



ALSTON & BIRD
CLASS ACTION
& MDL **roundup**

QTR 4 | 2025

Where the (Class) Action Is

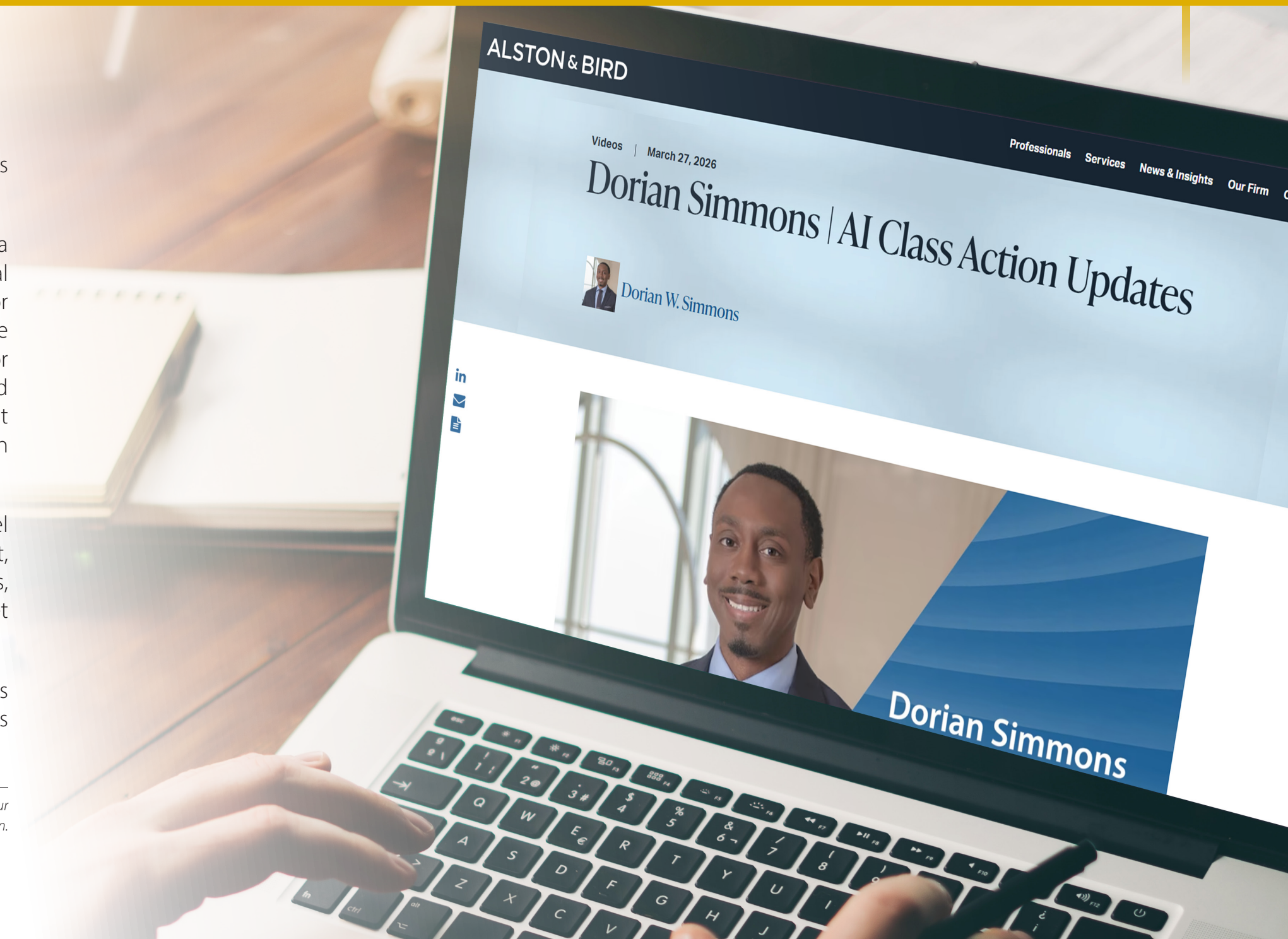
Welcome back to the *Class Action & MDL Roundup*! This edition covers notable class actions from the fourth quarter of 2025.

The final quarter of 2025 is another one for the books. We start with a decision from the U.S. Supreme Court affirming the Fourth Circuit's dismissal of an antitrust class action, leaving the proximate causation standard for civil RICO claims undisturbed. The appellate courts were busy across the board. In the consumer protection arena, the Eighth Circuit ruled in favor of defendants on multiple occasions—bringing issues of individualized reliance and timely filings to the forefront. Moreover, the Eleventh Circuit joined six of its sister circuits in a key ERISA decision involving arbitration clauses.

Privacy continues to be a hotspot with further developments in pixel tracking and data breach class actions. Before our settlements report, securities litigation rounded out the year with two appellate decisions, providing more insight to companies and investors on navigating market uncertainty.

We wrap up the *Roundup* with a summary of class action settlements finalized in the fourth quarter. We hope you enjoy this installment and, as always, welcome your [feedback](#) on this issue.

The *Class Action & MDL Roundup* is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.



Dorian Simmons | AI Class Action Updates

Privacy, Cyber & Data Strategy counsel **Dorian Simmons** discusses the uptick in lawsuits involving AI voice agents and AI-powered call monitoring services, providing insights on what the courts are saying and actions businesses can take to mitigate litigation risk.

PLAY



VIDEO

Antitrust / RICO

RICO-chet Shot: SCOTUS Passes on Reviewing RICO Proximate Causation Opinion

MSP Recovery Claims v. Lundbeck LLC, No. 24-1302 (U.S.) (Nov. 24, 2025). Denying writ of certiorari.

The Supreme Court denied a certiorari petition seeking review of the Fourth Circuit's February 2025 opinion upholding the dismissal of civil RICO class claims. In the ruling that was left undisturbed, the Fourth Circuit affirmed the dismissal of a proposed class action alleging RICO claims based on an alleged conspiracy to inflate the price of a drug for Huntington's disease brought by assignees of the recovery rights of health insurers and other payors. The court held that the plaintiffs failed to meet RICO's proximate causation standard for two reasons. First, the inflated prices allegedly caused by the defendants' conduct were more directly borne by the distributors and wholesalers that initially paid those inflated prices than the assignors that reimbursed those claims. Second, the increased volume of prescriptions the assignors were obligated to reimburse was logically unrelated to the alleged RICO violation, which was based on predicate acts of mail fraud, wire fraud, and Travel Act violations.

Tenth Circuit Un-Ties Antitrust Standing in Dismissal of Alleged Tying Scheme

North Brevard County Hospital District v. C.R. Bard Inc., No. 24-4039 (10th Cir.) (Dec. 31, 2025). Affirming dismissal.

The Tenth Circuit affirmed the District of Utah's dismissal of a lawsuit brought by North Brevard County Hospital District, d/b/a Parrish Medical Center, against medical-device manufacturer C.R. Bard Inc. Parrish alleged that Bard engaged in illegal per se tying under Section 1 of the Sherman Act by forcing buyers to purchase two products together and illegal monopolization under Section 2 of the Sherman Act. The court held that Parrish did not have antitrust standing to sue under Section 1 because it was not an "efficient enforcer" of the antitrust laws, in that it purchased only the alleged tied product, not the alleged tying product. The Tenth Circuit further held that it lacked jurisdiction over Parrish's appeal of

its Section 2 claim, which Parrish voluntarily dismissed with prejudice to induce an appealable final judgment after the district court denied class certification.

Cup of No: Buyers Denied Class Certification

In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation, No. 1:14-cv-02542 (S.D.N.Y.) (Nov. 20, 2025). Judge Broderick. Denying class certification.

The Southern District of New York denied certification of a putative class of direct purchasers of K-Cups from defendant Keurig entities. The plaintiffs alleged that the defendants engaged in an anticompetitive scheme after Keurig's K-Cup filter patents expired that included filing sham patent infringement lawsuits against competitors, entering into exclusive agreements with suppliers to limit competition, disparaging portion packs made by competitors, and launching a successor brewer designed with technology intended to ensure it only worked with Keurig-designed K-Cups. The court denied class certification on predominance grounds, finding that the plaintiffs' experts' overcharge models failed to account for whether some customers were able to negotiate away the purported overcharges, and if so, by how much. Because of the aggregate nature of the overcharge model, neither antitrust injury nor damages could be proven by common evidence. ■

Banking, Financial Services & Insurance

Short on Scienter: Second Circuit Shuts Down Securities Class Action

Puchtler v. Barclays PLC, No. 25-995 (2nd Cir.) (Dec. 5, 2025). Affirming dismissal of class action claims.

The Second Circuit upheld the district court's dismissal of class claims under the Private Securities Litigation and Reform Act against Barclays PLC and its affiliates, as well as several individual defendants, stemming from Barclay's alleged violation of its 2017 settlement with the Securities and Exchange Commission (SEC) in which it lost its status as a well-known seasoned issuer. Barclays inadvertently issued more securities than it registered in advance with the SEC, as the settlement agreement required, due to insufficient internal controls to track these securities. Puchtler, a short seller, alleged that the individual defendants knew about or recklessly disregarded Barclays' lack of internal controls and made related public misrepresentations, and that he and other short sellers of the securities incurred large losses when the securities' price did not fall as anticipated. In a two-page order, the Second Circuit held that Puchtler did not adequately allege scienter because the complaint never alleged that the individual defendants knew about Barclays' lack of internal controls when



Find five Alston & Bird antitrust attorneys moderating and speaking on panels at the [2026 ABA Antitrust Spring Meeting](#) in Washington, DC, March 23–27.



[Adam Biegel](#)



[Alex Brown](#)



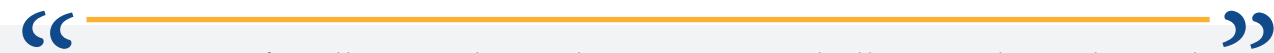
[Alexis Gilman](#)



[Matthew Kent](#)



[Andy Tuck](#)



Sam Park will remind you that not every challenge is hypothetical when it comes to [Class Action Litigation Ethics: Navigating Gray Areas in Class Communications, Settlement](#), a webinar on April 9.



[Sam Park](#)

they made their alleged public misstatements. The Second Circuit declined to reach any other issue raised by Puchtler and summarily affirmed the district court's dismissal. ■

Consumer Protection

Eighth Circuit Greenlights Dismissal of "Sustainability Collection" Suit

Ellis v. Nike USA Inc., No. 24-2420 (8th Cir.) (Nov. 7, 2025). Affirming dismissal with prejudice.

In response to a motion to dismiss, the plaintiff filed amended putative class claims under Missouri's statutory consumer protection laws, alleging that the defendants' "Sustainability Collection" products were not, in fact, sustainable because they were "made with virgin synthetic and non-organic materials that are harmful to the environment." The defendants filed a second motion to dismiss, contending that the amended complaint contained no factual support for this claim theory and failed to adequately explain how a reasonable consumer would be misled by the defendants' advertisements. The plaintiff opposed and requested leave to amend in her opposition brief, but she did not file a motion to amend or submit a proposed second amended complaint. The district court agreed with the defendants and granted their motion to dismiss.

The plaintiff then timely filed a motion to alter or amend the judgment, contending the court erred in dismissing her complaint with prejudice, seeking reconsideration of the dismissal order, and requesting leave to file a second amended complaint. The district court denied this motion as well, which also did not include a proposed amended complaint, and the plaintiff appealed on the grounds that the district court abused its discretion in dismissing her amended complaint with prejudice. In affirming the judgment, the Eighth Circuit noted that the plaintiff neglected to submit a proper motion to amend with a proposed second amended complaint, despite having seven months to do so before the district court issued its dismissal order.

Ninth Circuit Upholds Dismissal of FDCA Based Challenge to Supplement Advertising

Bubak v. Golo LLC, No. 24-492 (9th Cir.) (Oct. 9, 2025). Affirming motion to dismiss.

The Ninth Circuit affirmed the dismissal of a putative class action alleging that a dietary supplement manufacturer violated California's Unfair Competition Law by marketing its product in violation of the Federal Food, Drug, and Cosmetic Act (FDCA),

as incorporated into California's Sherman Law. The court held that the plaintiff's theory necessarily required adjudicating—precisely the type of private enforcement the FDCA precludes. Relying on its prior decision in *Nexus Pharmaceuticals*, the court emphasized that Congress reserved FDCA enforcement authority to the Food and Drug Administration (FDA) and, in limited circumstances, to the states, and precluded private litigants like the plaintiff from adjudicating underlying FDCA violations. The panel rejected the plaintiff's attempts to distinguish *Nexus*, concluding that her theory "rest[ed] upon a violation of the FDCA" and therefore could not proceed.

In doing so, the court determined that the Ninth Circuit's intervening decision in *Davidson v. Sprout Foods* did not mandate a different result. While *Davidson* recognized that some Sherman Law provisions may avoid preemption when they predate and exist independently of the FDCA, the court held that the claims in *Bubak* would require litigating whether the defendant's marketing constituted an FDCA violation—an inquiry reserved for the FDA under *Nexus*. A concurring opinion highlighted ongoing tensions between *Nexus* and *Davidson*, suggesting that the circuit may ultimately need to revisit the scope of preemption in this area.

Sweetener Labeling Case Sours at Class Certification Stage

Garcia v. TC Heartland, No. 5:23-cv-04192 (N.D. Cal.) (Dec. 3, 2025). Judge Wise. Denying motion for class certification.

The Northern District of California denied class certification on consumer fraud claims alleging that a sweetener brand's use of the label "Suitable for People with Diabetes" misled health conscious consumers because the products contain sucralose—which the plaintiff contended may cause adverse health effects, particularly for people with diabetes. The court determined that the plaintiff failed to establish many of the basic predicates for both Rule 23(a) and Rule 23(b). To begin, it found no credible evidence that the plaintiff was misled in a manner typical of the proposed class because he was a pre-diabetic and his deposition testimony undermined any showing of reliance. The court also determined that assessing reliance and injury would require individualized, consumer specific inquiries incompatible with classwide adjudication. The court further ruled that the proposed class was overbroad and unascertainable because it included both diabetic and non diabetic California consumers who could not be presumed to have been deceived or harmed in the same way, if at all, by these products alleged to be "unsuitable" to diabetics. On these grounds, the court denied certification, and following a court-mandated case management meeting, the plaintiff voluntarily dismissed his claims. ■



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Kara McCall

ERISA

Clause for Concern: The Eleventh Circuit Says “No” to Overbroad Arbitration Clause in ERISA Plan

Williams v. Shapiro, No. 24-11192 (11th Cir.) (Dec. 15, 2025). Affirming order denying defendants’ motion to compel arbitration.

The Eleventh Circuit affirmed the denial of a motion to compel arbitration in a putative ERISA class action brought by former employee stock ownership plan participants who alleged that plan fiduciaries engineered a stock sale that undervalued the plan’s shares by over \$30 million. In moving to compel arbitration, the defendants relied on two late-stage plan amendments—one adopted five days before the plan’s termination and another adopted after the participants filed suit—that added an “ERISA Arbitration and Class Action Waiver” prohibiting representative actions and planwide remedies, including relief expressly authorized by 29 U.S.C. §§ 1109(a) and 1132(a)(2). The district court denied the motion, ruling that the arbitration provision violated the effective vindication doctrine.

The Eleventh Circuit affirmed, joining six of its sister circuits in holding that arbitration provisions that eliminate the statutory right to substantive, planwide remedies under ERISA violate the effective vindication doctrine because they require a participant to effectively waive any rights to pursue that statutory relief. Because the arbitration provision at issue contained a nonseverability clause, the court invalidated it in its entirety. ■

International

UK Supreme Court Decides Whether Collective Proceedings Should Be Certified on an Opt-In or Opt-Out Basis in the Competition Appeal Tribunal

Evans (Respondent) v Barclays Bank Plc and others [2025] UKSC 48.

The English courts continue to define the boundaries and limits of the collective proceedings regime in the Competition Appeal Tribunal (CAT).

Collective competition proceedings can be brought in the CAT on an opt-in or opt-out basis. As the gatekeeper at the certification stage, the CAT determines whether the proceedings should proceed on an opt-in or opt-out basis.

Evans sought permission to bring opt-out proceedings against a number of banks that were addressees of prior European Commission settlement decisions. The purported class consisted of one group of sophisticated financial institutions with larger claims and another group of smaller individuals and entities with much smaller claims.

In a landmark judgment on 18 December 2025, the UK Supreme Court reversed the Court of Appeal and reconfirmed the CAT’s original refusal to certify the proceedings on an opt-out basis. The Supreme Court’s findings provide the CAT critical guidance for determining whether to certify proceedings as opt-in or opt-out:

- **Merits of the claim is an important factor.** Weak claims should counsel against certification as opt-out proceedings, even if the claims may survive strike-out, because certifying such claims as opt-out proceedings could unduly burden defendants procedurally and pressure them into settling unmeritorious claims.
- **Practicability of opt-in proceedings.** The court found that opting in would be practicable for the large and sophisticated financial institutions that formed the first sub-group in the class. And because the large financial institutions in this group account for a substantial portion of the claims’ value, it found that opt-in proceedings were practicable, even if opting in may be impracticable for some of the smaller claimants in the other sub-group.
- **Importance of deterring future wrongdoers.** The Supreme Court stated that courts must consider the advantages and disadvantages of opt-in and opt-out proceedings and found the Court of Appeals did not adequately weigh the deterrent factor against the interests of the defendants.

Overall, the decision will be welcomed by defendants looking to argue against the certification of a claim as an opt-out proceeding. ■

Gain practical insights, candid advice, and [Lessons Learned: Reflections on Law, Leadership, and Balance from Leading Women in Securities Litigation](#), hosted by the **Women in Securities Litigation Network** in our New York office on April 7.

Get a fair and reasonable examination of “[Optis v. Apple: Hold Out and F/RAND Rate Setting in the UK Courts](#)” from **Bryan Lutz** and **Jason Sigalos** in the *Intellectual Property & Technology Law Journal*.



Bryan Lutz



Jason Sigalos

Labor & Employment

Class Action Settlements Can Include Non-Opted Workers

Lundeen v. 10 West Ferry Street Operations LLC, No. 24-3375 (3rd Cir.) (Oct. 16, 2025). Vacating district court decision to deny settlement.

The Third Circuit held that the Fair Labor Standards Act (FLSA) does not restrict class action settlements from including workers who did not affirmatively opt into a collective action. The court vacated a Pennsylvania district court decision that refused to approve a settlement because it required non opt in class members to release FLSA claims, reasoning that Section 216(b) governs who may litigate claims but is silent on whether unasserted FLSA claims may be released in a class settlement. Applying reasoning similar to the Fifth Circuit’s view, this decision should ease uncertainty surrounding settlement structures by clarifying that hybrid state law wage class actions and federal FLSA collective actions can be settled together and permitting settlements to include workers who might otherwise forgo participation, thus avoiding unclaimed funds and simplifying resolution of wage and hour disputes.

Coast Guard Vaccination Suit Stuck in Port

Harkins v. United States, No. 1:23-cv-01238 (Fed. Cl.) (Oct. 14, 2025). Judge Bonilla. Denying class certification.

The U.S. Court of Federal Claims declined to certify a proposed class of Coast Guard personnel who were involuntarily removed from active duty after refusing the COVID-19 vaccine, stating that the proposed subclasses were overly broad and that the individual claims were too distinct to be addressed collectively. Six current and former Coast Guard members sued the U.S. government in August 2023 after being separated from service for refusing to get the COVID-19 vaccine, alleging the Coast Guard wrongly denied their religious accommodation requests and forced them to get a vaccine without their consent.

The court denied the class certification bid, finding the proposed class was overbroad and encompassed people with very different factual situations, including individuals who left the Coast Guard voluntarily and those who were forced out, those who submitted religious accommodation requests and those who submitted a different type of accommodation request or no request at all, and those who had access to FDA-approved vaccines and others who did not. Considering the uniqueness of the claims, the court suggested that “permissive joinder appears to be the more prudent approach.” This decision illustrates the reluctance of some courts to combine claims stemming from employers’ vaccination policies into a single class action when the employees’ reasons for requesting accommodations are distinct.

Hospital System’s Unlawful Time Rounding Damages Award Affirmed

Bennett v. Providence Health & Services, No. 86321-5-I (Wash. Ct. App.) (Oct. 27, 2025). Affirming \$230 million judgment.

The Washington Court of Appeals affirmed a nearly \$230 million judgment against Providence Health & Services, holding the hospital system liable for wage-and-hour violations related to its time-clock rounding policy and failure to ensure second meal breaks for employees working shifts longer than 10 hours. In January 2024, the trial court ruled in favor of the plaintiffs, who brought the class action on behalf of more than 33,000 current and former employees. The trial court ruled that Providence’s time rounding policy, which adjusted clock-in and clock-out times to the nearest 15 minutes, was unlawful. The appeals court affirmed, explaining that state law requires compensation for each hour worked, and rounding is only permissible if it does not result in underpayment.

The plaintiffs’ experts demonstrated that the policy disproportionately disadvantaged employees, and Providence failed to rebut that evidence. The court of appeals also held that Providence’s practice of placing the burden on employees to request an additional lunch break when they worked more than 10 hours was unlawful because, although Providence did not prohibit employees from taking the additional lunch break, the policy discouraged employees from exercising their rights. The court also upheld the lower court’s finding of willfulness, which supported an award of double damages, noting that Providence provided no evidence of a bona fide dispute or mistake. This decision is a significant warning to employers that Washington law requires strict compliance with wage-and-hour requirements, and failure to do so can result in substantial liability and enhanced damages. ■

Privacy & Data Security

Quest for Liability Not Found: Third Circuit Says Pixel Tracking Isn’t Medical Snooping

Cole v. Quest Diagnostics Inc., No. 25-1449 (3rd Cir.) (Nov. 13, 2025). Affirming motion to dismiss.

The Third Circuit affirmed the district court’s dismissal of putative class claims under the California Invasion of Privacy Act (CIPA) and California’s Confidentiality of Medical Information Act (CMIA), alleging that Quest Diagnostics improperly transmitted browsing information to Facebook through a tracking pixel embedded on its websites. The court held that the CIPA claim failed because, as a direct recipient of data sent from users’ own browsers, Facebook was a party to the

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communication, and no unlawful “eavesdropping” occurred. In upholding the dismissal of the CMLA claim, the court emphasized that the statute protects only substantive information about a patient’s medical condition or treatment, and it found the district court properly dismissed the claim because the plaintiffs alleged only that Quest disclosed nonsubstantive information—the URL of the webpage where they accessed their test results—but none of their substantive medical details such as the type of test performed or the results themselves.

Afraid of the Dark Web: Article III Standing Satisfied in Data Breach

Holmes v. Elephant Insurance Company, No. 23-1782 (4th Cir.) (Oct. 14, 2025). Affirming in part and reversing in part dismissal for lack of standing.

The named plaintiffs filed a putative class action against Elephant Insurance Company after it notified them that their personal information was compromised in a data breach, alleging claims for violation of the federal Driver’s Privacy Protection Act, negligence, negligence per se, unjust enrichment, declaratory relief, and violations of state consumer protection statutes. For applicant convenience, Elephant’s online quoting platform auto-populates certain information (such as a driver’s license number) when an applicant provides information such as name, address, or date of birth—information stored on Elephant’s personal information database, which it derives from customer information and third-party sources. Although the named plaintiffs’ drivers’ license numbers were compromised, the district court concluded they lacked standing to pursue their claims, granted Elephant’s Rule 12(b)(1) motion, and dismissed the entire case.

On appeal, the Fourth Circuit held that the two plaintiffs who allege their driver’s license numbers were listed on the dark web after the Elephant breach had standing to maintain their claims because they allege facts “showing that information they justifiably prefer to tightly control has been released into the open.” But it found the other two plaintiffs lacked Article III standing because they allege only that they were forced to spend time reviewing their credit and financial documents or that the breach increased their risk of identity theft.

How Many People Really Live in King Salmon, Alaska?

In re Apple iPhone Antitrust Litigation, No. 4:11-cv-06714 (N.D. Cal.) (Oct. 27, 2025). Judge Gonzalez Rogers. Granting motion to decertify class.

The district court decertified a putative class of Apple consumers asserting claims under Section 2 of the Sherman Act that alleged Apple unlawfully monopolized and attempted to monopolize the iOS application by charging app developers commissions. When the court granted the plaintiffs’ second motion for class certification in February 2024, it cautioned that decertification may be warranted if they could not match Apple ID accounts with actual consumers, as they represented they could do. Following expert discovery, the court granted Apple’s motion to exclude the expert testimony proposing the plaintiffs’ method for matching Apple IDs to individual consumers. As a result, the court also granted Apple’s motion to decertify the class, determining that the plaintiffs could not demonstrate classwide antitrust injury without this key expert testimony. This ruling underscores the burden on plaintiffs to present statistically rigorous, validated methodologies to establish classwide antitrust injury. ■

Products Liability

Eighth Circuit Serves Coffee Plaintiffs a Cold Cup of Reversal

Sorin v. The Folger Coffee Co., No. 24-2830 (8th Cir.) (Nov. 26, 2025). Reversing grant of class certification.

The plaintiffs brought claims for violation of the Missouri Merchandising Practices Act (MMPA), fraud, and unjust enrichment, alleging the defendants misrepresented the number of cups of coffee that could be brewed from one container. The Western District of Missouri certified a class over the defendants’ objection, and the Eighth Circuit reversed. The appellate court noted that the fraud and unjust enrichment claims were unsuitable for class treatment because they turn on the specific circumstances of each transaction. And although MMPA claims do not require individualized proof of reliance, loss causation is required. The court cited to a class representative’s deposition testimony in concluding that such proof would necessarily “require consumer-by-consumer inquiries” into each class member’s reliance (or not) and that “many class members weren’t deceived”—even if all the products included the same representations.



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The court also rejected the plaintiffs' argument that every class member suffered an ascertainable loss because the representations artificially inflated market demand and, thus, increased the costs paid by every class member. As the court explained, accepting this argument "would write the ascertainable-loss requirement out of the statute and permit any purchaser of these Folgers products to bring an MMPA claim, even if the purchaser didn't care about the representations or wasn't misled by them," by "piggyback[ing] on the injuries of others to pursue a remedy."

Court Says BIPA Voiceprint Suit Can Move Forward

Gunderson v. Amazon.com Inc., No. 1:19-cv-05061 (N.D. Ill.) (Nov. 6, 2025). Judge Valderrama. Granting in part, denying in part class certification.

The plaintiffs filed a putative class action alleging that Amazon's Alexa voice ID technology violated Illinois's Biometric Information Privacy Act (BIPA) by collecting customers' "voiceprints" without informed consent. The court found that one plaintiff's claims were not typical of the class, nor was he an adequate representative, because he was particularly vulnerable to the defendant's potentially available affirmative defenses, given that he opted into the allegedly problematic technology after becoming a named plaintiff, when he already knew he was creating a voiceprint. But the court found the other named plaintiff to be an adequate representative, despite being a "professional plaintiff," because his only connection to class counsel was in a prior case where they served as local counsel.

It then found the rest of Rule 23's requirements were satisfied, determining that common questions—whether Amazon collected the users' voiceprints and whether it adequately informed class members or obtained related written releases—predominated over individual ones. In doing so, the court refused to consider the defendant's contention that survey data established that most class members gave informed consent, noting that this and other arguments impermissibly addressed the merits of the plaintiffs' claims, rather than focusing on whether there was classwide evidence to prove them. ■

Securities

Second Circuit Shields Companies from Investor Demands for Supply Certainty

In re Mobileye Global Securities Litigation, No. 25-1292 (2nd Cir.) (Dec. 16, 2025). Affirming district court's order dismissing putative securities class action.

The Second Circuit upheld a district court's dismissal of an investor class action against Mobileye, an AI-focused Intel subsidiary. The investors alleged that their trading prices plummeted following the company's January 2024 announcement that it was cutting revenue expectations in half due to supply chain disruptions. Their lawsuit specifically called out the company's 2022 and 2023 Form 10-Ks, contending the statements that product shipments would "depend upon market conditions" downplayed the impact Mobileye's oversupply would have on future profits.

Viewing the public filings as a whole, the court held that the filings fully explained the company's limited use of minimum purchase agreements and warned that shipment volumes would vary with market conditions, making Mobileye's statements inactionable because it had no obligation to supply fixed volumes of its products to its customers. The panel also struck down other claims, concluding that the forward-looking statements and opinions of Mobileye executives underpinning those claims were inactionable.

This decision reinforces protections for companies facing supply chain uncertainty by limiting investors' ability to demand guaranteed, fixed volume commitments.

Hard Facts Only: Sixth Circuit Narrows Nondisclosure Liability

Lim v. Hightower, No. 24-3960 (6th Cir.) (Oct. 21, 2025). Affirming district court's order dismissing putative securities class action.

The Sixth Circuit upheld a district court's dismissal of a securities class action against Lordstown Motors Corporation, now called Nu Ride Inc. The shareholders alleged that Lordstown acted with scienter by failing to disclose problems in its electric vehicle joint venture with Foxconn, including the fact that Foxconn was in breach of an agreement related to the partnership. As a result of the failed deal, the shareholders experienced stock losses, which they attributed to Lordstown's nondisclosure.

The Sixth Circuit's analysis focused on the different disclosure obligations applicable to "hard" and "soft" information. The court explained that hard information, consisting of verifiable history and facts, must be disclosed to investors. In contrast, soft information consists of predictions and opinions and is only disclosable when it is "virtually as certain as hard facts." The court held that most of the alleged omissions involved soft information because the plaintiffs failed to plausibly allege that Lordstown could have foreseen Foxconn's bad faith. The court also concluded that the plaintiffs did not adequately plead scienter based on Lordstown's nondisclosure of an earlier letter accusing Foxconn of breach, because the letter ultimately led to a new agreement between the companies.

“ **Parker Miller, Jens-Olrik Murach, and Robert Poole** warn CEOs that loose lips sink ships in [“Antitrust Enforcers Sharpen Their Focus on Earnings Calls”](#) for CFO.com. ”



Parker Miller



Jens-Olrik Murach



Robert Poole

By drawing a clear line between hard and soft facts, this decision narrows investors' ability to bring claims against public companies for failing to disclose uncertainties in their ongoing business ventures. ■

Settlements

Car Owners Drive Home \$150 Million Post Trial Engine Defect Settlement

Siqueiros v. General Motors LLC, No. 3:16 cv 07244 (N.D. Cal.) (Oct. 8, 2025). Judge Chen. Granting final approval of \$150 million settlement and attorneys' fees.

A California federal court granted final approval of a \$150 million settlement, resolving claims that General Motors vehicles equipped with Generation IV Vortec 5300 LC9 engines suffered from an oil consumption defect. The court certified statewide classes in California, Idaho, and North Carolina consisting of current owners and lessees of specified 2011–2014 GM trucks and SUVs. The settlement was achieved after the trial in a rare instance of plaintiffs obtaining greater relief through the settlement than at verdict. Finding the agreement fair under Rule 23, Judge Chen emphasized the extensive discovery, substantial trial risks, and strong result obtained for the classes. The court awarded \$57 million in combined fees and expenses and approved \$30,000 service awards for each class representative.

Class Shares Settlement for Sharing Criminal History

McDowell v. Pluto Acquisition Opco LLC, No. 2:23-cv-12827 (E.D. Mich.) (Oct. 27, 2025). Judge White. Approving \$2.4 million settlement.

Judge White blessed the settlement of a class action brought against Pluto Acquisition Opco LLC, which does business as PeopleFacts, for its alleged violations of the Fair Credit Reporting Act while selling employment and background check reports. The named plaintiff specifically claimed that PeopleFacts reported him as being "found guilty" of weapons felony firearm and homicide murder in the second degree, even though he was exonerated of those crimes almost 20 years ago. Under the settlement agreement, PeopleFacts agreed to make a settlement payment of \$2.4 million and to take certain actions to review and refine its procedures to ensure they comply with the Fair Credit Reporting Act. In the approval order, Judge White found that the settlement was fair, reasonable, and adequate and observed that there were no objections and only one opt-out.

Parties Acquire \$38 Million Settlement in Securities Class Action

Sheet Metal Workers' National Pension Fund v. Bayer AG, No. 3:20-cv-04737 (N.D. Cal.) (Oct. 30, 2025). Judge Seeborg. Approving \$38 million settlement.

Judge Seeborg granted final approval to a settlement arising out of Bayer's acquisition of Monsanto. The plaintiffs, which are pension funds that collectively purchased close to 600,000 Bayer American depositary receipts (ADRs), which represent ownership in Bayer, alleged that Bayer made certain misrepresentations about Roundup in its acquisition of Monsanto. Subject to some exceptions, the settlement class includes all persons or entities that purchased or otherwise acquired Bayer's publicly traded ADRs from May 23, 2016 to July 6, 2020. In its approval order, Judge Seeborg found that the settlement was fair, reasonable, and adequate, including because the \$38 million settlement amount is over 9% of the maximum damages figure according to the plaintiffs' expert and because the class members submitted 153,097 claims without any objections.

Ponzi Pieces Fall: Court OKs \$46 Million Deal in Massive Investment Scheme

Kinnie Ma IRA v. Ascendant Capital LLC, No. 1:19-cv-01050 (W.D. Tex.) (Nov. 24, 2025). Judge Albright. Approving \$46 million settlement and awarding attorneys' fees and litigation expenses.

The Western District of Texas approved a \$46 million settlement in a securities fraud suit against GPB Capital Holdings LLC and Ascendant Capital LLC and its affiliates, following the defendants' alleged operation of a \$1.8 billion Ponzi-like securities fraud scheme. Specifically, the plaintiffs alleged that GPB Capital worked with Ascendant and others to fraudulently induce investors to invest in the offerings with promises of 8% distributions "from profits," which never materialized.

The plaintiffs filed multiple suits on behalf of all persons and entities that purchased the offerings from January 1, 2013 through Dec. 31, 2018 and suffered a loss as a result of the alleged securities fraud—including the *Kinnie Ma* suit in the Western District of Texas, and the *DeLuca* suit in the Southern District of New York. The *Kinnie Ma* Court approved the class settlement under the condition that the settling plaintiffs and defendants who are also parties in *DeLuca* seek to maintain the stay in that action until dismissal is filed. Due to the complexity of the suits involved in the settlement, the court approved an award of 30% of the gross settlement fund, in addition to a \$2.8 million reimbursement of litigation expenses, to be allocated among class counsel.

“**Lance Taubin** will provide the info you need on the panel “[Your Company’s AI Systems: The New Target for Cyber Attackers](#)” at the Incident Response Forum D.C. 2026, hosted by Cybersecurity Docket on April 22 in Washington, DC.



Lance Taubin

Homeowners Count on Double Counting Settlements

Hilario v. Allstate Insurance Company, No. 3:20-cv-05459 (N.D. Cal.) (Dec. 3, 2025). Judge Orrick. Approving \$4 million settlement and awarding attorneys' fees and incentive awards.

The plaintiffs alleged they were charged excessive homeowners' insurance premiums because Allstate purportedly "double counted" garages in certain California homes toward the total square footage of the homes. Allstate agreed to settle for \$4 million. In addition to approving the settlement as fair, reasonable, and adequate, the court also awarded \$1.3 million from the settlement fund in attorneys' fees (more than the Ninth Circuit's 25% benchmark) and a significant incentive award of \$20,000 for the plaintiff.

Investors Secure Securities Fraud Settlement Approval

Lozada v. TaskUs Inc., No. 1:22-cv-01479 (S.D.N.Y.) (Dec. 4, 2025). Judge Cronan. Granting final approval of \$17.5 million settlement.

Judge Cronan granted final approval of a settlement resolving securities fraud claims against TaskUs and related insiders, alleging that TaskUs misled investors and artificially inflated stock prices between June 2021 and January 2022. Finding Rule 23's requirements satisfied, the court determined the \$17.5 million settlement was fair, reasonable, and adequate in light of litigation risks, complexity, and the costs of continued proceedings. The court further awarded 30% of the fund as attorneys' fees, along with \$924,556 in litigation expenses, as well as costs and expenses for the named plaintiffs.

Crypto-Related Securities Class Action Settles for \$13 Million

In re BlockFi Inc. Securities Litigation, No. 2:23-cv-01165 (D.N.J.) (Dec. 5, 2025). Judge Cecchi. Approving \$13 million settlement and awarding attorneys' fees and incentive awards.

Judge Cecchi approved a settlement reached in a securities class action against the defendants for creating BlockFi interest accounts (BIAs)—crypto accounts where users deposited digital assets to earn monthly interest—without registering them as securities. The plaintiffs also alleged that the defendants made certain misrepresentations or omissions of material fact in public statements to the investing public, including statements or omissions involving the equivalence of BIAs to federally insured bank accounts. In the approval order, Judge Cecchi found that the \$13.25 million settlement was fair, adequate, and reasonable, and she awarded \$2.7 million in attorneys' fees and \$10,000 as a service fee for each named plaintiff. Judge Cecchi further ruled that the lone objection was "invalid for failing to comply with the Preliminary Approval Order" and "without merit on its own terms."

Caught on Tape: \$900,000 Settlement Ends Video Data 'Privacy Playback' Dispute

Lee v. Springer Nature America Inc., No. 1:24-cv-04493 (S.D.N.Y.) (Dec. 9, 2025). Judge Liman. Approving \$900,000 settlement and modifying attorneys' fees and incentive awards.

The Southern District of New York approved a \$900,000 settlement in a Video Privacy Protection Act (VPPA) suit against Springer Nature America Inc., which publishes *Scientific American* magazine. The plaintiffs were a class of credentialed Springer website users who possessed a Facebook account and used Springer's subscriber video services from June 12, 2022 through July 10, 2025. In the suit, the plaintiffs alleged that Springer violated the VPPA by knowingly transmitting to Meta Platforms Inc. a "pixel" that disclosed the Facebook IDs and URLs identifying the videos that class members accessed without obtaining informed written consent from Springer's users. Following mediation, Springer agreed to pay \$900,000 to satisfy the claims of the class and suspend operation of the pixel to comply with the VPPA. The court approved the settlement, but it slightly reduced the award of attorneys' fees from the 33% of the class award that counsel had requested down to approximately \$200,000.

Whole Grain Labeling Suit Concludes with \$10 Million Deal

Wallenstein v. Mondelēz International Inc., No. 3:22-cv-06033 (N.D. Cal.) (Dec. 12, 2025). Judge Chhabria. Granting final approval of \$10 million settlement.

Judge Chhabria granted final approval of a \$10 million settlement resolving claims that Mondelēz and related entities mislabeled certain Wheat Thins products as "100% WHOLE GRAIN." Finding the agreement fair, reasonable, and adequate under Rule 23 and compliant with the Class Action Fairness Act, the court approved an attorneys' fee award of 33%, plus over \$587,000 in expenses and service awards for class representatives.

Kickback Scheme Suit Settles After 17 Years

Munoz v. PHH Mortgage Corporation, No. 1:08-cv-00759 (E.D. Cal.) (Dec. 19, 2025). Judge Baker. Approving \$29.5 million settlement and awarding attorneys' fees and incentive awards.

After 17 years of litigation, Judge Baker (a judge on the Court of International Trade, sitting by designation) approved a settlement valued at \$29.5 million. The plaintiffs brought suit against PHH Mortgage Corporation and other defendants for allegedly violating the Real Estate Settlement Procedures Act. The plaintiffs claimed that the defendants established captive reinsurance agreements with lenders that allegedly allowed the defendants to receive unearned portions of private mortgage insurance premiums, which the plaintiffs asserted was a mechanism for the defendants to obtain kickbacks from the mortgage insurers. The parties reached their settlement in principle just one week before a bench trial to resolve the disputed issue of the plaintiffs' standing. After receiving no objections and just one untimely opt-out, Judge Baker approved the settlement—which would allow a class member to receive an \$875 payment per affected loan (without a cap)—as fair, adequate, and reasonable. The court also awarded attorneys' fees of \$9,031,000 and service fees of \$5,000 per plaintiff. ■

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