

Guest Post: Location, Location, Location

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Last fall the U.S. Supreme Court dismissed, as improvidently granted, the writ of certiorari in two pending securities lawsuits, including in the Meta Platforms/Facebook case (as discussed here). The Court's dismissal of the writ of certiorari in the Facebook case had obvious implications for the immediate litigants in the case, as it left the prior circuit court ruling standing. But the dismissal also has important implications for litigants in other cases involving the same issues as were raised in the Facebook case.

In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, considers the implication for those other litigants in those other cases in light of the Supreme Court's dismissal of the writ of certiorari in the Facebook case. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors in topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

As the D&O Diary reported in November and December 2024, the U.S. Supreme Court dismissed two significant securities fraud cases with DIG ("dismissed as improvidently granted") orders. While we previously discussed the Supreme Court's DIG Order in the securities class action case brought against Meta Platforms Inc. (formerly Facebook) in the wake of the Cambridge Analytica scandal, the following *digs* deeper into how the Federal Circuit Court split left from the DIG impacts D&O public company underwriting.

Key takeaway: Due to the U.S. Supreme Court's decision not to review (i.e., dismissal of certiorari in) the Facebook case, a circuit split regarding the application of the PSLRA and corporate disclosure standards remains unresolved. As a result, the location of an Insured's

headquarters could affect the likelihood of a securities claim surviving a motion to dismiss and the associated costs and potential loss exposure.

The Facebook case

The Supreme Court decided *In re Facebook, Inc. Securities Litigation* to DIG and thus did not provide clarity on whether an omission in an SEC risk-disclosure statement is misleading. By way of background Facebook had listed in the “Risk Factors” section of its 2016 Form 10-K that “[a]ny failure to prevent or mitigate . . . improper access to or disclosure of our data or user data . . . *could* result in the loss or misuse of such data, which *could* harm our business and reputation and diminish our competitive position.” Shortly thereafter, the Cambridge Analytica data harvesting scandal broke, causing Facebook stock to plummet.

Facebook shareholders subsequently filed a securities class action, which the Northern District of California dismissed for failure to meet the heightened pleading standards required by the Private Securities Litigation Reform Act (PSLRA). The Ninth Circuit reversed, finding that the lawsuit should proceed because the omission of Cambridge Analytica’s data harvesting could be materially misleading. In its request for the Supreme Court to hear the case, Meta played up the split in Circuit Courts’ PSLRA and regulatory disclosure standards. Supreme Court watchers opined that this variety in venue deference led to the initial grant of writ.

What is the PSLRA?

Understanding the PSLRA is relevant to public company D&O underwriters because it sets the pleading standard a securities case must meet to withstand an initial motion to dismiss.

By issuing a DIG, the Supreme Court did not say one way or the other if it agreed with the Ninth Circuit’s interpretation of the PSLRA to reverse dismissal of the *In Re Facebook, Inc.* complaint. The PSLRA was enacted in 1995 to curb abusive and frivolous lawsuits while still allowing legitimate securities fraud cases to proceed. It requires plaintiffs to plead scienter (intent to deceive or reckless disregard for the truth) with particularity. General or vague complaint allegations of purported bad acts or omissions are insufficient to state a claim.

Circuits Split

The difference in how Circuit Courts have applied the PSLRA and determined materiality of regulatory disclosure omissions of fact may impact the likelihood and survival of securities class actions brought against companies with local headquarters.

The First, Second, Third, Fifth, Tenth, and D.C. circuits generally require a company to disclose a past event in a regulatory filing if the company *knows or believes* that the event will likely cause future harm to the business. The Sixth Circuit has held that risk disclosures

are inherently forward-looking and *do not* require disclosure of past events, even if those events have materialized. Thus, in the circuit courts discussed above, and under the PSLRA, securities class actions stemming from omissions in risk disclosures may face increased difficulty in surviving a motion to dismiss.

The Ninth Circuit, on the other hand, as was evident in the *In Re Facebook* litigation, may not have such a high hurdle for pleadings to clear. The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The Circuit ranks second in the number of securities class action filings according to Stanford Law School's Securities Class Action Clearing House database. This is likely because of the type and number of businesses headquartered in California.

The Ninth Circuit has also developed a reputation for being relatively favorable to plaintiffs, particularly in its interpretation of the PSLRA. Therefore, the Supreme Court decision *not* to opine on the PSLRA pleading requirements may appear more favorable for securities fraud claims to survive the motion to dismiss stage. Especially if the case is filed in a Ninth Circuit district court.

For D&O underwriters, the heightened risk for protracted litigation stemming from regulatory disclosures may mean more time in court. Additional pleadings, motion practice, and discovery in securities cases are time-consuming, expensive, and often used as leverage for high-dollar settlement demands.

What about Nevada and Delaware?

The potential for increased insurance exposure for a company headquartered in the Ninth Circuit is also important to consider in light of the recent publicity that Nevada has received for being an attractive alternative domicile to Delaware. Nevada imposes no corporate income tax, personal income tax, franchise tax, or taxes on corporate shares. The state also offers protections for corporate officers and directors against personal liability for lawful business activities and does not require the disclosure of shareholders, directors, or officers in public records, ensuring a high level of privacy for business owners.

Companies have recently moved their incorporation from Delaware to Nevada, citing the state's more favorable "legal environment" and lower litigation risks. But Nevada is in the Ninth Circuit. The Facebook DIG by the Supreme Court may be a bucket of cold water. Instead, being headquartered in Nevada may attract plaintiff shareholder lawsuits alleging omissions in federal regulatory disclosures, with a perceived lower threshold application for the PSLRA.

This might be a win for Delaware. As discussed on the D&O Diary, Delaware recently passed SB21 to purportedly stop companies from incorporating elsewhere. Being in the Third Circuit may now also help Delaware with its Circuit applying the "virtual certainty" test

to determine whether a company must disclose a risk that has already materialized. With the heightened pleading standard of the PSLRA, securities actions filed in Delaware face an uphill battle.

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Lodestar Multipliers in
Delaware and Federal Attorney Fee Awards

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Stanford Law School and
The Rock Center for Corporate Governance

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May 14, 2025

Abstract: We examine the incidence, frequency, and characteristics of attorney fee awards with multipliers of seven or more (“septuples”) or ten or more (“decuples”) in Delaware and Federal courts. We identify a total of 20 Delaware septuples, including 14 decuples, and 23 federal septuples, including 5 decuples. Delaware courts have thus generated almost as many septuples as the entire federal system (87.0%) and almost triple the number of decuples (280%).

Measured as frequencies over the most recent five-year period (2000-2025), septuples are 23.35 times more frequent in Delaware court than in federal court. Decuples are 57.07 times more frequent. Delaware’s dominance in the count and frequency of septuples and decuples arises primarily in the most recent five years and is concentrated in decuples.

Measured over all time periods, Delaware’s maximum awarded multiplier of 66 almost quadruples (3.86x) the federal maximum awarded multiplier of 17.1. Delaware’s maximum hourly septuple rate, unadjusted for inflation, is \$35,000, triple (3.04) the federal maximum of \$11,507. Adjusting for inflation, and weighting by the dollar value of fee awards, the average Delaware septuple award compensates plaintiff attorneys at a rate of \$25,767/hour, or 3.80 times the comparable federal average of \$6,777/hour. For decuples, the adjusted Delaware average award compensates plaintiff attorneys at a rate of \$26,094/hour, or 3.85 times the comparable federal rate of \$6,785/hour.

Two members of the Delaware Court of Chancery generated 11 Delaware’s 20 septuples, more than half (55%) that population, and 9 of its 14 decuples, almost two-thirds (64.3%) of that population. Over the most recent five years, these two members generated 8 of Delaware’s 13 septuples (61.5%), and 6 of 8 decuples (75.0%).

We draw no inferences from these data. Readers can reach their own conclusions.

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Delaware courts assert that lodestar multipliers of seven or more (“septuples”) are “not so high”¹ and would “not raise a federal eyebrow.”² These are testable propositions. Prior research documents a total of 23 federal class action septuples³ constituting 23 hundredths of one percent of federal class action fee awards over all time periods.⁴ Readers can decide whether awards of this frequency are “not so high” or would “raise the federal eyebrow.”

This note extends the inquiry to include Delaware fee awards, and measures the incidence of Delaware septuples, as well as federal and Delaware awards with lodestar multipliers of ten or more (“decuples”). We identify 20 Delaware septuples, including 14 decuples, and clarify that our previously identified 23 federal septuples includes 5 decuples. Delaware has thus generated almost as many septuples as the entire federal system (87.0%) and almost triple the number of decuples (280%).

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*** On May 2, 2025, Mr. Joel Fleming commented on the initial version of our paper.

See, <https://www.linkedin.com/pulse/looking-lodestar-all-wrong-places-joel-fleming-ailie/?trackingId=VpI0XNPGBpG71VoE0UhXzg%3D%3D>. Mr. Fleming’s analysis caused us to delete one Delaware observation from the initial version of our analysis. *Pontiac General Employees Retirement System v. Ballatine*, C.A. No. 9789-VCL-ECF-87 (Del. Ch. May 8, 2015). All calculations in this updated version reflect that deletion. We thank Mr. Fleming for his contribution and invite additional comments on our database’s composition. A response to Mr. Fleming’s observations is at <https://www.linkedin.com/feed/update/urn:li:activity:7328183400077402112/>

¹ *In re Dell Technologies Inc. Class V Stockholders Litig.*, 2024 WL 3811075, *14 and n. 132 (Del. Aug. 15, 2024).

² *In re Dell Technologies Inc. Class V Stockholders Litig.*, 300 A.3d 679, 715 and n. 26 (Del. Ch. 2023).

³ See Grundfest, Joseph A. and Dor, Gal, *Raising the Federal Eyebrow: The Incidence of Multipliers of Seven or More in Federal Class Action Fee Awards* (February 24, 2025), Rock Center for Corporate Governance at Stanford University Working Paper No. 262, <https://ssrn.com/abstract=5152397> (hereinafter cited as “The Federal Eyebrow”).

⁴ *Id.* at 4.

Measured as frequencies over the most recent five-year period (2000-2025), septuples are 23.34 times more frequent in Delaware than in federal court. Decuples are 56.07 times more frequent. Delaware's dominance in the count and frequency of septuples and decuples arises primarily in the most recent five years and is concentrated in decuples.

Delaware's maximum multiplier of 66 almost quadruples (3.86x) the federal maximum of 17.1. Four Delaware multipliers exceed the federal maximum.

The maximum hourly rate in a federal septuple, unadjusted for inflation, is \$11,290. The comparable Delaware maximum of \$35,000 more than triples that amount. Adjusted for inflation, the maximum hourly rate in a federal septuple, is \$11,586. The comparable Delaware maximum of \$48,154, more than quadruples the federal maximum.

The average hourly rate in all federal septuples, unadjusted for inflation, is \$4,197. The comparable Delaware average is 2.38 times greater at \$9,998. Adjusting for inflation and weighting by the dollar value of fee awards generates a closer apples-to-apples comparison. So adjusted, the Delaware average fee septuple award is \$25,767/hour, or 3.80 times the federal average of \$6,777 per hour. For decuples, the Delaware average is \$26,094/hour, or 3.85 times the federal average of \$6,785/hour.

Two members of Chancery generated 11 of Delaware's 20 septuples, more than half (55%) the entire population, and 9 of Delaware's 14 decuples, almost two-thirds (64.3%) of that population. Over the most recent five years, these same two members generated 8 of Delaware's 13 septuples (61.5%), and six of eight decuples (75.0%).

We draw no inferences from these data. Readers will draw their own conclusions.

Counting Septuples and Decuples.

Table 1 lists all 20 Delaware septuples,⁵ including 14 decuples, that we have identified. Table 2 lists all 23 federal septuples,⁶ including 5 decuples, that we have identified. Both tables rank order from highest multiplier to lowest. Delaware has apparently generated almost as many septuples as the entire federal system (87.0%) and almost triple the number of decuples (280%).

Figure 1 stratifies these counts by five-year intervals and distinguishes decuples from septuples. During the most recent five years spanning 2020-2025, Delaware generated 13 septuples, including 8 decuples, while federal courts generated 4 septuples, including only 1 decuple. Thus, over these five years, Delaware generated more than triple (3.25) the number of septuples and 8 times as many decuples as federal courts. Delaware's divergence from federal

⁵ To identify Delaware septuples we conducted a series of Lexis and Westlaw searches supplemented by examples of high multipliers independently known to the authors from prior research. We also conducted an informal survey of experienced Delaware litigators for additional examples, and reviewed fee petitions prepared in cases where plaintiff counsel have incentives to cite prior examples of high multipliers in Delaware fee awards.

⁶ See The Federal Eyebrow, Table 1.

experience became more profound in the most recent five years and was driven primarily by the most extreme awards generating multipliers exceeding ten.

I. Frequencies

The frequency of septuples or decuples can be more informative than counts. If 20 septuples appear in a population of 40 awards, then septuples are reasonably common. But if 20 appear in a population of 20,000, then septuples are more reasonably viewed as rare.

Calculating the frequency of Delaware septuples or decuples therefore requires an estimate of the total annual number of Delaware fee awards for all multipliers. Two recent articles provide a foundation for this estimate. Significantly, both generate estimates that are very close to each other, thereby mutually reinforcing the accuracy of each article's methodology.

Prestipino analyzes all fiduciary litigation filed in Chancery over an eleven-year period spanning January 1, 2013, to December 31, 2023,⁷ and identifies 176 voluntary dismissals with mootness fees, 34 concluded trials, and 303 settled cases.⁸ To be conservative, we assume all concluded trials result in plaintiff victories that generate fee awards and that all settlements generate fee awards. Summing these outcomes results in a total of 513 fee awards over an 11-year period, or 46.6 awards per year.

Cox, Thomas and Bai identify 775 suits in Chancery⁹ that generate attorneys fee over the 16-year period spanning January 1, 2004, through December 31, 2019.¹⁰ The annual average number of fee awards is thus 48.44 (775/16).

Prestipino's 46.6 average aligns with Cox-Thomas-Bai's average of 48.44. The difference is easily attributed to different time periods covered by each study. To be conservative we assume the average annual number of settlements is the higher estimate of 48.44.¹¹

Table 3 presents an analysis of federal and Delaware septuples and decuples at five-year intervals, and over the full sample period.

Septuple Analysis. Panel A demonstrates that the frequency of federal septuples over the most recent five-year period was 0.0023, and 0.0017 over the full sample period. Panel B

⁷ Prestipino, Gilda S., *Beyond Approval: The Delaware Court of Chancery's Role in Settlements of Fiduciary Litigation* (February 18, 2025), Rock Center for Corporate Governance at Stanford University Working Paper No. 261, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5138314, at 13.

⁸ *Id.*, Table 1 at 14.

⁹ Cox, Thomas and Bai, *Shareholder Litigation in Delaware: An Empirical Investigation*, 78 Vanderbilt L. Rev. 433 (2025) (forthcoming) at 479, Table 19.

¹⁰ *Id.*, Abstract at 433.

¹¹ The methodology for deriving equivalent counts for federal litigation is described in the Methodology section of The Federal Eyebrow. Close examination demonstrates that the federal and Delaware populations are not perfectly comparable. The Methodological Note at the end of this paper addresses this issue and demonstrates that the discrepancy is likely small and would, in any event, bias our findings in a manner that overstates the frequency of federal septuples, thereby making our analysis more conservative.

demonstrates that the frequency of Delaware septuples over the most recent five-year period was 0.0537, and 0.0258 over the full sample period.

Thus, during the most recent five-year period, septuples are 23.35 ($0.0537/0.0023$) times more frequent in Delaware than in federal fee awards. Measured over the entire sample period, septuples are 15.18 ($0.0258/0.0017$) times more frequent.

Decuple Analysis. Panel C demonstrates that the frequency of federal decuples over the most recent five-year period was 0.00058 and 0.00036 over the full sample period. Panel D demonstrates that the frequency of Delaware decuples over the most recent five-year period was 0.0331, and 0.0181 over the full sample.

Thus, during the most recent five-year period, decuples are 57.07 ($0.0331/0.00058$) times more frequent in Delaware than in federal fee awards. Measured over the entire sample period, decuples are 50.28 ($0.0181/0.00036$) times more frequent.

Robustness. If our counts of Delaware septuples or decuples are understated, then our relative frequency estimates are biased downward. This is a conservative bias. Also, even if the Prestipino or Cox-Thomson-Bai counts understate the true number of total settlements by a factor of two - - an improbable result given that the two studies independently arrive at virtually identical estimates - - the relative frequency ratios remain very large. Over the most recent five-year period, septuples would be 11.68 ($23.34/2$) times as frequent and decuples 28.54 ($57.07/2$) times as frequent. Over the full sample, septuples would be 7.59 times as frequent ($15.18/2$) and decuples would be 25.14 ($50.28/2$) times as frequent. The qualitative conclusion that high multipliers are far more frequent in Delaware would remain unchanged.

II. Multipliers.

Delaware's highest multiplier is 66, almost quadruple (3.82x) the federal maximum of 17.3, and is, by a wide margin, the largest multiplier identified in our research. Five Delaware awards generate multipliers exceeding the federal maximum, of which four arise in the past five years.

Table 4, column 1, calculates that the average Delaware multiplier for all septuples is 15.39, or 1.64 times larger than the comparable federal average of 9.41. The average Delaware multiplier over all decuples is 18.49, or 1.44 times larger than the comparable federal average multiplier of 12.86.

III. Hourly Rates.

Unadjusted for inflation, over all time periods, the highest Delaware hourly rate is \$35,000, about triple (3.04) the maximum federal hourly rate of \$11,290. Four Delaware fee

awards generate hourly rates that exceed the federal maximum. Inflation-adjusted,¹² the highest Delaware hourly rate is \$48,154, or about 4.24 times the maximum inflation adjusted federal hourly rate of \$11,367. Seven inflation-adjusted Delaware fee awards generate hourly rates that exceed the federal inflation-adjusted maximum.

Unadjusted for inflation and not weighted by the dollar value of the award, the average hourly rate for all Delaware septuples is \$9,998 per hour, or 2.38 times the comparable federal average of \$4,197 (Table 4, column 4). For decuples, the Delaware average of \$12,122 more than doubles (2.18x) the federal average of \$5,566. (*Id.*)

Adjusting for inflation and weighting by the dollar value of fee awards generates a closer apples-to-apples comparison. These data are presented in Table 4, column 7. The Delaware average fee award for all septuples is then \$25,767 per hour, or 3.80 times the federal average of \$6,777 per hour. For decuples, the comparable Delaware average is \$26,094 per hour, or 3.85 times the comparable federal average of \$6,785 per hour.

IV. Average Aggregate Awards

Unadjusted for inflation, and over the entire sample, the average septuple Delaware attorney fee award is \$50.0 million, or 2.86 times the comparable federal average of \$17.5. Inflation adjusted, the average septuple Delaware award is \$60.1 million, or 2.60 times the comparable federal average of \$23.1 million. (Table 4, columns 2 and 3). Unadjusted for inflation, the average decuple Delaware attorney fee award is \$70.3 million, or 3.76 times the comparable federal average of \$18.7. Inflation adjusted, the average decuple Delaware award is \$84.5 million, or 3.25 times the comparable federal average of \$26.0.

Figure 2 presents a scatterplot of multipliers and aggregate fee awards for all Delaware and federal septuples and decuples. The scatterplot helps visualize the extent to which Delaware fee awards have, in some cases, diverged from federal experience. Figure 2 includes the fee award in *Dell II*, which is not formally in our sample because its multiplier of 6.76 is not a septuple. *Dell II* is, however, clearly an outlier when measured against federal experience.

V. Multiple Septuple and Decuple Awards in Federal Court and in Chancery.

No federal District Court judge has awarded more than one septuple. In contrast, two sitting members of Chancery have awarded 112 of Delaware's 20 septuples, well over half (55%) of all Delaware septuple awards, and 9 of Delaware's 14 decuples, or almost two-thirds of that population (64.3%). Over the most recent five years these two jurists have awarded 8 of Delaware's 13 septuples (61.5%) and 6 of 8 decuples (75%).

¹² Inflation adjustments assume values are as of year-end and adjust to dollars as of the end of March 2025. Monthly inflation rates are obtained from inflationdata.com and averaged to obtain a yearly inflation rate. For cases where the year composes a range, the most recent year is used as the starting period for inflation adjustments to minimize the effect of the adjustment and to remain conservative in estimation techniques.

VI. Conclusion.

Lodestar multipliers exceeding seven or ten are far more frequent and extreme in Delaware court than in federal court. They support higher hourly compensation rates and larger aggregate fee awards. Two sitting members of Chancery have generated more than half of all Delaware septuples and decuples, and three quarters of all Delaware decuples awarded in the most recent five years. Much of Delaware's divergence from federal experience, measured in terms of septuples and decuples, arises in the last five years.

We draw no inferences from these data. Readers will draw their own conclusions.

Methodological note

When comparing the estimated populations of federal and Delaware awards, our methodology does not compare precisely identical populations. The federal count is derived from the Fitzpatrick data, which includes only class actions. The Delaware count derived from the Prestipino and Cox-Thomson-Bai datasets includes class and derivative actions. The number of observations omitted from the federal sample is, however, likely small as a percentage of the estimate total number of class actions because federal derivative actions are rare in comparison with class actions. Moreover, the omissions cause a conservative bias in our estimates.

In calendar year 2024, Westlaw counts 2049 citations to FRCP 23, the Federal rule governing class actions. Lexis counts 1264 citations. Bloomberg counts 2597. In contrast, in 2024, Westlaw counts only 67 citations to FRCP 23.1, the rule governing federal derivative actions. Lexis counts 64 citations. Bloomberg counts 92. FRCP 23.1 citations, expressed as a percentage of FRCP 23 citations in Westlaw were thus 3.27% ($67/2049$). In Lexis the percentage was 5.06% ($64/1264$). In Bloomberg it was 3.54% ($92/2597$).

If citations are proportional to the number of fees awarded, the maximum number of omitted federal derivative actions awarding fees would, at most, be a fraction of approximately 5.06% of class actions —the Lexis estimate, which is the highest of the three. Moreover, because not all citations are associated with fee awards, the percentage of omitted fee awards in derivative cases could well be a fraction of that already small fraction.

Further, our research finds no indication of a federal derivative septuple or decuple award. Thus, the denominators in our federal calculations are slightly understated while our numerators are likely correct. If this observation is correct, then there is a conservative bias in our calculations because increasing the denominator, as derived in “The Federal Eyebrow,” without changing the numerator, would make septuples and decuples even more rare in the federal population.

Table 1
Delaware Fee Awards with Lodestar Multipliers of 7 or More
(2009–2024)

	Case ¹	Court	VC	Year	Class Recovery (in \$M)	Attorney's Fees (in \$M)	Inflation Adjusted Attorney's Fees (in \$ millions)	Percentage	Lodestar Multiplier	Lodestar (in \$M)	Hours	Awarded Hourly Rate (\$)	Inflation Adjusted Awarded Hourly Rate	Expenses (\$)
1	<i>Ams. Mining</i>	Del.	VCS	2012	2,000	304.7	419.2	15	66	[4.6]	8,597	35,000	48,154	
2	<i>Tornetta</i>	Del. Ch.	KSJM	2024	2,300	345	347.4	15	25.3	13,624	19,450	[17,690]	[17,811]	Included in fee
3	<i>Boxed, Inc.</i> Requested Awarded	Del. Ch.	MTZ	2022		2 0.85	2.2 0.92		[24.08]	0.035	42.75	[19,883]	[21,458]	Included in fee
4	<i>Versum</i> ²	Del. Ch.	JTL	2019	1,700	12	14.8	[0.7]	[17.49]	0.686	1,124	[10,676]	[13,191]	
5	<i>Salzberg</i> ³	Del. Ch.	JTL	2019		3	3.7		16.4	0.182	266.4	11,232	13,878	
6	<i>Moelis</i>	Del. Ch.	JTL	2024		6	6		15.2	[0.39]	[502]	11,950	12,032	
7	<i>Foley</i>	Del. Ch.	KSJM	2022	20	4.4	4.7	22	14	0.31	502	[8,766]	[9,461]	9,023
8	<i>Malone</i> ⁴	Del. Ch.	SG	2020	110	31.35	38.3	19.6	[12.78]	2,452	4,242	[7,390]	[9,019]	Included in fee
9	<i>dMY Tech.</i>	Del. Ch.	KSJM	2022		0.795	0.858		[12.3]	0.091	91.7	[8,669]	[9,356]	512.15
10	<i>Tesla Dir. Comp.</i>	Del. Ch.	KSJM	2025	734	176.16	176.16	24	11.62	15.16	21,477	[8,202]	[8,202]	Included in fee
11	<i>Genentech</i> ⁵	Del. Ch.	VCS	2009	2,800	24.5	36.1	0.875	11.6	2.1	4,482	5,445	8,017	90,669
12	<i>Facebook</i> ⁶ Requested Awarded	Del. Ch.	JTL	2018		129 68.7	162.3 86.4		[11.5]	7.9	6,050	[11,322]	[14,243]	Included in fee
13	<i>Clear Channel</i>	Del. Ch.	VCS	2013	200	6	8.1	3	10.5	5.9	1,046.2	5,702.5	7,732.0	33,944
14	<i>CM Life Sciences</i> Requested Awarded	Del. Ch.	KSJM	2022		0.95 0.795	1.03 0.858		10.04	0.075	102.2	[7,778]	[8,394]	294.66
15	<i>Umbrigh</i> ⁷ Requested Awarded	Del. Ch.	LWW	2022		1.25 0.85	1.35 0.92		[9.29]	0.091	132	[6,439]	[6,949]	4,178.98
16	<i>HC2 Hldgs</i>	Del. Ch.	JRS	2020		1.6	2.0		[8.81]	0.18	277.75	[5,760]	[7,030]	351
17	<i>Knott Partners</i>	Del. Ch.	SG	2022		0.3	0.32		[8.24]	0.036	64.5	[4,651]	[5,019]	
18	<i>Pilgrim's Pride</i>	Del. Ch.	JTL	2020	42.5	7.95	9.7	18.45	7.17	1.109	1,871.5	4,188.3	5,111.7	Included in fee
19	<i>Kallick</i>	Del. Ch.	VCS	2013		2.5	3.4		[8.23]	0.3	571.7	[4,372]	[5,928]	
20	<i>Gusinsky</i>	Del. Ch.	KSJM	2020		2.4	2.9		[7.2]	0.33	940	[4,839]	[5,906]	

NOTES:

* Inflation adjustments assume values are as of year-end and adjust to dollars as of the end of March 2025. Monthly inflation rates are obtained from inflationdata.com and averaged to obtain a yearly inflation rate. For cases where the year composes a range, the latest year is used as the starting period for inflation adjustments.

** Imputed values are bracketed in Tables 1 and 2.

- 1 *Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. Sup. 2012); *Tornetta v. Elon Musk*, C.A. No. 2018-0408-KSJM- ECF-757 (Del. Ch. Dec. 2, 2024); *Garfield v. Boxed, Inc.*, 2022 WL 17959766 (Del. Ch. Dec. 27, 2022); *In re Versum Materials, Inc. Stockholders Litig.*, Cons. C.A. No.: 2019-0206-JTL (Del. Ch. July 16, 2020); *Sciabacchi v. Salzgberg*, 2019 WL 2913272 (Del. Ch. July 8, 2019); *West Palm Beach Firefighters Pension Fund v. Moelis & Co.*, C.A. No. 2023-0309-JT-ECF-76 (Del. Ch. July 18, 2024); *City of Miami General Employees' and Sanitation Employees' Retirement Trust v. Foley*, C.A. No. 2020-0650-KSJM-ECF-98 (Del. Ch. June 21, 2022); *Hollywood Firefighters Pension Fund v. Malone*, C.A. No. 2020-0880-SG-ECF-247 (Del. Ch. Nov. 8, 2021); *Franchi v. dMY Tech.*, 2023 WL 2402644 (Del. Ch. Mar. 7, 2023); *In re Genentech Inc. Shareholder Litig.*, Consolidated Action 3911-VCS-ECF-223 (Del. Ch. July 9, 2009); *In re Facebook Class C Reclassification Litig.*, C.A. No. 12286-VCL-ECF-464 (Del. Ch. Oct. 24, 2018); *In re Clear Channel Outdoors Holdings*, C.A. No. 7315-CS-ECF-152 (Del. Ch. Sep. 9, 2013); *Franchi v. CM Life Sciences*, C.A. No. 2021-0842-KS-ECF-32 (Del. Ch. Oct. 4, 2023); *Umbright v. Khosla Ventures*, C.A. No. 2021-0762-LWW-ECF-64 (Del. Ch. Feb. 10, 2023); *Tera v. Hc2 Holdings, Inc.*, 2020 WL 4718112 (Del. Ch. Aug. 20, 2020); *Knott Partners, L.P. v. Josseyn Boudett, et al.*, C.A. No. 2022-0376-SG-ECF-79 (Del. Ch. June 29, 2023); *Kallick v. Sandridge Energy*, C.A. No. 8182-CS-ECF-150 (Del. Ch. Aug. 30, 2013); *Gusinsky v. Tribune Publishing Co.*, C.A. No. 2020-0716-KSJM-ECF-65 (Del. Ch. Apr. 15, 2021); *Pontiac General Employees Retirement System v. Ballantine*, C.A. No. 9789-VCL-ECF-87 (Del. Ch. May 8, 2015).
- 2 In reaching the \$1.7 B benefit conferred by plaintiffs' litigation, plaintiffs added the \$625 M additional benefit derived from Merck's first increased offer, and an additional \$545 million reflecting the second increased offer. If only the amount of the first increased offer is considered, *i.e.*, \$625 M, the \$12 M attorneys' fees represented 20% of the recovery.
- 3 Following the reversal of the decision by the Supreme Court, no fees were paid to plaintiff's counsel.
- 4 In *Malone*, plaintiffs obtained a monetary settlement of \$110 million, and corporate governance remedies that were obtained through a preliminary injunction. The corporate governance remedies (a) the reduction of voting power of Malone pursuant to Section 203; and (b) improved disclosure and voting control. The court granted plaintiffs' requested fee for the monetary settlement in full, to the tune of \$22 million. Plaintiffs also requested \$22 million for the corporate governance remedies. The court granted a total fee of \$9.35, consisting of \$3.05 million for resolving the Section 203 violation, and \$800,000 for the disclosure and voting power remedies. We note that Plaintiffs incurred approximately \$400,000 in expenses to pursue the litigation, but the expenses were included in their \$22 million fee application.
- 5 Plaintiff's Points & Authorities remarks that the requested fee represents 0.875% of the \$6 price increase that Roche's added to the original \$89 million merger consideration, and which provided the Class with approximately \$2.8 billion of additional compensation." Pl. P&A. *In re: Genentech, Inc. S'holder Litig.*, C.A. No. 3911-VCS, tr. at 7 (Del. Ch. July 9, 2009). Pl. P&A included the following information: "After deducting expenses of \$90,669, the fee requested is approximately 11.3 times the overall lodestar, representing an average hourly rate of approximately \$5,445. Id. at 42. Plaintiff's counsel has expended 4,482.6 hours" (footnote 9).
- 6 Plaintiffs' expert extrapolated that the reclassification plan had the potential to reduce Facebook's value by between 1.2% and 7.2%, or roughly \$3 billion to \$19 billion. Facebook's expert concluded that the Class A shareholders were not harmed. The parties exchanged further expert reports. In *Moelis*, Facebook's award appears as "agreed mootness award". We also found a reference to Facebook agreeing to pay \$68.7 to plaintiffs' counsel in the case. See <https://courts.delaware.gov/Opinions/Download.aspx?id=312280>, at 14. ("Then, as compensation for the benefits conferred by the Reclassification Action, Facebook agreed to pay a fee award of \$68.7 million to plaintiffs' counsel.").
- 7 The parties went through fee briefing, but before the court's hearing on the motion for attorneys' fees, agreed to an award of \$850,000. During briefing, the parties brought to the court's attention the decision in *Boxed*, and it appears that *Boxed* was the impetus for the settlement amount.

Table 2
Federal Class Actions Fee Awards with Lodestar Multipliers of 7 or More
(1984–2024)

	Case ¹	Court	Year	Class Recovery (in \$ millions)	Attorney's Fees (in \$ millions)	Inflation Adjusted Attorney's Fees (in \$ millions)	Percentage	Lodestar Multiplier	Lodestar (in \$ millions)	Hours	Awarded Hourly Rate	Inflation Adjusted Awarded Hourly Rate	Expenses
1	Haggard Fee requested Fee awarded	Fed. Cl.	2014	138	42 33.2	56 44.3	30 23.5	[17.3]	[1.9]	8,500	\$3,903	\$5,202.7	\$635,000
2	Stop & Shop Fee requested Fee awarded	E.D.PA.	2007	100	30 20	45.7 30.5	30 20	23.6 15.6	1.2	4,239	[\$4,717]	\$7,188.4	\$372,357
3	Lloyd	S.D.CA	2019	24.5	6.1	7.5	25	11	0.6	784.2	[\$7,811]	[\$9,651.2]	\$33,938
4	Farell	9th Cir.	2020	21.9	14.5	17.7	21.2	10.2	1.4	2,158	\$6,700	\$8,177.1	\$53,119
5	Doral Fin. Corp.	S.D.N.Y.	2007	129	19.7	30.0	15.2	10.2	1.9	4,185	[\$4,701]	[\$7,164.0]	\$242,555
6	Health Republic ² Original award Fee after remand	Fed. Cl.	2020- 2024	3,700	185 92.4	186.3 93.0	5 2.5	18 9.6	9.6	9,630 8,186	[\$19,209] [\$11,290]	[\$19,340.0] [\$11,367.2]	
7	Mercedes-Benz Fee requested Fee awarded	D.N.J.	1995	100	15 11.2	31.1 23.2	13 15	[9.3]	[1.2]	[4,047.3]	[2,779.6]	[\$5,765.0]	
8	<i>Chiron Corp.</i> ³	N.D. CA	1999					9.14					
9	Skochin v. Genworth Fin. Fee requested ⁴ Fee awarded (maximum)	E.D.Va	2020		12 - 26.5 26.5	14.6 – 32.3 32.3	13.2-28.8	9.05	2.9	6,233.5	[\$\$4,251]	[\$5,188.2]	\$64,398
10	Conley ⁵	D. Mass.	1998	165	7.5	14.5	4.5	8.9	0.8	[2,952]	[\$2,541]	\$4,926.7	\$48,237
11	Bais Yaakov	D.N.J.	2015	2.6	0.8	1.1	30	8.9	0.09	286.6	[\$3,024]	\$4,030.0	\$123.77
12	Sullivan	S.D.N.Y.	1991	100	1	2.3	1	[8.74]	0.1				\$6,078
13	Raetsch	D.N.J.	2010	36	9.7	14.1	27	8.7	1.1	2,066.3	[\$\$4,704]	[\$6,814.6]	\$164,207
14	Buspirone ⁶	S.D.N.Y.	2003					8.46					

Table 2 (cont.)
Federal Class Actions Fee Awards with Lodestar Multipliers of 7 or More
(1984–2024)

	Case ¹	Court	Year	Class Recovery (in \$ millions)	Attorney's Fees (in \$ millions)	Inflation Adjusted Attorney's Fees (in \$ millions)	Percentage	Lodestar Multiplier	Lodestar (in \$ millions)	Hours	Awarded Hourly Rate	Inflation Adjusted Awarded Hourly Rate	Expenses
15	First Federal Savings & Loans ⁸	E.D. Pa.	1986	4–6.8	0.2	0.6	3.7 – 6.2	[8.41]	0.09	200	[\$1,250]	\$3,605.1	\$457
16	Thacker	E.D. KY	2010	28.7	7.8	11.3	30	8.4	1.0	3,191	[\$2,703]	[\$3,915.8]	\$58,657
17	Genworth Life Ins. Co. ⁸	E.D. Va	2022		19.5	21	15	8.4	2.3	~6,000	[~\$3,250]	[~\$3,507.5]	\$26,701
18	Eng. Carpenters Fee requested Fee awarded	D. Mass.	2009	350	84 70	123.7 103.1	24 20	10 8.4	8.3	18,600	[\$3,763]	[\$5,540.8]	\$4,000,000
19	Santos ⁹ Fee requested Fee awarded	D. Guam	2008	90	9 3.0	13.2 4.4	10 3.3	11.2 8	0.4 3.4	3,685.4 1,807.3	[\$2,442] [\$1,684]	\$3,583.49 \$2,471.2	\$37,792 \$22,580
20	Newman ¹⁰	S.D.N.Y.	2001					7.7					
21	Bank USA, N.A. ¹¹	S.D.N.Y.	2013	[15.6]	5	6.8	31.7	7.6	[0.7]				\$33,155
22	Hainey	S.D. Ohio	2007	6	1.8	2.7	30	[7.5]	0.2	790	[\$2,278]	[\$3,471.5]	\$2,304
23	In re Boston and Maine	1st Cir.	1985	1.3	0.2	0.6	15	[7]	0.03				\$2,656

NOTES:

* If requested and awarded fees differ, both are noted. Otherwise, fee requests and awards are identical.

** Where the court's opinion detailed the lodestar, multiplier, hours, or hourly rate, we used the numbers as they appear in the opinion and did not recalculate the numbers, except that we rounded the numbers as we have done throughout the table. This is the case with *Haggart, Stop & Shop, Farell* and *Health Republic* on Remand.

*** When the court or plaintiffs' counsel's moving papers include exact numbers, we used these numbers to calculate the numbers in the different columns, and then rounded the result according to rounding standards.

**** Inflation adjustments assume values are as of year-end and adjust to dollars as of the end of March 2025. Monthly inflation rates are obtained from inflationdata.com and averaged to obtain a yearly inflation rate. For cases where the year composes a range, the latest year is used as the starting period for inflation adjustments.

¹ *Haggart v. United States*, 116 Fed. Cl. 131 (2014), *rev'd on other grounds*, *Haggart v. Woodley*, 809 F.3d 1336 (Fed. Cir. 2016); *The Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-4578, 2005 WL 1213926 (E.D. Pa. May 19, 2005); *Farrell v. Bank of America, Cop., Na.*, 827 Fed. Appx. 628 (2020); *Lloyd v. Navy Federal Credit Union*, No. 17-cv-1280, 2019 WL 2269958 (S.D. Cal. May 28, 2019); *In re Doral Fin. Corp. Sec. Litig.*, No. 1:05-md-01706-ECF No. 107 (S.D.N.Y. July 17, 2017); *Health Republic Ins. Company v. U.S.*, 156 Fed. Cl. 67 (2021), *rev'd*, *Health Republic Ins. Company v. U.S.*, 58 F.4th 1365 (2023); *Weiss v. Mercedes-Benz*, 899 F. Supp. 1297 (D.N.J. 1995), *aff'd*, 66 F.3d 314 (1995), *see also*, *In re Prudential Ins. Co. of America Sales Practices Litigation*, 962 F. Supp. 572, 592; *Skochin v. Genworth Fin., Inc.*, No. 3:19-CV-49, 2020 WL 6536140 (E.D. Va. Nov. 5, 2020); *Bais Yaakov of Spring Valley v. Peterson's Nette, LLC.*, No. 3:11-cv-00011-ECF 116 (D.N.J. Jan 20, 2015); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181 (D. Mass. 1998); *Raetsch v. Lycent*, No. 05-cv-05134-ECF 159 (D.N.J. Sep. 21, 2010); *Cosgrove v. Sullivan*, 759 F. Supp. 1667 (S.D.N.Y. 1991); *Thacker v. Chesapeake*, No. 7:07-CV-00026-ECF 82 (E.D. Ky. Nov. 3, 2010); *Halcom v. Genworth Life Ins. Co.*, No. 3:21-cv-19, 2022 WL 2317435 (E.D. Va. June 28, 2022); *Muchnick v. First Federal Savings & Loans of Philadelphia*, No. 86-1104, 1986 WL 10791 (E.D. Pa. Sept. 30, 1986); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-11148, 2009 WL 2408560 (D. Mass. Aug. 3, 2009); *Santos v. Camacho*, No. 04-00006, 2008 WL 8602098 (D. Guam Apr. 23, 2008), *aff'd* *Simpao v. Gov't of Guam*, 369 F. App'x 837 (9th Cir. 2010); *Yuzary v. HSBC Bank USA*, No. 12-3693, 2013 WL 5492998 (S.D.N.Y. Oct. 2, 2013); *Hainey v. Parrott*, No. 1:02-CV-733, 2007 WL 3308027 (S.D. Ohio Nov. 6, 2007); *In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985).

² Following remand, plaintiff counsel renewed its original fee motion, seeking the same fee, percentage, and multiplier. The court reduced plaintiff counsel's hours based on findings that some hours involved work on the fee motion itself, and on a portion of the case that was still ongoing and as to which counsel planned to seek a separate fee award.

³ In his Declaration in *Burnett v. National Association of Realtors*, Case No. 19-CV-00332-SRB (W.D. Mo. Sep. 13, 2024), pages 74-75 and Table 2, Professor Klonoff identifies three cases that were not already collected (Klonoff's Declaration). *Chiron Corp.*, No. 95-20725-SW (N.D. Cal. 1999) is one of the three cases. We are unable to validate the data from accessible records for any of these three cases. However, for purposes of conservatism, we include them in the analysis.

⁴ The lodestar multiplier is here calculated on the assumption that counsel received the maximum possible award of \$26.5 million. This assumption is consistent with our conservative methodology. Class counsel requested a \$2 million flat fee plus 15% of the recovery with a minimum of \$10 million and a cap of \$24.5 million for range of \$12 – 26.5 million. The court rejected the \$10 million minimum, thereby generating a range of \$2 million – \$26.5 million. At the time of the opinion, the estimated recovery was between \$92 million and \$200.5 million, with no precise amount specified. We therefore also present the percentage as a range, 13.2% to 28.8%, based on the assumption that counsel received the maximum possible award regardless of the ultimate value of the recovery to the class.

⁵ The court found that the value added by plaintiffs' settlement efforts was more than \$32 million and that the attorneys fee of \$7.5 million reflects between twenty and twenty-five percent of the value added by plaintiffs' counsel (*Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 189 (D. Mass. 1998).

⁶ As stated above, Klonoff's declaration included three cases that were not already collected. *In re Buspirone Antitrust Litig.*, No. 1:01-md-01413-JGK, slip op. at 8 (S.D.N.Y. Apr. 18, 2003) (Doc. No. 171) is one of the three cases.

⁷ "[T]he settlement obtains a substantial payment to the class, ... of between \$4 million and \$6.8 million, on the basis of technical ownership rights in First Federal, a mutual saving bank ...". *Muchnick v. First Fed. Sav. & Loan Ass'n of Philadelphia*, No. CIV.A. 86-1104, 1986 WL 10791, at *1 (E.D. Pa. Sept. 30, 1986).

⁸ The recovery field is blank because the opinion awarding fees does not specify the value of the recovery due to the settlement's complexity. The awarded fees are calculated as \$1 million plus 15% of the recovery capped at \$18.5 million. The actual fees awarded are not stated. To be conservative, we assume the maximum fee was awarded, thereby generating the highest multiplier.

⁹ The attorney's fees here include the fees for both the Class Counsel as well as for representative plaintiff Torres' attorneys because the settlement agreement stipulated that class counsel would receive 10% of the recovery and that Torres' attorneys would receive 11% of the first \$5 million of the fee award and 25% of any recovery exceeding \$5 million. The court found these fees, as well as the attorneys billed hours, to be unreasonable. The court reduced the number of billable hours and awarded the class counsel a fee of 8x the adjusted lodestar. The court awarded Torres' individual counsel its adjusted lodestar with no multiplier.

¹⁰ The Klonoff Declaration includes three cases that were not already collected as for which we cannot identify confirming information. *Newman v. Carabiner International, Inc.*, No. 1:99-cv-02271, slip op. at 11 (S.D.N.Y. Oct. 25, 2001) (Doc. No. 31) is one of the cases.

¹¹ The hourly rate cannot be calculated because the court did not report the hours billed by counsel. *Yuzary v. HSBC Bank USA, N.A.*, No. 12 CIV. 3693 PGG, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013).

Table 3

**Incidence and Frequency of Multipliers of Septuples and Decuples
In Federal and Delaware Fee Awards
(1984–2024)**

Panel A: Federal Septuples

	2020-2024 Most recent five years	2015-2024 Most recent ten years	2010-2024 Most recent fifteen years	2005-2024 Most recent twenty years	2000-2024 Most recent twenty-five years	1984-2024 Full sample of forty years
1. Total number of Federal class action awards with multipliers of seven or more ¹	4	6	10	15	17	23
2. Total number of Federal class action awards ²	1,720	3,440	5,160	6,880	8,600	13,760
3. Federal Frequency ³	0.0023	0.0017	0.0019	0.0022	0.0020	0.0017

Panel B: Delaware Septuples

	2020-2024 Most recent five years	2015-2024 Most recent ten years	2010-2024 Most recent fifteen years	2009-2024 Full sample of sixteen years
4. Total number of Delaware fee awards with multipliers of seven or more ⁴	13	16	19	20
5. Total number of fiduciary fee awards ⁵	242	484	726	774 ⁷
6. Delaware Frequency ⁶	5.37%	3.31%	2.62%	2.58%

¹ See Table 2.

² Calculated as the number of years in the corresponding column multiplied by 344. *See* text for discussion of the Fitzpatrick data.

³ Row 1 divided by Row 2.

⁴ See Table 1.

⁵ Calculated as the number of years in the corresponding column multiplied by 48.4 and rounded.

⁶ Row 4 divided by row 5.

⁷ The earliest Delaware septuple appears in 2009. The corresponding time span is thus 16 years, or 16 x 48.4 = 774.4.

Table 3 (ctd.)

**Incidence and Frequency of Multipliers of Septuples and Decuples
In Federal and Delaware Fee Awards
(1984–2024)**

Panel C: Federal Decuples

	2020-2024 Most recent five years	2015-2024 Most recent ten years	2010-2024 Most recent fifteen years	2005-2024 Most recent twenty years	2000-2024 Most recent twenty-five years	1984-2024 Full sample of forty years
1. Total number of Federal class action awards with multipliers of seven or more ⁸	1	2	3	5	5	5
2. Total number of Federal class action awards ⁹	1,720	3,440	5,160	6,880	8,600	13,760
3. Federal Frequency ¹⁰	0.00058	0.00058	0.00058	0.00073	0.00058	0.00036

Panel D: Delaware Decuples

	2020-2024 Most recent five years	2015-2024 Most recent ten years	2010-2024 Most recent fifteen years	2009-2024 Full sample of sixteen years
4. Total number of Delaware fee awards with multipliers of seven or more ¹¹	8	11	13	14
5. Total number of fiduciary fee awards ¹²	242	484	726	774 ¹⁴
6. Delaware Frequency ¹³	3.31%	2.27%	1.79%	1.81%

⁸ See Table 2.

⁹ Calculated as the number of years in the corresponding column multiplied by 344. *See* text for discussion of the Fitzpatrick data.

¹⁰ Row 1 divided by Row 2.

¹¹ See Table 1.

¹² Calculated as the number of years in the corresponding column multiplied by 48.4 and rounded.

¹³ Row 4 divided by row 5.

¹⁴ The earliest Delaware septuple appears in 2009. The corresponding time span is thus 16 years, or 16 x 48.4 = 774.4.

Table 4

Summary of Delaware and Federal Septuple and Decuple
Multipliers, Attorney Fee Awards and Hourly Rates¹

	Average							Median	
	Multipliers (x)	Unadjusted Attorney's Fees (\$Millions)	Inflation Adjusted Attorney's Fees (\$Millions)	Unadjusted Hourly Rate (\$/hr)	Inflation Adjusted Hourly Rate (\$/hr)	Unadjusted Weighted- Average Hourly Rate ¹ (\$/hr)	Inflation Adjusted Weighted- Average Hourly Rate ¹ (\$/hr)	Unadjusted Median Hourly Rate (\$/hr)	Inflation Adjusted Median Hourly Rate (\$/hr)
Septuples									
Federal	9.41	17.5	23.1	4,197	5,764	\$5,920	\$6,777	\$3,763	\$5,208
Delaware	15.39	50.0	60.1	9,998	11,935	\$19,766	\$25,767	\$7,990	\$9,188
Decuple									
Federal	12.9	18.7	26.0	5,566	7,478	\$4,934	\$6,785	\$4,717	\$7,188
Delaware	18.5	70.3	84.5	12,122	14,483	\$20,007	\$26,094	\$9,721	\$11,021

¹ Unadjusted and inflation-adjusted hourly rates are weighted using unadjusted and inflation-adjusted attorney fees, respectively.

Source: Table 1 and 2

Figure 1
Multipliers of Seven or More and Ten or More
In Delaware and Federal Fee Awards
(2000-2024)

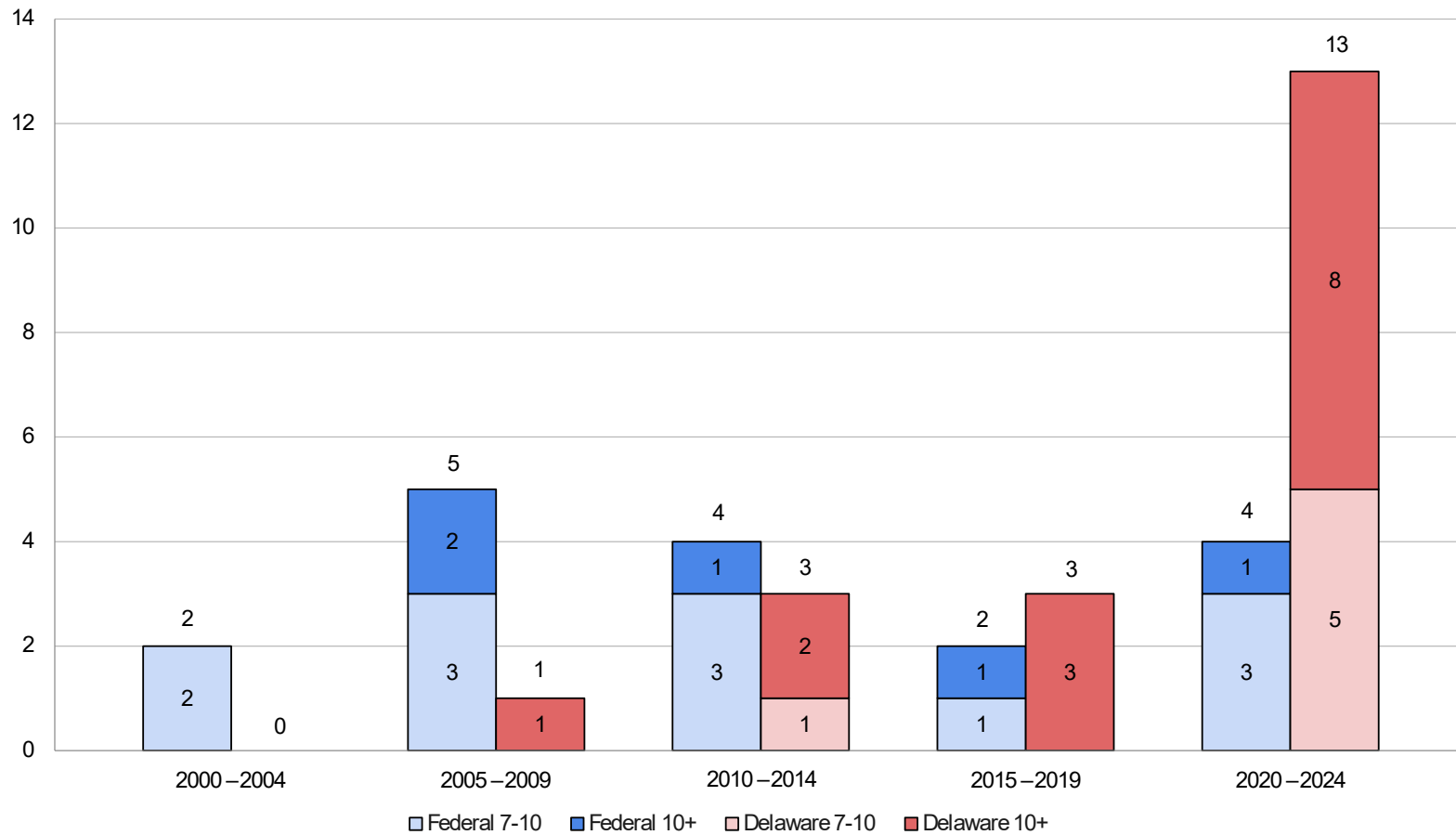
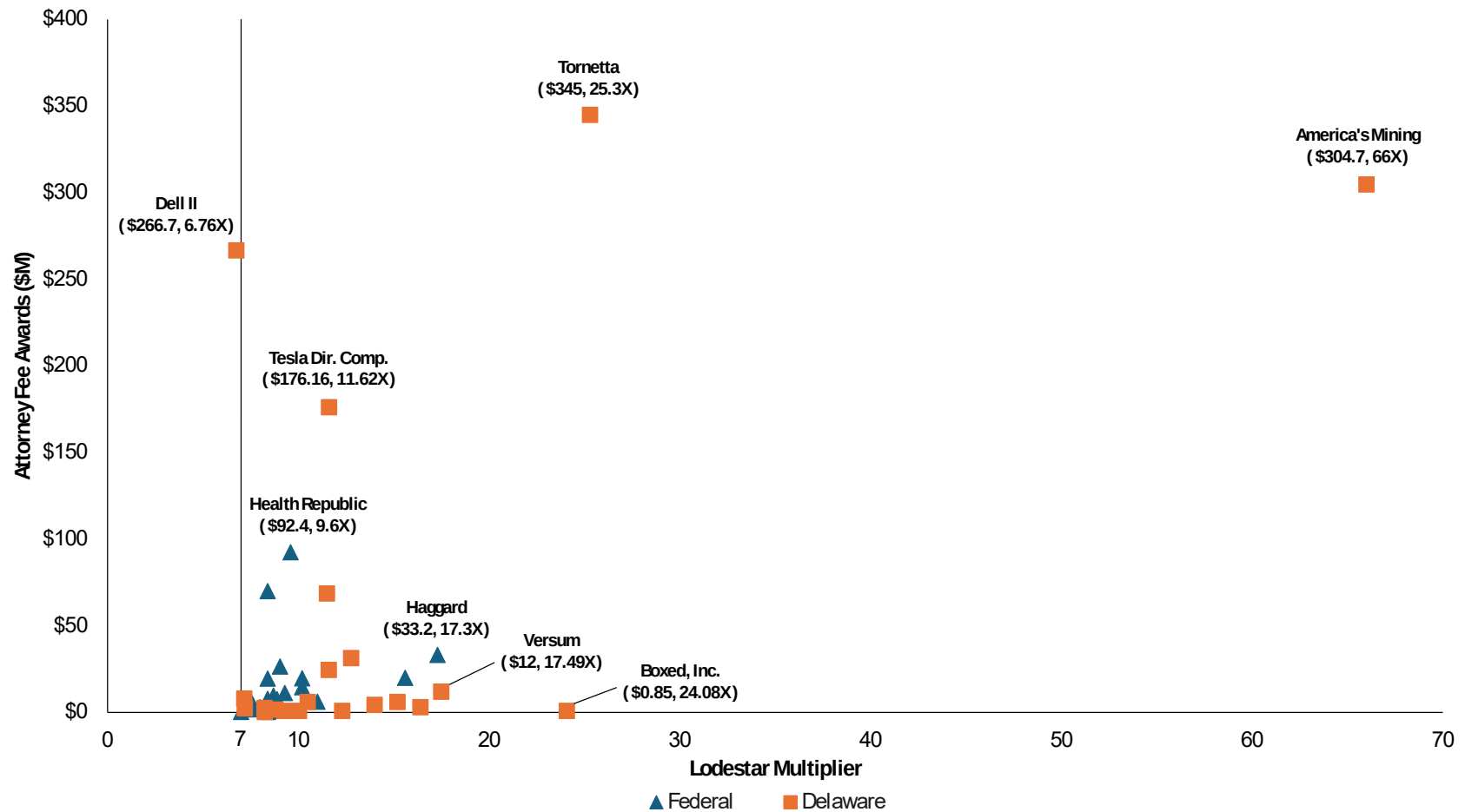


Figure 2
Attorney Fee Awards and Lodestar Multipliers of Seven or More
Federal and Delaware



Class Action

Class Claims Fraudster Gets Appeals Court to Rethink Restitution

June 3, 2025, 8:33 AM PDT

- **Appeals court instructed lower court to raise restitution**
- **Government hadn't appealed restitution issue, defendant says**

Alpha Plus Portfolio Recovery co-founder Joseph Cammarata—convicted of a scheme to submit false claims in securities class action settlements—persuaded the Third Circuit to reconsider its February ruling that was poised to increase the \$31.2 million he owes his victims, according to a Tuesday filing.

The US Court of Appeals for the Third Circuit's February 24 opinion affirmed Cammarata's convictions and 10-year prison sentence but vacated the lower court's restitution order, saying it didn't appear to fully compensate the victims of the scheme.

The problem with that is that the Mandatory Victims Restitution Act contemplates an "all-or-nothing approach" to restitution, the appeals court said.

The appeals court had instructed the district court on remand to increase the restitution ordered, unless it found distributing restitution at all to be impracticable.

That remedy, Cammarata's bid for a rehearing argued, needs to be rescinded because the government didn't cross appeal "and in fact affirmatively waived the restitution issue identified by the panel by requesting below that the sentencing court do exactly what it did."

Ordering, on the defendant's own appeal, that the challenged judgment be "altered to his disadvantage" is "flatly prohibited by Supreme Court authority and therefore must be corrected on rehearing," he said.

The panel comprises Judges D. Brooks Smith, L. Felipe Restrepo, and Theodore A. McKee.

Cammarata is represented by Peter Goldberger in Ardmore, Pa.

The case is United States v. Cammarata , 3d Cir., No. 23-02110, rehearing granted 6/3/25 .

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Securities Law News

Supreme Court Seeks DOJ View on Hertz Bondholder Case

June 2, 2025, 10:59 AM PDT

The Supreme Court invited a brief from the Justice Department for advice on a Hertz Global Holdings Inc. case about a roughly \$320 million payment that the rental car firm may owe to bondholders.

Hertz has been seeking a Supreme Court review of a federal appeals court decision that bondholders from the company's 2020 bankruptcy are owed make-whole premiums and interest related to the case. The court on Monday issued an order requesting the views of Solicitor General **D. John Sauer**, the Trump administration's top Supreme Court lawyer.

"We welcome the Supreme Court's invitation to the Solicitor General as it demonstrates the significance of the legal questions at stake and look forward to expressing our view with the Solicitor General that unwritten equitable considerations do not trump the plain language of the bankruptcy code," a Hertz spokesperson said in a statement.

The request means it will be at least several months — the Supreme Court is scheduled to start its summer recess in late June or early July — before the justices say whether they will hear Hertz's appeal.

Meanwhile, the company has been looking to raise \$500 million of secured debt as well as some equity, partly to finance the settlement with bondholders, Bloomberg has reported. Hertz has more than \$6 billion of total debt, according to data compiled by Bloomberg, including a \$500 million junk bond sold in December to repay borrowings.

Shares of the rental-car company — up about 70% this year — recently gained on news that **Bill Ackman's** Pershing Square Capital Management had amassed a nearly 20% stake in the beleaguered firm. His position suggested a positive outlook for the company that emerged from bankruptcy in 2021, only to then lose billions after a failed bet on a fleet of Tesla Inc. electric vehicles.

The case is Hertz v. Wells Fargo, 24-1062.

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Securities Law News

Luminar Shareholder Loses Bid to Revive Short-Swing Profit Suit

June 2, 2025, 12:23 PM PDT

- Eleventh Circuit affirms dismissal of CEO stock trading suit
- Another short-swing profit legal loss for the shareholder

An investor who's lost a series of legal battles over whether companies can collect profits from certain stock trades in a short time period lost his chance to reopen a lawsuit against the former CEO of Luminar Technologies Inc.

The US Court of Appeals for the Eleventh Circuit said Monday that it would "join every other federal court that has addressed Roth's claim" in holding that a securities law provision doesn't allow a company issuing stock to recover profits earned by a beneficial owner or corporate leader after the issuer buys back its own shares. The three-judge panel affirmed the US District Court for the Middle District of Florida's tossing of the complaint against Luminar founder Austin Russell.

The Eleventh Circuit's opinion follows a handful of legal losses for Andrew E. Roth in trying to pair company stock repurchases with sales by someone who beneficially owns a lot of its shares, a corporate director, or executive. Section 16(b) of the Securities Exchange Act of 1934 lets a publicly-traded company collect profit gained by such individuals or entities from any sale and purchase of stock with a six-month period—short-swing profits.

The Second Circuit said this month district judges correctly dismissed Roth's complaints involving The Estee Lauder Cos. and Altice USA Inc. repurchases. The US District Court for the Southern District of New York in March tossed his lawsuit filed on behalf of Hertz Global Holdings Inc.; Roth's appealed.

Roth's appellant brief said Russell should return \$23 million in alleged short-swing profits after the company bought back about 15 million of its own shares at an average price of \$15.45 each in 2021. Russell had sold about 10.5 million shares of the autonomous vehicle technology maker's stock at an average of \$21 a piece less than six months earlier, Roth said. Russell had an indirect interest in more than 28% of the repurchased shares based on his ownership interest, Roth said.

Failing to claim the company was the executive's investment vehicle or alter ego "is fatal to his ability to attribute Luminar's corporate investments to Russell," the opinion said.

A Securities and Exchange Commission amicus brief filed in a Second Circuit case, *Feder v. Frost*, in 2000 that Roth pointed to involving a company serving as someone's alter ego doesn't relate to the same issue here, the opinion said. Nor does it negate the SEC's own regulations which "unambiguously provide" stock repurchases aren't covered by section 16(b), the panel of Judges Robert J. Luck, Barbara Lagoa, and Nancy G. Abudu said.

Russell resigned as Luminar's CEO as the board faced an internal ethics probe this month.

Ostrager Chong Flaherty & Broitman PC and Lanigan & Lanigan PL represent Roth. Orrick, Herrington & Sutcliffe LLP, which declined to comment in an email, and GrayRobinson PA represent Russell and Luminar, a nominal defendant. The other law firms didn't immediately respond to emails seeking comment.

The case is *Roth v. Russell*, 11th Cir., No. 24-10448, affirmed 6/2/25 .

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Class Action

iRobot Asks Appeals Court to End Investor Suit Over Amazon Deal

June 3, 2025, 10:39 AM PDT

- **Said investor's compliance claims were vague and unspecific**
- **And didn't adequately allege iRobot, former executives' intent**

iRobot Corp. rightfully defeated a proposed investor class action over its abandoned Amazon.com Inc. merger because the allegations weren't specific, the robot vacuum maker told an appeals court.

The district court correctly ruled that vague news articles and sparse confidential witness accounts couldn't support claims the company misrepresented the deal's prospects and regulatory cooperation, said the appellees' brief filed in the US Court of Appeals for the First Circuit Monday.

And Boston federal Judge William G. Young correctly said the more compelling inference was that iRobot and former executives were providing consistent updates about the acquisition that ended up faltering under regulators' resistance, as opposed to having the requisite level of intent or recklessness to deceive investors, the brief said. Young tossed the US District Court for the District of Massachusetts-filed lawsuit in January.

iRobot "extensively warned investors" about risks to the acquisition's completion before it was abandoned in 2024, including antitrust regulators' potential opposition, the brief asking the First Circuit to affirm the dismissal said.

Amazon and iRobot abandoned the proposed sale as the deal faced antitrust concerns by US and European Union regulators and the vacuum-maker struggled financially in January 2024. Investors sued soon after, alleging iRobot misled them about the deal's prospects given Amazon's already large stake in the robot vacuum space and that the online marketplace giant, with iRobot's knowledge, wasn't providing certain information governmental overseers' reviewing the merger.

The suing plaintiffs filed their principal appellate brief last month.

The confidential witnesses, former iRobot employees relied upon by the lead plaintiff, didn't offer particularized facts about the timing of or any conduct reflecting Amazon's alleged refusal to comply with or send US and European regulators information—details the court needs when considering anonymous statements, the brief said. News articles relying on uncorroborated anonymous sources also couldn't support the lead plaintiff's claims it didn't cooperate with the governmental bodies, the brief said.

Similarly, statements providing status updates weren't properly alleged as misleading, given similarly vague claims brought by confidential witnesses, iRobot said. These allegations failed to demonstrate the company and former executives knew about any allegedly adverse developments which contradicted their statements about the deal, the brief said.

Lead plaintiff Premca Extra Income Fund LP told First Circuit that Young “wrongly disregarded” confidential witness accounts about Amazon’s alleged refusal to cooperate with antitrust regulators’ requests for information. iRobot’s stock price fell almost 27% in a day after news articles said regulators planned to block Amazon’s acquisition, Premca’s suit said. Premca sought to represent a class of stock purchasers from Feb. 13, 2023, through Jan. 29, 2024.

Pomerantz LLP represents the investors. Skadden Arps Slate Meagher & Flom LLP represents iRobot, former CEO Colin Angle, and former CFO Julie Zeiler. Neither law firm immediately responded to emails seeking comment.

The case is Premca Extra Income Fund LP v. iRobot Corp. , 1st Cir., No. 25-01192, brief 6/2/25 .

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Class Action

InnovAge Agrees to \$27 Million Investor Settlement Over IPO (1)

June 3, 2025, 7:28AM PDT; Updated: June 3, 2025, 8:13AM PDT

InnovAge Holding Corp. agreed to pay \$27 million to resolve investor allegations that the elder care company misrepresented its growth potential before its 2021 initial public offering.

The lead plaintiffs sought the US District Court for the District of Colorado's preliminary approval of the settlement on Monday in their class action against the company, its IPO underwriters, a private equity firm, and InnovAge board members, including former Republican Florida Gov. Jeb Bush. If approved, the settlement would resolve the suit in its entirety, their motion said.

- Lead plaintiffs El Paso Fireman & Policemen's Pension Fund, San Antonio Fire & Police Pension Fund, and Indiana Public Retirement System represent a court-certified class of investors who got InnovAge stock from May 11, 2021, through Dec. 22, 2021, and/or traceable to the company's IPO and were damaged
- The settlement follows Judge William J. Martinez's recent ruling to keep entities associated with private equity firm Welsh, Carson, Anderson & Stowe in the case on claims that they could plausibly be held liable as a "control person"
- Underwriters including J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC failed to escape the suit last year

Cohen Milstein Sellers & Toll PLLC is class counsel. Sullivan & Cromwell LLP represents the WCAS entities, InnovAge, and other defendants. Wilmer Cutler Pickering Hale & Dorr LLP also represents InnovAge. Freshfields US LLP represents the underwriters. None of these law firms immediately responded to emails seeking comment.

The case is McLeod v. InnovAge Holding Corp. , D. Colo., No. 1:21-cv-02770, motion 6/2/25 .

(Updates with case context throughout the story.)

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Securities Law News

GWA Gets First Approval for \$7.9 Million Deal Over 401(k) Funds

June 2, 2025, 11:20 AM PDT

- Lawsuit challenges retirement plan's alternative investments
- About 200 people to get gross payments of \$40,000 each

GWA LLC and its founder George A. Weiss received initial court approval for a \$7.9 million class settlement with employees challenging the proprietary investments in the hedge fund manager's retirement plan.

The proposed settlement will pay about 200 class members an average gross payment of about \$40,000 each, according to court filings. It represents up to 36% of the total estimated losses to the class, Judge Omar A. Williams of the US District Court for the District of Connecticut said in a May 30 order granting preliminary approval to the deal.

The two-year-old lawsuit claimed the entirety of the company's \$103 million retirement plan is invested in two proprietary investments: the Weiss Multi-Strategy Partners (Cayman) Ltd. hedge fund and a mutual fund that largely replicated the hedge fund's strategy.

This "highly unprecedented" decision to invest the entire plan in alternative investments is contrary to generally accepted investment principles and exposed the plan to "enormous concentration risk," former GWA employee Beth Andrew-Berry alleged in the complaint. GWA and Weiss defended the investments, saying in a 2023 court filing that there's nothing inherently imprudent or disloyal about investing plan assets in proprietary funds.

GWA filed for bankruptcy protection in April 2024, but this action was granted relief from the automatic stay. The parties reached an agreement with the help of a private mediator.

Cohen Milstein Sellers & Toll PLLC represents Andrew-Berry. Goodwin Procter LLP represents the defendants.

The case is Andrew-Berry v. Weiss , 2025 BL 187369, D. Conn., No. 3:23-cv-00978, 5/30/25 .

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Class Action

Evolve Bank Gets Initial Nod For \$12 Million Data-Breach Deal

June 2, 2025, 12:50 PM PDT

A federal court gave initial approval to a proposed deal requiring Evolve Bank & Trust to pay nearly \$12 million to settle a lawsuit over a 2024 data breach that exposed the information of around 18 million people.

Class members would be entitled to reimbursement of actual losses of up to \$3,000 per claimant or a pro-rata cash payment from the settlement fund, according to the plaintiff's motion for preliminary approval filed in the US District Court for the Western District of Tennessee.

- Judge Sheryl H. Lipman granted the plaintiffs' motion May 30, and scheduled a final fairness hearing for Nov. 14
- The Judicial Panel on Multidistrict Litigation consolidated 34 lawsuits arising from the breach and assigned them to Lipman in a July 2024 order
- Class counsel indicated they will seek a fee award of up to one-third of the settlement fund, and service awards of \$2,500 for each of the 14 class representatives, Lipman said

Stranch, Jennings & Garvey PLLC; Milberg Coleman Bryson Phillips Grossman PLLC; Cohen & Malad LLP; KO Lawyers; Nussbaum Law Group PC; Hausfeld LLP; Poynter Law Group; and Watson Burns PLLC represent the plaintiffs and the proposed class. Butler Snow LLP and Orrick, Herrington & Sutcliffe LLP represent Evolve.

The case is In re Evolve Bank & Trust Customer Data Sec. Breach Litig. , W.D. Tenn., No. 2:24-cv-02578, 5/30/25

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Securities Law

Investors Say They're Moving Away From ESG as 'Umbrella Concept'

June 3, 2025, 3:00 AM PDT

While institutional asset owners such as pension funds and insurers say they remain committed to sustainable investing, they're less wedded to ESG as "an umbrella concept."

They now widely treat ESG as three separate parts as opposed to a single strategy, according to a survey by Morningstar Inc. of 25 asset owners across North America, Europe and the Asia-Pacific region. Until recently, the anti-ESG push has been concentrated in the US.

"Mainly, the asset owners seem less concerned about what ESG is called versus how it is implemented across their global portfolios," according to the Morningstar report released on Tuesday. The environmental part of ESG is the primary focus for investors ahead of social and governance-related issues, with the majority viewing "climate as a material investment factor."

Read More: [Why ESG Faces Backlash and Its Future Under Trump 2.0: QuickTake](#)

The report quotes an official from a superannuation fund in Australia who's committed to climate investment strategies. The official says "our approach to climate risk is that it's an unrewarded or consistently under-rewarded risk in portfolios."

Jennifer Boscardin-Ching, a clean energy and environmental specialist at Pictet Asset Management, said she always wants to know how much of a company's capital expenses are earmarked for green projects before making a sustainable-investment decision.

"What is the business model?" she said. "What is the balance sheet."

The survey found that many asset owners feel ESG has become a polarizing marketing term that's left the investment industry "open to concerns of oversimplification or accusations of greenwashing." Many said "sustainable investing" and "responsible investing" are more appropriate terms.

ESG has been widely misunderstood, said Peter Krull, the director of sustainable investing at Earth Equity Advisors. It's really just "a risk-management tool," he said.

Asset owners also are increasingly concerned these days about rising geopolitical tensions caused by the Trump administration-led trade war, the Russia-Ukraine conflict and US-China relations.

The result is many investors are "waiting for more clarity before making short-term portfolio moves," according to Morningstar. An official at a US corporate pension plan said it's currently "very difficult to join the dots" to determine what it all means for the financial markets.

(The survey was conducted by Morningstar Indexes and Morningstar Sustainalytics with help from Opinium Research.)

Longtime Susman Godfrey Leader H. Lee Godfrey Dies at 86 After Long Illness



law.com/therecorder/2025/06/02/longtime-susman-godfrey-leader-h-lee-godfrey-dies-at-86-after-long-illness

Brenda Sapino Jeffreys

June 2, 2025

- H. Lee Godfrey, a former managing partner of Susman Godfrey, died Monday after a long illness.
- He had retired in 2013, but practiced at the firm since the early 1980s, shortly after Stephen Susman founded the litigation boutique.
- Godfrey was known for his courtroom skill, charm and intellect, according to a statement from the firm.

H. Lee Godfrey, former managing partner of Houston-founded trial firm Susman Godfrey, died Monday at 86 after a long illness.

Godfrey joined his friend Stephen Susman at the small litigation boutique he had recently founded, forming Susman Godfrey, in the early 1980s. Together, they built Susman Godfrey into an Am Law 100 litigation firm. Godfrey remained co-managing partner alongside Susman until he retired from the firm in 2013.

The firm, in a statement Monday, described Godfrey as one of the "preeminent" trial lawyers of his generation.

"His smile and wit charmed judges and jurors; his keen intellect persuaded them. Lee's cross examinations were legendary, an iron fist in a velvet glove," the firm wrote in the statement.

Godfrey represented "the most sophisticated clients in the world," the statement said. His work included "representing Northrup over an aborted sale of F-18 fighter jets, to the Gulf pension holders aggrieved at the invasion of their pension fund, to the shareholders of American Shell Oil Company opposing Royal Dutch Shell's going-private transaction, to mineral rights holders pursuing antitrust claims over oil royalties—Lee litigated some of the most important matters in the firm's history."

Even Evel Knievel wanted Godfrey to represent him, according to the firm.

Godfrey charmed clients and law school recruits with charisma, the firm wrote, and "a generation of Susman Godfrey trial lawyers owe their courtroom swagger and understanding of human nature to the lessons Lee taught them in and out of the courtroom, usually flavored with his legendary sense of humor."

In 1996, then-President Bill Clinton nominated Godfrey to be the ambassador to Brazil, but he ultimately turned down the opportunity. According to the firm's statement, Godfrey "realized that even Carnival in Rio was no match for the fun he had every day with us at the firm."

Godfrey's passing follows that of Susman, who died in 2020 of complications of a bicycle accident. During his recovery from that accident, he contracted COVID-19.

Vineet Bhatia, a co-managing partner of the firm, said he worked extensively with Godfrey over his first 15 years at the firm on significant litigation.

"He was a fabulous trial lawyer and even better friend, a great firm leader," Bhatia, a partner in Houston, said.

The firm is one of four U.S. firms that sued the Trump administration after President Donald Trump signed an executive order targeting it. A federal judge temporarily blocked the executive order against Susman Godfrey, but the firm is awaiting a ruling from a federal judge on its motion for summary judgment.

Bhatia said Godfrey would be "quite proud" of the firm's decision to fight the executive order.

"We are standing up for ourselves and I think it's something that he would have done without question. He was never one to stand down from fighting the good fight," Bhatia said.

Robin Gibbs, a partner in Houston trial firm Gibbs & Bruns, said Godfrey was the "whole package" as a lawyer and a longtime close friend.

"Lee was something, with a quick wit and an even quicker smile, and a truly great jury lawyer in large part because he was so engaged and liked people so much. It was a natural fit for him to be a trial lawyer," Gibbs said. "He got along with virtually everybody."

Godfrey is survived by his wife, Sandy; their daughter, Susman Godfrey partner Lindsey Godfrey Eccles, and her husband Matt; and Sandy and Lee's three grandchildren, Thomas Lee, Isabella and Tudor.

Securities Law

Matt Levine's Money Stuff: Fannie and Freddie Stakes Are High

June 3, 2025, 11:09 AM PDT

Fannie and Freddie

The capital structures of Fannie Mae and Freddie Mac are a little complicated, but here's roughly the situation :

Fannie and Freddie have total assets of \$7.8 trillion (\$4.4 trillion for Fannie, \$3.4 trillion for Freddie) and liabilities of \$7.6 trillion (\$4.3 trillion, \$3.3 trillion).

- This leaves them with total net worth (shareholders' equity, assets minus liabilities) of \$160.7 billion (\$98.3 billion, \$62.4 billion).
- The US government has a \$348.4 billion senior preferred claim on that net worth (\$216.2 billion, \$132.2 billion).
- After the US government, there are regular preferred-stock holders with \$33.2 billion of preferred claims (\$19.1 billion, \$14.1 billion).
- After paying out the senior preferred and the regular preferred, whatever's left over goes to the common shareholders. The biggest common shareholder is also the US government, which gets 79.9% of that; various regular shareholders – of whom Bill Ackman's Pershing Square Capital Management is perhaps the best-known – get the other 20.1%.

The essential thing to notice there is that the US government's \$348.4 billion senior preferred claim is quite a bit larger than the total shareholders' equity of \$160.7 billion. If Fannie and Freddie liquidated today and returned all their money to shareholders, the US government would get all of it. If Fannie and Freddie's shareholders' equity doubled, the US government would still get all of it. The common stockholders, and the holders of regular preferred stock, are underwater by many tens of billions of dollars.

Fannie and Freddie had total net income of \$28.8 billion last year (\$17 billion and \$11.9 billion); at that rate, it would take about 12 years to earn enough to pay back the government's \$348.4 billion claim and have anything left over for regular preferred shareholders (and another year and change to pay off those preferreds and have anything left over for the common stock). Or it would if Fannie and Freddie worked like normal companies. But in fact, the way they work is that every time their net worth increases, the government's senior preferred claim – that \$348.4 billion – increases by the same amount. So if they earn \$30 billion this year, the government's claim will increase to \$378.4 billion, and the shareholders will be no closer to getting paid than they are now.

I do not make the rules! Those are the rules! A lot of people do not like those rules, and that's reasonable. In the 2008 financial crisis, Fannie and Freddie ran into trouble, and the US government provided hundreds of billions of dollars of cash and credit lines to bail them out. From first principles, there are two plausible ways to do that:

1. Lend them the money, charge them a high interest rate, and take a big equity kicker (say 79.9% of their stock). Then hope they get back on their feet, pay back the money with interest, and create a ton of value for shareholders, including the government.
- 2. Just nationalize them entirely, zero the shareholders, zero the preferred shareholders, and have the government take all the upside and all the downside.

Either of those approaches could have been fine, and ex ante, in 2008, they didn't even look that different. But what the government actually did was first No. 1 – bailout with high interest and 79.9% equity stake – and then, later (in 2012), shifting to No. 2, changing the terms of the deal so that the interest on the bailout went from 10% per year to “all of your net income for the foreseeable future.” There is almost no way for the common and preferred shareholders to get anything; whatever money Fannie and Freddie make goes to the government. But the common and preferred still float around, and their holders have ideas. The ideas are mostly “this was unfair and will eventually change.”

And it does seem like *something* will change. As we have [discussed a few times](#), the Trump administration is talking more and more about ending the government's control and ownership of Fannie and Freddie. But I started with the capital structure because it seems to me that there is a very wide range of approaches for re-privatizing them.

One extreme of that range would be for the government to stand on its rights: Fannie and Freddie, right now, owe the government more than twice their net worth, and to end government control they would need to pay that back. The arithmetically simple way to do that would be for Fannie and Freddie to go out to the market and raise new capital to (1) pay back the government and (2) be well capitalized as standalone companies. “Well capitalized,” in these discussions, tends to mean shareholders' equity of at least 2.5% of assets, which works out to about \$194 billion of equity. So if Fannie and Freddie went out and did initial public offerings to raise \$542.5 billion of new capital – \$325 billion for Fannie and \$217.5 billion for Freddie – they would have enough to pay back the government and be well capitalized for the future.

This is arithmetically simple but practically impossible, because you can't raise \$542.5 billion in an IPO (or two). (Particularly not just to repay the government and leave the companies with less book equity than the amount they raised.) That's more than the total amount of money raised in all US initial public offerings *over the last 10 years*. If somehow you did do it, existing shareholders would be massively diluted. Pro forma for *half a trillion dollars of new equity*, the capital structure would be something like 99.99% new investors, 0.008% the US government (which owns 79.9% of the equity now) and 0.002% Bill Ackman and friends. Fannie's common stock closed at \$10.78 yesterday, Freddie's at \$7.975. Those shares would be – not literally zeroed, but pretty much zeroed, if Fannie and Freddie had to go out and raise new capital to pay back the full amount they owe the government.

The other end of the range would be for the government to say "you know what, never mind, this \$348.4 billion number is kind of fake, that claim is unfair, and we are going to *write it down to zero*." If you do that, then Fannie and Freddie can just keep their existing shareholders' equity (\$160.7 billion). That is *almost* enough for them to be well capitalized, though they'd still have to do very large IPOs – perhaps \$30 billion total – to get all the way to 2.5%.

If you do *that*, then the existing shareholders will be in good shape. Ignoring a potential new equity raise, the existing shareholders would own 20.1% of the companies (the US government would own the other 79.9%), with a book value per share of around \$14 or \$15. The existing common shareholders would get something like \$25 billion of book value in the companies, the preferred shareholders would get about \$33 billion (the face amount of their preferred), and the US government would have a 79.9% equity stake with something like \$100 billion of book value.

Notice that the \$100 billion for the government here is less than the \$348 billion in the other scenario. The other scenario is not realistic, though, because it relies on (1) making all of the existing shareholders really mad and then (2) doing a half-trillion-dollar IPO. The softer scenario – the one where the government gives up its \$348 billion claim – seems more realistic, and would actually get the government \$100 billion (or more) worth of stock.

Still the point here is that there is a range, and the government can *kind of* do whatever it wants within that range. It can stand on its rights! It can demand the \$348.4 billion, which would probably prevent the re-privatization of Fannie and Freddie, or it can give up the whole \$348.4 billion, or it can do something in between. "Do a \$60 billion IPO and give us half the money to cancel that senior preferred claim" seems fine, for instance. "Cancel the senior preferred claim, but give us 95% of the common equity instead of 79.9%," why not.

One possibility here is for the government to cancel its entire \$348.4 billion senior preferred claim for the benefit of existing common and preferred shareholders. That is obviously what those shareholders want! But the government doesn't *have* to do that, and it can drive a harder bargain.

Which it might do if ... it ... wants ... money? For instance? [Bloomberg's Scott Carpenter reports](#) :

Signs are emerging that the Trump administration may be less willing to give up control of mortgage giants Fannie Mae and Freddie Mac than investors have bargained for, as policymakers scrounge for ways to close US budget gaps.

In recent social media posts, Donald Trump said he's exploring the sale of new shares in the two companies, which play a key role in determining how much Americans pay for home loans – but he also made clear the government will keep a strong oversight role.

And in recent interviews, Federal Housing Finance Agency director William Pulte said the administration is considering a public offering without actually exiting conservatorship, the quasi-government ownership imposed on the two companies since a 2008 bailout.

"Maybe there's a way to take these companies public and use these companies for what they are, which are assets for the American people," Pulte said Monday in an appearance on Fox Business. ...

This might deeply disappoint Wall Street investors such as Pershing Square Capital Management's Bill Ackman who've been counting on a windfall if Fannie and Freddie are set free. Since Trump's election win, shares of Fannie Mae have been up some 700%, hovering near their highest levels in two decades. The bet is that removing the so-called government-sponsored enterprises or GSEs from conservatorship will unleash a torrent of pent-up earnings power.

I have no idea what this means in practical terms. But as a very general matter, Fannie and Freddie are giant companies that generate a lot of money. Right now, the US government is entitled to essentially 100% of that money. To re-privatize them, it would have to give up some of that money. The expectation, which is not unreasonable, is that the government will give up some of that money to Bill Ackman. But that is not an absolute requirement of re-privatizing them, and if the government is looking to keep as much money as possible, that might not be great for the shareholders.

Horizon

Everyone who has thought about finance for a while has had at least these two thoughts:

1. "Wouldn't it be cool if people could sell stock in themselves?"
- 2. "Wouldn't it be cool if homeowners could sell part of the equity of their homes?"

"The great late-night dorm-room question of financial capitalism," I [have called the first thought](#) , in part because selling equity in yourself is mostly a way to replace student loans; the second thought comes later (when you buy a house). What is great about these thoughts is that everyone has had them, but only at most, what, 500 people have started companies to address them? We have talked about the first [question](#) any [number](#) of [times](#) , because people keep starting businesses of the form "you can sell stock in yourself." We have talked about the second question fewer times, but not none. There have been some businesses of the form "you can sell stock in your house"; we [talked in 2016](#) about one called Point, which as far as I can tell still exists.

I suppose that in 2025 everyone who has thought about finance has had a third thought, which is "if I just buy a pot of Bitcoins will that make the otherwise normal thing that I am doing more exciting?" Like, if you run an enterprise software company, that's fine, whatever, but if you run an enterprise software company that also owns a bunch of Bitcoins, that is a capital markets revolution and will reliably get you a valuation that is many times the value of your pot of Bitcoins. So, whatever you are doing, you might as well buy a pot of Bitcoins too. This is not investment advice, but we have talked a [lot](#) about the [vogue](#) for [Bitcoin treasury companies](#) .

So the obvious move right now is something like "what if people could sell stock in themselves for Bitcoin," or "what if people could sell some of their home equity for Bitcoin." Two birds one stone etc. Here's a tweet from Joe Consorti, who runs a thing called Horizon:

Strategic leverage for bitcoin accumulation is the play.

The cost of capital to do this at an individual level via a HELOC or reverse mortgage, in addition to your mortgage payment, is way too much for most homeowners.

We've removed monthly payments, removed interest charges, and we're not even long the Bitcoin.

You get the Bitcoin right away, and by the way, there are no term limits.

Essentially, Horizon is a perpetual house-backed Bitcoin call option.

If you're betting that BTC (min. 24% 4yr CAGR) will outrun your home (avg. 4% national CAGR) over the next 5, 10, 20, 50 years, Horizon lets you arb that bet, without making any lifestyle changes.

It's essentially the Bitcoin Treasury Strategy at an individual level.

Near-term, we get every homeowner in America to stack bitcoin using their trapped home equity.

Long-term, we extract the monetary premium on real estate and siphon it into BTC.

That is: You have a house, you have \$100,000 of home equity, you sell 20% of the equity to Horizon, you use the \$20,000 to buy Bitcoins, and now you have diversified your "trapped home equity" into "stacking Bitcoin." Here is Horizon's website ("Transform Dormant Home Equity into Bitcoin.") As far as I can tell it's the standard way to structure this idea that you would come up with in your dorm room: They give you money for a fixed percentage of your home value, you make no payments, and you pay them back the same percentage when you sell or refinance. Amusingly Bitcoin has nothing to do with it; deep in the FAQ there's this:

Do I have to use the funds to buy Bitcoin?

No. While Horizon is designed to make it easy to invest a portion of your home equity in Bitcoin, how you ultimately use the funds is entirely up to you. There are no restrictions – once the funds are disbursed, they're yours to use as you choose.

Sure. "You can sell stock in your house" and "you can buy Bitcoin" are completely separate things, but there are only so many ideas in the world, and combining them in new ways can be good marketing.

I should say! We talked last month about the idea that people should [mortgage their retirement portfolios](#), in part because a lot of people really do have a lot of their net worth concentrated in undiversified home equity. "Sell some of your home equity to diversify into financial assets" is not a crazy pitch, though having a lot of your net worth concentrated in undiversified Bitcoin has its own issues.

Anyway, if you have started a company that lets people sell stock in themselves to buy Bitcoin, I guess let me know. Or don't honestly, it's fine.

Private credit continuation fund

Naively, the way a private equity fund works is that a sponsor raises money from limited partners, and then it uses their money to buy some companies, and then it spruces up those companies' operations and capital structures, and then when they are all spruced up it sells them for cash (to other buyers or to the public), and then it takes the cash and distributes it to the limited partners (minus fees). This whole process (buy, spruce, sell) takes a finite and pretty predictable amount of time: It would be weird for a private equity fund to hold a company for six months, or 15 years. So when the sponsor raises a fund, it can say to investors "we plan to give your money back within 10 years" or whatever, and the investors can plan on that.

And then the big story recently is that private equity funds have had a hard time selling their companies at prices they like, and the limited partners are getting antsy: They were expecting to get their money back already, and they haven't. The private equity industry has dealt with this problem in various ways, including borrowing money to pay out the limited partners, but particularly including "[continuation funds](#)," where the sponsor raises a new fund to buy companies from its old fund. This is controversial and sort of miscellaneously embarrassing, but it makes sense. The private equity holding period is longer than expected, so you need new fund structures to deal with it.

Naively, the way a private credit fund works is that a manager raises money from limited partners, and then it uses their money to make some loans (mostly to private equity buyouts), and those loans have fixed contractual terms, and as those loans get paid back, the money goes to the limited partners (minus fees). The whole process takes a finite and very predictable amount of time: If you do a five-year term loan, you pretty much get paid back in five years. So when the manager raises a fund, it can say to investors "we plan to give your money back within 10 years" or whatever, and the investors can *really* plan on that. The loans have fixed terms.

Or not! The Wall Street Journal reports:

Antares Capital has brought in Ares Management to help cash out investors in two older funds, forming one of several large private-credit continuation funds to hit the market in recent months.

Chicago-based Antares, which mainly extends loans to midsize businesses under private-equity ownership, raised over \$1.2 billion for a fund to acquire the holdings from investors that chose to sell their share of more than 100 outstanding loans, according to a joint statement.

Ares's secondary funds put up a majority of the capital with Antares also making a commitment to the continuation fund, according to the statement. Investment bank Evercore advised Antares on the process. ...

The use of continuation funds in the private-credit market has spiked in the past 18 months as managers look for ways to help fund backers, known as limited partners, monetize their illiquid investments.

The typical life of a private-credit fund has lengthened as private-equity managers extend the maturities of loans their portfolio companies have taken out rather than sell the companies. That has resulted in backers of those credit funds to remain invested for longer than anticipated.

I have to say, I didn't realize we were so far into the private-credit cycle that anyone would even need continuation funds. My impression was that the dollar-weighted average age of private credit funds was like six weeks.

Anyway I suppose the point here is that there is a category that is like "companies that are acquired by alternative asset managers' funds," whose capital structures consist of (1) equity owned by private equity funds and (2) debt owned by private credit funds. Technically the debt has a maturity and the equity doesn't, but practically they all have similar, finite, and somewhat flexible maturities: Everything kind of continues until the company gets sold, and if the company doesn't get sold everyone has to wait longer.

Cobol robot

Roughly once a week I get an email to the effect of "I asked ChatGPT to read your columns and then write about _____ in the style of Money Stuff," which is obviously a waste of time. What you should do is ask ChatGPT to read 200,000 lines of Cobol code written by Dave at Chemical Bank in 1973, which now underpin the entire US payments system, and which no one at any bank has understood since Dave passed away in 2005, and then have it rewrite the code in the style of Dave, but in Python, and with comments, so everyone else can read it. Morgan Stanley knows:

Morgan Stanley is now aiming artificial intelligence at one of enterprise software's biggest pain points, and one it said Big Tech hasn't quite nailed yet: helping rewrite old, outdated code into modern coding languages.

In January, the company rolled out a tool known as DevGen.AI, built in-house on OpenAI's GPT models. It can translate legacy code from languages like Cobol into plain English specs that developers can then use to rewrite it.

So far this year it's reviewed nine million lines of code, saving developers 280,000 hours, said Mike Pizzi, Morgan Stanley's global head of technology and operations. ...

But when it comes to full translation, the technology still has some room to mature, he said. It can technically rewrite code from an old language like Perl in a new one like Python, but it wouldn't necessarily know how to write it as efficient code that takes advantage of all Python's capabilities, he said. And that's one big reason humans are staying in the loop, he said.

I assume that approximately five people graduate from college each year with a degree in computer science (Cobol specialty), and then they immediately get hired at big banks at \$1 million a year to sit in Dave's seat and make sure nothing breaks. But now AI is coming for that very niche job.

Things happen

JPMorgan Hands [Lake](#) , Seen as a Contender to Succeed Dimon, More Responsibility. Trump's '[Revenge](#)' Tax Could See Dollar Dive 5%, Allianz CIO Says. Thoma Bravo's \$34 Billion Fundraising Haul Bucks Private-Equity Slowdown. Private credit could 'amplify' next financial crisis, study finds. At 10 AM, Stock Options Soar as [Retail Traders Unleash New Bots](#) . Meta to [Buy Nuclear Power](#) From Constellation as AI Demand Soars. Apple Challenges EU Order to Increase Compatibility with Rivals' Products. U.S. Scientists Warn That Trump's Cuts Will Set Off a Brain Drain. New spying claims emerge in Silicon Valley corporate espionage scandal. Doritos, M&Ms Could Be Forced to Include [Warning Labels](#) in Texas. Mongolian prime minister ousted after public anger over son's luxury lifestyle.

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- 1. Numbers as of March 31, from the balance sheets on page 58 of the Fannie Mae 10-Q and page 43 of the Freddie Mac 10-Q. Note that I count the senior preferred stock at its liquidation preference, not the amount on the face of the balance sheet. Pages 8-12 of the Fannie Mae 10-K explain the mechanics of the senior preferred, and page 12 explains the Treasury's common stock warrants, which have a strike price of

\$0.00001 per share; I just treat those warrants as common stock though they do not show up that way in all reports.

- 2. Numbers don't add due to rounding.
- 3. This eventually ends: When Fannie and Freddie are well-capitalized enough, the senior preferred claim will stop increasing by the same amount as their net worth, and will go back to increasing by the lesser of (1) the increase in their net worth or (2) 10% per year. But 10% of \$348.4 billion is still more than their net income last year, so that doesn't improve things much. Pages 8-12 of the Fannie Mae 10-K explain the mechanics of the senior preferred, including the accumulation of liquidation preference (page 10).
- 4. See pages F-56 and F-57 of Fannie's 10-K for discussion of the entities' capital requirements. I am very crudely multiplying 2.5% by their GAAP assets from their balance sheets to get \$194 billion of capital (\$108.8 billion and \$85.2 billion for Fannie and Freddie, respectively). Actual regulatory capital doesn't use the same accounting as the financial statements, but it's close enough for these purposes.
- 5. On my crude numbers (using 2.5% of GAAP assets) they'd need to raise about \$33.4 billion (\$10.5 billion for Fannie and \$22.8 billion for Freddie), though those numbers probably aren't good enough for *this* purpose. It's the right ballpark, though; back in December, Bill Ackman estimated a \$30 billion raise for an IPO at the end of 2026.
- 6. Simple math there is: Take the book equity from the 10-Qs (\$98.3 billion and \$62.4 billion for Fannie and Freddie, respectively) and subtract the face value of the preferred stock (*not* the government's senior preferred, but the regular preferred, also owned by investors). That gives you \$79.2 billion and \$48.3 billion, respectively, of common equity. Fannie and Freddie have 1,158 million and 650 million common shares outstanding, respectively, but that doesn't count the government's warrants; the "real" numbers are 5,762 million and 3,234 million (that is, the basic numbers times 100 divided by 20.1). Divide \$79.2 billion by 5,762 million and you get a book value of about \$13.74 for Fannie; divide \$48.3 billion by 3,234 million and you get a book value of about \$14.93 for Freddie. Very crude math! Again, back in December, Ackman estimated a \$34 "intrinsic value" per share for each of the companies in a 2026 IPO; presumably that's on an earnings basis rather than a book value basis.
- 7. I have linked a few times to the very fun No Dumb Ideas blog – he came up with the [lottery-ticket exchange-traded fund](#), for instance – and he published a version of this one just today.
- 8. Again, people in the Y Combinator demographic are more likely to be thinking about replacing student loans than about replacing mortgages.
- 9. This contrasts a bit with another model I have written about before, which is that private equity funds are stuck in a lot of investments and having a hard time raising money, while private credit funds are having a comically easy time raising money and are desperate for deals. So, I wrote, "the obvious synthesis of these two facts is 'the private equity funds should sell their companies to the private credit funds,'" though in practice the way to do that is for the private equity funds to *borrow* from the private credit funds – in dividend recap deals or I guess net asset value loans. That is a model in which private credit is growing and private equity isn't, so more of this category of alts-fund-owned companies should shift to private credit. The private-credit-continuation-fund model is one in which private credit and private equity are stuck in the same boat, so if one has trouble cashing out then so does the other.

Securities Law News

Accounting Fraud, Failed Audits Remain on SEC Enforcement Agenda

June 2, 2025, 12:06 PM PDT

Accounting fraud and audit failures remain fixtures of the SEC's enforcement agenda even as the Wall Street regulator shifts its priorities under the Trump administration and grapples with the fallout of a recent Supreme Court decision.

The Securities and Exchange Commission continues to focus on gatekeeper accountability, acting Chief Accountant Ryan Wolfe said to auditors and their lawyers at an American Law Institute conference Monday.

"A strong accounting profession that is acting as a force for good is completely consistent with the presence of a robust enforcement program focused on gatekeepers," Wolfe said. "Ethics and quality are worth defending."

Those gatekeepers include auditors but also corporate accountants and board members who oversee financial reporting, he said.

The commission is adjusting to new leadership and a new slate of priorities under Chair Paul Atkins, a Trump administration pick who has been on the job since late April. A 2024 high court ruling in *Jarkesy v. SEC* has limited the SEC's use of its in-house judges, forcing the regulator to bring more cases in district court and rethink any penalties it pursues.

Congress, meanwhile, has pitched a plan to eliminate a separate audit regulator, handing oversight of the industry entirely to the SEC.

The commission won't second-guess auditor judgment, but if auditors don't do their job or undermine the audit, the SEC would pursue a case, said Hester Peirce, a Republican commissioner, who spoke at the same event and also addressed the new administration's change in approach.

"You have a job to do and we expect you to do that job well," Peirce said. "That certainly won't change."

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

Securities Law News

Embattled Audit Board Pushes for Greater Dialogue with Industry

June 2, 2025, 2:58 PM PDT

The US audit board, facing a closure threat in Congress, invited auditors Monday to reach out to staff on practice issues ranging from fixing inspection violations to preparing for new firm governance rules to enforcement.

“Starting the dialogue early and often is critical,” Kathleen McGovern, chief litigation counsel for the Public Company Accounting Oversight Board’s enforcement division, told auditors and their lawyers at an American Law Institute conference on Monday. “It’s just better for everybody.”

A House budget measure would sunset the PCAOB and its funding source, reassigning auditor oversight to the Securities and Exchange Commission. The board’s possible dismantling has sparked calls for reforms in how it oversees the work of auditors from inspections to enforcement as well as calls for greater transparency.

Over the past year the board has ramped up outreach to firms with a steady stream of guidance to help them prepare for new rules plus workshops and events targeted for small firms.

Board staff have fielded questions and offered feedback to firms as they prepare to adopt new rules for how to manage routine risks in their practice, said Timothy Sikes, the board’s chief of firm inspections.

Staff are also available to consult with as firms work to correct weaknesses in their existing safeguards known as quality controls. “We have firms that engage with us on a very frequent basis and we welcome that,” Sikes said.

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<https://www.wsj.com/finance/currencies/bitcoin-goes-all-in-on-maga-shedding-its-antigovernment-slant-2f1bb3d0>

Bitcoin Goes All In on MAGA, Shedding Its Antigovernment Slant

Despite wins under Trump, some crypto factions are wary of politicizing industry; Las Vegas extravaganza becomes ‘a right-wing rally’

By [Kevin T. Dugan](#) [Follow](#), [Vicky Ge Huang](#) [Follow](#) and [Caitlin Ostroff](#) [Follow](#) | Photographs by Roger Kisby for WSJ

June 2, 2025 2:53 pm ET

LAS VEGAS—The cryptocurrency world was once the province of libertarians who kept their distance from the government. These days, it is in the midst of an all-out MAGA takeover.

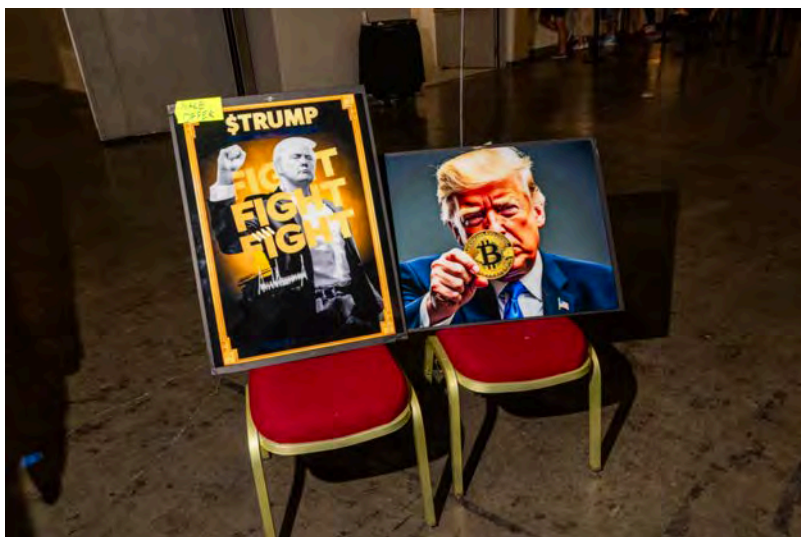
Take the scene at the industry’s flagship event in Las Vegas last week. Star speakers at the Bitcoin Conference included a parade of Trump officials and Washington allies. Crypto boosters including billionaire bitcoin evangelist Michael Saylor got a private audience with Vice President [JD Vance](#) to push their favored policies.

A retail store hawked Trump hats, bobbleheads, martini glasses and sequined shirts. Two Tesla Cybertrucks were wrapped in orange, bitcoin’s unofficial color. A felon pardoned by Trump was feted at a “welcome back” party that cost \$300 per person.

“The Bitcoin Conference right now is basically a right-wing rally,” said Richard Scotford, a 53-year-old bitcoin owner who lives in Costa Rica. He said being enamored with powerful people is “against the ethos of bitcoin.”

The industry, a realm of outsiders who have long clamored for legitimacy, has never had a friendlier U.S. regime in power. President [Trump](#) raised millions from crypto executives and is delivering a lot of what the industry craved, [dropping Biden-era lawsuits against crypto companies](#) and backing legislation to bring digital tokens into the financial mainstream.

Despite the winning streak, Trump’s fervent embrace is causing discomfort to some factions of the crypto world, including a wing that has argued since bitcoin’s early days that cozying up to any government is a bad idea.



Eric Trump and Donald Trump Jr. speak during the Bitcoin Conference. Artwork advertising Trump's memecoin.

Even some of the president's supporters say they have cringed at the [Trump family's push into every corner of the business](#), from bitcoin buying to mining to memecoins. Such moves might raise crypto's profile, but they also create substantial conflicts of interest and could jeopardize the industry's push for widespread acceptance, the critics say.

Some early bitcoin stalwarts are wary of the government entering the market. Patrick Murck, who spent years trying to establish the industry's legitimacy as co-founder of the Bitcoin Foundation, warned that Trump's plan to create a national strategic reserve for bitcoin could be counterproductive.

"It's supposed to be an apolitical, value-neutral network," he said. "If people believe that the U.S. government has a very large stake in its success, I don't know how people will feel about that in other parts of the world."

Crypto's comeback wasn't a given. Things looked promising a few years ago when entrepreneur Sam Bankman-Fried, schlubby attire notwithstanding, turned the exchange FTX into a phenomenon worthy of naming rights for a Miami arena and a Super Bowl ad starring Larry David. That gave way to the [scandalous FTX collapse in 2022](#), criminal prosecutions—Bankman-Fried was sentenced to 25 years in prison on fraud charges—and ramped-up regulatory scrutiny.

The mood is decidedly different now. Bitcoin is trading near record highs. The industry is optimistic that with Trump's backing, [legislation to create a regulatory framework for stablecoins](#)—tokens that are pegged to real currencies such as the dollar—will accelerate the mainstreaming of crypto.

Big banks including [JPMorgan Chase](#), [Bank of America](#) and [Citigroup](#) are exploring whether to [issue their own joint stablecoin](#), The Wall Street Journal reported. New Labor Department guidance could make it easier to bring cryptocurrency into 401(k) plans.

Time with the veep

As the conference showed, crypto's elite executives are hardly outsiders—they are the ultimate Washington insiders. In a ballroom on the third floor of the Venetian Hotel, past 20 security guards and three dividers, bitcoin enthusiasts pitched Vance in an intimate, hourlong private meeting.

Saylor, the executive chairman of Strategy, a software company that has made stocking up on bitcoin the centerpiece of its business, advocated for tax leniency for bitcoin miners, who perform the complex computational feats needed to unlock units of the currency, according to people familiar with their exchange.

Saylor argued that miners should only pay taxes on sales of tokens. He likened the status quo to if a movie studio had to pay taxes on a script based on the prediction that it would be a blockbuster.



Trump merchandise on sale at the Bitcoin Conference. Michael Saylor, co-founder and executive chairman of Strategy, is interviewed in front of a crowd.

The event was organized by Gemini, a crypto exchange controlled by the Winklevoss twins, of Facebook-founding lore. Namecards seen by a Journal reporter bore the logo for MAGA Inc., a pro-Trump super PAC. [Donald Trump Jr.](#) and White House crypto adviser David Sacks were among other people at the event. Sam Kazemian, the founder of stablecoin company Frax, pitched the ability for taxpayers to use dollar-pegged tokens to pay taxes.

Vance didn't indicate what he might do, but spoke about the need to make the industry more legitimate, said three people who were there.

‘No conflict of interest’

Last year, Trump used the Bitcoin Conference to declare himself a major industry ally. By this year's event, he and his family were part of the industry.

[Trump Media & Technology Group](#), the president's social-media company, announced plans to [raise \\$2.5 billion](#) to buy bitcoin, mimicking the playbook of Strategy's Saylor. That would give the Trumps control over one of the largest private bitcoin stashes.

"It is the hottest asset on Earth, hands down, not even close right now," said Eric Trump, one of the president's sons. "There is no conflict of interest. I have nothing to do with Washington, D.C."

"The very same people that were coming after the crypto community were coming after us viciously, for no reason whatsoever," the younger Trump said, "and it brought an industry and our family, quite frankly, together."



Eric Trump, at the Encore Hotel and Casino last week in Las Vegas.

Backers of a national bitcoin reserve say it would lend the prestige of the U.S. government to the currency. "It's a good thing, because the more people know about bitcoin, obviously, the higher the value is going to be," T.J. Slingby, who works for a crypto advocacy group in California, said of the administration's support of bitcoin.

A Trump family-controlled venture, World Liberty Financial, has also launched a stablecoin that would be affected directly by legislation that is advancing in Congress.

Tina Mataia, a former telecom worker from New Zealand, has been into bitcoin for five years and came to the conference for the first time, drawn by Trump's political message of antiwokeness. She is troubled by Trump's own foray into crypto coins. The top holders of Trump's memecoin recently were invited to [dinner with the president](#), drawing criticism from Democrats and government watchdog groups.

"I'd not buy it, even though I respect the man," Mataia said.

‘We do live in the real world’

Bitcoin was championed in its early days by libertarian idealists who dreamed of a currency that was totally private and secure, outside the reach of governments and financial institutions.

Earlier conferences were concerned with the finer details of money and personal liberty, and were attended by more paranoid types, said bitcoin developer Tadge Dryja. “We were like, ‘Well, are they gonna bomb this place and kill us all because they want to destroy bitcoin?’” he said.

Eventually, a more pragmatic approach took hold, one that sees joining with governments and financial institutions as the way to make bitcoin valuable in daily life—as a store of value, or a way to buy things.

“As much as the early adherents to bitcoin were libertarians that imagined it could exist in its own world, we do live in the real world,” said Dan Morehead, the CEO of Pantera Capital, a cryptocurrency-focused investment firm. “And the real world has regulators and the government will be involved.”

A free man

The MAGA impact on crypto land was on display with the celebration of Ross Ulbricht, the founder of Silk Road, a market for illicit drugs that used bitcoin as payment for transactions.



Ross Ulbricht, founder of Silk Road, speaks during the Bitcoin Conference. Clothes Ulbricht wore while he was behind bars were auctioned, along with his prison ID and paintings he made when he was an inmate.

In January, Trump granted Ulbricht a full pardon of his [conviction](#) on drug-trafficking charges, saying his life sentence was too harsh. During Ulbricht's 2015 trial, prosecutors said Ulbricht had ordered the assassinations of six people, which he denied. There was no evidence anyone was killed.

"He said he would free me, and he did. Period. He's a man of integrity," Ulbricht said in his conference remarks. The conference also held an auction for clothes Ulbricht wore while incarcerated, as well as his prison ID and paintings he made while in custody.

One painting sold for more than a bitcoin, or about \$105,000.

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Jeffrey Goodman: Opening Avenues to Hold Social Media Companies Accountable



law.com/thelegalintelligencer/2025/06/03/jeffrey-goodman-opening-avenues-to-hold-social-media-companies-accountable

Aleeza Furman

June 3, 2025

Plaintiffs trying to sue social media companies have historically run into a major obstacle: Section 230 of the federal Communications Decency Act.

For a long time, social media companies successfully used Section 230 to argue that they could not be held liable for any content users post to their platforms.

But last year, a landmark ruling from the U.S. Court of Appeals for the Third Circuit blew a hole in the defense that had so often protected those companies.

Leading the plaintiffs team in that case was Jeffrey Goodman, a partner at Saltz Mongeluzzi Bendesky and a finalist for The Legal Intelligencer's 2025 Attorney of the Year award.

Goodman said the ruling, in a case captioned *Anderson v. TikTok*, marked the clearest statement yet on how Section 230 applies in an era where social media companies employ algorithms to serve up content to users. And the Third Circuit's interpretation removed a long-standing barrier to holding those companies liable.

"For 30 years, Section 230 has been the impenetrable shield that social media companies have hidden behind to protect them from accountability for what is oftentimes really outrageous conduct," Goodman asserted. "Through the *Anderson* case, we have very much undermined that protection if not completely taken it away."

In its August 2024 *Anderson* ruling, the Third Circuit held that, while Section 230 generally immunizes online platforms from liability for content posted by third parties, it does not protect social media companies from allegations that their platforms actively promote harmful content.

The ruling allowed Goodman's client, Tawainna Anderson, to move forward with her claims that TikTok promoted dangerous content to minors through its video-suggestion algorithm.

Anderson claimed her 10-year-old daughter died attempting a viral stunt called the "Blackout Challenge," in which participants choke themselves until they pass out. She alleged that her daughter saw videos of the challenge on TikTok's "For You Page," a feed of algorithmically recommended videos tailored to the user.

Goodman said he knew when he took on the case that Section 230 posed a significant road block. In fact, he said, that was the point.

“We always saw the defining moments of the *Anderson* case being legal-based and decided in the appellate courts, as opposed to decided by a jury,” Goodman recalled. He said the plaintiffs team developed the case with the expectation that it would end up before the Third Circuit and possibly even the U.S. Supreme Court (TikTok ultimately did not seek to appeal the Third Circuit's ruling).

The focus on legal issues set *Anderson* apart from some of Goodman's other recent courtroom victories, of which there have been plenty. Also in 2024, Goodman won a \$6.1 million construction injury verdict, a \$68.5 million wrongful death verdict, and a \$15 million premises liability verdict.

Goodman said that, while every case he handles has dramatic consequences for the specific client, the *Anderson* case has broader ramifications.

“The impact of this case is far more important than just a jury verdict in favor of one particular client,” Goodman asserted. According to Goodman, the Third Circuit's ruling defined how social media companies can be held liable for wrongdoing.

Goodman contended that *Anderson* “fundamentally will help make social media a safer place for children. And for all of us.”

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Trending

New Suit - Copyright

Art Ask Agency filed a copyright infringement lawsuit on June 3 in Illinois Northern District Court. The suit, filed by Hughes Socol Piers Resnick & Dym, takes aim at e-commerce operators over the allegedly unauthorized sale of products featuring the artwork of Anne Stokes, for which the plaintiff is the exclusive licensee. The case is



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RBC Client Claims Billions Swept Into Low-Yield Accounts

By **Katryna Perera**

Law360 (June 2, 2025, 8:12 PM EDT) -- A new suit filed in New York federal court has alleged the Royal Bank of Canada and RBC Capital Markets ran a cash-sweep program that funneled billions of dollars into affiliated banks while paying clients as little as 0.01% interest.

Regis Moeller, who held an individual retirement account with RBC during the relevant period, **filed a complaint** Friday against RBC and RBC Capital Markets, alleging that the idle cash that was held in his account with RBC was swept into other banks the defendants selected at their discretion, with unreasonably low interest rates.

Moeller's individual retirement account was enrolled in RBC's insured deposit program, which provides a cash sweep program, according to the complaint. Under this program, the bank sweeps "idle" cash into interest-bearing deposit accounts at other banks selected by and affiliated with the defendants.

According to the complaint, the suit is on behalf of a proposed class of customers who had cash deposits or balances in the insured deposit program.

Moeller said "idle cash" often includes cash from deposits, dividends and proceeds from securities sales. Cash sweep services provide financial institutions with a low-cost source of cash for traditional lending activities and maximizing revenue, according to the complaint.

Banks earn revenue from cash sweep services because the profits they earn from swept funds are often significantly higher than the interest rates paid to customers, according to the complaint.

For example, the "program banks" that RBC often swept idle cash into paid the Canada-headquartered bank fees based on the number of deposit accounts and amount of customer cash swept into the deposit accounts, the complaint states.

However, Moeller alleged the cash sweep accounts used by the defendants and their affiliated banks paid unreasonably low, below-market interest rates to customers, "by a variety of objective measures," and that the defendants and the program banks worked together to set the rates.

This meant that the defendants were using their insured deposit program to generate "massive" revenue at the expense of customers, Moeller added.

"For example, between 2020-2021, the interest rate across all segments in the [insured deposit program] was nearly zero at 0.01%. However, the average federal funds effective rate was 0.37% in 2020 and 0.08% in 2021 — 37 times higher than the IDP's rate in 2020 and 8 times higher than the IDP's rate in 2021, respectively," Moeller said.

"And, while the effective federal funds rate increased dramatically from nearly zero in 2022 to as much as 5.33% in 2023, the highest in nearly two decades, rates within the IDP remained under 1% for individuals with less than \$250,000 in cash deposits," the bank customer added.

In paying customers such low interest rates, Moeller claimed, the defendants breached several contractual obligations to customers since the defendants owed duties of care and loyalty under the insured deposit program.

"RBC CM violated these duties when it acted in bad faith and abused its discretion by paying customers unreasonable sweep interest rates that were well below several objective benchmarks," Moeller said.

Additionally, the complaint alleges the defendants made material misrepresentations and omissions related to the insured deposit program, including that the program was being used to enrich the defendants at the expense of customers.

More specifically, Moeller noted several account agreements entered into by RBC customers misleadingly stated that the interest rates customers receive on their funds under the insured deposit program "may be higher or lower than the interest rates available on other deposit accounts offered by a program bank or on deposit accounts offered by other depository institutions."

Moeller said these statements were misleading because, in reality, interest rates in the insured deposit program were "always significantly below market alternatives, as defendants knew."

"Defendants also falsely claimed that '[t]his program [IDP] makes it easy' for customers 'to enjoy' among other things, the 'advantage[]' to '[e]arn competitive interest rates,'" Moeller said. "This statement was misleading ... because, in reality, interest rates in the IDP were not competitive compared to several objective benchmarks such as the federal funds rate or RBC CM's competitors' sweep program rates ... as defendants knew."

The suit seeks damages, attorney fees, rescission of the insured deposit program documents, restitution and a jury trial.

Other banks to get sued over their cash sweep programs recently include PNC, Wells Fargo, Bank of America, Morgan Stanley and UBS.

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

Moeller is represented by Stephen R. Astley, Andrew T. Rees, Scott I. Dion, Alex Kaplan and Rene A. Gonzalez of Robbins Geller Rudman & Dowd LLP, David Boies, Alexander Boies, Marc V. Ayala and Jack Wilson of Boies Schiller Flexner LLP, and Alfred G. Yates Jr. of the Law Office of Alfred G. Yates Jr. PC.

Counsel information for the defendants was not immediately available.

The case is Moeller v. Royal Bank of Canada et al., case number 1:25-cv-04512, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.



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Report Finds Del. Court Jumbo Fees Rival Federal System

By **Jeff Montgomery**

Law360 (June 2, 2025, 4:57 PM EDT) -- Delaware's corporation law courts have overshadowed the entire federal court system for some class attorney fees based on multiples of usual rate benchmarks, according to two Stanford Law School researchers whose findings have already caught the attention of a top state lawmaker.

Professor Joseph A. Grundfest and researcher Gal Dor with Stanford's Rock Center for Corporate Governance found that Delaware almost matched the federal court system for the number of awards with fees seven times or more above the firm's reasonable "lodestar" hours and hourly rate level.

Delaware's courts recorded 87% of the federal "septuple" level, but also produced nearly three times the number of awards that paid 10 or more times the lodestar in federal cases, according to the report. Most of the largest awards, the report said, have occurred in the last five years, with two Delaware jurists, not identified, accounting for most of the fees.

"This has been an area where arguably there's been more heat than light," Grundfest said by phone Monday. "People have been arguing about fees, but they haven't had much data where you collect, in a systematic manner, whatever it is we know about Delaware and federal fees."

Grundfest said the data was prepared in a fully transparent process, adding: "What I've done is collect the information and put out two databases." He added that the process was "very different from many other academic studies. We've actually fully disclosed our database."

Corporate bar unrest over Delaware class damage and fee awards already has prompted major amendments to Delaware's General Corporation Law in 2024 and 2025. Lawmakers in both cases adopted corporate-bar-drafted measures, while in the background rumblings of corporate redomestications produced a new term, "DExit."

Among the recent legislative changes was a measure in 2024 allowing corporations to **cede some governance rights** to big stockholders. A broader bill **signed into law** in March eased restrictions on some conflicted corporate acts and limited some stockholder document inspection demands.

Joel Fleming, a partner in plaintiff-side Equity Litigation Group LLP, described the Rock Center analysis on Monday as based on flawed data.

"I think it's clear to folks who have been following this space," Fleming said. "This is an advocacy piece from the same sort of pro-founder, Silicon Valley folk who have been attacking the Delaware courts," particularly Chancellor Kathaleen St. J. McCormick and Vice Chancellor J. Travis Laster of Chancery Court.

In an earlier LinkedIn post, Fleming described the Rock Center report as "so flawed as to be useless" and a product of the "controller caucus" that inaccurately mingles large fees awarded in megafund damages cases and small fees awarded in expedited governance cases.

According to a footnote in the Grundfest paper, Democratic Majority Leader Bryan Townsend of the Delaware Senate, an attorney with Morris James LLP, asked the authors to forward a copy to the state's corporate law council.

"Sen. Townsend did the right thing. If nothing else, the data confirms the importance of [the] study," Lawrence A. Hamermesh, professor emeritus and the former Ruby R. Vale professor of corporate and business law at Widener University Delaware Law School, said in an email when asked about the study's referral to the corporate bar.

Townsend could not immediately be reached for comment on Monday.

Brian JM Quinn, professor at Boston College Law School, who recently described Delaware's legislative processes regarding corporations as in disarray, said on Monday: "It's not really worthy of a comment. I think if you look at Grundfest's paper side by side with attorney Joel Fleming's response, there isn't really much to say."

On Thursday, Quinn said: "Things really started coming off the rails last summer with S.B. 313. This year the entire process was hijacked by the legislature and the normal process was discarded. The result is an ill-conceived amendment drafted by three people that was basically immune to changes during the process."

S.B. 313 took aim at a Court of Chancery ruling last year that struck down a company charter amendment ceding some corporate governance rights to the business' founder.

The decision by Vice Chancellor Laster concluded that some company agreements giving big stockholders board-trumping power are facially invalid in the absence of a charter amendment and awarded class attorneys a \$6 million fee, listed in the report as 15.2 times the lodestars of the winning firms.

Two Court of Chancery jurists issued 11 of Delaware's 20 septuples, and nine of its 14 decuples, the report said. The same two jurists, said by Quinn to be Chancellor McCormick and Vice Chancellor Laster, authored eight of Delaware's 13 septuples and six of eight decuples in the last five years, the study said.

Grundfest's report noted that Chancellor McCormick had once asserted that a multiple to lodestar of seven times "would not raise a federal eyebrow." A state Supreme Court ruling separately concluded that multipliers of seven, while high, are "not so unusual that we are required to undo [Chancery's] thorough consideration" of required factors going into decisions.

"These are testable propositions. We estimate that multipliers of seven arise in approximately 23 one-hundredths of one percent of federal class action fee awards," the Grundfest report said. "Readers can decide for themselves whether awards of this frequency might 'raise the federal eyebrow' or are 'unusual.'"

--Editing by Robert Rudinger.



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Alphabet Pledges \$500M To Boost Compliance In Investor Suit

By **Sarah Jarvis**

Law360 (June 2, 2025, 10:10 PM EDT) -- Google's parent company, Alphabet Inc., has agreed to earmark half a billion dollars over the next 10 years to overhaul the tech giant's global compliance structure, according to two institutional investors that sued the company's leaders over allegations of anticompetitive and monopolistic business practices.

The co-lead plaintiffs for the consolidated shareholder litigation — the Police and Fire Retirement System of the City of Detroit and Bucks County Employees' Retirement System — filed an unopposed **motion** for preliminary approval of settlement Friday, saying the deal requires the company to "completely revamp and rebuild its global compliance structure, both at the board and executive level."

"The settlement will transform the regulatory and compliance environment at Google, and will provide incalculable benefits to the company and its shareholders in the years to come," the shareholders said.

Patrick Coughlin of Scott + Scott Attorneys at Law LLP, counsel for the plaintiffs, praised the deal for addressing what he said were shortcomings with Google's corporate governance and regulatory compliance. He said Monday that he thinks the \$500 million fund is the largest created in a derivative case.

Counsel for the Alphabet executives declined to comment. The individual defendants — who include the controlling shareholders, senior executives and board of directors of Alphabet — deny the plaintiffs' allegations of wrongdoing and liability, according to the motion.

The shareholders noted in Friday's motion that the \$500 million fund agreement was reached after "quite challenging negotiations," and that the price tag "should ensure that the well-designed new regulatory-compliance enhancements are implemented fully."

Alphabet has also agreed to shift regulatory oversight matters from its board's audit and compliance committee to a newly created risk and compliance committee. Such a committee is rare among major public companies, the motion said, and the move may spur other tech companies to follow suit.

The company further agreed to implement "advanced, elaborate internal compliance mechanisms" that it has already designed.

Those mechanisms include a new senior vice president-level committee to handle regulatory and compliance issues; a rank-and-file executive-level compliance committee consisting of internal compliance experts and managers from each of Alphabet's product teams; and a slate of corporate reforms covering risk assessment, legal advising, third-party contracts and compliance program management, among other things.

And Alphabet has agreed to implement policies to preserve communications that were previously ephemeral, "so that compliance with the various measures created by this settlement can be monitored and enforced," according to the motion.

The investors urged the U.S. District Court for the Northern District of California to preliminarily

approve the deal, saying it "provides significant and material benefit to Alphabet, was reached after intensive arm's-length negotiations between experienced and informed counsel on both sides, and is well within the range of what might be approved as fair, reasonable and adequate at a final approval hearing."

The retirement systems had **accused** Alphabet of systematic anticompetitive behavior across several core business operations, including advertising, searching and Google Play services. The company's conduct exposed it to antitrust investigations and enforcement actions from the U.S. Department of Justice, state attorneys general, the House of Representatives, foreign authorities and private litigation, per the motion.

The most recent version of the complaint in the consolidated case included counts of breach of fiduciary duty, unjust enrichment and corporate waste. The investors had sought unspecified damages plus pre- and post-judgment interest, restitution, disgorgement and reforms to Alphabet's corporate governance practices and internal control systems.

The retirement systems are represented by Patrick Coughlin, Maxwell R. Huffman, Geoffrey M. Johnson, Donald A. Broggi and Jing-Li Yu of Scott + Scott Attorneys at Law LLP.

The Bucks County Employees' Retirement System is additionally represented by Michael J. Boni and Joshua D. Snyder of Boni Zack & Snyder LLC.

Alphabet's executives are represented by Boris Feldman, Doru Gavril and Rebecca Lockert of Freshfields US LLP.

The case is In re; Alphabet Inc. Shareholder Derivative Litigation, case number 3:21-cv-09388, in the U.S. District Court for the Northern District of California.

--Editing by Karin Roberts.

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Rocket Cos. Board Beats Investor's \$500M Insider Trading Suit

By **Katryna Perera**

Law360 (June 2, 2025, 10:49 PM EDT) -- Delaware's Court of Chancery on Monday dismissed a derivative shareholder suit accusing Rocket Companies Inc.'s board, chairman and controlling stockholder of breaching their fiduciary duties by liquidating \$500 million worth of stock allegedly based on material nonpublic information, saying the plaintiffs have failed to show a motive.

Chancellor Kathaleen St. J. McCormick issued a post-trial memorandum **opinion** saying the shareholders heavily rely on timing to prove motive and make their case, but that timing actually does not support their claims.

The suit alleged that Rocket's board chairman, Daniel Gilbert, and majority stockholder Rock Holdings Inc., which Gilbert controls, intentionally sold Rocket stock before the company released a negative business outlook that led the stock price to drop by 17% in May 2021.

Gilbert is the founder of Rocket Mortgage, an online mortgage platform that is the largest mortgage lender in the U.S. Also the founder of Quicken Loans, Gilbert serves as Rocket's board chairman and controls more than 80% of the voting power of Rocket's outstanding stock, according to the complaint. Rock Holdings was Rocket's sole stockholder before the mortgage platform **went public** in August 2020.

According to Monday's opinion, the stock sale at issue in the suit was led by Rocket's then-CEO Jay Farner and Rock Ventures's Chief Investment Officer, Scott Elkins. Rock Ventures "manages, oversees, and provides professional services for the Rocket family of companies," the complaint states.

The shareholders claim the defendants were motivated to sell the stock based on a March 9, 2021, "compass report" that included financial forecasts and a management report given to the board on March 23 stating that the following quarter's earnings would fall short of expectations.

However, Chancellor McCormick said Monday that the "timeline" does not show that Farner or Elkins were motivated to sell the stock by either the report or the board presentation.

"Rather, [the timeline] reflects that Farner and Elkins put the wheels in motion when the trading window opened on March 1, prepared to 'pull the trigger' mid-way through the trading window when the stock price started to rise, sought formal approval mid-way through the window, and involved internal counsel, external counsel, and the independent audit committee members in a sale process with a documented paper trail," the opinion states.

But then, after Farner received the March 9 report and the March 23 board presentation, he "put the brakes on the sale because the stock was not trading at his desired target," the opinion states, and the sale did not occur until after the market responded to the collapse of the hedge fund Archegos Capital Management on March 26.

After the Archegos collapse, Farner and Elkins were confident that Rocket's trading price would support the sale price they were targeting, and the sale was approved on March 29, the chancellor said.

According to the opinion, the shareholders argue that the March 23 board presentation was the

ultimate motivator for Farner to sell on March 29, but the chancellor rejected this theory since Farner still waited a few days after the presentation to sell.

"Farner declined to sell in the following days, waiting for a fortuitous change in the stock price a week later caused by a hedge fund's collapse," the opinion states.

Chancellor McCormick also rejected the shareholders' argument that Gilbert's planned \$500 million charitable donation from the sale to the city of Detroit was a motivator.

"The statement in the Form 4 disclosing that Gilbert' plans to use his portion of the proceeds to help fund his recently announced \$500 million commitment to revitalizing Detroit neighborhoods' was true and 'accurately reflected [his] plan,'" the opinion states. "It is true that Gilbert's charitable commitment was a negligible factor motivating the sale, but that is a non sequitur."

"The stock sale was a long-contemplated continuation of the [initial public offering] process and intended to provide liquidity to Rocket's operating subsidiaries if needed," the opinion further states.

Finally, the chancellor noted that Farner personally held 204,000 shares of Rocket stock, worth roughly \$5 million, and he did not sell any of his shares during the relevant period.

"Farner's Rocket stock declined in value by nearly \$800,000 when Rocket's stock price fell on May 6, 2021. If Farner was motivated by material, nonpublic information to trade before the stock price fell in May, one would think he would have attempted to save himself \$800,000," the opinion states.

"Plaintiffs respond that Farner's decision not to sell is irrelevant because, unlike Farner, [Rock Holdings] needed to make up for the IPO shortfall. But it is hard to view a \$800,000 drop in personal wealth as irrelevant," the opinion further states.

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

The shareholders are represented by Michael J. Barry, Christine M. Mackintosh, Vivek Upadhyia and Jonathan C. Millis of Grant & Eisenhofer PA, Jeffery S. Abraham and Michael J. Klein of Abraham Fruchter & Twersky LLP, Lee Squitieri of Squitieri & Fearon LLP, James S. Notis and Jennifer Sarnelli of Gardy & Notis LLP, and Fletcher Moore and Justin Kuehn of Moore Kuehn LLP.

The defendants are represented by William M. Lafferty and Ryan D. Stottmann of Morris Nichols Arsht & Tunnell LLP, Elena C. Norman of Young Conaway Stargatt & Taylor, and Sharon L. Nelles, Jeffrey T. Scott and Julia A. Malkina of Sullivan & Cromwell LLP.

The case is In Re Rocket Companies Inc., case number 2021-1021, in the Court of Chancery of the State of Delaware.

--Editing by Vaqas Asghar.



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Hatteras Hedge Fund Looks To Take Investor Suit Federal

By **Craig Clough**

Law360 (June 2, 2025, 11:10 PM EDT) -- Hedge fund Hatteras Investment Partners LP and its CEO on Friday sought to remove to Delaware federal court allegations that a \$300 million asset swap wiped out shareholder value, arguing the size of the alleged damages and other factors all satisfy federal jurisdiction.

Hatteras and CEO David B. Perkins argued the proposed class action has over 100 investors, minimal diversity and alleged losses over \$5 million, which all meet the federal jurisdiction standards under the Class Action Fairness Act, or CAFA.

"CAFA has two mandatory exceptions and one discretionary exception. No exceptions apply here," the defendants said.

The local controversy exception requires a plaintiff to show that more than two-thirds of the putative class are citizens where the original complaint was filed, and that the principal injuries occurred in that state, among other things, the defendants argued.

"Here, however, the allegations in the amended complaint do not reflect that a majority of putative class members are residents of the state of Delaware," the filing alleged. "To the contrary, plaintiffs allege that the putative class members are 'located in different jurisdictions across the United States.' For the same reason, there is no reason to believe the 'principal injuries' occurred in Delaware. Thus, the local controversy exception does not apply."

According to the filing by the removing defendants Hatteras and Perkins, the president and CEO of Hatteras, the original complaint was filed in April in Delaware Chancery Court and was amended in May, with other defendants including members of the board of directors.

The suit alleges that in 2021, the defendants approved a liquidation plan of the hedge fund's master fund and the core alternatives funds, with the buyer being The Beneficient Co.

"Beneficient had no viable revenue projections or cash available on its balance sheet at the time defendants made the decision to exchange the investors' holdings in the Hatteras funds for Beneficient shares," the complaint alleged, adding that when Beneficient went public in 2023, it wasn't as an initial public offering as expected, but as a SPAC merger business combination with Avalon Acquisition Inc.

"Rather, the supposed value of Beneficient primarily consisted of \$2,700,000,000 in 'good will,'" the plaintiffs said. "Despite the foregoing, defendants moved forward with exchanging the investors' holdings in the Hatteras funds for Beneficient shares. Those shares are now effectively worthless."

Shortly after the merger, Beneficient's stock "s," and at the time of the filing was worth \$.078 per share, according to the complaint, which brought a claim for breach of fiduciary duty.

"Defendants have admitted, through the chairman of the board of directors, David B. Perkins, that defendants did not conduct proper due diligence prior to approving the transaction with Beneficient that resulted in the exchange of the investors' holdings in the Hatteras funds for Beneficient shares," the plaintiffs alleged. "Indeed, an investigation into Beneficient would have revealed numerous facts and circumstances that would have strongly cautioned against the Hatteras' December 7, 2021

transaction with Beneficient."

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

The plaintiffs are represented by William M. Alleman Jr. of Meluney Alleman & Spence LLC.

Hatteras Investment Partners LP and Perkins are represented by Elena C. Norman, Richard J. Thomas, Robert M. Vrana and Rodney Square of Young Conaway Stargatt & Taylor LLP and Melanie B. Dubis, Corri A. Hopkins of Parker Poe Adams & Bernstein LLP.

Counsel information for the other defendants was not immediately available.

The case is John David Miley et al. v. Hatteras Investment Partners LP et al., case number 1:25-cv-00672, in the U.S. District Court for the District of Delaware.

--Editing by Dave Trumbore.

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9th Circ. Sends Express Scripts Opioid Case To State Court

By **Bonnie Eslinger**

Law360 (June 2, 2025, 9:36 PM EDT) -- The Ninth Circuit sent California's public nuisance lawsuit against Express Scripts and OptumRx over opioid dispensing back to state court Monday and denied the pharmacy benefit managers' bid to stay the remand pending appeal, saying the U.S. Supreme Court's 2009 *Nken* decision controls, not its later *Coinbase* ruling.

In a **published opinion** penned by U.S. Chief Circuit Judge Mary H. Murguia, the three-judge panel acknowledged that since the Supreme Court's **2023 decision** in *Coinbase, Inc. v. Bielski* , which found that interlocutory appeals of denials of motions to compel arbitration result in automatic stays of district court litigation, "some uncertainty has arisen as to whether that holding applies in other contexts."

Express Scripts and OptumRx had argued to the court that the logic used in the *Coinbase* ruling should extend to cases removed from federal court. The appellate panel disagreed, pointing to the U.S. Supreme Court's 2009 decision in ,  outlining the factors that determine whether stays are warranted.

Monday's decision notes that the *Coinbase* ruling relied on the Supreme Court's 1982 decision in *Griggs v. Provident Consumer Discount Co* , which held that an "appeal, including an interlocutory appeal, 'divests the district court of its control over those aspects of the case involved in the appeal.'"

Because the question on appeal is whether the case belongs in federal or state court, Express Scripts and OptumRx said the entire case is essentially involved in the appeal.

"We disagree," the Ninth Circuit panel said. "*Coinbase* read in conjunction with relevant Supreme Court precedent counsels in favor of limiting the *Coinbase* holding to the arbitration context."

The need to respect the jurisdiction of state courts and the limits of federal court jurisdiction don't fall into play in the arbitration context, the Ninth Circuit said.

In addition, "automatic stays of federal officer removal appeals could lead to improper delay tactics and do harm to principles of judicial efficiency," the judges said.

The Ninth Circuit underscored that point in the opinion, saying a defendant seeking to delay discovery could craft an argument for federal officer removal then appeal a district court's remand order.

"This could cause plaintiffs languishing under mandatory stays to suffer harms in the form of lost evidence, depleted funding, and diminished patience," the panel noted.

Coinbase is a carveout in the arbitration context but does not overrule *Nken*, the Ninth Circuit said.

Under *Nken*, there are four factors when weighing a discretionary stay request: whether the stay applicant has made a "strong" showing of "likely" success on the merits; whether the applicant will be "irreparably" injured absent a stay; whether a stay will "substantially" injure the other parties; and public interest.

"The first two factors are the most critical," the Ninth Circuit said Monday. "This discretion makes sense in the federal officer removal context because courts should have the power to weigh these

important factors before granting stays that could infringe upon the rights of state courts."

Arbitration matters are different because the Federal Arbitration Act favors arbitration when parties contract for it, the Ninth Circuit said.

Citing Coinbase, the judges said the ruling found parties may prefer to arbitrate instead of litigate is hopes of "efficiency, less expense, less intrusive discovery, and the like."

Not staying a case would mean parties still have to go through pretrial litigation and discovery, and that runs counter to Congress' intention with the FAA, the panel said.

"These fundamental differences between arbitration and litigation do not exist as between litigation in state versus federal courts," the panel added. "Though state and federal courts may operate in slightly different ways, each provide forums for litigation with roughly similar levels of efficiency, expense, and comprehensive discovery mechanisms."

In addition, Express Scripts and OptumRx didn't convince the Ninth Circuit panel that the pharmacy benefit managers were likely to succeed on the merits.

Originally brought in state court in September 2023, the **high-stakes case** on behalf of California residents claims Express Scripts and OptumRX should be held liable under California's public nuisance statute for contributing to the opioid epidemic through their prescription business practices.

Express Scripts and OptumRx act as intermediaries between drugmakers, pharmacies and insurers.

The defendants sent the case to federal court on the theory that their business involves contracts with federal agencies such as the U.S. Department of Veterans Affairs.

State officials amended their complaint to say their claims were limited to the company's conduct in the "non-federal market." The district court subsequently granted California's motion to remand back to state court.

In its Monday decision, the Ninth Circuit panel said the disclaimer "eviscerated all basis for federal officer removal jurisdiction."

In February 2024, U.S. District Judge Sherilyn Peace Garnett kicked the case back to state court, rejecting the pharmacy benefit managers' arguments that a question of federal jurisdiction regarding the Controlled Substances Act supported removal to federal court and denying the companies' request for a stay pending their appeal.

During oral arguments before the Ninth Circuit in March, the pharmacy benefit managers **also argued** that allowing the California to litigate in state court would create a circuit split.

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

U.S. Circuit Court Judges Mary H. Murguia, Gabriel P. Sanchez and Holly A. Thomas sat on the panel for the Ninth Circuit.

The people of the state of California are represented by Louis M. Bograd, Elizabeth Smith and Linda Singer of Motley Rice LLC.

Express Scripts is represented by Christopher G. Michel, Jonathan G. Cooper, Sage R. Vanden Heuvel, Michael J. Lyle, Kiel B. Ireland and Charles Barnwell Straut II of Quinn Emanuel Urquhart & Sullivan LLP.

OptumRX is represented by Kimberly K. Chemerinsky, Alexander Akerman and Omar Morquecho of Alston & Bird LLP.

The case is People of the State of California v. Express Scripts Inc. et al., case number 24-1972, in the U.S. Court of Appeals for the Ninth Circuit.



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Titan Of The Plaintiffs Bar: Labaton Keller's Ned Weinberger

By **Katryna Perera**

Law360 (June 2, 2025, 4:04 PM EDT) -- Ned Weinberger, a partner at Labaton Keller Sucharow LLP, said he never expected that his clients' suit challenging a \$23.9 billion Dell Technologies Inc. stock swap would reach a whopping \$1 billion settlement, let alone result in the largest prejudgment recovery ever achieved in a fiduciary duty action in the Delaware Chancery Court.





Ned Weinberger

Labaton Keller

What is your approach to cases and how do you pull off the big wins?

"A lot of lawyers yell and scream, a lot of lawyers are jerks. I just don't believe in taking that approach," he said. "Combine that [practicality] with creativity, extreme hard work and collaboration, and all that adds up to the results we're able to get in cases."

Weinberger told Law360 that he and his co-counsel had planned to go to trial from day one, and did not expect to reach such a **historic settlement** just three weeks before the trial was scheduled to begin.

"It is a great feeling giving news like that to your client, real vindication after all the blood, sweat and tears. But it's not you personally. There were multiple firms in the case, tons of lawyers ... and it's the result of just doing top-caliber work for years and years, and all of that work materializing in a really exceptional result."

Weinberger was a pivotal figure in litigating the nearly five-year suit and securing the final deal, Labaton Keller said. He has also been responsible for winning multiple nine-figure settlements, landing him a spot among **Law360's 2025 Titans of the Plaintiffs Bar**.

Weinberger said the Dell case was unique and challenging, because the defendants were aggressive and trial-ready from the outset. But he has an "appetite for risk-taking," Weinberger said, and he likes to approach all of his cases practically, viewing them as problems to be solved.

"A lot of lawyers yell and scream, a lot of lawyers are jerks. I just don't believe in taking that approach," he said. "Combine that [practicality] with creativity, extreme hard work and collaboration, and all that adds up to the results we're able to get in cases."

Eric Belfi, partner and head of client development at Labaton Keller, told Law360 that Weinberger tends to take a quiet and more thoughtful approach.

"He ... really thinks through issues and is very analytical," Belfi said. "But he's also very much a

businessman; he's a real entrepreneur and sees the opportunity for the firm and for our clients."

Jaren Janghorbani, a Paul Weiss Rifkind Wharton & Garrison LLP partner who has been opposing counsel on cases Weinberger worked on, told Law360, "Ned is smart, good on his feet and pragmatic. He's also able to think creatively both in court and in negotiating resolutions out of court."

Belfi also noted Weinberger has a unique understanding of the "Delaware way" and can pick up on nuances in Chancery Court suits that may be hard to catch for others at the firm located outside Delaware. Weinberger is essentially the firm's local counsel in Delaware, Belfi added.

Weinberger said he loves practicing in Delaware and called the Chancery Court the "best court in America."

"We have a sophisticated bench, judges who really are experts in the law," he said. "I really believe in the causes we're fighting for on behalf of our clients, who are oftentimes outmatched in terms of resources. Corporations will always have the advantage, they will always have more resources and hire armies of lawyers ... and I embrace taking on challenges like that."

Originally from a small town in West Virginia, Weinberger said he was only aware of a handful of professions growing up and being an attorney was one of them.

He received his law degree from the University of Louisville's Louis D. Brandeis School of Law and found a mentor in Larry Franklin, one of Kentucky's most successful trial lawyers. Weinberger said Franklin embodied the type of attorney he aspired to be, and he said he liked the idea of taking on cases that gave a voice to people.

Before leaving Kentucky to begin his career in Delaware, Weinberger said Franklin gave him an invaluable piece of advice.

"He said to me: 'You're going to move out to the Northeast and people are going to have degrees from Harvard and Yale. You don't have that, and you can't do anything about that, but what you can do is just work extremely hard. And not only can you accomplish anything through hard work but ... people will start to look at you as a hard-working associate, and that will serve you very well and help you get to where you want to go,'" Weinberger recalled.

And that's exactly what Weinberger has done, according to Belfi.

"The partners have so much respect for [Weinberger] as a leader. He's been through the battles ... and he's got a tremendous amount of experience under his belt, and so there's tremendous confidence in his leadership ability," Belfi said.

Weinberger's wins are a testament to his legal acumen. In 2024 alone, three of the cases he worked on secured nine-figure recoveries, and Weinberger said it has had a compounding effect, pushing him and his team to be better every day.

One of the nine-figure deals was in a suit former Discovery **shareholders filed** in 2022, challenging the company's \$43 billion merger with AT&T's Warner Media that year. Weinberger helped secure a **\$125 million settlement** on behalf of the Discovery shareholders just before trial.

Weinberger said the case was a "testament to innovation, creativity and thinking outside the box," because two sets of shareholders and law firms were involved in the suit. Weinberger said his team and client decided to take a different and very "surgical" approach in terms of legal theory and claims that the court ultimately agreed with, resulting in the groundbreaking deal.

Other large settlements Weinberger secured last year include a **\$123 million deal** in a high-profile case against Walmart, addressing its role in the opioid crisis, and a **\$100 million deal** in a class action challenging the self-interested 2019 acquisition of Pattern Energy Group by the Canada Pension Plan Investment Board.

--Editing by Lakshna Mehta.



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Airbnb Nixed Conservative Shareholder Proposals, Suit Says

By **Katryna Perera**

Law360 (June 2, 2025, 9:50 PM EDT) -- Two institutional Airbnb shareholders that promote conservative values have sued the vacation property rental company, saying it wrongfully excluded their shareholder proposals from its 2025 proxy materials while allowing the inclusion of a proposal submitted by a "liberal-leaning" state pension fund.

The Heritage Foundation, a conservative think tank, and the American Conservative Values ETF, an exchange-traded fund that reflects conservative political values in its investment strategy, **filed suit** Friday in Delaware federal court against Airbnb, its executives and several board members.

Among other things, they alleged that Airbnb violated U.S. Securities and Exchange Commission procedures for excluding proxy proposals and has claimed to not have received their proposals in the first place, despite proof of delivery.

According to the complaint, Airbnb's 2025 shareholder meeting is scheduled for June 4. In advance of the meeting, the Heritage Foundation and ACVF — which say they own Airbnb shares worth \$46,000 and \$447,000, respectively — independently submitted shareholder proposals to the company to be voted on at the meeting.

The Heritage Foundation's proposal asked the Airbnb board to "approve an analysis of how Airbnb oversees the legal and reputational risks connected with politicized divestments."

Meanwhile, ACVF's proposal asked the board to approve a report about how the company oversees risks related to denying or restricting services to users based on their religious or political status or views, and "how such discrimination impacts users, customers, and other individuals' exercise of their constitutionally protected civil rights."

The plaintiffs said they both received from FedEx proof of delivery of their proposals to Airbnb's San Francisco headquarters on different dates in December 2024, and that both receipts of proof of delivery listed the name of Airbnb's mailroom manager as the individual who received the items and signed for them.

According to the complaint, Airbnb is required to include submitted shareholder proposals in its proxy materials for annual shareholder meetings unless it follows the SEC requirements for excluding proposals. The requirements would have required Airbnb to notify the plaintiffs that their proposals were being excluded and explain why, and the plaintiffs would have had the right to respond, the complaint stated.

However, the plaintiffs said Airbnb excluded their proposals without following SEC regulations, and that the company claims it never received the proposals.

"Airbnb claimed that it never received the proposals and that FedEx must have faked the signature of Airbnb's mailroom manager and both proofs of delivery, even though they listed Airbnb's mailroom manager's name as the recipient, and even though the proposals arrived on different dates in December 2024," the complaint stated.

The plaintiffs claimed Airbnb is purposefully excluding their proposals because another proposal, submitted by the "liberal-leaning" Connecticut Retirement Plans and Trust Funds, was included in the

2025 proxy materials.

"There was nothing wrong with Airbnb's mailroom, at least when it came to processing proposals submitted by liberal shareholders," the complaint stated.

The complaint further alleged that Airbnb has also refused to agree not to exclude the plaintiffs' proposals from the 2026 proxy materials.

"These facts, taken together, indicate that Airbnb is playing politics with its shareholders' proposals, favoring those submitted by liberal-leaning shareholders while mysteriously 'losing' those submitted by conservative shareholders and then refusing even to undertake minimal good-faith efforts to rectify the situation," the complaint stated. "All signs point to Airbnb targeting plaintiffs, who will accordingly face increased risk of exclusion again in 2026."

In a statement to Law360 on Monday, Alexandra Gaiser of the Alliance Defending Freedom, counsel for ACVF, said Airbnb's "'lost in the mail' excuse is a new low."

"While Airbnb speaks about tolerance and diversity, its actions show that its leadership is intolerant to views represented by more than half the country," Gaiser said. "Companies that want to hide from shareholder transparency are free to appeal to legal avenues to scuttle resolutions, but they aren't free to lie to investors. That's not just wrong, it's illegal."

The Heritage Foundation's Chief Advancement Officer Andrew Olivastro said in a statement, "Airbnb broke the law — plain and simple. SEC rules require companies to notify shareholders and allow a response if a proposal is excluded. Airbnb ignored those rules and ignored the law."

"It makes you wonder what other legal corners Airbnb may have cut," he added. "Heritage and [Alliance Defending Freedom] are suing to make one thing clear: shareholder rights aren't subject to mood or politics — they're protected by law."

The suit seeks damages, attorney fees, an injunction barring Airbnb from excluding the proposals from the 2025 proxy materials and injunctive relief compelling the company to include the proposals in the 2026 proxy materials.

An Airbnb spokesperson told Law360 on Monday that it does not have a "record of previous receipt of the shareholder proposals, and thus, were unable to include it in our proxy for shareholder review."

"We have offered to work with the shareholders to make sure their proposal is considered at our 2026 shareholder meeting," the spokesperson added.

The plaintiffs are represented by Julianne E. Murray of the Law Offices of Murray Phillips & Gay.

The Heritage Foundation is also represented by R. Trent McCotter of Boyden Gray PLLC.

ACVF is also represented by Alexandra Gaiser and Philip A. Sechler of the Alliance Defending Freedom.

Counsel information for Airbnb was not immediately available.

The case is The Heritage Foundation et al. v. Airbnb Inc. et al., case number 1:25-cv-00676, in the U.S. District Court for the District of Delaware.

--Editing by Dave Trumbore.



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Amazon Defeats Prime Subscribers' Privacy Suit For Good

By **Hailey Konnath**

Law360 (June 2, 2025, 11:41 PM EDT) -- A Washington federal judge has permanently tossed Amazon Prime subscribers' proposed class action alleging that the company illegally disclosed their personal viewing habits, ruling that they still haven't plausibly alleged that Amazon "actually and affirmatively" shared their information.

In a **Friday order**, U.S. District Judge James L. Robart dismissed the suit with prejudice. Although the subscribers added 14 new paragraphs of allegations in their latest complaint, those allegations haven't addressed the deficiencies he identified in an order last year, the judge said.

Specifically, he called the newly added allegations "either speculative or far removed from the central issue of whether Amazon Services discloses [personally identifiable information, or PII] to Amazon affiliates."

Virginia resident Meredith Beagle, Louisiana resident Jordan Guerrero and California resident Sofauna Johnson claimed that Amazon.com Inc. and Amazon Services LLC have a **virtual "warehouse" of data** on Prime Video users that is shared with non-Amazon affiliates for advertising and audience analytics. In the initial complaint filed in March 2024, Beagle and Guerrero claimed that there is no way to opt out of the data collection and that the disclosure is buried in fine print.

Meanwhile, Amazon argued that the subscribers haven't actually shown that any of their personal information was disclosed to a third party.

Judge Robart agreed with Amazon and **threw out the suit** in September. Notably, the judge held that the subscribers can't sue for deceptive business practices and at the same time acknowledge that Amazon Prime's user terms tell customers up front about the potential for data-sharing. He dismissed claims under the Washington Consumer Protection Act with prejudice.

He had also ruled that the subscribers failed to support **their claims** under the federal Video Privacy Protection Act and California's Section 1799.3, which bar certain video service providers from sharing customer information. However, Judge Robart had acknowledged that the subscribers could potentially have valid claims under those statutes and gave them the opportunity to file a revised suit.

The subscribers filed an amended complaint in October.

In Friday's order, Judge Robart said the new allegations, "even when considered together with the allegations raised in the dismissed amended complaint, do not allow the court to draw the inference that Amazon Services affirmatively disclosed plaintiffs' PII to Amazon.com Inc. or unnamed Amazon affiliates."

They haven't moved the needle "from a mere possibility" that Amazon disclosed their information to plausibility, he said. For instance, the subscribers added an allegation that Amazon's data shows different "sellers of record" for one of the plaintiff's purchases of video content. They said that means her data has been shared among Amazon affiliates. But Judge Robart said he wasn't convinced.

"Plaintiffs have not plausibly alleged how the appearance of these entities as "sellers of record" reasonably gives rise to the inference that Amazon Services affirmatively disclosed Ms. Johnson's PII

to those entities or other Amazon affiliates," he said.

They also pointed to documents that they say show Amazon has a history of misleading consumers and misusing their data, according to the opinion. But none of those plausibly shows that Amazon affirmatively disclosed the information, the judge said.

"Plaintiffs argue that even if none of these new allegations considered individually, gives rise to a plausible allegation of affirmative data disclosure, they nevertheless constitute 'a bundle of facts that, together, ... permit an inference of disclosure,'" Judge Robart said. "The court is not persuaded."

Judge Robart noted that they've already amended their complaint three times, and the newly added allegations didn't cure the deficiencies.

"Therefore, the court denies plaintiffs' request for leave to file a fourth amended complaint," the judge said.

Amazon and counsel for the plaintiffs didn't immediately respond to requests for comment late Monday.

The plaintiffs are represented by Amanda K. Klevorn, Korey A. Nelson, Laura S. Seggerman and Cristina R. Delise of Burns Charest LLP and Lawrence P. Egel, Casey C. DeReus and Melissa A. Fortunato of Bragar Egel & Squire PC.

Amazon is represented by John Goldmark, Lauren Rainwater and Erwin Reschke of Davis Wright Tremaine LLP.

The case is Meredith Beagle et al. v. Amazon.com Inc. et al., case number 2:24-cv-00316, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Greg Lamm and Rachel Riley. Editing by Michael Watanabe.

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PG&E, Lenders Hit With Suit Over Solar Panel 'Scheme'

By **Isaac Monterose**

Law360 (June 2, 2025, 6:07 PM EDT) -- Pacific Gas & Electric Corp. and several other companies were accused in California federal court of running a "bait-and-switch" scheme in which they saddle homeowners with hidden fees after tricking them into financing solar panel installations through zero-interest loans.

In a **proposed class action** filed Friday, named plaintiff Cameron Beatty alleged that his PG&E bills pressured him into falling for a "solar financing scheme" run by the defendants, which include PG&E, its subsidiary PG&E Co., lenders Sungage Financial LLC and NBT Bank NA, and solar panel provider SunMade Energy LLC.

Beatty accused PG&E of hiking up electricity costs in order to create and take advantage of "desperate customers" and said the company runs an exploitative "dual monopoly."

"PG&E has dual control over electricity rates and solar compensation (i.e. if someone switches to solar and generates extra electricity that can be routed back to the grid, PG&E has artificially lowered the value for the extra energy over time) and creates impossible economics that force consumers into predatory financing arrangements," the homeowner said.

"PG&E lobbies to eliminate the favorable [Net Energy Metering] 2.0 rates and create artificial deadlines that solar scammers exploit to pressure consumers into fraudulent loan agreements subsidized by federal taxpayers through the solar tax credit program," he added.

Beatty alleged that the companies create their solar loan products with federal solar tax credits in mind and that they design loans in a way that expects customers to use their tax credits to pay them within 18 months of installing the solar panels.

"To maintain artificially low monthly payments throughout the loan term (typically 10 to 30 years), defendants' loan products require customers to make the tax-credit payment within the specified period or face sharp increases in monthly payments through loan re-amortization," the homeowner said.

Beatty said he and his family bought their Fresno, California, home in summer 2021, and he was convinced by a Sungage representative to install solar panels for his home in 2022.

The Sungage employee told Beatty that he would be able to transfer the loan that's used to finance the solar panel installation, according to the complaint.

The company's website corroborated what the employee told Beatty, so he took out the loan with the expectation of gaining a federal solar tax credit, he said.

Beatty said Sungage provided him with Truth in Lending Act disclosures that falsely told him he borrowed a loan with zero interest.

However, Beatty eventually found out that \$20,000 of the more than \$82,000 loan was being paid to Sungage and wouldn't be used for installing the solar panels, he claimed. The "hidden fees" were intentionally mischaracterized in order to avoid having to disclose them under TILA, he claimed.

"These hidden charges were neither properly disclosed in the loan documents nor reflected in the solar system's actual value or performance, constituting a clear violation of TILA's disclosure requirements and demonstrating the fraudulent nature of defendants' scheme to deliberately conceal the true cost of credit while exploiting the federal solar tax credit program," Beatty said in the suit.

"The systematic nature of this deception is further evidenced by defendants' coordinated practice of preventing consumers from discovering actual system costs through industrywide refusal to provide transparent pricing breakdowns, forcing consumers to rely on the false financing representations," he added.

Beatty also claimed that when he tried selling his home in 2024, he found out that he couldn't transfer the solar panels loan to a homebuyer without that homebuyer being forced to accept new loan terms. Sungage told Beatty that a buyer would have to accept a 5% or 9.99% interest rate on top of the current interest rate, he said.

This new information contradicted what he learned before borrowing the loan, and he failed to sell his home because of the solar panels loan, Beatty said.

The lawsuit seeks to represent a class of people who signed solar financing agreements with Sungage and/or NBT Bank. The defendants originated thousands of solar panel loans, according to the complaint.

On Monday, class counsel Jason M. Ingber said the defendants were engaged in "an industry-wide fraud."

"The entire solar panel industry is preying on low-income consumers and [they're] successfully sucking up federal tax credits that are supposed to go to the homeowners," he said. "Instead, they are illicitly taking those for themselves with hidden finance fees, straight up lying in term sheets or structuring the deals in a way that actually requires the homeowner to give the tax credit straight to the solar panel people."

Ingber said the Beatty suit is the first in an anticipated "wave of litigation" and that he's planning on representing additional plaintiffs.

The defendants didn't respond to requests for comment Monday. Counsel information for the defendants wasn't immediately available.

The proposed class is represented by Jason M. Ingber of Ingber Law Group.

The case is Beatty v. Sungage Financial LLC, a Massachusetts limited liability company et al., case number 1:25-at-00443, in the U.S. District Court for the Eastern District of California.

--Editing by Haylee Pearl.



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Ex-NFL Player Jack Brewer Traded On Insider Info, Court Says

By **Lauren Berg**

Law360 (June 2, 2025, 10:53 PM EDT) -- NFL player turned investment adviser Jack Brewer used nonpublic information he obtained from a client of his financial consulting business to sell shares before the company made an announcement that caused the stock price to plummet, a New York federal judge ruled Friday.

U.S. District Judge Jennifer H. Rearden, in a 31-page **order**, granted summary judgment to the U.S. Securities and Exchange Commission on its claim that Brewer violated securities law by engaging in insider trading, saying the former Minnesota Vikings player knew COPSync Inc. was financially struggling and about to make a stock offering to stay on the Nasdaq when he sold his stock for personal gain.

"There is no genuine dispute that Brewer acted with scienter in trading while knowingly possessing material information that was obtained in violation of a duty of trust and confidence," Judge Rearden said, adding that "at the very least, as a sophisticated, licensed financial services professional, Brewer acted recklessly."

Brewer, who played in the NFL from 2002 to 2007 before getting into the wealth management industry, founded private investment fund The Brewer Group Inc., according to the SEC's complaint.

In August 2015, his related company Brewer & Associates Consulting LLC signed a business development and marketing services agreement with COPSync, which developed communications technology for law enforcement agencies, the suit states. That agreement included a confidentiality provision requiring that Brewer's company not share any proprietary or nonpublic company information, the SEC says.

Then in January 2016, Brewer signed a personal endorsement agreement with COPSync, under which he would serve as a public face for the company, according to the complaint. Because of this role, Brewer had access to "high-level, sensitive meetings" that provided him information about internal discussions, the suit states.

In exchange, Brewer received cash and 200,000 shares of restricted stock, which were valued at \$2.06 on Dec. 31, 2015, according to the complaint.

But in 2016, COPSync's performance began declining "appreciably," and Brewer was informed that the company was burning through cash at about \$1 million a month with it likely running out of money by August 2016, the complaint says.

In May 2017, COPSync disclosed it no longer met Nasdaq's continuing listing requirements, and if it didn't raise \$4 million to \$5 million in equity, it would face delisting, according to the suit.

In order to raise money, COPSync's board of directors authorized conducting a securities offering of up to 2 million shares of the company's stock, along with up to 200% warrant coverage to buy additional shares, the suit says. There would be a 90 cent maximum price of the offering for each share, which was below the market price for COPSync stock at the time, the complaint states.

Brewer received this information ahead of the offering and knew it was meant to be confidential, the SEC says. Days later, Brewer learned from Jesse Meehan, chief operating officer of The Brewer

Group, that COPsync was likely only going to raise \$1.08 million from the offering — less than the \$2.5 million needed to meet the Nasdaq stockholder equity requirement, the suit notes.

When he learned COPsync was not able to cover payroll and other expenses, Brewer told Meehan to facilitate the sale of his COPsync shares, according to the SEC. On the first day, Brewer sold 5,000 shares at \$1.01 per share but quickly changed the order to sell the remaining 95,000 shares, the suit states.

The very next day, on Jan. 6, 2017, COPsync issued a press release announcing a \$1.15 million registered direct offering and stating that the combined purchase price for each unit consisting of one share and two warrants was 65 cents, the complaint says. On that news, COPsync's share price dropped about 32% from \$1.03 to 69 cents, the SEC notes.

According to the complaint, had he sold his 100,000 shares at the closing stock price following the announcement, Brewer would have received \$69,000 instead of \$104,178, which is a difference of \$35,178.

Brewer never told Meehan or others involved in the trades that he had insider information related to the transactions, the SEC says.

The SEC filed its enforcement action in August 2020 alleging violations of the Exchange Act and the Advisers Act, before filing the current motion for summary judgment on the insider trading claim in March 2023.

In her order Friday, Judge Rearden determined that "the record is replete with undisputed facts" supporting the SEC's insider trading claim, saying he knew he possessed nonpublic documents about the proposed offering from COPsync, as well as nonpublic information indicating that the offering was unlikely to raise the necessary capital to prevent suspension and delisting from Nasdaq.

"Brewer knew that a delisting was 'never good' and that COPsync's inability to raise the required capital from the offering was likely to 'have a negative impact on [COPsync's] stock price,'" the order said.

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

The SEC is represented in-house by Todd Brody, Bennett Ellenbogen, Lindsay Senechal Moilanen and Marc P. Berger.

Brewer is represented by David Madgett of Madgett Law LLC, Lee A. Hutton III and Jason Juran of The Hutton Firm PLLC, and Michael Caruso of Cuddy & Feder LLP.

The case is Securities and Exchange Commission v. Jack Brewer, case number 1:20-cv-06175, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.