

## **2025 UNDERPERFORMANCE & EXCESSIVE FEE SETTLEMENTS: PARTICIPANT MEDIAN RECOVERY OF \$68, PLAINTIFFS' LAWYERS AVERAGE FEES OF \$1.59 MILLION**

### **2025 Settlement Data**

The following Davis & Harman survey covers 2025 settlements involving ERISA class action lawsuits against defined contribution retirement plan sponsors in underperformance and excessive fee cases. For those cases, the survey presents:

1. the average and median of the average per-participant award for class members other than named plaintiffs; and
2. the average fees received by the attorneys representing a class.

### **Key Findings**

- **Total Settlements.** In 2025, the terms of 27 settlements in underperformance and excessive fee cases were disclosed.
- **Participant vs. Attorney Recoveries.** *In 2025, the median of the average per-participant award was just \$67.79 compared to an average plaintiffs' attorneys' fees of \$1.59 million.*
- **Lowest Per-Participant Recovery (\$5.85 per participant).** The unfortunate distinction of lowest per-participant award went to *Dukes v. AmerisourceBergen*, where the average per-participant award provided a recovery of \$5.85 to class participants. Meanwhile, plaintiffs' attorneys were awarded \$208,333.33 in fees (1/3<sup>rd</sup> of the total gross settlement).
- **Average Per-Participant Awards.** The average per-participant award in all of the 2025 settlements was \$892.19, a figure that was dramatically skewed by a single outlier awarding over \$16,000 to individual class members. If that outlier were removed, the average for 2025 would be \$291.67.
- **Average Attorneys' Fees.** In 2025, attorneys' fees consumed an average of 33% (or \$1.59 million) of each gross settlement.

### **Methodology for Per-Participant Award**

The per-participant award for each settlement was determined by dividing the settlement amount, net of any attorneys' fees, litigation expense reimbursements, independent fiduciary expenses, settlement administration expenses, and case contribution awards for class representatives, by the number of total participants in a class.

### **Assumptions**

- If settlements did not provide figures for litigation expense reimbursements, independent fiduciary expenses, settlement administration expenses, and/or case contribution awards for class representatives, those amounts did not reduce the class recovery.

- If settlement filings stipulated that one of the above-mentioned expenses would be provided “up to” a specific dollar amount, we assumed that the maximum dollar amount reduced the class recovery, unless a later filing specified the actual dollar amount.
- If attorneys’ fees were not expressly stipulated, which was very rare, we assumed that attorneys’ fees were 1/3 of the gross settlement.

	Case Name	Average Participant Award	Total Attorneys’ Fees
1	<i>Winkelman v. Whole Foods</i>	\$12.30	\$666,666.67
2	<i>Khan v. Pentegra Defined Contribution Plan</i>	\$543.38	\$16,513,179
3	<i>Mator v. Wesco Distribution</i>	\$44.64	\$750,000
4	<i>Conlon v. Northern Trust</i>	\$347.50	\$2,273,332
5	<i>Binder v. PPL Corporation</i>	\$476.46	\$2,733,333.33
6	<i>Gonzalez v. Northwell Health Inc.</i>	\$27.58	\$916,666.67
7	<i>Lacrosse v. Jack Henry &amp; Associates</i>	\$123.43	\$533,280
8	<i>Arevalo v. Cedars-Sinai Medical Center</i>	\$67.79	\$990,000
9	<i>Coppel v. SeaWorld</i>	\$13.55	\$375,000
10	<i>Andrew-Berry v. Weiss</i>	\$16,505.96	\$2,633,333.33
11	<i>Norton v. Mass General Brigham</i>	\$32.57	\$2,749,725
12	<i>Monteiro v. Children's Hospital Corp.</i>	\$92.07	\$1,000,000
13	<i>In Re American National Red Cross ERISA Lit.</i>	\$26.35	\$316,666
14	<i>In Re Sutter Health ERISA Litigation</i>	\$38.31	\$1,433,333
15	<i>Nagy v. CEP America LLC</i>	\$584.36	\$2,179,000
16	<i>Brookins v. Northeastern University</i>	\$55.55	\$242,000
17	<i>Perkins v. United Surgical Partners</i>	\$56.16	\$491,667
18	<i>Wagner v. Hess Corporation</i>	\$91.94	\$283,333
19	<i>George v. Garnet Health</i>	\$592.33	\$1,533,333
20	<i>Bozzini v. Ferguson Enters.</i>	\$13.86	\$600,000
21	<i>Kehrer v. Giant Eagle Inc.</i>	\$22.97	\$222,916
22	<i>Hagins v. Knight-Swift Transportation</i>	\$77.72	\$1,000,000
23	<i>Allison v. Republic Mortgage</i>	\$3,985	\$216,450
24	<i>Cannarozzo v. Nemours Foundation</i>	\$104.13	\$758,333.33
25	<i>Dukes v. AmerisourceBergen Corp.</i>	\$5.85	\$208,333.33
26	<i>Tsui v. Universal Services</i>	\$14.38	\$466,666
27	<i>Tobias v. NVIDIA</i>	\$133.12	\$833,333.33