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Advance Auto Parts Investor Meets Mixed Appeals Court on Intent

December 10, 2025, 9:50 AM PST

Summary by Bloomberg AI

AI Generated

- The US Court of Appeal for the Fourth Circuit heard oral arguments on whether to revive a dismissed lawsuit against Advance Auto Parts Inc. over allegations that former executives hid improper accounting practices.
- The judges questioned whether the investor sufficiently alleged that executives knew about issues with accounting of vendor credits or if the errors were so bad that they alone supported the standard for severe recklessness.
- The investor's attorney argued that the company had manipulated margins before and that a confidential witness said the company previously masked issues with vendor credits, and said "I think we should at least get a chance to prove our case here."

Advance Auto Parts Inc. might not be out of the woods from investor's fraud allegations that former executives hid improper accounting practices to boost margins during a turnaround effort.

The US Court of Appeal for the Fourth Circuit didn't give a clear signal during oral arguments Wednesday on whether it would revive some or any of the investor's dismissed lawsuit against the auto repair company. The judges pushed the parties on whether the investor sufficiently alleged that executives knew about issues regarding accounting of vendor credits or if the errors were so bad that they alone supported the standard for severe recklessness.

Still, Judge Roger L. Gregory ended the arguments telling the attorney for the public pension fund leading the proposed class action that "being wrong might not be enough for the pleading standard." The heightened pleading standard for a mental state to deceive—scienter—can be difficult to reach under the Private Securities Litigation Reform Act, which he said operated to curb sort of ambiguous suits that cause companies to spend a lot on attorneys' fees to "win or lose."

But these accounting procedures were critical according to former executives, the company had manipulated margins before, and a confidential witness who monitored margins had said the company previously masked issues with vendor credits, said Dana Kaersvang, a partner at Deutsch Hunt PLLC who represents the City of Southfield General Employees' Retirement System seeking reversal of the district court dismissal.

Looking at these and other issues together, "I think we should at least get a chance to prove our case here," she said.

The complaint tries to "cobble together" disparate issues of 2023 financial forecasting and accounting restatements, said William M. Regan, a partner at Hogan Lovells US LLP who represents Advance. Bad accounting on its own is generally not sufficient to allege scienter, and the complaint was devoid of claims typically used to support a compelling inference of intent or fraud such as stock sales or a Securities and Exchange Commission action.

Former Executives

Judge Albert Diaz asked if the chief accounting officer should face a different standard regarding accounting issues, and that both he and the chief financial officer departed as issues came to light.

The departure timing didn't support the investor's theory that problems only surfaced when new eyes came in, Regan said. A $17 million out-of-period charge, an announcement of internal accounting problems, and the 2023 forecast cut happened while the three executives in this case were there—CEO Thomas R. Greco, CFO Jeffrey Shepherd, and CAO William J. Pellicciotti, Jr.

In response to Advance's counsel raising additional arguments of a lack of actionable misstatements, Diaz asked, "If we were to agree with the plaintiffs that they've made out a sufficient claim of scienter, why would we take on these issues instead of just sending it back to the district court?"

If that were to happen, looking at whether shareholder sufficiently alleged statements were false or actionable on distinct issues of accounting and forecasting could narrow the case, said Allison M. Wuertz, a partner at Hogan Lovells who represents Advance.

Judge Gina M. Groh of the US District Court for the Northern District of West Virginia joined the panel.

Lower Court Dismissal

Judge James C. Dever III of the Eastern District of North Carolina tossed the lawsuit in January, saying company leaders issuing corrections more plausibly indicated that executives found and fixed accounting errors than acted with a mental state to deceive for securities fraud claims. The allegations fell "within the heartland of securities fraud actions" that the PSLRA intended to stop.

On appeal, the pension fund said former Advance executives manipulated accounting to hide from investors the company's inability to achieve a key performance metric during a turnaround effort. The district court didn't holistically assess the alleged level of intent or recklessness when dismissing its securities fraud claims, the fund's attorney said, although Dever held it adequately alleged misstatements pertinent to reasonable investors.

The auto repair company argued that the lower court accurately concluded Advance and former executives found and fixed errors rather than intended to deceive investors about its financial state.

Advance in May 2023 revealed a $17 million out-of-period charge and slashed its full-year guidance. Share prices plummeted 35% that day, then the stock's biggest one-day drop since its 2001 market debut, according to data compiled by Bloomberg.

Robbins Geller Rudman & Dowd LLP, Deutsch Hunt, and Higgins Benjamin PLLC represent the pension fund. Hogan Lovells and Smith Anderson represent Advance and three former executives.

Deutsch Hunt, Hogan Lovells, and Advance didn't immediately respond to emails seeking comment on the arguments, sent before they began.

The case is City of Southfield Gen. Emps. Ret. v. Advance Auto Parts, Inc. , 4th Cir., No. 25-01188, oral arguments 12/10/25 .

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FibroGen Investor Suit Dismissed Following $28.5 Million Deal

December 9, 2025, 5:12 PM PST

FibroGen Inc. is free of investor allegations tied to an anti-anemia drug following the distribution of a $28.5 million settlement.

Judge Edward M. Chen dismissed the claims with prejudice, asking the clerk to enter final judgment in his order entered Tuesday. The US District Court for the Northern District of California judge approved sending the remaining net settlement balance of almost $22,000 plus an anticipated tax refund of nearly $39,000 to court-approved recipient the Public Justice Foundation.

Investors alleged FibroGen and top executives misrepresented the safety and efficacy data of its drug candidate Roxadustat, which targets anemia associated with chronic kidney disease

When Food and Drug Administration approval in 2021 came into doubt and an advisory committee voted against it, share prices plummeted; Roxadustat hasn't earned US regulatory approval but is approved in China, Europe, and Japan

The settlement class, which Chen previously blessed of alongside settlement allocation terms, consists of those who acquired FibroGen securities from Dec. 20, 2018, through July 15, 2021

Saxena White PA is lead counsel for the class. Cooley LLP represents FibroGen and the individual defendants. Neither of these firms nor FibroGen immediately responded to emails offering the opportunity to comment.

The case is In re FibroGen, Inc. Sec. Litig. , N.D. Cal., No. 3:21-cv-02623, final judgment entered 12/9/25 .

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Hub Security Suit Should Settle for $11 Million, Plaintiffs Say

December 10, 2025, 7:41 AM PST

Summary by Bloomberg AI

AI Generated

- Investor plaintiffs told a New York federal district court that a proposed securities class action against Hub Cyber Security Ltd. should settle for $11 million.
- The plaintiffs sued in 2023, alleging that the company made misstatements about embezzlement claims, which caused Hub common stock to trade at artificially inflated prices.
- The plaintiffs argued that the $11 million settlement would be an "excellent result" due to the complexity, expense, and risk of the case, given that a majority of defendants and evidence are in Israel.

A proposed securities class action alleging that Hub Cyber Security Ltd. made misstatements about embezzlement claims should settle for $11 million, investor plaintiffs told a New York federal district court.

The parties' settlement agreement, which followed mediation, is the result of good faith arm's length negotiations, the plaintiffs told the US District Court for the Southern District of New York in a Tuesday filing seeking the court's approval.

The plaintiffs sued in 2023, alleging that the Israel-based company announced a proposed merger with Mount Rainier Acquisition Corp., a New York-listed special purpose acquisition company that had been looking for a technology business to buy. The registration statement followed in August, and the deal closed in 2023.

They said the merger occurred after the issuance of statements announcing Eyal Moshe would become president of US operations, and Moshe's subsequent resignation. Hub investigated and announced that Moshe and his wife embezzled hundreds of thousands of dollars.

Hub common stock traded at artificially inflated prices as a result of alleged misrepresentations, and "declined when the truth was revealed," the plaintiffs' filing said.

The plaintiffs argued the $11 million settlement would be an “excellent result” for plaintiffs because of the complexity, expense, and risk resulting from how a majority of defendants and evidence are in Israel.

Israel is a signatory to the Hague Convention, the plaintiffs said, but obtaining evidence through the convention’s procedures—as well as translating documents from Hebrew to English—is cumbersome, expensive, and inefficient, the plaintiffs said.

The best case scenario for recovery is nearly $179 million, the plaintiffs also said, and therefore the settlement represents about 6% of that amount—more than twice the median recovery of estimated damages in securities class action settlements during the past decade in cases with comparable damages.

Glancy Prongay & Murray LLP, The Law Office of Jacob Sabo, and Pomerantz LLP represent the plaintiffs.

The case is In re Hub Cyber Security Ltd. , S.D.N.Y., No. 23-cv-5764, memorandum of law 12/9/25 .

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Securities

Playstudios' $6.5 Million Investor Settlement Gets Court Sendoff

December 9, 2025, 10:54 AM PST

Playstudios Inc.'s $6.5 million agreement garnered final approval to resolve investor claims it hid issues with a role-playing game when going public.

Judge Richard F. Boulware II gave the deal between investors, the mobile gamemaker, and architects of its blank-check merger his blessing. The US District Court for the District of Nevada's approval entered Monday ends allegations Playstudios concealed bugs in its Kingdom Boss game while touting its growth potential to facilitate the special purpose acquisition company merger with Acies Acquisition Corp.

Boulware awarded investors' class counsel 20% of the settlement sum—$1.3 million—in attorneys' fees and almost $141,000 in expenses reimbursed plus interest

The settlement class covers those who acquired Playstudios shares, including by way of Acies' shares, traceable to the merger's proxy and registration statement

And it includes those who were solicited to approve the merger and exchanged their Acies shares for Playstudios' Class A Ordinary Shares or got Playstudios common stock from Aug. 11, 2021, through May 5, 2022

Pomerantz LLP is lead counsel and Muehlbauer Law Office Ltd. is liaison counsel for the investors. Fenwick & West LLP and Snell & Wilmer LLP represent Playstudios and certain executives and directors. Latham & Watkins LLP and Campbell & Williams, which deferred to Latham for comment, represent Acies leaders. None of these other firms nor Playstudios immediately responded to emails seeking comment.

The case is Felipe v. Playstudios, Inc. , D. Nev., No. 2:22-cv-01159, judgment entered 12/8/25 .

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Securities

AMC Gets Delaware Court Win on Insurance for Investor Settlement

December 9, 2025, 12:51 PM PST

Shares issued by AMC Entertainment Holdings Inc. to settle investor litigation are potentially covered losses under an excess directors and officers policy, Delaware's top court ruled.

The Delaware Supreme Court's Tuesday order affirmed a lower court ruling opening the door for AMC to pursue coverage from Midvale Indemnity Co., the only remaining insurer in the case.

AMC first sued its D&O insurers in Delaware Superior Court in May 2023, seeking coverage for an underlying investor suit over its plan to convert "APE" units to common stock. The entertainment giant dismissed claims against all other insurer defendants in the case—including units of American International Group Inc., W. R. Berkley Corp., and AXA SA—in 2023 and 2024.

Midvale had appealed a February ruling and subsequent final judgment for AMC. The lower court held that the AMC-issued shares paid out in the settlement constituted potentially covered losses under the excess D&O policy—which attaches at $30 million and covers 33% of the portion of loss up to $45 million —and entered a final judgment of $5 million against the insurer.

The insurer argued that AMC's decision to issue stock cost the company nothing and couldn't be considered a covered "loss," but the top court affirmed the lower court's holding.

"We find it evident that the judgment of the Superior Court should be affirmed on the basis of and for the reasons stated in the Memorandum Opinion dated February 28, 2025," Justice Abigail LeGrow wrote for the court.

The court heard oral arguments in the case on Nov. 12.

Phillips, McLaughlin & Hall PA and Wiley Rein LLP represent Midvale. Berger McDermott LLP and Cohen Ziffer Frenchman & McKenna represent AMC.

The case is Midvale Indem. Co. v. AMC Entertainment Holdings Inc. , Del., No. 206,2025, 12/9/25 .

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Del. Court: Harassment Charges Do Not Establish Fiduciary Duty Breach

dandodiary.com/2025/12/articles/director-and-officer-liability/del-court-harassment-charges-do-not-establish-fiduciary-duty-breach

Kevin LaCroix December 9, 2025

Sexual harassment allegations can of course support an employment practices claim. But if the conduct results in harm to the company through an adverse judgment, can the same misconduct allegations also support a claim under Delaware law for breach of fiduciary duty? At least one past Delaware court said, in the context of that case, that the answer is "yes." However, a recent Delaware Chancery Court decision took a different view, holding that "interpersonal" conduct alleged was "not a matter of corporate internal affairs." A copy of the December 1, 2025, decision can be found here.

Background

Credit Glory is a private Delaware corporation. Its sole stockholders are Alex Brola and Christopher Lundgren. Brola is the company's co-founder and President. Lundgren was the company's Vice President and Secretary.

Two former company employees charged that Lundgren sexually harassed them, subjecting them to offensive material and demands. The two employees resigned and ultimately sued Lundgren and the company in New York state court. Their actions resulted in substantial judgments against both Lundgren and the company.

Brola then sued Lundgren in a shareholder derivative suit in Delaware Chancery Court, alleging that Lundgren's actions breached his duty of loyalty by "acting in pursuit of his own personal interests and gratification, and contrary to the best interests of the Company." Lundgren filed a motion to dismiss, arguing that Brola had not sufficiently alleged demand futility.

The December 1, 2025, Opinion

In a December 1, 2025, Opinion, the Delaware Court of Chancery granted Lundgren's motion to dismiss, holding that Lundgren does not face a substantial likelihood of liability on the fiduciary duty claim, and therefore the plaintiff had not established demand futility.

In assessing the plaintiff's derivative claims, the "core issue," the court said, is "whether corporate law can be broadened to encompass interpersonal workplace disputes." Having posed this question, the court said that "it cannot." Delaware corporate law "governs internal affairs," while "external relationships between managers and employees, by contrast, are often governed by "the substantive law of the jurisdiction where the injury occurs."

The court said that Brola's liability arguments transform the Delaware corporate law principles "into a general morality code." Brola had specifically relied on the Vice Chancellor Travis Laster's January 2023 decision in the *McDonalds* case (discussed here), in which the court sustained a claim for breach of fiduciary duty against a corporate officer accused of sexually harassing employees. The court in this case said, with reference to the *McDonalds* opinion, that "that decision – whatever its outer bounds – did not create a rule that a viable breach of fiduciary duty claim arises whenever an officer engages in unlawful harassment."

The court went on to note that the defendant in the *McDonalds* case was a senior officer and head of the company's HR function, whose duties included maintaining a safe and respectful workplace. The court in the McDonalds case "conceivably breached his duty of loyalty by … engaging in acts that subverted that function." He was alleged to have engaged in the "corruption of the corporate mission he was entrusted to lead."

Even with the prior case clearly in mind, the court in this case when on to say that "Still, fiduciary liability is not a catch-all for every wrong committed in the workplace simply because the perpetrator happens to hold a title. Egregious interpersonal misconduct, even when violative of employment law and company policy, generally falls outside the scope of Delaware corporate law."

In drawing a distinction between the facts involved in the *McDonalds* case and the facts in this case, the court noted that Lundgren is "not alleged to have abused the specific delegated authority of his office." None of the factual allegations concern fiduciary conduct taken in Lundgren's capacity as a director or as the Corporate Secretary. However deplorable, his harassment and bigotry "were personal malfeasance, not a misuse of his corporate office."

Adopting the plaintiff's theory here, the court said, would "undermine the principled distinction between interpersonal harms and fiduciary breaches." A literal application of the *McDonalds* court's syllogism – that because sexual harassment is selfish and selfishness is disloyal, therefore it is a breach of the duty of loyalty – "would impose strict fiduciary liability for workplace misconduct." This logic "lacks a limiting principle." The court added that if "every self-serving, reprehensible act by an officer constitutes fiduciary disloyalty, then a breakroom fistfight, a defamatory media post, or theft of office supplies becomes an internal affairs matter."

The court concluded by noting that the individual victims of Lundgren's misconduct had sought and obtained redress for their harms. Those proceedings, the court said, "confirm that the remedy for Lundgren's behavior lies in tort and employment law, not corporate doctrine." To sustain the plaintiff's claim here "would impose a precarious layer of fiduciary liability onto comprehensive legal frameworks and convert this court of equity into a generally workplace disciplinary forum, adjudicating matters well beyond its purview."

Discussion

I have to say I am gratified and relieved to see the way that the court applied and interpreted the holding of the *McDonalds* court with respect to the misconduct of the defendant in that case constituting a breach of fiduciary duty. I said at the time that I thought VC Laster's decision in *McDonalds* sustaining these claims was "explosive" adding that I thought that the "possibilities for this conclusion to do mischief was incalculable."

My specific concern, which I noted at the time, was that the holding in the *McDonalds* case raised the possibility that every sexual misconduct claim would become a Delaware Chancery Court D&O claim brought by shareholders, in addition to an employment practices liability claim brought by the victim of the alleged misconduct.

The Delaware Court of Chancery in this case apparently shared similar concerns. The court here drew a sharp distinction between conduct relating to the internal affairs of the company (which is subject to the purview of Delaware corporate law) and conduct relating to interpersonal affairs (which is not). Fiduciary duties are not a "catch-all" for all misconduct allegations.

The court was at particular pains here to establish that the *McDonalds* court did not establish a rule that a viable claim for breach of fiduciary duty arises in every instance of alleged sexual harassment involving a corporate director or officer.

Nevertheless, there is a seeming conflict between the two cases, as the derivative claim in the *McDonalds* case was allowed to go forward, while it was not in this case. A December 8, 2025, memo from the Sheppard Mullin law firm (here) addresses this tension, saying that the two decisions "can be harmonized by focusing on the nature of the claims at issue." The officer defendant in the McDonalds case was charged with managing human resources and implementing a system of corporate harm as a result of sexual harassment, whereas the officer defendant in this case was interpersonal and not a matter of internal affairs.

The law firm memo suggests that the distinction may lie with "whether the alleged wrongdoing occurred within the domain of that fiduciary's corporate responsibilities." A claim for breach of fiduciary duty "may be stronger if it is tied to the fiduciary's specific corporate responsibilities."

While the two decisions can perhaps be harmonized, there is no doubt that the court in the *Brola* case made it clear that the court did not believe that Delaware corporate law should extend to workplace misconduct, regardless of what the court in the *McDonalds* case said. Ultimately, the Delaware Supreme Court is, in the words of the law firm memo, going to have to weigh in on the "potential conflict in the reasoning of *Brola* and *McDonalds*."

A Final Note: In his opinion in the McDonalds case, VC Laster noted and addressed concerns about his holding on the breach of fiduciary duty issue. He observed that "Some might ask whether the Court of Chancery should be hearing sexual harassment claims and worry that recognizing such a claim would open the floodgates." He was of course correct because those concerns were indeed expressed. However, Laster also noted that because this type of claim woudl be a derivative lawsuit, it would be subject to all of the defenses associated with derivative claims, such as the demand requirement; he also added that mere claims of misconduct would not suffice to support the fiduciary duty claim.

It could be that the court's opinion in the Brola case validates Laster's response to the "floodgates" fears. The *Brola* case was indeed brought as a shareholder derivative lawsuit, and the lawsuit was indeed subject to one of the associated defenses — in this case, the demand requirement. And the *Brola* case certainly does stand for the proposition that mere claims of misconduct alone will not suffice to support a fiduciary duty claim. Laster might well say this unfolded exactly the way I said it would, I suppose.

News | Mass Torts

Critical Mass With Law.com's Amanda Bronstad: Florida Judge Grants Mistrial After Jury Deliberates 14 Days, Heavyweights Mikal Watts and Mark Lanier Battle Each Other in Texas Flood Cases

December 10, 2025 at 10:01 AM By **Amanda Bronstad**

Broward Circuit Judge Carol-Lisa Phillips. Courtesy photo

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

This week: A Florida judge declared a mistrial in a high-profile opioid case against **Walgreens, Walmart** and **CVS**, one day after she dismissed a juror who had alleged misconduct. Plaintiffs' lawyers **Mikal Watts** and **Mark Lanier** are in the unusual situation of opposing each other in the lawsuits against **Camp Mystic** over this summer's flood deaths. Find out who got appointed to lead data breach class actions against **Coinbase**.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is amanda.bronstad@alm.com. Follow me on LinkedIn or X: @abronstadlaw.

Warren T. Burns of Burns Charest. Courtesy photo;

Opioid Trial Deadlocked After Juror Alleged Misconduct, Then Got Dismissed

A Florida judge declared a mistrial on Monday in a lengthy and high-profile trial accusing **Walmart, Walgreens** and **CVS** of flooding several counties with opioid prescriptions.

Jurors had sent a note to **Broward County Circuit Judge Carol-Lisa Phillips** saying they were deadlocked a second time on the 14th day of deliberations, prompting the dismissal. More than a dozen hospitals had sought up to $1.5 billion at the end of the 51-day trial. The jury, which began deliberations on Nov. 14, sent multiple notes, first indicating they were deadlocked on Dec. 4.

Deliberations took a decidedly bizarre turn: On Dec. 5, one juror sent a note accusing another of bullying, offensive comments and talking with defense attorneys in the men's bathroom. The note, titled "Formal Statement of Juror Misconduct," also said the other juror had "grabbed and hugged me without my consent" and had not considered the evidence with an open mind and openly stated he was not following the legal instructions.

After hearing heated arguments from the lawyers, Phillips interviewed the juror. But, by the end of the day, she dismissed the juror, who hadn't actually witnessed the bathroom conversations and whose other accusations were taken out of context.

“Her responses were all over the place,” Phillips explained on Monday, according to Courtroom View Network. “As we went through the document itself, it appeared that almost everything generated in this document was not credible.”

On Monday morning, the judge declined to dismiss the accused juror, who remained in deliberations.

Warren Burns (**Burns Charest**), who represented the hospitals, insisted he would ask for a new trial date in 2026. As to the dismissed juror, whose use of **Google AI** assistant **Gemini** to write her note had been cited by defense counsel to challenge her credibility, Burns told me it won’t be the last time a jury could turn to artificial intelligence to write a note:

“Put yourself in the juror’s shoes: Lay juror, not familiar with the legal process, wants to write something serious. It’s 2025. A lot of people turn to tools like Gemini to help them draft something, so she testified she relayed what she wanted to while speaking into her phone. Produced a draft, she transferred it to a computer and printed it."

Mikal Watts (left) of Watts Law Firm and Mark Lanier of The Lanier Law Firm. Courtesy photos

Lanier and Watts on Texas Flood Deaths: ‘On This, We See it Differently’

Two titans of the plaintiffs' bar, Mark Lanier (**Lanier Law Firm**) and Mikal Watts (**Watts Law Firm**), are faced off against one another in the lawsuits over the flood deaths of 20 girls this summer who attended **Camp Mystic**.

Here's my report on the unusual matchup of two lawyers who have spent decades pursuing litigation against companies like **Johnson & Johnson** and **PG&E**. They've previously teamed together representing Texas counties in the opioid litigation, and, more recently, are together pursuing lawsuits alleging prenatal use of acetaminophen, like **Tylenol**, causes autism.

This time, however, Lanier has sued Camp Mystic on behalf of the families of six girls who died in the July 4 floods, insisting the owners failed to have an adequate emergency plan and were saving their lawn equipment and canoes before evacuating the girls, some as young as 8. Watts, who has a ranch eight miles from the flooding, is defending the camp pro bono, insisting that the fault lies entirely with the state of Texas, whose legislators failed to approve $5 million to install a flood emergency system along the Guadalupe River in Kerr County.

Despite their differences, Watts and Lanier consider each other friends.

"Oh, I had hair when I first met Mark," Watts told me. Lanier, who once judged Watts' high school debate team, said, "I respect and appreciate Mikal. But on this, we see it very differently."

Tina Wolfson, with Ahdoot & Wolfson. Courtesy photo

Who Got the Work?

A federal judge in **New York's Southern District** appointed three plaintiffs' firms to lead 20 lawsuits over **Coinbase**'s data breach. In a Dec. 4 order, **U.S. District Judge Edgardo Ramos** appointed **Greenbaum Olbrantz, Freedman Normand Friedland** and **Ahdoot & Wolfson** as interim co-lead counsel. The order referenced Tina Wolfson (Ahdoot & Wolfson), leading numerous data privacy cases, Freedman Normand's lawyers have represented plaintiffs involving cryptocurrency, and the substantial work all three firms already have done in the multidistrict litigation.

Here's what else is happening:

Hellhole Hitlist: **Los Angeles** topped the **American Tort Reform Association**'s annual "Judicial Hellholes" list after a jury hit **Johnson & Johnson** with a $966 million talc verdict. The report also cited a $50 million verdict against **Starbucks** on behalf of a delivery driver who was burned by hot tea in the drive-thru, and racketeering lawsuits filed by **Uber** and **Ford** against several plaintiffs' attorneys in Southern California. New York City, at No. 2, was a "hot spot for unsupported, exaggerated, and suspicious lawsuits," the report said, while Texas, which saw verdicts of $831 million and $640 million this year, and whose attorney general has sued **Kenvue** over **Tylenol**'s alleged link to autism, was a venue to watch.

Benicar Battle: **Nagel Rice** has filed malpractice suits against **Robins Kaplan** and **Pendley Baudin & Coffin,** challenging their attorney fees in the **Benicar** multidistrict litigation, in which they served on the plaintiffs' executive committee. The suits, filed by Bruce Nagel (**Nagel Rice**) in New Jersey's **Camden County Superior Court**, allege Tara Sutton (**Robins Kaplan**) and Christopher Coffin (**Pendley Baudin**) charged a full 40% contingency fee, in violation of New Jersey's contingency fee rules, while failing to disclose to their clients the compensation they received from the $34 million common benefit fund. Nagel Rice filed similar suits against Adam Slater (**Mazie Slater**), who also was on the Benicar committee.

Meta Appeal: The **Massachusetts Supreme Judicial Court** heard Dec. 5 oral arguments in a case alleging that **Meta Platforms' Instagram** causes addiction in adolescents. Meta filed an interlocutory appeal of a 2024 decision by **Suffolk County Superior Court Judge Peter Krupp** denying dismissal of the case, brought by **Massachusetts Attorney General Andrea Joy Campbell**. Mark Mosier (**Covington**) argued that Meta was engaged in traditional publishing features protected under Section 230 of the Communications Decency Act and First Amendment, while **Massachusetts Solicitor David Kravitz** argued that the features at issue are not third-party content.

Thanks for reading Critical Mass! I'll be back next week.

HBO Max Subscriber Files Class Action Seeking to Block Netflix-WBD Merger

"The Merger, if consummated, will injure competition by eliminating a head-to-head rivalry in high-end content production and distribution," counsel for an HBO Max subscriber alleged in an antitrust class action seeking to prevent Netflix from acquiring Warner Bros. Discovery's streaming assets.

December 09, 2025 at 06:31 PM By **Sulaiman Abdur-Rahman**

Acquiring HBO Max would give Netflix's streaming market share a big boost. Photo: Ryland West/ALM

Plaintiffs firm Bathaee Dunne has filed an antitrust class action on behalf of HBO Max subscribers seeking to prevent Netflix's proposed $82 billion acquisition of Warner Bros. Discovery's streaming and entertainment assets.

"If allowed to consummate, the Netflix-WBD merger will substantially decrease competition in the U.S. [subscription video on demand] Market, harming consumers in that market through increased prices, reduced service quality, and decreased output," according to the allegations in the complaint.

Bathaee Dunne founding partner Brian Dunne, a former Quinn Emanuel Urquhart & Sullivan associate, filed the lawsuit Monday in the U.S. District Court for the Northern District of California seeking injunctive relief on behalf of plaintiff Michelle Fendelander and similarly situated HBO Max subscribers.

"The Merger, if consummated, will injure competition by eliminating a head-to-head rivalry in high-end content production and distribution," the plaintiff's counsel alleged in the 56-page complaint. "The Merger, if consummated, would further injure competition by enabling Netflix to increase prices or degrade service quality without fear of competitive discipline."

WBD's HBO Max streaming service "remains one of the most important competitors to Netflix in the United States," according to the complaint, which claims the proposed Netflix-WBD merger would substantially harm competition and consumers in violation of Section 7 of the Clayton Act.

"The lack of any affirmative consumer protections underscores the risk that the merger will result in exactly the type of competitive harm—reduced output, restricted choice, and diminished innovation—that Section 7 of the Clayton Act is designed to prevent," the complaint alleges.

"We believe this suit is meritless and is merely an attempt by the plaintiffs bar to leverage all the attention on the deal," a Netflix spokesperson said Tuesday in a statement provided to Law.com and the National Law Journal.

Counsel for the plaintiff declined to comment Tuesday beyond the complaint.

U.S. District Judge Eumi K. Lee of the Northern District of California is assigned to the case captioned as *Fendelander v. Netflix Inc*. Counsel for Netflix have not entered an appearance in the class-action lawsuit as of Tuesday.

Paramount on Monday launched a hostile $108 billion bid for WBD, refusing to acquiesce after Los Gatos, California-based Netflix announced Dec. 5 its planned $82.7 billion acquisition of New York-based WBD.

Skadden, Arps, Slate, Meagher & Flom acted as counsel for Netflix in the streaming giant's planned transaction.

In Discovery Communications privacy litigation, lawyers fight over arbitration providers

reuters.com/legal/government/discovery-communications-privacy-litigation-lawyers-fight-over-arbitration-2025-12-10

Jenna Greene December 10, 2025

Item 1 of 2 The Discovery Communications headquarters building is seen in Silver Spring, Maryland December 3, 2009. REUTERS/Brad Bower

[1/2]The Discovery Communications headquarters building is seen in Silver Spring, Maryland December 3, 2009. REUTERS/Brad Bower Purchase Licensing Rights, opens new tab

Dec 10 (Reuters) - When plaintiffs' lawyers threatened to bring thousands of cases against Discovery Communications over alleged consumer data privacy violations, all parties agreed the disputes belonged in arbitration.

That’s where the consensus ends. Nearly three years later, the litigation has stalled, opens new tab over which arbitration provider — JAMS or National Arbitration and Mediation (NAM) — should hear the claims.
The stalemate offers a revealing look at how some companies are navigating the growing phenomenon of mass arbitration, using the rules and procedures of competing arbitration providers to gain a litigation edge.

At the core of the dispute, according to court papers, is a move by Discovery that appears to limit the upfront fees it would have to pay if all 4,000-plus plaintiffs attempted to file simultaneous arbitration demands. In mass arbitration, the fees that companies must pay each time a claim is filed can collectively swell into millions of dollars, and it becomes cheaper to settle than fight.

The case started in early 2023, when the plaintiffs sent pre-arbitration notices to Discovery stating that they intended to bring suit, alleging that the company's discovery+ streaming service used third-party software tracking “pixels” on its website. They say this resulted in the unauthorized disclosure of their video viewing habits to other companies, in violation of the Video Privacy Protection Act.

The statute carries penalties of $2,500 per violation, and successful plaintiffs can also recover legal fees, though the hurdles are high. The Manhattan-based 2nd U.S. Circuit Court of Appeals earlier this year rejected, opens new tab a similar suit against another video platform.

A Discovery spokesperson said the privacy allegations have no merit. Plaintiffs' counsel Kiran Bhat at Keller Postman declined to comment.

Discovery's "visitor agreement" at the time specified that JAMS would hear any disputes.

Per the Discovery/JAMS agreement, each case would be heard individually, plaintiffs' lawyers said. Each case would also require an upfront filing fee, paid almost entirely by Discovery.

But then Discovery changed the rules.

According to court records, the same day Discovery received the pre-arbitration notices — Jan. 9, 2023 — it updated its visitor agreement, replacing JAMS with NAM, another well-known provider of alternative dispute resolution services.

Spokespeople for JAMS and NAM declined to comment.

Crucially, Discovery also updated the terms of its visitor agreement, adding specialized procedures for arbitrating mass claims as well as a provision allowing arbitrators to impose sanctions on lawyers for bringing frivolous claims.

Under Discovery's new rules, which apply whenever more than 25 plaintiffs represented by the same counsel file similar claims, NAM will accept the filings in batches of 50 claimants, then 100, then 200, with each stage followed by mediation. Doing so removes the specter of massive up-front fees paid by Discovery — but also means the latter batches of claimants could wait years before their cases are heard.

Plaintiffs' counsel cried foul. "Discovery is taking the position that it can revoke arbitration agreements it entered into by unilaterally posting a new agreement on its website," Keller Postman of counsel Albert Pak wrote in a 2024 letter to JAMS, asking that it move forward immediately with 693 arbitrations.

JAMS declined to do so, opens new tab, but added that it would be "happy to proceed" if a court were to order the parties to litigate before it.
The plaintiffs' lawyers are trying to make that happen.

Last year, they filed a petition on behalf of two individual claimants in federal court in Manhattan, seeking to compel Discovery to arbitrate at JAMS. Discovery responded with a cross motion to bring the cases at NAM.

U.S. District Judge J. Paul Oetken split the difference. Arbitration is “ultimately a matter of contract” requiring mutual assent, he wrote in a March 2025 decision, opens new tab.

Here, one plaintiff continued his discovery+ subscription after the new arbitration agreement, clicking through the “conspicuous notice of the change,” the judge wrote. Therefore, that customer is bound to arbitrate at NAM, he held.

The other claimant’s discovery+ subscription expired before the new agreement was put in place. That customer is not bound by the new provisions, Oetken ruled, and can still bring his case at JAMS.

Still unresolved: what happens to the other 4,225 claimants?

Keller Postman lawyers asked Discovery to produce records showing which plaintiffs quit its streaming service before the NAM agreement took effect and (per Oetken's decision) could presumably proceed at JAMS.

When Discovery declined to do so, the plaintiffs filed a new lawsuit, opens new tab in August in Manhattan federal court, asking U.S. District Judge Edgardo Ramos to issue a declaration specifying the forum — JAMS or NAM — that each claimant must use.

Lawyers for Discovery from Skadden, Arps, Slate, Meagher & Flom in a motion to dismiss, opens new tab called the petition “self-evidently absurd.” Keller Postman could determine this simply by asking its clients whether they’d discontinued their discovery+ subscription, and if so, when, they said.

Ramos sounded nonplussed by the entire fight.

“This is a very unusual case, in my experience,” he said during a telephone conference last month — the parties' first appearance before him — according to a transcript of the proceedings. ”Usually, you have the corporate defendant looking to force the claimants to go to arbitration.” He added, “I’ve never seen a case quite like this.”

Securities

Opinion

Matt Levine's Money Stuff: Private Indices Are the New Indices

December 9, 2025, 11:28 AM PST

Private index

I just feel like, within living memory, there were "public companies," in which you could invest, and "private companies," in which you couldn't. I mean, *someone* could: Many private companies took no outside investment, but some did, and so if you ran the right sort of pool of capital and had the right connections you could end up with a collection of investments in private companies. But there was not a thing called, like, the "private market." You couldn't pick from a menu of big private companies and just go buy their shares. "Private companies" was not a clear unified category. There were startups with venture capital investments, and companies acquired by private equity in leveraged buyouts, and private partnerships of lawyers or doctors or investment bankers, and the odd large bootstrapped profitable private business, and thousands of local hardware stores, but there was no special conceptual connection between them.

What they were was *not public*. "Public companies" were a thing: US public companies are all subject to similar disclosure requirements, they trade on the same exchanges, they are open to all investors equally and they are often largely owned by the same few dozen big investment firms. There was something coherent about lumping all the public companies together, or comparing them to each other. In fact, you could go further and *ignore the differences between them:* You could say "ahh I can't pick between the companies, I'll just buy all of them." This is, approximately, the theory of a broad market index fund: The stock index reflects the prices of all of the stocks, and an index fund allows you to buy all of the stocks and get the overall performance of the market. The stock market. The "public company" market. You just invested in all of the public companies.

"I'd like to invest in all of the private companies too" would have sounded insane. For one thing, how would you even know what they are? They're not traded on the exchange, they don't file with the US Securities and Exchange Commission, there is no readily available *list* of them, and there are at least millions of them. For another thing, they mostly won't let you: At any given time, a few private companies are raising money, but most aren't, and you can't just buy their shares on the exchange whenever you want. For a third thing: Why? What thesis is served by investing in all the tech startups and LBO targets and law partnerships and hardware stores?

All of this has, over the course of my time in financial journalism, changed, and now it is *absolutely normal* for people to go around saying things like “ordinary investors should be able to invest in private companies too.” It is still somewhat incoherent, but it is, like, developing coherence. There is a growing category of private companies that are kind of *like* public companies. “Private markets are the new public markets,” I keep saying. SpaceX is brokering stock trades at an $800 billion valuation. In recent memory it would have been quite weird for a private company to (1) frequently broker stock trades between existing shareholders and prospective investors or (2) have an $800 billion valuation. Now, meh, whatever, the private companies are big and liquid too.

In, like, two years, the received wisdom in investing will be “you should own a low-cost broad market index fund that includes all the public companies and also all the private companies.” I mean, not all of them, not the hardware stores. But the large and growing category of private-is-the-new-public companies will be increasingly investable and increasingly indexed. The Financial Times reports:

Index provider MSCI has launched a global benchmark incorporating both public and private equities, as investors increasingly look to private markets to boost returns and diversify their portfolios.

The MSCI All Country Public + Private Equity index will allocate a 15 per cent weighting to private equity. It combines MSCI’s All Country World Investable Equity index, which contains 8,300 listed companies — 99 per cent of developed and emerging markets listed stocks — with a newly launched All Country Private Equity index. The latter tracks the valuations of 10,000 private equity funds globally.

The launches follow rapid growth in the private equity sector in recent years, with assets under management more than doubling to $4.7tn since 2018, according to consultancy Bain, despite concerns among some commentators over valuations being paid.

As private asset investments become increasingly widespread, MSCI expects more demand for a total equity benchmark.

“I would say that the lines around public and private equity are blurring,” said Luke Flemmer, MSCI’s head of private assets.

“Institutional investors increasingly view equity as a unified asset class encompassing both publicly listed and privately held companies,” MSCI said in a report about the index’s methodology.

“A total equity benchmark”! You can’t take that too literally; the hardware stores and lemonade stands won’t be in the benchmark. (Institutional private equity *funds* will be.) But there is increasingly a class of private companies that *are* blurring the lines between public and private, and why shouldn’t they be in an index?

Narrow banking BNPL

A schematic story that I like to tell around here is that banks used to be in the business of taking deposits and making loans, but that business is risky, and they are moving away from it. Oh, not entirely. That *is* the core business of banking, after all, and they still do it. But at various margins, banking is getting narrower: Banks are putting less of their deposits to work in making loans, and more loans are being made by private credit firms with locked-up, long-term equity capital. (And banks are lending money to those private credit firms: The banks are “ re-tranching,” taking more senior claims on the private credit firms’ pools of loans.)

We have talked about this change in business lending and leveraged buyout lending and project finance and trade finance. But what does it look like in *consumer* lending? Is there a story like “normal people used to borrow from banks, but now they borrow from private credit”? Well, we’ve talked about private credit investors buying mortgages. But the simplest day-to-day version of the story is:

Normal people used to buy stuff using *credit cards*. When you use your credit card to buy something, your bank lends you the money to pay for it.

Now people increasingly use *buy-now-pay-later loans* to buy stuff. When you use a BNPL loan to buy something, some financial technology firm partners with a bank to lend you the money, but neither the fintech nor the partner bank has much of a balance sheet, and ultimately the loan is owned by someone else. Often the someone else is a private credit fund.

In this version, the modern rise of BNPL in the US is not so much a story of “fintechs offer a better user experience than credit cards” or “people are going into debt for burritos,” and more a story of “banks are retreating from consumer lending risk, and private credit firms, with their long-term capital, are better bearers of that risk.”

At the Wall Street Journal, Telis Demos reports on this shift:

Private credit is exploding onto the scene in what is known as alternative consumer lending. Analysts at KBW tallied up new private-credit funding deals this year for financial-technology firms in consumer lending and estimated that those deals could support nearly $140 billion in lending globally over the next few years. That is a big surge from under $10 billion in 2024, the analysts estimated.

This lending includes things like buy now, pay later arrangements, as well as other kinds of personal loans. …

Many banks that issue credit cards have sought to focus on higher-credit or wealthier borrowers. That has been reflected in part by shrinking card lending by banks: Across U.S. commercial banks, average balances on credit-card and other revolving consumer loans were down almost 2% in the third quarter from a year earlier, according to Federal Reserve data.

Demos's particular point here is that this shift makes *data* worse: People are used to looking at bank data for information about consumer spending and credit quality, but if consumer loans are increasingly made by non-banks, the bank data is less informative.

That is one symptom of a more general effect of the move toward narrow banking, which is that *banks are more regulated than non-banks*. There is a *reason* for that: The classic bank business model, of taking short-term deposits and using them to make long-term loans, is quite risky. What makes it risky is not, like, "the banks are constantly making stupid loans"; what makes it risky is the *funding model*. (Silicon Valley Bank blew up by *buying Treasury bonds*; the risk was not in the bonds it bought but in the deposits it issued.) Everyone knows this and has known it for a century and there is a popular Christmas movie about it, so there is a lot of bank regulation to mitigate it. Some of that regulation takes the form "well, at least don't make stupid loans": *Because* the bank funding model is quite fragile, it is very important that banks make good loans, and be seen to make good loans, and tell their regulators about the loans they are making so the regulators can check.

It is considerably less important that private credit firms make good loans. Still important! But bank regulation is driven by the particular funding risk of banks, and if loans are being made by non-banks those risks are lower and regulation will be lighter.

Slop feed

I sometimes like to imagine that humanity is capable of building an evil artificial superintelligence that will enslave or destroy us, and that we are foolishly blundering toward actually doing it, but we will be saved in the most trivial, embarrassing-for-humanity possible way. For instance:

- I have imagined a story "about venture capitalists building a runaway artificial intelligence that will likely enslave or destroy humankind, only to be thwarted by a minor poet suing them for copyright violations for scraping her poems."
- I have imagined a story about an artificial intelligence lab working on a project with a 20% chance of wiping out humanity, and then going to an insurance broker to price out insurance against that risk, getting a quote that it couldn't afford and shelving the project. "And the evil omniscient demon inside your computer will say 'ah drat,'" I wrote, "just before you pull the plug on him forever. And humanity will blunder on, saved from probabilistic extinction by the quiet heroism of insurance actuaries."
- We once discussed Scott Alexander's science fiction story "The Onion Knight," about a malign superintelligence built to trade prediction markets: It takes over the world, but because it was trained to avoid onions (there is a famous little bit of US commodity futures regulation banning onion futures trading), you could avoid being killed by the robots by tying an onion to your belt, which was the style at the time.

The theme here is something like: Humans are collectively brilliant and capable and reckless, and in theory we could build a computer that is even more brilliant and capable and reckless than we are. But we have lots of dumb little historically determined hang-ups, and in practice — or at least in an amusing science-fiction world — one of those hang-ups will hold the computer back from achieving perfect superintelligence.

I'm kidding! These are my dumb little sci-fi jokes. But here's kind of an amazing Wall Street Journal article about OpenAI's pivot to engagement:

When OpenAI CEO Sam Altman made the dramatic call for a "code red" last week to beat back a rising threat from Google, he put a notable priority at the top of his list of fixes. ...

OpenAI was founded to pursue artificial general intelligence, broadly defined as being able to outthink humans at almost all tasks. But for the company to survive, Altman was suggesting, it may have to pause that quest and give the people what they want. ...

And it was telling that he instructed employees to boost ChatGPT in a specific way: through "better use of user signals," he wrote in his memo.

With that directive, Altman was calling for turning up the crank on a controversial source of training data —including signals based on one-click feedback from users, rather than evaluations from professionals of the chatbot's responses. An internal shift to rely on that user feedback had helped make ChatGPT's 4o model so sycophantic earlier this year that it has been accused of exacerbating severe mental-health issues for some users.

Now Altman thinks the company has mitigated the worst aspects of that approach, but is poised to capture the upside: It significantly boosted engagement, as measured by performance on internal dashboards tracking daily active users.

Like: Sam Altman was apparently faced with a literal choice between working to make OpenAI's models superintelligent, and working to make them give users answers that they wanted, and he apparently decided "ehh go for engagement." Anyone who has ever looked at social media knows that "superintelligence" and "engagement" are opposites. Perhaps the intelligence of AI models is capped — not in computer science theory, but in commercial practice — at the intelligence of a social media feed. Maybe that's even good news for humanity.

Everything is securities fraud

You know the rule: Every bad thing that a public company does is also securities fraud. Shareholders will argue that the company didn't sufficiently warn them about the bad thing, they were tricked into buying the stock, the bad thing happened, the stock dropped, and they lost money, done.

"Bad thing," here, means "thing that makes the stock go down." On Friday, Netflix Inc. announced that it would buy Warner Bros. Discovery Inc. for about $82 billion; on Monday, Paramount Skydance Corp. jumped Netflix's bid, and it's possible that more bidding will come. Netflix's stock went down about 2.9% when the deal was announced, and it went down another 3.4% yesterday when Paramount came in; I suggested yesterday that this might be because Netflix's shareholders don't want it to buy Warner and worry that it will keep bidding. And in fact the track record of big media mergers is, uh, mixed. It's entirely plausible that Netflix's decision to buy Warner is, in this context, a bad thing.

Can shareholders sue? I mean, traditionally, doing a merger is not securities fraud. There are limits to the theory. But Bloomberg's Lucas Shaw reported this weekend:

When asked about a potential acquisition of Warner Bros., Netflix co-CEO Greg Peters echoed his former boss and mentor. "One should have a reasonable amount of skepticism around big media mergers," he said at Bloomberg's Screentime conference in October. "They don't have an amazing track record."

It's true, Netflix wasn't interested in most deals and had no interest in owning legacy cable networks. Peters' dismissal led industry insiders to believe Netflix wasn't interested.

Yet Peters' public skepticism masked the company's private intent. Netflix had already reached out to Warner Bros. and expressed an interest in the company and even gave the company a heads-up that Peters would dismiss a potential deal in public.

Hmm! "They don't have an amazing track record" is true, and not exactly a denial, so not exactly misleading. But giving Warner "a heads-up that Peters would dismiss a potential deal in public" does sort of sound like an intent to mislead shareholders? And Netflix lost like 6% of its market capitalization in two days, or about $29 billion, which might be enough for an enterprising shareholder lawyer to sue over.

Nothing is securities fraud

Of course, "everything is securities fraud," as a theme, might be going away. We talked a few weeks ago about new guidance from the US Securities and Exchange Commission, which will no longer discourage companies from banning shareholder fraud lawsuits. Under the new guidance, companies can require mandatory arbitration of shareholder lawsuits, making class-action lawsuits impossible and making "everything is securities fraud" considerably less attractive for plaintiffs' lawyers.

It is not at all clear how significant this will be: State law in Delaware, where most public companies are incorporated, might not allow it, and companies might just be embarrassed to announce "if we do fraud our shareholders can't sue." But they might not be. It's annoying that *everything* is securities fraud, and it might be preferable if *nothing* was, though ideally there would be some middle ground.

Anyway the Financial Times reports that a company did it:

An oil driller that uses biblical verses to guide exploration has become the first company to block class-action shareholder lawsuits under new management-friendly policies approved by US securities regulators.

Zion Oil and Gas, a penny stock that as of September had no revenue from drilling, said in a Securities and Exchange Commission filing last week that it would require shareholders to resolve disputes through arbitration rather than court. …

"It makes sense that a desperate company that's been steadily losing money would want to block lawsuits from its shareholders," said Tyler Gellasch, chief executive of advocacy group Healthy Markets Association. "What doesn't make sense is why anyone would think that it would make investors want to give that company or its management more money."

Here is Zion's announcement. The stock is actually up a bit since the announcement. I have to say that, if you spend $0.18 to buy a share of stock of an oil driller whose "vision … of finding oil and/or natural gas in Israel … is based, in part, on biblical references alluding to the presence of oil and/or natural gas in territories within the State of Israel that were formerly within certain ancient biblical tribal areas," but that has never actually found any oil, maybe you *shouldn't* be able to sue if you lose money? You do kind of know what you're getting into there.

Things happen

Kushner, Gulf money and desperate texts: inside Paramount's hostile bid for Warner Bros. Behind Paramount's Relentless Campaign to Woo Warner Discovery and President Trump. Warner Bros. Rival Bids Put Spotlight on Flagging Cable Networks. Supreme Court Appears Ready to Give President More Power to Fire Government Officials. Oil market faces 'super glut' as supply surge hits prices, Trafigura warns. Trafigura Boosts Trader Payouts After Another Bumper Profit. Abu Dhabi's Hedge Fund Island Plans $16 Billion Expansion. Drugmakers Are Ditching Middlemen to Sell Directly to Patients. Activist behind Engine No. 1 Exxon campaign builds stake in Siemens Energy. PepsiCo to Cut Costs, Lower Food Prices in Deal With Activist. Now Cracker Barrel Diehards Think the Food Isn't Up to Scratch, Either. A prediction market for shortform content. Swag gap.

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1. Technically we've talked about insurance companies buying mortgages, but I sometimes think of "private credit" as a cool modern way to say "insurance companies," and in fact "large alternative asset managers like Apollo Global Management Inc. and KKR & Co. are leading the shift" of insurance companies into buying whole mortgages.
2. Maybe. In other areas of law, companies have adopted arbitration policies that prohibit class actions, and plaintiffs' lawyers have responded with "mass arbitration": If, instead of one 10,000-person class action, you

file 10,000 individual arbitration actions, the defendant generally has to pay the arbitration costs of all of them, and won’t like it.

EY

EY hit with new investigation by UK accounting watchdog

Financial Reporting Council to examine two individuals and firm itself over 'unauthorised' auditors' reports

The litany of probes means EY could face millions of pounds in financial penalties if it is found to have breached audit requirements

Ellesheva Kissin in London

Published 6 HOURS AGO

EY has been hit with a new probe by the UK accounting watchdog, piling further pressure on the Big Four firm already dealing with four investigations and £5mn in fines this year.

The Financial Reporting Council said on Wednesday that it had launched an investigation of two individual EY auditors, as well as the firm itself, for issuing "unauthorised" auditors' reports to unnamed companies. EY said it had "self-reported" the issues to the regulator.

The new investigation will add to four probes already under way into EY. They include one into the Big Four firm's work on checking the books for the scandal-hit Post Office and another into two unnamed companies earlier this year.

The FRC is still examining EY's audits of collapsed furniture retailer Made.com and FTSE 100 hospital operator NMC Health, from 2023 and 2020, respectively.

The NMC Health audit is also being scrutinised in London's High Court after its administrators accused EY of negligence. They are seeking damages of about £2bn on behalf of NMC creditors who lost money when the hospital operator collapsed.

The litany of probes means EY could face millions of pounds in financial penalties if it is found to have breached audit requirements.

The firm has already paid more than £5mn in fines this year after "serious breaches" of audit standards in its work on failed travel group Thomas Cook's accounts, and for auditing listed company Stirling Water Seafield Finance for more than 10 years without publicly retendering for the contract.

EY said it would "continue to fully co-operate" with the FRC's investigation.

The FRC said the firm had informed the regulator that it had "identified and informed the relevant audited entities, remediated the audit files and concluded that no adjustments to the related financial statements or audit opinions were required".

The new investigation was opened under rules that govern the professional behaviour of accountants in cases of misconduct or in public interest cases, such as where a significant number of people are affected or a large sum of money has been lost.

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Blue Owl's Packer Quashes Idea of Reviving Scrapped Fund Merger

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Olivia Fishlow, Max Zimmerman December 10, 2025

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Summary by Bloomberg AI

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- Blue Owl Capital Inc. Co-President Craig Packer said his firm is not looking to rekindle a merger of two private credit funds after scrapping the plan.
- Packer said the company was trying to do what it considered best for shareholders and doesn't regret what happened with the merger.

- The firm's management will work with the board for a path forward for the private fund, according to Packer.

By Olivia Fishlow and Max Zimmerman

(Bloomberg) --
Co-President said his firm is not looking to rekindle a merger of two private credit funds after scrapping the plan following scrutiny over potential investor losses.

Packer said in an interview on Bloomberg TV that he didn't regret what happened with the merger because the company was trying to do what it considered best for shareholders.

"We're not going to merge the two back together," he said Wednesday. "I always like to say keep all options on the table, but that's not a very high likelihood outcome."

WATCH: Craig Packer, co-president at Blue Owl, discusses the termination of a merger of two private credit funds.
Source: Bloomberg

The firm terminated the deal between Blue Owl Capital Corp., publicly traded under ticker OBDC, and Blue Owl Capital Corp. II, a private fund, last month. As part of the proposed deal, shares of Blue Owl Capital Corp. II were set to be swapped for stock of OBDC. But OBDC shares had been trading below the value of the fund's assets, meaning investors in the private fund could have seen paper losses if the deal closed at those levels.

OBDC traded down even further following the November announcement, although the stock had been trading at a discount to net asset value well before.

"We thought this was the right plan to merge this into our publicly traded fund. After the announcement, the stocks traded down because of a lot of confusion," Packer said. The firm's management will work with the board for a path forward for the private fund, he added.

Blue Owl has seen record cash coming into its retail funds and continues to see monthly inflows into its credit funds, he said. In particular, the firm had seen strong performance from the software sector, Packer said.

Packer also expressed enthusiasm for data centers, describing them as a "really attractive space." He said the use by banks of synthetic risk transfers to manage data center risk is a "smart" move.

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Sally Bakewell

Securities

SEC Official Warns Against 'Incomplete' Business Unit Disclosure

December 9, 2025, 2:30 PM PST

Public companies need to ensure they're telling investors in financial reports how their executives use certain segment profitability metrics in business analysis, an SEC official said Tuesday.

Securities and Exchange Commission staff have found "missing or incomplete" disclosures from companies applying updated accounting rules, Jarrett Torno, an associate chief accountant in the SEC's division of corporation finance, said at an American Institute of CPAs event in Washington. The US rules aim to give investors further details on business segment-level expenses like advertising or the costs to sell products.

The Wall Street regulator has scrutinized this year the first batch of companies' annual financial reports that adopt the segment reporting guidance. The rules require companies to explain how a "chief operating decision maker," such as a CEO, utilizes reported measures of a segment's profit or loss to assess performance and dole out resources.

Saying a measure was used in performance or resource assessment without explaining how it was used is an example of incomplete disclosure, Torno said. SEC staff review financial filings to monitor compliance and can issue comments requesting revised disclosures or additional information.

Torno pointed to examples provided in the update, released in 2023 by the Financial Accounting Standards Board. FASB gave an example of a corporate disclosure that includes the detail that a chief decision maker uses segment gross profit when evaluating product pricing.

Non-GAAP Metrics

The segment guidance allows businesses to report more than one measure of a segment's profit or loss—including metrics that don't comply with US generally accepted accounting principles, or GAAP, if executives use them to view segment performance.

At least one should be the measure that is most consistent with the measurement principles under GAAP, according to FASB's guidance.

It can be complex to make this determination when none of the metrics are measured according to GAAP, Torno said Tuesday.

"One of the factors a registrant should consider when evaluating which measure is closest to GAAP in this scenario is the number of adjustments," he said.

For example, a corporate decision maker might use earnings before interest, taxes, depreciation, and amortization, or EBITDA, and another metric that adjusts EBITDA to exclude restructuring charges, Torno said. SEC staff believes that the adjustment is a further divergence from how amounts are measured in financial statements, he said, which would make the EBITDA metric the measure required to be reported.

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Starbucks Loses Bid For Second Look At 'Triple Shot' Ruling

By **Emilie Ruscoe**

Law360 (December 9, 2025, 5:38 PM EST) -- Starbucks can't get a Seattle federal judge to revise his order allowing a proposed investor class action over its "Triple Shot" reinvention plan to proceed, with the judge saying a recent Ninth Circuit decision on an investor suit over an ad slogan does not change his position.

In a Friday order, U.S. District Judge John H. Chun denied Starbucks' motion for reconsideration of his Nov. 19 partial dismissal bid, telling the company that the Ninth Circuit's August decision in Aaron Sneed Jr. et al. v. Talphera Inc. "does not provide a basis for reconsideration."

"Sneed is factually distinct from this case," Judge Chun held Friday, in that the challenged statement at the heart of the Sneed ruling was an ad slogan, as opposed to executive disclosures to investors on an earnings call in the Starbucks suit.

As such, the Sneed holding does not require the district court to revisit claims over allegedly false statements because the Ninth Circuit decision did not change legal standards for pleading falsity or scienter.

The Starbucks case concerns investor claims that the coffee chain misled shareholders about its struggles to rethink its business amid stiffer competition in China and other matters. Last month, Judge Chun cut several claims from the suit, including those against Starbucks executives, but allowed other claims to proceed.

In its Dec. 4 motion for reconsideration, Starbucks argued that after the Sneed decision, courts must "look at each statement in 'context,' including its 'surrounding text,'" to determine whether plaintiffs have adequately alleged falsity.

Judge Chun said Friday that he had "already identified, and applied, this principle in the dismissal order when analyzing the element of falsity." He added that he declined to "rethink what [he had] already thought through," quoting another judge's April reconsideration denial.

Judge Chun said that he "does not read Sneed to raise the bar for pleading" scienter.

"Instead, the court reads Sneed to reiterate the same general principles set forth in its order: scienter can be difficult, but not impossible, to establish at the pleading stage," Judge Chun said. He added: "despite reaching a different outcome from the Ninth Circuit in Sneed, the Court's analysis still tracks the same analysis applied in Sneed."

While the judge denied Starbucks' reconsideration bid, investors fared better in getting Judge Chun to reconsider another element of his ruling.

In response to the plaintiffs' motion, the judge said he "currently believes that an amendment to the order's conclusion is warranted" because the current conclusion of his dismissal order states that he is tossing "all claims against" Starbucks' former Chief Financial Officer Rachel Ruggeri.

That conclusion does not support the ruling's analysis, which preserved certain control person liability claims against Ruggeri hinging on fraud claims against Starbucks, the judge said Friday.

Judge Chun is "tentatively inclined" to partially grant the investors' motion for reconsideration of his dismissal order, he said, Friday, but "cannot do so before requesting a response from the defendants."

The investor claims launched in 2024 and the most recent version of the allegations — from February — allege the company hid its struggles to implement its reinvention plan.

According to the suit, Starbucks investors purchased the company's shares at artificially inflated prices, which fell when the company disclosed that its revenues were taking a hit from longer wait times for customized drinks in its U.S. shops and fierce competition in China.

In his November dismissal order, Judge Chun found, among other things, that the Starbucks investors had sufficiently alleged a causal connection between Starbucks' allegedly misleading statements and the economic loss to shareholders. At the same time, he tossed claims over three groups of allegedly misleading company statements.

The November order gives three institutional investor lead plaintiffs a chance to amend their claims before a Dec. 10 deadline, stating, generally, that "in amending the complaint, plaintiffs should consider other strong arguments raised by the defendants' motion to dismiss not explicitly addressed in this order."

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

Lead plaintiffs the Pavers & Road Builders District Council Pension Fund, Teamsters Local 237 Additional Security Benefit Fund and Teamsters Local 237 Supplemental Fund for Housing Authority Employees are represented by Luke O. Brooks, Laurie L. Largent, Kevin A. Lavelle, Erika L. Oliver, Patton L. Johnson and Evelyn Sanchez Gonzalez of Robbins Geller Rudman & Dowd LLP, and Juli E. Farris of Keller Rohrback LLP.

Starbucks Corp., Narasimhan and Ruggeri are represented by Tyler K. Lichter of K&L Gates LLP and Andrew B. Clubok, Susan E. Engel, Michele D. Johnson and Whitney B. Weber of Latham & Watkins LLP.

The case is Charles Garbaccio et al. v. Starbucks Corp. et al., case number 2:24-cv-01362, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Ben Adlin, Lauren Berg and Sydney Price. Editing by Vaqas Asghar.

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Ad Analytics Co.'s Brass Face Investor Suit Over Bot Traffic

By **Emilie Ruscoe**

Law360 (December 9, 2025, 10:19 PM EST) -- Current and former officers and directors of digital advertisement measurement services DoubleVerify Holdings Inc. kept the company from disclosing artificial intelligence-driven industry shifts that hurt its bottom line, including the company's own failures to detect increasingly sophisticated bot traffic, a shareholder derivative action alleges.

In her **complaint filed Tuesday** in New York federal court, DoubleVerify investor Susana Kaszirer alleged DoubleVerify CEO and Chair Mark Zagorski, Chief Financial Officer Nicola Allais and eight other members of the company's board breached their fiduciary duties by hiding that the company was losing customers and revenue amid the "the rapid evolution of invalid bot traffic schemes" facilitated by the proliferation of generative AI.

Kaszirer claimed that as early as November 2023, trading prices for DoubleVerify shares were artificially inflated while investors were kept in the dark about the company's struggles to compete in the changing digital advertising market.

According to Kaszirer, fake bot traffic had prompted many advertisers, including DoubleVerify customers, to move their ads from open exchanges to closed platforms such as the private marketplaces operated by tech giants Meta Platforms, Google, TikTok and Amazon.

On those closed platforms, Kaszirer said, DoubleVerify was at a competitive disadvantage: Its technological capabilities were limited, and it offered its services in direct competition with native tools.

The company also faced significant costs and a lead time of several years to develop technology for the closed platforms, the investor said, which undercut DoubleVerify's ability to monetize its premium-priced, higher-profit margin, artificial intelligence-powered activation services to help customers drive ad placement outcomes.

A series of disclosures between February 2024 and February 2025 led to three declines in DoubleVerify's share price, according to the complaint. Two of those drops came after the company lowered its financial forecasts, and one of those followed the company's acknowledgment that it had missed revenue expectations for its most recent fiscal quarter, Kaszirer said.

Separately, in March, DoubleVerify was the subject of a pair of reports that said the company was failing to identify fake traffic, Kaszirer said, though she didn't reference a trading price decline in connection with those reports.

Kaszirer accused the defendants of breaching their fiduciary duty, unjustly enriching themselves, abusing their control, grossly mismanaging the company and insider selling.

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

Kaszirer is represented by Joshua M. Lifshitz of Lifshitz Law PLLC.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Kaszirer v. Zagorski et al., case number 1:25-cv-10200, in the U.S. District Court for the

Southern District of New York.

--Editing by Lakshna Mehta.

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AmTrust Says Insurer Must Cover Securities Suit Losses

By **Hope Patti**

Law360 (December 9, 2025, 8:14 PM EST) -- A British insurance company wrongfully denied excess directors and officers coverage for underlying securities fraud litigation, AmTrust says in a suit filed in New York federal court Monday, saying the insurer must provide coverage since its primary policy and other excess policies have already been exhausted.

In its **complaint**, AmTrust Financial Services Inc. says Forge Underwriting Ltd. breached the excess run-off policy by refusing to cover a class action brought by preferred stockholders claiming AmTrust made misrepresentations that an acquisition of its outstanding common stock wouldn't affect the preferred stocks' status as publicly traded securities.

AmTrust says it "paid Forge substantial premiums for the Forge excess run-off policy to obtain [directors and officers] insurance coverage protecting AmTrust and its management against losses from securities claims made during the run-off period for alleged conduct prior to the take-private transaction and, in all likelihood, involving the take-private transaction."

Therefore, AmTrust says it is entitled to coverage for defense costs and settlement amounts incurred in connection with the underlying litigation under the Forge policy.

According to the complaint, AmTrust maintained a tower of primary and excess D&O policies that ran from Oct. 21, 2017, to Nov. 29, 2018, the take-private transaction closing date.

Before the transaction, the company says it purchased run-off insurance to cover claims made after the closing date relating to pretransaction conduct, which extended coverage from Nov. 29, 2018, to Nov. 18, 2024. Certain excess policies in the 2017-18 tower and 2018-24 run-off tower, including the Forge policy at issue, follow form to a primary D&O policy issued by AXA XL Ltd. unit Indian Harbor Insurance Co., the complaint says.

AmTrust says a settlement in previous consolidated stockholder litigation, which alleged that the company's directors and officers breached fiduciary duties owed to AmTrust's minority common stockholders, exhausted the first $25 million in coverage under the 2017-18 tower, including the Indian Harbor policy and three excess policies. AmTrust says it provided those insurers with full policy releases.

"The loss payments by these insurers under the 2017-2018 policies combined with contributions by AmTrust exhausted those policies, and thereby exhausted the corresponding run-off policies, by operation of the linked limit provisions in the run-off policies," the suit says.

Forge, which was also an excess insurer under the 2017-18 tower, contributed over $270,000 toward the settlement, meaning its excess run-off policy has also been eroded by that amount, AmTrust says. It adds that it did not provide Forge with a policy release and that more than $2.9 million in limits remains under the excess run-off policy.

In August 2019, about a year after the closing of the take-private transaction and the inception of the run-off policies, AmTrust stockholder Jan Martínek sued the company, its CEO and Chair Barry D. Zyskind, and directors George Karfunkel and Leah Karfunkel, alleging pretransaction misrepresentations.

AmTrust says Forge denied coverage for the suit in February 2022, on the basis that it related back to pretransaction claims filed by common stockholders and arose out of years-old alleged derivative liabilities.

"Forge improperly refused to provide coverage to AmTrust," the company asserts. "Forge agreed to indemnify AmTrust for losses in excess of the XL primary policy and the underlying excess layers, as provided under the Forge excess run-off policy."

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

AmTrust is represented by Robert L. Sills, Tamara D. Bruno and Peter M. Gillon of Pillsbury Winthrop Shaw Pittman LLP.

Counsel information for Forge was not immediately available Tuesday.

The case is AmTrust Financial Services Inc. v. Forge Underwriting Ltd., case number 1:25-cv-10170, in the U.S. District Court for the Southern District of New York.

--Editing by Leah Bennett.

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Mobile Game Maker, Investors Get Final OK For $6.5M Deal

By **Emilie Ruscoe**

Law360 (December 9, 2025, 8:07 PM EST) -- Mobile game developer Playstudios Inc. and its investors have gotten a final nod for their $6.5 million settlement of claims the company failed to disclose issues with a game it projected would be lucrative as it prepared to go public via merger with a special purpose acquisition company.

In a Sunday order in Nevada federal court, U.S. District Judge Richard F. Boulware II granted final approval to the settlement deal, finding it fair, reasonable, adequate and in the best interests of the settlement class.

Judge Boulware also said the investors' legal team, which includes attorneys from Pomerantz LLP and the Muehlbauer Law Office, could have a fee of 20% of the settlement fund, which is $1.3 million. The investors' counsel can also have nearly $140,600 for reimbursement of certain litigation expenses, the judge said.

The lead plaintiffs, the Phoenix Insurance Company Ltd. and The Phoenix Provident Pension Fund Ltd., will each receive awards of $10,000, the order states.

In their motion for preliminary approval of the deal in March, the investors told Judge Boulware that the agreement they had reached is "in the best interest of the settlement class and represents a significant recovery."

More specifically, the investors said, the settlement sum "exceeds the average recovery as a percentage of estimated damages in securities class actions, supporting preliminary approval."

The investors referenced securities class action settlement data from National Economic Research Associates in support of that claim. It was not immediately clear from the filing how the investors would compare their settlement, which involves three classes, to the NERA data.

The investors separately estimated that their average recovery of 30 cents per allegedly damaged share of Playstudios common stock "is also a result that well exceeds the average" in comparable cases.

Playstudios' 2021 go-public merger was with Acies Acquisition Corp., which said at the time the agreement was announced that Playstudios was valued at $1.15 billion, the suit states.

In the latest version of the claims, the investors assert that Playstudios is one of the "worst performing companies that chose to go public" via a SPAC merger since its market debut, citing market records showing that Playstudios shares have fallen nearly 70% since the merger.

The investors allege the trading price declines reflect disclosures about a game called Kingdom Boss, which Playstudios was developing for release ahead of the SPAC merger.

According to the investors, Kingdom Boss, a role-playing game, had "intractable technical defects including glitches, inordinate lags, and constant crashes that rendered the game completely inoperable" in the lead-up to the merger.

"As a result of these insurmountable problems, Playstudios never had a game that could be launched commercially or reasonably be assumed to be a source of revenue, let alone [the] $60 million per year in revenue" the company projected that the game would generate by 2022.

The investors claim trading prices for the company fell in response to adverse news about Kingdom Boss, which the company eventually suspended development of.

The suit's three classes are those who purchased Playstudios shares in connection with its registration filings, those who were asked to approve the merger and exchanged Acies shares for Playstudios shares and those who purchased Playstudios shares in a class period spanning August 2021 to May 2022.

In 2024, some of the suit's claims survived a dismissal bid, and the parties engaged in mediation at the end of that year, accepting a mediator's settlement proposal in January.

The defendants continue to deny wrongdoing.

Alongside the company, the complaint names Playstudios CEO Andrew Pascal and four members of its board, plus Acies co-CEOs Edward King and Daniel Fetters and six members of Acies' board.

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

The investors are represented by Omar Jafri, Diego Martinez-Krippner and Genc Arifi of Pomerantz LLP and Andrew R. Muehlbauer of the Muehlbauer Law Office Ltd.

Playstudios and the associated individual defendants are represented by Dean S. Kristy, Jennifer Bretan and Sofia Ritala Fenwick & West LLP and Patrick G. Byrne and Bradley T. Austin of Snell & Wilmer LLP.

The Acies individual defendants are represented by Kristin N. Murphy and Ryan A. Walsh of Latham & Watkins LLP and J. Colby Williams of Campbell & Williams.

The case is Felipe v. Playstudios Inc et al., case number 2:22-cv-01159, in the U.S. District Court for the District of Nevada.

--Editing by Vaqas Asghar.

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Cummins Investors Ink $1.6M Deal Over Emissions Fraud Suit

By **Sydney Price**

Law360 (December 9, 2025, 7:17 PM EST) -- Engine manufacturer Cummins Inc. and its investors asked an Indiana federal court to approve a $1.6 million deal that will end claims that the company hurt investors by hiding emissions control devices in certain engines, causing it to owe $2 billion in payments to regulators to settle Clean Air Act claims.

According to **the motion for preliminary settlement approval** filed Monday, the parties accepted a mediator's proposal of settlement terms following a virtual mediation session in September.

The investors requested that the court certify a class for settlement purposes consisting of people and entities that acquired Cummins shares between Feb. 11, 2019, and Dec. 21, 2023. Lead counsel for the proposed class will request fees and expenses in a separate motion, Monday's motion said.

If approved, the deal will end securities fraud allegations tied to Cummins' diesel engines for certain Ram-branded trucks, which allegedly secretly used defeat devices, allowing the engines to bypass emissions tests while emitting nitrogen oxide pollutants at unlawfully high levels.

Regulators found that 630,000 truck engines were equipped with the devices, even though the company told investors it was complying with the relevant Clean Air Act rules and was committed to controlling pollution, according to the latest version of the suit led by Richard Kraemer.

The investor also pointed to findings that 330,000 of those truck engines were given the devices even after the company knew it was under investigation in connection with the practice.

Kraemer also claimed the company failed to properly plan for appropriate contingencies, even as regulatory scrutiny of the company widened in scope. That oversight came as a surprise to investors and the markets when the company eventually announced it would pay more than $2 billion in fines to settle federal and state regulators' claims.

When Cummins announced its settlement with regulators in December 2023, it did not admit to any wrongdoing and said it "already addressed many of the issues involved" in the allegations it faced.

In finalized complaints and consent decrees against Cummins in January 2024 by the U.S. Department of Justice, the U.S. Environmental Protection Agency, the California attorney general's office and the California Air Resources Board, the DOJ valued the settlement at more than $2 billion.

That sum includes a $1.675 billion civil penalty that the DOJ described as the largest ever assessed in a Clean Air Act case. The company also made a $326 million commitment to fund federal and California emission mitigation projects.

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

Kraemer is represented by Brian B. Alexander of The Rosen Law Firm PA and Eric S. Pavlack and Colin E. Flora of Pavlack Law LLC.

Cummins is represented by Michael G. Bongiorno, Timothy J. Perla and Sonia Sujanani of WilmerHale and Paul A. Wolfla of Faegre Drinker Biddle & Reath LLP.

The case is Baker v. Cummins Inc. et al., case number 1:25-cv-00430, in the U.S. District Court for the Southern District of Indiana.

--Editing by Stephen Berg.

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Hagens Berman's Novel DOJ Referral May Have Chilling Effect

By **Emma Cueto**

Law360 (December 9, 2025, 4:56 PM EST) -- A Pennsylvania federal judge's unusual decision to refer prominent plaintiffs firm Hagens Berman LLP to the U.S. Department of Justice for possible criminal investigation over its pursuit of claims related to morning sickness drug thalidomide could have a chilling effect on lawyers' advocacy, law professors and attorneys said.

Hagens Berman has been accused of failing to vet its thalidomide cases against GlaxoSmithKline, with U.S. District Judge Paul S. Diamond saying that a report from the special discovery master suggested conduct "bordering on the criminal." The firm has contested this conclusion, and it's unclear if the DOJ will take up the judge's suggestion to investigate.

But law professors and attorneys said that it was unusual for a judge to take such a strong step in response to litigation-related conduct, as opposed to something like lawyers defrauding clients, and that the move could make attorneys more reluctant to pursue novel legal theories or aggressively advocate for clients.

"Most of the time, when lawyers are accused of criminal conduct, it's not of this sort; it's not excessive advocacy," said Bruce Green, head of the Stein Center for Law and Ethics at Fordham School of Law. "I think that to bring a criminal case is very chilling."

Competing Narratives

The Seattle-based Hagens Berman is known for victories such as its **recent nine-figure settlement** on behalf of homeowners over allegedly inflated brokers' fees and a **landmark U.S. Supreme Court case** that **allowed college athletes** to benefit from name, image and likeness rights.

In the instant suit, however, a special discovery master appointed by Judge Diamond has accused the firm of conduct the judge characterized as possibly criminal.

The cases in question involve multiple complaints on behalf of 52 total plaintiffs, the first filing in 2011, which allege that the individuals suffered birth defects as a result of exposure to the infamous morning sickness drug thalidomide decades earlier, but that the state of medical science only recently established a link between their injuries and the drug. The theory was first explored by Australian attorney Peter Gordon, who helped get the ball rolling on the U.S. suits eventually taken up by Hagens Berman.

Early on in the litigation, Judge Diamond appointed William T. Hangley, a trial lawyer with Hangley Aronchick Segal Pudlin & Schiller, as special discovery master in 2014.

Over a decade of contentious litigation later, Hagens Berman, its co-founder Steve Berman and a former partner are facing referral to the DOJ, with Judge Diamond saying in a three-page Dec. 2 order that Hangley had demonstrated Hagens Berman had chosen to "prepare, file, and prosecute fraudulent lawsuits" and that the matter warranted further investigation.

The issues in dispute are numerous. Hangley's 150-page report paints a picture of a firm that rushed ahead with cases it did not bother to properly vet, getting up the hopes of clients with serious disabilities in a reckless quest to wring a few questionably deserved pennies from a pharmaceutical giant. When GSK called its bluff, in Hangley's portrayal, Hagens Berman then tried to obstruct first the company and then Hangley himself from realizing the scale of its negligence.

Hangley's report, whose factual findings Judge Diamond **characterized as uncontested**, states or insinuates that the firm relied on the work done by Gordon and his associates without even speaking to all plaintiffs itself before filing; that it could not point to new scientific research to support its "march of science" theory; that it either overlooked or attempted to obscure inconvenient facts such as prior suits filed by three of its clients; and that it misled both its clients and the court, among other alleged conduct.

On the matter of misleading clients, one of the attorneys recommended to the DOJ by Judge Diamond has already been reprimanded by the Washington State Bar Association for his conduct in the case.

Tyler Weaver, who is no longer a partner at Hagens Berman, came forward after a 2017 deposition before Hangley to say he had mistakenly testified that an expert report he submitted to the court and a client was unaltered, when in fact he had three years prior omitted a portion of the report before sending it to the client, saying he thought it would mislead her into thinking the report was favorable to her claims when it was not.

The Washington Bar concluded in 2020 Weaver had violated state ethics rules and that the appropriate consequence was a reprimand, in part due to a lack of prior disciplinary history and Weaver's "timely good faith effort to make restitution or to rectify consequences of misconduct" by bringing the mistake to the court's attention.

Regarding its overall conduct, Hagens Berman characterizes the saga very differently than Hangley, including by stating in **its own 150-page response** in October that — contrary to Judge Diamond's assertion — it has never accepted many of Hangley's facts and that Hangley does not provide evidence to support many of his conclusions or characterizations.

The firm spent over 700 hours of its own work prior to filing the first suit and 20,000 hours in the four years after, it said, interviewing numerous experts and filing Freedom of Information Act request for U.S. Food and Drug Administration documents. It obtained and reviewed individual clients' birth-related medical records where they were available and conducted plaintiff-specific investigations prior to filing, it said, contrary to Hangley's claim.

Hagens Berman also defended its march of science theory, stating that even though some data had long existed that thalidomide exposure could have more wide-ranging effects, the scientific consensus — and thus the experts who would have been required to bring a suit — held that the effects were narrow until much more recently.

It also argued that where Hangley saw an attempt to deceive and conceal, Hagens Berman saw a valid attempt to protect its clients from having to speak in depositions about protected attorney-client communications.

'Pretty Unusual' Referral

Other examples of attorneys being referred for criminal investigation include **controversial environmental lawyer Steven Donziger** during his long-running battle with Chevron and a lawyer with nonprofit Lambda Legal **accused of judging shopping** a recent case involving gender-affirming care.

Scott Cummings, a legal ethics and public interest professor at UCLA, said that although he was not following the Hagens Berman thalidomide case, the decision to refer the firm to the DOJ was unusual.

In most cases where an attorney is referred for criminal investigation, he said, the attorney is accused of participating in defendants' own criminal conduct or obstructing law enforcement.

"This is a different kind of case because it's a question of whether the specific lawyering activities themselves are illegal or criminal," Cummings said. "That's pretty unusual."

Ellen Brotman, a lawyer who represents attorneys accused of misconduct in Pennsylvania, said in her experience when a judge referred an attorney to another authority, it was typically the Pennsylvania Office of Disciplinary Counsel.

Whether Hagens Berman acted ethically or not, experts said, it could have a chilling effect for a judge to say that a firm had acted criminally in pursuing a lawsuit.

Green at Fordham noted that not only is there generally a presumption that lawyers are acting lawfully, but lawyers are generally allowed to pursue long-shot cases so long as they aren't "frivolous." Even when lawyers cross that line, he said, it's not typically considered a matter for the DOJ.

"There's a whole literature of lawyers bringing cases for nuisance value because they just want a settlement," Green said. "It's not usually thought of as a criminal problem."

Moreover, he said, lawyers are not allowed to knowingly solicit false testimony but are entitled to give their clients the benefit of the doubt about their claims, such as when a client claims they were exposed to a drug.

"Lawyers are supposed to be zealous advocates for their clients," Green said. "Looking from the outside it may seem obvious someone crossed a line, but it may not be so obvious to the person at the time, particularly given the norms of zealous representation. It's one thing to deal with that in the disciplinary context and another to deal with as a criminal matter. I think that's going to be very chilling for advocates."

The DOJ referral also follows recent changes to the DOJ under the Trump administration. In addition to executive orders targeting law firms directly, President Donald Trump has publicly called for the DOJ to **investigate his political opponents**.

Hagens Berman has publicly criticized the Trump administration's attempt to **undo its landmark victory** regarding college athletes' name, image and likeness rights, and in March it **signed onto a letter** in support of Perkins Coie LLP after that firm was targeted by an executive order.

"We understand this might make our firm a target, and a few of our clients have expressed concerns," Hagens Berman said in a statement at the time. "After due deliberation and consideration of all views, we have chosen to join the effort to stop the blatantly illegal and dangerous acts undertaken by the Trump administration."

"It's a scary thing to be referred to the Justice Department, which has been truly transformed in the last 10 months," said Cummings at UCLA. "It's hard to know what to expect."

Brotman said it was not clear to her what the wider impact of the Hagens Berman referral might be for attorneys.

"Lawyers have very different tolerances for risk," she noted.

However, Brotman said that in general she thinks it's best for attorneys to be able to test out novel theories, and attorneys should not be punished if they have a good faith basis for filing a claim.

"There are often two ways to look at a set of facts; one has an innocent construction and one a sinister construction," she said. "I find it's not always complicated or implausible to credit that innocent construction."

Hangley and counsel for Hagens Berman and Weaver did not respond to a request for comment.

Berman and his firm are represented by Keith Beauchamp and Malvika A. Sinha of Coppersmith Brockelman PLC, Gaetan J. Alfano and Peter St. Tienne Wolff of Pietragallo Gordon Alfano Bosick & Raspanti LLP and Christopher C. Conner and Timothy M. Stengel of Saxton & Stump LLC.

GSK is represented by Michael T. Scott of Mike Scott Law LLC.

The case is Glenda Johnson et al. v. SmithKline Beecham Corp. et al., case number 2:11-cv-05782, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Ryan Boysen, Matthew Perlman, Adrian Cruz, Lauren Berg and Emily Field. Editing by Jay Jackson Jr.

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Mistrial Declared In Fla. Opioid Case Against Pharmacies

By **David Minsky**

Law360 (December 9, 2025, 4:59 PM EST) -- A Florida state judge declared a mistrial following a hung jury after two weeks of deliberations in a lawsuit brought by hospitals alleging that Walmart, Walgreens and CVS pharmacies negligently doled out painkillers and contributed to the opioid crisis.

Circuit Judge Carol-Lisa Phillips declared the mistrial Monday afternoon in a Broward County state court after jurors delivered a note indicating they were unable to reach a unanimous verdict following a previous Allen charge, or instructions from the judge to continue deliberating despite being deadlocked.

"Obviously after giving the Allen charge and the jurors knowing that they could let the clerk know that they are deadlocked, appeared to have sent a second and additional note after giving the Allen charge saying they are unable to render a unanimous verdict at this time," Judge Phillips said. "Therefore the court must and shall grant a mistrial."

Twenty-six Florida hospitals brought a lawsuit in 2019 against the stores in the Seventeenth Judicial Circuit, accusing them of Racketeer Influenced and Corrupt Organizations Act-related claims from recklessly over-dispensing opioid prescriptions that led to widespread addiction and overdose deaths across the U.S.

The hospitals claimed the big chain pharmacists **were the "gatekeepers"** who could have prevented improper prescriptions from getting filled. The pharmacies argued that no Racketeer Influenced and Corrupt Organizations Act conspiracy has been proven, nor has causation. The trial began in late September and concluded mid-November.

During the trial, the hospitals claimed the defendants **caused $1.5 billion in damages** for contributing to the epidemic and the cost of treating opioid-addicted patients.

On Wednesday, the defendants urged Judge Phillips to **declare a mistrial**, arguing that the jurors seemed to be unaware they could report a deadlock. Then the next day, on Thursday, jurors sent a note to the judge indicating they were having difficulty in reaching a verdict, although Judge Phillips issued her Allen charge urging the jury to continue deliberating.

On Friday, the court dismissed a juror, identified as juror nine, following allegations of misconduct. Juror nine sent a note to the judge describing a list of six allegations against another juror, identified as juror five.

The list included misconduct allegations such as refusing to follow the court's instructions, improper communications with defense counsel, inappropriate physical contact after juror five gave juror nine a hug, prejudging the case and bullying other jurors into adopting their position.

Additionally, juror nine claimed juror five made an inappropriate comment regarding "banging a 14-year-old girl," according to Judge Phillips, adding that the comment was described as an "analogy" and determined to be taken out of context.

Juror nine claimed that juror five entered a restroom with defense counsel on multiple occasions to discuss the case, according to Judge Phillips. Judge Phillips later learned that juror nine generated her note using artificial intelligence. The judge said everything on the document didn't appear to be credible and there wasn't any evidence to corroborate that juror five saw defense counsel in the restroom.

Juror nine allegedly told the court that she was "at the breaking point" with juror five. After questioning from the court, juror nine's allegations were found to be unsubstantiated and she was removed from the case.

David Markus of Markus Moss PLLC, representing Walmart, brought another motion for a mistrial and on Monday argued that juror nine's note should be construed as another indication of deadlock.

Markus told Judge Phillips that when juror nine was questioned about whether she discussed her allegations with other jurors, she couldn't give a straight answer.

Another juror, identified as the foreperson, told the court they were scheduled to begin an 18-day cruise starting on Tuesday, which Markus said was a self-imposed deadline. Instead of "lawfare," Markus described the juror situation as "juror-fare."

"The juror's answers were not credible," Markus said. "She was all over the place. The fact that juror nine was speculating about this with the other jurors, that alone is reason for mistrial.There's so many different problems and issues with the jury at this point, it's impossible for us to get a fair trial."

Warren Burns of Burns Charest LLP, representing the plaintiffs, urged the court to dismiss juror five and not declare a mistrial due to alleged omissions that they had worked for Walmart in some capacity, adding that the juror was siding with the defense.

Markus argued that the omission was not material, saying that the juror had no connection to Walmart. He added that Burns had a chance to follow-up

Burns called for the court to interview the juror.

"We don't have to create additional delay," Burns said. "We don't have to get into a he-said she-said with juror number five and juror number nine."

Judge Phillips denied the second motion for a mistrial, calling juror nine's allegations "pure and rank speculation," adding there were still eight jurors remaining to deliberate the case.

Shortly after the judge's order, the jury came back with a second deadlock note and a mistrial was declared.

A spokesperson from Walmart emailed a statement to Law360 on Tuesday, thanking the jurors for their time.

"This outcome confirms that the hospitals failed to prove their claims against Walmart," the spokesperson said. "That is not surprising since the evidence was flimsy. The plaintiffs' arguments, centered on Walmart's membership in a trade association, ignore both the First Amendment and well-established law confirming that pharmacies do not commit crimes by dispensing valid prescriptions. We remain confident this baseless lawsuit will ultimately fail."

Burns emailed a statement to Law360 on Wednesday, saying the one juror with a connection to Walmart stalled deliberations.

"The notion that the jury rejected plaintiffs' claims is a flight of fancy, not unlike the case defendants put on," Burns said. "What we know is that a single juror with undisclosed professional ties to Walmart locked up deliberations. That juror should have been excused."

CVS and Walgreens did not immediately respond to emailed requests for comment Tuesday.

The hospitals are represented by Warren Burns, Darren Nicholson, Hannah Crowe, Laura Soundy Seggerman, Korey A. Nelson and Amanda K. Klevorn of Burns Charest LLP, William R. Scherer of Conrad & Scherer LLP, John W. "Don" Barrett and David McMullan Jr. of Barrett Law Group PA and

David Black and Evelyn Riley of Cuneo Gilbert & LaDuca LLP.

Walgreens is represented by Brian Swanson, Kaspar Stoffelmayr, Jean Tinkham, Michael Nance, Jordan Golds and Rachel Smith of Bartlit Beck LLP and Alec Schultz of Hilgers Graben PLLC.

Walmart is represented by Tara Fumerton of Jones Day, David Markus and A. Margot Moss of Markus Moss PLLC and Alan Lawson and Jason Gonzalez of Lawson Huck Gonzalez PLLC.

CVS is represented by Eric Delinsky, Marcos Hasbun, Ariella Muller, Alexandra Miller, Paul Hynes Jr., Adam Fotiades, Steven Herman and Christopher MacColl of Zuckerman Spaeder LLP.

The case is Florida Health Sciences Center, North Broward Hospital District et al. v. CVS et al., case number CACE19018882, in the Seventeenth Judicial Circuit, State of Florida.

--Additional reporting by Cara Salvatore. Editing by Emily Kokoll.

Update: This story has been updated to include a response from plaintiffs' counsel.

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Expert Invoices Discoverable In J&J Talc MDL, Judge Says

By **George Woolston**

Law360 (December 9, 2025, 5:03 PM EST) -- A New Jersey federal judge said Monday that the plaintiffs steering committee can receive invoices for Johnson & Johnson's experts' work relating to multidistrict litigation alleging the use of talcum powder caused ovarian cancer and mesothelioma, but only after it produces its own expert invoices.

U.S. Magistrate Judge Rukhsanah L. Singh granted the committee's bid to compel J&J to produce its experts' invoices in all federal and state cases over J&J talcum powder products in part, ordering the committee to first produce the expert invoices it has in its possession. Judge Singh also ordered J&J to produce the expert invoices it has related to the cases for which the committee produced its expert invoices.

Judge Singh held that while the committee's discovery request is not unduly burdensome, and the credibility and potential bias of an expert are important aspects of the litigation, allowing for discovery imbalances to proceed at this stage of the litigation would "open the door" for further confusion.

"Although documents and information need not be admissible to be discoverable, permitting an imbalance of discovery to proceed at this time — on the eve of the first bellwether trial — would only open the door for further confusion as to admissibility concerns," Judge Singh said.

The committee asked for the invoices last August, according to the opinion, arguing they are relevant to show potential bias or financial interest of the experts and could be used for impeachment purposes.

J&J objected, arguing that sought after discovery is not proportional to the needs of the case nor necessary for the committee to probe the experts' alleged biases, the opinion said. It also noted that the information could confuse a jury and that the committee objected to the production of similar information about its own experts. In the alternative, J&J asked the court that if it were to grant the committee's request, to first require the committee to produce its own expert invoices.

Judge Singh's ruling is the latest in a series of discovery disputes between the parties in the long-running multidistrict federal litigation over the alleged link between use of J&J's talcum powder products and ovarian cancer and mesothelioma. Most recently, a special master **denied** J&J's bid to dig into alleged third-party litigation funding in July.

In August, U.S. District Judge Michael A. Shipp **permitted** the committee leave to amend their first amended master complaint to add Johnson & Johnson Inc., Kenvue Inc. and Janssen Pharmaceuticals Inc. as defendants.

The parties are now preparing for the first bellwether trial, with the case to be tried selected and lead counsel identified, according to court records.

A spokesperson for J&J declined to comment Tuesday. Counsel for the committee did not immediately respond to a request for comment.

The steering committee is represented by Christopher M. Placitella of Cohen Placitella & Roth PC, Michelle A. Parfitt of Ashcraft & Gerel LLP and Leigh O'Dell of the Beasley Allen Law Firm.

J&J is represented by Jessica Brennan of Barnes & Thornburg LLP and Allison Brown, Jessica Davidson and Kristen Fournier of Kirkland & Ellis LLP.

The federal multidistrict litigation is In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation, case number 3:16-md-02738, in the U.S. District Court for the District of New Jersey.

--Editing by Drashti Mehta.

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FTX Customers Seek Final OK For $10M Deal With Silvergate

By **Sydney Price**

Law360 (December 9, 2025, 6:33 PM EST) -- Customers of failed crypto exchange FTX asked a California federal judge to give final approval to a $10 million settlement resolving claims that Silvergate Bank and its parent company enabled the multibillion-dollar FTX fraud, saying the deal represents the best, and likely only, meaningful recovery available from the now-bankrupt lender.

The **settlement motion** filed on Monday states that despite Silvergate's insolvency, the FTX customers negotiated the settlement and obtained stay relief from the bankruptcy court to seek approval of the deal.

The settlement was preliminarily approved in October by U.S. District Judge Ruth Bermudez Montenegro, just several weeks after Silvergate filed Chapter 11 bankruptcy.

"[A]n uncertain road ahead, coupled with Silvergate's limited and depleted pool of assets, demonstrates that the Settlement is an excellent outcome under the circumstances," the motion states.

Class counsel requested 33%, or about $3.3 million, of the settlement fund in fees, over $102,000 for expenses related to the litigation and $10,000 service awards for each of the three class representatives, according to a separate motion.

A settlement hearing is scheduled for Feb. 9. If approved, the deal will end claims that Silvergate knowingly facilitated FTX's "dissipation" of extraordinary sums of money in the lead-up to the exchange's November 2022 collapse, and led federal prosecutors to level fraud, money laundering and campaign finance charges against FTX founder Sam Bankman-Fried the following month. Bankman-Fried was ultimately convicted and **sentenced to 25 years** in prison in March 2024.

The FTX customers' complaint accuses the bank of failing to "account for its actions and inactions" regarding its relationship with FTX. It notes that the run on deposits that led to Silvergate's failure was precipitated by FTX's own collapse.

In March 2024, Judge Montenegro **denied** Silvergate's dismissal motion in which it argued that the customers' negligence proposed class claim can't go forward because Silvergate "did not owe plaintiffs — customers of FTX, not [Silvergate] — any duty of care."

The judge disagreed, noting that FTX customers were the intended beneficiaries of the Silvergate Exchange Network, a "virtually instantaneous" payment network for digital currency industry participants.

Silvergate also moved for dismissal of the customers' aiding and abetting claims, saying they fail because there is no evidence that Silvergate had any "actual knowledge" of FTX's wrongdoings, and FTX and Bankman-Fried did not owe any fiduciary duties to their customers as a matter of law.

Again, the judge disagreed, saying the customers adequately and directly alleged that Silvergate knew about FTX's fraudulent scheme and that FTX owed a fiduciary duty to its customers.

Judge Montenegro added that the allegations "sufficiently plead several theories under which a fiduciary relationship existed between plaintiffs and FTX — one based on contract, one based on

FTX's representations that they would act for the benefit of its customers, and one based on the confidential relationship between FTX and its customers."

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

The customers are represented by Daniel C. Girard, Jordan Isern and Samhita Collur of Girard Sharp LLP, Jack Fitzgerald, Melanie Monroe and Trevor M. Flynn of Fitzgerald Monroe Flynn PC, Timothy G. Blood, Thomas J. O'Reardon and James M. Davis of Blood Hurst & O'Reardon LLP and Jason Kellogg and Marcelo Diaz-Cortes of Levine Kellogg Lehman Schneider & Grossman LLP.

The defendants are represented by Polly Towill, Heather L. Plocky and Madalyn A. Macarr of Sheppard Mullin Richter & Hampton LLP.

The case is Bhatia et al. v. Silvergate Bank et al., case number 3:23-cv-01406, in the U.S. District Court for the Southern District of California.

--Editing by Michael Watanabe.

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GM Says Air Condition Claims Too Individual For Class Cert.

By **Emily Field**

Law360 (December 9, 2025, 8:33 PM EST) -- General Motors LLC on Monday urged a Michigan federal judge to reject a new request to certify a proposed class of consumers who allege the automaker sold vehicles with air conditioning defects, pointing to recent Sixth Circuit rulings to argue that the claims are too individual to be grouped in a class.

GM said that the plaintiffs are seeking to turn one-time repairs on their vehicles' air conditioning into a broad five-state class action comprising more than 100,000 cars that largely didn't have those issues. The proposed class includes anyone who bought a new or used class vehicle, no matter its condition, where or when they bought it, or whether they still own it, GM said.

The class vehicles are 40 make-model-year combinations built on GM's K2XX platform for model years 2014 to 2017, according to the filing. The claims concern an allegedly defective combi-cooler, a component in the air conditioning system.

The record shows that most of the proposed class vehicles, which are between 8 and 11 years old, never had an air conditioning issue, "much less one due to a crack in the combi-cooler," GM said. And most that did were repaired for free under warranty, the company added.

"Those owners have no individual claim against GM because they have no injury," the automaker said. "Yet plaintiffs ask the Court to amass claims for tens of thousands of non-injured class members with their own handful of claims on the theory that all vehicle owners 'overpaid' by some unspecified amount because there was a small (and for most, unrealized) chance that they might require repair sometime in the future."

This is the type of "exponential aggregation" that the Sixth Circuit **cautioned against** earlier this year in its decision in Speerly v. General Motors LLC, in which it unraveled a certified class of car owners on the grounds that the lower court smoothed over differences in state law claims.

Additionally, Florida and California bar certifying classes that contain significant numbers of uninjured plaintiffs, GM said.

Since the class isn't limited to original buyers of new cars, it could include people who bought their cars used and previous owners who no longer have their vehicles. That makes it impossible to determine who belongs in the class, GM said.

"GM does not have records to identify these varied purchasers, and plaintiffs have made no showing that they could be readily ascertained," the carmaker said.

It cited another recent Sixth Circuit decision, In re: Nissan North America Inc. Litigation, that decertified a class of consumers across 10 states.

GM said that the panel clearly said that a lower court must look at the effects of design changes, including warranty data for repair rates of different vehicles, to figure out whether common questions predominate the class.

"GM's uncontroverted repair data shows no uniformity across vehicle models, model years, or combi-cooler component suppliers," the automaker said. "For example, Silverado and Sierra trucks (67% of putative class vehicles) had a less than 1% warranty return rate for combi-cooler repairs."

That return rate and the varying repair rates aren't consistent with a single common design defect that would affect the whole class, GM said.

Furthermore, the company said its data shows that the repair rates for combi-coolers varied by supplier, which doesn't suggest a common design defect.

As for the named plaintiffs, GM said, their evidence shows that their cars had a range of air conditioning repairs, including ones that weren't related to the combi-cooler.

"These variations preclude finding a common defect," GM said.

Representatives for the parties didn't immediately respond to requests for comment on Tuesday.

GM is represented by April N. Ross and Rachel P. Raphael of Morgan Lewis & Bockius LLP and Krista L. Lenart of Dykema Gossett PLLC.

The plaintiffs are represented by E. Powell Miller of The Miller Law Firm PC, Annika K. Martin of Lieff Cabraser Heimann & Bernstein LLP, Bryan L. Clobes of Cafferty Clobes Meriwether & Sprengel LLP, and Joseph G. Sauder of Sauder Schelkopf LLC.

The case is In Re: General Motors Air Conditioning Marketing and Sales Practices Litigation, case number 18-md-02818, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Nick Siwek.

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J&J Expert Tells Jury Women's Cancer Can't Be Traced To Talc

By **Craig Clough**

Law360 (December 9, 2025, 10:16 PM EST) -- A University of San Diego gynecologic oncologist told a California jury Tuesday in a bellwether trial over claims that Johnson & Johnson's talc products caused two women's ovarian cancer that it is "impossible" to conclude why any particular person contracts the deadly disease.

Testifying as a defense expert for J&J, Dr. Cheryl Saenz told the jury that ovarian cancer can be caused by a number of factors, including through genetics, age or the environment, but that she does not believe using talc as a feminine hygiene product can increase a woman's risk for the disease.

The scientific evidence on the topic is "inconsistent at best," she told the jurors.

Saenz also specifically analyzed the medical history of one of the plaintiffs and said her ovarian cancer was likely "sporadic," which is due to gene mutations that occur without any known reason. The plaintiff's age and years of hormone therapy were risk factors for developing the cancer, she also said.

"In my experience, we cannot identify why any one individual woman developed ovarian cancer," Saenz said. "It's impossible to do that in any one individual woman."

The **proceeding** is the first of three bellwether trials scheduled for cases claiming Johnson's Baby Powder and Shower to Shower products cause ovarian cancer. The suits are part of hundreds of coordinated cases in Los Angeles Superior Court among tens of thousands pending nationwide.

The coordinated cases resulted in one trial in 2017 where a Los Angeles jury reached an eye-popping $417 million verdict concluding Johnson & Johnson was liable for a woman's ovarian cancer, only for the judge to **overturn the verdict**.

In 2021, J&J commenced a multiyear effort at a so-called "Texas two-step" bankruptcy for its talc unit, which paused the Los Angeles cases from proceeding, but three attempts to do so were rejected by the courts. The latest denial came in March when a Texas bankruptcy judge **rejected** its effort through Chapter 11 to settle thousands of claims and threw out a roughly $9 billion bankruptcy deal over issues with the company's voting procedures and third-party releases.

Since then, J&J said it would return to the courtroom to resolve the talc cases and forgo more bankruptcy efforts, which resulted in some of the Los Angeles coordinated cases getting trials scheduled.

The bellwether trial is the first to commence in state court in Los Angeles focused on ovarian cancer claims. In October, a Los Angeles jury hit J&J with a **$966 million verdict** after finding it liable for an 88-year-old woman's death from mesothelioma.

The trial **began on Nov. 13**, with closing arguments expected later this week.

Saenz spent all the morning and part of the afternoon on the witness stand, with J&J using her testimony to cast doubt on various scientific studies or reports that concluded talc can cause ovarian cancer, and that plaintiff Deborah Schultz's cancer can be traced to her long-term use of Johnson's talc products for feminine hygiene.

Saenz said she's worked at the University of San Diego for about 30 years and performed roughly 7,000 surgeries, but that she's so unconcerned about talc she does not warn her patients about it or ask them about their history using it.

None of the major professional societies surrounding ovarian cancer list talc as a risk factor for the illness, and various studies or reports linking talc to ovarian cancer are flawed because there's never been scientific proof that talc can travel from exterior use on a vagina all the way into the ovaries, Saenz said.

When confronted under cross-examination with various reports or studies concluding talc can cause ovarian cancer, including due to possible asbestos contamination, Saenz said many of these were made based on talc being found in the ovaries of a patient with ovarian cancer.

"Simply finding talc in the ovaries doesn't mean it migrated," Saenz said. "It could be there from contamination as the specimen is getting processed. It could be there for any other reason. I'm not hypothesizing how it gets there, but I do know that there isn't a single study that shows that that migration happens."

Monica Kent is represented by Margaret M. Thompson and Andy Birchfield Jr. of Beasley Allen Law Firm.

Deborah and Albert Schultz are represented by Daniel S. Robinson of Robinson Calcagnie Inc.

The defendants are represented by Allison Brown, Kuan Huang and Julia E. Romano of Kirkland & Ellis LLP.

The cases are Monica Kent v. Johnson & Johnson et al., case number 17CV318672, and Deborah Schultz et al. v. Johnson & Johnson et al., case number 20CV0476, both in the Superior Court of the State of California, County of Los Angeles.

--Editing by Bruce Goldman.

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REIT Wants Early Win For Its Antitrust MDL Coverage Suit

By **Isaac Monterose**

Law360 (December 9, 2025, 3:43 PM EST) -- A multifamily real estate investment trust asked a Colorado federal court for an early win in its suit seeking insurance coverage for antitrust multidistrict litigation against the REIT, property management software company RealPage Inc. and several multifamily landlords.

In its **motion** for partial summary judgment filed Dec. 5, Apartment Income REIT Corp. argued that the antitrust claims fall within the coverage requirements of its insurance policies with Certain Underwriters at Lloyd's London and Everest National Insurance Co.

The antitrust allegations, which were **initially filed** in March 2023, accuse the REIT and the landlords of using RealPage's revenue management software to conspire to fix rent prices and not compete with each other.

New York law broadly requires the insurers to provide coverage for these antitrust claims, the REIT said, supporting its argument with case law examples such as the New York Court of Appeals' 2007 decision in BP Air Conditioning Corp. v. One Beacon Insurance Group .

The REIT further argued that its insurance policies involve providing coverage for litigation that deals with "private information" being accessed without permission.

"The MDL plaintiffs and government actions allege that AIR, RealPage, and the other defendants used one another's private information," the REIT said. "Most notably, RealPage allegedly used AIR's and other defendants' private information to generate pricing recommendations, which RealPage allegedly published for AIR and the defendants to use through RealPage's software."

"As alleged, AIR's use of other defendants' private information through RealPage's software constitutes a privacy breach, as does other defendants' alleged use of AIR's private information," the company continued. "In both instances such use was 'unauthorized.'"

Additionally, according to Apartment Income, its insurance policy doesn't specify how the confidential information has to be accessed in order to trigger coverage.

Throughout the rest of its motion, the REIT said it's owed coverage under its multimedia insurance policy because the multidistrict litigation alleges that the RealPage's software was used for a price-fixing scheme. The company pointed to the ninth paragraph of the policy to argue that it covers software claims that involve, among other things, "unfair trade practices."

"Insurers argue that multimedia wrongful act includes unfair competition and trade practices only where such conduct is alleged in conjunction with another listed act," Apartment Income said. "But an insurance policy 'should be enforced as written.'"

"The definition of multimedia wrongful act in paragraph 9 of the endorsement unambiguously includes 'unfair competition or trade practices,' without requiring more," the REIT added.

Apartment Income **began** its coverage suit in May 2024, and the presiding court **tossed** some of the REIT's claims in June.

Counsel for the REIT and the defendants didn't respond to requests for comment Tuesday.

Apartment Income is represented by Michael T. Williams, Judith P. Youngman, Cedric D. Logan and Kate K. Fletcher of Wheeler Trigg O'Donnell LLP.

The underwriters are represented by Erik Kowalewsky and Daniel S. Marvin of Kennedys CMK.

Everest is represented by Matthew J. Fink, William O. Williams III and Nicholas V. Whynott of Nicolaides Fink Thorpe Michaelides Sullivan LLP.

The case is Apartment Income REIT Corp. v. Certain Underwriters At Lloyd's London Subscribing To Policy No. B0713MEDTE2202301 et al., case number 1:24-cv-01285, in the U.S. District Court for the District of Colorado.

--Editing by Haylee Pearl.

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Smucker Pet Food Buyers Near Cert. In PFAS Disclosure Fight

By **Dorothy Atkins**

Law360 (December 9, 2025, 10:44 PM EST) -- A California federal judge said Tuesday he's inclined to certify a class of consumers who allege The J.M. Smucker Co. failed to disclose risks of so-called PFAS forever chemicals in pet-food packaging contaminating kibble, telling counsel during a hearing that many issues Smucker raises "are better addressed on the merits."

U.S. District Judge William H. Orrick's comments came during a hearing held via Zoom on Sandra Jeruchim and Melissa Vargas' motion for class certification in litigation over dog-food packaging containing toxic per- and polyfluoroalkyl substances.

The lawsuit, which was initially filed in November 2022 by Robin Humphrey, who has since been replaced as lead plaintiff, alleges that J.M. Smucker and its parent, Post Consumer Brands LLC, failed to disclose that the pet-food packaging contained the synthetic chemicals known as PFAS, even though PFAS has been found to materially influence animal health.

The consumers allege despite the risk of PFAS contaminating pet food, the food packages, which include 9Lives, Kibbles 'n Bits and Meow Mix, say the products are healthy and safe. The consumers seek to certify a class of California consumers who purchased those products from Nov. 4, 2018, through Dec. 31, 2022.

At the outset of the hearing Tuesday, Judge Orrick told counsel: "I'm inclined to think that many of the issues that have been raised by Smucker are better addressed on the merits than at class certification, and I am inclined to grant class certification."

The judge said the consumers' claims that they relied on the health statements on the packaging are plausible and sufficient. He also said their alleged injury — that they overpaid for the product and can't rely on the packaging in the future as a result of the lack of faith in the company — is sufficient to satisfy standing requirements.

Judge Orrick added that whether PFAS actually migrates from the packaging to the pet food goes to the merits of the case. He also noted that Smucker hadn't challenged the consumers' expert witness Melinda Wilkins, a professor at the University of Minnesota in the College of Veterinary Medicine, in a so-called Daubert evidentiary motion.

"With respect to the other issues, I think the plaintiffs are adequate class representatives — it doesn't matter that they're seeking a full refund as opposed to a partial refund," the judge said.

He also noted that under the consumers' omissions theory, the consumers don't have to demand the products say they were PFAS-free.

"I think the duty to disclose based on an unreasonable safety hazard also is established through the Wilkins opinion," Judge Orrick said.

Defense counsel Michael Ruttinger of Tucker Ellis LLP responded to the judge's comments by acknowledging that the arguments raise "at a minimum merits-adjacent issues," but he argued that for the court to determine whether an unreasonable safety hazard could be proved on a classwide basis, "there has to be some degree of merits analysis."

Ruttinger argued that Wilkins relied on PFAS studies involving food packaging that is "fundamentally different" than Smucker's packaging, which he noted is three-layered, with a layer of ink and clear coat over the PFAS component. He also noted that the expert acknowledged that she wasn't able to testify to the extent of the risk given the differences in the packaging.

"I think it becomes important at the [class certification] stage if an expert, who is the only person putting forth evidence of the unreasonable safety hazard, says, 'I don't know what the risk is,'" Ruttinger said. "Then you don't have evidence on a classwide basis that can establish an unreasonable safety risk, and so we think that that's the disconnect here. They have a real problem with classwide evidence."

Ruttinger also argued that consumers couldn't draw a causal connection between the allegedly wrongful act of not disclosing the presence of PFAS in the packaging and whether they would have actually bought the pet food, or if their purchasing decisions would've been affected by the disclosures.

He noted that the consumers' expert claims Smucker was aware of the PFAS migration issue as early as 2017, but the articles that their expert relied on for purposes of PFAS migration weren't published until 2020 and there's no claim that consumers would have looked at the pet food labeling again.

Ruttinger also argued that there are individual issues over how different consumers store pet food after they purchase it, which could affect the alleged risk levels of PFAS exposure. For instance, he said, a consumer who places pet food in tins immediately after buying the food would theoretically face a lesser PFAS exposure risk profile than consumers who keep the pet food in the packages or store them in warmer climates, which may quicken PFAS migration.

However, the consumers' counsel L. Timothy Fisher of Bursor & Fisher PA argued that Ruttinger's arguments address the merits of the case, not class certification. He noted that under Judge Orrick's 2021 ruling in a prior consumer case, Zeiger v. WellPet LLC, for an omissions case, consumers don't need to point to a specific past statement to establish reliance.

Instead, Fisher argued, a plaintiff may establish reliance by simply proving that had the omitted information been disclosed, the consumers would have been aware of it and behaved differently. "And I think we have that here," he added.

Fisher also argued that it doesn't matter that the consumers' expert focuses on 2020 studies because the allegation is that Smucker knew of the problem as early as 2017 but never disclosed it. He added that the consumers aren't required to allege they inspected the labels every time they purchased the products, since their purchases were "habitual."

Fisher argued that, ultimately, whether there's PFAS migration from the outer wall of food packaging into the food is a common question and one that does not defeat class certification.

"It's one that you know can be answered in one fell swoop, whether it's summary judgment or a trial, and it can determine the outcome in the case," he said.

Fisher added that differences over how consumers store the dog food after they purchase the products aren't enough to defeat class certification because that would suggest that no food product case could be certified since consumers may remove food from packaging after they purchase it.

"I just don't think that is how the law is intended or how it's supposed to work," he said.

At the end of the hearing, the judge didn't rule from the bench, but he said he would review his Zeiger decision. He took the arguments under consideration.

Jeruchim and Vargas are represented by L. Timothy Fisher and Julia K. Venditti of Bursor & Fisher PA.

J.M. Smucker and its parent company are represented by Michael Ruttinger and Ethan W. Weber of Tucker Ellis LLP.

The case is Robin Humphrey et al. v. The J.M. Smucker Co., case number 3:22-cv-06913, in the U.S.

District Court for the Northern District of California.

--Editing by Nick Siwek.

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Tyson Seeks Del. Toss Of Suit For Poultry Growing Docs

By **Jeff Montgomery**

Law360 (December 9, 2025, 8:51 PM EST) -- An attorney for a Tyson Foods Inc. stockholder told a Delaware magistrate in Chancery on Monday that records and sources spanning years support allegations of mismanagement and animal abuse and cruelty in poultry production, justifying wider document access.

Thomas A. Uebler of McCollom D'Emilio Smith Uebler LLC, counsel to Tyson stockholder and former company employee Michael Castagna, told Magistrate Christian Douglas Wright during dismissal arguments that while contract poultry growers supply birds, "documents show beyond dispute that Tyson controls the process of growing and slaughtering chickens through the lifetime" of the bird from hatching.

Prominent in the arguments were public allegations critical of Tyson's animal welfare oversight by Legal Impact for Chickens, a group advocating for reforms of so-called factory farms of the sort that produce the majority of chicken consumed in the United States.

Tyson ranks as the nation's top broiler chick producer. LIC said the Delaware suit followed "both child-labor allegations and an undercover investigation by the group Animal Outlook," which the complaint says led to a Tyson chicken grower pleading guilty to charges of animal cruelty last year.

The Court of Chancery suit, filed in August, additionally targeted reports that birds that fail to grow fast enough are left to die or are killed when they are unable to reach food and watering systems that are "physically too high for small or immobile birds to reach."

Also noted in the complaint are past calls for U.S. Department of Labor investigations of alleged child labor violations by Tyson, including by U.S. Sen. Josh Hawley, R-Missouri.

"It's reasonable to assume that Tyson's leadership was aware of these issues, and without some corrective action or proper oversight, we have to ask, how does this keep happening again and again?" Uebler said.

Mary Eaton of Freshfields LLP, counsel to Tyson Foods, told Magistrate Wright that Castagna's demand reflected an effort to pursue animal and worker welfare issues rather than focus on the fiduciary obligations at the foundation of Delaware's General Corporation Law.

"The [records] demand only asserts legal violations" Eaton said, and relies heavily on reporting by Animal Outlook, an animal welfare group, focused on a Tyson contract grower, Jannat Farm, that closed after an undercover investigation that was said to have documented animal cruelty.

"It's a legally focused demand," Eaton said of Castagna's complaint. "He has no intention of commencing a derivative action" seeking to recover damages on the company's behalf.

While ethical treatment of animals is a laudable goal, Eaton said, "it's not a license to broadly seek records" from Tyson, which operates under a business model focused on producing and selling animal protein.

Uebler said Castagna wants to make Tyson "a healthier company." The magistrate was shown a video of the stockholder's own comments, which in court documents included assertions of his concern about the cost of noncompliance with animal welfare rules.

"For me it was a moment of enough is enough," Castagna said in the video, referring to the emergence of undercover footage. "I certainly was disappointed in the stock performance," he said, adding later that after seeing a Tyson employee acknowledge awareness of abuse —including alleged feed supply disruptions – "to me that was a call to action."

Elena Norman of Young Conaway Stargatt & Taylor LLP, counsel to Tyson, said Delaware's books-and-records demand rights are "not meant to be a forum for wide-ranging document requests" outside stockholder needs for assessing corporate compliance.

"This is an overreach," Norman said.

"The crux of the dispute here is really whether the formal board materials failed to address key events," Norman told Magistrate Wright. The focus of the demand, however, rather than on the company's central business and decision-making, is the public release of a disturbing investigation "involving a contract grower for Tyson."

"Their opening brief does not even address Jannat as a significant event," Norman said, arguing that "something is not key just because [the] plaintiff says it is."

Magistrate Wright agreed at the end of the hearing to allow both sides to submit additional information to the court after Castagna's team cited late delivery of materials by the Tyson side.

Michael Castagna is represented by Thomas A. Uebler and Terisa A. Shoremount of McCollom D'Emilio Smith Uebler LLC, Brian E. Farnan and Michael J. Farnan of Farnan LLP and Alene Anello, Drew Givens and Kathryn Evans of Legal Impact for Chickens.

Tyson Foods Inc. is represented by Elena C. Norman, Jason W. Rigby and Kevin C. Gilligan of Young Conaway Stargatt & Taylor LLP and Mary Eaton, Adam M. Rosenfeld and Yevgeniya Lotova of Freshfields LLP.

The case is Michael Castagna v. Tyson Foods Inc., case number 2025-0941, in the Court of Chancery of the State of Delaware.

--Editing by Linda Voorhis.

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Uber May Win Sanctions On Atty Who Disclosed MDL Docs

By **Bonnie Eslinger and Mike Curley**

Law360 (December 9, 2025, 9:58 PM EST) -- A California federal judge said Tuesday it appeared an attorney for plaintiffs claiming Uber failed to protect passengers from sexual assault "acted in a cavalier manner" with a protective order in the multidistrict litigation, but didn't rule on Uber's requests for monetary sanctions nor its bid to kick the attorney off the plaintiff steering committee.

Tuesday's hearing was scheduled for a motion filed by Uber Technologies Inc. in October for sanctions against Bret Stanley of Johnson Law Group that seeks reimbursement of more than $168,000 in attorney fees the company says it incurred while investigating the lawyer's protective order violations and seeking his compliance.

U.S. Magistrate Judge Lisa J. Cisneros, who is handling discovery in the MDL, noted that Uber had filed a subsequent motion for sanctions against Stanley the night before, but said she had "not spent any meaningful time with that ... so it's not factoring into my thinking on the present motion."

The present motion relates to Judge Cisneros' finding in August that Stanley had violated a protective order governing the MDL. At that time, the judge ordered Stanley to go to the courts where that information was not being used as a result of his disclosure and take steps to ensure the destruction of all the unauthorized documents.

According to Uber, the judge said, a New Jersey court had the document up on its public docket for 13 days.

Stanley said another lawyer for the plaintiffs who used the document had it removed and then "accidentally" included it later in another filing.

"Once notified, he immediately contacted the court, and they brought it down again," Stanley said.

Veronica Gromada of Shook Hardy & Bacon LLP, who represents Uber, argued Stanley had not done enough to ensure the judge's orders were followed. For example, the other lawyer should not have still had a copy of the document to publish on the docket a second time, she said.

"Once this violation was set in motion, Mr. Stanley can't then take his hands off the steering wheel and leave it to his co-counsel to take steps to cure or remediate," Gromada said. "There should have been active involvement."

Gromada later told the court Uber made it clear to Stanley that they had the right to seek fees if the court found a violation of the protective order, "which Your Honor did."

Judge Cisneros asked for a declaration from Uber that Stanley had been told the company would be seeking its attorney fees.

"I've got to determine whether or not the award of the fees is just," the judge said.

She noted Stanley's argument — made in his opposition to Uber's motion for sanctions — that there had been legal uncertainty before the court's protection order on whether it was a breach of confidentiality to disclose the names of Uber's internal policies outside the MDL.

"You're arguing the names of these policies shouldn't be treated as confidential information, and therefore, effectively, there isn't a violation," the judge said.

While "it's a bit late to be making these arguments," she said she'd consider when determining whether to award "the full attorney's fees" requested.

Gromada pointed to a recent decision made by U.S. District Judge Yvonne Gonzalez Rogers in L.D. v. United Behavioral Health sanctioning the plaintiffs' lawyer and his law firm for a protective order violation. In that order, the judge said parties do not have the discretion to unilaterally decide to breach a protective order, Gromada said.

Furthermore, Stanley is using the MDL to get documents, data and information for other cases, Gromada argued.

Judge Cisneros said she was undecided on the attorney fee request.

"My impression is that Mr. Stanley has acted in a cavalier manner with respect to the protective order," the judge said. On the other hand, she said she wasn't sure the violation warranted the sanctions requested.

"I'll have to look more closely at what Judge Gonzalez Rogers ruled in that particular decision," Judge Cisneros said.

In her August ruling, Judge Cisneros said Stanley had disclosed "complete substantive contents of certain documents produced in discovery and designated as confidential," including lists that named Uber's policy documents.

Uber told the court in its August motion for sanctions that Stanley told Uber's counsel he wouldn't stop using certain confidential information unless "this court ordered him to do so."

In November, Stanley filed his opposition to Uber's sanctions motion and $168,573 fee request, saying he had justifications for his actions and "did not act in bad faith, vexatiously, wantonly, or for oppressive reasons."

In their motion filed Monday, Uber and co-defendant Rasier LLC said Stanley violated the court order and used confidential information gathered for the MDL to file and prosecute another, unrelated case, showing he is unfit to serve on the plaintiff steering committee leading the case.

According to the motion, Stanley used his access to the MDL's discovery repository as a member of the steering committee to search using the universally unique identifier of one of Uber Eats' delivery drivers, and used the information he found in a separate case involving a car crash with that driver.

Uber argued that the protective order specifically forbids attorneys from using the information for anything other than "prosecuting, defending, or attempting to settle" the MDL or a related state court consolidated case, making this a clear violation.

The company urged the court to restrict Stanley's access to the discovery repository to documents specifically related to his clients' cases and to remove him from the plaintiff steering committee, as an attorney who has repeatedly violated court orders should not be on the committee.

Uber also asked the court to award a sanction of fees and costs it incurred because of the violation, saying Stanley's actions demonstrate both willfulness and bad faith.

In the sprawling MDL, the plaintiffs generally contend that Uber failed to adopt safety measures, such as cameras and enhanced background checks, despite knowing since 2014 that drivers for its ride-hailing app have preyed on and sexually assaulted passengers.

About 20 cases have been earmarked to serve as bellwether trials, with an "initial wave" of six cases selected by the district court scheduled to start later this year, according to court documents.

In July, U.S. District Judge Charles R. Breyer **scrapped** some of the bellwether cases' fraud and product liability claims, finding that the plaintiffs had not done enough to show that ads for Uber's "designated driver" marketing campaign were misleading because they didn't mention that intoxicated people, particularly women, have a higher risk of being sexually assaulted by Uber drivers than sober people.

The bellwether plaintiffs are represented by Sarah R. London of Girard Sharp LLP, Rachel B. Abrams of Peiffer Wolf Carr Kane Conway & Wise LLP, and Roopal P. Luhana of Chaffin Luhana LLP.

Uber is represented by Laura Vartain, Jessica Davidson and Allison M. Brown of Kirkland & Ellis LLP, Veronica Hayes Gromada, Christopher V. Cotton, Michael B. Shortnacy, Alycia A. Degen and Patrick Oot of Shook Hardy & Bacon LLP, and Sabrina H. Strong and Jonathan P. Schneller of O'Melveny & Myers LLP.

The case is In re: Uber Technologies Inc. Passenger Sexual Assault Litigation, case number 3:23-md-03084, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg and Y. Peter Kang. Editing by Kristen Becker.
