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## Spotlight

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### Guidance on Guidance Claims Featured in Securities Litigation

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When a public company's stock price declines significantly, securities class action litigation may follow. One common trigger for such lawsuits is a company missing or lowering its financial guidance. Recent studies show that guidance claims are on the rise, with at least one in four securities claims predicated, in part, on allegations related to a shortfall of prior expectations.

Given the frequency of these claims, it is useful for public companies to be aware of the types of claims that may be asserted and to consider, in consultation with their advisors, general practices that may help address litigation risk associated with so-called guidance claims. This article is intended to provide a high-level overview of the legal landscape and does not prescribe any particular approach or establish a standard of care.

#### Background on Financial Guidance

Many public companies choose to issue some form of financial guidance, which may include revenue or earnings-per-share (EPS) projections for upcoming periods. Some companies also provide operational targets or key performance metrics relevant to their business or industry.

While securities laws do not require companies to provide guidance, some companies elect to do so to communicate management's expectations regarding future performance. Because guidance is inherently forward-looking, actual results may differ from projections for a variety of reasons.

#### Legal Principles Governing Guidance Claims

Securities litigation often involves allegations made with the benefit of hindsight. Guidance statements, by their nature, are subject to later scrutiny. Courts evaluating these claims apply a well-established legal framework.

To prevail on a guidance claim, plaintiffs generally must show that the guidance was false or misleading when issued. This typically requires a showing that the guidance was not genuinely believed, lacked a reasonable basis, or was issued despite knowledge of undisclosed facts that seriously undermined its accuracy.

Courts have recognized that demonstrating a lack of genuine belief is a high bar, as beliefs are subjective and difficult to disprove without contemporaneous evidence. Plaintiffs may also attempt to show that there was no reasonable basis for the guidance or that management disregarded contrary undisclosed facts or trends.

The Private Securities Litigation Reform Act (PSLRA) provides a “Safe Harbor” for forward-looking statements, including financial guidance. Under the Safe Harbor, forward-looking statements are generally not actionable if they are identified as such and accompanied by meaningful cautionary statements specifying important factors that could cause actual results to differ materially.

Additionally, claims based on forward-looking statements are barred unless plaintiffs can show that the speaker had actual knowledge that the statement was false. There are certain exceptions in which the Safe Harbor does not apply, such as when forward looking statements are included in a registration statement for an initial public offering. In addition to the Safe Harbor, the judicially created “bespeaks caution doctrine” is another that protects companies from fraud liability when their forward-looking statements are accompanied by sufficient, specific cautionary language.

The doctrine is premised on the idea that investors cannot reasonably rely on overly optimistic forecasts if they are provided with sufficient cautionary language. The bespeaks caution doctrine can be useful with respect to statements that do not fully meet all of the Safe Harbor’s requirements.

These legal standards can present significant challenges for plaintiffs. However, the persistence of guidance-based claims reflects the complexities involved in applying these standards in practice.

### What Guidance Claims Look Like

Guidance claims often arise after a company misses or lowers previously issued guidance, sometimes due to unforeseen developments. The underlying causes may include operational challenges, competitive pressures, product-related issues, regulatory actions, merger-integration difficulties, supply-chain disruptions, macroeconomic factors, or other unexpected events. Plaintiffs’ lawyers may allege, with the benefit of hindsight, that executives knew or should have known about these issues at the time guidance was issued.

To support their claims, plaintiffs may seek statements from former employees or other sources, sometimes presented as “confidential witnesses,” whose perspectives may be negative or inconsistent with public statements. These accounts are often presented in litigation as conflicting with the company’s prior disclosures.

### General Considerations for Mitigating Guidance Claim Risk

There is no single approach or process that is required or appropriate for all companies or industries when preparing or issuing guidance. Companies may, in consultation with their advisors, consider whether to adopt practices that are tailored to their specific circumstances, business, and risk profile.

Courts have, in some cases, considered the existence of a robust process for preparing guidance as a relevant factor in evaluating claims, but there is no prescribed or universally applicable process.

Some companies may find it useful to document the methodologies, assumptions, and rationale underlying their guidance, and to clearly distinguish between different scenarios or versions of guidance (such as internal targets versus public guidance). Marking drafts and tracking the individuals involved in the process may also be considered, depending on the company’s practices and needs.

Guidance is ultimately a matter of judgment, even when based on rigorous analysis. Courts have recognized that framing guidance and related commentary as opinions — using language such as “we believe,” “we expect,” or “we anticipate” — can underscore the subjective and forward-looking nature of such statements. Identifying key assumptions and risks within the forward-looking context may also be considered as part of a company’s disclosure practices.

Consistent use of forward-looking language and clear identification of risk factors may help maximize the protections of the Safe Harbor. Companies may also consider, in consultation with counsel, how to approach unscripted communications, such as responses to analyst questions, to avoid unvetted or overly optimistic statements.

### Reporting Missed Guidance or Downward Revisions

Developments leading to a guidance miss or revision may occur late in a reporting period and may not be known until after the period closes. In such cases, companies often address the issue in connection with the next regularly scheduled earnings release. Courts have generally held that there is no legal duty to update guidance, though there may be circumstances where a company determines, based on its specific facts and in consultation with counsel, that an update is appropriate.

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When announcing a guidance miss, some companies choose to disclose the reasons for the miss and reference previously disclosed risks. Companies may also consider, in consultation with their advisors, how to communicate about missed guidance, including whether to avoid language that could be misconstrued as an admission of wrongdoing.

### **Conclusion**

Guidance-based securities claims are frequently asserted, but prevailing on such claims can be challenging for plaintiffs under the applicable legal standards. While no process can eliminate the risk of litigation following a guidance miss, companies may, in consultation with their advisors, consider practices that are appropriate for their circumstances.

## Consumer Goods and Retailing



### Toy Maker's Risk Disclosures Could Have Implied That There Were No Existing Problems, Ninth Circuit Says

*Construct. Laborers Pension Tr. of Greater St. Louis v. Funko, Inc.*, No. 24-4909 (9th Cir. Feb. 4, 2026)

**What to know:** The Ninth Circuit reversed the dismissal of claims that a toy manufacturer's risk disclosures falsely implied that the company was not already experiencing significant inventory problems. The panel held that, unlike the case of forward-looking statements, a plaintiff may establish that risk disclosures were false even if executives were unaware of existing issues at the time they issued the warnings.

Funko, Inc., a pop culture collectible manufacturer, discarded millions of dollars of “dead inventory.” When news of the write-off became public, Funko's stock dropped and plaintiff shareholders filed a putative securities fraud class action against Funko and its then-CEO and CFO, bringing claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (Exchange Act or '34 Act) and SEC Rule 10b-5.

Plaintiffs alleged that Funko had misrepresented its progress on a new warehouse opening and an IT system upgrade, as well as the quality and management of its inventory. In addition, the plaintiffs alleged that Funko's risk disclosures falsely implied that the company was not already experiencing inventory control failures and problems with its IT systems, which caused a massive buildup of dead inventory. The district court dismissed the action, finding the allegations insufficient to show that Funko made false statements or had the requisite scienter for a securities fraud claim.

The Ninth Circuit reversed in part with respect to the claims based on the allegedly misleading risk factors. In so doing, the panel rejected the argument that a risk disclosure can be misleading only if the defendant has actual knowledge that it “paint[s] a false picture of present circumstances.”

Rather, the panel explained, “*what* defendants knew and *when* they knew it” goes to a defendant's fraudulent intent (*i.e.*, scienter — a separate element of a securities fraud claim), not falsity. Therefore, risk disclosures' warning that Funko's failure to effectively manage its inventory *would* harm its financial performance could be misleading by creating a false impression that the company was not already suffering from poor inventory controls. Similarly, a reasonable investor might understand Funko's warnings that “[f]ailure to successfully operate [its] information systems . . . could disrupt [its] business” to mean that, at the time the risk disclosures were made, the company was successfully operating its IT systems.

In so holding, the court distinguished the standards for pleading falsity for risk disclosures from the standard for pleading falsity for forward-looking statements, which requires that the speaker had actual knowledge of facts rendering the forward-looking statement false at the time it was made. The Ninth Circuit refused to graft an “actual knowledge” requirement to plead the falsity element for claims based on of risk disclosures and held that a defendant's knowledge relates only to scienter.

# Cryptocurrency

## Ninth Circuit Holds XRP Cryptocurrency Investors' Section 12 Claim Against Ripple Labs Barred by Statute of Repose

*In re Ripple Labs, Inc. Litig.*, Nos. 24-7599, 25-483 (9th Cir. Jan. 27, 2026)



**What to know:** The Ninth Circuit affirmed summary judgment for Ripple Labs in a suit brought by purchasers of XRP, a cryptocurrency Ripple had created, holding that claims that the company violated Section 12(a)(1) of the Securities Act by selling unregistered securities were time-barred based on the date the cryptocurrency was first made available to the public.

In 2012, Ripple launched the XRP Ledger blockchain and created 100 billion units of XRP, a cryptocurrency. The Ledger was made available to the public in late 2012 or early 2013. Ripple Labs, Inc. held the bulk of XRP units and began releasing them to purchasers in 2017. The lead plaintiff bought XRP on the Poloniex cryptocurrency exchange in January 2018. Purchasers brought a suit against Ripple in late 2018, alleging that Ripple's XRP sales were sales of unregistered securities in violation of Section 12(a)(1) of the Securities Act of 1933 (Securities Act or '33 Act).

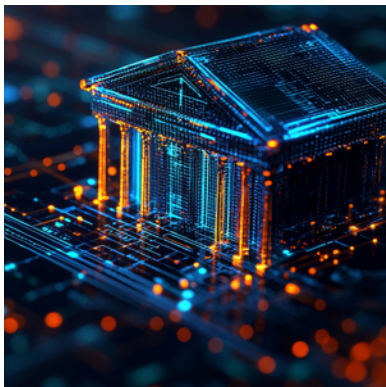
The district court granted summary judgment for Ripple on the grounds that the suit was time-barred based on the Securities Act's three-year statute of repose in Section 13. That provision requires plaintiffs to bring any claim under Section 12(a)(1) within three years "after the security was bona fide offered to the public."

The Ninth Circuit affirmed, holding that, because Ripple had started selling XRP to the public on the Ledger's built-in exchange at least since 2013, it was "offered to the public" at that time, "even if only technologically sophisticated consumers could navigate the Ledger to purchase XRP."

The lead plaintiff argued that Ripple changed the way XRP was sold and marketed between the time the XRP Ledger's exchange was opened to the public and the time he bought XRP five years later, such that he purchased from a wholly new offering. The Ninth Circuit rejected that argument because the plaintiff failed to raise a genuine dispute about whether the two offerings were separate, and the legal tests proposed by the plaintiff — including a five-factor test set out in *SEC v. Murphy*, 626 F.2d 633, 645 (9th Cir. 1980), to identify a single integrated offering and a new "economic reality" theory created by the plaintiff — were not suited to the statute of repose.

In the district court, Ripple argued that XRP is not a security, but the court declined to find that as a matter of law. That issue was not addressed by the Ninth Circuit.

## Financial Services



### Third Circuit Holds Tender Offeror's Terms and Conditions Do Not Violate Best Price Rule

*Abramowski v. Nuvei Corp.*, No. 24-3156 (3d Cir. Feb. 3, 2026)

**What to know:** SPAC sponsors brought suit against Nuvei Corp. when it refused to purchase their shares in a tender offer because the shares were restricted by a prior agreement. The sponsors alleged that the SEC's Best Price Rule required Nuvei to purchase the shares regardless of the agreement, but the Third Circuit disagreed, holding that tender offerors can enforce conditions on tendered shares.

Plaintiffs sponsored a special purpose acquisition company (SPAC) to take Paya Holdings Inc., an integrated payment provider, public. The sponsors received shares in the public company that could not be transferred for five years absent a change in control. If the purchase price in a change of control event was above \$15 per share, the transfer restrictions would lift. But if the price was under \$15, the shares would be automatically forfeited.

Three years in, Nuvei Corp., an unrelated party, made a tender offer to Paya's shareholders of \$9.75 per share, provided that all shares were "validly tendered." However, Nuvei rejected the sponsors' tenders because the offer price was below \$15, which meant that the shares could not be "validly tendered."

The sponsors sued, alleging that Nuvei violated the SEC's Best Price Rule (17 C.F.R. § 240.14d-10(a)(2)), which requires a tender offeror to pay the same consideration for all securities purchased in a tender offer. The sponsors alleged that, by rejecting their shares, Nuvei effectively paid them \$0 while paying other stockholders \$9.75. The district court dismissed the action, finding that no consideration was "actually" paid for the sponsors' shares, so the Rule did not apply.

The Third Circuit affirmed, holding that "it would contort the Best Price Rule beyond recognition to suggest that the Rule requires offerors to purchase every tendered share, even those restricted by the parties' prior agreements." The rule dictates the consideration that must be paid, but "is silent as to when, if ever, an offeror must purchase tendered shares or whether that offeror may include in the tender offer terms and conditions of acceptance."

In addition, the court noted that the Williams Act, the statute under which the rule was promulgated, contemplates that some tendered shares may not be purchased in an offer, but imposes requirements on those that are. The statute's "unambiguous" language, along with "the SEC's guidance, common sense, and longstanding industry practice" supported the court's holding that the Best Price Rule does not prohibit a tender offeror from conditioning its offer.

## Governance



### Tesla Forum Selection Bylaw Enforced and Case Dismissed Though It Was Filed After Bylaw's Adoption

*In re Tesla, Inc. Deriv. Litig.*, No. 2024-0631-BWD (Del. Ch. Apr. 13, 2026)

**What to know:** The Delaware Court of Chancery retroactively enforced a stockholder-approved forum selection bylaw adopted on June 13, 2024, that required derivative litigation on behalf of Tesla be filed in Texas, dismissing complaints that were filed in Delaware before the bylaw was adopted.

On April 17, 2024, Tesla, Inc. announced that it would seek stockholder approval to redomesticate in Texas and to amend its forum selection bylaw (Bylaw) to require that derivative litigation brought on behalf of Tesla be filed in Texas. At the time of the announcement, Tesla was a Delaware corporation that had a bylaw designating Delaware as the exclusive forum for such lawsuits.

Before the change in the Bylaw was formally approved by stockholders and adopted, several Tesla stockholders filed derivative against Tesla's board of directors in the Delaware Court of Chancery alleging that directors breached their fiduciary duties by, among other things, failing to exercise proper oversight over the company. The cases, filed on May 24, June 10 and June 13, 2024, were subsequently consolidated (Derivative Action). On June 13, 2024, 63% of Tesla's outstanding shares voted in favor of the redomestication and the Bylaw.

Defendants then appeared in the case and moved to dismiss the Derivative Action arguing, among other things, that the Bylaw required that it be brought in Texas and was in effect when the defendants first appeared in the Derivative Action. In response, plaintiffs raised three arguments: (i) At the time of the complaints were filed, Tesla had a bylaw designating Delaware as the exclusive forum (Time of Filing Argument). (ii) The Bylaw violated Delaware General Corporation Law (DGCL) Sections 266 and 115 (Statutory Argument). (iii) The Bylaw was unreasonable or unjust as applied (As Applied Argument). The Court of Chancery rejected these arguments and dismissed the Derivative Action.

**Time of filing argument.** The court rejected plaintiffs' argument because: (i) the relevant time to measure the impact of a forum selection bylaw is when defendant appears, because it can challenge venue at that time; (ii) under the DGCL, "[a] stockholder does not have a vested right to litigate in a particular forum, even for claims arising from past conduct," and "should hold the 'reasonable expectation' that the board could adopt such a [forum selection] bylaw at any time, subject to an as-applied challenge"; and (iii) the Bylaw was announced before any of the cases in the Derivative Action were initiated, and the Bylaw became effective "just days later," before any meaningful litigation occurred and before defendants entered their appearances.

**Statutory argument.** For similar reasons, the court concluded that the Bylaw did not violate DGCL Section 266(e), which governs the conversion of Delaware corporations. Again, the court noted that plaintiffs "never had any vested right or obligation to litigate in a particular forum." The court also determined that DGCL Section 115, which prohibits a Delaware corporation's bylaws from excluding Delaware as a forum for internal corporate claims, did not apply because Tesla was not a Delaware corporation when it adopted the Bylaw.

**As applied argument.** The court rejected plaintiff's argument that the Bylaw was unreasonable or unjust as applied because (i) plaintiffs did not allege that the disclosures issued when seeking stockholder approval of the Bylaw were deficient; and (ii) the court would not second-guess the stockholders' choice to move their designated forum by weighing the advantages and disadvantages of Texas's law and procedure versus Delaware's.

Plaintiffs have filed a notice of appeal.

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## Delaware Court of Chancery Dismisses Claim That Board Breached Oversight Duty by Failing to Uncover Fraud at an Unrelated Company

*Marchner v. Riley*, No. 2025-0164-LWW (Del. Ch. Mar. 30, 2026)

**What to know:** The Delaware Court of Chancery dismissed a derivative action against a board of directors for losses arising from the alleged impact of securities fraud at an unrelated entity.

In 2023, B. Riley Financial, Inc. facilitated the take-private acquisition of Franchise Group, Inc. (FRG), an entity led by Brian Kahn, a friend of B. Riley's founder Bryant Riley. The B. Riley board approved its participation in the \$2.6 billion transaction. Later, Kahn was implicated in a large securities fraud involving Prophecy Asset Management LP (PAM), which was not affiliated with B. Riley. B. Riley took \$490 million in write-downs on its FRG-related investments when FRG filed for bankruptcy in the fallout of the PAM fraud.

The plaintiff filed a derivative action alleging that the B. Riley directors breached their fiduciary duties of oversight by ignoring "red flags" about Kahn and approving the FRG investment, and made materially misleading disclosures. The defendants moved to dismiss. The case turned on whether a majority of B. Riley's nine-person board faced a substantial likelihood of liability for any of plaintiff's three claims. The court held they did not and dismissed the claims.

**Oversight duties.** The court stated that directors' oversight obligations under Delaware law require them to monitor internal corporate compliance with securities laws, not compliance by a separate company. The court found that plaintiff's allegations demonstrated that: (i) the B. Riley board had adequate compliance systems in place; (ii) the board's actions negated any conclusion that it consciously disregarded these issues; (iii) the questions presented to the board concerned "quintessential business risks,"

not unlawful behavior by the corporation; and (iv) the board did not deliberately mislead stockholders in disclosures.

**Independence from Riley.** The court also evaluated whether a majority of the board was independent from Riley. The court focused on the five outside directors on the nine-member board, and found that none were so beholden to Riley that their ability to exercise impartial judgment was compromised. Plaintiff's allegations — based on ordinary course compensation, social friendships, shared board service and professional ties to Riley — were insufficient to overcome the presumption of director independence.

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## Delaware Court of Chancery Reinstates CEO Terminated by Acquirer in \$250 Million Earnout Dispute

*Fortis Advisors, LLC v. Krafton, Inc.*, No. 2025-0805-LWW (Del. Ch. Mar. 16, 2026)

**What to know:** The Delaware Court of Chancery reinstated a target's terminated CEO in order for him to oversee the launch of a highly anticipated video game. The court held that the termination was part of the acquirer's scheme, inspired by ChatGPT, to avoid a \$250 million earnout.

In 2021, Krafton, Inc. acquired Unknown Worlds Entertainment (UWE), a video game studio with a popular game titled "Subnautica." The equity purchase agreement (EPA) governing the acquisition granted UWE's founders and CEO operational control, but "for cause" terminations of key employees could end that control. UWE's CEO, along with the founders, were allies and key employees. After months of development, the sequel to Subnautica was on track for a release that would likely trigger a \$250 million earnout under the EPA. Krafton's CEO felt that he would be a "pushover" to pay it. He asked ChatGPT to develop a strategy to renegotiate the earnout or takeover UWE. Negotiations failed. Krafton then terminated the key employees, installed its own chief executive and indefinitely delayed the launch.

The representatives for UWE's stockholders under the EPA sued in the Court of Chancery, seeking damages and specific performance to reinstate the key employees. The court expedited the latter claim because it found that the Subnautica sequel was a unique asset and the specter of its indefinite delay threatened irreparable harm.

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At trial, Krafton defended its terminations by claiming it had valid “cause” on two grounds under the EPA’s “intentional dishonesty” term: (i) the founders kept the acquiror in the dark about their reduced roles at UWE post-acquisition, and (ii) the key employees downloaded thousands of files to their own devices before termination.

The court rejected these justifications as pretextual and found the key employees’ termination lacked “cause.” First, the court held that the “role changes were transparent maneuvers rather than deliberate acts of deception.” Second, the court held that,

while wrongful, the “data downloads were protective measures, lacking the requisite intent to deceive.” The key employees neither disclosed the files nor used them to launch competing businesses, and the files were promptly returned upon request.

Ultimately, the court restored operational control to UWE over the Subnautica sequel’s release by reinstalling UWE’s CEO (but not the founders). The court also lengthened the earnout period by approximately eight months, equal to the period of the CEO’s ouster, because “this equitable extension ensures that the specific performance remedy is not illusory.”

## Health Care and Life Sciences



### Court Holds that 7 of 10 Alleged Misrepresentations About Condition of Business Were Properly Pled

*Stary v. Teladoc Health, Inc.*, No. 24-CV-3849 (S.D.N.Y. Mar. 31, 2026)

**What to know:** In the Southern District of New York, a motion to dismiss was denied in substantial part in a securities fraud class action against a virtual health company and certain of its officers arising from claims about the state of one of the company's businesses.

A Southern District of New York judge dismissed claims brought under Sections 10(b) and 20(a) of the Exchange Act and Rules 10b-5(a), (b), and (c) against defendants, a virtual health company and certain of its officers. The court found that plaintiffs adequately alleged material misrepresentations about customer acquisition costs (CAC). A lower CAC indicates that a company is obtaining a good return on its advertising.

Plaintiffs alleged that defendants made a series of misleading statements to investors about the CAC of one of its business segments. They contended that the supposed fraud came to light through a corrective disclosure in February 2024, in which the defendant's CEO explained that the business segment had "experienced returns on [its] social media advertising spend that were below target in the second half of [FY23]," and that this statement resulted in a 23.7% stock price decline. Shortly thereafter, the defendant's CEO was terminated.

In response to a motion to dismiss, the court evaluated 10 challenged statements and held that seven were actionable. It dismissed claims based on three statements, finding those statements were accurate.

The seven actionable statements included risk factor disclosures that failed to reveal that previously warned-of risks had already materialized; statements that understated the severity of the business segments' CAC deterioration and omitted material information about social media channel saturation; a factual claim about the business segments' scale driving strong ad returns when its scale was actually causing increased CAC; and an opinion statement about the business segments' growth prospects that omitted critical contrary information known to the speaker.

The court held that plaintiffs adequately alleged scienter based on several factors, including the defendants' statement that they monitored the business segments' ad spend yield "hourly and daily," combined with defendants' statement that they were "constantly looking at the marginal return" on advertising spend. According to the court, those statements supported an inference that defendants knew of the business segments deteriorating CAC during the class period. The court also held that a Federal Trade Commission investigation and order regarding CAC, as well as the CEO's termination, likewise supported an inference of scienter.

## Most Alleged Misrepresentations About Marketing and Safety of Dental Product Held to Be Actionable

*In re Dentsply Sirona, Inc. Sec. Litig.*, No. 24 Civ. 9083 (NRB) (S.D.N.Y. Jan. 16, 2026)

**What to know:** A judge in the Southern District of New York denied in substantial part defendants' motion to dismiss securities fraud class action claims against a global dental products manufacturing firm and several of its current and former executives where the complaint alleged specific, actionable misrepresentations about the marketing process and safety of one of its products.

A Southern District of New York judge dismissed claims brought under Sections 10(b) and 20(a) of the Exchange Act and Rules 10b-5(a), (b), and (c) against defendant Dentsply, a global dental products manufacturer, and certain of its officers and directors, on behalf of a putative class of investors who purchased Dentsply stock between January 4, 2021 and February 26, 2025. Plaintiffs alleged that defendants made material misstatements and omissions about the safety of one of its products, a direct-to-consumer "clear aligner" to straighten teeth, acquired for \$1.04 billion in December 2020.

The court held that plaintiffs adequately pled four categories of material misrepresentations: (i) that the products' were "doctor-directed" and "overseen" when dentists in fact had minimal involvement, approving plans in as few as "two minutes" via a "four click" process; (ii) that the products improved "conversion rate" was attributed to better patient targeting, when it was actually driven by the elimination of screening for contraindicated patients; (iii) that defendants were in compliance with Food and Drug Administration (FDA) reporting requirements, when 97% of at least 6,894 serious patient injuries from the product went unreported through December 2023; and (iv) that defendants were investing in "organic growth" despite knowledge of an impending regulatory crisis.

Most of the challenged statements were not inactionable opinion, puffery or forward-looking statements protected by the PSLRA safe harbor, the court held. Corporate and individual scienter was adequately pled through allegations that executives had access to internal injury-tracking systems, attended quarterly meetings discussing patient injuries, and oversaw policies that suppressed reporting. The court also sustained scheme liability claims under Rules 10b-5(a) and (c), finding that concealing injuries from the FDA constituted conduct beyond mere misstatements.

However, the court granted the motion to dismiss as to defendants' former CFO, finding insufficient particularized allegations of scienter against him. Certain statements regarding investment in treatment planners were also dismissed for lack of scienter. The Section 20(a) control person liability claim survived as to all remaining individual defendants.

## Media



### Plaintiff Lacked Standing and Failed to Allege Actionable Misrepresentations in IPO and SPO of Chinese Online Platform

*In re Qutoutiao, Inc. Sec. Litig.*, 20 Cv. 6707 (VM) (S.D.N.Y. Feb. 5, 2026)

**What to know:** A Southern District of New York judge dismissed securities claims against a Chinese online mobile content platform for failing to show adequate standing or allege actionable misrepresentations and omissions.

On remand from the Second Circuit, a Southern District of New York judge dismissed the second amended complaint in a consolidated class action brought under Sections 11, 12(a)(2) and 15 of the Exchange Act against the defendant corporation, its officers and directors, and its underwriters for alleged misstatements and omissions in connection with the company's IPO and secondary public offering (SPO) that caused plaintiff and other investors financial losses.

Plaintiff's losses arose when the share price of Qutoutiao, the defendant company, fell when China's state broadcaster reported that some advertisements placed on Qutoutiao's platform were illegal. Plaintiff specifically alleged that (i) the company misrepresented that it deployed an effective screening mechanism to prevent placement of illegal advertisements, (ii) the company omitted the fact that it was placing illegal ads in the documents submitted during its SPO, (iii) a material part of its revenue growth originated from placement of illegal advertisements, and (iv) the company did not disclose certain related party transactions.

The court dismissed all claims in plaintiff's second amended complaint. It first held that plaintiff lacked standing to bring claims against defendants involved only in the SPO, and further held that plaintiff lacked standing to bring the Section 12(a)(2) claim.

In addressing the Section 11 claim, the court held that none of the claims are materially misleading. First, defendant's employment of content screening technology did not apply to the screening of advertisements, as defendant differentiated content from advertisement. Second, the court held that defendant's risk disclosures adequately warned investors of possible non-compliance and plaintiff failed to plead any undisclosed advertising law violations.

Third, the court held that plaintiff failed to show that illegal advertisements were prevalent at the time of the IPO and that defendants knew that the advertisements were illegal then. Fourth, it held that the mere existence of a close business relationship for one transaction alone did not support the plaintiff's related party transaction claim in light of appropriate disclosures of other related party transactions.

Finally, the court held the Section 15 claim, which depended on the Section 11 claim, also failed as a result.

## Real Estate



### Suit Alleging Misrepresentations by REIT About Its Loan Underwriting Standards Dismissed

*Martin v. Arbor Realty Trust, Inc.*, No. 24-CV-5347 (E.D.N.Y. Mar. 31, 2026)

**What to know:** A judge in the Eastern District of New York granted a motion to dismiss a putative securities class action alleging that a real estate investment trust and certain of its officers made misleading statements about its loan underwriting processes, finding that statements were merely puffery or opinion, or lacked specificity.

In the Eastern District of New York, claims were dismissed against Arbor Realty Trust, Inc. (ABR), a real estate investment trust (REIT), and certain of its officers brought under Sections 10(b) and 20(a) of the Exchange Act and Rules 10b-5. Plaintiffs alleged that defendants made materially false or misleading statements about the company's loan underwriting standards, internal risk controls and GAAP accounting, in violation of Section 10(b) of the Exchange Act and Rule 10b-5. The court held that plaintiffs failed to adequately allege actionable falsity.

Plaintiffs alleged that ABR's rapid portfolio growth amid a risky multifamily market flooded with inexperienced smalltime real estate syndicators exposed ABR to significant default risk, which defendants concealed. The court evaluated three categories of alleged misstatements: (i) statements touting ABR's "high-quality balance sheet portfolio" and underwriting standards; (ii) statements regarding ABR's internal risk controls and loan performance monitoring; and (iii) financial statements based on allegedly inadequate allowances for credit losses under GAAP.

None of the challenged statements were actionable, the court held. Statements about defendants' underwriting quality were "no more than puffery" and "too general to cause a reasonable investor to rely upon them." As to internal controls, the court found that plaintiffs failed to describe any specific deficient control or explain how it was inadequate, and noted that independent audits had concluded ABR's internal controls were effective. Regarding GAAP-based claims, the court held that loss reserves are inherently subjective "statements of opinion," and plaintiffs failed to demonstrate that ABR's allowance was subjectively or objectively false.

Because plaintiffs failed to adequately allege material misstatements or omissions, the court did not reach the remaining Section 10(b) elements, including scienter.

The Section 20(a) control-person claims against ABR's officers likewise failed as derivative of the deficient Section 10(b) claim. Finally, the court dismissed plaintiffs' scheme liability claim as waived for failure to allege any deceptive conduct apart from the alleged misstatements.

## Technology



### Ninth Circuit Holds Preponderance of Evidence Required to Rebut Lead Plaintiff's Presumption of Adequacy Under PSLRA

*In re: Crain Walnut Shelling, LP*, No. 25-5435 (9th Cir. May 7, 2026)

**What to know:** The Ninth Circuit upheld the lower court's refusal to appoint Crain Walnut Shelling, LP as lead plaintiff in a securities fraud class action, clarifying that, under the PSLRA, when a plaintiff that does not have the largest financial interest in the case seeks to represent the class instead of the plaintiff with the largest interest, the challenger must rebut the presumption in favor of the latter by a preponderance of the evidence. Applying that standard, the challenger prevailed.

Crain Walnut and Universal-Investment Gesellschaft mbH (Universal) both sought to be appointed lead plaintiff in a securities fraud class action filed against Super Micro Computer, Inc. Crain Walnut had the largest financial interest at stake, but Universal claimed that Crain Walnut could not adequately represent the class because it was controlled by a general partner. When discovery revealed additional inconsistencies in Crain Walnut's purported ownership structure, the district court found "genuine and serious doubts" sufficient to rebut the presumption of adequacy.

Crain Walnut appealed the issue to the Ninth Circuit, arguing that the district court's "genuine and serious doubts" standard was clearly erroneous. The Ninth Circuit agreed. The panel (Circuit Judges N. Randy Smith, Jacqueline H. Nguyen and Gabriel P. Sanchez) noted that the PSLRA does not specify the standard of proof required to rebut the presumption, only that it "may be rebutted only *upon proof* by a member of the purported class that the presumptively most adequate plaintiff (aa) will not fairly and adequately protect the interests of the class; or (bb) is subject to unique defenses." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Without guidance from the statute itself, the panel held that "neither Supreme Court precedent, our precedent, nor a balancing of the interests give us reason to deviate from the 'default' burden of proof in civil litigation — preponderance of the evidence — for rebutting the loss leader's presumption of adequacy and typicality under the PSLRA." Since the appointment of a lead plaintiff affects only how the claims are processed, rather than any party's ability to vindicate its rights, the Ninth Circuit reasoned that the risk of error should be allocated equally among those seeking the role — as the preponderance standard does.

Ultimately, the district court found that the evidence rebutting Crain Walnut's adequacy was sufficient under both its "genuine and serious doubts" standard and the higher preponderance of the evidence standard. Applying the highly deferential "clear error" standard of review on appeal, the Ninth Circuit therefore declined to grant the writ of mandamus overturning the lower court's decision.

## Transportation



### 251 Alleged Misstatements Added in Second Amended Complaint Dismissed as Nonactionable and Lacking Allegations Showing Scienter

*Coll. Ret. Equities Fund v. Boeing Co.*, No. 22-CV-3845 (N.D. Ill. Mar. 31, 2026)

**What to know:** A judge in the Northern District of Illinois dismissed with prejudice all claims based on 251 newly alleged statements in a second amended complaint, holding that the alleged misstatements relating to a 2024 Alaska Airlines accident were forward-looking, inactionable puffery or immaterial, and that plaintiffs failed to plead scienter with sufficient particularity. Only limited claims against Boeing and its former CEO survive.

Plaintiffs, a group of equity funds, alleged 341 false and misleading statements made by The Boeing Company (Boeing), its former CEOs and former CFOs relating to the October 2018 and March 2019 737 MAX airplane crashes, the subsequent Federal Aviation Administration grounding and recertification of the 737 Max fleet, and a January 2024 Alaska Airlines accident.

The court previously addressed 89 statements relating to the 2018 and 2019 crashes, dismissing a number of statements as inactionable while allowing others to proceed. No. 22-CV-3845, 2023 WL 6065260 (N.D. Ill. Sept. 18, 2023). Following a second amended complaint, the court largely reiterated its prior holding on the original 89 statements, permitting the same claims to proceed and again finding statements such as “the 737 MAX is safe” immaterial and insufficiently specific to support a claim in light of the publicly reported crashes.

However, the court permitted claims to proceed based on statements by Boeing executives telling pilots that they could apply existing procedures to the 737 MAX model. The court reasoned that new allegations in the second amended complaint satisfied plaintiffs’ burden of alleging a strong inference of scienter, including an allegation that Boeing’s senior executives were aware that Boeing’s Safety Review Board had concluded pilots would not know how to respond to the 737 MAX’s unique system using existing procedures.

As to the 251 newly alleged misstatement relating to a 2024 Alaska Airlines incident, the court found none actionable. Most of the alleged misstatements were inactionable statements of opinion, puffery, forward-looking statements protected by the PSLRA’s safe harbor, or immaterial to the total mix of information available to investors regarding the crashes.

Although certain statements about Boeing’s recertification process and safety-reporting structures were adequately alleged to be false and misleading, plaintiffs did not adequately allege scienter. While plaintiffs alleged that defendants received safety reports and publicly represented that they were closely monitoring safety and quality control issues, plaintiffs did not allege that defendants were aware of specific safety and quality problems at certain facilities, including lower managers’ decisions to take shortcuts. The court found that plaintiffs’ argument that safety problems were so pervasive as to support defendants’ awareness of the issue was too vague to create the strong inference of scienter required under the PSLRA.

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