Chipotle Routs Investor Social Media Backlash, Portion Size Suit

Aug. 19, 2026, 8:29 AM PDT

Summary by Bloomberg AI

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- Chipotle Mexican Grill Inc. beat allegations it defrauded investors by denying shrinking portion sizes as customer accusations went viral on social media.
- Judge Sherilyn Peace Garnett said the plaintiff failed to adequately plead that executives' denials about portion size reductions were false or misleading.
- The US District Court for the Central District of California judge dismissed the proposed class action with finality, finding the complaint didn't sufficiently plead that Chipotle or its executives employed a scheme to defraud investors.

Chipotle Mexican Grill Inc. beat allegations the fast-casual restaurant chain and executives defrauded investors by denying shrinking portion sizes as customer accusations went viral on social media.

The investor leading the case didn't plausibly allege Chipotle reduced the size of its portions from 2021 to 2024 or that the company was investigating whether its employees were skimping on servings, Judge Sherilyn Peace Garnett said in an order entered Tuesday.

Thus, the plaintiff failed to adequately plead executive Laurie Schalow and former CEO Brian Niccol's repeated denials about portion size reductions were false or misleading, the US District Court for the Central District of California judge said. Nor did the complaint indicate executives created a false impression that Chipotle's consistency in serving sizes across its stores was perfect.

Investor Lisa Tai's second amended complaint largely echoed the prior one that Garnett found deficient last year, the judge said, dismissing the proposed class action with finality.

Testimony from the former employee serving as a confidential source didn't demonstrate that Chipotle had launched an investigation on servings; the description of the company's response to social media complaints largely squared with her normal customer relations duties, Garnett said. Tai didn't allege information about who was involved or how Chipotle was investigating portion sizes, she said.

Chipotle also allegedly failed to disclose it was experiencing social media backlash when providing a risk disclosure that discussed hypothetical consequences of negative publicity. But that online criticism was highly public in 2023 and 2024, Garnett said, and so Tai didn't sufficiently plead a reasonable investor would've been misled by this 2024 first quarter risk warning.

And Tai didn't sufficiently plead that Chipotle or any of the executives employed a scheme to defraud investors through allegations that mid-tier managers implicitly told employees to reduce portion sizes, Garnett said.

Social media backlash against Chipotle ramped up in 2024, with customers claiming that the popular fast-casual chain had become stingy with its scoop sizes.

Chipotle last month raised its annual sales outlook after a stronger-than-expected quarter, with the chain recently bringing back a popular menu item and updating its rewards program.

Robbins Geller Rudman & Dowd LLP is lead counsel for Tai. Latham & Watkins LLP represents Chipotle, Niccol, former Chief Financial Officer John R. Hartung, and Schalow, who is the company's Chief Corporate Affairs and Food Safety Officer. Neither of these law firms or Chipotle immediately responded to emails seeking comment.

The case is Stradford v. Chipotle Mexican Grill, Inc. , C.D. Cal., No. 8:24-cv-02459, 8/18/26 .

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Logitech faces class action after receiving $61M tariff refund

DJ dailyjournal.com/articles/393820-logitech-faces-class-action-after-receiving-61m-tariff-refund

Logitech Inc. is the latest company to face a proposed class action alleging it failed to pass along tariff refunds to customers after receiving $61 million from the government following the U.S. Supreme Court's invalidation of tariffs imposed under emergency powers.

Cotchett, Pitre & McCarthy LLP filed the lawsuit Tuesday in federal court in San Jose on behalf of a proposed nationwide class of Logitech customers, one of several complaints filed in California and across the country seeking to recover tariff-related costs for consumers.

The complaint accuses Logitech, a Swiss maker of computer peripherals and software with operational headquarters in San Jose, of raising prices on roughly half its products in April 2025 to offset tariffs imposed by President Donald Trump. The increases averaged 14% and reached 25% on some products, according to the lawsuit.

"Defendant refused to be honest with their customers by raising prices across their product catalog to allegedly account for costs due to tariffs and then failed to return tariff proceeds when the U.S. Supreme Court declared those tariffs unlawful," the complaint states. *SJK Development Inc. et al. v. Logitech Inc.*, 26-cv-08570 (N.D. Cal., filed Aug. 18, 2026).

Shippers including FedEx Corp. and United Parcel Service Inc. have begun passing refunds along to customers' bank accounts or credit cards, according to published reports.

Other companies have been sued for failing to refund tariff-related costs after the Supreme Court ruled in February that the International Emergency Economic Powers Act did not authorize the president to impose the tariffs. Learning Resources v. Trump, 2026 DJDAR 1259 (S. Ct.).

More than 10 lawsuits seeking tariff refunds from companies have been filed in California's Northern and Central districts, according to data compiled by Rain Intelligence.

Logitech Chief Financial Officer Matteo Anversa said the company received $61 million in tariff refunds during the quarter in its conference call.

Other companies have adjusted their earnings estimates based on expected tariff refunds but they have not always said they got the money, which could be an issue in any class actions.

The complaint alleges that consumers who effectively bore the tariffs through higher prices are entitled to the benefit of those refunds.

Some companies have pledged to lower prices, while others have declined to commit to specific refunds, citing logistical difficulties and arguing that tariff costs were not applied evenly to individual products.

"Logitech blamed tariffs when it raised prices," Cotchett said. "Then the Supreme Court struck those tariffs down, and Logitech kept every penny."

No court has yet ruled on whether companies receiving tariff refunds must pass them along to customers.

The issue has also surfaced in litigation against Amazon.com Inc., which received approximately $600 million in tariff refunds during its most quarter, according to Chief Financial Officer Brian Olsavsky in the company's July 30 conference call.

Plaintiffs in a separate consumer suit alleged the company did not intend to seek reimbursement. *In re: Amazon Tariff Litigation*, 26-cv-01670 (W.D. Wash., filed May 15, 2026).

Costco Wholesale Corp., another defendant in tariff-refund litigation, has moved to dismiss the claims against it. *Stockov v. Costco Wholesale Corp.*, 26-cv-02734 (N.D. Ill., filed March 11, 2026).

The Logitech complaint includes a claim for unjust enrichment based on the company's retention of tariff refunds.

Cotchett said in a phone interview that Logitech and other companies have highlighted tariff refunds to shareholders without informing customers.

"We're looking at many other companies that are taking the position that they don't have to give the money back," he said.

Logitech did not respond Wednesday to a request for comment.

Back to the Future: The SEC’s Years-Old 'New' Accounting Fraud Unit

law.com/newyorklawjournal/2026/08/20/back-to-the-future-the-secs-years-old-new-accounting-fraud-unit

On Aug. 5, 2026, the SEC announced the Financial Reporting and Accounting Unit within its Division of Enforcement. Staffed by attorneys and accountants and led by Timothy Zimmerman, the Unit covers accounting and financial reporting fraud and misconduct in the accounting and auditing professions.

The announcement reads like the creation of something new. It is not. Since July 2013, the Division has maintained a dedicated financial reporting enforcement function, beginning when David Woodcock, then director of the Commission’s Fort Worth Regional Office, created and chaired the Financial Reporting and Audit Task Force.

Woodcock now runs the Division of Enforcement, and he announced the Unit himself. The new Unit is therefore better understood as the fourth evolution of the task force Woodcock first created in 2013.

Woodcock’s statement describes the Unit as an expansion of the Division’s current and historical efforts, and it is worth taking him at his word. The function he built generated hundreds of enforcement actions, and this year’s cases are charged under the same provisions, against the same kinds of defendants.

The Task Force Never Went Away

The Division’s first five specialized enforcement units, created in 2010, did not include accounting. That changed on July 2, 2013, when the Commission announced three initiatives at once, one of them the Task Force, chaired by Woodcock and staffed with attorneys and accountants from Enforcement offices nationwide. Its stated purpose was detection: reviewing restatements, tracking performance trends by industry, and using technology, including the regression model the trade press had christened “RoboCop.”

The timing was counterintuitive. Accounting fraud was not rising, but detection had fallen away. Restatements had dropped from a peak of 1,842 in 2006 to 761 in 2009, then plateaued. Woodcock told the Center for Audit Quality that September that accounting-fraud investigations had been declining and the staff was refocusing. Chair Mary Jo White, who had arrived that April, was redirecting resources toward financial reporting as the financial-crisis caseload wound down.

Three months after the creation of the Task Force came an auditor-facing effort designated “Operation Broken Gate.” Both outlasted the conditions that produced them.

By January 2016, Enforcement Director Andrew Ceresney was describing the Task Force’s work as the province of the Financial Reporting and Audit Group—the “FRAud Group”—and within another year defense practitioners were treating that group as a permanent fixture of the enforcement program rather than a temporary initiative.

When the Division created a SOX Group under Enforcement’s Chief Accountant in March 2026, two months before Woodcock’s return, it was staffing the same function for the third time. The Unit announced in August is the fourth.

What the Task Force Produced

The FRAud Group produced concrete results. Issuer reporting and disclosure actions rose from 53 in fiscal 2013 to 114 in fiscal 2015, and in fiscal 2015 and 2016 the Commission brought more than 200 such actions, charged more than 245 individuals, and instituted 104 accountant proceedings under Rule 102(e)—roughly twice the prior comparable period.

Notably, the largest corporate resolution of the period did not allege fraud. In February 2016, Monsanto paid $80 million and retained an independent compliance consultant over its accounting for Roundup rebates, having booked revenue from rebate-incentivized sales without recording the associated program costs in the same period. *In re Monsanto Co.*, Securities Act Release No. 10037 (Feb. 9, 2016).

The SEC charged Securities Act Sections 17(a)(2) and 17(a)(3) and the reporting, books-and-records, and internal accounting controls provisions of the Exchange Act, but not Section 10(b), and it did not allege scienter.

The individuals faced consequences anyway. Three accounting and sales executives consented to findings that they violated Rule 13b2-1 and caused the company’s violations, and the two who were certified public accountants were suspended from practicing before the Commission under Rule 102(e).

Even the chief executive and the former chief financial officer, whom the SEC cleared of personal misconduct, returned more than $3.8 million in bonuses and stock awards—enough that the Commission never had to pursue a clawback under Section 304.

Fraud charges did appear during these years, but rarely against a company alone. The period’s largest issuer penalty, $190 million, went to Computer Sciences Corporation alongside charges against eight former executives. SEC Press Release 2015-111 (June 5, 2015).

In *Diamond Foods*, the SEC sued the chief financial officer for deferring walnut grower payments he called internally a “lever” to manage earnings, while settling with the chief executive on a finding that he *should have known* the reported cost was wrong. Litigation Release No. 22902 (Jan. 9, 2014).

The auditor docket ran the same way. The Commission eventually reached the national firms—the BDO and Grant Thornton actions of late 2015 were the first against such firms since 2009—but the Broken Gate respondents were small: sole practitioners, a proprietor whose practice was mostly tax work, an engagement quality review partner who had not participated in a public-company audit in more than 35 years.

Across these cases, five patterns repeat.

First, the conduct was accounting judgment rather than fabrication: rebates, contract estimates, cost timing, impairment. Nothing in the Task Force era resembles the fictitious-revenue frauds of the 1980s and 1990s.

Second, the charges followed the conduct into provisions that require no proof of deception. Sections 17(a)(2) and (3), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5), together with Rule 13b2-1, did nearly all of the work, and of those only Section 13(b)(5) requires even knowledge.

Third, individuals were named in almost every matter, often on causing or negligence theories. For accountants, the sanction that mattered was the Rule 102(e) suspension rather than the penalty.

Fourth, compensation came back without personal fault. The Ninth Circuit held in 2016 that Section 304 disgorgement applies regardless of whether the restatement was caused by the chief executive’s or chief financial officer’s own misconduct. *SEC v. Jensen*, 835 F.3d 1100, 1104 (9th Cir. 2016).

Fifth, detection stayed reactive. Monsanto came from a whistleblower, who collected $22 million, and the rest came from restatements and referrals. The Accounting Quality Model was folded into the agency’s risk-assessment dashboards without ever producing the docket that had justified building it.

The Same Cases, Ten Years Later

The Division has now run the function without interruption for 13 years, and the matters Woodcock chose to describe in his first public remarks as Enforcement Director, in May 2026, show that the continuity produced nothing new.

The first was *ADM*. Executives met a shortfall in the Nutrition segment—publicly promised to deliver 15% to 20% annual operating-profit growth—by directing retroactive rebates and repricing that shifted profit in from other segments. *In re Archer-Daniels-Midland Co.*, Securities Act Release No. 11403 (Jan. 27, 2026).

ADM paid $40 million on charges including Section 10(b) and Rule 10b-5, and the president of the Nutrition segment was charged as a primary violator and took a three-year officer-and-director bar. Former CFO Ray Young, who approved the adjustments, was charged only under Sections 17(a)(2) and (3)—the negligence subsections—and with causing the company's reporting and controls violations. Vikram Luthar, who devised the adjustments as Nutrition's CFO before succeeding Young, is litigating, including against a Section 304 reimbursement claim.

Key Tronic showed the same pattern at a smaller scale. Employees at a Minnesota facility generated false inventory entries that improperly increased income, an internal complaint arrived the morning of the quarterly earnings release, and what the company did next became the case. *In re Key Tronic Corp.*, Exchange Act Release No. 105275 (April 20, 2026).

Booking the out-of-period adjustments in the periods in which the errors occurred would have cut reported quarterly net income of $1.58 million by 44%. The SEC charged the company under Sections 13(b)(2)(A) and 13(b)(2)(B) and imposed no penalty, but it charged the then-chief financial officer, now the chief executive, with causing those violations for $20,000, and a senior vice president for $15,000.

The third, Ammo, Inc., ran further in the same direction. The SEC sued three former executives for concealing that a co-founder was running major operations despite a 2020 federal court order barring him from executive roles at a public company, and settled with the company itself without a penalty. Litigation Release No. 26446 (Dec. 17, 2025).

ADM paid $40 million; Key Tronic and Ammo paid nothing at all. But all three matters named executives—nine of them—and charged them under the provisions the Task Force had been using a decade earlier, with only ADM drawing a Section 10(b) charge.

It is reasonable to expect the Unit to work with the provisions the Division has used since 2013. Those provisions reach the people who approved the accounting entries, signed the relevant certifications, or explained the questionable number to the auditor—often without any allegation that they set out to deceive anyone. Much of the conduct that draws them in will look, at the time, like hard accounting calls.

When Accounting Decisions Become SEC Evidence

That makes the company's first response to a financial reporting issue more important. Staff will ask when the issue surfaced, who understood it, what auditors were told, what the board received, and why the company made the disclosure decision it made. Those questions are familiar. They will now be asked by a specialized group built for accounting and financial reporting cases, staffed by lawyers and accountants, and designed to coordinate with SEC offices that regularly touch financial reporting.

Companies should react accordingly when an accounting question has enforcement features. The issue may be an entry, estimate, reserve, segment disclosure, or control failure. The response may matter as much as the accounting conclusion. By the time the SEC arrives, emails, auditor exchanges, audit committee materials, disclosure drafts, certifications, and internal explanations may already tell the story.

Build the Chronology Under Privilege

Start with a chronology. In *Key Tronic*, sequence drove the SEC's case. The internal complaint arrived the morning of the scheduled earnings release. Within hours, the company confirmed the core allegations, reopened its books, reversed nearly $1 million of improper income, recorded offsetting adjustments, heard from its auditor about delay, convened the board, and issued earnings anyway.

Counsel should start with time. The chronology should cover the close process, the first red flag, the company's assessment of financial impact, auditor communications, management meetings, audit committee or board involvement, certifications, and disclosure decisions. It should identify who knew what, when they knew it, and what they did next.

It should also capture what was left undone. Delay, silence, and unexplained speed can all become facts.

Build the chronology at counsel's direction, for legal advice, with distribution kept tight. The facts themselves will not become privileged. Ordinary-course accounting work should not be relabeled after the fact.

Counsel should preserve the line between business records created during the close and privileged analysis prepared to advise the company, the audit committee, or the board.

Test Whether the Entry Served the Business Story

Next, ask whether the accounting treatment helped preserve a business story. *ADM* is the obvious example.

The SEC alleged that adjustments to intersegment transactions helped ADM's Nutrition segment appear to meet growth expectations that executives had projected to investors. The alleged accounting problem was tied to a segment promoted as a growth engine, operating-profit targets, and adjustments aimed at preserving the story investors had been told.

The test should be direct. Did the entry help meet guidance? Did it protect a segment target? Did it affect compensation? Did it avoid a covenant issue? Did it preserve a trend line, margin story, or analyst-facing narrative? If yes, counsel should treat the issue as a potential enforcement matter.

The review should move beyond the support for the entry to the communications around it: who proposed it, who approved it, who questioned it, what incentives were in play, what draft disclosures said, and what auditors or directors were told.

If the entry did not serve that kind of narrative, the response can be narrower. An immaterial classification error identified during the close, corrected before release, disclosed to the auditor, and unrelated to guidance, compensation, segment targets, or analyst expectations may not require a full investigation.

The company should still document the accounting basis, correction, control implication, and reason no broader escalation was needed. The SEC may later ask why the company treated the issue as ordinary-course accounting rather than misconduct.

Read the Auditor Record Before the SEC Does

Read auditor communications early. In *Key Tronic*, the SEC focused on what the auditor said before the company released earnings. According to the SEC, the auditor advised the company to consider delay, warned that additional facts could emerge, and said there was not enough time to evaluate the financial adjustments.

Companies should read that record with the SEC in mind. What questions did the auditor ask? What support did management provide? Were proposed adjustments accepted, rejected, or deferred? Did the auditor ask for time? Did management press for a filing or release before the auditor was comfortable? Did the audit committee receive the same information?

Most auditor questions are ordinary. Auditors ask questions. Management responds. The risk grows when the auditor's concern intersects with timing pressure, materiality, weak support, management involvement, or a disclosure decision that cannot wait. A unit staffed with attorneys and accountants will be well positioned to read that exchange for both accounting significance and state of mind.

Escalate Before Independence Becomes the Issue

The audit committee need not run every accounting review. Many routine issues can stay with management, finance, legal, internal audit, and outside accounting advisers. Reflexive escalation has costs: it can slow the close, consume committee attention, and make an ordinary issue look extraordinary.

That is especially true for a technical accounting question, a corrected classification error, or a small process failure—provided there is no fraud allegation, senior-management conduct, auditor disagreement, disclosure-timing problem, certification concern, restatement risk, or material weakness concern.

Independence matters when the issue reaches different markers. A whistleblower allegation about intentional accounting manipulation should be escalated. So should an auditor objection to an earnings-release decision or filing timeline.

The same is true for retroactive adjustments, out-of-period entries, unusual rebates, reserve releases, side arrangements, or other accounting moves that preserve a desired earnings result.

Issues that may affect CEO or CFO certifications, internal-control disclosures, material-weakness analysis, prior public statements, or a potential restatement also call for audit committee attention.

The reason is practical. If senior management may be part of the problem, management should not control the investigation. If the auditor and management disagree, the audit committee is already charged with auditor oversight and resolution of financial reporting disagreements. If the issue may affect certifications or disclosures, the board record matters. Companies should not wait until the SEC asks why management investigated itself.

Preserve Cooperation Options

Finally, preserve cooperation options before deciding whether to use them. *ADM* shows both the value and limits of cooperation. The SEC credited ADM for conducting an internal investigation, voluntarily reporting its findings, providing documents, offering detailed factual explanations, and supplying financial analyses from an outside accounting expert.

It also credited remediation: new internal accounting controls around intersegment transaction pricing, amended policies and procedures, training, and testing. ADM still paid $40 million.

Cooperation still requires command of the facts. Before approaching the staff, a company needs to understand the accounting issue and the human record.

The accounting issue is whether the entry, estimate, reserve, disclosure, or control was right. The human record is who pushed for it, who resisted it, what warnings were given, what auditors and directors were told, and whether the contemporaneous documents show good faith, negligence, or something worse.

The practical change is institutional. More financial reporting cases may now be reviewed by staff trained to understand both the accounting and the story around it. Companies that can explain how the number was reached, who challenged it, and why the company stood behind it will be better positioned when the accounting issue becomes an SEC matter.

Top Five Unethical Uses of Artificial Intelligence by Attorneys and Four More

law.com/newyorklawjournal/2026/08/20/top-five-unethical-uses-of-artificial-intelligence-by-attorneys-and-four-more

As artificial intelligence (AI) becomes more prevalent in legal practice, courts and bar associations increasingly emphasize that attorneys must remain fully responsible for the accuracy, confidentiality, and ethical propriety AI assisted work product.

Unfortunately, such intensified emphasis has not resulted in consistent compliance by the legal profession. AI use has interpenetrated every aspect of legal practice, yet the identification and remediation of ethical violations arising from its use have lagged behind.

Auspiciously, the rapid evolution of generative AI has not outpaced the rules of professional responsibility.

More specifically, the most common attorney ethical principles implicated related to AI are an attorney's duty related to competence, confidentiality, candor toward the tribunal, honesty and fairness, supervision of technology and nonlawyer assistance and charging reasonable fees. More specifically, the five most significant ethical risks associated with attorneys' use of AI follows.

First, certain uses of AI are inherently unethical. One of the clearest and likely the most violated ethical rule occurs when an attorney submits non-public or sensitive client information into a public or open-source AI platform that retains user data for training purposes. Such conduct is a *per se*, or near-certain, violation of the duty of confidentiality under Model Rule 1.6.

The most frequently cited concern regarding AI in legal practice is its potential to compromise client confidentiality. Model Rule 1.6(a) provides that "[a] lawyer shall not reveal information relating to the representation of a client" unless the client provides informed consent, the disclosure is impliedly authorized to carry out the representation, or another exception applies.

Attorneys also have an affirmative duty to exercise reasonable care to prevent confidential information from being inadvertently or unauthorizedly disclosed to third parties. Uploading confidential client information into AI systems that store or reuse user prompts may therefore constitute an unauthorized disclosure.

Second, attorneys act unethically when they rely on AI-generated work product without independent verification. Filing AI-generated legal research, citations, or briefs without confirming their accuracy—particularly when the AI has fabricated authorities through so-called "hallucinations"—violates both the duty of competence under Model Rule 1.1 and the duty of candor toward the tribunal under Model Rule 3.3.

The Rules of Professional Responsibility clear state than an attorney is personally responsible for every factual assertion and legal citation submitted to a court, regardless of whether the work product was generated by AI.

Third, attorneys violate their professional responsibilities when they allow AI to make legal judgments or strategic decisions without adequate human supervision. AI is not a substitute for professional legal judgment.

Treating AI as an autonomous decision-maker rather than a supervised assistant may violate an attorney's supervisory responsibilities under Model Rules 5.1 and 5.3.

Lawyers must exercise independent professional judgment and ensure that any AI-generated analysis is carefully reviewed before it influences client representation.

Fourth, attorneys may engage in unethical billing practices by charging clients for AI-generated work as though it were entirely attorney-generated.

Billing hourly rates for tasks that were substantially completed or dramatically expedited through AI, without making an appropriate adjustment to reflect the actual time and value provided, may violate the requirement that legal fees be reasonable under Model Rule 1.5. While attorneys are entitled to bill for their professional judgment, review, and analysis, they may not misrepresent the amount of attorney labor actually performed.

Fifth, attorneys may fail to obtain informed client consent before using AI in a manner that materially affects the representation. Informed consent is generally required whenever the use of AI involves the disclosure of confidential client information to a third-party platform or when AI plays a significant role in shaping legal advice or litigation strategy. This obligation arises under both Model Rule 1.6 (Confidentiality of Information) and Model Rule 1.4 (Communication).

Absent informed consent, which allow for public disclosure of client information, attorneys must continue to treat all information relating to the representation as confidential, regardless of whether portions of that information may already be publicly available.

Clients reasonably expect that confidential information will be shared only within the attorney's law office or with those reasonably necessary to provide legal services. They generally do not expect that their information will be uploaded into an AI platform for processing.

The elimination or amelioration of these ethical concerns may be achieved by having attorneys discuss their anticipated use of AI with clients at the outset of the representation.

This discussion should include the nature of the AI tools being used, the purposes for which they will be employed, whether client information may be transmitted to third-party platforms, and the safeguards implemented to protect confidentiality. Attorneys should also disclose which documents or categories of information may be processed through AI and explain both the benefits and the potential risks associated with AI-assisted legal work.

Failure to disclose how AI will be used, is likely to result in a substantial argument that the client has not provided truly informed consent.

Historically attorneys have been duty bound to explain the resources and research methodologies they employ in complex matters so as to promote transparency and hence client informed consent. Obtaining informed consent before incorporating AI into legal representation not only protects client autonomy but also reduces the risk of ethical violations under the Rules of Professional Conduct. If the lawyer fails to disclose the benefits of AI assisted assistance, it is arguable that the client has not actually demonstrated informed consent. Practitioners may be required to disclose their research capabilities such as access or lack thereof to certain databases, especially in complex cases.

It is a good practice to avoid the complications by explaining both the positive and negative aspects of artificial intelligence assisted work product to the client. Following such an explanation, client consent should be obtained and memorialized. Four less common ethical violations include the following: first, using AI to create or alter evidence. For example, by using generative AI to produce fake emails, contracts, images, audio, or video to support a client's position. This can amount to fraud, obstruction of justice, or criminal conduct.

Second, using AI improperly to coach witnesses. For example using AI to script testimony or coach witnesses to provide misleading or false statements rather than truthful preparation.

Third, using AI without checking for discrimination may result in an additional ethical violation. Doing so may result in unfairly disadvantage clients or parties based on race, gender, disability, or other protected characteristics.

Fourth, ethical violations may also arise from using AI for deceptive litigation tactics. Using AI to mass-produce frivolous claims, harassing discovery requests, phishing communications, fake online personas, or misleading client communications may violate court rules, ethics rules, and laws against fraud or abuse.

US Appeals Court Revives Signature Bank Collapse Lawsuit

law.com/newyorklawjournal/2026/08/19/us-appeals-court-revives-signature-bank-collapse-lawsuit

The U.S. Court of Appeals for the Second Circuit revived shareholders' suit over one of the largest bank failures in U.S. history, the collapse of the crypto-friendly Signature Bank, rejecting the intervening Federal Deposit Insurance Corporation's "sweeping" arguments that the government owned the investors' claims.

The FDIC intervened in the case to argue that shareholders' securities fraud claims against Signature transferred to FDIC once it was appointed as receiver for the bank. That argument rested on the Financial Institutions Reform, Recovery and Enforcement Act's Succession Clause, which states that FDIC "shall… succeed to… all rights… of any shareholder" of a bank under receivership, and had already convinced a federal judge in Brooklyn to dismiss the case.

But a three-judge panel on Wednesday overturned the district court, saying the clause wasn't "so sweeping." That clause covers rights that a stockholder possesses by virtue of owning shares, but the investors' fraud case stems from their purchase of Signature stocks, the panel said.

If "members of the putative class sold their stocks at a loss, such that they were no longer stockholders, they would still have the same rights of action under Rule 10b-5 as purchasers of securities," Circuit Judge Richard Wesley wrote on behalf of the panel.

Wesley was joined by Chief Judge Raymond Lohier and Circuit Judge Sarah Merriam.

The panel had been tasked with interpreting FIRREA's Succession Clause—a matter of first impression for the circuit court, according to the decision—in a case brought by Sjunde AP-Fonden, or AP7, the Swedish agency that operates Sweden's public pension investment fund.

AP7, represented by Kessler Topaz Meltzer & Check and Bernstein Litowitz Berger & Grossman, filed suit on behalf of those who invested in Signature, which was one of the few banks to embrace the cryptocurrency industry and accept cryptocurrency deposits. Counsel for AP7 didn't immediately respond to a request for comment.

The cryptocurrency pivot had seen Signature's total deposits leaping from $63.32 billion in 2020 to $106.13 billion in 2021, but a significant chunk of those deposits were concentrated in a few cryptocurrency clients, according to the decision. Following the 2022 crypto winter, Signature faced a run on its assets, ultimately closing in March 2023.

AP7 sued, arguing that Signature's top officers and its outside auditor, KPMG, violated federal securities laws by misleading investors about the liquidity risks of the cryptocurrency venture.

FDIC intervened in the case in 2023 to argue that it owned the securities fraud claims and that if it did not, AP7 should have first filed its claims with the FDIC before turning to the courts.

The Second Circuit also rejected that alternative argument. While the FDIC has the authority to determine claims against financial institutions under receivership, the investor suit was filed against KPMG and Signature's former directors, not Signature itself.

"AP7's claims do not name Signature as a defendant, do not seek to impose liability on Signature, and seek recovery only from the individual Officers and KPMG," the panel said.

An FDIC representative declined to comment.

Ninth Circuit Revives Regeneron Kickback Whistleblower Lawsuit

Aug. 19, 2026, 3:42 PM PDT

Summary by Bloomberg AI

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- A federal appeals court partially resuscitated a whistleblower lawsuit alleging Regeneron Pharmaceuticals Inc. illegally paid physicians to write prescriptions.
- The appeals court reversed dismissal of the False Claims Act claims, saying the most pertinent details surrounding the payments were not known before the lawsuit.
- The suit alleges Regeneron made payments to physicians far above fair market value, paid for luxury hotel stays and first-class airfare, and compensated doctors for educational events that never happened.

A whistleblower lawsuit alleging Regeneron Pharmaceuticals Inc. illegally paid physicians to write prescriptions was partially resuscitated by a federal appeals court Wednesday.

A district court erred when it threw out the core of the whistleblowers' Anti-Kickback Statute claims against Regeneron under the False Claims Act's public disclosure bar, a provision that blocks lawsuits based on allegations already available to the public, the US Court of Appeals for the Ninth Circuit said in a memorandum. The appeals court reversed dismissal of the FCA claims but affirmed dismissal of conspiracy claims against Regeneron and all other claims against Sanofi-Aventis US LLC.

The existence of the payments to physicians may have been known before the lawsuit, "but all the most pertinent details surrounding those payments—those that constitute the alleged fraud and indicate Regeneron's intent to unlawfully induce referrals—were not," the Ninth Circuit said.

The suit, which was brought by two former Regeneron employees, allege the company systematically made payments to physicians far above fair market value, paid for luxury hotel stays and first-class airfare in violation of its own written policies, and compensated doctors for educational events that never happened, the memorandum said. Internal audits and an external consulting firm both concluded that Regeneron may have been "inappropriately compensating" doctors.

The panel also upheld the district court's finding that the relators' substantive kickback allegations were pleaded with sufficient particularity to survive dismissal, citing specific examples of doctors paid for events that never occurred and payments that Regeneron's own tracking systems tied to prescription volumes.

Judges Jay S. Bybee and Ana de Alba joined the memorandum.

Judge Kenneth Kiyul Lee partially dissented, arguing the allegations fell short of establishing the "undue influence" required for an Anti-Kickback Statute violation.

"This case demonstrates that what appears unseemly is not always unlawful," Lee wrote, adding that a correlation between physician payments and prescription volumes did not establish causation or criminal intent.

Cutter Law PC, Gilbert LLP, and Mychal Wilson of Santa Monica, Calif. represent the relators. Clement & Murphy PLLC, Ropes & Gray LLP, and Reed Smith LLP represent Regeneron.

The case is Moore v. Regeneron Pharm. Inc. , 9th Cir., No. 24-5569, memorandum 8/19/26 .

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Signature Shareholders Can Sue Ex-Execs, Second Circuit Says (1)

Aug. 19, 2026, 10:06 AM PDT; Updated: Aug. 19, 2026, 1:58 PM PDT

Summary by Bloomberg AI

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- A federal appeals court said shareholders in failed Signature Bank can sue the bank's former officers, directors, and auditor.
- The court overturned a decision that gave only the Federal Deposit Insurance Corp. the power to bring securities fraud claims related to the bank's failure.
- The Second Circuit panel vacated the lower court's decision and remanded the case for further proceedings, allowing the plaintiffs to proceed with their claims.

Shareholders in failed Signature Bank can sue the bank's former officers, directors, and auditor, a federal appeals court said in overturning a decision that gave only the Federal Deposit Insurance Corp. the power to do so.

A federal district court judge wrongly applied the 1989 Financial Institutions Reform, Recovery, and Enforcement Act's succession clause in ruling that only the FDIC, in its role as receiver for Signature, has the authority to bring securities fraud claims related to the bank's failure, a unanimous US Court of Appeals for the Second Circuit panel ruled Wednesday.

"In this case, we disagree that the Succession Clause is so sweeping," Judge Richard C. Wesley said in the opinion.

The March 2025 ruling from Judge Frederic Block of the US District Court for the Eastern District of New York also determined that the plaintiffs hadn't yet exhausted their administrative claims against Signature's former directors and officers and auditor KPMG LLP in dismissing their claims.

The Second Circuit panel said that was unnecessary because the plaintiffs weren't suing the FDIC, in its role as Signature's receiver, and aren't looking to make claims against the failed bank itself.

The FDIC declined to comment. Counsel for the plaintiffs, led by Swedish public pension investment fund operator Sjunde AP-Fonden, didn't immediately respond to a request for comment.

Signature's 2023 failure was part of a string of regional bank failures highlighted by the collapse of Silicon Valley Bank.

The FDIC took over the crypto-friendly bank in March 2023 after depositors pulled more than $10 billion in deposits following SVB's collapse. New York-based Signature had more than $110 billion in assets at the time of its collapse, making it the third-largest bank failure on record.

Sjunde AP-Fonden and other Signature investors sued just after the collapse, when their stock lost nearly all of its value, alleging that they were given a rosy picture of the bank's finances that didn't match reality.

The Second Circuit vacated Block's decision and remanded the case for further proceedings.

Chief Judge Raymond J. Lohier Jr. and Judge Sarah A.L. Merriam signed onto the opinion.

Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer Check LLP represent Sjunde AP-Fonden.

The case is Sjunde AP-Fonden v. FDIC, 2d Cir., No. 25-720, Opinion 8/19/26 .

(Updates with comment from FDIC in sixth paragraph.)

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California climate disclosure law survives Exxon preemption challenge | Secondary Sources | National

(August 14, 2026) - A federal judge has dismissed Exxon Mobil Corp.'s claims that federal securities law preempts a California law requiring large companies to report climate-related financial risks.

U.S. District Judge Daniel J. Calabretta of the Eastern District of California on Aug. 11 said the National Securities Markets Improvement Act of 1996 did not preempt California's Senate Bill 261 because the state law did not affect Exxon's ability to offer securities.

The ruling narrows Exxon's challenge to the law, which requires companies with more than $500 million in annual revenue doing business in the state to publish online reports on their climate-related financial risks every two years.

The Ninth U.S. Circuit Court of Appeals paused enforcement of the law in November 2025 to consider an appeal in a separate action alleging compelled speech in violation of the First Amendment. *Chamber of Com. v. Randolph*, No. 25-5327, *order issued* (9th Cir. Nov. 18, 2025).

Exxon's own First Amendment claims against the law remain pending before Judge Calabretta.

Suit: NSMIA trumps California statute

Exxon sued California officials in October 2025, saying that Section 18(a)(2)(B) of the NSMIA, 15 U.S.C.A. § 77r(a)(2)(B), bars state laws that "limit, or impose any conditions upon the use of" offering and disclosure documents.
The energy company said the California law forces it to issue an additional report on climate risks, undermining Securities and Exchange Commission Form 10-K as the primary vehicle for federally mandated risk disclosures.

"Broad" NSMIA reading rejected

The California officials moved to dismiss the complaint in November 2025, arguing that the NSMIA does not preempt state business-disclosure laws generally.

Judge Calabretta agreed. He rejected Exxon's "broad" interpretation of the NSMIA's preemption clause, concluding that the statute only preempts state laws that regulate a company's ability to offer securities within the state.

He concluded that the heading under which Section 18 appears, "Exemption from State regulation of securities offerings," suggests that the NSMIA only preempts state laws that limit the "use of" disclosure documents when the law imposes offering requirements.

Because a failure to comply with the climate disclosure requirement does not affect a company's ability to offer securities in California, the NSMIA does not preempt it, the order said.

The District Court also said that adopting Exxon's argument could invalidate "large swaths of state code," including California laws that require corporate disclosures related to cybersecurity and employee compensation.

The court dismissed the preemption claim without leave to amend, saying any amendment would be futile because the issue is a pure question of law.

California Deputy Attorney General Katherine Gaumond represented the state defendants.

By Andrew Allard

Suit: Rolex embedded over 100 web trackers without user consent | Secondary Sources | National

(August 10, 2026) - The U.S. subsidiary of Swiss luxury brand Rolex embedded third-party trackers on its website to collect and transmit visitors' identifying data without their knowledge or consent, a proposed class-action lawsuit says.

In a complaint filed Aug. 3 in the U.S. District Court for the Northern District of California, Alexander Del Salto says Rolex Watch U.S.A. Inc. violated the federal Electronic Communications Privacy Act, 18 U.S.C.A. § 2510, and the California Invasion of Privacy Act, Cal. Penal Code § 630.
Rolex deployed 107 third-party trackers on its website including cookies, device fingerprints and session recorders, the suit says.

According to the complaint, the trackers are deployed automatically and invisibly when users visit rolex.com, resulting in users being tracked without their knowledge or consent.

In May, Del Salto visited Rolex's website to research the Rolex Daytona watch, the suit says.

Rolex shared Del Salto's data with third-party canvas fingerprinting operators including Facebook SDK and Shape Security, the suit says.

His data was then shared with third parties to conduct targeted advertising based on his location, the suit says.

Del Salto says he did not consent to the use of trackers while browsing Rolex's website.

Represented by attorneys from Potter Handy LLP, he seeks to represent a nationwide class of individuals whose data was tracked while visiting Rolex's website, as well as a California subclass.
Del Salto seeks class certification, damages, interest, costs and attorney fees.

By Nika Schoonover

Bloomberg Law

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Using Baseball Arbitration Would Cut Costs in Discovery Disputes

Aug. 20, 2026, 1:30 AM PDT

Summary by Bloomberg AI

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- The use of baseball arbitration to adjudicate document discovery disputes could streamline resolution and reduce costs by motivating parties to tailor initial discovery requests and responses more reasonably.
- Baseball arbitration will improve productivity at meet-and-confers because parties will start from more reasonable negotiating positions, and they will work harder to reach agreement rather than paying lip service to the meet-and-confer requirement.
- The procedure is likely to reduce motion practice as parties may seek to avoid the all-or-nothing risk of a baseball arbitration discovery hearing, resulting in substantial time and expense savings for both litigants and courts.

Courts and commentators for years have decried the rising cost of civil discovery. Those costs arise in substantial part from document discovery and related disputes.

As a former litigator and current commercial litigation funder at GLS Capital, I have seen how overspending on discovery disputes can strain case budgets and lead to disproportionate legal spend relative to case value. To reduce those costs, parties and courts should consider a changeup: resolving document discovery disputes through "baseball arbitration."

"Baseball Arbitration" Defined

In baseball arbitration — named due to its use in resolving salary disputes in professional baseball — each party submits a proposed settlement amount and, after a hearing, the arbitrator selects one of the proposed settlements as the final award. The arbitrator must select one of the parties' proposals and can't choose a middle ground.

This procedure encourages the parties to behave reasonably rather than swinging for the fences. As courts have recognized, "[i]n baseball arbitration … the parties … have every incentive to make a reasonable proposal to the arbitrator because the arbitrator will choose the more reasonable offer."

Document Discovery Procedure

Under the Federal Rules of Civil Procedure, either party may propound on its opponent requests to produce documents. The opponent must respond within 30 days, specifying which responsive documents it will produce.

If the propounding party is dissatisfied with the response, it must confer or attempt to confer with its opponent to seek to resolve the disagreement without court intervention (known as the "meet-and-confer" process). Failing compromise, the propounding party may then move the court to compel compliance with its request.

This process is the source of significant cost and expense and often drags into extra innings. It can involve multiple rounds of conference calls, emails, deficiency letters, amended requests or responses, motion practice, and discovery hearings. Legal fees mount each step of the way.

Applying Baseball Arbitration

Using baseball arbitration to adjudicate document discovery disputes could streamline resolution and reduce costs. It would work as follows:

Party A serves a document request to Party B, and Party B responds, specifying which responsive documents it will produce.

After conferring with Party B, Party A may move to compel — but it must seek compliance with its request as last put in writing to Party B, without modification.

The court resolves disputes by selecting one party's position, as stated in that party's most recent written request or response, as applicable.

Benefits

The use of baseball arbitration could increase efficiency at each step of the document discovery process.

Improved requests and responses. Baseball arbitration will motivate parties to tailor initial discovery requests and responses more reasonably. Parties routinely serve overly broad document requests or boilerplate responses, often to courts' dismay.

This practice aligns with the incentives the current scheme creates. Because courts frequently split the difference when resolving discovery disputes rather than siding entirely with one party, each side has good reason to be aggressive from the outset.

With baseball arbitration, however, those incentives dissipate. Propounding parties will avoid sweeping initial requests, knowing that courts will be unlikely to enforce them. Similarly, responding parties will forego improperly narrow responses, as such tactics risk compelled disclosure of everything their opponent requested.

More productive meet-and-confers. Baseball arbitration also will improve productivity at meet-and-confers. Because parties will start from more reasonable negotiating positions, there will likely be fewer disagreements to address and shorter divides to bridge.

Further, if parties can no longer count on courts to fashion compromises on their behalf, they will work harder to reach agreement, rather than simply paying lip service to the meet-and-confer requirement, as attorneys sometimes do.

Reduced motion practice. With baseball arbitration, parties likely will file fewer motions to compel. Courts have recognized baseball arbitration's tendency to foster settlement in other contexts.

The same result should follow in the discovery context, as parties often may seek to avoid the all-or-nothing risk of a baseball arbitration discovery hearing. The time and expense saved from such reduced motion practice for both litigants and courts could be substantial.

Potential Criticisms

Critics may view the use of baseball arbitration as too much of a curveball. They may argue it unduly restrains both judicial discretion and the scope of discovery. But such concerns are baseless.

First, some may argue that courts should retain discretion to call balls and strikes in discovery as part of case management, including by determining the proper scope of document production. But parties, not courts, are often best positioned to understand what information is relevant and proportionate to a case.

Parties may know better than courts — which sometimes manage hundreds of cases simultaneously — what facts matter for their particular case, where key documents are located, and what burdens accompany production. Accordingly, parties are best equipped to ascertain the appropriate scope of discovery in their cases, provided that they have incentives to behave reasonably.

Critics may also argue that baseball arbitration will unduly curtail the scope of discovery and undermine its truth-seeking mission by discouraging liberal document requests. That is unlikely.

The broad scope of permissible discovery would remain unchanged, and parties resisting discovery would continue to bear the burden of showing why a request is improper. The use of baseball arbitration will simply force parties to tailor their requests appropriately and cooperate with each other — the same objectives that the Federal Rules and courts have sought to achieve.

Key Takeaways

In many cases, baseball arbitration can pinch-hit for traditional discovery dispute resolution. It creates incentives for litigants to act reasonably and cooperatively in discovery and thereby reduces cost, burden, and expense on parties and courts.

Parties should therefore consider incorporating this procedure into their discovery plans. And courts and arbitrators should encourage — or, where appropriate, require — parties to use this practical and efficient method for dispute resolution in document discovery.

This article does not necessarily reflect the opinion of Bloomberg Industry Group Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

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Private Equity Found A Law Firm That Said Yes

abovethelaw.com/2026/08/private-equity-found-a-law-firm-that-said-yes

Wood Smith Henning & Berman, a California insurance-defense firm with more than 500 lawyers spread across 43 offices in 35 states and London, has reportedly signed a letter of intent to sell a piece of itself to private equity, in a deal valuing the business at around $700 million. The buyer is Charlesbank Capital Partners, a Boston firm with some $22 billion under management that got its start managing Harvard's endowment. If it closes, it would be the largest private equity investment in an American law firm to date, and the first concrete result of the flirtation the country's richest firms have been carrying on with outside money.

Now, Wood Smith is not Wachtell, it is not a white-shoe name with a marquee M&A practice. By revenue — $244 million last year — Wood Smith sits just outside Biglaw proper, though with 500-plus lawyers it is nobody's boutique. It is a high-volume insurance-defense shop, which is to say exactly the kind of commodity, repeat-business practice private equity has been circling, because the work is predictable and, crucially, sticky. As an M&A adviser predicted back in May, the early PE/law firms deals would come from a firm with a smaller cap table and founders still active and ready to cash out.

The mechanism of the deal is a management services organization, the structure that lets an investor own the billing, the software, and the back office while the lawyers keep control of the law part of the firm. The deal's reported price tag, $700 million, works out to about 18 times the firm's adjusted EBITDA of $38.2 million.

None of this means private equity has taken over Biglaw. It hasn't, and the marquee partnerships are still not ready to hand over the keys. But the industry knows how to read a weathervane, and Wood Smith is a good one… anyone trying to read which way the wind is blowing just got the clearest data point so far.

Missing avocado oil in Campbell's chips creates class action crunch

abajournal.com/news/article/absent-avocado-oil-in-campbells-chips-creates-a-class-action-crunch

A California woman has filed a class action lawsuit against the Campbell's Co. over its potato chip brand, questioning whether the snack's advertised use of avocado oil is a misrepresentation. (Photo from Diana Heiland's Aug. 18 lawsuit)

A California woman has filed a class action lawsuit against the Campbell's Co. over its potato chip brand, questioning whether the snack's advertised use of avocado oil is a misrepresentation.

Diana Heiland of Fresno, California, said in the suit filed Tuesday she purchased Kettle Brand Avocado Oil Sea Salt With a Hint of Pink Peppercorn Potato Chips, thinking that they were a healthier alternative to chips prepared with seed oils.

Heiland and others in the suit said they faced an economic injury when they paid more for a product that did not have the premium ingredient and the benefit that it claimed, according to coverage by Courthouse News Service.

"Every sample of every product was classified as compositionally inconsistent with authentic avocado oil," Heiland's suit said, referencing a published July study conducted by food scientists who tested the chips ingredients.

The suit alleges that Campbell's violated California's Consumers Legal Remedies Act, its Unfair Competition Law and its False Advertising Law. Heiland is requesting that a federal judge certify a nationwide class and a California subclass to declare that Campbell's violated the statutes. The suit further asserts that the company manufactures, sells, distributes and markets the potato chips, and it's responsible for packaging, which includes the claim, "Made With Avocado Oil."

A spokesperson said Campbell's does not comment on pending litigation.

1st Circ. Says Apellis Disclosures Weren't 'Half-Truths'

law360.com/articles/2515617

(August 19, 2026, 10:07 PM EDT) -- A First Circuit panel on Wednesday affirmed the dismissal of a securities fraud lawsuit accusing Apellis Pharmaceuticals and some of its top executives of misleading investors about the safety testing of the company's eye drug Syfovre, finding no actionable claim the company told "half-truths" about potential side effects of inflammation that can lead to blindness.

In a unanimous, published opinion, the three-judge panel held that statements made by Apellis about the absence of retinal vasculitis among participants in two major clinical trials were not actionable under federal securities laws, even though it did not explain to investors the trials were not specifically designed to detect the condition.

"In our view, the plaintiffs' theory fails to ground a viable securities fraud claim because, under the circumstances as alleged, the challenged statements are not actionable half-truths," the panel said.

The lawsuit stems from reports in July 2023 that patients receiving Syfovre had developed retinal vasculitis, an inflammation of the retinal blood vessels that can cause serious vision loss, with up to eight possible cases reported.

Apellis' stock price dropped during that period, and the lawsuit initially filed by Ray Peleckas and the Michigan Laborers' Pension Fund in August 2023 alleged that misrepresentations by the company about the side effects of Syfovre were responsible.

The plaintiffs alleged that Apellis' statements about retinal vasculitis not being observed in clinical trial participants were technically true but misleading because investors were not told that two clinical trials named Oaks and Derby were not designed specifically to detect retinal vasculitis.

The plaintiffs argued the studies did not require an immediate fluorescein angiogram — which is a method for detecting retinal vasculitis — whenever participants developed inflammation, and the trials did not require immediate testing of participants who left the studies.

The panel said the clinical trial protocols were publicly available and that participants underwent angiograms at the beginning, midpoint and conclusion of the two-year studies. Medical professionals conducting the study could order additional angiograms when symptoms warranted them, the panel said.

There was no evidence that any participant in the clinical trials developed retinal vasculitis, nor was it observed in any patient taking Syfovre over the 10 years it was developed, the panel said.

But the panel said those facts did not make the company's statements about retinal vasculitis "half-truths" because "there were neither contradictions nor undisclosed facts.

"The defendants reported that their clinical studies found two side effects that are symptomatic of retinal vasculitis: retinal inflammation and ischemic neuropathy. The defendants then announced that there were no observed cases of retinal vasculitis," the panel said. "These facts provide some basis for reasonable investors to infer that the defendants were testing for retinal vasculitis.

"But they do not create a factual contradiction because both the Oaks and Derby studies employed fluorescein angiography at set times and fluorescein angiography is the most common method used to test for retinal vasculitis," the panel added.

"There is no actionable claim here because the information provided by the defendants was accurate and did not conceal material information," the judges said.

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

The plaintiffs are represented by Alan Ellman, Andrew Love, Mark T. Millkey and Robert Michael Rothman of Robbins Geller Rudman & Dowd LLP, Ryan M. Ernst of Bielli & Klauder LLC, Theodore Michael Hess-Mahan of Hutchings Barsamian Mandelcorn LLP and Joseph Alexander Hood II and Jeremy Alan Lieberman of Pomerantz LLP.

The defendants are represented by Raymond J. DiCamillo, Jeffrey L. Moyer and Puja Upadhyay of Richards Layton & Finger PA, and Daniel W. Halston, Edward Welles Hasen, Peter J. Kolovos and Daniel Willey of WilmerHale LLP.

The case is In re: Apellis Pharmaceuticals Inc. Securities Litigation, case number 25-1383, in the U.S. Court of Appeals for the First Circuit.

Generac Investors Ask 7th Circ. To Revive COVID Sales Suit

law360.com/articles/2515406

(August 19, 2026, 9:53 PM EDT) -- A pension fund has urged the Seventh Circuit to revive a securities class action accusing home generator company Generac Holdings Inc. and its top brass of failing to keep up with a surge in business during the COVID-19 pandemic, arguing the lower court erroneously found that the statements challenged by the suit were immaterial.

The City Pension Fund for Firefighters and Police Officers in the City of Tampa and The City of Miami Fire Fighters' and Police Officers' Retirement Trust filed an opening **brief** on Monday seeking revival of their class action that a Wisconsin federal judge **tossed** in April.

The pension fund argues that the complaint adequately alleges materially misleading half-truths and that the district court's dismissal "was the result of failing to draw reasonable inferences regarding the materiality of the concealed facts and the interpretation of the statements in plaintiffs' favor."

The suit claims that during the proposed class period, Generac reported increased product sales driven mainly by demand for its home generators at the start of the COVID-19 pandemic. As the pandemic continued, however, Generac had trouble keeping up with orders and, despite efforts to increase capacity, its sales stalled, its orders decreased, and demand for its home standby generators declined, according to investors.

The suit claimed, among other things, that Generac and the individual defendants concealed declining close rates, which are the percentage of sales opportunities that are successfully closed.

On Monday, the pension fund said the district court erred in concluding that statements about close rates were immaterial because Generac CEO Aaron Jagdfeld repeatedly touted their importance and then hid them when they declined.

"Leading up to the class period, defendant Jagdfeld repeatedly disclosed positive trends in close rates, consultations, and dealer orders to support increased demand and sales forecasts for generators and even highlighted close rates as the most important, calling them the entire 'game' for evaluating demand," the brief states.

"Then, during the class period, he continued touting strong demand as supported by positive trends in consultations and dealer orders, while concealing that close rates declined as much as 40%," the brief further states.

The pension fund also said the court erred by finding that the defendants did not act with scienter, or knowledge of wrongdoing. According to the brief, the court concluded that the more plausible inference behind the concealment of the declining close rates was that they would not alter the "accurate picture" painted of the generator business.

But the pension fund again noted that Jagdfeld touted close rates as the most important metric for Generac, and that the painted picture was not accurate because later, contrary disclosures caused stock declines.

The district court also erred by finding that the magnitude of defects reported in Generac's solar products was not significant enough to warrant disclosure, according to the pension fund.

"The defect had required the company to work for months on three successive fixes, respond to multiple dealers' repeated complaints, indemnify its largest dealer, and report the defect to the Consumer Product Safety Commission, and the defect had caused two residential fires … and resulted in tens of thousands of customer complaints," the brief states.

"The defect was a massive problem for the main product in Generac's new business, which was called the Company's 'future' — it was not a trivial issue simply because sales were still ramping up," the brief further states.

Therefore, the suit adequately alleges that the defendants knowingly made material misrepresentations about the safety and compliance of Generac's solar products, the pension fund said.

Finally, the pension fund argued that the district court's finding that allegedly concealed solar sales concentrations were "simply immaterial" to investors was "premature."

"The allegations show that when the market learned that half of Generac's solar sales were concentrated in Pink Energy, which went bankrupt due to the solar defect, it contributed to the large stock declines and caused more than a 50% decline in solar guidance," the brief states. "Analysts reported on the sales concentration extensively, and even defendants admitted Pink Energy was a 'major' and 'really important' customer, the loss of which hurt Generac's business."

According to the brief, the court, in dismissing the case, focused on the fact that Generac's solar sales were under 5% of the company's total sales. But the pension fund argued on Monday that, in doing so, the court overlooked other factors demonstrating materiality, such as Jagdfeld calling solar the "future" of Generac and saying solar sales could grow to equal the size of generator sales.

"Here too, the court substituted its interpretation of the statements for the independent analysts who, after the sales concentration was belatedly disclosed, reported that investors would be 'surprised' by the concentration, that there had been 'no prior indication' of the concentration, that Generac was not as successful in broadening its customer base as defendants represented, and that management had therefore lost 'credibility,'" the brief states.

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

The investors are represented by James E. Barz, Frank A. Richter, Michael J. Stramaglia, Darren J. Robbins and Joseph Daley of Robbins Geller Rudman & Dowd LLP, and Robert D. Klausner of Klausner Kaufman Jensen & Levinson.

The defendants are represented by Glenn K. Vanzura and Erica L. Ross of Willkie Farr & Gallagher LLP and Jacqueline M. Vallette of Mayer Brown LLP.

The case is City Pension Fund for Firefighters and Police Officers in the City of Tampa et al. v. Generac Holdings Inc. et al., case number 26-2183, in the U.S. Court of Appeals for the Seventh Circuit.

Chipotle Beats Investor Suit Over Viral Burrito Size Backlash

(August 19, 2026, 4:46 PM EDT) -- Chipotle Mexican Grill has permanently beaten an investor suit tied to social media-fueledcomplaints about its portion sizes, with a California federal judge finding that the suit failed to plausibly plead its securities fraud theories.

U.S. District Judge Sherilyn Peace Garnett issued **an order Monday** finding that the operative complaint failed to allege any false or misleading statements and to adequately plead that the defendants committed a scheme to defraud.

The suit claimed Chipotle's leadership was dismissive ofviral social media complaints about its burrito and burrito bowl sizes, even as the company allegedly scrambled behind the scenes to investigate portion practices and correct course.

Posts of Chipotle customers describing the chain's sizes as "inconsistent or lacking" began trending on social media in 2024 and despite previously denying quality issues, in July 2024, Chipotle announced an initiative to ensure generous portions, reducing profitability and leading to share declines, the suit said.

Investors claimed the defendants misled the public about the reputational harm Chipotle might face from the social media posts by simply issuing a disclosure that the company's inability to "recognize, respond to and effectively manage" the posts might affect the business and lead to negative publicity.

According to the order, the investors claimed the disclosures were misleading because at the time they were made in Chipotle's regulatory filings, the company had "already concluded that the increasing number of social media allegations of skimping had negatively impacted the company's business through increased negative customer sentiment."

However, Judge Garnett said Monday that nothing in the complaint suggests the risk disclosures were false, especially since Chipotle had experienced sustained social media criticism long before the disclosures were made.

"Thousands of customers complained about the company's portion sizes on social media in 2023," the order said. "In December 2023, 'the New York Post published an article about the growing criticism of the company on social media.' This criticism was public and well documented. Plaintiff has not plausibly alleged that a reasonable investor would be misled by the company's first quarter 2024 risk disclosure."

The suit also said statements denying that the company had reduced its portion size, made by Chipotle's former CEO Brian Niccol, and Laurie Schalow, chief corporate affairs officer, were false and misleading because Chipotle had "secretly launched an internal investigation to determine whether social media criticism of the company's portion sizes was accurate."

However, Judge Garnett found no supporting evidence in the complaint that the internal investigations were actually launched, who was involved or what Chipotle did to "investigate portion size concerns."

"Plaintiff has not alleged facts with sufficient particularity to show that Niccol and Schalow failed to disclose an internal investigation into the size of the company's portions at the same time that they denied the company had reduced the size of its portions," the order said.

Finally, the judge tossed the suit's scheme liability claims, finding that the allegations that stores received "implicit or indirect instructions from mid-level corporate management to skimp" on customer portions were insufficient.

"Plaintiff has not identified what any defendant did that was deceptive or manipulative. ... [P]laintiff does not identify any defendant's alleged role in the 'scheme,'" the order said.

In dismissing the suit with prejudice, Judge Garnett said leave to amend would be futile because the operative complaint suffers from the same deficiencies the court previously identified.

Representatives for the parties did not immediately respond to request for comment Wednesday.

The investors are represented by Tor Gronborg and Trig R. Smith of Robbins Geller Rudman & Dowd LLP.

Chipotle and the individual defendants are represented by Michele D. Johnson, Ryan A. Walsh, Andrew B. Clubok, Susan E. Engel and Matthew J. Peters of Latham & Watkins LLP.

The case is Michael Stradford v. Chipotle Mexican Grill Inc et al., case number 8:24-cv-02459, in the U.S. District Court for the Central District of California.

--Editing by Stephen Berg.

Paramount Judge Urges Parties To Be 'More Reasonable'

law360.com/articles/2515372

(August 19, 2026, 4:59 PM EDT) -- A California federal judge overseeing the challenge to Paramount Skydance's $110 billion Warner Bros. Discovery acquisition brought by the Writers Guild of America and state attorneys general urged the parties Wednesday to be "much more reasonable" with discovery disputes, warning that if they aren't, "you will find yourself asked to engage a special master."

U.S. District Judge Araceli Martínez-Olguín gave the advice during a case management conference held in Oakland that started with her telling the parties that she would not go over "the discovery disputes that you all have sought to couch as scheduling issues."

The judge said she had read through the statements that the parties had submitted and would refer the discovery matters to Magistrate Judge Ajay S. Krishnan.

"I encourage you all to be much more reasonable in the positions that you are taking with regard to some of these disputes," Judge Martínez-Olguín said. "Because if you aren't, you will find yourself asked to engage a special master."

The judge said she would let the magistrate judge determine if that was needed.

Judge Krishnan would "determine whether you are taking up more time of his than you should," Judge Martínez-Olguín said.

During the hearing, the judge also encouraged the parties to go forward with mediation and asked them to choose a mediator within the upcoming week.

"Otherwise, I will refer you all to someone," the judge said.

While looking over the case schedule, she noted that it didn't include proceedings for pretrial Daubert challenges.

Paramount lawyer Beth Wilkinson of Wilkinson Stekloff LLP said because the case is headed to a bench trial the parties decided not to make pretrial motions challenging each other's expert witness.

"If we have any challenges, I think we would bring them up at trial," Wilkinson said.

A lawyer for the state of California who was also speaking on behalf of the other attorneys general, James Weingarten of Milbank LLP, agreed.

Judge Martínez-Olguín smiled.

"Can you talk to other parties about this?" she said to courtroom chuckles.

The judge also noted that the case schedule includes a deadline for parties and nonparties to file motions to seal any documents and depositions.

"I am reluctant, extremely reluctant, to close this courtroom," the judge said. "Trials happen in public."

At the end of the case management conference, the judge noted that Paramount had filed a motion Tuesday **for a bond** from state AGs fighting the Warner Bros. merger. The judge made no comment on the motion other than to say the hearing was noticed for Sept. 21 and that didn't fit with her schedule. The judge reset the hearing to Sept. 24.

In their **complaints**, the attorneys general claim the deal will pair two of Hollywood's five major film distributors and two of the five owners of major basic cable channels, leading to higher prices and fewer films and TV shows being produced. In their parallel lawsuit, the Writers Guild of America West Inc. and Writers Guild of America East Inc., known collectively as the WGA, **raise concerns** of losing bargaining leverage in screenwriting contract negotiations should two of the industry's largest buyers of those services combine and deny them a chance to pit one against the other.

The overlapping lawsuits make Paramount the latest company to face challenges from state attorneys general and private plaintiffs contesting a deal blessed by the Trump administration, whose U.S. Department of Justice has been repeatedly accused of being overly friendly toward corporate consolidation.

In its Monday motion, Paramount Skydance put a price tag on waiting until next year to close its planned $110 billion purchase of Warner Bros. Discovery, asking the court to impose an approximately $1.9 billion bond requirement on the Democratic attorneys general and the Writers Guild of America challenging the deal.

The requested bond, pegged principally to daily "ticking fees" Paramount must start paying Warner Bros. shareholders if the deal doesn't close by the end of September, appears to be the latest attempt to pressure the 12 attorneys general and the WGA to cut a deal resolving the challenge that as of last week is the **only remaining obstacle** to the transaction closing.

"If plaintiffs are to impede a merger that was otherwise on track to close with worldwide regulatory approval, they are required to post a bond to ensure that, if defendants ultimately prevail, Paramount is compensated for the damage inflicted by being wrongfully delayed," the company said in the brief. "Section 16 of the Clayton Act — the very provision that plaintiffs invoke to enjoin the merger — expressly conditions preliminary injunctive relief, including the court-approved no-close order here, 'upon' executing a 'proper bond' that sufficiently guards 'against damages for an injunction improvidently granted.'"

Paramount says it agreed to the no-close order, promising **to hold off** until either June 2027 or the Northern District of California rules without prejudice, and without knowing how long it would take to get an answer on the challenge. Less than two weeks after it made that promise in late July, Judge Martínez-Olguín set trial for the beginning of **March 2027.**

That trial, Paramount said, will begin approximately four months after the date it and WBD had jointly proposed.

"Each day that passes after September 30th without the merger closing, Paramount must pay roughly $7 million in 'ticking fees' to Warner Bros. stockholders and yet more fees to its financing sources for maintaining their commitments, and it is forestalled from realizing technology and marketing synergies, among many other transaction benefits," the company said.

"By the time trial concludes and the parties submit their final briefs, Paramount will have paid Warner Bros. shareholders an unrecoverable $1.3 billion in ticking fees alone. Delay also threatens to nullify the regulatory approvals that defendants have already spent months securing," it added. "If the transaction remains unclosed by the end of trial, defendants will have to take additional steps to obtain regulatory approval, once again at substantial expense. Absent security, even a complete victory on the merits would not restore a dollar of those extraordinary losses."

The California attorney general's office, which is leading the enforcer challenge, responded to the motion Monday by calling the combining firms "two sophisticated companies who willfully decided to include a costly ticking fee as a provision in their merger contract. They knew this merger would undergo regulatory review; they knew it was not a done deal; and they chose to include it anyway."

The WGA is represented by David C. Brownstein and David M. Goldstein of Farmer Brownstein Jaeger Goldstein Siegel & Shepard LLP, Kellie Lerner, Ellison A. Snider, J. Wyatt Fore and Ben Allen of Shinder Cantor Lerner LLP, Slade Bond, Charles J. LaDuca, Michael J. Flannery and Sarah Rooney of Cuneo Gilbert Flannery & LaDuca LLP, and Matthew J. Platkin and Aaron Haier of Platkin LLP.

The states are represented by their respective attorney general's offices.

California is further represented by Richard Parker, James Weingarten, Adam Di Vincenzo, Grant Bermann, Anastasia Pastan, Julia May, Natalie Nogueira, Allison Chesky, Kelly Dodge Garcia and Emme Tyler of Milbank LLP.

Paramount is represented by Danielle R. Sassoon and Philip Hammersley of Clement & Murphy PLLC, Beth A. Wilkinson and Rakesh Kilaru of Wilkinson Stekloff LLP, Jeffrey L. Kessler, Jeanifer Parsigian, Matt DalSanto, Conor Reidy, Kevin B. Goldstein and Matt Huppert of Winston Taylor, and Maggy Sullivan, Chris Brown, Anna M. Rathbun and Hanna Nunez Tse of Latham & Watkins LLP.

WBD is represented by Daniel M. Petrocelli, Julia Schiller and Pete Herrick of O'Melveny & Myers LLP, Barry A. Nigro Jr. and Kathy O'Neill of Fried Frank Harris Shriver & Jacobson LLP, and Derek Ludwin, Henry Liu and Ross A. Demain of Covington & Burling LLP.

The cases are California et al. v. Paramount Skydance Corp. et al., case number 4:26-cv-07116, and Writers Guild of America West Inc. et al. v. Paramount Skydance Corp. et al., case number 4:26-cv-07212, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bryan Koenig, Matthew Perlman and Lauren Berg. Editing by Marygrace Anderson.

Medtronic Rival Seeks Injunction After $382M Antitrust Win

law360.com/articles/2514326

(August 17, 2026, 6:06 PM EDT) -- Medical device company Applied Medical Resources Corp. has urged a California federal judge to issue final judgment and impose a permanent injunction against Medtronic Inc. that would block contracts a jury found were used to illegally maintain a monopoly over a surgical device, saying that would end Medtronic's "exclusionary conduct and restore competition."

The claims are over advanced bipolar devices — specialized electrosurgical tools used to simultaneously seal and cut blood vessels and tissue bundles during surgeries. Applied Medical **said in its Friday motion** the injunction is crucial to making the **jury's verdict** change the medical device behemoth's behavior.

"The jury found that Medtronic uses exclusionary conduct to preserve its monopoly, exclude rivals like Applied, and deny hospitals lower-priced alternatives," Applied Medical said, noting the court upheld that verdict and also rejected Medtronic's post-trial motions.

The proposed injunction seeks two targeted carveouts: one would allow hospitals to buy advanced bipolar devices from nonfull-line suppliers like Applied Medical. That needs to be "without triggering higher prices, worse terms, lost rebates, or other negative treatment on other products," Applied Medical said.

Evidence at trial showed that such a carveout would open up competition in the advanced bipolar devices market, Applied Medical said.

"Medtronic offered no contrary evidence or analysis," the rival added.

The court should also prevent Medtronic from punishing hospitals — or threatening to do so — for trying other advanced bipolar devices, Applied Medical said.

"Hospitals cannot choose a better product if Medtronic punishes them for testing it," Applied Medical said Friday. "The injunction therefore would bar Medtronic from using ABDs purchased for trials to impose or threaten to impose any less favorable price, term, rebate, or other negative treatment."

Applied Medical also asked for safeguards to make the injunction effective such as prohibiting retaliation, requiring Medtronic to notify customers and employees about the rules, periodic certifications, an independent hotline, targeted audits, and provisions preventing Medtronic from simply using a slightly different tactic to get around the order.

"Such provisions are common in antitrust injunctions and, together, would turn the verdict into meaningful relief for Applied and the market," Applied Medical said.

Applied Medical said Medtronic initially offered to accept the restrictions, but only if they protected Applied Medical specifically. Applied Medical rejected that proposal, saying its goal is to open the market to all competitors, not give itself an advantage.

"Applied declined because this case seeks to open the market, not secure special treatment for one supplier," Applied Medical said.

Medtronic then proposed changes that would undermine the injunction, according to Applied Medical.

In particular, Applied Medical said, the proposed revisions would allow Medtronic to use certain tactics to discourage hospitals from buying competitors' advanced bipolar devices.

"Medtronic also deletes every protection against retaliation. That would let Medtronic purport to honor the carve-outs while punishing hospitals that use them," Applied Medical said Friday.

Applied Medical also objected to Medtronic limiting the injunction to three years, noting that is the typical length of a single group purchasing organization or hospital agreement.

"Medtronic asks the court to presume an adjudicated monopolist will be reformed on a date certain, after years of monopolization," Applied Medical said. "Relief against an entrenched monopolist should not expire merely because of the calendar."

The court should also rebuff Medtronic's bid to prevent the injunction from being enforced during an appeal, Applied Medical added, and that Medtronic's proposed changes are not reasonable.

"They are an effort to preserve the very conduct that the jury found unlawful. The court should enter an injunction that restores competition, prevents Medtronic from continuing to engage in conduct the jury condemned, and ensures that hospitals are finally free to choose competing products on the merit," Applied Medical argued.

In a November filing to the court, Medtronic argued Applied Medical's claims for injunctive relief are too late, saying they accrued more than four years before Applied Medical filed suit.

"Laches forbids plaintiffs from sleeping on their rights," Medtronic had said.

Applied Medical launched its first advanced bipolar device in 2015, according to Medtronic's November filing.

"Evidence that at the time Applied launched its ABD, Applied was aware that Medtronic offered bundled, volume, and/or loyalty discounts and believed it was being injured by such conduct," Medtronic said.

There's also evidence Applied Medical complained to the U.S. Department of Justice regarding the challenged conduct some time before 2017, Medtronic noted.

In its Friday filing, Applied Medical urged the court to enter judgment against Medtronic on laches. It also noted that in U.S. District Judge Wesley Hsu order on Medtronic's motion for summary judgment, Medtronic hadn't argued that Applied Medical's damage claims were barred by the statute of limitations. If Medtronic had, the argument "would not be successful" since Applied had challenged Medtronic's conduct from 2019 to 2023, Applied Medical said.

Medtronic is now using laches to oppose Applied Medical's request for an injunction, but courts generally do not use past delay to prevent an injunction aimed at stopping ongoing or future unlawful conduct, Applied Medical argued Friday.

"Each exclusionary agreement that Medtronic signs, renews, or enforces is a new overt act, so there can be no undue delay as to such conduct that continues today," Applied Medical said.

Applied Medical did not have a complete advanced bipolar device line until 2019, the company noted.

"Applied acted reasonably in filing suit less than four years later," Applied Medical said.

The Friday filing also seeks a final judgment from the court on Applied Medical's California state law unfair competition claim. Since the jury found Medtronic's conduct violated antitrust principles, the same conduct also qualifies as "unlawful" and "unfair" under California law, Applied Medical argued.

Applied Medical filed its suit **back in 2023**, alleging Medtronic created a monopoly for itself by illegally hindering competition in the market for the surgical devices by using exclusive contracts and bundling multiple products together.

In July, Judge Hsu **denied a motion** from Medtronic that sought judgment in its favor or a new trial, lodged after a jury sided with Applied Medical Resources Corp. in February.

A representative for Medtronic told Law360 the company disagrees with the verdict and that it plans to file an appeal with the Ninth Circuit once judgment is final.

Representatives for Applied Medical did not respond to a request for comment Monday.

Applied Medical is represented by Joseph R. Re, Stephen C. Jensen, Stephen W. Larson, Cheryl T. Burgess, Joseph F. Jennings and Adam B. Powell of Knobbe Martens.

Medtronic is represented by Brian L. Stekloff and Sarah Neuman of Wilkinson Stekloff LLP, Leah Brannon and Alan B. Freedman of Cleary Gottlieb Steen & Hamilton LLP, and Jason L. Liang of Liang Ly LLP.

The case is Applied Medical Resources Corp. v. Medtronic Inc., case number 8:23-cv-00268, in the U.S. District Court for the Central District of California.

--Additional reporting by Lauren Berg, Matthew Perlman, Hailey Konnath and Craig Clough. Editing by Lakshna Mehta.

Pro-Business Foundation Backs J&J's Stelara Antitrust Win

(August 19, 2026, 8:25 PM EDT) -- Insurer CareFirst's bid to revive an antitrust lawsuit against Johnson & Johnson over its acquisition of patents affecting competitors would throw cold water over drug company mergers, burden government regulators and strip the issue of intent out of antitrust enforcement, according to an amicus brief filed by the Washington Legal Foundation.

The pro-business foundation's brief to the Fourth Circuit on Wednesday said a Virginia district court had rightly rejected CareFirst of Maryland's claims that Johnson & Johnson violated Section 2 of the Sherman Act when it acquired Momenta and its 500-patent portfolio in 2020, then later cited some of those patents to successfully keep another company from selling a "biosimilar" version of Stelara, an immunosuppressant drug Johnson & Johnson owned before the Momenta purchase.

"Market power acquired by accident is not unlawful," **WLF's brief** said. "CareFirst argues that a firm violates Section 2 merely by acquiring a patent portfolio that, years later, turns out to contain patents conferring market power — even if the firm lacked knowledge of the relevant patents and couldn't have foreseen their competitive effect at the time of acquisition. The theory reduces Section 2 to strict liability and has no support in the statute or the governing case law."

The pro-business foundation is one of several amici in the Fourth Circuit appeal to side with Johnson & Johnson, which got the Sherman Act claims stemming from its Momenta acquisition **cut from the case** in January.

Johnson & Johnson's **position**, which WLF adopted, was that the drugmaker had bought Momenta and its patents with the intent to acquire a different drug, nipocalimab. Regulators with the Federal Trade Commission and the U.S. Department of Justice had reviewed the merger and did not object, the foundation's brief said.

It wasn't until years later that Johnson & Johnson discovered that Momenta had four patents that covered a process another drugmaker, Amgen, had planned to use to make a biosimilar for Stelara, the brief said. Johnson & Johnson sued Amgen over those patents and reached a settlement, WLF noted.

CareFirst's **2023 complaint** against Johnson & Johnson had claimed that the Momenta acquisition and patent defense was a willful effort to suppress competition for Stelara. But WLF said that incidental acquisition of patents whose value becomes apparent later does not satisfy the willfulness requirement for an antitrust violation.

"Section 2's 'willfulness' requirement serves an essential purpose. It means that monopoly power becomes unlawful only when it's acquired through exclusionary or 'anticompetitive' conduct," the amicus brief said. "… It protects the 'incentive to innovate' and avoids chilling legitimate conduct."

The foundation also argued that CareFirst's theory would force companies and regulators to dig through patent portfolios to try and predict any monopolistic advantages a merger would create. That would undermine the so-called "Hart-Scott-Rodino premerger review framework" that currently compares things like "parties' principal lines of business, overlapping products, supply relationships, and other high level competitive overlaps."

While passing an HSR review isn't a guarantee of antitrust immunity, it carries weight with regulators and courts that would go away if the Fourth Circuit adopted CareFirst's theories of the case, the foundation argued.

"Under CareFirst's standard, HSR approval would become a hollow formality: firms could comply fully with HSR requirements yet still face Section 2 liability years later for patents whose relevance only became apparent long after closing," the brief said. "CareFirst's standard would force the FTC and DOJ into an untenable choice: either… demand exhaustive, burdensome review of every incidental patent in each transaction, grinding procompetitive deals to a halt, or …maintain the current process and accept that HSR clearance provides no meaningful guidance to courts or markets."

The possibility of antitrust liability would chill merger activity, which the foundation said was a key way for innovative drugs to make it to the market: small startups take chances on new treatments that get bought by bigger companies with the ability to finish bringing them to market, the brief said.

"Fewer acquisitions would mean fewer buyouts, reducing incentives for small firms to invest in early-stage research. Smaller firms would be forced to shoulder late-stage development burdens that larger firms are better equipped to handle, slowing the arrival of new, potentially lifesaving therapies. Consumers would face higher prices, fewer treatment options, and slower medical progress," the brief said.

Reviewing patent portfolios and divesting those that could give rise to future liability under a "strict liability" standard would go beyond diligence to "clairvoyance," the foundation said.

"Courts have long distinguished between acquisition of market power by accident, which isn't actionable, versus acquisition of market power through willful, exclusionary conduct, which is," WLF attorney Jay DeSanto told Law360 on Wednesday. "J&J's incidental patent acquisitions here fall into the former category, not the latter."

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

Washington Legal Foundation is represented in-house by Jerome P. DeSanto Jr. and Cory L. Andrews.

Johnson & Johnson is represented by George G. Gordon, Michael H. McGinley, Julia Chapman, David M. Costigan and Steven A. Engel of Dechert LLP.

CareFirst is represented by 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, Matthew W.H. Wessler, Matthew Guarnieri and Stefanie Ostrowski of Gupta Wessler LLP, Marc C. Greco, Kip A. Harbison and Michael A. Glasser of Glasser and Glasser PLC and John D. Radice of Radice Law Firm PC.

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.

Footprint Investors Sue In Del. Over $500M Financing Deal

law360.com/articles/2514718/footprint-investors-sue-in-del-over-500m-financing-deal

(August 19, 2026, 8:01 PM EDT) -- Early investors in Footprint International Holdco Inc. have sued the sustainable packaging company, its directors and several institutional investors in the Delaware Chancery Court, alleging that insiders used a $500 million financing round to seize control of the company and strip longtime Class A investors of valuable stockholder rights.

Robert S. Luke, Jaclyn M. Luke and several family trusts claim Cleveland Avenue LLC, Olympus Growth Fund VII and Movendo Capital BV engineered the Class F financing at an artificially low company valuation while their board designees pushed aside competing offers. The complaint, unsealed Friday, asserts claims including breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, aiding and abetting, civil conspiracy, and unjust enrichment.

The complaint describes a "series of self-interested and conflicted transactions through which institutional investors in Footprint, and their board designees, stripped and seized for themselves plaintiffs' bargained-for rights, preferences and protections as holders of Class A preferred stock of Footprint."

The plaintiffs invested in Footprint in 2019 and early 2020, when Class A shares cost $25,000 apiece and carried a liquidation preference equal to 1.4 times the purchase price, putting them at the top of the payment priority if Footprint were sold or liquidated. Their stockholder agreements also called for a Class A-designated director whose approval was required for certain actions affecting those rights. Brian Krzanich served in that role.

The complaint says the landscape changed after Cleveland Avenue, Olympus and Movendo collectively invested $150 million in Class A stock in November 2020. Footprint later pursued a business combination with Gores Holdings VIII that valued its equity at about $2.44 billion, but that transaction was terminated in December 2022.

Footprint then faced liquidity problems. The board received a roughly $125 million investment proposal from Ariel Alternatives LLC in January 2023 and formed a special committee the next month. In March, Shuler Capital Corp. offered to acquire at least 80% of Footprint at an initial valuation of $670 million, to invest $545 million in new capital and to provide $72 million in working capital, according to the complaint. The plaintiffs allege the special committee rejected that proposal without meaningful negotiations.

The plaintiffs also claim that the board failed to pursue an offer from Apollo Global Management that contemplated a $1 billion valuation. Instead, Footprint moved ahead with the Class F financing at a $500 million pre-money valuation, despite bridge loans just months earlier that valued the company at $1 billion. Cleveland Avenue committed $350 million to the Class F round, while Olympus and Movendo together committed about $100 million.

The complaint says the financing gave the new Class F shares liquidation preferences of three to four times the investors' original investments while moving Class A shares far down the payment priority. It also alleges that $45 million in Class F proceeds was earmarked to redeem preferred shares held by other institutional investors, including $10 million for ZenCap and $35 million for Koch-related holdings.

Footprint and other parties violated the implied promise in their stockholder agreements to preserve the protections that induced the Class A investors to invest, according to the suit. The complaint says the defendants' actions defeated those reasonable expectations and deprived the plaintiffs of the benefit of their bargain.

The plaintiffs further argue that Footprint's directors breached fiduciary duties by approving conflicted transactions benefiting certain investors, while Cleveland Avenue, Olympus and Movendo knowingly participated in those alleged breaches.

"The Class F round diluted plaintiffs almost all the way down to the bottom of the liquidation waterfall and stripped them of the entire fruit of their bargain — all of their bargained-for rights and preferences," the complaint says.

The plaintiffs began investigating after receiving the Class F term sheet in August 2023 and later pursued a Delaware books-and-records action when Footprint refused their inspection demands. Footprint began producing records in June 2024, and the plaintiffs say those materials confirmed their suspicions of wrongdoing.

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

The plaintiffs are represented by Joseph L. Christensen, Anne M. Steadman and Levi Akkerman of Christensen Law LLC.

Counsel information for the defendants was not immediately available Wednesday.

The case is Robert S. Luke v. Footprint International Holdco Inc., case number 2026-1041, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

8th Circ. Backs $1B Broker Commissions Settlement

law360.com/articles/2515455/8th-circ-backs-1b-broker-commissions-settlement

(August 19, 2026, 7:55 PM EDT) -- The Eighth Circuit decided Wednesday to affirm a more than $1 billion class action settlement that's supposed to resolve antitrust claims against the National Association of Realtors and multiple real estate brokerages, which were accused of running an anticompetitive scheme that involved the brokerages following NAR rules that artificially inflated buyer-broker commissions.

In its **published opinion**, the Eighth Circuit wasn't convinced by the arguments brought by the group of settlement objectors, which included Spring Way Center LLC, Monty March, Nancy Wehrheim, John Moratis, Nancy Moratis, Danielle Kay, James Mullis, Tanya Monestier, Robert Friedman, Jessie Kay, Kaitlyn Slavic, Maria Iannome, Benny D. Cheatham, Robert Douglass, Douglas Fender, Dena Fender, Rosalie Doyle, Jessica Winters and John Guerra.

The Eighth Circuit rejected pro se litigant Monestier's argument that the Missouri district court shouldn't have granted the class with injunctive relief because they lacked Article III standing. The panel ruled that the class has sufficiently shown how they were being harmed by the hiked up commission fees.

The Eighth Circuit has affirmed a more than $1 billion settlement that would resolve claims that the National Association of Realtors and other brokerages artificially inflated buyer-broker commissions. (Photo by Rafael Henrique/SOPA Images/Sipa USA)

"The record before us reflects an ongoing, continuous injury among the named plaintiffs who determine standing for the class — namely, that home prices remain inflated absent practice changes adopted by the defendants," the panel said. "Inflated prices harm home sellers and home buyers by channeling funds from the sellers and buyers to agents."

The Eighth Circuit also wasn't convinced by the objectors' arguments concerning the fairness or adequacy of the class action settlement. For example, Mullis claimed that the settlement wrongfully dropped "home buyer claims without adequate representation by class representatives and counsel," the panel said.

However, the Eighth Circuit ruled that the lower court rightfully determined that the class action settlement met the four factors under Federal Rules of Civil Procedure Rule 23, which applies to class actions.

According to the panel, the class action settlement factors under the amended Rule 23 include determining whether the class has adequate representation, whether the settlement negotiations were done "at arm's length," whether there's adequate class relief and whether the settlement treats the class members fairly.

Additionally, the panel backed the settlement's $333 million attorney fees award, which makes up one-third of the more than $1 billion settlement. The panel pointed to case law such as the Eighth Circuit's 2017 ruling for Huyer v. Buckley to affirm the lower court's decision to award the class counsel with one-third of the total settlement.

Throughout the rest of the opinion, the Eighth Circuit shot down the objectors' other arguments, which included allegations that the lower court handled the settlement's fairness hearing in a way that violated their due process.

The objectors argued that the lower court unfairly required them to show up in person for the hearing, but the panel pointed out that the lower court allowed attorneys to show up in the place of their objecting clients. The lower court also ruled on all objections even if the objectors and their attorneys weren't there, according to the panel.

"District courts 'need not endow objecting class members with the entire panoply of protections afforded by a full-blown trial on the merits,'" the panel said. "On this record, we find that the district court adequately considered each objection and did not violate due process."

U.S. Circuit Judges Lavenski R. Smith, Ralph R. Erickson and Jonathan A. Kobes sat on the panel for the Eighth Circuit.

In a Wednesday statement to Law360, class counsel Michael S. Ketchmark praised the Eighth Circuit's ruling.

"The jury got it right. The trial court got it right. And today the Eighth Circuit approved the settlement," Ketchmark said. "American homeowners were overcharged billions for decades. The rules that made it possible are gone. That's what this case did. Huge win for homeowners."

On Wednesday, Jenifer C. Wallis, an attorney for appellee and brokerage The Agency, stated that the panel's decision was the right one.

"We agree with the Eighth Circuit's published opinion affirming approval of the nationwide settlement and are pleased with this outcome on behalf of our client, The Agency," she said. "We also congratulate all appellees and their counsel, who advocated strongly for affirmance."

Similarly, the NAR told Law360 Wednesday that the trade group is "pleased" with the appellate court's decision.

"We will continue to work to foster fair, transparent, and pro-consumer real estate markets while providing resources and value to our Realtor members nationwide," the trade group added.

However, on Wednesday, attorney Patrick E. Knie, who represented objectors Cheatham, Douglass and the Fenders, told Law360 that the panel made the wrong call.

"First of all, the [lower] court, which goes against all precedent, required all objectors and their attorneys to appear in Kansas City and said that, if they didn't appear, he was going to strike their objections," Knie said. "There's virtually no case law that supports that."

"Secondly, the plaintiffs' attorneys took a verdict that was for 500,000 Missourians and basically traded it away to a 25 million person class, meaning that everybody would get pennies on the dollar instead of trying to negotiate a meaningful settlement," he continued. "We think that there was a lack of due process and that the U.S. Supreme Court would be very interested in those issues and other issues."

According to Knie, the objectors are thinking of filing a review petition for the Eighth Circuit's decision in the high court.

Mullis' counsel James R. Layton declined to comment. Counsel for Spring Way Center, Werheim, the Moratises, the Kays, Slavic, Iannome, Doyle, Guerra and Winters didn't respond to a request for comment.

Counsel information for March and Friedman wasn't immediately available.

The class is represented by Karl Barth, Steve Berman, Rio Pierce, Nathan Emmons, Jeannie Evans of Hagens Berman Sobol Shapiro LLP, Brandon J.B. Boulware and Jeremy Suhr of Boulware Law LLC, Robert A. Braun, Benjamin D. Brown, Sabrina Merold and Daniel H. Silverman of Cohen Milstein Sellers & Toll LLP, Eric L. Dirks and Michael A. Williams of Williams Dirks Dameron LLC, Benjamin H. Fadler, Michael S. Ketchmark and Scott A. McCreight of Ketchmark & McCreight, and Beatrice C. Franklin, Steven G. Sklaver and Marc M. Seltzer of Susman Godfrey LLP.

Spring Way Center, Werheim, the Moratises, the Kays, Slavic and Iannome are represented by Daniel M. Booker, Bruce C. Fox and Andrew J. Horowitz of Obermayer Rebmann Maxwell & Hippel LLP and Bert S. Braud of Popham Law Firm.

Mullis is represented by James R. Layton of Tueth Keeney.

Doyle, Guerra and Winters are represented by Nathanael N. Brown of The Law Office of Nate Brown and Joe D. Jacobson of Jacobson Press PC.

Monestier is representing herself.

Cheatham, Douglass and the Fenders are represented by Patrick E. Knie of Patrick E. Knie PA.

The NAR is represented by Deepti Bansal, Beatriz Mejia, Elizabeth Wright, Sarah M. Topol and Anne Bigler of Cooley LLP, Alexander C. Barrett and Charles W. Hatfield of Stinson LLP, John Bash, William A. Burck, Samuel H. Heavenrich, Rachel F. Quinton, Michael Sebring and Michael D. Bonanno of Quinn Emanuel Urquhart & Sullivan LLP, Jack R. Bierig, John S. Purcell, Suzanne L. Wahl, Robert J. Wierenga, Molly L. Wiltshire and Jacob K. Danziger of ArentFox Schiff LLP, David R. Buchanan of Brown & James, and Christopher G. Michel of Kirkland & Ellis LLP.

HomeServices of America, BHH Affiliates LLC and HSF Affiliates LLC are represented by Theodore J. Boutrous Jr., Gregg J. Costa, Christopher D. Dusseault, Alison M. Johnson, Julian Kleinbrodt, Sarah M. Kushner, Harry R.S. Phillips, Cynthia Richman and Adam I. Steene of Gibson Dunn & Crutcher LLP, Ian T. Hampton of Foley & Lardner LLP, Matthew T. Ciulla, Patrick J. Sanders and Robert D. MacGill of MacGill PC, and Jean P. Bradshaw II and Brian C. Fries of Lathrop GPM LLP.

Brokerage Brown Harris Stevens is represented by Michael D. Pospisil and Matthew T. Swift of Pospisil & Swift.

The Agency is represented by Jenifer C. Willis and Marina V. Bogorad of Munck Wilson Mandala LLP and Michael D. Pospisil and Matthew T. Swift of Pospisil & Swift.

The case is Rhonda Burnett et al. v. Rosalie Doyle et al., case number 24-3444, in the U.S. Court of Appeals for the Eighth Circuit.

--Editing by Michael Watanabe.

Pa. Judge Rejects $360M Offset In Generics Antitrust Case

law360.com/articles/2515336/pa-judge-rejects-360m-offset-in-generics-antitrust-case

(August 19, 2026, 7:21 PM EDT) -- The Pennsylvania federal judge overseeing antitrust multidistrict litigation against generic-drug makers over alleged price-fixing has rejected a request by the pharmaceutical company defendants to set off any potential award to insurance company plaintiff Humana Inc. by $360 million given its success in separate litigation.

U.S. District Judge Cynthia Rufe **said in her ruling** that the defendants failed to show that they were entitled to an offset because of Humana's **$360 million deal** with Walgreens in a separate case — in which the pharmacy chain challenged an arbitration award stemming from drug overcharge litigation — denying the defendants' motion for partial summary judgment.

Judge Rufe said that the pharmaceutical defendants didn't provide enough details in their argument for the offset, beyond including the arbitration award in the Walgreens case and citing the Seventh Circuit's 1983 ruling in MCI Communications Corp. v. Am. Tel. & Tel. Co.

The judge said MCI was unhelpful to the pharmaceutical companies' case because it dealt with a plaintiff failing to prove that all its damages were caused by a defendant's illegal acts.

"But MCI also holds that although a case cannot proceed to a jury if the plaintiff has not established a defendant's responsibility for the harm it suffered, if a plaintiff can establish causation due to the illegal practices of the defendant, a determination of damages will follow," Judge Rufe said.

"As defendants fail to explain how anything in the arbitration award absolves them, in part or in full, of responsibility for the damages Humana claims it incurred, they have not shown how any money Humana received from Walgreens requires partial summary judgment," she added.

In addition to requesting an offset, the defendants asked the court to cut down on Humana's damages claims with a reduction of its volume of commerce by 50.8% Medicare Part D payments, an 8.5% reduction in Humana's indirect VOC for instances where there was no alleged overcharge, and an at least a 28.4% reduction in Humana's indirect VOC to adjust for double-counted direct commerce, according to Judge Rufe.

Regarding the Medicare Part D number, Judge Rufe said the defendants' request was based on out-of-date information and had to be denied.

Judge Rufe also noted that the indirect VOC reduction request involved questions on the positions of differing experts, which she said was a matter best left for trial.

The plaintiffs in the **long-running litigation**, including insurers and health plans, claimed that drugmakers worked together to set generic medication prices, which resulted in higher costs for the buyers.

The Humana case in which Judge Rufe made her summary judgment ruling Wednesday is set to be the litigation's initial bellwether trial.

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

Humana and Molina are represented by Peter D. St. Phillip Jr., W. Joseph Nielsen, Raymond P. Girnys, Noelle Ruggiero, Uriel Rabinovitz, Deborah Rogozinski, Alexis H. Castillo, Thomas Griffith and Matthew A. Cartwright of Lowey Dannenberg PC, and Todd Schneider, J. Caleigh Macdonald, David D. Burnett and Jason H. Kim of Schneider Wallace Cottrell Kim LLP.

The generic-drug makers are represented by attorneys from Wilson Sonsini Goodrich & Rosati PC, Greenberg Traurig LLP, Kasowitz LLP, Proskauer Rose LLP, Baker Botts LLP, Morgan Lewis & Bockius LLP, Clark Hill PLC, Dechert LLP, Linklaters LLP and DLA Piper.

The cases are In re: Generic Pharmaceuticals Pricing Antitrust Litigation, case number 2:16-md-02724, and Humana Inc. v. Actavis Elizabeth LLC et al., case numbers 2:18-cv-03299, 2:19-cv-04862 and 2:20-cv-06303, in the U.S. District Court for the Eastern District of PA.