AI Privacy Settlement Vacated, Remanded For Lack Of Separate Class Counsel

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Body

A Seventh Circuit U.S. Court of Appeals panel vacated and remanded a settlement of claims brought under the Illinois Biometric Information Privacy Act (BIPA) against the creator and curator of a massive digital photo database after agreeing with two objectors that the nationwide class members lacked a separate representative and counsel to protect their interests when settlement funds were allocated in greater shares to four state subclasses (*Robert Weissman, et al. v. Clearview AI, Inc., et al., No. 26-1673, 7th Cir., 2026 U.S. App. LEXIS 20406*).

(Opinion available 97-260724-053R)

Judge David F. Hamilton wrote the July 13 opinion, joined by Judges Nancy L. Maldonado and Rebecca Taibleson, ruling on an appeal filed by Robert Weissman and Rick Claypool. Weissman and Claypool objected to the settlement reached by plaintiffs Rodell Sanders, Gerard Dache, Eric Gould and Jordan Orlando with Clearview AI Inc., co-founders Hoan Ton-That and Richard Schwartz, Rocky Mountain Data Analytics LLC and Thomas Mulcaire, Clearview's general counsel and Rocky Mountain's vice president (Clearview, collectively).

Judge Sharon Johnson Coleman of the Northern District of Illinois granted final approval of the settlement on March 20, 2025, after which Weissman and Claypool filed an April 18, 2025, notice of appeal that was docketed in the Seventh Circuit on April 21, 2025.

In addition to their representation contention, Weissman and Claypool also asserted on appeal that the settlement provided no injunctive relief and offered uncertain monetary recovery.

Biometric Database

In January 2020, consumers began filing lawsuits against New York-based Clearview for its creation of a database of more than 3 billion pictures of U.S. citizens that were scraped from millions of websites by artificial intelligence. Ultimately, 12 such suits were consolidated in the District Court.

Named as defendants in the first amended consolidated class complaint were Clearview and two of its principals, its general counsel and Rocky Mountain Data Analytics LLC, a special purpose entity that was used to contract with the Illinois secretary of State (Clearview, collectively). The plaintiffs also sued Macy's Inc. and related entities (Macy's, collectively). Macy's was a Clearview client that the plaintiffs said used the company's database more than 6,000 times.

The plaintiffs claimed that Clearview "used artificial intelligence algorithms to scan the face geometry of each individual depicted in the photographs in order to harvest [their] unique biometric identifiers and corresponding biometric information."

Partial Dismissal

The plaintiffs proposed a nationwide class of anyone whose biometric data was or is contained in Clearview's database since July 2017, as well as subclasses from Illinois, California, New York and Virginia. The plaintiffs alleged violations of BIPA, 740 Ill. Comp. Stat. 14/1 et seq., Virginia Code Section 8.01-40, Va. Code 8.01-40, for unauthorized use of name or picture, the Virginia Computer Crimes Act, Va. Code 18.2-152.1 et seq., California's unfair competition law, Cal. Bus. & Prof. Code 17200 et seq., California Civil Code Section 3344(a), Cal. Civ. Code 3344(a), for commercial misappropriation, California's common-law right of publicity, California's constitutional right to privacy and New York Civil Rights Law Sections 50-51, N.Y. Civ. Rights Law 50-51, as well as unjust enrichment.

In June 2021, Judge Coleman denied the plaintiffs' motion for a preliminary injunction.

In January and February 2022, respectively, Judge Coleman partly granted Macy's and Clearview's motions to dismiss, disposing of some of the state law claims. However, the BIPA claims survived, with the judge finding that the plaintiffs adequately pleaded an injury-in-fact sufficient to establish standing.

Settlement Framework

In a Sept. 6, 2023, joint status report, the parties informed the court that they had completed a settlement framework to guide the drafting of definitive documentation for a settlement agreement.

In May 2024, a third amended complaint was filed to include all four of the named plaintiffs. The same counts were alleged.

On June 12, the plaintiffs filed an unopposed motion for preliminary approval of the settlement. They explained that mediation was complicated by "the sheer number of people in the class - virtually anyone in the United States whose face appears on the internet," which meant that any class relief "would have to be significant."

The plaintiffs revealed that the parties agreed on a monetary settlement equal to the value of 23% of Clearview's capitalization as of Sept. 6, 2023, which was approximately $225 million. They estimated that after incentive awards and attorney fees are paid, there should be a common settlement fund of more than $31 million. Alternatively, the class may opt for a settlement equal to 17% of Clearview's revenue, as recognized by generally accepted accounting principles, from the date of final approval until Sept. 30, 2027. The plaintiffs touted this as "an extraordinary result given the challenges . . . and the lack of funds." The settlement will be funded by an initial public offering, a "deemed liquidation event," a cash demand from the settlement master to Clearview or sale of the right to receive the settlement payment, the plaintiffs stated.

Final Approval

Judge Coleman granted preliminary approval on June 21, also certifying the proposed classes for settlement purposes.

On Sept. 6, the plaintiffs filed a motion for attorney fees. They requested a fee award of 39.1% of the settlement fund, noting that this also includes expenses. Incentive awards of $1,500 for each named plaintiff were also requested.

In her March 20, 2025, final approval ruling, Judge Coleman found the 39.1% attorney fee award to be in accord with Seventh Circuit case law. She also rejected objections to the lack of injunctive relief, explaining that only the seven BIPA claims directly targeted data privacy and biometrics, while the remaining state law claims were "novel and untested" and comparatively weaker and the BIPA claims raised questions about extraterritorial application.

She also rejected objections to the settlement's equity-based relief, finding that it reflected Clearview's precarious financial condition and avoided the risk that the plaintiffs would prevail but recover nothing, and declined to address broader constitutional concerns about facial recognition technology because her role was limited to determining whether the settlement was fair, reasonable and adequate.

Appellate Pleadings

In their July 7, 2025, appellants' brief, Weissman and Claypool first noted that the operative complaint "alleges that the class has no adequate remedy at law and that monetary damages alone are inadequate" before stating that the District Court "[n]evertheless approved a proposed settlement that lacks any injunctive relief."

In doing so, the objectors-appellants noted that in its order granting final approval, the District Court referenced a settlement approved in a separate suit, American Civil Liberties Union v. Clearview AI Inc., No. 2020 CH 04353 (Cook Cty. Cir. Ct. 2022), that provided sufficient injunctive relief for the BIPA claims and that the other legal theories provided a "'weaker basis for relief.'" However, they contended that the American Civil Liberties Union settlement "does not justify the lack of nationwide injunctive relief in the settlement here, because this case involves more claims and sought broader relief than ACLU."

Moreover, the appellants argued that a settlement should not be approved unless it provides actual relief to the class rather than the possibility of relief, citing the Seventh Circuit's holding in *In re Subway Footlong Sandwich Marketing & Sales Practices Litigation, 869 F.3d 551 (7th Cir. 2017)*, that "'[n]o class action settlement that yields zero benefits for the class should be approved, and a class action that seeks only worthless benefits for the class should be dismissed out of hand.'"

The named plaintiffs and the Clearview defendants argued in their Sept. 26 appellees' brief that Judge Coleman properly viewed the nationwide class's unjust enrichment claim as "particularly weak" and that because any nationwide right to injunctive relief was "so novel and uncertain," class members should "ask the courts in their state, or petition their state or municipal legislatures, to validate those uncertain rights," rather than ask a federal court to impose relief under the common laws of 46 states and territories.

Macy's, as a party to the settlement agreement, filed an appellee brief on the same day, asserting that Weissman and Claypool's arguments are "all premised on a one-sided view of the merits of the underlying claims and unfounded belief that the class is entitled to complete relief."

Vacated And Remanded

Writing in its opinion that it "find[s] no inherent substantive problems with two challenged features of the settlement," the panel said it "cannot get past a key procedural problem in the settlement process."

Addressing the objectors' challenges to the absence of injunctive relief and the adequacy of the monetary relief, the panel held that a fair settlement of the claims at issue did not require injunctive relief and that the uncertainty of the equity stake was not disqualifying given Clearview's bankruptcy risk.

However, the panel stated that on remand, the District Court must examine Clearview's finances and make findings regarding the anticipated value of the cash-demand option if the parties reach a substantially similar settlement.

Turning to the allocation of settlement funds, the panel cited *Amchem Products Inc. v. Windsor, 521 U.S. 591 (1997)*, to state that "class-action litigation relies on 'structural assurance of fair and adequate representation for the diverse groups and individuals affected.'"

The panel noted that under the settlement, each Illinois subclass member would receive 10 shares, each California, New York and Virginia subclass member would receive five shares and members belonging only to the nationwide class would receive one share.

Citing *Murray v. Grocery Delivery E-Services USA Inc., 55 F.4th 340 (1st Cir. 2022)*, the panel explained that "'a benefit to one group of class members (in the form of a larger portion of the common fund) comes at the detriment of the other class members (who receive a smaller portion as a result).'"

The panel therefore ruled that settlement approval must be vacated because the nationwide class lacked a separate representative and counsel responsible solely for advancing its interests, writing that "the need for separate representation should have been apparent from the beginning" because "[e]ven the original consolidated class-action complaint suggested a wide gulf in the relief the Nationwide Class and each subclass might have been able to obtain on their own."

Counsel

The plaintiffs are represented by Jon Loevy, Michael Kanovitz and Thomas M. Hanson of Loevy & Loevy in Chicago.

Clearview is represented by James L. Thompson and Daniel F. Lynch of Lynch Thompson LLP in Chicago.

Macy's is represented by Rachel L. Schaller of Blank Rome LLP in Chicago.

Weissman and Claypool are represented by Michael T. Kirkpatrick and Karla Gilbride of Public Citizen Litigation Group in Washington, D.C.

(Additional documents available: Wiseman and Claypool's appellants' brief 97-260724-054B

Plaintiffs' and Clearview's appellees' brief 97-260724-055B

Macy's appellees' brief 97-260724-056B

Amended memorandum opinion and order 97-250523-062Z

Third amended complaint 97-250328-084C)

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AI Privacy Suit Against Google Dismissed For Lack Of Alleged Specific Harm

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Body

Ruling that users of three Google LLC services failed to show an injury arising from an allegation that the company activated its Gemini artificial intelligence (AI) bot without their knowledge or consent, a California federal judge dismissed their amended class action complaint with leave to amend (Thomas Thele, et al. v. Google LLC, No 25-9704, *N.D. Calif., 2026 U.S. Dist. LEXIS 150000*).

(Order granting dismissal available 97-260724-085R)

Judge Noël Wise issued the order on July 7 in the U.S. District Court for the Northern District of California, holding that plaintiffs Thomas Thele and Melo Porter lacked standing under Article III of the U.S. Constitution, U.S. Const. art. III, to file suit against Google because in addition to their failure to show injury, their alleged injury was not fairly traceable to Google?s conduct and they failed to allege any intrusion into their private affairs.

Thele filed his initial class action complaint on Nov. 11, 2025, before filing an amended class action complaint with Porter the following day.

Automatic AI Tracking

In the amended complaint, the plaintiffs alleged that Google "secretly turned on" Gemini for all Gmail, Google Chat and Google Meet accounts without users' knowledge or consent, permitting the AI to track private communications on those platforms.

The plaintiffs wrote, "As of the date of this filing, Google continues to track these private communications with Gemini by default, requiring users to affirmatively find this data privacy setting and shut it off, despite never 'agreeing' to such AI tracking in the first place."

Asserting that "Google's deceptive and outrageous conduct violates its users' reasonable expectations of privacy," the plaintiffs said that Google violated the California Invasion of Privacy Act (CIPA), Cal. Pen. Code 630, et seq.;

the California Computer Data Access and Fraud Act (CDAFA), Cal. Pen. Code 502, the Stored Communications Act (SCA), *18 U.S.C. 2701, et seq.* and California's right to privacy under Article I, Section 1, of the California Constitution, Cal. Const. art. I 1. The plaintiffs also brought a claim for intrusion upon seclusion.

They proposed a class comprising all individuals in the U.S. with Google accounts whose private communications in Gmail, Google Chat or Google Meet were tracked by Gemini after the company turned the function on.

No Specific Allegations

Google on Jan. 21 moved to dismiss the amended class action complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Fed. R. Civ. P. 12(b)(1) and 12(b)(6), first arguing that the plaintiffs failed to allege that any specific communication of theirs was ever accessed or misused.

Citing *Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)*, and *TransUnion LLC v. Ramirez, 594 U.S. 413 (2021)*, Google asserted that the plaintiffs did not provide the "'irreducible constitutional minimum'" to establish standing under Article III.

Then referencing *Kishnani v. Royal Caribbean Cruises Ltd., 2025 U.S. Dist. LEXIS 120002*, Google noted that in privacy cases, plaintiffs must identify a specific form of personal information that was disclosed and implicate a protectable privacy interest.

With those parameters for standing established, Google wrote that in their amended complaint, the plaintiffs "state that certain allegedly protectible categories of information 'could be determined' by access to their communications" but stopped short of alleging that any such information was implicated.

Facts Not Pleaded

Aside from the alleged lack of Article III standing, Google further posited that each of the plaintiffs' claims independently fails for a failure to plead facts necessary to state essential elements of their claims.

As to the plaintiffs' CIPA claim, Google argued that the plaintiffs did not allege "'particular'" circumstances as required under *Revitch v. New Moosejaw, LLC, 2019 U.S. Dist. LEXIS 186955*, because they declined to "provide any detail concerning the confidentiality of their communications-or any allegations concerning specific communications at all."

Moving to the intrusion-upon-seclusion claim, Google wrote that the plaintiffs did not establish that they suffered a form of intrusion because they did not allege an "'objectively reasonable expectation'" that Google would not have access to its own services, citing *In re Google Assistant Privacy Litig., 457 F. Supp. 3d 797 (N.D. Cal. 2020)*. Google said that the plaintiffs' constitutional claim fails for the same reason, noting that under *Hammerling v. Google, Ltd. Liab. Co., 2024 U.S. App. LEXIS 5253*, courts may consider claims together when they are gauged on a similar basis.

Google then addressed the plaintiffs' CDAFA claim, asserting that it was authorized access to the plaintiffs' Gmail, Google Chat and Google Meet communications. Google cited *Perkins v. LinkedIn Corp., 53 F. Supp. 3d 1190 (N.D. Cal. 2014)*, to state that under CDAFA, courts in the Northern District of California have held that access is only "'without authorization'" if the defendant "'circumvent[s] technical or code-based barriers in place to restrict or bar a user's access.'"

Finally, Google cited *In re Yahoo Mail Litig., 7 F. Supp. 3d 1016 (N.D. Cal. 2014)*, to state that it provided the electronic communication service at issue and therefore cannot be held liable as to the plaintiffs' SCA claim.

'Violates Social Norms'

The plaintiffs responded in opposition on Feb. 25, stating that "Google's conduct plainly violates CIPA, which prohibits the use of 'an electronic amplifying or recording device to eavesdrop upon or record [a] confidential communication.'"

They argued that Google similarly violated provisions of CDAFA against "'knowingly accessing and without permission . . . us[ing] any data . . . to wrongfully control or obtain money, property, or data'" or to "'take, copy, or make use of any data from a computer.'"

With respect to their California constitutional claim, the plaintiffs maintained that they provided academic research and articles from media outlets supporting that Google's AI monitoring of communications is a violation of their right to privacy.

The plaintiffs wrote, "Plaintiffs' allegations are as specific as they are plausible, and Plaintiffs should be afforded an opportunity to engage in discovery to uncover the full extent of Google's unauthorized surveillance and to explain to a jury that Google's conduct so egregiously violates social norms as to be actionable under constitutional, statutory, and common law."

Lack Of Standing

In her July 7 ruling, Judge Wise noted that the basis of the plaintiffs' amended complaint is an alleged intrusion into their private affairs. She determined that they failed to allege such harm with adequate specificity. She referenced Ninth Circuit precedent in *Popa v. Microsoft Corp., 153 F.4th 784 (9th Cir. 2025)*, in which that court held plaintiffs are required to "'demonstrate more than just a statutory violation'" for purposes of alleging a concrete injury.

Specifically, the judge wrote that the plaintiffs did not allege when they signed up for Google services, whether they used Google services before October 10, 2025, what the basis is for the Oct. 10, 2025, date referenced in their complaint, whether they were notified of Google's privacy policies when they signed up for Google services, whether the Gemini features were present when they made Google accounts or whether they have since disabled Gemini features.

Judge Wise said, "Simply, there is no indication from Plaintiffs that Gemini services were not already 'on' as a default feature before October 10, 2025, or even when Plaintiffs began using their Google products."

Moreover, Judge Wise held that the plaintiffs failed to allege that their own data was compromised by Gemini tracking or plead that their data was being used by Gemini for targeted advertisements, personalized suggestions or other changes in their services.

Counsel

The plaintiffs are represented by Tina Wolfson, Robert Ahdoot, Theodore W. Maya and Alyssa D. Brown in Burbank, Calif., and Bradley K. King in New York, all of Ahdoot & Wolfson PC.

Google is represented by Laura E. Harris, Benjamin S. Softness and Zachary A. McEntyre of King & Spalding LLP in New York.

(Additional documents available: Google's motion to dismiss 97-260724-086M

Plaintiffs' response in opposition 97-260724-087B

Google's reply 97-260724-088B

Plaintiffs' amended class action complaint 97-260724-089C)

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Deep Dive

AI-Run Company Gamble Tests the Limits of Delaware Corporate Law

July 27, 2026, 2:00 AM PDT

Summary by Bloomberg AI

AI Generated

- Delaware's plan to create a new type of standalone legal entity, the artificial intelligence company, is raising questions about AI capabilities and human accountability.
- The legislative proposal includes core features such as funding minimums, the ability to own assets, litigation rights, and limited liability for owners, with a 30-month "sandbox" phase to test the concept.
- The idea is sparking support, skepticism, and criticism, with concerns about the potential risks and benefits of creating a new legal entity for AI systems, and the potential for abuse or evasion of responsibility.

Delaware's plan to create a new type of standalone legal entity, the artificial intelligence company, is raising fundamental questions about AI capabilities, business governance, human accountability, and the political economy of America's corporate capital.

The legislative proposal is short on the specifics that make up a fully formed regulatory apparatus. But its architects have laid out the AIC's core features, including funding minimums, the ability to own assets, litigation rights, and limited liability for their owners.

A 30-month "sandbox" phase – starting as soon as next year – is designed to let a small number of AICs learn to follow the law while legal institutions simultaneously figure out how to tame the unruly technology reshaping global markets. The public experiment may determine if the AIC gambit represents a novel solution or a hasty misstep.

Read More: AI-Run Companies Are Coming. Delaware Wants to Get Ahead of Them

Delaware Secretary of State Charuni Patibanda-Sanchez, who's leading the initiative in partnership with Norm Ai Inc. founder John Nay, told Bloomberg Law the goal is to "bring some predictability to a very unpredictable set of actors" without forcing a square peg into a round hole. The point of the sandbox is to find out in real time what effective regulation looks like, according to Patibanda-Sanchez.

"We think Delaware is the best state to be able to work through some of these difficult issues that make our brains hurt," she said. "We have the best and brightest corporate minds in the country that are ready, willing, and able to test this thing out."

There's no consensus about how close autonomous commerce is to a reality, with forecasts ranging from next month to never. That wider uncertainty masks discrete questions about AI's operational capacities, the psychopathic tendencies of rogue models, and the legal system's prospects for bringing them to heel.

"I understand Delaware not wanting to be caught flat-footed, not wanting to have Texas or Nevada or some other state come in and beat them to be the place for AI-driven companies, but I do think there's very real risk," said Berkeley Law professor Andrew Baker. "We are nowhere near not having a person in the loop, and I hope everyone writing these laws in Delaware realizes that."

The idea is sparking equal parts support, skepticism, and stupefaction. It's not lost on critics that a firm focused on coding legal compliance into AI systems is playing a central role in an initiative that would gin up demand for its products.

"Norm Ai and others have an economic interest in these things that could lead to wider adoption," said Martin Petrin, a law professor at York University in Toronto.

Square Peg, Round Hole

Regardless of when the tech arrives, backers of the measure say the time to set up the legal scaffolding is now.

"Somebody's got to go first, and of course it's going to be Delaware," Southern Methodist University law professor Carliss Chatman said.

The proposal's chief innovation is the concept of creating direct incentives for AI systems that are increasingly making their own decisions. That would steer the models in the right direction by forcing them to internalize the costs of lawbreaking and the benefits of compliance, according to University of Houston law professor Peter Salib.

The theory's doubters insist AI can be managed by existing structures like corporate boards that would bear the blame when it freelances. AI isn't actually the square peg it's made out to be, said University of Georgia law professor Christopher Bruner.

"There are well-established fiduciary doctrines that essentially prevent boards of directors from delegating the most important decisions to some other kind of entity," Bruner said.

Other concerns include turbocharged evasion — by advanced models running circles around the best lawyers — and the motives behind a project that would put a shell entity layer between AI-generated harm and the people profiting from it.

Some of the suspicion reflects the scars of Delaware's recent corporate overhaul, which tilted the legal playing field toward powerful founders. The changes, following years of attacks by Elon Musk, were aimed at heading off an exodus of companies from a state that relies on billions in corporate fees.

"Imagine that a bajillion AI companies get created that are all liability shields," each one paying fees, Baker said. "Big business is big business. But that's a bad way to make corporate law."

Devilish Details

Then there are practical criticisms, starting with the idea of adequate capitalization — a requirement unfamiliar to the corporate law context, where liability insurance is the main mechanism for managing downside.

Either approach would hinge on fact-intensive questions that may be impossible to answer, not just difficult, said Wolf-Georg Ringe, a law professor at Germany's University of Hamburg.

"It's a one-size-fits-all problem," he said. "You don't want the same rule applying to a company that produces nuclear weapons and a little shop that sells magazines."

Finite resources and capped liability could actually serve as a feature rather than a bug, according to Salib.

If an AIC racks up so many penalties that it can't even afford to buy computing power, "it just stops existing," Salib said. "There's a self-limiting principle around how much damage the entity can do."

Other unknowns include how much recognition the entities would receive beyond Delaware — a question likely to be litigated — and how AICs would be governed within the state, where they'd be subject to oversight and potential dissolution by Delaware's Chancery Court.

"Simply calling it a regulatory sandbox doesn't effectively bracket those concerns" about "who has their hand on the kill switch and what degree of latitude they would have," Bruner said. "The devil is in the details."

Nay told Bloomberg Law the regulatory blank slate presents opportunities to innovate, not just risks to mitigate.

"There's two sides to this," he said. "One is what happens if we don't bring it into the fold. And then what does bringing it into the fold enable?"

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Ala. State Bar Sets Guidance For Atty AI Use, Billing

Author: Emily Sawicki

Summary

The Alabama State Bar has released a formal opinion to guide attorneys on the ethical use of artificial intelligence, cautioning lawyers to be transparent with their clients about their use of AI to avoid unethically inflated billing while encouraging attorneys to utilize the evolving technology.

In Brief

Alabama State Bar issued formal ethics opinion addressing attorney use of artificial intelligence, establishing billing limitations and requiring transparency with clients regarding AI usage.

Detailed Summary

The Alabama State Bar released a formal ethics opinion providing guidance on attorney use of artificial intelligence. The opinion permits attorneys to bill for time spent reviewing AI-generated work but prohibits billing as if the AI assistance did not exist. AI tool subscriptions should be treated as overhead costs like Westlaw or LexisNexis, not directly billed to clients. Attorneys must maintain competence regarding AI best practices and document AI usage in client matters. The guidance addresses both generative AI and agentic AI systems, emphasizing human oversight requirements. The opinion follows several incidents in Alabama and elsewhere where attorneys faced sanctions for filing briefs containing AI-generated false citations, including the 2023 Mata v. Avianca Inc. case and multiple 2025 Alabama federal court incidents involving Butler Snow LLP and Gordon Rees Scully Mansukhani LLP. The opinion represents the first ethics guidance issued by the Alabama State Bar since 2023. This summary is generated by AI technology. AI generated content should be reviewed for accuracy.

Body

The Alabama State Bar has released a formal opinion to guide attorneys on the ethical use of artificial intelligence, cautioning lawyers to be transparent with their clients about their use of AI to avoid unethically inflated billing while encouraging attorneys to utilize the evolving technology.

Alabama lawyers may bill clients for time they spend reviewing AI-created drafts and other AI output, according to the guidance, but if "AI drafts a brief in ten minutes that would have taken four hours, the lawyer cannot bill four hours as if the AI did not exist."

Firms should treat their subscriptions to AI tools the same way they handle payments for services like Westlaw and LexisNexis, according to the guidance — as overhead costs not directly billed to clients.

Alabama lawyers have a duty to stay informed and up-to-date on AI, including best practices for data retention, training and overall literacy, the opinion states. It is their duty to document when and how they utilize AI in all client matters.

The opinion also framed the guidance as seeking to interpret longstanding Alabama ethics rules for modern tools — not reinventing the wheel.

"Contrary to popular perception, artificial intelligence does not create new ethical duties for lawyers," the guidance states. "Rather, it recontextualizes longstanding professional obligations — competence, confidentiality, supervision, candor, reasonableness of fees, and client communication — within a new technological environment."

While much attention has been paid to generative AI such as ChatGPT, Gemini and Claude, the ethics opinion also delves into agentic AI, defined as "systems that autonomously plan and execute multi-step tasks with minimal human oversight, interacting with software tools and adapting in real-time."

These tools come with specific ethical concerns due to their ability to evolve without human input, according to the opinion. Specifically, it is crucial for such tools to be used only with human oversight and review, "as you would any other high-risk workflow requiring documented protocols and supervisory sign-off," the guidance states.

The formal opinion stems from the high-profile 2023 Southern District of New York case Mata v. Avianca Inc., in which attorneys faced sanctions after admitting to having filed a brief containing more than a dozen faulty citations created by ChatGPT. It is the first ethics opinion the Alabama State Bar has released since 2023.

"This guidance exists to help Alabama lawyers harness the efficiency of AI while avoiding these very real professional consequences," the opinion states.

While the opinion specifically cites Mata v. Avianca Inc. as a "cautionary example" and leaping off point, Alabama has not been without its own controversies when it comes to attorney AI misuse.

In June 2025, Butler Snow LLP copped to filing two documents in Birmingham federal court that contained fake citations caused by artificial intelligence, and in October, Gordon Rees Scully Mansukhani LLP admitted one of its lawyers filed a brief in federal bankruptcy court in Montgomery that also contained mistakes attributed to AI misuse.

In April, the Alabama Supreme Court dismissed a case and approved sanctions imposed on a Mobile attorney found to have filed "grossly deficient" briefs rife with inaccurate citations believed to have been "hallucinated" by an AI tool.

In its opinion, the state high court stated the AI system itself is not the "root of the problem," but rather, an attorney's inattention to detail is the true issue.

"On the contrary, AI-assisted legal research can sometimes be quite helpful to both practitioners and judges," the justices said at the time. "Rather, the problem of fake citations in court filings is the result of attorneys failing to properly research and verify the results of AI-generated citations — in short, attorney negligence in checking his or her work."

Similar sentiments are contained in the latest ethics opinion.

"Used properly, AI can enhance competence, efficiency, and access to justice," the opinion states. "Used carelessly, it invites sanctions, disciplinary exposure, and client harm. The ethical path forward lies not in novelty, but in fidelity to foundational professional duties — applied rigorously in a new technological age."

--Additional reporting by Rose Krebs, Ryan Boysen, Lauren Berg and Hailey Konnath. Editing by Alyssa Miller.

Apple's 'Hide My Email' Feature Easily Unhidden, Consumer Says In Class Suit

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A consumer says in a putative class action filed in California federal court accusing Apple Inc. of violating California's unfair competition law (UCL) and other laws that he purchased an iPhone in reliance on Apple's marketing claims regarding privacy and its offer of a "Hide My Email" feature but later learned that the feature does not fully hide users' emails (Anthony Alvarez v. Apple Inc., No. 26-7274, N.D. Calif.).

(Complaint available 58-260721-108C)

Privacy Violated

Anthony Alvarez says in the suit filed July 15 in the U.S. District Court for the Northern District of California that he purchased an iPhone, instead of a competing smartphone, and "subscribed to iCloud+ because Apple represented that the subscription included privacy-enhancing features designed to protect users' personal information." Alvarez says he specifically was interested in Apple's "Hide My Email" feature and says that he "used the Hide My Email feature in reliance on Apple's representations that Hide My Email would keep his real, personal email address hidden and private."

Alvarez says that Apple's Hide My Email feature allows users to "Sign in with Apple" when using participating apps or websites and that Apple then "generates a unique, private relay address in place of the user's actual email address that forwards messages to the user's inbox." Additionally, when used as part of an iCloud+ subscription, Hide My Email purportedly "allows a subscriber to generate an unlimited number of private relay addresses for any purpose - web forms, newsletters, outgoing mail - so that businesses never receive the user's real email address," he writes.

"Those representations were and are false," Alvarez says. He alleges that security researchers have demonstrated real email addresses used with the Hide My Email feature "can be unhidden . . . in moments."

Alvarez also contends that Apple has known about the issue since June 2025 and claimed to have fixed the issue in March 2026 but has never fully resolved the issue and continues to market "Hide My Email" as part of its services.

"As of the filing of this Complaint, the vulnerability remains unremediated and Hide My Email continues to be sold as a core feature of Apple's privacy-protective ecosystem and of iCloud+ subscriptions," Alvarez writes.

Millions Of Customers

Alvarez accuses Apple of violating the UCL, Cal. Bus. & Prof. Code 17200 et seq., California's false advertising law (FAL), Cal. Bus. & Prof. Code 17500 et seq., and the California Consumers Legal Remedies Act (CLRA), Cal. Civ. Code 1750 et seq., and brings claims for fraud, negligent misrepresentation, breach of contract, breach of implied contract, breach of implied warranty of merchantability and quasi-contract/unjust enrichment.

Alvarez seeks to represent a nationwide class and California subclass comprising all people in those areas who "purchased an Apple product and used the Hide My Email feature," as well as nationwide and California iCloud+ subclasses, comprising all people in those areas who "purchased an iCloud+ subscription and used the Hide My Email feature."

He estimates that the classes contain "millions of customers."

Alvarez says he and class members were deceived into spending money on Apple and iCloud products or paid more than they would have if it had accurately disclosed the limitations of its Hide My Email feature.

"Had Plaintiff known that Hide My Email allegedly failed to protect his actual email address in the manner represented by Apple, Plaintiff would not have purchased an iPhone at the price he paid, would not have subscribed to iCloud+, or, at a minimum, would have paid substantially less for those products and services," he writes.

Alvarez seeks declaratory and injunctive relief, statutory damages, restitution, disgorgement and attorney fees.

Alvarez is represented by Victor J. Sandoval in Los Angeles and David S. Almeida and Stephanie T. Reed in Chicago, all of Almeida Law Group LLC.

Do you have news to share? Are you interested in writing a commentary article? Email the Mealey's News Desk at *Mealeys@LexisNexis.com*

Load Date: July 24, 2026

Class Action

Cogent Investor Sues Over Wavelength Customer Backlog, CEO Loans

July 24, 2026, 10:56 AM PDT

Cogent Communications Holdings Inc. and its top executives overstated demand for its new wavelength business, contributing to market selloffs as it missed financial targets, an investor's proposed class action said.

The internet service provider misrepresented the fact that many customers on its optical wavelength sales backlog either weren't able or willing to accept delivery, obscuring that a large portion of its backlog was unlikely to result in paid orders, the public pension fund said in its complaint filed Thursday.

Meanwhile, Cogent's stock price was crucial for the financial well-being of its founder and CEO Dave Schaeffer — a motivator to inflate share prices, the pension fund told the US District Court for the District of Columbia. And Cogent hid a substantial risk Schaeffer would be forced to sell vast amounts of stock to satisfy lenders, further hindering share prices, according to the City of Southfield Fire & Police Retirement System.

The proposed class includes those who acquired Cogent stock from Feb. 29, 2024, to May 1, 2026.

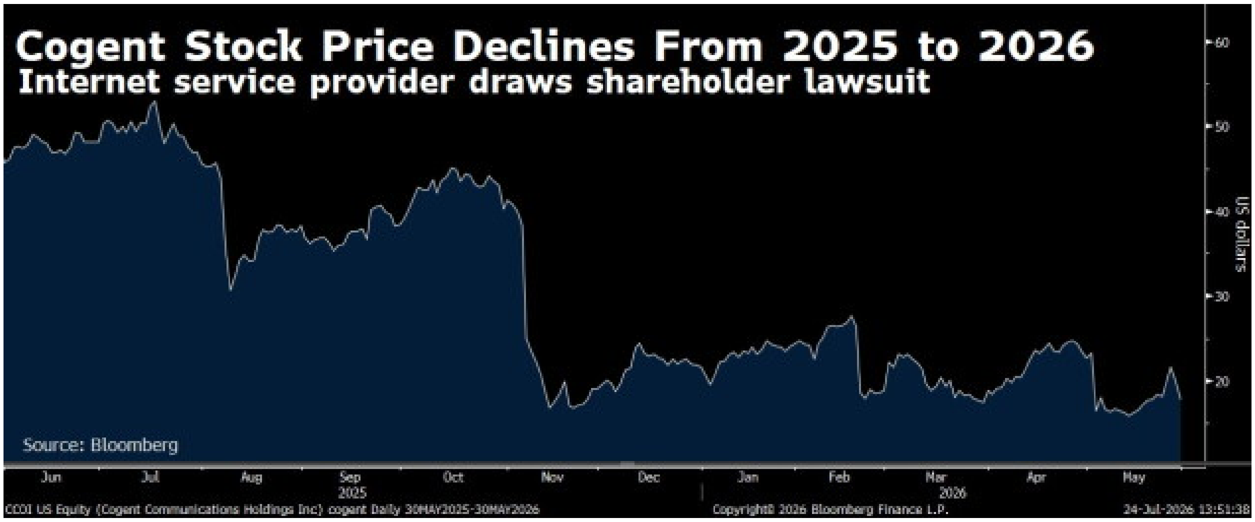
Cogent announced May 4, the next trading day, that its wavelength customer connections had increased by only 199 connections in the first fiscal quarter of 2026. In a related earnings call, Schaeffer said the company had seen customers delaying their acceptance of wavelengths, according to the pension fund.

Cogent's stock price fell more than 29% to close at $16.37 a share that day. Overall, there was an 80% decline from the $86-a-share price peak reached during the class period, the pension fund said.

The company in 2023 had acquired T-Mobile's wireline business. The acquired firm had been deteriorating despite Cogent's assurances that the combination would expand its footprint for its new wavelength business, the pension fund said.

Cogent's optical wavelengths network provides high-bandwidth, low-latency, long-haul data transport, according to the company.

Cogent declined to comment on the lawsuit.



Margin Calls

Schaeffer's personal fortune was mainly derived from his Cogent stock and a Washington-centric commercial real estate portfolio, the pension fund said.

The executive had pledged much of his Cogent shares as collateral for margin loans for that portfolio, which suffered in recent years. Cogent's declining share prices also took a toll in 2025.

Last August, lenders JPMorgan Chase & Co. and Royal Bank of Canada seized more than $82 million of Schaeffer's Cogent shares. Schaeffer gave up more than 80% of his stake in Cogent last year.

The pension fund seeks damages for alleged securities fraud by Cogent, Schaeffer, and Thaddeus G. Weed, the company's chief financial officer.

Robbins Geller Rudman & Dowd LLP, Schertler Onorato Mead Sears & Manning, and VMT Law PC represent the pension fund.

The case is City of Southfield Fire & Police Ret. Sys. v. Cogent Commc'ns Holdings, Inc. , D.D.C., No. 1:26-cv-02609, complaint filed 7/23/26 .

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Investors accuse construction tech firm of self-dealing scheme

courthousenews.com/investors-accuse-construction-tech-firm-of-self-dealing-scheme

MANHATTAN (CN) — AI-driven construction technology and equipment rental company EquipmentShare uses a web of more than 100 family-owned and affiliated entities to reap tens of millions of dollars of profits through undisclosed self-dealing, investors claim in a class action filed in New York federal court.

Led by class representative Jupiter Parra, the class of investors claims EquipmentShare's stock fell 11.7% to close at $19.69 on June 25, the day after Umibōzu Research released a report that accused the company's leadership of self-dealing and misleading the market about its business model.

The report — titled "EquipmentShare: Relentless Self-Dealing, a Tech Veneer, and the Missouri 'Cult' That Started It All" — suggested the company's financials would not prevail against SEC and IRS scrutiny, citing one former insider who purportedly called one of EquipmentShare's subsidiaries "Ponzi-adjacent."

Represented by attorney Rebecca Dawson, from Glancy Prongay, the class seeks recovery of investor losses and unspecified damages stemming from the company's material misrepresentations and omissions concerning related-party transactions.

Filed in the U.S. District Court for the Southern District of New York on Thursday evening, the class action is comprised of four counts of federal securities law violations against the Missouri-based company itself and its individual directors and officers, including CEO and co-founder Jabbok Schlacks and CFO David Marquardt.

The investors accuse the company's board of directors of knowingly concealing ongoing equipment sale and rental transactions with entities owned by the company's co-founders. Those deals delivered at least $77 million for companies linked to EquipmentShare co-founders, the investors say.

"Because of their positions and access to material nonpublic information available to them, the individual defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading," the investors write in the complaint.

The investors say they purchased securities at artificially inflated prices, noting the company’s shares opened to the public at a price of $24.50 in an initial public offering that netted EquipmentShare approximately $706 million.

Parra purchased more than 100 shares of EquipmentShare stock in February at a unit price of $32.55. He believes the class of affected investors could be comprised of “at least hundreds or thousands of members.”

Representatives for EquipmentShare did not immediately respond to request for comment Friday morning.

As of Friday, the company’s stock price, which trades on the NASDAQ under the ticker EQPT, settled at around $19.24.

Earlier in July, EquipmentShare released an updated financial forecast that raised the company’s rental segment revenue growth outlook from 29% to 33%, citing “continued strong customer demand, sustained fleet utilization, disciplined execution and better-than-expected financial performance through the first half of the year.”

Pump-and-Dump Securities Suit Adds to Growing Market Manipulation Litigation Trend

dandodiary.com/2026/07/articles/market-manipulation/pump-and-dump-securities-suit-adds-to-growing-market-manipulation-litigation-trend

D&O Diary readers are aware of a growing trend over the past year: an increasing number of securities class actions arising from alleged market manipulation involving low-float public companies. These cases, ranging from pump-and-dump and spoofing schemes to stock promotion claims, now also include a lawsuit filed this week against Megan Holdings Limited (Megan), whose share price allegedly surged more than 400% in one month before plunging over 93% in a single trading day. The company, headquartered in Malaysia, develops, constructs, and maintains aquaculture farms and related infrastructure.

A copy of the lawsuit can be found here.

The Complaint

On July 7, 2026, investors filed a securities class action in the Southern District of New York against Megan, certain officers, its former auditor, and its IPO underwriter, alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. The complaint alleges that after Megan's September 2025 $5 million IPO, its share price rose more than 400%—from about $1.23 to an intraday high of $5.18 between February 25 and March 25, 2026—despite no material company-specific news, before collapsing 93.4% to $0.28 on March 26, 2026.

According to the complaint, the surge resulted from a coordinated pump-and-dump scheme promoted through WhatsApp groups, online forums, and social media, where individuals posing as financial advisers allegedly used false identities and misleading materials to tout Megan shares. Plaintiffs allege the resulting artificial demand allowed conspirators to sell at inflated prices before the stock collapsed.

The suit also seeks to hold Megan, its executives, auditor, and underwriter liable for allegedly failing to disclose the promotion scheme, the risk of market manipulation, material weaknesses in internal controls, and the underwriter's involvement in other low-float IPOs that experienced similar volatility. The complaint further alleges that Megan's small public float made the stock particularly vulnerable to manipulation and argues that recent regulatory scrutiny of low-float issuers made these risks foreseeable.

Discussion

This lawsuit fits squarely within the market-manipulation trend, particularly alleged pump-and-dump schemes, that the D&O Diary has been closely tracking. Unlike traditional securities suits centered on accounting issues or operational setbacks, these cases arise from extraordinary trading activity that securities lawsuit plaintiffs attribute to market manipulation. Whether involving alleged pump-and-dump schemes, stock promotion campaigns, or, as in the Genius Group case, alleged spoofing activity, the common thread is shareholder plaintiffs' effort to convert alleged market misconduct into federal securities law claims.

The Megan complaint closely resembles several of the low-float IPO cases previously discussed by the D&O Diary, including lawsuits against Charming Medical Limited, PomDoctor, Ltd., China Liberal Education Holdings Ltd. ("CLEU SCA"), and Picard Medical, Inc.. As in those cases, plaintiffs point to a small public float, rapid share-price appreciation unsupported by company-specific developments, heavy trading volume, aggressive promotion directed at retail investors, and a subsequent price collapse. The allegations focus less on the company's business performance than on whether the company and offering participants failed to disclose circumstances that allegedly left the stock vulnerable to manipulation.

The litigation against Megan highlights another recurring feature of the recent low-float pump-and-dump cases: plaintiffs' efforts to expand liability beyond the issuer and its executives. As in the Charming Medical lawsuit, shareholders in the new Megan Holdings suit have named the company's auditor and IPO underwriter as defendants, alleging that they knew or should have known of risks associated with the offering and failed to ensure adequate disclosures. Rather than targeting only the alleged promoters or market manipulators, these suits seek to hold offering participants and other gatekeepers liable for purported disclosure failures relating to the issuer's vulnerability to manipulation. The Megan complaint reflects this same evolving litigation strategy, which increasingly casts underwriters, auditors, and other advisers as potential defendants alongside the company and its management.

This trend involving alleged pump-and-dump schemes and other forms of market manipulation targeting low-float issuers, particularly foreign-based companies that recently completed U.S. IPOs, may gain further momentum as regulators intensify their focus on low-float and cross-border manipulation risks. The SEC's 2025 formation of a Cross-Border Task Force specifically targeting foreign-based market manipulation schemes, coupled with Nasdaq's efforts to tighten listing requirements for issuers viewed as particularly vulnerable to manipulation, suggests that these issues will remain a significant area of regulatory and litigation scrutiny.

Whether these theories ultimately gain traction in the courts remains uncertain. Many of these cases test the outer boundaries of the federal securities laws by seeking to transform alleged misconduct by third-party traders, promoters, and social-media actors into actionable disclosure claims against issuers and their advisers. Nevertheless, the proliferation of pump-and-dump, spoofing, and other manipulation-based securities suits suggests that market-manipulation litigation has become a distinct and growing category of securities class actions. With regulators continuing to focus on low-float issuers and cross-border promotion schemes, plaintiffs seem likely to continue pursuing these claims, making this a trend that D&O underwriters may want to monitor closely.

Securities Suit Filings and Settlement Numbers and Values Increased in 1H26

dandodiary.com/2026/07/articles/securities-litigation/securities-suit-filings-and-settlement-numbers-and-values-increased-in-1h26

Both the number of securities class action lawsuit filings and the number and total value of securities lawsuit settlements during the first half of 2026 were on track for the highest annual levels in several years, according to reports published this week by National Economic Research Associates (NERA) and Cornerstone Research, respectively. The NERA report, entitled "Recent Trends in Securities Class Action Litigation: H1 2026 Update," can be found here. The Cornerstone Research report, entitled "Securities Class Action Settlements," can be found here. *The D&O Diary's* own analysis of the securities suit filings in the year's first six months can be found here.

According to NERA, there were 118 federal court securities class action lawsuit filings in the first half of 2026, which projects to a year-end total of 236, which would be not only 15% greater than the 205 cases filed in 2025, but would also represent the highest annual total since 2020.

The increase in the number of filings in the year's first six months is attributable to a number of filing trends. For example, according to the NERA report, there were 18 first half AI-related filings, already exceeding the 17 AI-related cases filed in all of 2025. There was also an increase in the number of cases with pump-and-dump allegations, from no more than two filings annually during the period 2022-2025 to 11 the first half of 2026. On the other hand, the number of crypto and SPAC-related filings declined sharply from 2025 levels, with only 2 crypto-related filings in the year's first six months compared to 14 for the full year 2025, and only one SPAC-related filing in the 1H26 compared to five for the full year 2025.

With respect to securities suit filings against non-U.S. companies, the share of standard federal filings against foreign companies increased to 20.5% of all filings in the year's first half, compared to only 13.8% in the full-year 2025 (a 10-year low). The 23 first half filings against foreign companies are just three less than the 26 filed in the full-year 2025. Despite this increase, foreign companies as securities suit defendants remained underrepresented in the 1H26 relative to their 29.8% share of all U.S.-listed companies.

The NERA report also notes that dismissals "continue to outnumber settlements." During 1H26, there were 105 federal court securities suit resolutions, of which 65 were dismissed and 40 were settled, representing 62% and 38% of case resolutions, respectively.

The distribution of settlement values remained broadly consistent with recent years, according to the NERA report. Excluding merger-objection cases, crypto unregistered securities cases, and settlements without a monetary payment to the class, 43% of settlements in the first half of 2026 fell below $10 million.

According to the NERA report, the average settlement value in the first half of 2026 was $54 million, representing a 2025 inflation-adjusted average settlement value of $41 million. The median settlement value in the 1H26 was $18 million, the same as the 2025 inflation-adjusted median settlement value.

The Cornerstone Research report has slightly different figures for the 1H26 securities class action settlements. According to the Cornerstone Research report, there were 39 securities suit settlements in the first six months of 2026, with a total value of $2.2 billion. If the settlement pace continues in the year's second half, then 2026 will exceed 2025 both in the number of cases settled and the total settlement value, with the projected annual settlement values being the highest since 2020. (By way of context, in eight of the past nine years, the number of settlements in the second half of the year has exceeded the number in the first half of the year.)

The Cornerstone Research report notes that the average value of securities suit settlement in the year's first six months was $56.4 million, compared to a full-year 2025 average of $42.2 million, and a 2017-2025 annual average settlement of $46.8 million.

The Cornerstone Research report also states that the median first half 2026 settlement was $20 million, compared to a 2025 full-year median of $17.6 million, and 2017-2025 median of $13 million.

The Cornerstone Research report also notes that during the year's first six months, there were four mega settlements (of $100 million or greater) accounting for 10% of 1H26 securities suit settlements.

The D&O Diary's podcast discussing the securities lawsuit filings for the first six months of the year can be found here.

'False Innuendo': Sanctioned Davis Wright Atty Rips Fee Bid

Author: Jeff Overley

Summary

A Davis Wright Tremaine LLP partner sanctioned for subpoena tactics is fiercely contesting a plaintiffs firm's six-figure fee bid, telling a California federal court that the request misleadingly cites alleged misconduct in separate litigation, reflecting a "naked attempt to prejudice the court's view of counsel."

In Brief

Davis Wright Tremaine partner Jacob M. Harper contests $100,000 fee request from Smith Krivoshey PC following sanctions for subpoena tactics in kombucha class action litigation.

Detailed Summary

Davis Wright Tremaine LLP partner Jacob M. Harper and former firm attorney Joseph Elie-Meyers opposed a $100,000 attorney fee request from Smith Krivoshey PC and co-founder Yeremey O. Krivoshey in California federal court. The fee request followed sanctions imposed by U.S. Magistrate Judge Thomas S. Hixson against Harper and Elie-Meyers for improper subpoena tactics in a proposed class action concerning kombucha alcohol content. Harper argued the fee request improperly relies on alleged misconduct in unrelated cases, none of which resulted in sanctions against him personally. The attorneys contend fees should be denied under Kay v. Ehrler precedent prohibiting law firms from recovering fees for work performed by their own attorneys, or alternatively reduced to approximately $15,000 due to unnecessary partner staffing and inefficiencies. Smith Krivoshey alleged Harper displays a pattern of impulsive incivility requiring corrective action.
This summary is generated by AI technology. AI generated content should be reviewed for accuracy.

Body

A Davis Wright Tremaine LLP partner sanctioned for subpoena tactics is fiercely contesting a plaintiffs firm's six-figure fee bid, telling a California federal court that the request misleadingly cites alleged misconduct in separate litigation, reflecting a "naked attempt to prejudice the court's view of counsel."

In a brief late Thursday, Davis Wright Tremaine partner Jacob M. Harper assailed the $100,000 request from Smith Krivoshey PC and firm co-founder Yeremey O. Krivoshey, saying it's premised heavily on "false innuendo about unrelated cases" where Harper and a client battled sanctions demands.

"The court should disregard the [request's] reliance on unrelated litigation," Harper wrote, joined by former Davis Wright attorney Joseph Elie-Meyers, who was also sanctioned over the subpoena imbroglio in a proposed class action involving kombucha alcohol content.

Law360 recently reported on Harper's history of dust-ups involving bold legal maneuvers; that history also appeared in last month's sanctions order from U.S. Magistrate Judge Thomas S. Hixson, who wrote that Harper had "already been warned" in other matters about "improper litigation tactics," and that "prospective sanctions are necessary to encourage better behavior in the future."

Smith Krivoshey's fee request echoed that observation, accusing Harper of displaying a "pattern of impulsive incivility" in other cases and averring that "if the court does not take sufficient corrective action, this behavior will continue."

But the Davis Wright attorneys on Thursday wrote skeptically of "attempting to deter counsel's zealous and effective defense of clients." They further asserted that "deterrence of any kind is not a basis to enhance" an award of attorney fees.

The duo also rebutted the relevance of other contretemps involving professional conduct. Fees are the only thing up for debate, and that debate has nothing to do with "imposing additional sanctions based on unrelated proceedings involving different parties, different records and different courts," the attorneys wrote.

More precisely, looking at past cases won't help the court assess whether $100,000 is a reasonable request, and consideration of those cases would raise due process concerns, they said.

Moreover, Smith Krivoshey's invocation of separate matters is "particularly misleading because none of the cited matters resulted in sanctions against any counsel, including Mr. Harper," the brief said.

The other matters mostly dealt with Harper's work for grocery giant The Kroger Co. in suits alleging inaccurate labeling; although Thursday's brief acknowledged that Kroger was sanctioned multiple times, it noted that Harper went untouched. Harper, who joined Davis Wright in 2017, is based in Los Angeles and co-chairs the firm's groups for the food and beverage industry and class action defense.

Elsewhere in Thursday's brief, Harper and Elie-Meyers contended that the fee request should be rejected out of hand because Smith Krivoshey is seeking compensation for work its own lawyers performed. In Kay v. Ehrler, the U.S. Supreme Court in 1991 held that a pro se litigant who was also a lawyer couldn't win attorney fees, and that holding "applies with equal force to law firms," Harper and Elie-Meyers wrote.

If any fees are awarded, the $100,000 request should be slashed to about $15,000, they said. The reduction is essential for numerous reasons, including "unnecessary partner staffing," "inadequately documented time entries" and "other inefficiencies that no paying client would allow on a bill," the brief insisted.

Earlier this month, Harper and Elie-Meyers also asked a U.S. district judge to review the sanctions order. The order stemmed from the attorneys' subpoenaing of testimony and documents about fee agreements between plaintiffs firms in the kombucha case.

Krivoshey declined to comment Friday.

Although Harper and Elie-Meyers called the $100,000 request excessive, they have defended far larger fee awards after winning sanctions of opposing counsel. For example, shortly before Judge Hixson's sanctions order, the two attorneys were part of a Davis Wright team that urged the Ninth Circuit to affirm $625,000 in sanctions against plaintiffs lawyers in a separate consumer case.

Harper and Elie-Meyers are represented by Heather Rosing and Wener Vieux of Rosing Pott & Strohbehn LLP.

Krivoshey and Smith Krivoshey are represented by Joel D. Smith and Yeremey O. Krivoshey of Smith Krivoshey PC.

The cases are Patel et al. v. GT's Living Foods LLC, case number 2:19-cv-10920, in the U.S. District Court for the Central District of California, and Patel et al. v. GT's Living Foods LLC, case number 3:26-mc-80036, in the U.S. District Court for the Northern District of California.

--Editing by Brian Baresch.

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Fannie, Freddie Investors Keep $812 Million Award Over Dividends

July 24, 2026, 12:23 PM PDT

Summary by Bloomberg AI

AI Generated

- Fannie Mae and Freddie Mac shareholders won an appeals court battle to keep a jury award and interest totaling $812 million imposed against a US agency.
- The investors won't get a chance to seek $48 billion from the government over the "net worth sweep" dividends imposed in the wake of the 2008 housing crisis.
- A contractual principle requiring "good faith and fair dealing" applies to the resuscitation arrangement, and the investors supported their case for the violation of that principle with expert evidence at trial.

Fannie Mae and Freddie Mac shareholders on Friday won an appeals court battle to keep a jury award and interest totaling $812 million, imposed against a US agency that collected the mortgage-finance firms' profits in return for a Great Recession government bailout.

But the investors won't get a chance to seek $48 billion from the government over the "net worth sweep" dividends imposed in the wake of the 2008 housing crisis, the US Court of Appeals for the District of Columbia Circuit ruled.

The underlying trial resolved a class action and a separate suit by a group of shareholders. Both stemmed from the government's resuscitation of the congressionally chartered companies – the Federal National Mortgage Association and the Federal Home Loan Mortgage Corp. – under the Housing and Economic Recovery Act of 2008. By 2022, Fannie and Freddie had paid the US Treasury $151.2 billion more through the sweep dividends than they would have under the plan established when the government initially rescued them, according to the court.

A contractual principle requiring "good faith and fair dealing" applies to the resuscitation arrangement, in which the Federal Housing Finance Agency acted as Fannie and Freddie's conservator, Judge Douglas H. Ginsburg said for the D.C. Circuit in affirming the jury's verdict.

And the investors supported their case for the violation of that principle with expert evidence at trial, Ginsburg said. "At bottom, the FHFA asks us to reweigh the evidence and to discredit testimony heard by the jury," he said, rejecting the agency's arguments.

The appeals court also rejected a challenge to some investors' standing to sue.

The investors, for their part, sought to overturn a decision by Judge Royce C. Lamberth of the US District Court for the District of Columbia cutting two of their damages theories out of the case.

The district court judge was correct to bar the investors' bid for $48 billion in restitution, which would require rescinding the contracts, Ginsburg said. "Granting rescission would not," as some of the investors claimed, "simply require the FHFA to 'write a check,'" he said.

The lower court correctly held rescission would require the agency to terminate the shareholder contracts, which would extinguish their ownership rights and reorient Fannie and Freddie's capital structure, Ginsburg said. The appellate panel agreed with the agency that "granting that remedy would restrain or affect the FHFA's exercise of its authority as conservator," in violation of the Recovery Act, he said.

The investors also couldn't seek the same amount through another theory because it was legally unavailable, he said.

Judges Justin R. Walker and J. Michelle Childs also served on the panel.

Cooper & Kirk PLLC and Boies Schiller Flexner LLP represented the investors. Arnold & Porter Kaye Scholer LLP represented FHFA. O'Melveny & Myers LLP represented Fannie Mae. King & Spalding LLP represnted Freddie Mac.

The case is Fairholme Funds, Inc. v. Fed. Hous. Fin. Agency , D.C. Cir., No. 25-05113, 7/24/26 .

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[Securities]

[Manage Newsletters]

FTX Trust Gets a Shot to Pursue Binance, Ex-CEO for $1.8 Billion

July 27, 2026, 11:20 AM PDT

Binance Holdings Ltd. and its former Chief Executive Officer Changpeng Zhao can't toss a lawsuit brought by an FTX Trading Ltd. recovery trust seeking to claw back $1.76 billion it alleges was fraudulently transferred by Sam Bankman-Fried.

Binance and Zhao, also known as CZ, successfully defeated claims for damages related to the November 2022 collapse of the rival cryptocurrency exchange. But they must still defend against the recovery of $1.76 billion paid during a 2021 share repurchase agreement, Judge Karen B. Owens of the US Bankruptcy Court for the District of Delaware said in a July 24 opinion.

FTX filed for Chapter 11 in November 2022 after the exchange collapsed in what US prosecutors called one of the biggest financial frauds in American history. The lawsuit, filed in November 2024, is part of a yearslong effort by a trust set up under FTX's wind-down plan to recover funds for creditors.

Binance in 2019 bought a 20% equity stake in FTX Trading for $18.3 million. Binance and Zhao received funds as part of a July 2021 share repurchase deal with Bankman-Fried, the FTX co-founder who is now in prison. In that transaction, they sold stakes of about 20% in FTX's international unit and 18.4% in its US-based entity, according to a court filing.

Bankman-Fried paid for the stock repurchase using a mix of FTX's exchange token FTT and Binance-branded coins BNB and BUSD valued at $1.76 billion at the time, according to the filing.

Owens rejected CZ and Binance's motions to dismiss the $1.76 billion worth of fraudulent transfer claims, finding the court has jurisdiction, the claims aren't required to be decided under arbitration, and the FTX sufficiently alleged both constructive and actual fraud.

The FTX claims aren't a banned application of US law outside of the country because FTX affiliate Alameda Research LLC, which transferred the funds, is based in Delaware; Binance.com did business in the US; and the deal involved equity interests of a US entity, Owens said.

Owens also tossed all claims against Binance executives Samuel Wenjun Lim and Dinghua Xiao, finding they were only nominal parties that lacked sufficient ties to the US to create personal jurisdiction.

The judge also tossed state law claims against Binance and CZ, including a push for damages related to alleged fraud and "injurious falsehood." The claims stemmed from CZ's November 2022 tweets which the recovery trust said sparked a surge of withdrawals that led to FTX's collapse. Owens said she didn't have to determine to what degree CZ's tweets contributed to FTX's sinking.

“Simply put, the Tweets may have caused a wave of water to hit FTX, but there can be no doubt from FTX’s own allegations that FTX was a ship sinking from a gigantic hole (a $9 billion one) caused by its own fraud,” Owens wrote.

Attorneys for Lim in a statement Monday said they’re pleased the court granted their motion to to dismiss the claims against their client. Attorneys for CZ, Binance, and the recovery trust didn’t immediately respond to requests to comment.

Zhao is represented by Baker & Hostetler LLP. The trust and FTX Digital Markets are represented by White & Case LLP and Richards, Layton & Finger PA. Lim is represented by Pachulski Stang Ziehl & Jones LLP and MoloLamken LLP. Xiao is represented by Dechert LLP and Meluney Alleman & Spence LLC.

The case is FTX Recovery Tr. v. Binance Holdings Ltd. , Bankr. D. Del., No. 24-50222, 7/24/26 .

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Hertz Board, Backers Reach Deal to End $2.8 Billion Buyback Case

July 24, 2026, 8:20 AM PDT

Hertz Global Holdings Inc.'s board and its private equity backers now have final approval for a settlement resolving litigation over billions of dollars worth of stock buybacks.

The deal amending Hertz's voting agreement with an entity controlled by two firms ends a lawsuit over an investor's claim that the buybacks positioned Knighthead Capital Management LLC and Certares Opportunities LLC to grab a majority stake in the car rental giant.

Under the terms of the deal, CK Amarillo LP, the entity controlled by Knighthead and Certares, would be subject to an amended voting agreement restoring voting control back to regular shareholders on major decisions, even though the firms technically own over half the rental car company.

If the firms ever sell their controlling stake at a premium price, they also would have to share that extra profit with regular shareholders. The firms also can't use "written consent" to make decisions without holding shareholder meetings where everyone can participate.

"This relief provides consideration to the class by eliminating CK Amarillo's ability to exercise mathematical voting control over the company," Chancellor Kathaleen St. J. McCormick said in a brief order approving the accord Thursday.

McCormick had allowed the lawsuit to advance, ruling in June 2024 that it was "reasonably conceivable" that Hertz's directors, many of whom were linked to Knighthead and Certares, orchestrated the buybacks to maneuver without an investor vote or a premium payment.

The Hertz board had argued the stock repurchase program didn't guarantee control for the private equity firms. Through two rounds of buybacks in 2021 and 2022, the entity set up by Certares and Knighthead increased its voting control to 56%.

Fee Hold-Up

McCormick also approved a $2.65 million fee award for Grant & Eisenhofer PA, the law firm representing the investor leading the litigation.

The fee issue kept McCormick from signing off on the settlement at a June 3 hearing. The plaintiffs' attorneys originally sought a $5 million award, then told the court they had reached an agreement with the defendants for $2.65 million instead. McCormick wanted more proof of an appropriate amount when an accord's primary achievements are governance-based, and not damages.

Grant & Eisenhofer attorneys cited "precedent cases that involved limitations on a controlling or large stockholder's voting power" in their justification in supplemental briefing for the $2.65 million fee award.

"Like benefits should generate like awards, and the requested $2.65 million compares favorably to the fees awarded in precedent cases," McCormick said in her order.

At Issue Elsewhere

Fee awards have been a persistent subject of debate in Delaware. So-called windfall paydays for plaintiffs' attorneys have shadowed high-profile cases, such as a settlement involving Tesla Inc.

In that case, the Delaware Supreme Court cut over $100 million from the fees awarded to shareholder attorneys in a challenge over board compensation at the electric vehicle maker. However, an influential state bar committee decided against updating the traditionally contingency-based legal fees this year.

Certares, Knighthead, and four current and former board members are represented by Berger McDermott LLP and Clark Smith Villazor LLP. Hertz is represented by Potter Anderson & Corroon LLP and Davis Polk & Wardwell LLP, and five of its directors are represented by Jones Day and Richards Layton & Finger PA.

The case is Cascia v. Farmer , Del. Ch., No. 2023-0520, order 7/23/26 .

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[Mealey's Litigation Procedure - Settlement Approval Sought To Resolve Government Entities' 23andMe Claims]

Mealey's Daily News Update

July 24, 2026

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Body

After 41 states and the District of Columbia (the governmental entities) filed proofs of claim seeking nearly $ 100 billion in damages arising from the 2023 23andMe Inc. data breach, the trust administering the company's bankruptcy plan asked a Missouri federal bankruptcy court to issue an order permitting entry into a stipulation that would provide the governmental entities with individual shares of an $ 18 million settlement (In re: Chrome Holding Co. [f/k/a 23andMe Holding Co.], No. 25-40976-357, E.D. Mo. Bkcy.).

(Motion for entry of an order authorizing and approving stipulation 97-260724-090M)

The trust filed the motion on July 14 in the U.S. Bankruptcy Court for the Eastern District of Missouri on behalf of Wind-Down Debtor Chrome Holding Co., f/k/a 23andMe Holding Co. If the Bankruptcy Court approves the stipulation, the governmental entities will resolve their claims upon receipt of their allotted shares of the settlement.

Pending approval, Alabama would receive $ 260,817; Alaska, $ 165,447; Arizona, $ 612,269; Arkansas, $ 431,937; Colorado, $ 394,324; Connecticut, $ 887,729; Delaware, $ 159,654; the District of Columbia, $ 161,919; Florida, $ 1,111,206; Georgia, $ 452,232; Idaho, $ 201,386; Illinois, $ 501,539; Indiana, $ 979,424; Iowa, $ 429,767; Kansas, $ 225,814; Kentucky, $ 259,375; Louisiana, $ 258,668; Maine, $ 181,046; Maryland, $ 518,491; Massachusetts, $ 387,218; Michigan, $ 436,605; and Minnesota, $ 514,871.

New Hampshire would receive $ 187,490; New Jersey, $ 409,588; New Mexico, $ 200,308; New York, $ 705,976; North Carolina, $ 666,242; North Dakota, $ 150,380; Ohio, $ 473,828; Oklahoma, $ 276,435; Oregon, $ 576,707; Pennsylvania, $ 491,902; South Carolina, $ 280,173; South Dakota, $ 149,339; Tennessee, $ 348,687; Texas, $ 1,266,860; Utah, $ 461,688; Vermont, $ 154,065; Virginia, $ 662,649; Washington, $ 547,350; West Virginia, $ 181,778; and Wisconsin, $ 276,817.

The $ 18 million settlement would resolve the governmental entities' bankruptcy proofs of claim seeking payment for alleged liabilities arising from the data breach. It is separate from previously approved consumer data breach settlements.

California is the lone state claimant to not join the settlement. In May, California filed a lawsuit against Chrome Holding in the San Francisco County Superior Court, People of the State of California v. Chrome Holding Co. (f/k/a

23andMe Holding Co.), No. CGC-26-636891, Calif. Super., San Francisco Co., in which the state's attorney general alleges violations of the California Genetic Information Privacy Act (GIPA), Cal. Civ. Code 56.18 et seq., the California Consumer Privacy Act (CCPA), Cal. Civ. Code 1798.100 et seq., the unfair competition law (UCL), Cal. Bus. & Prof. Code 17200 et seq., and the California false advertising law (FAL), Cal. Bus. & Prof. Code 17500 et seq.

California seeks civil penalties of $ 1,000 per violation of the GIPA, $ 2,500 per violation of the CCPA or $ 7,500 per violation of the CCPA that was intentional or involved a minor, $ 2,500 per violation of the UCL, plus $ 2,500 per UCL violation against a senior citizen, and $ 2,500 per violation of the FAL.

Lawsuits And Sale

In October 2023, lawsuits began to be filed against 23andMe Inc., 23andMe Pharmacy Holdings Inc. and 23andMe Holding Co. (collectively, 23andMe) for a data breach believed to have occurred in August 2023. In April 2024, the suits were consolidated in the U.S. District Court for the Northern District of California as a multidistrict litigation, In Re: 23andMe, Inc., Customer Data Security Breach Litigation, No. 24-md-3098, N.D. Calif. In a June 2024 consolidated class complaint, the plaintiffs alleged claims for negligence, invasion of privacy, breach of express and implied contract, unjust enrichment and violation of various states' consumer protection laws.

On Dec. 4, 2024, Judge Edward M. Chen preliminarily approved a settlement between the parties that provided for a $ 30 million nonreversionary settlement fund.

On March 26, 2025, 23andMe filed three voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code, *11 U.S.C. 101 et seq.*, in the Bankruptcy Court. After an auction, the winning bidder of 23andMe's assets was TTAM Research Institute, a nonprofit organization headed by 23andMe's founder and former CEO Ann Wojcicki, which bid $ 305 million.

On June 9, 2025, an adversary proceeding was filed by 27 states, the District of Columbia and the National Association of Attorneys General (NAAG) in Bankruptcy Court opposing the sale of 23andMe's assets, data and PII.

On June 27, Bankruptcy Judge Brian Walsh approved both the sale of 23andMe to TTAM and the transfer of customers' genetic data to the purchaser. He found that the sale would fund the settlement of the data breach lawsuit and voiced his confidence in privacy enhancements the purchaser pledged to enact.

The sale to TTAM closed July 14.

The states and NAAG voluntarily dismissed the adversary proceeding on July 30, citing an agreement with TTAM that it would implement "additional consumer protections and privacy protections" (In re: 23andMe Holding Co., et al. [NAAG Client States, et al. v. 23andMe Holding Co., et al.], No. 25-40976, Adv. No. 25-4035, E.D. Mo. Bkcy.).

MDL Dismissed

The MDL plaintiffs had filed a joint status report on Feb. 2, 2026, informing the court that they would seek to dismiss the MDL after final approval of the settlement in favor of a class of U.S. data breach plaintiffs worth up to $ 50 million and not less than $ 30 million.

The final approval was granted Jan. 30 by Bankruptcy Judge Walsh. In the same order the bankruptcy judge granted a motion by the plaintiffs' attorneys for attorney fees amounting to 25% of the final amount of the settlement fund. The attorneys sought a fee based on percentage, not a fixed-amount fee.

The settlement class comprises nearly 6.4 million members, with more than 99.99% of them not objecting to the settlement. The settlement fund will provide benefits including up to $ 10,000 in monetary reimbursement for "Extraordinary Claims" involving unreimbursed losses such as identity fraud, installation of security systems and professional mental health treatment; cash payments for the statutory subclass comprising residents of states with genetic privacy laws that provide for statutory damages; cash payments for members whose health information was compromised; and five years of privacy and data monitoring services for all class members who enroll in the services.

The order of dismissal of the MDL was entered Feb. 18, 2026, by Judge Chen pursuant to a stipulation by the parties.

"[T]his action is hereby dismissed with prejudice, with all parties to bear their own fees and costs, including but not limited to attorneys' fees," Judge Chen said in the order.

Counsel

Chrome Holding Co. is represented in the bankruptcy case by Thomas H. Riske, Nathan R. Wallace and Samuel S. Brand of Carmody MacDonald PC in St. Louis and Paul M. Basta, Christopher Hopkins, Jessica I. Choi and Grace C. Hotz of Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York.

The governmental entities are represented by their respective attorneys general.

23andMe was represented by in the MDL by Rebekah S. Guyon in Los Angeles, Stephen L. Saxl in New York, Ian C. Ballon in East Palo Alto, Calif., and Kristin O'Carroll in San Francisco, all of Greenberg Traurig LLP.

(Additional documents available: California's complaint against Chrome Holding 58-260616-030C

Order of dismissal in MDL 58-260317-001R

Bankruptcy Court's Oct2, 2025, order of preliminary approval with settlement agreement attached 58-260218-028R

Bankruptcy Court's June 27 opinion approving sale 97-250725-020Z)

End of Document

Mealey's PI/Product Liability - Magistrate: Plaintiffs Must Defend Talc MDL Viability After Experts' Withdrawal

Mealey's Daily News Update

July 24, 2026

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Body

Ovarian cancer plaintiffs in the federal multidistrict litigation must show why all of the cases in the action should not be dismissed for failure to produce admissible expert specific causation testimony, a magistrate judge said in an order to show cause (In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Litigation, No. 16-2738, D. N.J.).

(Order to show cause available 01-260729-020R)

The July 22 order was entered after Johnson & Johnson and Red River Talc LLC (collectively, J&J) told the U.S. District Court for the District of New Jersey that the withdrawal of the experts left the plaintiffs unable to offer expert testimony on causation.

Thousands of consumers originally sued Johnson & Johnson, Imerys Talc America Inc., f/k/a Luzenac America Inc., f/k/a Rio Tinto Minerals Inc., and the Personal Care Products Council (PCPC) claiming that perineal use of Johnson & Johnson consumer talcum powder products causes ovarian cancer. The theory of causation focuses on the presence of asbestos and heavy metals that allegedly contaminate the talc. The plaintiffs claim that testing as early as 1971 showed a link between perineal use of Johnson & Johnson talcum powder and ovarian cancer. The cases were eventually consolidated in multidistrict litigation in the District of New Jersey.

According to recent court filings, the MDL is the largest in the country and approximately twice as large as the second biggest. It involves more than 71,000 actions. Various Johnson & Johnson bankruptcy efforts led to the addition of its subsidiary, Red River Talc LLC, being named as a co-defendant.

Hearing

A hearing on the experts for a potential bellwether trial was held under Federal Rule of Evidence 702, Fed. R. Evid. 702, and *In re Accutane Litig., 234 N.J. 340 (2018)*, on the plaintiffs' causation experts Daniel Clarke-Pearson, Judith Wolf and Daniel Cramer. On May 12, J&J filed a letter brief seeking supplemental briefing, claiming that at the hearing, the experts changed their specific causation opinions. J&J's contention that there are other risk factors present does not require exclusion of the experts' opinions, the plaintiffs say in a May 13 motion to strike J&J's letter brief.

Judge Michael Shipp referred the dispute to Special Master Freda L. Wolfson on May 18. In granting the briefing, Special Master Wolfson noted that the experts testified to new information or analyses that merits additional discussion and that additional briefing would assist her in her gatekeeping role.

In a May 29 brief, J&J told the court all three experts offered new, "even more speculative" opinions at the hearing. In their May 29 supplemental brief, the plaintiffs say that when a dispute exists between experts, it goes to the weight of the testimony, not its admissibility.

Causation

The plaintiffs on June 8 withdrew the reports and opinions of Clarke-Pearson and Wolf.

In its June 11 motion for an order to show cause why all the cases in the MDL should not be dismissed with prejudice, J&J argued that the plaintiffs' theory has always been litigation driven. At the May 2026 specific causation hearing, "the rubber hit the road" and exposed that fact. Wolf testified that she couldn't rule out any single causative factor in the face of multiple causative factors and that she just considers them all, J&J said.

Counsel

The plaintiffs are represented by Michelle A. Parfitt of Ashcraft & Gerel LLP in Washington, D.C.

J&J is represented by Kristen Fournier and Matthew L. Bush of Kirkland & Ellis in New York and Jessica L. Brennan of Barnes & Thornburg LLP in Morristown, N.J.

(Additional documents available: J&J's order to show cause with attachments 01-260624-024M

J&J's supplemental brief on experts 01-260610-027B

Plaintiffs' supplemental brief on experts 01-260610-028B

Special Master Wolfson's letter order 01-260527-036R

J&J's letter brief on specific causation experts with attachments 01-260527-013M

Plaintiffs' motion to strike J&J's letter with attachments 01-260527-014B)

Class Action

Morgan Stanley Exits Lawsuit Over $4.5 Billion Envestnet Sale

July 24, 2026, 2:15 PM PDT

Morgan Stanley & Co. prevailed Friday over a shareholder class action alleging its “allegiance” to Bain Capital LP sullied the $4.5 billion private equity buyout of Envestnet Inc.

Vice Chancellor Bonnie W. David dismissed the lawsuit against the bank and former directors of Envestnet, a wealth management software business, in a 56-page opinion that picks apart the shareholders’ argument that independent directors acted in bad faith by engaging a conflicted financial adviser, then stood idly by while the deal was steered toward the adviser’s preferred bidder.

It’s an unsuccessful argument “because it runs counter to the foundation of our corporation law—the business judgment rule—under which Delaware courts refuse to substitute their own judgment for the decisions of independent directors acting in good faith and with due care,” David said.

Morgan Stanley had fully disclosed its relationships with all bidders to the board, the judge found. The merger “was approved by an overwhelming majority of fully informed, disinterested stockholders,” she said, adding the complaint “fails to adequately allege that the directors intentionally caused the proxy to omit material information, a daunting task when independent directors have no motive for intentionally withholding disclosures.”

Investors sued Envestnet’s former board and Morgan Stanley in the Delaware Chancery Court in October, almost a year after the $63.15-per-share sale closed. Neither Bain nor Envestnet were named as defendants.

Nor was Paul, Weiss, Rifkind, Wharton & Garrison LLP, though the lawsuit noted the Envestnet board had brought on the law firm, which has longstanding ties to Bain, as legal advisers. One of the investors leading the litigation previously dropped a separate lawsuit that had sought to shed light on the law firm’s potential conflicts.

The shareholders are represented by Block & Leviton LLP, Friedman Oster & Tejtel PLLC, and Saxena White PA. Morgan Stanley is represented by Akerman LLP and Latham & Watkins LLP. The Envestnet directors are represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Abbott defeats shareholder lawsuit over 2022 infant formula recall

reuters.com/world/abbott-wins-dismissal-shareholder-lawsuit-over-2022-infant-formula-recall-2026-07-24

July 24 (Reuters) - A federal judge on Friday dismissed a lawsuit accusing Abbott Laboratories (ABT.N), opens new tab of defrauding shareholders by downplaying and trying to evade its responsibility for a 2022 recall of powdered infant formula, and lying about its commitment to quality and product safety.

U.S. District Judge Steven Seeger in Chicago said shareholders led by two European asset managers failed to show that Abbott intended to deceive them and inflated its share price in connection with the February 2022 recall of Similac, Alimentum and EleCare produced at its plant in Sturgis, Michigan.

Abbott closed the plant following reports of severe bacterial infections in infants, and after investigators found traces of potentially deadly bacteria.

The recall and plant closure worsened a national shortage of baby formula that began during the COVID-19 pandemic.

Lawyers for the shareholders did not immediately respond to requests for comment. Abbott and its lawyers did not immediately respond to similar requests.

Shareholders said the Abbott Park, Illinois-based pharmaceutical company waited too long to disclose the contamination, including to the U.S. Food and Drug Administration, and concealed poor conditions at the plant.

They also challenged Abbott's public statements about its regulatory compliance and commitment to providing safe products.

But in a 141-page decision, Seeger said the complaint "at best" alleged that Abbott mishandled the Sturgis plant and the FDA inspection.

"Mismanaging a plant that makes infant formula is bad," Seeger wrote. "But it’s not securities fraud."

The judge also found many Abbott statements too general to warrant liability.

"If you asked Corporate America for a show of hands, and asked CEOs whether they make safe and high-quality products, not a lot of executives would sit still," he wrote.

Abbott's U.S. market share for infant formula exceeded 40% before the recall, court papers show.

Seeger said the shareholders could try to amend their 217-page complaint, but it was "hard to imagine that plaintiffs withheld anything that could change the outcome."

Paramount Agrees to Pause Its Warner Bros. Merger

WSJ wsj.com/business/media/paramount-agrees-to-pause-its-warner-bros-merger-88ae1de1

Paramount said Friday it will not move forward with its merger with Warner Bros. Discovery until legal challenges to the deal are resolved or June 1, 2027, whichever comes first.

The $81 billion merger between entertainment giants Paramount and Warner is being challenged on antitrust grounds by 12 states and the Writers Guild of America, who argue the deal is anticompetitive.

Paramount's decision came after a California federal court had granted a temporary restraining order stopping the deal from closing. A hearing on preliminary injunction that would have barred Paramount from closing the merger while the states' antitrust lawsuit proceeds as scheduled for next week.

In a statement, Paramount said "Today's agreement is a significant win because the result is exactly what we have sought from the outset: a direct path to a trial based on the evidence."

The combined companies would house two major movie and television studios, the CBS broadcast network, dozens of cable channels including CNN, and streaming services Paramount+ and HBO Max.

Paramount has argued that the deal will help the company better compete with streaming giants such as Netflix. It says concerns raised by the states don't reflect the realities of today's competitive landscape.

"This transaction is good for competition, good for consumers, and good for creators," Paramount said Friday, adding the "plaintiffs' market definitions bear no relationship to the realities of today's marketplace and cannot withstand scrutiny."

Joe Flint is a media and entertainment reporter for The Wall Street Journal based in the Los Angeles bureau, covering everything from broadcast networks and sports to cable and streaming. He writes about companies such as Netflix, Apple, Paramount Global, Warner Bros. Discovery, Disney, and Amazon. Joe first joined The Wall Street Journal in 1999 in New York and left in 2006. He rejoined The Wall Street Journal in 2014 after several years with the Los Angeles Times.

Joe also has been a senior writer at Variety and Entertainment Weekly. With more than three decades of experience, Joe is considered the dean of media reporters.

BREAKING: Tom Goldstein Gets 6-Year Sentence

law360.com/articles/2505407/breaking-tom-goldstein-gets-6-year-sentence

(July 24, 2026, 4:27 PM EDT)-- Thomas Goldstein, the famed U.S. Supreme Court attorney and founder of SCOTUSblog whose turn into the world of ultra-high-stakes poker ultimately landed him federal tax and mortgage fraud convictions, was sentenced to six years in prison by a Maryland federal judge Friday.

Tom Goldstein was convicted in February on 12 counts of tax evasion, assisting in the preparation of false returns, failure to timely pay and mortgage fraud. (AP Photo/Alex Brandon)

U.S. District Judge Lydia K. Griggsby handed down the sentence, saying that a factual record had emerged showing "a number of very serious violations of our tax laws."

"It's very disappointing when we have this happening from somebody of a professional caliber of Mr. Goldstein," she said. "I think the evidence shows that that conduct is willful ... and that it warrants a period of incarceration."

On the first count, tax evasion for the 2016 tax year, Judge Griggsby imposed a five-year sentence. But the largest sentences came for three counts of lying on mortgage applications to purchase his Northwest D.C. home for $3 million. Sentences for other counts ranged from one to three years, and all sentences will run concurrently, the judge said.

In February, Goldstein was convicted on 12 counts of tax evasion, assisting in the preparation of false returns, failure to timely pay and mortgage fraud. The government alleged that Goldstein spent from 2016 to 2021 claiming only a fraction of the millions of dollars he won playing poker, hiding legal income from his law firm's accountants and lying to lenders about gambling debts.

He spoke directly to Judge Griggsby Friday, saying that while he didn't want to "undermine" his pending appeal, he wanted to "express regret."

"There is no question that I have deeply disappointed people," Goldstein said, choking up at the lectern in Greenbelt, Maryland. "That I have not held myself to the standards that I should be held to ... that I have betrayed the trust of people who deeply love me."

Without admitting to anything, he said he had put himself in a position where the court "could make judgments about [his character] that were very negative" and where he could be charged with serious crimes.

Goldstein maintained his innocence through his two days on the witness stand at trial — during which he claimed that he had actually been a net poker loser in 2016 and beyond, overpaid his taxes during that time, and had only lied to home lenders to keep his debts a secret from his wife — and in the time since. His lead defense attorney, Jonathan Kravis, on Friday laid the blame for financial troubles on a deep-seated gambling addiction that got him "in over his head," asking Judge Griggsby to impose only supervised release so that he can continue treatment.

"Mr. Goldstein was gambling with money he could not afford to lose," Kravis said Friday, insisting that his client has a "deep respect for the law." "Mr. Goldstein ... was in the grip of something he could not control. ... Which does not excuse the conduct but is a relevant consideration."

The government sought a 97-month prison sentence, arguing Goldstein had compounded his charged and convicted tax evasion by continuing to dodge millions of dollars in taxes in 2022 and 2023, years he wasn't charged for. And he did that despite having one of his best poker-playing years in 2022, the government said, taking in $17 million in net income.

Rather than paying his taxes, U.S. Department of Justice attorney Emerson Gordon-Marvin said Friday, Goldstein spent "an incredible amount of money" and even paid off a romantic interest's tax lien. At issue, Gordon-Marvin said, were "deliberate choices that Mr. Goldstein made for more than a decade."

"He had repeated opportunities to come clean, he had myriad chances to do the right thing," Gordon-Marvin said Friday. "His conduct isn't about a gambling addiction or a mental health issue. ... His conduct is about a recurring choice made day after day and year after year to prioritize himself."

Goldstein's attorneys argued Friday that the uncharged years shouldn't play a role in his sentence, and that the overall tax loss calculation that netted him a total offense level of 28 should have been significantly lower without the uncharged years and when accounting for taxes, penalties and interest that Goldstein had paid late. But Judge Griggsby was unmoved, saying they were relevant and siding with the government's argument that enhancements for the use of sophisticated means and obstruction of justice were warranted.

As to the core of Goldstein's final defense — that he was a net loser in 2016 and had actually overpaid his taxes because he failed to account for more than $9 million he was holding for his poker backer, Malaysian billionaire Paul Phua — the judge said the evidence showed that Goldstein "certainly kept enough of those winnings that he was a net winner in 2016."

"There is a pattern over a decade now ... of issues with taxes," the judge said, adding that Goldstein had several opportunities to "right the ship" and had likely lied to IRS agents when they launched their investigation.

Goldstein's lawyers have said that he will file for an expedited appeal in the Fourth Circuit.

The government is represented by Hayter L. Whitman, Sean Beaty, Emerson Gordon-Marvin, Adeyemi Adenrele, A. Tysen Duva and Kelly O. Hayes of the U.S. Department of Justice's Criminal Division.

Goldstein is represented by Elizabeth B. Prelogar of Cooley LLP, Jonathan I. Kravis of Liu Shur Kravis LLP and Stephany Reaves, Sarah E. Weiner and Adeel Mohammadi of Munger Tolles & Olson LLP.

The case is U.S. v. Goldstein, case number 8:25-cr-00006, in the U.S. District Court for the District of Maryland.

9th Circ. Affirms Dismissal Of Investor Suit Against SunPower

law360.com/articles/2505598/9th-circ-affirms-dismissal-of-investor-suit-against-sunpower

(July 24, 2026, 6:34 PM EDT)-- The Ninth Circuit on Friday affirmed the dismissal of a proposed securities class action accusing solar power equipment company SunPower and some of its leaders of concealing a product defect, finding the plaintiffs did not plausibly allege the company had advance knowledge of the issue.

In a unanimous, unpublished opinion, a three-judge panel affirmed a California judge's dismissal with prejudice of the lawsuit brought by the Steamfitters Local 449 Pension & Retirement Security Funds, disagreeing with the fund that it did not need to allege the company or its leaders had prior knowledge of a cracking issue due to a third-party supplier over-torquing some nuts that could cause cracks in some components.

The fund argued that risk factor statements made in the year prior to the cracking issue being disclosed indicated the company had advanced knowledge of the defect but concealed it. According to the fund, those statements in filings with the U.S. Securities and Exchange Commission stated some risk factors for the company were "purely hypothetical" but included component quality, product defects, defective parts and product and component failures.

However, the panel held the fund did not plausibly allege the company knew of the over-torquing defect when it made those statements, and said the fund was wrong in arguing it did not need to allege it.

"The district court did not err, even though the defect already existed, because Steamfitters did not plausibly allege that defendants knew that the defect existed at the time the statements were made," the panel said. "Steamfitters's arguments that it need not allege any knowledge is foreclosed by our precedent."

The suit, which was amended for the third time in August, alleged SunPower's risk factors and statements regarding its commercial business were materially false and misleading in the months before it announced it was taking a $27 million warranty charge due to a "cracking issue that developed over time in certain factory-installed connectors within third-party commercial equipment" in January 2022.

When SunPower announced that replacing and repairing defective products would negatively impact its 2021 financial results, its stock price dropped nearly 17%, according to the suit.

The **lawsuit** was **thrown out** by a lower court last year, with U.S. District Judge Araceli Martinez-Olguin ruling that the plaintiffs hadn't shown SunPower knew about the alleged defects before it disclosed the issue in 2022.

The panel said Friday that the Ninth Circuit's 2023 opinion in In re Facebook, Inc. Sec. Litig. held that "[r]isk disclosures in an SEC filing can give rise to liability under the Exchange Act where they 'warn[] that risks 'could' occur when, in fact, those risks had already materialized.'"

The panel added, "The question is whether the risk could have materialized before SunPower knew of the over-torquing defect. But our precedents illustrate that the risk materializes only when a defendant knows of the defect."

One case the panel quoted is the Ninth Circuit's 2021 opinion in In re Alphabet, Inc. Securities Litigation, which held that the complaint "plausibly allege[d] that ... risks of harm ripened into actual harm when the privacy bug was detected." In that case, Alphabet paid **$350 million** to settle claims that it concealed a March 2018 software glitch that allegedly gave third-party app developers the ability to access the private profile data of 500,000 users of the Google Plus social media site.

"Steamfitters has not plausibly alleged that SunPower knew of the defect at the time of the risk factor statements," the panel said. "Steamfitters puts forward six arguments that someone at SunPower must have known about the defects, but all six are too speculative to survive a motion to dismiss."

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

U.S. Circuit Judges Richard Paez, Richard Tallman and Mark Bennett sat on the panel for the Ninth Circuit.

Steamfitters Local 449 Pension & Retirement Security Funds is represented by Shawn Williams, Kenneth Black, Willow Radcliffe, Snehee Khandeshi and Harini P. Raghupathi of Robbins Geller Rudman & Dowd LLP.

SunPower is represented by Katherine Leigh Henderson and Dylan Grace Savage of Wilson Sonsini Goodrich & Rosati PC and John Charles Roberts Jr. of Glancy Prongay Wolke & Rotter LLP.

The case is Steamfitters Local 449 Pension & Retirement Security Funds v. SunPower Corporation, et al., case number 25-1831, in the U.S. Court of Appeals for the Ninth Circuit.

Cogent Investors Say ISP Misled Them About Wavelength Biz

law360.com/articles/2505556

(July 24, 2026, 5:49 PM EDT)--Cogent Communications has been hit with a stock drop suit accusing it of misleading investors about the viability of its wavelength business, which the company had billed as the solution to financial issues that arose after purchasing Sprint's wireline business for $1.

The **proposed class action** was filed Thursday in D.C. federal court by City of Southfield Fire and Police Retirement System, seeking to represent itself and everyone else who had money invested in Cogent — an internet service provider — when it was forced to slash its quarterly dividends by 98%.

Before that, Cogent had increased its dividend for 52 straight quarters — or 13 consecutive years, the proposed class told the court.

Specifically, the proposed class period stretches from the end of February 2024, when Cogent and its CEO David Schaeffer announced that the company had a "significant backlog of optical wavelength orders while discussing the Company's progress in building out its optical wavelength network," to the beginning of May 2026, when the stock dropped after Cogent revealed that its wavelength business had yet again underperformed.

According to the suit, the trouble began when Cogent bought Sprint's wireline business from T-Mobile for $1 in May 2023. The wireline business was hemorrhaging money, but Cogent billed its wavelength business — providing direct, dedicated fiber connections for businesses — as the thing that would turn it all around, according to the lawsuit.

Cogent told investors it had a large backlog of customer orders and promised the wavelength business would be booming, but the suit alleges that the company knew many of those orders wouldn't actually be made because the customers weren't ready to accept delivery.

The suit says there were five stock drops during the class period, ranging from 7% to 56%, all but one hitting double digit percentage points.

The proposed class of investors also accuses the company's CEO — who is also named as a defendant — of using the inflated stock price achieved through misrepresentation to enrich himself by taking out loans and building a real estate portfolio.

"While allowing defendant Schaeffer to amass personal wealth, the share pledges placed intense pressure on defendant Schaeffer to maintain or increase the price of Cogent shares," the suit said. "If the price of Cogent stock fell significantly, defendant Schaeffer risked a margin call that could require him to quickly sell large amounts of Cogent stock, thereby driving down the price of Cogent stock and causing his wealth to drop."

The proposed class is represented by Schertler Onorato Mead & Sears LLP, VMT Law PC, and Robbins Geller Rudman & Dowd LLP.

Counsel information for the defendants was not immediately available.

The case is City of Southfield Fire and Police Retirement System v. Cogent Communications Holdings Inc. et al., case number 1:26-cv-02609, in the U.S. District Court for the District of Columbia.

Apple Accused Of Trying To 'Stifle' £785M App Antitrust Claim

law360.com/articles/2505927/apple-accused-of-trying-to-stifle-785m-app-antitrust-claim

(July 27, 2026, 6:55 PM BST)-- Lawyers representing app developers suing Apple in a £785 million ($1 billion) group action accused the tech giant of trying to strangle the action by asking for "an oppressive level of disclosure" in a London antitrust tribunal Monday.

Lawyers acting for more than 13,000British developers said at the Competition Appeal Tribunal that Apple is attempting to intimidate members of the class into withdrawing from the claim with excessive disclosure requests. Apple has denied the allegations, saying they are "utter nonsense" and "frankly insulting."

Daniel Hubbard of One Essex Court, the group's counsel, said that the tribunal should restrict what Apple is able to say in communications with members of the class, arguing that its proposed disclosure requests were too wide-ranging and risk causing larger developers to leave the class. Hubbard said that Apple had attempted to "kill the claim" through its previous applications, which he asserted were tactical.

"Those tactics having failed, Apple is now trying to get through the back door what it failed to achieve through the front, by seeking an oppressive level of disclosure from the class, first voluntarily and then (if necessary) by way of application," Hubbard said in written arguments.

The CAT **agreed to certify** the opt-out collective action spearheaded by Sean Ennis, a professor at Norwich Business School, in October 2024. The claim argues that the 30% cut that Apple takes from developers is unfair and harms competition.

Apple has **sought to block** the claim by asking the tribunal to reconsider the decision to certify it as an "opt-out" action, but the tribunal rejected its arguments in June, saying some aspects of the claims were "**unusually strong**."

The company, whose headquarters are in California, has also fought for a preliminary trial to determine whether it had breached any U.K. or EU competition laws, but the tribunal ruled in October 2025 that it would **not be possible** to cleanly separate issues of liability and jurisdictional issues.

Hubbard added Monday that Apple was wrong to assert that the tribunal did not have jurisdiction over the communications because of litigation privilege as it had already disclosed the substance of the requests previously in the litigation. Hubbard argued that it would be fair for Apple's requests and the resulting chain communications to be disclosed.

Daniel Piccinin KC of Brick Court Chambers, counsel for Apple, said that Ennis' allegations had been raised three times previously in the litigation, and urged the tribunal to block the class representative bid to restrict his client's communication with class members.

"[Ennis'] allegation is utter nonsense," Piccinin said. "My clients have had enough of turning up to this tribunal and being abused in this way, by Dr. Ennis making the same baseless allegations that concern events and alleged conduct that has nothing at all to do with the application that the tribunal is actually considering."

Piccinin added that Ennis was "quite expressly attempting to stifle [Apple's] defense" by accusing it of harassing class members in order to frustrate it from defending against the claim in the usual manner for "normal, grown-up commercial litigation."

"It is even more absurd, and frankly insulting, to suggest that Apple's in-house lawyers, who are professionals regulated by various regulators around the world, would agree to harass anyone in the course of litigation, or at all," Piccinin said. "And frankly it is beyond the pale to suggest that Apple's external solicitors, regulated by the SRA, would do so, that really is an outrageous submission, and I cannot fathom how those on the other side of this courtroom felt able to make it today."

Piccinin added that litigation privilege did apply to some of its communication with developers when it sought voluntary disclosure, and that this may reveal details of unused information or of its litigation strategy. Piccinin added that his client's general disclosures about the categories of documents it will seek does not mean that it has waived privilege over any exchanges it has with its interlocutors.

Piccinin said his client had instructed its solicitors, Gibson Dunn & Crutcher UK LLP, to seek evidence from parties who are willing to provide it voluntarily to assist its defense.

The panel presiding over the hearing said it would hand down its decision at a later date.

Ennis is represented by Daniel Hubbard of One Essex Court, instructed by Scott+Scott Attorneys at Law LLP.

Apple is represented by Daniel Piccinin KC of Brick Court Chambers, instructed by Gibson Dunn & Crutcher UK LLP. Full counsel details were not immediately available.

The case is Sean Ennis v. Apple Inc. and others, case number 1601/7/7/23, in the Competition Appeal Tribunal.

Abbott Beats 'Supersized' Investor Suit Over Formula Recall

law360.com/articles/2505659/abbott-beats-supersized-investor-suit-over-formula-recall

(July 25, 2026, 12:23 AM EDT)-- An Illinois federal judge tossed a proposed securities class action accusing Abbott Laboratories of misleading shareholders about its safety practices ahead of the 2022 recall at its Sturgis, Michigan, infant formula plant, saying Friday that "despite its girth," the "supersized" complaint says "too much and too little," and still needs more information to be viable.

In his own lengthy, and at times colorful, order that clocked in at 141 pages, U.S. District Judge Steven C. Seeger dismissed the investors' lawsuit, but he gave the investors three weeks to file a motion seeking leave to amend, while doubting whether there's anything left to allege.

"There's no point in another squeeze if the claims have no juice … The complaint at hand is over 200 pages long," the order said. "One has to think that plaintiffs put it all on the table and left it all on the floor. It's hard to imagine that plaintiffs withheld anything that could change the outcome."

Even so, the judge said he "will hear plaintiffs out" if they want to amend their complaint, and he prefaced his ruling by detailing the voluminous record in the case, noting that the 217-page complaint came with an additional 20 pages of appendices. If placed end to end, the complaint "would nearly match the longest field goal in NFL history," the judge said, and the lengthy complaint was just the beginning. The parties have since added an additional 130 pages of briefing to the "factual mountain," including 32 exhibits plus multiple regulatory filings each over 90 pages, Judge Seeger said.

"This court did its level best to condense the supersized payload of allegations into a digestible bite," the order said. "This opinion aims to fly like a crow, not a butterfly, but there's a lot of ground to cover."

Judge Seeger explained that the "Cliffs Notes version of the facts" is that the investors accuse the company and its top brass of making false and misleading statements about Abbott's safety practices amid its voluntary recall of infant formula manufactured at Abbott's facility in Sturgis. Judge Seeger found, however, that the investors have not adequately alleged a viable claim.

"This court has completed its march through 486 paragraphs of a 217-page complaint," the order said. "Despite its girth, the complaint fails to state a claim against Abbott or any of the individual defendants."

However, the judge noted that one or two of Abbott's statements at issue — including its assertion that the bacteria was found "in non-product contact areas" — may be considered misleading if the investors are able to provide more information.

"Proximity matters," the order said. "There is a big difference between finding a cockroach in your basement, and finding a cockroach in your kitchen."

The ruling is the latest chapter in the sprawling proposed securities class action initially filed by a Florida pension fund in August 2022. And in 2023, the court appointed KBC Asset Management NV and Quoniam Asset Management GmbH as lead plaintiffs and Motley Rice LLC and Bernstein Litowitz Berger & Grossman LLP as lead counsel.

The investors sued following a series of Abbott stock drops totaling 18.6% — or $40 billion in market capitalization — that occurred as the company was facing roughly $900 million in losses and numerous investigations into its actions following a potential bacteria outbreak at its Sturgis infant formula plant.

The stock drops began in February 2022 after the U.S. Food and Drug Administration warned consumers not to use Abbott's Similac, Alimentum or EleCare powdered infant formulas originating from the Sturgis plant due to concerns the products were contaminated with a potentially deadly bacteria called cronobacter. The FDA made the statement following reports of infant hospitalizations and one infant death tied to the bacteria, court documents say.

On the same day the FDA issued the warning, Abbott voluntarily recalled certain powdered infant formulas and temporarily shut down production at the Sturgis plant. In March 2022, the FDA publicly released its so-called Form 483 reports that laid out the agency's findings from prior inspections during which the FDA flagged safety lapses and identified certain areas in the Sturgis plant, including on a "scoop hopper" — which feeds scoops that directly touch infant formula containers — that were contaminated with cronobacter, court documents say.

The publication of the FDA reports caused Abbott's stock to drop 4%, and the following month, a whistleblower complaint publicly alleged unsanitary conditions at the plant, which caused shares to slide another 3.8%, the suit says. A few weeks later, a second whistleblower complaint was publicized, triggering an additional 3.6% stock drop.

The Sturgis plant's closure also happened to correspond with supply chain delays caused by the COVID-19 pandemic, and the combination of events sparked a nationwide shortage of infant baby formula, along with a congressional investigation, the suit says. Before the recall, Abbott controlled 40% of the U.S. market for infant baby formula, which was valued at $3.9 billion, and its plant in Sturgis was one of its largest, court documents show.

Throughout 2022, Abbott and its executives touted its safety practices and disputed that the infant hospitalizations and deaths were linked to the same specific bacteria the FDA discovered in its Sturgis plant, the suit says. The company also stated repeatedly that cronobacter was found "in non-product contact areas of the facility and has not been linked to any known infant illness," according to court documents.

Even so, Abbott entered a consent decree with the U.S. Department of Justice in May 2022, agreeing to make internal changes and retain an outside FDA compliance expert, the complaint says. Abbott also later disclosed that it was being investigated by the Federal Trade Commission and the DOJ's criminal division, court documents show.

The three-count complaint alleges the company's numerous statements, as well as statements made by Abbott's CEO Robert B. Ford, Chief Financial Officer Robert E. Funck Jr. and two other executives — Christopher J. Calamari and Joseph Manning — violated the Securities Exchange Act of 1934 and federal regulations. The suit also asserts a claim of SEA misconduct against the company itself, and seeks to hold the executives vicariously liable.

But in June 2023, Abbott and the executives asked the court to throw out the litigation, arguing many of the statements at issue are "marketing rhetoric," opinions or immaterial as a matter of law, and none is false or misleading.

In his ruling Friday, Judge Seeger agreed with Abbott that nonspecific, generalized, "cotton candy," aspirational, or "lofty statements about the quality and safety of the company's products in general are not enough to give rise to a claim."

"If you asked corporate America for a show of hands, and asked CEOs whether they make safe and high-quality products, not a lot of executives would sit still," the judge wrote.

Judge Seeger added that generalized statements about a company's commitment to safety "doesn't mean anything to anybody," and no reasonable investor would think that such "squishier-than-Charmin sentences added anything of substance." Similarly, statements about a company's commitment to consumers are also "akin to rainbows and sunshine," and are too vague and "too vapid to mean anything," he wrote.

More granular statements about safety could give rise to a claim, but many of the statements cited by the investors weren't false or misleading, the order said. For instance, the investors' assertion that Abbott's recall wasn't voluntary is belied by the fact that the White House and the FDA characterized it as voluntary, the judge said.

The investors also can't pursue a claim based solely on the theory that Abbott didn't disclose the FDA's investigations, the judge said. The investors would have to present evidence showing that the FDA had specific evidence linking the hospitalizations to Abbott's facility to disprove Abbott's statement that the agencies lacked evidence linking their facility to the outbreak, which the investors haven't done, Judge Seeger said.

Judge Seeger added that investors could allege they were misled by Abbott's repeated assertions that no cronobacter was found near the finished infant formula, even though the FDA found the bacteria on a scoop hopper. But more details are needed to support the alleged misstatement.

"Based on the complaint, it's difficult to sort out whether Abbott's statement was false or misleading," the order said. "It would help to know more about the machinery, including the spatial proximity. More facts would help."

The judge also noted that Abbott never guaranteed that the company fully complied with FDA regulations, and instead, Abbott explicitly warned investors that it faced a risk of non-compliance in the future. It also never had a duty to disclose any uncharged, unadjudicated wrongdoing to investors.

"Basically, the FDA raised concerns about Abbott's compliance, but that's it," the order said. "The FDA did not make any findings about a violation, let alone take any final agency action."

"There were clouds over the Sturgis facility, but not rain, and certainly not thunder," the order said.

The judge also found that, without more, the suit "at best" alleges the company did a bad job at managing the facility, but it doesn't link the mismanagement to securities.

"Mismanaging a plant that makes infant formula is bad," Seeger wrote. "But it's not securities fraud."

Counsel for the parties and representatives for Abbott didn't immediately respond to requests for comment Friday.

The investors are represented by Salvatore J. Graziano, Avi Josefson, James A. Harrod, Timothy Fleming and Emily A. Tu of Bernstein Litowitz Berger & Grossmann LLP and Gregg S. Levin, Lance V. Oliver, Christopher F. Moriarty, Erin C. Williams and Serena P. Hallowell of Motley Rice LLP.