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Business Litigation Report

Eleventh Circuit Clarifies Pleading Standard for Fraud, Declines to Apply PSLRA Bar to RICO Claim, and Supreme Court Denies Certiorari

A federal appellate decision provided significant guidance on a frequently disputed issue in transnational litigation: the pleading standards and substantive law governing fraud, RICO, and conspiracy claims. In 2025, the U.S. Court of Appeals for the Eleventh Circuit, in an 82-page opinion, reversed a district court order that dismissed a lawsuit involving one of the largest financial frauds ever for failing to state such claims. See *Otto Candies LLC v. Citigroup Inc.*, 137 F.4th 1158 (11th Cir. 2025). The Eleventh Circuit did so because the district court improperly applied the heightened "strong inference" standard for pleading knowledge from securities fraud cases to common-law fraud claims, and failed to credit plaintiffs' detailed allegations of defendant's misrepresentations and plaintiffs' reliance thereon.

The Eleventh Circuit also clarified that the Private Securities Litigation Reform Act (PSLRA) does not bar a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) based on plaintiffs "holding" (not selling) a security because that is not "actionable" as securities fraud. In January 2026, the U.S. Supreme Court denied defendant's petition for certiorari on that issue. The case, in which Quinn Emanuel represents the plaintiffs, has important implications both for plaintiffs seeking to bring cross-border disputes in the United States, and for defendants seeking to dismiss those lawsuits.

Several courts have recently cited the decision's analysis favorably.

"*Otto Candies* is a perfect illustration of the difference between these facts and a real RICO conspiracy," the court said in *Halabi v. Mega Bank* (WL 2187832, at *20, S.D. Fla., Apr. 27, 2026).

And in *Nyawara v. Interstaff, Inc.*, WL 1999277, at *8 (S.D. Tex. July 10, 2026), the court quoted *Otto Candies* in denying dismissal where "Rule 9(b)'s pleading standards should be relaxed ... to aid those alleging prolonged multi-act schemes ... if the plaintiff alleges at least some examples to lay a complete foundation for the rest of his allegations."

Overview

Plaintiffs suing for fraud in federal court must satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). To meet that standard, plaintiffs must allege, among other things, (1) the "precise statements" made; (2) the "time, place, and person responsible" for the statements; and (3) the "manner in which these statements misled" plaintiffs (i.e., reliance)—collectively known as the "who, what,

FIRM HIGHLIGHTS

Quinn Emanuel Boosts Its Pro Bono Commitment and Bonus Credit Bucket for Associates

Quinn Emanuel has expanded its pro bono program by separately crediting hours (up to 200 annually, with flexibility for major cases) toward bonuses, and is hiring a full-time pro bono counsel to oversee the practice—changes made in honor of the late Harry Olivar, Jr. The firm's pro bono work spans areas like immigration, criminal justice, and human rights. Partner Marc Greenwald says the goal is to give associates valuable trial experience while professionalizing the practice, even as some peer firms scale back public interest work amid political scrutiny

Richard East Named 'Fifty Most Influential Lawyers 2026'

Richard East, Senior and Founding Partner of our London office, has been named to Financial News' "Fifty Most Influential Lawyers 2026", making this the fourth time he has appeared on the list. The list recognizes the heads of the UK's largest firms, London and European leaders at America's top legal powerhouses, and finance lawyers at the helm of the most prominent practices in the market.

Viola Trebicka Recognized by Daily Journal Top Women Lawyers

The Daily Journal has recognized partner Viola Trebicka on its Top Women Lawyers 2026 list. This award honors the women lawyers shaping California's legal landscape. Viola's practice focuses on high-stakes commercial and technology matters.

when, where, and how" of fraud. *Id*. at 1178. Though Rule 9(b) requires more particularity than the normal Rule 8(a) standard, its application "must not abrogate the concept of notice pleading"—that defendants have been "made aware" of the circumstances for which they will have to "prepare a defense" at trial. *Id*. Moreover, the "conditions of a person's mind," including knowledge, "may be alleged generally." *Id*. (quoting Rule 9(b)).

Plaintiffs suing under the civil provisions of RICO must plausibly allege, among other things, that defendants (1) engaged in a "pattern" of racketeering activity (i.e., continuity) (2) that included at least two "predicate acts" of racketeering. Id. at 1196. Plaintiffs can establish a RICO conspiracy by showing that defendants "agreed to the overall objective of the conspiracy." *Id*. at 1201. Plaintiffs need not offer direct evidence of a RICO agreement; it may be inferred from the "conduct of the alleged participants" or from "circumstantial evidence of a scheme." *Id*. at 1201-02.

The plaintiffs in the *Otto Candies* case are former creditors of Oceanografía, a now-bankrupt Mexican company that provided maintenance and transportation services to Pemex, Mexico's state-owned oil and gas monopoly. Plaintiffs allege that Citigroup established a credit facility within its Mexican subsidiary Banamex to provide cash advances to Oceanografía, and loaned the company billions of dollars knowing the advances were based in part on forged Pemex work orders. When the fraud was exposed in 2014, Oceanografía declared bankruptcy and plaintiffs—comprised of 14 groups of shipping companies, investment funds, and a bank—lost over $1 billion. Before the Eleventh Circuit's recent reversal, in 2020, it reversed the district court's order dismissing the case in favor of Mexico as a more convenient location for the lawsuit (i.e., forum non conveniens). 963 F.3d 1331 (11th Cir. 2020).

Pleading Standard for Defendant's Knowledge of Fraud

The requirements for pleading common-law fraud under Rule 9(b) and securities fraud under the PSLRA differ. 137 F.4th at 1178. The PSLRA mandates that private plaintiffs allege facts supporting a "strong inference" of a defendant's knowledge (i.e., scienter) when pleading securities fraud, heightening the pleading standard. Id. Some federal district courts, including the U.S. District Court for the Southern District of Florida here, extended the PSLRA's pleading standard to claims of aiding-and-abetting fraud under Florida law. *Id*. at 1179 (citing 2023 WL 6418135, at *7 (S.D. Fla. Aug. 25, 2023)).

The Eleventh Circuit held that those courts "have gotten it wrong" and reiterated that for common-law fraud claims, "Rule 9(b) does not require a plaintiff to allege specific facts related to the defendant's state of mind," and "knowledge may be alleged generally." *Id*. The court stated that its approach "comports with the text of Rule 9(b) and recognizes that a plaintiff rarely will be able to plead a defendant's actual state of mind—particularly before it has access to discovery." *Id*. at 1179-80. The court also noted its standard matches those of seven of eight other circuits to rule on the issue, including the Fifth, Ninth, and D.C. Circuits, with the outlier in the Second Circuit, which required plaintiffs to allege a strong inference of fraudulent intent even before the PSLRA's passage. *Id*. at 1180 n.9.

Analyzing plaintiffs' claims *de novo* under the proper pleading standard, the Eleventh Circuit held that the complaint alleged generally that Citigroup knew of the fraud. *Id*. at 1180. The court noted plaintiffs' allegations that Citigroup employees and agents knew about the fraud, which may be attributed to Citigroup, and that Citigroup does not dispute that Banamex and Citibank employees acted as its agents. *Id*. Indeed, the court highlighted the allegations that plaintiffs received letters, emails, and business cards with a joint Banamex-Citigroup logo, and that a Citigroup managing director entered into a secret contract with Oceanografía that outsourced to it the task of authenticating the documents in support of its own cash-advance requests. *Id*. at 1173-74, 1180-81. The court also noted that the employees' actions were not "entirely adverse" to Citigroup given the interest payments that Citigroup received from the cash-advance fraud. *Id*. at 1181.

The Eleventh Circuit further took issue with the district court's overly critical analysis of plaintiffs' allegations regarding (1) Citigroup's statement that it fired an employee it believed was "directly involved" in the fraud (characterizing the district court's interpretation against Citigroup's criminal involvement as a "rather fine distinction" and "quite flimsy"); (2) the Mexican authorities' finding that several Citigroup employees were criminally responsible for the fraud (characterizing the district court's assessment that Mexican and U.S. law differ as "beside the point"); and (3) the large discrepancies between the cash advances and the underlying Pemex contracts. *Id*. at 1181-82. The court therefore concluded, "Citigroup is one of the world's most sophisticated financial institutions, and it strains credulity to conclude that, assuming the plaintiffs' allegations are true, Citigroup lacked awareness of [Oceanografía's] activities." *Id*. at 1182. The Eleventh Circuit later denied Citigroup's petition for *en banc* review of this issue.

Particularity of Fraud Allegations

As noted above, in addition to knowledge, a fraud claim requires plaintiffs to allege, as relevant here, the specific misrepresentations Citigroup made to plaintiffs and how the misrepresentations informed plaintiffs' decisions to lease ships, invest, or loan money to Oceanografía. The district court found that plaintiffs did not allege misrepresentations in detail or how plaintiffs relied on the misrepresentations to their detriment. However, the Eleventh Circuit found that the complaint alleged numerous examples of Citigroup's direct misrepresentations to several plaintiffs (e.g., Citigroup was working with Oceanografía to "cover" the debt owed to creditors) and misrepresentations by Citigroup's agents to other plaintiffs (e.g., a Banamex employee promised that a plaintiff would encounter "no problem" receiving payments from Oceanografía), including by summarizing the misrepresentations in a "succinct way" that was "clear to understand" through charts that plaintiffs attached to the complaint. *Id*. at 1186-87.

The Eleventh Circuit also found that plaintiffs adequately alleged Citigroup's liability for third party misrepresentations and omissions that Citigroup contributed to and knew would be distributed to plaintiffs. *Id*. at 1188. For example, an Oceanografía investor presentation given to plaintiffs with Citigroup's logo on the slides stated that Oceanografía "engages in recourse factoring with Mexican banks to minimize

days receivable and ensure sufficient liquidity." *Id*. at 1191. Other investor materials pledged that bondholders would be "protected" through Banamex's role as a trust "fiduciary." Id. at 1192. Yet Citigroup omitted mention of the mounting problems with the cash-advance facility and the shakiness of Oceanografía's finances in those materials despite having "full access" to the relevant information, and never updated the bond documents despite Citibank serving as trustee of a bond offering. *Id*.

The Eleventh Circuit referred to these examples as "classic illustrations of fraud" because Citigroup had "superior knowledge" yet failed to disclose information that was "not discoverable by ordinary observation." *Id*. at 1190. The court also emphasized plaintiffs' reliance on Citigroup as a "highly regarded international bank" for its "purported neutrality as a third-party, expertise and professionalism" and "intimate knowledge of [Oceanografía's] financial condition." *Id*. The court therefore found that plaintiffs alleged a "mosaic of fraud" that the district court "ignored" through its "oversight," and did "not see how the plaintiffs could have pleaded their fraud claims with greater specificity." *Id*. at 1187, 1193.

The Eleventh Circuit also found that each plaintiff adequately pleaded how they relied on the misrepresentations and omissions to conduct business with or invest in Oceanografía. *Id*. at 1194. The court highlighted plaintiffs' allegations of Banamex and Citibank employees' misrepresentations to plaintiffs, causing plaintiffs to continue providing services, restructure a loan, or retain bonds instead of ending their business relationship with Oceanografía. *Id*. The court also found that plaintiffs' allegations that they reviewed (as opposed to read) materials were sufficient since there are no "magic words" to plead reliance, characterizing Citigroup's arguments as "verbal gymnastics." *Id*. at 1195. The court further found that there is no higher standard for pleading reliance based on "holding" (not selling) an investment, and that plaintiffs' reliance was justified since the fraud evaded detection by U.S. and Mexican financial regulators for years. *Id*.

PSLRA Bar on RICO Claims

The district court dismissed plaintiffs' RICO claim for the same reason it dismissed plaintiffs' fraud claim: plaintiffs supposedly provided "no details about the specific misrepresentations that they relied on." *Id*. at 1197. The Eleventh Circuit found that was error for the reasons above. *Id*. However, the court remanded the RICO claim to the district court because the district court did not analyze whether plaintiffs sufficiently pleaded the elements of a RICO claim. *Id*. Still, the Eleventh Circuit gave the district court guidance on remand, finding that neither of Citigroup's alternative arguments to dismiss plaintiffs' RICO claim based on the PSLRA bar and RICO continuity was persuasive. *Id*.

First, Citigroup argued that the "predicate acts" underlying plaintiffs' RICO claim constitute fraud in the purchase or sale of securities, which cannot form the basis of a RICO claim under the PSLRA. *Id*. (citing 18 U.S.C. § 1964(c)). The Eleventh Circuit found that several plaintiffs leased vessels or loaned money to Oceanografía, which did not involve securities fraud. *Id*. Even for the bondholder plaintiffs, the court noted that the Supreme Court found that "holding" an investment does not offer grounds to sue under federal securities laws, so it was unclear why the PSLRA would bar those claims. *Id*. at 1197-98. The court therefore "decline[d] Citigroup's invitation to weaponize the PSLRA bar at the pleading stage in a case where the allegations have little to do with securities fraud in the first place." *Id*. at 1198.

Citigroup filed a petition for certiorari with the Supreme Court regarding the PSLRA's application to the bondholders' RICO claim. Citigroup argued that the PSLRA targets "conduct" actionable as securities fraud by anyone, including the Securities and Exchange Commission (which can sue on behalf of investors who held securities), and the Eleventh Circuit misconstrued the statute by focusing on the particular plaintiffs. Cert. Pet., 2025 WL 2856170, at 11-19 (Sept. 30, 2025). Citigroup cited authority from other circuits in support of its position. *Id*. at 20-24. Citigroup also stated that the issue was important for American businesses and risked undermining constraints on securities and RICO lawsuits. Id. at 24-27. The U.S. Chamber of Commerce and other entities submitted amici briefs in support of Citigroup's petition.

In opposing the petition, Plaintiffs argued that (1) there was no decision to review because the Eleventh Circuit's opinion did not suggest that any other plaintiff could bring a claim, (2) Citigroup did not make the SEC argument below so it was waived, and (3) there is no circuit precedent on whether the theoretical possibility of an SEC action alone suffices to trigger the PSLRA bar. Opp. to Cert. Pet., 2025 WL 3543204, at 10-17 (Dec. 3, 2025). Plaintiffs continued that this case would be a bad choice to address the issue because it was unlike the typical securities fraud case where plaintiffs challenge public statements for publicly traded securities, and it is at an interlocutory stage with further briefing on the RICO claim still pending before the district court that could moot the issue. *Id*. at 17-19. Plaintiffs lastly argued that Citigroup's position failed on the merits because the text, context, and legislative history of the PSLRA bar contradict Citigroup's argument that Congress intended to preclude RICO claims simply because someone else could have brought a securities fraud claim, particularly the strained, anomalous SEC claim Citigroup hypothesized. *Id*. at 19-25. In January 2026, the Supreme Court denied Citigroup's petition. *Citigroup Inc. v. Otto Candies LLC*, No. 25-391, 2026 WL 80015 (U.S. Jan. 12, 2026).

Second, Citigroup argued that plaintiffs insufficiently pleaded a "pattern" of racketeering activity that continued for at least a year (i.e., closed-ended continuity). 137 F.4th at 1198. The Eleventh Circuit found that Citigroup ignored allegations about the fraud from 2008 to 2013 based on an SEC investigation resulting in $4.75 million fine, including that Banamex lost $1 million via the cash-advance facility in 2009, Pemex refused to pay related invoices in 2010, and Citigroup fired an employee for receiving bribes from Oceanografía in 2012. *Id*. (citing *In re Citigroup Inc*., Exchange Act Release No. 83858, 2018 WL 3913653, at *6 (Aug. 16, 2018)).

Conspiracy to Violate RICO

The district court found that because Citigroup lacked knowledge of the fraud, it could not have agreed to conspire with Oceanografía to defraud plaintiffs. *Id*. at 1201. The Eleventh Circuit found that conclusion regarding Citigroup's knowledge wrong for the reasons above.

The Eleventh Circuit also found that plaintiffs pleaded ample circumstantial evidence of a RICO conspiracy, including Citigroup's and Oceanografía's extensive business relationship, mutual financial gain from the racketeering activity, and joint misrepresentations to plaintiffs. *Id*. at 1202. For example, during a meeting with a plaintiff at Oceanografía's headquarters, its financial consultant summoned a Citigroup managing director from an adjoining room, making it appear he had an office within Oceanografía and was working there full-time, where he said Banamex "support[ed] Oceanografía's finances" and not to worry because "all Oceanografía payments were coming through them." *Id*.

The Eleventh Circuit added that even if plaintiffs' substantive RICO claim was not viable, plaintiffs still could show a RICO conspiracy by alleging an agreement between Citigroup and Oceanografía and an underlying illegal act (e.g., wire fraud through an email), which was contrary to the district court's ruling. *Id*. at 1203.

Takeaways

The Eleventh Circuit's decision reinforced the pleading standard in common-law fraud claims that a defendant's knowledge of fraud may be alleged generally. The decision also highlighted the level of detail necessary for fraud allegations, including for misrepresentations and omissions by third parties. Lastly, the decision articulated that the PSLRA bar does not apply to RICO claims at the pleading stage where the allegations have little to do with securities fraud, and that plaintiffs can show a RICO conspiracy through circumstantial evidence and even if their substantive RICO claim is not viable. In sum, plaintiffs seeking to bring cross-border disputes in the United States, and defendants seeking to dismiss those lawsuits, should carefully consider the implications of the pleading standards and substantive law governing fraud, RICO, and conspiracy claims, as articulated by this decision, on their case.

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NOTED WITH INTEREST

Congressional Investigations After the Midterms: How Business Leaders Can Prepare

With control of Congress potentially turning on a small number of races this November, both parties are preparing to move quickly on investigations after the midterms. Investigative and oversight agendas developed now could become committee letters, hearings, document requests, and subpoenas when the next Congress convenes.

Those tools are likely to be used not only to probe specific events but also to define issues and shape public narratives ahead of the 2028 presidential election.

The stakes extend beyond the next Congress. The federal officials elected in 2028 will be in office as the 2030 Census is completed and the apportionment counts are delivered. Those results will determine how House seats are allocated among the states and provide the population data states use for the next round of legislative redistricting. The consequences could last through the decade that follows.

Companies Should Prepare for Exposure on Every Front

Whichever party holds the gavels come January, companies should get ready now.

"Congressional investigations are their own animal," says AJ Merton, Co-Managing Partner of Quinn Emanuel's Washington, D.C. office and Co-Chair of the firm's Congressional Investigations & Strategic Initiatives Group. "A committee isn't bound by the rules of evidence. It can compel testimony and documents while the story plays out in real time before the press."

Merton, who co-chairs the practice with Global Co-Managing Partner Bill Burck, says managing these matters well "demands fluency that ordinary litigation does not require"—fluency in committee jurisdiction and precedent, the separate interests of majority and minority staff, the rules governing compulsory process, the accommodations process, and separation-of-powers questions unique to the congressional setting.

"The exposure is rarely only legal," Merton says. "It is political, reputational, and financial at once, and it often runs alongside investigations by the Department of Justice, an inspector general, or a regulator, as well as private litigation and the scrutiny of investors, customers, and employees."

The practice group coordinates legal strategy, congressional procedure, timing, public communications, and parallel proceedings so that a gain on one front doesn't become a loss on another. Burck, Merton, and the group have handled significant congressional matters across industries, committees, administrations, and both sides of the political aisle—from companies, boards, executives, and universities under scrutiny to public officials, members of Congress, and committees conducting oversight.

Who Is Likely to Face Scrutiny

A company doesn't need to be accused of wrongdoing to find itself in a congressional inquiry. A committee may focus on a business because it contracted with a government agency, received federal funding or tax benefits, obtained a permit or regulatory waiver, entered into a government settlement, supplied technology used in a politically sensitive program, or simply operates in an industry that has become part of a broader policy fight.

The inquiries are already beginning. Earlier this year, senators asked the Department of Homeland Security's inspector general to investigate the agency's procurement and use of surveillance technology, including the cybersecurity requirements imposed on private contractors. The episode illustrates how an inquiry that begins with a government agency can reach the companies that contract with it, supply its technology, or possess relevant information and can establish the factual record and investigative agenda to pursue more aggressively in the next Congress.

A cloud provider may be asked who could access government data. An artificial intelligence developer may be questioned about how a model used in benefits administration, health care, national security, or law enforcement was trained, tested, and monitored. A defense, logistics, consulting, or other federal contractor may face scrutiny over procurement, pricing, cybersecurity, supply chain integrity, or performance.

From Banking to Tech to Prediction Markets

Financial institutions, fintechs, nonbank lenders, payment platforms, digital-asset businesses, and prediction markets could be drawn into inquiries concerning consumer protection, sanctions, market integrity, access to financial services, or dealings with government actors. Health care and life sciences companies may be pressed on pricing, federal reimbursement, procurement, clinical or safety data, and interactions with regulators.

Energy, infrastructure, transportation, and manufacturing companies could face questions about permits, grants, loans, tax credits, tariffs, environmental impacts, supply chains, or foreign dependencies. Universities, nonprofits, professional-services firms, and other recipients of federal funds may likewise be asked how public money was used, how institutional decisions were made, or whether policies complied with federal requirements.

The initial approach may be framed as a voluntary request for documents, a private briefing, or an invitation to testify. But the posture can change quickly. A dissatisfied committee can escalate to compulsory process, public hearings, contempt proceedings, committee reports, agency referrals, or parallel outreach to regulators and enforcement authorities.

“We are the call that clients make when a committee’s letter arrives, when a subpoena follows, and when a witness must testify with the outcome unfolding in public,” Merton says.

But the best time to prepare for congressional scrutiny is before a committee makes contact. A company should be able to answer the following questions quickly, accurately, and consistently, regardless of the party in power.

Before the First Letter Arrives

Business leaders should ask themselves these questions—today:

- Where could congressional interest arise? Map the company’s points of contact with government and politically salient issues. That may include federal contracts, grants, loans, tax benefits, permits, waivers, settlements, data-sharing arrangements, regulated products, or participation in high-profile government programs. Identify business lines that could become proxies for broader policy disputes even in the absence of alleged wrongdoing.
- Who owns the response? Designate a senior leader and a cross-functional team capable of coordinating legal, government affairs, communications, compliance, finance, information technology, and the relevant business units. Establish decision-making authority, escalation procedures, and a protocol for involving senior management and the board before the first request arrives.
- What does the factual record show? Develop an accurate chronology, identify the principal decision-makers, map relevant custodians and data sources, take appropriate preservation steps, and test the company’s account of events against the documents. The objective is not to manufacture a narrative. It is to know the facts before others define them.
- Who is likely to investigate, and how? Identify the committees and subcommittees with potential jurisdiction, the interests of both majority and minority staff, the likely leadership after the election, and the rules and precedents governing requests, subpoenas, interviews, depositions, and hearings. That intelligence can inform a practical engagement strategy and help the company seek a workable scope, sequence, and timetable.
- Can the company maintain one defensible position across every forum? A congressional inquiry may unfold alongside regulatory or enforcement proceedings, private litigation, and scrutiny from investors, customers, employees, and the press. Factual statements, legal positions, public communications, and any stakeholder outreach should be coordinated. Accurate information about the public benefits of the company’s work can help prevent the record from being defined by others, but it must remain consistent with the legal strategy.

- Are the people and information most at risk protected? Identify the executives and employees most likely to become witnesses and prepare them for staff interviews, depositions, or public testimony. Assess whether any individual's interests may diverge from those of the company. At the same time, identify applicable privileges, privacy obligations, contractual restrictions, national security concerns, and protections for commercially sensitive information.
- Has the company rehearsed the first 72 hours? Run a tabletop exercise built around a committee letter, an accelerated document deadline, a leak to the press, and an invitation to testify. Test who makes decisions, what information can be located, what must be escalated, and whether the company can speak consistently under pressure.

Preparation should also assess how a change in oversight priorities could affect the company's industry. Hearings and investigations can shape the policy agenda, public perception, and the competitive environment. Companies should understand both where they may face scrutiny and where they can responsibly give policymakers accurate information about the practical consequences of proposed action.

By the time the first letter arrives, the company should already know the facts, the decision-makers, the legal protections, and the position it can defend.

Noted with Interest
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PRACTICE AREA UPDATES

Securities Enforcement Update:

The SEC's Revised Enforcement Manual, Four Months On: A Recalibrated Path Through SEC Investigations

On February 24, 2026, the Securities and Exchange Commission's Division of Enforcement (the "Division") issued the first comprehensive revision of its Enforcement Manual (the "Manual") since 2017. *See* Press Release, SEC, *SEC's Division of Enforcement Announces Updates to Enforcement Manual,* No. 2026-20 (Feb. 24, 2026). Although the Manual is internal staff guidance and confers no enforceable rights on those under investigation, it is the playbook the staff follows in opening and executing investigations, including issuing Wells notices, weighing cooperation, and recommending charges. It therefore offers a valuable window into how the staff will ordinarily operate and informs enforcement defense practice. The revisions, which promote earlier engagement, greater transparency, and a recalibrated settlement bargain—and which have been reinforced by subsequent Commission activity—warrant attention from public companies, financial institutions, boards, and individuals under investigation alike.

Most SEC enforcement matters follow the same arc. The staff opens an investigation, gathers documents and testimony, and—if it concludes the evidence supports charges—notifies the prospective defendant through a "Wells notice" identifying the specific charges and relief it intends to recommend. The recipient may then file a "Wells submission," a written or video response arguing why the Commission should not proceed. The staff forwards its recommendation, with any accepted submission, to the Commission, which decides whether to authorize an action the parties may settle or litigate. The Wells process is the principal pre-charge opportunity for a party under investigation to be heard—and the stage most affected by the revisions. See 17 C.F.R. § 202.5(c); Securities Act Release No. 5310 (Sept. 27, 1972).

A More Structured, Front-Loaded Wells Process.

The most consequential changes formalize and compress the pre-charge phase. The revised Manual establishes, “in the absence of timing constraints,” a four-week period for a Wells submission—an explicit default the prior Manual did not specify. A post-Wells notice meeting—requests for which are now “typically granted”—must be scheduled no later than four weeks after the submission and must include a member of senior leadership at the Associate Director level or above. The Manual also makes explicit that the staff will reject any Wells submission that seeks to limit its admissibility under Federal Rule of Evidence 408 or the Commission’s use of it under Form 1662, or that includes a settlement offer, which must instead be made separately. See Manual § 2.3. For respondents, the net effect is a predictable timeline for its Wells submission and a more senior audience for pre-charge advocacy.

Access to the Staff’s Evidence.

Among the most consequential changes is the Manual’s new posture toward the investigative file. The 2017 Manual left disclosure to staff discretion; the revised Manual directs the staff to “be forthcoming about the content of the investigative file” and, case by case, to “make reasonable efforts to allow the recipient” to review relevant, non-privileged portions—excluding material that implicates whistleblower or Bank Secrecy Act information or other confidentiality constraints. See Manual § 2.3. The staff should also affirmatively flag the “salient, probative evidence” it has gathered that the recipient may not know about. For respondents, this narrows a longstanding asymmetry: a party could previously be asked to rebut a contemplated charge without seeing key materials the staff had collected from third parties. *Id*. That access is not absolute, however. It is a case-by-case “reasonable efforts” standard, and among the factors the staff weighs is whether the recipient “was unresponsive to staff requests, failed to cooperate, or otherwise refused to provide information during the investigation.” Id. A party’s own cooperation can thus influence whether it sees the staff’s evidence—tying the new transparency directly to the cooperation calculus. *Id*.

A Recalibrated Settlement Bargain.

The Manual reflects the Commission’s September 2025 restoration of the practice of simultaneously considering an offer of settlement and any related request for waivers from the automatic disqualifications and collateral consequences an enforcement resolution can trigger. Those consequences vary by client. For example: an issuer may lose well-known seasoned issuer status and the expedited registration it affords; an investment adviser or registered fund may be disqualified from serving in certain capacities under Section 9 of the Investment Company Act; and a private placement may forfeit the Regulation D or Regulation A exemptions on which its fundraising depends. Because these effects can dwarf the monetary terms of a settlement, the ability to weigh them before agreeing to settle is a core of the reform. See Manual § 2.5.2.1.

Under the policy in place since 2021, the Commission had weighed settlements and waiver requests separately and would not let a party condition its settlement on the waiver—leaving a respondent potentially settled while still awaiting, and at risk of losing, the collateral relief it needed. *See Statement of Acting Chair Allison Herren Lee on Contingent Settlement Offers* (Feb. 11, 2021). The restored practice, reviving an approach Chairman Clayton adopted in 2019, lets the Commission weigh both together; if it accepts the settlement but denies the waiver, the party ordinarily has five business days to withdraw. *See* Statement of Chairman Paul S. Atkins on Simultaneous Commission Consideration of Settlement Offers and Related Waiver Requests (Sept. 26, 2025). The settlement landscape has shifted further since. On May 18, 2026, the Commission rescinded Rule 202.5(e)—the “no-deny,” or “gag,” rule that since 1972 had barred settling parties from publicly denying the Commission’s allegations—and announced that it would not enforce no-deny provisions in existing settlements. *See* Press Release, SEC, *SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions*, No. 2026-45 (May 18, 2026). Chairman Atkins framed the change in free-speech terms. Together, the two changes give settling parties more certainty and control: the waiver reform is a real bargaining improvement, since a party can decline to settle if it cannot secure the collateral relief it needs, while the end of the gag rule is more a matter of optics and post-settlement control—removing the cost of enforced silence and letting a settling party publicly contest the allegations.

Cooperation, Clarified—and the New Director’s Gloss.

The revised Manual consolidates the Division’s cooperation framework, which traces to the Seaboard Report for entities and the 2010 cooperation policy statement for individuals. See Report of Investigation, Exchange Act Release No. 44969 (Oct. 23, 2001); 17 C.F.R. § 202.12. A new section addressing the “Other Benefits of Cooperation” confirms that the Division may recommend reduced civil penalties—or none at all—for meaningful self-reporting, cooperation, and remediation, and a newly formalized Cooperation Committee is charged with keeping such decisions consistent. See Manual §§ 6.2.1, 6.2.5. The framework is not all carrot. Self-reporting credit will "rarely" be available once the conduct has drawn media attention or another regulator's scrutiny; mere compliance with subpoenas earns no credit; and the threshold for a non-prosecution agreement has risen from "limited and appropriate" to "exceptional" circumstances. See Manual §§ 6.1.2, 6.2.4.

New Enforcement Director David Woodcock struck a similar note in his first public remarks, distinguishing honest mistakes from fraud: the Commission, he said, "recognizes the difference between error and fraud" and will calibrate its remedies accordingly, and a company that "self-reports, cooperates fully, and remediates will not be treated the same as one that conceals or obstructs." See David Woodcock, Dir., Div. of Enf't, Remarks at the MFA Legal & Compliance 2026 Conference (May 13, 2026). The implication for counsel at regulated companies is practical and time-sensitive: because both the value of cooperation and the very availability of self-reporting credit fall away once the conduct becomes public or draws another regulator's attention, the premium is on rapid internal escalation and an early, deliberate decision whether to self-report.

A Direction That Has Held.

These changes are institutional and adopted at the Commission level, which is why the leadership turnover that followed has not altered their trajectory. Director Margaret Ryan, who led the drafting, resigned on March 16, 2026, after roughly six months. See Press Release, SEC, *SEC Announces Enforcement Division Director Judge Margaret A. Ryan Has Resigned From Agency*, No. 2026-27 (Mar. 16, 2026). David Woodcock, a former Director of the SEC's Fort Worth Regional Office, succeeded her effective May 4, 2026. *See* Press Release, SEC, *SEC Appoints David Woodcock as Director of the Division of Enforcement*, No. 2026-35 (Apr. 8, 2026). The direction has nonetheless held. The Commission's fiscal year 2025 enforcement results reset the measure of enforcement success toward fraud, investor protection, and individual accountability and away from high-volume, headline-driven actions. *See* Press Release, SEC, *SEC Announces Enforcement Results for Fiscal Year 2025*, No. 2026-34 (Apr. 7, 2026). Director Woodcock has embraced the same "back to basics" approach. See David Woodcock, Dir., Div. of Enf't, Remarks at the MFA Legal & Compliance 2026 Conference (May 13, 2026).

The Division has dismissed inherited matters while directing its resources toward fraud-focused charges. In late March 2026 it voluntarily dismissed cases against five defendants in crypto wash-trading cases filed in 2024. *See, SEC v. CLS Global FZC LLC et al.*, No. 1:24-cv-12590 (D. Mass); *SEC v. Gotbit Consulting LLC et al.*, No. 1:24-cv-12589 (D. Mass); *SEC v. Vy Pham*, No. 1:24-cv-12588 (D. Mass); *SEC v. ZM Quant Investment Ltd. et al.*, No. 1:24-cv-12587 (D. Mass). The SEC also dismissed with prejudice its long-running fraud action against FAT Brands, Inc. and its executives, citing "the evidence developed in discovery." See Litigation Release No. 26510 (Mar. 27, 2026), *SEC v. FAT Brands, Inc.*, No. 2:24-cv-03913-MCS-AGR (C.D. Cal.). At the same time, the Division has directed its fraud resources at conduct that harms investors—for example, charging the founder and former CEO of Drake's Organic Spirits with an alleged offering fraud built on sham round-trip sales that raised roughly $2.4 million from investors. *See SEC v. Anderson*, No. 26-cv-02174 (D. Minn. filed Apr. 7, 2026).

Takeaways.

The throughline of these changes is earlier, more senior, and more transparent engagement before charges are filed. Entities and individuals who anticipate SEC scrutiny should approach the pre-charge phase deliberately—seeking access to the investigative file (where a record of cooperation can help), using the fuller four-week window and the senior-leadership meeting to full advantage, and pursuing settlement and waivers in tandem. The revisions are real improvements, but they come with limits: the Manual is not binding, cooperation credit remains discretionary and unquantified, and the non-prosecution bar is higher. Navigated with those caveats in mind, the new framework offers respondents a genuine opportunity to engage the staff constructively—and to influence outcomes earlier than the prior manual prescribed.

Securities Enforcement Update
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Quinn Emanuel Wins Landmark Serta 'Lender Violence' Trial—and Litigator of the Week—With Big Award for TPG Angelo Gordon, Apollo, Others

Talk about going to the mattresses. Quinn Emanuel has won an epic bankruptcy court victory in the six-year Serta Simmons Bedding battle and was honored as Litigator of the Week for its exceptional work.

Ruling against lenders who participated in a liability management exercise (LME) – a closely watched area of the law – the court on July 7 found total damages to be $261 million, subject to certain downward adjustments, plus pre-judgment interest running from the date of the transaction through the decision date.

Parachuting in just months before the March trial in the Southern District of Texas, the firm put on the enormous team effort that has become its hallmark. The victory for our clients – TPG Angelo Gordon, Apollo, Gamut, Contrarian, and a handful of other lenders – shows why Quinn has become the firm to trust in trying cases about novel restructuring techniques.

To those who work in the financial distress environment, the win is a stunner. This LME was the one that started it all. The decision is by far the most significant trial verdict holding some lenders accountable to others in a "lender-on-lender violence" case.

In recognition of the trial team's achievement, Quinn Emanuel's team were named Litigators of the Week by Law.com.

The downward adjustments to the damages are to remove defendants who recently settled and to account for the actual amount of loans eligible for recovery in the action.

Grappling With the LME

We were challenging the capital structure of a company that had already confirmed its Chapter 11 plan, reorganized, and was out of bankruptcy court. In the end, after five consecutive days of trial and a separate day of closing arguments in March, U.S. Bankruptcy Judge Christopher Lopez handed us the total victory.

The liability management exercise is a stratagem that goes back to the outset of the global pandemic. In June 2020, companies began looking for loopholes in their credit agreements – ways to borrow more money and stave off potential collapse. A laudable goal, but one that is rife with risk for existing lenders.

Mattress maker Serta Simmons, a household name, found itself facing financial distress and sought to raise more money. It conducted a bidding contest between two groups of lenders. Our clients were outbid in the negotiations by the majority par holders of the same debt (Eaton Vance, Invesco, Barings, Nuveen, and 100-plus others), who convinced Serta to take their new money offer in exchange for "uptiering," or elevating the position of their existing loans.

That would mean the new money gets first priority of repayment, this select group of participating lenders would be repaid next, and TPG Angelo Gordon, Apollo, Gamut, Contrarian and the others would be pushed down in the payment waterfall. When Serta emerged from bankruptcy, the participating lenders took the full value of the reorganized company, paying our clients less than one cent on the dollar.

The bankruptcy court's verdict reversed that inequitable outcome, awarding our clients a ratable recovery based on their holdings of the first lien term loan prior to the transaction.

A First-Of-Its-Kind Denial of Class Certification in Enovix's Securities Class Action

On April 21, 2026, Quinn Emanuel secured a decisive victory for battery-maker Enovix Corporation and its officers and directors, defeating class certification in a securities fraud action.

In a carefully reasoned 22-page order, Senior Judge Susan Illston of the U.S. District Court for the Northern District of California denied certification of a proposed class of all purchasers of Enovix common stock over a two-year class period. The precedent-setting decision applied the Supreme Court's 2021 Goldman Sachs decision and found that the sole alleged misstatement remaining in the case had not actually impacted Enovix's stock price. This marks the first denial of class certification based on Goldman in the Ninth Circuit. It is only the third such decision nationwide, out of about 40 analogous efforts to defeat class certification on Goldman grounds.

The dispute centered on factory acceptance testing ("FAT") of equipment from a Chinese supplier, Yinghe, for Enovix's first battery manufacturing line in Fremont, California ("Fab-1"). Plaintiffs alleged that the Yinghe equipment never passed FAT and that Enovix—constrained by COVID-19 travel restrictions—waived FAT requirements before delivery to California, rendering later statements which failed to explain these issues false or misleading. Plaintiffs pointed to three subsequent stock drops on November 1, 2022, January 3, 2023, and October 3, 2023—after which Enovix's market capitalization decreased by approximately $2.25 billion—as purported corrective disclosures revealing the "truth."

Quinn Emanuel replaced prior counsel after Judge Illston permitted three alleged misstatements to survive the pleading stage. Quinn Emanuel soon identified crucial deficiencies in Plaintiffs' theory of falsity for two of those three statements and moved for partial judgment on the pleadings under Rule 12(c). The briefing demonstrated how Plaintiffs had concealed the central problems with their case through cherry-picked quotations and omissions in their pleadings, and why the full context required judgment for Defendants. Judge Illston granted Enovix's motion in its entirety. As noted in analysis by Law360, this victory was one of just four across 18 analogous motions over the past two years.

VICTORIES

Following the 12(c) victory, and with only a single misstatement left, Quinn Emanuel proceeded to oppose class certification. In depositions, Quinn Emanuel secured concessions that a November 7, 2022 press release had revealed the allegedly omitted information, and when it did the stock price rose. Through expert analysis by Professor Chris James, aided by Cornerstone Research, Quinn Emanuel demonstrated that no securities analysts had discussed the alleged misstatement or linked it to the alleged corrective disclosures. Quinn Emanuel also delved deep into the structure of Enovix's novel battery factory to explain to the Court how it operated, and ultimately marshalled all of these points to demonstrate that there was a complete mismatch between the alleged misstatement and the purported corrective disclosures.

Judge Illston agreed. She concluded that Defendants demonstrated that the alleged misstatement had no price impact, and therefore rebutted the Basic presumption of reliance. Without the presumption, each plaintiff would have to prove individual reliance, making class treatment impossible. Though Plaintiffs relied heavily on the Ninth Circuit's September 2025 Zillow decision—its first addressing mismatch under Goldman, in which it endorsed certification —Judge Illston correctly found the case before her was different, as the purported corrective disclosures in Zillow had brought to light the same information alleged to have made Zillow's earlier statements misleading. Judge Illston thus denied class certification in its entirety.

These rare back-to-back victories represent a significant achievement in securities defense litigation. From the outset, Quinn Emanuel progressively narrowed and undermined plaintiffs' case, reducing an action targeting three alleged misstatements and over $2 billion in market losses to a case concerning one alleged misstatement that cannot proceed as a class action.

FIRM HIKE

Quinn Emanuel's Spectacular Hike Started Small, Reflects Culture of Winning With Teams

Quinn Emanuel's intensely team-based approach to business litigation and arbitration is reflected vividly in the annual Firm Hike.

Quinn Emanuel had just a few dozen lawyers in April 1993 when founder John B. Quinn sent a memo, titled Wilderness Adventure Opportunity, inviting them to join him on a hike in southern Utah.

He cited a 19th-century explorer who described the Escalante Canyons as "a maze of cliffs and terraces" and "burning plains barren even of sage – all glowing with bright color and flooded with blazing sunlight." And he told the story of Everett Ruess, a young artist from Los Angeles who in 1934 "went into the slick rock maze of the lower canyons and was never seen again."

In a letter penned shortly before he vanished, Ruess asked, "Do you blame me then for staying here, where I feel that I belong and am one with the world around me?"

What a sell! From its humble beginnings, the firm's annual hike has grown exponentially to a global event. The 32nd outing, which concluded last Saturday night with a celebratory dinner in the French Alps, drew more than 370 attorneys.

Today QE is the global leader in business litigation and arbitration, but the purpose of the unique event hasn't changed: to challenge participants in the most beautiful outdoor locations in the world, building the camaraderie at the heart of the firm's team-based approach to winning at trial.

This year, in Chamonix, the hardy litigators hiked up the mountain as far as 11 miles (18 kilometers), ascending more than 5,400 feet (about 1,650 meters), amid the stunning landscapes of the Mont Blanc massif

Mike Joins the Hike

Global Co-Managing Partner Mike Carlinsky joined for the first time and loved it. He was impressed by the hike itself and the beauty of the region, but also by the bonds formed among partners, associates, and summer associates alike, pointing out how unique it is that QE lawyers are so comfortable with each other no matter their position.

"The stories I've heard in the last few days, just people coming up to me talking about their experiences, whether they were up on the glacier, whether they were up in the hut, whatever it was," Carlinsky told the dinner crowd. "We all love this place, and the last three days, man, does it show."

In a final toast he invoked the late partner Bill Urquhart, who would say, "Cheers to the best people we know – us!"

Partners Tigran Guledjian and Steve Wood, along with associate Evan Larson, plan the hike itself, while Selene Dogan, Global Director of Events and Attorney Programs, does the same for all the critical travel, lodging and dining logistics.

Reflection of Firm's Culture

The event is challenging by design (and this year was paired with an easier route to meet more people's needs). Guledjian says the hike, which is entirely voluntary, is unique in its simplicity and free of the gimmickry of the dreary corporate team-building exercise.

"We all get on a trail and we start walking together," he says. The team building "happens naturally."

The hike reflects the firm's culture of assembling formidable teams of partners and associates who depend vitally on each other to be ready for trial at any time. It works because it's hard, but this year's announcement email also speaks to its great pleasures.

Now "we head to Chamonix and the splendor of the French Alps to hike in the shadows and grandeur of Mont Blanc, the highest mountain in Western Europe," the email read, citing "the experiences you'll have, the friends you'll make, and the memories you'll forever etch into your mind."

Living the Life

For the second year in a row, the attorneys could choose between a day hike and an overnight version. Unlike past hikes, with all the overnighters sleeping in tents, this year's event offered the option of a refugio complete with linen service and fine silverware at dinner, a full bar, comfortable beds and a shower in each room, some of them communal. The party on the outdoor deck rocked past midnight.

We kind of took over the little town, bunking down in eight hotels as if we were in our own summer camp – especially at night, when people went out to watch the World Cup. On the bus ride back to the airport Sunday you could hear people saying they didn't want the weekend to end.

Whichever hike they chose, the lawyers experienced the distinctive culture of Chamonix, eating local fare like fondu and veal escalope. Some also paraglided, rock-climbed, mountain-biked, or river-rafted, and all took gondolas up to the towering peaks, including the world-famous L'Aiguille du Midi tram.

Those activities and amenities provided a nice contrast to the demands of the hike. Still, the whole point of the hike is that those demands are shared.

Who Pitched My Tent?

"When you're out there and you can't lift your legs up, someone takes a load out of your backpack," Guledjian says. If you've got nothing left when you reach camp, you turn around and someone has put up your tent.

"The hike itself is a force of nature – it's a locomotive," he says, recalling John Quinn's perspective that there's nothing like a really hard hike to learn what your colleagues are made of.

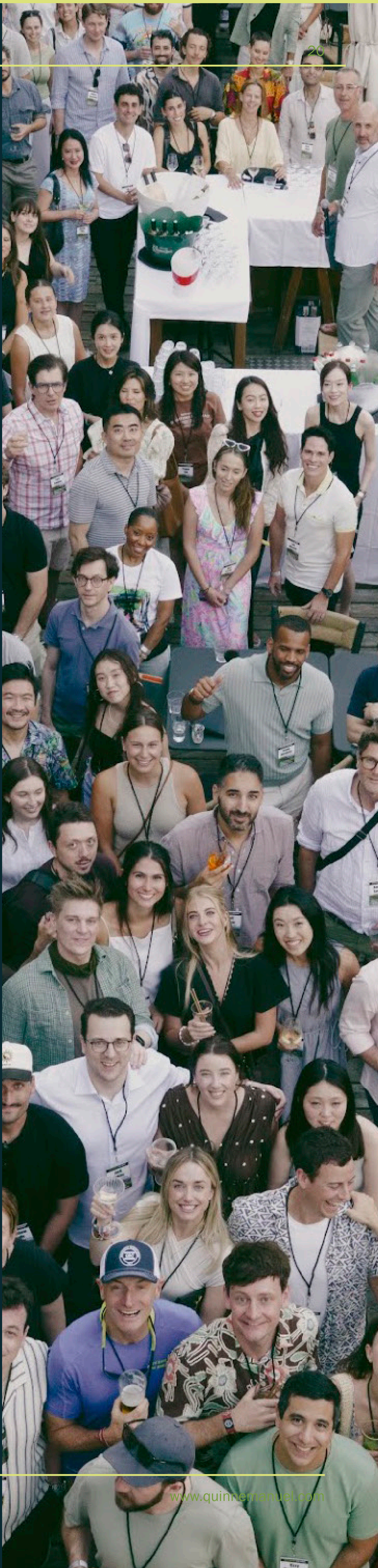
The spectacular event is also a recruiting tool, particularly for the summer associates who join in. Among the thank-you emails Dogan, Wood and Guledjian got after this year's hike was one from a summer who called the beauty of Chamonix and the chance to meet colleagues from around the world "amazing."

If the plan was to convince the summer associates to come back to Quinn Emanuel, he said, "it certainly worked."

Reflecting on that very first invitation more than three decades ago (which Dogan unearthed this week), Quinn recalls that 17 people took him up on the offer, including summer associates.

"We ended up staying an extra day because it took us longer than expected to get out of the canyon, all straggling out after dark," he says. "We had to crash in a flea bag hotel in a village 30 miles down the road from Escalante – a place where Escalante was viewed as 'the big town in these parts.' "

In his 1993 memo John noted that the town is named for the Escalante River – said to be the last one discovered in the continental U.S.



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- We are a business litigation firm of more than 1,100 lawyers — the largest in the world devoted solely to business litigation and arbitration.
- When we represent defendants, our trial experience gets us better settlements or defense verdicts.
- When representing plaintiffs, our lawyers have garnered over US$80 billion in judgments and settlements.

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