

Guest Post: Key Trends in 2025 Class Certification Decisions: Fraud-on-the-Market Under Fire

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The following guest post examines the resolution of class certification motions in securities class action lawsuits during 2025; considers the parties' economic arguments in support of or in opposition to class certification; and analyzes the courts evaluation of those arguments. The article is written by Andrew Roper, Mame Maloney, Brendan Rudolph, and Ravi Sinha, Principals at The Brattle Group, and Aidan Kutner, an Associate at The Brattle Group. We would like to thank the authors for allowing us to publish their article as a guest post on our site. Here is the authors' article.

Disclaimer: Contributing author Andrew Roper provided expert testimony in one of the matters discussed, Daniel Borteanu, et al. v. Nikola Corporation, et al. (D. Ariz. 2025). This article is descriptive in nature and does not advocate for any party's position in that or any other case.

A valuable opportunity arises whenever defendants challenge class certification in a federal securities class action and a district court issues an order granting or denying class certification, in whole or in part, outside the context of a settlement agreement. These challenges – and the courts' responses – provide a window into how parties present economic arguments in support of or in opposition to class certification, and how courts evaluate those arguments.

A [recent report by economists from The Brattle Group](#) (the "Brattle Report") provides a systematic review of class certification rulings in 2025, examining the 18 federal district court orders decided outside the context of settlement (the "2025 Class Certification Orders"). The report additionally discusses defendants' petitions to appeal these orders under Rule 23(f) in eight of the 18 cases, as well as defendants' appeals in four other matters in which federal appellate courts issued orders in 2025. These decisions reflect how district courts evaluated defendants' challenges to Rule 23(b)(3) in granting or denying (in whole or in part) plaintiffs' proposed classes of investors.^[ii] The sample of cases captures the views of a broad set of participants spanning multiple geographies, courts, law firms, and experts.

The analysis identifies the arguments underlying defendants' challenges to predominance under Rule 23(b)(3) and the ways in which courts evaluated these arguments. In doing so, it provides a unique vantage point to understand 2025 jurisprudence on class certification in securities litigation. The report does not take a position on the strengths or weaknesses of any particular cases, nor does it attempt to analyze the legal or economic merits of any rulings; rather, it provides a descriptive account.

From this vantage point, the report documents how multiple defendants challenged predominance for reliance and damages using similar arguments. Multiple defendants challenged the applicability of the fraud-on-the-market presumption of reliance by attempting to rebut the three prerequisites of the theory itself: the truth is not on the market, the market is efficient, and the fraud had a price impact. Multiple defendants also argued that plaintiffs failed to specify how they could measure the inflation caused by the alleged fraud.

The report further examines how different district courts evaluated these recurring arguments. Four themes emerge from the analysis, reflecting both the types of arguments defendants are advancing and the varying ways courts respond to them. Across these themes, defendants' challenges asked courts to evaluate case-specific public information to determine whether classwide methods of proof could be applied:

- **Theme #1:** Some district courts engaged with defendants' truth-on-the-market arguments, while other courts deferred adjudication to the merits.
- **Theme #2:** District courts did not deny or limit class certification on the basis of challenges to market efficiency, even when defendants put forward an affirmative argument that markets were inefficient.
- **Theme #3:** District courts examined price impact, but the only arguments that prevailed were those following the mismatch framework set out in *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.* ("*Goldman ATRS*"). [\[iii\]](#)
- **Theme #4:** District courts consistently held that the out-of-pocket formula could be used, finding that challenges regarding how inflation would be estimated were either unconvincing or could be resolved at trial. Importantly, 2025 also saw appellate court orders that may affect district courts' examinations of damages going forward.

In the remainder of this article, we first provide an overview of the orders analyzed and the outcomes of these orders. We then elaborate on each of the four themes outlined above. Finally, we provide concluding thoughts and a look ahead,

predicting that some of the issues challenged by defendants but deferred by district courts may resurface in the merits phase.

Across these four themes, defendants raised challenges that ultimately bear on plaintiffs' ability to measure harm as alleged. Some of these challenges were evaluated directly by district courts, while others were deferred to the merits, either explicitly or implicitly. The Sixth Circuit's appellate ruling in *In re FirstEnergy Corp. Securities Litigation* ("*FirstEnergy*"),^[iv] which overturned class certification and remanded the district court to perform a rigorous analysis of damages as required under *Comcast Corp. v. Behrend* ("*Comcast*"),^[v] demonstrates at least one circuit's preference for addressing more of these challenges at the class certification stage. Challenges that do not ultimately lead courts to impose a barrier to class certification may resurface in the merits phase and/or affect the settlement posture.

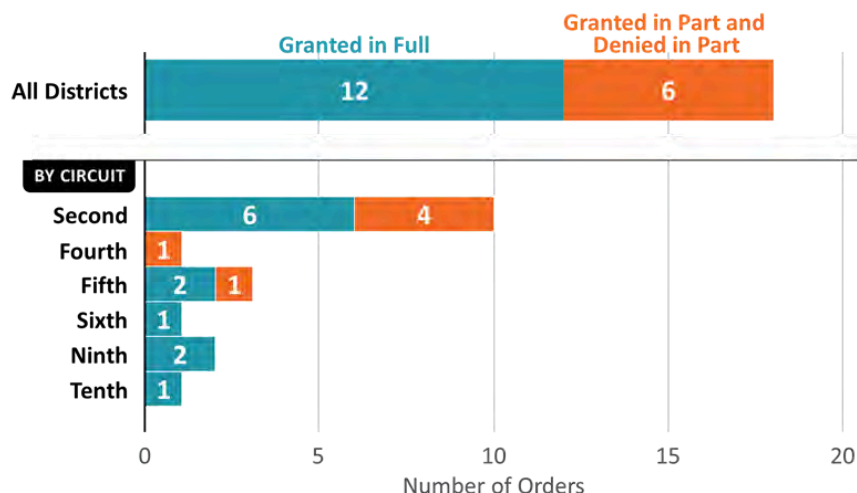
Class Certification Outcomes in 2025

In 2025, there were **18** class certification orders issued by federal district courts in which the court either granted or denied (in whole or in part) plaintiffs' proposed classes of investors.^[vi]

Figure 1 below summarizes the judicial outcomes of these 2025 class certification orders: In 12 of 18 cases, federal district courts granted certification in full. ^[vii] In the remaining six of 18 cases, certification was granted in part and denied in part. These partial denials of certification occurred across three different federal district circuits: the Second, Fourth, and Fifth.

In all six of these cases, defendants argued that plaintiffs had failed to satisfy Rule 23(b)(3)'s predominance requirement with respect to reliance. The courts agreed in part and limited the certified class on this basis.^[viii] In three of these cases, defendants further argued that plaintiffs failed to satisfy Rule 23(b)(3)'s predominance requirement with respect to damages, but the courts rejected these challenges.

Figure 1: Judicial Outcomes of the 2025 Class Certification Orders



In the six cases in which the courts denied certification in part, the outcomes were as follows:

- **Truth-on-the-Market.** The district courts in *In re The Boeing Company Securities Litigation* ("**Boeing**")^[ix] and *In re National Instruments Corporation Securities Litigation* ("**National Instruments**")^[x] granted certification to a shorter class period than was proposed because predominance could not be satisfied for reliance because the truth was on the market.
- **Price Impact Rebuttal.** The district courts in *Plaut v. The Goldman Sachs Group, Inc. et al.* ("**Goldman 1MDB**")^[xi], *City of Warwick Retirement System v. Concho Resources Inc. et al.* ("**Concho**")^[xii] and *Boeing* denied certification in part because defendants rebutted price impact for some, but not all, of the alleged material misrepresentations. In these matters, the district courts excluded certain alleged material misrepresentations, ruling that the fraud-on-the-market theory did not apply to those statements.
- **Affiliated Ute Challenge.** The district court in *In re DiDi Global Inc. Securities Litigation* ("**DiDi**")^[xiii] denied certification in part, ruling that plaintiffs were not entitled to the presumption of reliance under *Affiliated Ute* under Section 10(b) for a subset of allegations (but holding that *Affiliated Ute* could still be applied for other allegations).
- **Conflict Between Subclasses.** The district court in *Chahal v. Credit Suisse Group AG et al.* ("**Credit Suisse XIV**")^[xiv] denied certification to one of two proposed subclasses, ruling that there was a "fundamental conflict" between "the classes' theories of liability."

Theme #1: Truth-on-the-Market Challenges

In five of the 2025 class certification orders (*Credit Suisse XIV*, *Boeing*, *DiDi*, *Natera*, and *Nikola*), defendants challenged the applicability of the fraud-on-the-market theory in matters where publicly available information had corrected (or revealed) some or all of the allegedly misrepresented (or omitted) material facts.

Defendants' truth-on-the-market challenges examined the first prerequisite of the fraud-on-the-market theory: that the truth is not on the market.

In these challenges, some defendants argued that the proposed class period should be shortened after the truth was on the market. Other defendants made further arguments that price impact could be rebutted because the truth was on the market.

Different courts expressed different preferences for adjudicating truth-on-the-market challenges raised by defendants. In two cases (*Boeing* and *Nikola*), the district court engaged with the information that the defendants argued was available to investors, and in *Boeing*, the district court limited the class period on this basis. In the other three instances, district courts stated that these economic arguments could not be evaluated at the class certification stage, because similar analyses may also be examined in the merits stage as part of the materiality inquiry. **Figure 2** below summarizes the Brattle Report's findings.

Figure 2 summary of defendants' Truth-on-the-Market challenges and district court responses

Case	Defendants' Argument	District Court Response to Defendants' Argument	
Credit Suisse XIV (2 nd Cir.)	Shorten Class Period	Deferred adjudication to merits	
DiDi (2 nd Cir.)	Shorten Class Period	Deferred adjudication to merits	
Boeing (4 th Cir.)	Shorten Class Period	Rebutted fraud-on-the-market via truth-on-the-market for a subset of alleged misrepresentations	
Natera (5 th Cir.)	Price Impact Challenge	Deferred adjudication to merits	
Nikola (9 th Cir.)	Price Impact Challenge	Failed to rebut fraud-on-the-market via truth-on-the-market for any alleged misrepresentations	

Note: Orange shading indicates cases in which the district court agreed (in part) with defendants' truth-on-the-market challenges and limited the certified class on that basis.

Theme #2: Market Efficiency Challenges

In six of the 2025 class certification orders (*Credit Suisse ADS*, *Credit Suisse AT1*, *Waste Management*, *Boeing*, *Cassava*, and *Nikola*), defendants challenged whether plaintiffs had demonstrated market efficiency. These challenges to market efficiency examined the second prerequisite of the fraud-on-the-market theory: public information is rapidly and fully reflected in the price through market efficiency.

Specifically, across four matters involving debt, notes, or options, defendants challenged the analyses put forward by plaintiffs to establish market efficiency. In these instances, defendants raised similar methodological challenges. Separately, in two instances involving common stock (*Cassava Sciences* and *Nikola*), defendants went further by arguing that the case facts indicated that the market was *inefficient*.

No district court in the 2025 class certification orders denied or limited class certification on the basis that plaintiffs failed to establish market efficiency. However, in *Cassava Sciences*, the court of appeals for the Fifth Circuit granted the defendants' petition for permission to appeal based, in part, on the district court's opinion on market efficiency. **Figure 3** below summarizes the Brattle Report's findings.

Figure 3: summary of defendants' challenges to market efficiency and district court responses

Case	Defendants' Argument	District Court Response to Defendants' Argument	
Credit Suisse ADS (2 nd Cir.)	Bonds and Options: Insufficient number of events; fails to analyze distinct economic characteristics of each bond and option	Failed to rebut market efficiency	
Credit Suisse AT1 (2 nd Cir.)	Bonds: Subjectively selected events; fails to analyze distinct economic characteristics of each bond	Failed to rebut market efficiency	
Waste Management (2 nd Cir.)	Bonds: Insufficient number of events	Failed to rebut market efficiency	
Boeing (4 th Cir.)	Options: Fails to analyze distinct economic characteristics of each option	Procedurally improper to expand class to options	
Cassava Sciences (5 th Cir.)	Common Stock: Indicia of market inefficiency	Failed to rebut market efficiency (appealability granted on this basis)	
Nikola (9 th Cir.)	Common Stock: Subjectively selected events; indicia of market inefficiency	Failed to rebut market efficiency ¹	

Theme #3: Price Impact Challenges

In 11 of the 18 2025 class certification orders, defendants argued they had rebutted price impact for some or all of the alleged material misrepresentations. These rebuttals of price impact follow *Halliburton II*'s invitation to explore the third prerequisite of the fraud-on-the-market theory: the alleged material misrepresentation impacted the price.[\[xvi\]](#)

In some cases, defendants argued that there was an informational mismatch between the alleged material misrepresentations and the alleged corrective disclosures that ruled out price impact following *Goldman ATRS*. In some cases, defendants described how their testifying experts performed economic analyses purportedly rebutting price impact.

In three matters (*Goldman 1MDB*, *Boeing*, and *Concho*), district courts denied certification in part on the basis that defendants had successfully rebutted price impact. In these instances, the district courts denied certification because of an information mismatch following *Goldman ATRS*. While district courts engaged with the other types of economic analyses presented, they were either unpersuaded by the arguments or determined that the argument should be held over for trial.

Figure 4 below summarizes the Brattle Report's findings.

In addition, the Third Circuit (in *Hall v. Johnson & Johnson et al.*) and Ninth Circuit (in *Jaeger v. Zillow Group Inc. et al.*) affirmed district court orders granting certification, which had been appealed by defendants on the basis of price impact. In *Oklahoma Firefighters Pension and Retirement System v. Biogen Inc. et al.*, the First Circuit denied appealability of a similar price impact challenge.[\[xvii\]](#)

Figure 4: summary of defendants' challenges to price impact and district courts' responses

Case	Defendants' Argument	District Court Response to Defendants' Argument	
ASP Isotopes (2 nd Cir.)	Mismatch	Failed to rebut price impact for any alleged misrepresentations	
Credit Suisse ADS (2 nd Cir.)	Additional economic analyses	Failed to rebut price impact for any alleged misrepresentations	
Waste Management (2 nd Cir.)	Mismatch	Failed to rebut price impact for any alleged misrepresentations	
Credit Suisse XIV (2 nd Cir.)	Truth-on-the-market	Failed to rebut price impact for any alleged misrepresentations	
DiDi (2 nd Cir.)	Truth-on-the-market	Failed to rebut price impact for any alleged misrepresentations	
Goldman 1MDB (2 nd Cir.)	Mismatch; Additional economic analyses	Rebutted price impact for subset of alleged misrepresentations	
Boeing (4 th Cir.)	Mismatch; Truth-on-the-market	Rebutted price impact for subset of alleged misrepresentations	
Cassava Sciences (5 th Cir.)	Additional economic analyses	Failed to rebut price impact for any alleged misrepresentations	
Natera (5 th Cir.)	Truth-on-the-market; Additional economic analyses	Failed to rebut price impact for any alleged misrepresentations	
Concho (5 th Cir.)	Mismatch; Additional economic analyses	Rebutted price impact for subset of alleged misrepresentations	
Nikola (9 th Cir.)	Truth-on-the-market; Additional economic analyses	Failed to rebut price impact for any alleged misrepresentations	

Note: Orange shading indicates cases in which the district court agreed (in part) with defendants' challenges to price impact and limited the certified class on that basis.

Theme #4: Damages Challenges

In 13 of the 18 2025 class certification orders, defendants challenged whether plaintiffs had successfully established that damages are calculable on a classwide basis, as required for predominance under Rule 23(b)(3). In most of these challenges, defendants questioned whether plaintiffs had specified how they intended to measure inflation to calculate damages using the out-of-pocket formula. However, in none of these 13 matters did the district courts deny or limit class certification on the basis of those criticisms. **Figure 5** summarizes the Brattle Report's findings.

Importantly, in contrast to these district court decisions, a Sixth Circuit court of appeals order in *In re FirstEnergy Corp. Securities Litigation* ("*FirstEnergy*")^[xviii] overturned class certification and remanded the district court to perform a rigorous analysis of damages as required under *Comcast Corp. v. Behrend*

("Comcast").^[xix] Further, the Fourth Circuit (in *Boeing*) and Fifth Circuit (in *Cassava Sciences*) both granted review to consider the sufficiency of plaintiffs' showing of damages under *Comcast*. However, a similar challenge was denied review in the Ninth Circuit (in *Wells Fargo*).

Figure 5: summary of defendants' challenges to damages and district courts' responses

Case	Defendants' Argument	District Court Response to Defendants' Argument
CleanSpark (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Credit Suisse ADS (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Dentsply Sirona (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Waste Management (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Goldman 1MDB (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
National Instruments (2 nd Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Boeing (4 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification (appealability granted on this basis) 
Cassava Sciences (5 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification (appealability granted on this basis) 
Natera (5 th Cir.)	Cannot distinguish investors with reliance	Damages methodology sufficient for class certification 
Concho (5 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Upstart (6 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 
Wells Fargo (9 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification (appealed on this basis but appealability denied) 
Innovage (9 th Cir.)	Failed to specify inflation	Damages methodology sufficient for class certification 

Concluding Thoughts and Looking Ahead

The Brattle Report documents how multiple defendants in securities class actions argued that case-specific facts – publicly available to both defendants and plaintiffs without discovery – undermined the applicability of the fraud-on-the-market theory by showing that its required predicates are not satisfied. The report also describes how multiple defendants contended that case-specific facts and

circumstances suggest that inflation cannot be reliably estimated across the class period, as required by the out-of-pocket formula for damages proposed by plaintiffs.

Each of these challenges asked a district court to evaluate the case-specific fact pattern of public disclosures and additional sources of public information to determine the applicability of the fraud-on-the-market theory or out-of-pocket damages formula at the time of class certification.

Overall, our analysis of jurisprudence related to the 2025 class certification orders indicates that district courts have taken differing approaches to whether such challenges can be fully evaluated at class certification. In some instances, courts evaluated the case-specific fact patterns and reached a determination. In others, courts stated that they were precluded from evaluating these case-specific fact patterns. In at least one case (*DiDi*), the court determined that adjudication of the issue should be reserved for the merits, even if the argument was persuasive at class certification.

Ultimately, these challenges bear on plaintiffs' ability to measure harm as alleged. Under the fraud-on-the-market theory, the alleged harm is caused by the price impact of the alleged misrepresentations. By examining the total mix of information, defendants seek to rebut the presumption of price impact, which in turn affects whether inflation can be measured as an input to the out-of-pocket formula.

Accordingly, district courts may increasingly be required to engage with these arguments at the class certification stage – particularly in light of the Sixth Circuit's decision in *FirstEnergy*, which reminded courts of their potential obligations under *Comcast*, as well as the Fourth and Fifth Circuits' orders granting review of these issues in *Boeing* and *Cassava Sciences*.

Looking ahead, the extent to which courts engage with these arguments at the class certification stage – rather than deferring them to the merits – may shape both litigation strategy and the practical viability of classwide proof in securities cases.

A more detailed analysis of these findings is available in the full Brattle Report, which can be found on Brattle's website [here](#).

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[ii] In these matters, plaintiffs proposed damage classes for investors who purchased or acquired publicly traded stock, debt, notes, or options for alleged violations under Section 10(b) of the Exchange Act of 1934.

[iii] *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 US 113, 123 (2021) (explaining that price impact inference “starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure.”); *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 80 (2d Cir. 2023) (“the back-end price drop—what happens when the truth is finally disclosed—operates as an indirect proxy for the front-end inflation, or the amount that the misrepresentation fraudulently propped up the stock price.”).

[iv] *In re FirstEnergy Corp. Securities Litigation*, 149 F.4th 587 (6th Cir. 2025).

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

[vi] In these matters, plaintiffs petitioned damage classes for investors who purchased or acquired publicly traded stock, debt, notes, or options for alleged violations under Section 10(b) of the Exchange Act of 1934.

[vii] *Leone v. ASP Isotopes Inc., et al.*, No. 1:24-cv-9253-CM (S.D.N.Y., December 4, 2025) (“**ASP Isotopes**”); *Darshan v. CleanSpark, Inc., et al.*, No. 1:21-cv-00511-LAP (S.D.N.Y., September 24, 2025) (“**CleanSpark**”); *In re Credit Suisse Securities Class Actions*, No. 1:23-cv-5874-CM-SLC (S.D.N.Y., July 7, 2025) (“**Credit Suisse ADS**”); *Core Capital Partners, Ltd. v. Credit Suisse Group AG et al.*, No. 1:23-cv-9287-CM (S.D.N.Y., November 13, 2025) (“**Credit Suisse AT1**”); *San Antonio Fire and Police Pension Fund, et al., v. Dentsply Sirona Inc., et al.*, No. 22-cv-06339-AS (S.D.N.Y., July 10, 2025) (“**Dentsply Sirona**”); *In re Waste Management Securities Litigation*, No. 1:22-cv-04838-LGS (S.D.N.Y., March 31, 2025) (“**Waste Management**”); *In re Cassava Sciences Inc. Securities Litigation*, No. 1:21-cv-00751-DAE (W.D. Tex., August 12, 2025) (“**Cassava Sciences**”); *Schneider v. Natera, Inc., et al.*, No. 1:22-cv-00398-DAE (W.D. Tex., March 21, 2025) (“**Natera**”); *Crain v. Upstart Holdings, Inc. et al.*, No. 2:22-cv-02935-ALM-EPD, (S.D. Ohio March 27, 2025) (“**Upstart**”); *Borteanu v. Nikola Corporation et al.*, No. 2:20-cv-01797-SPL (D. Ariz. January 6, 2025) (“**Nikola**”); *SEB Investment Management AB et al. v. Wells Fargo & Company*

et al., No. 3:22-cv-03811-TLT (N.D. Cal. April 25, 2025) ("**Wells Fargo**"); *McLeod v. Innovage Holding Corp. et al.*, No. 1:21-cv-02770-WJM-SBP (D. Colo. January 8, 2025) ("**Innovage**").

[viii] In one of these six cases – *Credit Suisse XIV* – defendants challenged predominance for reliance as well as adequacy of the lead plaintiffs. *Credit Suisse XIV* 2023 Opposition Motion pp. 15, 21. The court in this matter denied class certification in part on the basis of adequacy.

[ix] *In re The Boeing Company Securities Litigation*, No. 1:24-cv-151-LMB-LRV (E.D. Va., March 7, 2025).

[x] *In re National Instruments Corporation Securities Litigation*, No. 1:23-cv-10488-DLC (S.D.N.Y., September 19, 2025).

[xi] *Plaut v. The Goldman Sachs Group, Inc. et al.*, No. 1:18-cv-12084-VSB-KHP, (S.D.N.Y., September 4, 2025).

[xii] *City of Warwick Retirement System v. Concho Resources Inc. et al.*, No. 4:21-cv-02473, (S.D. Tex. April 7, 2025).

[xiii] *In re DiDi Global Inc. Securities Litigation*, No. 1:21-cv-05807-LAK-VF (S.D.N.Y., August 13, 2025).

[xiv] *Chahal v. Credit Suisse Group AG et al.*, No. 1:18-cv-02268-AT-SN (S.D.N.Y., February 11, 2025).

[xv] The district court also stated that while the plaintiffs' expert analysis may not have been perfect, it could still be challenged at trial. *Nikola* Order p. 21. ("Furthermore, Defendants' continued attempts to couch their disagreements with the findings of [plaintiffs' expert] event study as methodological criticisms are unavailing for the purposes of their Motion to Exclude his proposed opinions and testimony. ... Plaintiffs also adequately address each of Defendants' claimed "fatal flaws" in Dr. Nye's study. As to Dr. Nye's selection of event dates, Plaintiffs note that the events were defined "ex ante . . . as the Company's quarterly and year-end earnings announcements," which is a methodology "supported by the literature" and regularly employed by experts. (Doc. 200 at 10). Here, as in other cases, the Court agrees that "[w]hile Dr. Nye's study may not be perfect, it is not unreliable. Defendants may challenge Dr. Nye's conclusions in the appropriate forum, that is, at trial."

[xvi] *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 US 258 (2014) ("*Halliburton II*").

[xvii] *Hall v. Johnson & Johnson et al.*, No. 3:18-cv-01833-ZNQ-TJB (3d Cir., October 15, 2025) ("**Johnson & Johnson**"); *Jaeger v. Zillow Group Inc et al.*, No. 2:21-cv-01551-TSZ (9th Cir., September 26, 2025) ("**Zillow**").

[xviii] *In re FirstEnergy Corp. Securities Litigation* (6th Cir. August 13, 2025).

[xix] *Comcast Corp. v. Behrend*, No. 11-864, March 27, 2013.

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Item 1 of 3 CEO Jason Cheung of toy manufacturer Hunter Company Inc poses amongst partially empty shelves at the U.S. office in Union City, California, U.S. May 8, 2025. REUTERS/Brittany Hosea-Small/File Photo

[1/3]CEO Jason Cheung of toy manufacturer Hunter Company Inc poses amongst partially empty shelves at the U.S. office in Union City, California, U.S. May 8, 2025. REUTERS/Brittany Hosea-Small/File Photo [Purchase Licensing Rights](#)  , [opens new tab](#)

- New system for filing import refund claims goes live Monday
- Many worry system could crash or encounter other glitches
- Question remains whether consumers will see any part of the tariff payback

April 17 (Reuters) - Jay Foreman said he's "locked and loaded" for the U.S. government's launch on Monday of a new system to refund up to \$166 billion in illegally collected tariffs, but he and many other importers are realistic that much could still go wrong.

"You have to be worried about what they could possibly do to jam things up," said the CEO of toymaker Basic Fun, which sells Tonka trucks, Care Bears and K'Nex construction toys.

The refund system is the latest twist in a drawn-out battle over tariffs collected over the past year as part of President Donald Trump's effort to restructure U.S. trade relations with almost every nation on earth. The constantly shifting tariffs roiled global business as companies rushed to shift supply chains to avoid them as well as figure out who would ultimately pay the taxes.

The U.S. Supreme Court in February struck down the tariffs President Trump pursued under a law meant for use in national emergencies, handing the Republican president a stinging defeat.

In a court [filing on Tuesday](#), U.S. Customs and Border Protection said it had completed development of the initial phase of the refund system, known as CAPE. The system will consolidate refunds so importers will get one electronic payment, with interest when applicable, rather than processing refunds on an entry-by-entry basis. Critics of Trump's tariffs had pushed for a streamlined process.

Customs officials said as of April 9, some 56,497 importers had completed the steps necessary to receive electronic refunds, an amount totaling \$127 billion, or

more than three-quarters of the total eligible to be refunded. More than 330,000 importers paid the tariffs at issue on 53 million shipments of imported goods, according to court filings.

Matt Field, CFO of heavy truck maker Oshkosh, is one of them. The Wisconsin-based manufacturer doesn't disclose how much it paid in emergency tariffs, but Field said it's an "impactful" amount. "I'm a CFO, so I do chase every dollar," he said.

Field said he's prepared to file for a refund as soon as the customs portal opens but may wait for the "system to settle."

Multiple importers reached by Reuters said they are concerned about the durability of the new filing system, at least in the opening phase as thousands rush to upload their claims.

"It's not like Taylor Swift tickets going on sale," said Basic Fun CEO Foreman, who is seeking \$7 million in refunds, but with so many companies looking for a refund at the same time, there's "no telling if it crashes the portal."

'THERE ARE WRINKLES'

There are plenty of potential logistics glitches. Jason Cheung, CEO of Hunter Co., a U.S.-based toymaker with a factory in China, said, "It'll be nice to get that money back," but added, "it looks like the government is trying to make it difficult."

Cheung noted that registration requires entering bank account information even though the government already has it for customs payments. And company names must be exact. "It took me five tries before we could get registered due to minor differences like 'company' versus 'co,'" Cheung said.

Still, he said, "we are very used to filling out forms" and have "no concerns" about ultimately getting a successful refund.

That sentiment was echoed by Rick Woldenberg, CEO of educational toy maker Learning Resources, one of the key plaintiffs in the court case that led to the tariffs' undoing.

"There are wrinkles, of course, but I am pleased to see the government do the right thing," said Woldenberg, whose company is seeking more than \$10 million. Refunds can be claimed by any company that is the legal entity that paid the taxes, so the issue reaches beyond U.S. borders. German fan manufacturer ebm-papst told Reuters it was already registered on the portal.

But as the system "is a new functionality created by U.S. Customs, it remains to be seen how well the system will actually handle the bulk processing of refund claims," a spokesperson for the Mulfingen, Germany-based company said.

Companies prepping claims also said they worry about a last-minute legal move by the Trump administration that could also slow the process. Customs has until early May to appeal the Court of International Trade's order requiring they create the tariff refund portal.

Meanwhile, the refund process opens a different challenge for many importers.

"The real complexity here is how to deal with my customers, assuming we get the tariffs back," said Austin Ramirez, CEO of Husco International in Waukesha, Wisconsin, a producer of hydraulic components used in automotive and off-road equipment like bulldozers.

"The question is what we do with it, do we keep it, pass it on to them?" It's a unique situation with each customer, he noted.

Just who gets the refunds has become a political issue after U.S. consumers endured a year of tariff-elevated prices. The system is set up to refund the importer of record, not ultimate end users who paid higher goods prices as a result.

At a congressional budget hearing on Thursday, U.S. Trade Representative Jamieson Greer - a key architect of the tariffs struck down by the high court and of the new import levies the administration is scrambling to install in their place - was asked if the administration had any plans for refunds for households.

The attorneys general for the Democratic-led states who filed one of the lawsuits decided by the Supreme Court "asked for the money to go back to the companies," Greer said. "The Democrat attorneys general asked for this and they're getting what they asked for."

Reporting by Timothy Aepfel; Nicholas P. Brown; and Christoph Steitz; additional reporting by Tom Hals; Editing by Daniel Burns and Anna Driver

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[Timothy Aepfel](#)

Thomson Reuters

Tim Aepfel covers the intersection of economics and companies, with an emphasis on manufacturing. Previously, Tim served as the Chief Economics Correspondent at The Wall Street Journal after spending six years as the Journal's roving manufacturing correspondent. He began his career at the Christian Science Monitor, where he launched the paper's first environmental affairs beat. Tim has spent much of his career chasing stories on the world's factory floors and industrial byways, applying a sharp eye for detail coupled with a deep

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Nicholas P. Brown covers retail and consumer issues for Reuters. He was formerly the news agency's San Juan bureau chief, leading coverage of Puerto Rico's economic and humanitarian crises, as well as its award-winning on-the-ground coverage of Hurricane Maria. Most recently, Nick was part of the team that reported Slavery's Descendants, a seven-part series on the economic legacy of American slavery. The series won an Online News Association award; a National Association of Black Journalists award; a pair of National Headliner awards; and was a finalist in three Deadline Club awards. Since joining Reuters in 2011, Nick has written about everything from bankruptcy law to the rise of white nationalism, deploying to the occasional natural disaster (including Hurricanes Harvey in Texas and Dorian in the Bahamas). He also covered Super Bowl LIV in Miami, and enjoyed it immensely. Contact:

Class Action

Manage Newsletters

Deep Dive

Live Nation Jury Verdict Boosts Private Plaintiff Monopoly Suits

April 17, 2026, 8:43 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal jury in Manhattan found that Live Nation Entertainment Inc. illegally monopolized the live events industry and overcharged fans for tickets to music performances.
- The verdict injects new momentum into private plaintiffs' antitrust cases against Live Nation and further exposes the company to billions in damages.
- Private plaintiffs will now argue that Live Nation can't attempt to relitigate many of the same facts found in the states' case, and the verdict may give other trial judges confidence to find liability against the company.

A high-profile jury verdict against Live Nation Entertainment Inc. in a suit pursued by more than 30 states injects new momentum into private plaintiffs' antitrust cases against the US concert promoter and further exposes the company to billions in damages.

Live Nation illegally monopolized the live events industry and overcharged fans for tickets to music performances, a federal jury in Manhattan concluded on April 15. Private plaintiffs will now argue that Live Nation can't attempt to relitigate many of the same facts found in the states' case.

The verdict shows other courts "that there was a violation of the law, that there was an adjudicated process that led to a finding of liability," said William Kovacic, a former chairman of the Federal Trade Commission.

"Even if the facts don't match up precisely with other cases, I think this tends to give other trial judges a sense of confidence that they are not going way out on a limb if they find liability themselves," said Kovacic, now a George Washington University law professor. "It's nice, I think, to have some company."

Some of the private cases predate the Justice Department's 2024 case against Live Nation, which later settled mid-trial. The states then resumed the trial, seeking a breakup of the company.

Taylor Swift fans sued in the US District Court for the Central District of California in 2023, saying they were victims of the concert ticket sale debacle for Swift's Eras tour due to the company's unlawful conduct.

The Swifties are "ecstatic that a jury has spoken what we all know to be the truth"—that the company is a monopoly that exploits consumers, said Jennifer Anne Kinder, a Dallas attorney who represents the plaintiffs.

"It's confirmation, it gives us confidence," Kinder said of the verdict. "It really is just step one in a process of dismantling and changing the way ticket sales occur in the United States."

Live Nation didn't immediately respond to a request for comment. The company in an April 15 statement said it will soon renew its motion to address liability theories in the states' case and will appeal any unfavorable rulings.

"The jury's verdict is not the last word on this matter," the company said.

Class Action

Another case, a certified class action, is further ahead procedurally than the other private suits and slated to go to trial in 2027.

The verdict is a "vindication for a lot of hard work and a lot of views that people have had for many, many years at this point," said Adam Wolfson, a partner at Quinn Emanuel Urquhart & Sullivan LLP who represents the ticket purchasers in the class suit along with his co-counsel Kevin Teruya.

The class action, along with the states' case, both bring antitrust claims under the Sherman Act, Wolfson said.

"We both are basing that on the same core set of facts and our allegations about the markets are virtually identical," he said. "Did they act anticompetitively? There is a strong chance that we are going to get issue preclusion on that in our favor."

He also noted that the damages model in the private class action against Live Nation is "multiples" of the states' damages model.

Jurors in the states' case found that the company's conduct caused concert-goers to overpay by \$1.72 per ticket, and Live Nation in its statement said it shouldn't owe more than \$450 million in damages.

Attorneys for plaintiffs in a separate consumer case against Live Nation in the Southern District of New York, and another brought by the defunct ticketing firm Fanimal Inc. in 2025, didn't immediately respond to requests for comment.

'Major Tailwind'

The Live Nation verdict sets up an argument for collateral estoppel, a legal doctrine that prevents a party from relitigating an issue that has already been decided in a prior action, said David Gringer, an antitrust partner with WilmerHale.

Private plaintiffs can now invoke the doctrine on questions relevant to their cases based on the verdict, he said.

"There is going to be a lot here that is potentially estopped," Gringer said. "If you're a private plaintiff, you just got a major tailwind behind you from this jury verdict. And if you're Live Nation, now there is a big headwind."

But Live Nation won't simply "swallow the defeat," Kovacic said. An appeal could drag out the litigation process for years, he noted.

"They are going to say there wasn't monopoly power and the conduct was not improper," Kovacic said. "They are going to fight on both of the traditional fronts of monopolization litigation, and I suspect there will be a disputed remedy as well."

The states are seeking to unwind the deal that combined Live Nation and Ticketmaster in 2010. And while private litigants tend to want damages, they can also ask for injunctive relief, Kovacic said.

"The whole reason the states pressed ahead here was to get a divestiture," he said.

Live Nation is represented by Latham & Watkins LLP in the class action and the states' case.

The class action is Jeanene Popp, Luis Ponce, and Jacob Roberts v. Live Nation Entertainment , C.D. Cal., No. 2:22-cv-00047 .

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Q&A | Litigators

Litigator of the Week: Non-Settling States Convince Jury That Live Nation Is a Monopoly

Jeffrey Kessler of Winston & Strawn stepped in to lead a trial team representing more than 30 states that did not join the DOJ's \$280 million settlement with the live event and concert giant, which was announced days into the highly anticipated trial.

April 17, 2026 at 06:30 AM By  **Ross Todd**



Jeffrey Kessler of Winston & Strawn. (Courtesy Photo)

It was a once-in-a-lifetime trial undertaken under once-in-a-lifetime circumstances.

Our Litigator of the Week is **Jeffrey Kessler** of **Winston & Strawn**, who stepped in to [represent a coalition of states](#) against Live Nation after lawyers at the U.S. Department of Justice announced mid-trial they had reached a settlement in the federal government's monopoly case against the live entertainment giant and its ticketing arm, Ticketmaster.

Kessler joined the proceedings for the non-settling states with the case already underway. No matter. This week, federal jurors found Live Nation and Ticketmaster [liable for violating federal and state antitrust laws](#), concluding they illegally monopolized key segments of the industry. Jurors found that, as a result of the defendants' conduct, consumers paid higher ticket prices and fees at major concert venues, resulting in overcharges of about \$1.72 per ticket.

Lit Daily: There's parachuting in and then there's this: Have you and the team ever joined a trial midstream like this before?

Jeffrey Kessler: Actually, I don't think this has ever happened before in a major antitrust case. It was a unique experience and an incredible challenge to get up to speed in just one week to take the lead role at trial in a monopolization case that had already begun trial.

What was your reaction to hearing about the DOJ's decision to settle this case with the trial underway?

The non-settling states (the States) had heard that this was a possibility, which is why they came to us to see if we could prepare in time. But it happened even more quickly than we anticipated.

How did you and the team get the call to represent the non-settling states at trial?

The States had a committee that contacted me, asking if Winston would be interested in taking this role. As a trial lawyer, it was an incredible opportunity I could not resist, and I immediately assembled a team from our deep antitrust bench to pitch for this role with me.

What was at stake here and why did you decide to take on this challenge?

This was the nation's first civil monopolization case brought before a jury by government regulators. It also was against a company, Live Nation, which had been the subject of antitrust review for more than 15 years. It was time to hold them accountable, so the opportunity to partner with the States was very attractive.

You only had something like eight days from the time that the judge pressed pause on the case until he started it back up. How did you get up to speed on the facts and the states' theory of the case on that timeline?

I assembled a trial "SWAT" team with my partners **Eva Cole**, **Jen Parsigian**, **Josh Hafenbrack** and **Johanna Hudgens** at my side, along with a group of associates and paralegals. We also had fantastic support from the lawyers at the States, including **Jonathan Hatch**, my co-lead trial counsel from the New York AG's office, and **Adam Gitlin** from the District of Columbia AG's office. They were backed up by a group of hard-working lawyers from the 34 States that remained in the case.

Who all was on the team and how did you divide the work?

My partner Jen Parsigian ran the case on a day-to-day basis, ensuring that all the pieces fit together. Eva Cole, Josh Hafenbrack, Johanna Hudgens and I divided up the key witnesses, working in tandem with designated associates to develop various direct and cross-examinations. I also worked with an associate team, led by **Neha Vyas**, on preparing the closing argument, which we knew was going to be critical. We also assigned witnesses to various attorneys from the different States and assembled teams from Winston and the States to handle nightly rounds of evidentiary objections, constant motion practice, jury instructions and the verdict form, as well as everything else that goes on in a big-time, antitrust jury trial. The Winston trial team also included **Michael Toomey, Zach Alexander, Caroline Beckmann, Tyler Dato, Melissa Iannuzzi, Nick Sloan, Dylan Russian, Madeline Virga, Rachel Benjamin, Corinne Kyritsopoulos** and **Ramona Van Ness**.

How much editing did you do to the witness list and the case that was presented to the jury vis-à-vis the case the DOJ-led team was planning to put on?

Our goal was to simplify the messaging and streamline the claims. We identified what we needed to present to win and focused on that, shedding both witnesses and distracting storylines. In the end, we believe we put together a very compelling and understandable case for the jury.

Several venue witnesses described losing—or at least fearing the loss of—concerts after switching ticketing providers. How important was testimony about fear and perceived retaliation in proving anticompetitive effects?

This part of the evidence helped to demonstrate one of the ways that we believed Live Nation abused its monopoly power, and it presented a very persuasive narrative for the jury. It was based on eye-witness testimony and documents as opposed to complicated expert analysis.

In your closing, you told the jury that this case was about a monopolist that believed it was “above the law.” What most surprised you, over the course of the trial, about how Live Nation and Ticketmaster behaved in the market?

It was the documents that were most surprising and told the story. We had a treasure trove of e-mails, chats and messages that revealed the unvarnished way that Live Nation executives spoke about the company’s abuse of monopoly power, which I believe was very compelling to the jury. As I argued in closing, witnesses don’t always tell the truth, but documents don’t lie.

You represented more than 30 states that don’t always agree on much, but you told the jury they agreed on one thing here. What unified those states behind this case, even after the DOJ settlement?

All of the States that continued in the case were united in the view that Live Nation and Ticketmaster had unlawfully monopolized the markets and abused that monopoly power to harm venues, artists, competitors and fans. It was an example of how State AGs from around the country can pool their resources to prosecute antitrust violations that impact all of their citizens.

Where were the standout moments to you from this trial—moments where you think you were able to drive home your narrative and trial themes with this jury?

I come back to the documents. Reading and hearing about how Ticketmaster executives referred to their treatment of the venues as “boiling the frogs,” how Live Nation executives referred to using the “velvet hammer” of withholding concerts as a point of leverage, how a Live Nation executive described its business model as “digging a moat around the castle” and how other Live Nation executives disparaged the fans who were forced to pay outrageous prices had a real impact in driving our narrative home.

What comes next? When will the remedies proceedings get underway and what will you be asking for?

The parties are going to meet and confer on developing an overall schedule, including for a remedies hearing. It will be up to the States to determine what relief to request at the remedies hearing in order to restore competition to the markets.

What will you remember most about this matter?

Like most trials, I will remember the camaraderie of our trial team, which in this case was a partnership between Winston and the States. Going through a major antitrust trial such as this is akin to going through a battle together—you make strong personal connections that you never forget. I also will never forget how proud I was of this jury, each of whom gave up six weeks of their personal lives for this trial and who then spent four days carefully deliberating over all the evidence before returning a verdict in favor of the States. That inspirational effort by ordinary citizens is why our jury trial system is the best system of justice in the world.

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Data Breach, Consumer Protection Claims Fuel 10-Year High for Class Action Filings, Report Says

A new report by legal analytics platform Lex Machina has found that class actions nationwide surged to a 10-year high in 2025 "after nearly a decade of stability," driven by a dramatic spike in consumer protection claims—particularly those involving data breaches.

April 16, 2026 at 06:17 PM By  **Kat Black**



Laura Hopkins, left, and Adam Masarek, right, with Lex Machina. Courtesy photos

A new report by legal analytics platform Lex Machina has found that class actions nationwide surged to a 10-year high in 2025 "after nearly a decade of stability," driven by a dramatic spike in consumer protection claims—particularly those involving data breaches.

Lex Machina's 2026 [class action litigation report](#), published this month, documented 7,650 putative consumer protection class actions filed in federal district courts last year—a 40% year-

over-year increase from 2024 that helped propel the number of total class actions in 2025 to 12,284, as compared with 9,847 in 2024 and 7,069 in 2016.

Data showed that, from 2016 to 2024, the total number of federal class action filings had maintained a stable upward trajectory, decreasing slightly in 2021 as a likely result of court closures associated with the COVID-19 pandemic. but steadily resuming growth in 2022.

"2025 really marks this inflection point after a pretty steady trend, and then, all of a sudden, we've burst open in 2025," said Laura Hopkins, one of the co-authors of the report, in an interview.

Over the past decade, the report said, lawsuits alleging violation of consumer protection statutes have "accounted for nearly half of all filings," followed by civil rights, employment, securities and contracts disputes. Lex Machina logged a total of 48,420 consumer protection class actions filed in federal courts since 2016.

Since 2022, it said, the rise in consumer protection cases has "primarily been the result of electronic data breaches."

Hopkins said that data breach claims—particularly those filed under California's privacy statutes—also contributed to the sudden uptick in consumer protection class actions recorded in 2025. "We're seeing California climb into a leadership role there among consumer protection class actions," she said.

Why are data breach claims driving class action litigation? "Companies are collecting more data, and so there's more potential points of liability," Hopkins added. "And plaintiff's firms are scaling around that because they know that the cases are out there. It could be the fact that there's more data out there and the fact that this class action train makes a lot of money for a lot of people and counsel, especially."

The report also identified a "handful" of federal district courts where class action filings were "highly concentrated" over a three-year period. The U.S. District Court for the Southern District of New York led the nation in class action filings from 2023 to 2025 with 4,793 cases, followed by 3,678 in the Central District of California and 2,211 in the Northern District of California.

But in 2025 alone, "plaintiffs filed more class action complaints in the Central District of California than any other district"—a total of 1,662 cases—setting up the U.S. Court of Appeals for the Ninth Circuit to maintain its streak as "the most active federal venue for appeals from class action cases," it said.

"With the increasing popularity of the Central District of California for filing class action cases, the Ninth Circuit's lead may reasonably be expected to continue," according to the report.

Hopkins said that, in terms of the volume of data breach class actions, the Central District of California and the Northern District of California have topped the list of federal venues over the past decade. "So, definitely, the privacy laws in California ... are leading that area," she said.

Adam Masarek, who also co-authored the report, said in an interview that he expects the number of federal class action filings to maintain its upward momentum.

"The factors behind the increase don't seem to be abating," he said. "There is a chance for a policy change, either at the legislative level or a significant appellate case that could slow things down. But for right now, it's unclear. What we can tell based on the data in 2026 is that it's still elevated, but for the rest of the year it's on track for similar numbers as it was this past year. So still high, not necessarily slowing down, and we expect it to continue going forward."

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Judge gives tentative OK to \$56 million menstrual app privacy settlement

 [courthousenews.com/judge-gives-tentative-ok-to-56-million-menstrual-app-privacy-settlement](https://www.courthousenews.com/judge-gives-tentative-ok-to-56-million-menstrual-app-privacy-settlement)

Margaret Attridge

April 16, 2026

The Google office with logo signage at the main entrance in Pancras Square, London, England, United Kingdom, on Dec, 26, 2025. (Michael Nguyen / NurPhoto via AFP)

SAN FRANCISCO (CN) — A federal judge Thursday indicated he would grant preliminary approval to a proposed \$56 million class action settlement over a lawsuit that accused period tracking app Flo of sharing users' highly sensitive information with third parties, including Google.

"I have to get rid of this thing. No one has gotten paid. This is done. I'm going to decide this right here, right now," U.S. District Judge James Donato, a Barack Obama appointee, said.

A class of app users sued Flo Health in 2021, claiming the company was improperly sharing personal identifying information and private health data with third parties, including Facebook (now known as Meta), Google, ad analytics company AppsFlyer and defunct analytics company Flurry.

Google reached a settlement in principle with the class in July. Flurry settled with the users in March, and the class voluntarily dismissed its claims against AppsFlyer in 2022. Last May, Donato preliminarily approved the plaintiff's \$3.5 million settlement with Flurry.

In August, a jury [found](#) Meta violated the California Invasion of Privacy Act when it intentionally recorded the sensitive health information of millions of women through Flo following a two-week trial. Flo [settled mid-trial](#) and admitted no wrongdoing.

Donato denied preliminary approval of the proposed settlement for Google and Flo Health in December, asking the plaintiffs for further clarification on issues related to the class and notice plan.

Under the agreement, Google will pay \$48 million, and Flo Health will pay \$8 million. Compensation will be available for class members who entered menstruation and/or pregnancy information into the Flo app in the U.S. between Nov. 1, 2016, and Feb. 28, 2019.

The plaintiffs estimate there are nearly 10 million individuals in the class. The estimated average recovery ranges from \$31.94 to \$12.69, depending on the number of claims submitted.

Potential class members will receive an email with instructions on how to obtain the settlement funds. The settlement notice will also be advertised on the Flo Health app and social media, including Facebook, Instagram, Pinterest, YouTube and TikTok, which Flo initially objected to.

"TikTok is where everyone is," Donato [said in December](#). "It's like giving print notice but skipping The New York Times."

At Thursday's hearing, the plaintiffs told Donato that they estimate around 40% of the class will receive a direct notice based on data Flo had provided to them, with a total estimated reach of 90% with the notice plan. However, they also wanted Meta to deliver a specialized notification, known as a jewel notice, to female users of Facebook and Instagram who are likely included in the class to reach the last 10%.

Meta strongly objected, arguing the plaintiffs were trying to compel Meta to speak about a settlement that does not involve the company.

Donato denied the plaintiff's request, saying he was not sure a jewel notice about Google and Flo's settlement would be a "relevant use of real estate" on users' screens. However, the judge left the door open for a future request for a jewel notice, depending on how successful the notice plan is.

"Get going, get this done. There is \$48 million sitting in an account, gathering interest, I presume. People need to get paid. You do whatever you need to do. Jewel is carved out; you can come back later," he said.

The plaintiffs' attorneys in the case requested an award of no more than 33.3% of each settlement amount, plus a maximum of \$3.6 million for litigation costs. Plaintiffs may request up to \$155,00 to cover their time and costs related to class representation.

The settlement administrator estimates notice and settlement administration costs will be between \$741,000 and \$1,490,000.

Donato said he would issue an order preliminarily approving the settlement by Wednesday.

Representatives for the plaintiffs declined to comment.

Representatives for Flo Health, Google and Meta did not respond to a request for comment.

Following this summer's trial, Donato [indicated](#) Meta may have to pay nearly \$8 billion in damages to Flo app users.

The plaintiffs have proposed damages of \$5,000 per class member — the amount of statutory damages allowed per violation of the California Invasion of Privacy Act.

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Expert Opinion | **Products Liability**

'Clean' Should Mean Clean: The Lululemon PFAS Investigation Is a Wake-Up Call for Consumer Safety

This investigation is less about a single company and more about a broader shift in how products are marketed, how consumers understand risk, and how the law is beginning to respond when those two things fall out of alignment.

April 16, 2026 at 10:00 AM By **Amanda Demanda**



Amanda Demanda of Amanda Demanda Injury Lawyers. Courtesy photo.

[When Ken Paxton launched an investigation this week into whether Lululemon Athletica sold apparel containing so-called “forever chemicals,”](#) it would have been easy to treat it as just another regulatory story—one more skirmish between a state attorney general and a major brand. But that framing misses what is really happening here. This investigation is less about a single company and more about a broader shift in how products are marketed, how consumers understand risk, and how the law is beginning to respond when those two things fall out of alignment.

What makes the moment even more significant is its timing. The investigation arrives as Lululemon is already working to regain its footing with consumers and investors after a stretch of mounting criticism—ranging from product quality concerns to broader questions about whether the brand has drifted from the innovation and reliability that once defined it. Reports of declining customer confidence, increased competition, and even high-profile product missteps have led some longtime customers to question whether the brand they trusted still exists in the same form. Against that backdrop, scrutiny over product safety does not land in a vacuum. It lands on a brand already under pressure.

We are living in a moment where companies are no longer simply selling goods. They are selling reassurance. Athletic wear is no longer just about performance; it is about wellness. Packaging is no longer just functional; it is meant to signal sustainability. Across industries, language like “clean,” “non-toxic,” and “safe” has become part of the value proposition. Consumers are not just buying what a product does—they are buying what they believe it will not do. And when that belief turns out to be misplaced, the consequences do not stay in the realm of marketing. They move, quickly, into the realm of liability.

At the center of this particular investigation are per- and polyfluoroalkyl substances, a class of chemicals that have drawn increasing scrutiny over the past decade. [PFAS are often referred to as “forever chemicals” because they do not readily break down, either in the environment or in the human body.](#) That persistence is not just a scientific curiosity; it is the reason they have been linked, in a growing body of research, to serious health concerns including certain cancers, endocrine disruption, and reproductive issues. Whether any specific product contains PFAS, and at what levels, is ultimately a factual question. But the legal significance of PFAS goes beyond their presence. It turns on what consumers were led to expect in the first place.

No one buys athletic apparel anticipating that it may carry hidden chemical exposure risks. Quite the opposite. Brands in this space have spent years cultivating an image of health, vitality, and increasingly, environmental responsibility. That image matters. It shapes consumer decisions, often justifying premium pricing and long-term brand loyalty. When a product is purchased under the implicit understanding that it aligns with those values, any deviation from that expectation is not just disappointing—it can be actionable. Product liability law has always been concerned with safety, but it is now just as concerned with the accuracy of the story being told about that safety.

This is where the line between marketing and liability becomes difficult to ignore. For a long time, product liability cases were driven by obvious failures—a defective part, a dangerous design, an injury that could be traced to a specific malfunction. Today, many of the most consequential cases look different. They are built around what was said, what was omitted, and what the company knew internally at the time those representations were made. Statements about a product being

“safe” or “non-toxic” may sound like branding, but in a courtroom, they are treated as claims that must be supported by evidence. If the investigation into Lululemon Athletica uncovers any disconnect between public-facing assurances and internal data, that gap will not be confined to regulatory review. It will become the foundation for litigation.

Equally important is the way responsibility is now understood across the supply chain. It is no longer sufficient for companies to point upstream when questions arise. Consumers do not interact with suppliers, chemical manufacturers, or subcontractors—they interact with the brand on the label. Courts are increasingly reflecting that reality. If a substance enters a product through sourcing, treatment, or manufacturing, the legal analysis does not stop at the point of origin. It follows the product all the way to the consumer. In that sense, the supply chain has effectively become the liability chain, and every link in it is subject to scrutiny.

What we are seeing now is not an isolated moment but part of a broader recalibration. Consumers are more informed, more skeptical, and more willing to question the claims made by companies they once trusted implicitly. At the same time, regulators are paying closer attention, and plaintiffs’ lawyers are building cases that reflect this new landscape—cases that do not just ask whether a product caused harm, but whether it was represented honestly in the first place. The legal system, in turn, is proving increasingly receptive to those arguments.

There is a straightforward principle underlying all of this, even if it is sometimes lost in the complexity of modern commerce. A company does not get to define safety on its own terms, especially when it is using that definition to shape consumer behavior. If a product is marketed as clean, consumers are entitled to assume that it meets a meaningful standard of cleanliness. If it is marketed as safe, that assurance must be grounded in reality, not aspiration. And when those assurances fall short, accountability is not an abstract concept. It is the mechanism by which the gap between promise and reality is closed.

Amanda Demanda *is the founder of Amanda Demanda Injury Lawyers and a nationally recognized trial attorney and legal-marketing innovator with offices in Florida and Texas. Amanda, who is the current president of the Miami-Dade Trial Lawyers Association, has built one of the nation’s most visible law firms while bringing a people-first, safety-driven approach to complex trucking and personal injury cases.*

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California Brief

Brita Defeats Appeal Over Filters' Contaminant Removal Deception

April 16, 2026, 12:30 PM PDT

Brita Products Co. convinced a federal appeals court Thursday to uphold the dismissal of a proposed class action alleging the company duped customers into thinking its water filters removed hazardous contaminants below lab detectable limits.

"Knowledge of the Products' limitations is consistent with the disclosures Brita did make," Judge Kim McLane Wardlaw wrote for the US Court of Appeals for the Ninth Circuit.

Plaintiff Nicholas Brown alleged Brita's labeling failed to conspicuously say the filters don't remove or reduce contaminants to below lab detection labels. But the filters come with data sheets that contain detailed information about the exact contaminants that get filtered by Brita products and to what extent, the appeals court said, affirming a lower court's decision to toss the case.

"As a matter of law, no reasonable consumer would expect Brita's low-cost filters to completely remove or reduce to below lab detectable levels *all* contaminants present in tap water, particularly in light of Brita's extensive disclosures to the contrary," Wardlaw wrote.

Brown also couldn't establish that Brita had a duty to disclose that its products don't entirely remove contaminants to below lab detectable levels, she said.

"Such a disclosure would not be important to a reasonable consumer in light of Brita's other disclosures on its Products' packaging and the objective unreasonableness of such an expectation," Wardlaw said.

Judges Ana de Alba and Eric C. Tung joined the opinion.

Brown was represented by Clarkson Law Firm PC. Brita was represented by Patterson Belknap Webb & Tyler LLP.

The case is Brown v. Brita Prods. Co. , 9th Cir., No. 24-6678, 4/16/26 .

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Beasley Allen appeal of DQ from N.J. talc cases rejected | Newsletter

 [legalnewsline.com/newsletter/beasley-allen-appeal-of-dq-from-n-j-talc-cases-rejected/article_c86c6bfd-c15f-454c-9ab1-afae290d5e92.html](https://www.legalnewsline.com/newsletter/beasley-allen-appeal-of-dq-from-n-j-talc-cases-rejected/article_c86c6bfd-c15f-454c-9ab1-afae290d5e92.html)

John O'Brien, John O'Brien

April 17, 2026

Johnson & Johnson Baby Powder no longer contains talc powder.

Austin Kirk, Public domain, via Wikimedia Commons

TRENTON, N.J. – The New Jersey Supreme Court won't overturn the disqualification of a law firm that spent years and money on thousands of talcum powder lawsuits, only to find itself on the sidelines.

Beasley Allen was found to have strategized too closely with a former lawyer for Johnson & Johnson on a plan to craft a mass settlement of claims alleging products like Baby Powder contained asbestos. The state Appellate Division earlier this year booted the firm off 3,600 cases in state court, and on April 10 the Supreme Court denied Beasley Allen's request to appeal.

It's the latest blow to the firm, which has also been removed from its lead counsel position in a massive consolidation of cases in New Jersey federal court. Though it said in court documents it is "likely to prevail in its forthcoming appeal" to the Third Circuit, lawyers at other firms have begun filing applications to take over as lead counsel.

That federal multidistrict litigation houses more than 60,000 lawsuits alleging asbestos from cosmetic talc caused ovarian and other cancers. Beasley Allen secured a leadership position and fought J&J's plan to settle claims for \$9 billion in bankruptcy court.

The firm was successful and forced J&J back to New Jersey federal court, where Beasley Allen hoped for jackpot verdicts that would boost its clients' position for larger settlements than the previous plan would have provided.

But along the way, it and Birchfield collaborated with a former J&J lawyer on a mass settlement plan – an arrangement J&J called "shocking and deeply troubling."

New Jersey's Appellate Division found Beasley Allen violated professionalism rules when it consulted with James Conlan, who had represented Johnson & Johnson in court, on a mass settlement of talc claims.

The ruling escalated the disqualification push in federal court, where a [disgruntled former client of the firm](#), Aletha Wilson, said Beasley Allen tried to trick her into signing a retroactive power of attorney giving the firm the power to vote against the \$9 billion bankruptcy plan Johnson & Johnson floated to settle talc litigation against it.

Beasley Allen voted against the bankruptcy plan on behalf of some 11,500 clients, claiming they were better off negotiating a settlement or suing in court. Wilson says she stood to gain money under the bankruptcy plan but nothing if she sued in court, since plaintiff experts back claims Baby Powder can cause ovarian cancer, but not uterine cancer.

Conlan was a partner at Faegre Drinker Biddle & Reath who defended J&J in talc litigation. He left the firm to start Legacy Liability Solutions, where he attempted to buy the company's talc liabilities and opposed the company's ultimately unsuccessful plan to settle all cases in bankruptcy court.

He worked with Beasley Allen's Birchfield to craft a settlement outside of the bankruptcy process, which was J&J's preferred avenue. Conlan and the firm wanted the talc liabilities bundled to an offshoot company that would be sold to him.

Conlan even wrote an [op-ed in Bloomberg](#) touting that strategy. Court records show 8,000 Beasley Allen clients who, through Beasley Allen, voted against J&J's bankruptcy settlement but never actually told the firm what their position on that plan was.

Beasley Allen "ratified" Conlan's conduct by asking to include him in settlement negotiations with J&J, U.S. magistrate judge Rukhsanah Singh wrote.

"Mr. Conlan has never been employed, retained, supervised or controlled by Beasley Allen," the firm says.

"Mr. Conlan has his own interests – that is the interest of Legacy Liability Solutions – looking to step into the shoes of Johnson & Johnson...Yet under this Court's expansive definition, their discussions during a court-ordered mediation rise to the level of an association..."

Affirming the ruling would chill participation in mediation efforts, the firm said, and discourage "creative approaches to dispute resolution."

The talc MDL is one of the largest in the country and was organized in 2016. There are more than 67,000 claims, and the promise of a large payout when it is resolved led to attorneys spending on advertising and some firms taking money from litigation funders who were promised a share of the recovery.

Still pending are motions to disqualify experts who testify there is asbestos in talc, the talc made its way into plaintiffs' bodies and it caused their cancers. J&J calls [those claims "junk science,"](#) and a ruling preventing those experts from telling it to jurors could doom the cases.

J&J has won plenty of defense verdicts in trials that hinge on expert testimony regarding whether there is asbestos in the talcum powder, but when it loses, jurors aren't shy about delivering massive verdicts. In December, one woman won [\\$1.5 billion in Baltimore](#), and two women in Los Angeles [won \\$40 million](#).

Zantac lawyers lose bid to knock Phila. judge off cases | Pennsylvania Record



legalnewsline.com/pennsylvania-record/zantac-lawyers-lose-bid-to-knock-phila-judge-off-cases/article_4da03c1a-f21d-4bf3-abf9-162927370191.html

John O'Brien, John O'Brien

April 17, 2026

Philadelphia City Hall in Downtown Philadelphia, home to the Court of Common Pleas

Photo: Chris Krug / The Center Square

PHILADELPHIA – A Philadelphia judge will not step down from hundreds of lawsuits alleging Zantac causes cancer, rejecting doubts of his impartiality stemming from his wife's job.

Judge Joshua Roberts this week turned down the request of plaintiffs firm Keller Postman, which argues his wife's position at the firm Blank Rome complicates cases alleging the ranitidine in the heartburn medicine morphs into cancer-causing NDMA in the human stomach.

Those claims are based on what other judges have found to be unacceptable science. Blank Rome represents Apotex in the Zantac litigation and brought in Roberts' wife Shannon McClure as a partner in February 2025.

That company faces only one lawsuit in Philadelphia out of the more than 500 filed there. When a colleague testified on the recusal issue, he said he "can represent that her compensation has no direct relationship" to fees earned from Apotex.

Roberts said in a short order Wednesday that Keller Postman waited eight months after he disclosed his wife's new job and that there is no merit to its argument.

"I can manage the Zantac mass tort in an impartial manner free of personal bias or interest in the outcome," Roberts wrote.

"Management of the program ranges from case management, ruling on procedural motions, ruling on substantive motions, and positioning bellwether cases for trial. Through this process, I work with court-appointed liaison counsel (Blank Rome is not liaison counsel).

"It is exceptionally rare that individual cases are discussed until the bellwether selection process, and I do not preside over the actual trials."

Roberts has [been celebrated by the American Tort Reform Association](#) for keeping other lawyers from presenting certain evidence in Philadelphia's Roundup program. Those cases claim the weedkiller causes cancer and are based on a 2015 International Agency for Research on Cancer study.

What evidence Roberts allows in the Zantac litigation will be key. Lawsuits are based on testing by the laboratory Valisure LLC, and its methods have been rejected by the FDA.

The litigation against GlaxoSmithKline and others began when Valisure created headlines in 2019 by claiming its testing showed Zantac and its generic equivalents contained ranitidine that changed to NDMA once ingested. Lawyers began spending on advertising for clients and cited the study in ensuing litigation, calling Valisure an "independent" lab.

Valisure had brought its findings in a citizen petition to the FDA, which ordered a short-lived recall. The FDA later said Valisure's methods were unreliable, saying the lab's "artificial stomach" was heated to 260 degrees and subjected to lethal levels of salt to create NDMA from Zantac.

[Valisure](#) detected no NDMA in the drug when testing it under normal human conditions. That didn't stop lawyers who, after a Florida ruling tossing their experts, moved on to courts in Delaware, California, Philadelphia and [elsewhere](#).

In December, a Delaware judge seemingly doomed 75,000 cases when he refused to let Keller Postman and other firms back them up [with new expert testimony](#). The state Supreme Court had found the opinions of their previous experts unreliable.

In Philadelphia, Keller Postman says it has noticed a whiff of a "personal displeasure" with calls for an evidentiary hearing on whether Roberts should recuse himself.

"By suggesting that an evidentiary hearing would be appropriate, you would be seeking to impugn my credibility to me, because I'm the one who's deciding the motion," Roberts said at a November status conference.

"There is no ability for a party to conduct an evidentiary hearing in support of a motion to recuse," he added, plus, "The decision is mine. The decision is mine and only mine. There's no other evidence. You can't cross-examine me."

Expert Opinion | **Artificial Intelligence**

Maximizing Privilege and Work Product Protection in the Age of Generative AI

To remain protected, legal teams must move away from ad hoc usage and toward a structured, tiered strategy that elevates AI-assisted work to ensure the widest privilege protection possible.

April 17, 2026 at 09:01 AM By **Natalie DeCesare**



Credit: terovesalainen/Adobe Stock

The decision in *United States v. Heppner*, recently handed down by U.S. District Court Judge Jed S. Rakoff in the Southern District of New York, potentially serves as a cold shower for any legal professional relying on generative AI. In that case, the defendant used a publicly available AI platform to brainstorm defense strategies and organize case facts after learning he was the subject of a federal investigation. When the government seized 31 documents recording these exchanges, the court ruled they were entirely discoverable. Rakoff's reasoning was sharp: AI is not an attorney, its public nature destroys any expectation of confidentiality, and a client cannot retroactively cloak unprivileged machine chats by later sharing them with counsel.

The *Heppner* facts involved a client operating without counsel—but the accountability problem it exposes does not stop at the client's door. Law firms face a version of the same risk every time an attorney uses AI without a documented governance process. The gap between machine output and protected legal work is the same; only the professional stakes are higher. When litigators use AI to assist with routine, factual tasks, we risk creating documents that look like the ordinary course of business rather than protected legal work. Or if the output appears to be a raw, unfiltered machine product, it loses the privileged status granted to an attorney's mental impressions. To remain protected, legal teams must move away from ad hoc usage and toward a structured, tiered strategy that elevates AI-assisted work to ensure the widest privilege protection possible.

Bridging the Accountability Gap

The core risk is that AI outputs are seen as routine data syntheses rather than strategic legal work. To prevent this, every interaction with the technology must be framed as a specific act of legal judgment. Firms should view AI as a specialized instrument that requires a human governor to provide context and direction.

Tier One: Protecting Ordinary Work Product

Factual materials like chronologies and evidence summaries only receive "qualified" protection. They are discoverable if an adversary can show a substantial need for them.

Two particular challenges arise with factual AI outputs as ordinary work product: First, these outputs may lack inherent proof that they were created because of a specific litigation threat, making them vulnerable to "ordinary course of business" arguments. Second, factual outputs (e.g., a list of dates) are seen as mere data, easily separated from the attorney's protective legal analysis.

To make these materials as privileged as possible, we must transform them from routine data into strategic assets.

- **Implement Mandatory Risk Documentation.** Before any sensitive query, the attorney should record the specific legal risk or theory driving the inquiry. This creates a contemporaneous, auditable record proving the material was created specifically in anticipation of litigation.
- **Define Strategic Input and Output.** Document the logic behind the data provided to the AI and the specific format required for the output. This level of curation demonstrates that the AI's role was defined by legal judgment rather than technical curiosity.
- **Use Judgment Infusion Protocols.** Attorneys should formally document their decisions to verify, reject or modify factual outputs. This documented selection process embeds the

lawyer's mental impressions into the data, making it subject to a higher standard of protection.

Tier Two: Maximizing Opinion Work Product

Opinion work product, the attorney's theories, conclusions, and strategic analysis, already receives near-absolute protection. However, in the age of AI, this high level of protection is threatened by the potential for waiver.

If the competence of a firm's defense due to the use of AI is challenged, that AI use may become subject to an "at-issue" waiver.

Consider a concrete scenario: it is alleged that a firm missed a court deadline because an AI tool produced an erroneous case summary. Opposing counsel moves to compel disclosure of the AI's raw output, the prompts used, and the attorney's interaction logs, arguing the firm relied on the tool rather than exercising independent legal judgment. The court agrees. Without documented human intervention at each step, the firm cannot demonstrate that its attorneys supervised the AI's work rather than deferred to it. The entire internal process is now at issue, and the near-absolute protection that would otherwise shield the firm's strategic analysis is gone.

Similarly, when AI drafts strategic advice, it creates ambiguity regarding where the machine's suggestion ends and the human's protected conclusion begins, weakening the claim of sole human authorship.

To prepare for a potential at-issue waiver, litigators should assume their process of engaging with AI will be under a microscope. To solidify opinion work product status, litigators need a structured approach to using AI for drafting and analysis.

- **Record Explicit Strategic Intent.** Before interacting with a tool, the attorney should record the nondelegable legal question they are solving. This establishes that the legal theory originated in a human mind, separate from any machine suggestion.
- **Apply Formal Accountability Mapping.** Every strategic conclusion derived from an AI's assistance should be assigned to a specific human professional. This provides a clear trail showing that the final work relies on the human's review and verification, not the machine's initial output.
- **Defend Against Reliance Waivers.** By proving that the final strategic decision relied on documented human oversight, litigators can credibly argue that the AI was a subordinate tool. This helps prevent the at-issue waiver by demonstrating that the firm's strategy was the result of professional supervision.

Augmentation With Accountability

The attorney-client relationship, and the privilege that protects it, depends on one thing above all: protecting an attorney's ability to use their judgment to give candid legal advice. When AI is introduced into that relationship without governance, the line between protected legal strategy and discoverable machine output begins to blur.

The profession is not waiting for this reckoning. Federal courts are already issuing standing orders requiring disclosure of AI use in filed documents. Bar associations are incorporating AI competence into professional responsibility frameworks. Malpractice insurers are beginning to scrutinize AI workflows as part of underwriting. The question for litigators is not whether their AI practices will face scrutiny. It is whether they will be able to defend them when they do.

Augmentation with accountability is not a compliance exercise. It is the foundation of defensible legal work in an era when the tools have changed but the standard of professional judgment has not. Firms that build that foundation now will be better positioned to protect their clients, their work product, and their professional standing in discovery and beyond.

Natalie DeCesare *is a senior consultant focusing on legal AI enablement with Harbor Global, a provider of professional and technology services to the legal industry.*

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White collar crime

The white-collar defence lawyers with nothing to do

The Trump administration's approach to justice has made life quieter for those who defend alleged financial criminals

Kaye Wiggins in New York and **Stefania Palma** in Washington

Published YESTERDAY | Updated 08:59



“You wanna hear the biggest lie people here are going to tell you?” a top criminal defence lawyer asks at a party filled with people who represent alleged fraudsters for a living. “It’s that they’re busy.”

Over the next two days, at an annual conference for America’s [white-collar defence bar](#), the gallows humour continues. Lawyers repeatedly crack jokes about needing to retrain or having nothing to do.

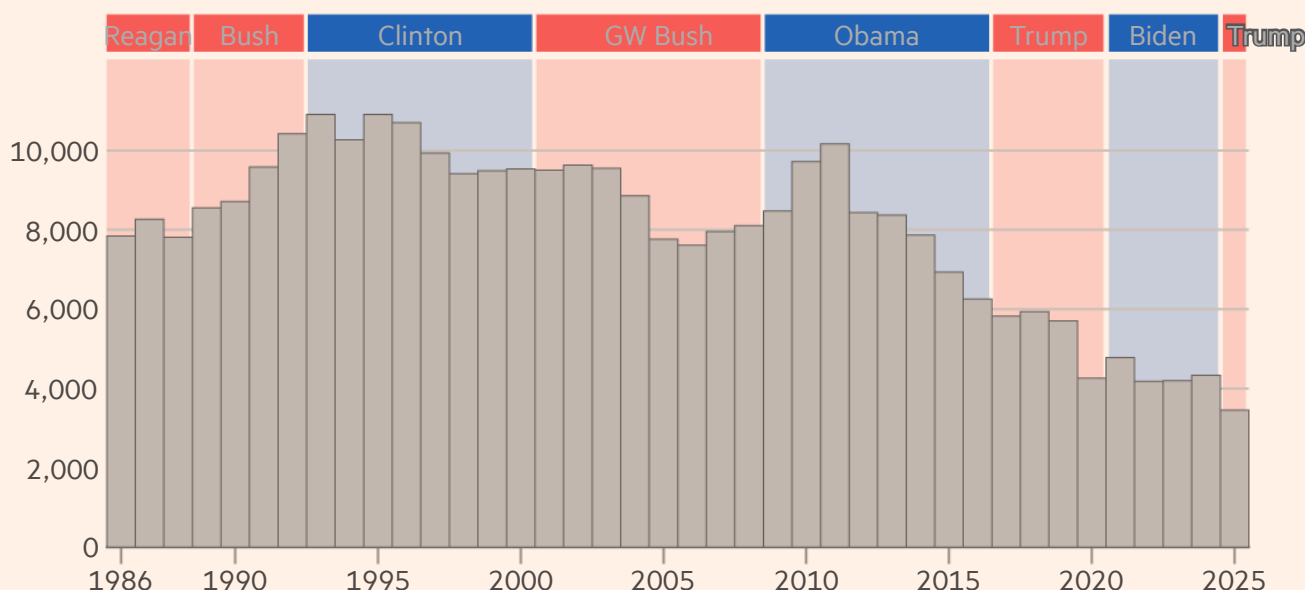
Some others do indeed say they are busy.

The Trump administration's approach to justice has left many of them with the impression that, at least when it comes to the traditional white-collar enforcement they have spent their careers dealing with, there were "no cops on the beat right now", one attendee said.

Though case numbers have been falling since the aftermath of the financial crisis, there were fewer white-collar prosecutions in 2025 than in any year since at least 1986, according to data from the [Transactional Records Access Clearinghouse](#).

White-collar prosecutions have fallen further under Trump 2.0

Number of defendants criminally prosecuted for white-collar offences



Source: TRAC • Data covers fiscal year from October to September. For example, 2025 data covers October 2024 to September 2025

While that might be good news for some of the alleged fraudsters they represent, it is bad news for the [lawyers](#).

The industry's top partners can bill more than \$2,000 per hour. Legal bills for the defence of Charlie Javice and a co-defendant, who were convicted of defrauding JPMorgan Chase when they sold their start-up to the bank, [exceeded \\$100mn](#), costs that JPMorgan said were "abusive".

“In the short term, I think all of us should be developing in other practice areas,” joked Baruch Weiss, a white-collar trial lawyer at Arnold & Porter and a former federal prosecutor, during a discussion at the conference, hosted by the American Bar Association.

Since the US has long been home to the world’s most aggressive white-collar prosecutors, its consequences are likely to be felt around the world.

“My concern is that [less enforcement] may lead to a rise in crime or the lack of accountability in certain spaces,” Breon Peace, a Cleary Gottlieb partner and previously Brooklyn’s top federal prosecutor, said at the event.

Since Trump returned to office last year, his administration has paused and then overhauled the enforcement of a [law](#) against bribing foreign officials, shifted prosecutors’ resources to immigration and raised the bar for crypto cases.



Ross Ulbricht, founder of Silk Road, was pardoned by Donald Trump © Ronda Churchill/Bloomberg

The Department of Justice has used resources to investigate Trump's perceived adversaries. [Trump has pardoned or commuted the sentences](#) of dozens of white-collar criminals, including Silk Road operator Ross Ulbricht and Binance co-founder Changpeng Zhao. The DoJ is shifting resources to the National Fraud Enforcement Division, which will focus on misuse of public funds, including benefit programmes.

At the same time, the Securities and Exchange Commission, the watchdog whose investigations often lead to, or run alongside, DoJ criminal cases and which generates a large portion of white-collar lawyers' work, has adopted lighter-touch enforcement than it did during Joe Biden's presidency.

It filed 456 enforcement actions in the year to September 30, the lowest number in two decades, and said this month that it had "put a stop to regulation by enforcement".

Elizabeth Warren, the highest-ranking Democrat on the Senate banking committee, on Friday sent SEC chair Paul Atkins a [letter](#) saying the "deeply disturbing" data showed the agency had "largely abdicated its enforcement responsibilities" since his appointment last year.

Atkins' testimony in February before the panel, in which he disagreed with Warren's premise that the SEC did not seem interested in enforcing laws against corporate crime, raised "concerns that you may have been deliberately trying to mislead the Committee about the state of SEC enforcement", she added. Such misconduct carries penalties ranging from fines to imprisonment.

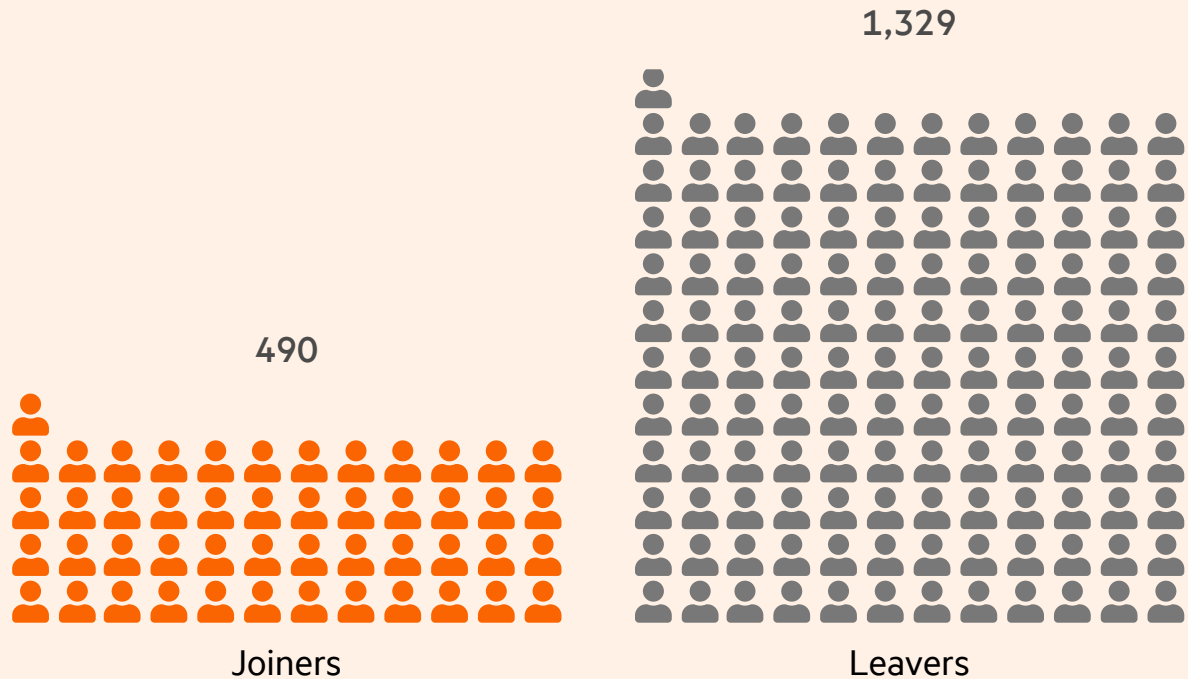
The SEC declined to comment on the letter.

The commission's staffing also fell 9 per cent in 2025 and is due to fall 10 per cent this year. Other agencies, the Consumer Financial Protection Bureau and the Commodity Futures Trading Commission, have shrunk.

The number of DoJ lawyers has fallen

Change in lawyers working at US Attorneys' Offices* since Jan 20 2025

Each icon represents 10 lawyers



Source: US Office of Personnel Management • *Across the country, and in the DC office that oversees them

“The Department of Justice is working day and night to protect the American people from all elements of crime, including fraud,” said Colin McDonald, head of the department’s National Fraud Enforcement Division. He said it had achieved “exceptional fraud results” and “seismic drops in homicide rates, violent crime rates, drug overdose deaths and other life-altering statistics”.

The SEC declined to comment.

Some major white-collar criminal cases are still going ahead. They include cases against Daniel Chu, the founder of collapsed subprime car lender Tricolor Holdings, [First Brands Group](#) founder [Patrick James](#) and his brother Edward, and 777 Partners co-founder Joshua Wander.

And the DoJ's Washington-based fraud section — which accounts for a small proportion of total white-collar work but tends to cover larger and more complex cases — charged 265 people in 2025, up from 234 the previous year.

Still, the nature of its work has shifted. It levied just \$123mn in penalties for violations of anti-bribery law the Foreign Corrupt Practices Act, a drop from \$1.7bn the previous year. It charged more people with healthcare fraud and prioritised cases involving trade fraud and tariff evasion, as well as frauds associated with Chinese companies using “variable interest entity” structures.

Tysen Duva, head of the DoJ's criminal division, said the department would “continue to enforce the FCPA firmly and fairly” and prosecute foreign bribery schemes that harm American interests.

The criminal division's corporate enforcement actions — 16 in 2025 and three so far in 2026 — have yielded more than \$1bn in total resolution penalties.



First Brands' founder Patrick James has pleaded not guilty to fraud and conspiracy © Michael Nagle/Bloomberg

Data from the US Office of Personnel Management shows that within the 94 local units that enforce federal laws across the country, and the Washington office that oversees them, there are 839 fewer lawyers than when Trump first returned to office.

Seventy-eight per cent of the lawyers hired in those US attorneys' offices between January 1 2025 and January 31 this year had no prior government experience, according to analysis by former FBI intelligence analyst Philip Fields, whose Forking Off project tracks government staffing. Those who left had on average almost 14 years of government experience.

"At the end of the day, fewer prosecutors means fewer cases," said Matt Graves, a partner at Winston & Strawn and the former US attorney for the District of Columbia. "What we're seeing is as much that challenge as it is a policy challenge."

Vanessa Roberts Avery, a partner at McCarter & English and the former top federal prosecutor in Connecticut, said it was "devastating to have a mass exodus". "When you don't have people who have the experience to lead [white-collar] cases it's going to be nearly impossible to keep them going."

To make up for the decline in criminal cases, some defence lawyers are taking on more civil work. "I'm back among the unwashed, doing commercial litigation [and] waiting for white-collar enforcement to step up a little bit," John Gleeson, a partner at Debevoise & Plimpton and a former federal judge, joked during a panel discussion at the ABA event.



The Securities and Exchange Commission headquarters in Washington. The SEC filed 22% fewer enforcement actions in the year to September 30 than in the previous 12 months © Matt McClain/Bloomberg

Some state-level prosecutors hope to fill the gaps. “The broad concept is . . . if they’re not going to do it, we’ll do it,” Rob Bonta, California’s attorney-general, told the FT. He said his office was looking through the Epstein files and working on antitrust and consumer protection cases.

New York’s state attorneys-general have been willing at times to take on Wall Street and other powerful actors: in 2024 the office, under Letitia James, won a case alleging civil fraud against Trump.

But state attorneys-generals’ offices are not generally set up to prosecute large-scale or complex white-collar crime cases, which demand teams of investigators. The offices cannot enforce federal criminal laws on which such cases often centre; they would have to find similar state laws.

“We might need to identify ways to step up more in that space, but that’s a tougher space,” Bonta said.

The other big hope for the white-collar defence bar is that the Democrats will win control of the House of Representatives in this year's midterm elections — handing the party's representatives, through committees, the power to issue subpoenas to companies about their dealings with the administration. That might lead companies to hire white-collar lawyers.

“The incoming potential chairmen and women [of congressional committees] have really learned . . . that going after private-sector actors can often be more fruitful than going after an administration,” said Emily Loeb, co-chair of Jenner & Block's congressional investigations practice. She said some companies had already started seeking legal advice on how to prepare for this.

Akin Gump, a DC-headquartered firm, last month beefed up its congressional investigations practice to be ready for that outcome.

For years, an important part of the white-collar defence bar's work has centred on advising companies on compliance as they seek to stay out of prosecutors' crosshairs. Several lawyers said companies have tried to reduce spending on this since Trump returned to office, viewing it as less necessary than before.

Some attorneys, however, have been brought in to help in-house lawyers by giving them ammunition to persuade their boards not to cut compliance spending.

“Just because there's less white-collar prosecutions in the traditional sense, it doesn't mean there's less fraud or white-collar crime going on,” Chuck Connolly, co-head of Akin's white-collar defence group, said at the event.

“In the future, there's going to be a lot of work for everyone in this room to do.”

Additional reporting by Suzi Ring in London

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Securities

SEC Move to Trim Corporate Risks Galvanizes Safe Harbor Debate

April 17, 2026, 2:00 AM PDT

Companies and investors are at odds over the role legal safe harbors for risk factor reporting should play in the SEC's push to lighten disclosure burdens.

One thing they agree on: how the agency handles them will be pivotal to whether companies feel comfortable cutting back on information they share with investors.

Sections of annual reports that detail companies' business risks have ballooned, not because they're useful to shareholders but because they curb opportunistic investor lawsuits, companies and industry groups recently told the Securities and Exchange Commission in comments calling for new safe harbors. Investors, on the other hand, said upholding robust disclosure marked the best path to accountability.

"Liability drives reliability," the New York City Comptroller's Office told the SEC. "Concealment generates litigation, while robust disclosure prevents it."

Company and investor feedback could inform how the SEC approaches potential changes to a key disclosure rule, Regulation S-K. The SEC is weighing comments as it considers updating the regulation, which governs risk factors, executive compensation, and other reporting. The review is part of SEC Chairman Paul Atkins' mission to entice companies to go public by cutting back the time and resources spent preparing reports.

Regulation S-K requirements were last updated in 2020 with new provisions requiring companies to include a summary of risk factor disclosure for investors if their section exceeds 15 pages. S&P 500 companies devoted on average nearly 14 pages to risk factors in 2024, up from just over 12 in 2020, according to a report from Deloitte and the University of Southern California's Marshall School of Business.

Without changing the litigation landscape alongside reporting requirements, companies' incentive to provide lengthy risk disclosures as a defense mechanism will remain, said University of Virginia assistant professor of commerce Jasmine Wang.

"This disclosure change and the litigation reform have to basically go hand-in-hand," Wang said. "They really cannot be independent from each other."

Safe Harbors

Companies said they over-disclose potential business risks due to fears that if stocks tumble, investors might sue citing companies' failure to inform investors of a potential threat.

"In a way, risk factors are like a free insurance policy because if you told investors about a particular risk, if it comes to pass, they can't then sue you and say that they didn't know," Debevoise & Plimpton LLP corporate partner Eric Juergens said.

Safe harbors, companies say, helps mitigate that issue.

The US Chamber of Commerce said the SEC should adopt a liability safe harbor for events that would reasonably affect most companies to reduce disclosure burdens. This could reduce the likelihood of investor lawsuits when geopolitical conflict or another large-scale event impacts performance.

But Norges Bank Investment Management argued when risks are common across industries—like global conflict or natural disasters—the most helpful information for investors is how specific companies are exposed and their contingency plans.

Regulation S-K should also include language codifying that risk factors are forward looking only, Nasdaq Inc. said. This could help curb investor litigation over previously stated risks that have materialized.

The SEC could add protections to clarify forward-looking risk factor disclosures reflect management's opinion, so investors couldn't win in court without proving management either didn't believe such statements or omitted facts, law firm Jones Day suggested.

"This framework would mean that an issuer's judgment about which risks warrant disclosure—including the decision not to identify a particular risk—would be evaluated as what it is: a subjective assessment of future uncertainties," the Jones Day letter said.

But investor organizations pushed back on the notion that safe harbors are needed.

Organizations including As You Sow, Etica Funds, and the New York City Comptroller's Office told the SEC the preserving their ability to sue when necessary keeps the disclosure system reliable and accurate.

"Anti-fraud provisions are necessary to protect investors from false or misleading disclosures," Etica Funds told the SEC. "Without adequate assurance of accuracy, our trust in the SEC system of disclosure would be greatly reduced."

Less Repetition and Confusion

Businesses are confused about what specific disclosures are required under risk factors and need to cut through the noise, the Chamber said.

To do that, the SEC could let businesses highlight a smaller section of important risks or combine risks scattered throughout reports into one centralized narrative, it told the SEC.

Disclosures should focus on risks unique to a company, packaging manufacturer Greif Inc. told the SEC. That could be accomplished with new interpretive guidance from the agency or a page limit that would force companies to prioritize top issues, other company-side commenters said.

Companies also suggested allowing cross-referencing to cut down on repetition, nixing the requirement that companies provide a risk summary when the section exceeds 15 pages, and allowing notices on company websites to count as risk disclosure.

But the Massachusetts Public Retirement Investment Management Board, or MassPRIM, told the SEC costs increase when companies disclose detailed information in unregulated ways.

"When information is scattered across multiple forums, it is operationally difficult to assemble a complete picture of a company's risk profile," the pension manager said.

Companies should reach out to long-term investors to see what risk areas they're watching and learn more about how they're using corporate disclosures, MassPRIM said.

Other investors said companies aren't always the best judges of what constitutes a risk.

Even if businesses don't view material as relevant, it could be important for certain investors or become material over time, As You Sow said.

California pension fund CalPERS agreed with companies that boilerplate language driven by litigation fears doesn't serve investors. But the investor said it also opposed a general risk repository—which Atkins floated this year—to replace company-specific disclosures.

Lengthy risk factor report sections doesn't mean they're irrelevant, the US Impact Investing Alliance said. Material risks facing companies have only expanded in recent years, and the solution for unwieldy disclosure is more specificity, not a tighter scope, it told the SEC.

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Securities

Manage Newsletters

Insight

The Supreme Court Could Defang the SEC's Most Powerful Remedy

April 17, 2026, 7:36 AM PDT

Summary by Bloomberg AI

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- The US Supreme Court will consider whether the SEC must show that its enforcement target's conduct caused pecuniary harm to investors before a court can award disgorgement in *Sripetch v. SEC*.
- The case resolves a circuit split, with the Second Circuit requiring a showing of pecuniary harm and the Ninth Circuit rejecting that requirement.
- The Supreme Court's decision will reshape settlement negotiations, litigation strategy, and the SEC's institutional incentives in every enforcement action where disgorgement is on the table.

The Securities and Exchange Commission's most powerful monetary remedy is disgorgement—the equitable mechanism that strips defendants of their ill-gotten gains regardless of whether any victim can be identified or any dollar of loss can be traced.

In theory, disgorgement simply puts a wrongdoer back where they started. In practice, it operates as something closer to a penalty: A court orders the defendant to pay the full amount of profits derived from the violation, and those funds go into a Fair Fund for eventual distribution to harmed investors—if any can be found.

The US Supreme Court is about to consider whether that “if any” qualifier matters. In *Sripetch v. SEC*, scheduled for argument on April 20, the Supreme Court could resolve a circuit split on a question that goes to the foundation of the SEC's remedial authority: Must the SEC show that its enforcement target's conduct caused pecuniary harm to investors before a court can award disgorgement?

The stakes are real. In fiscal year 2024, the SEC secured more than \$6 billion in disgorgement and related prejudgment interest—nearly three-quarters of the SEC's total financial remedies. The answer in *Sripetch* will reshape settlement negotiations, litigation strategy, and the SEC's institutional incentives in every enforcement action where disgorgement is on the table.

The Circuit Split

The US Court of Appeals for the Second Circuit held in *SEC v. Govil* that the SEC must demonstrate pecuniary harm before obtaining disgorgement.

The reasoning was straightforward: Disgorgement is an equitable remedy, and equity has always required a showing that someone was actually injured. A court sitting in equity doesn't strip a defendant of profits simply because a violation occurred—it does so to make victims whole.

Without victims who suffered financial harm, there is no equitable basis for the remedy. In *Govil*, the SEC alleged that the defendant caused the company he founded, Cemtrex, to issue securities under false pretenses. But the SEC offered no proof that investors suffered pecuniary harm. The Second Circuit vacated the disgorgement order and remanded for that determination.

The Ninth Circuit, in *Sripetch*, rejected that requirement. Sripetch orchestrated a series of pump-and-dump and scalping schemes involving nearly 20 microcap companies—the kind of case where the SEC's ability to identify and quantify harm to specific investors is inherently limited.

The Ninth Circuit upheld a \$2.2 million disgorgement order without requiring a showing of pecuniary harm. It reasoned that the 2021 congressional amendments to Section 21(d) of the Exchange Act expressly authorized the SEC to seek disgorgement in federal court. Congress didn't condition that authority on a showing of pecuniary harm. The statute says the SEC may seek disgorgement; it doesn't say the SEC may seek disgorgement only when investors have been financially harmed. The First Circuit has reached the same conclusion.

So three circuits have come up with two irreconcilable positions. The question is which framework the Supreme Court will adopt—and what the practical consequences will be.

What's at Stake

The case matters most in a category of SEC enforcement actions that is larger than most practitioners appreciate—those where the violation generated profits for the defendant but didn't cause quantifiable financial harm to any identifiable investor.

Insider trading is the paradigm. Say a corporate insider trades on material nonpublic information and makes \$5 million. The SEC brings an enforcement action and seeks disgorgement of the \$5 million. But who was harmed? The anonymous counterparties on the other side of the insider's trades would have traded anyway, as they didn't know about the inside information and weren't induced to buy or sell by the insider's conduct. The market absorbed the insider's trades without measurable distortion. The insider's profit didn't come "from" any investor's pocket in the way that, say, a Ponzi scheme operator's profits come from defrauded investors.

Under the Second Circuit's approach, the SEC would need to identify and quantify the pecuniary harm caused by the insider trading before obtaining disgorgement. That is a difficult or impossible burden to carry in many insider trading cases. Under the Ninth Circuit's approach, the SEC need only show that the defendant violated the securities laws and profited from the violation. The absence of identifiable victims is irrelevant.

The same tension appears across the enforcement landscape—market manipulation cases, registration violations, books-and-records cases, and accounting fraud matters where the defendant profited from the misconduct but the chain of causation between the violation and investor harm is attenuated or speculative.

***Liu* and Legislative Background**

Sripetch is the sequel to 2020's *Liu v. SEC*, where the Supreme Court held that SEC disgorgement in federal court must be limited to the defendant's net profits (not gross revenue) and that the funds must be returned to victims rather than retained by the government. *Liu* treated disgorgement as an equitable remedy bounded by traditional equitable principles—a remedy for victims, not a penalty by another name.

Congress responded in 2021 by amending Section 21(d) to expressly authorize the SEC to seek disgorgement in federal court, codifying the remedy that *Liu* had questioned and partially constrained. The legislative history is sparse on whether Congress intended to override *Liu*'s equitable limitations or simply confirm the statutory basis for disgorgement while leaving the equitable guardrails intact.

That ambiguity is at the heart of *Sripetch*. The SEC argues that the 2021 amendments superseded *Liu*'s equitable framework and that Congress created a statutory disgorgement remedy unconstrained by traditional equitable requirements such as pecuniary harm. *Sripetch* argues that the amendments were clarifying, not expanding—and that nothing in the statutory text or legislative history suggests Congress intended to strip courts of the discretion to require a showing of harm before ordering a defendant to pay.

When the justices take the bench on April 20, the key signals will be whether the Supreme Court treats the 2021 amendments as a clean statutory grant of disgorgement authority—freeing the remedy from traditional equitable constraints—or as a codification that left *Liu*'s guardrails intact.

Listen for questions probing the outer limits of the SEC's position: If disgorgement requires no showing of harm, what distinguishes it from a penalty? And if it is a penalty, does the Eighth Amendment's Excessive Fines Clause apply? The answers will reshape the economics of SEC enforcement for years to come.

The case is *Sripetch v. Securities and Exchange Commission*, U.S., No. 25-466, to be argued 4/20/26.

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US judicial panel scraps key provision in amicus brief disclosure rule

 [reuters.com/legal/government/us-judicial-panel-scraps-key-provision-amicus-brief-disclosure-rule-2026-04-16](https://www.reuters.com/legal/government/us-judicial-panel-scraps-key-provision-amicus-brief-disclosure-rule-2026-04-16)

Nate Raymond

April 16, 2026

A bronze statue depicting a figure of Justice is seen on the Albert V. Bryan United States Courthouse in Alexandria, Virginia, U.S., September 1, 2020.

REUTERS/Andrew Kelly/File Photo [Purchase Licensing Rights](#)  , [opens new tab](#)

April 16 (Reuters) - Federal judicial rulemakers on Thursday voted to abandon a key part of a proposed rule governing the disclosure of who finances friend-of-the-court briefs after top judges [expressed concern](#) the measure could interfere with the privacy of advocacy groups and their members.

The unanimous vote by the U.S. Judicial Conference's Advisory Committee on Appellate Rules marked the latest instance of the judiciary reducing the disclosure obligations for amicus brief filers in the long-debated measure, which was originally aimed at addressing transparency concerns.

The panel had previously endorsed a [rule](#) that would have required organizations that file amicus briefs to name any donors who provided more than \$100 for the preparation of a brief if that person or entity was a nonmember or joined the group less than 12 months earlier.

The proposal advanced after the panel voted in April 2025 against a broader rule change that would have required amicus briefs to disclose if a party or its counsel in a given case contributed 25% or more of the organization's annual revenue. Yet judicial rulemakers at the last minute in March withdrew the modest rule change they had submitted to the U.S. Supreme Court for its consideration, citing concerns from leaders of the U.S. Judicial Conference, the judiciary's top policymaking body.

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In the March 10 letter, judicial rulemakers said members of the Judicial Conference's executive committee were concerned the requirement that groups identify new members who contributed funding "could interfere with the privacy of those organizations and of their members."

That concern was shared by the U.S. Chamber of Commerce, a frequent amicus brief filer which in an [April 2 letter](#)  , [opens new tab](#) argued the rule as previously drafted could infringe on associational rights under the U.S. Constitution's First Amendment.

As a result, the appellate rules panel on Thursday voted to scrap the provision governing new members, resulting in a rule change that only slightly differs from a preexisting requirement that amicus filers disclose any support from nonmembers. The judiciary had been considering the rule change since 2019, when Democratic lawmakers including U.S. Senator Sheldon Whitehouse of Rhode Island introduced legislation they said would provide more transparency about who was behind such briefs.

U.S. District Judge Carl Nichols, an appointee of Republican President Donald Trump in Washington, D.C., on Thursday said it had "always seemed to me was at least that this was attempting to fix a problem that we didn't know existed."

"I wouldn't be pushing for a possible solution to a non-problem over the very negative reaction that we got," he said.

Read more:

[US judiciary withdraws new requirements for amicus brief disclosures](#)

[US judicial panel tweaks amicus brief disclosure rule, seeks public views on AI](#)

[US judicial panel advances proposal to regulate AI-generated evidence](#)

[US judicial panel votes to scrap key part of amicus disclosure rule](#)

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US sentencing panel adjusts fraud punishment guidelines for inflation

 [reuters.com/legal/government/us-sentencing-panel-adjusts-fraud-punishment-guidelines-inflation-](https://www.reuters.com/legal/government/us-sentencing-panel-adjusts-fraud-punishment-guidelines-inflation-2026-04-16)
2026-04-16

Nate Raymond

April 16, 2026

A Lady Justice statue is seen in this illustration taken June 10, 2021.

REUTERS/Andrew Kelly [Purchase Licensing Rights](#)  [, opens new tab](#)

April 16 (Reuters) - A U.S. panel tasked with crafting federal sentencing policy on Thursday adopted new guidelines for punishing white-collar criminals, adjusting for inflation how fraud victims' losses are calculated in a way that could result in lower sentences.

The change was adopted by the U.S. Sentencing Commission during a meeting in Washington, D.C., as part of a [package of amendments](#)  [, opens new tab](#) to the advisory guidelines federal judges consult when sentencing federal defendants. The bipartisan panel in a series of unanimous votes said it acted to simplify and streamline the application of the federal sentencing guidelines, as well as implement the HALT Fentanyl Act, which President Donald Trump signed into law last year.

The law permanently classifies all fentanyl-related substances as Schedule I drugs under the Controlled Substances Act and expands mandatory minimum sentences for distribution of those substances.

The panel in December had proposed reforming the guidelines used by judges to sentence defendants for economic crimes including fraud and theft, after years of criticism by defense lawyers, academics and some judges who have long argued for an overhaul.

They have claimed that the guidelines result in excessive punishments by prioritizing financial losses such as from falling stock prices over other factors, like a defendant's culpability, in determining sentences.

In 2015, the panel addressed those critiques and [revised the fraud guidelines](#), including for inflation, but it retained the practice of increasing sentences based on victim losses.

The latest amendments once again avoided major changes to the loss tables, retaining the 16 categories of different levels of monetary loss but adjusting them for inflation for the first time in a decade.

Even that small change, though, would generate lower sentencing ranges for fraud defendants. The 16-category table the guidelines deploy to categorize victims'

loss amounts now starts at \$9,000 and tops off at \$750 million, compared to \$6,500 to \$550 million previously.

The amendments will be submitted to Congress by May 1 and, absent congressional action, take effect on November 1.

Read more:

[US sentencing panel proposes sentencing changes for fentanyl, fraud cases](#)

[U.S. judicial panel changes fraud sentencing guidelines](#)

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9th Circ. Judge Rips 'Sophistry' By Online Prediction Markets

By **Dorothy Atkins**

Law360 (April 16, 2026, 11:13 PM EDT) -- A Ninth Circuit judge appeared skeptical Thursday of requests by KalshiEX LLC, Crypto.com and Robinhood to block Nevada from enforcing state gambling laws against sports and election-related contracts, telling Robinhood's counsel "I don't buy" the companies' regulatory interpretation and slamming a Crypto.com argument as "sophistry to the nth degree."

U.S. Circuit Judge Ryan D. Nelson's comments came during a hearing before a three-judge panel on consolidated **appeals** by prediction market operator Kalshi, Crypto.com and Robinhood Derivatives in **litigation** against the state of Nevada over online sports betting.

The appeals challenge separate lower court rulings that denied the companies' requests for preliminary injunctions that would prohibit Nevada from enforcing Silver State gambling laws against sports and election-related event contracts.

At the outset of the hourslong hearing, Crypto.com's counsel, Shay Dvoretzky of Skadden Arps Slate Meagher & Flom LLP, argued that the U.S. Commodity Futures Trading Commission — and not state regulators — has exclusive jurisdiction over swap trading on so-called "designated contract markets."

Dvoretzky argued that online platforms like Crypto.com constitute a DCM and the Dodd-Frank Act defines "swaps" broadly to encompass contracts that have a potential "financial, economic or commercial consequence." Dvoretzky added that sports-events related contracts traded on its platform are "fundamentally different" from betting at casinos.

That's because the transactions are structurally different, he said. Crypto.com's trades are between willing participants, and not between a better and "the house" like at Caesars' casino in Las Vegas, Dvoretzky said. However, Judge Nelson quickly rejected the argument.

"Counsel, this is sophistry to the nth degree, it's still the house," Judge Nelson said. "[Your platforms are] setting this by how many bets come in, and it's changing the odds in the same way that the house is setting the odds at Caesars. I don't understand how you can say that those are different."

Dvoretzky replied that sports-event contracts can be used to hedge risk in a way that sportsbooks at casinos cannot, but even if the contracts are gaming, the CFTC has the authority to determine if they're in the public interest. But Judge Nelson again doubted the argument.

"Here's one of the problems that I have," Judge Nelson said. "Every gaming contract that is going up on the DCM right now is contrary to the agreement that each of the parties have with the CFTC and with the CFTC's own regulations."

To that end, Judge Nelson repeatedly pointed counsel to the CFTC's self-certification regulation 40.11, which states that "a registered entity shall not list for trading ... an agreement, contract, transaction or swap ... that involves, relates to or references terrorism, assassination, war or gaming activity."

The judge repeatedly noted that the CFTC regulation serves as a "gatekeeper" and requires DCMs to request to be excluded, which is subject to a 90-day review, but none of those companies in the litigation sought exclusions for the contracts on their platforms.

But Dvoretzky, Robinhood's counsel Antony Ryan of Cravath Swaine & Moore LLP and Kalshi's counsel William Havemann of Milbank LLP repeatedly disagreed and argued the regulation is invalid and sports-events contracts aren't subject to 40.11's "gaming activity" restriction, which they said involves traditional games of chance like roulette, as opposed to sports "games."

During Kalshi's arguments, Havemann emphasized that Nevada's laws are preempted by federal law in the "narrow application" of regulating trading on DCMs, and "that's clear from the plain statutory text."

But Judge Nelson questioned why none of the companies had sought to invalidate the regulation, or seek to be excluded before allowing such online betting, and each specifically certified that they would abide by all CFTC statutes and all regulations.

"This would have been so much easier for all of you, I mean you had billions of dollars on the line, why didn't you go through [40.11] subsection c [to seek an exclusion]?" the judge asked, later adding: "You've got an argument that 40.11 doesn't mean what it says. I don't buy it. But then you have an argument that it shouldn't be adopted — it should be changed — but you never made that argument."

Robinhood's counsel Ryan argued that requiring companies to challenge 40.11 would be "shifting the burden around the wrong way in the self-certification regime."

But Judge Nelson quickly retorted, "No, it's not at all." The judge also quickly rejected Ryan's suggestion that the issues are akin to the Ninth Circuit's 2015 **ruling** in **Big Lagoon Rancheria v. State of California** in which an en banc panel found California failed to negotiate in good faith for a gambling compact under federal law.

"With all due respect, we are so far away from Big Lagoon. It's not even the same thing," Judge Nelson said. "You had the obligation. This is not difficult. You signed an agreement that [says], 'We will abide by the regulations. In fact [we will abide by] regulations that we don't even agree with. We will abide by them.' If you don't agree with them, it's your job to say this was wrongly decided, and you could have gone through the 90-day review."

Judge Nelson additionally noted during Kalshi's argument that Kalshi claimed in another proceeding in D.C. federal court that sports events like the Kentucky Derby constitute "gaming." Havemann acknowledged his client's apparently contradictory stance, but he noted the D.C. litigation involved election-related bets, and he added that the "whole thrust" of the Commodity Exchange Act is nationwide uniformity to prevent "total chaos" that would result in 50 states being able to enforce different civil and criminal state laws.

But Judge Nelson disagreed, telling Havemann "that's the chaos that's existed for the last 100 years," and gambling is "quintessentially what states have been regulating" for decades, and to find that Congress intended otherwise would be a "monumental change without discussion about it."

The other judges on the panel similarly appeared skeptical of the appeals. U.S. Circuit Judge Kenneth K. Lee doubted whether the contracts have a potential "financial, economic or commercial consequence" to legally qualify as a swap.

Havemann responded that if games are close or if certain teams win, more viewers will watch, which has a financial impact. But Judge Lee replied that whether the Yankees or Red Sox win a game, people will watch regardless of the financial consequence.

"The most valuable franchise in America is the Dallas Cowboys, and they haven't won anything in decades. They're still the most valuable ... even though they're terrible," Judge Lee said. "So I don't know if any single game or series has a financial consequence."

U.S. Circuit Judge Bridget S. Bade also noted that she receives regular Kalshi ads that advertise the platform as the only legal sports betting platform in all 50 states, so consumers likely think that they're engaging in gambling. But Havemann argued that Kalshi's ads are irrelevant to determining as a matter of law whether the contracts constitute sports gambling.

"There are marketing people that always make lawyers a little bit uncomfortable," he said. "But nonetheless it does not matter."

CFTC's counsel also appeared in court **backing the companies' appellate arguments** that although the CFTC doesn't regulate gambling or sportsbooks, it can regulate sports-events contracts.

Meanwhile, Nicole A. Saharsky of Mayer Brown LLP argued on behalf of Nevada that the consequences of the companies' position that "all sports bets would qualify as swaps" would "suck in all sports betting as we know it and make the CFTC the nation's gaming regulator."

Saharsky added that the companies' interpretation of "swaps" has no limiting principle and would count any event that could have any financial consequence as a swap. That interpretation could have "huge" consequences, including upending several federal laws that depend on states defining gambling. It would also upend the "core of the states' police power," while raising major federalism doctrine and implied repeal issues, she said.

At the end of the hearing, the panel took the arguments on all three appeals under consideration.

U.S. Circuit Judges Ryan D. Nelson, Bridget S. Bade and Kenneth K. Lee sat on the panel for the Ninth Circuit.

Crypto.com was represented during the hearing by Shay Dvoretzky of Skadden Arps Slate Meagher & Flom LLP.

Kalshi was represented during the hearing by William Havemann and Colleen Roh Sinzdak of Milbank LLP.

Robinhood was represented during the hearing by Antony Ryan of Cravath Swaine & Moore LLP.

The CFTC was represented during the hearing by in-house counsel Martin Jordan Minot.

The state of Nevada was represented during the hearing by Nicole A. Saharsky of Mayer Brown LLP and Jessica E. Whelan of the Nevada Office of the Attorney General.

The consolidated appeal is in cases North American Derivatives Exchange Inc. dba Crypto.com v. State of Nevada et al., case number 25-7187, KalshiEX LLC v. Assad et al., case number 25-7516, and Robinhood Derivatives LLC v. Dreitzer et al., case number 25-7831, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Michael Watanabe.



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Citizens Group Says 27 States Are Eyeing AI Chatbot Laws

By **Joyce Hanson**

Law360 (April 16, 2026, 11:58 PM EDT) -- Twenty-seven U.S. states are looking at passing laws to make artificial intelligence companies face liability claims in civil suits if they fail to protect consumers who interact with chatbots, while another three states have already enacted protections, according to a citizens group's new legislative tracker.

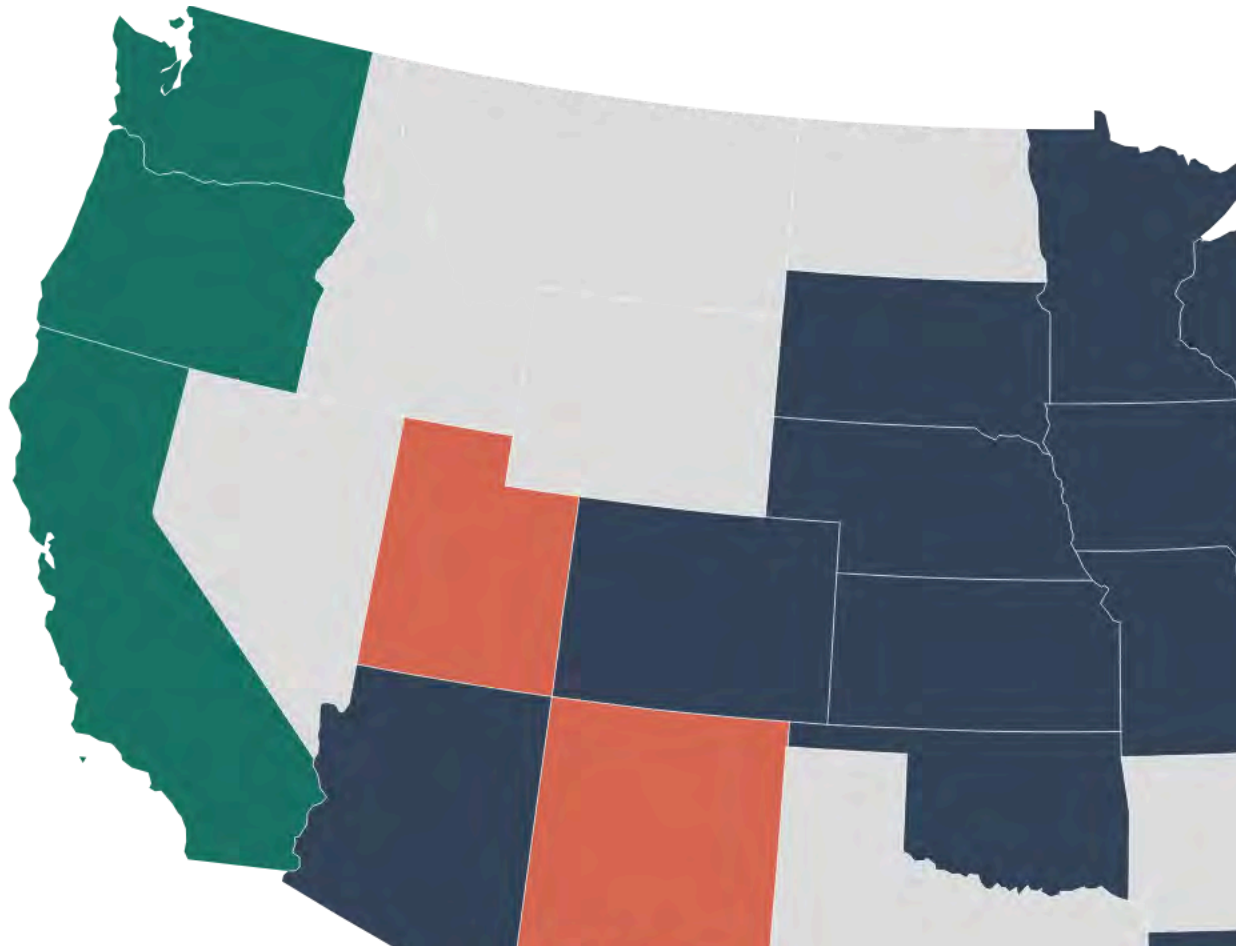
Nonprofit consumer advocacy organization Public Citizen said Tuesday that it specifically created the interactive tool to monitor state-level efforts to protect minors from potential harm stemming from their interactions with generative AI chatbots. The tracker identifies legislative proposals that have been introduced, passed and enacted across the 50 states, the group said.

"So far, three states have enacted protections, and 27 states have legislation currently pending," Public Citizens said in a statement.

AI Chatbot Regulations for Kids Gain Ground in the States

As of April 2026, three states passed legislation to protect children from the harms of generative artificial intelligence chatbots, while 27 more have at least introduced legislation.

Enacted Failed Pending



The tracker shows that the Western states of California, Oregon and Washington have already enacted AI chatbot laws as the technology becomes increasingly available and easy to use, and teenagers are among its most prolific users, according to the group.

For example, Washington Gov. Bob Ferguson **signed a pair of bills on March 24** requiring large artificial intelligence companies to embed data that distinguishes deepfakes as AI-generated and forcing companion chatbot developers to take steps to protect minor users from suicide and self-harm.

The Washington legislation mandates that certain AI system developers implement "commercially and technically reasonable" provenance data identifying any image, video or audio that's created or altered by AI. Such data, which might take the form of a watermark, would be embedded in digital content to provide information about the origin and modification history of a piece content.

Also Tuesday, Public Citizen said it has developed model language to aid state lawmakers in their drafting of deceptive trade practice bills. The proposed language is framed to say that it is illegal for companies to engage in commercial transactions where consumers can interact with a chatbot or other AI agent and be led to believe falsely that they are engaging "with an actual human."

"Any consumer subjected to a commercial transaction or trade practice that does not comply with [the state law] may initiate a private right of action," according to the model language, which extends to statutory damage claims and class actions.

Public Citizen warns that there are currently corporate efforts afoot to use generative chatbot technology in toys for children.

But according to the American Psychological Association, chatbots programmed to foster emotional relationships may negatively affect children's development and social well-being, Public Citizen said.

Ilana Beller, organizing manager at Public Citizen, said in a statement that an "alarmingly high" percentage of children and teens are regularly interacting with AI chatbots, raising concerns about their well-being, sexual exploitation and other harms.

"Lawmakers at the state level are taking notice and introducing critical protections but the clock is ticking," Beller said. "Big Tech companies are rapidly developing and pushing out this technology without safeguards, and the user base of vulnerable minors is growing by the day."

Meanwhile, the Trump administration on March 20 **issued a national AI legislative framework**, with the White House directing Congress to preempt "burdensome" state laws on artificial intelligence in a legislative framework released Friday.

President Donald Trump has been calling for months to rein in the patchwork of state laws on AI that he says have made it harder for companies to innovate. In mid-December, he issued an executive order that directed the development of the framework.

"Congress should preempt state AI laws that impose undue burdens to ensure a minimally burdensome national standard consistent with these recommendations, not 50 discordant ones," the White House's four-page national legislative framework on AI reads.

--Additional reporting by Courtney Bubl  and Rachel Riley. Editing by Jay Jackson Jr.

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Equity Residential Cuts \$56M Deal In RealPage MDL

By **Katryna Perera**

Law360 (April 16, 2026, 6:34 PM EDT) -- A Chicago-based real estate investment trust has reached a \$56 million settlement in a sprawling, multidistrict antitrust class action that claims the REIT and multiple landlords used property management software company RealPage Inc.'s revenue management software for rent price-fixing.

Equity Residential filed a Form 8-K with the U.S. Securities and Exchange Commission on Wednesday, disclosing the settlement, which remains subject to preliminary court approval.

The form stated that in addition to the payment of \$56 million, the deal includes "certain prospective commitments regarding the company's business practices, including provisions relating to the disclosure and use of nonpublic data and the company's use of revenue management software, all of which the company believes are consistent with its existing practices and will not require material changes to current operations."

Equity Residential said the settlement does not constitute an admission of wrongdoing, and the company does not deny nor admit to the class action's claims.

The REIT further said it believes resolving the litigation "will allow it to avoid the significant costs and distraction of protracted litigation and maintain focus on executing its business objectives."

"The company also believes the settlement reduces meaningful legal uncertainty and risk associated with complex antitrust litigation, including potential exposure under joint and several liability principles," the form said.

Finally, Equity Residential stated it does not believe there is insurance coverage for the settlement and does not expect the payment to have a material impact on its liquidity or operations. However, the company also noted it expects the settlement to increase its loss contingency reserves, which will be reflected in its financial statements for the first quarter of 2026.

Equity Residential is not the only defendant in the MDL to recently announce settlements. Last week, Texas-based REIT Camden Property Trust filed a Form 8-K disclosing it had reached a **\$53 million deal** in the litigation.

The class action claims that Equity Residential, Camden Property Trust and others used RealPage's YieldStar and AI Revenue Management software products for more than 58,000 units. The REITs allegedly knew they had to share confidential financial information with "horizontal competitors" to use the software products.

The renter plaintiffs claim that by agreeing to regularly share "confidential, competitively sensitive pricing and lease information with horizontal competitors in order to allow them to adjust prices," the REITs were effectively agreeing to join a "cartel" with the competitors.

Renters say the alleged conspiracy caused higher prices for multifamily residential leases across the country.

The MDL has also resulted in multiple landlords settling with renters and several states.

In November 2025, Greystar Management Services LLC **agreed** to pay \$7 million to nine states that accused the company of using RealPage software to fix rent prices.

Also, last November, the presiding judge in the MDL, U.S. District Judge Waverly D. Crenshaw Jr., **preliminarily approved** class action settlements totaling \$141.8 million.

Additionally, Mid-America Apartment Communities Inc. **stated** in January it would pay \$53 million to settle the MDL's antitrust claims.

However, RealPage is still fighting the renters' antitrust claims in court. In February, Judge Crenshaw **ruled** that renters couldn't quash subpoenas filed by RealPage.

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

The plaintiffs are represented by Clark Hill LLP, Stranch Jennings & Garvey PLLC, Hartley LLP, DiCello Levitt, Zimmerman Reed LLP, Cozen O'Connor, Law Office of Marc Walwyn, Law Firm of Thomas H. Brill, Dimond Kaplan & Rothstein PA, Frazer PLC, Spector Roseman & Kodroff PC, Salahi PC, Bell Nunnally & Martin LLP, Gustafson Gluek PLLC, Cotchett Pitre & McCarthy LLP, Smith Krivoshey PC, Israel David LLC, Steckler Wayne & Love PLLC, Barrett & Farahany, Archie Lamb & Associates LLC, Levin Sedran & Berman LLP, Terrell Marshall Law Group PLLC, Reinhardt Wendorf & Blanchfield, Lockridge Grindal Nauen PLLP, BoiesBattin LLP, Scott + Scott Attorneys at Law LLP, Herzfeld Suetholz Gastel Leniski & Wall PLLC, Robins Kaplan LLP, Hausfeld LLP, Lieff Cabraser Heimann & Bernstein LLP, Hagens Berman Sobol Shapiro LLP, Lowey Dannenberg PC, Burke Law Firm LLP, Joseph Saveri Law Firm LLP, Cafferty Clobes Meriwether & Sprengel LLP, Barrack Rodos & Bacine, Strauss Borrelli PLLC, Shuman Glenn & Stecker, Korein Tillery LLC, Schneider Wallace Cottrell Kim LLP, Edelson PC, Criden & Love PA, Wexler Boley & Elgersma LLP and Kozyak Tropin & Throckmorton.

Equity Residential is represented by Winston & Strawn LLP and BakerHostetler.

The case is In re: Realpage Inc. Rental Software Antitrust Litigation (No. II), case number 3:23-md-03071, in the U.S. District Court for the Middle District of Tennessee.

--Additional reporting by Isaac Monterose. Editing by Kristen Becker.