

# Meta, Nvidia Bring Investor Suits' Starting Gate to High Court

By Martina Barash

[Argument Preview](#)

[Documents](#)

 [Facebook Docket](#)

 [Nvidia Docket](#)

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Meta Platforms Inc. and Nvidia Corp. will aim a spotlight on risk disclosure claims and expert evidence during the early stages of securities fraud class actions in two arguments at the US Supreme Court this month.

The cases have the potential to reduce investor litigation—and the expense it brings to publicly traded companies, defense attorneys say. Investor advocates, for their part, say the suits are healthy for the market, and the US government has weighed in on the importance of private securities actions.

“The cases are of interest to the securities litigation bar because they both reflect allegations that are very common in securities fraud class actions and are made in complaints against companies and executives regardless of the industry,” said Susan Hurd of Alston & Bird LLP. In securities class actions, the dismissal stage is a “critical phase” since it’s where “some of these cases get disposed of entirely, or in large part,” said Hurd, who represents corporate defendants.

Both cases feature massive potential liability for the tech giants and come to the high court from the US Court of Appeals for the Ninth Circuit, which revived the investors' misrepresentation claims despite the companies' requests for dismissal.

### **Risk Disclosures**

In the Meta case, which will be argued at the Supreme Court on Wednesday, investors say the company should face securities fraud claims over disclosures that improperly treated the risk of user data misappropriation as hypothetical. Their multibillion-dollar proposed class action focuses on a data-harvesting scandal involving political consulting firm Cambridge Analytica. The investors allege their stock in the company, then called Facebook, took two significant hits in the wake of that scandal.

A split panel of the Ninth Circuit revived their suit after the US District Court for the Northern District of California dismissed the claims. The appeals court agreed with the investors that Facebook's risk disclosures—that data breaches and improper disclosure of user data “could harm” its reputation and negatively impact the business—were misleading because they presented the risks as hypothetical, even though company leaders allegedly knew Cambridge Analytica had accessed user data.

“The idea that investors don't rely on these risk disclosures—it's not true,” said Michael Canty of Labaton Keller Sucharow LLP, who participated in a brief for institutional investors supporting the Facebook plaintiffs. Facebook's stock plummeted when the truth was revealed, he said. “It was material to investors.”

In this case, and one from last term, *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, “the Supreme Court may be seeking to clarify risk disclosure,” he said.

But Jack Yoskowitz, a defense litigator who represents investment managers and banks at Seward & Kissel LLP, said the justices are likely “to side with Meta that the Ninth Circuit went too far—and that the disclosure that Meta did was sufficient, and was not misleading.”

### **Role of Expert Report**

The Nvidia investors allege the chip maker misled the market about its dependence on sales to cryptocurrency miners. That case, too, was revived by a divided Ninth Circuit panel following a Northern District of California dismissal.

The investors used an expert report to bolster their claims about the sources of Nvidia's revenue—specifically that the volatile crypto mining market accounted for more revenue, relative to gaming customers, than the company let on.

Nvidia said the report “invented” data and asked the justices to clarify the standard for such a suit to survive an early-stage dismissal under the Private Securities Litigation Reform Act, which requires “particularized” allegations. The company will spar with investors at oral argument Nov. 13.

"Foreclosing experts puts investors at a structural disadvantage," said Canty, who represents stockholders in securities class actions. The material is sometimes technically complex, and defendants could use that to defeat pleadings if investors can't present experts to explain the complexities to a district court judge, he said.

Nvidia wants a standard where the plaintiffs "actually have to have copies of the documents that they allege exists" under the PSLRA, Robert Peck of the Center for Constitutional Litigation PC said. In some way, investors "must get access to internal documents that are not available to the public," said Peck, who submitted a brief for the American Association for Justice in the case. "That would essentially turn off all this litigation."

Yoskowitz sees the Supreme Court potentially ruling for Nvidia because the use of an expert affidavit or report "raises analysis and questions that a court shouldn't be doing on a motion to dismiss, like, How good is the expert? Are they sufficient in this area?," he said.

### **The Court's Direction**

"It's always difficult in advance to read these kinds of tea leaves, and know what the court's real concern is," Peck said. "There's certainly a general concern that there's too much litigation."

But the court may simply be making sure the law is uniform across the federal appeals courts, he said.

To Yoskowitz, the court may "want to send a message that these pleading standards should be restrictive."

Hurd said, "Anything that makes it clear there is a heavy burden on the plaintiff to survive the motion to dismiss is obviously something that's important to the defense bar and potentially helpful to companies and their executives."

The cases are Facebook, Inc. v. Amalgamated Bank, 9th Cir., No. 23-980, oral argument 11/6/24 and NVIDIA Corp. v. E. Ohman J:or Fonder AB, U.S., No. 23-970, oral argument 11/13/24

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