ALSTON & BIRD

CLASS ACTION & MDL roundup

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video highlight

Hyun Jai Oh | Artificial Intelligence Class Action Trends

Technology associate **Hyun Jai Oh** discusses the evolving legal issues associated with artificial intelligence relevant to users and developers alike, including intellectual property concerns and discrimination claims.

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 third quarter of 2024.

We've made it to the third quarter, and we've got lots of exciting decisions to cover! Plaintiffs celebrate the motion for class certification in a 10-year-old consolidated antitrust suit involving alleged price inflation of diabetes medication. In another win for plaintiffs, the defendant's own market research led to its downfall in a consumer class action involving sustainability claims. However, not all plaintiffs were as lucky, with more than 1,000 cases dismissed in the shingles vaccine products liability MDL.

We also cover lawsuits on hot-button issues such as greenwashing, data breaches, and mislabeling that are impacting a wide range of industries, from financial services to food and beverage.

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

International

UK: High Court Strikes Out Representative Action for 116,000 Flights

Smyth v (1) British Airways and (2) easyJet Airline Company Limited, [2024] EWHC 2173 (KB).

The English courts continue to test the limits of collective redress – in this case under the 'representative action' avenue under the Civil Procedure Rules.

Representative actions can be brought pursuant to a short but deceptively simple rule: if more than one person has the 'same interest' in a claim, the claim may be begun or continued by one or more of the persons who have the same interest as representatives of any other persons who have that interest (Rule 19.8, Civil Procedure Rules).

In this case, a representative claim was commenced by a passenger of a British Airways flight that was cancelled in 2022. Regulatory provisions provide for rights of compensation when flights are cancelled or delayed by more than three hours, subject to certain defences that may be available to an airline. The defendant airlines maintained portals through which passengers can claim compensation at minimal cost. The class representative elected not to pursue compensation through those means and instead brought a representative action.

The representative action was purportedly brought on behalf of all passengers of approximately 116,000 cancelled or significantly delayed flights over the prior six years. However, the class representative proposed a series of steps ('rather like a game of Russian dolls') whereby the defendant airlines would tender evidence for each flight on whether any defences applied under the Regulations, which meant that compensation could not be pursued. Only flights for which there was no potential defence would remain in the class.

The defendant airlines applied to strike out the action principally on the ground that the same interest test was not met.

The High Court struck out the claim and found that the class representative and the purported represented parties did not share the same interest. This was because:

1. The required same interest must be established at the outset of the proceedings.
2. Each flight would require its own detailed evidence and enquiry and the likely defences would vary significantly between passengers within the represented class (as acknowledged in the procedure put forward by the claimant to refine the class size over time).
3. Having the same cause of action was not enough to meet the same interest test. The test is whether there is a 'common issue' the resolution of which would benefit all the represented parties. While the cause of action may have been the same, there nevertheless remained between the passengers on the flights 'widely diverging interests requiring individualized determinations.'
4. It was not appropriate to place the burden on the defendants to re-define the class through disclosure and further evidence of which flights may have a potential defence to compensation under the applicable regulations. ■

"**Dan Felz** and **Peter Swire** describe why a "German Court Decision Signals Move Toward Risk-based Approach to Data Transfers" for the International Association of Privacy Professionals."

Dan Felz

Peter Swire

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Antitrust / RICO

Ninth Circuit Throws Cold Water on Swimming Federation's Defeat of Class Cert Below

Shields v. World Aquatics, No. 23-15092, No. 23-15156 (9th Cir.) (Sept. 17, 2024). Reversing denial of class certification and remanding.

The Ninth Circuit concluded that the district court abused its discretion when it refused to certify the professional swimmer plaintiffs' damages class. The swimmers and the upstart International Swimming League (ISL) brought restraint-of-trade claims against World Aquatics (swimming's international governing body), alleging that a World Aquatics rule unlawfully prevented member federations and swimmers from doing business with the ISL without risking draconian sanctions. The district court denied class certification on the ground that intraclass conflicts prevented the plaintiffs from meeting Rule 23(a)(4)'s adequacy requirement. According to the district court, representation was inadequate because swimmers competed for shares of a fixed pot, meaning any damages formula would necessarily disfavor some swimmers. But the Ninth Circuit concluded this conflict was not "fundamental" to the suit because each plaintiff shared the same liability and damages theory: that the World Aquatics rule precluded opportunities to compete in ISL events and collect prize money. Further, mere speculation that conflicts could develop from the plaintiffs' apportionment methodology was not an appropriate reason to deny certification.

Automotive Software Vendors' Class Claims Given the Green Light

Loop LLC v. CDK Global LLC (In re Dealer Management Systems Antitrust Litigation), No. 1:18-cv-02521 (N.D. Ill.) (July 22, 2024). Judge Pallmeyer. Granting motion for class certification.

An Illinois federal court certified a class of software vendors that alleged that leading providers of automotive software (used by car dealers to manage day-to-day business functions) conspired to violate antitrust laws by restricting competitor access to their data systems. The defendant software providers controlled roughly 70% of the U.S. franchise automotive dealership market for these systems. The software providers opposed class certification by arguing that some vendors in the proposed class were uninjured, which doomed a finding of predominance. The court rejected the software providers' challenge, finding their expert's arguments concerned the precision with which the vendors' regression analysis could allocate individual damages, not whether the vendors' models could assess classwide damages.

According to the court, predominance issues arise when a proposed class includes members who *could not* have been harmed, as opposed to a class that includes members who *were not* harmed. Nothing in the record suggested that any class members were immune from harm—they all purchased software services from the defendants during the alleged conspiracy period when prices were inflated—and the regression analysis could establish concrete injury (price overcharges) on a classwide basis. At the same time, the vendors' models could filter out any putative class members who had not incurred any quantifiable price-overcharge damages.

Wait Is Over for Third-Party Payors Seeking Class Cert in Generic Delay Suit

Government Employees Health Association v. Actelion Pharmaceuticals Ltd., No. 1:18-cv-03560 (D. Md.) (Sept. 6, 2024). Judge Russell. Granting motion for class certification.

A class of third-party payors (insurers or self-funded employers that purchase drugs and pass them on to consumers) sued the manufacturer of a blood pressure drug, asserting various federal and state antitrust claims. The third-party payors, or TPPs, alleged that, to block or delay generic competition, the manufacturer refused to sell samples of the drug to generic manufacturers for necessary bioequivalence testing. The manufacturer challenged the TPPs' ability to satisfy the predominance requirement, arguing that several of the TPPs' members were uninjured because they were brand loyal and continued to purchase the brand-name version of the drug even after the generic became available. Because the patients never switched to the generic, the manufacturer argued they did not incur any overcharge—and neither did the TPPs that covered their prescription costs. The court rejected this argument, finding that earlier entry of the generic to the market would have driven down the price of even the brand-name drug. The court also rejected the manufacturer's argument that the TPPs' expert failed to account for rebating. The court reasoned that rebates may be relevant to the question of damages but were irrelevant to the question of antitrust injury, which occurs the moment the purchaser incurs an overcharge, regardless of whether that injury is later offset.

MORE THAN MEETS THE EYE:

Will Hooper analyzes why the "High Stakes of Transformational Bank Mergers Prompt Skepticism" in ***Bloomberg Law***.

Will Hooper

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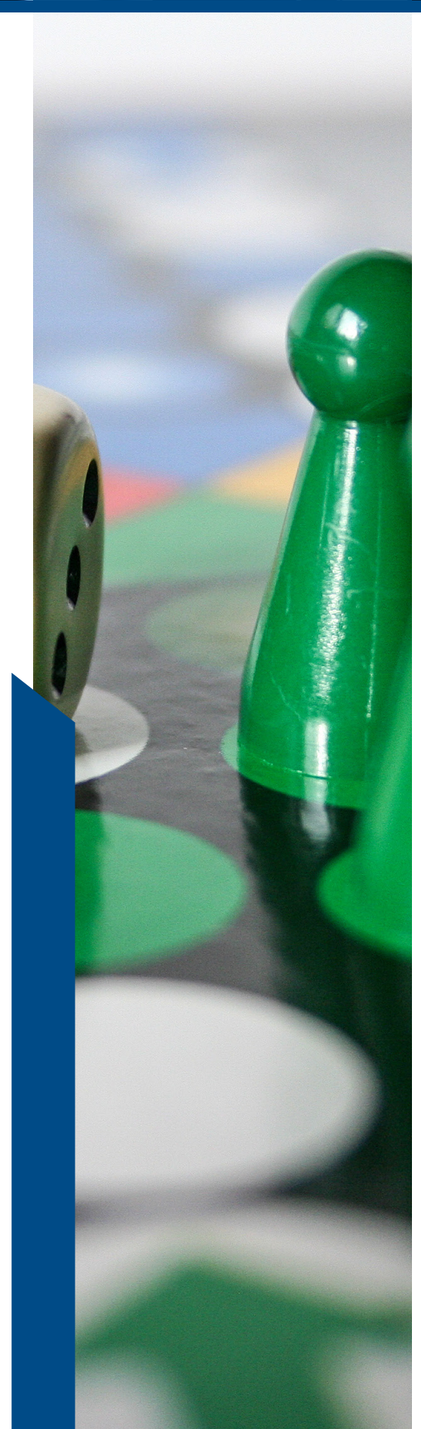
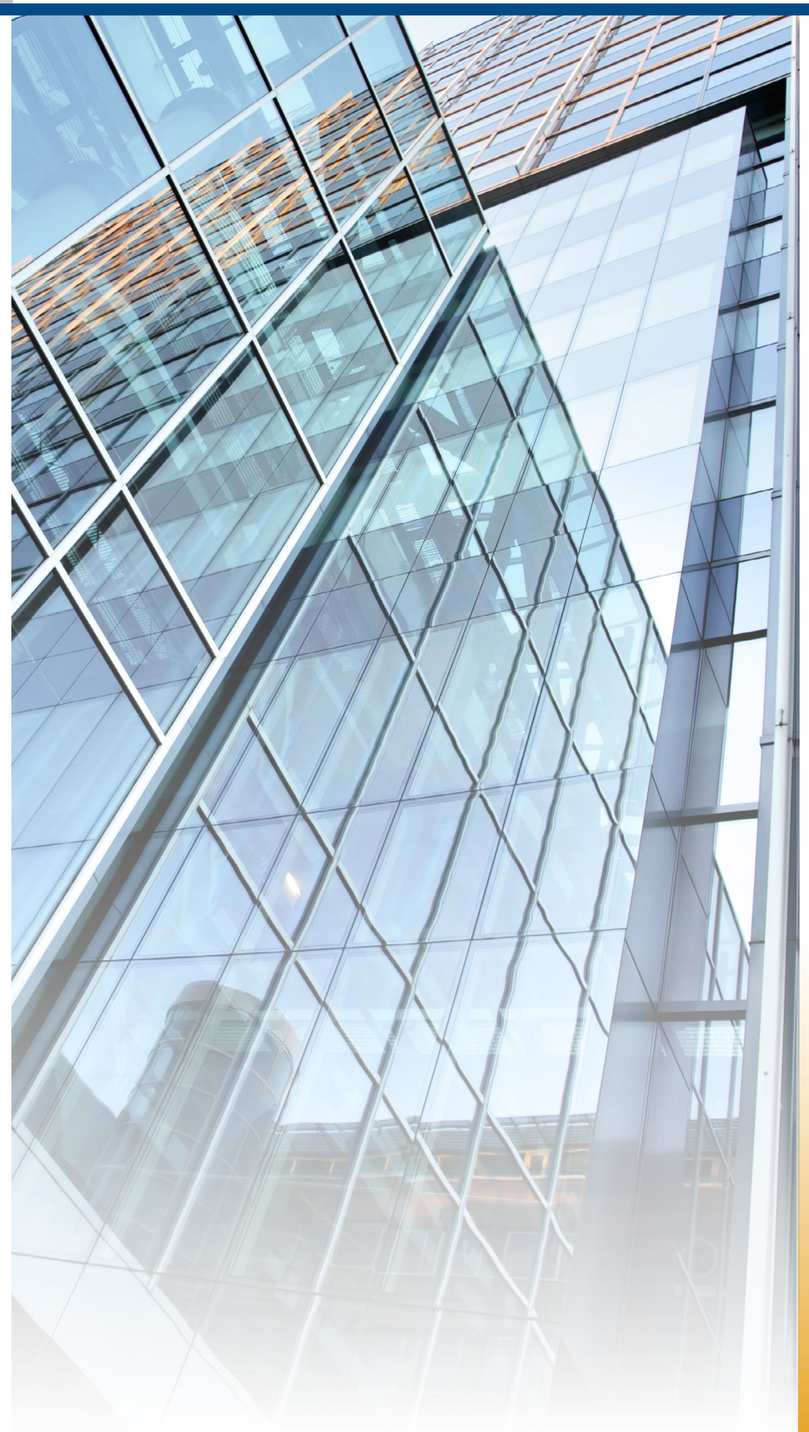


Individualized Review of Class Eligibility Does Not Render Antitrust Suit Ineligible for Class Treatment

In re Actos Antitrust Litigation, No. 1:13-cv-09244 (S.D.N.Y.) (Sept. 30, 2024). Judge Abrams. Granting motion for class certification.

A New York federal judge certified proposed end-payor and direct-purchaser classes in a 10-year-old consolidated antitrust suit in which they accused a pharmaceutical manufacturer of inflating the price of its diabetes treatment, Actos, by delaying the entry of generic alternatives. The manufacturer argued that individual questions predominated, precluding class certification, because identifying eligible end-payor class members would involve a multistep process requiring a detailed evaluation of individual affidavits for over 300,000 class members. The court acknowledged that individual inquiry would be necessary to determine class eligibility and that, although data relating to drug transactions is highly standardized, the data submitted by each member would be specific to that class member. Nevertheless, the court found that the common issues to be proved with classwide, standardized evidence—concerning the manufacturer's alleged antitrust violation, the plaintiffs' antitrust injury, and damages—were "more substantial." Therefore, the identification of class membership did not preclude a finding that the end-payor plaintiffs satisfied Rule 23(b)(3)'s predominance requirement. ■



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Consumer Protection

- **First Circuit Overturns Ruling That Favored Debt Collectors**

  Nightingale v. National Grid USA Service Co., No. 23-1476 (1st Cir.) (July 9, 2024). Vacating grant of summary judgment and denial of class certification.

  The First Circuit vacated a district court order that granted summary judgment to the defendants and denied class certification because it concluded the lower court erroneously applied common-law tort principles under Section 93A of the Massachusetts Consumer Protection Act. The plaintiff alleged that three debt collectors violated this Massachusetts statute by calling him more than two times within a seven-day period to collect on outstanding gas and electric bills, and the complaint alleged injuries in the form of emotional distress, invasion of privacy, and deprivation of the use of the plaintiff's phone. The district court concluded that the plaintiff had not shown a cognizable injury because he had not proven the elements of analogous common-law torts for invasion of privacy and infliction of emotional distress. The First Circuit noted that Section 93A provides remedies not available at common law, and it held the plaintiff had demonstrated cognizable injuries under Section 93A for purposes of summary judgment. Because the district court's class certification denial also rested on its injury analysis, the circuit court vacated that decision as well.

- **Second Circuit Revives Organic Whole Grain Cracker False Ad Suit**

  Venticinque v. Back to Nature Foods Co. LLC, No. 23-1236 (2nd Cir.) (July 12, 2024). Reversing dismissal of complaint alleging false-labeling claims.

  The Second Circuit vacated the dismissal of a complaint challenging the labeling of the defendant's Stoneground Wheat Crackers. The plaintiff alleged that the front label claim "ORGANIC WHOLE WHEAT FLOUR" was misleading because the predominant flour in the product is organic unbleached *enriched* wheat flour instead of organic *whole* wheat flour. The district court granted the defendant's motion to dismiss and denied the plaintiff leave to amend, finding that the complaint had not adequately pleaded that a reasonable consumer would be misled by the product packaging. The Second Circuit disagreed, citing its prior decision in *Mantikas v. Kellogg*, in which the court also considered flour-related label claims on a cracker product. Here, the defendant argued that any ambiguity in the front label could be resolved by reference to the ingredient list on the side label. But just as in *Mantikas*, the court held that the "whole wheat flour" claim on the product's front label is not just ambiguous, "but arguably falsely implies" that whole wheat flour predominates. Because "a reasonable consumer should not be expected to consult the Nutrition Facts panel on the side of the box to correct misleading information set forth in large bold type on the front of the box," the plaintiff had plausibly alleged a claim under Sections 349(a) and 350 of New York's General Business Law.

- **Sixth Circuit Resolves a Sticky Situation**

  Greer v. Strange Honey Farm LLC, No. 22-5589 (6th Cir.) (Sept. 6, 2024). Affirming order granting motion to dismiss and denying leave to amend.

  The Sixth Circuit affirmed the district court's decision to dismiss the plaintiffs' claims alleging honey-based deception. The plaintiff argued that the defendant's honey product had three false statements: (1) it was not raw (because it was heated); (2) it was not from Tennessee (some samples were from Vietnam); and (3) it was not 100% honey (some samples had added syrup). While the plaintiff alleged some testing proved each of these three allegations, the Sixth Circuit rejected each allegation as conclusory because the plaintiffs did not clearly allege their date of purchase or details of their testing, the plaintiffs were defrauded because the statement was proven false by the test findings, and the honey manufacturers intended to defraud customers by these statements.

- **Court Slays Defendant's Arguments and Certifies Class of Bread Consumers**

  Swartz v. Dave's Killer Bread Inc., No. 4:21-cv-10053 (N.D. Cal.) (Sept. 20, 2024). Judge Gonzalez Rogers. Granting class certification.

  The Northern District of California certified a class of California consumers who purchased the defendant's "Killer Bread" products, rejecting the argument in a false labeling case that a post-lawsuit purchase invalidated the plaintiff's claim that he would not have purchased the product had he known the "true nature" of the product. The court ruled that a single post-lawsuit purchase does not invalidate many pre-lawsuit purchases. Even the plaintiff's admission that he could not remember whether he saw the allegedly incorrectly calculated protein content disclosure wasn't enough to sway the court, which noted that the plaintiff's claim "does not require reliance on a misleading statement; only that plaintiff bought an unlawful product and paid a premium."

BE AWARE:

The "Federal Trade Commission's Updated Health Breach Notification Rule Is Now in Effect." **Kathleen Benway**, **Jennifer Everett**, **Alysa Austin**, and **Kristen Bartolotta** explain what it means in *Employee Benefit Plan Review*, November 2024.

Kathleen Benway

Jennifer Everett

Alysa Austin

Kristen Bartolotta

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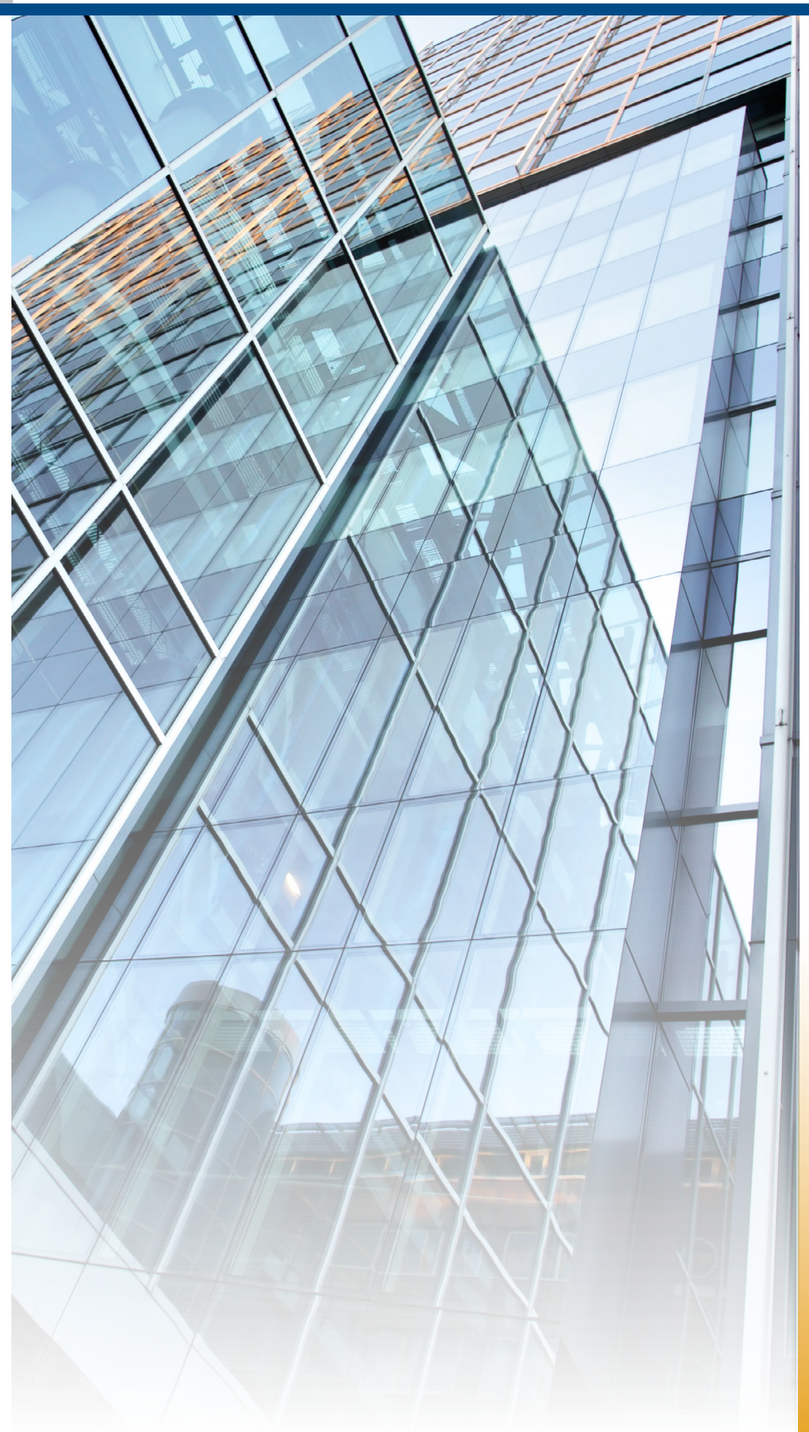
Class Certification Win Marks Sweet Victory for Chocolate Consumer Plaintiffs

Falcone v. Nestlé USA Inc., No. 3:19-cv-00723 (S.D. Cal.) (Sept. 26, 2024). Judge Lorenz. Granting class certification.

The defendant's own market research led to its downfall at the class certification stage in a lawsuit concerning sustainability claims on various chocolate chip and cocoa mix products. The plaintiff alleged that claims such as "sustainably sourced" and "better farming, better lives" led her to believe the defendant was doing "wonderful things" for the environment and farmers when instead cocoa production contributes to deforestation and child slave labor. The plaintiff successfully moved to certify two classes of California consumers, one for monetary relief and the other for injunctive relief. The defendant made several arguments opposing class certification, including that classwide proof was not possible given that there were almost 60 different product labels at issue. The plaintiff countered by citing to the defendant's records to show that the defendant itself viewed the sustainability claims as interchangeable. The court agreed with the plaintiff, noting that variations in messaging are not fatal to a class when the messaging is similarly misleading. The defendant's argument that the alleged misrepresentations were immaterial to consumers met a similar fate—the court found the representations to be material in large part based on records about the defendant's own materiality analysis, which had determined that the sustainability claims were material to consumers. ■



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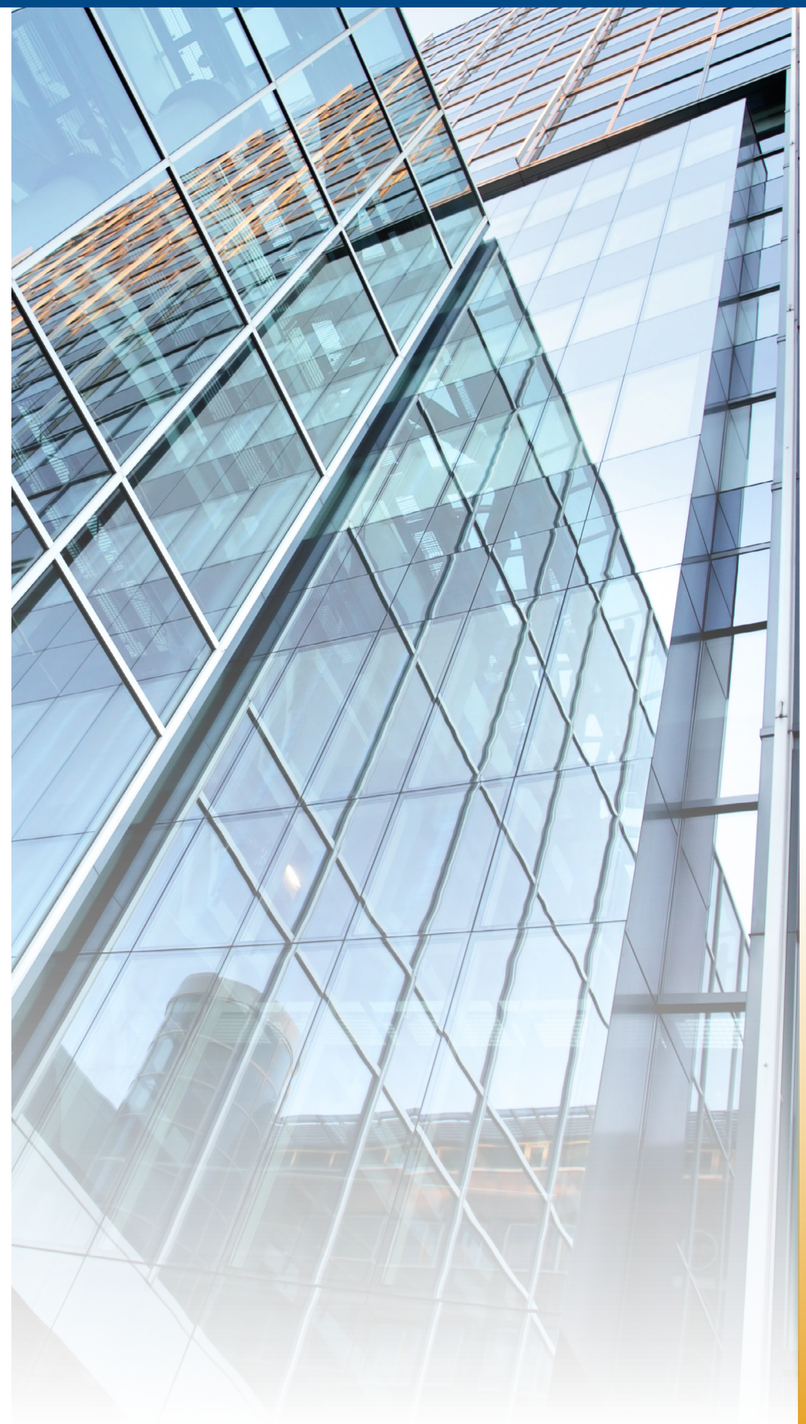
Privacy & Data Security

- **If Information Isn't Actually Stolen, It Isn't a Data Breach Case**

  Greenstein v. Noblr Reciprocal Exchange, No. 22-17023 (9th Cir.) (Aug. 21, 2024). Affirming dismissal with prejudice.

  The Ninth Circuit affirmed the district court's decision to dismiss a proposed class action for lack of Article III standing, finding the plaintiffs could not rely on an increased risk of future harm because they had not alleged their information was, in fact, stolen. The three named plaintiffs alleged that their driver's license numbers were targeted in a data breach suffered by their insurer's online insurance quote system, relying primarily on a notice they received from the insurer stating that the cyber-attackers were "able to access driver's license numbers." In affirming the district court's dismissal of the complaint with prejudice, the court noted that neither the plaintiffs' allegations nor the insurer's underlying notice stated that the plaintiffs' driver's license numbers were actually stolen. It thus found the plaintiffs' alleged increased risk of future harm was wholly speculative because it was predicated on the alleged theft of their driver's license numbers that may not have happened. ■



"**Kim Peretti** will help your team with "Communicating in a Crisis," and **Kate Hanniford** will provide a "Special Update on the Evolving Threat Actor Landscape" at ACI's Cybersecurity Law & Compliance '25 Conference, January 29–30 in Washington, DC."

Kim Peretti

Kate Hanniford

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Products Liability

- **More Than 1,000 Cases Dismissed for Failure to Comply with Lone Pine Order**

  In re Zostavax (Zoster Vaccine Live) Products Liability Litigation, No. 23-1032 (3rd Cir.) (July 16, 2024). Affirming district court's dismissal with prejudice.

  The Third Circuit affirmed a mass dismissal of cases consolidated in multidistrict litigation (MDL) for failure to demonstrate specific causation through a polymerase chain reaction assay (PCR) test in violation of the district court's Lone Pine order.

  In MDL proceedings alleging that the defendants' shingles vaccine caused shingles, the district court issued a Lone Pine order requiring the plaintiffs to demonstrate causation via a PCR test or risk dismissal. Over 1,000 plaintiffs failed to submit a PCR test, and their claims were dismissed. On appeal, the Third Circuit affirmed. The district court did not abuse its discretion in issuing the Lone Pine order. The PCR test mandate was the result of undisputed medical evidence establishing that PCR testing was the only way for the plaintiffs to demonstrate specific causation, and it made no difference that the plaintiffs had not performed those tests while they were experiencing shingles and were unable to perform them now because they no longer suffered from shingles.

- **Low Failure Rate and Lack of Damages Do Not Absolve Defendant of Liability for Latent Defect**

  Nuwer v. FCA US LLC, No. 0:20-cv-60432 (S.D. Fla.) (July 22, 2024). Judge Singhal. Denying defendant's motion for judgment as a matter of law.

  The Southern District of Florida ruled that the defendant automaker was not entitled to judgment as a matter of law on issues of liability or classwide damages over its alleged violation of Florida's deceptive practices law, even though the jury found that the class sustained no damages, because it also found the defendant violated the state law.

  The plaintiff brought a class action alleging that active head restraints in certain vehicles were made with an inferior plastic that is subject to weakening over time, resulting in a risk of inadvertent deployment that poses a safety hazard. The defendant moved for judgment as a matter of law, arguing that no reasonable jury could find a defect in the class vehicles because the undisputed evidence was that fewer than 1% of restraints inadvertently deployed, nor could a reasonable jury find classwide damages. After a jury verdict finding that the defendant violated the state law by failing to disclose the defect at the time of sale but also finding that the class did not sustain any damages, the defendant renewed its motion. The court "struggled with this decision" but ultimately denied the motion, noting that a jury had found the defendant engaged in deceptive conduct when it sold vehicles with an alleged defect and that damages are measured at the time of sale under the Florida law. Nevertheless, the court affirmed the jury verdict and entered final judgment in favor of the defendant.

- **JPML Continues Its Reluctance to Create Industrywide MDLs**

  In re Benzoyl Peroxide Marketing, Sales Practices and Products Liability Litigation, No. 3120 (J.P.M.L.) (Aug. 1, 2024). Denying plaintiffs' motion for centralization.

  The Judicial Panel on Multidistrict Litigation (JPML) ruled that MDL consolidation was not warranted for cases that, although premised on the same allegedly cancer-causing ingredient, were each brought against separate defendants.

  After a laboratory announced that its testing showed benzoyl peroxide in acne products degrades into benzene under certain conditions, plaintiffs filed lawsuits in federal courts across the country alleging that they would not have purchased such products had they known that their use posed a risk of exposure to a known human carcinogen. The plaintiffs in 11 actions moved to centralize the litigation, and the defendants opposed the motion. The JPML found that although the actions presented common issues of fact, several considerations weighed against centralization: no defendant was sued in more than six of the 35 total actions, the products varied widely in their testing, formulations, packaging, labeling, and marketing, and the plaintiffs did not allege an industrywide conspiracy or an indivisible physical injury caused by multiple defendants. Therefore, the JPML stated it would not disturb the defendants' efforts to self-organize the litigation by seeking to transfer claims because centralization under Section 1407 "should be the last solution after considered review of all other options" and "[c]reating defendant-specific 'hubs' ultimately may prove the most efficient means of moving the litigation toward resolution." ■

"**Donald Houser**, **Ashley Miller**, and **Nicole Weeks** kept track of how and why "Massachusetts Top Court Torpedoes Website Analytics Wiretapping Class Action."

Donald Houser

Ashley Miller

Nicole Weeks

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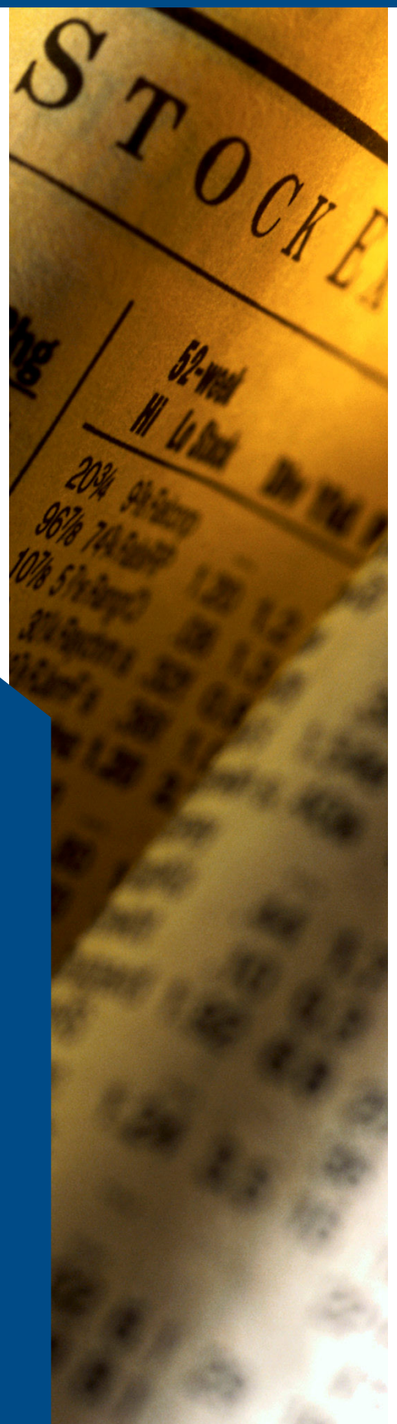

Securities

- **Second Circuit Upholds Dismissal of "Greenwashing" Claims by Investors**

  Swanson v. Danimer Scientific Inc., No. 23-7674 (2nd Cir.) (Sept. 27, 2024). Upholding dismissal of investor action.

  The Second Circuit upheld the dismissal of securities fraud claims because the plaintiffs did not prove scienter through the "core operations" doctrine. The plaintiffs alleged that Danimer engaged in "greenwashing" by making claims that its plastic substitute product, Nodax, was more biodegradable and environmentally friendly than it actually was. The plaintiffs alleged the defendants knew or should have known about the biodegradability issues with Nodax because Nodax was the company's key product and the challenged statements were "core information" for the company. The Second Circuit affirmed the district court's dismissal, holding the plaintiffs' "naked assertions" did not adequately allege state of mind because the complaint did not include any details about why Nodax should be considered central to the company's operations.

- **Delaware Chancery Court Emphasizes High Bar for *Caremark* Claims**

  Bricklayers Pension Fund of Western Pennsylvania v. Brinkley, No. 2022-1118-MTZ (Del. Ch.) (Jul. 12, 2024). Dismissing investor action.

  The Delaware Chancery Court dismissed a shareholder derivative action alleging that the board of directors of health care defendant Centene Corporation violated its fiduciary duties in connection with an alleged Medicaid billing fraud scheme. The plaintiff fund alleged the company knowingly failed to report its arrangement with its pharmacy benefit manager to state Medicaid agencies, as required by law. It brought *Caremark* claims against eight of the company's 13 directors, alleging they failed to make a good-faith effort to implement adequate legal compliance systems and to act on so-called red flags suggesting the company was violating applicable law. The court found the Centene board was sufficiently aware of the steps management was taking to handle both the compliance issues and the regulatory risks facing the company. It held the plaintiff did not show the directors "turned a blind eye" or otherwise rebut the presumption that they acted in good faith, reinforcing the high bar to prove a *Caremark* claim. ■

Dennis Garris will moderate "Everything You Always Wanted to Know About Securities Laws but Were Never Given the Chance to Ask…" at the 52nd Annual Securities Regulation Institute in Coronado, California, January 27–29.

Dennis Garris

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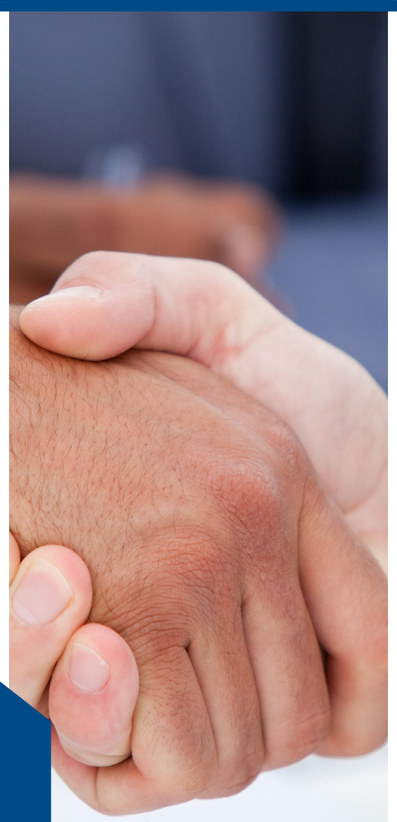

Settlements

Investors Run Away with $14 Million Settlement

In re Peloton Interactive Inc. Securities Litigation, No. 1:21-cv-02369 (E.D.N.Y.) (July 9, 2024). Judge Amon. Approving $14 million settlement and granting attorneys' fees.

A New York magistrate judge granted final approval of a $14 million settlement between in-home exercise equipment provider Peloton and an investor class over claims that the company failed to properly disclose known issues with its popular Tread+ product, despite receiving dozens of reports of incidents, injuries, and the death of one six-year-old that were not immediately reported to the U.S. Consumer Product Safety Commission. The court certified a settlement class that includes all persons who purchased or acquired Peloton securities between September 11, 2020 and May 5, 2021, and the approval order notes there were no opt-outs and only four valid requests to be excluded from the settlement class. The court also approved the attorneys' request for $3.9 million in fees and $89,000 in costs (reflecting approximately 28% of the settlement), as well as a $5,000 service award to the lead plaintiff.

Objection to Chicken Antitrust Settlement Hatched by Direct-Action Plaintiffs Fails to Take Flight

In re Broiler Chicken Antitrust Litigation, No. 1:16-cv-06837 (N.D. Ill.) (Aug. 12, 2024). Judge Durkin. Granting final approval of $75 million settlement.

An Illinois federal judge granted final approval of settlements between a class of direct-purchaser plaintiffs and two poultry companies, providing a total of $75 million to the class. The court approved the settlement over the objections of one group of large chain restaurants. They argued the settlement should not release their bid-rigging claims because the settling buyers had pursued their case on one track, which required them to abandon bid-rigging claims, whereas the objecting buyers' track did not. The court disagreed. It noted the objectors filed notices of intent to proceed on the second track, but stated that these notices did not satisfy the procedures necessary to opt out of the settlement class (which other direct-action plaintiffs did). Thus, the court concluded the restaurants could not blame class counsel for failing to pursue these claims and denied the objection.

Corrective Action Carries the Day in Loan Bias Suit

Camacho v. Alliant Credit Union, No. 5:22-cv-01690 (N.D. Cal.) (Aug. 15, 2024). Judge Freeman. Granting final approval of settlement.

A California federal court granted final approval of a class settlement in a case alleging that a credit union denied loans to Dreamers (young undocumented immigrants who received Deferred Action for Childhood Arrival status) and other immigrants due to their immigration status. The credit union established a settlement fund of $86,750, which allowed California class members to receive $2,500 per denial and national class members to receive $250 per denial, and the court awarded $50,000 in attorneys' fees and costs to the Mexican American Legal Defense and Educational Fund. Perhaps most significantly, the credit union agreed to modify its policies to begin evaluating applications of immigration on the same terms as those of U.S. citizens.

Counsel Requesting Departure from Benchmark Fees Gets (Mostly) Benched

Kurtz v. RHHC Trios Health LLC, No. 4:19-cv-05049 (E.D. Wash.) (Aug. 23, 2024). Judge Dimke. Granting final approval of $4.4 million settlement.

A Washington federal judge granted final approval to a $4.4 million settlement, resolving a five-year-old case involving allegations that hospital facility operators violated the Fair Labor Standards Act and Washington wage-and-hour law by automatically deducting 30 minutes from hourly workers' (nurses) daily time for a meal period, regardless of whether they were on duty or even had an opportunity to take a meal break. The court readily approved the gross settlement amount, but it rejected class counsel's request for one-third of the settlement fund in attorneys' fees, finding that a number of factors weighed against departing significantly from the standard 25% benchmark percentage amount, including its determination that counsel made several missteps and overlooked important details in the latter stages of the case. The court did award class counsel 27% in fees—a modest departure from the benchmark rate—in light of the plaintiffs' successful motions practice, counsel's substantial experience in the field, and the number of hours spent on the case without any guarantee of compensation. ■

"Giving back is a cornerstone of Alston & Bird's culture. Pro Bono Partner **Mary Benton** explains "How Cos. Can Build a Strong In-House Pro Bono Program" for ***Law360***."

Mary Benton

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