Amazon Will Beat California Bid to Block Alleged Price-Fixing

Aug. 27, 2026, 4:03 PM PDT

Summary by Bloomberg AI

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- Judge Ethan Schulman will tentatively deny California's request for a preliminary injunction to prohibit Amazon from communicating with vendors about retail pricing.
- California alleges Amazon engages in a price-fixing scheme by strong arming its top vendors into raising their prices on competing websites or face punishment on Amazon's platform.
- The case is scheduled for trial in January 2027, with Judge Schulman expressing skepticism that the parties will be able to meet the deadline.

Amazon.com Inc. will likely defeat a request by California's attorney general to proactively tackle the e-commerce giant's alleged price-fixing scheme ahead of a high-stakes jury trial scheduled to begin next year.

Judge Ethan Schulman at a hearing Thursday in the California Superior Court in San Francisco said he would tentatively deny the state's request for a preliminary injunction, which would have prohibited Amazon from communicating with vendors about retail pricing.

The tentative ruling is a blow to California's sweeping antitrust case alleging the e-commerce giant artificially inflated product prices to maintain its profits margins at the expense of consumers. The office of Attorney General Rob Bonta (D) alleges Amazon engages in a widespread price-fixing scheme by strong arming its top vendors, including Levi Strauss & Co., into raising their prices on competing websites or face punishment on Amazon's platform.

California said it identified a number of instances of Amazon employees contacting suppliers after seeing products with lower prices on competing sites, including Best Buy Co. and Newegg Commerce Inc. If the suppliers didn't "fix" or "raise" the prices on competing sites, Amazon would threaten to delist those products on its own site or demand financial compensation, the attorney general alleged.

Bonta first sued in 2022. This is one of several antitrust cases alleging similar price-fixing schemes playing out in both state and federal court.

California's case had been set for trial in January 2027, but Schulman at the Wednesday hearing expressed skepticism that the parties would be able to meet the fast approaching deadline. The Federal Trade Commission's case against Amazon in federal court in Washington state is scheduled for March next year.

Williams & Connolly LLP represents Amazon.

The case is People of the State of California v. Amazon.com Inc., Cal. Super. Ct., No. CGC22601826, 8/27/26 .

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Judge OKs attorney fees request in $425 million Google privacy suit

courthousenews.com/judge-oks-attorney-fees-request-in-425-million-google-privacy-suit

Attorneys representing a class of more than 100 million Google users who suffered privacy violations will take home nearly $147 million despite hundreds of objections.

SAN FRANCISCO (CN) — A federal judge granted a request Friday for more than $146 million in attorney fees in a Google privacy class action with nearly 100 million class members.

"I am comfortable that the request is not out of sight," U.S. District Judge Richard Seeborg said at a Thursday hearing before issuing an order Friday. "It is an understandable, reasonable request that recognizes the very good work done by the plaintiff side. It is certainly going to be within the realm of what you requested."

Lead plaintiff Anibal Rodriguez sued Google in July 2020, saying the company collected app data despite telling users they could disable tracking.

A jury trial last September found Google violated users' privacy by continuing to collect data even after they opted out, awarding more than $425 million in compensatory damages to a class of over 100 million users. The jury, however, did not find Google violated the California Comprehensive Computer Data Access and Fraud Act, and declined to award additional damages.

The $146.78 million in attorneys' fees accounts for one-third of the common fund, which now exceeds $440 million due to interest.

At Thursday's hearing, Seeborg asked plaintiffs' attorney David Boies of Boies Schiller to address concerns some class members have with the high fee request.

"We got 300 objections that came in, the bulk of which boil down to the perceived disproportion per recovery on a class member basis, which is a relatively small amount compared to the quite substantial recovery of the attorney's request," the Barack Obama appointee asked. "For those who are listening, why is that not a problem?"

Boies responded that the request has problematic optics, but the small amount of recovery per class member is par for the course in such a large class action.

“The very nature of a class action is that you have individuals who had such a small amount at issue, they couldn’t afford to litigate individually to hold the defendant accountable. What a class action does is it does give some sort of monetary compensation to the class, but more importantly, it holds the defendant accountable,” Boies said.

Boies emphasized that by taking the case to trial, counsel for the plaintiffs secured not only monetary damages, but injunctive relief, for the class. Following the jury’s verdict, Google amended its privacy disclosures to more accurately reflect its data collection practices.

“I would tell class members that the injunctive relief we got and the damages are worthwhile … [and] a contribution to benefit class members going forward,” he said.

The judge also approved requests for $50,000 awards for the two class representatives who testified at trial and $35,000 for the class representative who didn’t testify for medical reasons.

Boies explained that the class representatives dealt with “a lot of intrusion" into their private lives in order to be a successful representative for the class, including extensive discovery “going after the plaintiffs.”

“They had to go through an arduous process that is not normal for an individual,” he said. “While the amounts are high, they are relatively small compared to the recovery and injunctive relief we got for the class.”

Seeborg acknowledged the time and effort of the class representatives but told Boies the $50,000 was “a magnitude higher than any award I have given.”

The judge also praised both parties’ attorneys for their work, calling the case “extremely well litigated,” and noting there was substantial risk involved on the plaintiffs’ side for taking on such a case against Google.

Representatives for both parties did not immediately respond to a request for comment.

Following the jury’s decision, the plaintiffs sought a permanent injunction and $2.36 billion in disgorgement, a “conservative approximation” of Google’s profits made during the class period. Google countered by asking the court to decertify the class and vacate the verdict.

Seeborg denied both requests, describing the parties’ posttrial efforts as seeking to “augment and upset the verdict in various ways.”

Fortnite addiction claim complicates Epic arbitration fight

DJ **dailyjournal.com**/articles/393986-fortnite-addiction-claim-complicates-epic-arbitration-fight

A minor's inability to stop playing Fortnite because of his alleged addiction to the game could determine whether he can disaffirm Epic Games Inc.'s user agreement and keep his claims in court, a question that left a Los Angeles judge "very troubled" Thursday.

Before taking the matter under submission, Superior Court Judge Lawrence P. Riff heard arguments over Epic's request to reconsider his July order denying arbitration after finding that the minor had successfully disaffirmed the company's user agreement because there was no evidence that he continued playing Fortnite afterward.

The Fortnite creator, represented by Hueston Hennigan LLP partner Allison Libeu, said it discovered after Riff's original ruling that records showed the minor plaintiff -- identified in court filings as I.H.G. -- had played the game through an account Epic did not know about when it filed its original motion.

However, I.H.G.'s attorneys, Aylstock Witkin Kreis & Overholtz PLC partner Bryan F. Aylstock and Bradley/Grombacher LLP partner Kiley Grombacher, argued his continued play did not invalidate his disaffirmance because his alleged addiction left him unable to stop playing.

"I'm very troubled because I don't know what to do," Riff told the attorneys.

His analysis focused in part on two California appellate decisions addressing minors' rights to disaffirm contracts.

In *Holland v. Universal Underwriters Insurance Co.* (1969), the court held that a minor cannot disaffirm only unfavorable portions of a contract while retaining its benefits, while *J.R. v. Electronic Arts Inc.* (2024) held that a minor effectively disaffirmed an agreement after he stopped playing the game.

"If the rule of *Holland* applies, I guess at some point this case ends up in arbitration," Riff said. "If the rule of *J.R.* applies, then it doesn't and we have this, frankly, absurd circumstance where, I suppose, plaintiffs' counsel every 24 hours will be asserting a new disaffirmance from yesterday's gameplay."

Aylstock told Riff that I.H.G.'s continued play "absolutely confirms that he is highly addicted and simply cannot stop playing," pointing to a declaration from a psychologist who evaluated the minor.

Libeu countered that the plaintiffs were asking Riff to create an exception to existing disaffirmance law based on alleged addiction without supporting case law. She also noted that the plaintiffs' psychologist could not conclude that I.H.G.'s addiction was the sole reason he resumed playing Fortnite.

Riff pressed Libeu on the issue, asking whether she knew of any case holding that addiction or compulsion could overcome the rule barring a minor from retaining a contract's benefits while disaffirming it. Libeu said she did not.

The judge told the parties he had written a tentative ruling but opted not to share it because he wanted to hear their arguments before reaching a decision.

I.H.G.'s case is one of numerous coordinated lawsuits accusing major video game companies of designing addictive products that harm minors. *Videogame Addiction Cases*, JCCP5363 (L.A. Super. Ct., filed Jan. 13, 2025).

In July, Riff ordered I.H.G.'s claims against Roblox, Microsoft and Minecraft publisher Mojang AB to arbitration but allowed his claims against Epic to remain in court.

At Thursday's hearing, the plaintiffs argued Epic could have discovered I.H.G.'s continued play before the June hearing and therefore lacked grounds for reconsideration.

Libeu said Epic learned of the account only after Riff's ruling, when Microsoft's counsel alerted it to records showing additional Fortnite use.

Riff declined to revisit the plaintiffs' argument that I.H.G. lacked the capacity to contract because of his age and level of understanding, saying his July ruling rested instead on the minor's successful disaffirmance of the agreement.

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Dexcom Defeats Investor Suit Over Glucose Monitor Market Share

Aug. 28, 2026, 8:30 AM PDT

A Dexcom Inc. executive's comments about the company's increasing share of a subset of the glucose monitor market weren't false or misleading, a federal court said in dismissing an investor lawsuit.

The lead investor's new theories of falsity fail under the same logic that defeated the previous version of the complaint, Judge Robert S. Huie said Thursday for the US District Court for the Southern District of California. "A company may increase its overall market share while losing share in a particular distribution channel or underperforming amongst a particular category of prescribers," Huie said, tossing the suit without giving investors another chance to re-plead.

The proposed securities fraud class action sought to recover losses from a 41% stock drop — the steepest in the medical device maker's history, according to data compiled by Bloomberg.

The pension fund leading the suit alleged the glucose monitor manufacturer had a relatively small sales force compared to direct competitor Abbott Laboratories, which was already established among the subset of diabetes patients Dexcom assured investors it could win over. After initiating a major expansion and restructuring of its sales team, Dexcom misrepresented success to the public until July 2024, when the company reduced its full-year revenue projections by $300 million, according to the complaint.

The revelation that Dexcom wasn't adequately competing prompted the steep stock dive, the suit said.

A company's statements about "taking share" in a segment of the market — that is, increasing its share of that segment — aren't necessarily inconsistent with a competitor winning the majority of new prescriptions, Huie said in dismissing the previous version of the complaint in January.

That reasoning also applies to the new complaint, Huie said Thursday.

The pension fund argued that two statements by Dexcom chief financial officer Jereme Sylvain were misleading half-truths, but the statements didn't create a false impression, the judge said. "While Abbott's continuing lead, its capture of most new prescriptions, and Dexcom's alleged difficulties in particular channels and prescriber segments may have provided additional context, those facts did not negate Sylvain's narrower representation that Dexcom's overall basal market share was increasing," he said.

Robbins Geller Rudman & Dowd LLP was lead counsel for the investors. Cooley LLP represented Dexcom.

The case is In re Dexcom, Inc. Class Action Sec. Litig. , S.D. Cal., No. 3:24-cv-01485, 8/27/26 .

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Securities

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Kalshi Takes Hit as Appeals Court Says Sports Bets Aren’t Swaps

Aug. 28, 2026, 10:17 AM PDT

Summary by Bloomberg AI

AI Generated

- An appellate panel said Nevada gaming officials can continue cracking down on sports prediction markets as if they’re unlicensed sportsbooks.
- The US Court of Appeals for the Ninth Circuit disagreed with a prediction market company’s reading of federal commodity law, affirming a lower court ruling to dissolve an injunction against cracking down on its sports offerings.
- The decision creates a circuit split that might be considered by high court justices as litigation over sports prediction markets escalates nationwide.

Nevada gaming officials can continue cracking down on sports prediction markets as if they’re unlicensed sportsbooks, an appellate panel said Friday.

The decision creates a circuit split that might be appetizing to high court justices as litigation over these offerings escalates nationwide.

The US Court of Appeals for the Ninth Circuit said Friday it disagreed with a prediction market company’s overly broad reading of federal commodity law, affirming a lower court ruling to dissolve an injunction against cracking down on its sports offerings. But the court remanded to consider Kalshi Inc.'s election contracts.

“For Kalshi to deny that its sports event contracts are sports bets under a reasonable person’s understanding is disingenuous,” the opinion by Judge Ryan D. Nelson said. “That sports event contracts are, in reality, sports bets is not just an ‘I know it when I see it.’ Rather, *everyone*, including Kalshi, knows it when they see it.”

Led by Nelson, the panel of President Donald Trump appointees during oral arguments in April seemed wary of the prediction markets’ case about the difference between a Las Vegas casino and sports event contracts. Judges Bridget S. Bade and Kenneth Kiyul Lee also sat on the panel.

The Ninth Circuit is the second federal appellate panel to opine on the nationwide legal debate over regulatory control of the multibillion dollar industry, particularly as it relates to sports prediction markets. The Supreme Court will likely need to weigh in on the sports prediction market issue splitting district courts in preliminary decisions across the country, attorneys say.

States argue sports event contracts are glorified betting subject to their regulations. Prediction market providers with the backing of the US Commodity Futures Trading Commission say their event contracts are a hedging derivative on federally-regulated platforms under the Commodity Exchange Act. The CFTC as amici argued on behalf of Kalshi Inc., Crypto.com, and Robinhood Markets Inc. before the Ninth Circuit.

The Third Circuit, in a 2-1 decision, said Kalshi was likely to prevail on its arguments that sports event contracts are swaps on CFTC-designated contract markets, putting them under the agency's exclusive jurisdiction. The April decision upheld a preliminary injunction against New Jersey gaming regulators.

Dissenting, Judge Jane R. Roth said Kalshi's offerings were "virtually indistinguishable" from sportsbooks' products and that New Jersey's laws seemed to complement the Commodity Exchange Act.

New Jersey is expected to seek high court review of the decision, now with a circuit split under its belt.

In the Ninth Circuit, Milbank LLP and Bailey Kennedy LLP represent KalshiEX LLC. Skadden, Arps, Slate, Meagher & Flom LLP; Cleary Gottlieb Steen & Hamilton LLP; and Snell & Wilmer LLP represent Crypto.com's unit North American Derivatives Exchange Inc. Cravath, Swaine & Moore LLP and Pisanelli Bice PLLC represent Robinhood Derivatives LLC. Nevada Attorney General Aaron Ford's office and Mayer Brown LLP represent state gaming officials. Kalshi, Crypto.com, Robinhood, and the Nevada gaming control board didn't immediately respond to emails seeking comment.

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Litigation Trends to Watch: Suits Strike at Moonlighting Bans, 'Made With Avocado Oil' Claims and Employee Background Checks

law.com/2026/08/28/litigation-trends-to-watch-suits-strike-at-moonlighting-bans-made-with-avocado-oil-claims-and-employee-background-checks

Here's what caught our attention this week:

- Workers in Washington fight bans on secondary employment.
- New study fuels lawsuits challenging "made with avocado oil" claims.
- Job applicants launch FCRA suits over background checks.
- Texas property appraisers face litigation tsunami.
- Consumer class actions spike in New Jersey.

► **Labor & Employment | Washington**

Employment lawsuits skyrocketed in Washington during the week of Aug. 17, according to Law.com Radar. The platform surfaced 80 cases across the state's federal courts and major counties, more than double the typical weekly volume. Some of the surge stems from class actions against employers including **ABM Industries**, **Builders FirstSource**, **Hilton** and others over restrictions on second jobs. The cases are part of a wave of litigation alleging that "anti-moonlighting" clauses in employment contracts are unlawful because Washington only allows such restrictions if workers earn at least twice the state's minimum wage. **Emery | Reddy** represents plaintiffs in the moonlighting cases.

Radar has surfaced dozens of identical lawsuits in recent months, many targeting major companies like **Apple**, **CVS**, **Frito-Lay**, **Starbucks** and **Walmart**.

► **Class Actions | U.S., Eastern District of New York**

Class actions spiked in New York Eastern District Court during the week of Aug. 21. At least 24 lawsuits were brought in the federal court, more than double the usual volume. Of particular note was a case against **Utz Quality Foods** alleging that its potato chips are falsely marketed as containing avocado oil despite being made with blended oils.

More than a dozen similar lawsuits have surfaced in Radar this month, all following a study released by UC Davis in July. Researchers sampled dozens of chips, dressings and mayonnaise products marketed as containing avocado oil and found that nearly 90% of the products showed signs of being diluted or substituted with cheaper seed and vegetable oils. Other defendants include **Campbell's**, **Chosen Foods** and **Siete Family Foods**.

► **Labor & Employment | U.S., Southern District of Illinois**

Employment litigation surged on Aug. 21 in Illinois Southern District Court. At least seven cases were filed, including a trio of class actions centering on the use of consumer reports for hiring and other employment-related decisions. The suits accuse companies of violating the Fair Credit Reporting Act by acquiring background reports about applicants without obtaining consent, providing notice or sharing copies of the reports with applicants. Defendants include **Finray Solar**, **Pathway Strategy Group** and **Shawmut Services**. All three suits are backed by **Siri & Glimstad**.

Two similar FCRA cases were launched in California on Aug. 21 and 24 by the **Setareh Law Group**. The suits accuse **Reyes Coca-Cola Bottling** and American Airlines subsidiary **Envoy Air** of failing to provide clear, stand-alone written disclosures to job applicants before obtaining background reports.

► **Real Property | TX-Collin County**

Real property litigation exploded in Texas District Court for Collin County from Aug. 17-21. At least 137 lawsuits were filed, about seven times the typical weekly average. Almost all the suits were brought by businesses and property owners against the **Collin Central Appraisal District**. The plaintiffs span a wide range of industries and include **H-E-B**, **Nordstrom**, **South Richardson Hotels**, **T-Mobile** and **Texas Health Presbyterian**.

Law.com Radar has spotted similar lawsuits in recent weeks in Texas' Bexar, Denton and Harris counties. Plaintiffs in those cases include **Dillard's**, **Kohl's**, **Lowe's** and **Target**.

► **Consumer Protection | Class Actions | U.S., District of New Jersey**

Law.com Radar detected a swarm of consumer class actions in New Jersey District Court during the week of Aug. 17. At least nine cases were filed, most of which accuse companies of violating the Telephone Consumer Protection Act by sending unsolicited telemarketing texts, artificial-voice calls and fax advertisements without consent, including communications to numbers on the National Do Not Call Registry and messages sent after recipients requested they stop.

Also, **Ledisa**, a natural wellness patch brand, was sued over its dopamine patches, which the plaintiffs allege are falsely marketed as containing dopamine and providing neurological benefits despite containing only herbal ingredients. Plus, **Jaguar Land Rover** faces a breach-of-warranty class action over certain 2019-2024 mild-hybrid vehicles, which were recalled in April 2026 due to defective DC/DC converters that can cause sudden power loss and other critical system failures.

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LexisNexis Prevents Police Class Suit Over NJ Privacy Shield Law

Aug. 27, 2026, 2:34 PM PDT

Summary by Bloomberg AI AI Generated

- LexisNexis Risk Solutions Inc. thwarted class certification in a lawsuit alleging it violated the Fair Credit Reporting Act when it placed security freezes on police officers' accounts.
- The plaintiffs failed to show that common questions regarding the standing of absent class members predominated over individualized questions, according to Judge Harvey Bartle III.
- Only 13 members of the putative class could show a concrete injury sufficient for standing, which was too small for the required showing that joinder was impracticable, Bartle said.

LexisNexis Risk Solutions Inc. thwarted class certification in a lawsuit alleging it violated the Fair Credit Reporting Act when it placed security freezes on police officers' accounts.

The plaintiffs, who had made personal-data takedown requests under New Jersey's privacy shield law, failed to show that common questions regarding the standing of absent class members predominated over individualized questions, Judge Harvey Bartle III said Wednesday for the US District Court for the District of New Jersey. Bartle was sitting by designation from the the Eastern District of Pennsylvania.

And even if all of the putative class members could show an injury sufficient for standing, the type and extent of injury for each class member would have to be determined separately based on evidence from each class member and countless third-party creditors and insurers, which would defeat commonality, Bartle said.

Daniel's law allows protected individuals — including New Jersey judges, prosecutors, police officers, and their families — to demand that data brokers remove their home addresses and phone numbers from their online directories.

The three named plaintiffs alleged that LexisNexis placed security freezes on the accounts of 18,607 people who made data-takedown requests, rather than simply removing the personal information from its website as required under the privacy shield law. That, in turn, caused them to be denied credit or services in violation of the FCRA, the complaint alleged.

The company argued it couldn't redact addresses and phone numbers from consumer reports without enacting security freezes, Bartle said.

Two of the named plaintiffs asserted a concrete injury sufficient for standing, but only 13 members of putative class in total — who had been denied insurance or a service during a security freeze on their accounts — could make a similar showing, Bartle said. There was no evidence in the record to establish that the remaining class members had been denied credit or a service or had suffered any injury as a result of the freeze, he said.

And a class of 13 was too small for the required showing that joinder was impracticable, Bartle said.

PEM Law LLP and Boies Schiller Flexner LLP represent the plaintiffs. Lowenstein Sandler LLP represents LexisNexis.

The case is Doe v. LexisNexis Risk Sols. Inc. , D.N.J., No. 1:24-cv-04566, 8/26/26 .

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Mealey's Data Privacy - Judge Approves $ 17B Settlement In Meta Social Media Addiction MDL

Mealey's Daily News Update

August 27, 2026

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Body

In a California federal court multidistrict litigation and a related case, a California federal judge on Aug. 26 approved a proposed consent judgment by numerous states and Meta Platforms Inc. that includes settlement payments of approximately $ 17 billion that Meta agrees to pay to resolve claims against it by 47 states, the District of Columbia and three U.S. territories alleging that Meta designed Facebook and Instagram to addict youth and misrepresented the platforms' risks (In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, People of the State of California, et al. v. Meta Platforms, Inc., et al., Nos. 22-3047, 23-5448, N.D. Calif.).

(Proposed consent judgment available 24-260915-021X

Joint motion for consent judgment available 24-260915-023M

Consent judgment available 24-260915-023M)

Judge Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California, who is the judge in the MDL action, approved the settlement, finding it "fair, reasonable, comprehensive, and good faith approach not only to provide monetary relief, but importantly, to change conduct in a way that attempts to meaningfully address the negative impacts of the social media platforms at issue."

The settlement resolves claims in the MDL brought by the participating attorneys general against Meta, as well as claims in the associated case California v. Meta Platforms, Inc. It does not resolve the other claims pending in the MDL, including claims brought by private parties, school districts and municipal entities.

The proposed consent judgment was filed in the U.S. District Court for the Northern District of California after trial began in the MDL on Aug. 18. The consent judgment resolves the claims by the participating states against Meta but the trial remains ongoing as to claims by other plaintiffs, including individuals, school districts and other governmental entities against multiple other social media platforms, including Meta.

At issue during the trial as applied to Meta is whether it knowingly designed Facebook and Instagram to addict youth, mispresented the platforms' risks and unlawfully collected information from children under the age of 13 in violation of the Children's Online Privacy Protection Act (COPPA), *15 U.S.C. 6501*-*6506*.

Proposed Settlement

The proposed settlement, which is subject to District Court approval, requires Meta to pay $ 12.19 billion, consisting of approximately $ 11.66 billion in guaranteed payments over 10 installments, $ 75 million for state costs and $ 459.29 million to resolve specified Cambridge Analytica complaints. Meta could owe an additional approximately $ 5.02 billion if Snap, TikTok and YouTube, which are defendants in the MDL and the trial, become subject to the same daily use requirements and age assurance requirements as Meta.

The agreement identifies the Cambridge Analytica complaints as those in these cases: People v. Meta Platforms, Inc., No. 25-631678 (Cal. Super. Ct., S.F. Cnty. Dec. 18, 2025); State of New Mexico ex. rel. Raul Torrez v. Facebook, Inc., No. D-101-CV-2021-00132 (N.M. 1st Jud. Dist. Ct., Santa Fe Cnty. Jan. 21, 2021); District of Columbia v. Facebook, Inc., No. 2018-CA-008715-B (D.C. Super. Ct. Dec. 19, 2018); and People of the State of Illinois v. Facebook, Inc., No. 63 (Ill. Cir. Ct., Cook Cnty. Oct. 3, 2019).

The Cambridge Analytica scandal became public in 2018 and involved the gathering of personal information of Facebook users by an app that accessed users' information which was then sent to Cambridge Analytica, a political consulting company.

The agreement directs payments to the jurisdictions specified for various purposes, including funding outdoor activities, crisis intervention services and youth mental health programming.

The settlement does not provide for a private right of action but establishes that Meta commits to establishing daily limits on nighttime use for teenage users on Meta's social media platforms, Facebook and Instagram.

Further, Meta commits to "enhanced age assurance measures to prevent children from accessing the platform, or age restricted content available on the platform, and requiring additional tools to help parents and guardians to protect their children online."

Cases Centralized

In October 2022, an MDL comprising 28 federal lawsuits was established in the District Court against Meta, which operates Facebook and Instagram, and CEO Mark Zuckerberg; Snap Inc., which operates Snapchat; ByteDance Ltd., which operates TikTok; and Google LLC, which operates YouTube. The companies are accused of allowing adolescents to use their social media platforms and websites despite knowing the risks of youth addiction and personal injury.

Among the platforms' features that purportedly lead to addictive behavior are endless content, lack of screen time limitations, intermittent variable rewards, ephemeral content, filters and notifications. Ultimately, thousands of lawsuits were consolidated. The lawsuits were filed by parents on behalf of their minor children as well as by school districts, the Florida attorney general and multiple state attorneys general.

Amended Master Complaint

As to the MDL, an amended master complaint for personal injury plaintiffs was filed in April 2023. Against all defendants, these plaintiffs, who filed the complaint on behalf of children who incurred personal injuries and, in cases of death, as the personal representatives of their estates, allege design defect and failure to warn under strict liability and negligence theories; negligence, negligent undertaking and negligence per se; violation of the unfair trade practices and consumer protection laws of the plaintiffs' respective states; violation of federal sex trafficking law, *18 U.S.C. 1595* and *1591*; violation of federal child pornography law, *18 U.S.C. 2255 et seq.*; wrongful death; survival action; and loss of consortium and society. Against just Meta they allege fraudulent and negligent concealment and misrepresentation.

On Nov. 14, 2023, Judge Rogers partly granted the defendants' dismissal motion, granting dismissal "on Section 230 [Section 230 of the Communications Decency Act (CDA), *47 U.S.C. 230*] grounds as to plaintiffs' products liability design defect claims."

2nd Amended Complaint

On Dec. 15, 2023, the personal injury plaintiffs filed a second amended complaint, asserting claims for negligence, strict liability, fraudulent concealment and misrepresentation, negligent concealment and misrepresentation, negligence per se, violation of states' unfair trade practices/consumer protection laws, violation of *Title 18 U.S. Code Sections 2255* and *2252*, *18 U.S.C. 2255* and *2252*, wrongful death, survival and loss of consortium and society.

Zuckerberg moved to dismiss the claims asserted against him in his personal capacity, which Judge Rogers granted April 15, 2024.

Meta moved to dismiss claims filed against it by multistate attorneys general, the Florida attorney general and the personal injury plaintiffs regarding consumer protection and misrepresentation.

Rulings

Judge Rogers issued an order on Oct. 15, 2024, mostly denying Meta's motion to dismiss the Florida and multistate attorneys general claims and the consumer protection and misrepresentation claims.

On Nov. 7, 2024, Judge Rogers granted Zuckerberg's motion to dismiss the personal injury plaintiffs' claims against him for corporate officer liability.

Meta appealed the Oct. 15 order to the Ninth Circuit.

Meta argued that the District Court's denial of Section 230 immunity is immediately appealable as a collateral order.

TikTok filed joinder briefs in the Ninth Circuit, saying it was joining Meta's opening and reply briefs.

The plaintiffs filed cross-appeals on the District Court's partial grant of Section 230 immunity, maintaining that because the Ninth Circuit lacks jurisdiction over the dispute, all appeals should be dismissed.

On Nov. 22, 2024, the Ninth Circuit issued an order stating that it had decided to process the appeal as a large-party case.

Nov. 15 Order

On Nov. 15, 2024, Judge Rogers granted the motion to dismiss regarding the public nuisance claims under the laws of Illinois, New Jersey, Rhode Island and South Carolina.

Further, after determining "that plaintiffs have adequately alleged special injury," the judge concluded that they "have authority to seek abatement of the nuisance."

9th Circuit Dismissal

On Aug. 10, 2026, the Ninth Circuit dismissed Meta's and TikTok's appeals of the Oct. 15 order, finding that because Section 230 "merely provides a defense to liability-not immunity from suit-we lack appellate jurisdiction to review the district court's rulings on an interlocutory basis."

Further, the Ninth Circuit dismissed the plaintiffs' conditional cross-appeals.

Trial

Back in the District Court, a jury trial commenced Aug. 18.

On Aug. 26, Meta and specified state attorneys general filed a proposed consent judgment.

Mealey's Litigation Procedure - 1st Circuit Affirms Dismissal Of Securities Fraud Case Over Alleged Half-Truths

Mealey's Daily News Update

August 27, 2026

Cite: 2026-9995 Mealey's Daily News Update 1

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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.

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

Apellis, et al's appellee brief 57-260914-003B

Peloton Skirts Revived Investor Suit Over Post-Pandemic Demand

Aug. 27, 2026, 1:10 PM PDT

Summary by Bloomberg AI **AI Generated**

- Peloton Interactive Inc. shed investor allegations that the fitness company misled investors about its bike pricing and demand as the pandemic receded.
- The ruling frees Peloton and former leaders for now from the proposed class action, as the investors didn't adequately allege the level of intent or recklessness to carry securities fraud claims.
- The investors can ask to replead by Sept. 28, after Judge Andrew L. Carter Jr. said the defendants' assertion of innocent intent was the more compelling inference.

Peloton Interactive Inc. shed investor allegations that the fitness company misled investors about its bike pricing and demand as the pandemic receded.

The investors didn't adequately allege the level of intent or recklessness to carry securities fraud claims on a trio of alleged misstatements, Judge Andrew L. Carter Jr. said Thursday.

The ruling, which comes after the Second Circuit revived part of the suit, frees Peloton and former leaders for now from the proposed class action.

Peloton and the former executives simultaneously made detailed and accurate disclosures on the same topics of its inventory levels, demand, and pandemic-related risks – undercutting the investors' theory of intent or recklessness, the US District Court for the Southern District of New York judge said.

And a majority of the allegedly suspicious stock sales the investors pointed to occurred before a since-winnowed class period, weakening arguments about the former executives' motive, Carter said.

Compared to the investors' accusations, the defendants' assertion of innocent intent was the more compelling inference, Carter said – that Peloton believed building its inventory was important to meet increased demand.

The US Court of Appeals for the Second Circuit last year had narrowly reopened the suit, finding that the investors had plausibly pleaded three statements from 2021 as misleading: former Peloton CEO John Foley calling a $400 bike price reduction “absolutely offensive” rather than a defensive move and two disclosures warning that the company “may experience excess inventory levels” as hypothetical risks.

Allegations of excess inventory buildup at this time contradicted those statements, so they shouldn’t have been dismissed at this stage of litigation, according to the circuit’s majority opinion. Judge Jon O. Newman partially dissented, saying that amid all the information Peloton disclosed, a reasonable investor wouldn’t have been misled by any of the statements at issue.

The case centers on whether Peloton misled investors after heightened desire for at-home exercise equipment during Covid-19 lockdowns wound down.

The investors can ask to replead by Sept. 28. Carter previously had dismissed the lawsuit in 2024 without reaching the issue of intent or recklessness to deceive — scienter — because he said the complaint fell short of pleading actionably false or misleading statements.

Grant & Eisenhofer PA is lead counsel for the proposed class. Jenner & Block LLP represents Peloton and the former officers. Neither of these law firms nor Peloton immediately responded to emails seeking comment.

The case is Robeco Cap. Growth Funds SICAV – Robeco Glob. Consumer Trends v. Peloton Interactive Inc. , S.D.N.Y., No. 1:21-cv-09582, 8/27/26 .

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Walmart settles US government's opioid lawsuit

reuters.com/world/walmart-settles-us-governments-opioid-lawsuit-justice-department-says-2026-08-28

Aug 28 (Reuters) - Walmart (WMT.O), opens new tab has settled a U.S. government lawsuit accusing the largest U.S. retailer of fueling a nationwide opioid epidemic by unlawfully dispensing prescriptions from its pharmacies.

The U.S. Department of Justice and Walmart confirmed the settlement in separate statements on Friday without disclosing the terms.

In a complaint filed in 2020, the Justice Department accused Bentonville, Arkansas-based Walmart of repeatedly violating the federal Controlled Substances Act since 2013. The department said at the time that Walmart could face billions of dollars in civil penalties.

More than 905,000 people in the U.S. died from opioid overdoses between 1999 and 2025, according to the U.S. Centers for Disease Control and Prevention. Annual deaths began declining after 2022, the agency said.

"The department is pleased to have reached a settlement with Walmart resolving allegations that its pharmacies failed to comply with their obligations under the Controlled Substances Act in dispensing opioids and other controlled substances," a Justice Department spokesperson said. Walmart said in a statement: "We are pleased to resolve this matter and will continue supporting the exceptional work our pharmacists do every day to provide outstanding patient care." A joint stipulation dismissing the case was filed on Thursday in the federal court in Wilmington, Delaware. Walmart shares rose 0.5% in morning trading.

The lawsuit was one of the most significant Justice Department cases against a single company over the opioid epidemic.

Other companies targeted over opioids included Purdue Pharma, which pleaded guilty to criminal charges in 2020 related to its painkiller OxyContin after filing for bankruptcy protection, and the drug wholesaler Cencora (COR.N), opens new tab, formerly known as AmerisourceBergen.

In March 2024, U.S. District Judge Colm Connolly narrowed the Walmart case, dismissing claims that Walmart failed to report suspicious prescriptions to the U.S. Drug Enforcement Administration, and that Walmart pharmacists failed to document "red flags" associated with prescriptions.

Connolly let the government pursue a claim that pharmacists dispensed prescriptions that Walmart compliance personnel knew were invalid. A fourth claim, that pharmacists dispensed prescriptions they knew were invalid, also remained pending.

In 2022, Walmart agreed to pay $3.1 billion to settle thousands of lawsuits by state and local governments over its pharmacies' role in the opioid crisis. CVS (CVS.N), opens new tab and Walgreens reached similar, larger settlements.

Securities

Silver Lake Deal Case Hinges on Conflicts, Process Disclosures

Aug. 27, 2026, 12:42 PM PDT

Summary by Bloomberg AI AI Generated

- Lawyers for Silver Lake defended its $1.7 billion Zuora Inc. acquisition against a court case alleging lackluster efforts to manage conflicts of interest between the private equity giant and the tech company's founder.
- The lawsuit says the transaction deserves elevated scrutiny after Silver Lake got insider tips from an affiliate on the Zuora board and investors were misled into voting for it.
- A lawyer for the hedge fund leading the Zuora litigation suggested Silver Lake could have found a "cleaner" way to negotiate than relying on a managing partner whose role on the cybersecurity firm's board created significant conflicts.

Lawyers for Silver Lake defended its $1.7 billion Zuora Inc. acquisition Thursday against a court case alleging lackluster efforts to manage conflicts of interest between the private equity giant and the tech company's founder.

They squared off during a 90-minute hearing in Delaware's Chancery Court against shareholder attorneys leading the legal challenge, a proposed class action targeting a deal that also brought on Zuora founder Tien Tzuo as a co-investor.

The lawsuit says the transaction deserves elevated scrutiny after Silver Lake got insider tips from an affiliate on the Zuora board, Tzuo hedged with his promise to allow a neutral sale process, and investors were misled into voting for it.

The $10-per-share buyout last year was part of a spree that has made Silver Lake one of the world's most closely watched dealmakers and a frequent flier in Delaware's business courts. The global investment giant has played a central role recently in a rash of high-profile, politically charged transactions, including heading the consortium managing TikTok's US operations and partnering with a Saudi sovereign fund to take Electronic Arts Inc. private for $55 billion.

The corporate cases facing Silver Lake include a sprawling legal battle against billionaire activist investor Carl Icahn and dozens of hedge funds over the $25 billion buyout of Ari Emanuel's Endeavor Group Holdings Inc., parent company of WWE, UFC, and a top Hollywood talent agency.

Thomas James, a lawyer for the hedge fund leading the Zuora litigation, alluded to those rarefied M&A backrooms Thursday when he suggested Silver Lake could have found a "cleaner" way to negotiate than relying on a managing partner whose role on the cybersecurity firm's board created significant conflicts.

"I don't purport to know how things actually work," but "I'm sure there are plenty of folks at Silver Lake who are capable of communicating with bidders on behalf of the entity," James said in court. "Maybe that's an overly simplistic view of the world."

Deal Protections

That board member, Joseph Osnoss, was carrying out specific negotiating instructions dictated by the Zuora transaction committee, not freelancing on behalf of the private equity firm, said Laura Lin, an attorney for Tzuo, Osnoss, and Silver Lake.

She sought to parry allegations that Tzuo "equivocated" with his pledge to respect the committee's independence and let minority investors vote on the sale, two measures that can exempt deals raising controlling stockholder conflicts of interest from the special legal scrutiny they otherwise face. James had argued the commitments have to be "irrevocable" from the outset, not subject to various conditions.

But when Tzuo said he'd adopt the deal protections toward any sale that brought him on as a co-investor or surfaced other conflicts, he was simply echoing the legal standard, not trying to smuggle in caveats, according to Lin.

'Operationalize'

"I think it would be a pretty perverse result and send a strange signal to controllers if it's held against him," she said. "They keep adding adjectives into the mix. They're saying it's hedged, they're saying it's wishy-washy. It's not."

The presiding judge, Vice Chancellor J. Travis Laster, pressed both sides repeatedly on how to "operationalize" the standards of conduct and disclosure they were promoting into concrete, across-the-board legal rules that would offer meaningful guidance to corporate planners negotiating similar deals in the future.

The lawyers struggled at times to answer, particularly when it came to allegations that concerned both "what did this guy actually do and whether the information was disclosed" to investors, as James put it.

"There appears to be a little bit of conceptual blurring," James said.

The hedge fund, Meteora Capital LLC, is represented by Johnson Van Kwawegen LLP and Equity Litigation Group LLP. Silver Lake, Tzuo, and Osnoss are represented by Richards, Layton & Finger PA and Simpson Thacher & Bartlett LLP.

The case is Meteora Cap. LLC v. Tzuo, Del. Ch., No. 2026-0120, oral argument held 8/27/26.

California Brief

Texas' Billion-Dollar Side Deal Ranks High in Meta Settlement

Aug. 27, 2026, 11:15 AM PDT

A week before 47 states reached a $17 billion mid-trial settlement with Meta Platforms Inc. over claims it caused social media addiction in young users, Texas was presented with an offer to join them.

It passed.

Instead, Texas worked up a $1.05 billion side deal with Meta that maxes out at $1.335 billion if Alphabet's YouTube and TikTok agree to the same terms and safety changes the Facebook and Instagram parent accepted in the multistate settlement Wednesday.

Are Social Media Apps Like
Bloomberg Law

Watch on

WATCH: Is social media Big Tobacco 2.0? A look at the lawsuits against big tech over teens' mental health.

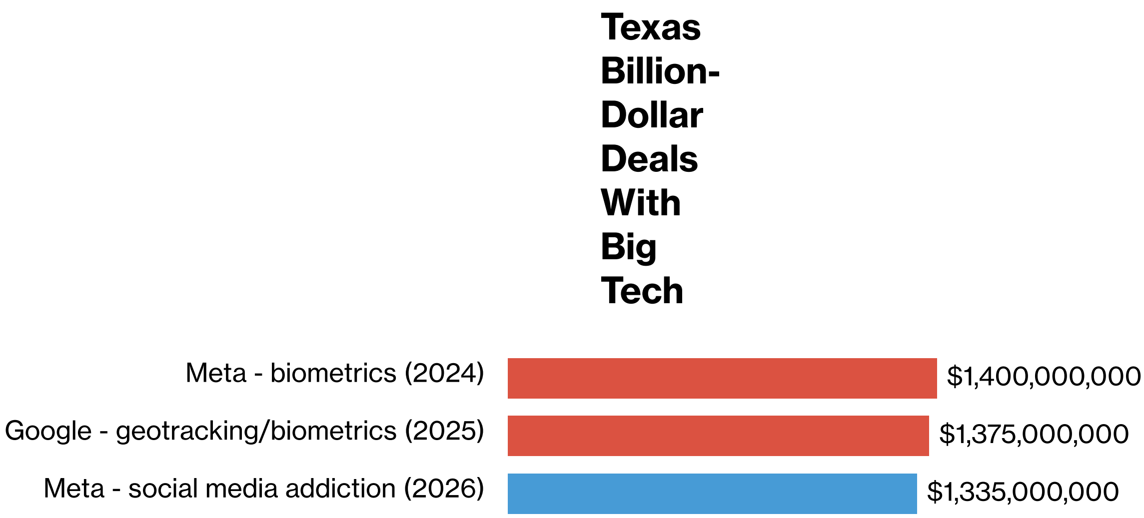
Details of the Texas accord were confirmed in an Aug. 25 email exchange between Brent Webster, first assistant to Texas Attorney General Ken Paxton (R), and Meta chief legal officer C.J. Mahoney, obtained by Bloomberg Law through a public records request.

The head-turning deal gives Texas a payout larger than every state but California, which will get up to $2.2 billion but put in far more work than Texas in helping to orchestrate the 29-state federal lawsuit. Texas never joined that case, never set foot in Oakland for the trial this month, and never sued Meta on its own.

"The deal within the multistate agreement was not as good for Texas as we wanted," Webster told Bloomberg Law.

Texas' share of the settlement would've been "significantly less" than what it got on its own, he said, declining to reveal the proposed amount.

Meta abruptly settled during the multi-state trial that started Aug. 18 in the Northern District of California. It also walked away from another trial in a case brought separately by Tennessee, agreeing to pay an amount of up to $739 million in the multistate deal.



Note: Meta's $1.05 billion social media addiction deal maxes at $1.335 billion if certain terms are met.

Bloomberg Law

New Mexico, which recently scored a more than $900 million judgment against Meta in a similar action in state court, didn't join the settlement.

Neither did Florida, whose Attorney General James Uthmeier (R) called the amount "peanuts" in post on X. He committed to taking Meta to trial in active litigation against the company.

No state other than Texas negotiated a deal outside of the settlement announced Wednesday.

"There's a little bit of a benefit to being one of the last states to move," Webster said. "When you take on someone like Meta, you have to be very strategic. We could have brought a really good case, but the value of the settlement we thought could have an immediate impact on Texas."

Billion-Dollar Tech Settlements

Texas had an advantage when it decided to go to the negotiating table alone with Meta — it's done it before.

In July 2024, Meta resolved facial recognition claims brought by Paxton's office with a $1.4 billion settlement — the largest ever obtained from an action brought by a single state. The deal was reached six months after a state appeals court ruled Texas could depose Meta founder Mark Zuckerberg. The company settled with the trial days away.

Ten months later, Texas negotiated a $1.375 billion resolution with Google to end a pair of privacy lawsuits.

Both settlements resulted in big payouts for the outside counsel Paxton's office brought in to litigate the matters. Keller Postman LLP and McKool Smith took $136 million of the cut in the Meta case, and Norton Rose Fulbright LLP got $156 million for the Google deal.

In May, Texas sued Meta again for misleading consumers over privacy protections for the messaging app WhatsApp — circling back to Keller Postman in what could be another big payday for the firm if Texas gets a favorable judgment.

TikTok Next

Conversely, proceeds in the social media addiction settlement are the state's alone because it handled it with in-house lawyers in the attorney general's office. Webster said that Paxton personally negotiated with Meta executives—taking a break from the campaign trail where he's locked in a tight race against state Rep. James Talarico (D) for a US Senate seat.

Kevin Martin, head of Meta's global policy, thanked Paxton "for his leadership in protecting Texas teens and making this standard possible," in a statement.

With the Meta settlement off the table, it frees the Texas AG's office to focus on another big target: TikTok.

Paxton claims the video app deceptively marketed its product as safe for minors and has tapped decorated Texas trial lawyer Tony Buzbee to present the case to a jury. The trial is set for Oct. 12 in Travis County.

TikTok didn't respond to a message asking if it expects the trial to go forward.

"For Texas, our main priority is going after TikTok," Webster said. "We see TikTok as the biggest problem."

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9th Circ. Wage Ruling Shows Arbitration Pacts Are Still Useful

By **Benjamin Runge** (August 28, 2026, 1:40 PM EDT)

Benjamin Runge

For years, employers in California have faced real uncertainty about whether the arbitration agreements they ask employees to sign will hold up. Courts in California scrutinize arbitration agreements closely, and a single unfavorable ruling can push a wage and hour dispute that parties agreed to be private and streamlined right back into court, often as a class action.

Further, the recoverable damages in a single-plaintiff action usually have the potential of being much greater in court where the case is decided by an unpredictable jury, as opposed to in arbitration, where an award is issued by an experienced neutral.

A June 23 **decision** from the U.S. Court of Appeals for the Ninth Circuit, Cocom v. ABM Aviation Inc., is an encouraging sign that carefully written arbitration agreements will be enforced.

The Crux of Cocom

ABM Aviation provides janitorial services at airports, and a former janitor filed a proposed class action claiming wage and hour violations. When he was hired, he signed a mutual arbitration agreement promising to resolve employment disputes through arbitration rather than in court.

ABM asked the U.S. District Court for the Central District of California to enforce that promise, but the trial court denied ABM's motion, ruling the agreement unconscionable — essentially, too one-sided and too broad to enforce — largely because it read the agreement as covering virtually any dispute the employee might ever have, not just work-related disputes.

The Ninth Circuit reversed. Reading the agreement sensibly and as a whole, the court concluded it covered employment-related disputes — the kind of claims that naturally arise between an employee and an employer. Because the agreement was reasonably limited in that way, it was enforceable.

Why It Matters

The trial court in Cocom leaned heavily on a 2024 Second Appellate District decision, Cook v. University of Southern California, which had refused to enforce an overbroad arbitration agreement. After Cook, many employees' lawyers have argued that similar agreements everywhere should meet the same fate.

Cocom pushes back on that idea. It confirms that Cook turned on its own unique facts — an agreement a court read as forcing an employee to arbitrate almost any dispute for the rest of her life, even a claim unrelated to her job — and that employment-focused agreements are distinguishable.

Notably, the Ninth Circuit relied on a March Fifth Appellate District decision, Ayala-Ventura v. Superior Court, which reached the same conclusion. There, another janitorial services employer's arbitration agreement was upheld. The court reasoned that, given the nature of the employer's business, it was difficult to imagine sweeping claims unrelated to employment ever arising, so the agreement was not unfairly broad.

The lesson from both cases is that context matters: Courts should look at what the company actually does and read the agreement in a way that makes sense in light of the business and relationship between the parties.

Why Compelling Arbitration Is Worth the Fight

For many employers, keeping disputes in arbitration is not about avoiding the allegations — the same claims, rights and remedies are still on the table. It is about a better forum. Arbitration is typically:

- More predictable in scope, because a valid class action waiver can keep a single employee's dispute from ballooning into a companywide class action, or an employee from recovering exorbitant damages based on alleged emotional distress;
- Decided by a neutral, experienced decision-maker with real expertise in employment issues, as opposed to a jury that can render a decision based on emotion;
- Private and confidential, which keeps sensitive personnel and business matters out of the public record; and
- Faster than court litigation with streamlined procedures.

Practical Takeaways for Employers and Their Counsel

Cocom and Ayala-Ventura are good news, but they are not a reason to relax. The agreements that survived did so because they were written and read as employment-focused. To put your company in the best position:

- Tie the agreement clearly to employment-related disputes, and say so plainly at the outset;
- Make the obligations mutual, so both sides agree to arbitrate;
- Include a severability clause, so that if one term is problematic a court can cut it rather than throw out the whole agreement; and
- Revisit your agreements periodically, because the case law is evolving in employers' favor, and your documents should keep pace.

Additionally, attorneys who are seeking to compel arbitration should be mindful when filing a motion to compel arbitration to ensure that they are filing the motion with the requisite evidentiary support to establish that the employee did in fact sign the arbitration agreement. Outlining the onboarding process and measures the employer takes to have employees sign arbitration agreements has become increasingly important as arbitration agreements are often signed electronically.

If the employee disputes signing the agreement despite a clearly outlined procedure with supporting declarations, counsel should ask the court to hold an evidentiary hearing if it is inclined to deny a motion to compel arbitration on the basis that an arbitration agreement was not formed.

Additionally, if your motion to compel arbitration is denied, be sure to keep an eye out for case law that may be published that could support a motion for reconsideration or renewal.

The Bottom Line

The last few years have made some employers wonder whether workplace arbitration agreements were still worth the paper they were printed on. Cocom v. ABM Aviation, together with Ayala-Ventura, is a strong signal that the answer is yes.

Thoughtfully drafted, employment-focused agreements remain a powerful and enforceable tool. If it has been a while since anyone reviewed your company's arbitration program, now is a good time to take a fresh look.

Benjamin Runge is a partner at Thompson Coburn LLP.

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Peloton Again Escapes Investors' Post-COVID Sales Suit

By **Jessica Corso**

Law360 (August 27, 2026, 8:32 PM EDT) -- A New York federal judge Thursday threw out a lawsuit accusing Peloton of misleading investors about the drop in demand for its exercise bikes following the early days of the COVID-19 pandemic, ruling that the prospective class hadn't proven that the company intentionally misled shareholders.

U.S. District Judge Andrew Carter dismissed the lawsuit a second time, stating that Peloton investors had not proven scienter when it came to the company's statements about the risks of holding too much inventory.

The company and its management team warned shareholders about unpredictable demand for its products, the judge said. He also said that corporate executives disclosed that Peloton was stocking more equipment than needed in order to improve delivery times and in anticipation of a possible holiday-related spike in sales.

"The fact that defendants continued building inventory during the class period while also disclosing precise dollar and inventory amounts in SEC filings undermines any inference that Peloton believed it had excess inventory," the judge ruled.

He dismissed the case while allowing investors to potentially file a third amended complaint, if they can first show how their new complaint would cure any deficiencies in the now-dismissed complaint.

"Although the court declines to grant plaintiffs leave to amend, plaintiffs may file a motion for leave to file a third amended complaint identifying any amendments that may cure the deficiencies here," Judge Carter said.

Peloton investors sued in 2022, arguing that the company surprised investors in November 2021 by announcing it had revised its full-year revenue guidance from $5.4 billion to a range of between $4.4 billion to $4.8 billion "due to declining demand as its customers were increasingly free to exercise outside the home."

On the news, Peloton's shares declined by 35%, falling $30.42 per share in one day, investors alleged.

Judge Carter **first dismissed the case** in October 2024, ruling that the alleged corporate misstatements were either inactionable or corporate puffery and that the plaintiffs had not sufficiently shown facts demonstrating that the challenged statements were false when made.

A divided Second Circuit then **partially revived the case** last year, though it did not touch on scienter when ruling that three of the company's statements related to inventory levels and a price cut may have been misleading.

The majority said that the district court "may consider whether the plaintiffs have plausibly alleged scienter with respect to Foley's statement" on remand.

And in an opinion that partially dissented from the majority's ruling, U.S. Circuit Judge Jon Newman said that he felt it was "highly unlikely that the plaintiffs' pleading of scienter can survive the defendants' motion to dismiss."

Neither Peloton nor attorneys for the investors immediately responded to a request for comment Thursday.

Peloton is represented by Stephen Ascher, Joanna Wright and Anna Windemuth of Jenner & Block LLP.

The investors are represented by Karin Fisch, Cecilia Stein and Mica Cocco of Grant & Eisenhofer PA and Hannah Ross, Avi Josefson, Kelly Hogan and Jonathan Uslaner of Bernstein Litowitz Berger & Grossmann LLP.

The case is City of Hialeah Employees Retirement System v. Peloton Interactive Inc. et al., case number 1:21-cv-09582, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Patrick Reagan.

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CVS Must Face Investor Claims Over AI Use Omissions

By **Rae Ann Varona**

Law360 (August 27, 2026, 10:24 PM EDT) -- A New York federal judge trimmed a proposed investor class action Thursday that alleges CVS Health Corp. concealed that its profitability was largely driven by its use of artificial intelligence, allowing the case to proceed on "actionable half-truths" that the company misrepresented the effects of its AI use.

U.S. District Judge Margaret M. Garnett partially granted CVS' motion to dismiss an amended consolidated complaint that claimed CVS deployed "illicit" AI algorithms to deny valid medical claims en masse and then allegedly lied to investors by attributing financial success to other factors.

Judge Garnett said Thursday that CVS' statements about complying with Centers for Medicare and Medicaid Services regulations and using AI responsibly "are not actionable misstatements."

The plaintiff investors also did not allege scienter in relation to the use of "stale data" to back the company's financial guidance for 2024, Judge Garnett said.

But in partially denying CVS' dismissal bid, Judge Garnett said that omissions about CVS' use of AI tools are "actionable half-truths."

The plaintiffs had alleged CVS and members of its brass misrepresented the effect of the company's AI use by, for instance, failing to disclose that its use of AI tools to deny Medicare Advantage prior authorization claims artificially inflated performance and that it was phasing out the tool.

"As alleged, CVS' use of prior authorization requirements and AI programs to automate claims reviews yielded a whopping $1.1 billion in cost savings — significant even in the context of a large company like CVS," Judge Garnett wrote. "Nevertheless, in numerous filings and public comments, defendants identified specific factors as the primary drivers of its success."

Judge Garnett said that at the current motion to dismiss stage of the suit, the plaintiffs' allegations "properly plead actionable half-truths, based on omissions of material information about CVS' past use of AI tools for prior authorization review, the financial impact of those tools, and the phasing out of their use."

The **lead plaintiffs** in the suit are the Louisiana Sheriffs' Pension & Relief Fund, Southeastern Pennsylvania Transportation Authority and City of Miami Fire Fighters' and Police Officers' Retirement Trust.

The suit was initially lodged in July 2024, but CVS' motion was to toss an amended consolidated complaint filed in March 2025 that alleges CVS, as "one of the nation's largest Medicare Advantage providers," deployed "illicit" AI algorithms to implement the company's "secret sauce" of "mass denials of valid medical claims."

According to the complaint, the algorithms allowed CVS to "broadly deny" prior authorization requests for medically required post-acute care for the elderly.

CVS allegedly lied to investors by misleadingly attributing the company's financial success to other factors.

The plaintiffs alleged that when CMS issued regulations in 2023 that threatened to put an end to CVS' "widespread denials," CVS continued to portray strong financial performance, relying on "stale data" from 2020 for its prospective financial guidance for 2024.

In trimming the suit Thursday, Judge Garnett said that the plaintiffs had raised "piecemeal arguments" that CVS' use of AI conflicted with Medicare regulations.

"These arguments cannot withstand scrutiny," Judge Garnett wrote.

Among the plaintiffs' allegations was that CVS forced medical staff to "rubber-stamp" AI-recommended denials.

"But plaintiffs nowhere allege that the medical directors then proceeded to deny all these requests, nor that medical directors could not grant requests or were pressured to deny requests for medically necessary care," Judge Garnett said.

As for CVS' alleged use of stale data to back statements that the 2024 guidance accounted for trends in the rate Medicare Advantage members use medical services, Judge Garnett said that the plaintiffs failed to show scienter because they did not adequately allege that former CEO Karen S. Lynch and Chief Financial Officer Thomas Cowhey "had actual knowledge or recklessly disregarded that the data was stale."

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

The plaintiffs are represented by Salvatore J. Graziano, Katie M. Sinderson and Jonathan G. D'Errico of Bernstein Litowitz Berger & Grossmann LLP, Joseph A. Fonti, Erin H. Woods, George N. Bauer, William E. Freeland and Evan A. Kubota of Bleichmar Fonti & Auld LLP.Lauren M. Kofke and Emma S. Stein of Wachtell Lipton Rosen & Katz.

Louisiana Sheriffs' Pension & Relief Fund and City of Miami Firefighters' & Police Officers' Retirement Trust are additionally represented by Robert D. Klausner and Stuart A. Kaufman of Klausner Kaufman Jensen & Levinson.

Southeastern Pennsylvania Transportation Authority is additionally represented by John A. Kehoe of Kehoe Law Firm PC.

CVS is represented by Lauren M. Kofke and Emma S. Stein of Wachtell Lipton Rosen & Katz.

The case is Louisiana Sheriffs' Pension and Relief Fund et al. v. CVS Health Corp. et al., case number 1:24-cv-05303, in the U.S. District Court for the Southern District of New York.

--Editing by Bruce Goldman.

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PBMs Hammer Opioid Judge In Last-Ditch Gambit At 6th Circ.

By **Jeff Overley**

Law360 (August 27, 2026, 11:26 PM EDT) -- An Ohio federal judge knowingly flouted a Sixth Circuit rebuke by forcing two of the largest remaining defendants in multidistrict opioid litigation to either "settle for enormous sums or litigate for years hundreds of cases," says a Thursday petition urging the appeals court to intervene.

The **petition** from pharmacy benefit managers OptumRx Inc. and Express Scripts Inc. lambasts U.S. District Judge Dan Aaron Polster, who has supervised the historic MDL since its inception in 2017, for recently allowing a tenfold spike in the number of entities suing them over business activities that allegedly worsened the opioid crisis.

Judge Polster's leeway for 800 plaintiffs to belatedly beef up their legal claims has close parallels with amendments he allowed — and that the Sixth Circuit erased — in earlier MDL cases targeting retail pharmacies, Optum and Express Scripts say. As in the earlier dispute, the judge didn't conduct case-specific analysis that's required by the Federal Rules of Civil Procedure, Thursday's petition argues.

"This is not the first time that the district court has ignored these bedrock requirements in this MDL," the companies contend, referring to the circuit's **conclusion in 2020** that Judge Polster "was plainly incorrect as a matter of law" when he said complaints could be belatedly amended.

According to Optum and Express Scripts, the main distinction between the past and present controversies is that the earlier situation only involved two cases, a tiny fraction of those implicated by Judge Polster's ruling last month.

"Notwithstanding this court's decision in [2020], the district court committed the same error again — this time on a much larger scale," the two companies, which administer prescription drug benefits, argue.

Judge Polster repeated that mistake despite being fully aware he was doing so, Optum and Express Scripts add. They call attention to a February hearing at which, according to a transcript, the jurist stated, "Everyone knows or should have known that I'm not going to allow 800 amendments adding the PBMs, nor am I going to allow zero. Okay? And if I did one or the other, the Sixth Circuit would reverse me in a heartbeat."

But Judge Polster ultimately did allow 800 entities, including municipalities and Native American tribes, in 700 cases to amend complaints with claims against OptumRx Inc. and Express Scripts Inc., according to the petition.

"Remarkably, the district court recognized that its departure from normal procedure was legally wrong," Optum and Express Scripts assert in their petition for mandamus, which is a rare form of appellate command for a lower court to do something — here, for Judge Polster to deny permission for the amendments.

Optum and Express Scripts are divisions of health insurance giants UnitedHealth Group Inc. and The Cigna Group, respectively. They're accused of extensive wrongdoing, such as conspiring with opioid manufacturers to disseminate deceptive materials and trading favorable coverage of prescription narcotics for millions of dollars in rebates.

States, local governments, tribes and other entities — via opioid cases inside and outside the MDL — have struck settlements collectively worth approximately $60 billion with an array of companies involved in prescription narcotic sales, according to a public database maintained by attorney Christine Minhee, who has long tracked payouts in opioid cases. Optum and Express Scripts are among the largest companies yet to reach deals.

Minhee, whose database was cited in the Sixth Circuit petition, told Law360 on Thursday that Judge Polster's disputed ruling "front-burnered the possibility of a national PBM accord." The companies, she said, are now "crying foul because they feel strong-armed and forced to the table by Judge Polster's mastery of the relative flexibility of the MDL machinery."

With every other national opioid settlement thus far, Minhee said, there was "a critical mass of MDL claims that made global peace a no-brainer." Thursday's petition referenced that dynamic, saying plaintiffs began trying to "exert settlement pressure on the PBMs" by bulking up their legal claims after the companies "refused to enter broad settlements."

If the PBMs prevail at the Sixth Circuit, it likely would "deflate the possibility of a straightforward national accord being reached with PBMs" anytime soon, Minhee said, adding that such a delay "would go against most folks' desire to get the last remaining stragglers wrapped up and to get all this over with."

Since the MDL commenced, various defendants have called for Sixth Circuit intervention on numerous occasions, sometimes because of perceived unfairness on the part of Judge Polster. While the appeals courts has **overruled** the judge multiple times, it has also **swatted down** accusations of bias, **rejected grievances** involving settlement pressure and permitted the judge to **use unorthodox methods** in the massive MDL.

The challenge from Optum and Express Scripts comes one month after Judge Polster granted leave to amend; that move, according to the companies, didn't comport with Rules 15 and 16 of the Federal Rules of Civil Procedure. Those rules demand that judges examine the substance of proposed amendments and find "good cause" for them, respectively, the PBMs say.

The companies also suggest the amendments conflict with a 2022 order in which the Judicial Panel on Multidistrict Litigation **shut the MDL to new cases**.

In a separate **motion** Thursday at the Sixth Circuit, Optum and Express Scripts also seek expedited consideration of their petition; among several reasons, they cite impending deadlines related to hundreds of new complaints, saying "the time and resources dedicated to that process cannot be recouped."

The Sixth Circuit's rules provide that the court can simply deny a mandamus petition or instead rule on it after requesting and receiving a response from Judge Polster.

Lead plaintiffs attorneys in the MDL didn't immediately respond to Law360's requests for comment Thursday.

Optum and its affiliates are represented by Robert J. Giuffra Jr., Jeffrey T. Scott and Matthew J. Porpora of Sullivan & Cromwell LLP, and Brian D. Boone, D. Andrew Hatchett and Matthew P. Hooker of Alston & Bird LLP.

Express Scripts and its affiliates are represented by Michael J. Lyle and Jonathan G. Cooper of Quinn Emanuel Urquhart & Sullivan LLP.

The plaintiffs' lead attorneys include Jayne Conroy of Simmons Hanly Conroy LLP, Joseph F. Rice of Motley Rice LLC and Paul T. Farrell Jr. of Farrell & Fuller LLC.

The mandamus case is In re: OptumRx Inc. et al., case number 26-3780, in the U.S. Court of Appeals for the Sixth Circuit.

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

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Class Actions At The Circuit Courts: August Lessons

By **Mitchell Engel** (August 27, 2026, 1:21 PM EDT)

*This article is part of a **monthly column** that highlights federal appellate decisions with takeaways for attorneys at various stages of class action litigation. In this installment, I discuss seven recent rulings from cases involving Class Action Fairness Act jurisdiction, appellate jurisdiction, attorney fees and employment rights.*

Mitchell Engel

In June, federal appellate courts published decisions in class certification cases that touched on:

- Whether the CAFA removal deadline can be equitably tolled;
- Whether a named plaintiff can appeal an adverse class certification decision after he settles his individual case;
- Whether an appellate court can hear a defendant's cross-appeal to a class certification decision if it reverses the order dismissing a plaintiff's case;
- How much detail a district court class certification order must have to merit Rule 23(f) interlocutory review;
- When a lodestar multiplier is appropriate in resolving disputed fee disputes;
- Whether class certification is appropriate if the substantive law changes in the middle of the class definition such that a different law applies to different class members; and
- Whether CAFA's local event or occurrence is jurisdictional or subject to the 30-day removal deadline.

This article provides a summary and overview of these decisions, discusses the determining factors in each case, and identifies key highlights for class action practitioners to keep in mind.

Ewalt v. GateHouse Media Ohio Holdings II

In Ewalt v. GateHouse Media Ohio Holdings II Inc., the U.S. Court of Appeals for the Sixth Circuit ruled on a procedurally unusual case involving the timing of CAFA removal jurisdiction. The case was originally filed as a putative class action in Ohio state court in 2019. GateHouse timely removed the case to federal court under CAFA jurisdiction.[1]

Years later, the U.S. District Court for the Southern District of Ohio denied the plaintiffs' motion for class certification. In the same order, the district court remanded the case to state court, concluding the district court could no longer exercise jurisdiction over the case following the denial of class certification.

The plaintiffs then moved to certify a class in state court. GateHouse again sought to remove the case. On Sept. 17, 2025, the Southern District of Ohio held that the 30-day removal period was equitably tolled and therefore removal was proper.

On May 22, 2026, the Sixth Circuit reversed. There were two key issues addressed on appeal. First, the Sixth Circuit made clear that the district court erred when — after denying class certification — it remanded the case to state court, because a denial of class certification does not divest federal courts of CAFA jurisdiction, as jurisdiction is measured at the time an action is commenced.

Second, the Sixth Circuit held that the Southern District of Ohio erred when it held that the subsequent removal was proper and reversed with instructions to again remand the case to state court. The Sixth Circuit held that the second removal took place long after the initial 30-day removal deadline had expired.

It explained that the "removal clock is unforgiving and cannot be equitably tolled," and that courts cannot create "equitable case-specific exceptions."

The Sixth Circuit issued a final order on Aug. 5 reversing the district court and instructing it to remand the case back to state court.

Mebane v. GKN Driveline North America

In Mebane v. GKN Driveline North America Inc., in 2018, named plaintiff James Mebane alleged that GKN violated wage and hour laws by having a policy of rounding employees' time entries and automatically deducting meal breaks from employees' time without regard to whether employees took their break or continued working.[2]

The U.S. District Court for the Middle District of North Carolina certified a class but then subsequently decertified the class because if found that (1) it would require individual inquiries to determine whether and to what extent the rounding affected each class member, and (2) there was evidence not all employees worked during the automatically deducted 30-minute meal breaks. Mebane then settled his individual claim and appealed the order decertifying the class.

On June 2, 2026, the U.S. Court of Appeals for the Fourth Circuit **held** that a named plaintiff that settles their individual case does not have Article III standing to appeal an adverse class certification decision.

The key highlight is that it held that when a putative class plaintiff has voluntarily settled or dismissed their individual substantive claims, that they no longer possess a sufficiently concrete interest in the certification question to satisfy the case or controversy requirement of Article III.

Jonathan R. v. Morrisey

In 2019 in Jonathan R. v. Morrisey, a class of West Virginia foster children alleged numerous constitutional violations, including abuse, neglect, inadequate foster care placement rates, understaffing, lengthy delays in case assessments, overreliance on institutional care, and wide-ranging failures to supply in-home physical and mental health services.[3]

The U.S. District Court for the Southern District of West Virginia dismissed the case for lack of standing. The plaintiffs appealed and the defendant cross-appealed and requested class decertification.

On June 8, 2026, the Fourth Circuit reversed the dismissal on standing grounds. The key class certification highlight was that it then held that because the case had been revived by its reversal of the district court's order dismissing the case, that there was no longer an appealable final judgment.

The appeal of the order certifying the class was therefore interlocutory, but the defendant's appeal was well beyond the 14-day time limit of Rule 23(f), and thus the Fourth Circuit did not have jurisdiction to hear it.

U.S. Circuit Judge Allison J. Rushing concurred in part and dissented in part. She would have held that the Fourth Circuit had final order jurisdiction to resolve the conditional cross-appeal of the class certification order, and she would have exercised discretion to address the defendant's arguments.

Judge Rushing reasoned that the Fourth Circuit's decision to reverse on one issue did not, mid-opinion, render the remainder of the appeal interlocutory and unreviewable. She would have held that the appellate court still had jurisdiction over an appeal from a final judgment, and that this appeal permitted review of all interlocutory rulings that led up to — and merged into — that judgment.

She noted that Rule 23(f) was intended to expand the opportunity for appellate review of class certification decisions beyond those available for other interlocutory decisions. She also noted that judicial economy, the centrality of certification to the litigation, and the substantial weaknesses the defendant identified in the certification decision counseled in favor of addressing class certification now.

State of Maryland v. Palmer

In State of Maryland v. Palmer — a suit brought in 2022 — U.S. Magistrate Judge Charles D. Austin of the U.S. District Court for the District of Maryland certified a Rule 23(b)(3) damages class of individuals detained at the Baltimore Central Booking and Intake Center. The class alleged that the state had a long-standing practice of unconstitutionally holding arrestees at Baltimore Central Booking and Intake Center for unreasonable periods of time after a commissioner or court ordered their release.[4]

The court refused, however, to certify a Rule 23(b)(2) injunctive relief class because nothing indicated all members of the class were likely to be detained again. The district court order had no analysis — it read: "it is hereby ordered that the Motion for Class Certification is granted in part and denied in part. Details on the class definitions, class representation, and further scheduling will be set forth at the time of the memorandum opinion," but no memorandum opinion had yet been filed.

On June 8, 2026, the Fourth Circuit denied a petition for interlocutory appeal without substantive analysis.

Judge Rushing dissented. She voted to accept the petition because she found the District of Maryland's order did not comply with Rule 23(c)(1)(B)'s requirement that "[a]n order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)" and that, therefore, the order was "manifestly erroneous."

Gelis v. BMW of North America

In 2017 in Gelis v. BMW of North America LLC, a class of automobile owners alleged that BMW knowingly manufactured and sold vehicles with defective engines. The parties negotiated a settlement but could not agree on the amount of attorney fees.[5]

The parties agreed to submit the issue to U.S. District Court for the District of New Jersey for an award of reasonable attorney fees to be paid separate and apart by BMW. The parties resolved the fee issue with a high-low provision in which BMW agreed not to object to an award of attorney fees up to $1.5 million, and class counsel would not seek an award exceeding $3.7 million.

Before the district court, class counsel sought $3.7 million in attorney fees, the maximum allowable amount under the high-low provision. The district court approved the settlement.

To resolve the fee dispute, the district court employed the lodestar method, found class counsel had reasonably expended 2,713 hours, which it then multiplied by an average rate of $716 per hour to produce a baseline lodestar amount of $1.9 million. The district court then applied a lodestar multiplier that increased the award to $3.7 million.

On June 11, 2026, the U.S. Court of Appeals for the Third Circuit **reversed** and vacated on two grounds.

The first key highlight is that it held that it is not appropriate to use a lodestar multiplier when (1) the fees are awarded under a contractual fee-shifting provision, (2) where the settlement agreement calls for the award of reasonable attorney fees as defined by federal law, and (3) where the district court employs the lodestar method.

The second key highlight is that it held that the district court abused its discretion when determining the baseline lodestar amount when:

- A "startling 80%" of the work was performed by partners;
- 262 hours were spent drafting complaints, 222 of which were claimed by partners, as well as 100 hours for prelitigation investigation;
- Class counsel spent 100 hours (nearly all by partners) reviewing BMW's document production;
- Class counsel spent 279 hours (again almost all by partners) meeting and conferring and preparing for court conferences; and
- Class counsel spent 172 hours for negotiation and settlement, including 97 hours for sending three partners to mediation.

Overby v. Anheuser-Busch

In 2021 in Overby v. Anheuser-Busch LLC, a class of Anheuser-Busch employees alleged that Anheuser-Busch failed to compensate employees for a host of pre- and post-shift work, including donning/doffing personal protective equipment, complying with COVID-19 health protocols, partaking in shift handoff meetings, and securing and putting away tools.

On March 27, 2025, U.S. District Judge Arenda L. Wright Allen of the U.S. District Court for the Eastern District of Virginia certified the class.[6]

On June 15, 2026, the Fourth Circuit **reversed**. The key highlight is that it held the class failed the commonality and predominance requirements and the class definition was too broad for three reasons.

First, not all hourly workers performed the same pre- and post-shift work. Second, some people performed these tasks — such as putting on work boots — before arriving at work. And third, the substantive law changed in the middle of the class period, meaning some putative class members were subject to one pre-2022 legal standard, some were subject to a different post-2022 standard, and some who worked during both periods were subject to both standards.

Craig v. City of Richmond

Craig v. City of Richmond was a case that arose following an industrial facility that caught fire in Richmond, Indiana, and burned for at least seven days. The fire allegedly emitted noxious gases that spread across hundreds of properties.[7]

The property owners brought suit in April 2025 in Wayne County, Indiana Circuit Court. The defendants removed under CAFA. The U.S. District Court for the Southern District of Indiana sua sponte remanded to state court under the local event or occurrence exception, which excludes from CAFA jurisdiction any civil action in which "all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State."

On June 18, 2026, the U.S. Court of Appeals for the Seventh Circuit affirmed. The key highlight is that it held that the local event or occurrence exception is jurisdictional and therefore not subject to the 30-day removal deadlines.

The Seventh Circuit held that an event or occurrence is some incident or happening that causes for injury, that the fire was an event or occurrence, and that "all of the claims in the action" could fairly be said to arise from the fire event as well as all injuries and damages. It noted that the circuits that have addressed the issue were split in defining what constitutes as an event or occurrence, but that the fire in this case would satisfy the definition of all circuits.

Mitchell Engel is a partner at Shook Hardy & Bacon LLP.

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[1] Ewalt v. Gatehouse Media Ohio Holdings II Inc., 2026 WL 1453585 (6th Cir. May 22, 2026).

[2] Mebane v. GKN Driveline North America Inc., 2026 WL 1549203 (4th Cir. June 2, 2026).

[3] Jonathan R. ex rel. Dixon v. Morrisey, 2026 WL 1660492 (4th Cir. June 8, 2026).

[4] State of Maryland v. Palmer, 2026 WL 1651220 (4th Cir. June 8, 2026).

[5] Gelis v. BMW of North America LLC, 2026 WL 1691583 (3d Cir. June 11, 2026).

[6] Overby v. Anheuser-Busch LLC, 2026 WL 1718962 (4th Cir. June 15, 2026).

[7] Craig v. City of Richmond, 2026 WL 1758978 (7th Cir. June 18, 2026).

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EV-Maker SPAC Investors Reach $4M Chancery Settlement

By **Jarek Rutz**

Law360 (August 27, 2026, 6:43 PM EDT) -- Former stockholders of the special purpose acquisition company that took electric vehicle manufacturer Lion Electric public have agreed to a $4 million cash settlement with seven individuals who served as Northern Genesis Acquisition Corp. directors, officers or alleged controllers to end Delaware Chancery Court claims over the 2021 deal.

The proposed settlement, filed Wednesday, would resolve claims that Northern Genesis fiduciaries impaired stockholders' redemption rights through allegedly inadequate disclosures tied to the merger. The deal covers a non-opt-out class of investors who held NGA Class A shares as of the April 21, 2021, redemption deadline and did not redeem all their shares, subject to exclusions for the defendants and related parties.

Plaintiffs said the settlement "provides substantial and immediate benefits for the class."

Northern Genesis was incorporated in May 2020 as a special purpose acquisition company and raised $300 million in an August 2020 initial public offering of 30 million units at $10 each, before selling additional units through an overallotment. It agreed in November 2020 to combine with Lion Electric, and NGA stockholders approved the transaction on April 23, 2021. The merger closed May 6, 2021.

Ahuva Schachter, Michael Smith, Douglas Neujahr, Samhita Gera and Denish Bhavsar filed the suit in November 2023, alleging breach of fiduciary duty and unjust enrichment stemming from the alleged impairment of investors' redemption rights. Lion later entered Canadian restructuring proceedings, but the investors continued their Delaware claims against nondebtor defendants. In December 2025, Vice Chancellor Morgan T. Zurn allowed fiduciary duty and unjust enrichment claims to proceed against Ian Robertson, Ken Manget, Christopher Jarratt, Michael Hoffman, Paul Dalglish, Brad Sparkes and Robert Schaefer.

The parties began discovery in early 2026 and reached an agreement in principle on April 28, according to the stipulation.

Under the settlement, the defendants and/or their insurers would fund the $4 million payment, with no contribution required from Lion Electric, Marc Bedard or Nicolas Brunet, who had previously been dismissed. After court-approved attorney fees and expenses, notice and administration costs and taxes are deducted, the remaining fund would be distributed to eligible claimants on a pro rata basis.

Class members must submit a proof of claim to receive money. Those who do not timely submit one generally would receive no payment but would still be bound by the settlement and releases. The defendants would have no right to recover leftover settlement money if some class members cannot be located or do not cash their payments.

Plaintiffs' lawyers said they weighed the risks and uncertainty of continued litigation, the chances of winning, potential proof problems and defenses, the expense of taking the case through trial and appeals, and delays associated with obtaining discovery from people and entities outside the United States. They concluded that the settlement was fair, reasonable and adequate and in the class's best interests.

Defendants, however, "maintain that their conduct was at all times proper and in compliance with applicable law." They deny breaching duties, harming NGA stockholders or being unjustly enriched, and the stipulation says the settlement is not an admission of wrongdoing.

Plaintiffs' counsel may seek attorney fees of no more than 20% of the $4 million settlement, or up to $800,000, plus expenses, all paid from the settlement fund. Counsel may also seek awards of up to $2,500 for each of the five named plaintiffs, payable from any fee award.

The settlement requires approval from the Court of Chancery. If approved and finalized, the case would be dismissed with prejudice and the covered claims against the defendants would be released.

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

The stockholders are represented by Randall J. Baron, Erik W. Luedeke, Christopher H. Lyons and Jason M. Avellino of Robbins Geller Rudman & Dowd LLP, Brian J. Robbins, Gregory E. Del Gaizo and Mario D. Valdovinos of Robbins LLP, Christine M. Mackintosh and Kelly L. Tucker of Grant & Eisenhofer PA, Peretz Bronstein and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC and Jack G. Fruchter of Abraham Fruchter & Twersky LLP.

The defendants are represented by Jay A. Dubow, Erica Dressler, Mary Weeks, Bianca DiBella, Douglas D. Herrmann and Emily L. Wheatley of Troutman Pepper Locke LLP.

The case is Ahuva Schachter et al. v. Ian Robertson et al., case number 2023-1112, in the Delaware Chancery Court.

--Editing by Linda Voorhis.
