



2012-2024 REVIEW & ANALYSIS

# M&A Litigation Settlements in the Delaware Court of Chancery

REVIEW & ANALYSIS



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

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# Executive Summary

Many merger and acquisition (M&A) transactions involving companies incorporated in Delaware have been subject to litigation brought in the Delaware Court of Chancery by stockholders of the acquirer or target.

This report analyzes settlements in M&A-related litigation in the Delaware Court of Chancery between 2012 and 2024. The analysis in this report is based on a hand-collected sample of 118 such settlements with a known monetary settlement amount.

## NUMBER AND TOTAL AMOUNT OF SETTLEMENTS

Both the number and total amount of settlements of M&A-related litigation in the Delaware Court of Chancery have been rising since 2019.

In 2024, there were 21 settlements in the research sample with a total settlement amount of \$618.3 million, up from five settlements with a total settlement amount of \$110.1 million in 2019. [\(page 3\)](#)

The median settlement amount during 2019–2023 ranged from \$20.4 million to \$34.4 million.

In 2024, the median settlement amount was \$16.5 million. [\(page 3\)](#)

The majority (over 80%) of settlements in the sample were below \$50 million (97 out of 118). [\(page 4\)](#)

From 2022 to 2024, the most frequent settlement amount was in the \$20 million to \$49.9 million range, accounting for 18 settlements. In contrast, in previous periods (2012–2016 and 2017–2021) the most common settlement amount was under \$10 million. [\(page 4\)](#)

The median transaction value associated with 2022–2024 settlements was \$1.2 billion.<sup>1</sup> The median transaction value associated with settlements in 2012–2016 and 2017–2021 was each \$0.6 billion.

*The analysis in this report shows an upward trend in the past three years in both the number and total amount of settlements in the Delaware Court of Chancery.*

## TRANSACTION VALUE

Reported transaction value is correlated with the settlement amount, with larger transactions implying larger settlement amounts.

There is a positive and statistically significant correlation between transaction value and settlement amount.<sup>2</sup> Transaction value explains 36% of the variation in settlement amounts. (page 5)

## ALLEGATIONS

Many settled cases include allegations of actions by a controlling stockholder and misrepresentations to minority stockholders.

In 74% of settlements, plaintiffs' allegations involved allegations about actions by controlling stockholder(s) that harm minority stockholders. This implies that a typical settlement involves allegations by a dispersed group of stockholders alleging they were paid unfair consideration for their shares caused by the actions of a controller. (page 6)

In 61% of settlements, allegations included misrepresentations in the transaction proxy disclosures. (page 6)

## SETTLEMENT CHARACTERISTICS

Sample settlements are associated with M&A transactions that differ from a benchmark of all M&A transactions on several dimensions, including being more likely to involve a special committee, more likely to have investors publicly expressing opposition to the transaction, and less likely to have a no-shop provision.<sup>3</sup> (page 7)

Moreover, while 86% of transactions in the settlement sample had a positive transaction premium relative to an estimate of unaffected price, 95% of transactions in the M&A Benchmark sample had a positive premium. The difference in proportion with a positive premium is statistically significant at the 1% level. The difference in average and median premia is, however, not statistically significant. (page 8)

## PLAINTIFF COUNSEL FEES

Counsel fees are correlated with settlement amounts.

Median plaintiff counsel fees during 2022–2024 ranged from \$3.4 million to \$8.9 million (ranging from 8.8% to 33.7% of the settlement amount). (page 9)

There is a statistically significant relationship between duration of litigation and the amount of plaintiff counsel fees as a percentage of settlement amount. (page 10)



# Total and Median Settlement Amount

Both the number of settlements and total settlement amount have been rising since 2019. During 2022–2024, the total amount of settlements averaged \$620 million per year.

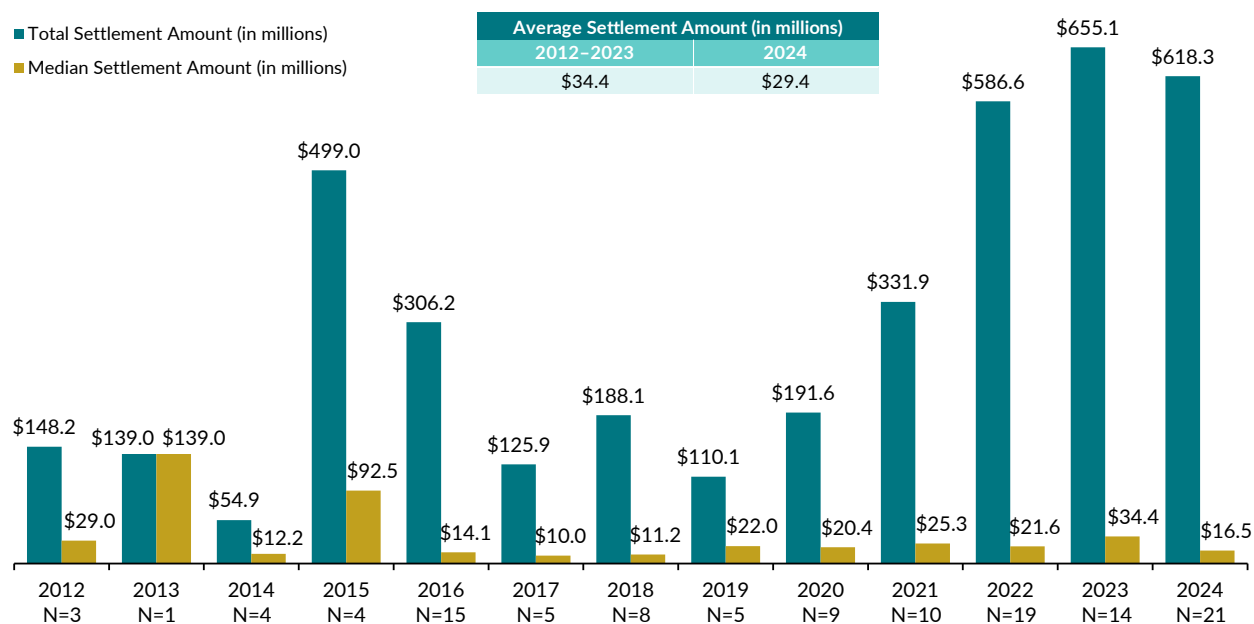
The median settlement amount in 2019–2024 ranged from \$16.5 million to \$34.4 million.

For 2023–2024, the sample contains nine settlements related to de-SPAC transactions, with a median settlement of \$12 million (minimum of \$2.5 million and maximum of \$33.8 million).<sup>4</sup>

## \$620 million

2022–2024 average total settlement amount

**Figure 1: Number of Settlements, Total Settlement Amount, and Median Settlement Amount**



Note: This chart is based on 118 settlements of M&A litigation in the Delaware Court of Chancery that settled in 2012–2024 with a known monetary amount. The dollar figure above each bar denotes the total/median settlement amount for the respective year.

# Settlement Amount Distribution

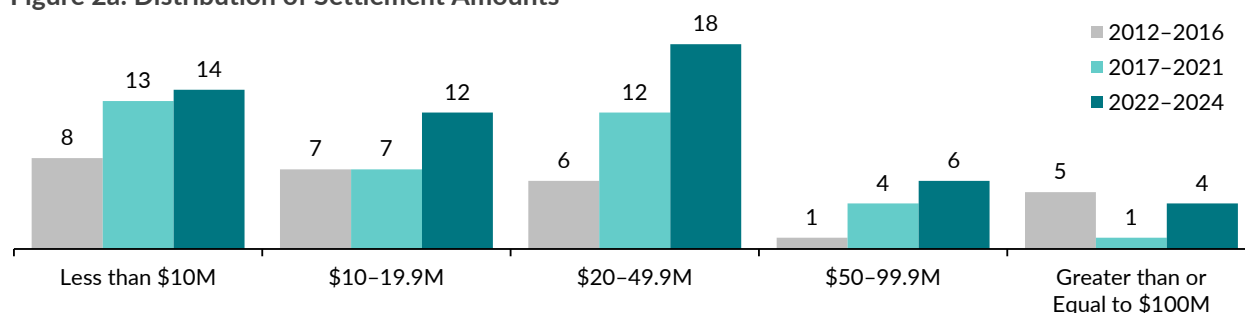
Settlement amounts vary, but the majority of settlements in the sample are below \$50 million (97 out of 118, or 82%). Of the 21 settlements in 2024, 19 were below \$50 million.

Grouping settlements based on settlement amount (under \$10 million, \$10–19.9 million, \$20–49.9 million, \$50–99.9 million, and greater than or equal to \$100 million), the distribution of settlement amount varies across periods. In 2022–2024, the largest number of settlements (18) were between \$20 and \$49.9 million; in comparison, in the 2012–2016 and 2017–2021

periods, the largest number of settlements were below \$10 million.

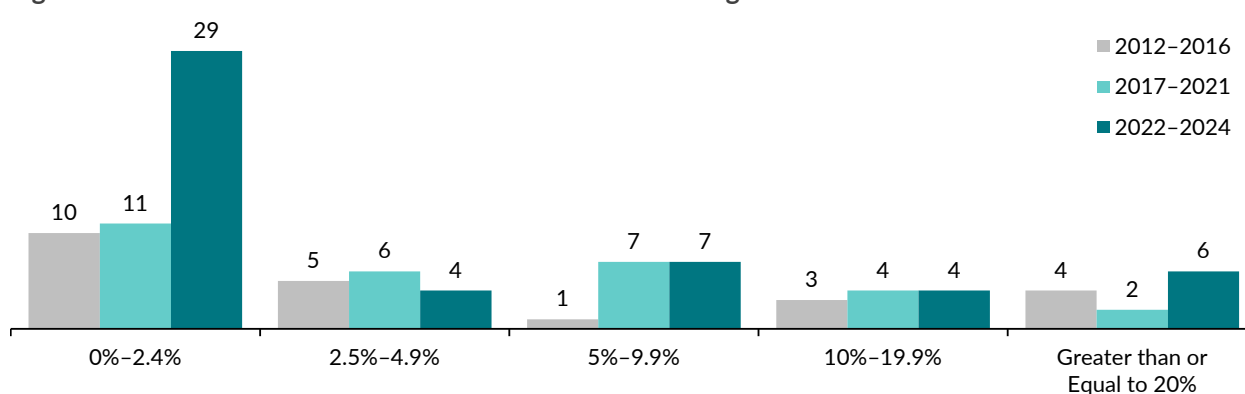
In 2012–2024, 10 settlements were greater than or equal to \$100 million. A higher percentage of 2012–2016 settlements were larger than \$100 million compared to 2017–2024. In 2012–2024, for 49% of settlements the settlement amount was less than 2.5% of the transaction value. Of the 2022–2024 settlements, 29 out of 50 (58%) were less than 2.5% of the transaction value.

**Figure 2a: Distribution of Settlement Amounts**



Note: This chart is based on 118 settlements of M&A litigation in the Delaware Court of Chancery that settled in 2012–2024 with a known monetary amount. The figure above each bar shows the number of settlements in the respective period and with the settlement amount in the indicated value range.

**Figure 2b: Distribution of Settlement Amounts as a Percentage of Transaction Value**



Note: This chart is based on 103 settlements of M&A litigation in the Delaware Court of Chancery that settled in 2012–2024 with both a known monetary amount and a transaction value reported by *FactSet*, which reflects the value of equity purchased in each M&A transaction (see also the description in Appendix 1). The figure above each bar shows the number of settlements in the respective period and with settlement amount as a percentage of transaction value in the indicated value range.



# Settlement Amounts and Transaction Values

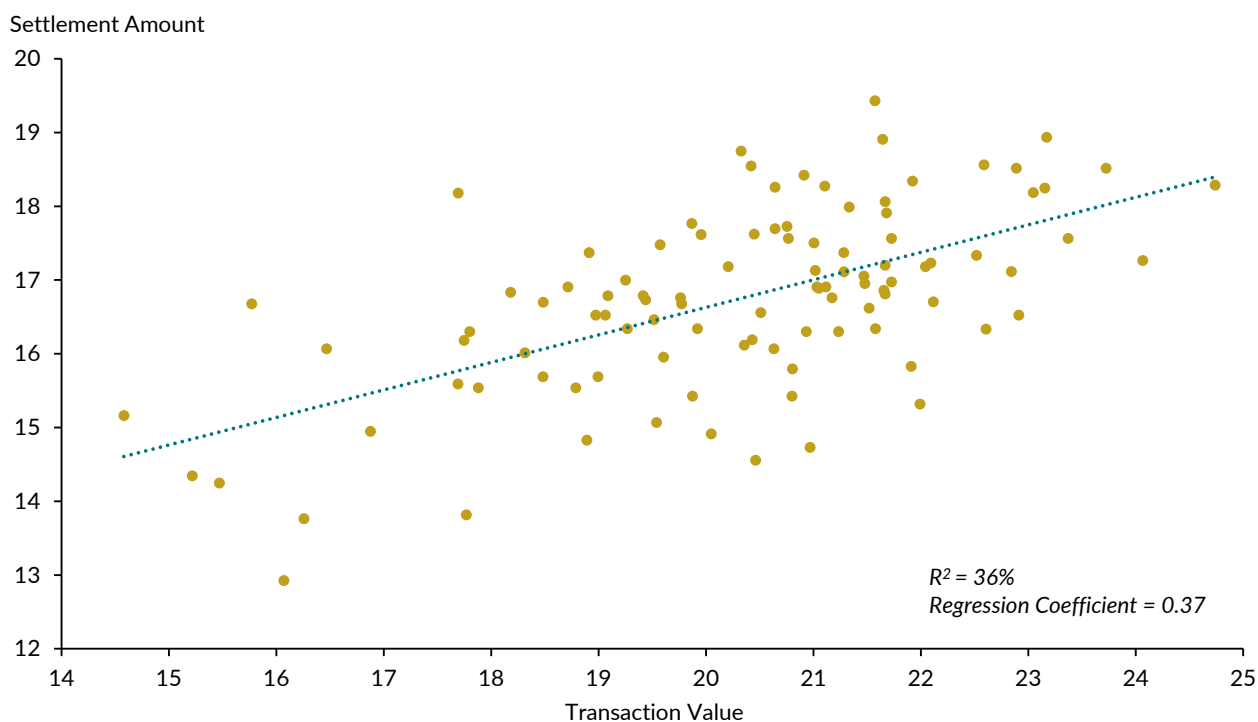
Because transaction values span a wide range, up to \$55.5 billion, this analysis is based on the natural logarithm of transaction value and, for consistency, natural logarithm of settlement amount.

There is a positive and statistically significant correlation (characterized by a regression coefficient of 0.37) between the natural logarithm of settlement amount and the associated transaction value in the sample. Positive correlation implies that larger transactions are associated with larger settlements.

Transaction value explains 36% of the variation in settlement amounts (as measured by  $R^2$  in the regression).

Because the estimated regression coefficient is less than 1, the estimated relationship implies that settlement amount as a fraction of transaction value is on average lower for larger transactions.

**Figure 3: Logarithm of Settlement Amount Compared to Logarithm of Transaction Value**  
2012–2024



Note: Transaction value is defined as the value of equity purchased in the at-issue transaction as reported by *FactSet* (see also the description in Appendix 1). The analysis uses the natural logarithm of each transaction value and settlement amount. Settlements with a missing transaction value are omitted in this analysis. One transaction with a logarithm transaction value below 14 is not shown and not analyzed. The dashed line represents the linear regression line implied by the data.



## Select Lawsuit Characteristics

In the sample, 78% of the transactions involved litigation brought by target company stockholder plaintiffs, 72% involved plaintiffs that are target stockholders of a public company, and 6% involved plaintiffs that are target stockholders of a privately held company.

There were instances in which both target and acquirer stockholders initiated separate litigation related to the same transaction and subsequently settled.<sup>5</sup> In these instances, target and acquirer stockholders' settlements are counted separately.

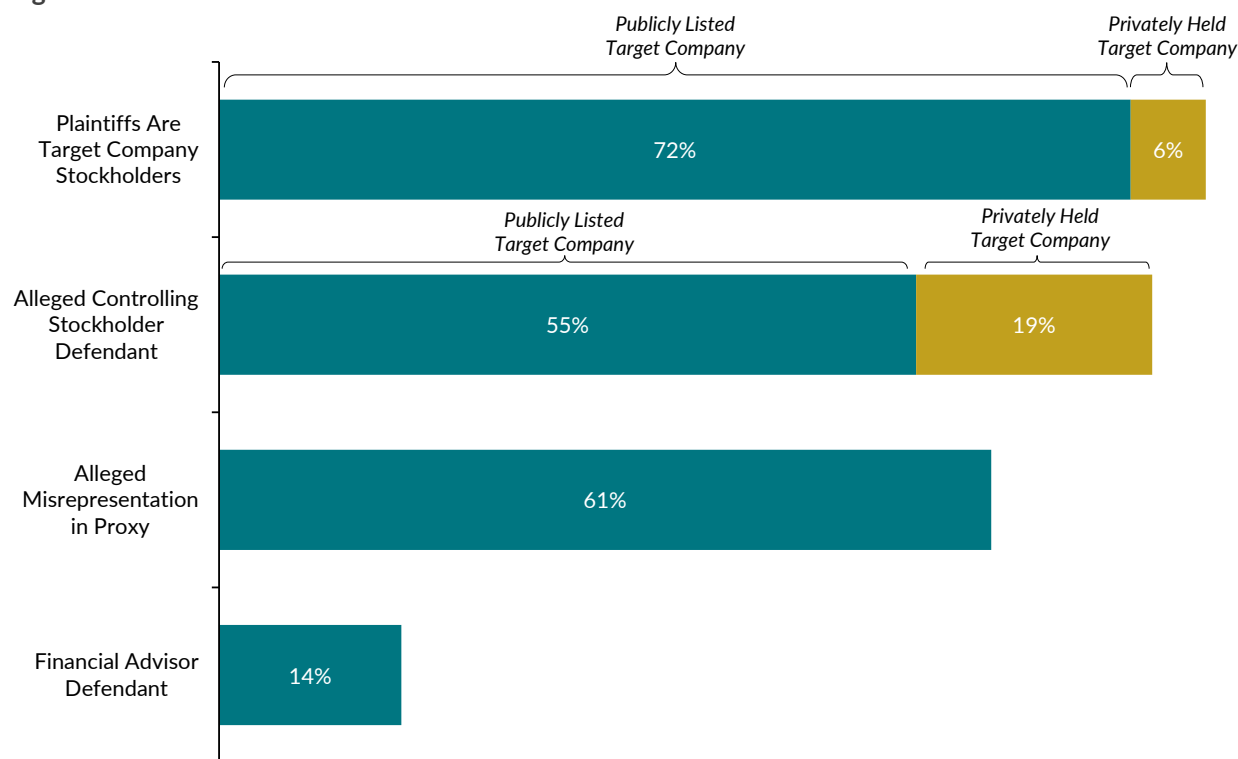
In 74% of settlements, plaintiffs' allegations involved actions by a controlling stockholder (see

variable definition in Appendix 2). This implies that a typical settlement involves allegations by a dispersed group of stockholders alleging unfair consideration paid for their shares caused by the actions of a controller.

In the research sample, during 2012–2024, 61% of settlements involved plaintiffs alleging misrepresentations in the transaction proxy disclosures.

Over the same period, only 14% of settlements involved financial advisors as named defendants. Even though allegations of unfair transaction terms are common, plaintiffs typically do not include financial advisors as defendants.

**Figure 4: Select Lawsuit Characteristics**



Note: This analysis is based on a review of litigation complaints. Allegations of controlling stockholders are as alleged in the complaints. Public status of the target company was determined through independent research. Additional variable descriptions are provided in Appendix 2.

# Select Transaction Process Characteristics

Plaintiffs commonly allege that a flawed transaction process led to unfair outcomes. This analysis compares select transaction process characteristics available from *FactSet* for the settlement sample to an M&A Benchmark.<sup>6</sup>

The transactions in the settlement sample were more likely to have a special committee, more likely to have investors publicly expressing opposition to the transaction, and less likely to have a no-shop provision in the transaction agreement.

**Figure 5: Select Transaction Process Characteristics**

Process Variable	M&A Benchmark	Settlement Sample	Statistical Significance of the Difference
Use of Special Committee	37.6%	65.8%	*
Investor Opposition to Transaction	7.2%	14.7%	*
Multiple Bids	5.0%	5.1%	
Use of No-Shop Provision	95.7%	70.7%	*

Note:

1. The transaction process variables in this analysis are described in Appendix 1.
2. Within the settlement sample, this analysis considers those settlements in which plaintiffs are stockholders of a public target company.
3. \* in the Statistical Significance of the Difference column denotes statistical significance at the 5% level.

# Transaction Premium

Target company stockholders in litigated M&A transactions in the sample commonly allege that the transaction consideration was unfair.

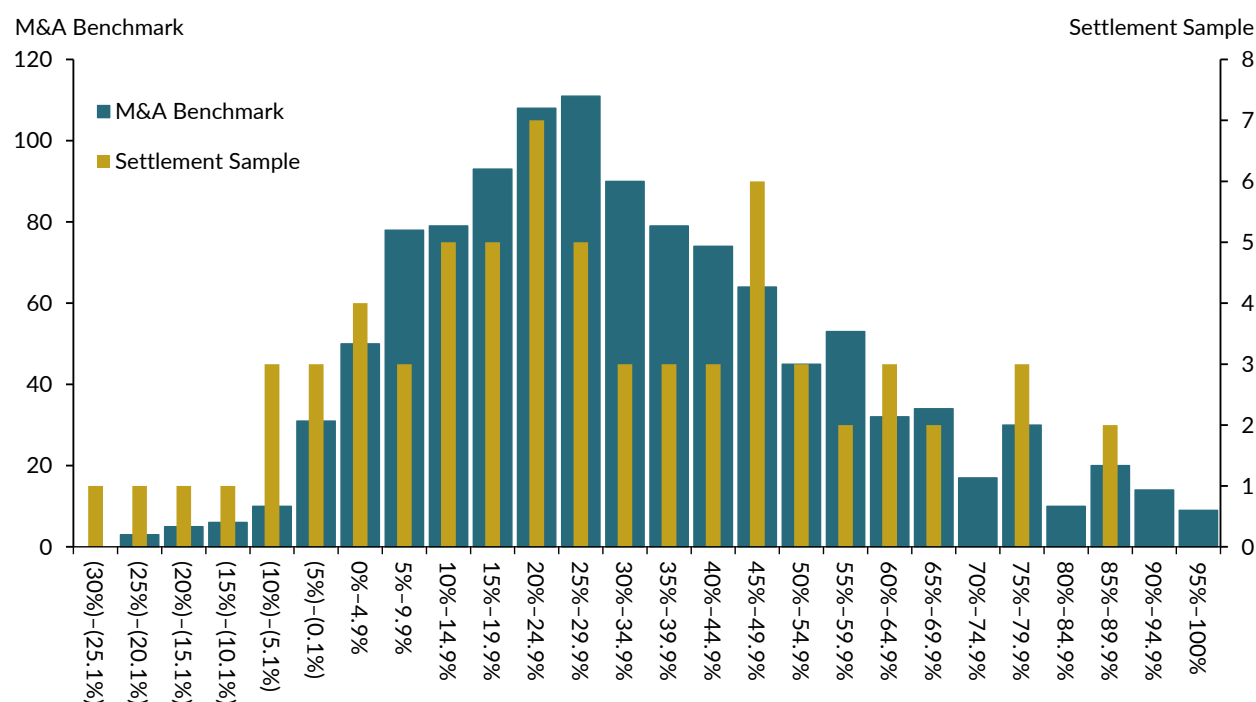
This analysis compares an estimate of the unaffected transaction premium—the percentage difference between the transaction price and the stock price on the last trading day before identified public news or rumors of the transaction, per *FactSet*—in the settlement sample and the M&A Benchmark.

In the settlement sample, 86% of transactions involved a positive unaffected transaction

premium. In comparison, 95% of transactions in the M&A Benchmark had a positive unaffected transaction premium. This difference in proportion with a positive premium is statistically significant at the 1% level.

The difference in average and median premia is, however, not statistically significant. The settlement sample average premium is 28.8%; the benchmark average is 33.6%. The settlement sample median is 25.9%; the benchmark median is 29.9%.

**Figure 6: Unaffected Transaction Premia in Settlement Sample and M&A Benchmark**



Note: The transactions in the settlement sample include settlements with plaintiff stockholders of a public target. M&A Benchmark transactions and the settlement sample transactions with an unaffected transaction premium greater than 100% and less than -30% are not displayed and not analyzed.

# Plaintiff Counsel Fees

For a significant majority of settlements in the sample, the amount of fees awarded to plaintiff counsel from the settlement fund is disclosed.

Across the entire sample, average and median plaintiff counsel fees were \$8.3 million and \$4.2 million, respectively. The highest plaintiff counsel fee paid in a settlement in the sample was \$72.5 million.

For 2022, 2023, and 2024, average (median) plaintiff counsel fees were \$7.5 million (\$5.3 million), \$12.8 million (\$8.9 million), and \$5.8 million (\$3.4 million), respectively.

Almost all plaintiff counsel fee awards (92% of the sample) are within 15%–34.9% of the settlement amount. Larger plaintiff counsel fees are awarded for larger settlements. Of the variation in fees awarded in the sample, 95% is explained by the corresponding variation in

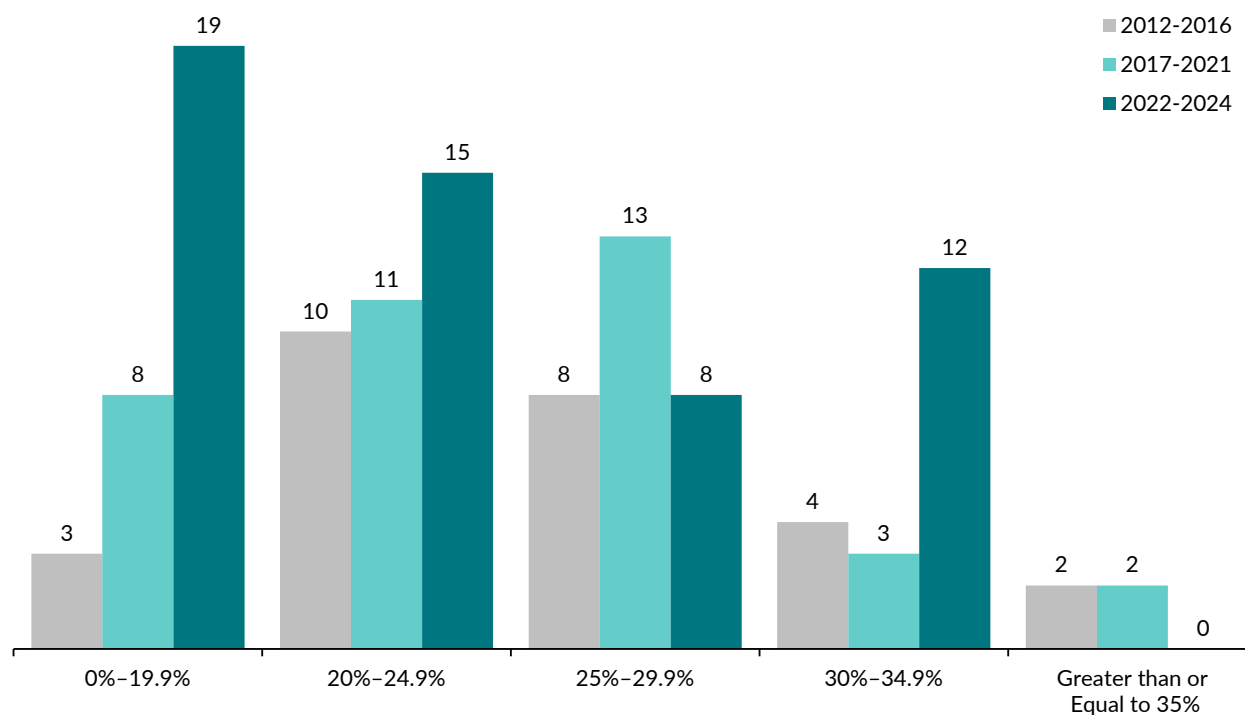
## \$8.3 million

Average plaintiff counsel fees in 2012–2024

settlement amount (as measured by  $R^2$  in the regression).

The data appear to be consistent with *In re Dell Technologies Inc. Class V Stockholder Litigation* (“*Dell Technologies*”), citing to *Americas Mining Corp. v. Theriault* (“Delaware case law supports a wide range of reasonable percentages for attorneys’ fees, but 33% is the very top of the range of percentages”).<sup>7</sup>

Figure 7: Plaintiff Counsel Fees as a Percentage of Settlement Amount



Note: Each bar shows the number of settlements in the respective period and with counsel fees as a percentage of settlement amount in the indicated range.



# Counsel Fees Awarded and Duration of Litigation

Litigation duration is measured as the time from the filing of the first public complaint to the court order approving the settlement.

The relationship between litigation duration and plaintiff counsel fees as a percentage of the settlement amount is positive and statistically significant at the 1% level.

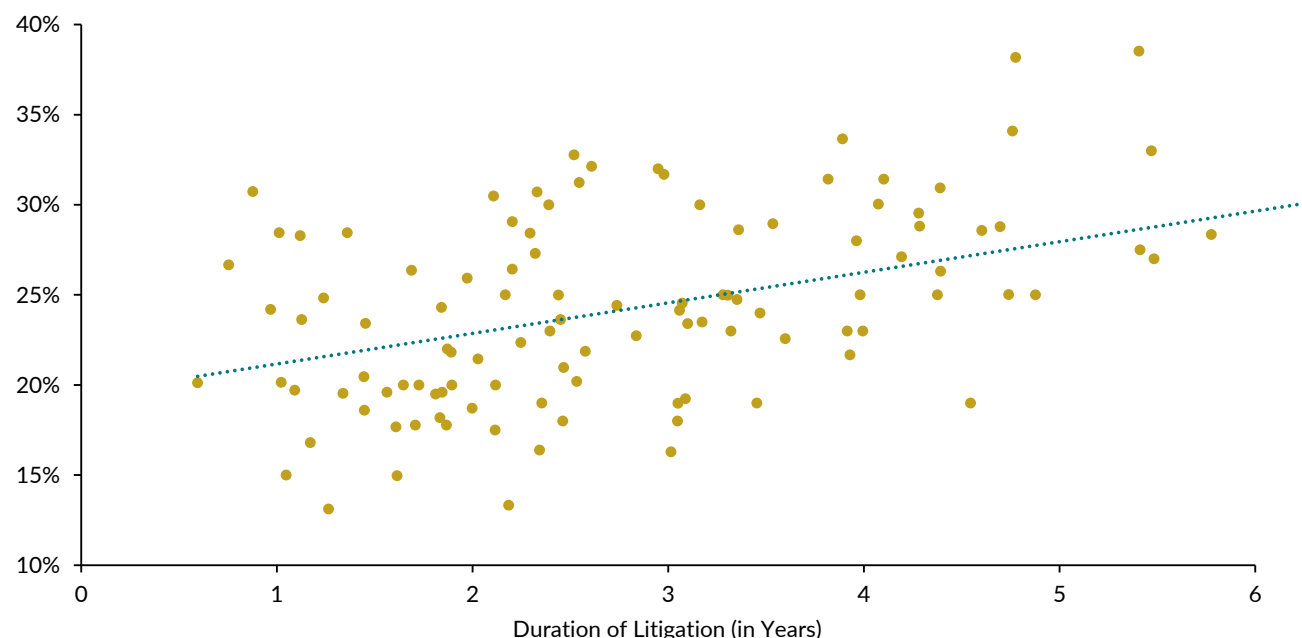
On average, an additional year of litigation is associated with an increase in the plaintiff counsel fee percentage of 1.7 percentage points.

For a \$25 million settlement, a 1.7 percentage point increase in fee percentage implies a \$425,000 increase in fees.

The data again appear to be generally consistent with *Dell Technologies* ("A court awards a higher percentage [of the settlement amount to plaintiff's counsel] when plaintiff's counsel has pushed deeper into the case, which rewards plaintiff's counsel for taking more risk in pursuit of the best outcome").<sup>8</sup>

**Figure 8: Plaintiff Counsel Fees as a Percentage of Settlement Amount and Litigation Duration**

Plaintiff Counsel Fees as a Percentage of Settlement Amount



Note: Two cases lasting longer than 2,500 days, two cases with counsel fees that were 50% or more of the settlement amount, and three cases with counsel fees that were less than 10% of the settlement amount are not shown and not analyzed.

# Fee Percentage and Settlement Amount

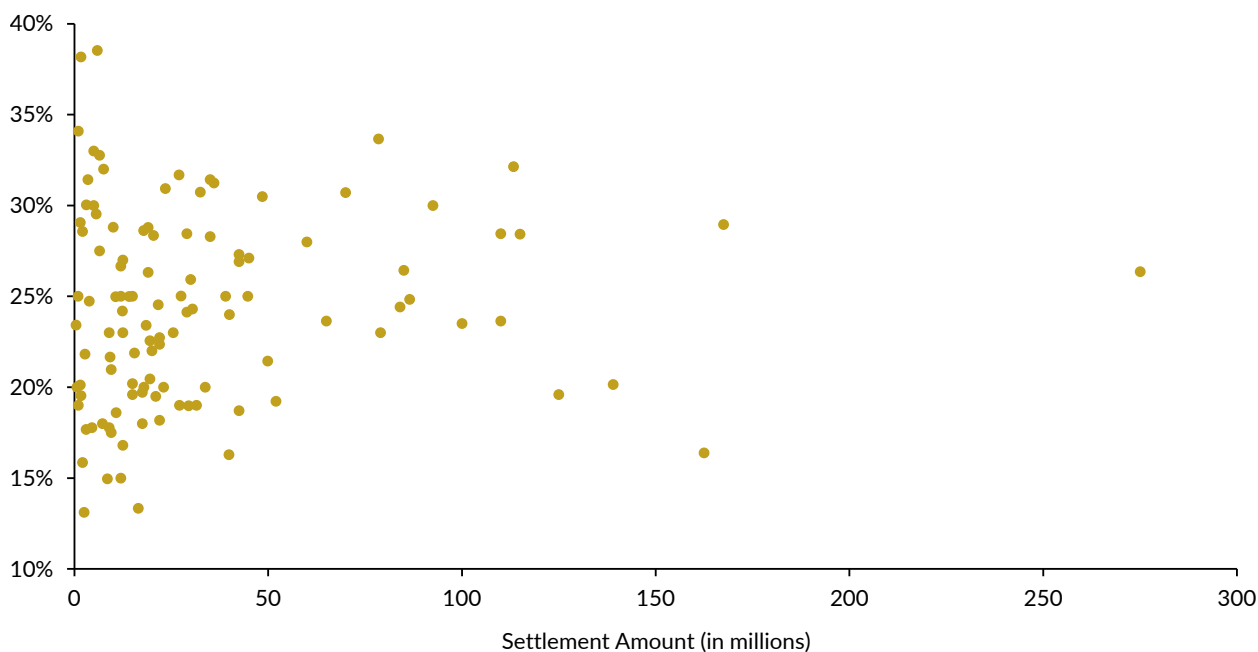
In *Dell Technologies*, plaintiffs secured a \$1 billion settlement, with fees of \$266.7 million awarded to plaintiff counsel (note that this transaction is excluded from the settlement sample because it involved a stock conversion, which is not part of the sample). In that litigation, defendants argued that plaintiff counsel fees should represent a relatively lower fraction of the settlement fund

for large settlements. The court rejected defendants' argument.

This analysis tests whether plaintiff counsel fees as a percentage of settlement amount are lower in larger settlements. In the sample, there is no statistically significant relationship between plaintiff counsel fee awards as a percentage of settlement amount and the settlement amount.

**Figure 9: Plaintiff Counsel Fees as a Percentage of Settlement Amount and Settlement Amount**

Plaintiff Counsel Fees as a Percentage of Settlement Amount



Note: The analysis omits two settlements with litigation that lasted longer than 2,500 days, two settlements with counsel fees that were 50% or more of the settlement amount, and three settlements with counsel fees that were less than 10% of the settlement amount.

# Research Sample and Data Sources

Settlements of M&A transactions analyzed include either transactions involving purchases of all outstanding common shares of a target company (or all assets and liabilities of a target company) by an outside entity, or a buyout of remaining non-owned shares by an insider (controller, management, or existing stockholder). Settlements of transactions primarily focused on capitalization, such as conversions of classes of shares or issuance of new shares, are excluded from the sample.

The sample of M&A settlements was compiled by identifying settlements reported by Law360.com in the period 2012–2024,<sup>9</sup> and augmented with searches of the Delaware Court of Chancery dockets using Lex Machina for documents filed in 2012–2024 containing phrases similar to “stipulation of settlement.”<sup>10</sup> While an attempt was made to capture as many publicly identifiable settlements as possible, the research sample may be incomplete.

The following filters were applied to the search results in order to construct the final sample:

- The sample is restricted to merger, acquisition, take-private, or buyout of minority stockholders transactions. Transactions primarily focused on capitalization, such as conversions of classes of shares or issuance of new shares, are excluded from the sample.
- The sample is restricted to class action lawsuits involving stockholders or derivative actions on behalf of the target or acquirer

company. Plaintiffs typically allege breaches of fiduciary duties by the board of directors, officers, and/or the controlling stockholders. In some cases, plaintiffs also allege unjust enrichment by officers or controlling stockholders. Other types of M&A-related disputes—for example, allegations of fraud by the acquirer, breaches of contract, or earnout disputes—were excluded. Appraisal litigations were also excluded. In instances where both target and acquirer stockholders initiated litigation, each litigation is separately included in the sample to the extent a settlement was identified.

- The sample is restricted to lawsuits in the Delaware Court of Chancery and did not consider potentially related matters, for example, federal securities class actions. Global settlements filed in other venues are excluded from the sample.
- The sample is restricted to settlements with a publicly disclosed monetary settlement amount. Disclosure-only settlements with no monetary component are excluded.
- Settlement amounts considered in this analysis include amounts approved by the Delaware Court of Chancery as resolving the corresponding litigation in the Chancery Court. The analysis excludes any settlement amount in related litigations in other courts, for example, related federal securities class actions.

# Endnotes

- 1 Transaction value is defined as the value of equity purchased in the at-issue transaction as reported by *FactSet* (see also the description in Appendix 1).
- 2 As described on page 5, this correlation corresponds to the regression coefficient between the natural logarithm of transaction value and natural logarithm of settlement amount.
- 3 Specifically, the benchmark comprises all M&A transactions with public targets incorporated in Delaware, completed during 2012–2024, as reported by *FactSet*, with available data (M&A Benchmark).
- 4 De-SPAC transactions are transactions in which a publicly traded special purpose acquisition company (SPAC) acquires a private target.
- 5 In instances where both target and acquirer stockholders initiated litigation, each litigation is separately included in the sample to the extent a settlement was identified.
- 6 As above, the M&A Benchmark is defined to include all M&A transactions with public targets incorporated in Delaware, completed during the period 2012–2024, as reported by *FactSet*, with available data.
- 7 Opinion on Fee Award and Incentive Award, *In Re Dell Technologies Inc. Class V Stockholders Litigation*, 2018-0816-JTL, August 21, 2023, citing to *Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).
- 8 Opinion on Fee Award and Incentive Award, *In Re Dell Technologies Inc. Class V Stockholders Litigation*, 2018-0816-JTL, August 21, 2023, citing to *Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).
- 9 Specifically, the article title or the leading paragraph was searched for words that start with “settl” and at least one of: “merger,” “acquisition,” “sale,” or “tender.”
- 10 Specifically, the search included documents containing the words “stipulation” and “settlement” within five words of each other.



# Appendices

## Appendix 1: Descriptions of Transaction Process from *FactSet*

Variable	Description from <i>FactSet</i>
Investor Opposition to Transaction	"Indicates [whether] a shareholder of the target or acquirer publicly expressed its opposition to the transaction.... These campaigns usually take the form of a hedge fund or other institutional investor disclosing via a Schedule 13D filing, press release or comments in the financial press that it is opposed to the transaction and will vote against it. In some cases the shareholder may commence a proxy fight to solicit votes against the transaction."
Multiple Bids	"[Indicates whether] the transaction is one of at least two deals in which different acquirers have made simultaneous attempts to acquire the same target company. In order for a transaction to be considered competing, the target company must be the same in both transactions, and both transactions must be pending at the same [time]."
Use of No-Shop Provision	"Indicates [whether] the merger agreement contains a provision under which the target agrees not to actively solicit, initiate or encourage a proposal from a third party. Generally, the no-shop provision applies not only to the acquirer/target itself, but also to any of its subsidiaries, employees, agents and representatives (including any investment bankers, attorneys or accountants retained by the company or any subsidiaries)."
Use of Special Committee	"[Indicates whether] the board of directors of the target company formed a committee of independent, disinterested directors to review the terms of the transaction and to ensure that any subsequent recommendation of the transaction is unbiased."
Transaction Value	"[Base equity value, which refers to the] total value of cash and all other forms of payment made to the Target – commonly cash and/or stock, though the calculation can include other methods of payment (e.g., notes, convertible debt, preferred stock, etc.) if disclosed and calculable. In transactions where multiple forms of payment are being made (e.g., cash and stock), the individual consideration components are calculated separately and then summed to arrive at the total Base Equity Value (e.g., cash component + stock component).... This value considers the terms of the transaction at announcement."
Unaffected Transaction Premium	"The percentage premium paid for the target based on the unaffected price of the target prior to the announcement date of the transaction. ...[The unaffected price refers to the] share price prior to rumors of the announcement or the announcement date of the transaction."

## Appendix 2: Descriptions of Litigation and Settlement Characteristics Collected from Court Filings

Variable	Methodology
Alleged Misrepresentation in Proxy	Indicates whether the complaint mentions “proxy” in the context of the proxy being misleading to investors or omitting some information.
Alleged Controlling Stockholder Defendant	Indicates whether the complaint alleges actions by a controlling stockholder.
Presumed Entire Fairness Standard	Indicates whether the complaint references “entire fairness,” “controlling shareholder,” or “controlling stockholder.”
Financial Advisor Defendant	Indicates whether the complaint names a financial advisor in the transaction as a defendant.
Litigation Duration	The time from the filing of the first public complaint to the court order approving the settlement.
Motion to Dismiss Ruling	Indicates whether there was a court ruling on a motion to dismiss prior to the settlement agreement.
Plaintiffs Represent Target Stockholders	Indicates whether plaintiffs represent stockholders of the target company.
Plaintiff Counsel Fees	The fees and expenses awarded to plaintiff counsel in the court order approving the settlement.
Settlement Amount	The settlement amount stated in the stipulation of settlement or the court order approving the settlement.

## Appendix 3: Average and Median Settlement Amounts Based on Transaction and Litigation Characteristics

Variable	Median Settlement Amount (in millions)		Average Settlement Amount (in millions)	
	Yes	No / Unknown	Yes	No / Unknown
Investor Opposition to Transaction	\$31.0	\$19.5	\$46.7	\$33.7
Below-Median Unaffected Transaction Premium	\$20.2	\$22.0	\$42.8	\$31.9
Multiple Bids	\$11.6	\$21.3	\$10.3	\$35.7
Use of No-Shop Provision	\$24.8	\$15.0	\$38.6	\$30.9
Use of Special Committee	\$22.0	\$19.3	\$42.1	\$25.7
Alleged Misrepresentation in Proxy	\$18.8	\$24.8	\$34.2	\$35.8
Below-Median Litigation Duration	\$20.5	\$20.0	\$39.3	\$30.2
Alleged Controlling Stockholder Defendant	\$19.0	\$27.0	\$34.8	\$34.6
Financial Advisor Defendant	\$23.8	\$19.0	\$43.3	\$33.3
Motion to Dismiss Denied	\$23.0	\$18.0	\$33.3	\$36.3
Plaintiffs Represent Target Stockholders	\$19.5	\$21.0	\$32.0	\$44.1

Note: See Appendix 1 for description of transaction characteristic variables and Appendix 2 for description of litigation and settlement characteristic variables.

## Appendix 4: Percentage of Settlements with Select Transaction and Litigation Characteristics

	Number of Settlements with Non-Missing Values	% of Settlements with Indicated Characteristics
<b>Transaction Characteristics</b>		
Use of Special Committee	115	52%
Use of No-Shop Provision	95	61%
<b>Litigation Characteristics</b>		
Alleged Controlling Stockholder Defendant	118	74%
Presumed Entire Fairness Standard	118	74%
Financial Advisor Defendant	118	14%
Alleged Misrepresentation in Proxy	118	61%
Motion to Dismiss Denied	118	50%
Plaintiffs Represent Target Stockholders	118	78%
Public Target Company	118	80%

Note: See Appendix 1 for description of transaction characteristics variables and Appendix 2 for description of litigation characteristics variables.

## Appendix 5: Distribution of Values of Select Transaction and Settlement Characteristics

	Number of Settlements with Non-Missing Values	Statistics					
		Average	10th Percentile	25th Percentile	Median	75th Percentile	90th Percentile
Transaction Characteristics							
Transaction Value (in millions)	103	\$2,822	\$49	\$192	\$922	\$2,526	\$6,545
Unaffected Transaction Premium	81	39%	-7%	11%	26%	49%	78%
Settlement Characteristics							
Settlement Amount (in millions)	118	\$34	\$2	\$9	\$19	\$40	\$87
Settlement Amount as Percentage of Transaction Value	103	43%	0%	1%	3%	9%	21%
Plaintiff Counsel Fees (in millions)	118	\$8	\$1	\$2	\$4	\$10	\$24
Plaintiff Counsel Fees as Percentage of Settlement Amount	118	26%	18%	20%	24%	29%	31%

Note: See Appendix 1 for description of transaction characteristics variables and Appendix 2 for description of settlement characteristics variables.

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Frank Schneider specializes in addressing complex financial and economic issues that arise in litigation and regulatory investigations, such as disputes related to M&A transactions, securities, valuation, and financial institutions, as well as white collar issues. He has extensive experience assessing loss causation, damages, and valuation issues across a range of industries and financial instruments. Dr. Schneider coheads Cornerstone Research's Valuation, M&A, and Bankruptcy practice.

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The views expressed herein are solely those of the authors and do not necessarily represent the views of Cornerstone Research.





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Economic and Financial Consulting and Expert Testimony

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## Cornerstone Research

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