

Securities Litigation + Enforcement Highlights From Q2 2023

July 20, 2023

As 2023 reached its midpoint, Cooley's securities litigation + enforcement practice continued its track record of obtaining victories for clients while serving as thought leaders on issues impacting the securities litigation and enforcement landscape. Below, we've rounded up key insights and developments from our team over recent months.

[Unanimous Supreme Court Decision Limits Scope of Direct Listing Lawsuits](#)

The US Supreme Court unanimously ruled that a shareholder suing under Section 11 of the Securities Act of 1933 must demonstrate that their shares are traceable to the allegedly misleading registration statement – a holding that will limit the scope of lawsuits brought by investors who purchase shares from companies that go public through a direct listing.

[Ninth Circuit Upholds Delaware Forum-Selection Clause, Dismisses Federal Derivative Action](#)

The US Court of Appeals for the Ninth Circuit held in a split en banc decision that forum-selection clauses requiring shareholders to file derivative claims in the Delaware Court of Chancery are enforceable as applied to claims asserted derivatively under Section 14(a) of the Securities Exchange Act of 1934. This decision is significant because a shareholder filing a derivative suit within the Ninth Circuit can no longer avoid Delaware forum-selection provisions by tacking on federal claims brought under Section 14(a) claims.

[On Remand, Texas District Court Concludes Fifth Circuit Dealt 'Iatrogenic Blow' to Securities Plaintiff, Dismisses Case](#)

On remand, the US District Court for the Northern District of Texas once again dismissed a securities class action filed against Six Flags that had previously been revived on appeal by the US Court of Appeals for the Fifth Circuit. The broader significance of the district court's ruling remains to be seen, but it is particularly striking in light of the Fifth Circuit's plaintiff-friendly decision – which we observe departed from the law of other circuits in meaningful ways.

[Cornerstone Research Report Highlights Rise in SEC Accounting and Auditing Enforcement](#)

In fiscal year 2022, the Securities and Exchange Commission initiated 55% more actions involving accounting and auditing enforcement than it did in the previous fiscal year. We examine recent trends and highlights, including a spike in actions involving alleged "clawback" provision violations, a significant increase in revenue recognition-related enforcement actions and continued activity related to the SEC's Earnings Per Share (EPS) Initiative.

Awards, recognition and accolades

- [The American Lawyer's Litigation Daily Litigator of the Week: Shoutout – Silverback Therapeutics](#)
- [The American Lawyer's Litigation Daily Litigator of the Week: Shoutout – Lipocine](#)
- [The American Lawyer's Litigation Daily Litigator of the Week: Shoutout – Everbridge](#)
- [Chambers USA 2023 recognizes Cooley's securities litigation + enforcement practice and six securities litigation + enforcement partners](#)
- [Law360 names Tijana Brien a 2023 Rising Star for securities](#)

Contributors

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