

AI-Washing Securities Suit Filed Against Tempus AI



[dandodiary.com/2025/06/articles/securities-litigation/ai-washing-securities-suit-filed-against-tempus-ai/](https://www.dandodiary.com/2025/06/articles/securities-litigation/ai-washing-securities-suit-filed-against-tempus-ai/)

Kevin LaCroix

June 18, 2025

"TEMPUS

In the latest AI-washing related securities class action lawsuit to be filed, a plaintiff shareholder has filed a securities suit against AI-based health care company Tempus AI, alleging, among other things, that the company overstated its AI capabilities. The lawsuit comes after the company's share price declined following the publication of a short seller report critical of the company and its management. A copy of the June 12, 2025, complaint against Tempus AI can be found [here](#).

Background

Tempus bills itself as providing Artificial Intelligence (AI) enabled precision medicine solutions. It claims to develop intelligent diagnostics through the application of AI in healthcare to make laboratory tests and connect laboratory results to a patient's own clinical data. The securities lawsuit complaint alleges that Tempus "branded itself as an AI company despite little history of generating significant revenues from AI solutions." Instead, the complaint alleges, Tempus "generated most of its revenue from acquisitions, genomic testing, and data licensing agreements."

The complaint also alleges that Tempus "repeatedly" claims that the contract value and quality of its data licensing agreements with life sciences companies were "secure and expanding." The complaint alleges the company used its relationship with AstraZeneca as an example of these relationships. The company also announced a joint venture with SoftBank as a way to generate revenue growth by entering the Japanese market. The company also claimed potential revenue growth from Ambry Genetics, a company Tempus acquired, due to Ambry's "strong relationships with health care providers."

On May 28, 2025, short seller Spruce Point Capital Management LLC issued a research report that raised a number of issues regarding Tempus, including, as the complaint subsequently alleged, "(1) Defendant Eric Lefkofsky and his associates have a history of cashing out of companies before public shareholders incur losses or lackluster returns; (2) Tempus' actual AI capabilities are overstated; (3) board members and other executives have been associated with troubled companies that restated financial results; (4) signs of aggressive accounting and financial reporting; (4) issues the AstraZeneca and Pathos AI

deal that merit scrutiny; and (5) the Company's recent financial guidance revision reveals weakness in core operations." According to the complaint, the company's share price declined nearly 20% on this report.

The Lawsuit

On June 12, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of Illinois against Tempus; its CEO, Erikc Lefkofsky; and its CFO, Jim Rodgers. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between August 6, 2024 and May 27, 2025.

The complaint alleges that during the class period, the defendants failed to disclose that: "(1) Tempus inflated the value of contract agreements, many of which were with related parties, including non-binding opt-ins and/or were self-funded; (2) the credibility and substance of the joint venture with SoftBank was at risk because it gave the appearance of 'round-tripping' capital to create revenue for Tempus; (3) Tempus-acquired Ambry had a business model based on aggressive and potentially unethical business practices that raised scrutiny and unsustainability; (4) AstraZeneca had reduced its financial commitments to Tempus through questionable 'pass-through payment' via a joint agreement between it, the Company and Pathos AI; (5) the foregoing issues revealed weakness in core operations and revenue prospects; and (6) as a result, Defendants' positive statements [sic] Company's business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis at all relevant times."

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

This complaint raises a host of allegations, only some of which are about AI. To be sure, the complaint clearly alleges that the company sought to position itself as an AI company, and the complaint further alleges that the company overstated its AI capabilities and prospects. But if this complaint is indeed AI-related, it is only partially so, as there are many other allegations, many of them having to do with the companies finances and the nature of its transactions and relationships with its trading partners.

Most readers undoubtedly noted that the complaint's allegations largely rely on the report of a short seller. As I have noted in prior posts (most recently [here](#)), courts have over time evinced a continuing skepticism of securities class action lawsuit allegations based on short-seller reports. The short sellers' financial incentives and their reliance on anonymous sources have caused courts to be wary of securities suit allegations based on their reports. In a recent Fourth Circuit decision in a case in which the plaintiffs' allegations largely relied

on a short-seller's report, the appellate court affirmed the district court's dismissal of the case, as discussed in detail [here](#). There were features of the short seller report involved that may have caused the Fourth Circuit to be particularly skeptical in that case, but the Fourth Circuit decision certainly could be useful to the defendants in seeking to oppose this new lawsuit, based as it largely is on the allegations from a short-seller's report.

While the AI-related allegations in this complaint are only one of several types of allegations raised here, this complaint undoubtedly is AI-washing related. AI-washing claims have been among the important types of securities class action lawsuit complaints filed in recent months. Indeed, according to the Stanford Law School Securities Class Action Clearinghouse, there have now been a total of seven AI-related securities class action lawsuits files so far this year, inclusive of this latest lawsuit.

The rise in the number of AI related lawsuits at one level is hardly surprising, given that AI has in many ways permeated the world of business these days. But what is important to note about these lawsuits is that they involve allegations that the defendant companies overstated or misrepresented their AI capabilities or prospects. It is not the companies' use of or even reference to AI that is attracting the lawsuits, it is what the company said, and more importantly what the companies wanted to try to get investors to believe about, the companies' use of AI, that is attracting the lawsuits.

Securities Law News

TC Energy Erases \$199 Million Loss in Columbia Pipeline Case (2)

June 17, 2025, 12:13 PM PDT; Updated: June 18, 2025, 4:10 AM PDT

- Hard bargaining crossed line into coercive threat, suit said
- Delaware Supreme Court reverses liability for aiding, abetting

TC Energy Corp. persuaded Delaware's top court Tuesday to overturn \$199 million in damages stemming from its \$13 billion acquisition of Columbia Pipeline Group Inc.

The state supreme court reversed a pair of rulings blaming the former TransCanada Corp. for driving down the transaction price with threats to damage Columbia's market value by publicly bailing on deal talks. The lawsuit led by a pair of pension funds said the Calgary-based energy giant crossed the line by exploiting inside information gleaned from secret talks with a Columbia executive.

Justice Gary F. Traynor, writing for the unanimous five-member tribunal, acknowledged TC Energy's aggressive negotiating tactics may have "stretched the bounds of hard bargaining so ungraciously as to unsettle the polite observer." But the dealmaking context requires giving corporate acquirers broad legal leeway unless they have "actual knowledge" they're actively facilitating sell-side fiduciary breaches, he said.

"It cannot be the case that taking advantage of a personal relationship and superior negotiating skills and experience to secure the best reasonably available price will expose a party to aiding-and-abetting liability," Traynor wrote in a 100-page ruling.

TC Energy praised the decision in a statement late Tuesday, saying it's "pleased that the Delaware Supreme Court has granted our appeal in the class action lawsuit" in a ruling that "reverses the lower court's finding of liability against TC Energy entirely." The company is no longer obligated to pay any damages, the statement said.

'Damaged Goods'

The shareholder suit, filed in Delaware's Chancery Court in 2020, initially targeted Columbia's ex-CEO and former chief financial officer, saying they worked to tilt the playing field toward TransCanada because its all-cash offer would give them maximum liquidity. After the two corporate officers settled the claims against them for \$79 million, the focus turned to the aiding and abetting claims.

Vice Chancellor J. Travis Laster issued the \$199 million ruling against TC Energy in May 2024. The pipeline and power company laid a "trap" by breaching a standstill agreement to learn confidential information, then driving down the price by threatening to publicly walk away from the negotiating table and turn Columbia into "damaged goods," the judge said.

Although TransCanada executives may not have actually known they were helping Columbia's officers sell out their own shareholders, Laster found they nevertheless had "constructive knowledge," meaning they're liable for knowing because they should have.

About six months later, the higher court rejected the "constructive knowledge" standard for aiding and abetting, issuing a novel ruling in a case involving a \$2 billion private equity buyout by Vista Equity Partners Management LLC.

It's "understandable" Laster couldn't have applied a legal standard that didn't yet exist, but it still dooms the case against TC Energy, Traynor said Tuesday.

"A bidder who has not colluded or conspired with its negotiating counterpart, who does not create the condition giving rise to a conflict of interest, who does not encourage his counterpart to disregard his fiduciary duties or substantially assist him in committing the breach, does not aid and abet the breach," Traynor wrote.

Successful Bluff

The court rejected the idea that TransCanada crossed the line by breaching a \$26-per-share deal before returning with a \$25.50 bid and the "coercive threat" of disclosure. The original price reflected an offer, not a firm deal, and Toronto Stock Exchange rules would have required the company to announce the collapse of any transaction, Traynor said.

The successful bluff "is merely another example of hard bargaining," he wrote.

The funds were represented by Bernstein Litowitz Berger & Grossmann LLP, Labaton Keller Sucharow LLP, and Ashby & Geddes PA. TC Energy was represented by Ross Aronstam & Moritz LLP, Young Conaway Stargatt & Taylor LLP, and Mayer Brown LLP.

The case is In re Columbia Pipeline Grp. Inc. Merger Litig. , Del., No. 281, 2024, 6/17/25 .

(Updates June 17 story with TC Energy statement in fifth paragraph.)

Class Action

Tilray Wins Lower Vote Standard After Top Delaware Court Review

June 18, 2025, 6:34 AM PDT

- **Delaware lawmakers changed certain voting standards in 2023**
- **Lawsuit said Tilray Brands duped investors into raising share limit**

A trial court correctly interpreted 2023 Delaware corporate law amendments that lowered certain voting standards when dismissing an investor's claims against Canadian cannabis company Tilray Brands Inc., the state's highest court ruled Wednesday.

The two-page order upholds a Delaware Chancery Court ruling that tossed a lawsuit alleging Tilray attempted to mislead investors into raising its share limit. Justice Karen L. Valihura signed the order for the high court's full five-member panel; it doesn't elaborate on their reasoning for affirming the lower court's opinion.

State lawmakers amended the default voting standard to make it easier for public companies to change the number of authorized shares of common stock through a majority of votes cast. The investor, Nabil Salama, argued the new statute still permitted companies to opt into a higher standard requiring a majority vote of outstanding shares.

The 2023 amendments preceded recent corporate law changes also currently under the Delaware Supreme Court's review. A 2024 law allowing the use of private contracts to grant stockholders the types of control previously requiring a charter provision or a special class of stock has factored into Moelis & Co.'s appeal of a Chancery Court ruling that invalidated much of Ken Moelis's 2014 pact with the bank.

The high court also will review statutory changes made this year to lower judge-made guardrails around insider conflicts of interest, which lawmakers said would persuade high-profile companies to stay in Delaware following Elon Musk's relocation of Tesla Inc. to Texas.

Salama is represented by Fields Kupka & Shukurov LLP, Ashby & Geddes PA, and Kaskela Law LLC. Tilray is represented by DLA Piper LLP (US).

The case is Salama v. Simon , Del., No. 502,2024, 6/18/25 .

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Securities Law News

ImmunityBio Gets Final OK for \$10.5 Million Investor Settlement

June 17, 2025, 3:58 PM PDT

ImmunityBio Inc.'s \$10.5 million class settlement with investors over alleged misrepresentations about a cancer drug's prospects received final approval from a federal court.

Although the amount of the settlement is "only a portion"—about 8%—of ImmunityBio's maximum exposure as estimated by the investors, "the relief appropriately accounts for the not-insubstantial risk that Plaintiff and the class would recover nothing on some or all claims," Judge Gonzalo P. Curiel said. Curiel also approved attorneys' fees of about \$3 million in the order docketed Monday in the US District Court for the Southern District of California.

- The suit alleges the biotechnology company and three of its executives misled investors about manufacturing processes and approval prospects for its Anktiva bladder cancer therapy, causing a 55% stock-price plunge when federal regulators rejected the drug
- The Food and Drug Administration ultimately approved Anktiva in April 2024
- Curiel denied ImmunityBio's request for dismissal in June 2024

Pomerantz LLP and Holzer & Holzer LLC are co-lead counsel for the proposed class. Wilson Sonsini Goodrich & Rosati represents ImmunityBio.

The case is *In re ImmunityBio, Inc. Sec. Litig.*, S.D. Cal., No. 3:23-CV-01216, docketed 6/16/25.

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Judge approves \$41.5 million settlement for Pilgrim's Pride shareholders over chicken price-fixing



[courthousenews.com/judge-approves-41-5-million-settlement-for-pilgrims-pride-shareholders-over-chicken-price-fixing](https://www.courthousenews.com/judge-approves-41-5-million-settlement-for-pilgrims-pride-shareholders-over-chicken-price-fixing)

FILE - This April 28, 2020 file photo shows the Pilgrim's Pride plant in Cold Spring, Minn. Pilgrim's Pride Corp. has reached a plea agreement with the U.S. government, Wednesday, Oct. 14, over charges of price-fixing in the chicken industry. If a federal judge approves the agreement, Pilgrim's Pride would pay a fine of \$110.5 million as a penalty for restraining competition. (Dave Schwarz/St. Cloud Times via AP)

DENVER (CN) — A federal judge [approved](#) a \$41.5 million class action [settlement](#) on Tuesday between Pilgrim's Pride and shareholders financially harmed by the chicken company's price-fixing scheme from the mid-2000s.

"The immediate value for the class outweighs continued litigation," said Senior U.S. District Judge R. Brooke Jackson. "The high response from the class and lack of objections point to that."

On behalf of the class, attorney Kim Miller said 28,140 members filed claims adding up to \$188 million. They will receive a pro-rated portion of the agreed settlement depending on each person's claim, with a \$40,000 award for lead plaintiff George Fuller. No one appeared in court to oppose the settlement.

The facts driving the case date back to 2008, when chicken producer Pilgrim's Pride aligned the prices of its broiler chickens with competitors Tyson and Sanderson Farms. The SEC and shareholders alike claimed the scheme to be anticompetitive as the three companies sold about half the chickens consumed in the United States at the time.

Investor Patrick Hogan [filed](#) a class action against Pilgrim's Pride in 2016, accusing the company of lying to investors about the scheme in press releases and solicitations that praised the company's competitive skills for driving record profits.

Along with the company, Hogan named former CEO William Lovette and chief financial officer Fabio Sandri as defendants. Sandri remains with Pilgrim's Pride, but Lovette moved to the Virginia-based spice company C.F. Sauer in 2023.

Despite short-term gains, investors said they were ultimately harmed when the scheme came to public light. Since first Hogan sued and Fuller took over as lead plaintiff, Pilgrim's Pride and executives [faced](#) criminal charges. Pilgrim's Pride [pleaded](#) guilty in 2021 to fixing prices and rigging bids for broiler chickens, paying out a \$107 million fine to the Department of Justice.

A class of workers also [sued](#) the company in 2020 over the scandal's effects on pension funds, which Chief U.S. District Judge Philip Brimmer dismissed that same year. Federal prosecutors tried to charge Lovette with unlawful restraint of interstate trade and commerce in 2020, but he was acquitted by a jury in 2022.

Senior U.S. District Judge R. Brooke Jackson, a Barack Obama appointee, initially [dismissed](#) the Hogan case without prejudice in March 2018. However, the 10th Circuit [revived](#) the case in July 2023 on a procedural issue.

In court Tuesday, Jackson reflected on the appellate ruling. "I learned a little something about statutes of repose, and you either dismiss the case or you don't. You don't give leave to amend."

A little more than a year later, in December 2024, the parties informed the court they had reached a \$41.5 million settlement with the help of a mediator, retired U.S. District Judge Layn Phillips, who had been appointed by Ronald Reagan in 1987.

"I actually sort of enjoyed the case to be honest with you," Jackson said from the bench. "We don't get these large complex civil cases as often as I'd like, or large complex white-collar crimes, and the chicken industry treated us to both. I was happy to get my piece."

When Miller requested \$13.8 million in attorneys' fees, Jackson recalled being paid \$25 an hour as an attorney when he started practicing, a rate he said "ripped off" clients at the time.

"Your honor, we earned every penny," Miller said, characterizing the case as a complex "turducken, a securities case with antitrust litigation wrapped up inside."

Miller practices with Kahn Swick & Foti in New York.

Ultimately finding the requested attorneys fees "fair, reasonable and adequate," Jackson concluded, "we'll send you on your way to a nice champagne dinner somewhere."

Attorney Milana Bretgoltz, of Weil's Securities Litigation in New York, represented Pilgrim's Pride in court, calling the concluding settlement "a hard-fought, arm's-length negotiation with a mediator after nine years of litigation."

The hearing was held in a sleek 1960s wood-paneled courtroom on the second floor of the Byron Rogers Federal Building in downtown Denver.

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Securities Law News

Atlas Energy Founder Ordered to Face Lawsuit Over Up-C Plan (1)

June 17, 2025, 8:28 AM PDT; Updated: June 17, 2025, 11:25 AM PDT

- Investor lawsuit over reshuffling moves forward toward trial
- Transaction followed public listing as an Up-C entity in 2023

Atlas Energy Solutions Inc.'s founder and board lost their bid Tuesday for an early win against allegations they shortchanged public investors when they reorganized the company after its 2023 public listing.

A Delaware judge let a shareholder case move forward over the reshuffling, which transformed the fracking services business from an umbrella partnership, or Up-C, into a traditional corporation. Vice Chancellor J. Travis Laster advanced the dispute toward a potential trial, dealing a setback to oil tycoon Ben "Bud" Brigham and his board allies.

The decision was the latest to confront claims that corporate founders or other insiders manipulated an Up-C restructuring to steer value to themselves. Other firms facing similar restructuring claims include private equity giants Apollo Global Management Inc., Carlyle Group Inc., and KKR & Co.

Laster's ruling highlighted a relatively rare split among colleagues on Delaware's Chancery Court, the leading US forum for high-stakes business disputes, after a different judge came out the other way in a recent case involving Cantor Fitzgerald LP and its billionaire ex-CEO, US Commerce Secretary Howard Lutnick.

The elite tribunal's seven specialist judges generally present a united front as they work through novel corporate issues in detailed rulings that set the nationwide tone on board battles, merger fights, executive liability, and shareholder rights. Their occasional disagreements—often over technical points with outsize legal consequences—usually draw the interest of Delaware's top court, which is already set to weigh the earlier decision in Cantor's favor.

'Magnitude of Benefits'

Tuesday's bench ruling rejected the lead argument by the Atlas board members, who said the lawsuit needed to precisely quantify the benefits reaped by corporate insiders in the restructuring. "That would be a complex and fact-specific inquiry that likely can only be conducted by a financial expert" after the two sides have exchanged documents and witness depositions, Laster said.

At the case's initial stages, what matters is whether gains potentially totaling hundreds of millions of dollars were conceivably "material," according to the judge. Brigham and the others may ultimately gain traction by arguing "that because they're so rich, these benefits could not have been material," Laster said, but for now, "we're dealing with a magnitude of benefits where that inference can be drawn."

Publicly traded partnerships, as Up-Cs are also known, are pass-through entities that serve as parent companies for businesses in which early investors own direct stakes. The insiders also hold voting-only shares in the public shell company that are pegged to the economic value of their equity in the private subsidiary.

When an Up-C restructures, the company generally pays the legacy investors for surrendering their pass-through benefits. The wave of shareholder suits has targeted those buyouts with claims that insiders controlling the process gave themselves favorable terms at the expense of public investors. Most of the earlier decisions—including Laster's 2023 ruling in a case involving GoDaddy Inc.—have gone for shareholders.

But not all. Laster drew explicit contrasts between Tuesday's decision and April's ruling by Vice Chancellor Lori W. Will throwing out the Cantor-related case. The two judges drew different conclusions about a key threshold question: whether the claims were asserted directly on behalf of shareholders or "derivatively" on behalf of the companies themselves.

Direct or Derivative

Will said in April that the lawsuit against Cantor and Lutnick boiled down to quintessentially derivative overpayment allegations. Because derivative claims technically belong to the corporation, an investor has to seek a board investigation first or show that conflicts of interest would have rendered the request futile, making the issue outcome-determinative in many corporate cases.

The earlier ruling showed "much greater confidence in the bright-line nature of the direct-versus-derivative distinction, which is something that I've told you I'm not as sanguine about," Laster said Tuesday. Although the line may often be "meaningful and sharp," there are also edge cases for which "the standard tests that we use in other settings just don't fit nearly as well, and we need to get back to thinking about first principles," the judge said.

"If you have something—a car, a computer, some Bitcoin—and someone takes it from you, and gives you back something different that is worth less, you've been injured," Laster said. "You haven't been injured indirectly. You haven't been injured derivatively through someone else."

Although close links among Atlas board members would have made it futile to seek an internal investigation anyway, classifying the claims properly may matter down the line, the judge said.

The investor leading the litigation, Patrick Ayers, is represented by Labaton Keller Sucharow LLP, Block & Leviton LLP, and Friedman Oster & Tejtell PLLC. Brigham and the other board members are represented by Vinson & Elkins LLP and Richards, Layton & Finger PA.

The case is Ayers v. Brigham , Del. Ch., No. 2024-0694, 6/17/25 .

(Updates with additional reporting throughout. An earlier update corrected transaction details in second paragraph.)

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Securities Law News

Stefanik Asks SEC to Investigate Harvard Bond Offering (1)

June 17, 2025, 6:09 PM PDT

Representative Elise Stefanik called on the US Securities and Exchange Commission to investigate Harvard University's recent bond sale, alleging the school may have withheld material information from investors about its standoff with the federal government.

In a letter to SEC Chair **Paul Atkins**, the New York Republican questioned whether Harvard may have already decided to reject a White House proposal that could affect its federal funding before the school's April 9 bond offering — but didn't disclose that until a supplemental filing days later.



Representative Elise Stefanik

Photographer: Tierney L. Cross/Bloomberg

“Such a failure would represent a material omission under federal securities law,” she said. “Investors were asked to analyze risk without knowing the full extent of Harvard’s exposure to reputational and funding related fallout from a conflict with the federal government.”

Harvard sold \$750 million of taxable bonds in April and the bond sale priced on April 9. The university later issued a supplemental disclosure on April 15, revealing that the day before it had rejected the demands of the federal government’s multi-agency task force to combat antisemitism. The university then listed disclosures of risks related to an ongoing conflict with the Trump administration. A lag in disclosure is fairly common in the municipal-bond market.

The SEC didn’t immediately respond to a request for comment. A Harvard spokesperson called the allegations false.

When Harvard made its offering on April 9 it couldn’t foretell the “additional, unlawful conditions outlined in the government’s April 11 letter, much less the government’s freezing of grants and contracts to Harvard on April 14,” spokesperson Sarah Kennedy-O’Reilly said in a statement. “This is why, on April 15, Harvard issued supplemental information to bondholders.”

Read more: Elite Colleges Go on \$4 Billion Debt Spree After Trump Threats

Stefanik, a Harvard alumna, has played a prominent role in Republican efforts to scrutinize elite universities over their handling of antisemitism on campus. She didn’t provide additional details about how the university may have allegedly withheld material information.

The Trump administration announced on March 31 it was reviewing Harvard’s compliance with civil rights laws and then sent the university a letter outlining changes it wanted from the university. The demands included eliminating diversity, equity and inclusion programs and additional oversight for “biased programs that fuel antisemitism.”

Stefanik also asked the SEC to investigate what she described as “risks associated” with the university’s holdings in private equity, venture capital and real estate.

(Updates with statement from Harvard beginning in fifth paragraph.)

--With assistance from **Gregory Korte**.

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New front in the politicization of corporate governance just dropped:

www.thecrimson.com/article/2025...

Stefanik Calls On SEC to Investigate Harvard's \$750 Million Bond Disclosure | News | The Harvard Crimson

Representative Elise M. Stefanik '06 (R-N.Y.) alleged that Harvard should have told bondholders in an April 9 notice to expect financial fallout from defying the Trump administration's demands. It is ...

www.thecrimson.com

June 18, 2025 at 9:28 AM Everybody can reply

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1



9



... 444



Write your reply



Ann M. Lipton @annmlipton.bsky.social · 31m

As I understand it, there was a 6 day delay between the original offering dox and the disclosures, so ... I'm sure investors were grievously injured and I hope similar standards are applied to private actions.



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Securities Law Prof Blog



lawprofessors.typepad.com/securities/2025/06/new-securities-law-articles-in-print-1.html

Tuesday, June 17, 2025

[New Securities Law Articles in Print](#)

The following law review articles relating to securities regulation are now available in paper format:

John W. Bagby & Nizan Geslevich Packin, *Market Manipulation Developments*, 80 Bus. Law. 297 (2025).

Anat Carmy-Wiechman, Giovanni Patti & Peter Robau, *SEC Cases and Actions: A Different Way to Measure Securities Enforcement*, 80 Bus. Law. 133 (2025).

Bregje de Vet, Note, *Securities Law—The Issue with Designating Crypto Assets on the Secondary Market as Securities and Regulating Crypto Assets Appropriately*, 47 UALR L. Rev. 47 (2024).

Javier El-Hage, *Beyond Climate: Addressing the Problem of Authoritarianism through ESG*, 49 N.C. J. Int'l L. 391 (2024).

Isaiah P. Harlan, Note, *The Securities and Environment Commission? The SEC Greenhouse Gas Disclosure Rule for Investment Advisers and Companies and the Fight against Administrative Overreach*, 44 N. Ill. U. L. Rev. 162 (2024).

Rochelle Kauffman Plesset, *Traps for the Unwary: What Every Operating Company Should Know to Avoid Regulation under the Investment Company Act*, 80 Bus. Law. 97 (2025).

Justin Marlowe, *ESG Factors in Municipal Securities Disclosures: Toward a Materiality Concept*, 44 N. Ill. U. L. Rev. 195 (2024).

Roland Trope & Candace Jones, *Emerging Guardrails for GenAI*, 80 Bus. Law. 237 (2025).

Hana Vizcarra, *Mandatory Disclosures and Organized Backlash: A Look at Litigation That Could Determine the Future of ESG in Investing*, 49 N.C. J. Int'l L. 421 (2024).

Securities Law News

Tower Health Sued Over Retirement Plan's Fees, Investment (1)

June 17, 2025, 10:20 AM PDT; Updated: June 17, 2025, 1:06 PM PDT

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** [No. 5:25-cv-03062](#) (Bloomberg Law subscription)

Pennsylvania-based Tower Health System was hit with a proposed class action by workers who say their retirement plan is plagued by excessive fees and a poorly performing guaranteed interest contract.

Tower's retirement plan, which held \$967 million in assets and covered more than 16,000 people as of 2023, paid annual recordkeeping fees that ranged between \$67 and \$83 per person, the workers said in a complaint filed Monday in the US District Court for the Eastern District of Pennsylvania. A plan this size should have paid annual fees no higher than \$28 per person for these services, according to the complaint, which brings claims under the Employee Retirement Income Security Act's fiduciary duty and prohibited transaction rules.

- The lawsuit also takes aim at the plan's guaranteed investment contract from Lincoln Financial Group Trust Co., which isn't named as a defendant
- This fund, which held more than \$34 million in plan assets, provided paltry returns compared to other capital preservation investments despite carrying greater risk, according to the lawsuit
- "Consistent with our longstanding policy, we do not comment on the specifics of litigation," a Tower spokesperson told Bloomberg Law

Capozzi Adler PC represents the employees.

The case is Brennan v. Tower Health Sys. , E.D. Pa., No. 5:25-cv-03062, complaint 6/16/25 .

(Updates with company's response in fifth paragraph.)

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Securities Law News

Lockheed Cites New SCOTUS Case in Bid to Dismiss 401(k) Lawsuit

June 17, 2025, 7:57 AM PDT

- Judge tasked with weighing ERISA prohibited transaction rules
- Justices took plaintiff-friendly view of these rules in April

Lockheed Martin Corp. asked a federal judge to dismiss litigation over its in-house 401(k) service provider and funds, calling the allegations against it a “conspiracy theory” that’s easily refuted by public documents and federal guidance.

Lockheed’s motion gives Judge Theodore D. Chuang an early opportunity to interpret the US Supreme Court’s April decision in *Cunningham v. Cornell University*, a plaintiff-friendly opinion holding that retirement plan participants claiming a violation of the Employee Retirement Income Security Act’s prohibited transaction rules don’t have to negate the statute’s exemptions from liability in their complaints in order to state a viable claim. According to Lockheed, this ruling considered only the exemptions found in Section 408(b) of the statute, which provides 21 specific instances in which interactions between plans and interested parties won’t be deemed illegal.

Cunningham didn’t consider the conduct described in Section 408(c) of the statute, which allows plan fiduciaries to receive reasonable compensation for services rendered and reimbursement of expenses, Lockheed said. The statute’s section titles make clear that this conduct “falls outside” the scope of ERISA’s prohibited transaction rules and therefore “requires no exception,” Lockheed said, arguing that the plan participants failed to meet their burden of pleading that this statutory provision doesn’t apply to defeat their claims.

The proposed class action says three Lockheed retirement plans have lost out on “hundreds of millions of dollars” since 2019 because of the company’s decision to use high-cost and poorly performing target-date funds from a wholly-owned subsidiary that provides investment management services to the plans.

But customized target-date funds are a popular and legally permissible option because of their diversification and simplicity, and the allegations of poor performance are based on “minimal, transitory differences” and comparisons to dissimilar funds, Lockheed said in a motion filed Monday in the US District Court for the District of Maryland.

“Courts have consistently rejected claims exactly like these—claims based on little more than hindsight-driven critiques of investment performance and simplistic fee comparisons between dissimilar investment options,” Lockheed said in its motion. “Aware of their core theory’s weakness, Plaintiffs embellish it with a tangle of complex allegations, hoping to set their Complaint apart from the many others just like it that have already failed.”

Lockheed also disputed the plan participants’ numbers, saying their allegations that the company made more than \$160 million from the plans in a five-year period is based on the wrong forms. The correct disclosures show expense reimbursements to Lockheed of only about \$20 million over this period, it said.

Groom Law Group represents Lockheed. Zuckerman Spaeder LLP and Don Bivens PLLC represent the plan participants.

The case is *Fezer v. Lockheed Martin Corp.*, D. Md., No. 8:25-cv-00908, motion to dismiss 6/16/25 .

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News | **Mass Torts**

Critical Mass With Law.com's Amanda Bronstad: Johnson & Johnson Takes Talc Fights Back to Court, Kirkland & Ellis Leads Surge in Product Liability Lawyers

June 18, 2025 | By  **Amanda Bronstad**



Judge John Porto. Courtesy photo

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: New Jersey's **Atlantic County Superior Court Judge John Porto** will hear arguments Thursday on whether to bar the *pro hac vice admissions* of two **Beasley Allen** lawyers in talc litigation. **Kirkland & Ellis** leads several defense firms bolstering litigation practices in the mass tort space. Find out who stepped into a dozen data breach class actions to represent **Keffer Development Services** and the **University of Michigan**, whose ex-football coach is accused of hacking into a database of student athletes.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on [LinkedIn](#) or X: [@abronstadlaw](#)



Pollock-J

‘This Case Is Enormous:’ Talc Back in Court

A hearing in **Johnson & Johnson’s** ongoing fight against **Beasley Allen** takes place Thursday in New Jersey, when **Atlantic County Superior Court John Porto** decides whether to ban the *pro hac*

vice admissions of two of the Alabama firm's principals, Andy Birchfield and Leigh O'Dell, who've been leading the charge in talcum powder lawsuits.

"Their admission would be detrimental to the prompt, fair and efficient administration of justice, as well as the interests of J&J," wrote Johnson & Johnson attorney Jessica Brennan (**Barnes & Thornburg**) in a May 29 opposition, citing a "myriad of ethical issues" with Beasley Allen.

Beasley Allen attorney Jeffrey Pollock (**Pollock Law**), in a June 10 reply, countered, "Under New Jersey case law, motions to disqualify, which is in essence what J&J's applications to bar *pro hac vice* admission amounts to, are highly suspect because they are often used – as is the case here – not for any valid reason but rather to gain strategic advantage by removing a strong opposing counsel."

Porto, who is overseeing the talc multicounty litigation in New Jersey state courts, rejected a similar attempt by Johnson & Johnson last year to disqualify Beasley Allen. Johnson & Johnson has appealed that decision, but the New Jersey Appellate Division has yet to schedule oral arguments.

Meanwhile, on Monday: Johnson & Johnson closed out another trial tying its baby powder to mesothelioma, this time in **Suffolk County Superior Court** in Massachusetts, where jurors are deliberating. Johnson & Johnson attorney Bruce Hurley (**King & Spalding**) told jurors that plaintiff Janice Paluzzi was exposed to asbestos from the John Hancock building where her three sons worked, according to Courtroom View Network. Paluzzi's lawyer, Ben Braly (**Dean Omar**) asked jurors for at least \$45 million in past pain and suffering, stating:

"This case is enormous. It's one of the biggest cases I've ever worked on in my career, and certainly Janice Paluzzi's one shot."



Mark Jones of Nelson Mullins. Courtesy photo

Defense Firms Bet Big On Mass Torts: ‘There’s So Much At Stake’

Big defense firms like **Kirkland & Ellis** and **Nelson Mullins** have beefed up their product liability practice areas so far this year, reflecting growing demand for high-stakes litigators in mass torts.

Here’s the report from my **ALM** colleagues **Aleeza Furman** and **Jon Campisi**. Kirkland & Ellis, the highest-grossing firm in the world, already has brought in 100 additional litigators in 2025 and launched a new office in Philadelphia, poaching partners from **Skadden Arps**, like Johnson & Johnson talc counsel Allison Brown, and **King & Spalding** partners Kristen Fournier, Kim Bueno and Morty Dubin last month. Other firms following suit are **Morgan Lewis** and **Nelson Mullins**.

Lawyers said the lure is a shift from commoditized products liability work, where the science is settled and billing rates compressed, to more bet-the-company litigation, which has expanded from pharmaceuticals and medical devices to include ultra-processed foods and PFAS. Aleeza

told me a lot of attorneys said there were more verdicts in the tens of millions, hundreds of millions and billions of dollars. One of them was Mark Jones (**Nelson Mullins**), who told her:

"Because of what's at stake, you even see blue chip companies facing the potential for bankruptcy from time to time. There's so much at stake that there has to be a different approach on the defense side, helping companies navigate these large pieces of litigation."



The entrance to the football stadium at the University of Michigan known as the Big House. Credit: Jack F Schultz/Adobe Stock

Who Got the Work?

Dillon McCandless attorneys Thomas King and Jordan Shuber have appeared for athletic trainer system software developer **Keffer Development Services**, which is accused in about a dozen lawsuits of failing to protect thousands of student athletes at multiple universities from having their personal information accessed by ex-**University of Michigan** football coach Matthew Weiss,

Moral Money Banks**Banks face rising risks from climate lawsuits**

Fossil fuel financing by the world's largest lenders is on the rise — and so is the potential for legal trouble



JPMorgan, Bank of America and Citigroup increased their fossil fuel financing by a combined \$42.6bn last year © REUTERS

Simon Mundy

Published 6 HOURS AGO



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Welcome back.

Climate-related lawsuits against companies have emerged at a growing pace in the past few years — including cases against European banks ING and BNP Paribas. A German court ruling last month suggested the risk of business disruption from these lawsuits might be greater than previously thought.

But as they ratchet up their fossil fuel lending, are banks taking that risk seriously enough?

CLIMATE JUSTICE

Fossil fuel bets could be riskier than banks realise

For a few years after many of the world's biggest banks set net zero targets in 2021, an optimistic case could have been made that they were at least making some progress towards that goal.

Fossil fuel financing by the world's 65 largest banks by assets declined by 15 per cent in 2022, and another 10 per cent in 2023, according to the annual Banking on Climate Chaos report.

But last year, according to the [latest edition of the report](#) published yesterday, it came roaring back — with a 22 per cent annual rise that has nearly wiped out the modest declines achieved in the prior two years. Fossil fuel finance by the banks amounted to \$869bn, almost back up to the \$922bn provided in 2021.

The rise was broad-based, with two-thirds of the 65 banks increasing their fossil fuel finance last year. But it was driven disproportionately by the biggest US banks, where the growth rate far outstripped the wider average.

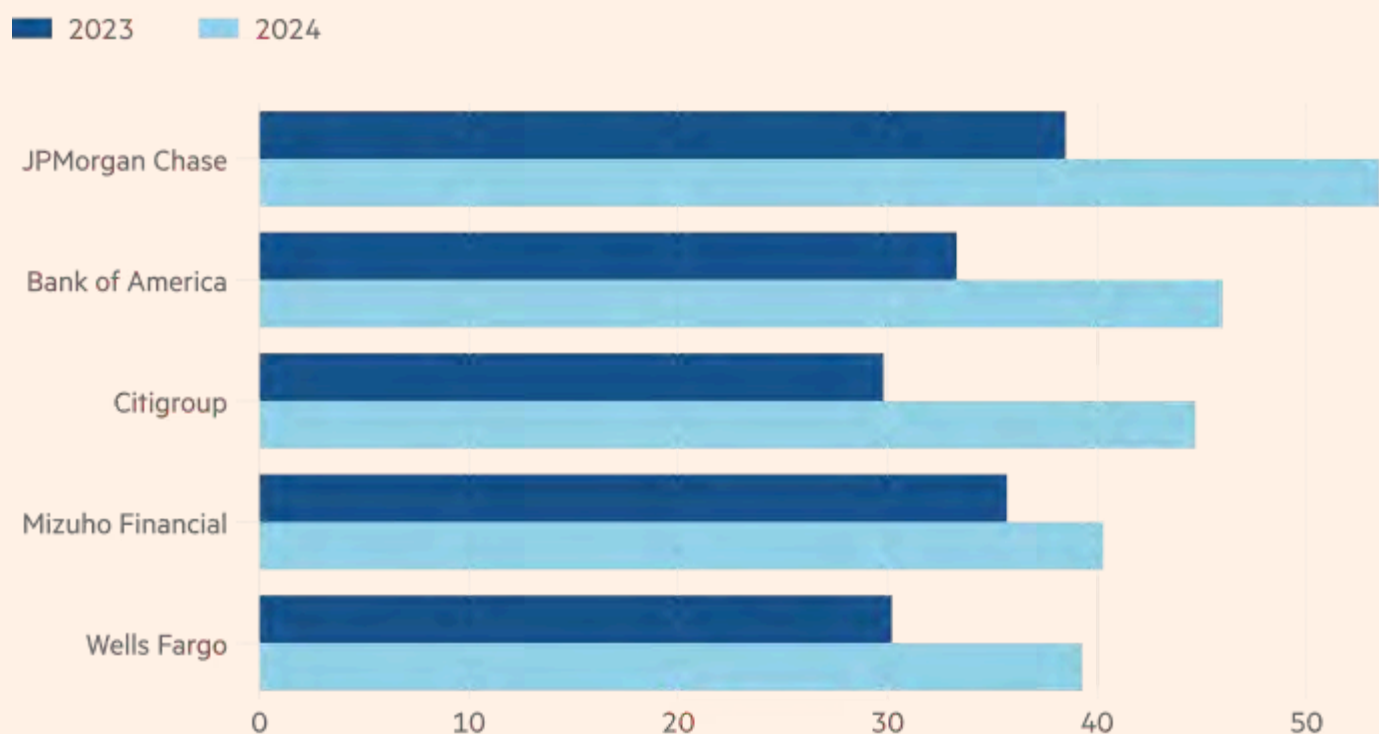
JPMorgan, Bank of America and Citigroup — the world's three largest fossil fuel financiers — increased their financing for fossil fuel companies by a combined \$42.6bn last year, a 42 per cent annual rise. At Barclays, by far Europe's biggest fossil fuel financier, the figure grew by an even more bullish 55 per cent.

In response to the report, the banks have said that their financing figures reflect the needs of society, and highlighted their extensive financing for the green transition. JPMorgan, for example, said it provided \$1.29 of low-carbon energy finance for every dollar backing the high-carbon sort. (This seems less impressive when you consider that the global ratio last year was 2:1, according to the International Energy Agency.)

Nearly all the financing covered by this report — produced by non-profit groups including the Rainforest Action Network — came before Donald Trump's victory in November's US presidential election, which has provided further tailwinds to fossil fuel investment this year.

On the up

Financing to fossil fuel companies by the five largest bank providers (\$bn)



Source: Banking on Climate Chaos

But these fossil fuel bets could prove riskier than some bankers realise. A new study by academics at the London School of Economics' Centre for Economic Transition Expertise argues that banks are failing to pay enough attention to the risk of climate-related lawsuits, which have been steadily growing in frequency over the past decade.

Last month, a German court [dismissed a climate case](#) brought against power company RWE by a Peruvian farmer for lack of evidence of harm — while asserting that, where such evidence can be shown, such a case may have merit. In another recent case involving oil company Shell, a Dutch court ruled that high-emitting companies had a “duty of care” to tackle climate change — and suggested that ongoing fossil fuel investments could clash with this duty.

Having studied banks’ public disclosures, the academics found that the lenders acknowledged they faced material risks around climate litigation, but tended to be vague about the details. Where they did go into detail, the banks broadly focused on the threat of greenwashing lawsuits, rather than litigation against banks or their clients over fossil fuel production. In banks’ presentation of the risks, they tended to present them as “reputational” rather than “operational” — perhaps because the latter type of risk can lead to increases in required capital buffers, which weigh on earnings.

In short, the academics reckon, supervisors need to pay closer attention to the expensive risks that climate lawsuits could create for banks. As banks’ fossil fuel portfolios continue to grow, so does the potential for trouble.

Smart reads

Hard to quit Why is [coal demand still growing](#) 10 years after the Paris Agreement? This FT Big Read explains.

Colour crackdown Kraft-Heinz is set to [remove artificial dyes](#) from US products as companies face government pressure over synthetic ingredients.

Up and running Norway has launched the world’s first full-scale [industrial carbon capture and storage operation](#).

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Class Action

Generative AI Requires Flexible Policy Plan to Protect Creators

June 18, 2025, 1:30 AM PDT

Adobe senior vice president Karen Robinson says generative AI can be a boon for creators, but only if the policies regulating it can protect intellectual property.

Creators around the world have emerged as economic powerhouses, fueling cultural movements with a single post and reshaping how brands connect with their customers. As creative expression becomes central to how we work, learn, and play, another force is simultaneously transforming the creative landscape: generative artificial intelligence.

Generative AI holds extraordinary promise. It can supercharge creativity, accelerate productivity, and unlock entirely new economic frontiers. But for many creators, it's also setting off alarm bells. In today's digital landscape, where content can be replicated, remixed, and monetized in seconds, the absence of thoughtful safeguards means creators risk becoming collateral damage in a technological gold rush.

Creators face a growing threat of unauthorized reproductions of their style, likeness, or work, along with misattribution and loss of control once their content goes online.

As a transformative technology, generative AI is reshaping the creator economy—and it's important that policies evolve in tandem.

Innovation and Oversight

As part of the broader tech industry, we share the collective responsibility to build transformative technology ethically. The scale and speed of generative AI's impact make it critical to consider how policies can complement responsible innovation. If we want to ensure that generative AI strengthens the foundation of creative industries, governments have an important role to play in supporting innovation through clear, balanced policies that protect creators while encouraging progress.

Regulation doesn't have to mean overregulation. Rather than narrowly tailored policies that struggle to keep pace with rapid technological change, the goal should be to establish clear, flexible frameworks that promote fair competition, protect creators, and evolve alongside innovation.

What's needed is a forward-looking approach—one that provides guidance and guardrails while remaining responsive to new use cases and modalities. This isn't only in the interest of innovation; it's also critical to ensuring a level playing field for companies of all sizes.

Addressing Inputs, Outputs

As more countries explore writing and setting AI policy, many are developing frameworks that focus heavily on either inputs (such as training data) or outputs (such as content impersonation), but rarely both. In practice, effective legal frameworks must consider both dimensions and take a balanced approach.

On the inputs side, we need clear guidance around how AI models are trained—starting with the data.

A major unresolved legal question is whether using copyrighted content to train generative AI constitutes “fair use” under current US copyright law. While broad data access fuels innovation, creators deserve meaningful agency over how their work is used.

For example, the UK government and the EU are currently exploring opt-out mechanisms in the context of text and data mining exemptions that would allow creators to prevent their content from being used in training data.

Since 2019, Adobe has advocated for the widespread adoption of “Content Credentials”: secure metadata that anyone can attach to their work to provide transparency into how a piece of content was created, who created it, and how it was edited. More importantly, Content Credentials can be used by creators to signal to generative AI models that their content shouldn’t be used for training.

Supporting the widespread, cross-industry adoption of technologies such as Content Credentials would provide creators with a powerful mechanism to assert control over their work. Governments have a key role to play here in encouraging enforceable standards and ensuring that creators’ preferences are respected across the AI development lifecycle.

On the output side, existing copyright laws in the US today don’t cover unauthorized imitation of artistic styles or digital likenesses.

As the company that powers creativity for billions around the world, we know that creators’ unique artistic styles aren’t only their expression but also integral to their livelihoods. When AI is used to replicate those styles without consent for profit, it undercuts the very people at the heart of the creative economy.

While generative AI outputs may not constitute direct copyright infringement, they can still undermine a creator’s livelihood when used to mimic their work without consent. Here, governments must act to modernize the legal framework for creator protection in the AI era. Legislation such as the Preventing Abuse of Digital Replicas Act, which aims to curb unauthorized digital impersonation, is an important step toward protecting the individuals and industries that fuel the creative economy.

Law to Policy

In the US, efforts to establish legal precedent around generative AI are largely playing out in courtrooms. While litigation can take time, these cases play an important role in clarifying how current laws apply to new and emerging technologies—and in shaping future policy discussions.

Recent rulings—such as *Andy Warhol Foundation v. Goldsmith*—underscore both the potential and limitations of relying solely on courts to define fair use in the context of generative AI training.

As new generative AI modalities continue to emerge—first images, then language models, now video—litigation alone can't provide the speed or scope needed to keep pace. Courts are an important part of the process, but meaningful progress will require proactive policy frameworks that protect creators and enable the transformative innovation AI can deliver.

Generative AI has the potential to become a foundational part of how we create, collaborate, and communicate. But its success depends on trust, transparency, and fairness.

Creators deserve clear pathways to assert control over how their work is used by generative AI. Businesses, in turn, need clarity on what responsible development looks like. Only through balanced, adaptive, and forward-thinking governance can we ensure that generative AI delivers on its full potential—while protecting the people who make creativity possible.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

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Write for Us: Author Guidelines

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State Farm accused of underinsuring wildfire victims

DJ[dailyjournal.com/articles/386210-state-farm-accused-of-underinsuring-wildfire-victims](https://www.dailyjournal.com/articles/386210-state-farm-accused-of-underinsuring-wildfire-victims)

Jun. 18, 2025

State Farm is accused of underinsuring California wildfire victims by manipulating reconstruction estimates and pushing high-risk policies to the FAIR Plan, causing an insurance crisis.

State Farm is accused in a new lawsuit of orchestrating a wide-ranging scheme to increase market share in California at the expense of its clients, who say they're unable to rebuild their homes after the destructive L.A. County wildfires.

The complaint, filed Monday in Los Angeles County Superior Court, claims violation of California's Unfair Competition Law; negligence; negligence (agent); breach of implied covenant of good faith and fair dealing; breach of contract; reformation; and unjust enrichment.

The complaint says a scheme played out over several years. It says State Farm suppressed home reconstruction estimates, which pushed clients to accept lower coverage limits at more attractive premiums, and caused them to be underinsured after the Eaton and Palisades fires destroyed their homes. In early 2023, State Farm allegedly conspired with other insurers to push high-risk policies to the California FAIR Plan, which eliminated those policies from State Farm's balance sheet and artificially raised the premiums that those clients pay under the FAIR Plan, the complaint says. This claimed "pump and dump" scheme caused an insurance crisis which State Farm allegedly used when it requested approval from the insurance commissioner to hike its rate, the lawsuit states.

Lawsuits against the state's insurer of last resort, the California FAIR Plan, are piling up in Los Angeles County courts. FAIR Plan's president recently asked the state Assembly to pass a bill to shift homeowners from its rolls back to the private market so it can be "sustainable."

State Farm representatives did not respond to a request for comment. A statement posted on its website on June 12 says it is "committed to helping build an affordable, available, and sustainable insurance market for all Californians."

It says it received over 12,870 claims related to the fires as of June 12 and has paid over \$4.03 billion to its California customers.

The complaint was filed by Shernoff Bidart Echeverria LLP and Larson LLP. *Jesse and Angela Albert, et al. v State Farm Fire & Casualty Co.*, 25STCV17327 (L.A. Super. Ct., filed June 16, 2025).

"Most homeowners never expect to need to cover a total loss, and so never find out if the limits set by their insurance company are adequate," Michael J. Bidart said in a statement. "These homeowners are confronting the unfortunate fact that the coverage set for them was never intended to fully rebuild their lives."

The complaint singles out the software that State Farm uses to estimate reconstruction costs. It says the company substitutes actual data with fictional numbers that lead to significantly lower reconstruction estimates. State Farm has a 20% market share in California and is the largest insurer in the state.

"Consumers have a reasonable expectation that their insurance companies are using the tools that determine coverage with at least ordinary skill and care," Stephen G. Larson said in a statement. "State Farm's deliberate misuse of their estimator program exposes both individual homeowners and the California market as a whole to greater liability at a time of significant insurance instability."

Shernoff Bidart Echeverria LLP and Larson LLP filed an antitrust action and a putative class action against State Farm and other insurers in April with similar allegations. The class action is: *Anthony Canzoneri, individually, and as Trustee of the Anthony Canzoneri Revocable Trust of 2008, and on behalf of others similarly situated, v. State Farm Fire & Casualty Co., et al.* (L.A. Super. Ct., filed April, 2025). The antitrust action is: *Ferrier et al., v. State Farm Fire & Casualty Co., et al.*, (L.A. Super. Ct., filed April, 2025).

Insurance Commissioner Ricardo Lara announced last week that his office was investigating State Farm's handling of claims stemming from the January wildfires. The investigation is expected to take several months. State Farm is still making decisions about claims stemming from the January wildfires, so investigators should be able to conduct a more thorough review.

Some State Farm clients have said that the company is offering to pay only fractions of what it costs to repair and clean homes that were damaged by the Eaton and Palisades fires and described its claims process as difficult and frustrating.

Ex-FTC lawyers form new firm targeting US antitrust enforcement 'gaps'



reuters.com/legal/government/ex-ftc-lawyers-form-new-firm-targeting-us-antitrust-enforcement-gaps-2025-06-17

Mike Scarcella

June 17, 2025

People walk through an office building in Tokyo January 8, 2009. REUTERS/Yuriko Nakao/File Photo [Purchase Licensing Rights, opens new tab](#)

June 17 (Reuters) - Three former U.S. Federal Trade Commission lawyers and a U.S. attorney who resigned in January opened a new plaintiffs law firm on Tuesday focused on unfair competition, price discrimination and other antitrust law violations.

They are launching the New York-based firm, Simonsen Sussman, as private antitrust litigation has surged in recent years, and as the FTC has shed staff under the second Trump administration.

Catherine Simonsen, Shaoul Sussman and Nicolas Stebinger, who departed senior roles at the FTC in recent months, formed the firm with Kate Brubacher, a former U.S. attorney for Kansas during the Biden administration.

The firm said underutilized laws and institutional constraints at federal agencies have left "gaps" in antitrust enforcement that the lawyers hope to fill.

"We've seen courts starting to understand that corporate interests have gone too far," Simonsen told Reuters.

The FTC under Trump has [sought to trim](#) the agency's headcount by about 10%. FTC Chair Andrew Ferguson told Congress last month that 94 employees so far this year have departed the agency, leaving 1,221 full-time employees.

The FTC in May [abandoned](#) a lawsuit accusing Pepsi of violating the decades-old Robinson-Patman Act. The law can restrict a seller from providing discounts, rebates and other pricing deals to some buyers, but not all.

Ferguson questioned whether the case filed in the waning days of the Biden administration had been adequately investigated. Pepsi had denied any wrongdoing.

Attorneys at the new firm said the Robinson-Patman Act was one example of where plaintiffs firms could use existing, underused laws to target alleged wrongdoing.

They also pointed to California's powerful unfair competition law.

A federal judge in California found [Apple violated](#) that state provision, but not federal antitrust law, in a high profile case lodged by "Fortnite" maker Epic Games. Apple has denied any

wrongdoing.

Read more:

[FTC drops case against Pepsi alleging price discrimination](#)

[US FTC chair seeks to trim agency by around 10%](#)

[Fired FTC commissioners seek to fast-track case over dismissal](#)

[Convenience stores sue Pepsi and Frito-Lay, alleging price discrimination](#)

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Securities Law News

Litigation Funders Fight 41% Tax in Senate Bill, Warn of Harm

June 17, 2025, 1:39 PM PDT

- Litigation finance tax added into 'big, beautiful' bill
- Funders are mobilizing to remove the provision

Litigation funders are mobilizing to strip a provision from the Senate version of President Donald Trump's "big, beautiful" bill that would discourage lawsuit investments.

The language by Sen. Thom Tillis (R-NC) would tax litigation finance proceeds at 41% and "knock out our industry," said Bill Farrell, co-founder of Longford Capital Management. Industry officials are courting senators and deploying lobbyists in a bid to remove the provision as the bill moves through the Senate.

The proposal "would fundamentally undermine access to justice" in the US, Paul Kong, executive director of the International Legal Finance Association, said in a statement. It "threatens to place significant barriers in front of small businesses, inventors, startups, and other less well-resourced claimants seeking redress."

The language disclosed Monday in the 549-page health and tax section of the legislation (H.R. 1) threatens an industry that has grown to \$16.1 billion in assets under management. It works by having investors pay the cost of lawsuits in return for getting a slice of any awards or settlements that result from successful cases.

Tillis is backed by corporations including Exxon Mobil Corp. and Uber Technologies Inc., and corporate trade groups such as the US Chamber of Commerce, that argue litigation finance increases their costs by encouraging meritless and speculative lawsuits. They claim the tax Tillis proposes would be in line with what plaintiffs and their attorneys pay for lawsuit awards, rather than the capitals gains and other lower rates paid by investors.

Tillis' office has said his plan would raise \$3.5 billion in revenue over 10 years, an amount that is noteworthy because Senate Republicans are looking for income sources to help pay costs in the bill and to limit deficit increases.

But Longford's Farrell contends the 41% tax won't generate revenue because it will deter investors from putting money into litigation finance. "It will not produce material revenue even in the best-case scenario," he said.

Byrd Rule

The "big, beautiful" bill so far lacks the Republican support needed to pass in the Senate, giving litigation finance backers time to thwart the Tillis provision. The reconciliation process Senate Republicans are using also offers the industry opportunities to get it removed or amended.

Reconciliation proposals must comply with the so-called Byrd Rule, which restricts items that are not primarily budgetary in nature. This opens up the possibility for senators who oppose the provision—Republicans or Democrats—to try to strip it out through a parliamentary maneuver. Longford Capital's Farrell said the provision likely wouldn't meet the Byrd standard because "it's really just a policy issue."

The International Legal Finance Association is actively engaging with members of the Senate to ensure they fully understand the consequences of the provision, according to the statement by Kong, the group's executive director. ILFA has hired GOP lobbyist Pete Kirkham, according to a public disclosure form. Kirkham previously was executive director of the National Republican Congressional Committee and was chief of staff for Rep. Tom Cole (R-OK), the House's top appropriator.

Funders are also taking issue with other provisions in the Tillis plan, including an "anti-netting" provision, which bars funders from offsetting their gains with other ordinary or capital losses in the same tax year.

"This bill sort of goes way overboard," said Gregg Polsky, an NYU professor who specializes in tax law. "You're taxed on your winners, but you get no relief for your losers."

Another provision removes shields for tax-exempt organizations, such as public pensions, and for foreign investors, who normally are subject to levies in their own countries though not US taxes. This could deter investors from putting capital in the space, according to Polsky.

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NewsRoom

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June 18, 2025

Former FirstEnergy lobbyist takes stand in utility commission's Ohio bribery scandal hearings

Nick Evans

Jun 18, 2025

Former FirstEnergy in-house lobbyist Justin Biltzer testifying at the PUCO. (Photo by Nick Evans, Ohio Capital Journal.)

FirstEnergy's former in-house lobbyist Justin Biltz took the stand Tuesday in a utility commission hearing about House Bill 6 — the bill at the heart of Ohio's utility political bribery and corruption scandal.

His testimony filled in some of the details of what prompted the company to bribe former Public Utilities Commission of Ohio Chair Sam Randazzo.

"The Ohio hole"

Sometime before 2019, FirstEnergy realized it had a problem. As a regulated monopoly, the company set rates in hearings before the PUCO. But it was becoming clear that FirstEnergy wouldn't be able to justify rates as high as it currently charged when it went back before regulators.

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Biltz explained they had a special name for it.

"The Ohio hole," Biltz described, "was the difference in revenues that were established from the company's last base distribution case as compared to what the company could justify if it were

to go in for another rate case in 2024 and the difference being that it would have been a lower amount.”

Concerns about that lower rate led Biltz and other FirstEnergy employees to start working on different strategies to fill in that hole.

“There was a broad kind of working group at the company who were coming up with these different options that could be put in front of Mr. Randazzo,” Biltz explained. “I don’t recall him arriving at any conclusion in any of those meetings, but rather, the information was presented and he had it.”

Biltz acknowledged FirstEnergy executives wanted to see Randazzo installed as PUCO chair, but said they simply saw him as a person with “subject matter expertise” who could “bring some stability to the agency.”

Biltz described at least three meetings between himself, FirstEnergy Vice President Michael Dowling, and Randazzo at Randazzo’s home in Columbus, his condo in Cuyahoga Falls, and a FirstEnergy office.

These meetings occurred around the time Randazzo was tapped to lead the PUCO but prior to his term officially beginning.

“Was it your understanding at the time,” Ohio Consumers’ Counsel attorney Thomas Brodbeck asked, “that it was okay for yourself and others at FirstEnergy to discuss business that would be before Mr. Randazzo as chairperson of the PUCO, with Mr. Randazzo, so long as those discussions occurred before he was seated as chief?”

“Yeah, that was my understanding,” Biltz said. “That as long as his term had not yet started, that the company’s lawyers were involved and seemed okay with it.”

But that wasn’t the last of communications between the company and Randazzo. Evidence in the case is littered with text messages between FirstEnergy executives describing interaction with Randazzo, and even a few with Randazzo himself. Biltz said he was unaware of those at the time.

Still, there was at least one apparent incident he knew about.

“Is it your understanding that Mr. Randazzo helped FirstEnergy draft House Bill 6?” Ohio Manufacturing Association attorney Kim Bojko asked.

“I can recall being on a conference call with Mr. Randazzo during the legislative drafting process, there were several other internal employees, discussing some of the language in House Bill 6,”

Biltz said. “I think we were sharing different language approaches. I don’t recall exactly the outcome of that and whether you’d consider that helping FirstEnergy.”

Randazzo officially assumed his post as PUCO chairman on April 11, 2019. House Bill 6 was filed the very next day.

Biltzer didn’t put a date on the conference call he described, but FirstEnergy’s deferred prosecution agreement describes Randazzo having a direct hand in the legislative efforts in June and July of 2019. The measure passed in late July.

The payments

On Jan. 30, 2019, an “urgent and confidential” request went out to the accounting team at FirstEnergy. Could they track down any payments to an organization called ‘Sustainability Funding Alliance’ — or something like that? The following day, the ask was expanded to include ‘McNees Wallace’ and ‘Randazzo.’

Sustainability Funding Alliance was a consulting firm controlled by Randazzo, and McNees Wallace was the law firm he worked for.

Gov. Mike DeWine tapped Randazzo to lead the PUCO on Feb. 4 that year.

Biltz explained the internal review started up in response to a reporter’s request. They’d found a connection to Sustainability Funding Alliance in bankruptcy proceedings for a subsidiary called FirstEnergy Solutions.

“In late January 2019, Mike Dowling had asked or informed me that this was a contract that was being managed out of the legal department,” Biltz said. “He wanted to know exactly how much had been paid to that entity over time, and by which entities those costs were being allocated to.”

The review found FirstEnergy had paid almost \$20 million to Sustainability Funding Alliance since 2010, including “a 4.3 million lump sum that was paid in December 2018.”

Brodbeck emphasized the timeline — lump sum payment in December, and Randazzo’s appointment to the PUCO two months later in February.

“Do you know what that lump sum was for?” he asked Biltz.

Biltz insisted, “I was never involved in any discussions regarding that lump sum.”

Brodbeck pressed on, asking whether those dollars got passed along to consumers.

"I was not able to determine that," he said. "I knew which entities they were allocated to, but whether they eventually made it into rates or riders, that was not something that I had been asked to look into and did not."

As for whether the expenses were applied to Ohio utility companies, Biltz acknowledged that they had.

Brodbeck asked if the company had discussed concealing the records from the public or sharing them with the PUCO.

"Not to my knowledge," Biltz said.

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Opinion

Matt Levine's Money Stuff: It's Not Gambling, It's Predicting

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Statute of Anne

Kalshi offers a prediction market where you can bet on sports. No! Sorry! Wrong! It offers a prediction market where you can predict which team will win a sports game, and if you predict correctly you make money, and if you predict incorrectly you lose money. Not "bet on sports." "Predict sports outcomes for money." Completely different.

The difference matters for somewhat baffling legal and jurisdictional reasons. The US has a federal system in which:

1. Commodity futures markets are regulated by the US Commodity Futures Trading Commission, a federal agency.
- 2. Gambling is regulated by the states.
- 3. State gambling regulators are not allowed to meddle with CFTC-regulated commodity futures contracts.

These things are related, because historically people sometimes thought that commodity futures contracts *were* gambling. If I buy a wheat futures contract, I make money if the price of wheat goes up and lose money if it goes down. I don't have to be a farmer or a baker; I don't have to have some non-speculative use for the wheat contract. I don't have to take delivery of the wheat; I can just close out my bet for cash, and most traders do. So there was a risk that your commodity futures contract would be treated as gambling; gambling was often illegal, so your futures contract might not be enforceable, or you might even go to jail for trading it. The Commodity Exchange Act of 1936, which established the CFTC, created federal regulation of commodity futures contracts, which had the benefit of making it clear that CFTC-regulated contracts *weren't illegal gambling* under state law, and so couldn't be regulated by state gambling regulators.

The CFTC allowed and regulated futures contracts on various commodities (though not onions). Over time, though, the notion of a “commodity future” expanded. It turns out that financial markets have enormous use for interest-rate futures and stock index futures and other things that are not commodities in the normal sense of the word. CFTC regulation expanded to cover those contracts too. The way this happened is essentially that the CFTC licensed and regulated *futures exchanges* — the Chicago Board of Trade, the New York Mercantile Exchange, etc. — and the futures exchanges decided what contracts to list. They started off listing wheat and cotton and pork bellies, and then moved into interest rates and stock indexes, and the CFTC went along with them. But the impetus to expand came from the exchanges, which could make more money by listing new categories of futures.

The CFTC has rules about what sorts of contracts the exchanges were allowed to list; for a long time those rules involved an “economic purpose test,” requiring the exchanges to list only contracts that could help with hedging or price discovery. Wheat futures could help farmers hedge, and interest-rate futures could help banks hedge, but pure gambling was discouraged. In 2000, the Commodity Futures Modernization Act removed the economic purpose test, giving the CFTC more flexibility to allow futures contracts without any showing of a specific economic purpose.

Still there are limitations. Specifically, the statute says that the CFTC can refuse to approve “event contracts” — that is, contracts that “are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity)” — that “are contrary to the public interest” if they involve among other things, illegal activity, terrorism, assassination, war, “gaming” or other similar activity.

For a while, the CFTC interpreted this pretty broadly. For one thing, it declared categorically that any contracts involving those things (assassination, war, gaming, etc.) were “contrary to the public interest” and not allowed. But it was also skeptical of “event contracts” more broadly; in particular, it tried to stop most exchanges from listing *election* contracts, because it worried that those were also contrary to the public interest, had no economic purpose, and “would put the CFTC in the role of an election cop.”

But Kalshi, which runs prediction markets and became a CFTC-regulated futures exchange, pushed back on this, arguing that the CFTC was going beyond the statute by banning election contracts. In September, Kalshi won an important victory, when a federal court ruled that “Kalshi’s contracts do not involve unlawful activity or gaming. They involve elections, which are neither.”

In November, Kalshi won a much more important victory, when Donald Trump was elected president and brought in an administration that is far more friendly to prediction markets generally. Trump’s nominee to run the CFTC was previously a member of Kalshi’s board of directors, and the CFTC, which had planned to appeal the district court’s election-contract ruling, decided to drop that appeal last month.

So now Kalshi can list election contracts, and does. But there is only so much money in election contracts; there is not a high-profile election every day. There are high-profile sporting events most days. People like to, uh, predict the outcomes of those sporting events, and win money if their predictions are correct. Starting in January, Kalshi has listed sports contracts too. Is it allowed to? Well. ESPN described the situation earlier this month:

Kalshi went through a six-year process to be certified as an exchange regulated by the CFTC. ... This allows them to list any new offerings, sports or otherwise, through a self-certification process without prior approval from the federal agency, which can later review products and flag them for violations.

A CFTC rule prohibits offering event contracts related to “gaming,” which Kalshi argued in court filings last year applied to sports. At the time, the company was facing scrutiny from the Biden administration about its offerings on political elections. “The only relevant legislative history, moreover, confirms that contracts on ‘sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament’ were precisely what Congress had in mind as ‘gaming’ contracts,” Kalshi’s attorneys wrote in a filing in January 2024.

A year later, Kalshi began offering sports contracts, including on the Super Bowl and the Masters, and advertised itself as the “First Nationwide Legal Sports Betting Platform.” Over the next five months, more than \$1 billion was traded on 3.4 million sports propositions, according to a company spokesperson. It has roughly two million users, the spokesperson said, and is still available nationwide.

On the federal level, the CFTC has yet to weigh in. The commission canceled a public roundtable on prediction markets in April and has not rescheduled it. ...

Currently, Kalshi offers contracts only on the results of games or tournaments, but the NBA wrote to the CFTC that it is concerned that the market will soon expand to individual player propositions or other types of contracts that pose a greater threat to sporting integrity. It also said that the self-certification process “allows most contract markets to simply proceed unchecked.”

That is: The CFTC currently has a rule that prohibits futures exchanges from listing “gaming” contracts, and Kalshi has previously said in court that contracts on sporting events are “gaming,” but it is not *absolutely* clear that that’s the case. More recently, Kalshi Chief Executive Officer Tarek Mansour has said that “I just don’t really know what this has to do with gambling,” because Kalshi offers a marketplace for traders to bet with each other on sports rather than serving as a central sportsbook. That argument strikes me as quite weak

— betting against other people is still betting? — but the point is that “gaming” is somewhat unclearly defined, there is some continuum between “betting on wheat prices” and “betting in-game parlays in the NBA Finals,” and, most crucially, *the CFTC hasn’t stopped them*. Kalshi has self-certified sports contracts, and the much more Kalshi-friendly 2025 version of the CFTC has said, implicitly, “eh fine go ahead.”

Perhaps that will change: In February, Robinhood Markets Inc. briefly offered its clients the opportunity to bet on the Super Bowl on Kalshi, and then quickly walked that back after getting some sort of pushback from the CFTC. Robinhood had thought the CFTC was cool with it (“We were in regular contact with the CFTC prior to launching this product, and we believe we are in full compliance with all applicable regulations,” it said), but that turned out to be wrong. Perhaps the CFTC will also get around to telling Kalshi to knock it off, though I wouldn’t bet on that.

But various state gaming regulators *have* told Kalshi to knock it off: The state gaming regulators want sports betting to go through state-regulated sportsbooks rather than through CFTC-regulated(-by-omission) futures markets, for consumer-protection and integrity-of-the-game and state-revenue-related reasons. But Kalshi has gone to court to argue: No, actually, states *aren't allowed to regulate our sports bets*, because they are CFTC-regulated futures contracts and state regulation is preempted.

And Kalshi has a pretty good record of winning those cases! Federal judges have blocked Nevada and New Jersey gaming regulators from banning Kalshi's sports contracts, because (1) Kalshi is a CFTC-regulated futures exchange, (2) the CFTC has exclusive jurisdiction over commodity futures, (3) the CFTC has not blocked Kalshi from listing these sports contracts and therefore (4) they must be commodity futures that are not subject to state regulation.

This strikes me as an extremely, extremely weird state of affairs. Andrew Kim and John Servidio explained some of the weirdness in April:

If Kalshi is right and the CEA preempts state wagering laws as they relate to sports-wagering contracts, such an outcome could have dramatic consequences for the sports wagering industry. It would have the potential to cause not just a realignment and reconfiguration of sports wagering (or event contracting) as we know it, it would also lead to a regulatory void. The CFTC cannot meaningfully regulate sports-related event contracts using the up-or-down power of prohibition. It lacks both statutory authority and experience to address the range of compliance issues uniquely presented by staking money on the outcome of sporting events, regardless of whether that happens as a "contract" or as a "wager." These issues include integrity monitoring, responsible gaming and anti-money laundering, to name just a few. Any court addressing the preemptive power of the CEA will need to grapple with these practical concerns.

I actually think that the US Securities and Exchange Commission does have a pretty good track record of dealing with "integrity monitoring" (banning insider trading, etc.), "responsible gaming" (telling brokers not to drain their customers' accounts too much) and anti-money laundering, so I am somewhat more optimistic that federal regulation of sports gambling by the CFTC could work. Still, "federal regulation of sports gambling by the CFTC" is a weird outcome!

But what am I going to do about it. Last week a company called "Ohio Gambling Recovery LLC" filed an amazing lawsuit in Ohio state court against Kalshi, Robinhood, and Susquehanna International Group, the options market maker that has also gotten big into sports gambling. Ohio's state gaming regulator, like New Jersey's and Nevada's and several other states', has sent Kalshi a cease-and-desist letter telling it to stop offering sports bets in Ohio, but Kalshi takes the position that those letters are invalid because they are preempted by CFTC regulation. So far that has been a winning strategy for Kalshi, but it is not absolutely certain that will continue. Maybe the CFTC will say "actually you can't list these contracts because they are gaming," or maybe a court will eventually rule against Kalshi's preemption arguments. If that happens, presumably Kalshi will have to stop listing sports contracts.

Ohio Gambling Recovery, though, has bigger plans. If Kalshi's contracts *are* gambling, it will have to stop offering them, sure, but the bet in this lawsuit is that it will also have to *pay all of its winnings* to Ohio Gambling Recovery. From the lawsuit:

Like many states, Ohio offers an additional safeguard against illegal, unregulated gambling: its Statute of Anne. Based on a 1710 British law passed during the reign of Queen Anne, that law allows a losing party to sue the winning party for the value of gambling losses plus fees. And should the losing party fail to sue within six months, the statute authorizes any third party to bring a claim against the winning party to recover those losses and fees also.

Defendants have operated in Ohio without regard to the state's legal limits for years. Each year, they take tens of millions of dollars from Ohio gamblers. But under the State's Statute of Anne, each time Defendants caused a gambler in Ohio to suffer gambling losses, that person had the right to sue for recovery of those losses. And after six months, *any* person may sue for those losses on the victims' behalf. In filing this action, Plaintiff takes just that step.

The theory here is that, *if* Kalshi's sports contracts are gambling, then they are illegal gambling in Ohio, and if they are illegal gambling in Ohio, then anyone — and why not Ohio Gambling Recovery? — can sue Kalshi to get back everyone's losing bets, under a 1710 bounty-hunting statute. (But they don't have to give back anyone's winning bets.)

That is: Some people think that Kalshi's sports contracts are gambling, and some people don't. Eventually there will be a definitive resolution of the question: The US Supreme Court will rule on the matter, or some other appellate ruling will become final and there will be consensus that the contracts are or are not gambling. If you have a strong informed opinion on the matter — if you know a lot about the court system and gambling regulation and the attitude of the CFTC in 2025 — you might want to *bet money* on your prediction of the outcome. Kalshi has at least implicitly bet a lot of money on the view that its sports contracts are fine and will be a lucrative business for it. And now somebody is taking the other side of that bet.

Greenhushing

For a while there was a concept called a "greenium." The idea was that investors wanted to fund climate-friendly projects, so a company raising money to do green projects would have a lower cost of capital on that project than it would on the rest of its projects. If you could borrow at an 8% interest rate to fund a normal project, you could borrow at, like, 7.97% to fund a solar energy project. As far as I can tell that was the right order of magnitude for the greenium; I have seen estimates of 1, 2, 8 or as many as 15 basis points of bond greenium. Investors wanted to fund climate-friendly projects, but not *that* much.

That was a few years ago, though, and since then the demand for climate-friendly projects in the US has reversed: There has been a political backlash to environmental, social and governance investing, and big asset managers now have to prove to politicians that they love funding fossil-fuel projects in order to keep investment mandates. If you own too many green bonds now, you will get in trouble. In theory this should be bad for the greenium: If US investors prefer non-green bonds, then the relative value of green bonds should come down. If European investors still prefer green bonds, the greenium might still be positive, but it might not be. It's not like the greenium was ever that big! If it has come down, it could well be negative now. Maybe the cost of capital of doing green projects is *higher* than the cost of doing non-green projects.

There is a limit to that, though, because if the greenium is negative you can just stop *talking* about the green projects. "This bond is for general corporate purposes, including all sorts of power projects, we'll decide later which ones," you say, instead of "this bond is for wind power projects." If the cost of financing wind power is higher than the cost of financing "miscellaneous," you raise money for miscellaneous and use it for wind power. The Financial Times reports:

US green bond sales have fallen since Donald Trump won a second term as president, as companies seek to avoid unwanted attention by backing away from or playing down their environmental activities. ...

While potential unwanted scrutiny from the administration was not the sole factor depressing green bond issuance, it was a significant one, [Sean Kidney, founder of the Climate Bonds Initiative] added.

However, shrinking cost savings from selling green debt and falling demand among US investors have also weighed on issuance in recent years.

"All of this makes for an environment prone to 'greenhushing.'" said Hortense Bioy, head of sustainable investing research at Morningstar.

In contrast with several years ago, when more corporates were keen to trumpet their environmental, social and governance (ESG) credentials, some US companies have been quietly funding green projects through traditional debt sales without slapping a green label on the bonds used to finance them.

Bankers focusing on the clean energy finance sector predict companies will continue to sell debt to fund projects such as wind and solar power generation during Trump's second term, but say these efforts increasingly could be financed without advertising them as green initiatives.

Meanwhile I suppose there must be a "brownium" now, where if you are raising money specifically to drill oil in a nature reserve that will command a lower cost of capital, because BlackRock Inc. can buy those bonds and go to Republican pension-fund managers and say "see we love oil." Perhaps there is always some sort of favored project that will command a lower cost of capital than general corporate projects; the trick is to finance the favored stuff specifically and the disfavored stuff generically.

Alt data manipulation

We talked yesterday about the wait time for delivery from pizzerias near the Pentagon, which arguably predicted Israel's attack on Iran, and which more generally is arguably correlated with oil prices. The busier those pizzerias are, the busier the Pentagon *probably* is, which *probably* means some geopolitical stuff is going down, which *probably* means oil prices are going up. None of those things is absolutely true. Maybe some unrelated business near the Pentagon needed a lot of pizzas; maybe the Pentagon's softball championship is that day; maybe the geopolitical stuff will *reduce* the price of oil. But it would not be shocking if there is some positive correlation.

I, like, one-quarter-jokingly suggested that hedge funds should pay for a direct data feed of Pentagon pizzeria wait times, since that would be a valuable signal to their commodity trading models. Fine.

Three readers independently emailed me with variants on what in retrospect is sort of an obvious question, which is: "Is it market manipulation to order like 200 pizzas to an office near the Pentagon, and then buy calls on oil?" A few points:

1. Not legal or investing advice!

- 2. This assumes that it would *work*, which in turn assumes that hedge funds *are* trading on this data. My thesis yesterday was something like "the oil futures market does not move immediately in reaction to Pentagon pizza delivery wait time data, so if *you* traded on that data, you would be ahead of the market and make a profit." My readers' implicit thesis is something like "since it was published in Money Stuff, now canonically the market *will* move immediately in reaction to Pentagon pizza delivery wait time data, so if you *manipulated* that data, you would be ahead of the market and make a profit." But obviously if nobody trades on that data then you've just wasted money on pizza.
- 3. More generally, "manipulate alternative data that is correlated with some security prices, expecting sophisticated hedge funds to trade on that data, and trade the correlated securities ahead of them" seems like a rich field for study in modern finance. As people seek more obscure sources of information, data sources that are moderately correlated with asset returns rather than leaks of merger news, there are more opportunities for both manipulation and plausible deniability. We have talked a few times about "shadow trading," which is the related practice of (1) getting *inside information* about some company and (2) trading some *correlated* security (rather than the company's stock, which will obviously get you in trouble). The field of alt-data manipulation is broader, though — if hedge funds are reading tweets, you can write a lot of tweets, etc. — and less *obviously* illegal. Trading one security with inside information about another security seems bad in some fuzzy but obvious way; ordering too many pizzas to trick people into buying oil is murkier. "Park 100 cars in the parking lot of some retailer announcing earnings next week, and buy calls on the company," that sort of thing: You were misleading someone, probably (the hedge funds examining satellite images of that parking lot), but why did they think they were entitled to rely on that parking lot for their trading?

A series of tubes

The US Securities and Exchange Commission requires public companies to file various disclosures using its Edgar online system. Edgar stands for "Electronic Data Gathering, Analysis, and Retrieval," and I suppose it is objectively old and clunky, but I have a soft spot for it. Compared to a lot of other online stuff, it is surprisingly *usable*, at least for consumers of information. (Filers might find it harder.) If it looks old-fashioned, it comes by that honestly: It has been around for a long time in reasonably consistent form. In recent years the SEC has done its worst to lard up Edgar with new features, but as online data sources go it's still pretty straightforward. Still, modernization continues, and this week the SEC adopted amendments to the EDGAR Filer Manual. I enjoyed this description of some of the amendments:

Volume II of the Filer Manual contains several outdated generic references, explaining for example the nature of the internet and other basic issues that were novel in the time period that the Filer Manual was initially adopted. The Commission has completely revised Volume I to streamline it and remove such references. The Commission now seeks to remove such antiquated language from Volume II. For example, we are removing sentences such as: "The SEC accepts electronic submissions through the Internet," "The EDGAR system is comprised of a number of large computers that receive filings submitted by entities," "Many people have become familiar with HTML since they have used the Internet," and "Browsers have very similar navigation functions...."

I don't know, if your description of your online filing service explains that it "is comprised of a number of large computers," that's pretty cool! I would keep that in just for retro-chic purposes.

Things happen

Millennium Stake Sale Talks Value Hedge Fund at \$14 Billion. OpenAI and Microsoft Tensions Are Reaching a Boiling Point. Musk's xAI in Talks to Raise \$4.3 Billion in Equity Funding. German prosecutors drop greenwashing case against former DWS chief. Crypto perpetual futures are coming to the US. Goldman Ditches Ban on SPACs as Blank-Check Firms Stage Comeback. Centerview Is Sole Bank on Meta's \$14 Billion AI Bet. Billionaire Gerko Takes Trader Profit Tax Appeal Over to UK's Top Court. Rob Arnott's Firm Says the Time Is Finally Right for 'Smart Beta.' High Times is back. Perelman at \$410 Million Art Trial Says Fire Faded His Paintings.

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- 1. This is called "preemption": The CFTC has "exclusive jurisdiction" to regulate commodity futures contracts, so courts find that states can't.
- 2. See CFTC Rule 40.11, and this 2023 criticism by CFTC Commissioner Summer Mersinger: "Rule 40.11 contradicts the statute. CEA Section 5c(c)(5)(C) grants the Commission discretion to determine whether a DCM's event contract that involves an enumerated activity is contrary to the public interest. CFTC Rule 40.11(a), by contrast, provides that a DCM 'shall not list for trading' a contract that involves (or relates to, or references) an enumerated activity (emphasis added). Read literally, Rule 40.11(a) removes entirely the flexibility that Congress granted the Commission to evaluate DCM event contracts from a public interest perspective."

- 3. I assume the name is a pun? When I read “Ohio Gambling Recovery,” I think of some sort of aid organization for recovering gambling addicts. But I can’t find much about OGR online, and the complaint lists a mailing address in Tampa and says it “has no relationship to any gambler who has suffered gambling losses.” This suggests that the “recovery” in the name means “we are going to recover all that money for ourselves,” rather than “we help gamblers recover from addiction.” Also I should say that Ohio Gambling Recovery has extremely high-powered lawyers, suggesting that at least someone sees serious money here.
- 4. There are I suppose some issues here, because as Kalshi will tell you, it is not the sports book and is not on the other side of anyone’s bets. But (1) I’m not sure how much that would matter to an Ohio judge annoyed about illegal gambling and (2) presumably Susquehanna is in the case for that reason: As a market maker, they are probably on the other side of many losing bets.

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I. The Tesla Brain Drain

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Patrick George

June 18, 2025

Before DOGE, there was Twitter. In 2023, Elon Musk seemed too distracted by his latest venture to run the world's most valuable car company. [Tesla was faltering](#) as he focused on remaking (and renaming) the social-media network. So at Tesla's investor-day event in Austin that March, Musk responded with a rare show of force. He was joined onstage [by a cadre of more than a dozen of the company's top executives](#), all to signal that even if he was extremely busy, Tesla was run by a world-class team: "We've obviously got significant bench strength here," Musk said. Sure enough, Tesla closed out 2023 with the best sales it's ever had.

Musk is in bad need of a similar comeback right now as he returns from Washington to focus on his struggling car company. In recent months, Tesla sales have plummeted as the [chain-saw-wielding](#), far-right centibillionaire has turned off traditionally liberal electric-car buyers. The MAGA faithful never stepped up to take their place, and they're less likely to do so now that the Trump-Musk bromance is over. Musk has other problems: Tesla created the modern electric car as we know it, but now the automaker is falling behind the competition while Musk is more focused on AI and robots than selling cars. And on top of everything else, the One Big Beautiful Bill Act working its way through Congress [could cost Tesla billions](#) each year.

This time around, however, Musk can't lean on that aforementioned bench even if he wants to. Something similar to DOGE's steep staffing cuts has been playing out at Tesla. About a third of the executives who stood onstage with him two years ago have left Tesla or been ousted. Many other high-profile company leaders have [resigned](#). Just since April, Tesla has lost its head of software engineering, head of battery technology, and head of humanoid robotics. Tens of thousands of rank-and-file employees left last year amid waves of mass layoffs. At the end of the day, Tesla is the Musk show: The company is the biggest source of his wealth, and is core to his reputation as a tech genius. Now, after all of the pivots and attrition, the future of Tesla rests singularly on Musk more than it ever has.

[Read: The Tesla revolt](#)

To longtime Tesla chroniclers such as myself, the chaotic, rapid-fire cuts that defined Musk's tenure at DOGE felt familiar from the very beginning. The playbook was pioneered at Tesla. When Musk took over as CEO in 2008, Tesla was a start-up struggling to build its first car. His early infusions of personal cash, ruthless approach to cost cutting, and, in his words, ["hardcore" work environment](#) are widely credited with getting the automaker up and running. He has a famous approach to any type of

problem: Get rid of preconceived notions, tear everything down, and rebuild from there. If things break, so be it. They can probably be repaired later on. At one point, the company got rid of the traditional turn-signal switch on some cars [before later putting them back](#). (Tesla and Musk did not respond to my requests for comment.)

For a long time, the strategy worked. In the span of a decade, Tesla rose from a start-up to an auto giant [worth more than Ford, Toyota, and GM combined—despite selling just a fraction of the cars its rivals did](#). That's why investors still back Musk today. He's made them a lot of money before, so if things get bad, he's the man to figure it out, right? Musk himself has helped promulgate the idea that he has all the answers. At one point, he said he would personally start approving some of his employees' expenses [amid a "hardcore" round of cost cutting](#). "He has always been the kind of person who says, 'I am the only one who can do this,'" Sam Abuelsamid, an auto-industry analyst at the research firm Telemetry, told me. In 2018, when I was the editor in chief of the auto publication *Jalopnik*, Tesla's now-defunct communications team frantically admonished us for reporting that Doug Field, the company's top engineer, had left the company. He was merely the top *vehicle* engineer, a spokesperson said. Musk—despite not being trained as an engineer—[was the top engineer](#).

[Read: Elon and the genius trap](#)

In 2019, an analysis [from the financial firm Bernstein](#) put Tesla's executive-turnover rate at nearly double the average of comparable Silicon Valley companies; the number was "dramatically higher" among Musk's direct reports as well. Layoffs and firings have sometimes felt more mercurial than anything else. Consider the team behind Tesla's charging network. In June 2023, I wrote that Tesla's fast and reliable "Superchargers" were its [secret weapon](#); other automakers had begun building cars using Tesla's proprietary charging port to give their customers Supercharger access. About a year later, Tesla laid off the entire 500-person team. Many of the staffers were later [rehired](#) and returned, but not all: Rebecca Tinucci, Tesla's head of charging, left for good. The Supercharger network has [grown since then](#), though not without a [period of chaos for the automaker and the entire car industry](#) that bet on it. The cuts to Tesla's charging workforce were part of a bigger reduction in headcount last year: Within the first six months of 2024, Tesla had shed nearly 20,000 employees, according to internal data [viewed by CNBC](#). And Tesla's latest quarterly [SEC filing](#), released in April, boasts of "a \$52 million decrease in employee and labor costs" compared with last year. (In reporting this story, I reached out to roughly a dozen current and former Tesla staffers. None would talk with me on the record.)

Last year's layoffs, Musk said, were designed to position the company for its "[next phase of growth](#)." Based on everything he's said so far, that means AI. He has promised that robots and driverless cars will eventually deliver "[a trillion dollars of profit a year](#)." Several top executives and engineers have resigned after they [reportedly clashed](#) with Musk on his pivot. This month, Tesla is tentatively set to launch its long-awaited robotaxi service in Austin, starting with what Musk has said will be "10 to 12" self-driving Teslas that can also be remotely operated by humans if needed. In other words, the

company has a long way to go before it's anywhere close to something like a driverless Uber. For now, the company still makes its money from selling cars, and Tesla has lost many of the smart people who helped create what was once an innovative automotive juggernaut. Musk still does have several long-standing deputies at the company, including Tom Zhu, a senior vice president who previously led Tesla's operations in China, and Lars Moravy, who leads vehicle engineering. But the departures put more pressure on Musk: He doesn't have the workforce he once did to build to make groundbreaking electric vehicles.

The silver lining for the future of electric vehicles is that these former Tesla staffers are fanning out to the rest of the car industry. Take Field, the former head Tesla engineer (or "head *vehicle* engineer," in Tesla's telling). He now leads advanced vehicle software at Ford, as well as a program tasked with making an affordable EV. Tinucci, the former head of Tesla's charging team, is now overseeing [Uber's shift to electric vehicles](#). "I think we'll see kind of a Tesla diaspora," Kristin Hull, the founder of Nia Impact Capital, an investment firm with a stake in Tesla, told me. "The rest of the world is catching up. And I think that's also playing a part in why the talent is moving on." (Field and Tinucci didn't respond to requests for comment.)

Musk's detractors might easily fall into *schadenfreude*. His actions might finally be catching up with him. But if Tesla continues to slide, there will be ramifications beyond Musk and his investors simply losing money. Tesla remains one of the very few companies outside of China that is making money by selling electric cars, which makes it uniquely [capable of making a super-affordable EV](#). Every day that goes by without cheaper options, Americans who might be inclined to go electric are instead buying gas-burning cars that could be on the road for a decade or more. Meanwhile, other carmakers have spent years racing to build cleaner cars in large part to keep up with Tesla. Without the company's continued dominance, it's easy to see a heavily polluting industry [fall back on old habits](#). [The risk is particularly high right now](#) as the Trump administration is betting big on fossil fuels.

Whether Tesla can rebound will test something truly scarce—not Musk's wealth but the faith that others have in him. Musk has already alienated people on the left and right, but [many people still fiercely believe in his ability to make them rich](#). At some point, even they might start to vanish.

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Securities Law News

Goldman Ditches Ban on SPACs as Blank-Check Firms Stage Comeback

June 17, 2025, 5:27 AM PDT

Goldman Sachs Group Inc. is wading back into the market for SPACs three years after stricter regulatory scrutiny prompted a self-imposed ban on handling so-called blank-check companies.

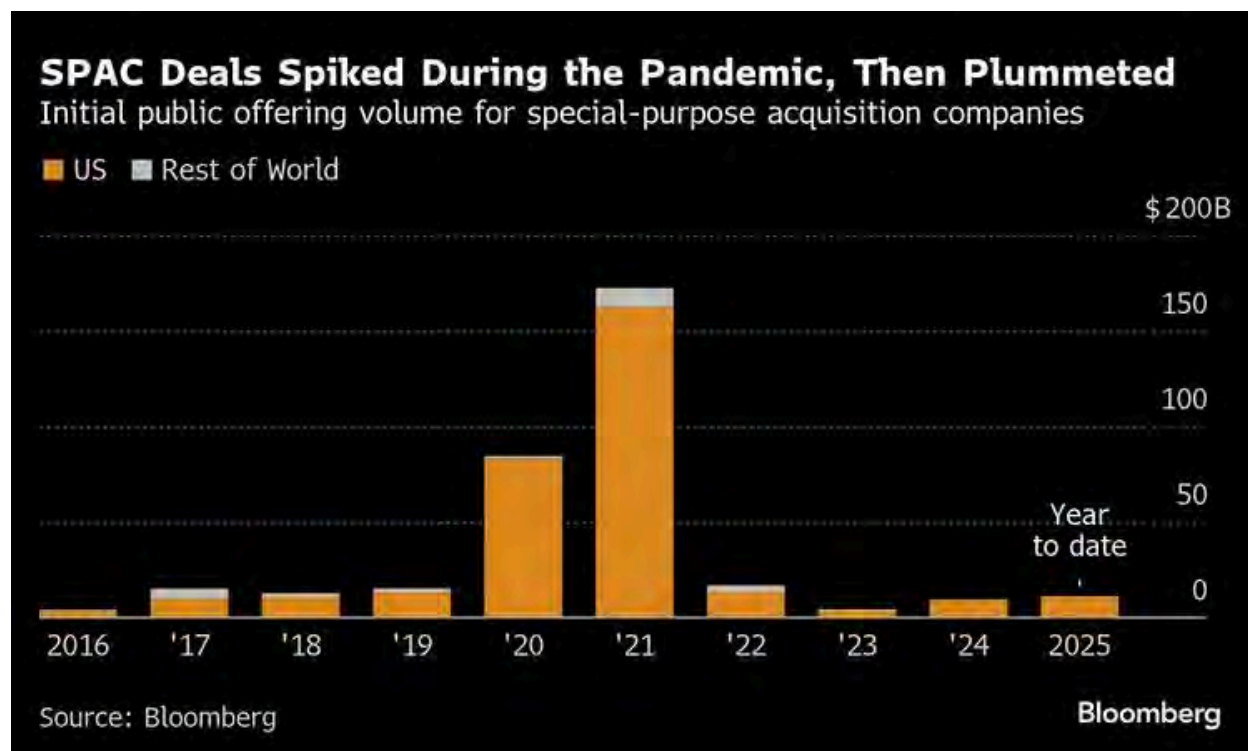
The investment bank is once again open to underwriting new deals for special-purpose acquisition companies, according to people with knowledge of the matter. The firm will evaluate potential deals on a case-by-case basis and may limit the sponsors it works with, one of the people said, asking not to be identified discussing private matters.

The decision marks a reversal from 2022, when the bank pulled out of working with most of the SPACs it took public and also stopped work on new US SPAC issuance. A SPAC typically works with its adviser even after going public to complete its merger with a target firm, known as the de-SPAC transaction.

SPACs caught fire on Wall Street in the market mania following the pandemic. Blank-check companies drew financiers, politicians and celebrities with the promise of making millions off investors rushing into the vehicles. But that came to an abrupt end when markets soured, hammered by stricter regulations and the plunging stock of companies that went public by merging with blank-check firms.

The revived interest comes as a burst of activity in recent months points to increased appetite for the product, in part because dedicated SPAC investors such as hedge funds are looking to park money in blank-check offerings. The stakes can be redeemed with interest if the investor doesn't wish to participate in the ultimate merger transaction. Adding fuel to the SPAC rebound has been the relative slowness of a revival in the traditional market for initial public offerings.

A spokesperson for Goldman Sachs declined to comment.



The blank-check industry has been active since the start of 2025, with volume on track to be the highest in four years. IPOs of SPACs have raised \$11.2 billion so far this year, rebounding from just \$1.8 billion in the same period a year ago, according to data compiled by Bloomberg.

That's still well below the peak set in 2021, when Goldman was the second-biggest underwriter.

When Goldman pulled out of most of its SPAC work in 2022, a spokesperson for the bank said it was in response to the evolving regulatory environment, adding that it could reverse course if the SEC guidelines were scaled back. The changes included exposing underwriters to greater liability risk in soured deals.

Two years later, the Securities and Exchange Commission embraced the plan for tightening oversight of SPACs, forcing more disclosure and marking an effort to crack down on conflicts of interest. The rules were partly aimed at addressing concern that the listings were bypassing more stringent requirements on traditional IPOs and exposing retail investors to higher risk.

The Trump administration is also expected to ease rules adopted under the Biden administration that it views as hindering capital formation.

Now, the slow-moving IPO market has given SPACs new life, raising the prospect that companies strike deals that wouldn't work if they tried to go public on their own.

Still, the average size of newly funded SPACs is markedly lower than it was at the height of SPAC mania. And while new listings have picked up, they're not being met with a similar uptick in finding attractive merger targets. Many investors have been choosing to exercise their option to swap shares for cash rather than take a stake in several of the proposed deals.

By lifting their self-imposed SPAC exile, banks such as Goldman could position themselves to partake in another source of revenue to compensate for the IPO slump, especially if bigger deals can be brought to the market.

--With assistance from **Anthony Hughes** and **Phil Kuntz**.

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What UnitedHealth Can Do to Revive Its Battered Stock

Investors long trusted the company to deliver earnings beats, despite limited transparency. Now they want answers.

By [David Wainer](#) [Follow](#) and [Jonathan Weil](#) [Follow](#)

June 18, 2025 5:30 am ET

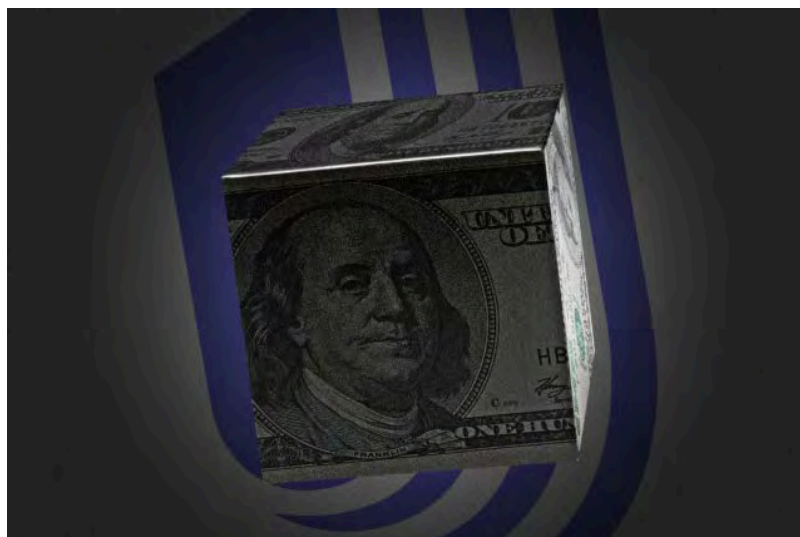


ILLUSTRATION: EMIL LENDOF/WSJ, ISTOCK

For years, [UnitedHealth](#) Group's UNH **0.56%** ▲ financial reporting has been a black box. That needs to change.

The largest healthcare insurer and provider in America, UnitedHealth is bigger by revenue than [Apple](#) or [Exxon Mobil](#). But investors have limited visibility into what is actually driving UnitedHealth's profits—or where the risks lie.

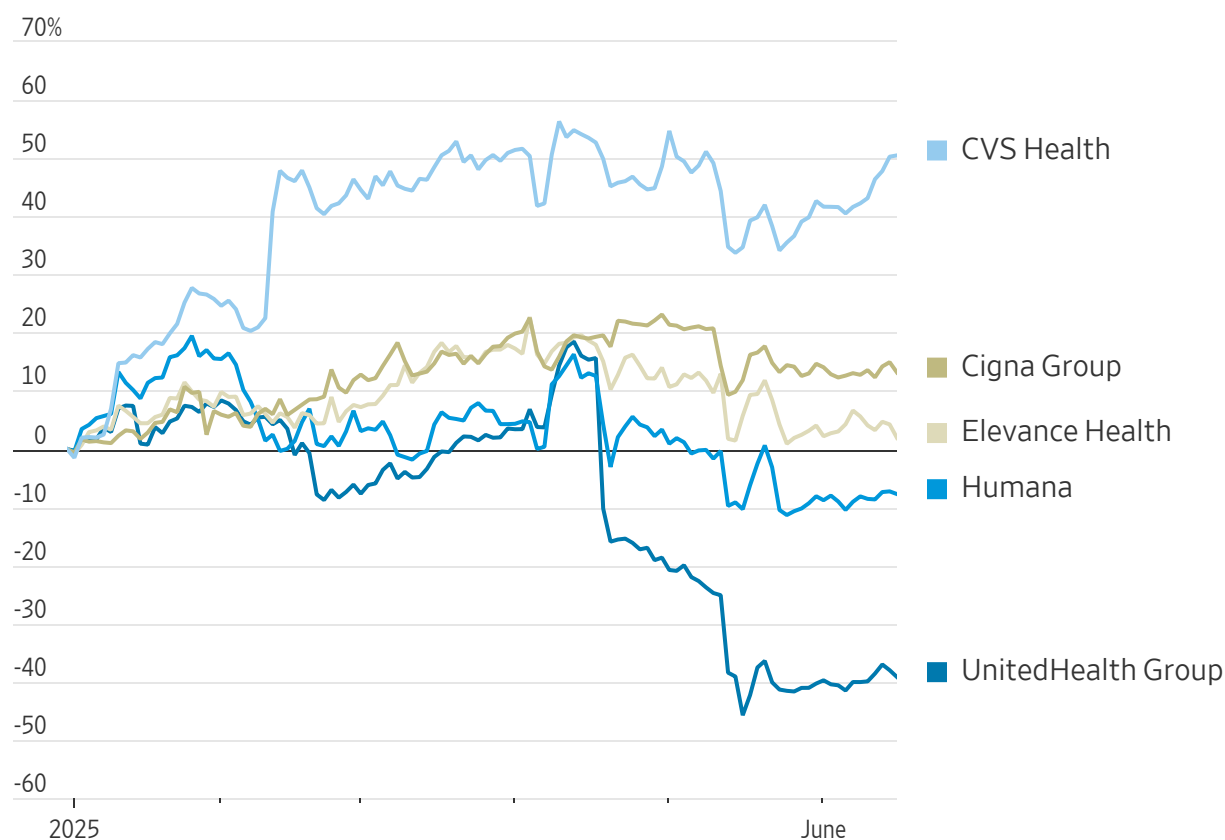
That is partly because its businesses are deeply intertwined. Its insurance arm has vast dealings with its health-services businesses, creating a maze of internal transactions and blurred business lines.

The opacity wasn't a problem for Wall Street as long as the company kept delivering. With a steady record of beating earnings estimates and a soaring stock, investors were content to let details slide.

This year, the magic vanished. In April, UnitedHealth missed its [quarterly earnings estimates](#) and slashed its 2025 forecast. In May, Chief Executive Officer Andrew Witty abruptly [stepped down](#), and the company suspended its outlook. Days later, The Wall Street Journal reported on a Justice Department [criminal probe](#) into its Medicare practices.

Industry Giant Falls Behind

UnitedHealth stock has underperformed peers this year



Source: FactSet

“Sunlight is the great disinfectant,” said George Hill, an analyst at Deutsche Bank. “If you have a lot of investor concerns around sources of profitability, transparency is a great way to address that.”

The stock is down nearly 40% in 2025. Medical costs have outpaced expectations, and regulators have cracked down on some coding practices in Medicare Advantage. Now, investors are rightly asking questions about how UnitedHealth really makes its money.

The company has signaled it hears such concerns. “The prevailing theme is that people want and need an even more reliable, consistently high-performing and fully transparent UnitedHealth Group,” returning CEO Stephen Hemsley said during this month’s annual meeting.

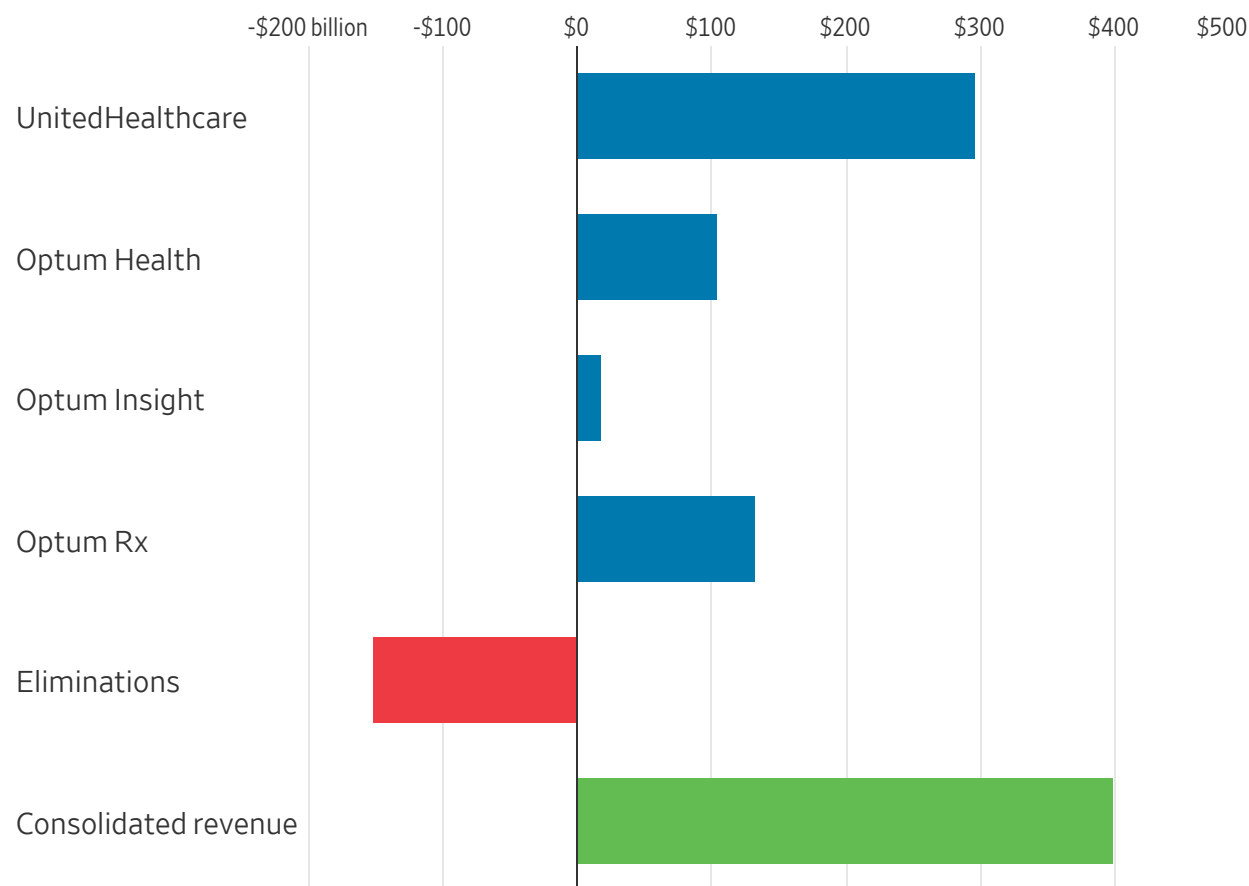
Here are the key ways that UnitedHealth can make good on that pledge:

First, provide more detailed disclosure across its four units

These are UnitedHealthcare, the insurer; Optum Health, which delivers care through clinics and doctors offices; Optum Insight, which focuses on technology and payments systems; and Optum Rx, which provides pharmacy services.

Three of those could stand alone as Fortune 100 companies. Yet detailed financial information about each is sorely lacking.

The Optum Health segment, for instance, showed \$105 billion of revenue and \$98 billion of operating costs in 2024. Financial disclosures offer no detail on how much it spent on medical care, staff or products—just a footnote saying it lumps all operating costs together.

UnitedHealth consolidated revenue breakdown, 2024

Source: company disclosures

To be fair, the company's health-insurance rivals aren't exactly beacons of transparency. Many report only limited breakdowns across their insurance operations. But because their businesses are less complex, investors have an easier time analyzing risks and opportunities.

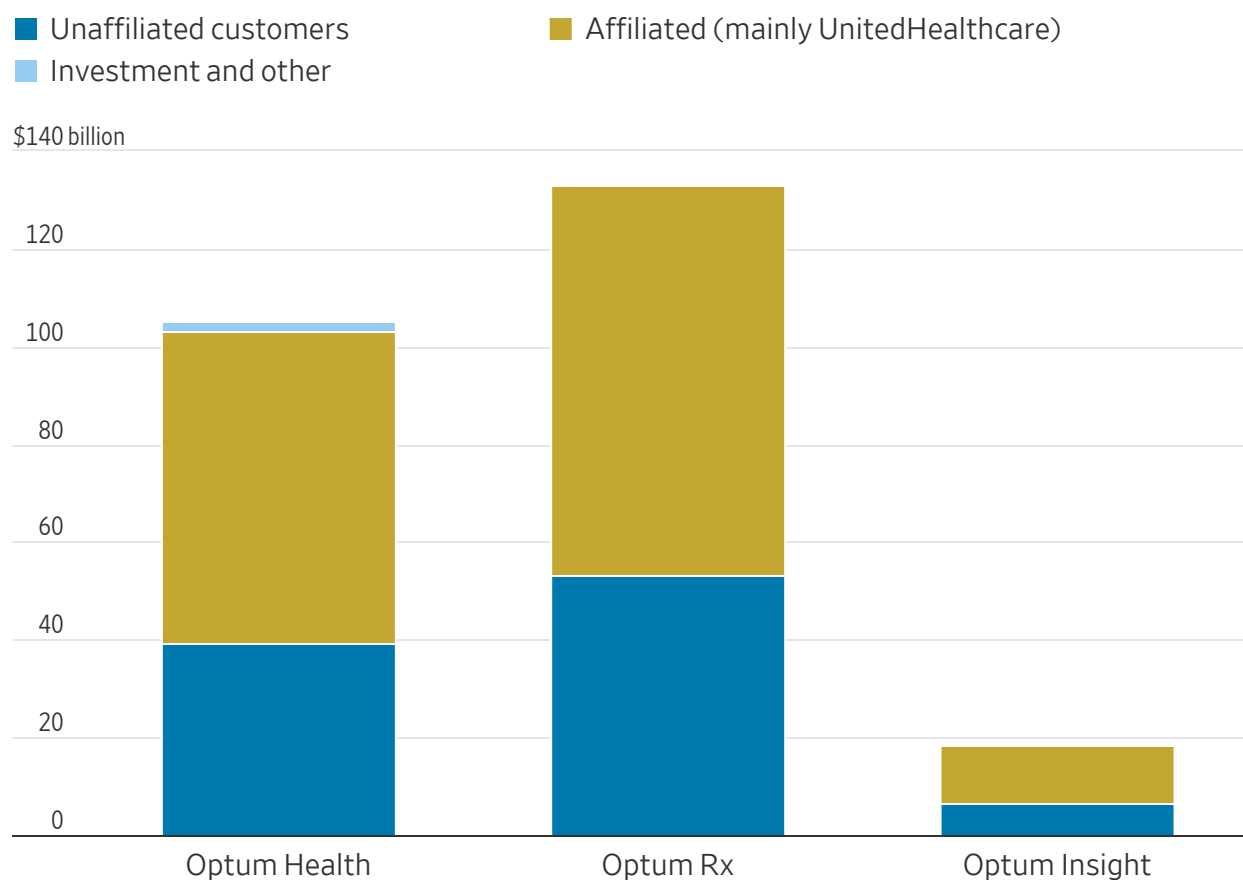
Take [Humana](#). It is largely a play on Medicare Advantage. So when it reports medical costs, investors see them as a clear signal about that part of the industry.

Give clearer disclosure on dealings between its business segments

Insurers are generally required to spend set amounts of every dollar they collect in premiums on care. The percentage paid out is called the medical loss ratio. The minimum typically ranges from 80 cents to 85 cents on the dollar, depending on the plan.

UnitedHealth's complex structure allows it to pay some medical costs incurred by its insurance arm to itself. Owning both healthcare providers and insurers makes it possible for companies to effectively sidestep regulatory caps on insurer profits.

Breakdown of Optum revenue by type of customer, 2024



Source: company disclosures

Last year UnitedHealth said it had \$151 billion of dealings between its different segments. Almost all were payments by the insurance unit to the Optum side. But UnitedHealth doesn't say which services were being paid for, and there is no breakdown that would help clarify whether the payments reflect competitive market rates.

That leaves investors guessing. If Optum Health's business depends largely on UnitedHealthcare's steering patients its way, it is hard to judge how well it would perform on its own.

Provide greater clarity on the group's acquisition sprees

UnitedHealth became an industry giant by rolling up smaller companies in a highly fragmented health landscape. Yet its disclosures regarding these purchases are mystifying.

That means investors can't tell how much of its growth is acquisition-fueled versus organic. There is really no way to differentiate based on its public statements.

In its 2024 annual report, for instance, UnitedHealth didn't disclose how many acquisitions it made in the year, the companies it bought, or how it allocated the purchase prices between different assets and liabilities.

The company's cash-flow statement showed it spent \$13.4 billion on "acquisitions and other transactions." But it didn't disclose a total dollar figure for acquisitions alone.

Meet stakeholders' needs

In response to questions about its financial reporting, a UnitedHealth spokesperson said: "We strive to meet our stakeholders' evolving need to understand our business performance through compliant, transparent and useful disclosures."

The issues outlined above are just a start. Investors also want a clearer view of how different parts of its insurance segment—such as Medicare Advantage, Medicaid and commercial—are performing. That would help them understand where the recent challenges are concentrated.

Of course, being more open carries risks. Revealing detailed information could draw unwanted attention from regulators and competitors, especially with scrutiny mounting around Medicare Advantage. And the hard part about choosing transparency is that investors might not like what they see.

But sticking with the black box is becoming unsustainable.

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Securities Law News

Yellen, Bernanke Oppose GOP-Backed Cuts to Financial Research

June 18, 2025, 2:00 AM PDT

Former Federal Reserve Chairs Janet Yellen and Ben Bernanke, along with several other academics, market participants and former Treasury officials, urged congressional leadership to oppose cuts to an office charged with gathering data aimed at preventing another financial crisis.

Shuttering the Office of Financial Research, an independent agency housed at the Treasury Department funded by a fee assessed on large financial institutions, would prevent the White House and key agencies from obtaining information that could be used to address systemic financial risks, Yellen, Bernanke and others wrote in a letter to US legislative leaders, a copy of which was viewed by Bloomberg News.

Such a move would “cripple” the Financial Stability Oversight Council, which groups the main US financial regulators and is charged with comprehensive monitoring of financial stability, the signatories warned.



Janet Yellen

Photographer: Kevin Dietsch/Getty Images

The academics, market participants and former officials said they were concerned about a provision in a bill being considered by congressional Republicans to curtail funding of the office. Opponents of the measure argue it would effectively kill the unit by starving it of resources. The group also opposed a separate effort to reduce headcount to 72 full-time staff, from 196.

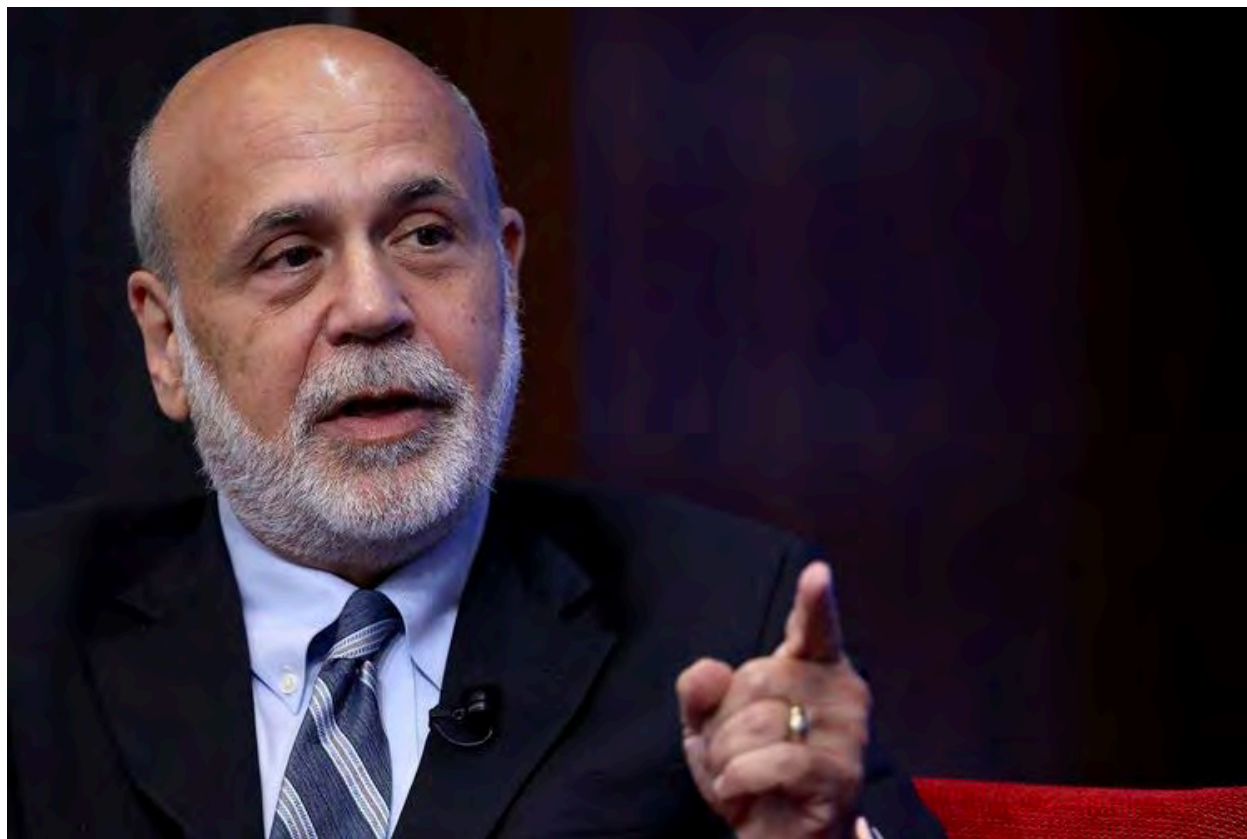
NOTE: Senate GOP Plans to Boost CFPB Scrutiny, Cut Fed Employee Pay

"The OFR is a vital piece of the post-Global Financial Crisis architecture, created by the Dodd-Frank legislation to help spot systemic risks to the US economy and financial system," Mark Sobel, a former Treasury official and signatory to the letter, said in an email. "Dismantling it would put Americans at greater risk of suffering again from a major crisis."

Cost Savings

Senate Banking Committee Chair Tim Scott, a South Carolina Republican, said in a statement earlier this month the legislation would "reduce waste and duplication in financial regulation." His office singled out the Office of Financial Research in a one-page summary of his committee's provisions, calling it "duplicative" and saying that cutting it would save the government \$300 million.

Stacey Schreft, one of the letter's signatories and a former official at OFR, says the office does things that no other entity within the FSOC can do.



Ben Bernanke

Photographer: Win McNamee/Getty Image

"The crises we have tend to be ones that are somewhat new and different from the ones in the past," Schreft said in an interview. "The OFR is there, in part, to try to look across the system, not just deeply into a narrow part of it, which is what happens with most of the other FSOC members."

In addition to Yellen and Bernanke, the letter is signed by several other former Treasury and Fed officials, including **Nellie Liang**, **Donald Kohn** and Nobel laureate **Robert Merton**. **William Dudley**, a former New York Fed president and current Bloomberg Opinion contributor, also signed.

The letter is addressed to Senate Majority Leader John Thune, House Speaker Mike Johnson, Senate Minority Leader Chuck Schumer and House Minority Leader Hakeem Jeffries, along with the chairs and ranking members of the Senate Banking and House Financial Services Committees.

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Securities Law News

Senate Proposal Risks Handing SEC Unfunded Audit Oversight Job

June 18, 2025, 1:45 AM PDT

- Senate plan silent on future funding for audit regulation
- Proposal may leave industry mostly unregulated, watchers say

A Senate Republican plan to shutter the nation's auditor oversight board and roll its responsibilities into the SEC would leave the Wall Street regulator with a hollow new mandate without a clear way to pay for the work, audit industry watchers warn.

The budget plan would disband the Public Company Accounting Oversight Board and its separate funding while handing its duties to the Securities and Exchange Commission. But the measure would prevent the SEC from tapping fees that historically funded its operations to regulate the audit industry.

This means that as written, the Senate measure risks leaving the industry largely unregulated—threatening a return to the era before the 2001 Enron accounting scandal when auditors policed themselves and wrote their own rules. The Senate didn't address whether the SEC in the future could receive additional taxpayer dollars to cover what would be a new directive from Congress.

"It would be regulatory limbo," said Tom White, a retired WilmerHale corporate law partner, who represented accounting firms.

The Republican-led Senate Banking Committee included provisions eliminating the PCAOB in text slated to form the chamber's reconciliation bill, a sweeping tax and spending package that would enact President Donald Trump's agenda. House lawmakers also targeted PCAOB in their version.

The Senate measure "ensures the SEC continues to carry out the PCAOB's mission—but with less duplication and at a lower cost to taxpayers," a spokesperson for Sen. Tim Scott (R-S.C.), Banking Committee chair, said. Committee Republicans estimate the audit reforms would save \$771 million over 10 years; the board's current budget is \$400 million.

Funding Limits

SEC Chair Paul Atkins has previously said that the Wall Street regulator could handle the board's duties overseeing the work of accountants tasked with vetting the revenues and assets underpinning US stocks worth trillions. But he told lawmakers that he would likely seek additional funding to pay for that work on top of \$100 million he set aside in the agency's 2026 budget.

The Senate committee's draft text, however, wouldn't allow Atkins to tap transaction fees that contribute to the commission's funding to pay for those extra responsibilities.

Congress created the PCAOB in 2002 to serve as an auditor watchdog and shore up investor confidence in corporate financial statements by setting and enforcing standards and reviewing the work of auditors. The board, overseen by the SEC, was the keystone of the corporate reform law known as the Sarbanes-Oxley Act passed after the collapse of Enron Corp. and WorldCom Inc.—two of the largest bankruptcies in US history.

But the Senate provision would likely force the SEC to seek annual appropriations from Congress to pay for its expanded role regulating auditors. Congress could opt to rescind limits on the SEC's use of transaction fees in future legislation, said Dan Goelzer, a former SEC general counsel and one of the original members of the PCAOB.

Limiting the fees, even temporarily, ensures that the SEC's spending related to auditor oversight isn't factored into the price tag of the Senate's spending package, Goelzer said.

Provisions in the bill must have a budget impact under Senate rules that govern reconciliation—a process that allows majority parties to fast-track legislation related to spending or revenue.

SEC Commissioner Mark Uyeda told Bloomberg Tax that the SEC would have to take up any funding gap with its appropriators in Congress.

The PCAOB declined to comment but board Chair Erica Williams has previously warned about the high cost to replicate its inspection program and hire professionals to staff it. Roughly 480 PCAOB employees are responsible for inspecting the work of auditors, according to the board.

Guardrails Targeted

The possibility that a divided Congress could restore funding for audit regulation provides little comfort for investors and other audit watchers who argue the bill would remove critical market guardrails.

Ensuring that regulators keep watch over auditors' work is particularly important now, said Anthony Scilipoti, president and CEO of Veritas Investment Research Corp., which focuses on Canadian and US-listed companies.

"Companies only push the accounting envelope under pressure—tariffs and economic shifts are pressures," Scilipoti said in an email. "Companies are starting to push."

Inspections serve as the board's primary oversight tool, offering routine assessments of whether firms meet core audit standards. Those mandatory inspections replaced industry-led peer reviews used before Congress created the board to ensure auditor objectivity and independence.

Investors stand to lose guardrails that were designed to subject corporate accounting to rigorous outside review, said Francine McKenna, a critic of the audit industry and a former corporate compliance adviser at PwC and other consulting firms.

"You are not going to get any assurances that the financial information that you're getting has been vetted by anybody independent of company management," McKenna said.

The accounting industry hasn't directly called for the board's elimination but has opposed the PCAOB's more aggressive standard-setting and enforcement agenda under Williams. Still, the industry supports retaining some type of regulator.

"We will work with whatever regulator Congress deems appropriate to ensure audit quality," the American Institute of CPAs, the industry's largest trade group, said in a statement.

But some auditor advocates are worried about the repercussions should Congress fail to come up with additional resources for the SEC.

"To just say we're just going to cut off your air supply and let the chips fall where they may, I don't see how that benefits anybody," White said. "I certainly don't see how it benefits America's capital markets."

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Investors Say Exxon Trial Should Remain On Schedule

By **Spencer Brewer**

Law360 (June 17, 2025, 6:47 PM EDT) -- A class of investors has told a Texas federal judge that Exxon Mobil has no basis to ask the court to stall a November trial for a suit accusing the oil giant of misleading investors, saying Exxon didn't point out any factors that would merit a delay.

In a Monday response brief, lead plaintiff Greater Pennsylvania Carpenters Pension Fund told the court its suit accusing Exxon executives of misleading investors and over-hyping its bitumen operations has been pending since 2016, and the court set the trial date for this November nearly two years ago. The court stated it would not grant any motions for continuance without "exigent circumstances," and here Exxon failed to show any valid reasons to delay the trial.

"Plaintiff is ready to try this case as scheduled by the court, and the focused trial can easily be completed in the time allotted, as this action involves a short, six-month class period and a discrete number of alleged misrepresentations contained in Exxon's FY 2015 Form 10-K," the investors said.

While Exxon claimed the investors introduced new theories of liability, the investors told the court that all the misrepresentations they alleged Exxon made were in their consolidated complaint.

The investors launched the suit in 2016, alleging Exxon executives made misrepresentations and claimed its bitumen operations in Exxon's Kearl Lake reserves and Rocky Mountain Dry Gas assets were profitable but were actually **operating at a loss**. Those claims have remained the same throughout the course of the class action, the investors said.

"As to the theory concerning Kearl's lack of profitability during FY 2015, plaintiff argued at class certification — over six years ago — that Kearl's lack of profitability rendered defendants' material misstatements false and misleading," the investors said.

Exxon asked the court for a continuance earlier this month, saying the case includes many complexities and nearly \$1 billion in damages. But difficulties such as working with witnesses' schedules do not merit postponing trial, the investors said.

In 2023, U.S. District Judge Ed Kinkeade granted certification to the investors while shortening **the class period**.

By the investors' telling, Exxon's oil and gas competitors took over \$93 billion in write-downs and impairments, including to Canadian tar sand and dry gas assets similar to Exxon's Kearl reserves and Rocky Mountain Dry Gas assets that are at issue in the suit. Kearl Lake is the site of a Canadian oil sands deposit.

But despite suffering from the same pricing slump, Exxon alone refused to write down its Kearl reserves or Rocky Mountain Dry Gas assets, the investors said. Then-Exxon CEO Rex W. Tillerson said while he was the chief executive that "we don't do write-downs."

The write-downs at issue in the suit were delayed a full year and didn't happen until Tillerson left the company to become the U.S. secretary of state in January 2017, the investors said. Instead of admitting the Kearl reserves were bleeding money and Rocky Mountain Dry Gas assets were impaired, the company filed a securities form that contained misleading statements about Kearl's profitability and Exxon's proved reserves and earnings, according to the investors.

Greater Pennsylvania Carpenters Pension Fund is represented by Joe Kendall of Kendall Law Group

PLLC, Balon B. Bradley of the Balon B. Bradley Law Firm and Darren J. Robbins, Michael J. Dowd, Spencer A. Burkholz, Scott H. Saham, Sam S. Sheldon, Jonah H. Goldstein, Nathan R. Lindell, Sara B. Polychron, Erika L. Oliver, T. Alex B. Folkerth and Justin G. Oetting of Robbins Geller Rudman & Dowd LLP.

Exxon Mobil is represented by Theodore V. Wells Jr., Daniel J. Kramer, Audra J. Soloway, Daniel J. Toal, Paul Brachman, Matthew D. Stachel, Samuel M. Kleiner and Lyuba Shamailova of Paul Weiss Rifkind Wharton & Garrison LLP and Nina Cortell and Jason Bloom of Haynes Boone LLP.

Tillerson is represented by D. Patrick Long of Squire Patton Boggs.

The case is Ramirez v. Exxon Mobil Corporation et al., case number 3:16-cv-03111, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Elliot Weld and Katryna Perera. Editing by Janice Carter Brown.

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Decarb Investors Reach \$8.8M Deal In Hyzon Motors SPAC Suit

By **Gina Kim**

Law360 (June 17, 2025, 10:06 PM EDT) -- An investor who challenged a \$2.1 billion take-public merger for Hyzon Motors Inc. in 2021 that he says deprived them of the opportunity to make an informed choice between sticking with the deal or cashing out told a Delaware vice chancellor Monday they've settled the case for \$8.8 million.

John E. Malork submitted a stipulation and proposed order telling the Delaware Chancery Court that he's reached an \$8,800,000 settlement to resolve his proposed class action following from Decarbonization Plus Acquisition Corp.'s initial \$200 million public offering in October 2020, before it began negotiating a merger with Hyzon, which had recently spun off from a Chinese hydrogen fuel cell company.

DPAC, a special purpose acquisition company, announced the proposed merger amid ongoing due diligence into Hyzon without a fairness opinion from a third-party financial adviser, Malork alleged. The deal was touted to outside investors based on "illusory" claims of production, sales and contract outlooks, he claimed.

Malork alleged DPAC and several individual defendants issued misleading or incomplete information about privately held Hyzon's business, customers, prospects and the conflicted structure of DPAC itself as the acquirer.

According to Monday's stipulation, the net settlement fund will be paid out to plaintiffs pro rata, based on the relative size of their recognized claims. Plaintiff's counsel also plan to seek attorney fees worth 25% of the settlement fund, and a service award that won't exceed \$15,000 for Malork.

"Plaintiff continues to believe that the claims asserted in the action have merit, but also believes that the settlement set forth herein provides substantial and immediate benefits for the class," the stipulation said. "Based upon plaintiff's counsel's evaluation, as well as his own evaluation, plaintiff has determined that the settlement is in the best interests of the class."

The defendants reject the argument that anything they did injured the DPAC stockholders, Monday's stipulation added. The settling defendants also maintained that they acted in good faith and in a way that they saw was in the best interests of DPAC and its investors.

"The settling defendants deny any and allegations of wrongdoing, fault, liability or damages with respect to released plaintiff's claims, including ... any allegations that the settling defendants have committed any violations of law or breach of any duty owed to Decarb stockholders, that the merger was not entirely fair to, or in the best interests of, Decarb stockholders, that the settling defendants have acted improperly in any way, that the settling defendants have any liability or owe any damages of any kind to plaintiff or the class, and/or that the settling defendants were unjustly enriched in the merger," the stipulation said.

Malork filed his lawsuit in March 2022 on behalf of himself and other similarly situated DPAC shareholders, accusing the defendants of breaching their fiduciary duties.

DPAC went public in the fall of 2020, offering 22,572,502 shares at \$10 each. In 2021, DPAC and Hyzon merged, and DPAC shareholders were given the opportunity to redeem their shares of DPAC class A common stock at the same \$10 per share.

After investors redeemed \$2,089,323 in shares, stockholders voted to approve the merger in July 2021. Results for stockholders who opted not to redeem their shares before the take-public deal proved a "catastrophe," Malork claimed, as shares fell below \$4 by January 2022 and later trading at less than half that.

He contended faulty disclosures deprived investors of the chance to make an informed decision about sticking with the deal or cashing out.

Two years ago, Vice Chancellor Paul A. Fioravanti Jr. found Malork raised reasonably conceivable fiduciary duty and disclosure claims.

Both sides participated in an all-day mediation with a JAMS neutral, Robert Meyer, in July and reached an agreement in principle that eventually became Monday's settlement.

Malork filed a second amended complaint in August to include claims saying legacy Hyzon and Craig M. Knight abetted the defendants' fiduciary duty breaches. Those claims have since been dismissed without prejudice; Monday's stipulation said the settlement doesn't resolve those claims.

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

Malork is represented by Brian J. Robbins, Samuel H. Rudman, Christopher H. Lyons, Tayler D. Bolton, Mary K. Blasy, Travis E. Downs III, Benny C. Goodman III, Erik W. Luedeke and Brian E. Cochran of Robbins Geller Rudman & Dowd LLP and Peter B. Andrews, Craig J. Springer, David M. Sborz, Andrew J. Peach and Jackson E. Warren of Andrews & Springer LLC.

The settling defendants are represented by Rolin P. Bissell, James M. Yoch Jr. and Kevin P. Rickert of Young Conaway Stargatt & Taylor LLP and Michael C. Holmes and Jeffrey Crough of Vinson & Elkins LLP.

The case is John E. Malork v. Erik Anderson et al., case number 2022-0260, in the Court of Chancery of the State of Delaware.

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



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Energy Co. Brass Faces Investor Suit Over LNG Project Delays

By **Sydney Price**

Law360 (June 17, 2025, 9:02 PM EDT) -- Executives and directors of New Fortress Energy Inc. have been hit with a shareholder's derivative suit accusing them of misleading investors about the company's timeline for completing a liquefied natural gas facility off the coast of Mexico.

According to the **complaint filed Friday** by shareholder Robert Troha, New Fortress announced in July 2022 that it would commence construction on the "Altamira" floating liquefied natural gas project, which it touted as a significant source of future earnings. Beginning in early 2023, however, New Fortress pushed back the project's expected completion date for the first of several times. The defendants are also accused of concealing financial issues that led to the delays.

In addition to nominal defendant New Fortress, the suit's individual named defendants are its founder and CEO Wesley R. Edens, Chief Financial Officer Christopher S. Guinta and several directors.

The suit's relevant period begins Sept. 20, 2022, the day New Fortress announced it expected to complete the Altamira project by mid-year 2023. But the complaint alleges the defendants "lacked any reasonable basis" for these projections.

"Construction was not proceeding efficiently; instead, it was hindered by disorganized execution, inadequate planning, a failure to properly sequence construction and commissioning activities, and delays caused by the lack of timely procurement of essential components," Troha said.

After informing investors of project delays in February 2023, New Fortress reported more delays a year later in February 2024, telling investors that it now expected production to begin in March 2024, postponed from the previously projected September 2023, and sales to commence in April 2024 instead of the originally anticipated October 2023, according to the suit.

Then, after announcing yet another material delay in July 2024, New Fortress reported "unexpectedly weak" earnings in August 2024 and has proved to be financially unstable since, Troha alleged.

"To raise capital, the Company entered into a debt financing agreement at a steep 12% interest rate," Troha said. "This high interest level suggests that New Fortress is not well-capitalized and is instead facing significant financial pressure to deleverage its balance sheet, contradicting earlier claims by Edens during the Relevant Period that the Company was financially stable."

On this news, the complaint states New Fortress' share price dropped from \$17.02 per share on Aug. 8, 2024, to \$13 per share on Aug. 9, 2024. On Tuesday, New Fortress' common stock was trading around \$2.22 per share.

The suit accuses the defendants of breaching their fiduciary duties, wasting corporate assets and being unjustly enriched.

Troha also noted the company is facing two **shareholder suits** based on allegations similar to those in his suit.

Representatives of the parties did not respond to requests for comment on Tuesday.

Troha is represented by Justin A. Kuehn of Kuehn Law PLLC.

Counsel for New Fortress and the individual defendants was not available Tuesday.

The case is Troha v. Edens et al., case number 1:25-cv-05010, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

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Del. Justices Undo \$200M Award In TransCanada Case

By **Jeff Montgomery**

Law360 (June 17, 2025, 8:42 PM EDT) -- Pointing in part to an earlier appellate ruling, Delaware's highest court on Tuesday reversed a Court of Chancery decision that ordered the former TransCanada Corp. to pay \$199 million to former Columbia Pipeline Group Inc. shareholders allegedly shorted in a 2016 merger.

The 100-page state Supreme Court decision rejected Vice Chancellor J. Travis Laster's ruling on TransCanada's liability in June 2023. That decision emerged 18 months before the top court found in a separate case that acquiror liability for aiding and abetting a seller breach requires knowledge from the buyer of both the target's violation and the wrongfulness of its own conduct.

"For understandable reasons, that standard was not applied here. And our independent review of the record, which includes a deferential consideration of the trial court's findings, leads us to conclude that the standard was not met," Justice Gary F. Traynor wrote for the full five-member court.

The justices found instead that, "where a buyer fails to act in the face of an affirmative contractual obligation, such 'contractual provision' [does] not transform [the buyer's] inaction into a 'knowing participation' in the seller's disclosure breach."

Also upended was a nearly \$180 million pre-and post-judgment interest award based on a breach of fiduciary duties by TC Energy Inc., formerly known as TransCanada Corp., in a \$13 billion merger with Columbia.

The TransCanada ruling on Tuesday relied in part on the justices' reversal in December of a Chancery Court finding that Vista Equity Partners Management LLC — which acquired Mindbody Inc. in 2019 — was liable along with Mindbody's CEO for aiding and abetting conduct that led to an unfair price for the fitness software company.

"We held that, for an acquiror to be held liable for aiding and abetting a sell-side breach of fiduciary duty, the acquiror must have actual knowledge of both the target's breach and the wrongfulness of its own conduct," the justices found.

Tossed was part of a finding in a case filed in 2018 that accused Columbia officers of initiating and timing a merger for their own benefit, at an "inopportune" time for company stockholders.

Vice Chancellor Laster found in May 2024 that TransCanada "induced" Columbia officers "to breach their duties by engaging in conduct that the parties had agreed was off limits," and "knowingly participated" in Columbia officer breaches of duty.

But the justices found Tuesday that TransCanada "successfully bluffed Columbia" when its business unit CEO was told that \$25.50 per share was TransCanada's best and final offer.

That statement, the justices found, does not amount to a threat that could subject TransCanada to aiding and abetting liability.

Instead, the justices said, "our review of the record, despite the deference we afford to the Court of Chancery's findings of fact, leads us to conclude that there was no deal at \$26 on which TransCanada could have reneged and that the court's finding to the contrary does not find support in the record."

Counsel for the parties did not immediately respond to a request for comment Tuesday.

Vice Chancellor Laster ruled after trial in June 2023 that TransCanada's active participation in duty of loyalty breaches by Columbia executives resulted in a lower price paid to shareholders. The buyers were said to have "exploited — with gusto — the breaches of fiduciary duty" by Columbia's board and others named.

The suit alleged that TransCanada knowingly helped Columbia's CEO Robert J. Skaggs Jr. and its Chief Financial Officer Stephen Smith sell the pipeline company at a \$25.50 per-share fire sale price in exchange for hefty retirement payouts, despite value estimates of at least \$26 per share.

The Mindbody decision, the justices said, clarified that a defendant's culpability for participation in another's breach of fiduciary duty hinges on whether the actions involved "substantial assistance" in the sell-side breach.

"It requires something more than the passive observation of the seller's eagerness to strike a deal or its negotiators' want of bargaining acumen," the justices found. They added that the findings mean that an aider and abettor in a fiduciary breach by a primary actor "must be of an active nature" more than pursuing the lowest possible price and taking advantage of another side's weakness.

In the run-up to appeal arguments, the U.S. Chamber of Commerce warned the justices of "detrimental and expensive consequences" from the unprecedented, \$199 million damages ruling against TransCanada.

Attorneys for the 300,000-member chamber said the ruling against TC Energy "foists a lose-lose choice upon third-party buyers" and "goes beyond existing precedent by imposing significant monetary liability on a third-party buyer for aiding and abetting fiduciary breaches of which it had no actual knowledge."

Vice Chancellor Laster found the buying company liable for 50% of a nearly \$398.4 million class damages award. The balance was assigned to Columbia's CEO and CFO, who settled for \$79 million.

TC Energy is represented by David E. Ross, S. Michael Sirkin, Roger S. Stronach and Thomas A. Barr of Ross Aronstam & Moritz LLP, James M. Yoch Jr. of Young Conaway Stargatt & Taylor LLP, Brian J. Massengill, Matthew C. Sostrin, Nicole A. Saharsky, Minh Nguyen-Dang and Carmen N. Longoria-Green of Mayer Brown LLP.

The stockholders are represented by Gregory V. Varallo, Jeroen van Kwawegen, Christopher J. Orrico and Thomas G. James of Bernstein Litowitz Berger & Grossmann LLP, Ned Weinberger and Brendan W. Sullivan of Labaton Keller Sucharow LLP, and Stephen E. Jenkins and Marie M. Degnan of Ashby & Geddes PA.

The cases are *In re Columbia Pipeline Group Merger Litigation*, case number 281,2024, in the Supreme Court of the State of Delaware, and *In re Columbia Pipeline Group Merger Litigation*, case number 2018-0484, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.



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AT&T Beats Investor Suit Over Lead-Lined Cables, For Now

By **Katryna Perera**

Law360 (June 17, 2025, 6:43 PM EDT) -- A Texas federal judge has tossed a securities class action against AT&T and several of its executives alleging they misled investors about removing lead-covered copper cables from the company's network, finding that the plaintiffs have failed to meet the heightened pleading bar for securities fraud.

The proposed class action, which is leading a sweeping multidistrict litigation against AT&T, claims the company failed to disclose a range of existing facts about the presence of lead in their network of obsolete telephone cables.

On Monday, U.S. District Judge David C. Godbey issued an **opinion and order** saying the plaintiffs have failed to sufficiently plead knowledge of wrongdoing, or scienter, by the defendants and have instead relied on group pleading and generalized allegations. He provided them 30 days to amend their complaint.

According to the opinion, the investor plaintiffs point to statements found in unsigned "issue briefs" attributed only to AT&T, and they attribute knowledge of several facts to a group or to nondefendant individuals to plead scienter, but Judge Godbey said Monday that neither is sufficient.

"First, the challenged statements that come from AT&T's 'issue briefs' fail to support scienter because they are not attributed or connected to any individual speaker," the opinion states. "Second, many other allegations in the complaint attribute knowledge of facts to groups of people or lower-level employees — not individual defendants — and therefore do not raise an inference of scienter."

The complaint's motive allegations are also not enough to establish scienter, the judge said. According to the opinion, the investors claim the defendants misled them about the lead-lined cables because they needed to reduce the company's costs and because they wanted to increase their own incentive compensation.

"Neither of these alleged motives are sufficient to create or support an inference of scienter here. First, the desire to reduce costs is a motivation held by all businesses and is so generic as to not be actionable," the opinion states.

"Second, the Fifth Circuit has clearly stated that incentive compensation 'can hardly be the basis on which an allegation of fraud is predicated.' On a practical level, were the opposite true, the executives of virtually every corporation in the United States would be subject to fraud allegations," the opinion further states.

Judge Godbey also concluded that the complaint fails to sufficiently plead that any of the individual defendants knew of any widespread environmental contamination risk or employee health issues that could result in material risk to the company.

Although the entire complaint was dismissed, Judge Godbey stated that some of the complaint's challenged statements were actionable.

He found that statements related to cost savings from the transition away from copper and the reclamation of that copper material were actionable since they were not opinions or forward-looking, and the investors "plead the complete chain of inferences necessary to connect the statements about

cost savings to the alleged material liability from lead-lined cables."

Judge Godbey also said that three statements about environmental stewardship are actionable.

"Plaintiffs challenge the statement: 'When AT&T vacates facilities and outside plant infrastructure, our teams remove all regulated materials and coordinate with vendors to recycle and dispose of the materials in an appropriate manner.' They further challenge the statement: 'Hazardous waste is disposed in landfills, incinerated and recycled,'" the opinion states.

"These statements are plausibly alleged to be false, as plaintiffs claim that AT&T would vacate wirelines (by ceasing to use them) but instead of removing lead (a regulated material), AT&T would simply leave the wires in place while knowing they were likely to leach lead into the environment," the opinion further states.

Statements about employee health and safety and potential risks were found to be inactionable.

The investors **filed suit in 2023**, accusing the company of covering up the lead problem prior to a Wall Street Journal series on the health impacts of lead-covered cables in legacy networks on telecom workers. Following the reporting, AT&T's stock price fell by nearly 7% on "unusually high" trading volume, the plaintiffs say in their complaint.

The suit was **quickly joined** by others accusing the company's executives of knowing about the risks posed by the cables but not disclosing them, eventually leading to the consolidation in Texas federal court.

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

The investors are represented by Jeremy A. Lieberman and Justin D. D'Aloia of Pomerantz LLP and Willie C. Briscoe of The Briscoe Law Firm.

AT&T and the other defendants are represented by John B. Lawrence, Kirstie Wallace and James J. Beha II of Baker Botts LLP.

The case is In re: AT&T Securities Litigation, case number 3:24-cv-01196, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Jared Foretek. Editing by Jay Jackson Jr.



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Cannabis REIT Reckless To Claim Due Diligence, 3rd Circ. Told

By **George Woolston**

Law360 (June 17, 2025, 7:16 PM EDT) -- Investors in a cannabis-focused real estate investment trust urged the Third Circuit on Tuesday to revive their proposed class action alleging it violated securities laws by ignoring information about a tenant, saying it was reckless to have claimed it conducted due diligence when it knew it did not.

Alejandro Handal and Stephen Forrester told the appellate panel that Innovative Industrial Properties Inc. and its executives failed to adequately look into information the REIT had in its possession about its tenant Kings Garden and its founder Michael King, who was accused of embezzling millions of dollars from the REIT, despite publicly praising them and claiming that it verified the financial information Kings Garden provided to it.

The REIT should have easily discovered Kings Garden was the defendant in two state court lawsuits, that it provided draw requests and invoices with missing signatures and that it possessed suspicious financial statements. The REIT also should have monitored the construction sites and confirmed work with contractors and architects, the investors said.

Counsel for the investors, Jacob A. Goldberg of the Rosen Law Firm, said one Kings Garden employee readily admitted to forging signatures when asked, and in a separate case the company produced wonky financial statements to its adversary.

"Kings Garden is not hiding that it is a fraudster. Seemingly, you just have to ask. And no one did," Goldberg said during oral argument before the panel. "There's no question that due diligence, that vetting of tenants, is core to this company. It's what they do. Did they do it? They did not with Kings Garden."

Goldberg asserted that the REIT's failure to conduct due diligence despite having access to the damning information, coupled with its touting of Kings Garden in two back-to-back public statements following the release of an April 2022 short-seller report from Blue Orca Capital claiming King had been credibly accused of fraud and theft and was a defendant in several different suits material to his ownership of Kings Garden, shows that the defendants acted with scienter.

Innovative Industrial Properties acknowledged that the company may have had an obligation to investigate after the release of the Blue Orca report when asked by the panel why it did not, but even so, its failure to do so does not rise to the level of recklessness as argued by the investors.

Counsel for the REIT, Stacy R. Obenhaus of Foley & Lardner LLP, said the report was obviously biased because it was authored by short-sellers and said it was just their opinions and lawsuits are filed and dismissed every day in this country, including the suits against Kings Garden.

"You can't put your head in the sand either when somebody approaches you," Chief Circuit Judge Michael A. Chagares said.

Obenhaus said both the Blue Orca report and the investors' complaint do not say anything about how Kings Garden handles its draw requests, or how Innovative Industrial Properties was supposed to be managing that.

"The question is, What do these officers and principals know about that? And that's one of the major

things that's missing from the complaint. There are no allegations that this construction team knew there was crazy stuff going on and did nothing about it," Obenhaus said.

Innovative Industrial Properties had no knowledge of Kings Garden's fraudulent activity until June 2022, after the Blue Orca report was released, Obenhaus said, and once it did, it dug into it and discovered the wrongdoing. The REIT ultimately sued Kings Garden in July 2022 for fraud and Racketeer Influenced and Corrupt Organizations Act violations, according to court records.

A member of Innovative Industrial Properties had to have been thinking fraud in order for the company to have been reckless, Obenhaus said.

"You have to have someone on that construction team who is more than just negligent. You had to have someone on that construction team who was thinking fraud. There's no pleading of that. So it's not enough," Obenhaus said.

The investors' suit, **filed in April 2022**, said the REIT's shareholders were harmed when the Blue Orca report was released. The investors said the information was available from early 2019, before Innovative Industrial Properties contracted with Kings Garden.

The day the report emerged, the REIT's stock price took a tumble, the investors' initial complaint said.

U.S. District Judge Evelyn Padin **tossed an amended complaint with prejudice** last September after finding that Innovative Industrial Properties's risk warnings only suggested that it conducted sufficient due diligence into Kings Garden itself, not King, and the shareholders failed to show how the REIT and its executives knew their statements about the efficacy of Innovative Industrial Properties's due diligence were false when they were made.

The suit was previously **dismissed in 2023 without prejudice** after the court determined the investors could not have proved that the REIT knew of the scheme because the REIT itself was defrauded by Kings Garden.

Judges Michael A. Chagares, Tamika Montgomery-Reeves and Theodore A. McKee sat on the panel for the Third Circuit.

The investors are represented by Gonen Haklay and Jacob A. Goldberg of The Rosen Law Firm PA.

The REIT and other defendants are represented by Stacy R. Obenhaus of Foley & Lardner LLP.

The case is Handal et al. v. Innovative Industrial Properties Inc et al., case number 24-2829, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Stephen Berg.



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ImmunityBio's \$10.5M Investor Deal Gets Final OK

By **Sydney Price**

Law360 (June 17, 2025, 9:17 PM EDT) -- A California federal judge has granted final approval to a \$10.5 million settlement between oncology drug company ImmunityBio Inc. and investors who claim they were misled over the likelihood the U.S. Food and Drug Administration would approve the company's bladder cancer drug.

Co-lead counsel for the investors will receive over \$2.9 million in fees plus interest, which is equal to approximately 30% of the settlement amount minus the administration fees, litigation expenses and the \$10,000 award to the lead plaintiff, according to the order signed Friday by U.S. District Judge Gonzalo P. Curiel.

The \$10.5 million settlement represents approximately 8% of the maximum recoverable \$130.6 million in alleged damages, according to a March order preliminarily approving the settlement. The investors' counsel estimates a gross recovery of 9 cents per damaged share for each settlement class member.

The complaint, which was most recently amended in November 2023, states ImmunityBio had no approved drugs and thus no source of meaningful revenues at the start of the class period in March 2021, and its lead product candidate was a bladder cancer treatment called Anktiva.

ImmunityBio and its executives represented to investors that Anktiva fully complied with the FDA's minimum standards for drug manufacturing, known as "current good manufacturing practices," despite knowing the facility used to manufacture Anktiva was "plagued" with issues.

Investors began learning of manufacturing issues in May 2023 when ImmunityBio announced the FDA rejected its application for Anktiva due to deficiencies arising from the pre-approval inspection at its third-party contract manufacturing organization, according to the complaint. Following the announcement, ImmunityBio's shares fell more than 55% in one day, the suit says.

According to ImmunityBio's website, Anktiva received FDA approval to treat certain bladder cancer patients in April 2024.

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

The investors are represented by Jeremy A. Lieberman, Justin D. D'Aloia and Jennifer Pafiti of Pomerantz LLP, and Corey D. Holzer of Holzer & Holzer LLC.

ImmunityBio and the individual defendants are represented by Gregory L. Watts and Natalie J. Morgan of Wilson Sonsini Goodrich & Rosati PC.

The case is *Salzman v. ImmunityBio Inc. et al.*, case number 3:23-cv-01216, in the U.S. District Court for the Southern District of California.

--Editing by Kristen Becker.



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Texas Targets Del. Primacy With Trio Of New Corporate Laws

By **Andrew Oringer** (June 17, 2025, 5:19 PM EDT)

It has long been the case that Delaware corporate law has effectively become a sort of federal law governing corporate governance and stockholder rights. The state has managed to develop an established system of rules with extensive interpretive authority, which has generally been welcomed by those looking for a domicile for their corporations and other businesses. This procedural backdrop has helped Delaware position itself as a leader in attracting business formation.



Andrew Oringer

And there has been a substantive appeal to domiciling in Delaware. Arguably at the heart of Delaware's attractiveness is the highly developed business judgment rule. Under that rule, a court generally is not to second-guess the judgment of a board or other decision-maker so long as a majority of the board or other members have no conflicting interest in the decision, and if the decision is undertaken with due care and in good faith.

A key area in which the business judgment rule can come into play is the area of executive compensation. The role of executive compensation, in fundamental business approaches, took on new significance after the Enron and WorldCom debacles, becoming an important lynchpin in the historic Troubled Asset Relief Program legislation that bailed out the financial sector in 2008.

Subsequent federal statutory enactments have also focused on executive compensation. It is through this prism that a number of issuers and other companies; boards and board committees; and consultants, lawyers, and other advisers have come to scrutinize executive compensation with an increasingly jaundiced eye. Against this backdrop, executives understandably may prefer a regime in which a company's compensation decisions are the subject of high levels of judicial and regulatory deference.

Lately, however, the Delaware courts' arguably somewhat deferential approach to executive compensation has become more varied and restrictive. There have been a series of cases coming out of Delaware in recent years that may be perceived by some as ratcheting up the second-guessing of corporate decision-making and as being increasingly business-unfriendly.[1]

Even so much as a decision to deny a motion to dismiss could reverberate in the market, as once a case survives such a motion, legal expenses could soar and the risk of an adverse judgment may increase exponentially when compared with the risk immediately before the denial. Those eventualities may dramatically increase the potential for material settlements, and, as a result, companies, defendants and their lawyers generally prefer judicial trends in favor of early dismissal.

We now see executive compensation emerging as a possible basis for a desire on the part of company decision-makers to disrupt Delaware's hold on business formation. The tipping point, if indeed this possibility comes to pass, may in retrospect turn out to be the high-profile judicial **rejection** of Elon Musk's compensation package by the Delaware Court of Chancery in its January 2024 decision in *Tornetta v. Musk*.[2]

The Musk cases, including the Court of Chancery's December 2024 second **decision** in *Tornetta v. Musk*, or *Tornetta II*, are noteworthy examples of where the case went far beyond the settlement stage, and to the point of actual and impactful adverse judgment. Indeed, as discussed below, the

impact transcends the legal and extends strikingly to the practical.

In the first of the *Tornetta v. Musk* decisions,[3] the Court of Chancery analyzed Musk's pay package from Tesla Inc. under an entire fairness standard of review, given the court's classification of the transaction as a conflicted-controller transaction. The court determined that the approval of Musk's pay package was in breach of Musk's, as well as the Tesla directors', fiduciary duties, and ordered the package to be rescinded.[4]

In response to that decision, Tesla sought and obtained stockholder ratification of the pay package. In the *Tornetta II* decision,[5] the court declined to revise its prior decision to rescind the pay package, again determining that the package was excessive and the result of a breach of fiduciary duty — and made quite the award of attorney fees, to boot.

Musk, not one to take rebuke lying down, decided to pack his bags and head elsewhere, and Texas seems to have taken the hint. Even before the Musk decisions, some had started to openly wonder whether Delaware's grip on corporate formation is at risk, with Texas emerging as a prime and aggressive competitor. Indeed, Texas, unlike Delaware, has the additional selling point of being a hotbed for certain types of business activity, having nothing to do with its being a potential legal-side magnet for business formation.

Texas officials have made no secret of their intent. Thus, Texas has enacted a triple play of new laws, with the express goal of attracting businesses to relocate to Texas.

First, S.B. 29 **changes** the Texas Business Organization Code and addresses governance and legal protections for business entities by (1) making clear that laws and court decisions from other states cannot override Texas business laws, allowing Texas-based companies expressly to specify in documents that internal disputes must be resolved in Texas courts; and (2) codifying the business judgment rule under which there is a presumption that corporate officers and directors act in good faith when making business judgments, thereby making it harder for shareholders to sue companies if there is no fraud, misconduct or illegal activity.

The legislation also allows publicly traded Texas companies to have an ownership threshold for shareholder derivative actions of up to 3% of outstanding shares, thereby, in the words of Gov. Greg Abbott, "eliminat[ing] rogue shareholders, with just a handful of shares of stock in a company, from being able to hold a company hostage from the ability to make sound business decisions."

Second, S.B. 1058 **exempts** various stock exchanges from certain franchise tax liabilities, and, third, H.J.R. 4 **provides** for a constitutional amendment to be put on the ballot in November 2025 to let voters decide whether to ban the state from imposing certain taxes on stock exchanges.

It's not as though Texas' designs here are overly subtle: "This legislation will incentivize even more businesses now to move the registrations, perhaps move their listings and ultimately to move their headquarters to Texas," Texas Stock Exchange CEO James Lee said.

Abbott also said when signing the bills into law on May 14, "Business decisions are to be made by the elected officers and their shareholders, not by unelected judges," adding, "These laws codify policies that attract businesses, attract job creators and will ensure that Texans are going to have plentiful job opportunities to earn a great paycheck for decades to come." [6]

Then there is the **upcoming** Texas Stock Exchange, which appears presently to be slated to open during the second week of February 2026. As Lee said when the bills were signed, "[The legislation] also lays the foundation for exchange operators to make meaningful investments in Texas, while providing greater access to our public markets." [7]

There are also other pending bills. For example, H.B. 9, if approved by the voters in November, would **raise** the business personal property tax exemption from \$2,500 to \$250,000. It would not be surprising if Texas is not at all done, either: One might suggest the state could be about to take a page out of the Dr. Seuss playbook: "[M]ost people stop with the Z[, b]ut not me." [8]

So, we once had Brexit, and now one may wonder if we're on the precipice of, as the phrase has been coined, DExit. Delaware might well be reminded of when Atari was the only video game

purveyor that mattered, and when Betamax ruled the world of television taping (when there was such a thing as "taping"). It is also worth noting that Texas is not the only jurisdiction making a pitch to eat Delaware's lunch; for example, Ohio has been mentioned as a jurisdiction that would like a seat at this table.

Success can be fleeting, especially for those who lose sight of that very truism. Texas Association of Business President and CEO Glenn Hamer left no doubt about Texas' designs at the bill signing, championing the effort of the Lone Star State to solidify it as the best state and "unrivaled epicenter" for business, and asserting "that it's only a matter of time before we leave Delaware in the dust." [9]

Sure enough, in an effort to mollify potential DExiters, Delaware earlier this year **enacted** S.B. 21, which includes new safe harbor protections for insiders, limits certain inspection rights and, in the case of a transaction involving a controlling shareholder, requires controlling shareholders only to obtain either minority shareholder approval or independent board approval.

So will Texas emerge as a new home for business formation? Are there other states that will take the bait and go all-in on an effort to displace Delaware? As Delaware has shown, the economic upside for a state becoming home to innumerable corporations and other businesses is patently evident, so the attraction is a strong one.

Andrew L. Oringer is a partner, general counsel and a co-chair of the executive compensation group at The Wagner Law Group.

Wagner Law Group paralegal Natalie M. McKnight and senior counsel J. Mark Poerio also contributed to this article.

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[1] E.g., **In Re: Match Group Inc. Derivative Litigation** ●, 315 A.3d 446 (Del. 2024) (extending the situations in which the analytical framework laid out in **Kahn v. M&F Worldwide Corp.** ●, 88 A.3d 635 (Del. 2014), may apply); **In re: Investors Bancorp Inc. Stockholder Litigation** ●, 177 A.3d 1208 (Del. 2017) (limiting the scope of ratification as a permissible defense); **Knight v. Miller** ●, No. 2021-0581-LWW (Del. Ch. June 1, 2023) (going so far as to reject a settlement following an earlier decision in the same case (No. 2021-0581-SG (Del. Ch. Apr. 27, 2022))); **Garfield v. Allen** ●, No. 2021-0420-JTL (Del. Ch. May 24, 2022) (concluding that the defendant knowingly accepted compensation not provided for under the relevant plan); **Howland v. Kumar** ●, No. 2018-0804-KSJM (Del. Ch. June 13, 2019) (motion to dismiss denied in a compensation-related action for breach of fiduciary duty); **Pfeiffer v. Leedle** ●, C.A. No. 7831-VCP (Del. Ch. Nov. 8, 2013) (motion to dismiss denied in a compensation-related action for breach of fiduciary duty).

[2] Multiple reports have connected the Musk situation to the possibilities that companies might seek to redomicile outside of Delaware. E.g., K. Mejdrich, "5 Things Executive Pay Attys Should Keep an Eye on in 2025," Law360 (Employment Authority), <https://www.law360.com/employment-authority/articles/2281495/5-things-executive-pay-attys-should-keep-an-eye-on-in-2025> (Jan. 9, 2025); K. Mejdrich, "4 Trends Executive Compensation Attorneys Are Watching," Law360, <https://www.law360.com/articles/1805981/4-trends-executive-compensation-attorneys-are-watching> (Feb. 23, 2024).

[3] **Tornetta v. Musk** ●, 310 A.3d 430 (Del. Ch. 2024).

[4] It is noted that, compounding the complexities of the Tesla situation is the issue that rejections of pay packages can make it very challenging to recast the compensation at desired levels (even conceding arguendo that there should be some amount of downwards revision) with retroactive effect, especially if options are a part of the package, in light of various extensive and difficult tax rules (e.g., Section 409A of the Internal Revenue Code of 1986) that may apply.

[5] **Tornetta v. Musk**, 326 A.3d 1204 (Del. Ch. 2024).

[6] Perreault, Daniel. "Gov. Abbott signs three bills with goal to attract more businesses to relocate to Texas," KVUE.com, <https://www.kvue.com/article/news/politics/texas-legislature/texas-governor-abbott-signs-bills-attract-businesses-move-headquarters/269-9b39bdb6-70a9-471f-b9cb-79cf4b9ba7b9> (May 14, 2025) ("KVUE.com (5/14/25)").

[7] Id.

[8] Dr. Suess, *On Beyond Zebra!* (Random House 1955).

[9] KVUE.com (5/14/25). Note that an effort to stop Tripadvisor, Inc. from redomiciling was rejected by the Delaware Supreme Court in *Maffei v. Palkon* , No. 125, 2024 (Del. Feb. 4, 2025).

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Firms Fight To Rep End Users In PVC Pipe Antitrust Row

By **Celeste Bott**

Law360 (June 17, 2025, 4:53 PM EDT) -- Several law firms are duking it out for a lead counsel appointment representing a new class of end-user plaintiffs in consolidated litigation accusing PVC pipe companies of using a commodity pricing service to exchange information and illegally fix prices, with Pearson & Warshaw LLP, Kirby McInerney LLP, Fegan Scott LLC and Levin Sedran & Berman LLP making bids.

Earlier this month, U.S. District Judge LaShonda Hunt granted a motion to create a separate end-user class in the litigation, after those plaintiffs argued there were "fundamentally divergent" positions between end-user and intermediate indirect purchasers that created conflicts of interest. While they all share a common interest in holding the PVC pipe companies liable for overcharges, end-user plaintiffs buying PVC pipe for personal use will try to show they bore the full burden of the overcharges, while the intermediate resellers would try to demonstrate they absorbed most of those excess charges, they said.

Several law firms want to take the lead in representing the new end-user class, according to motions filed in Illinois federal court Monday.

End-user plaintiffs **backing** Elizabeth A. Fegan of Fegan Scott and Frederick S. Longer of Levin Sedran said they were the ones who identified and alerted the court to the conflict of interest, and their "zealous advocacy" led to the creation of the independent, putative class in the first place.

Fegan and Longer are also supported by firms with extensive experience representing end-user classes in antitrust class actions, and they've done considerable work so far identifying and investigating potential claims, including their efforts to bring governmental end users, like plaintiff Erie County Water Authority, into the fold, they added.

Another plaintiff, Water District No. 1 of Johnson County, Kansas, **pushed** for Kirby McInerney, the firm it hired to represent the interests of institutional end-user class members before a distinct end-user class was created.

"WaterOne submits that it is important that large institutional indirect purchasers, like governmental and quasi-governmental entities such as WaterOne, receive independent representation under the auspices of the end-user class leadership structure," it said.

"Since the filing of the first consolidated class action complaint, Kirby McInerney has constructively advocated for similarly-situated entities within the class structure, including by submitting declarations and working with the [non-converter seller purchasers'] lead counsel, analyzing WaterOne's PVC Pipe purchases, and supporting settlement efforts."

Pearson Warshaw, meanwhile, **said** it began working on the case in August before the first complaint was even filed and has been counsel of record for nearly seven months. It's already prepared the consolidated first amended complaint filed by the non-converter seller purchaser class, secured a settlement and has consulted with economists while working on initial discovery matters, the firm said.

The firm also highlighted its role as co-lead counsel representing the direct purchaser class in sprawling antitrust litigation in Illinois federal court, which accused the nation's top poultry producers

of conspiring to fix chicken prices, noting that it has so far resulted in over \$284 million in settlements.

"Pearson Warshaw initiated discussion with other leadership applicants to reach consensus on a leadership structure for the end-user class. In light of time constraints, counsel has not reached consensus," the firm told the court. "Pearson Warshaw respectfully submits that such a combined leadership structure, whether ordered by the court or agreed to by the parties, will result in the most effective representation of the end-user class."

Multiple proposed class actions in the Northern District of Illinois claim that the makers of polyvinyl chloride pipe illegally colluded via subscription reporting service OPIS — itself targeted by the private plaintiffs — to keep the price of PVC pipes high even after supply chain issues from the coronavirus pandemic had subsided.

One such manufacturer, Atkore Inc., **announced** the receipt of a grand jury subpoena from the U.S. Department of Justice's Antitrust Division, issued out of the Northern District of California federal court, earlier this year.

The plaintiffs are represented by Pearson & Warshaw LLP, Kirby McInerney LLP, Fegan Scott LLC, Levin Sedran & Berman LLP, Gustafson Gluek PLLC, Cohen Milstein Sellers & Toll PLLC, Lockridge Grindal Nauen PLLP, Sperling Kenny Nachwalter, Kaplan Fox & Kilsheimer LLP, Scott + Scott Attorneys at Law LLP, Douglas & London PC, Zelle LLP, Mark K. Wasvary PC and The Saunders Law Firm.

The defendants are represented by Mayer Brown LLP, Axinn Veltrop & Harkrider LLP, White & Case LLP, Kirkland & Ellis LLP, Sheppard Mullin Richter & Hampton LLP, Dentons US LLP, Morrison Foerster LLP, Susman Godfrey LLP, Holland & Knight LLP and Massey & Gail LLP.

The case is In re: PVC Pipe Antitrust Litigation, case number 1:24-cv-07639, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Bryan Koenig. Editing by Dave Trumbore.

Correction: A previous version of this story misstated a firm's name. The error has been corrected.