ALSTON & BIRD

CLASS ACTION & MDL roundup

QTR 3 | 2025

In this issue

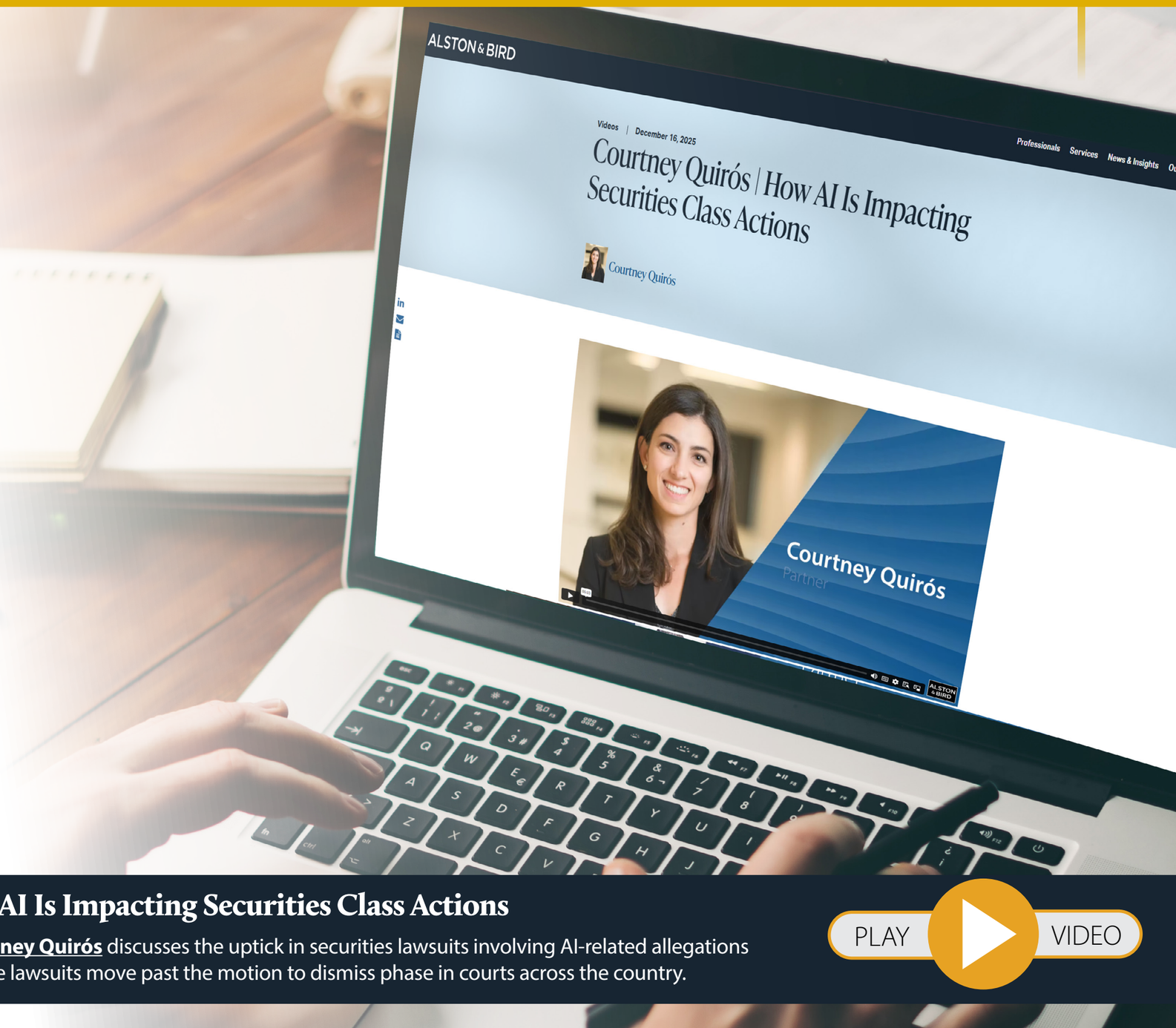
Where the (Class) Action Is

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

The circuit courts were extra busy in the third quarter. The Ninth Circuit was especially active, affirming the dismissal of antitrust and privacy class actions and affirming class certification for a false advertising suit. The Second and Fourth Circuits were not far behind with a decent amount of activity, particularly in privacy and financial services, upholding the district court's decision in most instances. Article III standing was a make-or-break point for circuit courts across the board, emphasizing the need for plaintiffs to prove concrete injury.

The district courts saw no shortage of the action, ruling in favor of the class in consumer protection cases involving misrepresentation and mislabeling and expanding the boundaries of discovery in an antitrust case. However, classes still face considerable hurdles when it comes to issue certification and trial strategy on the classwide front.

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.



Courtney Quirós | How AI Is Impacting Securities Class Actions

Securities Litigation partner **Courtney Quirós** discusses the uptick in securities lawsuits involving AI-related allegations and breaks down the trends as these lawsuits move past the motion to dismiss phase in courts across the country.

PLAY VIDEO

Antitrust / RICO

The House Always Wins: Ninth Circuit Affirms Dismissal of Antitrust Class Action Against Casino-Hotel Operators

Gibson v. Cendyn Group LLC, No. 24-3576 (9th Cir.) (Aug. 15, 2025). Affirming dismissal.

The Ninth Circuit affirmed a decision from the District of Nevada dismissing an antitrust class action based on allegations that competing hotels on the Las Vegas Strip all purchased licenses for the same software that provided pricing recommendations. The panel reasoned that it would undoubtedly violate Section 1 of the Sherman Act if the competing hotels agreed among themselves to abide by an outside entity's pricing recommendations when pricing their own hotel rooms. But because the plaintiffs alleged only that the competing hotels independently purchased licenses for the same pricing-recommendation software and the software did not share confidential information among the licensees, they did not sufficiently state a Section 1 claim.

A Peek Behind the Curtain: Consumer Class Entitled to Discovery on Antitrust Research

Frame-Wilson v. Amazon.com Inc., No. 2:20-cv-00424; *De Coster v. Amazon.com Inc.*, No. 2:21-cv-00693; *Brown v. Amazon.com Inc.*, No. 2:22-cv-00965 (W.D. Wash.) (Aug. 8, 2025). Judge Chun. Granting motion to compel.

The Western District of Washington granted a motion to compel discovery "concerning economists, antitrust scholars, and think tanks whose research on antitrust issues implicated in these cases were solicited, funded, or edited by" the defendant. The court reasoned that the discovery was relevant under Rule 26 because the plaintiffs presented information suggesting that the defendant communicated with or funded works that its expert relied on and because a working group affiliated with the defendant commissioned studies that were related to the defenses it asserted in the litigation. The court rejected the defendant's arguments about burden and the chilling of constitutionally protected speech. ■

Banking, Financial Services & Insurance

Second Circuit Affirms Dismissal of Derivatives Class Action for Lack of Injury

Sonterra Capital Master Fund Ltd. v. UBS AG, Nos. 19-2979, 19-3187 (2nd Cir.) (Sept. 15, 2025). Affirming order granting motion to dismiss.

The Second Circuit affirmed the dismissal of a class action brought by various entities and an individual that traded in derivatives based on the Sterling LIBOR rate. The plaintiffs brought claims against several banks that allegedly conspired to manipulate that rate for violation of the Sherman Act and Commodities Exchange Act. The district court dismissed the claims for several reasons, but the Second Circuit took a "more direct road to the same result" and held that the plaintiffs failed to allege actual injury under the Sherman Act or Commodities Exchange Act. The Second Circuit reasoned that the plaintiffs failed to "identify any specific transactions where they suffered financial harm because Defendants' price-fixing had distorted the market." The Second Circuit observed that the "alleged scheme went both ways, sometimes elevating and sometimes depressing LIBOR," so that the plaintiffs' allegations were "equally consistent with Plaintiffs *benefiting* from the alleged scheme."

Fractured Class Wins Some, Loses Some

Glover v. EQT Corp., No. 23-2204 (4th Cir.) (Aug. 20, 2025). Affirming in part and reversing in part certification of class.

Plaintiffs who leased oil, natural gas, and natural gas liquid interests to EQT Corporation alleged that EQT calculated and paid incorrect royalties. The district court granted the plaintiffs' motion for class certification on claims for breach of contract and statutory interest under West Virginia law, as well as fraudulent concealment.

On appeal, the Fourth Circuit affirmed the certification of the breach of contract claims, finding no abuse of discretion that minor variations in class lease language did not preclude commonality because EQT uniformly treated its payment of royalties among the class lessors in the same fashion. A sharp dissent disagreed, arguing that the majority was blurring clearly established criteria for satisfying class action requirements.

But the panel held unanimously that the district court's certification of the fraudulent concealment claim was improper because West Virginia law requires proof of reliance on the alleged fraudulent acts and the individual circumstances of reliance will vary. ■

Leading the way:

Alston & Bird Earns 11 Leadership Appointments to ABA Antitrust Law Section

"Set your course before "*Navigating ESG in Retirement Plan Investments: Fiduciary Best Practices Amid Regulatory Shifts*"as **Emily Costin** and **Bria Smith** note in PLANSPONSOR.

Emily Costin

Bria Smith

Consumer Protection

The Agony of Defeat: Second Circuit Affirms Dismissal of Pain-Reliever False Labeling Claims

Collaza v. Johnson & Johnson, No. 24-2568 (2nd Cir.) (Aug. 6, 2025). Affirming dismissal of class action.

The Second Circuit failed to offer pain relief for a plaintiff seeking to reverse the dismissal of her challenge to the labeling, marketing, and pricing of rapid-release acetaminophen gelcap tablets. The plaintiff alleged that the defendant's tablets do not work faster than less expensive, standard-release acetaminophen products. The district court dismissed the complaint on preemption grounds because the Federal Food, Drug, and Cosmetic Act (FDCA) contains an express preemption provision for nonprescription drugs and establishes standards for the use of "immediate release" label claims.

The Second Circuit rejected the plaintiff's attempt to sidestep preemption by arguing that her marketing and pricing claims do not implicate the product's labeling. The court reasoned that the defendant would be unable to use its federally approved labeling to market the products if the plaintiff's claims were allowed to proceed.

Ninth Circuit Affirms Certification of Face Moisturizer False Ad Suit

Noohi v. Johnson & Johnson Consumer Inc., No. 23-55190 (9th Cir.) (July 25, 2025) Affirming order granting class certification.

The Ninth Circuit affirmed an order granting certification of a class alleging the defendant's Oil-Free Face Moisturizer for Sensitive Skin product is mislabeled because it contains oils and oil-based ingredients.

The Ninth Circuit held that the district court did not abuse its discretion in finding that the plaintiff's expert's damages model could reliably measure classwide damages and was consistent with the underlying theory of harm, but directed that the defendant must have the opportunity to test the admissibility of the expert and the reliability of the model once it has been fully executed. The Ninth Circuit also agreed that the elements of materiality and reliance were susceptible to common proof under the objective, reasonable consumer standard—even if the class understood "oil free" in slightly different ways.

Advanced Driver Assistance Suit Moves Forward

In re Tesla Advanced Driver Assistance Systems Litigation, No. 3:22-cv-05240 (N.D. Cal.) (Aug. 18, 2025). Judge Lin. Granting class certification.

A federal district court certified a class of Tesla owners claiming the company misrepresented its "Full Self-Driving" package as if the vehicles were fully equipped with the hardware needed for complete driverless operation. The complaint alleged the vehicles were unable to complete a fully autonomous drive as promised.

Granting class certification for California residents who paid extra for the full self-driving package, the court determined that whether Tesla vehicles were equipped with hardware sufficient for full self-driving was a question that can be answered with common evidence. The court, however, narrowed the proposed class definition to only those individuals who would consider buying Tesla's full self-driving technology package again (and were not otherwise subject to arbitration).

Plaintiffs Toast Class Certification Win in Alcoholic Beverages Labeling Suit

Pizzaro v. Sazerac Company Inc., No. 7:23-cv-02751; *Koonce v. Sazerac Company Inc.*, No. 7:23-cv-04323 (S.D.N.Y.) (Sept. 18, 2025). Judge Karas. Granting motions for class certification.

False-labeling suits against an alcoholic beverages manufacturer continue after a New York court granted the plaintiffs' motions for class certification. The plaintiffs challenge the labeling of the defendant's malt beverage products, which are allegedly sold in packaging nearly identical to that of their distilled-spirit counterparts despite containing less alcohol. The district court ruled that commonality was satisfied because the defendant failed to contest whether the first element of the New York General Business Law claims presented a common question, and "even a single common question will do." Second, the court concluded the predominance requirement was satisfied because a reasonable consumer could be misled by the product packaging and the plaintiffs' damages model, while not perfect, was consistent with their theory of liability. The potential flaws in the damages model were insufficient to defeat class certification, and the court noted that the defendant could challenge the model at summary judgment and trial. ■

"What if the expert's model doesn't work? **Beth Chiarello**, **Caitlin Maly**, and **Matt Binder** explore "How J&J False Ad Ruling Could Shift Class Certification" for *Law360*."

Beth Chiarello

Caitlin Maly

Matt Binder

International

No Appeal for £1.3 Billion Landline Pricing Class Action

Justine Le Patourel v BT Group Plc and anor [2025] EWCA Civ 1061.

On 1 August 2025, the Court of Appeal refused to permit class representative Justine Le Patourel to appeal the Competition Appeal Tribunal's (CAT) dismissal of the opt-out class action against BT.

The CAT had dismissed the claim because BT's prices for landline services were 'excessive' but not 'unfair,' and BT had not abused its dominant position in breach of competition rules. Historically, that was the first substantive ruling in the CAT of a UK collective proceedings order claim. In a later hearing, the CAT refused permission to appeal and ordered the class representative to pay 85% of BT's costs (£16.5 million).

The Court of Appeal then ruled against all limbs of the class representative's appeal. It held that: (1) the CAT did not err in failing to draw adverse inferences from BT's decision not to produce certain costs data because the proper evaluation of evidence was well within the CAT's discretion; (2) the CAT neither erred in its factual economic conclusions, nor acted irrationally in applying the stand-alone costs combinatorial economic analysis; and (3) the CAT did not err in ruling that certain non-price attributes (such as additional services and brand value) justified part of BT's high prices. There was no need to consider the class representative's fourth limb of appeal on compound interest because the issue was moot.

The Court of Appeal's judgment demonstrates a degree of deference to the CAT's multi-factorial and expert-led evidential assessment of proceedings before it. For the class representative, there is no further avenue for appeal.

Drummer Refused Class Action Certification

Mr David Alexander de Horne Rowntree v (1) the Performing Right Society Limited and (2) PRS For Music Limited [2025] CAT 49.

On 27 August 2025, the CAT refused certification of a proposed opt-out collective proceedings order (CPO) brought by former Blur drummer David Rowntree against the Performing Right Society Ltd and its subsidiary PRS for Music Ltd.

PRS is a collective management organisation for artists' performing rights. Rowntree's claim targeted PRS's handling of 'unmatched' royalty sums for public performance and broadcast royalites, otherwise known as 'black box' royalties, for which it is not possible to attribute the royalties to a specific writer or publisher. These are typically distributed pro rata across all relevant members. Rowntree alleges that PRS over-allocates the black box royalties to publishers to the detriment of writers, who are more likely to be owed the royalties. The proposed class consisted of all songwriter members of PRS.

The CAT refused certification of the CPO and struck out the claim by way of summary judgment because it had no reasonable prospect of success. The CAT found that (1) the proposed class did not comprise members with individual claims under competition law because songwriters are not properly 'owed' black box royalties; (2) Rowntree had not identified a sufficiently credible or plausible method of assessing damages in the case, a required blueprint to trial; (3) it is doubtful that the cost-benefit of the proceedings favoured certification; and (4) although Rowntree was suitable as a proposed class representative, the proposed class action presented inherent conflicts and structural problems because if PRS, lost the case, it would have to divert funds away from the claimant class, its members.

This judgment is only the third time the CAT has refused certification and the first time a claim under the collective proceedings regime has been struck out at this early stage. ■

Privacy & Data Security

No Gaming the System When Alleging Article III Standing in Session-Replay Suit

Cook v. Gamestop Inc., No. 23-2574 (3rd Cir.) (Aug. 7, 2025). Affirming dismissal for lack of Article III standing.

Plaintiff Amber Cook visited GameStop's website and interacted with it by moving her mouse, clicking on links, typing in the search bar, and adding a product to her cart. She did not input any sensitive or personal information on the website, nor did she make any purchase on the site. Nonetheless, she sued GameStop for intrusion upon seclusion and violations of Pennsylvania's Wiretapping and Electronic Surveillance Control Act based on Gamestop's use of Microsoft's Clarity session replay code on its website, which captures a website visitor's mouse movements, clicks, and keystrokes and is used to improve website functionality and user experience.

Building on our success, Alston & Bird's London office expands rankings in both Chambers UK and Legal 500 UK.

"Before heading to the frontier, follow **Jennifer Everett** and **Dorian Simmons**'s map to "What Businesses Need to Know About California's AI Safety Law" in Bloomberg Law.

Jennifer Everett

Dorian Simmons

The district court dismissed Cook's complaint after finding she did not allege a concrete injury sufficient for Article III standing. The court found that Cook's alleged harms were insufficient because there was nothing connecting her browsing activity to her and she could not allege the disclosure of her activity on GameStop's website caused her "embarrassment or humiliation." The Third Circuit affirmed, but modified the ruling to be dismissal without prejudice. The court noted that because the absence of standing leaves the court without subject-matter jurisdiction to reach a decision on the merits, dismissals with prejudice for lack of standing are generally improper.

You've Got the Wrong Number: Fourth Circuit Affirms Denial of Certification in TCPA Case

Davis v. Capital One N.A., No. 24-1507 (4th Cir.) (Aug. 25, 2025). Affirming denial of class certification.

Plaintiff Clarence Davis sued Capital One for violating the Telephone Consumer Protection Act (TCPA) after Capital One left multiple prerecorded messages on his cell phone about a debt. Though Davis was not a Capital One customer and had never consented to receiving calls, his cell phone number had previously belonged to a Capital One customer who had incurred the debt and who had consented to receive calls.

Davis sought to certify a class of individuals who received calls from Capital One despite not being customers. To demonstrate the class was ascertainable, Davis relied almost entirely on his expert, who proposed a four-step process that involved cross-referencing various databases and public records to identify possible class members. Although Davis's expert proposed to identify a pool of 666 possible class members from a sample of 5,000 numbers, Capital One's rebuttal expert established that Davis's expert's methodology was unreliable because 75% of the 666 potential class members were actually Capital One customers and the methodology could not even identify Davis as a possible class member. The district court granted Capital One's motion to exclude Davis's expert and denied Davis's motion to certify the class.

The Fourth Circuit affirmed. It agreed that Davis's expert's methodology was unreliable and could not satisfy Rule 23's implicit ascertainability requirement because the district court was not "able to readily identify the class members in reference to objective criteria" in an administratively feasible manner.

Ninth Circuit Provides "Clarity" on Standing in Session-Replay Privacy Suit

Popa v. Microsoft Corp., No. 24-14 (9th Cir.) (Aug. 26, 2025). Affirming dismissal for lack of Article III standing.

Ashley Popa sued Microsoft and PSP, the operator of a pet supply website, in a class action arising out of the use of Microsoft's Clarity session-replay technology, which was embedded by PSP to track user interactions and generate heatmaps for better website design. Popa claimed the use of that technology gave rise to a claim for common-law invasion of privacy and violated Pennsylvania's Wiretapping and Electronic Surveillance Control Act, alleging that Clarity collected over 30 categories of data—from mouse movements and device types to partial mailing addresses—that allowed the website to reconstruct her entire visit. The district court dismissed Popa's claims for lack of Article III standing, finding her alleged harms too abstract to qualify as "concrete" injuries.

The Ninth Circuit affirmed, emphasizing that under *TransUnion LLC v. Ramirez,* plaintiffs must show a harm with a "close relationship" to one traditionally actionable at common law—not just a statutory violation. Popa analogized her claims to "intrusion upon seclusion" and "public disclosure of private facts." But the circuit court was unconvinced. Popa's tracked interactions—revealing only pet-product interests and a partial address—were more akin to a store clerk noting popular aisles than previously recognized invasions of privacy such as telescopic bedroom spying or publishing intimate photos. No embarrassing or sensitive info was at issue, the court reasoned, refusing to recognize a "free-roaming privacy right."

No "Free-Roaming" Right to Privacy: Ninth Circuit Affirms Dismissal Following Data Breach

Kisil v. Illuminate Education Inc., No. 23-4114 (9th Cir.) (Sept. 8, 2025). Affirming dismissal in favor of defendant.

The Ninth Circuit affirmed the dismissal of a class action brought by parents against Illuminate Education Inc. following a data breach that affected over 3 million students between December 2021 and January 2022. The compromised data included information such as grades, socio-economic status, and other educational details—but importantly, did not include Social Security numbers or financial information.

The plaintiffs argued that the mere fact their information was involved in a data breach gave rise to an intangible harm that was closely related to the common-law injury of "intrusion upon personal privacy." The court rejected this argument, underscoring that there is no "free-roaming" right to privacy and that claims based on intangible harm must be closely related to one of the four traditional privacy torts to be legally cognizable.

The court also rejected the plaintiffs' attempt to establish standing based on a tangible harm, reasoning that they could not make this showing because there was no evidence of identity theft or an imminent risk of future harm. The Ninth Circuit also concluded that emotional distress or costs incurred for credit monitoring based on an unsubstantiated hypothetical future harm did not confer standing, and the district court's dismissal was therefore proper. ■

Products Liability

Sixth Circuit Turns Up the Heat on Presale Knowledge

Tapply v. Whirlpool Corp., No. 23-1666 (6th Cir.) (Aug. 6, 2025). Affirming in part and reversing in part order granting motion to dismiss.

The plaintiffs allege that their ranges are defective because the stovetop burners turn on inadvertently. The district court granted Whirlpool's motion to dismiss, finding that the plaintiffs had Article III standing but the amended complaint failed to state plausible claims for relief.

On appeal the Sixth Circuit affirmed Article III standing but reversed the dismissal of most of the plaintiffs' fraud and consumer protection claims. The court agreed that the plaintiffs had standing but was split on whether the plaintiffs had alleged sufficient facts to show presale knowledge of the defect.

In holding the plaintiffs' allegations of presale knowledge adequate, the court distinguished prior precedent on the grounds that the plaintiffs here alleged actual knowledge, rather than constructive knowledge, based on eight letters the Consumer Product Safety Commission sent to the defendant over a five-year period. The court concluded that "a plaintiff plausibly alleges that a manufacturer knew of the alleged product defect when a government agency, required by law to transmit consumer complaints about a safety defect to a manufacturer, indeed transmits those complaints to the manufacturer," and that "direct government notice" is fundamentally different from complaints on online message boards or public databases.

Tenth Circuit Affirms Dismissal Under Illegality Defense

Messerli v. AW Distributing Inc., No. 23-3241 (10th Cir.) (Sept. 3, 2025). Affirming order granting motion to dismiss.

The Tenth Circuit affirmed the dismissal of a class action that asserted products liability claims under Kansas law against four manufacturers and distributors of computer dusters. According to the complaint, the named plaintiff's son became addicted to inhaling cans of computer duster and died to due to an overdose. The plaintiff alleged that the defendants knew that their products were abused but did not adequately reduce the purported potential harm. The defendants, in turn, moved to dismiss based on the illegality defense under Kansas law, which states that tort claims are barred when the plaintiff's illegal act caused his injuries.

The district court granted the defendants' motion to dismiss, and the Tenth Circuit affirmed. The Tenth Circuit first held that the illegality defense exists in Kansas's common law for tort claims, which include products liability claims, and that the Kansas Supreme Court would apply the illegality defense in a products liability case, though it declined to certify the question to that court. The Tenth Circuit also rejected the plaintiff's argument that Kansas's comparative negligence scheme abrogated the illegality defense.

Proposed Issue-Class Has Issues

Candelaria v. Conopco Inc., No. 1:21-cv-06760 (E.D.N.Y.) (July 2, 2025). Judge Merle. Denying plaintiff's request to certify certain classwide proposed issues under Rule 23(c)(4).

The plaintiff filed a products liability and negligence class action alleging chemicals used in the defendant's haircare products resulted in hair loss and dermatitis. After successfully proceeding past a motion to dismiss, the plaintiff sought to certify six issues for classwide resolution under Rule 23(c)(4).

In denying the plaintiff's motion, the court emphasized issue certification "would not materially advance the litigation" and "is not the superior method" to resolve the litigation. Expanding on the former, the court explained even if it certified the issues for class resolution, individual trials would still be required because the classwide issues do not resolve specific causation, proximate cause, or damages. And even worse, these required individual trials would require much of the same evidence already presented during the classwide trial, meaning that an issue class would not preserve judicial economy.

Expanding on the latter point, the court first explained classwide resolution is not manageable because the issues are governed by the laws of 49 states that vary significantly enough that the court could not resolve these issues "in one fell swoop," particularly when the plaintiffs failed to present a detailed trial plan or jury instructions that would mitigate these complexities. Second, the court noted class certification is not necessary to protect class members' interests. Because the plaintiff and other class members retained counsel on a contingency basis and the alleged individual damages are substantial, this is not a situation where class members will abstain from litigating unless the action proceeds as a class action. Third, the court found that the existence of at least four lawsuits already initiated by proposed class members also weighed against a finding of superiority. ■

"**Sam Jockel** will moderate this panel to extend your knowledge of "SB 343 California's Truth in Recycling Law: Analysis, Greenwashing Risks, Labeling Limits, and Other Potential Liabilities" at ACI's EPR Think Tank in New York City on January 28."

Sam Jockel

Securities

Defendants Face Uphill Battle Proving No Price Impact

San Diego County Employees Retirement Association v. Johnson & Johnson, No. 24-1409 (3rd Cir.) (July 30, 2025). Affirming district court's order granting class certification.

The Third Circuit affirmed a lower court's decision to grant class certification in an investor class action against Johnson & Johnson and certain of its current and former executives. The investors alleged Johnson & Johnson made materially misleading statements about the safety of its talc products and concealed the risk of asbestos contamination.

The Third Circuit considered whether class certification could be defeated by a showing that the disclosure of its alleged misstatements had no impact on stock price, holding that Johnson & Johnson had the burden to prove that the alleged corrective disclosures had no impact on the stock price. The court also noted that even if the information contained in a corrective disclosure is already public, a later corrective disclosure could have an impact on the company's stock price if it comes from a more credible source or compiles and analyzes pieces of already-public information. The court held that each of the six corrective disclosures identified by the plaintiffs could have given the market new, important information and were followed by stock price drops that had no other explanation than the corrective disclosures themselves.

This decision could make it more difficult for corporate defendants to argue that allegedly corrective disclosures did not impact the stock price, even if the corrective disclosures contain already-public information.

Omissions vs. Misstatements: New Class Action Roadmap

Owens v. FirstEnergy Corp., Nos. 23-3940, -3943, -3945, -3946 -3947 (6th Cir.) (Aug. 13, 2025). Reversing district court's class certification order.

The Sixth Circuit reversed the lower court's decision on class certification, holding that the lower court incorrectly applied the test for class certification in an investor lawsuit against FirstEnergy Corp. and its executives. The plaintiff investors claimed that FirstEnergy made materially misleading half-truths and omissions that hid an alleged bribery scheme involving payments to Ohio politicians to secure favorable legislation, which they allege artificially inflated the company's stock price.

The Sixth Circuit's analysis focused on the *Affiliated Ute* presumption of reliance, which allows courts to presume all class members relied on a company's omission of important information, instead of requiring each class member to prove that they individually relied on omissions. The court considered whether investors could invoke the *Affiliated Ute* presumption to show that all class members relied on the company's omissions, even though the case also involved allegedly misleading half-truths.

In its analysis, the court cited the Supreme Court's recent *Macquarie v. Moab* decision, which carefully distinguished between omissions and half-truths for the purposes of federal securities litigation. The circuit court held that applying the *Affiliated Ute* presumption is only appropriate if the plaintiff's allegations are based primarily on omissions, rather than half-truths. The court set out a four-part test to decide if a case is primarily about omissions and held that here, most of the claims were about what FirstEnergy affirmatively said, rather than its omissions. This case represents a new argument for defendants challenging class certification in securities cases that involve both half-truths and omissions.

From Extreme to Material: New Disclosure Test for IPOs

Sodha v. Golubowski, No. 24-1036 (9th Cir.) (Aug. 29, 2025). Reversing district court's order and applying materiality standard to IPO disclosures.

The Ninth Circuit reversed and remanded for further proceedings after holding the district court used the wrong legal standard in an investor class action against Robinhood and certain of its executives. The investors alleged that Robinhood omitted material information about its financial performance in its IPO registration statement and that this omission misled investors about the company's financial health.

The Ninth Circuit considered what standard applies to a company's duty to disclose interim financial results between quarterly reports. The lower court had used a strict "extreme departure" test, but the Ninth Circuit held the correct standard is whether the omitted information is "material" or whether a reasonable investor would have considered it important to its investment decision. The court also noted that issuers must quantify trends or uncertainties in their disclosures if it is reasonably possible to do so.

The case was remanded to the district court to apply these standards to the plaintiffs' allegations against Robinhood's IPO registration statement. This decision could make it easier for plaintiffs to argue that companies should have disclosed interim results between quarterly reports and puts pressure on issuers to be more thorough and quantitative in their disclosures. The decision also may lead to increased challenges to registration statements. ■

"**Courtney Quirós**, **Sierra Shear**, and **Lauren Funk** take stock of the matrix forming around "3 Trends from AI-Related Securities Class Action Dismissals" for *Law360*."

Courtney Quirós

Sierra Shear

Lauren Funk

Settlements

Settlement Flushed Down the Toilet

Kurtz v. Kimberly-Clark Corp., Nos. 24-425 and 24-454 (2nd Cir.) (July 1, 2025). Vacating order approving $20 million settlement.

The plaintiffs alleged the defendant falsely advertised its bathroom wipes as flushable. In the settlement, the defendant agreed to pay up to $20 million in compensation to the class and up to $4.1 million in attorneys' fees and expenses. Class members ultimately claimed less than $1 million, while class counsel were awarded $3.1 million. The district court approved the settlement, despite a class member's objection that the settlement was not "fair, reasonable, and adequate" under Rule 23(e) because it granted a disproportionate share of the total recovery to class counsel.

On appeal, the Second Circuit held that the district court erred in finding the settlement fair based on its conclusion that the size of a fee award cannot impact class relief when there are two separate funds. The 2018 Amendments to Rule 23(e) require courts to assess whether "the relief provided for the class is adequate, taking into account … the terms of any proposed award of attorney's fees." That, according to the Second Circuit, is an acknowledgment that fee awards can impact the monetary relief that is provided to the class. Joining the Ninth Circuit, the Second Circuit held that, regardless of the settlement structure, courts must "directly compar[e] the allocation of the total recovery between the class and class counsel."

The court also rejected the argument that a finding that the fees were reasonable under Rule 23(h) supports a finding of fairness under Rule 23(e), explaining that the "analyses conducted under one cannot suffice to satisfy the other." The court did not dictate whether attorneys' fees should be compared to the actual, hypothetical, or predicted class recovery, explaining that "is the kind of fact-bound question that is best left to the district court's discretion" depending on the settlement structure, rate of actual recovery by the class, and treatment of unclaimed funds. The panel remanded the case to the district court to conduct the proper analysis under Rule 23(e).

Investor Settles for "Enhancements" to Problematic Product

In re Peloton Interactive Inc. Derivative Litigation, No. 1:21-cv-02862 (E.D.N.Y.) (July 2, 2025). Magistrate Judge Kuo. Approving consolidated derivative action settlement.

A New York magistrate judge granted final approval for a settlement between in-home exercise equipment provider Peloton and an investor over derivative claims for breach of fiduciary duty and related claims over issues with Peloton's Tread+ treadmill product, which the investor claimed to be dangerous. Under the settlement, Peloton is required to implement a package of corporate governance reforms referred to as "Enhancements" and to pay $1.75 million in attorneys' fees and expenses.

Court Approves Retirement Communities Derivative Action Settlement

Anders v. Baier, No. 3:21-cv-00373 (M.D. Tenn.) (July 9, 2025). Judge Trauger. Approving $1.9 million shareholder derivative action settlement.

Judge Trauger approved a shareholder derivative action settlement filed on behalf of Brookdale Senior Living against former and current officers and directors for breach of fiduciary duties, waste of corporate assets, and unjust enrichment. Judge Trauger found that the requirements of Rule 23.1 had been met and that the settlement terms were fair, reasonable, and adequate. Under the settlement agreement, Brookdale agreed to corporate governance reforms and to pay $1.9 million in attorneys' fees and expenses.

Securities Lawsuit Involving Acquisition Settles for $27.5 Million

In re Aimmune Therapeutics Inc. Securities Litigation, No. 3:20-cv-06733 (N.D. Cal.) (July 18, 2025). Judge Chesney. Entering final judgment for $27.5 million settlement.

Judge Chesney entered final judgment in a five-year old class action arising from Nestlé's acquisition of Aimmune Therapeutics in 2020. Aimmune was a biopharmaceutical company that developed and commercialized treatments for potentially life-threatening food allergies, including Palforzia, which was the first FDA-approved treatment to help reduce the frequency and severity of allergic reaction to peanuts. The plaintiffs in the class action alleged that, among other

"**Valarie Williams**, **Alvaro Montenegro**, and **Lydia Rachianioti** ponder "To Favor or Not to Favor? Self-Preferencing in Antitrust Litigation: A Comparative Analysis" for the American Bar Association Antitrust Law Section."

Valarie Williams

Alvaro Montenegro

Lydia Rachianioti

things, the consideration offered to shareholders as part of the acquisition was inadequate. Judge Chesney approved the $27.5 million settlement, finding that the settlement was fair, reasonable, and adequate. The plaintiffs' attorneys will receive more than $9 million in fees.

Forecast Failure Costs $48 Million

Local 295 IBT Employer Group Welfare Fund v. Compass Minerals International Inc., No. 2:22-cv-02432 (D. Kan.) (July 31, 2025). Judge Melgren. Approving $48 million settlement.

The District of Kansas approved a class settlement of $48 million in an Exchange Act suit against Compass Minerals International Inc., a miner and producer of essential minerals for consumer, industrial, and agricultural uses. Compass Minerals operated the largest underground rock salt mine in the world, which accounted for one-third of the company's earnings. The company assured investors that, starting in 2018, the significant upgrades to the mine would materially reduce costs and boost the company's profits, increasing the share price. In reality, once the actual financials from Q3 2018 were in, it became apparent that these statements were misleading, and the company's price tanked, according to the allegations. The approved class included potentially hundreds of thousands of shareholders because it included any person or entity who purchased or otherwise acquired a share of Compass Minerals stock during the class period. The court did not allocate attorneys' fees in its class approval, but the plaintiffs are seeking up to one-third of the settlement amount.

Drilling Down: $84 Million Settlement for Alleged Concealment of Price-Fixing Violations

In re Dentsply Sirona Inc., No. 1:18-cv-07253 (E.D.N.Y. Sept. 11, 2025). Judge Gershon. Approving $84 million settlement.

The Eastern District of New York approved a class settlement of $84 million in an Exchange Act suit against Dentsply Sirona Inc., the world's largest manufacturer of professional dental products. The plaintiffs, a class of investors, alleged that the company artificially inflated its value, and share price, as a years-long beneficiary to a price-fixing scheme conducted by the major distributors of Dentsply Sirona's products.

The plaintiffs also alleged that Dentsply Sirona had engaged in an exclusive distribution agreement with a specific distributor that required the distributor to buy up massive amounts of inventory on the front end. The plaintiffs alleged that the company greatly benefited from this price-fixing scheme and inventory buildup and then misled the SEC and its investors by stating that Denstply Sirona's strong financial results were driven by innovation in a highly competitive market. When the truth began to be revealed, the company's stock price rapidly declined.

The class of up to 200,000 plaintiffs was composed of all individuals who purchased or acquired Denstply Sirona's stock over a certain period or as part of Denstply's acquisition of Sirona. The court also approved the requested allocation of 30% of the fund (approximately $25 million) as attorneys' fees in compensation for the nearly six years of litigation.

Court Approves Settlement Pitch from College Baseball Coaches

Smart v. NCAA, No. 2:22-cv-02125 (E.D. Cal.) (Sept. 15, 2025). Judge Shubb. Granting final $49 million settlement approval.

The Eastern District of California approved a $49 million settlement between the National Collegiate Athletic Association and 1,000 Division I volunteer baseball coaches, resolving Sherman Act Section 1 and unfair competition claims under California law. The court noted that there were significant risks associated with further litigation for the plaintiffs, including the several competitive justifications the defendants advanced. The court found that the settlement was adequate—including the nearly $33 million allocated to class member payments, which was about 70% of the plaintiffs' expert's damages valuation. ■

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