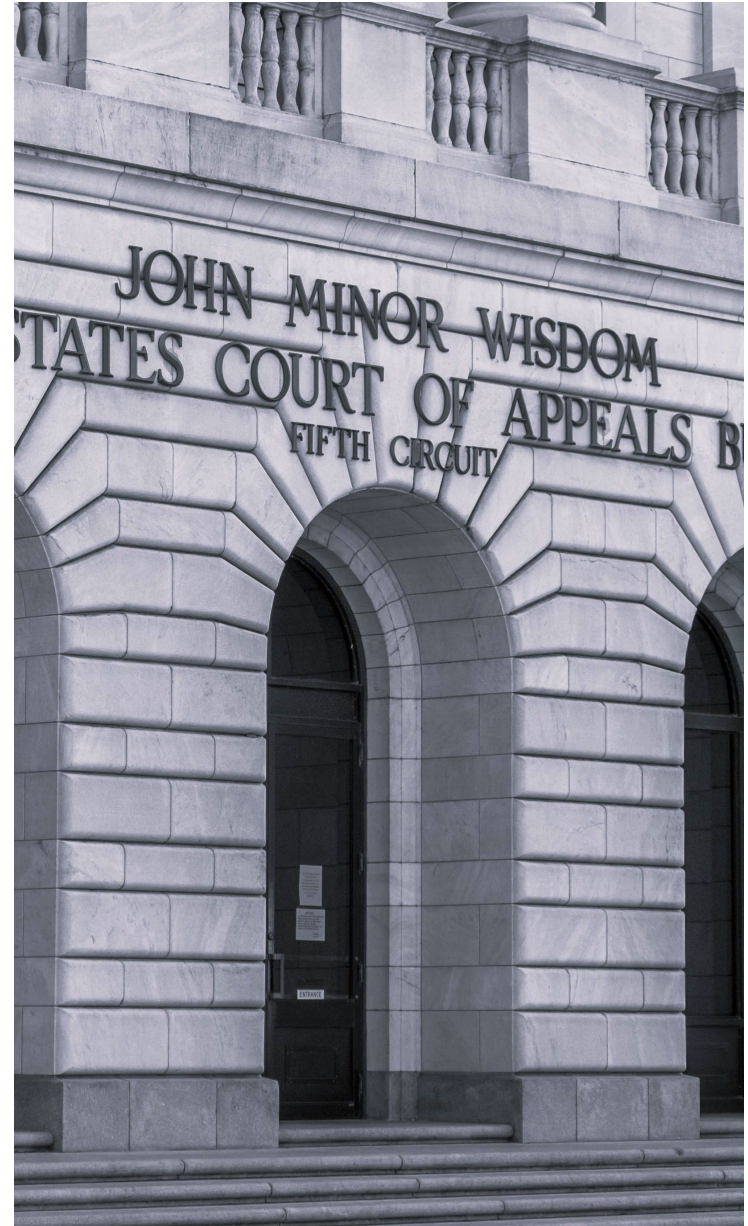


Fifth Circuit Securities Litigation Quarterly

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A&O SHEARMAN

Contents

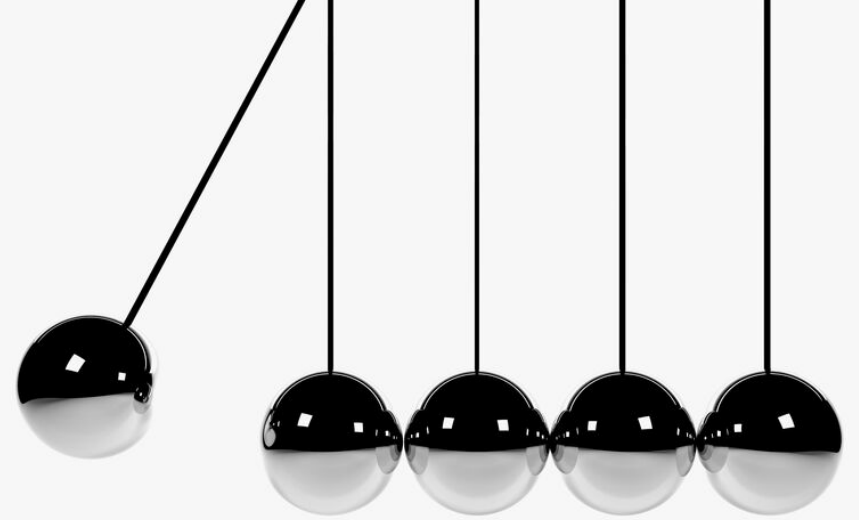
03 Introduction

04 A new securities class action filing

05 A new securities class action settlement

06 Decisions of note

13 Our Texas securities litigation team



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Texas – *Chambers USA*

Welcome to the Q1 2026 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 key developments and help our clients navigate the unique landscape for federal securities litigation in the Fifth Circuit.

In our Q1 edition, we cover one new class action filing, one new class action settlement, five decisions on pleading stage and class certification issues, and other decisions of note.



A new securities class action filing

VITAL FARMS (W.D. TEX., 1:26-CV-00738, FILED MARCH 27, 2026)

- ◆ Filed on behalf of a putative class of investors who purchased or otherwise acquired Vital Farms, Inc. securities between May 8, 2025, and February 26, 2026, inclusive
- ◆ Asserts claims under the Securities Exchange Act of 1934
- ◆ Alleges Defendants made statements that were “false and/or misleading at the time they were made because: (1) Defendants emphasized the importance of the [Enterprise Resource Planning (‘ERP’)] implementation to Vital Farms’ operations and that it was ‘fundamental to the operational improvements we are planning’; (2) Defendants stated the implementation of the ERP would require the time and attention of ‘management and key crew members’; (3) Defendant Wrede stated that Vital Farms pushed back the expected implementation date of the ERP to ‘ensure flawless switchover’; (4) given the stated importance of and management’s knowledge of the issues surrounding the implementation of the ERP, Defendants knew, or were reckless in not knowing, that implementing the ERP would result in delays of shipments and/or production; (5) Defendants did not warn investors that implementing the ERP would result in delays in shipments and/or production, instead merely couching it as a hypothetical in their risk disclosures; and (6) as a result of the delay in shipments and/or production, Vital Farms would lose important retail shelf space, which would negatively impact Vital Farms’ business and operations.”

A new securities class action settlement

F45 TRAINING HOLDINGS (W.D. Tex., 1:22-cv-1291)

- ◆ USD 10.5 million settlement of case asserting claims under the Securities Act of 1933 and the Securities Exchange Act of 1934
- ◆ Case initially filed on December 8, 2022. On February 21, 2025, the Court granted in part and denied in part Defendants' motion to dismiss
- ◆ The case resolved through mediation during fact discovery. A motion for preliminary approval of the settlement was filed on February 17, 2026.



Decisions of note

- ♦ *CrowdStrike*: W.D. Tex. Grants Motion to Dismiss for Failure to Plead Material Misstatements and Scienter
- ♦ *Lumen Techs.*: Fifth Circuit Reverses Dismissal with Prejudice and Renders Judgment of Dismissal without Prejudice
- ♦ *Orthofix*: E.D. Tex. Grants in Part Motions to Dismiss for Failure to Plead Material Misstatements and Loss Causation
- ♦ *Anadarko*: S.D. Tex. Grants Class Certification, Finding Defendants Did Not Prove Lack of Price Impact
- ♦ *Southwest Airlines*: S.D. Tex. Grants Motion to Dismiss on Reconsideration for Failure to Plead Material Misstatements and Scienter
- ♦ **Other Cases of Note**: N.D. Tex. denies motion to exclude class certification rebuttal expert in *Exxon Mobil Corp.*; W.D. Tex. dismisses remaining claims against underwriters without prejudice in *Natera*; N.D. Tex. dismisses all claims with prejudice in Southwest Airlines shareholder derivative suit; Houston Court of Appeals affirms sanctions against Plaintiff's counsel in suit challenging Exxon Mobil transaction.

In re CrowdStrike Holdings, Inc. Sec. Litig., --- F. Supp. 3d ---, 2026 WL 89682 (W.D. Tex. Jan. 12, 2026)

- ◆ Judge Pitman granted Defendants' motion to dismiss without prejudice.
- ◆ Plaintiff brought Exchange Act claims alleging that Defendants made false or misleading statements concerning CrowdStrike's software testing process prior to causing an IT outage that affected approximately 8.5 million users, including airlines, police departments, and hospitals.
- ◆ The Court held that thirteen of the fifteen statements Plaintiff alleged were false or misleading were nonactionable because Plaintiff had taken them out of context, the statements would not have misled a reasonable investor, or Defendants' own risk disclosures adequately warned investors of the risks Plaintiff claimed were concealed.
- ◆ The Court held that Plaintiff plausibly alleged that two statements concerning Defendants' compliance with FedRAMP and Department of Defense requirements were misleading. The Court found, however, that the claims based on those two statements should be dismissed because Plaintiff failed to plead a strong inference of scienter. Plaintiff's confidential witness and other scienter allegations did not create an inference as strong as the nonfraudulent inference that Defendants believed they had valid business reasons for their software decisions.
- ◆ Following the dismissal without prejudice, the lead Plaintiff elected not to seek to file a further amended complaint.

McLemore v. Lumen Techs., Inc., 2026 WL 252698 (5th Cir. Jan. 30, 2026)

- ◆ The Fifth Circuit reversed a pleading stage dismissal with prejudice in a securities putative class action and rendered a judgment of dismissal without prejudice.
- ◆ The Western District of Louisiana district judge had accepted the magistrate judge's recommendation of dismissal with prejudice.
- ◆ The lower court had evaluated five categories of alleged false statements, "finding that they did not add up to material falsehood or misleading omissions, and that plaintiffs did not plausibly plead scienter for fraud under the heightened standards of the Private Securities Litigation Reform Act of 1995." The Fifth Circuit did not hold that there was any error in these findings.
- ◆ The Fifth Circuit concluded that the magistrate judge and district judge had not adequately explained why dismissal should be with prejudice and reversed the with-prejudice aspect of dismissal, allowing Plaintiffs a third opportunity to plead a claim.



In re Orthofix Medical Inc. Sec. Litig., 2026 WL 660450 (E.D. Tex. Mar. 9, 2026)

- ◆ Judge Gilstrap granted in part and denied in part Defendants' motions to dismiss.
- ◆ Plaintiffs brought Exchange Act and Securities Act claims alleging that Defendants made false or misleading statements in merger regulatory filings about alleged misconduct by executives from the target company.
- ◆ The Court found most of the alleged misstatements immaterial under Fifth Circuit precedent that a company's "generalized positive characterization[s]" are "not actionable under the securities laws" and dismissed claims based on those statements without leave to amend.
- ◆ The Court held that other statements the target made about not being involved in prior settlement agreements in the merger agreement appended to Orthofix's prospectus were adequately alleged to be materially false or misleading where Plaintiffs alleged the target had previously settled a discrimination class action. The Court held that the prospectus' warning that investors should not rely on representations in the appended merger agreement did not create a per se bar to liability.
- ◆ Accordingly, the Securities Act claims survived dismissal for the subset of statements for which Plaintiffs adequately pled falsity. The Exchange Act claims based on these statements were dismissed without prejudice for failure to plead loss causation. Plaintiffs alleged that the company's stock price declined due to alleged corrective disclosures, but the Court found that Plaintiffs' own statements and those of analysts asserted that the sudden departure of executives precipitated the drop in price.

In re Anadarko Petroleum Corp. Sec. Litig., --- F.R.D. ---, 2026 WL 673470 (S.D. Tex. Mar. 10, 2026)

- ◆ Judge Eskridge granted certification of an Exchange Act class of all persons and entities that purchased or acquired Anadarko common stock between February 20, 2015, and May 2, 2017, inclusive.
- ◆ The Plaintiff “allege[d] that Anadarko and its corporate representatives actively misled investors about the viability and profitability of a deepwater asset in the Gulf of Mexico.”
- ◆ Judge Eskridge had previously certified the class, but the Fifth Circuit vacated the certification, holding that the district court abused its discretion by not permitting the Defendants to submit a sur-reply to address Plaintiff’s new reply evidence.
- ◆ Following remand, Defendants argued they adequately rebutted any presumption of reliance by demonstrating a lack of price impact on Anadarko’s stock due to the alleged corrective disclosure.
- ◆ The Court found that Defendants had not sufficiently shown a lack of price impact because “when news broke on the same day of both an *actual* \$900 million write-off as to the complained-of event and a *potential* \$140 million in new regulatory costs as to an entirely different event, an eight percent decline in the company’s stock price the following day isn’t *solely* attributable to the latter regulatory costs.”
- ◆ The Court also rejected various challenges by each side to the other side’s expert, generally finding that the challenged grounds went to weight rather than admissibility.

Teroganesian v. Southwest Airlines Co., 2026 WL 886303 (S.D. Tex. Mar. 31, 2026)

- ◆ Judge Tipton granted Defendants’ motion for reconsideration of the Court’s previous denial of their motion to dismiss and dismissed Plaintiffs’ claims without prejudice.
- ◆ Plaintiffs asserted Exchange Act claims arising from Southwest Airlines’ operational disruptions in 2021 and 2022 and statements that “allegedly downplayed or concealed Southwest’s exposure to flight-disruption events.” The Court had previously denied the motion to dismiss in a one-paragraph order.
- ◆ Plaintiffs challenged dozens of statements, and for all but six, the Court found that Plaintiffs failed to adequately plead the statements were materially false or misleading. The Court determined that Southwest adequately disclosed risks of technology shortfalls and severe weather. Other statements were dismissed as challenges to corporate puffery, disagreements with Defendants’ business judgment, or inactionable opinions.
- ◆ For the handful of statements that the Court concluded were adequately pled to be false or misleading, the Court found that Plaintiffs failed to plead a strong inference of scienter, noting that “the Complaint facially acknowledges that risk of disruption events and the unions’ criticisms were publicly disclosed, which negates scienter.”
- ◆ The Court granted Plaintiffs leave to amend to attempt to overcome their pleading deficiencies.

Other decisions of note

1

***Yoshikawa v. Exxon Mobil Corp.*, No. 3:21-cv-00194 (N.D. Tex. Feb. 24, 2026)**: Judge Godbey in a sealed opinion denied Exxon’s motion to exclude the Plaintiffs’ class certification rebuttal expert. Exxon had argued that Plaintiffs’ expert improperly introduced new evidence on reply and otherwise failed to satisfy the *Daubert* standards for expert testimony.

2

***British Airways Pension Trs. Ltd. v. Natera, Inc.*, No. 1:22-cv-398 (W.D. Tex. Mar. 4, 2026)**: Judge Ezra granted Plaintiffs’ motion to voluntarily dismiss their Securities Act Section 12 claims (which were the only remaining claims against Underwriter Defendants) without prejudice in a certified securities class action. The dismissal was undisputed with the only contested issue being whether the dismissal should be with prejudice or without prejudice. The Court held that Defendants’ rights could be adequately protected following a without prejudice dismissal.

3

***Gusinsky v. Reynolds*, 2026 WL 747179 (N.D. Tex. Mar. 17, 2026)**: Judge Kinkeade dismissed with prejudice all claims asserted in a shareholder derivative suit against Southwest Airlines. The suit was barred by Southwest’s bylaw creating a 3% ownership threshold for bringing a derivative suit, as permitted by the recent revisions to the Texas Business Organizations Code, which the Court upheld as valid.

4

***Corwin v. Exxon Mobil Corp.*, 2026 WL 872703 (Tex. App.—Houston [1st Dist.] Mar. 31, 2026)**: The Court of Appeals affirmed sanctions against Plaintiff’s counsel in a suit challenging an Exxon Mobil merger transaction, finding no error in the trial court’s conclusions that Plaintiff’s counsel “filed this lawsuit and requested an injunction solely for the purpose of trying to obtain a settlement from one of the defendants,” and that “[t]his strategy is precisely the type of conscious doing of a wrong for dishonest, discriminatory, or malicious purpose that sanctions exist to deter.”

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