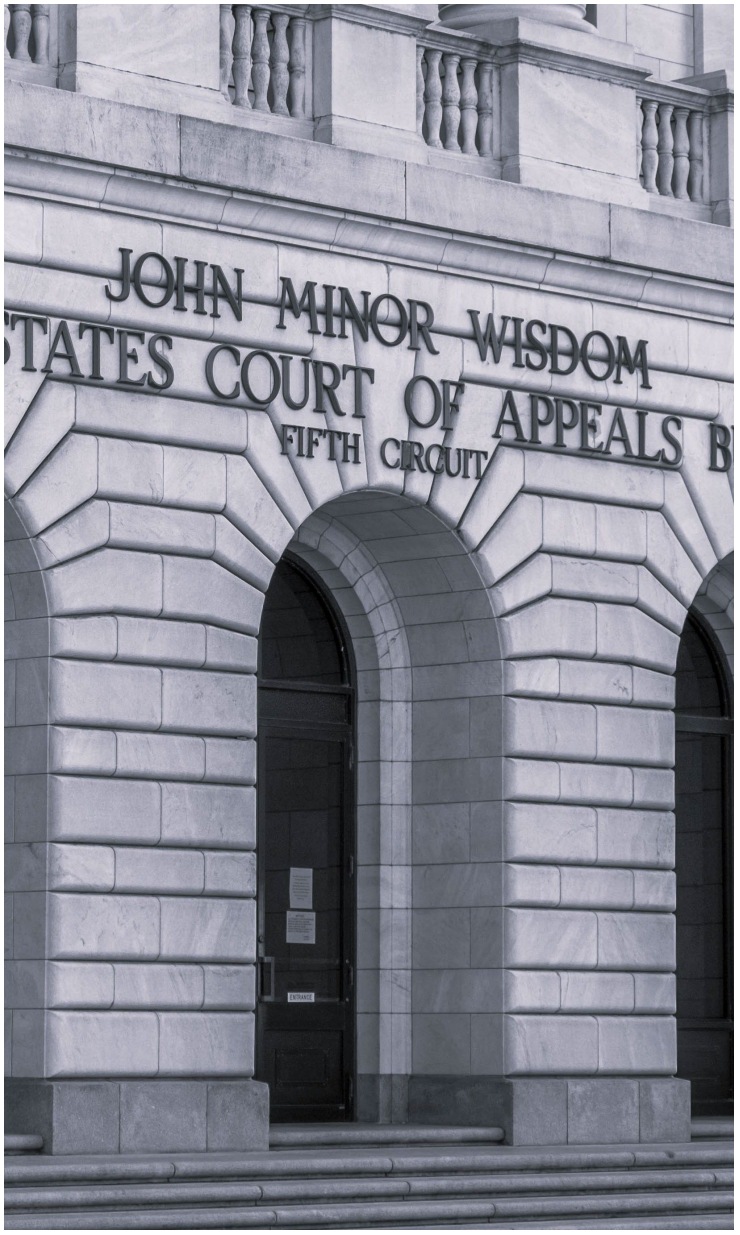
Fifth Circuit Securities Litigation Quarterly

Q1 2025



A&O SHEARMAN

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Texas Securities Litigation

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Introduction

Welcome to the Q1 2025 edition of A&O Shearman's Fifth Circuit Securities Litigation Quarterly. As public companies and financial institutions continue to migrate to Texas, our Texas-based securities litigation team continues to monitor all developments and help our clients navigate the unique landscape for federal securities litigation in the Fifth Circuit.

In our Q1 2025 edition, we cover two new case filings, a settlement in a rare securities class action that went to trial, five district court decisions on pleading stage and class certification issues, and other decisions of note.

New securities class action filings

ENCORE ENERGY (S.D. TEX., 4:25-CV-01234, FILED MAR. 14, 2025)

Filed on behalf of a putative class of investors who purchased or otherwise acquired enCore securities between March 28, 2024 and March 2, 2025, inclusive

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants "failed to disclose to investors: (1) that enCore lacked effective internal controls over financial reporting; (2) that enCore could not capitalize certain exploratory and development costs under GAAP; (3) that, as a result, its net losses had substantially increased; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis."

New securities class action filings

SOLARIS ENERGY INFRASTRUCTURE (S.D. TEX., 4:25-CV-01455, FILED MAR. 28, 2025)

Filed on behalf of a putative class of investors who purchased or otherwise acquired Solaris securities between July 9, 2024 and March 17, 2025, inclusive

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants "misrepresented and/or failed to disclose: (1) [a company Solaris acquired, Mobile Energy Rentals LLC] had little to no corporate history in the mobile turbine leasing space; (2) MER did not have a diversified earnings stream; (3) MER's co-owner was a convicted felon associated with multiple allegations of turbine-related fraud; (4) as a result, Solaris overstated the commercial prospects posed by the Acquisition; (5) Solaris inflated profitability metrics by failing to properly depreciate its turbines; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis."

New securities class action settlement

ALTA MESA (S.D. TEX., 4:19-CV-00957)

$126.3 million settlement of case asserting claims under the Securities Exchange Act of 1934, inclusive of settlements previously announced with a subset of the defendants totaling $11.3 million

Case initially filed March 2019. In March 2021, the court denied Defendants' motions to dismiss. The court granted class certification in January 2022. The court granted in part and denied in part Defendants' motions for summary judgment on August 12, 2024, and denied the parties' Daubert motions without prejudice to reasserting them at trial. A motion for preliminary approval covering the settlement as to all defendants, superseding previously-filed motions related to partial settlements, was filed on January 6, 2025. The parties agreed to the settlement in principle during trial.

Decisions of note

Sunnova: S.D. Tex. Grants Motions to Dismiss Without Prejudice for Failure to Plead a Material Misstatement
Natera: W.D. Tex. Grants Class Certification, Rejecting Arguments That Alleged Truth Was Disclosed Earlier Than Plaintiffs Alleged
CS Disco: W.D. Tex. Grants-in-Part and Denies-in-Part Motion to Dismiss, Allowing One Category of Alleged Misstatements to Survive
F45 Training: W.D. Tex. Grants Motion to Dismiss Exchange Act Claims and Allows Some Securities Act Claims to Survive
Lumen: W.D. La. Grants Motion to Dismiss for Failure to Plead a Material Misstatement
Other Cases of Note: N.D. Tex denies motion for leave to file third amended complaint in *Exxon* case; S.D. Tex. adopts magistrate recommendation denying class certification as to certain claims in *McDermott* case; W.D. Tex refers securities class action to bankruptcy court for resolution of third-party release issue; W.D. Tex. dismisses *Tesla* derivative case in sealed order; S.D. Tex. dismisses merger-related fiduciary duty claims against CEO and controlling shareholder of Camber Energy.

Trindade v. Sunnova Energy Int'l, 2025 WL 849405 (S.D. Tex. Jan. 28, 2025), adopted, 2025 WL 848288 (S.D. Tex. Mar. 18, 2025)

- Judge Ellison adopted Magistrate Judge Palermo's recommendation that Defendants' motion to dismiss be granted with leave to amend.
- Plaintiffs brought Exchange Act claims alleging defendants' public statements were false and misleading because the company allegedly engaged in predatory sales practices and provided inadequate service to customers.
- The court held that Plaintiffs failed to plead a materially false or misleading statement.
- Plaintiffs failed to adequately allege that customer-related operating expenses were increasing at the time of an alleged misstatement. With respect to other statements, Plaintiffs failed to explain how the allegedly omitted information would have significantly altered the total mix of information. Other statements about the company's commitment to and quality of its customer service were held to be too general to be actionable.

Schneider v. Natera, 2025 WL 369243 (W.D. Tex. Jan. 28, 2025), adopted, 2025 WL 880256 (W.D. Tex. Mar. 21, 2025)

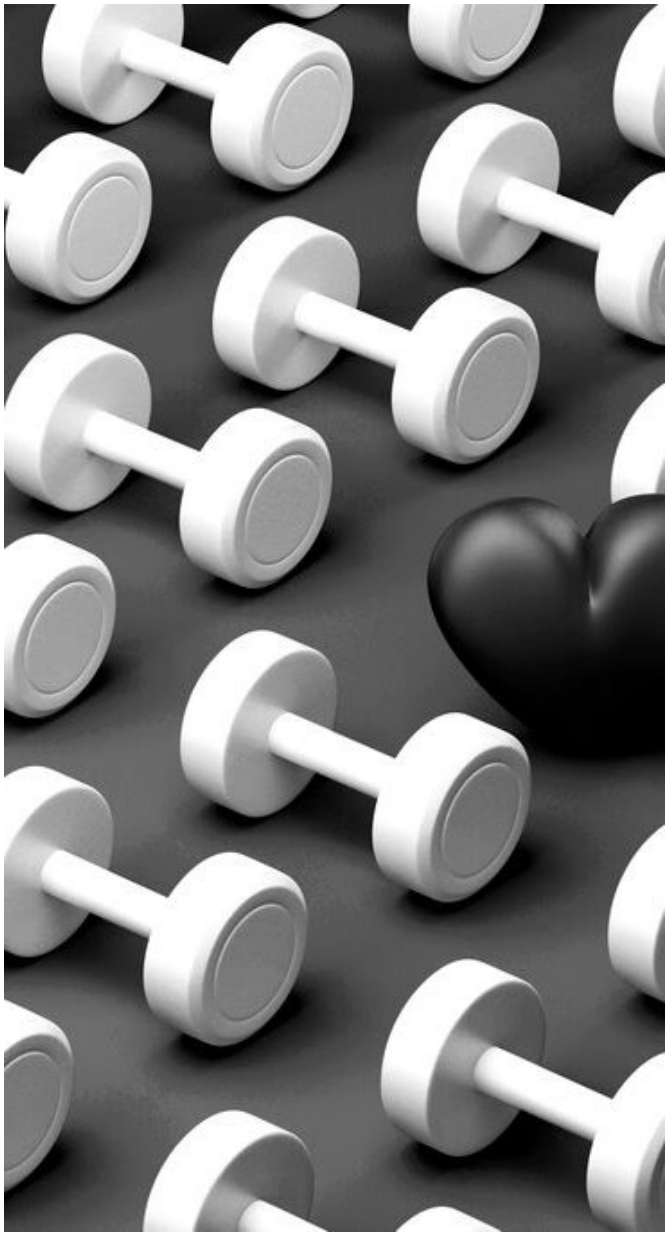
- Judge Ezra adopted Magistrate Judge Howell's recommendation that plaintiffs' motion for class certification be granted.
- Plaintiffs sought to certify a class of stockholders who purchased Natera stock between February 27, 2020 and March 8, 2022, the day before a short seller report allegedly revealed the truth about the company's allegedly deceptive business practices.
- Defendants opposed class certification by primarily arguing that the information disclosed by the short seller report was known to the market much earlier in time and, importantly, before the plaintiffs purchased their stock. As a result, Defendants argued that Plaintiffs could not invoke the fraud-on-the-market presumption of reliance and also were atypical and inadequate class representatives and lacked standing to assert Securities Act claims.
- The court viewed this as a "truth-on-the-market" argument that was not appropriate for resolution at the class certification stage and raised questions common to class members.
- The court also held that Plaintiffs had adequately shown standing to assert Securities Act claims because the earlier disclosures identified by Defendants were likely only partially corrective, and Plaintiffs adequately showed a purchase in the stock offering at issue.

Gambrill v. CS Disco, Inc., 2025 WL 388828 (W.D. Tex. Jan. 30, 2025)

- Judge Ezra granted-in-part and denied-in part Defendants' motion to dismiss, without prejudice.
- Plaintiffs brought Exchange Act claims alleging defendants' statements about the company's growth were misleading because the results were allegedly contingent on a small number of projects of limited duration.
- Considering the statements in context, the court held that plaintiffs failed to adequately plead that some of the challenged statements about the company's growth were misleading by omission, and projections were held to be protected by the safe harbor for forward-looking statements. As to other statements about fluctuation and volatility in customer usage, the court held that plaintiffs had carried their burden at the pleading stage.
- The court also dismissed claims premised on allegations related to an executive's purported conduct, finding the allegations were based on a news article that was not sufficiently substantiated.

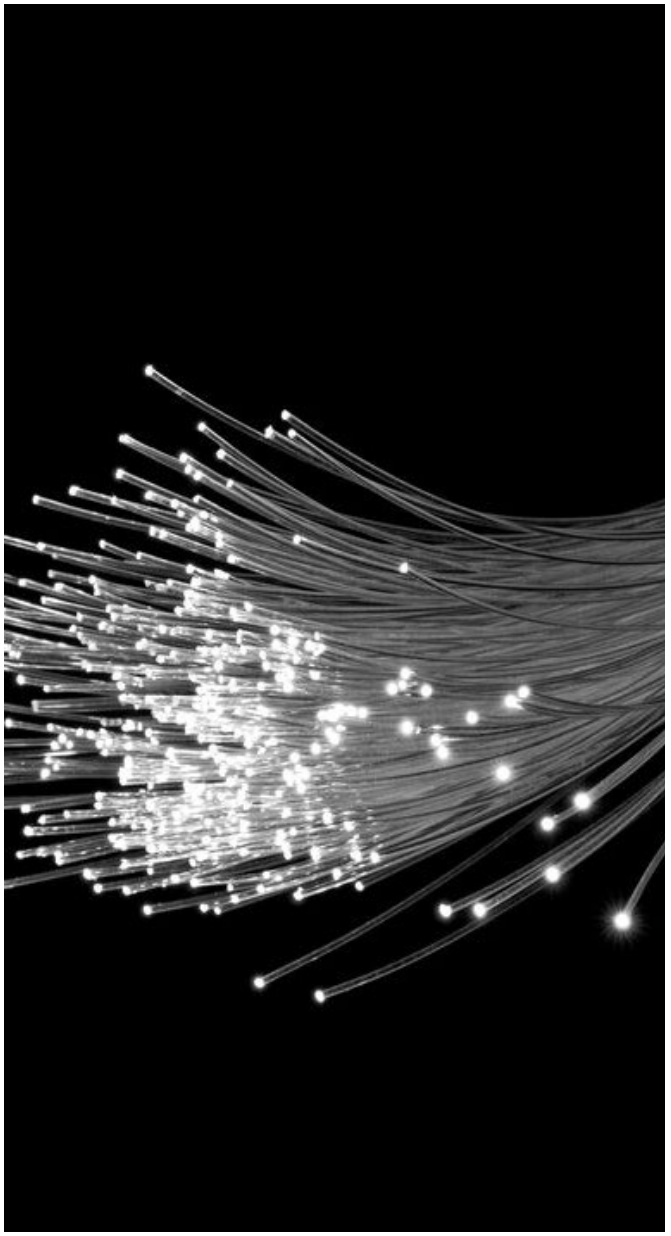
In re F45 Training Holdings, Inc. Sec. Litig., 1:22-CV-01291 (W.D. Tex. Feb. 21, 2025)

- Judge Ezra granted-in-part and denied-in part Defendants' motion to dismiss, without prejudice.
- Plaintiffs brought Exchange Act and Securities Act claims alleging the company's public statements about its business were misleading in light of allegedly undisclosed and unsustainable practices, such as misleading definitions of key business metrics and undisclosed insufficient diligence of potential franchisees.
- The Exchange Act claims were dismissed without prejudice. While the court found that some of the challenged statements were actionable and adequately alleged to be misleading, the court held that plaintiffs failed to plead a strong inference of scienter or loss causation.
- The court allowed portions of the Securities Act claims to survive, finding that loss causation need not be alleged as part of plaintiffs' prima facie case and that one plaintiff adequately alleged standing because it claimed to have purchased stock in the IPO from an underwriter.
- The court also dismissed claims premised on allegations related to an executive's purported conduct, finding the allegations were based on a news article that was not sufficiently substantiated.



In re Lumen Techs., Inc. Sec. Litig. II, 3:23-CV-01290 (W.D. La. Mar. 14, 2025), adopted, (W.D. La. Mar. 31, 2025

- Judge Doughty adopted Magistrate Judge McClusky's recommendation that defendants' motion to dismiss be granted with prejudice.
- Plaintiffs brought Exchange Act claims alleging defendants' public statements were misleading for failing to disclose potentially significant civil and regulatory liability from lead-sheathed copper telephone cables placed into the ground by a predecessor entity.
- The Court found that plaintiffs failed to allege any material misrepresentation or omission by defendants.
- With respect to scienter, the Court found no plausible facts to suggest the individual defendants knew the company had thousands of miles of improperly contained lead-sheathed cable, much less knowledge that the lead posed a risk to others and the environment. The more plausible inference was that defendants believed the lead was safe or comparatively stable where it was in the ground.
- The court was "left with the inexorable conviction that Plaintiffs are attempting to assert a non-cognizable 'fraud by hindsight' securities claim."



Other decisions of note

Yoshikawa v. Exxon Mobil Corp., 3:21-CV-00194 (N.D. Tex. Jan. 6, 2025): Judge Godbey denies plaintiffs' motion for leave to file a third amended complaint, holding that the evidence underlying the proposed amendment exceeded the scope of permitted class certification discovery and would subvert the protections of the Private Securities Litigation Reform Act.

Edwards v. McDermott Int'l Inc., 4:18-CV-04330 (S.D. Tex. Mar. 7, 2025): Judge Hanks revisits his prior decision and adopts Magistrate Judge Edison's recommendation denying class certification as to Section 14 claims for lack of standing, as covered in our prior reviews. The Fifth Circuit is set to consider class certification for the Section 10 claims under Rule 23(f).

Pang v. Levitt, 1:22-CV-01191 (W.D. Tex. Mar. 7, 2025): Judge Ezra refers case to bankruptcy court for all purposes, including consideration of defendants' arguments that plaintiffs' claims are barred by opt-out third-party releases and anti-suit injunction in the *Core Scientific* bankruptcy plan.

Other decisions of note

In re: Tesla Inc. Stockholder Deriv. Litig., 1:22-cv-00592 (W.D. Tex. Mar. 12, 2025): Judge Ezra grants motion to dismiss with prejudice in sealed order. Defendants had moved to dismiss for failure to plead demand futility and lack of diversity jurisdiction.

Rowe v. Doris, 2025 WL 963590 (S.D. Tex. Mar. 31, 2025): Judge Eskridge grants motion to dismiss breach of fiduciary duty claims asserted against CEO and controlling shareholder of Camber Energy related to merger with Viking Energy Group. Plaintiffs' theory was held to be insufficient under controlling Nevada law.

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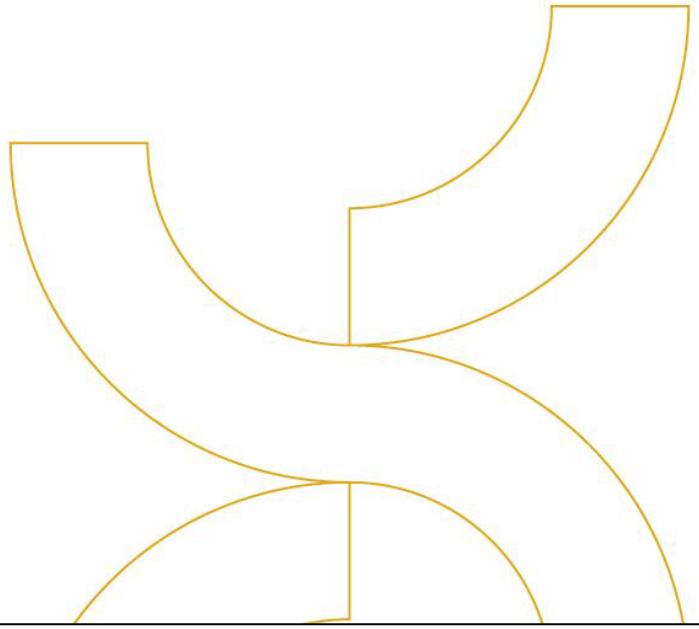
Band 1

"The lawyers are world-class in securities class action defense."

"They offer 100% value for the service provided."



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