DAVIS & HARMAN LLP

UPDATE REGARDING NON-MONETARY RELIEF IN 2025 ERISA LITIGATION SETTLEMENTS: ONLY TWO OF 27 SETTLEMENTS CONTAINED EVEN POSSIBLY MEANINGFUL NON-MONETARY RELIEF

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

In January, we released the study below showing how ERISA litigation benefits only the plaintiffs' lawyers, with de minimis immediate benefit to the participants. Other studies have shown the long-term adverse effects of ERISA litigation on participants, in terms of less assistance, fewer services, and limited investment options.[1] Some have tried to argue that the settlements provide broad meaningful non-monetary relief that benefits participants. This updated version of the study – with the changes highlighted – shows that argument to be a myth.

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;
2. the average fees received by the attorneys representing a class; and
3. if applicable, any terms in the settlement providing non-monetary relief.

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 (1/3rd 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.
- Non-Monetary Terms: Only Two of 27 Settlements Even Arguably Contain Meaningful Non-Monetary Relief. Only six of the 27 settlements included terms providing non-monetary relief. Moreover, one of

[1] Courtney Zinter, *The Proliferating Risk of Baseless Retirement Plan Litigation is Harming Plan Participants*, Am. Benefits Council (Oct. 2, 2025), https://americanbenefitscouncil.org/pub/?id=80095a3f-cbb8-e46c-854f-a475d2c68358.

Updated by Kent Mason, Adam McMahon, Grace Sullivan, Addison Spencer, and Taylor Howard
August 18, 2026

the six simply required the fiduciaries to keep doing exactly what they had been doing. Two more simply required one-time requests for proposals ("RFPs"), hardly a rigorous change, reducing the real number down to three. In fact, as shown by the chart below, only two settlements – #2 and #15 – included non-monetary relief that could even arguably be viewed as having some meaningful effect.

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.

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	Case Name	Average Participant Award	Total Attorneys' Fees	Non-Monetary Terms
1	*Winkelman v. Whole Foods*	$12.30	$666,666.67	None
2	*Khan v. Pentegra Defined Contribution Plan*	$543.38	$16,513,179	• Issue RFP for recordkeeping/administrative /fiduciary services • Replace the plan's board members • Hire independent fiduciary to oversee the above requirements
3	*Mator v. Wesco Distribution*	$44.64	$750,000	• Issue RFP for recordkeeping services • Annual fiduciary training • Annual review of plan's investment policy statement • Ensure plan continues to maintain privacy of participants' personal data
4	*Conlon v. Northern Trust*	$347.50	$2,273,332	None
5	*Binder v. PPL Corporation*	$476.46	$2,733,333.33	None
6	*Gonzalez v. Northwell Health Inc.*	$27.58	$916,666.67	None
7	*Lacrosse v. Jack Henry & Associates*	$123.43	$533,280	• Issue RFP for recordkeeping services
8	*Arevalo v. Cedars-Sinai Medical Center*	$67.79	$990,000	None
9	*Coppel v. SeaWorld*	$13.55	$375,000	None
10	*Andrew-Berry v. Weiss*	$16,505.96	$2,633,333.33	None
11	*Norton v. Mass General Brigham*	$32.57	$2,749,725	None
12	*Monteiro v. Children's Hospital Corp.*	$92.07	$1,000,000	None
13	*In Re American National Red Cross ERISA Lit.*	$26.35	$316,666	None
14	*In Re Sutter Health ERISA Litigation*	$38.31	$1,433,333	None

15	*Nagy v. CEP America LLC*	$584.36	$2,179,000	• Remove and replace challenged investment • Defendant plan sponsor will not charge plan for services it provides
16	*Brookins v. Northeastern University*	$55.55	$242,000	• Continue to retain qualified consultant to advise as to the plan's (1) recordkeeping/administrative fees and services and (2) plan investments
17	*Perkins v. United Surgical Partners*	$56.16	$491,667	None
18	*Wagner v. Hess Corporation*	$91.94	$283,333	None
19	*George v. Garnet Health*	$592.33	$1,533,333	• Issue RFP for recordkeeping services • Issue RFP for investment advisor services
20	*Bozzini v. Ferguson Enters.*	$13.86	$600,000	None[2]
21	*Kehrer v. Giant Eagle Inc.*	$22.97	$222,916	None[3]
22	*Hagins v. Knight-Swift Transportation*	$77.72	$1,000,000	None
23	*Allison v. Republic Mortgage*	$3,985	$216,450	None
24	*Cannarozzo v. Nemours Foundation*	$104.13	$758,333.33	None
25	*Dukes v. AmerisourceBergen Corp.*	$5.85	$208,333.33	None
26	*Tsui v. Universal Services*	$14.38	$466,666	None
27	*Tobias v. NVIDIA*	$133.12	$833,333.33	None

[2] The briefs relating to the settlement state that Defendant "agreed prior to the Settlement" to conduct an RFP for recordkeeping services "in order to competitively test its fees in the current marketplace." The relationship between the settlement and this RFP is not clear. Regardless, a mere one-time RFP is hardly meaningful.

[3] The plaintiffs' brief relating to the settlement states that "an RFP for recordkeeping has recently been concluded which will result in even further reduced fees to the Plan." There is nothing linking this RFP to the settlement.