Attorneys' Fee Awards in Delaware: A Normative and Empirical Analysis

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Abstract

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. Specifically, critics claim that fees are too high a multiple of "lodestar"-hours lawyers work times their hourly rate. That criticism, however, is based solely on a handful of cases. To remedy the ad hoc basis of this criticism, we have collected and analyzed data on all fee awards granted over the past ten years. In short, we find no basis for the criticism. Specifically, 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. Among cases settled or tried, they amount to one percent of our sample. We further find that fee awards are consistent with the percentage-of-the-benefit approach laid out by the Delaware Supreme Court, under which the percentage increases for cases that settle late in the litigation process and cases that progress to trial. That approach is consistent with economic analyses of optimal fee regimes. The outliers that the Court's critics have found are inevitable results of this approach.

Keywords: Delaware, Court of Chancery, Attorneys' fee awards

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Abstract

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. Specifically, critics claim that fees are too high a multiple of "lodestar"—hours lawyers work times their hourly rate. That criticism, however, is based solely on a handful of cases. To remedy the *ad hoc* basis of this criticism, we have collected and analyzed data on all fee awards granted over the past ten years. In short, we find no basis for the criticism. Specifically, 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. Among cases settled or tried, they amount to one percent of our sample. We further find that fee awards are consistent with the percentage-of-the-benefit approach laid out by the Delaware Supreme Court, under which the percentage increases for cases that settle late in the litigation process and cases that progress to trial. That approach is consistent with economic analyses of optimal fee regimes. The outliers that the Court's critics have found are inevitable results of this approach.

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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] The Delaware legislature has responded by calling for a report on attorneys' fees 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 have devoted to a case—their "lodestar."[3] They have further argued that Delaware fees

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[1] *See* Tex. Civ. Prac. & Rem. Code § 26.004(d); *id.* § 26.003(a) (providing that "the 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. The initial deadline was set for March 31, 2025, and was later extended to December 31, 2025.

[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*].

are considerably higher than fees in federal securities class actions.[4] Their claim, however, is based on minimal data.[5] Moreover, they fail to recognize that, as we explain below, the objective of a fee award regime is to align plaintiffs' lawyers' incentives with shareholder interests *ex ante*, and that the natural result can be the occurrence of the sort of outliers they observe.[6]

In this paper, we remedy those deficiencies. First, we analyze comprehensive data on fees in Delaware and in federal securities class actions, and we find no evidence that Delaware fees are systematically excessive. Second, we explain how a fee award regime that creates incentives *ex ante* for plaintiffs' lawyers to act in the interests of their clients will, in some cases, inevitably result in fees that, from an *ex post* perspective, are surprisingly high. If this were a common occurrence, there would be reason for concern. Occasional high fees, however, cannot be

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The first version of *Multipliers* is dated April 30, 2025. The second and current draft is dated May 15, 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; 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, 12:07 PM EDT), https://fortune.com/2025/06/02/delaware-lawyers-fee-multipliers-dexit/; Jeff Montgomery, *Report Finds Del. Court Jumbo Fees Rival Federal System*, Law360 (June 2, 2025, 4:57 PM EDT), https://www.law360.com/articles/2347877/report-finds-del-court-jumbo-fees-rival-federal-system; Press Release, Citizens for Judicial Fairness, *Citizens for Judicial Fairness Slams Excessive Delaware Chancery Fees Following New Stanford Report*, Business Wire (June 5, 2025, 9:55 AM EDT), https://www.businesswire.com/news/home/20250605882699/en/Citizens-for-Judicial-Fairness-Slams-Excessive-Delaware-Chancery-Fees-Following-New-Stanford-Report; Lori Anne Czepiel, *DExodus: New Considerations from Stanford Study on Shareholder Suit Expenses*, Nelson Mullins – Insights (June 11, 2025), https://www.nelsonmullins.com/insights/blogs/corporate-governance-insights/all/dexodus-new-considerations-from-stanford-study-on-shareholder-suit-expenses#:~:text=A%20recent%20study%20by%20Stanford%E2%80%99s%20Professor%20of%20Law,shareholder%20suits%20may%20be%20more%20predictable%20and%20lower; The Activist Investor, *Shareholder Primacy: Prof. Joe Grundfest and attorney Joel Fleming on Delaware contingency fees*, (Apple Podcasts, June 18, 2025, 12:48 PM UTC); Drew Calamaro et al., *DExodus: New Considerations from Stanford Study on Shareholder Suit Expenses*, JDSupra (June 11, 2025), https://www.jdsupra.com/legalnews/dexodus-new-considerations-from-2615715/; 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?soid=1130984243344&aid=6UbQzkq0z8g; Video posted by Bill Gurley (@bgurley), X (May 31, 2025, 3:44 PM), https://x.com/bgurley/status/1928900302859575566; YieldRadar, *Delaware Lawyers' Fees Face Review: Multipliers Up to 66 Times Rates*, https://yieldradar.info/news/delaware-lawyers-fees-face-review-multipliers-up-to-66-times-rates/; Amuse on X (@amuse), X, *Delaware Is Broken: Why You Shouldn't Incorporate There* (May 31, 2025), https://amuseonx.substack.com/p/delaware-is-broken-why-you-shouldnt.

[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.

eliminated without undermining the incentives that the Delaware fee regime creates. Our empirical analysis shows that Delaware fees are consistent with incentive alignment, and that the high fee awards identified by the commentators constitute a proportionately small number of outliers. We do not doubt that fee awards can be large in some instances, but we find no evidence that the fee awards these commentators have found justify concern about systematically excessive fee awards in Delaware.

The paper 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 explains how attorneys' fees should be structured to best align attorneys' incentives with shareholders' interests. 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, under which each litigant bears its own legal fees, two equitable exceptions are routinely applied. The "common fund" doctrine applies in class actions when the plaintiffs' attorneys' efforts have led to a settlement payment or a damage award for members of the class following trial.[7] The "corporate benefit" doctrine applies in derivative suits and class actions when the plaintiffs' attorneys' "efforts have conferred a substantial benefit upon the corporation" or the class.[8] In these instances, the court has discretion to award reasonable attorneys' fees to the plaintiff's counsel to be paid by the corporation or out of the plaintiffs' recovery.[9]

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

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

[8] *See* Tandycrafts, Inc. v. Initio P'rs, 562 A.2d 1162, 1163, 1164–67 (Del. 1989).

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

in the fee arrangement, and the standing and ability of counsel.[10] The court also considers the stage at which the case ended.[11] Of these factors, the Supreme Court has stated that the benefit conferred by the litigation is the most important one.[12] 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.[13] Both the Delaware Supreme Court and the Court of Chancery have justified this approach in terms of providing the plaintiffs' lawyer with an incentive aligned with his or her client's interest.[14] Although a requested fee award can be adjusted based on the *Sugarland* factors, the Supreme Court has rejected the lodestar approach—that is, an approach based primarily on the time attorneys have worked on a case multiplied by a reasonable hourly rate.[15]

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

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

[12] *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.

[13] *See* Dover Hist. Soc., 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.").

[14] Dell Techs., 326 A.3d 686, 698 (Del. 2024).

> We also rejected the federal lodestar approach. … We concluded that adopting the loadstar [*sic*] 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. *Id.*;

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).

[15] Sugarland Indus., Inc. v. Thomas, 420 A.2d 142, 150 (Del. 1980) (discussing *Lindy Bros. Bldrs., Inc. of Phila. v. American R. & S. San. Corp.*, 3 Cir., 487 F.2d 161 (1973) (*Lindy I*) and *Lindy Bros. Bldrs., Inc. of Phila. v. American R. & S. San. Corp.*, 3 Cir., 540 F.2d 102, 110 (1976) (*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,

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. It reviewed prior Court of Chancery fee awards, stating 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 benefits 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.[16]

The Supreme Court rejected the argument of an objector that the percentage awarded should be reduced when a recovery is very large (*i.e.*, a "megafund rule" or the "declining percentage approach"), as it was in *Americas Mining*.[17] 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. The post-trial damage award in *Americas Mining* was over $2 billion, so a 33% fee would have amounted to a $670.4 million fee. The plaintiff's attorneys requested a fee award of 22.5%, which would have been $450 million.[18] The Court of Chancery instead awarded a fee of about $300 million—15% of the recovery—which was still about 90 times the lawyers' lodestar.[19] The Supreme Court affirmed that award.[20]

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 had awarded attorneys' fees of $266.7 million

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> 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. *Id*.

[16] Americas Mining, 51 A.3d at 1259−60.

[17] Americas Mining at 1258−61.

[18] *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).

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

[20] Americas Mining at 1263.

against the $285 million requested.[21] That fee of 26.6% of the recovery was 6.66 times the attorneys' lodestar.[22] 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.[23] 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 the Court had addressed the 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.'"[24]

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*.[25] Following the rescission of the $51.4 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 $51.4 billion reverse-dilution.[26] 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 25.2.[27] The case is currently under appeal.[28]

II. The Current Controversy over Attorneys' Fees

Attorneys' fees in Delaware are currently the subject of significant controversy. Large awards have attracted media scrutiny, provoked backlash from corporate leaders, and drawn criticism from commentators who question the size of fees and claim a lack of transparency

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

[22] The multiplier decreases to 6.13 when adding the expenses to the lodestar amount.

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

[24] Dell Techs. at 693.

[25] Tornetta v. Musk, 326 A.3d 1203, 1261 (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).

[26] Had the court adopted the plaintiff's valuation of the benefit, the fee would have amounted to $7.71 billion.

[27] The multiplier decreases to 23.4 when adding the expenses to the lodestar amount.

[28] *In re* Tesla, Inc. Derivative Litigation, C.A. No. 2018-0408-KSJM (Del. Ch. Jan. 30, 2024), appeal docketed, No. 534, 2024 (Del. Jan. 21, 2025).

regarding how they are determined.[29] The controversy is so significant that the Delaware legislature has mandated completion of a comprehensive report on attorneys' fees by the end of 2025.[30] Just beneath the surface of the issue 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.[31]

Headline-grabbing fee awards have invited the perception that things are seriously amiss in Delaware.[32] After the 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

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[29] *See supra* note 3.

[30] *See supra* note 2.

[31] *See 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 AM EST) https://news.bloomberglaw.com/esg/tripadvisor-ruling-eases-dexit-path-for-corporate-departures; Michael Maugans, *ANALYSIS: DExit Pits Chancery Against Controlling Stockholders*, Bloomberg Law (Feb. 20, 2025, at 5:00 AM EST) https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-dexit-pits-chancery-against-controlling-stockholders; Tom Hals, *In Tesla's wake, more big companies propose voting 'Dexit' to depart*, REUTERS (May 14, 2025, at 6:29 PM EDT) https://www.reuters.com/business/autos-transportation/teslas-wake-more-big-companies-propose-voting-dexit-to-depart-delaware-2025-05-14/; 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/; 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).

[32] Jeff Montgomery, *5 Firms Win Record $266.7M Fee From $1B Dell Settlement*, LAW360 (July 31, 2023, at 5:42 PM EDT) https://www.law360.com/pulse/articles/1600897/5-firms-win-record-266-7m-fee-from-1b-dell-settlement; Alison Frankel, *Whopper $267 million fee award in $1 billion Dell case shows why Delaware is different*, REUTERS (Aug. 1, 2023, at 5:10 PM EDT) https://www.reuters.com/legal/transactional/column-whopper-267-million-fee-award-1-billion-dell-case-shows-why-delaware-is-2023-08-01/; Justin Wise & Mike Leonard, *Top US Business Court Bolsters Reputation with Big Lawyer Fees*, BLOOMBERG LAW (Aug. 3, 2023, at 5:01 AM EDT) https://news.bloomberglaw.com/business-and-practice/top-us-business-court-bolsters-reputation-with-big-lawyer-fees; 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; Jennifer Kay, *Big Lawyer Paydays in Risky Cases Affirmed by Delaware Court (2)*, BLOOMBERG LAW (Aug. 14, 2024, at 5:41 PM EDT) https://news.bloomberglaw.com/litigation/big-lawyer-paydays-in-risky-cases-affirmed-by-top-delaware-court; Tom Hals & Jonathan Stempel, *Court upholds blockbuster $267 million legal fee award in Dell lawsuit*, REUTERS (August 14, 2024, at 5:34 PM EDT) https://www.reuters.com/legal/court-upholds-blockbuster-267-million-legal-fee-award-dell-lawsuit-2024-08-14/; Jeff Montgomery, *Chancery OKs $345M Fee Award For $55B Musk Pay Fight*, LAW360 (Dec. 2, 2024, at 5:09 PM EST) https://www.law360.com/articles/2268309/chancery-oks-345m-fee-award-for-55b-musk-pay-fight; Jeff Montgomery, *Chancery Awards $176M Atty Fee In Tesla Board Pay Suit*, LAW360 (Jan. 8, 2025, at 1:26 PM EST) https://www.law360.com/articles/2281210/chancery-awards-176m-atty-fee-in-tesla-board-pay-suit.

a migration of Corporate America from Delaware."[33] Earlier, media reports on the *Dell* case highlighted "whopper" fee awards, suggesting that Delaware is an "outlier."[34] 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.[35] One paper identifies twenty cases in which the Delaware Court of Chancery awarded attorneys' fees with lodestar multipliers of seven or more – what they call "septuples."[36] Although the study is based on minimal data and suffers from other methodological flaws, which others have pointed out,[37] it attracted significant media attention and has been seized upon as evidence that the Delaware judiciary's fee practices are problematic.[38] For example, reacting to the study, advocacy group Citizens for Judicial Fairness declared that "Delaware's Chancery Court

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[33] *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 1:49 PM EST), https://www.foxbusiness.com/politics/very-wrong-elon-musk-case-sparks-calls-for-reform-judge-awarded-massive-judgement-lawyer-fees (quoting Bill Ackman (@BillAckman), X (Dec. 3, 2024, at 6:31 AM), https://x.com/BillAckman/status/1863908964863242322); *see also* Elon Musk (@elonmusk), X (Mar. 1, 2024, at 10:49 PM), https://x.com/elonmusk/status/1763773501616328775 ("The lawyers who did nothing but damage Tesla want $6 billion. Criminal.").

[34] *See* Frankel *supra* note 32.

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

[36] *Multipliers*, *supra* note 3 at 1. 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* Dell Techs., 300 A.3d at 715 (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.

[37] *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; Joel Flemming, *Looking for Lodestar In All The Wrong Places* (May 2, 2025), https://www.linkedin.com/pulse/looking-lodestar-all-wrong-places-joel-fleming-ailie/. Hanrahan and Flemming 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"); (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.

[38] *See generally supra* note 3.

is more interested in enriching lawyers than serving shareholders or protecting everyday investors."[39]

Others have leveled a second charge – opacity.[40] Adam Pritchard and Jessica Erickson, in a blog post titled "*Opening Delaware's Black Box of Attorneys' Fees*," argued that a "process that relies primarily on judges' intuition creates a black box that only the judges themselves can understand. This black box makes it hard for the public to evaluate their decisions."[41] The authors argue that reliance on precedent "is a recipe for replicating mistakes, as those [fee award] decisions are not grounded in data either."[42] Pritchard and Erickson called for a comprehensive database of Delaware fiduciary litigation, maintained by the Court of Chancery, including information on attorney effort and fee awards. The database would be generated by parties completing a mandatory form at the end of class action and derivative litigation.[43]

An added dimension to the debate is rising competition with other states, particularly Texas and Nevada, for corporate chartering business.[44] Both Texas and Nevada pitch their states as lower-cost alternatives to the Delaware regime. It seems doubtful that the fees a corporation might pay to plaintiffs' lawyers constitute a significant factor affecting an incorporation decision. But Texas caps fees at four times the attorneys' lodestar in class actions,[45] and at this point, perceptions of Delaware fees are so clouded that one cannot exclude the possibility that firms might be concerned.

Fear of DExit has spurred legislative action in Delaware. Alongside Senate Bill 21 ("SB 21"), which creates a safe harbor for certain interested transactions, the General Assembly introduced Senate Concurrent Resolution 17 ("SCR 17") mandating that the Council of the

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[39] *See* Citizens for Judicial Fairness *supra* note 3.

[40] *See, e.g.*, The Activist Investor, *Shareholder Primacy: Prof. Joe Grundfest and attorney Joel Fleming on Delaware contingency fees*, (Apple Podcasts, June 18, 2025, at 12:48 PM UTC).

[41] Adam C. Pritchard & Jessica M. Erickson, *Opening Delaware's Black Box of Attorneys' Fees*, Harvard Law School Forum on Corporate Governance (Mar. 19, 2025), https://corpgov.law.harvard.edu/2025/03/19/opening-delawares-black-box-of-attorneys-fees/ [hereinafter *Black Box*].

[42] *See Black Box*.

[43] *See Black Box*.

[44] *See supra* note 31.

[45] 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 42(i)(1) mandates that any adjustment fall within the range of 25% to 400% of the lodestar figure.

Corporation Law Section of the Delaware State Bar Association prepare a report of recommendations for 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.[46]

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.

Notably, by their own admission, Grundfest and Dor's analysis of "septuples" represents "a numerator in search of a denominator."[47] Grundfest and Dor do not know whether the fee awards they identified are common or uncommon in the context of fee awards generally, and they do not even know whether there are other septuples out there.[48] Yet their alarmist 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 and Dor with a denominator and reveals that there is no such flaw. Moreover, our analysis in Part III explains why one should not be surprised—or concerned—by the outliers Grundfest and Dor found. As we explain in Part III, occasional large fee awards and the attention they attract in isolation are an inevitable consequence of maintaining incentives for plaintiffs' lawyers to act in the interest of shareholders across the full run of cases.

Moreover, Pritchard and Erickson's description of Delaware fee awards as a "black box" is, in our view, inaccurate. As we explained in Part II, the Court of Chancery follows an approach to fee awards laid out by the Supreme Court. It is primarily a percent-of-benefit approach with a discretionary adjustment based on the lodestar, among other factors. The adjustment is, by design, discretionary and applied on a case-by-case basis, but that does not make the entire approach a black box. Pritchard and Erickson argue that data would be useful to judges in approving fees and urge the Court of Chancery to require filings by litigants to facilitate the compilation of such data.

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[46] *See* SCR 17.

[47] *Eyebrow*, *supra* note 3, at 3.

[48] *Id*. at 4.

Although it is unclear to us how data would be helpful to the Court of Chancery in determining a specific fee award, we have no quarrel with the proposition that ongoing data collection could be worthwhile (certainly for academics if not for judges).[49]

III. How Should Attorneys' Fees be Determined (and Are "High" Fees Necessarily Bad)?

The central objective of a rule governing fee awards should be to structure plaintiffs' lawyers' incentives to align as closely as possible with the interests of their clients—the corporation in a derivative suit and the shareholder class in a class action.[50] Delaware case law,[51] SCR 17,[52] and academic commentary[53] recognize this as the primary objective of a fee award rule. Even the most sophisticated lead plaintiffs' monitoring of their attorney is imperfect.[54] Incentives, therefore, are the best tool available.

The theoretically ideal fee regime would induce plaintiffs' lawyers to file all cases with positive net present value—and only those cases—and to make decisions regarding continued litigation and settlement that maximize the net present value of the prospective recovery.[55] To induce plaintiffs' lawyers to litigate potentially meritorious but risky cases, the fees that are

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[49] At least one Delaware judge has welcomed the idea. *See* Dell Techs., 300 A.3d at 707 ("What we lack—and what would be wonderful to have—is a thorough study akin to the analysis conducted in [Stephen Choi, Jessica M. Erickson & Adam C. Pritchard, *The Business of Securities Class Action Lawyering*, 99 IND. L. J. 775 (2024)]").

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

[51] *See supra* note 14.

[52] 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."

[53] *See, e.g.*, Steven Shavell, *The Social Versus the Private Incentive to Bring Suit in a Costly Legal System*, 11 J. LEGAL STUD. 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 (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 (1991); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010); Jill E. Fisch, *Lawyers on the Auction Block: Evaluation and Selection of Class Counsel by Auction,* 102 COLUM. L. REV. 650 (2002); Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORDHAM L. REV. 1151 (2021).

[54] *See* Reinier H. Kraakman, *Corporate Liability Strategies and the Costs of Legal Controls*, 93 YALE L.J. 857 (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 (1987).

[55] 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 (2006); Lucian Arye Bebchuk, *A New Theory Concerning the Credibility and Success of Threats to Sue*, 25 J. LEG. STUD. 1 (1996). As a practical matter, however, analysis from that perspective would have no bearing on the topic of this paper.

awarded must compensate them for both the cases for which they receive an award and the cases for which they receive nothing, without inducing them to file non-meritorious cases. In making litigation decisions once they file a case, one would want them (a) to settle a 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 continued litigation is greater than an available settlement, and (c) to drop a case when the net present value of continued litigation is negative. Such an ideal fee regime would not only maximize shareholders' net recovery, but would also force defendants to internalize the costs of their misdeeds.

This theoretical ideal is not feasible for two reasons. First, there is no way that a fee award regime can perfectly calibrate fees in response to *ex ante* litigation risk, either with respect to a particular case or in the aggregate. Second, because plaintiffs' lawyers receive only a portion of the shareholders' recovery, they may, in some cases, have an incentive to fall short of maximizing the prospective recovery when deciding whether to settle or continue litigating. Nonetheless, the theoretical ideal is a useful construct in evaluating a fee award regime.

Although incentive alignment should be the primary objective of a fee award regime, a secondary objective should be to avoid overpaying plaintiffs' counsel.[56] A plaintiffs' attorney's fee comes out of the shareholders' recovery or from the corporate treasury. So, if more is paid than is necessary to maintain a fee award regime that sufficiently aligns lawyers' incentives, shareholders lose out. As we explain below, however, eliminating overpayment entirely without impairing incentives is also not feasible.

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 attorneys' fees that substantially exceed the value of the time and expenses attorneys invest.

A. Fees Based on the Percentage of the Benefit

As explained above, the Delaware courts have adopted a rule that awards attorneys' fees based primarily on a percentage of the plaintiffs' recovery, or in cases involving a non-monetary

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[56] *See Black Box*.

remedy, a percentage of the benefit provided to shareholders.[57] The percentage awarded increases for settlements later in the litigation process 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 best result in litigation.[58]

How well the percentage-of-the-benefit rule aligns attorney incentives with shareholder interests depends on the nature of the case and the percentage awarded. Cases obviously differ with respect to risk, potential recovery, time required to litigate, and willingness of defense counsel to settle at what plaintiffs believe are reasonable terms. In some cases, a low percentage will produce sufficient incentives, 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 forego bringing meritorious cases where the risk-return ratio of the expected fee does not warrant the investment of his or her time. Second, as a case proceeds in litigation, the lawyer will stop short of maximizing the net recovery for shareholders. The lawyer will continue litigating a case only if he or she expects the marginal fee, discounted by the probability of winning the case, to be greater than the marginal cost of the time and expense of continued litigation. A low percentage fee, therefore, would serve shareholders poorly in a risky, time-consuming case with relatively low expected recoveries—especially if defense counsel drive a hard bargain and refuse to settle early. In such a case, a higher percentage fee is necessary.

A high percentage, on the other hand, would enhance incentives in riskier, more time-consuming cases with relatively low recoveries. But a fee-award regime cannot effectively differentiate among cases *ex ante* based on these factors. Because of the limited *ex ante* information, the same percentage regimes must apply to all cases—albeit with the possibility of *ex post* adjustments. That is the approach followed in Delaware. Consequently, a higher percentage will more often lead to lawyers having incentives aligned with shareholder interests—that is, having their time and expenses covered sufficiently to pursue the best outcome for their clients—but it will also more often result in lawyers receiving fees that are large relative to their time and

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

[58] *See* sources cited at *supra* note 53.

expenses. From an *ex post* perspective, lawyers will sometimes appear to have been overpaid. There is an inevitable conflict between establishing a fee-award rule that creates sufficient incentives *ex ante* and creating the appearance of overpayment *ex post* in some cases.

There is no way to resolve the tradeoff between creating attorney incentives and avoiding apparent overpayment. A court can reduce overpayment by adjusting fees on a case-by-case basis, as the Court of Chancery does, but if it reduces fees too much, too often, it will reduce the percentage that plaintiffs' lawyers expect, which will impair their incentives—and hence, the interests of shareholders. In Part IV, we analyze data on Delaware fee awards in order to gain an insight into whether the Court of Chancery, in its efforts to create sufficient incentives for plaintiffs' attorneys *ex ante*, has too often granted fees that are large *ex post*.

B. Fees Based on Lodestar

A fee structure based on the number of hours a lawyer works times a reasonable hourly rate—the lodestar—might appear to avoid overpayment, but it 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. Second, a strict lodestar-based rule would give attorneys no incentive to maximize the shareholders' recovery. They would be paid regardless of how much they recover for shareholders. Finally, a strict lodestar-based rule would not address overpayment. It 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' recovery. The lawyer would be overpaid, and the shareholders would be undercompensated. 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.[59] Additionally, courts would also be called to make determinations of the reasonable hourly rate.[60]

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[59] 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, 51 A.3d at 1253–54 (discussing the Task Force's criticism of the lodestar method and its recommendation of a percentage-of-the-benefit approach).

[60] Third Circuit Task Force, *Court Awarded Attorney Fees*, at 246, 260–62.

C. Fee Caps Based on Lodestar

One approach to reducing overpayment of plaintiffs' lawyers is to award fees based on a percentage of benefit but to cap fee awards at a specified multiple of lodestar. Texas follows this approach by capping fees at four times a lodestar in class actions. This approach reduces overpayment at the expense of impairing attorney incentives to obtain the best outcome for shareholders. The ceiling reduces the expected fee in cases where there is a potential payoff that is disproportionate to the time the attorney must invest in a case. It will therefore reduce the lawyer's incentive to continue litigating a case rather than settling. In addition, when a case reaches a late stage of the proceedings and the potential recovery is very high relative to the lodestar, the plaintiffs' attorney will have little incentive to insist on a high settlement, and the defense attorney will have an incentive to manipulate the situation to achieve a low settlement. To take an extreme but simple example, imagine a case that has been tried, and parties are waiting for a judgment, which will potentially 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 that is far below the shareholders' potential recovery. The plaintiffs' lawyers will have an 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. In addition, the court might step in to disallow a settlement that appears to favor the lawyer over the client. The hypothetical is only intended 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 large cases. The cost to a plaintiffs' lawyer of litigating a case is not necessarily proportionate to the size of a case. Imagine two straightforward cases involving blatant duty of loyalty breaches, one with shareholder losses of $20 million and one with losses of $1 billion. 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 be binding on a percentage of the benefit fee, so the plaintiffs' lawyer's incentives will be aligned with her client's interest. But in the larger case, the cap will probably bind, and the lawyer will have no incentive to obtain a larger recovery for shareholders.

Americas Mining provides an example of a case in which a fee cap could have had a disastrous effect on shareholders. The shareholders in that case recovered $2 billion, and their lawyers were awarded a fee of $300 million, which was about 90 times their lodestar. How would that case have been litigated if the plaintiffs' lawyers faced a cap of four times their lodestar? The case may well have settled for a small fraction of what the shareholders obtained.

A lodestar-based cap on fees is thus highly problematic from the perspective of incentive alignment. In large recovery cases, a fee based on the percentage of the benefit is what keeps the plaintiffs' lawyer working in the interest of shareholders to obtain the highest recovery possible.

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

As explained in Part I, *Sugarland* and the cases that followed contemplate considering the stage at which a case is resolved as a factor in awarding a fee. *Americas Mining* endorsed a set of increasing percentages as the case proceeds. In a case litigated through trial, the plaintiffs' attorney is awarded a higher percentage than in a case that settles. In cases that settle early in litigation, the attorney receives a lower percentage of the recovery compared to those settled at a later stage.

Economic analysis has shown that this approach aligns attorneys' incentives with shareholder interests. All other factors equal, a plaintiffs' lawyer will want to settle early. A defendant, therefore, could take advantage of the lawyer's interest by driving up the cost of litigating and 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.[61]

Setting a fee at a higher percentage of the recovery for a victory at trial, as opposed to a settlement, is important for an additional reason. When a plaintiffs' attorney takes a case through trial, he or she risks getting nothing for a very large, undiversified investment of time. Without an extra payoff for a victory at trial, the attorney will have an incentive to settle for an amount less than the net present value of trying the case. Diversified shareholders, on the other hand, would

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[61] Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, *supra* note 53, at 1158; Coffee, *supra* note 53, at 690, 697; Fisch, *supra* note 53, at 679. It is also possible that a plaintiffs' lawyer will turn down an attractive settlement offer early in order to litigate to a later stage and get a higher percentage fee. But, in general, there are two factors implying that this would not be common. First, plaintiffs' lawyers will have to put in additional work and expense on further litigation. Second, the time value of money would lead defendants and their insurers to put off larger offers until later.

want to take the case to trial. 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 risk of reversal. Consequently, increasing the percentage fee awarded to the lawyer for a win at trial promotes an alignment of interests.

While this approach helps align attorney incentives, the result could be a fee award that equates to a large lodestar multiple. But, again, the primary objective of a rule governing fee awards is to provide an incentive for the lawyer to continue litigating a case when doing so will maximize the shareholders' recovery. The question, therefore, is whether high-lodestar multiples are common.

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.[62] As discussed above, the Court of Chancery has used its equitable powers to reduce fees in some of these cases, based on the *Sugarland* factors, to levels lower than the percentage ranges stated in *Americas Mining*. But the courts have declined to apply an across-the-board rule under which the percentage of the recovery would be reduced when recoveries are large. The cases discussed in Part I are examples. Even with the Court of Chancery's reductions, fees in those cases were still substantial multiples of lodestars.

The courts' refusal to adopt across-the-board rules that reduce percentage fees in megafund cases is consistent with the primary goal of providing plaintiffs' lawyers with incentives to act in the interest of their clients. The principles discussed above apply to megafund cases just as they do to smaller cases.[63] An across-the-board rule reducing percentages or capping fees based on a lawyer's lodestar could be as dysfunctional in megafund cases as it would be in any case—and there is more at stake for the shareholders in these cases. As explained above, applying Texas's 4x lodestar cap in *Americas Mining* would likely have led the plaintiffs' lawyers to settle for far less than the amount they recovered for shareholders. On the other hand, if the lawyers had expected a fee lower than the 90x multiple they received, their incentive to take the case to trial would

[62] Dell Techs., 326 A.3d at 698; Tornetta v. Musk, 326 A.3d 1203 (Del. Ch.), *judgment entered*, (Del. Ch. 2024).

[63] *See, e.g.*, Fitzpatrick, *A Fiduciary Judge's Guide*, *supra* note 53, at 1169; Fisch, *supra* note 53.at 679.

probably have remained strong. Perhaps the fee award could have been smaller, but by how much is unknowable. By contrast, in *Dell*, where the lodestar multiple was about seven, the lawyers may well have declined to take the case to trial if they faced a lower percentage fee or a capped fee.

Megafund cases do raise the possibility of plaintiffs' lawyers being awarded fees that are substantially higher than their lodestars, because the potential recovery in a case is not necessarily commensurate with the time and expense it takes for a plaintiffs' lawyer to litigate the case. But the same incentives apply in large and small cases. So, an across-the-board rule that reduces fees in large-recovery cases would impair incentives in those cases to the disadvantage of shareholders. The Court of Chancery's discretion to reduce fees on a case-by-case basis is a better approach to avoiding overpayment in particular cases. But the Court must be careful not to use this discretion to reduce fees below the expected percentage by too much or too often. Doing so would undermine the intended incentives of the fee regime as a whole.

F. 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.[64]. 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. Otherwise, the Court of Chancery is not involved.

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 ones where lawyers should be paid less. On the other hand, these are the cases in which the lawyer has achieved the most benefit for the least effort, and with the least judicial involvement.

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

[64] 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.

G. Summary

No fee regime is perfect. The percentage of the benefit approach can provide a plaintiffs' lawyer with an *ex ante* incentive to maximize the net present value of a case for shareholders, so long as the percentage is high enough and increases as litigation proceeds. This rule can also result in fees that, *ex post*, appear to be large lodestar multiples. We would expect to see large lodestar multiples occasionally in cases with large recoveries, cases that settle late in the litigation process, and especially in cases where both of these factors are present. It may be that lawyers in these cases were "overpaid" in some sense from an *ex post* perspective. But trying to reduce fees by capping them or reducing the applicable percentage as a general rule would reduce incentives *ex ante* and harm shareholders precisely in those cases where they have the most to lose—those with large potential recoveries and those in which reasonable settlements are not available early in the litigation process. Similarly, large lodestar multiples can arise in mootness cases, but they are to be expected and are not a basis for concern. They are often resolved relatively quickly and result in substantial wins for shareholders. The multiples are high because lodestars are generally low. In general, they are cases in which defendants negotiate fees with plaintiffs' lawyers with no court involvement.

This is not to say that there is no danger that plaintiffs' lawyers will be paid too much, too often. Whether they are or not is an empirical question. The courts' presumptive percentages reflect their judgment of what is needed to align incentives, and the Court of Chancery has the discretion to adjust fee calculations on a case-by-case basis as it deems appropriate. Part IV analyzes data on its fee awards in order to determine whether large fee awards are a pervasive occurrence, as the Court's critics seem to believe.

IV. Empirical Analysis of Attorneys' Fees in Delaware

The question Part III leaves open is whether large fee awards are so common as to raise doubt about the wisdom of Delaware's fee award regime, or whether they are the occasional and inevitable result of a reasonable fee regime. The relatively small number of high-multiple cases on which the Court's critics rely raise the question, but they do not answer it.

In this Part IV, we address this question by analyzing comprehensive data on fee awards in relation to lodestars. We find that, in general, fees as a multiple of lodestar are fairly low. Moreover, we find that large fees are rare and tend to appear where we would expect them, based on the analysis of Part III—that is, where cases settle late in the litigation process, where recoveries are very large, or where cases are dismissed as moot.

In addition, as a further check on the reasonability of Delaware fees, we compare those fees to fees in federal securities class actions. We find that the two sets of fees are roughly comparable. We also find, however, that federal fees as a percentage of the 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 conclude that the alarm commentators have raised based on a few isolated instances of large fee awards in Delaware is unwarranted.

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 fiduciary duty breaches. We tracked all cases through December 31, 2024. We excluded cases that were transferred, removed, sent to arbitration, or resulted in a default judgment.[65]

Table 1 shows fees,[66] 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. 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.

We take a deeper dive into the data below, but these figures raise little cause for concern. To put them in perspective, during the period of our sample, there were 189 cases in which

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[65] The initial sample comprised a total of 2,747 cases, *i.e.*, 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 was 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. We intend to make the data publicly available upon publication of the article in a journal.

[66] 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.

plaintiffs' attorneys received no fee—cases they lost on motions to dismiss, at trial, or on appeal. As explained above, the fee awards in cases that settle or go to trial must cover cases in which the plaintiffs' lawyers get 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. Of course, 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 lawyers are overpaid relative to their time, effort, and risk-taking in the aggregate.

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.[67] 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, based on the analysis in Part III. Among settled cases, mean and median lodestar multiples are 1.86 and 1.43, respectively, and among the few cases that went to trial, mean and median multiples are 2.04 and 2.34, respectively. The 75th percentile multiples were, of course, higher but nowhere near the levels that drew the Court of Chancery's critics' attention. Among all

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

193 settled cases, analysis of docket entries showed that the Court reduced fees from the requested amount 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 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.[68] As explained above, 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 35 such cases, out of a total of 145 mootness dismissals. Of the 35 cases with disputed mootness fees, the court approved the requested fee in only 2 cases, reduced it in 16, and denied it altogether in 2. In the remaining 15 cases, the parties ultimately reached an agreement after briefing but before a ruling, and therefore, there was no court involvement.

Finally, returning to the current concern about Delaware fees, we consider the "septuples" that Grundfest and Dor suggested were signs of dysfunction. Our data only goes back ten years, whereas they looked for every septuple they could find in the secondary materials they consulted, going back to cases filed in 2004.[69] 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 significant concern.

C. Lodestar Multiples by Size of Recovery

Table 3 breaks down attorneys' fees and lodestar multiples by the size of the 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

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[68] 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 Litig., 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).

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

recoveries. This is not only a natural result of the approach, it is also necessary to provide plaintiffs' lawyers with incentives to achieve the best results for shareholders. As previously noted, 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 fees based on the percentage of the benefit that are relatively high multiples of lodestar. The Court could, and does, reduce fees in 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.

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 a high multiple 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.[70] 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.[71] During this period, 415 settlements met these criteria. No securities class action went to trial during this time 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 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 1.86—and the mean in federal court is somewhat lower than in Delaware—1.47 compared to 1.22. 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 court mean and median are 1.51 and 1.2, respectively, and the mean and median in Delaware are 1.86 and 1.59. All of these differences are small; they do not suggest anything amiss in the Court of Chancery's fee awards. Furthermore, there are roughly the same percentage of "septuples" in federal securities class action settlements during this five-year period as there are in the ten-year period for which we have Delaware data—small numbers in each.

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[70] Hanrahan, *supra* note 37; Flemming, *supra* note 37.
[71] 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.

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%

V. Conclusion

A handful of anecdotal data points has driven the recent controversy over attorneys' fee awards in Delaware fiduciary litigation without a theoretical or empirical foundation. Our goal has been to supply the data necessary to evaluate whether the Court of Chancery's fee awards are inconsistent with shareholder interests. To that end, we assembled a hand-collected dataset of every fee award in Delaware fiduciary duty class and derivative actions involving public corporations over the past decade. We have analyzed the data within an economic framework in which the objective of a fee-award regime is to align plaintiffs' counsel's incentives with their clients' interests. We conclude that the criticism of the Court of Chancery's fee awards is unfounded.

The Delaware Supreme Court has articulated a fee award regime grounded primarily in the percentage of the benefit conferred and the stage of the case at which a settlement occurs, with later settlements providing a higher percentage fee than earlier settlements. The Court of Chancery, however, retains discretion to adjust fees based on other factors, including counsel's lodestar. Our analysis indicates that this approach is consistent with economic theory.

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 portraying them as evidence of a broad defect in the Court of Chancery's fee awards. In reality, based on the data presented here, such instances are rare and context-specific. As we have explained, such outliers are an inevitable byproduct of a framework that seeks to align attorney incentives *ex ante* with shareholder interests across all cases. They reflect not excess, but the predictable operation of an incentive-based system. At the mean and median, fees in settlements are about 1.5 times the lodestar, a level that reflects the risk inherent in litigation. In cases that settle later in the litigation process, plaintiffs' lawyers are paid somewhat higher multiples, which is consistent with maintaining incentives aligned with client interests. In short, there is no basis for concern about how fees are awarded in Delaware.

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