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# Piling On? An Empirical Study of Parallel Derivative Suits

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# Piling On? An Empirical Study of Parallel Derivative Suits

*Stephen J. Choi, Jessica Erickson, and A. C. Pritchard\**

Using a sample of all companies named as defendants in securities class actions between July 1, 2005 and December 31, 2008, we study parallel suits relying on state corporate law arising out of the same allegations as the securities class actions. We test several ways that parallel suits may add value to a securities class action. Most parallel suits target cases involving obvious indicia of wrongdoing. Moreover, we find that although a modest percentage of parallel suits are filed first, over 80 percent are filed after a securities class action (termed “follow-on” parallel suits). We find that parallel suits and, in particular, follow-on parallel suits sometimes target individual officers not already named as defendants in the securities class action. Suing more officers, however, does not positively correlate with an increase in settlement incidence, monetary recovery amounts, or attorney fees. Parallel suits sometimes result in settlements when the corresponding class action is dismissed; however, only rarely do the parallel suit settlements provide monetary recovery for investors. We find that follow-on parallel suits often result in nonmonetary, corporate governance settlements, particularly for frequent-filing plaintiffs’ attorneys. Corporate governance settlements correlate with significantly lower attorney hours and attorney fees for the plaintiffs’ attorneys. We conclude that such settlements are used to justify fees in cases in which there is no monetary recovery.

## I. INTRODUCTION

When it comes to sanctioning corporate misconduct, is more litigation necessarily better? When corporate wrongdoing comes to light, shareholders can choose from an array of litigation options, including securities class actions, shareholder derivative suits, and shareholder class actions filed under state law. Traditionally, scholars have evaluated these suits separately, examining each type of suit as a stand-alone option. In practice, however, shareholder lawsuits rarely occur in isolation. Public companies facing

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securities class actions may find themselves named in state class actions based on the same underlying allegations, and—more frequently—their directors or officers may be named in parallel shareholder derivative suits. The alleged misconduct may also give rise to government enforcement actions filed by the Securities and Exchange Commission (SEC), the U.S. Department of Justice, or state regulators.

These overlapping suits complicate the empirical review of shareholder litigation. The relevant question is whether and how specific types of lawsuits deter corporate misconduct and compensate the victims of misconduct, given the panoply of litigation options. Our article focuses on private litigation, studying the relationship between securities class actions and shareholder lawsuits based on state corporate law. Starting with all securities class actions filed over a three-and-a-half-year period, we collect data on all parallel shareholder lawsuits arising out of the same underlying allegations, including shareholder derivative suits and shareholder state law class actions. Overall, we examine 264 parallel lawsuits, mostly derivative claims, filed against or on behalf of public companies. We look at the timing and targeting of parallel suits, settlement incidence and amounts, and the incidence of corporate governance reforms in settlements. We also examine the role of plaintiffs' attorneys, the fees awarded to them, and their litigation efforts.

Why do plaintiffs' attorneys file parallel lawsuits? These attorneys typically work on a contingent basis and are therefore motivated to pursue cases that will produce a settlement that generates a fee, regardless of whether the settlement generates a recovery for shareholders. If a second parallel suit is likely to generate a fee, it is likely that a law firm will be available to file it if the expected return exceeds the costs. Notwithstanding the attorneys' motivation, we hypothesize that parallel state law litigation can promote deterrence or compensation in a number of ways. First, parallel suits can uncover the alleged misconduct, exposing facts that can be used in other types of litigation. Second, parallel suits can uncover new facts, broadening the investigation into the alleged misconduct. Third, parallel suits can target different defendants, holding a broader group of individuals or entities accountable for the alleged wrongs. Finally, parallel suits can generate additional recovery, providing greater compensation for the victims of the misconduct as well as greater deterrence for other potential wrongdoers.

Our study finds little evidence that parallel suits add significant value beyond that offered by securities class actions. We find that parallel litigation typically follows the filing of a securities class action (a phenomenon we refer to as a "follow-on" parallel suit), suggesting that these suits do not typically bring the alleged misconduct to light. Nor does it appear that parallel suits uncover new facts about the alleged misconduct. Instead, we find that parallel suits are more likely to be filed in the wake of highly salient allegations in the securities fraud class action, such as a government investigation or an accounting restatement. This pattern suggests that attorneys cherry pick the allegations from the most promising securities class actions when filing a parallel suit. We find that parallel suits sometimes target individual officers not already named as a defendant in the securities class action, but adding defendants does not correlate with higher likelihood of settlement or greater recovery. Finally, looking at settlements themselves, we find that parallel suits typically result in poorer quality settlements than securities

class actions, undermining the possibility that parallel suits offer meaningful additional relief to the victims of corporate misconduct.

Our study also sheds new light on shareholder derivative suits. These suits are the most common type of shareholder lawsuit (Erickson 2010), but they have received relatively little attention in the empirical literature. In our study, 93.9 percent of the parallel lawsuits were derivative suits, reflecting the close link between derivative suits and securities class actions. In examining the shareholder derivative suits in our study, we find that few of the settlements included a monetary component; instead, the vast majority of the settlements involved corporate governance reforms. In these cases, the corporation agreed to reform its corporate governance practices in exchange for dismissal of the suit. Although other studies have examined these settlements (Romano 1991; Erickson 2010), our data provide new empirical insights into the merits of these settlements. First, we find that courts award lower attorney fees in cases that end with corporate governance settlements compared with suits that produce monetary settlements, suggesting that courts weigh these corporate governance settlements as less valuable. Second, we also find that parallel suit attorneys invest fewer hours in obtaining corporate governance settlements relative to their securities class action attorney counterparts. This finding is consistent with such settlements not representing the product of extensive work by attorneys, but instead being used to justify fees in cases without monetary recovery.

The article proceeds as follows. Section II provides background on state corporate law suits, the incentives of the lawyers who file them, and develops hypotheses relating to parallel lawsuits. Section III describes the sample and provides descriptive statistics. We present the results of our empirical tests in Section IV. A brief conclusion, Section V, discusses the potential policy implications of our results.

## II. BACKGROUND AND HYPOTHESES

### *A. Background*

#### 1. Relationship Between Shareholder Litigation Filed Under State Law and Securities Class Actions

The focus of this study is the relation between shareholder litigation filed under state law—specifically, shareholder derivative suits and state shareholder class actions—and securities class actions filed under federal law. There are only a handful of prior studies examining parallel shareholder litigation, and these studies all rely on datasets of shareholder derivative suits filed in a single court or court system over a fairly short period of time.

For example, Thompson and Thomas (2004b) examined shareholder derivative suits filed in the Delaware Court of Chancery in 1999 and 2000. They noted that, in the few cases in their study that ended with a monetary settlement, there was a “strong interconnection” between shareholder derivative suits and other parallel litigation. For example, they described a handful of derivative settlements that were paid directly into related settlements in securities class actions or bankruptcy proceedings. Their study, however, focused specifically on shareholder derivative suits and not on their potential

overlap with other lawsuits. It also ignored derivative suits filed in federal court and other state courts.

Erickson (2011) examined the relation between shareholder derivative suits filed in federal court and other types of corporate litigation. She found that approximately 95 percent of the shareholder derivative suits filed on behalf of public companies in the study were accompanied by at least one parallel lawsuit or government investigation. The most common parallel lawsuits were securities class actions, with nearly 75 percent of the shareholder derivative suits accompanied by a parallel securities class action. The Erickson study also found evidence suggesting that shareholder derivative suits were less effective than securities class actions and SEC investigations. For example, shareholder derivative suits were typically filed after both securities class actions and SEC investigations. Moreover, unlike the multimillion-dollar settlements common in securities class actions, few shareholder derivative suits in the sample ended with a monetary settlement. This study, however, was focused on a fairly small dataset—shareholder derivative suits filed in federal court over a 12-month period—that does not include suits filed in state court.

More recently, Fuerman (2016) compared the effectiveness of derivative suits and securities class actions in stock options backdating cases. He concluded that securities class actions are more effective than derivative suits in forcing the departure of executives associated with backdating stock options. Other than the Erickson and Fuerman studies, there have not been any other empirical studies specifically examining the interplay between state corporate lawsuits and other types of corporate litigation.

There have been a few studies examining the relation between other types of enforcement mechanisms in corporate law, providing insights that may help evaluate the role of state corporate lawsuits. Choi and Pritchard (2016), for example, studied the relationship between securities class actions and SEC investigations. They found that a stand-alone securities class action was more likely to result in settlements and terminations of officers than a stand-alone SEC investigation. This study cast doubt on the conventional wisdom that SEC investigations are superior to securities class actions in targeting corporate fraud. It also suggests that parallel proceedings can have independent effects on the targeted defendants, even if they arise out of the same underlying allegations.

## 2. Empirical Evidence Regarding Shareholder Litigation Filed Under State Law

Our study also builds on prior empirical work specifically examining state corporate lawsuits. Among the litigation options available to check corporate misconduct, state corporate lawsuits are the most maligned, with many studies casting doubt on the efficacy of these suits in targeting and deterring corporate misconduct. Several studies, for example, have found that shareholder derivative suits rarely settle for monetary relief (Wood 1944; Romano 1991; Erickson 2010). Romano (1991), for example, found that of the 139 total lawsuits filed against a random sample of 535 public corporations, only 12 ended with a monetary settlement in a derivative suit. Even these settlements were small, with a monetary recovery averaging \$0.15 per share net of attorney fees. Similarly, Thompson and Thomas (2004b) examined all derivative suits filed in the Delaware Court of Chancery in 1999 and 2000, finding that only six of the 16 settlements involved

monetary relief. More recently, Erickson (2010) found that less than 10 percent of shareholder derivative suits filed in federal court end with a monetary settlement.

More commonly, the settlements in shareholder derivative suits include corporate governance reforms. Romano (1991), for example, found corporate governance reforms in 30 percent of the settlements in her study. She concluded that most of the reforms in these settlements were cosmetic and likely reflected a “need to paper a record to justify an award of attorneys’ fees to courts.” Thompson and Thomas (2004b) had a more mixed review of the corporate governance settlements in their study. They concluded that some cases produced “really clear gains” in some cases for shareholders, while in other cases the settlements contained no specific relief other than fees for the attorneys. Erickson (2010) found that nearly all the settlements in her study included corporate governance reforms. These reforms were fairly uniform from case to case, regardless of the underlying allegations in the suit, likely reflecting the fact that investors use settlements in derivative suits as a means to implement other, often unconnected, reform efforts.

Despite the modest financial recoveries typically found in derivative suits, studies have found that plaintiffs’ attorneys still receive significant fees, although those fees tend to be smaller in cases that produce only corporate governance reforms. Romano (1991) found that courts awarded fees to the plaintiffs’ attorneys in all but one of the settled cases in her study. The average fee award was \$287,000 in cases in which the settlement included only corporate governance reforms compared to \$1.45 million in cases where the settlement included monetary relief. Erickson (2010) also found that the amount of the fees depended in large part on the consideration in the settlement. She found that when the corporation received a meaningful financial benefit, the median attorney fees were \$6.65 million. In the cases in which the only consideration for the settlement was corporate governance reform, the median fees were much smaller: \$480,000. Judges apparently are willing to approve settlements premised on corporate governance reforms, but the modest fees awarded suggest that judges are less impressed by governance changes than they are by monetary relief.

More recently, multiple studies have examined class actions arising under state corporate law, specifically those challenging mergers and acquisitions (Cain & Davidoff-Solomon 2015; Fisch et al. 2015; Koumrian 2014). These studies have found that merger class actions are often filed in multiple jurisdictions, suggesting that plaintiffs’ attorneys are filing additional cases to share in the fees awarded in settled cases. Moreover, like shareholder derivative suits, these suits almost never settle for monetary consideration, with the vast majority of the settlements involving additional disclosures by the target company. This trend may be changing, however, with the increased scrutiny of these settlements by the Delaware Court of Chancery and other courts (Cain et al. forthcoming).

## *B. Hypotheses*

Our goal is to examine the marginal effect of state corporate lawsuits in targeting corporate wrongdoing beyond that provided by securities class actions. Specifically, we are interested in testing the proposition that parallel state corporate lawsuits, or state law

lawsuits based on the same underlying events as securities class actions, offer additional deterrence and/or compensation beyond that provided by securities class actions. The contribution of this article is to test this proposition empirically by comparing the filing patterns and outcomes of the two types of lawsuits.

We posit that plaintiffs' attorneys are willing to file suit whenever their expected fee exceeds the expected costs of the suit. So, it is hardly a surprise that attorneys are willing to file a second suit based on alleged misconduct already addressed in a pending suit; the first suit is based on a different legal theory and presents no obstacle to recovering a fee in another suit unless and until it goes to judgment. Moreover, such suits entail minimal expenditure for the attorney filing the second suit because the complaint can be drafted largely by cutting and pasting the allegations from the first suit. (Changing the causes of action requires minimal effort.)

Given the willingness of the plaintiffs' bar to file more than one suit (albeit limited by a desire to minimize the costs of litigation), we start with a framework for how a parallel suit based on the same underlying wrongful corporate activity alleged in a securities class action can add value for shareholders. First, parallel suit plaintiffs' attorneys may add resources and experience to those already employed by the securities class action plaintiffs' attorneys. These contributions may be particularly useful when the evidence of underlying wrongdoing is not obvious and requires development. The worry is that plaintiffs' attorneys in parallel suits want to avoid spending resources to develop novel evidence and, instead, cherry pick the most promising securities class actions when deciding which suits to file, free riding on the work of the class action attorneys and avoiding the cost of additional investigation.

Some securities class actions focus on violations where others have already developed evidence of wrongdoing. Prior empirical studies have found that the settlement amounts in securities class actions are positively correlated with the presence of an SEC investigation or enforcement proceeding. (Choi & Pritchard 2016; Cox et al. 2004). Settlement amounts are also higher in securities class actions that arise out of a corporate restatement; in those cases, the corporation has already admitted that investors should not rely on the corporation's financial statements (McShane et al. 2012). We test whether parallel actions are more common when the securities class action is accompanied by a restatement. Such lawsuits demand less effort on the part of the plaintiffs' attorneys while offering greater potential financial rewards. These parallel suits add little value, however, in the way of deterrence, as the market will have received a negative reputational signal from other sources.

*Cherry Picking Hypothesis:* The incidence of a parallel suit will be positively correlated with the presence of a government investigation or a restatement.

Second, derivative lawsuits are thought to play a distinct role in deterring corporate managers. If parallel suits target individual defendants not named as defendants in the securities class action, the parallel suit may add value by increasing individual deterrence. If, instead, plaintiffs' attorneys seeking a low-effort settlement do not expend resources in targeting individual defendants not already named in the securities class action, the marginal deterrent value is less obvious.

We hypothesize that parallel suits will only target individuals already named as a defendant in the securities class action, which minimizes investigative costs for the plaintiffs' lawyer. We focus this analysis on officer, rather than director, defendants. Although derivative suits frequently name multiple directors as defendants (Erickson 2010), prior studies have found that outside directors rarely pay a monetary judgment, largely because of doctrinal rules that make it exceedingly difficult to prevail against these defendants (Black et al. 2006). As a result, we examine the targeting of officer-directors in parallel suits. Because the CEO is typically named a defendant in both securities class actions and parallel suits, we focus on other officers, including the CFO, COO, corporate treasurer, and general counsel. Do parallel suits bring in additional defendants?

*Duplicative Defendant Hypothesis:* Parallel suits will only target non-CEO officers as defendants who are already named a defendant in the securities class action.

Third, parallel attorneys may investigate the underlying wrongful activity and be the first to file the lawsuit (Parallel First). This requires greater effort on the part of the attorney, but may send an important signal to shareholders and the market. This sort of case is most likely to be filed when the corporation has not suffered a significant drop in its stock price, which may complicate proving loss causation and materiality in the securities class action. Accordingly, we examine whether parallel suit attorneys are more likely to take the lead and file before a securities class action in certain subject matter areas where a large number of parallel suits were filed—including option backdating cases (Backdating) and cases involving the financial crisis (Credit Crisis). Contrast this potential source of value with parallel plaintiffs' attorneys filing a "follow-on" suit (Follow On) after the filing of a securities class action, which may send a minimal signal to the market. To distinguish these possibilities, we examine the relative timing of parallel suit and securities class action suit filings.

*Follow-On Filing Hypothesis:* The parallel suit will typically be filed after the filing of the securities class action. Parallel suits that filed before a securities class action filing will tend to concentrate on certain subject matter areas such as option backdating and the financial crisis.

Fourth, a parallel suit may add value for shareholders if differing legal standards make it more likely to produce monetary recovery than a securities class action. If the parallel suit is a follow-on suit and does not add much value for the shareholders, we expect a lower settlement amount in the parallel suit. Prior studies have found that derivative lawsuits are filed by a small cohort of plaintiffs' firms (Krishnan et al. 2016; Erickson 2010), suggesting that these firms conduct a volume business by filing and settling a large number of cases. Under this business model, firms devote relatively little time and effort to most cases, accepting a low-value settlement and then moving on to the next case. Thus, we hypothesize that the firms who file the most parallel suits will be more likely to obtain settlements, but these settlements will likely include smaller monetary payments, and correspondingly smaller attorney fees. We focus in particular on those plaintiffs' attorney firms that are one of the top 10 firms in our dataset in terms of the frequency of parallel suit filings (Top 10 Parallel Attorney).



*Follow-On Low-Value Hypothesis:* Follow-on parallel suits will recover smaller settlements than parallel suits filed before the securities class action. The monetary settlement will be smaller for follow-on suits with a top 10 parallel attorney firm. Plaintiffs' attorneys in follow-on suits will also receive lower relative attorney fees for the parallel suit compared with the securities class action.

Fifth, a parallel suit may add value for shareholders if the parallel suit expands on the type of settlement to include forms of nonmonetary settlements. Settlements in state corporate lawsuits often include corporate governance reforms rather than monetary payments. Prior empirical studies, however, have criticized these reforms as mere window dressing used to justify attorney fees. (Erickson 2010; Romano 1991). Building on this prior work, we hypothesize that follow-on parallel suits will tend to have settlements with only corporate governance reforms, particularly when a frequent-filing plaintiffs' attorney firm has filed the parallel suit. If courts are skeptical of the value of the corporate-governance-only settlements, we expect that such settlements will be accompanied by lower attorney's fees. (For these purposes, we compare the fee in the parallel suit with the fee award in the securities class action.) Lastly, we expect that these suits will also correlate with less work expended by the parallel suit plaintiffs' attorneys compared with the securities class action. We conjecture that governance settlements are being used to justify fees in cases with no monetary recovery.

*Window Dressing Hypothesis:* Follow-on parallel suits will tend to have more settlements with no monetary recovery and only corporate governance reforms. The incidence of corporate-governance-only settlements will also be higher for parallel suits with a top 10 parallel attorney firm. Corporate-governance-only settlements will correlate with lower relative attorney fees for the parallel suit compared with the securities class action. These suits will also correlate with less work expended by the parallel suit plaintiffs' attorneys compared with the work done by plaintiffs' attorneys in the accompanying securities class action.

### III. SAMPLE

We begin constructing our sample with all companies named as defendants in securities class actions between July 1, 2005 and December 31, 2008. We obtained information relating to these lawsuits from Cornerstone Research and the Securities Class Action Clearinghouse, which attempt to collect all such cases (a realistic goal given the required public notice of filing). We identified 582 securities class actions. From the securities class action complaint, we collected information on the filing date and the court, the alleged misconduct, causes of action, and the defendants. We also identified the attorneys representing the lead plaintiff and class. From the settlement notices, we collected the settlement amount and the attorney fees requested and awarded. We obtained market capitalization data from CRSP.

We then searched for parallel corporate law actions for each of our securities class action observations. No public notice is required for these suits. Therefore, to find these parallel suits, we relied on keyword searches in: (1) the "Legal Proceedings" disclosure

Table 1: Descriptive Statistics

<i>Panel A: Securities Class Actions and Parallel Suits</i>					
<i>Year</i>	<i>Securities Class Action Without Parallel Suit</i>		<i>Securities Class Action With Parallel Suit</i>		<i>Total</i>
	<i>N</i>	<i>Percent</i>	<i>N</i>	<i>Percent</i>	
2005	31	43.1	41	56.9	72
2006	45	38.8	71	61.2	116
2007	95	56.2	76	44.4	171
2008	147	65.9	76	34.1	223
Total	318	54.6	264	45.4	582

<i>Panel A: Securities Class Actions and Parallel Suits</i>		
<i>Parallel Court</i>	<i>Frequency</i>	<i>Percent</i>
AZ	3	1.1
CA	27	10.2
CO	2	0.8
DC	1	0.4
DE	4	1.5
FL	2	0.8
GA	4	1.5
ID	1	0.4
IL	4	1.5
MA	8	3.0
MD	2	0.8
MN	2	0.8
MO	5	1.9
NC	1	0.4
NH	1	0.4
NJ	3	1.1
NM	1	0.4
NY	6	2.3
OH	3	1.1
PA	2	0.8
TN	1	0.4
TX	4	1.5
UT	1	0.4
WA	4	1.5
WI	1	0.4
Federal District Court	171	64.8
Total	264	100.0

<i>Panel C: Securities Class Actions and Parallel Suits</i>			
<i>Variable</i>	<i>Securities Class Actions</i>	<i>Parallel Suits</i>	<i>Settled Parallel Suits</i>
	<i>%</i>	<i>%</i>	<i>%</i>
Government	40.1	50.6	63.4
Backdating	6.6	12.9	21.5
Credit Crisis	14.9	8.7	7.5
Restatement	22.8	33.7	44.1
Follow On	—	80.8	77.8

Table 1 Continued

<i>Panel C: Securities Class Actions and Parallel Suits</i>				
<i>Variable</i>	<i>Securities Class Actions</i>	<i>Parallel Suits</i>	<i>Settled Parallel Suits</i>	
Rule 10b-5	83.2	—	—	
Section 11	24.3	—	—	
Top Officer	89.7	80.7	90.3	
Non-CEO Defendant	82.8	77.3	88.2	
Accounting Firm	9.1	—	—	
Investment Bank	14.2	—	—	
Top 10 Attorney	56.5	48.9	65.6	
SDNY	31.4	—	—	
Number of Class Action Filings	3.2	—	—	
Delaware	—	1.5	2.2	
Settled	—	38.1	—	
	Mean (Billions)	Mean (Billions)	Mean (Billions)	
Market Cap	12.770	10.885	8.464	
N	582	264	93	
<i>Panel D: Parallel and Class Action Suit Settlement Characteristics</i>				
<i>Variable</i>	<i>Securities Class Action Only Settlements</i>	<i>Securities Class Action Settlements with a Parallel Suit</i>	<i>Parallel Suit Settlements</i>	<i>Combined Parallel Suit Settlements with Corresponding Securities Class Action Settlement (If Both Settled)</i>
N	132	155	82	73
Amount (Millions)	\$28.873	\$60.205	\$20.827	\$70.959
Ratio of Parallel Settlement to Securities Settlement				17.1%
Corporate Governance			82.8%	
Attorney Fees + Expenses (Millions)	\$5.413	\$9.989	\$2.486	\$12.827
Ratio of Parallel Attorney Fees + Expenses to Securities Attorney Fees and Expenses				35.7%
<i>Panel E: Parallel Suit Settlement Characteristics</i>				
<i>Variable</i>	<i>Parallel Suit Settlements with Monetary Recovery</i>	<i>Parallel Suit Settlements with No Monetary Recovery; Only Corporate Governance Reform</i>	<i>p Value of t Test of Difference</i>	
N	17	65	—	
Amount (Millions)	\$100.462	\$0.000	—	
Ratio to Securities Settlement	52.5%	0.0%	—	
Corporate Governance	70.6%	100.0%	—	
Attorney Fees + Expenses (Millions)	\$7.202	\$1.366	0.0000	
<i>Panel F: Parallel First Compared with Follow-On Parallel Suit Settlements</i>				
<i>Variable</i>	<i>Parallel First</i>	<i>Follow On</i>	<i>p Value</i>	
N	19	61	—	
Amount (Millions)	\$65.400	\$7.627	0.036	

Table 1 *Continued*

<i>Panel F: Parallel First Compared with Follow-On Parallel Suit Settlements</i>			
<i>Variable</i>	<i>Parallel First</i>	<i>Follow On</i>	<i>p Value</i>
Ratio to Securities Settlement	0.397	0.089	0.001
Corporate Governance	0.800	0.843	0.655
Attorney Fees + Expenses (Millions)	\$6.373	\$1.293	0.000
Attorney Fees Ratio	0.862	0.212	0.000

NOTE: *N* represents the number of observations for which we have data on parallel suit settlement amounts. We do not have settlement amount and other data relating to the settlement for 11 of the parallel suits settlements. The Ratio of Parallel Settlement to Securities Settlement is not defined where the Securities Settlement is \$0. This occurred in two observations in the dataset; in both, the Parallel Settlement was also equal to \$0. The Ratio of Parallel Attorney Fees + Expenses to Securities Attorney Fees and Expenses is not defined where the Securities Attorney Fees and Expenses is \$0. This did not occur in any observations in the dataset. We also lack information on whether the securities class action or parallel suit was filed first for two of the observations.

item in companies' periodic filings with the SEC and (2) Bloomberg Law.<sup>1</sup> If we identified potential matches, we reviewed the complaints to confirm that the misconduct was the same as that alleged in the securities class action. We included suits, whether derivative or class action, if the state corporate law suit was based on the same alleged misconduct as the securities class action.

For the parallel actions, we used the docket entries on Bloomberg Law to collect the date of filing, the court, the defendants, whether there was a motion to dismiss or a motion for summary judgment, and the outcome(s). We also collected settlement information, including the amount of any monetary settlement, any corporate governance reforms included as part of the settlement, the attorney fee and expenses requested and awarded, and the attorneys' hours and any multiplier. For many of the companies in our sample, there was more than one derivative or corporate class action suit filed based on the same allegations. If there were multiple suits, we included in the sample only the suit producing the most substantial relief for the plaintiffs. In a number of cases, settlements resolved more than one case. If multiple suits were resolved, we attributed the entire settlement to the case included in the sample. Thus, the construction of our sample maximizes the recovery attributed to the included parallel suits. Table 1 presents descriptive statistics for the sample.

From Panel A of Table 1 note that 264 of the 582 securities class actions had a parallel suit (45.4 percent of our sample). Panel B of Table 1 provides a breakdown of the parallel suits by state court as well as how many were in federal district court. Note that the majority of parallel suits are filed in federal district court, typically the court in which the securities class action is filed. Among those parallel suits filed in state court, 10.2 percent are filed in California state courts. Surprisingly, only four (1.5 percent of

<sup>1</sup>We rejected the alternative approach of proceeding in the opposite direction, that is, starting with the population of state corporate lawsuits, as not logistically feasible. Many jurisdictions do not have online docket systems and public companies do not consistently report state corporate lawsuits in their public filings.

the parallel suits) are filed in Delaware, despite the prevalence of Delaware incorporation for public companies. Recall that our sample period is prior to the trend among Delaware corporations to adopt forum selection clauses in their bylaws, which is primarily a response to acquisition-related lawsuits.

We see a high incidence of highly salient allegations in both the securities class actions and in the parallel suits. In particular, from Panel C of Table 1 note that allegations involving a government investigation show up in 40 percent of the securities class actions and in over half the parallel suits, and in over 63 percent of the settled parallel suits. This pattern suggests that attorneys filing parallel suits are selective in what they pursue, focusing on targets most likely to yield a settlement. We see a similar pattern with allegations of stock option backdating and restatements of financials. By contrast, allegations arising out of the financial crisis were relatively common for securities class actions, but less so for parallel suits, perhaps driven by the demand requirement that applies to derivative suits. Also notable is the high percentage of parallel suits that are filed after the filing of a securities class action—over 80 percent—suggesting minimal independent investigation by parallel suit attorneys. This high percentage of follow-on suits lends support to the Follow-On Filing Hypothesis.

Focusing on attorneys, we see evidence of substantial concentration among the plaintiffs' bar in both securities class actions and parallel suits. The top 10 securities class actions firms in our sample appear in over 56 percent of the class actions, while the top 10 parallel suit firms appear in almost 49 percent of the parallel suits, and an even more dominant 66 percent of the parallel suits that lead to settlements. Overall, these attorneys are taking on a nontrivial risk in filing parallel suits, with only 38 percent of the suits filed leading to a settlement. This risk no doubt reinforces the need to minimize litigation costs.

Panels D and E of Table 1 provide descriptive statistics for settlements. For the group of securities-class-action-only settlements, the class action resulted in a mean settlement of \$29 million. For securities class actions with a parallel suit, the mean settlement for the class action is \$60 million, while the mean settlement for the parallel suit is \$21 million. As explained below, however, the majority of parallel suits resulted in no monetary recovery. The mean parallel suit settlement of \$21 million is driven by a minority fraction of the parallel suits. The larger settlements for securities class actions with a parallel suit compared with class actions without a parallel suit is consistent with derivative suit attorneys targeting higher-value securities class actions for a parallel suit.

The last column of Panel D of Table 1 reports that the combined settlement amount for parallel suits and the corresponding securities class action is equal to \$71 million. The mean ratio of parallel suit settlement to securities class action settlement is 17.1 percent. Note from Panel E that only 17 out of the 82 parallel suits (21 percent) with a settlement for which we have settlement data result in a monetary recovery. The mean settlement amount for these suits was \$100.4 million, representing 52.5 percent, on average, of the settlement in the securities class action. In contrast, 65 out of the 82

(79 percent) parallel suits with a settlement for which we have settlement data resulted in only corporate governance reforms.<sup>2</sup>

The attorney fees were far smaller in the parallel suits than in the securities class actions. Panel D of Table 1 reports that attorneys in the parallel suits were awarded an average of \$2.486 million in fees and expenses, which was 35.7 percent of the amount awarded to the attorneys in the corresponding securities class action. In other words, parallel suits generate smaller overall paydays for plaintiffs' attorneys. For those parallel suit settlements with no monetary recovery and only corporate governance reform, Panel E reports that attorneys were awarded an average of \$1.366 million, which was 28.0 percent of the amount awarded to attorneys in the securities class action; in contrast, for those parallel suit settlements with a positive monetary recovery, attorneys were awarded an average of \$7.202 million, which was 62.2 percent of the amount awarded to attorneys in the securities class action. These figures lend support to the Follow-On Low-Value Hypothesis and the Window Dressing Hypothesis.

Panel F of Table 1 compares settlements in parallel-first suits with the settlements in follow-on suits. The mean settlement is dramatically greater for the parallel-first suits, with a mean of \$65.4 million compared to the mean settlement of \$7.6 million for follow-on suits. The ratio to the settlement in the securities class action is also much greater in the former category, at nearly 40 percent of the securities class action settlement, compared with only 9 percent of the follow-on cases. These numbers are consistent with the Follow-On Low-Value Hypothesis. Attorney fees demonstrate a comparable disparity in favor of the parallel-first suits.

## IV. EMPIRICAL TESTS

### A. Selection of Parallel Suits

We begin by assessing the selection of cases for parallel litigation to test the Cherry Picking Hypothesis. We first examine whether a securities class action in our sample had a parallel derivative suit or not. We estimate the following logit model on all securities class actions. We use *Parallel*, defined as equal to 1 if the securities class action has a parallel suit and 0 otherwise, as the dependent variable.

$$\begin{aligned} \text{Prob}(\text{Parallel})_i = & \alpha + \beta_{1i}\text{Restatement}_i + \beta_{2i}\text{Backdating}_i \\ & + \beta_{3i}\text{Class Action Filings} + \beta_{4i}\text{Credit Crisis}_i \\ & + \beta_{5i}\text{CRSP}_i + \varepsilon_i \end{aligned}$$

We include *Restatement* as an obvious indicia of wrongdoing. We also include an indicator variable for whether the underlying allegations involve backdating claims

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<sup>2</sup>The mean \$21 million for all parallel suits is obtained from the 17 parallel suits with a mean settlement amount of \$100.4 million and 65 parallel suits with no monetary recovery.

Table 2: Logit Model for the Presence of a Parallel Suit

	<i>Model 1</i> <i>Parallel Suit</i>	<i>Model 2</i> <i>Parallel Suit</i>
Restatement	0.693** (2.91)	1.119** (3.64)
Backdating	1.871** (3.40)	2.160** (2.79)
Credit Crisis	-0.702* (-2.46)	-1.426** (-3.28)
Class Action Filings	0.148** (3.92)	0.139** (2.91)
CRSP	1.946** (5.12)	
Log Market Cap		0.141* (2.32)
Constant	-2.514** (-6.34)	-1.051 (-1.62)
Industry Effects	No	Yes
<i>N</i>	571	381
Pseudo <i>R</i> <sup>2</sup>	0.148	0.144

<sup>+</sup>  $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$ .

NOTE: Sample is securities class actions filed between July 1, 2005 and December 31, 2008 that were filed prior to any parallel suit. Logit model; dependent variable is coded as 1 if securities class action has a parallel suit, and 0 otherwise. *z* statistics in parentheses.

(Backdating). A large number of derivative suits were filed involving backdating; derivative suit plaintiffs' attorneys may have taken more of a lead role in these actions relative to other parallel suits. We also include an indicator variable for whether the underlying allegations involve a credit-crisis-related claim (Credit Crisis). Similar to Backdating suits, the large number of credit-crisis-related derivative suits may have led derivative suit plaintiffs' attorneys to take more of a lead in such actions. We also include the number of complaints filed in the securities class action as a measure of the plaintiffs' bar's interest in the suit. Finally, we include an indicator variable for whether the defendant firm has stock price data in the Center for Research in Security Prices (CRSP). CRSP tracks firms with stock listed for trading on major securities exchanges, including the NYSE, AMEX, and NASDAQ. The non-CRSP firms, for which we lack data on market capitalization, typically are smaller in size and unable to meet the listing requirements of the exchanges. The CRSP variable therefore is correlated with the size of the defendant firm.

We find evidence that the key driver for the presence of a parallel suit is whether the company makes a restatement. From Model 1 of Table 2, note that the coefficient on Restatement is both positive and significant at the 1 percent level. This is consistent with the Cherry Picking Hypothesis. From Model 1 of Table 2, also note that the coefficient on Backdating is positive and significant at the 1 percent level, while the coefficient for Credit Crisis is negative and significant at the 5 percent level. The coefficients on Number of Class Action Filings is positive and significant at the 1 percent level in

Table 3: Parallel Versus Class Action Suits

	N	<i>Class Action Non-CEO Defendant = 0</i>	N	<i>Class Action Non-CEO Defendant = 1</i>	p Value
Parallel Suit Non-CEO Defendant = 0	87	87.0%	290	60.2%	
Parallel Suit Non-CEO Defendant = 1	13	13.0%	192	39.8%	
Total	100	100.0%	482	100.0%	0.000
		<i>Class Action Dismissed</i>		<i>Class Action Settled</i>	
Parallel Suit Settled = 0	82	85.4%	64	45.1%	
Parallel Suit Settled = 1	14	14.6%	78	54.9%	
Total	96	100.0%	142	100.0%	0.000

NOTE:  $p$  value is from a  $\chi^2$  test of the difference in proportions between the Class Action Non-CEO Defendant = 0 and Class Action Non-CEO Defendant = 1 groups and the Class Action Dismissed and Class Action Settled groups.

both models. The greater the interest and competition among plaintiffs' attorneys in the class action, the greater is the likelihood of a parallel suit. Size is also an important factor for a parallel suit. The coefficient on CRSP, a proxy for a larger company, is positive and significant at the 1 percent level.

We reestimate Model 1 for only those observations with CRSP market data. We replaced CRSP with the log of the market capitalization and indicator variables for the one-digit SIC industry code. Reported in Model 2 of Table 2, we obtained the same qualitative results as in Model 1.

To test further the Cherry Picking Hypothesis, we include an indicator variable for the presence of a related government action into the same underlying allegations (Government) to the models in Table 2. The presence of a related government action may indicate more serious underlying offenses. Unreported, we find similar qualitative results as in Table 2. The coefficients on Government are positive and significant at the 1 percent level in the models. Government is positively correlated with the incidence of a parallel suit, consistent with the Cherry Picking Hypothesis. Nonetheless, we are unable to determine the relative timing of the related government action and the parallel suit and cannot rule out the possibility that the government action is filed in response to the parallel suit.

Our selection tests focus on whether a corporate defendant targeted in a securities class action also faces a parallel suit, but both securities class actions and parallel suits may target other defendants. To test the Duplicative Defendant Hypothesis, we collected the frequencies of securities class actions and parallel suits that target a non-CEO officer defendant, including the CFO, COO, treasurer, and general counsel. As reported in Table 3, when a securities class action names a non-CEO officer as a defendant (which occurred in 482 out of the 582 observations in our dataset), a parallel suit targets a non-CEO officer as a defendant in only 39.8 percent of the cases (or in 192 observations in our dataset). When the securities class action does not name a non-CEO officer as a defendant (which occurred in the remaining 100 observations in our dataset), the



parallel suit targets a non-CEO officer in only 13.0 percent of the cases (or in only 13 observations in our dataset). The difference in these percentages is significant at the 1 percent confidence level. The cases where a parallel suit targets a non-CEO officer, but the class action does not, are arguably those cases where the parallel suit may add deterrence value by targeting additional individual defendants, but this happens infrequently. Instead, if anything, parallel suits tend to target non-CEO officers only when that officer has already been named a defendant in a securities class action, which is consistent with the Duplicative Defendant Hypothesis.

It is possible that parallel suits add value if they produce settlements when the class action does not. Table 3 also compares the percentage of parallel suits that settle when the corresponding class action is dismissed and settled. Note that 54.9 percent of the parallel suits (78 out of 142 parallel suits) are settled for the group of cases where the securities class action settles. In comparison, only 14.6 percent of the parallel suits (or 14 out of 96 parallel suits) are settled for the group of cases where the securities class action is dismissed. This difference is significant at the 1 percent confidence level. Although there are 14 instances where a parallel suit settles when the securities class action does not, these represent only a small fraction (between 5 and 6 percent) of the parallel suits in our sample. Moreover, only one of these 14 parallel suit settlements resulted in a monetary recovery.

### *B. Timing of Parallel Suits*

We next examine whether parallel suits are filed before or at the same time as the securities class action, focusing only on those observations with both a securities class action and a parallel suit. Note from Table 1 that for those securities class actions with a parallel suit, over 80 percent of the parallel cases were filed after the securities class action filing, consistent with the Follow-On Filing Hypothesis. We examine the factors that correlate with parallel suits that are filed after the class action (Follow On) in the following logit model estimated for the subset of class actions with a parallel suit with Follow On = 1 or = 0 as the dependent variable.

$$\begin{aligned} \text{Prob}(\text{Follow On})_i = & \alpha + \beta_{1i}\text{Restatement}_i + \beta_{2i}\text{Backdating}_i \\ & + \beta_{3i}\text{Credit Crisis}_i + \beta_{4i}\text{CRSP}_i + \beta_{5i}\text{Top 10} \\ & \text{Parallel Attorney}_i + \varepsilon_i \end{aligned}$$

We include the same explanatory variables as in Model 1 of Table 2 and add an indicator variable for a top 10 parallel suit attorney firm appearing in the parallel suit (Top 10 Parallel Attorney). This variable tests whether such attorneys follow a volume strategy that would lead them to expend fewer resources investigating claims and instead rely more on copying existing class action suits. We report the results in Table 4.

The multivariate results in Table 4 indicate that the coefficient on Restatement is not significantly different from zero. Although there is some evidence in support of the Cherry Picking Hypothesis for the incidence of a parallel action, cherry picking does

Table 4: Logit Model for Parallel Suit Filed After Securities Class Action

	<i>Parallel Suit</i>
Restatement	-0.014 (-0.04)
Backdating	-2.749** (-5.95)
Credit Crisis	-1.134* (-2.23)
CRSP	-0.596 (-0.54)
Top 10 Parallel Attorney	0.718* (2.02)
Constant	2.151* (1.98)
<i>N</i>	264
Pseudo $R^2$	0.170

<sup>+</sup> $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$ .

NOTE: Sample is securities class actions filed between July 1, 2005 and December 31, 2008 accompanied by parallel suit. Logit model; dependent variable is coded as 1 if securities class action has a parallel suit that is filed after the class action, and 0 if securities class action has a parallel suit filed prior to or at the same time as the class action. *z* statistics in parentheses.

not seem to drive the relative timing of a parallel suit and class action.<sup>3</sup> Models 1 and 2 of Table 4 also report that the coefficients for Backdating and Credit Crisis are negative and significant, indicating that follow-on suits are less prevalent for these types of parallel suits. The coefficient on Top 10 Parallel Attorney is positive and significant at the 5 percent level. This result is consistent with frequent-filing plaintiffs' attorneys following a high-volume, low-expenditure strategy. Follow-on suits allow frequent-filing plaintiffs' attorneys to conserve resources by free riding on the efforts of class action attorneys in identifying litigation targets.

### C. Parallel Suit Case Characteristics

We next compare postfiling case characteristics of parallel-first suits with follow-on suits. We compare the incidence of parallel suits that target non-CEO officers when the securities class action does not name a non-CEO officer as defendant (Parallel Suit Only Non-CEO Officer), whether the parallel suit reached a summary judgment decision (Parallel Suit Summary Judgment), and whether the parallel suit settled first (Parallel Suit Settle First). We report the results in Table 5.

We find that of the 12 cases where the parallel suit targets non-CEO officers when the securities class action does not, 11 occur when there is a follow-on parallel suit. Although parallel suit only non-CEO officer defendants are relatively rare, such suits are

<sup>3</sup>We reestimate the model in Table 4 with the addition of the Government indicator variable. Unreported, we obtain the same qualitative results as in Table 4. In addition, the coefficient on Government is not significantly different from zero.

Table 5: Parallel-First Versus Follow-On Suits

	N	<i>Parallel First</i>	N	<i>Follow On</i>	p Value
Parallel Suit Only Non-CEO Officer = 0	48	98.0%	195	94.7%	
Parallel Suit Only Non-CEO Officer = 1	1	2.0%	11	5.3%	
Total	49	100.0%	206	100.0%	0.327
Parallel Suit Summary Judgment Decision = 0	25	89.3%	118	96.7%	
Parallel Suit Summary Judgment Decision = 1	3	10.7%	4	3.3%	
Total	28	100.0%	122	100.0%	0.093
Parallel Suit Settle First = 0	8	47.1%	38	71.7%	
Parallel Suit Settle First = 1	9	52.9%	15	28.3%	
Total	17	100.0%	53	100.0%	0.063

NOTE: *p* value is from a chi<sup>2</sup> test of the difference in proportions between the parallel-first and follow-on groups.

typically a follow-on parallel suit, suggesting that follow-on parallel suits may add value in expanding the targeting of individual defendants, contrary to the Duplicative Defendant Hypothesis. The difference in the incidence of a parallel suit only non-CEO officer defendant between follow-on suits and parallel-first suits is not, however, statistically significant.

Looking to the litigation process, we report in Table 5 that the incidence of parallel suits that reach a summary judgment decision and parallel suits that settle before the securities class action settlement is lower for follow-on suits compared with parallel-first suits (differences significant at the 10 percent level). These findings suggest a more passive litigation strategy for plaintiffs' attorneys prosecuting a follow-on parallel suit, consistent with the Follow-On Low-Value Hypothesis. Follow-on suits tend not to progress as far in the litigation process as parallel-first suits, which is consistent with less investment by plaintiffs' attorneys.

In sum, compared with first-filed parallel suits, follow-on suits are more likely to include non-CEO officer defendants who are not named as defendants in the securities class action, although this difference is not significant. This expanded targeting may indicate greater deterrence for follow-on suits. It may also indicate, however, that with the benefit of knowing who the named defendants in the securities class action are, plaintiffs' attorneys in the follow-on suit may name additional defendants to justify an otherwise duplicative parallel suit. We test this possibility below. Finally, compared with parallel-first suits, plaintiffs' attorneys in follow-on suits appear to take a more passive litigation strategy. They litigate fewer summary judgment motions and are more likely to settle after the securities class action settlement. We next turn to various measures of the value of the outcome of a parallel suit to assess more directly the value of follow-on suits.

#### *D. Parallel Suit Outcomes*

Our next set of tests looks at the outcome of a parallel suit. We examine three aspects: (1) incidence of settlement; (2) settlement amount; and (3) the inclusion of corporate governance reforms.

Table 6: Settlement Incidence

	<i>Model 1</i> <i>Parallel</i> <i>Suit Settled</i>	<i>Model 2</i> <i>Parallel</i> <i>Suit Settled</i>	<i>Model 3</i> <i>Parallel</i> <i>Suit Settled</i>	<i>Model 4</i> <i>Parallel</i> <i>Suit Settled</i>
Follow On	-0.303 (-0.85)	-0.568 (-1.24)	-0.256 (-0.48)	-0.529 (-0.76)
Top 10 Parallel Attorney	0.800** (2.82)	0.844* (2.45)	0.872 (1.33)	0.898 (1.08)
Follow On × Top 10 Parallel Attorney			-0.088 (-0.12)	-0.067 (-0.07)
Restatement	0.659* (2.25)	1.027** (2.74)	0.653* (2.19)	1.023** (2.69)
Same Court	0.467 (0.96)	-0.558 (-0.82)	0.472 (0.97)	-0.556 (-0.81)
CRSP	0.983 (0.90)		0.984 (0.90)	
Log Market Cap.		0.009 (0.10)		0.009 (0.10)
Constant	-1.901 <sup>+</sup> (-1.69)	-0.807 (-0.72)	-1.938 <sup>+</sup> (-1.66)	-0.836 (-0.71)
Industry Effects	No	Yes	No	Yes
<i>N</i>	237	178	237	178
Pseudo <i>R</i> <sup>2</sup>	0.062	0.112	0.062	0.112

<sup>+</sup>*p* < 0.10; \**p* < 0.05; \*\**p* < 0.01.

NOTE: Sample is parallel suits filed between July 1, 2005 and December 31, 2008. Logit model; dependent variable is coded as 1 if parallel suit results in a settlement, and 0 otherwise. *z* statistics in parentheses

### 1. Incidence

We look at the incidence of settlements as a measure of the value of the parallel suit. We also examine the role of frequent-filing plaintiffs’ attorneys, which we define as the top 10 parallel suit plaintiffs’ attorneys in our dataset by frequency. To provide a multivariate test, we estimate a logit model using a binary dependent variable coded as 1 for parallel suits that produced a settlement and 0 for cases that produced none.

$$\begin{aligned} \text{Prob(Parallel Suit Settlement)}_i = & \alpha + \beta_{1i}\text{Follow On}_i \\ & + \beta_{2i}\text{Top 10 Parallel Attorney}_i + \beta_{3i}\text{Restatement}_i \\ & + \beta_{4i}\text{Same Court}_i + \beta_{5i}\text{CRSP}_i + \varepsilon_i \end{aligned}$$

As independent variables, we include indicator variables for follow-on suits (Follow On), top 10 parallel suit attorney firm is associated with the parallel suit (Top 10 Parallel Attorney), a restatement (Restatement), whether the parallel suit is in the same federal court as the securities class action (Same Court), and whether the defendant firm has stock price data in CRSP (CRSP). We report the results as Model 1 of Table 6. In Model 2 of Table 6, we reestimate Model 1 for only those company defendants with data in

CRSP and replace the CRSP variable with the log of market capitalization as well as one-digit SIC industry code indicator variables.

We do not find evidence that follow-on suits are less likely to produce a settlement. Although the coefficients on Follow On are negative in Models 1 and 2, they do not differ significantly from zero. We do find evidence that frequent-filing plaintiffs' attorneys are more likely to obtain a settlement. The coefficients on Top 10 Parallel Attorney are positive and significant at the 1 percent and 5 percent levels in Models 1 and 2, respectively. We also find evidence supporting the Cherry Picking Hypothesis. Parallel suits are more likely to reach settlement when there is a restatement. Restatement is positive in both models and significant in Model 1 at the 10 percent level and in Model 2 at the 5 percent level.

We reestimate both Models 1 and 2 with the addition of an interaction term between Follow On and Top 10 Parallel Attorney to see if the impact of a top 10 parallel attorney is different for follow-on suits. We report the results in Models 3 and 4 of Table 6. Note from both Models 3 and 4 that the coefficient on the interaction term Follow On  $\times$  Top 10 Parallel Attorney is not significantly different from zero. We therefore find no evidence that the impact of a top 10 parallel attorney in obtaining a settlement differs between first-filed parallel suits and follow-on parallel suits.

To test further the Cherry Picking Hypothesis, we include an indicator variable for the presence of a related government action into the same underlying allegations (Government) to the models in Table 6. The presence of a related government action may indicate more serious underlying offenses. Unreported, we find similar qualitative results as in Table 6. The coefficients on the presence of a related government action are positive and significant at the 5 percent level in all four models. Government action is positively correlated with the settlement of a parallel suit, consistent with the Cherry Picking Hypothesis. Nonetheless, we are unable to determine the relative timing of the related government action and the parallel suit and cannot rule out the possibility that the government action is filed in response to the occurrence of a parallel suit settlement.

For robustness tests, we add an indicator variable (Backdating) for option backdating cases to the models in Table 6. Option backdating cases tend to correlate with a top 10 parallel attorney (correlation coefficient = 0.209) and are also negatively correlated with follow-on derivative suits (correlation coefficient = -0.482). Many option backdating cases were filed after public news reports of option backdating activity in defendant companies. Unreported, the coefficient on Backdating is positive in all four models but only significant (at the 10 percent level) in Models 1 and 3. Thus, we find weak evidence that parallel suits alleging option backdating are more likely to be settled. The other results are qualitatively similar to the results in Table 6.

As another robustness test, we reestimate Models 1 and 2 of Table 6 with the addition of an indicator variable for parallel-suit-only non-CEO officer. Unreported, we obtained the same qualitative results as in Table 6 and the coefficients on Parallel Suit Only Non-CEO Officer were not significantly different from zero. We find no evidence that including additional non-CEO officers in the parallel suit makes settlement more likely.

Table 7: Parallel Suit Monetary Recovery

	<i>Model 1</i> <i>Parallel Suit</i> <i>Monetary</i> <i>Recovery</i> <i>Amount</i>	<i>Model 2</i> <i>Parallel</i> <i>Suit Monetary</i> <i>Recovery</i> <i>Amount</i>	<i>Model 3</i> <i>Parallel Suit</i> <i>Monetary</i> <i>Recovery</i> <i>Amount</i>	<i>Model 4</i> <i>Parallel Suit</i> <i>Monetary</i> <i>Recovery</i> <i>Amount</i>
In(1+SCA Monetary Recovery)	0.0872* (2.48)	0.148** (3.29)	0.0854* (2.42)	0.148** (3.37)
Follow On	-2.422* (-2.23)	-1.446 (-1.29)	0.272 (0.26)	1.888 <sup>+</sup> (1.95)
Top 10 Parallel Attorney	0.112 (0.18)	-0.219 (-0.29)	4.416* (2.37)	4.780** (2.69)
Follow On × Top 10 Parallel Attorney			-5.289** (-2.68)	-6.018** (-3.16)
Restatement	1.718* (2.45)	2.434** (2.97)	1.289 <sup>+</sup> (1.93)	1.962* (2.56)
Same Court	-0.0586 (-0.04)	-0.879 (-0.58)	0.256 (0.19)	-0.666 (-0.46)
CRSP	0.588 (1.07)		0.640 (1.18)	
Log Market Cap.		0.696** (3.36)		0.692** (3.48)
Constant	1.209 (1.14)	-1.955 (-0.66)	-0.886 (-0.80)	-4.791 (-1.59)
Industry Effects	No	Yes	No	Yes
<i>N</i>	222	169	222	169
Adj. <i>R</i> <sup>2</sup>	0.110	0.234	0.158	0.284

<sup>+</sup>  $p < 0.10$ ; \*  $p < 0.05$ ; \*\*  $p < 0.01$ .

NOTE: Sample is parallel suits filed between July 1, 2005 and December 31, 2008. OLS model; dependent variable is the natural log of one plus the monetary recovery in the parallel suit. *t* statistics in parentheses.

## 2. Settlement Amount

We next look at monetary recovery. For suits that are dismissed, we use 0 as the monetary recovery. For suits that settle, we use the settlement amount as the monetary recovery. We set the amount as 0 if the settlement included only corporate governance reforms. We use the natural log of one plus the monetary recovery as the dependent variable in an ordinary least squares regression. We use the same independent variables as used in the settlement incidence regression models presented above. We also add the log of one plus the monetary recovery in the securities class action as an independent variable. To the extent the parallel suit is based on the same underlying allegations, we expect the parallel suit monetary recovery to track the amount of the securities class action monetary recovery. We present the results of these OLS estimations in Table 7.

We find some evidence that follow-on parallel suits correlate with lower parallel suit monetary recoveries, consistent with the Follow-On Low-Value Hypothesis. In Models 1 and 2 of Table 7 the coefficient on Follow On is negative, although the coefficient is only significant at the 5 percent level in Model 1 and not significant in Model 2. We also find evidence that Restatement is positively related to the parallel suit recovery

amount, consistent with the Cherry Picking Hypothesis. The coefficients on Restatement are positive and significant at the 5 percent and 1 percent levels, respectively, in Models 1 and 2. We do not find evidence that the presence of a top 10 parallel attorney correlates with the parallel suit monetary recovery amount.

We add an interaction term between Follow On and Top 10 Parallel Attorney to Models 1 and 2 of Table 7 and report the results in Models 3 and 4 of Table 7. Note that the coefficients on Top 10 Parallel Attorney are positive and significant at the 5 percent and 1 percent levels in Models 3 and 4, respectively, indicating that a top 10 parallel attorney correlates with greater monetary recovery in parallel suits that are filed first. The coefficients on Follow On  $\times$  Top 10 Parallel Attorney are negative in both models and significant at the 1 percent level and the sums of Top 10 Parallel Attorney and Follow On  $\times$  Top 10 Parallel Attorney are negative and significant at the 10 percent level in Models 3 and 4. This indicates a negative relationship between a top 10 parallel attorney and the monetary recovery amount in a follow-on suit. Frequent-filing plaintiffs' attorneys correlate with lower monetary recovery amounts when they file follow-on parallel suits. Although there is no correlation between frequent-filing plaintiffs' attorneys and follow-on suits, when frequent-filing attorneys do file follow-on suits, these suits generate smaller average monetary recoveries.

To test further the Cherry Picking Hypothesis, we include an indicator variable for the presence of a related government action to the models in Table 7. Unreported, we find the same qualitative results as in Table 7. The coefficients on Government Action are positive but significant only in Models 1 and 3 at the 5 percent and 1 percent levels, respectively. Government Action is positively correlated with parallel suit monetary recovery amount, consistent with the Cherry Picking Hypothesis. Nonetheless, we are unable to determine the relative timing of the related government action and the parallel suit and cannot rule out the possibility that the government action is filed in response to the parallel suit.

As a robustness test we added an indicator variable (Backdating) for option backdating cases to the models in Table 7. Unreported, the coefficient on Backdating is positive in all four models and significant at the 1 percent (Model 1) and 5 percent (Models 2–4) levels. Consistent with the widespread news coverage relating to backdating, the backdating cases generally corresponded with higher monetary recovery compared with other parallel suits. The other results are qualitatively similar to the results in Table 6, with one exception. The coefficient on Follow On in Model 1 is negative but no longer significantly different from zero.

As another robustness test, we reestimate Models 1 and 2 of Table 7 adding an indicator variable for parallel-suit-only non-CEO officer. Unreported, we obtained the same qualitative results as in Table 7. The coefficients on Parallel Suit Only Non-CEO Officer in Models 1 and 2 were not significantly different from zero. We find no evidence that including additional non-CEO officers in the parallel suit correlates with a greater monetary recovery.

### 3. Corporate Governance Settlement

Our last set of outcome tests looks at corporate governance reforms adopted as part of a parallel settlement. We saw in Table 1 that corporate governance reforms are a

Table 8: Corporate-Governance-Only Settlement

	<i>Model 1</i> <i>Corporate-</i> <i>Governance-</i> <i>Reform-Only</i> <i>Settlement</i>	<i>Model 2</i> <i>Corporate-</i> <i>Governance-</i> <i>Reform-Only</i> <i>Settlement</i>	<i>Model 3</i> <i>Corporate-</i> <i>Governance-</i> <i>Reform-Only</i> <i>Settlement</i>	<i>Model 4</i> <i>Corporate-</i> <i>Governance-</i> <i>Reform-Only</i> <i>Settlement</i>
Follow On	1.422* (2.28)	0.224 (0.27)	-0.740 (-0.71)	-2.287 (-1.36)
Top 10 Parallel Attorney	1.703** (2.91)	1.718* (2.17)	-0.910 (-0.77)	-0.991 (-0.58)
Follow On × Top 10 Parallel Attorney			3.317* (2.50)	3.551 <sup>+</sup> (1.74)
Restatement	-0.644 (-1.15)	-1.363 (-1.49)	-0.465 (-0.79)	-1.255 (-1.37)
Same Court	1.748 <sup>+</sup> (1.70)	0.763 (0.39)	0.536 (0.53)	0.492 (0.22)
CRSP	—		—	
Log Market Cap.		-0.403 <sup>+</sup> (-1.66)		-0.417 <sup>+</sup> (-1.65)
Constant	-1.023 (-1.39)	3.535 (1.31)	0.831 (0.81)	4.682 (1.64)
Industry Effects	No	Yes	No	Yes
<i>N</i>	89	54	89	54
Pseudo <i>R</i> <sup>2</sup>	0.148	0.211	0.208	0.257

<sup>+</sup> $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$ .

NOTE: Sample is parallel suits filed between July 1, 2005 and December 31, 2008 that resulted in a settlement. Logit model; dependent variable is coded as 1 if parallel suit results in only corporate governance reforms and no monetary recovery as part of the settlement, and 0 otherwise. *z* statistics in parentheses.

common feature of parallel suit settlements, appearing in 80 percent of the settled cases. As discussed in Section I, corporate governance reforms have been criticized as “window dressing.” Governance reforms may allow corporations to settle on the cheap, and allow plaintiffs’ attorneys to justify a fee, regardless of whether the reform effects a meaningful change. Institutional-investor plaintiffs, particularly those affiliated with state and local governments, respond to such criticisms by arguing that such reforms improve governance in firms that have demonstrated substantial problems. These institutions claim that they are using litigation to directly improve governance in their portfolio companies.

For this analysis, we limit the sample to parallel suits that resulted in a settlement. We use a binary dependent variable coded as 1 if the settlement included only corporate governance reforms and no monetary recovery (Corporate Governance Only), and 0 otherwise. We again use the same independent variables as the regressions presented in Tables 6 and 7 to estimate a logistic regression. We present the results of these estimations in Table 8.

We find some evidence that follow-on parallel suits correlate with higher possibility of a corporate-governance-only settlement, consistent with the Window Dressing Hypothesis. In Model 1 of Table 8 the coefficient on Follow On is positive and



significant at the 5 percent level, although the coefficient is not significant in Model 2. We also find that frequent-filing attorneys are more likely to negotiate corporate-governance-only settlements. The coefficients on Top 10 Parallel Attorney in Models 1 and 2 are positive and significant at the 1 percent and 5 percent levels, respectively. This result, when viewed alongside the results of our incidence and amount regressions in Tables 6 and 7, suggests that the busiest attorneys filing derivative suits are reaching more settlements by agreeing to corporate governance reforms. These settlements, however, do not come with larger settlement dollars.

We add an interaction term between Follow On and Top 10 Parallel Attorney to Models 1 and 2 of Table 8 and report the results in Models 3 and 4 of Table 8. Note that the coefficients on the Follow On  $\times$  Top 10 Parallel Attorney interaction term are positive and significant at the 5 percent and 10 percent levels, respectively, in Models 3 and 4. Follow-on suits involving a frequent-filing attorney are more likely to result in corporate-governance-only settlements. Frequent-filing attorneys appear to trade off corporate-governance-only settlements, resulting in smaller average monetary recoveries in follow-on suits.

As a robustness test we added an indicator variable (Backdating) for option backdating cases to the models in Table 8. Unreported, the coefficient on Backdating is negative in all four models but significant in only Models 1 (10 percent level) and 2 (5 percent level). Backdating cases generally corresponded with fewer corporate governance reforms. The other results are qualitatively similar to the results in Table 8, with two exceptions. The coefficient on Follow On in Model 1 is positive but no longer significantly different from zero. The coefficient on Follow On  $\times$  Top 10 Parallel Attorney in Model 4 is positive but no longer significantly different from zero.

As another robustness test, we reestimate Models 1 and 2 of Table 8 with the addition of an indicator variable for parallel-suit-only non-CEO officer. Unreported, we obtained the same qualitative results as in Models 1 and 2 of Table 8 and the coefficient on Parallel Suit Only Non-CEO Officer was not significantly different from zero. We find no evidence that including additional non-CEO officers in the parallel suit correlates with a greater likelihood of a corporate governance settlement.<sup>4</sup>

### *E. Attorney Fees*

Our last set of tests looks at the attorney fees awarded in the settled cases. The attorney fees represent a court's determination of the value of the plaintiff attorney's contribution. We restrict the sample to observations with a settlement in both securities class action and the parallel case. In an ordinary least squares regression, we use as our

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<sup>4</sup>We reestimate the models in Table 8 with the addition of the Government indicator variable. Unreported, we obtain the same qualitative results as in Table 8. In addition, the coefficients on Government are not significantly different from zero.

dependent variable the natural log of one plus the ratio of the parallel suit awarded attorney fees and expenses to the securities class action awarded attorney fees and expenses. Our independent variables include the same variables as the regressions presented in Tables 6 through 8. We omit the CRSP indicator variable from the variable because  $CRSP = 0$  is perfectly correlated with observations where we lack data on the dependent variable. To test how judges view corporate-governance-only settlements, we include an indicator variable for whether the settlement includes only corporate governance reforms (Corporate Governance Only). We present the results in Table 9.

Note from Table 9 that the Follow On coefficient in Models 1 and 2 is negative and significant at the 1 percent and 10 percent levels, respectively. Compared with first-filed parallel suits, plaintiffs' attorneys in follow-on parallel suits receive significantly lower attorney fees and expenses, measured as a ratio of the attorney fees and expenses awarded in the accompanying securities class actions. We view this as a signal that judges view follow-on suit settlements as less valuable than the securities class action settlement. The coefficients on the Top 10 Parallel Attorney indicator variables are positive and significant at the 1 percent level in both Models 1 and 2. All else equal, frequent-filing plaintiffs' attorneys receive higher attorney fees and expenses as a ratio of the attorney fees and expenses awarded in the accompanying securities class action. Finally, note that the coefficients on Corporate Governance Only are negative in Models 1 and 2 and significant at the 1 percent and 10 percent levels, respectively. Judges view corporate-governance-only settlements more skeptically than settlements that include monetary recovery.

We add an interaction term between Follow On and Top 10 Parallel Attorney to Models 1 and 2 of Table 9 and report the results in Models 3 and 4 of Table 9. Note that the coefficients on the Follow On  $\times$  Top 10 Parallel Attorney interaction term are negative and significant at the 10 percent level and 5 percent level in Models 3 and 4, respectively. The sums of Top 10 Parallel Attorney and the Follow On  $\times$  Top 10 Parallel Attorney interaction terms are also not significantly different from zero in Models 3 and 4. Thus, top 10 parallel attorneys receive higher fees only when they file suit prior to the securities class action.

As a robustness test we added an indicator variable (Backdating) for option backdating cases to the models in Table 9. Unreported, the coefficient on Backdating is not significantly different from zero in the four models. The other results are qualitatively similar to the results in Table 9, with three exceptions. The coefficient on Follow On in Model 2 is negative but no longer significantly different from zero. The coefficient on Corporate Governance Only in Model 2 is negative but significant at only the 13.4 percent level, beyond conventional significance levels. The coefficient on Follow On  $\times$  Top 10 Parallel Attorney in Model 3 is negative but significant at only the 11.8 percent level, beyond conventional significance levels.

As another robustness test, we reestimate Models 1 and 2 of Table 9 adding an indicator variable for parallel-suit-only non-CEO officer. Unreported, we obtained the same qualitative results as in Table 9 and the coefficients on Parallel Suit Only Non-CEO Officer are negative and significant at the 1 percent level in Models 1 and 2. We

Table 9: Attorney Fees

	Model 1 <i>Log(1 + Parallel to SCA Attorney Fee and Expense Ratio)</i>	Model 2 <i>Log(1 + Parallel to SCA Attorney Fee and Expense Ratio)</i>	Model 3 <i>Log(1 + Parallel to SCA Attorney Fee and Expense Ratio)</i>	Model 4 <i>Log(1 + Parallel to SCA Attorney Fee and Expense Ratio)</i>
Follow On	-1.304** (-4.26)	-0.738 <sup>+</sup> (-2.01)	-0.504 (-0.81)	0.327 (0.50)
Top 10 Parallel Attorney	0.894** (3.22)	0.889** (3.38)	1.874** (3.22)	2.064** (3.55)
Follow On × Top 10 Parallel Attorney			-1.303 <sup>+</sup> (-1.79)	-1.593* (-2.05)
Corporate Governance Only	-1.290** (-4.39)	-0.686 <sup>+</sup> (-2.00)	-1.124** (-3.79)	-0.514 (-1.48)
Restatement	-0.129 (-0.48)	-0.0284 (-0.09)	-0.208 (-0.82)	-0.0356 (-0.12)
Same Court	0.897 <sup>+</sup> (1.91)	0.628 (0.98)	1.108* (2.27)	0.780 (1.36)
CRSP	—	—	—	—
Log Market Cap.		0.413** (3.25)		0.413** (3.36)
Constant	15.01** (34.83)	10.84** (8.82)	14.31** (22.62)	9.780** (7.56)
Industry Effects	No	Yes	No	Yes
N	73	57	73	57
Adj. R <sup>2</sup>	0.401	0.523	0.425	0.554

<sup>+</sup>  $p < 0.10$ ; \*  $p < 0.05$ ; \*\*  $p < 0.01$ .

Note: Sample is parallel suits filed between July 1, 2005 and December 31, 2008 that resulted in a settlement. OLS model; dependent variable is natural log of one plus the parallel suit to SCA suit attorney fees and expenses awarded ratio. *t* statistics in parentheses.

Table 10: Attorney Effort

	<i>Model 1</i> <i>Log(1 + Parallel to</i> <i>SCA Hour Ratio)</i>	<i>Model 2</i> <i>Log(1 + Parallel to</i> <i>SCA Lodestar Ratio)</i>
Follow On	-0.263 (-1.23)	-0.179 (-1.34)
Top 10 Parallel Attorney	0.154 (1.54)	0.169 <sup>+</sup> (2.10)
Corporate Governance Only	-0.308* (-2.46)	-0.379** (-3.32)
Restatement	-0.0605 (-0.69)	-0.162 (-1.75)
Same Court	0.0249 (0.19)	0.134 (1.44)
Constant	0.700** (3.56)	0.709** (4.69)
<i>N</i>	31	21
adj. <i>R</i> <sup>2</sup>	0.080	0.377

<sup>+</sup> $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$ .

NOTE: Sample is parallel suits filed between July 1, 2005 and December 31, 2008 that resulted in a settlement. OLS model. *t* statistics in parentheses.

find evidence that judges awarding attorney fees and expenses do not appear to value adding non-CEO officers in the parallel suit. Rather than increase deterrence by expanding on the named officer defendants in a parallel suit, it appears that plaintiffs' attorneys in follow-on suits target officers not named as defendants in the securities class action as a means of justifying the otherwise duplicative lawsuit.<sup>5</sup>

Finally, we examine the ratio of attorney work hours and lodestars for the parallel suit relative to the securities class action. For each ratio we use the log of one plus the ratio in a series of regression models with the same independent variables as in Model 1 of Table 9. The results are reported in Table 10.

Note from Models 1 and 2 of Table 10 that a corporate-governance-only settlement corresponds with a lower amount of hours and lodestar for the parallel suit compared with the accompanying securities class action. The coefficient on Corporate Governance Only is negative and significant at the 5 percent level and 1 percent level in Models 1 and 2, respectively. Fewer hours worked by plaintiffs' attorneys and the lower lodestar for corporate-governance-only settlements are consistent with such settlements representing less effort on the part of the plaintiffs' attorneys. Instead, the fewer attorneys' hours used to justify attorney fees are consistent with the Window Dressing Hypothesis. We note, however, that the number of observations with lodestar

<sup>5</sup>We reestimate the models in Table 9 with the addition of the Government indicator variable. Unreported, we obtain the same qualitative results as in Table 9. The coefficients on Government in the models in Table 9 are not significantly different from zero.

data available for both suits is small, so any inferences should be treated with caution.<sup>6</sup>

## V. CONCLUSION

Our empirical findings offer insight into a particular subset of state corporate lawsuits—namely, those based on the same underlying allegations as securities class actions. Parallel suits are more likely to be filed in the wake of highly salient allegations in the securities fraud class action. Although most prior empirical work has focused on state corporate lawsuits in isolation (Romano 1991; Jones 1980; Thompson & Thomas 2004b), our study finds that a significant number of these suits (262 over three and one-half years; 81 percent of our sample) are follow-on suits that appear to essentially tag along behind securities class actions. Moreover, it is the frequent-filing plaintiffs' attorneys that tend to file these follow-on suits. In a small number of cases, follow-on suits target individual non-CEO officers not already named defendants in the accompanying securities class action. We find no evidence, however, that this expansion of defendants is accompanied by increased incidence of settlement, monetary recovery amounts, or the attorney fees. (If anything, attorney fees are lower.) Looking at outcomes, we find that follow-on suits, particularly those filed by frequent-filing plaintiffs' attorneys, correspond with lower dollar recoveries and a higher incidence of corporate-governance-only settlements. Finally, attorney fees are higher for frequent-filing attorneys, but only when filing prior to the securities class action. Attorney fees are also significantly lower for parallel suits that obtain only a corporate governance reform settlement.

These findings suggest several possible reforms for lawmakers. First, courts should exercise greater oversight of corporate governance settlements. Although these settlements have been criticized for more than 70 years (Wood 1944; Romano 1991; Erickson 2010; Griffith 2015), they remain a staple of derivative suit litigation. If a state corporate lawsuit is the only suit arising out of alleged corporate misconduct, the lawsuit arguably offers deterrent value, even if it ends with a corporate governance settlement. This deterrent value shrinks, however, when the corporate governance settlement is dwarfed by a monetary settlement in a securities class action. Under these circumstances, the corporate governance settlement offers little marginal deterrence. Courts should accordingly be especially vigilant when reviewing corporate governance settlements in parallel suits.

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<sup>6</sup>Due to a lack of observations, we do not reestimate the models of Table 10 with the log of market capitalization and one-digit SIC industry code indicator variables. As a robustness test, we include just the log of market capitalization in the models of Table 10. Unreported, we obtain the same qualitative results as in Model 1 of Table 10. In Model 2 of Table 10, although Corporate Governance Only remains negative, it no longer is statistically significant. As an additional robustness test, we reestimate the models in Table 10 with the addition of the Government indicator variable. Unreported, we obtain the same qualitative results as in Table 10. The coefficients on Government in the models in Table 10 are not significantly different from zero.

Second, courts should not automatically assume that more experience is necessarily better when it comes to choosing lead counsel. Many jurisdictions have held that experience is one of the most important factors to consider in selecting lead counsel (Erickson 2015). Our findings, however, suggest that firms that file the most state corporate lawsuits do not necessarily produce the best results for shareholders. These firms are better at obtaining settlements, but the settlements are more likely to include corporate governance reforms. Frequent-filing firms may be doing a volume business that does not benefit shareholders. In light of this finding, when reviewing lead counsel motions, courts should focus on the firm's record of achieving tangible benefits for shareholders, rather than simply tallying their participation in past cases.

Third, lawmakers may explore ways that state corporate lawsuits can bring their own value to corporate law. To the extent that many of these lawsuits simply tag along after securities class actions, these lawsuits may not offer much additional value. Courts also should be skeptical of derivative suits that are not filed prior to a securities class action.

Notwithstanding these limitations, derivative lawsuits may play a more meaningful role for certain kinds of corporations. Private companies, for example, are much less likely to be named in securities class actions. As a result, state corporate lawsuits may play a key role in combating corporate wrongdoing in private companies.

Similarly, there are some types of corporate wrongdoing that are better suited to state corporate lawsuits than securities class actions. The cases involving the backdating of stock options are a prime example. Allegations of backdating were more likely to trigger shareholder derivative suits than securities class actions, likely because the backdating scandal at its core reflected governance problems rather than a disclosure problem. As a result, fiduciary duty claims were a better fit for the underlying facts than causes of action that sounded purely in fraud. As this example suggests, state corporate lawsuits have the potential to play an important role in policing corporate managers separate and apart from securities class actions. Lawmakers should explore how to enhance the role of state corporate lawsuits in the narrow category of cases where state law is a better fit to corporate misconduct than the federal securities laws. For most public companies, however, parallel lawsuits appear to add little to deterrence or compensation.

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