Boeing Case Gives Investors Tougher Task to Show Class Damages

July 22, 2026, 10:48 AM PDT

Investors leading lawsuits against public companies will have to change their approach to getting class status in the wake of a recent appeals court ruling freeing Boeing Co. from facing a shareholder class.

The effect won't be limited to the Fourth Circuit, where the federal appeals court this week reversed a lower court's class certification ruling, legal observers said.

"It will be a wake-up call to district courts and to the plaintiffs' bar that this is something that appellate courts take very seriously," said Ben Snyder of Paul Hastings LLP, who submitted a friend-of-the-court brief in the case.

"The Fourth Circuit's decision is important because it breaks the recent trend in which district courts had effectively allowed class certification based just on assurances that the plaintiff's expert would eventually come up with a classwide damages model," said Snyder, who co-authored the brief for the Securities Industry and Financial Markets Association arguing for reversal.

Fights over class certification have proliferated in recent years as a second line of defense to lawsuits that survive dismissal attempts. A potential circuit split is developing on the separate issue of classwide investor reliance. Here, the US Court of Appeals for the Fourth Circuit squarely addressed how litigants can approach damages.

"I expect it to resonate everywhere because this has been a very unified push" by companies, said Ann Lipton, a professor at the University of Colorado's law school. Lipton writes about the relationships between corporations and investors and has been critical of policies weakening investor protections.

Safety Assurances Targeted

Boeing investors brought a securities fraud lawsuit over numerous company safety statements following two deadly 737 Max aircraft crashes in 2018 and 2019.

When a 737 Max 9 door panel blew out on an Alaska Airlines flight in 2024, the investor plaintiffs claimed the incident showed the safety promises were hollow, leading to stock drops that allegedly cost them billions of dollars.

To obtain class status, plaintiffs must show that common issues predominate over individualized ones, but the Boeing investors' attempt to show how damages could be calculated on a classwide basis — potentially for thousands of investors — fell short, the Fourth Circuit panel said.

A 2013 US Supreme Court decision, *Comcast Corp. v. Behrend* , requires plaintiffs to provide a methodology "showing how damages are calculable on a class-wide basis in a manner that is consistent with their theory of liability and that is not speculative," and the Boeing plaintiffs didn't, Judge A. Marvin Quattlebaum Jr.'s July 20 opinion said.

The plaintiffs' expert gave a description "so general that it would apply in any securities fraud case" and "never committed to any methodology," Quattlebaum said.

In a later report, the expert proposed measuring the artificial inflation of the stock price by using a constant percentage across the class period. But that was inconsistent with the plaintiffs' theory of liability, which pointed to about 40 alleged misrepresentations, Quattlebaum said. "Conclusorily claiming that each statement had the exact same effect on the market is speculation," he said.

Attorneys for the investors didn't provide comment. Nor did Boeing or its attorneys.

The appeals court distinguished a Second Circuit opinion approving class certification over defense arguments about the damages methodology.

"I think there's enough of a basis here for the Supreme Court to take this based on a circuit split" if the Boeing investors appeal, said Todd Cosenza, co-chair of the securities litigation practice group at Willkie Farr & Gallagher LLP, who submitted an amicus brief supporting Boeing on behalf of several former Securities and Exchange Commission officials and law professors.

But Lipton said the Fourth and Second Circuit opinions are likely reconcilable. "It's too early to say there's a split," she said.

'Trust Us'

Securities plaintiffs have been submitting reports that are "relatively theoretical about how they would go about calculating damages" and not case-specific, Lipton said.

"This is what they typically do," Cosenza said. "For the plaintiffs, it was a very much a check-the-box exercise. 'We can do it. We'll do it later. We can calculate it on a classwide basis. Trust us.' And that was enough, honestly, for the last 10 or 12 years."

"This is really raising the bar on plaintiffs," Cosenza said of the Fourth Circuit's opinion. "It's going to limit the amount of damages they're able to claim in a securities case because they're not just going to be able to say, 'This is the stock price, this is the decline and we get all of it as part of our damages.'"

Plaintiffs will "have to be much more realistic and surgical in how they come forward with a damages methodology," he said.

Edmund Polubinski, a securities litigation partner at Davis Polk & Wardwell LLP, called it a significant decision.

"It makes clear *Comcast* requires a much more detailed and specific showing," he said by email.

Day by Day?

For Cosenza, the most important takeaway is that when plaintiffs "seek to rely on a large volume of different types of misstatements over a long class period, they're not simply going to be able to run an event study on the day of their corrected disclosure and then backcast the inflation for the entire class period."

"They're going to have to look at this in a much more detailed way as to how the purported inflation impacts the stock price almost on a day-by-day level," he said.

The Fourth Circuit wanted to see detailed calculations "because it's a long class period with a lot of different kinds of statements," Lipton said.

But "it's not clear how much that's going to play out in other cases, especially as plaintiffs get better at articulating exactly what they plan to show," she said. How much of a burden and "whether it creates real challenges — that's going to be fought out for quite some time," she said.

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

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editors responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com; Michael Smallberg at msmallberg@bloombergindustry.com

© 2026 Bloomberg Industry Group, Inc. All Rights Reserved

Videogame addiction cases split on arbitration over parental consent

A Los Angeles judge overseeing coordinated litigation accusing videogame companies of designing addictive games that harm minors ruled that claims against Roblox and Microsoft must proceed to arbitration, while allowing identical claims against Epic Games Inc. to remain in court.

The differing outcomes turned on whether Superior Court Judge Lawrence P. Riff found the companies' electronic account records sufficiently established that a minor plaintiff or his parents agreed to arbitrate disputes arising from his Roblox, Minecraft and Fortnite accounts.

In three separate orders issued last Friday, Riff concluded Roblox and Microsoft met that burden, while Fortnite creator Epic Games did not.

Riff found the disputes centered on:

• who accepted the companies' online user agreements when the gaming accounts were established or used

• whether valid arbitration agreements were formed

• and whether those agreements remained enforceable against the minor plaintiff.

For Roblox, Riff concluded the company's electronic records sufficiently established the plaintiff's acceptance of its arbitration agreement. As to Microsoft and Mojang AB, he found both parents agreed to Microsoft's services agreement, leaving the plaintiff, referred to as I.H.G., unable to legally void those contracts.

However, Riff found Epic Games failed to show that I.H.G. remained bound by his father's acceptance of Fortnite's End User License Agreement after the minor plaintiff exercised his statutory right to disaffirm the agreement.

Although Epic attributed one of the Fortnite accounts to I.H.G.'s father, Riff found the company failed to show the father created or accepted the account on the minor's behalf, facilitated his access to Fortnite, or otherwise bound him to arbitrate.

As to Epic, Riff found the company initially established that I.H.G. accepted Fortnite's End User License Agreement (EULA) which contains an arbitration provision, but failed to show the father's acceptance independently required the minor plaintiff to arbitrate.

"Epic does not cite any evidence or contract term in its EULA that indicates Mr. Gibson's acceptance of the EULA was made on behalf of plaintiff," Riff wrote.

Riff reached a different conclusion as to Microsoft and its Minecraft developer. He found the record showed both parents accepted Microsoft's Services Agreement governing the family's Xbox and Microsoft accounts, leaving I.H.G. unable to disaffirm contracts entered into by his parents on his behalf.

As to Roblox, Riff found the company presented sufficient evidence that arbitration agreements were accepted through the plaintiff's Roblox accounts, including records documenting account activity and subsequent acceptance of updated terms.

The rulings address only one of dozens of cases pending in the coordinated litigation in Los Angeles County Superior Court.

Riff did not consider the merits of the mother, Evette Gibson's allegations that the companies intentionally designed videogames to maximize user engagement and incite compulsive play.

On Aug. 3, Riff is scheduled to hear another round of arbitration motions involving Sony in other cases within the coordinated litigation.

In the underlying action, filed by Bradley/Grombacher LLP and Aylstock Witkin Kreis & Overholtz PLC, Evette Gibson, on behalf of her son I.H.G., alleges videogame companies deliberately engineered addictive gameplay mechanics and other platform features that caused minors to develop gaming disorders and suffer educational, behavioral and mental health harms. *Videogame Addiction Cases*, JCCP5363 (L.A. Super. Ct., filed Jan. 13, 2025).

Gibson alleges her son became addicted to Roblox, Fortnite and Minecraft after he began playing the games around age 8, causing severe emotional distress, diminished social interactions and withdrawal symptoms, including rage, anger and physical outbursts. Gibson v. Roblox Corp. et al., 24STCV32897 (L.A. Super. Ct., filed Dec. 13, 2024).

The companies deny the allegations and moved to arbitrate Gibson's case.

The defense was represented at a hearing last month by Davis Wright Tremaine LLP partner Ambika Kumar for Microsoft and Mojang AB. Orrick Herrington & Sutcliffe LLP partner David P. Fuad represented Roblox, and Hueston Hennigan LLP partner Allison L. Libeu appeared for Epic Games.

What Constitutes Geopolitical Disclosure Risk?

dandodiary.com/2026/07/articles/geopolitical-risk/what-constitutes-geopolitical-disclosure-risk

Over the past couple of years, the D&O Diary has followed how geopolitical developments, including wars, sanctions, tariffs, export controls, and trade disputes, can create public company D&O exposure. These developments can present disclosure challenges and have led to securities suits arising from export controls, tariffs, and related business impacts.

A recently filed securities class action against Photronics, Inc. (Photronics) highlights how later statements about geopolitical tensions and supply chain challenges can be woven into broader claims that a company's earlier disclosures were misleadingly incomplete. Photronics manufactures photomasks, the highly precise templates used in the process to produce semiconductors. While the complaint primarily alleges misstatements about product demand and financial performance, it also cites disclosure failures related to the U.S.-Iran conflict and supply chain disruptions.

The discussion below examines the lawsuit allegations and related D&O underwriting considerations arising from geopolitical risk disclosures. A copy of the complaint can be found here.

The Lawsuit

On July 6, 2026, a shareholder filed a securities class action lawsuit in the United States District Court for the District of Connecticut against Photronics and three of its senior executives. The complaint asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of investors who purchased the company's securities between December 10, 2025, and May 27, 2026.

According to the complaint, Photronics repeatedly emphasized robust demand for its higher-end integrated circuit photomask products, highlighted its competitive position in the U.S. market, and pointed to AI-related semiconductor demand and domestic reshoring initiatives as drivers of continued revenue growth. The company also projected continued strength in its high-end business despite acknowledging softness elsewhere in the market.

The shareholder plaintiffs allege that these statements were materially false or misleading because the company purportedly knew that customer design releases had slowed, elevated foundry utilization rates were delaying new product launches, and other operational headwinds were adversely affecting demand and future financial performance. Plaintiffs contend that these conditions had already undermined the company's outlook while management continued providing optimistic guidance.

On May 28, 2026, Photronics announced second-quarter results below expectations and provided third-quarter guidance that also fell short of market expectations. During the accompanying earnings release and conference call, company executives allegedly attributed the disappointing results to several factors, including delayed customer design releases, elevated foundry utilization, memory supply constraints, and geopolitical uncertainty. Plaintiffs cite management's statements that the U.S.-Iran conflict had increased macroeconomic uncertainty and affected customer decision-making.

Immediately after the disclosure and conference call, Photronics' stock price allegedly declined approximately 36%.

Discussion

The Photronics complaint is, at its core, a typical earnings guidance and disclosure case. Plaintiffs allege that the company failed to disclose adverse developments affecting demand for its products while continuing to present an optimistic outlook. What makes the complaint noteworthy is not that it arises from geopolitical events, but rather how the plaintiffs incorporate the company's own discussion of geopolitical uncertainty into their allegations.

Specifically, the complaint points to management's statements that delayed customer design releases and weaker results were attributable to several factors, including supply chain issues stemming in part from geopolitical uncertainty arising from the U.S.-Iran conflict. Plaintiffs contend that these conditions were already affecting the business before the company disclosed them publicly. In that respect, the alleged securities law violation stems from the adequacy and timing of the company's disclosures rather than the geopolitical developments themselves.

The allegations against Photronics fit within disclosure themes highlighted in prior D&O Diary commentary. Recent posts have pointed to securities litigation involving Super Micro Computer, Seagate, Kaspi.kz, and Pinterest, where plaintiffs relied on export controls, sanctions, tariffs, or other geopolitical developments to allege that companies failed to adequately disclose the business and financial consequences of changing external conditions.

The lawsuit against Photronics reflects a similar dynamic. It does not allege that the company caused or could have predicted geopolitical developments. Rather, shareholder plaintiffs latch on to management's subsequent explanation that geopolitical uncertainty was one of several factors contributing to weaker financial performance and argue that investors should have been informed sooner that these headwinds were affecting the company's outlook.

From a D&O underwriting perspective, the allegations against Photronics serve as another reminder of the importance of disclosure controls and ongoing assessments of evolving business risks. When management later attributes disappointing results to external developments, such as geopolitical uncertainty or supply chain disruptions, plaintiffs may argue that those conditions were already affecting operations and should have been reflected in earlier disclosures, guidance, or risk factor discussions. As this case illustrates, a company's own explanations for disappointing performance can provide the basis for allegations that prior disclosures were materially incomplete.

Key Voice in Delaware's Dominance Steps Down From Its Top Court

July 22, 2026, 2:00 AM PDT

Delaware Supreme Court Justice Karen L. Valihura steps down July 25, leaving a legacy of steadfast support for the state's corporate law standards as her influence in shaping them evolves under a new role.

Her 12-year tenure at the state's highest bench spanned a rapid rise in intense competition for Delaware's corporate dominance and a slower, but persistent, increase in the number of women practicing in corporate law's elite tribunals.

Just a handful of senior-level women attorneys were litigating in Wilmington when she began working at Skadden, Arps, Slate, Meagher & Flom LLP, Valihura recalled in a Bloomberg Law interview. "You took the job wondering, 'Am I going to be accepted in this world?'"

Now, many of her opinions are widely recognized as rulings that sought to "protect Delaware as the gold standard," Chief Justice Collins J. Seitz Jr. said in a public salute to Valihura last month.

"She wrote some of the most important opinions that we follow every day," Latham & Watkins partner Michele Johnson said, listing Valihura's rulings rejecting stricter scrutiny for companies moving away from Delaware, finding that a buyer isn't automatically liable for a conflicted sales process even if it benefits, and upholding charter provisions requiring securities claims to be brought in federal court. That last one, *Sciabacucchi* — it's pronounced *Shabacookie* — is one Johnson said her team refers to "all the time."

"She absolutely has a legacy that will live forever," she said.

Not bad for someone whose application to shape Delaware corporate law as a judge at its renowned Chancery Court was rejected twice. Valihura next plans to lead a new corporate law institute at Wilmington University.

Legal Legacy

The cases Valihura said she considered the toughest typically involved issues of first impression, where the high court had no governing precedent, that may have public policy implications. One yielded an opinion she wrote in April, holding that a privately held company was responsible for expenses in an employee benefits lawsuit.

“You have to figure out an analytical pathway to resolve the case and figure out what you’re going to rely on,” she said.

Some cases were just physically difficult, such as the close study of faint, hard-to-read paperwork required to produce an opinion over insurers’ duty to cover asbestos claims. “The photocopying was very light, there were just reams of agreements, and it was just a real labor-intensive process to get through the record,” she said.

In a June 24 special session of the Delaware Supreme Court in Wilmington, Valihura’s peers celebrated her legal opinions and her dedication to her job.

She was always the first to arrive for oral arguments, insisted in criminal cases on watching hours of police interviews and reading all available witness statements, and personally drove her first law clerk to their first session of oral arguments together, they said.

“She gets to oral arguments in Dover at 7:30 a.m.,” Justice N. Christopher Griffiths said then. “We don’t start until 10 a.m.”

Then-Delaware Supreme Court justice Carolyn Berger -- the court’s first female member -- with the then-freshly minted Justice Karen Valihura in 2014.
Photo courtesy of Delaware court system

Seitz said Valihura had a “keen interest” in disclosure conflicts, she interpreted bylaws and statutes “according to plain language,” and that “balance was her North Star in her judicial decision-making.”

Another celebrated legal skill: Valihura’s embrace of the dissent, an infrequent occurrence for Delaware’s highest court.

“Her style is distinct because she offers a full opinion with a factual background,” Justice Abigail M. LeGrow said. Valihura’s dissents “can be understood without the reader first needing to digest the majority opinion.”

Dissenting Opinions

Valihura opposed the majority in a variety of cases, including the long-running TransPerfect Global Inc. dispute, in which she said in 2017 that the Chancery Court had “ordered one of the most extreme remedies possible,” forcing a sale of the company to resolve a deadlock between its estranged co-owners.

Her dissent proved prescient: the TransPerfect sale generated a decade of continued litigation and put the company at the forefront of criticism that Delaware judges sought to take control from powerful founders.

The high court prefers to reach unanimity, Valihura told Bloomberg Law. “However, no justice is going to surrender his or her views on a substantive issue for the mere sake of achieving consensus.”

Some dissents might signal to the bar an opportunity to raise an issue again, or to flag “that perhaps the law is not as stable in that particular area,” she said. Other justices might communicate that in just one dissenting sentence, but the justice said she always sought to clearly explain why she couldn’t join the majority in a particular case.

Griffiths said he found it endearing that Valihura was “trying to persuade you up to the last minute” that her perspective should be the majority’s opinion.

Women in Law

Valihura, the second woman to join the high court, served briefly with the first, Justice Carolyn Berger. When they posed for a photograph in 2014, shortly before Berger retired, many wondered when two women might serve again on the state’s top court.

It was still somewhat uncommon then for women to hold leadership positions in corporate practice, let alone the Delaware judiciary that effectively wrote the rules for corporate America. Five years passed before another woman joined Valihura on the high court bench.

Her successor, Chancery Court’s Morgan T. Zurn, will be the fifth woman on the high court. “That part of it feels good,” Valihura said in the interview, but when she speaks with women attorneys in Delaware and the corporate law community, “they would say we’re still not there yet.”

The hand-off from woman to woman is significant because corporate law remains a predominantly male field, said Geeta Kohli, a Widener University Delaware Law School professor.

“To have another woman in the judiciary hearing these cases is fundamental, because it does send a message to the law firms that this is still important for gender equity, and advancement of women in corporate leadership is still important, and it’s meaningful and valued,” she said.

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

To contact the editors responsible for this story: Andrew Harris at aharris@bloomberglaw.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

© 2026 Bloomberg Industry Group, Inc. All Rights Reserved

Labaton Launches Task Force Exploring New Litigation Strategies for Corporate Reforms

law.com/newyorklawjournal/2026/07/14/labaton-launches-task-force-exploring-new-litigation-strategies-for-corporate-reforms

A statement from the firm said the task force is focused on finding ways to achieve those reforms as part of resolutions to traditional securities fraud cases, rather than solely through derivative cases that are primarily litigated in Delaware.

Labaton Keller Sucharow has announced it's launched a corporate accountability and governance task force in an effort to pursue corporate governance reforms through securities and shareholder litigation.

A statement from the firm said the task force is focused on finding ways to achieve those reforms as part of resolutions to traditional securities fraud cases, rather than solely through derivative cases that are primarily litigated in Delaware.

The task force is chaired by Carol Villegas and Domenico Minerva, both partners in the firm's New York office.

"Investors increasingly recognize that litigation can serve not only as a mechanism for recovering losses but also as a catalyst for meaningful corporate change," Villegas said in a press release. "Our Corporate Accountability & Governance Task Force reflects our commitment to helping clients achieve both objectives."

The firm stated the task force represents the formalization and expansion of Labaton's longstanding efforts to get both monetary recoveries and governance reforms on behalf of institutional shareholder plaintiffs. The securities fraud actions the task force is set to focus on would be those that involve "significant corporate misconduct or governance failures."

"Few firms can point to a track record of achieving both substantial monetary recoveries and meaningful governance reforms in matters involving some of the most significant corporate failures of our time," Minerva said. "This task force builds on that experience and positions Labaton to help clients pursue resolutions that deliver both accountability and long-term shareholder value."

The Social Media MDL Shows Why Rule 702 Must Be Properly Enforced

law.com/litigationdaily/2026/07/22/the-social-media-mdl-shows-why-rule-702-must-be-properly-enforced

The 2023 amendments to Federal Rule of Evidence 702 were intended to reinforce a basic point: Trial courts must act as gatekeepers responsible for deciding whether expert testimony is relevant and reliable before it is presented to a jury. A recent order in the Social Media Adolescent Addiction MDL illustrates how some courts continue to abdicate their gatekeeping duties despite the amendment's recent clarification, especially in complex litigation where experts rely on broad bodies of scientific literature to offer sweeping causation opinions.

The Social Media MDL involves claims by personal injury plaintiffs, school districts and state attorneys general alleging that defendants, including Meta, Google, ByteDance and Snap, designed their platforms to foster compulsive use by minors, causing amorphous mental-health, educational, physical and public-health harms. After earlier rulings narrowed the case, the defendants moved to exclude the plaintiffs' general-causation experts under Rule 702.

The 2023 amendment to Rule 702 was enacted in part to reaffirm the court's gatekeeper responsibilities by addressing what the Advisory Committee viewed as a recurring misapplication of the rule: courts treating "the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology" as matters of weight rather than admissibility. That misapplication persisted despite longstanding Supreme Court precedent under *General Electric v. Joiner* recognizing that courts may exclude expert opinions where the underlying totality of the evidence leaves too great an analytical gap between the data and the opinion offered. Unfortunately, even after the 2023 amendment, some courts continue to punt those threshold reliability questions to juries rather than conducting the analysis themselves.

These concerns were at the center of the Social Media MDL defendants' motion to exclude the plaintiffs' general causation opinions. The plaintiffs' purported general causation experts (most of whom are not medical doctors) opined that the use and design features of social media platforms cause "social media addiction," depression, anxiety, eating disorders, sleep disruption, poor academic performance and purportedly related harms. The defendants argued that those opinions were methodologically unreliable because the experts relied on studies about "social media use" generally, rather than evidence tied to specific product design features; over-extrapolated from weak or inconsistent literature; cherry-picked favorable studies; failed to account for alternative explanations or confounders; and treated distinct symptoms, diagnoses and outcomes as interchangeable. The defendants also pointed out that “social media addiction” is not recognized as a diagnosis in either of the medical community’s primary diagnostic manuals, the DSM-5-TR or ICD-11.

The court’s March 2026 order largely rejected these central causation challenges in terms that echo the approach the amendment was intended to correct. On the product feature issue, the defendants argued that the plaintiffs’ experts relied on generalized social media research without reliably tying their opinions to particular actionable features, platforms or alleged harms. The court nevertheless held that the plaintiffs’ experts could testify generally that the defendants’ “design features render teens addicted to the platforms,” and that an expert’s failure to “tease out causation as to each actionable feature” did not bar admissibility. The court also treated disputes over what “the overall body of literature indicates” as “a matter for cross-examination, not exclusion,” and criticisms of the experts’ technical understanding —or lack thereof— of challenged platform features as matters of “weight, not admissibility.” Similarly, the court rejected challenges to baseless opinions on the relationship between social media use and academic performance, characterizing them as “fodder for cross-examination.”

The court’s reasoning runs against the purpose of the 2023 amendments. The defendants’ objections went directly to the issues the Advisory Committee identified: whether the experts had a sufficient basis for their opinions and whether they reliably applied that basis to the facts of the case. The order does not seriously grapple with the threshold question of whether general studies about social media use could be reliably extrapolated to support specific opinions about addiction, platform design and distinct mental health harms, or whether the experts had tied their conclusions to specific product features through a reliable methodology rather than by mere *ipse dixit*. Treating such scientific leaps as issues of weight to be handled through cross-examination abdicates the court’s gatekeeper duties and improperly shifts the reliability inquiry to jurors.

Hope Abounds as Some Courts Have Properly Applied Rule 702 as Intended

Example 1: *Sig Sauer*

In *Williams v. Sig Sauer*, the plaintiff alleged that a Sig Sauer P320 pistol discharged without a trigger pull and offered two experts to identify defects and explain causation. One expert listed alleged defects, but failed to explain or test how those defects could have caused the P320 to discharge under the facts of the accident. His principal theory was that debris inside the pistol could interfere with its internal safety mechanisms. But he found no such debris when he inspected the gun, did not test the effect of different amounts of debris and observed that the pistol functioned properly during post-accident testing. The other expert proposed three possible causation mechanisms, but tested none and failed to eliminate other possible causes. The court excluded both experts and granted summary judgment for Sig Sauer because the plaintiff lacked admissible evidence of a defect or causation.

Example 2: Valsartan MDL

The first personal injury bellwether in the Valsartan MDL involved a claim that contaminated valsartan, a generic blood pressure medication, caused the decedent's liver cancer. The plaintiff offered one physician expert to make that case-specific causation link. After a Rule 702 hearing, U.S District Chief Judge Renée Bumb of the District of New Jersey excluded the expert, finding that her opinion was conclusion-driven rather than the product of a reliable application of her methodology. The court found that she selectively discounted established liver cancer risk factors while relying on scientific literature that did not support the causal conclusions she drew. The court emphasized that it could not simply allow the jury to sort through the expert's testimony without "abandoning its gatekeeping responsibility." That ruling ended the bellwether case: Without the expert's testimony, the plaintiff conceded she had no specific-causation evidence, and the court granted summary judgment before trial.

Conclusion

In *Sig Sauer* and *Valsartan*, the courts embraced their gatekeeping duties under Rule 702. They looked past the surface-level fact that an expert cited evidence and offered a plausible-sounding theory, instead requiring the plaintiffs to show that the experts had reliably connected the evidence to the specific causation opinion offered. The Social Media MDL order, by contrast, illustrates how courts do not always follow that approach, even after the enactment of the 2023 Rule 702 amendments.

For defense counsel, the lesson is not simply to raise reliability and fit deficiencies in a Rule 702 motion at the end of expert discovery. The causation defense should be framed from the outset. Defendants should identify early the precise causal link plaintiffs must prove and alert the court that plaintiffs' experts will likely rely on a generalized "totality of the evidence" approach rather than scientific evidence tied directly to that causal theory. This distinction should be reinforced throughout the case, including in case-management proceedings, discovery disputes, expert disclosures, depositions and dispositive briefing. By consistently focusing the court on the gap between broad scientific literature and the actual causation opinions necessary to carry the plaintiffs' burden, defendants can better position the Rule 702 inquiry as a threshold admissibility issue rather than a dispute to be left for the jury.

Matthew J. Malinowski *is a partner and trial lawyer at* ***Hollingsworth LLP****, representing clients in highly complex, "bet-the-company" trials and litigation, including environmental contamination claims, medical device and pharmaceutical products liability defense,*

SEC Plan Spares Mega IPOs From Audit Guardrails, Investors Say

July 22, 2026, 1:45 AM PDT

Summary by Bloomberg AI

AI Generated

- The SEC has proposed changes that could allow companies like OpenAI and Anthropic to forgo executive disclosures and extra scrutiny from auditors when they go public.
- Roughly 80% of US listed companies would see relief from certain disclosures under the proposal, which could apply to both smaller companies and tech behemoths.
- Investor and consumer advocates have warned that the proposal could erode shareholder protections and safeguards that have underpinned US capital markets for decades.

Tech behemoths preparing to go public like OpenAI and Anthropic would benefit from relaxed reporting rules meant for smaller companies under an SEC plan, investors and auditors warn.

Extending the reporting carve-out to a wide swath of listed companies would weaken fraud protections, and deliver less reliable and less comparable information to the markets, they told the SEC.

Roughly 80% of US listed companies would see relief from certain disclosures related to executive pay, certain past financial statement information, and auditor testing of financial reporting controls under a proposal the Securities and Exchange Commission released in May. Newly minted public companies could avoid more robust disclosures and auditor review for five years, regardless of their resources or ability to provide the information to the market.

The plan comes with more mega initial public offerings like SpaceX's June debut anticipated, fueled by advances in artificial intelligence. The SEC's proposed changes could not only apply to smaller companies that go public, but also tech giants, potentially limiting key investor information, asset managers and industry trade groups said in comment letters due Monday.

"Large newly public companies such as OpenAI and Anthropic could qualify for these temporary exemptions despite having significant resources and potentially broad investor ownership," Northern Trust Asset Management told the SEC in a letter.

Even well-known American companies and established stocks like JetBlue, Hertz, and Kohl's are among those that would qualify as "non-accelerated" filers under the proposal based on their recent market capitalization, making them eligible for relaxed reporting mandates, accounting firm CBIZ CPAs PC said in its letter.

SEC Chairman Paul Atkins has said the project is part of his renewed focus on "rightsizing" the agency's disclosure requirements, noting when the plan was unveiled that it intends to build on the success of the IPO on-ramp created by Congress through the JOBS Act in 2012. The SEC is expected to consider the feedback before it would release any final version of the rule.

Auditors urged the SEC to proceed with caution as it weighs raising the public float threshold for a company to be tagged as a "large accelerated filer" from $700 million to $2 billion. Companies could experience recurring changes in filer status due to modest changes in public float, KPMG LLP wrote.

Investor and consumer advocates warned that the proposal could erode shareholder protections imposed by Congress in the wake of the 2008 financial crisis and earlier accounting frauds that toppled Enron Corp. and WorldCom Inc.

"Weakening the auditor attestation safeguards for internal control over financial reporting and accountability for executive compensation decisions is a particularly dangerous and volatile deregulatory combination," the AFL-CIO wrote, calling the effort "shortsighted."

Executive Compensation

Critics of the SEC proposal's wider disclosure carveouts for companies warned the exemptions could lead to less comparable and detailed information used by investors in their analysis, requiring them to fill in the gaps.

By expanding the cohort of companies eligible for certain reporting exemptions, businesses with less than a $2 billion float could avoid requirements including shareholder advisory votes to approve corporate executives' compensation, called "say-on-pay" votes.

Those companies would also no longer be required to provide the CEO-to-median-worker pay ratio or a pay-versus-performance disclosure, according to the New York State Common Retirement Fund's letter.

The proposed exemptions would likely reduce the quantity and detailed nature of information available to investors, who are "best equipped to ingest and analyze increasingly larger data sets with the help of artificial intelligence," the fund said.

More than 95% of respondents to a late June and early July survey conducted and cited by the Society for Corporate Governance said investor expectations and analyst coverage would influence whether their company would use the proposed exemptions.

Consumer advocacy group Public Citizen told the SEC the exemptions violate congressional mandates, many of which were made in response to the financial crash.

"Executive compensation is not decimal dust on a company's balance sheet," the group's letter said.

Reporting Governance

Congress imposed auditor testing of financial reporting controls as part of a corporate governance overhaul following a series of accounting frauds nearly 25 years ago. The measures have contributed to fewer restatements and bolstered investor confidence in corporate revenue and asset values.

Those financial reporting backstops are becoming more critical as companies increasingly rely on AI to craft their reports, auditors argue.

Even with the proposed relief, CohnReznick LLP cautioned in its letter that auditors might still test controls regardless of any SEC exemptions, especially as companies incorporate AI into their reporting processes. Auditors also might have to expand their core financial statement testing if they don't rely on the company's internal controls, Ernst & Young LLP told the commission.

"Increasing reliance on technology and complex systems heightens the importance of robust controls and independent oversight for issuers and may limit the reduction in costs" stemming for eliminating the testing mandate, the Center for Audit Quality wrote.

A financial services trade group, however, urged the SEC to provide controls testing relief to a wider swath of companies. "This one requirement has been a direct cause of the decline in public companies over the last twenty years and its costs have clearly outweighed its benefits," the American Securities Association said.

Preformed Line Products Co., a mid-sized manufacturer in Ohio, also said it supports relief from the mandatory internal controls testing — calling it the "most significant and recurring compliance burdens" for the listed company.

To contact the reporters on this story: Jorja Siemons in Washington at jsiemons@bloombergindustry.com; Amanda Iacone in Washington at aiacone@bloombergtax.com

To contact the editors responsible for this story: Amelia Gruber Cohn at agrubercohn@bloombergindustry.com; Andrea Vittorio at avittorio@bloombergindustry.com

© 2026 Bloomberg Industry Group, Inc. All Rights Reserved

In landmark Anthropic settlement, judge rejects 'windfall' for lawyers | Business Information & News | FE

W today.westlaw.com/Document/Id0375b20852c11f1a197e75524805fa6/View/FullText.html

In landmark Anthropic settlement, judge rejects 'windfall' for lawyers

WASHINGTON, July 21 (Reuters) - A federal judge overseeing the $1.5 billion copyright settlement between Anthropic and authors sharply reduced the plaintiffs' legal fee request, rejecting a percentage-based award that she said would produce a "windfall" for the lawyers and divert tens of millions of dollars from class members.

U.S. District Judge Araceli Martínez-Olguín in Oakland approved the nationwide settlement on Monday but awarded class counsel about $101.6 million, below the $187.5 million they sought after cutting back an earlier request for $300 million.

The lawsuit alleged Anthropic trained its artificial intelligence models on hundreds of thousands of pirated books. Anthropic denied any wrongdoing. The settlement is the largest in a copyright class action in U.S. history.

The dispute over fees highlighted a recurring dispute in major class actions over how lawyers should be compensated. Courts can award fees based on a percentage of the settlement fund or use the "lodestar" method, which calculates fees based on hours worked and reasonable billing rates.

The difference between the approaches can be substantial, with millions more dollars potentially flowing to class members or to the lawyers who represent them.

The attorneys for the class at law firms Susman Godfrey and Lieff Cabraser had no immediate comment on the fee award. In a statement, Anthropic said it was looking forward to bringing the litigation to a close but declined to comment on legal fees.

The class lawyers initially sought $300 million in fees but withdrew that request after another judge indicated that he would not approve it. They later sought $187.5 million, arguing that the amount reflected the complexity of the litigation and the result achieved.

In court filings, the attorneys said a percentage-based award better aligned the interests of counsel and class members by rewarding lawyers for obtaining a larger recovery.

Anthropic in a court filing in December criticized the plaintiffs' fee approach, saying judges have questioned using the benchmark percentage model in the context of a so-called megafund settlement.

The authors' lawyers countered that Anthropic wanted to lower the fees to "discourage quality firms from bringing similar class actions against it in the future."

Martínez-Olguín, in her order, concluded the lodestar method was better suited to determining a reasonable fee in the case than a percentage-based award. She said granting the requested 12.5% share of the settlement fund would generate outsized profits for class counsel given the size of the recovery and the hours worked.

The judge increased the lawyers' lodestar award with a multiplier, citing the record-setting settlement, the novel copyright and AI issues involved, and the risk that counsel might recover nothing. The final fee award amounted to about 6.8% of the settlement fund.

"Class Counsel litigated complex, novel issues in an uncertain area of the law, where they faced a real risk of adverse rulings and zero recovery in this first of its kind litigation," Martínez-Olguín wrote.

Martínez-Olguín rejected a series of objections to the fee request by authors who are members of the class, finding that they did not account for the risks the plaintiffs' lawyers took.

Senate confirms Trump pick for 6th Circuit US appeals court | Business Information & News | FE

today.westlaw.com/Document/Id6c10d1085ef11f1a842e5f46c48d3a7/View/FullText.html

July 22 (Reuters) - The U.S. Senate on Wednesday confirmed a former top appellate lawyer for Ohio's attorney general, who once clerked for the late U.S. Supreme Court Justice Antonin Scalia, to a seat on a federal appeals court.

The Republican-led Senate voted 49-46 in favor of Benjamin Flowers becoming a judge on the Cincinnati-based 6th U.S. Circuit Court of Appeals.

Flowers was an associate at law firm Jones Day from 2015 to 2019 and served as Ohio's state solicitor general from 2019 to 2023. He will leave his post at law firm Ashbrook Byrne to join the appeals court.

He was confirmed over objections from a key Democrat who said Flowers supported baseless legal arguments put forward by Trump related to the 2020 election and immigration.

Flowers at the U.S. Supreme Court in January argued in favor of Trump's since-failed effort to limit birthright citizenship, and earlier filed a brief challenging Pennsylvania's administration of the 2020 presidential election that Trump lost, said Senator Dick Durbin, the ranking Democrat on the Senate Judiciary Committee.

A reproductive rights advocacy group said it opposed Flowers' nomination "due to his extensive record of hostility toward reproductive freedom."

Dozens of partners at Jones Day, one of the country's largest and most profitable law firms, told the Senate Judiciary Committee in a letter in May that "our time practicing law with Ben assures us that he will be exactly the type of judge that every American should want to have deciding their case."

Flowers became the ninth appeals court judge confirmed by the Senate in President Donald Trump's second term. Trump's other appointees include three of his personal attorneys: Matthew Schwartz, Emil Bove and Justin Smith.

The 6th Circuit hears appeals from Michigan, Ohio, Kentucky and Tennessee. Flowers will be the 11th Republican-appointed judge on the appeals court. Eight of those judges, including Flowers, were appointed by Trump. Six other judges on the court are Democrat appointees.

Taylor Farms, Taco Bell named in proposed class action over 'adulterated' lettuce | Secondary Sources | National

today.westlaw.com/Document/I56a8e95685f811f19f4f991e11ccd25a/View/FullText.html

Taylor Farms, Taco Bell named in proposed class action over 'adulterated' lettuce

(July 22, 2026) - Taylor Fresh Foods Inc. and Taco Bell Corp. owe damages for selling food containing iceberg lettuce allegedly contaminated with cyclospora, a West Virginia man says in a proposed class-action lawsuit filed in California federal court.

Null v. Taylor Fresh Foods Inc. et al., No. 26-cv-1943, *complaint filed* (C.D. Cal. July 21, 2026).

Taylor Farms and Taco Bell were negligent by failing to prevent cyclospora contamination and were unjustly enriched by selling the tainted products, Lawrence Null alleges in a complaint filed July 21 in the U.S. District Court for the Central District of California.

"Federal public-health authorities linked a nationwide outbreak of cyclosporiasis, a parasitic infection, to iceberg lettuce that Taylor Farms produced and supplied," the complaint says. "Consumers who purchased food containing that lettuce paid for a wholesome, merchantable product and received an adulterated one."

Cyclospora outbreak

In July, the U.S. Centers for Disease Control and Prevention, the U.S. Food and Drug Administration and other health agencies reported they were investigating a multistate outbreak of cyclosporiasis, an intestinal infection caused by the parasite cyclospora, which spreads through food or water contaminated with feces.

According to the CDC, more than 1,600 people in Michigan, Indiana, Ohio, Kentucky and West Virginia became ill from May 13 to July 13, with 94 hospitalizations.

Health officials linked the outbreak to Taylor Farms de Mexico shredded iceberg lettuce that was distributed to Taco Bell restaurants in the five states.

Taylor Farms responded in a July 17 statement that it was voluntarily recalling iceberg lettuce sourced from central Mexico.

After a re-review of the test, the FDA on July 19 called the test result a false positive, Reuters reported, adding that the FDA said the basis for linking Taylor Farms lettuce to the outbreak remained unchanged and that the agency was continuing its investigation.

Taylor Farms updated its statement to say "Today, FDA apologized to us. … To be clear, at this moment, FDA has not identified a single positive product test result for cyclospora."

Alleged economic injury

According to the complaint, Null bought three cheesy bean and rice burritos with added lettuce and one mini taco salad at the Taco Bell location in Ravenswood, West Virginia, on June 29.

He says he would not have purchased the food if he had known the lettuce was contaminated.

Null says neither he nor the putative class received the "benefit of their bargain" and that they sustained an economic injury because they paid for "wholesome food fit for human consumption" but received "adulterated food that could not lawfully be sold and was worth less than they paid, and in law was worthless as human food."

The suit alleges Taylor Farms and Taco Bell engaged in unfair or deceptive practices in violation of West Virginia's Consumer Credit and Protection Act, View more Negative TreatmentsW. Va. Code Ann. § 46A-6-104, by representing that the affected products were wholesome.
Null further alleges Taylor and Taco Bell were negligent and unjustly enriched and breached the implied warranty of merchantability.

He seeks class certification for a nationwide class and a West Virginia subclass of all people who purchased Taco Bell food containing Taylor Farms iceberg lettuce that was subject to recall, as well as Taylor Farms lettuce-containing products distributed through other channels, from May 1 through the date of final judgment.

Null, represented by Jason M. Ingber of Levi & Korsinsky LLP, also seeks actual, statutory and treble damages, plus restitution and disgorgement of money that the defendants received for the purportedly contaminated products.

Zelle must face New York attorney general lawsuit over 'rampant' fraud, judge rules | Business Information & News | FE

today.westlaw.com/Document/Idc61d9f085d311f1a842e5f46c48d3a7/View/FullText.html

Zelle must face New York attorney general lawsuit over 'rampant' fraud, judge rules

NEW YORK, July 22 (Reuters) - A judge rejected Zelle's bid to dismiss a lawsuit by New York Attorney General Letitia James, who said the electronic payment platform's refusal to adopt critical safety features enabled fraudsters to steal more than $1 billion from consumers.

In a decision late Monday, Justice Phaedra Perry-Bond of a New York state court in Manhattan said James sufficiently alleged that Zelle's parent Early Warning Services "prioritized accessibility, convenience, consumer adoption, and market dominance at the expense of consumer safety" in rushing the platform to market, despite objections from its banking partners.

Early Warning Services is owned by seven large U.S. banks: Bank of America, Capital One, JPMorgan Chase, PNC, Truist, U.S. Bank and Wells Fargo.

Perry-Bond said Zelle also conceded it still collects and retains fees from fraudulent transactions, raising the question of whether it implicitly or expressly approved what the fraudsters were doing.

James also objected to how Zelle was marketed to consumers, including claims that the platform offered "peace-of-mind" and was "backed by the banks, so you know it's secure."

Zelle intends to appeal.

"Reports of fraud and scams committed by bad actors against Zelle users have always been exceptionally low," spokesperson Eric Blankenbaker said. "The attorney general is targeting our company for political gain by recycling claims that courts across the country have rejected as meritless. The attorney general's claims are not supported by either the facts or the law."

Zelle "failed to protect users from rampant fraud," James said in a post on X. "We will keep fighting to hold big banks accountable and stop fraud in all of its forms."

CFPB BACKED AWAY

In seeking a dismissal, Zelle argued it was not misleading to advertise the platform as safe and secure.

It also said there was no liability for what it called "passive nonfeasance" in allegedly creating an atmosphere conducive to fraud.

Zelle was launched in 2017, and competes with apps such as PayPal's Venmo and Block's Cash App.

James said typical scams involved hacking into users' accounts and making unauthorized transfers, convincing users to send money for nonexistent goods and services, and impersonating banks, government offices and utilities.

She said it wasn't until 2023, after the U.S. Consumer Financial Protection Bureau and several members of Congress began probes, that Zelle adopted "basic" safeguards it had proposed four years earlier.

Consumers lost more than $1 billion to fraud at Zelle between 2019 and 2022, the attorney general said.

James sued after the CFPB dropped a similar case in March 2025. That agency ended most enforcement activity soon after U.S. President Donald Trump began his second White House term.

Artificial Intelligence

Top Senate Democrat Releases AI Package on Risks, Data Centers

July 21, 2026, 9:48 AM PDT

Sen. Mark Warner (D-Va.) unveiled a four-part national framework to address artificial intelligence, focused on infrastructure, consumer protections, the workforce, and national security.

The package includes several bills that target each area in response to growing concerns about the emerging technology. Warner's agenda comes as Congress is seeking to advance federal legislation on AI that would establish some rules of the road as the industry booms.

Data center development has accelerated nationwide, prompting fears about rising energy and water costs to consumers. Virginia, Warner's home state, has the largest data center concentration in the world. One of the bills in his package would require developers to provide reports to the public about their energy and water consumption, emissions, and other operations. The legislation also aims to encourage developers to meet strong sustainability and efficiency standards.

Warner also introduced measures that aim to promote the safe and responsible use of AI. One bill seeks to bolster competition in the marketplace and require consumer-facing agents to protect user data. Other bills would aim to combat non-consensual deepfakes and child sexual abuse material as well as AI-driven risks in financial markets.

The framework includes legislation that would establish a fund to support worker training and development as AI adoption increases across industries. Another provision would aim to expand the pipeline of American higher education students and researchers studying AI, quantum, and other critical technologies.

Warner, who serves as vice chair of the Senate Intelligence Committee, has raised concerns about AI's cybersecurity and national security risks. Part of his blueprint includes a bill that would create a mandatory testing environment for advanced AI models before deployment.

The White House last month issued an executive order that would direct the government to work with AI companies to voluntarily test their most powerful AI systems before releasing them to the public.

To contact the reporter on this story: Oma Seddiq in Washington at oseddiq@bloombergindustry.com

Amgen To Pay $74M To End Investor Suit Over $10.7B Tax Bill

law360.com/articles/2503870/amgen-to-pay-74m-to-end-investor-suit-over-10-7b-tax-bill

(July 21, 2026, 5:23 PM EDT)-- Pharmaceutical giant Amgen has agreed to pay $74 million to resolve an investor class action alleging it hid a $10.7 billion tax bill from shareholders, according to an agreement filed in New York federal court.

The Amgen tax bill at issue, which the company is challenging in the U.S. Tax Court, stemmed from intangible property that the drugmaker licensed to its Puerto Rican affiliate in exchange for royalty payments. (Kristoffer Tripplaar/Sipa via AP Images)

The Asbestos Workers Philadelphia Pension Fund asked the court Monday to approve the **settlement**, which would have Amgen pay $74 million in cash to the fund and other investors that claimed the drugmaker failed to timely disclose tax liabilities for 2010 through 2015. The Internal Revenue Service had assessed the tax bill after allocating California-based Amgen's profits from the company's Puerto Rican subsidiary.

According to the AWPPF, in a "best case" scenario where its allegations were proven at trial, maximum recoverable damages would have totaled approximately $740 million.

"While the settlement represents at least 10% of these maximum estimated recoverable damages, it would represent a much higher percentage if any of defendants' arguments limiting damages were accepted by the court or a jury," the fund said.

An Amgen spokesperson told Law360 on Tuesday that the company agreed to settle the case because it believes it is in the best interests of Amgen and its shareholders.

"We continue to believe that the claims in this case are without merit, and the settlement includes no admission of liability or wrongdoing," the spokesperson said.

Amgen's tax bill, which the company is **challenging** in the U.S. Tax Court, stemmed from intangible property that the drugmaker licensed to its Puerto Rican affiliate in exchange for royalty payments. In allocating profits back to the U.S., the IRS concluded that Amgen could not justify the "super-sized returns" that it attributed to the affiliate, according to Tax Court filings.

According to **the shareholders' suit**, filed in March 2023, the IRS sent Amgen proposed adjustment notices in early 2017 and in May 2020. The notices stated that the company "was relying on a profit allocation system that ran afoul of the U.S. tax code, and was on the hook for billions of dollars in back taxes," the complaint said.

Rather than disclose these notices, Amgen's filing with the U.S. Securities and Exchange Commission on July 29, 2020, contained "material omissions" that caused the stock to trade at artificially high prices, according to the complaint.

These omissions continued **until Amgen disclosed** in an April 27, 2022, SEC filing that the IRS was seeking over $10 billion, causing Amgen's stock to fall and investors to suffer hundreds of millions of dollars in losses, the complaint said.

A separate investor, Roofers Local No. 149 Pension Fund, filed the suit on behalf of all investors who purchased Amgen stock between July 29, 2020, and April 27, 2022.

U.S. District Judge John P. Cronan determined in July 2023 that the AWPPF's alleged losses of $100,000 were the largest in the class and appointed the fund as lead plaintiff.

Judge Cronan in September 2024 **denied Amgen's bid to dismiss** the suit, holding that the company had concealed the true nature of its dispute with the IRS by using vague descriptions such as "significant" and "substantial" when referring to its tax liabilities.

In urging the court to approve the settlement, the AWPPF said Monday that while it believes "significant evidentiary support exists for the allegations," it recognizes the hurdles of prevailing at trial. In addition, if Amgen succeeds in its Tax Court dispute, the company would try to use that ruling to undercut the shareholders' claims, according to the fund.

"Indeed, although plaintiff believes its case is strong, it acknowledges the uncertainties associated with this action," the fund said.

Representatives for Amgen and the AWPPF did not respond to request for comment Tuesday.

The Asbestos Workers Philadelphia Pension Fund is represented by Evan Jay Kaufman, Mario Alba Jr., Skyler J. Sands, Jason Ryan Edelman, Theodore J. Pintar and Eric I. Niehaus of Robbins Geller Rudman & Dowd LLP.

The Roofers Local No. 149 Pension Fund is represented by Brian Cochran and Samuel Howard Rudman of Robbins Geller Rudman & Dowd LLP.

Amgen is represented by Jay B. Kasner, Peter B. Morrison and Tansy Woan of Skadden Arps Slate Meagher & Flom LLP.

The case is Roofers Local No. 149 Pension Fund et al. v. Amgen Inc. et al., case number 1:23-cv-02138, in the U.S. District Court for the Southern District of New York.

EY Sued Over Breach Targeting Client Tax, Financial Info

law360.com/articles/2503497/ey-sued-over-breach-targeting-client-tax-financial-info

(July 20, 2026, 8:59 PM EDT)-- An Ernst & Young customer's personal, financial and tax information might have been compromised after it was determined cybercriminals accessed a third-party support ticket system used by EY's IT staff, he said in a proposed class action in New York federal court Monday.

In a **28-page complaint**, Peoria, Illinois resident Markishi Wyatt accused the global professional services firm of failing to prevent a data breach that occurred between March 28 and April 12, where unknown third-party actors accessed his confidential information, which were kept on EY's systems.

"On July 13, 2026, E&Y notified its clients that an unauthorized third party breached a support ticket platform used by its IT staff, downloading [personally identifiable information] including documents containing personal information tied to individuals' investment holdings with EY's institutional clients, along with financial and other information used in preparing tax filings," Wyatt said.

Wyatt argued the Big Four accounting firm negligently failed to use adequate and reasonable security measures to make sure its customers' sensitive information was protected and failed to prevent the data leak. He alleged he had to turn over his financial and tax information and other personal information to the firm through the course of ordinary business dealings.

"Because the exposed data at issue relates to financial holdings and tax data it is likely that it includes, without limitation, names, addresses, Social Security numbers, driver's licenses or other government-issued ID numbers and financial account numbers," Wyatt said.

Wyatt contended that EY's negligence in protecting his information is exacerbated by other data breaches that have been carried out against other businesses in different industries in recent years.

"Yet, despite the prevalence of public announcements of data breach and data security compromises, E&Y failed to take appropriate steps to protect plaintiff's and class members' [personally identifiable information] and financial and tax information from being compromised," Wyatt alleged.

EY owed its customers a duty to use reasonable security measures to protect their information, Wyatt said. The firm also owed a duty to design, maintain and test its systems, servers and networks to ensure its customers' sensitive data was adequately protected, the suit said.

Wyatt asserted several causes of action against EY, including negligence, breach of implied contract, breach of implied covenant of good faith and fair dealing, and unjust enrichment.

Wyatt has brought his suit on behalf of a proposed class consisting of all those in the U.S. whose personally identifiable information, including financial and tax information, was exposed from the data breach that took place earlier this year.

Wyatt asked the court to enter judgment in his favor, and grant injunctive and equitable relief, requiring EY to protect all information it gathers in accordance with all applicable regulations; industry standards; and federal, state and local laws. He also wants EY to purge its clients' information, and hire an outside security auditor and internal staff to run automated security monitoring, simulated attacks and regular audits on the firm's systems.

The court should ban EY from maintaining personal data on a cloud database, and it should have the firm conduct regular database scanning checks, and pay attorney fees and damages.

Earlier this year, Bank of America and EY **reached a $2.5 million deal** to resolve claims brought by nearly 200,000 people in multidistrict litigation over a May 2023 breach of the file transfer application known as MOVEit. In that case, the plaintiffs alleged cybercriminals known as "CL0P Ransomware Gang" abused a weakness in the MOVEit system and "threatened to name and publish the leaked data of any organizations that did not respond to its ransom demands."

Progress software confirmed vulnerabilities in its systems later on. EY, as a consultant of Bank of America, had the responsibility to protect the personal information of the bank's customers, the plaintiffs had alleged.

More than 100 other commercial and government entity defendants face liability in the multidistrict litigation stemming from the breach. Recently, Cadence Bank reached a **$5.3 million deal** to end negligence claims it faced in the MDL, and Nebraska-based Union Bank & Trust Co. agreed to pay $2.4 million **to resolve its alleged wrongdoing** associated with the breach.

Wyatt is represented by Blake Hunter Yagman of Yagman PLLC and Kevin Laukaitis of Laukaitis Law LLC.

The case is Markishi Wyatt v. Ernst & Young LLP, case number 1:26-cv-06108, in the U.S. District Court for the Southern District of New York.

How 2nd Circ. Raised The Bar For Pleading Securities Fraud

On June 26, the U.S. Court of Appeals for the Second Circuit issued a decision in Huey v. Anavex Life Sciences Corp. affirming the dismissal of a securities fraud complaint for failing adequately to allege loss causation where the stock price increased upon the corrective disclosure and did not decline for a few days thereafter in the face of a broader market decline.[1]

While the ramifications of this decision remain to be seen, the ruling represents a significant expansion of a lead plaintiff's burden in pleading loss causation, as well as a court's role in evaluating such a pleading, under the Second Circuit's 2005 decision in Lentell v. Merrill Lynch & Co.[2]

Lentell

For over two decades, the Second Circuit's decision in Lentell, authored by U.S. Circuit Judge Dennis Jacobs, has been widely cited on the requirements for pleading loss causation in actions alleging violations of Section 10(b) of the Securities Exchange Act.[3]

In that case, the lead plaintiffs alleged that research analysts issued false and misleading research reports recommending that investors buy or accumulate shares of certain companies when those analysts purportedly did not believe those recommendations and issued them only to generate investment banking business.[4] The lead plaintiffs claimed that they adequately alleged loss causation based on the decline of the share prices of those companies following later analyst downgrades — which coincided with the burst of the dot-com bubble.[5]

The Second Circuit disagreed with the lead plaintiffs' argument, reasoning that they failed to sufficiently allege the required causal link.

The Second Circuit explained that, at the pleading stage, loss causation requires: (1) a "relationship between the plaintiff's investment loss and the information misstated or concealed" that is "direct" and not "attenuated"; (2) "both that the loss be foreseeable and that the loss be caused by the materialization of the concealed risk"; and (3) "that the market reacted negatively to a corrective disclosure."[6]

In holding that lead plaintiffs had failed to allege loss causation, the Second Circuit emphasized that "when the plaintiff's loss coincides with a marketwide phenomenon causing comparable losses to other investors, the prospect that the plaintiff's loss was caused by the fraud decreases."[7] In that case, the lead plaintiffs' losses were disconnected from the correction of the supposedly fraudulent buy or accumulated research report recommendations, which were coupled with information about the volatility risk inherent in those internet companies.[8]

The Anavex District Court Decision

In June 2025, U.S. District Judge Colleen McMahon of the U.S. District Court for the Southern District of New York**addressed** the sufficiency of a securities fraud complaint in Huey v. Anavex, where the defendant's stock price rose on the day of the alleged corrective disclosure and declined on subsequent days, both consistent with market movements on those dates.[9]

The operative complaint alleged Anavex had issued materially false or misleading statements related to an endpoint used in its clinical study of a drug.[10]

Judge McMahon held that lead plaintiff failed to plead loss causation because, on the day of the alleged corrective disclosure, the company's stock price went up, not down, and the stock price decline on the following two days tracked the direction of leading market indices.[11]

In light of the stock price movements, Judge McMahon concluded that amendment would be futile, dismissing the complaint with prejudice.[12]

The Anavex Second Circuit Decision

The Second Circuit panel of U.S. Circuit Judges Guido Calabresi, Dennis Jacobs and Alison Nathan affirmed Judge McMahon's decision, concluding that the lead plaintiff's pleadings did not explain why her loss was delayed and why it was caused by Anavex's corrective disclosure, rather than by broader market forces.[13]

The Second Circuit explained that, under the pleading standard derived from the U.S. Supreme Court's 2009 **ruling** in Ashcroft v. Iqbal, a "plausible causal link is easy to establish where the share price declines" following a corrective disclosure "while the market does not."[14] When that is not the case, however, the Second Circuit made clear that "more must be pleaded" — specifically, facts that, if proven, would show that any loss was caused by the alleged misstatements rather than intervening events.[15]

Expanding on the inquiry set forth in Lentell, the Second Circuit tasked courts to "conduct a precise inquiry to ascertain the plausible existence of [a] causal link and proximity."[16] As a part of that inquiry, the Second Circuit explained that courts must view loss causation allegations in a fraud-on-the-market case in the context of the market's broader movements, as well as the time gap between the corrective disclosure and the alleged loss.[17]

Indeed, the Second Circuit took judicial notice of Nasdaq Composite data in the days following the corrective disclosure "to provide objective market context against which the plaintiff's allegations could be evaluated."[18]

Notably, the Second Circuit expressly declined to adopt a categorical rule requiring a company's stock price to fall immediately after a corrective disclosure.[19] It held, however, that where a plaintiff's loss occurs some time after the corrective disclosure, it is the plaintiff's burden to plead facts showing why the loss was not immediate.[20]

The Second Circuit explained that "the necessary showing at the pleading stage increases — sometimes dramatically — where the loss does not immediately follow the corrective disclosure."[21] Moreover, where the market also declines on the days of the alleged losses, a plaintiff's "plausibility burden increases further."[22]

Assessing the particular allegations in the case, the Second Circuit faulted the lead plaintiff for failing to plead facts explaining why the stock price decline was delayed or why the increase in Anavex's share price on the day of the corrective disclosure did not cut against the plausibility of her loss causation allegations.[23]

The Second Circuit ultimately determined that the lead plaintiff's complaint provided "no indication" of the aforementioned factors and thus concluded that the initial increase in Anavex's share price, the correlation with the market over the next two days and the delayed loss all undermined the plausibility of a causal link, making dismissal appropriate.[24]

Looking Ahead

Loss causation is one of the most extensively litigated issues in motions seeking to dismiss securities fraud complaints. In Huey, the Second Circuit appears to have increased the burden on lead plaintiffs in pleading loss causation — and district courts in evaluating such a pleading — where there is no immediately evidenced causal link, i.e., no immediate share price decline following the corrective disclosure that deviates from the market returns on that date.

Importantly, the Second Circuit's reasoning appears to apply broadly to any situation in which there is any disconnect between the price reaction and the lead plaintiff's loss, and in such circumstances requires the lead plaintiff to say more and provide some indication of why the disconnect exists to plausibly establish causation.

This approach generates new questions that the district courts must grapple with. For instance, which particular factual circumstances will require a lead plaintiff to plead more? Is a delayed price decline that is inconsistent with the market movements sufficient? Is an immediate stock price decline that corresponds with the market movements on that date sufficient? District courts will be left to draw those lines.

Similarly, what is the more that lead plaintiffs must plead?

While the Second Circuit was clear that it is not requiring the district courts to conduct event studies at the pleading stage, it nevertheless has articulated a standard pursuant to which lead plaintiffs are now required to plead facts explaining why their loss is still plausible in the face of the underlying share price and market movements. Ultimately, future securities decisions from district courts will demonstrate how the Second Circuit's decree applies to varying fact patterns.

Data Capture Alone Doesn't Violate Calif. License Plate Law

law360.com/articles/2504099/data-capture-alone-doesn-t-violate-calif-license-plate-law

(July 21, 2026, 10:07 PM EDT)-- A California state appeals court has refused to revive a proposed class action that accused a vehicle location data company of unlawfully collecting drivers' data through automatic license plate readers, saying in a published opinion that the suit's plaintiff couldn't lean on his "subjective belief" that his privacy was invaded.

A three-judge panel of the Fourth Appellate District ruled Monday that under the plain text of California's Automated License Plate Recognition Systems statute, standing to sue under the statute requires "actual harm."

But plaintiff Guillermo Mata "makes no attempt to show that he has been harmed" by any of Digital Recognition Network Inc.'s alleged violations, the panel said.

Writing for the panel, Justice Truc T. Do acknowledged privacy concerns that come with the ability for technology to capture license plates numerous times a day via different types of cameras.

"The fear is understandable," Justice Do said.

But Mata's "subjective belief of harm" is "not a cognizable harm for standing under the ALPR statute," she said.

"While he contends that there is a factual dispute about whether DRN's usage and privacy policy is adequate, whether that policy is sufficiently conspicuous on DRN's website, and whether DRN's security procedures and practices are sufficient, Mata has not identified how he has been directly harmed by those alleged violations," Justice Do said.

Enacted in 2015, California's ALPR statute regulates public agencies and private entities in their operation and use of an ALPR system, defined as a "searchable computerized database resulting from the operation of one or more mobile or fixed cameras combined with computer algorithms to read and convert images of registration plates and the characters they contain into computer-readable data."

Among the statute's requirements are for operators of such systems to implement a usage and privacy policy to ensure that the collection, use, maintenance and dissemination of information is "consistent with respect for individuals' privacy and civil liberties." The policy must also be available in writing and be "posted conspicuously" on any of the operator's websites.

Mata sued in 2021, claiming that while DRN maintains a written privacy and usage policy on its website, the vehicle location data and analytics company was only trying to "maintain the appearance of adhering" to the statute and to "pay lip service to privacy laws without having any intention of actually complying with them."

He sought to represent a class of all persons in California whose license plate data was collected by DRN using an automatic license plate reader.

Mata filed his appeal to the Fourth Appellate District after a trial court granted summary judgment in favor of DRN. The trial court had agreed that Mata lacked standing to sue.

In affirming the trial court's judgment, the Fourth Appellate District on Monday said that the statutory text — California Civil Code Section 1798.90.5 — confirms that "actual harm" is needed for standing.

Justice Do said the statute "differentiates between the concept of harm, on the one hand, and the concept of a statutory violation, on the other."

The statute, she said, specifically states that an individual may sue if "harmed by a violation."

The use of the proposition "by" further shows that the harm must arise from the violation, Justice Do said.

Turning to the dictionary definition of "harm," Justice Do agreed with Mata that California's Legislature did not intend for only monetary damages to establish harm and that the inclusion of statutory damages suggests an intention to allow plaintiffs to recover for "difficult to quantify" harms.

"But it does not follow, as Mata contends, that it signals the Legislature's intention to authorize an individual to bring suit based on the type of amorphous harm he has articulated," Justice Do wrote.

Giving "effect 'to every word' in section 1798.90.54(a), we conclude standing under the ALPR statute requires that a plaintiff must demonstrate actual harm that arises from the violation," Justice Do said.

Counsel for Mata and DRN did not immediately respond to requests for comment late Tuesday.

Justices Truc T. Do, David M. Rubin and Judith McConnell sat on the Fourth Appellate District panel.

Mata is represented by Aaron Lawson of Edelson PC.

DRN is represented by Nancy L. Stagg, Xiao Jing Diego Wu Min, Cole B. Ramey, Timothy E. Taylor and John D. Robinson of Kilpatrick Townsend & Stockton.

The case is Guillermo Mata v. Digital Recognition Network Inc., case number D084781, in the Court of Appeal of the State of California, Fourth Appellate District.

Settlement Admins, Banks, Fintechs Target Conspiracy MDL

law360.com/articles/2503232/settlement-admins-banks-fintechs-target-conspiracy-mdl

(July 21, 2026, 9:02 PM EDT)-- Two banks, three prepaid card companies and four major class action settlement administrators asked a D.C. federal judge to dismiss the consolidated proposed class action accusing them of a wide-ranging kickback scheme juicing administration fees while diminishing class action payouts.

The three groups of defendants each filed their own motion to dismiss Friday. The individual administration companies, Angeion Group LLC, Epiq Class Action & Claims Solutions Inc., JND Legal Administration and Kroll Settlement Administration LLC, also filed their own motions to dismiss.

Their target: the combined lawsuits **consolidated late last year** accusing the administrators, controlling an estimated 80% of the market, of secretly working with Huntington National Bank and Western Alliance Bank to divert settlement deposits to the banks, which in turn allowed the administration companies to siphon off interest that should have either been distributed to claimants or put toward reducing administration costs. Prepaid card companies Blackhawk Network Holdings Inc., Tremendous LLC and Digital Settlement Technologies LLC allegedly helped facilitate the conspiracy, including helping to hide it, since their cards were used to distribute the settlement proceeds.

The sweeping complaint alleges a fraudulent conspiracy under the Racketeering Influenced and Corrupt Organizations Act; that the banks and administrators breached their fiduciary duty to class members; that the prepaid card companies or "fintech" defendants facilitated that breach; and that the banks and administrators violated antitrust law by conspiring "to reap hundreds of millions of dollars in undisclosed kickbacks and compensation from the bank defendants, while increasing the costs and depressing the payouts on thousands of class actions that a competitive administrator market would otherwise produce."

In seeking dismissal Friday, the administrators and banks argued they have no fiduciary duty to class members. They attacked assertions of an anticompetitive conspiracy and argued that class members have no financial relationship with administrators, meaning they're not "direct" purchasers able to pursue damages under federal antitrust law. And the fintechs said the lawsuit's focus on the other defendants leaves them as addendums to a complaint that accuses them of little more than "silence," which is not enough to allege fraud.

According to the administrators' main brief, any fiduciary duty to claimants under Federal Rule of Civil Procedure 23 is assigned to class counsel, not settlement administrators.

"Settlement administrators serve a different function altogether. Rule 23 says nothing about settlement administrators, and none of the underlying settlements referenced in the complaint identifies any administrator defendant as a fiduciary," they said. "That is because settlement administrators are third-party service providers retained by counsel and approved by the court for the limited purpose of ministerially implementing the terms of settlements negotiated by counsel."

The administrators said that without a fiduciary duty, "nearly all of the remaining claims collapse."

"Absent a fiduciary duty, the claim that administrator defendants failed to disclose business arrangements with bank and fintech defendants necessarily fails," they said. "So too do plaintiffs' omission-based fraud, negligent-misrepresentation, negligence, civil-conspiracy, unjust-enrichment, and civil RICO claims — each of which depends on the existence of an affirmative duty to disclose arising from a nonexistent fiduciary relationship."

The antitrust claims fail, they said, because the claimants never purchased anything from the administrators, let alone anything directly. Instead, it was class counsel who solicited bids from administrators and the court that approved their work, according to the brief.

"At no point did class members directly purchase or fund any transaction in the administration process, nor were they even involved in the selection of an administrator. Rather, they received a portion of the funds provided by settling defendants only after an administrator had been selected, and after costs and class-counsel fees were approved by the court," the administrators said.

The banks similarly argued they "maintained ordinary debtor-creditor relationships with the administrators and had no direct dealings (let alone fiduciary relationships) with plaintiffs."

Without a fiduciary duty, the banks said there's no underlying fraud to support a RICO claim, among other failings, including an inability to directly trace injury back to them.

"Specifically, there were at least two intervening steps between the bank defendants and plaintiffs' claimed injury: first, the selection of a bank by class counsel or an administrator, and second, class counsel's investment instructions to the bank. That separation renders plaintiffs' claimed injuries too remote to support a RICO claim," the banks said.

In targeting the antitrust claims, the banks said the claimants haven't alleged "any communication between the bank defendants about the interest they would provide in class action settlements," let alone claims that would support assertions that they conspired with the administrators to keep interest rates artificially low.

The banks also argued that many of the claims are time-barred under a four-year clock, since the interest rates paid to class members "were known or available to plaintiffs and class counsel at the time the payments were made, and class counsel, which included some of the most sophisticated law firms in the country, were obliged to ensure their clients' interests were being served."

The fintechs in turn argued that the plaintiffs concede that they made no "actionable misstatement" and had no fiduciary duty, meaning there can be no fraud-based claims against them.

"Plaintiffs admit that the fintech defendants had no fiduciary or similar obligation and allege nothing beyond silence by the fintechs, who were not before any settlement court. By plaintiffs' own reasoning, their fraud-based claims fail," they said.

Without "any underlying primary violation," the fintechs said there can be no claims they helped the other defendants commit fraud or breach fiduciary duties.

An attorney for the plaintiffs, Christopher Seeger of Seeger Weiss LLP, assailed the motions in a statement.

"These motions to dismiss are without basis and blatantly ask the court to look past class members' allegations that they were shortchanged through hidden financial arrangements, which intentionally diverted money they should have received," Seeger said. "We look forward to responding to these motions and holding these defendants accountable in court, both to increase transparency in the claims administration process and to ensure class members finally receive the justice and compensation they are owed."

Counsel for the defendants did not immediately respond late Tuesday to requests for comment.

The plaintiffs are represented by Boies Schiller Flexner LLP, Edelson Lechtzin LLP, Seeger Weiss LLP, Aylstock Witkin Kreis & Overholtz, Bradley & Grombacher LLP and Stone & Magnanini LLP.

Epiq is represented by WilmerHale.

Angeion Group LLC is represented by Morgan Lewis & Bockius LLP.

Kroll is represented by Winston Taylor.

JND Legal Administration is represented by Arnold & Porter Kaye Scholer LLP.

The Huntington National Bank is represented by Winston Taylor.

Western Alliance Bank and Digital Settlement Technologies LLC are represented by Sullivan & Cromwell LLP.

Tremendous LLC is represented by Wilson Sonsini Goodrich & Rosati PC.

Blackhawk Network Holdings is represented by Weil Gotshal & Manges LLP.

The case is In Re Class Action Settlement Administration Litigation, MDL No. 3162 and case number 1:25-mc-00179, in the U.S. District Court for the District of Columbia.

Nike's Discounts Based On Phony Reference Prices, Suit Says

law360.com/articles/2504111/nike-s-discounts-based-on-phony-reference-prices-suit-says

(July 21, 2026, 8:05 PM EDT)--Nike was slapped with a proposed class action in California federal court on Tuesday that accuses it of hawking bogus discounts and savings on footwear and other goods sold online by displaying reference prices that don't reflect the actual prevailing market prices.

Nike is accused of hawking discounts for items sold on its website and mobile app based on fictitious reference prices, misleading shoppers into believing they were scoring savings when they were not, according to a proposed class action filed on Tuesday in California federal court. (Court Documents)

La Mesa resident Corinne Pearson accused the sportswear apparel giant of using a misleading reference price scheme on its website and mobile app that tricks customers into thinking they are scoring savings on purchases when they are not.

"Deceptive reference pricing is a strategy known to retailers, and it was broadly deployed post-pandemic 'to drive sales and unload excess inventory as rising inflation and other economic concepts led consumers to pull back from making discretionary purchases,'" the suit said. "Thus, Nike knew or should have known that its pricing scheme was false or misleading."

Pearson contended that the reference prices listed on Nike's website are fake, and that its sales often last longer than 90 days. Since those items are on sale for more than 90 days, the listed reference prices are "stale" and don't reflect their prevailing market prices, the suit alleged.

On April 26, 2025, Pearson said she ordered black Nike Killshot 2 leather shoes that were listed for sale on Nike's mobile app. She added that she saw the crossed-out reference price of $100 for the footwear and the marketed sale price of $54.97 that she believed marked a genuine discount from the regular prevailing market price.

Pearson said she bought the shoes for $54.97 thinking she was saving at least $45 — yet the shoes have been on sale through Nike's site with an advertised $90 reference price since at least Jan. 19, 2025. Nike never sold the shoes for $90 on its website or for $100 on its mobile app in the 90 days immediately before she bought them in April 2025, the suit said.

Pearson's complaint also referenced other Nike products sold online that she claims use the deceptive reference pricing scheme. She claimed the Nike Air Max 2017 men's footwear is an "emblematic example" of such an advertising practice. Between Sept. 8, 2025, and March 14, Nike's site listed a $190 reference price for the shoes, implying that its prevailing market price was $190.

However, when the shoes were listed for sale, customers were shown a sale price of $114.97 and also shown that this marked a 39% discount, according to a screenshot included in the complaint from Oct. 23, 2025.

Reasonable customers would understand that to mean that they can save $75 on their purchase of the shoes if they bought them while on sale, Pearson argued. However, pricing data for those shoes indicate that they were on sale for six months, and Nike never sold them for more than $171.97 between Sept. 8, 2025, and March 14, she added.

Under California law, any published former price must reflect actual prevailing market price for the advertised item, the suit said.

"Simply put, an item 'on sale' in California must have been openly and actively offered for sale at the advertised 'former price' within 90 days of the sale," Pearson said. "Notwithstanding these prohibitions, Nike engages in a widespread scheme of advertising deceptive reference prices on its website and on its mobile app ... [to] include a deceptive, slashed reference price along with a purported 'sale' price and a calculation of the purported discount as a percentage."

Pearson's suit echoes similar false advertising complaints that have been filed in recent years wherein customers claim they were led to think they were scoring savings or steep discounts on products when they were not.

In June 2025, a Nike customer filed a proposed class action in Washington state court alleging the company flooded his inbox with promotional emails containing misleading subject lines to trick him into making purchases based on discount deals that did not have legitimate expiration dates.

And Shutterfly-owned printing company Snapfish **was sued in late February** in California federal court for allegedly embellishing discounts on products sold on its site with false reference prices that artificially inflated their value and misled customers into thinking they were scoring a better bargain than they actually were.

Additionally, Under Armour was hit with a proposed class action **in New York federal court in October 2024** alleging it promised customers huge savings on athletic apparel sold online and at its brick-and-mortar stores by including bogus higher reference prices on items that are virtually never sold at those prices.

Pearson's suit asserts causes of action for unjust enrichment and violations of California's Unfair Competition Law, False Advertising Law and Consumer Legal Remedies Act. She brings her claims on behalf of a proposed class of Golden State customers who bought a Nike product through its website or app at a discount from a higher advertised reference price on or after July 21, 2022.

Pearson asks the court to certify the proposed class, name her as class representative and her attorneys as class counsel, and find that Nike violated the consumer protection laws alleged in the case. Pearson also wants the court to order Nike to disgorge its profits from the alleged scheme, and permanently ban it from using the challenged advertising practices.

Representatives for the parties did not immediately return inquiries seeking comment on Tuesday.

Pearson is represented by Manfred P. Muecke of Manfred APC, Anna P. Prakash, Brock J. Specht and Patricia C. Dana of Nichols Kaster PLLP, and Maxwell K. Weiss of Don Bivens PLLC.

Counsel information for Nike was not immediately available.

The case is Corinne Pearson v. Nike Inc., case number 3:26-cv-04167, in the U.S. District Court for the Southern District of California.

Class Cert. In Avandia MDL Undone For Lacking Stats

(July 21, 2026, 8:00 PM EDT)-- The Third Circuit undid class certification for a group of health plans claiming GlaxoSmithKline deceptively marketed its diabetes drug Avandia, with a panel majority ruling Tuesday the plans needed stronger statistical analysis to show links between the marketing, the revelation of side effects and a drop in sales.

A 2-1 majority said the "third-party payors" hadn't shown more than "correlation" between the allegedly deceptive marketing and physicians' prescriptions for Avandia, and the plans needed a regression analysis to rule out other causes and solidify that there was causation common to all the proposed class members.

"Evidence of mere correlation leaves causation speculative, particularly regarding quantitative questions like how much of the prescription volume the fraud caused or the probability that every member of the class covered at least one relevant prescription," the majority **said in its opinion** authored by U.S. Circuit Judge Thomas L. Ambro. "The point is not that a jury might not believe the data. It is that there is a limit to what the data, if believed, can prove."

The panel unanimously agreed, with one judge concurring, to undo the class certification and remand the suit to the district court for additional evidence and analysis.

Led by United Food and Commercial Workers Local 1776 and Participating Employers Health and Welfare Fund, along with J.B. Hunt Transport Services Inc., the third-party payors had been merged into a multidistrict litigation over GSK's alleged efforts to hide or downplay the cardiac side effects of Avandia between its introduction in 1999 and the addition of a warning in 2007.

A Pennsylvania federal judge had **approved class certification** in May 2025, but GSK appealed, **arguing to the Third Circuit** in February the court had already thrown out or limited the expert reports that the plans had previously cited to support their causation theories.

After agreeing that the class was ascertainable from the health plans' records, the panel Tuesday sided with the drugmaker on the need to bolster the plaintiffs' claims of causation.

"In this case, the predominance question is whether the plans can prove by class-wide evidence that they covered more Avandia prescriptions by reason of GSK's fraud. To do so, they must prove prescribers relied on GSK's misrepresentations," the panel said.

One expert, Dr. Meredith Rosenthal, had opined that Avandia prescriptions were 41% higher on account of the alleged deception. But the district court judge threw out her report after a Daubert hearing because her mathematical model "deviated from the standards of her field," was "results-oriented" and appeared "particularly susceptible to false positives," according to the opinion.

Another plaintiff's expert, Dr. Thomas McGuire, had focused on damages, but still had part of his analysis thrown out because it had relied on Rosenthal's report, the panel added.

"The plans could have cleared the bar if they had introduced statistical evidence of causation, like a regression analysis. They tried. But the district court struck that evidence after a Daubert hearing," the judges said. "Without it, the plans have only statistical evidence of correlation and circumstantial evidence of causation."

All that was left was GSK's internal marketing studies, and data showing a drop in prescriptions after a 2007 study conducted by Dr. Steven Nissen showed Avandia's cardiac risks.

The GSK internal studies were not useful to prove causation because they did not separate out the allegedly deceptive marketing from the rest of the drugmaker's advertising efforts, the panel said.

The plans cited the drop after the Nissen study as evidence that prescriptions would have dropped earlier if GSK had come clean, but the majority said other circuits have ruled in similar cases that such links are not strong enough without a more thorough analysis.

U.S. Circuit Judge Patty Shwartz said in a concurrence separately she would have still remanded the case, but noted she was more persuaded by the Nissen study than her colleagues.

"Notably, GSK has offered no explanation for the plummeting prescriptions after the Nissen study's publication aside from the revelation of its fraud," Judge Shwartz said. "While it is circumstantial, it could support an inference that at least some Avandia prescriptions written before the drop were written in reliance on the fraudulent marketing, particularly in view of GSK's failure to offer an alternative explanation for the drop."

Judge Shwartz also said a regression analysis was not strictly required by the law.

Counsel for the parties did not respond to requests for comment Tuesday.

U.S. Circuit Judges Patty Shwartz, Tamika R. Montgomery-Reeves and Thomas L. Ambro sat on the panel for the Third Circuit.

The health plans are represented by Thomas M. Sobol and Erin C. Burns of Hagens Berman Sobol Shapiro LLP, and James R. Dugan II of Dugan Law Firm APLC.

GSK is represented by Devora W. Allon, Cole Carter, James Hileman, Jay P. Lefkowitz, and Kevin M. Neylan Jr. of Kirkland & Ellis LLP.

The case is In re: Avandia Marketing, case number 25-2278, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by P.J. D'Annunzio. Editing by Lakshna Mehta.

Correction: An earlier version of this article included incorrect counsel information. The error has been corrected.