News from Bloomberg Terminal

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Summary by Bloomberg AI

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- A four-partner team from Robbins Geller, including Chad Johnson, is joining a new boutique launched by an ex-Bernstein Litowitz partner.
- Johnson is joining JVK Law as a co-founding partner, along with securities litigators Noam Mandel, Desiree Cummings, and Jonathan Zweig.
- The new firm, JVK Law, is focused on advising institutional investors as regulatory changes weaken guardrails, and is quickly building out a roster of shareholder suit litigators.

By Tatyana Monnay

(Bloomberg Law) --

A four-partner team from Robbins Geller, including former New York securities fraud prosecutor Chad Johnson, is joining a new boutique launched by an ex-Bernstein Litowitz partner.

Johnson, who led Robbins Geller's New York office, is joining JVK Law as a co-founding partner, the firm said Monday. Securities litigators Noam Mandel, Desiree Cummings, and Jonathan Zweig also are jumping to the new firm.

"Johnson Van Kwawegen represents exactly what institutional investors need right now—a modern, trial-ready firm of creative teams with the skill, independence, and clarity to take on the most consequential corporate misconduct cases of our time," Johnson said in a statement.

The new firm is quickly building out a roster of shareholder suit litigators after Jeroen van Kwawegen's messy departure from Bernstein Litowitz. JVK Law this month has poached partners from two elite firms known for leading cases involving massive corporations.

Van Kwawegen, who led Bernstein Litowitz's corporate governance group, unveiled the new firm earlier this month with a slate of ex-Bernstein recruits. The new firm is focused on advising institutional investors as regulatory changes weaken guardrails.

Johnson and Mandel both previously practiced at Bernstein Litowitz and Quinn Emanuel before joining Robbins Geller. Johnson helped secure more than $6 billion in recovery in the WorldCom securities litigation and $627 million recovered in the Wachovia securities litigation. He led the securities fraud unit during a stint as deputy attorney general in New York.

"Chad and these three additional partners leave Robbins Geller on the friendliest terms," Robbins Geller said in a statement.

Van Kwawegen was part of the Bernstein team that challenged Elon Musk's executive pay package at Tesla. He also was part of the trial team that secured a $1 billion settlement from Wells Fargo to resolve a federal securities class action lawsuit.

Ex-Bernstein partner Andrew Blumberg will run JVK's Delaware outpost. Other Bernstein recruits, including CJ Orrico, Tom James, Eric Reidel, Edward Timlin, Dan Meyer, Ben Potts, and Lauren Cruz, are joining JVK as partners, with some being elevated to partner after serving as senior counsel at their former firm.

Bernstein Litowitz says it fired Van Kwawegen for "misconduct," though van Kwawegen responded that "any claim of misconduct is pretextual and disappointing." The firm on Dec. 8 said it was bringing back retired partner Mark Lebovitch to help run the corporate governance group.

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(Adds van Kwawegen response to misconduct claim in last paragraph.)

LAW.COM

News | **Law Firm Hiring**

Robbins Geller's NY Head Takes 3 Partners With Him to New Boutique

The New York managing partner of Robbins Geller has left to be a co-founder at Johnson Van Kwawegen, a new boutique focused on securities and corporate governance.

December 22, 2025 at 06:00 AM By **Ryan Harroff**

What You Need to Know

- Chad Johnson joined Johnson Van Kwawegen along with three securities partners from Robbins Geller.
- The firm began earlier this month when Jeroen van Kwawegen left Bernstein Litowitz.
- Demand for securities and governance attorneys is up, Johnson and van Kwawegen said, amid lower government enforcement.

Chad Johnson, co-founder of Johnson Van Kwawegen. Courtesy photo

Chad Johnson, the managing partner of Robbins Geller Rudman & Dowd's New York office, has left the firm to be a co-founder of new boutique Johnson Van Kwawegen, formerly JVK Law. The boutique's other co-founder is Jeroen van Kwawegen, Bernstein Litowitz’s former corporate governance leader.

Three other securities partners at Robbins Geller — Noam Mandel, Desiree Cummings and Jonathan Zweig — are joining Johnson at the new boutique.

A representative for Robbins Geller said, "We are wishing them the best and look forward to working with them going forward" in an email to Law.com.

With the four additional partners, van Kwawegen said in an interview that the new boutique now has 16 attorneys and will likely have more.

Van Kwawegen said that both on the securities front and the corporate governance front, there is an increased demand for private legal services amid reduced enforcement efforts during the Trump administration this year.

“From the investor perspective, some of the guardrails that were previously in place have, at a minimum, been lowered,” van Kwawegen said. “Some people may argue that they have been removed altogether, but they have at least been lowered. And when the guardrails are lowered, there's just more demand for protection from investors to us, like to the private bar, that needs to fill that void.”

The majority of the 16 attorneys currently at Johnson Van Kwawegen are based in New York, Johnson and van Kwawegen said. The firm first opened up shop earlier this month after Van Kwawegen left Bernstein Litowitz, along with several attorneys from the firm's corporate governance department. Johnson and the trio coming with him from Robbins Geller are all New York-based, Johnson said in an interview.

Both Johnson and van Kwawegen said that while the majority of the firm’s attorneys are in New York physically, the firm also has people in Delaware and California. Further, they said that the boutique will operate across states collaboratively, with van Kwawegen saying it is “essentially a U.S. firm” but “not necessarily New York-based.”

Johnson said that he expects to see the firm grow further during 2026. He added that there is not a specific number of attorneys that he and Van Kwawegen are looking to add, but candidates who are a good fit will naturally find their way into the firm.

The new boutique is already serving a variety of investors, Johnson said.

“We're all watching closely to see if there are going to be major developments on the legislative front,” Johnson said. “We'll see. That's obviously a battleground between those who are interested in protecting investors and those who are, frankly, just serving the interests of Wall Street. But as far as our firm's concerned, we're very excited to be able to represent investors of all stripes, asset managers, sovereign wealth funds, hedge funds, pension funds, individual investors, you name it."

Securities

Deep Dive

Securities Litigation Reform Act's Success Debatable 30 Years In

December 22, 2025, 2:00 AM PST

Thirty years' distance from the passage of the Private Securities Litigation Reform Act shows the law has had a powerful impact on the practice area it addressed, but whether it had the desired effect remains up for discussion.

Enacted on Dec. 22, 1995, the PSLRA transformed the type of investors who typically lead securities fraud class actions, the investigations and evidence they bring to early stages of the case, and the tailwinds behind companies' requests for dismissal.

Defense attorneys are mixed on whether the law has had the impact its proponents hoped for: using new processes to blunt the pressure for stock issuers to settle in the face of class securities fraud allegations.

"The PSLRA has accomplished what it was designed to do, and that was to give defendants and courts the ability to weed out at the pleading stage those cases that might have arguable merit and those that don't have any merit," said Dechert LLP's Joni Jacobsen.

"I would describe the Act as a major success," Joseph Grundfest, a Stanford Law School professor who was involved in the negotiations for the PSLRA, said via email. "It brought a level of discipline and order to the process that was previously lacking."

Some take a more nuanced view. "It's had a lot of successes, but it doesn't mean it's been completely successful," said Simpson Thacher & Bartlett LLP's Jonathan Youngwood.

The PSLRA, part of the Contract with America the Republican Party championed in the mid-1990s, was intended to curb frivolous or abusive securities class actions. Before then, small investors could sue with sparse allegations and negotiate quick settlements with companies that wanted to avoid the costly discovery process waiting just around the corner, attorneys say. The PSLRA forced those filing suit to select an "adequate" lead plaintiff, to plead key elements of security fraud to a heightened standard, and to proceed without discovery until dismissal motions were resolved, among other provisions.

Before the law, "all a plaintiff had to do was get through a motion to dismiss," and suddenly a corporation faced the risk of a "cataclysmic result," including defense costs and a potential trial judgment, said Jonathan Polkes of White & Case LLP.

Thirty years later, "it's déjà vu all over again. Everything I just described in the past tense is in the present tense, everything. Abuse of discovery; outrageous, ginned-up damages," Polkes said. "The PSLRA has lost a lot of its force."

And an attorney for investors, Eric Belfi of Labaton Keller Sucharow LLP, said the plaintiffs' bar is still on its feet. The PSLRA "was meant, in a lot of ways, to destroy the industry," he said. "What it did was make the industry a lot stronger and a lot better."

'Battle Royale'

The law is unique in its impact on the complaint and motion-to-dismiss stages of the case, said Alston & Bird LLP's Susan Hurd. Its pleading and other requirements all go to "setting up this battle royale at the start of the case," she said.

On the plaintiffs' side, the front-loading has increased initial costs and expenses, shrinking the pool of law firms that can handle the litigation, said Scott & Scott Attorneys at Law LLP's David Scott.

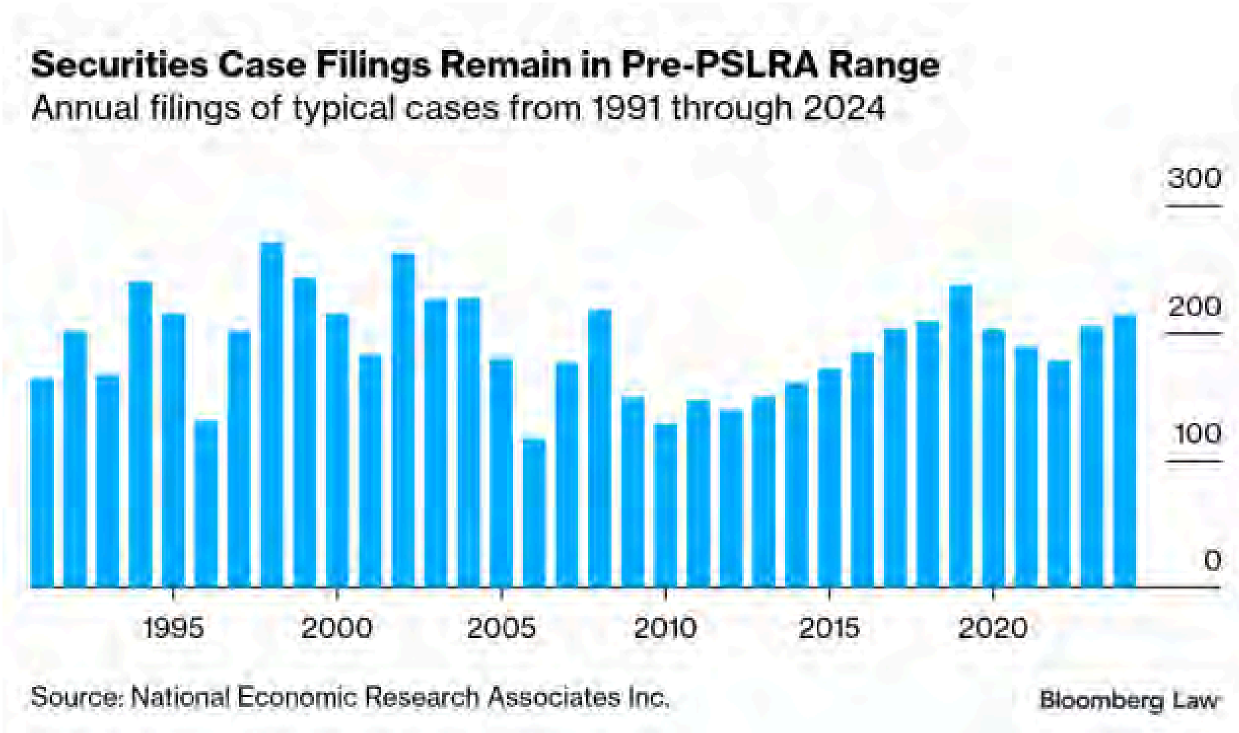
Clients are now often institutional investors that "will draw lines in the sand" in negotiations, Belfi said.

The act's pleading standards mean surviving claims have met a higher bar, increasing settlement cost pressure, said defense lawyer Jay Dubow of Troutman Pepper Locke LLP.

Before the PSLRA, certain cases could settle cheaply and quickly, he said. Now, "if they've survived that bar, then the plaintiffs' lawyers are not willing to take a lower settlement."

Surviving Cases

The PSLRA didn't lower the number of securities fraud class actions filed. A 2007 National Economic Research Associates report with data spanning years before and after the law's passage showed a roughly comparable number of suits filed from 1991 through 2007, with a dip in 1996. Subsequent NERA and Cornerstone Research reports show no appreciable drop.



"The plaintiffs still want to take their shot," said Hurd. But the law has affected the dismissal rate, she and others said. However, pre-PSLRA dismissal data isn't available.

NERA data shows that for cases filed from 2000 to 2006, the dismissal rate ranged between 53% and 68%. The group's July 2025 report shows dismissal rates of 52% and 56% for the two most recent annual cohorts of cases with nearly complete resolution data, namely those filed in 2016 and 2017.

"When these cases survive a motion to dismiss, they become more valuable," Scott said. "As they become more valuable, you're finding that the defendants are litigating them harder."

Part of that's been borne out at the class certification stage.

Defendants used to stipulate to class certification when Labaton's Christine Fox started practicing around the time of the PSLRA's passage. "They would be like, 'Okay, this is a stock that trades on an exchange. How are we going to fight class certification?"

Now, that's a major battleground playing out in appellate courts nationwide.

Wish Lists

Some aspects of securities litigation could still use addressing, attorneys said.

Shareholder derivative complaints, with no equivalent law, show plaintiff-selection "abuses that you used to see pre-PSLRA," Dubow said, likening these suits following proposed class actions to shark-following fish that "eat the crumbs that the sharks don't eat."

Scott wishes courts would allow limited discovery when repleading. A consequence of the discovery stay "is that there are investors who go without redress," he said.

And the defense bar should be taking better advantage of the PSLRA's latitude toward judicial decision making by leveraging a motion to dismiss to argue "that the defendants are good people who did their best to tell the truth about the condition of the company," said Baker & Hostetler LLP's Doug Greene.

"While the dismissal rate is good, it could be far higher."

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News | Litigation

Delaware High Court Rejects Rescission of Musk's Tesla Pay Package, Substituting $1 in Nominal Damages as Remedy

The court stated rescinding the $56 billion pay package wasn't a proper remedy because it left Musk uncompensated for six years of work he'd already contributed to Tesla.

December 19, 2025 at 05:54 PM By Ellen Bardash

Elon Musk. Credit: Steve Jurvetson via Wikimedia Commons

This article was first published by Delaware Business Court Insider.

The Delaware Supreme Court has reversed the 2024 Court of Chancery decision that rescinded Elon Musk's $56 billion pay package at Tesla.

In a 49-page per curiam opinion published Friday afternoon, the court stated rescinding the compensation package wasn't a proper remedy because it left Musk uncompensated for six years of work he'd already contributed to Tesla.

"We hold that the Court of Chancery erred in finding that rescission was both 'reasonable and appropriate' for two reasons—first, the court could not restore all the parties substantially to their *status quo ante* positions; and second, Musk’s existing equity stake could not serve as substitute consideration to restore the parties to the *status quo ante*," the opinion stated. "The court also erred in faulting the defendants for not proposing an alternative remedy."

The justices wrote it was the plaintiff's responsibility, not the defendants', to justify rescission or propose a different remedy. At trial, rescission was the only remedy proposed by Tesla shareholder Richard Tornetta, whose attorneys argued rescission was the correct route because Musk repeatedly interfered with the transactional process through his influence at the company and his connections with board members.

Having concluded rescission wasn't the proper route and not having another proposed remedy, the Supreme Court stated it would follow precedent and order $1 in nominal damages.

Quinn Emanuel Urquhart & Sullivan; Cravath, Swaine & Moore; and Ross Aronstam & Moritz represented Musk. Sullivan & Cromwell; Ashby & Geddes; DLA Piper; Morris, Nichols, Arsht & Tunnell; and Richards, Layton & Finger represented Tesla.

The Supreme Court also altered the fee awarded to Tornetta's counsel at Bernstein Litowitz Berger & Grossmann, Andrews & Springer and Friedman Oster & Tejtel, granting an award based on a *quantum meruit* approach with four times counsel's lodestar, an amount a defense brief placed at $54 million. The original award, the largest in Delaware history, was calculated using a 25.3 lodestar multiplier.

"Although we would ordinarily remand for a reassessment of fees, we make an exception based on the length of this litigation and not to burden the Court of Chancery, which has devoted enormous time and attention to this case over many years, at great personal sacrifice," the justices wrote, going on to state that while Tornetta did not achieve the goal of rescission, Tesla still benefited from counsel's efforts.

Tornetta filed his case in 2018, the year Tesla's board approved a pay package that would incrementally award Musk Tesla stock if he led the company to meet certain performance benchmarks. The plan was valued at roughly $56 billion, making it the largest ever approved for a CEO other than the $1 trillion plan Tesla shareholders recently voted to award Musk if Tesla meets a subsequent set of financial milestones.

The case went to trial in November 2022, and McCormick issued the decision ordering rescission in January 2024. After Tesla shareholders' ratification vote that summer, the defendants moved for reconsideration of the original ruling, which McCormick rejected last December.

On Oct. 15, the Supreme Court heard argument on Musk and Tesla's appeal of two decisions McCormick issued in 2024. The appellants claimed the compensation package represented a fair price that was arrived at through a fair process, neither of which should have been invalidated by

McCormick's decision. They claimed if there were issues with the process, they were resolved in 2024 when Tesla shareholders voted to ratify the compensation plan, and if the defendants were to be held liable, nominal damages, not rescission of the pay package, would have been the proper remedy, warranting a fee far lower than the $345 million awarded to plaintiff's counsel.

The Supreme Court did not weigh in on the transaction process' fairness or whether the post-opinion ratification vote impacted it.

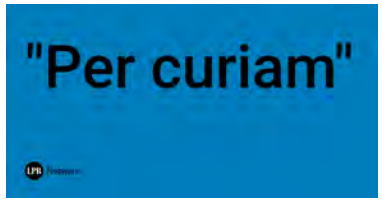
"Although the justices have varying views on the liability determination, we agree that rescission was an improper remedy and therefore choose that narrower path to resolve this appeal," the opinion stated.

Attorneys involved in the case either declined to comment or did not immediately respond for comment on the decision.

"Per curiam" | Business Law Prof Blog

businesslawprofessors.com/2025/12/per-curiam

Ann Lipton December 19, 2025



Well, restoring Elon Musk's 2018 pay package and awarding $1 in nominal damages instead is, I suppose, one way of distracting from the Epstein files.

No one needs a recap of where we were on Elon Musk's 2018 pay package, but just in case: in 2024, Chancellor McCormick concluded after a trial that Elon Musk was a controlling shareholder of Tesla, and that the pay package was a conflicted transaction that was not entirely fair to the stockholders. In particular, she found that Musk himself controlled the process by which the compensation committee set his pay, and largely made up his own contract with the comp committee serving as a rubber stamp. As a remedy, she ordered that the pay package be rescinded.

Today, the Delaware Supreme Court did not question any of Chancellor McCormick's actual findings regarding how Musk's 2018 pay package was negotiated, the control and interference that Musk exercised over the process, or even the unfairness of the award itself. Instead, the sole basis for the holding is a kind of Rumpelstiltskin argument: the plaintiffs used the word "rescission" when requesting a remedy, but this case does not meet the technical requirements for rescission – because rescission requires that both parties be restored to the status quo ante, and there's no way to give Musk back his years working for Tesla after 2018. "It is undisputed," said the Court, "that Musk fully performed under the 2018 Grant, and Tesla and its stockholders were rewarded for his work."

(It was disputed, actually. Per Chancellor McCormick, "Defendants failed to prove that Musk's less-than-full time efforts for Tesla were solely or directly responsible for Tesla's recent growth, or that the Grant was solely or directly responsible for Musk's efforts." Details.)

Nor could the appreciation in value of his preexisting equity stake serve as a substitute to restore the status quo, because, per the Court, "[t]he benefits from his preexisting equity stake were not the compensation he was promised if he achieved the 2018 Grant milestones." Which is an argument that proceeds on the assumption that Tesla's "promise" was a fair one achieved at arm's length, rather than one manipulated by Musk himself – which is … not what Chancellor McCormick found.

Okay, so the plaintiffs can't technically receive rescission, because both parties can't be restored to their 2018 positions. What about remedies like disgorgement or rescissory damages, then, would they be appropriate? A ha! Plaintiffs used the word "rescission," not "rescissory damages" and not "disgorgement," so the Court need not ponder such unlikely hypotheticals.

Which is to say, in the grand tradition of *Paramount v. Time*, widely viewed as a response to Martin Lipton's *Interco* memo, the opinion reeks of political expediency (an impression buttressed by the fact that it was issued per curiam – no individual judge wanted to be associated). The Court took a hot potato and found a way to toss it without saying anything at all.

But one difference between *Tornetta* and the *Paramount v. Time* decision is that in *Paramount*, the Court found a way to protect the interests of corporate stakeholders from a rapacious form of shareholder wealth maximization. In *Tornetta* it … did the other thing.

And … a Very Special Shareholder Primacy podcast! Me and Mike Levin close out the year with a crossover episode with our sister pod, Proxy Countdown, featuring Matt Moscardi and Damion Rallis of Free Float LLC. Here on Spotify, here on Apple, and here on YouTube.
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Securities

Musk 2018 Tesla Pay Plan Reinstated After 7-Year Legal Fight (3)

December 19, 2025, 4:34 PM PST

Elon Musk won reinstatement of his 2018 pay package as chief executive of Tesla Inc., after the Delaware Supreme Court reversed some findings of a judge who said the billionaire improperly influenced board members who formulated the record-breaking corporate compensation package.

The high court Friday concluded the world's richest person is entitled to a stock-based compensation plan now valued at about $140 billion. When Tesla directors first authorized the payout, it was the biggest ever for a US executive. It's since been eclipsed by a separate plan that could be worth an additional $1 trillion for the Tesla chief executive officer if he hits future performance targets.

Musk's 2018 compensation plan has been on hold after a single investor — who owned nine shares — successfully sued to block it in Delaware, where the electric carmaker was incorporated at the time. Tesla investors twice overwhelmingly voted to back the plan, which surged in value as the stock soared close to $500 a share from around $20 seven years ago.

In a unanimous ruling, the five justices on Delaware's highest court said canceling the CEO's entire payout improperly left "Musk uncompensated for his time and efforts over a period of six years." However, they upheld the finding of a lower court judge that Tesla's board was riven with conflicts of interest when it established the pay package for the company's billionaire co-founder.

"While they overturned the ruling on damages, the decision still serves as a warning to corporate boards they better have a compensation process free from the kind of conflicts we saw in this case if they want it to pass muster," said Charles Elson, a retired University of Delaware professor who founded the school's Weinberg Center for Corporate Governance.

Delaware Exit

The much-anticipated ruling wipes out some findings by Chancery Court Chief Judge **Kathaleen St. J. McCormick**. She ruled in January 2024 Tesla directors had too many ties to their CEO — who owns the largest stake in the company — to properly set his pay. Her decision drew the ire of corporate interests and Musk, who accused Delaware's judges of taking an anti-business stance and unfairly putting the spotlight on controlling shareholders.

Musk has since launched a campaign to persuade other companies to yank their incorporations out of Delaware, the corporate home to more than 60% of Fortune 500 firms. Musk moved the incorporation of Tesla, Space X and his other companies to Texas and Nevada and has continued to harshly criticize McCormick and other Delaware judges as activists.

That prompted a change in Delaware law, with the support of new Governor Matt Meyer, a Democrat, making it harder to successfully sue corporate titans such as Musk in hopes of stemming the tide of companies yanking their incorporations out of the state. Critics said it wrongfully eased legal standards for reviews of insider deals. Delaware is the US' incorporation haven, the corporate home to more than 60% of Fortune 500 companies. It generates more than $2 billion annually in fees tied to such incorporations.

Greg Varallo, one of the lawyer's for the Tesla shareholder who challenged Musk's pay, said he's considering what "next steps" his client could take in connection with the case. Lawyers for Tesla and its directors didn't immediately return a request for comment on the court's ruling.

In a post on his X social-media platform, Musk said he tries "not to start fights, but I finish them."

In the 49-page ruling, Delaware's justices concluded McCormick erred in determining that the remedy for the board conflicts was a complete rescission of Musk's pay deal. That left the him without compensation for a half-dozen years of guiding the electric-carmaker, which experienced unprecedented growth during that period. "It is undisputed Musk fully performed under the 2018 grant, and Tesla and its stockholders were rewarded for his work," the court reasoned.

From 2018 to 2024, Musk turned the electric-car maker into one of the world's most-valuable and best-known companies. Musk has a net worth of around $643 billion, according to the Bloomberg Billionaires Index. "Musk's prior compensation arrangements cannot solve the problem of awarding a remedy which deprives him" of the proper benefits of his efforts, the court found.

The justices also said that because lawyers for Tornetta, the investor who sued, didn't offer an alternative remedy for the problems caused by the director conflicts, he deserved only "nominal damages." They awarded him $1 and cut the legal fees McCormick awarded by more than $290 million, to no more than $54.5 million, according to the decision. Tornetta also could go back to McCormick to ask her to consider another remedy for the board's breach of its legal duties to investors.

The board had been prepared with an alternative pay plan for Musk if the court had rejected his 2018 pay package. After Tesla moved its incorporation to Texas, directors in August created interim compensation for the CEO valued at $30 billion in stock, but only if he lost. That plan no longer applies.

To create even more incentives in the future, shareholders approved a stock-based plan Nov. 6 that could make him the first-ever trillionaire and expand his stake in Tesla to 25% or more over the next decade. To cash in, he'll have to reach a host of performance targets at Tesla, including selling a million AI robots and getting a million self-driving robotaxis on the road.

The pressure of companies fleeing Delaware as their corporate homes “added to the political pressure” the state’s highest court faced when weighing Musk’s controversial pay plan, said Ann Lipton, a corporate law professor at the University of Colorado.

The case is In Re Tesla Inc. Derivative Litigation, No. 534, 2024, Delaware Supreme Court (Dover).

(Updates with investor lawyer’s comment in ninth paragraph)

--With assistance from **Dana Hull**.

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Deep Dive

Musk Pay Pushes Corporate Law to Bend-or-Break Inflection Point

December 22, 2025, 9:48 AM PST

Summary by Bloomberg AI

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- Delaware's leaders eliminated crucial judicial checks on self-dealing in March, which was sparked by attacks from Elon Musk, whose $56 billion compensation was voided by a judge last year and reinstated by the state's top court Dec. 19.
- The overhaul of Delaware's corporate system has investors and experts concerned that it is yielding rules ill-suited to ordinary shareholders and politicizing a technocratic process, emboldening powerful founders who can end-run the state's world-renowned courts.
- The changes have led to a "race to the bottom" with Texas and Nevada, where corporate leaders face far less liability, and experts warn that if corporate law bends too far, it could break, with potentially disastrous consequences for investors and the market.

A year that saw Elon Musk's record pay plan push corporate law to the breaking point has investors casting a wary eye across a legal landscape reshaped by billionaires.

Delaware's leaders upended its best-in-class corporate system in March, eliminating crucial judicial checks on self-dealing. They portrayed the move—sparked by attacks from Musk, whose $56 billion compensation was voided by a judge last year and reinstated by the state's top court Dec. 19—as a modest course correction to save the golden goose in a state that funds a quarter of its budget with corporate fees.

The jurisdiction, which faces competition from Texas and Nevada, still offers more investor protections than its rivals. But the forces buffeting Delaware aren't going anywhere, and molding corporate law to the idiosyncrasies of moguls is yielding rules ill-suited to ordinary shareholders, said Berkeley Law professor Stavros Gadinis.

“That could work for Musk"—whose investors often care more about his dreams than their returns—"but there are not a lot of Musks around,” Gadinis said. “He's pushing the logic of the market, and the logic of corporate law, to its end.”

Worse than the overhaul's substance is the way it politicized a technocratic process, emboldening powerful founders who learned how to end-run Delaware's world-renowned courts, said retired University of Delaware law professor Charles Elson.

The lawyers and lobbyists behind the legislation "were trying to solve a problem for their clients," said Elson, alluding to corporate controlling stockholders like Musk and Mark Zuckerberg.

"But by injecting the patient with a drug to protect the controlling shareholders, they killed everybody else," he said.

Precarious Moment

For a century, Delaware's Chancery Court has set the tone on buyouts, boardroom battles, and shareholder rights. The overhaul, Senate Bill 21, came at a precarious moment for the state's judges, who've weathered a barrage from Musk since the 2024 ruling striking down his Tesla Inc. comp deal.

The bill's backers have denied catering to the world's richest person. But skyrocketing pay for the billionaires flexing power over our economy, politics, and culture is a key part of the story,said Harvard Law professor John Coates.

Deference toward day-to-day managerial decisions—a doctrine known as the business judgment rule—has been a pillar of corporate law for decades. Even when corporate leaders faced conflicts of interest, that deference was the default.

"Managers are given enormous latitude to pursue a value-maximizing strategy, whether it's building a plant or hiring a certain person," said Lawrence Cunningham, director of the University of Delaware's Weinberg Center for Corporate Governance.

The exception was high-stakes M&A transactions, which raise the risk that insiders will siphon value. Executive pay straddled both categories, but as long as its size was manageable, Delaware's judges took the view that close scrutiny would lead to micromanagement.

Then equity mega-grants like Musk's—representing a growing proportion of total enterprise value—began presenting the same type of looting risk as a whole-company sale. Many reflect self-dealing by founders with minority stakes who exercise control through influence or dual-class stock, said Coates.

"The number of people in this new controller category, pushing comp to levels never seen in the history of the world," undermined the distinction between M&A and compensation, he said.

A billionaire backlash followed.

'Race to the Bottom'

After his landmark court loss, Musk relocated Tesla to Texas, where he won a $1 trillion replacement package. Many experts now view angling by Texas and Nevada as a serious challenge to Delaware's dominance.

Several major companies followed Tesla out the door, a mini-wave of “DExits” that unnerved the incoming governor. The resulting shake-up—rolled out aggressively by lawyers linked to Musk and Zuckerberg—took aim at a ruling that cleared the way for elevated scrutiny of compensation.

“What SB21 showed is that if you spend some money, you can overturn a Delaware court decision,” Elson said.

Delaware is now in a “race to the bottom” with Texas and Nevada, where corporate leaders face far less liability, said Southern Methodist University law professor Carliss Chatman. “Maybe it doesn’t matter where you incorporate, because shareholders can’t recover anyway,” she said.

The question is how far corporate law can bend—and what happens if it breaks.

“People like Elon Musk are deciding what happens with our assets,” Chatman said. “I get to retire—or not—based on Elon’s whims. I don’t know how long the market tolerates that.”

Texas and Nevada are betting on systems that let shareholders place total trust in founders they admire. That may work for Tesla on a sunny day, but corporate law exists for failure and conflict, said Coates. When those states inevitably find themselves backing into increased accountability, it’s unclear they have anything to offer besides a pale imitation of Delaware, he said.

‘Naked Politicization’

Delaware may be following Texas and Nevada toward that cliff. US-listed companies can already incorporate in tax havens that make investor litigation virtually impossible, but few reputable businesses go that route due to the increased cost of capital.

As major jurisdictions continue reducing fiduciary duties, sophisticated investors could turn away from traditional equity and toward debt instruments that carry contract rights enforceable anywhere, according to Elson.

“It would be a disaster,” he said. “Debt is very difficult for a small, growing company. You could really snuff out some really good ideas before they even come to market.”

Then there’s the prospect of a national corporate law, Delaware’s recurring nightmare. The state’s corporate constituencies have largely staved off federal incursions by emphasizing its sophisticated judiciary and a legislature that took its cues from experts.

“With the naked politicization of SB21, it’s going to be harder to make that argument,” according to Elson, who said a decision striking down portions of the law—currently before Delaware’s top court—could save the state from itself.

“It would force all parties back to the table for a reasoned, careful discussion,” Elson said.

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Two Tech Companies Hit with Data Breach-Related Securities Suits

dandodiary.com/2025/12/articles/securities-litigation/two-tech-companies-hit-with-data-breach-related-securities-suits

Kevin LaCroix December 21, 2025

The possibility of a securities class action lawsuit being filed against a company after it experiences a data breach is a long-standing risk. For most of 2025, there were relatively few of these kinds of suits filed, at least compared to recent years. However, last week, two different companies – the e-commerce firm Coupang and the application security firm F5 – were each hit with new cybersecurity-related securities class action lawsuits. The new lawsuits have several interesting features, as discussed below, and at a minimum underscore the fact that the threat of these kinds of cybersecurity suits is ongoing.

The Coupang Lawsuit

Coupang is an e-commerce site and web-services hub largely serving customers in South Korea. Its shares trade on the NYSE. According to the securities suit complaint, during the class period, the company made disclosures about the quality of its technology, data, and privacy controls, as well about the adverse consequences the company would sustain if these controls were compromised or breached.

In late November and early December 2025, a series of press reports disclosed that on November 18, 2025, the company discovered that it had sustained a massive data breach. As the company itself later disclosed, the company ultimately found that personal information of over 33 million customers has been compromised in what press reports called "the largest data breach in South Korean history." The company also disclosed that the breach had been caused by a former company employee who had retained his log-in credentials after he left the company, and that the employee had exploited a vulnerability in the company's systems to access information and data. The company's CEO later resigned. Subsequent media reports disclosed that the South Korean police are investigating the breach.

According to the complaint, the company's share price declined in several steps as details of the breach were disclosed.

On December 18, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against the company and certain current and former executives. A copy of the complaint can be found here. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between August 6, 2025 and December 16, 2025 (the date the company filed a disclosure statement on Form 8-K with the SEC about the data breach).

The complaint alleges that during the class period, the defendants misrepresented or failed to disclose that: "(1) Coupang had inadequate cybersecurity protocols that allowed a former employee to access sensitive customer information for nearly six months without being detected; (2) this subjected Coupang to a materially heightened risk of regulatory and legal scrutiny; (3) When Defendants became aware that Coupang had been subjected to this data breach, they did not report it in a current report filings (to be filed with the U.S. Securities and Exchange Commission (the SEC) in compliance with applicable reporting rules; and (4) as a result, Defendants' public statements were materially false and/or misleading at all relevant times."

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

The F5 Lawsuit

F5 provides multi-cloud application security and delivery solutions, helping companies make their apps available and secure across environments. The company offers services like load balancing, firewalls, and app security. The company's largest revenue product is called BIG-IP, which manages and secures application traffic for high availability and performance.

According to the securities lawsuit complaint, during the class period F5 provided investors with material information concerning its cybersecurity controls and effectiveness. The defendants, the complaint alleges, "routinely emphasized the importance of effective security measures to its clientele." Company statements referred to the company's ability to address newly developing security concerns, provide "best-in-class" security offerings, and protect its clients' data while capitalizing on the market potential for enhanced security offerings.

On an October 15, 2025 press release (here), the company announced its discovery, in August 2025, of a nation-state actor's "long-term, persistent" breach to its system, during which the company's BIG-IP product development and engineering knowledge management systems were compromised. The company also identified its remediation efforts in response to the breach. According to the securities suit complaint, the company's share price fell nearly 14% on this news.

On October 27, 2025, in connection with its fiscal fourth quarter earnings release, the company provided revised guidance including lowered growth expectations for fiscal 2026 due in part to the security breach. The lowered guidance included expected reductions in sales and increased expenses due to remediation efforts. According to the complaint, the company's share price fell a further 11% in subsequent trading days.

On December 19, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Western District of Washington against F5 and certain of its executives. The complaint, a copy of which can be found here, purports to be filed on behalf of investors who purchased the company's securities between October 28, 2024, and October 27, 2025.

The complaint alleges that during the class period, the defendants disseminated "materially false and misleading statements" or concealed "material adverse facts concerning the true state of F5's security capabilities." Specifically, the complaint alleges that the company was, contrary to its representations, "not truly equipped to safely secure data for its clients," as the company was at relevant time "experiencing a significant security breach … of some of its key offerings, and further, that the revelation of this breach would significantly impact F5's potential capitalize on the security market." These statements, the complaint alleges, from with material facts were omitted, "caused Plaintiff and other shareholders to purchase F5's securities at artificially inflated prices."

The complaint alleges that the defendants violated Section 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

At a minimum, these two new lawsuits are a reminder of the ways that a data breach or cybersecurity incident can translate into a D&O claim. There was a time, not that long ago, that commentators (including me) were predicting that there would be massive amounts of cyber-related D&O litigation. Since that earlier time there have indeed been some cyber-related securities suits filed, but these kinds of suits have never really accumulated in the volume anticipated.

This seeming short-fall is due in part to the fact that in many high-profile instances, the plaintiffs have not fared well in these kinds of cases (as discussed, for example, here). Another reason there have been fewer suits than anticipated is that the stock markets have become inured to data breach news. Many companies have sustained massive data breaches in recent years without any ensuing lawsuits filed, likely due to the fact that the breached company's share price didn't react to the news of the incident. These two new cases serve notice that the risk of these kinds of suits has not gone away.

There is a specific reason why I find the new Coupang lawsuit particularly interesting, and that is because one of the suit's major allegations is that the company allegedly failed to make the requisite disclosures under SEC's cyber security disclosure guidelines. Readers will recall that in July 2023, under the Biden administration, the agency adopted a set of guidelines. The guidelines require companies to make certain data breach-related disclosures within four days of determining that the breach was material, as well as to make annual disclosures concerning the company's cybersecurity governance.

Since the time the cybersecurity disclosure guidelines were adopted, one of my concerns has been that plaintiffs' attorneys would incorporate allegations into securities lawsuit complaints about alleged violations of the guidelines. This lawsuit is, to my knowledge, the first securities suit to contain allegations relating to compliance with the guidelines. The Coupang complaint emphasizes this particular allegation, among other things by setting out at length the text of the guidelines.

Interestingly, the F5 complaint also refers to the SEC's cybersecurity disclosure guidelines, but in a different way than in the Coupang complaint. The F5 complaint, citing the company's filing on Form 8-K with respect to the breach, notes that on September 12, 2025, the U.S. Department of Justice determined that a disclosure delay was warranted pursuant to Item 1.05(c). This provision authorizes companies to delay otherwise required cyber incident disclosure "if the Attorney General or the Attorney General's authorized designees determine that the disclosure poses a substantial risk to national security or public safety." In other words, F5 appears to have received a waiver to the SEC guidelines cybersecurity disclosure guidelines, apparently because the incident involves nation-state actor activity. (The Coupang complaint also mentions Item 1.05(c), but only to assert that Coupang did not have an exemption.)

In any event, these two recently filed cybersecurity-related securities class actions are a reminder of the ways that cybersecurity concerns can translate into securities litigation and underscore the fact that the threat of this kind of litigation remains.

South Korea online retailer Coupang faces US securities class action over massive data breach

reuters.com/legal/government/south-korea-online-retailer-coupang-faces-us-securities-class-action-over-2025-12-22

Mike Scarcella December 22, 2025

Delivery trucks for e-commerce retailer Coupang leave a distribution centre in Seoul, South Korea, June 21, 2018. REUTERS/Josh Smith/File Photo Purchase Licensing Rights, opens new tab

WASHINGTON, Dec 22 (Reuters) - South Korean e-commerce company Coupang (CPNG.N), opens new tab has been sued in a U.S. court in an investor class action alleging violations of securities laws after a cybersecurity breach exposed personal information of more than 33 million customers.

The lawsuit, filed last week in federal court in California, claims Coupang, its CEO and Chairman Bom Kim and its Chief Financial Officer Gaurav Anand misled investors about the company's data security practices and failed to disclose the breach in a timely way.

Coupang, South Korea's biggest online retailer, last month apologized over the breach of personal information through unauthorized data access. In the aftermath, Park Dae-jun, chief executive of subsidiary Coupang Corp, resigned this month.

The company, dubbed the Amazon.com of South Korea, previously said it would tighten security to prevent another data leak.

Coupang did not immediately respond to a request for comment, and neither did a lawyer representing the investor who filed the lawsuit on December 18.

Coupang, which operates globally, has offices in California and other U.S. cities. The company dominates South Korea's e-commerce market, providing same-day delivery, video streaming and food delivery. The breach has spurred investigations in South Korea.

The lawsuit said Coupang discovered on November 18 that a former employee had retained access to internal systems for months, compromising customer names, email addresses, delivery addresses and some order histories. The company said the breach did not expose payment details or login credentials.

Coupang failed to report the breach under U.S. securities rules in a timely way, the lawsuit alleged.

Coupang, according to the lawsuit, submitted U.S. regulatory filings that understated the company's vulnerability to cyberattacks and overstated its safeguards. The complaint is seeking damages for investors who purchased Coupang securities between August 6 and December 16.

Our Standards: The Thomson Reuters Trust Principles., opens new tab

Class Action

Manage Newsletters

Driven Brands Reaches $25 Million Investor Deal Over Performance

December 22, 2025, 9:03 AM PST

Summary by Bloomberg AI

AI Generated

- Driven Brands Holdings Inc. agreed to settle investor allegations for $25 million, aiming to cover those who got Driven stock from Oct. 27, 2021, through Aug. 1, 2023.
- The settlement would end two years of litigation between shareholders, Driven, and two former executives, accusing the company of overstating its campaign to integrate acquired auto glass companies and hiding issues with those and its car wash business segments.
- Driven and the former executives denied wrongdoing in the settlement, according to the Dec. 19 filing.

Driven Brands Holdings Inc. agreed to settle investor allegations the automotive-services company overhyped the integration of its glass repair acquisitions and performance of its car wash businesses for $25 million.

The settlement class aims to cover those who got Driven stock from Oct. 27, 2021, through Aug. 1, 2023, said the public pension funds leading the case, which are seeking preliminary approval of the deal. If approved in the US District Court for the Western District of North Carolina, the agreement would end two years of litigation between shareholders, Driven, and two former executives, accusing the company of overstating its campaign to integrate acquired auto glass companies and hiding issues with those and its car wash business segments.

Driven and the former executives, CEO Jonathan G. Fitzpatrick and Chief Financial Officer Tiffany L. Mason, denied wrongdoing in the settlement, according to the Dec. 19 filing. The pension funds' lead counsel will seek 25% or less of the sum for all counsel in attorneys' fees and up to $500,000 in litigation expenses reimbursed.

Judge Max O. Cogburn Jr. denied Driven—the parent company of Take 5 Oil Change, Meineke Car Care Centers, and other auto-service brands—its motion to dismiss the proposed class action this year. Driven allegedly misled investors about those business sectors until lowering its annual financial forecast a few months after Mason's abrupt 2023 departure, the suit said.

Driven slashed its 2023 revenue guidance by $50 million on Aug. 2, 2023, announcing lackluster financial results for the second quarter in both its auto glass and car wash segments. Driven said it was behind on the auto glass integration and that its car wash segment took a hit from burgeoning competition.

The company's share price fell more than 41% to close at $15.20 that day—at that time the stock's biggest drop since its 2021 market debut, according to data compiled by Bloomberg.

Bernstein Litowitz Berger & Grossmann LLP, lead counsel for the proposed class, didn't immediately respond to an email seeking comment. VMT Law PC and Terpening Law PLLC also represent the pension funds: the Genesee County Employees' Retirement System, Oakland County Employees' Retirement System, and Oakland County Voluntary Employees' Beneficiary Association.

Gibson, Dunn & Crutcher LLP represents Driven and Fitzpatrick. Neither the firm nor Driven immediately responded to emails seeking comment. Rottenberg Lipman Rich PC represents Mason and deferred to Driven's counsel for comment. Robinson, Bradshaw & Hinson PA is Driven and Fitzpatrick's local counsel. Flannery Georgalis LLC is Mason's local counsel.

The case is Genesee Cnty. Emps. Ret. Sys. v. Driven Brands Holdings Inc. , W.D.N.C., No. 3:23-cv-00895, 12/19/25 .

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Securities

Rivian’s $250 Million IPO Investor Accord Gets First Court Nod

December 19, 2025, 11:03 AM PST

Rivian Automotive Inc.‘s $250 million settlement earned a federal judge’s initial blessing to resolve investor allegations the electric-vehicle maker hid inevitable price hikes surrounding its initial public offering.

Judge Josephine L. Staton preliminarily approved the agreement Thursday in the US District Court for the Central District of California. The class action alleged false and misleading statements in Rivian’s IPO paperwork and a 2021 earnings calls, saying EV executives knowingly hid material costs for vehicles far surpassed their sales price which made price increases inevitable.

The suit, under the federal law governing stock issuances, also alleged Rivian directors and executives failed to disclose a known trend of material costs in IPO paperwork and that its underwriters failed to do a sufficient due-diligence investigation

The securities-fraud claim class covers those who acquired Rivian stock from Nov. 11, 2021, through March 10, 2022, and the stock issuance class covers those who purchased its stock from Nov. 10, 2021, through March 10, 2022

Rivian has said it didn’t admit fault or wrongdoing in the proposed settlement

Kessler Topaz Meltzer & Check LLP is class counsel. Freshfields US LLP, which declined to comment, represents Rivian and executives. Orrick Herrington & Sutcliffe LLP represents underwriters, among them Morgan Stanley & Co LLC, Goldman Sachs & Co. LLC, and JP Morgan Securities LLC. Kessler Topaz, Orrick, and Rivian didn’t immediately respond to emails seeking comment.

The case is Crews v. Rivian Auto., Inc. , C.D. Cal., No. 2:22-cv-01524, 12/18/25 .

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Securities

Manage Newsletters

Fidelity National to Pay Investors $210 Million Over Merger (1)

December 22, 2025, 7:05 AM PST; Updated: December 22, 2025, 8:26 AM PST

Summary by Bloomberg AI

AI Generated

- Fidelity National Information Services Inc. has agreed to pay $210 million to settle investor class claims that the company misrepresented how it was integrating payment processor Worldpay.
- The investors alleged that Fidelity and its leadership engaged in a "fraudulent scheme to prop up the value of Worldpay" after acquiring it in 2019 for more than $40 billion.
- The settlement amount "represents approximately 3.6% to 11.7% of estimated damages" under realistic damages scenarios, according to the investors.

Fidelity National Information Services Inc. has agreed to pay $210 million to settle investor class claims that the financial technology company misrepresented how it was integrating payment processor Worldpay, according to federal court filings.

The deal warrants preliminary approval, the investors told the US District Court for the Middle District of Florida on Dec. 19. The settlement amount "is fifteen times greater than the median reported recovery in securities class actions in 2024, which was $14 million," they said.

The high-stakes litigation stemmed from Fidelity's acquisition of Worldpay in 2019 for more than $40 billion. The company and its leadership engaged in a "fraudulent scheme to prop up the value of Worldpay following the acquisition despite knowing it was an abject failure," the investors alleged.

Fidelity ultimately recorded a $17.6 billion goodwill impairment charge for Worldpay and announced that it would spin the unit off, the investors alleged. Fidelity's stock price "collectively plummeted 47% while the Individual Defendants personally made millions through a farcical executive compensation plan that somehow rewarded them for a 'successful' acquisition," they alleged.

Fidelity's acquisition of Worldpay for cash and stock, including the assumption of debt, has been valued at different amounts. The initial complaint in the case described it as a $43 billion deal, whereas the amended complaint pegs the purchase price at $48 billion.

Judge Timothy J. Corrigan denied Fidelity's dismissal request in 2024.

Corrigan should grant preliminary approval, the investors said here. Under realistic damages scenarios, the settlement amount "represents approximately 3.6% to 11.7% of estimated damages," they said.

Labaton Keller Sucharow LLP is lead counsel for the investors. McGuireWoods LLP, Sidley Austin LLP, and Goldberg Kohn Ltd. represent Fidelity.

The case is In re Fid. Nat'l Info. Servs., Inc. Sec. Litig. , M.D. Fla., No. 3:23-cv-252, motion 12/19/25 .

(Updates story with additional information and context throughout.)

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Securities

Manage Newsletters

Snap Investor Drops Lawsuit Over Ad Tool Glitch's Sales Impact

December 22, 2025, 9:08 AM PST

A Snap Inc. investor voluntarily dismissed his lawsuit alleging the Snapchat owner hid a technical issue that impacted its advertising revenue before reporting underwhelming 2025 second quarter results.

Investor Omar Abdul-Hameed dropped his lawsuit Dec. 19, two weeks after US District Court for the Central District of California Judge R. Gary Klausner named him lead plaintiff. Abdul-Hameed sued Snap, CEO Evan T. Spiegel, and Chief Financial Officer Derek Andersen after Snap attributed a topline revenue growth slowdown to the issue with its ad platform, Ramadan's timing, and other effects.

Snap's stock price plummeted more than 17% the next day, Aug. 6—its sharpest one-day drop in more than a year, according to data compiled by Bloomberg

An update to Snap's ad auction system caused it to mistakenly discount sales to ad buyers, the tech company said in an Aug. 5 letter to shareholders about its second quarter results

In an associated earnings call, Andersen said Snap saw advertising revenue growth drop to about 1% year-over-year in April, and after rolling back the change, saw that metric recovering in May

Levi & Korsinsky LLP represents Abdul-Hameed. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents Snap and the executives. Neither of these law firms nor Snap immediately responded to emails seeking comment.

The case is Abdul-Hameed v. Snap Inc. , C.D. Cal., No. 2:25-cv-07844, notice 12/19/25 .

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Securities

Vera Therapeutics Investors Drop Short-Swing Trading Lawsuit

December 19, 2025, 11:24 AM PST

Vera Therapeutics investors have voluntarily dismissed a derivative suit on behalf of the biotech company alleging a venture capital fund with a seat on the board engaged in stock trading within a short period.

The investment funds that sued Sofinnova Venture Partners X LP and related entities notified the US District Court for the Southern District of New York of the agreement on Thursday, without saying why they're dropping the action. Attorneys for the plaintiffs, Sofinnova, and nominal defendant Vera didn't immediately respond to an email requesting information and comment.

Sofinnova, an early investor in Vera when it was still private, allegedly made additional stock purchases in January 2024 and sold stock in a series of transactions in March of that year, within a six-month window in which federal law says "short-swing" profits by insiders must revert to the company
Judge Edgardo Ramos ruled in July that the investors could sue the Sofinnova entities on the theory that they deputized Maha Katabi to represent them on Vera's board of directors

Counsel for the investors includes James Hunter, who practices in Radnor, Pa. Katten Muchin Rosenman LLP represents Sofinnova. Cooley LLP represents Vera.

The case is Calenture, LLC v. Sofinnova Venture Partners X, L.P. , S.D.N.Y., No. 1:24-cv-04194, stipulation 12/18/25 .

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Law firms chart back-office deals as investors seek bigger legal market foothold

reuters.com/legal/government/law-firms-chart-back-office-deals-investors-seek-bigger-legal-market-foothold-2025-12-18

Sara Merken December 18, 2025

A boardroom is seen in an office building in Manhattan, New York City, New York, U.S., May 24, 2021. REUTERS/Andrew Kelly Purchase Licensing Rights, opens new tab

- MSO model allows investment in law firms' non-legal operations
- Interest growing among big law firms, private equity, litigation funders
- Financing lawsuits, state deregulation have upped investor stakes in legal services

NEW YORK, Dec 18 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters, opens new tab.com)
Law firms courting capital and investors looking to cash in on firms have a new buzzword: the MSO, or management services organization, a model that could reshape a segment of the U.S. legal market.

The approach, long used in healthcare and other industries, lets investors take a stake in a separate entity handling law firms' non-legal, back-office operations. The MSO is paid by the firm for its services but does not share in its profits, steering clear of ethics rules that bar non-lawyers from owning law firms in most U.S. jurisdictions.

At least two U.S.-based international law firms, McDermott, Will & Schulte and Cohen & Gresser, in recent weeks acknowledged exploring potential MSO deals. Litigation funding giant Burford Capital said it's talking with law firms as potential MSO partners, and its chief development officer Travis Lenkner told Reuters that Burford has had discussions with other investors to help broker MSO deals.

There are “a lot of large institutional investors” that are interested in law firms, Lenkner said.

If the model gains steam, it would be the latest chink in barriers dividing outside capital and law in the United States, where the litigation finance industry and state-level regulatory changes have already given investors a larger foothold in the legal profession.

Law firms, said Brad Blickstein of legal consultancy Blickstein Group, are coming to be viewed as "an investable asset class.”

FIRMS AND INVESTORS TAKE NOTE

McDermott would be the largest U.S. firm to adopt an MSO structure if it moves forward. The firm is exploring using the model to sell a stake to private equity investors, the Financial Times reported last month, citing people with knowledge of the matter. McDermott chairman Ira Coleman in a statement acknowledged there was "inbound interest" but said any talks were preliminary.

New York-founded firm Cohen & Gresser, which has around 70 lawyers, is also in discussions to sell a stake to private equity and has weighed options including the sale of a $40 million convertible note that would later switch to equity in a future MSO, a spokesperson confirmed.

“We are exploring innovative structures with a number of prominent investment firms that can support our strategic objectives," said co-founder and managing partner Lawrence Gresser.

Lee Minkoff, who oversees private equity firm Renovus Capital’s professional services investments, said the promise of law firm MSOs was “part of the thesis” for an investment Renovus announced in vendor K2 Services last month. K2 already provides IT managed services and other support to law firms and could someday acquire a firm’s entire back office through an MSO, he said.

Legal advisors said some law firms began forming smaller-scale MSOs as early as the 2000s. What’s new is that increasingly “private equity is coming in to take an ownership stake in those MSOs,” said Trisha Rich, an ethics lawyer at Holland & Knight who advises law firms and investors on such deals.

Personal injury firms and other consumer-focused firms focused on areas like trusts and family law are of particular interest to investors, advisors say.

Many large firms, meanwhile, face a cash crunch fueled by the cost of technologies like artificial intelligence and by surging compensation for top lawyers, said David Wilkins, faculty director of the Center on the Legal Profession at Harvard Law School.

"The need for capital investment is skyrocketing," Wilkins said.

INVESTING IN THE LAW

The interest in MSOs is just part of a broader U.S. trend toward investing in legal work.

Litigation funders like publicly-traded Burford invest in specific lawsuits or other legal claims in exchange for a cut of recoveries, growing into a $16.1 billion industry in the United States in past decade. More recently, a handful of states have loosened rules that prohibit non-lawyers from owning U.S. law firms or receiving a percentage of their fees, allowing some investors to take a direct stake in firms.

Arizona has gone the furthest, allowing more than 100 law firms and legal services organizations to operate as "alternative business structures" in partnership with non-lawyers. KPMG earlier this year launched a law firm subsidiary under the program.
The ABS model is also attracting interest from Burford and other litigation funders. Litigation funder Certum Group earlier this month said it launched an MSO to provide pre-litigation and other services to firms that handle mass tort and other litigation. William Farrell, co-founder and managing director of Longford Capital, said his firm is "absolutely interested" in participating in both ABS and MSO deals.

“We anticipate that direct investment in law firms will become a bigger part of our portfolio construction," Farrell said.

The American Bar Association has not explicitly weighed in on the ethics of law firms using MSOs, but an ABA representative said its Center for Professional Responsibility “is aware of and following developments," including a February ethics opinion from the state bar of Texas.

The Texas opinion said that under state rules, lawyers who engage a non-lawyer owned company to provide a support platform cannot pay for its services based on a percentage of the legal firm's revenues. It also said lawyers and non-lawyers can share ownership of such a company if it does not engage in the practice of law.

The opinion "implicitly acknowledges the permissibility" of MSOs, Rich and other Holland & Knight lawyers said in an August client newsletter.

Lucian Pera, a partner at Adams & Reese who has advised investors and law firms, said he expected both MSO deals and public discussion about the trend will reach a new pitch in 2026.

"Some of the investors, frankly, are out shopping vigorously for firms," he said.

Read more:

Is Big Law's 'pyramid' due for an AI makeover?
Tom Goldstein fights to sell home as tax trial looms
Conservatives split on litigation funding reform legislation
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Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

Securities
Insight

Apple's Antitrust Win Shows Why Big Data Is a Litigation Problem

December 22, 2025, 1:29 AM PST

When a federal court decertified a $20 billion class in *In re Apple iPhone Antitrust Litigation* in late October, it didn't throw out a legal theory—it threw out a data model.

Millions of iPhone users who bought apps and in-app content through the App Store were once potential class members. Today, they're not, because the plaintiffs' team couldn't answer a seemingly simple question: Which real people, tied to which accounts, were actually harmed?

That failure was about data science, not antitrust doctrine. And it should be a wake-up call for every lawyer handling large-ticket class actions and complex litigation.

Machines vs. Spreadsheets

Consumers see eerily tailored ads after a single search or conversation and assume their phones are "listening." What's really happening is that big tech companies are operating enormous data-science engines that continuously analyze digital exhaust—IDs, devices, locations, transactions—to predict what we'll do next and use that data to their benefit.

Contrast that with the way most plaintiffs staff large cases against those same companies – and companies to whom that data is transferred. The legal theory may be sophisticated, but the data work is often treated as an administrative chore–a process that looks more like this:

Export some transaction data
Hand it to a traditional claims administrator or expert
Stitch it together with ad-hoc code and spreadsheets
Hope the model survives rigorous Rule 23 and *Daubert* analyses

In *Apple*, that approach failed. The court initially certified a broad class of App Store purchasers but warned that certification would hinge on plaintiffs producing a "cognizable" damages model. At the heart of that model was a data-science assignment: Accurately match Apple IDs and payment records to real, identifiable consumers to prove class-wide injury.

The court didn't get a data science analysis. It got data stitched together with ad hoc code and spreadsheets in which the judge noted "several alarming errors." The result: A once-certified, multibillion-dollar class unraveled for lack of a data model grounded in true data science.

Threshold Question

The central lesson of *Apple* isn't limited to class certification. It's broader and simpler—in today's age of big data, every stage of complex litigation involves some type of data analysis.From the day a large-scale action is contemplated, counsel must ask at each step of the process: "Is there a data science problem here?"
In modern class actions, the answer is almost always yes. Consider just three phases that recur in nearly every large matter:

Class Certification and Class Definition: Class-wide predominance depends on whether you can reliably identify who's in the class and who's not. That is an identity-resolution problem at scale—normalizing names and aliases, reconciling multiple accounts and payment instruments, resolving household versus individual purchasers, mapping digital IDs to human beings. Treat that as "mailing list work," and you risk another *Apple*-style collapse.

"Best Practicable" Is a Data Question First: Courts assume "best practicable" notice reaches the people who were actually harmed. But in a mobile-first, multi-channel world, that assumption is only defensible if the underlying data work is rigorous.

Effective notice demands industrial-grade identity resolution and channel optimization. Address history, email and phone validation, deduplication, language and demographic analysis. Weak pipelines systematically miss mobile-only households, frequently moving consumers, and language communities. That administrative shortfall has become an access-to-justice problem.

Claims Processing, Eligibility, and Fraud: Claims administration is no longer about checking boxes and rubber-stamping documentation. Eligibility itself is a big-data problem: Did the claimant live in a specific city during the exposure period? Were they an account holder or an authorized user? Are multiple claims really the same person?

Traditionally, we push that burden onto claimants: "Attach a bill. Prove you lived here." Modern data science allows the opposite—quietly validating claims against historical address, transaction, and network data on the back end, while flagging anomalies and suspected fraud through sophisticated pattern recognition. If that work is done poorly, or not done at all, cases invite later objections, re-openers, and collateral attacks.

Across these phases, the pattern is the same: Big litigation is now big data, and big data problems require real data science, not improvised scripts.

Apple may seem like a technical fight over matching logic. But the underlying claim—that Apple’s app distribution and 30% commission structure overcharged consumers—reflects a larger issue. When a class is decertified because the plaintiffs can’t present a defensible model of who was harmed, millions of consumers may lose any realistic path to relief.

A New Playbook

If consumers are to stand any chance in these cases, their legal counsel must eliminate Big Tech’s data advantage and begin taking data science just as seriously as they take the law and legal theories behind their cases. At minimum:

Ask the data science question early. At case intake and again when designing discovery, identify which issues turn on large-scale data analysis (class membership, exposure, injury, allocation).
Design discovery around the data pipeline, not the other way around. What raw data, keys, and reference tables will you need to build a defensible model? Are they available? In what format? With what gaps?
Build or buy real data-science infrastructure. Treat identity resolution, record linkage, and claims validation as engineering problems. Invest in data engineers and statisticians or specialized providers who can construct and document robust pipelines.
Interrogate your own model before your opponent. Stress-test your matching rules, run sensitivity analyses, and sample your outputs. If you can’t explain why a given record is in or out of the class, a judge will notice.
Document for Daubert from day one. Keep an audit trail from ingestion to final opinion. Courts no longer “trust the expert” without visibility into the machinery.

In the age of big data, every major case is, at bottom, a fight over data. If plaintiffs and courts don’t insist on data science rigor, we’ll keep seeing versions of *Apple* where legally plausible claims come undone because the numbers behind them can’t be validated and trusted.

The case is In re Apple iPhone Antitrust Litig., N.D. Cal., No. 4:11-cv-06714, 10/27/25.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

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Write for Us: Author Guidelines

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California Brief

Meta Sheds Bulk of Consumer Suit Over Portal Device 'Bricking'

December 19, 2025, 10:07 AM PST

Meta Platforms Inc. convinced a federal judge to dismiss most of a proposed class action alleging the tech giant misrepresented how long its Portal video calling device would be functional.

The alleged misrepresentations in the complaint weren't false at the time of purchase, Judge William H. Orrick of the US District Court for the Northern District of California said Thursday.

Meta launched the Portal in 2018, and the device became popular during the pandemic. The company announced it was discontinuing the product in 2022 and began phasing it out in 2023.

The consumers alleged Meta committed to providing ongoing support for Portal owners, but that the devices are significantly unusable now. They cited advertisements that touted features that the company later disabled.

But, "these features were present on the Portal in November 2020—and as plaintiffs readily admit, continued to exist until January 31, 2025," Orrick said. "These statements cannot reasonably be interpreted as affirmative misrepresentations about the quality and nature of their product."

The consumers also didn't state whether Meta made affirmative misrepresentations about the product's lifespan, the court said.

But Orrick allowed the claim for a violation of California's Unfair Competition Law to proceed.

The consumers alleged Meta charged a premium for the Portal's software features but then later disabled them and discontinued access, which meant they lost money. The complaint pointed to a Federal Trade Commission staff report that a failure to provide software updates or tell consumers about the duration of software support could be considered unfair if it causes an injury that consumers can't reasonably avoid.

The complaint also cited a letter from consumer advocacy groups to the FTC that calls out the Portal as an example of this kind of software tethering and bricking, Orrick said.

Those facts together show that Meta could be engaging in unethical or injurious conduct by "bricking" the Portal devices, he said.

The consumers are represented by Kalielgold PLLC and Tycko & Zavareei LLP. Meta is represented by Weil, Gotshal & Manges LLP.

The case is Shipley v. Meta Platforms, Inc. , 2025 BL 455255, N.D. Cal., No. 3:25-cv-03324, 12/18/25 .

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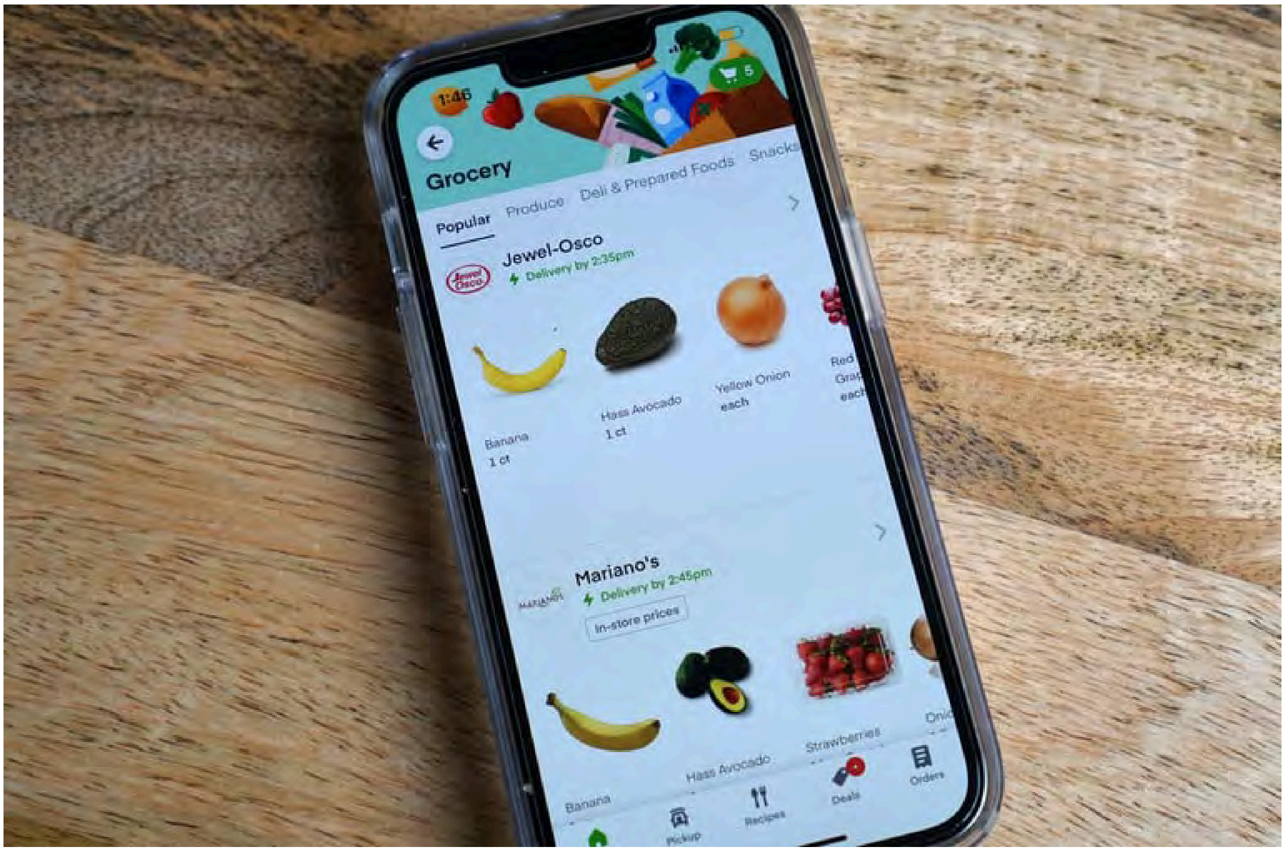
News | **Consumer Protection**

Instacart's Algorithm-Driven Price Variations on Identical Groceries Draw Regulatory Scrutiny

The company's pricing strategy is grabbing headlines at a time affordability has become a major issue for U.S. consumers.

December 19, 2025 at 03:29 PM By **Michael Gennaro**



Credit: MKPhoto/Adobe Stock

Instacart customers are unknowingly participating in widespread algorithmic pricing experiments that charge different people different amounts for identical grocery items—sometimes varying by as much as 23%—according to a months-long investigation by Consumer Reports and the left-leaning think tank Groundwork Collaborative.

The grocery delivery giant's AI-enabled pricing tests affect customers shopping at major retailers, including Albertsons, Costco, Kroger, Safeway, Sprouts Farmers Market and Target, the investigation found. While algorithmic pricing is not illegal at the federal level, consumer advocates and economists warn the practice could evolve into more invasive "surveillance pricing" that uses personal data, such as a person's location or browsing history, to set individualized prices.

The investigation recruited 437 volunteers across the country who simultaneously shopped for identical baskets of 18 to 20 items on Instacart during coordinated sessions in September and November. By controlling for factors like store location, time of day and day of week, researchers could isolate pricing variations attributable to Instacart's algorithms.

The study found that every volunteer was an unwitting participant in price experiments. About three-quarters of products were offered at different prices to different customers, with variations ranging from 7 cents to $2.56 per item.

In one test involving 39 volunteers shopping at a Seattle Safeway, the same basket of 20 products ranged from $114.34 to $123.93, a difference of nearly $10, or 8.4%. Based on typical household grocery spending, these price variations could translate to approximately $1,200 in annual cost differences for a family of four. The study noted that only 8% of shoppers got the lower basket total.

Instacart acknowledges the practice, which it calls "smart rounding."

According to a February 2024 Instacart shareholder letter, smart rounding works by "thoughtfully pricing certain items with high or low price sensitivity" to improve customers' overall price perception while increasing engagement. For major grocery partners, the company claimed this has generated millions of dollars in additional annual sales.

Instacart did not respond to Law.com's request for comment on the Consumer Reports study, but it did confirm the investigation's findings accurately reflect its pricing experiments in a statement to Consumer Reports. The company says the pricing is currently active at 10 partnering retailers. However, the company declined to name these partners and maintained that only a small portion of retail partners participate in such experiments.

"Just as retailers have long tested prices in their physical stores to better understand consumer preferences, a subset of only 10 retail partners—ones that already apply markups—do the same online via Instacart," the company told Consumer Reports in its statement.

The investigation also found what economists call "false reference pricing" or "fictitious pricing." Researchers found Instacart repeatedly showed different customers different "original" prices for the same discounted item, making purported savings appear larger or smaller depending on which group they were sorted into.

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News | Litigation

Reddit Launches First Challenge Against Australian Social Media Ban

American social media platform Reddit has launched a High Court challenge to Australia's social media ban for under 16s, arguing it infringes freedom of political communication.

December 12, 2025 at 12:27 AM By Christopher Niesche

Reddit app.

American social media platform Reddit has launched a High Court challenge to Australia's social media ban for under 16s, arguing it infringes freedom of political communication.

The information sharing network wants the High Court of Australia to stop the government from applying the ban to Reddit.

Reddit argues that it should not be subject to the ban because the platform's sole or significant purpose is not to enable online social interaction between users, according to a writ filed with the High Court.

A world-first ban on people aged under 16 from using social media came into effect in Australia this week. It will require social media that the government deems to be "age restricted social media platforms," including Facebook, Youtube, Instagram, Snapchat and X (formerly Twitter), to verify the age of its users and remove those who are under 16.

Countries including Denmark, Norway, France, Spain, Malaysia and New Zealand are considering similar bans, and the Australian case will be watched with considerable interest.

Reddit argues that the new law infringes the implied freedom of political communication in Australia because it bans all Australians under the age of 16 from engaging in any political communication on "an age restricted social media platform".

San Francisco-based Reddit, which is represented by Australian firm Thomson Geer, says many of the discussions on the platform facilitate the discussion of Australian political matters.

"Further, it is a frequent occurrence for Australian politicians to come to Reddit specifically to engage in political dialogue with constituents," the company's High Court application states.

In a separate argument, Reddit states that it should not be considered an "age-restricted social media platform" because it doesn't meet the definition under the new law.

"That is because it is not the case that the sole purpose, or a significant purpose, of Reddit is to enable 'online social interaction' between two or more end-users," the company said.

Reddit said that instead of facilitating "online social interaction", it facilitates the sharing of information from one user to another user.

In a statement explaining why it launched the case, Reddit said it will continue to comply with the social media ban.

"This case is also not about opposing child safety measures or even regulation. There are more targeted,privacy-preserving measures to protect young people online without resorting to blanket bans," Reddit said, and pointed to age assurance at the device or app store level.

"Despite the best intentions, this law is missing the mark on actually protecting young people online. So, while we will comply with this law, we have a responsibility to share our perspective and see that it is reviewed by the courts."

All social media platforms subject to the ban have said they will comply, apart from X, which has not commented.

News from Bloomberg Terminal

FirstEnergy Reports $275m Settlements of PUCO Proceedings

December 19, 2025, 11:40 AM PST

By Guillermo Molero

(Bloomberg) --

FirstEnergy's Ohio electric companies have reached an agreement with parties to settle multiple Public Utilities Commission of Ohio matters and provide $275 million to FirstEnergy's Ohio customers.

- Settlement resolves Corporate Separation, Rider DMR and Rider DCR matters that were the subjects of the PUCO's Nov. 19 orders and the pending Political and Charitable Spending review
- If approved, $250 million of settlement to be directed to all customers and $25 million to be added exclusively for residential customers

To view the source of this information click here

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News from Bloomberg Terminal

December 19, 2025, 11:35 AM PST

Settlement Reached in Multiple PUCO FirstEnergy Proceedings

PR Newswire

AKRON, Ohio, Dec. 19, 2025

Settlement provides $275 million to FirstEnergy Ohio customers

AKRON, Ohio, Dec. 19, 2025 /PRNewswire/ -- FirstEnergy Corp.'s Ohio electric companies - Ohio Edison, Toledo Edison and The Illuminating Company - have reached an agreement with parties to settle multiple Public Utilities Commission of Ohio (PUCO) matters and provide $275 million to FirstEnergy's Ohio customers.

The settlement resolves four PUCO proceedings - the Corporate Separation, Rider DMR and Rider DCR matters that were the subjects of the PUCO's Nov. 19 orders and the pending Political and Charitable Spending review. The PUCO's Nov. 19 orders directed the companies to pay $250 million, with $64 million going to the state general fund. If approved by the PUCO, the settlement will direct all $250 million to all customers and add $25 million exclusively for residential customers.

Torrence Hinton, FirstEnergy President, Ohio: "We appreciate the dedication and collaboration shown by all parties and are grateful for the collective effort that led to an agreement that provides even more dollars to our Ohio customers. With these matters reaching resolution, we're moving ahead with a clear focus on operating with transparency, delivering reliable service and investing in Ohio communities."

Key Settlement Details

Settlement provisions include:

- $250 million in restitution and refunds, credited to customer bills in 2026
- $25 million in additional restitution exclusively to residential customers, including $20 million for low-income bill payment assistance, weatherization and energy efficiency programs

Parties to the settlement include The Office of the Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Energy Group (OEG), Northeast Ohio Public Energy Council (NOPEC), Northwest Ohio Aggregation Coalition (NOAC), Ohio Partners for Affordable Energy (OPAE), Citizens Utility Board of Ohio (CUB Ohio), Interstate Gas Supply, LLC (IGS), Retail Energy Supply Association (RESA), NRG/Direct Energy Services, LLC and Direct Energy Business, LLC, Ohio Environmental Council (OEC), Ohio Cable Telecommunications Association (OCTA) and FirstEnergy's Ohio utilities.

Focused on the Future
Between 2025 and 2029, FirstEnergy plans to invest $14 billion in Ohio's transmission and distribution infrastructure, workforce and facilities - critical improvements that enhance reliability, support economic growth and prepare for future energy needs. The company looks forward to working constructively with the PUCO and other stakeholders to meet the needs of customers and communities across Ohio.

FirstEnergy (NYSE: FE) is dedicated to integrity, safety, reliability and operational excellence. Its electric distribution companies form one of the nation's largest investor-owned electric systems, serving more than six million customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York. The company's transmission subsidiaries operate approximately 24,000 miles of transmission lines that connect the Midwest and Mid-Atlantic regions. Follow FirstEnergy on X @FirstEnergyCorp or online at firstenergycorp.com.

https://www.wsj.com/opinion/the-sec-may-make-wall-street-analysts-corrupt-again-79effdf4

OPINION COMMENTARY Follow

The SEC May Make Wall Street Analysts Corrupt Again

Regulators end a settlement that stopped investment bankers from influencing researchers.

By Arthur Levitt

Dec. 21, 2025 3:37 pm ET

MICHAEL NAGLE/BLOOMBERG NEWS

Investors rely on Wall Street's analysts for objective, independent research. But two decades ago, investigators revealed that some analysts had deep conflicts of interest and were misleading investors. They were collaborating with their investment banking counterparts to generate business for their banks.

An analyst at Salomon Smith Barney famously labeled a company a "buy" but called it a "pig" in an email to colleagues.

A Merrill Lynch analyst publicly recommended buying certain shares while privately discouraging bank clients from doing the same. He also championed another company he privately called a "POS" in an email. At one point he received a note from a colleague: “We are losing people money and I don’t like it. John and Mary Smith are losing their retirement because we don’t want [an investment banking client] to be mad at us.”

Research analysts didn’t act as truth-tellers but as IPO co-marketers with their investment-banking colleagues. Bankers could influence analysts’ guidance and the timing of their reports to boost investment-banking fees. It was an outrage.

New York’s Attorney General Eliot Spitzer discovered the worst of these abuses and failures in the wake of investors losing billions in the dot-com bubble. Prodded by the investigation, the Securities and Exchange Commission in 2003 required banks to separate their research and banking operations under a far-reaching legal agreement known as the Global Research Analyst Settlement. The SEC chairman at the time, William Donaldson, said that research analysts had become “cheerleaders” for banks’ investments. He was right.

Earlier this year, a group of banks filed motions to terminate the Global Settlement. They claimed that other regulations made the 2003 rule redundant. This month the SEC agreed to scrap the settlement, citing a need for “lower compliance friction.” But the Global Settlement isn’t redundant—that’s why banks are eager to avoid the regulation.

One of the settlement’s most onerous requirements—at which investment banks have bristled for years—was the firewall that separates investment banking from research analysts. It was supposed to be impenetrable. No unchaperoned business-related conversations, emails, meetings, texts or other coordination could go on between bankers and researchers at the same bank.

It protected both sides. Outsiders wanted to keep investment bankers from compromising research analysts. But in my experience, many research analysts were looking to be compromised. When a bank did well, so did they. Chaperoning calls between bankers and analysts was purposely intrusive. The two parties needed a babysitter for their conversations, because left to their own devices they would happily collude to boost their bank’s revenue.

The Global Settlement wasn’t perfect, but it restored the possibility of objectivity and independence to Wall Street research. It forced investment banks to rebuild a culture where research analysts told the truth about the companies they cover.

Don’t be fooled by the promise that other regulations provide this separation. They notably don’t include a firewall. Already, these rules are being watered down in the name of “modernization.” Financial regulators are floating the removal of “quiet periods” restricting when analysts can publish research on their own bank’s transactions. This is the natural pattern of regulatory surrender.

The Global Settlement worked because it was absolute. But even under its strict rules, the allure of investment banking fees invited corruption. In 2014 a Needham & Co. analyst said in an email: “My whole life is about posturing for the Toys R Us IPO.” As the SEC relaxes its rules, don’t be surprised when compliance standards slide even further.

One day, perhaps sooner than most think, regulators will unearth a fresh set of scandals involving Wall Street’s research. People will justifiably ask why the financial sector keeps making the same mistakes. But regulators deserve much of the blame. They assume banks remember the hard lessons. In reality, Wall Street forgets.

Mr. Levitt served as SEC chairman, 1993-2001.

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SEC Suspicion of Shareholder Proposals Hurts Corporate Democracy

December 22, 2025, 1:30 AM PST

The Trump administration's view is that companies should prioritize increasing shareholder value rather than address stockholder proposals—particularly those related to environmental, social, and governance issues.

The White House issued an executive order in December to limit the ability of these proxy advisers to make shareholder recommendations.

The Securities and Exchange Commission appears to have adopted that view in recent public statements, but that position could undermine corporate democracy by curtailing shareholder proposals to comport with that view.

SEC Chair Paul Atkins explained his goal to refocus shareholder meetings on "significant corporate matters" during a keynote address in October. He argued that non-binding stockholder proposals consume substantial management time and impose unnecessary costs on a company.

Atkins' comments presuppose that a company's directors and managers' views on what constitute "significant corporate matters" should carry more weight than the company's stockholders. He presumes that many stockholders—the actual owners of the business to whom directors owe fiduciary duties—are provocateurs seeking to distract directors.

This view is outdated. Shareholder proposals, once primarily used by social activists, are now a common tool for institutional investors who want to promote good corporate governance

Such proposals provide a cost-effective way for stockholders to voice their opinions without launching a costly and complex campaign to replace board members. They're an efficient tool for shareholders to communicate with directors that is much more nuanced than the blunt instrument of directorial elections.

Despite this, the SEC under Atkins appears to view all shareholder proposals with suspicion. Its Division of Corporation Finance last month announced a substantial change to how it is approaching Rule 14a-8, which normally restricts a company's ability to exclude procedurally valid shareholder proposals.

For the 2025–2026 proxy season, the Division of Corporate Finance will accept any company's representation that it had a "reasonable basis" to exclude a proposal and won't object to that exclusion.

This effectively gives companies unrestricted power to reject shareholder proposals without SEC review. It means management's perspective on corporate policy will be the only one expressed during the upcoming proxy season.

SEC Commissioner Caroline Crenshaw said the announcement "is the latest in a parade of actions by this Commission that will ring the death knell for corporate governance and shareholder democracy, deny voice to the equity owners of corporations, and elevate management to untouchable status."

Crenshaw's summary is apt—the SEC's new stance reverses the traditional notion that management is accountable to shareholders.

Although Rule 14a-8 proposals are typically non-binding and can't force directors to act, they serve an important purpose: They allow shareholders to give directors guidance on their preferred course of action. Most shareholder proposals provide directors with valuable information at a fraction of the cost of a contested board election.

This upcoming proxy season, with likely fewer shareholder proposals, will produce valuable data. If the SEC's policy causes proposals to plummet, we can better assess the validity of concerns about management distraction and costs.

For example, companies can compare the costs of managing their annual meetings this year, with fewer shareholder proposals, with the cost of annual meetings with numerous shareholder proposals, and actually determine just how marginally expensive shareholder proposals are for companies. Likewise, directors claims of distraction, while subjective, can be put to the test.

However, shareholders who disagree with the directors' managerial decisions may be forced into more expensive and distracting proxy fights to replace directors.

It will be interesting to see whether the decision to effectively eliminate shareholder proposals leads to closer collaboration between directors and those shareholders with large shareholdings or personal relationships to directors, who can still communicate their managerial preferences to the board with a shareholder vote.

Assuming companies provide unbiased reports on cost differences from shareholder meetings and board impacts, this data will be crucial.

With trustworthy information on the actual costs and benefits of shareholder proposals, both sides can have a better educated debate on whether these proposals are a legitimate tool for corporate democracy or a method of harassing corporate boards.

Author Information

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Litigation

Manage Newsletters

Exclusive

US Attorney Dropped FIFA Bribery Case at Trump Official's Behest

December 19, 2025, 11:29 AM PST

Summary by Bloomberg AI

AI Generated

- The Justice Department's solicitor general ordered Brooklyn prosecutors to abandon two FIFA bribery convictions, potentially unraveling dozens of other international soccer corruption cases and hundreds of millions of dollars in recovered penalties.
- The decision to drop the case was made despite a federal appellate panel unanimously upholding the guilty verdicts in July, and some government lawyers worried that ending the case could result in overturning convictions of dozens of other soccer officials and sports marketing executives.
- The solicitor general's directive to dismiss the indictments with prejudice was followed by the Eastern District of New York chief prosecutor, who signed a motion requesting the district court dismiss the indictments, with the solicitor general filing a brief to the Supreme Court echoing the decision as an exercise of "prosecutorial discretion".

The Justice Department's solicitor general effectively ordered Brooklyn prosecutors to abandon two FIFA bribery convictions amid pushback from their Trump-appointed US attorney—potentially unraveling dozens of other international soccer corruption cases and hundreds of millions of dollars in recovered penalties.

John Sauer, DOJ's top Supreme Court litigator, recently relayed to Eastern District of New York chief prosecutor Joseph Nocella that he must ask a judge to overturn guilty verdicts of the former chief executive officer of Fox International Channels and an Argentine marketing company that were unanimously upheld by a federal appellate panel in July, said three people familiar with the situation.

Nocella reached out to Sauer to urge him to reconsider and not drop the case, according to a person briefed on the matter, who asked not to be identified because the communications were private.

Some government lawyers worried that ending the case could result in overturning convictions of dozens of other soccer officials and sports marketing executives, as well as the return of hundreds of millions of dollars in fines and penalties, said the person. There was also concern that the government was walking away from a federal appeals court decision that affirmed the government's ability to prosecute bribery cases.

But Sauer, who was previously President Donald Trump's personal lawyer, wasn't swayed, informing others he was certain he'd lose the case before a high court that's been progressively weakening public corruption statutes, added the individuals, who spoke anonymously about internal deliberations.

Nocella's office wasn't given the opportunity for a meeting to present their arguments to continue the case, said the person briefed on the matter.

A DOJ spokesperson and a spokesman for Nocella declined to comment.

Although the justices had yet to determine whether to review the case, Nocella followed Sauer's directive, signing a Dec. 9 motion requesting the district court dismiss the indictments with prejudice "in the interests of justice." Sauer filed a brief to the Supreme Court the same evening, echoing Nocella by calling the government's decision an exercise of "prosecutorial discretion."

It's standard for a solicitor general, DOJ's fourth-ranked official often dubbed the 10th justice, to prevail in disputes over cases the Supreme Court may hear.

But attorneys said the about-face at such an advanced stage last week surprised them. Some noted that dismissing cases against Hernan Lopez and Full Play Group, if approved by the judge, would void the government's July court victory that was expected to bolster corruption prosecutions.

"If the solicitor general's considered view is that it can't defend the theory of prosecution, that should have a meaningful effect on the entire Department of Justice's view of the law," said Justin Weddle, a former Manhattan federal prosecutor. Weddle now represents a former Central American soccer president who pleaded guilty in 2016 for wire fraud and racketeering conspiracies.

"It should mean that these convictions shouldn't stand for other defendants convicted on that same theory," he said.

Weddle's client, Alfredo Hawit, is already released from prison, but he's among numerous FIFA scandal defendants likely to cite DOJ's reversed course for Lopez to request the government return millions from accepted bribes that they've forfeited over the past decade.

Lawyers for a handful of those other defendants said they're awaiting Supreme Court action on Sauer's request to redirect the case to the trial court for approval of the dismissals. At that point, they said they'll raise arguments for comparable lenience.

Two of those defense lawyers said Brooklyn prosecutors told them the motion to dismiss was directed from DC and was outside the US attorney's office control.

A career solicitor general's office deputy expressed concerns about allowing Brooklyn prosecutors to appeal the case in 2023, but that deputy was overruled by the Joe Biden-era solicitor general who supported the convictions, said a government source familiar with the matter.

'Unequal Treatment'

The FIFA investigation, announced in 2015 by then-Attorney General Loretta Lynch, exposed decades of corruption in international soccer. It resulted in criminal charges against more than 50 defendants in 20 countries, guilty pleas by more than 30 people and companies, and the trial convictions of three people and one corporation.

Lopez, the former Fox International Channels executive, was convicted in 2023 of a scheme to pay millions of dollars in bribes to get lucrative broadcast rights to soccer matches, including confidential bidding information for the rights to broadcast the 2018 and 2022 World Cup tournaments in the US, which Fox successfully obtained. Full Play Group SA, a South American sports marketing company, was also convicted at the trial.

21st Century Fox Inc., the parent company of Fox International Channels, was not charged in the bribery scandal and denied any wrongdoing.

Later in 2023, US District Judge Pamela Chen in Brooklyn overturned the verdicts based on the high court's May 2023 opinion setting aside the honest services wire fraud conviction of an aide to former New York Gov. Andrew Cuomo (D). The honest services doctrine has been commonly applied to public and private sector bribery or kickback schemes that defraud others.

Although the US Court of Appeals for the Second Circuit backed prosecutors in restoring the convictions in July, DOJ leadership wasn't willing to risk the justices granting review and handing down an adverse ruling.

'Ill-Conceived Case'

Lopez is represented by Debevoise's John Gleeson, the prominent former Brooklyn mob prosecutor and federal judge. Gleeson didn't respond when asked if his firm had sought the Trump administration's intervention. On Dec 16, he told the Supreme Court the "ill-conceived" case against Lopez should be dropped.

A lawyer for Full Play declined to comment, and FIFA didn't respond to a request.

In a statement on LinkedIn after the decision, Lopez called the prosecution "baseless" and said the decision to drop the case was "extraordinary."

The solicitor general's pivot comes as the president and his DOJ leaders have issued pardons and dismissals to multiple white-collar defendants with political connections. It also came days after FIFA awarded Trump a peace prize.

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F5 Faces Securities Class Action Over 'False' Security Claims

By **Ben Adlin**

Law360 (December 19, 2025, 7:25 PM EST) -- Seattle tech company F5 Inc. boasted to investors about its cybersecurity offerings while at the same time hiding a long-term data breach that targeted the company's highest-revenue product, an investor claimed Friday in a proposed class action filed in Washington federal court.

Plaintiff Matthew Smith said in Friday's **complaint** that he and other investors bought F5 stock at artificially inflated prices, convinced by the company's "overwhelmingly positive statements" about its cybersecurity capabilities. When F5 then disclosed what the company called a "long-term, persistent" security breach to its systems in October, Smith said, the stock cratered.

F5 and its executives knew of the breach and its potentially adverse impact on company value, the suit claims, making their simultaneous lauding of the company's securities capabilities materially false.

The company's statements to investors beginning in October 2024 included "confidence in the company's ability to uniquely address newly developing security concerns, provide best-in-class security offerings, and overall protect its clients' data while capitalizing on the market potential for enhanced security offerings," the suit alleges.

That month, for example, company President and CEO François Locoh-Donou said on an earnings call that leaders had "substantially reshaped F5 from a hardware-centric, single-product company into a security and software leader," according to the complaint. F5 was "uniquely positioned to address" customers' security concerns, the CEO allegedly said, calling the company "the most effective and comprehensive app and API security platform in the industry."

During another earnings call in April, Locoh-Donou told investors that F5 had "the best technology in the industry to move data security," according to the suit, adding that "the opportunity is in front of us, and I think it will be durable over time."

The CEO continued to express confidence in F5's cybersecurity position into September, the suit claims.

Then, on Oct. 15, the company **announced** that "a highly sophisticated nation-state threat actor maintained long-term, persistent access to, and downloaded files from, certain F5 systems," the suit says. F5 allegedly said at the time that it learned about the security breach in August.

The news sent F5 share prices tumbling nearly 14%, Smith claimed, from $343 on Oct. 14 to $295 on Oct. 16.

Prices tumbled another almost 11% after F5 shared more details of the security incident later that month, according to the complaint. It adds that the company announced it had fallen short of growth expectations due in significant part to the security breach, and it shared that one of F5's product portfolios targeted by the hackers, known as BIG-IP, was the company's highest-revenue product.

Analysts subsequently dropped their price targets for the company, according to the suit. It further states that J.P. Morgan lowered its target nearly 8% and reported that the late October earnings call's "biggest focus … was the recent security breach, which has led F5 to take corrective measures to ensure protection of customer environments."

Analysts' focus on the breach "suggests the public placed significant weight on F5's statements of prior confidence in their security systems and investments," the suit states, "alongside the lack of any continued or future impact disclosure on October 14, 2025, when the security breach was initially disclosed to the public."

Smith is seeking to certify a proposed class of shareholders who purchased F5 stock between Oct. 28, 2024, and Oct. 27, 2025. Company executives knew or should have known that their statements of confidence in F5's security capabilities "were materially false or misleading," given their awareness of the data breach and the company's vulnerability to potential attacks, the suit claims.

Along with F5 and CEO Locoh-Donou, the suit also names as defendants Chief Financial Officer Edward Cooper Werner, Chief Financial Officer Kunal Anand and Chief Operating Officer Thomas Dean Fountain. Because of their roles at the company, the suit claims, they could control F5's statements to the U.S. Securities and Exchange Commission, the media, analysts and investors.

The company's conduct broke federal securities laws and regulations forbidding "manipulative and deceptive" devices and fraud, the suit alleges. F5's statements about its cybersecurity were designed to inflate stock prices and encourage investors to buy, the suit claims, adding that the same goals led executives to conceal information about the breach.

The individual executives, meanwhile, violated a section of the federal Securities Exchange Act establishing a duty for officers to disseminate accurate information and promptly correct any untrue statements, the suit claims.

Friday's action seeks to recover damages shareholders allegedly suffered as a result of the company's comments as well as legal costs and fees.

F5 did not immediately respond to a request for comment Friday. Counsel for Smith also did not immediately respond.

Matthew Smith is represented by Roger M. Townsend of Townsend Legal PLLC and Adam M. Apton of Levi & Korsinsky LLP.

Counsel information for the defendants was not immediately available.

The case is Matthew Smith v. F5 Inc. et al., case number 2:25-cv-02619, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Lauren Berg. Editing by Amy French.

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The Major Securities Litigation Rulings And Trends Of 2025

By **Maeve O'Connor and Elliot Greenfield** (December 22, 2025, 10:15 AM EST)

Maeve O'Connor

Elliot Greenfield

2025 was an exciting year in the securities litigation space, with numerous interesting developments that may significantly affect the law and litigation strategy in 2026 and beyond. Among other things, the past 12 months saw an increased focus on disclosures concerning artificial intelligence, signs of growing judicial scrutiny at the class certification stage and shifting regulatory priorities at the U.S. Securities and Exchange Commission.

The number of AI-related cases is on track to far surpass prior years, which is unsurprising given the influence technology companies have on the market and the race to develop the most advanced AI tools.

While class certification is overwhelmingly granted in securities litigation, some courts in 2025 showed greater openness to attacks on reliance and damages at the certification stage, creating the potential to narrow claims or defeat certification entirely in appropriate cases.

In the crypto space, the U.S. Court of Appeals for the Second Circuit on Feb. 26 affirmed the U.S. District Court for the Southern District of New York's decision in Risley v. Universal Navigation Inc., holding that a decentralized crypto exchange was not a seller of tokens traded on the exchange.

On the regulatory front, the SEC on Sept. 17 shifted its position on the use of mandatory arbitration clauses pertaining to claims arising under the federal securities laws.

Several of this year's notable appellate and U.S. Supreme Court developments — including In re: FirstEnergy Corp. Securities Litigation, HRSA-ILA Funds v. Adidas AG and Slack v. Pirani — are likely to influence litigation strategy for both plaintiffs and defendants in 2026, and the issues they addressed will be further developed by courts in the coming year.

As companies look ahead to next year, the trends and cases discussed below offer meaningful insight into how litigants can assess potential exposure, frame their defenses and approach early motion practice.

Increase in AI-Related Filings

The number of AI-related securities litigation filings sharply increased in 2025. Plaintiffs in these cases typically allege that companies misrepresented the extent or significance of their AI capabilities, understated the risks associated with the use of AI, or made overly optimistic statements about AI's anticipated impact on financial performance.

Despite the sharp increase in filings related to AI, decisions to date indicate that plaintiffs' claims have been met with mixed success, with claims rising or falling based on the same factors that govern securities complaints more broadly — in particular, whether plaintiffs are able to offer concrete factual allegations indicating that a company's statements were false or misleading.[1]

The rapid increase in the value of AI companies and the debate among market experts over whether we are in an AI bubble make this a space to watch in 2026.

Judicial Scrutiny at Class Certification

While defeating class certification in securities class actions remains challenging, arguments by defendants under past Supreme Court decisions in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System Sachs, Affiliated Ute Citizens of Utah v. U.S. and Comcast Corp. v. Behrend got traction in a handful of important cases this year, and we expect to see continued developments under all three theories in 2026.

First, courts continue to grapple with the Supreme Court's 2021 decision in Goldman Sachs, which held that the generic nature of an alleged misstatement and the mismatch between that statement and a purported corrective disclosure are relevant to the analysis of price impact.[2] Courts have taken varying approaches in applying Goldman Sachs, and the analysis in each case turns on particular allegations and disclosures, which means the likelihood of success can be jurisdiction-dependent and difficult to predict.

In Jaeger v. Zillow Group Inc., the U.S. Court of Appeals for the Ninth Circuit on Sept. 26 **affirmed** the certification of a class because the front-end and back-end statements were "matched enough," indicating that courts will not always require an exact match to certify a class.[3]

In In re: Concho Resources Inc. Securities Litigation, by contrast, the U.S. District Court for the Southern District of Texas on April 7 granted class certification in part, but excluded a number of alleged misstatements under Goldman Sachs on the ground that there was a sufficient mismatch between the misstatements and the corrective disclosures, such that the link between "back-end price drop and front-end misrepresentation" had been "severed."[4]

Second, building on the Supreme Court's April 2024 **holding** in Macquarie Infrastructure Corp. v. Moab Partners LP that pure omissions are not actionable in private litigation under Rule 10b-5(b),[5] the U.S. Court of Appeals for the Sixth Circuit on Aug. 13 **reversed** a grant of class certification in In re: FirstEnergy Corp. Securities Litigation, based in part on the U.S. District Court for the Southern District of Ohio's 2023 **ruling** that the plaintiffs were entitled to a presumption of reliance under the Supreme Court's 1972 ruling in Affiliated Ute.[6]

In the FirstEnergy case, the Sixth Circuit emphasized that it is important to give "a narrow legal construction of what constitutes an omission," and that the Affiliated Ute presumption does not apply when the omissions are just the inverse of the misrepresentations or where reliance can be established by pointing to misrepresentations and linking them to the alleged injury.[7]

This decision is of particular significance in event-driven securities litigation where price impact, and thus the applicability of the fraud-on-the-market presumption, may be subject to challenge. The court's four-factor test narrowed the circumstances in which cases involving both misrepresentations and omissions qualify for the presumption in the Sixth Circuit, and may provide a road map for other courts addressing this issue in the future.

Third, this year brought renewed focus at the class certification stage to the Supreme Court's 2013 decision in Comcast Corp. v. Behrend, which held that courts must undertake a "rigorous analysis" at class certification to ensure that the plaintiffs' damages models align with their theory of liability and are capable of measuring damages on a classwide basis.[8]

Courts have historically resisted applying Comcast to deny certification in securities litigation, but recent developments in the U.S. Court of Appeals for the Fourth Circuit, as well as in the Sixth Circuit, suggest a greater willingness to consider the import of Comcast.

The Fourth Circuit **will address** the evidentiary proof required to satisfy Comcast in connection with a Rule 23(f) petition in In re: The Boeing Co. Securities Litigation, where the plaintiffs' expert asserted that he would be able to model potential losses, but did not do so in connection with class certification.[9]

And in FirstEnergy, in addition to Affiliated Ute, the Sixth Circuit vacated the grant of class certification and remanded on the independent ground that the lower court "incorrectly overlooked

Comcast's rigorous-analysis requirement in its damages analysis."[10]

These cases will be ones to watch in the coming year to see whether Comcast gains traction at the class certification stage.

Increased Focus on Risk Disclosures

In 2025, plaintiffs in event-driven cases increasingly challenged companies' risk disclosures by arguing that they misleadingly described in hypothetical terms risks that had already materialized. This trend is likely to continue into 2026 as plaintiffs remain focused on event-driven claims in the AI space and elsewhere.

The Supreme Court's November 2024 decision to **dismiss** the appeal in Facebook Inc. v. Amalgamated Bank after oral argument left intact the Ninth Circuit's holding that a risk disclosure warning of the harms arising from the misuse of data was misleading because the underlying risk — unauthorized data access — had already materialized.[11]

The Ninth Circuit had earlier addressed a similar issue in In re: Alphabet Inc. Securities Litigation, where it held in 2021 that Alphabet's risk disclosures concerning cybersecurity risks were misleading because the company failed to update them after discovering a security glitch that had exposed users' data to third-party developers.[12]

At the argument in Facebook, several justices appeared to struggle to articulate a bright-line rule for whether and to what extent a risk disclosure requires disclosure of past events relevant to the articulated risk — a question with which lower courts continue to wrestle.

On Dec. 3, however, in HRSA-ILA Funds v. Adidas AG, the Ninth Circuit **affirmed** the dismissal of claims brought by shareholders who alleged that Adidas misled investors by failing to disclose incidents of improper behavior by Ye — formerly known as Kanye West — that occurred years before he made a series of offensive statements that led Adidas to terminate its partnership with him.[13]

The Ninth Circuit agreed with the district court that Adidas did not mislead investors by warning that "improper behavior of individual athletes, influencers or partners in the entertainment industry could have a negative spill-over effect," reasoning that the disclosure "presents the hypothetical risk as the negative effect of improper behavior, not the improper behavior itself," and that any reasonable investor would be aware of the inherent risk of celebrity misconduct.[14]

The Adidas decision, which carved a path through the Ninth Circuit's prior decisions in Facebook and Alphabet, highlights that language matters: Whether a risk disclosure framed in hypothetical terms is actionable under the federal securities law will depend on the nature of the risk being described — e.g., an adverse event or the business impact of that event — and the facts and circumstances of each case.

Given the continued focus of the plaintiffs bar on risk disclosures and the difficulty of drawing a bright-line rule, companies should continue to carefully review their risk disclosures in their factual context.

SEC Policy Shift on Mandatory Arbitration Clauses

On Sept. 17, the SEC **issued** a policy statement concerning the presence of mandatory arbitration provisions in issuer governance documents in connection with requests to accelerate the effectiveness of registration statements.[15]

The SEC's position is now that provisions requiring the arbitration of investor claims arising under the federal securities laws will not affect the commission's decision as to whether to declare a registration statement effective, representing a reversal of its prior policy position. Instead, the SEC's statement emphasizes that the SEC's primary role is evaluating the adequacy of disclosure, including with respect to such provisions.

The SEC's new approach reflects its view that the federal securities laws do not override the Federal Arbitration Act's policy supporting the enforcement of arbitration provisions. Whether issuers will adopt mandatory arbitration provisions, at the initial public offering stage or through amendments thereafter, will depend upon various factors, including restrictions under applicable state law, questions of enforceability generally, and adverse stockholder and proxy adviser reactions.

Crypto Exchanges Not Liable for Third-Party Misuse

In a victory for decentralized crypto exchanges, in Risley v. Universal Navigation, the Second Circuit **affirmed** that an exchange could not be held liable for the alleged fraudulent conduct of third parties on that exchange.[16]

The lawsuit was filed by individuals who acquired various tokens on the Uniswap exchange and claimed to have been harmed when those tokens fell in value, allegedly because they were scams. The plaintiffs sought to hold the developer of the exchange liable for those losses on the theory that the developer was a seller of the tokens.

Echoing the decision of the lower court, the Second Circuit agreed that the developer was not a seller of the tokens that the plaintiffs purchased, and that it "defies logic" that a software developer could be held liable under the securities laws for a third-party user's misuse of the exchange.

Supreme Court Watch

Three recent Supreme Court decisions — two denying certiorari and one granting it — will affect the securities litigation landscape in 2026 and beyond.

On Oct. 6, the Supreme Court **declined** to review the Second Circuit's October 2024 decision in New England Carpenters Guaranteed Annuity and Pension Funds v. DeCarlo, which **held** that an auditor's allegedly false certification of compliance with Public Company Accounting Oversight Board standards can be material even without a direct link to a specific accounting error.[17] The Second Circuit's ruling effectively endorses a more expansive view of liability for auditors and public companies that rely on their opinions by allowing securities fraud claims to proceed based on boilerplate audit-compliance statements.

Conversely, the Supreme Court, also on Oct. 6, effectively narrowed exposure for companies facing Securities Act Section 11 and 12(a)(2) claims by **declining** further review in Pirani v. Slack Technologies Inc., a case involving direct listings.[18] On remand from the Supreme Court's **decision** in 2023,[19] the Ninth Circuit on Feb. 10 not only **dismissed** the Section 11 claims, but also dismissed the Section 12(a)(2) claims on the grounds that they are subject to the same traceability requirements applicable to Section 11 claims.

The Supreme Court's denial of certiorari in this case therefore reinforces its earlier holding that Section 11 liability requires strict traceability to the shares issued under a registration statement, leaving intact the Ninth Circuit's expansion of that ruling to claims under Section 12(a)(2).

On Dec. 10, the Supreme Court **heard** oral arguments in FS Credit Opportunities Corp. v. Saba Capital Master Fund Ltd., a case addressing whether Section 47(b) of the Investment Company Act provides a private right of action for shareholders of registered investment funds.[20] The Second Circuit's June 2024 recognition of such relief marked a sharp departure from the long-standing view that only the SEC may enforce Investment Company Act violations.[21]

Despite the Supreme Court's general skepticism toward implied private rights of action, several justices appeared to signal an openness to recognizing one here. Justice Brett Kavanaugh, for example, noted that the SEC itself had repeatedly described the statute as providing an "express remedy" for private parties in an earlier brief, and said he viewed the case as an "extremely close" call.

Other justices, however, voiced separation-of-powers concerns, including Justice Neil Gorsuch, who described the requested relief as "pretty disastrous for ... our system of government, where the people are supposed to write the laws that govern them, not judges."

The case has tremendous potential significance for fund managers and investors and will be one to watch in 2026.

Conclusion

These notable trends, decisions and pending cases have the potential to affect both law and strategy for plaintiffs and defendants in 2026. Practitioners and companies should keep a close eye on these developments in the new year.

Maeve O'Connor is a partner, co-chair of the securities litigation practice and chair of the insurance litigation practice at Debevoise & Plimpton LLP.

Elliot Greenfield is a partner at the firm.

Debevoise counsel Brandon Fetzer and associate Adriana Rielly contributed to this article.

Disclosure: The authors represented Adidas in HRSA-ILA Funds v. Adidas and Universal Navigation in Risley v. Universal Navigation.

[1] Compare In re: GigaCloud Tech. Inc. Sec. Litig., 2025 WL 307378 (S.D.N.Y. Jan. 27, 2025), Helo v. Sema4 Holdings Corp., 2025 WL 1733387 (D. Conn. June 23, 2025) and In re: Gen. Motors Co. Sec. Litig., 773 F. Supp. 3d 429 (E.D. Mich. 2025), which survived motions to dismiss, with In re: UiPath, Inc. Sec. Litig., 2025 WL 2065093 (S.D.N.Y. July 23, 2025), In re: Palo Alto Networks, Inc. Sec. Litig., 2025 WL 1093247 (N.D. Cal. Apr. 11, 2025), and Dolly v. GitLab Inc., 2025 WL 2372965 (N.D. Cal. Aug. 14, 2025), which did not.

[2] Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System, 594 U.S. 113 (2021).

[3] Jaeger v. Zillow Group Inc., 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025).

[4] In re: Concho Resources Inc. Securities Litigation, 2025 WL 1040379, at *14 (S.D. Tex. Apr. 7, 2025).

[5] Macquarie Infrastructure Corp. v. Moab Partners LP, 601 U.S. 257 (2024).

[6] Affiliated Ute, 149 F.4th 587 (6th Cir. 2025).

[7] Id. at 609-10.

[8] Comcast Corp. v. Behrend, 569 U.S. 27 (2013).

[9] No. 25-135 (4th Cir.). The Ninth Circuit declined a similar opportunity to address the issue in SEB Investment Management AB v. Wells Fargo & Company. See No. 25-3021 (9th Cir.).

[10] FirstEnergy, 149 F.4th at 603.

[11] 604 U.S. 4 (2024); In re Facebook, Inc. Sec. Litig., 87 F.4th 934 (9th Cir. 2023).

[12] In re: Alphabet Inc. Securities Litigation, 1 F.4th 687 (9th Cir. 2021).

[13] HRSA-ILA Funds v. adidas AG, 2025 WL 3471703 (9th Cir. Dec. 3, 2025).

[14] Id. at *1-2.

[15] SEC, Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions, Release No. 33-11389; 34-103988 (Sept. 17, 2025), https://www.sec.gov/files/rules/policy/33-11389.pdf.

[16] Risley v. Universal Navigation Inc., 2025 WL 615185 (2d Cir. Feb. 26, 2025).

[17] New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo, No. 24-1151; 122 F.4th 28 (2d Cir. 2024).

[18] Pirani v. Slack Technologies Inc., No. 25-44; 127 F.4th 1183 (9th Cir. 2025).

[19] 598 U.S. 759 (2023).

[20] FS Credit Opportunities Corp. v. Saba Capital Master Fund Ltd., No. 24-345.

[21] Saba Cap. Master Fund LTD. v. Blackrock ESG Cap. Allocation Tr., 2024 WL 3174971 (2d Cir. June 26, 2024).

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Ex-Derailment Deal Admin Will Pay $17M To End Contempt Bid

By **Matthew Santoni**

Law360 (December 22, 2025, 11:59 AM EST) -- The ousted administrator of Norfolk Southern's $600 million settlement over the derailment in East Palestine, Ohio, will pay $17.25 million to resolve claims that it mishandled the distribution of payouts, according to deal terms approved Monday.

Kroll Settlement Administration and the lead counsel for the consolidated class actions over the fiery 2023 derailment stipulated that Kroll would pay the money into the settlement fund for the benefit of those making personal injury claims, also known as the "voluntary exposure" class, in exchange for dropping further auditing and potential contempt findings.

The payment would be due Dec. 26, according to the parties' stipulation, which was approved by U.S. District Judge Benita Y. Pearson.

The deal ends the two-step process wherein the plaintiffs were asked to show cause why they thought Kroll should be held in contempt of the court's plan for distribution of the settlement, then the court would determine any additional damages or penalties based on a third-party audit.

Kroll's settlement offer exceeded the $10 million the company had been allocated to administer the settlement and was even more than what it said it had actually been paid as of when it was terminated.

Kroll had been appointed the administrator of the railroad's $600 million settlement with the residents and businesses within 20 miles of the Feb. 3, 2023, train wreck in the village along the Ohio-Pennsylvania border, but drew concern from the court and the lawyers leading the plaintiffs over reports of delayed payments and projections that the personal-injury payouts would exceed the $120 million originally set aside.

The court removed Kroll in June and eventually set up a procedure for determining if Kroll should be held in contempt.

At a hearing earlier in December, counsel for Kroll told U.S. District Judge Benita Pearson that the company had been relying on language in the settlement plan that said personal-injury claimants would each start with a $25,000 payout, and the amount would be adjusted up or down based on "points" for factors like their distance from the site of the derailment.

But the plaintiffs' lawyers argued that the plan had been to calculate all the points first, then divide the $120 million based on that. Judge Pearson, unhappy with the prospect of claimants going unpaid or underpaid, had not been receptive to some of the ousted administrator's arguments.

With the court's acceptance, the deal will drop the rest of the hearing and the audit, it said.

"Upon approval by the court, both class counsel and KSA shall be relieved of any and all outstanding requirements and obligations imposed by those court orders relating to the show cause process including, without limitation, any requirements or obligations to conduct any further audit of KSA's alleged violations and errors," the stipulation said.

The plaintiffs are represented by Jayne Conroy of Simmons Hanly Conroy LLP, Elizabeth Graham of Grant & Eisenhofer PA and Seth Katz of Burg Simpson Eldredge Hersh & Jardine PC.

Kroll Settlement Administration is represented by Christopher J. Joyce of Flannery Georgalis LLC and Scott M. Ahmad, Stephen V. D'Amore, Scott P. Glauberman and Rachael E. Thompson of Winston & Strawn LLP.

The case is In re: East Palestine Train Derailment, case number 4:23-cv-00242, in the U.S. District Court for the Northern District of Ohio.

--Editing by Alyssa Miller.

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9th Circ. Takes Up IPhone Buyers' Class Decertification

By **Bryan Koenig**

Law360 (December 19, 2025, 2:07 PM EST) -- The Ninth Circuit has summarily agreed to let consumers appeal what they had described as the "death knell" district court ruling that decertified their class of iPhone users that was expected to reach 200 million members in an antitrust case over Apple's App Store policies.

A two-member panel's one-page **ruling**, entered Thursday, offered no explanation for granting the **mid-case appeal**, instead of forcing the named consumer plaintiffs to litigate their lawsuit to completion before appealing decertification.

The consumers **had argued** the lower court's "erroneous" order has left the named plaintiffs with just $268 in potential damages, instead of the more than $20 billion sought by the class. Spending "millions of dollars" to try that case "is not realistic," they asserted.

According to the consumers' filings, the lower court initially accepted an expert's model that calculated overcharges for every App Store transaction, grouped by Apple ID, as a basis for showing that nearly all class members suffered damages from the App Store policies.

But the court then imposed an additional requirement when reviewing **the decertification motion** and called for the class to identify every member's individual damages before trial. When Apple's data prevented a second expert from performing this additional step, the lower court abruptly decertified the class, the consumers said. They argued that identifying individual class members by matching transaction to buyer "is a matter for post-trial administration."

The case traces back to 2011. The iPhone users have accused Apple of **violating antitrust law** by monopolizing the distribution of apps on its devices through policies requiring the use of the App Store and its in-app payment system, through which the technology giant collects commissions of up to 30%.

The allegations are **similar** to those being brought by video game developer Epic Games against both **Apple** and Google.

The consumer case previously took a trip all the way to the U.S. Supreme Court, which held in 2019 iPhone users have **standing to sue** under federal antitrust law permitting damages claims only for customers who purchase directly from the company they alleged had broken the law.

U.S. District Judge Yvonne Gonzalez Rogers certified a **nationwide class** last year for individuals who have spent $10 or more on iOS applications or in-app purchases since 2008. The Ninth Circuit later rejected Apple's bid for an interlocutory appeal of the class certification.

But in October 2025, the judge granted Apple's motion for decertification, noting that when she certified the class, she had warned the consumers about finding a reasonable way to determine whether and to what extent consumers were harmed.

She also said she had been assured the consumers' experts could match Apple ID accounts with actual consumers to prove consumer harm, but that turned out not to be the case.

In their petition for review, the iPhone buyers said all that matters for class certification is calculating the overcharge on every App Store transaction on a classwide basis, contending that it is not necessary to match the transactions to individual class members until after trial.

Apple **responded** that the judge gave the consumers "every chance" to establish a way to show injury through common evidence across the class but they were consistently unable to do so.

An attorney representing the consumers, Mark Rifkin of Wolf Haldenstein Adler Freeman & Herz LLP, told Law360 in a statement Friday: "This is an important appeal, both for the law and for American consumers. We look forward to briefing and arguing the merits of the appeal."

Representatives of Apple did not immediately respond Friday to requests for comment.

U.S. Circuit Judges Andrew David Hurwitz and Daniel Aaron Bress sat on the panel.

The consumer class is represented by Betsy C. Manifold, Rachele R. Byrd, Mark C. Rifkin, Matthew M. Guiney and Thomas H. Burt of Wolf Haldenstein Adler Freeman & Herz LLP and David C. Frederick, Aaron M. Panner, Alex P. Treiger, Caroline A. Schechinger, Kyle M. Wood and Kelley C. Schiffman of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Theodore J. Boutrous Jr., Daniel G. Swanson, Blaine H. Evanson, Bradley J. Hamburger, Caeli A. Higney, Julian W. Kleinbrodt, Matt Aidan Getz, Eli M. Lazarus and Harry R.S. Phillips of Gibson Dunn & Crutcher LLP.

The case is Pepper et al. v. Apple Inc., case number 25-7122, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Matthew Perlman, Hailey Konnath, Bonnie Eslinger, Dorothy Atkins and Lauren Berg. Editing by Covey Son.

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AI Note-Taking Software Stores Voice Data, Ill. Suit Says

By **Lauraann Wood**

Law360 (December 19, 2025, 9:29 PM EST) -- Artificial intelligence software that provides transcription and other meeting assistance on platforms such as Zoom and Microsoft Teams illegally collects, stores and uses individuals' biometric voice data without their informed consent, according to a lawsuit filed in Illinois federal court.

Plaintiff Katelin Cruz's Thursday **complaint** claims California-based Fireflies.AI Corp. has violated the Illinois Biometric Information Privacy Act by allowing its meeting assistant to record, analyze, transcribe and store the biometric voice data of all participants, "including individuals who never created Fireflies accounts, never agreed to Fireflies' terms of service and never executed any written consent authorizing biometric data collection."

The data collected counts as a voiceprint "for good reason," Cruz alleged. Voiceprints are often used to authenticate individuals' identities when they seek access to restricted personal or financial information, she said.

"Thus, individuals whose voiceprints are stolen or compromised are at increased risk of identity theft and fraud," she added.

Fireflies advertises its product as having "speaker recognition" capabilities that can identify different speakers in meetings and audio files, a function that "necessarily involves" analyzing participants' unique vocal characteristics and creating a template to identify and distinguish between them, Cruz alleged. The so-called meeting assistant joins video meetings automatically once the host enables it, the suit says.

The company's privacy policy states that it collects and processes "meeting data" and meeting data "derivatives," and that it stores meeting recordings within its systems when enabled, Cruz alleged.

Fireflies' meeting policy says personal information is deleted only when the company determines it is "no longer needed," or upon a user's request, without providing any sort of timeline for retaining or deleting the information, her suit says.

Cruz says she experienced the AI assistant's allegedly unlawful biometric data practices while she participated in a virtual meeting in November. She says the software analyzed her unique vocal characteristics to distinguish her as a unique speaker during the meeting and created a transcript that attributed statements to her, even though she never created a Fireflies account or gave the company permission to collect her personally identifiable voice data.

"Fireflies' terms of service apply only to individuals who affirmatively click 'I Agree' to those terms of service, register for an account, or otherwise access the services as users or account owners," she alleged.

Fireflies never informed users in writing or otherwise that the company intended its software to collect their biometric data, nor has it ever obtained their written consent to do so, Cruz says. Nor does the company have a publicly available policy governing its data storage and destruction practices, as BIPA requires, she claims.

Cruz is looking to pursue her claims on behalf of all individuals who say their speaker data was collected, stored and used by Fireflies' meeting assistant. She's asking the court to award the proposed class statutory damages and injunctive relief alongside fees, interest and other costs.

Representatives for the parties did not immediately respond Friday to a request for comment.

Cruz is represented by Douglas Werman and John Frawley of Werman Salas PC.

Counsel information for Fireflies.AI could not immediately be determined on Friday.

The case is Cruz v. Fireflies.AI Corp., case number 3:25-cv-03399, in the U.S. District Court for the Central District of Illinois.

--Editing by Vaqas Asghar.

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BREAKING: Mercedes, Daimler Ink $150M Deal In Emissions Cheating Claims

By **Brian Steele**

Law360 (December 22, 2025, 11:38 AM EST) -- Mercedes-Benz USA and Daimler AG have reached a nearly $150 million national settlement with state attorneys general to resolve allegations that they sold and leased vehicles equipped with devices capable of defeating emissions tests.

Mercedes-Benz and Daimler must pay $120 million directly to the states, while about $30 million will be suspended and potentially waived if they complete a $200 million consumer relief program. (Jeremy Moeller/Getty Images)

Connecticut Attorney General William Tong and Delaware Attorney General Kathy Jennings jointly announced the deal Monday. The attorneys general alleged that, between 2008 and 2016, the automakers manufactured, marketed, advertised and distributed more than 211,000 vehicles that included the emissions-cheating software. The devices allowed the vehicles to exceed legal limits of nitrogen oxides, posing a threat to public health and the environment, according to the law enforcers.

The companies must pay $120 million directly to the states, while about $30 million will be suspended and potentially waived if they complete a $200 million consumer relief program.

Nearly 40,000 vehicles that had not been repaired or permanently removed from U.S. roads by August 2023 will be covered by the relief program, which will extend warranty coverage and pay out $2,000 per vehicle. Mercedes must pay for installing approved software on each vehicle, Tong said in a statement.

Jennings said that Mercedes and Daimler have agreed to stop deceptive advertising of diesel vehicles "once and for all." California entered its own settlement, but 50 government entities joined in the effort, she said.

--Editing by Alex Hubbard.

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J&J Hit With $66M Verdict In Minnesota Mom's Asbestos Case

By **Rae Ann Varona**

Law360 (December 19, 2025, 11:06 PM EST) -- A Minnesota jury Friday awarded a mother of three $65.5 million following a 13-day trial in her lawsuit that claimed Johnson & Johnson's talc products exposed her to asbestos and contributed to cancer in her abdominal lining, the mother's attorneys announced.

The jury in Minnesota's Ramsey County District Court handed down the verdict after hearing evidence that Johnson & Johnson sold and marketed the talc-based products despite knowing the mineral could be contaminated with the known carcinogen asbestos, attorneys for Anna Jean Houghton Carley said in a press release.

"This verdict does not make up for the pain and suffering that Anna, her husband Mike, and her children will go through all because of J&J's desire for revenue and company profits," Carley's attorney Ben Braly of Dean Omar Branham Shirley said in a statement. "This case was not about compensation only. It was about truth and accountability."

The verdict for the 37-year-old mother is compensatory, according to the press release.

Johnson & Johnson did not immediately respond to a request for comment Friday evening.

The verdict is the latest against the pharmaceutical giant over its talc-based products and comes one week after a Los Angeles jury hit Johnson & Johnson with a **$40 million verdict** following a monthlong **bellwether trial**, finding that its talc products were a substantial factor in causing two women's ovarian cancer. The jury in that case, however, declined to award punitive damages against Johnson & Johnson, finding that the company did not act with malice, fraud or oppression.

A Los Angeles jury had also hit Johnson & Johnson in October with a nearly **$1 billion verdict** in favor of the estate of an 88-year-old woman who died of mesothelioma. That verdict covered $16 million in compensatory damages and $950 million in punitive damages.

Dean Omar had also represented the estate in that case, as well as a builder who, also in October, was awarded **$10 million** in punitive damages on top of an existing $15 million verdict after a jury sided with him in his suit that claimed Johnson & Johnson's baby powder caused his peritoneal mesothelioma.

According to the law firm's Friday press release, Carley had also been diagnosed this year with peritoneal mesothelioma, which is cancer of the peritoneal lining in the stomach, and which the firm said is caused only by asbestos exposure.

The firm said that Johnson & Johnson's baby powder was used on Carley throughout her childhood and that those who used it on her "were never warned about its dangers." It noted that the baby powder was taken off the shelves in the U.S. in 2020.

The jury had been presented with evidence that Johnson & Johnson knew for decades that talc deposits are often associated with asbestos, that there were concerns raised in testing and scientific literature about contamination and that the company nevertheless "continued to market its products as safe for daily use," according to Dean Omar.

Carley is represented by Ben Braly, Aaron Chapman, Laurel Halbany and Daniel Liberio of Dean Omar Branham Shirley and Chad Alexander of Sieben Polk PA.

Counsel information for Johnson & Johnson and case information were not immediately available.

--Additional reporting by Craig Clough, Emily Field and Brian Steele. Editing by Jay Jackson Jr.
