Alphabet Loses $700 Billion in Market Value as AI Questions Rise

Aug. 27, 2026, 7:03 AM PDT

Summary by Bloomberg AI

AI Generated

- Alphabet shares have fallen roughly 15% from their peak, erasing more than $700 billion in market value, due to questions about a brain drain at Google's parent and fears that the company is losing its edge in AI.

- The company's heavy spending on building out AI infrastructure and the delayed release of its new Gemini AI model have weighed on investor sentiment, with some expressing concerns about the company's ability to monetize AI.

- Despite the recent slump, some investors remain optimistic about Alphabet's AI business, citing the success of its tensor processing unit chips and the company's overwhelming computing power, as well as its potential to succeed with new talent and models.

For much of the last year, Alphabet Inc. has been the Big Tech stock to beat as investors bet that it was the most-likely winner from the artificial intelligence boom.

Alphabet shares hit an all-time high on May 13 after soaring more than 150% in the previous 12 months, putting them among the 25 best performers in the S&P 500 Index over that stretch and far outpacing the other Magnificent Seven technology giants. But the momentum has reversed since then due to questions about a brain drain at Google's parent and fears that the company is losing its edge in AI.

The stock is down roughly 15% from its peak, erasing more than $700 billion in market value and making it the biggest point drag on the S&P 500 in that span. At the crux of the selloff is Alphabet's suddenly shaky standing in the AI race, with its heavy spending on building out the infrastructure to develop the technology and the delayed release of its new Gemini AI model weighing on investor sentiment.

Shares were lower by less than 1% in early trading Thursday.

Alphabet's Second-Half Slump

Shares are down 15% from a May record high

Source: Bloomberg

Bloomberg

And then there's the personnel issue.

A few months ago, Google lost two top employees to Anthropic PBC and OpenAI. Earlier this month, Jeff Dean, who was key to Google's AI strategy, departed to launch a startup and took several high-profile coworkers with him. And **Demis Hassabis**stepped down as chief executive officer of the Google DeepMind AI research lab, accepting a new role as chairman . Those moves sent Alphabet shares tumbling 4% on Aug. 5, erasing $186 billion in market value in a single session.

"You've had this kind of brain drain," said **Angelo Zino**, senior vice president and head of technology at CFRA. "It does pose some risk because it's the area of the market everybody is looking at at this point in time, right? It's, you know, can you monetize AI?"

Read More: Google AI Veterans Depart During Seismic Leadership Shift

Of course, Alphabet is hardly the only firm challenged by Big Tech's talent race. Last year, Meta Platforms Inc. poached Ruoming Pang from Apple Inc., where he ran the iPhone maker's AI models team, with a $200 million multi-year compensation package and then brought in a couple of his senior deputies.

Around that time, OpenAI Chief Executive **Sam Altman** complained that Meta was offering his employees signing bonuses of as much as $100 million to join its top AI team. Meanwhile, OpenAI has lured more than 400 Apple employees with rich salaries and hefty stock option offers. And Apple has sued OpenAI for stealing trade secrets.

At Alphabet, however, turnover questions are just the tip of the iceberg. Its more immediate concerns surround delays in developing its most powerful AI model, Gemini 3.5 Pro, which is behind schedule as the company works on improvements, particularly with its coding capabilities, an area where Alphabet is already seen as lagging Anthropic and OpenAI. Two weeks ago, Google released a new Gemini 3.7 Flash model but gave no update on the timetable for Gemini 3.5 Pro.

"If you're an AI winner, you have a leading-edge model and the market gives you a certain multiple premium, which is what was being seen in the stock over the last, let's say nine to 12 months, which has kind of gone away a little on the margins," said **Divyaunsh Divatia**, analyst at Janus Henderson.

Reasons for Optimism

Alphabet, however, says progress is coming quickly.

"Our AI momentum and shipping velocity are at an all-time high. We're rolling out model updates within weeks of each other, with Gemini 3.7 Flash becoming our fastest-growing model to date and Gemma surpassing one billion downloads," a Google spokesperson said.

The optimism for Alphabet's AI business stems from the success of its tensor processing unit, or TPU, chips and the overwhelming amount of computing power it has amassed. But it's also facing skepticism about its spending after raising $25 billion in an early August bond offering featuring generous yield payouts.

Alphabet has company there, as investors increasingly press the biggest AI developers for proof of returns on their spending to build out AI data centers. The tech-heavy Nasdaq 100 Index hasn't reached a new high since May. In the backdrop are macroeconomic fears from the war in the Middle East, the US trade war with Canada and the threat of higher interest rates amid stubborn inflation.

At least part of the rotation away from Alphabet shares is just the normal market churn. For example, Microsoft Corp. has surged more than 25% since the end of July, when its earnings report showed the fastest cloud growth in four years. Alphabet, on the flip side, sold off after its earnings in late July as investors balked at its heavy capital expenditures and negative free cash flow .

Read More: Alphabet Falls as $205 Billion Spending Plan Fuels AI Cost Fear

“Capex is going to go up significantly next year,” Divatia said. “They’re going to be negative free cash flow, they already raised equity, they’re already raising a lot of debt. So that is one of the things where a lot of people are just focused on this company’s turning free cash flow negative and funding this capital intensity or this race to AGI through using equity as well as debt capital markets, which makes a lot of investors nervous.”

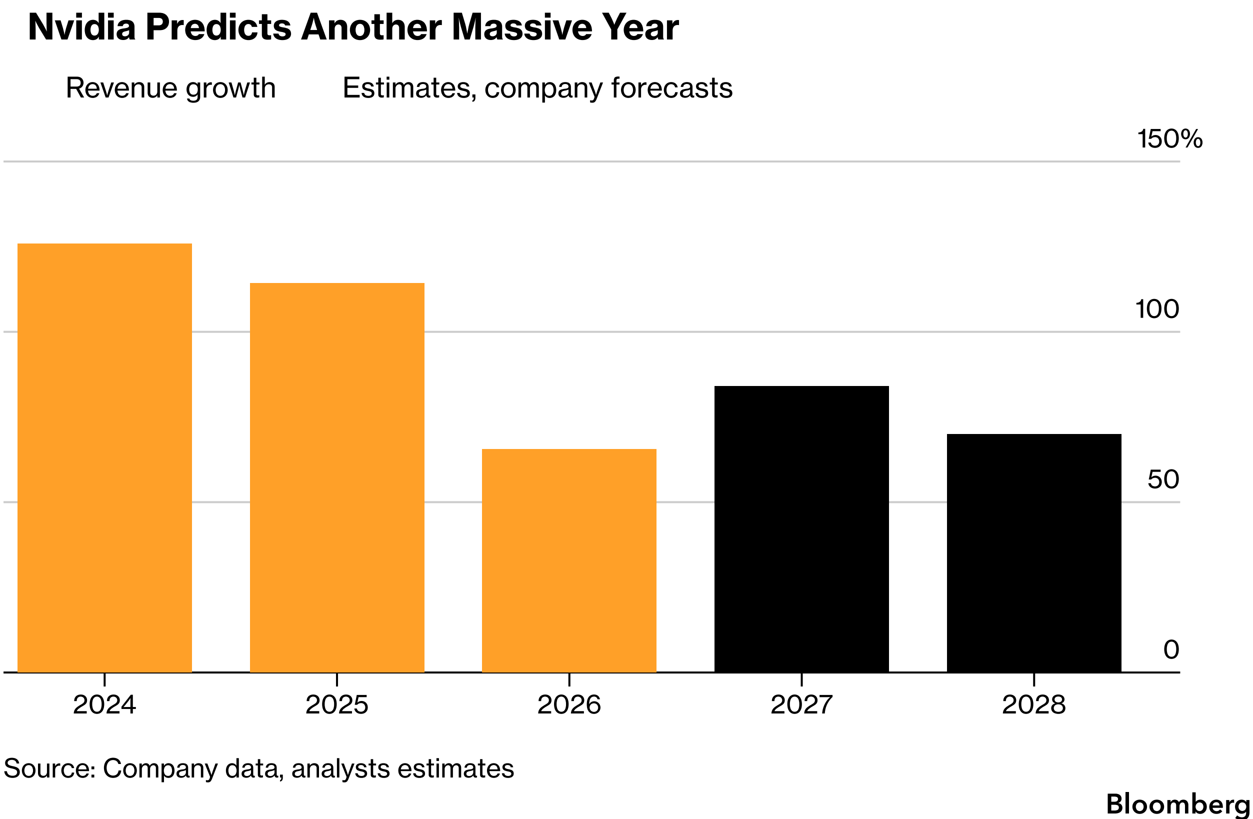
Meanwhile, some bulls see a silver lining in the recent movement of talent. And, despite the stock’s recent slump, it’s outperformed the broader market and its Magnificent Seven peers over the last 12 months with a 65% gain.

“Maybe this is a good thing, you know, maybe you need to have a new group of people try their hand and get Google back to where it belongs,” said **Daniel Pilling**, portfolio manager at Sands Capital Management, which owns the stock. “They have some of the best chips in the world, they have probably, if not the most, one of the biggest compute fleets in the world, and they should be really able to succeed.”

Still, investors expect to keep holding Alphabet to a high standard in communicating its next phase of AI growth.

“I’m less interested in the exact person and more interested in what they say in their next earnings call about the performance of AI and how it’s going to start to really translate into fundamental growth,” said **Melissa Otto**, head of technology, media and telecommunications research at Visible Alpha. “That’s somewhat of an open question.”

Tech Chart of the Day



Nvidia Corp., the chipmaker at the heart of the artificial intelligence boom, gave a bullish sales outlook for fiscal 2028, easing concerns that AI spending is poised to lose momentum.

Top Tech Stories

Nvidia said it sold a small number of its H200 chips to customers in China during the most recent quarter, though shipments of the artificial intelligence processors to the world's second-largest economy fell short of the total permitted with the blessing of US President Donald Trump.

Salesforce Inc. jumped in premarket trading after the software company gave an outlook for strong revenue expansion and deepened its partnership with Anthropic PBC, reassuring investors that it can compete successfully in the AI era.

Shein Global Holdings Ltd. is on track to raise about HK$13.6 billion ($1.7 billion) in its Hong Kong initial public offering as it nears the end of an arduous journey to go public.

Meta Platforms Inc. said it agreed to pay up to $18 billion in landmark settlements to resolve social media claims from US states that would require the company to make major changes to how it operates platforms like Facebook and Instagram.

Appeals court: Google OK to pay $42M to left-wing groups to end location tracking lawsuit

Legal News Line

August 26, 2026

Length: 1228 words

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Body

SAN FRANCISCO — Google can pay $42 million to mostly left-wing political organizations to settle a class action lawsuit supposedly brought on behalf of hundreds of millions of Americans whose privacy rights Google allegedly violated by surreptitiously tracking their locations, while paying nothing to the people allegedly harmed by the company, a federal appeals panel ruled.

On Aug. 26, a split three-judge panel of the U.S. Ninth Circuit Court of Appeals upheld the settlement that would power down a class action lawsuit launched in 2018 against tech giant Google.

In the new 2-1 decision, the panel majority said the payment to organizations including the American Civil Liberties Union; online civil liberties and "justice" organization, the Electronic Frontier Foundation; and environmental justice organization, the Rose Foundation, was merited because such groups advocate for consumer privacy rights and the settlement.

And the judges said that would essentially be good enough in a settlement that would otherwise pay hundreds of millions of Americans only about 25 cents each.

The lawsuit accused Google of misleading users into believing they had the ability to use the settings on their devices to turn off the ability of Google to track them geographically. However, the lawsuit, which was based on journalistic investigations, asserted Google continued to track their devices without their knowledge.

The lawsuit was lodged on behalf of named plaintiffs Napoleon Patacsil, Michael Childs and Noe Gamboa by attorneys from the firms of Ahdoot & Wolfson PC, of Burbank; and Lieff Cabraser Heimann & Bernstein, of San Francisco and New York.

After years of proceedings in San Francisco federal court, *U.S. District Judge Edward J. Davila granted approval of a deal to end the lawsuit in 2024.*

Under the deal, Google agreed to make changes to its location history and user tracking practices and policies, allegedly to satisfy the concerns spelled out in the lawsuit. The company further agreed to pay $62 million into a so-called non-reversionary fund, meaning none of the money could revert back to Google.

However, unlike other privacy class action settlements, none of the money would be paid to Google users who allegedly were harmed by the practices. Rather, all of the money would go to either pay lawyers, cover the costs of the settlement or to help a series of about two dozen non-profit entities allegedly help consumers enforce the portions of the settlement addressing privacy rights.

Such an arrangement, known legally as "cy pres" - Latin for, "as near as possible" - typically steers money to charities or non-profit organizations, in the name of those harmed.

Such arrangements, however, have also come under increased scrutiny in recent years, and have become the target of objectors, challenging such settlements as little more than backscratching deals designed to give trial lawyers a result to present to judges to justify multi-million dollar fee requests, when they supposedly can't secure significant money to be paid to class members directly.

Under the deal, attorneys are slated to receive $18.6 million in attorney fees, or one-third of the settlement.

The cy pres portion of the settlement, however, drew objections, including from attorney Ted Frank, of the Hamilton Lincoln Law Institute Center for Class Action Fairness, of Washington, D.C.

Frank has built a reputation for decades, objecting to class action settlements, most of which greatly benefit trial lawyers, while providing little relative relief for class members. According to his bio, his work has generated "tens of millions of dollars for consumers and other plaintiffs." The American Lawyer Litigation Daily has called Frank “the indefatigable scourge of underwhelming class action settlements.”

In this instance, Frank filed objections on behalf of named objectors John Andren, Matthew Lilley and Joseph S. St. John.

The objections asserted the $42 million cy pres payments couldn't be justified and would go to organizations that are little more than left-win political policy organizations whose primary objectives are to push for left-wing political causes, such as "racial justice" or to promote abortion.

The objectors assert millions of likely class members whose locations were allegedly tracked by Google would be "shocked" to learn that money supposedly obtained in their name would now be turned over to political activist organizations advocating on behalf of causes with which they may strongly disagree, with the blessing of the court.

Frank and the objectors instead urged the court to scrap the cy pres arrangement and divide the money among Google users through a class action claims process.

Since the settlement does not provide any direct relief for class members, Frank and the objectors asserted the lawyers who secured the deal also should receive nothing from it, either.

Judge Davila, however, approved the settlement.

Frank and the objectors appealed.

However, at the Ninth Circuit, the majority said the cy pres arrangement marked the best possible outcome for such a relatively small settlement when weighed against the massive size of the group that could be owed payment.

The judges said they believed the payment to the advocacy groups sufficiently addressed the privacy concerns raised in the lawsuit.

The decision was authored by Judge Richard Clifton, with concurrence from Judge Jay Bybee. Both judges were appointed by former President George W. Bush.

"Because the pro rata distribution here would be ... miniscule, the district court (Davila) did not abuse its discretion in approving the parties’ proposed settlement," Clifton wrote.

Judge Danielle J. Forrest dissented.

She said the majority decision allowed the parties to scoot past the requirement to first determine if the money can't be feasibly distributed to the people actually allegedly harmed by the company's misconduct.

"What is at stake is more than the distribution of what, I readily admit, is often a very small sum per individual class member," Forrest wrote. "Relaxing the requirements for cy pres distribution threatens to sideline focus on the property rights of those for whose benefit the litigation was brought in the first place, which runs headlong into due-process problems.

"Cy pres is an extraordinary tool for extraordinary cases. The record does not establish that this is such a case where there has been no attempt at distribution and there is no obvious reason to think that distribution would be ineffectual."

In response to those concerns, however, the majority said the courts must examine settlements to determine if they benefit the most possible class members, "not just the tiny number who filed objections and not just the tiny fraction of the class that might be expected to file financial claims."

Forrest's reasoning, they said, "would elevate the noisy few over the interests of all class members."

Following the decision, Frank said he intended to appeal the matter to the U.S. Supreme Court.

In an email responding to questions from The Record, Frank said:

"In 2018, the Supreme Court granted review of an all-cy pres Google settlement approved by this judge and vacated the Ninth Circuit’s affirmance for other reasons. As a result, the class got $17 million instead of zero.

"This settlement is worse, and we look forward to seeking Supreme Court review."

Load Date: August 27, 2026

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Apple Wins Invalidation of Browsing Patent in Infringement Suit

Aug. 26, 2026, 5:24 PM PDT

Apple Inc. convinced a US Patent and Trademark Office tribunal to invalidate a patent covering web browsing technology for mobile devices that a French inventor accused the tech giant of infringing.

Five prior patents render Ferid Allani's US Patent No. 10,943,058 obvious, the Patent Trial and Appeal Board ruled Tuesday.

Allani sued Apple and Google LLC in the US District Court for the Western District of Texas in 2024, accusing the tech companies' cellphones, tablets, and smartwatches of infringing the '058 patent and US Patent No. 8,271,877

Apple petitioned the PTAB to invalidate both inventions last year, and the board rejected its validity challenge to the '877 patent in November

In June, the district court denied Apple's bid to stay the lawsuit pending the PTAB decision

Erise IP PA represents Apple. Hudnell Law Group PC, Thompson Technology Law, and Nixon & Vanderhye PC represent Allani.

The case is Apple Inc. vs. Allani , P.T.A.B., IPR2025-00857, 8/25/26 .

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Securities

Deep Dive

Bang Energy Tax Ruling Gives Shareholders Bankruptcy Leverage

Aug. 27, 2026, 2:00 AM PDT

A federal appeals court provided a win for shareholders of closely held businesses by ruling that a former energy drink company's tax election doesn't belong to its bankruptcy estate.

The US Court of Appeals for the Eleventh Circuit's decision this month involving former Bang Energy parent company Vital Pharmaceuticals Inc. is part of a growing consensus among circuits. It means shareholders of certain corporations may be able to trap tax liabilities at the corporate level instead of paying them personally, said Carter Bishop, a professor at Indiana University's Robert H. McKinney School of Law.

The ruling represents a loss for the bankruptcy trustee and unsecured creditors but gives shareholders in similar situations leverage to negotiate earlier as appellate courts recognize their control over tax elections.

The decision speaks to a core principle that business owners alone control tax status for S corporations, said Bishop, who specializes in business organizations and bankruptcy law. It's a standard that cuts against bankruptcy courts' instincts to "create a bigger estate" for creditors, he said.

Vital Planning

Vital Pharmaceuticals, the now-former parent company of Bang Energy, filed for Chapter 11 in October 2022 and eventually sold the brand to rival Monster Beverage Corp. for $362 million. It fired founder Jack Owoc as CEO in 2023, though he remained a shareholder.

Owoc initially elected to classify Vital as an S corporation under the tax code in 1997, which avoided corporate-level taxation and passed income, deductions, and credits to himself as sole shareholder.

In July 2023, Owoc moved to confirm that the automatic bankruptcy stay didn't apply to his push to revoke Vital's status so he could avoid personal tax liability from the gain on the sale to Monster. The bankruptcy court rejected the move, holding the election protected the estate from tax liability and was therefore its property.

The Eleventh Circuit reversed Aug. 10, ruling that a corporate debtor's S corporation election belongs to shareholders and isn't property of the estate. It also held the case wasn't constitutionally or equitably moot, even though the bankruptcy plan is mostly consummated.

The decision is significant for closely held corporations under Chapter 11, will have implications for future tax planning in bankruptcy, and avoids what would've been a "troublesome" split with the US Court of Appeals for the Third Circuit, said Daniel Staeven, a Frost Law bankruptcy partner.

"Going forward, there's going to be much closer attention paid to what happens to a company's tax election at the outset of a case, rather than treating it as an afterthought," Staeven said.

Circuit Certainty

The ruling is in line with the Third Circuit's 2013 opinion holding that S corporation tax status isn't "property" under the bankruptcy code, vacating a Delaware bankruptcy court ruling. That decision allowed Majestic Star Casino's lone shareholder to avoid personally paying taxes on $170 million of canceled debt.

"For an area with little case law, having another circuit make a decision in the same way gives practitioners much more confidence in how these cases will be decided going forward," Staeven said.

Shareholders of S corporations should treat the latest ruling as a planning tool, Larry J. Brant, chair of Foster Garvey PC's tax and benefits group, said via email.

"I presume that is a tool that shareholders could very well use in the planning of a bankruptcy, impacting unsuspecting creditors of the corporation," Brant said.

Practical Relief

Despite the win for Owoc, it remains to be seen whether he can actually revoke or terminate the previous S corporation election.

Owoc's attorneys said in court filings his tax liability could be as high as $197.4 million, though Vital has said it would be closer to $3.4 million. Vital's liquidating trustee said revoking the tax status would lead to a roughly $27.5 million tax burden to the estate, which has only about $11.6 million for unsecured creditors, and leave the estate administratively insolvent.

Vital sold its assets in 2024, and it's unclear if Owoc can retroactively undo the election for that year. He could seek relief from the IRS through a private letter ruling, in which the agency applies tax laws to specific facts.

The Justice Department's tax division told the Eleventh Circuit in an amicus brief that the IRS couldn't help Owoc under the tax code, regulations, or case law, and recommended tossing the case as moot.

"It is impossible for this Court or the bankruptcy court to provide Owoc with meaningful relief," the DOJ tax attorneys said.

Tax issues need to be addressed while restructuring options are still open and before events such as sales fix them, Pillsbury Winthrop Shaw Pittman LLP said in a legal note issued Aug. 18.

Thomas E. Rutledge, part of Stoll Keenon Ogden PLLC's business services group, questioned whether the decision could eventually let members of single-member LLCs in bankruptcy elect corporate tax treatment to shift personal tax liability back onto bankrupt entities.

"It's something that will require some detailed investigation under both the Bankruptcy Code and the Internal Revenue Code," Rutledge said.

Tax Attributes

Tax credits, refunds, and elections can have a big impact on restructuring economics, Pillsbury said in its legal note.

One of the most significant points in the Eleventh Circuit's ruling is how the court distinguished S corporation status from net operating loss carryforwards, a valuable tax attribute that's commonly considered in bankruptcy.

NOLs can be carried forward to offset future taxable income, reduce tax bills, and potentially lead to refunds. Maximizing their value has long been a strategy for whoever controls a bankrupt entity.

Courts have generally treated NOLs as estate property because they're fixed and known when a bankruptcy is filed. An S corporation election, by contrast, is a designation that only shareholders can revoke.

"That distinction of control versus mere benefit is likely to be cited anytime a court is asked whether some other intangible tax attribute belongs to a bankruptcy estate or to the people who created it," Staeven said.

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Binance.US Forces Token Holder to Arbitrate Manipulation Claims

Aug. 27, 2026, 9:05 AM PDT

An Arizona man must take his digital-asset manipulation claims against Binance's US affiliate to individual arbitration, and he can't proceed with claims against a Binance-owned cryptocurrency website at all, a federal court ruled.

Additionally, Binance.US is free of antitrust-based claims, Judge Susan M. Brnovich said Wednesday for the US District Court for the District of Arizona in the lawsuit, which alleged crypto exchange and website suppressed a token's ranking.

In total, the decision effectively strips HEX token owner Ryan Cox of his ability to represent a proposed class. A provision in the exchange's terms of service included a class action waiver, according to Cox's brief opposing arbitration.

The case has already taken a trip to the US Court of Appeals for the Ninth Circuit, which revived the case in June 2025 following Brnovich's dismissal on jurisdictional grounds. The companies failed to interest the US Supreme Court in looking at jurisdictional provisions in the Commodity Exchange Act.

Brnovich then threw out the CEA and other claims in February, with a chance to replead. Cox chose not to reassert the CEA claim, thereby opening the door to other jurisdictional defenses.

The suit targets two entities associated with the Binance global crypto exchange, which was previously named Binance Capital Management Co. and is now Digital Anchor Holdings Ltd., according to the complaint.

Cox sued Binance.US, formally known as BAM Trading Services Inc., which is Binance's US affiliate; and CoinMarketCap OpCo LLC, owned by Digital Anchor, which allegedly operates a website that ranks cryptocurrencies by their market capitalization.

Cox alleged CoinMarketCap's website improperly ranked HEX 201st among cryptocurrencies, rather than within the top 20. The latest version of the complaint brought common law fraud, consumer fraud, Sherman Act, and other claims for allegedly suppressing HEX prices and elevating the value of digital coins offered by Binance and other companies.

CoinMarketCap, an unincorporated entity, isn't subject to personal jurisdiction based on nationwide service of process because the applicable provision governing the federal Sherman Act claims applies only to corporations, Brnovich said. And the ranking-site operator lacks sufficient contacts with Arizona to support the exercise of jurisdiction on that basis, she said, dismissing it from the suit.

Binance.US waived arbitration of the Sherman Act claims against it, but Cox's "lone allegation" related to those claims is "far too conclusory," Brnovich said. The exchange didn't waive other claims, and its arbitration provision is valid, she said.

Counsel for Cox includes Kolodin Law Group PLLC and Matthew Schmidt, who practices in Tiburon, Calif. Carlton Fields PA and NCP Law PLLC represent CoinMarketCap. Hahn Loeser & Parks LLP and Snell & Wilmer LLP represent Binance.US.

The case is Cox v. CoinMarketCap OpCo LLC , D. Ariz., No. 3:21-cv-08197, 8/26/26 .

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Boeing Fails to Undo Revived $72 Million Trade Secrets Loss (1)

Aug. 26, 2026, 10:59 AM PDT; Updated: Aug. 26, 2026, 1:12 PM PDT

Summary by Bloomberg AI AI Generated

- The Ninth Circuit ruled that it has jurisdiction to revive a $72 million trade secrets verdict against Boeing and to remove the judge that vacated the award.
- The court said Boeing's patent counterclaim wasn't compulsory, so the appeal of the trade secrets judgment didn't belong at the nation's patent appeals court.
- The opinion preserves Zunum's award, which still could rise to $254 million based on willfulness multipliers that haven't yet been litigated.

Boeing Co. was unable to convince the Ninth Circuit Wednesday that the court lacked jurisdiction to revive a $72 million trade secrets verdict against the aerospace giant and to remove the judge that vacated the award.

Zunum Aero Inc.'s appeal shouldn't have been heard by the US Court of Appeals for the Federal Circuit, as Boeing argued, because of the nature of Boeing's patent ownership counterclaim, the Ninth Circuit said. The patent counterclaim wasn't compulsory – meaning Boeing would've had to file it or lose its right to do so later – so the appeal of the trade secrets judgment didn't belong at the nation's patent appeals court, the court said.

The opinion by Judge Lucy H. Koh preserves Zunum's award, which still could rise to $254 million based on willfulness multipliers that haven't yet been litigated.

Koh also – in a matter of first impression for the circuit – ruled that permissive counterclaims could justify district courts retaining jurisdiction over state law claims, siding with the three circuits to previously consider the question.

Zunum sued Boeing in 2020 and later convinced a jury to award it $72 million for trade secret misappropriation. During the suit Boeing filed –ultimately successful – counterclaims for declarations that it was the sole inventor of two of the patents that Zunum said included stolen information.

But Judge James L. Robart of the US District Court for the Western District of Washington nixed the jury verdict, finding Zunum hadn't adequately described the allegedly stolen secrets. The Ninth Circuit reversed Robart and removed him from the case, finding he'd consistently ruled in Boeing's favor — including in the error-filled opinion — and failed to timely disclose his spouse's Boeing stock transactions during the litigation.

Boeing then challenged the Ninth Circuit's jurisdiction.

But Koh said the claims weren't compulsory under either its own or Federal Circuit precedent, meaning the Ninth Circuit has jurisdiction. The patent claims weren't "logically related" to Zunum's trade secrets claims because they turned on different operative facts, and because the "aggregate core of facts" upon which Zunum's claim rests isn't what activates rights otherwise dormant in Boeing — like the right to bring an inventorship counterclaim.

Even if the trade secrets claim itself activated Boeing's ability to pursue its declaratory judgment counterclaim, the "aggregate core of facts" Zunum relied upon did not do so, Koh said.

The Ninth Circuit also rejected Boeing's "fallback" argument that, if its counterclaims weren't compulsory, the federal district court lacked supplemental jurisdiction over Zunum's state law claims. Koh wrote that Congress' clearly intended for the supplemental jurisdiction test to be broader than that for compulsory counterclaims. Sharing a common nucleus of operative facts sufficed, she said.

Judge Bridget S. Bade concurred, agreeing with the result but not the analysis. She said the ultimate question was whether the "counterclaim arises out of the transaction or occurrence that is the subject matter of the [plaintiff's] claim." She criticized the idea of putting any "subsidiary tests we may devise" over the text of the procedural rule.

Bade said courts must identify the "occurrences" essential to both claim and counterclaim, and decide whether they're sufficiently related as to be part of the same transaction. She said the possibility that both Zunum's claims and Boeing's counterclaims could be successful "often, but not always, indicates" they arise from different transactions.

Judge Johnnie B. Rawlinson joined the majority opinion.

Howell Shuster & Goldberg LLP, Carr Conin LLP and CFL Law LLP also represent Zunum. Munger Tolles & Olson LLP, Morrison & Foerster LLP and Hueston Hennigan LLP represent Boeing.

The case is Zunum Aero Inc. v. The Boeing Co. , 9th Cir., No. 24-5212, 8/26/26 .

(Updates throughout to add details from ruling.)

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Lawsuit accusing Abbott MitraClip of kickbacks will proceed

courthousenews.com/lawsuit-accusing-abbott-mitraclip-of-kickbacks-will-proceed

SAN DIEGO (CN) — A federal judge will allow a lawsuit accusing the medical device manufacturer Abbott Laboratories of giving kickbacks to doctors to encourage them to perform a medical procedure device to move forward.

The lawsuit, initially filed in 2020, hinges on claims Abbott Laboratories provided cash, meals, marketing, and patient referrals to doctors who performed a heart procedure implanting its patented MitraClip device.

The case is brought by the Department of Justice and more than two dozen state governments who say Abbott Laboratories' scheme has caused thousands of false claims to government healthcare programs in violation of the Anti-Kickback Statute and False Claims Act.

U.S. District Judge Todd Robinson, a Donald Trump appointee, ruled a jury could decide whether Abbott Laboratories was liable under those laws.

The case was first brought by a whistleblower and former employee of Abbott Laboratories who says the kickbacks often took the form of expensive meals at fancy events. In the ruling, Robinson drew a line between ordinary meals at legitimate training events and events prosecutors say may have been used to improperly influence doctors.

"In short, while MitraClip training events that served modest meals and beverages likely did not violate the Anti-Kickback Statute, relator's evidence indicates that a reasonable jury could find that the training events held at expensive hotels with dinners at 'fancy' restaurants were of questionable educational value," Robinson wrote. "Thus, the court denies Abbott's motion to the extent it seeks summary judgment of claims related to the modest meals and beverages provided at educational training events."

Abbott Laboratories also sought to exclude testimony from the plaintiffs' experts. The company argued Genevieve Kanter, a public policy expert who prepared MitraClip damages causation analyses, was unreliable and her research was irrelevant. If her testimony was excluded, the plaintiffs would have failed to show causation and summary judgment must be granted in its favor, the healthcare manufacturer argued.

“Because Abbott challenges Dr. Kanter’s assumptions — that is, her assumption that the challenged activities violate the Anti-Kickback Statute — and not her methods or procedures, it goes to the weight of her testimony, not reliability,” Robinson found.

The judge found her research was reliable, including her analysis into how payments can influence doctors without them even knowing. He denied Abbott’s motion to exclude her testimony.

The healthcare manufacturer also sought to exclude testimony from Dr. John Karamichalis, a doctor with a specialty in cardiac surgery, as unqualified, because he was a pediatric surgeon with no experience with the MitraClip.

But the judge also disagreed with this, finding that, despite never using the MitraClip, he had extensive qualifications and his testimony would ultimately be helpful.

However, the judge granted summary judgment in favor of Abbott on its Florida and California claims, finding the plaintiffs did not provide credible evidence of a false claim.

“Instead, relator must identify specific evidence of California or Florida Medicaid claims for MitraClip procedures from healthcare providers who allegedly attended a challenged activity,” Robinson wrote. “Because relator has not cited any such evidence, the court grants Abbott’s motion as to the California and Florida claims.”

The ruling means the broader case can still proceed to trial.

The MitraClip is a medical device used on patients who suffer from mitral regurgitation, which occurs when the heart’s mitral valve does not close all the way and blood flows back into the heart’s upper chamber. The result can cause the heart to work harder and, in some cases, fail.

The MitraClip implantation procedure is described as minimally invasive and potentially life changing for people with mitral regurgitation.

Although the device has been in use for about two decades, it was approved for use in the U.S. in 2013. The MitraClip procedure was approved for reimbursement under Medicare and Medicaid in 2014.

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

Meta settlement leaves thousands of youth-harm cases unresolved

DJ dailyjournal.com/articles/393963-meta-settlement-leaves-thousands-of-youth-harm-cases-unresolved

Meta on Wednesday agreed to pay as much as $17 billion and overhaul Facebook and Instagram to settle claims brought by state attorneys general over children's data and platform safety, but thousands of individual youth-harm cases against Meta and other social media platforms remain headed toward trial.

Legal observers said the agreement does not establish liability or otherwise bind the individual cases, though its size and the platform changes Meta agreed to could influence how plaintiffs try their cases and how the companies approach future settlements.

Among those cases are two bellwether plaintiffs scheduled for Oct. 28 trials before Los Angeles County Superior Court Judge Carolyn B. Kuhl, who is overseeing thousands of coordinated cases alleging Meta, YouTube, Snapchat and TikTok designed their platforms in ways that addict and harm minor users.

Co-lead counsel for the individual plaintiffs in the coordinated Los Angeles cases stressed that Meta's proposed federal agreement does not resolve the broader litigation.

"To be clear: this settlement resolves claims brought by state governments. It does not resolve, release, or compensate a single one of the thousands of individual claims brought by children and families in this coordinated proceeding. Nor does it resolve the claims of school districts, local governments, and other public entities," a joint statement read.

"Our clients are seeking accountability for specific, individual harms -- including depression, self-harm, eating disorders, and death -- that we allege were the foreseeable result of choices these platforms made. Nothing in this settlement changes that, and nothing in it speaks for our clients."

Withers partner Jessica K. Nall, who is not involved in the cases, said the settlement does not amount to an admission of liability but could have a factual impact on the individual cases, particularly because Meta agreed to implement safeguards plaintiffs have argued were possible all along.

Nall said those changes could give plaintiffs a new argument before juries even though the agreement has no legally binding effect on their cases.

She said the deal also raises questions about whether Meta, which has largely resisted settling private plaintiff cases, is changing its litigation strategy as continued trials expose the company to the risk of large verdicts and public scrutiny.

"It'll be interesting to see whether this signals some kind of sea change in Meta's tactics," Nall said, including whether the company begins "settling more than fighting."

Social Media Victims Law Center founder Matthew P. Bergman, who filed one of the first bellwether lawsuits and helped develop the defective-design theory underlying the litigation, similarly said the federal agreement has no precedential effect but changes the litigation dynamic.

Bergman said Meta's agreement to make significant changes to its platforms "will make it more difficult for them to argue at trial that there's nothing wrong with the platforms."

The plaintiffs in the cases before Kuhl are led by Lanier Law Firm attorneys Rachel Lanier and Mariana Aroditis, Joseph VanZandt of Beasley Allen Law Firm and Rahul Ravipudi of Panish | Shea | Ravipudi LLP.

Pending approval from Chief U.S. District Judge Yvonne Gonzalez Rogers in Oakland, the federal settlement would resolve claims brought by state attorneys general accusing Meta of unlawfully collecting children's data and misleading users and the public about risks to minors from Facebook and Instagram -- allegations the company denies.

The deal came just over a week after 29 states, including California, took their claims against Meta to trial before Gonzalez Rogers. *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 4:22-md-03047 (N.D. Cal., filed Oct. 6, 2022).

In a statement, Meta Chief Legal Officer C.J. Mahoney called the agreement a new framework for teen social media use that gives parents greater control and said its success depends on other platforms adopting similar measures and "following Meta's lead."

YouTube, Snapchat and TikTok have not reached broader settlements resolving government enforcement or individual litigation, though some have settled claims brought by individual plaintiffs as cases approached trial.

Meta and YouTube lost the first Los Angeles bellwether in March, when a jury awarded $6 million to a young woman identified in court records as Kaley G.M., who alleged addictive features on Instagram and YouTube contributed to her depression and other mental health diagnoses. *Social Media Cases*, JCCP5255 (L.A. Super. Ct., filed Oct. 24, 2022).

A second planned bellwether ended before trial after the plaintiff settled with other platforms and dismissed Meta without payment.

Meta, represented in much of the litigation by Covington & Burling LLP, has continued fighting the individual cases, denying that its social media platforms are defective or caused plaintiffs' alleged harms and arguing that many claims are barred by the First Amendment and online platform protections under Section 230 of the Communications Decency Act.

Those defenses have faced setbacks this year. In addition to the $6 million verdict against Meta and YouTube, Meta was hit with $942 million in penalties and monetary relief in New Mexico's separate state enforcement case.

"They were getting their ass kicked at trial," Bergman said about why he believed Meta agreed to settle some claims now.

Plaintiffs will continue preparing individual cases for trial while remaining open to settlement discussions, Bergman added.

Eric Goldman, a Santa Clara University law professor who is not involved in the litigation, was more cautious, saying the agreement does not make individual plaintiffs more likely to prevail and that resolving their cases presents a fundamentally different problem from settling claims brought by a finite number of government plaintiffs.

Goldman noted the individual claims are not proceeding as a class action, meaning Meta cannot negotiate with a defined group and bind the potentially much larger universe of people who could bring claims but have not yet sued.

"It would actually be easier for Meta if the cases had been brought as a class action," Goldman said. "The fact that it's not actually hinders settlement."

Jenna Schneider, a technology attorney at Watstein Terepka LLP who is not involved in the cases, said the settlement could nevertheless make it harder for platforms to argue that safeguards sought by plaintiffs are too expensive or burdensome to implement.

She also pointed to the unusual structure tying part of Meta's payment to competitors adopting comparable restrictions.

"I've never seen a settlement structure before which conditions a portion of payment on the participation of the settling parties' direct competitors," Schneider said.

Schneider said she expects the individual cases to continue because they seek recovery for specific injuries the government settlement does not address.

Guest Post: Increasing Deterioration in U.S. Securities Litigation Risk

In the following guest post, Nessim Mezrahi and Stephen Sigrist present their view that U.S. securities litigation risk is increasing significantly, driven by geopolitical instability and weakening investor confidence in the AI investment proposition, and that growing market capitalization losses, increased shareholder scrutiny, and the potential for an AI-related market correction are creating heightened securities litigation exposure. Nessim Mezrahi is co-founder and CEO, and Stephen Sigrist is a senior vice president, at SAR LLC. Our thanks to Nessim and Stephen for allowing us to publish their article on our site.

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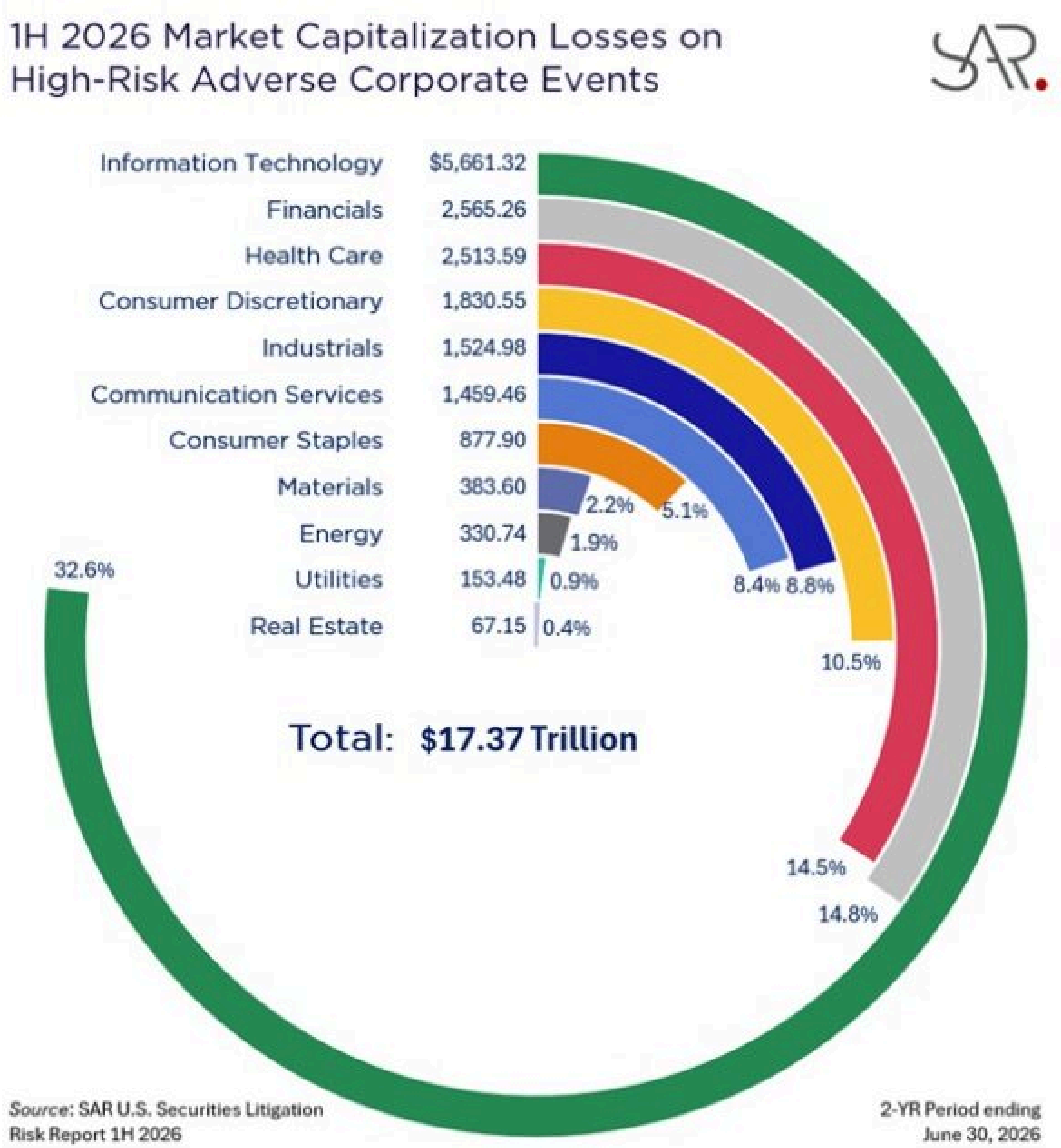
Geopolitical instability continues to complicate disclosure adequacy for public companies and is facilitating the materialization of securities litigation risk due to heightened corporate governance demands by shareholders.[1] Between June 30, 2025, and June 30, 2026, the aggregate market capitalization for issuers in the NYSE and NASDAQ expanded by ~28%, from ~$70.3 to ~$90 trillion. Over the salient period, the two-year market capitalization losses on high-risk adverse corporate events increased by ~48%, from ~$11.8 to ~$17.4 trillion.[2] Our analysis indicates that market capitalization losses have outpaced market cap growth in U.S. equities. To “pick up slack for plummeting” enforcement by the U.S. Securities and Exchange Commission, plaintiff securities class action attorneys are touting their “superior effectiveness” in seeking monetary recompense due to allegedly defrauded shareholders for violations of the federal securities laws.[3]



Stock price impact data indicate that investors have begun to lose conviction on the story behind the artificial intelligence (AI) investment thesis, particularly for some large cap issuers in the information technology sector. According to Jonathan Weil of the Wall Street Journal, "Wall Street's forecasts for Big Tech require a major leap of faith: that the biggest AI hyperscalers can boost revenue much faster than the costs of running their businesses. Some of the numbers look too good to be true."[4] According to Weil's analysis, free cash flow for Alphabet, Meta, Microsoft, and Oracle is not expected to break even until at least 1Q 2027, when capex is estimated to exceed one trillion dollars.[4] That's just around the corner and situational awareness suggests the time horizon is likely to be premature.

July’s trading data on the information technology sector indicate that investor sentiment is worsening based on the magnitude of recently deployed capex and may continue to do so if Big Tech does not reverse free cash flow’s falling knife by the start of second half of 2027. According to Asa Fitch of The Wall Street Journal, “[i]nvestors have given Big Tech a long leash to invest in AI over the past few years. That made sense given the capital intensity of what looked like a potentially world-changing boom. But shareholder patience is being tested like never before, as tech giants take AI ambitions to the next level even as the cost of computer memory and other AI-infrastructure components rises.”[5]

Confidence decay in the AI play is driving the increase in the frequency and severity of high-risk adverse corporate events in the sector. As of Dec. 31, 2025, information technology accounted for ~$4.1 trillion in market capitalization losses over the two-year period.[6] As of June 30, 2026, the information technology sector accounted for ~$5.7 trillion. [7] Based on the magnitude at stake, conditions are ripe for increased investigative scrutiny by institutional investors.

Information Technology: Frequency and Severity of High-Risk Adverse Corporate Events

SAR.

		FREQUENCY			SEVERITY
Market Cap Sector Category	Information Technology U.S. Public Companies	Type I ACEs [1] (Avg. No.)	Type II ACEs [2] (Avg. No.)	High-Risk ACEs [3] (Avg. No.)	Market Cap. Losses on High-Risk ACEs ($B)
Large Cap IT	148	4.07	0.59	3.43	$5,349.28
Mid Cap IT	132	1.99	0.53	3.05	240.37
Small Cap IT	341	1.77	0.86	2.23	71.67
TOTAL:	621				$5,661.32

[1] Stock price residual return declined by a stat. significant amount (@95% CI) over the close-to-close event window driven by company-specific news issued via public statements, press releases, earnings calls.
[2] Stock price residual return declined by a stat. significant amount (@95% CI) over the close-to-close event window driven by company-specific news in filings made with the U.S. Securities Exchange Commission.
[3] Stock price residual return declined by a stat. significant amount (@95% CI) over the close-to-close event window driven by company-specific news via public statements, press releases, earnings calls, and filings made with the U.S. Securities and Exchange Commission.

Source: SAR U.S. Securities LitigationRisk

2-YR Period ending June 30, 2026

When comparing the growth in market capitalization relative to the growth in market capitalization losses, the numbers present an eerie prognostication of the sector. Between December 31, 2025, and June 30, 2026, market cap losses grew ~1.6x relative to the ~23.9% growth in market cap. It is not surprising that trading data in information technology through July 28, 2026, prompted a market correction in the NASDAQ-100.[8]

The impact is not limited to an increase in the deterioration of securities litigation risk for issuers in information technology. The effect is bleeding over into credit risk based on the scale of capex investments directly related to the push for AI dependence. According to Fitch Ratings, “[t]he global credit risk environment has evolved heading into 2H26 but continues to be driven by two main sources of short-term risk: rising vulnerability to an AI-related market correction and persistent geopolitical uncertainty in the Middle East.”[9]

Sustained geopolitical uncertainty coupled with multiple market corrections in tech prior to 2027 may be a precursor to greater deterioration in securities litigation risk for both U.S. and non-U.S. issuers across all sectors due to AI's interconnectivity. According to Fitch, "[t]he combination of revenue uncertainty and the extent to which capital markets and economies have become intertwined with the AI story have created a key potential vulnerability for credit in the event of a re-evaluation of long-run returns potential. Very short-term spikes in market volatility for individual equities and tech-heavy stock indices have already been observed, but a larger, more protracted correction could have wider market, macro and credit effects depending on its scale, duration and contagion."[9]

Based on our stock price impact data derived from single-firm event study analyses on 11,557 corporate disclosures from a population of 4,648 U.S. public companies, empirical results demonstrate an increasing deterioration in securities litigation risk, driven by both geopolitical instability and flailing investor confidence on the AI story. There is little doubt that uninformed issuers will flop on their disclosures when internal truths on AI are revealed.

Bloomberg Law

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Google to Pay £260 Million to Settle App Developer Class Action

Aug. 27, 2026, 9:45 AM PDT

Alphabet Inc. has agreed to pay £260 million ($354 million) to settle a UK class action accusing the US firm of abusing its dominance and charging excessive commissions to app developers.

The claim alleged Google imposed “excessive and unfair” commissions for transactions through its Play Store. The action was brought on behalf of UK app developers by Barry Rodger, a competition law professor.

The Competition Appeal Tribunal will consider approving the settlement at a hearing in September, according to a statement from the claimant and his lawyers. UK domiciled app developers that sold digital content through Play Store-distributed apps from August 2018 are potentially eligible for compensation if they don’t opt out.

“This is the largest settlement to date” under the UK’s class action regime for competition claims, introduced in 2015, according to Damien Geradin, who represented the app developers.

Another class action on behalf of millions of Android phone users in the UK remains pending. Google spokespeople didn’t immediately respond to a request for comment.

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Manage Newsletters

Google’s $62 Million Tracking Settlement Upheld by Appeals Court

Aug. 26, 2026, 10:48 AM PDT

Summary by Bloomberg AI AI Generated

- A federal appeals court approved Google LLC’s $62 million privacy class action settlement to be distributed to nonprofit groups instead of Google account users.
- The settlement funds will go to court-approved nonprofit groups that work on privacy technology and advocacy, including the American Civil Liberties Union and the Electronic Frontier Foundation.
- The court rejected arguments from class members who said they should receive a cut of the settlement money, with Judge Richard Clifton writing that the most effective use of the funds is to provide them to nonprofit groups.

A federal appeals court approved Google LLC’s $62 million privacy class action settlement that will see funds go toward a group of nonprofits instead of the millions of Google account users whose locations were surreptitiously tracked by the company.

The US Court of Appeals for the Ninth Circuit rejected arguments from some class members who said that they should receive a cut of the settlement money, even if it meant each member would only get a few cents based on the 247 million class members.

The trial court overseeing the settlement was correct in determining the most effective use of the funds is to provide them to court-approved nonprofit groups that work on privacy technology and advocacy, Judge Richard Clifton wrote in a majority opinion for a three-judge panel on the Ninth Circuit.

The class action filed in 2018 in the US District Court for the Northern District of California alleged that Google incorrectly told users that it wasn’t tracking their mobile device location when the “Location History” setting was disabled.

After years of litigation, the parties reached a settlement that included a number of internal privacy policy reforms that included data deletion and additional clarity about how users' locations were tracked. But given the enormous size of the class and the impossibility of identifying all the members, the trial court opted for a legal process known as cy pres, where class action settlement funds are distributed to advocacy groups instead of class members.

The court approved more than a dozen different organizations to receive funds, including the American Civil Liberties Union, the Electronic Frontier Foundation, and the Massachusetts Institute of Technology, which said it would use the money to work on technology that could prevent privacy abuses.

The class members' objections to the settlement drew support from a number of Republican state attorneys general who argued money that would otherwise go to consumers is being diverted to controversial political organizations.

Judge Danielle Forrest dissented from the majority opinion, finding that the district court had failed to show that the funds were truly "non-distributable" to the class. Judge Jay Bybee joined Clifton's majority opinion.

The case is Patacsil v. Google LLC, 9th Cir., No. 24-3387, 8/26/26 .

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KKR Agrees to Pay Record $250M Penalty for Serial Violations of Federal Premerger Review Law

justice.gov/opa/pr/kkr-agrees-pay-record-250m-penalty-serial-violations-federal-premerger-review-law

KKR Will Pay Largest-Ever Penalty for Repeatedly Violating the Hart-Scott-Rodino Act by Withholding and Altering Documents and Failing to Make Required Filings
The Justice Department filed a proposed settlement today requiring KKR & Co. GP LLC to pay a civil penalty of $250,000,000 to resolve allegations that KKR repeatedly flouted the premerger antitrust review process. The United States' Complaint alleged KKR evaded antitrust scrutiny for at least 16 separate transactions by failing to comply with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act).

"This historic $250 million civil penalty – more than 20 times any prior HSR penalty obtained by the DOJ – sends a powerful message: the Department is committed to vigorous enforcement of the Act," said Associate Attorney General Stanley E. Woodward Jr. "The Act's requirements protect competition by giving the Justice Department an opportunity to investigate potentially unlawful transactions. Companies that disregard their legal obligations will face serious consequences."

The HSR Act requires parties to a merger, acquisition, or other transaction above a certain size to submit a premerger filing to the Department of Justice's Antitrust Division and the Federal Trade Commission to facilitate the agencies' enforcement of Section 7 of the Clayton Act, which prohibits mergers and acquisitions that threaten to harm competition. As a sophisticated private equity firm in the business of buying and selling companies, KKR is familiar with the HSR Act and its requirements. Since 2021, KKR was required to make more than 100 premerger filings under the HSR Act.

The Division's Complaint alleged that in 2021-2022, KKR failed to make complete and accurate premerger filings for at least 16 transactions. Specifically, KKR violated the HSR Act by altering documents in HSR filings for at least eight of those transactions, failing to make any HSR filing for at least two of those transactions, and systematically omitting required documents in HSR filings for at least 10 of those transactions.

The HSR Act authorizes civil penalties for violations of the Act at more than $50,000 per day per violation. The proposed $250 million penalty is the largest civil penalty ever assessed for violating the HSR Act.

KKR is a global investment firm headquartered in New York, New York. It is one of the world's largest investment firms with over $744 billion in total assets under management.

Kiromic Investors Get First Approval for $1.2 Million Settlement

Aug. 26, 2026, 3:08 PM PDT

Kiromic Biopharma Inc. investors have obtained a federal court's preliminary approval of a $1.2 million class settlement with three of the bankrupt drugmaker's former leaders in a securities suit over the progress of a clinical trial.

The initial approval doesn't affect claims against ThinkEquity LLC, Judge Jennifer H. Rearden said Tuesday for the US District Court for the Southern District of New York over the investment bank's objection. Kiromic itself is out of the suit due to bankruptcy, which led the parties to renegotiate an original $2.3 million settlement, according to a court filing in May.

The investors alleged Kiromic's June 2021 registration statement and prospectus misleadingly failed to disclose that the Food and Drug Administration had imposed a clincial hold on a cancer drug trial, and even denied the FDA had done so

The allegations echo SEC charges against former Kiromic CEO Maurizio Chiriva Internati that resulted in a $125,000 civil penalty

Kiromic's assets, including a drug candidate then in a first clinical trial, were sold in bankruptcy in 2025 to the owner of Immunocell Therapeutics Inc., according to a press release by her attorneys

Gainey McKenna & Egleston is investor lead counsel. Chiriva Internati isn't represented by counsel, according to the docket. Harris St. Laurent LLP represents the other two individual defendants. David Schrader & Assocs. PC represents ThinkEquity.

The case is In re Kiromic Biopharma, Inc. Sec. Litig. , S.D.N.Y., No. 1:22-cv-06690, 8/25/26 .

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Krispy Kreme Investor Advances Faltered McDonald’s Deal Suit

Aug. 27, 2026, 8:41 AM PDT

Krispy Kreme Inc. and a pair of executives must defend against investor allegations that they recklessly or consciously hid significant cost and operational issues while touting the expansion of its since-abandoned partnership to sell doughnuts at McDonald’s Corp. restaurants.

The investor leading the case, relying on confidential testimony from former employees at both chains, sufficiently alleged top brass knew of high hurdles to the partnership’s nationwide rollout and had rushed into the deal while the doughnut maker’s business was shrinking, Judge Max O. Cogburn Jr. said Wednesday.

This testimony adequately bolstered an inference that the executives had the intent or reckless disregard to defraud investors, the US District Court for the Western District of North Carolina judge said, sparing some proposed class claims from dismissal. Also notable was the fact that, after the deal was canceled, several individuals behind it, including defendant and former Chief Financial Officer Jeremiah Ashukian, were fired, the judge said.

“These facts, when interpreted in the light most favorable to Plaintiffs, support the inference that Defendants agreed to a fundamentally flawed contract, knew early on that it was destined for failure, and continued to make public statements touting the partnership as a success to save face and their jobs,” Cogburn said.

The investor, a public pension fund, sufficiently alleged the defendants misleadingly asserted that Krispy Kreme would achieve its expansion using existing structures and downplayed the significance of upfront expenditures, he said. The investor can also advance claims over February 2025 statements touting the rollout’s success and ability to expand to 6,000 McDonald’s restaurants by the end of the year.

But other statements were objectively true or too vague for a reasonable investor to have relied on, such as about the existence of upfront costs, he said. Expressions of optimism for the partnership and its national rollout before February 2025 were mere puffery or forwarding looking and not actionable, Cogburn said, shedding more than half of the challenged statements from the case.

The proposed class would cover those who got Krispy Kreme securities from March 26, 2024, to May 7, 2025. Krispy Kreme’s share price plummeted almost 25% to close at $3.26 the next day , when the doughnut maker withdrew its 2025 financial guidance partly due to uncertainty around the McDonald’s rollout. It was the stock’s biggest one-day drop since its 2021 market debut, according to data compiled by Bloomberg.

Turnaround

Krispy Kreme, while releasing second quarter of 2026 results this month, touted the success of a turnaround plan in the fallout of the McDonald’s deal and maintained its full-year guidance.

“Demand for our fresh, iconic doughnuts across the US and international markets drove systemwide sales growth of 2.6% excluding the impact of the now-ended McDonald’s USA partnership,” CEO Josh Charlesworth, a defendant in this suit, said in the release.

Saxena White PA is lead counsel for the pension fund. Skadden, Arps, Slate, Meagher & Flom LLP and Robinson, Bradshaw & Hinson PA represent Krispy Kreme and the executives. None of these law firms nor Krispy Kreme immediately responded to emails seeking comment.

The case is Cameron v. Ashukian , W.D.N.C., No. 3:25-cv-00332, 8/26/26 .

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SpaceX Took a Risk on Mandatory Arbitration, Other IPOs Staying Away

law.com/nationallawjournal/2026/08/26/spacex-took-a-risk-on-mandatory-arbitration-other-ipos-staying-away

Last September an SEC policy reversal cleared the path for IPOs with mandatory arbitration provisions. Nearly a year later, just one large company has taken advantage of the move: SpaceX, the largest IPO in history.

Newly public companies have been reluctant to adopt mandatory arbitration provisions to resolve shareholder disputes due to legal uncertainty and shareholder risk, securities law experts say.

Of the 20 largest initial public offerings over the past year, just one company has a mandatory arbitration bylaw: SpaceX, which in June became the largest IPO in history. That is despite the U.S. Securities and Exchange Commission last September declaring that it would take a neutral position on mandatory arbitration clauses and clearing the path for their widespread adoption.

Arbitration generally benefits companies by keeping disputes private, limiting class actions and jury trials, and potentially making it harder for investors to bring claims collectively. The SEC's change reversed a longstanding policy in which the agency would not accelerate the effectiveness of registration statements with mandatory arbitration clauses.

SEC chair Paul Atkins argued the move was needed to encourage more companies to go public. But newly public companies have not taken advantage of mandatory arbitration due to a combination of legal uncertainty at the state level and general investor skepticism of provisions that limit shareholder rights. SpaceX's adoption of a mandatory arbitration framework is largely possible because of CEO Elon Musk's unique influence and the extraordinary demand for the company's shares, lawyers say.

"I've seen in my profession in practicing in this area, quick adoption of the next great thing when it comes to corporate governance," said Alfred Fatale, partner at Labaton Keller Sucharow. "And we are not seeing that here now because of the uncertainty and potential unquantifiable risk compared to quantifiable risk based on 100 years' worth of securities litigation."

Delaware, where most public companies are incorporated, has an anti-arbitration law. Texas, where SpaceX is incorporated, does not. There is also the unsettled legal question of whether such provisions regardless of state law violate the anti-waiver provisions of federal securities law. The uncertainty has made mandatory arbitration provisions not worth the risk to most companies, said securities law scholar John Coates, a professor at Harvard.

IPO underwriters are likely telling companies that by having mandatory arbitration, “Institutional shareholders are going to look at you very skeptically,” Coates added. Companies going public need interest in the company and investor support and mandatory arbitration may prove to be “just a distraction,” he said.

Firms must balance adopting protective measures that help the company without alienating investors prior to the IPO, said former SEC attorney Ryan Adams.

“Mandatory arbitration—I think it’s fair to characterize it as an aggressive position and proxy manager firms do not like it,” added Adams, a partner at Morrison Foerster.

While companies often complain about securities litigation, lawsuits can increase investor confidence by deterring fraud and providing a path to recover losses, Coates said.

Arbitration may not eliminate securities litigation either, Fatale said, but could “fragment one consolidated lawsuit into potentially many arbitrations.”

The SpaceX IPO notes that “the mandatory arbitration provision in our bylaws could be subject to litigation or regulatory scrutiny,” signaling that even the company is unsure whether its mandatory arbitration clause is legal, Coates said.

Underwriters are telling companies: “Do you want to include something that we’re going to have to describe as possibly illegal in the prospectus?” he added. “Why do we want to do that?”

‘Appetite for Risk’

Lawyers have described SpaceX as an outlier in the market, which allowed it to pursue mandatory arbitration and does not mean such provisions will become more widely adopted. SpaceX, being unusually sought after, has more leverage to impose unusual governance terms without worrying about losing investor demand, Fatale said. The Starbase, Texas-based company could afford to have a greater “appetite for risk and willingness to face that risk doing something a little unknown,” he added.

Musk’s personal history with losing shareholder lawsuits helps explain the move as well, Coates said.

“I think SpaceX and Elon are very unlike even other companies whose management might agree with the policy approach of— ‘Let’s get rid of litigation,’” he added. “They might agree with him, but I don't think they would be willing to do the things he's done."

Adams said the SpaceX provision operates as a hybrid that uses mandatory arbitration as a fallback if a court determines certain claims aren't under the jurisdiction of the Texas Business Court. Still, that makes litigation for retail investors very difficult, he said.

The SpaceX provision, as well as any mandatory arbitration provision, "makes it practically impossible for anybody who is not very wealthy to have a lawsuit even if there is clear fraud," Coates said.

For now, companies have not shown a willingness to accept the risks inherent in mandatory arbitration. That could change if more companies choose to incorporate in Texas, or if Delaware changes its law. Atkins himself has urged Delaware lawmakers to allow shareholder arbitration.

"For the rest of the market, nothing really much has changed yet," Coates said. "I just want to put the emphasis on 'yet' because it's possible that politically this may get enough momentum."

Mark Walter's TWG Says 'There Has Been No Fraud' in Dealings (2)

Aug. 26, 2026, 10:20 AM PDT

Summary by Bloomberg AI AI Generated

- TWG Global is working with the US Department of Justice and the Securities and Exchange Commission to resolve their inquiries, and its insurance business has submitted plans to regulators to address concerns.
- The company said "there has been no fraud" and "no one has been harmed" despite regulators and US prosecutors probing its business, including potential financial improprieties at two of its insurance companies.
- TWG has announced plans to buy affiliated assets and eliminate affiliate exposure, and said its insurers have "invested in real assets that are performing well" with "no policyholders" losing money due to these transactions.

TWG Global , the holding company at the heart of Mark Walter's empire, defended itself against what it called "multipronged attacks" on its business as regulators and US prosecutors continue to probe the firm.

The company is working with both the US Department of Justice and the Securities and Exchange Commission to resolve their inquiries, according to a statement Wednesday. Its insurance business has also submitted plans to regulators to try to eliminate any concerns they have, the firm said.

"Despite what has been reported, there has been no fraud," TWG said. "There is no victim here. No one has been harmed, and no one has claimed they were harmed."

The comments come as regulators and US prosecutors have been investigating Walter's sprawling investment empire, including potential financial improprieties at two of his insurance companies and at Guggenheim Partners , Bloomberg News previously reported.

Read More: 'I Hate Losing': Walter Rushes Makeover as DOJ Probes His Empire

Earlier this year, two insurers controlled by TWG – Delaware Life Insurance Co. and Clear Spring Life and Annuity Co. – told investors that more than $20 billion of loans on their balance sheet should have been labeled as affiliated but weren't. The disclosures followed federal subpoenas prying into the arrangements.

Industry rules allow insurers to lend money to related parties but require that the dealings be disclosed. Regulators then scrutinize those arrangements to ensure that a firm's owners don't put their interests ahead of policyholders.

TWG has since announced that it will buy as much as $6.5 billion of affiliated assets from Delaware Life as part of a plan to whittle down the pile of assets that had drawn scrutiny from the Justice Department.

On Wednesday, TWG said it has already submitted a plan to its regulators that will eliminate all of its affiliate exposure. The Delaware Department of Insurance is reviewing that proposal.

'Performing Well'

"Affiliated transactions should be properly disclosed, but to state that they 'generally' have the potential to 'loot' the insurer is untrue," TWG said in its statement. The company said its insurers have "invested in real assets that are performing well" and that "the insurance companies have recognized significant income from the investments and no policyholders have lost money because of these transactions."

Other parts of Walter's empire, meanwhile, have been working to assuage concerns about any potential fallout from the probes.

Guggenheim Investments , the asset-management arm of Guggenheim Partners, disclosed to lenders this week that insurers linked to TWG make up about 1% of its total assets under management and less than 1% of its base fee revenue, according to people familiar with the matter. It projected a measure of annual earnings for 2026 and 2027 of about $400 million, with 2027 revenue expected to exceed $1 billion, said the people, who asked not to be identified discussing private information.

A representative for Guggenheim Investments declined to comment.

A $1.18 billion loan from GIH Borrower LLC , the asset management firm's financing entity, rallied sharply Wednesday. It's indicated at about 82.5 cents on the dollar, up from as low as 73 cents earlier this week, data compiled by Bloomberg show.

Lakers Sale

As Walter has worked through plans to shed affiliate exposure, TWG has been looking to pull off a range of deals. This month, he agreed to sell the Los Angeles Lakers to **Josh Kushner** and Bob Iger for a record-breaking $12.5 billion.

He has also explored selling his stake in Chelsea FC to Clearlake Capital , the majority owner of the London-based football club, Bloomberg previously reported.

The company said it "is not looking to sell its sports assets at 'fire sale' prices" to raise capital for his insurance operations. The Lakers deal, for instance, was done at a 25% premium to the price Walter paid less than a year ago for the team, according to the statement.

TWG said the Los Angeles Dodgers aren't being sold and it's not considering exiting its stake in the Cadillac Formula 1 team or any other part of TWG Motorsports.

"TWG, Mr. Walter and his partners continuously get interest from prospective buyers and co-investors in their sports assets and, as responsible owners and investors, they consider all legitimate offers when they are received," according to the statement.

(Updates with Guggenheim Investments details beginning in 10th paragraph.)

--With assistance from **Eliza Ronalds-Hannon**, **Katherine Schwartz** and **Sridhar Natarajan**.

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Daniel Taub

Mealey's Securities/D&O Liability - 1st Circuit Affirms Dismissal Of Securities Fraud Case Over Alleged Half-Truths

Mealey's Daily News Update

August 27, 2026

Cite: 2026-9993 Mealey's Daily News Update 7

Section: 2026, 9993

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Body

A First Circuit U.S. Court of Appeals panel affirmed a lower court's dismissal of investors' case against a biopharmaceutical company, holding that investors had no actionable securities fraud claim against the defendants because the company and CEO did not make any materially misleading statements about the findings of two clinical trials for a drug the company was producing (*In re Apellis Pharmaceuticals Inc. Securities Litigation, No. 25-1383, 1st Cir., 2026 U.S. App. LEXIS 25059*).

(Opinion available 57-260914-001Z)

Judges Seth R. Aframe, Sandra L. Lynch and William J. Kayatta Jr. issued the opinion on Aug. 19, finding the lower court properly dismissed the complaint because the defendants' statements about the clinical trials were not actionable half-truths as they did not conceal material qualifying information. Citing *Macquarie Infrastructure Corp. v. Moab Partners L.P., 601 U.S. 257 (2024)*, the panel held that securities laws do not require issuers to disclose information simply because investors may prefer additional details.

Pharmaceutical Trials

Apellis Pharmaceuticals Inc., a biopharmaceutical company, developed the drug pegcetacoplan to treat geographic atrophy (GA), which is an advanced form of age-related macular degeneration (AMD). The Food and Drug Administration approved pegcetacoplan as a treatment for GA under the commercial name SYFOVRE on Feb. 17, 2023.

After the commercialization and distribution of SYFOVRE, on July 15, 2023, the American Society of Retina Specialists (ASRS) published a letter stating that there had been six reported incidents of retinal vasculitis in patients treated with SYFOVRE. Two weeks later, Apellis confirmed a seventh case and stated that it was investigating a potential eighth case. Apellis' stock price declined significantly, and in November 2023, SYFOVRE's label was updated to include a warning about retinal vasculitis as a potential side effect. The ASRS committee filed a second letter on Dec. 21, 2023, stating that while no cases of retinal vasculitis were reported in the clinical trials, there was no defined protocol in the trials to obtain angiography when a trial participant showed intraocular inflammation, a possible symptom of retinal vasculitis.

Mealey's Securities/D&O Liability - 1st Circuit Affirms Dismissal Of Securities Fraud Case Over Alleged Half-Truths

Investor Judith M. Soderberg originally filed suit in the U.S. District Court for the District of Delaware against Apellis, its CEO Dr. Cedric Francois, Chief Financial Officer and Treasurer Timothy Sullivan and former Chief Medical Officer Federico Grossi on Aug. 2, 2023. Investors Ray Peleckas and the Michigan Laborers' Pension Fund were appointed lead plaintiffs in October 2023, and in February 2024, they filed the operative amended complaint. In that complaint, they alleged that Apellis and Francois violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, *15 U.S.C. §§ 78j(b)* and *78t(a)*, and Securities and Exchange Commission Rule 10b-5 promulgated thereunder, *17 C.F.R. § 240.10b-5*. Peleckas and the pension fund brought the action on behalf of all purchasers of Apellis common stock from Jan. 28, 2021, until July 28, 2023. In May 2024, the Delaware District Court transferred the case to the U.S. District Court for the District of Massachusetts to satisfy venue requirements.

The investors alleged that during the two Phase III clinical studies, known as the OAKS and DERBY studies, the defendants made more than a dozen statements about the absence of occurrences of retinal vasculitis among trial participants. They argued that these statements, though not false, could plausibly be found to be misleading because the statements did not include an express acknowledgment that the trials were not designed to detect retinal vasculitis. Specifically, the investors argued that the defendants did not state how frequently Apellis used fluorescein angiography to test for retinal vasculitis and failed to state that their testing protocols were inadequate to detect retinal vasculitis.

In June 2024, the defendants filed a motion to dismiss the amended complaint, and on March 17, 2025, Judge Julia E. Kobick granted the motion and dismissed the case with prejudice. The judge held that the investors failed to plausibly allege a material misrepresentation or omission and failed to plausibly allege that the defendants acted with the requisite scienter. The investors appealed to the First Circuit.

No Material Misrepresentation

The panel affirmed the lower court's ruling, agreeing that "under the circumstances as alleged, the challenged statements are not actionable half-truths."

Citing Macquarie Infrastructure, the panel found that the defendants did not omit critical qualifying information. Specifically, it stated that while "the defendants did not explicitly state that fluorescein angiograms were not automatically given to all sufferers of inflammation and ischemic neuropathy or that fluorescein angiograms were not given to those leaving the OAKS and DERBY studies within thirty days of their exits," "the defendants disclosed both facts by providing a full and complete disclosure of when fluorescein angiograms would be given to trial participants."

The panel further noted that the defendants reported that their clinical studies found retinal inflammation and ischemic neuropathy, which are side effects symptomatic of retinal vasculitis, and announced that there were no observed cases of retinal vasculitis. "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."

Counsel

Peleckas, et al. are represented by Andrew S. Love in San Francisco and Robert M. Rothman, Mark T. Millkey and Alan I. Ellman in Melville, N.Y., all of Robbins Geller Rudman & Dowd LLP; Jeremy A. Lieberman and Michael J. Wernke of Pomerantz LLP in New York; and Theodore M. Hess-Mahan of Hutchings Barsamian Mandelcorn LLP in Wellesley Hills, Mass.

Apellis, et al. are represented by Daniel W. Halston, Peter J. Kolovos, Dan Willey and Edward W. Hasen of Wilmer Cutler Pickering Hale and Dorr LLP in Boston.

(Additional documents available: Peleckas, et al's opening brief 57-260914-002B

Mealey's Securities/D&O Liability - 6th Circuit Revives Securities Fraud Action Against Freddie Mac

Mealey's Daily News Update

August 27, 2026

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Body

The Sixth Circuit U.S. Court of Appeals found that a lower court erred when it rejected a pension fund's price-maintenance theory, denied class certification and granted summary judgment to Federal Home Loan Mortgage Corp. (Freddie Mac), reviving the pension fund's nearly two-decade-long securities fraud suit against *Freddie Mac (Ohio Public Employees Retirement System v. Federal Home Loan Mortgage Corporation, et al., No. 25-3765, 6th Cir., 2026 U.S. App. LEXIS 25417)*.

(Opinion available 57-260914-011Z)

Circuit Judge Helene N. White wrote the Aug. 21 opinion, in which Judges Karen Nelson Moore and Amul R. Thapar concurred. The panel held that the lower court erred in rejecting Ohio Public Employees Retirement Systems' (OPERS) price-maintenance theory, under which OPERS's alleged misrepresentations keep an already inflated stock price artificially high. Judge Thapar wrote a separate concurring opinion to expand on certain issues, including emphasizing that the holding that price maintenance is a valid securities fraud theory.

Mortgage Underwriting

OPERS alleged that in the early 2000s, Freddie Mac assured investors that it maintained conservative underwriting standards and limited its exposure to risky mortgage products, when in reality Freddie Mac accumulated significant exposure to subprime, Alt-A and other nontraditional mortgages. Further, it alleged that when Freddie Mac's true exposure was revealed, the price of its stock fell, causing financial harm to investors.

OPERS filed its initial complaint on Jan. 18, 2008, in the U.S. District Court for the Northern District of Ohio against Freddie Mac and several executives and Freddie Mac committee members, including former Chairman of the Board and CEO Richard F. Syron, former Executive Vice President and Chief Financial Officer Anthony S. Piszel, former President and Chief Operating Officer Eugene M. McQuade and former Executive Vice President, Investments and Capital Markets, Patricia L. Cook. OPERS filed two amended complaints that withstood a motion to dismiss. OPERS did not include claims against the committee members in the amended complaints. Cook died during the case and the claims against her were dismissed with prejudice. It then filed a third amended complaint, alleging that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, *15 U.S.C. §§ 78j(b)* and

78t(a), and Rule 10b-5 promulgated thereunder, *17 C.F.R. § 240.10b-5*. On Oct. 31, 2014, the District Court issued an order granting the defendants' motion to dismiss, holding that OPERS failed to adequately plead loss causation. The Sixth Circuit reversed that decision in 2016, holding that OPERS adequately pleaded loss causation.

After the case returned to the District Court, OPERS moved for class certification and the parties filed cross-motions to exclude each other's experts. In August 2018, the District Court denied OPERS's motion for class certification, granted Freddie Mac's motion to strike OPERS's expert and denied OPERS's motion to strike Freddie Mac's experts. OPERS sought leave to appeal the District Court's denial of its class certification motion, which the Sixth Circuit denied in 2019.

OPERS then asked the District Court to enter summary judgment for Freddie Mac. OPERS argued that rulings made in conjunction with the class certification decision were case-dispositive. The District Court entered summary judgment in favor of Freddie Mac, and OPERS appealed. In 2023, the Sixth Circuit held that it lacked jurisdiction because OPERS had manufactured a dismissal and, therefore, there was no final judgment and no appellate jurisdiction.

Again before the District Court, the defendants moved for summary judgment, which the District Court granted Aug. 29, 2025. OPERS appealed the lower court orders denying class certification, excluding its expert's testimony and granting summary judgment to the defendants.

Class Certification

The panel first vacated the District Court's denial of class certification, holding that the District Court abused its discretion by relying on a faulty premise in concluding that OPERS had not demonstrated market efficiency.

The panel found that OPERS met its burden to establish market efficiency. The District Court had concluded that OPERS's expert, finance professor Dr. Steven P. Feinstein, did not demonstrate market efficiency because he relied on a single-date event study to assess market efficiency, which the court concluded was unreliable.

It stated that OPERS's price maintenance theory, which the panel states "describes the price impact of misrepresentations in a case where the plaintiff has alleged loss causation on a materialization-of-the-risk theory-although the misrepresentations do not cause further inflation, they do cause the stock to maintain an inflated price." It said the District Court should have credited this theory, under which the defendants' misstatements maintained Freddie Mac's stock "price at an artificially inflated level compared with the value of the stock in absence of the misrepresentations." The panel vacated the District Court's decision, holding that the District Court should have credited the price-maintenance theory when evaluating market efficiency and class certification.

The panel also found that the District Court correctly determined that OPERS failed to establish that damages could be measured on a classwide basis because it did not identify an appropriately specific calculation methodology. "However, the district court's rejection of the damages measurement was bound up in its rejection of OPERS' price maintenance theory." Because the Sixth Circuit is not a court of first review, it directed the District Court to "permit OPERS to refile a motion for class certification with a specific proposal for calculating damages under the price-maintenance theory."

Summary Judgment

Reviewing the lower court's ruling de novo, the panel disagreed with the District Court's determination that there were no genuine issues of material fact and, therefore, that the defendants were entitled to summary judgment.

"Viewing the evidence in the light most favorable to OPERS and drawing all reasonable inferences in OPERS' favor, OPERS has shown that a reasonable juror could conclude that defendants made materially false statements about Freddie Mac's subprime and Alt-A exposure but not its credit risk and underwriting standards," the panel stated.

It then held that OPERS provided sufficient evidence for a reasonable juror to find scienter, noting that "Freddie Mac's internal reports demonstrated significant exposure to Caution loans and internal reports and comments suggest a recognition that many would consider the Caution loans to be subprime or subprime-like." Caution loans are the company's designation for higher-risk mortgages. It stated that these warnings "should have alerted the individual defendants that their comments disclaiming subprime exposure were misleading."

Because it accepted OPERS's theory of price maintenance, the panel also rejected the District Court's "conclusion that OPERS failed to establish loss causation as a matter of law." It remanded the case "to allow OPERS to present evidence of loss causation in light of our price-maintenance analysis."

Lastly, it found that "the district court's erroneous rejection of OPERS' underlying theory excuses OPERS' failure to present evidence of damages at summary judgment."

Concurrence

Judge Thapar wrote a separate concurrence "to clarify three distinct issues that recur in complex cases like this one-and to urge all involved to make this case a priority going forward."

First, the judge sought to "further explain why price maintenance is a valid securities-fraud theory." Judge Thapar stated, "If a company's stock price is already inflated, a misrepresentation can artificially maintain that inflation by confirming the market's expectations. . . . So the economic effect of unlawful price maintenance is that a stock's price is higher than its real value-no different from a classic securities-fraud violation."

Then, the judge argued that the District Court had made summary judgment more complicated than necessary. The judge stated that while under the Private Securities Litigation Reform Act of 1995 (PSLRA), *15 U.S.C. § 78u-4(b)(2)*, "a securities-fraud class-action complaint must include allegations raising a 'strong inference' of scienter to survive a motion to dismiss," "[s]ummary judgment is the wrong time to apply the strong-inference standard." He noted that the 11th *Circuit U.S. Court of Appeals in Mizzaro v. Home Depot Inc., 544 F. 3d 1230 (11th Cir. 2008)*, the *Seventh Circuit U.S. Court of Appeals in Costello v. Grundon, 651 F.3d 614 (7th Cir. 2011)*, and the *Ninth Circuit U.S. Court of Appeals in Howard v. Everex Sys., Inc., 228 F.3d 1057 (9th Cir. 2000)*, "held that the strong-inference standard doesn't apply at summary judgment." *Only the First Circuit U.S. Court of Appeals in Geffon v. Micrion Corp., 249 F.3d 29 (1st Cir. 2001)*, found that the strong inference standard applies at the summary judgment stage.

Lastly, Judge Thapar wrote that "this litigation has lingered for far too long, hurting the parties, courts, and taxpayers." The judge stated that "[d]istrict courts and litigants have tools at their disposal to prevent cases from dragging on as long as this one has." Judge Thapar stated that judges can set firm discovery deadlines and issue oral rulings from the bench. Additionally, the parties "shouldn't request repeated extensions" and "should follow up on outstanding motions."

Counsel

OPERS is represented by W.B. Markovits, Christopher D. Stock and Terence R. Coates of Markovits, Stock & DeMarco LLC and Richard S. Wayne and Robert R. Sparks of Strauss & Troy Co. LPA, all in Cincinnati.

McQuade is represented by Michael S. Doluisio of Dechert LLP in Philadelphia and Joseph C. Weinstein and Steven A. Delchin of Squire Patton Boggs (US) LLP in Cleveland.

Syron is represented by Frank Robert Volpe of Sidley Austin LLP in Washington, D.C.

Piszel is represented by James K. Goldfarb of Davis Wright Tremaine LLP in New York and Joseph C. Weinstein and Delchin.

Freddie Mac is represented by Hugh E. McKay of Porter Wright Morris & Arthur LLP in Cleveland and Fred L. Black and Michael E. Kenneally in Washington and Jason D. Frank, Emily E. Renshaw and Andrew M. Buttaro in Boston, all of Morgan, Lewis & Bockius LLP.

(Additional documents available: OPERS's appellant brief 57-260914-012B

McQuade's appellee brief 57-260914-013B

Syron's appellee brief 57-260914-014B

Piszel's appellee brief 57-260914-015B

Freddie Mac's appellee brief 57-260914-016B

OPERS's reply brief 57-260914-017B

District Court's memorandum of opinion and order 57-260914-018R)

[Mealey's Securities/D&O Liability - 9th Circuit Finds Investor Failed To Plead Loss Causation In Merger Suit]

Mealey's Daily News Update

August 27, 2026

Cite: 2026-9993 Mealey's Daily News Update 6

Section: 2026, 9993

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Body

A Ninth Circuit U.S. Court of Appeals panel affirmed the dismissal of a securities action challenging a technology development company's merger with another company, holding that the investors did not adequately plead loss causation because the alleged economic harm from shareholders' purported rejection of the tender offer was too speculative (*[Ken Callen, et al. v. Resonant Inc., et al., No. 25-2396, 9th Cir., 2026 U.S. App. LEXIS 24201]*).

(Unpublished memorandum available 57-260914-006Z)

Judges Susan P. Graber, Lucy H. Koh and Holly A. Thomas issued the memorandum on Aug. 7, affirming the lower court's decision to dismiss the case for failure to plead loss causation. The panel stated that the complaint's theory that Resonant Inc. would have been worth more if the shareholders had rejected the subject tender offer rested on speculative analyst price targets. Additionally, it held that the complaint did not plead with particularity that Murata Electronics North America Inc. (Murata America) would have increased its bid.

Merger

Technology development company Resonant designs radio frequency filters for 5G mobile and other wireless devices. It formed a partnership with Murata Manufacturing Co. Ltd. (Murata Japan) under which it sold 3,960,560 shares to Murata Japan's subsidiary, Murata America for $ 2.53 per share. This gave Murata America an 8.5% stake in Resonant. On Sept. 30, 2019, Resonant and Murata Japan entered into a collaboration and license agreement (CLA), under which Resonant licensed certain filter designs to Murata Japan for four radio frequency bands in exchange for up to $ 9 million in royalties, which equaled up to $ 2.25 million per design. The royalties were to be paid when Resonant achieved certain technological milestones with respect to the designs. As part of the CLA, Murata Japan was granted exclusive use of Resonant's XBAR technology for mobile devices through March 31, 2022.

In September 2021, Murata Japan expressed interest in Murata America acquiring Resonant. Resonant and Murata Japan executed an addendum to the CLA on Sept. 30, 2021, which covered designs for up to four additional radio frequency bands and provided for a $ 4 million nonrefundable upfront payment and aggregate prepaid royalties ranging from $ 8 million to $ 36 million. The royalties would equal between $ 2 million and $ 9 million per filter design.

Murata America submitted an initial bid on Oct. 12, 2021, offering to purchase Resonant's outstanding shares at $ 4 per share in cash. The board felt the proposal undervalued Resonant, despite the company's stock price closing at $ 2.29 per share. In November, Resonant's board hired financial adviser Centerview Partners LLC, which solicited several parties regarding the purchase of Resonant. Murata and four other radio frequency filter industry participants expressed interest and Murata Japan and two of the additional companies signed nondisclosure agreements and received financial information.

Murata America increased its bid to $ 4.20 per share in December 2021, and after the four other companies that had expressed an interest declined to submit offers by Jan. 25, 2022, Murata America resubmitted its $ 4.20 per share bid. Centerview informed Murata America that Resonant's board did not support the offer, and Centerview asked Murata to submit its last, best and final offer. Murata America submitted its final offer of $ 4.50 per share in cash on Jan. 30, 2022. The offer was accepted Feb. 14, 2022, and Resonant and Murata America executed a merger agreement. The merger was completed March 28, 2022, when Resonant announced that shares tendered in the offer, together with shares already owned by Murata and its subsidiaries, represented approximately 75.57% of Resonant's outstanding shares.

Investor Joseph Boudre filed the initial putative class action complaint in this case on May 19, 2022, in the U.S. District Court for the Central District of California, asserting two claims for violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934, *15 U.S.C. §§ 78n(e)* and *78t(a)*. The District Court appointed Ken Callen as lead plaintiff and dismissed Boudre without prejudice on Aug. 5, 2022. Callen filed a first amended complaint asserting the same two claims on Sept. 9, 2022. The defendants moved to dismiss the first amended complaint on Oct. 21, 2022, and the District Court granted the motion with leave to amend on Dec. 27, 2023.

Callen and named plaintiff Christopher Leach filed the operative second amended complaint on Jan. 17, 2024, against Resonant, its CEO and Chairman of the Board of Directors George B. Holmes, Chief Financial Officer Martin S. McDermut and members of the board Michael J. Fox, Ruben Caballero, Alan B. Howe, Jack H. Jacobs, Joshua Jacobs, Jean F. Rankin and Robert Tirva. It asserted the same claims as the first amended complaint, as well as an additional claim for violation of Section 14(d) of the Exchange Act, *15 U.S.C. § 78n(d)*. The defendants moved to dismiss the second amended complaint, and the District Court granted the motion and dismissed the action with prejudice on March 28, 2025. The District Court found that the investors failed to plead loss causation and the investors did not request leave to amend. The investors appealed.

Loss Causation

In affirming the lower court's decision, the panel noted that the investors alleged that Resonant's shareholders would have rejected Murata America's offer if the defendants had not made purportedly false and misleading statements. The investors alleged that if the offer had been rejected, Resonant's share value would have increased or Murata America would have made a higher offer to acquire Resonant.

The panel held that the investors failed to plead loss causation plausibly and with particularity. First, it held that the investors' argument that Resonant's share value would have been higher than $ 4.50 per share if it had not merged with Murata America was "too speculative to adequately plead loss causation." It noted that the analysts' price targets the investors relied on "were based on Resonant's reaching cash-flow breakeven in 2022 by securing additional contracts, and Plaintiffs do not allege that Resonant ever did so or was likely to do so" and "were made before Resonant's significant decrease on stock price and revenue and its failure to receive any other offers."

Additionally, the panel held that the investors did not adequately plead that Murata America would have made another offer at more than $ 4.50 per share. It also found that the investors' argument that Murata America had insider information that allowed it to obtain a low share price lacked particularity because the complaint did not "identify what information Murata America possessed that other potential buyers did not or how that information enabled it to obtain an unfairly low share price."

Because the investors did not request leave to amend, the panel found that they waived any argument that they should be given another chance to amend.

Counsel

Callen, et al. are represented by Joshua Fruchter of Wohl & Fruchter LLP in Monsey, N.Y., and Jeremy A. Lieberman and Tamar A. Weinrib of Pomerantz LLP in New York.

Resonant, et al. are represented by Alexandra M. Avvocato in New York and Aileen M. McGrath, Robert May and Christin Hill in San Francisco, all of Morrison & Foerster LLP.

(Additional documents available: Callen et al's opening brief 57-260914-007B

Resonant et al's answering brief 57-260914-008B

Callen et al's reply brief 57-260914-009B

District Court order 57-260914-010R)

End of Document

Meta Says It’ll Pay Up to $18 Billion in Social Media Claims (3)

Aug. 26, 2026, 2:09 PM PDT

Summary by Bloomberg AI

AI Generated

- Meta Platforms Inc. agreed to pay up to $18 billion in landmark settlements to resolve social media claims from US states that would require the company to make major changes to how it operates platforms like Facebook and Instagram.
- The agreement requires Meta to put new guardrails on its platforms, including restricting how much time youths can scroll and preventing them from switching off certain safety settings without parental consent.
- The settlement includes payments to resolve a variety of claims across multiple lawsuits, with some payments contingent upon other social media companies adopting similar platform changes and making their own payouts.

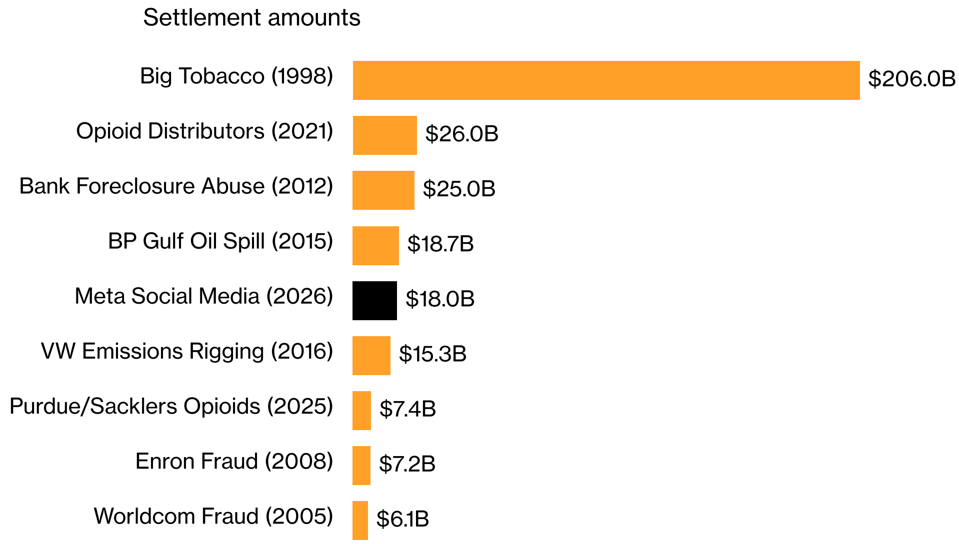
Meta Platforms Inc. said it agreed to pay up to $18 billion in landmark settlements to resolve social media claims from US states that would require the company to make major changes to how it operates platforms like Facebook and Instagram.

Key parts of the deal, disclosed in a court filing Wednesday, require the company to put new guardrails on its platforms, including restricting how much time youths can scroll and preventing them from switching off certain safety settings without parental consent.

The agreement includes payments to resolve a variety of claims across multiple lawsuits. At the heart of it was an ongoing trial in Oakland, California, in which multiple US states alleged that the company deliberately designed Facebook and Instagram to encourage compulsive use among young users.

How Meta Deal Ranks Among Major US Settlements

Company says it will pay up to $18 billion to settle social media claims



Note: Under Meta's agreement, company won't pay full amount unless other social media companies agree to platform changes and payouts
Source: Bloomberg

Bloomberg

Meta has agreed to pay up to $16.7 billion to resolve that lawsuit, according to the court filing. In addition, the company will pay another $459 million to resolve other privacy claims as well as $75 million in legal fees. Separately, Meta said it reached an agreement to pay Texas up to $1 billion.

Some of the payments are contingent upon other social media companies adopting similar platform changes and making their own payouts.

US District Judge Yvonne Gonzalez Rogers signed off on the agreement Wednesday after suspending the trial earlier in the day. In the earlier filing outlining the agreement, Meta denied the allegations against it and said the deal did not constitute an admission of liability.

Read More: Time Limits, 'School Mode': Meta Agrees to Curb Kids' Access

Oakland Trial

The accord came in the second week of a jury trial in California federal court that posed enormous risk for Meta. The top legal officers of 29 states were seeking not only massive financial penalties on behalf of the public, but also court orders forcing the company to change how it operates its platforms.

The states had alleged violations of state consumer protection and federal privacy laws — which carry fines that add up quickly when multiplied by millions of young Instagram and Facebook users. By Meta's own calculations, a loss at trial could have saddled it with penalties of as much as $1.4 trillion, an amount close to its market capitalization and unheard of in the annals of legal history.

Meta shares closed the day 1.1% higher. Bloomberg reported late Tuesday that the parties had discussed a possible mid-trial settlement.

"Ensuring teens have a safe and productive experience on our platforms is an absolute imperative for Meta. We want to get this right for parents and teens," the company said in a statement Wednesday.

Meta also said that the agreement includes default blocks from its apps at night as well as muted notifications during school hours.

The settlement includes the appointment of an independent auditor to oversee compliance, who can issue their own recommendations and report findings to the states. The agreement also requires Meta to enhance its age verification tools to better identify young users on the app. Access to features like viewing the number of likes on a post or beauty filters will be restricted for teens.

"Meta has agreed to make massive transformations that will reduce the risk of harm from its platforms — and will do it within months," California Attorney General Rob Bonta said in a statement.

Settlement Structure

The settlement doesn't immediately require Meta to pay out the full value of the deal. Under the agreement, Meta is required to pay the states a total of $12.19 billion over 10 years. That amount will increase to the full $17.1 billion value of the settlement only if Alphabet Inc.'s YouTube and TikTok also agree to platform changes and settlement payouts, Meta said. Statements from several states said Snap Inc. would be subject to those terms as well.

Representatives for those companies didn't respond to requests for comment.

During the first week of testimony, jurors heard from Instagram head **Adam Mosseri** and a collection of current and former Meta employees who helped design its social media platforms and studied how teen users interacted with tools designed to cut down on problematic use.

Lawyers had also said they expected to call Meta founder and chief executive officer Mark Zuckerberg to testify.

WATCH: West Virginia Attorney General JB McCuskey says the state’s Meta settlement provides a blueprint for pursuing other tech companies over child safety.
(Source: Bloomberg)

The attorneys general spearheading the case, from California, Colorado, Kentucky and New Jersey, alleged under their separate state laws that Meta knowingly designed features that encouraged compulsive and prolonged use of its platforms by young people, while simultaneously misleading consumers about safety features on its platforms.

Meta argued at trial that it already had sufficient guardrails to curb problematic teen usage of its platforms.

The broader bipartisan group of 29 states accused the company of collecting data from users under 13 years old in violation of the federal Children’s Online Privacy Protection Act.

Meta said Wednesday the accord involves 52 attorneys general from US states, territories and Washington, DC and would resolve active cases, including a trial in Tennessee that had been in progress.

Social media companies are facing a global backlash over concerns that they profit at the expense of young users, for whom a growing body of research shows that excessive screen time is dangerously unhealthy.

While authorities from Australia to Europe have enacted or proposed outright bans for youths in the last year, legislative crackdowns in the US have had limited success, turning the courts into a pivotal battleground.

Meta, Alphabet’s Google, Snap and TikTok all face billions of dollars in potential exposure from more than 3,000 personal injury claims by individuals and families in the US, and about 1,300 more lawsuits by public school districts across the nation.

Some of the cases have already settled, avoiding trials, while more bellwether cases loom in the months ahead.

The lawyers behind the cases have gained traction in court by arguing that the products themselves — through their design and functionality — have created harms, rather than taking aim at content, for which platforms are broadly protected from liability.

This strategy, several years in the making, succeeded in its first test when a Los Angeles jury in March awarded $6 million to a 20-year-old woman who said her nonstop use for more than a decade of sites including Meta's Instagram and Google's YouTube caused her to suffer anxiety, depression and body dysmorphia.

The Oakland trial followed a nearly $1 billion hit for Meta in a case brought by New Mexico's attorney general.

A state court judge in Santa Fe likened Meta to a polluting factory and ordered the company to make platform changes, including time limits for usage and push notifications for young users. Meta was ordered to pay roughly $375 million in civil fines and $567 million to ameliorate social media harms to youths in the state.

The case is People of the State of California v. Meta Platforms Inc., 23-cv-05448, US District Court, Northern District of California (Oakland).

(Updates with judge's approval in sixth paragraph and chart)

--With assistance from Erik Larson, **Alexandra S. Levine**, **Peter Blumberg** and Isaiah Poritz.

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Ben Bain

Paramount Might Get $8 Billion for Turner Networks, Analyst Says

Aug. 26, 2026, 12:27 PM PDT

Summary by Bloomberg AI

AI Generated

- Paramount Skydance Corp. could get roughly $8 billion and some legal relief if it agreed to sell Warner Bros. Discovery Inc.'s Turner networks as a path toward settling two lawsuits.
- The Turner networks, which include TBS, TNT and CNN, throw off about $2 billion a year in earnings before interest, taxes, depreciation and amortization.
- Paramount faces a difficult choice in deciding how to settle the lawsuits, with options including selling Warner Bros. channels or negotiating separate distribution agreements with cable operators.

Paramount Skydance Corp. could get roughly $8 billion and some legal relief if it agreed to sell Warner Bros. Discovery Inc.'s Turner networks as a path toward settlings two lawsuits challenging the Warner acquisition, according to Bloomberg Intelligence estimates.

The channels, which include TBS, TNT and CNN, are among the most valuable in the Warner Bros. portfolio. They throw off about $2 billion a year in earnings before interest, taxes, depreciation and amortization and the business would sell for about four times those earnings, according to **Geetha Ranganathan**, a senior industry analyst with Bloomberg Intelligence.

What are Warner's Cable Networks Worth?

Paramount might sell some channels to settle litigation.

Warner Asset	Major Channels	Cash Flow	Valuation
Kids Channels	Nickelodeon, Nick Jr.	$473M	$2.27B
Turner Broadcasting	TNT, TBS, CNN	$2B	$8B
All Warner Channels	Above plus Discovery, HGTV, Food Network	$4.75B	$17.9B

Source: Bloomberg Intelligence estimates

Bloomberg

The media giant controlled by **David Ellison** is trying to acquire Warner Bros. in a $110 billion deal that has won approval from jurisdictions around the globe. The last regulatory hurdle is a pair of lawsuits filed by 12 Democratic-led state attorneys general and the Writers Guild trade union. California Attorney General Rob Bonta, who has taken a lead in the states' case, has said he wants major changes to the deal before he'll agree to settle the suit. Paramount has said it's open to some sort of structural remedy.

Read More: Paramount Weighs Structural Changes to Settle Warner Deal Suits

The states claim the merger would give Paramount illegal market shares in movies and cable TV. The combination of Paramount channels, like MTV and Nickelodeon, with Warner Bros.' networks would give the combined entity a 27% share of all the fees paid to channel owners by pay-TV distributors like Comcast Corp. and DirecTV , according to the states' suit. The new company would have 34% share of viewers on basic cable networks.

Paramount has weighed selling Warner Bros. channels such as HGTV and the Food Network in an effort to settle the suits, Bloomberg News reported on Tuesday. The company is also considering offering to negotiate separate distribution agreements with cable operators for different parts of its TV empire, as a way to address concerns. Paramount has declined to comment on any potential settlement terms.

Cable channels have been losing viewers and advertising to streaming TV services, and the market for cable networks has not been robust. Walt Disney Co. sold its half interest in channels like A&E and History to its partner Hearst Communications Inc. earlier this month after trying to sell them for more than a year. Versant Media Group, parent of MS NOW and CNBC, has lost about 12% of its value this year, following its spin off from Comcast.

Paramount faces a difficult choice, according to **Rich Greenfield**, an analyst at LightShed Partners. Continuing to fight the lawsuits could cost the company hundreds of millions of dollars in late fees and might not be successful. Asset sales are also problematic, Greenfield said, because a lot of the rationale for the Warner Bros. acquisition lies in combing the two large TV portfolios and looking for efficiencies.

“The beauty of the transaction is you were buying all of the cable networks,” Greenfield said in an interview.

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SpaceX Windfall Presents Dilemma for California Pension Fund

Aug. 26, 2026, 9:37 AM PDT

Summary by Bloomberg AI

AI Generated

- A California pension's investment in SpaceX has grown to about $2 billion, creating a windfall and an unexpected headache.
- The pension must re-vamp some risk and portfolio strategies to manage the large and volatile asset over the long term.
- The pension will move SpaceX to its public markets asset class to rebalance its venture book, but doesn't want to sell down its position or cash in on SpaceX yet.

A California pension's tiny SpaceX investment has ballooned to about $2 billion, creating a windfall for the portfolio – and an unexpected headache.

Roughly eight years ago, Orange County Employees Retirement System backed Elon Musk's aerospace and space technology company with $60 million. The investment has grown so large that it's become a much more concentrated position than originally expected, and the pension must now re-vamp some risk and portfolio strategies to manage such a large and volatile asset over the long term.

The investment was done in two funding rounds through co-investments with venture capital managers in the pension fund's portfolio, according to Chief Investment Officer **Molly Murphy**.

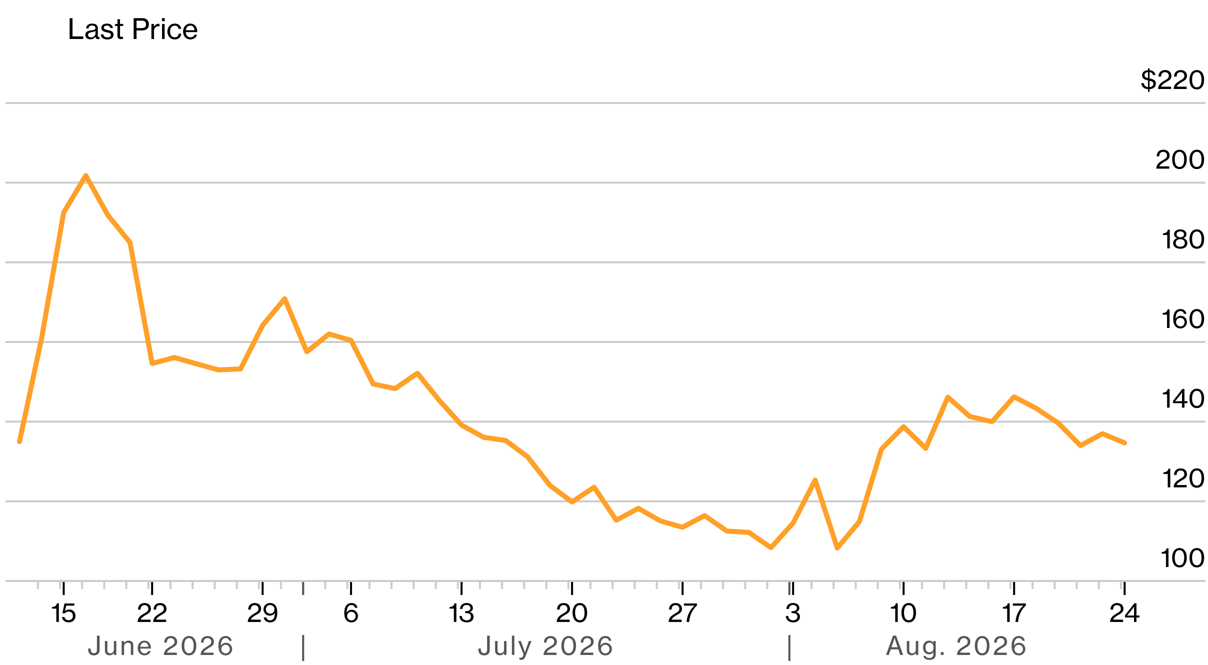
SpaceX went public on June 12, surging to about $225 per share before falling as low as $104.83. It now trades at around $136.20.

But the volatility of the share price has led to big swings in the pension fund's exposure to the company, with SpaceX's portion of the portfolio ranging between 4% to 9% since the IPO, Murphy said. In contrast, the Magnificent 7 stocks and Broadcom Corp. account for a more consistent 1% each in the public equity book, she said.

"We believe that we're buying generational holdings, but living with SpaceX month to month, quarter to quarter is going to be interesting," Murphy said in an interview.

SpaceX's Shares Have Been Volatile Since its IPO

The volatility has led to wide swings in OCERS' portfolio



Source: Bloomberg

Bloomberg

It's a high-class problem, but a problem nonetheless. OCERS, as the pension is known, will need to adopt different risk parameters for the position, Murphy said.

“Let’s just say it doubles from here, which is a pretty tame expectation for the next five years,” Murphy said. “SpaceX will be a very concentrated position for a very long time for the pension. So we have to not just think about concentration risk, but also volatility in the stock.”

OCERS invested in the rocket company as part of its effort to become a bigger participant in California’s economy, Murphy said. At that time, SpaceX’s plants were located in the state. When the pension first invested, it was underwriting “the promise” of Starlink Inc ., SpaceX’s satellite internet service, Murphy said.

“We were really getting the opportunity to invest in a next-gen communications company with a rocket company as collateral and the Department of Defense contracts that the main body of SpaceX’s business was providing us,” Murphy said.

OCERS has backed other ventures related to artificial intelligence and holds them in its venture capital portfolio, Murphy said, declining to name the investments. The pension’s venture capital holdings are “exploding because of these big wins” and now exceed their target size.

“We’re actually trying to do a lot of maintenance,” Murphy said. OCERS will move SpaceX to its public markets asset class in the near future to rebalance its venture book, she said.

The pension doesn’t want to sell down its position or cash in on SpaceX yet, Murphy said.

“We believe this is a holding that we’ll probably have for as long as we believe in the company, which I think is tethered to the longevity of Elon Musk in some way, shape or form,” she said.

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Sara Munoz

U.S. court dismisses appeal over objections to $7.25 billion Roundup deal | Business Information & News | FE

NEW YORK, Aug 27 (Reuters) - The 8th U.S. Circuit Court of Appeals on Thursday dismissed a challenge by a group of plaintiffs who opposed Bayer's effort to resolve tens of thousands of Roundup lawsuits through a $7.25 billion state court class action settlement.

The objecting plaintiffs had argued that a state court had no power to implement a nationwide resolution of those lawsuits, and that the case should be heard by a federal judge who is already overseeing consolidated federal lawsuits that allege the company's Roundup weedkiller causes cancer.

But a different federal judge ruled in June that the case should stay in Missouri state court, and the 8th Circuit on Thursday agreed.

Ashley Keller, the lawyer for the objecting plaintiffs, said Thursday that he would fight the company's settlement proposal in the state court, which has scheduled a September 14 hearing to consider approving the deal.

"We still oppose the deal," Keller said. "We will argue our objections in state court next month and leave all options open for appeals of adverse rulings, if any."

The 8th Circuit's dismissal puts the case firmly back in front of a state court that has fast-tracked the settlement for approval, and prevents the deal from being formally reviewed by a federal judge who has criticized it.

Bayer is facing approximately 65,000 claims in U.S. state and federal courts from plaintiffs who say they developed non-Hodgkin lymphoma and other forms of cancer after using Roundup at home or on the job. The company has said it is confident that the settlement is "fair to all parties and warrants final approval."

Bayer, which acquired Roundup when it purchased Monsanto in 2018, has said that decades of studies have shown Roundup's key ingredient, glyphosate, is safe and does not cause cancer. The settlement, announced in February, aims to resolve most current and future Roundup claims in the U.S.

While the settlement was pending, Bayer won a Supreme Court appeal over the adequacy of Roundup's warning label, undercutting one of the central legal claims in the Roundup cases.

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Bankrupt Villages Health System Agrees To $541.5M FCA Deal

By **Hailey Konnath**

Law360 (August 26, 2026, 9:24 PM EDT) -- Florida-based The Villages Health System has agreed to shell out more than $541.5 million to resolve allegations it violated the False Claims Act by submitting false diagnosis codes to get more money from Medicare, conduct that it disclosed itself, the U.S. Department of Justice said Wednesday.

The deal was approved by U.S. Bankruptcy Judge Lori V. Vaughan Wednesday, without elaboration, according to the case docket. The Villages filed for Chapter 11 bankruptcy protection in 2025. It has since been acquired by CenterWell Senior Primary Care.

The Justice Department said The Villages revealed in 2024 that it had submitted invalid diagnosis codes between 2020 and 2024 to three Medicare Advantage organizations for certain beneficiaries, which increased the payments made by the Centers for Medicare & Medicaid Services under the Medicare Advantage program.

"The diagnosis codes were invalid because they did not have adequate support in the patient's medical record or were based on amendments to the medical record that were not initiated by the rendering provider and were not timely or were not approved by the rendering provider," the DOJ said.

The codes were submitted to Humana Inc., UnitedHealthcare and GuideWell Mutual Holding Corp., the DOJ said. Those companies are returning the overpayments they received as a result.

The DOJ noted that The Villages also "took a number of significant steps entitling them to credit for cooperating with the government."

"TVH promptly took remedial actions and self-disclosed the invalid diagnoses to the [U.S. Department of Health and Human Services]," the DOJ said. "TVH also provided the government with a detailed and thorough written disclosure and cooperated with the government throughout its investigation."

Assistant Attorney General Brett A. Shumate of the DOJ's Civil Division said in a statement that the Medicare Advantage program "relies on accurate diagnoses to protect the federal fisc."

"Today's settlement reflects that we will hold accountable entities that inflate payments through invalid diagnoses," he said. "At the same time, we will continue to credit organizations that disclose wrongdoing, take appropriate remedial actions, and fully cooperate with the government's investigation."

Counsel for The Villages Health System didn't immediately respond to requests for comment late Wednesday.

The government is represented by Martha Glovery of the U.S. Department of Justice's Civil Division and Christopher Emden of the U.S. Attorney's Office for the Middle District of Florida.

The Villages Health System is represented by Elizabeth A. Green, Jimmy D. Parrish, Andrew V. Layden, Benjamin R. Taylor, Danielle L. Merola and Michael T. Delaney of BakerHostetler.

The case is In re: The Villages Health System LLC, case number 6:25-bk-04156, in the U.S.

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Shoals Wins $96M Patent Infringement Verdict Against Rival

By **Hayley Fowler**

Law360 (August 26, 2026, 2:07 PM EDT) -- A federal jury in North Carolina on Wednesday awarded a solar components company $96.38 million in damages after finding a rival supplier infringed its patents for an electrical connection system.

Shoals makes electrical systems that carry energy from solar panels to inverters, otherwise known as an electrical balance of system, or EBOS. (Rafael Henrique / SOPA Images/Sipa USA)(Sipa via AP Images)

The nine-person jury in Winston-Salem, North Carolina, sided with Tennessee-based Shoals Technologies LLC on all claims related to two of its patents that protect an electrical circuit for transmitting solar energy. The jurors rejected defendant Voltage LLC's invalidity defenses, finding it liable for direct, induced and contributory infringement. Voltage's infringement was also deemed willful.

Shoals was awarded $70.33 million in lost profits and $26.05 million for price erosion, according to the **verdict**.

The decision punctuates a 10-day trial in which Shoals sought to prove Voltage had manufactured a copycat product and undercut Shoals' prices to poach customers in the solar industry for large-scale utility projects. The jury began deliberations Tuesday afternoon and returned a verdict just before noon Wednesday.

U.S. District Judge Michael F. Urbanski — a Virginia federal judge sitting by designation in North Carolina who oversaw the trial — granted Shoals' motion for a preliminary injunction pending final judgment after the verdict was announced, according to a docket order.

Shoals makes electrical systems that carry energy from solar panels to inverters, otherwise known as an electrical balance of system, or EBOS.

Inverters convert power generated by solar panels into usable electricity for the power grid. According to trial testimony, Shoals specializes in creating systems associated with that conversion process. Its primary customers are engineering, procurement and construction firms that build larger scale solar energy projects.

One of Shoals' products is the Big Lead Assembly system, or BLA, the jury heard. It includes what's known as a "molded trunk bus," or a cable system that uses molds to seal or crimp the joints.

The joints in the trunk bus are molded in a factory instead of having to be fastened by licensed electricians in the field, a Shoals executive **testified**, making for a safer and more reliable circuit.

Shoals' BLA system and the trunk bus in particular are protected by U.S. Patent Nos. 12,015,375; and 12,015,376, which formed the basis of Shoals' infringement case against Voltage and Chinese manufacturer Ningbo Voltage Smart Production Co.

Shoals' counsel said in a statement on Wednesday after the verdict, "This verdict sends a clear message: you cannot willfully infringe patented technology, undercut the innovator on price, and expect to walk away. Shoals invested in developing the technology that is powering utility-scale solar energy across the United States, creating American manufacturing jobs in the process. A jury has now confirmed that investment deserves protection, to the tune of $96 million."

Counsel for Voltage did not immediately respond to a request for comment.

Shoals is represented by William Belanger, Lawrence Cameron, Erin Harrigan, Dustin N. Ferzacca, Frank Liu, Gillian Schutt, Kimberly E. Coghill and Ryan Deck of Troutman Pepper Locke LLP.

Voltage and Ningbo are represented by Rachel Rodman, Yar R. Chaikovsky, Philip Ou, Gazal Homayouni and Radhesh Devendran of White & Case LLP and Robert Van Arnam of Williams Mullen.

The case is Shoals Technologies Group LLC v. Voltage LLC et al., case number 1:25-cv-00026, in the U.S. District Court for the Middle District of North Carolina.

--Additional reporting by Adam Lidgett, Elliot Weld and Jack McLoone. Editing by Nicole Bleier.

Update: This article has been updated to include a response from Shoals' counsel.

Meta Judge Quickly OKs $17B Deal Over Social Media Harms

law360.com/articles/2518164

(August 26, 2026, 6:42 PM EDT) -- A California federal judge overseeing a bellwether trial over claims Meta hid social media's harms to youth on Wednesday approved its $17.1 billion deal with 29 states, after a hearing in which she pressed lawyers on details of the deal and raised concerns about how Meta was handling attorney-client privilege issues.

U.S. District Judge Yvonne Gonzalez Rogers issued an order approving Meta Platforms Inc.'s **eleven-figure settlement,** which includes multiple injunctive relief provisions, a few hours after holding a hearing Wednesday morning.

The parties reached their proposed settlement ahead of the fifth day of a high-stakes advisory jury trial in Oakland that was expected to last six weeks. The trial **kicked off last week** with 29 state attorneys general accusing Meta of prioritizing profits over safety and hiding the risks of teen social media use in a yearslong effort to hook kids on its platforms, while Meta defended its safety practices as best-in-class.

With one hour left in the trial day on Tuesday, Instagram CEO Adam Mosseri **took the stand,** and Mosseri was scheduled to return to the stand on Wednesday morning. But two hours before trial began, the parties told the judge they had cut the deal, which was subject to court approval.

During the hearing Wednesday morning, the judge told the parties that the proposed settlement is "appropriate and a good step forward," and she said she's inclined to approve it. However, she noted that she received the parties' proposed 119-page settlement at 6 a.m., so she needed more time to review it.

"My inclination is to grant [it]," she said. "I got it at 6 a.m. this morning. I'd like to take another look at it. What I'm willing to do is suspend the trial, and then just give me a little bit of time, so that I can look at this. I suspect that I will approve it — that I will approve it shortly. I just need a little more time to go through it, and then I will file the approval."

However, the judge emphasized that she had some concerns about Meta's conduct, particularly regarding attorney-client privilege assertions by its in-house counsel.

"I disagree with in-house counsel's approach to attorney-client privilege and what that means for transparency going forward," the judge said.

Judge Gonzalez Rogers noted that there is a provision in the settlement that addresses attorney-client privilege, but she emphasized that it is important for Meta's in-house counsel to change their apparent practices.

"I think that if Meta's in-house attorneys continue to operate the way that I saw [during trial], there are going to be problems," she said.

Under the settlement, the parties would agree on an independent auditor who would ensure that Meta is complying with the terms of the settlement's injunctive relief. However, the consent decree allows Meta to withhold documents from the auditor that Meta believes is subject to attorney-client privilege or the attorney work product doctrine.

During the hearing Wednesday, Judge Gonzalez Rogers reiterated the appropriate legal standard and noted that just because an attorney has a view on litigation "doesn't mean it's protected."

"Changing one word to another in my view is not protected legal advice," she said. "What we all don't need is to have yet another round of lengthy delays because of ... attorneys claiming something is attorney-client privileged when it is not."

Meta's privilege designations took center stage in the trial last week after Judge Gonzalez Rogers warned Meta during a trial break that its in-house attorney had **described the wrong privilege legal standard** within a document, although the document itself was properly protected as privileged.

The judge admonished Meta and suggested that the attorney take an ethics course on the Ninth Circuit's rules on privilege. In light of the judge's admonition, counsel for the states **repeatedly asked** the judge to require Meta to re-review all of its attorney-client privilege designations, but Judge Gonzalez Rogers declined to issue such a ruling without additional evidence of misconduct.

Even so, during trial on Tuesday, the judge ordered Meta to disclose multiple portions of a document that had been redacted under attorney-client privilege, finding that the redactions were improper. States' counsel then used those redactions to question Mosseri, who appeared taken by surprise on the stand by a document showing Instagram's in-house counsel removed data from a teen-safety presentation before presenting it to minimize Mosseri's "litigation exposure risk."

On Wednesday, Meta's counsel, Paul William Schmidt of Covington & Burling LLP, told the judge that the company takes her comments about attorney-client privilege to heart, and he noted that Meta has already spent "massive resources trying to get that right."

"Our view is that we thought we had it right, and we will continue to look at it," Schmidt said.

Aside from the attorney-client privilege issue, the judge asked the parties about a provision that would resolve claims by the states against Meta over the 2018 Cambridge Analytica scandal in which data on 87 million Facebook users was shared with Cambridge Analytica, the now-defunct political consulting firm hired by President Donald Trump's 2016 campaign.

Counsel for the states explained that some states have already sued individually in other jurisdictions over the **scandal** and cut previous deals with Meta to resolve their claims. But this deal allows Meta to pay $459 million out of the total settlement to resolve any outstanding claims by 46 states plus Puerto Rico and the Northern Mariana Islands over Cambridge Analytica.

The judge also asked the parties to explain the contingency payment trigger in the settlement. The states explained that although Meta agreed to pay over 70% of the $17.1 billion settlement, the provision allows the states to collect the remaining balance if they reach similar injunctive relief settlements with Meta's competitors.

As a result, Meta will start off paying the participating states $12.2 billion over 10 years, increasing up to $17.1 billion if fellow social media giants TikTok, YouTube and Snapchat, which are also facing state investigations and enforcement actions, also agree to reforms.

The rationale is that Meta doesn't want to be put at a disadvantage over rivals who haven't implemented the same safety features, the states' counsel said.

Meta also conditioned implementing certain safety features based on whether its rivals agreed to the same reforms. For instance, Meta has agreed to implement a two-hour daily time limit on teen accounts for five years, but will narrow the daily limit to one hour for 10 years, if other companies agree to the same terms, according to the consent decree. Meta also agreed to blocking teen use at night from midnight to 6 a.m., but it would expand those hours from 10 p.m. until 7 a.m. if its competitors were bound by the same terms.

Judge Gonzalez Rogers also asked how the parental controls over teen accounts would be enforced, and she questioned whether the states were waiving their right to enforce that Meta is keeping kids under 13 off the platforms.

Schmidt noted that the settlement provides that Meta identify under-13 users on its platforms and remove them. Meta is also required to give annual updates to the auditor on its efforts to keep those users off the platforms. That will likely require Meta to create and implement a new model to identify under-13 users, and creating an effective tool is a fundamental challenge in the litigation, he argued.

Similarly, there's no prescriptive solution in providing effective parental controls, Meta's counsel argued, although the settlement requires Meta to hire third-party experts to help inform its practices and compliance efforts.

For her part, the judge commended the parties for incorporating independent third-party experts into the compliance regime, and she acknowledged the practical difficulties of enforcing parental controls over teen accounts.

"It's complicated, and I don't say that lightly or pedantically," she said. "There have been reports of young people who are also looking for a community when parents are not supportive of who they are and that creates complications too, so [there's] hard work ahead."

The judge also asked whether the agreement identifies where settlement enforcement disputes must be brought. The states' counsel explained that states suing over compliance could sue in state or federal court, depending on the provision challenged, but most compliance claims likely would be filed in her court.

The judge observed that the parties obviously didn't reach their agreement suddenly overnight, and it took efforts from attorneys across the country. She also noted that with fast-developing technology, "it is not surprising that [courts] are always looking at things retroactively."

"To the extent that companies operate in good faith to try to make these things not harmful is always a good approach," she said.

At the end of the hearing, the judge told counsel that she needs more time to review the deal, while adding that a settlement is an excellent way to resolve the dispute.

"I don't want to suggest that there is anything in this agreement that I'm particularly concerned with, I'm quite happy to not have to finish up this trial and [not have] to try to resolve things that are very sticky ... in an environment that's constantly changing," she said.

A few hours later, around 1 p.m., the judge issued an order granting the consent decree. She also issued a separate order discharging the jury and detailing her ruling rejecting Meta's attorney-client privilege objections.

Within hours, the deal was receiving both praise and criticism from a variety of stakeholders across the country, including some law experts who questioned the deal's implications for privacy rights.

Syracuse University communications law professor Alexis Shore Ingber said in a statement Wednesday that although the amount of money Meta has agreed to pay is substantial, the deal's design changes may raise new privacy concerns, because Meta will have to take more steps to identify which users are children.

"This opens up a privacy issue, as many age-verification technologies do not have adequate privacy protections nor do they produce accurate results," Ingber said.

The states are represented by their respective attorneys general and Megan O'Neill, David Patrick Beglin, Katherine Read and Nayha Arora of the California Department of Justice, Jason Slothouber and Shannon Wells Stevenson of the Colorado Department of Law, John Christian Lewis of the Kentucky Office of the Attorney General's Office of Consumer Protection and Mandy K. Wang of the New Jersey Office of the Attorney General.

Meta is represented by Ashley M. Simonsen, Paul William Schmidt and David Sneed of Covington & Burling LLP and Brian L. Stekloff and Moira Penza of Wilkinson Stekloff LLP.

The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California. The instant case is People of the State of California et al. v. Meta Platforms Inc., case number 4:23-cv-05448, in the U.S. District Court for the Northern District of California.

The consent decrees were also entered in the cases Massachusetts v. Meta Platforms Inc. et al., case number 2384CV02397, in the Suffolk County Superior Court of Massachusetts.

--Additional reporting by Matthew Santoni. Editing by Emily Kokoll.

NAPCO To Pay $20M To End Investor Accounting Fraud Suit

law360.com/articles/2518018/napco-to-pay-20m-to-end-investor-accounting-fraud-suit

(August 26, 2026, 6:25 PM EDT) -- NAPCO Security Technologies and its top two executives have reached a $20 million settlement with shareholders to resolve claims over alleged COVID-19-era financial reporting errors, and lead counsel from Robbins Geller Rudman & Dowd LLP and Johnson Fistel PLLP intend to seek more than $6 million in attorney fees.

A **stipulation** of settlement and **motion** asking the court for preliminary approval of the deal were both filed Tuesday in New York federal court. The deal is between the investors, NAPCO, the company's founder and CEO Richard Soloway and NAPCO's chief financial officer, Kevin Buchel.

"The settlement reflects a well-informed assessment of the strengths and weaknesses of plaintiffs' claims, the costs and risks of continued litigation, and the substantial benefit to class members of securing a meaningful recovery without further delay," the motion said.

According to the investors' suit, NAPCO announced in August 2023 that it would restate its financials for the first three quarters of that fiscal year due to material weaknesses in its internal controls. During that period, NAPCO overstated its net income by as much as 115%, and in response to NAPCO's corrective disclosures, its shares fell nearly 45% in a single trading day, the suit alleged.

Lead plaintiff Donald Hutchings urged the court Tuesday to give the deal the first green light, noting that the $20 million settlement represents roughly 9.5% of the estimated recoverable damages, "a recovery that compares favorably to settlements routinely approved in this circuit and district."

According to Hutchings, the deal was reached through noncollusive, arm's-length negotiations and is favorable given the risks of continued litigation.

The proposed settlement class includes all those who purchased or acquired NAPCO common stock between Nov. 7, 2022, and Aug. 18, 2023, the motion said. In addition to approximately $6.6 million in attorney fees, lead counsel plans to ask the court for $700,000 in litigation costs.

The suit claimed that the defendants, which previously included seven directors and two underwriters, made false or misleading statements about NAPCO's inventory levels, cost of goods sold and profitability, including several statements about NAPCO's response to the global supply chain shortage caused by the COVID-19 pandemic.

According to the suit, NAPCO purchased as many components as possible, regardless of price, to ensure it could continue manufacturing its products as supply chain problems plagued the industry, and the purchases contributed to a significant increase in the value of NAPCO's inventory. But by late 2022, the supply shortage began to ease, and the price of component parts decreased. Around the same time, NAPCO announced a secondary public offering, which closed in February 2023.

The directors and underwriters were dismissed from the suit last year, according to court filings.

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

The investors are represented by David A. Rosenfeld, Erin W. Boardman, Avital O. Malina, Skyler Jordan Sands, Jeremy Yohannan and Ellen Gusikoff Stewart of Robbins Geller Rudman & Dowd LLP and Michael I. Fistel Jr. and Jeffrey A. Berens of Johnson Fistel PLLP.

One plaintiff, the City of Warren Police and Fire Retirement System, is additionally represented by Thomas C. Michaud of Vanoverbeke Michaud & Timmony PC.

NAPCO and the individual defendants are represented by Jonathan K. Youngwood and Janet A. Gochman of Simpson Thacher & Bartlett LLP. The case is Zornberg v. NAPCO Security Technologies Inc. et al., case number 1:23-cv-06465, in the U.S. District Court for the Eastern District of New York.

Norfolk Southern Says Precedent Undermines Derailment Suit

law360.com/articles/2517907

(August 26, 2026, 9:48 PM EDT) -- Norfolk Southern urged a Georgia federal judge Wednesday to deny class treatment to investors who allege they were deceived about the company's safety operations before a fiery train derailment in Ohio during 2023, arguing U.S. Supreme Court precedent undercut the argument that the rail carrier's share price was unlawfully inflated.

Attorney Nathan A. Hasiuk, representing the investors in their securities suit, urged U.S. District Judge Steven D. Grimberg to certify a class of individuals and entities that purchased or acquired Norfolk Southern common stock from Oct. 28, 2020, through March 3, 2023. He argued that it is "undisputed" that the proposed class meets the numerosity requirements for certification given the more than 227 million shares of common stock outstanding during the class period.

The investors alleged in their lawsuit that those possessing that stock were misled by Norfolk about the safety of its operations during the implementation of a cost-cutting strategy known as "precision scheduled railroading," or, as Hasiuk called it, "PSR."

Hasiuk said Norfolk repeatedly reassured investors that PSR implementation would not come at the cost of safety, even though it knew it would be running longer, heavier trains with fewer and shorter inspections and fewer employees. It did this, he said, when it knew the implementation of PSR and safety were both "fundamental" to Norfolk's stock price and that investors cared deeply about "operational excellence."

Those statements had a "front-end price impact," Hasiuk said, meaning that the alleged misrepresentations inflated stock prices. A "back-end price impact," or a drop in stock price resulting from a corrective disclosure, resulted after the highly publicized East Palestine derailment and subsequent "vent and burn" of five tank cars carrying vinyl chloride in February 2023, he said.

The declines in Norfolk's stock price following "corrective disclosures" made after the East Palestine incident and other derailments — like a March 2023 derailment near Springfield, Ohio — were significant, Hasiuk said, and Norfolk has pointed to nothing else that could explain the stock price drops.

Financial analysts noted this at the time, Hasiuk told the judge, citing statements from J.P. Morgan that Norfolk's "public perception as a safe rail network" had been damaged.

Judge Grimberg asked Hasiuk if there was a difference between a "general statement" from Norfolk that PSR would be implemented safely or that there would be "no impact" on safety caused by the implementation.

Hasiuk said he did not necessarily think so because investors were basing decisions about whether to purchase stock on what Norfolk said either way. And Norfolk, he said, spent the class period emphasizing safety to stockholders.

Norfolk's attorney, Michael G. Bongiorno, told the judge that stock prices went down after the derailments not because of any statements about safety made beforehand or "corrective disclosures" made afterward but because the market recognized the possibility of an expensive cleanup process.

Bongiorno referenced the U.S. Supreme Court's 2021 decision in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System and the Second Circuit's decision in what is known as "Goldman II" — where it reheard the same case on remand from the nation's justices.

The justices, when they heard Goldman, found that the connection between a claim allegedly used to artificially inflate stock prices and a subsequent fall in stock prices after bad news breaks down if the original claim was "generic" and the supposed corrective disclosure was very specific, Bongiorno explained.

Then, in Goldman II, Bongiorno said the Second Circuit created a three-part test for applying that guidance. It involves determining whether there was "mismatch" between the content of the original claim and subsequent disclosure, determining whether a "truthful substitute" for the alleged misstatement would have impacted stock prices, and assessing other evidence of price impacts, such as analyst commentary.

In this case, Bongiorno argued that there is exactly the kind of "mismatch" warned about by both courts.

The statements investors challenge as misstatements were "generic" and meant to reflect Norfolk's general business practices, he said, noting they include things like Norfolk Southern saying it was "committed to safety as a core value." Such statements are too vague to establish any meaningful connection to alleged corrective disclosures like derailments and analyst reports about what happened in East Palestine, he argued.

Bongiorno also told the judge that the derailments could not really be corrective disclosures when they revealed no new information to the public or investors. There were "88 recorded derailments" before the East Palestine derailment, he said, and Norfolk never tried to hide that derailments were a risk.

If the court does find that the investors can establish a price impact, however, Bongiorno argued that the class period must be shortened because the lead plaintiffs only purchased Norfolk stock before the East Palestine derailment and the subsequent vent and burn. They have no standing to represent proposed class members who purchased stock after that derailment, he said, and have no standing to pursue any claims based on statements the company made about the vent and burn itself.

Hasiuk pushed back on the idea that the class period should be truncated, saying that nothing in the record shows the lead plaintiffs are not "sufficiently motivated" to represent the proposed class. Typicality is not defeated, he argued, when it is alleged that all class members were harmed by the same disregard for safety.

Judge Grimberg told the parties that he would strive to reach a decision on the class certification issue within the next 60 days.

"Obviously I have a lot to consider," the judge said. "Our hope is to get a decision out within the next 60 days, and hopefully we can stick to that."

The battle over class certification comes after Judge Grimberg **ruled** in March 2025 that the investors' claims were specific enough to be material for investors and that Norfolk Southern executives' promises about safety were enough to sustain claims that Norfolk knew it was deceiving people.

The investors are represented by Nathan A. Hasiuk, Daniel A. Friedman, Vanessa M. Milan and Alec S. Garber of Kessler Topaz Meltzer & Check LLP, Jason C. Davis, Ashley M. Price, Peter Ko, Mark Conover, Jack Abbey Gephart and Evelyn Sanchez Gonazalez of Robbins Geller Rudman & Dowd LLP, Michael A. Caplan, Cameron B. Roberts and Annie Boring of Caplan Cobb LLC, John C. Herman of Herman Jones LLP, and Joseph F. Murray of Murray Murphy Moul + Basil LLP.

Norfolk Southern and the other defendants are represented by Hilary Houston Adams of Hall Bloch Garland & Meyer LLP and Michael G. Bongiorno, Tamar Kaplan-Marans, Ripley B. Shiarella and Denise Tsai of WilmerHale.

The case is Bucks County Employees Retirement System et al. v. Norfolk Southern Corp. et al., case number 1:23-cv-04175, in the U.S. District Court for the Northern District of Georgia.

--Editing by Bruce Goldman.

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Flock Surveillance Cameras Enable Stalking, Class Suit Says

By **Kelcey Caulder**

Law360 (August 26, 2026, 1:04 PM EDT) -- Flock's nationwide vehicle surveillance system has repeatedly been used for "personal surveillance and stalking" rather than for proper law enforcement purposes, a driver said in a proposed class action in Georgia federal court.

Flock Group Inc.'s automatic license plate reader network uses more than 120,000 cameras to record where and when vehicles are seen and allows law enforcement to search those records. Grace Schulte, who said she drives past Flock cameras to get to work, said in a **complaint** Tuesday that established safeguards to distinguish legitimate law enforcement use from personal or other unauthorized use have failed on many occasions, creating a "known and recurring risk" of improper user access.

"Reported incidents have involved law enforcement personnel using Flock to conduct personal surveillance, repeated improper searches continuing before detection, former agency personnel retaining access to agency accounts, Flock employees accessing customer-integrated camera feeds in sensitive locations and government customers discovering that access actually provided through Flock exceeded the access they intended or understood themselves to have authorized," Schulte said.

In July, for example, an internal audit of the Flock system in Albany, Georgia, led to the arrests of five former police officers, Schulte said. The Georgia Bureau of Investigation found that those officers had accessed the system on multiple occasions and used retained license plate data for "non-law enforcement purposes," according to the suit.

In Conyers, Georgia, a GBI investigation revealed that a police department dispatcher used Flock more than 30 times between April and July for improper purposes, Schulte said. And the GBI reported that a former Polk County police officer with access to the Cedartown Police Department's Flock system accessed it "multiple times" in 2024 and 2025 for non-law enforcement purposes, according to the suit.

The former Polk County officer, Tracey Royston, was arrested and charged with four misdemeanors for her actions, the GBI said in a news release this month.

A former Dallas Police Department 911 director was charged in August with two counts of misuse of a license plate reader system for accessing the department's Flock system in 2024 and 2025, according to the suit.

Citing a Washington Post investigation published this month, Schulte said that in 26 of 50 cases where an officer was charged with or accused of misusing automated license plate reader systems, it was alleged that the officers used the technology to "surveil wives, girlfriends, former partners, new partners of former partners, or women the officers wanted to meet."

Flock's system was involved in 46 of the 50 cases, Schulte said, adding that in one instance, a Georgia police chief was found to have searched tags associated with his former girlfriend and her teenage daughter "roughly 600 times." In another case, she said a former deputy in Richmond County, Georgia, searched a woman's license plate 1,639 times over several months for "personal monitoring."

The problems don't stop with law enforcement or police personnel, Schulte said, as Flock employees can also misuse the system. In Dunwoody, Georgia, for example, she said the company's workers accessed the system during a testing meeting and were able to access feeds that included cameras at a children's gymnastics room, a playground, a school, a Jewish community center and a pool.

"Flock thereafter stated that its employees would conduct demonstrations using more public locations," Schulte said. "However, the incident identifies a separate access mechanism for misuse: that Flock personnel can possess technical access to integrated camera environments and that the scope of access available through the platform may extend to privately owned cameras located in private and even sensitive locations, connected to a governmental surveillance network."

Setting aside issues with privacy and data sharing, Schulte said Flock's system could produce as many as 1.4 billion inaccurate license plate readings each month. The consequences of that are significant, she said, when it results in things like "innocent motorists being repeatedly stopped, detained, handcuffed, jailed or confronted by officers with firearms drawn."

Flock is aware of the "rampant misuse and error problems," Schulte said, but has displayed "a lack of willingness to address them" and instead minimizes the significance of the problems by describing abuse as "rare or isolated."

Schulte, who said she is unable to "avoid Flock surveillance" on her drive to work even if she were to alter her usual route, asked the court to allow her to represent a class of people in the U.S. whose license plate data was collected by the company using its automated system since January 2024.

Schulte described herself and the other potential class members as being "aggressively and pervasively surveilled" when they are attempting to engage in "basic everyday activities," alleging a claim for invasion of privacy.

Other claims in the suit are for negligence, negligent design, failure to warn and intentional infliction of emotional distress.

"Flock's continued facilitation of broad vehicle location collection and searching without safeguards reasonably sufficient to prevent or timely surface known categories of personal misuse constitutes, upon information and belief, reckless, willful and wanton disregard for the privacy and security of persons whose movements are recorded through the system," Schulte said. "As a result, plaintiff and the class have suffered severe and continuing emotional distress and lasting impairment of their well-being and quality of life."

Schulte said she and the other potential class members are entitled to compensatory, consequential and punitive damages, pre- and post-judgment interest, and attorney fees and costs.

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

Schulte is represented by John C. Herman and Candace N. Smith of Herman Jones LLP.

Counsel information for Flock wasn't available.

The case is Grace Schulte v. Flock Group Inc., case number 1:26-cv-04843, in the U.S. District Court for the Northern District of Georgia.

--Editing by Aaron Pelc.

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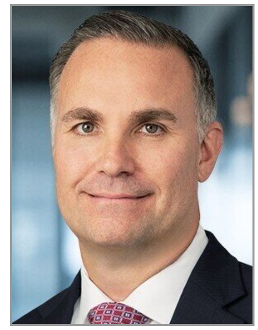
Del. Boeing Ruling Shows How Compliance Defeats Caremark

By **Brian Rostocki** (August 26, 2026, 4:22 PM EDT)


Brian Rostocki

Delaware law recognizes that directors and officers owe a duty of oversight, and failure to exercise such duty may result in liability under what are known as Caremark claims, named after the Delaware Chancery Court's seminal 1996 decision in In re: Caremark International Inc.

On Aug. 13, the Chancery Court **dismissed** In re: The Boeing Co. Derivative Litigation, in which shareholders had brought Caremark claims against Boeing's board.

The court affirmed that corporate directors who actively engage with compliance programs can gain protection from personal liability — even when catastrophic events occur.

The decision carries significant lessons for shareholders pursuing Caremark claims, and for corporate counsel advising boards on oversight obligations. Key takeaways include the following:

- Caremark claims remain the hardest shareholder claims to bring, even for mission-critical operations such as, in this case, aviation safety.
- Oversight liability requires a conscious abandonment of duty — not mere negligence, or even gross negligence.
- Robust compliance reporting is a shield, not a sword. Boards are not liable simply because they receive extensive risk information.
- Not every risk report is a red flag. The warning must signal an imminent legal violation or corporate trauma, and be tied to the harm at issue.
- An imperfect compliance program can defeat an oversight claim when the board and management actively identify problems, pursue corrective action and monitor progress.
- Production targets are business judgments protected by the presumption of good faith when set and adjusted based on risk and feasibility.

Impact on the Litigants

The plaintiffs, Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Oklahoma Firefighters Pension and Retirement System, suffered a setback in their attempt to hold Boeing's directors accountable for what they characterized as oversight failures leading to the January 2024 door-plug blowout on an Alaska Airlines 737 Max.

For Boeing's current and former directors, the ruling confirms that their documented engagement with safety reporting insulated them from liability.

Background: A Company Already Under Scrutiny

Boeing faced lawsuits after the Alaska Airlines door-plug blowout — including **this derivative action** brought by institutional investors and public pension funds.

But the company was already operating under intense legal and regulatory pressure. Two separate 737 Max crashes killed 346 people in 2018 and 2019, gutting the manufacturer's reputation and triggering extensive legal consequences.

In January 2021, Boeing entered into a **deferred prosecution agreement** with the U.S. Department of Justice to resolve a criminal charge, and agreed to pay a $243.6 million fine, make over $2 billion in compensation payments and implement extensive compliance obligations.

That same year, Boeing stockholders sued the board in the Chancery Court, in a suit also captioned In re: The Boeing Co. Derivative Litigation, for bad faith oversight failures related to the Max crashes.

The parties reached a $237.5 million **settlement** that imposed sweeping corporate governance reforms, including creation of an independent aerospace safety committee to oversee the safety of Boeing's aerospace products and services.

In connection with the instant lawsuit, the shareholders noted in their complaint that on Jan. 5, 2024, a 737 Max's left midcabin door plug flew off while the plane was in flight, leaving a gaping hole in the aircraft. The National Transportation Safety Board investigation revealed the cause: The door plug was missing bolts.

The jet's fuselage had arrived at Boeing's Renton, Washington, factory with defective rivets that needed rework. Boeing personnel allegedly opened the door plug to replace the rivets, but failed to reinstall the securing bolts before delivering the aircraft to Alaska Airlines.

Understanding Caremark Claims

A Caremark claim is a specific type of shareholder lawsuit that accuses a company's board of directors of breaching their fiduciary duty by failing to properly oversee their business. A Caremark claim is widely recognized as one of the most difficult theories for a plaintiff to prevail on.

Because corporate boards are generally shielded from liability for bad business decisions. Shareholders cannot sue simply because an outcome was poor.

To bring a Caremark claim, shareholders must prove that directors acted in bad faith under one of two standards: an utter failure to implement controls, meaning the board completely failed to establish any system to monitor critical risks; or ignoring red flags, meaning the board had a reporting system but knowingly failed to act after being alerted to serious legal or compliance violations.

The Chancery Court's opinion in the Boeing case reinforces these standards. It explains that Caremark liability rests on a particular kind of bad faith: an intentional dereliction of duty or conscious disregard of responsibilities.

Liability requires a sustained or systematic failure to exercise oversight, and the conduct must be more culpable than negligence. Even gross negligence in responding to a corporate trauma is insufficient to establish director liability.

The Lawsuit and the Arguments

The plaintiff pension funds claimed that the directors breached their fiduciary duties by failing to respond in good faith to warning signs of potential deficiencies in the mission-critical areas of airplane safety and regulatory compliance.

They also alleged that the board implemented a production schedule that could not be met safely or lawfully, and ignored dozens of warning signs of systemic airplane manufacturing problems.

Boeing's directors countered that the board actively monitored safety and quality risks through a comprehensive reporting framework. The board had created an aerospace safety committee that met at least 23 times between January 2022 and July 2024, receiving regular reports on safety management, in-service safety incidents and special attention items requiring the committee's focus.

Management routinely updated the board on workforce productivity challenges, supplier defects, foreign object debris, rework metrics and recordkeeping compliance.

The Court's Ruling

The court dismissed the case, ruling that the shareholders did not demonstrate that Boeing's directors had engaged in a bad faith dereliction of duty after receiving a red flag.

The court found that the record instead showed a board that paid attention to safety and to the risks of operating a large manufacturing operation producing complex aircraft in the wake of the COVID-19 pandemic. Directors received extensive reporting on manufacturing and compliance risks, along with management's efforts to reduce those risks.

Crucially, the court found that the reporting did not "put the board on notice of ongoing violations of law or a risk of serious corporate trauma that triggered a duty to act."

The Difference Between Risks and Red Flags

According to the court, a true red flag must be so vivid and alarming that it puts the board on notice of an imminent legal violation or looming corporate catastrophe. Routine operational updates and general risk disclosures do not meet that standard.

The court drew a critical line between business risk and legal risk. Challenges like workforce turnover, supply chain disruptions and manufacturing rework metrics are inherent business risks entitled to deference — not evidence of illegality.

Red flags must also be directly connected to the specific harm that ultimately occurred. Generalized safety or operational risks that bear no proximate relationship to the actual corporate trauma cannot support a claim.

Where management is iteratively identifying root causes, implementing corrective actions and reporting progress to the board, directors are protected — even if those efforts have not yet produced measurable improvement. Active engagement with a known problem is the opposite of bad faith, the defendants argued and the court accepted.

Finally, setting production targets — even aggressive ones — is a business judgment, not evidence of bad faith. The court refused to infer bad faith from a board's decision to maintain production goals in the face of known operational risks.

Production planning is a quintessential business decision shielded by the presumption of good faith. Evidence that Boeing adjusted timelines, paused production lines and pushed back targets when warranted actually reinforced the conclusion that the board exercised informed, flexible judgment rather than reckless indifference.

The court's finding was also supported by the record showing that Boeing's production plans were informed by management assessments of risk and feasibility, and were adjusted when circumstances warranted.

Lessons for Corporate Governance

The court reaffirms that Caremark oversight claims remain the hardest claims to bring in corporate law.

Even in the context of mission-critical operations, the court held that Caremark does not demand omniscience. Directors who make a good faith effort to implement and monitor a reasonable board-level reporting system have satisfied their baseline duty.

The ruling is particularly significant in light of the recent rise in Caremark claims filed in Delaware and the doctrine's extension to corporate officers. It reaffirms the high bar for liability, despite the expanding scope of potential claims.

According to this ruling, oversight liability requires something far more culpable than negligence or even gross negligence: It requires a conscious, intentional abandonment of duty. A bad outcome alone, even a catastrophic one, does not establish liability.

The court distinguished an inadequate or flawed effort to fulfill fiduciary duties from conscious disregard of those duties, and imperfect compliance from purposeful lawbreaking. Courts will not collapse those distinctions.

A board that engages with compliance reporting is protected. Volume of reporting is a shield, not a sword. The court rejected the attempt to recast a robust, well-functioning reporting system as evidence of wrongdoing.

Caremark cannot be used to impose personal liability on directors for doing exactly what the doctrine requires — actively overseeing and monitoring risk. The court cautioned against "recasting the volume and depth of Boeing's reporting from a best practice into evidence of disloyalty."

A board's responses to reported risks are presumed to have been made loyally and in good faith. Courts will not second-guess how a board chose to respond to a particular compliance report.

Lessons for Both Sides

The ruling makes clear that plaintiffs cannot transform the very existence of a robust reporting system into a litigation weapon.

Had the court ruled otherwise, it would have created a perverse incentive for boards to avoid detailed compliance reporting, and any board following a compliance program could face second-guessing over the granular details of that program in hindsight.

The message for corporate counsel advising boards is to document oversight, engage meaningfully with compliance reports, ask probing questions and authorize management to take corrective actions — then maintain records of that engagement.

For plaintiffs counsel pursuing derivative claims, the path forward requires identifying genuine red flags that are both vivid enough to demand board action and sufficiently connected to the specific corporate trauma at issue. Generalized allegations that a board knew of operational challenges will not suffice.

Brian M. Rostocki is a managing partner at Reed Smith LLP.

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Apollo Shareholders Say Their Data Was Exposed To Hackers

By **Sydney Price**

Law360 (August 26, 2026, 6:15 PM EDT) -- Shareholders of Apollo Global Management Inc. have launched a pair of proposed class action complaints in New York federal court accusing the asset manager of failing to secure and protect the personal information of customers from a recent data breach.

In their complaints filed this week, Apollo shareholders Henggao Cai and Donna Paris said Apollo did not take sufficient steps to safeguard their personally identifiable information from a cybersecurity incident that occurred in July.

According to the complaints, sharing private information such as home addresses and Social Security numbers is a required step in using Apollo's services or becoming a shareholder. An investigation determined Apollo's systems, which had files containing private information, were improperly accessed between July 6 and July 10, according to the suits.

Apollo submitted a sample notice to the California office of the attorney general earlier this week that allegedly revealed Apollo had failed to encrypt or redact the private information.

"Defendants were, or should have been, fully aware of the unique type and the significant volume of data on defendants' server(s), and, thus, the significant number of individuals who would be harmed by the exposure of the unencrypted data," the suits said.

Cai and Paris also said Apollo has not announced whether it has contained the threat, "leaving victims to fear whether the private information that defendants continue to maintain is secure." Both suits claim the victims will spend "considerable time and money on an ongoing basis to try to mitigate and address harms."

"[T]here is a strong probability that entire batches of stolen information have been placed, or will be placed, on the black market/dark web for sale and purchase by criminals intending to utilize the private information for identity theft crimes," the suits said.

Cai and Paris seek to represent classes of U.S. citizens whose information "may have been compromised" in the data breach.

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

Paris is represented by Courtney Maccarone of Kopelowitz Ostrow PA.

Cai is represented by Leanna A. Loginov of Shamis & Gentile PA and Mark K. Svensson of Milberg PLLC.

The cases are Cai v. Apollo Global Management Inc. et al., case number 1:26-cv-07223, and Paris v. Apollo Global Management Inc. et al., case number 1:26-cv-07238, both in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.

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Iowa, Montana Ask Justices To Stop Paramount Merger Case

By **Matthew Perlman**

Law360 (August 26, 2026, 10:16 PM EDT) -- Iowa and Montana are asking the U.S. Supreme Court to stop California and other state enforcers from challenging Paramount Skydance Corp.'s planned purchase of Warner Bros. Discovery, calling the effort "a partisan enforcement action" that targets a procompetitive deal.

Iowa and Montana filed a motion with the high court Tuesday seeking permission to lodge a bill of complaint that would ask to block the other states from challenging Paramount's $110 billion purchase of Warner Bros. and to declare that the merger does not **violate antitrust law**.

The motion said the Supreme Court has "original and exclusive jurisdiction" over the case because it's a dispute between states and argued that the case presents fundamental questions about the power to interfere with a merger that was approved on the federal level and internationally.

"The costs of this weaponization of antitrust enforcement are vast, grow by the day, and extend well beyond the borders of the states challenging the merger," Tuesday's motion said. "Two great American companies are paralyzed while this deal is on hold, harming plaintiff states' economies."

Iowa and Montana also filed a motion asking the Supreme Court to expedite consideration of the case.

A representative for the California Attorney General's Office, which is helping lead the merger challenge, told Law360 Wednesday the coalition is "reviewing the filing and will respond as appropriate."

In an op-ed published by the Daily Wire on Tuesday, Iowa Attorney General Brenna Bird said that California is once again trying to be "the country's regulator" and is again defying common sense to raise costs around the country. She said enforcers from Iowa and other states reviewed the deal alongside the U.S. Department of Justice and concluded, like federal enforcers, that the deal would **increase competition**.

"Twelve states have overridden that judgment for the entire country, and Iowans never got a vote," Bird said.

Bird argued that California challenged the merger because state enforcers viewed the DOJ's approval as a political favor to President Donald Trump, but she said that does not explain why enforcers in nearly 70 other jurisdictions have approved the deal, including in Europe, Canada and China.

"When regulators in 68 jurisdictions with different laws, different politics, and no stake whatsoever in American elections all reach the same conclusion, the outlier is not the consensus," Bird said. "California is just dreaming up something radical."

California is helping lead a coalition of a dozen states suing to block the merger in California federal court, alleging the deal threatens competition for the distribution of film and television content, which could lead to higher prices and fewer films and TV shows being produced. The Writers Guild of America also alleges in a parallel case that writers would **lose bargaining leverage** in screenwriting contract negotiations if the deal goes through.

U.S. District Judge Araceli Martínez-Olguín initially granted a **temporary restraining order** that prevented the deal from closing as the case moved ahead, but Paramount agreed in July **not to close the deal** while the challenges play out. A 12-day trial is **currently scheduled** to start in March.

Paramount has pushed back against the lawsuit, arguing that the merger is needed to shore up its ability to compete with streaming giants like Netflix, which had **also sought to buy** Warner Bros. Paramount CEO David Ellison has said the challenge is really about CNN and concerns that his politics could **impact news coverage**.

California Attorney General Rob Bonta rejected those assertions in his own op-ed **earlier this month**, saying the lawsuit is about antitrust law and nothing else and seeks to prevent the long-term impact of competition being lost to the merger.

In the bill of complaint Tuesday, Iowa and Montana told the justices that the merger challenge is not a neutral application of the antitrust laws, but rather an "impermissible attempt to achieve through antitrust enforcement in court what they could not achieve through the political process."

While California and the other states blame partisanship at the DOJ for needing to file the challenge, Iowa and Montana said the challenge itself was "motivated by partisanship at the state attorneys' general offices."

"Defendant states are employing their antitrust enforcement authority to exact maximum pain on a political enemy, rejecting a loud consensus of antitrust authorities that have cleared a transaction of national, even international, significance," the bill of complaint said. "Under these extraordinary conditions, with other sovereign states on the other side of the ledger, this court should intervene."

Iowa and Montana said they are suffering and will continue to suffer irreparable harm from the challenge, in the form of lost investments, abandoned productions and deferred hiring, thanks to "the paralysis of two enterprises that employ tens of thousands and supply content and services to residents" of all states.

"A transaction destroyed by delay cannot be reassembled by a later judgment," the bill of complaint said.

Representatives for Paramount did not respond Wednesday to a request for comment about the Supreme Court action.

Montana and Iowa are represented by their respective attorneys general and by Ashley C. Keller of Keller Postman LLC, Adam K. Mortara of Lawfair LLC, and Noah Heinz of Pak Heinz PLLC.

Counsel info for the coalition of state enforcers was not immediately available.

The case is State of Iowa et al. v. State of Arizona et al., case number unavailable, in the Supreme Court of the United States.

--Additional reporting by Bonnie Eslinger, Rae Ann Varona, Bryan Koenig, Lauren Berg and Al Barbarino. Editing by Jay Jackson Jr.

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9th Circ. Backs Google Privacy Deal With No Class Payouts

By **Allison Grande**

Law360 (August 26, 2026, 11:42 PM EDT) -- A split Ninth Circuit panel Wednesday affirmed approval of a location data privacy deal that requires Google to pay $62 million to plaintiffs' counsel and third-party organizations but gives no money to individual class members, agreeing the structure was appropriate because direct distribution to all class members would be "infeasible."

In a 2-1 decision, the appellate panel rejected a bid by objectors John Andren, Matthew Lilley and Joseph St. John to vacate and reverse the decision from U.S. District Judge Edward J. Davila of the Northern District of California to grant final approval **in May 2024** to a settlement resolving accusations that Google LLC illegally collected and stored smartphone users' private location information even after they had turned off the "location history" feature on their devices.

While the deal includes terms for injunctive relief, including mandating Google to publicly disclose information about its location data practices that will allow consumers to exercise more control over this data, individual members of the settlement class of roughly 247.7 million smartphone users won't receive payments from the $62 million settlement fund Google is tasked with establishing.

Instead, that money will be distributed to 21 cy pres recipients that provide research and education regarding online privacy issues and to class counsel that was awarded $18.6 million in fees, an arrangement both the objectors and a coalition of state attorneys general **supporting them** argued didn't meet the requirement that class action settlements provide a direct benefit to class members.

However, in siding with the settlement class members and Google, the Ninth Circuit majority held that the district court had correctly concluded that the cy pres distribution was appropriate given that the $62 million settlement fund, divided by 247.7 million class members, would result in "a de minimis recovery" for each class member, which would be further reduced by attorney fees, expenses, administrative costs and service awards.

"The district court's holding accords with our precedents deeming a settlement fund non-distributable where 'each class member's recovery under a direct distribution would be de minimis,'" the majority held, pointing to the Ninth Circuit's prior decisions to back a **$13 million cy pres deal** to end claims that Google's Street View car fleet illegally gathered Wi-Fi network data and its affirmation of Facebook's similar **$9.5 million settlement** of user privacy claims over its "Beacon" feature.

"Because the pro rata distribution here would be similarly miniscule, the district court did not abuse its discretion in approving the parties' proposed settlement," the majority opinion, written by U.S. Circuit Judge Richard R. Clifton and joined by U.S. Circuit Judge Jay S. Bybee, held.

While the objectors contended that the interests of the class would be better served by distributing money to class members rather than directing the funds to initiatives protecting privacy interests more generally, the majority held that this argument "rests upon the false premise that cy pres distributions do not benefit the class."

"We do not share that view," the majority held.

Additionally, the approach of "dispersing funds to a fraction of the class" would likely result in "significantly larger administrative costs" that would provide "no benefit whatsoever" but rather "subtract from the benefits" to class members, the majority said.

In her dissent, U.S. Circuit Judge Danielle J. Forrest argued that the district court "failed to adhere to important limitations on cy pres disbursement" in approving the Google location data privacy deal "without attempting any distribution to the absent class members where, unlike in [the] Google Street View [case], it is possible to identify the class members and verify their claims."

"Cy pres is not properly employed merely because the members of a class may be difficult to identify or are likely to receive only a small sum," Judge Forrest said. "Its use is appropriate only when settlement funds are truly 'non-distributable' to the absent class members. [T]hat has not been shown to be the case here."

Judge Forrest contended that courts should "start with the presumption that distributing settlement funds to the class members is the first best choice," and that "relaxing the requirements for cy pres distribution" in instances where class members stand to receive only very small payments or can't be automatically identified "threatens to sideline focus on the property rights of those for whose benefit the litigation was brought in the first place, which runs headlong into due-process problems."

"Cy pres is an extraordinary tool for extraordinary cases," Judge Forrest said, adding that the record in the dispute before the appellate panel "does not establish that this is such a case where there has been no attempt at distribution, and there is no obvious reason to think that distribution would be ineffectual."

However, the majority slammed this "alternative approach" promoted by Judge Forrest of favoring direct distribution to class members over cy pres payments, concluding it would wrongly "elevate the noisy few over the interests of all class members."

"The district court considered the interests of all class members, not just the tiny number who filed objections and not just the tiny fraction of the class that might be expected to file financial claims," the majority said, pointing to the objectors' estimate that only 1.5% of the class members would be likely to submit claims. "It was correct in doing so."

The majority also found that the district court had "properly considered the fact that even if it were feasible to distribute such a minimal amount to each claimant, there was no way to verify whether claimants fit the class definition" since Google has said its data-collection practice and systems make it "infeasible" for the company to conduct this identification.

While the objectors had argued that class members could self-identify and opt-in to the settlement class, they failed to propose a methodology to verify each claimants' entitlement to such funds, making any such self-identification "pure speculation," the majority held.

The objectors also fell short with their contention that the settlement should be scrapped because the district court had failed to consider whether the deal satisfied the changes to Rule 23(e)(2)(C)(ii) adopted in 2018, which requires analyzing "the effectiveness of any proposed method of distributing relief to the class" when deciding whether to approve a settlement.

While the amendment was meant to provide specific factors for courts to consider in determining whether a proposed deal was fair, reasonable and adequate, the majority found that the district court had "appropriately considered the enumerated factors" under the revised rule by taking steps such as assessing the "amount offered" in the settlement.

The district court further met its obligations under the revised rule by concluding that a cy pres distribution would be appropriate because the settlement fund would only provide class members "no more than twenty-five cents" each and therefore would be "nondistributable" under the court's precedents, the majority stated.

Additionally, the lower court correctly provided "a detailed and reasoned response to objectors' contentions regarding the availability of other methods of relief," resulting in its conclusion that "distribution of the settlement funds through alternative methods would be infeasible," the majority held.

"The district court 'explored comprehensively all [Rule 23(e)(2)] factors' and 'g[ave] a reasoned response to all non-frivolous objections,'" the majority said, adding that the lower court was likely to "conduct the same analysis and reach the same result" even if the dispute were returned to it on remand.

Additionally, the majority rejected the contention the district court erred in approving at least 9 of the 21 cy pres recipients, including the Fordham University Center on Law and Information Policy and Electronic Frontier Foundation, which the objectors argued were "too remote" or "engaged in ideological work at odds" with the settlement class and the underlying data privacy issues.

"We agree with the district court that the cy pres recipients had documented their commitment to advocate for the protection of data privacy, establishing a substantial nexus to the underlying interests of the class," the majority said, adding that a "standard mandating universal approval" of cy pres recipients "would be unworkable in practice," given that the settlement class is estimated to include 247.7 million people, or roughly three-quarters of the U.S. population.

Counsel for the objectors and settlement class members, and a representative for Google couldn't be reached for comment Wednesday.

The disputed $62 million settlement is intended to resolve litigation that involves six related proposed class actions that were consolidated in 2018. The consumers claim Google committed "egregious" violations of their privacy while the company maintained that iPhone and Android users already agreed to be tracked when operating their smartphones.

The certified nationwide settlement class consists of all individuals who, since January 2014, used one or more mobile devices and whose location information was stored by Google while their location history was disabled in their settings.

In addition to the private litigation, Google also faced heat from state attorneys general for its location data practices.

On the same day Google **revealed its settlement** with smartphone users, California's attorney general announced the state had reached its own $93 million deal with Google over claims the company falsely told users if they turned off the "location history" setting, it would not store their location data.

Google also **separately agreed** to pay nearly $40 million in May 2023 to resolve a similar lawsuit brought by the Washington State Attorney General's Office accusing the company of secretly tracking users' locations. Additionally, it reached a historic $391.5 million location tracking settlement with the attorneys general of Oregon, New York, Florida, Illinois and three dozen other states **in 2022** and penned an **$85 million deal** with the Arizona Attorney General's Office over these alleged practices.

Circuit Judges Richard R. Clifton, Jay S. Bybee and Danielle J. Forrest sat on the panel for the Ninth Circuit.

The objectors are represented by Theodore H. Frank and Anna St. John of the Center for Class Action Fairness at the Hamilton Lincoln Law Institute.

The plaintiffs are represented by Samuel Issacharoff, Michael W. Sobol, Jallé H. Dafa, Michael K. Sheen, John D. Maher, Melissa Gardner and Nicholas Diamand of Lieff Cabraser Heimann & Bernstein LLP, and Tina Wolfson, Theodore W. Maya, Bradley K. King and Henry J. Kelston of Ahdoot & Wolfson PC.

Google is represented by Benjamin W. Berkowitz, Ian A. Kanig, Nicholas D. Marais and Thomas E. Gorman of Keker Van Nest & Peters LLP.

The case is Patacsil et al. v. Google LLC et al., case number 24-3387, in the U.S. Court of Appeals for the Ninth Circuit.

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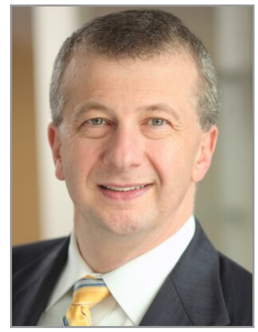
The Expanding Litigation Front Against the Data Center Boom

By **Jonathan Martel, Ethan Shenkman and Adam Masurovsky** (August 27, 2026, 4:39 PM EDT)



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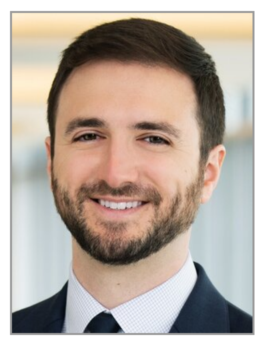

Adam Masurovsky

McKinsey & Co. Inc. has projected that data center expenditures could reach $7 trillion globally by 2030 in order to meet the growing demand for compute power.[1] The Trump administration has made data center buildout a national priority, directing agencies to fast-track permitting and remove regulatory hurdles.[2]

On the other hand, the rapid and large-scale deployment of data centers has run into intense political, social and legal backlash from states, local communities and advocacy groups.

Local moratoria on data centers are popping up in cities and counties nationwide. Most states now have at least one local jurisdiction that has hit the pause button, with one tracker reporting more moratoria adopted in June alone (80) than in all of 2025 (59).[3] And fierce debates over data centers have been front and center in several recent primary races for congressional seats.[4]

This backlash has also generated a new wave of novel disputes and litigation.[5] Communities are raising concerns about the environmental impacts of data centers, transparency with respect to agreements between regulators and developers, and the social and economic implications of AI technology.

Below, we survey the environmental and land use claims raised in data center disputes across the country.

Much of the current litigation remains pending. The outcomes of these disputes will have significant implications for the future of data center development.

But they may also shed light on how unburdening infrastructure development from regulations and permitting requirements can backfire on developers that do not have a clear plan for managing public engagement and a sound litigation strategy.[6]

Citizen Suits Under Federal Environmental Statutes

Litigation over data centers is raising novel issues under the citizen suit provisions of the Clean Air Act and the Clean Water Act.

Several environmental statutes authorize citizen suits, allowing private enforcement when the federal government does not act. Section 304 of the CAA, for example, allows "any person" to sue for a violation of an "emission standard or limitation."[7]

A citizen plaintiff must first notify the federal government, and the suit is barred if the government steps in and "diligently prosecutes" the violation.[8]

In one such case, NAACP v. X.AI Corp., the NAACP, the nation's oldest civil rights organization, is

pursuing a citizen suit against xAI and its subsidiary MZX Tech LLC in the U.S. District Court for the Northern District of Mississippi, alleging that the fleet of gas turbines powering xAI's Colossus data center in Memphis, Tennessee, is in violation of the CAA.

In June, the U.S. Department of Justice **moved to intervene** as of right as a plaintiff and to dismiss the suit. Specifically, the government argued that allowing the case to proceed over the executive branch's objections would raise separation of powers concerns under Article II of the U.S. Constitution.

Without engaging on the merits of the NAACP's claim, the government explained that it seeks dismissal based on national security interests tied to xAI-supported military operations.

If the government succeeds in dismissing the NAACP's citizen suit in this case, it could set a precedent significantly narrowing the availability of environmental citizen suits as a tool for challenging data centers and other infrastructure projects where the government objects for reasons that may be unrelated to the merits of the suit.

Air Permitting and Emissions From On-Site Energy Generation

In the NAACP v. X.AI case, the plaintiffs' substantive claim raises novel issues for CAA permitting and emissions standards for fossil fuel-fired generation assets. The plaintiffs in that case allege that xAI has constructed and is operating over 33 natural gas turbines without the requisite CAA permits and/or in violation of emissions standards.[9]

Under the CAA, new or modified stationary fossil fuel-fired turbines can qualify as major sources subject to the New Source Review program — including prevention of significant deterioration review and best available control technology — along with Title V operating permit requirements, performance standards and hazardous pollutant standards generally administered under state implementation plans approved by the U.S. Environmental Protection Agency.[10]

The defendants contended that the gas turbines are temporary, trailer-mounted mobile sources exempt from CAA stationary-source permitting because they sit on flatbed trailers and are expected to remain on site for under 12 months.

If that theory succeeds, it could remove CAA permitting requirements for a wide range of similarly designed energy facilities — making the case an important one to watch, for this issue and the citizen suit arguments, as it progresses in the district court and through potential appeals.

Water Permitting, Use and Contamination Issues

Data centers also use significant volumes of water for cooling purposes, with large data centers consuming roughly 2 million liters per day.[11] This level of use has raised concerns among local communities, particularly in water-scarce areas.

The types of water-related claims brought in litigation against data centers, however, have tended to focus on water pollution — i.e., from the construction of the data center or discharges of the cooling water.

The evaporative cooling process that many data centers use can concentrate contaminants and dissolved solids already found in the water; the periodic flushing of cooling water to avoid scaling and corrosion releases that wastewater into the environment.[12]

These disputes have relied on federal environmental statutory causes of action, common-law nuisance and state tort law. For example, the plaintiffs in Pearson v. Amazon Data Services Inc., a proposed class action brought in the U.S. District Court for the District of Oregon in March, alleged that high-nitrate wastewater associated with the data center cooling processes contributed to nitrate contamination of groundwater and drinking water supplies.

The plaintiffs in the Oregon action brought an imminent-and-substantial-endangerment claim under the Resource Conservation and Recovery Act,[13] together with Oregon common-law claims for negligence, trespass and private nuisance.

In June, the district court preliminarily approved a proposed class settlement that provided for a settlement fund, reportedly valued at $20.5 million, for improving access to clean drinking water among class members.[14]

In May, in another dispute, landowners neighboring a data center campus in Fayetteville, Georgia, represented by Flint Riverkeeper, an environmental group, issued a notice of intent to bring a citizen suit in federal court in under the CWA.

The notice alleges discharges of sediment-laden stormwater from clearing and grading of more than 350 acres at the data center campus, in violation of CWA Sections 402 and 404. The notice further demands abatement of nuisance and trespass under Georgia law.

These disputes reveal that while water consumption by data centers may be the issue garnering the most public attention and political opposition, litigants and environmental groups are finding creative avenues under federal environmental statutes and state tort and nuisance law to challenge alleged water pollution.

Environmental Review Adequacy

Many states have their own statutes similar to the National Environmental Policy Act that require environmental review of state authorizations of major projects. Data center opponents are increasingly using these laws to attack the adequacy of the review that supported data center approval.

These disputes involve, for example, claims that state agencies improperly exempted components of a data center project from environmental review,[15] failed to include connected facilities — e.g., power generation — in the scope of the review[16] or failed to prepare an environmental impact statement where one was required.[17]

In one case that has received a merits ruling, In re: Archer Datacenters Environmental Assessment Worksheet, the Minnesota Court of Appeals found in June that a city's decision not to prepare an EIS was unsupported and remanded the proceeding.[18]

Common-Law Nuisance Claims

Common-law nuisance claims are among the more common causes of action against data center developers and operators. In such disputes, plaintiffs — typically neighboring residents — allege that a facility's operations unreasonably interfere with the use and enjoyment of their property.

In one putative class action with over 10,000 members, Haley v. X.AI Corp., **filed in June** in the Northern District of Mississippi, the plaintiffs allege that the gas turbines from a power plant adjacent to and serving a data center expose nearby residents to "loud, persistent, and low-frequency noise and vibrations."

The plaintiffs brought public and private nuisance claims, along with state tort claims for negligence and emotional distress.[19] These issues are not new to gas-fired power plants, and can be mitigated through design features, setbacks and other measures that reduce sound and vibrations.

Even so, similar class actions pleading public and private nuisance along with tort claims regarding the noise and vibrations associated with continuous operation of data centers continue to be brought around the country.[20]

Local Zoning and Land Use Issues

The most numerous challenges to data center development have arisen at the local level, where project opponents challenge the procedures used to enact rezonings, zoning amendments or violations of comprehensive plans for localities.

Plaintiffs have alleged, for example, defective or incomplete public notice, failure to make proposed ordinances and supporting materials available before a hearing, and failure to observe statutory intervals between publication and adoption.

In one case, Board of County Supervisors v. Oak Valley Homeowners Association, the Virginia Court of Appeals affirmed the **invalidation** of three data center rezonings in April, because the county advertised proposed ordinances that were not yet available for public inspection, and failed to provide adequate time for public feedback.

The court emphasized that these public notice and comment rules are procedural safeguards for meaningful public participation.[21]

Other examples of challenges to data centers contend that approvals were arbitrary or constituted illegal spot zoning, or that the authorized data center use conflicted with the locality's comprehensive plan and the stated purposes of the underlying zoning district.[22]

These cases demonstrate that local opposition to data center development — which may be borne out of concern for their environmental impacts or other potentially disruptive characteristics as well as more general policy or social/economic opposition — can manifest most strongly in disputes before local zoning authorities.

Data Center Moratoria and Developer-Side Challenges

Localities are increasingly enacting temporary moratoria on data center approvals, prompting developers to challenge those moratoria in court alleging procedural defects, exceedances of state statutory authority, and claims under the state and federal constitutions.

In several cases, for example, developers have alleged that moratoria are ultra vires, exceeding statutory authority under state law and procedurally invalid by failing to satisfy notice-and-hearing or emergency legislation requirements.[23]

Developers are also pursuing regulatory takings claims, as well as alleging procedural and substantive due process violations and equal-protection claims, premised on the assertion that underlying permits or authorizations are protected property interests.

At least one developer has brought a First Amendment claim, in Imperial Valley Computer Manufacturing LLC v. City of Imperial, in the U.S. District Court for the Southern District of California, alleging retaliatory actions by municipal officials.[24]

While these disputes have not reached merits decisions yet, some have resulted in rescissions of moratoria and settlements.[25] This suggests that these types of claims may provide a successful avenue for developers to push back against local moratoria.

Regulatory Reforms Aimed at Facilitating Data Center Development

Even as data center opponents pursue the litigation strategies surveyed above, the federal government has moved aggressively to advance a suite of regulatory reforms designed in part to remove or streamline environmental requirements for data center development and their supporting energy infrastructure.

Executive Order No. 14318, issued in July 2025, was aimed at accelerating federal permitting of data centers. It directed agencies to establish new categorical exclusions for data centers under NEPA.

The order also called on the EPA to streamline environmental permitting by developing or modifying regulations under the CAA; the CWA; the Comprehensive Environmental Response, Compensation and Liability Act, also known as the Superfund law; and the Toxic Substances Control Act.

Agencies have already started implementing this strategy. The EPA has advanced a series of CAA regulatory reforms, including:

- Loosening limits on beginning construction of a new major source prior to obtaining a New Source Review permit by allowing construction of nonemitting components;[26]

- Proposing to eliminate public notice requirements for minor NSR permits;[27] and
- Issuing guidance concluding that "islanded" off-grid generation serving data centers is not subject to the Acid Rain Program.[28]

The EPA has also finalized a rule that subjects smaller purportedly temporary fossil fuel-fired turbines to less stringent standards under the CAA's New Source Performance Standards, as well as a conditional exclusion from stationary source requirements for turbines that meet the definition of a mobile source.[29]

Outside of the CAA, the U.S. Army Corps of Engineers has updated its nationwide permits, which allow for streamlined CWA permitting, to explicitly include data centers.[30]

These regulatory reforms may themselves become the target of litigation under the Administrative Procedure Act, creating additional risks for developers relying on them.

Implications for Data Center Development and Infrastructure Writ Large

The wide range of federal and state environmental claims, as well as nuisance, tort and local zoning and land use causes of action, reflects a rapidly evolving landscape of legal challenges facing data center development across the country.

Although much of the litigation remains at early procedural stages, these disputes are already affecting the landscape of data center development as well as broader efforts to build out new energy infrastructure.

Project proponents and developers should be closely following these emerging trends as they develop their legal strategies moving forward.

Novel Legal Theories

Plaintiffs, developers and governmental entities are pursuing a wide range of legal theories, and how these are ultimately resolved will have implications not only for data centers, but for infrastructure development well beyond this sector.

The argument that the federal government has ultimate authority to dismiss citizen suits under federal environmental laws, for example, would provide federal power to override citizen opposition to pursue broader federal policies favoring projects, regardless of the merits of the environmental claims.

Moreover, how disputes over local moratoria unfold may embolden developers to pursue these claims in other localities.

Opposition Strategy

The range of causes of action being brought against data centers reveals that opponents are flexible and pursuing a variety of litigation strategies in service of their ultimate objectives to frustrate data center development.

How these cases are resolved on the merits may push litigants toward certain causes of action. For example, if citizen suits under federal environmental statutes become effectively foreclosed, opponents may focus further on state and common-law claims.

As more and more project opponents resort to the courthouse, this will put a premium on developing robust community engagement strategies in an effort to avoid adversarial litigation in the first place.

Chilling Effect on New Energy Investments

The AI and data center boom has been the primary catalyst for investments in new energy infrastructure development around the country to power these facilities.

While these disputes are still at the early stages, they are already affecting the risk calculus for new energy investments as developers weigh the potential delays or cancellation of projects.

How these disputes are ultimately resolved, both with regard to preliminary relief — i.e., injunctions — and the merits, will affect siting decisions and the legal risk calculus going forward. Such trends could also have major implications for investments in other types of infrastructure development.

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Arnold & Porter counsel Travis Annatoyn contributed to this article.

[1] The $7 trillion data center build-out: How industrials can capture their share, McKinsey & Company (March 2026).

[2] See, e.g., Executive Order 14318, Accelerating Federal Permitting of Data Center Infrastructure, alongside Winning the AI Race: America's AI Action Plan.

[3] https://mjbommar.github.io/moratorium-data-2026/index.html.

[4] Data centers show their primary colors, Politico (Aug. 5, 2026), https://www.politico.com/newsletters/power-switch/2026/08/05/data-centers-show-their-primary-colors-01025879.

[5] Exclusive: Over 530 Local Laws Now Seek to Ban or Restrict Data Centers in U.S., Heatmap News (July 30, 2026), https://heatmap.news/politics/data-center-local-laws-bans-total.

[6] This tension is front and center in the debate over permitting reform and the "abundance" movement. See, e.g., Shenkman, The Abundance Agenda: Seizing the Opportunity for Bipartisan Progress, Environmental Forum (Jan. 15, 2026), https://www.eli.org/environmental-forum-column/abundance-agenda-seizing-opportunity-bipartisan-progress.

[7] 42 U.S.C. § 7604.

[8] Id. § 7604(b)(1).

[9] Data centers require enormous amounts of energy for the computing and storage capacity as well as the cooling needed to keep them running. A "hyperscale" data center — i.e., one with at least 5,000 servers — requires hundreds of megawatts of electricity.[9] To meet these energy needs at the speed of deployment, data centers increasingly rely on on-site and backup generation.

[10] See 42 U.S.C. §§ 7470-7492 (PSD); id. §§ 7661-7661f (Title V); 42 U.S.C. §§ 7411, 7412.

[11] Cong. Rsch. Serv., R48646, Data Centers and Their Energy Consumption: Frequently Asked Questions 9 (May 12, 2026).

[12] U.S. Dep't of Energy, Fed. Energy Mgmt. Program, Cooling Water Efficiency Opportunities for Federal Data Centers, https://www.energy.gov/cmei/femp/cooling-water-efficiency-opportunities-