# [2nd Circuit Affirms Dismissal Of Securities Fraud Suit For Lack Of Scienter]

Mealey's(R) Emerging Securities Litigation

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## Body

A Second Circuit U.S. Court of Appeals panel affirmed the dismissal of investors' putative securities fraud class action against a virtual health care service provider and certain of its executives regarding alleged misstatements they made after the company's $18.5 billion merger with another health care company, finding that the investors had not adequately alleged scienter (*In re Teladoc Health Inc. Securities Litigation, No. 25-1022, 2nd Cir., 2026 U.S. App. LEXIS 22196*).

( Summary order available 57-260810-019R )

Judges Richard J. Sullivan, Joseph F. Bianco and Beth Robinson issued the summary order on July 27, finding that the investors did not prove motive or opportunity to benefit from the alleged misstatements and did not adequately plead that the executives consciously misbehaved or acted recklessly.

Judge Denise Cote of the U.S. District Court for the Southern District of New York dismissed the case against Teladoc Health Inc. and its executives (collectively, Teladoc) on March 21, 2025, finding that the investors who brought the suit had not adequately pleaded scienter. Judge Cote previously dismissed the case for failure to plead falsity, but the Second Circuit reversed that decision in a prior appeal.

Claims

In a December 2022 second amended complaint, investors including lead plaintiff Leadersel Innotech ESG and additional plaintiff Hui Ma sued the company and CEO Jason Gorevic, Chief Financial Officer Mala Murthy, Chief Marketing & Engagement Officer Stephany Verstraete and Chief Accounting Officer Richard Napolitano, seeking to represent those who purchased Teladoc common stock from Feb. 11, 2021, through July 27, 2022, "and were damaged thereby."

The investors alleged that Teladoc had falsely assured investors that Teladoc was successfully integrating Livongo Health Inc. Additionally, the investors alleged that Teladoc had falsely assuaged investors' concerns about competition, denying that competition was materially affecting Teladoc's business. They alleged that after the truth about these issues was revealed, Teladoc's investors lost billions.

The investors asserted a claim against all defendants for violating Section 10(b) of the Securities Exchange Act of 1934, *15 U.S.C. 78j(b)*, and the accompanying regulation Securities and Exchange Commission Rule 10b-5, *17 C.F.R. 240.10b-5*, and a claim against the executives for violating Section 20(a) of the Exchange Act, *15 U.S.C. 78t(a)*.

Falsity

Teladoc successfully sought dismissal for failure to state a claim, with Judge Cote in July 2023 concluding that many of the integration statements were inactionable puffery and as to the remainder, that the investors did not "adequately plead that any of these representations was false or materially misleading."

Leadersel and Hui Ma appealed, focusing on certain integration statements and the denial of leave to amend. Partway through the briefing, the Second Circuit granted a joint motion to simplify the appeal caption, which the parties said had been inconsistent with the District Court's, "incorrect and potentially misleading."

In a Sept. 24, 2024, ruling, a Second Circuit panel reversed and remanded the case, finding that the complaint adequately pleaded falsity with respect to the challenged statements. The panel said that on four "alleged misstatements regarding the status of the integration itself," it disagreed with the District Court. One of those statements consisted of "the risk warnings in Teladoc's 2021 Form 10-K." Among other things, the panel ruled the allegations were "sufficient to plausibly support a finding that, by the time of the filing of the 2021 Form 10-K in February 2022, the risks regarding the Livongo integration were not merely 'potential difficulties that Teladoc may encounter in the integration process'. . . but had already materialized and resulted in significant disruption to Teladoc's business," citing *Set Cap. LLC v. Credit Suisse Grp. AG, 996 F.3d 64, 85 (2d Cir. 2021)*.

Finally, the panel declined to consider Teladoc's alternative argument that dismissal was warranted for failure "to adequately plead scienter and loss causation," stating that "the district court did not consider those arguments, and we decline to do so here in the first instance." It remanded the case to the lower court to address whether the investors adequately pleaded scienter and loss causation.

Renewed Motion

Back in the District Court, Teladoc filed a renewed motion to dismiss the case, arguing that scienter and loss causation had not been adequately pleaded. The motion addressed the four remaining statements at issue - two statements by Gorevic in early 2021 that the sales teams had been fully integrated; Verstraete's statement in late 2021 that the marketing data and tech stacks had been integrated; and the risk disclosures in Teladoc's 2021 Form 10-K.

On March 21, 2025, Judge Cote granted the motion, finding that the second amended complaint "does not provide strong circumstantial evidence of conscious misbehavior or recklessness with respect to any of the four statements that remain at issue in this case."

Among other things, the judge found that three integration problems covered by the Form 10-K's risk disclosure had materialized by the end of February 2022 and addressed the allegations of scienter for each. Judge Cote said the second amended complaint did not adequately allege that Gorevic knew enough about the sales integration problem with respect to the risk warning to adequately plead scienter. The judge further noted that the second amended complaint failed to plead Verstraete's scienter regarding the statement about the delay in Tableau integration. The lead plaintiff also failed to offer meaningful allegations that Gorevic, Murthy or Napolitano was aware of the salesforce integration issue.

Judge Cote denied the lead plaintiff's request to amend, noting that it had not identified how an amendment would address the second amended complaint's deficiencies and that the lead plaintiff was warned that it would likely not have another opportunity to amend the complaint.

Leadersel and Hui Ma appealed the decision to the Second Circuit.

Scienter

The panel affirmed, finding first that the investors provided no path to motive and opportunity other than the executives' stock sales. It found that "Plaintiffs' contention that Defendants sold stock to profit from their misstatements is far less compelling than the 'opposing inference' that these executives were simply selling their stock in the ordinary course."

It also found that the investors did not adequately plead that the individual defendants acted with conscious misbehavior or recklessness. First, it held that the investors failed to plead any facts suggesting that Gorevic knew that his misstatements about the Legacy Teladoc and Livongo sales teams being fully integrated and vague warnings that Teladoc may encounter integration issues were inaccurate because they were based on confidential witnesses who provided no relevant information.

The panel disagreed with the investors' argument that Murthy and Napolitano consciously misbehaved or were reckless because Murthy discussed increased competition at certain all-hands meetings between fall 2020 and spring 2022. It stated that the investors had not explained why the mention of competition implicitly revealed an understanding of Teladoc's integration issues rather than "any of the other reasons why a large business may struggle with its competitors." Nor did the investors explain how Murthy's knowledge should be imputed on Napolitano. Additionally, it found that "Verstraete's purported misstatement does not carry the same inference of knowledge as an officer's use of specific financial data."

The panel also found that the investors failed to plead scienter under the core-operations doctrine. It stated, "Though Teladoc's acquisition of Livongo for a record-breaking $18.5 billion was plainly important to the core operations of Teladoc, Plaintiffs have not plausibly pleaded that the details of the sales-team staffing arrangements and technical integration of marketing databases are sufficiently 'core' to the acquisition and Teladoc's operations to support a 'core operations' argument."

The panel disagreed with the investors' argument that the District Court erred in rejecting their allegations that Teladoc possessed corporate scienter because the individual defendants and other nondefendant executives possessed scienter. It found that the allegations against the nondefendant executives did not provide evidence of their knowledge of any falsity and did not connect them to the alleged misstatements.

Because the panel found the investors failed to establish that Teladoc violated Rule 10b-5, it found that their Section 20(a) claims against the individuals also failed.

Counsel

Leadersel Innotech is represented by Carol C. Villegas, Irina Vasilchenko and Matthew J. Grier of Labaton Keller Sucharow LLP in New York.

Teladoc, et al. are represented by Abigail Frisch Vice in Washington, D.C., and Daniel J. Kramer, Audra J. Soloway and Dylan O. Smith in New York, all of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

( Additional documents available: Leadersel Innotech's appellant brief and special appendix 57-260810-020B

Teladoc, et al's appellee brief 57-260810-021B

Leadersel Innotech's reply brief 57-260810-022B

District Court opinion and order 57-250414-041Z

District Court judgment 57-250414-042X )

# 4th Circuit Reverses Class Certification In Stock-Drop Suit Against Boeing

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## Body

A Fourth Circuit U.S. Court of Appeals panel reversed a lower court's decision to certify a class of investors in their suit against The Boeing Co. and its former officials over alleged misstatements about the company's emphasis on safety that artificially inflated the company's stock price, finding that the investors did not provide a damages methodology tied to their theory of liability, as required by Comcast Corp. v. *Behrend (State of Rhode Island Office of the General Treasurer, et al. v. The Boeing Company, et al., No. 25-1492, 4th Cir., 2026 U.S. App. LEXIS 21327*).

( Opinion available 57-260810-059Z )

Judges Julius N. Richardson, A. Marvin Quattlebaum Jr. and Allison Jones Rushing issued the opinion on July 20, also finding that the lower court did not conduct the thorough analysis required by *Comcast, 569 U.S. 27 (2013)*.

Safety Issues

Boeing and Airbus SE manufacture large commercial airplanes. After Airbus announced the A320neo in December 2010, Boeing decided to update its 737 model. It delivered the 737 MAX to customers in May 2017. In October 2018 and March 2019, two Boeing 737 MAX aircraft crashed shortly after takeoff. The Federal Aviation Administration grounded all 737 MAX airplanes in March 2019, and investigation discovered a defective sensor.

The U.S. House of Representatives' Committee on Transportation and Infrastructure, the U.S. Department of Justice and the Securities and Exchange Commission found that pressures at Boeing, including costs and scheduling, undermined the safety of the 737 MAX and led to safety compromises. Boeing and the DOJ entered into a three-year deferred prosecution agreement on Jan. 7, 2021, that included a $2.5 billion settlement to resolve a charge that Boeing conspired to defraud the FAA. The SEC and Boeing agreed to a $200 million settlement over allegations that Boeing misled investors about the safety of the 737 MAX after the crashes.

During this time, Airbus' market share went from 45.3% in 2018 to 62.5% in 2019, while Boeing's revenue temporarily dropped from $101 billion in 2018 to $58.1 billion in 2020. Boeing's revenue increased to $77.8 billion in

2023. Boeing made 40 statements about safety between Jan. 7, 2021, and Jan. 8, 2024, that investors alleged were false and misleading. On Jan. 5, 2024, another flight operating a 737 MAX made an emergency landing because a door plug in the plane's fuselage detached shortly after takeoff. On Jan. 8, 2024, Boeing's stock price dropped 8%.

The State of Rhode Island Office of the General Treasurer filed the initial complaint against Boeing and certain of its executives on Jan. 30, 2024. The General Treasurer and Local #817 IBT Pension Fund were appointed lead plaintiffs on April 22, 2024. They filed the operative amended complaint on May 22, 2024, alleging claims pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, *15 U.S.C. 78j(b)* and *78t(a)*, and SEC Rule 10b-5, *17 C.F.R. 240.10b-5*, against Boeing, its former President and CEO Dennis A. Muilenburg, current President and CEO David L. Calhoun, former Chief Financial Officer Gregory D. Smith and current Chief Financial Officer Brian J. West. Boeing moved to dismiss the amended complaint, but the District Court denied the motion, finding that the investors had provided enough information in the amended complaint to let the case move forward.

The investors then moved to certify a class of "persons or entities who purchased or acquired Boeing stock or options between Sept. 30, 2019 and May 14, 2024." On March 7, 2025, the District Court narrowed the class to include purchasers of common stock only, from Jan. 7, 2021, through Jan. 8, 2024.

It certified the class after finding the investors' "out-of-pocket" methodology for calculating per-share inflation to be widely accepted for measuring damages in SEC Rule 10b-5 actions and that the methodology fit the investors' theory of liability. Additionally, the District Court held that the majority of courts have interpreted *Federal Rule of Civil Procedure 23(b)(3)*, *Fed. R. Civ. P. 23(b)(3)*, and Comcast to permit the standard out-of-pocket method of calculation to be used in securities class actions.

The defendants petitioned the Fourth Circuit for permission to pursue an interlocutory appeal. The Fourth Circuit granted the petition under *Federal Rule of Civil Procedure 23(f)*, *Fed. R. Civ. P. 23(f)*. On appeal, Boeing argued that the class certification order, arguing that the reports provided by the investors' expert witness, Chad Coffman, failed to put forth a classwide, case-specific damages methodology consistent with their theory of liability, as required by Comcast. The Securities Industry and Financial Markets Association filed an amicus curiae brief in support of Boeing and its executives, as did former officials of the SEC and law professors.

Unmet Requirements

The panel reversed the District Court's order on class certification and remanded the case to the District Court. In doing so, it noted that the investors pointed to the out-of-pocket methodology provided by Coffman in his initial report, which defined the out-of-pocket approach by stating that "'damages are equal to the artificial inflation per share at the time of purchase minus the artificial inflation per share at the time of sale (or if the share is not sold prior to the full revelation of the fraud, just the artificial inflation at the time of purchase).'"

The panel stated that this legal description of damages was not enough because it did not explain "how to determine the artificial inflation embedded in Boeing's stock price on any day of the class period," which is required under Comcast. While Coffman's rebuttal report provided a longer damages discussion, it still did not provide the information required by Comcast because Coffman still did not commit to a specific methodology.

Additionally, the panel found that the investors did not "identify their theory of liability by the class-certification stage," finding that the investors claimed that Boeing's allegedly misleading statements caused its stock price to artificially increase before dropping after the truth emerged but never explained how that happened. It said this generic description of securities fraud does not satisfy Comcast.

The panel disagreed with the investors' argument that because any potential problems with their damages theories affect the entire class, they did not have to provide the methodology required by Comcast. It stated, "Plaintiffs can't get around Comcast's frontloading mandate by emphasizing a backend conclusion."

The panel said that because the District Court approved the investors' insufficient proof, it misapplied Rule 23(b)(3). It said that while the investors failed to provide an adequate methodology and failed to identify their liability theory with enough specificity, Comcast also "requires the district court to conduct a rigorous analysis that includes this comparison."

Counsel

The investors are represented by Deepak Gupta and Gregory Beck of Gupta Wessler LLP in Washington, D.C.; Carol C. Villegas, Christine M. Fox and Jake Edward Bissell-Linsk of Labaton Keller Sucharow LLP in New York; and Chad Johnson, Noam Mandel, Jonathan Zweig and Desiree Cummings in New York and Douglas Wilens in Boca Raton, Fla., all of Robbins Geller Rudman & Dowd LLP.

Boeing, et al. are represented by Benjamin L. Hatch of McGuireWoods LLP in Washington and Jeffrey B. Wall and Judson O. Littleton in Washington, Richard C. Pepperman II and Jacob E. Cohen in New York, all of Sullivan & Cromwell LLP.

Amicus the Securities Industry and Financial Markets Association is represented by Kevin M. Carroll of Securities Industry and Financial Markets Association in Washington and Benjamin W. Snyder and Vladimir J. Semendyai of Paul Hastings LLP in Washington.

Amici former officials of the SEC and law professors are represented by Todd G. Cosenza, Brady Sullivan and Amanda M. Payne of Willkie Farr & Gallagher LLP in New York.

( Additional documents available: Boeing, et al's appellant brief 57-260810-060B

Investors' appellee brief 57-260810-061B

Boeing, et al's reply brief 57-260810-062B

Securities Industry and Financial Markets Association amicus brief 57-260810-063B

Former SEC officials, et al's amicus brief 57-260810-064B

District Court's order 57-260810-065R )

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# 9th Circuit Affirms Lower Court's Penalties Against Municipal Securities Adviser

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## Body

A Ninth Circuit U.S. Court of Appeals panel affirmed a lower court's summary judgment order in favor of the Securities and Exchange Commission and the remedies imposed against a municipal securities adviser and one of its founders for breaching their fiduciary duties in providing municipal advisory services, finding that the lower court was within its discretion in ordering a permanent injunction, as well as disgorgement and civil penalties (*United States Securities and Exchange Commission v. Choice Advisors, et al., No. 24-6447, 9th Cir., 2026 U.S. App. LEXIS 21583*).

( Unpublished memorandum available 57-260810-003Z )

Judges Richard R. Clifton, Jay S. Bybee and Ana de Alba issued the unpublished memorandum on July 21, holding that Judge Jinsook Ohta of the U.S. District Court for the Southern District of California correctly found that the agreement Choice Advisors LLC and Matthias O'Meara entered into with BB&T Securities LLC, the underwriter on the subject transactions, was an illegal fee-splitting arrangement.

Municipal Advisory Services

The SEC filed its complaint against Choice Advisors and O'Meara, one of its founders, on Sept. 22, 2021, in the U.S. District Court for the Southern District of California. It alleged claims for violations of Sections 15B(a)(5), 15B(a)(1) and 15B(c)(1) of the Securities Exchange Act of 1934, *15 U.S.C. 78o-4(a)(5)*, *78o-4(a)(1)* and *78o-4(c)(1)*; and Municipal Securities Rulemaking Board (MSRB) Rules G-17, G-42 and A-12, which were adopted pursuant to Section 15B of the Exchange Act.

It alleged misconduct in connection with municipal advisory services that they provided to four charter schools in 2018, noting that at the time the schools employed Choice Advisors, O'Meara and co-founder Paula Permenter had not registered Choice Advisors with the SEC or the MSRB in violation of both SEC and MSRB registration requirements.

Additionally, the SEC alleged that Choice Advisors and O'Meara had formed an impermissible fee-splitting arrangement with the underwriter on the transactions, BB&T, which was also O'Meara's and Permenter's former employer. O'Meara also allegedly operated in a dual capacity while he was still employed by BB&T.

On April 15, 2024, the District Court granted partial summary judgment to the SEC on several of its claims, finding the defendants performed municipal advisory services without being registered, entered into an impermissible fee-splitting agreement with BB&T, provided municipal advisory services to the school clients while O'Meara was still employed by BB&T and failed to disclose their material conflicts of interest to the school clients. It granted summary judgment for the SEC on claims against Choice Advisors and O'Meara for violations of Section 15B(c)(1), MSRB Rule G-17 and MSRB Rules G-42(b)(i)(D), (b)(i)(F), (c)(i-ii) and (e)(i)(D). Additionally, it granted summary judgment on the SEC's claims against Choice Advisors for violations of Section 15B(a)(1)(B) and MSRB Rule A-12. The SEC on June 7, 2024, dismissed its claim against Choice Advisors and O'Meara for violations of Section 15B(a)(5) and its claim against O'Meara for aiding and abetting Choice Advisors' failure to register in violation of Section 15B(a)(1)(B) and (c)(1) of the Exchange Act and MSRB Rule A-12.

The SEC then requested a final judgment imposing a permanent injunction enjoining the defendants from future violations of the federal securities laws, disgorgement in the amount of $133,149 plus $44,150 in prejudgment interest from O'Meara and disgorgement in the amount of $79,889 plus $26,490 in prejudgment interest from Choice Advisors, and the imposition of a civil penalty of $133,149 against O'Meara and $250,000 against Choice Advisors.

On Sept. 24, 2024, the District Court granted in part and denied in part the SEC's motion for entry of final judgment. It issued an amended order on Oct. 7, 2024, granting the SEC's request for a permanent injunction against Choice Advisors and O'Meara; imposing disgorgement of $133,149 and $45,932 in prejudgment interest against O'Meara and disgorgement of $79,889 and $27,559 in prejudgment interest against Choice Advisors; and imposing civil penalties of $70,889 against Choice Advisors and $133,149 against O'Meara.

Choice Advisors and O'Meara appealed, challenging the District Court's finding that their agreement with BB&T constituted an illegal fee-splitting arrangement, as well as all the remedies imposed against them.

Illegal Fee-Splitting Arrangement

The panel first found that the District Court correctly held that the appellants' agreement with BB&T constituted an illegal fee-splitting arrangement. It noted that the record showed that the appellants and BB&T agreed to split the 2% underwriting fee for every client the appellants referred to BB&T for underwriting services.

While the appellants argued that the agreement did not violate Rule G-42 because the underwriting fee payment was structured to go to both parties simultaneously, the panel held that "how a fee-splitting payment is structured is irrelevant" and what matters is the agreement's existence because the existence of the agreement "creates a self-interested financial incentive for the municipal advisor to direct its clients to a particular bank underwriter and creating a conflict of interest."

The panel also found that the District Court did not abuse its discretion by permanently enjoining the appellants from future violations of federal securities laws. It found that the appellants were wrong to assert that their conduct constituted simple negligence and, therefore, was not enough to warrant a permanent injunction. It held that their "actions constitute more than simple negligence because they acted with disregard in following compliance regulations . . . and actively and knowingly engaged in municipal advisory activities and acted in a dual capacity as an underwriter and an advisor, among other things."

Additionally, the panel held that the District Court had not abused its discretion by ordering disgorgement and prejudgment interest because the appellants were not entitled to receive their ill-gotten gains because they were not authorized to provide municipal securities advice to clients. Citing its decision in *SEC v. Sripetch, 154 F.4th 980 (9th Cir. 2025)*, which was affirmed by the Supreme Court on June 4, 2026, the panel noted that it "recently held that the

SEC is not required to show that investors suffered pecuniary harm as a precondition to a disgorgement award under Sections 78u(d)(5) or (d)(7)."

Lastly, the panel held that the District Court did not abuse its discretion when "imposing civil penalties because it reasonably found that additional deterrence was warranted given Appellants' knowing misconduct and failure to fully appreciate its wrongfulness."

Counsel

The SEC is represented by Acting General Counsel Jeffrey B. Finnell, Solicitor Tracey A. Hardin, Assistant General Counsel Daniel Staroselsky and Senior Special Counsel Samuel B. Goldstein of the SEC in Washington, D.C.

Choice Advisors, et al. are represented by Paul L. Vorndran of Jones & Keller PC in Denver.

( Additional documents available: Choice Advisors, et al's opening brief 57-260810-004B

SEC's answering brief 57-260810-005B

Choice Advisors, et al's reply brief 57-260810-006B

District Court's amended order 57-260810-007R

District Court's amended judgment 57-260810-008X )

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# 9th Circuit: Investor's Claims Against Energy Company Failed To Allege Falsity

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## Body

A Ninth Circuit U.S. Court of Appeals panel affirmed dismissal, finding that an investor's securities fraud class action against a solar energy company, certain former executives and controlling entities alleging misleading statements about product defects failed to allege falsity (Steamfitters Local *449 Pension & Retirement Security Funds v. SunPower Corporation, et al., No. 25-1831, 9th Cir., 2026 U.S. App. LEXIS 22009*).

( Unpublished memorandum available 57-260810-014Z )

Judges Richard A. Paez, Richard C. Tallman and Mark J. Bennett issued the unpublished memorandum on July 24, affirming a lower court's dismissal of the third amended complaint filed in this case with prejudice. The panel agreed with the lower court that Steamfitters Local 449 Pension & Retirement Security Funds failed to allege that SunPower Corp. was aware of the defect when it issued certain risk factor statements.

Warranty Charge

SunPower announced Jan. 20, 2022, that it was taking a $27 million warranty charge because of the existence of a cracking issue that had developed in some factory-installed connectors within third-party commercial equipment supplied to SunPower. The announcement led to a 16.9% drop in the company's share price on Jan. 21, 2022.

Investor Piotr Jaszczyszyn filed the initial class complaint in the U.S. District Court for the Northern District of California, alleging that SunPower, its former CEO, president and chairman of the company's board of directors Peter Faricy and its former chief financial officer and executive vice president Manavendra S. Sial made materially false and/or misleading statements, failing to disclose to investors that some connectors the company used had cracking issues, for which the company would likely incur costs to remediate. The complaint stated that because of the cost of remediating the faulty connectors, SunPower's financial results would be adversely impacted, making SunPower's positive statements about the company's business materially misleading.

On Oct. 13, 2022, the District Court appointed Steamfitters as lead plaintiff in the case. Steamfitters filed a first amended complaint on Dec. 15, 2022, bringing claims for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, *15 U.S.C. 78j(b)* and *78t(a)*, and Securities and Exchange Commission Rule 10b-5, *17 C.F.R. 240.10b-5* against SunPower, Sial and Faricy. The District Court dismissed the first amended complaint on July 17, 2024, finding that Steamfitters failed to show that any of the challenged statements were false or misleading when they were made and that several statements were inactionable puffery or protected by the statutory safe harbor for forward-looking statements.

Steamfitters filed a second amended complaint on Aug. 15, 2024, before filing the operative third amended complaint on Aug. 21, 2024, to add TotalEnergies Gaz & Electricite Holdings SAS and TotalEnergies Solar INTL SAS as controlling persons under Section 20(a) of the Exchange Act, stating they were beneficial majority owners of SunPower's common stock.

The District Court dismissed the third amended complaint on Feb. 14, 2025, finding again that Steamfitters did not plausibly allege that the subject statements were false because it did not plausibly allege that anyone at SunPower knew of the defect at the time the statements were made. Steamfitters appealed.

No False Statements

The panel affirmed the District Court's dismissal, finding first that the District Court did not err in determining that the subject statements were not false or misleading, "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."

Citing *Weston Family Partnership LLLP v. Twitter, Inc., 29 F.4th 611 (9th Cir. 2022)*, and *In re Alphabet, Inc. Securities Litigation, 1 F.4th 687 (9th Cir. 2021)*, it stated that Steamfitters' arguments that it did not need to allege that the defendants' knowledge was foreclosed by Ninth Circuit precedent. The panel stated that the language from other cases that Steamfitters pointed to that suggested otherwise was taken out of context.

Additionally, the panel held that Steamfitters did not plausibly allege that SunPower knew of the defect at the time the risk factor statements were filed.

The panel stated that because the District Court properly dismissed the securities fraud claim, the lower court did not err in dismissing the claim for control-person liability.

Counsel

Steamfitters is represented by Harini P. Raghupathi in San Diego and Shawn A. Williams, Willow E. Radcliffe, Kenneth J. Black and Snehee Khandeshi in San Francisco, all of Robbins Geller Rudman & Dowd LLP.

SunPower, et al. are represented by Katherine L. Henderson and Dylan G. Savage of Wilson Sonsini Goodrich & Rosati PC in San Francisco.

( Additional documents available: Steamfitters' opening brief 57-260810-015B

SunPower, et al's answering brief 57-260810-016B

Steamfitters' reply brief 57-260810-017B

District Court's order 57-260810-018R )

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# 10th Circuit Affirms Dismissal Of Broker's SEC Rule 17a-8 APA Challenge

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## Body

A 10th Circuit U.S. Court of Appeals panel affirmed a lower court's dismissal of a broker-dealer's suit against the Securities and Exchange Commission claiming that the SEC violated the Administrative Procedure Act (APA) by using a commission rule to impose Bank Secrecy Act requirements on broker-dealers, finding that the broker-dealer did not identify an unlawful final agency action as required under the *APA (Scottsdale Capital Advisors v. United States Securities and Exchange Commission, No. 25-4000, 10th Cir., 2026 U.S. App. LEXIS 22972*).

( Opinion available 57-260810-038Z )

Judges Harris L. Hartz, Paul J. Kelly Jr. and Timothy M. Tymkovich issued the opinion on July 31, finding that the SEC's enforcement action against Alpine Securities Corp., a self-clearing broker-dealer that shares common ownership with plaintiff/appellant Scottsdale Capital Advisors, was not a final agency action.

Bank Secrecy Act Requirements

The suit involves the enforcement of the Bank Secrecy Act (BSA), *31 U.S.C. 5311*-*5336*, which was enacted in 1970. While the Department of the Treasury adopted implementing regulations requiring banks and other financial institutions to maintain records of potentially suspicious financial transactions, it authorized the SEC to ensure that brokers and dealers complied with BSA regulations. To do so, the SEC relied on Section 17(a)(1) of the Securities Exchange Act of 1934, *15 U.S.C. 78q(a)(1)*, to promulgate SEC Rule 17a-8, *17 C.F.R. 240.17a-8*. After Rule 17a-8 was adopted in 1981, the SEC enforced Treasury's updated regulations against brokers and dealers through that rule.

In 2002, Treasury expanded its regulations to require brokers and dealers to file suspicious activity reports (SARs), but let the SEC and self-regulatory organizations determine how broker-dealers were to comply under Rule 17a-8. Scottsdale Capital Advisors argued that the SEC violated the APA, 5 U.S.C. 551-559, *701*-*706*, by relying on Rule 17a-8 to enforce the SAR regulations.

10th Circuit Affirms Dismissal Of Broker's SEC Rule 17a-8 APA Challenge

In June 2017, the SEC filed a judicial enforcement action against Alpine Securities Corp. in the U.S. District Court for the Southern District of New York, alleging that Alpine had violated Rule 17a-8 by not filing SARs, filing deficient SARs or not retaining documentation for filed SARs. While not named in that action, Scottsdale shares common ownership with Alpine and was the introducing broker for most of the suspicious transactions at issue in the case. Alpine moved for summary judgment and judgment on the pleadings in that case. The Southern District of New York denied both motions and granted the SEC's cross-motion for summary judgment.

Days after the New York court denied Alpine's reconsideration of the order granting summary judgment, on June 22, 2018, Alpine and Scottsdale filed the instant case in the U.S. District Court for the District of Utah, seeking declaratory and injunctive relief against the SEC under the APA. The New York court enjoined them from pursuing the case until after the conclusion of any appeal of its final judgment, and the Utah court stayed the action.

While this case was stayed, the SEC won partial summary judgment on additional claims in the New York court and chose not to pursue claims on which it had not obtained summary judgment. The SEC obtained a $12 million civil penalty against Alpine. The Second Circuit U.S. Court of Appeals affirmed the summary judgment and the penalties.

After the Utah court lifted its stay, Alpine voluntarily dismissed its claims. Scottsdale proceeded, filing an amended complaint seeking to establish the invalidity of the SEC's use of Rule 17a-8 to enforce the SAR regulations. The SEC moved to dismiss the amended complaint, arguing that Scottsdale had not identified a final agency action subject to APA review and that Scottsdale did not have standing under Article III of the U.S. Constitution, U.S. Const. art. III. Additionally, the SEC argued that Scottsdale's claims were untimely. The District Court granted the SEC's motion to dismiss, finding, among other things, that Scottsdale lacked standing to bring its claims because the SEC's lawsuit in New York against Alpine was not a final agency action. Scottsdale appealed.

No Final Action

The panel affirmed the District Court's decision, finding that the SEC did not engage in a final agency action when it decided to sue Alpine in New York federal court. Quoting *Custodia Bank Inc. v. Fed. Rsrv. Bd. Of Governors, 157 F.4th 1235 (10th Cir. 2025)*, it stated, "Where review of an agency action is not expressly provided for by statute, judicial review under the APA is available only for 'final agency action for which there is no other adequate remedy in a court.'"

It noted that the 10th Circuit in Custodia quoted the U.S. Supreme Court's decision in *Bennett v. Spear, 520 U.S. 154*, and said that an agency action is not final unless it marks the consummation of the agency's decisionmaking process and be an action by which rights or obligations have been determined. The panel stated that the SEC's complaint in the New York court "does not satisfy the second part of the Bennett test and therefore cannot be considered a final agency action under the APA."

The panel noted that Scottsdale argued that when the SEC filed its complaint against Alpine, it "'effectively created its own new and harsher SAR enforcement regime' under which it could 'pursue its claims on a strict liability basis and impose higher penalties' than those allowed under the BSA," and that Scottsdale had no choice but to comply. The panel disagreed, finding that "the only obligation or legal consequence of filing the Alpine suit was that Alpine had the burden of defending itself, a burden that does not suffice to create final agency action."

Additionally, the panel disagreed with Scottsdale's argument that the burdens it has encountered arose from the filing of the Alpine complaint. The panel pointed out that the SEC's position "on these matters was unambiguous well before the complaint was filed" and noted that the SAR requirements were extended to brokers and dealers in 2002.

It noted that there was nothing new about the SEC's claiming violations based on strict liability in its complaint against Alpine. The panel stated that the SEC has "contended for decades that no scienter was required for sanctions to be imposed for violations of record-keeping regulations under Section 17(a)." It further stated that the

SEC has prevailed in court on that argument, citing *Stead v. SEC, 444 F.2d 713 (10th Cir. 1971)*; *SEC v. Drexel Burnham Lambert Inc., 837 F. Supp. 587 (S.D.N.Y. 1993)*; and *SEC v. McNulty, 137 F.3d 732 (2d Cir. 1998)*.

Counsel

Scottsdale is represented by Aaron D. Lebenta of Clyde Snow & Sessions PC in Salt Lake City and Maranda E. Fritz of Maranda E. Fritz PC in New York.

The SEC is represented by Acting General Counsel Jeffrey B. Finnell, Solicitor Tracey A. Hardin, Assistant General Counsel Daniel Staroselsky, Senior Appellate Counsel Rachel M. McKenzie and Appellate Counsel Stephen Silverman of the SEC in Washington, D.C.

( Additional documents available: Scottsdale's appellant brief 57-260810-039B

SEC's appellee brief 57-260810-040B

Scottsdale's reply brief 57-260810-041B

District Court's Nov5, 2024, amended memorandum decision and order 57-260810-042R )

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**Load Date:** August 10, 2026

**AbbVie, Novartis Sue Illinois Over Hospital Drug Pharmacy Law**

Aug. 10, 2026, 9:13 AM PDT

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## Summary by Bloomberg AI

AI Generated

- Illinois is facing separate lawsuits from AbbVie and Novartis AG seeking to block a law regulating drugmakers' contractual agreements with pharmacies under a federal drug discount program.
- AbbVie alleges the law violates its constitutional property rights and the Fifth Amendment's takings clause, while Novartis argues the law violates the supremacy clause of the Constitution.
- Both companies ask the court to declare the law violates the Constitution and to issue a preliminary injunction blocking the state from enforcing it.

Illinois is facing separate lawsuits from AbbVie and Novartis AG seeking to block a law regulating drugmakers' contractual agreements with pharmacies under a federal drug discount program.

Chicago-based pharmaceutical giant AbbVie filed a lawsuit Friday in the US District Court for the Northern District of Illinois. The maker of blockbuster autoimmune treatment Humira alleges the state law violates its constitutional property rights by requiring it to transfer its federally discounted drugs to certain commercial pharmacies or face civil penalties.

Novartis filed a similar lawsuit the same day, arguing the law violates the supremacy clause of the Constitution because it restructures drugmakers' obligations under the federal 340B drug discount program.

That federal program requires drugmakers to discount drugs for covered entities, such as qualifying hospitals, clinics, and providers, that treat a disproportionate number of low-income and uninsured patients. States have taken aim in recent years at manufacturers that have moved to restrict deliveries to some types of pharmacies under the program.

One such law is Illinois' HB 2371, which prohibits pharmaceutical manufacturers from denying, prohibiting, or conditioning pharmacies in the state from acquiring a 340B drug by, or delivering those drugs to a pharmacy on behalf of a 340B covered entity.

AbbVie alleges the law violates the Fifth Amendment's takings clause, which prohibits the seizure of private property without just compensation.

"Under the Constitution, the government has no authority to force A-to-B transfers of private property for the benefit of private parties," AbbVie's brief said.

Novartis adds that "H.B. 2371 increases the potential penalties associated with 340B noncompliance beyond what Congress provided for in the federal 340B statute," a violation of the supremacy clause's requirement that federal law take precedent over state law.

Both companies ask the court to declare the law violates the Constitution and to issue a preliminary injunction blocking the state from enforcing it.

Gibson, Dunn & Crutcher LLP, Kirkland & Ellis LLP, and King & Spalding LLP represent AbbVie.

Armstrong Teasdale LLP and Hogan Lovells Cadwalader LLP represent Novartis.

The cases are AbbVie Inc v. Raoul , N.D. Ill., No. 1:26-cv-09523, complaint 8/7/26 and Novartis Pharmaceuticals Corporation v. Raoul , N.D. Ill., No. 1:26-cv-09522, complaint 8/7/26 .

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# Appellate Panel: No Jurisdiction In Investors' Suit Against Irish Company

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## Body

A Second Circuit U.S. Court of Appeals panel found that a complaint filed by investors in an Irish company against the company and its president for alleged fraudulent inducement was properly dismissed because the lower court correctly found that the company's and its president's contacts with New York were not sufficient to establish specific personal jurisdiction (*Murad Michael Khan, et al. v. Sedicii Innovations Limited, et al., No. 25-2072, 2d Cir., 2026 U.S. App. LEXIS 21541*).

( Summary order available 57-260810-028R )

Circuit Judges Guido Calabresi and Sarah A. L. Merriam and Judge Lewis J. Liman of the U.S. District Court for the Southern District of New York, sitting by designation, issued the summary order on July 21, affirming the dismissal after concluding that the defendants lacked sufficient contacts with New York to support specific personal jurisdiction. The panel also noted that the shareholder agreements were governed by Irish law and contained a nonexclusive Irish jurisdiction provision.

Investment Solicitation

Sedicii is a private company incorporated and existing under Irish law, and Sedicii's president, Robert Leslie, is a citizen and permanent resident of Ireland. Investors allege that Leslie solicited them to invest in Sedicii by promoting the company's alleged relationship with the blockchain project Integra Network. They said that they were informed that they could exchange their investments with Sedicii into Integra tokens and then each invested between 10,000 euros and 25,000 euros in Sedicii. Each of the investors entered into a shareholder agreement that stated that the parties submit to the nonexclusive jurisdiction of the courts of Ireland. Sedicii and Leslie failed to enter into an agreement with Integra Network.

An entity called IP Investors Group LLC filed a complaint against Sedicii and Leslie on Feb. 9, 2023, in the Southern District of New York. Sedicii and Leslie moved to dismiss, and on June 21, 2023, the District Court ordered IP Investors Group to amend the complaint or oppose the motion. IP Investors Group filed the first amended complaint on July 11, 2023. Sedicii and Leslie again moved to dismiss, and on Feb. 22, 2024, the District

Court dismissed the action, finding that on the pleadings, IP Investors Group did not plead facts supporting its satisfaction of the associational standing requirements under Article III of the Constitution, U.S. Const. art. III. It dismissed the action without prejudice to refile consistent with Article III standing requirements.

On Dec. 11, 2024, Murad Michael Khan, Kyle Armour, Unworq LLC, Jonathan Kuo, Happy Walters, David Malka and Jake Udell (the IP investors), who replaced the IP Investors Group, sought leave to file the operative second amended complaint, which the District Court granted March 7, 2025. The second amended complaint contained claims for fraudulent inducement, breach of contract, breach of fiduciary duty and unjust enrichment.

Sedicii and Leslie filed a motion to dismiss the second amended complaint, which the District Court granted July 28, 2025, for lack of personal jurisdiction and on the basis of forum non conveniens. The IP investors appealed, arguing that Sedicii's and Leslie's contacts with New York were sufficient to establish personal jurisdiction and that the dismissal on the basis of forum non conveniens rested on an erroneous finding of fact.

No Specific Jurisdiction

The panel affirmed the lower court's decision. In doing so, the panel looked to New York's long-arm statute, *N.Y. C.P.L.R. 302(a)(1)*. Quoting *Best Van Lines, Inc. v. Walker, 490 F.3d 239 (2d Cir 2007)*, the panel stated, "To determine whether it has specific personal jurisdiction under 302(a)(1), 'a court must decide (1) whether the defendant transacts any business in New York and, if so, (2) whether this cause of action arises from such a business transaction.'"

It found that the IP investors failed to adequately allege that Sedicii and Leslie transacted business in New York. Specifically, the panel rejected the the IP investors' argument that the District Court erred by not separately analyzing whether it had personal jurisdiction over Sedicii and Leslie. It found that the District Court properly considered a declaration submitted by Leslie describing his and Sedicii's contacts with New York in concluding that neither defendant was subject to specific personal jurisdiction.

Additionally, it found that the IP investors failed to make a persuasive argument regarding the merits of the personal jurisdiction question. The investors argued that the fact that the shareholder agreements contain a reference to investors from New York City provides proof that Sedicii did business in New York. However, quoting *Am. Girl, LLC v. Zembrka, 118 F.4th 271 (2d Cir. 2024)*, the panel stated that "the mere fact that some investors may have been from New York does not mean that Sedicii 'purposefully availed itself of the privilege of conducting activities within New York and, thus, transacted business.'"

The panel also found that the IP investors did not address on appeal most of the jurisdictional allegations in the second amended complaint and found that the allegations that were addressed on appeal were also insufficient. Among other things, the panel found that the allegation that the majority of funds Sedicii raised was in New York "is purely conclusory and is not supported by the record," noting that New York investors contributed only 35,000 euros of the at least 610,000 euros the company raised from U.S. investors.

Lastly, the panel found that the IP investors' challenge to the District Court's denial of jurisdictional discovery failed because the investors failed to explain what information they could obtain from discovery that would not otherwise be available to them.

The panel said it considered the IP investors' remaining arguments and found them to be without merit.

Counsel

The IP investors are represented by Nicholas A. Duston, Danielle M. DeFilippis and Benjamin D. Schwartz of Norris McLaughlin PA in New York.

Sedicii and Leslie are represented by Eric J. Boden of Brach Eichler LLC in New York.

( Additional documents available: IP investors' appellant brief 57-260810-029B

# 9th Circuit rejects Meta, TikTok bid for immediate appeal of Section 230 rulings

DJ dailyjournal.com/articles/393555-9th-circuit-rejects-meta-tiktok-bid-for-immediate-appeal-of-section-230-rulings

The 9th U.S. Circuit Court of Appeals ruled Monday that Section 230 of the Communications Decency Act provides social media companies a defense against liability rather than immunity from suit, rejecting efforts by Meta Platforms Inc. and TikTok to immediately appeal rulings allowing portions of sprawling litigation over alleged harms to young users to proceed.

In a published opinion by Circuit Judge Jacqueline H. Nguyen, a three-judge panel dismissed Meta's and TikTok's appeals, along with conditional cross-appeals filed by plaintiffs, for lack of appellate jurisdiction.

"Section 230 merely provides a defense to liability--not immunity from suit," Nguyen wrote. As a result, the court held, orders rejecting that defense generally must await final judgment before they can be appealed.

The ruling arose from multidistrict litigation before U.S. District Judge Yvonne Gonzalez Rogers in the Northern District of California involving thousands of lawsuits against social media companies. Plaintiffs allege that Facebook and Instagram, among other platforms, encourage addictive behavior among young users, fail to adequately verify users' ages and protect against harmful content, and encourage adolescents to circumvent parental controls.

The litigation includes claims brought by individual plaintiffs, state attorneys general, school districts and local governments.

Meta sought dismissal of various claims under Section 230, which generally protects online platforms from liability for third-party content. Gonzalez Rogers granted Meta's motions in part but allowed other claims to proceed, while finding that Section 230 still imposed significant limitations on claims involving platform features tied to Meta's role as a publisher of third-party content.

Meta argued that rulings denying Section 230 protection qualified for immediate review under the "collateral order" doctrine, a narrow exception to the general rule limiting federal appellate review to final judgments.

The panel disagreed.

Nguyen distinguished between immunity from suit, which can be effectively lost if a party is forced to stand trial, and a defense against liability, which remains reviewable after final judgment. The court concluded that nothing in Section 230 explicitly gives internet companies a right to avoid being sued or tried.

"When Congress wants to create immunity from suit, it knows how to say so unequivocally," Nguyen wrote, pointing to other federal statutes that expressly provide such protection. The panel said statutory immunity from suit is a "rare form of protection" and Section 230 does not meet that standard.

The panel acknowledged that the 9th Circuit has sometimes loosely described Section 230 as providing "immunity from suit." But those cases did not decide whether denial of a Section 230 defense could be immediately appealed, Nguyen said. The panel instead agreed with the 10th Circuit, which previously concluded that Section 230 protects against liability rather than suit.

The court also found the district court's rulings failed the other requirements for immediate collateral-order review because they were not conclusive and resolving the Section 230 questions would require examining factual allegations underlying the plaintiffs' claims.

The panel dismissed all appeals and denied as moot Meta's emergency request to stay trial pending the appeal.

# Delaware High Court Reverses Nearly $16M Attorney Fee Award In Investment Dispute

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## Body

The Delaware Supreme Court affirmed a lower court's finding that a China-based company did not prove its loyalty- and care-based fiduciary duty claims against an investment fund and its principal in a failed investment attempt and that the investment fund breached its duty of candor, but it reversed the lower court's award of $15.83 million in attorney fees and expenses to the company because the company prevailed on only a single issue (Leo Investments Hong Kong Limited v. Tomales Bay Capital Anduril III, L.P., et al., Nos. 415, 2025 and 428, 2025, *Del. Sup., 2026 Del. LEXIS 242*).

( Opinion available 34-260720-031Z )

Chief Justice Collins J. Seitz Jr., Justices Gary F. Traynor, Abigail M. LeGrow and N. Christopher Griffiths and Judge Paul R. Wallace of the Delaware Superior Court, sitting by designation to complete the quorum, issued the opinion on July 10. Leo Investments Hong Kong Ltd. had sought to indirectly invest in Space Exploration Technologies Corp. (SpaceX) through Tomales Bay Capital Anduril III L.P. (Tomales Bay), an investment fund whose principal, Tomales Bay Capital Anduril LL GP LLC (TBC), was managed by Iqbaljit Kahlon. Leo Investments sued Tomales Bay, TBC and Kahlon after they removed it as a limited partner in Tomales Bay.

Failed Investment Attempt

Before its initial public offering on June 12, 2026, SpaceX was a privately held company that maintained a right of first refusal over any shares a holder sought to sell. It was selective about investors and preferred not to have investors based in certain countries such as China. Additionally, SpaceX preferred not to be surprised by an investor disclosing their investment in the company.

Kahlon formed TBC to create funds to invest in certain technology companies and became a trusted intermediary for SpaceX and its investors by 2021. That year, Kahlon had the opportunity to acquire SpaceX shares that were owned by a fund controlled by Suhail Rizvi. Kahlon established Tomales Bay to acquire these shares. Kahlon asked

Gulf Asia Venture Group to help find investors and Gulf Asia identified Leo Investments, a publicly traded corporation in China, as a potential investor.

Kahlon began negotiating with Leo Investments, and on Nov. 15, 2021, the parties signed a limited partnership agreement (LPA) and a side letter permitting Leo Investments to make a regulatory disclosure. Later that day, Leo Investments made the disclosure with the Shenzhen Stock Exchange, as well as an announcement promoting its SpaceX investment. The announcement drew significant media attention.

On Nov. 19, 2021, SpaceX Chief Financial Officer Bret Johnsen emailed Kahlon inquiring about Leo Investments' investment, and Kahlon and Johnsen spoke by phone that day. At the end of the call, Johnsen told Kahlon that Tomales Bay would not be allowed to invest in SpaceX if Leo Investments remained a limited partner. After the call, Kahlon acted to remove Leo Investments from Tomales Bay before the initial closing for Tomales Bay began 10 days later. On Nov. 20, 2021, Gulf Asia told Leo Investments that Kahlon was unilaterally removing it from Tomales Bay at SpaceX's insistence. After Kahlon, Gulf Asia and Leo Investments had a video conference the next day, Kahlon invoked the withdrawal provision of Tomales Bay's limited partnership agreement and informed Johnsen that Leo Investments was out of Tomales Bay.

On Nov. 22, 2021, Leo Investments stated that it would not voluntarily withdraw and Kahlon returned Leo Investments' $50 million investment and sent a unilateral termination letter. When Leo Investments contacted Kahlon asking for supporting evidence for the unilateral withdrawal, Kahlon did not respond. SpaceX exercised its right of first refusal on the Rizvi shares on Dec. 13, 2021, and SpaceX's founder Elon Musk purchased the vast majority of those shares. Five months later, Tomales Bay purchased SpaceX shares at a higher price per share than the Rizvi shares.

## Breaches Of Duty

In February 2022, Leo Investments sued Kahlon, TBC and Tomales Bay in the Delaware Court of Chancery for breaches of fiduciary duty and breaches of the limited partnership agreement. The court granted partial summary judgment sua sponte in favor of Leo Investments, finding that Leo Investments' disclosures were permitted under the parties' agreements.

After a three-day trial, the Chancery Court found that Leo Investments failed to rebut any presumptions of the business judgment rule because it did not prove that Kahlon had breached his duties of care and loyalty. The Chancery Court also found that Kahlon's actions were rational. However, the court ruled sua sponte that Leo Investments proved that Kahlon breached his duty of candor in his discussions with Leo Investments and awarded Leo Investments nominal damages of $1 because it did not prove reliance or causally related harm in connection with that breach. Additionally, it held that Kahlon did not breach the limited partnership agreement.

The Chancery Court held that Leo Investments was entitled to all of its litigation expenses because of Kahlon's breach of the duty of candor and awarded Leo Investments $15,828,174.05 in attorney fees and expenses. Both parties appealed, with Leo Investments arguing that the Chancery Court erred by finding that the business judgment rule applied. The defendants argued that the Chancery Court erred by finding that Kahlon breached the duty of candor and in awarding Leo Investments $15.83 million in attorney fees and expenses.

## Liability Rulings Affirmed

The Delaware Supreme Court reversed the Chancery Court's ruling regarding the availability of fee-shifting but affirmed the lower court's other holdings.

The Delaware Supreme Court first addressed the Chancery Court's finding that Leo Investments failed to rebut the presumption of the business judgment rule. It found that Kahlon did not breach his duty of loyalty because while Kahlon acted out of self-interest, that interest aligned with Tomales Bay's interest. The Delaware Supreme Court also held that Leo Investments did not carry its burden of proof to show that Kahlon breached his duty of care. Without a finding of a breach, the Delaware Supreme Court said the Chancery Court was right to conclude "that the business judgment rule applied and that Kahlon's decision to remove Leo [Investments] using the withdrawal provision was 'plainly rational.'"

Turning to Kahlon's cross-appeal, the Delaware Supreme Court held that the Chancery Court did not err in awarding Leo Investments nominal damages. The lower court had found that when Kahlon spoke with individual investors, he had a duty to speak honestly and completely and that "the [Chancery] court's post-trial factual findings support the conclusion that Kahlon knowingly disclosed false-or at least intentionally misleading-information to Leo [Investments] after the Johnsen phone call." The Delaware Supreme Court held that while Leo Investments did not prove reliance or any causally related harm based on Kahlon's false statements, "it was within the court's broad discretion to award $1 in nominal damages."

Fees Reversed

In finding that the Chancery Court erred in awarding attorney fees to Leo Investments, the Delaware Supreme Court noted that the lower court's fee award was based on its decision in *William Penn Partnership v. Saliba, 13 A.3d 749, 758-59 (Del. 2011)*.

It noted that unlike in Saliba, the Chancery Court found that Leo Investments prevailed only on the candor claim. "Although we do not condone Kahlon's misrepresentations to Leo [Investments] after the call with Johnsen, Leo [Investments'] failure to prove causation or damages associated with that breach distinguishes this case from the unusual facts in Saliba."

Additionally, the Delaware Supreme Court noted that while the Chancery Court's order also referred in passing to Kahlon's litigation conduct, Leo Investments did not make a claim for fee shifting under the bad faith exception to the American Rule. It said a single finding in favor of Leo Investments did not warrant a nearly $16 million fee award to compensate it "for litigating a case that it lost on almost every issue."

Counsel

Leo Investments is represented by Eamon P. Joyce, Charlotte K. Newell and Tyler J. Domino of Sidley Austin LLP in New York and A. Thompson Bayliss and Adam K. Schulman of Abrams & Bayliss LLP in Wilmington, Del.

Tomales Bay, et al. are represented by Aaron H. Marks, Amal El Bakhar and Ava Roche in New York and George W. Hicks Jr. in Washington, D.C., all of Kirkland & Ellis LLP, and David E. Ross, Eric D. Selden, Thomas A. Barr and A. Gage Whirley of Ross Aronstam & Moritz LLP in Wilmington.

( Additional documents available: Leo Investments' opening brief 34-260720-032B

Tomales Bay, et al's answering brief on appeal and opening brief on cross-appeal 34-260720-033B

Leo Investments' reply brief on appeal and answering brief on cross-appeal 34-260720-034B

Tomales Bay, et al's reply brief on cross-appeal 34-260720-035B

Chancery Court's order 34-260720-036R )

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**Load Date:** August 10, 2026

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# [Elon Musk Appeals Order Mostly Upholding Verdict In Stock-Price Manipulation Case]

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## Body

Elon Musk filed a notice in a California federal court that he was appealing to the Ninth Circuit U.S. Court of Appeals an order mostly upholding a jury's verdict against him in a class action brought by investors in the company formerly known as Twitter who say that Musk attempted to manipulate the company's stock price before his takeover (Giuseppe Pampena, et al. v. Elon Musk, No. 22-5937, N.D. Calif.).

( Musk's notice of appeal available 57-260810-037X )

Musk filed the notice on July 30, appealing an order by U.S. Judge Charles R. Breyer of the Northern District of California on the parties' post-trial motions issued on June 6 after a jury found that a May 13, 2022, tweet and a May 17, 2022, tweet were false and damaged the investing public. In the order, the judge denied the motion for judgment as a matter of law as to the May 13 tweet and denied Musk's motion to decertify the class. The judge granted the investors' motion for prejudgment interest and their motion for approval of the proposed class notice and claims administration procedure. Judge Breyer had granted Musk's motion for judgment as a matter of law only as to Musk's May 17 tweet because the investors failed to provide substantial evidence to support a finding of loss causation with respect to that tweet.

The appeal has been filed in the Ninth Circuit as No. 26-4928.

Musk's Tweets

In October 2022, Twitter investor Giuseppe Pampena sued Musk in the District Court. Later, investors Steve Garrett, Nancy Price, John Garrett and Brian Belgrave were collectively named lead plaintiffs, and they filed the operative amended complaint in June 2023.

In the months before Musk purchased Twitter and rebranded it X Corp., Musk entered into a merger agreement with Twitter in April 2022. Musk agreed to waive conditions requiring financing or business due diligence. Musk initially planned to finance his acquisition of Twitter with shares of Tesla Inc., but Tesla's share value dropped dramatically after Twitter and Musk announced the acquisition.

In the days after the announcement, Musk posted a series of tweets on his personal Twitter account about the deal. On May 13, 2022, he tweeted that the deal was on hold as he awaited information from Twitter about the number of fake accounts run by "bots" on the website. On May 17, he tweeted that as many as 20% of the accounts could be fake, and the day after that he tweeted that the deal could not go forward unless the company could show that fewer than 5% of accounts were fake. The investors also cited several other tweets from Musk and said Musk continued to make false statements about the merger, including further statements about backing out of the purchase.

The investors say Musk was attempting to artificially lower the price of Twitter shares to force Twitter to lower the price of the acquisition. The investors say Musk violated Section 10(b) of the Securities Exchange Act of 1934, *15 U.S.C. 78j(b)*, and Securities and Exchange Commission Rule 10b-5, *17 C.F.R. 240.10b-5*, promulgated thereunder.

Motion To Dismiss

Musk moved to dismiss the complaint in its entirety in July 2023. In December, Judge Breyer denied the motion in part but granted it in part.

The judge held, "Plaintiffs plausibly allege their Section 10(b) claim as to the May 13 tweet that the deal was 'temporarily on hold,' the May 17 statement that fake and spam accounts make up at least 20% of Twitter's users, and the May 17 tweet." The judge noted in part that Musk had waived business due diligence, which meant that the deal could not have been predicated on the number of fake accounts.

However, the judge granted Musk's motion as to all other alleged misstatements, finding that the investors failed to show the falsity of those statements.

On March 26, 2024, Musk moved for judgment on the pleadings, which automatically triggered a stay of discovery under the Private Securities Litigation Reform Act (PSLRA), *15 U.S.C. 78u-4*. On Aug. 5, 2024, Judge Breyer denied Musk's motion for judgment on the pleadings, finding that Musk made nearly identical arguments to those he made in the motion to dismiss. By denying the motion, the stay required by the PSLRA was automatically lifted, and Judge Breyer thus denied the investors' motion to lift the stay as moot. As part of his motion for judgment on the pleadings, Musk requested that the court take judicial notice of a number of documents, but the judge did not explicitly reference the request in his ruling.

Further Activity And Trial

On Sept. 27, 2024, the judge certified a class of all sellers of Twitter stock between May 13, 2022, and Oct. 4, 2022. On Oct. 15, 2025, Judge Breyer denied the investors' motion for partial summary judgment and Musk's motion for summary judgment. In the one-page order, the judge stated that after carefully considering the parties' arguments, he found there were genuine issues of material fact.

A two-week trial was held in March 2026, and the jury on March 20 unanimously found that the two tweets were false. Judgment was handed down April 3, awarding damages to the plaintiffs and the class "in an amount calculated pursuant to the out-of-pocket measure of damages in which the number of Twitter shares or call options sold or put options purchased by each Class Member on a given day during the Class Period is multiplied by the amount of damages per share or per opinion awarded by the jury for that day," as calculated by the claims administrator.

After the verdict and judgment, Musk sought to set aside the verdict, moving for judgment as a matter of law or, alternatively, for a new trial. He also moved to decertify the class. The plaintiffs filed motions for an award of prejudgment interest and approval of their class notice of the verdict.

Judgment As A Matter Of Law

Judge Breyer granted Musk's motion for judgment as a matter of law as to loss causation for Musk's May 17, 2022, tweet, but denied it in all other respects.

First addressing the arguments regarding the May 13, 2022, tweet, the judge noted that investors' expert, Dr. David Tabak, "testified that there was direct evidence that the May 13 tweet caused an immediate, significant drop in Twitter's share price." While Musk argued there was no evidence that the false statement caused the stock drop, Judge Breyer noted that Tabak testified that he evaluated news stories and analyst reports about the tweet and that they were 'generally in accord' that Musk's 'declaring the deal temporarily on hold[]' was causing the price decline." The judge also disagreed with Musk's argument "that there was insufficient evidence of loss causation because the market knew the truth that the deal was not actually on hold." Judge Breyer also agreed with the investors that they did not need to prove a corrective disclosure in a seller case and that they did prove one.

Judge Breyer denied Musk's motion as to material falsity, finding that his arguments as to the falsity of the May 13 tweet "primarily go to his view of the evidence, rather than its sufficiency." The judge also found that the evidence at trial supported a jury finding of scienter because "[a] jury could conclude that Musk had a motive to get out of the existing deal and used bots as a pretext to do so."

As to the May 17, 2022, tweet, the judge agreed with Musk's argument that the lack of market reaction to this tweet meant that no loss causation was attributable to it. Judge Breyer noted that "Dr. Tabak did not provide an expert opinion on price maintenance" and that "[w]ithout an expert opinion on price maintenance, Plaintiffs lack substantial evidence to support a finding of loss causation with respect to the May 17 tweet."

The judge also found there were no errors at trial and that "[t]he only instance of prejudice the Court found was Plaintiffs' counsel's statement during closing argument, which the Court explained was insufficient to trigger a new trial." The judge denied the motion for a new trial.

Motion To Decertify Class

The judge also denied Musk's motion to decertify the class, noting that *Federal Rule of Civil Procedure 23(c)(1)(C)*, *Fed. R. Civ. P. 23(c)(1)(C)*, permits a judge to decertify a class before final judgment and that Judge Breyer entered final judgment on April 3.

"Moreover, as discussed regarding Musk's motion for a judgment as a matter of law, the Court concluded that Plaintiffs properly invoked the fraud-on-the-market presumption and Musk failed to present evidence that could have rebutted it," the judge stated.

The judge found that "there was no evidence of individual reliance during trial."

Investors' Motions

Judge Breyer granted the investors' motions, first granting the investors' motion for prejudgment interest. The investors sought "prejudgment interest based on the rate set by [*Title 26 Section 6621(a)(2) of the U.S. Code*, *26 U.S.C. 6621(a)(2)*], compounded daily from October 4, 2022 (the end of the Class Period) to April 3, 2026 (the entry of final judgment)."

The judge noted that all factors from *Osterneck v. Ernst & Whinney, 489 U.S. 169 (1989)*, "are applicable and support an award of prejudgment interest." First, the judge held that "prejudgment interest is needed to fully compensate the class members," noting that class members had been deprived of the use of their money for about four years. Judge Breyer also held that "Musk's fraudulent conduct favors an award."

Rather than applying Section 6621, Judge Breyer chose the Treasury bill rate pursuant to *Title 28, Section 1961 of the U.S. Code*, *28 U.S.C. 1961*, agreeing with Musk that this is the appropriate rate. The judge said the Section

6621 rate is generally applied by the Internal Revenue Service, while "the Section 1961 rate is in line with the 'default rule in the Ninth Circuit' for securities actions."

The judge also granted the investors' motion for approval of their notice of verdict and claims administration process.

Counsel

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Musk is represented by Alex Spiro, Ellyde R. Thompson and Jesse A. Bernstein in New York and Michael T. Lifrak, Stephen A. Broome and Alex Bergjans in Los Angeles, all of Quinn Emanuel Urquhart & Sullivan LLP.

( Additional documents available: June 6 order 57-260713-061R

Judgment 57-260713-074X

Verdict 57-260713-075X

Oct15, 2025, order denying motions for summary judgment 57-260713-076R

Aug5 2024, order denying motion to dismiss 57-240812-139R

Pampena, et al's amended complaint 57-240812-150C )

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# Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System: Defendants' Second Line Of Defense In Securities Class Actions

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## Body

By Douglas W. Greene, Zachary R. Taylor and Carla Caliendo

Introduction

Defense counsel and D&O insurers have seen a troubling rise in a particularly frustrating strain of securities class actions over the past decade. The plaintiff's bar has increasingly been filing securities cases that attack issuers' broad and often generic statements about their business, claiming that they were fraudulent in light of specific subsequent negative developments. A subset of these is the so-called event-driven securities class action. Given that every company will, at some point, experience some sort of challenge or setback, this strain of securities class action complaint is particularly concerning.

To be sure, broad-statement securities class actions typically face significant hurdles at the motion to dismiss stage. Often, these prior broad statements are statements of opinion subject to the high substantive standard for falsity under *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund, 575 U.S. 175 (2015)*. In Omnicare, the Supreme Court raised the bar for showing the falsity of a defendant's statement of opinion: For a statement of opinion to be false or misleading under Omnicare, a plaintiff must do more than allege that it turned out to be incorrect: he must plead (1) facts sufficient to show that the speaker did not actually hold the stated belief at the time the statement was made; or (2) "particular (and material) facts going to the basis for the issuer's opinion . . . whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context." *575 U.S. at 188-89, 194*.

Omnicare is a powerful tool to contest the falsity of the alleged misrepresentations on a motion to dismiss (and beyond). Since Omnicare, courts have found broad statements concerning, among other things, a company's current operational and future performance,1 financial statements and internal controls,2 and compliance with laws and regulations,3 to be statements of opinion under the securities laws. For instance, in *Strezsak v. Ardelyx Inc., 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024)*, the court found defendants' statements that interactions with the FDA "have gone exceedingly well," and descriptions of "successful" clinical trials, to be statements of opinion, and that plaintiffs failed to plead any facts that rendered the statements false. Similarly, in *In re Diebold Nixdorf, Inc., Securities Litigation, 2021 U.S. Dist. LEXIS 62449, 2021 WL 1226627, at *9-*

10 (S.D.N.Y. Mar. 30, 2021), the court concluded that the defendants' statements describing the company's "excellence" in finance, operations, and sales, and "confidence" in a merger, were statements of opinion that plaintiffs did not adequately plead were false.

Yet some complaints that allege opinion misrepresentations still manage to survive.4 But that should not mean that defense counsel should either march along into the burdensome, expensive, and often contentious discovery process or throw up the white flag of surrender and settle. Defense counsel should be prepared to immediately deliver a second wave of attack to knock out such claims at class certification utilizing the Supreme Court decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System, 594 U.S. 113 (2021)*.

Goldman provides defense counsel with a way to defeat a securities class action as a class action by attacking the "back-end" of a complaint's allegations, i.e., by analyzing whether the later disclosed adverse event (i.e., the alleged "corrective disclosure") was sufficiently related to the prior alleged misrepresentation. Where there is a "mismatch" between the nature, contents, and/or subject matter of the alleged misrepresentation and the alleged corrective disclosure, a plaintiff may not be able to establish reliance at class certification, which would strip the case of its class action status and virtually eliminate defendants' and D&O insurers' financial exposure to such claims.5

Given the one-two punch Omnicare and Goldman afford defendants in securities class actions, defense counsel should be prepared from the outset of the case to analyze and develop the strength of its arguments at class certification should the case proceed past the motion to dismiss stage. Further, defense counsel should seek to brief class certification early on and stay discovery (or at least limit discovery to class discovery) pending resolution of class certification.6

The Supreme Court Decision in Goldman

The claims in Goldman arose around the time of the Great Recession. At issue in that case were certain alleged conflicts of interest that existed for a series of transactions in collateralized debt obligations ("CDO") involving subprime mortgages.7 Goldman allegedly marketed the CDO transactions as "ordinary asset-backed securities, through which investors could buy shares in bundles of mortgages and that investors, and presumably Goldman, hoped would succeed."8 However, Goldman purportedly allowed an outside hedge fund, Paulson & Co., to play an active role in selecting the mortgages that constituted the CDOs, and Paulson was actively betting against those investments through short sales.9 Goldman had not publicly disclosed Paulson's involvement in the mortgage portfolio selection for the CDOs.10

The Goldman plaintiff alleged that Goldman's stock price declined on the news of three government enforcement actions related to the CDO transactions and that they revealed the falsity of Goldman's prior broad statements concerning its controls for conflicts of interest generally and the company's integrity.11 Representative examples of some the alleged misrepresentations, which are statements common to issuers in their SEC filings and elsewhere, included:

* "Our reputation is one of our most important assets. As we have expanded the scope of our business and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ."

* "We have extensive procedures and controls that are designed to identify and address conflicts of interest . . . ."

* "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow . . . ."

* "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard . . . ."

* "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients . . . ."

* "Integrity and honesty are at the heart of our business."12

Having successfully defeated the motion to dismiss, the parties entered discovery and class certification briefing. The district court certified the class and after a near decade long series of appeals, the class certification issue reached the Supreme Court.

At issue in the Goldman decision was whether the shareholders were entitled to the fraud-on-the-market presumption of reliance under *Basic Inc. v. Levinson, 485 U.S. 224 (1988)*, at class certification. The fraud-on-the-market theory asserts "that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction."13 At class certification, a defendant may rebut the Basic presumption of reliance by showing that the alleged misrepresentations had no impact on the stock price.14 "Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance."15

In Goldman, the plaintiff asserted that the alleged misrepresentations maintained an artificial inflation in the stock price for years, which was exposed and dissipated on the announcements of the corrective disclosures described above.16 This is commonly known as a "price maintenance" theory of price impact. Under a price maintenance theory, the artificial inflation embedded in a company's stock price at the beginning of the class period can be shown through the "back-end" stock price decline attributed to the corrective disclosures.17 In other words, "the misrepresentation prevents preexisting inflation in a stock price from dissipating, but does not cause a price uptick. Instead, the back-end price drop-what happens when the truth is finally disclosed-operates as an indirect proxy for the front-end inflation, or the amount that the misrepresentation fraudulently propped up the stock price. Simply put, the theory goes: back-end price drop equals front-end inflation."18

By showing such embedded artificial inflation at the beginning of the class period, a plaintiff may invoke the Basic presumption of reliance at class certification based on a price-maintenance theory.19

Goldman argued that there was a "mismatch" between the alleged misrepresentations-general and generic statements-and the alleged corrective disclosures-specific events-such that any stock price drops attributable to the corrective disclosures did not support an inference that the alleged misrepresentations caused any embedded artificial inflation. In other words, by "severing the link" between the alleged corrective disclosures that revealed the alleged artificial inflation, and the alleged misrepresentations that purportedly caused said artificial inflation, plaintiff could not establish that it had relied on the alleged misrepresentations (which would have had no impact on Goldman's stock price) under the Basic presumption.

The Supreme Court agreed with this principle20 and explained that evidence of a "mismatch" between an alleged corrective disclosure and an alleged misrepresentation is relevant evidence to rebut the Basic presumption of reliance. The Court explained that:

[The] inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure. That may occur when the earlier misrepresentation is generic (e.g., "we have faith in our business model") and the later corrective disclosure is specific (e.g., "our fourth quarter earnings did not meet expectations"). Under those circumstances, it is less likely that the specific disclosure actually corrected the generic misrepresentation, which means that there is less reason to infer front-end price inflation-that is, price impact-from the back-end price drop.21

Directly at issue in Goldman was the "mismatch" between generic alleged misrepresentations and specific corrective disclosures. But the Court did not limit the "mismatch" principle to such statements. As a general matter, the "inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure."22 Accordingly, if the connection between the alleged misrepresentations and alleged corrective disclosures is too attenuated, there should be strong grounds for rebutting the presumption of reliance.

The Second Circuit Remands in Goldman

After the Supreme Court remanded the case to the Second Circuit, the Second Circuit remanded the case to the district court because it was "unclear whether the district court considered the generic nature of Goldman's alleged misrepresentations" as required under the Supreme Court's decision.23

On remand, the district court again certified the class after determining that the alleged misrepresentations were not sufficiently generic as to establish a sufficient mismatch to rebut the Basic presumption.24

On appeal, the Second Circuit reversed the district court's decision and remanded with instructions to decertify the class. The Second Circuit elaborated on the principle set forth in Goldman as follows:

[W]hat happens when the match between the contents of the price-propping misrepresentation and the truth-revealing corrective disclosure is tenuous? Consider two examples. In the first, an automobile manufacturer's earlier statement to the market that its best-selling vehicle passed all safety tests is followed by later news that, in fact, the car failed several crash tests. A price drop follows. There, the earlier statement is precisely negated, or rendered false, by the later news-a clean match. In the second example, however, the same back-end news (and the same price drop) is instead preceded by the manufacturer's statement to the market that it strives to ensure that all its vehicles are road-ready, that it has an elaborate testing protocol to that effect, but that [] task is tall, the goal difficult to achieve. There, it is less apparent the market would understand the later news of failed crash tests revealed that, in fact, there was no protocol, or that, in fact, the manufacturer did not seek to make its automobiles safe to drive. The match between the more specific "corrective disclosure" and the earlier, more generic statement is on shakier ground.25

Based on this analysis, in part, the Second Circuit held that Goldman's alleged misrepresentations as to its business principles (e.g., statements such as "integrity and honesty are at the heart of our business") were too generic to support an inference of price impact based on the stock price drop following the alleged corrective disclosures of specific government investigations into the allegedly conflicted transactions.26

With regard to Goldman's generic statements as to how it addressed conflicts of interest, the Second Circuit concluded that the alleged corrective disclosures were insufficiently linked to the alleged misrepresentations. The Second Circuit distinguished Goldman from its prior decision in *Waggoner v. Barclays PLC, 875 F.3d 79 (2d Cir. 2017)* where the alleged corrective disclosures "expressly identified" the alleged misrepresentations.27 The Second Circuit also distinguished Goldman from its prior decision in *In re Vivendi, S.A. Sec. Litig., 838 F.3d 223 (2d Cir. 2016)*, where the Second Circuit explained that a front-end price impact of a generic disclosure can established if there is sufficient evidence to infer that there would have been a negative stock price reaction had the company spoken truthfully at the time of the alleged misrepresentation but "at an equally generic level."28 The Second Circuit explained that, in line with Goldman, there cannot be a presumption that the market relied on the generic alleged misrepresentation unless it would have also reacted negatively to an equally generic negative disclosure had it been disclosed.29 Because the alleged corrective disclosures in Goldman described the "details and severity" of Goldman's alleged conduct, that presented a generic-specific "mismatch" sufficient to rebut the presumption of reliance.30

District Court Decisions Based on Goldman

Not many courts have opined on the Goldman mismatch principle, and the majority of those that have did not find the mismatch sufficient to rebut the Basic presumption. It is worth noting however, that these many of these decisions rely heavily on pre-Goldman precedent in assessing price impact. Arguably, some of these decisions reflect the same errors found in the district court decision in Goldman, which, as noted, has since been reversed.

However, several recent decisions demonstrate that courts may be starting to catch on to the logic underlying Goldman and denying (in full or in part) class certification on a sufficient showing of mismatch between the alleged misrepresentations and alleged corrective disclosures:

* In *Ferris v. Wynn Resorts Ltd., 2023 U.S. Dist. LEXIS 35374, 2023 WL 2337364, at *11 (D. Nev. Mar. 1, 2023)*, the court found that the issuer's (a resort casino company) announcement that it had dismissed the law firm it had retained to investigate sexual and other misconduct allegations was "not matched" to the alleged misrepresentations, which concerned the defendants' denials of said misconduct. The court concluded that "[t]he plaintiff class therefore may not proceed on this allegation as a corrective disclosure." Id.

* In In re Qualcomm Inc. Sec. Litig., 2023 U.S. Dist. LEXIS 47016, 2023 WL 2583306, at *12 (S.D. Cal. Mar. 20, 2023), the court found a mismatch between the issuer's (a technology company that owns patents for components inside cell phones and other devices) statements concerning its "broad," "fair," "reasonable," and "non-discriminatory" licensing practices, and the alleged corrective disclosures that allegedly revealed that the issuer did not license chips. The court refused to certify a class with respect to the licensing-related alleged misrepresentations.

* In *In re Apache Corp. Sec. Litig., 2024 U.S. Dist. LEXIS 23001, 2024 WL 532315, at *7 (S.D. Tex. Feb. 9, 2024)*, the court found a mismatch between the issuer's (an oil company) alleged misrepresentations concerning the attributes, performance, and prospects of a particular oil field and the alleged corrective disclosures that the head geologist at the oil field resigned, and that the company was temporarily deferring the oil field's production given continuing low oil prices. The court granted in part and denied in part the motion for class certification.

* In *In re Kirkland Lake Gold Ltd. Sec. Litig., 2024 U.S. Dist. LEXIS 59981, 2024 WL 1342800, at *8 (S.D.N.Y. Mar. 29, 2024)*, the court found a mismatch between the issuer's (a mining company) alleged misrepresentations concerning the company's focus and preference for internal growth "instead of going out and trying to buy [a] company," and the alleged corrective disclosure of the company's acquisition of a mine from another company. The court denied class certification.

* In *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc., 2024 U.S. Dist. LEXIS 64060, 2024 WL 1497110, at *4, 16-17 (S.D.N.Y. Apr. 5, 2024)*, a case related to the 1MDB scandal, the magistrate judge found a mismatch between the issuer's (Goldman) alleged misrepresentations that Goldman did not receive "fees or commissions" from 1MDB, that Goldman "had no visibility" into 1MDB's diversion of funds, and that "Jho Low [the creator of the 1MDB fund]" was not a client of Goldman, and the alleged corrective disclosures that Goldman's CEO had met with Jho Low in 2013. The magistrate judge issued a report and recommendation denying class certification as to those alleged misrepresentations, and the district court adopted the report in full. See *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc., 798 F. Supp. 3d 416, 468 (S.D.N.Y. 2025)*.

* In Shupe v. Rocket Companies, Inc., 2024 U.S. Dist. LEXIS 177472, 2024 WL 4349172, at *24-26 (E.D. Mich. Sept. 30, 2024), the court found a mismatch between the issuer's (a real estate financial services company) alleged misrepresentations that it saw "strong consumer demand" and an "opportunity" to invest as interest rates rose, that certain of its networks were "growing," and that it "takes" rising interest rates as an "opportunity to grow market share," and the alleged corrective disclosures of the issuer's low "closed loan volume," "net rate lock volume," and "gain on sale margins." The court determined that there was a mismatch between the generic alleged misrepresentations and the specific alleged corrective disclosures following Goldman's guidance. The court also noted that defendants' expert testimony demonstrating that "no analyst referenced" the alleged misrepresentations "in reports issued throughout the class period" was "fatal" to plaintiffs' claim that the alleged misrepresentations impacted the issuer's stock price. The court denied class certification.

* In *In re Concho Res., Inc., 2025 U.S. Dist. LEXIS 66272, 2025 WL 1040379, at *10-17 (S.D. Tex. Apr. 7, 2025)*, the court found a generic-specific mismatch between the issuer's (an oil company) specific alleged corrective disclosure reporting "substandard second quarter 2019 financial results" and lowering oil production guidance, and generic alleged misrepresentations, including that: (1) "Our operational and financial performance demonstrated our ability to consistently execute, control costs and capitalize on opportunities that strengthen our competitive position."; (2) "High quality acreage and scale within the Permian Basic enables Concho to efficiently allocate capital while continuing to advance manufacturing style development with leading-edge drilling and completion

techniques."; (3) "Concho is collecting valuable data that helps the Company optimize lateral placement, completion design and facilitates planning."; (4) "Our strategy allows us to adapt quickly."; (5) "We believe this type of [large-scale] development is important to maximize recoveries, drive economies of scale and deliver attractive economic returns predictably and consistently over the long term."; (6) "[T]he allocation of capital is probably the most important thing that our team does and the most important thing that we do that creates success for the company. That's what drives our production growth and free cash flow. Also, we run a very large and stable ship. This allows us to balance risk and kind of plow through the volatility of our business."; (7) "I think the drilling side of our business is one of the best parts of our business. And I think the way we have approached that in the past will continue." (8) "[B]y drilling longer laterals and the spacing we're using, the efficiency and all that, you can get a whole lot more done."; (9) "[T]hese large- scale projects, they really emphasize planning and planning ahead. And our team has done a good job of that."

The court also found a subject matter mismatch between the alleged corrective disclosure and other alleged misrepresentations because the alleged misrepresentations did not "pertain to the financial results for the second quarter of 2019." These categories of alleged misrepresentations included: (1) "[L]arge-scale projects . . . . [are] very dispersed amongst our asset base."; (2) "[W]e've been building up to this kind of larger-scale development mode, and we're very excited about what we're seeing."; (3) "The 2018 capital program is expected to be funded with cash flows from operations and generate 20% crude oil growth and 16% to 20% total production growth year-over-year."; (4) "Concho expects to grow total production at a compound annual growth rate of 20% from 2017 to 2020. The outlook reflects the Company's high-quality production base and strong operating momentum."; and (5) "In addition to our size, scale and execution strength provided us with the unique ability to capitalize on [] new complementary assets."

* In *Gambrill v. CS Disco, Inc., 2025 U.S. Dist. LEXIS 259789, 2025 WL 3771433, at *7-13 (W.D. Tex. Dec. 16, 2025)*, the magistrate judge recommended denial of class certification based on the "mismatch" between the alleged corrective disclosures related to issuer's (an e-discovery services provider) revised 2022 guidance, and the alleged misrepresentations that concerned: (1) "growth of usage [of the issuer's product] by one client"; (2) "the general adoption of [the issuer's] services by typical clients"; and (3) "the expectation that as [the issuer] grows, fluctuations in usage by any one client will become less impactful." The magistrate judge found both a subject matter and a generic-specific mismatch. Id. at *11 ("Defendants have demonstrated that the Alleged Corrective Disclosures do not sufficiently match [the]Alleged Misrepresentations. The court's comparison reveals too great a distance between the content of what the statements discussed. . . . The comparison also reveals too great a distinction in the specificity of the matters discussed.").

* In *In re NVIDIA Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 63927, 2026 WL 821418, at *19-22 (N.D. Cal. Mar. 25, 2026)*, the court found a subject matter mismatch between certain of the issuer's (a multinational technology company) alleged misrepresentations-which stated that "sales of [the issuer's] products to cryptocurrency miners were insignificant" and that the issuer's "cryptocurrency-related revenues were contained primarily in the [issuer's Original Equipment Manufacturer & IP] segment" rather than its Gaming segment-and the alleged corrective disclosures where the issuer disclosed a "lack of cryptocurrency revenue in the future earnings forecast" and an "increase in balance sheet inventory."

* In *In re Enovix Corp. Sec. Litig., 2026 U.S. Dist. LEXIS 87945, 2026 WL 1078569, at *8-13 (N.D. Cal. Apr. 21, 2026)*, the court denied class certification after finding a mismatch between the issuer's (an early-stage technology company that makes a new type of lithium-ion battery) alleged misrepresentations that allegedly concealed that certain Chinese equipment used in the issuer's production factory failed to pass Factory Acceptance Tests, and the alleged corrective disclosures which revealed the failure of the production factory "broadly speaking."

Recent Developments in the Third Circuit - San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, et al.

The class action defendants opposed class certification primarily on the theory that the alleged corrective disclosures did not constitute "new" information33 because the allegations and litigations regarding asbestos in Johnson & Johnson talc products were already well-known to the market, and thus the alleged corrective disclosures could not have caused the class action plaintiff's losses.34 The class action defendants also asserted that there was a mismatch between the alleged corrective disclosures and the alleged misrepresentations, including: (1) the 2017 Bernstein Liebhard press release did not match any alleged misstatement because "Plaintiff does not (and could not) claim that J&J concealed that ovarian cancer patients 'planned to include' asbestos related claims"; (2) the July 2018 verdict did not match the alleged misstatements because "Plaintiff does not allege that Defendants concealed the risk of large adverse verdicts in talc cases"; (3) "Plaintiff argued that the [2018] Reuters article disclosed for the first time that 'J&J has never adopted a concentration method for preparing talc samples before asbestos testing," but "J&J never said it used concentration testing and was not required to"; and (4) the 2018 Reuter's article's quoting of the "personal opinions" of a "former New York City environmental protection chief" who learned of the jury verdict and stated "[h]ow come it took so long?," and a plaintiffs' lawyer who stated that "the documents J&J [allegedly] withheld from [his client] would have made a 100% difference for his client," did "not match any alleged misstatement."35

In granting the motion for class certification, the district court did not address the class action defendants' Goldman "mismatch" arguments, concluding that "the Court need not determine whether the disclosures are corrective at this stage."36 The class action defendants appealed the district court decision to the Third Circuit Court of Appeals, arguing, in part, that the district court erred in "refusing even to decide whether the alleged corrective disclosures were even corrective," which "contradicts Goldman, which held that the issue must be addressed before a class is certified."37 The class action plaintiff opposed the appeal, arguing that: (1) any Goldman concern is "absent here, where Defendants' misstatements concerning asbestos in J&J talc products were pointed and specific-and definitively linked with the contrary disclosures"; and (2) "[t]he district court correctly noted it didn't have to consider loss causation at the class-certification stage [], and elsewhere reiterated that '[a]gain, . . . the Court need not determine whether the disclosures are corrective at this stage."38

In a 2-1 decision, the Third Circuit affirmed the district court's order certifying the class. In its decision, the majority only stated the following regarding the class action defendants' Goldman arguments:

[W]e observe that each disclosure contained information relating to J&J's alleged misrepresentations concerning the presence of asbestos in its talc product, its commitment to safety, or its potential asbestos-related liability. Thus, unlike in Goldman, . . . there is no mismatch between the subject of the alleged misrepresentation and the content of the disclosures. Therefore, market reaction to the disclosures is capable of shedding light on the price impact of the alleged misrepresentations.39

In the dissent, Judge Chung opined that he would vacate the district court order and remand for further proceedings, specifically because "the District Court did not assess evidence introduced by J&J showing that the disclosures did not contain newly public information and were not corrective," and "[a]bsent such findings, it is impossible to determine whether the District Court clearly erred in concluding that J&J failed to show that the disclosures had 'price impact,' and thus failed to rebut Basic's presumption of reliance."40

The class action defendants sought appeal of the Third Circuit decision to the Supreme Court, but the Supreme Court denied certiorari.

Recent Developments in the Ninth Circuit - Jaeger v. Zillow Group, et al.

In *Jaeger v. Zillow Group, Inc., et al., 746 F. Supp. 3d 1025 (W.D. Wash. Aug. 23, 2024)*, the class action defendants sought to rebut the Basic presumption and defeat class certification based on Goldman's mismatch guidance. Zillow operates several real estate websites and, in 2018, launched its "Zillow Offers" business in which Zillow purchased homes directly from sellers, performed renovations, and resold the homes for small profit margins.41 The class action plaintiff alleged two categories of alleged misrepresentations: (1) statements of optimism related to the strengthening of Zillow's pricing models in connection with its Zillow Offers business;42 and (2) statements regarding the durability of certain operational, unit economic, and/or renovation process improvements.43 Plaintiff alleged that the first category of alleged misrepresentations was false or misleading because Zillow allegedly concealed its use of "gross pricing overlays" in setting prices, that these overlays were what created demand, and thus Zillow was not in fact strengthening its pricing models. Plaintiff alleged that the second category of alleged misrepresentations were false or misleading because Zillow allegedly concealed its reduction in the scope and pricing of renovations.

Plaintiff alleged that the falsity of these disclosures was revealed through four alleged corrective disclosures: (1) an October 4, 2021 analyst report stating that Zillow appeared to have too much inventory that it bought "at too high a price"; (2) an October 17, 2021 news article reporting that Zillow Offers was pausing new home acquisitions, which Zillow later confirmed in an October 18, 2021 press release as being due to a "backlog in renovations and operational capacity constraints"; (3) an October 31, 2021 analyst report and a November 1, 2021 news article stating that 66% of Zillow's homes were for sale below their purchase price and that Zillow planned to divest approximately 7,000 homes; and (4) Zillow's November 2, 2021 earnings call announcing it was writing down over $500 million in home inventory and winding down Zillow Offers because the housing market was too volatile for Zillow's pricing projections.44

The Zillow defendants opposed class certification, arguing that there was a mismatch between the alleged misrepresentations and the alleged corrective disclosures because none of the alleged corrective disclosures actually revealed the allegedly concealed information, i.e., Zillow's use of pricing overlays and its reductions to the scope and pricing of renovations. The district court rejected this argument, concluding that: (1) the October 17-18, 2021 disclosures regarding the pause in new acquisitions due to inventory backlog "render[ed] some aspect of [Zillow's] prior statements false or misleading" because plaintiff had alleged that Zillow's inventory backlog was caused by the overlay pricing model and inability to renovate houses; (2) the October 31 and November 1, 2021 disclosures that Zillow was selling homes below their purchase price and divested 7,000 homes revealed the prior pricing statements to be false or misleading because plaintiff alleged that overpayments for houses were a result of Zillow's overlay pricing model; and (3) the November 2, 2021 earnings call's disclosure that Zillow's pricing model would not be able to accurately forecast future home prices rendered its prior statements regarding the strength of Zillow's pricing model false or misleading.45

In January 2025, the defendants appealed the class certification decision to the Ninth Circuit. On September 26, 2025, in a two-page unpublished order,46 the Ninth Circuit affirmed the district court's decision, concluding that: "The back-end disclosures [] revealed new information about how Zillow's home-pricing struggles threatened the business and suggested that its earlier statements may have obscured how Zillow's pricing model misfired. Zillow's front-end and back-end statements are matched enough under Goldman." *Jaeger v. Zillow Grp., Inc., 2025 U.S. App. LEXIS 24977, 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025)*.

***

While Johnson & Johnson and Zillow represent that some courts will still find a sufficient match where the alleged corrective disclosures concern the same general subject matter as the alleged misrepresentations, courts are increasingly scrutinizing the substantive match (or mismatch) between alleged misrepresentations and alleged corrective disclosures following Goldman, including in the Ninth Circuit following the Zillow decision,47 as discussed above.

Goldman as a Tool for Defense Counsel

Too often, after the filing of a case, defense counsel devotes its exclusive attention to the motion to dismiss process. Once a court denies a motion to dismiss-sometimes years after the initial complaint is filed-defense counsel enter into settlement discussions, and/or enter discovery mode and negotiate a case schedule that puts off class certification for many months. During that time, defendants and their D&O insurers are burdened with the enormous burden and expense of discovery in securities class actions, and any settlement analyses or valuations are determined based on what the expected damages would be at trial.

That classic way of doing things overlooks the opportunity to virtually defeat such cases under Goldman, which provides added protection for cases involving broad statements of opinion under Omnicare as well as broad and/or generic statements of fact.48 Indeed, the example cited by the Supreme Court in Goldman itself demonstrates a mismatch between a broad alleged misrepresentation of opinion ("we have faith in our business model") and a specific corrective disclosure ("our fourth quarter earnings did not meet expectations").49 That alleged misrepresentations are often broader in scope than the alleged corrective disclosures should incentivize defense counsel to utilize Goldman to rebut the Basic presumption of reliance and defeat class certification early in the case.

Accordingly, should a complaint survive a motion to dismiss, defense counsel should be immediately prepared to reload and brief the issue of class certification if it has a viable Goldman mismatch argument. Indeed, *Federal Rule of Civil Procedure 23(c)* directs courts "at the earliest practicable time . . . to determine by order whether to certify the action as a class action."50 And defense counsel should move to stay discovery pending the outcome of class certification, or at least seek to limit discovery to class discovery, pending the outcome of class certification. This way, issuers have a second chance to virtually eliminate the case early on without the notorious burden and expense of discovery in securities class actions.

Additionally, depending on the strength of the Goldman arguments, attempting to defeat class certification early on may bring plaintiffs' counsel to the settlement table earlier with defendants having the upper hand.

Endnotes

1. *In re MINISO Grp. Holding Ltd. Sec. Litig., 2024 U.S. Dist. LEXIS 31227, 2024 WL 759246, at *17 (S.D.N.Y. Feb. 23, 2024)*; *Strezsak v. Ardelyx Inc., 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024)*.

2. *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo, 80 F.4th 158, 176 (2d Cir. 2023)*; *Se. Pennsylvania Transportation Auth. v. Orrstown Fin. Servs., Inc., 2016 U.S. Dist. LEXIS 169379, 2016 WL 7117455, at *13 (M.D. Pa. Dec. 7, 2016)*; In re Qiwi plc *Sec. Litig., 2023 U.S. Dist. LEXIS 197945, 2023 WL 7283619, at *13 (E.D.N.Y. Nov. 3, 2023)*; *In re Citigroup Sec. Litig., 2023 U.S. Dist. LEXIS 50726, 2023 WL 2632258, at *18 (S.D.N.Y. Mar. 24, 2023)*.

3. *Omnicare, 575 U.S. at 175*; *Villella v. Chem. & Mining Co. of Chile Inc., 2017 U.S. Dist. LEXIS 45501, 2017 WL 1169629, at *10 (S.D.N.Y. Mar. 28, 2017)*; *In re Plains All Am. Pipeline, L.P. Sec. Litig., 307 F. Supp. 3d 583, 622 (S.D. Tex. 2018)*.

4. See, e.g., *In re Home Point Cap. Inc. Sec. Litig., 2022 U.S. Dist. LEXIS 239647, 2022 WL 18932069, at *5 (E.D. Mich. Oct. 5, 2022)* (concluding that the company's statement that "we believe that [our scalable operating platform] provides us with significant operating leverage" was adequately pleaded as false); In re Intuitive Surgical Sec. Litig., 2017 U.S. Dist. LEXIS 161098, 2017 WL 4355072, at *2 (N.D. Cal. Sept. 29, 2017) (same regarding the company's opinion statements that "[w]e believe [that the company's surgery system] continues to be a safe and effective surgical method").

5. While this analysis may overlap with principles of loss causation and materiality-which courts have found to be inappropriate merits questions at the class certification stage-Goldman held that evidence of such a "mismatch" is appropriate evidence to defeat price impact and the presumption reliance at class certification. *Goldman, 594 U.S. at 114 (2021)* (courts must "consider all record evidence relevant to price impact, regardless whether that evidence overlaps with materiality or any other merits issue"); *Delaware Cnty. Emps. Ret. Sys. v. Cabot Oil & Gas Corp., 2023 U.S. Dist. LEXIS 172506, 2023 WL 6300569, at *6 (S.D. Tex. Sept. 27, 2023)* ("The class-certification question of whether the Basic presumption [of reliance] has been rebutted by evidence of no price impact overlaps with the merits questions of materiality, reliance, and loss causation. Nonetheless, district courts must consider all probative evidence" to determine whether the Basic presumption of reliance has been rebutted) (citing *Goldman, 594 U.S. at 122 n.2*).

6. Economic arguments against class certification are also available at summary judgment and trial. See, e.g., *Basic Inc. v. Levinson, 485 U.S. 224, 241, 259 n.29 (1988)*; *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds, 568*

Mergers & Acquisitions

# Intel to Sell $15 Billion in Stock After AI Boosts Demand (1)

Aug. 10, 2026, 9:05 AM PDT


## Summary by Bloomberg AI

AI Generated

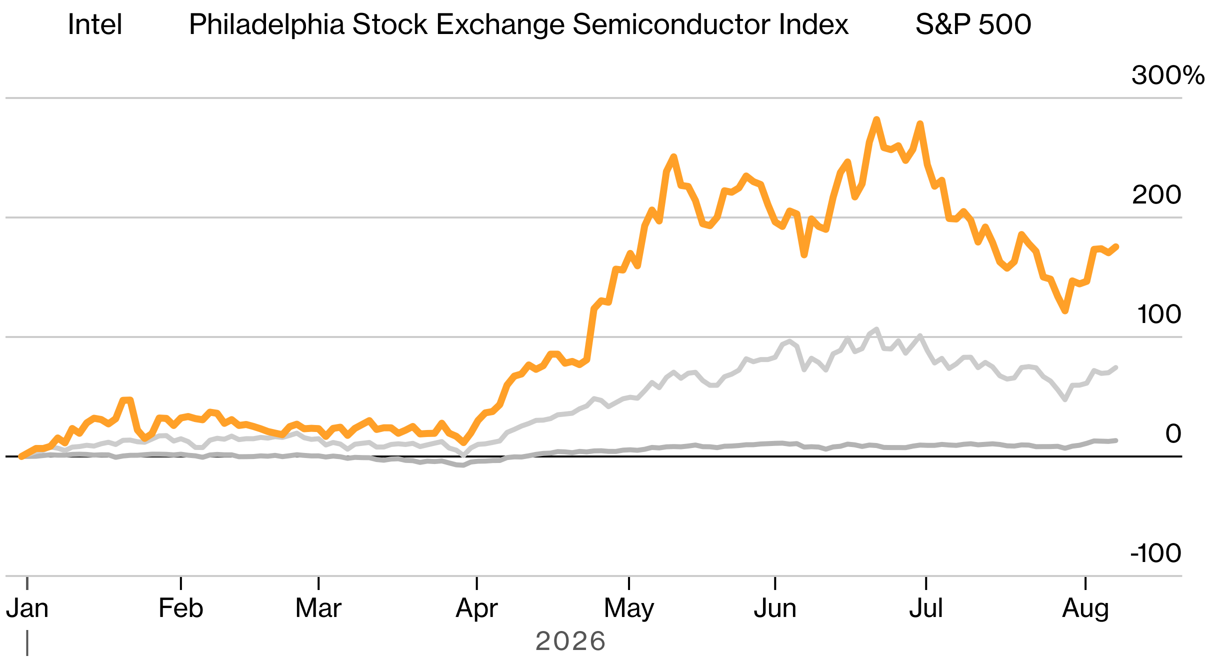
- Intel Corp. plans to offer $15 billion worth of new stock in its first public share sale since 1971 to extend its comeback and capitalize on the AI boom.
- The money is meant to help Intel tap new markets, such as real-world uses of artificial intelligence and purpose-built silicon, and for general corporate purposes.
- The stock sale should help further cushion a balance sheet that had become burdened with debt and provide substantial capacity to fund AI, foundry and other projects without adding leverage.


Intel Corp. plans to offer $15 billion worth of new stock in what may be its first public share sale since the chipmaker listed in 1971, a bid to extend its comeback and capitalize on the AI boom.

“The offering is intended to further enable Intel to pursue the growth opportunities ahead,” the company said in a statement Monday. The money — earmarked for general corporate purposes — is meant to help Intel tap new markets, such as real-world uses of artificial intelligence and purpose-built silicon.

**Intel Has Outperformed Its Peers This Year**

Optimism about the company's prospects with AI data centers keeps rising




Source: Bloomberg

Bloomberg

The chipmaker's stock fell as much as 5.3% in New York trading to $96.30 on Monday following the announcement. Existing investors typically dislike new share offerings because the transactions dilute their ownership.

Intel shares are still up more than 160% this year, lifting its market value to close to $500 billion. It has outpaced most chip peers in the closely watched Philadelphia Stock Exchange Semiconductor Index, which is up more than 70% in 2026.

The stock sale should help further cushion a balance sheet that had become burdened with debt. Chief Executive Officer Lip-Bu Tan, who took the helm last year, has made cleaning up Intel's finances a priority. The effort has included attracting outside investments from the US government and even chip rivals such as Nvidia Corp.

Intel shares fell early on Monday after the company said it will be offering $15 billion in common stock. Intel says the money will be used to pursue growth opportunities in AI. Bloomberg's Ed Ludlow reports. Source: Bloomberg

Intel is building up cash reserves with a goal of taking on a more central role in the artificial intelligence boom. The worldwide expansion of data centers has already bolstered demand for its general processors, but the company has struggled to compete directly with Nvidia and Advanced Micro Devices Inc. in the market for AI processors. Intel also needs funds to build out a factory network to meet its goal of serving as an outsourced manufacturing hub for the tech industry.

Sales in Intel's data center segment soared 59% last quarter, more than double the pace of Intel's overall revenue. Still, the company is working to line up significant outside customers for its chip foundry business.

The year's biggest US equity offerings have been dominated by companies riding the boom in artificial intelligence spending. Alphabet Inc. is in the process of raising as much as $85 billion through equity offerings, including so-called at-the-market share sales and equity-linked deals. And Oracle Corp.'s fundraising plans include a $20 billion at-the-market sale.

South Korean memory chipmaker SK Hynix Inc. raised $26.5 billion in its debut offering of American depositary receipts, the largest ever listing by a foreign company on a US exchange.

SpaceX's blockbuster initial public offering, meanwhile, centered on its AI aspirations, including a plan to put data centers in space. That company's revenue increasingly hinges on providing AI computing power to customers such as Anthropic PBC.

Proceeds from Intel share sale will provide "substantial capacity" to fund AI, foundry and other projects without adding leverage, Bloomberg Intelligence analyst Robert Schiffman said in a note.

"Intel also reinforces a broader theme across AI infrastructure: Rising investment doesn't have to fall entirely on bondholders," he said, drawing comparisons to Alphabet, Oracle, SpaceX, Meta Platforms Inc. and Microsoft Corp.

(Updates with other AI-related equity sales in eighth paragraph. A previous version was corrected to indicate that Intel does have some AI-specific chips.)

# Judge Allows Investors' Suit Over REIT Proxy Disclosures To Proceed

Mealey's(R) Emerging Securities Litigation

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## Body

A federal judge in New Jersey denied a motion to dismiss investors' putative class complaint alleging that three real estate investment trusts (REITs) and their external advisers and directors misled shareholders through proxy statements that omitted material information about charter amendments delaying liquidation and benefiting the REITs' controlling executive, finding the omissions to be material (Kenneth N. Ayer, et al. v. Lightstone Value Plus REIT I Inc., et al., No. 24-10371, *D. N.J., 2026 U.S. Dist. LEXIS 174788*).

( Memorandum opinion available 57-260810-073Z )

Judge Michael A. Shipp issued the memorandum opinion denying the motion to dismiss on Aug. 4, finding that the investors plausibly alleged that the proxy statements and shareholder solicitations omitted material information, including chairman and CEO David Lichtenstein's conflict of interest and the proposed charter amendments' effect on shareholders' ability to obtain liquidity.

Proxy Statements

Investors Kenneth N. Ayer, Martha Harvey and Larry Melton brought the putative "class action on behalf of themselves and all other similarly situated investors who own illiquid shares of common stock in Lightstone Value Plus REIT I (REIT I), Lightstone Value Plus REIT II (REIT II) and Lightstone Value Plus REIT III (REIT III)" in the Ocean County Superior Court. The case was removed to the U.S. District Court for the District of New Jersey on Nov. 7, 2024.

They brought claims against REIT I, REIT II and REIT III (together, the Lightstone REITs); their external advisers Lightstone Value Plus REIT LLC Lightstone Value Plus REIT II LLC (together, the Lightstone advisers); and the REITs' directors. The directors include Yehuda I. Angster, who is a director of REIT II and REIT III; Howard E. Friedman and Alan Retkinski, who were directors of REIT I; and Lichtenstein, who is a director of all of the Lightstone REITs, is the chairman and CEO of each of the Lightstone REITs and owns and controls the external advisers. The defendants moved to dismiss the original complaint on Jan. 6, 2025. Judge Shipp granted the defendants' motion without prejudice on Aug. 31, 2025.

The investors filed the operative first amended complaint on Oct. 15, bringing claims for breach of fiduciary duty, declaratory relief and breach of contract. They sought a declaration that the defendants breached their fiduciary duties to shareholders as well as that they breached their terms of the REITs' charters.

The case involves nontraded REITs. Because they are not traded publicly, REIT stockholders often wait for a liquidity event to maximize returns. Liquidity events typically occur five to seven years after the initial investment. Each Lightstone REIT's original charter contains provisions governing its liquidation obligations, and each REIT was required to seek shareholder approval of an amendment to extend its duration or adopt a plan of liquidation. Lichtenstein, through special purpose entities (SPEs), indirectly holds subordinated participation interests (SPIs), which the investors alleged are potentially worth $59.8 million or more. However, he receives distributions on the SPIs only after stockholders are paid their preferred returns. They alleged that if REIT II and REIT III had liquidated between 2024 and 2025, as required by their charters, Lichtenstein's investments would have been worthless.

The investors alleged that the defendants misled the Lightstone REITs' shareholders through the 2022 proxy statements into approving amendments to their charters that resulted in harm, including the indefinite delay of liquidation that would have allowed shareholders to monetize their investments. Additionally, they alleged that the charter amendments curtailed the fiduciary duties of the directors of the Lightstone REITs to shareholders. They also alleged that the defendants actively misled the shareholders in the 2022 proxy statements about the 2023 charter amendments by, among other things, not informing shareholders of Lichtenstein's direct financial conflict of interest with common shareholders. Because of the alleged misstatements, the investors argued that the 2023 charter amendments were purportedly approved by shareholders under false pretenses.

The defendants moved to dismiss the first amended complaint, arguing that Maryland law exculpates directors for corporate acts ratified by stockholder vote, that the proxy statements accurately disclosed the charter amendments, that the business judgment rule protects the directors' decision-making and that the investors failed to state a breach of contract claim.

Improper Disclosures

Judge Shipp denied the defendants' motion to dismiss, finding that the first amended complaint adequately alleged that statements made during phone calls to shareholders to solicit stockholder votes were misleading half-truths because the calls failed to disclose that the charter amendments proposed in the proxy statements eliminated the liquidation deadline.

The judge also held that the investors plausibly alleged that the proxy statements did not disclose that Lichtenstein's SPIs would not receive a distribution if REIT II and REIT III liquidated within the required time frame, while shareholders would receive significant cash distributions. Judge Shipp found this omission plausibly materially misleading, leaving shareholders not fully informed when they approved the charter amendments.

The defendants argued that even if stockholder ratification does not foreclose the investors' claims, the claims are barred by the business judgment rule. Judge Shipp disagreed, finding that the investors' allegations plausibly supported an inference that the directors acted in bad faith because they recommended the amendments without fully disclosing the conflict of interest and "the effect of the vote on shareholders' ability to obtain liquidity."

The judge found that the investors also pleaded facts sufficient to state a claim for the advisers' breach of fiduciary duty, noting that under the legacy charters, the advisers had a fiduciary responsibility to the company and the stockholders, which they breached by not disclosing Lichtenstein's conflict of interest.

The judge also denied the defendants' motion as to the declaratory relief claim, finding that the "Defendants' only argument against declaratory relief is that stockholder ratification exculpates them."

Additionally, Judge Shipp found that the stockholders adequately allege that the defendants had a contractual obligation to them and that the defendants breached that obligation. Specifically, it noted that the directors and trustees had fiduciary obligations to shareholders that were embodied in the REITs' charters.

Counsel

Ayer, et al. are represented by Christopher J. Gray of Law Office of Christopher J. Gray PC in New York and Donald J. Enright, Elizabeth K. Tripodi and Jordan A. Cafritz of Levi & Korsinsky LLP in Washington, D.C.

Lightstone, et al. are represented by Jeremy B. Stein and Kelly A. Zampino of Hartmann Doherty Rosa Berman & Bulbulia LLP in Hackensack, N.J., and John F. Baughman and Andrew Bosse of Baughman Kroup Bosse PLLC in New York.

( Additional documents available: Lightstone, et al's motion to dismiss 57-260810-074M

Ayer, et al's opposition to motion to dismiss 57-260810-075B

Lightstone, et al's reply brief 57-260810-076B

Ayer, et al's first amended class action complaint 57-260810-077C )

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**Load Date:** August 10, 2026

# Judge Dismisses Investors' Fraud Claims, Allows Final Amendment

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## Body

A federal judge in Illinois granted a motion to dismiss fraud claims and claims sounding in fraud filed against an individual defendant and corporate defendant in a case brought by investors alleging that several individuals and two corporate defendants misrepresented the nature and profitability of investment securities involving cryptocurrency and other investments, finding that the investors failed to specify each defendant's participation in the alleged fraud (Francisco Panti, et al. v. Jazzberry Digital Solutions Inc., et al., No. 25-1345, *N.D. Ill., 2026 U.S. Dist. LEXIS 174284*).

( Memorandum and order available 57-260810-078Z )

Judge Sharon Johnson Coleman issued the memorandum and order on Aug. 5, also dismissing the breach of contract claim against defendant Rosa Venisia Garcia with prejudice. This was the second time OLEM LLC and Rosa Garcia successfully moved to dismiss the claims against them.

Alleged Investment Scheme

Investors Francisco Panti, Lauretiu Mateescu, Rosa Salas, Daniel Santos, Maria Consolacion Carreon, Roberto C. Martinez, Agustin Alvarado, Galo Alvarado, Richelle Alvarado, Jessica Jasso, Miguel Cabanas, Minerva Jasso, Jorge Zamudio, Ignacio Jasso, Angelica Rodriguez, Maria Jasso, Veronica Jasso, Felipe Jasso, Tereza Jasso, Angel Rico, Raul Rico, Karen Rico, Olga Botello, Luis Fernando Botello, Jose Botello, Evelyn Botello, Lorenzo Alvarez, Lourdes Duran, Paulino Duran, Orlando Barrera, Minerva Jasso Jr., Mario Lozano, Carlos Monarrez, Maria Guadalupe Monrroy, Antonino Santamaria and Mariela Jaso filed their initial complaint against Jazzberry Digital Solutions and Brek Snyder, who allegedly made Illinois-directed solicitations; as well as OLEM and Rosa Garcia and Elizabeth Noemy Esparza, both of whom allegedly solicited Illinois residents on behalf of OLEM; and Armando Garcia, who allegedly participated in Illinois-directed solicitation and directed investor funds.

The investors alleged that beginning in 2021, the defendants promoted uniform investment offerings to Illinois residents, promising about 15% to 18% monthly returns for a six-month term, as well as a return of principal. They allegedly promoted the investments as safe or risk-free. They alleged that despite assurances, the defendants failed to provide the promised monthly payments and did not return principal when demanded. Additionally, the defendants allegedly refused to provide promised reports or accounting and gave inconsistent explanations for their nonperformance. The nonperformance caused losses to the investors.

Based on the investors' losses and subsequent reports against the defendants, the Illinois secretary of state issued a Final Order of Prohibition on Jan. 26, 2023. This order permanently prohibited Rosa Garcia, Jazzberry and OLEM from offering or selling securities or engaging in the business of an investment adviser in Illinois. The order adopted findings that the defendants targeted Illinois investors, directed them to pay in the names of OLEM and Jazzberry, failed to pay the promised monthly returns and were not registered to offer or sell securities in Illinois.

The investors filed the initial complaint on Feb. 7, 2025, in the U.S. District Court for the Northern District of Illinois. They filed a first amended complaint on April 2, 2025. OLEM, Rosa Garcia and Esparza filed a motion to dismiss the first amended complaint, which the District Court granted Oct. 24, 2025, giving the investors leave to amend.

The investors filed a second amended complaint on Nov. 24, 2025, seeking damages on claims of federal securities fraud, violation of Illinois' securities law, common-law fraud and deceit, breach of contract, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., negligent misrepresentation, unjust enrichment, conversion, breach of fiduciary duty and accounting.

OLEM and Rosa Garcia moved to dismiss all claims against them for fraud or sounding in fraud pursuant to *Federal Rule of Civil Procedure 9(b)*, *Fed. R. Civ. P. 9(b)*, and the breach of contract claim against Rosa Garcia. They argued that the second amended complaint still failed to plead fraud with the necessary particularity. Specifically, they argued that the investors still did not identify who made the alleged misrepresentations. No other defendants filed motions to dismiss.

Failure To Plead Fraud

Judge Coleman said that despite the amendments in the second amended complaint, the investors' claims remained insufficient because they lump the defendants together rather than identifying each defendant's alleged conduct.

"While Plaintiffs opposition comes closer to providing this information with particularity, for the six 'illustrative examples,' the SAC is void of any of this information, and surely does not outline this information with particularity for the other 30, unreferenced, Plaintiffs," Judge Coleman stated.

The judge noted that the second amended complaint "already alleges that payment and misrepresentation particulars can be specifically identified for each Plaintiff, making leave for further amendment appropriate." The judge gave the investors one last opportunity to submit an amended complaint that complies with the standards outlined in Rule 9(b).

Judge Coleman then addressed the investors' breach of contract claim against Rosa Garcia, finding that the "Plaintiffs still fail to offer any facts or authorities that establish Rosa was a signatory to the agreements or otherwise subject to contract liability." The judge dismissed the breach of contract claim against Garcia with prejudice.

Counsel

Panti, et al. are represented by Faustino Rodriguez of Law Office of Faustino Rodriguez in Chicago.

OLEM and Garcia are represented by Craig M. Capilla of Franklin, Greenswag, Channon & Capilla LLC in Northfield, Ill.; and Scott Wellman of Wellman & Warren LLP in Laguna Hills, Calif.

( Additional documents available: OLEM and Garcia's motion to dismiss 57-260810-079M

Panti, et al's opposition to motion to dismiss 57-260810-080B

# Meta Hit With $567M Abatement Order in New Mexico Child Safety Case

law.com/corpcounsel/2026/08/07/meta-hit-with-567m-abatement-order-in-new-mexico-child-safety-case

A New Mexico judge has ordered Meta Platforms Inc. to pay $567 million into an abatement fund and make a series of child safety changes after finding that Facebook and Instagram substantially contributed to a statewide youth mental health crisis and created a public nuisance.

The decision, issued Thursday afternoon by First Judicial District Chief Judge Bryan Biedscheid, comes after a two-phase trial in a closely watched case brought by New Mexico Attorney General Raúl Torrez. A jury in March found that Meta violated the New Mexico Unfair Practices Act and imposed $375 million in civil penalties. Biedscheid's order adds a separate abatement remedy after a bench trial on the state's public nuisance claim, bringing Meta's total monetary penalty to nearly $1 billion.

"In sum, the court finds that New Mexico is in the midst of a teen mental health crisis affecting public health and public safety in and throughout the state, and that Meta's platforms are a significant contributing cause to the crisis," Biedscheid wrote

The ruling is one of the most significant setbacks yet for Meta in the growing wave of litigation accusing social media companies of harming young users. It could also become a template for other states, municipalities and school districts pursuing claims that social media platforms have created broad public harms.

Meta said it disagrees with the ruling and plans to appeal.

"We remain confident in our record of protecting teens online and will continue to defend ourselves against claims that misrepresent the facts," the company said in a statement.

Meta was represented by a team from Kellogg, Hansen, Todd, Figel & Frederick, Covington & Burling, Holland & Hart and Rodey, Dickason, Sloan, Akin & Robb. Messages sent to the attorneys seeking comment Friday were not immediately answered.

The case, *State of New Mexico ex rel. Raúl Torrez v. Meta Platforms*, was filed in December 2023. The first phase focused on the state's consumer protection claims, while the second phase addressed whether Meta's platforms constituted a public nuisance and, if so, what remedy was appropriate.

Biedscheid found that the evidence showed Meta designed platforms to maximize engagement, including through features such as push notifications, infinite scroll, autoplay, recommendation algorithms and public “like” counts, and that those features were harmful to teenagers. The judge cited internal Meta materials, including a 2020 presentation stating that “approval and acceptance are huge rewards for teens” and that notifications, comments, follows and likes “encourage teens to continue engaging and keep coming back to the app.”

The order also cited evidence that Meta was aware of risks tied to addictive or problematic platform use. Biedscheid wrote that Meta “implemented platform features that were designed to optimize engagement, and that these features were and are harmful to teenagers.”

In one of the ruling’s more vivid passages, Biedscheid adopted a “polluting factory” analogy that Meta had used to argue for limits on equitable relief.

“The court considers Meta’s platforms to be analogous to the factory, the advertising and other content displayed on those platforms to be what is produced by the factory, and the psychological harm to and sexual exploitation of children to be the pollution that must be abated,” he wrote.

Biedscheid concluded that the harms alleged by New Mexico were not confined to Meta’s platforms, but spilled into schools, hospitals, law enforcement and families. He found that Meta’s platforms interfered with public resources and injured public health, safety and welfare in New Mexico.

The judge also rejected Meta’s argument that other social media platforms, including TikTok, YouTube, Snapchat and X, relieved the company of responsibility. While acknowledging that other platforms also contribute to youth harms, Biedscheid found that Meta’s platforms remained a cause of and substantial factor in the alleged nuisance.

“The fact that other companies also operate social media is not a defense to liability,” Biedscheid wrote.

The $567 million abatement fund will be used over a five-year period. The largest share, $420 million, is earmarked for treatment. The remaining money is allocated to awareness and prevention, screening and assessment, referral and coordination, implementation, quality improvement and evaluation.

Biedscheid declined to adopt the state’s proposed 15-year abatement period, finding that it exceeded the scope of remedies available to address existing harm and risk of harm. He also reduced the proposed fund amount based on a shorter time period and the fact that other social media companies share responsibility for harms to New Mexico teenagers.

The order imposes several platform-related requirements on Meta for users in New Mexico. Those include improving age-assurance tools, requesting proof of age for accounts believed to belong to users under 13, making it easier to report underage users, and creating an appeal process for users who claim their age was wrongly estimated.

For users under 18, Meta must maintain private-by-default settings on Instagram, prevent minors' accounts from being recommended to adults, bar unconnected adults from messaging minors, and keep child-safety defaults in place unless a parent or guardian approves changes.

The order also requires Meta to eliminate push notifications for users under 18 between 10 p.m. and 7 a.m. every day and between 8 a.m. and 3 p.m. during the academic year, excluding weekends, with limited exceptions. Meta must also hide "like counts" by default for minors unless a parent or guardian permits the setting to be changed, and must impose a 90-hour monthly usage limit across Facebook and Instagram for users under 18.

Biedscheid declined, however, to order changes to Meta's algorithms, finding that the state's requested algorithmic remedies were "vague and aspirational" and would likely run into First Amendment and Section 230 concerns.

"Unlike the court's other abatement relief that seeks to minimize or resolve harms caused by Meta's algorithmic content and connection recommendations without directly impacting platform content, the state's requested algorithm relief would directly alter and limit the manner in which platform content is displayed," Biedscheid wrote.

The judge also refused to appoint a child safety monitor, finding the state's proposal too vague. But he left open the possibility of appointing a monitor or special master later if disputes over specific compliance requirements become too burdensome for the court to manage.

A key legal issue in the case was whether Section 230 of the Communications Decency Act barred the state's public nuisance claim. Meta argued that it was immune, but Biedscheid rejected that defense, finding that the state's claim targeted Meta's platform design and features rather than third-party content.

The ruling adds to a broader legal and regulatory reckoning for social media companies over youth safety. More than 40 states and more than 1,300 school districts have filed public nuisance lawsuits against social media companies seeking damages and court ordered changes to product design and practices.

# Smartsheet Sued Over $50M Stock Buyback During Takeover Talks With Blackstone, Vista

**law.com**/newyorklawjournal/2026/08/07/smartsheet-sued-over-50m-stock-buyback-during-takeover-talks-with-blackstone-vista

A pension fund claims Smartsheet should have disclosed acquisition offers from Blackstone and Vista Equity Partners or stopped repurchasing shares before its $8.4 billion sale.

Galveston Firefighters' Pension Fund sued cloud-based work management software company Smartsheet and two former executives in the Southern District of New York, claiming the company concealed takeover offers from private equity firms Blackstone and Vista Equity Partners while repurchasing approximately $50 million of its shares at lower prices.

The proposed securities class action says Smartsheet bought more than 1.1 million shares between June and August 2024 at an average price of $44.34. During that same period, the Blackstone-Vista consortium offered to acquire the company for $56.50 per share. Smartsheet announced the approximately $8.4 billion all-cash deal on Sept. 24, 2024, and the acquisition closed in January 2025.

At the transaction price, the repurchased shares would have been worth approximately $63.7 million—about $13.7 million more than Smartsheet paid.

The fund claims Smartsheet should have disclosed the offers before buying its stock or stopped the repurchases. By remaining silent, the complaint alleges, Smartsheet bought shares at prices that did not reflect the premium offers. It says the transaction's size, the bidders' stature and the consortium's sustained interest made the offers material to investors.

The fund sued Smartsheet, former CEO Mark Mader and former chief financial officer Pete Godbole under Sections 10(b) and 20(a) of the Securities Exchange Act and SEC Rule 10b-5. It seeks to represent investors who sold Smartsheet shares during the proposed class period.

Counsel for Smartsheet has not appeared. Wolf Popper represents the fund. Blackstone and Vista are not defendants or accused of wrongdoing.

According to Smartsheet's merger proxy, Blackstone and Vista offered $56.25 per share on Jan. 24, 2024. The board rejected the offer the next day, but Blackstone told Mader in February that it remained interested.

Vista notified Smartsheet in March that it had begun acquiring shares and planned to make an antitrust filing. The proxy says Vista and its affiliates disclosed in May that their holdings had increased from 363,271 shares to approximately 2.1 million.

Smartsheet's board authorized a separate $150 million repurchase program in April and began buying shares under it in June, the complaint says. The fund does not challenge the program's authorization, but claims Smartsheet made purchases without disclosing the consortium's interest and offers.

The sale process became more formal in June. Mader met with consortium representatives on June 24, and the board retained Qatalyst Partners three days later and created a transaction committee.

Smartsheet bought 420,000 shares in June at an average price of $42.40, according to the complaint.

Blackstone and Vista returned on July 8 with a $56.50-per-share proposal, a 29% premium over Smartsheet's closing price. Smartsheet repurchased another 498,000 shares in July at an average price of $45.25 and 210,000 shares in August at an average price of $46.05, the complaint alleges.

The complaint, citing Smartsheet's proxy, says that by July 16, Smartsheet had given the consortium and three other potential buyers access to nonpublic information about its product roadmap, new pricing model, go-to-market plans and three-year financial forecast.

The fund cites those steps as evidence that Smartsheet was actively pursuing a sale while buying shares from investors unaware of the premium offer.

After Reuters reported on July 18 that Smartsheet had attracted takeover interest, its stock closed at $47.81, approximately 5% above the previous closing price.

On Aug. 21, Blackstone and Vista submitted a nonbinding $56.50-per-share proposal they called their "best and final offer," according to the proxy. The parties signed the merger agreement on Sept. 24.

Rule 10b5-1 provides an affirmative defense under specified conditions, including that a trading plan was adopted before the buyer learned material nonpublic information.

Smartsheet said in its September 2024 quarterly report that purchases under the program were made pursuant to Rule 10b5-1 plans. The filing separately said management had discretion over the program and could suspend or discontinue it.

The filing does not disclose when the plans were adopted or what control Smartsheet retained over purchases under them. The complaint alleges the plans did not protect the transactions because Smartsheet could control or stop the repurchases. It also claims the company misleadingly said the purchases complied with securities laws without revealing the consortium’s proposals.

The SEC has examined similar buyback issues in enforcement actions, although those matters involved internal controls violations rather than private securities fraud claims.

In 2020, the SEC found that oil refiner Andeavor authorized a $250 million buyback shortly before resuming confidential acquisition discussions with Marathon Petroleum. Andeavor repurchased shares at an average price of $97 before announcing a transaction valued at more than $150 per share. The SEC said Andeavor lacked an adequate process for determining whether it possessed material nonpublic information.

Andeavor does not establish that Smartsheet violated Rule 10b-5. But it shows that using a Rule 10b5-1 plan does not end the inquiry into what information a company possessed when it adopted the plan.

The Galveston fund says it bought 572 Smartsheet shares for $43.93 on June 7, 2024, and sold them for $44.29 on July 15, after the consortium’s second proposal but before the first public report of takeover interest.

The proposed class covers investors who sold Smartsheet shares from June 1 through Sept. 23, 2024. The fund seeks class certification, damages, interest and attorneys’ fees.

# [Mealey's Securities/D&O Liability - Investors Appeal Dismissal Of SLUSA Claims Against Meta]

Mealey's Daily News Update

August 7, 2026



**Cite:** 2026-9951 Mealey's Daily News Update 8

**Section:** 2026, 9951

**Length:** 1137 words

**Dateline:** SAN FRANCISCO

## Body

Investors in two related cases filed notices of appeal after a federal judge in California dismissed their claims that Meta Platforms Inc. facilitated pump-and-dump investment schemes advertised on its Facebook and Instagram platforms, ruling in a single order that the claims were barred by the Securities Litigation Uniform Standards Act of 1998 (SLUSA) (Maurie Daigneau, et al. v. Meta Platforms Inc., No. 25-10180 and Anthony Irving, et al. v. Meta Platforms Inc., No. 26-1127, *[N.D. Calif., 2026 U.S. Dist. LEXIS 159522]*).

( Notice of appeal in Irving vMeta available 57-260810-043X

Notice of appeal in Daigneau vMeta available 57-260810-044X

Order granting motions to dismiss available 57-260810-045R

Judgment in Daigneau vMeta available 57-260810-046X

Judgment in Irving vMeta available 57-260810-047X )

On July 27, the investors in both cases appealed Judge William H. Orrick's July 17 order. The judge ruled that the investors' state law claims - which alleged that Meta helped facilitate the schemes by creating and targeting advertisements that directed users to fraudulent investment promotions - were barred under SLUSA, , (1998), because they sought to hold Meta liable for conduct "in connection with" the purchase of securities.

The appeal of the decision in Irving v. Meta was docketed in the Ninth Circuit U.S. Court of Appeals as No. 26-4826, and the appeal of the decision in Daigneau v. Meta was docketed as No. 26-4808.

Pump-And-Dump Scheme

The investors in the related cases alleged that they fell for pump-and-dump investment schemes that had been advertised on Facebook and Instagram and carried out in WhatsApp groups. In these schemes, criminal networks operating out of China convinced investors to purchase penny stocks. The criminals then sold off their own shares.

In both cases, the investors alleged that Meta Platforms Inc. enabled and facilitated the schemes with its advertising tools and contributed to the schemes. They alleged that Meta is liable for the financial losses the investors suffered.

Investors Illay Gordon, Maurie Daigneau, Johann Wiebe and Uday Palmer filed the original class action complaint in Daigneau v. Meta on Nov. 24, 2025, in the U.S. District Court for the Northern District of California. The investors filed the operative amended class action complaint on Feb. 6. They allege that beginning in May 2025, fake investment advisers instructing them through a WhatsApp group pressured them to purchase shares in Ostin Technology Group Co. Ltd. (OST) with the promise that the stock would appreciate. They alleged that after the scammers dumped nearly 2 million OST shares, investors lost more than $ 20.8 million.

Investors Anthony Irving, Yaakov Strauss and Santosh Kumar filed the class action complaint in Irving v. Meta on Feb. 5, alleging that they purchased shares of Jayud Global Logistics Ltd. (JYD) beginning in March 2025 based on advice from fake investment advisers. They alleged that they lost more than $ 9 million after the scammers dumped their stock during after-hours trading on April 1, 2025.

The investors in both cases brought causes of action against Meta for aiding and abetting fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, negligence and unjust enrichment. Judge Orrick issued an order relating the cases on March 13.

Meta filed motions to dismiss in both cases, moving to dismiss under Federal Rule of Civil Procedure 12(b)(6), Fed. R. Civ. P. 12(b)(6), and Rule 12(b)(1), Fed. R. Civ. P. 12(b)(1), arguing that the investors' claims were barred by Section 230 of the Communications Decency Act, *47 U.S.C. 230*, and arguing that the investors' claims were barred under the SLUSA.

SLUSA Preclusion

Judge Orrick granted the motions to dismiss under Rule 12(b)(1), finding that the claims in both cases were barred under SLUSA. The judge denied the motions to dismiss under Rule 12(b)(6) as moot.

The judge noted that Meta argued that both sets of investors' claims met all five requirements for SLUSA preclusion, while the investors focused on the "in connection with" factor. The investors argued that their claims against Meta were not "in connection with" the purchase of the subject securities, but, Judge Orrick stated, "It was the purchase of these investments that Meta is alleged to have aided and abetted that caused their harm."

Further, Judge Orrick stated that "the way plaintiffs have voluntarily framed their claims and causes of action against Meta in their complaints (casting Meta as an integral participant in the fraud scheme that started with Meta allegedly generating, optimizing, and targeting the investment scheme advertisements promising high returns and soon thereafter led to plaintiffs' purchase of the covered securities) means that SLUSA's 'in connection with' requirement is met."

The judge noted that the investors argued that because Meta was a quasi-advertising agency, "it is not the type of defendant Congress intended SLUSA to protect from securities litigation. . . . However, as Meta points out, plaintiffs cite nothing in support of their policy argument or proposed limitation to exclude Meta as an 'advertising agency' when its conduct is an allegedly integral part of the securities fraud scheme." Judge Orrick agreed with Meta.

Counsel

Irving, et al. are represented by Leonid Kandinov in San Diego and Aaron T. Morris, Andrew W. Robertson and William H. Spruance in New York, all of Morris Kandinov LLP.

Daigneau, et al. are represented by Leonid Kandinov in San Diego and Aaron T. Morris, Andrew W. Robertson and William H. Spruance in New York, all of Morris Kandinov LLP.

Meta is represented by Sonal N. Mehta, Jessica Lewis and Madeeha Dean in Palo Alto, Calif., and Ari Holtzblatt in Washington, D.C., all of Wilmer Cutler Pickering Hale and Dorr LLP.

( Additional documents available: Meta's motion to dismiss Irving's complaint 57-260810-048M

Irving, et al's opposition to motion to dismiss 57-260810-049B

Meta's reply in support of motion to dismiss Irving's complaint 57-260810-050B

Meta's motion to dismiss Daigneau's amended complaint 57-260810-051M

Daigneau, et al's opposition to motion to dismiss amended complaint 57-260810-052B

Meta's reply in support of motion to dismiss Daigneau's amended complaint 57-260810-053B

Meta's motion to dismiss amended complaint for lack of jurisdiction 57-260810-054M

Daigneau, et al's opposition to motion to dismiss amended complaint for lack of jurisdiction 57-260810-055B

Meta's reply in support of motion to dismiss amended complaint for lack of jurisdiction 57-260810-056B

Irving, et al's class action complaint 57-260810-057C

Daigneau, et al's amended class action complaint 57-260810-058C )

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End of Document

California Brief

# Meta Fails to Win Last Minute Pause to Landmark State AGs Trial

Aug. 10, 2026, 9:29 AM PDT

Meta Platforms Inc. failed to obtain an emergency order pausing a landmark trial slated to begin this week involving claims from dozens of state attorneys general alleging the social media giant addicts children and has caused a youth mental health crisis.

A three-judge panel for the US Court of Appeals for the Ninth Circuit in a ruling Monday said the court lacked the jurisdiction to review Meta's early appeal and dismissed it.

The ruling means Meta must defend against a possible $1.4 trillion penalty request by the state AGs at the trial, which is scheduled to begin with jury selection on Aug. 12 in federal court in Oakland, California. Opening arguments are expected to begin Aug. 18.

Meta is facing numerous legal attacks across the country from state AGs, consumer attorneys, and school districts over its role in harming youth mental health through Instagram and Facebook.

The company is facing an almost $950 million total penalty in New Mexico after a jury returned a $375 million verdict, and the judge added an additional $567 million in a separate social media harm case brought by the state's attorney general. Earlier this year, a Los Angeles jury awarded a woman $6 million in a case involving claims that Meta caused her anxiety and depression.

The case is Personal Injury Plaintiffs v. Meta Platforms, Inc., 9th Cir., No. 24-7037, 8/10/26 .

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To contact the editor responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com

# New Jersey's $2.5 billion 'forever chemicals' settlements with DuPont, 3M, others win court approval

reuters.com/legal/litigation/new-jerseys-25-billion-forever-chemicals-settlements-with-dupont-3m-others-win-2026-08-07

Aug 7 (Reuters) - A federal judge on Friday approved more than $2.5 billion of settlements that New Jersey reached with DuPont (DD.N), opens new tab, Chemours (CC.N), opens new tab, Corteva (CTVA.N), opens new tab and 3M (MMM.N), opens new tab to resolve claims over pollution attributed to PFAS, also known as “forever chemicals.”

- Chief Judge Renee Marie Bumb of the New Jersey federal court said the settlements reached last year were fair, reasonable and adequate, and served the public interest, calling the total value an "impressive windfall" given the risks of litigation.
- The Camden-based judge quoted an 1818 speech by James Madison, the fourth U.S. president, who said the "happiness of our country" required faithful guardianship of its "soil and climate."
- DuPont, Chemours and Corteva will pay $875 million over 25 years for natural resources and other damages, clean up four former industrial sites and create a $1.2 billion remediation fund.
- 3M will pay $400 million to $450 million over the same period to settle claims over drinking water contamination.
- DuPont and Corteva will also create a $475 million reserve to ensure the four sites are cleaned up even if the companies go bankrupt or don't perform their responsibilities. Chemours and Corteva were part of DuPont prior to spinoffs.
- The office of New Jersey Attorney General Jennifer Davenport had no immediate comment. DuPont, Chemours and Corteva did not immediately respond to requests for comment. In a statement, 3M said it was pleased, and that it exited all PFAS manufacturing last year.
- Bumb overruled objections by Carneys Point Township and the Borough of Sayreville, which said New Jersey lacked power to resolve claims belonging to individual municipalities.
- PFAS, or per- and polyfluoroalkyl substances, are found in hundreds of consumer and commercial products, including cosmetics, non-stick pans and stain-resistant clothing.
- They are called "forever chemicals" because they do not break down easily in the human body or environment. PFAS have been linked to negative health effects, including higher cholesterol, low birth weight, reduced antibody response to vaccines, and kidney and testicular cancer.
- DuPont, Chemours, Corteva and 3M face other litigation over PFAS contamination, including a lawsuit last month by New York Attorney General Letitia James.

# US appeals court allows thousands of lawsuits against social media companies over user addiction claims to proceed

reuters.com/world/us-appeals-court-allows-thousands-lawsuits-against-social-media-companies-over-2026-08-10

Aug 10 (Reuters) - A U.S. appeals court on Monday allowed thousands of lawsuits to move forward against Meta Platforms (META.O), opens new tab, Alphabet's (GOOGL.O), opens new tab Google, ByteDance's TikTok, and other social media companies over claims they designed their products to be addictive to young users.

The San Francisco-based 9th U.S. Circuit Court of Appeals rejected the companies' bid to reverse a lower court's ruling forcing them to face some 2,400 lawsuits over the claims filed in federal court.



The companies, which also include Snap Inc's (SNAP.N), opens new tab Snapchat, had argued that Section 230 of the Communications Decency Act of 1996 - which shields them from lawsuits over content posted by their users - also shields them from allegations that they failed to warn the public about the addictive nature of their platforms.

But the court said the appeal was brought too early for it to weigh in, a problem the judges flagged during oral arguments in the case. Most appeals come after a trial in the case has concluded, so the judge's decision would be reviewed at that time, the judges said.

Filed by states, municipalities, school districts and individuals, the lawsuits allege that social media companies intentionally addicted young users, contributing to surging depression, anxiety and body-image issues and a broader mental health crisis among American youth in recent years.

The plaintiffs - which include parents, school districts and states - had argued that the trial court's ruling was not final and therefore could not be appealed. But they also objected to the companies' arguments about the federal law, saying it does not cover claims related to how they operate and design their products.

The cases, which have been centralized before U.S. District Judge Yvonne Gonzalez Rogers in Oakland, California, seek damages, penalties and restitution from the companies. The companies appealed Rogers' orders in 2023 and 2024 that largely allowed the litigation to move forward.

At arguments in the case on January 6, the appeals court judges expressed skepticism that it was an appropriate time to weigh in on the case. But they also had questions about the companies' argument that they were shielded from the claims by federal law, with one judge noting that if Congress had intended for the law to provide a shield for the companies from broad liability it could have said so explicitly.

The companies are facing hundreds of additional lawsuits over similar claims in state court, with approximately 3,300 of them in a consolidated proceeding in California state court.

In the first lawsuit to go to trial in the California litigation, and a closely watched test of how juries might respond to similar claims, a Los Angeles jury in March found Meta and Google negligent for designing social media platforms that harm young people. The jury awarded $6 million to a now-20-year-old woman who says she became addicted to Instagram and YouTube as a child.

In a separate verdict also handed down in March, Meta was found liable and ordered to pay $375 million to New Mexico after a jury agreed with the state that the company misled users about the safety of its platforms and enabled child sexual exploitation. The judge overseeing that case is currently considering whether to order the company to make changes to its platforms and pay additional damages.

Both Meta and Google, which have denied the claims in those cases, said they would appeal. The appeals are expected to center on the question of whether Section 230 applies to claims over platform design, a question experts say could have broad implications for the tech industry in general.

Reporting by Diana Novak Jones in Chicago, Editing by Alexia Garamfalvi and Matthew Lewis

[Artificial Intelligence]

# SEC Exempts Data-Center Bonds From Key Securitization Rules

Aug. 10, 2026, 8:37 AM PDT

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## Summary by Bloomberg AI **AI Generated**

- The Securities and Exchange Commission has made it easier for data center owners to sell asset-backed securities by not requiring certain disclosures and investor protections.
- The SEC staff wrote that data centers aren't financial assets that liquidate over time, and therefore bonds tied to them aren't subject to the same rules as debt backed by car loans or home mortgages.
- The change is expected to have practical consequences as firms have been applying the rules as a precaution, and comes as Wall Street strains to accommodate a flood of debt to pay for a historic buildout of data centers and digital infrastructure.


The Securities and Exchange Commission has made it easier for data center owners to sell asset-backed securities, potentially opening the door for more debt sales as tech firms scour Wall Street for ways to pay for artificial intelligence.

The SEC said a major subset of data-center securitizations don't need to have disclosures and investor protections that similar deals require. That includes risk retention, a requirement that companies issuing asset-backed securities retain some of the debt to better align their interests with investors.

In a letter late last month, staff wrote that data centers aren't financial assets that liquidate over time, like loans or leases, and therefore bonds tied to them aren't subject to the same rules as debt backed by car loans or home mortgages. The letter was written in response to a query from Latham & Watkins, a law firm that advocated for clarification of the rules.

The requirements that the SEC's staff said don't apply were generally created after the 2008 global financial crisis to protect investors from excesses in securitization markets that ultimately brought about the near collapse of the banking system.

Those rules don't make sense for all types of deals and compliance with them has proven costly and unnecessary, even keeping some firms from entering the market, according to lawyers at Latham. For example, data center operators that issue ABS already retain a substantial amount of risk in the deals, and if they didn't they wouldn't be able to achieve strong credit ratings, according to Kevin Fingeret, a partner at Latham.

"There was a growing need for this relief," said Fingeret. Complying with the rules required sponsors to take on "ownership structures that weren't necessarily in line with their ultimate objectives."

While the SEC's guidance isn't a formal rule change, it will still have practical consequences as firms have been applying the rules as a precaution.

The change comes as Wall Street strains to accommodate a flood of debt to pay for a historic buildout of data centers and digital infrastructure. Asset-backed securities represent just one pocket of the AI-linked debt universe, but they've already expanded to $15.5 billion of annual new issuance last year from $2.4 billion in 2020, according to data compiled by Bloomberg News. They're on pace for a new record this year, the data show.

The Trump administration has been a vocal booster of America's data-center buildout. Last year the president signed executive orders aimed at accelerating AI development in the US by loosening regulations and bolstering data-center energy supplies.

The SEC's clarification doesn't exempt other types of data-center securitizations from the rules. For instance, commercial mortgage backed securities backed by data centers still must comply because their collateral is a mortgage, rather than the physical assets themselves.

--With assistance from Charles Williams.

# SEC Proposes New Regulation To Make E-Delivery Of Disclosures The Default

Mealey's(R) Emerging Securities Litigation

Online ISSN: 2158-9755 , Print ISSN: 1541-2512

August 2026



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## Body

The Securities and Exchange Commission has proposed Regulation E-Delivery (Reg E-Delivery) to expand the ability of issuers, broker-dealers, investment advisers and others to satisfy information delivery requirements using electronic delivery.

( SEC's proposed Reg E-Delivery available 57-260810-001X

Proposed Reg E-Delivery fact sheet available 57-260810-002X )

In the July 16 proposal, the SEC stated that issuers, market intermediaries and others would not be required to obtain affirmative consent from investors before using e-delivery. The proposal noted that under current laws and regulations, many regulatory disclosures and reports must be delivered in paper form unless the person receiving the disclosures and reports affirmatively elects to receive them electronically. If the rule is adopted, Reg E-Delivery would supersede the SEC's current electronic-delivery guidance based on the opt-in approach.

The commission stated that the proposal draws on its experience and "reflects the significant advances in electronic communication technologies and the increased adoption of those technologies . . . that have occurred since the Commission's initial publication of guidance on the use of electronic media to deliver required regulatory documents and reports."

The proposal would address e-delivery of covered information, which would generally be defined as "any information required to be delivered to a covered recipient under the Federal securities laws." It would define covered entities to include "any person that has an obligation to deliver covered information to a covered recipient under the Federal securities laws." Additionally, covered recipients would include "any current or prospective customer, client, investor, security holder, counterparty, or similar recipient of information."

The proposed rule would establish conditions under which the SEC would consider the delivery requirements to have been satisfied by e-delivery. The proposed rule states that covered entities would satisfy these requirements if

"(1) the covered recipient has provided an electronic address; (2) the covered entity has provided a prominent disclosure to the covered recipient that it will send covered information to the electronic address provided; and (3) the covered recipient has not opted out of e-delivery." The SEC stated that the conditions reflect its understanding of common e-delivery practices and are "designed to help ensure that materials are delivered in a user-friendly format while also protecting personal financial information." Additionally, the proposed conditions would provide relevant information about the process to opt out of e-delivery and receive paper copies of covered information upon request, as well as the process to update an email address.

The proposal also stated that to facilitate the proposed regulation, the SEC is proposing to rescind Rule 30e-3 under the Investment Company Act of 1940, *17 C.F.R. 270.30e-3*, and amend certain rules in Regulations 14A and 14C under the Securities Exchange Act of 1934, 17 C.F.R. 240.14a and 240.14c, and SEC rule 14d-5, *17 C.F.R. 240.14d-5*. The SEC would be making these amendments to facilitate the proposed regulation.

Commissioners' Support

The proposed Reg E-Delivery has the support of all three commissioners.

SEC Chairman Paul S. Atkins stated that proposing that electronic delivery to be allowed to become the default delivery method is another step toward a more modern regulatory framework. Atkins further stated that the world has changed significantly since the SEC's delivery requirements were first adopted.

Commissioner Mark T. Uyeda noted that research done by the Office of Investor Research within the Commission's Office of the Investor Advocate found that a majority of investors prefer disclosure documents to be delivered electronically. He stated that this shows that delivering information via paper unless an investor opts-in to receive information electronically does not reflect how most investors prefer to receive information.

Commissioner Hester M. Peirce stated that an e-delivery default should lower costs and allow the incorporation of technological advances in order to improve investor engagement with the provided information. She said this should be just a first step toward allowing registrants to design disclosure with new technologies.

The public comment period will be open for 60 days after the proposed rule's publication in the Federal Register.

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:** August 10, 2026

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**Semiannual Reporting Faces Backlash as Investors Brace for Less**

Aug. 10, 2026, 2:00 AM PDT

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## Summary by Bloomberg AI AI Generated

- The SEC proposal to end quarterly reporting for public companies has received a record amount of public input, with about 200,000 comments, the largest public comment docket at the SEC.
- Proponents of semiannual reporting say it would let firms focus on longer-term planning, while critics argue it could hurt investors and allow companies to bury bad news.
- An analysis of more than 2,500 US companies shows that a shift to half-yearly reporting would have obscured bad quarters at more than twice the rate of good quarters each year, on average.


When President Donald Trump called to end quarterly reporting for public companies last year, the head of the Wall Street regulator tasked with the overhaul vowed to fast-track a plan ending a mainstay of US markets.

But since then, businesses, investors and hedge funds alike have come out in overwhelming opposition to the Securities and Exchange Commission proposal, which has already seen a record amount of public input.

In a recent townhall, Chairman Paul Atkins told staff that the agency collected about 200,000 comments on the plan, the largest public comment docket at the SEC by sheer numbers, according to a person familiar with the matter.


US President Donald Trump, left, and Paul Atkins, chairman of the US Securities and Exchange Commission, shake hands during a swearing-in ceremony in the Oval Office of the White House on April 22, 2025. Photographer: Bonnie Cash/UPI/Bloomberg

That deluge of input highlights the divisiveness around the plan, which would end a more than 50-year old requirement that US public companies file reports every three months detailing their financial health.

Proponents of semiannual reporting say the change would let firms focus on longer-term planning and worry less about short-term volatility. But critics argue it could hurt investors and allow companies to bury bad news that would normally be revealed in quarterly reports.

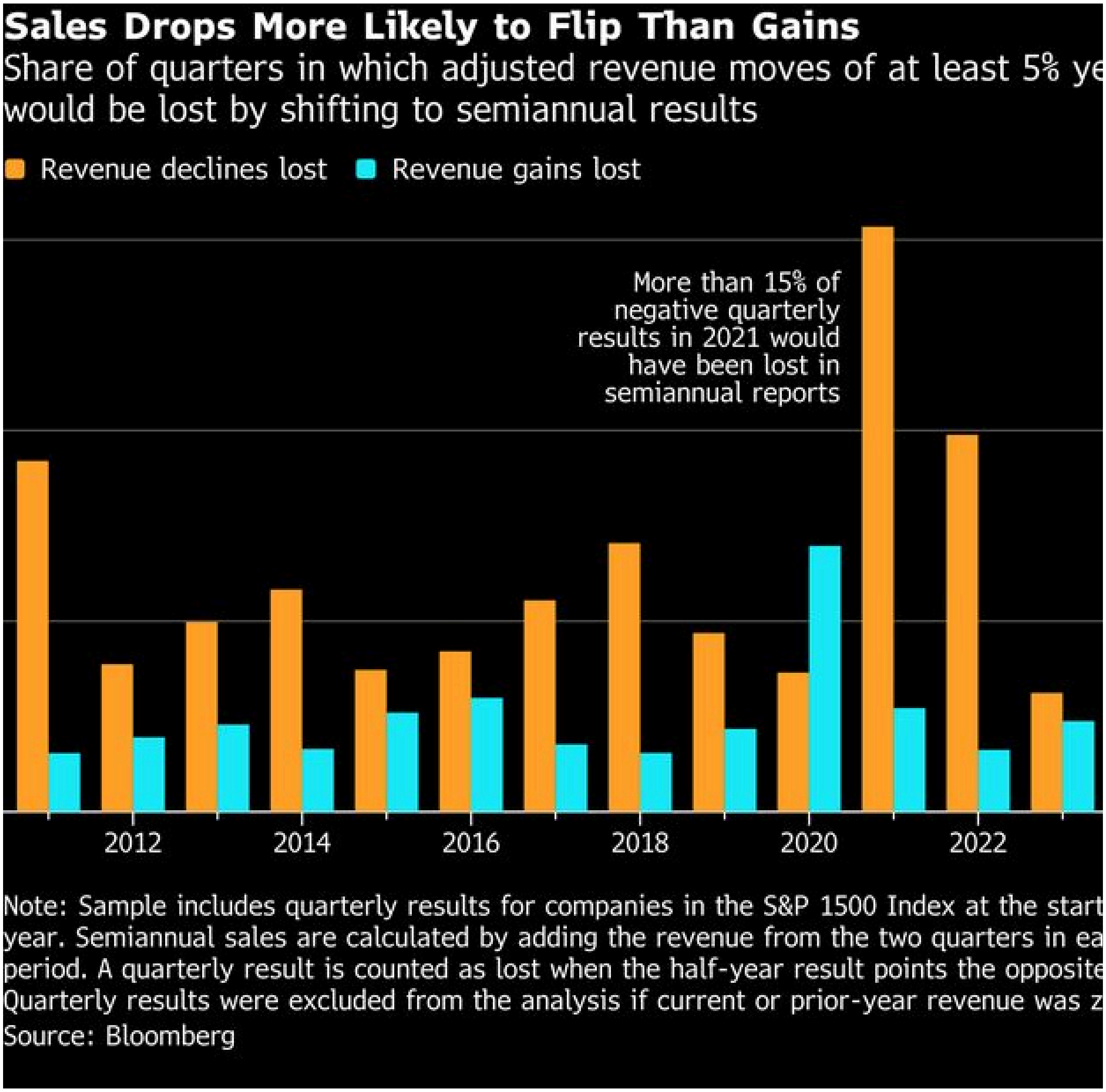
“Making disclosures less frequent doesn’t make the information disappear,” said Tyler Gellasch, president of the Healthy Markets Association, a policy group whose members include pension funds and exchanges. “It just means that the information is being kept away from investors and the public — while still being available to insiders, key customers, and business partners.”

To test what the proposal could mean for investors, Bloomberg created semiannual sales figures for S&P 1500 companies going back to 2010, adding revenue from two consecutive quarters to create a half-year result. The analysis then compared each company's quarterly year-over-year revenue growth with its corresponding half-year growth rate to see how semiannual reporting would have masked significant changes.

The analysis of more than 2,500 US companies shows that a shift to half-yearly reporting would have obscured bad quarters at more than twice the rate of good quarters each year, on average. The effect was more significant during times of heightened volatility, like the pandemic, when as much as 15% of material quarterly revenue declines in a year would have been masked by switching to semiannual reporting. That's compared to as much as 7% of material quarterly increases that would have been absorbed into negative half-year results.

The skew is likely due, in part, to the fact that these established US companies generally report more quarters with revenue gains than with declines.

The SEC declined to comment.

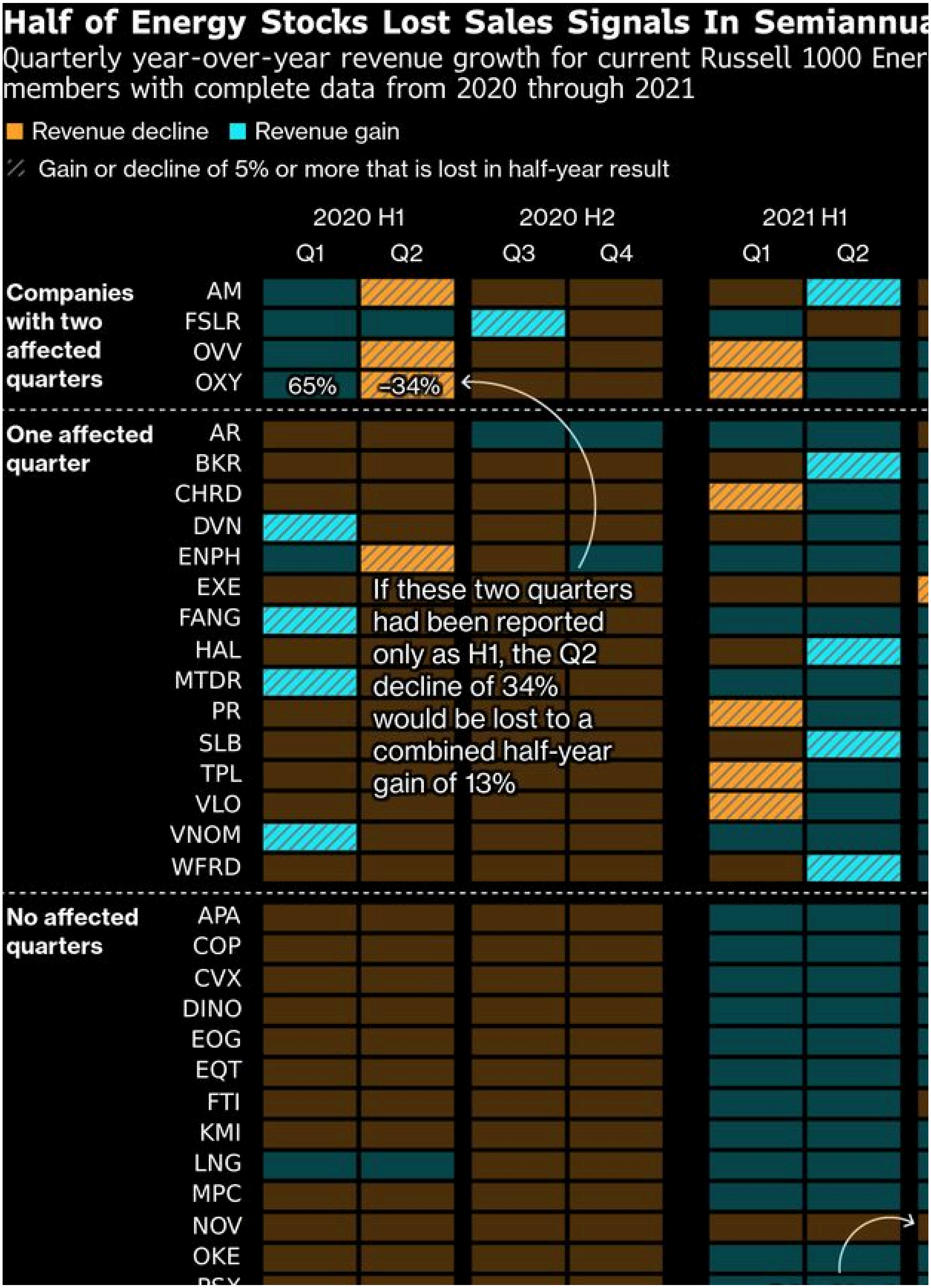



A material quarterly change — defined as a sales increase or decrease of at least 5% from the prior year — was only counted as masked when the semiannual result pointed in the opposite direction.

While critics of the plan argue it could keep investors in the dark and allow problems to fester, some proponents say that temporary setbacks revealed in quarterly disclosures can needlessly hinder a firm. The SEC has also emphasized that flexibility is a positive and the proposal is a part of an effort to incentivize companies to go public.

This issue was especially apparent with energy companies during the pandemic. The sector's exposure to commodity prices made it prone to sharp quarter-to-quarter swings when oil demand collapsed and then rebounded.

Bloomberg's analysis looked at how different sectors in the Russell 1000 would be impacted by the reporting change. Hypothetically, had those firms elected to report every six months, it found that more than half of the current members of the Russell 1000 Energy Index had at least one material quarterly revenue move between 2020 and 2021 that would have been blurred with semiannual results.


Half of Energy Stocks Lost Sales Signals In Semiannua
Quarterly year-over-year revenue growth for current Russell 1000 Ener
members with complete data from 2020 through 2021
Revenue decline
Revenue gain
Gain or decline of 5% or more that is lost in half-year result
2020 H1
2020 H2
2021 H1
Q1
Q2
Q3
Q4
Q1
Q2
Companies with two affected quarters
AM
FSLR
OVV
OXY
65%
-34%
One affected quarter
AR
BKR
CHRD
DVN
ENPH
EXE
FANG
HAL
MTDR
PR
SLB
TPL
VLO
VNOM
WFRD
If these two quarters had been reported only as H1, the Q2 decline of 34% would be lost to a combined half-year gain of 13%
No affected quarters
APA
COP
CVX
DINO
EOG
EQT
FTI
KMI
LNG
MPC
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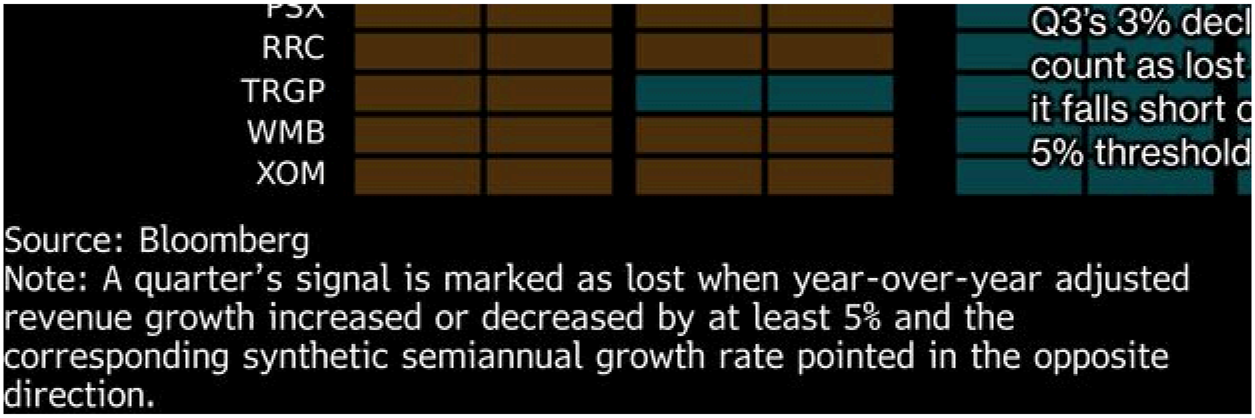


**Public Input**

The vast majority of public comments are opposed to the SEC's proposal, according to a preliminary review by Tzachi Zach, a professor at Ohio State University. Zach's analysis showed about 99.5% of public comments were against the plan to end quarterly reporting. The deadline for that input closed July 6.


The MFA, a trade association representing hedge funds and private equity firms, is one of the groups opposed to the proposal and suggested the regulator instead "streamline disclosure obligations." Trading firm Citadel said the plan would make "US capital markets less transparent, less efficient, and less competitive."

The Committee on Capital Markets Regulation, which includes executives from JPMorgan Chase & Co. and Fidelity Investments, also urged the SEC to retain requirements that material information be provided quarterly. A representative for Bloomberg LP, the parent company of Bloomberg News, is a member of that group.

The backlash may not be enough to stop the proposal. Nathan Dean, a senior government analyst with Bloomberg Intelligence, puts the odds of a reporting change at 70% by 2027. Other analysts and experts echoed that sentiment.

"It's highly likely it's going to pass," said James Angel, finance professor at Georgetown University. "There's global precedent, legal authority, and there's a president who wants to get rid of it."

Not all big companies want to stick to the current system though, with firms like Eli Lilly & Co. and ExxonMobil Holdings Corp. backing the move to eliminate mandatory quarterly disclosures.

"Semiannual reporting would modernize the reporting framework without compromising investor protection or the quality of information available to the market," said ExxonMobil Chief Financial Officer Neil Hansen wrote in a letter.

As the agency weighs next steps on the proposal, officials emphasize that if the plan is finalized companies could choose to continue detailing their financial performance every three months. That would be similar to countries like the UK, where some companies still voluntarily report every three months despite the country eliminating quarterly requirements in 2014.

"Investors can choose to invest in a company that is following the traditional route" of quarterly reporting, SEC Division of Corporation Finance Director Jim Moloney said in a recent podcast interview. "Or, if it's an industry and a company that you think needs the flexibility and the breathing room to focus on the business, that's fine. Invest in a company that's doing semiannual reporting."

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# This Week in Chancery Court: Cloudflare Investors, Dragos Payout

Aug. 10, 2026, 2:00 AM PDT


## Summary by Bloomberg AI

AI Generated

- A dispute alleges Cloudflare Inc.'s founders are abusing their corporate control to dilute and disempower investors.
- Cloudflare is facing a breach of fiduciary duty class action led by Class A stockholder Ronald Mumme over a capital restructuring.
- A case against Dragos Inc. alleges the company manipulated post-merger sales and accounting to deprive a shareholder representative of a $10 million earn-out.


A dispute alleging Cloudflare Inc.'s founders are abusing their corporate control to dilute and disempower investors and, separately, a case on whether Dragos Inc. manipulated post-merger sales and accounting to deprive a shareholder representative of a $10 million earn-out highlight this week's Delaware Chancery Court calendar.

A look at Delaware's court calendars:

**Wednesday:** Mumme v. Cloudflare Inc., Del. Ch., No. 2026-0734, motion for summary judgment hearing 8/12/26.

Cloudflare is facing a breach of fiduciary duty class action led by Class A stockholder Ronald Mumme. He alleges the web security firm's co-founders and its board of directors committed that breach by engineering a capital restructuring designed to permanently entrench the founders' voting control while allowing them to cash out billions of dollars in stock at the expense of public stockholders. The approval of the restructuring process was allegedly driven with conflicts of interest, as the Special Committee that negotiated the deal was stacked with the founders' personal associates and long-time allies and never sought any consideration for public stockholders or their approval.

Court action: Motion for summary judgment hearing

Cloudflare's Restructuring Draws Legal Challenges From Investors

**Thursday:** Schultz v. Dragos Inc., Del. Ch., No. 2026-0373, motion to dismiss hearing 8/13/26.

The court will hear argument over whether to toss a breach of contract lawsuit from a shareholder representative for the stockholders of Network Perception, acquired by the cybersecurity firm Dragos Inc. in 2024 for $58 million. Robert Schultz alleges Dragos deliberately manipulated its business practices to ensure an earnings threshold that would have given him a $10 million payout was never reached. The earn out would have happened if Network Perception generated $2 million in recurring revenue in the following 12 months. Dragos allegedly gave away Network Perception's core product for free to attract customers to its own offerings, bundled it with its own products while attributing all revenues to itself, and sold it below cost. Schultz seeks the full $10 million payout.

Court action: Motion for dismissal hearing

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# Healthcare company's negligence affects 3.8 million in data breach, suit says | Secondary Sources | National



(August 07, 2026) - Unlimited Technology Systems LLC's failure to protect its data systems exposed the personal and health information of more than 3.8 million patients, a proposed class action alleges.

Florida resident Gary Cole's complaint, filed July 27 in the U.S. District Court for the Southern District of Ohio, alleges that Unlimited Systems failed to safeguard his and other class members' personally identifiable information and protected health information.

Cincinnati-based Unlimited Systems provides medical billing and management software to more than 6,500 specialty healthcare providers across the U.S.

The company discovered unauthorized activity within its data center on Oct. 19, 2025, and determined that an unauthorized actor had exfiltrated patients' PII and PHI between Oct. 5 and 10, the complaint states.

The information includes names, email addresses, birthdates, phone numbers, demographic information, Social Security numbers, driver's license numbers, and health insurance and medical information such as medical record numbers, dates of service and diagnoses, and scanned documents such as insurance cards and intake forms, according to the complaint.

Cole alleges the data breach is a result of Unlimited Systems' inadequate cybersecurity procedures, which allowed cybercriminals unimpeded access to patients' PII and PHI.

He was notified July 20 that his information was exposed in the breach. Since then, he says he has seen an increase in spam calls and texts.

According to the complaint, Unlimited Systems failed to comply with Federal Trade Commission standards, industry frameworks and information security regulations under the Health Insurance Portability and Accountability Act, 45 C.F.R. §§ 160 and 164.

Cole, represented by Goldenberg Schneider LPA and Edelson Lechtzin LLP, seeks to represent a nationwide class of those whose PII and PHI were compromised in the breach. He brings claims of negligence, breach of implied contract and unjust enrichment.

White Collar & Criminal

# US Cellular Unable to Stop Whistleblowers' FCC Fraud Lawsuit

Aug. 7, 2026, 1:17 PM PDT


## Summary by Bloomberg AI

AI Generated

- A Washington, DC federal court said two whistleblowers can move forward with their False Claims Act lawsuit alleging US Cellular Corp. engaged in a fraudulent scheme to win FCC spectrum licenses at an auction.
- The court rejected US Cellular's arguments that the whistleblowers' suit is barred by the FCA's public disclosure bar and that the suit violates Article II of the US Constitution.
- The whistleblowers alleged that US Cellular fraudulently obtained bidding credits for FCC license auctions by improperly claiming a bidding credit for small businesses, and the court said they plausibly alleged that the scheme constitutes a new distinct scheme.


Two whistleblowers can move forward with their False Claims Act lawsuit alleging US Cellular Corp. engaged in a fraudulent scheme to win FCC spectrum licenses at an auction, a Washington, DC federal court said.

US Cellular failed to show that Mark O'Connor and Sara Liebman based their current lawsuit on a 2008 suit, which the company said triggered the FCA's public disclosure bar, or that the whistleblowers did not adequately allege materiality under the FCA, Judge Tanya S. Chutkan of the US District Court for the District of Columbia said Friday. Materiality concerns whether a defendant's alleged conduct affected a government payment decision, Chutkan said.

Chutkan also rejected US Cellular's arguments that whistleblower suits under the FCA violate Article II of the US Constitution. The FCA's whistleblower provisions "are not only critical, but also constitutional—at least according to every U.S. Court of Appeals to address the question," the judge said.

Similar constitutional disputes are pending at the Third and Eleventh circuits.

**Alleged $113 Million Scheme**

The whistleblowers in 2015 alleged that US Cellular, acting through sham company Advantage Spectrum LP, fraudulently obtained $113 million in bidding credits for FCC license auctions by improperly claiming a 25% bidding credit for small businesses. US Cellular was too big to get the credits, they alleged.

The district court previously dismissed the case under the public disclosure bar, which generally prevents whistleblowers from pursuing fraud claims based on substantially the same allegations as those in the public domain. The US Court of Appeals for the DC Circuit reversed that ruling in 2025.

US Cellular again said the district court should dismiss on public disclosure grounds, saying the whistleblowers' suit is substantially the same as a 2008 complaint O'Connor's former law firm filed. But the whistleblowers plausibly alleged that the Advantage Spectrum scheme constitutes a new distinct scheme compared to what was alleged in 2008, the court said.

Chutkan also rejected US Cellular's argument that because the FCC knew of the whistleblowers' allegations from the initial 2015 complaint, the agency's 2016 decision to approve Advantage Spectrum's licenses and bidding credits shows that the allegations weren't material to the government.

Knowledge of the whistleblowers' allegations in 2015 doesn't mean the FCC had actual knowledge that violations occurred, the court said. The agency may have approved the bidding credits because it didn't believe the allegations, not because it deemed the allegations immaterial if true, the court said.

Arnall Golden Gregory LLP, The Vernia Law Firm, and Secil Law PLLC represent the whistleblowers. Sidley Austin LLP represents US Cellular.

The case is United States ex rel. O'Connor v. US Cellular Corp., D.D.C., No. 20-cv-2070, 8/7/26.

# Webtoon Reaches $10 Million Settlement With Investors Over IPO

Aug. 10, 2026, 10:30 AM PDT

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Webtoon Entertainment Inc. has agreed to pay investors about $10 million to settle class claims over its disclosures about user metrics and risks before going public, according to a federal court filing.

The online comics company's settlement offer should receive preliminary approval because it's fair, reasonable, and adequate, shareholders leading the lawsuit told the US District Court for the Central District of California. The settlement amount represents 7% of the estimated maximum recoverable damages, they said in the Aug. 7 filing.

The case raised issues about the standards for disclosing intra-quarter results before an initial public offering — issues that the US Court of Appeals for the Ninth Circuit addressed in August 2025 in a case involving Robinhood Markets Inc.'s IPO. Information about declines in certain metrics merely needed to be "material" to prompt updated disclosures in registration and prospectus documents between regular quarterly reports, the appeals court said, acknowledging a circuit split. Robinhood has asked the US Supreme Court for review of that decision.

The proposed class action over Webtoon's June 2024 IPO alleged that the company, members of its leadership, and its underwriters misled investors by pointing to growth in monthly active users while failing to disclose that the trend had reversed. The defendants also failed to disclose the negative effect of foreign currency fluctuations in the first half of 2024, the investors said.

Judge Consuelo B. Marshall denied the defendants' request to dismiss the user metrics claim in a 2025 ruling, citing the Robinhood case. She also allowed claims to proceed based on risk disclosures about user levels and currency fluctuations. But she threw out claims that Webtoon overstated its growth prospects.

The proposed $10,050,000 settlement would apply to those who acquired Webtoon stock traceable to the IPO, the investors said in their request for preliminary approval. The investors' attorneys intend to seek no more than 25% in fees, according to the filing.

Robbins Geller Rudman & Dowd LLP is lead counsel for the investors. Kirkland & Ellis LLP represents Webtoon and the individual defendants. Gibson, Dunn & Crutcher LLP represents the underwriters.

The case is Brookman v. WEBTOON Ent. Inc. , C.D. Cal., No. 2:24-cv-07553, motion 8/7/26 .

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# Net Power Urges Toss Of Investor Suit Over Texas Plant Delay

**law360.com**/articles/2511063/net-power-urges-toss-of-investor-suit-over-texas-plant-delay

(August 7, 2026, 8:01 PM EDT) -- Net Power Inc. has asked a North Carolina federal court to free it from a shareholder's proposed class action accusing it of misleading the public about known problems with a power plant project in Texas, saying the construction updates issued by the defendants are not evidence of securities fraud.

In its motion to dismiss on Thursday, Net Power argued it sufficiently cautioned investors that final cost and schedule estimates for its Texas utility plant project would likely vary from prior estimates, and that these final estimates would not be available "until extensive third-party engineering and design work concluded."

Net Power said the suit — which was filed after the company disclosed in March 2025 that the estimates cast in 2023 regarding the plant, known as Project Permian, had changed — attempts to establish "fraud by hindsight."

"Courts likewise reject fraud-by-hindsight theories arising specifically from energy and construction project delays and cost overruns, the circumstances here," the motion states.

According to the suit, which was most recently amended in June, Net Power's shares fell by nearly 19% in November 2023, when the company announced delays for its Texas utility plant project — and then dropped again by nearly 32% in March 2025, when it announced further delays and a potential doubling of its initial $1 billion estimate for the project.

The suit states that Net Power now expects the plant to be online by 2029, yet it projected in 2022 that it would open in 2026.

Even though the suit claims Net Power and its executives knew a price estimate for Project Permian was "well above defendants' publicly disclosed $950 million estimate," Net Power said the complaint does not establish that any of the defendants — which include CEO Daniel

Rice IV, former Chief Financial Officer Akash Patel and former Chief Operating Officer Brian Allen — acted with scienter, or knowledge of wrongdoing.

"[T]he far more compelling inference is that defendants made good faith estimates that, based on subsequent developments, later proved too optimistic," the motion states.

Additionally, the defendants claim that some of their positive statements regarding the plant's timeline are opinions and "inactionable puffery."

"The vague optimism plaintiff describes — that Net Power was 'making significant progress' on Project Permian; that its technology would deliver power that is 'more affordable, cleaner and with 24-hour reliability without compromise'; and that the investment thesis 'continues to play out quickly' — is the sort of 'rosy affirmation commonly heard from corporate managers,'" the motion states.

Net Power also alleges that none of the suit's confidential witnesses, who are both former Net Power employees, satisfy the pleading standard because they never "had access to what any defendant knew," or "could not know what any individual defendant knew."

Additionally, the suit alleges Patel made $1.9 million during the class period by selling 150,000 purportedly inflated shares. But Net Power said in its motion that the "single stock sale" represents only 19% of Patel's beneficial holdings, an amount in a range courts have previously said "does not add to the scienter analysis in any meaningful way," according to the motion.

"Insider sales bear on scienter only when their 'timing and amount' are 'unusual or suspicious'; whether a sale is 'unusual in scope' considers 'the amount of profit made, the amount of stock traded, the portion of stockholdings sold or the number of insiders involved,'" the motion states. "Patel's single sale fails that test."

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

The investors are represented by Garth Spencer and Charles H. Linehan of Glancy Prongay Woke & Rotter LLP.

Net Power and the individual defendants are represented by Christopher G. Smith and Edward F. Roche of Smith Anderson Blount Dorsett Mitchell & Jernigan LLP and Jessica P. Corley, B. Warren Pope and Brandon R. Keel of King & Spalding LLP.

The case is Luciani v. Net Power Inc. et al., case number 1:25-cv-00296, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Philip Shea.