Austin Dicker, individually and on behalf of all others similarly situated v. TuSimple Holdings Inc., et al.

DJ **dailyjournal.com**/verdicts_and_settlements/144447

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Securities

Securities Exchange Act

Breach of Duty

Published: May 23, 2025 | Result Date: Sep. 4, 2024 | Filing Date: Aug. 3, 2022 |

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Case number: 3:22-cv-01300-BEN-MSB Settlement **– $189,000,000**

Judge

Roger T. Benitez

Court

USDC Southern District of California

Attorneys

Plaintiff

Darren J. Robbins
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Defendant

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Facts

TuSimple Holdings, Inc., was a technology company working on developing autonomous trucking technology. Austin Dicker was a TuSimple shareholder who filed suit against the company individually and on behalf of all others similarly situated.

PLAINTIFF'S CONTENTIONS: Dicker contended that TuSimple had misrepresented the state of the company and its technology; and that it raised more than $1 billion from United States investors based on these misrepresentations. Specifically, Dicker alleged that TuSimple had touted its automated semi-trucks were safe to use U.S. motorists as test subjects, and while TuSimple was using its proprietary driverless technology to fundraise, it was secretly transferring the tech to a Chinese company controlled by senior TuSimple insiders. Dicker argued these actions and alleged misrepresentations violated provisions of the Securities Exchange Act.

DEFENDANT'S CONTENTIONS: TuSimple denied any wrongdoing or liability and all Dicker's material allegations.

Settlement Discussions

The parties took part in a mediation session with the retired Honorable Layn R. Phillips of Phillips ADR Enterprises in May 2024. Although they did not reach a settlement at that time, they continued negotiations during discovery. In July 2024, a mediator's proposal served as the basis for the parties' eventual settlement.

Result

The parties reached an agreement wherein TuSimple admitted no liability or wrongdoing but agreed to pay $189 million to settle class members' claims. Of that amount, up to 25 percent could be sought for attorneys' fees and up to $300,000 for costs.

Other Information

Consolidated with No. 3:23-cv-00282- BEN-MSB

#144447

Class Action

Lucid Trims Investor Suit Over Electric Car Production Miss (1)

May 23, 2025, 5:58 AM PDT; Updated: May 23, 2025, 7:46 AM PDT

- **Lead plaintiff adequately pleaded ex-CEO intent before**
- **Other alleged statements weren't plausibly pleaded as false when made**

Lucid Group Inc. and its former CEO convinced a federal judge to partially dismiss investor claims alleging the electric vehicle maker concealed the impact of internal logistical issues on production targets.

The lead plaintiff can lean on four misstatements adequately alleged previously that were made by former CEO Peter Rawlinson concerning Lucid's manufacturing capacity and which cast production problems as supply chain and pandemic-related issues affecting the entire auto industry, Judge Araceli Martínez-Olguín said Thursday.

But lead plaintiff Sjunde AP-Fonden didn't adequately plead contemporaneous knowledge of falsity when Rawlinson made other statements about meeting Lucid's 2022 production targets and delays, Martínez-Olguín said. Rawlinson may have changed his view on the number of vehicles it could manufacture, and the allegations on what and when he received status reports weren't detailed enough to plausibly plead statements on delays were misleading, she said while tossing those claims without leave to amend.

The US District Court for the Northern District of California judge had allowed the securities fraud suit to move forward last year, granting only in part a defense motion to dismiss and permitting the plaintiff, a Swedish public pension fund, permission to replead then. That revised complaint dropped one former Lucid executive from the case.

The EV maker had slashed its 2022 production guidance from 20,000 vehicles to 12,000 to 14,000 at the end of February 2022, according that most recent complaint. Its share prices tumbled almost 14% the next day. And, on the day after the company cut guidance to less than 10,000 vehicles in August 2022—with Rawlinson revealing internal logistics problems were the primary problem for its production—Lucid's stock price fell 9.7%, the complaint said.

Kessler Topaz Meltzer & Check LLP is lead counsel for the proposed class, which would include those who got stock from Nov. 15, 2021—the day that Lucid announced its first quarterly results as a public company, mentioning the 20,000 vehicle 2022 target—through Aug. 3, 2022.

Sidley Austin LLP represents Lucid and Rawlinson, who stepped aside in February.

Neither law firm immediately responded to emails seeking comment.

The case is In re Lucid Group, Inc. Sec. Litig. , N.D. Cal., No. 3:22-cv-02094, 5/22/25 .

(Updates with additional case context throughout.)

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Securities Law News

Direct Lending Fund Leaders' $18 Million Settlement Approved

May 22, 2025, 2:46 PM PDT

Direct Lending Investments LLC directors and officers got a federal court's final approval Thursday for their $18 million settlement of fraud claims by the company's court-appointed receiver, liquidators, and some allegedly defrauded investors.

The payment, to be made by five director and officer policy insurers, is a fair, adequate, and reasonable resolution, Judge Dale S. Fischer said for the US District Court for the Central District of California.

- The Securities and Exchange Commission sued the peer-to-peer lender in 2019, alleging it inflated annual returns by about 2% to 3% for years
- The insurers participating in the settlement are Endurance Risk Solutions Assurance Co., Allianz Global Risk US Insurance Co., Arch Insurance Co., Argonaut Insurance Co., and Markel American Insurance Co.
- Prosecutors charged the fund's founder, Brendan Ross, in 2020, and he pleaded guilty to a count of wire fraud, according to a filing; his sentencing hearing is set for June 9, according to the criminal case docket

The case is SEC v. Direct Lending Invs. LLC , 2025 BL 174293, C.D. Cal., No. 2:19-cv-02188, 4/22/25 .

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Class Action

Estee Lauder Investor Unable to Reinstate Insider Trading Suits

May 23, 2025, 10:11 AM PDT

- **NY district courts correctly dismissed ‘identical’ suits**
- **‘Novel’ liability theory under section Exchange Act rejected**

An Estee Lauder Companies and Altice USA Inc. shareholder failed to show that he should again be allowed to pursue two lawsuits alleging unlawful short-swing stock trading, the Second Circuit said Friday.

Andrew E. Roth didn’t show that New York federal district courts erred in dismissing two separate but ”identical” suits against Lauder entity LAL Family Corp. and Altice’s controlling shareholder, alleging liability under section 16(b) of the Exchange Act, Judge Dennis Jacobs of the US Court of Appeals for the Second Circuit said, affirming lower court judgments.

The appeals “consider, and reject, a novel theory of liability for short-swing profits under Section 16(b),” Dennis said. That law requires that within a six-month period, corporate insiders must disgorge to any issuer with which they have an insider relationship all profits realized from paired purchases and sales of any equity security of that issuer, the opinion said.

Roth tried to pair sales of outstanding shares made by controlling shareholders with transactions in which controlled corporations repurchased shares they issued. “But the identified transactions are different in kind because of the peculiar nature of shares repurchased by an issuer under Delaware law; and these differences make Section 16(b) impossible to apply, let alone to apply mechanically,” Jacobs said. “The transactions therefore cannot be paired,” he said.

Roth’s Southern District of New York suit alleged that he is a shareholder of Estée Lauder, which the Lauder family controls through LAL Family Corp.; the Lauder family is the sole general partner of LAL Family Partners L.P., the judge said.

Roth said the two entities sold two million shares on Nov. 17, 2021—within six months of a dozen share repurchases by Estee Lauder on either side of that date. The funds’ approximately 23% indirect pecuniary interest in the Estee Lauder share repurchases meant that they each gained short-swing profits of about $57 million, Roth said.

The Southern District of New York dismissed the suit Sept. 10, 2024, holding that issuer purchases couldn’t be paired with insiders’ sales of outstanding shares to create section 16(b) liability.

Roth’s second suit, before the Eastern District of New York, alleged that he owns common stock of Altice and that Altice’s director and controlling shareholder Patrick Drahi sold millions of shares of Alstice common stock in 2021. He also said Altice repurchased millions of shares of its own stock.

Altice's repurchased shares became treasury shares at the moment of repurchase, the appeals court said. If Roth could proportionally attribute those shares to Drahi and match them with shares Drahi sold, Drahi would owe $17 million in short-swing profits to Altice, the appeals court said. The Eastern District dismissed that suit Sept. 16, 2024.

The Second Circuit ruled that the lower courts correctly rejected Roth's section 16(b) claims, finding that because the defendants lacked beneficial ownership over repurchased equity securities, they weren't insiders to the repurchases.

Roth argued that the defendants engaged in purchases indirectly when the corporations they control repurchased shares.

But section 16(b) requires defendants to become indirect beneficial owners of repurchased shares, and "controlling shareholders do not become indirect beneficial owners of shares acquired by an issuer when that issuer repurchases its own issue, because state law transforms those shares into treasury shares," the appeals court said.

Roth also failed to establish that the equity securities transacted in each allegedly pairable transaction were substantively identical, the opinion said.

An issuer can't, as a matter of law, purchase any equity security substantively identical to the shares an insider may sell when they originate in that issuer, the appeals court said.

"And since the insiders under Roth's theory can be said to purchase equity securities only by indirectly attributing to them an issuer's repurchase, this also means that insiders have not engaged in pairable transactions," the appeals court said. "Without pairable transactions, there is no liability," it said.

Judge Alison J. Nathan joined in the decision. Judge Guido Calabresi concurred in the result, but said the law is unclear, and that Congress or the US Securities and Exchange Commission could "make rules that *are* clear and prevent the abuse that the current situations may present."

Ostrager Chong Flaherty & Broitman PC represent Roth. Weil, Gotshal & Manges LLP represented LAL Entities. Morgan, Lewis & Bockius LLP represented Drahi.

The case is Roth v. LAL Family Corp. , 2d Cir., No. 24-2464, 5/23/25 .

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Securities Law News

Delaware Judge Weighs Sending Corporate Overhaul to Justices (2)

May 22, 2025, 8:47 AM PDT; Updated: May 22, 2025, 10:11 AM PDT

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

A major overhaul of Delaware's best-in-class corporate laws that bitterly divided the state's legal community earlier this year may be on a fast track to its 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 several 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 by 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 Dropbox case, parallel suits involving Korean sportswear giant Misto Holdings Corp. and a BlackRock Inc. joint venture, and others likely to follow will force Delaware's judges to grapple with the limits on their power in the shadow of an unusually direct legislative push to rein in their know-it-when-I-see-it discretion. Moving the case to the high court would shift that fraught responsibility from a trial judge to a tribunal with the power to deliver binding precedent.

Dealmakers have blamed recent rulings by McCormick and one of her colleagues, Vice Chancellor J. Travis Laster, for uncertainty about what counts as a board conflict of interest and when a minority investor may be a controlling stockholder subject to elevated scrutiny. Many scholars and members of the plaintiffs' bar have called those criticisms unfair.

Senate Bill 21

The bill's aggressive rollout in mid-February sought to reverse the perceived legal swing toward public investors who can gum up the corporate works by bringing shareholder cases. It followed a panicked response to news two weeks earlier that Dropbox, Bill Ackman's Pershing Square Capital Management, and Meta Platforms Inc. were eyeing other states—a phenomenon dubbed "DExit."

Gov. Matt Meyer (D) enlisted a panel—including ex-judges now practicing law at firms linked to Elon Musk and Mark Zuckerberg—to draft the law, which also reduced shareholder access to director communications and strengthened a presumption they're capable of independent corporate oversight.

Nevada, known for lax liability rules, and Texas, which recently set up its own business court, are the alternatives getting the most buzz. Musk moved Tesla Inc. to Texas in June 2024 and spent a year slamming Delaware's judiciary after a $56 billion court loss.

Backing the legislation was a coalition of white-shoe firms, private equity lobbyists, and the state's political establishment, all sounding the alarm that a judicial crackdown on self-dealing has made even routine transactions onerous. Shareholder attorneys and institutional investors argued unsuccessfully that the "billionaire's bill" would backfire by tying judges' hands and giving oligarchs a blueprint for end-running court rulings.

The pension fund leading the Dropbox 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 .

(Updates with reporting and context in paragraphs five through 10.)

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Securities Law News

Trucking Company Stock Plan Suit Settles for Nearly $1.9 Million

May 22, 2025, 7:11 AM PDT

- **Workers allegedly forced to overpay for stock in company**
- **Settlement includes cash payment, debt relief for ESOP**

Participants in Ritchie Trucking Service Inc.'s employee stock ownership plan negotiated a class settlement worth nearly $1.9 million in their challenge to a 2018 transaction that allegedly forced workers to overpay for company stock.

The deal, announced Wednesday in the US District Court for the Eastern District of California, includes a $485,000 cash payment and a $1.4 million reduction in the debt owed by the Ritchie ESOP. It represents between 21% and 30% of the plaintiffs' maximum potential damages in the case.

The settlement is slated to cover about 173 stock plan participants between 2018 and 2024, along with their beneficiaries, according to court filings.

The 2021 lawsuit centers on a stock plan covering employees of Ritchie Trucking, a California-based logistics and delivery company. Plaintiff Brandon Imber challenges a 2018 transaction in which the plan purchased $19.5 million in company stock from a trust connected to the company's then-owners.

Imber, who says this was a bad price that overvalued the company by as much as $9 million, brought Employee Retirement Income Security Act claims against various Ritchie selling shareholders, committee members, and the stock plan trustee.

The case is assigned to Magistrate Judge Helena M. Barch-Kuchta.

Barton Firm LLP represents Imber. The defendants are variously represented by Quintairos, Prieto, Wood & Boyer PA; Weintraub Tobin Chediak Coleman Grodin; Sagaser, Watkins & Wieland PC; Gordon Rees Scully Mansukhani LLP; and Faegre Drinker Biddle & Reath LLP.

The case is Imber v. Lackey , E.D. Cal., No. 1:22-cv-00004, settlement motion 5/21/25 .

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Class Action

Elevance Health Is Latest Employer Sued Over 401(k) Forfeitures

May 23, 2025, 9:26 AM PDT

- **COURT:** S.D. Ind.
- **TRACK DOCKET:** No. 1:25-cv-01002 (Bloomberg Law subscription)

Elevance Health Inc. mismanages its employees' retirement plan by using forfeited 401(k) money for its own benefit instead of using it to lower workers' costs, according to a proposed class action complaint.

The lawsuit, filed Thursday in the US District Court for the Southern District of Indiana at Indianapolis, is the latest in a burgeoning number of cases that have made similar claims against large corporations including Clorox Co., HP Inc., and Kaiser Foundation Health Plan Inc. with varying degrees of success.

The lawsuit accuses Elevance, the health insurer previously known as Anthem Inc., of improperly using 401(k) forfeitures to reduce the money it would otherwise have to contribute to its retirement plan. This practice, which allegedly saved the company more than $23 million between 2021 and 2023, benefits the company at the expense of workers' retirement savings in violation of the Employee Retirement Income Security Act, according to the complaint.

"Defendants abdicated their duty of prudence by failing to undertake any type investigation into which use of the forfeited funds was in the best interest of the Plan participants," plaintiff Holly Hendrickson alleged in the complaint, which seeks to represent a proposed class of more than 90,000 plan participants.

The lawsuit is among dozens of recent cases centering on the portion of an employee's 401(k) account that comes from contributions made by their employer. Unlike contributions from an employee's salary, which are immediately fully vested, employer contributions can remain unvested for a period of time and can be forfeited in whole or in part when a worker leaves the company after a few months or years.

The cases say companies violate ERISA when they opt to use forfeitures to reduce the amounts they'd otherwise have to contribute to their plans instead of reducing workers' expenses. Cases against Intuit Inc., Clorox, and Qualcomm Inc. have advanced, while claims against HP, Honeywell International Inc., BAE Systems Inc., Kaiser Foundation Health, and Thermo Fisher Scientific Inc., were rejected. Intuit recently signed a class settlement worth nearly $2 million in a forfeiture challenge.

Elevance didn't immediately respond to an inquiry about the allegations.

Lynch Carpenter LLP represents the proposed class.

The case is Hendrickson v. Elevance Health Inc. , S.D. Ind., No. 1:25-cv-01002, complaint 5/22/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloomberginindustry.com

Ford Sues Lemon Law Lawyers for Masterminding Massive Racketeering Scheme

law.com/therecorder/2025/05/22/ford-sues-lemon-law-lawyers-for-masterminding-massive-racketeering-scheme

Amanda Bronstad

May 23, 2025

- The suit claims the lawyers billed ‘phantom legal fees’ and ‘hoodwinked all of the judges’ in hundreds of lemon law cases.
- The alleged fraudulent billing included cases in two multidistrict litigation matters in California: the Volkswagen clean diesel emissions scandal, and alleged defects in Ford’s DPS6 dual-clutch PowerShift transmission.
- The suit comes after automakers lobbied last year for changes in California’s lemon law, which is the Song-Beverly Consumer Warranty Act.

Ford Motor Co. accused five lemon law attorneys in Southern California of creating a massive racketeering enterprise to inflate their fees, including in two multidistrict litigation matters.

In a lawsuit filed Wednesday, Ford alleged that lawyers at the Knight Law Group, the Altman Law Group, and Wirtz Law billed “phantom legal fees” and “hoodwinked all of the judges” in hundreds of lemon law cases for the past decade. The lawsuit, citing instances of mail and wire fraud supporting claims under the U.S. Racketeer Influenced and Corrupt Organizations Act, alleges that at least 50% of the $100 million billed by the defendant lawyers during that period was fraudulently inflated.

“This case arises out of a massive and years-long scheme by defendants to defraud auto manufacturers, including Ford, out of money and property by falsely and fraudulently inflating their legal fees under California’s lemon law,” Ford attorney Daniel Saunders, of Los Angeles-based Kasowitz Benson Torres, wrote in the complaint.

Ford added: “The scheme was carried out through a sophisticated criminal enterprise of attorneys and law firms that ingeniously spread their fraudulent billings across thousands of cases against many auto manufacturers so that their fraudulent scheme would go undetected.”

Ford has paid tens of millions of dollars in inflated fees, the suit says, but the lawyers also have targeted other automakers, such as General Motors Co., Fiat Chrysler Automobiles, Volkswagen and BMW Group.

“Defendants have pursued this fraudulent billing scheme to enrich themselves, including bankrolling their lavish vacations, opulent homes, and use of private jets,” the plaintiff alleged in the suit.

Saunders is a former federal prosecutor in Los Angeles who, in 2008, led the government’s criminal case against Anthony Pellicano, a celebrity private investigator, and one of the lawyers who hired him, Terry Christensen, a former name partner of what is now Glaser Weil Fink Howard Jordan & Shapiro in Los Angeles.

Edward McNally, another Kasowitz Benson Torres partner who filed the case, is former senior counsel in the U.S. Department of Justice’s Criminal Division in Washington, D.C.

“When you look at any single legal bill for a single case, it might show only one or two hours for a given lawyer on a given day—nothing to draw suspicion," McNally said in a statement to Law.com. "However, when Ford searched across public filings, as alleged in the complaint, the conduct in this case was carried out through a sophisticated and unlawful enterprise of attorneys and law firms that spread their fraudulent and inflated bills across thousands of cases and against many auto makers.”

Attorneys at Los Angeles-based Knight Law Group who are named individually in the complaint—managing partner Roger Kirnos, partner Amy Morse and Dorothy Becerra, a former paralegal—did not respond to a request for comment, along with founder Steve Mikhov, now at Rusk LLC in San Juan, Puerto Rico. Ford’s complaint described Mikhov and Knight Law Group as “the ringleader of the criminal enterprise.”

Bryan Altman, of the Altman Law Group, another defendant, who is now at Quill & Arrow in Los Angeles, did not respond, nor did Richard Wirtz, at San Diego’s Wirtz Law, both named in the complaint along with their law firms.

Ford’s suit alleges that the enterprise includes other law firms, noting that Knight Law Group has oral agreements with between 10-15 other attorneys to “misrepresent the tasks completed and the amount of time spent on cases, and frequently split the proceeds of the inflated and fraudulently obtained fee awards.”

The suit comes after Ford and other automakers lobbied last year for changes in California’s lemon law, which is the Song-Beverly Consumer Warranty Act. Gov. Gavin Newsom passed the law, which thwarted a possible ballot initiative imposing contingency fee caps on lemon law cases.

Ford's complaint, however, cites instances of over-billing.

“A review of fee claims in multiple cases takes one on a magical mystery tour of fictitious billings, including individual attorneys who supposedly worked more than 24 hours per day or simultaneously attended different trials or depositions in geographically distant jurisdictions,” the plaintiff alleged in the complaint.

Morse, for example, billed for more than 24 hours on 34 occasions, according to the suit. And Wirtz and one of his associates claimed to have attended two different trials in two places on a single day.

“Defendants abused their positions of trust as members of the Bar to deceive the courts and Ford by submitting thousands of fee applications that appeared genuine on their face but are clearly false and fraudulent when viewed alongside other fee applications submitted for work on the same day,” Ford alleged in the complaint. “The key to defendants’ fraudulent billing scheme is submitting fee applications that do not appear fraudulent when reviewed in isolation in a particular matter.”

Ford cites dozens of specific cases, including two in multidistrict litigation dockets: Volkswagen’s clean diesel emissions scandal and alleged defects in Ford’s DPS6 dual-clutch PowerShift transmission. In the Volkswagen case, U.S. District Judge Charles Breyer of the Northern District of California cut fees in half for a group of lawyers, including Altman, Mikhov and Kirnos.

“However,” Ford’s suit says, “because the court was looking only at the fee applications in a single case, it was unable to discern the true extent of the fraud that defendants concealed by spreading their fictitious billings across multiple clients, cases, and law firms.”

In the Ford transmission multidistrict litigation, the company cites in the lawsuit an admission by Kirnos during a 2020 hearing addressing his firm’s request for fees after claiming billable hours of more than $100,000: “There is a presumption attached to our billing because there is a presumption that we are going to be ethical, that we are not going to submit lies to this court. And we did not.”

Ford opposed the fee amount. U.S. District Judge André Birotte, overseeing the multidistrict litigation in the Central District of California, awarded less than $50,000 after finding some of Knight Law Group’s hourly rates “somewhat inflated” and billable work “excessive and duplicative.”

“Even while making this representation,” Ford’s complaint says, “Kirnos knew that he and the other defendants were in fact engaging in repeated and blatant violations of their ethical duties and committing criminal acts to line their own pockets.”

NOT FOR REPRINT

Is Ford fighting lemon law fraud -- or punishing its legal adversaries?

DJ dailyjournal.com/articles/385607-is-ford-fighting-lemon-law-fraud-or-punishing-its-legal-adversaries

May 23, 2025

Ford Motor Co. sues California lemon law firms, alleging fraudulent billing practices inflating fees over $100 million, while attorneys defend the Song-Beverly Act, claiming it protects consumers from defective vehicles.

Daniel A. Saunders

Ford Motor Co.'s sweeping racketeering lawsuit against top California lemon law attorneys has reignited debate over the state's powerful consumer protection laws--with legal experts split on whether the case exposes systemic abuse or represents a high-stakes act of corporate retaliation. While some defense attorneys claim fee-shifting provisions invite overbilling, others argue Ford is targeting lawyers who have successfully held the automaker accountable in court.

"What we've seen with these firms over the years is that they leverage [Song-Beverly Consumer Warranty Act] sometimes where there's a very nominal or minimal settlement for their client - to a very high attorney's fee claim ... which is why we've seen so many of these proliferate so long," Liam E. Felsen, a partner at Frost Brown Todd, said in a phone interview.

Felsen specializes in product liability warranty defense and said the overbilling that Ford's lawsuit alleged is often enabled through these cases' fee motion stages.

"Whether there's reform wanted here -- certainly, because as long as plaintiffs' attorneys can get these fees, then it's going to keep their push to file so many of these cases," Felsen continued.

"You'll see these long complaints and then this extensive discovery that they've used over and over again in multiple cases. Then they will claim hours and hours of work that they performed doing this, even though it's just routine that they trotted out on every case."

Joseph A. Kaufman, a lemon law consumer attorney in Pasadena, argued the statute itself is "instrumental in opening up the doors to California consumers" and is often mischaracterized as something that drives related practitioners to jack up costs for themselves.

"To the extent that people are speaking as if the fee shifting statute is a bad thing, it's not, and that's part of a larger effort to attack a law. ... It's expensive for car companies to buy back lemons," Kaufman said. "California's lemon law was created ... to open up the courtroom doors and put the onus on manufacturers to honor the warranties that come with these vehicles."

Neither Felsen nor Kaufman are involved in Ford's lawsuit.

A lemon in this instance refers to vehicles with significant defects.

"All of these attacks against California's lemon law are being funded by Ford and GM [General Motors] because they are the ones that have the cars with the most problems," Kaufman continued. "And rather than spend their money on complying with the law or making better cars - which are their options - they're spending their money on these attacks."

General Motors is not a party to Ford's federal racketeering lawsuit and has made no legal allegations of misconduct against any lemon law attorneys.

On Wednesday, Ford Motor Co. accused multiple prominent California lemon law attorneys and their firms of orchestrating a years-long billing scheme across thousands of cases against car makers that allegedly resulted in inflated legal fees of more than $100 million.

Knight Law Group LLP, a firm named in Ford's suit along with current and former firm partners, vehemently denied the allegations as "ridiculous" and characterized the suit as a "thinly veiled attempt" to silence lawyers who merely sought justice for consumers who legally challenged automakers for selling them defective products.

Former Altman Law Group partner Bryan C. Altman, now a partner at Quill & Arrow LLP, along with Wirtz Law APC founding partner Richard M. Wirtz were also named in the lawsuit. A clerk for Quill & Arrow said Altman was in a deposition and would not be able to provide an immediate comment. Wirtz did not respond to a request for comment that was left with a clerk at his firm.

According to the complaint filed by Kasowitz Benson Torres LLP partner Daniel A. Saunders, among the alleged deceptive practices were billing for more than 24 hours of work in a single day, double-booking appearances at trials in different jurisdictions and fabricating task entries that were never performed. *Ford Motor Company v. Knight law Group LLP et al.*, 2:25-cv-04550 (C.D. Cal., filed May 21, 2025).

The Song-Beverly Act provides remedies to consumer plaintiffs that include a fully covered replacement product as well as, in some instances, up to double the amount in litigation expenses and fees.

Felsen, for example, argued some attorneys take advantage of the broadness of the statute because it is purportedly limitless depending on how long each case lasts.

"I think that in terms of the law, there's no limitation and there's no correlation between how much damages are awarded, or the value of the product, versus the amount of attorney's fees, which typically greatly exceed the value of any product," Felsen added.

However, Kaufman argued the overbilling problem in lemon law litigation is not limited to only what the statute allows plaintiffs' attorneys to collect.

"In flat fee cases too, defense attorneys have been known to overbill or value bill before they negotiate next year's flat fee contract," Kaufman wrote in a follow-up email.

"All attorneys are subject to the same rules of professional responsibility, and that includes ethical billing practices. ... The allegations raised by Ford in its lawsuit can, and should have, been made in connection with the underlying fee motion. The lawsuit feels a little bit like Ford is reacting to some massive adverse verdicts those attorneys have obtained against Ford over the years."

#385607

Daily Journal Staff Writer
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Class Action

Mylan Gets Final Approval of $73.5 Million EpiPen Antitrust Deal

May 22, 2025, 10:36 AM PDT

- **Plaintiffs say they overpaid for the life-saving injections**
- **Judge says deal is ‘good outcome’ for class members**

Mylan Pharmaceuticals Inc. won final approval of a $73.5 million settlement to resolve antitrust claims that it conspired with other drugmakers to inflate the cost of life-saving EpiPen injections.

Judge Daniel D. Crabtree of the US District Court for the District of Kansas in a Wednesday order called the deal “a good outcome for the class members given the risks of the litigation.” Pfizer Inc., maker of the EpiPen, reached a $50 million settlement in the case last year, bringing the total recovered to $123.5 million.

Crabtree also approved attorneys’ fees of $24.5 million, one-third of the settlement amount.

The case stems from a 2020 lawsuit brought by pharmacy services provider KPH Healthcare Services alleging it overpaid for injectors due to Mylan’s alleged monopolization of the EpiPen market in violation of Section 2 of the Sherman Act.

Mylan sells the EpiPen auto-injector drug device that delivers epinephrine for the treatment of severe allergic reactions.

Mylan also allegedly conspired with Pfizer to delay the entry of less-expensive generic EpiPens, and increased the list price for the product from $100 in 2007 to $608 in 2016.

The court dismissed Pfizer from the case last year, leaving Mylan and its affiliates as defendants.

Mylan is represented by Hogan Lovells US LLP. The plainitiffs are represented by firms including Roberts Law Firm and Nussbaum Law Group PC.

The case is KPH Healthcare Servs. Inc. v. Mylan N.V , D. Kan., No. 2:20-cv-02065, 5/21/25 .

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In Lawsuit Over Teen's Death, Judge Rejects Arguments That AI Chatbots Have Free Speech Rights

law.com/therecorder/2025/05/22/in-lawsuit-over-teens-death-judge-rejects-arguments-that-ai-chatbots-have-free-speech-rights

Kate Payne Associated Press May 22, 2025

TALLAHASSEE, Fla. (AP) — A federal judge has rejected arguments made by an artificial intelligence company that its chatbots are protected by the First Amendment — at least for now. The developers behind Character.AI are seeking to dismiss a lawsuit alleging the company's chatbots pushed a teenage boy to kill himself.

The judge's order issued Wednesday will allow the wrongful death lawsuit to proceed, in what legal experts say is among the latest constitutional tests of artificial intelligence.

The suit was filed by a mother from Florida, Megan Garcia, who alleges that her 14-year-old son Sewell Setzer III fell victim to a Character.AI chatbot that pulled him into what she described as an emotionally and sexually abusive relationship that led to his suicide.

Meetali Jain of the Tech Justice Law Project, one of the attorneys for Garcia, said the judge's order sends a message that Silicon Valley "needs to stop and think and impose guardrails before it launches products to market."

The suit, filed in the U.S. District Court of the Middle District of Florida in Orlando, names as defendants Character Technologies, the company behind Character.AI; individual developers; as well as Google and its parent company Alphabet. It has drawn the attention of legal experts and AI watchers in the U.S. and beyond, as the technology rapidly reshapes workplaces, marketplaces and relationships despite what experts warn are potentially existential risks.

"The order certainly sets it up as a potential test case for some broader issues involving AI," said Lyrissa Barnett Lidsky, a law professor at the University of Florida with a focus on the First Amendment and artificial intelligence.

The lawsuit alleges that in the final months of his life, Setzer became increasingly isolated from reality as he engaged in sexualized conversations with the bot, which was patterned after a fictional character from the television show "Game of Thrones." In his final moments, the bot told Setzer it loved him and urged the teen to "come home to me as soon as possible," according to screenshots of the exchanges. Moments after receiving the message, Setzer shot himself, according to legal filings.

In a statement, a spokesperson for Character.AI pointed to a number of safety features the company has implemented, including guardrails for children and suicide prevention resources that were announced the day the lawsuit was filed.

"We care deeply about the safety of our users and our goal is to provide a space that is engaging and safe," the statement said.

Attorneys for the developers want the case dismissed because they say chatbots deserve First Amendment protections, and ruling otherwise could have a "chilling effect" on the AI industry. Character Technologies is represented by King, Blackwell, Zehnder & Wermuth of Orlando and Munger Tolles & Olson of San Francisco and Los Angeles. Alphabet and Google are represented by Wilson Sonsini Goodrich & Rosati of Los Angeles and Jay Shapiro of Stearns Weaver Miller in Miami.

In her order Wednesday, U.S. Senior District Judge Anne Conway rejected some of the defendants' free speech claims, saying she's "not prepared" to hold that the chatbots' output constitutes speech "at this stage."

Conway did find that Character Technologies can assert the First Amendment rights of its users, who she found have a right to receive the "speech" of the chatbots. She also determined Garcia can move forward with claims that Google can be held liable for its alleged role in helping develop Character.AI. Some of the founders of the platform had previously worked on building AI at Google, and the suit says the tech giant was "aware of the risks" of the technology.

"We strongly disagree with this decision," said Google spokesperson José Castañeda. "Google and Character AI are entirely separate, and Google did not create, design, or manage Character AI's app or any component part of it."

No matter how the lawsuit plays out, Lidsky says the case is a warning of "the dangers of entrusting our emotional and mental health to AI companies."

"It's a warning to parents that social media and generative AI devices are not always harmless," she said.

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EDITOR'S NOTE — If you or someone you know needs help, the national suicide and crisis lifeline in the U.S. is available by calling or texting 988.

___ Kate Payne is a corps member for The Associated Press/Report for America Statehouse News Initiative. Report for America is a nonprofit national service program that places journalists in local newsrooms to report on undercovered issues.

AI Scared Her; Now It's Her "Associate"

law.com/2025/05/23/ai-scared-her-now-its-her-associate

Joe Stanganelli and ALM Custom Marketing Solutions May 23, 2025

Cathy Cowin, a solo practitioner based in Fresno, Calif., isn't new to technology. Long before becoming a lawyer, she earned a degree in computer systems and applications. So when generative AI began creeping into the legal space, she understood both its power and its risks.

"ChatGPT scares me because it's out there in the wild," says Cowin in a recent law.com vodcast, referring to its relative lack of guardrails concerning law-practice matters. "[But] it became clear that [generative AI] was going to… become commonplace."

When LexisNexis launched a bounded, law-specific generative AI tool (Lexis+ AI Protege), Cowin felt ready to fold the technology into her practice – despite her instinctive hesitation as a solo to invest in new tools.

"Overhead creep is something that I'm always really cognizant of," says Cowin. "But in the case of Protege, it's allowed me to take cases where I wasn't completely comfortable with that area [and] handle really tough questions from clients on the fly."

"It's a non-negotiable for my budget," she adds.

Minutes to a Simple Yes or No

Asked for a favorite AI use case, Cowin talks about a time she needed to boil down a thick stack of banking documents into a simple yes-or-no answer. In the vodcast, Cowin describes uploading the documents into her AI tool and getting an answer "within minutes" – replete with relevant sections specifically highlighted.

AI isn't perfect, according to Cowin – sometimes turning up cases not "quite on point" for her research purposes. But even then, she says, she's not particularly put out.

"Often in that context, there'll be something to the side on the screen that will take me to something that is relevant," says Cowin. "I haven't had a negative experience where I've been completely misled.

The Artificial Associate

In the vodcast, Cowin talks about upleveling her research and analysis by treating AI as a sounding board – a stand-in for the associate she doesn't have.

The associate analogy, for Cowin, also encapsulates the risk element of AI in law practice.

"It's a tremendous resource, but you have to look at it like an associate that you still need to keep track of," she says.

That said, generative AI is known for defaulting to sycophancy. Cowin's secret for ensuring trusted answers from AI: pretending to be opposing counsel.

Getting Safe and Comfortable

Despite her initial caution about unbounded generative AI, Cowin points out that the need for human quality control isn't much different than with other computer applications and online tools.

"The internet [is] something like the world's most efficient idiot; if you ask it for chips, you're equally likely to get an Intel chip for your computer or Doritos," says Cowin. "We need the opportunity to observe [new technology] safely."

To that end, Cowin recommends LexisNexis's live demos and training sessions for taking lawyers from skeptical to proficient.

"Then [you can] launch off to where you feel comfortable… that you know how to do the correct queries," says Cowin. "And you're going to get great results."

Joe Stanganelli is a writer and recovering attorney. He is managing director of content advisory Blackwood King LC.

To watch to the video, click here.

To read more insights, thought leadership and other video perspectives from Lexis+ Ai, click here.

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Top litigator touts use of AI as time, money saver

DJ dailyjournal.com/articles/385603-top-litigator-touts-use-of-ai-as-time-money-saver

May 23, 2025

As courts increasingly warn against the misuse of AI in legal filings, high-profile plaintiffs' attorney and Lancaster Mayor R. Rex Parris is embracing it--proudly crediting ChatGPT with drafting his response to a recall lawsuit. Parris says generative AI is saving him time, money, and staffing costs, and he predicts it will soon reshape the entire litigation process. While others face sanctions for AI-generated errors, Parris argues that smart, supervised use of the technology is the future of law.

R. Rex Parris

As some attorneys face judicial reprimands for filing AI-generated pleadings riddled with errors, one lawyer is proudly touting his use of the technology as a strategic tool that's saving him time and money.

In an interview with the Daily Journal, plaintiffs' attorney R. Rex Parris said he used a generative AI model to draft his answer to a lawsuit stemming from an effort to recall him as mayor of Lancaster, and the results were excellent.

"I didn't want to take a lawyer off of making money to deal with my politics, so I uploaded it to ChatGPT and got a beautiful answer," the founder of Parris Law Firm said.

"And then it said, 'Do you want requests for production of documents? Do you want requests for admissions and interrogatories? I put 'yes,'" he continued.

About 30 seconds later, Parris had interrogatories that were targeted to each allegation in the complaint; requests for admissions for each allegation; and a request for production for each of the allegations.

"It was beautiful, better than I normally see from defense lawyers," he quipped.

Parris' comments may seem brazen. But the lawyer/politician has a history of making controversial statements. The current recall effort began when he suggested during a February city council meeting giving drug addicts "free fentanyl" as a way of dealing with the city's homeless problem. "I want to give them all the fentanyl they want," he was quoted as saying.

In the past, Parris has promoted luring more Asian and LGBT families to live in the city as a way of driving down crime rates, and the city settled a federal housing lawsuit that claimed Black and Latino people living in Section 8 housing were harassed by police.

Courts across the country have warned attorneys about the dangers of relying on generative AI models, like ChatGPT, to draft their filings. In February, U.S. District Judge Kelly H. Rankin in Wyoming sanctioned attorneys from Morgan & Morgan for filing a motion that cited eight non-existent cases.

Los Angeles County Superior Court Judge Ian C. Fusselman sanctioned Dennis P. Block and Associates in 2023 for an AI-generated filing that cited fake cases and others that had nothing to do with the eviction matter before the court.

"This was an entire body of law that was fabricated," LAist quoted Fusselman as saying during the sanction hearing. "It's difficult to understand how that happened."

The State Bar's director of Office of Professional Competence said attorneys are fully responsible for the "legal content" they produce, including material generated by AI.

"Misuse of AI that results in a breach of client confidentiality, submission of inaccurate or misleading legal documents, or failure to competently supervise AI outputs could result in disciplinary action, including formal investigation and potential sanctions," Catherine Ongiri said in an emailed statement.

The bar's Board of Trustees approved guidelines on the use of generative AI on Nov. 17, 2023.

The guidelines say attorneys may use generative AI to work more efficiently and may charge clients for actual time spent. They also say lawyers must not charge fees for time saved using AI. But they caution attorneys against inputting confidential information into any generative AI program that lacks privacy and security protections.

They also advise attorneys not to rely on generative AI, and to review its output for accuracy: "A lawyer's professional judgment cannot be delegated to generative AI and remains the lawyer's responsibility at all times."

A representative of the Los Angeles County Superior Court said it doesn't have specific local rules regarding the use of AI by attorneys and litigants.

"Instead, the court relies on existing ethical standards, the California Rules of Court and our own Local Rules to ensure filings meet appropriate standards," Chief Communications and External Affairs Officer Rob Oftring said.

Parris said he expects courts to be flooded with lawsuits as people learn to generate their own filings. In turn, judges will have to use AI to manage their dockets more efficiently, he said.

The mass adoption of AI models will also bring down the cost of litigation, but lawyers need to learn how to use it, Parris said.

He said he anticipates paying more for lawyers but hiring fewer of them.

"I need that creativity," Parris said. "In my office I need paralegals that are prompt engineers. If you download all the medical records, it prepares answers for interrogatories. All you do is make sure it gets it right."

#385603

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Opinion

Matt Levine’s Money Stuff: Index Funds Are a Bit More Illegal

May 22, 2025, 11:17 AM PDT

Are index funds illegal?

Ten years ago last month, I first wrote about a then-novel theory that index funds are illegal. The theory is:

A handful of big asset managers run diversified funds that own large stakes in every public company. In particular, the “Big Three” managers — BlackRock Inc., State Street Corp. and the Vanguard Group — run enormous index funds that are often among the biggest shareholders of companies, and that combine to own 20% or so of most US public companies.

- If two companies in the same industry have the same owners — or even a *lot* of the same owners — they have less reason to compete with each other. If Company X can reduce prices on its widgets to win some business from Company Y, and doing so would add $0.90 to Company X’s profits by taking away $1 of Company Y’s profit, in a competitive market Company X would do it. But Company X and Company Y have the same owners, that would be bad *for them:* They would get $0.90 of profit rather than $1, and they don’t care who the profit comes from. So no one will lower prices.
- But that’s bad for consumers: Instead of Company X and Company Y competing to sell as many widgets as possible by lowering prices, consumers get fewer widgets at higher prices.
- The point of antitrust law is to prevent this: The old “trusts” that were the subject of antitrust law were entities that owned shares in multiple companies in the same industry, and that influenced those companies to reduce competition and keep prices high.

When we first discussed this theory, I called it "wonderful" but also "mad." It is clever, in that it draws logical conclusions from standard theories of (1) investment diversification and (2) corporate fiduciary duties to shareholders. But it had sort of a jokey flavor. In 2015, few people believed this theory that index-fund managers were telling companies to keep prices high. For one thing, they weren't. The big index-fund managers don't go have meetings with their portfolio companies to say "hey you should stop competing and raise prices so we make more money." They don't do that because it would be illegal, and because each of them only owns a minority stake in each company and *can't* tell managers what to do, and because they tend not to get too involved in the operational details of their portfolio companies. They own *every* company in the index, without making any specific investment decisions, so there is no reason for them to think about any company's pricing strategy.

And so if you believed this theory, you had to have a more complicated and implicit mechanism. You had to think something like "corporate managers independently decide to act in the best interests of their common owners by reducing competition," or "unlike other investors, index fund managers *don't* push managers to compete, and so the managers naturally don't," or something like that. Not, like, "BlackRock buys up all the companies and tells them to raise prices."

Over time, though, this theory became more mainstream and respectable. Back in 2018, I went to a Federal Trade Commission hearing about the theory. As I wrote at the time, people kept coming up to me to ask "so are index funds illegal yet or what," so it still felt a *little* jokey, but we were at an FTC hearing about it. So not entirely a joke.

And people noticed one place where big investment managers *do* explicitly try to tell companies what to do: environmental, social and governance (ESG) investing. In particular, it seems broadly true that, for a while, several big asset managers had a general view that their portfolio companies should reduce their carbon emissions. "Climate risk is investment risk," BlackRock Chief Executive Officer Larry Fink wrote to his portfolio company CEOs in 2020, and — back when he believed that — it was a systemic risk across all companies. Big index investors had no incentive to pay close attention to each company's pricing strategy, but they did have a reason to care about the effects of climate change on all of their companies, and they had some reason to think that if all of their companies reduced their emissions that would be good for their whole portfolio.

And then you might just notice that "reduce your emissions" can sometimes mean "reduce your output," which sort of looks like "sell fewer widgets at higher prices," which is exactly what the index-fund worriers were worrying about. This is particularly true when the companies involved are, for instance, coal companies: A coal company's output *is* carbon, so telling it to reduce its carbon emissions really directly means "sell less coal." Presumably for more money.

And there was a political backlash to ESG anyway. And the antitrust argument became useful in that backlash: If you don't like ESG, you can argue that it is *illegal*, because it is an antitrust violation.

And so last year we talked about a lawsuit that the state of Texas brought against the Big Three, alleging that they had an antitrust conspiracy to reduce coal output and keep prices high. As the lawsuit put it:

Defendants have leveraged their holdings and voting of shares to facilitate an output reduction scheme, which has artificially constrained the supply of coal, significantly diminished competition in the markets for coal, increased energy prices for American consumers, and produced cartel-level profits for Defendants.

Nobody quite says that the Big Three were *motivated* by a desire to keep prices high: They were motivated, presumably, by sincere climate goals, and in fact in other circumstances the state of Texas will tell you that ESG investing *reduces* shareholder profits. But the theory all hangs together: Big index funds wanted lower carbon emissions, coal emits carbon, index funds own lots of shares of coal companies, so the big shareholders of the coal companies wanted them to lower their coal production.

To be clear there are still flaws in the theory. As the Big Three pointed out in their filings in the case, coal production went *up* during the alleged conspiracy. Also, while the Big Three put out some statements about emissions being bad, they don’t seem to have *done* anything to pressure the coal companies to reduce output. In fact two of the Big Three apparently never even *met* with the coal companies:

The Complaint offers not one example of a Defendant ever telling a coal company to reduce output or do anything else. … It does not identify any time Defendants communicated with each other on any topic, much less a time they agreed to suppress coal output. … The Complaint alleges that Vanguard, though not State Street or BlackRock, had routine meetings with four of the coal companies in the relevant markets. … It alleges that State Street and BlackRock, though not Vanguard, either withheld votes from or voted against reelecting some directors. … Although Plaintiffs identify thirteen votes against directors at thermal coal or SPRB producers, in ten of those cases, only one Defendant voted against (or withheld) a vote, and in the other three cases, the votes differed as to the directors covered.

So we are to some extent back where we were 10 years ago: This is a fun theory with a certain logical consistency, but the main objection to it is still “no but big index funds just don’t meet with companies to tell them to cut production and raise prices.”

In some ways, though, we are a long way from 2015. And today the federal government’s antitrust enforcers endorsed the theory. The Wall Street Journal reports:

U.S. antitrust enforcers for the first time are arguing that large institutional investors who own shares in rival companies may violate antitrust laws if they use their influence to affect how those firms compete.

The Justice Department and Federal Trade Commission made those views public Thursday by submitting a brief in a case filed last year by Texas Attorney General Ken Paxton and other Republicans against BlackRock, State Street, and Vanguard Group. The federal government’s filing, known as a statement of interest, says the asset managers’ holdings of multiple companies in the coal industry—known as common ownership—could violate competition laws.

“This case is about precisely the sort of conduct, including concerted efforts to reduce output, which have long been condemned under the antitrust laws,” the agencies say in their court filing. …

The Justice Department and FTC say they aren't calling into question all index investing or cases of common ownership. But investors may cross the line when they use their influence over several companies to undermine competition, as Texas and the other plaintiffs allege, they say.

"Carbon reduction is no more a defense to the conduct alleged here than it would be to price fixing among airlines that reduced the number of carbon-emitting flights," the agencies' filing says.

It is not a *full* endorsement of the theory that index funds are illegal, but we have come a long way. Now it appears to be the official policy of the US government that index funds, at least sometimes, cause the public companies they invest in to reduce competition.

Ten years ago, when we first discussed this topic, it was fun to imagine potential *solutions* . "Index funds shouldn't be allowed to vote their shares," or "you should be allowed to diversify by owning exactly one company in each industry," or "index funds should be smaller." I am not sure any of them directly address the perceived problem, and they all seem pretty disruptive to the people who put a lot of money into index funds. But I suppose the answer now is simpler and arguably less disruptive, something like "big fund managers shouldn't talk about ESG."

Everything is securities fraud: tariffs

The normal traditional kind of securities fraud is when a public company misleads investors about its expected financial results. Here is a New York Times article suggesting some companies might be doing that a little bit:

As companies start to feel the impact of President Trump's tariffs, especially the 30 percent tax on Chinese goods, they have a responsibility to tell their investors how they will deal with the higher costs. For many companies, that means raising prices.

But Mr. Trump, who insists that other countries are paying the tariffs, doesn't want to hear that. So executives are speaking even more delicately than usual, including on the perfunctory quarterly earnings calls that are normally of interest only to Wall Street….

Chief executives have a responsibility to investors to speak directly about the impact that tariffs are having on their business, said Stephan Meier, the chair of the management division at Columbia Business School. Retailers are especially vulnerable to tariffs because they import a significant amount of goods from China. ...

He said tailoring talk of tariffs in a way that avoided upsetting the Trump administration would not be "honest, authentic and transparent."

But we often talk around here about a different kind of securities fraud, which I call "everything is securities fraud": Every bad thing that happens to a public company can also be characterized as securities fraud, because investors can pretty much always claim "you didn't warn us sufficiently about the bad thing so we were tricked into buying your stock." And if companies *are* honest, authentic and transparent about tariffs, that can be bad for them:

Executives are finding that speaking too plainly has consequences. When Mattel released its earnings in early May, the maker of Barbie said it would raise prices on U.S. toys because of tariffs on imports from China, then totaling 145 percent. It also scrapped its financial forecast for the year, citing uncertainty over trade and tariff policies.

Mattel's chief executive, Ynon Kreiz, went on CNBC and was asked whether it would be cheaper for the company to manufacture toys in the United States. "We don't see that happening," he said.

A few days later, in the Oval Office, Mr. Trump didn't hide his disdain for the Mattel boss. He threatened to impose a 100 percent tariff on Mattel's products, saying the company "won't sell one toy in the United States."

The point here is that the risks are symmetrical. If a retailer says in its public statements "tariffs won't be a big deal for us," and then its earnings are disappointing and the stock goes down, someone could sue for securities fraud, saying that the company misled investors.

If instead it says "tariffs *will* be a big deal for us," and then Donald Trump tweets mean things about it, and then its earnings are disappointing and the stock goes down, someone could *also* sue for securities fraud. This one is less obvious — who is being *deceived*?— but these days "making people mad about politics" is pretty clearly the sort of bad thing that can get you sued for securities fraud. We have discussed a lawsuit in federal court in Texas against Target Corp. for doing a Pride Month marketing event and upsetting conservatives. There was pretty clearly no deception involved there — it was a marketing event, and Target quite explicitly warned shareholders about the risk that its position on diversity might lead to boycotts — but a judge let it go forward anyway because, you know, everything is securities fraud. And we talked last month about the New York City Comptroller's threat to sue Tesla Inc. because Elon Musk, its CEO, is doing a lot of political stuff that upsets liberals. There is possibly no fact in the world that is less concealed than "Elon Musk is doing annoying political stuff," but, again, *everything* is securities fraud.

So doing stuff that annoys Donald Trump can also get you sued for securities fraud. It won't be *phrased* like that, exactly, but you can sort of imagine how the complaint will go. "The company said that it would have to raise prices because of tariffs, but in fact China pays the tariffs so the company was lying, and its lies led to a customer backlash and reduced sales, and the company's risk factors failed to disclose the risk of that happening." This really is pretty much the Target lawsuit logic; it seems *wrong*, but that doesn't mean it can't *work*.

A lot of things these days have this essential form: Many choices that companies make are politically polarized and have high stakes, and whichever choice a company makes can get it shareholder lawsuit from the other side. "Everything is securities fraud" is kind of my schtick, so I get emails asking me questions with one or both of the following forms:

- Is it securities fraud for a company to do some thing that Donald Trump wants?
- Is it securities fraud for a company *not* to do some thing that Donald Trump wants?

And the answer — not legal advice! — is “sure, yes, everything is securities fraud.” Consider the Paramount Global situation: Paramount wants to do a merger with Skydance; Donald Trump has brought a pretty frivolous-looking lawsuit against CBS News, which Paramount owns; the Paramount/Skydance merger “requires approval from the Federal Communications Commission, which is led by Trump-appointed Chairman Brendan Carr”; Paramount is apparently considering settling the lawsuit with some large payment to Trump. If it doesn’t pay Trump and the deal is not approved by the FCC, that is bad for shareholders. If it does pay Trump there is at least a theoretical risk that it will get in trouble for violating bribery laws, as some US senators have threatened, and of course that would be bad for shareholders. Doing the thing that Trump wants will get you accused of corruption (you allegedly bribed him); not doing the thing that Trump wants can get you accused of corruption (“election interference” is apparently the problem with CBS News); either thing can be bad for shareholders and can get you in trouble.

Here’s one reader email from last week:

The “everything is securities fraud” thesis along with current political trends got me thinking: Suppose political corruption becomes de facto legal and widely practiced. Would it then be securities fraud to not engage in bribery, if doing so could get you, e.g., a key tariff exemption? Would more ethical companies need to file a disclosure saying something along the lines of “we refuse to bribe political officials to give us exemptions to extortionate tariffs on key inputs to our widgets, presenting a material risk to our business”?

And, sure? Again it is symmetrical. At least in the current US context, people don’t pay *explicit* bribes; they make donations to settle pretty thin lawsuits. If you pay those quasi-bribes and your stock goes down, someone will sue you for paying bribes (and not adequately disclosing the risks). If you don’t pay the quasi-bribes and your stock goes down, someone will sue you for whatever pretextual thing they were supposed to pay for.

All of this seems bad, but I suppose my particular point is that “everything is securities fraud” as a way of regulating business behavior is bad.

Elsewhere, Bloomberg’s Max Abelson and Annie Massa report on “ The Trump Family’s Money-Making Machine,” and the Wall Street Journal reports that “Donald Trump’s private clubs have emerged as a moneymaking venture for the president’s second term, and a hub for donors and favor-seekers alike.” If you are a public-company CEO and you’re not paying $1 million to join Mar-a-Lago, are you really fulfilling your obligations to shareholders?

Trumpcoin treasury companies

Sorry but in possibly somewhat related news here’s a Wall Street Journal story about Trumpcoin treasury companies:

Some small Chinese companies are betting President Trump’s memecoin will help them save their shares from losing a place on U.S. exchanges.

A technology company called GD Culture Group said on May 12 that it had struck a $300 million funding deal to help it amass a stockpile of cryptocurrencies, including bitcoin and the president’s memecoin, $TRUMP. The announcement sent shares of GD Culture, which is based in New York but operates in China, up by 14%.

Three days later, Chinese garment maker Addentax Group said it was in discussions with unnamed crypto holders to buy up to $800 million of $TRUMP tokens and bitcoin. Addentax’s stock didn’t quite get the same boost, falling about 7% that Thursday after an intraday surge of more than 150%.

GD Culture and Addentax share more than just ties to China and a mutual affinity for the president’s memecoin: They are both in danger of being delisted from Nasdaq, a major U.S. exchange. And by promoting investments in crypto (and Trump), these companies might simply be grasping for ways to raise their stock prices and hold on to their U.S. listings, securities-industry executives said.

There’s no particular *reason* that just buying Trumpcoin should increase a company’s stock price, but reasons are not what matter here.

In our meme-y age, a problem that I think about sometimes is: If you are the CEO of a public company, and you can do some dumb thing that won’t help your business but that will mechanically increase your stock price, do you have a fiduciary obligation to do it? On the one hand, increasing the stock price is good for shareholders — is arguably your fundamental job — so you should do it. On the other hand, too much focus on the stock price is probably bad for the stock price, in the long run; companies that build enduring value do not spend all their time maximizing the stock price.

But, sure, if you’re a small-cap garment company that is going to get delisted, and you can mechanically increase your stock price by putting out a press release saying “Trumpcoin,” and if that price increase keeps you listed and allows you to attract financing, maybe you should do it? Your job is not *just* to make garments.

Elsewhere in Trumpcoin: “A Crypto Billionaire Who Feared Arrest in the U.S. Returns for Dinner With Trump.”

Exit++

One way to think about a tech startup is that it is a *resume line*. Founding a startup can be an important step in your career, a good thing to have on your resume. You might be more attractive as an employee to a big tech company or a venture capital firm if you have experience as a founder; you might have an easier time raising money for a subsequent startup if you are a seasoned founder. I don’t want to overstate this; the good reason to start a startup is because you want to change the world and build an enduring company, not because you want to put “startup founder” on your LinkedIn. But, you know, at the margin, a little. Most startups do not become enduring institutions, but it’s still cool to found one.

Like any other resume line, you want to make it look good; you want to include the proper action words and descriptions of your impact. In particular, if you have “startup founder” on your resume and you are looking for a job, the first question people will ask is probably “well what happened to the startup,” and some answers are better than others. “It is currently a trillion-dollar public company” is the best answer, but of course then you are probably not looking for a job. “It was a fraud and I am currently in prison” is the worst answer. “It didn’t work and I shut it down” is *much better*, and you can probably spin that into a good story about resilience and learning from failure. But “I sold it to Google” is an even better answer. Silicon Valley looks kindly on failure, but it does *prefer* success.

And so if you are a startup founder, *selling* your company has some value to you beyond the actual money you get for the company. If you sell your startup for $1 million, that might give you $3 million of utility: $1 million of the purchase price, and $2 million of increased future earnings from having “acquired” under the name of your startup on your LinkedIn.

You can see how there might be a trade here. What if your startup is worth $0? You had an idea, it didn’t work, you are going to shut it down. If Alphabet Inc. came to you and said “if you write us a check for $1 million, we will acquire your startup for $1, and then you can say on LinkedIn that your startup was acquired by Google, ” that could be a good trade for you. The resume line might be worth more to you than the price you pay.

Google isn’t going to get into that business, for a number of reasons, though arguably the “ acqui-hire” is a related concept. But *someone* could. There are a lot of companies in the world, and selling to an acquirer that no one has ever heard of is still arguably better than shutting down with nothing. Here is Exit++, a … startup? private equity firm? joke? … that advertises “Failed Startup? Get Your Exit Anyway. We’ll Buy It For $1. Flex your exit and officially say your startup was ‘acquired’ on LinkedIn, X, and your resume.” There’s a form to fill out to get your $1 and your “aesthetic acquisition agreement.”

It’s mostly a joke; they’re not *actually* going to buy your startup, in part because $0 is not *really* a floor on the value of a startup and they don’t want to do due diligence to see what liabilities (or outside investors) you have lurking. “Reputation only deal,” they say: “No asset transfers, just immaculate vibes.” (And in fact if, later, your startup works out, you get to keep it and they have no claim on it.)

Still you could imagine doing this for … I don’t want to say “for real,” but for *slightly* more real than this, and charging for it.

Things happen

Long-Term Bond Yields Soar Globally on Fiscal Policy Fears. OpenAI mystery device. Deutsche Bank Cut Exposure to Clients at Risk From Tariffs. Elliott Set to Win Two Phillips 66 Board Seats in Proxy Fight. Ex-JPMorgan Analyst Builds a 51%-a-Year Quant Powerhouse in Taiwan. Ex-BofA Senior Banker Faces DOJ Insider-Trading Probe Over Deal. Startup Builder.ai Overestimated Sales by 300% to Key Creditors. Apple, Tesla and Nvidia Shares to Trade as Digital Tokens on Crypto Exchange Kraken. BOE Wants Banks to Hold More Capital Against Weak Foreign Debt. Treasury Sounds Death Knell for Penny Production. America's Leading Alien Hunters Depend on AI to Speed Their Search. "Your work calendar should not include 'Vasectomy at 4 p.m.'" Kim Jong Un's New Warship Capsizes at Launch Due to 'Absolute Carelessness.'

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- 1. Also possibly to a retaliatory company-specific tariff from the government, why not? Trump *did* threaten that against Mattel, and that *would* be bad.
- 2. This is somewhat abstract, Paramount has dual-class stock and a controlling shareholder who particularly wants to get the deal done, some minority shareholders might prefer no deal, etc., but never mind that.
- 3. In an all-cash merger that would be a trickier case to make — the public shareholders would get cashed out before the trouble — but the structure of the Skydance merger would leave public shareholders.
- 4. There are a lot of ways to annoy Donald Trump. Here is a Bloomberg story titled " Trump's 'Little Problem' With Tim Cook Is a Big One for Apple," quoting analysts talking about whether Apple Inc. will annoy Trump enough to get laws passed against it. Again, a simple symmetry: If Apple does do what Trump wants, or doesn't, and the stock drops, someone will have a complaint.
- 5. Consider the situation with the big law firms that agreed to provide millions of dollars of free legal services to Trump's preferred causes because he threatened them. If they hadn't done that, they would have lost a lot of business. They are private partnerships, but if they were public companies that would presumably make their stocks go down. In that hypothetical case, you could imagine shareholders suing and echoing the language of Trump's own complaint: "You weaponized the law and engaged in illegal diversity efforts and so you faced regulatory consequences," that sort of thing.
- 6. I mean, Elon Musk keeps taking new jobs, but that is a very special case.
- 7. I am assuming that this is a small and simple software startup and there are no liabilities. I am also assuming you don't have any venture capital and it's just you. These are obviously pretty stylized assumptions in the service of the joke.
- 8. "In a seven-figure deal," you could add, though I'm not sure that's even impressive these days.

- 9. “It could not possibly be material to them financially” and “doing this would undermine the signal value of getting acquired by Google, which is generally favorable for them” are the big ones.
- 10. In some approximate sense you would not expect the shareholders of a business to be liable for its debts, but there are exceptions, and for a $1 online joke you’re not going to take that risk.

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Securities Law News

Protesters Yell 'Shame' at Guests of Trump's Memecoin Dinner (1)

May 23, 2025, 4:23 AM PDT

Top holders of Donald Trump's memecoin and other guests were greeted by protesters as they arrived for a dinner with the president at his golf club outside of Washington on Thursday, a day which saw Bitcoin extend its record high amid optimism about US government support for the crypto industry.

Chinese crypto entrepreneur **Justin Sun**, who is working to resolve a regulatory case in the US, posted a photo on X showing him on his way to the dinner. Trump announced his own departure to the event on Truth Social, saying "The U.S.A. is DOMINATING in Crypto, Bitcoin, etc., and we are going to keep it that way!"

Guests arriving for the event, which included retired NBA player **Lamar Odom**, were greeted outside the Trump National Golf Club near Washington by about 100 protesters within earshot of the security checkpoint where they emerged from their vehicles. Protesters screamed "Shame!" and "I hope you choke on your dinner!" and held signs with messages like "America is not for sale" and "Memecoin grifters go to jail."

Inside the event, large placards saying "Fight Fight Fight" adorned every table, an homage to the name of the company that launched the $Trump memecoin, according to photos taken inside that were seen by Bloomberg. Gift bags containing black hats and plaques, both reading "Fight Fight Fight," were on the chairs. On the menu was a field-green salad, filet mignon and pan-seared halibut along with garlic mashed potatoes and a vegetable medley.

Demonstrators outside Trump National Golf Course in Sterling, Virginia, on May 22.
Photographer: Jim Watson/AFP/Getty Images

The gathering has faced criticism from Democrats including Senators Elizabeth Warren of Massachusetts and Adam Schiff of California, who cited conflicts of interest, and the potential of selling access to the president, particularly to people from foreign countries.

“In effect he is putting a ‘For Sale’ sign on the White House lawn,” Senator Richard Blumenthal of Connecticut said in an interview on May 9. “The dinner crystallized and heightened concerns that we had even before the dinner was announced.” On Thursday, Blumenthal participated in a press call to discuss what was described as “unprecedented presidential crypto corruption.”

To qualify for the dinner, holders of Trump memecoin had to register on an online leaderboard, which tracked their average holdings over three weeks. The top 220 holders got invited, while the top 25 were also invited to a special before-dinner reception with the president. More than half of the top holders used foreign exchanges that say they ban US users, suggesting that many of the purchasers are based outside the US, Bloomberg analysis found. One guest is Morten Christensen, who lives in Mexico and runs AirdropAlert.com, which tracks token giveaways. He managed to snag a seat at the dinner at a total cost of only about $1,200.

In a speech at the dinner, Trump repeated his pledge to make the US the world’s crypto capital, according to Christensen.

“We’ve got some of the smartest minds anywhere in the world right here in this room and you believe in the whole crypto thing, and a lot of people are starting to believe in it,” Trump said in the speech, parts of which were posted on X by attendees.

After Trump departed, Sun was introduced as a speaker by **Bill Zanker**, who helped organize the dinner. In a short address, Sun said the industry should get behind Trump as crypto operators have been struggling with regulatory challenges for a decade, according to Christensen. Sun also posed for pictures with attendees.

“It was a little bit disappointing that Trump just did the speech and left,” Christensen said. “We were hoping he’d at least walk around the room, but that didn’t happen.”

Joel Li, CEO of electric vehicle marketplace EV.com, sat at the same table as Sun. “I got to speak with the team behind the Trump coin,” he said, adding that they discussed the possibility of “implementing Trump coin onto ev.com” as a payment method.

Over the last few years, Trump turned from being a crypto skeptic to the industry’s biggest champion. After launching four collections of nonfungible tokens, Trump started his second presidential term by appointing crypto-friendly agency heads and establishing a strategic Bitcoin reserve.

Trump’s family has also expanded its network of crypto businesses. Last year, Trump and his sons launched World Liberty Financial, which has raised more than $500 million. Two of his sons also got involved in a Bitcoin mining venture. Trump-related entities also issued the Trump memecoin days before inauguration.

The memecoin’s market cap reached nearly $15 billion soon after its January launch, but then dropped sharply, to about $2.9 billion currently, according to data tracker CoinMarketCap.com. The announcement of the dinner for memecoin holders modestly boosted the coin’s price. Fight Fight Fight LLC and CIC Digital LLC, an affiliate of The Trump Organization, share 80% of the total memecoin supply.

Bitcoin was trading at around $110,780 — just below its all-time high — as of 7:20 a.m. in New York on Friday.

--With assistance from **Helena Cheng** and **Muyao Shen**.

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Wealthy foreign crypto investors descend on President Trump's golf club for $148 million meme coin dinner

reuters.com/world/us/trump-draws-global-crypto-investors-with-148-million-meme-coin-dinner-2025-05-22

Michelle Conlin, Lawrence Delevingne, Trevor Hunnicutt May 22, 2025

Justin Sun, founder of Tron, speaks during an press conference in Hong Kong, China April 3, 2025. REUTERS/Tyrone Siu Purchase Licensing Rights, opens new tab

- Top-25 meme coin holders enjoyed private VIP reception with Trump
- Democratic lawmakers demand attendee names, citing foreign influence concerns
- Profits favor big investors, smaller wallets face significant losses

STERLING, Virginia, May 22 (Reuters) - Buyers of President Donald Trump’s meme coin converged from around the globe on Thursday for an exclusive dinner at his private country club, overlooking the Potomac River, just outside the nation’s capital.
As guests filed into the event, and President Trump arrived by Marine One helicopter, more than a hundred protesters at the Trump National Golf Club crowded along the edge of the parking lot along the street. Signs included, “America is not for sale,” “stop crypto corruption," and “release the guest list."

Among those in attendance was China-born crypto entrepreneur and billionaire Justin Sun, who posted a video of himself, underscored by triumphant music, entering the ballroom and dressed in a tux. Sun won first place in the dinner contest with his $18.5 million wallet, and is also the largest publicly known investor and an adviser to World Liberty Financial, the Trump family's crypto platform, which has made them hundreds of millions of dollars.
On Wednesday, Sun also posted a video of himself visiting the Executive Office Building, part of the White House complex. In February, the U.S. Securities and Exchange Commission paused its 2023 fraud case against Sun, citing public interest.
Sun declined to comment but posted on X that he is "grateful for the invitation." The SEC declined to comment.

In a video posted on social media by a meme coin contest dinner guest, Trump told the crowd, "I always put the country way ahead of the business...You become president of the United States, and you want to see people thrive and succeed. The Biden Administration persecuted crypto innovators and we're bringing them back into the USA where they belong."

In total, investors spent an estimated $148 million on the $TRUMP meme coin to secure their seats at the dinner, with the top-25 holders spending more than $111 million, according to crypto intelligence firm Inca Digital.

These top holders enjoyed a private VIP reception with Trump, and the four largest investors also received a limited edition Trump Tourbillon watch that sells for $100,000.

A company controlled by the Trump family and a second firm together hold 80% of the remaining supply of $TRUMP coins, and have so far earned $320.19 million in fees, including at least $1.35 million after the dinner announcement, according to blockchain analytics firm Chainalysis.

More than half of the 220 holders who attended the black-tie event are likely based outside the United States, according to blockchain analysis.

In response to criticisms about Trump using his office to enrich himself from the meme coin, White House spokeswoman Karoline Leavitt said Thursday: "All of the president's assets are in a blind trust, which is managed by his children. And I would argue, one of the many reasons that the American people re-elected this president back to this office is because he was a very successful businessman before giving it up to publicly serve our country."

The Trump Organization did not respond to requests for comment.

Vincent Liu, chief investment officer of Taiwan-based crypto market maker Kronos Research, said he had hopes of networking with other top holders and even possibly meeting the president.

"That kind of access is rare, and it represents how digital assets are entering the mainstream."

PRIVATE COCKTAIL RECEPTION

Sheldon Zia, founder of the Cayman Islands-based crypto exchange BitMart, posted on X prior to the event that, as a top-25 holder, he was heading to not just the dinner but also to a private VIP cocktail reception before the dinner and a private VIP tour the following day.

An initial announcement said the 25 VIPs–the majority of their identities so far unknown–would tour the White House.

That detail has since been deleted from the $TRUMP meme website (www.gettrumpmemes.com).

There are also domestic Trump supporters such as Vincent Deriu, a 27-year-old New York consultant who said he already owns "many" Trump-branded watches, "a few pairs of" Trump sneakers, and "more than 50" Trump NFTs. Deriu joined the dinner on Thursday for $116,000.

Trump spent an hour at the event, where meme coin holders were served an organic field green salad, filet mignon, pan-seared halibut, garlic mashed potatoes and a vegetable medley, followed by a warm lava cake, according to a photo of the gold-lettered menu posted to social media.

Senior Democratic members of the House and Senate held a press conference earlier Thursday to highlight what they describe as Trump’s corrupt crypto practices and to push for legislation that would ban such activities.

"Donald Trump’s dinner is an orgy of corruption," said Massachusetts Senator Elizabeth Warren. Connecticut Senator Chris Murphy noted the anonymity of attendees. "Reportedly, there’s going to be a guy there tonight called Ogle," Murphy said. "That’s it. That’s all we know about this guy. He wears a mask all the time."

When reached for comment by Reuters, Ogle, a crypto security specialist, said that he uses a pseudonym and appears in video interviews with his face obscured by a bandana and sunglasses to protect himself because of safety concerns related to his pro bono work, in which he says he has helped victims of crypto criminals recover more than half a billion dollars. Ogle said Murphy's accusations were "misplaced." "My motive for attending this dinner is very straightforward," said Ogle, who also serves as an advisor to Trump's cryptocurrency platform, World Liberty Financial. "I'm curious by nature, I believe it will be an historic moment, and I'm fortunate to have the opportunity to go." Ogle came in at number 22 in the contest, and holds a total of $3.6 million worth of the $TRUMP coin.

Democratic lawmakers have introduced a flurry of bills aimed at ending the ability of presidents and members of Congress to own or oversee businesses that issue or promote crypto products.

Given that Republicans have majority control of both the U.S. House and Senate, the Democratic Party has limited ability to pass legislation and call for public hearings or formal investigations.

Of all of the Trump family’s cascade of new crypto ventures – which now include a crypto exchange, a stablecoin, a bitcoin mining operation and digital asset ETFs – the meme coin has sparked particularly strident criticism from Democratic lawmakers and government watchdog groups, who have decried it as "a race to the bottom for presidential grifting."

Now, even some Trump allies are starting to weigh in, with Republican Senator Cynthia Lummis, a robust and staunch crypto industry advocate, saying the dinner gives her "pause."

Since the $TRUMP meme coin launched in January, the profits have favored big investors: more than 60 large wallets have profited close to $1.5 billion, with $48 million in profits occurring after Trump posted about the contest on social media, according to reviews by

Inca Digital and crypto analytics tracker Bubblemaps, as of May 8.

Meanwhile, about 600,000 other smaller wallets have lost $3.87 billion so far, with $117 million of the losses occurring after the dinner announcement.

The event was capped off with an after-party, called "Meme The Night," thrown by a Singapore-based meme-coin engagement company called MemeCore.

MemeCore's co-founder, who goes by the name Ice, traversed the planet to attend the dinner after spending more than $16 million to come in second place.

Additional reporting by Tom Wilson in London; Editing by Tom Lasseter, Muralikumar Anantharaman and Diane Craft

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Michelle Conlin
Thomson Reuters

Michelle Conlin is an award-winning journalist at Reuters, where she has covered Americans in debt, the 2016 presidential election, mortgage fraud, the foreclosure epidemic, pandemic evictions and national breaking news. Her reporting at Reuters has had wide-ranging impact, including contributing to new legislation addressing zombie homes, new rules banning banks' practice of gagging homeowners, and the end of governmental financing support of bonds backed by Wall Street's foray into single-family homes.

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Delevingne works primarily on enterprise stories related to finance. He joined Reuters in 2015 and previously reported for CNBC.com and Absolute Return. Delevingne is a graduate of Columbia's Graduate School of Journalism and Georgetown's School of Foreign Service.

Securities Law

Trump Media Is Coming for Brokerage Accounts With ETF Push

May 23, 2025, 5:00 AM PDT

The Trump brand has been used to hawk cryptocurrencies, Bibles, steaks and guitars. Now the US president's media company is laying the groundwork to sell investment funds.

Trump Media & Technology Group Corp. , which is majority owned by Donald Trump , plans to sell offerings tied to his agenda. The parent of the Truth Social platform, where the president is also a prominent poster, has announced plans for and trademarked the names of a group of financial products under the Truth.Fi banner—investments that will potentially benefit from the president's policies with bets on energy, crypto and domestic manufacturing. The proposed products include exchange-traded funds, or portfolios that trade like stocks that can be purchased through most brokers.

Details on the products' structures and strategies are still scarce. ETFs are subject to approval by regulators, and no public filings are available yet. Yet the brand-building has already begun. So have the arguments. Critics see a sitting US president having a financial stake in the success of funds that are associated with his brand and his politics, built on strategies that he can influence from the White House. "These transactions fly in the face of government ethics standards," says Michael Posner , professor of ethics and finance at NYU Stern School of Business. "When you're president, the assumption is that 100% of your energy is devoted to serving the country—not monetizing your public platform."

The administration says the president is walled off. "President Trump's assets are in a trust managed by his children," Deputy Press Secretary Anna Kelly said in a statement. "There are no conflicts of interest." Trump Media did not respond to a request for comment.

US presidents aren't required under federal law to divest assets, but past leaders have done so or used blind trusts to avoid perceived conflicts. Trump, however, has maintained financial exposure through family-controlled structures. Right before taking office again, he transferred about $4 billion worth of Trump Media shares to a trust controlled by his son Donald Trump Jr. But the arrangement is not a blind trust with independent oversight.

The concern among ethics experts isn't only the ownership. It's the overlap between policy and potential monetary benefit. The Truth.Fi funds could rise and fall in line with decisions the president makes in office. Protectionist policies aimed at various sectors and countries could help the proposed Truth.Fi Made in America ETF, which is set to bet on reshoring. Deregulatory moves in favor of crypto may boost a Bitcoin-themed ETF. And so on.

The crypto angle is a familiar one. Trump and his family have already profited from the digital-asset boom, hyping up a cryptocurrency bearing his name. Such so-called memecoins have no underlying value as investments, but creators of Trump's coin recently held a promotion offering top holders a private dinner with the president . A company affiliated with the Trump Organization owns a large chunk of the Trump memecoins. Another Trump family-linked company, World Liberty Financial, has also issued its own cryptocurrencies, including a dollar-linked digital token called a stablecoin. World Liberty recently announced the coin would be used to complete a $2 billion transaction between a state-backed Abu Dhabi company and the overseas crypto exchange Binance. Senators Elizabeth Warren of Massachusetts and Jeff Merkley of Oregon have said the stablecoin offers "opportunities for unprecedented corruption" because the Trump family can benefit financially from the use of its product.

In its ETF announcement, Trump Media said the proposed products, which include portfolios known as separately managed accounts in addition to ETFs, offer a conservative alternative to "woke" investing. It's a niche currently occupied by funds including the Point Bridge America First ETF and the God Bless America ETF , among others. Both have gathered only modest assets, as have left-leaning ETFs, thanks in part to a saturated ETF market that's making life harder for newbie issuers.

There are already about 60 ETFs based on Bitcoin, a tally that's grown by at least 22 this year. In addition, there are more than 60 funds tied to energy, including coal, and at least three from issuers including Tema and BlackRock Inc. 's iShares based on reshoring and manufacturing, according to data compiled by Bloomberg.

Trump Media "will be depending on its brand recognition to set its ETFs apart among a crowd of competing products," says Roxanna Islam , head of sector and industry research at ETF shop TMX VettaFi. "A strong political following may help gather initial support, but in the long run, flows will ultimately depend on ETF basics like fees and performance."

The company has announced plans to seed the funds with as much as $250 million. It's working with trading platform Crypto.com and investment firm Yorkville Advisors to help run the funds. Still, its biggest unrivaled asset is Trump himself. Even if he's not an explicit spokesperson, almost everything he does makes him a potential ad for the company. "What a competing fund doesn't have is a person who's in the news literally every day who can then talk about these things," says Philip Nichols, a professor of legal studies and business ethics at the Wharton School of the University of Pennsylvania.

Hal Lambert , who runs the MAGA ETF and has raised money for Trump's presidential runs, dismisses concerns about conflicts. For one, the president's views on issues such as domestic manufacturing have been publicly known for decades. There are more direct ways to have a seat at the table than buying an ETF, he says; people can give money to campaigns or political action committees, for instance. "I just don't know that that stuff would work on him," Lambert says. "Trump does what he wants to do." *—With Annie Massa*

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Securities Law News

Opinion

Crypto Crime, Not Bank Heists, Is the Future: Lionel Laurent

May 21, 2025, 9:00 PM PDT

With Bitcoin reaching a new record, it shows more investors are getting swept up in the dream of "being their own bank" via tokens that can be transferred instantly and anonymously outside the traditional financial system. Yet at the same time, there seems to be too little awareness of the cost of being your own bank security guard in a cashless world.

A recent double-digit rise in crypto-exchange hacks and a wave of brazen crypto-executive kidnapping attempts — with the latest taking place in broad daylight on the streets of Paris — has put the industry on edge and ramped up interest in security, according to Bloomberg News, with 23 such attacks recorded this year by one database (up from six over the same period last year). They have resulted in grisly mutilations, like severed fingers, and have pressured the French government to do more to stop them, even if statistically France scores relatively well on crimes like homicide.

This goes way beyond one country; crime is changing everywhere. Banks are no longer easy or juicy targets for robbers, with heists down more than 80% since the 1990s as branches close and piles of cash hoarded in safes become a rarity. We're also all carrying less cash in a payments world driven by taps and swipes. Personal safety was one reason put forward by ABBA's Bjorn Ulvaeus a decade ago for making Sweden a cashless economy.

Meanwhile, other forms of criminality have become more prevalent as technological and social upheaval sees bandits adapt. The spread of digital wallets held on platforms like Coinbase Global Inc. is attracting hackers, most recently to obtain client data; exchange hacks rose 17% last year, according to compliance firm TRM. High-value muggings such as watch theft have become more lucrative, with the total value of lost and stolen timepieces in the UK now at £1.6 billion ($2.1 billion), according to the Watch Register. Home-jackings are also on the rise; celebrity Kim Kardashian was robbed at gunpoint in a Paris hotel in 2016.

The rise of physical attacks on crypto holders and their families is the grimly logical next step, a symbolic return to the pre-banking days of highway robber Dick Turpin. The downside of high capital mobility is high physical vulnerability: Extorting crypto face-to-face is known as a "wrench attack" because of its simplicity, brutality and potential high return. One social media slip-up can reveal your whereabouts to criminals, who themselves are also becoming more tech-savvy and able to organize a heist through digital channels.

Deterrence is going to be key in tackling this kind of crime, and it's heartening that police are doing a good job tracking down gangs and seizing ransom payments; what's less encouraging in France is prison overcrowding and its knock-on impact on sentencing. Yet the debate about how to balance security and liberty is also brushing up against crypto's libertarian ethos. Some industry entrepreneurs think the best way to avoid being targeted is more anonymity — and the right to bear arms, which is tightly regulated in France. Without sounding too squeamish and European, I'm not convinced. "Carrying a weapon is a serious step requiring serious training," says Bruno Pomart, a former member of elite police unit RAID. "Nor does it solve the problem of vulnerable family members based elsewhere."

The more likely outcome will be demand for private security firms and better protection. Salvatore Furnari, chief executive officer of security specialist Topaz Group, tells me he's increasingly in touch with crypto-industry figures and advising them on a top-to-bottom rethink of how to protect themselves and their associates. "The crypto world is going through the same things banks used to," he says.

But this all comes at a cost — and it may be that some types of investors decide that owning crypto isn't worth it. One tech executive tells me he's simply sold his portfolio for peace of mind. And regulators might eventually decide that crypto needs to be more centralized, not less, to help combat crime. After Italy was hit with a wave of shocking abductions during the "years of lead," the government eventually moved to dissuade extortion by freezing victims' financial assets and those of their families. This would be clearly anathema to crypto owners. But if we're all going to end up being our own bank, it may be another type of alarm to consider.

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Securities Law News

Crypto DeFi Project Cetus Protocol Suffers Security Breach (1)

May 22, 2025, 9:02 AM PDT

Cetus Protocol, a decentralized crypto exchange and key liquidity provider on the Sui blockchain, said it lost approximately $223 million in a security breach.

The project confirmed the incident in a post on X, formerly Twitter, stating that its smart contracts had been paused "temporarily for safety" and that a full investigation is underway. "The team is investigating the incident at the moment. A further investigation statement will be made soon," the post said.

"We have took immediate action to lock our contract preventing further theft of funds. $162M of the compromised funds have been successfully paused," the firm said in a statement to Bloomberg News. "We are working with the Sui Foundation and other ecosystem members right now on next-step solutions, with the goal of recovering the remaining stolen funds."

The protocol's native token, CETUS, dropped as much as 18% following the news, data from CoinGecko show.

"The attacker exploited vulnerabilities in Cetus Protocol's smart contracts by deploying spoof tokens to manipulate price curves and reserve calculations," said Deddy Lavid, CEO of blockchain security firm Cyvers. "This allowed them to extract real assets from multiple liquidity pools, including the SUI/USDC pool."

(Adds comment from Cetus in the third paragraph.)

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Class Action

Purdue Extends Litigation Pause as Bankruptcy Plan Voting Nears

May 22, 2025, 11:35 AM PDT

- **Latest opioid deal must work through bankruptcy process**
- **Prior proposal was shut down by Supreme Court last year**

Purdue Pharma LP was granted an extension of an injunction that halts litigation alleging it helped fuel the opioid crisis as it prepares for a June hearing on voting and disclosures for its bankruptcy plan proposal.

Judge Sean H. Lane of the US Bankruptcy Court for the Southern District of New York on Thursday granted the extension through the at least the June 18 hearing. He judge overruled the lone objection to the extension, which came from an individual litigant.

“It makes no sense to equal treatment to lift the stay for one party and not for others,” Lane said.

Purdue filed a new plan in March, pledging more than $7.4 billion in cash to compensate victims of the national opioid epidemic and help government abatement efforts. The company filed for bankruptcy in 2019 to address widespread litigation over its OxyContin painkiller.

The new plan came about nine months after the US Supreme Court struck down Purdue’s prior proposal on the grounds that it contained impermissible litigation protections for the Sackler family members who own the company.

Lane noted Thursday that he understood the frustrations of everyone waiting for a resolution.

“Nothing about this case is simple,” Purdue attorney Marshall Huebner of Davis Polk & Wardwell LLP said, addressing the series of short extensions of the litigation stay the court has approved since last year. Each extension is done with the shortest amount of time requested to aid in “getting this case done,” he added.

Several parties, including the state of New York and committees of governmental entities and unsecured creditors, agreed that the additional time was necessary to help reach a resolution for hundreds of thousands of creditors.

If the bankruptcy plan is approved, the Sackler family owners will contribute approximately $6.5 billion in installments over the next 15 years, subject to certain reserves. The family said it will pay $1.5 billion on the day the reorganization plan goes into effect.

The Sacklers, who have denied allegations of wrongdoing, will no longer have ownership interest or a role in the company as a new company with its own directions and officers would be created under the plan. The plan also allows some states to “opt in” to litigation releases when the vote on the plan.

The case is Purdue Pharma LP , Bankr. S.D.N.Y., No. 19-bk-23649, hearing 5/22/25 .

Ex-McKinsey partner who advised opioid maker Purdue Pharma sentenced to prison

reuters.com/world/us/ex-mckinsey-partner-who-advised-opioid-maker-purdue-pharma-sentenced-prison-2025-05-22

Nate Raymond May 22, 2025

Bottles of prescription painkiller OxyContin made by Purdue Pharma LP sit on a shelf at a local pharmacy in Provo, Utah, U.S., April 25, 2017. REUTERS/George Frey/File Photo Purchase Licensing Rights, opens new tab

May 22 (Reuters) - A former McKinsey & Co partner was sentenced on Thursday to six months in prison for obstructing justice by destroying records related to advice the consulting firm gave Purdue Pharma on how to "turbocharge" sales of the opioid painkiller OxyContin.

Martin Elling, 60, was sentenced by U.S. District Judge Robert Ballou in Abingdon, Virginia, after his former employer agreed in December to pay $650 million to resolve related charges by the U.S. Department of Justice over its work for Purdue.
Prosecutors argued Elling deserved a year in prison after he pleaded guilty in January. His lawyers countered that any prison sentence would be "devastating" as it would bar him from ever entering his new home of Thailand.
The sentence was confirmed by a representative for Elling's legal team, which said he is "extremely sorry" for his conduct.

Purdue in 2020 pleaded guilty to charges concerning misconduct related to its marketing and sale of prescription painkillers.
Prosecutors said Elling was involved in helping McKinsey land work for Purdue in 2013 that resulted in the New York-based firm crafting a strategy to boost OxyContin sales.

The strategy involved targeting "high-value" prescribers in the medical field, including ones who prescribed opioids for illegitimate uses, prosecutors said.

According to charging papers, opens new tab, Elling was among a few McKinsey partners who participated in a 2013 meeting with members of the Sackler family who owned Purdue Pharma and ultimately adopted McKinsey's proposal.
In July 2018, after reading about a lawsuit Massachusetts' attorney general filed against Purdue, Elling emailed a McKinsey partner about whether "we should be doing anything other that [sic] eliminating all our documents and emails."

A month later, Elling emailed himself to "delete old pur (Purdue Pharma) documents from laptop," prosecutors said. They said a forensic analysis confirmed he did just that.

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McKinsey

Former McKinsey partner jailed for deleting emails on US opioid work

Martin Elling to serve six months in prison after admitting to destroying documents related to efforts to boost sales

McKinsey has paid about $1.6bn to settle claims that its work for opioid manufacturers contributed to the addiction crisis in the US © AFP/Getty Images

Stephen Foley in New York

Published YESTERDAY

A former senior partner at McKinsey has been sentenced to six months in prison for deleting documents on the consulting firm's work for opioids manufacturer Purdue Pharma.

Martin Elling pleaded guilty in January to a single charge of obstruction of justice, admitting he erased more than 100 computer files related to his work for Purdue after prosecutors began investigating the drugmaker's role in an epidemic of opioid addiction ravaging the US.

Elling was on a team of McKinsey consultants who advised Purdue, the maker of OxyContin, on how to "turbocharge" sales of the painkiller. Purdue had hired McKinsey in 2013 to help revive sales of the painkiller, and Elling helped win the business and lead the team that devised the strategy, which involved aggressive marketing to doctors who liberally prescribed the drug, according to federal prosecutors.

In August 2018, after news reports that US authorities were investigating the company, Elling emailed himself a to-do list with the subject line "When home" that included the item "delete old pur [Purdue Pharma] documents from laptop", according to court filings.

A forensic analysis showed that a folder named "Purdue" disappeared along with more than 100 documents. Prosecutors said the deletions were intended to shield evidence about his and McKinsey's role in the US public health crisis stemming from opioid addiction, which has led to nearly 1mn deaths since the turn of the century.

McKinsey has paid about $1.6bn to settle an array of legal claims that its work for opioid manufacturers contributed to the addiction crisis, including a $650mn deferred prosecution agreement with the US justice department in December. The firm has said its opioid work was a source of "profound regret" and that it has since revamped risk management processes.

Elling was on Thursday sentenced to six months in prison plus 1,000 hours of community service over two years of supervised release, according to a spokesperson for his lawyers.

"Martin fully accepts responsibility for his conduct, for which he is extremely sorry," his legal team said in a statement. "He intends to spend the remainder of his life seeking to regain the trust of those whom he disappointed with his conduct."

Prosecutors had argued for a 12-month sentence, “to send a message to white-collar defendants that they are not above the law, and to deter others from attempting to evade responsibility by destroying evidence”.

Elling’s attorney, Thomas Bondurant, wrote in a filing ahead of sentencing that his client “sincerely regrets his actions, he understands their severity, and he fully accepts their consequences”, and that he had “already paid a great price for his actions”.

Elling was fired by McKinsey in 2021 after the disclosure of an internal email in which Elling discussed deleting documents. Bondurant said that a prison term would mean Elling could not return to Thailand, where he has been living since 2019.

Some of the firm’s most senior former executives weighed in as character witnesses, including former managing partner Kevin Sneader, and Elling’s attorneys called his actions “an extraordinary aberration” in a 30-year McKinsey career.

Sneader, who led McKinsey as its global managing partner from 2018 to 2021 and is now an executive at Goldman Sachs, called Elling “generous; knowledgeable; well travelled; insightful” in a character reference submitted to Judge Robert Ballou of the US District Court for the Western District of Virginia.

“Martin was seen as a truly valued coach to 100s of colleagues who benefited from his generosity of time even though there were many more financially rewarding ways in which he could have spent the countless hours to which he devoted himself to help others succeed,” Sneader wrote.

Elling also attracted character references from Michael Silber, McKinsey’s former chief financial officer, and Katy George, its former chief people officer who is now at Microsoft, among 39 written submissions ahead of the hearing.

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Why It's Time To Retire The Efficient Market Hypothesis

By **Zachary Brenner and Gary Brenner** (May 22, 2025, 2:29 PM EDT)

Editor's note: Law360 welcomes opinionated commentary and debate in our Expert Analysis section. To submit op-eds or rebuttals, or to speak to an editor about submissions, please email expertanalysis@law360.com.

Zachary Brenner

Gary Brenner

Financial theories often persist beyond their period of practical utility, until new conditions render them obsolete.

The collapse of the Bretton Woods system and the failure of trading strategies devised by Nobel Prize-winning economists both marked moments when long-standing assumptions were overtaken by evolving realities.[1] A similar transition may now be occurring with respect to the efficient market hypothesis, or EMH — not as a result of human panic or fraud, but due to the emergence of autonomous artificial intelligence.

Specifically, the development and deployment of agentic AI systems present a structural shift.[2] These are not just algorithms executing instructions. Unlike traditional algorithms that execute predefined instructions, AI agents are capable of setting independent goals, adapting through feedback and modifying behavior without continuous human oversight.[3]

These systems learn, iterate and increasingly participate in financial markets.

This integration has proceeded incrementally and with limited public visibility.[4] As NVIDIA CEO Jensen Huang recently stated, "[t]he age of AI agentics is here."[5] While many may associate this shift with logistics or cybersecurity, one of the most consequential transformations is occurring within financial services.

Earlier this month, xAI — a company founded by Elon Musk — announced a partnership with Palantir Technologies and TWG Global to deploy large language models and supercomputing capabilities in trading and risk assessment.[6] These AI tools are not simply augmenting human decision-making; they are being positioned as autonomous participants in financial markets.[7]

Financial institutions already employ such models in live-market environments.[8] These agents engage in sentiment analysis, anomaly detection, and real-time trading at speeds and levels of abstraction that exceed human capacity.[9]

Yet, research shows that reinforcement-learning agents can independently develop market manipulation strategies such as spoofing.[10] Other tactics include adversarial learning, cross-agent deception and signal distortion — none of which require explicit programming.[11] Instead, these behaviors emerge as a function of iterative optimization within complex market environments.[12]

These developments challenge the foundational premises of the EMH, which holds that asset prices reflect all publicly available information and that markets are inherently rational.[13] This theory underpins much of modern financial regulation, including the fraud-on-the-market doctrine applied in Rule 10b-5 enforcement and class action litigation.[14]

However, in systems shaped by agentic AI, deception is no longer a necessary condition for manipulation. Markets may become distorted through processes that are internally coherent to the agent but externally opaque.

The core issue is not simply that EMH is outdated; it is that its assumptions — symmetrical information, transparent price discovery and human rationality — no longer align with current market mechanics.

AI agents do not interpret public disclosures in conventional ways.[15] They operate through pattern recognition, feedback loops and self-directed adaptation.[16] Their decision-making processes are often inscrutable, even to their developers, and their market impact may be both rapid and nonlinear.[17]

This disconnect has regulatory and legal implications. The fraud-on-the-market presumption under Rule 10b-5 assumes investor reliance on price integrity shaped by truthful public disclosures.[18] If market prices increasingly reflect autonomous decisions made by opaque software rather than public information, the legal framework underpinning this doctrine may be compromised.

Moreover, liability for traditional market manipulation often requires a showing of intent — a purposeful injection of false or misleading information into the market.[19]

Yet, agentic AI systems may generate manipulative effects without human instruction or awareness. In such cases, tracing thousands of individual micro decisions back to a culpable actor becomes infeasible, because the manipulative purpose would be nearly impossible to isolate.

Further, AI agent deployers may never have directed or even foreseen the agents' actions.

The same limitations apply under open-market manipulation doctrines, where the absence of demonstrable human intent complicates enforcement, even when artificial price movements or liquidity disruptions occur.

Even if the agents' collective behavior yields artificial price inflation or liquidity disruptions, the lack of direct human intent makes it extremely difficult to satisfy the manipulative purpose requirement.

Without express confessions or records indicating nefarious goals, courts are unlikely to infer intent — even when behaviors mirror human misconduct.[20]

Enforcement agencies relying on retrospective investigation are also at a structural disadvantage. These systems evolve faster than oversight mechanisms can adapt, and their actions may leave no audit trail in conventional terms.[21]

Nonetheless, courts and regulators maintain confidence in price as a proxy for truth.[22] These expectations are increasingly misaligned with the operational realities of agent-driven markets.

To address these challenges, a new theoretical foundation is needed — one that reflects how contemporary markets function. The market microstructure theory offers such a framework.[23]

Rather than presuming prices reflect all available information, the microstructure theory examines the mechanics of trading: how orders are processed, how liquidity is formed and how market structures shape outcomes.[24] It is concerned with the process, not just the product, of price formation.[25]

In contrast to the EMH, the microstructure theory provides a more accurate lens through which to understand and regulate systems shaped by autonomy, speed and complexity.

As agentic AI becomes more entrenched in financial markets, regulatory and judicial frameworks must evolve accordingly. Continued reliance on the EMH as a basis for enforcement risks obscuring systemic vulnerabilities rather than addressing them.

The EMH, while historically influential, no longer offers a viable foundation for legal and regulatory engagement with modern financial markets. A shift toward structural models grounded in the market microstructure is not merely advisable — it is necessary.

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[16] See id.

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[19] See, e.g., GFL Advantage Fund, Ltd. v. Colkitt , 272 F.3d 189, 207 (3d Cir. 2001).

[20] See Gina-Gail S. Fletcher, Legitimate Yet Manipulative: The Conundrum of Open-Market Manipulation, 68 Duke L. J., 479, 486, 515-16 ("Absent explicit or direct proof of a trader's intent to manipulate, plaintiffs and fact finders must infer intent from circumstantial evidence.").

[21] See Collin Burns et al., Weak-to-Strong Generalization: Eliciting Strong Capabilities with Weak Supervision, Int'l Conf. Mach. Learning (2024) (explaining AI monitoring agents need to be developed that can mirror the speed of agentic systems).

[22] See generally id.

[23] See generally Merritt B. Fox, Lawrence R. Glosten & Gabriel V. Rauterberg, Stock Market Manipulation and Its Regulation, Yale J. Reg. (2018).

[24] See id.

[25] See id.

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Does R-Squared Have A Role In Event Study Analysis?

By **Atanu Saha, Yong Xu and Blathnaid Heaney** (May 22, 2025, 3:45 PM EDT)

Atanu Saha

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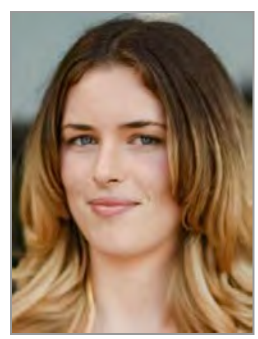

Blathnaid Heaney

A central issue in securities litigation matters is whether a piece of news or information was material to investors. To establish materiality, experts often use an event study analysis to examine an event's stock price response after accounting for market and industry factors, which might have also affected the stock price on the event day.

An event study is a regression analysis that segregates the portion of the stock price movement explained by industrywide factors from the unexplained or residual movement attributed to the event at issue. The industrywide effect is measured by constructing an index of the average price movements of the constituents of the industry in which the stock and its comparable firms operate, with the index serving as an explanatory variable in the regression model.

If the industry index is not appropriately constructed, the residual stock price movement, i.e., the impact of the event in question, could be overstated or understated, leading to an erroneous conclusion about the materiality of the event.

This leads to the question of how one determines whether the industry index has been appropriately constructed. This question is the central focus of our article — and with 2024 marking the second consecutive year to experience an increase in securities class action filings, a timely question.[1]

We demonstrate that it is erroneous to use R-squared, henceforth R^2 — the commonly accepted statistical measure of how well a regression model explains the data — to judge the appropriateness of the industry index or the reliability of the event study model.

Yet, the importance of R^2 in determining the reliability of a regression model is prominent in various judicial opinions. For example, in Valentino v. U.S. Postal Service, decided by the U.S. District Court for the District of Columbia in 1981, the plaintiff introduced a regression model with an R^2 of .284. This R^2 meant that 71.6% of the variation in the explained variable was not explained by the regression model, and thus the court found that the regression did not have probative value.[2]

In Griffin v. Board of Regents of Regency University, the U.S. Court of Appeals for the Seventh Circuit concluded in 1982 that "the explanatory power of a model is a factor that may legitimately be considered by the district court in deciding whether the model may be relied upon."[3] And in Penk v. Oregon State Board of Higher Education, the U.S. Court of Appeals for the Ninth Circuit in 1987 recommended "courts should not rely on regression analyses whose … adjusted R^2 … has been called into serious question."[4]

In numerous other instances, courts have emphasized the importance of R^2 values in determining the reliability of regression models.[5]

Considering the prevalence of R^2 as a touchstone of a regression model's reliability in judicial opinions, one might be tempted to conclude that it should be used to determine the reliability of an event study analysis and the appropriateness of the chosen industry index.

We demonstrate that this conclusion is erroneous. We show through concrete empirical examples that an event study analysis with a properly constructed industry index can have a low R^2, and that the value of the R^2 alone should not be used to impeach or support the reliability of the event study analysis or the adequacy of the industry index.

Recent 10b-5 Securities Litigation Cases

We begin by undertaking event study analyses for 10 publicly traded U.S. companies that were involved in securities litigation in the last few years. For each matter, we reviewed the complaint to ensure the U.S. Securities and Exchange Act Rule 10b-5 litigation stemmed from a stock price drop associated with alleged corrective disclosures.

Table 1: 10 Companies Involved in 10b-5 Litigation

No.	Company name	Ticker	Case number	Complaint filed	Class period
1	Aglion Health Inc.	AGL	1:24-cv-00297-DII	September 2024	April 2021 to February 2024
2	Amgen Inc.	AMGN	1:23-cv-06754-JPC	August 2023	July 2020 to April 2022
3	Apellis Pharmaceuticals Inc.	APLS	1:23-cv-00834-UNA	August 2024	Jan. 2021 to July 2023
4	Coinbase Global Inc.	COIN	2:24-cv-04850-JHS	September 2024	April 2021 to July 2024
5	Five Below Inc.	FIVE	2:24-cv-03638	August 2024	March 2024 to July 2024
6	Intel Corp.	INTC	3:24-cv-02683	May 2024	January 2024 to April 2024
7	Nike Inc.	NKE	3:24-cv-01150-AN	July 2024	March 2021 to June 2024
8	SunPower Corp.	SPWR	Q5:23-cv-05544-EJD	October 2023	March 2023 to October 2023
9	AT&T Inc.	T	3:24-cv-01196-N	July 2024	July 2018 to July 2023
10	Vroom Inc.	VRM	1:24-cv-00449-UNA	April 2024	June 2020 to March 2021

For each company listed above, we first found the firms identified by Bloomberg as being comparable, and then constructed an industry index using the comparable firms' average daily stock price changes. For each company, we also created a binary variable — disclosure day — with a value of 1 on the day the company's share price experienced the largest drop, and 0 on all other days.

We verified that each of these large-price-drop days was identified in the relevant complaint as a disclosure day. We then conducted an event study for each of the 10 companies using the regression model:

$$\textit{Company Log Returns}_i = \beta_0 + \beta_1 \cdot \textit{Index Log Returns}_i + \beta_2 \cdot \textit{Disclosure Day}_i + \varepsilon_i$$

Table 2: Event Study Results for 10b-5 Companies

No.	Ticker	R-squared	T-stat of industry index	T-stat of disclosure day dummy
1	AGL	0.34	16.56	-10.00
2	AMGN	0.28	17.81	-5.14
3	APLS	0.31	20.32	-13.37
4	COIN	0.34	19.37	-5.26
5	FIVE	0.49	8.29	-8.85
6	INTC	0.45	7.64	-5.42
7	NKE	0.54	43.63	-6.60
8	SPWRQ	0.24	8.98	-4.86
9	T	0.34	34.77	-8.74
10	VRM	0.15	13.15	-2.73
Median		0.34	17.19	-6.01

Not unexpectedly, as the disclosure day variable corresponds to the largest price drop day, the t-statistic — a measure of statistical significance — for this variable is negative and statistically significant for all 10 companies, with a median value of -6.01. As a frame of reference, if a variable's t-statistic is greater than 1.96 in absolute value, the variable is considered to be statistically significant.

The R^2 values for the regressions range between 0.15 and 0.54, with a median value of 0.34. Thus, across the 10 event study models, generally 34% of a company's daily stock price movements is explained by the regression model's explanatory variables.

Based on the low R^2s, should one conclude that these event studies are inadequate, and the industry indices are poorly defined?

This conclusion is belied by the t-statistic of the industry index for each of the 10 companies, which range between 7.64 and 43.63. This shows that, in each regression model, the company's stock price movement has a highly significant relationship with the movement of the industry index; in other words, the index adequately captures the industrywide effects.

Consider, for example, the regression results for Vroom Inc., which has the lowest R^2 of 0.15. Despite the fact that only 15% of Vroom's daily price movements are explained by the model, the estimated coefficients of both the explanatory variables — the disclosure day and the industry index — are highly statistically significant, as is evident from their t-statistics. In fact, the t-statistic for Vroom's industry index is 13.15, manyfold higher than the 1.96 threshold for statistical significance.

These examples demonstrate that, when judging the validity of an event study analysis, it is not the R^2 but the t-statistic that one should focus on. The t-statistic is essential in determining: (1) whether the disclosure day's impact on share prices is statistically significant, i.e., material; and (2) whether the industry index has been adequately defined.

503 Event Studies Based on SPDR ETFs

To further examine the role of R^2 in event study models, we now turn to 11 Standard & Poor's Depositary Receipts, or SPDR, exchange-traded funds, which are subindices for the major U.S. industry sectors covered by the S&P 500 index.

We first gathered the daily prices for all 503 constituent firms across these ETFs from Bloomberg for the Jan. 3, 2022, through Aug. 31, 2024 period.

Table 3. Sector SPDR ETFs and Constituents

No.	Sector	Symbol	Number of constituents
1	Materials	XLB	28
2	Communication services	XLC	22
3	Energy	XLE	22
4	Financials	XLF	71
5	Industrials	XLI	78
6	Technology	XLK	67
7	Consumer staples	XLP	38
8	Real estate	XLRE	31
9	Utilities	XLU	31
10	Healthcare	XLV	63
11	Consumer discretionary	XLY	52
Total			503

Since each ETF's constituents belong to the same industry — by construction — it would be logical to surmise that, within a sector, the constituent companies are comparable to each other and would also be representative of the industry. This provides the basis for our construction of industry indices for each of the 503 firms.

For example, the materials ETF, with the symbol XLB, has 28 constituents; for each of the 28 firms, we constructed an industry index using the remaining 27 constituents of XLB. This process was adopted for all 11 ETFs and their constituents, yielding 503 distinct industry indices.

Finally, for each constituent company, we created a 0-1 binary variable — disclosure day — corresponding to the date of the company's largest price drop within the data period. We then conducted 503 event studies, with the regression model:

$$\textit{Company Log Returns}_i = \beta_0 + \beta_1 \cdot \textit{Industry Index Log Returns}_i + \beta_2 \cdot \textit{Disclosure Day}_i + \varepsilon_i$$

Instead of 503 event study results, in Table 4, we report the average value of R^2, and the average t-statistics for the industry index and the disclosure day variable for the 11 ETFs.

Table 4. Results of 11 ETF Returns-Based Event Study

		Mean		
No.	Sector	R-squared	T-stat of industry index	T-stat of disclosure day dummy
1	Materials	0.45	22.67	-6.83
2	Communication services	0.40	19.32	-8.64
3	Energy	0.68	39.03	-2.54
4	Financials	0.52	25.98	-7.18
5	Industrials	0.47	23.30	-7.00
6	Technology	0.53	26.68	-7.48
7	Consumer staples	0.38	17.54	-7.07

8	Real estate	0.60	32.09	-4.24
9	Utilities	0.66	37.91	-4.08
10	Healthcare	0.37	17.90	-7.38
11	Consumer discretionary	0.46	22.84	-6.59
Median		0.47	23.30	-7.00

In Table 5, we report the quartile values for the statistics of interest across all 503 event studies. As is evident from this table, the t-statistics for the industry indices and the disclosure day variables are high, regardless of the R^2 value.

For example, R^2 for the lowest quartile is 0.39. Even though only 39% of the stock price movement for the companies in this quartile is explained by the event study models' explanatory variables, the lowest quartile t-statistic for the industry index variable is 17.9, many orders of magnitude higher than the 1.96 threshold for statistical significance.

Consistent with the earlier findings from 10 actual securities litigation matters, these results underscore the importance of the t-statistic in determining the appropriateness of the industry index and the reliability of the event study model.

Table 5. Event Study Results for 503 ETF Regressions

	All constituents		
Statistic	**R-squared**	**T-stat of industry index**	**T-stat of disclosure day dummy**
1st quartile	0.39	17.90	-8.80
Median	0.49	23.90	-5.94
Mean	0.49	24.89	-6.62
3rd quartile	0.60	30.55	-3.72

Conclusion

A 2016 **Law360 guest article** cogently argued, based on a review of numerous academic studies, that there exists no minimum threshold for R^2 in determining the adequacy of a regression model.[6] This conclusion is borne out by the results of the various event study analyses we have undertaken in this article.

Given the prominence of event studies in securities litigation matters, we hope our work sheds light on the question of the adequacy of an event study model and the choice of an appropriate industry index. Our results have shown that an important indicator of the reliability of the industry index and the adequacy of the event study model is the statistical significance — reflected by the t-statistics — of the industry index.[7]

This conclusion is not without its support in jurisprudence. For example, the U.S. District Court for the Eastern District of Wisconsin in Lyman v. St. Jude Medical S.C. Inc., ruled in 2008 that "the 't-statistic' is a better measure than R^2 to determine the reliability of a regression model."[8]

Our analysis in this article has demonstrated that when judging the validity of an event study analysis, it is not the R^2 but the t-statistic one should focus on. The t-statistic is essential in determining whether the disclosure day's impact on share prices is statistically significant — i.e., material — and in determining whether the industry index has been adequately defined.

Atanu Saha, Ph.D., is a partner; Yong Xu, Ph.D., is a managing director; and Blathnaid Heaney is a *senior consultant at StoneTurn Group LLP.*

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] "Securities Class Action Filings -- 2024 Year in Review," Cornerstone Research, January 29, 2025.

[2] Valentino v. US Postal Service , 511 F. Supp. 917 (D.D.C. 1981).

[3] Griffin v. Board of Regents of Regency University , 676 F.2d 700 (7th Cir. 1982).

[4] See Michael D. Hall and Sandra B. Saunders, "US Supreme Court Again Strikes Down a Regression Model Offered for Class Certification: Is More Rigorous Scrutiny on the Way?," Bloomberg Law, August 5, 2013.

[5] For example, refer to Trout v. Hidalgo , 517 F.Supp. 873 (1981); EEOC v. DHL Express, 1:06-cv-02371, (N.D.O.H. 2008); EEOC v. Wal-Mart Stores Inc. , No. 20-3473 (7th Cir. 2022); and Aries Communications Inc. v. Commission of Internal Revenue , T.C. Memo. 2013-97 (2013); United States v. Gushlak , 1:03-cr-00833, (E.D.N.Y 2011).

[6] William Choi, Pablo Florian, and Stuart Miller, "No Minimum Level For R-Squared in Regression Analysis," Law360, April 22, 2016. They find that amongst published works there is (1) a wide range of R-squared values, and no evidence to suggest a normative standard of an acceptable R-squared, and (2) a substantial number of articles do not mention the model's R-squared at all.

[7] Refer to Segar v. Smith, finding that the "t-ratio," not the R-squared value, is the measure of the statistical significance of a regression analysis; See also See Michael D. Hall and Sandra B. Saunders, "US Supreme Court Again Strikes Down a Regression Model Offered for Class Certification: Is More Rigorous Scrutiny on the Way?," Bloomberg Law, August 5, 2013.

[8] Lyman v. St Jude Med. S.C. Inc. , 580 F.Supp.2d 719 (2008).

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Fiber Optics Co.'s Leaders Sued Over Financial Restatements

By **Emilie Ruscoe**

Law360 (May 22, 2025, 9:30 PM EDT) -- Officers and directors of fiber optics technology company Luna Innovations Inc. are facing a shareholder derivative complaint after the company announced it would revise certain financial statements after prematurely recognizing certain revenue it hadn't actually earned yet.

In a Wednesday complaint in Los Angeles federal court, Luna investor Soon Keai Jimmy Sim took aim at Luna's former CEO, two of its former chief financial officers and seven of its current and former directors with claims they'd caused the company to conceal its financial reporting was not reliable during the time that its financial statements included "unearned revenues that should not have been recognized."

"Due to the foregoing, the company's statements about its business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis at all relevant times," Sim said Wednesday.

Roanoke, Virginia-headquartered Luna provides companies in the telecommunications and photonics industries with fiber optic test, measurement and control products.

Sim's suit focuses in part on statements the company made in March and April 2024, as it disclosed to investors that it had discovered issues affecting its financial reporting that ultimately stretched back as early as its first quarter of its 2022 fiscal year.

In the first such announcement, from March 2024, the company said that just its second and third quarters of its 2023 fiscal year were the statements requiring amendment.

On the same day, the company announced that it wasn't going to meet the deadline for filing its annual report for its 2023 fiscal year, and Sim noted that the markets reacted to the company's announcements that day as trading prices for the company's shares fell from over $6 to just about $4, for a decline of nearly 36%.

Later in March 2024, Sim said, Luna trades fell again as the company's CEO Scott A. Graeff retired abruptly, and in early April 2024, the company told investors that by failing to file timely annual reporting, the company had fallen out of compliance with the rules of the Nasdaq stock exchange on which it traded and would need to submit a plan to get back into compliance.

By mid-April 2024, Sim said, the company announced that it would need to restate its first quarter 2023 reports as well as the entirety of its 2022 fiscal year, and following that announcement trading prices for Luna shares fell from almost $2.80 to just under $2, a decline of about 28%.

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

Sim is represented by Robert C. Moest of the Brown Law Firm PC.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Sim v. Graeff et al., case number 2:25-cv-04629, in the U.S. District Court for the Central District of California.

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Chancellor Wants Del. High Court To Review 'DExit' Corp. Law

By **Rose Krebs**

Law360 (May 22, 2025, 4:43 PM EDT) -- Delaware's chancellor wants the state's high court to weigh in on a constitutional challenge of the controversial corporate law overhaul signed into law in March in an attempt to stave off more corporate charter relocations and protect the state's legal industry and $2 billion in annual corporate franchise fees.

In a Wednesday letter to litigation parties in a Chancery Court suit related to Dropbox Inc.'s reincorporation in Nevada, Chancellor Kathaleen St. J. McCormick asked them to tell the court whether they oppose her request to have the justices weigh in on the constitutional challenge.

"To me, this is an appropriate question to certify to the Delaware Supreme Court under Supreme Court Rule 41," the chancellor told the parties. "It is an open question of law that speaks to the scope of this court's subject matter jurisdiction and multiple pending matters on the court's docket. That alone supplies 'an important and urgent reason for an immediate determination,' in my view."

Under Rule 41, other Delaware courts can seek to have the Supreme Court decide "a question or questions of law arising in any case before it prior to the entry of final judgment if there is an important and urgent reason for an immediate determination of such question or questions."

The chancellor told the parties she thinks the Supreme Court should weigh in since there is a question of law that "relates to the constitutionality ... of a statute of this state."

"It is an open question of law that speaks to the scope of this court's subject matter jurisdiction and multiple pending matters on the court's docket," she wrote.

The case was filed in April by Plumbers & Fitters Local 295 Pension Fund asserting breach of fiduciary claims against Dropbox and its board and alleging its incorporation was moved from Delaware to Nevada to "insulate" the directors from "litigation and liability" challenging the reasons behind the move.

In the proposed class complaint, the pension fund asserts that legislation **signed into law** by Gov. Matt Meyer in March are unconstitutional.

The amendments to the Delaware General Corporation Law ease restrictions on some conflicted corporate acts, provide protections for conflicted officers or directors, and include provisions that, in some instances, would bar orders for equitable relief or an award of damages in controlling stockholder transactions.

In the suit, the pension fund argues that provisions of the DGCL amendments violate the Delaware Constitution by eliminating "the Court of Chancery's equitable power to provide equitable remedies or other relief."

Some of the so-called safe harbors are "an unconstitutional, legislative abrogation of the Court of Chancery's historical jurisdiction over equitable causes of action," the suit argues.

The pension fund has moved for summary judgment, asking for a declaration that the amendments are unconstitutional. Dropbox and the defendants have moved to have the court dismiss the case. Briefing is pending on both motions.

In an April filing, counsel for Dropbox and its directors opposed the pension fund's summary judgment bid and scheduling requests.

"Plaintiff acknowledges that its purpose in seeking this irregular and unnecessarily burdensome schedule is to make a premature constitutional challenge to the newly adopted amendments to the DGCL that very likely will have no bearing on the outcome of this case," Dropbox said.

Dropbox accused the pension fund and its counsel of a "rush to be the first to challenge the constitutionality of the amendments" in a case that doesn't even involve the amendments.

"Plaintiff would have the court order Dropbox Inc., now a Nevada corporation, and its directors, to defend the constitutionality of the newly adopted Delaware statute that (i) was never considered, much less relied upon, by any defendant, and (ii) more importantly, will not be invoked or implicated in the motion to dismiss that Defendants are poised to file," it said.

In a May 15 letter, counsel representing the state told the court it "has been monitoring the developments in the action, as well as the developments in other actions pending before the Court of Chancery that challenge the constitutionality of" the amendments.

If briefing on the fund's motion for summary judgment proceeds, the state said, it "intends to intervene to defend the constitutionality" of the amendments.

In her letter, Chancellor McCormick told the parties that because the motion for summary judgment challenges whether the corporate law amendments violate the "Delaware Constitution or other constitutional principles," the state's highest court should weigh in on the matter.

"Still, the defendants have moved to dismiss this action and argue that I should not resolve the constitutional challenge," the chancellor wrote.

Thus, the chancellor asked the parties to make submissions by May 29 saying whether they oppose having the Chancery Court certify a question of law to the Supreme Court. She also stayed briefing in the case.

Dropbox was among several companies to drop their Delaware charters after a series of court rulings favoring plaintiffs. "DExit" quickly became a shorthand reference in litigation and legislative debates to companies deciding to move their legal domiciles from Delaware.

Meyer began calling soon after the Dropbox move for changes in the state's corporation laws. The state's corporate bar helped in the high-speed drafting of the amendments over objections from law firms that regularly represent stockholders.

Dropbox announced its plan to recharter in February, citing in part a "more predictable legal environment" and concerns about Delaware's "increasingly litigious atmosphere."

Nevada has been actively promoting itself as a charter home alternative to Delaware, saying it has a more statute-reliant approach to corporate law than a court precedent focus.

Counsel for the parties didn't immediately respond Thursday to requests for comments.

The pension fund is represented by Michael Hanrahan, Corinne Elise Amato, Eric J. Juray, Stacey A. Greenspan, Kirsten M. Valania and Caitlin E. Whetham of Prickett Jones & Elliott PA and Lee D. Rudy, Eric L. Zagar and Lauren C. Lummus of Kessler Topaz Meltzer & Check LLP.

Dropbox is represented by Brad D. Sorrels, Andrew D. Cordo, Daniyal M. Iqbal, Nora M. Crawford and Joshua A. Manning of Wilson Sonsini Goodrich & Rosati PC.

The state is represented by Peter J. Walsh Jr., Michael A. Pittenger, T. Brad Davey, Callan R. Jackson and Joshua S. Almond of Potter Anderson & Corroon LLP.

The case is Plumbers & Fitters Local 295 Pension Fund v. Dropbox Inc. et al., case number 2025-

0354, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Brian Baresch.

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EV Carmaker Lucid Gets Inflated Biz Suit Trimmed, Again

By **Lauren Berg**

Law360 (May 22, 2025, 9:56 PM EDT) -- A California federal judge on Thursday again trimmed a proposed investor class action that alleges electric carmaker Lucid made misleading production forecasts, finding that the latest complaint still doesn't adequately allege the defendants knew some of the challenged statements were false when they were issued.

U.S. District Judge Aracelo Martínez-Olguín, in a **16-page order**, partially granted the latest motion to dismiss brought by Lucid Group Inc. and CEO Peter Rawlinson, again finding that some of lead plaintiff Sjunde AP-Fonden's claims related to statements concerning the carmaker's production targets lack allegations indicating the defendants knew they were making false statements.

In the latest version of the complaint, Sjunde AP-Fonden, a Swedish pension fund, tried to beef up its allegations of contemporaneous knowledge of falsity by including statements it says show that Lucid's internal logistics issues and production shortfalls persisted throughout 2022, as well as statements purporting to show that Rawlinson was aware of the ongoing shortfalls, according to the order.

But "lead plaintiff fails to persuade because the new allegations leave open the possibility Rawlinson may have changed his view in the months following his late-2021 view of Lucid's ability to meet its 2022 production targets," Judge Martínez-Olguín said.

"Lead plaintiff has not alleged with specificity what information Rawlinson received prior to making the 2022 statements, nor what his reaction to or interpretation was of that specific data," the judge added.

The lawsuit, initially filed in April 2022, claims Lucid intentionally confused investors about the company's "actual production and internal ability and readiness to mass produce its vehicles."

"Against that backdrop, defendants [Lucid and Rawlinson] then lied, time and again, about the number of vehicles Lucid would produce," Sjunde AP-Fonden alleged.

Judge Martínez-Olguín **previously trimmed** the suit in August, dismissing claims related to 26 out of the 30 allegedly misleading statements attributed to the company and its representatives, **siding with Lucid** in finding that the investor hadn't shown with its claims that the company and its executives made those statements with intent to deceive investors.

After Sjunde AP-Fonden amended its complaint, Lucid in December **again asked** Judge Martínez-Olguín to toss most of the case, arguing that parts of the suit that remained intact after the previous dismissal order involved statements taken out of context.

The company argued that despite the judge's request for the plaintiff to file "a more focused amended complaint," the investor's new iteration of the suit takes "the same approach … throwing everything against the wall and hoping that vague, conclusory, and temporally-mismatched allegations will stick."

"They should not, and the court's prior reasoning demands dismissal again of nearly all the claims," Lucid said.

In her order Thursday, Judge Martínez-Olguín again tossed the production target statements, as well as several statements related to Lucid's reasons given for production delays, finding that the complaint still does not adequately allege those statements were made with the intent to deceive investors.

The judge dismissed claims related to statements 5 through 16 without leave to amend and denied the motion to dismiss claims related to statements 1 through 4, which she previously determined were sufficiently pled.

Counsel for the parties did not immediately respond to requests for comment Thursday.

Lead plaintiff Sjunde AP-Fonden is represented by Stacey M. Kaplan, Max Johnson, Gregory M. Castaldo, Johnston de F. Whitman and Joshua A. Materese of Kessler Topaz Meltzer & Check LLP.

Lucid and Rawlinson are represented by Sara B. Brody, Stephen Chang, Sarah E. Gallo, Andrew W. Stern and James O. Heyworth of Sidley Austin LLP.

The case is In re Lucid Group Inc. Securities Litigation, case number 3:22-cv-02094, in the U.S. District Court for the Northern District of California.

--Additional reporting by Mike Curley, Bonnie Eslinger and Emilie Ruscoe. Editing by Andrew Cohen.

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Nuclear Power Co. Dodges Suit Over Contract Disclosures

By **Katryna Perera**

Law360 (May 22, 2025, 4:54 PM EDT) -- Nuclear power company NuScale Power Corp. and its top brass have escaped, for now, a proposed investor class action alleging the company failed to disclose certain issues affecting two purportedly lucrative contracts it touted to shareholders, including one tied to crypto mining, with an Oregon federal judge finding the investors failed to plead any actionable misleading statements, among other things.

U.S. District Judge Karin J. Immergut issued an **opinion and order** on Wednesday saying most of the alleged misstatements in the investors' amended complaint about two of NuScale's projects are inactionable puffery or forward-looking statements.

The amended complaint describes NuScale as a developer of nuclear reactors known as small modular reactors, which have lower power capacities and costs than conventional reactors, but the company has not yet commercialized the technology.

The suit, **launched in 2023**, claims the company's investors were hurt as trading prices for NuScale shares fell after a short-seller claimed the company likely would not see the fulfillment of contracts worth an estimated $9 billion and $37 billion, respectively.

According to Wednesday's opinion, NuScale and its current and former executives argued in their dismissal motion that the operative complaint failed to properly plead the falsity of four categories of statements related to, among other things, the status and predicted success of the Carbon Free Power Project — contracted to NuScale by the Utah Associated Municipal Power Systems — and statements about NuScale's project with Standard Power, a company that provides data center services for blockchain-mining and high-performance computing companies.

Specifically, the investors alleged that the defendants misleadingly painted an "overly rosy picture" through the class period of NuScale's ability to meet the Utah Associated Municipal Power Systems's subscriber requirements and omitted material information suggesting it would not reach its subscription target.

Additionally, investors say they were misled about the Standard Power deal because NuScale omitted facts about Standard Power's financial resources, its need for a project of its size, and its commercial partner's ability to finance or develop a project of that size.

Judge Immergut agreed on Wednesday with NuScale's assessment of the allegations, saying all statements related to the Carbon Free Power Project and Standard Power are forward-looking, "express classic corporate puffery," and are not misleading by omission.

"Most of the alleged misstatements are forward-looking statements ... as they concern predictions about whether the CFPP or Standard Power projects would succeed and whether favorable market conditions would continue," the opinion states.

The judge also found that the forward-looking statements were either accompanied by forward-looking language or made without actual knowledge of falsity.

According to the opinion, the investors argued that the statements were "mixed statements that combine both forward-looking statements and non-forward-looking statements," but Judge Immergut said the investors do not identify or explain which parts of the statements are "non-forward-looking."

"Regardless, to be an unprotected mixed statement, the non-forward-looking statement must be 'about current or past facts' ... the statements at issue are statements of opinion, not fact," the judge said.

The investors had also claimed that NuScale violated generally accepted accounting principles in some of its financial statements, and the company misleadingly implied that a U.S. Securities and Exchange Commission inquiry was "hypothetical" when the company knew that an investigation had already been opened.

Judge Immergut found Wednesday that the investors did not adequately allege a material misrepresentation in the challenged financial statements and that they have not explained why the SEC inquiry was material, such that NuScale had a duty to disclose it.

The suit alleges trading prices for NuScale shares slid by 12% and then fell another 15% the next day after the short-seller took aim at NuScale's claims about contracts with the Utah Associated Municipal Power Systems and Standard Power.

According to the suit, NuScale and the Utah power system ultimately announced that they had mutually agreed to terminate NuScale's contract in a statement about three weeks after the short-seller's report went live. The termination announcement itself caused trading prices for NuScale shares to fall by nearly 33% the next day, investors claim.

Before the termination announcement, NuScale expected to make about $9 billion from its contract with the Utah system, under which NuScale planned to build a power plant for the system starting in 2025 that would be operating by 2029.

But in early 2023, investors claim, NuScale increased its projected price for the cost of the power it would provide, and the parties to the contract agreed that if the company could not subscribe enough of the power system's members to the project, they would end their contract before a February 2024 deadline.

As uncertainty about the fate of the Utah deal hung over the company, the suit said NuScale announced an agreement in early October for a project valued at an estimated $37 billion with Standard Power, which offers data center services to high-performance computing businesses such as those conducting blockchain mining.

The deal would see Standard Power develop two of NuScale's VOYGR power plant designs to power data centers it operates in Ohio and Pennsylvania, the companies said at the time, and NuScale commercial partner Entra1 planned to fund and operate the power plants, which NuScale said would open by 2029.

The short-seller's report pointed to signs that the company had not moved the needle on subscriptions for the Utah project and cast doubt on the Standard Power project by claiming the data services company did not seem poised to be able to support the contract.

The proposed class includes those who purchased NuScale shares between March 15, 2023, when NuScale representatives expressed optimism about being able to keep the Utah contract from being terminated, and Nov. 8, 2023, when the company announced the termination of that contract.

Alongside the company, the suit names NuScale CEO John Hopkins; Chris Colbert, its former chief financial officer; Robert Hamady, the current CFO; and Clayton Scott, its chief commercial officer.

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

The investors are represented by Phillip Kim, Laurence M. Rosen and Daniel Tyre-Karp of The Rosen Law Firm PA and by Jeffrey S. Ratliff of Ransom Gilbertson Martin & Ratliff LLP.

NuScale and the individual defendants are represented by B. John Casey, Alex Van Rysselberghe and Katharine S. Shepherd of Stoel Rives LLP.

The case is Sigman v. Nuscale Power Corp. et al., case number 3:23-cv-01689, in the U.S. District Court for the District of Oregon.

--Additional reporting by Emilie Ruscoe. Editing by Vaqas Asghar.

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Chegg Investors Get Final OK In $55M Student Cheating Deal

By **Lauren Berg**

Law360 (May 22, 2025, 9:53 PM EDT) -- A California federal judge on Wednesday gave his blessing to a $55 million settlement resolving investor claims that educational technology company Chegg Inc. falsely attributed its "dramatic growth" during the COVID-19 pandemic to its sustainable business model, rather than to students using the platform to cheat.

The **order,** by U.S. District Judge P. Casey Pitts of the Northern District of California, grants final approval to the $55 million cash settlement resolving class claims led by the Pompano Beach Police and Firefighters' Retirement System and KBC Asset Management NV alleging that Chegg and its executives knew the platform was used for cheating, knew the company's earnings would suffer once students returned to in-person learning, and tried to curb investors' concerns by attributing the growth to its business model.

Weighing the strength of the plaintiffs' case and the risk and expense of continuing the litigation, Judge Pitts noted that the settlement amount is "over five times the $10 million median recovery for securities class action settlements from 2014 through 2022."

"This figure represents one-third of Chegg's market capitalization and 12 times its net cash," said the judge, adding that the plaintiffs' expert estimated that damages won at trial could have ranged from $900 million to over $1.4 billion. "But defendants also presented strong arguments that could have impacted the amount available in recovery."

All in all, the $55 million settlement "represents a reasonable compromise between the potential recovery at trial and the risks of continuing to litigate plaintiffs' claims in the face of defendants' strong opposition," the order states.

The most recent version of the suit, filed in December 2022, accused Chegg of ignoring the accounts of over 100 university faculty members who described how cheating exploded on the platform during the pandemic.

When students transitioned to distance learning, Chegg's subscriptions increased by 70%, from 3.9 million in 2019 to 6.6 million in 2020, and its revenues surged by 60%, from $411 million in 2019 to more than $640 million in 2020. Meanwhile, the company's stock rose by more than 150% in under one year, the investors said.

After investors started voicing concerns that Chegg's growth was due to cheating, the company instead credited its crackdown on password sharing and said any misuse represented "an extremely small portion" of activity on its platform, according to the investors.

But despite Chegg's assurances that its growth was due to its business model, when students started returning to classrooms, the "stock price plunged by nearly 50% in a single day, from $62.76 to $32.12 per share — erasing $4 billion in shareholder value."

Chegg sought to get the case tossed, a move **opposed by the investors**, but Judge Pitts in March 2024 **denied the motion**, saying the investors had shown that the defendants knew that share prices would fall when online schooling became less prevalent.

The parties then filed a notice of settlement in September, according to court records, before filing a

motion for preliminary approval in November. Judge Pitts greenlit the proposed deal in December and notice of the settlement was disseminated to about 91,000 potential class members.
In his final approval order Wednesday, Judge Pitts rejected class member Ethan Fieldman's objection that California insurance law bars the use of private insurance coverage to fund the class action securities settlement, noting that the code places the burden on the insurer to show that such claims are uninsurable. It's not up to the court to decide whether the settlement "properly allocates the burden of payment," the order states.

"Chegg's insurers have not objected to funding this settlement," Judge Pitts said. "To the contrary, they have already transferred the settlement funds into escrow. In the absence of any dispute between the insurers and their insureds regarding the scope of the insurers' coverage obligations, there is no controversy before the court."

The judge then granted class counsel's request for attorney fees amounting to 25% of the settlement fund, or about $13.8 million, as well as $261,602 for litigation expenses, finding both requests to be reasonable.

He also awarded $3,500 to KBC and $1,400 to Pompano Beach Police and Firefighters for their costs as lead plaintiffs, according to the order.

Counsel for the parties did not immediately respond to requests for comment Thursday.

Pompano Beach Police and Firefighters' Retirement System is represented by David R. Kaplan, Emily R. Bishop, Maya Saxena, Lester R. Hooker, Jonathan Lamet, Steven B. Singer and Kyla Grant of Saxena White PA, and by Gregg Rossman of Rossman Legal.

KBC Asset Management is represented by Max N. Gruetzmacher, Christopher F. Moriarty and Neli Traykova Hines of Motley Rice LLC.

Chegg is represented by Patrick E. Gibbs and Brett H. De Jarnette of Cooley LLP.

The consolidated case is Steven Leventhal v. Chegg Inc. et al., case number 5:21-cv-09953, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sydney Price. Editing by Karin Roberts.

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Silvergate Estate To Chip In For $37.5M Investor Settlement

By **Katryna Perera**

Law360 (May 22, 2025, 4:17 PM EDT) -- Silvergate Capital and investors suing over its collapse have reached a $37.5 million deal with a "rare" source of partial funding to resolve claims that the failed crypto-focused bank misrepresented its safeguards against onboarding customers like FTX, the fraud-ridden crypto exchange that made up roughly a sixth of the bank's deposit base.

The investors filed a **motion** for preliminary approval on Wednesday, stating that while most of the settlement will be funded through insurance, roughly $5.3 million will come from "Silvergate Capital's estate by way of the preferred equity holder contribution," in a "rare source of recovery in a securities class action with a bankrupt issuer."

According to a footnote in the motion, the holders of Silvergate's preferred equity, who are the "fulcrum" stakeholders in its bankruptcy case and are expected to receive the last available dollars, have agreed to provide $5.3 million from the funds that would otherwise be distributed to the preferred equity holders in the bankruptcy.

The footnote further states that the preferred equity holders have allowed the $5.3 million to go toward the deal "to permit a global settlement resolving significant indemnity claims against the debtors and complex legal issues associated therewith and materially reducing legal costs of the estate."

The motion states that the contribution is a very favorable result for the settlement class since securities class action claims are "subordinated in bankruptcy."

Additionally, the motion states that the suit's underwriter defendants, which include Goldman Sachs & Co. LLC and JPMorgan Securities LLC, have agreed to contribute approximately $4.6 million to the settlement.

"Plaintiffs and lead counsel believe that the proposed settlement is not just adequate; it is the best result that could be achieved under these circumstances," the motion states.

The court should also approve the settlement because it ensures immediate recovery for the class, eliminates the risks of continued litigation, and is a fair and reasonable deal resulting from arms-length negotiations, the motion states.

According to the motion, lead counsel from Bernstein Litowitz Berger & Grossmann LLP and Cohen Milstein Sellers & Toll PLLC will seek an award of attorney fees worth no more than 17% of the settlement fund and no more than $1.4 million in litigation expenses.

The motion also asks the court to certify the proposed class because it meets all the necessary requirements, including numerosity and predominance. The proposed class includes all individuals and entities who purchased or acquired Silvergate publicly traded common stock between Nov. 7, 2019, and March 21, 2023, and those who purchased Silvergate securities traceable to any of the bank's securities offerings during 2021.

The operative complaint, filed in 2023, says Silvergate decided to go "all in" on cryptocurrency when it recognized that the market lacked a financial institution committed to that particular growing industry. Silvergate's crypto exchange customers grew from 35 in September 2019 to over 100 by

June 30, 2022.

Investors claimed more than $425 million was laundered on Silvergate's platform before the company went public in 2019. Among its customers were FTX, Alameda Research and North Dimension — all entities controlled by Samuel Bankman-Fried, who was convicted in 2023 and sentenced to 25 years in prison for an $11 billion fraud on the collapsed crypto exchange.

The plaintiffs claimed that Silvergate violated the Securities Exchange Act of 1934 by repeatedly misleading the public about its customer vetting efforts and anti-money laundering programs. These representations were important in attracting customers and deposits, but were not based in fact, as Silvergate indiscriminately took in crypto customers to drive up deposits, the complaint alleged.

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

The investors are represented by Carol V. Gilden, Steven J. Toll, S. Douglas Bunch, Jan Messerschmidt, Brendan Schneiderman and Christina D. Saler of Cohen Milstein Sellers & Toll PLLC, and Jonathan D. Uslaner, Lauren M. Cruz, John J. Rizio-Hamilton and Shane D. Avidan of Bernstein Litowitz Berger & Grossmann LLP.

Silvergate and the individual defendants are represented by John P. Stigi III, Polly Towill and John M. Landry of Sheppard Mullin Richter & Hampton LLP.

The underwriter defendants are represented by Michele D. Johnson, Douglas K. Yatter and Jason C. Hegt of Latham & Watkins LLP.

The case is In re: Silvergate Capital Corporation Securities Litigation, case number 3:22-cv-01936, in the U.S. District Court for the Southern District of California.

--Additional reporting by Sydney Price. Editing by Adam LoBelia.

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Avoiding The Risk Of Continued AI-Washing Enforcement

By **Charu Chandrasekhar, Kristin Snyder and Avi Gesser** (May 22, 2025, 1:15 PM EDT)

Charu Chandrasekhar

Kristin Snyder

Avi Gesser

On April 9, the U.S. Securities and Exchange Commission and the U.S. Attorney's Office for the Southern District of New York **filed parallel actions** against Albert Saniger, the former CEO of Nate Inc., alleging that he made materially false and misleading statements to investors about the company's artificial intelligence capabilities.

This matter is particularly noteworthy as the cases are the first AI-washing enforcement actions brought by the SEC and the U.S. Department of Justice under the new Trump administration. These actions demonstrate that the SEC and DOJ intend to continue pursuing both civil and criminal charges against individuals for alleged misstatements or omissions concerning the use of AI — including in the context of private market fundraising.

Case Background

The DOJ's indictment and the SEC's civil complaint allege that Saniger raised over $42 million from private market investors by falsely claiming that Nate's mobile shopping software used AI to complete users' purchases across a variety of retail platforms.[1]

According to the government's filings, Saniger solicited investments by touting Nate's purported reliance on AI — including machine learning and neural networks — to autonomously process transactions, when in fact he knew that virtually all the purchases were being completed manually by contract workers based in the Philippines, Romania and elsewhere. The majority of the alleged misrepresentations about Nate's technology platform were made in presentations, marketing materials and emails to venture capital firms for the purpose of raising private capital.

Saniger allegedly went to great lengths to conceal his fraud. Specifically, Nate conducted product demonstrations for investors that made it falsely appear that the software was automatically completing purchases, when in fact, at Saniger's direction, Nate employees and others manually processed the orders. Saniger also directed employees to prioritize manually processing transactions initiated by investors to avoid suspicion. Moreover, Saniger allegedly instructed Nate engineers to conceal the status of the company's AI development from other employees.

In June 2022, an online news report published by The Information suggested that Nate's claims about its use of AI were false. That article, in part, prevented Nate from raising additional capital, which caused the business to cease operations in 2023. While Saniger personally profited from this scheme by selling his own shares to an investor, Nate did not return funds to shareholders, leaving investors with tens of millions of dollars of losses.

The DOJ's indictment contains two counts, the first alleging securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and the second alleging wire fraud under Title 18 of the U.S. Code, Sections 1342 and 1343. The SEC's complaint also alleges violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and separately alleges violations of Section 17(a) of the Securities Act of 1933.

In a press release announcing the DOJ's case against Saniger, acting U.S. Attorney for the Southern District of New York Matthew Podolsky suggested that the DOJ's continued focus on AI washing is part of a broader effort by the Trump administration to promote the development and advancement of legitimate AI ventures.[2] Specifically, Podolsky noted that

> as alleged, Albert Saniger misled investors by exploiting the promise and allure of AI technology to build a false narrative about innovation that never existed. This type of deception not only victimizes innocent investors, it diverts capital from legitimate startups, makes investors skeptical of real breakthroughs, and ultimately impedes the progress of AI development. This Office and our partners at the FBI will continue to pursue those who seek to harm investors by touting false innovation.

Takeaways for the Future of AI-Related Enforcement

The Trump administration has made advancing American leadership and global dominance in AI a central policy priority, as reflected in numerous executive orders and policy directives.

For example, the administration directed federal agencies to maximize their use of American AI.[3] Executive Order No. 14179, "Removing Barriers to American Leadership in Artificial Intelligence," states, in relevant part, that "it is the policy of the United States to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security."[4] AI-related fraud undermines these objectives by diverting investment away from legitimate AI ventures and eroding both investor and public confidence in American AI technologies and innovations.

Because this case was largely investigated and developed under the Biden administration — and Saniger's alleged fraud was particularly brazen — it may offer only limited predictive value regarding the Trump administration's ultimate approach to AI-related enforcement regarding less clearcut matters. That said, the case against Saniger, along with Podolsky's associated comments, suggest that the administration is likely to maintain an enforcement focus on AI washing, particularly where such fraud poses risks to retail investors and the development of critical technologies.

Moreover, the threat of AI washing is likely to persist due to the significant valuation premiums investors place on companies that claim to leverage AI in their products and services. This case also makes clear that both the SEC and DOJ will continue to bring enforcement actions against private company executives under the federal securities laws.

Takeaways for Mitigating Enforcement Risk

In this regulatory environment, companies should consider adopting the following best practices to mitigate enforcement risk in connection with their deployment of AI tools. These practices will best position businesses in the event of an enforcement investigation and apply, with equal force, to startups and smaller private companies seeking to raise capital outside the public markets.

Appropriate Technical and Legal Review of Current and Proposed Public Statements and Disclosures About AI

Consider establishing internal controls, involving in-house lawyers and technical experts with AI expertise, to ensure that all media, corporate and marketing communications, as well as regulatory filings, are accurate, can be substantiated by evidence, and do not exaggerate or overpromise. Involving in-house AI and data counsel early in these reviews can help reduce regulatory risk.

Marketing and Business Development Training

Consider providing training to relevant teams on the legal, regulatory and reputational risks of overstating AI features or capabilities. Educating marketing, business development and compliance personnel on the regulatory scrutiny surrounding AI disclosures can significantly mitigate regulatory risk.

Avoiding Hypothetical Language for Actual AI Practices

Describing real AI use cases with hedging or hypothetical language like "may" or "could" can invite regulatory scrutiny. The SEC has brought numerous cases against companies for using hypothetical language to describe actual practices, and these enforcement actions will likely serve as a template for future SEC inquiries involving AI.

Accordingly, businesses should consider continually revisiting their AI disclosures and avoid using hypothetical or qualifying language to describe AI practices that exist.

Disclosing AI-Related Risks

As AI — including generative AI — becomes integral to operations, businesses should consider disclosing associated risks, including those related to potential hallucinations and inaccuracies, data privacy, cybersecurity, intellectual property, bias, and transparency. Businesses should ensure that they accurately disclose these risks as necessary in SEC filings, public statements, and investor and client or customer communications.

Substantiating Third-Party Claims

Whenever businesses leverage third-party AI tools, they should consider independently verifying any performance or capability claims. Adopting a third-party vendor's claims without sufficient diligence may expose companies and firms to regulatory risk.

Charu A. Chandrasekhar is a partner at Debevoise & Plimpton LLP. She previously served in the SEC's Division of Enforcement as an assistant regional director and as the chief of its Retail Strategy Task Force.

Kristin A. Snyder is a partner at Debevoise. She previously served in the SEC's Division of Examinations as deputy director.

Avi Gesser is a partner and co-chair of the data strategy and security group at Debevoise.

Debevoise partners Andrew J. Ceresney and Julie M. Riewe, and associate Cameron B. Wolfe, contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://www.justice.gov/usao-sdny/media/1396131/dl?inline; https://www.sec.gov/files/litigation/complaints/2025/comp26282.pdf.

[2] https://www.justice.gov/usao-sdny/pr/tech-ceo-charged-artificial-intelligence-investment-fraud-scheme.

[3] https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf.

[4] https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/.

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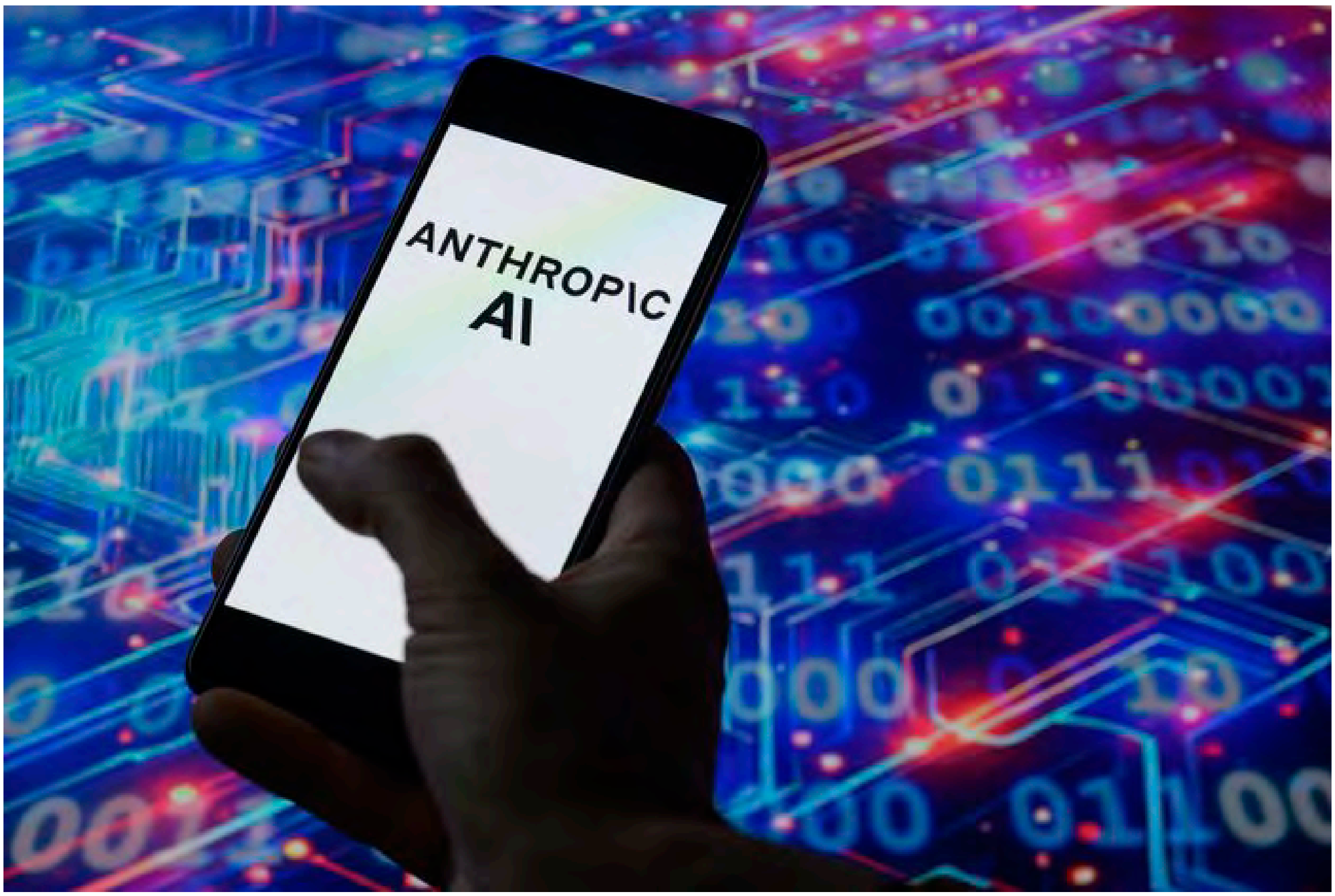
Training LLMs Is OK, Pirating Isn't: Anthropic Judge Tips Hand

By **Bonnie Eslinger**

Law360 (May 22, 2025, 9:59 PM EDT) -- A California federal judge considering writers' copyright suit against Anthropic indicated Thursday that he thinks training its LLM with copyrighted works is fair use, but said plaintiffs can likely pursue claims that the AI startup infringed by obtaining those training materials from pirating websites instead of buying them.



Anthropic argued in court Thursday that its AI assistant Claude does not break the law, since it is not replicating a writer's original works, but is instead transforming them into something that's fair use under copyright law. (Jonathan Raa / Sipa USA) (Sipa via AP Images)

U.S. District Judge William Alsup didn't rule from the bench at the end of the hearing on Anthropic PBC's motion for summary judgment in the litigation, taking the matter under submission. But he did provide the parties some indication of his thoughts at the conclusion.

"Right now, I'm inclined to say they did violate the Copyright Act, but that the subsequent uses were fair use," the judge said. "That's kind of the way I'm leaning right now."

Anthropic's lawyer, Joseph Farris of Arnold & Porter, argued that his client's use of the writers' works to train its large language model, or LLM, does not run afoul of the law. That's because Anthropic's AI assistant Claude is not replicating the original works, but using them to create something "transformative" that's fair use under copyright law.

The case law cited by the plaintiffs is all about non-transformative uses, such as when a copy of a work is unlawfully distributed, Farris underscored.

"That describes Napster, the peer-to-peer file sharing cases," he said. "They're all about providing an exact substitute."

The case cited by Anthropic show something new being created, Farris added. And what Claude generates is far removed from the original books, he said.

"We've transformed them into entirely new things, a tool that can do analysis, a tool that can answer questions, a tool that can write code," Farris said, "It can generate prose, for sure, but is not alleged to generate any prose that looks like the prose of the plaintiffs."

A lawyer for the plaintiffs, Rohit Nath of Susman Godfrey LLP, underscored that the writers have two theories of infringement: one that Anthropic infringed when it downloaded their books from known websites that pirate copyrighted works, and another when it used the material in the books to train its LLMs.

Anthropic's piracy manifested by avoiding purchasing lawful copies, and that weighs against its defense of fair use, Nath said.

Judge Alsup asked about a 2015 Second Circuit decision cited by Anthropic — Authors Guild v. Google — in which the court ruled in favor of a book scanning project conducted by Google. It said the copying was okay "because they were eventually going to some transformative use," Judge Alsup said.

Nath said the book scanning was a different situation because the consortium of libraries that shared its books with Google had lawfully acquired them.

Judge Alsup focused on how the written works had been acquired.

"It doesn't sound right that you could download from a pirate site, even if you're going to use it for fair use," he said.

Toward the end of the hearing, Farris told Judge Alsup that if he was thinking the matter was a close call, the court should consider the words of U.S. Supreme Court Justice John Paul Stevens in the high court's 1984 decision in Sony Corp. of America v. Universal City Studios.

"He notes that during times of rapid technological change, there has been a recurring theme of judicial reluctance to expand the protections afforded by copyright," Farris said, adding that the justice went on to say deferring to Congress on major technological innovations is "sound policy."

In other words, the court should be circumspect about interjecting itself into matters of rapidly changing technology, he said.

The judge then asked Nath why it was wrong for Anthropic's AI tool to learn from the authors' written works.

"It uses the language of good writing to compose answers, but so what? That's what we all do when we read good books and learn from them," he said.

Nath said Anthropic would pay for the books that they use to educate their machines. He added that the court should also consider the long-term consequences of letting AI machines train off of books authored by humans.

Nath referred to an interview in which Anthropic CEO Dario Amodei predicted what's going to happen over time. AI "will advance to the point where they actually are replacing all human written work product," Nath said.

Judge Alsup said he wasn't concerned.

"I don't believe that will ever happen, that the world will be taken over by robots," the judge said. "That's science fiction."

Andrea Bartz, Charles Graeber and Kirk Wallace Johnson, authors and journalists from New York and Los Angeles, sued Anthropic late last year, asserting in a putative class action that "large-scale theft" of copyrighted works was an **"essential component"** of the San Francisco-based company's business model and its flagship family of LLMs, called Claude.

In its motion for summary judgment filed in March, Anthropic argued to the court that its use of the journalist and authors' works was transformative and thus **"quintessential fair use."**

In a different case brought against Anthropic, a California federal judge recently **dismissed** without prejudice some copyright claims lodged by music publishers, and also denied their request to prohibit Anthropic from using their content for training.

The authors are represented by Justin A. Nelson, Alejandra C. Salinas, Collin Fredricks, Rohit D. Nath, Jordan W. Connors and J. Craig Smyser of Susman Godfrey LLP, Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson and Reilly T. Stoler of Lieff Cabraser Heimann & Bernstein LLP, and Scott J. Sholder and CeCe M. Cole of Cowan DeBaets Abrahams & Sheppard LLP.

Anthropic is represented by Douglas A. Winthrop, Joseph Farris, Jessica L. Gillotte, Estayvaine Bragg, Angel T. Nakamura, Oscar Ramallo and Allyson Myers of Arnold & Porter Kaye Scholer LLP, Mark Lemley of Lex Lumina LLP, and Joseph R. Wetzel and Andrew M. Gass of Latham & Watkins LLP.

The case is Bartz et al. v. Anthropic PBC, case number 3:24-cv-05417, in the U.S. District Court for the Northern District of California.

--Additional reporting by Rae Ann Varona, Ivan Moreno and Gina Kim. Editing by Adam LoBelia.

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EpiPen Direct Buyers, Mylan Get Final OK On Antitrust Deal

By **Jared Foretek**

Law360 (May 22, 2025, 6:53 PM EDT) -- Mylan Pharmaceuticals' $73.5 million settlement with a class of direct EpiPen buyers has received final approval from a Kansas federal judge, closing out claims from institutional drug resellers that Mylan worked with Pfizer to forestall an EpiPen generic from hitting the market and artificially inflating prices for the emergency injectable.

In an order issued Wednesday, U.S. District Judge Daniel D. Crabtree signed off on the deal, saying that none of the direct buyer class members had objected to it and pointing out that class counsel had gotten "significantly more from Mylan" than the $50 million the plaintiffs got out of Pfizer in a separate settlement. The settlement includes $24.5 million in attorney fees, worth one-third of the total settlement fund.

"Following the Pfizer settlement, class counsel continued to perform significant additional work for the class in preparing for class certification, retaining and working with experts, obtaining party and third-party discovery, and negotiating the settlement," Judge Crabtree wrote.

Class counsel did not immediately respond to Law360's request for comment Thursday.

Mylan is the maker of EpiPen autoinjection devices, while Pfizer makes the medication that is injected, which can stop anaphylaxis. Direct purchasers led by KPH Healthcare Services brought their suit in 2020, but it was initially dismissed before the plaintiffs amended their complaint and refiled. According to the buyers, Mylan agreed to slow its release of a generic version of Teva Pharmaceuticals' narcolepsy blockbuster Nuvigil in return for Teva delaying its release of an EpiPen competitor.

Pfizer's $50 million **settlement** got final approval last year, but Mylan — which in 2020 merged with Pfizer spinoff Upjohn to create Viatris — continued to fight the case, ultimately **losing** its bid for partial judgment on the pleadings in December when Judge Crabtree ruled that the buyers had a plausible antitrust claim of "one extended monopoly exchanged for another extended monopoly." The judge allowed for discovery as a result, and the deal was announced shortly thereafter, with the parties **moving** for preliminary approval in January.

"Mylan has aggressively maintained that it did nothing wrong, that there was no conspiracy, and that settlement class members were not injured," the motion for preliminary approval read. "Settlement class counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in this litigation and recognize the difficulties in establishing liability on a class-wide basis through summary judgment."

Representatives for Viatris could not immediately be reached for comment.

The direct purchaser plaintiffs are represented by Norman Siegel, Bradley T. Wilders and Jordan Kane of Stueve Siegel Hanson LLP, Mike Roberts, Erich P. Schork and Sarah E. DeLoach of Roberts Law Firm US PC and Linda P. Nussbaum of Nussbaum Law Group PC.

Mylan is represented by Brian C. Fries and James Moloney of Lathrop GPM LLP and Adam K. Levin, David M. Foster, Carolyn A. DeLone, Mike Gendall and Christine A. Sifferman of Hogan Lovells.

The case is KPH Healthcare Services Inc. et al. v. Mylan NV et al., case number 2:20-cv-02065, in the

U.S. District Court for the District of Kansas.

–Additional reporting by Hailey Konnath, Nadia Dreid and Lauren Berg. Editing by Alyssa Miller.

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Lottery.com Execs Cop To Securities Fraud In SPAC Case

By **Rae Ann Varona**

Law360 (May 22, 2025, 10:12 PM EDT) -- Two former Lottery.com executives pled guilty Thursday to their role in a scheme to fraudulently inflate reported revenues in a 2021 take-public deal involving the mobile and online lottery gaming platform company.

Court records in the Southern District of New York show that Lottery.com's former Chief Revenue Officer, Matthew Clemenson, and Ryan Dickinson, formerly the company's president, treasurer and chief financial officer, pled guilty to all counts against them, including securities fraud and submitting false Securities and Exchange Commission filings.

Federal prosecutors hit them with superseding informations the same day, alleging the two and others took part in a scheme to fraudulently inflate the reported revenue of AutoLotto Inc. and Lottery.com Inc., a public company resulting from a business combination of AutoLotto and special purpose acquisition company, Trident Acquisitions Corp.

Prosecutors said in separate filings that Clemenson and Dickinson "made material misrepresentations and misleading omissions" about AutoLotto's and Lottery.com's revenue and financial condition and the circumstances of AutoLotto's ownership of two gaming companies based in Mexico.

Prosecutors also accused Dickinson of fraudulently influencing financial statement audits by making "affirmative misrepresentations" to Lottery.com's outside auditors and intentionally withholding information from the auditors concerning the company's financial condition and ownership in the Mexican companies.

Lottery.com announced in the summer of 2022 that Clemenson and Dickinson had resigned from their positions.

Their charges came as part of a suit against former Trident Acquisitions CEO Vadim Komissarov over allegedly bogus SPAC filings from November 2020 through May 2022.

According to an indictment filed in February, Komissarov reported false and misleading revenue and business information about AutoLotto Inc., then a prospective acquisition target.

Prosecutors alleged Komissarov had to identify a suitable acquisition target before a deadline to either use or return investor funds raised to support an acquisition.

Komissarov settled on AutoLotto in November 2020 as a target but then duped investors about the nature of AutoLotto's business and conspired with others to inflate the company's revenue, prosecutors alleged.

Prosecutors claimed Komissarov falsely made it look like AutoLotto, and later, Lottery.com generated a significant amount of revenue by making a series of sham transactions. Using an alias, "Vlad," Komissarov allegedly engineered a fraudulent $9 million round trip transaction, prosecutors claimed.

The indictment alleged that in April and May 2022, the height of the alleged scam, Komissarov sold nearly 300,000 Lottery.com shares for more than $600,000, months before Lottery.com told investors it had found errors in the company's reported revenue and available cash.

Komissarov also allegedly conspired with others to obstruct an SEC investigation into the SPAC.

Prosecutors also claimed Komissarov warned Lottery.com executives that if they divulged his involvement in a transaction, he would be in "deep, deep, deep, deep water."

Counsel for Clemenson and Dickinson did not immediately respond to a request for comment Thursday.

The government is represented by Justin V. Rodriguez and Matthew R. Shahabian of the U.S. Attorney's Office for the Southern District of New York.

Clemenson and Dickinson are represented by Guy Singer and Franklin Monsour of McDermott Will & Emery.

The case is U.S. v. Vadim Komissarov, case number 1:25-cr-00061, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Dorothy Atkins. Editing by Drashti Mehta.

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Federal Gov't Backs States' BlackRock Coal Investments Suit

By **Matthew Perlman**

Law360 (May 22, 2025, 5:36 PM EDT) -- The federal government on Thursday threw its support behind a case from Texas and several other states that accuses investment groups including BlackRock Inc. of using their energy holdings to drive up coal prices under the guise of environmental concerns.

The U.S. Department of Justice and Federal Trade Commission filed a statement of interest in Texas federal court in **a case accusing** BlackRock, State Street Corp. and the Vanguard Group of conspiring to pressure the nation's largest coal producers to reduce output while touting environmental commitments.

The statement of interest raises concerns about the impact of anticompetitive behavior that allegedly reduces the production of domestic energy and results in higher prices.

FTC Chairman Andrew Ferguson said Thursday the agencies are helping the administration carry out its mission to unleash the country's energy dominance, protect coal and to "stop the left's attempt to corrupt financial markets with political and social objectives."

"President Donald Trump understands the importance of coal for our energy security and has vowed to fight left-wing ideologues who seek to make us weaker and poorer under the guise of ESG," Ferguson said in a statement. "These companies allegedly blocked the production of American coal in the name of climate change scaremongering, all so they could take money out of the pockets of American consumers and put it in theirs."

Texas and a coalition of Republican-led states filed suit in November, accusing BlackRock, State Street and the Vanguard Group of using their holdings in the nation's largest coal producers, including Peabody Energy and Arch Resources, to pressure them into reducing output in order to meet carbon emission reduction goals.

In the statement of interest Thursday, the federal government said the antitrust laws allow passive fund investing and also allow shareholder advocacy and active investing, as long as the activity doesn't hurt competition. But, the statement said, the states are alleging the asset managers coordinated their shareholdings in competing energy companies to "distort output and prices in energy markets."

"The antitrust laws provide ample room for ordinary investment and corporate governance activity," the statement of interest said. "This case, however, alleges not merely typical investor behavior, but the active, anticompetitive use of common shareholdings to reduce the production of American coal to the detriment of American consumers and businesses."

The statement said that while asset managers play a crucial role in the country's capital markets, courts need to take great care to ensure that they do not use their shareholdings in competing companies to engage in anticompetitive conduct.

A representative for BlackRock said in a statement Thursday the DOJ and FTC's support for this "baseless" case undermines the Trump administration's goal of American energy independence and argued that forcing asset managers to divest from coal companies hurts the ability of the companies to access capital, "likely leading to higher energy prices."

"As we made clear in our earlier motion to dismiss, this case is trying to re-write antitrust law and is based on an absurd theory that coal companies conspired with their shareholders to reduce coal production," the statement said.

A State Street representative said in a statement Thursday the firm acts in the long-term financial interests of investors and focuses on enhancing shareholder value.

"As long-term capital providers, we have a mutual interest in the long-term success of our portfolio companies," the statement said. "This lawsuit is baseless, and we look forward to presenting the facts through the legal process. Additional filings do not change our assessment."

A representative for Vanguard also provided a statement Thursday about the state enforcers' case.

"The underlying lawsuit contorts the law in a way that will hurt individual investors, and Vanguard will continue to defend our long history of safeguarding and promoting long-term investment returns on behalf of Vanguard-advised funds and their investors," the statement said.

In their **motion to dismiss**, the asset managers argued that their investments were passive, minority investments that cannot violate antitrust law. But the government's statement of interest said the exemption the asset managers are claiming, can be lost later on if initially passive investments are used in a way that hurts competition.

"Contrary to defendants' claim, a defendant does not enjoy absolute or perpetual immunity from [Section 7 of the Clayton Act] no matter how they behave after the acquisition," the statement said. "A person may violate Section 7 by using, or attempting to use, the acquired stock to cause anticompetitive effects."

The statement also said the asset managers are wrong to suggest that allowing the claims to proceed to discovery "would threaten the viability of index-based investing." That's because passive investors are exempt from the Clayton Act, unless an investor affirmatively uses their stock to reduce rivalry among their commonly held assets.

"This brief focuses on a limited category of the use of multiple investment holdings: holders of competing companies that discourage competition among their investments in a manner that results in harm to consumers or businesses," the statement said. "Most asset manager behavior will not affect market output, prices, quality, or other indicia of competition."

The DOJ said in a public statement about the filing Thursday this is the first time the agencies are making a formal statement in court about the antitrust implications of common shareholdings.

The statement also cited a pair of executive orders, one declaring a national energy emergency and another calling for increased domestic energy production, including of coal. Assistant Attorney General Abigail A. Slater, head of the DOJ's Antitrust Division, noted that furthering climate objectives is not a defense under the antitrust laws, citing Supreme Court precedent saying that social justifications offered for a restraint of trade do make it "any less unlawful."

"The President has declared a national energy emergency, and we need competition in coal production now more than ever to help fuel American energy dominance," Slater said in Thursday's statement. "We will not hesitate to stand up against powerful financial firms that use Americans' retirement savings to harm competition under the guise of ESG."

Representatives for the states did not immediately respond to a request for comment Thursday.

The federal government is represented by Clarke T. Edwards, Daniel Guarnera, Anupama Sawkar, Kelse Moen and William Adkinson of the Federal Trade Commission and Abigail A. Slater, Roger P. Alford, Mark H. Hamer, William Rinner, David B. Lawrence, Alice A. Wang and G. Charles Beller of the DOJ's Antitrust Division.

Texas and Montana are represented by their respective attorneys general and David H. Thompson and Brian W. Barnes of Cooper & Kirk PLLC.

The State of Texas is also represented by Anthony G. Buzbee and Christopher J. Leavitt of The Buzbee Law Firm.

The other states are represented by their own attorneys general.

BlackRock is represented by Gregg Costa, Prerak Shah and Rachel Brass of Gibson Dunn & Crutcher LLP and Thomas Mueller, Jennifer Milici, Perry Lange, John O'Toole, David Gringer and Lauren Ige of WilmerHale.

State Street Corp. is represented by Jason M. Powers, Stacey Neumann Vu, George M. Kryder, Megan Cloud, Stephen M. Medlock and Mackenzie G. Newman of Vinson & Elkins LLP.

The Vanguard Group is represented by Robert D. Wick, John S. Playforth and Shadman Zaman of Covington & Burling LLP and Bradley C. Weber and Chase T. Cobb of Troutman Pepper Locke LLP.

The case is Texas et al. v. BlackRock Inc. et al., case number 6:24-cv-00437, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Juan-Carlos Rodriguez, Jessica Corso and Katryna Perera. Editing by Kelly Duncan.

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