CLASS ACTION & MDL roundup



overview

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video highlight

Blake Crohan | ERISA Litigation Update

ERISA Litigation senior associate **Blake Crohan** discusses the drastic increase in litigation associated with employee benefit plans since 2020, highlighting two waves of litigation involving health and welfare plans and forfeited employer contributions in 401(k) plans.

Watch the video on alston.com



Where the (Class) Action Is

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

A slew of important decisions swept through the courts in the second quarter of 2025. In theme with this edition's video highlight, we kick off the *Roundup* with a unanimous ERISA decision from the Supreme Court that lowers the standard for plaintiffs to bring lawsuits against retirement plan sponsors. We follow that up with several circuit decisions, including the Ninth Circuit changing its personal jurisdiction standards, the Fourth Circuit enforcing class action waivers, and the en banc Sixth Circuit toughening up its class certification rules.

Moving through the *Roundup*, a motion to dismiss was granted in a products liability case after seven years of litigation. This decision offers further distinctions for plaintiffs seeking relief under the Magnuson–Moss Warranty Act and citing the Class Action Fairness Act. We also cover the array of usual suspects, including mislabeling claims, policyholder class actions, and California labor violations.

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 <u>feedback</u> on this issue.

The <u>Class Action & MDL Roundup</u> 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.

& MDL roundup



Supreme Court

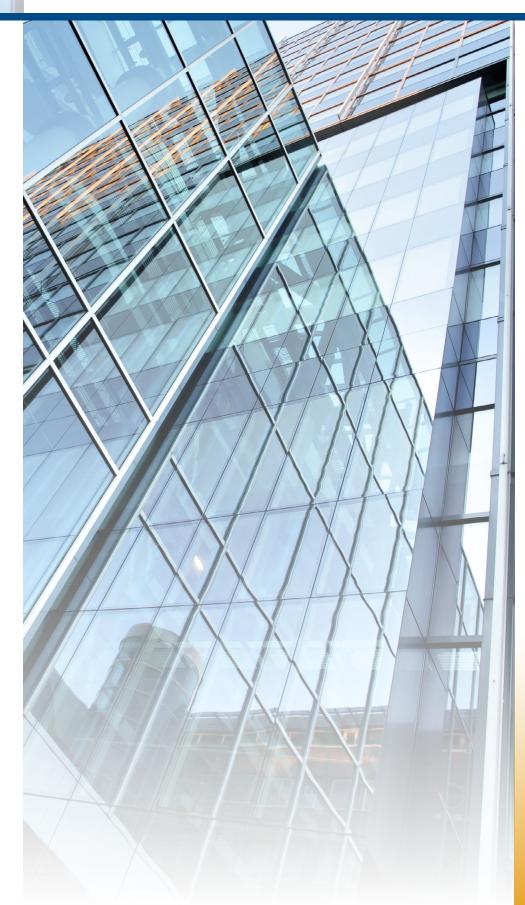
Supreme Court Paves Way for More Litigation

Cunningham v. Cornell University, No. 23-1007 (U.S.) (Apr. 17, 2025). Reversing the Second Circuit.

The U.S. Supreme Court has made it easier to bring ERISA suits. The Court reversed the dismissal of a suit in which participants in the Cornell University 401(k) plan alleged the university engaged in a prohibited transaction under ERISA simply by contracting with recordkeepers for the plan. The district court had granted Cornell's motion to dismiss the ERISA prohibited-transaction claim, ruling that in addition to pleading the elements of a prohibited transaction, ERISA plaintiffs must also allege evidence of self-dealing or other disloyal conduct. The Second Circuit then affirmed, but on different grounds, concluding that ERISA plaintiffs must allege that the transaction was unnecessary or involved unreasonable compensation.

In a unanimous decision, the Supreme Court reversed the Second Circuit and held that for ERISA plaintiffs to state a claim under 29 U.S.C. §1106(a)(1)(C) they need only plausibly allege that a plan fiduciary engaged in a transaction prohibited by that subsection. Further, the Court held that if a defendant contends that a prohibited-transaction exemption applies, it bears the burden of proving it as an affirmative defense. The Supreme Court recognized the "serious concerns" about an uptick in litigation because of its opinion. But the Court highlighted several "existing tools" to "screen out meritless claims before discovery," including Federal Rule of Civil Procedure 7, under which a court can order a plaintiff to file a reply to a defendant's answer asserting an affirmative defense.

We expect that the Supreme Court's decision will result in an increase in class actions related to 401(k) plans, defined benefit plans, and employee stock ownership plans, particularly over recordkeeping fees. Further, considering the Supreme Court's reference to Rule 7, we expect class actions involving ERISA prohibited transactions will lead to new and unique motion practice to try to dispose of those claims before discover.



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& MDL roundup



Privacy & Data Security

 Can't Buy Me Personal Jurisdiction, The Sequel: En Banc Ninth Circuit Reverses Course and Holds "Differential Targeting" of Forum Not Required for Specific Personal Jurisdiction

Briskin v. Shopify Inc., No. 22-15815 (9th Cir.) (Apr. 21, 2025) (en banc). Reversing dismissal for lack of personal jurisdiction.

California shopper Brandon Briskin sued Shopify, a Canadian company that operates an e-commerce payment platform throughout the United States, alleging Shopify violated various California privacy and unfair competition laws through its extraction and retention of customer data and by concealing its involvement in consumer transactions. The district court dismissed the action for lack of personal jurisdiction, and a panel of the Ninth Circuit affirmed.

But the en banc Ninth Circuit reversed, holding that jurisdiction is proper because Shopify's allegedly tortious actions deliberately targeted Briskin in California: (1) Shopify knew that Briskin's device was in California when it installed cookies on the device; and (2) Shopify is alleged to have collected and used Briskin's data without his knowledge or consent in ways that profited Shopify. Although the panel concluded that Shopify did not expressly target California because Shopify operated the same way across the United States—that is, there was nothing to show that Shopify specially targeted California—the en banc court disagreed that "differential targeting" was necessary. The en banc court overruled precedent that any differential targeting is inconsistent with the "traditional principles" of personal jurisdiction. The en banc court also emphasized that specific personal jurisdiction did not require contacts between the defendant and the forum state that were independent of the plaintiff.

The en banc court also reversed the district court's dismissal of the complaint as vague under Rule 8, an issue not reached by the panel. The en banc court held that the rule is typically applied to dismiss complaints that are "so verbose, confused and redundant that [the] true substance, if any, is well disguised." Here, that the operative complaint was sufficiently detailed to provide fair notice to the Shopify defendants of the claims against them.

Back from the Brink: Individualized Issues Preclude Class Certification in Data Breach Case

Theus v. Brinker International Inc., No. 3:18-cv-00686 (M.D. Fla.) (June 27, 2025). Judge Corrigan. Denying motion for class certification.

Plaintiff Theus brought a nationwide class action against Brinker International Inc., owner of the restaurant chain Chili's, over a 2018 data breach at Chili's restaurants in which hackers allegedly stole credit and debit card data and posted it for sale on the dark web. The case came before the court on remand following an Eleventh Circuit decision vacating the initial grant of class certification in another case. The Eleventh Circuit held the initial class definition—covering anyone whose data was "accessed by cybercriminals"—to be overly inclusive. It instructed the district court either to refine the class to include only those who experienced fraudulent charges or had their data posted on the dark web or to reanalyze the impact of the class potentially including uninjured individuals on the predominance inquiry.

On remand, the district court adopted the refined class definition suggested by the Eleventh Circuit and narrowed the class to include only individuals who "(1) experienced fraudulent charges or had data posted on the dark web in connection with the data breach; and 2) incurred reasonable expenses or time spent in mitigation." Under the refined definition, the court denied class certification because the common questions did not predominate over individualized issues). The only common questions were whether Brinker acted negligently and the circumstances of the data breach.

The court identified three questions requiring extensive individualized evidence. First, the transactions required individualized proof because the plaintiff failed to show that every Chili's customer who used a credit or debit card at affected restaurants during the relevant period had their data taken. Evidence of all transactions in the relevant period was therefore insufficient. Second, there was no common proof that each member experienced fraudulent charges or had data posted on the dark web. The plaintiff relied on an article describing the sale of a tranche of cards purportedly taken in a breach of nationwide chain restaurants, which did not mention Chili's, and Brinker's credit card servicer's emails roughly estimating 4.5 million at-risk cards. The court found that this did nothing to demonstrate any particular Chili's customer's credit or debit card was posted on the dark web, including the plaintiff's own card. Third, the plaintiff offered no common proof of expenses and time spent on mitigating damages from the breach.

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Join Kim Peretti and
Cara Peterman for the
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"A Strategic Approach to Cyber
Crisis Ready: Before, During,
and After an Incident" on
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Kim Peretti

Cara Peterman

CLASS ACTION & MDL roundup

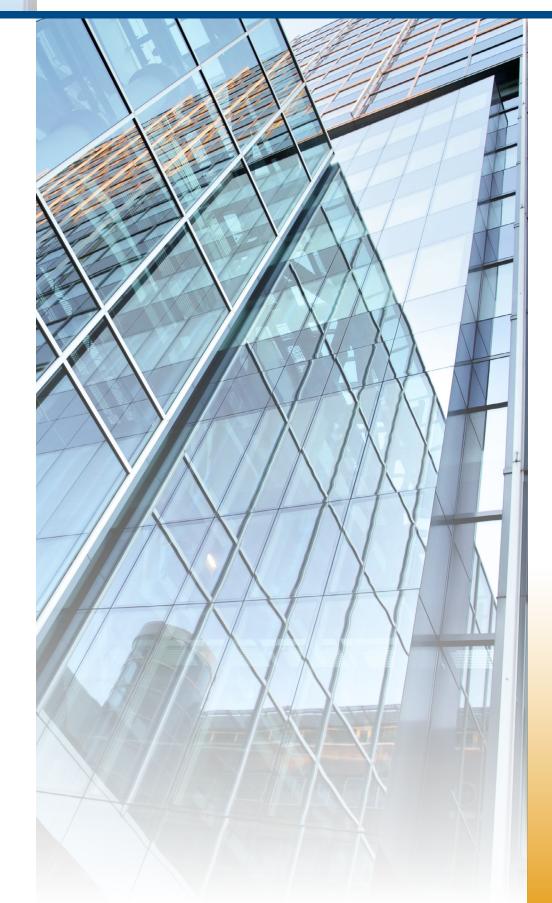




In re Marriott International Inc. Customer Data Security Breach Litigation., No. 24-1064 (4th Cir.) (June 3, 2025). Reversing grant of class certification.

Following a 2018 data breach exposing 133.7 million guest records in Marriott's Starwood database, members of the Starwood Preferred Guest (SPG) Program sued Marriott and its tech provider, Accenture LLP, alleging breach of contract, consumer protection violations, and negligence. After the district court certified classes of SGP members, the Fourth Circuit reversed, holding that the district court failed to consider whether the class action waiver in the SGP agreement precluded certification.

On remand, the district court recertified the classes, ruling that Marriott waived the class action waiver by participating in multidistrict litigation (MDL) and that the waiver might otherwise be unenforceable under Rule 23. The Fourth Circuit again reversed, holding that Marriott preserved its class action waiver defense by raising it in its answer, motion to dismiss, and opposition to class certification. Marriott's agreement to participate in MDL proceedings did not waive the SPG contract's requirement that disputes be handled "individually without any class action" because MDL consolidation does not equate to class litigation. The circuit court also rejected the district court's ruling that the waiver was unenforceable, holding that the waiver neither conflicted with Rule 23 nor was unconscionable because the waiver was clearly presented to customers and plaintiffs could choose other hotel providers if they did not wish to be bound.







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Products Liability

Defective Class Certification in Product Defect Case

Speerly v. General Motors LLC, No. 23-1940 (6th Cir.) (June 27, 2025). Vacating class certification order.

In a class action alleging defective transmissions, the Eastern District of Michigan certified 26 state-specific subclasses asserting 59 separate causes of action. On appeal, in a closely contested 9–7 decision, the en banc Sixth Circuit vacated the certification order, holding that the district court improperly generalized Rule 23's requirements and postponed relevant merits inquiries to a later stage.

The Sixth Circuit explained that courts must conduct an element-by-element analysis to determine whether a common question would resolve at least one contested element of each claim. However, a "court may not simply ask whether generalized questions yield a common answer"; the question must be sufficiently specific to advance each claim. For example, asking whether a common defect exists masks differences among the various causes of action and therefore cannot resolve them in one stroke because some may require the defect to be unreasonably dangerous, or to make the product unfit for its ordinary purpose, or to result in diminished value. The Sixth Circuit directed the lower court, on remand, to evaluate whether a common answer to a common question would resolve an element of each of the 59 alleged claims.

The court again stressed the need for an "element-by-element, claim-by-claim inquiry" into predominance and further cautioned against postponing merits inquiries for later, ignoring slight variations across state law, or adopting a "certify-now-cull-later approach." The Sixth Circuit then walked through various causes of action explaining its skepticism that common issues would predominate for any of them given the multitude of individualized legal and factual issues—for example, whether and how the defect manifested, whether class members presented their vehicles for repairs and, if so, whether GM in fact repaired the vehicles, issues of reliance, and whether class members' claims were subject to arbitration—but remanded for the lower court to apply Rule 23's predominance requirement.

Class Certification Stands in Third-Party Payor Diabetes Drug Suit

Painters & Allied Trades District Council 82 Health Care Fund v. Takeda Pharmaceutical Co., No. 23-55742 (9th Cir.) (June 16, 2025). Affirming class certification.

Takeda Pharmaceutical and Eli Lilly appealed the district court's order certifying a class of third-party payors alleging the pharmaceutical companies violated RICO by concealing a diabetes drug's alleged risk of bladder cancer.

The Ninth Circuit, relying nearly exclusively on its 2022 *Olean* decision, upheld certification over a vigorous dissent. The Ninth Circuit concluded that the district court conducted a sufficiently "rigorous analysis" of the report of the plaintiffs' econometrics expert because the court "considered and rejected" each of the defendants' challenges to the report. The court also rejected the defendants' argument that predominance is defeated by their individualized defenses based on physicians' prescribing decisions, holding that they had failed to meet their evidentiary burden. Finally, though the class's expert conceded that 1.5% of the class may be uninjured, the court rejected the argument that this defeated predominance or necessitated a trial plan to screen out those uninjured class members.

Thousands of Class Members Don't Make a Hundred Named Plaintiffs

Smith v. Costa Del Mar Inc., No. 3:18-cv-01011 (M.D. Fla.) (June 17, 2025). Judge Corrigan. Granting motion to dismiss.

The plaintiff filed a class action for allegedly deceptive sunglass warranty and repair policies, seeking relief solely under the Magnuson–Moss Warranty Act (MMWA) and citing the Class Action Fairness Act (CAFA) as the only basis for jurisdiction. The parties reached a global settlement that the district court approved, but objectors appealed, and the Eleventh Circuit reversed because the plaintiffs lacked standing to seek the injunctive relief included in the settlement and directed the district court to consider "other jurisdictional issues" raised by the parties, including recent authority from the Third and Ninth Circuits on subject-matter jurisdiction for MMWA claims.

On remand, the district court determined that it lacked subject-matter jurisdiction and dismissed the case after seven years of litigation. Under the MMWA, consumers cannot bring class actions under Section 2310(d)(1)(B) unless there are at least 100 named plaintiffs. Because this case was brought by a single named plaintiff, the district

Our Chicago team of **Kara McCall**, **Beth Chiarello**, and **Henry Woods** is on the case

for "Ill. Toxic Tort Jurisdiction Law Raises Constitutional Concerns" in Law360.





Kara McCall

Beth Chiarello

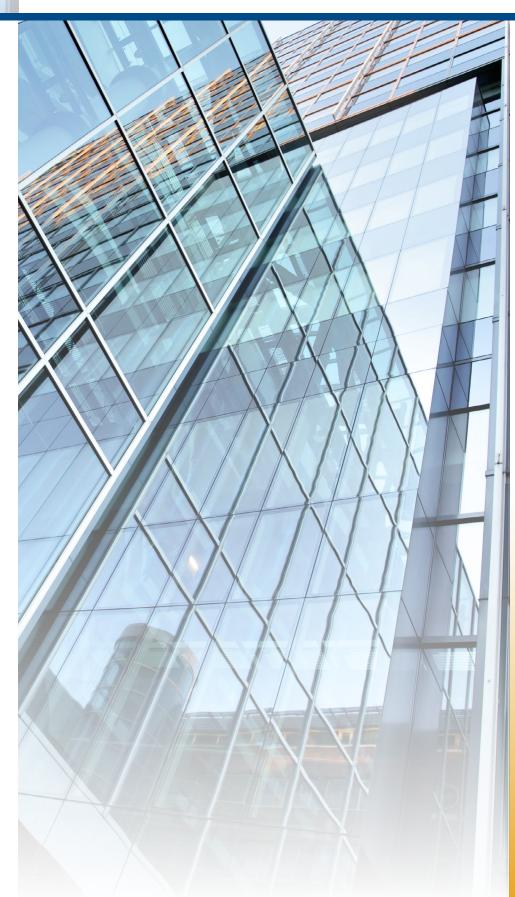


Henry Woods

CLASS ACTION & MDL roundup

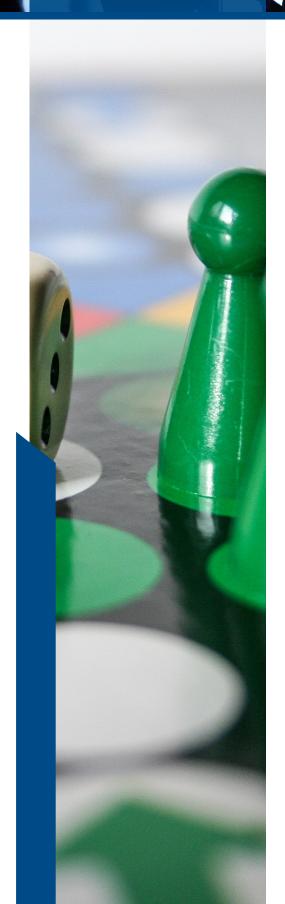
court reasoned that it could only have subject-matter jurisdiction under two possibilities: (1) federal district courts are considered "any court of competent jurisdiction in any State" under Section 2310(d) (1)(A) of the MMWA; or (2) CAFA "effectively supersedes" the MMWA's jurisdictional requirements. Following statements from the Eleventh Circuit and other district courts, the court rejected the possibility that Section 2310(d)(1)(A) provided a basis to exercise subject-matter jurisdiction.

The court agreed with analyses from the Third Circuit in *Rowland v. Bissell Homecare Inc.* and the Ninth Circuit in *Floyd v. American Honda Motor Co.*, as well as numerous district court decisions from within the Eleventh Circuit, which determined that CAFA does not provide an independent basis for subject-matter jurisdiction in a case that arises only under the MMWA. The court dismissed the case without prejudice but did not take a position on whether equitable tolling would apply if the plaintiff refiled the action in state court.



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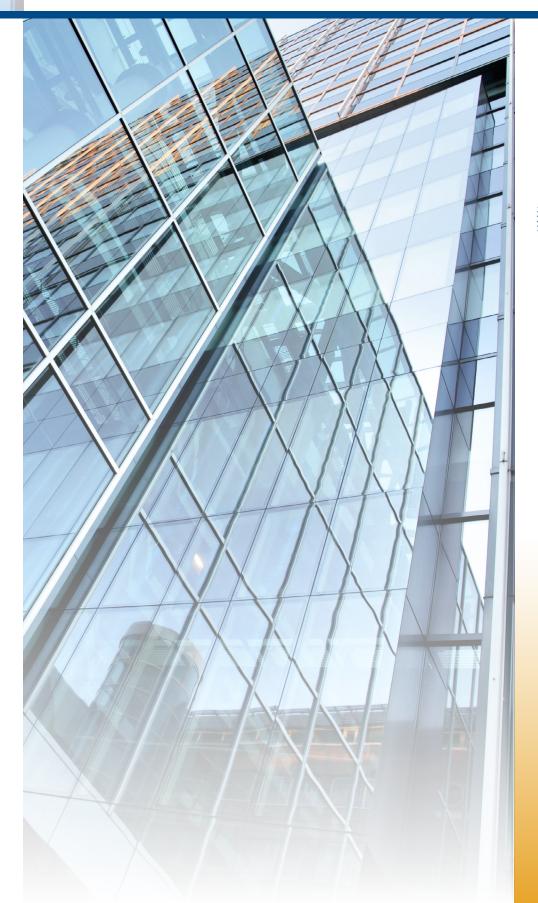


Antitrust / RICO

Class of Professional Tennis Players Scores Rule 23(d) Relief

Pospisil v. ATP Tour Inc., No. 1:25-cv-02207 (S.D.N.Y.) (May 7, 2025). Judge Garnett. Granting in part motion under Rule 23(d).

In an antitrust class action brought by professional tennis players against operators of tournaments and events, the plaintiffs obtained relief under Rule 23(d) to stop defendant ATP Tour Inc. from engaging in improper, coercive, and threatening communications with potential class members. The plaintiffs alleged that ATP was soliciting players to sign a "position statement" that indicated the players didn't support the litigation. The court found that the potential class members were vulnerable to economic coercion by ATP, that ATP unilaterally targeted potential class members by approaching them with the position statement, and that there was evidence that ATP's actions directly or indirectly coerced or misled players. The court entered an order prohibiting ATP from retaliating or threatening retaliation against potential class members, ordering ATP to distribute a corrective notice clarifying that signing the position statement does not affect any legal rights, and requiring ATP to preserve related communications. The court declined to bar all communications or require disclosure of all past communications.



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Companies" at our San Francisco
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Valarie Williams

Michelle Clark





Phil Ducker

Stuart Plunkett



Tania Kazi

CLASS ACTION & MDL roundup





Banking, Financial Services & Insurance

Sixth Circuit Reinstates Overdraft Fees Claims

Gardner v. Flagstar Bank FSB, No. 24-1436 (6th Cir.) (June 20, 2025). Reversing district court's grant of summary judgment to the defendant.

The Sixth Circuit reversed a district court's grant of summary judgment for defendant Flagstar Bank in a class action brought by a class of customers. The plaintiff alleged that Flagstar breached its contracts with customers through unauthorized overdraft and insufficient-funds charges. The district court ruled that because the plaintiff admittedly did not read the terms and conditions upon signing, she could not advance the theory that the contractual language was ambiguous.

The Sixth Circuit reversed because Michigan law sanctions a party's failure to read an agreement only when it tries to advance an interpretation that runs counter to ambiguous text. Because the language of the terms and conditions were undisputedly ambiguous, the fact that the plaintiff had not read the agreement before signing was immaterial, and summary judgment was improperly granted.

A Successful Squeeze to Arbitration

In re January 2021 Short Squeeze Trading Litigation, No. 1:21-md-02989 (S.D. Fla.) (Apr. 8, 2025). Judge Altonaga. Granting motion to compel arbitration.

Judge Altonaga granted a motion to compel arbitration filed by Robinhood in an MDL arising from trading restrictions it imposed during the January 2021 short squeeze involving "meme stocks." The court previously dismissed certain other claims with prejudice, leaving only individual federal securities claims. Robinhood moved to compel arbitration on those claims and argued that the remaining plaintiffs agreed to a valid arbitration clause, the claims fall within the scope of the clause, and Robinhood had not waived the arbitration clause. Judge Altonaga agreed, rejecting the plaintiff's argument that the dismissed state-law claims fell outside the scope of the arbitration clause.

Good Day for Class Members in Good Driver Discount Insurance Class Action

King v. National General Insurance Co., No. 4:15-cv-00313 (N.D. Cal.) (May 5, 2025). Judge Ryu. Granting in part and denying in part motion for class certification.

A class of policyholders obtained class certification on one of their two claims in a lawsuit alleging that a group of insurers violated California's good driver discount (GDD) rule by not offering a GDD policy with the lowest rate offered by any of the insurers in the group. The insurers argued that common guestions of law or fact did not predominate because whether or not a class member suffered harm depended on whether the class member would have accepted the lower-rate policy even if it had been offered. According to the insurers, factors other than rate affect the choice between various policy options, such as the amount of coverage for non-listed drivers, rental vehicle coverage, and repair coverage policies. The court framed this as an issue of reliance on the two claims alleged: (1) violation of California's Unfair Competition Law (UCL); and (2) breach of the implied covenant of good faith. Reasoning that actual reliance is not a required element for a UCL claim but is necessary for an implied covenant claim, the court granted the plaintiffs' motion for class certification on the UCL claim only.



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Consumer Protection

Class Action Bid Melts Away in Ghee Labeling Suit

Effinger v. Ancient Organics LLC, No. 3:22-cv-03596 (N.D. Cal.) (May 23, 2025). Judge Seeborg. Denying motion for class certification.

A Northern District of California court shut down a plaintiff's bid to certify nationwide and California classes of consumers in a food mislabeling class action. The plaintiff alleged that the defendant, a ghee manufacturer and distributor, falsely marketed its product as containing "good fat" and being a "superfood," which she claimed misled consumers into believing the product was a healthy alternative to other butters, despite its high saturated fat content.

In evaluating the motion for class certification, the court found that the plaintiff did not provide sufficient evidence to establish numerosity because the only evidence of sales she provided was an incomplete ledger, lacking specific dates and sales figures. She also failed to satisfy her evidentiary burden to show that the labels were false or misleading because she relied only on her own experience without expert reports or consumer surveys to support that "a significant portion of the consuming public" would find the label misleading. The court also determined that the plaintiff's attorneys did not adequately represent the proposed class, citing repeated last-minute extension requests, missed deadlines, losing contact with a co-plaintiff, and other litigation missteps.

Plaintiffs Can't Collect: Class Certification Motion Denied in FDCPA Suit

Lezark v. I.C. System Inc., No. 2:20-cv-00403 (W.D. Pa.) (May 29, 2025). Judge Wiegand. Denying class certification.

The Western District of New York denied a motion for class certification brought by plaintiffs claiming that the defendant violated the Fair Debt Collection Practices Act. The plaintiff alleged that he suffered emotional distress after receiving a debt collection letter stating that his collections account might be referred to an attorney, even though legal action could not be used to collect the debt. He sought to represent a class of similarly situated individuals in Pennsylvania and, in the alternative, a class of similarly situated individuals who indicated on a survey sent to potential class members that they had experienced distress or took particular action after receiving the letter that suggested that their debt could be referred to an attorney. The defendant focused its opposition on predominance, arguing that

neither class could be certified because, under the Supreme Court's decision in *TransUnion LLC v. Ramirez*, a court must affirmatively determine that each class member has Article III standing to recover damages. The court agreed. And because standing was based on each class member's reaction to receiving the letter, the court determined that individual questions predominated for both classes, such that neither satisfied Rule 23(b)(3)'s predominance requirement.

Plaintiffs Challenging Pet Food Labeling Say Fur-Well to Class Certification

Vanzant v. Hill's Pet Nutrition Inc., No. 1:17-cv-02535 (N.D. III.) (June 9, 2025). Judge Alonso. Decertifying class.

A pet food manufacturer succeeded in decertifying a class of consumers asserting claims that the marketing of pet food was deceptive and unfair under Illinois law. The complaint alleged that the labeling of the "prescription diet" pet food led consumers to believe that the product contained a drug or medicine when it did not. The plaintiffs brought deceptive-practices and unfair-practices claims based on two different theories of liability. The court granted summary judgment in the defendant's favor on the plaintiffs' unfair-practices claim but allowed the deceptive-practices claim to proceed. However, the plaintiffs' damages model, which supported their motion for class certification, was based on both theories of liability. On its motion to decertify the class, the defendant argued that, because only the deceptive-practices claim remained, the damages model was no longer valid and the class should be decertified. The court was persuaded, ruling that the damages model was tied to both theories, and in the absence of a common damages model, predominance was not satisfied. The court also denied the plaintiffs' request to supplement their expert report because the report would need to introduce an entirely new damages model, which was inappropriate after the disclosure deadline.

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International

The Court of Appeal Rules That Litigation Funding Agreements Are Enforceable

Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd [2025] EWCA Civ 841.

On 4 July 2025, the English Court of Appeal confirmed that litigation funding agreements (LFAs) calculated by reference to a multiple of a funder's outlay are enforceable. The determination, while expected, brings clarity, certainty, and confidence to litigation funders involved in UK collective proceedings before the Competition Appeal Tribunal (CAT).

Why we are here?

Before the Supreme Court's decision in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, it was standard practice in LFAs for a funder's return to be *calculated by reference to a percentage* of the damages obtained upon a successful determination. However, the Supreme Court held that these funding agreements were 'damages-based agreements' (DBAs) as defined by the relevant legislation and, due to the prohibition against DBAs in opt-out collective proceedings and other DBA regulations, were unenforceable. As a result, the LFAs operative in collective proceedings before the CAT were amended, mostly to stipulate that a funder's return is calculated by reference to a multiple of the funder's outlay.

Are the revised LFAs enforceable?

The Court of Appeal considered appeals from Sony, Apple, Mastercard, and Visa, each related to the LFAs in place in various collective proceedings against them.

A fundamental question before the court was whether the funders' returns in the revised LFAs were 'determined by reference to the amount of the financial benefit obtained' by the litigation. As a matter of statutory interpretation, the appellants had already accepted that the calculation of a funder's return by reference to a multiple of its outlay was not 'by reference to the amount' of damages awarded. Under these arrangements, the funder's contractual entitlement to a return is linked to the amount it has contributed, not the size of the proceeds. As a starting point, therefore, the revised LFAs were enforceable.

Contrary to the appellants' submissions, the court held that the enforceability of the LFAs was unaffected by the fact that funders' returns could be affected or *influenced in some way* by the size of the proceeds; for the LFA to be rendered unenforceable, the size of the damages has to be the substantive basis on which a funder's return is measured.

The appellants therefore failed to persuade the court that an express or implied cap on the amount that funders could receive which was limited by reference to the total amount of the damages awarded caused the LFAs to be caught by the relevant legislation (and thus rendered unenforceable). The court noted that the entire litigation funding system relies on returns made out of available damages; to disallow any and all references to damages recovered would make it almost impossible to draft an enforceable LFA.

The Civil Justice Council's Final Report on Litigation Funding

On 2 June 2025, the Civil Justice Council published its final report on litigation funding which, amongst other proposals, advised the UK government to retrospectively reverse the findings of *PACCAR* and to adopt a 'light-touch' regulatory regime for funders, with additional requirements for consumer and class actions.

However, a bill to address reforms to the litigation funding landscape was dropped by the new administration following the 2024 general election. The government has not yet responded to the Civil Justice Council's final report.

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Elise Paeffgen takes on
the extensive responsibility of
keeping up with extended producer
responsibility (EPR) laws for packaging
at the West Coast Legal, Regulatory &
Compliance Forum on Cosmetics &
Personal Care Products in Santa
Monica, California October 7–9.



lise Paeffgen

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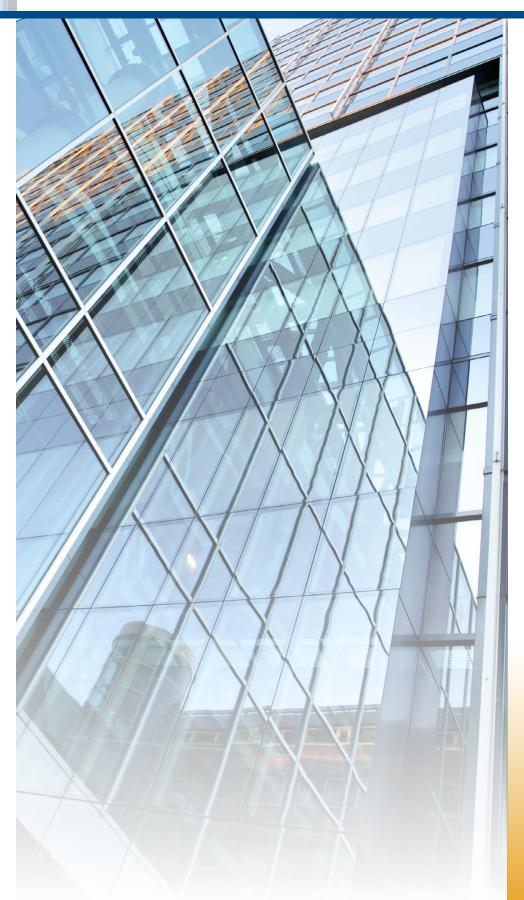
Labor & Employment / ERISA

PAGA at a Crossroads

Williams v. Alacrity Solutions Group LLC, No. B335445 (Cal. Ct. App.) (Apr. 22, 2025); and Osuna v. Spectrum Security Services Inc., No. B338047 (Cal. Ct. App.) (May 27, 2025).

Two decisions in the California Court of Appeal highlighted issues in Private Attorneys General Act (PAGA) litigation: standing and timeliness. Both cases involve former employees who filed PAGA claims more than one year after their employment ended, but the courts reached opposite conclusions about whether those claims could proceed. On April 22, in *Williams*, the court held that a PAGA plaintiff must have suffered a Labor Code violation within the one-year statute of limitations to have standing to bring a valid PAGA claim. The following month, in *Osuna*, the court allowed a former employee to proceed with a representative PAGA claim even though his own claims were untimely.

The conflict reflects a broader debate over the viability of actions when the named plaintiff no longer has a timely individual claim—a structure sometimes referred to as a "headless PAGA claim." The *Osuna* decision is also notable in light of recent legislative changes. In 2024, the California legislature amended PAGA to clarify that plaintiffs must have experienced each alleged violation within the applicable one-year statute of limitations. This amendment, however, only applies to PAGA notices filed after June 19, 2024, leaving open the question about what to do with cases involving a PAGA notice that predates June 19, 2024.



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CLASS ACTION & MDL roundup



Securities

Early Notice Leaves an Imperfect Claim

TransPerfect Holdings LLC v. Pincus, No. 24-2218 (3rd Cir.) (June 17, 2025). Affirming district court's dismissal of securities fraud claim.

The Third Circuit affirmed the lower court's dismissal with prejudice of a securities fraud claim by plaintiff TransPerfect Holdings LLC against defendants Robert Pincus and Credit Suisse Securities (USA) LLC. The plaintiff alleged being misled in 2019 into increasing its bid in the court-ordered sale of TransPerfect Global Inc. by the defendants fraudulently saying they had received other bids with higher headline values. The plaintiff claimed it discovered the alleged fraud in 2021 during discovery in a separate case.

The Third Circuit held that the plaintiff was on notice of the alleged fraud more than two years before filing suit. The Third Circuit pointed to the plaintiff's own filings in the Delaware Chancery Court that included several instances of notice about the sale, including stating in an answering brief that the plaintiff's offer "remained far superior" to other parties.' Those filings demonstrated the plaintiff's knowledge that it had a superior bid to other parties and the defendants' statement had been false. The Third Circuit concluded that those filings shed light on the plaintiff's awareness of the defendants' fraud at the time and therefore the suit is time-barred.

Short-Seller Report Insufficient to Prove Securities Fraud

Defeo v. lonQ Inc., No. 24-1709 (4th Cir.) (Apr. 8, 2025). Affirming district court's dismissal of securities fraud claims and denying leave to amend the complaint.

The Fourth Circuit affirmed a lower court's dismissal of a securities fraud claim against lonQ Inc., a publicly traded quantum computing company. The plaintiffs, a group of shareholders, alleged that a "short seller" report published by Scorpion Capital alleging fraud by lonQ revealed lonQ's fraud and caused a decline in stock price. The report accused lonQ of perpetrating a "quantum Ponzi scheme" through allegedly misleading statements about its technology and finances. Notably, Scorpion Capital, a short-seller with a financial motive to lower lonQ's stock price, provided a disclaimer that the report could not be authenticated for accuracy.

The Fourth Circuit upheld the lower court's decision denying the plaintiff's attempt to file a second amended complaint because of a fundamental inability of the plaintiffs to establish loss causation. The Fourth Circuit, drawing on Ninth Circuit precedent that short-seller publications do not meet the pleading standards, reasoned that there was no loss causation because the report did not expose any new and credible truths about lonQ. The Fourth Circuit based its decision in part on Scorpion Capital's disclaimer of the report's accuracy. The Fourth Circuit concluded, "We are not experts in quantum computing, but we do know that a plaintiff fails to plead loss causation when it fails to plausibly allege truth leaked out to the market."

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Not so fast! **Susan Hurd** and **Carissa Lavin** explain why "Quick Gains Lead to Quick Claims: Short-Swing Profit Liability" in Corporate Counsel.





Susan Hurd

Carissa Lavin

CLASS ACTION & MDL roundup



Settlements

Broiler Chicken Antitrust Litigation Takes Another Step Across the Road

In the Matter of Broiler Chicken Antitrust Litigation, No. 24-1030 (7th Cir.) (April 1, 2025). Affirming \$8 million settlement approval.

The Seventh Circuit affirmed the Northern District of Illinois's approval of an \$8 million settlement between the plaintiff class and Simmons Foods in the long-running and complex Broiler Chicken Antitrust Litigation. The plaintiffs alleged Sherman Act Section 1 violations based on bidrigging and supply reduction. The district court put different theories and different defendants on "Track 1" or "Track 2." The Seventh Circuit reviewed the settlement for the Track 1 claims against Simmons food, which omitted bid-rigging allegations in exchange for an expedited schedule. Several members of the class objected to being included in the settlement primarily because they had their own pending antitrust suits but had missed the opt-out deadline. The settlement at issue therefore had the effect of releasing the objectors' bid-rigging claims against Simmons The Seventh Circuit saw nothing unreasonable in the settlement and affirmed.

Upward Adjustment for Stargazers' Attorneys in Indirect Telescope Purchaser Action

In re Telescopes Antitrust Litigation, No. 5:20-cv-03639 (N.D. Cal.) (Apr. 11, 2025). Judge Davila. Approving \$32 million settlement.

The Northern District of California granted final approval of a \$32 million common settlement fund for indirect purchasers in a class action alleging a conspiracy among telescope manufacturers to fix prices. The court found that this "excellent result" warranted an upward adjustment from the standard 25% attorneys' fees benchmark to a third of the settlement fund (\$10.67 million). The court reasoned that the \$32 million settlement fund provided direct cash relief and represented between 19% to 110% of the possible recoverable damages. It also noted that class counsel took on substantial risk in litigating the hard-fought and complex case on contingency.

The Final Block Falls into Place for Crypto Claims

Winter v. Stronghold Digital Mining Inc., No. 1:22-cv-03088 (S.D.N.Y.) (Apr. 14, 2025). Judge Abrams. Granting final approval of \$4.6 million settlement.

The Southern District of New York granted final approval in the class action against Stronghold Digital Mining and associated defendants, approving a settlement that resolves claims brought by investors who purchased Stronghold Class A common stock pursuant to the company's October 2021 IPO. The court said it would issue a separate order for attorneys' fees and expenses, which would not affect the finality or implementation of the settlement.

Elevator Union Litigation Reaches New Heights

McLachlan v. Board of Trustees of the Elevator Constructors Annuity and 401(k) Retirement Plan, No. 2:22-cv-04115 (E.D. Pa.) (Apr. 15, 2025). Judge Baylson. Granting final approval of \$5 million settlement and granting in part motion for attorneys' fees.

The Eastern District of Pennsylvania granted final approval to a settlement with a retirement plan. In the underlying suit, the plaintiffs alleged the plan's trustees breached their fiduciary duties under ERISA by retaining expensive, underperforming funds, charging excessive recordkeeping and administrative fees, and failing to monitor investment management fees. The settlement creates a \$5 million settlement fund to be distributed pro rata among class members, with the class period spanning from October 13, 2016 to November 26, 2024. The court scrutinized the requested attorneys' fees and incentive awards, ultimately reducing the incentive awards for the named plaintiffs from \$8,000 to \$1,000 each, and the attorneys' fees from the requested \$1,666,500 (about 33.3% of the fund) to \$950,000 (about 19%), citing the early resolution of the case and the amount of time devoted by counsel as key factors in the reduction.

Settlement Reached in Flint Water Crisis

In re Flint Water Cases, No. 5:16-cv-10444 (E.D. Mich.) (Apr. 28, 2025). Judge Levy. Granting final approval to \$53 million settlement.

More than 10 years after the Flint water crisis, water technology company Veolia North America reached a settlement with approximately 26,000 individual plaintiffs for \$53 million (with one-third going to the plaintiffs' lawyers). In a press release, Veolia maintained that the "final settlement is in no way an admission of responsibility." Instead, from "day one," Veolia has rejected the "false allegations" and instead focused on the "clear facts,"

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Now that the kids are (finally) back in school, **Elizabeth Clark** and **Courtney Quirós** can reveal the "Parenting

<u>Skills That Can Help Lawyers</u>

<u>Thrive Professionally</u>" for

<u>Law360</u>.





Elizabeth Clark

Courtney Quirós

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including that Veolia was hired to conduct a one-week assessment that was not focused on lead and that Veolia made recommendations to the City of Flint on corrosion control that were ignored.

Automotive Lawsuit Settlement Spurs Fight over Excessive Attorneys' Fees

Aberin v. American Honda Motor Co. Inc., No. 4:16-cv-04384 (N.D. Cal.) (May 9, 2025). Judge Tigar. Granting final approval of settlement.

A California federal judge granted final approval to a settlement ending litigation over allegedly defective hands-free systems in Acura vehicles. The settlement provided class members with reimbursement of out-of-pocket expenses of up to \$500 for replacement of hands-free units, as well as a \$350 payment for hands-free units that were disconnected or where the alleged defect was indicated. Class counsel estimated the settlement value at well over \$23 million, based on 171,000 settlement class vehicles, and sought attorneys' fees of over \$10 million. However, with a low claims rate, the benefit to the class actually ended up at just \$540,000. The defendant argued that the attorneys' fees were therefore grossly disproportionate to class relief. Judge Tigar approved attorneys' fees, trimmed down to \$8.5 million, emphasizing the policy considerations implicated when plaintiffs bring claims under consumer protection laws and the need to incentivize competent counsel to take cases on contingency.

Plaintiffs in Securities Class Action Grab \$80 Million Settlement

InreGrab Holdings Limited Securities Litigation, No. 1:22-cv-02189 (S.D.N.Y.) (May 15, 2025). Judge Rochon. Approving \$80 million settlement, certifying settlement class, and awarding attorneys' fees.

Judge Rochon approved a class action settlement and certified a class of plaintiffs who purchased or otherwise acquired public shares of Grab Holdings Ltd., a Southeast Asian technology company that provides Uber-like ride and food delivery services in Southeast Asia. Grab faced litigation after allegedly failing to disclose in its statements that it was facing a driver shortage, which purportedly caused Grab to increase incentive programs, causing Grab's ride services to be less profitable. After three years of litigation, the parties reached an agreement under which Grab will make a settlement payment of \$80 million (33% will go to the plaintiffs'lawyers). Without any objections and with just one optout from the class, Judge Rochon found that the class action settlement was fair, reasonable, and adequate.

Plaintiffs Record One of the Highest Settlement Recoveries Under the California Invasion of Privacy Act

Aguilar Auto Repair Inc. v. Wells Fargo Bank N.A., No. 3:23-cv-06265 (N.D. Cal.) (May 23, 2025). Judge Cisneros. Granting final approval of \$19.5 million settlement and awarding attorneys' fees.

Judge Cisneros approved a settlement of a class action brought against Wells Fargo Bank and other defendants for allegedly recording telemarketing cold calls without consent of the recipients in violation of the California Invasion of Privacy Act (CIPA). That statute prohibits recording confidential telephone communications and allows a plaintiff to recover up to \$5,000 per violation. Under the settlement agreement, the defendants will pay \$19.5 million for a settlement fund and an additional \$200,000 in settlement administration costs, and one defendant will be required to disclose when it is recording calls going forward. Judge Cisneros awarded the plaintiffs' lawyers their requested fees of one-third of the settlement fund. Among other things, she remarked that plaintiffs' counsel "secured one of the highest settlements in a CIPA action of its kind."

Over \$5 Million Settlement for Long-Standing Generic Drug Price-Fixing Conspiracy

In re Generic Pharmaceuticals Pricing Antitrust Litigation., No. 2:16-md-02724 (E.D. Pa.) (May 29, 2025). Approving \$5.2 million settlement.

The Eastern District of Pennsylvania approved a settlement of \$5.2 million in multidistrict litigation against a number of pharmaceutical manufacturers accused of a conspiracy to artificially inflate generic drug prices through collusion. The class asserted claims of price fixing by various defendants in violation of the federal Sherman Antitrust Act and various state antitrust laws, alleging that the defendants conspired through joint activities, including company-to-company contacts and trade associations, to inflate the prices of 18 distinct generic drugs. The class of plaintiffs included over 59,000 dispensers of drugs (including clinics, hospitals, and independent pharmacies) throughout the United States who purchased the generic drugs from the defendant manufacturers from January 1, 2010 through March 5, 2024. Due to the complexity of the multidistrict litigation, class counsel was awarded 33% of the settlement fund in attorneys' fees.

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Modern Athlete Compensation

In re College Athlete NIL Litigation, No. 4:20-cv-03919 (N.D. Cal.) (June 6, 2025). Judge Wilken. Approving \$2.78 billion settlement.

A California federal judge approved a \$2.78 billion settlement that allows NCAA Division I athletes to receive revenue sharing for the first time. The settlement compensates approximately 184,000 former athletes for previously withheld NIL (name, image, and likeness) earnings. It also establishes a framework for future revenue sharing beginning in the 2025–26 academic year. The case was led by athletes Grant House and Sedona Prince and challenged the NCAA's long-standing restrictions on athlete compensation. Judge Wilken required multiple revisions to the settlement to address concerns about roster limits and fairness. This landmark decision marks a major shift in college sports, aligning athlete compensation with modern legal and economic standards.

Insurance Companies Settle over Improperly Calculated COI Deductions

Glover v. Connecticut General Life Insurance Co., No. 3:16-cv-00827 (D. Conn.) (June 16, 2025). Judge Shea. Approving \$147.5 million settlement.

The District of Connecticut approved a class settlement of \$147.5 million to a class of plaintiffs who alleged two defendant insurance companies—Connecticut General Life Insurance Company and The Lincoln National Life Insurance Company breached policy provisions governing cost of insurance (COI) deductions from the investment portions of their policies. The plaintiff class of approximately 191,000 policyholders claimed that the defendants improperly calculated inflated COI deductions from their policies, effectively reducing their cash value. While the court affirmed the proposed settlement, the court reduced class counsel's requested 25% of the total settlement down to 20%. The court then awarded counsel for an objector 10% of the total awarded attorneys' fees pot, finding that the objector counsel's efforts in a related action likely impacted a defendant's decision to settle, positively influencing the settlement for the class as a whole. Between them, class counsel were awarded a total of \$26.5 million in attorneys' fees.

Poultry Giant Reaches Meaty Settlement in Price-Fixing Securities Class Action

In re Pilgrim's Pride Corporation Securities Litigation, No. 1:16-cv-02611 (D. Colo.) (June 17, 2025). Judge Jackson. Approving \$41.5 million settlement.

Judge Jackson approved a \$41.5 million settlement agreement between Pilgrim's Pride and investors who purchased or otherwise acquired shares of Pilgrim's Pride between 2014 and 2016. According to the allegations in the complaint, Pilgrim's Pride and certain of its officers violated the Securities Exchange Act of 1934 by making certain statements and omissions about the broiler chicken industry while allegedly fixing the price of chicken, which in turn inflated the price of Pilgrim's Pride's stock. Judge Jackson had no trouble finding that the settlement—to which no class member objected—was fair, reasonable, and adequate, and he awarded the plaintiffs' attorneys one-third of the settlement fund, for a total of \$13.83 million. Most notably, the court awarded a hefty incentive payment of \$40,000 to the lead plaintiff.

Investors in Automaker Drive Away with \$7 Million in Securities Fraud Case

In re Mullen Automotive Inc. Securities Litigation., No. 2:22-cv-003026 (C.D. Cal.) (June 20, 2025). Judge Gee. Granting final approval of \$7.25 million settlement.

A California federal court approved a nonreversionary cash settlement of \$7.25 million to resolve a securities suit brought by investors alleging that the defendant automaker had made representations to artificially inflate its stock price leading up to a merger. In arguing that the \$7.25 million settlement was fair and reasonable, class counsel pointed out the tenuous financial position of the defendant, which had little cash on hand and was experiencing significant operating losses. The court also approved \$2 million in attorneys' fees to be paid from the settlement fund, in line with class counsel's agreement that they would not seek fees exceeding a third of the settlement fund, as well as a \$25,000 award to the lead plaintiff as reimbursement for her reasonable costs and expenses directly related to her representation of the settlement class.

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Closing Costs: The Final Word on Real Estate Commission Class Action Settlements

Gibson v. National Association of Realtors, No. 4:23-cv-00788; No. 4:25-cv-00055 (W.D. Mo.) (June 24, 2025). Judge Bough. Granting final approval of \$21 million settlements and motion for attorneys' fees.

The Western District of Missouri granted final approval to a series of settlements in nationwide class actions challenging real estate commission practices. The two comprehensive orders cover settlements with a wide array of real estate brokerages and multiple listing services, including both national and regional players. The court found that the notice program reached over 96% of class members, resulting in more than 2.5 million claims, only 28 opt-outs, and a single objection—demonstrating overwhelming class support for the settlements. The certified classes encompass all persons who sold homes listed on a multiple listing service (MLS) in the United States during specified periods, with some variations based on geography and MLS affiliation.

The court's analysis emphasized that the settlements are fair, reasonable, and adequate under both Rule 23(e)(2) and Eighth Circuit precedent. Key factors included the complexity and risk of antitrust litigation, the significant financial and practice change relief secured, and the settling defendants' limited ability to pay larger judgments. The settlements collectively add to a recovery exceeding \$1 billion for the class and require meaningful changes to industry practices—most notably, the elimination of rules mandating compensation offers to cooperating brokers on all MLS listings. The court also approved attorneys' fees of one-third of the common fund, finding this percentage consistent with Eighth Circuit norms for complex class actions, especially given the extraordinary time, effort, and risk undertaken by class counsel.

These orders mark the final chapter for these settling defendants in the real estate commission antitrust saga—delivering both monetary and structural relief to millions of home sellers nationwide.

Copy That: Konica Minolta 401(k) Class Action Settles

Luense v. Konica Minolta Business Solutions U.S.A. Inc., No. 2:20-cv-06827 (D.N.J.) (June 25, 2025). Judge Allen. Granting final approval of \$900,000 settlement and motion for attorneys' fees.

A magistrate judge in the District of New Jersey granted final approval to a class action settlement involving the Konica Minolta 401(k) Plan. The court confirmed the certification of a settlement class consisting of all persons who participated in the plan between June 4, 2014 and the date of the preliminary approval order after finding that the requirements of Rule 23 were satisfied.

The settlement, valued at \$900,000, was found to be fair, reasonable, and adequate after arm's-length negotiations facilitated by an experienced mediator. The court noted that the settlement avoided the expense, risk, and uncertainty of protracted litigation and that the method of distributing the net settlement fund was efficient, requiring no claims process for current participants with active accounts. The court also found that the attorneys' fees, litigation expenses, and case contribution awards to the class representatives were fair and reasonable, awarding \$150,000 in attorneys' fees plus litigation costs and specific case contribution awards to the named plaintiffs.



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