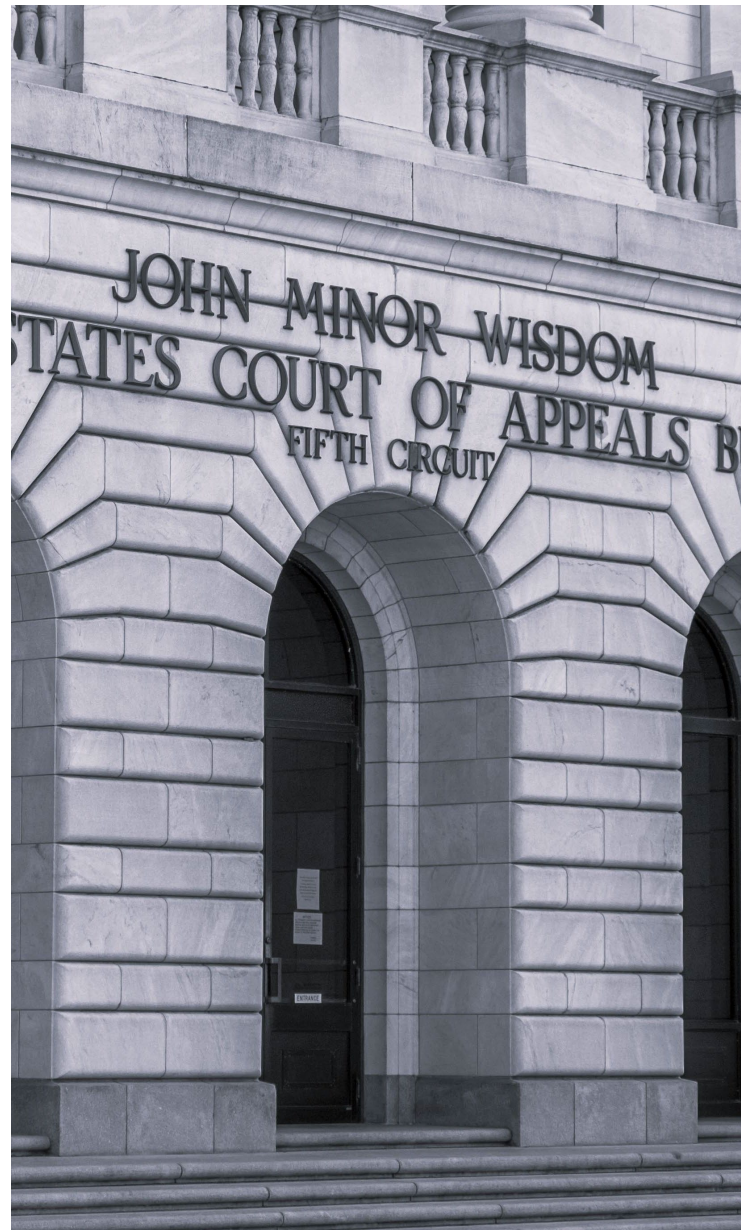


Fifth Circuit Securities Litigation Quarterly

Q2 2025



A&O SHEARMAN

Contents

3 Introduction

4 New securities class
action filing

5 Securities class action
settlement

6 Decisions of note

11 A&O Shearman's
Texas securities
litigation team



Texas Securities Litigation
Ranked Band 1
Chambers USA

Introduction



Welcome to the Q2 2025 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 2025 edition, we cover one new case filing, one new settlement, a Fifth Circuit shareholder derivative litigation opinion, two district court decisions on pleading stage and class certification issues, and other decisions of note.

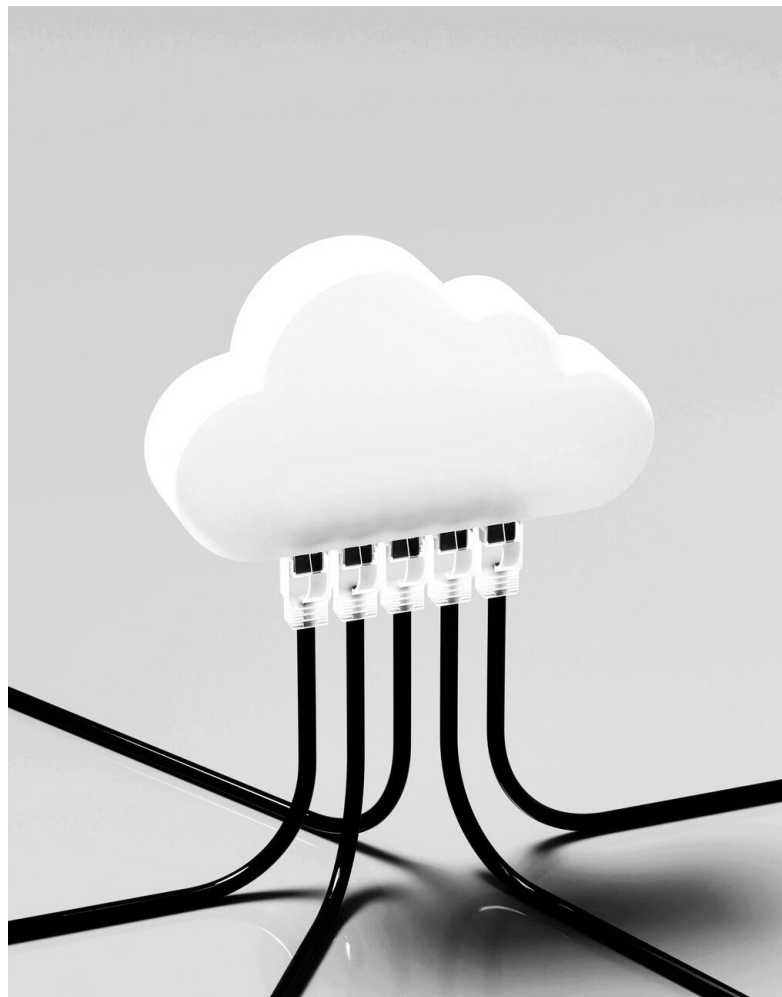
New securities class action filing

OPEN LENDING (W.D. TEX., 1:25-CV-00650, FILED MAY 1, 2025)

Filed on behalf of a putative class of investors who purchased or otherwise acquired Open Lending Corporation securities between February 24, 2022 and March 31, 2025, inclusive

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants “(1) misrepresented the capabilities of the Company’s risk-based pricing models; (2) issued materially misleading statements regarding the Company’s profit share revenue; (3) failed to disclose the Company’s 2021 and 2022 vintage loans had become worth significantly less than their corresponding outstanding loan balances; and (4) misrepresented the underperformance of the Company’s 2023 and 2024 vintage loans.”



New securities class action settlement

VERTEX ENERGY (S.D. TEX., 4:23-CV-02145)

\$6.3 million settlement of case asserting claims under the Securities Exchange Act of 1934

Case initially filed April 2023. The parties agreed to settle following briefing and oral argument on Defendants' motion to dismiss. A motion for preliminary approval of the settlement was filed on April 18, 2025.



Decisions of note

Cabot Oil & Gas: Fifth Circuit Affirms Dismissal With Prejudice of Shareholder Derivative Suit for Failure to Plead Demand Futility

AT&T: N.D. Tex. Grants Motion to Dismiss Without Prejudice for Failure to Plead Scierter and Failure to Plead a Material Misstatement as to Most Statements

Concho Resources: S.D. Tex. Grants in Part and Denies in Part Class Certification, Finding No Predominance as to Certain Statements

Other Cases of Note: Fifth Circuit grants interlocutory review under Rule 23(f) of order certifying a class in *Natera* case; W.D. Tex. denies motion to reconsider denial of motion to dismiss in *CS Disco* case; W.D. Tex. grants Plaintiffs' motion to supplement complaint and denies Defendants' motion to exclude Plaintiffs' class certification expert in *Cassava Sciences* case.

Ezell, Derivatively on Behalf of Cabot Oil & Gas Corp. v. Dinges, 137 F.4th 291 (5th Cir. 2025)

- ♦ The Fifth Circuit panel of Judges Graves, Engelhardt, and Oldham affirmed the Southern District of Texas' dismissal with prejudice of a shareholder derivative suit for failure to plead demand futility.
- ♦ Plaintiffs sued Cabot board members for allegedly breaching their fiduciary duties by failing to exercise oversight over the company, causing the company to issue material misrepresentations about its fracking activities, and engaging in insider trading.
- ♦ The court held that Plaintiffs failed to plead demand futility under the applicable Delaware law standards.
- ♦ Plaintiffs failed to plead facts supporting an inference of bad faith for oversight liability. The allegations and incorporated documents showed “both successes and failures” in remediation of the gas migration and water contamination issues, not a conscious disregard for their responsibilities by the board members.
- ♦ Plaintiffs “failed to demonstrate that some directors faced a substantial likelihood of liability for knowingly causing Cabot to issue material misrepresentations” where the disputed statements could reasonably be interpreted as accurate.
- ♦ The court held Plaintiffs waived their insider trading claim by addressing it only in a footnote and that the allegations would not support a finding of futility as to a majority of the board in any event.



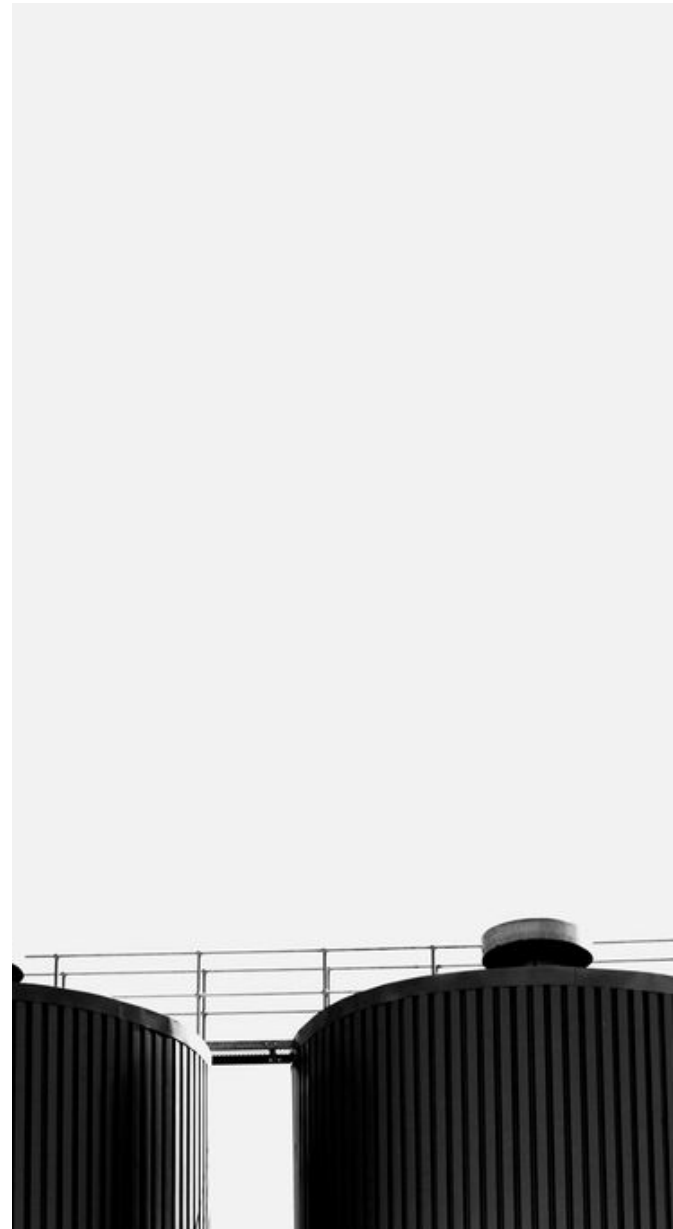
In re AT&T Inc. Sec. Litig., 2025 WL 1685840 (N.D. Tex. June 16, 2025)

- ♦ Judge Godbey granted Defendants' motion to dismiss without prejudice.
- ♦ Plaintiffs brought Exchange Act claims alleging AT&T's statements about cost savings from retiring old cables, environmental stewardship, employee health and safety, and risks to the business were misleading in light of the risks and exposure from lead cables.
- ♦ The court first held that Plaintiffs failed to plead a strong inference of scienter for any of the challenged statements. Plaintiffs relied on improper group pleading and offered insufficient allegations of motive to defraud. Plaintiffs also failed to adequately plead that any individual defendant was "aware of any widespread environmental contamination risk or employee health issues that could reasonably result in material risk to the company."
- ♦ The court further held that some categories of statements were adequately pled to be materially misleading and others were not. Statements on cost savings and some statements on environmental stewardship were adequately pled, with the court rejecting the Defendants' arguments that statements were opinions or protected by the PSLRA safe harbor. Other environmental stewardship statements and statements on employee health and safety were inactionable puffery. Finally, AT&T's statements concerning future risks were not adequately pled to be false when made.
- ♦ Judge Godbey gave Plaintiffs thirty days to file an amended complaint.



In re Concho Res., Inc. Sec. Litig., 2025 WL 1040379 (S.D. Tex. Apr. 7, 2025)

- ♦ Judge Hanen granted in part and denied in part Plaintiffs' motion for class certification.
- ♦ Plaintiffs brought Exchange Act claims and sought certification of class with a class period of February 21, 2018 through July 31, 2019, with a single alleged corrective disclosure on August 1, 2019.
- ♦ The court held that Plaintiffs met the Rule 23(a) numerosity, commonality, and typicality requirements. Plaintiffs were held to be adequate representatives of open market purchasers, but the court held they could not adequately represent other investors who received their shares in an acquisition. The court, however, gave Plaintiffs leave to propose a new class representative for these investors.
- ♦ Defendants sought to rebut the presumption of class-wide reliance through evidence that many of the alleged misrepresentations did not impact Concho's stock price. The court concluded that Defendants rebutted the presumption for 29 statements where there was a mismatch—in the level of genericness or the substantive information—between the alleged misrepresentations and the alleged corrective disclosure. The court granted class certification as to 37 statements for which it found Defendants did not rebut or did not challenge the presumption of reliance.
- ♦ The court held Plaintiffs' proposed damages model was sufficient at the class certification stage, rejecting Defendants' argument that Plaintiffs were relying on a materialization-of-the-risk theory.
- ♦ The court also largely denied Plaintiffs' motion to exclude Defendants' class certification expert, granting it only to the extent that the expert sought to opine on legal conclusions. See 2025 WL 1042411 (S.D. Tex. Apr. 7, 2025).



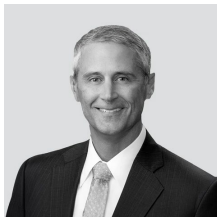
Other decisions of note

Schneider v. Natera, Inc., No. 25-90009 (5th Cir. May 9, 2025): The Fifth Circuit granted a motion for leave to appeal an order granting class certification under Rule 23(f). The question presented concerns whether plaintiffs must prove a purchase of securities from each defendant sued under Section 12 of the Securities Act to obtain class certification of a Section 12 claim against that defendant.

Gambrill v. CS Disco, Inc., 2025 WL 1088224 (W.D. Tex. Apr. 9, 2025): Judge Ezra denied reconsideration of an order denying dismissal as to Exchange Act claims, holding that statements were adequately alleged to be materially misleading and made with scienter and that the court had not made a chronological error in its prior order.

In re Cassava Sciences, Inc. Sec. Litig., 2025 WL 1465045 (W.D. Tex. May 21, 2025): Judge Ezra granted Plaintiffs' motion to supplement their complaint to add new allegations and new alleged corrective disclosures based on events that occurred after the suit was filed. The court also denied Defendants' motion to strike Plaintiffs' class certification expert, holding that the motion was untimely filed.

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 Hoggatt

Partner, Houston
T +1 713 354 4847
mallory.toschhoggatt@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



Billy Marsh

Partner, Dallas
T +1 214 271 5348
billy.marsh@aoshearman.com



David P. Whittlesey

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

Top ranked *Chambers* team

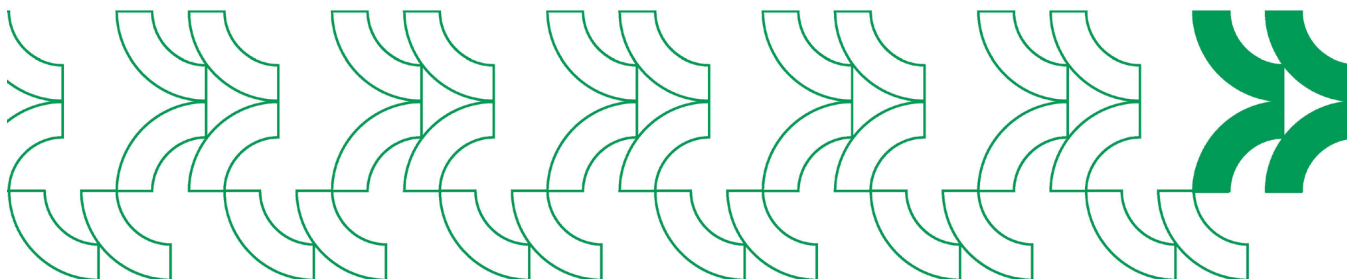
TEXAS

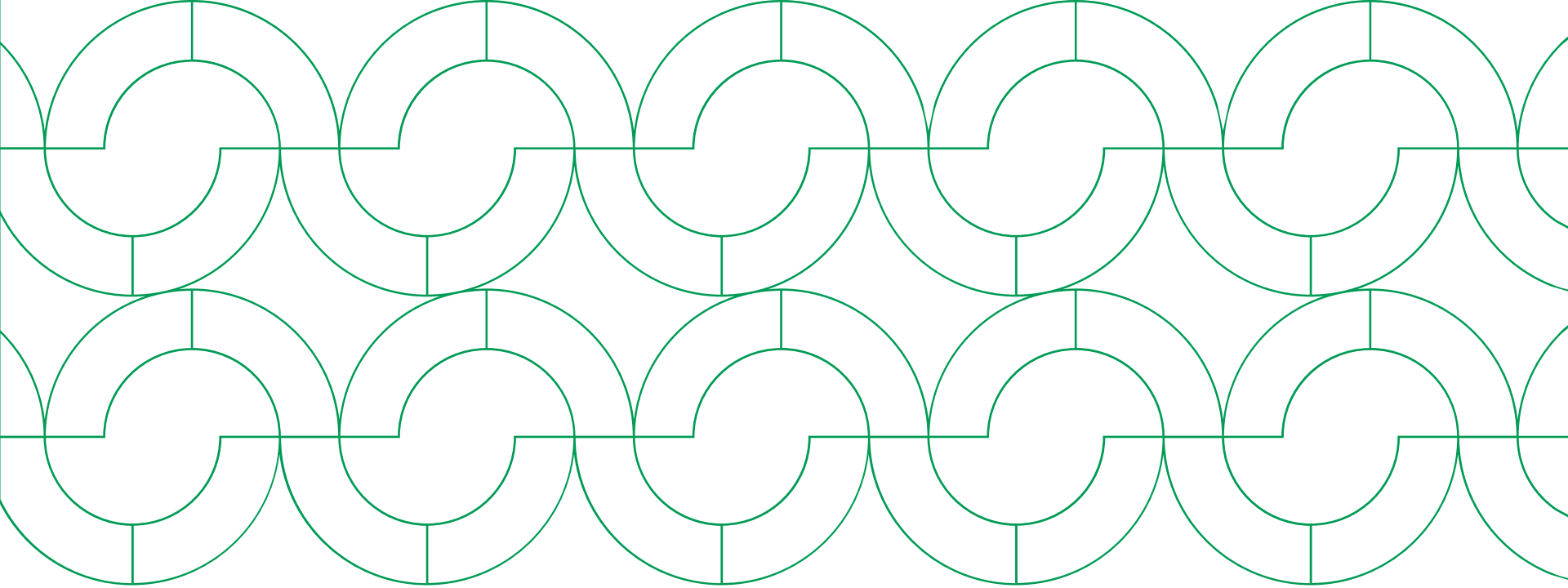


Litigation: *Securities*

Band 1

A&O SHEARMAN





A&O SHEARMAN

A&O Shearman is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 29 countries worldwide. A current list of A&O Shearman offices is available at aoshearman.com/global/global_coverage. A&O Shearman means Allen Overy Shearman Sterling LLP and/or its affiliated undertakings. Allen Overy Shearman Sterling LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen Overy Shearman Sterling LLP (SRA number 401323) is authorized and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen Overy Shearman Sterling LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen Overy Shearman Sterling LLP's affiliated undertakings. A list of the members of Allen Overy Shearman Sterling LLP and of the non-members who are designated as partners is open to inspection at our registered office at One Bishops Square, London E1 6AD. Some of the material in this document may constitute attorney advertising within the meaning of sections 1200.1 and 1200.6-8 of Title 22 of the New York Codes, Rules and Regulatory Attorney Advertising Regulations. The following statement is made in accordance with those rules: ATTORNEY ADVERTISING; PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. © Allen Overy Shearman Sterling LLP 2025. These are presentation slides only. This document is for general information purposes only and is not intended to provide legal or other professional advice.