Guest Post: New Year's Primer for Directors: Things to Know About Shareholder Litigation

dandodiary.com/2026/01/articles/securities-litigation/guest-post-new-years-primer-for-directors-things-to-know-about-shareholder-litigation

Kevin LaCroix January 30, 2026

Edgar A. Neely IV

Scott N. Sherman

The arrival of a securities class action lawsuit can be and often is a watershed moment in the life a public company. In the following guest post, Edgar A. Neely IV and Scott N. Sherman provide a basic briefing for directors concerned about securities litigation. Edgar and Scott are both partners at the Nelson Mullins law firm. I would like to thank Edgar and Scott for allowing me to publish their article on this site. Here is the authors' article.

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As we kick off the new year, the risk of shareholder litigation remains a significant reality for public companies and their boards. For example, a Cornerstone Research report in September 2025 showed that merger and acquisition-related litigation in Delaware has increased based both on volume and average settlement value. (See the Cornerstone press release here). Recent years have also seen an increase in the value of derivative settlements, with at least 12 derivative settlements over $100M since 2020. This trend serves as a stark reminder that shareholder litigation can present financial exposure not just for a company but also personally for its directors.

Understanding important concepts about shareholder litigation can help companies and their directors mitigate risk and assess potential strategies. With that in mind, the five key considerations below provide important and actionable context for directors to know when it comes to shareholder litigation, from protections like insurance and exculpation to considerations on strategy and risk mitigation.

1. **It's important to assess and understand D&O insurance and other protections**

Directors and officers ("D&O") insurance is critically important to protect board members from personal financial exposure in shareholder litigation. Board members should thus understand D&O insurance and engage with management in selecting an appropriate policy.

A primary consideration is the appropriate amount of coverage, which requires assessing the circumstances and risk profile of the company. It's also important to understand the different "sides" of D&O insurance and how much coverage is available for "Side A." At a high level, D&O insurance in typically broken into three sides: "Side A" covers individual directors and officers, "Side B" provides reimbursement to the company after it indemnifies individual directors and officers, and "Side C" covers the company for its securities litigation risk. Assessing the coverage amount for Side A, whether there is "difference in conditions" (DIC) coverage, and the terms of any conduct exclusions are each critical in the policy selection process.

The company can also offer protections through its articles of incorporation and bylaws. A company's articles of incorporation can exculpate directors from personal liability for duty of care claims. Its articles of incorporation and bylaws can also include provisions for indemnification and fee advancement for directors and officers. But, importantly, the extent of these protections is often limited by state law to exclude circumstances like bad faith or intentional misconduct.

It's important for the board to understand these protections on the front end and, should litigation arise, consult with counsel to review and secure the available rights and protections from personal exposure.

2. **State of incorporation matters**

The decision of where to incorporate (or reincorporate) and developments in the "DExit" movement continue to be hot topics in corporate governance, as discussed in our firm's Corporate Governance Insights series (including installments in March, June, and July, and November 2025).

The laws of a company's state of incorporation generally govern matters concerning the relationship between the company, its directors, and its shareholders. As a result, key issues directly related to shareholder litigation can be meaningfully different depending on the state of incorporation.

For example, shareholders often make a books and records request (called a "Section 220 demand" in Delaware) to gather information from the company before pursuing legal action. State law on the requirements for shareholders to obtain the information and the scope of information they may be entitled to varies from state-to-state, directly impacting the company's options in assessing a response to the request. Similarly, how a shareholder may bring a derivative action differs depending on the laws of the state of incorporation. And beyond procedural issues, substantive legal rules can vary among states.

Retaining knowledgeable counsel on the applicable state's rules and standards is vital to understanding the key issues and assessing available strategies related to shareholder claims.

3. **The type of shareholder action matters**

Two common types of shareholder actions are (1) securities class actions, and (2) derivative actions. Securities class actions are brought by shareholders to recover for their alleged losses. These actions typically involve claims against the company itself and its chief executives under federal securities laws—often based on certain public statements alleged to be fraudulent. By contrast, derivative actions are brought by the shareholder "on behalf of the company" against the company's officers or directors for alleged harm suffered by the company. They typically involve claims for breach of fiduciary duty, unjust enrichment, and corporate waste against the company's officers and directors.

Each type of action has its own unique considerations. For example, because derivative actions are brought by shareholders on behalf of the company, they may be subject to dismissal if the shareholder fails to meet certain base-line requirements to proceed on the company's behalf. Derivative actions can also be dismissed if an independent board or special committee determines the action is not in the best interests of the company based on a reasonable and good faith investigation. This process requires several key considerations, including each board member's independence, whether it's necessary to form a committee for the investigation, the scope of the committee's decision-making authority, and obtaining independent counsel for the committee. For additional detail on derivative investigations and the role of related committees, see our firm's publication here.

Securities class actions also involve distinct issues and strategy points. The company may seek early dismissal based on the stringent requirements a shareholder must meet to properly allege federal securities fraud. Defeating class certification presents another critical point in the case and requires detailed analysis of the class allegations and key legal arguments. Key issues in the analysis include the shareholder's standing (i.e., ability to represent and bring the alleged class claims) and challenging the "fraud-on-the-market" theory (i.e., that the alleged misrepresentations inflated the company's stock price).

Overall, both types of actions present complex legal and procedural issues, making it crucial to engage legal counsel early on to assess and develop an appropriate response. And as noted above, early consultation with counsel is also important to understand and secure the available rights and protections against personal exposure, such as D&O coverage.

4. **Parallel shareholder actions are common and require careful assessment**

Securities class actions often involve an accompanying (or parallel) derivative action based on similar or related allegations. According to Cornerstone Research, nearly half (47%) of the securities class action settlements between 2019 to 2024 involved parallel derivative actions. (The Cornerstone Research report can be found here.)

Because decisions and activity in one action can impact the other, it's important to avoid handling parallel actions in a vacuum. For example, derivative actions often seek indemnification for the amounts paid by the company in the parallel securities action. Liability for that claim will thus hinge on the outcome of the securities action. Dismissal of the securities action may also weaken or remove the basis for a parallel derivative action brought on the same allegations. And if both actions proceed simultaneously, the company is put in the awkward position of defending the allegations against it in the securities action while the derivative plaintiff (on behalf of the company) is actively seeking to prove similar allegations.

For these and other reasons, it often makes sense to stay the derivative action until the related securities action is resolved or until key developments occur, such as a ruling on a motion to dismiss. Staying parallel derivative actions can serve to avoid inefficiencies, conflicting rulings, and potential prejudice to the company and its litigation interests. But whether and to what extent a stay is appropriate will depend on the facts and circumstances.

Effectively managing parallel actions therefore requires careful assessment and coordination with legal counsel.

5. **Staying informed and documenting board considerations is key**

There are several ways directors can mitigate the risk of shareholder litigation. Among them, a board's ability to stay informed and document its decision-making process has proven to be crucial. These practices are important not only for reducing litigation risk overall through board engagement and oversight, but also for limiting personal financial exposure for directors.

For example, most jurisdictions recognize the business judgment rule, which generally protects directors and officers from liability for decisions made on an informed and good faith basis, and in the honest belief that the action taken was in the best interests of the company. Taking measures to ensure the board is adequately informed thus provides a strong foundation for the protections of the business judgment rule.

Recent court decisions have also shown the importance of documenting the board's receipt and consideration of important information. This is particularly true with respect to "mission-critical" and compliance-related issues for companies. A written, non-privileged record of the board's discussion of such key issues (often via board or committee minutes) can provide a powerful defense to fiduciary duty claims against the board.

As the securities litigation and corporate governance landscape continues to evolve, it's important for boards to consult with legal counsel on strategies for risk mitigation.

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Meta faces New Mexico trial over child-exploitation claims

reuters.com/legal/government/meta-faces-new-mexico-trial-over-child-exploitation-claims-2026-01-30

Diana Jones January 30, 2026

A teenager poses for a photo while holding a smartphone in front of a Meta logo in this illustration created on September 11, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

- New Mexico AG alleges Meta enabled child exploitation on platforms
- Meta claims First Amendment, Section 230 shield it from liability
- Meta faces scrutiny over child safety, mental health impacts

Jan 30 (Reuters) - Meta Platforms (META.O) , opens new tab is set to face trial next week in a lawsuit brought by the state of New Mexico accusing it of exposing children and teens to sexual exploitation on its platforms and profiting from it, the first case of its kind against the social media giant to reach a jury.
The lawsuit, brought by New Mexico Attorney General Raúl Torrez, a Democrat, alleges the company promoted illegal content and enabled the sexual exploitation of children on its Facebook, Instagram and WhatsApp platforms. The lawsuit claims Meta allowed predators unfettered access to underage users and connected them with victims, often leading to real-world abuse and human trafficking.

The trial, which is set to begin with jury selection on Monday in Santa Fe District Court, is expected to last seven or eight weeks.

Meta denies the allegations and says it has extensive safeguards in place to protect younger users.

UNDERCOVER OPERATION

The case grew out of an undercover operation called “Operation MetaPhile," which Torrez, a former prosecutor, and his office ran in 2023. As part of that effort, investigators created accounts on Facebook and Instagram posing as users younger than 14. The accounts received sexually explicit material and were contacted by adults seeking similar content, leading to criminal charges against three individuals, according to Torrez's office.

The state also accuses Meta of designing its platforms to maximize engagement despite evidence they were harming children's mental health. Features like infinite scroll and auto-play videos keep kids on the site, fostering addictive behavior that can lead to depression, anxiety and self-harm, the lawsuit claims.

According to the complaint, internal company documents acknowledged the problems with sexual exploitation and mental health harms. Yet the company, the state says, did not institute basic safety tools like age verification and misrepresented the safety of using its platforms, according to the complaint.

The state is seeking monetary damages, as well as an order directing Meta to make changes to improve children’s safety while using the platforms.

In a statement ahead of the trial, a Meta spokesperson called New Mexico’s arguments “sensationalist, irrelevant and distracting” and said they were based on cherry-picked documents.

"For over a decade, we’ve listened to parents, worked with experts and law enforcement, and conducted in-depth research to understand the issues that matter most,” the spokesperson said. "We’re proud of the progress we’ve made, and we’re always working to do better.”

Meta has argued that the company is shielded from liability in the case by the free-speech protections of the U.S. Constitution's First Amendment and Section 230 of the Communications Decency Act, which generally bars lawsuits against websites over user-generated content. The state's allegations of harms cannot be separated from the content on the platforms, because its algorithms and design features serve to publish content, the company has said.

A spokesperson for the New Mexico Department of Justice said ahead of the trial that the agency looked forward to presenting the case in court, as it would allow it "to present the jury with documents and testimony gathered over more than two years of litigation."

SAFETY RECORD UNDER FIRE

Meta has come under increasing scrutiny in recent years over the safety of child and teen users, spurred in part by whistleblower testimony before Congress in 2021 that alleged the company knew its products could be harmful but refused to act.

Last year, Reuters reported that an internal policy document allowed the company's chatbots to "engage a child in conversations that are romantic or sensual." Meta confirmed the document's authenticity, but said it removed language permitting flirtation and romantic role-play with minors after Reuters asked questions about it. The report prompted lawmakers to seek data on the platforms' impact on children and the effectiveness of its parental controls. Evidence about the company's AI chatbots is expected to be presented at the trial. Meta is also facing thousands of lawsuits accusing it and other social media companies of intentionally designing their products to be addictive to young people, leading to a nationwide mental health crisis. Some of the lawsuits, which have been filed in both state and federal courts, seek damages in the tens of billions of dollars, according to Meta's filings with financial regulators.

Meta has denied those claims and also argued that Section 230 shields it from liability in those cases. The company says it has taken many steps that have reduced youth engagement and growth in order to promote safety.

The first trial in those cases kicked off in Los Angeles earlier this week. Alphabet's (GOOGL.O) , opens new tab Google and Meta are the only remaining defendants in that case after TikTok and Snap (SNAP.N) , opens new tab reached settlements with the plaintiff.
Reporting by Diana Novak Jones in Chicago, Editing by Alexia Garamfalvi and Matthew Lewis

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Diana Novak Jones
Thomson Reuters

Diana reports on product liability, litigation, mass torts and the plaintiffs' bar. She previously worked at Law360 and the Chicago Sun-Times.

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Class Action

Manage Newsletters

J&J Wins Dismissal of Talc Class Suit for Medical Monitoring

Jan. 30, 2026, 10:36 AM PST

Summary by Bloomberg AI

AI Generated

- A New Jersey federal judge ruled Johnson & Johnson can avoid a proposed class action to cover medical screening costs for individuals worried about developing ovarian or gynecological cancers from using J&J talc products.
- The judge found no concrete injury was alleged, as lead plaintiff Joni Bynum hasn't plausibly alleged an economic injury caused by J&J and lacks a cancer diagnosis.
- The complaint also suffers from defects that prevent class status, with the judge citing materially divergent interests between women with and without a current cancer diagnosis.

Johnson & Johnson can avoid a proposed class action to cover medical screening costs incurred by individuals worried about developing ovarian or gynecological cancers from using J&J talc products, a New Jersey federal judge ruled, finding no concrete injury was alleged.

Lacking a cancer diagnosis, lead plaintiff Joni Bynum hasn't plausibly alleged an economic injury caused by J&J or provided enough basis to support a medical monitoring claim under New Jersey or Washington state law, Judge Michael A. Shipp of the US District Court for the District of New Jersey ruled Thursday.

The complaint also suffers from defects that prevent class status, Shipp said, citing Bynum's proposal to bring claims on behalf of women with and without a current cancer diagnosis.

"These groups have materially divergent interests," said Shipp. "Absent structural protections such as separate representation for the different subclasses, the proposed class suffers from a fundamental adequacy defect that cannot be cured through discovery."

An attorney for the plaintiffs didn't immediately respond to a request for comment.

Filed in 2024 and amended last year, the suit sought compensatory relief for consumers who developed cancer and medical monitoring relief for those who haven't been diagnosed but used J&J's talc-based baby powder or Shower to Shower products on their genitals for several years.

The company, which has for years contested claims that its products harmed users, replaced its talc-based powders with a cornstarch version at the end of 2023.

Bynum's case was paused for several months beginning in 2024 when J&J launched its third attempt in to put a special purpose entity through Chapter 11 bankruptcy to resolve its exposure to tens of thousands of asbestos-related mass tort talc claims.

A Texas bankruptcy judge dismissed the proceedings last year, which led to a surge of lawsuits that have been largely consolidated in New Jersey federal court.

The company has continued to absorb costly rulings in civil cases, being ordered last month to pay $1.56 billion to a mesothelioma patient in Maryland and $40 million to two women in California suffering from ovarian cancer.

The proposed class is represented by Golomb Legal PC. J&J is represented by Barnes & Thornburg LLP.

The case is Bynum v. Red River Talc LLC , D.N.J., No. 24-cv-07065, 1/29/26 .

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US judge tosses lawsuit accusing J&J of fraud over talc bankruptcy strategy

reuters.com/sustainability/boards-policy-regulation/us-judge-tosses-lawsuit-accusing-jj-fraud-over-talc-bankruptcy-strategy-2026-01-29

Dietrich Knauth January 29, 2026

The logo of Johnson & Johnson is seen on the top of a Brussels' office of the company in Diegem, Belgium September 21, 2023. REUTERS/Yves Herman/File Photo/File Photo Purchase Licensing Rights, opens new tab

- Judge says litigation delay is not a harm on its own
- J&J's bankruptcy strategy stopped lawsuits for nearly four years

Jan 29 (Reuters) - A U.S. district judge on Thursday dismissed a lawsuit alleging Johnson & Johnson committed fraud by repeatedly attempting to use a shell company's bankruptcy to resolve tens of thousands of lawsuits claiming its baby powder and other talc products caused cancer.

Filed by five cancer victims suing J&J over its talc products, the lawsuit alleged that the bankruptcy strategy was designed to put billions of dollars out of plaintiffs' reach in order to "hinder, delay, and defraud these women and prevent them from ever having their day in court."
Sign up here.

The lawsuit stemmed from a sprawling legal battle over J&J’s discontinued talc-based baby powder. Tens of thousands of women have alleged that the products contained asbestos and caused ovarian and other cancers. J&J has said that its baby powder and other talc products are safe, do not contain asbestos and do not cause cancer.

U.S. District Judge Michael Shipp ruled Thursday that the cancer victims could not show that they were harmed by the bankruptcy delays, which stopped their cases from moving ahead in the years between October 2021 and March 2025.

Shipp, who is also overseeing more than 67,000 of the lawsuits against J&J that have been consolidated in multidistrict litigation, said "their claimed injury is entirely hypothetical, as it is contingent on plaintiffs' first prevailing in the talc litigation."

Shipp said he could not accept the argument that the delay was itself a form of injury, because that would be “fundamentally incompatible with the structure and purposes of the bankruptcy code.” U.S. bankruptcy law automatically stops lawsuits from proceeding against a debtor, which gives the debtor time to negotiate a comprehensive debt resolution and stops some creditors from claiming assets ahead of others.

Patricia Kipnis, an attorney for the five women, said Thursday that she and her co-counsel “disagree with the decision and will be reviewing it with our clients to discuss an appeal.”

Erik Haas, worldwide vice president of litigation for J&J, said that the court correctly rejected the "wholly meritless claims" in the lawsuit.

J&J had attempted to contain the litigation by using a corporate maneuver called the Texas two-step to place its talc liabilities into a subsidiary company, which then filed for bankruptcy. Courts have rejected that strategy three times, most recently in March. The lawsuits resumed after a proposed $10 billion bankruptcy deal fell apart after a judge found it did not have sufficient support from women who alleged J&J products caused their cancer.
Most of the talc lawsuits have been brought by women with ovarian cancer, while other cases involve people with mesothelioma, a deadly cancer linked to asbestos exposure.

Litigation against J&J resumed after its third bankruptcy was dismissed. The company has a mixed record in court, winning some cases outright but also being hit with several substantial verdicts including a $1.5 billion judgment in Baltimore in December.
J&J stopped selling talc-based baby powder in the United States in 2020 and globally in 2023, switching to cornstarch-based alternatives.

The case is Love v. Red River Talc, U.S. District Court for the District of New Jersey, No. 24-cv-06320

For the plaintiffs: Leigh O'Dell of Beasley Allen; Patricia Kipnis of Bailey Glasser; and Richard Golomb of Golomb Legal

For J&J's subsidiary Red River Talc: Jessica Brennan of Barnes & Thornburg Read more:

J&J talc opponents decry bankruptcy as "deja vu all over again"

J&J vows appeal after US jury hits it with record $1.5 billion talc cancer award

Experts can testify about suspected J&J talc products' cancer link

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News | **Copyrights**

Music Publishers Use Evidence Unearthed in Bartz to Hit Anthropic With $3B Suit

The publishers initially alleged the AI company infringed 500 works. They say evidence brought to light in a copyright infringement case brought by book authors revealed the actual number was 40 times higher.

January 30, 2026 at 10:24 AM By **Michael Gennaro**

Credit: Barna Tanko/Adobe Stock

A coalition of major music publishers led by Concord Music Group and Universal Music Group is suing Anthropic for copyright infringement, armed with evidence from a parallel case they say reveals the AI company illegally downloaded more than 20,000 songs, lyrics, musical compositions and sheet music.

The 48-page complaint, filed Wednesday in the Northern District of California, seeks damages topping $3 billion. If successful, it would rank among the largest non-class-action copyright cases in U.S. history.

After unsuccessfully attempting to expand a 2023 federal suit they filed in Tennessee alleging Anthropic infringed 500 works, the publishers launched the new case alleging 40 times the number of violations.

They're leveraging revelations from *Bartz v. Anthropic*—a separate Northern District of California copyright case brought by book authors—to allege what they characterize as brazen piracy through BitTorrent file-sharing.

The publishers' new legal strategy hinges entirely on evidence exposing Anthropic's use of notorious pirated libraries that was unearthed in Bartz and brought to light in July 2025 rulings by Judge William Alsup. Alsup concluded that training AI models on copyrighted content was permissible, but acquiring that content through piracy wasn't.

A month later, San Francisco-based Anthropic settled, agreeing to pay $1.5 billion—the biggest settlement ever in a U.S. copyright case.

According to this week's complaint, the music publishers "did not learn of Defendants' illegal torrenting of their works" until Alsup threw the spotlight on it, a revelation that meant the alleged copyright infringement was much more sweeping than the music publishers had realized.

The publishers attempted to amend their 2023 complaint to address the newly discovered piracy claims, but the court shot it down last fall. In filing the new case, the publishers added as defendants Anthropic CEO Dario Amodei and co-founder Benjamin Mann.

The publishers allege that discovery in Bartz revealed that Anthropic founders, including Amodei and Mann, personally engaged in downloading approximately five million books from Library Genesis in June 2021, followed by an additional two million books from Pirate Library Mirror in July 2022. Both are illegal shadow libraries that have been found liable for willful copyright infringement by federal courts.

The publishers claim that in addition to books, their musical compositions were downloaded as well.

“While Anthropic misleadingly claims to be an AI ‘safety and research’ company, its record of illegal torrenting of copyrighted works makes clear that its multibillion-dollar business empire has in fact been built on piracy,” the publishers said in the complaint.

Perhaps most damaging to Anthropic is the publishers' allegation that the company actively concealed its torrenting activities during the first litigation. "Anthropic concealed during discovery in Concord I that it had separately torrented millions of copyrighted books—including hundreds or more books that plainly contain Publishers' musical compositions—from pirate library websites," the complaint alleges.

The complaint treats Anthropic's torrenting as a distinct form of copyright violation, separate from the AI training issues in the first case. The publishers argue that downloading works via BitTorrent constitutes both reproduction (downloading) and distribution (uploading) infringement, regardless of whether those works were subsequently used for AI training.

"Defendants' piracy of each of Publishers' musical compositions via torrenting was a standalone act of unmistakable, irredeemable infringement," the complaint asserts, dismissing any fair use defense Anthropic might raise regarding AI training.

The complaint identifies 714 musical compositions in Exhibit A that were allegedly torrented from pirate libraries, including major hits like "Wild Horses," "Sweet Caroline," "Bennie and the Jets" and "Viva La Vida." These works appeared in songbooks and sheet-music collections from licensed publishers Hal Leonard and Alfred Music that were among the millions of books Anthropic downloaded.

A separate Exhibit B lists 20,517 additional works allegedly infringed through ongoing AI training and output in models released after the first lawsuit was filed.

Drawing on evidence apparently surfaced in Bartz, the complaint quotes internal Anthropic communications showing leadership knew the sources were illegal. The publishers cite deposition testimony from Mann, who personally conducted the torrenting, and note that Anthropic's own Archive Team had deemed Library Genesis a "blatant violation of copyright" while Amodei described it as "sketchy."

Despite these concerns, leadership approved the downloads. The complaint quotes one founder's reaction to discovering Pirate Library Mirror: "[J]ust in time!" Another employee responded, "zlibrary my beloved," referring to the shuttered Z-Library that Pirate Library Miror mirrored.

According to the complaint, Amodei admitted at the time that Anthropic "ha[d] many places from which" it could have legally purchased copyrighted works for training, but chose to torrent them instead because it was "faster and free." The complaint characterizes this as avoiding a "legal/practice/business slog."

The case highlights how discovery in one copyright lawsuit against an AI company can fuel entirely new litigation. The publishers explicitly state they would not have known about the torrenting if not for the Bartz case.

The complaint cites or quotes Bartz 16 times and leverages other Bartz case revelations about Anthropic's data practices, including its unauthorized scanning of physical books and its use of extraction tools to deliberately strip copyright management information from training data, practices the publishers argue violated the Digital Millennium Copyright Act.

The publishers are seeking statutory damages of up to $150,000 per work infringed, which with over 20,000 works could result in damages exceeding $3 billion. Alternatively, they request their actual damages plus Anthropic's profits. They also seek injunctive relief and an accounting of all training data used in Claude models.

Anthropic did not respond to requests for comment on this story.

Representing the plaintiffs are Oppenheim + Zebrak, Coblentz Patch Duffy & Bass and Cowan, Liebowitz & Latman.

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News | **Law Firm Hiring**

Boies Schiller, Focused on Growth in Bankruptcy Litigation, Adds Grant & Eisenhofer Lawyer

The addition is part of a broader effort by Boies Schiller to strengthen its bankruptcy practice bench, which has lately "secured high-profile representations," the firm said.

January 29, 2026 at 04:33 PM By **Ryan Harroff**

What You Need to Know

- Gordon Novod joined Boies Schiller after more than 11 years at his prior firm, where he was principal and head of bankruptcy and distressed litigation.
- Boies Schiller is seeking to grow its bankruptcy bench to meet increased demand.

Gordon Novod, bankruptcy partner with Boies Schiller. Courtesy photo

Boies Schiller Flexner added Gordon Novod, formerly the principal and head of bankruptcy and distressed litigation practice at Delaware-based plaintiff law firm Grant & Eisenhofer, as a bankruptcy partner in its New York office amid what the firm said is a broader buildout of its practice group.

Novod joined Boies Schiller this week after more than 11 years at Grant & Eisenhofer. The addition is part of a broader effort by Boies Schiller to strengthen its bankruptcy practice bench, which has lately "secured high-profile representations," the firm said. For his part, Gordon has worked on major restructuring in the matters of Bed Bath & Beyond, Rite Aid, General Motors and Joann Inc., among others.

Representatives for Grant & Eisenhofer did not immediately respond to requests for comment on his departure.

Marc Ayala, co-administrative partner and co-leader of Boies Schiller's creditor rights, bankruptcy and restructuring practice group, said in an interview that the firm is focused on growth in the bankruptcy space as a priority amid higher demand and more billable hours, adding that he expects 2026 will surpass 2025's already strong performance.

"I expect the demand for bankruptcy litigation to continue to increase in the way that it has for the last several years," Ayala said. "Some of that is a function of politics and some of the macroeconomic events that are unfolding, but I think a lot of it is also susceptible to market participants increasingly focusing on how litigation, in the context of a bankruptcy or reorganization, can be a significant driver of value."

According to Boies Schiller, Novod's disputes experience covers all aspects of Chapter 11 reorganization plans, valuations, plan confirmation proceedings, contested financing around debtor-in-possession matters and cash collateral use. In a statement on his move, Novod said that he made the jump from Grant & Eisenhofer in part because he wanted to grow his own practice just as Boies Schiller wants to grow its bankruptcy practice. "BSF is a growing player in the restructuring space, and I'm looking forward to helping build our capability in this area," he said.

Novod is the latest addition to Boies Schiller's bankruptcy practice. The firm brought Robert Gordon into its New York office from Herrick Feinstein late last year.

Ayala credited the firm's recent laterals for helping the firm obtain a number of new client matters, flagging that kind of expansion as a driver for lateral hiring.

"We've been quite busy with a variety of engagements in the [bankruptcy] space," Ayala said. "We participated in bankruptcy disputes in multiple jurisdictions last year. The other lateral additions that have joined the practice played a role in us getting involved in those engagements."

Boies Schiller is currently representing creditor groups in bankruptcy proceedings for Hertz and Revlon, which are being litigated in the Southern District of New York and the Southern District of Texas bankruptcy courts, respectively. The firm also recently had one of its partners, Martin De Luca, appointed as a corporate litigator in the Chapter 11 proceedings for auto parts company First Brands.

California Brief

Goldstein Trial Features Whales, Stakes, and Crypto in Ninth Day

Jan. 29, 2026, 4:43 PM PST

Rick Salomon, a professional poker player who famously filmed a sex tape with Paris Hilton and leaked it in 2003, took the stand in Tom Goldstein's trial Thursday morning.

He was there to testify about money the government believes Goldstein was hiding in Hong Kong and Goldstein's heads-up matches against "whales," or poker players who lose big, in Asia.

When you want to play whales in Asia, Salomon said, you often have to go through Paul Phua, which means "you have to give him a piece."

Perhaps in an attempt to show that Goldstein maintained secret bank accounts in Asia, it introduced a 2016 text Goldstein sent to Salomon saying "I have money in Hong Kong and Robl"—meaning professional poker player Andrew Robl—"can get it." He sent it while trying to secure backers to play billionaire Alec Gores.

But on cross Salomon testified that he assumed Goldstein was referring to Phua's money, and that he wasn't aware of any secret Goldstein accounts.

Phua—identified in the indictment as Foreign Gambler-3—is a casino owner who stakes a lot of players, Salomon said, meaning he backs them financially. He has featured prominently throughout the trial as someone who frequently had "a piece" of Goldstein's games.

The government also introduced a few text messages between Salomon and Goldstein, in which Goldstein asks if he and 10 other people going to see the musical Chicago might be able to "say hi" to Salomon's ex-wife, Pamela Anderson, who was performing in the show. He also sent a text message about meeting Paris Hilton. Goldstein's defense team had sought to keep the text messages out as cumulative and prejudicial.

Goldstein attorney Jonathan Kravis asked Salomon if Goldstein was even remotely "one of those people" who is obsessed with celebrities. Salomon, who said he knows Goldstein very well, answered in the negative.

The government also called Chuck Pacheco, a talent manager, professional gambler, and former client of Goldstein's.

Pacheco, referred to as "The Producer" in the indictment, testified that he received a $170,000 gambling payment from Goldstein's law firm, Goldstein & Russell PC.

Pacheco has also faced IRS scrutiny in connection with his gambling winnings.

The other two witnesses called Thursday were IRS special agent Quoc Tuan Nguyen and Katie Bart, a former firm manager whom Goldstein allegedly offered things of value.

Nguyen's expert testimony—based on what the prosecution team told him, as he wasn't part of the investigation—focused on summarizing information about Goldstein's cryptocurrency accounts and his use of VPNs and Proton Mail, which features end-to-end and zero-access encryption, in an attempt to show that Goldstein was hiding his gambling activities.

But on cross, the defense made the point that Goldstein used centralized exchanges, which keep records the government was able to subpoena. He also emailed the same records the government suggests he was trying to hide from his law firm's email account, so there was no "zero-access" protection.

Zero-access means even the service provider can't access the encrypted information stored on its servers.

Bart, who testified that she received immunity in exchange for her cooperation, testified about things of value that Goldstein allegedly offered her "at least in part" to dissuade her from cooperating with the IRS investigation. She will resume her testimony Monday.

Goldstein is facing one count of tax evasion, eight counts of aiding and assisting in the preparation of false and fraudulent tax returns, four counts of willful failure to pay taxes and three counts of making a false statement on a loan application. Among other things, prosecutors say he mischaracterized gambling-related expenses as business expenses and concealed income from the IRS. The government said it expects to conclude its case in chief Feb. 4.

Goldstein is represented by Munger Tolles & Olson LLP

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, 1/29/26 .

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Litigation

Manage Newsletters

Susman Godfrey, Longford Sued Over $37 Million Arbitration Award

Jan. 30, 2026, 11:08 AM PST

Summary by Bloomberg AI

AI Generated

- An Irish patent monetization firm, Arigna Technology Limited, is suing Susman Godfrey and litigation funder Longford Capital to vacate an over $37 million arbitration award.
- Arigna alleges the arbitrators arrived at the award by corruption and fraud, and seeks to vacate the award, arguing it was arbitrary and capricious and obtained by corruption, fraud or other undue means.
- The dispute arose over how much Longford was owed from a multi-party settlement, and Arigna claims the JAMS arbitrators overseeing the proceedings were guilty of misconduct and exceeded their powers.

An Irish patent monetization firm is suing Susman Godfrey and litigation funder Longford Capital in Houston to vacate an over $37 million arbitration award.

Arigna Technology Limited filed suit on Thursday in the District Court of Harris County asking the court to vacate an arbitration award and alleged the arbitrators arrived at the award by corruption and fraud. Arigna hired Susman in August 2020 to enforce patents and Susman obtained funding from Longford for the litigation.

Arigna, which is associated with Dublin-based patent monetization firm Atlantic IP Services Ltd, seeks to vacate JAMS' final decision from January and final award to Longford, arguing the final decision and final award were arbitrary and capricious and obtained by corruption, fraud or other undue means. Arigna alleges that the JAMS arbitrators overseeing the proceedings were guilty of misconduct and exceeded their powers.

"The JAMS Appellate Panel's Final Decision and the Arbitrator's Final Award were fundamentally unfair," Arigna's attorneys at Charhon Callahan, Robson & Garza PLLC wrote in the complaint.

According to the complaint, a dispute arose in 2023 between Arigna, Longford and Susman over how much Longford was owed from a multi-party settlement. Arigna filed a complaint in December 2023 in the US District Court, District of Delaware seeking declaratory relief concerning Longford filing a first-priority lien on the settlement proceeds.

Exhibits for the suit in Delaware federal court revealed that Longford provided more than $23 million toward Arigna's portfolio of patent suits that were being litigated by Susman. The complaint included exhibits revealing details of the arrangement between the funder and Susman Godfrey. It included agreements for funding to enforce patents in the International Trade Commission, U.S. district courts, and Germany. Litigation finance agreements are confidential, and often heavily redacted in court filings.

The court agreed to move the case to arbitration in June 2024. The arbitrator issued a final award in July 2025 in Longford's favor and awarded the funder over $37 million. Arigna appealed the award shortly after and in January, the JAMS Appellate Panel dismissed Arigna's appeal.

"We're pleased with the outcome of the arbitration, and confirmation proceedings are pretty routine and we expect to have our arbitration award confirmed in short order," said William Farrell, managing director and general counsel at Longford Capital.

Arigna, Susman Godfrey and JAMS did not immediately respond to requests for comment.

The case is: Arigna Technology Limited v. Longford Capital Fund III , Tex. Dist. Ct., 2026-05917, 1/29/26

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LAW.COM

News | **Mass Torts**

'A Very Dangerous Trend': Calif. Lawyers Want Uber Case Tossed as New Company Files RICO Suit

Plaintiffs' lawyers in California moved to dismiss Uber's racketeering lawsuit against them, while another company, J-M Manufacturing, filed a new case alleging similar claims against the Gori Law Firm, an asbestos plaintiffs' firm.

January 29, 2026 at 06:54 PM By **Amanda Bronstad**

What You Need to Know

- Uber has filed RICO suits against plaintiffs' firms in California, New York, Pennsylvania and Florida.
- On Nov. 24, U.S. District Judge Michelle Williams Court, in the Central District of California, dismissed much of a RICO case Ford brought against Knight Law Group, Altman Law Group and Wirtz Law, citing the Noerr-Pennington doctrine's protections for lawyers who file lawsuits.
- J-M Manufacturing, in its RICO suit filed Thursday, referenced a whistleblower who described a 'systematic scheme of fraud' at The Gori Law Firm that involved financial incentives to coach clients in depositions and 'sham' lawsuits designed to inflate potential settlement values.

Bram Alden, counsel at Hueston Hennigan. Couretsy photo

California plaintiffs' lawyers sued by Uber Technologies Inc. over an alleged racketeering enterprise moved to dismiss the case as retaliatory, while another company, J-M Manufacturing Co. Inc., filed a new lawsuit Thursday against the Gori Law Firm, an asbestos firm.

Uber's case, filed in U.S. District Court for the Central District of California, against Downtown LA Law Group and Jacob Emrani, of the Law Offices of Jacob Emrani, both in Los Angeles, is one of four racketeering lawsuits the San Francisco-based rideshare firm has brought against plaintiffs' lawyers, with others in New York, Pennsylvania and Florida. It is also one of several actions brought by corporations under the U.S. Racketeer Influenced and Corrupt Organizations Act, such as 3M Co. and Ford Motor Co., against lawyers who sue them.

On Thursday, J-M Manufacturing, which does business as JM Eagle, added another RICO case alleging that the Edwardsville, Illinois-based Gori Law Firm and its lawyers concocted a racketeering scheme that involved filing "sham" asbestos cases on behalf of mesothelioma plaintiffs.

"It's a very dangerous trend," Bram Alden, of Hueston Hennigan in Los Angeles—who filed a Jan. 23 motion to dismiss Uber's case against his client, Emrani, citing the *Noerr-Pennington* doctrine, which protects lawyers under the First Amendment from being sued because they filed lawsuits—told Law.com, "And I am a defense side lawyer, so I certainly appreciate the desire to litigate aggressive defenses, but the use of RICO and as a stratagem to try to shut down your litigation adversary directly violates the First Amendment, which is why the *Noerr-Pennington* doctrines exist."

On Nov. 24, U.S. District Judge Michelle Williams Court, in the Central District of California, ruled that *Noerr-Pennington* wiped out a RICO case Ford brought against Knight Law Group, Altman Law Group and Wirtz Law. Alden said his client, whose cases Uber settled without bringing sanctions or malicious prosecution claims, has an even stronger than the defendants in *Ford*, which sued over $100 million in allegedly fraudulent attorney fees.

"This is all related directly to underlying litigation, and it is unlike in *Ford*, which involved attorney fees that were collateral to the main action," Alden told Law.com. "These were cases that were evaluated, brought on behalf of real injury victims, and Uber did not have the courage to litigate before a jury, probably because they knew that they would sustain a much bigger judgment."

Downtown LA Law Group and one of its partners named in the case, Igor Fradkin, and Greg Khounganian, a doctor who, along with his clinic, was sued by Uber, made similar arguments in their dismissal motions. Winston & Strawn's David Scheper, a Los Angeles partner who represents Downtown LA Law Group and Fradkin, and Stephen Larson, at Los Angeles-based Larson, for Khounganian, did not respond to requests for interviews.

The lawyer who represents Uber, Oliver Gold, a Los Angeles partner at Perkins Coie, also did not respond.

J-M, in its new complaint, said that the *Norr-Pennington* doctrine is not a defense in its case because there is an exception for “sham” lawsuits.

“The misconduct in this case extends well beyond routine litigation activity,” said the complaint, filed in U.S. District Court for the Southern District of Illinois. “The majority of lawsuits that the Gori Firm brought against J-M Manufacturing constituted sham litigation that is not entitled to immunity under the *Noerr Pennington* doctrine.”

The case references an unnamed whistleblower, who worked at the Gori Law Firm from 2018 to 2024. The whistleblower described a “systematic scheme of fraud” at the firm that involved financial incentives to coach clients in depositions and “sham” lawsuits designed to inflate potential settlement values.

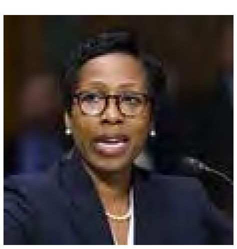
The lawsuit alleges that the Gori Law Firm has filed 400 cases against J-M, a plastics pipe manufacturer, since 2018, of which 96.3% were dismissed. The complaint also named individual partners: owner Beth Gori-Gregory, managing partner Sara Salger, Erin Beavers, Jason Steinmeyer and Chris Layloff.

None of the individual partners responded to requests for interviews, but a spokesperson for the Gori Law Firm provided Law.com with a statement via email: “We are outraged by these ridiculous claims from an asbestos company. These scare tactics will not stop us from fighting for justice for our clients who are hurt by manufacturers like J-M Manufacturing Company.”

Garreth DeVoe, of Buchalter in Chicago, who represents J-M, did not respond to a request for an interview.

'Close the Courthouse Doors'

In Uber’s cases outside California, lawyers in Pennsylvania and New York also filed motions to dismiss.



Orelia Eleta Merchant testifies before the Senate Judiciary Committee during her confirmation hearing to be U.S. District Judge for the Eastern District of New York, on Wednesday, January 25, 2023. Photo: Diego

M. Radzinschi/ALM

U.S. District Judge Cecilia Altonaga, who is overseeing Uber's case in Florida's Southern District against Miami's Law Group of South Florida and several medical providers, stayed the case until the New York suit's dismissal ruling. Feb. 26 oral arguments are scheduled before U.S. District Judge Orelia Merchant in the Eastern District of New York, where New York-based Wingate, Russotti, Shapiro, Moses & Halperin and two Brooklyn firms, Banilov & Associates and the Lavelle Law Firm, have filed dismissal motions.

"It's really important to emphasize how unorthodox this is and how, in our mind, not coincidental that it aligns with all of Uber's attacks on the plaintiffs' bar, including ballot propositions in which they're trying to limit contingency fees and damages injury victims can recover," Alden said. "And the fact that they're filing these across the country, and claiming multiple different law firms and doctors are engaged in the same type of conspiracy, it reeks of a stratagem that would close the courthouse doors to real injury claims."

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News | **Personal Injury**

Bank of New York Mellon Wins Dismissal From Epstein Abuse Lawsuit, but Bank of America Still Faces Case

Although U.S. District Judge Jed Rakoff dismissed the lawsuit against The Bank of New York Mellon with prejudice, the judge allowed claims against Bank of America to proceed. According to plaintiffs, Ghislaine Maxwell was a customer at Bank of America.

January 30, 2026 at 02:36 PM By **Alyssa Aquino**

Bank of New York Mellon headquarters in New York. Photo: Rafal Pytel/ALM

A Manhattan federal court has freed The Bank of New York Mellon Corp. from claims of enabling Jeffrey Epstein's sex abuse, but allowed some claims against Bank of America N.A. to proceed.

U.S. District Judge Jed Rakoff dismissed the sex trafficking suit against BNY with prejudice, as well as narrowed a similar lawsuit against Bank of America in an order that was released on Thursday.

The order—only spanning two pages—lacked a full explanation for the dismissal, with Rakoff saying he would release an opinion outlining his legal reasoning "no later than February 13."

Bank of America, represented by Jones Day, still faces two claims of violating the Trafficking Victims Protection Act.

When asked for comment on the continued case, a Bank of America spokesperson said in an emailed statement that "it's important to understand the underlying facts have not been reviewed at this stage of the litigation. We look forward to a full review of the facts."

In an emailed statement, a spokesperson for BNY welcomed the dismissal.

The decision "reinforces that BNY had no involvement in Epstein's crimes," according to the statement. BNY was represented by Wilmer Cutler Pickering Hale and Dorr.

David Boies, whose firm, Boies Schiller Flexner, brought the cases, said his team looked forward to trying the case against Bank of America.

But "we respectively disagree with the Court's dismissal of the complaint against Bank of New York Mellon and we will seek appellate review," Boies wrote in an emailed statement.

The dismissal comes less than three months after the firm filed lawsuits seeking to hold Bank of America and BNY liable for Jeffrey Epstein's abuse. The cases were filed on behalf of a woman—pseudonymously identified as "Jane Doe"—who said she was abused by Epstein "on at least 100 occasions" between 2011 and 2019. Doe sought to represent a class of survivors.

In near identical lawsuits, the firm alleged that Bank of America and BNY knowingly participated in and benefitted from the sex trafficking enterprise.

The cases were filed after Boies Schiller lobbed similar cases against Deutsche Bank AG and JPMorgan Chase & Co., which resulted in the banks paying a collecting $365 million to Epstein's victims.

In a motion to dismiss, Bank of America stressed that, unlike Bank of America, Deutsche Bank and JPMorgan had Epstein has a client. According to the complaint against Bank of America, Ghislaine Maxwell, Epstein's former girlfriend and associate, held a Bank of America account.

BNY similarly argued in its own motion to dismiss that "the complaint never identifies a single BNY employee, or even a division of BNY, with whom Epstein supposedly dealt."

Securities

BNY Gets Epstein Suit Dismissed, BofA Continues to Face Claims

Jan. 29, 2026, 1:04 PM PST

A federal judge in New York dismissed a proposed class-action lawsuit against Bank of New York Mellon Corp. by victims of **Jeffrey Epstein** accusing the bank of aiding in his sex-trafficking. The judge allowed two claims to proceed in a related suit against Bank of America Corp.

US District Judge Jed Rakoff on Thursday threw out all claims that BNY participated in and benefited from Epstein's actions. The judge dismissed four of six claims in the case against Bank of America but permitted the victims to move ahead with claims that it knowingly benefited from Epstein's conduct and obstructed enforcement of the sex-trafficking statute.

The two-page decision comes at an early stage of the litigation, which was filed against the banks last year. Rakoff said he will publish his reasoning in a full opinion by Feb. 13.

"We are pleased with the court's decision dismissing the lawsuit in its entirety, which reinforces that BNY had no involvement in Epstein's crimes," said Ryan Wells, a spokesman for the bank. "BNY has great sympathy for the victims of Jeffrey Epstein and believes his crimes should be fully investigated and prosecuted."

Bank of America spokesman **Bill Halldin** said, "We are pleased the court dismissed most of the claims. On the remaining claims, it's important to understand the underlying facts have not been reviewed at this stage of the litigation. We look forward to a full review of the facts."

The two cases were filed on behalf of unidentified victims seeking to represent other women who were harmed by Epstein.

"We are pleased that the Court sustained our sex trafficking claims against Bank of America, and we look forward to trying that case in May," **David Boies**, a lawyer representing the victims, said in a statement. Boies said his team will appeal the ruling in favor of BNY.

In June 2023, JPMorgan Chase & Co. agreed to pay $290 million to settle suits by Epstein victims represented by Boies. Deutsche Bank AG reached a $75 million pact earlier that year. Rakoff also oversaw those cases. He dismissed many of the claims against them earlier in 2023 but allowed the suits to proceed.

The complaint against Bank of America doesn't allege Epstein was a client but focuses instead on accounts at the bank allegedly used by "his co-conspirators, associates and victims," including **Ghislaine Maxwell**. According to the suit, Bank of America was aware these accounts were being used for crimes.

The case are Doe v. Bank of America NA, 25-cv-8520, US District Court, Southern District of New York, and Doe v. Bank of New York Mellon Corp., 25-cv-8525, US District Court, Southern District of New York.

(Updates with details from ruling.)

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Katherine Chiglinsky, Michael J. Moore

Judge rules Bank of America must face lawsuit over Jeffrey Epstein ties

reuters.com/legal/government/judge-rules-bank-america-must-face-lawsuit-over-jeffrey-epstein-ties-2026-01-29

Jonathan Stempel January 29, 2026

A Bank of America logo is seen on the entrance to a Bank of America financial center in New York City, U.S., July 11, 2023. REUTERS/Brendan McDermid Purchase Licensing Rights, opens new tab

- Lawsuit accuses Bank of America of benefiting from Epstein sex trafficking
- Bank of America trial scheduled for May 11
- Epstein accuser plans to appeal BNY dismissal

NEW YORK, Jan 29 (Reuters) - A U.S. judge on Thursday said Bank of America (BAC.N) , opens new tab must face part of a proposed class action lawsuit accusing it of knowingly aiding Jeffrey Epstein's sex trafficking by providing banking services to the disgraced late financier.

The judge, U.S. District Judge Jed Rakoff in Manhattan, also dismissed a similar lawsuit against Bank of New York Mellon (BK.N) , opens new tab.

Rakoff said Epstein's victims may pursue two claims accusing Bank of America, the second-largest U.S. bank, of knowingly benefiting from Epstein's sex trafficking, and of obstructing enforcement of the federal Trafficking Victims Protection Act.

The judge rejected four other claims in the lawsuit, including that Bank of America participated in and aided Epstein's sex trafficking, and that it negligently failed to protect victims or refrain from "non-routine" banking services.

Bank of New York Mellon, the world's largest custodial bank, won dismissal of the same six claims. Rakoff plans to issue an opinion by February 13 explaining his reasoning. A trial for Bank of America is scheduled for May 11.

Bank of America said it was pleased that its case was narrowed, adding: "We look forward to a full review of the facts."

BNY said its dismissal "reinforces that BNY had no involvement in Epstein's crimes."

The lawsuits were filed in October by a Florida woman known as Jane Doe on behalf of herself and other Epstein accusers.

Doe said that despite widespread knowledge of Epstein's misconduct, both banks did business with him until his arrest in July 2019 because they considered making money a higher priority than protecting victims.

David Boies, a lawyer for Doe, said he looked forward to the Bank of America trial and planned to appeal the BNY decision.

JPMORGAN, DEUTSCHE BANK PREVIOUSLY SETTLED

Bank of America's lawsuit included previously publicized accusations concerning Epstein's business ties with prominent people, while BNY's lawsuit included an accusation that the bank processed hundreds of millions of dollars of wire transfers on Epstein's behalf.

The lawsuits also accused both banks of failing to file timely suspicious activity reports with the U.S. Treasury Department.

In seeking a dismissal, Bank of America said that Doe "at best" alleged that it banked high-net-worth clients affiliated with Epstein, which it called "insufficient," and that she did not identify any law enforcement investigation that it intentionally obstructed.

Doe's lawyers have brought other lawsuits on behalf of Epstein accusers. In 2023, they reached settlements of $290 million with JPMorgan Chase (JPM.N), opens new tab and $75 million with Deutsche Bank (DBKGn.DE), opens new tab, two of his main banks.
Neither bank admitted wrongdoing. Rakoff approved both settlements.

Epstein died in a Manhattan jail cell in August 2019 while awaiting trial on sex trafficking charges. New York City's medical examiner ruled the death a suicide.

Reporting by Jonathan Stempel in New York; Editing by Edmund Klamann

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

Securities

Adani Hires Top Wall Street Lawyer in Sign SEC Case Will Advance

Jan. 29, 2026, 4:52 PM PST

Gautam Adani has hired a prominent Wall Street lawyer to defend him against fraud allegations by the US Securities and Exchange Commission, as the regulator presses to advance its stalled case.

India's second-richest person recently tapped Robert Giuffra Jr., to be his lawyer in the SEC's lawsuit, court filings show. Giuffra, who represents prominent clients in high-stakes financial cases as co-chair of white-shoe law firm Sullivan & Cromwell, is also working on President Donald Trump's bid to overturn his criminal conviction.

The SEC's lawsuit, filed in November 2024, alleges that Gautam and his nephew Sagar Adani violated US securities laws by making false and misleading representations about Adani Green Energy Ltd. In addition to the SEC's civil complaint, federal prosecutors in Brooklyn, New York, charged the Adanis and others with allegedly helping drive a $250 million bribery scheme in India to lock in solar-power contracts.

Both the criminal and SEC case have been stalled for more than a year with both Adanis in India. But the SEC last week asked a US judge to let it use alternative measures to formally notify the Adanis of the lawsuit. The regulator asked permission to use email and serve papers on other US law firms representing the Adanis.

Adani stocks slipped on news of the SEC's move, wiping away almost $13 billion in combined market value on Jan 23. There still hasn't been any movement in the criminal case.

The regulator says it was rebuffed in India with attempts to formally serve the Adanis with the lawsuit. Generally, litigation can't proceed in the US until the defendants have been properly notified of a complaint.

The SEC said in a court filing that Giuffra contacted the agency to say he's representing Gautam and is willing to accept the lawsuit on the Adanis' behalf. Giuffra then asked the court for more time to negotiate with the SEC on how to proceed with both Adanis in India.

US District Judge Nicholas Garaufis, who's presiding over the case, is set to rule on the SEC's request Friday.

Giuffra and the SEC declined to comment.

The US regulator has said it's unsuccessfully tried to get assistance from Indian government to deliver the summons.

Gautam and Sagar Adani are preparing to accept the SEC summons through US-based counsel and their representatives have been in touch with Indian government officials about their plans, according to a person familiar with the matter. The Indian government may seek certain modifications to the summons process, said the person, who asked not to be identified discussing the deliberations.

India's Ministry of Law and Justice and the Ministry of External Affairs didn't immediately respond to an email sent after normal office hours seeking comments.

A representative for the Adani Group had no immediate comment on the developments in the SEC's lawsuit. Gautam Adani chairs the conglomerate and Sagar Adani is executive director at Adani Green Energy. Neither the conglomerate nor its corporate units were sued by the SEC.

Wall Street Lawyer

Giuffra, a former law clerk to **William Rehnquist** while he was chief justice of the US Supreme Court, joined Sullivan & Cromwell in 1989. For more than 25 years, he has represented a roster of prominent clients, including Volkswagen AG and Goldman Sachs Group Inc.Benchmark Litigation gave him a "Securities Litigator of the Year" US award in 2025 and has listed him on its shortlist for this year's awards.

Giuffra last year began representing Trump in his attempt to overturn his 2024 criminal case where a Manhattan jury found him guilty of falsifying business records to cover up payments to an adult film star. He is also representing Trump in his bid to have that state case moved to federal court.

--With assistance from **Tom Schoenberg**, **Nicola M White**, **Bhuma Shrivastava** and **Sudhi Ranjan Sen**.

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Anthony Lin

Securities
Insight

SEC's Motives for AI Adoption Could Strengthen Market Oversight

Jan. 30, 2026, 1:28 AM PST

In August 2025, the Securities and Exchange Commission launched an internal artificial intelligence task force to try to drive innovation and operational efficiency. This move signals the agency's transition from monitoring AI as an external trend to integrating it as an internal tool. The initiative has the potential to enhance the agency's efficiency by using AI to enhance market surveillance, examinations, and enforcement.

Effective AI Integration

AI tools allow the SEC to bridge the gap between the agency's constrained resources and the vast, complex, and evolving financial system it monitors.

To maximize effectiveness of AI deployment, the SEC must align specific AI tools with the unique characteristics of the data and information under review. For instance, the agency's market surveillance analytics programs, such as the Advanced Relational Trading Enforcement Metrics Investigation System, rely on quantitative trading data for detecting unusual patterns and relationships among traders. These sizable, structured datasets are ideally suited for traditional machine learning tools, which use algorithms designed to identify anomalies across high-dimensional variables with greater speed and precision than manual oversight allows.

While traditional machine learning tools excel at analyzing structured data, generative AI and large language models are optimized to help analyze unstructured information. These tools can process vast volumes of unstructured data, such as brokerage statements, internal corporate records, and emails, to identify topical observations, semantic nuances, and qualitative patterns that traditional quantitative tools might miss.

Ultimately, the SEC may also consider deploying AI agents across its investigative workflows, including for autonomous triage of inbound leads. These AI agents can operate as digital assistants, conducting complex analyses autonomously while reducing the need for human direction. By generating, orchestrating, or running their own specialized code, AI agents can investigate intricate data patterns and perform complex calculations independently, significantly accelerating the entire investigative lifecycle.

Enforcement Can Benefit

SEC enforcement stands to benefit from generative AI’s ability to process the massive, unstructured narrative datasets—such as emails, call transcripts, internal reports—that have traditionally served as sources of potentially critical evidence. These datasets present a significant analytical challenge because they lack the consistent format best suited for database analytics. Instead, they require interpreting ambiguity, context, and semantic nuances, which challenge the limits of traditional text analytics approaches.

The most immediate application of this technology lies in the SEC’s Tips, Complaints, and Referrals, or TCR, system, which annually ingests over 45,000 leads ranging from highly detailed whistleblower reports to vague or irrelevant grievances. Managing this volume with manual review or text analytics tools creates a considerable administrative burden. Generative AI can serve as an initial triage tool by categorizing submissions based on the specificity and verifiability of their allegations, which could considerably speed up the initial review process and thereby reduce administrative burden.

Beyond simple categorizing of submissions, AI-enhanced tools can identify patterns across seemingly unrelated TCR submissions. For instance, by clustering leads that mention the same entities, individuals, or suspicious behaviors, the SEC can uncover broad market manipulation schemes that might appear as isolated incidents to a human reviewer.

This automation doesn’t replace the human investigator. Rather, it empowers SEC staff to direct their expertise toward the most complex and credible leads, which can help accelerating the timeline from the initial tip to a formal enforcement action.

More broadly, deploying generative AI can transform how SEC enforcement connects “narrative” evidence with “quantitative” market activity. In a typical insider trading or market manipulation case, investigators must link the timing of private communications directly to public price movements or trading activity.

By rapidly processing thousands of unstructured records, AI allows investigators to identify hidden connections between private communications and public trades. This can significantly compress the investigative timeline while providing the evidentiary depth required for enforcement actions.

Solutions Are Complicated

Adopting AI technology likely won’t be a straightforward solution. Before the marketplace or market participants see results, the SEC should invest more in procuring or building platforms and processes to evaluate, manage, and mitigate the high error rates still prevalent in current AI-driven processes and models.

The primary challenge lies in mitigating false positive errors (in which an AI model reports suspicious activity that isn’t present) and false negatives (in which an AI model misses actual suspicious activity). If left unmanaged, high error rates could overwhelm investigators with “noise” or, conversely, create a false sense of security. To handle these errors effectively, the SEC will require robust internal procedures to validate AI outputs before they trigger formal investigative steps.

Ensuring strict data confidentiality is another significant hurdle. The SEC can't use public-facing AI models, as doing so would risk exposing sensitive, non-public data to external networks.

However, the marketplace now offers viable solutions for such high-security clients. These solutions often include access to powerful models within FedRAMP-certified government clouds or "on-prem" services, meaning those that allow models to run entirely within an agency's own secure data centers, ensuring that investigative data never leaves the agency's firewall.

Key Takeaways

The SEC's move to formalize an AI task force marks a significant step toward a more modernized market oversight. By pairing traditional machine learning for quantitative data with generative AI for complex narrative datasets, the agency can enhance its market oversight capabilities and better fulfill its mission of investor protection.

However, realizing this potential won't be straightforward, and challenges will include high AI error rates and strict data privacy requirements. The SEC's success will depend on its ability to balance these powerful automated tools with robust internal procedures and secure infrastructure to better protect investors in increasingly complex markets.

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

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Write for Us: Author Guidelines

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SBF is auditioning hard for a pardon and reinventing himself as a Republican.

Apparently his conversion happened in 2022 right before he got caught defrauding investors out of billions.

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Robbins Geller To Lead CarMax Investors' Tariffs-Linked Suit

By **Emilie Ruscoe**

Law360 (January 29, 2026, 10:53 PM EST) -- Robbins Geller Rudman & Dowd LLP will represent a proposed class of CarMax Inc. investors in a suit accusing the used car retailer of mischaracterizing a bump in sales caused by consumers trying to get ahead of the Trump administration's tariffs as a sign of sustainable growth.

In a Wednesday order in Maryland federal court, U.S. District Judge James K. Bredar granted the lead plaintiff bid to two pension fund clients of Robbins Geller — the Excavators Union Local 731 Pension Fund and City of Birmingham Retirement and Relief System — finding that their alleged losses of over $908,000 gave them the greatest financial interest in the litigation.

"The pension funds are the type of sophisticated institutional investors whose participation in securities class actions Congress sought to encourage through enactment" of the Private Securities Litigation Reform Act, Judge Bredar said Wednesday.

The duo beat out a competing lead plaintiff bid from Cohen Milstein Sellers & Toll PLLC client the Indiana Public Retirement System, which had alleged losses of nearly $872,000. The Indiana fund previously told the court that it didn't oppose the two funds being appointed lead plaintiffs.

Two other individual investors who'd moved to be lead plaintiffs withdrew their bids earlier, including Jason Cap, who launched the claims in November.

According to the suit, CarMax told investors in June 2025 that it expected to see "significant year-over-year earnings growth for years to come" after it had a positive first quarter of its 2026 fiscal year.

At the time, the suit states, CarMax touted increased earnings, sales and gross profits, stating its financial results for the quarter "highlight the strength of our earnings growth model."

On the earnings call that followed, the investor said, CarMax's then-CEO William D. Nash downplayed the impact of tariff fears on the company's recent positive financial results when analysts asked him whether the good news represented a blip or a trend. At the time, he also acknowledged that CarMax had seen increased sales that coincided with news of a looming 25% tariff on all imported cars and auto parts.

The lawsuit said CarMax's share prices were subsequently artificially inflated until the company's September earnings report, when it announced a drop in earnings per share.

Nash told investors at the time that the company ramped up inventory to support its growth, but CarMax's price competitiveness and sales took a hit following subsequent depreciation, the suit said.

Following those September disclosures, trading prices for CarMax shares fell over 20%, or $11.50, to under $46, the suit said.

Alongside CarMax, the suit names Nash, who left the company in November, and current CarMax Chief Financial Officer Enrique N. Mayor-Mora.

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

The pension funds are represented by Danielle S. Myers, Michael Albert and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP and Steven D. Silverman, Andrew C. White and William N. Sinclair of Silverman Thompson Slutkin & White LLC.

CarMax and the individual defendants are represented by Paul Allan Solomon of Skadden Arps Slate Meagher & Flom LLP.

The case is In Re Carmax Inc. Securities Litigation, case number 1:25-cv-03602, in the U.S. District Court for the District of Maryland.

--Additional reporting by Gina Kim. Editing by Emily Kokoll.

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Justices' BDO Denial May Allow For Increased Auditor Liability

By **Dean Conway** (January 29, 2026, 3:53 PM EST)

Dean Conway

On Oct. 6, the U.S. Supreme Court **denied** a petition for writ of certiorari filed by accounting firm BDO USA LLP.[1]

In denying the petition, the Supreme Court let stand BDO v. New England Carpenters Guaranteed Annuity and Pension Funds, an October 2024 U.S. Court of Appeals for the Second Circuit decision that **held** that an alleged false audit certification was material for purposes of pleading a claim under the anti-fraud provisions of the federal securities laws.

Although the Second Circuit stopped short of adopting a bright-line materiality standard, its decision meaningfully lowers the pleading burden for plaintiffs and makes the early dismissal of such claims more difficult, potentially exposing auditors to increased securities fraud litigation.

Factual and Procedural Background

On April 4, 2017, AmTrust Financial Services Inc. restated five years of its financial results to correct major accounting errors in its annual and quarterly reports filed with the U.S. Securities and Exchange Commission. The restatement addressed, among other issues, improper revenue recognition related to extended warranty contracts and improper accounting for certain discretionary employee bonuses.

The restatement prompted the filing of a putative securities class action against various AmTrust officers and board members, its external auditor BDO, and certain underwriters for allegedly misstating the company's financial statements in violation of Sections 11, 12 and 15 of the Securities Act, and Section 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5 thereunder.

The District Court Opinion

In April 2020, the U.S. District Court for the Southern District of New York **dismissed** the third amended complaint in its entirety under Rule 12(b)(6) of the Federal Rules of Civil Procedure.[2] The district court held that none of the alleged misstatements were actionable under the federal securities laws, including the Section 10(b) claim based on BDO's representation that it conducted its audit in accordance with Public Company Accounting Oversight Board standards.[3]

The plaintiffs' allegations centered on BDO's purported failure to complete all required audit procedures before issuing an audit opinion, as well as its alleged efforts to conceal that the audit work had not been timely completed.

Notwithstanding these allegations, the district court concluded that the plaintiffs failed to adequately plead materiality. Specifically, the plaintiffs did not allege facts demonstrating that BDO's alleged failures to timely complete its audit work would have been significant to a reasonable investor, or that those deficiencies had any effect on the 2013 audit opinion.[4]

The Second Circuit's Initial Decision

On Aug. 23, 2023, the Second Circuit largely **vacated** the district court's dismissal of the plaintiffs'

Securities Act claims under Sections 11, 12(a)(2) and 15, but affirmed the dismissal of the fraud claim against BDO.[5] The challenged audit certification in the 2013 auditor opinion stated that BDO had conducted its audit in accordance with PCAOB standards — an assertion that the appellants alleged was false.

Nonetheless, the Second Circuit concluded that the appellants failed to plead materiality because the complaint did not allege facts demonstrating that the purported misstatement in the audit certification would have been significant to a reasonable investor. In particular, the appellants failed to allege any link between the alleged misstatements in the 2013 auditor opinion and the material errors contained in AmTrust's 2013 Form 10-K.[6]

Critically, however, the Second Circuit did not suggest that audit certifications are categorically immaterial or too generalized to support securities fraud claims. Rather, it emphasized that the appellants had not alleged facts explaining why the audit certification itself would have been significant to a reasonable investor.

SEC Argument That Audit Certifications Have Independent Significance

On Sept. 6, 2023, the appellants moved for rehearing on the dismissal of the fraud claim against BDO.[7] In connection with that motion, the SEC submitted an amicus curiae brief addressing the materiality of an audit certification.[8]

The SEC forcefully argued that audit certifications, standing alone, convey important information to the market. According to the SEC, investors' perception of financial statements as reliable depends on auditors fulfilling their gatekeeper role with professionalism, integrity and independence.

The commission further emphasized that investors rely on audit certifications when making investment decisions. Where financial statements have not been audited in accordance with PCAOB standards, investors must account for the heightened risk that the company's financial statements are inaccurate or misleading.

The SEC also cited commission precedent recognizing that false audit certifications are material misstatements of independent significance, even absent any link to errors in the financial statements.[9]

The Second Circuit's Amended Opinion

On Oct. 31, 2024, the Second Circuit amended its opinion and vacated the dismissal of the fraud claim against BDO.[10]

The Second Circuit started its analysis by distinguishing audit certifications from financial statement certifications required under the Sarbanes-Oxley Act made by AmTrust's officers. Here, the Second Circuit affirmed the dismissal of the SOX-related claims because they were nonactionable statements of opinion under the Supreme Court's 2015 decision in Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund, while at the same time acknowledged that the audit certification resembled the SOX certifications.[11]

Notwithstanding the similarities between the two certifications, the Second Circuit agreed with the district court that the complaint alleged — unlike in the instance of the SOX certifications — critical facts that rendered the audit certification actionable. Specifically, the Second Circuit agreed that the alleged facts made it plausible that the audit partner who signed the audit opinion "disbelieved the statement that the audit was conducted in accordance with the relevant PCAOB standards."[12]

The Second Circuit disagreed with the lower court's holding, however, that materiality had not been adequately pled. The crux of the appeals court's reasoning was that audit certifications fundamentally convey to investors that audited financial statements are reliable.[13]

It then concluded — essentially mirroring the SEC's position — that materiality did not rest on an allegation that there was any link between false certification and specific errors in the financial statements.[14]

Takeaways

The denial of certiorari by the Supreme Court allows for expanded liability for accounting firms, but does not necessarily foreshadow that every inaccurate audit certification will be actionable fraud. Like all determinations of materiality, the materiality of a misstatement in an audit certification will turn on the particular facts and circumstances of the case.

Like the SOX certifications discussed by the Second Circuit, allegations regarding audit certifications may still be regarded by a court — depending on the facts pled — to be nonactionable opinion statements. For example, a missing audit work paper or some other deviation from PCAOB audit standards does not inescapably result in an actionable fraud claim.

The Second Circuit preserved the Omnicare defense for auditors who sign flawed audit certifications, so long as they had a reasonable subjective belief that their audit conformed to PCAOB standards. Auditors will not face liability for statements genuinely believed to be true, even if they later turn out to be wrong.

Notwithstanding the survival of bedrock principles of materiality, the Supreme Court's denial of BDO's petition undoubtedly ups the ante for auditors. The Second Circuit now explicitly recognizes the independent materiality of audit certifications separate and apart from any impact on the accuracy of the financial statements.

This precedent provides a road map for pleading falsity with respect to audit certifications, and it will arguably increase the number of actions filed by both private plaintiffs and the SEC. It's also of importance that the SEC, unlike plaintiffs in private securities litigation, is not saddled with the burden of proving reliance and loss causation, thereby making it easier for the SEC to prevail.

In addition to filing a Section 10(b) complaint in federal district court, the SEC also has the powerful option of filing an administrative action against an auditor under Rule 102(e) of the SEC's Rules of Practice to censure, suspend, or bar an auditor who appears or practices before it. Even with the recent slowdown in enforcement activity, the SEC has emphasized that holding gatekeepers accountable remains one of its key priorities, and this opinion will be a persuasive authority for it to cite in administrative proceedings.

In this elevated risk environment, accounting firms and auditors should exercise heightened caution to ensure that audits are conducted in accordance with PCAOB standards, and that the corresponding audit certifications fit comfortably within the opinion statement protections afforded under Omnicare.

Dean Conway is a shareholder at Carlton Fields. He previously served as assistant chief litigation counsel at the SEC.

[1] BDO USA, LLP v. New England Carpenters Guaranteed Annuity and Pension Funds, et al. , No. 24-1151.

[2] In re AmTrust Fin. Servs., Inc. Sec. Litig. , 2020 WL 2787117 (S.D.N.Y. Apr. 20, 2020).

[3] The Sarbanes-Oxley Act of 2002, as amended, directs the PCAOB to establish, by rule, auditing and related professional practice standards for registered public accounting firms to follow in the preparation of audit reports for public companies and other issuers, and broker-dealers.See Auditing Standards | PCAOB.

[4] Id. at *34.

[5] New England Carpenters Guaranteed Annuity & Pension Funds v. Decarlo(New England Carpenters I) , 80 F.4th 158, 165 (2d Cir. 2023).

[6] Id.

[7] Appellants' Mot. for Reh'g, New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo, No. 20-1643, ECF No. 176 (2d Cir. Sept. 6, 2023).

[8] Brief for the SEC as Amicus Curiae, New England Carpenters Guaranteed Annuity & Pension Funds v. Newmark, No. 20-1643, ECF No. 202 (2d Cir. Feb. 16, 2024).

[9] Id. at 10, 13.

[10] New England Carpenters Guaranteed Annuity & Pension Funds v. Decarlo(New England Carpenters II), 122 F.4th 28 (2d Cir. 2024).

[11] New England Carpenters II at 47-48.

[12] Id. at 52-53.

[13] Id. at 53.

[14] Id.

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Zuora Investor Sues Over $1.7B Silver Lake Take-Private Deal

By **Jeff Montgomery**

Law360 (January 29, 2026, 7:00 PM EST) -- An investor in software as service subscription software venture Zuora Inc. has opened a proposed class suit seeking damages in connection with Silver Lake Group's $1.7 billion take-private acquisition of the company, naming both Silver Lake and managing panther Joseph Osnoss and alleging breaches of fiduciary duty.

Summary filings accompanying the complaint, otherwise entered under seal, identified the plaintiff investment adviser Meteora Capital LLC as a holder of Zuora Inc. common stock at the time of actions targeted in the complaint.

Silver Lake Group completed a $1.7 billion, $10-per-share cash acquisition of Zuora on Feb. 14, 2025.

A suit seeking books and records on the deal, filed in January 2025 by the Southeastern Pennsylvania Transportation Authority and later dismissed, described the transaction as a "canonical example of the kind of facts that show a credible basis to investigate."

Joseph Levy, chief financial officer of Meteora, confirmed the company's former Zuora holdings in a court filing, which said the suit seeks "monetary relief (even if secondarily[)]" under a transaction agreement.

Silver Lake described the transaction in an announcement in October 2024 as having been completed "in partnership with an affiliate of GIC Pte. Ltd," Singapore's sovereign wealth fund.

Among other points, the now-dismissed SEPTA suit observed that Zuora's founder and largest stockholder, Tien Tzuo, controlled about 40% of the company's total voting power and obtained a variety of benefits from the deal. They included a rollover of most of his equity along with post-closing employment and governance rights.

According to court records on the SEPTA action, dismissed with prejudice in September 2025, Zuora refused to permit the stockholders to use confidential documents at trial. The company also allegedly required attorneys for the stockholders to "conduct a multi-day document review to scrub their own emails and word-processing documents" at the end of the case.

"Zuora and its counsel know that no competent lawyer would agree to the terms it insists on. This is a way for Zuora to place obstacles in the plaintiffs'" path, a brief filed early in the SEPTA case said.

At the time the Silver Lake deal was announced, it was described as representing an 18% premium, and "the only, final, fully-financed proposal received by Zuora." The deal was said to have been reviewed by a board Special Committee, "evaluated against Zuora's standalone prospects, future outlook and growth plans, and other strategic and financial alternatives."

The company describes itself as providing "a leading monetization suite to build, run and grow a modern business through a dynamic mix of usage-based models, subscription bundles and everything in between."

Meteora Capital LLC is represented by Daniel Meyer, Jeroen van Kwawegen and Christopher Orrico of Johnson Van Kwawegen LLP.

Counsel information for those named in the suit was not immediately available.

The case is Meteora Capital LLC v. Tien Tzuo, Joseph Osnoss and Silver Lake Group LLC, case number 2026-0120, in the Court of Chancery of the State of Delaware.

--Editing by Emily Kokoll.

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RealNetworks Can't Exit Investor Suit Over Take-Private Deal

By **Katryna Perera**

Law360 (January 29, 2026, 7:21 PM EST) -- RealNetworks Inc., an artificial intelligence-focused digital media company, cannot escape a shareholder suit alleging that the company and its top brass misled investors in a 2022 take-private transaction, a Washington federal judge has ruled.

According to an unsealed order Wednesday, U.S. District Judge Kymberly K. Evanson denied RealNetworks' dismissal motion, finding plaintiff Richard Brender has standing and has adequately pleaded his claims.

According to the order, in July 2022, RealNetworks merged with and into Greater Heights LLC and Greater Heights Acquisition LLC, both of which are affiliates of RealNetworks founder, former CEO and board chair Robert Glaser.

Glaser and other RealNetworks directors are named as defendants in the suit. A special committee of RealNetworks' independent directors presented shareholders with the proposed merger and accompanying proxy statements and recommended approval, according to the order.

The shareholders voted to approve the merger, and as a result, shareholders who were unaffiliated with Glaser received 73 cents per share of RealNetworks common stock, the order states.

Brender alleges that the merger's proxy statement contained nine false and misleading statements regarding July 2022 financial projections.

"Plaintiff contends that earlier financial projections, from January and May 2022, were more accurate, and that RealNetworks fraudulently revised the projections and justified those revisions to result in a lower share price to benefit Glaser, to the detriment of shareholders," the order states.

On Wednesday, Judge Evanson found that Brender has standing to bring his claims via a direct action rather than a derivative suit because the complaint describes an injury he suffered, not one suffered by the corporation.

In arguing for dismissal, the defendants claimed the nine challenged statements in the proxy were forward-looking because "when examined as a whole, they relate to future expectations of economic performance."

However, Judge Evanson said that while the allegedly misleading statements do reference forward-looking projections, those are not the portions that Brender challenges.

"Instead, plaintiff challenges defendants' representations that the projections were, for example, prepared in 'good faith' or represented 'updated' or the 'best' available estimates," the order states. "Thus, while defendants are correct that each of the challenged statements may contain a forward-looking statement, they have not shown that plaintiff's claims are based on any forward-looking statements covered by the safe harbor."

The judge further found that the suit adequately challenges that the proxy statement's July financial projections were prepared in good faith and "reflected management's reasonable best estimates."

"These allegations support an inference that the proxy's description of the July 2022 projections as 'prepared in good faith' and the 'best currently available estimates and judgments of company management' were subjectively and objectively false, because plaintiff alleges that the individual defendants did not prepare the projections in good faith and the projections were objectively inconsistent with other reports of RealNetworks' position," the order states.

The suit also adequately alleges that the defendants acted negligently, the judge said, noting that Brender claims that Glaser took actions to "coerce" the special committee into recommending approval of the merger and that the board and special committee were aware of Glaser's intentions and conflicts of interest.

Additionally, the judge found that because the complaint adequately alleges that the proxy contained false and misleading statements that were openly discussed during board meetings, there is a strong inference of negligence against each individual board member.

"Because plaintiff's complaint adequately alleges that all board members were on notice of the false or misleading statements in the proxy, and yet approved its dissemination via RealNetworks, the court finds that the complaint plausibly alleges the negligence of all defendants," the order states.

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

Brender is represented by Juan E. Monteverde of Monteverde & Associates PC, Michael J. Palestina of Kahn Swick & Foti LLC and Roger M. Townsend of Townsend Legal PLLC.

The defendants are represented by Randall T. Thomsen, Shane P. Cramer and Caleb T. Mathena of Bryan Cave Leighton Paisner LLP.

The case is Strougo v. RealNetworks Inc et al., case number 2:24-cv-00297, in the U.S. District Court for the Western District of Washington.

--Editing by Patrick Reagan.

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Inspire Medical Leaders Face Suit Over Apnea Device Rollout

By **Emilie Ruscoe**

Law360 (January 29, 2026, 5:54 PM EST) -- Brass of Inspire Medical Systems Inc. face shareholder derivative claims they breached their fiduciary duties by concealing issues affecting the launch of the company's latest sleep apnea device, damaging investors after its trading prices fell 32% when the issues were disclosed.

In a Wednesday complaint in Manhattan federal court, Inspire Medical Systems investor Mary Korte claimed that three executives and eight company directors defrauded investors, unjustly enriched themselves and wasted corporate assets in connection with Inspire Medical's rocky rollout for the latest version of its flagship device.

Korte described Inspire Medical as a maker of implantable systems that use neurostimulation to treat obstructive sleep apnea, a breathing disorder.

The newest version of this system, the Inspire V, recently received U.S. Food and Drug Administration approval, and the company aimed to soft launch the product in 2024 with a 2025 hard launch, the suit states.

Between August 2024 and August 2025, Korte claimed, the company assured investors its Inspire V launch would be relatively straightforward, and the investor pointed to Inspire CEO Timothy P. Herbert's claim that its new system was "ready to go" and would be in demand as the product rolled out.

But in reality, the investor said, the launch hit snags. Korte claimed medical centers didn't finish training they needed to implant the device, major insurers including Medicare wouldn't reimburse for Inspire V expenses, and these factors, combined with poor marketing, led to low demand for the systems.

Korte pointed to the company's August 2025 release of its financial results for its second quarter of the 2025 fiscal year, when the company lowered its full year earnings guidance by 80% as Herbert conceded the company "encountered certain headwinds that slowed our efforts to transition customers to Inspire V."

Following that disclosure, Inspire Medical shares fell $42, or over 32%, to settle at under $88, Korte said.

The derivative suit follows a proposed class action against Inspire Medical and certain members of its leadership team, including Herbert, Chief Financial Officer Richard J. Buchholz and Chief Strategy and Growth Officer Carlton W. Weatherby, Korte said.

The investor claimed the executives' alleged misconduct opened the company up to liability in the securities class action and required it to incur costs including its legal fees and investigator payments.

Alongside the breach of fiduciary duty claims, the complaint levels securities offering fraud claims, control person liability claims and alleges the defendants wasted corporate assets and unjustly enriched themselves.

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

Korte is represented by Vincent A. Licata, Leah B. Wihtelin and Seth D. Rigrodsky of Rigrodsky Law PA.

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

The case is Korte v. Herbert et al., case number 1:26-cv-00680, in the U.S. Disrtict Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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TreeHouse Foods Sued In Chancery For Docs On $2.9B Sale

By **Jeff Montgomery**

Law360 (January 29, 2026, 2:36 PM EST) -- A TreeHouse Foods stockholder filed suit in Delaware's Court of Chancery late Wednesday for expedited access to withheld documents on the company's $2.9 billion agreement in November to sell the packaged snack and beverage company to affiliates of Investindustrial VIII SCSp, an independently managed group of European investment, holding and advisory companies.

The suit, docketed a day ahead of the shareholder vote, alleged that TreeHouse improperly refused previous demands by the stockholder who sued for details on the deal with private equity firm Investindustrial, which has offices in Europe, the U.S., Asia and Saudi Arabia.

Among the concerns cited in stockholder Dean Drulias' complaint: the TreeHouse board's sole financial adviser, Goldman Sachs, was also representing the proposed buyer during the **sales process,** and represented Investindustrial "on various matters" as of Nov. 10 while also having directly invested more than $24 million in Investindustrial.

"With various conflicts of interest at play, it is unsurprising that the merger consideration appears unfair," the complaint said. "Goldman Sachs' own cash-only discounted cash flow model implied a valuation range with a midpoint of $24.31 per share, almost $2 per share higher than the merger price."

"To date, the company has refused to produce documents pursuant to plaintiff's demand and has similarly refused to enter into a standing or access agreement, necessitating this action," the complaint said.

Terms of the sale include $22.50 per share and one "right" per share contingent on the value of proceeds from ongoing litigation, without guarantees regarding the amount. Also noted in the complaint is a risk — as determined by Goldman Sachs — that the "downside" for the post-tax litigation proceeds is negative 29 cents per share.

A closing on the deal, if approved, is expected in the first quarter of 2026, the complaint said.

The complaint seeks formal board materials regarding the merger and director and officer questionnaires, issues described in the suit as related to the stockholder investigation.

The complaint said the stockholders have a credible basis to suspect the deal, and asserted that the Court of Chancery "has repeatedly described the credible basis standard as the 'lowest possible burden of proof under Delaware law.'"

The parties did not immediately respond to requests for comment Thursday.

InvestIndustrial's food and beverage portfolio will have over 85 manufacturing plants and 16,000 employees following the acquisition of TreeHouse Foods, said Andrea C. Bonomi, chair of Investindustrial's industrial advisory board.

Drulias seeks coverage of legal fees and expenses in his complaint.

TreeHouse Foods is a North America private brands food and beverage manufacturer that has made products for such retailers as Safeway, Trader Joe's, Target and Whole Foods.

Drulias is represented by Kimberly A. Evans, Lindsay K. Faccenda, Daniel M. Baker and Jason Leviton of Block & Leviton LLP.

Counsel for TreeHouse was not immediately available Thursday.

The case is Dean Drulias v. TreeHouse Foods Inc., case number 2026-0121, in the Delaware Court of Chancery.

–Additional reporting by Bonnie Eslinger. Editing by Karin Roberts.

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Shoddy Funds Cost Bloomberg 401(k) Investors Big, Suit Says

By **Grace Elletson**

Law360 (January 29, 2026, 3:00 PM EST) -- Bloomberg may have lost its workers almost $200 million by failing to nix two underperforming investment funds from its $5 billion retirement plan, according to a proposed class action filed in New York federal court on Thursday claiming the financial data and media company shirked its fiduciary duties.

Bloomberg is accused of choosing retirement investment funds that failed to clear performance expectations set out in their stated benchmarks. (Artur Widak/NurPhoto via AP)

Plan participant Rajkumar Rajappan **claimed** in the Employee Retirement Income Security Act suit that Bloomberg LP and its retirement plan investment committee kept two funds — the Harbor Capital Appreciation Fund and the Parnassus Core Equity Fund — in the plan for over 10 years even though they delivered lackluster returns.

"The Bloomberg defendants seemingly ignored clear warning signals, keeping the challenged funds in the plan despite years of underperformance that tanked the retirement savings of thousands of plan participants," Rajappan said.

The plan holds the assets of 20,000 participants, Rajappan said. Workers invested $437 million of their retirement savings in the Harbor Capital fund and over $59 million in the Parnassus fund as of the end of 2024, the suit states. Bloomberg selected the Harbor Capital fund for the plan in 2010, and tapped the

Parnassus fund in 2015, according to the suit.

Both plans failed to clear performance expectations set out in their stated benchmarks, Rajappan said.

The Harbor Capital fund underperformed by 23 percentage points from 2009 to 2019, and the Parnassus fund underperformed by five percentage points from 2015 to 2019, according to the complaint. Since 2019, the Harbor Capital fund's performance fell another 24 points, and the Parnassus fund fell an additional 20 points when compared to their benchmarks, Rajappan said.

These patterns should have signaled to Bloomberg that it was time to remove the investment options from the plan in line with its fiduciary duties under ERISA, but the company did no such thing, Rajappan said.

Failure to remove the funds has been "disastrous" for workers, Rajappan said. He claimed they have faced anywhere from $79.9 million to $197.8 million in losses through the retention of the lackluster funds.

In support of his claims, Rajappan pointed to comparable funds that performed better than the Harbor Capital fund and the Parnassus fund that Bloomberg could have tapped for the plan. He pointed to the Fidelity Blue Chip Growth Fund, the JPMorgan Large Cap Growth Fund, the T. Rowe Price U.S. Equity Research Fund and the Vanguard Russell 1000 Growth Index Fund that all performed better than the Bloomberg funds at issue and had similar characteristics.

He seeks to represent a class consisting of all those who invested in the Harbor Capital fund and the Parnassus fund dating back to Jan. 29, 2021, through the suit's resolution. Rajappan estimated that the classes would consist of thousands of workers.

"Cases like this one against Bloomberg are an important tool for protecting the hard-earned retirement savings of employees and ensuring continuing positive change in retirement plan management," Charles Field, an attorney representing the proposed class, said in a statement.

Representatives for Rajappan and Bloomberg did not immediately respond to requests for comment.

The proposed class is represented by Russell Kornblith and Charles Field of Sanford Heisler Sharp McKnight.

Counsel information for Bloomberg was not yet available.

The case is Rajappan v. Bloomberg LP et al., case number 1:26-cv-00785, in U.S. District Court for the Southern District of New York.

--Editing by Nicole Bleier.

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Boies Schiller Hits Meta With Arbitration Bids Over Addiction

By **Hailey Konnath**

Law360 (January 29, 2026, 11:04 PM EST) -- Boies Schiller Flexner LLP on Thursday filed a number of arbitration demands against Meta Platforms Inc. on behalf of young Instagram users, claiming that the social media company's products are harmful and intentionally designed to hook young people.

The users said Instagram is designed to trap young people in a "negative loop of addictive and obsessive use that, like any addictive product, leads to fleeting moments of elation, but also long periods of depression, anxiety, insecurity, body dysmorphia, sleeplessness and, in some cases, suicidal thoughts," according to copies of two of the petitions obtained by Law360.

In those petitions, New York resident Ian Macrae Locke, 26, and Daniel Alejandro Trejo Canales, 19, of North Carolina, said they are owed compensation for harms Meta knowingly inflicted upon them.

"As Meta concedes in its internal documents, Instagram, as designed, leads to worse health, more stress, anxiety and depression, poor health and body images and sleepless nights," the demands state.

Both users are also represented by lawyers with Labaton Keller Sucharow LLP and Milberg PLLC, per the demands, filed before the American Arbitration Association. The total number of petitions filed wasn't immediately available late Thursday.

The arbitration demands were filed just days after **jury selection began** in the first bellwether trial over claims that social media harms young users' mental health in sprawling consolidated litigation in Los Angeles County Superior Court. TikTok reached a settlement the day before the trial began, leaving just Meta and YouTube as defendants in that case.

Parallel **federal personal injury claims** are also pending against tech companies in multidistrict litigation in California federal court. In 2024, Boies Schiller filed its own proposed class action against Meta in a different court claiming Instagram's designs addicted and harmed a 10-year-old girl and others. Just months later, the judge overseeing the federal litigation said she **wouldn't let the firm disrupt the MDL with that suit**.

"I'm not going to let Boies Schiller come in here with a class action that you think does something different," U.S. District Judge Yvonne Gonzalez Rogers said at the time. "You all don't really do anything different."

In Thursday's arbitration demands, Locke and Canales noted that young people used to interact and connect primarily in person, but Instagram is now at the center of socializing. Meta itself has described Instagram as "the connector and key to the social world" for young people, they said.

"This is a disturbing reality: humans are inherently social beings and social interaction has been shown in numerous studies to be a critical component of good mental and physical health," they said.

They said one would "reasonably assume" that Meta would design Instagram to ensure that its use contributes to healthy behaviors and states of mind. But Meta does just the opposite, they said. And it openly encourages parents to allow their children to use Meta's products by arguing that banning children will only cause "social ostracization," according to the demands.

"Why does Meta facilitate these negative effects? For an age-old reason: to make money through addiction," the users said.

Those children grow into young adults, like Locke and Canales, who exhibit classic addictive behavior, spending hours a day on Instagram, they said.

For instance, Locke said he started using the app when he was just 11 years old. Fifteen years later, his Instagram use has caused him to perform poorly in school, feel anxious and depressed and develop poor body image issues, he said.

"As a result, claimant has been hospitalized, received psychological therapy and prescribed antidepressants," his demand states.

Locke said he's tried to delete Instagram five times over the past few years, but each time he felt anxious and returned to the app. He said certain changes to the app — like replacing the button that takes users to their direct messages with a button that navigates users to scroll through videos — have made it harder to stay off the app.

"During his use, claimant was exposed to content he did not choose to see that negatively addressed body image issues and social comparison that gives him 'a day-to-day awareness or feeling of inadequacy' in his own life and accomplishments and 'immense pressure' to know what's going on with the accounts he follows," the filing states.

When he was 22, Locke tried to take his own life, he said.

Canales also started using Instagram at age 11, he said. Eight years later, he is on the app two to six hours every day and developed the same problems as Locke, per his demand. He, too, was hospitalized, received psychological therapy and was prescribed antidepressants, Canales said.

Specifically, Canales said he developed a porn addiction between the ages of 11 and 16 thanks to the images he was unwittingly exposed to on Instagram. He said he was also shown images that contained gore, violence and crazy car accidents.

"Ultimately, he became depressed and anxious," the filing states. "As an overweight child, he developed low self-esteem about his body and how he looked. He felt like everyone was judging him, and he spent lots of time comparing himself to others online."

Both are alleging design defects, failure to warn, negligence, computer fraud and abuse, unjust enrichment and invasion of privacy.

A spokesperson for the users said filing the arbitration demands is "an important step for holding Meta and big tech accountable for the harm it causes young users."

Meta didn't immediately respond to a request for comment late Thursday.

The users are represented by David Boies, Alexander Boies, Joshua Michelangelo Stein, Sigrid S. McCawley and Jenny Kim of Boies Schiller Flexner LLP, Jonathan Waisnor, Morris Dweck, Stephen Kenny and Eric Freiman of Labaton Keller Sucharow LLP and Gary M. Klinger, Melissa H. Nafash and Christian Torres of Milberg PLLC.

Counsel information for Meta wasn't immediately available.

The arbitration demands are Ian Macrae Locke v. Meta Platforms Inc. et al. and Daniel Alejandro Trejo Canales v. Meta Platforms Inc. et al., both before the American Arbitration Association.

--Editing by Jay Jackson Jr.

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Fitness App Must Face Trimmed Suit Over Tracking Cookies

By **Allison Grande**

Law360 (January 29, 2026, 11:30 PM EST) -- A California federal judge cut several wiretap and fraud claims from a proposed class action accusing MyFitnessPal of allowing third parties to track the browsing activities of website visitors who rejected the use of tracking cookies while allowing the plaintiffs to proceed with invasion of privacy and two other allegations.

In a ruling issued Tuesday on MyFitnessPal Inc.'s motion to dismiss, U.S. District Judge P. Casey Pitts found that plaintiffs Vishal Shah and Christine Wiley had established Article III standing and adequately stated claims for invasion of privacy, intrusion upon seclusion and unjust enrichment in their lawsuit challenging the nutrition and fitness app's placement of third-party tracking cookies on their devices.

However, Judge Pitts also held that the plaintiffs failed to assert the elements required to maintain their claims under the California Invasion of Privacy Act and for common law fraud and trespass to chattels, pointing to deficiencies such as their inability to specify how their own personal interactions were impacted by the company's allegedly unlawful conduct while giving the plaintiffs permission to amend these claims.

MyFitnessPal argues that the plaintiffs couldn't move forward with their suit for several reasons, including that they fail to plead a sufficiently concrete and particularized injury to establish Article III standing because they hadn't demonstrated that their personal information was actually collected or that they were injured by this activity.

In launching their proposed class action in May, the plaintiffs assert that MyFitnessPal violated website visitors' privacy rights by deploying cookies that allowed third parties to track users across different websites for targeted advertising and other purposes, despite these users opting out of receiving functional and advertising cookies through a popup cookies consent banner that appeared on the MyFitnessPal website.

The nutrition and fitness app claims the suit suffered from the same standing issues that led the Ninth Circuit **to dispose of** Ashley Popa's proposed class action accusing Microsoft Corp. of providing a pet supply website with "session replay" technology that illegally captured visitors' browsing activities. In that dispute, the Ninth Circuit found Popa lacked standing because she didn't establish how her interactions being tracked "caused her to experience any kind of harm that is remotely similar to the 'highly offensive' interferences or disclosures that were actionable at common law."

But Judge Pitts ruled Tuesday that, unlike in the Microsoft case, "the kind of injury that Shah and Wiley allegedly suffered is similar to a harm recognized at common law — specifically, the harm made actionable by the common law public-disclosure-of-private-facts tort."

"Plaintiffs here allege that MFP told them that their individual information would not be shared because they could opt out of unnecessary cookies, and yet it was shared," Judge Pitts ruled. "This harm is thus similar in kind to a harm recognized as actionable at common law."

The sensitivity of the information at issue in the dispute also distinguishes it from the Microsoft case, Judge Pitts found. While the Ninth Circuit held that Popa's privacy interest in information about her pet store preferences and the street she lived on wasn't particularly sensitive, the data collected through the cookies on the MyFitnessPal site, which included interactions related to personal topics like nutrition and fitness tracking, "could plausibly be understood at this stage of the proceedings to be 'embarrassing, invasive, or otherwise private information,'" Judge Pitts held.

The judge also rejected MyFitnessPal's contention that the plaintiffs failed to assert claims for invasion of privacy and intrusion upon seclusion because they hadn't demonstrated that they had a "reasonable expectation of privacy" or that the company's alleged intrusion was "highly offensive."

While Judge Pitts acknowledged that MyFitnessPal was "correct" to assert that the browsing histories, website interactions, shopping behaviors, device information and other data gathered by the tracking cookies wasn't necessarily the type of information in which users have a qualified expectation of privacy on its own, the company's alleged misrepresentation of how it would treat information belonging to users who opted out of nonessential cookies shifted the calculus.

"MFP allegedly told plaintiffs that it would not collect information for advertising or analytics if they opted out of such collection," the judge ruled. "A reasonable visitor to MFP's website who chose to opt out of optional cookies would thus reasonably expect MFP not to install such cookies on their devices."

Additionally, because the company's primary product is an app and accompanying website "designed to help users track their calorie intake, exercise, and health and fitness goals," users "may have a reasonable expectation of privacy in that type of information," the judge found.

While MyFitnessPal points to other disputes where the court found similar information to not be sufficiently "sensitive" enough to support an invasion of privacy claim, Judge Pitts found that these matters were distinguishable because, unlike MyFitnessPal, the defendants in those cases hadn't set out an expectation that they wouldn't collect certain information.

Judge Pitts additionally pointed to the California Consumer Privacy Act, which was enacted in 2018 and gives consumers the ability to access, correct, delete and opt out of the sale and sharing of their personal information, as further support for the conclusion that the app users "had a reasonable expectation of privacy in the information that was collected by cookies they had attempted to reject."

"When evaluating Californians' reasonable expectations of privacy, the CCPA's provisions are highly relevant 'customs, practices, and circumstances,' because they provide Californians with the reasonable expectation that they will have some control over their data and necessarily shape users' expectations about their ability to opt out of websites' collection of data for profit," the judge held, adding that cases decided prior to the CCPA's adoption provide "limited value in considering users' reasonable post-enactment expectations."

MyFitnessPal also fell short with its argument that its alleged data collection and dissemination couldn't be considered "highly offensive," with Judge Pitts concluding that the plaintiffs' allegations that the company not only engaged in unlawful tracking but that this conduct was "undertaken through deceptive conduct" precluded him from finding that alleged invasion wasn't highly offensive.

Judge Pitts additionally allowed the plaintiffs' unjust enrichment claim to move forward, rejecting MyFitnessPal's arguments that unjust enrichment is not a stand-alone cause of action and that no misrepresentation or omission had been asserted.

"Plaintiffs allege MFP misled them as to the effect of opting out of certain cookies and that the resulting data collection was valuable because it enabled UMG to better market features and services, better target advertisements, and better profit from its understanding of users' behaviors," the judge held in sustaining the claim.

The plaintiffs' allegations under the California Invasion of Privacy Act didn't fare as well.

For the plaintiffs' claim under Section 631(a), which prohibits the unauthorized reading of the content of any communication while it's in transmit, Judge Pitts found that while the plaintiffs had sufficiently alleged that MyFitnessPal was tracking the "contents" of users' communications and not merely record information, "the problem" with their accusation was that they didn't specifically say that their own personal communications were intercepted by any third parties.

"Plaintiffs repeatedly allege that MFP enabled third parties to track the information and communications of 'website users,'" the judge said. "But with respect to their own interactions with MFP's websites, plaintiffs allege only that they visited the website and chose to opt out of certain cookies. They do not allege that, in interacting with MFP's website, they personally engaged in any communications with the websites whose content could have been intercepted."

Judge Pitts pointed to similar issues with the plaintiffs' claims that the cookies violated the pen register provision of CIPA, which prohibits the installation or use of a device or process that records or decodes dialing, routing, addressing, or signaling information, but not the contents of a communication.

While the judge found that the plaintiffs "have sufficiently pleaded that the cookies placed on certain users' devices could amount to an unauthorized pen register," he concluded that "once again, however, the problem with plaintiffs' pen register claim is that they have not alleged that they ever communicated with the website."

"In the absence of any allegation that they communicated with the websites, they cannot allege that the "dialing, routing, addressing, or signaling information" relating to any such communication was unlawfully tracked," Judge Pitts held, adding that if the plaintiffs elect to revise this claim, "they must identify not only their communications with MFP but also the specific 'dialing, routing, addressing, or signaling information' for outgoing communications that was tracked."

Judge Pitts gave the plaintiffs 28 days to file a revised complaint to address the deficiencies he identified with the dismissed claims, which also include common law fraud and trespass to chattels.

For the fraud claim, Judge Pitts held that the plaintiffs hadn't adequately alleged "the when of the misconduct alleged" in order to put MyFitnessPal on sufficient notice of its alleged misconduct, while the judge cut down the trespass claim due to the plaintiffs' failure to plausibly allege "physical, functional, or other 'measurable loss' from the involuntary placement of cookies on their devices."

Counsel for the parties couldn't be reached for comment Thursday.

The plaintiffs are represented by Seth A. Safier, Marie A. McCrary, Todd Kennedy, Hayley A. Reynolds and Francisco J. Rolon of Gutride Safier LLP.

MyFitnessPal is represented by Sean P. Killeen and Edward McAndrew of BakerHostetler.

The case is Shah et al. v. MyFitnessPal Inc., case number 5:25-cv-04430, in the U.S. District Court for the Northern District of California.

--Editing by Kristen Becker.

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United Healthcare Beats Class Cert. Bid Over Breast Surgery

By **Gina Kim**

Law360 (January 29, 2026, 6:23 PM EST) -- A New Jersey federal judge on Wednesday declined to certify a proposed class of United Healthcare Insurance plan participants who were denied coverage for post-mastectomy breast reconstruction surgery, finding that she can't determine which standard of review applies to each plan's varying language without conducting individualized, fact-specific inquiries.

In an 11-page decision, U.S. District Judge Susan D. Wigenton of the District of New Jersey denied Barbara Williams' motion for class certification in a case accusing United Healthcare of denying coverage for patients at risk of cancer or who had a form of reconstructive surgery that uses the deep inferior epigastric perforator flap, in which fat and skin from the lower abdomen is used to create a new breast.

Williams, the proposed class representative, sought to certify a class of all those in the U.S. who were a member of a health plan governed by the Employee Retirement Income Security Act and were denied coverage for the surgery on or after June 21, 2015.

United Healthcare opposed certification, arguing that some claims would be time-barred under varying statutes of limitations.

Williams also fails to meet the commonality requirement for certification because the classwide injury cannot be adjudicated; rather, it calls on the judge to conduct individual inquiries due to the varying language in different members' plans, the company said.

On Wednesday, Judge Wigenton agreed with United Healthcare's position, explaining that she must determine the applicable standard of review when seeing if the insurer improperly rejected benefits to the plaintiffs.

Quoting Luby v. Teamsters Health, Welfare & Pension Trust Funds, a Third Circuit case from 1991, the order noted that determining whether a plan administrator's exercise of power is up to their discretion or mandatory depends on the plan's terms.

"This court agrees with defendant that the question of which standard of review applies to the members' plan cannot be resolved on a classwide basis and as such, plaintiff fails to satisfy the commonality requirement," the judge wrote.

Judge Wigenton wrote that she'd have to examine each patient's plan to see which ones reserve discretion, "and how far that discretion extends."

The order continued: "Here, this court cannot determine which plans reserve discretion without reviewing the plan language of each member's plan, and plaintiff offers no method of identifying plans that reserve discretion on a classwide basis."

Furthermore, there's a wide variety of limitation windows throughout the members' plans, ranging from one year to three years, the judge said.

"Based on the sample claims and thousands of putative class members, it is likely that the numerous class members with untimely claims could render plaintiff's timely claims atypical," the judge said.

Wednesday's certification denial is the latest development in a proposed class action originally brought in June 2021 by a pair of out-of-network plastic surgeons, Joseph Tamburrino and Taylor Theunissen, asserting violations of ERISA. The doctors sought reimbursement from United Healthcare under assignments from their patients, according to court records.

The surgery is a complicated, crucial part of the recovery process for patients that's medically necessary, the plaintiffs said. It requires many providers, like a co-surgeon or surgery assistant, to minimize length and complications.

While the procedure is covered under the health plans, United Healthcare systematically rejects claims by applying inapplicable Medicare billing and coding guidelines, the plaintiffs alleged. This left medical providers with no reimbursement as the denial was based on criteria that were more restrictive than the plans' relevant terms, they said.

Williams argued that there is common evidence of a uniform denial policy under which the insurer would pay for safer, medically necessary dual-surgeon procedures only if the billing is down-coded under the "more generic alternative," which means it could reimburse covered claims at a lower rate.

Williams contended that there are no individualized issues in the case, as United Healthcare implemented a uniform policy that denied every class member's claim, in conflict with their plans' terms. Williams also sought relief in the form of a court order mandating that United Healthcare reprocess rejected claims.

United Healthcare argued that there are "insurmountable challenges" facing certification. While the case was initially brought by two surgeons seeking reimbursements, the first provider was dismissed due to lack of standing and the second later withdrew from litigation. Now, the proposed class is represented only by the first provider's patient, who said she hasn't been billed or paid anything to her provider, according to the company brief.

Williams said she wasn't interested in being a representative and only wanted her provider to get paid, United Healthcare argued.

United Healthcare contended that it wasn't required to apply the same standard to each claim decision, especially when the plan language and the facts of each claim would vary throughout the class. Nor could the plaintiffs show commonality since there's no classwide method of establishing standing, injury or standard of review applicable to each patient's claim, the defendant said.

This calls for a case-by-case analysis of the facts behind each claim, patient correspondences with their providers, members' plan records and physician assignments, the insurer added.

Williams also wouldn't be an adequate representative because if she secured the relief she wants — reprocessing of claims — some class members would be financially worse off, due to higher copay and deductibles, the insurer said.

It could also result in some members paying more in co-insurance, since the providers would receive higher reimbursements, United Healthcare explained. That would mean only the members' providers would benefit from that relief, not the class members, the insurer said.

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

The proposed class is represented by Natalie Lesser and Amey J. Park of Berger Montague PC, and by Leslie S. Howard and Michael F. Fried of Cohen Howard LLP.

United Healthcare is represented by Heather L. Richardson, Geoffrey Sigler, Jennafer M. Tryck, Stephanie L. Silvano and Seton Hartnett O'Brien of Gibson Dunn & Crutcher LLP.

The case is Barbara Williams v. United Healthcare Insurance Co., case number 2:21-cv-12766, in the U.S. District Court for the District of New Jersey.

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J&J, Talc Unit Get Patients' Bankruptcy Fraud Claims Tossed

By **Lauren Berg**

Law360 (January 29, 2026, 10:58 PM EST) -- A New Jersey federal judge Thursday tossed a proposed class action brought by cancer patients who allege that Johnson & Johnson's maneuvers to settle thousands of tort claims through Chapter 11 involved fraud, saying the plaintiffs have not asserted an injury that confers standing to sue.

U.S. District Judge Michael A. Shipp's **order** grants the motion to dismiss brought by J&J, Janssen Pharmaceuticals, Kenvue Inc. — **spun off** from J&J in August 2023 and **since acquired** by Kimberly-Clark Corp. — and Red River Talc LLC, one of the units J&J used to attempt a bankruptcy court resolution to tort claims.

The plaintiffs argue that they were harmed by the defendants' allegedly fraudulent corporate restructurings because the bankruptcy filings triggered repeated stays in the talc litigation, which "resulted in plaintiffs 'losing the time value of any money that could have been paid as a judgment,'" the order states.

But this asserted injury isn't enough to confer Article III standing, Judge Shipp said.

"Plaintiffs fail to cite any authority holding that a delay in litigation — whether caused by a bankruptcy stay or otherwise — constitutes a cognizable injury for the purposes of Article III standing," the judge said, adding that they don't claim the alleged fraudulent transfers delayed their collection of a debt, bur rather their collection of a potential judgment in the talc litigation.

"Even assuming protracted litigation due to a bankruptcy stay could constitute a cognizable injury, plaintiffs' alleged harm is too speculative to confer standing," he said.

The suit generally alleges that the defendants "'shorted plaintiffs of their ultimate recoveries in order to hoard defendants' corporate free cash flow' by the time value of money," according to the order, but the plaintiffs don't quantify the harm.

"Plaintiffs' allegations make clear that their claimed injury is entirely hypothetical, as it is contingent on plaintiffs first prevailing in the talc litigation," Judge Shipp noted.

"If, for example, defendants prevail on the cases in the talc litigation, plaintiffs will not be entitled to any recovery and therefore will not suffer any injury from the allegedly fraudulent transfers or by the 'time-value of money,'" he said. "This sort of 'tenuous chain of uncertain events' does not suffice to establish the requisite injury."

Judge Shipp dismissed the plaintiffs' claims without prejudice, adding in a footnote that "ordinarily, dismissals for lack of standing are without prejudice to a plaintiff's right to file an amended complaint," according to the order.

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

In their operative complaint, the plaintiffs alleged, "For years, defendants engaged in a complex web of corporate transmogrification — and concomitant shifting of assets and liabilities — that J&J knew from the outset" would reduce or delay its payouts to claimants.

"J&J has compounded its tort malfeasance by embarking on successive fraudulent transfers — and serial related invocations of bankruptcy proceedings despite its lack of financial distress — to hinder, delay, and/or defraud these victims and prevent them from ever having their day in court before a jury of their peers, much less recovering from J&J," they said.

J&J has **failed three times** to use the bankruptcy process to settle claims that its products contained cancer-causing asbestos.

The first entity J&J spun off to hold its cosmetic talc liability, LTL Management, initially filed for Chapter 11 protection in North Carolina in 2021 to deal with tens of thousands of claims arising from exposure to J&J's cosmetic talc products. The case was moved to New Jersey and thrown out in January 2023 after the Third Circuit found that LTL was **not in financial distress** and lacked the required good faith to commence its bankruptcy.

Less than three hours after an order dismissing the case was signed in April 2023, LTL filed a second bankruptcy in the same court. That **case was tossed** months later.

The plaintiffs in the **instant case**, filed in May 2024, asked the court to undo three corporate transfers beginning with the company's 2021 **"Texas two-step"** maneuver to form LTL Management. They sought a judgment that the 2021 maneuver — along with the 2022 transfer of corporate assets from an existing consumer health division into Kenvue and the 2023 replacement of a $61.5 billion funding agreement provided to LTL with a $29.9 billion funding agreement — were fraudulent.

They asked that those transfers be voided and for a finding that J&J was liable for the full $61.5 billion provided in the original funding agreement to LTL. They argued that those actions allowed the company to use the bankruptcy courts to limit its liability for talc claims and delay trials and other forms of resolution for the proposed class for years.

Then, Johnson & Johnson created Red River in 2024 through another divisional merger that saddled it with liabilities and claims tied to the talc litigation facing J&J. It filed for bankruptcy in Texas with a prepackaged Chapter 11 plan apparently supported by 83% of talc plaintiffs in September 2024.

But that case was thrown out like the previous efforts. U.S. Bankruptcy Judge Christopher M. Lopez said in a written decision that voting irregularities before Red River's bankruptcy filing and third-party releases supported dismissing the case and throwing out a roughly $9 billion bankruptcy deal.

J&J maintains its products are safe, do not contain asbestos and do not cause cancer or other illnesses.

The plaintiffs are represented by Patricia M. Kipnis, Brian A. Glasser, David L. Selby II, Thomas B. Bennett, D. Todd Mathews and Michael L. Shenkman of Bailey & Glasser LLP and Richard M. Golomb and Kevin W. Fay of Golomb Legal PC.

Red River Talc and its co-defendants are represented by Jessica L. Brennan of Barnes & Thornburg LLP and Kristen R. Fournier of Kirkland & Ellis LLP. J&J and Janssen are additionally represented by Glenn M. Kurtz, Jessica C. Lauria, Gregory M. Starner and Matthew E. Linder of White & Case LLP.

The case is Rebecca Love et al. v. Red River Talc LLC et al., case number 3:24-cv-06320, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Tom Zanki, Al Barbarino, Emlyn Cameron, Alex Wittenberg, George Woolston, Rick Archer and Vince Sullivan. Editing by Michael Watanabe.

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Trump SPAC Fights Chancery's $25K Daily Sanction Ruling

By **Katryna Perera**

Law360 (January 29, 2026, 9:34 PM EST) -- The blank check company that took Trump Media & Technology Group Corp. public last year says it has been "unfairly trapped in a procedural morass" after a Delaware Chancery Court magistrate held the company in contempt and ordered it to pay sanctions over its refusal to pay an over $2 million legal fee advancement bill.

Digital World Acquisition Corp. — now known as TMTG following its take-public merger with President Donald Trump's media company — filed a **brief** on Wednesday arguing the magistrate's contempt and sanctions ruling needs to be reviewed by a "constitutionally appointed member" of the Chancery Court, such as a vice chancellor, and that the magistrate erred by issuing sanctions before such a review.

In early January, Magistrate Christian Douglas Wright **ordered** a $25,000-a-day sanction against DWAC over the special purpose acquisition company's refusal to pay a more than $2 million legal fee advancement bill arising from litigation involving Patrick Orlando, DWAC's former CEO.

Orlando was fired as DWAC's CEO in March 2023 after he reported concerns about "unprecedented headwinds" facing Trump's social media venture, now known as Truth Social. He later invoked a right to have his litigation costs covered for responding to U.S. Securities and Exchange Commission and U.S. Department of Justice probes of the blank check company and activities surrounding it.

Orlando sued DWAC in the Chancery Court in early 2024 after his ouster, seeking to have the company pay his legal expenses, including those for litigation over his activities in the workup to a take-public merger with Trump Media & Technology Group, which operates the Trump-focused Truth Social platform.

He is seeking reimbursement for having to bring the fee advancement suit in the Chancery Court, along with costs to cover fees incurred as a result of the litigation in Delaware and those related to a Florida state court suit.

But DWAC claimed Thursday that the $2 million in advanced legal fees Orlando is seeking are meant to cover services related to Orlando being held in contempt and sanctioned twice by the Florida court.

DWAC said it "believes in good faith that fees for contemptuous conduct are unreasonable under Delaware law."

It claims it filed timely exceptions to the magistrate's fee report. But that briefing has not yet started on the matter, and the magistrate ruled that DWAC could not file exceptions until the case has concluded, "which could take years," the SPAC said.

"Despite the fact that DWAC has already advanced more than $20 million to plaintiff, the magistrate recently held DWAC in contempt for withholding the disputed $2 million related to plaintiff's contemptuous conduct, even though the advancement order entered by [a vice chancellor] at the beginning of this case allows DWAC to withhold any fees 'pending resolution' of a 'dispute' over fees and the magistrate's fee report has yet to be reviewed and adopted," the brief said.

But until the contempt and sanctions order is "meaningfully reviewed and adopted by a constitutionally appointed judge, it is unenforceable," DWAC said, adding that a review would reveal that the order should be reversed.

"A party does not have to comply with any report or order from a magistrate (whether it be a draft, interim or final report) until reviewed and adopted by a constitutional judge," the brief said. "While advancement proceedings necessarily demand efficiency, the desire for efficiency cannot override a party's constitutional right to have disputes adjudicated by a constitutionally appointed judicial officer, or a corporation's contractual right to never have to pay unreasonable fees."

The contempt and sanctions report exceeds the constitutional authority granted to Delaware magistrates, DWAC argues, and at a minimum, the daily $25,000 fine should not begin until after a meaningful review.

Additionally, the dispute over the $2 million in legal fees remains "live," DWAC said.

"The reason that there has been no 'resolution of the dispute' over the $2 million in disputed fees is because the magistrate held that his order addressing those fees cannot be subjected to exceptions until the end of the case, and thus, that ruling has not been subjected to a meaningful review and adopted by the chancellor or a vice chancellor and, like the contempt report, it remains unenforceable," the brief said.

According to DWAC, it has maintained from the beginning that it will pay the disputed fees, with interest, as long as the fees are "determined to be reasonable by a constitutionally appointed officer of the court."

The newly formed TMTG has claimed in part that Orlando and his company, Arc Global Investments II LLC, threatened to block the take-public merger with DWAC as a way to enrich themselves at the eleventh hour. That complaint asserted that Orlando's actions resulted in lengthy delays in the merger process and imposed massive costs.

Separate litigation is pending in the U.S. District Court for the District of Columbia filed by the SEC that accuses Orlando of hiding advanced merger discussions with TMTG from special purpose acquisition company investors in 2021.

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

Orlando is represented by Matthew D. Perri, Daniel E. Kaprow and Elizabeth J. Freud of Richards Layton & Finger PA.

DWAC and TMTG are represented by John L. Reed of DLA Piper.

The case is Orlando v. Digital World Acquisition Corp., case number 2024-0264, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Nick Siwek.
