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Analysis | **Litigators**

Preparing a Mandatory Arbitration Provision for Securities Claims? Prepare to Get Sued

Jeroen van Kwawegen of Bernstein Litowitz Berger & Grossmann said the complaint is already written in case anyone takes up the SEC's invitation to include a mandatory arbitration provision in registrations.

October 29, 2025 at 06:30 AM By **Ross Todd**

Jeroen van Kwawegen of Bernstein Litowitz Berger and Grossmann. Photo: Ryland West/ALM

Plaintiff-side securities lawyer **Jeroen van Kwawegen** of **Bernstein Litowitz Berger & Grossmann** has a clear message for any would-be public company considering taking up the SEC chairman's recent invitation to include mandatory arbitration provisions in registration statements.

Do it and you'll get sued.

"We have written the complaint already. So, the first mover we're going to have fun ... coming for you," said van Kwawegen, only somewhat tongue-in-cheek, on Tuesday afternoon.

Van Kwawegen, co-lead counsel in the blockbuster case against Tesla over Elon Musk's compensation package that's currently pending at the Delaware Supreme Court, spoke as part of a panel discussion during the Berkeley Fall Forum on Corporate Governance in San Francisco. I had intended to bring you a recap of the remarks of three judges on Delaware's Court of Chancery who spoke just prior to Van Kwawegen's panel, including Chancellor Kathaleen McCormick, whose orders in the Musk compensation case are the subject of that big appeal. Alas, the judges' panel was not part of the forum's livestream, so I opted to tune in to the panel that Van Kwawegen styled as a rapid-fire memo to companies considering either where to incorporate or reincorporate, with some debate on the pros and cons of Delaware versus Nevada and Texas—but mainly Nevada.

Van Kwawegen spoke alongside **Paul Loughman** of Delaware's **Young Conaway Stargatt & Taylor,Cooley** corporate and securities lawyer **Christina Roupas** and **Lenin Lopez**, a senior vice president of D&O insurance broker **Woodruff Sawyer**.

When the moderator, Berkeley Law Professor **Frank Partnoy**, turned the topic to mandatory arbitration, Loughman pointed out that, despite the SEC's change in policy, such clauses are not allowed for companies incorporating under Delaware law.

Van Kwawegen added that in his opinion as a shareholder lawyer in the U.S., the interests of his investor clients might diverge from his own if securities cases were to play out in arbitration rather than court.

“I represent institutional investors who will not be pleased with these mandatory arbitration provisions at all, because in the U.S. we have an opt-out system,” Van Kwawegen said.That meanseven when a member of a class does nothing, if there's a settlement, or trial and judgment, they can simply fill out a claims form and get paid. With mandatory arbitration,Van Kwawegensaid, that all goes away. "So for many of my clients, that's not going to be a good thing.”

But Van Kwawegen added that one of the unintended consequences of companies adopting such provisions would be institutional investors would either sue or sell their claims. "You're going to have thousands of arbitrations. There is no more global release," he said. “When people think about plaintiff's lawyers—the plague of us—they never think about the peace that we actually provide.”

“There's not going to be a global release anymore. And at that point in time, we're going to have arbitrations everywhere with no precedential value,” he said. Van Kwawegen added that since securities class action recoveries rarely hit 50% of the damages, arbitration could actually be a boon for the plaintiffs. "You know what I like about arbitrators? They will split the baby."

“So, for the lawyers, this is going to be great. But for the institutional investors, it's not,” he said.

Cooley's Roupas, meanwhile, said that while the concept of routing securities claims to mandatory arbitrations leads to “very interesting, intellectually stimulating conversations,” she's ultimately skeptical they'll take hold. "I think once companies really flesh this out and think about it, I don't know that they are going to actually want to implement a mandatory arbitration provision," she said.

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News | **Securities Litigation**

Federal Judge Puts Voluntary Dismissal of Shareholder Suit Against Avis on Hold

On Oct. 24, U.S. District Judge Michael E. Farbiarz issued an order that plaintiff Arjun Dua's shareholder lawsuit, accusing Avis and members of its board of directors with violating the Exchange Act and committing breach of fiduciary duty resulting in $1.96 billion in losses for the fourth quarter of 2024, would not be approved for voluntary dismissal.

October 29, 2025 at 10:49 AM By **Nicholas Malfitano**

Avis car rental. Photo: Diego M. Radzinschi/ALM

A New Jersey federal judge has put the brakes on a proposed voluntary dismissal of a billion-dollar securities litigation against rental car company Avis Budget Group, finding that fellow shareholders were not notified of the potential for such an action.

On Oct. 24, U.S. District Judge Michael E. Farbiarz of the District of New Jersey issued an order that plaintiff Arjun Dua's shareholder lawsuit, accusing Avis and members of its board of directors with violating the Exchange Act and committing breach of fiduciary duty resulting in $1.96 billion in losses for the fourth quarter of 2024, would not be approved for voluntary dismissal. What led to the Oct. 22 attempt at dismissal was the parties and counsel for both sides mutually pointing out that two other class action securities litigations, *Merriam v. Avis Budget Group* and *O'Connor v. Avis Budget Group,* were previously filed in the U.S. District Court for the District of New Jersey, concerned the same events as the instant suit and were subsequently consolidated for further proceedings on Aug. 11. Both sides had argued that notifying Avis shareholders of the proposed dismissal was unnecessary, since the plaintiff sought dismissal without prejudice, there had been no settlement or compromise, there had been no collusion among the parties, and neither the plaintiff nor his counsel received nor will receive any consideration from Avis or otherwise for the dismissal.

In his order, Farbiarz noted Federal Rule 23.1(c), where in any derivative action, "[n]otice of a proposed ... voluntary dismissal ... must be given to shareholders or members." Farbiarz charged plaintiff counsel from The Weiser Law Firm with either making that notification or submitting to the court a letter brief explaining in detail its exceptions to forgo making that notification by next week. Farbiarz said the parties' reference to one order in another, unrelated case, which granted a similar request, was "not enough" for the proposed dismissal to proceed.

"Should the parties wish to proceed without notice to shareholders, they shall each (i) file a letter brief supporting the existence of their proposed exceptions to Rule 23.1(c), and (ii) attach a declaration to substantiate all relevant, underlying factual contentions, on or before Nov. 5," Farbiarz said.

Dua claimed that Avis's board of directors and executive officers, which had focused on a strategy of maintaining its rental fleet of 695,000 vehicles during the supply chain shortages of the COVID-19 pandemic, abruptly changed course in the fourth quarter of 2024 and accelerated a fleet rotation when prices for model-year 2025 vehicles began to return to pre-COVID levels. However, the suit alleged that the decision was made without first informing shareholders. The suit added they later learned of it last February, when Avis issued a press release disclosing its financial results for the fourth quarter and full year 2024. According to the press release, Avis lost $1.96 billion, or $55.66 per share, for the fourth quarter, compared to a profit of $259 million, or $7.10 per share, for the same period in 2023. The change in fleet rotation strategy was credited for the financial losses.

The plaintiff seeks an accounting of all funds expended, the termination for cause of any employees responsible for the losses in question, remuneration of the monies at issue, corporate governance reforms to prevent a recurrence of this issue, interest, injunctive relief, restitution, costs, attorney fees and other relief, for an alleged violation of the Exchange Act, breach of fiduciary duty, unjust enrichment and waste of corporate defendants.

James M. Ficaro of The Weiser Law Firm in Berwyn, Pennsylvania, represents Dua.

Samuel I. Portnoy of Gibbons in Newark, New Jersey, represents the Avis defendants.

Neither attorney immediately responded to requests for comment.

Securities

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Snap Inks $65 Million Deal to End Investors' Ad Revenue Suit (1)

Oct. 29, 2025, 5:48 AM PDT; Updated: Oct. 29, 2025, 7:54 AM PDT

Summary by Bloomberg AI

AI Generated

- Snap Inc. agreed to a $65 million settlement over proposed class claims it misled investors about Apple Inc. privacy changes' impact on its advertising business.
- The settlement would end almost four years of litigation of the investors' claims against Snap, CEO Evan Spiegel, and a former executive if approved by Judge George H. Wu.
- The claims centered on alleged misstatements, including comments by former Chief Business Officer Jeremi Gorman about advertisers' adoption of a new user-activity tracking tool.

Snap Inc. agreed to a $65 million settlement over proposed class claims the technology giant misled investors about how Apple Inc. privacy changes would impact its advertising business.

The claims had winnowed to a single alleged misstatement in 2021, making continued litigation more difficult, the public pension fund leading the case said while seeking preliminary approval of the deal in the US District Court for the Central District of California.

If approved by presiding Judge George H. Wu, the settlement would end almost four years of litigation of the investors' claims against Snap, CEO Evan Spiegel, and a former executive. That included a revival by the US Court of Appeals for the Ninth Circuit on the alleged inference of former Chief Business Officer Jeremi Gorman's intent to mislead in comments about advertisers' adoption of a new user-activity tracking tool.

Snap draws most of its revenue from selling advertisements. Certain ad partners relied on a tool to track Apple users that was curbed by the iPhone maker's privacy update, originally scheduled for 2020.

Gorman allegedly assured investors in April 2021 that Apple's delayed rollout of the change gave Snap and advertisers time to implement and test an alternative tracking tool, and that most of the company's partners had successfully made the switch.

Her purportedly misleading comments caused a spike in Snap's stock price, the suit said.

Then Snap's share price plunged more than 26% on Oct. 22, 2021, the day after the Snapchat owner revealed it missed revenue estimates in the third fiscal quarter. Executives said the Apple change impacted its ad business more than expected.

It was the stock's sharpest one-day decline since its 2017 market debut, according to data compiled by Bloomberg.

Snap and the executives agreed to a settlement class of those who acquired Snap securities or call options, or sold put options, from Feb. 5, 2021, through Oct. 21, 2021, according to the pension fund's Oct. 27 motion seeking the court's initial blessing of the agreement.

The deal came while the Oklahoma Firefighters Pension and Retirement System's motion for class certification was pending.

Saxena White PA is lead counsel for the pension fund. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Bird, Marella, Rhow, Lincenberg, Drooks, & Nessim LLP represent Snap and the two executives. None of these law firms nor Snap immediately responded to emails seeking comment.

The case is Black v. Snap Inc. , C.D. Cal., No. 2:21-cv-08892, 10/27/25 .

(Updates with additional reporting throughout.)

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California Brief

Snap Inks $65 Million Deal to End Investors' Ad Revenue Suit

Oct. 29, 2025, 5:48 AM PDT

Snap Inc. agreed to a $65 million settlement over proposed class claims the technology giant misled investors about how Apple Inc. privacy changes would impact its advertising business.

The claims had winnowed to a single alleged misstatement in 2021, making continued litigation more difficult, the public pension fund leading the case said while seeking preliminary approval of the deal in the US District Court for the Central District of California Oct. 27.

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To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

US appeals court revives $2.5 billion opioid lawsuit in West Virginia

reuters.com/legal/government/us-appeals-court-revives-25-billion-opioid-lawsuit-west-virginia-2025-10-28

Dietrich Knauth October 28, 2025

Item 1 of 2 The flag of the U.S. state West Virginia is seen in this illustration taken, August 21, 2024. REUTERS/Dado Ruvic/Illustration

[1/2]The flag of the U.S. state West Virginia is seen in this illustration taken, August 21, 2024. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

- Drug companies had won at trial in 2022
- Lawsuit seeks $2.5 bln for addiction prevention and treatment
- Appeals court says drug sales may have caused a public nuisance

NEW YORK, Oct 28 (Reuters) - A U.S. appeals court on Tuesday revived a $2.5 billion lawsuit against drug distributors accused of contributing to an opioid addiction crisis in West Virginia communities, overturning a 2022 victory at trial by the largest drug suppliers in the U.S.

The 4th U.S. Circuit Court of Appeals ruled that a lower court incorrectly concluded that Cencora (COR.N), opens new tab, McKesson Corp (MCK.N), opens new tab and Cardinal Health (CAH.N), opens new tab did not create a "public nuisance" by supplying a flood of addictive pills to pharmacies in Cabell County and the City of Huntington.
The 4th Circuit reopened the case, saying the lower court should re-evaluate whether the three drug companies should pay for addiction treatment and prevention efforts in the city and county, based on their alleged failure to stop "suspicious" large orders of opioid pills from pharmacies.
A Cencora spokesperson said the company was disappointed in the ruling and considering next steps, including a further appeal. Drug companies must "walk a legal and ethical tightrope between providing access to necessary medications and acting to prevent diversion of controlled substances," according to Cencora.

Cardinal Health declined to comment. McKesson did not immediately respond to requests for comment.

Huntington Mayor Patrick Farrell said that the city looks forward to a new opportunity to hold drug distributors accountable for "the devastating harm that they have caused our city and far too many of its families."

The distributors had previously agreed to pay up to $21 billion to resolve the thousands of lawsuits brought against them by state and local governments around the country. But communities in hard-hit West Virginia opted against joining the national opioid settlement in favor of seeking a bigger recovery.
U.S. District Judge David Faber had ruled in favor of the three drug companies in 2022, finding that West Virginia's "public nuisance" law did not create liability for companies that sold prescription drugs, and concluding that the three companies had complied with their duty to report suspicious drug orders to U.S. regulators. The 4th Circuit reversed both those findings.

The appeals court found that the three drug companies repeatedly shipped opioids to pharmacies in quantities that exceeded the distributors' own thresholds for "suspicious" orders, without reporting the sales to the U.S. Drug Enforcement Administration.

For example, Cencora, formerly known as AmerisourceBergen, supplied 775 potentially suspicious orders from a single pharmacy in Cabell County over a five-year period, but it only reported 16 of those orders to the DEA, according to the 4th Circuit.

Reporting by Dietrich Knauth in New York and Nate Raymond in Boston; Editing by Richard Chang and Aurora Ellis

4th Circuit overturns Cabell/Huntington opioid ruling | West Virginia Record

legalnewsline.com/west-virginia-record/4th-circuit-overturns-cabell-huntington-opioid-ruling/article_da9d8389-c271-47a7-a654-7476906a4817.html

Chris Dickerson, Chris Dickerson October 28, 2025

RICHMOND, Va. – An appeals court has vacated and remanded a West Virginia federal court dismissal of public nuisance claims against the three largest opioid distributors in the country.

In its October 28 opinion, the U.S. Fourth Circuit Court of Appeals said U.S. District Court Judge David Faber used an overly narrow interpretation of West Virginia law regarding public nuisance and distributor duties under the Controlled Substances Act.

The opinion directs Faber to reconsider the evidence under a broader standard, focusing on the distributors' conduct in opioid distribution and its alleged impact on the opioid epidemic in Cabell County and Huntington.

Farrell
File photo

Majestro
File photo

Webb
File photo

"It has been a long journey, and there is still much work to be done," Paul T. Farrell Jr., lead attorney for the city and county, told *The West Virginia Record*. "We look forward to another opportunity to seek civil justice for the harms caused by the opioid epidemic."

A co-counsel for Cabell County agreed.

"I am ecstatic that the court completely vindicated our core legal theories of public nuisance and the duties of opioid distributors under the Federal Controlled Substances Act," Anthony Majestro told *The Record*. "We are hopeful that Cabell County and the City of Huntington, two jurisdictions that are among the hardest hit by the opioid epidemic, now will be awarded abatement funds from the opioid distributors to help alleviate the ongoing public nuisance."

An attorney who worked on the case for Huntington also expressed optimism.

“It’s great to see the Fourth Circuit agreed with what the city and county have been arguing all along,” Rusty Webb told *The Record*. “The entire state was devastated by the opioid epidemic, but Huntington and Cabell was Ground Zero.”

Joe Rice of Motley Rice, one of the plaintiffs firms in the case, is eager to get back to work on the case.

“The people of Huntington know the true human cost of the opioid epidemic,” said Rice, who co-founded the firm. “While significant strides have been made nationwide, the rate of overdose deaths remains stubbornly high in West Virginia, exceeding that of every other state in the country. The Fourth Circuit reached the same conclusion we did at the outset of this litigation – the crisis faced by Huntington and its neighbors can constitute a public nuisance under West Virginia law.

“We, too, hold firm in our belief that opioid distributors and pharmacy benefit managers must be held accountable for their actions and come to the table to fix the damage. Motley Rice has worked zealously and proudly with our public clients that have been devastated by opioids. We look forward to a new day in court and the chance to apply the law to provide relief to our client and its residents.”

Huntington Mayor Patrick Farrell said he’s happy the court vacated the ruling.

“The Fourth Circuit Court of Appeals has held what the city argued and believes — that distributors of opioids have a legal duty to prevent the diversion of highly addictive opioids, and that we are able to seek to hold them accountable for the devastating harm that they have caused our city and far too many of its families,” the mayor said in a statement. “We look forward to a new day in court and the chance to apply the law to provide relief for the residents of our community.”

A spokesperson for Cencora, which is the new name for AmerisourceBergen, said the company disagrees with the ruling and is mulling its next move.

“We are disappointed with the Fourth Circuit’s decision and continue to believe Judge Faber correctly concluded AmerisourceBergen substantially complied with its obligations under the Controlled Substance Act,” the spokesperson said in a statement to The Record. “Distributors of pharmaceutical products are asked to walk a legal and ethical tightrope between providing access to necessary medications and acting to prevent diversion of controlled substances.

"We are considering next steps, including potentially seeking further appellate review of the Fourth Circuit's decision."

The City of Huntington and Cabell County sued AmerisourceBergen, Cardinal Health, and McKesson in 2017 alleging their over-distribution and lack of adequate monitoring for diversion contributed to the opioid crisis and created a public nuisance.

After a 10-week bench trial in 2021, Faber ruled in 2022 for the drug companies after he said the plaintiffs failed to prove the opioids was a public nuisance. Faber said public nuisance law in West Virginia was limited to interference with public property/resources and did not cover product distribution such as prescription opioids.

Even if such a claim were possible, Faber also ruled Cabell County and Huntington had failed to show unreasonable interference, proximate causation or entitlement to abatement remedies

The city and county appealed Faber's ruling to the Fourth Circuit.

In January, [the Fourth Circuit filed a certified question] with the West Virginia Supreme Court of Appeals asking, "Under West Virginia's common law, can conditions caused by the distribution of a controlled substance constitute a public nuisance and, if so, what are the elements of such a public nuisance claim?"

In May, the state Supreme Court decided not to answer, saying "We resolve that we cannot, at this juncture, answer the question certified … due to the disputed factual findings and related legal conclusions resting on those factual findings."

The Fourth Circuit disagreed with Faber's restrictive definition of public nuisance under state law, saying conditions caused by the distribution of controlled substances can, in fact, constitute a public nuisance.

"We observe that public nuisance under state law is broadly defined," the 49-page Fourth Circuit ruling, written by Senior Circuit Judge Barbara Milano Keenan, states. "Under West Virginia common law, a public nuisance is 'an act or condition that unlawfully operates to hurt or inconvenience an indefinite number of persons.' …

"The state Supreme Court also has explained that 'the distinction between a public nuisance and a private nuisance is that [a public nuisance] affects the general public, and [a private nuisance] injures one person or a limited number of persons only.' …

"We hold that under West Virginia common law, the conditions resulting from the over-distribution of opioids can constitute a public nuisance."

The Fourth Circuit also said Faber misinterpreted the scope of duties for opioid distributors under the Controlled Substances Act, particularly regarding threshold-setting and suspicious order reporting. It said Faber also failed to fully consider evidence showing the distributors repeatedly raised pharmacy order limits, potentially enabling large opioid shipments while avoiding suspicious order reporting rules.

The appeals court also criticized his analysis of causation and remoteness for failing to consider whether distributors' actions directly contributed to the opioid crisis, including supplying pharmacies linked to prolific prescribers.

It also rejected Faber's stance that abatement remedies must only address the cessation of conduct, finding that more expansive remedies — such as possible funding for harm reduction — should not be categorically excluded.

In vacating the lower court ruling, the Fourth Circuit sent it back to Faber with instructions to apply the correct standards for public nuisance, distributor duties, causation and remedies.

The district court now must reconsider the claims in light of the broader standards set forth by the Fourth Circuit, including full review of evidence about distributor practices and their alleged contribution to the opioid epidemic in West Virginia.

U.S. Fourth Circuit Court of Appeals case number 22-1819

Fourth Circuit says opioid distributors can face public nuisance claims

courthousenews.com/fourth-circuit-says-opioid-distributors-can-face-public-nuisance-claims

Joe Dodson October 29, 2025

Pills, including opioids, are stored in police headquarters and slated for destruction, in Barberton, Ohio. (AP photo/Keith Srakocic)

RICHMOND, Va. (CN) — The Fourth Circuit on Tuesday held that drug distributors could be held accountable for their role in fueling the opioid epidemic.

The opinion, penned by Senior U.S. Circuit Judge Barbara Keenan, reversed a West Virginia-based federal court's decision holding that local governments' public nuisance claims failed as a matter of law because West Virginia common law does not permit such claims based on the distribution of prescription drugs.

"We decline the defendants' request to restrict the scope of public nuisance under West Virginia law by excluding as a matter of law harm suffered by the general public originating from the distribution of opioids," the Barack Obama appointee wrote. "The state Supreme Court has not identified any particular type of product-based harm that should be excluded from qualifying as a public nuisance. And nothing in that court's jurisprudence indicates that public nuisance under West Virginia law should be restricted by carving out any product-based harm."

In separate, now consolidated cases, Huntington, West Virginia, and surrounding Cabell County lodged a public nuisance suit against prescription opioid distributors AmerisourceBergen Drug Corporation, Cardinal Health Inc. and McKesson Corporation, which hold a 90% market share of opioid distribution.

"The opioid epidemic in West Virginia continues to have a devastating impact on the health and welfare of communities throughout the state," Keenan wrote. "In fact, it is undisputed in the present appeal that West Virginia is 'ground zero' for the opioid epidemic in the United States."

Drug manufacturers like Perdue and Johnson & Johnson sell their products to distributors supplying pharmacies. The localities settled cases involving manufacturers and pharmacies. The localities claim the distributors repeatedly shipped opioids to pharmacies in quantities that the distributors knew or should have known exceeded any legitimate uses for the drugs.

Under the Controlled Substances Act, distributors are obligated to maintain adequate controls against diversion, including exercising due care to confirm that all pharmacy orders are legitimate before filling them.

The localities claim that to avoid responsibility, the distributors continuously raised the threshold of opioids a pharmacy could order without being considered suspicious. The localities claim the distributors supplied the area that shares roughly 100,000 people with 80 billion units of opioids over 20 years, totaling 40 units per resident.

The three-judge panel also disagreed with the lower court's opinion that the localities had failed to prove the elements of the claim. The lower court held that the local governments had not established the distributors' conduct unreasonably interfered with a public right, a required element for stating a common law claim for public nuisance under West Virginia law.

In granting judgment to the distributors, the lower court read the Controlled Substances Act narrowly, as requiring distributors only to decline to ship to rogue or illegitimate pharmacies, rather than requiring them to decline service to legitimate pharmacies like CVS or Walgreens that order suspiciously large quantities of opioids. Keenan called this analysis an error.

"If the distributors' duties under the act were as limited as the district court held, the act's purpose to prevent diversion of controlled substances would be substantially undermined," Keenan said. "When the district court found that the distributors substantially complied with their duties under the act and did not unreasonably interfere with a public right, those findings necessarily were based, at least in part, on the court's incorrectly narrow perception of what those duties were."

The panel also reversed the lower court's rejection of the local governments' abatement plan, which would cost $2.5 billion to address prevention, treatment, recovery and special populations. The lower court said the plan had no relation to any of the purported misconduct.

"West Virginia law permits abatement of a public nuisance to include a requirement that a defendant pay money to fund efforts to eliminate the resulting harm to the public," Keenan said. "West Virginia has long characterized abatement as an equitable remedy."

Nearly 645,000 people died from overdoses involving any opioid, including prescription and illicit opioids, from 1999-2021, according to the U.S. Centers for Disease Control and Prevention. Opioids are substances that work in the nervous system of the body or in specific receptors in the brain to reduce pain.

“Hundreds of pregnant women have been admitted for treatment of opioid use disorder and, at times, up to 10% of babies born at Cabell Huntington Hospital have suffered from neonatal abstinence syndrome,” Keenan wrote. “The number of children placed in foster care has doubled.”

Types of opioids include prescription opioids like oxycodone and morphine, often prescribed following surgery or injury or for health conditions such as cancer. Synthetic opioids derived from chemicals rather than opium poppy plants include methadone and fentanyl.

All opioids, including heroin, are chemically similar, with the same biological mechanism and similar effects. Often, people turn to illegal opioids like heroin after running out of their prescription opioids following surgery or injury.

Attorneys representing the distributors did not respond to a request for comment. U.S. Circuit Judges Robert King, a Bill Clinton appointee, and DeAndrea Benjamin, a Joe Biden appointee, concurred in the opinion.

“We’re gratified by the Fourth Circuit’s careful and meticulous ruling that the opioids distributors can be held liable for the public nuisance they created,” David Frederick of Figel & Frederick, representing the localities, said in a statement. “Huntington and Cabell County were devastated by the opioids crisis and the need for abatement remedies is still crucial to assist the community in addressing the crisis.”

Categories / Appeals, Briefs, Business, Health, Personal Injury

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News | **Mass Torts**

Critical Mass With Law.com's Amanda Bronstad: Utah AG Fires Motley Rice From Opioid Lit., Video Privacy Suit Moves Forward Against LinkedIn

October 29, 2025 at 09:28 AM By **Riley Brennan**

Prescription drugs and opioids on table top viewing up close.

Welcome to Law.com Class Actions: Critical Mass, a weekly briefing for class action and mass tort attorneys.

This week: A **Florida jury** returned a [$20M talc-mesothelioma verdict](#) against Johnson & Johnson on Oct. 28, finding that **Johnson & Johnson**'s talc-based products caused the physician's fatal mesothelioma. **Motley Rice** was [abruptly fired](#) by the **Utah attorney general's office** from the state's opioid lawsuit following accusations from one of the opioid defendants, **United**

Healthcare's Optum Rx, that the firm unethically used confidential information about the pharmacy benefit manager's business practices.

I'm **Riley Brennan**, filling in for **Amanda Bronstad** this week. Feel free to reach out to me with your input. My email is rbrennan@alm.com. Follow me on LinkedIn or X: @riley_brennan22

Broward County Courthouse. Photo: Raychel Lean/ALM

Florida Jury Returns $20 Million Talc-Mesothelioma Verdict Against Johnson & Johnson

A **Broward County jury** on Tuesday awarded $20 million to the family of Dr. Alberto A. Casaretto Sr., with the verdict capping a seven-week trial that opened in late September.

Casaretto, 79, a pioneering nephrologist who led Florida's first kidney transplant team and practiced in Fort Lauderdale for decades, died in 2022 from malignant pleural mesothelioma. Evidence presented at trial showed Casaretto Sr. used **Johnson's Baby Powder** daily for 49 years, beginning in 1969 when he immigrated from Argentina. Having grown up in a humid climate, he continued the practice in Florida, applying the powder liberally after showering.

Co-counsel for the plaintiff, **John Uustal of Kelly Uustal in Fort Lauderdale**, shared that this was the most prolonged and most intense exposure to baby powder he had ever seen.

“Dr. Casaretto had no other exposure. He didn’t work as a mechanic or cut floor tile or repair brakes or do any of the traditional things that expose people to asbestos,” Uustal said.

Uustal said the trial—second longest of his career—featured unusually aggressive defense tactics.

“Johnson & Johnson chose to defend the case by attacking the plaintiff’s family and the lawyers, accusing us of all sorts of misconduct,” he said. “It wasn’t true, and the jury knew that. The family didn’t spike asbestos in the baby powder bottles that got tested.”

In his opening statement, **Nelson Mullins’ Michael A. Brown**, representing the company, said evidence would show the talc did not contain asbestos and added that asbestos was present throughout the environment at low, “background levels,” which are not considered dangerous. Brown said those levels were not high enough to pose a disease threat.

“The dose is what matters,” Brown said during livestream coverage by CVN. “And even if you take the plaintiff’s worst-case scenario—and we submit to you, respectfully, that there is no asbestos in Johnson’s Baby Powder—it isn’t enough to cause Dr. Casaretto’s mesothelioma.”

Motley Rice office

Utah Attorney General Fires Motley Rice From Opioid Lawsuit

Utah Attorney General Derek Brown, a Republican who took office at the start of 2025 after campaigning on issues like transparency and efficiency, sent an Oct. 16 letter to **Motley Rice** dismissing the firm from the state's opioid case. The firing follows repeated allegations from one of the opioid defendants, **United Healthcare's Optum Rx**, which alleges that Motley Rice unethically used confidential information the firm obtained when representing other government entities—specifically, the city of Chicago, the state of Hawaii and the District of Columbia—in prior cases over insulin pricing.

"We terminated the contract. We did it pursuant to the best interest of the state," a spokesperson for the Utah attorney general's office told Law.com.

Motley Rice spokeswoman Alicia Ward, in its statement, said, "The meritless accusations from OptumRx are an attempt to skirt legal responsibility in litigation that alleges in detail how the company put profits ahead of public health by favoring, promoting and dispensing opioids in exchange for rebates and other fees. Its allegations against Motley Rice have been unanimously rejected and dismissed by six courts."

OptumRC has previously raised similar allegations in other opioid suits, but no judge has granted its request. Last year, **U.S. District Judge Dan Polster**, who is overseeing thousands of lawsuits in the opioid multidistrict litigation in the **Northern District of Ohio**, declined OptumRx's request to disqualify Motley Rice from the plaintiffs' executive committee.

In his order, Polster noted he was "very uncomfortable" with Motley Rice's government client arrangements and agreed with OptumRx that Motley Rice was acting as a "public officer" in its prior government cases, and is now representing private clients, even though they are cities and counties.

But Polster is now questioning whether the firm obtained confidential documents, given that the same materials should have been provided in the multidistrict litigation, and found the timing of OptumRx's disqualification motion "somewhat troubling," given that Motley Rice member Joe Rice was appointed to the plaintiffs' executive committee in 2018. The **U.S. Court of Appeals for the Sixth Circuit** refused to take up OptumRx's petition to review Polster's ruling.

OptumRx has also attempted to disqualify Polster and the special master in the opioid multidistrict litigation, David Cohen.

Who Got the Work?

Z Law, a boutique law firm in Timonium, Maryland, is representing plaintiffs in two separate consumer class actions against clothing retailer Urban Outfitters and luxury beauty brand L'Occitane, accusing the companies of sending emails with false or misleading information in the subject lines to Washington consumers. The complaints were filed on Oct. 23 in the **Superior Court of Washington for King County** and maintain that the defendants send emails with subject lines that misrepresent sales and promotional events.

Here's what else is happening:

Video Privacy Violations: Last week, **U.S. District Judge P. Casey Pitts for the Northern District of California** denied a motion to dismiss a proposed privacy class action against **LinkedIn** amidst allegations that the social networking application violated the federal Video Privacy Protection Act (VPPA) by disclosing consumers' personally identifiable information to **Facebook**, owned by parent **Meta Platforms Inc.,** via the **Meta Pixel**, a snippet of code embedded in the back end of websites that businesses can use to track data about user activity and measure the effectiveness of their advertising. The data collected is also shared with Meta for use in its own targeted ad campaigns directed at Facebook users. Pitts concluded that the plaintiff plausibly alleged that LinkedIn is a "videotape service provider" as defined by the VPPA.

Mass Tort Difficulties: Central figures in Philadelphia's mass tort programs discussed challenges for judges in the **Court of Common Pleas** and elsewhere face during a **Philadelphia Bar Association** webinar last week. With over 500 participants in attendance, judges and litigators spoke about the challenges judges overseeing mass torts face, including coordinating discovery rulings and dealing with different legal standards across state lines.

Formula Ruling: An **Illinois federal judge** sided with Abbott Laboratories on Oct. 23 after concluding that the parents of a deceased Louisiana baby failed to show that Abbott's Similac Special Care 24 formula could be considered defectively designed under the state's products liability law. The parents had attempted to connect their child's death from necrotizing enterocolitis, a gastrointestinal condition that primarily affects premature infants, to the allegedly dangerous formula, claiming their son died just days after doctors decided to transition him from human-donor milk to the Similac cow-milk-based formula days before his death.

U.S. District Judge Rebecca R. Pallmeyer for the **Northern District of Illinois** said the plaintiffs failed because their suggested alternative, a supplement added to human-milk-based products produced by Prolacta, could not be feasibly produced on a large scale, mainly due to a lack of donor supply, ethical issues, and high costs.

California Brief

New Social Media Company Documents Revealed as Case Nears Trial

Oct. 28, 2025, 6:35 PM PDT

Several internal documents displayed for the first time in open court Tuesday show social media companies discussing negative links between their platforms and users' mental health.

The new information builds on a trove of internal documents that have already been publicized in news reports and lawsuits, describing the companies' strategies to keep users returning to their platforms. It comes comes as initial trials approach in a massive set of cases claiming tech giants designed their platforms to addict children.

Judge Carolyn B. Kuhl allowed plaintiffs' lawyers to share images of and information from the documents at the Tuesday summary judgment hearing.

YouTube documents presented in court said users who watch videos to quickly boost their moods can become addicted. Beauty filters on photos can worsen body dissatisfaction, according to Meta documents, which is linked to eating disorders and other health problems.

TikTok's design reduces user agency and produce a "slot machine effect," its documents say. And Snap's "streaks" feature tracking the number of days users exchange messages is connected, its documents say, to compulsive use of the app.

Lawyers for the tech companies objected repeatedly to Kuhl allowing the documents before her full ruling on their motion to seal.

The negative effects described in the records are "the exact type of harm that K.G.M. claims to have experienced from these features," said Beasley Allen's Joseph VanZandt said, arguing on behalf of the first plaintiff, whose trial is scheduled to begin in late January.

Content-based

The social media companies are asking Kuhl to resolve the first set of three "bellwether" cases before they go to trial.

They reprise an argument they've made throughout the case's yearslong pendency—this time, armed with discovery—that the plaintiffs' claims are barred because they allege harm based on content posted to the apps, and are unable to show that the way they're designed directly causes users' problems.

Kuhl's decision on whether to resolve the three cases before trial will have an impact on proceedings and settlements for the hundreds of cases set to follow them.

Ashley Simonsen of Covington & Burling LLP said for Meta that the "gravamen" of K.G.M.'s claims about its platform design are either barred by Section 230, the federal shield against lawsuits based on third-party content posted online, or by the First Amendment, as Meta's expressive activity.

"Facebook also has notifications and endless scroll," Simonsen said. "But the plaintiff isn't addicted to Facebook, because she isn't addicted to its content."

Counsel for Snap also argued that the second bellwether plaintiff, R.K.C., should not be able to proceed to trial because user data shows he has only used accounts associated with his phone number for less than four minutes, ever.

R.K.C.'s attorneys disputed the data, saying R.K.C. likely had other accounts.

Expertise

Kuhl throughout the hearing—continuing an inquiry from a September hearing on the admissibility of experts—asked whether she has authority to allow lay people to testify that social media caused their mental health problems. Lawyers for the companies have argued that the plaintiffs aren't presenting sufficient evidence of causation.

Kuhl in September allowed all but one of eleven proposed doctors and researchers to present at trial, but barred them from discussing the companies' intentions.

Simonsen said the medical cause of a physical injury must be discerned by an expert.

"What's the dividing line here?" Kuhl said. "If you are emotionally distressed but you don't go to a medical professional, versus you do go to a medical professional? How do we make a distinction?"

Later in the hearing, Simonsen said to Kuhl that an order finding non-experts can testify on medical causation would be a reversible error.

"I remember when I stood in this court and argued" to a prior judge "that he was about to make reversible error," Kuhl said. "He didn't like it."

The case is Social Media Cases JCCP, Cal. Super. Ct., No. JCCP5255, 10/28/25 .

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California Brief

Apple Gets Win in Smartphone-Monopoly Antitrust Lawsuit Appeal

Oct. 28, 2025, 2:17 PM PDT

Apple Inc. kept its victory in a case alleging the tech giant conspired to monopolize the smartphone operating system market and inflate the price of iPhones, as the Ninth Circuit affirmed a trial court's ruling that the plaintiffs lacked antitrust standing.

"Because Plaintiffs fail to allege that their injury of inflated prices would be redressed by an injunction, without requiring guesswork as to how independent decisionmakers will exercise their judgment, Plaintiffs do not establish Article III standing to seek injunctive relief," the US Court of Appeals for the Ninth Circuit said Tuesday.

The appeals court affirmed a July 2024 ruling that granted Apple's motion to dismiss, saying the iPhone purchaser plaintiffs lacked standing and failed to allege injury in the market where competition was restrained.

Purchasers of iPhones who reside in California or Illinois alleged in January 2024 that Apple engaged in anticompetitive conduct through agreements with browsers that prevented third-party apps from entering the market.

That in turn reduced competition and allegedly raised prices for the Apple iOS operating system—as part of their iPhone purchase—and inflated prices for the iPhone.

The Ninth Circuit said, however, that the alleged injury is in the smartphone and smartphone operating system markets, not in the same market as plaintiffs' alleged restraint of trade.

"Plaintiffs fail to allege antitrust injury, which is required to establish antitrust standing," the court said.

Chief Judge Mary H. Murguia and Judges John B. Owens and Patrick J. Bumatay were on the Ninth Circuit panel.

Apple is represented by Gibson, Dunn & Crutcher LLP. The plaintiffs are represented by Bathaee Dunne LLP.

The case is Bakay v. Apple Inc. , 9th Cir., No. 24-5314, 10/28/25 .

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California Brief

CVS Stuck With Privacy Suit Over Third-Party Online Trackers

Oct. 28, 2025, 11:59 AM PDT

A proposed privacy class action against CVS Pharmacy Inc. will proceed, after a California federal judge allowed most claims stemming from its use of third-party website trackers to go through.

Plaintiff Justin Brewer said that he started to receive targeted advertising for over-the-counter medical products related to serious medical condition after looking up options at CVS. He sought to represent a class of people who had their private information shared by CVS' third-party trackers, according to the US District Court for the Central District of California.

Judge Michelle Williams Court said Brewer didn't need to get more into the specifics of his condition in order to sufficiently allege a claim against CVS. He also said that he looked up private sexual health products at CVS and received ads for similar goods.

The alleged intrusion into the Brewer's personal health information isn't "trivial or de minimus," Court said, and meets the bar for the California Invasion of Privacy Act. The use of his information to create profiles of website visitors could plausibly be "an egregious breach of social norms."

CVS was only successful in shedding an Unfair Competition Law claim after Court ruled that Brewerfailed to sufficiently describe an economic injury, either through diminution in value or benefit-of-the-bargain theories.

The judge also dismissed advertising company Criteo—which works with retailers to collect data for personalized ads—from the case. Brewer failed to sufficiently "allege Criteo created contacts with California" from which the privacy claims arose, or that the marketing company targeted the state, Court said.

Kelley Drye & Warren LLP represents CVS. Sheppard, Mullin, Richter & Hampton LLP represented Criteo. Freed Kanner London & Millen LLC, Milberg Coleman Bryson Phillips Grossman PLLC, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert represent Brewer.

The case is Getz v. CVS Health Corp. , C.D. Cal., No. 2:25-cv-04689, entered 10/27/25 .

California Brief

Edison's Equipment 'Likely' to Be Deemed Cause of LA Fire: CEO

Oct. 28, 2025, 2:28 PM PDT

Edison International Chief Executive Officer **Pedro Pizarro** said it is likely that the company's utility equipment could be found to be associated with the start of the deadly Eaton Fire absent additional evidence.

Edison isn't able to reasonably estimate a range of losses that may be incurred from claims resulting from the wildfire, Pizarro said during the company's third quarter earnings call
Edison confident that it would make a "good faith showing" that its conduct with respect to its transmission facilities in the Eaton Canyon area was "consistent with actions of a reasonable utility," Pizarro said
The state's wildfire fund administrator has confirmed Edison can access the insurance fund to pay claims from the Eaton fire.
Edison doesn't see needing to issue new debt or equity to cover losses from Eaton fire, Chief Financial Officer **Maria Rigatti** said on the call.
EARLIER: Edison International 3Q Operating Revenue Meets Estimates

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Litigation

Manage Newsletters

Texas Returns to Keller Postman to Link Tylenol to Child Autism

Oct. 28, 2025, 2:57 PM PDT

Summary by Bloomberg AI

AI Generated

- Texas is suing Johnson & Johnson and Kenvue, alleging they deceptively marketed Tylenol to pregnant mothers despite knowing exposure to acetaminophen can cause disorders in minors.
- Keller Postman will act as lead outside counsel in the lawsuit, with a payment contract that calls for payment only if Texas wins.
- The lawsuit claims Johnson & Johnson and Kenvue deceptively marketed Tylenol, and Texas says it is not waiting for certainty on the link between Tylenol and autism before taking action.

Texas is turning again to Keller Postman, a firm that helped the state secure a $1.4 billion settlement with Meta, as it tries to link Tylenol with an increased risk of autism.

Keller Postman will act as lead outside counsel in a groundbreaking lawsuit Texas announced Tuesday, Ashley Keller, a senior partner, confirmed in an interview with Bloomberg Law. In addition to previously litigating anti-privacy claims for the state against Big Tech, the firm has also brought similar litigation against the pain reliever alleging harm to children.

Texas in the lawsuit brought in Panola County, a rural community with a population of about 23,000, says Johnson & Johnson, the drug's onetime owner, and Kenvue, which owns it now, deceptively marketed it to pregnant mothers despite knowing exposure to acetaminophen, its active ingredient, can cause disorders in minors.

"We don't have to wait until we're 100% certain before we sound the alarm," Keller said. "That's not how we treat any other medicine and that's not how we should treat Tylenol. Challenge accepted."

The lawsuit comes weeks after President Donald Trump claimed the drug caused autism in children, a link that hasn't been proven.

Keller said the legal services contract calls for payment only if Texas wins, similar to a contingency agreement the firm accepted with the state in litigation against Meta.

Last year, the parent company of Facebook and Instagram agreed to pay Texas $1.4 billion to settle claims that it abused users' facial recognition data, with Keller Postman pocketing $93.36 million in fees. The settlement was and remains today the largest ever by a single state.

The firm with offices in eight US cities also represents Texas on contingency in antitrust claims against Google.

"I take appropriate risk and put skin in the game alongside my client," Keller said in a phone interview Tuesday.

"I don't think it'll be the herculean lift you think it is," Keller said on Texas' path to victory.

$3,780 an Hour

Keller, based in the firm's Miami office, said he believes the hourly contingency rate in the Johnson & Johnson litigation is the same as in the Meta and Google cases.

Those contracts called for top lawyers at the firm to bill $945 an hour, multiplied by four to offset the risk of losing and coming away with nothing. That comes out to $3,780 an hour. The firm's total net recovery in the Meta case was capped at 11% of the state's total net recovery, just as it is in the pending Google litigation.

Texas Attorney General Ken Paxton's (R) office didn't respond to a request for comment Tuesday about its continued use of Keller Postman.

Keller, a former law clerk for Justice Anthony Kennedy on the US Supreme Court, said he met Paxton during an interview to pitch the firm for the Google case. Another partner at the firm, Zina Bash, previously worked as a top aide to Paxton in the attorney general's office. Bash isn't involved in the Tylenol litigation.

"My firm is going to put a lot of resources into this," said Keller, who is joined by three other Keller Postman attorneys in the lawsuit.

In addition to the existing working relationship with the state, Keller Postman is already litigating claims that Tylenol causes autism and attention deficit hyperactivity disorder.

On Nov. 17, the firm is arguing on appeal a federal judge's August 2024 decision not to let them use an expert witness to establish an ADHD-acetaminophen connection. Judge Denise Cote of the US District Court for the Southern District of New York said that "none of the statements" the plaintiffs would rely on from the expert "state that prenatal exposure to acetaminophen causes ADHD in offspring."

"You can see that's what happened in New York," said Katherine Brem, a professor at the University of Houston Law School. "Those cases were simply dismissed once the expert testimony was excluded."

The Texas lawsuit differs from the New York litigation in that it advances state-level claims for deceptive trade practices and for fraudulent transfer, the latter alleging Johnson & Johnson illegally shifted its Tylenol-related liabilities to Kenvue.

The case is Texas v. Johnson & Johnson , Tex. Dist. Ct., No. 2025-348, 10/28/25 .

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News | **Litigation**

Paxton Sues Makers of Tylenol for Alleged Link to Autism, ADHD

The case follows an effort by the federal government to update labeling on the medication.

October 28, 2025 at 03:02 PM By **Sameea Kamal**

Texas Attorney General Ken Paxton. Photo: Diego M. Radzinschi/ALM

Texas Attorney General Ken Paxton filed suit Monday against Johnson & Johnson and Kenvue for deceptive trade practices, alleging the companies marketed Tylenol to pregnant women despite "knowing early exposure could lead to an increased risk of the disorders"—a claim that has been opposed by many medical groups.

The attorney general is also suing Johnson & Johnson for allegedly violating the Texas Uniform Fraudulent Transfer Act, because the company transferred liability to Kenvue, which produces Tylenol. The state has hired Chicago and Washington, D.C.-based attorneys from Keller Postman as part of its litigation team.

The move by Paxton—who is vying for President Donald Trump's endorsement in a race for a U.S. Senate seat—follows an effort by the federal government to update labeling on the medication.

“Big Pharma betrayed America by profiting off of pain and pushing pills regardless of the risks. These corporations lied for decades, knowingly endangering millions to line their pockets,” Paxton wrote in a press release, issued Tuesday. “By holding Big Pharma accountable for poisoning our people, we will help Make America Healthy Again.”

Ashley Keller, a senior partner at Keller Postman, said he was "honored to play a part in General Paxton's commitment to safeguarding Texas's women and children."

"Alongside the incredible attorneys at the [Office of the Attorney General], we are going to pursue an aggressive litigation schedule to hold Kenvue and Johnson and Johnson accountable for concealing the risks they have known about for years," he said in a statement to Texas Lawyer.

Medical experts—including the National Academy of Medicine, the American College of Obstetricians and Gynecologists, and researchers from Columbia and Yale University, said studies have only established a possible correlation—not a causal link.

The case follows a 2023 decision from U.S. District Judge Denise Cote for the Southern District of New York in multidistrict litigation against the makers of Tylenol, excluding experts whose work plaintiffs said alleged a causal link between pregnant women using the pain medicine and autism spectrum disorder and attention-deficit/hyperactivity disorder. That case is being appealed.

In the 2023 opinion, Cote described the studies that formed the plaintiffs’ arguments as unreliable, and based primarily on other studies rather than through controlled experiments: “...The unstructured approach adopted by the plaintiffs’ experts permitted cherry-picking, allowed a results-driven analysis, and obscured the complexities, inconsistencies, and weaknesses in the underlying data,” she wrote.

Kenvue, in a statement responding to Paxton’s petition, said the allegations in the complaint have already been made in the underlying products liability cases.

“We believe there is a deliberate distortion of the facts being driven by the plaintiffs’ bar as this latest filing, which is a common tactic used by plaintiffs’ lawyers in product liability cases, is yet another attempt to revive legal claims that have already been thrown out of federal court,” the company wrote in its statement.

“It is critical that expecting women understand that health professionals—not lawyers—are best positioned to advise them on whether taking acetaminophen is appropriate based on their unique medical conditions, as indicated on our product label for Tylenol.”

News | **Cryptocurrency**

Drake, Adin Ross Sued in Missouri for Promoting Stake.us

"The new thing is to sue the people who have publicists and public relations people who are going to want to put the lawsuit to sleep as fast as possible," said Jordan Shaw, the managing partner at Shaw Lewenz, who regularly litigates in the class action arena and is not involved in the case.

October 28, 2025 at 12:24 PM By **Michael A. Mora**

FILE - In this June 27, 2015 file photo, Canadian singer Drake performs on the main stage at Wireless festival in Finsbury Park, London. Photo: Jonathan Short/Invision via AP

A Missouri man sued rapper Aubrey "Drake" Graham, online streamer Adin Ross and a Cyprus-based gambling company, alleging they ran an illegal online casino disguised as a "social gaming" platform and fueled by cryptocurrency transactions.

In a proposed class action filed in Missouri's Jackson Circuit Court, plaintiff Justin Killham alleged that Sweepsteaks Ltd., the operator of Stake.com, violated Missouri gaming and consumer protection laws by allowing residents to wager real money under the guise of virtual play. While Sweepsteaks has been sued before, this appears to be the first time Graham has been drawn into the litigation.

Jordan Shaw, the managing partner at Shaw Lewenz in Fort Lauderdale, an expert who regularly litigates in the class action arena and is not involved in the case, said it follows a broader litigation trend.

“It’s a cause célèbre right now to name the celebrity,” Shaw said. “The new thing is to sue the people who have publicists and public relations people who are going to want to put the lawsuit to sleep as fast as possible.”

Steven A. Schwartz, a partner at Chimicles Schwartz Kriner & Donaldson-Smith in Haverford, Pennsylvania, who is among the attorneys that represent the plaintiff, declined to comment.

Stakes.com is described in the complaint as the most popular and profitable online casino, generating $4.7 billion in 2024 revenue. The company sponsors an English Premier League soccer club, a Formula One team and several Mixed Martial Arts and Ultimate Fighting Championship fighters.

The plaintiff alleged that because online casino gambling is banned in many U.S. states, including Missouri, the company launched Stake.us to skirt regulatory restrictions. However, Stake cannot openly sell casino chips to U.S. customers because it would “expose Stake.us as an illegal online casino.”

Stake requires players to purchase Gold Coins and redeem Stake Cash using fiat or cryptocurrency, including Bitcoin and Ethereum. As a result, the plaintiffs alleged that Stake Cash functions as real currency by directly linking virtual wagers to actual monetary value, allowing players to seamlessly convert their virtual gambling winnings into real-world money.

The plaintiffs alleged that Stake’s deceptive practices have inflicted harm on the vulnerable public in Missouri by preying on people prone to gambling addiction and younger consumers targeted through Stake’s “free play” marketing. To do so, Stake allegedly floods social media platforms in Missouri and elsewhere with influencer videos and flashy videos that conceal the dangers of gambling.

Graham is named as Stake’s most prominent influencer, allegedly paid millions annually to promote and livestream casino play. But, according to the complaint, Graham and Ross “do so under deeply fraudulent pretenses” and “threaten the welfare of Missouri residents and especially its young people.”

“To wit, when Ross and Drake purport to gamble online with Stake.com, they often do not do so with their own money despite telling the public in Missouri and elsewhere the opposite,” the plaintiffs alleged. “This fact is not shared with the public in Missouri by Stake and/or Ross and/or Drake. These acts are deceptive, fraudulent and unfair and violate Missouri law.”

Shaw, who litigates on both the plaintiff and defense sides in class actions and is not involved in the litigation, observed problems with the complaint, noting that the plaintiff defined the class as only people who have lost money, given his allegations that the conduct and advertising were wrongful.

“At that point, irrespective of whether someone made money, they would be part of the class because the conduct that was wrongful occurred prior to the act of gambling,” Shaw said. “The way that you’d deal with somebody who did not suffer damages at all would be an exclusion to the class definition or dealt with on the class administration formula during or post certification.”

Citigroup Inc

Citi probe did not interview women who complained about executive's conduct

Bank stood by Andy Sieg, a potential successor to CEO Jane Fraser, after investigation by law firm Paul Weiss

Andy Sieg, Citi head of wealth © Noam Galai/Getty Images

Akila Quinio in New York

Published YESTERDAY

A Citigroup investigation into complaints about the conduct of a top executive was completed without interviewing some of the most high-profile employees who left the Wall Street bank after expressing concerns about him, raising questions about its credibility.

The probe, for which Citi commissioned long-standing legal adviser Paul Weiss, centred on accusations of bullying, intimidation and unfair sidelining of employees by the bank's head of wealth Andy Sieg.

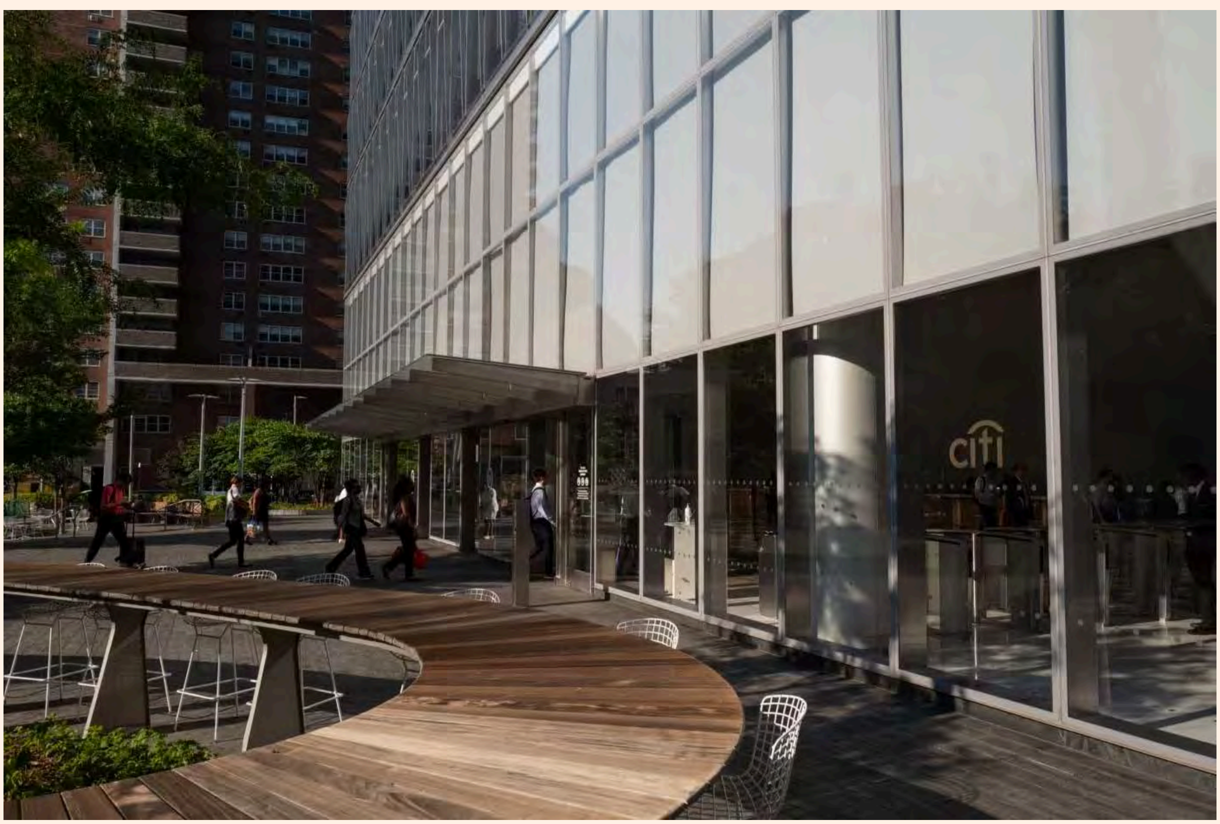
It was prompted by complaints from several female bankers, and an anonymous letter to the bank's board, according to people familiar with the matter.

Citi has stood by Sieg, who is seen as a potential successor to Jane Fraser as chief executive, saying he has transformed its wealth business and boosted returns. The bank declined to give any information about the outcome of the investigation.

However, Paul Weiss did not interview some of the most high-profile women in the division as part of its investigation, including former head of private banking Ida Liu, who announced her departure in January after clashing with Sieg, said five people with knowledge of the matter.

Naz Vahid, a Citi veteran who left last year after nearly four decades, complained to the bank's human resources team about Sieg's behaviour but was not contacted by Paul Weiss during the investigation, the people said.

Linda Friedman, founding and managing partner at Stowell and Friedman, a law firm that defends employees' civil rights, said she was representing another three women — former employees of Citi's wealth division who raised concerns, including about gender discrimination — who had not been contacted by Paul Weiss.



The wealth business remains one of Citi's smallest divisions © Juan Cristobal Cobo/Bloomberg

The decision not to interview the women raises questions about whether Citi and Paul Weiss followed best practice in the probe, which was reported in August to have concluded. Experts say that commissioning a law firm that does other work for the bank could pose a conflict of interest.

Citi declined to comment on "the specifics of this matter" but said it handles "all internal complaints appropriately by conducting unbiased, thorough, and complete investigations", citing its "commitment to a workplace where everyone is treated fairly and has equal opportunity to succeed".

Paul Weiss's work for Citi has included defending the bank in landmark litigation and regulatory investigations, including a probe linked to the sale of mortgage-backed securities in the 2008 financial crisis and a probe by the US Securities and Exchange Commission into alleged securities fraud.

The firm previously defended Banamex, the Mexican retail bank in which Citi recently sold a stake, in anti-money laundering investigations.

Elise Maizel, an assistant professor at Michigan State University specialising in corporate governance and misconduct, said it was better for companies to hire an "outside set of eyes" to investigate senior executives rather than law firms they have "long-standing and lucrative relationships with".

She added: "You want to make sure the law firm doing the investigating is exercising independent judgment."

Friedman criticised the choice of Paul Weiss to carry out the investigation, arguing that its work defending Citi in other cases could raise a question about its independence. "Either you defend or you investigate," she said.

She added that three of her clients who had worked in the wealth division intended to file claims against Citi.

Citi said it had not yet received a claim from Friedman. It said Friedman was conducting "a simultaneous, ongoing campaign to leverage the media to help her case", adding: "Rather than address her remarks and allegations in the press, we instead plan to provide our response through the appropriate legal venue."

The allegations against Sieg risk staining Citi's reputation at a time when Fraser is pushing ahead with an ambitious revamp of the bank, which has lagged peers since the 2008 financial crisis.

Hiring Sieg in September 2023 from Bank of America, where he was president of the Merrill Wealth Management division, to boost the wealth division's profits was a key tenet of her strategy.

Despite recent gains, the wealth business remains one of Citi's smallest divisions and lags behind much larger rivals such as JPMorgan Chase and Bank of America.

Fraser was last week awarded a $25mn retention bonus for her turnaround efforts, with the bank's board praising her "extraordinary leadership", including her "actions to build a strong executive team".

Sieg, Liu and Vahid declined to comment. Paul Weiss did not respond to requests for comment.

This article has been corrected to remove an incorrect statement that Paul Weiss advised Citi on its sale of a stake in its Mexican retail arm

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Due Diligence Mergers & Acquisitions

'Fire K&E': the PE investor revolt against Kirkland

Plus, the Trump administration's $80bn Brookfield deal and the bankruptcy fee bonanza for First Brands begins

© Bloomberg

Published YESTERDAY

One scoop to start: Life sciences group Thermo Fisher is nearing an all-cash takeover of drug trial software maker Clario in a deal that could value the healthcare technology group at approximately $10bn.

Another scoop: Phoenix Group is in talks to raise over £1bn from private capital firms as it seeks to expand its pension-risk transfer business and win a bigger share of an increasingly competitive and lucrative part of the insurance market.

And an upcoming event: Our friends at FT Alphaville are throwing a pub quiz in New York on November 11. Sign up here before it's too late for your chance to prove you're the biggest finance nerd this side of the Atlantic.

In today's newsletter:

- PE investors want Kirkland gone
- The White House's nuclear windfall
- The (mega) fees at First Brands begin

Private equity investors' magic wish

Tensions between private equity firms and their investors are already running high. We would think the last thing these buyout barons need is their lawyers making matters worse.

Yesterday morning, DD's Alexandra Heal revealed that **Kirkland & Ellis** has hauled in its lawyers for training on their communication style, as it tries to tackle a reputation for uncooperative behaviour in negotiations between its private equity clients and their investors.

The efforts followed frustration among investors in private capital funds, known as limited partners, where they vented at an industry event last year.

Organisers of the event in New York asked LPs to name one thing they would like private equity groups to do if they could wave a "magic wand". Displayed prominently in a word cloud of responses was an inflammatory line: "Fire K&E".

Oof. Gripes among investors have centred on two main issues, according to limited partners and former Kirkland lawyers.

First, Kirkland's refusal to negotiate on even minor fund terms. Second, the firm's lawyers gave little explanation as to why they were rejecting changes suggested by the other side, often with the stock phrase: "We respectfully decline."

As DD's Sujeet Indap writes for Lex, it's a sign of the pendulum of power swinging from general partners, who only a few years ago held all the cards, to investors.

The relative drought in mergers and IPOs has made it hard for the Masters of the Universe to realise investment returns, he writes. That's made their customers increasingly choosy about new ones.

The Tuesday scoop struck a nerve within the legal and private equity communities, with many top advisers and investors getting in touch with DD with knowing nods of their prior battles with Kirkland.

The Chicago-based law firm has transformed in just a few decades from a mid-tier player to a global giant that is the envy of the legal industry.

It did so by riding the wave of the booming $13tn private capital industry, becoming the go-to legal firm for many of the fastest growing players.

The beachhead for its dominance has in part come from the relatively rote work of helping private capital giants structure and raise their funds, an area that often can seal higher-stakes deal work. So it's no surprise Kirkland has become known for its unbending negotiating posture on fundraising minutiae.

But with the PE industry's highest flyers, including many Kirkland clients, chastened by a brutal marketplace, the law firm is trying a softer side.

Howard Lutnick gets a cut of Brookfield's crown jewel

It was a private equity masterstroke that now involves a growing cast of odd bedfellows reaching the highest levels of government in North America.

In 2018, **Brookfield** acquired nuclear services group **Westinghouse** for $4.6bn in a bankruptcy auction that drew interest from its rivals including **Blackstone** and **Apollo**.

The deal was also coveted at the time by one of US President **Donald Trump**'s closest confidantes, **Tom Barrack**, in what would prove a quixotic but highly controversial takeover attempt by the property mogul.

Brookfield has made billions of dollars from its canny deal to buy Westinghouse at the nadir in sentiment on the future of nuclear power.

In 2023, the Brookfield buyout unit that acquired Westinghouse sold a majority 51 per cent stake to another arm of Brookfield and the remaining 49 per cent stake to Canadian uranium miner **Cameco**.

While the deal minted a $4.5bn profit for Brookfield's PE unit, Westinghouse's current owners may make more.

The Trump administration unveiled on Tuesday a massive boost for the group: it will buy $80bn of nuclear services from Westinghouse, a deal spurred by the president's executive order in May to begin constructing 10 new US nuclear plants by 2030.

But there's another catch.

Once Brookfield and Cameco receive $17.5bn in distributions, the US government will get a 20 per cent cut of Westinghouse's profits. And if the company's value reaches $30bn, the White House will have the right to force Westinghouse to go public and could own up to a fifth of it.

The deal was brokered by Trump's pugilistic trade representative **Howard Lutnick**, who is funding the government's Westinghouse purchases via a trade deal with Japan. The Asian ally will invest $550bn into mostly US industrial and mining assets, led by an up to $100bn investment into Westinghouse.

While Brookfield chief **Bruce Flatt** was on hand with Lutnick and Trump in Japan on Tuesday to unveil the deal, one architect of Brookfield's windfall was elsewhere.

Mark Carney, the former Brookfield executive who helped lead its 2023 deal with Cameco, left the private capital giant earlier this year to successfully run for prime minister of Canada.

Carney's now a long way from Lutnick-Trump deals.

This week, he was in Malaysia with other world leaders blasting Trump's trade wars after the White House (furious over a TV ad) broke off trade talks with Canada and dialled up tariffs.

'The attorneys and advisers always win'

Earlier this year, **Bank of America** clocked in a $130mn mergers and acquisitions fee for advising **Norfolk Southern** on its $72bn sale to **Union Pacific**, a record M&A banker payout.

Amid the early days of the meltdown at car parts supplier **First Brands**, one Wall Street adviser contemplated a chance to beat that record.

DD's Sujeet Indap and the FT's Jill Shah looked into the retention applications that First Brands advisers have just filed with the federal bankruptcy court to see what the circus is going to cost the bankruptcy estate.

The findings shouldn't be a surprise for anyone familiar with the hugely expensive process of US bankruptcy court: it's going to cost a whole lot.

The debtors' law firm, **Weil, Gotshal & Manges** will have its top partners charge nearly $2,575 an hour. **Alvarez & Marsal**, the turnaround consultant, is also charging by the hour (max rate of $1,575 an hour) but also is entitled to a $10mn success fee at the end of the case.

But the most interesting fee arrangement came from the investment bank **Lazard**, which instead of hourly rates, wants success fees for various deals that may be struck.

Most notably, Lazard will get 75 basis points in an M&A sale up to an $11bn transaction and then a 2.25 per cent kicker on every dollar after that.

But they're drawing the line somewhere. The bank's fees will have a total cap of . . . $150mn.

Some back-of-the-napkin maths shows a $14bn deal would be enough to hit that cap — a transaction that's one-fifth the size of the one between Norfolk Southern and Union Pacific, but pays out roughly 15 per cent more.

People close to the debtor told the FT that those fee terms, while still operative, were struck before all the biggest problems at First Brands were known.

In fact, an M&A sale may end up in the $4bn to $5bn range, resulting in a deal fee of less than $40mn (don't worry, Lazard is due millions in other fees for financings and retainers).

Exploding fees is a concern in Chapter 11 cases and hedge funds and asset managers have crunched the numbers to show that adviser costs are meaningfully eating into their recoveries.

But the reality remains: going broke in corporate America is prohibitively expensive.

Job moves

- **JPMorgan Chase** has named **Jay Horine** as head of global banking's security and resilience initiative. He is currently co-head of global investment banking, leaving **Dorothee Blessing** as the sole head.

https://www.wsj.com/business/c-suite/fiserv-erases-30-billion-in-market-value-after-new-ceo-pulls-guidance-63c8ba9f

BUSINESS | C-SUITE

Fiserv Erases $30 Billion in Market Value After New CEO Pulls Guidance

Shares tumble after payments company, formerly led by Trump appointee Frank Bisignano, says outlook is unachievable

By Dean Seal Follow

Oct. 29, 2025 12:41 pm ET

Commissioner of the Social Security Administration Frank Bisignano at the White House in August.

MANDEL NGAN/AFP/GETTY IMAGES

Quick Summary

- Fiserv's new leaders stated the company wouldn't meet prior financial forecasts, leading to a stock drop of over 40%.

View more

The new leaders of Fiserv FI **-40.96%** ▼ gave investors a harsh reality check: The financial technology company would never be able to hit financial forecasts set by its former boss Frank Bisignano before he left for the Trump administration.

The disclosure sent the company's stock tumbling more than 40%, erasing nearly $30 billion in market value. Fiserv slashed its financial goals for the year and reported third-quarter results below Wall Street's expectations. It also said its chief financial officer was leaving.

Though largely unknown to consumers, Fiserv provides much of the financial technology that connects Wall Street to Main Street. It processes payments and handles transactions at Walmart registers, gas station pumps and even apps like Lyft.

Chief Executive Mike Lyons, who joined Fiserv this year from PNC, told analysts on Wednesday that as the company analyzed its business, many of the assumptions and projections set by prior leaders were too rosy.

Lyons took the helm in May from Bisignano, who led Fiserv for five years and was tapped to lead the Social Security Administration. Earlier this month, Bisignano was additionally named CEO of the Internal Revenue Service.

"It became clear that there were incremental assumptions embedded in our guidance, including outsized business volume growth, record sales activity and broad-based productivity improvements, all of which would have been objectively difficult to achieve even with the right investment and strong execution," Lyons said on a conference call.

A representative for Bisignano couldn't immediately be reached for comment.

Fiserv processes credit- and debit-card transactions for banks and merchants, and provides a range of other services to firms in the business of moving money. The 38,000-person company has faced competition from upstarts such as Square.

Write to Dean Seal at dean.seal@wsj.com

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Tesla Pushes Top Delaware Court to Rein in Big Lawyer Paydays

Oct. 29, 2025, 8:05 AM PDT

A $176 million legal fee award for the shareholder attorneys who challenged four years of pay for Tesla Inc.'s board should be knocked down to roughly $70 million, the electric vehicle-maker argued Wednesday before the Delaware Supreme Court.

It's the second time this month that Tesla has argued that the state's elite trial-level business court ordered a windfall for attorneys representing shareholders challenging compensation decisions, including the record-setting pay package it offered to CEO Elon Musk.

The case is In re Tesla, Inc. Dir. Comp. S'holder Litig., Del., No. 53,2025, oral arguments 10/29/25 .

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Elon Musk's $1 trillion pay deal draws ire of labor unions, others as shareholder vote nears

reuters.com/sustainability/boards-policy-regulation/elon-musks-1-trillion-pay-deal-draws-ire-labor-unions-others-shareholder-vote-2025-10-29

Ross Kerber October 29, 2025

Tesla CEO Elon Musk attends a memorial service for slain conservative commentator Charlie Kirk at State Farm Stadium, in Glendale, Arizona, U.S., September 21, 2025. REUTERS/Daniel Cole/File Photo Purchase Licensing Rights, opens new tab

- Opposition from unions, Democratic leaders against Musk's pay package
- Pension plans in Republican-led states support Musk payout
- Tesla retail investors could be a factor

Oct 29 (Reuters) - Tesla (TSLA.O), opens new tab critics hope to block the stratospheric compensation proposed for CEO Elon Musk but face an uphill fight. Investors in the electric vehicle maker will decide on November 6 whether to approve the pay package that is potentially worth $1 trillion - likely the largest-ever CEO compensation agreement. Tesla's board is pushing for shareholders to approve the plan, with Chair Robyn Denholm warning on Monday that Musk could leave if the deal is rejected.

Meanwhile, longtime skeptics of the company's corporate governance, including Democratic U.S. state leaders and union officials, have launched a campaign to vote down the offer. Several have tried and failed to block earlier record payouts to Musk, including his $56 billion compensation plan for 2018 that investors reapproved last year amid legal challenges that remain.
The critics hope the results this time will be different, and also aim to reject all three Tesla directors who are up for reelection.

"The idea that another massive equity award will somehow refocus a man who is distracted is both illogical and contrary to the evidence," Democratic New York State Comptroller Thomas DiNapoli, a frequent doubter of Musk, said on Monday. DiNapoli controls the vote of 3.3 million shares in Tesla through the state's pension retirement system, or 0.1% of the company. "This is not pay for performance. It is pay for unchecked power," he said.

He and others also worry that the deal would consolidate Musk's control of the automaker and revive what New York City Comptroller Brad Lander called "the era of robber barons." Lander spoke with DiNapoli on a webinar about Tesla's shareholder meeting on Monday. New York City's retirement plans held around 5 million Tesla shares as of April.

"Tesla is basically asking shareholders to relinquish having a meaningful voice in the company," said Tejal Patel, executive director of the union-affiliated SOC Investment Group. It advises union pension plans that it said together hold fewer than 1% of the EV maker.

Although top proxy advisers recommend voting against the pay, even Tesla skeptics say they face a tough battle as U.S. Republican politicians shift power from investors to corporate leaders.
Ann Lipton, a University of Colorado law professor, said that many investors also will want to keep Musk happy. "Asset managers that believe they may have opportunities to invest in his other ventures – like xAI or SpaceX – may also want to stay in his good graces," she said.

A Tesla representative declined to comment for this article.

POLITICAL DIVIDE OVER MUSK PAY ISSUE

Two of Tesla's three largest outside investors, BlackRock (BLK.N), opens new tab and State Street (STT.N), opens new tab, both declined to comment through their press teams. A Vanguard representative did not respond to questions. Musk's new pay plan, Item 4 on the ballot, must win a majority of shares entitled to vote on the proposal, including his own, in order to be approved.
A relatively high percentage of Tesla shares are held by retail investors, who tend to back management but often do not vote. Musk has the backing of legions of fans on his social media platform X, like Alexandra Merz, a self-described "Fangirl of Elon" and "Fierce Tesla retail shareholder advocate" who posts as @TeslaBoomerMama to her 209,000 followers.
Merz said via text message that she supports Musk's pay package, which she said "challenges Elon to grow Tesla's capitalization by nearly $7.5 trillion and achieve ambitious operational milestones" such as delivering robotaxis and AI robots, "ensuring that his compensation is tied to transformative value creation."

To some extent, arguments about Musk's pay have divided along political lines. Democrats DiNapoli, Lander, Massachusetts Treasurer Deb Goldberg and others have come out swinging against the compensation while pension plans in Florida and Texas, which are run by Republicans, have said they will support the plan.

A spokesperson for the Texas Teacher Retirement System, the largest pension fund in the state, declined to comment about the support for Musk's pay it recently disclosed.

Asked about its vote, an official for the Florida State Board of Administration cited a recent securities filing that states Musk's new award aligns pay with "ambitious, measurable milestones that benefit all shareowners" and contains governance safeguards.

Interested in this story? You can read more of our corporate governance coverage and related topics in the Reuters Sustainable Finance Newsletter, which you can sign up for here.
Reporting by Ross Kerber in Boston; Editing by Dawn Kopecki and Matthew Lewis

Ross Kerber is U.S. Sustainable Business Correspondent for Reuters News, a beat he created to cover investors' growing concern for environmental, social and governance (ESG) issues, and the response from executives and policymakers. Ross joined Reuters in 2009 after a decade at The Boston Globe and has written on topics including proxy voting by the largest asset managers, the corporate response to social movements like Black Lives Matter, and the backlash to ESG efforts by conservatives. He writes the weekly Reuters Sustainable Finance Newsletter.

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Major investors like BlackRock have stakes in xAI.

Jon Cooper @joncooper-us.bsky.social · 4h
Elon Musk's new competitor to Wikipedia says apartheid wasn't that bad, cites the Kremlin, and gives legitimacy to "white-genocide theory."

Musk is constructing a parallel universe in his own image.

What Elon Musk's Version of Wikipedia Thinks About Hitler, Putin, and Apartheid
The next step in Musk's propaganda machine

www.theatlantic.com

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13 likes **1** save

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BlackRock should be banned from possessing any government contracts, receiving any special gov benefits or having any account connected to government money after this.

It's too tied to actual fraud and white supremacists to ever be trusted.

Tesla's autopilot isn't driving into the future, it's crashing through the courts

DJ dailyjournal.com/articles/388287-tesla-s-autopilot-isn-t-driving-into-the-future-it-s-crashing-through-the-courts

Shutterstock

A $329 million verdict should ordinarily be enough to change corporate behavior. But when the defendant in the lawsuit is Tesla, all bets may be off. That award was handed down nearly three months ago in the case of *Benavides v. Tesla* (case number 1:21-cv-21940, U.S. Dist.Ct. Southern District of Florida, Aug. 1, 2025), by a Miami jury that found Tesla's autopilot technology a contributing factor in the death of a third party in a 2019 Florida Keys crash.

It was not the first time Tesla's self-driving technology was implicated in a serious accident, but it was the first successful third-party wrongful death suit against the company. Tesla had settled other lawsuits, and its autopilot had been cleared of liability in prior California cases.

Such a legal track record -- and considerable hubris -- may have emboldened Tesla to reject a $60 million pretrial settlement demand. The company has long been in the crosshairs of litigants, whose claims have sought damages for death and serious personal injury. Although Tesla's competitors have also faced lawsuits, these have generally involved minor injuries, loss of property, or extreme inconvenience; none seem to have engendered the same level of vitriol as those brought against Tesla.

Despite the gravity of the claims asserted against it, Tesla has continued to aggressively market its autopilot capabilities. It now faces a class-action lawsuit based on claims that it has been misleading customers about self-driving capabilities for years. With this new verdict and the class-action lawsuit looming, we should expect to see a host of other autopilot claims being asserted against the company.

Safety at other companies

Is Tesla just the tip of the self-driving iceberg, or is it an outlier? Tesla's competitors have generally stayed under the radar, but now may be the time to review the safety records of all self-driving vehicles.

The industry, which includes Alphabet's Waymo and General Motors, came under serious regulatory scrutiny in the aftermath of a 2023 incident in which a pedestrian was seriously injured by a GM Cruise vehicle. Following that incident, GM cut Cruise's funding and folded it into its broader operations. Waymo has more than 1,500 vehicles in San Francisco, Los Angeles, Phoenix and Austin, Texas and provides more than 250,000 fully autonomous paid rides each week.

In July, the National Highway Traffic Safety Administration (NHTSA) closed an investigation into Waymo, citing two recalls issued by the company - one in 2024 in response to a collision with a utility pole and another in May to update software in more than 1,200 vehicles to detect and avoid roadway barriers such as chains, gates and other obstacles.

Safety is prominently featured on the Waymo website, with multiple sections devoted to the subject. The company makes it a clear priority: "Our progress is guided by Waymo's Safety Framework -- a set of methodologies that detail how we approach safety on a daily basis. To make sure this framework fulfills its function credibly, it is meticulously documented and pressure-tested by our Safety Case." The Safety Case website documents Waymo's three-levels of safety analysis -- hardware, behavioral and operations -- and shares a white paper on Waymo's Public Road Safety Performance Data.

Dozens of safety publications cited by Waymo provide "an unprecedented level of transparency within the autonomous driving industry," and a Swiss study compares Waymo liability claims to human driver baselines. Based on 500,000 claims over 200 billion miles, "the Waymo Driver demonstrated better safety performance when compared to human-driven vehicles, with an 88% reduction in property damage claims and 92% reduction in bodily injury claims." The Waymo vehicle was reportedly involved in nine property damage claims and two bodily injury claims over the course of 25.3 million miles -- compared to 78 property damage and 26 bodily injury claims expected with human drivers over the same distance.

Safety at Tesla

A visit to the Tesla website offers a sharp contrast to Waymo's site. The word "safety" appears nowhere on Tesla's home page or in the section dedicated to "Full Self-Driving (Supervised)." Visitors are prompted to view and purchase vehicles on every page; they cannot initiate searches for or otherwise uncover vehicle safety information.

Tesla "full self-drive" vehicles are touted as follows: "Tesla uses billions of miles of anonymous real-world driving data to train Full Self-Driving (Supervised) to take care of the most stressful parts of daily driving while helping make the roads safer for you and others. When enabled, your vehicle will drive you almost anywhere with your active supervision, requiring minimal intervention."

Other than a four-word caution -- "with your active supervision" -- and the parenthetical "Supervised," nothing would alert Tesla buyers to the potential for catastrophic harm if they are not fully engaged in the navigation process.

In fact, Tesla has claimed that all vehicles built since 2016 have hardware capable of achieving "full self-driving," and it has sold a software package called "Full Self-Driving" (FSD) that it claims would deliver unsupervised level 4-5 self-driving. Level 4 vehicles are capable of driving themselves within a defined "geo-fenced" area under certain conditions; Level 5 vehicles can operate anywhere under any conditions without human intervention or a steering wheel.

In April 2024, the NHTSA issued a report based on a three-year investigation into 956 crashes in which Tesla Autopilot was thought to have been in use. Tesla's Autopilot design, according to the report, has "led to foreseeable misuse and avoidable crashes".

Lawsuits against Tesla

At least a dozen lawsuits are now in play against Tesla, and more are sure to be filed in the aftermath of the Florida judgment. Another wrongful death case, *Maldonado v. Tesla*, involved a Tesla vehicle on Autopilot that hit a pickup truck on a California highway, killing a 15-year-old passenger. Unlike in Florida and other cases, the Autopilot was being used on an approved thoroughfare. That case was settled Sept. 17, just a few weeks after the Florida verdict.

A shareholder lawsuit was filed Aug. 5 against Tesla and its founder Elon Musk. The plaintiffs accused them of securities fraud for concealing the significant risk that self-driving vehicles, including the Tesla Robotaxi, were dangerous. The proposed class action was filed after the first public test of Tesla robotaxis in late June in Austin, Texas. The test showed vehicles speeding, braking suddenly, driving over a curb, entering the wrong lane and dropping off passengers in the middle of multilane roads.

On Aug. 19, a judge ruled in favor of allowing a class-action lawsuit against Tesla over claims that the company had been misleading customers about its self-driving capabilities for years. U.S. District Judge Rita Lin said the claim that Tesla lacked hardware to achieve the promised level of autonomy and its inability to "demonstrate a long-distance autonomous drive with any of its vehicles" justified group lawsuits by two sets of drivers who bought its FSD package. Judge Lin observed, "While these channels alone may not ordinarily be enough to establish class-wide exposure for a traditional car manufacturer, Tesla's distinctive advertising strategy warrants a departure from the typical approach."

In the *Benavides* trial, the plaintiffs alleged that Tesla's marketing and deployment of Autopilot contributed to misuse of a system that failed to perform as advertised. Tesla, they argued, "set the stage" for the crash by overhyping the autopilot software's capabilities despite knowing its vulnerabilities. Evidence from the case will soon be made public, providing fuel for other cases involving Tesla's self-driving systems.

The California Department of Motor Vehicles (DMV) has also filed a case against Tesla, accusing it of wrongly calling its cars "fully self-driving" when it is only on the second of a five-point scale of self-driving and its cars require full driver attention. The DMV has asked for a one-month ban on Teslas being driven in California, Tesla's largest U.S. market.According to the DMV's complaint, Tesla has exaggerated the capability of its autopilot feature, downplaying the amount of active driver supervision required. A verdict is expected this month, barring a settlement with the state.

Safety regulation

The NHTSA has conducted intensive investigations of the three major players in the self-driving space. In September 2024, it ordered GM to pay a $1.5 million fine based on the company's failure to disclose details of the 2023 crash that seriously injured a pedestrian. Cruise agreed to submit a corrective action plan on how it would improve compliance and reporting of incidents, and it became subject to enhanced reporting requirements for at least two years. The Waymo investigation was closed by the agency after the company issued two major recalls to address safety issues.

The NHTSA Tesla investigation is arguably the most damning of the three, but there does not appear to be an action plan or any further requirements for Tesla. However, the *Benavides* case identified several clear areas for improvement. In addition to misleading claims and potentially false advertising, the case looked at the design and capabilities of the cars.

Unlike Waymo's vehicles, which use three sensors, Tesla vehicles rely only on cameras; these are not coupled with light detection and ranging tools. Experts, including those who testified in the Florida trial, say three sensors working together can better detect other cars and people, greatly reducing safety-related issues.

It should be a simple matter to add these sensors, but Tesla is unlikely to do so unless forced to do so. Just as it has resisted calls to add handles or other ways to open doors when there is a power outage -- leaving occupants to die in burning vehicles -- Tesla appears entrenched in the belief that nothing needs changing. And with a government currently focused on belt-tightening and reduced regulation, there is little chance we will see significant movement as a result of government oversight.

Conclusion

But a future of enormous plaintiff verdicts -- coupled with more state action to shut Tesla down -- could be the straw that finally breaks the company's back. Even with a purported trillion-dollar payout, Musk will not welcome the idea of writing an unending series of enormous checks.

With the Florida verdict on the books, even pending appeal of the judgment, the floodgates are now open to lawsuits against Tesla, and potentially other manufacturers of self-driving vehicles. Unlike Waymo and Cruise, which operate in the rideshare space, Tesla aggressively courts a broad spectrum of drivers with dreams of futuristic transportation. How many will end up paying the ultimate price for this dream?

#388287

Submit your own column for publication to Diana Bosetti

Securities

Stablecoin Hype Fuels Crypto’s Demands for Accounting Clarity

Oct. 28, 2025, 12:44 PM PDT

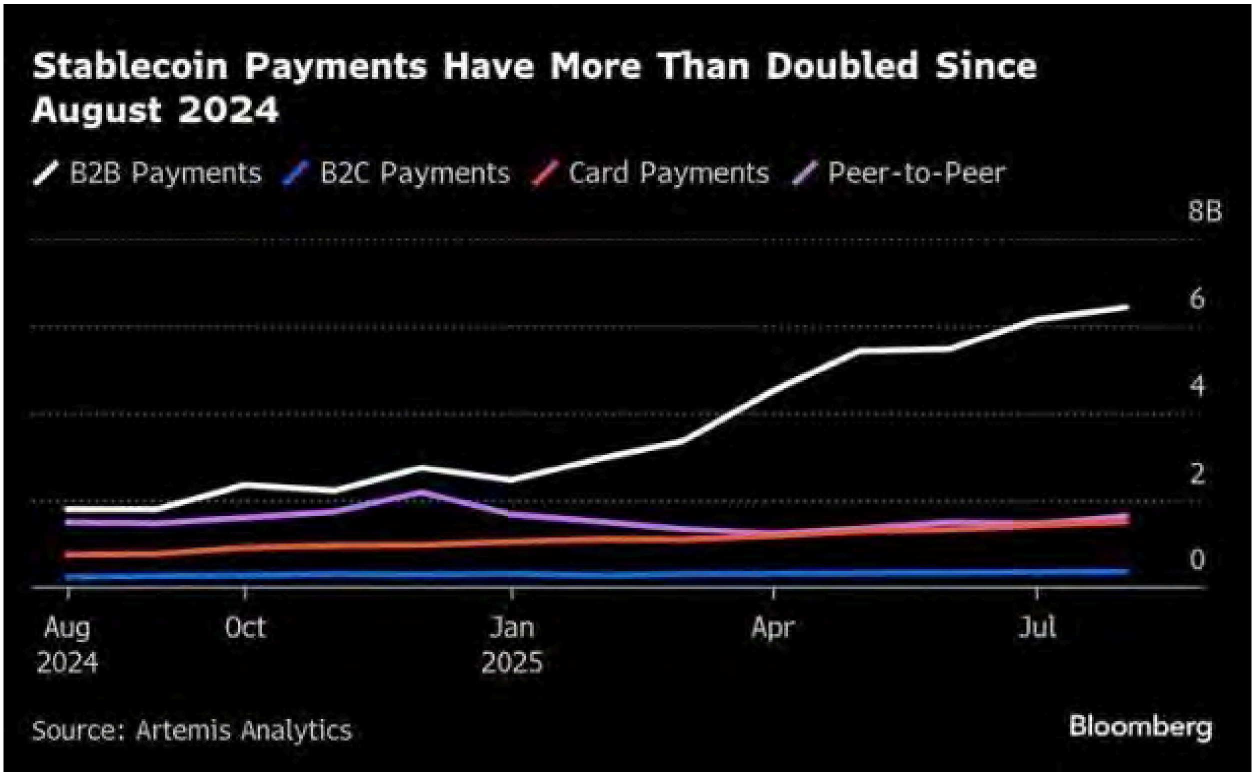
Stablecoin issuer Circle Internet Group Inc. and others in the cryptocurrency industry are pushing for clarity on whether increasingly popular digital tokens with values pegged to underlying assets can be treated similarly to cash in corporate financial reports.

US accounting rulewriters will meet Wednesday to consider adding a project addressing that hot-button question to their technical agenda, as well as discuss broader crypto-related feedback. The Financial Accounting Standards Board’s first crypto rules, published in 2023, focus more narrowly on other digital currencies like Bitcoin and Ether that meet the definition of intangible assets.

The accounting approach is becoming more relevant as stablecoins are poised to see wider adoption. Citigroup Inc., for example, is tapping Coinbase Global Inc. to explore stablecoin payments for clients. Meanwhile, digital payments network Zelle will leverage stablecoins for cross-border money movement.

Stablecoins could get a further boost from the GENIUS Act, which President Donald Trump signed into law in July, creating a new regulatory framework for certain coins designed to maintain a steady value. More than $10 billion was moved through stablecoins for goods, services, and transfers in August—up from $6 billion in February.

“Right now, the No. 1 issue on everybody’s mind is ‘Can stablecoins be classified as cash equivalents?’” Indiana University finance professor Vivian Fang said.



Companies include cash and certain short-term investments like US Treasury bills in a line item on their balance sheets. This helps investors assess businesses' most liquid assets.

Stablecoins are a type of cryptocurrency designed to maintain a stable value relative to a reference asset, such as the US dollar.

Circle's popular USDC token is pegged to the US dollar. Some users of its stablecoins have expressed concern over "heightened accounting risk" as long as no specific classification guidance exists, the company told FASB in a comment letter.

The board "should move with some sense of urgency to address this in the very near term," Corey Then, vice president and deputy general counsel of global policy at Circle, told Bloomberg Tax.

Crypto exchange Kraken and The Digital Chamber, a trade association, also have urged the accounting board to clarify financial reporting for stablecoins.

Growing Use

Stablecoins are set to be adopted significantly faster than other crypto assets because their use cases are closer to those for traditional business activities, according to Aaron Jacob, vice president of enterprise accounting solutions at digital asset compliance firm Taxbit.

"When I send stablecoin from a wallet address that is controlled by my US entity over to a wallet address that is controlled by my Asia or South America or Europe or wherever-based entity, that transfer of funds is instantaneous—and it's very low cost," Jacob said.

Total stablecoin transfer volume hit $27.6 trillion in 2024, surpassing the combined transaction volume of Visa and Mastercard, according to CEX.IO.

Stablecoins "aren't a monolith," however, said Scott Muir, partner in KPMG's national office.

The category encompasses a variety of tokens, including ones that keep values stable by managing supply through an algorithm.

The GENIUS Act applies to certain stablecoins designed to be used as a means of payment or settlement. The issuers of such coins are obligated to keep them at a stable value relative to a fixed monetary value.

While it's challenging to determine what will stick in the fast-evolving crypto landscape, the GENIUS Act adds more certainty, said Jay Schulman, principal and national leader of RSM US LLP's blockchain and digital assets practice.

"If you go back to this ultimate question, 'is this thing going to be around for nine years or nine months?' I think the GENIUS Act squarely puts it into the nine years bucket," Schulman said.

Cash Equivalents

Most stablecoins don't meet the scope of FASB's first-ever crypto guidance, accounting professionals have told the board in public feedback.

The rules address digital assets like Bitcoin or Ether, requiring companies that hold them to record them at fair value. The guidance applies to coins that meet the definition of intangible assets, a category that also includes patents and trademarks.

FASB added a research project in August looking into which digital assets might qualify as cash equivalents—investments that are readily convertible to known amounts of cash and pose limited risk of changes in value.

The definition should be expanded to allow certain payment stablecoins to qualify, Circle's letter said. In a blockchain-based financial system, these coins allow "price stability and near-instant settlement and liquidity," it said.

Securities and Exchange Commission staff's stop-gap guidance has said that certain stablecoins could be treated like cash.

Some coins, including USDC, have temporarily lost their pegs, sparking concerns about stability.

The GENIUS Act aims to provide consumer safeguards. It "enshrines Circle's long-standing practices" for issuing USDC, including strict one-to-one reserve mandates in assets, monthly public reserve reporting attested to by firms, and bankruptcy protection for token holders, Circle's Then said in an emailed statement.

Future Priorities

The American Institute of Certified Public Accountants' financial reporting executive committee and its digital assets working group are among those that have called on FASB to expand crypto guidance, including by broadening the scope of the 2023 rules.

"There are little tweaks or more guidance that might be necessary for certain areas that have emerged since," said Rahul Gupta, audit services partner at Grant Thornton LLP and partner at Grant Thornton Advisors LLC. Gupta is a member of the AICPA's digital assets working group.

The AICPA groups also suggested FASB address derecognition, or the removal of crypto intangible assets from the balance sheet.

Digital assets were among 72 issues raised by the public during the board's agenda outreach project, FASB spokesperson Christine Klimek said in an emailed statement.

Ultimately, accounting standard-setters should try to develop crypto guidance that will withstand the test of time, Taxbit's Jacob said.

"You don't want to write a rule today that doesn't make sense five years from now," he said.

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Building Materials Co. Misled Investors About Sales, Suit Says

By **Sydney Price**

Law360 (October 28, 2025, 4:53 PM EDT) -- Fiber cement products manufacturer James Hardie Industries PLC has been hit with a proposed investor class action accusing it of making misleading claims about its ability to strengthen its North American segment while a significant portion of its customers were destocking inventory.

According to the complaint filed by the Laborers' District Council and Contractors' Pension Fund of Ohio Friday, James Hardie closed its $8.4 billion merger with building products manufacturer the Azek Co. Inc. in July. Investors expected, due to the companies' representations, that the merger would significantly elevate James Hardie's brand recognition and marketing in North America, but James Hardie failed to disclose for several months that overstocking was the primary driver of its growth, and that its distributors held onto excessive inventory.

The suit's class period begins May 20, 2025, the day James Hardie told investors that its full-year business results "demonstrate the inherent strength of our unique value proposition," and that it expected to grow revenue double-digits in its North American fiber cement segment.

However, on Aug. 19, several weeks after the merger had closed, the "truth" about James Hardie's misrepresentations was revealed, the suit alleges. James Hardie reported that day its North American fiber cement sales declined by 12% year-over-year, quarterly profits declined by 29%, and the company now projected lower-than-expected fiscal 2026 earnings, according to the complaint.

The company attributed the results to "expected normalization of channel inventories" as uncertainty built throughout April and early May, the complaint states. James Hardie also said the "normalization" would continue due to the slower seasonality of new construction into the back half of the calendar year, the suit says.

Following the announcements, the price of James Hardie's shares fell $9.79 each, or about 35%, to close at $18.64 on Aug. 20, according to the complaint.

In addition to James Hardie, its CEO Aaron Erter and Chief Financial Officer Rachel Wilson are individual defendants in the suit.

James Hardie and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and are not protected under the safe harbor provisions of securities laws.

"The decline in James Hardie's stock price is directly attributable to the announcement of inventory overstocking in the North America segment, and the associated sales decline and disappointing 1Q 2026 results," the suit states.

Representatives of the parties did not immediately respond to requests for comment Tuesday.

The Laborers' District Council and Contractors' Pension Fund of Ohio is represented by Katrina Carroll of Carroll Shamberg LLC and Jeffrey C. Block, Jacob A. Walker and Sarah E. Delaney of Block & Leviton LLP.

Counsel information for James Hardie and the individual defendants was not immediately available Tuesday.

The case is Laborers' District Council and Contractors' Pension Fund of Ohio v. James Hardie Industries PLC, case number 1:25-cv-13018, in the U.S. District Court for the Northern District of Illinois.

--Editing by Jay Jackson Jr.

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Ex-Philips CEO Can't Undo Finding He Misled Shareholders

By **Emilie Ruscoe**

Law360 (October 28, 2025, 4:47 PM EDT) -- A Brooklyn federal judge will not reverse a finding that a former CEO of health technology company Koninklijke Philips NV misled shareholders about the safety and compliance of a subsidiary's sleep and respiratory care products.

In an unpublished opinion Monday, U.S. District Judge Edward R. Korman held that Philips and its former CEO, François "Frans" van Houten, had not met the strict standards for granting a motion for reconsideration of part of Judge Korman's September 2024 ruling on the company's bid to dismiss a proposed shareholder class action.

Philips and Van Houten had asked the judge to reconsider his finding that Van Houten must face liability for acting with reckless disregard of the truth regarding customer reports of polyurethane foam breaking down in certain Philips respiratory devices such as CPAP, or continuous positive airway pressure, machines.

In their reconsideration bid, the defendants argued, among other things, that the court had "overlooked" certain factual matters in finding that Van Houten had acted with scienter.

For example, the company asserted that certain statements Van Houten made about how the company became aware of the foam issues did not pinpoint when, how, or from whom Van Houten himself had learned about the foam problem.

Judge Korman said Monday that those specifics did not matter because it was "implausible, based on the facts alleged, that knowledge of such a severe product defect was kept from Van Houten for years, despite his attendance at a multitude of meetings designed to discuss this sort of issue."

In his 2024 order responding to the company's dismissal bid, Judge Korman tossed investor claims against Philips' chief financial officer and a different former CEO of a Philips subsidiary, finding that the suit did not show that the CFO knew about the relevant product defects and that statements by the subsidiary CEO, who was not involved in the management of Philips, could not be imputed to Philips.

But the judge left the fraud claims against Van Houten in place, and because those claims could be imputed to the company, both Van Houten and the company remain parties to the suit.

Reconsideration of the scienter finding against Van Houten "would result in dismissal of all remaining claims against all remaining defendants," Philips said in its October 2024 motion for reconsideration.

In the latest version of the suit, from October 2022, investors Richard Sun and Subhash Patel claimed that trading prices for the company's shares were artificially inflated while the company hid the foam degradation issues.

According to Sun and Patel, investors were hurt by trading price declines following revelations about the extent of the foam degradation issues, such as the company's April 2021 announcement that would take a $250 million reserve to repair units it sold that used the foam.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Philips and Van Houten are represented by Sharon L. Nelles and William B. Monahan of Sullivan & Cromwell LLP.

The investors are represented by Jeremy A. Lieberman, Emma Gilmore, Dolgora Dorzhieva and Villi Shteyn of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

The case is Patel v. Koninklijke Philips NV et al., case number 1:21-cv-04606, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Sydney Price. Editing by Vaqas Asghar.

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Snap Cuts $65M Deal To End Investor Suit Over Privacy Tools

By **Dorothy Atkins**

Law360 (October 28, 2025, 7:20 PM EDT) -- Snapchat investors urged a California federal judge on Monday to preliminarily approve a $65 million settlement to resolve a proposed securities class action that was recently revived by the Ninth Circuit alleging the social media company downplayed the negative impact Apple's 2021 privacy changes would have on its advertising business.

In a **32-page motion**, a putative class of investors led by an Oklahoma firefighters' pension fund asked U.S. District Judge George H. Wu to preliminarily sign off on the eight-figure deal, under which class counsel plan to seek up to $19.5 million — or 30% of the settlement — in attorney fees and $715,000 in costs plus interest.

If approved, the deal would resolve consolidated putative securities class action litigation **initially launched** against Snap Inc., its CEO Evan Spiegel and its former Chief Business Officer Jeremi Gorman in November 2021.

The investors allege Snapchat's parent company and its top brass downplayed the negative impact Apple's April 2021 privacy changes would have on its advertising business, causing the stock price to plunge once the effect was realized.

The investors claim that Snap Inc. and its executives reassured its shareholders that its focus on privacy, independent of Apple Inc.'s app tracking transparency-related changes, prepared the company to handle the impacts.

But in reality, the changes hurt the company's bottom line, causing its value to tumble, the suit alleges. When Snap finally announced the impact, in October 2021, the stock price fell $19.97 per share, or 26%, to close at $55.14 per share, according to the suit.

Apple announced the changes in June 2020 as a part of the tech giant's ongoing privacy push, including a new data privacy feature that allows users to opt out of app data tracking.

After multiple rounds of pleading, the lower court tossed the case in September 2023. But in December, the Ninth Circuit **revived** the litigation, and on remand, the case headed into full-blown discovery. In May, the investors filed a motion to certify the class, but before the court ruled, the parties asked the court to suspend court deadlines as they entered mediation. Last month, the parties informed the judge they struck a settlement in principle.

The investors' latest motion to preliminarily approve the deal seeks to conditionally certify a class of individuals and entities that bought or sold publicly traded Snap securities or Snap call or put options between Feb. 5, 2021, and Oct. 21, 2021.

The motion notes that the proposed deal allows class members to recover at least $10, and although the motion doesn't include a specific class size, it estimates that there will be hundreds, if not thousands of putative class members.

The motion also points out that the proposed $65 million deal is more than six times the $10 million median settlement amount in securities class actions in the Ninth Circuit over the past decade, and therefore, the investors argue, it "falls well within the range of settlements courts in this circuit regularly approve."

"Here, the $65 million settlement amount is a tremendous result for the class," the motion says. "It is more than four times the $14 million median settlement amount for securities class actions in 2024, and almost six times more than the $11.3 million median settlement amount for federal securities class actions from 2015-2023. It is also $55 million more than the $10 million median settlement for securities class actions in the Ninth Circuit from 2015-2024."

The investors added that although their damages expert estimated that the maximum damages that could be asserted is up to $3.5 billion, given various defenses over actionable statements, it's "extremely unlikely" they would recover that amount at trial and "realistically" the damages likely range between $989 million to $1.2 billion.

"And should this case proceed to trial, these damages most likely would have been significantly smaller (if any at all)," the motion says. "Thus, the $65 million recovery constitutes approximately 5.4% to 6.6% of plaintiff's likely maximum damages."

A hearing on the motion is set for Dec. 4 at 8:30 a.m.

Counsel for the parties and representatives for Snap didn't immediately respond to requests for comment Tuesday.

Earlier this year, Snap investors in a separate case **agreed to voluntarily drop** a consolidated shareholder derivative suit over similar allegations against Snap executives and directors that the social media company failed to warn investors about the impact that certain iPhone privacy changes would have on its advertising revenue.

According to the court's dismissal order in that case, "no compensation in any form has passed directly or indirectly from any of the defendants to the plaintiffs or plaintiffs' attorneys, and no promise to give any such compensation has been made."

The investors are represented by Laurence M. Rosen of The Rosen Law Firm PA, Maya Saxena, Joseph E. White III, Lester R. Hooker, Dianne M. Pitre, Steven B. Singer, Sara DiLeo, David R. Kaplan and Emily R. Bishop of Saxena White PA, and John L. Littrell and Michael R. Williams of Bienert Katzman Littrell Williams LLP.

Snap Inc., Evan Spiegel and Jeremi Gorman are represented by Audra J. Soloway, Daniel J. Kramer and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP and Darren L. Patrick and Ekwan E. Rhow of Bird Marella Rhow Lincenberg Drooks & Nessim LLP.

The case is Kellie Black v. Snap Inc. et al., case number 2:21-cv-08892, in the U.S. District Court for the Central District of California.

--Editing by Michael Watanabe.

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4th Circ. Overturns Landmark W.Va. Opioid Verdict

By **Emily Field**

Law360 (October 28, 2025, 4:05 PM EDT) -- The Fourth Circuit on Tuesday overturned a key ruling by a West Virginia judge in the first federal bellwether in multidistrict opioid litigation that went in favor of the country's three biggest drug distributors, finding that the oversupply of opioids can create a public nuisance.

The Fourth Circuit held that the effects of overdistributing opioids can constitute a public nuisance under West Virginia common law, and that a lower court judge misinterpreted the duties of drug distributors under the Controlled Substances Act. (AP Photo/Mark Lennihan)

In a published **opinion**, a three-judge panel held that the effects of overdistributing opioids can constitute a public nuisance under West Virginia common law and that U.S. District Judge David Faber misinterpreted the duties of drug distributors AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp. under the Controlled Substances Act.

"Today, the Fourth Circuit Court of Appeals confirmed that the devastation caused by the opioid epidemic can be addressed through the law of public nuisance, affirming our clients' rights to hold those responsible to account for their role in flooding communities in West Virginia with opioids," plaintiffs executive committee co-lead counsel Joe Rice of Motley Rice LLC, Jayne Conroy of Simmons Hanly Conroy, and Paul T. Farrell Jr. of Farrell & Fuller Law LLC said in a statement Tuesday.

"We are thankful for another opportunity to seek civil justice for those harms," the attorneys said. "There is still much work to be done, and we look forward to our return to the trial court for further proceedings."

"The Fourth Circuit reached the same conclusion we did at the outset of this litigation — the crisis faced by Huntington and its neighbors can constitute a public nuisance under West Virginia law. We, too, hold firm in our belief that opioid distributors and pharmacy benefit managers must be held accountable for their actions and come to the table to fix the damage," added Rice in an email late Tuesday.

The issue of whether distributing a controlled substance can be considered a public nuisance under West Virginia law was a novel question, the panel said. The Mountain State's high court turned down the panel's request to weigh in on the issue, leaving it up to the Fourth Circuit to decide if it was.

The law has a broad definition of a public nuisance, which is an illegal act or condition that hurts or inconveniences "an indefinite number of persons," according to the opinion.

The panel rejected the distributors' argument that a harm based on a product, like opioids, can't be considered a public nuisance under West Virginia law.

"We decline the defendants' request to restrict the scope of public nuisance under West Virginia law by excluding as a matter of law harm suffered by the general public originating from the distribution of opioids," it said. "The state Supreme Court has not identified any particular type of product-based harm that should be excluded from qualifying as a public nuisance. And nothing in that court's jurisprudence indicates that public nuisance under West Virginia law should be restricted by carving out any product-based harm."

The ruling sends back the case brought by Cabell County and its seat, Huntington, to Judge Faber. He ruled on the Fourth of July in 2022 that the county had failed to show that the distributors failed to control against the diversion of opioids for illicit use and didn't operate systems to detect suspiciously large orders.

Under the CSA, drug distributors must develop and maintain a system to detect signs that orders of controlled substances placed by pharmacies are being diverted for illicit purposes, the panel said.

But Judge Faber's view of the distributors' obligations was too limited and would undermine the purpose of the CSA, it said.

"This statutory duty is ongoing and applies to each order of controlled substances that a distributor receives from a customer pharmacy," the panel said. "The duty is not limited, as the district court held, to examining whether a pharmacy essentially is serving as an 'adjunct[] of the illicit market.'"

Looking at the size and frequency of a pharmacy's opioid orders can enable distributors to find irregularities earlier, instead of waiting for the effects of oversupplying opioids to hit a community, the panel said.

"At the point that a pharmacy is found to be operating essentially as an 'adjunct of the illicit market,' much of the damage of oversupply and diversion already has been done," it said. "So, the act emphasizes the importance of recognizing a problem of oversupply and potential diversion before their cumulative effects place an effective solution beyond reach."

This narrow focus meant that the lower court failed to take into account the full breadth of evidence that the distributors often raised the limits on opioid orders for certain pharmacies.

That potentially let some "suspicious" orders be delivered without investigation or reporting the orders to the U.S. Drug Enforcement Administration, the panel said.

"By frequently increasing their pharmacy customers' threshold limits, the distributors necessarily avoided having to report many 'suspicious' orders to the DEA," the panel said. "The documentary record shows that when a pharmacy came close to exceeding the existing threshold limit, the distributors often raised the permitted limit for that pharmacy customer."

Additionally, the panel also found that Judge Faber wrongly found that the county couldn't seek relief for abating the damage wrought by the opioid crisis under the public nuisance law.

The panel said that the law allows for the abatement of a public nuisance requiring a defendant to pay money to address harm done to the public.

There's nothing in state law suggesting that the West Virginia Supreme Court would limit abatement to just injunctive relief, and that the court has suggested that a nuisance can be ameliorated by a defendant directing money and resources to addressing the damage, the panel said.

"And we observe, as a practical consideration, how can widespread harm to the general public be abated without some cost incurred or money spent?" the panel said.

"We're gratified by the Fourth Circuit's careful and meticulous ruling that the opioids distributors can be held liable for the public nuisance they created." said David C. Frederick of Kellogg Hansen Todd Figel & Frederick PLLC, counsel for Cabell County and Huntington, in an email Tuesday. "Huntington and Cabell County were devastated by the opioids crisis and the distributors can be held to account for the problems they created."

Representatives for the other distributors didn't respond to requests for comment on Tuesday.

Cabell County and Huntington are represented by Kellogg Hansen Todd Figel & Frederick PLLC.

Cabell County is additionally represented by Powell & Majestro PLLC.

Huntington is additionally represented by Motley Rice LLC.

AmerisourceBergen is represented by Reed Smith LLP.

Cardinal is represented by Williams & Connolly LLP.

McKesson is represented by Covington & Burling LLP.

The cases are City of Huntington, West Virginia et al. v. AmerisourceBergen Drug Corp. et al., case number 22-1819, and Cabell County Commission v. AmerisourceBergen Drug Corp. et al., case number 22-1822, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Adam LoBelia.

Update: This article has been updated with more information about the decision and comment from the plaintiffs.

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Social Media Apps Say Section 230 Halts Mental Health Claims

By **Craig Clough**

Law360 (October 28, 2025, 10:24 PM EDT) -- Attorneys for Meta Platforms, YouTube, Snap and TikTok on Tuesday urged a Los Angeles judge to toss claims against them from an upcoming bellwether trial over the platforms' alleged harm to youth mental health, arguing that Section 230 of the Communications Decency Act should prevent many of the claims from reaching a jury.

During a daylong hearing, Los Angeles Superior Court Judge Carolyn B. Kuhl heard arguments on motions for summary judgment or summary adjudication filed by the companies ahead of a scheduled January **bellwether trial** focused on three cases in what could be the first of dozens of trials related to over 1,000 consolidated complaints.

The judge previously tossed claims alleging that specific content on the platforms caused harm, finding that Section 230 and the First Amendment barred them, but allowed claims that certain design features of the platforms are harmful to move forward. Attorneys for the companies frequently argued on Tuesday that many of the plaintiffs' claims as alleged still fall within the protections of Section 230.

Ashley Simonsen of Covington & Burling LLP, who represents Meta, showed the judge deposition testimony of a plaintiff identified as K.G.M., where she said content she viewed on some of the platforms caused her eating disorder, and where she agreed with an attorney's question that the disorder came from "the content you received on those sites."

"She attributes her harm in terms of the orthorexia and body dysmorphia to specific content," Simonsen said, adding that a child psychologist serving as an expert for the plaintiffs, Dr. Kara Bagot, said "the same thing."

Simonsen then showed the judge more deposition testimony where K.G.M. attributed her suicidal thoughts and self-harm to content she saw on Instagram and YouTube.

"So we know that of the numerous features this plaintiff is challenging, she cannot bring a claim for content recommendation algorithms," adding that such claims are barred under Section 230.

K.G.M. also said she suffered harm by engaging in an "endless scroll" on Instagram, but Simonsen argued that one cannot attribute her harm simply to scrolling, but to the content she was viewing while scrolling, because you "can't have an endless scroll without content."

Simonsen also argued the judge previously held that Section 230 may not apply to "endless scroll"' if that feature operated to addict and harm minor users of the platform, but that K.G.M. "does not claim any harm from endless scroll independent of the content, and neither does Dr. Bagot. So endless school ... cannot go to a jury in terms of being a basis for K.G.M.'s claims."

While the defendants made other arguments on Tuesday against the claims, including that some were filed after the statute of limitations, Section 230 was repeatedly cited by some of the defendants' attorneys.

Josh Autry of Morgan & Morgan, who represents the plaintiffs, told the judge that the defendants' arguments in the K.G.M. case "is that if user content is a partial cause of a harm, then that harm cannot be recovered for. That's a reworking of the but-for test."

He went on to argue that the defendants' desired test is if harm is partially caused by user content.

"And if so, they believe that Section 230 is an absolute bar," he said. "This provision would give defendants a unique position under the law. It is a position that police officers don't have, prosecutors don't have. They want a type of immunity, absolute immunity, that does not exist in really any other context."

The three cases scheduled for the first bellwether trial are among over 1,000 that have been coordinated in Los Angeles Superior Court, alleging that the social media companies purposely induce young people to compulsively use their products, according to the personal injury master complaint filed in 2023.

Judge Kuhl **tossed** some claims from the master complaint, but allowed failure-to-warn claims to proceed alongside negligence and concealment allegations.

Similar multidistrict litigation is pending in the U.S. District Court for the Northern District of California.

The plaintiffs are represented by Joseph G. VanZandt and Davis Vaughn of the Beasley Allen Law Firm, Mariana A. McConnell, Paul R. Kiesel and Cherisse H. Cleofe of Kiesel Law LLP, Rachel Lanier of The Lanier Law Firm PC, Josh Autry of Morgan & Morgan and Rahul Ravipudi, Brian J. Panish, Ian Samson and Jesse Creed of Panish Shea Ravipudi LLP.

Meta is represented by Alexander L Schultz, Paul W. Schmidt, Ashley Simonsen and Michael Imboscio of Covington & Burling LLP.

Snap is represented by Jonathan H. Blavin, Rose Leda Ehler, Victoria A. Degtyareva and Ariel Teshuva of Munger Tolles & Olson LLP.

TikTok is represented by David M. Mattern and Geoffrey M. Drake of King & Spalding LLP.

YouTube is represented by Christopher C. Chiou, Matthew K. Donohue, Samantha Machock, Lauren Gallo White and Brian M. Willen of Wilson Sonsini Goodrich & Rosati PC, Joseph G. Petrosinelli and Ashley W. Hardin of Williams & Connolly LLP, and Yardena R. Zwang-Weissman, Brian Ercole and Stephanie Schuster of Morgan Lewis & Bockius LLP.

The state case is Social Media Cases, case number JCCP5255, in the Superior Court of the State of California, County of Los Angeles.

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Vegan Protein Powder Contains Lead, Cadmium, Class Says

By **Mike Curley**

Law360 (October 28, 2025, 4:57 PM EDT) -- A proposed class of buyers of protein powder is suing vegan meal and supplement maker Huel Inc. in Illinois federal court, saying the company hid toxic levels of lead and cadmium in its products.

In a **complaint** filed Monday in the U.S. District Court for the Southern District of Illinois, Amber Albright said a recent Consumer Reports investigation found that a single serving of Huel Black Edition Powder, a protein supplement, contained 6.3 micrograms of lead and 9.2 micrograms of cadmium.

Neither the federal government nor Illinois recognizes a "safe" level of lead, and both the World Health Organization and the Centers for Disease Control and Prevention say there is no safe level of lead, according to the complaint.

California has a "safe harbor" of 0.5 micrograms, according to the complaint, and Huel's products contain more than 12 times that amount, while the levels of cadmium are more than double the 4.1 micrograms that leading health authorities say is harmful to have on a daily basis.

Other suits have also sprung from the Consumer Reports investigation, with Naked Whey **facing** similar claims in California.

According to the complaint, the health effects of lead and cadmium are well established, and as such Huel had a duty and obligation to warn its consumers, rather than marketing its products as safe and healthy while charging a premium for them.

Lead has been linked to brain, liver and kidney damage, while cadmium is a known carcinogen, Albright said in the complaint, that is also linked to kidney, lung and stomach damage.

In the suit, Albright seeks to represent a class of Illinois residents who bought the powder, and makes claims for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and unjust enrichment.

Huel is also facing a case in California **alleging** that it uses inferior ingredients that are not as healthy or easy to digest as the company represents.

A spokesperson for Huel said in a statement Wednesday, "Huel's high protein meals are healthy, delicious, and perfectly safe. Plaintiff's claims lack merit and are based on reporting that is not accurate. Huel will vigorously defend against these baseless allegations."

Representatives for Albright could not immediately be reached for comment Tuesday.

Albright is represented by Adam C. York and Zachary Crosner of Crosner Legal PC.

Counsel information for Huel was not available Tuesday.

The case is Albright v. Huel Inc., case number 3:25-cv-01972, in the U.S. District Court for the Southern District of Illinois.

–Additional reporting by Jonathan Capriel. Editing by Karin Roberts.

Update: This story has been updated with comment from Huel.

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7th Circ. Skeptical Of Samsung Users' BIPA Suit Revival Bid

By **Lauraann Wood**

Law360 (October 28, 2025, 8:50 PM EDT) -- The Seventh Circuit seemed doubtful Tuesday that it should revive a biometric privacy suit from Samsung phone and tablet users, saying they seemed not to have pled enough to demonstrate the company ever collected or possessed their geometric facial data.

The three-judge panel seemed skeptical during oral argument that they should reverse a district court's dismissal of certain smartphone and tablet users' proposed class Biometric Information Privacy Act suit against Samsung, saying it seemed the phone and tablet users hadn't plausibly alleged that the technology giant has control or possession of the biometric data coming from the photos the users themselves take.

For instance, Samsung's Gallery app wouldn't process any biometric data in connection with users who loved to take pictures exclusively of landscapes and never photographed themselves or other people, U.S. Circuit Judge John Lee said. "So, in the end isn't it the user that decides whether or not the data is collected?" Judge Lee asked the plaintiffs' counsel.

U.S. Circuit Judge Michael Brennan pointed to a growing number of cases in state and federal court that say "there's a difference between controlling or accessing the technology versus the data itself." That distinction appears to make the difference in viability for the users' claims, he suggested.

"To the extent we've got a bifurcation there, that seems to be it," the judge said.

And even though the district court made it clear in an **earlier dismissal** ruling that it found the users' allegations lacking when it came to the control issue, the plaintiffs did not bolster their claims regarding Samsung's cloud, where such data is typically alleged to be stored in similar cases, U.S. Circuit Judge Candace Jackson-Akiwumi noted.

Representing the plaintiffs, though, Timothy Sostrin of Keogh Law Ltd. argued his clients should have been allowed to pursue accusations that Samsung illegally scans the facial features in photos and groups them together by facial geometry without notice or permission.

The users don't control the biometric data collection because they're simply deciding to take a photograph, Sostrin said. They're not choosing to scan the biometrics associated with their photos because they have no idea it's even happening on their devices, he argued.

"That's Samsung's decision," he told the panel.

And the operative complaint does allege that Samsung accesses the users' technology — for instance, to group photos of the same person together, Sostrin told the panel.

"The decision to do that is not something that the user decided to do," he argued. "It's something that Samsung decided to do through its own software, yes, but that software is an instrumentality of Samsung when the users are not choosing to do any of this."

While the users don't include many specific allegations about Samsung's cloud, their allegations lead to a reasonable inference that biometric data ends up there, since the Gallery app connects to the cloud, Sostrin said. As it relates to pleading Samsung's control over that information, "we alleged what we could," given the information that was available to the users, he told the panel.

Samsung attorney Shay Dvoretzky blasted the users' position and urged the panel to keep his client's dismissal win intact, saying their argument "conflates Samsung software with Samsung the company."

The users merely allege in their case that facial scans and templates are generated on their devices using software that Samsung designs, and that those scans and templates are stored on the hardware the users themselves own, Dvoretzky said.

"They don't allege that Samsung the company could use that data or even access it," Dvoretzky told the panel. "It therefore makes no sense to say that Samsung had possession of the data," as required under BIPA's section governing companies' written data collection policies, "or that it obtained it any way," as required under the section regulating collection and use of such data, the attorney said.

Anything else the users could possibly allege in terms of Samsung's biometric data collection "is just speculation" and would not be appropriate to consider at the dismissal stage, Dvoretzky argued.

Also key is the inability to identify any one individual based on the information purportedly collected from the users' photographs, Dvoretzky told the panel. To identify someone, the Gallery app would need to be able to tell who a person is based on a name, Social Security number, police lineup or some other distinguishing characteristic, he said.

"Simply saying person in photo A is the same as the person in photo B [is] not identifying the people or telling you who it is" Dvoretzky argued. "That's just matching up the people who are in the same photos on the phone."

Both Judge Lee and Judge Jackson-Akiwumi pushed back on that assertion, though. For Judge Lee, the disagreement seemed rooted in the differences between how two people might define the term "identify."

"Isolating one person out of a group of possible people with regard to an external reference … seems to me at least sufficient to kind of separate one individual from all the others in the world based on a facial template," he said.

Judge Jackson-Akiwumi's issue came in applying Dvoretzky's assertion to the current state of society.

"I think your argument would have more force if we were not already in a world where facial recognition technology can do so much already and has already been subject to so much litigation and news," she said.

U.S. Circuit Judges Michael Brennan, John Lee and Candace Jackson-Akiwumi sat on the Seventh Circuit panel.

The plaintiffs are represented by Timothy Sostrin, Keith Keogh, Theodore Kyuper and Gregg Barbakoff of Keogh Law Ltd. and Christian Levis and Amanda Fiorilla of Lowey Dannenberg PC.

Samsung is represented by Shay Dvoretzky, Michael McTigue Jr., Kurt Hemr, Hanaa Khan, Colm McInerney, Jeremy Patashnik, Andrew Quinn, Parker Rider-Longmaid and Meredith Slawe of Skadden Arps Slate Meagher & Flom LLP and Randall Edwards of O'Melveny & Myers LLP.

The case is G.T. et al. v. Samsung Electronics America Inc. et al., case number 25-1120, in the U.S. Circuit Court of Appeals for the Seventh Circuit.

--Editing by Linda Voorhis.

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9th Circ. Won't Revive IPhone Web App Antitrust Suit

By **Gina Kim**

Law360 (October 28, 2025, 10:54 PM EDT) -- The Ninth Circuit on Tuesday refused to revive Apple customers' proposed antitrust class action alleging that Apple's mobile ecosystem barriers against advanced web-based apps result in higher iPhone prices, ruling they lack standing to seek injunctive relief and that an injunction against Apple likely wouldn't eliminate those barriers.

In a six-page, unpublished ruling, the Ninth Circuit backed Chief U.S. District Judge Richard Seeborg's order dismissing a lawsuit alleging Apple illegally controls which apps are available on its smartphones, which inflates their prices. The customers targeted Apple's App Store guidelines that required all browsers to be distributed through Apple's WebKit mobile browser engine, which doesn't fully support so-called progressive web apps designed to run via a browser.

In July 2024, Judge Seeborg threw out the case for lack of Article III standing and lack of antitrust standing, finding the claims are based solely and insufficiently on App Store Guideline 2.5.6. requiring iOS browser apps to run on WebKit, which the customers said amounted to an "express contract."

The judge poked multiple holes in the case, including the customers' claims of injury through the monopolization of the smartphone operating system, or SOS, market and through an allegedly anticompetitive deal with nonparty Google to keep rival browser engines off the iPhone iOS.

Furthermore, a browser app developer's decision to produce an iOS version using WebKit doesn't take an independent decisionmaker out of the market, Judge Seeborg had said. Rather, developers themselves opt to create a WebKit-based browser for iOS and compete with other iOS browsers, he said.

On Tuesday, the Ninth Circuit sided with Judge Seeborg, agreeing with his view that the customers lacked Article III standing to pursue injunctive relief, which in this case ultimately sought to lower iPhone prices.

The panel also rejected the customers' argument that 2.5.6, or the WebKit agreement, would continue to injure competition in the markets for smartphones and smartphone operating systems and that it squashed the proliferation of web-based apps that rely on more diverse, cross-platform engines.

Under Google and Apple's agreement, Google's Chrome browser — which uses Google's own browser engine Blink on every platform other than iOS — has to use Apple's WebKit engine on the iPhone, the customers alleged.

The customers argued that if Google replaced its WebKit-based Chrome browser with a Blink-based Chrome browser on Apple's iPhone, it would enable cross-platform progressive web apps and result in competitive markets.

"However, accepting plaintiffs' allegations as true, plaintiffs plead no facts to suggest that Google would be likely to make this change if an injunction were in place," the judges wrote. "Absent factual allegations that Google would be likely to deploy Blink on Apple's iPhones if the court were to grant injunctive relief, 'any pleading directed at the likely actions of third parties ... would almost necessarily be conclusory and speculative.'"

Cheaper iPhones would also depend on new market entrants that get over the hurdle in the market for operating systems that the customers reference in their suit, the panel said.

"An injunction against Apple is unlikely to eliminate the mobile ecosystem barrier to entry and result in increased competition such that iPhone prices will decrease," the judges added. "Because plaintiffs fail to allege that their injury of inflated prices would be redressed by an injunction, without requiring guesswork as to how independent decisionmakers will exercise their judgment, plaintiffs do not establish Article III standing to seek injunctive relief."

Tuesday's ruling comes almost two years after the customers first filed their proposed class action in the Northern District of California, **alleging that a deal between Apple and Google** — which controls what apps are downloaded onto iPhones — maintains "the longstanding Apple-Google duopoly" and inflates prices of iPhones.

Apple **moved to dismiss the suit**, arguing the customers lacked standing to bring their "highly convoluted and speculative" claims. It also contended that the plaintiffs' theory assumes that third-party app developers and web browsers will take certain actions to push new rivals to enter the market.

Judge Seeborg's dismissal order invited the customers to amend their claims, but the customers opted to appeal to the **Ninth Circuit in November,** arguing their claims clearly showed how cheaper smartphones could enter the market if web-based apps became the norm. Apple **hit back against the customers' arguments** in February, arguing their suit alleged a "highly indirect and speculative" harm that's not even an antitrust injury.

On Tuesday, the Ninth Circuit also sided with Judge Seeborg's finding that the customers lack antitrust standing to pursue Sherman Act claims and said they failed to allege antitrust injury.

The appellants' alleged harms come down to supracompetitive prices for the Apple iOS operating system as part of their iPhone purchase, and supracompetitive prices for the iPhone, which means injury would be to the smartphones and SOS markets, according to the opinion.

However, the WebKit agreement and the alleged scheme between Apple and Google to monopolize through the WebKit deal doesn't restrain trade in those markets for SOS and smartphones, the opinion says.

The consumers had alleged the restraint is in Apple's enforcement of the WebKit Agreement and its scheme with Google to monopolize by not deploying any other web engine but WebKit on the iOS operating system.

Safari is Apple devices' default browser and WebKit its default web engine; Chrome is Google's default browser and Blink its web engine on Android systems, the plaintiffs had alleged. While Apple doesn't allow any other engine to run on its devices, Android devices are typically designed to allow distribution via Google's Play Store.

"These allegations suggest that browser engines are not exclusively tied to smartphone operating systems, meaning they operate in a distinct market," the opinion says. "Smartphone and operating system consumers can, on Google's Play Store, choose which browser and associated browsing engine to download and use. Thus, plaintiffs' alleged injury is not in the same market as plaintiffs' alleged restraint of trade."

Representatives for Apple did not immediately return inquiries seeking comment Tuesday. Yavar Bathaee of Bathaee Dunne LLP, one of the attorneys for the appellants, said he had no comment.

U.S. Circuit Judges Mary H. Murguia, John B. Owens and Patrick J. Bumatay sat on the panel for the Ninth Circuit.

The appellants are represented by Yavar Bathaee, Brian James Dunne and Edward Maxwell Grauman of Bathaee Dunne LLP.

Apple is represented by Daniel G. Swanson, Cynthia Richman, Julian Kleinbrodt, William Feldman and Matt Aidan Getz of Gibson Dunn & Crutcher LLP.

The case is Luisa Bakay et al. v. Apple Inc., case number 24-5314, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Bryan Koenig, Dorothy Atkins and Bonnie Eslinger. Editing by Marygrace Anderson.
