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The Bulletin **is a quarterly newsletter by Kessler Topaz Meltzer & Check to help institutional investors stay**

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HIGHLIGHTS

KESSLERTOPAZ MELTZERCHECK LLP

D.C. CIRCUIT COURT OF APPEALS UPHOLDS KTMC'S $812 MILLION TRIAL JUDGMENT IN FANNIE MAE & FREDDIE MAC SHAREHOLDER LITIGATION

Lauren Lummus, Esquire

On July 24, 2026, the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit") affirmed the $812 million judgment for plaintiff shareholders of the Federal National Mortgage Association ("Fannie") and the Federal Home Loan Mortgage Corporation ("Freddie") (together, the "Companies"). This ruling is a tremendous step forward in KTMC's long-running litigation against the Companies and the Federal Housing Finance Agency ("FHFA"), the Companies' regulator.

Background

Fannie and Freddie are publicly traded enterprises that Congress created to support the secondary mortgage market in the U.S. In response to the financial crisis, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), which granted FHFA the authority to place the Companies into conservatorship, allowing FHFA to take actions to "preserve and conserve the assets" of the Companies and restore them to a

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KTMC SECURES HISTORIC $500 MILLION SETTLEMENT IN GOLDMAN SACHS 1MDB SECURITIES LITIGATION

Matthew Mustokoff, Esquire, Nathan Hasiuk, Esquire, and Nathaniel Simon, Esquire

After seven years of hard-fought litigation, Kessler Topaz Meltzer & Check, LLP has secured a $500 million settlement on behalf of investors in *Sjunde AP-Fonden v. The Goldman Sachs Group, Inc.*, No. 18-cv-12084 (S.D.N.Y.), a securities fraud class action arising from Goldman's role in the 1Malaysia Development Berhad ("1MDB") scandal. Subject to court approval, the recovery would rank among the twenty largest securities class action settlements in the Second Circuit since the passage of the Private Securities Litigation Reform Act of 1995, and the fourth largest PSLRA recovery in the Circuit over the last decade. For Lead Plaintiff Sjunde AP-Fonden ("AP7") and the Class of Goldman shareholders, it is an extraordinary result in a case that was contested at every turn.

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KTMC ACHIEVES SECOND CIRCUIT VICTORY IN SIGNATURE BANK COLLAPSE SUIT

Nathaniel Simon, Esquire

On August 19, 2026, the United States Court of Appeals for the Second Circuit issued a precedential decision in *Sjunde AP-Fonden v. FDIC*, --- F.4th ----, 2026 WL 2416170 (2d Cir. 2026), vacating the dismissal of a securities fraud class action stemming from the stunning collapse of Signature Bank. The unanimous opinion concerned interpreting the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), a federal statute implicated by the Federal Deposit Insurance Corporation's ("FDIC") March 2023 placement of Signature Bank into receivership. The panel held that FIRREA's Succession Clause did not transfer Lead Plaintiff Sjunde AP-Fonden's ("AP7") securities fraud claims to the FDIC as receiver, and that the claims were not subject to FIRREA's administrative exhaustion requirement. The decision resolves a question of "first impression" in the Circuit that was the subject of extensive briefing and an October 21, 2025 hearing argued by KTMC partner Sharan Nirmul. Importantly, the decision clears a threshold procedural hurdle to prosecuting the merits of AP7's and the Class's securities fraud claims against Signature's former officers and auditor, KPMG.

Signature Bank's Collapse and AP7's Complaint

Signature Bank was a New York State-chartered, federally insured commercial bank whose stock traded on the NASDAQ. Its collapse in 2023 was one of the largest bank failures in United States history. After years of growth built on a New York-centric commercial real estate strategy, the bank pivoted in 2017 into the cryptocurrency and blockchain industries, launching a digital assets banking group and a digital payment platform. Its total deposits grew dramatically as a result, reaching roughly $106 billion in 2021, but most of the new deposits belonged to a small number of clients and, because they exceeded the FDIC's $250,000 insurable limit, were uninsured. As the Second Circuit observed, "[a]s more of Signature's total deposits became concentrated in the accounts of a small number of cryptocurrency clients, it also became increasingly exposed to the risk that a downturn in the volatile cryptocurrency industry would eliminate a significant portion of its total deposits." *Id.* at *3.

When the "Crypto Winter" arrived in 2022 and clients such as cryptocurrency exchange FTX failed, Signature's condition deteriorated. On March 10, 2023, coinciding with the failure of Silicon Valley Bank, more than 20% of Signature's deposits were withdrawn in a single day. On March 12, 2023, New York banking authorities closed the bank and appointed the FDIC as receiver. By late March, Signature stock had fallen to $0.13 per share, after reaching a high of $365.71 in 2022.

Lead Plaintiff AP7's amended consolidated complaint asserts three claims under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 on behalf of investors who purchased Signature common stock between January 21, 2021 and March 12, 2023: a misrepresentation claim and a scheme-liability claim against seven former Signature officers and directors, and a misrepresentation claim against KPMG, the bank's outside auditor, based on audit opinions included in Signature's Form 10-Ks. The complaint alleges that the officers and KPMG misrepresented the bank's liquidity risk profile and risk management practices, artificially inflating its stock price. Signature itself is not a defendant.

FIRREA and the FDIC's Intervention as Receiver

Because the FDIC was appointed Signature's receiver, it intervened and moved to dismiss on two grounds under FIRREA. First, it argued that FIRREA's "Succession Clause," 12 U.S.C. § 1821(d)(2)(A), transferred ownership of AP7's securities fraud claims to the FDIC upon its appointment, depriving AP7 of prudential standing to assert what had become a third party's claims. Second, it argued that the district court lacked subject-matter jurisdiction because AP7 had not exhausted FIRREA's administrative claims process.

As the Second Circuit described the ruling below, the district court (Block, J., E.D.N.Y.) "dismissed the complaint for lack of prudential

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PRESSURE BUILDS ON SOCIAL MEDIA GIANTS AS LANDMARK SCHOOL DISTRICT BELLWETHER, STATE ATTORNEYS GENERAL, AND PERSONAL INJURY CASES SETTLE AND ADDITIONAL TRIALS APPROACH

Matthew Macken, Esquire

Recent Landmark Settlements

In June, social media behemoths Meta, Snap, YouTube, and TikTok ("Social Media Defendants") were set to face the first jury trial considering negligence and public nuisance claims brought by 1,500 local governments and school districts from around the country. Plaintiffs sought damages and injunctive relief for harms stemming from the youth mental health crisis created by the Social Media Defendants' platforms.[1] As Kessler Topaz and other firms representing plaintiffs in the Social Media MDL were preparing to try the claims brought by Breathitt County School District, the Social Media Defendants settled shortly before trial. While the settlement is confidential, Reuters reported that Breathitt received approximately $27 million, with $9 million from Meta, $8 million from both Snap and TikTok, and $2.01 million from YouTube.[2] Given Breathitt's student population of 1,579, the settlement amounts to over $17,000 per student.

This school district settlement came after multiple plaintiff victories in related jury trials and has been followed by the landmark August settlement whereby Meta agreed to pay up to $17.1 billion to 47 states, the District of Columbia, and U.S. territories.[3] Under this settlement, Meta agreed to make meaningful changes to Facebook

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[1] These claims have been consolidated for pre-trial proceedings in *In re Social Media Adolescent Addiction/Personal Injury Product Liability Litigation* ("Social Media MDL").

[2] Diana Nocak Jones, *Social media companies to pay $27 million to settle Kentucky school district's lawsuit, records show*, Reuters (May 28, 2026 7:48PM EDT), https://www.reuters.com/business/meta-paid-9-million-settle-kentucky-school-districts-lawsuit-over-social-media-2026-05-29/.

[3] Cecilia Knag & Eli Tan, *Meta to Pay Up to $17.1 Billion in Landmark Settlement Over Social Media Addiction Claims*, New York Times (Aug. 26, 2026), https://www.nytimes.com/2026/08/26/technology/meta-settlement-social-media-addiction-lawsuit.html.

KTMC ACHIEVES "STRONG RESULT" WITH $26 MILLION SETTLEMENT OF CASE CHALLENGING FOUNDATION BUILDING MATERIALS MERGER

Kevin Kennedy, Esquire

The Delaware Court of Chancery has approved a $26 million cash settlement (the "Settlement") of claims brought by former stockholders of Foundation Building Materials, Inc. ("FBM" or the "Company") in connection with the Company's sale to private equity firm American Securities LLC ("American Securities"). The Settlement is an excellent result for the former public stockholders of FBM after years of hard-fought litigation by plaintiff Firefighters' Pension System of the City of Kansas City, Missouri Trust ("Plaintiff").

Factual Background

On November 16, 2022, FBM announced that American Securities agreed to take the Company private for $19.25 per share (the "Merger"). The Merger was initiated and negotiated by FBM's then-controlling stockholder, Lone Star Fund IX (U.S.), L.P. (collectively with its affiliates, "Lone Star"), which received a $74.8 million side payment pursuant to a "tax receivable agreement" (the "TRA") between Lone Star and FBM.

The TRA was executed when FBM went public in 2017 and committed FBM to paying Lone Star 90% of FBM's annual tax savings realized through certain tax attributes. The TRA payments were initially valued at $205 million over 15 years, but the Tax Cuts and Jobs Act of 2017, which reduced the federal corporate

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HUMANA SECURITIES LITIGATION SURVIVES MOTION TO DISMISS

Aubrie Kent, Esquire

On April 27, 2026, Judge Jennifer L. Hall of the District of Delaware largely denied defendants' motion to dismiss in *In re Humana Inc. Sec. Litig.*, a federal securities class action alleging that health insurance giant Humana concealed rising healthcare utilization among its members following the COVID-19 pandemic while simultaneously pursuing an aggressive cost-cutting campaign that defendants knew would jeopardize the company's ratings under the U.S. Department of Health and Human Services' Centers for Medicaid & Medicare Services ("CMS").

This case arises out of Humana's representations regarding the level of healthcare utilization among its Medicare Advantage members. As detailed in the Complaint, utilization had fallen to artificially low levels during the COVID-19 pandemic, as public-health measures discouraged patients from seeking care and using their insurance benefits. That decline generated record profits for Humana during the height of the pandemic. A key measure of Humana's profitability, and thus its value to investors, is its Medical Loss Ratio, or "MLR," which reflects the percentage of premiums revenue that the company spends on members' healthcare. Medicare Advantage — Humana's core business, accounting for more than 70% of its total revenue — provides coverage to people age 65 and older and certain individuals with disabilities. The program is administered and regulated by CMS, from which Humana receives most of its premiums revenue.

By mid-2022, investors had become concerned that the artificially depressed utilization reported by the company in previous years would lead to a surge in demand for healthcare services and, in turn, lower profits. In response, the Complaint alleges that defendants Bruce Broussard, Humana's former CEO, and Susan Diamond, its former CFO, repeatedly assured investors that the company was not experiencing any resurgence in demand and that utilization trends remained favorable. Defendants specifically emphasized that demand remained low for both inpatient healthcare, a more costly type of care, and outpatient procedures such as knee replacements. Defendants also represented that Humana could continue to rely on the competitive advantage provided by the company's CMS Star Ratings. The Star Ratings system is CMS's comprehensive quality-evaluation system for Medicare Advantage plans, which measures various performance metrics on a 1-to-5 scale. The ratings are intended both to aid patients in selecting high-quality health insurance plans and to incentivize health insurers to provide quality services through bonus payments tied to the number of Stars achieved. Historically, Humana had maintained high Star Ratings across its plans, generating billions of dollars in bonus payments from CMS for the company each year.

However, as the pandemic abated, Humana experienced a massive uptick in member utilization that the company had anticipated and was tracking internally. While continuing to represent to the market that utilization trends remained favorable, Humana embarked on an aggressive internal cost-cutting campaign to avoid lowering its revenue guidance. These measures included increased denials of members' requests for coverage for both inpatient and outpatient procedures, as well as massive layoffs. These denials and layoffs materially affected the quality of the services Humana provided to its members and posed a significant risk to the key quality metrics underlying its CMS Star Ratings. Defendants were fully aware that these cost-cutting measures jeopardized the quality-bonus payments Humana would receive in the future.

Humana's misrepresentations were revealed through a series of disclosures beginning on June 16, 2023, when the company was forced to acknowledge that it was experiencing "higher than anticipated non-inpatient utilization trends."[1] In November 2023 and January 2024,

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[1] Consolidated Class Action Complaint for Violations of the Federal Securities Laws, D.E. 54 (Nov. 20, 2024) ¶ 23.

RECENT DEVELOPMENTS REGARDING THE SEC'S ENFORCEMENT MECHANISMS

Geoffrey Jarvis, Esquire and Joshua Keszczyk, Esquire

Over the last few months, two significant developments have reshaped how the United States Securities and Exchange Commission (the "SEC") resolves enforcement actions. *First*, the United States Supreme Court ("Supreme Court") issued its decision in *Sripetch v. SEC*, 608 U.S. ___, 146 S.Ct. 1403 (2026), unanimously holding that the SEC may require entities that violate the federal securities laws to disgorge their ill-gotten gains to wronged investors without proving that the victims of the securities law violation actually suffered a pecuniary loss. *Second*, the SEC eliminated a decades-old enforcement policy that prohibited parties settling an enforcement action with the SEC from denying the agency's allegations against them, commonly referred to as the "Gag Rule." These decisions cut in opposite directions regarding the impact of SEC enforcement actions on those who violate the securities laws: the SEC's elimination of the Gag Rule weakens the impact of SEC allegations of wrongdoing, while the Supreme Court's decision arguably strengthens the scope of the SEC's enforcement powers.

Elimination of the Requirement that the SEC Prove the Amount of Any Investor Losses Before Ordering Disgorgement

Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), allows federal courts to grant the SEC "any equitable relief that may be appropriate or necessary" in enforcement actions. 15 U.S.C. §78u(d)(5). It has long been understood that "any remedies" can include a requirement that an entity violating the requirements of the federal securities laws disgorge the proceeds of its illegal conduct. The Supreme Court has addressed the nature of the SEC's disgorgement remedy in several cases over the last decade. In *Kokesh v. SEC*, 581 U.S. 455 (2017), the Supreme Court, in resolving a statute of limitations question, concluded that disgorgement is the equivalent of a penalty in that it is intended to serve as a deterrent to wrongful conduct rather than as a remedial measure designed to compensate a harmed plaintiff. Three

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DISTRICT COURT SUSTAINS SECURITIES FRAUD CLAIM AGAINST KPMG IN SVB COLLAPSE SUIT

Nathaniel Simon, Esquire, Lyndsey Campbell, Esquire, and Mariama Barry, Esquire

Securities fraud claims against auditors of a public company are rare. Just a handful of cases against audit firms have been sustained in the last decade.[1] This is in large part due to the stringent pleading standards developed in the case law relating to auditor liability for fraud. Plaintiffs are required to plead facts amounting to evidence that its audit was "so deficient that the audit amounted to no audit at all." *New Mexico State Investment Council v. Ernst & Young LLP*, 641 F.3d 1089 (9th Cir. 2011). On August 5, 2026, Sjunde AP-Fonden ("AP7") and Norges Bank, as co-lead plaintiffs, successfully defended a securities fraud claim against KPMG, the outside auditor of Silicon Valley Bank, in *In re SVB Financial Group Securities Litigation*, 2026 WL 2260372 (N.D. Cal. Aug. 5, 2026).

Plaintiffs allege that KPMG signed off on SVB's financial statements which classified the bulk of SVB's nearly $100 billion investment portfolio as "held to maturity" securities, a strategy designed by SVB's management to pursue higher yielding mortgage-backed securities while avoiding mark-to-market losses in a rising interest rate environment. This strategy proved catastrophic for SVB because the designation prevented SVB from being able to use these assets for liquidity needs and it ultimately led to the Bank's March 2023 failure because of a liquidity crisis. Along the way, there were a plethora of warning signs that SVB did not have the risk controls to manage its liquidity and interest rate risk,

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[1] Honigsberg, Colleen and Rajgopal, Shivaram and Srinivasan, Suraj, The Changing Landscape of Auditor Litigation (September 27, 2017). Stanford Law and Economics Olin Working Paper No. 512, Columbia Business School Research Paper No. 17-110, Available at SSRN: https://ssrn.com/abstract=3074923 or http://dx.doi.org/10.2139/ssrn.3074923.

D.C. CIRCUIT COURT OF APPEALS UPHOLDS KTMC'S $812 MILLION TRIAL JUDGMENT IN FANNIE MAE & FREDDIE MAC SHAREHOLDER LITIGATION

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"sound and solvent condition." FHFA placed the Companies into conservatorship in September 2008 due to large losses during the financial crisis. At that time, FHFA explained that the conservatorship was "intended to have a limited duration" and its purpose was "to operate [each] institution until it is stabilized and then returned to the shareholders."

Once in conservatorship, the U.S. Treasury purchased senior preferred stock in Fannie and Freddie, and provided a funding commitment of up to $100 billion for each of Fannie and Freddie in exchange for a 10% annual dividend on any amount Fannie or Freddie drew on the commitment. Treasury, Fannie, and Freddie memorialized this agreement in the Senior Preferred Stock Purchase Agreements ("PSPAs"). Treasury ultimately invested a total of $189 billion in Fannie and Freddie to help support the Companies' critical mission of backstopping the nation's housing finance system through the financial crisis.

Once in conservatorship, the Companies recorded large non-cash losses in the form of accounting write downs, which required the Companies to take significant draws from Treasury to maintain positive net worth. Those draws in turn increased the dividends the Companies owed to Treasury. But because these losses were driven by accounting write downs, it was foreseeable that they could be reversed when the housing market recovered, leading to large gains.

By August 2012, the housing market was recovering and Fannie and Freddie had just posted two quarters of profitability. It was becoming clear that FHFA had overestimated the Companies' future losses, and that the Companies were on the path to building capital and exiting conservatorship. But instead, with no notice to stockholders, on August 17, 2012, FHFA executed a third amendment to the PSPAs, which replaced the 10% dividend to Treasury with a "Net Worth Sweep" requiring Fannie and Freddie to pay their full net worth to Treasury every quarter. The Net Worth Sweep prevents the Companies from ever building capital, exiting conservatorship, or paying private shareholder dividends, regardless of how profitable they become. To this day, the Net Worth Sweep continues to sweep all of Fannie's and Freddie's profits to Treasury. Treasury has received more than $150 billion than it would have received under the initial PSPAs.

KTMC Prevails at Trial

In response to the Net Worth Sweep, KTMC brought suit in the U.S. District Court for the District of Columbia on behalf of Fannie and Freddie stockholders, claiming that FHFA and the Companies breached the shareholder contracts by depriving shareholders of any opportunity to participate in the Companies' future profits.[1] KTMC has vigorously litigated the stockholders' claims for more than a decade, including through two jury trials, one of which ended in a hung jury. KTMC ultimately secured the favorable jury verdict following a second trial in July and August 2023, after which the jury found that the Net Worth Sweep was an "arbitrary and unreasonable" violation of stockholders' reasonable expectations under their shareholder contracts and thus violated the implied covenant of good faith and fair dealing. The jury awarded damages of $612.4 million. A final judgment of $812 million was entered on March 20, 2024, inclusive of pre-judgment interest.

In April 2025, FHFA appealed, seeking to overturn the final judgment and jury verdict.

The D.C. Circuit Affirms KTMC's Trial Victory

A three-judge panel of the D.C. Circuit unanimously upheld the final judgment on July 24, 2026, rejecting FHFA's three central arguments.

First, the D.C. Circuit ruled that Plaintiffs' implied covenant claim was not barred as a matter of law. FHFA's primary argument was that the Net Worth Sweep was a "core exercise" of FHFA's "broad" powers under HERA, and that Plaintiffs' implied covenant claim was foreclosed as a matter of law by the U.S. Supreme Court's decision in *Collins v. Yellen*, which held that FHFA did not exceed its ***statutory*** authority in approving the Net Worth Sweep.[2] The D.C. Circuit, siding with

[1] The underlying case is *In Re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreements Class Action Litig.*, No. 13-mc-1288 (RCL) (D.D.C. 2013).

[2] *Collins v. Yellen*, 594 U.S. 220 (2021).

Plaintiffs' argument, held that *Collins* foreclosed certain statutory claims, but not breach of contract claims for damages like Plaintiffs' implied covenant claim. The D.C. Circuit explained that whether FHFA acted within its ***statutory*** authority is not the same question as whether it acted in accordance with shareholders' reasonable expectations as a matter of contract. The D.C. Circuit thus held that it was proper for the jury to consider the extent to which HERA informed stockholders' reasonable expectations, and it was not required to reject the implied covenant claim based on FHFA's statutory authority under HERA.

Second, the D.C. Circuit ruled that Plaintiffs had sufficiently proven harm. At trial, Plaintiffs relied on a lost-value theory for damages, contending that their harm could be measured by the $1.61 billion decrease in the trading price of Fannie and Freddie shares on the day the Net Worth Sweep was announced. FHFA argued that Plaintiffs failed to prove damages because they failed to account for increases in share price following the Net Worth Sweep, and potential alternative causes for the August 2012 stock drop. The D.C. Circuit found FHFA's arguments unpersuasive and ruled that Plaintiffs introduced sufficient evidence for their lost-value theory, including an event study prepared by Defendants' own expert that proved the Companies' stock price reacted negatively to the Net Worth Sweep. The D.C. Circuit also rejected FHFA's argument that Plaintiffs did not address alternative causes for the stock drop, and rejected FHFA's request to reweigh the evidence.

Third, the D.C. Circuit rejected Defendants' arguments that the certified classes (defined to include *current* shareholders) included Fannie and Freddie stockholders who lacked standing to bring an implied covenant claim because they purchased their shares after the imposition of the Net Worth Sweep. Defendants asserted those claims remained with the seller of the shares. Plaintiffs argued that the sellers' claims traveled with the shares under Delaware and Virginia law, which respectively govern Fannie's and Freddie's stockholder contracts. The D.C. Circuit agreed, explaining that Delaware law was clear that the implied covenant claims traveled with the Fannie shares to subsequent purchasers because those claims "inhere[d] in the security." And because Virginia's statute was identical to Delaware's, the Court held that Virginia courts would likely follow Delaware's approach.

The appellate decision represents a significant milestone for Fannie and Freddie shareholders who were wronged by FHFA's decision to approve the Net Worth Sweep and deprive shareholders of their economic rights under the shareholder contracts. KTMC is prepared to defend this judgment for Fannie and Freddie stockholders through further potential appeals.

KTMC's team consists of attorneys Lee Rudy, Eric Zagar, Grant Goodhart, and Lauren Lummus.

The opinion can be found at *Fairholme Funds, Inc. on behalf of Fairholme Fund v. Fed. Hous. Fin. Agency*, 2026 WL 2132530 (D.C. Cir. 2026). ■

KTMC SECURES HISTORIC $500 MILLION SETTLEMENT IN GOLDMAN SACHS 1MDB SECURITIES LITIGATION

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The 1MDB Scandal

The settlement closes the book on litigation stemming from what remains one of the largest financial frauds in modern memory. In 2012 and 2013, Goldman served as the sole underwriter for three state-guaranteed bond offerings by 1MDB, a Malaysian sovereign wealth fund, raising $6.5 billion. On paper, the deals were meant to finance Malaysian energy and development projects. In reality, they became the vehicle for a sprawling international money laundering and bribery ring.

In a brazen scheme orchestrated by the upstart Malaysian financier Jho Low and a cast of co-conspirators, including two Goldman Sachs bankers, government officials from Malaysia, Saudi Arabia, and the United Arab Emirates, roughly $4.5 billion was siphoned out of 1MDB, including approximately $2.7 billion from the bond deals underwritten by Goldman. The stolen money financed luxury real estate in New York and Paris, super yachts, and even helped finance the film *The Wolf of Wall Street*. For its role in the offerings, Goldman collected approximately $600 million in fees, more than one hundred times the customary fee for typical state-sponsored debt offerings.

The Complaint and Successful Opposition to Goldman's Motion to Dismiss

Led by AP7, one of Sweden's largest public pension funds, and represented by KTMC, the complaint alleged that Goldman and its most senior executives repeatedly misled investors about Goldman's role in the scheme. Notably, the complaint alleged that in 2016, as facts related to 1MDB's corruption began to emerge, Goldman assured the market it had "found no evidence showing any involvement by Jho Low in the 1MDB bond transactions," — even though Goldman bankers routinely discussed Low's involvement as an "intermediary" in the 1MDB bond deals. The complaint further alleged that former CEO Lloyd Blankfein misled the market when stating during a November 1, 2018 interview that he was "not aware" of any red flags with respect to the 1MDB bond offerings. According to the complaint, reports in November 2018 that Blankfein had met with Low in 2013, after Goldman's compliance department warned against dealing with him, exposed the bank's institutional complicity in the scandal and sent Goldman's stock tumbling, inflicting substantial losses on investors.

On June 28, 2021, U.S. District Judge Vernon S. Broderick of the Southern District of New York sustained the core of the case, upholding Section 10(b) claims against Goldman, Blankfein, and Former COO Gary Cohn, and finding that AP7 had adequately alleged scienter as to each. Judge Broderick found the complaint was replete with allegations that Goldman's statements denying their culpability with respect to the 1MDB transactions were false, including based on allegations that Blankfein had several personal meetings with Low, Goldman bankers in Asia had widespread dealings with Low and knew of Low's role in the transactions, and based on internal warnings by Goldman's compliance department about Low's role in the deals.

Prosecuting Fact Discovery on a Massive Record and Global Scale

Following the motion to dismiss ruling, KTMC prosecuted the Action through an exhaustive fact and expert discovery campaign commensurate with the scale of the underlying fraud. KTMC obtained and reviewed more than 244,000 documents, over 1.9 million pages, spanning years of internal Goldman communications, deal files, and compliance records, along with more than 2,800 recorded telephone calls totaling over 535 hours of audio. KTMC also served extensive written discovery and subpoenaed documents from third parties in order to reconstruct the full history of Goldman's dealings with Low and 1MDB.

KTMC then deposed 30 current and former Goldman employees, including the bank's most senior decision-makers, such as former CEO Lloyd Blankfein, former COO Gary Cohn, and former CFO Stephen Scherr. These efforts spanned the globe. Because many of the key witnesses were based abroad, the Firm pursued letters rogatory and negotiated cross-border agreements to secure their testimony. During one week in London, KTMC deposed five witnesses at the center of the 1MDB deal team. Through years of disciplined, well-resourced litigation, KTMC built a strong and favorable record.

Securing Court Approval to Bolster Class Damages

At the close of fact discovery, AP7 moved for leave to file a Third Amended Complaint to sharpen its damages theory and maximize the potential recovery for the Class. Guided by its expert's damages analysis, AP7 alleged that the November 2018 corrective disclosure drove Goldman's stock down over a two-trading-day window spanning November 9 and 12, 2018. Goldman vigorously opposed the amendment. In a July 31, 2023 opinion, Magistrate Judge Katharine H. Parker granted the motion. Judge Parker found AP7 diligently moved to amend within the court's scheduling deadline and in good faith to maximize the Class's recovery; and the amendment was meritorious because multi-day event windows are permissible. The ruling cleared the way for AP7 to pursue the full measure of the Class's damages.

Groundbreaking Class Certification Win

Following the successful motion to amend, AP7 renewed its motion to certify the class of Goldman investors, which was pending at the time it sought leave to amend. The renewed class certification briefing faced novel questions of law as it came in the immediate wake of the Second Circuit's landmark decision in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, 77 F.4th 74 (2d Cir. 2023) ("*ATRS*"). In *ATRS*, the Second Circuit found that Goldman had rebutted the presumption of reliance by completely severing the link between their alleged misstatements and the company's stock price and eventual price declines.

Following extensive briefing, Magistrate Judge Parker presided over a full-day evidentiary hearing in February 2024. During the hearing, KTMC Partners Matthew Mustokoff and Nathan Hasiuk elicited extensive testimony from AP7's economics expert and cross-examined Defendants' economics expert. The parties' experts offered competing testimony about the degree to which Goldman's statements linked to the November 2018 corrective disclosure, alternative causes of Goldman's stock price declines on November 9 and November 12, and the degree to which the market already knew the information revealed in November 2018. In short, the hearing was a "mini-trial" on the issue of price impact.

On April 5, 2024, Judge Parker sided with AP7 and the Class, issuing a Report and Recommendation recommending certification of a class of investors who purchased Goldman common stock between December 22, 2016 and November 8, 2018. It was the first decision in the Second Circuit to certify, or recommend certifying, a shareholder class under the *ATRS* framework.

Judge Parker credited AP7's consistent theory of price impact whereby Goldman's longstanding dishonesty about its role in the scandal propped up its stock until the market learned that Blankfein, the Bank's then-CEO, had met with the architect of the fraud for a third time. Judge Parker rejected each of Goldman's economic arguments, including its attempt to confine the price-impact analysis to the first fifteen minutes of trading and to a single trading day, and its reliance on purportedly confounding news. Judge Parker also recommended that AP7 be appointed Class Representative and KTMC as Class Counsel. She found that AP7 had "demonstrated its commitment to participate in and supervise the prosecution of this action" on behalf of the proposed class, and that KTMC had "demonstrated its competency by its excellent advocacy."

Goldman objected to Judge Parker's order, urging the District Court to reject certification outright. On September 4, 2025, Judge Broderick overruled those objections and adopted Judge Parker's recommendation in full, certifying the Class. Goldman then sought an interlocutory appeal, petitioning the Second Circuit under Rule 23(f) in a final challenge to class certification. On December 23, 2025, the Second Circuit denied Goldman's petition, clearing a major obstacle between the Class and trial.

A Landmark Settlement

The parties reached an agreement at an advanced stage of the litigation, with KTMC poised to respond to Defendants' summary judgment motions. Subject to court approval, the settlement will rank among the twenty largest securities class action recoveries in the Second Circuit since the enactment of the PSLRA in 1995, and the fourth largest in the Circuit over the past decade. The $500 million recovery is especially strong, as Plaintiff's damages expert estimated maximum recoverable classwide damages of approximately $847 million to $3.16 billion, depending on the model and the damages period. The settlement therefore represents roughly 16% to 59% of potential recoverable damages, well above the historical averages for securities class actions of this size, and a testament to the strength of the claims developed during discovery.

For Goldman investors, the settlement delivers real accountability and an outstanding cash recovery. The Firm congratulates AP7 and appreciates their stewardship of the case. ■

KTMC ACHIEVES SECOND CIRCUIT VICTORY IN SIGNATURE BANK COLLAPSE SUIT

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standing, because, in its view, the Succession Clause transferred these securities fraud claims from AP7 to the FDIC as receiver for Signature." *Id.* at *1. Relying on the reasoning of another district court order, Judge Block concluded that AP7's claims asserted stockholder rights "with respect to" Signature and its assets.

The Succession Clause Does Not Reach Direct Purchaser Claims

On appeal, the panel "disagree[d]" with the FDIC "that the Succession Clause is so sweeping." *Id.* The Second Circuit "beg[a]n and end[ed]" its analysis with the Clause's first requirement, that the claims assert a right "of a[ ] stockholder." Id. at *8. The panel agreed with AP7's argument that the right at issue must be one that a stockholder possesses as a stockholder, "that is, 'by virtue of . . . share ownership.'" Id. The court reasoned that "[a] stockholder right, within the meaning of the Clause, is one that is distinctive to stockholders and therefore derives from the ownership of stock or the corresponding legal relationship between stockholders and the corporation." Id. at *8-9. Applying that standard, the panel held that AP7's claims assert the rights of a stock purchaser, not a stockholder, and thus the Succession Clause did not apply.

The panel also grounded its reading in the Supreme Court's decision in Collins v. Yellen, 594 U.S. 220, 141 S.Ct. 1761, 210 L.Ed.2d 432 (2021), which construed the substantially identical succession clause in the Housing and Economic Recovery Act as effecting only a limited transfer of the rights stockholders hold as stockholders. *Id.* at *8. The court found further support in the Succession Clause's neighboring provisions and in the established understanding of stockholder rights. As to the latter point, the court observed that "[t]he well-established understanding of stockholder rights under state corporate law holds particular purchase here." Id. at *10 (citing *In re Bronson*, 150 N.Y. 1, 8, 44 N.E. 707 (1896)). Consistent with the Circuit's detailed review of shareholder rights, it concluded that "AP7's securities fraud claims do not assert the right of a stockholder but the right of a stock purchaser under Rule 10b-5." *Id.* at *10.

The Second Circuit also rejected the district court's view that AP7's action was "in its capacity as a stockholder" because its "theory of damages . . . depend[s] on the drop in value of its shares." *Id.* at *11. The court reasoned that "the fact that a plaintiff's theory of damages involves the plaintiff's stock ownership does not mean that the underlying right asserted by the plaintiff's claim attaches to stock ownership and is distinctive to stockholders." *Id.* at *11.

AP7's Claims Did Not Implicate the Exhaustion Requirement

The panel also held that AP7 was not required to exhaust FIRREA's administrative claims process. FIRREA's jurisdictional exhaustion requirement, 12 U.S.C. § 1821(d)(13)(D), applies only to claims against the failed institution or against the FDIC as receiver, following prior Circuit precedent in First Millennium. Under that decision, "the procedural requirements of FIRREA's administrative claim scheme apply only to claims against the failed institution, or against the FDIC as receiver." Id. at *12. Applying that rule, the court held: "Here, AP7 did not need to exhaust its securities fraud claims against the Officers or KPMG because they are not claims against Signature. AP7's claims do not name Signature as a defendant, do not seek to impose liability on Signature, and seek recovery only from the individual Officers and KPMG." Id.

Implications of the Decision

The decision resolves a question of first impression in the Circuit and confirms that a defrauded purchaser's Rule 10b-5 claim is a personal right that does not pass to the FDIC when a bank fails. This result is consistent with the securities laws' longstanding purpose of protecting investors through private enforcement. As the Second Circuit recited, "[w]e have explained that a Rule 10b-5 claim remedies 'the evil . . . of being induced to buy' without the disclosure required by the . . . Act." *Id.* at *5 (quoting *Clark v. John Lamula Invs., Inc.*, 583 F.2d 594, 603 (2d Cir. 1978)). KTMC looks forward to continuing to pursue AP7's and the Class's claims on behalf of defrauded investors in Signature Bank. ■

KTMC ACHIEVES "STRONG RESULT" WITH $26 MILLION SETTLEMENT OF CASE CHALLENGING FOUNDATION BUILDING MATERIALS MERGER

(continued from page 3)

income tax rate, soon reduced the value of the TRA to Lone Star because FBM would realize fewer tax savings than previously expected. The TRA included a provision, however, providing for an "early termination payment" to Lone Star upon a "change in control" of FBM.

Lone Star, seeking to monetize its FBM investment and trigger the early termination payment under the TRA, orchestrated a sale process with the assistance of Royal Bank of Canada ("RBC"). FBM's board of directors (the "Board") empaneled a "special committee" of directors who were purportedly independent from Lone Star, but the Special Committee, advised by Evercore Group LLC ("Evercore"), failed to adequately protect the minority shareholders' interests in the sale process.

FBM and American Securities agreed to the Merger in November 2020, which Lone Star approved by written consent, as FBM's majority stockholder. As such, public stockholders were given no chance to approve or disapprove of the Merger.

The Litigation

On December 22, 2020, Plaintiff demanded that the Company produce books and records concerning the Merger. On January 1, 2021, Plaintiff filed an action under Section 220 of the Delaware General Corporation Law seeking to compel inspection of FBM's books and records (the "220 Action"). Plaintiff and the Company reached agreement to resolve the 220 Action shortly before trial, and the Company subsequently produced documents, including electronic communications, to Plaintiff.

On May 27, 2022, Plaintiff filed a Verified Stockholder Class Action Complaint against FBM, Lone Star, the Lone Star-affiliated members of the Board, the members of the Special Committee, RBC, Evercore, and American Securities (collectively, the "Defendants"). The complaint was amended on November 2, 2022 (the "Complaint"). Plaintiff asserted breaches of fiduciary duty in connection with the sale process (the "Sale Process Claims") and the misleading disclosure regarding the sale process (the "Disclosure Claims"). Plaintiff also asserted that RBC, Evercore, and American Securities aided and abetted the aforementioned breaches of fiduciary duty (the "Aiding and Abetting Claims"), and that certain defendants violated Delaware's appraisal statute requiring timely notice of appraisal rights (the "Appraisal Notice Claim").

Defendants filed six motions to dismiss the claims brought against them. Following extensive briefing and oral argument, the Court largely denied the motions. The Court upheld the Sale Process Claims and the Disclosure Claims, as well as the Aiding and Abetting Claims against RBC and Evercore. The Court dismissed the Aiding and Abetting Claims against American Securities. And the Court upheld the Appraisal Notice Claim against FBM and a subsidiary of American Securities, but dismissed the claim against Lone Star, American Securities, and the Board.

Discovery and Mediation

Following Plaintiff's successful opposition to Defendants' motions to dismiss, the parties engaged in extensive fact discovery for more than a year. The discovery involved the review of approximately 1.28 million pages of documents produced by Defendants and third parties. Plaintiff also produced documents, responded to interrogatories from Defendants, and took five depositions of key fact witnesses.

On September 5, 2025, the parties engaged in a day of mediation, preceded by the submission of briefing on the merits of the case and potential damages. Though the mediation did not result in a settlement, Plaintiff and certain of the Defendants continued settlement discussions through the mediator over the next month as the Plaintiff continued engaging in fact discovery. On October 6, 2025, Plaintiff and Defendants, except Lone Star, accepted a mediator's proposal to settle Plaintiff's claims against the settling Defendants.

Plaintiff continued preparing the case for trial against Lone Star, including negotiating an amended case schedule and securing the production of additional documents from Lone Star, while continuing to negotiate a potential settlement with Lone Star. On February 4, 2026, Plaintiff and Lone Star accepted a mediator's proposal to settle Plaintiff's claims against Lone Star. On April 10, 2026, the parties executed and filed a Stipulation of Settlement agreeing to settle the case against all Defendants for a payment of $26 million.

Court Approval

On May 7, 2026, the Court preliminarily certified the Settlement class and ordered notice of the Settlement, which was disseminated on May 29, 2026. No objections to the Settlement were received. On July 29, 2026, the Court held a fairness hearing and approved the Settlement, finding that the $26 million cash recovery is "a strong result for the class" and is fair, reasonable and adequate. The Court awarded Plaintiff's counsel's requested attorneys' fees and expenses, and also granted Plaintiff a $10,000 service award in recognition of Plaintiff's efforts in litigating the case and achieving the significant recovery for the class. ■

PRESSURE BUILDS ON SOCIAL MEDIA GIANTS AS LANDMARK SCHOOL DISTRICT BELLWETHER, STATE ATTORNEYS GENERAL, AND PERSONAL INJURY CASES SETTLE AND ADDITIONAL TRIALS APPROACH

(continued from page 3)

and Instagram that plaintiffs in the Social Media MDL have fought for throughout this litigation, including: (1) implementing a cumulative two-hour daily time limit for teenage Facebook and Instagram users, with Meta pledging to apply that limit across apps even when teens establish multiple accounts; (2) ceasing to send noncritical notifications to teen users during school hours of 8:00 a.m. to 3:00 p.m.; and (3) blocking teens from the platforms between midnight and 6:00 a.m.[4] Moreover, teens and their parents will now be able to opt out of an algorithmic feed and teen accounts will no longer show the number of "likes" by default.[5]

With these successes in hand, Kessler Topaz has now turned its attention towards preparing for the next two school district bellwether trials, which are slated to begin in February 2027. If the trials proceed, Defendants will for the first time defend, before a jury, claims from two large school districts — Tucson Unified School District and Charleston County School District — which collectively seek over two billion dollars in damages.[6]

Multiple Plaintiff Victories and Settlements

Juries and judges that have considered claims against the Social Media Defendants for their harms to young users have unanimously found these companies liable. First, in March 2026, the New Mexico attorney general tried its case alleging that Meta misled consumers about the safety of Facebook and

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[4] Matthew Santoni, *Meta Makes $17B Deal With States Over Child Harms*, (Aug. 26, 2026), https://www.law360.com/productliability/articles/2517785 .

[5] *Id.*

[6] *ISee In re Social Media Adolescent Addiction/Pers. Injury Prods. Liab. Litig.*, 4:22-md-03047 (N.D. Cal. May 21, 2026), ECF No. 3062, ECF Nos. 2536-35, 2536-39, 2536-98, 2536-102.

Instagram and failed to keep minor users safe, which enabled the sexual exploitation of young users. The jury found Meta liable for $375 million in penalties for violating New Mexico's consumer protection laws.[7] After the jury verdict, the judge ordered Meta to create a $567 million abatement fund to address harms to young people bringing Meta's total liability to $942 million.[8] In a second March 2026 trial, a jury in California state court found Meta and YouTube liable for a minor user's mental health harms and awarded $6 million in damages.[9] Prior to this trial, Snap and TikTok entered into settlements with the plaintiff for undisclosed amounts.

In the wake of these two jury verdicts for plaintiffs, the Social Media Defendants settled with the first school district bellwether slated for a June trial as discussed above.[10] Moreover, Google, Snap, and TikTok reached additional confidential settlements in a second bellwether trial brought by a young user slated to begin in July.[11] And, with additional personal injury trials in California state court scheduled for October 2026, TikTok reached confidential settlements with three additional young users.[12] And then, as discussed above, just recently and while trial was ongoing, Meta entered into the $17.1 billion settlement to resolve claims brought by state attorneys general.[13]

Looming School District Trials

Against this backdrop of significant plaintiff victories and settlements, two bellwether school districts, Tucson Unified School District and Charleston County School District, are scheduled for back-to-back trials beginning in February 2027. These school districts have some of the largest damages among the trial bellwethers, with over $2.5 billion in damages.[14]

Kessler Topaz's Leadership of School District Actions

Kessler Topaz has been at the forefront of spearheading litigation against the Social Media Defendants on behalf of local governments and school districts and has taken on a substantial leadership position in the Social Media MDL. Indeed, in April 2023, Kessler Topaz filed an action against the Social Media Defendants after investigating claims against these companies for the harms caused to school districts and local governments who have been on the front lines of addressing the youth mental health crisis caused by the Social Media Defendants' platforms. Following the consolidation of the school district and local government cases in the Social Media MDL, in November 2023 Kessler Topaz partners Joseph Meltzer and Melissa Yeates were named to leadership positions on the Plaintiffs Steering Committee and appointed to the newly created Local Government and School District Committee, which Ms. Yeates co-chairs. After this appointment, Kessler Topaz worked on drafting the master complaint on behalf of local governments and school districts and participated in briefing and oral argument (done by Ms. Yeates) that defeated the Social Media Defendant's early attempt to dismiss the litigation. As the bellwether cases have proceeded, Kessler Topaz has worked closely with experts retained by the school districts to establish liability and enumerate the damages alleged by the bellwether school district plaintiffs. Kessler Topaz and other leadership successfully led the briefing and oral argument, which overcame the Social Media Defendants' attempts to exclude these experts, and survived Defendants' summary judgment motions. Thereafter, Kessler Topaz has served on trial bellwether teams, including the Breathitt team, to help prepare these cases for trial.

Kessler Topaz is proud of the substantive impact of this litigation to date and will continue to vigorously pursue these claims so that local government and school districts receive compensation for the numerous resources that have been spent and diverted to address the harms the Social Media Defendants have caused. ■

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7 ICecilia Kang & Eli Tan, *Meta Ordered to Pay $375 Million Over Child Safety Violations*, N.Y. Times (Mar. 24, 2026), https://www.nytimes.com/2026/03/24/technology/meta-new-mexico-child-safety-violations.html.

8 IMeghan Bobrowsky & Erin Mulvaney, *Meta Ordered to Pay $942 Million to Address Harm to Kids From Social Media*, Wall St. J. (Aug. 6, 2026; 8:56 PM ET), https://www.wsj.com/tech/meta-ordered-to-pay-942-million-to-address-harm-to-kids-from-social-media-8ba5aab7.

9 ICecilia Kang, Ryan Mac & Eli Tan, *Meta and YouTube Found Negligent in Landmark Social Media Addiction Case*, N.Y. Times (Mar. 25, 2026), https://www.nytimes.com/2026/03/25/technology/social-media-trial-verdict.html.

10 ICecilia Kang, *Meta Settles a School District's Social Media Addiction Lawsuit*, N.Y. Times (May 21, 2026), https://www.nytimes.com/2026/05/21/technology/meta-settlement-social-media-addiction-lawsuit.html; WKYT News Staff and Samantha Valentino, *Breathitt County schools to receive $27 million settlement from social media companies*, WKYT (June 1, 2026), https://www.wkyt.com/2026/06/01/wkyt-investigates-breathitt-county-schools-receive-27-million-settlement-social-media-companies/.

11 IOlivia Carville & Alexandra S. Levine, *Snap Nears Settlement of Addiction Case Ahead of Jury Trial*, Bloomberg (Jul. 20, 2026; 3:27 PM EDT), https://www.bloomberg.com/news/articles/2026-07-20/snap-nears-settlement-of-addiction-case-ahead-of-jury-trial.

12 IDietrich Knauth, *TikTok Settling Three Teen Social Media Lawsuits Ahead of Trial*, Reuters (Aug. 3, 2026; 6:05 PM EDT), https://www.reuters.com/business/tiktok-settling-three-teen-social-media-lawsuits-ahead-trial-2026-08-03/.

13 ICecilia Knag & Eli Tan, *Meta to Pay Up to $17.1 Billion in Landmark Settlement Over Social Media Addiction Claims*, New York Times (Aug. 26, 2026), https://www.nytimes.com/2026/08/26/technology/meta-settlement-social-media-addiction-lawsuit.html.

14 I*See id.*, ECF Nos. 2536-35, 2536-39, 2536-98, 2536-102.

RECENT DEVELOPMENTS REGARDING THE SEC'S ENFORCEMENT MECHANISMS

(continued from page 5)

years later, in *Liu v. SEC*, 591 U.S. 71 (2020), the Supreme Court concluded that, despite its similarity to a penalty, a disgorgement award is limited to the wrongdoer's ill-gotten gains and any disgorged funds must be returned to the victims of the illegal conduct and may not be retained by the government.[1]

In the wake of *Liu*, the U.S. Courts of Appeals differed on whether, in order to establish a disgorgement remedy, the SEC was required to actively determine the amount of harm suffered by victims of illegal conduct, or if the SEC merely had to ascertain the amount of the proceeds to the wrongdoer from such conduct. The United States Court of Appeals for the Second Circuit held that actual proof of damages was a requirement of disgorgement, while the Courts of Appeals for the First and Ninth Circuits held that no such proof was required.[2]

In *Sripetch*, the Supreme Court reaffirmed its prior rulings in *Kokesh* and *Liu* that disgorgement and sided with the First and Ninth Circuits, holding that no proof of actual damages was required before the SEC ordered disgorgement of ill-gotten gains. Specifically, the Supreme Court ruled that disgorgement was an equitable remedy designed to deprive a wrongdoer of its ill-gotten gains, rather than legal remedy such as an award of damages, which would require proof of the victims' actual losses. The Supreme Court concluded that:

> Under traditional equitable principles, a victim seeking disgorgement of a defendant's unlawful gains does not need to prove he has "suffered a corresponding loss or," indeed, "any loss." Restatement (First) of Restitution § 1, Comment *e* (1936) (First Restatement). Instead, when a victim "has suffered an interference with protected interests," he may be entitled to "restitution of [the defendant's] wrongful gain" from that interference even when he has suffered "no measurable loss whatsoever." Third Restatement §3, Reporter's Note *a*; *id.*, §1, Comment *a*. The point of the remedy is for "the defendant . . . to give to the plaintiff the amount by which he has been enriched" from the wrongful invasion of the plaintiff's legally protected interests, not to compensate the plaintiff for a financial loss.[3]

After *Sripetch*, the focus of any litigation over the amount of any disgorgement award turns solely on the amount of any improper gain by a defendant, and the amount by which any victims are harmed becomes entirely irrelevant.

Elimination of the Longstanding Gag Rule

The SEC's Gag Rule (which was adopted in 1972 under an exception to notice-and-comment rulemaking for interpretative rules, general statements of policy and rules of agency organization, procedure, or practice) stated that the agency would not settle a civil enforcement action unless the defendant agreed not to publicly deny the allegations. The SEC adopted the policy after concluding that "it is important to avoid creating, or permitting to be created, an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur."[4] The SEC further noted that it "believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations."[5] The Gag Rule has not

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[1] After the decision in Liu, on January 1, 2021, Congress passed the National Defense Authorization Act ("NDAA"). Section 6501 of the NDAA contained significant amendments to Section 21(d) of the Exchange Act. In particular, Section 21(d), as amended, grants the SEC explicit authority to seek disgorgement and the federal courts express authority to order disgorgement. In the wake of this grant of express authority to seek disgorgement, it is unclear whether the requirement in *Liu* that the SEC distribute disgorged funds to harmed investors, rather than to the U.S. Treasury, remains in force.

[2] *Compare SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023) with *SEC v. Navellier & Assoc., Inc.*, 108 F.4th 19 (1st Cir. 2024), and *Sripetch v. SEC,* 154 F.4th 980 (9th Cir. 2025), *aff'd* 146 S.Ct. 1403 (2026).

[3] *Sriptech*, 146 S.Ct. at 1410-11.

[4] *See* 17 C.F.R. § 202.5(e) (2008) (repealed 2026).

[5] *Id*.

been widely adopted by other U.S. governmental enforcement agencies.[6]

The Gag Rule has been challenged over its more than 50-year history, and particularly in the last decade, as a restraint on free speech that violates the First Amendment of the U.S. Constitution.[7] In October 2018, the New Civil Liberties Alliance ("NCLA") — a conservative-leaning nonprofit public interest law firm that challenges what it views as unlawful uses of administrative power — brought a petition to amend the language of the Gag Rule to allow defendants settling with the SEC to admit, deny, or neither admit nor deny the SEC's allegations. The SEC took no action for five years, and in late 2023, the NCLA renewed its petition. In January 2024, the SEC rejected the NCLA petition,[8] and the NCLA appealed, arguing that the Gag Rule acted as a prior restraint on free speech. In August 2025, the U.S. Court of Appeals for the Ninth Circuit upheld the Gag Rule, holding that parties may voluntarily waive constitutional rights, including First Amendment rights, in exchange for settlement benefits.[9] The NCLA sought review by the Supreme Court, but its *writ of certiorari* was denied in June 2026 without any statement.

On May 8, 2026 — after the Ninth Circuit's decision, and while the issue of Supreme Court review was pending — the SEC sent to the U.S. Office of Management and Budget a final rule titled "Rescission of Policy Regarding Denials in Settlements of Enforcement Actions," which proposed to eliminate the Gag Rule. An SEC spokesman commenting on the matter stated that it "would align the [SEC] with the majority of federal agencies that do not have a policy requiring defendants in enforcement actions to sign no-deny provisions and give the commission more flexibility in settling enforcement actions — conserving resources, providing certainty, and potentially expediting the return of money to injured investors."[10] A little over a week later, on May 18, 2026, the SEC officially rescinded the Gag Rule. In a press release announcing the rescission of the rule, SEC Chairman Paul S. Atkins noted that "[s]peech critical of the government is an important part of the American tradition" and that "[t]his rescission ends the policy prohibiting such criticism by settling defendants."[11] In connection with the rescission of the rule, the SEC indicated that it would no longer seek to enforce any existing settlement agreements that contained language required by the Gag Rule, but it did indicate that the SEC may still demand admissions in select cases.

Although the SEC's decision to eliminate the Gag Rule does not necessarily mean that settling defendants will decide to deny or publicly challenge the SEC's allegations, defendants now have the opportunity to do so, however, investors will need to carefully analyze any denials or explanations made by defendants in such instances. Notably, a defendant's decision to make a statement regarding the SEC's allegations or its settlement would trigger a duty of full disclosure that could support investors' private claims in civil litigation if all elements of such claims under the federal securities laws are met.[12]

Conclusion

These developments, and particularly the SEC's decision to rescind the Gag Rule after more than 50 years, when analyzed in connection with other recent changes at the SEC discussed in prior articles (such as the SEC's decisions to reduce its enforcement of cryptocurrencies and related companies, the reduction of the SEC's enforcement under the Foreign Corrupt Practices Act of 1977, and its proposal to get rid of mandatory quarterly reporting for public companies), highlight the significant changes occurring at the SEC and seemingly signal that the SEC has become less predictable in its protection of investors. ■

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[6] *See* Hester M. Peirce, *Unsettling Silence: Dissent from Denial of Request for Rulemaking to Amend 17 C.F.R. § 202.5(e)*, U.S. S.E.C., Jan. 30, 2024, https://www.sec.gov/newsroom/speeches-statements/peirce-nand-013024.

[7] *See id.; see also* Rodney A. Smolla, *Why the SEC Gag Rule Silencing Those Who Settle SEC Investigations Violates the First Amendment*, 29 Widener L. Rev. 1 (2023); James Valvo, Notice & Comment, *The CFTC and SEC Are Demanding Unconstitutional Speech Bans in Their Settlement Agreements*, Yale J. On Regul. (Dec. 4, 2017).

[8] Letter from Vanessa Countryman, S.E.C., to Margaret A. Little, New Civil Liberties Alliance (Jan. 30, 2024), https://www.sec.gov/files/rules/petitions/2024/4-733-letter-013024.pdf.

[9] *See Powell v. S.E.C.*, 149 F. 4th 1029 (9th Cir. 2025).

[10] Sarah Jarvis, *SEC Sends Plan To Nix Settlement 'Gag Rule' To White House*, Law360, May 11, 2026, https://www.law360.com/articles/2476133/sec-sends-plan-to-nix-settlement-gag-rule-to-white-house.

[11] U.S. Sec. & Exch. Comm'n, *SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions*, May 18, 2026, https://www.sec.gov/newsroom/press-releases/2026-45-sec-rescinds-policy-regarding-denials-settlements-enforcement-actions.

[12] *See, e.g.*, *Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l., Inc.*, 367 F. Supp. 3d 16, 31-32 (S.D.N.Y. 2019) (finding that the company's statements were misleading "half-truths" — even if literally true—by failing to mention the true nature of the factors impacting the company); *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 891 (2024) ("Half-truths . . . are representations that state the truth only so far as it goes, while omitting critical qualifying information.") (internal citations and quotations omitted).

DISTRICT COURT SUSTAINS SECURITIES FRAUD CLAIM AGAINST KPMG IN SVB COLLAPSE SUIT

(continued from page 5)

it failed stress tests, and did not have adequate funding resources to meet projected deposit outflows, facts which were known to KPMG. Indeed, KPMG issued a clean audit opinion on SVB's financial statements just three weeks before the Bank collapsed.

Applying the Ninth Circuit's auditor-scienter framework, the Court held that Plaintiffs adequately alleged that KPMG's audits were "so deficient that the audit amounted to no audit at all." *Id.* at *7. The Court's decision marks an important win for investors in holding auditors responsible for their gatekeeping responsibilities to shareholders.

SVB's Collapse and Lead Plaintiffs' Claims

Silicon Valley Bank was a California-based bank that catered to technology companies and venture capital firms in San Francisco's Bay Area that collapsed in March 2023, marking the third largest bank failure in U.S. history. In the years before its failure, SVB experienced a massive influx of deposits, increasing deposits by over $125 billion. These deposits were primarily above the FDIC-insurable limits and were largely concentrated among a small subset of the bank's core venture capital and tech clients. As the Bank rapidly expanded in size, and unbeknownst to investors, the Bank lacked the fundamental processes and controls to manage and mitigate its rapidly increasing liquidity and interest rate risks.

Based on these concealed risk management failures, Lead Plaintiffs alleged in the original consolidated complaint filed in January 2024 that SVB's former CEO and CFO were liable under the Exchange Act for issuing materially false or misleading statements with scienter, while several defendants — including SVB's directors and officers, underwriters, and auditor, KPMG — were liable for issuing false statements in connection with SVB's public securities offerings issued in 2021 and 2022. In the face of vigorous motions to dismiss, the Court sustained the entirety of Plaintiffs' claims in a June 2025 order. *See In re SVB Fin. Grp. Sec. Litig.*, 2025 WL 1676800 (N.D. Cal. June 13, 2025).

SVB's HTM Classification and the Second Amended Complaint

One consequence of SVB's fundamental deficiencies in risk management appeared on SVB's balance sheet in the form of its misclassification of tens-of-billions in investment securities as held-to-maturity, or "HTM." Under GAAP, a bank may designate securities as HTM only if it can demonstrate the "positive intent and ability" to hold those securities to maturity. That designation is critical because it insulates the bank from marking unrealized losses to market — losses that, if recognized, could significantly weaken a bank's liquidity and capital position as interest rates rise. *SVB*, 2026 WL 2260372, at *8. The designation also requires a bank to consider "[c]hanges in market interest rates" or "[n]eeds for liquidity" arising from "the withdrawal of deposits" before maintaining the HTM classification. *Id.*

Plaintiffs alleged that SVB, based on its risk management failings, could not show that it had the "intent and ability" under GAAP, rendering the Bank's financial statements materially misleading to investors. The Court sustained this theory in its June 2025 order, including finding that KPMG misled investors by representing that SVB's financial statements for FY-2020 and FY-2021 complied with GAAP, that its internal controls were effective, and that KPMG had conducted its audits in accordance with PCAOB standards. *Id.* at *1-2, *7. As noted above, though, Plaintiffs' original consolidated complaint asserted only a Securities Act claim against KPMG, which does not require scienter.

After reviewing more than 1.5 million pages of documents produced by KPMG in discovery, including its internal workpapers and communications, Plaintiffs moved to amend to add a claim under Section 10(b) of the Exchange Act, which does require scienter. *Id.* at *2-3. The amended allegations, drawn from those files, are that KPMG knowingly or with deliberate recklessness ignored numerous red flags in issuing clean audit opinions for FY-2021 and FY-2022. The red flags included, among others, SVB's mounting liquidity risk, deficient liquidity risk management practices, escalating interest-rate-risk sensitivity, repeated attempts to reclassify or sell HTM securities, and unreliable interest-rate-risk monitoring.

As is alleged in the Second Amended Complaint, rather than confront these warning signs, KPMG relied wholly on Bank management's untested, cursory representations that SVB had the intent and ability to hold its HTM securities to maturity. Plaintiffs allege that these clean opinions reassured the market that SVB's HTM classifications complied with GAAP and that the Bank had effective internal controls in place, thereby artificially inflating SVB's stock price.

KPMG primarily moved to dismiss the new claim on scienter grounds. *Id.* at *6. The Court held oral argument on July 29, 2026, during which KTMC partner Sharan Nirmul presented argument.

The Court's Conclusion that KPMG Acted with Scienter

The Court held that Plaintiffs adequately alleged KPMG's scienter. Applying the Ninth Circuit's decision in *New Mexico State Investment Council v. Ernst & Young LLP*, 641 F.3d 1089 (9th Cir. 2011), and the "red flag" doctrine, the Court found that KPMG was "repeatedly confronted with obvious and escalating red flags" contradicting management's assertion that SVB could hold its HTM portfolio to maturity, yet "consciously disregarded that information and issued clean audit opinions anyway." *Id.* at *7.

Rather than address those warning signs, the Court explained, KPMG "based its clean audit opinions almost entirely on the Bank's self-serving representations," and "knew, or deliberately disregarded, facts that directly contradicted those opinions." *Id.* Taken together, the Court concluded, the allegations "amount[ ] to [an] audit so deficient that the audit amounted to no audit at all." *Id.* (quoting *New Mexico*, 641 F.3d at 1100).

The magnitude of the accounting judgment was central to the Court's reasoning. It held that "[t]he GAAP violation at issue here — the classification of nearly 80% of the Bank's investment portfolio as HTM, representing over 40% of total assets — supports a strong inference of scienter." *Id.* Drawing on *New Mexico*, the Court reasoned that an auditor's failure to scrutinize issues of extraordinary significance "is more than negligence because 'an auditor, in fulfilling duties of public trust, should take a long hard look' at such matters." *Id.*

The Court also found that Plaintiffs adequately alleged motive. While noting that motive is not required, the Court credited allegations that, during the FY-2022 audit, SVB notified KPMG that it intended to seek competitive bids for its audit work, and that KPMG "responded by actively courting the Bank's business," including considering a multi-million-dollar sponsorship commitment. *Id.* at *8. These allegations, the Court held, demonstrated that KPMG had the "motivation to overlook [accounting issues] in order to protect its own source of lucrative accounting and consulting fees," which, viewed alongside KPMG's "repeated failure to investigate contradictory audit evidence, challenge management's assumptions, or revisit its conclusions despite mounting warning signs," further supported an inference of scienter. *Id.*

Implications of the Opinion

KPMG was the auditor for three banks that failed in rapid succession in March 2023: SVB, Signature Bank, and First Republic Bank. KPMG's role in those collapses was recently the topic of a U.S. Senate Minority Report ("PSI Report") that found "KPMG's willful ignorance in lead-up to collapse of troubled banks."[2] As U.S. Senator Richard Blumenthal (D-CT) stated, the PSI Report "expose[d] KPMG's willful blindness and stresses that significant reforms to the auditing industry are needed to promote transparency and better protect consumers." An email published within the Report itself quoted a KPMG employee commenting that "this industry is a joke and our regulators are a joke." Institutional investors, including AP7, have sued KPMG for fraud in each of those cases, seeking to hold KPMG responsible for their willful blindness and abdication of their gatekeeping responsibilities. The District Court's decision is a meaningful step in holding auditors accountable to shareholders.

As to the SVB case specifically, the sustained KPMG securities fraud claim will proceed into fact discovery alongside the other previously sustained claims. Fact discovery is set to close early in 2027, and Plaintiffs will also be renewing their motion to certify a class of investors asserting claims under both the Exchange Act and the Securities Act.

KTMC, on behalf of co-Lead Plaintiff AP7 and the Class of investors, looks forward to continuing to prosecute the merits of these claims. ■

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[2] *See* PSI Report, "New Senate Report Reveals KPMG's Willful Ignorance in Lead-Up to Collapse of Troubled Banks," available at https://www.blumenthal.senate.gov/newsroom/press/release/new-senate-report-reveals-kpmgs-willful-ignorance-in-lead-up-to-collapse-of-troubled-banks.

HUMANA SECURITIES LITIGATION SURVIVES MOTION TO DISMISS

(continued from page 4)

Humana further revealed that its utilization among its Medicare Advantage members had continued to rise steadily, ultimately resulting in a net loss for the fourth quarter of 2023 and a reduction in the company's earnings-per-share guidance. In October 2024, the full consequences of Humana's aggressive cost-cutting measures became known when CMS announced a dramatic decline in the company's Star Ratings. These disclosures triggered a series of sharp declines in Humana's stock price.

Lead Plaintiff SEB Investment Management AB ("SEB"), represented by Kessler Topaz, filed the Consolidated Class Action Complaint against Humana, Broussard, and Diamond on November 20, 2024, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. Defendants moved to dismiss the Complaint on January 22, 2025, arguing that: (i) SEB lacked standing to assert claims on behalf of its funds; (ii) the Complaint failed to establish the falsity and scienter of defendants' statements; and (iii) the Complaint failed to adequately plead loss causation. SEB opposed the motion on March 25, 2025.

Without oral argument, Judge Hall ruled largely in SEB's favor on April 27, 2026. First, the Court found that "a foreign asset manager such as SEB has standing to sue on behalf of its investment funds — even though SEB itself did not purchase or sell the securities at issue."[2] In support of this finding, the Court cited the multiple securities fraud class actions in which SEB had served as lead plaintiff and confirmed that SEB's representation of its funds falls squarely within the "prudential exception" that allows asset managers like SEB to bring claims.[3] Next, the Court rejected defendants' arguments that the Complaint failed to adequately allege falsity and scienter. The Court credited the allegations of the confidential witnesses cited in the Complaint and found that SEB had alleged "a strong inference that Diamond was aware of the true state of affairs" when the false statements regarding utilization were made. The Court further found that, given Broussard's position as CEO, the inference that he was aware was "at least as compelling."[4] The Court reached the same conclusion with respect to defendants' statements concerning Humana's Star Ratings.[5]

Turning to defendants' final argument, the Court found that the Complaint did not adequately plead loss causation with respect to one of SEB's funds because that fund sold its shares before the October 2024 corrective disclosure regarding Humana's Star Ratings. The Court otherwise rejected defendants' remaining loss causation arguments, finding that the alleged corrective disclosures revealed new information to the market. The ruling as to the single SEB fund had no impact on the Class Period or estimated damages.

Following the Court's April 27 decision, the case has moved into the discovery phase of litigation. ■

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[2] D.E. 72 (Apr. 27, 2026), ¶ 5.

[3] *Id*. at ¶ 6.

[4] *Id*. at ¶ 9 and ¶ 9 n.3.

[5] *Id*. at ¶10.

WHAT'S TO COME

OCTOBER 2026

Michigan Association of Public Employee Retirement Systems (MAPERS) 2026 Fall Conference

October 3 – 6

Kalamazoo, MI ■ Radisson Plaza Hotel

International Foundation of Employee Benefit Programs (IFEBP) 72nd Annual Employee Benefits Conference

October 25 – 28

New Orleans, LA

NOVEMBER 2026

State Association of County Retirement Systems (SACRS) 2026 Fall Conference

November 10 – 13

Mirage, CA
Omni Rancho Las Palmas Resort & Spa

County Commissioners Association of Pennsylvania (CCAP) 2026 Fall Conference

November 22 – 24

Dauphin County, PA ■ The Hotel Hershey

FEBRUARY 2027

National Association of Public Pension Attorneys (NAPPA) Winter Seminar

February 17 – 19

Palm Springs, CA
Renaissance Palm Springs Hotel

MARCH 2027

Council of Institutional Investors (CII) 2027 Spring Conference

March 8 – 10

Washington, DC ■ The Potomac Hotel

California Association of Public Retirement Systems (CALAPRS) General Assembly

March 8 – 10

Coronado, CA
Coronado Island Marriott Resort & Spa

21st Annual Rights & Responsibilities of Institutional Investors (RRII) Conference

March 11 – 13

Amsterdam, Netherlands

APRIL 2027

Association of Public Employee Retirement Systems (TEXPERS) 2027 Annual Conference

April 4 – 7

Fort Worth, TX ■ The Worthington Renaissance

Pennsylvania State Association of County Controllers (PSACC) 2027 Spring Conference

April 28 – 30

Harrisburg, PA ■ The Central Hotel

MAY 2027

State Association of County Retirement Systems (SACRS) 2027 Spring Conference

May 11 – 14

Monterey, CA
Hyatt Regency Monterey Hotel & Spa

KESSLER TOPAZ MELTZER CHECK LLP
280 King of Prussia Road
Radnor, PA 19087

EDITORS

Darren J. Check, Esquire

Nicole B. Schoeffling, Director of Marketing

Please direct all inquiries regarding this publication to Darren J. Check, Esquire at 610.822.2235 or dcheck@ktmc.com

280 King of Prussia Road
Radnor, PA 19087
P 610.667.7706
F 610.667.7056

One Sansome Street
Suite 1850
San Francisco, CA 94104
P 415.400.3000
F 415.400.3001

KESSLER TOPAZ MELTZER CHECK LLP
KTMC.COM