

GOVERNANCE · RISK · BOARD PERFORMANCE

THE PRICE TAG ON GOVERNANCE FAILURE

What derivative lawsuit settlements reveal about the cost of absent challenge

Owen Vallis · 15 June 2026

On 12 June, SpaceX raised \$75 billion on Nasdaq, the largest IPO ever completed. A dual-class share structure leaves Elon Musk with majority voting control after the float, so the new public shareholders hold economic exposure, much of it to Starlink, without the votes to challenge how the company is run.

Controlled listings are legal and fully disclosed. This one poses, at record scale, the question underneath every boardroom. When a consequential decision meets no independent capacity able to challenge it, what does it cost? Shareholders have been pricing that answer in court for a decade.

Tesla's directors settled a derivative claim for \$735 million, the largest shareholder derivative settlement on record. The claim was that the board had set its own pay with no independent check on the figure, and to close it the directors returned stock options and cash and gave up several years of board fees.

That case leads a longer record. Kevin M. LaCroix, a D&O insurance attorney who writes *The D&O Diary*, has maintained a continuously updated list of the largest derivative settlements in US corporate history since 2014. Every case on it is publicly filed and every settlement carries a number. Derivative suits also have a feature that makes those numbers unusually informative. Shareholders bring the claim on the company's own behalf, so the recovery flows back to the company. Each settlement is, in effect, a court-supervised price on what the board's missing challenge cost the business it governed.

Six categories of failure, each with a number attached

Read together, the cases on LaCroix's list cluster into six failure modes.

FAILURE MODE	REPRESENTATIVE CASE(S)	SETTLEMENT
Executive compensation	Tesla — directors set their own pay with no independent check on the figure	\$735m
M&A process	Activision Blizzard (2014); Freeport-McMoRan (2015), a conflicted related-party acquisition; Bank of America, over the Merrill Lynch deal	\$275m / \$153.75m / \$62.5m
Financial controls	Wells Fargo (2019) — millions of unauthorised accounts opened to hit sales targets the board's oversight had left untested	\$240m

FAILURE MODE	REPRESENTATIVE CASE(S)	SETTLEMENT
Risk culture	Alphabet; CBS/Viacom — misconduct the boards were held to have overseen inadequately	\$310m / \$167.5m
Regulatory compliance	Alphabet (2025 competition settlement, payable over ten years with governance-reform conditions); McKesson; Walmart — opioid distribution oversight	\$500m / \$175m / \$123m
Product safety	Boeing (2021) — over the 737 Max	\$237.5m

Each settlement is publicly filed; figures are the reported settlement amounts. Source: Kevin M. LaCroix, The D&O Diary — largest derivative settlements in US corporate history.

Six categories, six different board functions, one shared structural feature. In every case a consequential decision, whether a pay package, a transaction, a control environment, a culture, a compliance posture or a safety certification, passed through its approval process without encountering an independent capacity whose mandate was to challenge it.

The settlement is the smaller number

The settlement also understates the damage. The Institute of Financial Services Zug at Lucerne University examined 669 listed companies across Germany, Austria and Switzerland between 2018 and 2024, identifying 471 severe crises, defined as a monthly share-price fall of 25 per cent or more (Hunziker and colleagues, ERM Report 2025). Two of its findings belong in this analysis.

First, the crises that originated inside the company, in governance, reporting and operational failures, cut deepest. The median decline for these preventable events was around 35 per cent, with outliers losing 60 to 80 per cent of their value, against a median of 29 per cent for externally driven shocks. The failures a board could have caught are the ones that cost the most when it doesn't.

Second, recovery is slower and shallower than it looks. Two years after a severe crisis, the average affected firm had returned to roughly 103 per cent of its pre-crisis value. Over the same period, the broader DACH market indices rose to roughly 115 per cent. The affected firm spent those two years winning back ground its peers had simply kept, leaving a gap of roughly twelve percentage points that the recovery period never touched.

So the full price stacks up in layers. The settlement itself, the defence costs, two years of management attention diverted into remediation and litigation, the discount applied by capital markets and counterparties in the meantime, and a double-digit performance gap against the market once the share price finally limps home.

The gap between approval and challenge

Across all six categories, a board can almost always evidence approval. Evidence of challenge is far rarer, and that gap is precisely the exposure LaCroix's list prices. A remuneration committee that has never recorded a substantive challenge to a pay decision is running the Tesla fact pattern with the outcome still

open. A board approaching a major acquisition without a documented, independent interrogation of the deal thesis is running Bank of America's.

Most boards do not sit beneath a controlling shareholder who can overrule them, as SpaceX's new investors now do. That removes the easy excuse. There is no dual-class structure to blame for the gap, only the question of whether the board has closed it.

Answering that question properly takes more than a show of hands in the room. It takes a structured, evidence-based read of where challenge is built into the governance architecture and where a consequential decision can still pass unexamined. That is the work of a [Tier 1 Diagnostic](#). The Marentis Risk Maturity Model scores six dimensions of governance and risk maturity, from board composition and risk culture through to monitoring and regulatory alignment, and returns a current-state assessment with a prioritised view of where the absent-challenge exposure actually sits. It is a fixed-fee engagement, measured in weeks, and it gives a board the evidence to act on the gap while acting is still cheap.

More governance, same failures

The instinctive response to a governance failure is more governance. More policies, more committees, more assurance. The market has bought exactly that. Global spending on governance, risk and compliance tools passed \$4 billion in 2024 and is forecast to reach \$35 billion by 2032. Over the same years the failures kept coming, from Boeing to Wirecard to Silicon Valley Bank to the Post Office. Each had frameworks. None had the challenge that would have tested the decision while it could still be changed.

That is the argument of our [white paper on Strategic Governance as a Service](#). Governance failures are failures of challenge, continuity and independence, not of documentation. They share three structural defects: engagement that is episodic when the risk is continuous, decision-making that rewards consensus over dissent, and the absence of any party whose explicit job is to challenge the board.

SGaaS supplies them by design. The Red Team Protocol institutionalises challenge that no consensus can quietly switch off. The Risk Simulation Lab stress-tests how a board behaves under crisis conditions before the crisis arrives. The Pre-Mortem Diagnostic forces a failure-first interrogation before significant capital is committed. Across more than 200 studies, roughly 90 per cent find that stronger governance lowers the cost of capital, which puts adversarial challenge on the return side of the ledger long before it prevents a loss.

The full argument, with the failure case studies, the evidence base and the SGaaS delivery architecture, is set out in [the white paper](#).

FROM THE SGaaS WHITE PAPER

Governance is challenge, not documentation

The white paper develops the full evidence base behind continuous, adversarial governance and the four-tier SGaaS delivery architecture, including the Red Team Protocol, Risk Simulation Lab and Pre-Mortem Diagnostic.

[Download the paper →](#)

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