

Bloomberg Law**Tivity, Investors Reach Tentative Settlement Over Merger (1)**May 22, 2025, 8:19 AM PDT; Updated: May 22, 2025, 9:15 AM PDT

Tivity Health Inc. has reached a tentative deal to end investors' class claims that it overstated the benefits of its 2019 Nutrisystem Inc. acquisition, the wellness company told a federal court.

The terms weren't available in Judge Waverly D. Crenshaw Jr.'s order on Wednesday canceling a hearing scheduled to take place before a June 9 trial in the US District Court for the Middle District of Tennessee. Attorneys for the parties didn't immediately respond to an emailed request Thursday for information about the agreement.

- The investors allege Tivity misled them after the \$1.3 billion merger about its newly acquired nutrition segment's performance, and omitted an \$8.3 million loss in financial disclosures
- Crenshaw certified a class in 2022 and then re-certified it in 2023 after the US Court of Appeals for the Sixth Circuit asked for more analysis; the appeals court declined to take the issue up a second time
- The judge in April cleared the way for trial, largely denying Tivity's request for summary judgment

Robbins Geller Rudman & Dowd LLP is lead counsel for the class. King & Spalding LLP and Bass, Berry & Sims PLC represent Tivity and former executives.

The case is *Strougo v. Tivity Health, Inc.*, M.D. Tenn., No. 3:20-cv-00165, order canceling pretrial conference 5/21/25 .

(Updates story with additional background beginning in second paragraph.)

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In 1995, Congress passed the Private Securities Litigation Reform Act, or PSLRA. The law was [designed](#) to stem the tide of allegedly frivolous securities lawsuits. Such lawsuits are filed under Rule 10(b) of the Securities Exchange Act of 1934, and generally allege that the plaintiff’s investment holdings were devalued, via a decrease in stock price, by the misstatements or omissions of the defendant corporation. The PSLRA raises the pleading requirements for these lawsuits.

With over 20 years of electronic recordkeeping in the courts, analysis of trends in the way court cases are filed relative to changes in law, economics, and history is now possible. According to Docket Alarm data, lawsuits filed under PACER Nature of Suit code 850 remained relatively steady throughout the 2000s, before increasing heavily starting in 2017, and peaking in 2021.

Litigation Activity

Cases from Jan 1, 2000 to May 21, 2025



New Filing Each Month



Not all cases filed in PACER under code 850 are Rule 10(b) lawsuits. Data from before PSLRA’s enactment is unavailable, as PACER had not been fully adopted at that time.

From data alone, it’s difficult to tell if there was any trigger to the increase in securities litigation that began in 2017. Insurance company Woodruff Sawyer [posited](#) that the changes could be due to trends in filing patterns. Allegations in securities complaints became less focused on accounting over time, perhaps in response to tighter regulations issues after Enron and other corporate accounting scandals.

Economics could also play a factor. The spike in filings in 2021 came in the midst of the economic impact of COVID-19; but also during a period of frequent initial public offerings and the rise of the [SPAC](#).

Top Parties

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NO. OF CASES▼	PARTY TYPE▼
Securities and Exchange Commission 2429	98% Plaintiff
Exchange Commission 1606	100% Defendant
Securities 1451	88% Plaintiff
Citigroup Global Markets 775	92% Defendant
Morgan Stanley 716	98% Defendant
J.P. Morgan Securities 616	96% Defendant
United States Securities and Exchange Commission 582	90% Plaintiff
Goldman Sachs	

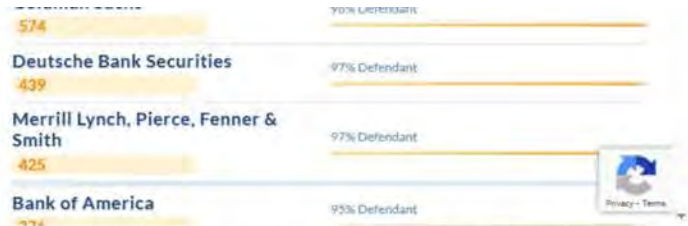
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ANALYTICS



The top parties involved in securities lawsuits – other than the SEC – are financial institutions like Citigroup, JP Morgan Chase, and Morgan Stanley.



The top law firms in securities litigation include Robbins Geller Rudman & Dowd, Pomerantz LLP, and The Rosen Law Firm. Each of these law firms represents both plaintiffs and defendants relatively equally.

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Law Firm Leasing Is Booming, as Volume Doubles Year Over Year

 [law.com/americanlawyer/2025/05/21/law-firm-leasing-is-booming-as-volume-doubles-year-over-year-](https://www.law.com/americanlawyer/2025/05/21/law-firm-leasing-is-booming-as-volume-doubles-year-over-year/)

Brenda Sapino Jeffreys

May 22, 2025

- Law firm leasing activity swelled during Q1 2025 to 3.4 million square feet.
- Two-thirds of the leases were renewals, a significant increase from 2024 and 2023.
- Mayer Brown signed the two largest deals of the quarter.

Law firm leasing boomed during the first quarter of 2025, with double the volume during the same period of 2024, and 68.8% of firms chose to stay in place, a significant increase from recent years, Savills' The Legal Tenant reports in its U.S. Law Firm Activity Report.

Among leases of at least 20,000 square feet, law firm leasing activity grew to 3.4 million square feet during the quarter, far outpacing the 1.7 million square feet of activity during the first quarter of 2024. While slightly trailing Q4 2024's record high of 3.8 million square feet, the surge signals a solid start to the year and "sustained momentum" in the legal sector, according to the report.

The number of leasing transactions was also up by 51.6% year over year.

The strong start to the year follows an active 2024, when leasing totaled 10.2 million square feet, exceeding the previous record of 8.4 million square feet in 2019.

This pace of growth, the report states, "demonstrates that demand remains active across a range of markets and firm sizes" and "reflects firms' continued appetite for office space, driven by high-profile renewals, restructures, and expansions in key markets."

Tom Fulcher, chair of The Legal Tenant practice group at Savills, called the magnitude of leasing during the first quarter of this year "surprising" and "impressive."

"When you look at the top leases as well, a handful in the top 10 were more than 100,000 square feet. It was just a lot of leases, a lot of big leases, that just elevated the numbers," Fulcher said in an interview, noting that firm growth is fueling some of the activity. In a few cases, he said, firms got rid of some space in the wake of the pandemic, and now need it back.

More than two-thirds of firm leases during Q1 were renewals, which reflects a significant shift from 2023 and 2024, when the mix was more evenly balanced between renewals and relocations. Several factors played into the increasing number of renewals—more limited

options for premium space, higher construction costs, and a scarcity of tenant improvement funds—which burnished the renewal option for many firms, Savills said in the report.

Law firms are continuing a trend of signing longer leases, as construction costs rise and tenant allowances decline. Leases are trending longer in markets including Dallas, Los Angeles, New York and San Francisco, while terms are flattening or falling in Houston, Washington, D.C., Boston and Chicago, according to the report.

New York was the most active market during Q1, with 23% of total leasing volume and 17.5% of lease transactions in the U.S. within the report's size range.

Mayer Brown signed the largest law firm lease of the quarter, a 330,662-square-foot renewal and expansion in Manhattan. The second-largest lease of the quarter was also inked by Mayer Brown, with a 271,807-square-foot extension in Chicago.

The others among the top 10, in order, are Duane Morris in Philadelphia; Jackson Walker in Dallas; Kirkland & Ellis in New York; Robbins Geller Rudman & Dowd in San Diego; Nutter, McClennen & Fish in Boston; Morgan, Lewis & Bockius in San Francisco; Marshall Dennehey in Philadelphia; and Freshfields in Washington, D.C.

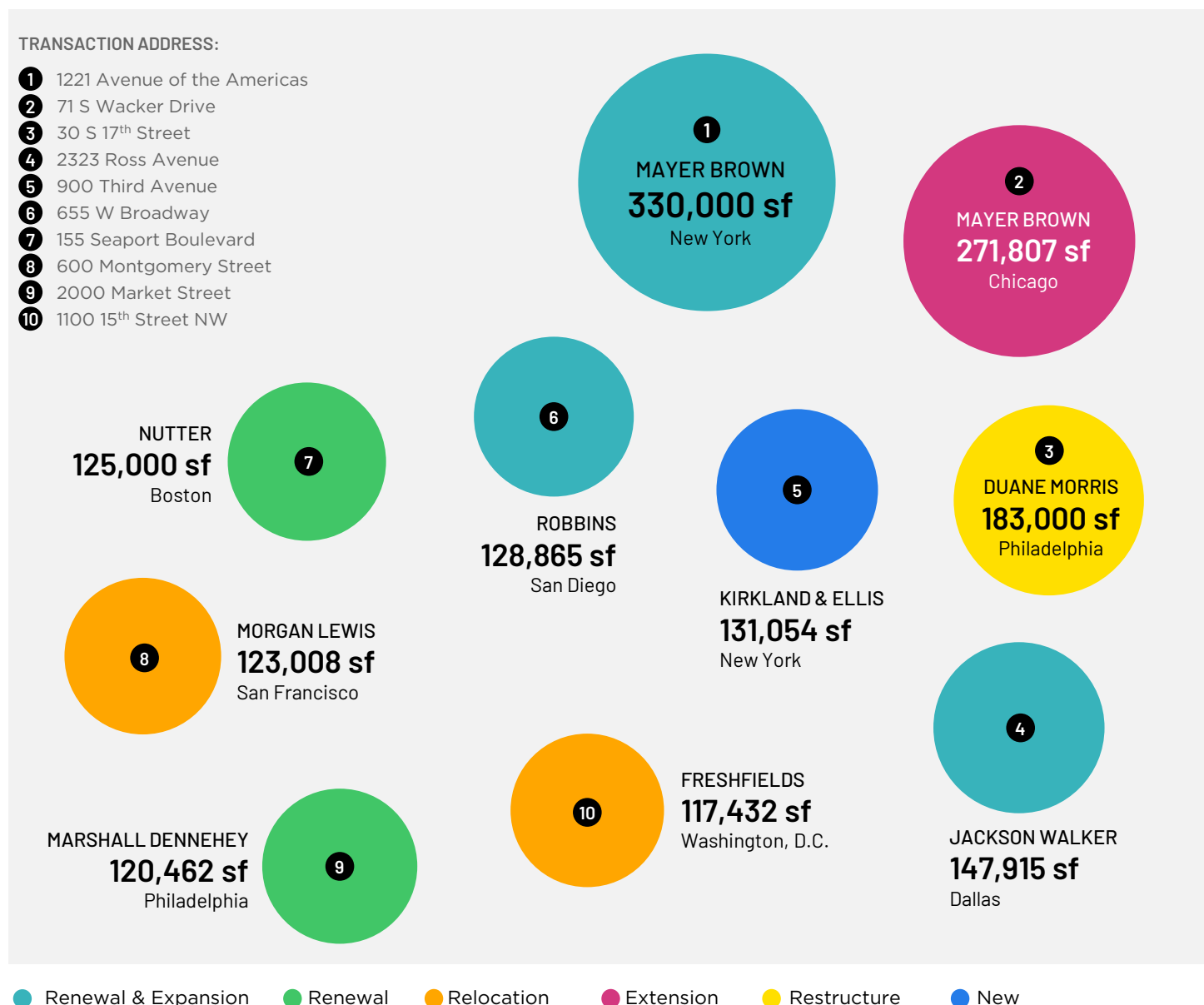
A total of 40.4% of the Q1 leases were for a smaller footprint, and 29.8% were expansions. As a whole, the expansions grew the footprint by 49.3%, and the downsized leases were 28.8% smaller.

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Legal leasing momentum builds in 2025, with lease deals up 51.6% year-over-year after a record 2024

Q1 2025 notable law firm transactions



The top law firm lease of Q1 2025 was Mayer Brown's 330,662-sf renewal and expansion at 1221 Avenue of the Americas in New York, reaffirming its major Manhattan footprint. New York led all markets, accounting for 23% of total legal leasing volume and 17.5% of number of lease transactions nationally.

Legal leasing activity remained strong, with the number of transactions up 51.6% year-over-year and total leased volume more than doubling, rising 100.9% from Q1 2024. This surge reflects firms' continued appetite for office space, driven by high-profile renewals, restructures, and expansions in key markets.

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<https://www.wsj.com/finance/investing/robert-monks-institutional-shareholder-services-27896f90>

MARKETS & FINANCE | INVESTING

Robert Monks, Pioneering Shareholder Activist, Dies at 91

The founder of Institutional Shareholder Services, Monks understood that corralling shareholder power could provide a counterweight to management

By [Chris Kornelis](#) [Follow](#)

May 22, 2025 10:42 am ET



Robert Monks in 2003. PHOTO: GORDON CHIBROSKI/PORTLAND PRESS HERALD/GETTY IMAGES

When Robert Monks finally got a meeting with Sears Chief Executive Edward Brennan, one of Brennan's lieutenants accompanied Monks during the long elevator ride to the CEO's suite on the 68th floor of the Chicago tower bearing the iconic company's name.

It was the early 1990s, and Monks, an outspoken shareholder, was advocating for a laundry list of changes at the struggling retail behemoth—from separating the chairman and chief executive role (both held by Brennan) to selling noncore assets like Discover Financial Services. He also wanted a seat on the board.

As they passed floors 30, 40 and 50, the two men avoided eye contact and stood as far away from each other as possible. Before they exited the elevator, the Sears executive looked at Monks and told him this was the first time bad news had made it past the 67th floor.

“And that’s who Bob Monks was,” said Nell Minow, his longtime business partner, who recounted the story. “Bob was the bad news that went all the way to the top floor.”

Monks, who died April 29 at the age of 91, was a pioneering shareholder activist who advocated tipping the balance of power away from what he considered the monarchies in C-suites to give shareholders more of a voice in how companies are run, as well as who serves on their boards of directors.



Monks at a Sears shareholders meeting in 1991 while campaigning for a seat on the board. PHOTO: MARK ELIAS/ASSOCIATED PRESS

Most notably, Monks founded Institutional Shareholder Services, which advises institutional investors on how to vote their shares. Individually, a pension fund or college endowment might not control enough of a company’s shares to affect change, but voting together on the advice of ISS created a voting bloc that could act as a powerful counterweight to management.

In fact, on the day Monks died, the House Financial Services Committee [held a subcommittee hearing](#) to examine the power wielded by ISS and its largest competitor, Glass Lewis, which dominate their field.

“He created an environment where there was a balance between shareholder power and managerial power, which didn’t exist 30 years ago,” said Charles Elson, retired founding director of the Weinberg Center for Corporate Governance at the University

of Delaware. “That was the era of the imperial CEO, where the shareholders were but parsley on the corporate fish, as were directors, and he changed the world dramatically in that regard.”

Robert Monks, sitting in his mother’s lap in a family photo, grew up in a blue-blooded New England family. PHOTO: MONKS FAMILY

To school in a limo

For a revolutionary character, he wasn’t plucked out of central casting.

Born Robert Augustus Gardner Monks in Boston on Dec. 4, 1933, to a blue-blooded New England family, he carpooled to school in a limousine with members of the Vanderbilt clan, studied (and rowed) at both Harvard and Cambridge, and earned a law degree from Harvard Law School. He practiced law into his early 30s before making his own fortune in the family’s fossil-fuels business, as well as in finance. After two failed runs for Senate as a Republican (there would eventually be a third), he began his pivot toward shareholder activism.

His crusade began in earnest in the early 1980s, when he asked for and received a role in President Ronald Reagan’s Labor Department as the administrator of the pension and welfare-benefits program.

In that capacity, he tried to convince pension-fund managers that they had a fiduciary duty to vote their shares and to do so in the best interest of their beneficiaries—a

position that effectively became Labor Department guidance before the end of the decade. He left the department in 1985, the year he founded ISS.

Standing more than 6½ feet tall and possessing a commanding knowledge of the topic at hand, Monks had to tone things down so as not to overwhelm his audience, Minow said. He also loved a good fight.

Insulated management

After Monks left ISS in 1989 (he later returned as an investor in the company), he founded a number of other companies. He and Minow used their activist LENS Fund to square off against blue-chip brands like Waste Management, [Kodak](#) and [Exxon](#), where “the one consistent factor in all of them,” Minow said, “was this insulated management that didn’t get the bad news.”

With his campaign against Sears in the early '90s, Monks didn’t get the board seat or the split in the chairman and CEO roles, but the company did sell noncore assets, including Discover. Elson, at the University of Delaware, said the campaign also demonstrated the way that an individual shareholder could buck up to the biggest companies.

“And that was the beginning of the activist shareholder movement,” he said, “and it led to the modern-day activist.”

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Videos

Securities Law News

Kronos Bio, Board Sued by Shareholder Over Concentra Buyout Deal

May 21, 2025, 11:00 AM PDT

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [3:25-cv-04322](#) (Bloomberg Law subscription)

Kronos Bio Inc.'s impending sale to Concentra Biosciences LLC was misleadingly contrived to line the pockets of top brass without targeting benefits for investors, a lawsuit seeking to stop the approximately \$35 million deal said.

Kronos' acquisition paperwork misrepresented the sales process plus board and management's conflicts of interest—including large, illiquid amounts of Kronos stock that will be converted into the merger consideration not shared with public shareholders—said the complaint filed in the US District Court for the Northern District of California on Tuesday.

Kronos announced this month Concentra, a biotech buyer, would acquire it for \$0.57 in cash per share of common stock plus one non-tradeable contingent value right. The contingent value right provides Kronos shareholders with additional proceeds depending on various potential outcomes for the sale of the biopharmaceutical company's treatment candidates and other assets.

A wholly-owned subsidiary of Concentra would commence a tender offer May 15 for outstanding shares of Kronos' common stock, the May 1 press release said. The deal's expected to close mid-2025 depending on certain conditions, including there being at least \$40 million in cash at closing, Kronos said. Under the deal, Kronos officers, directors, and affiliates holding about 27% of its stock agreed to tender shares and support the transaction, the company said.

Kronos stockholder Susan Bowen's complaint seeks an injunction enjoining the merger, among other forms of relief. If the transaction goes through, she wants the court to rescind it, set it aside, or award her rescissory damages.

Federal filings for the acquisition didn't adequately disclose Kronos' financial projections or potential partners they were shared with in negotiations, Bowen said. They were "silent as to the nature" of any confidentiality agreement between the biotechnology company and Concentra or how it differed from any other potential partners', she said. And they didn't completely disclose communications about post-acquisition employment, she said.

President and interim CEO Deborah Knobelman has a "golden parachute" severance package to soften the blow of her job being cut in certain circumstances, Bowen said. Knobelman isn't a defendant in her suit.

Struggling Kronos said in November it was cutting its workforce 83% and named Knobelman president and interim CEO. The layoffs were part of a cost reduction strategy as it's board explored potential alternatives for the company.

Brodsky Smith represents Bowen, who's suing Kronos and its board for alleged securities law violations.

Kronos didn't immediately respond to an email seeking comment. Neither did its legal counsel for the deal, Goodwin Procter LLP.

The case is *Bowen v. Kronos Bio, Inc.*, N.D. Cal., No. 3:25-cv-04322, complaint filed 5/20/25 .

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Class Action

NuScale Beats Investor Claims Over Nuclear Projects for Now (1)

May 22, 2025, 6:04AM PDT; Updated: May 22, 2025, 8:19AM PDT

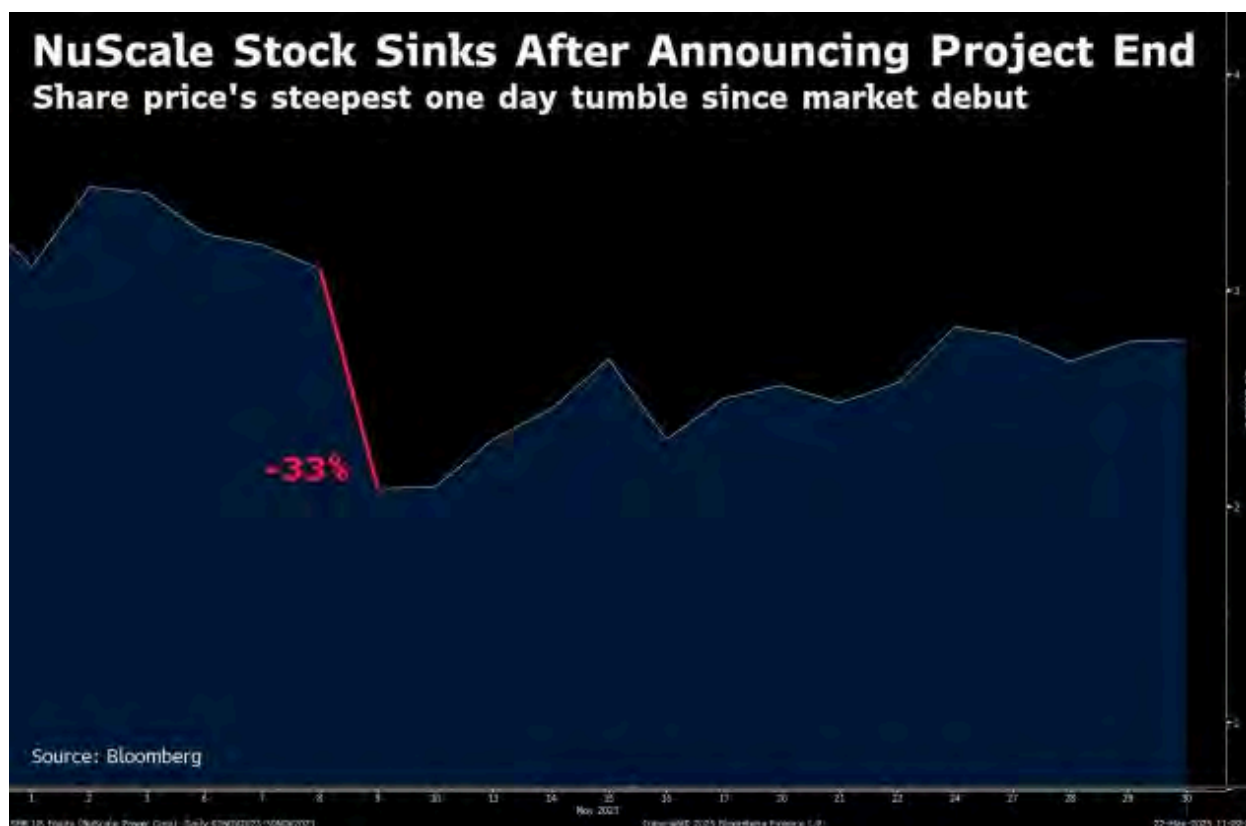
- **Investors didn't sufficiently plead any misleading statements**
- **Judge is letting them refile suit over nuclear plant projects**

NuScale Power Corp. beat allegations that it misled investors over its ability to fulfill a pair of nuclear plant projects before a record 33% stock selloff, a federal judge ruled.

Most of the statements about meeting subscription requirements and other points were inactionable puffery or forward-looking projections, Judge Karin J. Immergut said while tossing consolidated claims in the US District Court for the District of Oregon. The plaintiffs failed to allege precisely when NuScale's top brass learned about its need to raise prices for its Western state project, making it unclear if executives even knew about certain issues when making alleged misstatements, she said in her opinion and order filed on Wednesday.

Risk warnings about potential investigations off short-seller accusations weren't misleadingly presented as a hypothetical, Immergut said. Investors didn't sufficiently allege the Securities and Exchange Commission was investigating NuScale over short-seller claims, she said: The SEC had sent NuScale a voluntary information request in December 2023 about its employment, severance, and confidentiality deals, asking for more information on that in July 2024.

Immergut's letting the investors file a third amended complaint in the suit that alleges NuScale and current and former executives overhyped its ability to meet an 80% subscription level for its contract with Utah Associated Municipal Power Systems and left out details about issues with its second project contract. The company said on Nov. 8, 2023, it agreed to terminate the Utah group's carbon-free power project due to low subscriptions. NuScale's stock price fell nearly 33% the next day—its biggest one-day drop since its 2022 blank-check company merger to go public, according to data compiled by Bloomberg.



The investors—including lead plaintiff Lawrence Lo and named plaintiffs Adam Kay, Keith Irving, and Philip Holland—said NuScale didn’t properly disclose subscribers opting out due to the price hike, the pricing decision, and failure to raise its subscription rate.

The investors’ most recent complaint said NuScale didn’t adequately share Standard Power’s inability to support the company’s second project, which included two plants, among other issues. They pointed to a 2023 short-seller accusations that leadership at Standard Power, which provides data center services for blockchain-mining and computing companies, wasn’t credible.

A different short-seller requested information from the SEC about potential NuScale investigations in 2023, investors said, publishing an agency response regarding its denial in July. Share prices sank 5.7% Aug. 2, the day NuScale said in a federal filing the SEC had asked for information about employment and other details.

The Rosen Law Firm PA is lead counsel for the proposed class, which aims to include those who got NuScale shares from March 15, 2023, through Aug. 2, 2024. Attorneys didn’t immediately respond to an email seeking comment. Schall Law Firm is additional counsel and Ransom, Gilbertson, Martin & Ratliff LLP is liaison counsel.

Stoel Rives LLP, which didn’t immediately respond to an email seeking comment, represents NuScale and current and former executives.

The case is Sigman v. Nuscale Power Corp. , D. Or., No. 3:23-cv-01689, 5/21/25 .

(Updates with case context throughout the story.)

Securities Law News

AbbVie, Allergan Merger Suit Dismissal Upheld By Illinois Court

May 21, 2025, 11:42 AM PDT

- Proposed class suit challenged AbbVie, Allergan merger
- Lower court said US shareholders could attend Irish hearing

An Illinois appellate court on Wednesday affirmed a lower court's decision throwing out a challenge related to AbbVie Inc.'s acquisition of Allergan Plc, finding that an Irish court gave Allergan shareholders sufficient notice of a fairness hearing and they had a right to appear at that hearing through counsel.

Beyond that, the Allergan shareholder who brought the suit "suffered no actual or threatened injury" from the merger, Illinois Appellate Court Justice LeRoy Martin Jr. wrote.

"On the contrary, he gained from AbbVie's actions," Martin wrote, noting that the Allergan share value went up due to the impending acquisition and AbbVie shares subsequently increased. "This is a gain, not a loss."

Stephen Twigg, an Allergan shareholder, filed suit over AbbVie's agreement to acquire Allergan, claiming AbbVie illegally issued him unregistered shares.

Cook County Judge Anna Demacopoulos dismissed the suit in 2022, finding that certain fairness considerations satisfied an exemption to registration requirements.

Justices Bertina Lampkin and Debra Walker concurred.

Nick Larry of Chicago, Hedin Hall LLP, and Andrew Brown of San Diego represent Twigg. Kirkland & Ellis represents AbbVie.

The case is Twigg v. AbbVie, Inc. , Ill. App. Ct., 1st Dist., No. 1-22-1581, 5/21/25 .

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\$17.5M Deal Ending Glassdoor Review Fraud Case Wins Federal Magistrate's Support

 [law.com/therecorder/2025/05/21/175m-deal-ending-glassdoor-review-fraud-case-wins-federal-magistrates-support](https://www.law.com/therecorder/2025/05/21/175m-deal-ending-glassdoor-review-fraud-case-wins-federal-magistrates-support)

Alyssa Aquino

May 21, 2025

The Daniel Patrick Moynihan U.S. Courthouse in the Southern District of New York, at 500 Pearl St. Photo: Ryland West/ALM

The deal was struck more than three years after a Bleichmar Fonti & Auld-represented firefighter pension fund and investor accused TaskUs Inc., its executives and its largest shareholder of violating the Securities Act and the Exchange Act. TaskUs is represented by Simpson Thacher & Bartlett.

Securities Litigation

The original version of this story was published on New York Law Journal

A Manhattan federal magistrate advanced a \$17.5 million settlement that would end shareholder claims that a Facebook content moderator used fake Glassdoor reviews to trick investors into believing that the company was outperforming peers with high employee turnover rates.

U.S. Magistrate Judge Gary Stein of the District Court of the Southern District of New York recommended on Tuesday that a federal judge preliminarily approve the settlement. If approved, the deal would cover investors who purchased stock between June 11, 2021 and Jan. 19, 2022.

The deal was struck in February, three years after a Bleichmar Fonti & Auld-represented firefighter pension fund and investor accused TaskUs Inc., its executives and its largest shareholder of violating the Securities Act and the Exchange Act.

TaskUs is represented by Simpson Thacher & Bartlett in the case, which is captioned *Lozada v. TaskUs* and assigned the case number 1:22-cv-01479.

Counsel for the investors and TaskUs didn't respond to Wednesday's requests for comment.

TaskUs provides staff to third-party businesses, notably Facebook and Doordash, to perform customer support, content moderation and other tasks. With the backing of Blackstone, the company went public in June 2021. Combined with a secondary offering later that year, the company was able to raise over one billion dollars.

In February 2022, Humberto Lozada and Oklahoma Firefighters Pension and Retirement System claimed that TaskUs misled investors on two vital metrics, its Glassdoor rating and its employee attrition rate.

They argued that those metrics were key within the business process outsourcing, or BPO, industry, an “unglamorous” field in which companies provide low-paid employees to perform repetitive, menial tasks like telephone customer support and content moderation. Operating in an industry known for high-attrition rates, TaskUs stood out with its claims of a happy workforce, the investors alleged.

They claimed that TaskUs inflated its rating on Glassdoor.com—a site where employees can anonymously rate their employers—by requiring new hires to submit reviews before beginning their responsibilities. They further alleged that TaskUs misled investors on its general 40% employee attrition rate, by only disclosing that workers employed for over 180 days had a 14.9% attrition rate.

TaskUs fought the complaint, arguing that the investors hadn’t alleged that TaskUs had forced new hires to provide specific reviews or ratings. The company further pointed out that Glassdoor users can see the employment length of anyone who leaves a review. On the attrition rate claims, the company stressed that its metric was correct, arguing that it had no legal obligation to disclose its all-employee attrition rate.

As the case was pending, a separate group of investors, represented by Rigrodsky Law, filed a similar suit. That case was related to the *Lozada* action.

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Simpson Thacher & Bartlett

Latest

Trending

Litigation

Delaware Judge Weighs Sending Corporate Overhaul to Justices (1)

May 22, 2025, 8:47AM PDT; Updated: May 22, 2025, 9:18 AM PDT

- **Lawmaker push for dealmaking safe harbor faces court challenge**
- **Delaware Chancery chief judge says top court should weigh in**

A major corporate law overhaul that bitterly divided Delaware's legal community earlier this year may be on a fast track to the state's top court.

The chief judge of Delaware's elite business court, Chancellor Kathaleen St. J. McCormick, said Thursday that she'd like the Delaware Supreme Court to weigh in on a constitutional challenge to the law, state Senate Bill 21. The legislation, which took effect in late March, replaced many longstanding legal guardrails around insider transactions with a safe harbor for dealmakers.

The safe harbor and another section making the bill retroactive have been targeted in multiple shareholder lawsuits that say they violate several provisions of the state constitution, including a clause prescribing the jurisdiction of Delaware's Chancery Court. McCormick, who's overseeing the first challenge—a case taking aim at Dropbox Inc.'s departure from Delaware—said the state's justices should get the first crack at those legal theories.

But because the company and leaders including founder Andrew Houston have asked McCormick to throw out the case without ruling on the validity of SB21, she invited them Thursday to make their views known. Their responses are due May 29.

The pension fund leading the litigation, the Plumbers & Fitters Local 295 Pension Fund, is represented by Prickett, Jones & Elliott PA and Kessler Topaz Meltzer & Check LLP. Houston, Dropbox, and other members of its board are represented by Wilson Sonsini Goodrich & Rosati PC.

The case is Plumbers & Fitters Local 295 Pension Fund v. Dropbox Inc. , Del. Ch., No. 2025-0354, 5/22/25 .

(Updated with reporting throughout)

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Delaware Supreme Court Allows Law Professors' Amici Briefs Arguing Musk Compensation Decision Should Be Upheld

 [law.com/therecorder/2025/05/20/delaware-supreme-court-allows-law-professors-amici-briefs-arguing-musk-compensation-decision-should-be-upheld](https://www.law.com/therecorder/2025/05/20/delaware-supreme-court-allows-law-professors-amici-briefs-arguing-musk-compensation-decision-should-be-upheld)

Ellen Bardash

May 20, 2025

This article was first published by Delaware Business Court Insider.

The Delaware Supreme Court has agreed to consider two amicus briefs from law professors who argue the court shouldn't overturn the Court of Chancery decision that rescinded Elon Musk's compensation package at Tesla.

The briefs, which the court on Monday entered orders granting leave to file, are two of eight amicus briefs that have been entered in the appeal, which was filed in January and has not yet been scheduled for argument. The other six, approved last month, all support Tesla and Musk, who are asking the Supreme Court to reverse the decision to avoid infringing on shareholders' rights.

In one brief, six corporate law professors argue that reversing the Chancery decision would reopen a door the Supreme Court closed last year in its *In re Match Group* decision, which set a precedent on "cleansing" mechanisms required in conflicted controller transactions. The professors included Anat Alon-Beck of Case Western Reserve University School of Law; James An of Stanford Law; Joan MacLeod Heminway of the University of Tennessee Knoxville College of Law; Katharine Jackson of the University of Cincinnati College of Law; Brian J.M. Quinn of Boston College Law School; and Anne Tucker of Georgia State University College of Law.

"Repeating many of the same arguments that this court already rejected in *Match*, Tesla and its amici say that this case falls in a double-secret exception to *Match* because this case involves executive compensation and the second stockholder vote took place after the Court of Chancery found a fiduciary breach," the brief stated. "These arguments find no support in Delaware law and ignore the central policy at the heart of *Match* and (*Kahn v. M&F Worldwide Corp.*)"

A separate brief from Professor Charles Elson, the founding Director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, said the appeal represents an attempt by Musk to sow uncertainty about the reliability of the Delaware corporate franchise and the state's judiciary.

"Threatening the franchise is not a new strategy," Elson's brief stated. "Disappointed litigants have long used this tactic in hopes of influencing Delaware courts. But what has made Delaware great is the predictability of its law and the expertise and courage of its courts. Accepting Musk's amici's arguments and discarding core precedents to save Musk's pay package would harm that reputation."

Days before the court approved the two most recently filed amicus briefs, the Tesla directors who are appellants in the case filed a reply brief addressing what makes a party a controller under Delaware law and arguing that the Supreme Court should find the business judgment rule applies in the compensation case, allowing the pay package to go forward.

"The control definition adopted by the General Assembly in Senate Bill ('SB') 21 codifies principles that were well-established in Delaware law but misapplied by the Court of Chancery in some cases, including this one," the directors' brief stated. "Under a proper application of Delaware law, Musk was not a controlling stockholder because he did not exercise control over Tesla's corporate affairs—or the specific transaction at issue, even though that would not suffice in any event."

The brief claims the court could instead reverse the case in any of several other ways: finding that the transaction was entirely fair, determining that rescission of Musk's compensation was a remedy that went beyond restoring the parties to where they stood when negotiating the pay package in 2018, or ruling that Tesla shareholders adequately ratified the compensation plan with a vote last summer.

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Nevada Legislature Passes Corporate Law Bill

 [businesslawprofessors.com/2025/05/nevada-legislature-passes-corporate-law-bill](https://www.businesslawprofessors.com/2025/05/nevada-legislature-passes-corporate-law-bill)

Benjamin P. Edwards

May 22, 2025



Earlier tonight, the Nevada Senate voted unanimously to pass AB239, introduced by Nevada Assemblymember Joe Dalia. The legislation was put forward by the Nevada State Bar's Business Law Section. The State Bar's explanatory memorandum summarizes the changes. Although it has not yet been signed by Governor Lombardo, I expect that it's legislation he'll be happy to sign.

I'll cover three changes here: (1) jury-trial waivers; (2) controlling stockholder duties; and (3) merger approvals.

Bench Trial Elections

This is how the Nevada Business Law Section explained the change:

The proposed amendments to NRS 78.046 are designed to address the ability of a corporation to waive jury trials with respect to "internal actions" (as defined by NRS 78.046(4)(c)). In other words, the corporation can essentially require that such actions be heard only before a judge rather than before a jury. **This amendment is aimed at providing additional predictability with respect to the resolution of internal actions, and will also give some comfort to companies considering a move to Nevada, since jury trials are unavailable for cases heard in the Delaware Court of Chancery.**

One of Delaware's advantages has been that Chancery only has bench trials. The possibility for jury trials in other jurisdictions added layers of uncertainty to keep corporations in Delaware. A jury trial shifts how lawyers present a case and adds in possible appeals about jury trial instructions and other jury-related delays. Now, it appears that all three states have converged on permitting bench trials for internal corporate actions.

There are still some differences. Delaware makes bench trials mandatory. Nevada allows corporations to opt-in to bench trials by charter provision. Texas allows jury trial waiver by corporate bylaw. I'm going to need to start making charts to keep track of the differences between the states.

Controlling Stockholder Duties

Duties

The legislation also addresses controlling stockholder duties. The Nevada Business Law Section explains the change as providing:

that the only fiduciary duty owed by a controlling stockholder is to refrain from exerting undue influence over a director or officer with the purpose and proximate effect of inducing a breach of fiduciary duty by said director or officer that (a) results in liability under NRS 78.138 and (b) involves a contract or transaction where the controlling stockholder has a material and nonspeculative financial interest and results in a material, nonspeculative and nonratable financial benefit to the controlling stockholder.

Cleansing

The changes allow for disinterested directors to approve a transaction with a controlling stockholder, granting a presumption that there was no breach of fiduciary duty.

The proposed amendment further provides **the presumption that there is no breach of fiduciary duty by a controlling stockholder if** the underlying contract or transaction has been **approved by** either (1) a committee of only **disinterested directors** or (2) the **board of directors in reliance upon the recommendation of a committee of *only* disinterested directors.**

Liability

The legislation also gives controlling stockholders protection similar to the Nevada business judgment rule for officers and directors. It also notes that Nevada aims to “maintain Nevada’s competitive advantage as a leader in stable, predictable and common-sense corporate law.”

Lastly, the proposed amendment provides that a stockholder is not individually liable to the corporation or its stockholders or creditors unless: (1) the stockholder is a controlling stockholder; (2) above-reference presumption has been rebutted; and (3) **the controlling stockholder has been found to have breached its fiduciary duty. This approach is structurally and conceptually comparable to the approach taken with respect to corporate directors and officers under NRS 78.138(7).** The amendments to 78.240 are especially important in light of the Delaware Legislature’s recent push to codify in this area, and will help maintain Nevada’s competitive advantage as a leader in stable, predictable and common-sense corporate law.

Merger Approvals

In response to *Activision Blizzard*, Nevada now joins Delaware in making clear that boards do not need to approve the “final” documents. The Delaware amendments authorize boards to approve documents “in final form or substantially final form.” To avoid litigating over what is “substantially final,” the Nevada legislation allows boards to use their business judgment to decide what is substantial enough.

There is more to cover here and I’ll be busy updating the Nevada treatise after this.

Securities Law News

TIAA Sued Over Retirement Plans' In-House Fund Share Classes (1)

May 20, 2025, 12:12 PM PDT; Updated: May 21, 2025, 7:59 AM PDT

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-04228](#) (Bloomberg Law subscription)

Teachers Insurance & Annuity Association of America mismanages its employees' retirement plans by filling them with expensive, in-house investment options, a plan participant alleged Tuesday in a proposed class complaint.

TIAA's retirement plans offer the company's proprietary, in-house managed funds in high-cost share classes, despite the ready availability of cheaper versions of the same investments, according to the lawsuit. This "unnecessary waste of assets" forces the plans to pay millions of dollars in unnecessary fees that ultimately benefit the company at the expense of workers' retirement savings, plaintiff Brian Byrne said in a complaint filed in the US District Court for the Southern District of New York.

Byrne, who seeks to represent a class of thousands of people covered by two TIAA retirement plans, also takes aim at the company's decision to offer workers a proprietary, large-cap growth fund. This fund has underperformed its stated benchmark by more than 186% since 2009 and should have been removed as an investment option, Byrne claims.

"Acting in their self-interest, rather than the best interests of the Plans and their participants and beneficiaries, the TIAA Defendants retained a poorly performing investment option that benefited TIAA, rather than the Plans, despite the availability of superior—and readily available—investment alternatives as detailed in this Complaint," Byrne said in the lawsuit. "A loyal fiduciary, in possession of the same investment performance information, would have removed the Growth Fund as an investment option in the Plans and replaced them with a more prudent alternative."

Byrne brings claims for breach of fiduciary duty under the Employee Retirement Income Security Act and violations of the statute's prohibited transaction rules, which are aimed at putting guardrails on arrangements between benefit plans and interested parties. His lawsuit comes one month after the US Supreme Court took a broad, employee-friendly view of prohibited transactions under ERISA.

"TIAA believes the lawsuit is without merit," a company spokesperson said in an emailed statement. "The company provides its employees and participants with quality products and services that deliver strong long-term performance at reasonable costs. Our mission remains focused on helping those we serve, including our own employees, achieve a financially secure retirement."

Sanford Heisler Sharp McKnight LLP represents Byrne.

The case is Byrne v. Teachers Ins. & Annuity Ass'n of Am. , S.D.N.Y., No. 1:25-cv-04228, complaint 5/20/25 .

(Updates May 20 story with company's statement in sixth paragraph.)

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2024 produced record number of 'thermonuclear verdicts,' report finds; what is impact of younger jurors?

 [abajournal.com/news/article/2024-produced-a-record-number-of-thermonuclear-verdicts-report-finds-what-is-impact-of-younger-jurors](https://www.abajournal.com/news/article/2024-produced-a-record-number-of-thermonuclear-verdicts-report-finds-what-is-impact-of-younger-jurors)

Debra Cassens Weiss

Verdicts & Settlements

May 22, 2025, 12:11 pm CDT

A record number of eight- and nine-figure jury verdicts are evidence of an “indisputable trend,” according to the CEO of a communications and research company that compiled the figures. (Image from Shutterstock)

A record number of eight- and nine-figure jury verdicts are evidence of an “indisputable trend,” according to the CEO of a communications and research company that compiled the figures.

“Civil court juries want to punish companies like never before,” said Phil Singer, the CEO and founder of Marathon Strategies, in a May 20 press release. “Supersized jury verdicts are being issued at greater scales, in more places across the country, and against a wider breadth of industries than we’ve ever encountered in our research.”

Marathon Strategies’ report found that 135 lawsuits against corporate defendants resulted in jury awards of \$10 million or more—the largest number of “nuclear verdicts” in a year since the company began compiling civil jury awards in 2009.

Marathon Strategies also identified 49 suits that produced verdicts of more than \$100 million last year—a record number of “thermonuclear verdicts.” Five of those cases involved verdicts greater than \$1 billion last year.

Big verdicts were most often issued in products liability and intellectual property cases.

“While many factors have influenced this growth,” Marathon Strategies said in its report, “Marathon’s research identified corporate mistrust, social pessimism, erosion of tort reform and public desensitization to large numbers as among the most important.”

The research also showed that an influx of millennial and Generation Z jurors could be affecting verdicts. According to Marathon Strategies, studies show that millennials are generally more pro-plaintiff than the prior generation and less trusting of corporations.

The report identified new areas of legal risk as forever chemicals, obesity, algorithmic liability, cryptocurrency and cybersecurity.

Marathon Strategies compiled jury verdict data from state and federal court records, media reports and other records. Sources included the National Law Journal's VerdictSearch and LexisNexis' Jury Verdicts & Settlements database.

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Next up for the FDA, and probably class action lawyers: Talc in food and pills



legalnewsline.com/stories/671611923-next-up-for-the-fda-and-probably-class-action-lawyers-talc-in-food-and-pills

John O'Brien

May 20, 2025

Federal Government

FDA commissioner Martin Makary and deputy commissioner Sara Brenner | YouTube

WASHINGTON - New leaders at the Food and Drug Administration are sounding the alarm on talc, which could lead to lawsuits against the makers of candy, gum and pharmaceuticals, among other widely used products.

Current litigation over talc claims it contains asbestos that caused cancers in people who used products like talcum powder. Tens of thousands of ovarian cancer lawsuits against Johnson & Johnson are pending in a New Jersey federal court.

But during a May 20 hearing, President Trump's head of the FDA, Martin Makary, and a panel of researchers discussed the possible dangers of ingesting talc. The naturally occurring mineral is used to help the body receive swallowed medication and sometimes as a filler in capsules to increase their weight.

It also coats candy and rice, the panel noted, and is used during surgical procedures as an inflammatory agent.

"Scientists for a long time have been pointing to an urgent problem and that is the potential carcinogenic activity of talc," Makary said. "Talc has increasingly been recognized to have health concerns beyond just cancer but also with inflammation."

Studies were thrown about during the two-hour discussion, with none of the panelists defending the use of talc in these products. Instead, research is needed and substitutes for talc, like magnesium stearate, should be used, they concluded.

Previous *Legal Newsline* coverage has addressed the impact former trial lawyer Robert F. Kennedy Jr.'s position as head of the Department of Health and Human Services will have on litigation.

Action from the FDA on talc ingestion would certainly create a race to the courthouse for plaintiffs lawyers who wouldn't have to find physically injured clients. Instead, they could file class actions that said consumers wouldn't have paid as much for gum or cheese or pills coated in talc had they known about its alleged dangers.

The FDA brought together a panel of "top scientific experts," with Nicolas Wentzensen of the National Institutes of Health declaring, "There's a lot more that we don't know about talc than we know about talc."

His colleague at the NIH, Nicole Kleinstreuer, announced she wouldn't let her child participate in a talc study no matter the amount of candy that would be given to him.

"(F)irst of all not ethical, and second of all, it's just not needed based on the existing body of evidence and the availability of safer alternatives," she said.

Several of the panelists have had their previous research on talc cited by plaintiff lawyers pushing the idea it contains asbestos and causes cancer. J&J has said the talc used for its Baby Powder didn't contain asbestos, and Erik Haas, the worldwide vice president of litigation for J&J, told *Legal Newsline* the roundtable featured "cherry-picked plaintiff lawyer witnesses, prohibited questions from the audience and included no discussion on gold standard scientific epidemiology studies that establish that talc does not cause cancer."

J&J says the panel mainly relied on findings from the International Agency for Research on Cancer, which kickstarted litigation over the weedkiller Roundup. Those findings were just a review of existing studies that showed a "weak association" between talc and ovarian cancer.

"In fact, there was uniform acknowledgement by the panelists at today's roundtable that there was no evidence of any causal link between talc and cancer," Haas added. "We remain confident that a rigorous review of the best science will result in the same conclusion that health authorities around the world have reached for decades: that talc is safe and does not cause cancer."

One panelist, John Joseph Godleski, is the subject of a disqualification motion by J&J in the ovarian cancer MDL. He says he identified talc in tissue samples taken from five of six bellwether plaintiffs.

That ratio demonstrates a causal link between talc exposure and ovarian cancer, he says. J&J says his opinions are inadmissible, writing in a July 2024 motion to exclude them that they are "highly speculative, unscientific and unreliable."

"This is all the more true because Dr. Godleski ignores the foreign materials he identified in each plaintiff's tissue samples and fails to consider whether those materials could have caused each plaintiff's cancer," attorneys for the company wrote.

Godleski looked at particles from the women that had magnesium and silicon in the accepted proportions for talc. He looked for particles that exhibited birefringence, like talc does, but conceded in a deposition "lots of particles are birefringent."

Plaintiff lawyers said J&J is "desperate" to get Godleski's opinions excluded.

Other plaintiff lawyers have recently jumped on FDA action against fluoride that is ingested from children's toothpaste and mouth rinse. Makary says fluoride, which Kennedy has called "industrial waste," can kill intestinal bacteria important for a child's health.

Lawyers didn't wait until Makary's goal date of Oct. 31 for a complete safety review. The FDA announced its plans to phase out fluoride in children's oral care products on May 13, and by May 15, at least one class action had already been filed.

"The reality is that fluoride mouthrinse is considered by the U.S. Food and Drug Administration to be too dangerous for children under 6 to use," attorneys at Siri & Glimstad wrote in a proposed class action against Colgate-Palmolive filed in Chicago federal court.

The lawsuit cited the FDA's May 13 press release and quoted Makary. Because they are flavored, the products are "candy-like" drugs, it adds.

The lawsuit seeks a return of money spent on toothpaste and mouthrinse. "Plaintiff and the putative class do not seek recovery for any personal injuries," it says.

Another recent model of the announce-then-sue strategy is phenylephrine, a vasoconstrictor once commonly used in over-the-counter cold medicines. A few days after an FDA advisory panel declared oral phenylephrine ineffective in September 2023, the first class action hit federal court in Pensacola, Fla.

By December, there were more than 70 economic damages suits against everyone from Johnson & Johnson to Family Dollar stores. They didn't claim anyone was injured by the drug, just that they paid too much.

Lawyers struck out with phenylephrine after a judge dismissed all the claims in November 2024, but that's unusual. Typically, when faced with scores of lawsuits and potentially ruinous damages, companies settle and plaintiff lawyers collect a quarter or more of the money as fees.

ORGANIZATIONS IN THIS STORY

Food And Drug Administration

Oregon Jury Awards \$35M to 10 Wildfire Victims

 [law.com/2025/05/21/oregon-jury-awards-35m-to-10-wildfire-victims](https://www.law.com/2025/05/21/oregon-jury-awards-35m-to-10-wildfire-victims)

Amanda Bronstad

May 22, 2025



- In total, juries have awarded more than \$265 million to 69 plaintiffs.
- All the trials have involved multiple residents or businesses with property damages, and are part of a lawsuit with 5,000 class members.
- Plaintiffs lawyers have asked a judge in Multnomah County Circuit Court to schedule up to five wildfire trials a month for 2026.

An Oregon jury awarded more than \$35.5 million to 10 people who sued over wildfires that ravaged the state in 2020.

Wednesday's verdict, which includes \$5.3 million in economic damages and \$30.2 million in non-economic damages, is the seventh to hit Pacific Power parent company PacifiCorp over the wildfires, for which it was found liable in 2023. All the trials have involved multiple residents or businesses with property damages, and are part of a lawsuit with 5,000 class members. In total, juries have awarded more than \$265 million to 69 plaintiffs.

"When juries hear what PacifiCorp's fires have done to people – destroying their homes, displacing them for months or years, saddling them with trauma – they return verdicts that provide justice," Matthew Pruesch, a partner in Santa Barbara, California, at Seattle's Keller Rohrback, said in a statement on Wednesday. "It is past time for PacifiCorp to step up and make all survivors whole."

Pruesch represented the 10 plaintiffs along with Chicago-based Edelson and Seattle's Stoll Berne. Some of the plaintiffs lost their homes and had been displaced for years.

PacifiCorp, which is part of Berkshire Hathaway, was represented by Hueston Hennigan, based in Newport Beach, California.

'Survivors Of Those Fires Need Relief Now'

The verdict comes as more lawyers are suing over devastating wildfires, which have cost utilities, such as Hawaiian Electric, Pacific Gas and Electric and Southern California Edison, billions of dollars in settlements. In Oregon, PacifiCorp, which reached a \$178 million settlement last year with other law firms representing wildfire victims, faces at least five more trials this year.

The first jury, in 2023, found PacifiCorp liable for the wildfires and assessed a multiplier that adds 25% in punitive damages to future verdicts for class members. Under Oregon law, class members also are entitled to double their economic damages.

That means Wednesday's verdict could grow to about \$50 million, according to Edelson, and the total value of wildfire verdicts against PacifiCorp could reach \$385 million.



Multnomah County Circuit Court Judge
Steffan Alexander. Courtesy photo

Plaintiffs' lawyers have asked Multnomah County Circuit Judge Steffan Alexander to schedule "back-to-back trials of up to five per month" in 2026.

"It will soon be five years since the Labor Day fires for which an Oregon jury has found PacifiCorp liable," they wrote in an April 25 motion. "Survivors of those fires need relief now. Many remain displaced, many are elderly or infirm, many have been unable to rebuild their homes, and a growing number have passed away since the fires."

The judge hasn't ruled yet.

In a statement, PacifiCorp said the proposed trial plan "risks significant legal prejudice to PacifiCorp."

"Proceeding with dozens of damages trials in a compressed and unprecedented schedule while PacifiCorp's appeal is pending raises serious due process concerns and departs from established legal norms," the statement says. "Moreover, the plan proceeds despite a conclusive report from the Oregon Department of Forestry finding that power lines did not cause the Santiam Canyon fire, which affects the majority of plaintiffs in the class being scheduled for trial. PacifiCorp is evaluating all available legal options in response to the ruling."

Edelson partner Nicholas Rosinia said, “We are looking forward to bringing these cases to trial at any pace the court sets. Month after month, juries have been consistent and clear: PacifiCorp must answer for the devastation it caused.”

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Coinbase faces lawsuits over \$400M data breach, foreign workers blamed

DJ [dailyjournal.com/articles/385589-coinbase-faces-lawsuits-over-400m-data-breach-foreign-workers-blamed](https://www.dailyjournal.com/articles/385589-coinbase-faces-lawsuits-over-400m-data-breach-foreign-workers-blamed)

May 22, 2025

Coinbase faces class actions after cybercriminals, bribing employees, accessed customer data, leading to a \$20M ransom demand and up to \$400M in damages, with SSNs stolen, prompting fraud concerns.

Cybercriminals gained access to customers' accounts by paying Coinbase employees directly, the latest putative class action against over a data breach at the company claims.

The hacking breach resulted in a \$20 million ransom demand and the estimated economic impact could be up to \$400 million, according to the complaint.

In a May 15 video, Coinbase CEO Brian Armstrong confirmed overseas employees were responsible for the breach but claimed they only had "limited access to customer information."

Armstrong said, "Customer support agents do have access to personal information like name, date of birth, address, et cetera. Unfortunately, they were able to find a few bad apples. Our system was designed to mitigate the impact of something like this. Less than 1% of our monthly transacting users had their records accessed. This is still unacceptable." Coinbase has yet to disclose the exact number of users affected.

Filed Monday in federal court in San Francisco, the case is one of six lawsuits filed in the last week by users claiming their Social Security numbers and other information were stolen. Some claim they were tricked into handing over cryptocurrency to hackers. *McGuire v. Coinbase Inc. et al.*, 3:25-cv-04299 (N. D. Cal. filed May 19, 2025).

Coinbase's media relations office declined to comment on Wednesday. The company is offering to reimburse customers tricked into handing over crypto currency to the criminals. Coinbase refused to pay the ransom and instead offered a \$20 million reward for information leading to arrests.

Tina Wolfson, a founding member of Ahdoot & Wolfson PC in Burbank, argued in the complaint that Coinbase's security "did not meet industry standards."

"Given the highly sensitive nature of SSNs, theft of SSNs in combination with other personally identifying information is akin to having a master key to the gates of fraudulent activity," the complaint stated.

The following plaintiffs' attorneys could not be reached for comment Wednesday: Robert Ahdoot, and Theodore Walter Maya of Adhoot & Wolfson; Jonathan S. Mann and Gary M. Klinger of Pittman, Dutton, Hellums, Bradley & Mann P.C. in Birmingham, Alabama.

The other cases are: *Shakib v. Coinbase, Inc. et al.*, 3:25-cv-04207 (N.D. Cal. filed May 18, 2025); *Squeo et al. v. Coinbase, Inc. et al.*, 3:25-cv-04254 (N.D. Cal. filed May 16, 2025); *Neu et al. v. Coinbase, Inc. et al.*, 4:25-cv-04243 (N.D. Cal. filed May 16, 2025); *Ortiz v. Coinbase, Inc. et al.*, 3:25-cv-04235 (N.D. Cal. filed May 16, 2025); *Balian v. Coinbase, Inc. et al.*, 3:25-cv-04171 (N.D. Cal. filed May 15, 2025).

#385589

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Class Action

Judge OKs USAA's \$3.25 Million Settlement in Data Breach Suit

May 21, 2025, 4:15 PM PDT

United Services Automobile Association, better known as the insurer USAA, got the final green light from a federal judge on a \$3.25 million settlement resolving a lawsuit from a class of policy holders impacted by a data breach.

Judge Vincent L. Briccetti gave the settlement agreement final approval on Wednesday, ruling due and adequate notice had been given to the more than 22,000 policy holders who sued, according to a final order and judgment in the US District Court for the Southern District of New York. Briccetti also certified the proposed class for settlement purposes only.

- The class members will be eligible for an equal share of the settlement fund, resulting in a gross recovery of \$143 for each member, or 5.74% of the maximum statutory damages
- Briccetti also signed off on \$1.08 million in attorneys' fees, about \$25,000 in litigation expenses, and a \$10,000 service award for lead plaintiff Vincent Dolan, the motion said
- Dolan sued USAA in 2021, alleging it negligently disclosed the class members' driver's license numbers to cybercriminals. The criminals allegedly used the information to file fraudulent unemployment claims, among other things

Lowey Dannenberg PC, Gainey McKenna & Egleston, and Lynch Carpenter LLP represent Dolan and the class. Hunton Andrews Kurth LLP represents USAA.

The case is Dolan v. United Servs. Auto. Ass'n , S.D.N.Y., No. 7:21-cv-05813, final order and judgment 5/21/25 .

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CFO JOURNAL

Radical Market Swings Leave Some in the Pension Crowd on Edge

Pension plans heavily invested in volatile stocks are watching recent market swings closely

By [Jennifer Williams](#) [Follow](#)

May 20, 2025 6:00 am ET



Plans for S&P 500 companies lost nearly \$74 billion in value in the days after President Trump's 'Liberation Day' tariffs were announced. PHOTO: SPENCER PLATT/GETTY IMAGES

Corporate pension funds are feeling the heat after the fits and starts of the Trump administration's tariff policies sparked [radical market swings](#), including some of the [biggest one-day moves](#) of the past decade.

Plans for S&P 500 companies lost nearly \$74 billion in value in the days after President Trump's "Liberation Day" tariffs were announced and funded status dipped below 100% in March for the first time since last September, staying there until early this month, according to professional services firm [Aon](#). Stocks have since [recovered](#) with the surprise agreement between the U.S. and China to unwind certain tariffs, but [uncertainties remain](#) about when and where markets will settle.

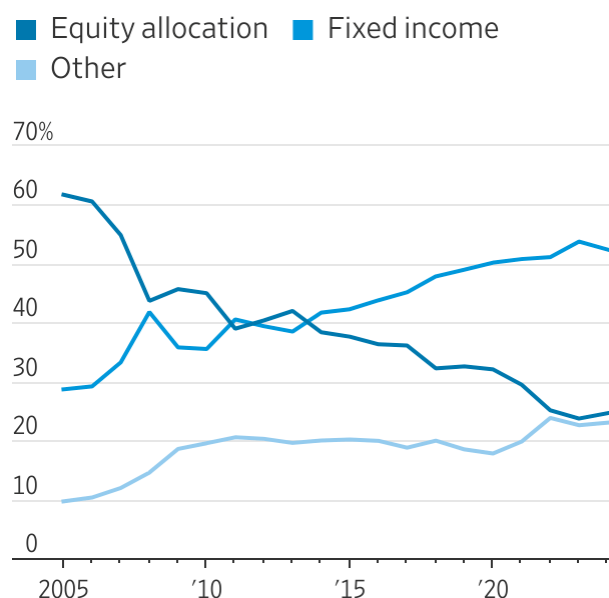
“They’re all trying to figure out what the impact to them is,” said Matt McDaniel, a partner in consulting firm Mercer’s wealth practice, of the dozens of corporate pension managers he’s heard from since stocks started gyrating last month. For those pensions that have a less volatile investment strategy, plan managers have been surprised to learn their pensions are mostly unscathed, he said. “Whereas others with different investment strategies are having a more painful experience.”

The “others” are pension plans that have kept assets in volatile investments versus fixed-income investments. For this group, it has been a taxing several weeks assessing the duration and effect of the volatility on their pensions, with some considering changing or pausing strategies to reduce risk, pension advisers say.

While big companies have mostly switched new hires to 401(k)-style retirement options in recent years, corporate pension plans for U.S. companies still cover around 18 million people and \$2.1 trillion in assets, according to Aon.

Stock Dive

Pension investment in equities has dropped among the Milliman 100



Source: Milliman

Some of those corporate pensions continue to have “high exposure” to riskier assets, which pension advisers define as around 40% or more of assets invested in equities. Sixteen companies from consulting firm Milliman’s index of the 100 largest pension plans sponsored by U.S. public companies fall within that range. Among them are [Johnson & Johnson](#), Merck, [Abbott Laboratories](#) and [Berkshire Hathaway](#), all of which are fully funded, meaning they have enough assets to cover liabilities, according to Milliman. [Philip Morris International](#) and gas and electric utility company [Public Service Enterprise Group](#) have more than 50%

in equities and are less than 100% funded on their global pension liabilities, according to Milliman’s review of companies’ latest annual filings.

Philip Morris’s international pensions, which accounted for over 90% of the plan’s total assets as of the end of 2024, meet local statutory funding requirements, a company spokesman said.

Pensions with significant exposure to riskier investments are particularly concerned if they aren't fully funded, said William Strange, a principal at consulting firm Milliman. "Companies with high equities exposure that are fully funded or over funded have a buffer, and so are less impacted and potentially less concerned about recent market volatility," he said.

Companies with pension plans have spent the last several years [cutting the associated pension risks](#), by [transferring them](#) off their balance sheets, for one. Some have also moved away from riskier investments in favor of more stable fixed-income investments. Roughly 25% of pension assets were in equities last year, according to Milliman. That is down from around 38% a decade ago.

Electric utility [Entergy](#) slashed its equities exposure for 2024 by around 15% compared with a year earlier. The company has worked for over a decade to reduce its pension-related risks, said Finance Chief Kimberly Fontan. That includes closing it to new participants in 2014, lifting out around \$1.2 billion in assets last year and shifting investments as the pension's funded status rose. Around 36% of Entergy's pension assets were in equities last year compared with just over 50% a year earlier.

Fontan may further decrease equity investments as the plan's funded status, which last year was at around 96%, increases. But, she said she isn't planning to make investment changes because of the market swings. "When you're in market volatility, you don't want to make drastic moves because it's going to swing one way and then swing the other," she said. "We're at a good place with where we are in the funded status, but obviously if we see a significant shift there, we can make tweaks in the equity allocation."

Plan sponsors are watching recent market turbulence and asking whether their risk exposure makes sense, pension advisers said. Some will keep higher exposure, particularly those that are funded below 100%. They want to make up the funding gap without having to throw in cash, advisers said. So, they look to the markets to do the work by leaning in on equity investments, for example, to outperform other assets such as bonds. Some are considering transferring their liabilities off the balance sheet, an [increasingly appealing option](#) in recent years with plans more than fully funded. Meanwhile, others are putting derisking plans on hold, waiting for calmer markets.

"More often than not, it leads to changing something," Mercer's McDaniel said of the conversations he's having with pension plan sponsors. But it tends to be smaller shifts done over time, he said. "It's usually not a wholesale change where you're going to

say, ‘Let’s open the floodgates and throw risk back on’ or ‘Let’s exit the equity market entirely and only invest in fixed-income for the rest of our lives.’ It’s usually more of an iterative process.”

Write to Jennifer Williams at jennifer.williams@wsj.com

Appeared in the May 21, 2025, print edition as ‘Radical Swings in Market Mean Pressure for Pensions’.

Gen Z Is Not Afraid to Change the Legal Workforce With Gen AI

 [law.com/thelegalintelligencer/2025/05/22/gen-z-is-not-afraid-to-change-the-legal-workforce-with-gen-ai/](https://www.law.com/thelegalintelligencer/2025/05/22/gen-z-is-not-afraid-to-change-the-legal-workforce-with-gen-ai/)

Maria Sevlievskia

May 22, 2025



Maria Sevlievskia, senior legal specialist at Robin AI. Courtesy photo

Expert Opinion

Generative AI is already having an influence over the way law firms and in-house legal teams operate, and my generation—keen to not fall behind—are ready to fully integrate it into our day-to-day.

4 minute read

Young Professionals

Gen Z is entering the workforce and, as the most technologically literate generation, we have some opinions about what the tech stack we're working with should look like. If it doesn't match our criteria, why wouldn't we seek out workplaces with more modern set-ups? Generative AI is already having an influence over the way law firms and in-house legal teams operate, and my generation—keen to not fall behind—are ready to fully integrate it into our day-to-day. In fact, I imagine that the top law firms of the future will feel very much like the social media platforms Gen Z thrive on—customizable, tech-led, and tailored to what suits us.

We expect a revolution. Traditional law firms may have plenty of people still willing to toil through long billable hours caused by manual reviews and archaic software that turns basic tasks into time sinks, but that doesn't align with how Gen Z wants to work. According to a 2024 Deloitte survey, 64% of Gen Z respondents consider work-life balance a top priority when choosing an employer. Simultaneously, data from LexisNexis found that the number of legal professionals using generative AI more than doubled between July 2023 and January 2024. That means many of the best legal minds will look elsewhere for careers or lateral to firms with modern tools. Tech-driven change is fast approaching, and to no surprise, it's driven by young lawyers.

Time-consuming tasks like standardized contract reviews leave little room for creativity and deep thinking. Using Microsoft Word to manually edit contracts makes about as much sense to Gen Z as relying on a landline instead of a smartphone. AI tools can help prevent burnout and fuel more fulfilling legal careers. Young lawyers want to adopt technology that will make us better and faster at our jobs and legal teams need to follow suit to remain competitive and attract top-tier talent.

More importantly, as AI companies like OpenAI and Anthropic continue to release new models, we foresee an imminent future where advanced AI reaches artificial general intelligence (AGI), proving itself capable of autonomous action and decision making. AGI promises to transcend limited human cognition and process mountains of data at digital speeds. In that context, having humans manually grind through standardized legal work feels like a missed opportunity.

Our goal in pushing for AI adoption is to achieve efficiency (and work-life balance) and to bring more flexibility, trust, and independence to the legal profession. By letting AI do the grunt work typically pushed onto junior lawyers, there's potential for a more merit-based system with less hierarchy. We want technology that empowers young lawyers to think critically and creatively—not grind them down with repetitive tasks. If the industry actually modernizes, Gen Z lawyers can transform what it means to practice law.

Law firm partners might not want to hear this. If an AI tool lets young lawyers finish what used to require 2,000 billable hours in just 200, that's 1,800 hours of lost revenue. But you can only ignore the realities of AI's advantages for so long. Legal teams not leveraging generative AI effectively signal that they're losing the war for talent.

The legal industry sits on the cusp of a new AI-powered epoch, but its future shines brightly if today's leaders trust the vision of Gen Z. Empowering us to apply AI will not only benefit junior lawyers, but strengthen firms and serve clients more effectively. Without openness to new technologies, vast swathes of the legal industry will languish in the past, losing their most talented people to more forward-thinking teams. Progress waits for no one.

is a senior legal specialist at Robin AI, a company that combines the power of AI, data and legal expertise to build AI-native products for the legal sector.

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Securities Law News

Column

Big Law Firms Wary of SPAC Rebound Seek to Get Paid This Time

May 22, 2025, 2:30 AM PDT

Welcome back to the Big Law Business column . I'm Roy Strom, and today we look at how Big Law firms are trying to mitigate risks in the SPAC practice. Sign up for Business & Practice , a free morning newsletter from Bloomberg Law.

Big Law learned a lesson about SPACs when the last boom ended: The shell companies are not a blank check for lawyer fees.

That's because special purpose acquisition companies are a two-step process, and law firms make the bulk of their money on the second step. That is, when a SPAC spends the pile of money it raised to complete a merger and usher a private company onto the public markets.

During the boom of 2021 and 2022, when Big Law firms fell over themselves to cash in on the craze, many SPACs failed to complete a merger. That meant lawyers didn't get paid the way they'd hoped.

So with activity in the so-called blank check companies heating up again, law firms are approaching with care.

"A lot of law firms took some big write-offs," said Elliott Smith, a Perkins Coie partner who advises on these transactions. "They were able to absorb those losses within their other countercyclical practices. So yeah, there is a certain caution that is applied now that probably wasn't in 2021."

Some firms are sitting out the resurgence, while others are looking to negotiate broken deal fees for mergers—the part of the process known as a de-SPAC—that fail to materialize.

Still others are trying to get their fees for a merger guaranteed as part of the first step—an initial public offering. For that stage of work, law firms generally charge a flat fee of around \$250,000 to \$400,000, according to regulatory filings. Legal fees for de-SPACs are typically in the single millions, lawyers have said.

Firms are simply being more selective about what clients they'll work with in these transactions. They're looking for SPACs that are more likely to complete a merger (hint: anything with institutional investor backing is a good sign). Or they'll decide to stick with a transaction because the firm has a broader relationship with a client at stake.

"There is a lot more due diligence, let's say, by a lot of the bigger firms before they get involved with a de-SPAC transaction," said Joel Rubinstein, a White & Case partner who has advised on SPACs since 2005. "They are not blindly taking on de-SPAC deals with new clients where you can accrue a multimillion-dollar bill and then get left holding the bag if the deal doesn't get done."

One major firm that followed investment banking clients into the SPAC market in 2020 is not actively pursuing the work, according to a partner who described the firm's strategy on the condition of anonymity. The firm would work for a regular client if it were pursuing a SPAC IPO or a de-SPAC, but so far none have brought those opportunities, the partner said.

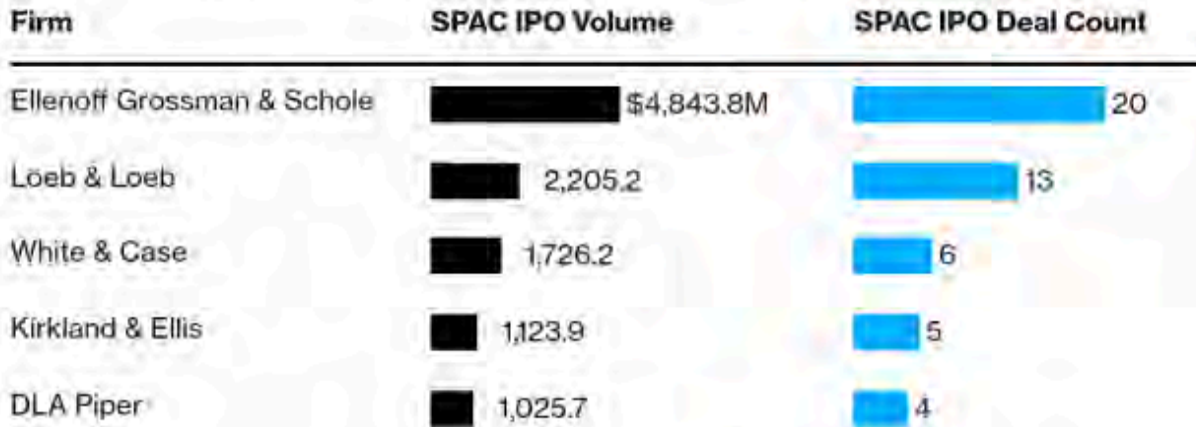
One strategy pursued in 2020 involved representing SPAC IPOs for a discounted fee in exchange for an assurance that the firm would advise on the more lucrative de-SPAC transaction, the partner said. Considering how many vehicles failed to complete a merger, "that strategy bears a lot of risk," the partner said.

Carefully choosing clients is the best way to mitigate any payment risks, said Stephen Alicanti, a DLA Piper partner who has advised on four SPAC IPOs in the past month. At DLA Piper, a special committee assesses each new SPAC-related transaction before lawyers are permitted to engage on a new matter.

It's "incredibly important" that the latest vintage of SPACs successfully close deals, Alicanti said. "In light of the quality of some of the target companies we're working with, I'm optimistic that we're going to start seeing those positive results in the next six to twelve months," he said.

SPACs Are Back

The leading law firms advising on special purpose acquisition company initial public offerings in 2025.



Source: SPAC Research
Note: Data runs through May 20.

Bloomberg Law

To be sure, the recent return of SPACs hasn't reached anywhere near the height of the pandemic-era boom.

There have been 46 SPAC IPOs so far this year, raising about \$9.5 billion, according to data from SPAC Insider. That's about what was raised all last year.

In 2021, more than 600 SPACs hit the market, building a pool of more than \$150 billion searching for companies to take public. Of those, 319 SPACs have been liquidated—most of which never completed a merger, SPAC Insider data show.

Still, some firms see opportunities.

White & Case advised blank-check vehicle Helix Acquisition Corp. II in its \$949 million combination with BridgeBio Oncology Therapeutics announced in March. That deal included \$260 million in committed financing through what is known as a PIPE, or a private investment in public equity—a sign that institutional investors back the deal's closing. (SPAC IPO investors can redeem their shares before a merger, effectively pulling their money and increasing the risk that deals will fall through.) The firm also advised the Helix vehicle on its February 2024 IPO.

White & Case's Rubinstein said SPACs have always been a "meaningful part" of his practice, "so we care about it."

"There will be other firms that will say it's not as important," he said.

Douglas Ellenoff, a champion of the SPAC structure whose firm Ellenoff Grossman & Schole has for years represented the most SPACs, said he expects to handle a larger share of de-SPAC transactions as larger firms grow more conservative.

"The major law firms who have a lot of capacity had a lot of credit risk, and they are not going to do that again because they're used to being paid for their time," Ellenoff said. "For us, it's a venture portfolio. We get paid on some and we don't get paid on others. That's the way the SPAC industry operates."

Perkins Coie's Smith said he's "cautiously optimistic" that the most recent SPAC vintage will result in more deals.

"The valuations have come down," he said, "and there's more recognition that a company needs to be generating significant revenue in order to make sense as a public company."

Lawyers, like the rest of the SPAC industry, are invested in seeing successful deals finalized. They're hoping this time is different than last.

Worth Your Time

On Cadwalader: The law firm aims to help the Brooklyn District Attorney defend convictions as a way to satisfy a pledge to President Donald Trump for free legal services, Justin Henry reports.

On KPMG Law: A California bill aims to throw a wrench into plans by KMPG and law firms backed by outside investors to operate in the state from their perches in Arizona, Emily Siegel reports.

On Susman Godfrey: The law firm is boosting a law student diversity scholarship program that's under attack by the Trump administration, Tatyana Monnay reports. She also spoke about the firm on Bloomberg Law's On The Merits podcast.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

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Ford accuses law firms of fraudulent overbilling, including a 57-1/2 hour workday

 [reuters.com/business/autos-transportation/ford-accuses-law-firms-fraudulent-overbilling-including-57-12-hour-workday-2025-05-21](https://www.reuters.com/business/autos-transportation/ford-accuses-law-firms-fraudulent-overbilling-including-57-12-hour-workday-2025-05-21)

Jonathan Stempel

May 21, 2025

A Ford logo is seen on the Ford Motor World headquarters in Dearborn, Michigan, U.S., March 12, 2025. REUTERS/Rebecca Cook/File Photo Purchase Licensing Rights, opens new tab

May 21 (Reuters) - Ford (F.N), opens new tab sued several California lawyers and law firms on Wednesday, accusing them of fraudulently inflating their legal fees under that state's Lemon Law, including one instance where a lawyer allegedly billed 57-1/2 hours in one day. In a complaint filed in Los Angeles federal court against nine defendants, Ford called the alleged improper billings a "magical mystery tour" of bogus work and time entries, spread across thousands of cases against several automakers so they would go undetected.

Ford said the law firm Knight Law Group anchored the scheme, regularly bringing in other law firms to overstaff cases, sometimes with 10 to 15 lawyers.

The Dearborn, Michigan-based automaker said it lost at least \$100 million from the scheme over five years. It is seeking at least \$300 million in damages for alleged violations of the federal anti-racketeering law known as RICO.

Requests for comment on behalf of the defendants were not immediately returned.

The complaint identified "numerous" alleged instances of lawyers billing more than 24 hours in a single day.

Ford said the 57-1/2 hours that Knight partner Amy Morse allegedly billed on November 30, 2016 included 12.9 hours on "requests for admission, opens new tab," where parties ask opponents to admit that facts are true or documents are authentic.

The automaker said another lawyer allegedly billed 29 hours to prepare for, travel to and attend two trials on the same day in Los Angeles and near San Francisco, about 400 miles apart.

California's Lemon Law, the Song-Beverly Consumer Warranty Act, lets lawyers collect legal fees, opens new tab based on reasonably incurred time spent representing vehicle owners. The case is Ford Motor Co v Knight Law Group LLP et al, U.S. District Court, Central District of California, No. 25-04550.

Reporting by Jonathan Stempel in New York; Editing by David Gregorio

News from Bloomberg Terminal

May 21, 2025, 10:53AM PDT

By Matt Levine

(Bloomberg Opinion) --

Unicorn

The oldest trick in the book is:

1. I have some magic beans.
2. You have some beautiful beachfront property in Poyais.
3. I would like to sell my beans to rubes, and you would like to sell plots of your Poyais land to rubes.
4. We go out and look for rubes, but we can't find the right rubes. All the rubes we find are too sophisticated. They ask questions like "well what is the market value of these beans" and "well who else is buying property in Poyais," and we do not have satisfactory answers.
5. We get to chatting.
6. We put out a press release (and some tweets) saying that we have entered into an innovative transaction, the largest magic-bean-denominated property acquisition in history, in which I have acquired 200 beachfront acres in Poyais for a price of \$200 million, with the purchase price to be paid in the form of 2 million magic beans, at an agreed market valuation of \$100 per bean.
7. Now we are cooking.
8. Now I go out and pitch my magic beans to rubes, saying "the magic bean market is hot, they are trading at \$100 per bean and sophisticated international luxury property developers are clamoring to do deals for beans."
9. Now you go out and pitch your plots, saying "the Poyais property market is hot, we have sold 200 acres at a price of \$1 million per acre, and we are a progressive forward-thinking developer who does innovative bean-denominated transactions."
10. People buy our stuff for actual money.

Here is a bizarre and charming US Securities and Exchange Commission enforcement action against Unicorn Inc. and three of its executives (Alex Konanykhin, Silvina Moschini and Alex Dominguez) for all sorts of fun stuff. Unicorn is, approximately, a crypto company that wanted to sell tokens that were going to be (as the SEC complaint puts it) "asset-backed by billions of dollars in real estate and equity interests in promising pre-IPO companies." There are various legal complexities that you have to deal with if you want to do that, including:

- Selling crypto tokens to individuals, particularly tokens that are backed by some investment program (and not just memes), implicates US securities laws, and you have to register your tokens or otherwise comply with securities laws.
- It seems legally and operationally complicated to “back” crypto tokens with a portfolio of assets, and you have to think about the contractual and technical arrangements there.
- Ideally you would not lie about the stuff backing your tokens.

And, according to the SEC, Unicoi, uh, messed all of those up pretty bad. But in a sweet way? Like they didn't just *ignore* all of these requirements; they *did stuff* to comply with them, but haplessly.

The weirdest thing about Unicoi is that it is, sort of, a public company. Its stock does not trade publicly, not even over the counter, but for some reason Unicoi is registered with the SEC and files pretty normal annual reports about its business. Unicoi's *tokens* also do not trade publicly; in fact, technically, Unicoi has never issued any unicoi tokens.¹ It raised money from investors by selling “unicoi rights certificates,” which entitled investors to get tokens eventually, but it has not yet issued the tokens. It might be a touch generous to say that this structure was designed to comply with securities laws, but it does look that way. (From its 10-K: “The unicoin will be issued once the groundwork for that issuance has been completed, such as legal, technical, regulatory, brand recognition, initial portfolio of assets, and listing on crypto exchanges. ... As of February 1, 2025, we have not issued any unicoin and there is no assurance as to whether, or at what amount, or on what terms, unicoin will be available to be issued, if ever.”)

The gist of the SEC complaint is that Unicoi and its executives went around on social media promoting its tokens (technically, its Unicoi rights certificates) and making false claims about both the assets backing the tokens and how many tokens they had sold. But Unicoi is a public company that files audited financial statements, and its auditors seem to have done real audits and had normal accounting judgment, and the financial statements seem fine. The SEC is *not* saying that the financial statements are misleading. It is saying that the social media promotions were misleading, and you can tell by comparing them to the financial statements.

For instance, Unicoi's executives went around saying that they had sold a lot of tokens (or rather, rights certificates), but the financial statements reveal that they had not. From the complaint:

By June 2024, the Promoting Defendants claimed to have “exceeded \$3B in Unicoi sales.” Specifically, on June 9, 2024, Moschini announced on her LinkedIn page, “I am pleased to share with you that we have achieved \$3 billion in Unicoi sales! . . . Our record-breaking pre-ICO sales enabled us to start a massive branding campaign using a wide range of advertising options, including TV, online, print, events, and OOH advertising . . . prior to our ICO.” Konanykhin and Dominguez similarly touted the purported \$3 billion milestone on LinkedIn the same day.

But in fact, when Unicoi sold rights certificates, it meticulously accounted for them by booking them as a liability: If it sold a unicoi right for \$1 of cash, it debited \$1 to cash and credited \$1 to an offsetting liability to, you know, refund the cash. From its 10-K:

The Company accounts for unicon rights by recording a liability representing the amount management believes the Company would be obligated to pay or refund (i.e., the amount holders have a right to claim and would likely be awarded in settlement) for fair value exchanged (i.e., in the form of cash or services) for rights to receive unicoin in the future in the event the unicon is never launched. ... As of December 31, 2024, any amounts received for unicon rights are not considered equity or revenue, management determined that 100% of the obligation is a liability to be settled by through the issuance of unicoin, or through other means if unicoin are never issued.

Honestly that's pretty conservative, for a crypto promoter; I'm sure some people are out there accounting for token sales as revenue. But the point is that you can just look at the financial statements and see that Unicon had sold, not \$3 billion of tokens, but \$110 million. And the SEC did ²:

Far from the \$3 billion in Unicon Rights Certificates the Promoting Defendants claimed to have sold by June 2024, the Company's reported Unicon Rights Financing Obligation shows that it had raised, at most, \$110 million by that point.

Ah. Meanwhile Unicon was also telling investors, not only that it had sold a lot of tokens, but also that those tokens were innovative asset-backed crypto tokens. The assets backing the tokens would consist mainly of:

- Shares of private startups, which Unicon would acquire in exchange for featuring the startups on "a streaming reality series called 'Unicorn Hunters'" produced by a Unicon-affiliated company. ³ "Through 'Unicorn Hunters,'" says the SEC, "the Company acquired minority interests in seven private companies that appeared on the show between November 2, 2021, and December 4, 2023." Those stakes have a total value of about \$8.2 million, according to the latest 10-K.
- Real estate, which Unicon acquired under its "140% program," in which "Unicon would offer to pay 140% of the appraised value of real estate in Unicon Rights Certificates, at the current price at which Unicon was selling those rights certificates." "In an April 18, 2023, Investor Update," notes the SEC, "Konanykhin further explained that '[t]he objective of developing a large real estate portfolio is to provide backing of Unicon by assets of unquestionable value,' which would 'further differentiat[e] [Unicoins] from . . . assetless cryptocurrencies.'"

You can probably see where this is going. For instance, Unicon acquired some mining rights in Argentina for "\$210 million" in unicon, a 40% premium to the "\$150 million" value of the mining rights:

Unicon and Konanykhin repeatedly represented to the public that the Argentine Mining Rights were valued at \$150 million. ...

In the August 16, 2023, press release announcing the transaction, Unicon claimed, "Unicon, an assets-backed cryptocurrency that addresses the extreme volatility of the crypto market, announced today that it signed an agreement with . . . an Argentine corporation, to acquire from [it] the rights to explore and exploit mineral rights located in Argentina, primarily copper."

The August 16, 2023, press release continued, "The purchase price shall be paid in unicoin. The acquisition is structured pursuant to Unicoins' program of acquiring real estate assets at 140% of their appraised value for unicoin, at an agreed value of \$0.50 per unicon. Unicon Inc. agreed to pay [the Argentine company] 420,000,000 unicoin for the acquisition, a \$210M value at the 50¢/ú [Unicon token] price investors currently pay for unicoin."

Again, though, Unicon has actual normal accountants, and presented with this mining concession, the accountants went out and got an actual appraisal and whoops:

On November 4, 2024, nearly 15 months after Unicon announced the Argentine mining rights acquisition, the Company received for the first time an appraisal of the Argentine Mining Rights. This appraisal valued the Argentine Mining Rights at \$7.1 million – less than 5% of the \$150 million that Unicon had announced in August 2023 and repeatedly touted through mid-2024.

Unicon's balance sheet in its 3Q2024 10-Q – which Unicon filed with the SEC on November 14, 2024 – listed the Argentine Mining Rights at a value of only \$7.1 million.

When Unicon filed its 2024 10-K, the Company valued the Argentine Mining Rights on its audited balance sheet at just \$580,000 based on a review by a mining-rights specialist retained by Unicon's auditor in connection with its audit of Unicon's 2024 financial statements. Unicon's auditor's work papers indicated that the Company agreed with the revised valuation.

There are other examples, but here is the aggregate result:

Unicon's [2024] 10-K (which Konanykhin signed) shows that as of year-end 2024, the Company had acquired less than \$1.5 million of real estate pursuant to the 140% program. ...

Nonetheless, Unicon and Konanykhin continued to represent publicly that Unicon already had acquired real estate assets worth billions of dollars. For example, in an April 22, 2025, Investor Update, Konanykhin falsely claimed that Unicon had "[c]losed over \$2.5B of 'Real Estate for unicoin' deals."

The real estate portfolio was worth \$2.5 billion in the unaudited investor update and \$1.5 million – 99.94% less – in the audited financial statements.

There is another, less obvious problem here, which is that the unicon tokens were "asset-backed" only in a general vibe-y way. It's not like Unicon was going to issue tokens that had some direct connection to the assets, with legal ownership rights or the ability to foreclose on them or whatever.⁴ It's more like:

- Unicon issues tokens (or will, anyway);
- It has assets;
- Eh, come on, that's asset-backed enough *for crypto*.

Maybe that's even correct, but the SEC doesn't like it:

Despite their numerous statements that Unicoïn would be “asset-backed,” the Promoting Defendants also never actually intended for Unicoïn tokens to be backed by any assets. Konanykhin, Moschini, and Dominguez have each admitted in sworn testimony that they never intended that any assets would “back” Unicoïn tokens. Comparing cryptocurrency to a physical product like a bottle of water, Konanykhin testified that it “cannot be backed by something or reporting, et cetera.”

Moschini testified under oath that when she called Unicoïn “asset-backed,” she meant only that the Company owned assets.

I sympathize. It’s asset-backed-ish; who can be bothered with the technicalities.

More generally I am just charmed by Unicoïn’s apparent double nature. As the SEC tells it, in their public promotions, Unicoïn’s executives talked like stereotypical crypto promoters, making exaggerated claims about the value of their token, how it would revolutionize finance and how many people had bought it. Fine, normal. But then Unicoïn was also – for no real reason? – publicly filing very sober and normal SEC reports, with audited financial statements, that deflated all of those claims. On that side of things, Unicoïn was such a normal well-managed company that its 10-K includes a risk factor about how sometimes it says untrue things about its tokens:

Certain communications and marketing materials have incorrectly stated the regulatory status of unicoin, which could cause market confusion and expose the Company to enforcement actions by regulatory authorities such as the Securities and Exchange Commission if such statements are deemed to be materially misleading, which would adversely affect the Company’s ability to carry out its plans with respect to the launch of tokenized unicoin.

Statements contained in promotional videos and on our Unicorn Hunters show have erroneously stated the unicoin are “registered with the SEC,” which statements are factually incorrect, as unicoin have not been registered, and unicon rights have been sold only pursuant to exemptions from the SEC’s registration requirements, as described in this Annual Report on Form 10-K and in “Risks Related to Our Unicoïn Offering” below. Such statements were the result of the misunderstanding of the registration process and the regulatory status of unicoin and unicon rights by the speakers of these statements. Despite the correct disclosure in the Company’s offering materials and other SEC filings, such incorrect statements could have material adverse effects on our company and its plans for the tokenization and launch of unicoin.

They do seem to have had some adverse effects.

Private rooms

One of the most valuable resources in financial markets is bad counterparties. If you think a stock will go up, you will want to buy it, so you will have to find someone who wants to sell it, and presumably that person thinks it will go down. One of you is wrong. If you are trading with Warren Buffett, you might worry: "Wait, *will* this stock go up? What do I know that he doesn't?" (This is called "adverse selection.") If you are trading with, you know, the opposite of Warren Buffett, you might feel great: "Ooh, this stock will definitely go up, because I definitely know stuff that he doesn't." Getting steady access to the opposite of Warren Buffett is highly desirable, and you should be willing to pay for it.

Obviously it is hard to precisely identify "the opposite of Warren Buffett." I once joked that "for equity market makers, there are few more beautiful phrases in the English language than 'day trader and volleyball programs coordinator,'" but joke's on me because that guy made a ton of money trading GameStop. But there are rules of thumb, and the main one is that small-dollar amateur retail traders are worse at predicting stock price moves than big-dollar professional institutional traders. This is in part a question of skill and information, but in the short term it is also a question of *trade size*. When a big institution sells 10 shares of stock, it is probably going to continue selling 100,000 more shares, so if you buy those first 10 shares the stock will probably go down (as the institution sells more) and you will lose money. When an individual sells 10 shares of stock, that's probably all she has, so you can safely buy them.

You can slice things more finely than this, of course. There is a rough hierarchy, in which the counterparties you most want to avoid are "toxic" high-frequency trading firms whose business involves being first to notice price moves, so that every time you trade with them the price has already moved against you.⁵ And then there are various institutions, with their desirability varying based on their size and sophistication and reasons for trading. And then retail is the best, though there is a range there too: One study has suggested that TD Ameritrade customers are the best people to trade with, while Interactive Brokers Pro customers are the least desirable (that is, *best at trading*) retail counterparties.⁶

And so a retail brokerage controls this hugely valuable resource: It has customers, the customers go on its app or website and press buttons to buy and sell stocks, and the retail brokerage collects their orders. It has to *route* those orders, that is, find someone to take the other side of the trade. And everyone wants to be on the other side.

The simplest way to route the orders is to send them to a national stock exchange – the New York Stock Exchange, Nasdaq, etc. – to execute against all of the other orders that all of the other traders send there. But if you do that, the orders *lose their value*. The stock exchanges are anonymous; everyone on the exchange will see an order to buy 10 shares of stock and won't know if it's from a nice inept retail trader or a toxic high-frequency trader. The retail orders aren't any more desirable than any other orders, because you can't tell which are which.⁷ (This is exaggerated, because many stock exchanges recognize the problem and have various programs and order markers to segregate retail orders and preserve their value.)

And so the standard way to do it these days – the way we talk about a lot around here – is instead to route orders to a “wholesaler,” an electronic market-making firm that really wants to trade with retail orders. The wholesaler will make a deal with a retail broker, in which:

1. The retail broker agrees to send orders to the wholesaler.
2. The wholesaler agrees to fill them all (either by taking the other side of the trade or routing them somewhere else to execute).
3. The wholesaler promises to get better prices, all in all, than the retail broker could get from the stock exchange. (This is called “price improvement,” and is intended to satisfy the broker’s obligation to get “best execution” for its customers.)
4. The wholesaler also, at least in some cases, pays the retail broker directly for the arrangement. (This is called “payment for order flow.”)

The first element is what the wholesaler wants: a steady stream of retail investors to trade with, this valuable supply of bad counterparties. The other three are what the wholesaler *gives* to get that: a commitment to make markets, better prices for the customers, and cash for the broker. And there are a bunch of wholesalers who do this, and they compete mostly on efficiency (filling orders quickly) and price improvement. And it is hard to break into that business, because it requires good technology and the capacity to take risk to fill trades.

But meanwhile *lots* of people want to trade with retail orders, at least *some* of the time. Every professional mutual fund manager who wants to buy 10,000 shares of stock will think “well it would be nice if I could get 200 of them from retail.” These people are not going to set up a whole electronic market-making program to get into the wholesaling business: They don’t want to stand ready to buy or sell *any* stock; they just want to buy the stocks they want. But they’d like to buy them from retail, if that’s available. They will go to *their* institutional brokers and say “hey, could you match me up with some retail traders?”

Is there a trade to be done? Well, maybe. Sometimes the institution’s broker also has a retail brokerage arm, and matching its retail customers with its institutional customers could be good customer service on both sides. (They can *both* get better prices than they would on the stock exchange.)

Or you could imagine a general solution, something like this. You set up a huge variety of bilateral trading channels. Each channel matches (1) one retail brokerage’s customers with (2) one institutional investing or trading firm. You have, like, the Robinhood/Fidelity channel, and the TD Ameritrade/Jane Street channel, etc., one for each combination of retail brokerage and institution. Each time a retail broker gets an order, it can expose it to whichever institutions it wants and see if they want to do the trade; each time an institution wants to do a trade, it can expose it to whichever retail brokers it wants and see if any of their customers want the other side.

If this worked – if people regularly succeeded in trading on these channels – presumably the institutions would like it, because they would at least sometimes get to trade with retail customers. The retail brokers might like it, if they got (1) better executions for their retail customers (more price improvement, faster trades, etc.), or (2) better executions for their *institutional* customers (if they have both), or (3) money.

In the limit, the effect of this would be to de-anonymize the stock market: Each time you wanted to trade, you could pick exactly who you'd be willing to trade with, and see who wanted to trade with you. You'd be able to specify how good or bad your counterparty would have to be, and you'd be willing to pay more to trade with a bad one.⁸

So here's Bloomberg's Katherine Doherty on retail private rooms:

These gated arenas are set up within dark pools, trading platforms originally designed specifically for only the biggest institutional business. But private rooms are luring in more modest activity from firms keen to pick and choose who they deal with in order to control their trading experience.

While it's a small slice of the market for now, it's a big contrast to the so-called wholesale model that dominates the industry, where retail orders are routed direct to the likes of Citadel Securities or Virtu Financial to be filled from their balance sheets. Citadel Securities has already flagged concerns about the growth of the new venues to US regulators.

But some brokers say private rooms offer a path to tap new liquidity beyond these big wholesalers – and often better pricing along the way. ...

Not having the ability to give institutional clients access to retail orders is "a significant market structure issue" for bank brokers like Evercore ISI, according to Brian Suth, the firm's head of electronic trading. So a year and a half ago it set up specific private rooms with retail brokers at the dark pools OneChronos and IntelligentCross.

"We're now offering unique access to retail," said Suth. Private rooms aren't the only or most-popular way to route a trade, but the more retail brokers sign up "the more meaningful that marketplace becomes," he said.

Wells Fargo was among the first retail brokers to utilize a private room for its retail arm at the end of 2023, mirroring a shift the firm had already made with its institutional business. Instead of going direct to wholesalers, orders are sent to dark pools such as IntelligentCross, where Wells Fargo runs private rooms. ...

The key advantage of a private room is a firm knows exactly who its counterparty is, which allows it to control the quality of the trade, according to Mehmet Kinak, global head of equity trading at asset manager T. Rowe Price.

In practice a few of these exist, a tiny sampling from the vast potential space of counterparty combinations, but in theory one day everyone could have a private room with everyone else, and trading could be completely de-anonymized. The key advantage of the stock exchange is that your counterparty *doesn't* know who *you* are, but sometimes knowing who they are is more important.

Pope house

I write a lot about memecoins around here, so I suppose I should mention a small house in Dolton, Illinois, that carries at least \$31,000 of pope premium:

The childhood Chicago-area home of Pope Leo XIV is being sold at a luxury auction following a surge of interest sparked by his election last week.

The three-bedroom house in Dolton, Illinois – about 20 miles (32 kilometers) south of downtown Chicago – will open bidding at \$250,000, according to Paramount Realty USA, the firm managing the sale.

The home was initially listed in January for \$219,000 as a typical residential property. But the listing was pulled from the market on May 8, just hours after Cardinal Robert Francis Prevost, 69, was named pope and the sellers discovered the connection.

"Before he was named pope, the house was a house," said Misha Haghani, chief executive officer of Paramount Realty. "When the pope was elected, it became something else, it became much more than just a house."

Presumably if you buy that house you get about \$219,000 of value from having a place to live, and then \$31,000 or more (depending on the auction-clearing price) of purely memetic value from having a place to live where the pope once lived. I take it that non-pope cardinals carry zero premium.

That story is from Bloomberg's Miranda Davis last week, but yesterday there was an update:

The law firm representing Dolton, about 20 miles (32 kilometers) south of downtown Chicago, sent a letter Tuesday to the auction company saying that the village intends to take possession of the property through eminent domain. Officials plan to work with the Archdiocese of Chicago to establish it as a historic site. ...

"Please inform any prospective buyers that their 'purchase' may only be temporary since the Village intends to begin the eminent domain process very shortly," Burton Odelson, the village's attorney, wrote in the letter.

I am by no means an expert in eminent domain, but generally speaking if the village is going to seize a property, it has to pay the fair market value for it. Presumably the fair market value includes *both* the value of the house (\$219,000 I guess) *and* the pope premium. (The village wouldn't be seizing the house if it weren't for the pope connection!) I have said that the pope premium is at least \$31,000, but I actually have no idea; they never ran the auction, and it seems hard to do it now that any buyer knows "that their 'purchase' may only be temporary." So I guess they will have to get appraisals and argue in court about how much the pope premium should be.

Elsewhere in meme stuff, yesterday we discussed the Trumpcoin dinner trade, where you could buy President Donald Trump's meme token, qualify for the dinner that he is throwing on May 22 for top holders of the token as of May 12, and then dump the tokens after the record date but before the actual dinner. But here is a claim that the trade to do with the Trumpcoin dinner was (1) buy a lot of Trumpcoin by the May 12 record date, so you get invited to the dinner and (2) simultaneously *short* Trumpcoin via perpetual futures, to hedge your price risk. If you did that you apparently got paid a funding premium (people wanted to hold futures more than they wanted to hold Trumpcoins, so they would pay you to do the arbitrage). So you could get invited to the dinner with no cost and no economic exposure to Trumpcoin. Sure, I guess.

Things happen

Donald Trump considers order to open US retirement plans to private equity. Banks Are Shifting Quickly to Crypto as New Rules Loom. OpenAI's Biggest Data Center Secures \$11.6 Billion in Funding. Tesla Sets Record With \$139 Million Pay Package for Finance Chief. Sixth Street's Easterly Sees 'Complacency' in Private Credit. HSBC warns of bonus cuts for staff who work from home too much. The \$34.5 Billion Deal That Started With a Love Letter. How Two CEOs Mixed Romance and Business, Leading to Scandal. New York's Wealthiest All Want to Live Downtown Now.

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1. I will call the company "Unicoi" and the token "unicoi."
2. The "at most" in this block quote presumably ties to the "fair value exchanged" in the previous one. Unicoi reported a \$110 million "Unicoi rights financing obligation" at the end of 2024, but only \$2.6 million of cash and only \$26.9 million of total assets, suggesting that it sold some of those \$110 million of magic beans for, you know, land in Poyais. We'll get to some specifics.
3. Here is its website? It lists a "Circle of Money" including the Unicoi executives but also ... Steve Wozniak? Lance Bass?
4. From the complaint: "Consistent with the Promoting Defendants' sworn testimony that they did not intend Unicoi tokens to be backed by assets, a draft version of the smart contract (a digital program stored on a blockchain (or distributed ledger system) that is executed automatically when certain predefined conditions are satisfied, with the outcome of any execution recorded to the blockchain) that purportedly was to govern the Unicoi tokens contained no feature or indication that its functionality would be tied to real-world triggering events, such as a liquidation of a real world asset."
5. There are various time scales at which you might care about adverse selection, but traditionally in equity markets the relevant times are pretty short. If you buy a stock and it moves against you in the next, like, minute, that feels kind of toxic and you might think "ugh what did my counterparty know that I didn't?" If it moves against you over the course of six months, that does not feel like an "adverse selection" issue in the stock market, though it might in other contexts (mergers, art, real estate, etc.). I am being a little cute citing Warren Buffett in the first paragraph: He is recognizably a guy who has a handle on what stocks will go up, but that doesn't necessarily mean he's a bad person to trade with over the course of 100 milliseconds.
6. Obviously the *best* retail counterparties are the ones who want to buy zero-day options from you, or foreign exchange forwards for that matter, but let's stick to stocks.
7. On the plus side, though, if all orders went to an anonymous stock exchange, the *institutional* orders would get better execution because any trade would have some probability of trading with retail.
8. You wouldn't have to limit the channels to retail/institution, either. You could set up a Fidelity/Jane Street channel, in case they wanted to trade with each other; why not. There are various subtle gradations of counterparty desirability, and you could specify exactly which ones you wanted. And in fact we talked about institutional private rooms a few months ago.

SEC Alleges Unicoi Misled Thousands in \$100 Million Fraudulent Crypto Securities Offering

 [law.com/nationallawjournal/2025/05/21/sec-alleges-unicoi-misled-thousands-in-100-million-fraudulent-crypto-securities-offering](https://www.law.com/nationallawjournal/2025/05/21/sec-alleges-unicoi-misled-thousands-in-100-million-fraudulent-crypto-securities-offering)

Michael A. Mora

May 21, 2025

- The SEC says Unicoi falsely claimed tokens were backed by real assets.
- Over 5,000 investors were allegedly misled through ads and marketing.
- Unicoi's general counsel was sanctioned for negligent misstatements in private placement documents.

The U.S. Securities and Exchange Commission announced Tuesday evening that it has civilly charged New York City-based Unicoi Inc. and three of its top executives for allegedly making false and misleading statements in an offering of certificates that purportedly conveyed rights to receive crypto assets and an offering of its common stock.

Mark Cave, an associate director in the SEC's division of enforcement, alleged that Unicoi and CEO Alex Konanykhin, ex-president Silvina Moschini and ex-CIO Alex Dominguez exploited thousands of investors with fictitious promises that its Unicoi tokens, when issued, would be backed by real-world assets including an international portfolio of valuable real estate holdings.

"But as we allege, the real estate assets were worth a mere fraction of what the company claimed, and the majority of the company's sales of rights certificates were illusory," Cave said in a statement. "Unicoi's most senior executives are alleged to have perpetuated the fraud, and today's action seeks accountability for their conduct."

'The Key Question'

Unicoi was formed as a "software-as-a-service" business that provided remote workforce monitoring and management software but later acquired a media company that produced a streaming reality series called "Unicoi Hunters." The series showcased private companies seeking publicity for their private security offerings.

The SEC alleges Unicoi broadly marketed rights certificates to the public through extensive promotional efforts, including advertisements in major airports, on thousands of New York City taxis, and on television and social media. The defendants allegedly convinced more than 5,000 investors to purchase rights certificates through false and misleading statements that portrayed them as investments in safe, stable and profitable "next generation" crypto assets.

Specifically, Unicoi allegedly claimed the tokens underlying the rights certificates were “asset-backed” by billions of dollars of real estate and equity interests in pre-IPO companies when Unicoi’s assets were worth a small fraction of that amount. The company also allegedly claimed it had sold more than \$3 billion in rights certificates. when it raised no more than \$110 million.

In addition, Unicoi allegedly claimed the rights certificates and its tokens were “SEC-registered” or “U.S. registered” when they were not.

According to the SEC’s complaint, Unicoi and Konanykhin also violated federal securities laws by engaging in unregistered offers and sales of rights certificates. The CEO allegedly offered and sold more than 37.9 million of his rights certificates to offer better pricing and target investors the company had prohibited from participating in the offering to avoid jeopardizing its exemption to registration requirements.

The case is pending before the U.S. District Court for the Southern District of New York.

Unicoi did not immediately respond to a request for comment.

The SEC also charged Unicoi’s general counsel, Richard Devlin, with violating the antifraud provisions of the federal securities laws by negligently making similar misstatements in private placement memoranda the company used to offer and sell rights certificates and its common stock. Without admitting or denying the SEC’s allegations, Devlin consented to the entry of a final judgment providing permanent injunctive relief and ordering him to pay a \$37,500 civil penalty.

“Devlin’s case shows how important the role of legal counsel is in doing due diligence and ensuring disclosure,” said Jeffrey Reisman, a criminal defense attorney at Jeffrey Reisman Laws in Toronto, Canada. “Negligence in these duties can lead to personal liability and sanctions even if fraud is not proven.”

Hofstra University law professor Felix Shipkevich, who teaches courses on the business and policies of cryptocurrencies, observed that while the Trump administration under SEC Chair Paul Atkins has adopted a markedly different and more favorable approach to crypto than the Biden administration under ex-Chair Gary Gensler, it would be inconsistent for the agency to turn a blind eye to bad actors.

“Attracting both domestic and foreign investment requires not only a sensible regulatory framework but also a demonstrated commitment to cleaning up the space,” Shipkevich said. “In this case, the allegations are clearly detailed in the complaint, particularly the promises made to investors about coins allegedly backed by offshore real estate investments. The key question is whether those investments were ever actually made, closed or materialized.”

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<https://www.wsj.com/finance/currencies/sec-sues-crypto-startup-unicoi-and-its-executives-for-fraud-b3df6276>

MARKETS & FINANCE | CURRENCIES

SEC Sues Crypto Startup Unicoi and Its Executives for Fraud

Crypto company misled investors, overstated value of real estate deals, agency says

By [Caitlin Ostroff](#) [Follow](#) and [Alexander Osipovich](#) [Follow](#)

May 21, 2025 1:58 pm ET



Unicoi yacht cruise party favors. PHOTO: ALEXANDER OSIPOVICH/WSJ

The Securities and Exchange Commission sued Unicoi, a flashy crypto startup, alleging that the company and its executives misled investors while raising more than \$100 million to launch a digital token that it touted as safe, stable and backed by real-world assets such as land in Antigua and the Bahamas.

The lawsuit, filed late Tuesday, is one of the SEC's first major enforcement actions taken against a crypto firm since President Trump—a supporter of the digital-currency industry—took office. Representatives of Unicoi didn't immediately respond to requests for comment.

What is Unicoi

Unicoi is a crypto startup that promoted its plans to launch a token through ads at airports and on thousands of New York City taxis, as well as testimonials from former pro athletes.

The company said it was planning to launch a token called unioi, which would be backed by real estate and equity interests in pre-IPO companies. It has yet to actually launch the token, and instead sold certificates that conveyed future rights to the token.

The company's website previously suggested that investors could get returns in excess of 9,000,000% for their uniois, the SEC said in its complaint. Unicoi removed the language from its website earlier this year [after The Wall Street Journal asked about it](#).

What does the SEC allege in its complaint?

Unicoi falsely said its tokens were "SEC-compliant," "SEC-registered" or "U.S. registered" as it convinced more than 5,000 investors to purchase certificates, according to the SEC's complaint.

The agency said Unicoi misled investors about having billions of dollars worth of assets to back its tokens, saying its real estate and equity interests were worth a fraction of the amounts promoted by the company.

In late 2023, for instance, Unicoi announced that it had acquired two properties in Antigua valued at \$680 million, despite not having an appraisal and executives having doubts about the seller's valuation of the parcels, the SEC said. The agency cited internal communications between Unicoi executives suggesting that the land's real value might be under \$40 million.

One executive also shared links to court records with another showing that New York disbarred the seller's representative for the properties in 2002, calling him "an immediate threat to the public interest" after he failed to respond to 10 complaints of professional misconduct, the SEC said. Despite such red flags, they followed through with the Antigua deal.

The SEC similarly alleged that Unicoi overstated the value of transactions in Argentina, Thailand and the Bahamas.

Unicoi Chief Executive Alex Konanykhin has previously said that it complied with the law and that it has spent about \$10 million on compliance to be the "most

transparent and compliant crypto company” in the U.S.

Why is this notable?

It has been unclear how aggressive the SEC will be in pursuing enforcement actions against crypto companies under Trump, who has pledged to promote the industry while his family has pursued their own [crypto business ventures](#).

The SEC’s investigation of Unicoi started under the Biden administration. Under Trump, the agency has dropped a number of Biden-era lawsuits against crypto firms such as Coinbase Global, which were accused of registration violations, but not fraud.

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Videos

Securities Law News

Behind Trump's 'Most Exclusive' Dinner, a Partner Sells Access

May 21, 2025, 5:16 AM PDT

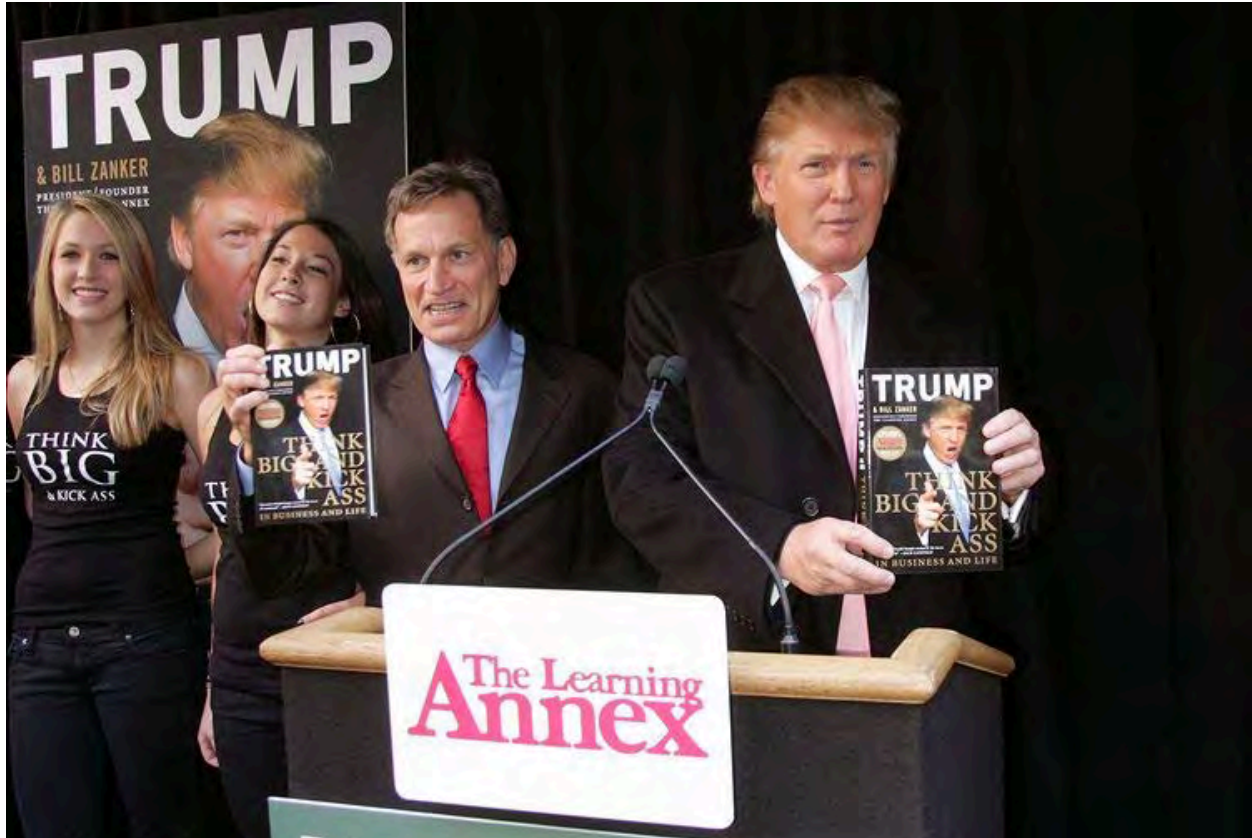
A dinner on Thursday in Washington — billed as the “Most Exclusive Once in Lifetime Invitation” — is the latest and boldest spectacle **Bill Zanker** has launched for Donald Trump.

Since Zanker co-authored a 2007 book with Trump, they've had a number of splashy collaborations, including a crowdfunding site and a series of non-fungible tokens featuring superhero versions of Trump, with events for some of the largest holders at Trump's private club, Mar-a-Lago.

These days, though, Zanker is uniquely positioned to sell the Trump name — and access to the president himself.

While Zanker, 71, has remained behind the scenes in recent years, he has built up a portfolio of at least six businesses associated with the president, including the memecoin known as \$Trump, which has already spun off more than \$300 million in fees for companies linked to Trump and Zanker, according to the data firm Chainalysis.

Zanker's businesses with Trump carry many of the marks of the president's other ventures: the aggressive push to make money from Trump's name, the relative lack of transparency of the deals, and a disregard for the institutional norm that presidents should avoid the appearance that they are profiting personally from their political role.



Bill Zanker, left, and Donald Trump during the “Think Big and Kick Ass” book signing at Barnes & Noble in New York in 2007.

Photographer: Jim Spellman/WireImage/Getty Images

Zanker’s name is not on the website for the memecoin and he has avoided any comment on it. But on a Delaware corporate filing, Zanker is listed as the “authorized person” for Fight Fight Fight LLC, the company that runs the coin’s website. He’s been instrumental in directing and marketing the business and organizing a dinner on Thursday where the top 220 holders of the coin will get to meet the president in person, according to people familiar with the project.

The event led to a spike in the value of the coins owned by companies linked to Trump and it has been widely criticized by ethics experts for offering access to the White House through transactions that are widely believed to directly benefit the president. Those concerns were heightened after Justin Sun, a China-born crypto entrepreneur, said on Tuesday that he would be attending the event at the same time he is looking to ramp up his business in the US and resolve a lawsuit that US regulators brought against him in 2023.

The White House did not respond to a request for comment, but spokeswoman **Karoline Leavitt** said recently that “President Trump is compliant with all conflict-of-interest rules, and only acts in the best interests of the American public – which is why they overwhelmingly re-elected him to this office, despite years of lies and false accusations against him and his businesses from the fake news media.”

Zanker declined to comment for this story. Last summer, in the only recent interview he has given, he told Bloomberg that in their decades-long relationship he has handled the details while Trump has offered the bigger vision.

“He is a man that likes to ask a lot of questions,” Zanker said of Trump in the interview “He asked a lot of questions, and then he makes his own decisions.”

Senator Richard Blumenthal, a Democrat from Connecticut, sent a letter to Zanker this month, asking for more details about his role in the memecoin and the upcoming dinner — part of a nascent effort by Democrats on the US Senate Permanent Subcommittee on Investigations to dig into the crypto businesses affiliated with Trump and his family.

Trump Watches

Blumenthal said in an interview that Trump and Zanker are “pumping up the value of his cryptocurrency with all kinds of public stunts and offers, which seem to be a trademark of both Trump and Zanker.”

The broader portfolio run by Zanker includes Trump-branded shoes, watches, perfumes and an upcoming digital game, according to people familiar with the deals who asked not to be named because the information is confidential.



Donald Trump holds gold Trump-branded shoes at Sneaker Con Philadelphia in 2024.

Photographer: Manuel Balce Ceneta/AP Photo

The websites for these products don't mention Zanker and he is not on the corporate documents for the companies, but they are visibly intertwined with his other efforts. People who purchased large numbers of the NFTs got a pair of The Never Surrender Gold Low Top Sneakers, and the top four owners of the memecoins have been offered the Magnificent Trump Tourbillon, a gold and diamond-encrusted watch that retails for \$100,000 on GetTrumpWatches.com. The websites for Zanker's products accept the memecoin as a payment option and share the same naming scheme, with the cologne on GetTrumpFragrances.com and the \$Trump coin on GetTrumpMemes.com.

Zanker is not involved with all Trump-affiliated businesses. His name, for example, is not publicly associated with Trump deodorants, bibles, and steaks, or the sprawling Trump real estate empire. World Liberty Financial, the cryptocurrency company owned in part by the Trump family, has said that it has no affiliation with Zanker.

When it comes to the memecoin, the organization run by Zanker, Fight Fight Fight, will share 80% of the total tokens issued by the project with CIC Digital LLC, "an affiliate of The Trump Organization" according to the website. The coins they will receive for free are worth a combined \$2.1 billion when calculated using the price of the \$Trump this week. Trump promoted the coins on social media when they were first released and in March when he wrote "I LOVE \$TRUMP — SO COOL!!!" leading to a spike in the value of the coin.

Zanker has worked with investors like Tim Draper, founder of Draper Fisher Jurvetson, who said in an email that Zanker's "enthusiasm is catching." Austin Campbell, an entrepreneur and adjunct professor at New York University's Stern School of Business, said he spoke with Zanker earlier this year about \$Trump and offered advice on how to avoid some of the pitfalls that have plagued other similar projects.

"He reminds me of a lot of the people I've dealt with in the creative space: high energy, free thinking — the kind of people who feel like the laws of reality doesn't apply to them," Campbell said, adding that he doesn't view those qualities as negative in the industry where Zanker operates. "You have to be that kind of thinker."

Pickets Outside

The memecoin is, in some ways, a natural extension of the work that Zanker did earlier in his career, when he was not afraid to court controversy to sell a product. His adult education company, The Learning Annex, offered standard lectures on business and entrepreneurship, but also had a course on "How to find a lover," and an exercise class focused on "improving your buns," Zanker said during a 1986 appearance on David Letterman's *Late Night* show.

"How to cheat on your mate was the most controversial course we had," Zanker told Letterman. "We had pickets outside."

Zanker brought Trump in to speak at events hosted by The Learning Annex, which led to a book that the men wrote together, *Think Big and Kick Ass*. In a foreword to a later edition of the book, Trump called Zanker "a gifted promoter."

"Anyone who has been around Bill will never forget him," Trump wrote.



Bill Zanker with musician Pitbull at a GRIT BXNG event in New York in 2019.

Photographer: Jared Siskin/Getty Images

During Trump's first term, Zanker worked with his own children to create a boxing gym, GRIT BXNG, in New York and a Peloton-like startup aimed at building exercise equipment. But Zanker came back together with Trump before his second term to launch the non-fungible tokens, or NFTs, featuring various heroic images of Trump.

Read More: Trump's Journey From Crypto Skeptic to Bitcoin Cheerleader

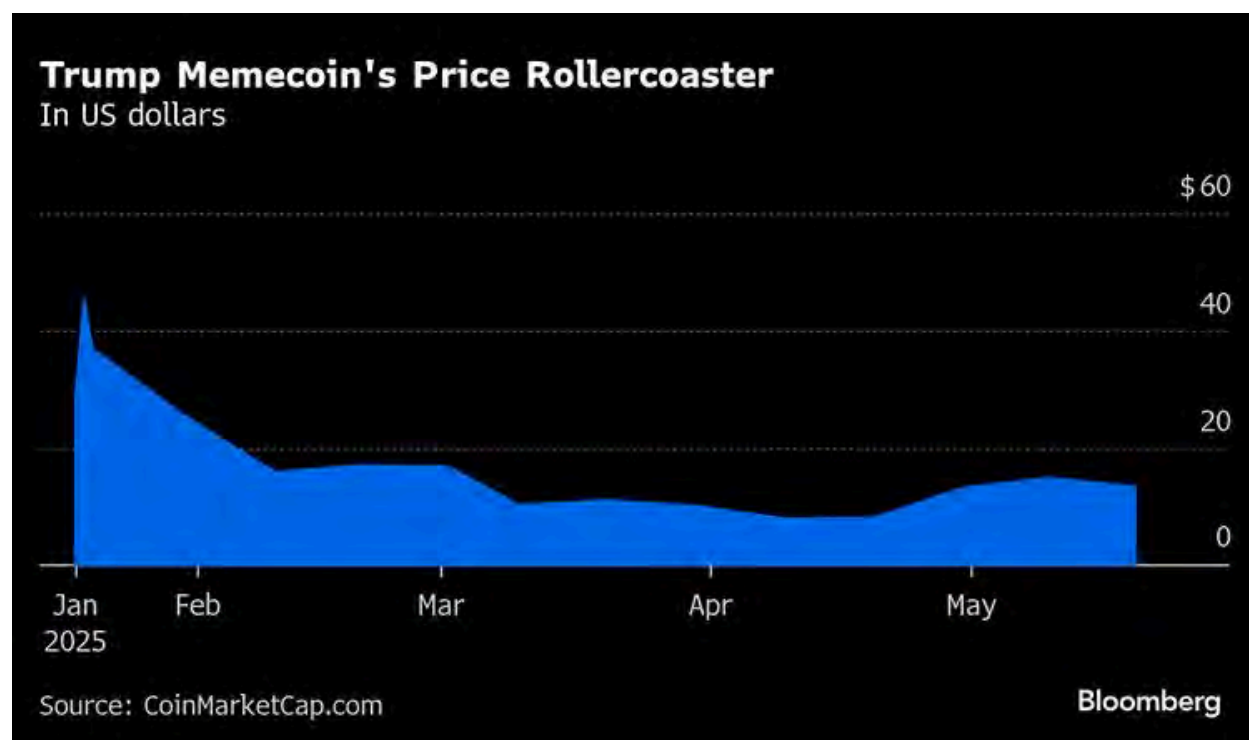
The first collection was ready to go on sale in 2022 roughly a month after the collapse of the cryptocurrency exchange FTX, and Zanker told Bloomberg that he met with Trump at his club in Mar-a-Lago and asked if they should still go ahead with the project.

"You know what Bill," Zanker remembered Trump saying, "a lot of my friends say I shouldn't do it. But I like it, let's do it."

"Mr. President, it could take three to six month to sell out these cards," Zanker said he told Trump. "He said, 'Bill, let's go.' I said 'Great, but don't yell at me!'"

The cards ended up selling out quickly and brought in around \$4.5 million – a sum they built on by issuing three more successful collections in the years leading up to the 2024 presidential election. Trump took a break from campaigning to attend two events at Mar-a-Lago for people who bought thousands of dollars of the cards. In a video of the 2024 dinner, Trump told the crowd: “I am doing this because I want you people to do well.”

Zanker said last year that the NFT collections and the events helped Trump turn from a Bitcoin skeptic into an outspoken advocate for the industry. It also allowed Zanker to expand his business relationship with the president to a host of new products like the watches and sneakers, which Trump has personally promoted.



Some of Zanker's projects haven't panned out as hoped. The crowdfunding site he and Trump created eventually closed shop. The memecoin plunged in value in the weeks after it was originally issued. It has recovered modestly since the announcement of the dinner for the top memecoin holders. That recovery, though, has not helped assuage the concerns of Trump's critics. The coin presents an unprecedented conflict of interest, said Richard Painter, a White House ethics lawyer for George W. Bush.

"You are going to have people close to the president who will put pressure on the president to do what they want," Painter said. "If they want to listen to their friends, who are making huge amount of money in a business, it's a breach of public trust."

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EXCLUSIVE CURRENCIES

A Crypto Billionaire Who Feared Arrest in the U.S. Returns for Dinner With Trump

Justin Sun, whose digital-currency network is popular with the crypto industry's criminal underbelly, is a top investor in Trump's memecoin

By [Angus Berwick](#) [Follow](#), [Patricia Kowsmann](#) [Follow](#) and [Vicky Ge Huang](#) [Follow](#)

May 22, 2025 10:11 am ET



Chinese entrepreneur Justin Sun in Hong Kong in December. PHOTO: KEITH TSUJI FOR WSJ

Crypto billionaire Justin Sun for years wouldn't set foot in the U.S. for fear of arrest. The Chinese-born tycoon, facing scrutiny from U.S. authorities, even missed a chance to fly on [Jeff Bezos'](#) Blue Origin rocket despite paying \$28 million for the opportunity.

Now, Sun isn't just back in America. He is about to attend [a dinner with President Trump](#) as a VIP guest.

After weeks of industry speculation, Sun [confirmed](#) in a social-media post Tuesday that he is the largest holder of the president's [\\$TRUMP memecoin](#). His some \$23-million stash catapults him into the exclusive circle of 25 investors who were invited

to a private VIP reception with the president on Thursday. Critics say the event is among the most glaring demonstrations yet of [the conflicts of interest](#) for Trump and his family as they pursue a range of business ventures.

Until Trump's election win, the 34-year-old entrepreneur was in the sights of U.S. authorities and was persona non grata in much of the U.S. crypto industry. [His company Tron](#), which operates a blockchain network with the same name, has been a popular channel for crypto's criminal fraternity to move funds.

The U.S. Treasury Department's Financial Crimes Enforcement Network wrote in a private 2023 report that Tron was "growing in popularity among illicit actors." By last year, more than half of all illegal crypto activity—some \$26 billion—took place on the network, according to researcher TRM Labs, which tracks crypto transactions and works with law enforcement.

Representatives for Sun have said that it is false to suggest Tron enables criminal activity and that TRM's research has created a misleading narrative about the company. Last year, though, Tron joined with TRM and another crypto company, Tether, to form a task force to tackle crypto crime.

Sun faced charges from the Securities and Exchange Commission, which in 2023 accused him of [fraudulently manipulating the market](#) for Tron's TRX token. The SEC asked a court in February to [pause its lawsuit](#).

The Justice Department, meanwhile, had been investigating Sun for suspected financial crimes, people familiar with the case said. The U.S. attorney's office in Manhattan requested information from Sun back in 2021 and continued gathering evidence through at least 2023, some of the people said, causing him to avoid travel to the U.S. over concerns about a possible arrest warrant. That meant Sun, who is based in Hong Kong, had to skip [the 2021 launch](#) of Blue Origin's first crewed space flight, on which he had won a spot, the people said. (At the time, Blue Origin said Sun pulled out due to scheduling conflicts.)

It couldn't be learned whether the Justice Department investigation is still ongoing.

Representatives for Sun didn't return repeated calls and emails requesting comment. Spokespeople for the SEC and the U.S. attorney's office in Manhattan declined to comment. Representatives for Blue Origin didn't respond to a request for comment.

Sun's fortunes took a turn after he invested \$75 million in World Liberty Financial, a crypto project Trump and his sons launched last September. He was named an adviser

to the venture. Later, he started buying the president's memecoin.

The SEC's decision to pause its suit against Sun and Tron surprised several agency staffers who were highly confident in winning the case, people familiar with the matter said. Sun, who has called the SEC lawsuit meritless, tweeted a handshake emoji in response to the news.

Sun came to the U.S. in 2011 to pursue a graduate degree from the University of Pennsylvania. He is now back on a whirlwind tour, punctuated by photo ops in front of the Hollywood sign and a visit to a store for Sam Altman's [eye-scanning crypto project](#). On Wednesday he posted a video of himself entering the Eisenhower Executive Office Building, part of the White House complex, and mentioned he had stopped by Blue Origin's headquarters in Kent, Wash., for a tour. "Can't wait to fly," he posted on X.

He separately indicated on X that he would attend Trump's gala dinner.

Sun's ties with World Liberty have helped put him directly in front of Trump's family. In December, he hung out in the VIP backroom of an Abu Dhabi bitcoin conference, along with Binance founder Changpeng Zhao and Eric Trump. He handed out miniature versions of [a \\$6 million piece of artwork](#) he had purchased that consisted of a banana duct-taped to a wall.

Earlier this month, Sun joined Eric Trump and Zach Witkoff, a co-founder of World Liberty and son of Trump diplomatic envoy Steve Witkoff, for a "fireside chat" at a conference in Dubai. "Was an honor sharing the stage with these legends," Witkoff wrote on X.

HTX, a crypto exchange that [Sun advises and effectively](#) has led, was the first major trading platform to list World Liberty's newly launched stablecoin, USD1.

His participation in the Trump crypto ventures has triggered concerns on Capitol Hill. In a congressional hearing Tuesday, Rep. Glenn Ivey, a Maryland Democrat, questioned the SEC's decision to pause its case against Sun. "This frankly to me smells very bad," Ivey said.

A spokesperson for Sun has said that his investment decisions aren't politically motivated.

Sun, whose net worth Forbes estimates at \$8.5 billion, is controversial even within the crypto industry. In a December court filing, U.S. crypto exchange [Coinbase Global](#)

said he was “infamous in the crypto community,” citing the SEC’s allegations and media reporting about his past business dealings.

He adopted the title “His Excellency” in 2021 after Grenada’s government appointed him as its new ambassador to the World Trade Organization. He sought the position, which he hoped would grant him diplomatic immunity, after learning about the Justice Department probe, people familiar with the matter said. Sun has said his term ended in March 2023.

Authorities have repeatedly warned about Tron’s alleged use by criminals and terrorist organizations. The United Nations Office on Drugs and Crime last year called Tron’s blockchain a “preferred choice for crypto money launderers” in Asia.

Zhao, Binance’s founder, gave evidence on Sun to U.S. prosecutors as part of his 2023 plea deal for violating anti-money-laundering rules, The Wall Street Journal [previously reported](#). A representative for Sun declined to comment at the time on “baseless allegations about legal matters.”

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Videos

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<https://www.wsj.com/articles/audit-watchdog-created-after-enron-might-be-dismantled-its-defenders-duel-with-gop-05e9f81e>

CFO JOURNAL

Audit Watchdog Created After Enron Might Be Dismantled. Its Defenders Duel With GOP.

Former audit regulators, academics and investors say oversight would diminish if the PCAOB is folded into the SEC, while the plan's supporters tout the capabilities of the securities regulatory agency

By [Mark Maurer](#) [Follow](#)

Updated May 22, 2025 9:09 am ET



Rep. French Hill, Public Company Accounting Oversight Board Chair Erica Williams and Securities and Exchange Commission Chair Paul Atkins. ILLUSTRATION: THOMAS R. LECHLEITER/WSJ, ALYSSA SCHUKAR/WSJ REUTERS, ZUMA PRESS, SHUTTERSTOCK

Former audit regulators, academics and investors are making a push to fight the proposed elimination of the Public Company Accounting Oversight Board, which a Republican-led Congress could vote to approve as part of the broader tax bill now under consideration.

Congress created the PCAOB in 2002 to boost financial oversight in the wake of the Enron and WorldCom accounting scandals. But its fate now hangs in the balance as GOP lawmakers target a July 4 bill signing by President Trump.

Republican lawmakers want to fold the PCAOB's functions into the Securities and Exchange Commission, a once-fringe idea revived in a Project 2025 document last year. The House Financial Services Committee, [led by Rep. French Hill \(R., Ark.\)](#), voted along party lines to [approve the measure](#) last month. Early Thursday, the Republican-led House [passed the broader tax bill](#), 215-214, which included the provision to eliminate the PCAOB.

Opponents warn that the plan would weaken oversight of auditing firms and reduce the accuracy and reliability of financial reporting, in part because they fear the SEC is unlikely to replicate the PCAOB's expertise and infrastructure with similar results due to its resource constraints and competing priorities.

PCAOB Chair Erica Williams, former members of the board and advisory groups in recent weeks have asked lawmakers to reconsider the plan. "The PCAOB has worked," six former board members said in a May 8 letter to the heads of the House financial services and budget committees. "We urge you not to jeopardize that progress."

Republican lawmakers and some former SEC officials say the proposal will make audit oversight more efficient and decrease duplication of regulatory functions, in line with the Trump administration's focus on government efficiency.

"As far as standard setting and everything else, to me, all that could be done in the SEC with a lot less process and certainly a lot less cost," said Dan Gallagher, chief legal, compliance and corporate affairs officer at [Robinhood Markets](#) and a Republican former SEC commissioner.

Accounting firms, many of which have argued that the PCAOB [went too far in certain rule-making efforts](#) under Chair Erica Williams, say there is a need for strong audit oversight but have provided no official stance on the proposal. Groups representing the profession have said they are committed to collaborating with policymakers regardless of where audit oversight resides.

Approval of the measure isn't a foregone conclusion. One potential hurdle would be the Byrd Rule, which prohibits the Senate from including nonmonetary items in reconciliation bills like the one being considered.

If Congress doesn't pass the legislation, the PCAOB could still undergo major changes under new SEC Chair Paul Atkins, who frequently [criticized the auditing watchdog](#) as SEC commissioner in the 2000s. At a congressional hearing Tuesday, Atkins said the SEC is fully capable of taking on the PCAOB's duties but "obviously we would need the resources to do that."

The PCAOB has played a major role in the general absence of large-scale U.S. accounting failures since Enron and WorldCom, said Nemit Shroff, an accounting professor at the Massachusetts Institute of Technology and a member of a PCAOB advisory group.

“I do worry that we’re going back in time with the wrong arguments in mind,” Shroff said.

Key differences

If the SEC takes over the PCAOB, “the question is what are they going to do less,” said Bill Gradison, a founding PCAOB board member and a former House member (R., Ohio) from 1975 to 1993.

The PCAOB is an independent nonprofit that sets standards for U.S. public companies’ auditors, inspects audits and disciplines firms for violations as mandated by the Sarbanes-Oxley Act of 2002 that created it. The SEC [must approve the PCAOB’s rules and annual budget](#) and can appeal inspection findings and enforcement actions. It also appoints the PCAOB’s board members and can remove them at will.

A key difference between the two bodies is that the SEC doesn’t perform audit inspections. The PCAOB’s inspection division is its largest unit by far, at nearly 500 employees and about 45% of the budget.

Williams has said it would take years for the SEC to reassemble skilled inspections staff and renegotiate agreements with dozens of foreign governments required to perform the work.

Those agreements would include the PCAOB’s landmark deal with China. The PCAOB in 2022 [inspected China-based audits for the first time](#) after years of Chinese regulators refusing to allow such reviews on national-security concerns.

“Not only will that agreement go away, our agreement with every jurisdiction abroad will go away because those don’t transfer automatically,” Williams said in an interview this month.

German regulators told Williams in a May 9 letter that they were “bewildered” to learn of the proposal, which they said would trigger a re-evaluation of their agreement with the U.S.

Not all of the PCAOB's leaders agree with Williams. PCAOB board member Christina Ho, who has been the [lone dissenter on several rulemakings](#), said she doesn't believe investors would be any less protected under SEC-run audit oversight. "The message that the sky is falling is not credible," Ho said.

American Institute of Certified Public Accountants CEO Mark Koziel said he supports lawmakers and regulators' efforts to review how to improve the PCAOB, which he said presents an opportunity to determine whether inspectors could employ more tech tools in their work.

"I know it will work either way, but it's not my decision," Koziel said, referring to the lawmakers' choice whether to roll up the PCAOB into the SEC. "There will still be inspections, enforcement actions and standards."

Former SEC Chair Richard Breeden, one of the first to publicly say that the SEC and not a separate body should regulate auditing before the PCAOB's creation, said his position largely remains the same more than 20 years later.

"A narrow silo agency tends to make rules that are less balanced and less appropriate for the entire marketplace than a larger agency with a broader mission of investor protection," Breeden said.

The PCAOB, whose budget is nearly \$400 million this year, is funded by public companies and broker-dealers. Those funds will stop being collected if the measure becomes law, with anything left on hand to be transferred to the Treasury Department.

The Congressional Budget Office estimated that eliminating the fee authority would reduce direct spending by \$3.2 billion from 2027 to 2034 because the PCAOB would no longer be spending the fees. Any costs for the SEC to absorb the PCAOB weren't included in the CBO estimate.

A new standard for standards

If the SEC officially absorbs PCAOB's regulatory functions but doesn't have the resources to incorporate its standard-setting duties, some have suggested that those duties could revert to the AICPA, which is a professional group that sets standards for private-company auditors but isn't a regulator.

The PCAOB at its inception was allowed to copy AICPA standards, officially on an interim basis, and still uses more than 30 of them. Those standards, criticized for

being generally too industry-friendly, remain largely untouched from when the AICPA wrote them in the 1980s and '90s.

The AICPA is capable and would hire more people, Koziel said. "If we are chosen to be the ones to manage that, then we will find a way to do it very effectively," he said.

Regardless of how the PCAOB ultimately changes, the companies subject to audits hope to have a greater role in providing input on new auditing rules, said Evan Williams, vice president at the U.S. Chamber of Commerce Center for Capital Markets Competitiveness.

"Companies have been paying greater attention to auditing rule changes over the last four years and would welcome more of a seat at the table," the Chamber's Williams said.

Write to Mark Maurer at mark.maurer@wsj.com

GOP Pushes to Eliminate Audit Oversight Watchdog, Shift Duties to SEC

 [law.com/nationallawjournal/2025/05/21/gop-pushes-to-eliminate-audit-oversight-watchdog-shift-duties-to-sec/](https://www.law.com/nationallawjournal/2025/05/21/gop-pushes-to-eliminate-audit-oversight-watchdog-shift-duties-to-sec/)

Dan Novak

May 22, 2025

U.S. Securities and Exchange Commission building. Photo: Diego M. Radzinski/ALM

News

It would be very difficult for the SEC to take over the board's inspection duties if the measure were to pass, said former Public Company Accounting Oversight Board chief trial counsel Mike Plotnick. All registered audit firms, depending on size, must be inspected annually or every three years, which requires substantial manpower and expertise, he added.

May 21, 2025 at 05:31 PM

Capital Markets

Congressional Republicans are seeking to eliminate the Public Company Accounting Oversight Board and move its responsibilities to the U.S. Securities and Exchange Commission under provisions of a spending bill now before Congress.

But several former PCAOB board members oppose the transfer, saying it would harm capital markets and increase investor risk.

"Even if the SEC could eventually re-create inspections and standard-setting functions comparable to the PCAOB's programs, doing so could take years, and there would be considerable disruption and lack of continuity in the interim," former PCAOB Chair James Doty wrote in a May 8 letter to the House Financial Services Committee.

In addition, without the PCAOB's agreements to conduct inspections in foreign countries, "non-U.S. audit work would undoubtedly weaken again, increasing the risk of material errors and fraud in financial statements on which U.S. investors rely," Doty added. He was joined in the letter by former board members Lewis Ferguson, Kayla Gillan, Daniel Goelzer, Bill Gradison and Steven Harris.

The PCAOB, established by the Sarbanes-Oxley Act of 2002, is an independent watchdog group that oversees audits of public companies, and is funded through fees paid by companies and accounting firms. The SEC has broad authority in overseeing the board.

The 1,116-page tax and spending bill, which was being debated in a marathon session in the House Rules Committee on Wednesday, still contains the provision in its latest draft.

Former PCAOB chief trial counsel Mike Plotnick said Wednesday that it would be very difficult for the SEC to take over the board's inspection duties if the measure were to pass. All registered audit firms, depending on size, must be inspected annually or every three years, which requires substantial manpower and expertise, he added.

"The SEC as currently constituted does not have the number of people and the people with the necessary audit experience to do that," said Plotnick, a partner at King & Spalding. "The PCAOB has attracted people from industry to come there that have the experience and expertise to do inspections. And that would be, I think, in my mind, the most challenging part of it."

Republicans who support the proposal say the PCAOB has become overly politicized and performs duties duplicative of the SEC and that moving its functions to the commission would make them more accountable to Congress.

SEC Chair Paul Atkins, who criticized the board as an SEC commissioner in the mid-2000s, said at a congressional oversight hearing Tuesday that the commission is "fully capable" of taking on the PCAOB's work but would need more resources to do so.

In a column posted to Medium this month, Goelzer wrote that the SEC already essentially controls everything the board does without needing to invest its own resources or perform the daily functions.

"Under the merger proposal, the SEC would lose this ability to use regulatory leverage and instead become the frontline audit regulator," Goelzer wrote. "The result is likely to be dilution of both audit oversight and of the SEC's ability to perform its other investor protection responsibilities."

Since the PCAOB is not taxpayer-funded, moving its functions to a federal agency would only add to the federal budget, he added.

Plotnick, the former chief trial counsel, said the PCAOB has performed its duties well over the last 22 years and has effectively carried out the Sarbanes-Oxley Act's mandate of corporate accountability and financial transparency.

"It has done the functions that it's supposed to do, and I think it plays an important role in the regulation of capital markets," he said, "in part because of the expertise and experience that are necessary to fill those functions."

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<https://www.wsj.com/business/autos/chinas-byd-outsell-tesla-in-europe-for-first-time-38a63cc4>

BUSINESS | AUTOS

China's BYD Outsell Tesla in Europe for First Time

Tesla's battery-electric vehicle registrations fell by almost half last month as BYD's registrations more than doubled

By [Mauro Orru](#) [Follow](#)

May 22, 2025 10:41 am ET



BYD has been expanding rapidly in Europe even as the European Union has raised tariffs on China-made EVs. PHOTO: JUNG YEON-JE/AGENCE FRANCE-PRESSE/GETTY IMAGES

Chinese automaker [BYD](#) 002594 -0.30% ▼ sold more electric vehicles in Europe than [Tesla](#) TSLA 2.53% ▲ for the first time, a setback for [Elon Musk's](#) EV maker as it faces growing competition overseas.

Tesla registered 7,165 battery-electric vehicles in Europe last month, down 49% from a year earlier, according to data from JATO Dynamics, a consumer-research group. In contrast, registrations for BYD more than doubled to 7,231 vehicles.

“Although the difference between the two brands’ monthly sales totals may be small, the implications are enormous,” said Felipe Munoz, global analyst at JATO Dynamics. “This is a watershed moment for Europe’s car market, particularly when you consider

that Tesla has led the European BEV market for years, while BYD only officially began operations beyond Norway and the Netherlands in late 2022.”

Tesla sales in Europe have been languishing for months as the company grapples with stiff competition and backlash from Chief Executive Elon Musk’s role in the Trump administration. New car registrations for Tesla models in the European Union slumped 36% in March, 47% in February and 50% in January, according to the European Automobile Manufacturers’ Association, an industry body.

The company in April posted a 71% fall in net income for the first quarter. Musk said at the time that he was going to spend less time in Washington and more overseeing Tesla as investors were concerned that he had taken his eye off the ball.

Meanwhile, BYD has been expanding rapidly in Europe even as the EU raised tariffs on China-made EVs. BYD’s registrations, including plug-in hybrids, more than quadrupled in April from a year earlier, according to JATO Dynamics data. The research group attributed that growth to a broad and competitive lineup of fully electric vehicles and plug-in hybrids.

BYD in April reported a doubling in net profit for the first quarter. The company sold more battery EVs than Tesla in the first three months of the year, retaining the crown as the world’s top EV seller.

JATO Dynamics said BYD’s rapid expansion in Europe had already pushed the Chinese company ahead of legacy brands, outselling [Fiat](#) and Seat in France.

Write to Mauro Orru at mauro.orrु@wsj.com

Videos

BYD**BYD sells more electric vehicles in Europe than Tesla for first time**

Chinese car group has been pushing to expand into overseas markets for past few years



BYD's Dolphin Surf electric vehicles in Paris. The Chinese company registered 7,231 EVs in Europe last month compared with 7,165 registrations for Tesla © Bloomberg

Kana Inagaki in London and Gloria Li in Hong Kong

Published 8 HOURS AGO | Updated 02:50



BYD has sold more electric vehicles in Europe than Tesla for the first time, marking a breakthrough for the Chinese group's efforts to [expand](#) into overseas markets.

BYD registered 7,231 fully electric cars in Europe last month compared with 7,165 registrations for [Tesla](#), according to Jato Dynamics, the automotive data intelligence firm. Tesla's monthly volume was down 49 per cent year-on-year, while BYD reported a 169 per cent jump.

The Chinese group's registrations including plug-in hybrids soared 359 per cent.

The Chinese group's aggressive expansion into Europe has coincided with a slump in sales for Tesla due to its ageing product portfolio and a backlash to Musk's intervention into regional politics.

"This is a watershed moment for Europe's car market, particularly when you consider that Tesla has led the European battery electric vehicle market for years, while BYD only officially began operations beyond Norway and the Netherlands in late 2022," said Felipe Munoz, global analyst at Jato Dynamics.

Tesla's sales have continued to decline in key European markets despite a recent upgrade of its flagship Model Y car. Musk has also announced that he was stepping back from his government role in the US to focus on running the carmaker after its first-quarter profits fell to the lowest level since the fourth quarter of 2020.

The US EV company's decline in Europe also comes as Renault, Stellantis and other brands have aggressively rolled out new battery-run vehicle models at more affordable prices to meet tougher emissions regulations in the EU starting this year.

For the month of April, Renault, Škoda, Volkswagen, Audi and BMW also outsold Tesla in pure electric cars.

On a global level, BYD has overtaken Tesla as the world's largest maker of electric vehicles driven by strong demand in its home market. But the Chinese group is a relative newcomer in Europe and its rapid foray into overseas markets has sparked alarm among western carmakers.

BYD and other Chinese groups have expanded their product line-up in Europe, increasing the sales of plug-in hybrids, which are not subject to EU tariffs of up to 45 per cent on EVs from China.

Registration of EVs made by Chinese carmakers rose by 59 per cent year-on-year in Europe in April to 15,300 vehicles, while plug-in hybrids increased nearly eight-fold to 9,649 units, according to Jato.

In recent years, BYD has launched eight models across more than 30 European countries, including the compact Seagull hatchback priced as low as €22,990, with virtually no direct rivals in the segment.

"We have a mission that we need to have all of BYD's high technology and innovation reach as many customers as possible in the world," Jolin Zhang, deputy managing director of BYD Europe, told the FT's Future of the Car summit last week.

She added that BYD is offering a "full spectrum" of products from EVs to plug-in hybrids to cover "the diverse customer profile" across the continent.

The company plans to produce locally via its plants in Hungary and Turkey to address the tariffs, but some of those ambitions have been entangled in geopolitical tensions.

The European Commission is [investigating](#) whether China provided unfair subsidies for the company's first European factory in Hungary, the Financial Times reported.

Its plan to build a factory in Mexico has also faced hurdles in obtaining approval from Chinese authorities, amid concerns that its smart car technology could potentially leak across the border to the US.

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Supreme Court Affirms Fraud Conviction of Business That Lied About Using Minority-Owned Subcontractor

LAW [law.com/nationallawjournal/2025/05/22/supreme-court-affirms-fraud-conviction-of-business-that-lied-about-using-minority-owned-subcontractor](https://www.law.com/nationallawjournal/2025/05/22/supreme-court-affirms-fraud-conviction-of-business-that-lied-about-using-minority-owned-subcontractor)

Jimmy Hoover

May 22, 2025



The U.S. Supreme Court on Thursday held that a defendant need not intend to hurt a victim's bottom line to be found guilty under the federal wire fraud statute.

In a ruling written by Justice Amy Coney Barrett, the court upheld the convictions of a public works company and its project manager who lied about using a minority-owned subcontractor to obtain lucrative projects from the Pennsylvania Department of Transportation.

The justices rejected the defendants' argument that the Disadvantaged Business Enterprise condition for bids on PennDot contracts was a mere "regulatory" request separate from any financial loss with which the federal wire fraud statute is concerned.

"We are not convinced," Barrett wrote, citing the language of the statute, 18 U. S. C. §1343, which makes it a crime to devise "a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises."

"Petitioners 'devised' a 'scheme' to obtain contracts through feigned compliance with PennDOT's disadvantaged-business requirement," Barrett added. "Their goal? To 'obtain money' (tens of millions of dollars) from PennDOT. And how? By making a number of 'false or fraudulent . . . representations'—first about their plans to obtain paint supplies from Markias and later about having done exactly that. Section 1343 requires nothing more."

The ruling affirmed the validity of the so-called "fraudulent inducement theory" of federal wire fraud, in which prosecutors have targeted defendants for false representations made to obtain lucrative government contracts.

A U.S. District Court for the Eastern District of Pennsylvania jury convicted Alpha Painting and Contruction Co. and Stamatios Kousisis, its project manager, of wire fraud in connection with the falsehood about hiring a disadvantaged contractor in its successful bid for two federally funded Pennsylvania bridge projects in 2009 and 2010.

The company was ordered to return all of its \$10.9 million profit from the Philadelphia projects and pay a \$500,000 fine. Kousisis was sentenced to 70 months in prison.

The U.S. Court of Appeals for the Third Circuit upheld the convictions, prompting Alpha Painting and Kousisis to seek review by the Supreme Court.

Justice Neil Gorsuch, while agreeing with the underlying result, declined to join Barrett's opinion.

"[T]he Court's decision today contains a footnote that appears to spurn fraud's historic injury rule," Gorsuch wrote. "Under the federal wire-fraud statute, the Court suggests, it does not matter if the putative victim receives all he was promised... Respectfully, that cannot be the law."

The court's suggestion that making all lies during contract negotiations a form of federal fraud "risks turning prosecutors and courts into morality police with a commission to prosecute and punish harmless lies," Gorsuch added.

Justice Sonia Sotomayor similarly declined to join Barrett's opinion, expressing discomfort with the its breadth even as she concurred in the decision to affirm the convictions.

The court, Sotomayor wrote, "has no reason to opine on a class of fraudulent-inducement cases distinct from this one: those in which a defendant provides exactly the goods or services that they promised to deliver, but lies in other ways to induce the transaction."

"That discussion is not essential to the Court's resolution of the dispute before us, and I see no reason to proceed more broadly than necessary," Sotomayor added.

Justice Clarence Thomas joined Barrett's opinion, but wrote separately to criticize the federal Disadvantaged Business Enterprise program as "impos[ing] an explicitly race-based classification system," adding he is "skeptical" of the program's legality.

"It is implausible to think that a 'reasonable person' would 'attach importance' to contract provisions that mandate constitutional violations," Thomas wrote.

The court rendered its decision in *Stamatios Kousisis and Alpha Painting and Construction Co. v. United States*, No. 23-909.

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Google faces DOJ probe over Character.AI deal, Bloomberg Law reports

 [reuters.com/business/google-faces-doj-probe-over-deal-ai-tech-bloomberg-law-reports-2025-05-22](https://www.reuters.com/business/google-faces-doj-probe-over-deal-ai-tech-bloomberg-law-reports-2025-05-22)

Reuters

May 22, 2025

A Google logo is seen at a company research facility in Mountain View, California, U.S., May 13, 2025. REUTERS/Carlos Barria/File Photo Purchase Licensing Rights, opens new tab

(GOOGL.O), opens new tab Google violated antitrust law in its agreement with Character.AI that allows the tech giant to use the AI startup's technology, Bloomberg Law reported on Thursday.

Antitrust enforcers have recently told Google they are examining whether the company structured the agreement with Character.AI to avoid formal government merger scrutiny, the report said, citing people with knowledge of the matter.

Google last year signed a licensing deal with Character.AI that granted the search engine giant a non-exclusive license to the chatbot maker's large language model technology. The company also hired Character.AI co-founders Noam Shazeer and Daniel De Freitas, both former Google employees.

"We're always happy to answer any questions from regulators," a Google spokesperson said. "We're excited that talent from Character.AI joined the company but we have no ownership stake and they remain a separate company."

Character.AI and the DOJ did not immediately respond to Reuters requests for comment.

The DOJ can scrutinize whether the deal itself is anti-competitive even if it did not require a formal review, the report said, adding the antitrust probe was in the early stages and may not lead to an enforcement action.

Other tech giants have struck similar deals in the past year in their push for growth in the heated generative AI race.

Microsoft (MSFT.O), opens new tab struck a \$650 million deal with Inflection AI in March 2024, to use the AI startup's models and hire its staff, while Amazon (AMZN.O), opens new tab hired AI firm Adept's co-founders and some of its team last June. Both deals had drawn regulatory scrutiny.

Google is already under pressure from regulators, with the DOJ seeking to break up the company's dominance in the online search market and in digital advertising technology in two separate cases.

Reporting by Deborah Sophia in Bengaluru; Editing by Pooja Desai, Sriraj Kalluvila and Devika Syamnath

OpenAI Wins Dismissal of Lawsuit Alleging ChatGPT-Generated Defamation

 [law.com/nationallawjournal/2025/05/21/openai-wins-dismissal-of-lawsuit-alleging-chatgpt-generated-defamation](https://www.law.com/nationallawjournal/2025/05/21/openai-wins-dismissal-of-lawsuit-alleging-chatgpt-generated-defamation)

Kat Black

May 22, 2025

- Mark Walters, a pro-gun rights radio host, sued OpenAI for defamation in 2023.
- Walters claimed that OpenAI's chatbot, ChatGPT, had incorrectly stated he was being sued for embezzlement in a summary of a lawsuit that it produced for a journalist.
- A judge granted summary judgment in favor of OpenAI, citing First Amendment protections.

A Georgia state court ruled in OpenAI's favor in what may be the first-ever generative artificial intelligence defamation suit after a radio talk show host accused OpenAI's chatbot product, ChatGPT, of inaccurately stating he was sued for embezzlement. Gibson, Dunn & Crutcher represented OpenAI.

Gwinnett County Superior Court Judge Tracie Cason issued an order granting summary judgment in full to OpenAI on Monday, almost two years after Mark Walters, a Georgia resident, Second Amendment activist and host of the nationally syndicated Armed American Radio show, sued OpenAI Inc. for allegedly inventing a fictional lawsuit against him that incorrectly claimed he had defrauded and misappropriated funds from the Second Amendment Foundation, a pro-gun rights advocacy organization.

Gibson Dunn declined to comment but directed Law.com to an OpenAI spokesperson, who said in an email, "We appreciate the court's careful decision and its findings about our efforts to responsibly educate users and improve our models. ChatGPT is helping millions of people be more creative, learn faster and solve hard problems, and we'll keep working to make sure it's safe and helpful."

Walters, who describes himself as a conservative activist and claims that Armed American Radio is "the fastest growing pro-gun rights radio broadcast in American Broadcasting history" on his website, founded Armed American Radio in 2019 and estimates, per court records, that 1.2 million listeners tune in to each of his radio segments. OpenAI, which is headquartered in San Francisco, was founded in 2015 and debuted its large language model chatbot, ChatGPT, in November 2022.

OpenAI currently faces 12 lawsuits, some of which involve its stakeholder, Microsoft, alleging that it used copyrighted materials to train its large language models. The litigation was consolidated in the U.S. District Court for the Southern District of New York in April 2025.

Walters first filed suit against OpenAI LLC in Gwinnett County Superior Court in Georgia on June 5, 2023. He is represented by John Monroe of John Monroe Law in Dawsonville, Georgia.

Walters alleged that, on May 4, 2023, journalist Fred Riehl, an editor at media outlet Ammoland Shooting Sports News, used ChatGPT to summarize a lawsuit he was reporting on that was filed by the Second Amendment Foundation in the U.S. District Court for the Western District of Washington, captioned *Second Amendment Foundation v. Ferguson*.

One of the plaintiffs in the Second Amendment Foundation case is Alan Gottlieb, the founder of the SAF. Gottlieb's praise for Walters is featured at the top of the Armed American Radio website. Walters is not involved in the SAF litigation.

Neither Riehl nor Ammoland were defendants in Walters' lawsuit.

According to the complaint, ChatGPT's summary of the lawsuit erroneously named Walters as the defendant and stated that he was "accused of defrauding and embezzling funds from the SAF" while serving as the treasurer and chief financial officer of the organization. Walters, it said, has never filled any role at the SAF and said the allegations against him were completely fabricated "hallucinations," or generative AI-induced errors. Walters, who claimed that communicating these hallucinations to a journalist was tantamount to publishing "libelous matter," sought general and punitive damages, attorneys' fees and costs and a jury trial.

"ChatGPT's allegations concerning Walters were false and malicious, expressed in print, writing, pictures, or signs, tending to injure Walter's reputation and exposing him to public hatred, contempt, or ridicule," the complaint stated.

The court denied OpenAI's motion to dismiss in January 2024 and OpenAI filed a motion for summary judgment in November 2024. In December 2024, the Technology Law and Policy Clinic at New York University School of Law submitted an amicus brief articulating the "novel" questions presented by the case about adapting defamation law to emerging technologies and requesting that the court's decision strike a balance between "redressing reputational harm" and "creating breathing space for protected speech."

In her Monday decision, Cason noted that Walters testified he had not suffered any damages from ChatGPT's hallucinations and that he had not asked OpenAI to correct or retract its embezzlement claims. She agreed with OpenAI's argument that ChatGPT's output "does not communicate defamatory meaning as a matter of law," finding that a "reasonable person" in Riehl's position could not have concluded that ChatGPT's output communicated "actual facts" since the chatbot had warned Riehl before he input a link to the complaint that it did not have access to the internet and could not retrieve the provided link.

In addition, Cason said that challenged statements can only be interpreted as "defamatory" if they are believed to be factual by the individual viewing them—and it was "undisputed" that Riehl himself, after a short period of reflection, had concluded that the allegations against Walters were not true. "This alone is sufficient to require summary judgment in favor of OpenAI," she wrote.

Separately, the order said, Walters had failed to establish that OpenAI acted with negligence, noting that Walters could not cite a legal precedent for holding that a "publisher is negligent as a matter of defamation law merely because it knows it can make a mistake" and alluding to OpenAI's expert testimony, which contended that all large language models on the market are capable of producing hallucinations. Walters also failed to meet the "actual malice" standard since OpenAI was not aware at the time that it was circulating false information and has, in fact, actively taken measures to reduce hallucinations in its output, it said.

Cason concluded that Walters was not entitled to punitive damages under the First Amendment.

"We are reviewing the order and considering our options," said John Monroe, Walters' counsel, in an email. Walters could not immediately be reached for comment on Wednesday.

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Who Got The Work

Paul, Weiss, Rifkind, Wharton & Garrison partner Joshua Hill Jr. has entered an appearance for Kldiscovery Ontrack LLC in a pending intellectual property lawsuit. The complaint, filed March 31 in New York Southern District Court by Wuersch & Gering LLP on behalf of ZL Technologies Inc., accuses the defendant of



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Kronos Bio Shareholder Says Sale Unfairly Benefits Execs

By **Gianna Ferrarin**

Law360 (May 21, 2025, 4:32 PM EDT) -- Kronos Bio is facing a new shareholder suit claiming its plan to be acquired by another biopharmaceutical company will unfairly entitle Kronos executives to "lucrative" benefits unavailable to public shareholders.

The suit, filed in California federal court Tuesday, challenges Kronos' planned sale to Concentra Biosciences, a clinical-stage biopharmaceutical company. The deal provides Kronos executives with unique benefits including multimillion-dollar severance packages and the conversion of illiquid portions of stock, Kronos shareholder Susan Bowen alleged in the suit.

"While the proposed transaction is not in the best interests of Kronos, plaintiff, or company stockholders, it will produce lucrative benefits for the company's officers and directors," the shareholder said in her complaint.

The complaint also names Kronos executives as defendants, including the chairman and company directors.

Kronos announced the acquisition deal at the beginning of May, noting the agreement includes terms for Concentra to receive proceeds from small molecule therapies Kronos has been developing to treat cancers and other similar diseases. The deal is expected to close in the middle of the year, according to the announcement.

A media representative for Kronos did not immediately respond to a request for comment from Law360 on Wednesday.

According to the suit, the recommendation statement Kronos filed with the U.S. Securities and Exchange Commission for the deal did not provide certain details about how the sale will benefit Kronos executives, including negotiation communications on post-transaction employment and the amount executives will be able to exchange for illiquid restricted stock units as part of the deal.

The statement also allegedly failed to adequately disclose information relevant to the deal, including the full extent of financial details shared by Kronos management during negotiations, as well as financial projections for the company.

"This information is necessary to provide plaintiff in her capacity as a company stockholder, with a complete and accurate picture of the sales process and its fairness," the shareholder said in her complaint. "Without this information, plaintiff is not fully informed as to defendants' actions, including those that may have been taken in bad faith, and cannot fairly assess the process."

These gaps in disclosure put Kronos in violation of the Securities and Exchange Act, the suit alleges. The suit claims Kronos violated rules prohibiting material misrepresentations and omissions and fell short of its statutory obligation to make a full and complete disclosure in connection with the acquisition.

The shareholder is represented by Evan J. Smith Esquire and Ryan P. Cardona Esquire of Brodsky Smith.

Counsel information for Kronos was not immediately available Wednesday.

The case is *Bowen v. Kronos Bio Inc. et al.*, case number 3:25-cv-4322, in the U.S. District Court for the Northern District of California.

--Editing by Kelly Duncan.

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Intel Investors Say They Fixed Suit Over Chipmaking Woes

By **Sydney Price**

Law360 (May 21, 2025, 7:11 PM EDT) -- Intel Corp. investors say a California federal judge should reject the company's bid to dismiss a suit claiming it concealed problems in its domestic computer chipmaking business, arguing they have fixed all potential deficiencies in the suit that previously led to its dismissal.

The investors said Monday that the latest version of their complaint, filed in March, alleges with "sufficient particularity" that Intel misled investors by reporting only a fraction of its foundry results because it repeatedly emphasized Intel's foundry venture as the key to Intel's turnaround and success, prompting a duty to disclose certain information.

In August, Intel announced a \$1.6 billion loss along with plans to lay off 15,000 people and cut \$10 billion in 2025 due to struggles launching a chipmaking business, according to the suit. The 26% stock drop in the following 24 hours amounted to a reduction of \$32.2 billion in equity in an event the investors argue was the steepest single-day stock decline since 1985.

U.S. District Judge Trina Thompson **tossed the investors' claims** in March, but allowed the group a second chance to argue that Intel reported false statements about its chipmaking business. Judge Thompson found that the investors misleadingly cast a \$7 billion loss for Intel's overall manufacturing business in 2023 as the result of its chipmaking arm for external customers.

After the investors refiled their suit later that month, **Intel responded** by claiming the new complaint only offers "unsupported spin on the same public material" as the previous complaints.

Intel said it was upfront in telling investors that it would not report results for the newly formed business segment selling chips to external customers until it finished a reorganization in 2024, and that companies are not required to report everything investors would have liked to see.

However, the investors said Monday that the \$7 billion in foundry-related losses are not mere "nice to know" information.

"[I]ts omission, in the context of Intel's decision to disclose a smaller subset of positive foundry results and having repeatedly touted the foundry as key to Intel's success, was materially misleading because it significantly altered the total mix of information made available," the investors said.

In 2021, Intel said it would seek to make computer chips for outside buyers, instead of its own use, announcing Qualcomm and Amazon Web Services as its first major buyers that year.

The group of investors pointed to the company's struggles in launching the business as contributing to Intel's November removal from the Dow Jones Industrial Average. The investors also noted that CEO Pat Gelsinger announced his retirement in December, while the company delayed the expected opening of its first chipmaking factory in Ohio to at least 2030.

Judge Thompson previously determined the investors did not sufficiently allege Gelsinger regularly reviewed the full foundry's operating results, but the investors said Monday that the new complaint adds "substantial facts alleging Gelsinger's direct involvement" in implementing the internal foundry model and evaluating its results throughout 2023.

"[I]n 2023, Gelsinger regularly reviewed and used the full foundry's operating results to make decisions and its discrete financial information was available," the motion said. "Thus, Intel was required to report the full foundry in its 2023 results; its failure to do so violated [Generally Accepted Accounting Principals] and rendered its reported financial results materially false and misleading."

Representatives of the parties did not immediately respond to requests for comment Wednesday.

The investors are represented by Robert V. Prongay, Kara M. Wolke and Garth Spencer of Glancy Prongay & Murray LLP, and Laurence M. Rosen and Robin B. Howald of The Rosen Law Firm PA.

Intel is represented by Brian Rivas Boessenecker, Gregory P. Stone, John M. Gildersleeve and Lorraine Abdulahad of Munger Tolles & Olson LLP.

The case is In re Intel Corp. Securities Litigation, case number 3:24-cv-02683, in the U.S. District Court for the Northern District of California.

--Editing by Drashti Mehta.

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AbbVie Gets Victory In Allergan Shareholder Suit Upheld

By **Katryna Perera**

Law360 (May 21, 2025, 8:07 PM EDT) -- An Illinois state appellate panel said Wednesday that a trial court properly dismissed a shareholder class action against biopharmaceutical company AbbVie Inc. that accused the drugmaker of issuing unregistered shares to investors after acquiring Irish pharmaceutical company Allergan.

A three-judge panel for the state appellate court issued an **opinion**, written by Justice LeRoy K. Martin Jr., saying the lower court properly found the AbbVie shares issued to Allergan shareholders were exempt from registration, among other things.

According to the opinion, AbbVie acquired Allergan in 2020, and Allergan shareholders received cash and newly issued AbbVie shares in exchange for their old Allergan shares. In announcing the deal, AbbVie indicated that it would rely on Section 3(a)(10) of the Securities Act of 1933, which "exempts securities from registration when securities are issued in exchange for other securities and a court or governmental body finds the terms of the exchange fair after a hearing."

The required "fairness hearing" occurred in May 2020 before the High Court in Dublin, Ireland, and the merger was approved after the High Court found that the merger was fair and equitable, the relevant and interested parties had been duly notified of the hearing, no parties notified Allergan's counsel of an intent to appear, and over 99% of Allergan shareholders voted in favor of the acquisition, the opinion states.

Plaintiff Stephen Twigg then brought the current action on behalf of all former Allergan shareholders who reside in the U.S. and received AbbVie shares from the merger, alleging that AbbVie failed to register the securities issued to Twigg and members of the putative class.

According to Twigg, the registration exemption requirements of the Securities Act were not satisfied, and therefore, the shares were not exempt. Specifically, Twigg argued that travel restrictions implemented in response to the COVID-19 pandemic made it "effectively impossible" for him or any other Allergan shareholder residing in the U.S. to appear at the hearing in Dublin, Ireland.

However, the appeals court said Wednesday that while in-person attendance for U.S.-based Allergan shareholders may have been "impractical," shareholders could have arranged for Irish counsel to appear on their behalf.

Twigg also argued that U.S.-based Allergan shareholders were deprived of a "meaningful right to appear" at the hearing, but the panel disagreed, saying Allergan shareholders had a right to appear that satisfies section 3(a)(10).

"The statute does not specify that the right to appear includes the right to be physically present. And apart from certain proceedings where fundamental rights are at stake, such as in a criminal prosecution, in-person attendance is not required to satisfy due process. Meaningful alternatives were available," the opinion states.

"In addition, evidence in the record indicates Irish courts were amenable to virtual appearance by telephone or videoconference," the opinion further states. "Twigg asserts that the High Court did not make videoconferencing available, but Twigg also failed to show it would not have permitted it if requested."

According to the opinion, Twigg further argued that AbbVie failed to inform the High Court of statements from two of the five Federal Trade Commission commissioners opposing approval of the merger, which was a "material omission" essential to the fairness hearing since a reasonable investor might have found the statements important.

However, the panel again disagreed on Wednesday, calling Twigg's suggested standard "unworkable."

"What a reasonably prudent investor could find 'important' is only limited by imagination. This standard would render any fairness hearing insufficient and make section 3(a)(10) useless," the opinion states. "The dissenting FTC commissioners' statements had no bearing on the value of the shares to be exchanged. Nor would this information be relevant to guard against fraud or collusion."

The panel also noted that the dissenting FTC commissioners' statements were publicly posted on the FTC website and, therefore, available to Allergan shareholders regardless of whether AbbVie disclosed it to the High Court.

The panel said dismissal is warranted based on Twigg's failure to show that the exemption requirements were unmet. However, the panel also said even if they had found dismissal appropriate from Twigg's claims, they would still affirm the trial court's ruling based on AbbVie's alternative argument that the action should be tossed for lack of an available remedy.

The panel said Twigg has not suffered any actual or threatened injury but has gained from AbbVie's actions. According to the opinion, the shares Twigg gained through the merger have appreciated by roughly \$30, and if AbbVie were to return to him the cash value of the old Allergan shares in exchange for the shares he currently holds, Twigg would suffer a loss.

"The financial reality here weighs heavily against finding standing: courts exist to redress or prevent injuries, not cause them," the opinion states.

Rescission may also not be possible, the panel said, since Twigg did not pay any money for his AbbVie shares and his old Allergan shares now no longer exist.

"So it is not possible to return what Twigg gave as consideration for AbbVie shares," the opinion states. "Yet, as noted, even if he received the cash value instead, he would incur a loss. In any event, Twigg would not benefit from the relief granted."

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

Justices LeRoy K. Martin Jr., Bertina E. Lampkin, and Debra B. Walker sat on the panel for the Illinois Appellate Court.

Twigg is represented by J. Dominick Larry of Nick Larry Law LLC, David W. Hall of Hedin Hall LLP and Andrew J. Brown of The Law Offices of Andrew J. Brown.

AbbVie is represented by Robert J. Kopecky, Joshua Z. Rabinovitz and Philip M. Cooper of Kirkland & Ellis LLP.

The case is Stephen Twigg v. AbbVie Inc. et al., case number 1-22-1581, in the Appellate Court of Illinois, First District.

--Editing by Vaqas Asghar.



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Chancery Orders Nominating Do-Over For Ionic Board Vote

By **Jeff Montgomery**

Law360 (May 21, 2025, 7:28 PM EDT) -- Citing overwhelming trial evidence, a Delaware vice chancellor on Wednesday told bankrupt Celsius Network's Ionic Digital successor to reopen a board nomination window after finding that the company wrongly eliminated one of two director seats ahead of an election in a defensive move targeting dissident candidates.

Vice Chancellor Bonnie W. David's 53-page **decision** after expedited proceedings found that Ionic stockholders Veton Vejseli, Brett Perry and Christopher Villinger established their entitlement to an order invalidating the board reduction and restoring the board to six directors ahead of a rescheduled vote.

"The trial evidence here overwhelmingly supports a finding that the board reduction resolution was not adopted on a 'clear day,'" the vice chancellor wrote. The decision added that "in the face of a mounting proxy contest," those sued have to clear an "enhanced scrutiny" review hurdle obliging them to show they acted reasonably and not with improper or unselfish motives.

Rejected, however, was a stockholder call to overturn an Ionic board denial of the group's original two-candidate slate. Vice Chancellor David ruled that the original slate was rejected for legitimate board reasons.

Nevertheless, the vice chancellor concluded that Ionic's directors "breached their fiduciary duties by reducing the size of the board, not for a valid corporate purpose, but as an inequitable defensive measure."

Ionic was formed to take up the bitcoin mining business of Celsius Network in early 2024 as part of Celsius' Chapter 11 plan. In December 2024, Celsius founder Alex Mashinsky **pled guilty** to commodities fraud and securities fraud, under an agreement ruling out appeal for any sentence of 30 years or less.

While Vice Chancellor David allowed the late nomination, she ruled in Ionic's favor on a claim that the stockholders failed to comply with the company's advance notice bylaws covering nominations. The 10-day reopened window for nominations, however, mooted the bylaw ruling's effect.

Ionic received the stockholders' nominations on Feb. 17 and made the board seat reduction public on its website on Feb. 20. A day later, the company's corporate governance and nominating committee agreed to recommend an incumbent director for the one seat up for a vote and declined to recommend the stockholder candidates.

The stockholders, meanwhile, were said to have learned of the seat reduction on Feb. 26.

Vice Chancellor David determined that directors failed to show that the board seat was eliminated "for a valid, non-pretextual corporate purpose" and ruled that the board must correct disclosures about the reduction resolution and the annual meeting.

Of concern to Ionic and its incumbents, the vice chancellor found, was the undisclosed development of the stockholder slate with financial backing from Figure Markets and GXD, "non-parties that do not own Ionic stock but have proposed commercial arrangements" with the company.

Figure Markets had proposed that Ionic list its stock on Figure Markets' alternative trading system. A top GXD official had separately proposed replacing Ionic's management services provider. In a meeting in October 2024 between the company, one of the plaintiffs, Figure Markets and GXD, the outside group "encouraged the board to replace directors, appoint a new CEO, immediately list Ionic's stock" and overhaul other company arrangements.

Taken to trial on May 8 and 9 were four counts: a breach of duty claim tied to the board reduction resolution; a related claim challenging the reduction as a bylaw violation; a breach of fiduciary duty claim tied to the nomination rejections; and disclosure claims.

In the decision Wednesday, the vice chancellor ruled in the stockholders' favor on the board reduction breach and some of the disclosure-related breaches. The court had already, on March 13, ruled in the stockholders' favor in a Court of Chancery **"books and records"** complaint for access to Ionic's stock list.

"Although the board urges that plaintiffs should not get a 'do-over' after failing to comply with the advance notice bylaw," the decision said, company officials "offer no good reason to deny plaintiffs the ability to submit a new nomination during the reopened window so that, with the benefit of full disclosure, Ionic's stockholders can finally decide for themselves who should serve on the board."

A. Thompson Bayliss, counsel for the stockholders who sued, said late Wednesday: "Our clients are grateful for the court's time and attention and delighted that Ionic's stockholders will finally have a say in who sits on Ionic's board of directors."

Other parties did not immediately respond to requests for comment.

Crypto lender Celsius Network hit bankruptcy in July 2022. Prosecutors alleged that Celsius held \$25 billion of assets at its peak in early 2022. Those billions were quickly drained out of the platform prior to its collapse. Mashinsky's plea agreement said he had agreed to forfeit over \$48 million and is responsible for a loss exceeding \$550 million.

Stockholders Veton Vejseli, Brett Perry and Christopher Villinger are represented by A. Thompson Bayliss, Nicholas F. Mastria and Daniel J. McBride of Abrams & Bayliss LLP and Adrienne Ward, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome Wolosky LLP.

Ionic Digital and Ionic directors Scott Duffy, Thomas DiFiore and Scott Flanders are represented by Martin S. Lessner, Alberto E. Chavez and Andrew J. Czerkawski of Young Conaway Stargatt & Taylor LLP.

Director Elizabeth LaPuma is represented by John A. Morris of Pachulski Stang Ziehl & Jones LLP.

The case is Veton Vejseli et al. v. Scott Duffy et al., case number 2025-0232, in the Court of Chancery of the State of Delaware.

The bankruptcy case is In re: Celsius Network LLC et al., case number 1:22-bk-10964, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Emily Lever and Pete Brush. Editing by Linda Voorhis.



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19-Year-Old Mass. Student Admits To PowerSchool Hacking

By **Hailey Konnath**

Law360 (May 20, 2025, 10:30 PM EDT) -- A 19-year-old student at Assumption University in Worcester, Massachusetts, has pled guilty to hacking into the networks of two companies, including education software and cloud storage company PowerSchool Group LLC, and extorting them for ransoms, the U.S. Department of Justice announced Tuesday.

Matthew D. Lane, of Sterling, Massachusetts, agreed to plead guilty to cyber extortion conspiracy, cyber extortion, unauthorized access to protected computers and aggravated identity theft, the Justice Department said in a statement.

Millions of students, parents and teachers had their personal information compromised in a December 2024 PowerSchool breach, which has already spurred at least **two proposed class actions**. The plaintiffs say their addresses, Social Security numbers, grades, medical records and other sensitive information was exposed in the incident.

Neither the criminal information nor plea agreement filed Tuesday in Massachusetts federal court name PowerSchool, and the Justice Department declined to identify the companies. However, a person familiar with the matter confirmed to NBC News that PowerSchool was indeed one of the victims.

According to the information, Lane used stolen log-in credentials to access PowerSchool's network. The company is identified in the filings only as "Victim 2" and described in the DOJ's statement as "a software and cloud storage company that served school systems in the United States, Canada and elsewhere."

Prosecutors said Lane transferred personally identifying information of students and teachers to a server he was leasing in Ukraine. On Dec. 28, 2024, Lane threatened to leak that information "worldwide" if the company didn't shell out \$2.85 million in Bitcoin, the government said.

Prosecutors said Lane and other individuals also extorted a \$200,000 ransom payment from an unnamed telecommunications company by threatening to publicly share customer data that had been stolen from the company's computer network. That happened between April 2024 and May 2024, they claimed.

According to prosecutors, the telecommunications company asked if a ransom payment would actually mean the data wouldn't be leaked. Lane then purportedly responded, "We are the only ones with a copy of this data now. Stop this nonsense [or] your executives and employees will see the same fate. ... Make the correct decision and pay the ransom. If you keep stalling, it will be leaked."

Leah B. Foley, the U.S. attorney for the District of Massachusetts, said in the statement that Lane "stole private information about millions of children and teachers, imposed substantial financial costs on his victims, and instilled fear in parents that their kids' information had been leaked into the hands of criminals — all to put a notch in his hacking belt."

Kimberly Milka, acting special agent in charge of the FBI's Boston Division, added that Lane "apparently thought he found a way to get rich quick."

"This alleged scheme has resulted in serious consequences," Milka said in the statement.

Counsel for Lane didn't immediately respond to a request for comment late Tuesday.

The government is represented by Kristen A. Kearney of the DOJ's Securities, Financial & Cyber Fraud Unit

Lane is represented by Sean M. Smith of Rudolf Smith Griffis & Ruggieri LLP.

The case is U.S. v. Matthew Lane, case number 4:25-cr-40015, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Lauren Berg. Editing by Kristen Becker.

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Fox Accuses Smartmatic Of Destroying 'Critical' Evidence

By **Hailey Konnath**

Law360 (May 21, 2025, 10:34 PM EDT) -- Fox News on Wednesday called for Smartmatic to be sanctioned, claiming that nearly two-dozen executives and other employees at the voting tech company destroyed "critical" evidence related to the company's defamation case against the television network, an accusation that comes a week after Smartmatic said Fox deleted relevant texts.

Fox lodged a motion for sanctions in New York state court, arguing that on the eve of Smartmatic filing its suit, its CEO Antonio Mugica ordered founder Roger Piñate to delete WhatsApp messages "discussing critical damages issues surrounding the outlandish \$2.7 billion the company planned to seek from Fox."

"Mere days before that, a top Smartmatic executive, again in writing, directed his subordinates to doctor key customer records to manufacture support for the massive damages case Smartmatic had invented," Fox says in the heavily redacted motion. "And while they should have been retaining documents, key Smartmatic employees deleted their mobile messages, depriving Fox of yet more evidence undermining Smartmatic's unsupported damages claim."

Fox contends the allegedly spoliated evidence undermined Smartmatic's damages claims. It adds that it also "stands in stark contrast to how Fox has comported itself throughout this litigation, despite Smartmatic's recent fact-free assertions to the contrary."

"Smartmatic's flagrant discovery misconduct cannot be tolerated," Fox News says in the motion. "Fox seeks an order finding intentional spoliation by Smartmatic, and entering all relief that the court deems appropriate, including but not limited to adverse inferences that the spoliated evidence undermined Smartmatic's damages claims, striking Smartmatic's lost-profits claims for opportunities arising after 2022, and limiting Smartmatic's general damages claims to nominal damages."

Smartmatic has claimed Fox reported baseless statements that the company was involved in a scheme to rig the 2020 presidential election for former President Joe Biden and that those reports caused a significant hit to its business.

Last week, Smartmatic lobbed its own **evidence-deleting accusations** at Fox News, filing a motion for adverse inference charges based on spoliation. Smartmatic says network executives, including Robert Murdoch and his son Lachlan, deleted "critical" and "incriminating" text messages related to allegedly defamatory broadcasts during the election.

"The spoliation occurred despite a clear duty to preserve evidence," Smartmatic said at the time. "The destruction was not isolated or accidental. It was extensive and willful." It asked for a pretrial order "directing that the jury be charged with an adverse inference instruction."

However, Fox says in its Wednesday motion that it had disclosed the gaps in its own mobile data years ago. All of those gaps were inadvertent, and there's no evidence of bad intent or culpability, it adds.

"Fox undertook extensive mitigation measures to remedy the gaps and produced thousands of text messages and emails to Smartmatic," Fox says. "Smartmatic did the opposite. At every turn, it has concealed, destroyed and disassembled."

According to the motion, Smartmatic didn't disclose any document-preservation issues because the issues were "so serious." Instead, the company hid behind "voluminous productions filled with junk documents, apparently hoping Fox would never notice," Fox says.

Smartmatic knew its preservation obligations, and it knew that evidence would contradict those claims, Fox argues.

"It is highly implausible that the cause is anything other than intentional spoliation," Fox argues.

A Fox News spokesperson said in a statement that the company is "seeking relief to remedy Smartmatic's brazen and purposeful spoliation of relevant mobile data."

Meanwhile, Erik Connolly of Benesch Friedlander Coplan & Aronoff LLP, who represents Smartmatic, said in a statement Wednesday that Fox "continues to smear Smartmatic to distract from the truth: Fox lied following the 2020 election and has repeatedly lied to shield itself from accountability in this case."

"Fox's baseless attacks are nothing more than retaliation, a deliberate effort to avoid addressing its own destruction of evidence," Connolly said. "Smartmatic has met all of its legal obligations in this case. Unlike Fox, Smartmatic has preserved and produced evidence in accordance with New York law."

Also last week, a New York state appeals court **ordered** Smartmatic to give Fox News documents related to a federal investigation into allegations that the company's executives bribed officials in the Philippines, ruling the materials are "plainly relevant" to the network's defense against defamation claims.

In April, both parties lodged **dueling summary judgment bids**, with Smartmatic accusing Fox of a malicious "betrayal of the truth" while the network argues there is no evidence its election fraud claims caused Smartmatic's "business failure."

Smartmatic is represented by J. Erik Connolly, Nicole E. Wrigley, Lee B. Muench and Edward C. Wipper of Benesch Friedlander Coplan & Aronoff LLP.

Fox News, hosts Maria Bartiromo and Jeanine Pirro and former host Lou Dobbs' estate are represented by Mark R. Filip, Chris Stackhouse, Aaron H. Marks, Robert W. Allen, K. Winn Allen, Michael F. Williams, Devin S. Anderson, Erin E. Cady, Leah A. Hamlin and Brad Masters of Kirkland & Ellis LLP, Steven G. Mintz and Scott Klein of Mintz & Gold LLP, and Paul D. Clement and Erin E. Murphy of Clement & Murphy PLLC.

The case is Smartmatic USA Corp. et al. v. Fox Corp. et al., case number 151136/2021, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Frank G. Runyeon and Elliot Weld. Editing by Kristen Becker.