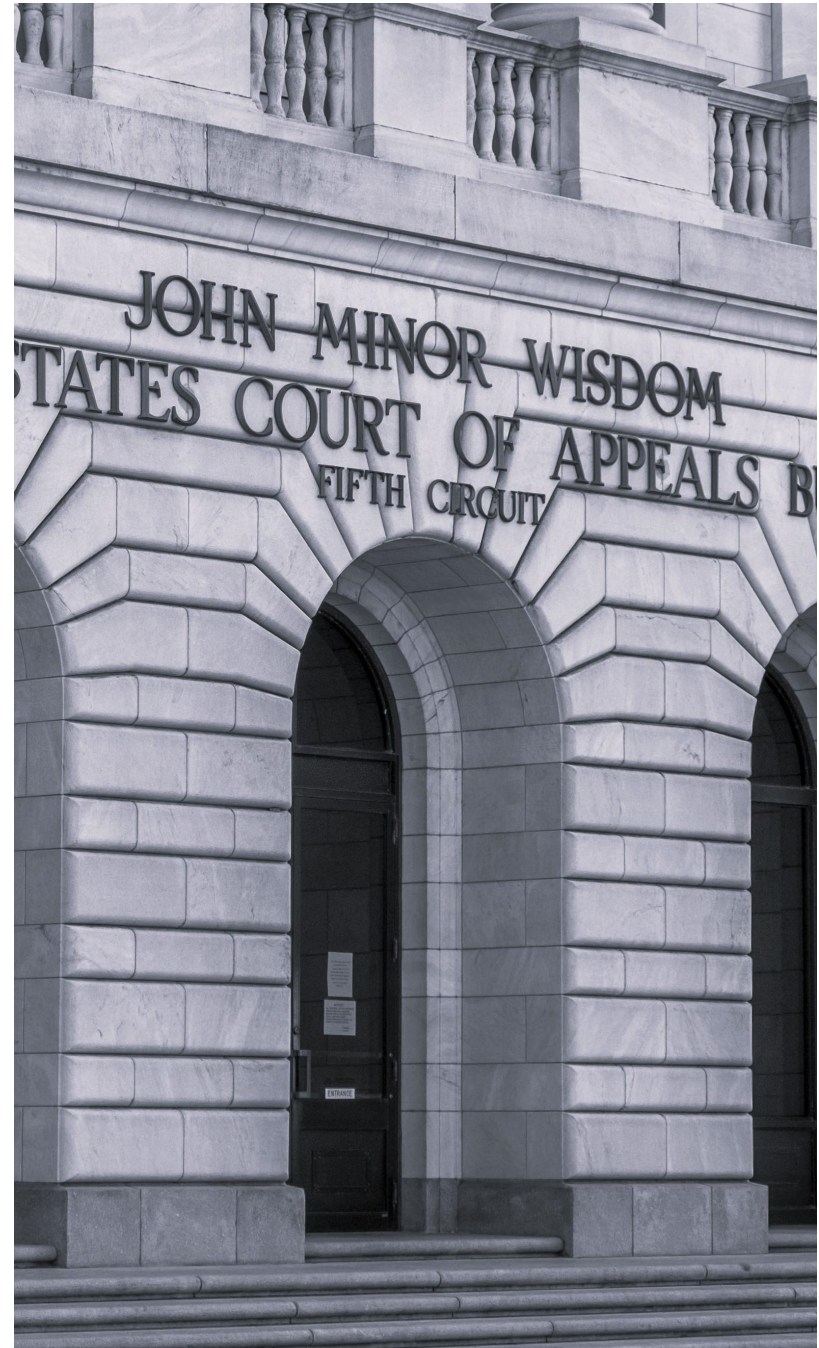


Fifth Circuit Securities Litigation Quarterly

Q2 2024



A&O SHEARMAN

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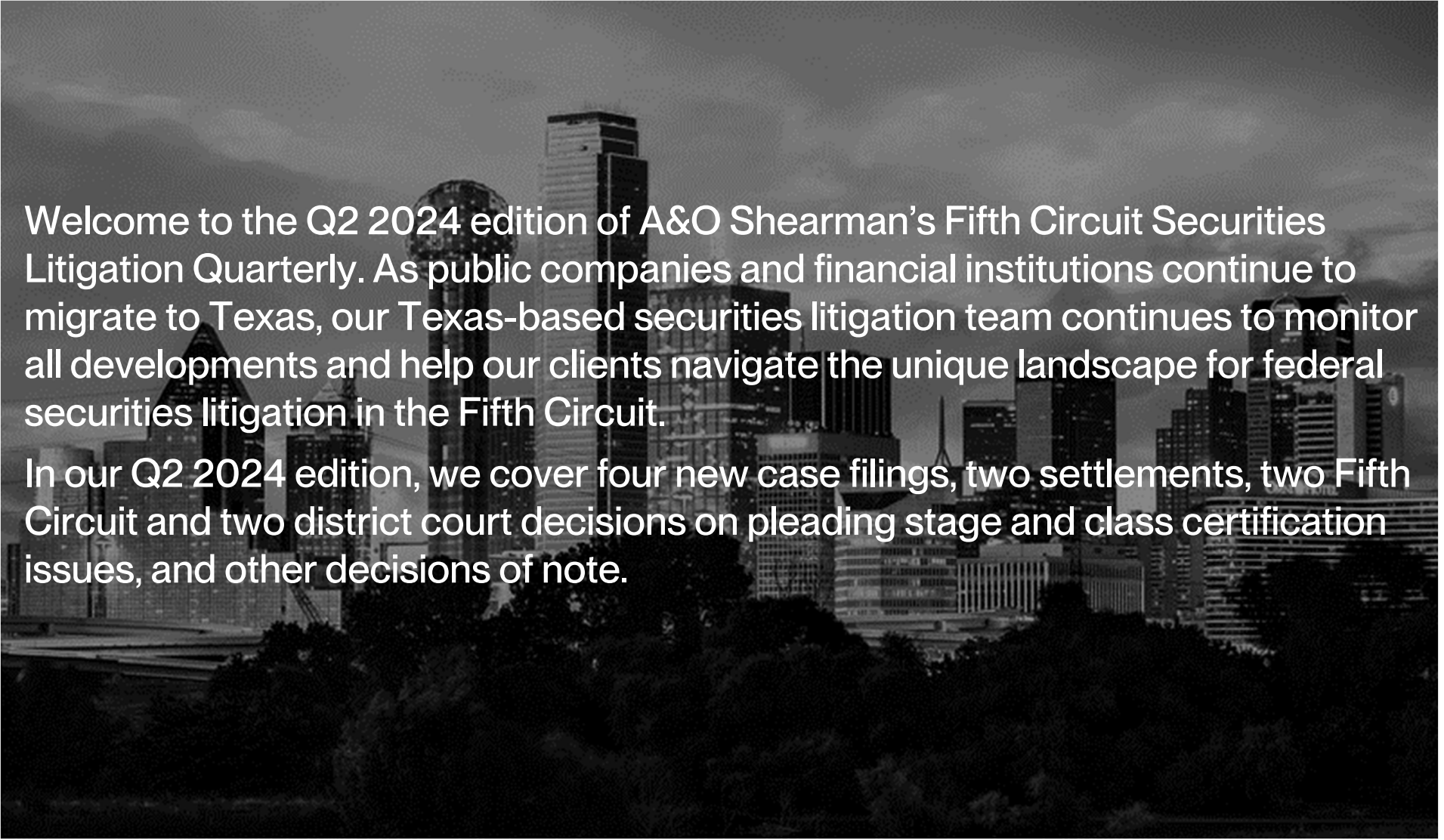
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Texas Securities Litigation
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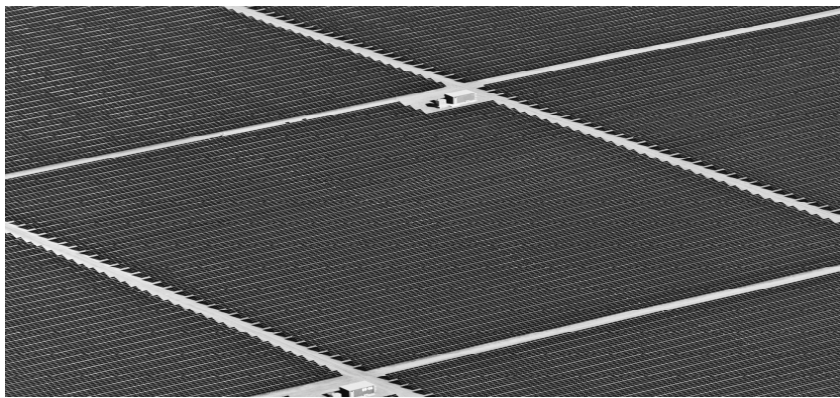
Introduction



Welcome to the Q2 2024 edition of A&O Shearman's Fifth Circuit Securities Litigation Quarterly. As public companies and financial institutions continue to migrate to Texas, our Texas-based securities litigation team continues to monitor all developments and help our clients navigate the unique landscape for federal securities litigation in the Fifth Circuit.

In our Q2 2024 edition, we cover four new case filings, two settlements, two Fifth Circuit and two district court decisions on pleading stage and class certification issues, and other decisions of note.

New securities class action filings

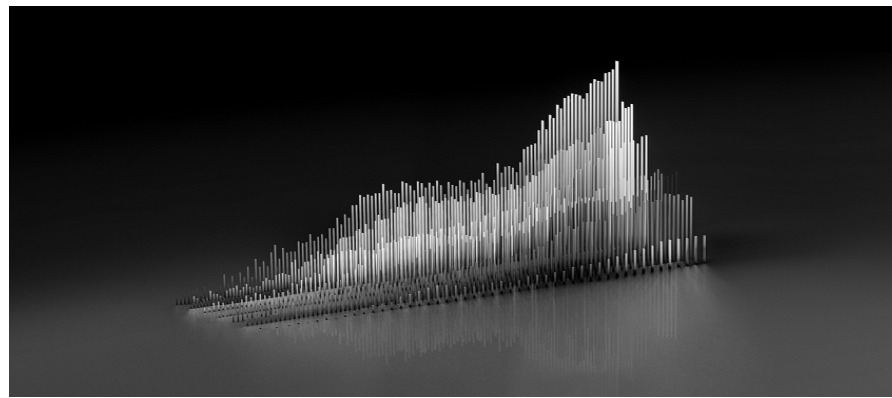


AST SPACEMOBILE (W.D. TEX., 7:24-CV-00102, FILED APR. 17, 2024)

Filed on behalf of a putative class of persons who purchased AST SpaceMobile, Inc. securities between November 14, 2023 and April 1, 2024

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants made false and/or misleading statements and/or failed to disclose “ 1) that production of the Company’s five Block 1 BlueBird satellites had been negatively impacted by two suppliers of key subsystems; (2) that a result, the Company had not substantially completed the production of the Block 1 BlueBird satellites; (3) that, as a result, the Company’s five Block 1 BlueBird satellites were not on track to launch in the first quarter of 2024; and (4) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.”



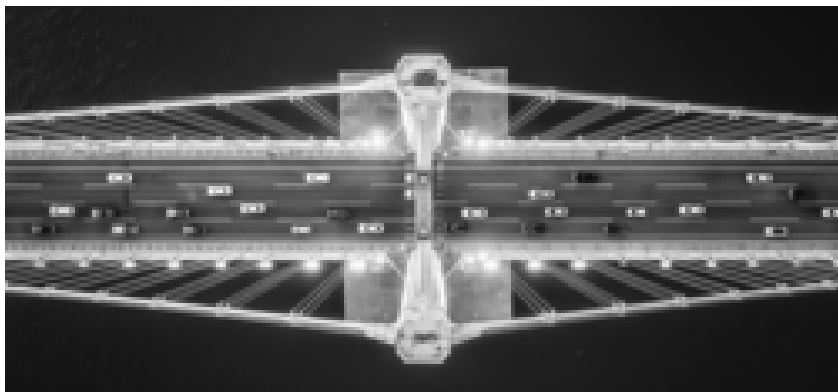
GLOBE LIFE (E.D. TEX., 4:24-CV-00376, FILED APR. 30, 2024)

Filed on behalf of a putative class of persons who purchased Globe Life Inc. common stock between May 8, 2019, and April 10, 2024

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants made false and/or misleading statements and/or failed to disclose that “Globe Life was engaged in wide-spread insurance fraud, therefore inflating Globe Life’s financial results” and “permitted a culture of unchecked sexual harassment, in direct contravention of the Company’s Code of Conduct.”

New securities class action filings



DIRECT DIGITAL (S.D. TEX., 4:24-CV-01940, FILED MAY 23, 2024)

Filed on behalf of a putative class of persons who purchased Direct Digital common stock during the period from April 17, 2023 through March 25, 2024,

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants “made false and/or misleading statements, as well as failed to disclose material facts, including that: (1) the Company’s transition toward a ‘cookie-less’ advertising environment was accelerated and would impact revenue in 2024; (2) the Company’s alternatives to third-party cookies, including planned investments in AI and machine learning to build on first-party data sources, would not be viable alternatives to third-party cookies and similar tracking technologies; (3) the Company did not have adequate solutions to address the impending phase out of third-party cookies by Google; and (4) based on the foregoing, Defendants lacked a reasonable basis for their positive statements about the effectiveness of Direct Digital’s platform and related financial results, growth, and prospects.”



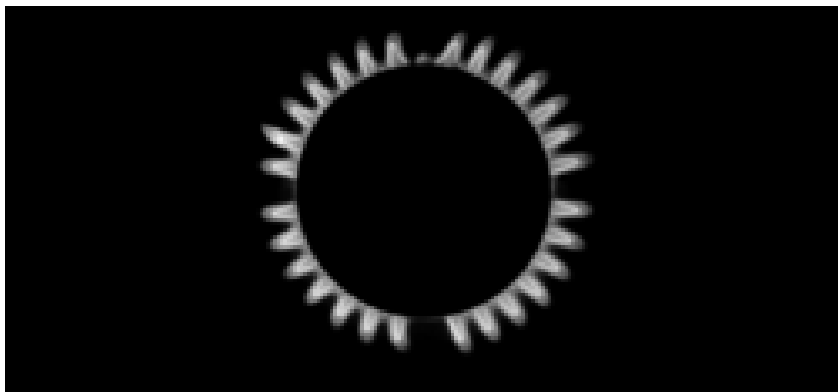
AT&T (N.D. TEX., 3:24-CV-01196, TRANSFERRED MAY 20, 2024)

Filed on behalf of a putative class of persons who purchased AT&T securities between March 1, 2020 and July 26, 2023

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants made false and/or misleading statements and/or failed to disclose that “(1) AT&T owns cables around the country that are highly toxic due to their being wrapped in lead, and which harm Company employees and non-employees alike; (2) it faces potentially significant litigation risk, regulatory risk, and reputational harm as a result of its ownership of these lead-covered cables and the health risks stemming from their presence around the United States; (3) it was warned about the damage and risks presented by these cables but did not disclose them as a potential threat to employee safety or to everyday people and communities; and (4) as a result, Defendants’ statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.”

New securities class action settlements



APACHE (S.D. TEX., 4:21-CV-00575)

\$65 million settlement of case asserting claims under the Securities Exchange Act of 1934.

Case initially filed on February 23, 2021. In late 2022, Judge Hanks adopted Magistrate Judge Edison's recommendation that Defendants' motion to dismiss be denied. In early 2024, Magistrate Judge Edison recommended that Plaintiffs' motion for class certification be granted-in-part and denied-in-part, finding that Defendants had rebutted the fraud-on-the-market presumption of reliance by proving a lack of price impact for part of the class period. The case resolved during briefing on Plaintiffs' objections to the recommendation on class certification. Motion for preliminary approval of settlement filed on May 8, 2024.



CABOT (S.D. TEX., 4:21-CV-02045)

\$40 million settlement of case asserting claims under the Securities Exchange Act of 1934.

Case initially filed on October 5, 2020. After a motion to dismiss an earlier complaint was granted, Defendants' motion to dismiss an amended consolidated complaint was granted-in part and denied-in-part in August 2022. Plaintiffs' motion for class certification was granted in September 2023, and Defendants' petition for leave to appeal was denied by the Fifth Circuit. The case resolved during expert discovery. Motion for preliminary approval of settlement filed on June 3, 2024.

Decisions of note

Six Flags: Fifth Circuit Reverses Grant of Judgment on the Pleadings Premised on Prior Decision

Anadarko: Fifth Circuit Vacates Class Certification and Requires District Court to Consider Additional Price Impact Evidence and Scrutinize Plaintiffs' Expert

Core Scientific: W.D. Tex. Grants Motion for Reconsideration and Dismisses Case Without Prejudice on Falsity Grounds

McDermott: S.D. Tex. Grants Class Certification In Part

Other Cases of Note: Fifth Circuit addresses loss causation in private company context; N.D. Tex. denies multiplier as part of attorney's fees award; W.D. Tex permits supplement to complaint adding new alleged corrective disclosure; W.D. Tex. grants motion to dismiss derivative complaint on demand futility grounds.

Okla. Firefighters Pension & Ret. Sys. v. Six Flags Ent. Corp., 2024 WL 1674125, (5th Cir. Apr. 18, 2024)

- ♦ Fifth Circuit reversed grant of defendants' motion for judgment on the pleadings and denial of an additional proposed plaintiff's motion to intervene.
- ♦ In an earlier opinion reversing a district court order granting defendants' motion to dismiss, the Fifth Circuit had stated that Six Flags had "adequately tempered" its alleged misleading statements by October 2019.
- ♦ Based on that statement, on remand Judge Pittman (i) granted defendants' motion for judgment on the pleadings because the plaintiff had purchased its stock after the alleged misstatements were tempered and therefore had no injury, and (ii) denied a proposed plaintiff's motion to intervene because there was no valid "case or controversy."
- ♦ On appeal the Fifth Circuit clarified that its prior opinion "did not hold the alleged fraud was fully disclosed by October 2019." Rather, the relevant portion of the prior opinion was viewed as holding only that October 2019 statements about park opening dates (one of four categories of alleged misstatements) were not actionable.
- ♦ Having clarified that not all of the alleged fraud was necessarily revealed by October 2019, the Fifth Circuit reversed the grant of judgment on the pleadings because the plaintiff's injury based on later stock purchases could relate to other categories of alleged false statements.
- ♦ The Fifth Circuit also held it was error to deny another proposed plaintiff's motion to intervene because it was a member of the putative class and had standing based on its own stock purchases.



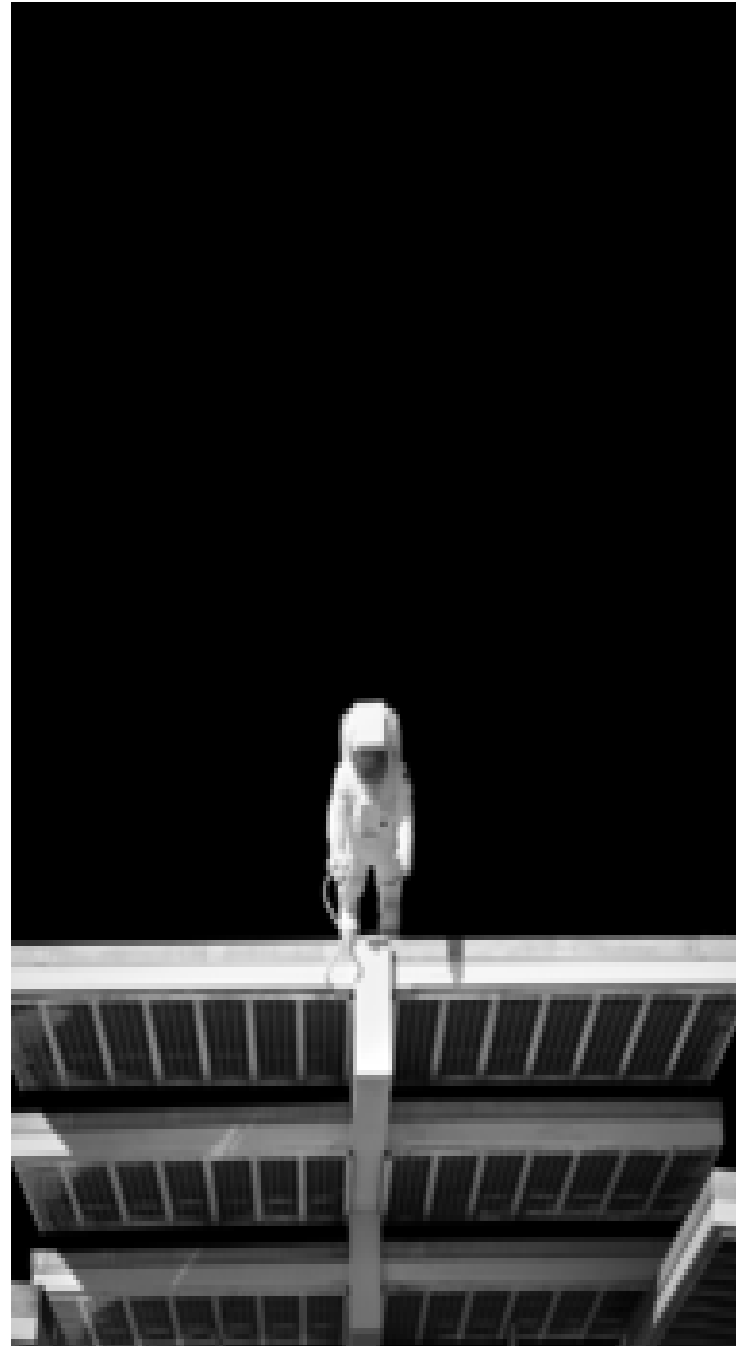
Ga. Firefighters' Pension Fund v. Anadarko Pet. Corp., 99 F.4th 770 (5th Cir. Apr. 25, 2024)

- ♦ Fifth Circuit vacated district court's order granting class certification and remanded for further proceedings.
- ♦ In obtaining class certification, Plaintiffs relied on the fraud-on-the-market presumption of reliance.
- ♦ In the district court, Defendants had attempted to rebut the presumption of reliance in their opposition brief by proving that the alleged fraud did not impact the Anadarko stock price. More specifically, they attempted to prove that the stock price decline at the end of the putative class period was caused by information unrelated to the alleged fraud.
- ♦ In their reply brief in the district court, Plaintiffs submitted a rebuttal report from an expert addressing the issue of price impact for the first time. Defendants moved for leave to file a sur-reply to address this new evidence and moved to exclude the rebuttal report under *Daubert*. Both motions were denied by the district court, class certification was granted, and Defendants' Rule 23(f) petition to appeal was granted.
- ♦ The Fifth Circuit held that the district court abused its discretion by not allowing Defendants to file a sur-reply because the Plaintiffs' class certification reply brief presented new evidence in the form of the expert rebuttal report.
- ♦ The Fifth Circuit also faulted the district court because it "failed to perform a full *Daubert* analysis." While the district court "conducted a *Daubert* inquiry to some extent," the Fifth Circuit concluded that Defendants' *Daubert* challenge has not been "fully considered."



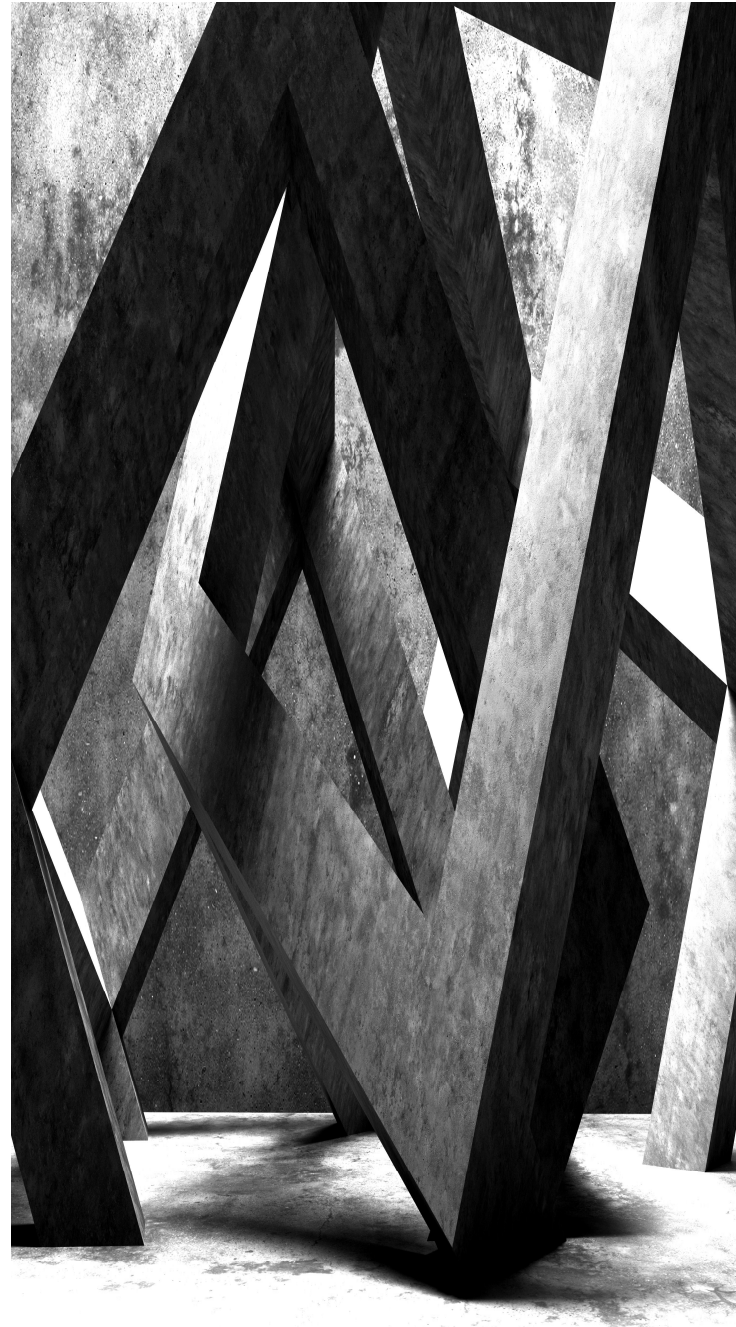
Pang v. Levitt, 2024 WL 2108842 (W.D. Tex. Apr. 22, 2024)

- ♦ Judge Ezra granted Defendants' motion for reconsideration and dismissed without prejudice a securities class action related to Core Scientific, Inc.
- ♦ The court had previously granted-in-part and denied-in-part Defendants' motion to dismiss, permitting some claims to proceed with respect to one alleged misstatement. Defendants moved for reconsideration with respect to that one alleged misstatement, arguing the court had relied on a theory that was not briefed.
- ♦ The statement at issue represented that the company's customers are "generally billed on a fixed and recurring basis each month for the duration of their contract..." Plaintiffs alleged the company sought to migrate its new and returning customers to contracts that permitted it to pass through certain cost increases, rather than being on fixed rates.
- ♦ The court acknowledged that its prior opinion did not "fully clarify whether its decision rests on actions taken by Core at the time the registration statement was made or whether it rests on speculative future business plans." The court clarified that it had held the statement was adequately pled as misleading for failure to disclose the company's future business plans. The court further found that Plaintiffs had not alleged that theory and that the court had not been fully briefed on the issue.
- ♦ Upon reconsideration, the court held that the challenged statement was not misleading based on a failure to disclose future plans. The court reasoned that a company has no duty to disclose changes to its business plans absent a stated intention to adhere exclusively to a particular strategy. The company had warned investors that it might adjust its business model, making that exception inapplicable.



Edwards v. McDermott Int'l, Inc.,
2024 WL 1769325 (S.D. Tex.
Apr. 24, 2024), *adopted*, 2024
WL 3085177 (S.D. Tex. June 21,
2024)

- ♦ Magistrate Judge Edison amended his prior memorandum and recommendation regarding Plaintiffs' motion for class certification.
- ♦ The prior memorandum recommended that the motion for class certification be denied without prejudice due to a fundamental conflict between sub-groups of putative class members, necessitating separate classes.
- ♦ After further reflection, Magistrate Judge Edison determined that the motion for class certification should be granted-in-part, with one of the two separate classes being certified.
- ♦ As to the other separate class, the amended memorandum recommended that the court permit new applications from the stockholders who had originally sought appointment as lead plaintiff.
- ♦ Judge Hanks approved and adopted the recommendation over various objections from the parties, certifying one subclass and reopening the lead plaintiff appointment process for the other subclass.



Other decisions of note

Cory v. Stewart, -- F.4th --, 2024 WL 2745835 (5th Cir. May 29, 2024): Fifth Circuit reversed summary judgment on federal securities claims, adopting loss causation standard in private company context requiring proof that misstatement was “substantial factor” in causing plaintiff’s actual economic loss.

Chun v. Fluor Corp., 2024 WL 2402083 (N.D. Tex. May 23, 2024): Judge Starr granted-in-part motion for attorney’s fees in connection with settlement of securities class action, awarding lodestar amount (hours worked multiplied by hourly rates) and rejecting multiplier.

In re Cassava Sciences Inc. Sec. Litig., No. 1:21-cv-00751 (W.D. Tex. June 12, 2024): Judge Ezra granted plaintiffs’ motion for leave to supplement the complaint to add a new alleged corrective disclosure and expand the putative class period. The court held the supplement was not futile because the newly alleged corrective disclosure may have contained new information and questions regarding its accuracy were too fact intensive for resolution on the pleadings.

In re Tesla Inc. Stockholder Derivative Litigation., No. 1:22-cv-00592 (W.D. Tex. Apr. 11, 2024): In a stockholder derivative case against directors and officers of Tesla, Judge Ezra granted a motion to dismiss without prejudice for failure to plead demand futility in a sealed opinion .

A&O Shearman's Texas securities litigation team



Thad Behrens

Partner, Dallas
T +1 214 271 5812
thad.behrens@aoshearman.com



Emily Westridge Black

Partner, Austin
T +1 512 647 1909
emily.westridgeblack@aoshearman.com



Mallory Tosch Brennan

Partner, Houston
T +1 713 354 4847
mallory.brennan@aoshearman.com



Samuel W. Cooper

Partner, Houston
T +1 713 354 4838
samuel.cooper@aoshearman.com



Dan Gold

Partner, Dallas
T +1 214 271 5821
dan.gold@aoshearman.com



David P. Whittlesey

Partner, Austin
+1 512 647 1907
david.whittlesey@aoshearman.com

Top ranked *Chambers* team

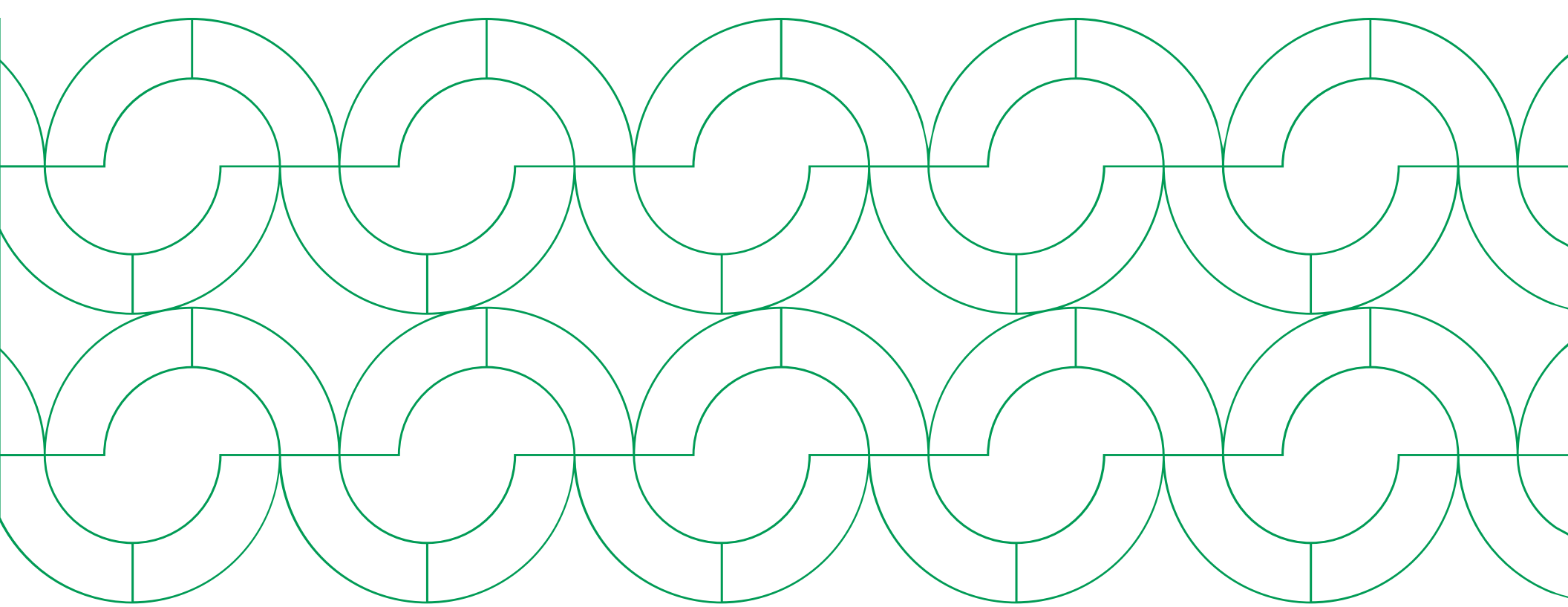
Texas *Litigation: Securities*



Band 1

“The lawyers are world-class in securities class action defense.”

“They offer 100% value for the service provided.”



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