Parallel Derivative Action Settlement Outcomes: 2023 Review and Analysis

Laarni T. Bulan
Matthew Davis

INTRODUCTION

This study analyzes the settlement characteristics of parallel derivative lawsuits in which a shareholder derivative action features the same or similar underlying allegations as a securities class action. As shown in Cornerstone Research's study of securities class action settlements, nearly half of securities class actions settled between 2019 and 2023 were associated with a parallel derivative claim.[1] This report analyzes settlement outcomes for 110 of these parallel derivative actions.

A shareholder derivative action is a lawsuit brought by a corporation's current shareholder(s) on behalf of the corporation.

A shareholder derivative action is a lawsuit brought by a corporation's current shareholder(s) on behalf of the corporation. Often, the defendants in these derivative actions include executives and/or members of the corporation's board of directors.[2]

This report focuses on derivative actions associated with a separate securities class action, that is, a lawsuit brought by purchasers of a corporation's common stock alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims and seeking damages for investors who purchased stock after allegedly false or misleading statements.

Many parallel derivative actions are "follow-on" suits, that is, derivative lawsuits filed after the initial securities class action and based on similar underlying allegations.[3] Among such follow-on suits, it is not uncommon for derivative plaintiffs to allege injury to the corporation as a result of the alleged false or misleading statements made by the defendants, and/or to claim that the board of directors breached its fiduciary duty in failing to properly oversee the corporate actions or circumstances that led to the alleged misconduct.[4]

As the corporation is alleged to have been harmed, any monetary settlement paid in the derivative suit is paid to the corporation, benefiting the plaintiff shareholder(s) indirectly.[5]

PARALLEL DERIVATIVE ACTION SETTLEMENT OUTCOMES

As most recently reported in *Securities Class Action Settlements—2023 Review and Analysis*, 47% of securities class action settlements between 2019 and 2023 were accompanied by a parallel shareholder derivative action.

Nearly half of securities class action settlements during 2019–2023 had a parallel derivative action.

Among those securities class action settlements, the median settlement amount (adjusted for inflation) was $14.5 million.[6] Securities class actions with accompanying derivative claims are typically associated with higher settlements than those without accompanying derivative claims. A 36% premium is observed based on the median settlement amounts for cases that settled between 2019 and 2023.[7]

Parallel derivative settlements often include an agreement to institute therapeutic corporate governance reforms, and as a result, not all settlements include monetary consideration. Indeed, monetary settlements (i.e., those that include a monetary payment other than plaintiff attorney fees) remain significantly less common than non-monetary settlements (i.e., settlements including therapeutic provisions only).

DERIVATIVE SETTLEMENT OUTCOMES

Parallel Derivative Action Settlements Sample

Type of Settlement	No. of Cases	% of Cases
Securities Class Action Settlements (2019–2023)	425	
Parallel Derivative Actions	198	47%
Parallel Derivative Action Settlements	110	
Monetary Settlements	29	26%
Therapeutic Provisions	101	92%

Note: Monetary settlements are settlements featuring a monetary component other than reimbursement of plaintiff attorney fees. Percentages do not add up to 100% as some monetary settlements also include therapeutic provisions.

The research presented in this report has identified 110 parallel derivative settlements, 92% of which resulted in therapeutic provisions, while only 26% included a monetary component.[8] Of the 29 cases with a monetary component, the median derivative settlement was $8.9 million (or 26% of the associated securities class action settlement).[9]

Parallel Derivative Action Settlement Awards

	Monetary Component (Monetary Settlements only)	**Plaintiff Attorney Fee Award** (Non-Monetary Settlements Only)
25th Percentile	$1,613,035	$392,124
Median	$8,940,426	$629,688
75th Percentile	$27,791,820	$1,300,000
	N = 29	N = 75

Note: Amounts are adjusted for inflation; 2023 dollar equivalent figures are presented. Plaintiff attorney fees have not been netted from monetary components. Settlement amounts and plaintiff attorney fees are as recorded in the settlement stipulation and could differ from the amounts ultimately approved by courts. Plaintiff attorney fees could not be determined for all settlements.

Among derivative settlements with a monetary component, the median settlement amount was $8.9 million.

Monetary settlements are more common in certain courts. For example, 48% of monetary settlements were settled in the Delaware Court of Chancery, the District of Delaware, or the Southern District of New York, yet only 26% of non-monetary settlements come from one of these venues.

Of the parallel derivative settlements (including both monetary and non-monetary settlements), 87% called for some form of corporate therapeutics. Examples of such reforms include:

- Enhancements to board independence, such as the addition of independent directors or the granting of additional authority to a lead independent director.
- Revisions to the charters of key board committees, such as the audit, compensation, or disclosure committees.
- Reforms tailored to case-specific allegations, such as accounting controls, insider trading policies, or rules governing related-party transactions.
- The adoption or strengthening of compensation clawback rules, whistleblower policies, and/or director independence standards.

PLAINTIFF ATTORNEY FEES

The median plaintiff attorney fee award associated with the derivative settlements in the sample was approximately $800,000. The median fee among cases with a monetary settlement was $3.0 million, while the median fee for those without a monetary settlement was 79% lower—consistent with the absence of a direct financial benefit associated with those settlements.[10]

The median plaintiff attorney fee award among cases with a monetary settlement was $3.0 million.

Median Plaintiff Attorney Fee Award

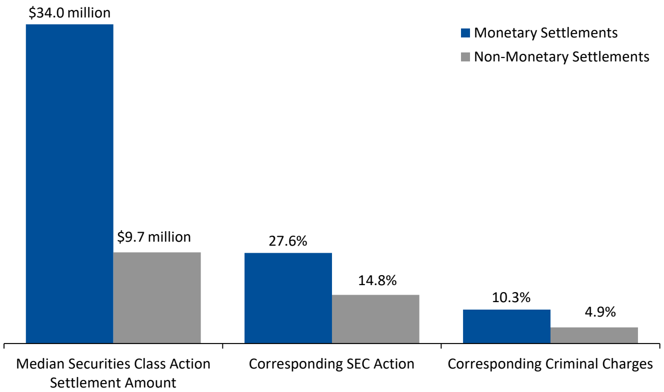
Non-Monetary Settlements	$629,888
Monetary Settlements	$2,970,000
All Parallel Derivative Action Settlements	$828,122

Note: Amounts are adjusted for inflation; 2023 dollar equivalent figures are presented. Plaintiff attorney fees are as recorded in the settlement stipulation and could differ from the amounts ultimately approved by courts. Plaintiff attorney fees could not be determined for all settlements.

DERIVATIVE SETTLEMENTS AND RELATED ACTIONS

By examining characteristics of the associated securities class action, this research also sheds light on what factors affect the likelihood of a monetary settlement in a parallel derivative action. Overall, derivative settlements with a monetary component are associated with higher securities class action settlements, consistent with a view that the monetary settlements correlate with the size of the case or the strength of the underlying allegations.

Characteristics of Monetary and Non-Monetary Parallel Derivative Settlements



Note: Dollar amounts are adjusted for inflation; 2023 dollar equivalent figures are presented. Percentages represent the proportion of settlements that satisfy the criteria listed.

The alleged misconduct underlying both securities and derivative suits could also be associated with government enforcement actions filed by the U.S. Securities and Exchange Commission (SEC), U.S. Department of Justice (DOJ), or other regulators.

Derivative settlements with a monetary component in the sample were more likely to be associated with an SEC action or criminal charges against the defendants or related parties in connection with the allegations covered by the underlying class action.[11]

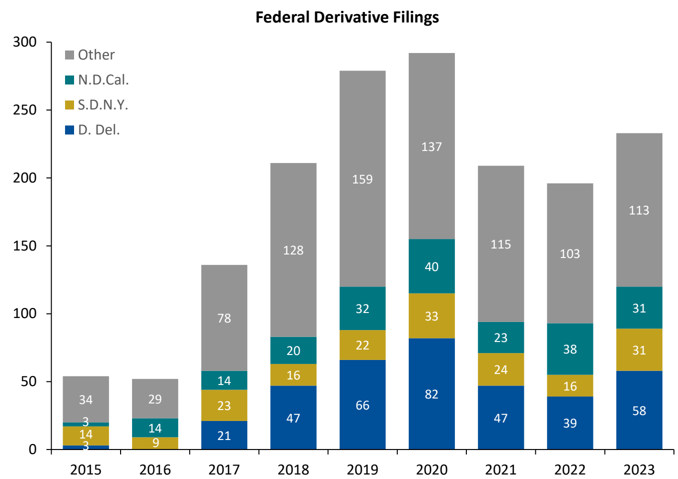
> Monetary derivative settlements are more common in cases with large securities class action settlements and when associated SEC actions or criminal charges are present.

RECENT TRENDS

Nearly half of securities class actions that settled between 2019 and 2023 were associated with a parallel derivative claim (as noted above); however, the percentage of class action settlements with an associated derivative action was only 40% in 2023, the lowest level observed since 2011.[12] While the data discussed in this report pertain to a subset of the universe of derivative actions (specifically, those associated with recent securities class action settlements), data on overall derivative action filings can provide some insight on broader trends.

Data on all derivative action filings in federal courts (including both parallel derivative suits and filings without a related securities class action) show that derivative filings accelerated rapidly between 2015 and 2020 before declining slightly in more recent years. Filings were also concentrated in certain venues—specifically, 46% of federal derivative filings between 2015 and 2023 were filed in either the District of Delaware, Southern District of New York, or Northern District of California.[13]

Derivative Filings in Federal Courts



Note: Data on shareholder derivative suit filings reported by Lex Machina.

These filing trends likely contributed to the significant numbers of large monetary derivative settlements in recent years that have been noted in industry commentary.[14] Specifically, a list of large derivative settlements compiled by *D&O Diary* identifies 29 settlements between 2005 and 2023 of at least $50 million, 16 of which occurred since 2020. Such large derivative settlements may pave the way for other large derivative settlements and/or motivate more derivative filings in the coming years.

ABOUT THE AUTHORS

Laarni T. Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues; firm valuation; and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, securities clearing and settlement, and real estate.

Matthew Davis is a senior manager in Cornerstone Research's San Francisco office. His work has focused on securities and other complex financial litigation addressing class certification, damages, and loss causation issues, as well as antitrust issues in financial markets, market manipulation, executive compensation, valuation, and real estate.

RESEARCH SAMPLE AND DATA SOURCES

The source database on securities class action settlements used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock, as described more fully in *Securities Class Action Settlements—2023 Review and Analysis*. Specifically, utilizing this database, the research described in this report focuses on 198 securities class actions settled between 2019 and 2023 featuring a parallel derivative suit.

This report relies on a variety of sources to obtain information on derivative suit settlements, including SEC filings, court filings, Stanford Securities Litigation Analytics (SSLA), Lex Machina, public press, and *D&O Diary*. All reported settlement information reflects the information recorded in the settlement stipulation, which is subject to change before the settlement is finalized.

1 See Cornerstone Research, *Securities Class Action Settlements—2023 Review and Analysis* (2024), p. 11.

2 Jessica Erickson, "Corporate Governance in the Courtroom," *William and Mary Law Review* 51 (2010): 1749–1831 ("Erickson (2010)").

3 See Stephen J. Choi, Jessica Erickson, and A.C. Pritchard, "Piling On? An Empirical Study of Parallel Derivative Suits," *Journal of Empirical Legal Studies* 14, no. 4 (2017): 653–682 ("Choi et al. (2017)").

4 Erickson (2010).

5 Erickson (2010). It is understood that in rare instances, the corporation's shareholders may benefit directly from a monetary derivative suit settlement.

6 Except when referencing figures from third-party research, all monetary figures in this report are adjusted for inflation (2023 dollar equivalent figures are presented).

7 Premium is calculated based on the difference in the median settlement amounts among class action settlements with and without an accompanying derivative action.

8 Cases featuring no monetary payment other than reimbursement of attorney fees and/or plaintiff service awards are considered non-monetary settlements. Reported settlement amounts for monetary settlements include attorney fees. Settlement amounts and plaintiff attorney fees are as recorded in the settlement stipulation and could differ from the amounts ultimately approved by courts. The 88 cases not associated with a settlement include dismissed cases, pending cases, and cases for which an outcome could not be determined.

9 In an analysis of derivative actions associated with securities class actions filed between July 1, 2005, and December 31, 2008, Choi et al. (2017) find that only 21% of the parallel derivative suit settlements in their sample included a monetary component, while the remaining 79% of settlements resulted in corporate governance reforms only. The average settlement amount for those monetary parallel derivative suit settlements was $100.5 million or 53% of the associated securities class action settlement.

10 Choi et al. (2017) find that therapeutic-provision-only settlements are correlated with significantly lower hours and fees for the plaintiff attorneys.

11 A corresponding SEC action against the issuer, other defendants, or related parties is identified by a litigation release or administrative proceeding listed on the SEC's website. Identification of a corresponding criminal charge or criminal indictment is based on review of SEC filings and public press. For purposes of this research, criminal charges and/or indictments are collectively referred to as "criminal charges."

12 See Cornerstone Research, *Securities Class Action Settlements—2023 Review and Analysis* (2024), p. 11.

13 Lex Machina does not identify derivative actions in state courts, including the Delaware Court of Chancery.

14 See, for example, "Guest Post: As Derivative Settlements Trend Higher, Side-A Coverage Becomes Crucial," *D&O Diary*, August 24, 2023, https://www.dandodiary.com/2023/08/articles/shareholders-derivative-litigation/guest-post-as-derivative-settlements-trend-higher-side-a-coverage-becomes-crucial/.