



# Securities Litigation + Enforcement Highlights From Q1 2024

April 18, 2024

To kick off 2024, Cooley's securities litigation + enforcement practice guided clients through significant developments in securities law, shared insights on recent trends in securities filings and settlements, and earned a spot on The American Lawyer's Litigation Daily Litigator of the Week Runners-Up and Shout Outs list for securing an appellate win affirming the dismissal of securities fraud claims against client BioMarin Pharmaceutical. Below is a roundup of key highlights for Q1.

## [Second Circuit Highlights Difficulty in Pleading Fraud Claims Involving the Interpretation of Clinical Data](#)

The US Court of Appeals for the Second Circuit issued an opinion that provides strong support for pharmaceutical companies facing securities fraud claims based on an alleged misinterpretation of clinical trial data. The Second Circuit affirmed dismissal of securities fraud claims alleging that the defendant company misled investors when stating that its device could be marketed as a healthier alternative to cigarettes. The ruling built upon a Second Circuit line of precedent to hold that interpretations of scientific data consistent with the Food and Drug Administration's ultimate views are per se reasonable and thus inactionable as a matter of law. The Second Circuit also held that general statements that a trial complies with good clinical practice requirements should be treated as opinions, as such statements are inherently subjective.

## [Delaware Chancery Court Allows TripAdvisor to Move to Nevada, But Lets Stockholders Pursue Their Claims for Damages](#)

Delaware corporations contemplating conversion to another state should take note of a recent Delaware Court of Chancery decision in which Vice Chancellor J. Travis Laster declined to enjoin a set of corporate moves to Nevada, but sustained stockholder allegations that the defendants breached their fiduciary duties in connection with approving the conversion. The court held that the decisions to approve the conversions were subject to entire fairness review because both entities were allegedly controlled companies, and the conversions allegedly resulted in reduced litigation exposure for the controller and the directors who approved the moves. The court found that the plaintiffs pled facts sufficient to call into question both substantive and procedural fairness, and thus allowed the plaintiffs to proceed with their case for damages. Moving forward, it appears there is a clear path for Delaware companies looking to reincorporate in other states; however, it comes with a risk of litigation.

## [Trending in Securities Class Actions: Section 10\(b\) Claims Predominate, Ninth Circuit Sees Uptick, According to Cornerstone Report](#)

Cornerstone Research issued its annual report examining trends in securities class action filings. Overall, 2023 saw a slight uptick in securities class action filings compared to trends from previous years, with the technology and communications industries remaining targets for securities class actions. Though Cornerstone's findings indicate a shift away from Section 11 and state 1933 Securities Act filings, the increase in federal filings without Section 11 allegations – including cases asserting only Section 10(b) claims under the 1934 Exchange Act – more than made up for that decline.

## [Securities Class Action Settlement Trends: Number of Settlements Down, But Dollar Amounts Up, According to Cornerstone Research](#)

Cornerstone Research also issued a report analyzing securities class action settlements from the past year. Cornerstone reported a significant decline in the number of securities class action settlements in 2023, but the median settlement dollar amount increased to the highest amount recorded since 2010, and a smaller proportion of cases settled before a ruling on class certification as compared to prior years. The data confirms that securities class actions can subject companies to substantial monetary exposure and suggests that the plaintiffs' bar, as a whole, is more willing to take cases further into discovery.

## **Awards, recognition and accolades**

### [The AmLaw Litigation Daily Litigator of the Week: Shoutout – BioMarin Pharmaceutical](#)

# Contributors

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