

Lawsuit Filed Against Facebook's Director Compensation

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A derivative action has been brought in Delaware Chancery Court alleging that Facebook's board of directors breached their fiduciary duties and unjustly enriched themselves and wasted corporate assets through the compensation paid to the non-executive directors, with "a yearly take beyond what could be considered reasonable."

Plaintiff alleges that the individual director compensation of \$461,000 is 43% higher than peer companies, including Amazon and Walt Disney, which generate more revenue and profit. In making this peer group calculation, plaintiff removed from Facebook's disclosed list of peers certain companies, such as Apple, Google and Microsoft. It claims those entities are not comparable to Facebook because their market cap and other financial metrics make them much larger.

Plaintiff complains that there is no limit to how much the directors can pay themselves, other than a general restraint under an incentive plan that has a total annual limit of 25 million shares or 2.5 million shares to any individual (amounting to \$145 million at current prices according to the complaint). The suit asks directors to repay Facebook for alleged damages and to impose "meaningful limits" subject to shareholder approval regarding the amount of stock that can be awarded to directors.

According to a [survey](#) by Fred Cook, the average director compensation for large-cap companies was \$236,650. Meridian Compensation Partners [report](#) that the median total compensation for companies in the Fortune 100 and Fortune 250 was \$260,000 and \$250,455, respectively.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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