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Skadden

Inside the Courts

A Quarterly Update From Skadden Securities Litigators

Spotlight

Second Circuit Expands Loss Causation Pleading Requirements

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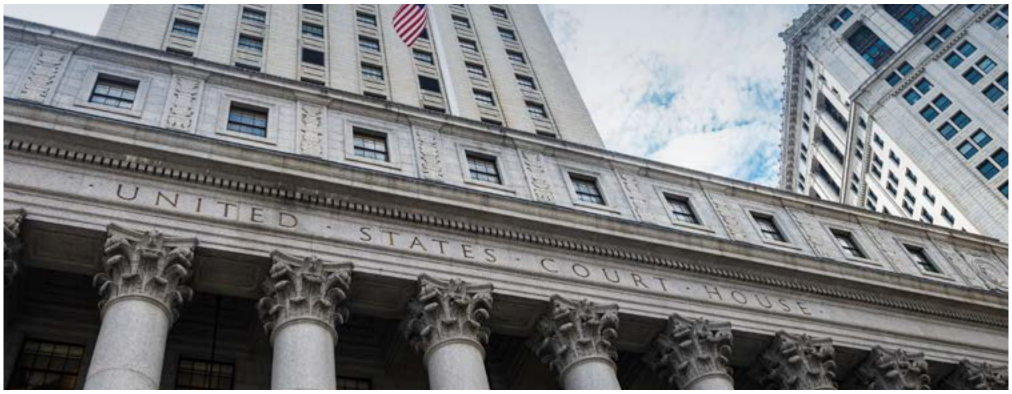


Executive Summary

- **What's new:** The Second Circuit affirmed dismissal of a securities fraud complaint, expanding loss causation pleading requirements when no immediate price decline follows corrective disclosure.
- **Why it matters:** The ruling appears to increase lead plaintiffs' burden and district courts' role in evaluating pleading for securities fraud complaints with price-reaction disconnections.
- **What to do next:** Companies facing securities fraud complaints will want to assess alleged corrective disclosures against market movements, time gaps and disconnections between price reaction and alleged loss.

On June 26, 2026, the U.S. Court of Appeals for the Second Circuit issued a decision affirming the dismissal of a securities fraud complaint for failing to adequately allege loss causation where the stock price increased upon the corrective disclosure and did not decline for a few days thereafter in the face of a broader market decline.[1]

While the ramifications of this decision remain to be seen, the ruling represents a significant expansion of a lead plaintiff's burden in pleading loss causation, and a court's role in evaluating such pleading, under the Second Circuit's 2005 *Lentell v. Merrill Lynch & Co.*[2] decision.

Lentell

For over two decades, the Second Circuit's decision in *Lentell*, authored by Judge Dennis Jacobs, has been widely cited on the requirements for pleading loss causation in actions alleging violations of Section 10(b) of the Securities Exchange Act of 1934.[3] In that case, the lead plaintiffs alleged that research analysts issued false and misleading research reports recommending that investors buy or accumulate shares of certain companies when those analysts purportedly did not believe those recommendations and issued them only to generate

[1] *Huey v. Anavex Life Scis. Corp.*, No. 25-1752, 2026 WL 1838665, at *9-12 (2d Cir. June 26, 2026).

[2] 396 F.3d 161 (2d Cir. 2005).

[3] The Private Securities Litigation Reform Act (PSLRA) provides that "the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. § 78u-4(b)(4).

investment banking business.[4] The lead plaintiffs claimed that they adequately alleged loss causation based on the decline of the share prices of those companies following later analyst downgrades[5] — which coincided with the burst of the "internet bubble."[6]

The Second Circuit disagreed with the lead plaintiffs' argument, reasoning that they failed to sufficiently allege the required causal link. The Second Circuit explained that, at the pleading stage, loss causation requires: (i) a "relationship between the plaintiff's investment loss and the information misstated or concealed" that is "direct" and not "attenuated";[7] (ii) "both that the loss be foreseeable *and* that the loss be caused by the materialization of the concealed risk";[8] and (iii) "that the market reacted negatively to a corrective disclosure."[9] In holding that the lead plaintiffs had failed to allege loss causation, the Second Circuit emphasized that "when the plaintiff's loss coincides with a marketwide phenomenon causing comparable losses to other investors, the prospect that the plaintiff's loss was caused by the fraud decreases."[10] In that case, the lead plaintiffs' losses were disconnected from the correction of the supposedly fraudulent buy or accumulated research report recommendations, which were coupled with information about the volatility risk inherent in those internet companies.[11]

The *Anavex* District Court Decision

In July 2025, former Chief Judge Colleen McMahon of the Southern District of New York addressed the sufficiency of a securities fraud complaint where the defendant company's stock price rose on the day of the alleged corrective disclosure and declined on subsequent days, both consistent with market movements on those dates. In *Huey v. Anavex Life Scis. Corp.*,[12] the operative complaint alleged Anavex Life Sciences Corporation (Anavex) had issued materially false or misleading statements related to an endpoint used in its clinical study of a drug.[13] Judge McMahon held that the lead plaintiff failed to plead loss causation because on the day of the alleged corrective disclosure, the company's stock price went up, not down, and the stock price decline on the following two days tracked the direction of leading market indices.[14] In light of the stock price movements, Judge McMahon concluded that amendment would be futile, and dismissed the complaint with prejudice.[15]

The *Anavex* Second Circuit Decision

The Second Circuit panel of Judges Guido Calabresi, Dennis Jacobs and Alison Nathan affirmed Judge McMahon's decision, concluding that the lead plaintiff's pleadings did not explain why her loss was delayed and why it was caused by Anavex's corrective disclosure rather than by broader market forces.[16]

The Second Circuit explained that under the *Iqbal* pleading standard, a "plausible causal link is easy to establish where the share price declines" following a corrective disclosure "while the market does not."[17] When that is not the case, however, the Second Circuit made clear that "more must be pleaded" — specifically, facts which, if proven, would show that any loss was caused by the alleged misstatements rather than intervening events.[18] Expanding on the inquiry set forth in *Lentell*, the Second Circuit tasked courts to "conduct a precise inquiry to ascertain the plausible existence of a causal link and proximity."[19] As a part of that inquiry, the Second Circuit explained that courts must view loss-causation allegations in a fraud-on-the-market case in the context of the market's broader movements as well as the time gap between the corrective disclosure and the alleged loss.[20] Accordingly, the Second Circuit observed Nasdaq Composite data in the days following the corrective disclosure "to provide objective market context against which the plaintiff's allegations could be evaluated."[21]

Notably, the Second Circuit expressly declined to adopt a categorical rule requiring a company's stock price to fall immediately after a corrective disclosure.[22] The court held, however, that where a plaintiff's loss occurs some time after the corrective disclosure, the plaintiff has the burden to plead facts showing *why* the loss was not immediate.[23] The Second Circuit explained

[4] 396 F.3d at 164-66.

[5] *Id.* at 172.

[6] *Id.* at 174; *see also In re Merrill Lynch & Co., Inc.*, 273 F. Supp. 2d 351, 362 (S.D.N.Y. 2003), *aff'd sub nom. Lentell v. Merrill Lynch & Co.*, 396 F.3d 161 (2d Cir. 2005). ("There was no causal connection between the burst of the [Internet] bubble and the alleged omissions; it was the burst which caused the market drop and the resultant losses a considerable time thereafter when plaintiffs decided it was time to sell.")

[7] *Id.* at 174.

[8] *Id.* at 173.

[9] *Id.* at 175.

[10] *Id.* at 176-77.

[11] *Id.* at 174.

[12] No. 24-CV-01910 (CM), 2025 WL 1707581 (S.D.N.Y. June 18, 2025), *aff'd*, No. 25-1752, 2026 WL 1838665 (2d Cir. June 26, 2026).

[13] *Id.* at *3.

[14] *Id.* at *6-8.

[15] *Id.*

[16] *Huey v. Anavex Life Scis. Corp.*, No. 25-1752, 2026 WL 1838665, at *11 (2d Cir. June 26, 2026).

[17] *Id.* at *8.

[18] *Id.*

[19] *Id.* at *9.

[20] *Id.*

[21] *Id.* at *9 n.17.

[22] *Id.* at *8.

[23] *Id.* at *9.

that “the necessary showing at the pleading stage increases — sometimes dramatically — where the loss does not immediately follow the corrective disclosure.”[24] Moreover, where the market also declines on the days of the alleged losses, a plaintiff’s “plausibility burden increases further.”[25]

Assessing the particular allegations in the case, the Second Circuit faulted the lead plaintiff for failing to plead facts explaining why the stock price decline was delayed or why the increase in Anavex’s share price on the day of the corrective disclosure did not cut against the plausibility of her loss causation allegations.[26] The Second Circuit ultimately determined that the lead plaintiff’s complaint provided “no indication” of the aforementioned factors, and thus the court concluded that the initial increase in Anavex’s share price, the correlation with the market over the next two days and the delayed loss all undermined the plausibility of a causal link, making dismissal appropriate.[27]

Looking Ahead

Loss causation is one of the most extensively litigated issues in motions to dismiss securities fraud complaints. Although the impact of the Second Circuit’s decision is yet to be seen, the ruling appears to have increased the burden on lead plaintiffs in pleading loss causation, and on district courts in evaluating such pleading, where there is no immediately evidenced causal link (*i.e.*, no immediate share price decline following the corrective disclosure that deviates from the market returns on that date).

[24] *Id.* at *10.

[25] *Id.*

[26] *Id.* at *11.

[27] *Id.* The court noted that on the day of the corrective disclosure, February 7, 2023, Anavex’s share price increased by 5.8%; and from market close on February 6, 2023, to market close on February 8, 2023, the stock price fell only 1.6%. *Id.* at *9. Over that same period, however, the Nasdaq Composite stayed essentially level (0.2%) and the share price did not materially decline more than the market until February 9, 2023 (4.8% vs. 1.0%). *Id.*

Importantly, the Second Circuit’s reasoning appears to apply broadly to any situation in which there is any disconnect between the price reaction and the lead plaintiff’s loss, and in such circumstances requires the lead plaintiff to “say more” and provide “some indication” of why the disconnect exists to plausibly establish causation. This approach generates new questions that the district courts must grapple with. For instance, which particular factual circumstances will require a lead plaintiff to plead more? Is a delayed price decline that is inconsistent with the market movements sufficient? Is an immediate stock price decline that corresponds with the market movements on that date sufficient? Will the requirement to plead additional facts come into play where there is a modest stock price decline followed by a quick and sustained price recovery, which may be insufficient to support loss causation in the Ninth Circuit?[28] District courts will be left to draw those lines. Similarly, what is the “more” that lead plaintiffs must plead? While the Second Circuit clearly communicated that it is not requiring district courts to conduct event studies at the pleading stage, the Second Circuit nevertheless has articulated a standard pursuant to which lead plaintiffs are now required to plead facts explaining why their loss is still plausible in the face of the underlying share price and market movements. Ultimately, future securities decisions from district courts will demonstrate how the Second Circuit’s decree applies to varying fact patterns.

[28] *See, e.g.*, *Cai v. Visa Inc., et al.*, Case No. 24-cv-08220-NW, 2026 WL 1865365 (N.D. Cal. June 29, 2026).

Consumer Goods and Retailing

Appeals Court Affirms Dismissal of Claims Against Gap Over Failed Clothing-Sizes Initiative

Smith v. The Gap, Inc., No. 25-1130 (2d Cir. May 28, 2026)

What to know: The Second Circuit affirmed dismissal of a putative securities class action against a clothing retailer and two executives, holding plaintiffs failed to allege actionable misstatements or scienter in connection with a failed sizing initiative.

In August 2021, Gap Inc. started an initiative in which it required all of its Old Navy subsidiary's stores to carry its full women's lineup in extended sizes. The initiative packed stores with plus-size inventory that didn't sell well and reduced stock in core sizes, resulting in markdowns and the rollback of the initiative in early 2022.

The central issue considered by the Second Circuit was: When does a company's failure to update a risk disclosure cross the line into securities fraud? Plaintiffs argued that any time a disclosed risk materializes, silence is actionable. The Second Circuit disagreed, "reject[ing] Plaintiffs' proposed rule that a risk disclosure is actionable whenever a company fails to disclose that the risk already materialized in some way." Citing Second Circuit precedent, the Second Circuit held that whether a risk has "actually materialized" to render a prior disclosure misleading must be evaluated under the "totality of the circumstances." Here, defendants' inventory warnings were generic industry risks — not tied to the initiative — and defendants had already acknowledged that such inventory risks were not purely hypothetical but had materialized in the past and would continue to do so. The Second Circuit agreed with Judge Diane Gujarati of the Eastern District of New York that the challenged statements would not have misled a reasonable investor about the nature of the risks.

The Second Circuit also dispatched two other theories advanced by the plaintiffs: (i) Earnings-call statements touting "strong" demand and customers "craving trend choice" were inactionable puffery, and (ii) press releases attributing inventory challenges to Covid supply-chain disruptions were not misleading simply because they omitted the initiative's impact on inventory: "A company's decision to speak about one aspect of sales does not necessarily require it to address other issues."

On scienter, the Second Circuit held that knowledge of store-level inventory problems at roughly 75 of 1,200 stores did not support a strong inference that executives knew the initiative was failing nationwide — particularly where the initial initiative rollback concerned only those 75 stores.

Michigan Federal Court Allows Securities and Common Law Fraud Claims to Proceed in Marijuana Dispensary Investment Dispute Despite Federal Illegality

5 Guys Mgmt., Inc. v. Great Lakes Holistics Muskegon, Inc., No. 1:24-cv-1297, 2026 WL 1911454 (W.D. Mich. July 2, 2026)

What to know: A Michigan federal court granted in part and denied in part summary judgment in a dispute over an investment in a marijuana dispensary, allowing securities fraud and common law fraud claims to proceed despite the federal illegality of the underlying business, while dismissing state law conversion, fiduciary duty and innocent misrepresentation claims.

A Michigan federal court allowed securities fraud and common law fraud claims to proceed in a dispute arising from a failed investment in Great Lakes Holistics Muskegon, Inc., a marijuana dispensary in Muskegon, Michigan. Following discussions with the founder of a Michigan marijuana dispensary, investment group 5 Guys Management, Inc. (5 Guys) pledged $1.5 million for a 22.5% stake in the dispensary. Another founder drafted a Private Placement Memorandum (PPM) with the terms of the investment agreement, which 5 Guys later claimed contained fraudulent misrepresentations.

The dispensary ultimately failed, and 5 Guys accused defendants — the founders and others — of fraudulently obtaining financing in violation of Section 10(b) of the Exchange Act and state securities laws. Specifically, defendants allegedly misrepresented that: (i) the investment would fund the dispensary, but the founders diverted funds elsewhere; (ii) dividends would be proportional to ownership, but one shareholder received an additional cut; and (iii) the dispensary was new, but it was not.

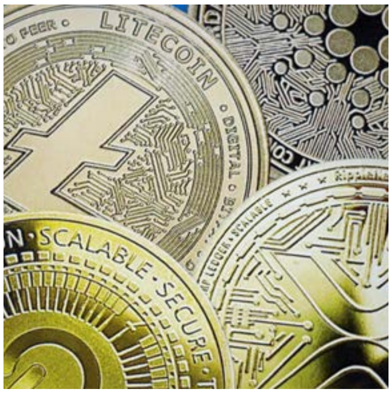
Defendants moved for summary judgment, arguing the contractual-illegality doctrine barred relief. That doctrine prohibits federal courts from assisting in carrying out the terms of an illegal contract. While the PPM complied with Michigan law, it violated the federal Controlled Substances Act, which criminalizes all marijuana-related activities.

The court held that while "[t]he Supreme Court's precedents 'leave no doubt that illegal promises will not be enforced' by federal courts," the illegality doctrine is not so rigid. It bars relief only when a judgment would enforce unlawful conduct. Otherwise, courts may apply it flexibly to prevent one party from unfairly obtaining another's property. The court distinguished claims seeking expectation damages (which require enforcing illegal contracts) from claims seeking restitution (which might not).

Because 5 Guys sought to recoup its investment, not to enforce an illegal contract, the doctrine did not categorically bar 5 Guys' securities-fraud claims. "[B]y granting such a remedy, the Court would merely imply that Defendants should not have falsely promised to break the law, which is a perfectly benign pronouncement." The court concluded that the equities favored allowing 5 Guys to seek relief because defendants were "more morally culpable" — "all parties engaged in a federally illegal business but only Defendants committed fraud."

On the merits, the court ruled that 5 Guys could proceed against certain of the defendants on all but the alleged "new business" misrepresentation. That statement failed for lack of loss-causation evidence.

Digital Assets



Securities Fraud Claims in Coinbase Crypto Dispute Are Ruled to Be Time-Barred

Heabeart v. Coinbase, Inc., No. 25-cv-9197 (JSR) (S.D.N.Y. May 7, 2026)

What to know: A New York federal court dismissed securities fraud claims brought by customers who purchased a digital asset on the Coinbase trading platform, finding that all claims were time-barred by the two-year statute of limitations and independently failed to meet the Private Securities Litigation Reform Act's (PSLRA's) heightened pleading requirements. The court also compelled arbitration of all nonsecurities claims.

Coinbase Inc. (Coinbase) operates one of the largest U.S. digital asset trading platforms. In August 2021, Coinbase listed for trading a digital asset called Wrapped LUNA (WLUNA), which was an Ethereum token "intended to represent" Terra (LUNA) on the Ethereum blockchain. Coinbase said in a statement on its platform that "1 LUNA can be exchanged for 1 WLUNA, and vice versa." A May 2022 crash in the value of LUNA led Coinbase to suspend trading in WLUNA later that month.

Eleven Coinbase customers brought claims under Section 10(b) of the Exchange Act against Coinbase and under Section 20(a) of the Exchange Act against parent Coinbase Global, Inc. and Coinbase CEO Brian Armstrong. Plaintiffs alleged three categories of Section 10(b) violations: (i) that Coinbase falsely represented that WLUNA maintained a 1-to-1 peg to LUNA; (ii) that Coinbase misled investors by characterizing its May 2022 trading suspension of WLUNA as temporary; and (iii) that Coinbase provided materially inaccurate account statements and tax documentation. The court dismissed all three claims, finding them untimely because the facts underlying each alleged violation were discoverable by May 2022, yet plaintiffs did not file suit until May 2025.

The court further held that even if timely, plaintiffs' claims failed on the merits. As to falsity, the court held that Coinbase's description of WLUNA as "intended to represent" LUNA did not guarantee a price peg, that plaintiffs failed to plead with particularity that any of Coinbase's representatives characterized the suspension as temporary, and that challenged statements could not have misled a reasonable investor. As to scienter, the court held that generalized allegations of a desire to profit and speculative theories about Coinbase retaining airdropped tokens did not satisfy the PSLRA's demanding standard.

The court also found that plaintiffs failed to adequately plead reliance and loss causation. Plaintiffs did not allege that any individual plaintiff actually saw the challenged statements before purchasing WLUNA, and the loss-causation theory, premised on a speculative chain of inferences involving third-party actions by Terraform Labs, was too attenuated to survive dismissal. Nonsecurities claims, including RICO, breach of contract, unjust enrichment and interference with ownership rights, were referred to arbitration pursuant to the Coinbase User Agreement.

Health Care and Life Sciences

Seventh Circuit Affirms Dismissal of Securities Class Action Over Alleged Misstatements Related to Channel-Stuffing Practices

Hunter v. Elanco Animal Health Inc., No. 23-3061 (7th Cir. Aug. 14, 2026)

What to know: The Seventh Circuit affirmed the dismissal of a securities class action lawsuit alleging an animal health product company and several of its officers and directors deceived investors by attributing revenue growth to strong underlying end-user demand while failing to disclose that the company's revenue was bolstered by an alleged channel-stuffing scheme.

The Seventh Circuit affirmed the dismissal of a proposed securities class action against Elanco Animal Health Inc. (Elanco), an animal health product company, and several of its officers and directors. Plaintiffs alleged violations of the Securities Exchange Act of 1934, the Securities Act of 1933 and SEC Regulation S-K Item 303, based on Elanco's alleged failure to disclose its "channel stuffing" practices while attributing revenue growth to strong end-user demand.

Plaintiffs alleged that, following a shift to a "move in" sales model in 2017, Elanco used heavy discounts to incentivize distributors to take on more product than end-user demand could support, that is, by so-called channel stuffing. Despite this, Elanco publicly asserted that strong end-user demand drove its revenue.

In the fourth quarter of 2019, Elanco switched to a "move out" sales model that based distributors' incentives on their sales to end users. Subsequently, in May 2020, Elanco announced that its revenue for the first quarter of 2020 had decreased by 10% year-over-year, citing Covid-19 as a factor, and explaining that it had reduced the amount of product in distributor inventory and would continue to do so. Its stock price fell by 13%.

The Seventh Circuit disagreed with the district court's conclusion that because plaintiffs had not alleged Elanco's channel stuffing was *itself* fraudulent, the court did not have to consider whether defendants made material misstatements by failing to disclose the alleged practices. But the court nonetheless affirmed dismissal because plaintiffs failed to plead scienter. In reaching its decision, the court "steeply discount[ed]" allegations from former employees who lacked personal access to knowledge about defendants' mental states. The court also noted that there were no allegations that demand was not strong enough to sustain the practice, that sales were illusory, that financials were restated, or that defendants knew that demand was not strong or that its strategy was unsustainable.

Turning to the Securities Act, the court affirmed that the allegations, based on the same course of conduct as the Exchange Act claims, were "bestrewn with averments of fraud" and subject to Rule 9(b)'s heightened pleading standard, and thus correctly dismissed. The court also held that plaintiffs failed to plead any violation of Item 303, explaining that Item 303 concerns external trends in the market, not internal business strategies such as the use of certain sales strategies.

Having found that plaintiffs failed to plead a primary violation of the securities laws, the court affirmed dismissal of the control person claims.

Court Dismisses Claims Against Biotech Company Based on Failure to Allege an Actionable Omission

Buathongsri v. Zenas Biopharma, Inc., No. 25-10988-LTS (D. Mass. June 29, 2026)

What to know: A Massachusetts federal court dismissed a putative securities class action, holding that the class failed to plausibly allege an actionable omission because the registration statement adequately disclosed the company's high and increasing R&D spending and losses, and did not need to include quarterly or in-progress third-quarter data to avoid misleading investors.

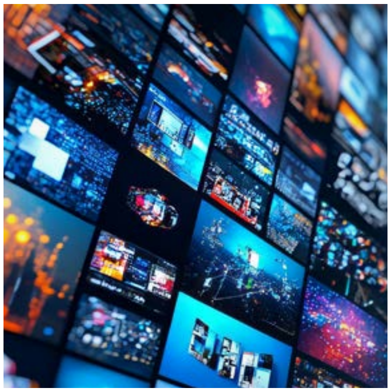
Zenas Biopharma, Inc. (Zenas), a clinical-stage biopharmaceutical company developing immunology-based therapies, held its IPO on September 13, 2024, at $17 per share. Plaintiffs purchased shares of Zenas in November 2024 at approximately $11.15 to $11.65 per share. At the time the lawsuit was filed against Zenas and certain of its officers in April 2025, Zenas was trading at $8.33 per share.

Plaintiffs alleged that defendants' registration statement included a material omission because it did not disclose that (i) "spending was not uniform across the first six months of 2024" and (ii) "R&D expenses" and "cash burn" had "materially increased between the first and second quarter of 2024" and "remained at a higher rate during the already in progress third quarter."

The court held that plaintiffs failed to plausibly allege an actionable omission because the registration statement accurately disclosed research and development (R&D) spending and repeatedly warned that spending and losses were high and expected to increase. The court concluded that it was unreasonable to infer that investors reading those disclosures would have believed spending had peaked or declined. The court further concluded that neither quarterly disaggregation nor in-progress third-quarter data was necessary to make the registration statement not misleading.

The court also rejected plaintiffs' Item 303 "known trend" argument. The court concluded that, even assuming the quarter-over-quarter increase was a "trend," the registration statement adequately disclosed it through quantitative data. The court declined to impose an across-the-board requirement that clinical-stage biotech firms disclose in-progress quarterly burn-rate data.

Media



Central District of California Finds Secured Promissory Notes Are Securities

SEC v. Dencer, No. 2:24-cv-10622 (PDx), 2026 WL 2261061 (C.D. Cal. Aug. 5, 2026)

What to know: A California federal court denied a motion to dismiss the Securities and Exchange Commission's (SEC's) complaint for alleged Section 10(b) and Rule 10b-5 violations, concluding that one investor's secured promissory notes might meet the definition of a security.

Frederick Tayton "Tayt" Dencer and his son Luke Abelard Dencer raised money from approximately 40 investors through offerings of promissory notes and common stock. The Dencers allegedly told investors they would use the funds to support their content-streaming business, which would target customers in China. Instead, according to the SEC, the Dencers diverted funds for their personal benefit and used some later investment proceeds to pay earlier investors. The SEC brought 10(b) and 10b-5 claims.

The first and largest investor — identified as Investor 1 — invested a combined $4.25 million in the defendants' venture through two secured promissory notes. The notes were later converted into shares in the venture. The SEC alleged the plaintiffs led Investor 1 to believe they would use his investment to develop and launch the streaming business.

Defendants moved to dismiss. Among other arguments, they argued Investor 1's notes were not securities. The court disagreed, applying the four-part test from *Reves v. Ernst & Young*, U.S. 56, 60-63 (1990), as follows:

- **Motivations of buyer and seller.** This factor suggested the notes were securities because the defendants sought to raise capital for the general purpose of their venture, and the investor sought to invest in the enterprise. The court contrasted these motivations with ordinary credit used to purchase a specific asset or other conventional purpose — which would weigh against finding the notes were securities.
- **Plan of distribution.** This factor suggested the notes were not securities because they represented two individual transactions with one lender. There was no public offering, broad distribution, secondary trading or other feature that indicated they were securities.
- **Reasonable expectations of the investing public.** This factor was mixed. The formal presentation of the notes suggested they were individually negotiated loans, but the plaintiffs' solicitation of the investor suggested they were securities.
- **Alternative regulatory scheme or risk-reducing factors.** This factor suggested the notes were securities because the notes offered limited contractual protection, the adequacy of collateral was not established and there was no alternative regulatory regime governing the transactions.

Altogether, the court found that the notes' "loan-like features d[id] not establish as a matter of law that the instruments strongly resemble a recognized category of nonsecurity notes." The court thus concluded the SEC plausibly alleged the notes were securities and ultimately denied the motion to dismiss.

Central District of California Dismisses Claims That Executives Depressed Share Price Ahead of Merger

Altshares Event-Driven ETF v. Endeavor Gp. Holdings, Inc., No. 2:26-cv-00526-RGK-KS, 2026 WL 1848123 (C.D. Cal. June 23, 2026)

What to know: A California federal court dismissed certain federal securities claims against Endeavor, a global sports and entertainment conglomerate, related to its recent going-private transaction that closed in March 2025. Among other things, the plaintiff alleged that intervening changes in the business impacted the value of Endeavor, rendering statements made about the fairness of the merger in the information statement issued in connection with the transaction materially false and misleading. The court held that the plaintiff failed to plead the falsity of these statements.

In 2024, Endeavor Group Holdings, Inc.'s Executive Committee established a two-member Special Committee to explore a potential going-private transaction with a private equity firm. On April 2, 2024, the Special Committee's independent financial advisor rendered a fairness opinion, opining that, as of that date, the $27.50 per share merger consideration was fair. The Special Committee recommended that the Executive Committee approve the merger, and at a meeting held later the same day, the Executive Committee determined that the merger agreement and related transactions were fair and in the best interests of the company and its stockholders. On January 15, 2025, Endeavor filed an Information Statement, which contained statements about the April 2, 2024, fairness determinations.

An Endeavor investor brought a federal securities class action lawsuit against Endeavor, the Executive Committee members and the Special Committee members, challenging, among other things, statements made in the Information Statement that the merger was fair. Specifically, the plaintiff asserted that the defendants could not have had a good faith belief that the merger was fair when they made those statements because intervening developments that occurred after the issuance of the fairness opinion in April 2024 had resulted in a dramatic increase in Endeavor's value. Thus, the plaintiff argued, the omission of Endeavor's increase in value created a false impression of Endeavor's actual value as of January 2025.

The California federal court granted in part the defendants' motion to dismiss, finding that the plaintiff failed to plead that the challenged statements about the fairness of the merger were false or misleading. As the court explained, the disclosures contained sufficient caveats that made it clear to the average investor that the fairness statements were made as of April 2024 and did not imply that the merger was fair as of January 2025.

Mergers and Acquisitions

Delaware Court of Chancery Rejects Argument That Advisors Must Disclose Immaterial Potential Conflicts in Arm's-Length Mergers

Berger as Tr. for Paul Berger Revocable Tr. v. Fox, No. 2025-1183-BWD (Del. Ch. July 24, 2026)

What to know: The Delaware Court of Chancery dismissed a post-closing stockholder challenge to a noncontroller take-private merger. The court held that the business judgment rule protected the transaction because it had received fully informed stockholder approval. In doing so, the court rejected arguments that the proxy statement failed to disclose material conflicts of the Board's financial and legal advisors, and dismissed aiding and abetting claims against the target's financial advisor.

In 2024, funds affiliated with Bain Capital Private Equity LP (Bain) acquired all outstanding shares of Envestnet, Inc. (Envestnet or the Company) in an all-cash take-private merger. Prior to agreeing to a deal with Bain, the Company received unsolicited acquisition proposals from two other bidders, each of which offered a higher cash price per share but presented larger uncertainties compared to Bain's proposal. The merger with Bain was approved by 75.3% of the Company's stockholders.

After closing, former stockholders of the Company filed an action challenging the merger, alleging that the Company's board of directors (the Board) and CEO breached their fiduciary duties and that the Board's financial advisor aided and abetted those breaches by steering the sales process in Bain's favor. The Court of Chancery granted defendants' motions to dismiss on two independent grounds.

Business judgment rule protection. The court held that the merger was approved by a fully informed, uncoerced vote of disinterested stockholders, triggering business judgment review under *Corwin v. KKR Financial Holdings LLC*. (Under the *Corwin* doctrine, when there is no conflicted controller, and a transaction is approved by a fully informed, uncoerced stockholder vote, an irrebuttable business judgment presumption applies, leaving only claims for waste.) Plaintiffs alleged multiple disclosure deficiencies that purportedly rendered the stockholders' vote uninformed, including the Board's financial and legal advisors' concurrent engagements with Bain and Bain portfolio companies.

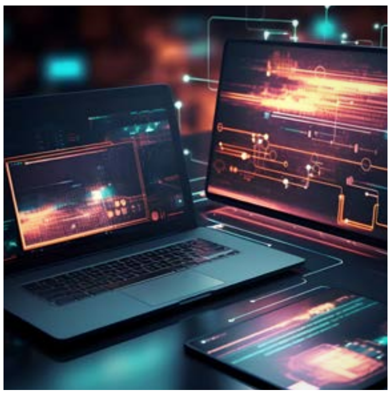
As to the financial advisor, the proxy statement disclosed that the advisor expected to receive customary fees for concurrent Bain engagements that would be "significantly more" than the fee the advisor would receive from Envestnet in the merger. The court held that this "rough scale" disclosure was sufficient.

Regarding the legal advisor's concurrent unrelated representation of Bain portfolio companies, the court held that plaintiffs failed to plead these engagements were material to the advisor. The court noted that recent case law requiring certain advisor conflict disclosures in a controlled company sale process did not apply here.

No breach of fiduciary duty. Even absent *Corwin*, the court held that the complaint failed to adequately plead a non-exculpated claim for breach of fiduciary duty. The directors were undisputedly independent and protected by an exculpatory charter provision, leaving only a bad faith theory. The court found that plaintiffs' allegations provided no support for any inference of bad faith but rather painted a picture of a fully independent board retaining experienced advisors, informing itself of potential conflicts, engaging with multiple bidders and meeting more than a dozen times before reaching a deal.

No aiding and abetting. The court also dismissed aiding and abetting claims against the financial advisor because plaintiffs failed to plead the advisor's "knowing participation" in any breach of fiduciary duty by the Board. The court emphasized that plaintiffs must plead that the advisor (i) knew the Board's conduct constituted a breach of fiduciary duty and (ii) knew its own conduct was "legally improper" and provided "substantial assistance" to the Board. The court rejected plaintiffs' arguments that the advisor's disclosure of its conflicts, provision of information to the Board and alleged "steering" of a transaction to Bain satisfied the stringent standard.

Technology



Court Holds That SLUSA Bars Claims That Meta's Ads Induced Users Into Joining Scam Chat Groups

Bouck v. Meta Platforms, Inc., No. 3:25-cv-05194-RS, 2026 WL 1697631 (N.D. Cal. June 11, 2026)

What to know: A California federal court dismissed state law claims against Meta in which the plaintiffs alleged that advertisements tricked them into joining WhatsApp groups and making stock purchases based on tips they received in those groups. The court found the claims were effectively securities fraud claims premised on state law violations and dismissed them for lack of jurisdiction.

A group of individuals brought state law claims against social media company Meta Platforms, Inc., claiming that advertisements on Meta's platforms tricked them into joining scam WhatsApp groups, in which they were convinced to purchase worthless Chinese penny stocks. The advertisements falsely showed respected investment professionals promoting the WhatsApp groups and the trading strategies the plaintiffs would learn if they joined them.

In a prior ruling, the court denied Meta's motion to dismiss on Section 230 grounds, finding the plaintiffs adequately alleged that Meta actively participated in the creation of the content in the advertisements through its generative AI tools.

Meta then moved to dismiss on jurisdictional grounds, arguing that the Securities Litigation Uniform Standards Act (SLUSA), which bars state law securities class actions, required dismissal of the plaintiffs' claims. Meta argued that the case was effectively a securities class action brought under state law because the purchase of securities was integral to the plaintiffs' alleged injuries. As Meta described it, the alleged misrepresentations in the advertisements on Meta's platforms were made "in connection with the purchase or sale of a covered security."

In determining whether SLUSA barred the claims, a California federal court focused on "whether the fraudulent statements that Plaintiffs complain of 'ma[de] a significant difference to' their decision to purchase" the stocks. Because plaintiffs alleged that the fraudulent advertisements gave the WhatsApp groups "the veneer of legitimacy," the court reasoned that they must been material to the plaintiffs' decision to purchase the stock. Therefore, SLUSA applied.

The plaintiffs countered that they did not allege that Meta's conduct directly related to securities transactions, making the connection between the statements and the purchase decisions too tenuous for SLUSA to apply. The court found this distinction unpersuasive, explaining that the plaintiffs' transacting "in covered securities simply makes this an easy case."

The court dismissed the complaint "without prejudice to refiling the case under federal securities laws or in some other form that is not precluded by SLUSA."

The plaintiffs have appealed the court's ruling.

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