[23ANDME INC: Judge OKs $47MM Data Breach Settlement Deal]

Troubled Company Reporter

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Body

Craig Clough of Law360 Bankruptcy Authority reports that a Missouri bankruptcy court on Tuesday, July 7, 2026, approved a $46.7 million settlement between the 23andMe Chapter 11 plan administration trust and claimants pursuing damages related to the company's data breach. The order resolves one of the largest remaining disputes facing the post-confirmation estate.

According to court filings, the settlement follows extensive negotiations aimed at avoiding the cost and uncertainty of continued litigation. The parties argued that the compromise provides meaningful compensation to affected individuals while preserving value for the bankruptcy estate and its creditors.

The court's approval allows the trust to proceed with administering the settlement and distributing funds under the agreed terms. The decision also reduces outstanding litigation as the estate continues implementing the confirmed Chapter 11 plan, the report states.

About 23andMe Holding Co.

23andMe Holding Co. is a genetics-led consumer healthcare and biotechnology company in San Francisco, Calif. Through its direct-to-consumer genetic testing, 23andMe offers personalized insights into ancestry, genetic traits, and health risks. The company has developed a large database of genetic information from over 15 million customers, enabling it to provide health and carrier status reports and collaborate on genetic research for drug

development. On the Web: http://www.23andme.com/

On March 23, 2025, 23andMe and 11 affiliated debtors each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code (Bankr. E.D. Mo. Lead Case No. 25-40976). 23andMe disclosed $277,422,000 in total assets against $214,702,000 in total liabilities as of Dec. 31, 2024.

Paul, Weiss, Rifkind, Wharton & Garrison, LLP, Morgan, Lewis & Bockius, LLP and Carmody MacDonald, PC serve as legal counsel to the Debtors while Alvarez & Marsal North America, LLC serve as the restructuring advisor. The Debtors tapped Reevemark, LLC and Scale Strategy Operations, LLC as communications advisors and Kroll Restructuring Administration Services, LLC as claims agent.

Lewis Rice LLC, Moelis & Company LLC, and Goodwin Procter LLP serve as special local counsel, investment banker, and legal advisor to the Special Committee of 23andMe's Board of Directors, respectively.

Jerry Jensen, Acting U.S. Trustee for Region 13, appointed an official committee to represent unsecured creditors in the Debtors' Chapter 11 cases. The committee tapped Kelley Drye & Warren, LLP and Stinson, LLP as legal counsel and FTI Consulting, Inc. as financial advisor.

Load Date: August 14, 2026

Aflac Loses Bid to Dismiss Lawsuit Over Massive 2025 Data Breach

Aug. 13, 2026, 1:40 PM PDT

Summary by Bloomberg AI AI Generated

- Aflac Inc. failed to dismiss a proposed class action alleging it negligently failed to protect the personal information of nearly 23 million people that was exposed in a 2025 data breach.
- The plaintiffs established standing to sue in federal court and adequately pleaded common law claims of negligence, breach of implied contract, unjust enrichment, and declaratory judgment, according to Judge Clay D. Land.
- The breach exposed names, contact information, dates of birth, Social Security numbers, driver's license numbers, financial account information, health insurance information, and medical information, the complaint said.

Aflac Inc. failed in its bid to dismiss a proposed class action alleging it negligently failed to protect the personal information of nearly 23 million people that was exposed in a 2025 data breach.

The plaintiffs established standing to sue in federal court and adequately pleaded common law claims of negligence, breach of implied contract, unjust enrichment, and declaratory judgment, Judge Clay D. Land of the US District Court for the Middle District of Georgia said Wednesday.

Aflac argued the plaintiffs didn't allege concrete injuries sufficient to establish standing or cognizable injury under Georgia law, but Land said their allegations of data misuse following the breach were good enough to advance past the pleading stage.

They also adequately alleged breach of a duty to protect their data in the form of specific deficiencies in Aflac's data-security practices, he said.

Their negligence-per se-claim survived based on alleged violations of the Federal Trace Commission Act, the Health Insurance Portability and Accountability Act, and the Health Information Technology for Economic and Clinical Health Act, Land said. The federal acts didn't authorize a private right of action, but Georgia law authorizes consideration of federal statutory duties as a basis for a state law negligence claim, Land said.

The breach-of-implied-contract claim survived based on the reasonable inference that Aflac agreed to take reasonable steps to protect information it needed to collect in order to provide insurance, he said.

He also allowed the unjust enrichment claim to survive, finding the plaintiffs adequately alleged they were denied the benefit of the bargain for data security protection that wasn't provided.

Land declined to rule at the pleading stage on Aflac's factual challenge to the plaintiffs' allegations of injury.

He granted Aflac's motion to dismiss their claims of violations of the California Consumer Protection Act because the information provided to the insurer fell within the statute's exemption for information maintained by a HIPAA-covered entity.

At the plaintiffs' request, Land dismissed their claims under the California Confidentiality of Medical Information Act and the Georgia Uniform Deceptive Trade Practices Act.

The breach exposed names, contact information, dates of birth, Social Security numbers, driver's license numbers, financial account information, health insurance information, and medical information, the complaint said.

Pope McGlamry, Milberg PLLC, KO Lawyers, Morgan & Morgan PA, Beasley Allen Law Firm, and Gibson Consumer Law Group LLC represent the plaintiffs and the proposed class. Hogan Lovells US LLP and Page, Scrantom, Sprouse, Tucker & Ford PC represent Aflac.

The case is In re Aflac Inc. Data Breach Litig. , M.D. Ga., No. 4:25-cv-00183, 8/12/26 .

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Apple App Store Commission-Rate Proceedings Can Move Forward (2)

Aug. 13, 2026, 3:54 PM PDT

Summary by Bloomberg AI

AI Generated

- The US Supreme Court rejected Apple's bid to pause further action in a case over the rate it charges developers for sales outside its App Store.
- Apple argued it should be allowed to charge developers a 15% fee on purchases made outside its store to compensate for intellectual property, technologies, and services it provides.
- The Supreme Court will review lower court decisions that found Apple willfully defied a 2021 antitrust injunction, with the case likely to be argued in December.

Apple Inc. must take part in a lower-court proceeding over the rate it charges developers for sales outside its App Store after the US Supreme Court rejected a bid by the iPhone maker to pause all further action in the case.

Justice Elena Kagan on Thursday turned aside a request by Apple for a stay of further action by the trial court until the justices rule on an appeal related to a contempt finding in the case. The new order, which came without comment, supersedes a temporary pause Kagan imposed Wednesday to allow more time to consider Apple's request.

Apple didn't have an immediate comment on the ruling.

Separately, the company argued in a court filing in the underlying case that it should be allowed to charge developers a 15% fee on purchases made outside its store.

The company said that fee would compensate it for the intellectual property, technologies and services it provides to developers. Apple acknowledged, however, that the under the ruling issued by the US Court of Appeals for the Ninth Circuit last year — which said the company could only charge for "necessary costs" — the commission would be zero.

In June, the Supreme Court agreed to review lower court decisions that found Apple willfully defied a 2021 antitrust injunction. The justices said they would consider the proper standard for civil contempt findings while refusing to hear arguments from Apple on other issues in the case. The case is likely be argued in December, though the court hasn't yet set a date.

Supreme Court review comes after the justices declined to intervene in 2024. The current proceeding revolves around whether Apple complied with a judge's original ruling when it imposed a new 27% commission on sales that occur outside its lucrative App Store.

The high court's pause countermands an Aug. 11 ruling by US District Judge Yvonne Gonzalez Rogers, who said proceedings should move forward in her court in Oakland, California, simultaneously with the Supreme Court appeal.

In her order, Gonzalez Rogers said that the justices agreed to hear a narrow issue related to the contempt ruling and that the appeals court decision in the case required her to make additional factual findings.

"The Supreme Court's grant of a narrow review of the contempt proceedings does not substantially impact the factual issues that must be resolved to ensure compliance with the injunction," she wrote. "We are approaching the five-year anniversary of this court's decision. Further delay is unwarranted."

The emergency request is Apple v. Epic Games, 26A194. The granted case is Apple v. Epic Games, 25-1311.

(Adds additional details on rate proceeding beginning in third paragraph.)

--With assistance from Greg Stohr.

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Boeing Directors Avoid Investor Suit Over Safety Claims (1)

Aug. 13, 2026, 2:55 PM PDT

Summary by Bloomberg AI

AI Generated

- A Delaware judge tossed a shareholder lawsuit accusing Boeing Co. directors of ignoring safety before the blowout of a door plug on a 737 Max 9 jet.
- Judge Morgan Zurn concluded that company directors didn't act in bad faith when overseeing management's steps to address safety.
- The lawsuit was filed by pension plans owning Boeing stock, claiming directors breached their fiduciary duties by failing to respond to red flags showing potential deficiencies in airplane safety and regulatory compliance.

A Delaware judge tossed a shareholder lawsuit accusing Boeing Co. directors of ignoring safety before the blowout of a door plug on a 737 Max 9 jet operated by Alaska Airlines in 2024.

Judge Morgan Zurn concluded that company directors didn't act in bad faith when overseeing management's steps to address safety. "Delaware law does not hold corporate fiduciaries liable merely because a general risk materialized," Zurn wrote in a ruling on Thursday.

Boeing faced shareholder lawsuits and renewed regulatory scrutiny following the Alaska Airlines incident, which didn't result in any fatalities. But it revived scrutiny of the planemaker's safety record because the blowout came a few years after two of its 737 Max jets crashed within months of each other, killing 346 people.

The company reached a deal with the US Justice Department in 2021 to defer prosecution on a charge that the company deceived regulators about design flaws linked to crashes of a Lion Air jet in 2018 and Ethiopian Airlines flight in 2019. After the door plug blowout, DOJ said the company had breached its agreement, leading to a new $1.1 billion settlement allowing Boeing to avoid prosecution.

The judge overseeing the current investor suit also handled earlier claims by shareholders over the Lion Air and Ethiopian Airlines crashes. In that litigation, the directors agreed to pay $237.5 million to settle claims that they ignored safety issues before the fatal crashes. The directors denied wrongdoing and said in court filings they settled the case because of the "expense, uncertainty, and risks inherent in any litigation, especially in complex cases."

'Duty to Act'

Zurn, who recently became a Delaware Supreme Court justice, wrote in her Thursday ruling that nothing reported to the board put the directors "on notice of ongoing violations of law or a risk of serious corporate trauma that triggered a duty to act." The judge added, "much of the reporting had nothing to do with the causes of the door plug blowout or subsequent regulatory costs," Zurn wrote.

Attorneys for the directors have insisted the case over the blowout is different because Boeing implemented significant changes following the Max crashes. The company undertook "extensive efforts to remake and enhance oversight procedures," replaced management and added new board members, the attorneys wrote in court documents.

Pension plans owning Boeing stock filed the lawsuit in November 2024 claiming directors breached their fiduciary duties by failing to "respond in good faith to red flags showing potential deficiencies in the mission-critical areas of airplane safety and regulatory compliance" and approving a production schedule they knew couldn't comply with the law or be implemented safely. This resulted in "substantial losses to Boeing," attorneys for the pension funds wrote in court documents.

Maxwell Huffman, an attorney for the plaintiffs, argued in a May hearing that the board acted in "bad faith" and should have told management to slow down production. "The board of directors deferred entirely, passively to management at every opportunity," Huffman told the judge.

Attorneys for the directors contend the board "actively monitored safety and quality risks." Sharon Nelles, an attorney for the directors, told the judge at the May hearing that the oversight framework worked as it should have since management was reporting risks to the board, which then responded. "Good faith, not good results, is what is required of a board," Nelles said.

The case is In Re: The Boeing Co. Derivative Litigation, 2024-1210-MTZ, Delaware Court of Chancery

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California Advances Bill to Expand Antitrust Enforcement Law (1)

Aug. 13, 2026, 5:49 PM PDT

Summary by Bloomberg AI

AI Generated

- A major expansion of California's antitrust laws advanced in the state legislature despite opposition from business leaders and some government officials.
- The measure would extend the state's Cartwright Act to cover conduct by individual companies and make it easier for the state attorney general to pursue monopolization cases.
- The bill was amended to limit actions to public prosecutions, removing an earlier provision that allowed private citizens to sue under the new additions to the law.

A major expansion of California's antitrust laws advanced in the state legislature Thursday despite opposition from business leaders and some government officials.

The state Senate Appropriations Committee moved the bill, AB 1776, to the full chamber, where it must pass before it moves to Governor Gavin Newsom's desk. Newsom, a Democrat, hasn't publicly offered his opinion on the measure.

A spokesperson for the governor's office didn't immediately respond to a request for comment.

"If we can get this across the finish line, then we have an opportunity to make California's economy more competitive, more innovative, and more open to everyone—not just the most powerful corporations," the bill's sponsor, Assembly Majority Leader Cecilia Aguiar-Curry, a Democrat, said in a statement.

The measure is part of a push by states to strengthen antitrust and competition laws. Washington, Colorado, New York, Pennsylvania and others have sought amendments to make it easier to challenge mergers or other forms of anticompetitive conduct.

If the California measure passes, it would be easier for the state attorney general to pursue monopolization cases against technology giants in the state, which is home companies including Apple Inc., Alphabet Inc. and Nvidia Corp.

The bill would extend the state's Cartwright Act to cover conduct by individual companies, a shift from its current focus on anticompetitive conduct by two or more companies.

In moving to the full senate, the bill was amended to "limit the actions to public prosecutions," Senator Sabrina Cervantes, a Democrat who chairs the appropriations committee, said during the hearing. That removes an earlier provision allowing private citizens to sue under the new additions to the law. Californians can bring private lawsuits under the existing provisions of the law.

Aguiar-Curry said she is disappointed that the so-called private right of action was removed.

Business groups including the California Chamber of Commerce have been outspoken in their opposition. The state's Department of Finance is also opposed, saying the attorney general's office "indicates this bill may create unknown but potentially significant costs," if it leads to additional antitrust investigations and lawsuits.

However, consumer advocates and labor unions — an influential force in California's capitol — have supported the bill, arguing it would give the state more tools to crack down on anticompetitive business practices they contend are raising prices and shortchanging workers.

Newsom has though supported the state's antitrust enforcement efforts, and the newly passed budget for the current fiscal year includes about $14.3 million in funding for antitrust litigation by the state attorney general's office.

(Updates with Assembly Majority Leader's comment in fourth paragraph.)

--With assistance from **Leah Nylen** and Andrew Oxford.

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Baby food companies aim to avoid fuss over toxic metals

courthousenews.com/baby-food-companies-aim-to-avoid-fuss-over-toxic-metals

SAN FRANCISCO (CN) — A federal judge grilled attorneys Thursday as she considered the fate of a class action against baby food companies over neurological defects in infants.

"Each side has made tactical moves," U.S. District Judge Jaqueline Scott Corley, bashing one plaintiff's attempt to belatedly remand the case to state court.

The multidistrict class action against baby food manufacturers began in April 2024, when it was fashioned from 10 pending lawsuits with similar claims and central questions. The plaintiffs, all children with brain injuries or neurodevelopmental harm, claim their conditions are a result of the metal-contaminated baby foods sold by the defendant companies.

At Thursday's hearing, the Joe Biden appointee addressed the companies' motion for summary judgment, saying if the plaintiffs were going to claim injuries in addition to ADHD and autism, they must identify them within the complaints.

An attorney representing baby food manufacturer Beech-Nut Nutrition Company and Walmart said the plaintiffs hadn't previously specified any additional injuries.

"Here is the issue," he said. "There are references to learning disability or speech delay, which are consequences of having ADHD and autism."

Corley noted that as a matter of law, it wasn't up to her to determine what symptoms or possible injuries were related to those two ailments or not.

In an October 2025 order, Corley granted motions to dismiss from baby food manufacturers Danone North America, Sun-Maid Growers of California and two of Nestlé's international subsidiaries. However, she refused to dismiss claims against Campbell's after an amended complaint accused the company of exceeding "the accepted norms of parental oversight of a subsidiary." Campbell's was the parent company of Plum until May 3, 2021, when it sold the snack brand to Sun-Maid.

In April 2025, Corley issued a mixed ruling, dismissing certain claims for lack of personal jurisdiction and failure to state a claim, with leave to amend. She also denied a collective motion to dismiss from the defendant companies, rejecting their arguments that the plaintiffs needed to state a specific level of metals exposure that would result in autism disorders or ADHD.

Additional baby food manufacturers and sellers involved in the lawsuit include Whole Foods, Hain Celestial Group, Neptune Wellness Solutions, Nurture, Inc. and Sprout Foods.

Corley instructed the attorneys to provide more documentation before her ruling on summary judgment could take place.

“Hopefully we will get this wrapped up nicely,” she said.

Baltimore claims Kalshi, Polymarket run illegal sportsbooks

courthousenews.com/baltimore-claims-kalshi-polymarket-run-illegal-sportsbooks

BALTIMORE (CN) — The city of Baltimore sued Kalshi and Polymarket on Thursday, lcaiming their rapidly growing prediction markets constitute sports gambling without obeying Maryland gambling laws.

“These companies are running sportsbooks without licenses and betting that a new label will put them above the law,” Baltimore Mayor Brandon M. Scott said in a press release Thursday. “It won’t. Baltimore will not let multibillion-dollar companies put profits over people and harm our communities through illegal gambling.”

While regulation of sports betting has primarily been relegated to individual U.S. states since 2018, the recent breakneck rise of alternative prediction markets has thrown a wrench in both the gambling industry and regulation of them.

Rather than placing bets based on odds determined by a casino or “house,” users of prediction markets like Kalshi and Polymarket purchase event contracts based on odds determined by trade activity of the event contract itself.

Beyond technical distinctions, Kalshi and Polymarket provide nearly identical services compared to traditional sportsbooks — both services allow wagers on game winners, point spreads, point totals and player statistics, Baltimore says in its complaint.

While the prediction markets say these distinctions distinguish them from sportsbooks and shield them from state regulations, Baltimore and Maryland’s gaming commission have called event contracts “indistinguishable” from traditional bets. As such, Baltimore claims, Kalshi and Polymarket have been operating gambling rings without proper state licensure and in violation of state consumer protection laws.

“Defendants have deceptively represented that their sports wagers are lawful in Baltimore and have unfairly disregarded Maryland’s gambling laws to the detriment of thousands of Baltimore consumers,” the city says in its complaint, filed Thursday in Baltimore City Circuit Court.

Legal precedent exists for state regulation of prediction markets — states including Nevada, Massachusetts and Washington state have all previously won court orders restricting Kalshi’s activity. New York’s attorney general also filed a similar suit in July, weeks after a New York federal judge refused to block state regulators from enforcing gambling laws against Kalshi and Polymarket.

However, this past April a Third Circuit panel found states lack authority to regulate prediction markets, effectively sending regulation of such markets into legal limbo.

Two members of the three-judge panel sided with Kalshi, which argued event contracts constitute “swaps,” a type of derivative exclusively regulated by the Commodity Futures Trading Commission. The commission is a federal agency, of which its commissioners are nominated by the president.

As such Kalshi and Polymarket have argued states are preempted from demanding restrictions for prediction markets.

“City-specific action runs counter to the CFTC’s established framework for regulating prediction markets,” a Polymarket spokesperson said Thursday. “As courts have recognized, prediction markets on CFTC-registered exchanges are governed by federal law, not a patchwork of state and local rules.”

Similarly, Kalshi said its business does not run afoul of applicable federal law.

“Kalshi spent years getting regulated by the federal government and abide[s] by all applicable regulations, including consumer protection laws,” a Kalshi spokesperson said Thursday. “If the mayor has genuine concerns about guardrails, we’re always happy to chat.”

Kalshi urges judge to block Iowa from regulating prediction market

courthousenews.com/kalshi-urges-judge-to-block-iowa-from-regulating-prediction-market

DES MOINES, Iowa (CN) — Prediction market platform Kalshi told a federal judge Friday Iowa should be permanently blocked from regulating the business under state gambling laws because the federal Commodity Futures Trading Commission (CFTC) has exclusive regulatory jurisdiction that preempts state action.

Kalshi, a derivatives exchange and prediction market platform where participants predict and then bet on the outcomes of future events with payouts determined by the outcome of the predicted event, characterizes its exchange as operating in the same way as any other federally regulated derivatives market where individuals can buy and sell contracts at changing prices, often to hedge risk.

Iowa, however, says Kalshi also operates a sports-betting platform that offers sports event contracts that act like sports gambling in violation of Iowa's gambling laws. While the state has not threatened to enforce its gambling laws against Kalshi, it has not ruled out any such enforcement in the future.

Thus, Kalshi filed a pre-enforcement suit against Iowa in U.S. District Court for the Southern District of Iowa in March seeking to block Iowa from taking such action, saying federal law preempts Iowa laws that might apply to Kalshi's platform.

Kalshi attorney Grant Mainland of New York's Milbank LLP told U.S. District Judge Stephen Locher the question before the court at Friday's hearing is whether Iowa is preempted by federal law from enforcing the state's gambling laws.

"The answer is unquestionably yes," Mainland said, pointing to the 1936 Commodity Exchange Act that gives exclusive jurisdiction to the U.S. Commodity Futures Trading Commission to regulate the sort of prediction market exchange Kalshi operates. "Exclusive means exclusive, your honor," Mainland said.

Locher, a Joe Biden appointee, asked whether sports gambling operations might adopt the Kalshi model to escape state gambling regulators.

Mainland said the two business models are fundamentally different. Event contracts are traded on an exchange where prices are determined by market forces and there is no "house" that sets the odds in its favor in the case of sportsbooks.

Locher noted Congress left gambling regulation to the states and asked Mainland whether the CFTC protects against the problems states confront with gambling. Mainland said Kalshi has mechanisms in place to deal with issues associated with gambling, but the CFTC has never said sports betting is not in the public interest and gave it exclusive jurisdiction to make such decisions.

Iowa Assistant Solicitor General Catherine Frappier urged the judge to deny Kalshi's bid for an injunction, which she characterized as "seeking sweeping relief from each and every section of nine chapters of the Iowa Code" dealing with gambling regulation.

A question the judge and both parties wrestled with Friday is whether Kalshi has standing since there is no explicit threat by Iowa to enforce its gambling laws against the company.

Locher put the question to Frappier bluntly: "Does the Attorney General's Office see Kalshi as engaged in illegal sports gambling?"

Frappier replied by saying the Attorney General's Office has not taken a position and it has said it would hold off any decision while this case is pending. But it has not ruled out enforcement in the future.

In its brief filed with the court in support of its injunction, Kalish said it "offers event contracts related to commodities, economics, finance, health, cryptocurrencies, and popular culture. For example, Kalshi's platform currently allows users to trade on the prices of physical commodities such as oil and gold, on whether India will meet its 2030 climate goals, and on whether the market share for electric vehicles will exceed 50% in 2030."

Kalshi says its event contracts are "swaps" as defined by the Commodity Exchange Act (CEA) in that they provide for payment based on the "occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence" as stated in the federal statute.

"All of Kalshi's contracts fit comfortably within this definition," Kalshi says in its brief. And the federal regulations preempt regulation by the states. "Congress has preempted the field of regulating trading on DCMs [derivative commodity markets], both expressly in the text of the CEA and implicitly by creating a comprehensive structure for regulating DCMs that leaves no room for state regulation."

Iowa argues what Kalshi offers is sports betting that amounts to the sort of gambling Iowa has long regulated.

"In 2025, Kalshi began offering what it calls 'sports event contracts'," the state says in its brief. "And those contracts operate like sports bets: Participants — including those with nothing at stake in the sporting event and therefore no financial risk to hedge — can purchase either a ‘yes’ or ‘no’ position on any number of sports-related questions, from whether a team will win a particular game to how many points a player will score or even whether the broadcasters will mention particular words or phrases. Participants who pick correctly get paid out. Participants who pick wrong lose.”

Amicus curiae briefs in support of Iowa were filed by the American Gaming Association, whose members include licensed gaming operators, and the Indian Gaming Association along with 29 federally recognized Indian tribes.

Trade court clears Trump gut of tariff exemptions on low-price goods

courthousenews.com/trade-court-clears-trump-gut-of-tariff-exemptions-on-low-price-goods

(CN) — The U.S. Court of International Trade sided with President Donald Trump on Thursday, finding he had the authority to end a tariff exemption on goods valued under $800.

The lawsuit brought by plaintiff Detroit Axle, an auto parts retailer and distributor, asked the court to overturn Trump's rescission of the exemption on cheaper imported goods.

The so-called "de minimis" exemption, enacted in 1938 and subsequently updated by Congress, allowed imports of goods under $800 to enter the U.S. duty-free.

In 2025, Trump took several steps to curb the exemption, specifically targeting China and then later suspending the exemption for all countries in an executive order.

However, in its unanimous ruling, the three-judge panel found the ending of the exemption fell within Trump's authority under the International Emergency Economic Powers Act, also known as the IEEPA.

"Instead, by rescinding the de minimis exemption, the president found the existence of an underlying condition — the national emergency — and executed the policy of Congress by taking an action specifically enumerated in IEEPA purportedly to deal with that emergency," wrote the panel in its per curiam ruling.

The Trump administration claimed in a related executive order that the import exemption was being used to smuggle illegal drugs into the country and used the IEEPA as a legal basis for ending the rule and for enacting other tariffs.

Effects of ending of the exemption have been felt by retailers such as Shein, an online clothing retailer founded in China and now headquartered in Singapore, which said it lost $99 million last quarter due to the loss of the exemption and the levying of a 3-euro fee by the European Union.

Trump's use of the IEEPA, a Nixon-era law, to impose tariffs was untested legal ground, having previously been used by presidents to impose sanctions or to restrict assets of terrorist organizations.

In fact, in February the U.S. Supreme Court rebuked Trump's broad worldwide tariffs, finding the IEEPA did not give him the power to issue such wide-reaching tariffs.

However, in its ruling regarding the de minimis exemption, the trade court found a distinction while not challenging the Supreme Court’s ruling.

“The president’s rescission of the de minimis exemption is not tantamount to the imposition of tariffs because suspending the de minimis exemption imposes no new duties; it merely renders goods valued at $800 or less subject to the same duties that would apply to those goods if they were valued at more than $800,” the panel wrote.

The panel did not assess the validity of Trump’s claimed emergency.

The panel consisted of Judge Timothy Reif, a Trump appointee, Judge Gary Katzmann, a Barack Obama appointee and Judge Jane Restani, a Ronald Reagan appointee.

AB 1776 advances after private antitrust lawsuits are stripped

DJ dailyjournal.com/articles/393653-ab-1776-advances-after-private-antitrust-lawsuits-are-stripped

A bill expanding California's antitrust authority made it through a tough committee test Thursday. But AB 1776 survives in weakened form, losing provisions for a private right of action.

Introduced in February, the bill came out of nowhere to become one of the most intensely debated pieces of legislation this year. AB 1776 would amend California's 1907 Cartwright Act to allow antitrust cases against single firms. That could allow antitrust suits to take aim at AI companies and other tech giants in the state, even if just one company was involved.

"When a handful of dominant corporations control entire industries and abuse their power, small businesses struggle to compete and communities lose the employers they depend on," the bill's author, Assembly Majority Leader Cecilia Aguiar-Curry, D-Winters, told people attending a rally for AB 1776 outside the state Capitol on Tuesday.

But the bill set off alarms with business groups. The California Chamber of Commerce made AB 1776 a key focus of its multimillion-dollar lobbying efforts in Sacramento this year.

Last month, it launched a statewide media campaign against the bill. Some of these communications cited an April study from the Computer and Communications Industry Association Research Center claiming the bill, also known as the COMPETE Act, could cost California $1 trillion in gross domestic product and 1.6 million jobs over a decade.

On Wednesday, the Civil Justice Association of California distributed an editorial warning "AB 1776 would turn lawyers into strip-mall bounty hunters."

But when the Senate Appropriations Committee hearing began Thursday, the chair implied the bounty hunters would be sidelined. Sen. Sabrina Cervantes, D-Riverside, began the hearing by stating there would be no debate on any bill. She added that all votes to advance any bill would be based only on fiscal concerns having been addressed.

When the committee took up AB 1776, Cervantes said the author had agreed to amendments "to limit the actions to public prosecutions." AB 1776 then passed on a 5-2 party-line vote.

Thursday's hearing addressed scores of bills sitting in the committee's suspense file. That is a designation given to bills flagged for fiscal concerns. AB 1776 was moved to suspense on

Monday after a Senate analysis said it could impose "potentially significant" costs on courts through increased litigation.

The changes were not yet in print as of Thursday afternoon. But John Myers, senior vice president for communications and external affairs with the chamber, confirmed that the pending amendments would remove the private right of action.

"That's a very positive step," Myers told The Daily Journal. "We had told members of the committee and members of the legislature this was really important."

Aguiar-Curry's office did not comment or confirm the changes when reached on Thursday.

"We're going to withhold comment until we have a chance to review the language of the bill as amended in appropriations," said Nick Mirman, a spokesman for the Civil Justice Association.

AB 1776 was already narrowed earlier this month with amendments requiring plaintiffs to prove substantial market power, limiting claimed business benefits to the same market where harm occurred, exempting small businesses, and protecting certain government-approved arrangements. Those changes also direct courts to follow existing antitrust guidance and interpret California law broadly to promote competition.

The revised version of the bill could still be a potent tool in the hands of public attorneys -- such as California Attorney General Rob Bonta. Bonta has already shown a willingness to go after powerful corporations like Amazon.com, Inc. and Live Nation Entertainment for alleged anticompetitive behavior.

AB 1776 has a substantial and diverse list of supporters, including labor unions, consumer advocates, small-business groups, and economic-justice organizations. These include many groups that have been critical of the growing political power of the technology industry in Sacramento. Backers include the California Labor Federation and the Consumer Attorneys of California.

California is one of just six states that lack antitrust laws that reach single-firm monopolization, according to a database maintained by the Institute for Local Self-Reliance, a nonprofit advocacy group. However, these state laws vary in important ways, including whether and under what circumstances private parties can sue a single company for monopolization.

Elanco Investors Fail to Revive Sales Misrepresentation Suit (1)

Aug. 14, 2026, 8:30 AM PDT; Updated: Aug. 14, 2026, 10:01 AM PDT

Summary by Bloomberg AI

AI Generated

- The Seventh Circuit ruled that Elanco Animal Health Inc. investors can't proceed with claims that the company misrepresented its sales as driven by demand rather than unsustainable distribution practices.
- The investors failed to adequately allege fraudulent intent, and the Securities Act allegations didn't meet the heightened fraud standard, according to Judge Doris L. Pryor.
- The court said the investors didn't create a strong inference of intent, or scienter, in light of competing inferences of innocent conduct, and they didn't show executives knew they were misleading investors.

Elanco Animal Health Inc. investors can't proceed with claims that the animal health product maker misrepresented its sales as driven by demand rather than unsustainable distribution practices, the Seventh Circuit ruled Friday.

The proposed class action was rightly dismissed because the investors failed to adequately allege fraudulent intent, the US Court of Appeals for the Seventh Circuit said.

The investors also claimed the company and its executives made misstatements in offering documents in violation of Sections 11 and 12(a) of the Securities Act of 1933.

The Seventh Circuit joined a majority of appeals courts in deciding that a stricter federal pleading standard for fraud-related allegations applies to those claims when the complaint alleges the "same course of conduct" for both the securities fraud claims under the Securities Exchange Act and the offering misstatement claims.

The complaint here "alleges a single course of conduct: Elanco's alleged habit of failing to mention that its revenues were bolstered by its channel-stuffing practices," Judge Doris L. Pryor said for the court. The Securities Act allegations didn't meet the heightened fraud standard, and the plaintiffs didn't even argue that they did, she said.

'Channel-Stuffing'

The investors alleged that Elanco, which makes products for farm animals and pets, engaged in a practice of overselling to distributors known as "channel-stuffing."

"Anticipating a merger in which Elanco's stock price would determine the transaction terms, Elanco engaged in rampant channel-stuffing to create the illusion of steady growth in consumer demand," the plaintiffs said in their brief to the Seventh Circuit.

The level of sales became unsustainable, and when the company announced lower revenue in May 2020, its stock dropped, they said.

The investors argued to the appeals court that a district court shouldn't have dismissed the suit on the basis that they failed to allege "that Elanco's channel-stuffing was itself an illegal scheme."

Elanco countered that its distribution strategies made business sense and were fully disclosed.

The Seventh Circuit didn't decide whether the targeted statements were false or misleading, although it said the district court was wrong to require an underlying fraudulent scheme to find falsity.

Instead, the court said the investors didn't create a strong inference of intent, or scienter, in light of competing inferences of inncoent conduct. And they didn't show executives "knew they were misleading investors by omitting channel stuffing from their explanations of sales growth," Pryor said.

The Elanco investors' Securities Act claims for misstatements in a registration statement and prospectus are governed by Federal Rule of Civil Procedure 9(b) because the complaint treats all the allegedly false statements as part of a single, coordinated scheme, Pryor said.

The complaint expressly disavowed a fraud theory, she said. But that doesn't change the analysis because the choice between Rule 9(b) and the more lenient Rule 8 depends on the substance of the allegations, not a disclaimer, she said.

"We recognize that the Fifth and Eighth Circuits appear to disagree with the Second, Third, Fourth, and Ninth Circuits on this point," she said, siding with the latter group.

"We decline to create a significant loophole by permitting Plaintiffs to allege fraud in substance but avoid Rule 9(b)'s heightened pleading standard by including formalistic disavowals," Pryor said.

Neither Elanco nor attorneys for the investors immediately responded to emailed requests for comment.

Judges Candace R. Jackson-Akiwumi and John Z. Lee also served on the panel.

Glancy Prongay Wolke & Rotter LLP and MoloLamken LLP represented the investors. Weil, Gotshal & Manges LLP represented Elanco.

The case is Hunter v. Elanco Animal Health Inc. , 7th Cir., No. 23-03061, 8/14/26 .

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Geron Must Defend Investor Suit Over Blood Disorder Drug Sales

Aug. 14, 2026, 9:02 AM PDT

Geron Corp. investors advanced allegations that former biopharmaceutical company executives knowingly or recklessly misrepresented slowing sales of its blood condition treatment in 2024.

Former Chief Commercial Officer Jim Ziegler allegedly approached an ex-sales executive about joining Geron to help revive drug Rytelo's sales growth in 2024, Judge Vince Chhabria said Thursday. The investors leading the case alleged Ziegler indicated he thought sales plateaued given his review of weekly data, attendance at medical conferences, and discussions with physicians and sales representatives.

"That is sufficient to allege that Ziegler knew that sales had slowed before November 2024," the US District Court for the Northern District of California judge said, supporting a pleading of a mental state for securities fraud. Chhabria denied the company and two former executives' bid to toss the proposed class action.

Chhabria could infer other Geron executives were aware sales had slowed in fall 2024 because Rytelo's commercial success was key to the company's core operations. And the investors had alleged the executives were motivated to hide issues with Rytelo's commercial launch to boost Geron's position as a potential acquisition target, he said.

The investors adequately pleaded Geron leaders misrepresented on three occasions in 2024 that Rytelo's uptake was promising following its commercial launch despite having adverse sales data, Chhabria said.

Chhabria tossed a version of the investors' complaint earlier this year, finding prior allegations of fraudulent intent and misrepresentations paled in comparison to a more innocent explanation about the timing of the flattened sales.

The proposed class includes investors who got Geron stock from Nov. 7, 2024, to Feb. 25, 2025. The next day, Ziegler said in a fourth-fiscal quarter earnings call executives had started seeing slowed sales growth around Thanksgiving. Its stock price plummeted more than 32% to close at $1.61 on Feb. 26, 2025.

Geron's share price jumped last week after the company reported second fiscal quarter revenue that beat expectations.

Levi & Korsinsky LLP is lead counsel for the investors. Cooley LLP represents Geron, Ziegler, and former CEO John Scarlett. Neither of these firms nor Geron immediately responded to emails seeking comment.

The case is Dabestani v. Geron Corp. , N.D. Cal., No. 3:25-cv-02507, 8/13/26 .

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Goldman $2.25 Billion Neos Deal Raises Stakes in Active-ETF Race

Aug. 13, 2026, 8:53 AM PDT

Summary by Bloomberg AI AI Generated

- Goldman Sachs Group Inc. has agreed to buy Neos Investments for as much as $2.25 billion, marking a new front in Wall Street's ETF battle.
- The deal gives Goldman a sizable position in options-based strategies that promise investors income, downside protection or other defined outcomes, a corner of the fund industry that has been growing.
- The acquisition of Neos, which has grown to about $32.5 billion across nearly two dozen ETFs, offers Goldman a track record of turning specialized strategies into multibillion-dollar funds.

Goldman Sachs Group Inc.'s agreement to buy Neos Investments for as much as $2.25 billion marks a new front in Wall Street's ETF battle: paying up for specialist firms that have found growth beyond the industry's low-fee giants.

The deal announced Wednesday is Goldman's second major acquisition of a niche ETF manager in less than a year, following its roughly $2 billion purchase of Innovator Capital Management . Together, they give Goldman a sizable position in options-based strategies that promise investors income, downside protection or other defined outcomes, a corner of the fund industry that has been growing at a speedy clip.

The acquisitions also mark a shift for a firm that arrived relatively late to the fiercely competitive ETF business and has experimented with different ways of gaining ground.

Now it's spending billions to acquire products that have already proved they can attract investor money.

Founded by **Troy Cates** and **Garrett Paolella** in 2022, Neos has grown to about $32.5 billion across nearly two dozen ETFs in just four years. Its funds use options to generate income or alter the payoff investors receive from traditional assets. For Goldman, Neos offers something harder to manufacture quickly: a track record of turning specialized strategies into multibillion-dollar funds.

“For some larger firms, it is easier to acquire a company with a proven track record than to start your own products replicating strategies and hope it builds traction,” said **Mohit Bajaj**, managing director of ETFs at WallachBeth Capital .

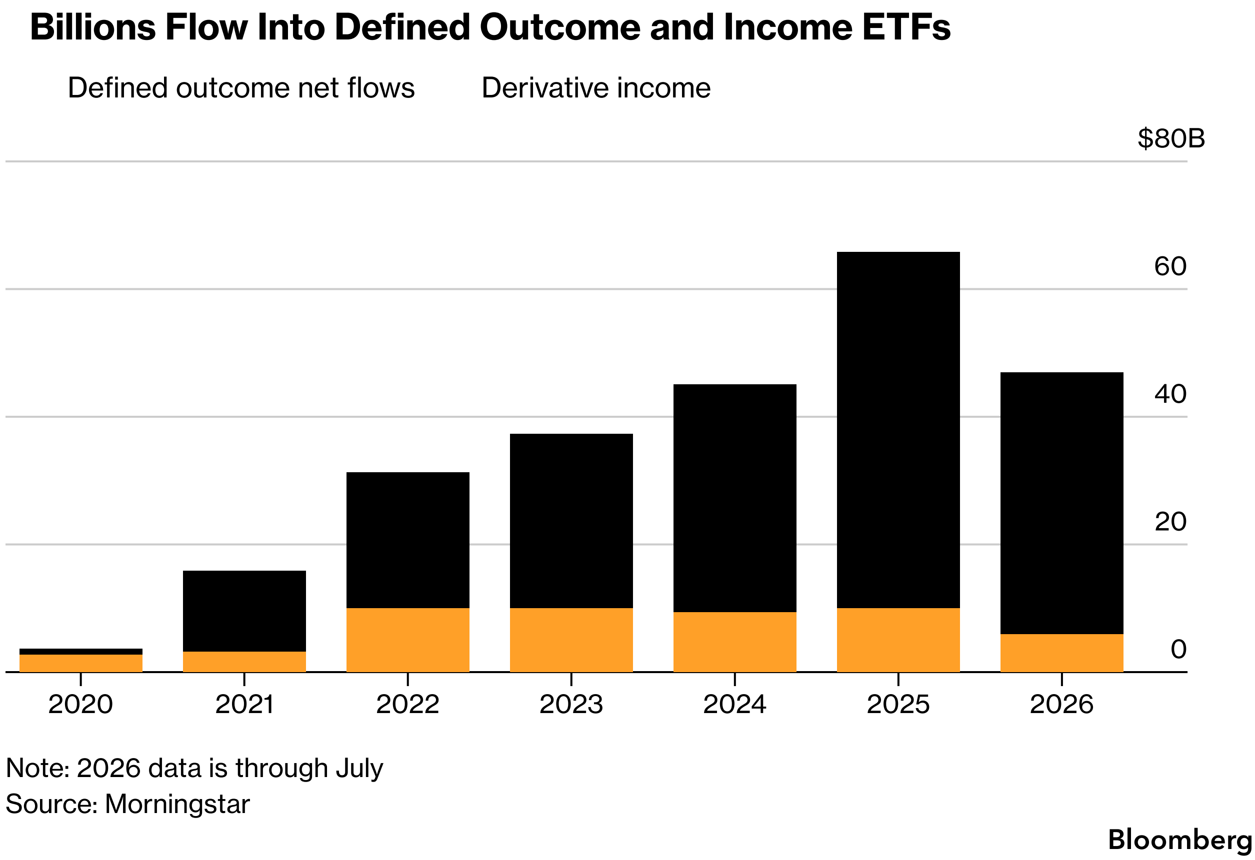
Both categories have ballooned in recent years. Defined-outcome ETFs, which use options to offer features such as downside buffers, now hold about $74 billion, according to Morningstar. Derivative-income ETFs like those sold by Neos have roughly $186 billion.

“This category is a category that we want to be in,” said **Bryon Lake**, global co-head of third-party wealth and chief transformation officer at Goldman Sachs Asset Management. “Now, we feel like we’ve got one of the most complete ranges of income capabilities in the income category.”

Read more: Yield-Crazed Day Traders Pony Up for ‘169%’ Option-Income ETFs

That means that the recent acquisitions give Goldman exposure to two distinct – though complementary – corners of the market. If Innovator gave Goldman a major foothold in defined-outcome ETFs, Neos will help add another piece to the options-based income puzzle. Together, they give the bank a broader toolkit for investors looking for something beyond simple market exposure.

“This is a sturdy revenue stream of non-hot sauce offerings that appeal to rich boomers,” said **Eric Balchunas**, senior ETF analyst at Bloomberg Intelligence. “It’s hard to find that combination in an acquire-able company in the ETF space right now.”



In a market where the biggest firms have spent decades driving down the price of basic exposure, some of the most valuable ground left to fight over is in products that investors are still willing to pay more to own. Unlike the core vanilla products that have driven the ETF industry's fee war to near-zero, newer and more complex strategies can command considerably higher fees. That matters for an acquirer.

Bloomberg Intelligence's **Neil Sipes** and **Ravi Chelluri** argue that Neos' relatively high-fee products help justify the up-to $2.25 billion price tag. The deal represents roughly 7% to 8% of Neos' assets, they wrote in a note, a multiple that looks reasonable when compared with other private-market asset-management transactions.

Still, Neos's suite is competing in a crowded space.

JPMorgan's Equity Premium Income ETF (JEPI) has arguably been the poster child for the options-income category. The fund has grown to $46 billion since its 2020 launch, and its blockbuster success was followed by JEPQ, the JPMorgan Nasdaq Equity Premium Income ETF, which tracks the tech-heavy index while generating income from an option-overlay strategy. The traction of these funds caught the attention of JPMorgan's rivals and spawned a wave of copycat products – including some from Goldman.

JEPI and JEPQ – which have seen combined inflows of more than $11 billion this year – charge 0.35% each.

Neos took a slightly different — and more expensive — route. Across its 19 ETFs, the issuer charges an average 0.74% and sees an estimated annual revenue run rate of $222 million, according to Bloomberg Intelligence.

All but one of the 19 ETFs in Neos's lineup have managed to attract inflows this year despite charging higher-than-average fees. In a business where investors have been conditioned to obsess over every basis point, that is evidence that a compelling strategy can still command a premium.

"Goldman Sachs brings the scale, resources, and global reach that will enable Neos to invest more aggressively," said Neos co-founder Paolella. "The demand for tax-efficient, outcome-oriented investment solutions continues to accelerate."

--With assistance from **Sridhar Natarajan**, **Todd Gillespie** and **Athanasios Psarofagis**.

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Holland & Knight Taps Familiar Face to Fight $1.2 Billion Suit

Aug. 13, 2026, 11:57 AM PDT

Summary by Bloomberg AI AI Generated

- A former Holland & Knight partner, Peter Prieto, is representing the firm in a $1.2 billion malpractice case brought by MV Realty PBC, a Florida-based real estate company.
- MV Realty PBC alleges that Holland & Knight's poor legal advice regarding homeowner benefit agreements led to state-level authorities bringing litigation against the company and ultimately destroyed its business.
- The lawsuit claims that Holland & Knight's actions exposed the company and its officers to "massive liability" and hurt their earning capacity, and that the firm billed the company more than $9 million for legal work that failed to avoid the destruction of the business.

A former Holland & Knight partner is representing the firm in a $1.2 billion malpractice case by a Florida-based real estate company that says poor legal advice eviscerated its business.

Peter Prieto, a partner at South Florida-based firm Podhurst Orseck, is representing Holland & Knight, a firm spokesperson confirmed. Prieto previously served as the head of litigation for Holland & Knight.

MV Realty PBC is suing the firm over its work designing homeowner benefit agreements (HBAs) in which the company offered upfront payments in exchange for decadeslong exclusive rights to list the homes if owners decide to sell. State-level authorities brought litigation against the company, describing the HBA business as deceptive and unconscionable, according to the lawsuit. Courts in multiple states slammed the agreement’s early termination fee. The law firm’s actions destroyed MV Realty’s business, exposed the company and its officers to “massive liability” and hurt their earning capacity, the lawsuit alleges.

“Had H&K met the standard of care required, it would have designed a lawful and enforceable version of the business that would have allowed MV to continue its success,” the company said in the complaint. The suit also lists three Holland & Knight partners as defendants: Jesús Cuza, Rebecca Cañamero and J. Raul Cosio.

The firm, according to the lawsuit, authorized the HBA program through formal opinions, presentations and emails, and the company then implemented the work without meaningful changes. Sixteen states filed lawsuits related to the program, and upward of 30 states opened investigations, MV Realty said. It stated the firm created and approved the early termination fee.

Prieto, who has lengthy experience with complex commercial litigation, and has done a mix of defense work and plaintiff-side litigation since joining Podhurst Orseck in 2010. His work has involved defending law and accounting firms against professional malpractice claims.

Prieto's plaintiff-side work includes a case that led Ford Motor Co. to agree to shell out $299.1 million to settle consumer claims tied to Takata Corp. air-bag recalls. He also represented purchasers in antitrust litigation that accused fisheries of rigging the salmon market.

"We are confident in the advice the firm provided, the merits of our position and look forward to presenting our case in court," Holland & Knight said in a statement provided by the spokesperson.

MV Realty alleges that Holland & Knight and its lawyers have "avoided public responsibility" while hundreds of news articles and TV reports have destroyed the professional and personal reputation of company officials. The firm billed the company more than $9 million for legal work that was intended to avoid the "complete destruction of the business," according to the complaint.

The firm "destroyed what it was hired to protect, and then turned away from the clients it left behind," MV Realty said.

Plaintiffs often face an uphill battle in bringing legal malpractice cases, experts say.

But Holland & Knight will face a challenge in explaining how the HBA program drew such deep backlash across so many states, according to Lance Entrekin, an Arizona-based attorney who litigates legal malpractice cases.

The challenge for MV Realty is that law firms fight hard and usually have deep pockets, Entrekin said.

"It's going to be challenging because they are going to have to prove that, but for Holland & Knight's errors, they are out large sums of money," he said.

The case is: MV Realty PBC v. Holland & Knight , Fla. Cir. Ct., 2026-014644-CA-01

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Bloomberg Law

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Judge Orders Kalshi to Stop Offering Most Wagers in Washington

Aug. 13, 2026, 2:46 PM PDT

Summary by Bloomberg AI **AI Generated**

- A judge ordered Kalshi to stop offering most of its prediction market contracts in Washington state, after regulators said they likely constituted an illegal gambling operation.
- Kalshi was told to implement an IP address and residency-based geofence by Aug. 19, and to implement more robust restrictions through a third-party software platform by Sept. 2.
- The order requires Kalshi to block contracts on topics like politics and sports, but does not include categories like commodities, climate, economics, and finance.

Kalshi was told by a judge to stop offering most of its prediction market contracts in Washington state, after regulators said they likely constituted an illegal gambling operation.

King County Superior Court Judge John McHale in Seattle signed a preliminary injunction on Wednesday ordering Kalshi to implement an IP address and residency-based geofence by Aug. 19, and to implement more robust restrictions through a third-party software platform by Sept. 2.

The decision stems from a lawsuit brought by Attorney General Nick Brown earlier this year, in which McHale rejected Kalshi's argument that the Commodity Futures Trading Commission preempted local regulators. McHale found that Kalshi likely violated numerous state gambling-related laws, citing some of the company's marketing tactics and a letter from the state's gaming commission that Kalshi "willfully ignored."

Kalshi had asked the Washington Court of Appeals to put a hold on the injunction during the appeals process, but was denied.

"Kalshi has gotten rich promoting wagers on sports, elections, natural disasters, events related to the Iran War, and more. Under this order, Kalshi is banned from offering wagers on most of those topics in Washington," Brown said in a statement. "As this case moves forward, we will continue to enforce Washington law and hold Kalshi accountable for misleading consumers."

Kalshi said after the ruling that it follows federal regulators.

“Kalshi is regulated by the CFTC, which has exclusive jurisdiction over our exchange,” spokesperson Jacki McGavick said in an emailed statement. “We respectfully disagree with the court’s decision and are considering all legal options.”

While the order requires Kalshi to block contracts on topics like politics and sports — which have soared in volume on the platform over the past year — it does not include categories more traditionally associated with derivatives, such as commodities, climate, economics, and finance.

Washington maintains some of the strictest gambling laws in the country, restricting sportsbetting and online gambling exclusively to tribal lands, for example.

It remains to be seen if or how the CFTC will respond to the ruling. Earlier this week, the agency invoked “emergency authority” and ordered Kalshi to defy New York regulators’ enforcement efforts — even after a federal court denied the company’s request for relief.

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Anthony Aarons

In re AmTrust Fin. Services Inc. Sec. Litig.

Region:New York

Docket No:17-cv-1545

Publication Date:2026-08-14

Date Filed:2026-08-04

U.S. District Court for the Southern District of New York, U.S. - SDNY
Judge

District Judge Lewis A. Kaplan
Practice Area

August 14, 2026 at 12:00 AM

Case Digest Summary
Investors pursuing securities fraud claims against former AmTrust Financial Services auditor BDO USA won certification of a Rule 23(b)(3) subclass after the court found the proposed class satisfied Rule 23's requirements. Rejecting BDO's arguments that reliance, loss causation and damages required individualized inquiries, the court held plaintiffs were entitled to invoke the *Basic* fraud-on-the-market presumption because the alleged misstatements in BDO's 2013 audit report were public; the securities traded in efficient markets; and the proposed class period corresponded to the period between the challenged statements and the alleged corrective disclosure. The court further found BDO failed to rebut the presumption by proving the alleged audit misstatements had no price impact, citing evidence of a statistically significant stock price decline following publication of a Wall Street Journal article detailing deficiencies in BDO's audit work. The court certified a subclass of purchasers of AmTrust common and Series F Preferred stock pursuing Section 10(b) and Rule 10b-5 claims against BDO and appointed the proposed class representatives and class counsel.

[Get Full Text Case PDF]

Litigator of the Week: A Landmark Multibillion Dollar ‘Forever Chemicals’ Settlement for the State of New Jersey

law.com/litigationdaily/2026/08/14/litigator-of-the-week-a-landmark-multibillion-dollar-forever-chemicals-settlement-for-the-state-of-new-jersey

Our Litigator of the Week is **William J. Jackson** of **Kelley Drye & Warren**, who represented the State of New Jersey against DuPont and 3M in litigation involving so-called forever chemicals.

After more than six years of hard-fought litigation, the state’s effort to hold the companies accountable for PFAS contamination conclude with what U.S. District Chief Judge Renée Marie Bumb described as a “fair and reasonable” compromise. Last week, Bumb approved judicial consent orders involving more than $2 billion in payouts from DuPont and about $450 million from 3M settlement. “The North Star of this litigation is and always has been whether the Proposed JCOs protect the public interest,” the judge wrote, adding that she concluded that they “strike that balance.”

Lit Daily: What was at stake for the State of New Jersey in this litigation?

Bill Jackson: New Jersey was facing billions of dollars in costs to remediate, restore and abate the PFAS and other hazardous substances at issue. For over a century, DuPont owned, operated and used a number of industrial and other facilities in New Jersey that discharged a wide-variety of hazardous substances—including PFAS, colloquially known as “forever chemicals”—into the environment and natural resources of New Jersey. 3M was not known to be a “discharger” in New Jersey, but for almost 50 years, 3M was DuPont’s main supplier of PFOA, a particularly toxic form of PFAS, in New Jersey and nationally. Both 3M and DuPont also sold a wide variety of PFAS-containing products in New Jersey that contaminated drinking water resources across the state. DuPont’s efforts to restructure and transfer assets and business lines away from these PFAS liabilities was also a significant risk and hotly litigated throughout the case.

How did this matter come to you and your firm? And what sort of investment was it for Kelley Drye to take on a plaintiff-side representation of this size and scope for the state?

When we were hired by New Jersey, Kelley Drye had already filed suit for the State of Ohio, asserting claims against DuPont for PFAS contamination from another notorious DuPont facility in West Virginia, so we had unique experience and knowledge that was applicable to the Chambers Works facility on the Delaware River and with regard to PFAS issues more broadly. Moreover, several of us at Kelley Drye had had the honor of representing the State of New Jersey in its Passaic River litigation from 2005 to 2015, so we had a good handle on New Jersey law and a strong track-record of representing the New Jersey Department of Environmental Protection in significant natural resource damages matters. Kelley Drye is proud to make significant investments in efforts such as this, protecting the public interest, the environment and natural resources in New Jersey and other states, as well as public entities around the country.

Who all has been part of your team and how have you divided the work?

As you noted, representing New Jersey in these statewide PFAS matters has been a huge investment of time and effort. The team was large and included the **New Jersey AG/Division of Law**, co-counsel firms **Taft Stettinius & Hollister**, the **Dema Law** firm, and **Cohn Lifland Pearlman Herrmann & Knopf**, and a large team from Kelley Drye. At Kelley Drye, we created several teams (consisting of over 20 lawyers in all) to address the PFAS production, knowledge and liabilities of 3M and DuPont, the environmental impacts and remediation costs of PFAS and other hazardous substances at issue, the economic and natural resource damages suffered by the public, and the fraudulent transfer and restructuring claims against “Old” DuPont and its related entities holding PFAS liabilities: Chemours, Corteva and “New” DuPont.

The state filed these suits in 2019, and the litigation stretched across multiple sites, defendants and legal theories. What were the biggest challenges in building a cohesive, sustainable case?

With well over a century of industrial discharges in New Jersey—and a 75-year history with PFAS in New Jersey and around the country—the breadth and scope of the issues were absolutely sweeping in nature. There were millions of documents, over 100 fact witnesses and over 75 designated experts in the Chambers Works case alone. Judge Joel Schneider, our special master and mediator, was remarkable in shaping discovery, ruling on disputes, and keeping all parties on track for the May 2025 trial. In April of 2025, Chief Judge Bumb shaped the case and ordered the parties to try a series of six “mini-trials” to the bench commencing on May 19, 2025 (to address certain statutory liabilities of DuPont and Chemours and a series of defensive issues), with a jury trial on common law liability and all damages to follow that fall.

The defendants ultimately settled as that mini-trial process unfolded. How did preparing for those trials change the leverage dynamic in the case?

By March 2025, the state's trial team was working around the clock to get ready for a series of April pre-trial hearings before Judge Bumb and the anticipated commencement of the May 19, 2025, trial. The state settled its claims against 3M for $400 to $450 million on May 12, 2025 (after literally negotiating final issues and terms up until the eve of trial). We tried the first five "mini-trials" against DuPont and Chemours during May and into June 2025, establishing DuPont's and Chemours's liability under the New Jersey Spill Act for a large area extending out from the Chamber Works Site and under the Water Pollution Control Act for unauthorized discharges of PFAS into the Delaware and waters of the state, and defeating numerous defensive arguments under the Spill Act, prior agreements with the state, and the Government Contractor Defense. We were back in Camden to try the sixth mini-trial—on the fraudulent transfer and ISRA claims against DuPont—when the state reached a settlement with DuPont.

You told my colleague Charlie Toutant that the ability to tell both the liability story and the damages story at trial had a tremendous impact on the outcome. How did your team approach pulling those two narratives together?

There is no question that being able to put on the state's case before Judge Bumb—demonstrating the defendants' understanding of the risks and harms of PFAS and the scope of contamination and impacts in and to New Jersey—allowed all of the parties and the court to better evaluate the extent of liabilities and risks at issue. That only happened because of the court's dedication and commitment to set aside a month of her calendar last summer to try this case, which also enabled the parties to simultaneously mediate under the expert guidance of Judge Schneider and, ultimately, resolve the matters statewide for the benefit of all of the citizens of New Jersey.

PFAS litigation often involves complicated scientific, environmental and public-health issues. How did you translate those issues into a story that would resonate in court?

We had excellent experts and lawyers directing them who were able to boil down extremely complex issues and convey them in a way that even I can understand! Gratefully, we also had an exceptional jurist who quickly grasped the issues and often questioned the experts directly herself.

Judge Bumb's approval order repeatedly emphasizes the public interest and New Jersey's authority to act in its sovereign and parens patriae capacities. How significant were those state-power issues to the overall strategy of the case?

The issues of the state's power and authority to protect the public health, environment, and natural resources of the state—through state statutory authorities and common law doctrines such as parens patriae, the public trust, and public nuisance—were foundational to every aspect of these litigations and settlements. The State of New Jersey is empowered to bring claims to protect its citizens from hazardous substances such as PFAS, to remediate and restore its natural resources, and to protect its drinking water from this kind of contamination. We had to fight through challenges to these powers, doctrines and claims every step of the way, and we are incredibly proud of the result the state achieved here, enforcing and enshrining those powers.

The settlements include both monetary recoveries and remediation commitments. From the state's perspective, how did you balance the desire for immediate compensation against the need for long-term environmental cleanup?

The guiding star of this litigation was to ensure that 3M and DuPont pay to address their PFAS contamination, not the citizens of New Jersey. So, the breadth and scope of the relief obtained through the JCOs—including Old DuPont’s uncapped remediation obligations at and from all of its sites, layers of financial assurance mechanisms to ensure the defendants (not the public) pay for this work, natural resource damage funds to restore New Jersey’s water and other natural resources, and PFAS abatement funds to test, treat and address PFAS throughout the water cycle across the state—were all designed to protect the public and New Jersey’s environment. All of this work will take place over many years, so the settlements were structured to provide long-term funding and lasting protections for all of it.

The court noted that the settlements include protections designed to ensure the state is not disadvantaged if a DuPont entity later enters bankruptcy. How difficult was it to negotiate safeguards around future financial risk?

As noted, protecting the taxpayers and ratepayers from these costs, and ensuring the DuPont defendants, in particular, pay to address the contamination they caused, was always a priority of the state. So, utilizing statutory schemes and adding layers of protection that spread the responsibility to pay for and remediate this contamination among Old DuPont, New DuPont, Corteva and Chemours were essential terms for the state. There are layers of third-party financial assurance mechanisms put in place. On top of that, if any one of the DuPont defendants is unable or unwilling to pay their share of the obligations under the JCOs, the others must step forward and pay.

You've described the New Jersey PFAS settlement as a model that could influence other states and claimants. What are the most important lessons from this litigation that other governments pursuing PFAS claims should take away?

I believe that the State of New Jersey’s unwavering commitment to protecting public health and restoring its water resources, in particular, provides a model for structural resolution nationally. The state’s all-of-government approach to resolution—and its creation of PFAS abatement funds and use of preexisting NRD funding mechanisms—also allowed for a comprehensive and durable settlement structure. The long-time horizon of the settlements—recognizing the reality that remediation and water treatment work will go on for many decades—also allows for payment structures and a scope of release that gives the PFAS defendants and sources an opportunity to resolve through a structured format that also allows them to resolve their liability and move forward.

What will you remember most about this matter?

Personally, I will most remember our summer in Camden! The state's trial team was large, with many lawyers, paralegals, and other team members ranging from their first year of practice to several more experienced lawyers and team members.Although we were all working around the clock, the team was as cohesive as I have ever seen, all having fun and fighting for a common goal. It was a great experience for the Kelley Drye team and our esteemed co-counsel.

Mealey's Antitrust/Unfair Competition - 'Veggie' Pouches Containing Avocados Not Deceptively Labeled, Judge Says

Mealey's Daily News Update

August 13, 2026

Cite: 2026-9963 Mealey's Daily News Update 1

Section: 2026, 9963

Length: 798 words

Dateline: SAN FRANCISCO

Body

A California federal judge dismissed with prejudice a consumer's putative class action accusing a manufacturer of food pouches of violating California's unfair competition law (UCL) and other laws by labeling its products as containing a "fruit and veggie blend," ruling that the label is not false because the product contains avocados, which "can be and have been considered vegetables" (Alexa Parashos v. Once Upon A Farm, No. 26-314, *N.D. Calif., 2026 U.S. Dist. LEXIS 177382*).

(Order available 58-260814-055R)

Fruit Or Vegetable?

"Avocados, though botanically a fruit because they have seeds, fit within . . . broad definitions of vegetables, as the edible part of a plant that is eaten as part of a meal," U.S. Judge Edward M. Chen of the Northern District of California wrote in the Aug. 7 ruling, in which he dismissed with prejudice the complaint filed by consumer Alexa Parashos against Once Upon A Farm (OUAF).

Parashos said she bought OUAF's "Wild Rumpus Avocado Fruit & Veggie Blend" with the belief that it contained vegetables because it states "veggie blend" on the label.

She asserted in a complaint against OUAF filed Dec. 15 in the Alameda County, Calif., Superior Court that the product's label is "literally false." She alleged that the product, which is marketed toward parents buying snacks for children, "contains no vegetables" and instead is made of fruits including pineapple, banana, apple, avocado and mint herb.

She cited the Food and Drug Administration as classifying avocados as a fruit.

She accused OUAF of violating the UCL, Cal. Bus. & Prof. Code 17200 et seq., the California false advertising law (FAL), Cal. Bus. & Prof. Code 17500 et seq., and the California Consumers Legal Remedies Act (CLRA), Cal. Civ. Code 1750 et seq., and brought claims for common-law fraud and unjust enrichment/quasi-contract.

She sought to represent a nationwide class comprising all people in the United States who bought the product within the statute of limitations.

OUAF removed the suit to the District Court on Jan. 12 and then moved to dismiss, which Parashos opposed.

Avocados Defended

Judge Chen determined that OUAF's labels would not deceive a reasonable consumer because it is reasonable to describe avocados as vegetables.

"[A] survey of dictionary definitions . . . suggests that the question of whether an avocado is a vegetable is not so clear-cut in common parlance, notwithstanding the technical botanical definition of avocados as a fruit," Judge Chen observed.

The judge noted that "[a]vocados, like peppers, zucchini, and other botanical fruits, lack the 'sweet pulp' that would place them firmly within the 'fruit' category of popular usage" and that avocados are defined in the Collins Dictionary as a vegetable.

Judge Chen wrote that in *Nix v. Hedden, 149 U.S. 304, 307 (1893)*, the U.S. Supreme Court determined that tomatoes, which are technically fruit, may be considered vegetables based on public perception.

"As with tomatoes, some portion of the consuming public perceives avocados as vegetables . . . [P]eople eating chips and guacamole are not likely to think they are eating a fruit dip," Judge Chen said. The judge also noted, "Unsurprisingly, a number of district courts in this circuit have treated avocados as vegetables in consumer protection cases."

The judge concluded, "Given that avocados can be and have been considered vegetables in common parlance and have been treated as such for legal purposes, the label's reference to 'veggie,' where the product contains avocados, cannot be deemed 'literally false' for purposes of the consumer laws at issue."

The judge also said the product's label with an image of fruits and avocados is not misleading.

For these reasons, Judge Chen granted OUAF's motion to dismiss all claims against it and denied leave to amend. "The Court has determined as a matter of law that the use of 'veggie' was not literally false or so unambiguously deceptive that a reasonable consumer would not be expected to check the back label. There are no further facts plaintiff could allege that would plausibly show that a reasonable consumer could be deceived by this product."

Counsel

Parashos is represented by Paul K. Haines of Haines Law Group APC in El Segundo, Calif., and Jack Day and Calvin Bryne of Day Bryne & McIntosh in Costa Mesa, Calif.

OUAF is represented by Michael J. Stortz and K. Taylor Yamahata of K&L Gates LLP in San Francisco.

(Additional documents available: OUAF's motion to dismiss 58-260814-056M

Parashos' opposition 58-260814-057B

OUAF's reply 58-260814-058B

OUAF's June 15, 2026, statement of recent decision 58-260814-059X

Notice of removal with first amended complaint attached 58-260814-060N)

Mealey's Litigation Procedure - $ 24.75M Settlement Approved In Drivers' Classification Class Suit Against Grubhub

Mealey's Daily News Update

August 13, 2026

Cite: 2026-9963 Mealey's Daily News Update 5

Section: 2026, 9963

Length: 1250 words

Dateline: SAN FRANCISCO

Body

A more than decade-long class case against Grubhub Inc. and Grubhub Holdings Inc. (together, Grubhub) by drivers who alleged that they were unlawfully classified as independent contractors was settled for $ 24.75 million, according to an order by a federal judge in California granting final settlement approval and partially granting a motion for attorney fees and costs (Raef Lawson, et al. v. Grubhub, Inc., et al., No. 15-5128, *N.D. Calif., 2026 U.S. Dist. LEXIS 170029*).

(Order granting final settlement approval and partially granting attorney fees and costs available 43-260814-079R)

In the July 30 order, U.S. Judge Jacqueline Scott Corley of the Northern District of California ruled that the settlement, which will provide pro rata shares of no less than $ 25 each to class members based on the number of miles they traveled while using Grubhub's platform, was fair. Settlement administrators stated that the average recovery will be approximately $ 126 per class member.

However, the judge ruled that the $ 8.25 million for attorney fees and costs sought by the plaintiffs was higher than the 25% benchmark in the Ninth Circuit and that the plaintiffs failed to show that such a departure was warranted. Additionally, the judge considered the lodestar method and opined, "As Class Counsel has not provided adequate support for the hours claimed here, the lodestar cross-check does not support a fee award that exceeds the 25 benchmark. Further, even if the Court were to accept Plaintiff's lodestar, a fee award of 25 percent ($ 6,187,500) is nearly 1.2 times their lodestar ($ 5,018,933). Given the substantial recovery for the class, the significant risks of non-recovery or limited recovery had this case proceeded to trial, and the overall length of this litigation, a .8 multiplier is reasonable."

The judge awarded the 25% fee along with the full amount requested for litigation and settlement costs, $ 433,290.45.

Next, the judge considered the plaintiffs' requested service awards of $ 100,000 for Raef Lawson and $ 5,000 for Rejenna Marshall and awarded Lawson $ 10,000 and Marshall $ 2,000. While Lawson argued that the amount he sought was warranted due to the length of the case and size of the recovery, Judge Corley opined that the amount sought was much higher than the awards in the cases cited by the plaintiffs and was "not warranted to the extent Mr. Lawson experienced negative publicity based on his credibility issues at trial." As for Marshall, the judge wrote that the reduced amount was reasonable because "Marshall was added as a plaintiff in this action solely for purposes of settlement and before any discovery or motion practice in the action she previously filed in superior court."

Finally, the judge approved a $ 2 million payment from the settlement for California Private Attorneys General Act (PAGA), Cal. Labor Code 2698 et seq., penalties, with 75% of that amount being paid to the California Labor and Workforce Development Agency for civil penalties and 25% being paid to the settlement class members.

Class Complaint

In September 2015, Grubhub driver Andrew Tan filed a putative class complaint against Grubhub in the San Francisco County Superior Court under the California Labor Code and as a representative action under the PAGA.

Grubhub removed the case to the U.S. District Court for the Northern District of California under the Class Action Fairness Act, *28 U.S.C. 1332(d)* et seq. There, Lawson joined as a plaintiff. Lawson alleged that Grubhub failed to pay the minimum wage in violation of California Labor Code Sections 1194, Cal. Labor Code 1194, and 1197, Cal. Labor Code 1197; failed to pay a time-and-a-half premium for hours worked in excess of 40 per week or eight hours per day in violation of Labor Code Section 1194, 1198, Cal. Labor Code 1198, 510, Cal. Labor Code 510, and 554, Cal. Labor Code 554; and failed to reimburse for necessary business expenses in violation of Labor Code Section 2802, Cal. Labor Code 2802.

The District Court denied class certification, finding that only two of Grubhub's thousands of delivery workers in California, Lawson and one other, had opted out of the arbitration and class action waiver. The court held that Lawson was atypical and not an adequate class representative. At that point, Tan dropped out of the lawsuit.

Trial Bifurcated

The parties agreed to bifurcate the trial by focusing first on whether Lawson was misclassified and second on whether Grubhub owed PAGA penalties for having misclassified its California drivers.

A bench trial on classification was held in September 2017. Judge Corley applied the multifactor test set out in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations, 769 P.2d 399 (Cal. 1989)*, and ruled Feb. 8, 2018, that Lawson was properly classified and the judge granted judgment to Grubhub on all claims.

Lawson appealed to the Ninth Circuit U.S. Court of Appeals.

Three months later, after the appeal, the California Supreme Court adopted the "ABC" test for classification of workers raising claims rooted in California wage orders in *Dynamex Operations W., Inc. v. Superior Court, 416 P.3d 1 (Cal. 2018)*.

Lawson's appeal was then stayed pending a decision by the California Supreme Court regarding a certified question on whether Dynamex applied retroactively. A short time later, the California Legislature passed Assembly Bill No. 5, codifying and slightly modifying the ABC test.

In November 2020, California voters passed Proposition 22, which provided that, if certain conditions are met, "app-based drivers" are independent contractors. Nothing in Prop 22 states that it is retroactive.

In January 2021, the California Supreme Court ruled in *Vazquez v. Jan-Pro Franchising International, Inc., 478 P.3d 1207 (Cal. 2021)*, that the ABC test applies retroactively.

Wage Claims Reinstated

A Ninth Circuit panel reviewed the class certification decision de novo for legal error and then, if there was no legal error, for abuse of discretion. In September 2021, the panel ruled that the district court must reconsider the claims under California's ABC test. The panel also vacated judgment for Grubhub on Lawson's expense reimbursement claim for the District Court to decide in the first instance whether the ABC test applies.

In September 2022, a motion by Lawson for partial summary judgment was denied. Grubhub's motion for partial summary judgment was denied one year later.

A settlement was negotiated and granted preliminary approval in March 2026 after an amended complaint for purposes of settlement was filed.

Counsel

Lawson is represented by Shannon Liss-Riordan and Thomas Fowler of Lichten & Liss-Riordan PC in Boston. Marshall is represented by Todd M. Friedman, Adrian R. Bacon and Matthew R. Snyder of Law Offices of Todd M. Friedman PC in Calabasas, Calif.

Grubhub is represented by Theane Evangelis, Dhananjay S. Manthripragada and Brandon J. Stoker in Los Angeles and Michele L. Maryott in Irvine, Calif., all of Gibson, Dunn & Crutcher LLP.

Objector Samuel Goldstone in Las Vegas is pro se.

(Additional documents available: Lawson, et al's motion for attorney fees, costs and service awards 43-260814-080M

Lawson, et al's motion for final settlement approval and memorandum 43-260814-081M

Goldstone's objections 43-260814-082B

Settlement agreement 43-260814-083P

Lawson, et al's amended complaint for settlement 43-260814-084C)

Mealey's Litigation Procedure - Amazon Responds To Plaintiffs' New Heavy Metals In Rice Complaint

Mealey's Daily News Update

August 13, 2026

Cite: 2026-9965 Mealey's Daily News Update 11

Section: 2026, 9965

Length: 1070 words

Dateline: SEATTLE

Body

In a response to a recently filed second amended putative class complaint brought by customers who contend that Amazon.com Inc. is liable for damages and fraudulent concealment in relation to rice that they bought that contained arsenic and other heavy metals, Amazon expressly denied the allegations and argued that it had no duty to disclose the presence of heavy metals in its rice products (Merriman Blum, et al. v. Amazon.com Inc., No. 25-977, W.D. Wash.).

(Amazon's answer to second amended complaint available 15-260818-012X)

Amazon filed its answer and affirmative defenses to the second amended putative class complaint on July 27. Merriman Blum, along with new named plaintiffs Anam Amirali and Bianca Johnston, filed the second amended complaint on July 13. U.S. Judge James L. Robart of the Western District of Washington on July 10 granted Blum's unopposed motion to amend the complaint to add Amirali and Johnston as plaintiffs and add arguments related to them.

Allegations

Blum, who with a former plaintiff initially filed his putative class action complaint against Amazon on May 23, 2025, in the Western District of Washington, filed an amended complaint on Aug. 22, alleging violation of Section 19.86.010 of the Washington Consumer Protection Act (WCPA), RCW 19.86.010 et seq., and fraudulent concealment with regard to the presence of arsenic and heavy metals in rice that he ordered from Amazon.com.

Blum seeks costs, restitution, compensatory damages, punitive damages and disgorgement of funds. Blum argues that the rice he bought contains arsenic, cadmium, lead and mercury. Moreover, Amazon could also disclose the presence of heavy metals in the rice products it sells, Blum alleges.

"Amazon could also require the third-party merchants that list Rice Products on Amazon's Marketplace test for the presence of heavy metals and disclose any such contaminants in their product descriptions," Blum argues.

He maintains that Amazon had a duty to ensure that rice products were not "deceptively, misleadingly, unfairly, and falsely marketed and that all material information was properly and fully disclosed." The omissions are "material and reasonably likely to deceive reasonable consumers," Blum says.

Dismissal Motion Denied

Amazon moved to dismiss the complaint on Sept. 26. Amazon argued that the amended complaint fails to allege plausible claims for relief under the WCPA and under the theory of fraudulent concealment.

Specifically, it argued that the WCPA claim and fraudulent concealment claims fail because it has no duty to disclose information that is publicly known and easily discoverable. It also argued that Blum did not sufficiently plead that he suffered an injury or plead his claims with particularity as required by Federal Rule of Civil Procedure 9(b), Fed. R. Civ. P. 9(b).

In a Dec. 29 order, Judge Robart denied the motion, finding that Blum sufficiently alleged that Amazon had a duty to disclose, rejecting the retailer's argument that the presence of heavy metals in rice is widely known.

The judge ruled that evidence that some publications have reported on the presence of heavy metals in rice is "not sufficient evidence that such information is widely known and easily available to consumers of Rice Products as required to defeat a WCPA claim."

The judge also ruled that Blum alleged an injury under the WCPA.

Furthermore, the judge said that Blum had stated a claim for fraudulent concealment. "Specifically, Mr. Blum (1) plausibly alleges a duty to disclose and an actual injury; and (2) pleads with sufficient particularity to satisfy Rule 9(b). Consequently, the court concludes that Mr. Blum states a claim for fraudulent concealment," Judge Robart said.

2nd Amended Complaint

Blum, now joined by Amirali and Johnston, brings identical causes of action in the second amended complaint and seeks identical relief. Amirali claims that she purchased Happy Belly brand jasmine rice that she says contained heavy metals, including arsenic. Johnston alleges that she purchased RiceSelect arborio rice from Amazon, which also allegedly contained heavy metals including arsenic.

"Amazon could have manufactured its Rice Products to control the presence of heavy metals and require the same from third-party sellers. Methods for reducing contaminants in rice or rice-based products exist across both farming and manufacturing. Recent research suggests that strategically timing field wetting and drying cycles, along with careful management of soil moisture, fertilizer application, and other factors can help growers minimize both cadmium and arsenic levels in rice," the plaintiffs say in their complaint.

The plaintiffs allege that Amazon's omissions of information about heavy metals "were intended to and did, in fact, cause consumers like Plaintiffs and the other Class Members, to purchase products they would not have purchased if Amazon had disclosed that the products contained heavy metals, or for which they would not have paid a premium price, or any price at all."

In its answer to the claims, Amazon acknowledges that federal agencies have established arsenic levels for water, juice and infant rice cereal but says that "the federal regulations and other agency standards speak for themselves as to their content, and do not apply to the Products at issue in this action."

Amazon also raises a series of 15 affirmative defenses, arguing in part that the plaintiffs lack standing to assert their claims, that they have adequate remedies at law precluding the recovery of equitable relief and that their claims are barred by Section 230 of the Communications Decency Act, *47 U.S.C. 230*.

Counsel

The plaintiffs are represented by Steve W. Berman of Hagens Berman Sobol Shapiro LLP in Seattle and Catherine A. Peterson, Rebecca A. Peterson and Krista K. Freier of Hecht Partners LLP in Bloomington, Minn.

Amazon is represented by Kevin Kramer and K'reisa Cox of Davis Wright Tremaine LLP in Seattle, Jennifer J. Nagle and Robert W. Sparkes III in Boston and Loly G. Tor in Princeton, N.J., all of Reed Smith LLP.

(Additional documents available: Plaintiffs' motion to amend complaint 15-260818-013M

Order granting motion to amend 15-260818-014R

Order denying motion to dismiss first amended complaint 15-260106-031R

Plaintiffs' second amended complaint 15-260818-015C)

Bloomberg Law

Manage Newsletters

Meta Defeats Financial Professionals' Pennystock Deception Suit

Aug. 14, 2026, 9:40 AM PDT

Meta Platforms Inc. convinced a federal judge that claims by financial professionals suing the company over its role in a fraudulent pump-and-dump penny stock scheme were barred.

The plaintiffs conceded the core illegal content that caused their injury came from the scammers, not Meta, Judge Richard Seeborg said Thursday for the US District Court for the Northern District of California. Their claims are therefore barred by Section 230 of the Communications Decency Act.

The financial professionals alleged scammers, who aren't defendants in the suit, posted ads on Facebook and Instagram that impersonated them and directed victims to investment-focused chats on Meta's messaging platforms. Their complaint said the scammers posed as the financial professionals and used Meta's generative AI tools to create ads featuring the financial professional's identities.

But the complaint's impersonation allegations are "thin," Seeborg said.

The financial professionals dropped the allegations about how they were impersonated from their amended pleading, so reading the complaint most favorably to the plaintiffs, "it is not plausible that they were impersonated in the ads the scammers disseminated on Facebook and Instagram," the judge said.

That would mean the only offending content was the posts and messages the scammers disseminated on Meta's messaging platforms, and the financial professionals can't hold it accountable for that content because they didn't allege it contributed to the creation of those posts, Seeborg said.

The plaintiffs' theory that Meta was liable for the injury to their professional reputations because the ads Meta allegedly helped create were a gateway to the messaging groups is precluded by Section 230, which immunizes online platforms from liability for third-party content.

The only way to have prevented the posts in the messaging groups would have been for Meta to monitor third-party content and prevent the scammers from posting, Seeborg said.

The result here differs from that in a related case from investors who sued Meta over the same pennystock scheme because in that case the plaintiffs alleged Meta helped create the ads through generative AI tools.

Seeborg also dismissed the financial professionals' breach of contract claim. The plaintiffs argued Meta's terms of service include a provision that promises the company will remove content that goes against community standards and its failure to respond to their attempt to remove the content breached that obligation.

That provision doesn't create an enforceable promise and instead serves as a warning for users who post offending content, Seeborg said.

"Nowhere does this provision indicate any intention to protect Meta's other users from the ills of the offending content," Seeborg said.

He gave the plaintiffs 21 days to file an amended complaint.

The plaintiffs are represented by Scott + Scott Attorneys at Law LLP.

Meta is represented by Wilmer Cutler Pickering Hale and Dorr LLP.

The case is Suddeth v. Meta Platforms Inc. , N.D. Cal., No. 3:25-cv-08581, 8/13/26 .

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Bloomberg Law

Manage Newsletters

PayPal Gets Anti-Steering Case Tossed for Good Over Standing

Aug. 13, 2026, 11:41 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal judge dismissed claims accusing PayPal Holdings Inc. of enforcing anticompetitive agreements with merchants that caused consumers to pay more for goods online, concluding the plaintiffs still lack standing.
- The plaintiffs failed to allege their injuries are "sufficiently direct and nonspeculative," and failed to allege facts that explain the significance of the passed-on transaction fees relative to the other numerous pricing factors.
- The judge dismissed the state-law claims without prejudice for lack of subject-matter jurisdiction and closed the case, which was brought by two consumer plaintiffs who claimed they were overcharged as the result of PayPal's alleged anticompetitive conduct.

A federal judge dismissed claims for a third and final time accusing PayPal Holdings Inc. of enforcing anticompetitive agreements with merchants that caused consumers to pay more for goods online, concluding the plaintiffs still lack standing.

The plaintiffs that first sued the payment company in 2023 failed to allege their injuries are "sufficiently direct and nonspeculative," said Judge Jeffrey S. White of the US District Court for the Northern District of California in a Wednesday order granting PayPal's motion to dismiss the complaint with prejudice.

White also dismissed the state-law claims without prejudice for lack of subject-matter jurisdiction and closed the case.

The case, filed in 2023, was brought by two consumer plaintiffs who regularly shopped on websites for retailers including Walmart, eBay, Target, and Home Depot, and claimed they were overcharged as the result of PayPal's alleged anticompetitive conduct.

PayPal's anti-steering rules allegedly barred e-commerce merchants from offering price discounts when consumers used non-PayPal means of payment, leading to higher prices, the plaintiffs claimed.

PayPal argued that the plaintiffs' claim that they were injured by overcharges was too attenuated and speculative.

White in 2024 granted PayPal's motion to dismiss the plaintiffs' antitrust claim in the original complaint, saying it was too indirect to maintain antitrust standing.

In 2025, he again concluded that the plaintiffs failed to allege antitrust injury and didn't allege facts showing PayPal had market power.

In his Wednesday order, White didn't budge on the standing issue.

The plaintiffs failed to allege facts that explain the significance of the passed-on transaction fees relative to the other numerous pricing factors for any goods or services Plaintiffs allegedly purchased, White said.

The plaintiffs are represented by Hagens Berman Sobol Shapiro LLP. PayPal is represented by A&O Shearman.

The case is Sabol v. PayPal Holdings Inc. , N.D. Cal., No. 4:23-cv-05100, order 8/12/26 .

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Securities

Manage Newsletters

SEC Delays Crypto Regulation Meeting in Latest Industry Setback

Aug. 13, 2026, 2:53 PM PDT

The Securities and Exchange Commission canceled a Friday meeting where the agency was expected to unveil new plans for digital assets as landmark crypto legislation remains stalled in Congress.

The regulator announced earlier this week it planned to meet "to create a tailored offering regime for certain investment contracts involving crypto assets." That meeting will be moved to a later date due to an unforeseen scheduling issue, an agency spokesperson said in a statement Thursday.

The move comes after lawmakers failed to pass a crypto market structure bill before the Senate's August recess. That effort was delayed earlier this month largely over a partisan spat about ethics provisions curbing public office holders' activities in the sector after President Donald Trump reported earning $1.4 billion from crypto and memecoin-related ventures in 2025.

Read More: SEC Poised to Unveil Major Crypto Plans as Clarity Act Stalls

Senate Majority Leader John Thune filed to set up a procedural vote on the bill, known as the Clarity Act, when lawmakers return mid-September. That would give Congress a short runway to pass the legislation before lawmakers turn their eyes to the midterm elections.

SEC Chairman **Paul Atkins** has repeatedly calling writing clear rules for the digital asset industry "job number one" for the agency while urging lawmakers to continue their work on crypto market structure legislation.

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Trump's 401(k) Proposal Shows Evidence of Phony Public Support

Aug. 13, 2026, 3:00 AM PDT

Summary by Bloomberg AI

AI Generated

- A comment supporting a plan to invest Americans' retirement plans in private equity was submitted to the US Department of Labor under the name Danna Oderman, who died in December.
- Nearly 12,000 comments showing signs that they may have been manufactured to resemble grassroots support for the proposal were submitted, lacking personalization and variation in the text.
- Bloomberg found five cases in which people said they or their family members did not submit comments, and dozens of companies and industry groups were unable to say who was behind the language in the supportive comments.

Heath Oderman was surprised to learn that a comment supporting a plan to get more Americans' retirement plans invested in private equity and other "alternative" assets had been submitted to the federal government in May under his mother's name.

She couldn't have done it, he said, because she died in December.

"That's not my mom," he wrote in an email to Bloomberg News after being alerted to the comment, which was submitted to the US Department of Labor on May 3 under the name Danna Oderman. "The language is nothing she would ever have used while on this Earth."

The comment was one of nearly 12,000 showing signs that they may have been manufactured to resemble grassroots support for the controversial measure. Unlike the more than 30,000 submissions that opposed the proposal, these supportive comments lacked any personalization, such as signatures, and had no variation in the text. And while almost all of the anti-rule comments included the commenter's city, state or email address, the pro-rule form letters didn't include that information.

Bloomberg attempted to contact dozens of the people whose names were attached to the 12,000 comments and found five cases in which people said they — or their family members — did not submit them. Like Danna Oderman, all of them had unique names that allowed Bloomberg to identify people through a national search of public records. While it's possible that others have those same names, reporters could find no evidence that they exist.

Heath Oderman

Photographer: Parker Michels-Boyce/Bloomberg

Even more mysterious: dozens of companies, industry groups and others in favor of the proposal were unable to say who was behind the language in the supportive comments.

The practice of ginning up commenters, known as “astroturfing,” has become familiar in Washington, where agencies seek public comment as part of their rule-making process. It’s neither unusual nor improper for such comments to arrive as form letters, provided that the individuals whose names appear on them have actually signed their names. But that’s not always the case. Both the Federal Communications Commission and the US Securities and Exchange Commission have seen rulemakings tainted by astroturfing in recent years.

While such campaigns have created political backlash and can lead to government investigations, they’re difficult to police and perpetrators are rarely punished. One exception was the New York Attorney General’s probe into millions of comments submitted in favor of the first Trump administration’s proposal to do away with net neutrality, which prohibited internet providers from giving priority service to one website over another. The state investigation led to more than $4 million in penalties and disgorgement against firms that facilitated the astroturfing.

The comments attributed to Danna Oderman and others may not receive as much scrutiny. In response to questions about the evidence of astroturfing, a spokesperson for the Labor Department declined to say whether it would investigate. The department’s “focus when reviewing a comment is on the substance of the comment and not on the identity of the commenter or the number of commenters making the same point,” the spokesperson said.

A family photo of Danna Oderman, center, with her husband and children.
Photographer: Parker Michels-Boyce/Bloomberg

He added that the department relies on regulations.gov, a website run by the General Services Administration , to accept public submissions on proposed rules. GSA declined to comment.

The Employee Benefits Security Administration , which is part of the Labor Department, published the draft rule on March 31. The proposal would help fulfill part of President Donald Trump 's executive order, issued a year ago, that seeks to broaden access to alternative investments, such as commodities, real estate and crypto. The private equity industry, in particular, has been lobbying for the change, which could ease its path to managing more of the roughly $10 trillion that workers have stashed in 401(k) retirement accounts .

Trump's nominee to head the Labor Department told a panel of senators in July that the issue remains a top priority.

"We're working very hard at the Department of Labor to make sure that 401(k) plans have access to alternative investments," said Keith Sonderling , the department's acting secretary. "This is how President Trump is going to make America wealthy again."

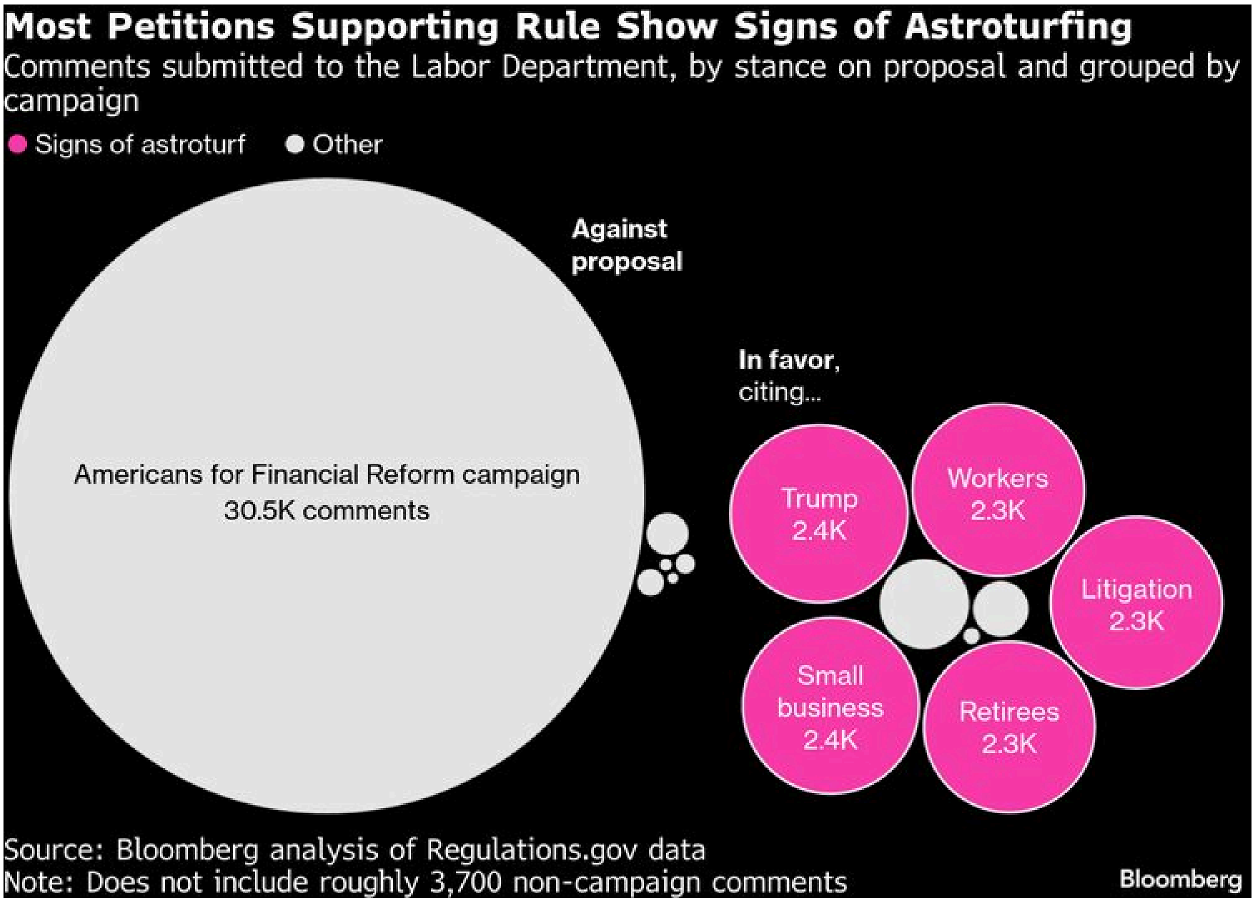
The administration has argued that American workers are missing out on the returns and portfolio diversification that have made alternatives a mainstay of public pensions. Many of those plans, which guarantee income to participants, have a quarter or more of their money invested in alternative investments. The typical 401(k) plan, in contrast, allocates almost nothing to such assets.

To ease the path for alternatives in 401(k)s, the proposed rule would give employers a "safe harbor" from lawsuits alleging they violated fiduciary duties by offering what can be riskier, more expensive and less liquid investments. Companies that take steps to "objectively, thoroughly and analytically" weigh those factors would be protected from such litigation, which the Labor Department argues is often frivolous.

Roughly 47,000 comments on the proposal poured into the government during the roughly 9-week period that ended June 1. That's double what the next-most-commented EBSA rule received over the past five years.

Bloomberg reporters used computer programs that examined the comments' distinctive phrasing and grouped those containing identical language into campaigns.

The results largely aligned with the government's own classification of comments into about a dozen distinct groups. More than 92% of the submissions, both for and against the proposal, followed some sort of form letter.



The most popular of these was a petition that urged the government to scrap the proposal, arguing it would expose people to "expensive fees and dangerous levels of risk." That message was sent more than 30,000 times, representing about two-thirds of all submissions.

Ninety-nine percent of these commenters included an email address and location in their submission, and many had personalized messages or signatures at the end of the form letter. Bloomberg attempted to contact three dozen of them. Most didn't respond. But Judith Bergson, a social worker in Massachusetts, confirmed that she sent the comment and would be "terribly upset" if private investments were put into her retirement plans. "I'm definitely a person," she added in an interview.

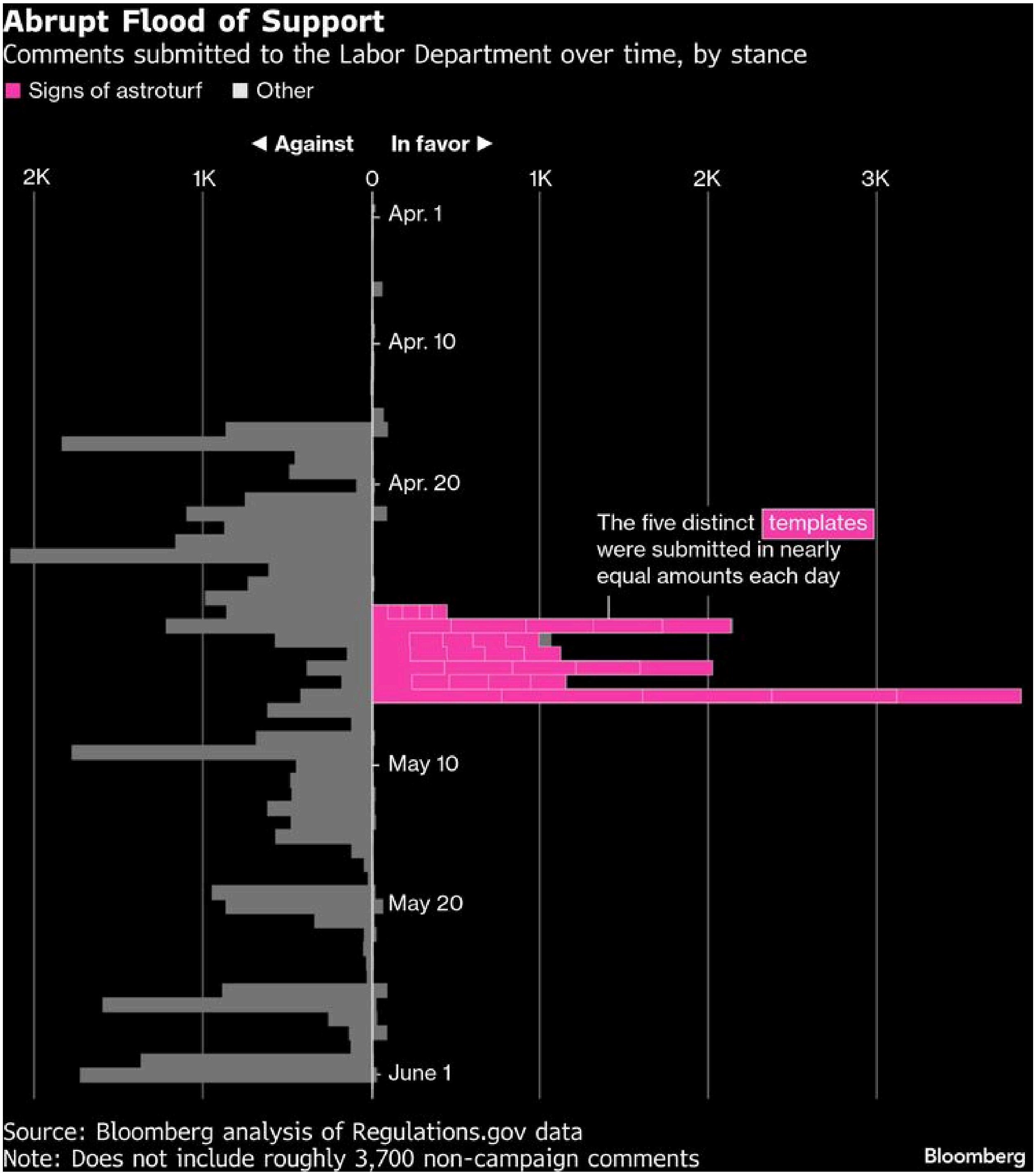
The advocacy group Americans for Financial Reform drafted the form letter that Bergson signed and worked with partner groups to disseminate it, said Ericka Taylor, the organization's co-executive director. She said she was unsurprised by the scale of the response.

The rule "has the potential to really devastate the funds and investments of regular folks," she added. "We have seen no data that anyone would benefit but private equity."

Determining who drafted the five form letters supporting the rule is more difficult. Bloomberg reporters contacted more than two dozen investment firms, trade groups and advocacy organizations that have announced their support for the rule. None said they had information about who was behind the campaigns.

Roughly 12,000 form-letter comments backing the proposed rule were almost evenly split across five templates. Each comment that followed a template bore a different person's name but otherwise was remarkably consistent — down to the number of characters, punctuation and line breaks.

The comments following these five templates were submitted in almost identical amounts to one another each day between April 29 and May 5, then ceased. The other submissions for the campaign opposing the rule came in at more random intervals and stretched out over more of the two-month comment period.

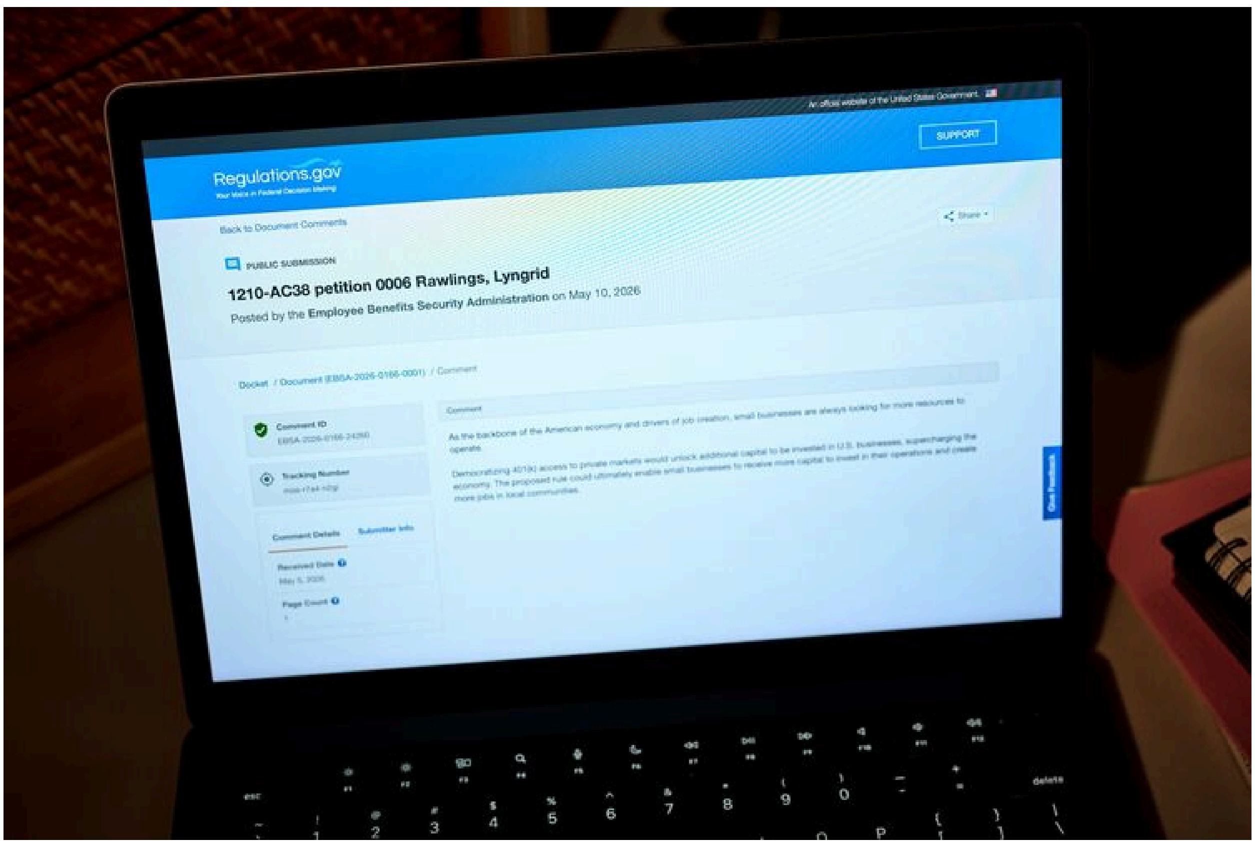


The comment that had Danna Oderman's name emphasizes the benefit to small businesses by "democratizing" access to private markets. Her son Heath said that she worked at a youth center on a US Navy base.

Another template takes aim at plaintiffs attorneys, saying the plan will end "frivolous lawsuits." The third is written from the vantage of a retiree who supports the administration effort to "modernize" 401(k) plans. A fourth focuses on the "millions of private sector workers" who are missing out on the same investment choices as pension plans. And a fifth begins simply: "Thank you, President Trump."

Since the supportive comments didn't include locations or email addresses, reporters used a two-step process to try to find some of the people behind them. First, artificial intelligence helped identify unique names. Then, manual searches for dozens of those names in the LexisNexis database produced a shorter list of names that were each tied to just one individual. While there are holes and inconsistencies in the database, it draws on tens of billions of public and proprietary records. Bloomberg reporters did additional web research and were unable to find any evidence that other people with these names exist.

Reporters contacted three dozen of them, or their next of kin. Most did not respond. But those who did all vehemently denied submitting the comments or said their relatives couldn't have done so because they were dead. Some added that they were upset and mystified by the fact that their names, or their family members' names, were associated with the effort.



A comment attributed to Lyngrid Rawlings was submitted in May. Her daughters said she died in 2024.
Photographer: Gabby Jones/Bloomberg

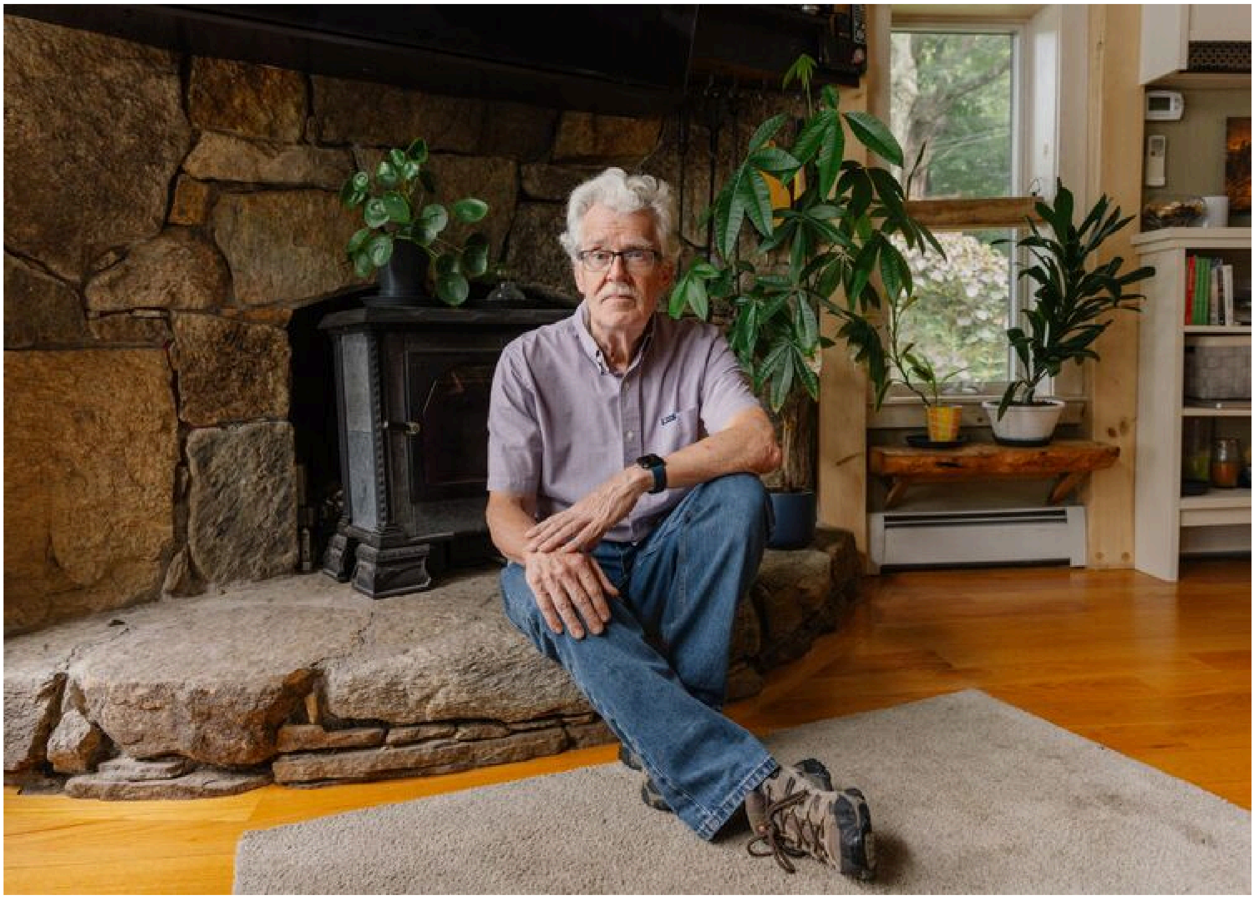
Among them were Lauren and Lisa Rawlings. They were shocked to find that a comment bearing their mother's name was submitted in May. Lyngrid Rawlings died in 2024 after a long career as an educator and US foreign service officer, her daughters said.

"It's deeply disrespectful and dishonoring," Lauren added. "Her life was about service, and to have her name misused in this way is the antithesis of everything she lived for."

No one else in the family has their mother's first name, which their grandparents created, the sisters said.

Another was Karl Giberson, a retired professor in Massachusetts with his own Wikipedia page and a long list of published articles and books. “Those don’t reflect my sentiments, at all,” he said after learning about the comment.

If the submissions following the five templates turn out to be astroturf, there would be relatively few individuals supporting the administration’s rule in the public comments.



Karl Giberson
Photographer: Cassandra Klos/Bloomberg

A former Labor Department official who opposes the rule said it would be “deeply problematic” if the only way supporters could show public demand for the rule “is by manufacturing commenters.”

“All it does is impugn the process and give people another reason to attack this thing,” said Ali Khawar, who served under four presidents at the Labor Department — Democrat and Republican — including a stint as the acting head of EBSA during the Biden administration.

Finding suspect patterns in submissions then asking individuals whether they sent the comments is a standard way of identifying astroturfing, said Steven Balla, co-director of the Regulatory Studies Center at George Washington University, who has testified about the phenomenon before Congress. Still, he added, it can be challenging to prove who is responsible.

“Agencies and governments have a tough time with this,” he said.

About 3,700 comments didn’t come in as form letters. More than 200 of them included attachments, which tended to be substantial submissions from companies, lawmakers, industry groups and public-interest organizations. This batch of 200 was highly divided, with many taking nuanced positions for and against the proposal.

Agencies tend to spend their time with these more substantial submissions, especially if they think the commenter has the capacity to sue, said Devin Judge-Lord, an assistant professor at the University of Michigan's Gerald R. Ford School of Public Policy, who studies the politics of rulemaking. But industry-aligned groups sometimes manufacture supportive comments to "give political cover" for an agency pursuing an unpopular proposal, he added.

Perhaps no one was more surprised to learn about a comment in favor of the 401(k) rule than Ross Waetzman, whose name also returns just one result in LexisNexis. A turnaround and restructuring adviser in Wilmington, Delaware, he said he'd invested in private equity himself.

Yet he's against letting unsophisticated investors allocate money to what could be poorly performing assets. The private equity industry has been having a hard time unloading investments in recent years, hurting returns. Getting retail investors to buy in through their 401(k)s, Waetzman added, could just end up giving "private equity investors, who have not been able to exit, an off-ramp."

– *With assistance from Peter Champelli, Silla Brush and Laura Benitez*

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J&J Says No To Reviving Stelara Case

law360.com/articles/2513168/j-j-says-no-to-reviving-stelara-case

(August 13, 2026, 8:18 PM EDT) -- Johnson & Johnson has asked the Fourth Circuit not to revive CareFirst's antitrust suit alleging the company tried to monopolize the market for the immunosuppressive drug Stelara.

The pharmaceutical giant said the challenge is not to its acquisition of the Momenta manufacturing patents for Stelara biosimilars but to its subsequent enforcement of them, which it says is constitutionally protected petitioning activity under the Noerr-Pennington doctrine and cannot serve as the basis for antitrust liability unless an exception to the Noerr-Pennington doctrine applies.

The Noerr-Pennington doctrine protects businesses from antitrust liability when they seek government action, even if that action would hurt competitors.

J&J said CareFirst asked the court to apply a strict-liability rule that would make it illegal to enforce patents acquired via a corporate acquisition, "regardless of what was known about the patents or their competitive effect at the time."

"No court has endorsed such an unworkable standard," J&J's brief added. "And doing so now would unnecessarily open a circuit conflict."

CareFirst's **2023 complaint** alleged that Johnson & Johnson bought Momenta, a research company with patents for methods of producing Stelara biosimilars, to stop competitors from producing biosimilar versions of the drug once patent protection expired. CareFirst's suit also claimed that the pharmaceutical giant deliberately withheld critical information from the U.S. Patent and Trademark Office when it sought a new patent covering the use of Stelara to treat ulcerative colitis.

The district court then **cut key claims** from the lawsuit and said a trial was not warranted at the time.

CareFirst **argued in June** that the judge created a new standard for monopolization claims when he dismissed claims from the suit and misread a Fourth Circuit decision in ruling that monopolization requires a showing of specific intent. The Federal Trade Commission also told the Fourth Circuit that the district court had erred in its ruling regarding specific intent.

But in Wednesday's brief, J&J said the district court was correct in granting summary judgment because CareFirst was unable to establish that Johnson & Johnson knew what the Momenta manufacturing patents claimed in 2020 or that it knew or could have known that they could be enforced against future biosimilar Stelara manufacturers.

Johnson & Johnson said it purchased Momenta to acquire a different drug, Imaavy, which had no connection to Stelara, and that it did not know what the patents claimed at the time or that they could be enforced against Stelara manufacturers years later.
-
J&J said the case is a textbook example of a defendant acquiring alleged monopoly power "'unwittingly' by 'historic accident,' if at all."

"At that time," J&J said, "it did not know whether there would be Stelara biosimilars, who would make them, and what manufacturing processes they would use. And the patents themselves did not identify ustekinumab among the 29 different compounds the claimed processes could be used to make."

J&J added that "no amount of diligence" could have revealed whether a future Stelara biosimilar might use the processes covered by the patents.

It also said there was no evidence then that the acquisition of the patents had actual or foreseeable anticompetitive effects.

Johnson & Johnson also said CareFirst wrongly argued that the district court improperly applied a specific-intent standard. It said CareFirst argued it could prove its claim by merely showing that Johnson & Johnson knowingly purchased Momenta.

"For plaintiffs, it would make no difference that J&J did not know what the manufacturing patents claimed in 2020 — or that J&J could not know that biosimilar Stelara manufacturers might one day infringe them," J&J said.

That standard amounts to strict liability, and it is irreconcilable with antitrust case law, which permits liability only for the willful, not unwitting, acquisition of monopoly power and requires that the defendant's business rationale be exclusionary, J&J said.

Johnson & Johnson also said CareFirst's claims fail because it did not establish that the acquisition of Momenta had any anticompetitive effect, that J&J had an anticompetitive rationale for acquiring Momenta, that any asserted anticompetitive harm outweighed the procompetitive benefits of J&J's acquisition of Imaavy or that J&J had a less restrictive alternative.

Johnson & Johnson also said the district court correctly found that the allegedly withheld information, the UNIFI Protocol, was before the examiner and that it couldn't be "but-for material" because it reflected J&J's subjective expectations. It also said CareFirst was unable to show specific intent to deceive.

Counsel for Johnson & Johnson and CareFirst did not immediately respond to requests for comment Thursday.

CareFirst is represented by Matthew M.H. Wessler, Matthew Guarnieri and Stefanie Ostrowski of Gupta Wessler LLP, Thomas M. Sobol, Hannah W. Brennan and Rebekah Glickman-Simon of Hagens Berman Sobol Shapiro LLP, Peter D. St. Phillip and Uriel Rabinovitz of Lowey Dannenberg PC, William H. Monroe Jr., Marc C. Greco, Kip A. Harbison and Michael A. Glasser of Glasser & Glasser PLC and John D. Radice of Radice Law Firm PC.

Johnson & Johnson is represented by Christina Guerola Sarchio, George G. Gordon, Julia Chapman and David Michael Costigan of Dechert LLP.

The case is CareFirst of Maryland Inc. v. Johnson & Johnson, case number 26-1248, in the U.S. Court of Appeals for the Fourth Circuit.

Customers Can't Depose Google, Apple CEOs, 9th Circ. Says

(August 13, 2026, 9:41 PM EDT) -- The Ninth Circuit has denied a group of consumers' petition for writ of mandamus challenging a lower court's order rejecting their repeated requests to depose Google's and Apple's CEOs and several other executives in antitrust litigation alleging the search engine giant shut out competitors.

"Petitioners have not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus," the one-page order said. "The petition is denied."

The Ninth Circuit's Wednesday order ends the consumers' April petition asking the appellate court to review a California federal judge's denial of their repeated requests to depose a dozen senior executives, including current and former CEOs, as well as former general counsel.

The petition stemmed from high-stakes litigation **that commenced in April 2022** in the Northern District of California alleging antitrust violations against Google and Apple, in which the consumers accused the parties of striking a deal where Apple wouldn't wade into the search market in return for an illegal sharing of billions of dollars of Google's revenue from search.

The alleged anticompetitive conduct resulted in lower quality search services when it came to privacy and the use of consumer data, as well as less innovation, the consumers claimed.

The consumers' suit was heavily based on the U.S. Department of Justice's 2024 case, which convinced a D.C. federal judge that Google is an illegal monopolist with contracts that make it the default search engine on devices and browsers from Apple, Mozilla, Samsung and others.

In the Northern District of California case, U.S. District Judge Rita F. Lin dismissed **consumer conspiracy claims against Apple,** along with allegations that Google paid off the iPhone maker to not create its own search engine.

But in January 2025, the judge **kept intact other monopolization claims** that alleged Google's dealings stifled competition, and lifted a stay on discovery.

About a month later, Judge Lin refused to allow the consumers to amend their pleading to further add Apple back as a defendant, and she laid out a case schedule, setting a jury trial for November.

The litigation was headed into discovery, but Apple has since argued that the consumers' counsel has continued to **subpoena its executives** and sought sanctions before the California district court to force the consumers to stop.

Meanwhile, Google sought **summary judgment**. The consumers also asked the court **to award** them partial summary judgment before trial.

In their April 27 mandamus petition to the Ninth Circuit, the consumers argued the lower court erred and that they should be permitted to depose the tech giants' top executives, including those who negotiated and signed the allegedly anticompetitive agreements at issue.

The consumers contended the discovery dispute was timely given the upcoming Nov. 2 jury trial in the case; without the depositions, their case against Google could suffer. Furthermore, they argued Apple wouldn't be harmed if ordered to participate in discovery.

In June, Google and Apple filed separate briefs in response to the petition, arguing the appeal was unwarranted, and the repeated deposition demands were unjustified "harassment." Google and Apple also said the mandamus petition fails to explain why they can't appeal the lower court's discovery order until after a judgment is entered in the case.

Google argued the discovery dispute didn't warrant mandamus review, which the search engine behemoth noted was only permitted in extraordinary circumstances. Google also said the lower court didn't clearly err in concluding that the consumers' discovery demands weren't proportional to the needs of the case, and the consumers' repeated efforts to depose the executives amounted to abuse of the discovery process.

Apple echoed Google's position, and added that the consumers' repeated discovery demands were particularly egregious since the court dismissed Apple from the case. Apple also pointed out that the consumers could get the discovery they want from Google.

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

U.S. Circuit Judges Morgan Christen, Eric D. Miller and Daniel P. Collins sat on the panel for the Ninth Circuit.

The consumers are represented by Joseph M. Alioto and Tatiana V. Wallace of the Alioto Law Firm, Josephine Alioto of The Veen Firm, Robert J. Bonsignore of Bonsignore Trial Lawyers PLLC, Jeffrey K. Perkins of the Law Offices of Jeffrey K. Perkins and Lawrence G. Papale of the Law Offices of Lawrence G. Papale.

Google is represented by John E. Schmidtlein, Graham Safty and Kees D. Thompson of Williams & Connolly LLP.

Apple is represented by Sarah M. Ray, Aaron T. Chiu, Melissa Arbus Sherry and Lia Rose Barrett of Latham & Watkins LLP.

The case is Mary Katherine Arcell et al. v. United States District Court for the Northern District of California, San Francisco, case number 26-2642, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Dorothy Atkins. Editing by Drashti Mehta.

Spirit Execs Ax Investor Suit Over Pre-Ch. 11 Claims, For Now

law360.com/articles/2513353/spirit-execs-ax-investor-suit-over-pre-ch-11-claims-for-now

(August 13, 2026, 10:50 PM EDT) -- A Florida federal judge dismissed a lawsuit accusing Spirit Airlines' current and former top brass of misleading investors about the budget air carrier's prospects amid two bankruptcy filings, saying Thursday that the challenged statements are either corporate "puffery" or otherwise nonactionable, but the plaintiffs can rework their complaint.

U.S. District Judge William P. Dimitrouleas' **order** grants the **motion to dismiss** filed by Spirit Aviation Holdings' CEO David Davis, Chief Financial Officer Frederick S. Cromer and former CEO Edward M. Christie III. Investors Terrance Mleczko and TM Defense Solutions LLC filed the **proposed class action** in September 2025 following the discount carrier's bankruptcy last August, just five months after it **emerged** from the **first bankruptcy** it declared in November 2024.

Mleczko and his company accuse the executives of assuring investors that Spirit had successfully emerged from bankruptcy protection despite the company being, among other problems, "on the brink of breaching liquidity covenants, risking a default and acceleration of its debt obligations" and failing to meet delivery terms for a $519 million aircraft sale that was necessary for its liquidity needs.

In his **order** Thursday, the judge agreed with the executives that two of the challenged statements — including the comment, "We're pleased to complete our streamlined restructuring and emerge in a stronger financial position to continue our transformation and investments in the guest experience" — are "nonactionable corporate puffery or opinion."

"A statement is nonactionable, immaterial puffery where it is 'excessively vague, generalized and optimistic,'" Judge Dimitrouleas said. "These statements in the March 12 and May 27, 2025, press releases — that Spirit was in a 'stronger financial position' after the first bankruptcy, that Mr. Davis was 'pleased' with Spirit's 'progress' are precisely the types of statements the Eleventh Circuit has held to be nonactionable."

Regarding forward-looking financial statements contained in Spirit's Q1 2025 10Q filing with the U.S. Securities and Exchange Commission, Judge Dimitrouleas agreed with Spirit that they are not actionable because the company also provided risk disclosure statements.

The judge noted that the Private Securities Litigation Reform Act provides a safe harbor from liability for forward-looking statements that turn out to be false "if the statement is 'accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement.'"

For instance, Spirit's statement that "'it is probable we will have sufficient liquidity to meet our future cash needs'" was accompanied by "cautionary language that states, 'The company can give no assurances that its current plan will be successful or that it will be able to secure additional sources of funds to support its operations,'" according to the judge.

What's more, that same challenged statement is also a nonactionable statement of opinion, Judge Dimitrouleas said, adding that it "makes no affirmative representation, but merely opines on the probability of an outcome."

The judge also found that statements about an aircraft sale agreement and liquidity statements in the Q1 2025 10Q filing were not actionably misleading.

Finally, Judge Dimitrouleas found that the plaintiffs also have not sufficiently pled that the executives "acted with the requisite scienter," or a "showing of either 'intent to deceive, manipulate or defraud,' or 'severe recklessness,'" the order states.

The judge gave the plaintiffs until Aug. 27 to file an amended complaint curing the identified deficiencies.

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

The plaintiffs are represented by Nathan C. Zipperian and Jayne A. Goldstein of Miller Shah LLP, Joshua B. Silverman, Brian P. O'Connell, Jaime D. Nolasco and Jeremy A. Lieberman of Pomerantz LLP, and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

The Spirit executives are represented by Alec H. Schultz and Carly A. Kligler of Hilgers PLLC, and Dana M. Seshens, Daniel J. Schwartz and Esther C. Townes of Davis Polk & Wardwell LLP.

The case is Mleczko et al. v. Davis et al., case number 0:25-cv-61959, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Rae Ann Varona, Vince Sullivan and Emily Lever. Editing by Adam LoBelia.

Albertsons Didn't Flag Suspicious Opioid Orders, Judge Hears

law360.com/articles/2513229

Ben Adlin

(August 13, 2026, 11:19 PM EDT) -- Albertsons failed to report its pharmacies' unusual opioid orders to the U.S. Drug Enforcement Administration despite explicit instructions from the agency to do so, the retailer's vice president of pharmacy compliance testified Thursday during a bench trial in Washington's lawsuit accusing the chain of exacerbating the state's opioid epidemic.

The DEA told Albertsons Cos. Inc. in a December 2007 letter that as an opioid distributor, it was required to disclose "suspicious orders of controlled substances," including unusually large or frequent orders from pharmacies, according to an exhibit shown to King County Superior Court Judge Janet Helson during day 20 of the ongoing trial.

But the company never reported any such orders from its Washington pharmacies, Anthony Provenzano, vice president of pharmacy compliance at the grocery chain, said in a September 2025 video deposition, even when its stores placed orders for opioid products that were multiple times more than their average amounts.

"Albertsons never reported any suspicious order from its Washington pharmacies, correct?" asked Jay Lichter of Baron & Budd PC, who represents the state.

"Correct," Provenzano replied.

In a separate deposition played Thursday, Cliffton Amend, a former Albertsons pharmacy district manager, acknowledged that a pharmacy employee at Safeway Inc. — which was later acquired by Albertsons — stole more than 17,000 prescription pills over a yearlong period before being caught.

"Do you have any idea how someone like this could divert that many doses over a one-year period without notice by anyone at the store?" Lichter pressed, noting that the diversion from 2013 to 2014 was one of the largest cases of opioid losses among Albertsons pharmacies.

"No," answered Amend.

After the misconduct was discovered, Amend testified, the worker remained at the company and was transferred to another location. He added that the employee was suspected of selling the opioids because of his expensive attire.

Washington accuses Albertsons of fueling opioid-related deaths and other harms in the state through lax oversight and failure to report suspicious drug orders. The company's alleged failure to investigate and report the orders created a public nuisance and violated Washington's Consumer Protection Act, the state claims.

Albertsons' pharmacy distribution center routinely checked the stores' orders for accuracy, according to separate testimony from David Beck, who managed pharmacy operations at the center from 2014 to 2016. But the center never refused to fulfill an order, nor did it ever consider any orders to be suspicious.

"Are you aware of any instances in which Albertsons ever reported an order to the DEA on the grounds that it was suspicious," Lichter asked.

"I'm not aware," Beck said.

Amend, the former pharmacy district manager, further testified that individual pharmacy managers experienced "inherent stress" in their jobs. He acknowledged under questioning from Lichter that he had observed Safeway and Albertsons workers self-medicate as a result.

Albertsons has argued that its opioid dispensing practices merely reflected the medical community's evolving relationship with opioid drugs. Amend said that when he was a student in pharmacy school, the American Medical Association and other groups put a "big focus" on the treatment of pain — often with prescription opioids.

"These legitimate prescriptions being written by doctors that were following these guidelines created this opening of a faucet," he said, describing the flow of opioids into Washington and other states. "We were all part of it in the healthcare system ... and then the realization hit that this was bad."

"Pharmacies play a role in controlling that flow, correct?" Lichter asked.

"Yeah," Amend replied.

Judge Helson **ruled in June** that as a dispenser and distributor of controlled substances, Albertsons had a duty to perform due diligence and report any apparently suspicious orders. Now, Washington is seeking to prove its claims that the company dropped the ball, eventually leading to a spike in illicit opioid use and tens of thousands of overdose deaths.

Washington's **2022 lawsuit** initially named a number of drugstore chains as defendants, including Rite Aid Corp. and The Kroger Co., but all except Albertsons have been dismissed from the litigation due to settlement or bankruptcy.

The trial, which **began July 13**, is expected to stretch into early September.

Washington is represented by Kelsey E. Endres, Jonathan J. Guss, Alison E. Cordova and Jonathan Tebbs of the Washington Attorney General's Office, Russell W. Budd, Christine C. Mansour, Michael Thakur, Daniel Alberstone, Mark Pifko, Peter Klausner, Evan Zucker, Jay Lichter, Elizabeth Smiley, Sterling Cluff, Catherine H. Dorsey and Marco A. Palmieri of Baron & Budd PC, Peter J. Mougey and Jeffrey R. Gaddy of Levin Papantonio Proctor Buchanan O'Brien Barr Mougey PA, Kathleen Clark, Amy Quezon and Allan J. Elkins Jr. of McHugh Fuller Law Group, Anthony J. Majestro, Christina L. Smith and Graham B. Platz of Powell & Majestro PLLC, and Mildred S. Conroy of Simmons Hanly Conroy LLP.

Albertsons Cos. Inc. and Safeway Inc. are represented by Mary Re Knack and Alexandrea M. Smith of Ogden Murphy Wallace PLLC, George A. Borden, Olivia L. Campbell, Richard S. Cleary Jr., Sarah S. Gallant, William Hawkins, Loryn Helfmann, Enu A. Mainigi, Carl Metz, Steven M. Pyser, Jennifer Wicht and Jack H. Danon of Williams & Connolly LLP, and Francis A. Citera, Gretchen Miller, Emily Mankowski, Brett Doran, Meredith Mandell, Linda Ricci, Bryan Harrison, Akiesha Sainvil and Christopher Torres of Greenberg Traurig LLP. The case is Washington v. Rite Aid Corp. et al., case number 22-2-20910-1, in King County Superior Court.

'Anticompetitive Friction': Google Must Fix App Store Search

law360.com/articles/2513375

(August 13, 2026, 10:01 PM EDT) -- A California federal judge Thursday ordered Google LLC to streamline the steps for Android users to find rival app stores as part of his court-ordered remedies in antitrust litigation won by Epic Games Inc. against Google, saying the current user process includes "anti-competitive friction" to discourage competition.

U.S. District Judge James Donato ruled from the bench during a hearing in San Francisco, during which he asked the parties to show him a real-time demonstration of the user experience. A lawyer for Epic and one for Google each walked the court through the steps a user might take if they were looking for one of the rival Android app stores the court **previously ordered** Google to carry in addition to its own Play Store.

During the demonstration by Yonatan Even of Cravath Swaine & Moore LLP, who represents Epic, Even pointed out that a search for "app store" prompts a response from Google that says "Looking for App Stores?"

He noted that even when he clicks on that page and gets to the third-party app store page, there's no "install" button next to the app store name.

"I have a 'view' button," Even said. "If I'm persistent, I click the button, that will open up the landing page ... and I can click install."

Users see a warning that says Google Play "is now distributing third-party Android app stores in the United States. Third-party app stores operate under their own security and privacy practices."

Kuruvilla Olasa of Munger Tolles & Olson LLP, who represents Google, told the court the language was negotiated between the parties.

Even told the court that with the current setup, even a well-known company, like Amazon.com Inc., would see an app store it created relegated to a separate page that users can't reach without extra steps.

When Olasa put his Android phone through the steps, projected onto a screen for the judge to see, he suggested that if searches weren't going directly to third-party app stores, it was because the remedy was just implemented.

Judge Donato appeared skeptical of that argument.

"You're telling me Google's search engine isn't smart enough to do that?" the judge asked. "I don't buy that."

Olasa said it takes time for the search engine to learn as users increasingly search for things.

Judge Donato said Google needs to train its search engine, adding that normally he gets to the pages he wants "even when I phrase it stupidly."

During Thursday's demonstration, the phrase "store for apps" was typed into the Android search bar, and no third-party app stores appeared.

"That is not acceptable, that has to be fixed," Judge Donato said. "I want every possible variation that's even only 70% properly phrased."

When Olasa said Google would develop a list with Epic, the judge bristled.

"You do it. You've got the engineers. You know how to make it work," he said.

He also told Olasa to have his client get rid of the "view" screen.

Olasa said that page also has the warning language.

The judge said they could keep that language, but change the "view" button to an "install" button.

"Keep your warning, fine, I don't have a problem with the warning," Judge Donato said.

The page that asks if the user is looking for an app store also has to go, he added.

Olasa said that's meant to make the user pause in light of the broad permissions app stores have.

"This flow was appropriate to ensure that users understood that they are about to take a very significant act of handing over keys to their entire device," he argued.

Judge Donato said he already allowed the warning screen.

"That is anti-competitive friction. There is no reason for that other than discourage people from continuing to click through," Judge Donato said. "That goes."

The judge gave Google a week to make the changes.

"If there's some problem with that, let me know," he said.

This **latest dispute** between the companies comes less than a month after Epic and Google withdrew their joint bid to modify the injunction Judge Donato issued following Epic's win in the antitrust case. At a July hearing, Judge Donato told the parties there's "**no time to waste**" to begin monitoring the three-year injunction against Google, saying he wants monthly reports with metrics to show the injunction's impact.

Although the injunction issued in 2024 was originally set to sunset in November 2027, that date was stayed for Google's appeal. Most of the injunction went into effect at the end of 2025 and is scheduled to sunset at the end of 2028. Two key components of the order are only now being implemented and won't end until July 2029: one giving third-party Android app stores the ability to offer their users Play Store's catalog of apps, and a second related to allowing rival app stores to be available through the Google Play Store.

Epic launched the antitrust litigation against Google **in August 2020**, shortly after bringing a **similar suit** against Apple Inc. related to the App Store.

The video game developer accuses both companies of building monopolies through their individual app platforms and using that power to control what apps users could download. Specifically, the suits targeted the companies' treatment of paid apps, as both Google and Apple generally charged a 30% commission on any money made on or through apps sold in their store.

In the Google fight, a jury came down **on Epic's side** at the end of 2023, and Judge Donato later handed down his injunction requiring Google to open up the Android operating system to rivals.

After Google **appealed**to the U.S. Supreme Court, Google and Epic worked out **a deal** they said would end the appeals. Microsoft Corp. and others **pushed back** on the proposed injunction, as well as a revised settlement. The Epic and Google deal then **hit a snag** when a court-appointed expert informed Judge Donato on July 10 that she found issues with the parties' revised proposal. Days later, Epic and Google pulled the deal.

Epic is represented by Paul J. Riehle of Faegre Drinker Biddle & Reath LLP and Gary A. Bornstein, Yonatan Even, Lauren A. Moskowitz, Michael J. Zaken and M. Brent Byars of Cravath Swaine & Moore LLP.

Google is represented by Glenn D. Pomerantz, Kuruvilla Olasa and Lauren N. Beck of Munger Tolles & Olson LLP and Brian C. Rocca, Sujal J. Shah, Michelle Park Chiu and Leigha Beckman of Morgan Lewis & Bockius LLP.

The case is Epic Games Inc. v. Google LLC et al., case number 3:20-cv-05671, in the U.S. District Court for the Northern District of California.

First Baby Formula MDL Trial To Kick Off In Chicago

law360.com/articles/2513167/first-baby-formula-mdl-trial-to-kick-off-in-chicago

(August 14, 2026, 1:50 PM EDT) -- An Illinois federal jury will soon be asked to decide whether Mead Johnson baby formula causes a serious abdominal condition in premature infants, as the first case to make it to trial in multidistrict litigation is set to begin with the parties' opening statements on Monday.

Jury selection began Wednesday and concluded on Thursday for a trial on plaintiff Alexis Inman's claims that the company didn't warn her or her healthcare providers that Enfamil Premature formula could cause her son to suffer from necrotizing enterocolitis, a devastating and often fatal condition. Her son Daniel died from necrotizing enterocolitis-related shock in 2020 after a week of exclusive Enfamil feedings, according to filings in the case.

Her case was chosen alongside three others against Abbott Laboratories to serve as bellwether trials in federal court litigation over both companies' infant formulas, though it's the first to make it this far. U.S. District Judge Rebecca Pallmeyer handed pretrial wins to Abbott in all three of its bellwether cases, but said in May that Inman's evidence of available alternative feeding options was part of the reason her case **survived summary judgment**.

On Wednesday, the judge granted a bid by Mead Johnson to bifurcate the liability and punitive damages portions of the trial, after it had argued the factors to determine if punitive damages should be awarded — including whether the company had engaged in fraud, malice, or willful and wanton conduct — are "irrelevant" to the jury's consideration of Inman's negligent design defect and failure to warn claims.

Mead Johnson also claimed the introduction of evidence relevant to punitive damages would be unfairly prejudicial, citing a **recent ruling** by an Illinois appellate court that vacated a $60 million jury verdict won by another mother who alleged the company's infant formula caused her premature baby to develop NEC. That court said the presiding judge should not have allowed the jury to hear evidence about Mead Johnson's profits, including its revenue, executive compensation, marketing budgets and profit margins.

The company was **not successful**, however, in convincing Judge Pallmeyer that a June U.S. Supreme Court decision preempts Inman's claims and warrants dismissal of the suit altogether.

Citing the high court's ruling in Monsanto v. Durnell — where the justices said the Federal Insecticide, Fungicide and Rodenticide Act preempts failure-to-warn claims based on a product's label when the U.S. Environmental Protection Agency has not required the warning — Mead Johnson attempted to argue that Inman's defective design claims are preempted by the Infant Formula Act.

But FIFRA includes an express preemption clause, while the Infant Formula Act does not, the judge said. And the Durnell decision barred state law failure-to-warn claims in a suit in which a weedkiller's label had to be approved by a federal agency, Judge Pallmeyer added.

Opening statements in the case are set for Monday morning.

A spokesperson for Mead Johnson told Law360 in a statement that the company remains "confident in our position based on the facts and the science and look forward to presenting our case at trial."

"Specialized preterm hospital nutrition products provide essential, lifesaving nutrition to vulnerable premature infants when mother's or donor milk is unavailable or insufficient," the spokesperson said on Thursday. "We stand behind the safety and efficacy of our specialized preterm hospital nutrition products, which neonatologists recommend when clinically appropriate as part of the standard of care in neonatal intensive care units. Claims by plaintiffs' lawyers that these products cause NEC are not supported by the science or the medical consensus."

Attorneys for Inman did not immediately respond to requests for comment.

Inman gave birth following a high-risk pregnancy that included her twins sharing one placenta, which caused her son Deyvon to grow at Daniel's expense, according to court filings. At 670 grams, or nearly 1.5 pounds, Daniel weighed roughly half as much as his brother at birth.

Daniel remained in the neonatal intensive care unit and was largely fed Inman's own fortified breast milk until he was nearly a month old, when he was switched to a mix of donor milk and Enfamil Premature, and then exclusively to Enfamil just days later, according to filings in the case.

Inman's case is one of hundreds claiming infant formula manufactured and sold by Mead Johnson and Abbott Laboratories caused or contributed to babies developing NEC — not just in the federal multidistrict litigation, but in state courts throughout the country.

Some of those state court cases have made it to trial, with mixed results. Mead Johnson lost its first trial in March 2024, although that was overturned on appeal this year. In July 2024, a Missouri jury awarded $95 million in compensatory damages and $400 million in punitive damages over bellwether claims that Abbott's baby formula caused a premature baby to suffer NEC.

A few months later, a St. Louis jury cleared Abbott and Mead Johnson of liability in the companies' first joint trial over claims their baby formula caused the serious gut condition in preterm infants. But a judge later vacated that verdict and ordered a new trial last year, a decision **that was upheld** by a Missouri appeals court on Tuesday.

A Cook County jury in April **sided with four mothers** bringing claims against Abbott, awarding $53 million in compensatory damages and $17 million in punitive damages. In July, Mead Johnson prevailed at another NEC trial in Missouri state court.

Inman is represented by Jose Rojas and Stephen M. Reck of Levin Rojas Camassar & Reck LLC and Diandra S. Debrosse of DiCello Levitt LLP.

Mead Johnson and its nutrition unit are represented by Phyllis A. Jones, Nicole M. Antoine and Elizabeth T. Fouhey of Covington & Burling LLP and Rachel Cannon and Anthony Anscombe of Steptoe LLP.

The individual case is Inman et al. v. Mead Johnson & Co. LLC et al., case number 1:22-cv-03737, and the MDL is In re: Abbott Laboratories et al., Preterm Infant Nutrition Products Liability Litigation, case number 1:22-cv-00071, both in the U.S. District Court for the Northern District of Illinois.

Wolfspeed Escapes Investor Suit Over 'Optimistic' Projections

law360.com/articles/2513033

(August 13, 2026, 8:00 PM EDT) -- A North Carolina federal judge has thrown out a proposed class action lawsuit accusing chipmaker Wolfspeed Inc. of deceiving investors about demand for its products, saying that the claims in the suit amount to "fraud by hindsight."

U.S. District Judge Lindsey Freeman dismissed the lawsuit Wednesday, ruling that lead plaintiffs hadn't shown that Wolfspeed, former CEO Gregg Lowe or former Chief Financial Officer Neill Reynolds had intentionally misled investors about the financial state of the business.

"Plaintiffs' amended complaint fails to create a strong inference that defendants knew of or recklessly disregarded information contrary to their disclosures," Judge Freeman said. "And they may not wield the benefit of hindsight to transform the company's subsequent financial trouble into fraud."

She dismissed the case without prejudice, giving investors another chance to amend their complaint.

Neither counsel for the investors nor a spokesperson for Wolfspeed immediately responded to a request for comment Thursday.

The lawsuit was filed in New York in 2024 but **was transferred** to North Carolina late last year.

It accuses the company of lying about is attempts to ramp up production in its Marcy, New York, facility and of hiding the fact that demands for its products were dropping globally.

Investors allege that the problems came to light first when the news broke that Wolfspeed was delaying plans to build a $3 billion plant in Germany and then, through company announcements, it was closing its Durham, North Carolina, facility and that its second quarter 2025 results would be lower than expected.

The lawsuit alleges that the stock price dropped several times with the rolling series of revelations, at one point falling nearly 40%, or $5.38 per share, in November 2024.

Wolfspeed **filed for bankruptcy** in 2025 but has since exited, **having slashed** $4.6 billion in debt.

Investors accused the company, Lowe and Reynolds of securities fraud.

But Judge Freeman said the defendants were merely "optimistic about a future that did not materialize."

She said that the company expected demand for its silicon carbide chips for electronic vehicles would grow but that it reduced its optimistic projections as soon as it became clear that the company couldn't weather a downturn in the EV market.

The judge also said that the plaintiffs hadn't proven that Lowe and Reynolds had seen reports of alleged financial misreporting that were mentioned by two former employees relied on by investors as witnesses.

The fact that the company's New York factory "failed to achieve the lofty goals set by the defendants does not mean that they intentionally or recklessly defrauded investors about the project," the judge said.

"Nor does the company's optimistic view of demand during a turbulent period reveal hidden nefarious intent," she said.

Wolfspeed and the individual defendants are represented by Michael Bongiorno, Tamar Kaplan-Marans, Nicole Prunetti and Matthew Martens of WilmerHale.

The investors are represented by Samuel Rudman and Alan Ellman of Robbins Geller Rudman & Dowd LLP, Jeremy Lieberman and Michael Wernke of Pomerantz LLP, Peretz Bronstein of Bronstein Gewirtz & Grossman LLC, David G. Schiller of Schiller & Schiller PLLC, and Junbo Hao of Hao & Han Law Firm.

The case is Zagami et al. v. Wolfspeed Inc. et al., case number 1:26-cv-00018, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Jay Jackson Jr.