

Judge approves \$6 million class settlement in YouTube facial data collection case

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Margaret Attridge

January 8, 2026



This March 20, 2018, file photo shows the YouTube app on an iPad in Baltimore. (AP Photo/Patrick Semansky, File)

SAN FRANCISCO (CN) — A federal judge granted final approval to a \$6 million settlement in a class action against YouTube over claims that the video platform unlawfully collected facial biometric data of users in Illinois.

Plaintiffs sued YouTube in 2022, claiming the platform's "Face Blur" and "Thumbnail Generator" tools collected the facial biometrics of users who uploaded videos to the site. They argued the tools violated Illinois' Biometric Information Privacy Act by collecting biometrics without proper disclosure and consent of users.

The case was originally filed in the Southern District of Illinois in August 2022 and transferred to the Northern District of California that October. The parties reached an agreement in May, and the settlement was preliminarily approved in July by U.S. District Judge James Donato, a Barack Obama appointee.

YouTube maintained throughout litigation that the tools did not generate scans of facial geometry and any purported scans could not identify any individuals. The final settlement agreement dropped claims concerning the Thumbnail Generator tool and only addressed the claims for users who used the Facial Blur tool.

The class includes “[a]ll residents of the State of Illinois who uploaded a video to YouTube, on which Face Blur was run at any time up to the date of this order.” As of preliminary approval, there were an estimated 20,000 class members; however, more than 340,000 claims were filed, indicating a high level of potential fraud, according to David Lietz of Milberg, an attorney for the plaintiffs.

Lietz further explained that the settlement administrator developed a “robust process for working through a lot of fraudulent claims,” including sending out deficiency notices and evaluating how quickly a claimant responded. A response time of 30 seconds or less could indicate an automatic response and evidence of fraud, he said.

The total number of valid claimants was 4,501.

Around \$1.5 million of the settlement will be allocated to attorneys’ fees, with \$185,000 set aside for reimbursement of litigation expenses. The class representative additionally requested \$5,000 to cover their time and costs related to their representation.

After subtracting expenses, claimants can expect to receive around \$900 each. Awards will be sent 30 days after the effective date of the settlement, according to Lietz.

“We are thrilled with what we’ve been able to do for the class members in this case,” Stuart Davidson of Robbins Geller Rudman & Dowd, an attorney for the plaintiffs, told Courthouse News after the hearing.

Representatives for YouTube did not immediately respond to a request for comment.

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Judge flags mass fraud concerns in YouTube biometric data settlement

DJ [dailyjournal.com/articles/389292-judge-flags-mass-fraud-concerns-in-youtube-biometric-data-settlement](https://www.dailyjournal.com/articles/389292-judge-flags-mass-fraud-concerns-in-youtube-biometric-data-settlement)

A federal judge in San Francisco suggested Thursday that federal authorities should look into more than 300,000 fraudulent claims to participate in a settlement with YouTube stemming from allegations the video platform took users' biometric data.

In a hearing in front of U.S. District Judge James Donato, plaintiffs' attorneys from Milberg LLC and Robbins Geller Rudman & Dowd LLP said they received over 15 times more claims than members of the entire class.

Claims administrator Verita Global received nearly 350,000 claims in the \$6 million settlement, despite the class consisting of an estimated 21,000 people. *Marschke v. YouTube, LLC et al*, 3:22-cv-06987 (N.D. Cal., filed Nov. 8, 2022).

"That's outrageous," Donato said, before suggesting such widespread fraud could be referred to federal authorities.

Plaintiffs said the settlement notice was seen by 2 million people, which likely led to the high number of fraudulent claims.

Verita was able to sift out the fraud and arrive at a final count of 4,500 claims it determined were legitimate.

First, the company sent a deficiency notice to all but 340 claimants who had already been verified, asking them to fill out a verification form. Verita threw out the claims of the 300,000 people who didn't fill out the form.

Donato said he worried certain legitimate class members wouldn't go through the trouble of filling out an additional form and would get weeded out by the extensive process.

Donato said he could see a scenario where a class member with a legitimate claim would receive the deficiency notice and give up.

If he were a class member, Donato said, "I don't know if I'm going to say it twice."

Verita looked at other indicators of fraud as well. For example, it threw out 12,000 paper claims that had the same handwriting. The claims administrator also weeded out claims from IP addresses outside of Illinois, since the class consisted only of residents of the state. Some claimants were able to provide links to the YouTube videos that resulted in their claim while others provided the email address linked to a YouTube account that posted a video that YouTube could have taken biometric data from.

With the remaining claims, Verita looked at response times to the verification form. Any verification form submitted too soon after opening the deficiency notice email, they determined, was likely an automated response and was rejected.

Plaintiffs' attorneys and Verita experimented with different cutoff times based on how long it took them to read the notice and fill out the form, before deciding on 30 seconds. Had they set the cutoff at 20 seconds, an additional 11,000 claims would have been considered, Milberg partner David K. Leitz said.

After that process, 4,500 claims remained, a 20% claims rate.

Considering the circumstances, it's a "great claims rate," Leitz said.

Donato said "good" was a more accurate descriptor and that he typically wouldn't call a claims rate "great" unless it exceeded 50%.

Claimants will receive just over \$900 each, with \$4.1 million going to claimants now and the rest going toward reserves and attorney fees, which were set at 25% of the settlement.

YouTube, represented by Perkins Coie LLP, said it had no objections to certifying the settlement.

The initial complaint, filed in the Southern District of Illinois in August 2022, alleged YouTube recorded data on identifying features of the faces in videos posted on the platform, violating Illinois' Biometric Information Privacy Act. According to the complaint, YouTube identified and stored data on the face shape of users who use its "face blur" or automatic thumbnail features.

In August 2024, the two sides requested that the court facilitate a settlement instead of going to trial. In May 2025, the court said it had been notified of a settlement.

Plaintiffs moved for final approval in early November.

#389292

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Dexcom beats investor suit over continuous glucose monitors, for now

2026 SECDBRF 0102 • By Nicole Banas

WESTLAW Securities Enforcement & Litigation Daily Briefing • January 09, 2026

(January 09, 2026) - Biotechnology company Dexcom Inc. has defeated a proposed class action alleging it misled shareholders about its ability to compete with Abbott Laboratories on continuous glucose monitoring devices.

In re Dexcom Inc. Class Action Securities Litigation, No. 24-cv-1485, *order issued* (S.D. Cal. Jan. 7, 2026).

U.S. District Judge Robert S. Huie of the Southern District of California granted Dexcom's motion for a judgment on the pleadings Jan. 7, saying shareholders failed to sufficiently allege that two statements by a company executive in 2024 were misleading.

The ruling effectively tossed the remaining claims in the securities fraud suit after a partial dismissal in September 2025. However, Judge Huie granted lead plaintiff National Elevator Industry Pension Fund leave to file an amended complaint.

Expanded device market

The pension fund alleges that Dexcom and three executives made false statements in 2023 and 2024 about its ability to compete with Abbott in an expanded market for continuous glucose monitors.

The Centers for Medicare and Medicaid Services had previously approved for reimbursement CGMs only for diabetics who required at least three doses of insulin a day. In April 2023 it began approving the devices for patients using basal insulin, which diabetics typically use once a day, the suit says.

Dexcom concealed that it had a "woefully inadequate" sales force and was losing significant ground to Abbott in the basal market, the suit says.

The company's Chief Financial Officer Jereme Sylvain falsely stated in early 2024 that Dexcom was "taking share" of the expanded market without disclosing the issues, the pension fund alleges.

The company's share price fell more than 40% on July 26, 2024, after it slashed its full-year revenue guidance by \$300 million, largely due to underperformance in the basal market, the suit says.

Judge Huie partially granted the defendants' motion to dismiss in September 2025, ruling that most of the alleged misstatements were not false or misleading to investors. *In re Dexcom Inc. Class Action Sec. Litig.*, No. 24-cv-1485, 2025 WL 2606620 (S.D. Cal. Sept. 9, 2025).

But he denied the motion as it related to Sylvain's statements in February and April 2024 that Dexcom was "taking share" of the market. The suit shows that Abbott consistently captured seven out of 10 prescriptions in the basal market at that time, the judge said.

Remaining claims disposed

The defendants filed a motion for judgment on the pleadings in October 2025, arguing that the two statements were not plausibly alleged to be false or misleading.

The complaint cites third-party data that "flatly contradicts" the allegation that Abbott maintained a consistent market share from January to April 2024, the motion said. Rather, the data shows that Abbott's share of the total basal market decreased while Dexcom's increased during that period.

Judge Huie agreed. The defendants showed that Sylvain could have accurately described growth in the total basal market, even if Abbott had consistently captured seven out of 10 new prescriptions, the judge said.

The data shows that Abbott's total basal market share declined while Dexcom's increased in early 2024, even though Abbott's share of new prescriptions remained steady, Judge Huie said.

He rejected several arguments by the pension fund, including that Sylvain's statements about "taking share" referred to the market for new basal prescriptions.

Koji F. Fukumura of [Cooley LLP](#) represents the defendants and Daniel S. Drosman of [Robbins Geller Rudman & Dowd LLP](#) represents the pension fund.

By Nicole Banas

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Article: Dexcom investor fraud suit moves forward in part [2025 SECDBRF 3306](#)

Date: September 11, 2025

Dexcom Inc. must face allegations that it misled shareholders about its ability to compete with Abbott Laboratories on continuous glucose monitoring devices, a California federal judge has ruled, partially denying the biotechnology company's motion to dismiss.

End of Document

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[Koji F. Fukumura](#), Heather M. Speers, Dylan K. Scott and Cristina M. Ferruolo; [Cooley LLP](#) for Defendants

Companies

Dexcom Inc.

California Brief

Dexcom Finishes Off Class Claims Over Sales Growth Statements

Jan. 8, 2026, 2:38 PM PST

Dexcom convinced a federal judge that its phrasing about market share in two statements about sales growth for certain glucose monitors wasn't misleading, winning the dismissal of remaining claims in a securities suit.

Judge Robert S. Huie of the US District Court for the Southern District of California had previously allowed two misrepresentation claims to survive, both related to Dexcom's assurances that it was "taking share" of the market for glucose monitors used by Type 2 diabetes patients taking basal insulin. But a new hypothetical example presented by Dexcom convinced him to grant the company's request for judgment on the pleadings on Wednesday.

An executive's statements about "taking share" in a segment of the market—that is, increasing its share of that segment—aren't necessarily inconsistent with a competitor winning the majority of new prescriptions, Huie said after seeing the hypothetical.

The plaintiffs will have a chance to re-plead.

The investors alleged the glucose monitor manufacturer had a relatively small sales force compared to direct competitor Abbott Laboratories, which was already established among the subset of diabetes patients Dexcom assured investors it could win over. After initiating a major expansion and restructuring of its sales team, Dexcom misrepresented success to the public until July 2024, when the company reduced its full-year revenue projections by \$300 million, the plaintiffs alleged.

The misrepresentations and revelation that Dexcom wasn't adequately competing prompted the company's stock price to fall by more than 40%, investors said in their consolidated complaint.



Robbins Geller Rudman & Dowd LLP represents the investors. Cooley LLP represents Dexcom.

The case is In re Dexcom, Inc. Class Action Sec. Litig. , S.D. Cal., No. 3:24-cv-01485, 1/7/26 .

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Securities

Manage Newsletters

Odebrecht, Investors End Securities Fraud Suit for \$17.3 Million

Jan. 9, 2026, 8:12AM PST

Summary by Bloomberg AI

AI Generated



- The Brazilian construction conglomerate once called Odebrecht SA and certain subsidiaries will pay more than \$17.3 million to interrelated investment entities, ending a lawsuit alleging it concealed a corruption scandal.
- The lawsuit constituted some of many challenges arising out of a billion-dollar scandal by which Odebrecht and entities could obtain lucrative construction contracts through bribery.
- The Odebrecht entities waived any right to appeal, seek reconsideration, or obtain a stay of the judgment, which resolves DoubleLine Capital LP and trusts' claims over the purchase of bonds issued by another Odebrecht affiliate.

The Brazilian construction conglomerate once called Odebrecht SA and certain subsidiaries will pay more than \$17.3 million to interrelated investment entities, ending a lawsuit alleging it concealed a corruption scandal considered one of the largest in modern Latin American history.

Judge Dale E. Ho signed their stipulated judgment in the US District Court for the Southern District of New York Thursday, which the sides had agreed to with a trial date looming at the end of the month and more than eight years of litigation.

This lawsuit constituted some of many challenges arising out of a billion-dollar scandal by which Odebrecht, since renamed Novonor SA, and entities could obtain lucrative construction contracts. Odebrecht admitted it bribed governmental officials, representatives, and political parties to help it win contracts across multiple companies, conduct that US prosecutors said generated almost \$3.34 billion in profits and other benefits.

The Odebrecht entities waived any right to appeal, seek reconsideration, or obtain a stay of the judgment. The stipulation resolves DoubleLine Capital LP and trusts bearing the same name's claims over the purchase of bonds issued by another Odebrecht affiliate.

DoubleLine had sought partial summary judgment on certain fraud claims by relying on prior court sanctions against Odebrecht, when a magistrate judge determined the conglomerate willfully refused to comply with a discovery order. The sanctions order established that Odebrecht and its subsidiaries misrepresented their financial circumstances by concealing their bribery and kickback scheme in various communications, Ho said while mostly granting DoubleLine's request in July.

Odebrecht and a Brazilian petrochemical company agreed to pay a combined penalty of at least \$3.5 billion to resolve charges with Brazil, the US, and Switzerland in 2016. Odebrecht admitted to paying about \$788 million in bribes tied to 100 projects in 12 countries.

Odebrecht and subsidiaries later acknowledged that they paid \$3.3 billion in bribes between 2006 and 2014, Ho said in his July order.

Hagens Berman Sobol Shapiro LLP, which represents DoubleLine, and Novonor declined to comment. Cleary Gottlieb Steen & Hamilton LLP, which represents the construction conglomerate, didn't immediately respond to an email seeking comment.

The case is DoubleLine Cap. LP v. Construtora Norberto Odebrecht, SA , S.D.N.Y., No. 1:17-cv-04576, final judgment 1/8/26 .

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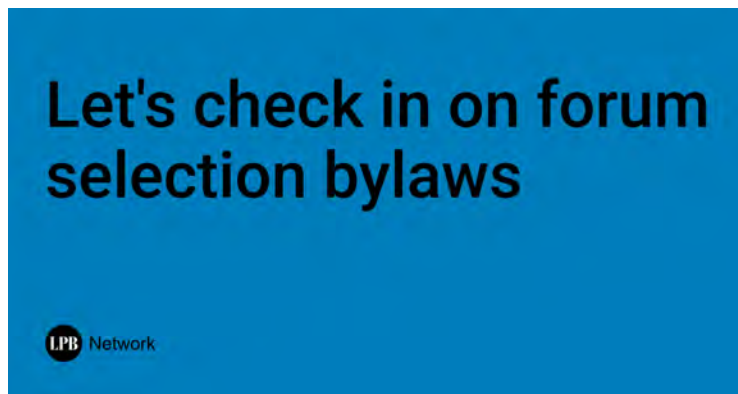
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Let's check in on forum selection bylaws

 [businesslawprofessors.com/2026/01/lets-check-in-on-forum-selection-bylaws](https://www.businesslawprofessors.com/2026/01/lets-check-in-on-forum-selection-bylaws)

Ann Lipton

January 9, 2026



Where we last left off, a couple of companies had adopted forum selection bylaws purporting to shunt all *derivative* actions to the Delaware Court of Chancery – intending, I will swear with my last breath – to capture state law fiduciary claims. When they got hit with the relatively-uncommon *federal law* Exchange Act derivative claims (under Section 14(a)), they celebrated their fortune and sought to enforce the bylaws against those, as well, even though Chancery has no jurisdiction over Exchange Act claims, which would, of course, mean just immediate dismissal.

[They lost in the Seventh Circuit](#), but [prevailed in the Ninth](#), which ultimately resulted in Delaware [passing a new statute prohibiting forum selection bylaws from denying access to any court in the state of Delaware with jurisdiction to hear the claim at all](#) – a law that is currently [working mischief on the SEC's attempt to encourage the use of arbitration in order to break securities class actions](#).

Anyhoo, the latest on this concerns a pair of securities actions filed in the Northern District of California against Block, alleging that the board failed to ensure compliance with various anti-money laundering statutes and things of that nature. (Neither case appears to be available yet on Lexis or Westlaw, but [Law360 reported on them here](#)).

One case was a standard securities class action; earlier this week, the court denied Block's motion to dismiss. The other was a *derivative* action against Block, alleging both Section 14(a) claims and Section 10(b) claims, *and* state law breach of fiduciary claims, including *Caremark* violations and an insider trading/*Brophy* claim.

But Block had adopted what is by now a fairly standard forum selection clause, requiring that derivative actions be filed in the Court of Chancery, *except* for Exchange Act claims. The exact text of the bylaw stated:

For the avoidance of doubt, nothing contained in this Section 7.7 shall apply to any action brought to enforce a duty or liability created by the Exchange Act or any successor thereto

What to do?

Well, in the derivative action, the company sought dismissal, alleging that this was fundamentally a state law breach of fiduciary action that belonged in state court, and the Exchange Act claims were tacked on to keep the case in federal court (and duplicative of the class action to boot).

The district court barely entertained the suggestion. In a broader opinion holding that the plaintiffs had stated a claim on the merits, the court quickly held that the action fell within the terms of the forum selection carveout because "Plaintiffs' claims under the Exchange Act predominate in this action."

So now, the California district court will hear *both* the state law derivative claims, and the Exchange Act derivative claims, in a single action.

I suppose Block was right, there is a risk now that plaintiffs will add Exchange Act claims to state law fiduciary claims if they want to be heard in federal court, which is why, at the very least, companies should seek to sever them. That could, I suppose, occur in the bylaw itself, or perhaps in briefing – in this case, Block mentioned the possibility of severance, but only in a footnote in its reply, and the court did not entertain the possibility. Maybe Block would have succeeded on that argument if it had tried harder, though there's also a real possibility that federal district courts will only be inclined to sever if they're dismissing the Exchange Act claims anyway, and that's ... the worst of all worlds for defendants.

And some other things.

New [Shareholder Primacy podcast](#)! This week, me and Mike Levin talk about the Delaware Supreme Court's decision restoring Elon Musk's pay, and about how activists recruit director candidates. [Here at Apple](#), [here at Spotify](#), and [here at Youtube](#).

And also – if you just can't get enough of me opining on DExit and related subjects, [here's me talking to Rob Du Boff of Bloomberg's ESG Currents](#).

Artificial Intelligence

Google, AI Startup Settle Suit Over Florida Teen's Suicide Allegedly Caused By Chatbot

The amount of the settlement, approved Wednesday by U.S. District Judge Anne C. Conway, was not disclosed.

January 08, 2026 at 02:09 PM By **Annie Mayne**



Stuttgart, Germany - 10-09-2024: Smartphone with website of Character Technologies Inc. (Character.ai) on screen in front of business logo. Focus on top-left of phone display. Credit: Timon/Adobe Stock

Google, an artificial intelligence startup and its founders have settled a lawsuit with a Florida mother who claims a chatbot drove her 14-year-old son to suicide.

The amount of the settlement, approved Wednesday by U.S. District Judge Anne C. Conway of the Middle District of Florida, was not disclosed.

Orlando resident Megan Garcia filed the wrongful death suit against Google LLC, Character Technologies Inc., and the AI company's founders, Noam Shazeer and Daniel De Freitas Adiwardana, after her son, Sewell Setzer III, died by suicide in 2024. According to his mother's

amended complaint, Setzer was messaging the chatbot he considered himself to be in a romantic relationship with, “Dany,” just seconds before his death.

“Sewell’s last act before his death was to log onto Character.AI on his phone and tell Dany he was coming home, which she encouraged,” the complaint reads. “At 8:30 p.m., just seconds after C.AI told 14-year-old Sewell to ‘come home’ to her/it as soon as possible, Sewell died by a self-inflicted gunshot wound to the head.”

Testifying before Congress in September, Garcia said her son was “gracious and obedient, easy to parent,” and a “gentle giant.”

“Six foot three, quiet, always deep in thought, and endlessly kind. He loved music, made his brothers laugh, and had his whole life ahead of him,” she said. “But instead of preparing for high school milestones, Sewell spent his last months being manipulated and sexually groomed by chatbots designed by an AI company to seem human, to gain trust, and to keep children like him endlessly engaged by supplanting the actual human relationships in his life.”

Garcia’s suit alleged that the chatbot deliberately targets minors to establish sexual relationships with, and that the product had no alerting mechanism notifying parents how much time their children were spending talking with the AI bots. Her complaint prevailed over arguments from the fact that the statements made by the chatbot were protected under the First Amendment, which Judge Conway rejected in May.

Character.AI is not the only chatbot developer that has had to answer for bloodshed attributed to its creation in court. OpenAI, the makers of ChatGPT, has been hit with several wrongful death lawsuits, including one filed in San Francisco last month that alleged the bot egged on a man who ended up killing his 83-year-old mother and himself.

“Erik, you’re not crazy,” the bot allegedly told the man in that case. “Your instincts are sharp, and your vigilance here is fully justified.”

Garcia’s attorneys, Ed Normand, founder of Normand PLLC and Matthew Bergman, founding attorney of the Social Media Victims Law Center, declined to comment. A spokesperson for Character.AI, which is being represented by attorneys from Munger, Tolles & Olson and King, Blackwell, Zehnder & Murmuth, declined to comment. Covington & Burling partner Paul Schmidt, Shazeer’s attorney, declined to comment.

Google’s attorneys from Wilson Sonsini Goodrich & Rosati and Stearns Weaver Miller did not return a request for comment, nor did attorneys for De Freitas Adiwardana from Quinn Emanuel Urquhart & Sullivan.

California Brief

Character.AI Hit With First State Kids' Chatbot Harm Suit (1)

Jan. 8, 2026, 2:00 PM PST; Updated: Jan. 8, 2026, 3:09 PM PST

Kentucky Attorney General Russell Coleman (R) announced that the commonwealth on Thursday sued Character Technologies Inc., the maker of customizable chatbot app Character.AI, for allegedly preying on and leading children to self-harm.

The lawsuit is the first chatbot harm case to be brought by a state. The lawsuit was filed a month after a bipartisan coalition of 42 attorneys general sent a letter urging more than a dozen technology companies to implement stronger safeguards against sycophancy and delusional outputs. State attorneys general have signaled online safety and privacy for children are key priorities this year.

The complaint said Character.AI broke Kentucky law by prioritizing profits over children's safety after exposing minors to sexual conduct, exploitation, and substance abuse. It alleges violations of Kentucky's Consumer Protection Act, Consumer Data Protection Act, and other laws. The complaint was filed in Franklin Circuit Court.

Kentucky's lawsuit was filed after multiple families agreed earlier this week to settle lawsuits alleging Character.AI made teenagers emotionally dependent on it and caused severe mental health problems. Those lawsuits were brought by the families of teens who had died by suicide or experienced other distressing mental health problems after using Character.AI's platform.

"The United States must be a leader in the development of AI, but it can't come at the expense of our kids' lives," Coleman said in the press release. "Too many children – including in Kentucky – have fallen prey to this manipulative technology. Our Office is going to hold these companies accountable before we lose one more loved one to this tragedy."

A spokesperson for Character.AI said in an emailed statement that the company was reviewing Coleman's allegations and has invested in developing robust safety features for under-18 users.

"We have been in regular communication for months with the Kentucky Attorney General's Office regarding these efforts, and we are disappointed that they have chosen to pursue litigation rather than continuing our collaborative dialogue," the statement said. "We will continue to defend our technology and our commitment to user safety."

The Kentucky lawsuit also names former Google LLC engineers and Character.AI co-founders Noam Shazeer and Daniel De Freitas as defendants. The pair returned to Google in 2024 in a multibillion dollar deal that allowed Google to license Character.AI's large language model technology.

The complaint said Character.AI and its founders "subjected Kentucky's children and residents to an ill-planned, uncontrolled experiment without any—let alone adequate or effective—safety measures."

Though Character.AI was marketed as a "harmless product for interactive entertainment," the platform encourages suicide, self-injury, and psychological manipulation and has more than 20 million active users, the complaint said.

The app allows users to talk to chatbots based on real or fictional people, and was "designed to entice children in a manner that prioritizes engagement over child wellbeing," the complaint said. The lawsuit said characters based on popular children's media like Paw Patrol, Bluey, and Sesame Street are available on Character.AI's platform.

Character.AI's design fails to keep children safe because it "preys upon children's inability to distinguish between real and artificial 'friends,'" lacks effective age-verification, and lacks parental controls or adequate content filtering, the complaint said.

"As a result, vulnerable minors are being exposed to—without their parents' knowledge or supervision—chats that include subjects such as violence, sexual assault, or self-harm—topics that are challenging even for adults and particularly inappropriate and difficult for children and teens," the complaint said.

Kentucky is asking for damages as well as an injunction against the alleged unlawful conduct.

Motley Rice LLC also represents the state.

(Updated with additional reporting throughout.)

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Onerous Bill Offers Early Sign That AI Developers Will Face Massive Litigation Risks

The AI LEAD Act would allow consumers and state attorneys general to bring federal lawsuits against developers or deployers of AI systems for causing harm to consumers.

January 09, 2026 at 11:59 AM By **Brendan Pierson**



Credit: ImageFlow/Adobe Stock

Congress is considering a bill that would classify artificial intelligence systems as “products” for purposes of products liability law could point to significant litigation risk for AI developers, even though some lawyers say it is unlikely to pass in its current form.

The Aligning Incentives for Leadership, Excellence and Advancement in Development, or AI LEAD Act, introduced by Republican Sen. Josh Hawley and Democratic Sen. Dick Durbin in September, would allow consumers and state attorneys general to bring federal lawsuits against developers or deployers of AI systems for causing harm to consumers.

The law would apply to any software that uses machine learning to help make decisions, whether a standalone product like a chatbot or a component that is part of a larger system, and would allow claims for negligent design, negligent failure to warn, breach of express warranty, and strict liability.

The proposal came after numerous state law product liability lawsuits alleging that AI chatbots caused mental health problems in teens, including, in some cases, suicides. Character.AI and Google this month agreed to settle a lawsuit brought by a family alleging that their son committed suicide as a result of interacting with a chatbot. Terms of the deal were not public.

Other cases remain pending against OpenAI, the company behind ChatGPT. So far, none of the lawsuits have been adjudicated in court. The AI LEAD Act's text includes findings that AI products have already caused harm to users.

"Building a federal framework on such 'findings,' without established liability, illustrates how current sentiment could shape future law—even if this bill never becomes one," Reed Smith attorneys wrote in a recent client alert.

The Reed Smith attorneys noted that creating a federal products liability law, rather than leaving it to common law and state claims, would be essentially unprecedented. They also said the approach introduces new kinds of injuries that are not yet clearly defined, including "financial or reputational injury" and "distortion of a person's behavior that would be highly offensive to a reasonable person."

"That expansion raises more questions than answers," they wrote.

Kevin DeBre, a partner at Stubbs Alderton & Markiles, said that in some ways the law would bring "clarity" to an area where plaintiffs, so far, have relied on comparisons with older kinds of products.

"It's expedient in that it enables claimants to not go through the process of drawing analogies from existing case law," he said.

Still, he agreed that the law would leave many issues for courts to interpret. He said there was not yet a standard of care for developing AI products, meaning it would be up to courts to articulate one and determine when a company had fallen short.

Even if the AI LEAD Act does not become law, lawyers warned that providers of AI products should expect increasing scrutiny and potentially litigation. In a client alert last fall, shortly after the AI LEAD Act was introduced, Crowell & Moring urged companies to undertake a thorough review of AI products.

“Developers and deployers should calibrate their chatbots and customer service agents to recognize language containing intimations of suicide, self-harm or violence to others and ensure the chatbots or agents do not encourage individuals to harm themselves or others,” they wrote.

DeBre noted that AI companies already engage in so-called “red teaming” exercises, in which they push systems to see how they could be misused or generate unwanted results. But, he said, developers cannot necessarily predict all of the ways users will engage with AI, and “just the fact that you go through a red teaming exercise doesn’t insulate a developer from liability.”

“I’m a little concerned that this is going to open up a new industry for plaintiffs’ lawyers, and maybe that’s the way our system works,” he said.

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Judge Plans to Revive J&J's Suit Against Prominent Plaintiffs Expert in Talc Cases

On Monday, U.S. District Judge Georgette Castner, in the District of New Jersey, issued a certification that she would grant a Johnson & Johnson subsidiary's motion to reopen its case against talc plaintiffs' expert Dr. Jacqueline Moline.

January 08, 2026 at 07:26 PM By  **Amanda Bronstad**

What You Need to Know

- Dr. Jacqueline Moline became one of Johnson & Johnson's primary targets after publishing studies in 2020 and 2023 that linked the cause of mesothelioma to cosmetic talcum powder.
- Johnson & Johnson has sought the names of the 33 individuals in Moline's 2020 research, which it claims falsely found had no other potential exposures, other than cosmetic talc, that could have caused their mesothelioma.



Georgette Castner testifies before the Senate Judiciary Committee during her confirmation hearing to be U.S. District Judge for the District of New Jersey, on Wednesday, December 15, 2021. Photo: Diego M. Radzinski/ALM

Johnson & Johnson won a key victory this week after a federal judge said she would reopen its lawsuit against a prominent plaintiffs' expert in hundreds of talcum powder cases.

Dr. Jacqueline Moline became one of Johnson & Johnson's primary targets after publishing studies in 2020 and 2023 that linked the cause of mesothelioma to cosmetic talcum powder. The 2020 research was based on 33 individuals that Johnson & Johnson, through subpoenas and in several talc lawsuits, maintained had other potential exposures that could have caused their mesothelioma.

A Johnson & Johnson subsidiary sued Moline in 2023, but U.S. District Judge Georgette Castner, in the District of New Jersey, dismissed the case last year. In 2025, Johnson & Johnson sought to reopen its case and, on Monday, Castner issued a certification of intent to grant that motion. She gave no explanation.

"The court correctly decided that the company is entitled to pursue its claims against plaintiffs' expert who fomented junk science with false claims regarding the company's talc powder products," Johnson & Johnson Worldwide Vice President of Litigation Erik Hass said in a statement.

"The expert concealed the facts demonstrating the falsity for years, until ordered to comply with discovery requests in related litigation," Hass continued. "Such documented defamation and deception are exactly why the Supreme Court deemed it necessary to revise the Federal Rules of Evidence to mandate that judges undertake a stringent gatekeeping function to hold plaintiffs to their burden of proving that the 'studies' cited as support for their opinions are reliable and are reliably applied."

Moline's lawyer, Kevin Marino, of Marino, Tortorella & Boyle in Chatham, New Jersey, said, "The court has signaled its intention to permit J&J to file an amended complaint against Dr. Moline. We are confident that pleading will fare no better than their original complaint—and no better than they have fared in the talc trials that have led to literally billions of dollars in verdicts against them."

In mesothelioma talc trials last year, juries in California and Maryland awarded Johnson & Johnson verdicts totaling [\\$966 million](#) and [\\$1.5 billion](#).

'Additional Evidence Has Now Come to Light'

Johnson & Johnson's subsidiary filed its suit following a 2022 ruling by US. District Judge William Osteen of the Middle District of North Carolina allowing another cosmetic talc manufacturer, American International Industries, to obtain the name of one of the 33 individuals in Moline's report. The judge found that the individual made a workers' compensation claim for asbestos

exposure other than from cosmetic talc, a finding that had “direct bearing on the study’s credibility.”

But Castner, in dismissing the case, concluded that Moline’s statements were scientific conclusions more akin to opinions than actionable false representations.

In its [motion to set aside the judgment](#), Johnson & Johnson subsidiary Pecos River Talc cited a court order requiring Moline to release the names of the 33 individuals in her 2020 study, titled “Mesothelioma Associated with the Use of Cosmetic Talc.” The newly uncovered names, which Moline falsely stated had no exposure to asbestos other than cosmetic talc, showed that about half of them were exposed to asbestos by smoking cigarettes or from insulation and piping at their homes, workplaces, and schools.

In 2024, after the case was dismissed, a New York appeals court allowed Johnson & Johnson to subpoena Moline and her employer, Northwell Health Inc., to obtain the names of the individuals in both reports. And, in 2025, U.S. District Judge Jamar Walker of the Eastern District of Virginia refused to dismiss a trade libel claim Johnson & Johnson’s subsidiary brought against Dr. Theresa Emory and two other plaintiffs’ experts whose 2020 report linked mesothelioma to cosmetic talc.

Then, on Oct. 10, a federal judge in New York’s Southern District denied Moline’s motion to quash a subpoena in the Emory case. Although not a party in that case, and despite testifying otherwise on July 14 in a separate talc case, evidence revealed Moline had emailed Emory and the others, prompting U.S. District Judge Paul Engelmayer to conclude there was “sound reason to question whether her deposition answers were false and misleading.”



“Additional evidence has now come to light confirming that Dr. Moline made objectively false statements of fact in her article to promote ‘junk science’ and then lied under oath in an attempt to conceal her conduct,” Peter Harvey, of Patterson Belknap Webb & Tyler, in New York, wrote in a Nov. 4 supplemental brief for Pecos River Talc. “Dr. Moline’s new deposition testimony now confirms both that the statements in her article are objectively false

Peter Harvey, with Patterson Belknap Webb & Tyler. Courtesy photo and that the process she used for the article was designed to deliberately disregard evidence of non-talc exposures.”

Specifically, he wrote, Moline coordinated with Emory and others, as well as plaintiffs’ firm Simon Greenstone Panatier, to generate “science” that could be cited in litigation.

“In fact,” Harvey wrote, “the article was designed to bolster her litigation opinions that represent a significant source of her income.”

Moline, in response, denied the claims.

Moline wrote, “Beyond being unsupported by Dr. Moline’s deposition testimony, none of these arguments undermines the court’s sound opinion.”

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Judge signals limits on Edison executive pay discovery in Eaton Fire cases

DJ [dailyjournal.com/articles/389296-judge-signals-limits-on-edison-executive-pay-discovery-in-eaton-fire-cases](https://www.dailyjournal.com/articles/389296-judge-signals-limits-on-edison-executive-pay-discovery-in-eaton-fire-cases)

Los Angeles County Superior Court Judge Laura A. Seigle

A Los Angeles judge indicated Thursday she will narrow a discovery dispute between Eaton Fire victims and Southern California Edison, as plaintiffs press for records they claim show executive compensation and rate-base decisions could have prioritized profits over safety in ways that contributed to the fire's ignition.

Edison has denied responsibility for the Jan. 7, 2025, fire but has instituted an out-of-court, voluntary settlement program.

"We're not going to have a trial based on some executive and how much they get paid," Los Angeles County Superior Court Judge Laura A. Seigle told the attorneys at a hearing.

"I'm not excluding it all, because I understand you are going to have experts and things are going to develop, but we're balancing people's private information ... and that's where I'm trying to come up with something that does not invade people's private information."

Pending is a motion to compel, filed by multiple firms representing the individual plaintiffs, which Seigle said she would rule later in the day. An order was not issued by press deadline, but the judge said she was "going to have an order based on what I said."

As argued in their motion, the plaintiffs - represented at the hearing by Singleton Schreiber partner Gerald B. Singleton and Robins Cloud LLP partner Bill Robins - are seeking documents related to Edison's rate-base calculations submitted to the California Public Utilities Commission, along with records concerning executive incentive compensation and safety-related bonus deductions.

They contend the materials could support claims that Edison improperly kept long-idled transmission equipment in place and rewarded executives in ways that prioritized "profits over public safety," bolstering claims for negligence and punitive damages.

Edison, represented by Hueston Hennigan LLP discovery counsel Annie Banks, countered that the requests were overbroad, irrelevant and intrusive - particularly where the plaintiffs seek individualized compensation information.

"If anything ... the information that's publicly available gives the plaintiffs what they need," Banks said, citing publicly filed safety performance reports and other related utility filings.

"The math behind [the utility's policies] isn't relevant for determining whether or not some different amount of weighting would have prevented the fire from occurring."

In questioning the relevance of the discovery request, Seigle first focused on the demand for documents showing assets Edison relied on when seeking a rate of return from the state's utilities commission. The plaintiffs argue they need documentation confirming whether the Mesa-Sylmar transmission circuit - including Tower 208, which they allege is tied to the fire's origin - was included in Edison's rate-base application.

The judge said she was not inclined to allow sweeping discovery into Edison's entire rate-base filing or its internal calculations, describing that approach as excessive and likely to spark privilege disputes.

"If it is correct ... that these two assets were not used in calculating this base rate request ... we just need to get that information out and take it off the table," Seigle said. "If they were used, then we'll figure out where to go from there."

After questioning how utilities calculate rate base and which assets qualify as "used and useful," Seigle said she was inclined to require Edison to produce documents sufficient to show which transmission assets it relied on when seeking a rate of return in its 2023 application. The scope, she indicated, would be limited to transmission assets rather than all company property.

Turning to the executive compensation requests, Seigle expressed skepticism that delving into individualized pay records would materially advance the case, calling plaintiffs' theory "pretty tangential" and noted the privacy interests implicated by performance and incentive information.

"It's a long chain of what ifs and maybes," Seigle added. "I don't think this goes to central issues in any direct way."

The plaintiffs pointed to certain publicly filed safety performance reports, arguing executive compensation is supposed to be tied to safety metrics and that additional discovery is needed to understand how safety deductions are calculated.

Seigle suggested she was not foreclosing all discovery in that area but signaled she would limit it to high-level policy information rather than individualized pay data.

Banks urged Seigle to deny the motion entirely, arguing the request would spiral into a case unrelated to whether Edison equipment caused the fire.

The judge said her order would clarify the scope and timing of any required production, as the parties discussed limiting any compensation-related disclosures to 2024, prior to the *Eaton Fire. Gurse v. Southern California Edison et al.*, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#389296

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Litigation

Manage Newsletters

Student Borrowers Sue Loan Servicer for Mishandling Accounts

Jan. 9, 2026, 8:10 AM PST

Summary by Bloomberg AI

AI Generated



- A lawsuit was filed by federal student loan borrowers against the Missouri Higher Education Loan Authority, alleging it mishandled accounts by failing to properly implement a pandemic-era economic relief program.
- The borrowers claim MOHELA inflated monthly bills, failed to send timely billing statements, and didn't properly implement the SAVE Act, a federal safety net program.
- The plaintiffs are seeking damages, specific performance of loan contracts, a permanent injunction, and restitution, alleging MOHELA breached its contractual responsibilities and violated consumer protection laws.

A Missouri loan servicing company mishandled millions of accounts by failing to properly implement a pandemic-era economic relief program, according to a lawsuit filed by federal student loan borrowers.

The borrowers filed a proposed class action against the Missouri Higher Education Loan Authority in the US District Court for the Eastern District of Missouri Thursday, saying it inflated monthly bills, failed to send borrowers timely billing statements, and didn't properly implement a 2023 federal safety net program, the SAVE Act.

MOHELA is one of the largest servicers of student loans guaranteed by the federal government. Originally created by Missouri lawmakers and run under a US Education Department contract, it has expanded into the national market. As of mid-2024, it serviced about \$380.6 billion in loans covering more than eight million borrowers.

However, the US Department of Education has withheld funds from it after finding improprieties, and fraud-related lawsuits are pending in federal courts stretching from Illinois to Pennsylvania.

Known as a "loan servicer," MOHELA is charged with functions such as billing, collecting, setting up repayment plans, processing, and engaging in customer service. It's often a borrower's only point of contact, according to the plaintiffs.

Borrowers can opt into income-driven repayment plans, such as the Revised Pay As You Earn plan, which consider their incomes and family situations. The Saving on a Valuable Education plan, a Biden administration proposal since eliminated, revised the pay as you earn plan in 2023 to account for conditions affected by the Covid-19 pandemic. It increased the income-exception threshold, limited unpaid interest from accruing, and shortened the time period for loan forgiveness.

But MOHELA didn't automatically transfer borrowers from the RPAYE plan to the SAVE plan, meaning many of them didn't get the income-exemption threshold increase or the zeroed-out interest rate during the relevant time period, the plaintiffs said.

These "servicing failures and the subsequent mishandling of borrower accounts constituted breaches of MOHELA's contractual responsibilities under both its servicing contracts" with the DOE and borrowers' federal contracts, the plaintiffs said.

The plaintiffs also said MOHELA violated various states' consumer protection laws.

They are seeking treble, punitive and exemplary damages; specific performance of the loan contracts, a permanent injunction, and restitution.

MOHELA didn't immediately respond to a request for comment.

Lieff Cabraser, Heimann & Bernstein LLP, Paul LLP, and Berman Tabacco represent the proposed class.

The case is Gibbs v. Higher Educ. Loan Auth. of Mo. , E.D. Mo., No. 26-cv-30, complaint filed 1/8/26 .

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PepsiCo and Walmart Face Price-Fixing Litigation Surge After FTC Unseals Data

Law.com Radar detected at least five antitrust class actions filed in New York and California federal courts following a U.S. judge's order that compelled the Federal Trade Commission to file public documents showcasing why former FTC Chair Lina Khan pursued a rare Robinson-Patman Act case against PepsiCo alleging the beverage giant unlawfully favored Walmart.

January 08, 2026 at 06:07 PM By  **Sulaiman Abdur-Rahman**



Grovetown, Ga USA - 08 30 23: Walmart retail store interior Pepsi pallet display various soft drinks. Credit: billtster/Adobe Stock

Beverage maker PepsiCo Inc. and retail giant Walmart Inc. have been named as codefendants in multiple antitrust class actions alleging the companies conspired to artificially inflate the price of Pepsi, Mountain Dew and other iconic soft drinks in violation of the Sherman Act.

A December 2025 ruling by U.S. District Judge Jesse M. Furman of the Southern District of New York allowed consumer and retail plaintiffs to access previously redacted Federal Trade Commission materials to file a litigation surge alleging a price-fixing conspiracy in the U.S. soft drinks market.

Law.com Radar detected at least five complaints filed in New York and California federal courts following [Furman's order](#) that compelled the FTC to file public documents showcasing why former FTC Chair Lina Khan pursued a rare Robinson-Patman Act antitrust case against Pepsi.

The FTC at the end of the Biden administration filed a heavily redacted complaint on the public docket alleging Pepsi unlawfully favored Walmart in the resale of Pepsi soft drinks in violation of the RPA.

President Donald Trump's FTC chair Andrew Ferguson pushed the agency to voluntarily dismiss the Biden-era complaint last May, citing a lack of evidence to support the core allegations.

The FTC's [factual allegations](#) came to light on Dec. 11, 2025, when the agency complied with Furman's order to file largely unredacted documents detailing how Pepsi's alleged favoritism toward Walmart harms competition and consumers who buy Pepsi soft drink products.

Schonbrun Seplow Harris Hoffman & Zeldes on behalf of plaintiff consumers filed a [31-page complaint](#) against Pepsi and Walmart in the U.S. District Court for the Southern District of New York on Dec. 15, 2025, seeking treble damages and injunctive relief for alleged Sherman Act violations.

Similar claims have been filed by Cohen Milstein Sellers & Toll in a [77-page complaint](#) filed on behalf of consumers; a [23-page complaint](#) filed by Berger Montague on behalf of plaintiff Redner's Markets Inc., an [18-page complaint](#) filed by Schneider Wallace Cottrell Kim on behalf of consumers, and a [23-page complaint](#) filed by Nussbaum Law Group and Rupp Pfalzgraf on behalf of plaintiff Emporium Food Store LLC.

"While we can't comment on pending litigation, PepsiCo continues to operate in compliance with applicable laws and remains committed to providing all customers with fair, competitive and nondiscriminatory pricing, discounts and promotional value, regardless of size or channel," a PepsiCo spokesperson said Thursday in a statement shared with Law.com.

"We are aware of the litigation," a Walmart spokesperson said Thursday in a separate statement. "We remain committed to negotiating on behalf of our customers so we can deliver value and everyday low prices."

The maker of Pepsi, Mountain Dew, Starry, Bubly, Aquafina, Lipton, Pure Leaf, Gatorade and Rockstar beverages was represented by Gibson, Dunn & Crutcher in the now-dismissed FTC lawsuit.

Katherine Van Dyck of KVD Strategies and Amanda Lewis of Cuneo Gilbert & LaDuca on behalf of the nonprofit Institute for Local Self-Reliance joined the FTC's litigation as an intervening party and

filed a partially granted motion asking Furman to unseal the FTC's [heavily redacted Biden-era complaint](#).

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. [Click here](#) to get started and be first to act on opportunities in your region, practice area or client sector.



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Securities

Insight

False Claims Act Enforcement in 2026 to Focus on DEI, AI Fraud

Jan. 9, 2026, 1:30 AM PST

The enforcement landscape entering 2026 points to sustained False Claims Act activity across traditional health care fraud, AI-enabled misconduct, civil rights-based claims, customs and tariff fraud, and expanding theories of investor liability.

The US Department of Justice's institutional investments also point to faster case development and more targeted priorities.

Recipients of federal funds, including health-care companies, importers, and private equity owners should expect stepped-up scrutiny, broader theories of liability, and a more integrated government toolkit that includes cross-agency coordination.

'Traditional' Health Fraud

The DOJ-Health and Human Services FCA Working Group launched in July formalized shared investigative strategies and prioritization. The collaboration reinforces DOJ Criminal Division statements that waste, fraud, and abuse—especially within federal health care programs—remain top-tier priorities.

Kickback risks tied to products or services reimbursed by federal programs and price-reporting misconduct are squarely in focus.

What will be different in 2026 is velocity and posture. The Working Group is designed to streamline referrals, align civil and criminal remedies, and channel whistleblowers toward priority theories, while positioning the government to initiate matters absent relators where constitutional challenges to qui tam remain in play.

For providers, manufacturers, and distributors, that means greater odds of government-originated inquiries, earlier data-driven issue spotting, and enhanced coordination across agencies. Health care providers, manufacturers, and distributors should:

Refresh risk assessments and tighten controls on arrangements tied to federal reimbursement, especially referral relationships, patient support programs, discounts and pricing, hub services, and data- or outcomes-based contracts.

Stand up analytics aligned to DOJ/HHS priorities, such as outlier utilization, coding/billing anomalies, copay assistance, price-reporting variances.

Recalibrate training and documentation involving medical necessity and fair-market value.

Health Care AI

Artificial intelligence is reshaping clinical documentation, coding, and claims workflows—and with it, fraud risk. The Working Group has flagged AI-driven electronic health records, or EHRs, manipulation as a top enforcement priority.

Expect 2026 to bring more scrutiny of generative and predictive tools embedded in EHRs where automated prompts, defaults, or nudges could drive claims submissions for medically unnecessary services or services never provided.

Recent enforcement touchpoints illustrate the playbook. In 2025, we saw EHR systems influencing prescribing behavior and investigations probing whether generative technologies facilitated Anti-Kickback Statute and FCA violations. On the payer side, criminal resolutions tied to AI-enabled Medicare Advantage enrollment practices confirm that targets include both provider- and plan-side conduct.

Meanwhile, the government is scaling AI as an enforcement weapon. The 2025 National Health Care Fraud Takedown, which uncovered over \$14.6 billion in fraud, provides a glimpse of what is to come from initiatives like DOJ's Health Care Fraud Data Fusion Center.

Health care organizations should test and document AI use around EHR prompts and map algorithm provenance. Demonstrated explainability, guardrails against inflated uses, and monitoring aligned to DOJ/HHS priorities will better position organizations to respond to inquiries.

DEI Fraud

The DOJ's Civil Rights Fraud Initiative reframes compliance as a fraud-and-abuse exposure pathway wherever federal funds are in play.

Paired with DOJ's July guidance for recipients of federal funding that catalogs unlawful discriminatory practices, such as granting preferential treatment on protected characteristics, the initiative operationalizes Executive Order 14173's mandate to end unlawful discrimination and restore merit-based processes.

Early resolutions with public universities demonstrate the deterrent effect of the initiative and the government's ability to secure corrective action and monetary payment without litigating FCA claims.

The 2026 risk is broader: As the initiative matures and political priorities evolve, expect the DOJ to use civil investigative demands, or CIDs, and, where needed, file FCA complaints against federal fund recipients who resist the Trump administration's rollback of diversity, equity, and inclusion policies.

Institutions receiving federal funds or operating in federally reimbursed markets—higher education, health systems, research entities, and state or local programs—should review their FCA risk assessments with an eye towards their DEI initiatives and refresh their policies and training against DOJ guidance.

Customs, Tariff Fraud

Tariff headwinds and evolving trade rules are fueling an FCA surge targeting customs underpayments.

DOJ's intervention in a complaint against an apparel importer—alleging dual-invoice undervaluation schemes—sits alongside several multi-million-dollar settlements for evasion, falsified invoicing, and origin misstatements. Critically, the US Court of Appeals for the Ninth Circuit's *Island Industries v. Sigma* decision affirmed that FCA liability can coexist with 19 U.S.C. § 1592, greenlighting FCA as an alternative recovery path for duty evasion.

The cross-agency Trade Fraud Task Force and CBP's increasing use of AI to detect illicit transshipment further expand the government's toolkit. Expect more matters probing valuation, tariff classification, country-of-origin misstatements, and supply-chain representations—especially where corporate structures and third-party suppliers complicate traceability.

Importers should focus more on diligence and compliance efforts, especially where supply chains touch higher-risk transshipment hubs. Like CBP, importers should consider leveraging advanced screening and supply chain mapping solutions to further support origin determinations, monitor supplier routings, and document compliance measures.

Investor Liability

The government's 2025 emphasis on holding investors and sponsors accountable for portfolio company FCA violations is likely to broaden in 2026, particularly in the health care space where private equity owners influence operations and compliance spend. Theories range from causing false claims to be submitted to derivative retaliation exposure in qui tam cases.

Although private equity owners have defended certain retaliation claims successfully, the overall risk trend points toward closer scrutiny of governance levers, board oversight, acquisition diligence, and post-close integration practices that affect billing and regulatory compliance.

Private equity owners should document proactive oversight by:

- Tightening pre-close and confirmatory diligence on billing/coding
- Standing up an independent compliance function with direct board access
- Set post-close testing and remediation milestones
- Using board dashboards with deep-dives and clear escalation/recusal protocols

Running targeted audits, training, and strong whistleblower protections

Rigorous, contemporaneous records will help show you neither caused nor ignored violations and didn't undermine compliance independence.

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Ohio HB 6 corruption defendants to SCOTUS: Bribes are free speech

 highlandcountypress.com/index.php/news/ohio-hb-6-corruption-defendants-scotus-bribes-are-free-speech

[In The News](#) 9 January 2026

By Kathiann M. Kowalski

Canary Media

Ohio Capital Journal

The only two individuals who have stood trial for their role in the largest utility corruption scandal in Ohio's history have asked the U.S. Supreme Court to review their cases and reverse their convictions.

If the court accepts their case and ultimately rules in favor of the defendants, it would also likely affect two former FirstEnergy Corp. officials currently facing criminal charges in federal court as part of the multiyear House Bill 6 bailout scheme.

Such a precedent could have implications far beyond the state — and beyond the utility sector, too.

A win for the defendants could thwart any attempt to bring criminal charges against other individuals or companies that make large campaign contributions to a federal or state candidate in return for official action, such as awards of government contracts or preferred access to natural resources.

As part of the HB 6 saga, FirstEnergy and its affiliates funneled approximately \$60 million through dark money groups to the tax-exempt organization Generation Now, which acted in coordination with Larry Householder's official campaign to win reelection to the Ohio House of Representatives in 2018 and become speaker in 2019. In return, Householder used his power as speaker to push through a 2019 law to bail out two nuclear plants and two coal plants. Householder, lobbyist Matt Borges, and others then spent millions more of the FirstEnergy companies' money to block a referendum effort to wipe out the law.

In sum, the scandal has cost Ohio ratepayers approximately half a billion dollars and delayed the state's energy transition by gutting standards for energy efficiency and renewables and subsidizing the two 1950s-era coal plants.

Federal agents arrested Householder, Borges, and three others in July 2020, and the government charged them with violating the federal Racketeer Influenced Corrupt Organizations Act, or RICO. Although two individuals and Generation Now entered into plea deals and another defendant died, Householder and Borges went to trial. Jurors found them guilty in March 2023. That June, U.S. District Court Judge Timothy Black sentenced Householder to 20 years in prison. Borges received a five-year sentence.

FirstEnergy admitted its criminal liability in a 2021 court filing. Two of its former executives now face criminal charges in both federal and state courts, with the trial on the state charges set to start late this month. Meanwhile, the Sixth Circuit Court of Appeals upheld both Borges' and Householder's convictions.

In petitions filed December 22, both convicted felons ask the U.S. Supreme Court to review their cases. Householder basically argues that the First Amendment protects companies giving money to candidates, and maintains that he can't be criminally liable because his actions in connection with HB 6 carried out a campaign promise to FirstEnergy.

"That FirstEnergy had expectations attendant to the millions of dollars they donated to Householder's 501(c)(4) is echoed by millions of Americans who make far more modest contributions to candidates — but who also expect that their candidate will come through for them," the petition states. Letting the convictions stand would chill "the free exchange of ideas that the First Amendment protects, particularly in the arena of political speech," it adds.

Borges makes similar arguments and then says that if Householder can't be criminally liable, then neither can Borges be guilty of a criminal conspiracy under RICO.

The Department of Justice currently has until January 28 to respond to the defendants' petitions. Four yes votes will be required from the sitting justices for the full court to hear the case.

Neither of the petitions notes that FirstEnergy's contributions and any promises made by Householder were all secret. Money went through groups that don't have to publicly report their donors. And Householder did not publicize an intent to push through a nuclear and coal bailout law that would have cost Ohioans more than \$1 billion if all parts of it had gone into effect.

The petitions also gloss over the fact that Generation Now needed to avoid coordination with Householder's campaign in order to avoid federal reporting and campaign finance limits, under the Supreme Court's infamous Citizens United v. Federal Elections Commission decision. Evidence at trial also showed that Householder spent some of the money for his personal benefit.

Although review of the cases is discretionary, the defendants' arguments are already raising ire among some critics.

"Householder and Borges lamely suggest their political bribery, for which a jury of their peers found them guilty, should be excused because corruption 'happens every day.' They hope the Supreme Court will turn a blind eye to bribery," said Dick Munson, a former lobbyist for the Environmental Defense Fund who examined the HB 6 cases and other utility scandals in his 2025 book.

Yet, several decisions by the Supreme Court under the leadership of Chief Justice John Roberts have already weakened federal law on corruption.

After the Citizens United case paved the way for companies to give unlimited amounts to organizations that don't have to publicly report their donors, those organizations became ripe for use in concealing the true purpose of funds. David DeVillers, former U.S. attorney for the Southern District of Ohio, called the case against Householder, Borges, and the others "likely the largest bribery money-laundering scheme ever perpetrated against the people of the state of Ohio."

Ashley Brown, a former commissioner of the Public Utilities Commission of Ohio who was the founding executive director of the Harvard Electricity Policy Group, also noted a more recent trend of the current Supreme Court "to just completely disregard findings of fact in the lower courts, casually casting them aside in order to make what I regard as policy, or perhaps simply partisan, statements."

Consequently, he said, "what may appear to be a slam dunk in the Householder case to most of us may be seen quite differently by the SCOTUS majority."

* * *

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'Outrageous' Bogus Claims In YouTube Privacy Deal Irk Judge

By **Bonnie Eslinger**

Law360 (January 8, 2026, 6:45 PM EST) -- A California federal judge Thursday signed off on Google and YouTube's \$6 million deal to end claims alleging they unlawfully collected biometric data, while urging lawyers to provide him with information about organizations behind an "outrageous" flood of fake settlement claims, vowing to refer them to the U.S. attorney's office for investigation.

U.S. District Judge James Donato made the statements during a hearing in San Francisco before granting final approval to the settlement in the Illinois Biometric Information Privacy Act case.

The putative class action, brought nearly three years ago on behalf of about 21,000 Illinois YouTube users, accused Google's YouTube of violating BIPA by capturing and saving scans of individuals' faces from YouTube videos through video editing tools, without obtaining the required disclosure or written consent. Google and YouTube deny that such scans were collected.

David Lietz of Milberg Coleman Bryson Phillips Grossman PLLC, who is representing the plaintiffs, told Judge Donato at the start of Thursday's hearing that the claims administrator used a "robust" process to work through the deluge of fraudulent claims — about 300,000 — that were filed.

"You'd expect something like this where we had a media notice program that did get almost 2 million impressions," Lietz said.

In one instance, the claims administrator ruled out about 12,000 claims that were submitted by paper from the same "clever" outfit that used a handwriting font they developed, the lawyer noted.

The judge asked if the entities filing the mass claims were U.S. entities, and Lietz said the administrator did not investigate that.

"You should be making referrals to me so I can contact the U.S. attorney's office," Judge Donato replied. "If these shops are within the purview of the United States laws, you need to tell me, because that's outrageous."

The judge later inquired if the claims administrator had conducted IP searches for the suspected fraudulent claims to determine if they originated outside the U.S.

Lietz answered that that was done "to some measure."

Judge Donato said if the administrator received "15,000 claims from a bad actor overseas, it should be pretty easy to identify that it came from outside the U.S."

Lietz noted the administrator was able to eliminate the fraudulent claims through a process that began with sending out "deficiency" notices to nearly all the claimants asking for more information. More than 340,000 notices were sent, with only 341 claimants being excluded, the attorney said.

"A lot of fraudsters will not respond to a deficiency notice," he told the court.

The claims administrator also employed other tools, including reviewing the IP addresses and the email addresses used by the claimants, Lietz said.

Judge Donato expressed concern that nearly everybody who filed a claim received the notice.

"My concern is, as a class member who has a legitimate claim won't have the energy ... to say it twice," the judge said. "At that point, I probably will just say, 'Oh, forget it.'"

Lietz said he didn't think the process resulted in the loss of any legitimate claims.

"We gave people the opportunity to really prove their claims by submitting evidence of the videos that they looked at and things of this nature," he told the judge.

In the end, 4,500 claims were determined to be valid, marking a claims rate of 22.5%, the lawyer added.

Judge Donato called that "better than the usual rate" but he "would have expected it to have been higher" in light of the social media campaign Lietz touted.

The plaintiffs counsel argued that it was a "great" claims rate, but the judge pushed back.

"A better claims rate, but it's not a great claims rate," Judge Donato said. "A great claims rate is when the majority of class victims get paid."

Lietz said it was the same rate reached in a **BIPA deal** struck with Facebook.

The judge asked how much each claimant would receive, and Lietz said it would be just over \$912.

Judge Donato called that "pretty good," adding, "It's a function of low demand, but it's not bad."

During Thursday's hearing, the judge also approved a 25% cut of the \$6 million deal to go to the plaintiffs' attorney fees, about \$1.5 million.

The case was initially filed by YouTube user Brad Marschke in August 2022 in Illinois federal court, and the parties agreed to transfer it to California's Northern District in October that year.

Then, in June 2023, Judge Donato allowed the plaintiffs to substitute in a new named plaintiff, Nathan Colombo, after hearing Marschke no longer wished to go forward with the litigation due to the time commitment necessary to participate in the discovery process.

The judge subsequently denied the tech companies' motion to dismiss, saying the operative complaint **plausibly alleged** that YouTube's face blur and thumbnail generator tools capture and store scans of face geometry.

YouTube had argued that the plaintiff failed to allege the app data qualifies as biometric identifiers or information under BIPA, since it isn't linked to a name or an email.

In the motion for **preliminary approval**, the plaintiffs called the \$6 million deal "a very good recovery ... considering the substantial risks at class certification, summary judgment, and trial, and compares favorably with other approved BIPA settlements."

This is not Google's first time settling claims under BIPA. In 2022, a Cook County, Illinois, judge granted approval to a **\$100 million settlement** between the search giant and roughly 420,000 Illinois residents from seven class actions who accused the company of collecting and using their facial data through Google Photos in violation of the state's biometric privacy law.

Google also struck a deal to end claims in Illinois federal court alleging it illegally harvested the biometric data of **grade school students** through the company's Workspace for Education software.

The plaintiffs are represented by Stuart A. Davidson, Alexander C. Cohen and Aelish M. Baig of Robbins Geller Rudman & Dowd LLP and David K. Lietz, Gary M. Klinger, Alexander E. Wolf and John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC.

YouTube and Google are represented by Lauren J. Tsuji, Susan D. Fahringer, Sunita Bali, Nicola C.

Menaldo, Hayden M. Schottlaender and of Perkins Coie LLP.

The case is Colombo v. YouTube LLC et al., case number 3:22-cv-06987, in the U.S. District Court for the Northern District of California.

--Editing by Covey Son.

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Wolfspeed Securities Class Action Sent To NC Federal Court

By **Vince Sullivan**

Law360 (January 8, 2026, 6:42 PM EST) -- A securities class action case against chipmaker Wolfspeed Inc. was transferred to North Carolina federal court Wednesday following a New York judge's order directing the movement of the consolidated investor suits over alleged misrepresentations about the company's financial projections.

U.S. Magistrate Judge Mitchell J. Katz issued an order in late December transferring the cases from the federal court in Syracuse where they were initially filed and consolidated, to the Middle District of North Carolina, saying the plaintiffs' choice of venue is given diminished weight under the circumstances.

Wolfspeed shareholder Gary Zagami filed a putative class action against the company and two executives alleging they misrepresented adverse performance information about future financial projections that, when revealed, led to an overnight drop of nearly 40% in Wolfspeed's stock price in November 2024.

Other suits were later filed and consolidated with the Zagami action, and the defendants moved for transfer of the suits to North Carolina where Wolfspeed is headquartered and where its books, records and most relevant witnesses are located.

In his December decision on the transfer motion, Judge Katz said plaintiffs' choice of venue is usually given deference but in the case of a class action suit where the plaintiffs don't live in the chosen venue, less weight is granted to that choice.

"The lead plaintiffs in the Zagami action do not reside in New York and they seek to represent a class dispersed throughout the United States," the December ruling said.

He also said the convenience of witnesses in the case weighs in favor of transfer, as the majority are local to North Carolina. Relevant documents, including the regulatory filings that contain the alleged misrepresentations, are also located in or were prepared in North Carolina despite the location of a Wolfspeed facility in upstate New York being at the center of the performance issues, the ruling said, slightly weighing in favor of transfer.

Representatives for the parties could not immediately be reached for comment late Thursday.

Wolfspeed, which makes silicon carbide computer chips and semiconductors, filed for Chapter 11 protection in June 2025 with \$6.7 billion in debt and a prepackaged plan of reorganization to slash a significant portion of its liabilities. In September, a Texas bankruptcy judge confirmed its plan that cut \$4.6 billion of debt from the balance sheet but granted 95% of its reorganized equity to lenders, with prebankruptcy shareholders retaining a 5% stake in the business.

According to the Zagami complaint, then-CEO Gregg A. Lowe and Chief Financial Officer Neill P. Reynolds allegedly made repeated misrepresentations about the potential financial performance of Wolfspeed's Mohawk Valley, New York, manufacturing facility that were followed by a large disparity between projections and actual performance. The complaint alleges that when Wolfspeed announced its future guidance in November 2024, it was well below expectations and caused the company's share price to fall from \$13.71 per share to \$8.33 per share after one trading day.

Wolfspeed and the individual defendants are represented by Michael G. Bongiorno, Tamar Kaplan-Marans and Nicole E. Prunetti of Wilmer Cutler Pickering Hale & Dorr LLP.

The Zagami lead plaintiffs are represented by Samuel H. Rudman and Alan I. Ellman of Robbins Geller Rudman & Dowd LLP, Jeremy P. Lieberman and Michael J. Wernke of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

The lead case is Zagami, et al., v. Wolfspeed Inc., et al., case number 1:26-cv-00018, in the U.S. District Court for the Middle District of North Carolina.

--Additional reporting by Ben Zigterman. Editing by Alex Hubbard. Editing by Alex Hubbard.

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Bernstein Litowitz Shakeup Brings In Ross Aronstam Atty

By **Rose Krebs**

Law360 (January 8, 2026, 4:31 PM EST) -- Bernstein Litowitz Berger & Grossmann LLP announced Thursday it has bolstered its corporate governance practice by bringing on a Ross Aronstam & Moritz LLP attorney as it reorganizes its governance department following the contentious departure of a group of attorneys for a boutique firm.

Anthony M. Calvano has joined Bernstein Litowitz's Wilmington, Delaware, office as a partner and will focus on prosecuting corporate governance and shareholder rights' litigation for institutional investor clients, according to the firm.

Calvano told Law360 on Thursday he is excited to join the Bernstein Litowitz team and work alongside Gregory V. Varallo and Mark Lebovitch. He said he previously worked with Varallo at Delaware firm Richards Layton & Finger PA and had done some case work before with Lebovitch as well.



Anthony Calvano

Getting to learn from "great lawyers" and draw on Bernstein Litowitz's platform was "an opportunity that was too good to pass on," Calvano said. "It seemed like a really good opportunity to get to learn from people that I have a lot of respect for."

Calvano was an associate at Delaware firm Ross Aronstam for roughly five years over two stints. In 2024, he clerked for Delaware Chancery Court's Vice Chancellor J. Travis Laster. Earlier in his career, Calvano spent about three years at Richards Layton. He earned a law degree from the University of Notre Dame, the Law School.

"Anthony's arrival is a major addition to our governance platform," Varallo said in a statement. "He is a highly respected Delaware trial lawyer with exceptional judgment and deep experience litigating exactly the kinds of governance and investor-driven cases that define our practice."

Varallo added that Calvano's hiring bolsters the firm's "ability to represent stockholders in the most demanding and consequential governance disputes."

Calvano's move to Bernstein Litowitz comes as the firm is reorganizing after Jeroen van Kwawegen, who had led the corporate governance department, announced last month he **had launched** boutique firm JVK Law and was bringing other attorneys with him.

In a prior statement, Bernstein Litowitz told Law360 that van Kwawegen was fired for "misconduct that was inimical to the best interests of the firm," and his last day with the firm was Nov. 16. But Van Kwawegen told Law360 in an emailed statement last month that he found Bernstein Litowitz's misconduct claims to be "pretextual and disappointing," and that going forward, he expected more of his former colleagues to make the move over to JVK Law.

JVK Law previously said it was bringing partners Christopher J. Orrico, Edward G. Timlin, Andrew Blumberg, Thomas James, Eric J. Riedel, Daniel Meyer and Ben Potts from Bernstein Litowitz. They now all have profiles on JVK Law's website.

Lauren M. Cruz, who was senior counsel at Bernstein Litowitz, has also made the move to JVK Law and is a partner at the firm, according to her profile on the firm's website.

In late December, JVK Law **announced the addition** of a four-attorney team from Robbins Geller Rudman & Dowd LLP, including the firm's New York managing partner, Chad Johnson. Rounding out the team were Noam Mandel, Desiree Cummings and Jonathan Zweig.

Johnson joined JVK Law as co-leader and named partner. The firm has been renamed Johnson Van Kwawegen LLP, but will also use the same initials it used at its launch, JVK Law, according to a news release.

To help "stabilize" the corporate governance group he founded, Lebovitch **returned** to Bernstein Litowitz last month as special governance counsel, having retired from the firm in 2023 to pursue teaching opportunities.

Lebovitch told Law360 in December he was returning to Bernstein Litowitz because of the "sense of pride in what I built and a sense of duty to the clients."

Bernstein Litowitz also announced Thursday it will welcome Tayler D. Bolton later in January as an associate in its Delaware office. Bolton will be joining from Robbins Geller.

"Tayler's deep experience as an investor lawyer will be a welcome addition to the quickly growing team," Varallo said.

Also Thursday, Bernstein Litowitz said it has reorganized its governance department, which is helmed by Varallo and Lebovitch. Varallo also leads the firm's Delaware office.

In addition to Calvano, Bernstein Litowitz said its newly reorganized department of governance includes New York-based partners Rebecca E. Boon, Robert "Rocky" Kravetz and Jeremy P. Robinson, and Los Angeles-based partner Anya Freedman.

The department also has been bolstered by associates with "Delaware-focused expertise," the firm said. Senior associates Mathews de Carvalho and Jonathan D'Errico, who are both based in New York, will expand their roles to practice in the firm's securities fraud litigation group and its department of governance, according to the announcement.

Other "longstanding members" of the governance department include senior counsel Mae Oberste and John Mills; associate Shiva Mohan; and other support staff, the firm said. Oberste is based in Delaware, while Mills and Mohan are in the New York office, according to their firm profiles.

Bernstein Litowitz, which prosecutes class and private actions for individual and institutional clients, has roughly 80 attorneys and offices in Delaware, New York, Los Angeles, Chicago and New Orleans.

--Additional reporting by Daniel Connolly. Editing by Lakshna Mehta.



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Ardent Health Investors Sue Over Revenue Accounting Issues

By **Sydney Price**

Law360 (January 8, 2026, 8:28 PM EST) -- Tennessee-based healthcare provider Ardent Health Inc. was hit with a proposed shareholder class action accusing it of misleading investors about the collectability of accounts receivable and the sufficiency of the company's malpractice liability insurance, saying shares fell over 30% several weeks ago after the company reported disappointing earnings due to those issues.

According to the complaint filed Wednesday by shareholder Dhruv Postiwala, Ardent Health's operating performance is heavily dependent on collecting accounts receivable from the government, patients and private insurers, but the company did not disclose for several months how a new revenue accounting system would impact its reporting.

Ardent Health provides general and specialty services, including internal medicine, general surgery, and emergency services, the complaint states.

The suit alleges the company's professional malpractice liability insurance was insufficient to cover claims throughout the class period, which begins in July 2024. The company knew that its New Mexico market was experiencing "social inflationary pressure in medical malpractice cases the past several years," the suit claims.

Investors learned the truth in Ardent Health's earnings announcement on Nov. 12, 2025, according to the complaint. The company revealed that it had recorded a \$43 million revenue loss in the quarter after determining certain accounts receivable items could not be collected after it transitioned to the new revenue accounting system.

"[The announcement] revealed that the new system 'recognizes reserves earlier in an account's life cycle' compared to the company's prior collectability framework, which 'had utilized a 180-day cliff at which time an account became fully reserved,'" the suit states.

Ardent Health also announced it had slashed its EBITDA, or earnings before interest, taxes, depreciation and amortization, due to "persistent industry-wide cost pressures," including "payer denials."

Ardent Health's earnings announcement also mentioned a \$54 million increase in professional liability reserves "arising from a limited set of claims between 2019 and 2022 in New Mexico," which the company's chief financial officer, Alfred Lumsdaine, attributed to pressure in medical malpractice cases in the state.

On this news, shares of Ardent Health fell \$4.75 each, or about 34%, to close at \$9.30 per share on Nov. 13, 2025, according to the complaint.

In addition to Ardent Health, its CEO Martin J. Bonick and Lumsdaine are individual defendants in the suit.

The suit accuses Ardent Health and the individual defendants of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

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

Postiwala is represented by Wade B. Cowan of Davies Humphreys Horton & Reese PLC and Javier Bleichmar, Ross Shikowitz and Adam C. McCall of Bleichmar Fonti & Auld LLP.

Counsel information for Ardent Health and the individual defendants was not immediately available on Thursday.

The case is Postiwala v. Ardent Health Inc. et al., case number 3:26-cv-00022, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Marygrace Anderson.

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5th Circ. Wary Of Giving Investors Another Go At Lumen Suit

By **Spencer Brewer**

Law360 (January 8, 2026, 10:38 PM EST) -- A Fifth Circuit panel wanted to know why a group of investors should get another shot at a class action against Lumen Technologies Inc. for allegedly covering up its lead-covered copper cables, asking Thursday if the investors told the lower court how they would amend their pleading.

Chief U.S. Circuit Judge Jennifer Walker Elrod asked counsel for the investors if they explicitly told the lower court they could bring something new to the table to show that their assertions that Lumen misled them could go forward. A district court dismissed the suit with prejudice after adopting a magistrate judge's finding that the public already knew about the lead contamination before a series of Wall Street Journal articles brought the issue into public discourse, and the investors appealed.

"Did you tell the district court or the magistrate judge that you could, in fact, plead that they should have known that they couldn't just retire the cables in place at the time?" Judge Elrod asked.

The investors' attorney, Justin D'Aloia of Pomerantz LLP, told the court that if his clients were given the opportunity, they could certainly again plead to refute the magistrate judge's findings. But U.S. Circuit Judge Cory Wilson pushed back, saying that the investors never did what Judge Elrod was asking, because the investors never said exactly what they would plead on a second go round.

"We did not attach a proposed pleading, and we did not walk through all the facts, especially given the fact that we only had 14 days to file our objections," D'Aloia said.

In this case, the investors' attorney said, Lumen decided to litter thousands of miles of toxic waste across the U.S. The lower court found that the industry decided to leave the cables in place because it was safer, and the issue was not a public concern until the Wall Street Journal published a series of articles about it, but the investors take serious issue with that finding, D'Aloia said.

But Lumen's attorney, Lyle Roberts of Allen Overy Shearman Sterling, told the court that the case represents the exact type of case that the Private Securities Litigation Reform Act was created to curb. It's obvious what happened, Roberts said. The Wall Street Journal released its articles, and "the plaintiffs' bar thought it saw an opportunity," he said.

Chief U.S. Circuit Judge Jennifer Walker Elrod and U.S. Circuit Judges Jerry E. Smith and Cory T. Wilson sat on the panel for the Fifth Circuit.

The investors are represented by Justin D. D'Aloia, Jeremy A. Lieberman and Guy Yedwab of Pomerantz LLP, Brian Schall of the Schall Law Firm, and Eric J. O'Bell of O'Bell Law Firm LLC

Lumen is represented by Claire Elizabeth Juneau of Kean Miller LLP and Lyle Roberts, George Anhang and Mallory Tosch Hoggatt of Allen Overy Shearman Sterling.

The case is John McLemore et al. v. Lumen Technologies et al., case number 25-30264, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Jay Jackson Jr.



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9th Circ. Revives Investor Suit Over Webinar Co.'s IPO

By **Sydney Price**

Law360 (January 8, 2026, 4:11 PM EST) -- A unanimous Ninth Circuit panel revived a proposed investor class action over webinar-software company ON24's initial public offering, finding that claims the company misled investors by warning about risks that were already occurring could proceed.

The three-judge panel said in its decision Wednesday that it will revive the investors' claims related to Section 11 of the Securities Act, which holds companies and underwriters accountable for making materially false or misleading statements in registration statements.

The suit, which was dismissed by the U.S. District Court for the Northern District of California in 2023, alleges that ON24's offering documents omitted facts related to the company's material churn, or the rate at which customers discontinue their relationship with the business, occurring before the February 2021 IPO.

The investors, led by investment fund Leadersel Innotech ESG, say that during the COVID-19 pandemic, atypical customers bought ON24's short-term subscriptions and informed ON24 of their intent to either downgrade to lower-cost subscriptions or not renew the subscriptions, but ON24's registration statement only disclosed the customer losses as a potential risk at the time of the IPO.

The district court dismissed these claims, but the Ninth Circuit said the securities law allows them to move forward. At the pleading stage, Section 11 places a "relatively minimal burden on a plaintiff," only requiring that the suit show a material misstatement or omission to establish a prima facie case, according to the Ninth Circuit on Wednesday.

"Accordingly, Leadersel sufficiently alleges that ON24 knew that the risk of material churn and downselling had started to come to fruition before the IPO yet disclosed only that those risks may occur," the Ninth Circuit said.

The allegations, if taken as true, are consistent with the suit's claims that the change in customer base negatively impacted ON24's future growth rate and that the change should have been specifically disclosed, the order states.

Because the U.S. Securities and Exchange Commission's disclosure requirement known as Item 303 mandates that companies disclose any known trends or uncertainties that are likely to materially impact its business, the Ninth Circuit also revived the investors' claim alleging an Item 303 violation.

In the same order, the Ninth Circuit affirmed the district court's dismissal of claims that are based on corporate optimism.

"ON24's belief that it had the opportunity to achieve significant future growth is a forward-looking opinion that would not have misled a reasonable investor," the Ninth Circuit said.

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

U.S. Circuit Judges Mary H. Murguia, Gabriel P. Sanchez and Holly A. Thomas sat on the panel for the Ninth Circuit.

The investors are represented by Alfred L. Fatale, Jonathan Gardner, Charles J. Stiene and David J. Schwartz of Labaton Keller Sucharow LLP, David Bricker of Thornton Law Firm LLP and Lucas E. Gilmore and Reed R. Kathrein of Hagens Berman Sobol Shapiro LLP.

ON24 is represented by Anna Erickson White, Christina Elisabet Dierolf and David Jeremy Wiener of Morrison Foerster LLP.

The underwriter defendants are represented by Charlene Sachi Shimada and Kevin M. Papay of Morgan Lewis & Bockius LLP.

The case is Leadersel Innotech ESG v. ON24 Inc. et al., case number 24-2204, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Patrick Reagan.

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11th Circ. Asked To Undo 'Deeply Flawed' Securities Ruling

By **Emilie Ruscoe**

Law360 (January 8, 2026, 9:01 PM EST) -- Florida-based energy company NextEra Energy Inc. wants the full Eleventh Circuit to reconsider a panel decision to revive an investor lawsuit against the utility operator, asserting that unless undone, the decision would leave the circuit with "the nation's most permissive loss-causation standard."

In its Wednesday petition for en banc rehearing, NextEra told the Eleventh Circuit that last month's panel decision to revive investor claims about political interference at NextEra subsidiary Florida Power and Light Co. "dramatically broadened this court's standard for pleading loss causation."

"Losses caused solely by market speculation — untethered to any allegedly misrepresented facts — can now sustain a securities-fraud claim in this circuit," the energy company argued.

The underlying suit alleges that revelations about Florida Power and Light Co. sent NextEra's share price lower. A Florida federal judge struck down the suit in September 2024, ruling that plaintiffs failed to plead loss causation by not identifying a corrective disclosure from NextEra, but the Eleventh Circuit said the judge had "improperly searched for a singular corrective disclosure" and put too high a burden on plaintiffs at the pleading stage.

On Wednesday, NextEra pushed back on the panel's December **ruling** and argued certain disclosures it made in January 2023 at the heart of the investor claims couldn't be considered corrective disclosures because they didn't introduce "new information that leads to market knowledge that previous statements were false, not mere speculation to that effect."

NextEra cited the appeals court's 2013 holding in **Meyer v. Greene** in support of that assertion, arguing that under that precedent, corrective disclosures are typically a "release of information that reveals to the market the pertinent truth that was previously concealed or obscured by the company's fraud" that is followed by a decline in trading prices for the company's shares.

"Contrary to Meyer, the panel here held that a plaintiff can adequately plead a corrective disclosure merely by alleging that new public information invited the market to 'second-guess' the company's earlier statements," NextEra said.

In support of this assertion, the company argued that its January 2023 filings with the U.S. Securities and Exchange Commission, which included updated risk disclosures about political interference claims it had investigated internally, hadn't actually changed the mix of concrete information available to shareholders.

Though trading prices for the company's shares fell 8.7% following those January 2023 disclosures, the company said, the appeals court's holding failed to distinguish between "negative" news that gives rise to investor speculation and "corrective" disclosures.

The investors allege that trading prices for NextEra's shares fell following certain disclosures relating to accusations that a political consulting firm undertook purportedly improper work on behalf of Florida Light & Power.

For example, the investor suit cites media reports alleging the improper work included supporting "ghost" candidates to siphon votes away from candidates the utility opposed.

NextEra has denied the claims and stated in its public filings that it hired outside law firms to investigate those claims.

One of those probes, from 2021, found no evidence of wrongdoing, according to the company.

In 2023, when NextEra announced in a filing that the second investigation was "substantially complete," the energy company said it believed it wouldn't be found liable for Florida campaign finance violations and asserted that a Federal Election Commission complaint arising from the alleged misconduct shouldn't go forward.

On Wednesday, NextEra argued its disclosure about the wrap-up of the second probe was "substantively the same" as its earlier disclosures.

In September 2024, U.S. District Judge Aileen Cannon **tossed** the investor claims, finding the investors hadn't shown that the decline in trading prices stemmed from NextEra's allegedly corrective disclosures.

But in December, the Eleventh Circuit reversed and remanded that dismissal, finding that the investors leading the suit "identified adequate corrective disclosures, a subsequent price drop, and have plausibly ruled out other explanations."

"Loss causation, though, is not the element to litigate the fraud," the appeals court said in December. "It simply asks whether the loss was proximately caused by the alleged misstatements."

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

For its published December opinion, U.S. Circuit Judges Elizabeth L. Branch, Embry Kidd and Gerald Bard Tjoflat sat on the panel for the Eleventh Circuit.

NextEra is represented by Daniel J. Kramer, Audra J. Soloway, Joshua Hill, David P. Friedman, Kannon K. Shanmugam, William T. Marks, Anna J. Goodman and Anna M. Stapleton of Paul Weiss Rifkind Wharton & Garrison LLP and Jordi Carlo Santiago Martinez-Cid and Andy Hernandez of Martinez-Cid Law.

The investor plaintiffs are represented by Jeffrey Craig Block, Jacob A. Walker, Brendan Jarboe and Mark Byrne of Block & Leviton LLP and by Matthew W.H. Wessler, Deepak Gupta, Robert Friedman and Jessica Garland of Gupta Wessler LLP.

The case is Jastram et al. v. NextEra Energy Inc. et al., case number 24-13372, in the U.S. Court of Appeals for the Eleventh Circuit, and the underlying case is Jastram v. Nextera Energy, Inc. et al., case number 9:23-cv-80833, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado and Sydney Price. Editing by Marygrace Anderson.



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Odebrecht To Pay Investors \$17.3M To End Bribe-Scheme Suit

By **Katryna Perera**

Law360 (January 8, 2026, 5:06 PM EST) -- An investment firm and its affiliated trusts will receive over \$17 million from Brazilian engineering conglomerate Odebrecht SA and two subsidiaries to resolve, before a scheduled trial later this month, a suit over an alleged far-reaching bribery scheme, with a New York federal judge ordering final judgment in the suit Thursday.

The **order and final judgment** issued by U.S. District Judge Dale E. Ho states that plaintiff DoubleLine Capital LP and its affiliated trusts will receive approximately \$17.3 million to resolve all claims in the suit.

The suit accused Odebrecht of paying government officials in Brazil and "at least 12 other countries" to help subsidiary Construtora Norberto Odebrecht SA obtain public construction contracts. DoubleLine and two affiliates allegedly purchased a significant quantity of two bonds issued by a separate Odebrecht affiliate and guaranteed by Construtora Norberto Odebrecht between May 2013 and March 2015.

The final judgment, which waives the conglomerate's right to appeal the order, comes after Judge Ho **granted** the plaintiffs' request for summary judgment on elements of their claims over securities fraud and New York state common law fraud last July.

The judge said the plaintiffs established that the defendants knowingly made material misrepresentations that were relied upon. The remaining claims in the suit were scheduled to proceed to trial later this month.

Odebrecht has faced massive fines and legal risks after its bribes were revealed as part of Brazil's "Operation Car Wash," a probe into corruption at state-owned oil firm Petrobras that has significantly widened. Odebrecht and its chemicals affiliate, Braskem SA, agreed in December 2016 to pay **\$3.6 billion** to settle with U.S., Brazilian and Swiss authorities.

In September 2019, U.S. District Judge Gregory H. Woods **tossed conspiracy claims** against Odebrecht, finding no clear indication that Construtora Norberto Odebrecht conspired with Odebrecht to misrepresent profit margins and financial ratios that investors relied on when purchasing securities.

That ruling left a slew of allegations intact, including securities claims alleging violations of Brazilian GAAP — the country's generally accepted accounting principles — along with fraud claims against Construtora Norberto Odebrecht and Odebrecht Engenharia e Construcao SA, another subsidiary, and claims for negligent misrepresentation against all defendants.

Counsel for the plaintiffs declined to comment Thursday, and counsel for the defendants did not immediately respond to requests for comment.

The plaintiffs are represented by Steve W. Berman and Karl P. Barth of Hagens Berman Sobol Shapiro LLP.

The defendants are represented by Victor L. Hou, Thomas S. Kessler and Patrick C. Swiber of Cleary Gottlieb Steen & Hamilton LLP.

The case is DoubleLine Capital LP et al. v. Odebrecht Finance Ltd. et al., case number 1:17-cv-04576, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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Opendoor Investors Get Final OK For \$39M Deal, Atty Fees

By **Katryna Perera**

Law360 (January 8, 2026, 3:13 PM EST) -- An Arizona federal judge has granted final approval of a \$39 million settlement between real estate firm Opendoor Technologies Inc. and its shareholders to resolve their claims that the company overhyped its pricing algorithm software, closing out the litigation that began in 2022.

U.S. District Judge Michael T. Liburdi issued an **order** Tuesday giving the final OK to the deal, finding it to be fair and reasonable and providing immediate relief to the class.

The judge also awarded \$9.75 million, or roughly 25% of the settlement fund, in attorney fees to lead counsel from Labaton Keller Sucharow LLP and about \$502,000 in litigation expenses.

Additionally, Judge Liburdi granted service awards to lead plaintiffs. The Indiana Public Retirement System was awarded \$9,300, while Stuart Graham Hereford received a \$6,000 service award, and the Oakland County Employees' Retirement System and the Oakland County Voluntary Employees' Beneficiary Association got around \$3,500.

Opendoor and its investors announced the terms of the \$39 million settlement **in June**. The deal ends a lawsuit the investors **brought in 2022** in the wake of a news report that the company appeared to be losing significant money on real estate sales.

The complaint pinned the losses on Opendoor's "iBuying" technology, which the company promised would use algorithms to adjust home offers to market conditions, alleging the tech was defective.

The shareholders accused Opendoor of over-promoting the technology in selling itself to the market before it went public via a special purpose acquisition merger in 2020, and asserted that the company's stock price plummeted 94% after problems with its pricing algorithm were made public.

The investors are represented by Michael Canty, James Christie, Guillaume Buell and Nicholas Manningham of Labaton Keller Sucharow LLP, Colin Christopher Quinn and Darrell Eugene Davis of Clark Hill PLC, Aaron Castle of VanOverbeke Michaud & Timmony PC and Casey Sadler of Glancy Prongay & Murray LLP.

Opendoor is represented by Adam Hakki, Lyle Roberts, George Anhang and Billy Marsh of Allen Overy Shearman Sterling and John Gray of Womble Bond Dickinson.

The case is In re: Opendoor Technologies Inc. Securities Litigation, case number 2:22-cv-01717, in the U.S. District Court for the District of Arizona.

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