ATTORNEYS' FEE AWARDS IN DELAWARE: A NORMATIVE AND EMPIRICAL ANALYSIS

Gilda Sophie Prestipino* and Michael Klausner**

Fee awards that the Delaware Court of Chancery has granted to plaintiffs' counsel in class actions and derivative suits are a recent focus of controversy. Critics claim that fees are too high relative to plaintiffs' attorneys' "lodestars"—hours lawyers work multiplied by their hourly rate. That criticism, however, is based solely on a handful of cases. We have collected and analyzed data on all fee awards granted over the past ten years. We find that mean and median fee awards are well within a reasonable range, and that the fee awards on which the Court's critics rely are extreme outliers. We further find that fee awards reflect the percentage-of-the-benefit approach laid out by the Delaware Supreme Court, which aligns plaintiffs' lawyers' incentives with shareholders' interests in obtaining the largest recovery possible. Outliers that the Court's critics have identified are occasional byproducts of that approach when recoveries are very high. Others have argued that Delaware fees are high relative to the risk plaintiffs' attorneys bear and suggest that the Court take risk more into account in awarding fees. We explain that if fees were set to compensate plaintiffs' lawyers for risk, plaintiffs' attorneys' incentives to obtain the highest recoveries for shareholders would be impaired. Some low-risk cases entail high shareholder losses. To provide incentives to obtain compensation for those losses, attorneys need to be paid commensurately high fees. Finally, we explain that lodestar-based caps on fees would both reduce incentives to obtain the best recovery for shareholders and motivate plaintiffs' attorneys to drag out litigation in order to raise the cap.

* Judicial Clerk, Delaware Court of Chancery; Academic Fellow, Arthur & Toni Rembe Rock Center for Corporate Governance, Stanford Law School (2024−2025).

** Nancy and Charles Munger Professor of Business and Professor of Law at Stanford Law School. Professor Klausner is currently co-counsel in cases before the Delaware Court of Chancery on behalf of plaintiffs in cases involving special purpose acquisition companies. Among these cases, those that have settled have an average lodestar multiple of 1.5. Arvind Asokan provided excellent research assistance.

The views expressed herein are solely the personal views of the authors and do not represent the views of the Delaware Court of Chancery. The authors thank Joel Fleming, Seth Ford, Joseph Grundfest, Curtis Milhaupt, Holger Spamann, Madison Wulf Elbich, and Delaware attorneys who wish to remain anonymous for helpful comments or discussions on a previous draft.

INTRODUCTION

Fees awarded to plaintiffs' lawyers in Delaware derivative suits and class actions have recently become the subject of public controversy and legislative attention. The debate has taken on greater urgency due to competition from Texas, where attorneys' fees in class actions are capped at four times the lodestar.[1] As a result, Delaware State Senator Bryan Townsend and other sponsors introduced a concurrent resolution calling on the Council of the Corporations Law Section of the Delaware Bar Association to prepare a report on attorneys' fees with recommendations for legislative action by the end of 2025.[2]

Two commentators have received considerable attention for their claim that Delaware attorneys' fee awards are substantially higher than warranted by the number of hours plaintiffs' lawyers

[1] *See* TEX. CIV. PRAC. & REM. CODE § 26.003(a) (2025); *id.* ("[T]he trial court shall use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel.").

[2] On February 17, 2025, the 153rd General Assembly passed Senate Concurrent Resolution No. 17, requesting the Council of the Corporation Law Section of the Delaware State Bar Association to prepare a report of recommendations for legislative action regarding awards of attorney's fees in certain corporate litigation cases. *See* S. Con. Res. No. 17, 153d Gen. Assemb. (Del. 2025). The initial deadline was set for March 31, 2025, and was later extended to December 31, 2025.

have devoted to a case—their "lodestar."[3] They have further claimed that Delaware fees are substantially higher than fees in

[3] Joseph A. Grundfest & Gal Dor, *Raising the Federal Eyebrow: The Incidence of Multipliers of Seven or More in Federal Class Action Fee Awards* (Rock Ctr. for Corp. Governance, Stanford L. Sch., Working Paper No. 262, 2025) [hereinafter *Eyebrow*]; Joseph A. Grundfest & Gal Dor, *Lodestar Multipliers in Delaware and Federal Attorney Fee Awards* (Rock Ctr. for Corp. Governance, Stanford L. Sch., Working Paper No. 263, 2025) [hereinafter *Multipliers*]. The first version of *Multipliers* is dated April 30, 2025. The second and current draft is dated May 13, 2025. We refer to the latter. *See* Andrew Ross Sorkin et al., *Companies Rely on Delaware Courts. Lawyers Reap Huge Fees There.*, N.Y. TIMES: DEALBOOK (June 2, 2025), https://www.nytimes.com/2025/06/02/business/dealbook/delaware-courts-legal-fees.html [https://perma.cc/KW7L-ZWKH]; Chris Morris, *'Something is Awry in Delaware': New Study Reveals Lawyers in the Tiny U.S. State are Winning Fee 'Multipliers' from Major Companies Up to 66 Times Their Normal Hourly Rate*, FORTUNE (June 2, 2025, at 12:07 ET), https://fortune.com/2025/06/02/delaware-lawyers-fee-multipliers-dexit/ [https://perma.cc/BP2S-3PL8]; Jeff Montgomery, *Report Finds Del. Court Jumbo Fees Rival Federal System*, LAW360 (June 2, 2025, at 16:57 ET), https://www.law360.com/articles/2347877/report-finds-del-court-jumbo-fees-rival-federal-system [https://perma.cc/L37U-6SJU]; *Citizens for Judicial Fairness Slams Excessive Delaware Chancery Fees Following New Stanford Report*, BUSINESS WIRE (June 5, 2025, at 09:55 ET), https://www.businesswire.com/news/home/20250605882699/en/Citizens-for-Judicial-Fairness-Slams-Excessive-Delaware-Chancery-Fees-Following-New-Stanford-Report [https://perma.cc/S48X-8626]; Lori Anne Czepiel, *DExodus: New Considerations from Stanford Study on Shareholder Suit Expenses*, NELSON MULLINS RILEY & SCARBOROUGH LLP (June 11, 2025), https://www.nelsonmullins.com/insights/blogs/corporate-governance-insights/all/dexodus-new-considerations-from-stanford-study-on-shareholder-suit-expenses [https://perma.cc/43FN-5FW6]; SHAREHOLDER PRIMACY: *Prof. Joe Grundfest and Attorney Joel Fleming on Delaware Contingency Fees*, (Apple Podcasts, June 18, 2025); GLADSTONE PLACE PARTNERS, *Grundfest Delaware Research Sparks Cross-Country Slugfest, While GPPers Pick the Best Things to Do in NYC*, CORPORATE GOVERNANCE & ACTIVISM WEEKLY HIGHLIGHTS (June 2025), https://myemail.constantcontact.com/Weekly-Corp--Gov---Activism-Highlights---Grundfest-Delaware-Fee-Research-Sparks-Cross-Country-Slugfest--While-GPPers--and-Intern.html [https://perma.cc/NF49-4WRG]; Video posted by Bill Gurley (@bgurley), X (May 31, 2025, at 15:44 ET), https://x.com/bgurley/status/1928900302859575566 (on file with Columbia Business Law Review); *Delaware Lawyers' Fees Face Review: Multipliers Up to 66 Times Rates*, YIELDRADAR, https://yieldradar.info/news/delaware-lawyers-fees-face-review-multipliers-up-to-66-times-rates/ [https://perma.cc/4G9S-N3QB] (last visited Mar. 9, 2026); Alexander Muse, *Delaware Is Broken: Why You Shouldn't Incorporate There*, AMUSE ON X (May 31, 2025), https://amuseonx.substack.com/p/delaware-is-broken-why-you-shouldnt [https://perma.cc/2SN2-3UG7].

federal securities class actions.[4] These claims, however, are based on minimal data.[5] Moreover, they fail to recognize that the objective of a fee award regime is to align plaintiffs' lawyers' incentives with shareholder interests, and that a byproduct of that objective can be the sort of outliers they observe.[6]

In this Article, we remedy those deficiencies by analyzing comprehensive data on fees in Delaware derivative suits and shareholder class actions against public corporations and in federal securities class actions. We find no evidence that Delaware fees are systematically excessive, that Delaware's fee award regime is flawed, or that high fees are awarded more in Delaware than in federal court. Our analysis shows that Delaware fees are consistent with incentive alignment and that the high fee awards identified by critics constitute a proportionately small number of outliers. We further explain how a fee award regime that creates incentives *ex ante* for plaintiffs' lawyers to act in the interests of their clients will occasionally result in fees that, from an *ex post* perspective, are surprisingly high, perhaps unnecessarily so. Based on an analysis of alternative fee award rules—including a lodestar-based cap, in which the Delaware legislature has indicated an interest—we conclude that addressing outlier fee awards with a new rule of general applicability would unduly impair the incentives that the Delaware fee regime creates for all cases. Instead, relying on the Court of Chancery's existing discretion to adjust fees on a case-by-case basis will constrain unnecessarily high fees in the small number of cases where they occur while maintaining appropriate incentives in other cases.

We also address the role that risk plays in a fee award regime. Other commentators have found that Delaware fee awards are high relative to the risk plaintiffs' lawyers face when they decide to file a case.[7] If the primary role of fees were to compensate for this risk, there would be reason for concern. But, as the Delaware courts and legislature have recognized, fees must also be structured

---

[4] *Multipliers*, *supra* note 3, at 2, 6.

[5] *Id.* at 2−3.

[6] For simplicity, we refer to the plaintiffs in both derivative suits and class actions as shareholders.

[7] Stephen J. Choi, Jessica M. Erickson & A.C. Pritchard, *Is Delaware Different? Stockholder Lawyering in the Court of Chancery*, *in* U. MICH. L. SCH., LAW & ECONS. RSCH. PAPER SERIES at 5 n.18 (Ser. No. 25-031, 2025), https://ssrn.com/abstract=5748607.

to motivate lawyers to obtain the best outcome for their shareholder clients when deciding whether to settle a case or move forward toward trial. Fee structures that accomplish that objective can result in fees greater than necessary to compensate for the risk entailed in filing a case. In our view, therefore, fees that overcompensate for risk do not necessarily reflect a flaw in the Delaware fee award regime.

The Article proceeds in four parts. Part I briefly summarizes the Delaware courts' approach to fee awards. Part II describes the controversy over attorneys' fees and the pending legislative response. Part III explores alternative approaches to fee awards and their implications for incentive alignment, both with respect to filing meritorious cases and litigating or settling cases once they are filed. Part IV presents an analysis of hand-collected data on attorneys' fees in Delaware corporate litigation from 2013 to 2024 and comparable data on securities class actions.

I. THE DELAWARE COURTS' APPROACH TO ATTORNEYS' FEES

While Delaware generally follows the American Rule,[8] under which each litigant bears its own legal fees, two equitable exceptions are routinely applied. The "common fund" doctrine applies when the plaintiffs' attorneys' efforts have led to a monetary settlement payment or a post-trial damage award for members of the class.[9] The "corporate benefit" doctrine applies when the plaintiffs' attorneys' efforts have conferred a substantial benefit upon the corporation or the class.[10] In these instances, the court has discretion to award reasonable attorneys' fees to the plaintiffs' counsel to be paid by the corporation or out of the plaintiffs' recovery.[11]

Over the years, Delaware's judiciary has developed a framework governing fee awards for plaintiffs' attorneys in class

[8] *See*, *e.g.*, Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975) ("In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser.").

[9] *See* Goodrich v. E.F. Hutton Grp., Inc., 681 A.2d 1039, 1044–50 (Del. 1996).

[10] *See* Tandycrafts, Inc. v. Initio Partners, 562 A.2d 1162, 1163, 1164–67 (Del. 1989).

[11] *In re* Plains Res. Inc. S'holders Litig., 2005 WL 332811, at *3 (Del. Ch. Feb. 4, 2005).

actions and derivative suits. Under the authority of *Sugarland*, the court employs a multi-factor analysis that takes into account the benefits conferred by the litigation, the time and effort of counsel, the relative complexity of the litigation, whether the litigation was undertaken on a contingent fee basis, and the standing and ability of counsel.[12] The court also considers the stage at which the case is resolved.[13] Of these factors, the Supreme Court has stated that the benefit conferred by the litigation is the most important one.[14] In a case where monetary relief has been obtained, the benefit is the amount recovered for shareholders. In a case involving non-monetary relief, it is the estimated value of the benefit conferred on the corporation or the shareholder class.[15] Both the Delaware Supreme Court and the Court of Chancery have justified this approach in terms of providing the plaintiffs' lawyer with an

[12] Sugarland Indus., Inc. v. Thomas, 420 A.2d 142, 149 (Del. 1980); *In re* Cox Commc'ns Inc. S'holders Litig., 879 A.2d 604, 640 (Del. Ch. 2005).

[13] Americas Mining Corp. v. Theriault, 51 A.3d 1213, 1260 (Del. 2012) ("Higher percentages are warranted when cases progress to a post-trial adjudication.").

[14] *In re* Dell Techs. Inc. Class V S'holders Litig., 326 A.3d 686, 698 (Del. 2024) ("We looked to five factors that are now the yardstick to measure whether a fee award is 'reasonable': (1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and ability of counsel involved. The first factor – the results achieved – is paramount.").

[15] *See* Dover Hist. Soc'y, Inc. v. City of Dover Plan. Comm'n, 902 A.2d 1084, 1090 (Del. 2006) ("A[n] . . . exception [to the American Rule is] the 'corporate benefit' doctrine, [which] allows a litigant to recover fees and expenses from a corporation where the litigation has conferred some other (non-monetary) valuable benefit upon the corporate enterprise or its shareholders.").

incentive aligned with his or her client's interest.[16] The Supreme Court has rejected the lodestar approach.[17]

In *Americas Mining*, the Supreme Court endorsed an approach to fee awards based primarily on a percentage of the benefit achieved for plaintiffs, where the percentage increases for cases that settle later in the litigation process. The Supreme Court reviewed with approval the Court of Chancery's approach to fee awards, explaining that (i) when a case settles early, the Court tends to award a fee equal to 10% to 15% of the benefit conferred, (ii) when a plaintiff's attorney has engaged in "meaningful litigation efforts, typically including multiple depositions and some level of motion practice," the Court tends to award fees in a range from 15% to 25% of the benefit conferred, and (iii) when a case proceeds through trial, a higher percentage award is reasonable up to 33%, which it described as the top of the range of fees awarded.[18]

---

[16] *Dell Techs.*, 326 A.3d at 698 ("We also rejected the federal lodestar approach. . . . We concluded that adopting the loadstar approach would require the Court of Chancery to engage in 'elaborate analyses' when the existing practice was sufficient. In other words, instead of adopting a formulaic approach to fee requests, we committed the fee award to the discretion of the Court of Chancery."). *See* Goodrich v. E.F. Hutton Grp., Inc., 681 A.2d 1039 (Del. 1996); *In re* Dell Techs. Inc. Class V S'holders Litig., 300 A.3d 679 (Del. Ch. 2023), *aff'd*, 326 A.3d 686 (Del. 2024); Thomas v. Kempner, 398 A.2d 320, 331 (Del. Ch. 1979), *enforcement granted in part, order set aside in part*, 1979 WL 6164 (Del. Ch. May 10, 1979); Transcript of Oral Argument on Plaintiff's Petition for Award of Attorneys' Fees and Expenses and Rulings of the Court, *In re* S. Peru Copper Corp. S'holder Derivative Litig., C.A. No. 961-CS (Del. Ch. Dec. 19, 2011).

[17] *Sugarland Indus.*, 420 A.2d at 150 (discussing Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973) [hereinafter *Lindy I*] and Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp., 540 F.2d 102, 110 (3d Cir. 1976) [hereinafter *Lindy II*]) ("Under *Lindy I*, the Court's analysis must begin with a calculation of the number of hours to be credited to the attorney seeking compensation. The total hours multiplied by the approved hourly rate is the "lodestar" in the Third Circuit's formulation. It has, indeed, been said that the time approach is virtually the sole consideration in making a fee ruling under *Lindy I*. Be that as it may, we conclude that our Chancery Judges should not be obliged to make the kind of elaborate analyses called for by the several opinions in *Lindy I* and *Lindy II*. To put it another way, while *Lindy*'s careful craftsmanship has much to commend it, we are not persuaded that our case law governing fee applications is an inadequate criterion for a fair judgment in this case, nor that new guidelines are needed for the Court of Chancery.").

[18] *Americas Mining*, 51 A.3d at 1259–60.

The Supreme Court rejected the argument of an objector that the percentage awarded should be reduced when a recovery is very large (a "megafund rule" or the "declining percentage approach"), as it was in *Americas Mining*.[19] But the Supreme Court also recognized the Court of Chancery's discretion to award fees below those percentages on a case-by-case basis according to the *Sugarland* factors.[20] The post-trial damage award in *Americas Mining* was over $2 billion,[21] so a 33% fee would have amounted to approximately $670.4 million. The plaintiff's attorneys requested a fee award of 22.5%, which would have resulted in about $450 million.[22] The Court of Chancery instead awarded a fee of about $304 million—15% of the recovery—which was still about ninety times the lawyers' lodestar.[23] The Supreme Court affirmed that award.[24]

The Supreme Court repeated its endorsement of the *Americas Mining* approach in *In re Dell Technologies Inc. Class V Stockholders Litigation*, when the parties agreed to a monetary settlement of $1 billion, and the Court of Chancery awarded attorneys' fees of $266.7 million against the $285 million requested.[25] That fee award was 6.66 times the attorneys' lodestar.[26] In response to an objection to the requested fee, the Court of Chancery again rejected an approach under which the percentage awarded would formulaically decline as recovery increases.[27] In doing so, it recognized the importance of the incentives created by the *Americas Mining* approach to fees. The Supreme Court affirmed the Court of Chancery's fee award, stating that it had addressed the

[19] *See id.*, at 1258−61.

[20] *See id.*, at 1261–62.

[21] *Id.* at 1262.

[22] *Id.* at 1252. *See* Transcript of Oral Argument on Plaintiff's Petition for Award of Attorneys' Fees and Expenses and Rulings of the Court, *In re* S. Peru Copper Corp. S'holder Derivative Litig., C.A. No. 961-CS (Del. Ch. Dec. 19, 2011).

[23] The multiplier decreases to 66.43 when adding expenses to the lodestar amount.

[24] *Americas Mining*, 51 A.3d at 1263.

[25] *In re* Dell Techs. Inc. Class V S'holders Litig., 326 A.3d 686, 686 (Del. 2024); *In re* Dell Techs. Inc. Class V S'holders Litig., 300 A.3d 679 (Del. Ch. 2023).

[26] *See Dell* Techs, 326 A.3d at 703. The multiplier decreases to 6.13 when adding the expenses to the lodestar amount.

[27] *Dell Techs.*, 300 A.3d at 687.

possibility of an excessive award by using "[t]he hours worked . . . 'as a cross-check to guard against windfall awards, particularly in therapeutic benefit cases.'"[28]

More recently, in a case that has contributed to the current controversy over attorneys' fees, the Court of Chancery approved the attorneys' fee award in *Tornetta v. Musk*.[29] Following the rescission of the $55.8 billion compensation package approved for Tesla's CEO, Elon Musk, the Court valued the benefit to the corporation at $2.3 billion, which was the award's grant-date fair value, rather than at the $51 billion reverse-dilution.[30] That led to an award of $345 million to the plaintiff's attorneys, which was 15% of the benefit, measured this way, and represented a lodestar multiplier of 25.3.[31] While the appeal was pending, based on new public disclosures, Tesla obtained shareholder approval to reinstate the rescinded compensation package and to redomicile the company to Texas.[32] The following year, the Supreme Court reversed the Chancery Court opinion and reinstated Musk's compensation package.[33] Instead of remanding to the lower court, the Supreme Court awarded fees in the amount of four times the lodestar on the grounds that "Tesla and its stockholders benefited by counsel's efforts"[34]—though the nature of that benefit was neither explained nor evident.

[28] *Dell Techs.*, 326 A.3d at 693.

[29] Tornetta v. Musk, 326 A.3d 1203, 1261–62 (Del. Ch.), *judgment entered*, (Del. Ch. 2024). "There is justification for awarding Plaintiff's counsel 33% of the $2.3 billion, which would result in a fee award of $759 million. But that would be the highest award in the history of Delaware litigation by a wide margin. And so yet a further adjustment is required to avoid the windfall issue." *Id.* (footnote omitted).

[30] *Id.* at 1213, 1241. Had the court adopted the plaintiff's valuation of the benefit, the fee would have amounted to $7.71 billion.

[31] *Id.* at 1262. The multiplier decreases to 23.4 when adding the expenses to the lodestar amount.

[32] Press Release, Tesla, Tesla Releases Results of 2024 Annual Meeting of Stockholders (June 13, 2024), https://ir.tesla.com/press-release/tesla-releases-results-2024-annual-meeting-stockholders (on file with Columbia Business Law Review).

[33] *In re* Tesla, Inc. Derivative Litig., 2025 WL 3689114, at *1 (Del. Dec. 19, 2025).

[34] *Id.* at *18.

II. THE CURRENT CONTROVERSY OVER ATTORNEYS' FEES

Attorneys' fees in Delaware are currently the subject of controversy. Large awards have attracted media scrutiny, provoked backlash from corporate leaders, and drawn criticism from commentators who question the size of fees.[35] The controversy is so heated that Senator Townsend and other sponsors introduced a concurrent resolution mandating completion of a report on attorneys' fees by the end of 2025.[36] Just beneath the surface lies rising concern over companies reincorporating out of Delaware ("DExit") in favor of Nevada and, particularly, Texas, which caps attorneys' fees in class actions at four times the lodestar.[37]

---

[35] *See* sources cited *supra* note 3.

[36] *See* S. Con. Res. No. 17, *supra* note 2.

[37] *See* TEX. CIV. PRAC. & REM. CODE § 26.003(a), *supra* note 1 ("The rules may give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method by no more than four times based on specified factors."); Michal Barzuza, *Nevada v. Delaware: The New Market for Corporate Law* (Eur. Corp. Governance Inst., Law Working Paper No. 761/2024 (Mar. 4, 2024)), https://www.ecgi.global/sites/default/files/working_papers/documents/nevadavdelaware.pdf; Mike Leonard & Jennifer Kay, *TripAdvisor Ruling Eases 'DExit' Path for Corporate Departures*, BLOOMBERG LAW (Feb. 13, 2025, at 11:57 ET), https://news.bloomberglaw.com/esg/tripadvisor-ruling-eases-dexit-path-for-corporate-departures (on file with Columbia Business Law Review); Michael Maugans, *ANALYSIS: DExit Pits Chancery Against Controlling Stockholders*, BLOOMBERG LAW (Feb. 20, 2025, at 05:00 ET), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-dexit-pits-chancery-against-controlling-stockholders (on file with Columbia Business Law Review); Tom Hals, *In Tesla's Wake, More Big Companies Propose Voting 'Dexit' to Depart*, REUTERS (May 14, 2025, at 18:29 ET), https://www.reuters.com/business/autos-transportation/teslas-wake-more-big-companies-propose-voting-dexit-to-depart-delaware-2025-05-14/ (on file with Columbia Business Law Review); Jun Frank, *DExit: Signs of Discontent in Biggest Corporate Domicile?*, ISS CORPORATE GOVERNANCE (Apr. 3, 2025), https://www.iss-corporate.com/resources/blog/dexit-signs-of-discontent-in-biggest-corporate-domicile/ [https://perma.cc/5QUW-YWGV]; Dorothy S. Lund & Eric L. Talley, *Should Corporate Law Go Private?* (Eur. Corp. Governance Inst., Law Working Paper No. 877/2025 (Oct. 20, 2025)), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5534959. *But see* Stephen M. Bainbridge, *DExit Drivers: Is Delaware's Dominance Threatened?*, 50 J. CORP. L. 823 (2025).

Headline-grabbing fee awards have created the perception that things are seriously amiss in Delaware.[38] After the Court of Chancery fee award in *Tornetta v. Musk*, for example, hedge fund billionaire Bill Ackman declared on X, "This decision and the payola for lawyers is absurd. We are going to see a migration of Corporate America from Delaware."[39] Earlier, media reports on the

---

[38] Jeff Montgomery, *5 Firms Win Record $266.7M Fee From $1B Dell Settlement*, LAW360 (July 31, 2023, at 17:42 ET), https://www.law360.com/pulse/articles/1600897/5-firms-win-record-266-7m-fee-from-1b-dell-settlement (on file with Columbia Business Law Review); Alison Frankel, *Whopper $267 Million Fee Award in $1 Billion Dell Case Shows Why Delaware is Different*, REUTERS (Aug. 1, 2023, at 17:10 ET), https://www.reuters.com/legal/transactional/column-whopper-267-million-fee-award-1-billion-dell-case-shows-why-delaware-is-2023-08-01/ (on file with Columbia Business Law Review); Justin Wise & Mike Leonard, *Top US Business Court Bolsters Reputation with Big Lawyer Fees*, BLOOMBERG LAW (Aug. 3, 2023, at 05:01 ET), https://news.bloomberglaw.com/business-and-practice/top-us-business-court-bolsters-reputation-with-big-lawyer-fees (on file with Columbia Business Law Review); Sujeet Indap, *Shareholders' Lawyers in $1bn Dell Case Clinch $267mn Fee Award*, FINANCIAL TIMES (Aug. 14, 2024), https://www.ft.com/content/13f9c087-0c51-4cec-8468-66e78288d167 (on file with Columbia Business Law Review); Jennifer Kay, *Big Lawyer Paydays in Risky Cases Affirmed by Delaware Court (2)*, BLOOMBERG LAW (Aug. 14, 2024, at 17:41 ET), https://news.bloomberglaw.com/litigation/big-lawyer-paydays-in-risky-cases-affirmed-by-top-delaware-court (on file with Columbia Business Law Review); Tom Hals & Jonathan Stempel, *Court Upholds Blockbuster $267 Million Legal Fee Award in Dell Lawsuit*, REUTERS (Aug. 14, 2024, at 17:34 ET), https://www.reuters.com/legal/court-upholds-blockbuster-267-million-legal-fee-award-dell-lawsuit-2024-08-14/ (on file with Columbia Business Law Review); Jeff Montgomery, *Chancery OKs $345M Fee Award For $55B Musk Pay Fight*, LAW360 (Dec. 2, 2024, at 17:09 ET), https://www.law360.com/articles/2268309/chancery-oks-345m-fee-award-for-55b-musk-pay-fight (on file with Columbia Business Law Review); Jeff Montgomery, *Chancery Awards $176M Atty Fee In Tesla Board Pay Suit*, LAW360 (Jan. 8, 2025, at 13:26 ET), https://www.law360.com/articles/2281210/chancery-awards-176m-atty-fee-in-tesla-board-pay-suit (on file with Columbia Business Law Review).

[39] *See* Andrew Miller, *'Very wrong': Elon Musk Case Sparks Calls for Reform After Judge Awarded Massive Judgment for Lawyer Fees*, FOX BUSINESS (Dec. 18, 2024, at 13:49 ET), https://www.foxbusiness.com/politics/very-wrong-elon-musk-case-sparks-calls-for-reform-judge-awarded-massive-judgement-lawyer-fees [https://perma.cc/245F-9XXN] (quoting Bill Ackman (@BillAckman), X (Dec. 3, 2024, at 06:31 ET), https://x.com/BillAckman/status/1863908964863242322 [https://perma.cc/8SJ9-D6GS]); *see also* Elon Musk (@elonmusk), X, *The lawyers*

Dell case highlighted "whopper" fee awards, suggesting that Delaware is an outlier.[40] Catchy sound bites reinforce the perception that Delaware litigation disproportionately benefits plaintiffs' lawyers at the expense of corporations and shareholders.

Recent unpublished papers by Joseph Grundfest and Gal Dor poured fuel on the controversy.[41] One paper identifies twenty cases in which the Delaware Court of Chancery awarded attorneys' fees with lodestar multiples of seven or more—what they call "septuples."[42] Although the study is based on minimal data and suffers from other methodological flaws, which others have pointed out,[43] it attracted significant media attention and has been

---

who did nothing but damage Tesla want $6 billion. Criminal. (Mar. 1, 2024, at 22:49 ET), https://x.com/elonmusk/status/1763773501616328775 [https://perma.cc/NLB9-4258].

[40] *See* Frankel, *supra* note 38.

[41] *Eyebrow*, *supra* note 3; *Multipliers*, *supra* note 3.

[42] *Multipliers*, *supra* note 3 at 1–2. It bears emphasizing that there is nothing conceptually meaningful about a lodestar multiple of seven. The focus on "7x" or "septuple" lodestar multiples as a supposed indicator of excess does not originate in any Delaware or federal precedent or policy statement. In *Dell*, Vice Chancellor Laster observed that a 7x lodestar would "not raise a federal eyebrow," citing federal cases that had approved comparably high multipliers as examples of outcomes within the range of reasonableness. *See In re* Dell Techs. Inc. Class V S'holders Litig., 300 A.3d 679, 715 (Del. Ch. 2023) (citing federal cases exceeding fee awards with 7x multiples and higher). The first federal case in the citation string affirmed the approval of a fee award at a 10.15x multiple, commenting, "In short, neither the settlement nor the fee award raises an eyebrow." Farrell v. Bank of Am. Corp., N.A., 827 F. App'x 628, 631 (9th Cir. 2020). The *Dell* comment built off that reference and was descriptive, not prescriptive: it was an observation that other courts had approved awards exceeding the 6.6x multiple in *Dell*, not that 7x constituted a meaningful doctrinal threshold. To advance their claims, Grundfest and Dor chose to depict the 7x reference as a normative claim and treated it as a benchmark for presumptively excessive awards. There is no theoretical, empirical, or policy reason for treating that figure as broadly meaningful outside of a case-specific analysis.

[43] *See* Michael Hanrahan, *There is No Basis for a Delaware Lodestar Cap: A Response to Professor Grundfest* (Aug. 15, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5363663 [https://perma.cc/UBM6-XNGW]; Joel Fleming, *Looking for Lodestar In All The Wrong Places* (May 2, 2025), https://www.linkedin.com/pulse/looking-lodestar-all-wrong-places-joel-fleming-ailie/[https://perma.cc/WEF5-LQTA]. Fleming and Hanrahan point out three serious weaknesses in Grundfest and Dor's work: (1) the authors have not anchored their data in a complete dataset (by their own admission, they have produced a "numerator in search of a denominator");

seized upon as evidence that the Delaware judiciary's fee practices are problematic.[44] For example, reacting to the study, advocacy group Citizens for Judicial Fairness declared that "Delaware's Chancery Court is more interested in enriching lawyers than serving shareholders or protecting everyday investors."[45]

In a more recent study, Stephen Choi, Jessica Erickson, and Adam Pritchard analyze the risk plaintiffs' lawyers face in filing derivative suits and class actions against public corporations in the Court of Chancery compared to the risk of filing a securities class action in federal court. They find that Delaware litigation is similarly risky and more remunerative than federal securities litigation and conclude that plaintiffs' lawyers in Delaware are "overcompensated."[46]

An added dimension to the debate is the rising competition with other states, particularly Texas and Nevada, for corporate chartering business.[47] Both Texas and Nevada pitch their states as lower-cost alternatives to the Delaware regime, including with respect to litigation costs. For example, Texas caps fees in class actions at four times the attorneys' lodestar.[48] Although it seems doubtful that the fees a corporation might pay to plaintiffs' lawyers in the event of litigation constitute a significant factor affecting an incorporation decision, at this point, perceptions of Delaware fees

(2) the authors relied on secondary sources (expert opinions) to identify the lodestar multiplier, without acknowledging differences in the methodologies used by the various experts to calculate the multipliers; and (3) the authors made no attempt to determine the stage of the case at which the fees were awarded. Grundfest and Dor responded to Fleming and Hanrahan. *See* Joseph A. Grundfest & Gal Dor, *Responding to* Looking for Lodestar (May 14, 2025), https://www.linkedin.com/feed/update/urn:li:activity:7354328749577809920/ (on file with Columbia Business Law Review); Joseph A. Grundfest & Gal Dor, *Plaintiff Fees in Delaware Litigation: A Response to Mr. Hanrahan*, (Nov. 12, 2025), https://ssrn.com/abstract=5736663 [https://perma.cc/PCR6-Z7PF].

[44] *See* sources cited *supra* note 3.

[45] *See Citizens for Judicial Fairness Slams Excessive Delaware Chancery Fees Following New Stanford Report*, *supra* note 3.

[46] Choi, Erickson & Pritchard, *supra* note 7, at 6–7, 61.

[47] *See supra* note 37 and accompanying text.

[48] In class actions, Texas Civil Practice and Remedies Code § 26.003(a) requires courts to calculate attorneys' fees using the lodestar, and Texas Rule of Civil Procedure mandates that any adjustment fall within the range of 25% to 400% of the lodestar figure. *See* TEX. CIV. PRAC. & REM. CODE § 26.003(a) (2025); TEX. R. CIV. P. 42(i)(1).

are so clouded that one cannot exclude the possibility that firms might be concerned.

Fear of DExit has spurred action in Delaware's General Assembly. Alongside Senate Bill 21 ("SB 21"), which creates a safe harbor for certain interested transactions, Senate Concurrent Resolution 17 ("SCR 17") mandated that the Council of the Corporation Law Section of the Delaware State Bar Association prepare a report recommending

> legislative action that might help the Delaware Judiciary ensure that awards of attorney's fees provide incentives for litigation appropriately protective of stockholders but not so excessive as to act as a counterproductive toll on Delaware companies and their stockholders that threatens to make the overall 'benefit-to-cost' ratio of corporate litigation negative. . . . [And] that in considering any such recommendation, the General Assembly requests the Council examine the utility of a cap on such awards based on a multiple of lodestar amounts determined by the time devoted by plaintiffs' counsel and their ordinary billing rates.[49]

The initial deadline for the report was set for March 31, 2025, but it was extended to December 31, 2025, due to challenges in collecting reliable data. According to unofficial accounts, in early 2026, the Council informed the legislature that it would continue to gather information but did not recommend an amendment at that time.

Grundfest and Dor acknowledge that the number of "septuples" that they found represents "a numerator in search of a denominator."[50] Based on other studies of federal litigation, they estimate that these cases constitute a small minority.[51] Yet their sensationalist tone, and the press reports and other commentary that followed, create the impression that they uncovered a systematic flaw in the Court of Chancery's fee-award decisions. The comprehensive data that we present in Part IV provides Grundfest

[49] S. Con. Res. No. 17, 153d Gen. Assemb. (Del. 2025).
[50] *Eyebrow*, *supra* note 3, at 2–3.
[51] *Id.* at 5.

and Dor with a denominator and reveals that there is no such flaw. Our analysis in Part III explains why one should not be surprised by the outliers Grundfest and Dor found. As we explain, occasional large fee awards and the attention they attract in isolation are a consequence of maintaining incentives for plaintiffs' lawyers to obtain the highest recoveries they can for shareholders across the full run of cases.

Choi, Erickson, and Pritchard's analysis of Delaware fees in relation to the risk plaintiffs' lawyers face when filing a lawsuit is thorough and informative. As we explain in Part III, however, Delaware's fee award regime is designed to provide plaintiffs' attorneys with an incentive to obtain the best outcome available for their shareholder clients. A fee award regime with that objective may result in fees that are larger than necessary to compensate the attorneys solely for risk. That is not a flaw.

III. HOW SHOULD ATTORNEYS' FEES BE DETERMINED?

The central objective of a rule governing fee awards should be to align plaintiffs' lawyers' incentives as closely as possible with the interests of their clients—the corporation in a derivative suit and the shareholder class in a class action.[52] Delaware case law,[53] SCR 17,[54] and academic commentary[55] recognize this as the primary objective of a fee award rule. Even the most sophisticated lead

[52] As stated above, for simplicity, we will refer to the client as shareholders in both types of cases.

[53] *See* cases cited *supra* note 16 and accompanying text.

[54] SCR 17 states that fees should provide "sufficient incentive for law firms to take the risks of representing stockholders on a contingent basis in cases that actually implicate important stockholder interests." S. Con. Res. No. 17, 153d Gen. Assemb. (Del. 2025).

[55] *See, e.g.*, Steven Shavell, *The Social Versus the Private Incentive to Bring Suit in a Costly Legal System*, 11 J. LEGAL STUD. 333, 333 (1982); John C. Coffee Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 669–70 (1986); Jonathan R. Macey & Geoffrey P. Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. CHI. L. REV. 1, 3–4 (1991); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043, 2046–47 (2010); Jill E. Fisch, *Lawyers on the Auction Block: Evaluation and Selection of Class Counsel by Auction,* 102 COLUM. L. REV. 650, 658–59 (2002); Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORDHAM L. REV. 1151, 1152 (2021).

plaintiffs' monitoring of their attorney is imperfect.[56] Incentives, therefore, are the best tool available to promote shareholder interests in litigation.

The theoretically ideal fee regime would induce plaintiffs' lawyers to file all cases with positive net present value—and only those—and to make decisions regarding continued litigation and settlement that maximize the net present value of the prospective recovery.[57] To induce plaintiffs' lawyers to file potentially meritorious but risky cases, the fees that they expect must compensate them for the risk inherent in litigation, without inducing them to file non-meritorious cases. Then, once a plaintiffs' lawyer files a case, the fees she expects must provide incentives for her (a) to settle the case when the net present value of proceeding is less than an available settlement, (b) to press forward toward trial when the net present value of doing so is greater than an available settlement, and (c) to drop the case when the net present value of continued litigation is negative. A fee regime that accomplishes these objectives would not only maximize shareholders' net recovery but would also deter defendants from violating Delaware corporate law. Ideally, a fee regime would pay plaintiffs' lawyers no more than is necessary to provide incentives to accomplish these objectives.[58]

The ideal fee regime will not produce the right incentives at the right cost in every case. Because a fee regime must be applied to cases that vary widely in potential recovery, risk, and litigation cost, incentives will be insufficient in some cases, and lawyers will

---

56 *See* Reinier H. Kraakman, *Corporate Liability Strategies and the Costs of Legal Controls*, 93 YALE L.J. 857, 894–95 (1984); John C. Coffee, Jr., *The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action*, 54 U. CHI. L. REV. 877, 881–84 (1987).

57 This is a slight simplification. There is a small literature analyzing litigation in a real option framework as opposed to a discounted cash flow or net present value framework. *See, e.g.*, Joseph A. Grundfest & Peter H. Huang, *The Unexpected Value of Litigation: A Real Options Perspective*, 58 STAN. L. REV. 1267, 1267–68 (2006); Lucian Arye Bebchuk, *A New Theory Concerning the Credibility and Success of Threats to Sue*, 25 J. LEG. STUD. 1, 1–2 (1996). As a practical matter, however, analysis from that perspective would have no bearing on the topic of this paper.

58 *See* Adam C. Pritchard & Jessica M. Erickson, *Opening Delaware's Black Box of Attorneys' Fees*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 19, 2025), https://corpgov.law.harvard.edu/2025/03/19/opening-delawares-black-box-of-attorneys-fees/ [https://perma.cc/QUQ3-WP4W].

be overpaid in others. Since plaintiffs' lawyers will receive only a portion of the shareholders' recovery, they may have an incentive to refrain from filing some meritorious but costly and/or risky cases. When they do file a suit, if at some point in the litigation the expected value of their potential fee is less than the cost of continued litigation, they will have an incentive to settle sooner rather than later and not necessarily on terms that maximize the shareholders' recovery. Conversely, in some cases, fee awards may be greater than the amount needed to create an incentive for a lawyer to press forward to maximize her clients' recovery. These would be cases of overpayment. Fee awards that are merely high relative to the lawyer's lodestar, however, do not necessarily constitute overpayment. Such fees may be necessary to provide an incentive to pursue the highest recovery for shareholders, taking into account the cost and the risk entailed.

The remainder of this section analyzes alternative fee award rules in terms of how close they come to the ideal of aligning plaintiffs' attorneys' incentives and shareholder interests, and their implications for awarding fees that overcompensate attorneys.

A. *Fees Based on the Percentage of the Benefit*

As explained above, the Delaware Supreme Court has adopted an approach to attorneys' fees based primarily on a percentage of the plaintiffs' recovery, or, in cases involving a non-monetary remedy, a percentage of the benefit provided to shareholders.[59] The percentage awarded increases for settlements entered into at a later litigation stage and reaches its maximum if a case is tried to conclusion.

This percentage-of-the-benefit approach is consistent with economic analysis showing that it can align the lawyer's incentives with shareholders' interests in achieving the greatest recovery or other remedy by either settling a case or taking it to trial.[60] How well the percentage-of-the-benefit approach aligns the attorney's incentives in a given case, however, depends on the nature of the case and the percentage awarded.

---

[59] For simplicity, we will refer to this rule in either context as "percentage of the benefit."

[60] *See* sources cited *supra* note 55.

To produce the right incentive throughout the duration of a case, the fee that a plaintiffs' lawyer expects must be high enough to cover the time the lawyer expects to devote to a case, the expenses he expects to incur, and the risk the lawyer faces in litigating the case—all at the margin as the case proceeds. The risk that a plaintiffs' attorney faces can change over the course of litigation, as rulings are issued, evidence is uncovered, and the defendant's attitude toward settlement changes. Cases obviously differ with respect to risk at the outset, changes in risk as a case proceeds, potential recovery, time required to litigate, and willingness of defense counsel to settle on terms that plaintiffs believe are reasonable. In some cases, a low percentage fee will produce sufficient incentives for the lawyer to continue litigating until he maximizes the shareholders' remedy; and in some cases, a higher percentage is needed.

A low percentage can impair a lawyer's incentives in two ways. First, a lawyer will forgo bringing meritorious cases in the first place where the risk-return ratio of the expected fee does not warrant the time and expense the lawyer expects will be necessary to litigate the case. Second, as a case proceeds, the lawyer will stop short of maximizing the net recovery for shareholders. The lawyer acting in his own interest will continue litigating a case only if he expects the marginal fee, discounted by the probability of settling later or winning at trial, to be greater than the marginal cost of the time and expense of continued litigation.[61]

A fee award rule promising a higher percentage fee will provide the right incentives in more cases than a lower percentage. In some cases, however, a rule providing for a higher percentage award will result in overpayment—fees that provide lawyers with more than they need to have an incentive to obtain the best remedy available for their clients. There is an inevitable conflict between establishing a fee-award rule that creates sufficient incentives for more plaintiffs' lawyers across the board and avoiding overpayment in some cases.

Under current Delaware law, the Court of Chancery can, and does, adjust fees on a case-by-case basis if it believes a percentage-based fee would be too high. But if the Court were to

[61] As we explain below, we do not believe that lawyers act solely in their own self-interest. But to the extent we are analyzing the incentive effects of fees, we make that assumption throughout this analysis.

reduce fees too much, too often, it would reduce the percentage that plaintiffs' lawyers expect, which would impair their incentives in future cases—and hence, impair the interests of shareholders. In Part IV, we analyze data on Delaware fee awards to gain an insight into the Court of Chancery's efforts to strike a balance between paying enough to maintain incentives in most cases and not paying too much.

B. *Fees Based on Lodestar*

An alternative to a percentage-of-the-benefit fee structure is a fee structure based on the number of hours a lawyer works multiplied by a reasonable hourly rate—the lawyer's lodestar. A pure lodestar approach, however, is a nonstarter for at least three reasons. First, a lawyer would not bring cases that entail any chance of losing. Lawyers working on a contingency fee basis must be paid enough when they win to cover the work they do when they lose, when they are paid little, and when they investigate a potential case and decide not to proceed with filing a lawsuit. We do not want to provide incentives for lawyers to bring non-meritorious cases, but we do want them to investigate potential cases and bring meritorious cases even if they entail risk—with respect to both liability and remedy. Second, paying the lawyer's lodestar would give attorneys no incentive to maximize the shareholders' recovery. The lawyers would be paid regardless of how much they recover for shareholders. Finally, paying the lawyer's lodestar would give attorneys an incentive to run the clock, increasing hours without necessarily increasing the recovery. A lawyer could spend years in litigation and secure only a modest settlement, yet still be awarded a large fee out of the shareholders' eventual recovery. Furthermore, the rule would impose excessive burdens on judicial resources, as courts would be faced with unnecessary motions and drawn-out discovery as lawyers run up their fees.[62] Additionally, courts would

[62] As recognized by the 1985 Third Circuit Task Force, the lodestar method generated excessive judicial oversight and inevitable waste of judicial resources. Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 246−49 (1985). *See also* Americas Mining Corp. v. Theriault, 51 A.3d 1213, 1253–54 (Del. 2012) (discussing the Task Force's criticism of the lodestar method and its recommendation of a percentage-of-the-benefit approach).

also be called on to make determinations of the lawyer's reasonable hourly rate.[63]

C. *Fee Caps Based on Lodestar*

A variant of the pure lodestar approach is to award fees based on a percentage of the benefit but to cap fee awards at a specified multiple of the lawyer's lodestar. Texas follows this approach in class actions, capping fees at four times a lodestar. As stated in Part II, SCR 17 directed the Council to consider this approach in its review.

A lodestar-based cap on fees would reduce the incidence of overpayment, but it would do so at the expense of impairing attorney incentives to obtain the best outcome for shareholders. In addition, it would produce some of the same problems as the straight lodestar approach would produce with respect to keeping the clock running.

Consider a case in which a plaintiffs' lawyer is offered a large settlement early in litigation. Assume the terms would be attractive to shareholders, but the fee award rule caps fees at four times the lodestar. Since the proposed settlement is large and the case was recently filed, the percentage fee will be capped. The lawyer, therefore, will have an incentive to reject the settlement offer and continue litigating, earning four times her increasing lodestar as she continues litigating the case.

When the case reaches a later stage of the proceedings—with an increased lodestar—the plaintiffs' attorney will have an incentive to settle rather than incur the risk of a trial, where her upside fee will be capped, and her downside will be no fee at all. Furthermore, the lawyer will have no incentive to negotiate a settlement so high that the percentage fee would be above the cap. The defense attorney, therefore, will have an incentive to agree only to a settlement in which the applicable percentage fee equals the cap. The shareholders would thus be shortchanged. To take an extreme but simple example, imagine a case that has been tried, and parties are waiting for a judgment that could be very large but not a sure bet. While awaiting the judgment, defense lawyers offer a settlement that will yield a fee equal to the cap but far below the shareholders' potential recovery. The plaintiffs' lawyers will have an

[63] *Court Awarded Attorney Fees*, *supra* note 62, at 246, 260−62.

overwhelming incentive to settle rather than wait for a judgment with no upside and a downside of zero. Of course, this is a stylized example, and, in reality, a plaintiffs' lawyer may act in the interest of her client even when doing so is against her own interest. Or the court might step in to disallow a settlement that appears to favor the lawyer over the client. The hypothetical is intended only to illustrate how a fee cap can put the interests of the plaintiffs' lawyer in conflict with the interests of the shareholders.

The fee cap is especially problematic in cases with high potential damages. The cost to a plaintiffs' lawyer of litigating a case is not necessarily proportionate to potential damages. Imagine two straightforward cases involving blatant breach of the duty of loyalty, one with shareholder losses of $20 million and one with losses of $200 million. It may not take much more time and expense to litigate the latter case than the former. In the smaller case, the cap may not bind a percentage-of-the-benefit fee—four times the lodestar may exceed the applicable fee percentage times potential settlement amount or post-trial damages—thus the plaintiffs' lawyer's incentives will be aligned with her client's interest. But in the larger case, the cap may bind, in which case the lawyer's incentive will be to keep litigating with the clock running and eventually to settle regardless of whether the settlement is not optimal for shareholders.

Americas Mining provides an example of a case in which a lodestar-based fee cap could have had a disastrous effect on shareholders. The shareholders in that case recovered $2 billion after trial, and their lawyers were awarded a fee of $300 million, which was about ninety times their lodestar of $3.4 million.[64] The plaintiffs' lawyers in that case surely would have continued litigating through trial with the prospect of a far lower award. But if they faced a cap of four times their lodestar, they may well have settled for a small fraction of the $2 billion the shareholders obtained. The cap would have been $13.6 million, so at the 33% fee for late settlements under *Americas Mining*,[65] any recovery greater than $41 million would yield no benefit to the lawyers.

Thus, although a lodestar-based cap on fees would reduce the number of cases in which lawyers are paid more than needed to

[64] *See Americas Mining*, 51 A.3d at 1262–63.
[65] *See id.* at 1259.

maintain incentives, it would do so at the cost of impairing incentive alignment and creating inefficient litigation.

D. *Higher Percentage Fees for Resolution at Later Stages of Litigation*

As explained in Part I, *Americas Mining* endorsed a set of increasing percentage fee awards as a case proceeds and is eventually resolved. In a case litigated through trial, the plaintiffs' attorney is awarded a higher percentage than in a case that settles before trial. In cases that settle early in litigation, the attorney receives a lower percentage of the recovery compared to those settled at a later stage.[66]

Economic analysis has shown that this approach aligns plaintiffs' attorneys' incentives with shareholder interests. All other factors equal, a plaintiffs' lawyer will want to settle early. As a case proceeds and plaintiffs' lawyers must retain expert witnesses and mediators, the plaintiffs' lawyer's costs increase. In addition, the risk that the plaintiffs' lawyer faces can change as the court issues evidentiary and other rulings. A defendant, therefore, could take advantage of a plaintiffs' lawyer's risk aversion by offering a settlement below the value of the case to the shareholders. An increasing percentage fee enhances the plaintiffs' lawyer's incentive to hold out for a higher settlement later or a victory at trial.[67]

Setting a fee at a higher percentage of recovery for a victory at trial, as opposed to at settlement, is important for an additional reason. When a trial is imminent, the parties are in a game of chicken: an undiversified plaintiffs' attorney faces a dramatic increase in costs, while defense attorneys charge a publicly held and insured corporation by the hour. Without an extra payoff for a victory at trial, the plaintiffs' attorney will have an incentive to settle for an amount less than the net present value of trying the case rather than risking a loss and receiving nothing. Moreover, even if the plaintiff wins at trial, there may be an appeal. The plaintiffs' lawyer will not be compensated for the time spent defending the appeal and facing the possibility of reversal. Consequently,

[66] *See supra* text accompanying notes 18–24.

[67] *See* Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, *supra* note 55, at 1158; Coffee Jr., *supra* note 55, at 690, 697; Fisch, *supra* note 55, at 679. It is also possible that a plaintiffs' lawyer will turn down an attractive settlement offer early to litigate to a later stage and get a higher percentage fee.

increasing the percentage fee awarded to the lawyer for a win at trial promotes an alignment of interests.

While increasing the percentage fee for later settlements helps align attorney incentives, it could result in overpayment in some cases. The question, therefore, is whether overpayment occurs so often as to require a change in the fee award rule. We address this question in Part IV, where we analyze data on fee awards.

E. *Lower Percentages in "Megafund" Cases?*

The cases for which the Court of Chancery has received the most criticism are "megafund" cases—cases involving very large shareholder recoveries and therefore very large fee awards.[68] These cases raise the possibility that plaintiffs' lawyers may be overpaid because the percentage-based fee in a case may be disproportionately high relative to the time and expense of litigating through trial, or credibly threatening to do so.

A fee objector in *Dell* and a group of law professors who filed an *amici curiae* brief, among others, have argued that lower percentage fees should apply in these cases, and to the extent a lodestar-based cap is being considered, it would tend to apply more to these cases than others.[69] We are doubtful that the distortions introduced by either of these measures would be a cost worth paying to address overpayment in a few cases, especially because the Court of Chancery can adjust fees in megafund cases as they arise.

An across-the-board rule reducing percentages in megafund cases could be as dysfunctional as it would be in cases with lower recoveries—and there is more at stake for the shareholders in megafund cases. To be sure, there is more room to reduce fee

---

[68] Tornetta v. Musk, 326 A.3d 1203, 1237 n.197 (Del. Ch.), *judgment entered*, (Del. Ch. 2024).

[69] *See* Pentwater Capital Management L.P.'s Objection to Plaintiff's Counsel's Fee Application, *In re* Dell Techs. Inc. Class V S'holders Litig., Cons. C.A. No. 2018-0816 (Apr. 4, 2023); Pentwater Capital Management L.P.'s Supplemental Submission in Further Response to its Objection to Plaintiff's Counsel's Fee Application with Certificate of Service, *In re* Dell Techs. Inc. Class V S'holders Litig., Cons. C.A. No. 2018-0816 (Apr. 11, 2023); Brief of Law Professors as *Amici Curiae*, *In re* Dell Techs. Inc. Class V S'holders Litig., Cons. C.A. No. 2018-0816 (Apr. 12, 2023).

percentages in some of these cases without impairing incentives. As the Delaware Supreme Court stated in the *Dell* case, "[a]t some point, the percentage of fees awarded in a megafund case exceed their value as an incentive to take representative cases and turn into a windfall."[70] But some megafund cases may require lawyers to bill time in proportion to the size of the case. In such a case, a lower fee percentage could impair their incentives to obtain the best outcome for shareholders. A case-by-case approach is therefore better than an across-the-board rule.

A lodestar-based cap on fees would be more dysfunctional. As we explained in Part III.C, a lodestar-based cap would create incentives for plaintiffs' lawyers to both resist early settlements that would be beneficial to shareholders and to agree to late settlements that are not. Although the fee of ninety times the lodestar in *Americas Mining* could have been a lot lower without impairing incentives going forward, if the fees there had been subject to a lodestar cap, the settlement would likely have been far lower than the amount shareholders recovered.

In Part IV, we investigate how common high fees are in these cases.

F. *Fees Based on Risk*

The Court of Chancery and the Supreme Court occasionally raised risk as a factor in determining fee awards, most recently in the *Dell* case.[71] In addition, as described above, Choi, Erickson, and Pritchard have recently posted a paper focusing on Delaware attorneys' fees in relation to the downside risk of losing a case and

---

[70] *In re* Dell Techs. Inc. Class V S'holders Litig., 326 A.3d 686, 702 (Del. 2024).

[71] *See In re* Dell Techs. Inc. Class V S'holders Litig., 300 A.3d 679, 726 (Del. Ch. 2023), *aff'd,* 326 A.3d 686 (Del. 2024); Tornetta v. Musk, 326 A.3d 1203, 1238 (Del. Ch. 2024), *and rev'd sub nom. In re* Tesla, Inc. Derivative Litig., 2025 WL 3689114 (Del. 2025) ("[Plaintiffs' attorneys] assume the risk of recovering nothing in the end."); Americas Mining Corp. v. Theriault, 51 A.3d 1213, 1256 (Del. 2012) ("Plaintiff's counsel incur[s] all of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever."); Seinfeld v. Coker, 847 A.2d 330, 333–34 n. 11, 338 (Del. Ch. 2000) ("By risk, I refer primarily to the risk of losing the case outright, something that every plaintiff must bear. Risk reflects the contingent nature of the work, the financing costs incurred with delaying the attorneys' compensation until the case is concluded, the inability to diversify away particular risks, as well as other contingencies.").

being paid nothing. They conclude that fees are high relative to that risk. They propose that the Court of Chancery take risk into account through more active use of a lodestar cross-check and with the aid of data on fees that the Court would collect on an ongoing basis. They also state that a lodestar-based cap, which we have addressed above, "should not be ruled out."[72]

Some of Choi *et al.*'s empirical findings are different from ours, perhaps because we study different time periods, but we take their results at face value. Looking back at fee awards, many are apparently higher than the amount necessary to compensate lawyers for the risk they incur when they file a lawsuit. In our view, this is neither surprising nor necessarily a basis for intervention. As the Delaware courts have stated, the primary factor in the design of a fee award system should be incentive alignment—the incentive to file a meritorious suit, even if it is risky, *and* the incentive to obtain the best possible resolution for shareholders when litigating the suit.[73] A plaintiff's attorney will file a case if his expected return compensates for the risk that he estimates he will incur in doing so. But a fee that induces a lawyer to file a suit will not necessarily provide an incentive for the lawyer to obtain the best outcome for his clients. The latter could well be higher than a fee that serves the former objective. For example, consider a case in which the merits strongly favor the plaintiffs and shareholder losses are clear, so risk is low. The parties choose to negotiate a settlement early in the litigation and agree to a recovery close to the plaintiffs' maximum damages. A percentage-of-the-benefit fee would overcompensate the plaintiffs' lawyer for the low risk he took when he filed the case. But a fee not based on the shareholders' high recovery would give the lawyer no incentive to negotiate that recovery.

Furthermore, the fee a plaintiffs' lawyer expects must also provide an incentive to continue litigating when a reasonable settlement is not available. A fee based on risk at the time the case was filed may not be enough to provide that incentive. Risk changes over the course of litigation. It could increase or decrease

---

[72] Choi et al. also advocate greater use of the lodestar cross-check and ongoing collection of data on fees. Choi, Erickson & Pritchard, *supra* note 7, at 75-90.

[73] *See Americas Mining*, 51 A.3d at 1255–59 (applying the *Sugarland* factors which incorporate attorneys' incentives to file a lawsuit and incentives to obtain the best result for their client (shareholders)).

depending on court rulings, newly discovered evidence, witness credibility, the attitude of the defense lawyer toward settlement, and other factors. So, unless one is willing to accept the possibility that some plaintiffs' lawyers will not have an incentive to pursue their clients' interests, a prospective fee must also be high enough to allow for increases in risk over the course of litigation.

A further complication to having the Court consider risk in awarding a fee is that it can only do so in a very rough and intuitive way. In some cases, *ex ante* liability risk may be clear, but shareholder losses are often much less clear. Choi *et al.* measure risk as the probability that a plaintiff will lose, and the lawyer will get no fee.[74] But that is an oversimplification—albeit a necessary one for purposes of empirical analysis. If the Court were to consider risk, it should consider the probability of all possible outcomes—the full range of damage awards, or settlement amounts, between zero and total plaintiff losses. The standard deviation, or spread, of that probability function is the correct measure of risk. But often it will not be susceptible to estimation with any sort of precision.

G. *Cases Voluntarily Dismissed as Moot*

Cases dismissed as moot are a special set. These cases typically arise when a defendant accedes to the plaintiffs' demands early in a case, and the plaintiffs drop the case. Consequently, the shareholders receive the benefit sought with less litigation effort by their attorney than would be entailed in a settlement or trial.[75] Defendants negotiate fees with plaintiffs' lawyers and typically reach an agreement without judicial involvement. If a defendant thinks a plaintiffs' fee demand is too high, it can seek a judicial ruling. Therefore, it is reasonable to assume that, even without judicial involvement, fee agreements are roughly in line with what the Court would approve.

Because these cases can entail a high benefit for relatively little attorney effort, it would not be surprising to see large multiples of lodestars. One might reasonably identify these cases as instances in which lawyers should be paid less. On the other hand, these are often cases in which the lawyer has accomplished the most with the

[74] Choi et al., *supra* note 7, at 36−39, 53.

[75] Cases voluntarily dismissed as moot, on average and at the median, are resolved in about half the number of days it takes to resolve cases that settle.

least effort and judicial involvement. This will be evident from the data presented in Part IV.

Reasonable minds can differ on how Delaware handles mootness cases. These cases have generated some of the high lodestar numbers that Grundfest and Dor trumpet,[76] but they are generally not what critics have in mind when they complain that Delaware judges award excessive fees.

H. *Summary*

No fee regime is perfect. The percentage-of-the-benefit approach can provide a plaintiffs' lawyer with an incentive to maximize the net present value of a case for shareholders, so long as the percentage is high enough. Trying to reduce fees with a lodestar-based cap would create dysfunctional incentives and harm shareholders precisely in those cases where shareholders have the most to lose. A rule that reduces the percentage fees payable in all megafund cases would not be as bad as a cap, but it would impair the incentives of plaintiffs' lawyers to achieve the best results for their clients.

The percentage-of-the-benefit approach will result in fees that are large multiples of a lawyer's lodestar in some cases. We would expect to see large lodestar multiples occasionally in cases with large recoveries, in cases that settle late in the litigation process, and especially in cases where both factors are present. It may be that lawyers in some of these cases are overpaid in the sense that they did not need such high fees as incentives to achieve the results they obtained. But a high lodestar multiple does not necessarily mean that lawyers were paid more than they had to be paid to get those results. Part IV analyzes data on fee awards to determine whether large fee awards occur so often as to warrant a change in the courts' approach.

The percentage-of-the-benefit approach will also result in fees higher than necessary to compensate plaintiffs' lawyers for the risk they take when they file a case. But the primary objective of a fee award regime is, and should be, to align the interests of plaintiffs' lawyers and their shareholder clients. If lawyers were paid only on the basis of the risk they take, their incentives would be misaligned with shareholder interests.

---

[76] *See Eyebrow*, *supra* note 3; *Multipliers*, *supra* note 3.

Finally, large lodestar multiples can arise in mootness cases, but the multiples in these cases are high because lodestars are generally low. These cases are often resolved relatively quickly without Court involvement and may result in substantial wins for shareholders. Therefore, they are not a major concern.

IV. EMPIRICAL ANALYSIS OF ATTORNEYS' FEES IN DELAWARE

In this Part, we analyze comprehensive data on fee awards as a multiple of lawyers' lodestars, which has been the focus of the Court's critics. As our examples in Parts III.C and III.F show, a large lodestar multiple is not necessarily an overpayment, which we have defined as a fee that is higher than necessary to motivate a lawyer to seek the best outcome for his shareholder clients. Because overpayments are not observable, however, we investigate the incidence of high lodestar multiples to gauge whether overpayment is common and whether those multiples reflect a flaw in Delaware's fee award regime.

We find that, in general, fees paid following a settlement are fairly low relative to the lodestar. Moreover, we find that high-multiple fees are rare and tend to appear where they are most likely needed to align incentives—that is, where cases settle late in the litigation process, where recoveries are very large, or where cases go to trial. High-multiple fees are also paid in cases voluntarily dismissed as moot, as one would expect.

As a further check on the reasonability of Delaware fees, we compare those fee awards to fees in federal securities class actions. In contrast to Grundfest and Dor, we find that the two sets of fees are roughly comparable. We also find, however, that federal fees as a percentage of the plaintiffs' recovery do not rise when cases settle later in the litigation process, as economic analysis shows they should in order to maintain appropriate incentives. Hence, we question whether fees in securities class actions produce incentives for plaintiffs' attorneys to litigate in the interests of shareholders.

A. *Dataset and Methodology*

The analysis below is based on all derivative and class action lawsuits filed in the Delaware Court of Chancery between January 1, 2013, and December 31, 2023, involving publicly held corporations, and alleging breaches of fiduciary duty.[77] We tracked all those cases through December 31, 2024. Cases filed before December 31, 2023, but not concluded by December 31, 2024, are omitted. We excluded cases that were transferred, removed, sent to arbitration, or resulted in a default judgment.[78]

Table 1 shows fees,[79] lodestar amounts, lodestar multiples, and effective hourly rates for all 232 cases in the sample. This includes cases tried, cases settled, and cases voluntarily dismissed as moot where the court approved the plaintiffs' attorney's fee.[80] Table 1 includes cases where the plaintiff sought monetary relief, non-monetary relief, or both. Taking all cases together, the median multiple of fee award to lodestar is 1.42, and the mean is 2.1.

---

[77] To compile the data, we filtered for "Corporation Law" [case type] and "Breach of Fiduciary Duty" [case tag] on Lex Machina, identifying 2,583 cases— approximately 20% of the total 12,499 cases filed in the Delaware Court of Chancery during the sample period. Cross-verifying with Bloomberg Law and filtering for "Breach of Fiduciary Duties" [case type] led to the addition of 164 cases, leading to a total sample of 2,747 lawsuits.

[78] The initial sample comprised a total of 2,747 cases, which constituted every case with a breach of fiduciary duty claim filed from January 1, 2013, until December 31, 2023. After excluding transferred cases, removed cases, cases compelled into arbitration, and cases resulting in a default judgment, the sample comprised 2,718 cases. After tracking the development of each case until December 31, 2024, the sample included: 874 consolidated cases, 213 pending cases, 71 dismissed cases under Delaware Court of Chancery Rule 41(e), 824 voluntarily dismissed cases, 220 cases that had a ruling on a motion to dismiss as the most recent docket item, and six summary judgments. None of these cases were relevant for purposes of analyzing the plaintiff's attorneys' fees. The remaining 510 cases had either been voluntarily dismissed as moot, been settled, or proceeded to trial. The analysis focused on the 232 cases that: (i) involved public companies, (ii) had a fee award to plaintiffs' counsel, and (iii) presented complete data on lodestar amounts in supporting affidavits. All data is derived from filings on individual case dockets. Incomplete data may result from plaintiffs' attorneys not submitting complete information (e.g., class counsel in a class action constituted by multiple law firms, where one firm only submits the hours billed but omits the lodestar amount). Thus, an omission by a single class representative impedes the collection of complete data.

[79] Because most but not all awards cover both fees and expenses, the figures subtract expenses to isolate attorneys' fees for consistency. The figures also subtract plaintiff incentive awards, which are payments made to lead plaintiffs.

[80] One difference between our data and Choi, Erickson, and Pritchard's is that they include cases plaintiffs voluntarily dismissed without being moot. *See* Choi et al., *supra* note 7, at 34 (Table 2).

We take a deeper dive into the data below, but these figures raise little cause for concern. During the period of our sample, there were 189 cases in which plaintiffs' attorneys received no fee. Those were cases they lost on motions to dismiss, at trial, or on appeal. As explained above, for a plaintiffs' lawyer to continue practicing, the fee awards in cases that settle or go to trial must cover cases in which he gets no fees. Moreover, when lawyers earn a fee, they receive the fee at the end of the case and must finance the case until then. And, in many cases, the plaintiffs' attorneys incur costs for experts, mediators, and other out-of-pocket expenses. There is no way to measure the net present value of the portfolio of winning and losing cases with any precision, and we are not claiming to do so. But the upshot of these basic facts is that there is little reason to believe that the mean or median lawyer is overpaid.

Table 1

Descriptive Data on All Cases (n=232)

	Mean	**Median**
Fee Award	$5,740,565	$1,326,691
Lodestar Amount	$2,810,929	$1,056,722
Lodestar Multiple	2.10x	1.42x

B. *Lodestar Multiples by Stage at Which Cases Are Resolved*

Table 2 presents fees and lodestar multiples broken down in two ways. First, we separate cases dismissed as moot, cases that settled, and cases that were tried.[81] Second, among settled cases, we separate those that settled before a ruling on a motion to dismiss and those that settled after a motion to dismiss had been denied.

Relative lodestar multiples track expected results based on the analysis of Part III. First, the relationship between lodestar multiples among cases that were settled and those that were tried is consistent with what the *Americas Mining* framework should produce. It is also what is desirable as a policy matter for reasons explained in Part III. Among settled cases, the mean and median

[81] We include post-trial settlements with cases tried.

lodestar multiples are 1.86 and 1.43, respectively, and among the few cases that went to trial, the mean and median multiples are 2.04 and 2.34, respectively.[82] The seventy-fifth percentile multiples were, of course, higher but nowhere near the levels that drew the Court of Chancery's critics' attention. Among all 193 settled cases, we analyzed docket entries and found that the Court reduced fees from the amount requested in 57 cases, or nearly one-third of the time.

Table 2
Fee Award and Lodestar Multiple by Timing of Resolution (n=232)

Timing of Settlement	Fee Award			Lodestar Multiple			Number of Cases ≥ 7x Lodestar
	Median	75th Percentile	Mean	Median	75th Percentile	Mean	
Mooted and Voluntarily Dismissed (n=33)	$183,553	$784,640	$3,208,448	1.19x	3.34x	3.55x	6
All Settled Cases (n=193)	$1,795,988	$4,931,440	$5,687,012	1.43x	2.42x	1.86x	2
Litigated Through Trial (n=6)	$18,459,955	N/A*	$21,389,813	2.34x	N/A*	2.04x	0
Settled Before Ruling on Motion to Dismiss (n=109)	$944,995	$3,496,995	$3,124,342	1.23x	2.38x	1.88x	1
Settled after Motion to Dismiss is Denied (n=84)	$3,169,667	$7,323,307	$9,012,381	1.54x	2.43x	1.83x	1

* We do not separate the six tried cases into quartiles. We present the median and mean.

Third, a similar pattern exists for cases that settled earlier in the litigation process and those that settled later, although the difference is not as substantial as one might expect. Mean lodestar

[82] Choi *et al.* report a much higher mean lodestar multiple for settled cases and for cases that settled after a motion to dismiss. *See* Choi et al., *supra* note 7, at 52, 66 (Tables 5 and 8).

multiples are approximately 1.8x in both sets of cases, while the medians are higher among cases that settled after a ruling on a motion to dismiss than among cases that settled before.

Fourth, cases voluntarily dismissed as moot have lodestar multiples higher than those in settled or tried cases, but they also had the lowest absolute fees. Median fees for these cases, among those with disclosed lodestars, are $183,553. Mean fees are $3,208,448, reflecting the impact of outliers.[83] As explained in Part III, most mootness fees are negotiated between the plaintiffs' attorney and defendants with no court involvement. The data on mootness fees encompasses only cases in which the fees were challenged and, therefore, in which plaintiff's counsel submitted affidavits disclosing their lodestars. There were thirty-five such cases, out of a total of 145 mootness dismissals. Of the thirty-five cases with disputed mootness fees, the court approved the requested fee in only two cases, reduced it in sixteen, and denied it altogether in two. In the remaining fifteen cases, the parties ultimately reached an agreement after briefing but before a court ruling.

Finally, returning to the current concern about Delaware fees, we consider the "septuples" that Grundfest and Dor suggested[84] were signs of dysfunction. Our data only go back ten years, whereas they looked for every septuple they could find in the secondary materials they consulted, going back to cases filed in

[83] For example, the Facebook Class C reclassification litigation, mooted on the eve of trial when Facebook withdrew the plan and agreed to pay plaintiffs' counsel $68.7 million under the corporate benefit doctrine (plaintiffs had sought $129 million, relying on an expert valuing the benefit between $1.29 billion and $27.59 billion). *See* United Food & Com. Workers Union v. Zuckerberg, 262 A.3d 1034, 1038-40 (Del. 2021); Defs.' Opp'n to Pls.' Fee Pet. at 20–21, *In re* Facebook, Inc. Class C Reclassification Litig., C.A. No. 12286-VCL (Del. Ch. June 12, 2018). Another is *In re* Versum Materials, Inc. Stockholder Litigation, where Merck KGaA's $53-per-share topping bid yielded roughly $1.17 billion in additional consideration, and the Court of Chancery awarded a $12 million mootness fee, affirmed on appeal. *See* Order, No. 266, 2020 (Del. Feb. 22, 2021); Order Granting Plaintiffs' Petition for an Award of Attorneys' Fees and Expenses, *In re* Versum Materials, Inc. S'holder Litig., C.A. No. 2019-0206-JTL (Del. Ch. July 17, 2020).

[84] *See Eyebrow*, *supra* note 3, at 2; *Multipliers*, *supra* note 3, at 1.

2004.[85] In our dataset, there were eight 7x lodestar multiples, two in settled cases and six in cases voluntarily dismissed as moot. Among settled cases, the septuples constituted 1% of fee awards. There was a higher percentage among cases voluntarily dismissed as moot, but for reasons explained in Part III, these cases do not merit concern.

C. *Lodestar Multiples by Size of Recovery*

Table 3 breaks down attorneys' fees and lodestar multiples by size of shareholder recovery. This table includes both exclusively monetary settlements and cases with post-trial damage awards. It does not include cases in which the Court ordered non-monetary remedies, alone or along with monetary remedies. The table also does not include cases voluntarily dismissed as moot.

As explained in Part III, the percentage-of-the-benefit approach to fee awards would be expected to result in fees with larger lodestar multiples in some, but not all, cases involving large recoveries. This is a natural byproduct of the approach. Large-recovery cases do not necessarily entail proportionately more time to litigate than do cases with small recoveries. Some of these cases, therefore, will result in percentage-of-the-benefit fees that are relatively high multiples of lodestar—perhaps more than needed to create proper incentives. The Court can, and does, reduce fees in some of those cases, but if it were to do so too much, too often, plaintiffs' attorneys would come to expect lower fees and would lose the incentive to promote the interests of their client shareholders.

The data reported in Table 3 is again consistent with what one would expect based on the analysis of Part III. The mean and median lodestar multiples are correlated with the size of shareholders' recoveries, and neither is particularly high. Seventy-fifth percentile multiples, again, are not remarkably higher than the medians at any level of recovery.

[85] *Multipliers* reports 20 "septuples" based on a search for these cases going back twenty years. *Multipliers*, *supra* note 3, at 1. Our dataset of all fee awards in the past ten years includes eight awards of that size.

Table 3

Fee Award and Lodestar Multiple by Size of Recovery (n=87)

Size of Recovery	Mean Fee Award	75th Percentile Fee Award	Median Fee Award	Mean Lodestar Multiple	75th Percentile Lodestar Multiple	Median Lodestar Multiple	Nos. of Cases ≥ 7x Lodestar
First quartile ($625,000 - $9,250,000)	$886,917	$1,446,875	$828,516	1.14x	1.50	0.92x	0
Second quartile ($9,500,000 - $20,000,000)	$2,881,938	$3,559,372	$2,959,290	1.97x	2.45x	1.93x	0
Third quartile ($21,000,000 - 42,500,000)	$6,758,480	$8,860,818	$5,936,203	1.95x	2.13x	1.66x	0
Fourth quartile ($44,750,000 - $1,000,000,000)	$32,259,084	$25,810,183	$19,863,020	2.74x	3.35x	2.61x	0

In sum, the data show that Delaware fee awards are generally not particularly high multiples of lodestar, that cases with high lodestar multiples are a very small minority of cases, and where lodestar multiples are high, they are a predictable product of a salutary approach that awards fees based primarily on an increasing percentage of the recovery as a case proceeds before settling. The "septuples" emphasized by the Court's critics represent 1% of settled cases. Other commentators have explained the nature of those cases.[86] Thus, we need not do so here.

D. *Fees in Securities Class Actions*

For purposes of comparison, Table 4 presents data on fee awards in securities class actions. The sample includes cases in which a stipulation of settlement was filed with a disclosed lodestar, between January 1, 2020, and December 31, 2024, and in which fees were awarded by October 15, 2025.[87] During this period, 415 settlements met these criteria. No securities class action went to trial

[86] Hanrahan, *supra* note 43; Fleming, *supra* note 43.

[87] There were 464 cases settled during this period. Fifty-four of these either were not disclosed by October 15, 2025 or did not disclose a lodestar.

during this period, and there is no counterpart among securities class actions to Delaware cases voluntarily dismissed as moot. So, we can only compare settlements. As in Delaware, the federal courts generally award fees based on a percentage of the benefit to shareholders, which typically amounts to a monetary recovery, and attorneys generally submit lodestars in their fee requests as a cross-check. Among all federal securities class action settlements, mean and median lodestar multiples are 1.58 and 1.28, respectively. These are lower than the Delaware multiples reported in Table 2—1.86 and 1.43, respectively—but not dramatically so. Among cases that settled before final rulings on motions to dismiss, the mean lodestar multiple in federal court is essentially the same as that in Delaware—1.79 compared to 1.88—and the median in federal court is somewhat higher than in Delaware—1.47 compared to 1.23. Finally, among cases settled after a motion to dismiss is denied, the mean and median Delaware multiples are higher than those in federal cases. The federal mean and median are 1.51 and 1.2, respectively, and the mean and median in Delaware are 1.83 and 1.54. All of these differences are small; they do not suggest anything amiss in the Court of Chancery's fee awards.[88] Furthermore, in contrast to what Grundfest and Dor state, there are roughly the same percentages of "septuples" in federal securities class action settlements during this five-year period as in the ten-year period for which we have Delaware data—about one percent.

[88] These numbers are lower than Choi et al., *supra* note 7, at 52 (Table 5).

Table 4

Fee Awards and Lodestar Multiples in Federal Securities Class Actions

Timing of Settlement	Mean Fee Award	75th Percentile Fee Award	Median Fee Award	Mean Lodestar Multiple	75th Percentile Lodestar Multiple	Median Lodestar Multiple	Nos. of Cases ≥ 7x Lodestar
All Settled Cases (n=415)	$9,307,733	$8,750,000	$3,500,000	1.58x	1.98	1.28x	4 (1%)
Settled Before Ruling on Motion to Dismiss (n=113)	$1,092,000	$2,850,000	$2,850,000	1.79x	2.19x	1.47x	2 (2%)
Settled After Motion to Dismiss is Denied (n=302)	$5,000,000	$12,000,000	$11,800,000	1.51x	1.89x	1.20x	2 (0.67%)

A further comparison of Delaware and federal fees suggests that, to the extent lodestars in federal cases are slightly lower than those in Delaware, this may reflect a problem with the federal fee award practice. As discussed in Part III, economic analysis has shown that an increasing percentage of the recovery for cases that settle later in the litigation process promotes incentive alignment for plaintiffs' lawyers. And, as we have also explained, this is the approach that Delaware courts have taken. Our data, however, reveal that this is not how fees are awarded in federal securities class actions. Table 5 shows that percentage fees in those cases are essentially flat. So, for late-settling federal cases, fee awards may well be too low to provide appropriate incentives for plaintiffs' lawyers. This may help explain the absence of securities class action trials in our window and the slightly lower multiples compared to those in Delaware.

Table 5

Fees as a Percentage of the Recovery in Federal Securities Class Actions

	Settlement Before Ruling on Motion to Dismiss (n=114)		Settlement After Ruling on Motion to Dismiss (n=297)	
	Mean	Median	Mean	Median
Settlement Amount	$10,000,000	$3,750,000	$49,200,000	$18,300,000
Fees Awarded	$2,631,814	$1,092,000	$11,800,000	$5,000,000
Fees as Percentage of the Settlement Amount	29%	30%	28%	28%

CONCLUSION

A handful of cases have played a central role in the recent controversy over attorneys' fee awards in Delaware fiduciary litigation. Critics have focused on the ratio of fees to lodestar, pointing to cases in which awards exceeded seven times lodestar—"septuples," in their terminology—and suggesting that they are evidence of a defect in Delaware's fee award regime. We have shown that such instances are a rare byproduct of a framework that seeks to align attorney incentives with shareholder interests across all cases. They reflect not excess, but the predictable operation of an incentive-based system.

Another critique of Delaware fee awards has come from an empirical analysis of the relationship between fees and risk. That analysis shows that Delaware fees are high relative to the risk a plaintiffs' lawyer takes when she files a lawsuit. Some empirical findings in that study differ from ours, perhaps because our samples cover different time periods, but we accept those results as true. Nonetheless, as we have explained, fees that are based primarily on a percentage-of-the-benefit approach, as Delaware's are, will likely overcompensate for risk. Because percentage-based fees provide incentives for lawyers to maximize their clients' recovery, overcompensation for risk is not a problem.

Notwithstanding our generally sanguine conclusion regarding Delaware's fee regime, we agree with the critics that there is room to reduce fees in extreme cases. A lodestar-based fee cap, however, which SCR 17 directed the Council to consider, would reduce fees at the expense of undermining incentives generally and promoting a dragging out of litigation to increase lodestars. Reducing the schedule of percentage fees available in very large cases would distort incentives less, but there would still be a danger of distortion in some cases. The Court of Chancery has discretion to adjust fees on a case-by-case basis. In our view, relying on that discretion can constrain fees in appropriate cases without impairing incentives generally.