Adam & Eve Customer Advances Lawsuit Over Google Data-Sharing

July 20, 2026, 10:42 AM PDT

Summary by Bloomberg AI

AI Generated

- Adam & Eve failed to defeat a proposed class action alleging it shared consumers' personal information with Google LLC without consent in violation of Pennsylvania's wiretapping statute.
- Lead plaintiff Shawn Delong alleged a privacy injury sufficient for standing to sue in federal court and adequately pleaded claims of violations of the Pennsylvania Wiretapping and Electronic Surveillance Control Act.
- Judge John F Murphy found that Delong pleaded enough facts in his amended complaint to establish standing and jurisdiction, including that PHE advertised its website in Pennsylvania and shipped products there.

Sex-toy seller Adam & Eve failed in its bid to defeat again a proposed class action alleging it shared consumers' personal information with Google LLC without consent in violation of Pennsylvania's wiretapping statute.

Lead plaintiff Shawn Delong alleged a privacy injury sufficient for standing to sue in federal court and adequately pleaded claims of violations of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, Judge John F. Murphy of the US District Court for the Eastern District of Pennsylvania said.

Murphy previously granted a motion to dismiss filed by Adam & Eve's operator, PHE Inc., finding that Delong failed to allege a concrete harm sufficient for standing or plead facts establishing the court's jurisdiction over the North Carolina corporation.

Delong alleged in the 2024 lawsuit that PHE had incorporated data-tracking technology from Google on its website, allowing the social media company to collect users' personal information.

PHE again challenged Delong's standing to sue in a renewed motion to dismiss, but Murphy found that the plaintiff pleaded enough facts in his amended complaint to clear the bar.

Delong plausibly alleged he entered personal and sensitive information into PHE's website, and thus suffered harm analagous to intrusion upon seclusion when Google recorded his information, Murphy said in the July 16 ruling.

He also established that he had a reasonable expectation of privacy in the information he shared, the judge said.

PHE's jurisdictional challenge fared no better. The plaintiff's allegations that PHE advertised its website in Pennsylvania and shipped products there showed it purposefully availed itself of the privilege of conducting business in the state, a requirement for jurisdiction, Murphy said.

The judge also found that the plaintiff adequately pleaded the elements of a WESCA claim: that he made a "communication" as defined under the statute, that Google captured the "contents" of the communication, that the Google technology was a "device," and that the communications were captured in Pennsylvania.

Coulson PC and Kim Law Firm LLC represent the plaintiff. Leech Tishman represents PHE.

The case is Delong v. PHE Inc. , E.D. Pa., No. 2:24-cv-05212, order filed 7/16/26 .

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Artificial Intelligence

Anthropic, Authors' $1.5 Billion Deal Receives Final Approval

July 20, 2026, 1:53 PM PDT

Anthropic PBC and a group of authors received final approval Monday of their $1.5 billion settlement to end a copyright class action over the AI company's downloading of millions of pirated books, $122 million of which will go to the authors' attorneys and litigation costs.

The pact is the largest copyright class action settlement in US history and one of the first deals in the dozens of similar lawsuits pending against AI giants including OpenAI Inc., Meta Platforms Inc., and Google. It provides about $3,100 per author of more than 447,000 works Anthropic downloaded from pirate libraries Library Genesis and Pirate Library Mirror.

The fees awarded to class counsel, Susman Godfrey and Lieff Cabraser, represent nearly 6.8% of the settlement. The firms had asked for asked for $187.5 million for fees, $2.97 million for expenses, and $18.22 million for anticipated expenses. The order provides $101 million for attorneys' fees, $2.6 million for expenses, and a $18.2 million reserve for anticipated expenses.

The settlement is fair, said Judge Araceli Martinez-Olguin of the US District Court for the Northern District of California.

The authors sued Anthropic in 2024, alleging the AI company infringed their works by using them to train large language models. Anthropic secured a partial win last year when now-retired Judge William Alsup ruled that training AI on copyrighted works is fair use, but he left it to a jury to decide the piracy claims regarding the company's downloading over 7 million copies of pirated books from "shadow" libraries.

Pressure on the AI company skyrocketed after Alsup granted class certification to authors whose books are in the pirate libraries.

Anthropic, authors, and book publishers struck the deal last August, mere months before the case was set to head to a jury trial that potentially would expose Anthropic to business-ending liability. If a jury found Anthropic willfully infringed the books, it could have awarded the authors up to $150,000 in damages per work.

Anthropic also agreed to destroy the pirated datasets as part of the deal.

Alsup preliminarily approved the settlement in September, and passed the reins to Martinez-Olguin after his retirement.

Anthropic is represented by Cooley LLP, Arnold & Porter Kaye Scholer LLP, and Morrison & Foerster LLP.

The case is Bartz v. Anthropic PBC , N.D. Cal., No. 4:24-cv-05417, settlement approved 7/20/26 .

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Apple Uses New Court Ruling to Pause Epic Games Case

Apple has cited a newly paused securities fraud lawsuit to support its request to delay further proceedings in its legal battle with Epic Games while the US Supreme Court reviews part of the dispute.

The related case was filed on behalf of the City of Coral Springs Police Officers Pension Plan and accused Apple of misleading investors about its compliance with the Epic Games injunction and the progress of its announced AI-powered Siri features.

Judge Noël Wise recently paused that securities case until the Supreme Court decides whether Apple can face civil contempt for charging commissions on purchases completed outside the App Store.

Apple has now submitted Judge Wise's ruling to Judge Yvonne Gonzalez Rogers, arguing that the decision supports its request to pause proceedings over what commission it can charge for external purchases.

Epic Games opposes the request and argues that the Supreme Court review should not stop the lower court from continuing its work.

Apple also asked Judge Rogers to grant a temporary pause if she rejects the main request, which would give the company time to seek relief from the Ninth Circuit or the Supreme Court.

Judge Rogers is now reviewing both sides before deciding whether the proceedings should continue.

Bloomberg Law

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Boeing Gets Investors’ Class Status Scrapped in 737 Max Suit (1)

July 20, 2026, 7:56 AM PDT; Updated: July 20, 2026, 9:02 AM PDT

Summary by Bloomberg AI AI Generated

- A federal appeals court ruled that Boeing Co. investors didn’t present sufficient evidence to proceed on behalf of a class in a securities fraud lawsuit over company safety statements.
- The investors’ attempt to show how damages could be calculated on a classwide basis fell short of legal requirements, according to the US Court of Appeals for the Fourth Circuit.
- The appellate panel reversed a lower court’s class certification ruling and sent the case back for further consideration, saying the investors never committed to one theory of liability and the district court didn’t conduct a sufficiently rigorous analysis.

Boeing Co. investors didn’t present sufficient evidence to proceed on behalf of a class in a securities fraud lawsuit over company safety statements following two deadly 737 Max aircraft crashes, a federal appeals court ruled Monday.

The investors’ attempt to show how damages could be calculated on a classwide basis fell short of legal requirements, the US Court of Appeals for the Fourth Circuit said. The appellate panel reversed a lower court’s class certification ruling and sent the case back for further consideration.

Boeing has faced litigation on multiple fronts after the 2018 crash of a Lion Air jet and an Ethiopian Airlines crash the following year. The Seventh Circuit agreed in May to review a class certification order in a similar investor suit. That stage of securities lawsuits has seen increased contention in recent years as corporate defendants seek to avoid the enormous pressure to settle that class status typically brings.

Boeing settled federal criminal charges over the two crashes for $1.1 billion — a result challenged by families of the victims. The Fifth Circuit denied the families’ bid to revive the criminal case in March, saying they lacked legal standing to fight the deal.

In the case at hand, stockholders sued the Arlington, Va.-based plane maker over safety claims after a 737 Max 9 door panel blew out on an Alaska Airlines flight in 2024. They claimed the door panel incident showed the safety promises were hollow, leading to stock drops that allegedly cost them billions of dollars.

The US District Court for the Eastern District of Virginia said investors met their evidentiary burden for class certification by using a damages model based on the plaintiffs' out-of-pocket losses.

The investors "alleged generally that the 75 purported misrepresentations inflated the share price for Boeing stock or maintained it at an artificially high level," Judge A. Marvin Quattlebaum Jr. said for the Fourth Circuit. "In other words, they offered alternative theories of liability — inflation or maintenance." But they never committed to one theory, and at the class certification stage, they had to do so, Quattlebaum said.

"That's because the district court needs that information to compare the plaintiffs' damages methodology to their liability theory," he said. "To state the obvious, to conduct a comparison, you need to provide the necessary information about both comparators. Here, the plaintiffs provided neither."

The district court also didn't conduct a sufficiently rigorous analysis, he said.

Judges Julius N. Richardson and Allison Jones Rushing also served on the panel.

Counsel for the investors included Gupta Wessler LLP and Labaton Keller Sucharow LLP. Counsel for Boeing included Gibson, Dunn & Crutcher LLP and McGuireWoods LLP.

The case is State of R.I. Office of the Gen. Treasurer v. The Boeing Co. , 4th Cir., No. 25-1492, 7/20/26 .

(Updates story with additional reporting and context beginning in third paragraph.)

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Faceoff brewing over Paramount-Warner Bros. merger

courthousenews.com/faceoff-brewing-over-paramount-warner-bros-merger

OAKLAND, Calif. (CN) — A federal judge on Friday grilled a Paramount attorney over the planned merger between it and Warner Bros. over whether the takeover should be temporarily blocked on antitrust grounds.

U.S. District Judge Araceli Martínez-Olguín declined to rule from the bench during an emergency hearing for a temporary restraining order and would instead rule before the inking of the $110 billion merger scheduled for July 22.

Twelve states filed a lawsuit in the Northern District of California federal court on July 13, saying the merger violated the Clayton Antitrust Act.

During oral argument on the restraining order Friday, James Weingarten, an attorney representing California and speaking for all the plaintiff states, said it was clear the states showed sufficient evidence of the anticompetitive effects the merger between two of the big five Hollywood film studios would have on the movie and cable industries.

“I’ll use one of the defendant’s own quotes and say it will be the largest merger ever in Hollywood. It is an industry-transforming merger,” said Weingarten. “For every dollar produced at the box office, this combined company is going to pocket more than a quarter.”

Weingarten said Paramount’s evidence rebutting the states’ arguments about the merger’s anticompetitive effects did not definitively disprove the merger will harm competition and the companies’ customers, including cable providers that package channels. Weingarten said if the combined company controls 50 channels, it would increase bargaining leverage and could potentially raise prices.

Paramount Skydance attorney Jeffrey Kessler conceded an order delaying the merger for 30 days wouldn’t substantially harm the companies and would allow both parties to continue briefing the court for argument on a preliminary injunction. He said a ruling on a preliminary injunction is preferable before September, when Paramount starts incurring penalties for the delay.

Martínez-Olguín, a Joe Biden appointee, pointedly asked Kessler why the presumption that the merger would create unlawful market concentration is wrong.

Kessler said the states relied on incomplete evidence that didn’t match “real-world economics.”

“It’s not simply enough to put in an expert declaration, that is not the ticket,” he said. “They have to show there is at least a probability that it will bring anticompetitive behavior.”

Kessler said the states’ expert witness who analyzed the film industry market did not include streaming services as competitors in market share statistics. He said one of the biggest movies last year, “F1: The Movie” starring Brad Pitt, was made by Apple Studios — not one of the big five film studios. He argued the market producing and releasing money-making films is also expanding through independent studios like A24 Films.

“Amazon Prime went from making two to 15 movies this year,” he said. “Talent is completely mobile, actors and writers go from studio to studio.”

Weingarten noted Warner Bros. distributed “F1: The Movie,” and films made by smaller companies typically still go through one of the major distributors to be released widely in theaters.

Martínez-Olguín took the arguments under submission and said she would rule before the July 22 deadline.

Attorney Daniel Petrocelli appeared for Warner Bros. on Friday but did not speak.

States joining California in the lawsuit include Arizona, Colorado, Connecticut, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon and Washington state.

A similar lawsuit claiming the merger’s anticompetitive effects on film industry employees was filed on Tuesday by the Writers Guild of America, both east and west divisions, and ruled a related case under Martínez-Olguín.

Fourth Circuit severs class of Boeing investors

Joe Dodson July 20, 2026

RICHMOND, Va. (CN) — The Fourth Circuit sided with Boeing Monday, ruling that a group comprising thousands of investors failed to provide an effective way to shell out damages for purported securities fraud.

A class of institutional investors, represented by the Rhode Island Office of the General Treasurer on behalf of the state's employee retirement system, claimed the company defrauded investors in the wake of two plane crashes in 2018 and 2019 that left 346 passengers dead. Investigators blamed the company's flight control system for the tragedies, which occurred just five months apart.

Boeing entered into a deferred prosecution agreement with the Justice Department to improve safety and quality control practices. But the DOJ concluded the company violated the agreement in 2024 when a door plug blew out mid-flight on an Alaska Airlines flight.

The proposed class includes thousands of investors who purchased stock between Sept. 30, 2019, and May 14, 2024. The investors are all pursuing a common civil action focused on whether Boeing defrauded them regarding the safety of the company's aircraft. U.S. Circuit Judge Marvin Quattlebaum ruled that the lower court improperly granted class certification.

The Donald Trump appointee said the proposed means of resolving the dispute failed to comport with the Supreme Court's ruling in *Comcast Corp. v. Behrend*. Under *Comcast*, plaintiffs must provide a nonspeculative classwide damages methodology consistent with their theory of liability.

"The plaintiffs did not provide a damages methodology consistent with *Comcast's* commands," Quattlebaum said. "And the district court did not conduct the rigorous analysis *Comcast* requires."

The investors say they suffered damages when they purchased Boeing stock at inflated prices due to the company's fraud. The class is relying on an out-of-pocket methodology for calculating damages that economist Chad Coffman proposed, in which damages equal the artificial inflation per share at the time of purchase minus the artificial inflation per share at the time of sale.

"The out-of-pocket description broadly tells us what securities fraud damages are — the difference between the price paid or received and the price that would have existed absent the fraud," Quattlebaum said. "But it doesn't tell us how to determine the artificial inflation embedded in Boeing's stock price on any day of the class period. *Comcast* demands that missing step."

The class members claimed they aren't required to present detailed damage modeling at the class certification stage and that Coffman's rebuttal report is sufficient, regardless. In *Comcast*, the high court instructed lower courts to undergo rigorous analysis, which may involve considering the merits of the claims at the class certification stage.

"Methodologies require more than a legal description of what damages are generically — they must explain how damages will be measured in a specific case," Quattlebaum said. "A menu of options that the party will decide on later is not a damages methodology. It is, therefore, insufficient for plaintiffs to give examples of what they might, or could, do to measure damages — they have to tell the district court what their actual methodology is and how it resolves the predominance inquiry."

The three-judge panel agreed with Boeing that Coffman failed to provide any detail about how he would account for the complexity of the case, which involves varying degrees of misleading statements over the course of years. Quattlebaum said the proposed class failed to clearly state a theory of liability for the lower court to compare to damages methodology.

"We understand that litigants sometimes don't want to tip their hand," Quattlebaum said. "But at the class certification stage, the plaintiffs had to."

Quattlebaum criticized Bill Clinton-appointed U.S. District Judge Leonie Brinkema's finding on the class members' proposed theory of liability.

"According to the district court, the plaintiffs' theory was 'that investors were damaged by purchasing Boeing stock at inflated prices due to defendants' fraud.'" Quattlebaum said. "But that isn't a liability theory. It simply restates the generic securities fraud principles that misstatements inflate and the truth deflates. That describes every Section 10(b) case, which is precisely the problem."

Fellow Trump-appointed U.S. Circuit Judges Allison Rushing and Julius Richardson joined in the ruling. Attorneys representing Boeing and the class members did not respond to a request for comment.

Lululemon sued over ‘phantom discounts’

courthousenews.com/lululemon-sued-over-phantom-discounts

LOS ANGELES (CN) — A California woman is suing the athleisure retailer Lululemon, claiming the retailer listed products on its website using “fictitious regular prices” and “corresponding phantom discounts.”

“This practice allows defendant to fabricate a fake ‘reference price,’ and present the actual price as ‘discounted,’ when it is not,” plaintiff Annette Cody states in her complaint, filed in Los Angeles Superior Court Friday.

In April, Cody says in her complaint that she purchased a pair of “Wunder Train high-rise” tights — yoga pants, essentially — in steel blue. The listed price of $59 was accompanied by a “strikethrough” price of $98, suggesting a steep discount of $39. According to Cody, those pants hadn’t been sold for $98 in quite some time, and not at any time since Oct. 8, 2025.

“These pricing and advertising practices reflecting high-pressure fake sales are patently deceptive,” Cody writes. “They are intended to mislead customers into believing they are getting a bargain by buying products from defendant on sale and at a substantial and deep discount.”

Cody cites written guidance from the Federal Trade Commission, which cautions businesses about using reference prices. The “regular price” should be, according to the agency, “one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith – and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.”

Cody does not indicate how much money she is seeking, and her attorney declined to comment. She does say in the complaint that she is seeking injunctive relief, restitution, damages and punitive damages.

Meta escapes investment scam claims

courthousenews.com/meta-escapes-investment-scam-claims

Brief

July 17, 2026

SAN FRANCISCO — A federal court in California dismissed two pump-and-dump investment scheme victims' lawsuits against Meta, whose platforms Facebook, Instagram and WhatsApp facilitated the Chinese penny-stock schemes. The claims are barred by the Securities Litigation Uniform Standards Act, which deprives the court of jurisdiction over the claims.

Read the ruling **here.**

Read our coverage of the arguments on this motion **here.**

Judge grants TRO blocking Paramount-Warner Bros merger but expedites hearing on preliminary injunction

A federal judge in Oakland handed Paramount Skydance Corp. and the 12 states suing to block its acquisition of Warner Bros. Discovery Inc. a mixed result in a Friday ruling granting plaintiffs' motion for a temporary restraining order that blocks, for now, the entertainment industry merger.

U.S. District Judge Araceli Martínez-Olguín granted the TRO in litigation brought by California Attorney General Rob Bonta and 11 other states, who contend the merger would reduce competition in violation of Section 7 of the Clayton Act. *State of California et al. v. Paramount Skydance Corp. et al.*, 26-cv-07116 (N.D. Cal., filed July 13, 2026).

During Friday's hearing, a lawyer for Paramount Skydance - Jeffrey L. Kessler, a partner with Winston Taylor LLP - all but conceded the TRO and instead focused on scheduling a preliminary injunction hearing by mid- to late August.

Kessler got an earlier hearing. Martinez-Olguin scheduled the preliminary injunction hearing for Aug. 3 - weeks sooner than Kessler requested.

He argued for the August hearing, saying Paramount Skydance would suffer "severe harm in terms of penalties that total $200 million a month" in fees owed to Warner Bros. Discovery shareholders if the $110 billion deal does not close by Sept. 30.

Kessler said the company was in a "unique situation" due to the pending fees.

The states' motion for a preliminary injunction is due Thursday, with Paramount Skydance's opposition to be filed July 27, with the states' reply due three days later.

But if Paramount Skydance got good news on the scheduling front, the states could be pleased about Martinez-Olguin's reliance in her TRO on a 63-year-old U.S. Supreme Court decision holding that Section 7 of the Clayton Act applies to mergers - an argument emphasized by James H. Weingarten, a partner with Milbank LLP who represents the states. *U.S. v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963).

"Here, Plaintiffs present compelling evidence that the combined firm resulting from the transaction will possess substantial market share in the wide-release theatrical distribution market (anticipating 27% market share for wide-release theatrical distribution market)," wrote Martinez-Olguin, an appointee of President Joe Biden.

"On this combined firm market share alone, the Court is persuaded that it can presume the proposed merger is likely to violate antitrust laws," she added.

Martinez-Olguin also cited a 9th U.S. Circuit Court of Appeals ruling from a decade ago as well as a preliminary injunction earlier this year blocking cable TV station giant Nexstar Media Group Inc.'s proposed acquisition of competitor Tegna Inc. following an antitrust lawsuit by DirecTV LLC and state attorneys general.

The injunction halting the Nexstar-Tegna merger by Chief Judge Troy L. Nunley of the Eastern District of California is on appeal to the 9th U.S. Circuit Court of Appeals. *DirecTV LLC et al. v. Nexstar Media Group Inc. et al*., 26-2490 (9th Circ., filed April 22, 2026).

Both sides praised the TRO and the early preliminary injunction hearing.

"This is a critical first win in our case to ensure this megamerger never sees the light of day," California's attorney general, Rob Bonta, a Democrat who is leading the states' lawsuit, said in a statement.

"We are grateful for the Court's swift order on the motion for a TRO," a Paramount Skydance spokesperson said. "Like the timing agreement to which we were willing to stipulate, this TRO preserves the status quo while the Court considers the antitrust issues presented."

"We are confident the evidence will demonstrate that the State AGs' antitrust arguments are without merit as their alleged markets and claims of anticompetitive effects are without any basis in modern market realities," the company added.

The companies have argued the merger is necessary to compete in a rapidly changing entertainment market, while the states contend combining two of Hollywood's major studios would reduce competition in theatrical releases, "blockbuster" films and basic cable TV programming.

The Trump administration's Department of Justice approved the deal, which would bring Paramount Skydance, Warner Bros. Discovery, CNN and CBS under the control of one of the president's allies, the Ellison family. European Union regulators may decide whether to back the acquisition as early as Tuesday, which led to concern by the states that Paramount Skydance and Warner Bros. Discovery would close its deal on Wednesday.

Securities

Holley Reaches $12.8 Million Investor Settlement Over Demand

July 20, 2026, 9:53 AM PDT

Holley Inc. agreed to pay almost $12.8 million to resolve allegations that the auto parts company misled investors about its distribution strategy and integration of acquisitions.

The proposed settlement class includes those who acquired Holley securities from July 21, 2021, to Feb. 6, 2023, the pension fund leading the case told the US District Court for the Western District of Kentucky. If approved, the agreement would end almost three years of litigation over whether the auto parts company and then-executives overhyped profit potential from its direct-to-consumer strategy and consumer demand growth surrounding its market debut.

In reality, the suit said, Holley was dealing with shrinking organic growth that it hid through mergers and acquisitions. Meanwhile, it allegedly wrecked relationships with resellers — a key channel for the company — by undercutting them with discounting and shoddy pricing discipline in its DTC sales.

Judge Greg N. Stivers last year said the pension fund's securities fraud allegations were sufficient to survive a motion to dismiss.

Holley went public through a special purpose acquisition company merger in 2021.

The investors' counsel plans to seek up to 25% of the settlement sum in attorneys' fees plus $300,000 for litigation expenses, according to the motion seeking preliminary approval of the deal filed July 17.

Holley said last week it made a voluntary $15 million debt prepayment, part of a years-long deleveraging strategy. Holley's repaid $115 million in debt since 2023, the company said.

Robbins Geller Rudman & Dowd LLP is lead counsel for the pension fund. Latham & Watkins LLP and Louisville-based Kaplan Johnson Abate & Bird LLP represent Holley. Robbins Geller, Latham, and Holley didn't immediately respond to emails seeking comment.

The case is City of Ft. Lauderdale Gen. Emps. Ret. Sys. v. Holley Inc., W.D. Ky., No. 1:23-cv-00148, 7/17/26.

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Eye on the Industry
Investors Cut Out Litigation Funders to Bankroll Cases (1)
July 20, 2026, 2:05 AM PDT; Updated: July 20, 2026, 7:23 AM PDT

Summary by Bloomberg AI AI Generated

- Investors are increasingly putting money directly into law firms and case portfolios rather than relying on intermediaries to direct their decisions.
- This approach gives investors more control over their money and more of the proceeds when they win cases, but they lose the legal expertise of the go-between.
- Investors who choose to invest directly in cases are using insurance products to increase their comfort level and protect against potential losses, with such products letting them purchase policies that protect against a court loss or guarantee a certain return.

Investors who seek financial returns from litigation are increasingly putting money directly into law firms and case portfolios rather than relying on intermediaries to direct their decisions.

Going on their own without a traditional litigation funder gives investors more control over their money and more of the proceeds when they win cases. While they lose the legal expertise of the go-between, they gain efficiency in moving their money.

“Everyone’s obviously trying to find ways to cut costs and reduce fees,” said Mohsin Patel, co-founder of litigation finance broker Risk Factor Management. Cutting the intermediary is “one way I think they’ve found that they can do that.”

The changing approach shows investors are gaining comfort with the intricacies of financing lawsuits three decades after the practice took hold in the US. Litigation funders, who seek gains uncorrelated to the stock market, committed $2.8 billion to commercial legal deals last year, up from $2.3 billion in 2024, according to litigation finance broker Westfleet Advisors.

While the industry lacks data on how investments move, brokers, funders and consultants say they have seen an uptick in the number of investors who choose to put money into cases directly rather than routing proceeds through a litigation funder.

“It’s one of the clearest shifts in the market over the last couple years,” said Jim Batson, chief investment officer of Siltstone Capital’s legal finance strategy.

Examples of investors selecting deals have emerged. Court documents this year revealed that HPS Investment Partners, a subsidiary of BlackRock Inc., provided an advance on a judgment in a high profile case in Florida. JPMorgan Asset Management advanced two mass tort law firms money tied to expected attorneys’ fees.

Such direct investing differs from the traditional approach in litigation finance. Historically, investors participate as limited partners and a litigation funder serves as the general partner who manages the assets and deploys the capital.

But the traditional route has stopped working for many investors, said Kelly Daley, founder of Celsia Capital, an advisory firm for institutional investors interested in legal assets. Such investors don’t want to sit on the sidelines while funders call the shots on a portfolio of cases, said Daley, who previously worked for Burford Capital and funder Gerchen Capital Partners. Instead, they prefer to make decisions on a deal-by-deal basis, Daley said.

“There is a shortage of capital interested” in the traditional structure, she said. Investors “find it attractive to have the front-of-market litigation assets brought directly to them for direct investment.”

Capital Market

The traditional commercial litigation finance industry has felt the pinch of less capital moving through traditional channels. A relatively small group of established participants drove the 23% increase in capital commitments to new litigation finance deals in 2025, according to Westfleet. Though there was an increase in 2025, overall the numbers have decreased since 2022.

“Many funders continue to face significant challenges in raising new capital from investors, and those constraints have translated into cautious underwriting and more selective deployment practices across the industry,” Westfleet said in a report in March.

Batson said investors have become tired of the long duration of legal investments before they see a possible payout.

“That’s made allocators weary of blind pools and more comfortable with the transaction they can evaluate on their own merits,” he said. “A direct deal lets the investors see exactly what it owns.”

Some investors look to partner with dedicated legal finance managers on individual deals, Batson said. “They’ll reach out to a credible litigation finance company and say, ‘Hey, we like this, we’d love to hear what you think. If you like it, we’d let you invest with us.’”

Insurance Niche

Still, there's a learning curve for investing in legal assets, and investing without a dedicated funder can prove difficult for those inexperienced in litigation to correctly value cases and portfolios. "Underwriting litigation is not the easiest thing to do and it's very different from credit underwriting," Westfleet founder Charles Agee said.

To increase their comfort level, direct investors are heavy users of insurance products, said Rebecca Berrebi, a litigation finance and special situations consultant at Litigation Finance Advisors. Insurance policies are much more traditional for underwriting than legal assets, she said.

Such products let investors purchase policies that protect against a court loss or guarantee a certain return. The questions they ask for underwriting involve whether the insurers will go bankrupt or will they try to get out of paying as opposed to how long a case may take to resolve.

Patel said the policies can help protect against duration issues with lengthy cases by guaranteeing a payout after a certain window of times elapses. The premiums are expensive, but investors view it as a worthy cost for a steady return, he said.

"Capital preservation is kind of the name of the game for them," Patel said. "They're willing to trade some of the upside if it means that they can get some downside protection."

(Adds funding detail in 11th paragraph. An earlier update corrected the spelling of the name in the third paragraph.)

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After Disqualifying Beasley Allen, Johnson & Johnson Sets Sights on Other Talc Lawyers

law.com/2026/07/17/after-disqualifying-beasley-allen-johnson--johnson-sets-sights-on-other-talc-lawyers

Johnson & Johnson lawyer Kristen Fournier, at Kirkland & Ellis, wrote in a July 9 letter to U.S. Magistrate Judge Rukhsanah Singh in the talc multidistrict litigation about "concerning and newly developed facts" that surfaced during a July 6 evidentiary hearing in Florida.

What You Need to Know

- At issue is a former partnership between Beasley Allen's Andy Birchfield and James Conlan, previously at Faegre Drinker Biddle & Reath, to propose a $19 billion talc settlement with Johnson & Johnson in 2023.
- Judges in state courts in Pennsylvania, Illinois and Florida, as well as a New Jersey appeals court, have disqualified Beasley Allen, or revoked the pro hac vice admissions of its lawyers, in talc cases, but judges in California and Georgia have not.
- According to Johnson & Johnson, a Feb. 6 evidentiary hearing in Florida revealed that Brown Rudnick's David Molton, who was bankruptcy counsel for the talc claimants committee, "participated" in Birchfield's partnership with Conlan.

After getting Beasley Allen disqualified from talcum powder lawsuits in state courts across the nation, Johnson & Johnson now wants a federal judge to allow discovery into other lawyers, citing "concerning and newly developed facts" during testimony at a hearing earlier this month in Florida.

At issue is a former partnership between Beasley Allen's Andy Birchfield and James Conlan, previously at Faegre Drinker Biddle & Reath, to propose a $19 billion talc settlement with Johnson & Johnson in 2023. Conlan previously advised Johnson & Johnson on resolving thousands of talc lawsuits but, in 2022, left Faegre to create his own company, Legacy Liability Solutions. According to Johnson & Johnson, Birchfield violated the rules of professional conduct by partnering with Conlan, a lawyer who was, at one point, adverse to him.

But it wasn't just Beasley Allen working with Conlan, Johnson & Johnson lawyer Kristen Fournier, a New York partner at Kirkland & Ellis, wrote in a July 9 letter to U.S. Magistrate Judge Rukhsanah Singh in the talc multidistrict litigation in the District of New Jersey. She referenced "concerning and newly developed facts" that surfaced during a July 6 evidentiary hearing in Florida.

“At the hearing, defendants learned for the first time that other plaintiffs’ lawyers, as well as David Molton of Brown Rudnick (the attorney who served as lead counsel to the plaintiffs’ steering committee in both the LTL and LLT bankruptcies), participated in the illicit collaboration with Mr. Conlan and Beasley Allen,” she wrote.

She asked for the matter to be addressed at an Aug. 3 status conference.

The plaintiffs’ steering committee in the talc multidistrict litigation has not yet responded to Johnson & Johnson’s letter in court. Michelle Parfitt, of Ashcraft & Gerel in Washington, D.C., who is lead counsel, declined to comment.

Molton, who is chairman of the cross-border, mass tort and restructuring litigation at Brown Rudnick in New York, did not respond to a request for comment.

On July 9, Broward County Circuit Court Judge Jeffrey Levenson, three days after the evidentiary hearing, granted Johnson & Johnson’s motion to disqualify Beasley Allen from a case alleging its baby powder caused ovarian cancer in three women.

“Here, Conlan’s prior defense representation and his subsequent plaintiffs’-side collaboration concerned the identical body of nationwide talcum powder litigation and the same core objective: the strategic resolution of J&J’s talc liabilities,” he wrote. “Conlan’s former representation of J&J triggers an irrefutable presumption that he acquired confidences, and his subsequent collaboration with Beasley Allen directly targeted the same talcum powder litigation and interests materially adverse to J&J.”

Beasley Allen lawyer Leigh O’Dell, in an email to Law.com, said her firm plans to appeal the decision “immediately.” She called Johnson & Johnson’s disqualification motions part of an “aggressive litigation tactic targeting the lawyers.”

Another ovarian cancer case in Broward County Circuit Court is set to begin Aug. 3 before a different judge, she wrote.

“We look forward to presenting evidence that Johnson & Johnson sold talcum powder it knew was contaminated with asbestos to tens of thousands of women, many of whom developed ovarian cancer,” she wrote. “Ms. Sarah Ortiz suffered and died needlessly, and we count it a privilege to represent her husband, Massimo Mancuso, to seek justice on her behalf.”

'He Met With Many Different Plaintiff Lawyers, Correct?'

In 2024, Atlantic County Superior Court Judge John Porto sided with Beasley Allen, but the New Jersey Appellate Division, in an opinion on Feb. 6 of this year, reversed that decision,

prompting a new wave of disqualification motions from Johnson & Johnson. On March 26, Singh, who sat with Porto during his own evidentiary hearing, disqualified Beasley Allen from the talc multidistrict litigation, where O'Dell had served as co-lead counsel with Parfitt in charge of more than 6,700 cases.
O'Dell noted that other courts had sided with Beasley Allen.

"We would remind everyone that other courts—the JCCP court in California, and a state court in Georgia—reviewed these very same facts and evidence and reviewed the very same complaint from Johnson & Johnson," O'Dell wrote. "Those courts ruled in our favor. In nearly all of the cases where courts have ruled against Beasley Allen, the matter is on appeal, where we feel confident that the law dictates that the decisions be reversed."

On April 10, Los Angeles Superior Court Judge Theresa Traber denied Johnson & Johnson's disqualification motion, which was brought after the first bellwether trial—a move she concluded was done for an "improper tactical purpose." The first trial California's Judicial Council Coordinated Proceedings, or JCCP—had ended on Dec. 12 with a $40 million verdict against Johnson & Johnson for two women who were diagnosed with ovarian cancer. The second trial, involving the family members of four women who died of ovarian cancer, ended on June 5 with a defense verdict.

In Georgia, Fulton County State Court Judge Jane Morrison denied Johnson & Johnson's motion to revoke the pro hac vice admissions of O'Dell and three other Beasley Allen lawyers: Ted Meadows and Ryan Beattie in Montgomery, Alabama, and David Dearing in Atlanta. In a June 25 decision, she wrote that Johnson & Johnson had waived its right to such an "extraordinary request" based on conduct dating back to 2023.

"In this regard, nearly 900 days have lapsed between when defendants learned of the potentially disqualifying conduct and the date they sought relief," she wrote.

On Thursday, she denied Johnson & Johnson's reconsideration of that motion.

Levenson now joins judges in state courts in Pennsylvania and Illinois who have disqualified Beasley Allen from talc cases, or revoked the pro hac vice admissions of its lawyers, due to its prior partnership with Conlan.

Levenson considered all the other decisions involving Beasley Allen in talc cases and concluded that the California ruling was "entirely distinguishable."

"Allowing a law firm to circumvent its ethical obligations by routing a former opposing counsel's proprietary knowledge through an outside consulting entity would render these rules toothless and severely undermine public confidence in the integrity of the legal profession," he wrote.

He also held own evidentiary hearing, during which Birchfield, in Montgomery, and Johnson & Johnson's Worldwide Vice President of Litigation Erik Haas both testified, as did Barnes & Thornburg's Jim Murdica, in Chicago, who is lead resolution counsel for Johnson & Johnson.

During that testimony, Haas continued to emphasize that Conlan played a "central and pivotal" role in coordinating Johnson & Johnson's talc litigation, particularly after the first bankruptcy in 2021. He also said he was "shocked and appalled" upon discovering that Conlan, in 2023, was working with Beasley Allen on an alternative proposal to resolve the talc lawsuits.

"Just quite frankly, we were blown away by this," Haas said, according to a transcript of the evidentiary hearing. "When I saw this, that Mr. Conlan, our former counsel, is coordinating with our adversary on a proposal that was contrary to what I had just indicated was our goal, to pursue a bankruptcy solution, it, quite frankly, was dumbfounding to us."

Plaintiffs' lawyer John Uustal of Kelley Uustal in Fort Lauderdale, Florida, when cross-examining Haas, asked him who had introduced Conlan to Birchfield.

"He met with the mediators. He met with many different plaintiff lawyers, correct?" Uustal asked Haas, according to the transcript.

Haas replied, "At the time I had no knowledge of what Mr. Conlan was doing because he didn't disclose it to me, he didn't come to me and ask me for my consent, and he didn't seek a waiver."

Uustal later asked, "How many other plaintiff law firms did you move to disqualify, besides Beasley Allen?" according to the transcript.

"The only other law firm we moved to disqualify is the Beasley Allen law firm," Haas answered.

On cross-examination by Johnson & Johnson attorney Matthew Bush of Pensacola, Florida's McDonald Fleming, Birchfield testified at the hearing that, in 2023, after the first talc bankruptcy was dismissed, Molton, who was bankruptcy counsel for the tort claimants committee, suggested he contact Conlan, then at Legacy. At Birchfield's first meeting with Conlan, there were several other lawyers there, including Parfitt.

"There was no effort to hide this," Birchfield told him, according to the transcript.

Litigation Trends to Watch: Claims Surge Over Law Firm Data Breaches, Cannabis Employment Practices and Contactless Payments

law.com/2026/07/17/litigation-trends-to-watch-claims-surge-over-law-firm-data-breaches-cannabis-employment-practices-and-contactless-payments-

Here's what caught our attention this week:

- Law firm data breaches fuel litigation.
- Employment cases surge in cannabis sector.
- Retailers face IP claims over contactless payments.
- Class actions pile up in California.
- Workers challenge "exempt" status across multiple industries.

► Data Breach | Class Actions | U.S., Eastern District of Pennsylvania

Data breach class actions spiked in Pennsylvania Eastern District Court during the week of July 6. At least 14 cases were filed, seven times the typical weekly average. Most of the suits target **AdaptHealth**, a distributor of home medical equipment, over a June 2026 social engineering attack that allegedly allowed cybercriminals to access patient data through the company's cloud-based applications, including patient management and document storage platforms.

Plus, **Blank Rome** was named in a trio of lawsuits after hackers allegedly gained access to sensitive data in May 2026 by posing as the firm's IT employees. The suits are part of a broader pattern of litigation targeting major law firms over cyberattacks: Other firms sued in recent months include **Fox Rothschild**, **GrayRobinson**, **Orrick**, **Wiley Rein** and **WilmerHale**.

► Labor & Employment | Cannabis

Law.com Radar detected a raft of employment suits in the cannabis sector last month. The platform spotted 19 cases, more than twice the typical monthly average across federal courts and major state jurisdictions. Most of the suits pursue wage-and-hour claims or allege discrimination based on race, sex or disability. Plus, **98 Leaf**, **CannaBoy Tree House**, **Culture Stanton Store** and **Tilray Brands** are accused of misclassifying nursery workers, shift supervisors and other employees as either independent contractors or exempt from overtime requirements.

► Patent | Retail & Consumer Goods | U.S., Eastern District of Texas

Law.com Radar flagged a wave of patent lawsuits in the retail sector last month in Texas Eastern District Court. The platform surfaced 23 cases targeting retail entities on Radar's watchlist, almost triple the usual monthly average. Several cases were brought by **Fall Line Patents** over claims that retailers' mobile apps infringe the plaintiff's patent by creating and executing location-specific questionnaires to collect responses from users. Defendants include **Abercrombie & Fitch**, **Dick's Sporting Goods**, **Gap**, **Macy's**, **Sephora** and **Ulta Beauty**. Fall Line Patents is represented by **Antonelli, Harrington & Thompson**.

► **Class Actions | California**

Class actions are on the rise in California, according to Law.com Radar. The platform spotted 1,032 cases in June, part of an upward pattern that traces back at least one year. In the 12 months preceding the trend period, Law.com Radar detected 678 class actions per month across the state's federal courts and largest counties — a number that has shot up to 925 during the trend period.

Driving the litigation are employment suits accusing companies of failing to pay minimum wage and overtime, provide meal and rest breaks and reimburse business expenses. Also, plaintiffs firm **Potter Handy** has launched a swarm of privacy lawsuits accusing businesses of using third-party "trap and trace" software to compile data on anonymous website visitors. Defendants include major retailers like **Christian Louboutin**, **Genuine Parts** and **Under Armour**.

► **Labor & Employment | Class Actions | U.S., Northern District of Ohio**

Employment class actions spiked last month in Ohio Northern District Court. At least 10 cases were filed, a nearly 65% jump from the typical monthly average. Half the suits accuse companies in the manufacturing and industrial sector of failing to compensate workers for pre- and post-shift tasks such as engaging in meetings, donning protective gear and checking equipment.

Also, casino operator **JACK Entertainment** was sued by a class of surveillance supervisors who claim they were misclassified as exempt from overtime compensation despite performing non-exempt tasks like responding to calls and emails and providing operational, departmental and shift-support functions. Similar lawsuits have emerged across other sectors in recent months: **Tyson Foods** was sued by a class of supervisors alleging they performed non-exempt work on the production line, and similar claims were launched by managers for pizzeria chain **Mod Pizza**.

Mergers & Acquisitions

Paramount-Warner Bros. Judge Pauses Deal With 'Serious' Concerns

July 20, 2026, 10:39 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal judge temporarily paused Paramount Skydance Corp.'s takeover of Warner Bros. Discovery Inc., saying it "likely" violates antitrust law.
- The judge ordered the companies to hold off on consummating the deal for 14 days and scheduled an Aug. 3 hearing on whether to extend the hold for longer.
- California and 11 other states sued to block the merger, alleging it would harm competition for film and cable TV distribution and give the merged company control over a significant portion of the market.

A federal judge temporarily paused Paramount Skydance Corp.'s $110 billion takeover of Warner Bros. Discovery Inc. saying it "likely" violates antitrust law.

US District Judge Araceli Martínez-Olguín in Oakland on Monday ordered the companies to hold off on consummating the deal for 14 days. Paramount and Warner Bros. hoped to close as soon as July 22.

California and 11 other states sued to block the Hollywood mega-merger on July 13. The states allege the deal, which seeks to combine two of the five largest studios, would harm competition for film and cable TV distribution.

The judge scheduled an Aug. 3 hearing on whether to extend the hold for longer. The judge will decide whether to pause completion of the deal until after a trial to decide whether it is illegal under federal antitrust law.

California has requested an April 2027 trial date. Paramount has only sought to have a decision on the preliminary injunction before September 30, when its daily payments to Warner Bros. kick off.

The judge said the states showed that “serious questions going to the merits remain” in their challenge to the merger.

“This is a critical first win in our case to ensure this megamerger never sees the light of day,” California attorney general Rob Bonta said in a statement. “History tells the tale of what happens when a few people have great power over markets that are central to Americans’ lives: fewer opportunities for more people, worse products and services for all people.”

Paramount shares fell as much as 2.2% on the news and were down 1.4% at $8.63 at 1:25 pm in New York. Warner Bros. shares were down 1.5% at $26.47.

A spokesperson for Paramount didn’t immediately respond to a request for comment.

The deal would give the merged company control over 27% of the market for films widely released to theaters, the suit claims. Warner Bros. and Paramount would also allegedly control more than 30% of anticipated blockbusters, widely released films with large production budgets. Post-merger, only four companies would control more than 90% of that market — the new entity, along with Walt Disney Co., Universal and Sony Pictures Entertainment.

“Plaintiffs present compelling evidence that the combined firm resulting from the transaction will possess substantial market share in the wide-release theatrical distribution market,” Martínez-Olguín wrote in her 10 page order. “On this combined firm market share alone, the Court is persuaded that it can presume the proposed merger is likely to violate antitrust laws.”

Paramount has until June 4, 2027, to close the deal under its merger agreement, but must start paying Warner Bros. a daily fee of $7 million beginning Sept. 30 until the transaction is completed. The company has said that the tie-up deal will better enable it to compete with tech giants like Amazon.com Inc. and Netflix Inc. in the rapidly evolving streaming market. It has pledged to release at least 30 films in theaters each year, a claim the states say does not hold up.

Paramount reached a deal to buy Warner Bros. in February, defeating Netflix in a heated, months-long bidding war. The takeover unites two Hollywood studios behind legendary films from Casablanca and Harry Potter to Mission: Impossible; two major news networks in CNN and CBS; the streaming powerhouse HBO Max and dozens of cable networks.

--With assistance from Hannah Miller and Christopher Palmeri.

Regeneron Pharmaceuticals concealed cancer drug trial risks from public, investors say

MANHATTAN (CN) — Regeneron Pharmaceuticals investors claim the American biotech company inflated its stock price by overstating the promise of a skin cancer treatment before revealing its clinical trial failed to meet the benchmarks needed for approval.

Filed Thursday in the Southern District of New York, investor Allen Cheatham claims Regeneron and its top executives touted the potential of a phase III clinical trial of fianlimab in combination with cemiplimab as a first-line treatment for metastatic or locally advanced melanoma while mischaracterizing the risk the study would fail because of prolonged slowdowns in event accrual.

Cheatham points to statements by Regeneron co-founder, President and CEO George D. Yancopoulos describing the drug combination as a “potential blockbuster,” even as the trial upended the company’s assumptions about its efficacy.

Cheatham says the omissions of the trial findings “were committed willfully or with reckless disregard for the truth.”

Represented by Manhattan firm Levi & Korsinsky, Cheatham says Regeneron (NASDAQ: REGN) “repeatedly and affirmatively represented to investors that Regeneron was well-positioned to achieve a practice-changing and clinically differentiated efficacy profile to capture the claimed multi-billion-dollar metastatic melanoma market,” while minimizing the known impact of event accrual delays on the study’s chances of success.

“Defendants repeatedly and falsely characterized this slowdown as a likely positive development that reflected the durable efficacy of the active treatment arms, while knowingly or recklessly disregarding that the actual risk of clinical failure had dramatically increased due to the nature of the delay,” Cheatham says in the complaint. “Defendants’ representations regarding the nature and impact of the slowdown mischaracterized the actual risk of failure that the study was facing.”

The class of investors says Regeneron’s share price dropped 6.2% to $686.36 per share after disclosures during an April 29, 2026, earnings call that the company had issued a last-minute amendment to the study’s protocol to expand the eligible patient pool for the primary endpoint analysis.

Two weeks later, Regeneron shares declined nearly 10% in the span of one day to $629.68 per share on May 18, 2026, after the company issued a press release announcing that the “Phase 3 Trial of Fianlimab . . . did not reach statistical significance for the primary endpoint of improvement in progression-free survival (PFS).”

ADVERTISING—N.D. CAL.: PUTATIVE CLASS ACTION AGAINST META OVER ‘BRICKED’ DEVICE WILL PROCEED IN PART | Secondary Sources | National

A judge dismissed some, but not all, claims involving the Meta Portal's loss of functionality and granted leave to amend.

The federal district court in San Francisco dismissed state consumer protection law claims against Meta Platforms, Inc., over alleged loss of functionality in its Portal devices, saying consumers bringing a putative class action failed to show what misrepresentations or omissions they relied upon. But the dismissal included leave to amend, and the court allowed claims under California's Unfair Competition Law and for breach of implied covenant of good faith and fair dealing to go forward (*Shipley v. Meta Platforms, Inc.*, No. 3:25-cv-03324-WHO (N.D. Cal. Jul. 16, 2026)).

Background. Meta launched the Meta Portal in the fall of 2018, advertising it as a “functional hands-free video calling and streaming device” that supported auto-zooming video chat, music and video streaming, and voice command features, according to the ruling in the case. The device became “particularly popular” during the COVID-19 pandemic, with millions of units sold, but Meta ultimately announced in 2022 it would discontinue the devices.

The company continued to sell the Meta Portal at a lower price and “continued to tout its same purported features, but by mid-2023 began “bricking” it—reducing its functionality to that of a brick—by removing applications and functionality, which continued through 2025. The consumers allege that while Meta sold the Portal, it “uniformly omitted at the point of purchase” that the software could stop working well before the hardware, advertising many of its features as “built-in.” But the company failed to issue any refunds to consumers, despite the product becoming “now largely useless” and selling at a “high price point.”

The consumers filed a putative class action over the issue on April 14, 2025 and have since amended their complaint several times. Meta moved to dismiss.

Evidentiary issues. In support of its motion to dismiss, Meta attached a declaration from attorney Bambo Obaro as well as hyperlinks to screenshots of its Limited Consumer Warranty and Terms of Service documents on the Internet Archive's Wayback Machine. Obaro also provided photographs of the exterior of the Portal boxes.

The consumers moved to exclude those exhibits saying they were not properly authenticated and should not be subject to judicial notice. The consumers argued Obaro would not have firsthand knowledge of the documents submitted, but the court noted that Obaro sourced the documents from the Wayback Machine—which hosts archives of website—and packaging in the consumers' possession. The consumers failed to put forth arguments for why the exhibits would not be reliable, the court found, declining to exclude the materials.

Additionally, to exclude the product packaging would be a “death knell to the viability of these claims,” since many claims hinge on representations made to consumers there, according to the ruling.

State consumer protection law claims. The consumers brought claims on behalf of various state and national classes for violations of state consumer protection laws, including sections sections (a)(5) and (a)(16) of California's Consumer Legal Remedies Act (“CLRA”), View more Negative Treatmentssection 349 of New York's General Business Law, and section 505/2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”). The parties agree that California law governs for purposes of the motion to dismiss and that the claims under Illinois and New York law are substantially similar to the CLRA claims, according to the ruling. Meta argued the consumers failed to allege a pre-purchase misrepresentation, failed to show an actionable omission, and failed to allege consumer reliance and causation.

The SAC points to representations Meta made in marketing the Portal, including advertising features like “Alexa Built-In,” “hands-free video calling,” and compatibility with third-party apps and services. Meta argued these do not constitute pre-purchase misrepresentation, since the parties do not dispute that the services were available during the warranty period and several years after that nor do they claim any representation features would be available indefinitely.

The side of the box indicated that “Features, functionality and content are subject to change or withdrawal at any time,” and Meta argued that Ninth Circuit caselaw holds such representations can “ameliorate any tendency of the label to mislead.” But the consumers argue that Meta represented that certain features could not be taken away because they were “built-in” to the product and said the question of whether a reasonable consumer would be misled isn't appropriate for the motion-to-dismiss stage.

The court found the term built-in “plausibly conveys to a reasonable consumer that a feature is permanent or irrevocable” and that while the side panel might ultimately persuade a finder of fact that the packaging is not misleading, that doesn't create a basis for dismissal at this stage. Similarly, the consumers have “sufficiently alleged enough facts to give rise to an omission theory,” the court found, based on the argument Meta omitted the fact that it could strip the Portal's advertised uses before the end of its natural life.

Under the state consumer protection laws, the consumers are also required to plead they relied on Meta's alleged misrepresentations or omissions. Previously, the judge dismissed with leave to amend the state law claims, saying they did “not identify any particular advertisement or sales materials they even saw before purchasing the Portal.” The SAC added detail about what motivated the named plaintiffs to buy the device. But the court found they still failed to provide sufficient information about what specific advertisements and information they viewed and what representations they relied on. “While plaintiffs are close, more needs to be alleged to survive Rule 9(b)' s threshold,” according to the ruling, which again dismissed the state consumer law claims with leave to amend within 20 days.

Unfair Competition Law claims. The consumers also allege violation of California's Unfair Competition Law (UCL), which prohibits “unlawful, unfair, or fraudulent business act or practice.” Each of those is treated as a separate claim.

The “unlawful” and “fraudulent” claims fail because the consumers failed so far to show violation of the consumer protection laws upon which they rely, the court found. The court previously ruled that the consumers met the threshold for the “unfair” prong but Meta had urged the court to reconsider. Meta argued that the “unfair” prong cannot stand under Northern California precedent if the other prongs fail, while the consumers argued Ninth Circuit precedent holds just the opposite.

The court found that the “unfair” practices claim hinges on the “bricking” of the device rather than just claims about misrepresentations and omissions. Meta argued that loss of functionality outside a warranty period doesn't give rise to an “unfair” claim, but the court found that the caselaw it cited pertains to defects, while the consumers here point to “Meta's decision to disable core functionalities of the Portal that were marketed as integral to the product.” While the warranty and related “policy implications” may have bearing later on, including summary judgment, the consumers have pleaded enough to proceed at this stage, the court found.

Breach of contract. The SAC also includes a breach of contract claim, including “both a breach of the implied covenant of good faith and fair dealing.” Meta argues the SAC doesn't allege any contractual obligation it's said to have breached and that even if it did, the company acted within its rights.

The consumers argue they entered into a contract when they bought the devices, with Meta promising certain built-in features. But, noting that marketing and advertising are typically not treated as offers but merely invitations to bargain, the court found no contractual provision alleged to have been breached and dismissed the claim.

The Case is No. 3:25-cv-03324-WHO.

Securities

Manage Newsletters

Twist Bioscience’s Investor Settlement Nets Preliminary Approval

July 20, 2026, 11:03 AM PDT

Twist Bioscience Corp. and two executives obtained preliminary approval to pay $17.1 million to resolve allegations that they misled investors about the company’s synthetic DNA quality and automated manufacturing.

The US District Court for the Northern District of California granted preliminary approval of the settlement July 17, signaling the likely end to more than three years of litigation that began after a November 2022 short-seller report.

The court preliminarily certified a class of investors who purchased Twist stock in a 2020 offering or from Dec. 20, 2018, through Nov. 15, 2022

The court set a final approval hearing for Nov. 18

“We are pleased that the Court has granted preliminary approval,” George Bauer at Bleichmar Fonti & Auld LLP, who represents the proposed class, said in an email. “We look forward to continuing the process to get investors compensated from this excellent settlement.”

Orrick, Herrington & Sutcliffe LLP and Munger, Tolles & Olson LLP represent Twist and the executives. The law firms nor Twist immediately responded to a request for comment.

The case is Peters v. Twist Bioscience Corp. , N.D. Cal., No. 5:22-cv-08168, 7/17/26 .

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Crypto D&O Risk Is Evolving

dandodiary.com/2026/07/articles/cryptocurrencies/crypto-do-risk-is-evolving

One of the questions that has accompanied the Securities and Exchange Commission's changing approach to digital asset regulation is whether a decline in enforcement activity would lead to an increase private plaintiff litigation against cryptocurrency and crypto-adjacent companies. A July 7, 2026, report by NERA Economic Consulting (NERA) suggests the answer may be more nuanced. While, according to NERA's analysis, private securities litigation has become a larger share of crypto-related litigation, it has not fully replaced the reduction in SEC enforcement actions. The changing nature of crypto-related claims could have a significant impact on D&O underwriters operating in the sector. The NERA report provides a useful framework for evaluating the D&O implications of these developments.

A link to the NERA report published by Simona Mola, Ph.D. can be found here.

The NERA study analyzed 181 federal crypto-related cases filed between January 1, 2021, and May 31, 2026, including 89 SEC enforcement actions and 92 private federal lawsuits. These matters involved a broad range of participants in the digital asset ecosystem, including token issuers, stablecoin providers, cryptocurrency exchanges, DeFi platforms, staking and lending programs, mining operations, NFT projects, and other crypto-market participants.

From 2021 through 2024, SEC enforcement actions represented a significant portion of federal crypto-related filings and contributed to an increase in annual filings from 28 cases in 2021 to 40 cases in 2024. Following the change in administration and the SEC's reduced focus on crypto enforcement, SEC filing activity declined sharply. NERA reports that the SEC filed 75 crypto-related enforcement actions during Gary Gensler's tenure (April 2021–January 2025), compared with 11 actions filed between April 21, 2025, and May 31, 2026. Consistent with this decline in SEC activity, total federal crypto-related filings fell from 40 cases in 2024 to 31 cases in 2025.

The report further notes that SEC enforcement actions have been concentrated in token offerings, stablecoins, staking and lending programs, and other crypto investment schemes. NERA found that 68 of the SEC's 89 enforcement actions (approximately 77%) fell into one of those categories. By contrast, private plaintiffs have pursued a broader array of claims, including actions against cryptocurrency exchanges and trading platforms, mining companies, NFT projects, banks, auditors, promoters, and other service providers throughout the crypto ecosystem.

By way of background, the regulatory framework governing digital assets in the United States remains fragmented and continues to evolve. Historically, the SEC has been the primary federal regulator overseeing digital assets that it views as securities and has pursued numerous enforcement actions against cryptocurrency issuers, exchanges, and other industry participants. At the same time, the CFTC has exercised authority over digital assets that qualify as commodities, bringing its own enforcement actions involving fraud, market manipulation, and derivatives-related activities.

The proposed Digital Asset Market CLARITY Act seeks to establish clearer jurisdictional boundaries between the SEC and the CFTC, with many sufficiently decentralized digital assets potentially falling under the CFTC's oversight. The legislation passed the House with bipartisan support and is currently awaiting Senate action, where negotiations have focused on ethics provisions, decentralized finance (DeFi) oversight, and other proposed amendments. D&O Diary readers may also recall that the GENIUS Act, signed into law on July 18, 2025, established the first federal regulatory framework for payment stablecoins, including reserve, disclosure, and compliance requirements for issuers.

Even as Congress and regulators attempt to provide market participants with greater clarity regarding regulatory oversight and compliance obligations, the recent NERA report indicates that cryptocurrency-related securities claims against digital asset issuers and market participants continue to increase.

From a D&O coverage perspective, the distinction between regulatory enforcement and private securities litigation is important. While SEC proceedings may present threshold coverage issues, securities claims may expose a D&O underwriter to substantial defense expenses, settlements, and long-tail litigation. A decline in regulatory enforcement does not necessarily translate into a reduction in D&O exposure.

In addition, the NERA report's analysis is consistent with digital asset litigation trends that The D&O Diary has been tracking. Digital asset companies can remain vulnerable to private securities claims when investors challenge the accuracy and completeness of disclosures concerning regulatory risks, business prospects, or other material developments. Coinbase provides a useful example. As The D&O Diary previously noted, the company faced securities and derivative litigation alleging that investors were not adequately informed about regulatory risks and the potential treatment of customer assets in a bankruptcy scenario. The litigation illustrates how disclosure-related claims can arise from market and regulatory developments, independent of the ultimate direction of SEC enforcement policy.

NERA's findings also align with the themes that The D&O Diary has frequently chronicled regarding governance and control risks in the digital asset sector. One notable example is

SafeMoon, a decentralized finance (DeFi) cryptocurrency token launched on the Binance Smart Chain in March 2021. As we discussed here, the alleged SafeMoon liquidity pool fraud highlights how D&O exposures can arise from issues involving fiduciary duties, asset custody, disclosures, and board oversight. These allegations illustrate how governance and control failures can generate significant D&O exposures regardless of shifts in regulatory enforcement priorities.

Viewed in the context of the current securities litigation environment, the NERA report's findings suggest that the nature of cryptocurrency-related D&O risk may be changing, but not necessarily diminishing. Securities class action filing activity through the first half of 2026 remains elevated despite fluctuations in specific categories of litigation. While regulatory activity against cryptocurrency companies may be declining, the underlying drivers of securities litigation remain. For D&O insurers with cryptocurrency-related exposures, the NERA report may suggest that risk is increasingly tied to disclosure, governance, and oversight issues rather than regulatory enforcement alone.

Third Cir. Sanctions Lawyer Over Alleged Bias Suit AI Flaws (1)

B news.bloomberglaw.com/daily-labor-report/third-circuit-sanctions-lawyer-over-alleged-bias-suit-ai-flaws

A federal appellate court sanctioned a Pittsburgh attorney for using potentially AI-generated fictitious quotes in a filing for a disability accommodation case, which the court also declined to revive.

J.P. Ward & Associates LLC president and managing partner Joshua Ward must shell out $14,636.50 to West Penn Allegheny Health System Inc. to reimburse the company for attorney fees it paid defense counsel Reed Smith LLP to deal with Ward's "antics" as a result of the apparent artificial intelligence hallucinations, a three-judge panel of the US Court of Appeals for the Third Circuit said Monday.

The sanction came in a former healthcare worker's disability bias and wrongful termination suit, which the panel said was correctly dismissed by the US District Court for the Western District of Pennsylvania.

The legal industry is grappling with a hotbed of issues around AI misuse, with attorneys facing disciplinary referrals, monetary fines, and temporary disqualification for using tools that generate non-existent case citations or faulty legal arguments. Judges have also faced backlash for AI-related errors in rulings.

Ward, who previously faced disciplinary sanctions within the Third Circuit and is awaiting the outcome of another sanctions hearing, said the former worker's motion was submitted with mistakes due to his failure to check a law clerk's work, according to Monday's decision.

But Judge Stephanos Bibas, who authored the panel's opinion, found Ward's "response insufficient to foreclose sanctions."

"We cannot tell if they were hallucinations by artificial intelligence, since they cite real cases about the same subject," he said. "Either way, misquotations are serious, and we expect counsel to guard against them by checking citations."

Accommodation Obligations

In the ruling on the case's merits, the Third Circuit panel established that an employee's advanced notice of their disability and a request for an accommodation are required to trigger an employer's legal obligations to consider a reasonable accommodation.

The panel rejected fired former worker Cheryl Hileman's argument that disclosing her Type 2 diabetes during a disciplinary investigation should have prompted the health system to inquire about a disability accommodation for her condition before ultimately terminating her.

The ex-CT technician, fired after falling asleep on the job, never made a formal accommodation request under the Americans With Disabilities Act nor a leave request, Bibas said. She didn't even mention her diabetes until confronted about sleeping, according to the opinion.

"Employers' duty to accommodate is real, but it is not a license to speculate," Bibas, a Trump appointee, wrote. "They must respond to what they know—not what they might imagine. And they certainly need not go digging for disabilities without a signal that one exists."

Even if Hileman's statement could somehow qualify as an accommodation request, the panel said West Penn offered a legitimate, non-discriminatory reason for firing her. She provided no evidence to suggest she was instead terminated for her medical condition, the opinion said.

The parties didn't immediately respond to requests for comment on the ruling Monday.

Judges Cindy Chung, a Biden appointee, and Jennifer Lee Mascott, a Trump appointee, also sat on the panel.

The case is Hileman v. West Penn Allegheny Health Systems Inc., 3d Cir., No. 25-01459, ruling issued 7/20/26.

Flyers Seek Class Cert. In JetBlue-American Pact Case

law360.com/articles/2502484/flyers-seek-class-cert-in-jetblue-american-pact-case

(July 17, 2026, 10:07 PM EDT)-- Consumers accusing American Airlines and JetBlue of entering into a pact to allegedly increase fares and reduce flight choices have asked a New York federal judge to certify their narrowed class definition.

In a 33-page memorandum filed Thursday, the proposed class of flyers led by Dianne Buehler are seeking to tailor their class to those who flew out of Boston Logan International Airport during the class period and were impacted by the disputed Northeast Alliance (NEA) pact.

"Defendants treated Boston Logan very differently," the memorandum said. "Rather than American following through on its pre-NEA plan to 'fight like hell in BOS,' defendants reduced their collective capacity at Boston Logan (i.e., decreased supply) pursuant to their conspiracy, resulting in supracompetitively inflated prices (i.e., impact and damage) for consumers at that airport."

The flyers argued common evidence will show that the airlines' illegal conduct allowed them to overcharge for airfares during the class period which injured the members and that the anticompetitive conduct injured all members.

They also argued the proposed new class meets the four requirements of Rule 23(a) needed to form a class action — numerosity, commonality, typicality and adequacy.

The pact, which was entered into in early 2020 and ran until 2023, called for airlines to share ticketing codes and engage in revenue sharing, joint scheduling and gate pooling. The flyers said they **overpaid for flights** covered by the pact and alleged the pact violated the Sherman Act.

JetBlue **abandoned** the pact in 2023 after a Massachusetts federal court agreed with the U.S. Department of Justice that it was effectively an **illegal merger** that allowed the airlines to combine their operations at airports in the New York City and Boston regions. American has appealed the ruling to the First Circuit, which heard **oral arguments** in June 2024 and **affirmed** a lower court's decision blocking the partnership.

The suit is now seeking to represent a class that includes direct purchasers of airline tickets going to or from Boston Logan International Airport from JetBlue and American for domestic travel from April 1, 2021, until July 28, 2023.

Thursday's memo said the new proposed class in the matter satisfies the numerosity requirement of the rule as its expert economist, Jonathan Schwartz, identified 17 million passenger itineraries that departed from or arrived at Boston Logan. The memo added that the Second Circuit has an implied requirement that the class be "ascertainable" and noted that the proposed class meets this as the class membership boundaries include those who purchased tickets from the companies to and from the airport during the class period.

The flyers also said the commonality requirement is satisfied by creating "a single common question" of fact or law as to all class members, including "the NEA agreements and illegal conduct that comprised defendants' scheme; whether that scheme had anticompetitive effects; whether that scheme violated the antitrust laws; whether members of the proposed class paid overcharges; and whether aggregate damages can be measured for the class as a whole."

The memo said the typicality requirement is satisfied because the class representative and members' claims are based on the same conduct by the airlines, claim violations of the same antitrust laws, and seek relief for the overcharges.

The memo argued the proposed class representative and counsel will fairly represent the members, saying there are no conflicts as the plaintiffs have the same interests as the class members and all were harmed by the airlines' conduct.

The flyers also asserted that 23(b)(3), which says a case is maintainable as a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy," is satisfied as both the predominance and superiority requirements are met.

They also said their antitrust claims will be proven through common evidence to all class members and that it will show injury to the class is widespread.

"Based on his analysis, Schwartz concludes that all domestic passengers traveling to or from Boston Logan on JetBlue or American during the class period would have paid significantly lower airfares in the but-for world," the memo said. "Because all, or nearly all, passengers on JetBlue flights to or from Boston Logan paid an overcharge of 5.0% and all, or nearly all, passengers on American flights to or from Boston Logan paid an overcharge of 6.7%, all members of the class paid overcharges."

The memo also noted that because the airlines "created the uncertainty with their misconduct," the damage calculations do not need to be exact and that the class has provided a reliable method to establish the damages.

"To estimate classwide damages, Schwartz applies his overcharge analysis to the relevant commerce at issue: the ticket fares for itineraries meeting the class definition contained in the transaction data provided by JetBlue and American," it said.

The flyers concluded that the superiority requirement is also satisfied as a "class action is superior to individual actions."

Counsel for the proposed class, JetBlue and American did not respond to requests for comment Friday.

The proposed class is represented by interim co-lead class counsel Arthur L. Shingler III and Robert M. Rothman of Robbins Geller Rudman & Dowd LLP and Israel David, Adam M. Harris, Mark A. Cianci and Madeline Sheffield of Israel David LLC. Additional counsel on the brief includes Kathleen M. Donovan-Maher, Christina Louise Gregg Fitzgerald, Patrick Thomas Egan and Brooke E. Lowell of Berman Tobacco.

American Airlines is represented by Marguerite Sullivan and Kimon Triantafyllou of Latham & Watkins LLP.

JetBlue is represented by Matthew L. Craner and Richard F. Schwed of Allen Overy Shearman Sterling US LLP.

The case is Berger v. JetBlue Airways Corp. et al., case number 1:22-cv-07374, in the U.S. District Court for the Eastern District of New York.

Judge Decries 'Extreme' Penalty Bids In Social Media MDL

law360.com/articles/2502815/judge-decries-extreme-penalty-bids-in-social-media-mdl

(July 17, 2026, 10:36 PM EDT)-- A California federal judge overseeing an upcoming trial over states' social media addiction claims against Meta took issue with both sides' "extreme" penalty estimates during a pretrial hearing Friday, saying the states' $1.4 trillion proposal is "unreasonable," but Meta's $4 million estimate "is not even a slap on the hand."

U.S. District Judge Yvonne Gonzalez Rogers' comments came during a roughly three-hour hearing on the latest pretrial issues ahead of an Aug. 12 advisory jury trial over claims by state attorneys general from Kentucky, California, Colorado and New Jersey against Meta Platforms Inc.

The four states are set to face off against the social media giant in Oakland, California, in the first bellwether trial in the multidistrict litigation. The judge plans to empanel an advisory jury to help her decide the state-specific consumer protection claims, while she will likely decide the states' other claims under the federal Children's Online Privacy Protection Act herself.

During the hearing, Meta's counsel complained that the states' 13-figure penalty estimate is unprecedented. Although multiple news outlets have **reported** on the estimate, which was recently revealed in a court filing, it's unclear to Meta if the estimate is real or not, which puts the company in a difficult position to defend against it, Meta's counsel argued.

However, counsel for the states defended their $1.4 trillion estimate, arguing that it is legally supported, and just one potential penalty calculation depending on whether Meta is found liable for each statutory violation.

The parties began arguing over whether a trillion dollars is a legally justifiable civil penalty, but Judge Gonzalez Rogers short-circuited the discussion, and told Meta's counsel, "I don't know why you're objecting."

The judge noted that such a large penalty demand could backfire and work against a plaintiff at trial.

"Sometimes when they overreach, it actually is good for you, because it makes them seem unreasonable in turn, and perhaps given all the … media about the $1.4 trillion, [the media] realized that it sounded pretty unreasonable," the judge said.

The judge added that the states "can shoot themselves in the foot if they want," but it's not uncommon to make such large demands ahead of trial.

"I understand you want [the penalty demand] down, but they want to see how the evidence comes in," the judge told Meta's counsel.

Judge Gonzalez Rogers also noted that Meta has also appeared to low-ball its own penalty estimate. So far, Meta's briefs have suggested that if the company is found entirely liable, Meta's "back-of-the-envelop" estimate pegs the company's maximum penalty liability at $4 million, which the judge said "is also unreasonable."

"Penalties are there to be penalties," the judge said. "And a $4 million penalty for Meta is not even a slap on the hand. It's not even that. That's unreasonable. So you both have taken positions in this case that are in the extreme, and I will see where it ends up."

But Meta's counsel quickly pointed out that Meta hasn't specified an exact penalty amount that it believes is justifiable if Meta were found liable, and the company maintains that its practices comply with all state and federal laws. But the judge again interjected to clarify her stance.

"If it is found that the conduct that is alleged was in fact committed and there is liability, I don't know what you're going to do," the judge acknowledged. "I don't know what you're going to say to them, or what you're going to say to me. But given what you've written, the notion that I would impose a $4 million penalty across all of these states, where there is in fact liability, would not satisfy the goal of those statutes."

The judge added that she has concerns about the states' own assumptions and which issues they may want to present to the jury, and she is concerned that the states may "try to prey upon" jurors' sympathies inappropriately during trial. However, the judge clarified that she's not prejudging liability, penalties or any of the issues that are reserved for trial.

"We will get there," she added.

The states and Meta head to trial months after the **first bellwether case** in the MDL **was scheduled** to go to trial over claims by a Kentucky school district. That trial was slated to begin June 12, but in May, Meta, Snap Inc., TikTok Inc. and YouTube informed the judge that they had **agreed to settle** the school district's claims.

In light of those deals, Meta's fight with the four state attorneys general will be the first trial in the **consolidated** federal MDL, which was initially filed in 2020. In addition to claims by the states, the MDL includes claims by personal injury plaintiffs, as well as **Native American tribes** and more than 1,200 school districts.

The plaintiffs generally accuse the social media giants of designing their multibillion-dollar revenue-generating platforms with addictive features, such as infinite scroll, autoplay, notifications and reward systems, to the detriment of minors' health and livelihoods.

Aside from discussing potential penalties, during the pretrial hearing Friday, Judge Gonzalez Rogers denied Meta's request to file an interlocutory Ninth Circuit appeal to address certain issues on certain state deception claims. The judge said the appeal is unnecessary and she took issue with Meta waiting so long to raise it.

"We have gone through a considerable amount of work and if at any time you thought this was actually true, you could have asked the Ninth Circuit to consider this and you didn't," the judge said.

The judge also took issue with the parties' exhibit lists for including thousands of potential exhibits. Given the number of exhibits on the lists, the judge noted that if she started the clock now, the parties wouldn't be able to just read the names of all the proposed exhibit lists by the end of trial.

"There is zero chance 34,000 exhibits are admitted," she said. "There is zero reason for us to go to trial to figure out why you need 34,000 exhibits."

The judge said she is tired of waiting for the parties to winnow down their exhibits, and so she ordered them to file an exhibit list with the most important "core" 300 exhibits by Monday, which she pointed out won't all be admitted.

She recalled that when she was in private practice, attorneys would call such core exhibits "hot dogs" and produce them in a single binder.

"So figure it out and start pulling your case together," the judge said. "You are weeks before trial. You should be better. You should be more prepared. 300. Figure it out."

The states were represented during the hearing by Megan O'Neill of the California Department of Justice, and Jason Slothouber of the Colorado Department of Law, among others.

Meta was represented during the hearing by Ashley M. Simonsen, Isaac D. Chaput and Timothy C. Hester of Covington & Burling LLP, among others.

The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.