Securities Law News

Sea’s $46 Million Investor Class Settlement Gets Final Court Nod

July 14, 2025, 1:06 PM PDT

Sea Ltd.‘s $46 million settlement garnered a federal court’s final blessing, resolving a proposed class action that alleged the company and top executives hid negative trends in its entertainment and e-commerce platforms post-pandemic.

Judge Douglas L. Rayes awarded the investors’ lead counsel 25% of that sum—$11.5 million—and $123,264 in litigation expenses. The US District Court for the District of Arizona judge awarded the lead plaintiff, a pension fund, $7,720 on July 11 as he entered the final judgment. The settlement frees the Singapore-based internet company of allegations that it downplayed to investors the then-impending impact of losing the publishing rights to the internationally popular “League of Legends” game, among other claims.

- The class, certified for the settlement, includes those who got Sea’s American Depositary Shares from Nov. 15, 2022, through Aug. 14, 2023
- Lead counsel Robbins Geller Rudman & Dowd LLP described in a motion that the settlement as among the largest securities class action recoveries in this Arizona court
- “This was a complex and hard-fought case,” said lead counsel Marco Janoski Gray in an email. “We’re pleased with the result for the investors who were harmed here.”

Zimmerman Reed LLP is local counsel for lead plaintiff Laborers District Council Construction Industry Pension. A&O Shearman and Lewis Roca Rothgerber Christie LLP, which since merged into Womble Bond Dickinson (US) LLP, were representing Sea and executives Forrest Li, Tony Hou, Yanjun Wang, Gang Ye, and David Chen. Neither Sea nor its outside counsel immediately responded to emails seeking comment.

The case is Laborers Dist. Council Constr. Indus. Pension Fund v. Sea Ltd. , D. Ariz., No. 2:23-cv-01455, closed 7/11/25 .

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Class Action

Subscribe

Pool Supplier Leslie’s Beats Investor Suit Over Waned Demand (1)

July 15, 2025, 6:24 AM PDT; Updated: July 15, 2025, 7:47 AM PDT

- **North Carolina treasurer leads proposed class suit on inventory**
- **Didn’t adequately allege falsity, but can amend complaint**

Leslie’s Inc. defeated proposed class claims that the pool supplier hid its excess chlorine-based product inventory levels as pandemic demand waned, a federal judge ruled.

North Carolina’s treasurer, the lead plaintiff, didn’t sufficiently connect the dots between alleged misstatements and omissions to successfully plead falsity, Judge Sharad H. Desai of the US District Court for the District of Arizona said, tossing the suit Monday.

But issues of specificity on what exactly investors thought was false or omitted in purported misstatements about demand and inventory, and other shortcomings, could be fixed in another complaint, the judge said. Desai allowed the treasurer and additional plaintiff Macomb County Employees’ Retirement System 30 days to amend their allegations.

Because Desai dismissed the consolidated complaint on falsity grounds, he declined to address whether it adequately alleged an overall inference of intent or reckless disregard by former CEO Michael R. Egeck and former chief financial officer Steven M. Weddell to defraud investors. But Desai noted that the complaint didn’t sufficiently establish former employees’ reliability and personal knowledge when citing confidential witness statements to allege corporate intent to deceive or recklessness.

The complaint didn’t adequately allege that the importance of Leslie’s chlorine-product business suggested the executives knew of inventory issues, which was needed to meet the US Court of Appeals for the Ninth Circuit’s high pleading burden, Desai said. And the fact that Weddell’s departure coincided with disappointing financial results didn’t, on its own, suggest an inference of intent, he said.

Leslie’s revealed a decline in sales and disappointing gross profits in July 2023 while delivering preliminary results for the third quarter of that year. The company on July 13, 2023, lowered its full fiscal year outlook and announced Weddell would be replaced.

Share prices plummeted almost 30% July 14, the day after the announcement—the stock’s biggest one-day drop since its 2020 market debut, according to data compiled by Bloomberg. The stock price tumbled almost another 19% over the next trading day to close at $5.46 on July 17.

But before this, Leslie's and executives touted demand for the company's chemical products after a pandemic boom, the complaint said. They hid from shareholders that the company and its customers "had a glut of inventory, which would inevitably depress future demand," the complaint said.

The proposed class would include those who obtained Leslie's stock from Feb. 3, 2022, through July 13, 2023.

Robbins Geller Rudman & Dowd LLP is lead counsel for the treasurer. Gibson Dunn & Crutcher LLP and Snell & Wilmer LLP represent Leslie's and the former executives.

The law firms, the treasurer's office, and Leslie's didn't immediately respond to emails seeking comment.

The case is W. Palm Beach Police Pension Fund v. Leslie's Inc. , 2025 BL 244579, D. Ariz., No. 2:23-cv-01887, 7/14/25 .

(Updated with additional reporting throughout.)

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News

‘Untenably Broad:’ Federal Judge Dismisses Class Action Kickback Claims Against Chicago Pharmaceutical Company

July 15, 2025 | By Alex Anteau

Abbvie. Courtesy photo

A federal judge in Chicago recently shot down a class action bid accusing the leaders of a pharmaceutical company of misleading investors by concealing two marketing programs that offered healthcare providers free services in exchange for prescribing an arthritis medication.

The lawsuit focused on whistleblower allegations regarding AbbVie's flagship product is Humira, which is an injectable medication used to treat rheumatoid arthritis, Crohn’s disease, and other health conditions. The fallout from the whistleblower scandal eventually caused AbbVie's stock price to drop, and the company's investors, represented by a team of attorneys including litigators from Motley Rice, sued, alleging AbbVie, represented by a team of attorneys from Kirkland Ellis, was dishonest about complying with the Anti-Kickback Statute.

The summary judgment order, written by U.S. District Court Judge for the Northern District of Illinois John Tharp, reasoned that even if the defendants made misrepresentations, a reasonable jury could conclude there was no reckless intent to deceive investors, or that AbbVie's alleged deception caused the plaintiff's financial losses. Tharp also cautioned the plaintiff’s position as “untenably broad” in the opinion, published on July 10.

“Under their reading, virtually all pharmaceutical product-support services would qualify as a kickback,” Tharp wrote.

AbbVie, a Chicago-based spinoff of Abbot Laboratories, launched two initiatives in 2012 to boost Humira’s sales: a nurse ambassador program and an electronic platform, called HLink, to make it easier for healthcare providers to get pre-clearance authorization for the drug. In 2015, however, a whistleblower filed a complaint against AbbVie in the Northern District of Illinois, alleging the ambassador program functioned as an illegal kickback to incentivize providers to prescribe Humira more than they otherwise would have. An investigation by the California Department of Insurance followed.

According to the plaintiff’s amended complaint, Humira was AbbVie’s most important product, accounting for $18.4 billion in sales, two-thirds of the company’s revenue, in 2017. However, the company faced pressure from cheaper generic manufacturers in Europe and was expecting similar challenges in the U.S. in the coming years.

AbbVie’s ambassador program was intended to bolster sales and make sure patients were using the drug correctly. The company hired registered nurse ambassadors to visit patients’ homes to teach them how to perform self-injections, promote proper usage, answer questions, and help get insurance coverage and refills.

However, former nurse ambassador turned whistleblower, Lazaro Suarez, alleged that this program functioned as an illegal kickback where AbbVie offered these free, valuable services to providers in exchange for prescribing more Humira.

“Suarez attended national trainings wherein Nurse Ambassadors were trained to conceal Humira’s serious cancer and infection risks from patients,” the plaintiffs wrote in their shareholder derivative complaint. “When patients asked about Humira’s serious potential side effects, Suarez and others were explicitly taught to deflect the question and reply that, while they were not able to discuss these side effects, they would help find a way to ‘get you your Humira for five dollars or less.’”

The plaintiffs also noted Humira is required to carry the FDA’s strongest warning for prescription drugs.

Suarez filed his whistleblower complaint in the Northern District of Illinois in 2018. It was soon followed by a similar case in the District of New Jersey and a California Department of Insurance investigation, which caused AbbVie’s stock price to drop by over 4.5% over the next two trading days, according to the shareholders’ complaint.

In response, the investors sued, alleging AbbVie intentionally hid the company's legal liability in the Humira support programs. The plaintiffs further contended that, in addition to free administrative assistance provided by the nurse ambassador and electronic filing programs, AbbVie offered cash, meals, alcohol, and other gifts to providers who prescribed Humira. All of the alleged conduct violated the Securities Exchange Act because it led the company to artificially inflate the price of the stocks the plaintiffs bought, causing the shareholders to lose money when the stock prices fell.

The shareholders prevailed against an earlier unsuccessful motion to dismiss. But, as discovery wound to a close, AbbVie filed a motion for summary judgment, arguing the Humira programs do not violate the anti-kickback statute, nor did the company intentionally or recklessly mislead investors in a way that would cause them to lose money.

Tharp sided with the defendants. The judge found the plaintiffs failed to point to specific, admissible evidence to support their kickback claims.

"That shortcoming is fatal, particularly given that the plaintiffs had ample time to identify such support during the six-year pendency of this case," Tharp wrote.

The judge further reasoned that because AbbVie's promotional programs only offered administrative and educational services related to Humira, which didn’t have any independent value for healthcare providers, they were in line with the Anti-Kickback Statute. As a result, a reasonable jury could conclude there was no reckless intent to deceive investors and that the alleged deception was not responsible for the shareholders’ losses. This portion of the opinion hearkened back to the original Suarez whistleblower case, which was dismissed after fellow U.S. District Court for the Northern District of Illinois Judge Rebecca Pallmeyer reached a similar conclusion.

Neither AbbVie's nor the lead plaintiff's counsel responded to requests for comment.

Securities Law News

Deep Sea Miner TMC Routs Investor Suit Over SPAC Merger (1)

July 14, 2025, 9:55 AM PDT; Updated: July 14, 2025, 12:34 PM PDT

- **Investors didn't adequately allege any misleading statements**
- **2021 blank-check company merger brought miner public**

TMC The Metals Co. ended investor allegations that the deep sea miner misrepresented its environmental impacts and cash reserves surrounding its 2021 blank-check company merger to go public, a federal judge ruled.

No purported misstatements were sufficiently alleged as false or misleading to support securities fraud claims, Judge Eric R. Komitee said while dismissing the lawsuit. Nor did the investors adequately plead the level of intent or recklessness to deceive by TMC, CEO Gerard Barron, or the former CEO of the special purpose acquisition company that its predecessor merged with, the US District Court for the Eastern District of New York judge said in a July 11 order.

And lead plaintiffs Point12 Diversified Fund LP and Kyle Autry lacked standing to challenge a pair of alleged misstatements about a $330 million investment and three statements about TMC's pre-merger predecessor, DeepGreen Metals Inc., given the timing of their share purchases, Komitee said.

Investors sued in 2021 after the merger of DeepGreen and SPAC Sustainable Opportunities Acquisition Corp. formed publicly-traded TMC. TMC aims to mine and refine minerals found on the ocean floor which can be used to make electric vehicle batteries, among other things, according to the company.

Days after TMC started trading publicly that September, a Bloomberg News report questioned the company's environmental bona fides with respect to deep-sea mining. The report said that two-thirds of a $330 million private investment in its public equity had fallen through, despite executives saying the money was "fully committed."

Then a short-seller report in October accused TMC of artificially inflating its exploration expenses to deceive investors about the scale of its operations. The Bonitas Research report alleged that TMC had pumped $43 million in cash and stock to undisclosed investors by overpaying for an exploration license.

TMC's share prices declined following these accusations to investors' detriment, the suit said, alleging the company and certain overseers had misled them about its environmental safety and cash levels, they said.

But Barron's statements about having sufficient cash and TMC's ability to be a low-cost nickel producer in September 2021 amounted to opinions, and a statement on working to recover the missing PIPE funds wasn't false when made, Komitee said. The investors didn't identify specific facts omitted from purported understatements about environmental risks, the judge said. And the complaint didn't adequately explain how discrepancies in certain financial valuations were anything more than different methods of accounting, he said, denouncing other allegations.

"We believed these claims were entirely without merit, and are pleased with the court's thorough and well-reasoned opinion dismissing the case. With this matter concluded, The Metals Company is focused on advancing its mission of responsibly developing a new source of critical minerals to support energy, defense, manufacturing, and infrastructure supply chains," said Latham & Watkins LLP partner Jeff Hammel, lead counsel for TMC.

TMC is contending with a different proposed securities class action tied to restating financial statements in the Central District of California.

Pomerantz LLP is lead counsel for the proposed class, which would've covered investors from March 4, 2021, through Oct. 5, 2021. Attorneys didn't immediately respond to an email seeking comment.

The case is Point12 Diversified Fund, LP v. TMC The Metals Co. , E.D.N.Y., No. 21-CV-5991, 7/11/25 .

(Updates to add a comment from TMC's counsel and the company in the ninth paragraph.)

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Morgan Stanley, Goldman, Wells Fargo reach settlement tied to Archegos collapse

reuters.com/legal/government/morgan-stanley-goldman-wells-fargo-reach-settlement-tied-archegos-collapse-2025-07-14

Jonathan Stempel July 14, 2025

Archegos Capital Management founder Sung Kook "Bill" Hwang leaves the United States District Court in Manhattan in New York City, U.S., November 20, 2024. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights, opens new tab

NEW YORK, July 14 (Reuters) - Morgan Stanley (MS.N), opens new tab, Goldman Sachs (GS.N), opens new tab and Wells Fargo (WFC.N), opens new tab will pay a total of $120 million to settle a lawsuit claiming they hid conflicts of interest while sales of ViacomCBS shares helped fuel the collapse of Bill Hwang's Archegos Capital Management.
A proposed final settlement with former shareholders of ViacomCBS, now known as Paramount Global (PARA.O), opens new tab, was filed this month in New York state court in Manhattan; it requires a judge's approval.

Archegos, a family office that once managed $36 billion, imploded in March 2021 when Hwang could not meet margin calls on bank loans he obtained to make large bets in ViacomCBS and other media and technology stocks.

Investors led by the Camelot Event Driven Fund and the Municipal Police Employees' Retirement System of Baton Rouge, Louisiana, accused banks of hiding their roles as Archegos counterparties and dumping their shares to avoid losses.
The defendants served as prime brokers for Archegos, which had about $20 billion of ViacomCBS exposure and had helped underwrite ViacomCBS common and preferred stock offerings in March 2021.

Morgan Stanley, Goldman and Wells Fargo denied wrongdoing in agreeing to settle, according to a court filing dated July 1.

It was unclear how much each would pay, but Morgan Stanley handled about 45% of the offerings and the other banks handled much less. All declined to comment on Monday.

Many other defendants were previously dismissed. Some court papers had been kept under seal. Bloomberg News reported the settlement earlier on Monday.

ViacomCBS common stock and preferred stock investors would receive $75 million and $45 million, respectively, minus legal fees and expenses, court papers show.

Their lawyers plan to seek 29% of the settlement fund, or about $35 million, for fees, the papers show.

Hwang and former Archegos chief financial officer Patrick Halligan were convicted of fraud in July last year over the firm's collapse and sentenced to 18 years and eight years in prison, respectively. Both are appealing and free on bail.
The case is Camelot Event Driven Fund et al v Morgan Stanley & Co et al, New York State Supreme Court, New York County, No. 654959/2021.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler

Our Standards: The Thomson Reuters Trust Principles., opens new tab

Securities Law News

Ex-Binance Execs Seek Dismissal From $1.8 Billion FTX Trust Suit

July 14, 2025, 11:10 AM PDT

- **FTX's Binance suit seeks to claw back transfers made by ex-CEO**
- **US bankruptcy court lacks jurisdiction over them, ex-execs say**

Two former Binance Holdings Ltd. executives urged a court to remove them from an FTX trust's lawsuit seeking to claw back $1.76 billion it alleges was fraudulently transferred by Sam Bankman-Fried.

Former Binance compliance head Samuel Wenjun Lim and former executive Dinghua Xiao said the US bankruptcy court lacks jurisdiction over them because they have limited ties to the US. They also said they never received any benefit from the FTX transfers in question, according to motions to dismiss filed July 11 in the US Bankruptcy Court for the District of Delaware.

FTX filed for Chapter 11 in November 2022 after the exchange collapsed, in what US prosecutors called one of the biggest financial frauds in American history. The suit is part of a years-long effort by a trust set up under FTX's wind-down plan to recover funds for creditors.

Binance, its former chief executive officer Changpeng Zhao, and several others were sued by the FTX trust in November to claw back funds it said were fraudulently transferred by FTX's co-founder and former CEO, Bankman-Fried. Zhao served four months in prison after he pleaded guilty to US anti-money laundering violations, while Bankman-Fried is serving a 25-year sentence after being convicted of seven offenses, including fraud and conspiracy.

The trust alleged Binance and the former executives received the funds as part of a share repurchase deal with Bankman-Fried through which they sold stakes of about 20% in FTX's international unit and 18.4% in its US-based entity.

Xiao and Lim in February 2020 bought the 18.4% stake in West Realm Shires Inc., a US-based parent company of FTX US, for about $2, the complaint said. In July 2021, FTX repurchased those shares and Xiao was a "nominal counterparty" in two agreements transferring them to Bankman-Fried, the complaint said. Lim was also a "nominal counterparty" in two agreements and transferred shares to others, the suit said.

But Lim and Xiao in their motions said the true beneficiary of any alleged transfer was Binance, not them. Binance has also moved for the court to dismiss the suit.

Xiao said he's an Australian national who lives in China who has never worked in the US, while Lim said he's a Singapore national and resident. Both said their only connections to the US were the shares they held on behalf of Binance, which isn't enough to create the minimum contacts necessary to support personal jurisdiction.

Lim's attorneys argued that he shouldn't be brought "into this Court from the other side of the globe to defend himself against claims arising from events in which he admittedly had no meaningful involvement."

Xiao said meeting discovery obligations would be difficult, costly, and inefficient, especially due to Chinese data protection laws that require review of electronic information before it can leave the country to be viewed by US attorneys.

Lim and Xiao also said the 2021 share repurchase contracts are governed by Hong Kong law and include arbitration clauses that require disputes to be resolved in Hong Kong. They noted that the amount they're alleged to be responsible for, about $8.13 million, is just 0.4% of the $1.76 billion being sought by the FTX trust.

Lim is represented by Pachulski Stang Ziehl & Jones LLP and MoloLamken LLP. Xiao is represented by Dechert LLP and Meluney Alleman & Spence LLC. The FTX trust is represented in the suit by White & Case LLP and Richards, Layton & Finger PA.

The case is FTX Recovery Trust v. Binance Holdings Limited et al , Bankr. D. Del., No. 24-50222, motions 7/11/25 .

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Did the DExit Debate Just Hit an Inflection Point?

dandodiary.com/2025/07/articles/corporate-law/did-the-dexit-debate-just-hit-an-inflection-point

Kevin LaCroix July 15, 2025

ANDREESSEN HOROWITZ

In recent months, a debate has raged about whether Delaware companies should up stakes and reincorporate elsewhere, particularly Nevada or Texas. While this debate has sparked a great deal of discussion, and while a few high-profile companies have made the move, by and large the number of companies actually moving remained small. But now in a potentially significant development for the whole DExit topic, Silicon Valley VC firm Andreesen Horowitz has announced that it is leaving Delaware for Nevada, and, perhaps event more significantly, encouraging its portfolio companies to incorporate in Nevada as well. As discussed below, this development could represent an inflection point in the DExit debate, with potential significance for the corporate litigation going forward.

Background

AH Capital Management, LLC, familiarly known as Andreesen Horowitz or a16z, is a Silicon Valley venture capital firm. By some reports, it is the largest VC firm in the country, with $42 billion assets under management. When the firm was formed in 2009, it was organized under the laws of the state of Delaware.

In a July 9, 2025, three principals of the firm posted an open letter on the firm's website, entitled "We're Leaving Delaware, And We Think You Should Consider Leaving, Too" (here), announcing the firm's intent to reincorporate in Nevada. In presenting its proposed change, the memo's authors noted that while the firm "could have made this move quietly … we think it is important for our stakeholders, and for the broader tech and VC communities, to understand why we've reached this decision." The authors lay out their reasons for the move in the memo, as well as why they think their decision is important for those broader communities.

The memo opens with the authors' observation that while incorporation in Delaware was once "a no-brainer," recent Delaware Court of Chancery decisions "have injected an unprecedented level of subjectivity into judicial uncertainty into what was once consider the gold standard of U.S. corporate law," while at the same time Nevada has "taken significant steps in establishing a non-technical, non-ideological forum for resolving business disputes.

In explaining why their views of Delaware have changed, the authors cite the actions of both the Delaware courts and the Delaware legislature. In the authors view, the judge-made principles of the business judgment rule have increasingly become subject to exceptions, to the point that the exceptions "have begun to swallow the rule." In addition, director independence has been increasingly questioned in a number of high-profile cases.

While the Delaware Legislature has taken some exception to these developments, "its actions fail to take full measure of the problem" – which is, according to the authors, that "Delaware courts can at times appear biased against technology startup founders and their boards." The legal uncertainty now resulting from Delaware litigation "is a real cause for concern for entrepreneurs and their professional investors." That is, according to the memo's authors, why "significant technology companies," such as Dropbox, Tripadvisor, and Tesla have take action to incorporate in other jurisdictions.

Nevada, the authors say, has "taken a different path," particularly through legislation allowing companies to waive jury trial in civil cases, and permitting direct appointment of business court judges by the Governor. The memo also identifies four additional specific ways Nevada is increasingly more attractive to entrepreneurs:

1. Statutory Business Judgement Rule: In Nevada, the business judgment rule is codified in statute. The authors contrast this to Delaware, where the judge-made business judgment rule remains subject to judicially created exceptions (such as, for example) the "entire fairness doctrine," which can dilute the protection afforded by the business judgment rule.
2. Shareholder Limits on Director and Officer Exposure: Nevada, by default, permits broad protections against individual liability for officers and directors, and monetary damages are excluded unless the plaintiff can show that the defendant did not act in good faith or engaged in intentional misconduct. While Delaware allows for limitation of director and officer liability, these limitations are subject to judicial doctrines, which is "particularly troublesome" when Delaware's courts "appear to show bias against founders and their boards," and increasingly are applying large damages against defendants.
3. Inspection of Books and Records: Nevada provides that only 15% or greater stockholders have the right to inspect books and records, which, according to the authors, significantly limits the plaintiffs' lawyers ability to engage in fishing expeditions. By contrast, Delaware allows any stockholder of record to inspect a company's books and records. While the Delaware legislature recently limited the categories of materials subject to books and records requests, these limitations "do not overcome the advantages of the bright line rule adopted by Nevada.

4. Established Business Court: Delaware's long-standing advantage has been the specialized expertise of its courts. However, the authors assert, "that advantage has eroded as judicial decision-making has increasingly seemed to veer away from the technical expertise for which it is known." Nevada has its own dedicated business court, the judiciary for which is going to be appointed by the Governor. By allowing companies to waive the right to a jury trial, "Nevada has taken a significant step to ensure that business court judges, rather than uninformed lay juries, can resolve complex commercial business disputes."

In its opening explanation for the firm's relocation, the memo's authors note that there is "often a reluctance to leave Delaware, based in part on concerns for how investors will react." The memo's authors express their hope that, as the country's largest VC firm, perhaps their firms decision "signals to our portfolio companies, we well as to prospective portfolio companies, that such concerns "may be overblown." While the firm will continue to fund companies incorporated in Delaware, "we believe Nevada is a viable alternative and may make sense for many founders."

Discussion

What makes the Andreesen Horowitz memo so interesting is not just that the firm is loudly announcing its plan to move from Delaware to Nevada, but it is doing so loudly for the express purpose of influencing its portfolio companies and its prospective portfolio companies, in their choice of state of incorporation. In other words, the country's largest VC firm is expressly trying to influence the community of start ups and tech firms, as well as the VC firms active on those communities, to prefer and favor Nevada as the state of incorporation over the traditional favorite state of Delaware.

Andreesen Horowitz's move seems likeliest to have influence within the company's own portfolio of companies, a not inconsiderable thing in and of itself. The more interesting question is whether or not it will have more widespread influence, on startups and tech companies generally. This possibility of more widespread influence is interesting, because up until now, the companies electing DExit have consisted of a few large established companies, while at the same time the vast majority of existing Delaware companies are making no changes. If the considerations the Andreesen Horowitz firm cites were to influence more startups to incorporate as an initial matter in Nevada (or elsewhere) rather than in Delaware, that could change the current dynamic favoring presumptive Delaware incorporation.

I personally think that the Andreesen Horowitz move could prove to be an important inflection point in the current state of incorporation debate. If in fact the DExit dynamic shifts from a few established companies to a wider range of startups selecting their initial state of incorporation for a state other than Delaware, not only would the weight of the place of incorporation shift, it could also effect a broader change in overall corporate law, as Delaware law become less important and other states more protective laws alter the corporate litigation dynamic. Time will tell of course, but the possibilities are there, and are quite interesting as well.

One observation about the Andreesen Horowitz memo, which is how little the Delaware legislature's adoption of S.B. 21 seems to have affected the firm's analysis. While I think some in the Delaware corporate law community had hoped S.B. 21 might "stem the tide" of corporate departures, it is fair to say that the changes enacted in S.B. 21 had little or no impact on the firm's decision to leave the state. Indeed, the firm's memo expressly states that the Delaware legislature's actions "fail to take full measure of the problem" Whatever else might be said about S.B. 21, it seems to have little impact on the state of incorporation debate. So much for S.B. 21 stemming the tide.

I do think it is a fair question to ask how valid the justifications the firm gives for its decision to move really are. Along those lines, I think it is important to note that law University of Colorado law professor Ann Lipton, in a social media post, said that the Andreesen Horowitz memo "literally misstates Delaware law." In his July 11, 2025, post on the *CorporateCounsel.net* blog about the firm's memo, John Jenkins characterizes the firm's arguments in favor of abandoning Delaware as "tendentious." (I had to look it up; "tendentious" means "expressing or intending to promote a particular cause or point of view, especially a controversial one.")

In my view, the memo completely understates the value of Delaware's experienced and specialized judiciary, and completely overstates the value of Nevada's new and untested business courts. Maybe someday there will be a sufficient track record to be able to compare the courts in some meaningful way, but we aren't there yet, and in meantime, I think that the Delaware courts' long and distinguished history has to, or at least should, weigh heavily in Delaware's favor.

All of those observations notwithstanding, I think it is possible the Andreesen Horowitz move will have an impact, and to that extent at least, we may be moving toward a new era in corporate law in the U.S., one that could result in less litigation overall and more favorable outcomes for corporate defendants. If more startups and tech firms really do start to favor Nevada over Delaware as the state of initial incorporation, not only will there be fewer companies in Delaware, but there will be less corporate litigation in Delaware's courts. The result could be a very different corporate litigation environment. Of course, it will be many years before we know for certain how much things have changes, and in the meantime, I don't see D&O insurance underwriters changing the practices in anticipation of the changes. But it could be very interesting to watch all of this unfold.

I confess that at the outset of the DExit debate, I thought this whole thing might be just a tempest in the teapot, stirred up by Elon Musk because he was upset that the Delaware courts barred his massive pay package. It does seem now that there is more to this than might have originally appeared. The state of incorporate debate could mean we are headed into a very different corporate law environment in the U.S., potentially representing a different corporate liability arena, as well.

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News

‘Dirty Little Secret’: Another J&J Talc Trial Opens in Boston

July 14, 2025 | By Amanda Bronstad

What You Need to Know

- Plaintiff Paul Lovell, who lives in Melrose, Massachusetts, was diagnosed with mesothelioma in 2021 after more than four decades of using Johnson & Johnson’s baby powder.
- Kirkland & Ellis partner Morty Dubin, who represents Johnson & Johnson, blamed Lovell’s mesothelioma on a ‘very rare gene fusion.’
- On June 18, a prior jury in the first Boston talc trial awarded $8 million to Janice Paluzzi, who was diagnosed with mesothelioma in 2021.

Johnson's talc powder on a supermarket shelf in Baltimore. Photo: Diego M. Radzinschi/ALM

Another Boston trial over Johnson & Johnson's talcum powder began on Monday, with Dallas-based Dean Omar Branham Shirley attorney Danny Kraft representing plaintiff Paul Lovell.

The trial is the second in Suffolk County Superior Court in the past two months focused on holding Johnson & Johnson liable for a plaintiff's mesothelioma. On June 18, a jury in a prior talc case in Boston awarded $8 million to Janice Paluzzi, who was diagnosed with mesothelioma in 2021. Lovell, who lives in Melrose, Massachusetts, was diagnosed with mesothelioma in 2021 after decades of using Johnson & Johnson's "iconic" baby powder.

"We're here today because that product has a dirty little secret—a secret that the company who manufactures the product hid from us all for decades, hid from Mr. Lovell and his family, from the three decades that he used it, a secret that J&J hid from the FDA, regulators, scientists, nurses and doctors, but most importantly the people like Paul Lovell who used the product every single day, year after year, decade after decade," Kraft said in his opening statement, according to livestream coverage of the trial by Courtroom View Network. "And the secret was that their product, the franchise, the cornerstone of Johnson & Johnson's consumer section, was contaminated with something that causes cancer."

He asked the jury for "substantial monetary damages."

New York attorney Morty Dubin represents Johnson & Johnson. Dubin, who joined Kirkland & Ellis two months ago from King & Spalding, told jurors to focus on the science during the trial, according to Courtroom View Network. He insisted that his client's talc product didn ot cause Lovell's mesothelioma.

"It has to do with a very rare gene fusion," he explained to jurors.

Both cases involve only compensatory damages, as Massachusetts law does not permit punitive damages in asbestos cases.

In last month's trial, the jury awarded $5 million in past pain and suffering and $3 million in future pain and suffering. Dean Omar's Benjamin Braly had asked jurors for $25 million.

Johnson & Johnson, represented in that trial by King & Spalding partner Bruce Hurley, in Houston, said it would immediately appeal the verdict, which it said was based on "junk science."

Last year, another judge in Suffolk County Superior Court declared a mistrial in the Paluzzi case after one juror became sick and another juror belatedly raised a potential conflict.

Dean Omar previously won a $15 million talc verdict in Connecticut's Bridgeport Judicial District Court, a $45 million award in Chicago's Cook County Circuit Court, $260 million in Oregon's Multnomah County Circuit Court and $63.4 million in South Carolina's Richland County Court of

Common Pleas—all against Johnson & Johnson. A fourth trial in Dallas County District Court was settled before the jurors were assigned to the case.

A Conversation With NLJ Elite Trial Lawyers Lifetime Achievement Award Winner Patrick Coughlin

law.com/nationallawjournal/2025/07/14/a-conversation-with-nlj-elite-trial-lawyers-lifetime-achievement-award-winner-patrick-coughlin

Cheryl Miller July 14, 2025

Patrick Coughlin, of counsel with Scott + Scott. Courtesy photo

There was no "Perry Mason" moment in Patrick Coughlin's youth that drove him to become a leading plaintiffs lawyer. In fact, once he graduated from Santa Clara University in 1977, Coughlin thought he was headed to a career practicing medicine—either on animals or people.

Fate took him in a different direction, however, and five decades later, Coughlin has tried more than 50 cases against some of the nation's biggest companies. He helped secure more than $7 billion for victims of the Enron Corp. fraud. He's taken on Apple, Nationwide, Wells Fargo and Credit Suisse. And he challenged RJ Reynolds for using its Joe Camel cartoon mascot to target children as future customers.

The veteran plaintiffs lawyer is unassuming in conversation, one who describes cases as a kind of puzzle to be figured out and not a story to be sold to a jury or a David v. Goliath courtroom battle.

“Pat is a one-of-a-kind legal heavyweight who has brought countless legendary court battles to a successful resolution" said David Scott, managing partner of Scott + Scott, where Coughlin serves as of counsel.

Coughlin is a recipient of the 2025 National Law Journal Elite Trial Lawyers Lifetime Achievement Award, which honors leaders of the plaintiffs’ bar whose career and service have made an indelible mark on their community, their clients and the practice or business of law.

He recently spoke about his career and his approach to ligation. The conversation is edited for length and clarity.

I was hoping we could start with something I saw in your firm biography. It said that after college, you went to Puebla, Mexico, to coach football and attend medical school for a year before law school. There's a lot going on in that sentence. It sounds pretty interesting.

Well, it's probably not that interesting. I was always thinking I'd like to become a vet. But when I was getting out of college, it was harder to get into veterinary school than medical school. When I applied to medical school, I was wait-listed at the University of Arizona, and they wanted me to get a master's in biology or chemistry, and I had an offer to coach football and go to medical school in Puebla, Mexico. And so I thought, you know, that would be more interesting and fun. So that's what I did.

Then I found that I really didn't like being in a hospital where a lot of people were dying. But it was a good experience. It taught me to be more patient as things were happening around me. It was a good building experience for me to go from there to law school.

So from vet school to med school to law school?

I wanted to make sure I could get a job somewhere. And so then I went to law school, and I ended up working at the U.S. attorney's office as an intern. And I ended up trying about six misdemeanor cases coming off of a nearby Army base. And I enjoyed trying those cases, and I argued in the Ninth Circuit, actually, when I was still in law school. So I just really enjoyed litigation.

Then I got into the honors program in the criminal division, and I went to the Department of Justice Washington appellate section, and that's where I started.

How did you end up going from being a prosecutor to private practice?

I spent almost eight years with the Department of Justice, U.S. Attorney's Office in D.C., and then we moved out here in San Diego to be closer to my family. And I was trying a case, a murder for hire case under a new statute. It was an oil fraud scheme where a guy had hired some bikers to shoot a state congressman in Oklahoma.

There was a case being tried next door, and while I was on breaks, I went over and started watching this guy try a case. He was pretty flamboyant. And one of his partners knew the congressman and said, "Hey, if you're ever going to go into private practice, come interview with us."

And actually the U.S. attorney in San Diego was leaving and had asked me to go to a defense firm that he was going to. I was going to do that, but I didn't have any interviewing experience. So I thought I would go for a practice interview with the firm that was doing securities and antitrust work. And it sounded much more interesting after that interview than going to a big defense firm that was doing mainly construction contract work here in San Diego.

Sure enough, they offered me a job. So I went there, and I wasn't there long before I tried a case against Nationwide Life Insurance, which had partnered with a local group that was selling whole life policies to people going over to Vietnam. When those people turned 60, they canceled your policy. But you wouldn't have known that unless you went and looked at the bylaws in D.C. And so I tried that case. It was very interesting. And I tried a case against Apple when I was in my first or second year there. So I got some big trials right away. It was a good introduction.

What attracted you to litigation? Being in front of a jury?

I don't know if I liked being in front of a jury a lot. What I found interesting was figuring out the case—how it happened and what people were doing. Whether it was Nationwide and why would a big company like that be involved in something kind of fraudulent as those policies. Or why did Apple tout the Lisa computer the way it did when it was clearly not selling? It was fascinating to have guys like Steve Jobs on the stand and asking questions.

It's one thing to put a case together and figure out why big companies did things a certain way. But isn't it another to be able to communicate that to a judge or a jury?

Very much so. You watch some trials with some complicated matters. A lot of lawyers can't break down the complexity of whatever they're talking about in a way that a regular juror can understand it. And I think I can do that.

And how do you do that?

I just kind of keep looking at it and then talk to people about it and see their reactions. And then I go back and try to do it again so it's simpler or easier to understand, if I didn't get the point across.

Whether it's the importance of the efficacy of, let's say, a cancer drug and what that means and why that is so important, not only to people taking the drug, but also to investors when announcements are made. It's taking a kind of a complicated thing, whether it's a securities case or an antitrust case and breaking it down to get across the idea that you can't collude.

Looking back on your career, is there one case that stands out as your favorite or most memorable?

I would have to say it's the Joe Camel case. I knew somebody that said, "My daughter picked out a lunch box, and there was a Joe Camel on it." And you supposedly couldn't sell cigarettes to anybody under the age of 18 but here's this advertisement on a child's lunchbox. And so I started looking into it.

So what meant success in that case for you? Was it reaching the settlement? Was it exposing the company's strategies?

It was exposing the lies. When we settled one of the main things we demanded was that we be allowed to use all the information that we had received in discovery. And we got that agreement. The surgeon general came to a press conference with us, and we revealed all of it. It was a pretty satisfying win.

What would you say to newly minted attorneys who have dreams of taking on big defendants?

I would say go get some trial experience. So many young lawyers don't have any, and then they get older and then people are afraid to go and try a case. So go to a public defender's office or a state prosecutor's office, a U.S. attorney's office and get some trial experience so that later on in your career, when somebody says, "No, we're not going to do that," you can say, "Well, let's try it." Then you're not afraid to do it, because you've got the experience.

LAW.COM

News

Australia's Class Action Surge Sets 2025 on Record-Breaking Pace

July 15, 2025 | By Christopher Niesche

Class Action Settlements; Photo: Charlie/Adobe Stock

Australia has seen 36 class actions filed in the first half of 2025 alone—a pace that law firm Allens says could make this a record-breaking year.

Employee and consumer claims dominate the list, with employment-related actions surging to 56% of all filings, a sharp jump from the usual 15%. Shareholder class actions are also making a comeback.

"In a continuation of a trend that emerged over the final months of 2024, class action prom have maintained an appetite for bringing shareholder claims following a prolonged drought filings last year," Allens said in a report. "Over the first half of 2024, no shareholder class actions were filed, though by comparison, four shareholder class actions have been commenced in 2025."

These include a shareholder class action against mining company Mineral Resources filed in April by plaintiff firm Phi Finney McDonald alleging that the company engaged in misleading conduct and failed to disclose material information in relation to its business practices, standards of corporate governance, and the scope and nature of transactions with related parties, including chief managing director Chris Ellison. THe company and Ellison are defending the lawsuit.

"Interestingly, the resurgence in shareholder class actions has occurred against the backdrop of a growing body of case law that has highlighted the significant challenges facing plaintiffs in establishing these claims (particularly in proving loss and damage)."

The firm notes that of the six shareholder class actions to have proceeded to judgement, no plaintiff has established liability and obtained an order for a remedy.

The number of competing class actions—multiple firms filing similar claims against the same defendant—continued to decline.

A total of 51 class actions were filed in 2024.

A survey last year found that Australian corporations had grown more concerned about class action risks.

California Brief

French's Mustard Consumer Hits Setback in 'Made in USA' Suit

July 14, 2025, 8:41 AM PDT

- **'Made in the USA' laws at issue allow 5-10% foreign content**
- **Magistrate judge declined to consider YouTube videos**

McCormick & Company Inc. is entitled to dismissal of a proposed class action that alleges it deceptively claims its French's mustard products are made in the US, a federal magistrate judge recommended.

Magistrate Judge Stanley A. Boone said July 11 the plaintiff failed to adequately allege that McCormick's products contain enough foreign-sourced ingredients to violate California's "Made in USA" labeling laws, which allow for up to 5-10% foreign content.

The suit, filed in the US District Court for the Eastern District of California in February, alleged the labeling for French's dijon, honey dijon, and yellow mustard products—which indicate they were "Crafted and Bottled" in Springfield, Mo., and contain "American Flavor in a Bottle"—was deceptive. The products allegedly contained components, namely mustard seed and turmeric, that were sourced, grown, or made outside of the US.

Darnell McCoy, the plaintiff, alleged the company violated California's Consumers Legal Remedies Act, Unfair Competition Law, and False Advertising Law. He also alleged breach of express warranty, negligent and intentional misrepresentation, and unjust enrichment.

The magistrate judge cited safe harbor provisions added into California's "Made in the USA" statutes in 2015 that allowed for a product to be labeled as domestically produced if ingredients representing no more than five percent of the final wholesale value of the product are obtained from outside of the US, or 10 percent if manufacturer shows that it can't produce or source the ingredients domestically.

Although the plaintiff alleges the products contain foreign-sourced mustard seed and turmeric, he fails to make claims about the products' composition or the value of the other ingredients, Boone said.

The judge also declined to incorporate by reference YouTube videos that were cited in the footnote of the complaint which McCoy said bolstered his allegations, because they were not sufficiently central to the claims.

Although Boone recommended that the suit be dismissed, he also said McCoy should get leave to amend his complaint to address its deficiencies.

The court gave the plaintiff 14 days to file any objections to the findings and recommendations before they are reviewed by District Judge Jennifer L. Thurston, who will decide whether to accept Boone's recommendations..

McCoy is represented by Kazerouni Law Group APC. McCormick is represented by Venable LLP.

The case is McCoy v. McCormick & Co., Inc. , E.D. Cal., No. 1:25-cv-00231, findings and recommendations 7/11/25 .

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News | **Litigation**

Warned for Years: Federal Court Consolidates Surging Data Breach Class Actions Against Aflac

July 14, 2025 | By Alex Anteau

Credit: putilov_denis/Adobe Stock

As dozens of data breach class action lawsuits have been filed for a "cybercrime campaign" against insurance companies last month, a federal judge in Georgia has agreed to consolidate an ever-growing list of actions against Aflac.

In the wake of countless data breaches in recent years, including threats against Big Law firms and other business sectors, the insurance industry was among the most recent targets of a suspected cybercriminal group, putting dozens of customers at risk of identity theft. In June, the hacking group known as Scattered Spider allegedly hit Erie Indemnity, Philadelphia Insurance Co., and Aflac with ransomware attacks. Now, lawsuits are starting to pile up against these insurers, particularly in Georgia and Pennsylvania federal courts.

“The majority of companies that maintain sensitive consumer data continue to take insufficient cybersecurity measures, which results in data breaches," said John Yanchunis, an attorney with Morgan & Morgan, who represents some plaintiffs in this latest surge against Aflac.

This isn't the first time insurance companies have come under attack. In 2024, data breach class actions piled up against Prudential Insurance Co., in federal court in New Jersey, and Geico and Travelers Indemnity Co. were ordered to pay a combined $11.3 million for data breach penalties in New York. Change Healthcare, UnitedHealth Group and Optum also faced data breach class action filings, causing significant interruptions to healthcare providers.

“These companies have incredible resources, and digital security is comparatively not very expensive, but they don’t like spending money on something that doesn’t earn them money,” said Thomas E. Loeser, a partner with Cotchett Pitre & McCarthy, who has also joined in similar actions recently filed against Aflac. “So these companies, historically, have been under-spending on digital security, even though they’ve been warned about these risks for years.”

Similar lawsuits have been filed against Erie Indemnity, represented by Burns White attorneys Lyle Washowich, Daniel Inadomi and Samuel Evans, in the Western District of Pennsylvania, among others, according to Law.com Radar data. According to the complaints, the ransomware group used social engineering and other tactics to gain access to personally identifiable information. The suspected hackers, Scattered Spider, are known for selling personal information, including full names, email addresses, social security numbers, and birthdays on the dark web. As a result, the plaintiffs say they “are now at a current, imminent, and ongoing risk of fraud” and “must now and for years into the future closely monitor their medical and financial accounts to guard against identity theft.”

In a June 20 statement, Aflac disclosed that it had identified suspicious activity on the company's network about a week prior. The corporation described the data breach as “part of a cybercrime campaign against the insurance industry," and said that protocols were "promptly initiated" to stop the intrusion, but that the company was still evaluating the extent of the compromised information.

Since then, Aflac has been hit with nearly 30 lawsuits. The cases were consolidated on July 8 in the U.S. District Court for the Middle District of Georgia. Judge Clay Land has been tapped to oversee the matters captioned *In re Aflac Inc. Data Breach Litigation.*

The insurer will be represented by Alan Snipes and Thomas Gristina of Page Scrantom in the litigation.

While the company announced it would give victims of the breach two years of free credit monitoring and set up a call center to answer questions about the incident, the complaints argue that that's not enough. The plaintiffs contend Aflac failed to protect their data before the hack, for instance, by not implementing safeguards like encryption.

In addition to Yanchunis and Loeser, attorneys from Beasley, Allen, Crow, Methvin, Portis & Miles; Gibson Consumer Law Group; and Milberg Coleman Bryson Phillips Grossman, among others, have joined in filing actions on behalf of plaintiffs. The court has not tapped lead counsel for the consolidation yet. According to Loeser, the court will set up a briefing schedule for the attorneys involved to file motions on why they think they should be in charge. From there, the court will decide on a group of lawyers to lead the case.

Aflac and Erie Indemnity's counsel did not respond to request for comment at the time of publication.

Securities Law News

American Express Must Defend Whistleblower's Retaliation Suit

July 14, 2025, 11:59 AM PDT

- **Sarbanes-Oxley Act doesn't impose time limits on de novo actions**
- **Amex must face whistleblower discrimination suit**

American Express Co. failed to convince a federal judge that a former manager's lawsuit alleging she was retaliated against after complaining of fraudulent commission practices was untimely and should be dismissed.

The Sarbanes-Oxley Act of 2002's whistleblower provision provides a statute of limitations of 180 days for filing a complaint with the Secretary of Labor, which bars the application of the "catchall 4-year statute of limitations" to file a lawsuit in federal court, the US District Court for the District of Arizona said July 11, denying Amex's motion to dismiss.

Although SOX's limitations period "may be a bit unusual"—as it only creates a discrete time limit for the initial filing of the administrative complaint and makes the time limit for filing an ensuing kick-out action in federal court contingent of the resulting administrative process—it's still a limitations period, the court said.

Sophia Lewis brought two administrative complaints in 2019 and 2020 before the Secretary of Labor. While the second complaint was in review, she sued in federal court.

Lewis alleged that she was "harassed, subjected to a hostile work environment, and wrongfully terminated from her employment with Amex." She claimed she was terminated after she made protected disclosures that she "reasonably believed violated the Sarbanes-Oxley Act and regulations."

The SOX makes it illegal for publicly traded companies to retaliate against employees who report potentially unlawful conduct.

The ruling is noteworthy for clarifying an issue that hasn't been directly addressed by the US Court of Appeals for the Ninth Circuit and has divided district courts—which limitations period should apply in these cases.

Amex sought dismissal arguing that SOX’s lack of a limitations period to file a lawsuit in federal court means that the catch-all 4-year period should apply. Lewis argued that since the SOX provides its own statute of limitations, the 4-year period is inapplicable.

The court ruled that the act provides its own statute of limitations for whistleblower claims, including “kick-out” actions filed in federal court.

“The kick-out provision creates a ‘safety valve’ to ensure that claims brought within the Department of Labor are processed within a reasonable time,” Judge Dominic W. Lanza said for the court. “Sarbanes-Oxley does not set forth any additional limitations period within which the de novo action must be brought in federal court.”

Amex didn’t immediately respond to a request for comment.

Guyer & Ayers represents Lewis. Jackson Lewis PC and Orrick Herrington & Sutcliffe LLP represent Amex.

The case is Lewis v. Am. Exp. Co. , D. Ariz., No. 2:24-cv-03370, 7/11/25 .

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Pensions industry

Calpers pushes further into private equity after best results in 4 years

Former directors warn US's largest public pension fund is taking too much risk in unlisted investments

Calpers reported an 11.6% gain for its latest financial year, its strongest performance for four years, bringing total managed assets to $556.2bn © Max Whittaker/Getty Images

Mary McDougall in London

Published YESTERDAY

Calpers, the largest public pension fund in the US, has signalled an appetite for more exposure to private equity despite concerns that these assets could expose retirees to too much risk.

Stephen Gilmore, chief investment officer of the California Public Employees' Retirement System, said it was "reasonable to expect our private equity exposure will continue to increase somewhat".

Despite concerns about lower than expected returns from some managers and the reliability of private valuations, Calpers has already boosted its allocation to private equity and overhauled its investment strategy.

"We've proved our manager selection and we've also increased the share of co-investment," said Gilmore. These co-investments were often "no fee" and did not come with shared profit payments to managers, known as carried interest, he added.

He said the fund's scale and the long-term nature of its investments made it an attractive partner for the best private equity firms.

Gilmore's comments came as Calpers reported an 11.6 per cent gain for its latest financial year, its strongest performance for four years, bringing total managed assets to $556.2bn.

It improved its estimated ability to pay its retirees in full, known as the funding ratio, from 75 per cent to 79 per cent over the year to June 30.

In March last year, Calpers increased its target private equity allocation from 13 per cent to 17 per cent.

Calpers' push into the asset class comes as some other investors, such as the Teachers Retirement System of Texas, lowered their target allocation to private equity last year. The average allocation to unlisted companies among US public pension funds is about 10 per cent, according to the National Conference on Public Employee Retirement Systems trade association.

Private equity investors around the world have come under pressure after a decade of low interest rates. Money paid back from funds has been lower than expected, raising questions over whether private company valuations are accurate until the stake is sold.

According to Bain & Company's Global Private Equity Report, distributions as a percentage of net asset value fell from an average of 29 per cent in the period from 2014 to 2017 to just 11 per cent in 2024.

Some former board members of Calpers — including Margaret Brown, now president of non-profit group Retired Public Employees' Association of California — are concerned that the managers could be taking too much risk with their private equity push.

"I have grave concerns that Calpers plans to double down on private equity. It's far too much risk for a public pension fund that millions of retirees depend on," Brown said.

Calpers private equity portfolio, which makes up close to 18 per cent of the fund, delivered a return of 14.3 per cent, up from 10.9 per cent the previous year and a loss of more than 2 per cent the year before.

The fund said an overhaul of its private equity strategy in 2022 had led to a 10 per cent reduction in management fees in recent years.

However, its public equity investments, which make up 39 per cent of the fund, outperformed all other asset classes with a 16.8 per cent return.

Gilmore joined Calpers as chief investment officer from New Zealand's sovereign wealth fund last year, after an unstable period for the Californian scheme following the resignations of Ben Meng in 2020 and Nicole Musicco in 2023.

Calpers chief executive Marcie Frost said private equity was "an asset class we have conviction in and we think it will outperform the public markets over the long term, and why shouldn't our members have access to those outsized returns?"

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Special master to decide whether Quinn Emanuel lawyers must contribute to $3M sanction

abajournal.com/news/article/special-master-to-decide-whether-quinn-emanuel-lawyers-must-share-in-3m-sanction

Debra Cassens Weiss

Law Firms

July 15, 2025, 8:45 am CDT

A federal judge imposed a significant sanction for alleged misrepresentations about the need for Natera Inc. to introduce a supplemental expert report shortly before a jury trial. Sipa via AP Images

Updated: A federal judge in San Francisco ordered the payment of nearly $3 million in legal fees to a medical diagnostics company and appointed a special master to determine whether individual lawyers at Quinn Emanuel Urquhart & Sullivan should be at least partly responsible for payment.

Senior U.S. District Judge Edward M. Chen awarded more than $2.9 million in attorney fees to Guardant Health in a July 9 opinion.

Chen, a judge in the Northern District of California, imposed the sanction for alleged misrepresentations about the need for defendant Natera Inc. to introduce a supplemental expert report shortly before a jury trial, report Reuters and Law360.

Quinn Emanuel represented Natera in the litigation accusing its client of false advertising and unfair competition.

“But for the deliberate misrepresentation made to this court, the court would not have postponed trial and reopened discovery,” said Chen, a judge in the Northern District of California.

The supplemental report was based on a clinical study known as the COBRA study that examined Guardant’s colorectal cancer screening product. The misrepresentations left the impression that information on the COBRA study “was late breaking and seemingly new,” Chen wrote in an October 2024 decision.

But the expert actually had earlier knowledge of test information, something that came to light based on emails provided by the Rutgers Cancer Institute of New Jersey. The institute was involved in the study and was the expert’s employer. The expert maintained he was not able to find any communications with COBRA investigators.

Jurors awarded more than $292 million in damages to Guardant Health in November 2024 in its suit accusing Natera of making misleading claims about their competing tests for colorectal cancer.

Natera has said it disagrees with the jury decision and will seek to overturn it. The company has filed a motion for judgment as a matter of law or for a new trial.

Chen said in the October decision that sanctions are warranted for "deliberate misrepresentations" by Natera, through its counsel, and by its expert witness. Chen also said in October that sanctions were "likely appropriate" for Quinn Emanuel after its correspondence with the expert suggested the law firm misled the court about the timing of the expert's knowledge.

Guardant then sought attorney fees and costs of $2,985,909 as well as punitive sanctions—including a referral to state ethics regulators—against Quinn Emanuel lawyers "who appear to have had a hand in this conduct," Chen said.

The Quinn Emanuel lawyers told Chen in declarations that their representations to the court were made in a good-faith belief of their truthfulness after relying on the expert witness.

"These declarations largely continue with the same narrative Natera's counsel previously stated—they all relied on [the expert's] representations," Chen said. "Natera's counsel states they were 'shocked' upon the discovery that [the expert] actually had emails and had received an initial draft of the COBRA study results. The court previously found this line of argument more than foolish."

The lawyers' declarations don't warrant a deviation from a prior finding of bad faith, Chen said. The number of requested attorney-fee hours by Guardant is reasonable as is its requested billing rate, according to him.

The court can award attorney fees to Guardant against Natera, Quinn Emanuel or specific attorneys. Chen said he is deferring questions on apportionment for resolution by the special master. He is also deferring to the special master Guardant's request for a personal fine against the lawyers and a referral to the State Bar of California.

Quinn Emanuel released this statement to the ABA Journal:"We respectfully disagree with the court's findings because we have always conducted ourselves with candor and in good faith. We look forward to presenting the full facts surrounding this matter to the special master."

A Natera spokesperson also released a statement to the ABA Journal. "There has been no allegation that Natera or its employees knew about or participated in the alleged conduct described in the court's order," the statement said.

Story updated at 11:50 a.m. on Tuesday to add the word "individual" to the lede and to state that Chen found the misrepresentations were made by Natera through its counsel. Story also updated to add Natera's statement.

[Write a letter to the editor, share a story tip or update, or report an error.]

Lawyer Cites AI Hallucinations, Responds With Pretentious Meditation On Nature Of Being

abovethelaw.com/2025/07/lawyer-cites-ai-hallucinations-responds-with-pretentious-meditation-on-nature-of-being

Joe Patrice July 14, 2025

It's a day that ends in "y" so we have another story about a lawyer filing fake citations with a court after Skynet trolled him with phony research. The first public hallucination humiliation (Opens in a new window) should've nipped this in the bud and yet — somehow — the problem seems to be accelerating. The latest out of New York is, in a lot of ways, par for the course. Some non-existent case citations and misattributed quotations, but no wrong legal theories. And the lawyer responded swiftly upon learning of the mistake.

We've said before that sanctions need to keep ratcheting up (Opens in a new window) to reflect that as these stories become more pervasive, lawyers still making these mistakes are running out of excuses. Still, if a lawyer responds quickly and contritely, they can enjoy some grace if only to draw a line between boneheaded errors and doubling down and citing more fake cases to defend the first set of fake cases (Opens in a new window).

So this story should sit comfortably in the "oops, my bad" category. But then he decided to write his apology straight out of the deleted scenes from *Dead Poets Society*:

> My professional practice has always been guided by the principle that legal advocacy is not mere mechanical execution, but a craft that demands the gardener's touch—a careful, lasting engagement that leaves something of oneself behind. Each citation, each argument, each procedural decision is a mark upon the clay, an indelible impression that may one day be studied, critiqued, or serve as a cautionary tale.

My eyes rolled so hard that I'm dizzy. Come on, man! The profession is pretentious enough as it is without calling every citation an indelible mark upon the clay.

> In this spirit, I recognize that the work we do as advocates—our filings, our citations, our choices—are not ephemeral. They endure, shaping the legal landscape and, in their own way, becoming part of the record of our professional lives. My aspiration is always to be the gardener, not the lawn-cutter: to leave a mark that is careful, thoughtful, and lasting, even as I acknowledge and learn from my errors.

Ephemeral? You're not a goth kid trying to score a spot in the 8th grade literary magazine — you can just say "sorry" without going all Albert Camus. There's a reason no one's writing: "*Verily, my failure to comply with the court's page limit has left me in a state of deep despondence not unlike that of the majestic black swan*…."

Thankfully, the brief gets back on track to recount the steps that led to the error, noting that he had employed cross-verification tools but that those had failed. He also identifies a breakdown in the legal technology landscape itself:

> The primary source of citation inaccuracies stems from database migration complications wherein (i) many problematic citations originated from research conducted in December 2024 using Casetext with CoCounsel, (ii) when Casetext was subsequently acquired by Thomson Reuters and integrated into Westlaw, I discontinued my subscription due to prohibitive cost constraints, thereby losing verification access to previously compiled authorities, and (iii) this technological disruption created a verification gap that my alternative research methods failed to adequately bridge.

There's a lot of grumbling out there about Casetext's final absorption into Thomson Reuters. Multiple small and solo lawyers have expressed frustration about TR's pricing structure and it touches on access to justice issues if legal AI becomes a force multiplier only accessible to the deepest Biglaw pockets. On the other hand, AI is expensive — or at least all the work required to keep the product from hallucinating up fake cases is expensive — and companies have to get that money somewhere. TR paid over $600M for Casetext and they're going to have to get that money back.

But all that aside, this explanation should raise red flags — see what I did there — because if the Casetext/TR migration issue tripped up "Michelangelo of the Motion" over here, it's going to happen to someone else too. Casetext was too beloved of a platform for this to be an isolated situation.

Then the response outlines the attorney's plans for the future:

> To ensure such errors do not recur, I have implemented systematic procedural safeguards:
>
> - Require primary source checks for all citations, especially unpublished or database-specific ones.
> - Use AI tools alongside traditional methods for multi-platform verification.
> - Enroll in legal education courses on technology and research accuracy.
> - Implement multi-stage reviews to ensure each filing is accurate and candid.

Note how there's a plan that doesn't run away from AI. It's too trite and almost definitely bad policy to say, "I promise I'll never use AI again." It's basically a high school abstinence pledge: noble, doomed, and going to involve gratuitous Bible quotes. That analogy might've gotten away from me, but I'm sticking by it. First of all, it's a lie because AI will weasel its way into everything before too long so there's no way to avoid it. And second, it's actually a useful tool as long as lawyers understand what it can and can't accomplish. The legal profession is going to use AI… figure out how to do it without injecting ethical disasters into the workflow.

Honestly, attorneys who find themselves on the wrong end of a hallucination matter should look to this response as a template. Take immediate action, apologize, explain the problem so future lawyers know exactly what happened, and proactively forge an AI plan for the future. The *substance* of this response should be taught in CLEs.

OK, maybe don't follow everything from this template:

> Your Honor, in the ancient libraries of Ashurbanipal, scribes carried their stylus as both tool and sacred trust—understanding that every mark upon clay would endure long beyond their mortal span. As the role the mark (x) in Ezekiel Chapter 9, that marked the foreheads with a *tav* (x) of blood and ink, bear the same solemn recognition: that the written word carries power to preserve or condemn, to build or destroy, and leaves an indelible mark which cannot be erased but should be withdrawn, let it lead other to think these citations were correct.

Oh my GOD, STOP! If the case isn't about repatriating an archaeological find, the word "Ashurbanipal" should not be in the brief. It's a court filing, not lore for the next *Assassin's Creed*.

But hey… the gratuitous Biblical citation made it in there!

(Full brief on the next page…)

Headshot

(Opens in a new window) is a senior editor at Above the Law and co-host of [Thinking Like A Lawyer] (Opens in a new window). Feel free to [email] (Opens in a new window) any tips, questions, or comments. Follow him on [Twitter] (Opens in a new window) or [Bluesky] (Opens in a new window) if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a [Managing Director at RPN Executive Search] (Opens in a new window).

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Securities Law News

Opinion

Matt Levine’s Money Stuff: Musk Has Money and xAI Wants Some

July 14, 2025, 11:13 AM PDT

The Musk Mars Conglomerate

One model you could have is: Tesla Inc. is a big car company. Last year it had $97.7 billion of revenue, up about 1% from the year before. It had about $14.9 billion of cash flow from operations and spent about $11.3 billion on capital expenses. It has about $37 billion of cash and short-term investments. That is: It is a big, stable, slow-growing old-economy industrial company with good cash flow and limited need for reinvestment. I understand that nobody experiences Tesla this way, and I feel dumb for writing it, but, you know, a little.

And then there is xAI, which is an artificial intelligence company, meaning that (1) it is currently a gaping maw for swallowing up money and (2) perhaps one day it will fulfill any economic or other fantasy you can think of. Maybe one day xAI will produce the only computer program that anyone uses, and will intermediate all of commerce, and will satisfy every human want, and will rule humanity with an iron fist. I mean! There are like five candidates and xAI is one of them; the probability of this outcome is not *zero*. And then you’d be stoked to be an xAI shareholder. But, right now, gaping maw for capital.

That is: Tesla has $37 billion and no pressing need for it; xAI has not enough money and a pressing need for as much as you’ve got. Should Tesla just take some of its $37 billion and invest it in xAI? Ordinarily one does not ask this sort of question. Ford Motor Co. also sells cars and has a lot of cash; OpenAI also builds AI models and is a sinkhole for cash; nobody is like “Ford should invest $5 billion in OpenAI.” Why would car-company executives be good at evaluating speculative venture-type investments in AI labs? Why would car-company investors want exposure to AI labs, or rather, why would they want their AI exposure *through* their car stocks? If you want to invest in AI, buy Nvidia or whatever; if you own Ford stock it’s because of cars.

But of course if you own Tesla stock it's not because of cars. It's because of Elon Musk, the chief executive officer/TechnoKing of Tesla and the principal owner/whatever-he-is of xAI, and of SpaceX and Neuralink and Boring Co. and some others I'm forgetting. It's because you think that Musk is a really good allocator of capital to futuristic endeavors, and Tesla is his only public company, which just happens to be a car company. If Tesla was "an index fund for Musk's futuristic endeavors," you'd probably be fine with that, probably happier with that than "slow-growing car company." And, again, nobody experiences Tesla as "slow-growing car company": Tesla is that *plus* somewhat hypothetical futuristic endeavors like robotaxis and humanoid robots. Truly, the more hypothetical futurism the better. If Tesla could chuck that $37 billion into xAI's gaping maw, everyone would be better off: xAI would have money to pursue world domination, and Tesla would have more entertaining things to do with its money than making cars.

Obviously there is a question of valuation — how big a stake in xAI's future world domination should Tesla get for $37 billion? — but let's not worry about that. We are all family here. The heuristic is "if you invest alongside Elon Musk, you will get rewarded when he achieves futuristic world domination"; you can't get on the rocket ship if you're negotiating every last basis point of your economics.

I talk a lot around here about the "Musk Mars Conglomerate," the idea that *really* Elon Musk runs one giant company that makes cars and rockets and tunnels and brain implants and social media posts and large language models, but it happens to be organized into different divisions with different (though overlapping) shareholders. It is in some ways useful for the brain-implant company to be separate from the rocket company: It helps to align employee incentives (if they are paid in shares of only *their* company) and insulates each company from the others' potential liabilities (a lot can go wrong with brain implants or rockets or for that matter social media posts). In theory it also allows investors to pick and choose only the exposures they want, but in practice no one seems to care about that. People (used to) buy Berkshire Hathaway Inc. for Warren Buffett, not for its candy business.

Anyway SpaceX has some spare cash, xAI needs it, so:

Elon Musk's SpaceX has agreed to invest $2 billion in his artificial-intelligence company xAI, investors close to the companies said, nearly half of the Grok chatbot maker's recent equity raise. ...

The SpaceX investment is part of xAI's $5 billion equity fundraise announced by Morgan Stanley last month. It is the rocketmaker's first known investment into xAI and one of its largest in another company. ...

SpaceX recently had more than $3 billion in cash on hand, the Journal has reported. The company has rarely made investments in outside ventures. ...

At xAI, Musk is spending billions of dollars every year training AI models, an effort that mirrors the high spending levels at rival AI startups, which have similarly garnered high valuations but face almost constant pressures for cash.

And Tesla has even more spare cash, xAI needs it, so:

Tesla Inc. shareholders will vote on whether to invest in Elon Musk's xAI, the billionaire said, after the Wall Street Journal reported that SpaceX agreed to pump $2 billion into the artificial intelligence startup.

Musk made the statement in response to an account on X that said the carmaker must be able to invest in xAI to be fair to Tesla retail investors.

"It's not up to me. If it was up to me, Tesla would have invested in xAI long ago," Musk replied. He didn't say when the carmaker will have a shareholder vote or offer other details, beyond saying in a separate post that he didn't support a merger of the companies.

Notice the difference here, which we talk about from time to time. "It's not up to me," says Musk, about Tesla. With SpaceX it … is? I mean. With SpaceX, Musk can go to the board of directors and say "hey can we chuck all the spare cash into xAI?" and they say "of course." Is there a shareholder vote? I dunno, maybe he calls a few of the bigger shareholders — longtime Musk fans who are probably xAI shareholders too — and says "hey, heads up, we're gonna chuck the SpaceX spare cash into xAI" and they say "great, of course." SpaceX is a private company, meaning both that there aren't too many formalities and that everyone — Musk, the board, the shareholders — are pretty aligned on what they want, which is Elon Musk futuristic capital allocation.

Tesla is a public company, meaning that there are formalities. Two years ago, I would have described them roughly like this:

1. If Elon Musk wants Tesla to invest a ton of money in another company he owns, that is a conflict of interest.
- 2. Tesla has thousands of shareholders and they are not all aligned. Some of them don't particularly like Musk and will sue over a conflicted transaction like this.
- 3. If he wants to do it anyway, there are best practices: a special committee of independent directors empowered to consider the transaction, a shareholder vote with full disclosure of the economic terms and negotiating dynamics, approval by a majority of the outside shareholders. But all of these points are debatable, and a shareholder who sues could argue that the board committee was not independent, the disclosure was not accurate, etc.
- 4. If he doesn't follow those best practices, a court will review the deal for "entire fairness," and might unwind the deal or require Musk to pay the shareholders back.

That's how other conflicted transactions (Musk's own pay package, Tesla's purchase of SolarCity) were reviewed by Delaware courts. But Musk didn't like it, and so last year Tesla moved its state of incorporation to Texas, and now Texas law applies and I'm not sure what the rules are. (Not a ton of conflicted public-company investment deals get litigated in Texas.) But, sure, Musk is probably right: It would be at least best practices, if not actually required, to put it to a shareholder vote. And then I'd bet some shareholders would sue, though I would not bet on them winning. And I would definitely bet on the shareholders voting yes. What is the point of investing in Tesla, if not to also invest in xAI or whatever else Elon Musk is cooking up?

Windsurf

It's a little weird that the Silicon Valley startup ecosystem still works. Like roughly the way the artificial intelligence business works now is:

1. You have some good experience working in AI.
- 2. You launch a startup and raise $200 million from venture capitalists in exchange for 20% of your company.
- 3. You build a cool product: Maybe it's not commercially viable, and certainly it is not a sustainable business *yet*, but it's cool.
- 4. You get a call from Google or Meta, offering you $1 billion to quit your startup and come work for them building AI products.
- 5. A billion dollars is more than you'll likely make at your startup, plus Google and Meta have the enormous resources required to actually build the products that you want to make, so you say yes.

Traditionally, the next step of the process is:

Google pays $1.25 billion to acquire your startup. You get $1 billion of that, and your venture capital investors get $250 million, a 25% return on their money. Your startup ceases to exist, and you and your colleagues go work at Google, though maybe your product does get incorporated into Google's offerings.

This is called an "acqui-hire," but it is out of fashion now, largely because US antitrust regulators have become more suspicious of acquisitions by big tech companies. Actually buying your company now is a bit taboo.

On the other hand, you could *imagine* the next step of the process being:

You go to the board of your startup and say "hey, sorry, here's my two-week notice, I'm going to work at Google." And your directors say "well what about the startup" and you say "yeah, it's a bummer." And they say "well but what about all the equity that we paid $200 million for" and you say "yeah good luck with that." And they say "but you own 80% of this company that was valued at a billion dollars last month, are you really leaving that behind," and you say "yeah see Google is paying cash?" And they say "we will sue you" and you say "For what? It's a free country, I'm allowed to quit my job, and noncompetes aren't enforced in California. I raised money from you in good faith, I worked hard at this startup, but now I quit, good luck."

Like, why should Google cash out your investors? It doesn't care about the corporate shell of your company; it might not even care that much about your product. It just wants *you*. Because you own a lot of equity in your company, it has to cash out your equity to get you to move, but why does it have to cash out your *investors'* equity?

You could imagine this being the norm, but it's a bad norm. Who would ever invest in a hot AI startup, if they knew that their investment would become worthless if Google made the founder a better offer? If the venture capitalists are giving you money, it's because they want to bet on *you*, not just whatever product you happen to be working on right now. If Google could buy you away without paying them, that would not be a very good bet.

And so, with really quite striking consistency, the big tech companies that hire AI startup founders throw in a parting gift for the venture capitalists. I do not quite understand why. I suppose that, while the startup can't enforce a *noncompete* against its founders, it probably can enforce some *intellectual property rights*, and Google doesn't want to get sued because it hired an AI startup founder who then reused some ideas from the startup. But it is also a small world of repeat players and strong social norms, and everyone does understand that an equilibrium where startup equity was worthless would be a bad equilibrium. How are Google and Meta going to find promising AI researchers, if venture capitalists won't fund their startups?

Anyway Google bought Windsurf, sort of:

Google is paying $2.4 billion for an nonexclusive licensing fee that will pay for Windsurf's technology and multiple years of compensation for Windsurf staff coming to the company, according to a person with direct knowledge. It will not take a stake in the company, Google said.

The deal will generate a return for at least some of the startup's investors, according to a person familiar with the deal. Employees with vested shares will receive cash, but those without vested equity—many of whom joined in the past year—will not receive a payout, according to a person who spoke to leadership at Windsurf.

The deal represents a quick payout for investors in the four-year-old startup, which raised $240 million from Greenoaks Capital Partners, General Catalyst, Kleiner Perkins and others.

Windsurf had been in talks to sell itself to OpenAI for $3 billion, but those fell apart and it went with Google. The deal is apparently:

Google will pay $2.4 billion.

- For that money, it will get (1) 0% of Windsurf, which will stick around as an independent company, (2) some of Windsurf's top staff, who will go work at Google and (3) a nonexclusive license to the technology, why not.
- The founders and employees who are going to Google will presumably get a big chunk of that money.
- The venture capitalists who put in $240 million will also get a chunk of it; Kleiner Perkins "is expected to receive around three times its investment."

As far as I can tell, OpenAI wanted to buy 100% of Windsurf for $3 billion; Google bought 0% of Windsurf for a 20% discount to the price of the full company. Seems right.

Not everyone likes this. At Stratechery, Ben Thompson notes that it's rough on the employees who aren't going, arguing that it "breaks the implicit social contract that made startup employment significantly less risky for rank-and-file employees":

The fact of the matter is that picking-and-choosing who to hire from a failed startup is great for Big Tech: they get the IP they want and the employees that matter, and get to jettison everyone else without having to do a future layoff. That they never thought to do so previously was, in retrospect, downstream of "the way things are done", not some sort of legal requirement; once the law, in the form of over-eager regulators who didn't understand what they were regulating, gave them no choice, it's not at all clear why they would go back to the old model.

This, in the long run, is very bad for startups. The incentives for founding a company do still remain. ... The people who are getting screwed, however, are the folks who were never necessarily going to get rich — that's reserved for founders, and appropriately so — but who could justify rolling the dice on a positive outcome as long as they had downside protection in the form of guaranteed employment with a Big Tech company if things didn't work out.

I argued above that, if Google could just hire away the founders without paying the investors, why would anyone invest in startups? But a similar argument can be made about employees: If Google could just hire away the founders and abandon the employees, why would anyone go work for startups? The ecosystem might be breaking down for employees.

But why *hasn't* the ecosystem broken down for the investors? *Did* Google have to pay the venture capitalists anything just to hire the top employees? Maybe — for intellectual-property and investor-relations reasons — but maybe not. John Luttig worries:

Silicon Valley built up decades of trust – a combination of social contracts and faith in the mission. But the step-up in the capital deployment is what Deleuze would call a deterritorializing force, for both companies and talent pools. It breaks down the existing rules of engagement, from the social contract of company formation, to the loyalty of labor, to the duty to sustain an already-working product, to the conflict rules that investors used to follow.

Trust can no longer be assumed as an industry baseline. The social contracts between employees, startups, and investors must be rewritten. In the age-old tension between mission and money, missionary founders must prepare themselves for the step-function increase in mercenary firepower. …

Historically, the social contract of starting a company meant the founders would see it through to an exit. But how big do the numbers need to get before that breaks? People didn't used to leave companies they founded, especially when they're nascent and/or highly valued, but the AI talent war is deterritorializing. This fragility enables a CEO or key execs to leave their company with minimal recourse. …

Investors need protection against extreme instances of talent departure, particularly when it involves the founders. One instantiation could be that founders taking new jobs would qualify as an M&A event, or allow investors to redeem their capital.

One possibility here is that the norm of paying off investors is a fragile one: Not that long ago, Google would have *bought* Windsurf to acquire its founders, so getting the founders at a 20% discount to the whole-company price seems like a good deal. But in a few years, will Google think "hey we could get the founders without paying the VCs *anything*"? Will that look like a better deal?

Pest Control Stuff

I feel like I read an article every week about search funds, where recent business school graduates raise small funds from investors so they can go out and buy pest control companies in Missouri. I have written about these funds as a sort of prestige arbitrage. In theory, the value of business education is that it makes you good at running businesses, and lots of (pest control) businesses need running. But in our modern superstar economy, it is hard to attract fancy business-school graduates to work for pest-control companies in Missouri. "I am using my Wharton MBA to get into pest control": No, bad, not prestigious. But "search funds" (and, more broadly, "private equity") are a more prestigious rebranding of "pest control." "I am using my Wharton MBA to raise a private fund to go out and do a leveraged acquisition of a business with strong cash flows and use that as a platform to roll up an industry": Yes, good, now we are cooking. And if the business is pest control that's fine!

What I would really like to read, though, is an article about what it is like to be the founder/owner/CEO/exterminator of a regular pest control business. Are you *constantly* getting automated cold emails from recent Harvard MBAs? Is it endless business lunches at the local diner? Do you need to hire an intern to sift through the mountain of termsheets? Also are valuations up? I feel like, 10 years ago, the average local pest-control company probably got fewer than, you know, three takeover bids per month. Now, many more. Surely you could get an auction going? Sell to the very most overconfident Stanford MBA? I guess I would also like to read an article about what it is like to be the sell-side investment banker for all these pest control companies. Could be fun.

Anyway here's another Business Insider article about search funds, which pleasingly *does* get into what the sell-side experience feels like:

[Atlantic Duct Cleaning CEO/owner Tom] Keys was used to receiving emails like this. He had started Atlantic in 1995 as a 28-year-old with several years of experience in the heating, ventilation, and air conditioning industry. Even today, duct cleaning is pretty obscure. But back then, virtually no one thought about the dust, bugs, pet hair, skin cells, mold spores, and all the other gunk that piles up inside a building's ventilation system — and the occasional need to clean it out. Keys had the idea to do it with newer equipment than the tiny operations he knew of that ran on bare-bones crews. He grew the company painstakingly, bit by bit. By 2021, Atlantic was bringing in $4 million in annual sales, with impressive profit margins and a few dozen people on staff.

Many of Keys' suitors were private equity firms with deep pockets that were consolidating HVAC shops in the area. They offered Keys huge sums of money for his business, but he knew the PE playbook: They would almost certainly fire many of the employees he would leave behind. Other suitors were young searchers like [Columbia MBA Dan] Schweber who would, in theory, be less likely to strip his company into pieces. ...

Upon receiving the 12th email from Schweber, Keys finally picked up the phone and called him.

All he wants to do is clean gunk out of ducts and his phone keeps buzzing with desperate emails from private equity and search funds. Anyway eventually Schweber bought the duct cleaning business and is now ecstatically happy. ("I will never work in a corporate job ever again. There's no amount of money that you could give me.") I do wonder, though, how many cold emails he's getting now. Do search-funders flip their companies to other search-funders?

Tokenization

I think there are two meanings of the word "tokenization":

1. One idea is that there are some technical benefits to wrapping various financial instruments in *tokens* that trade on a *blockchain*. These tokens would be interchangeable with each other in ways that existing financial instruments are not; they would be composable and programmable; they would trade around the clock on crypto exchanges; they could be financed in new ways; it would be easier to build derivatives and trading strategies on them; I don't know. Stuff like this.

- 2. Another idea is that if you say the word "blockchain" then regulators will get confused, traditional securities laws won't apply, and you'll be able to sell financial assets — private-company stock, real estate, etc. — without complying with the US Securities and Exchange Commission's registration and disclosure requirements.

My view on the matter is that No. 1 is mostly a nice distraction and No. 2 is *obviously* the goal, which is why we keep talking about efforts to tokenize the stocks of private companies. You don't need to tokenize the stocks of *public* companies! Public stocks trade electronically on the stock exchange, and tokenizing them doesn't solve any real problems for anyone. But if you let anyone buy the stocks of *private* companies, you have filled a real business niche. And if you let them do that without public disclosure, you have … well, you have evaded the securities laws, is my view, but other people have different views.

Pleasingly, Hester Peirce, an SEC commissioner and the leader of its Crypto Task Force, seems to take my view. Last week she issued a statement on tokenization:

Distributors of tokenized securities must consider their disclosure obligations under the federal securities laws and may wish to refer to the Division of Corporation Finance's recent staff statement on this topic.

Market participants who distribute, purchase, and trade tokenized securities also should consider the nature of these securities and the resulting securities laws implications. For example, depending on the particular facts and circumstances, a token could be a "receipt for a security," which is itself a security but is distinct from the underlying security held by the distributor of the token. Alternatively, a token that does not provide the holder with legal and beneficial ownership of the underlying security could be a "security-based swap" that cannot be traded off exchange by retail persons. While blockchain-based tokenization is new, the process of issuing an instrument representing a security is not. The same legal requirements apply to on- and off-chain versions of these instruments.

I think that this is obviously true, but it must have disappointed some of the more aggressive tokenizers.

HYPE PIPE

This keeps working huh:

Sonnet BioTherapeutics, Inc., (NASDAQ: SONN) ("Sonnet" or the "Company") today announced that it has entered into a definitive agreement (the "Business Combination Agreement", or the "BCA") for a business combination (the "Business Combination") with Rorschach I LLC ("Rorschach"), a newly-formed entity formed by an entity affiliated with Atlas Merchant Capital LLC ("Atlas"), an affiliate of Paradigm Operations LP ("Paradigm"), and additional sponsors (all together, the "Sponsors"), to transform its business by building a reserve of HYPE, the token of the Hyperliquid Layer-1 blockchain.

At the closing of the Business Combination, the newly-created entity is to be named Hyperliquid Strategies Inc ("HSI"), which is expected to hold approximately 12.6 million HYPE tokens, representing $583 million in value (based on the spot price of HYPE shortly before the signing of the Business Combination Agreement) and gross cash invested of at least $305 million, for a total assumed closing value of $888 million.

We talk all the time about how the US stock market values $1 of crypto at $2 or more, but it keeps happening. Sonnet's stock closed at $5.17 per share on Friday (a market capitalization of about $16 million). The new, HYPE-based investors are buying stock at $1.25 per share. The stock got as high as $19.30 this morning; at noon it was trading at about $10.83. This means that the stock market is valuing an $888 million pool of HYPE at around $7.7 billion. I do feel like the name here is particularly on-the-nose.

Things happen

Investment banking set to extend worst run in over a decade. EU warns Trump's 30% tariffs would eliminate transatlantic trade. Mysterious Option Trades Put Spotlight on Key Indian Stock Index. Jane Street Sets Aside $564 Million as India Probe Continues. Private Credit Firms Pitch More Leverage to Win Over Deals. "Continuation funds returned a median of 1.4 times the initial investment net of fees, slightly higher than the returns for buyout funds." Elon Musk Is Back at Work and Burning Through Executives. Taiwan's central bank tells foreign investors to stop violating capital controls. China's Bid for 'Global Yuan' Finds Double-Edged Sword in Stablecoins. Ex-Citadel Portfolio Manager Joins Rare $1 Billion Launch Club. Bitcoin Soars Past $120,000 as US Congress Starts ' Crypto Week.' Crypto companies race to secure banking foothold in US. Lemonade stand LME. "If I want to lose money, I mean, that's my right as an American." Man Had 14 Toucans Stashed in His Volkswagen Dashboard, U.S. Says.

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- 1. Technically vehicle sales were down year-over-year in 2024 (other revenues were up), but the point of this description is not to be scrupulously accurate.
- 2. Would you? I think a lot about OpenAI telling its investors that "it may be difficult to know what role money will play in a post-AGI world." If humanity is ruled with an iron fist by *Grok*, will Grok care that you are a shareholder?

https://www.wsj.com/business/autos/tesla-troy-jones-north-american-sales-leaves-b2ac616d

EXCLUSIVE AUTOS

Tesla's Top North American Sales Executive Leaves Amid Slump

Troy Jones's exit after 15 years is the latest departure at Elon Musk's electric-car company

by *Becky Peterson* Follow

July 15, 2025 10:41 am ET

A Tesla dealership in California. PHOTO: DAVID PAUL MORRIS/BLOOMBERG NEWS

Tesla's TSLA **-1.01%** top sales executive in North America has left, according to people familiar with the matter, the latest high-level departure at the automaker that is facing a steep drop in sales.

Troy Jones, vice president of sales, service and delivery in Tesla's largest market, has departed after 15 years at the electric-car company, the people said.

The move comes less than a month after the departure of Omead Afshar, a top aide to Chief Executive Elon Musk, who had been promoted less than a year ago to oversee all of sales and manufacturing operations in North America and Europe.

The company's director of human resources for North America, Jenna Ferrua, departed in June, too. Earlier this year, a top artificial-intelligence executive also left the company. Milan Kovac, a vice president of engineering, oversaw Tesla's development of Optimus, a humanoid robot that is central to Musk's vision of transforming the electric-vehicle maker into a robotics and artificial-intelligence company.

Tesla has turned to vehicle updates and low-cost financing to try to drum up customer interest as it faces increased competition and pressure on its brand stemming from Musk's stint in politics.

It released a refreshed version of its popular Model Y midsize SUV in March and a cheaper, pared-down version of the Cybertruck in April. It unveiled updated versions of its Model S and Model X luxury vehicles in June.

Tesla executives have played down Wall Street's concerns about declining sales and shrinking margins, pointing instead to the potential upside stemming from Tesla's investments in its autonomous driving software, which it calls Full Self-Driving, and its Optimus humanoid robot.

On June 22, Tesla rolled out its long-promised robotaxi service, opening up its new ride-hailing app to a small group of customers, including social-media influencers, who took rides in autonomously driven Tesla Model Ys through a limited area of Austin.

Write to Becky Peterson at becky.peterson@wsj.com

Videos

Tesla's top North American sales executive leaves, WSJ reports

reuters.com/business/autos-transportation/teslas-top-north-american-sales-executive-leaves-wsj-reports-2025-07-15

Reuters July 15, 2025

The logo of Tesla is seen on a store in Paris, France, October 30, 2020. REUTERS/Charles Platiau/File Photo Purchase Licensing Rights, opens new tab

(TSLA.O), opens new tab top sales executive in North America, Troy Jones, has left the electric vehicle maker in the latest senior departure at the company, the Wall Street Journal reported on Tuesday, citing people familiar with the matter.
The vice president of sales, service and delivery in North America - Tesla's biggest market - Jones has been with the company for 15 years.

Tesla and Jones did not immediately respond to Reuters' requests for comment.

Shares of Tesla fell more than 1% following the report.

The reported exit comes at a time when Tesla is grappling with flagging sales, as demand in Europe and North America crumble amid Tesla's aging vehicle line-up and increased competition from rivals offering more affordable alternatives.

Tesla has seen a wave of high-level executive departures since early last year, including key figures like CEO Elon Musk's confidant, Omead Afshar, chief battery engineer Drew Baglino and global public policy head Rohan Patel.

The head of Tesla's Optimus humanoid robot team, Milan Kovac, announced he was leaving in June, and top battery executive Vineet Mehta did so in May.

Their departures, along with others in legal and supply chain leadership, have raised questions about internal stability at the company as it navigates a sales slump and a shift to robotics and self-driving technology.

Reporting by Deborah Sophia and Akash Sriram in Bengaluru; Editing by Maju Samuel

Our Standards:

Securities Law News

Stealth Stake Sales Helped UnitedHealth Beat Wall Street Targets

July 15, 2025, 3:00 AM PDT

Until this year, UnitedHealth Group Inc. had managed to pull off an impressive feat: more than 60 consecutive quarters of earnings that beat Wall Street estimates.

As the end of last year approached, that streak was getting harder to maintain. Ballooning medical costs and stricter government payment policies were eroding the health conglomerate's profit margin.

But shortly before the books closed for 2024, more profits appeared. They came from the discreet sale of stakes in business units to firms including Warburg Pincus and KKR & Co., according to people familiar with the matter. Some of the deals included terms that could require UnitedHealth to buy the interests back at a higher price in a matter of years, the people said.

The New York Stock Exchange in May.
Photographer: Michael Nagle/Bloomberg

Those terms — along with UnitedHealth's insistence that transactions be completed by Dec. 31 and not be publicized even after they closed — gave people with knowledge of the deals the sense that the insurance giant was putting them together with an eye toward meeting earnings targets.

In the end, the deals helped UnitedHealth book an additional $3.3 billion of annual profit, mostly in the fourth quarter. The company alluded to the dispositions in its January earnings statement and analyst call, saying they improved operating costs. It disclosed the $3.3 billion in its annual report the next month, without specifying what it sold.

Details about UnitedHealth's year-end deals haven't been previously reported and the effect on earnings went little noticed by Wall Street analysts at the time. Without the gain, the company would have missed estimates for the first time in more than 15 years.

UnitedHealth counted the $3.3 billion from asset sales toward last year's operating income and adjusted earnings per share, two closely watched profit measures. At the same time, it excluded a $7.1 billion loss on the sale of its Brazil business from those measures. The moves were "unusual" but allowed under US accounting rules, said Jack Ciesielski, an accounting analyst and the founder of R.G. Associates Inc. in Baltimore.

“If the company is manufacturing earnings by chopping up their furniture or selling their assets, that’s not exactly a great business model,” Ciesielski said. “The risk is that it might be masking a weakness in the operations.”

A UnitedHealth spokesman said the company had valid business reasons for the deals and has consistently reported gains and losses from routine asset sales — what it calls “portfolio refinement” — in operating costs and adjusted earnings. The sale of the Brazil unit was excluded because the company left the market entirely, making it an infrequent occurrence that included losses from foreign currency effects, he said.

“We certainly stand by our practices yet these matters are hardly news, since we disclosed the information through quarterly earnings calls, SEC filings and more dating back to January,” he said in an emailed statement.

Companies report adjusted earnings figures to give investors a clearer view of the ongoing profitability of an enterprise, often by excluding events such as asset sales that don’t reflect the normal course of business. There’s no formal definition of the figures under accounting rules, but companies are required to be consistent about which kinds of items are included or excluded, Ciesielski said. As long as the company can argue the transactions were fundamentally different — as UnitedHealth does with its Brazil sale — there’s no conflict with disclosure rules, he said.

UnitedHealth went on to snap its streak of earnings outperformance in the first quarter and withdraw its forecast for 2025, citing higher-than-expected costs in Medicare Advantage. Chief Executive Officer Andrew Witty abruptly resigned in May, replacedby former CEO Stephen Hemsley. The *Wall Street Journal* reported the next day that the insurer is under criminal investigation over Medicare billing practices. The company has defended its practices.

Inside UnitedHealth, there's a culture of meeting financial targets and pressure to find ways to make up for missing targets, according to people close to the firm. Witty, in the company's fourth-quarter earnings call in January, said that the insurer delivers on its commitments to investors.

"Even in highly challenging periods like 2024, our results bear out that we find a way, even if it's not always how we may have initially envisioned the path," he said.

But some analysts didn't grasp the deals' impact on earnings until later. An April 28 note from Wolfe Research noted that "a thorough reading of disclosures" revealed the gains from asset sales, and stripping those out would lead to a lower baseline for earnings. John Ransom, an analyst at Raymond James, slashed his profit forecast for UnitedHealth in May after combing through the annual report and finding details about the gains. He called those earnings "low-quality and non-recurring in nature."

Dealmaking to the Rescue

How UnitedHealth salvaged an earnings streak

Stake Sales	UnitedHealth sells stakes in several business units, including to private equity, generating $3.3 billion of gains for 2024.
Buyback Feature	Some of the deals contain options that allow UnitedHealth to buy the stakes back in future years.
Accounting Treatment	UnitedHealth includes the gains in adjusted earnings, while excluding a loss from the sale of a Brazil unit from the measure.
The Effect	Because of the gains, UnitedHealth beats analyst expectations for fourth-quarter earnings.
Analyst Reaction	Some Wall Street analysts don't immediately realize that so much of UnitedHealth's profit came from these gains. One later calls the earnings from the gains "low quality."
UnitedHealth Response	UnitedHealth says it sold the stakes for valid business reasons and stands by its accounting practices. It generally includes gains and losses from asset sales in adjusted earnings, and excluded the Brazil loss because the company left that market entirely, the company says.

Source: Bloomberg reporting Bloomberg

The gains "probably should not have been included in the adjusted earnings," said Jeff Jonas, a portfolio manager at Gabelli Funds, which owns UnitedHealth shares. Proceeds from a sale could far exceed a unit's annual earnings, he said. "When you include that gain, you're really including the equivalent of multiple years of earnings in one year."

Jonas said he didn't realize the full extent of how the gains had affected the 2024 results until around the time of the CEO change in May.

"I think a lot of us, including myself, were missing it or just giving them the benefit of the doubt because everyone loved the company and they'd been so consistent for so many years," Jonas said.

The UnitedHealth spokesman said the company aims to help stakeholders understand its business performance "through compliant, transparent and useful disclosures."

Making Deals

While best known for its UnitedHealthcare insurance unit that covers more than 50 million people, UnitedHealth gets a growing share of revenue and profits from health-services businesses under its Optum arm, which it built through dozens and dozens of acquisitions. At the same time, the Eden Prairie, Minnesota-based company is facing government scrutiny that has made it increasingly difficult to conduct the types of deals that have fueled its growth.

The Department of Justice last year sued to block UnitedHealth’s takeover of Amedisys, a home health company. The government previously unsuccessfully tried to block its acquisition of Change Healthcare, which provides the infrastructure for health insurance payments. The Federal Trade Commission is suing UnitedHealth and two rivals over insulin costs. UnitedHealth has called the FTC case “baseless” and said it misunderstands how drug pricing works.

The increased scrutiny has made some counterparties nervous to sell to UnitedHealth. The company earlier this year offered to buy health-tech firm Edifecs but its private equity owners went with a lower offer in part because they were worried that a deal with UnitedHealth would get caught in regulatory limbo, people familiar with the matter said.

UnitedHealth, which has a market value of $273 billion, has said that deals that it considers to be relatively minor don’t meet its threshold for requiring material disclosure. But the company has gone a step further, sometimes asking its private equity counterparties not to disclose information about their new investments as well, people familiar with the matter said. (The UnitedHealth spokesman said the company discloses transactions when it or the counterparty is legally obligated to do so.)

A handful of deals, some of which were struck in December, accounted for the bulk of the $3.3 billion gain, some of the people said.

Warburg Pincus, for example, purchased a controlling stake in a UnitedHealth hearing-benefits business known as Epic Hearing Healthcare. The company’s website still identifies it as part of UnitedHealthcare, but a recent job posting by UnitedHealth stated that Epic Hearing is a joint venture with Warburg Pincus that “will become an independent company.”

The private equity firm also invested in a UnitedHealth unit in Louisville, Kentucky, that helps health plans identify third parties that might be responsible for paying medical claims, a process known as subrogation, some of the people said. In April, UnitedHealth posted a job opening involving its subrogation business in Kentucky that referenced “the OptumInsight/Warburg Pincus joint venture.”

KKR, meanwhile, invested in a UnitedHealth business that provides fitness programs for seniors on Medicare, some of the people said. There’s similarly no mention of the investment on the company’s website. Business records on file in Delaware show UnitedHealth formed a limited partnership in December whose general partner is a company located at KKR’s New York headquarters.

Neither Warburg nor KKR announced the deals. Representatives for the firms declined to comment.

A UnitedHealth building on its Eden Prairie, Minnesota, corporate campus.
Photographer: Matthew Ludak/The Washington Post/Getty Images

In some of the deals, UnitedHealth is getting an earnings benefit from selling stakes in assets without necessarily parting with them forever. It retains options to buy back its stakes within a few years. If it doesn't, the private-equity firms can later force it to buy them back at a higher price.

UnitedHealth could end up paying as much as $3.4 billion if it buys stakes back under the options, it said in the annual report.

In January, UnitedHealth reported fourth-quarter adjusted earnings of $6.81 a share, beating the Wall Street profit forecast by a dime. The gains from the stake sales were worth roughly $3.50 a share and took place mostly in the fourth quarter — enough to spell the difference between barely meeting expectations and missing them by wide margins.

UnitedHealth also reported the gains as part of annual operating income, a measure that typically reflects the money generated from a company's core business activities, such as selling insurance. As with adjusted earnings, companies have broad leeway to determine what's operating income and what isn't, said Tom Linsmeier, chair of the accounting and information systems department at Wisconsin School of Business and a former member of the Financial Accounting Standards Board. Still, he called UnitedHealth's handling of the matter "curious."

"It's reasonable to ask why losses on strategic transactions are outside of operating income, but a huge gain on a strategic transaction is within operating income," he said.

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Insurers Dump Catastrophe Risk of Climate Change and Earthquake to Chump Bond Investors. What Could Go Wrong?

nakedcapitalism.com/2025/07/insurers-dump-catastrophe-risk-of-climate-change-and-earthquake-to-chump-bond-investors-what-could-go-wrong.html

Yves Smith July 15, 2025

A story that was briefly the lead item in the Financial Times, Catastrophe bond sales hit record as insurers offload climate risks, is frustratingly short on key details, like the maturity of these catastrophe bands and how the risks are stipulated. The big selling points seem to be "really juicy yield" and some diversification compared to other bonds. But subprime debt and CDOs looks like a deal before the financial crisis until they weren't.

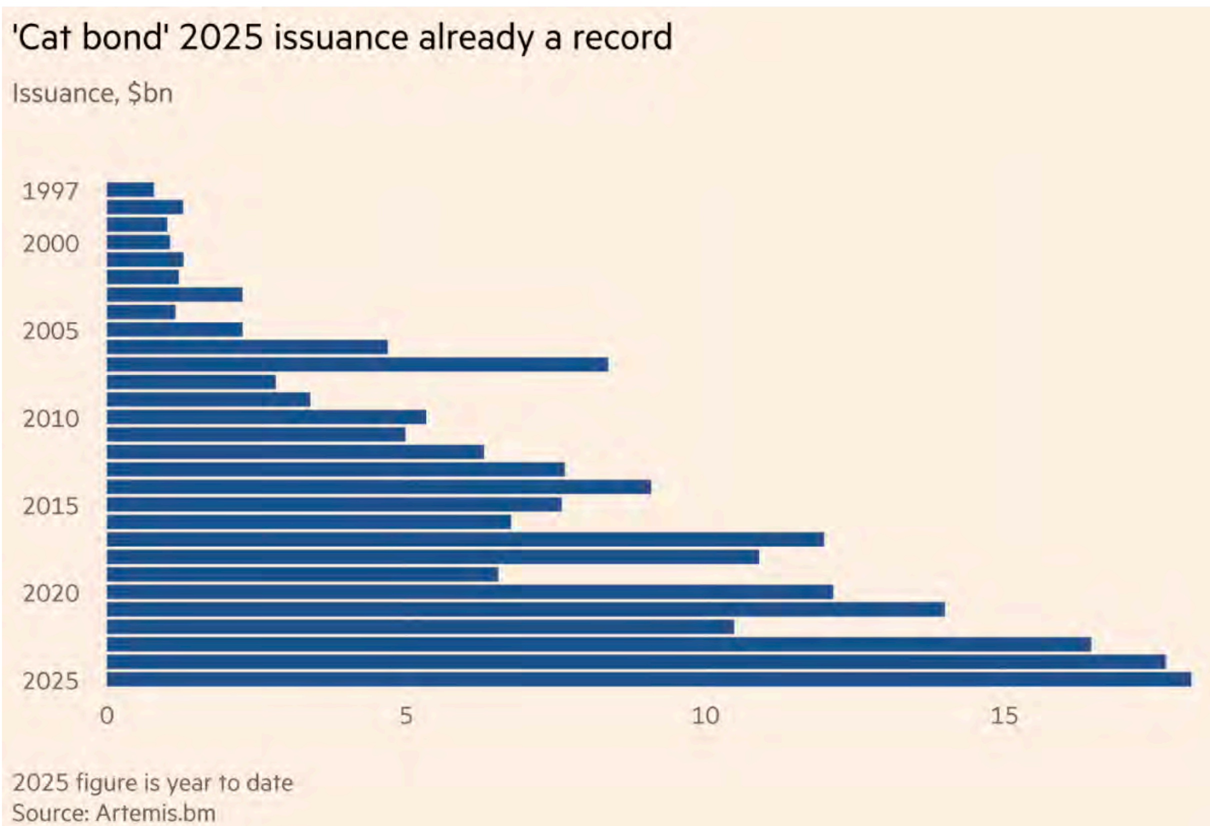
What is particularly frustrating is that this article does not make some key issues clear, such as:

> Unlike traditional corporate, sovereign, and real estate debt, there's no good way to assess the risk, which means investors (save perhaps the few that have staffers with reinsurance chops) have no clue as to whether they are getting an adequate return. Reinsurance has some arcane issues, such as if certain events happen in too short a timeframe, they can blow through regular insurer catastrophe cover and lead them to hit up their reinsurance policies, which can be at risk of coming up short. This is the sort of event the reinsurance unit at Berkshire Hathaway dreams of, when insurers are not yet certain how certain events will be classified, are scrambling to buy extra "cat cover" for which Berkshire can then charge through the nose. In general, Berkshire seeks to write policies only in "hard markets" when pricing is very favorable, and otherwise sit on the sidelines. To my knowledge, pretty much no one else has the discipline to keep staff employed and doing nothing all day waiting for what often is only a few days every year or 18 months to write huge amounts of cover on lucrative terms.
>
> The regular occurrence of large hurricane, wildfire, and earthquake events means that there is more risk of a total or large principal loss than in many other fixed income instruments.[1]
>
> Credit spreads, as in what bond investors are typically paid for assuming risk, were at record low levels in late 2024, as even tighter than in the famed "wall of liquidity" period during the runup to the crisis. They have widened a bit since March 2025 but from what I can tell (not having access to a Bloomberg terminal) are still extraordinarily thin. It's at times like this that investors are unduly tempted to pile into high risks, mistakenly thinking they can exit in good shape if needed.
>
> In addition to reinsurers, and hence also presumably these bonds, writing risks to cover certain exposures and not others, my impression is the also regularly (always?) cover only certain limits, say $50 to $100 million of excess exposure.
>
> And a query to the real experts: a colleague jokes that an insurance policy is simply the right to sue an insurer for payout. Those insurers are operating entities and hence all staffed up to dig in their heels. How well positioned are these bond investors to do so?

Twitter confirms that I am not alone in my skepticism:

> Hedge Funds buying catastrophe bonds
>
> ft. @macyagilliam pic.twitter.com/2yNBHFeQ0g
>
> — Morning Brew ☕ (@MorningBrew) January 22, 2024

Now to the high points of what the pink paper does say about these bonds:

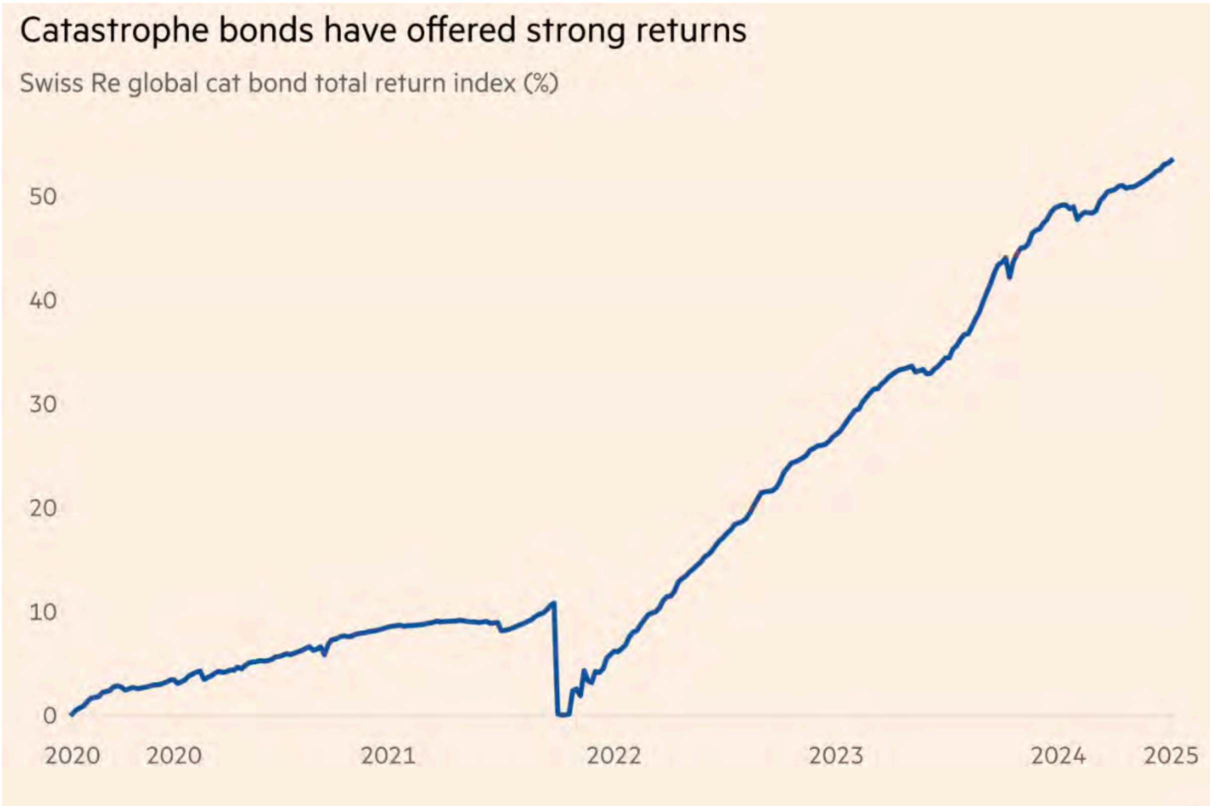
> Issuance of the instruments, which transfer part of the risk for events such as wildfires, hurricanes and earthquakes to bondholders, has surged to $18.1bn so far this year. That compares with the previous record of $17.7bn for the whole of 2024, according to specialist data provider Artemis.bm….
>
> As disasters become more commonplace, insurers have had to pay out more than $100bn in natural catastrophe losses every year so far this decade, a number Swiss Re recently predicted could reach $300bn in a peak year…
>
> An industry-wide Swiss Re index of total returns from catastrophe bonds has risen 14 per cent over the past year and by more than 50 per cent over the past five years.
>
> 
>

Fitch in 2023 explained the sudden search for new chumps in [Global Reinsurers Pull Back from Natural Catastrophe Cover](https://www.nakedcapitalism.com/):

> Fitch Ratings-Chicago/Frankfurt/London-24 August 2023: Global reinsurers are cutting back on the cover they provide against medium-sized natural catastrophe risks due to investor pressure after several years of large catastrophe losses and improved profitability in other parts of the market, Fitch Ratings says.
>
> Some companies were already retreating from the property-casualty market in 2022 but even the strongest reinsurers have now pulled back, largely through tightening their terms and conditions to limit their aggregate covers and low layers of natural catastrophe protection. This leaves primary insurers much less protected against secondary peril events. However, reinsurers still offer ample cover against the most severe events. The reinsurance market appears to have returned to its pre-soft market state of providing capital protection for cedents, rather than earnings protection.
>
> Natural catastrophe business has become largely loss-making in recent years as prices have failed to keep pace with increasingly frequent, severe and volatile weather-related losses due to climate change. This has reduced reinsurers' appetite to provide natural catastrophe cover, particularly as other business lines are now benefitting from price rises that are higher than claims inflation. Tighter terms and conditions for natural catastrophe cover are a structural improvement that should benefit reinsurers' risk profiles in the medium term as they are unlikely to be quickly reversed even when market conditions change.

So pricing for risk has allegedly improved due to reinsurers pulling back…but if they don't deem the pricing to be "hard" enough to justify stepping up to their former level, why should generally unskilled institutional investors? Demand for risk protection greatly increasing due to underlying risks rising does not guarantee profits.

Finally the Financial Times provides bit of information as to what these bonds are about:

> Catastrophe bonds are a form of reinsurance, through which insurers or companies give investors regular payments to assume some of the risk from events such as extreme weather. If such a disaster occurs, bondholders can lose their money….
>
> 
>
>
> In a sign of the instrument's widening appeal, the first exchange traded fund for catastrophe bonds launched on the New York Stock Exchange in April….
>
> The steadily increasing cost of traditional reinsurance — partly due to extreme weather losses and rising asset prices — has also pushed insurers towards catastrophe bonds.
>
> New investors in the sector range "from large institutional investors, to multi-strategy hedge funds, endowments and family offices", said Steve Evans, editor-in-chief at Artemis.
>
> .

Some Financial Times readers filled in key gaps in information:

Commons
There is probably too much reference to climate risk both overstated and understated in the discussion of CAT bonds. These bonds are relatively short duration, typically 3 years and so the marginal change in climate risk over this period is negligible. Insurers reprice their policies every year so again their pricing does not reflect the long term effect of climate change. Rapid urbanization in catastrophe prone locations due to high property prices and perverse tax incentives are more powerful drivers of insurance pricing than climate change. If however re-insurers were to start issuing 30 year bonds linked to standardized parametric catastrophe event triggers that occur over the last ten years of the bond, then a secondary market might develop to infer the level and trend of climate risk. Today's mention of climate risk in insurance pricing is largely hot air to justify price hikes to cover poor, prior year underwriting, or climate activists seeking market evidence for their views.

Roxelana1955
Just out of curiosity, why did performance fall off a cliff in 2021-2022 ?

> **Venkman**
> Traditional reinsurance rates were low, so insurance carriers bought lots of it to take advantage of the soft market. In 2023 the reinsurance market started to harden significantly (some treaties seeing rate increases of 30-50% YOY) so alternative risk transfer methods were more attractive.
>
> **LukZ**
> Hurricane Ian which hit Florida and the U.S. East coast in September 2022. Losses above USD 100bn, insured losses ~60bn, many of them covered by Cat bonds.

Commons
Insurers and reinsurers have comparative advantage in estimating the risk to a particular building contingent on a catastrophic event occurring (wind, flood or fire). They have very little insight relative to capital market investors as to the probability of catastrophes occurring in the next few years. It is more like a lottery, close to random with a very long term trend that does not lend itself to back testing. Insurers already have a concentration in this risk while investors are under weight this risk so shifting this risk at a fair price is a win win for each sector's Sharpe Ratio. You might think this is already possible by owning the shares of reinsurance companies but they do much more than take catastrophe risk. On the upside Berkshire Hathaway has had good investment returns and AIG, Swiss Re and Munich have periodically lost huge sums on bad investments unrelated to insurance. Cat bonds are a more transparent, pure play

> on extreme event risk. The downside is they lack a deep secondary market because the insurers fail to make steady issuance on standardized terms as they prefer to take advantage of the cyclical pricing advantage they offer relative to reinsurance.
>
> > **Mediumgrey**
> > Erm, it is the market that 'prices' trades, and not the sponsors. These bonds are purchased buy quibs. Your suggestion above has little to do with how this works.

And others were skeptical:

> **dr psingh**
> The article comes across as a marketing call to invest in CAT bonds. Too much about the returns and not enough about the losses on such investments.
> The S&P 500, FTSE all-share, FTSE 100 are up 110, 49, and 52% over 5 years, which compare favourably to the average 10% pa from CATs, before adjusting for risk

Orandar
The SwissRe's index performance is a function of 1) underwriting results over the (short) period under consideration and 2) investors bidding up the prices of these bonds (effectively reflecting a reduction in the pricing of risk). Classic example of information asymmetry, with yield chasing investors being sold long term risks they mostly do not understand.
Berkshire's Ajit Jain is watching, and would probably not be buying any of those bonds, nor underwriting those risks directly at those price levels.
Caveat emptor.

Herbert
Pretty much all in Orandars post is true.

unless you are an expert in the intricacies of statistical loss dependencies based on geolocation, you are buying a risky asset that you don't understand. And get a lower risk premium than the underwriter of this risk

The big points should be evident: that many investors are piling into a product where they can't properly assess the hazards, and general credit market froth strongly suggests they aren't being paid enough. It won't take all that long to see how these wagers pan out.

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[1] Another is commercial real estate development.

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Nvidia Investors Push For Cert. After High Court Pass

By **Jessica Corso**

Law360 (July 14, 2025, 8:04 PM EDT) -- Nvidia Corp. investors are asking a California judge to grant them class status on claims that the chipmaker and its CEO undersold the company's reliance on the volatile crypto market, putting the case back in the spotlight six months after the U.S. Supreme Court pulled the plug on issuing a ruling.

Shareholders claim Nvidia and CEO Jensen Huang downplayed how many gaming chips were being sold to crypto miners, a truth they say came to light when the company was forced to twice cut its revenue projections in 2018.

"The class is comprised of thousands of investors whose claims are brought under the same federal securities laws, based on defendants' common course of fraudulent conduct, and concern the same facts and elements of proof," shareholders said in pushing for class certification Friday.

It's the first major movement forward for the litigation since the Supreme Court in December **dismissed the case** as improvidently granted.

The court didn't say why it tossed the case after initially agreeing to hear it, but during oral argument in November **some justices questioned** whether any ruling they issued would have a greater impact beyond the single lawsuit in front of them.

Nvidia investors alleged in a 2019 complaint that the company hid its $1 billion exposure to the volatile crypto mining market due to the industry's position as a major purchaser of Nvidia's graphics processing units.

They said that the truth came to light in late 2018, when the company first announced a 2.2% drop in expected quarterly revenues followed three months later by an announced 7% year-over-year quarterly revenue decline as crypto markets struggled.

Suing investors said the announcements caused stock prices to drop by 5% and 28.5%, respectively.

The lawsuit **was thrown out** by U.S. District Judge Haywood S. Gilliam in 2021 before being **partially revived** by a split Ninth Circuit two years later.

The circuit court said that suing investors had adequately alleged that Huang knowingly or recklessly made false or misleading statements regarding the company's crypto sales.

Nvidia told the high court that investors should have provided more detail about the internal documents Huang allegedly reviewed to demonstrate that he knew about the crypto sales figures even while publicly downplaying them.

The Supreme Court at first agreed to hear the issue of what internal documents needed to be provided to make it past a motion to dismiss in a securities case, as well as a second question on the role that expert analysis should play in overcoming a dismissal bid.

But the justices quietly withdrew the suit, sending it back to the district court where it began.

Nvidia's attorneys didn't immediately respond to a request for comment on the class certification motion on Monday.

Nvidia investors are represented by Matthew Mustokoff, Jamie McCall, Nathan Hasiuk, Nathaniel Simon and Stacey Kaplan of Kessler Topaz Meltzer & Check LLP and John Rizio-Hamilton, Jonathan Uslaner, Preethi Krishnamurthy and Michael Mathai of Bernstein Litowitz Berger & Grossmann LLP.

Nvidia and Huang are represented by Patrick Gibbs, Amanda Main, John Bostic, Brett De Jarnette and Sarah Lightdale of Cooley LLP.

The case is In re: Nvidia Corp. Securities Litigation, case number 4:18-cv-07669, before the U.S. District Court for the Northern District of California.

--Editing by Jay Jackson Jr.

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NBA Deal Investor Suit Doesn't Hold Up, Warner Bros. Says

By **Hailey Konnath**

Law360 (July 14, 2025, 10:43 PM EDT) -- Warner Bros. Discovery has asked a New York federal judge to throw out investors' proposed class action over its failed negotiations for a new media rights agreement with the NBA, arguing that the investors haven't pointed to any evidence showing that Warner Bros. intended to mislead them about the deal.

In a **motion to dismiss**, Warner Bros. pointed to several purported deficiencies in the investors' amended complaint, which accuses the company of making false and misleading statements about how the talks with the NBA were really going. According to Warner Bros., the shareholders "offer no allegations of fact from which to infer that the admittedly factual statements … were intended to mislead."

"There is simply no allegation of motive or other circumstantial evidence establishing the required cogent and compelling inference of fraudulent intent — let alone one sufficient to overcome the competing and straightforward inference: WBD was engaged in tough negotiations with the NBA and hoped it would secure the NBA rights, but, ultimately, the NBA chose competing offers," Warner Bros. said in the motion, filed Friday.

Shareholder Richard Collura **first filed suit** last November. The dispute centers on the NBA's **$76.9 billion megadeal** with Amazon.com Inc., which was reached after Warner Bros. failed to reach an agreement to renew its longstanding partnership with the NBA.

Collura claims that Warner Bros. wasn't up front with investors that its sports rights negotiations with the NBA were causing, or likely to cause, the company to "significantly reevaluate its business and goodwill." The company also failed to disclose that its goodwill in its networks segment — which is mostly made up of television networks — had significantly deteriorated, Collura alleged.

Warner Bros. also didn't tell investors that all of that significantly increased the likelihood of the company incurring billions of dollars in goodwill impairment charges, Collura said in his suit. Altogether, the allegedly false and misleading statements meant Warner Bros. had overstated its overall business and financial prospects, he says.

Collura filed an amended complaint in May that added Anthony Yuson and Michael Steinberg as co-lead plaintiffs.

In Friday's motion, Warner Bros. said the statements identified by the shareholders in the suit are "self-evidently true and none predicted the outcome of the negotiations." And they haven't alleged any facts that support their fraud claims, it said.

For one, "wall-to-wall media coverage" about the negotiations discredits the investors' theory that Warner Bros. failed to disclose the importance of the NBA rights, it said.

"This media coverage is in addition to the steady drumbeat of disclosures in WBD's public filings and statements specifically discussing these facts," Warner Bros. said. "Defendants expressly warned investors about the possibility of losing the NBA rights and acknowledged that they were planning for various potential outcomes."

Also, there are no allegations of fact that support their claim that Warner Bros. wouldn't match competing bids, Warner Bros. said. The investors pointed to statements that were made months before any competing bids even existed, it said.

Warner Bros. and counsel for the investors didn't immediately respond to requests for comment late Monday.

The investors are represented by J. Alexander Hood II, Joshua B. Silverman, Christopher P.T. Tourek and Genc Arifi of Pomerantz LLP, by Phillip Kim and Sara Fuks of The Rosen Law Firm PA and by Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Warner Bros. is represented by Jonathan D. Polkes, Stacy Nettleton, Joshua D. Weedman and Veronica Gordon of White & Case LLP.

The case is Richard Collura v. Warner Bros. Discovery Inc. et al., case number 1:24-cv-09027, in the U.S. District Court for the Southern District of New York.

--Editing by Leah Bennett.

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Masimo Corp. Settles Investor Suit Over Revenue Disclosures

By **Carla Baranauckas**

Law360 (July 14, 2025, 4:57 PM EDT) -- Masimo Corp. has settled proposed class claims alleging the health technology firm misrepresented the company's finances and plans to investors, according to a filing in Southern California federal court.

The agreement would resolve all claims against Masimo and its executives, including former CEO Joseph Kiani, on a classwide basis, according to the joint motion filed Friday. The **filing** didn't reveal details of the deal.

The lawsuit, filed in August 2023, **alleged** that Masimo and its leadership misled investors about the financial health and strategic direction of the company, including the impact of certain acquisitions and business decisions. Plaintiffs claim that the company's public statements inflated its stock price and failed to adequately disclose risks, causing financial harm when Masimo's share value later declined.

The plaintiffs are represented by attorneys from Labaton Keller Sucharow LLP, including Lauren A. Ormsbee, Lisa M. Strejlau and David Saldamando, as well as by Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP. Additional counsel includes Adam Marc Apton of Levi & Korsinsky LLP.

The defendants are represented by attorneys from Quinn Emanuel Urquhart & Sullivan LLP, including Michael E. Swartz and Valerie Roddy, as well as by Jeffrey F. Robertson of Schulte Roth & Zabel LLP. Joseph Kiani is represented by John C. Hueston and Marshall A. Camp of Hueston Hennigan LLP.

The case is Vazquez v. Masimo Corp. et al., case number 3:23-cv-01546, in the U.S. District Court for the Southern District of California.

--Editing by Daniel King.

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$94M Fee Bid In Auto Parts Antitrust MDL Rejected, For Now

By **Dorothy Atkins**

Law360 (July 14, 2025, 5:55 PM EDT) -- A Michigan federal judge on Friday rejected class counsel's request to add $94 million to the $269 million fee award they have already secured for cutting deals totaling $1.2 billion resolving automotive parts antitrust litigation, finding that the request is excessive and premature, but allowing counsel to revise it in the future.

In an eight-page ruling, U.S. District Judge Sean F. Cox noted that the additional requested fee award by end payor plaintiffs' class counsel would increase their cut of five deals totaling $1.2 billion from 22% to 30%.

The judge said the 22% fee award already secured by class counsel for reaching the first four settlements is fair and reasonable, and although some additional fees should be awarded to class counsel for cutting the fifth settlement, an additional fee award that would bring their total recovery to 30% of the total settlement would be excessive.

Judge Cox added that class counsel filed their additional fee request too soon, because to date class members have only received a portion of their payouts.

"The court finds the pending motion seeking an additional $94 million in attorney fees to be premature, given that no class member has yet to receive more than $100 and pro rata distribution not having occurred despite five years passing since claim filing, and where settlement class counsel concede that there is more work to be done," the order said.

The judge said, however, that class counsel can resubmit their request once the claims process is "at or near completion," which he noted will occur following his impending retirement.

"Given the undersigned judge's retirement from the bench, all of those issues shall be left for another day, to be decided by the successor judge assigned to this case," the order said.

The ruling is the latest development in decades-old multidistrict litigation that was initially filed in 2011, accusing auto parts makers of conspiring to fix the price of auto parts, including shock absorbers, fuel injection systems and steel tubes.

U.S. District Judge Marianne O. Battani presided over the litigation for years, and after years of motions practice, she **approved the first three settlements** reached by end payor plaintiffs, which include millions of class members, in 2016, 2017 and **2019**, and she awarded attorney fees for those deals, according to Judge Cox's order.

After Judge Battani retired, the MDL was reassigned to Judge Cox in June 2020, and the following September, he approved a fourth settlement reached by the end payor plaintiffs, and he later awarded fees.

Judge Cox noted that he told the parties a few months ago that he plans to retire, but in May, the end payor plaintiffs asked him to award them the additional $94 million in attorneys fees after cutting a fifth settlement.

Class counsel's additional fee request drew swift pushback from multiple class members that filed objections, including rental car companies Hertz Corp., Avis Budget Group Inc. and Element Fleet

Management Corp.

The objectors said class counsel's latest fee request is too large and unsubstantiated by the record, particularly since the court has already indicated that 22% of the net settlement proceeds is a fair and reasonable fee.

The objectors also said many class members have not been paid yet, and the claims administration process is ongoing, so an award of any additional fees at this point in litigation would be premature.

In his ruling Friday, the judge took issue with the timing of class counsel's fee request, noting that it came "on the eve of the undersigned judge's retirement from the federal bench" and it represents a 7.77% increase of the aggregate settlement amount for fees, amounting to more than $94 million.

The judge said he wouldn't consider all the objections raised by class members, because he found the fee request is premature, and so he denied the motion without prejudice.

Class Action Capital, which is a third-party claim filing agent that has managed the claims on behalf of some of the objectors, said in a statement by its CEO JJ Thomas that it represents some of the top class members, making up approximately half of all eligible vehicles.

"While class counsel won an historic settlement, we are pleased that after this five-year-long claims process, tens of millions of dollars more will soon go into the hands of deserving class members," Thomas said.

Counsel and representatives for the other parties didn't immediately respond to requests for comment Monday.

The end payor plaintiffs are represented by William V. Reiss of Robins Kaplan LLP, Adam J. Zapala and Elizabeth T. Castillo of Cotchett Pitre & McCarthy LLP, Marc M. Seltzer, Steven G. Sklaver, Jenna G. Farleigh and Chanler A. Langham of Susman Godfrey LLP and E. Powell Miller and Devon P. Allard of The Miller Law Firm PC.

Objectors Overland West Inc. and Booton Inc. are represented by Patrick F. Linehan of Steptoe & Johnson LLP.

Objectors The Hertz Corp., Avis Budget Group Inc. and Element Fleet Management Corp. are represented by L. Conrad Anderson IV and Lorna McGilvray Norton of Balch & Bingham LLP.

218 Large Claim Objectors are represented by Emma K. Burton, Ann L. Rives, Deborah E. Arbabi and Daniel A. Sasse of Crowell & Moring LLP.

The end payor case is In Re: Automotive Steel Tube — End Payor Actions, case number 2:16-cv-04003, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Stephen Berg.

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Amazon Aims To Flush 'Greenwashing' Toilet Paper Suit

By **Mike Curley**

Law360 (July 14, 2025, 4:21 PM EDT) -- Amazon.com Inc. is asking a Washington federal court to throw out a proposed class action alleging it "greenwashed" its toilet paper products by misleading consumers about the source of wood for the products, saying the plaintiffs can't read their subjective expectations into the labeling.

In a **motion** filed Thursday, Amazon said the complaint led by plaintiffs Rey Rain Ramos, David Ramirez, Robert Parker and Roy Campbell fails to link Amazon to any allegedly unsustainable practices but rather details the plaintiffs' grievances with the logging industry as a whole.

In the **proposed class action**, filed in March, Ramos alleged the website misleads buyers about the sustainability of their products, as while both of the site's toilet paper products feature the same "Climate Pledge Friendly" and Forest Stewardship Council logos, the "Aware" line is "derived from 100% bamboo and is sourced from 100% FSC forests," while the "Basics" line is "made from 100% virgin fiber derived from clearcutting and burning the boreal forest."

While the four allege that the labels misled them into thinking that the products were made from supply chains using sustainable forestry practices in FSC-certified forests and a lower carbon footprint, Amazon said that the FSC certification logo only means that the products are FSC certified and make no promises beyond that, under Ninth Circuit precedent.

"Certifications speak for themselves and stand alone, and plaintiffs cannot maintain deception claims based upon the subjective meanings that they individually ascribe to third-party, objective certifications," Amazon wrote.

The website further argued that the plaintiffs' desire for the certification to mean more than what it says is not the basis for a deception claim.

In addition, Amazon argued that there are no factual allegations supporting the claim that the paper products are sourced from boreal forests, but rather the complaint's allegations attempt to impute onto Amazon the plaintiffs' complaints about the logging industry in general, using generic photos of deforested areas that have nothing to do with Amazon.

No reasonable consumer would be misled by the information on Amazon's website for the products, according to the motion, which said that the site accurately tells buyers that the paper products are made with "materials from well-managed forests, recycled materials and/or other controlled wood sources," which the plaintiffs understand includes non-FSC forests.

The language on the site does not mention carbon footprints, and the plaintiffs don't point to any other information they reviewed that would give them the impression that the certifications promise lowered footprints, Amazon added.

The website also has no legal duty to disclose general logging practices, Amazon told the court, both because there is no special relationship between it and consumers, and because the logging industry practices are publicly available knowledge, as evidenced by the allegations in the complaint, which cite reports predating the plaintiffs' purchases by years.

Amazon further argued that the complaint fails to plead why the applicable statutes of limitations should be tolled, as it does not allege any bad faith, deception or false assurances from Amazon that would have delayed the filing, or due diligence from the plaintiffs that would justify it.

Finally, Amazon argued that the proposed class should be stricken as too broad, as it includes all buyers of the products, including those who did not go out of their way to view the information on Amazon's website that the plaintiffs alleged was misleading, and those proposed class members would not have standing.

Representatives for the parties could not immediately be reached for comment Monday.

The consumers are represented by Steve W. Berman and Catherine Y.N. Gannon of Hagens Berman Sobol Shapiro LLP and Rebecca A. Peterson of George Feldman McDonald PLLC.

Amazon is represented by David A. Bateman, Katherine L. Hollingsworth, Jennifer J. Nagle, Robert W. Sparkes III and Loly G. Tor of K&L Gates LLP.

The case is Rey Ramos et al. v. Amazon.com Inc., case number 2:25-cv-00465, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Sarah Jarvis. Editing by Dave Trumbore.

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BCBS Defends $2.8B Provider Antitrust Deal Amid Objections

By **Dorothy Atkins**

Law360 (July 14, 2025, 10:43 PM EDT) -- Blue Cross Blue Shield asked an Alabama federal judge on Friday to approve a $2.8 billion antitrust settlement with hospitals and other healthcare providers over its territorial policies, arguing that recent objections to the deal's release provision are meritless and the settlement preserves "key, procompetitive features" of the insurance system.

In a 27-page brief, the Blue Cross affiliates argued that objections to the settlement's release provision are based on the objectors' "strained reading of the release runs counter to its plain text." The brief also notes that the release is similar to a release provision in Blue Cross' other 10-figure settlement that the Eleventh Circuit affirmed.

"The release is carefully crafted and substantively identical in all relevant respects to the one this court and the Eleventh Circuit approved as part of the settlement in the subscriber track of this MDL," the brief says.

The Blue Cross antitrust litigation was filed in 2012, accusing the BCBS Association and its 33 independent member insurers of illegally carving up the country into exclusive geographical blocs to stifle competition and drive up profits. That arrangement allegedly came at the expense of both subscribers to those health insurance plans and the healthcare providers paid by them.

Commercial and individual subscribers struck a $2.7 billion deal with Blue Cross in 2020, which was held up on appeal until last year, when the U.S. Supreme Court **declined to take up** a challenge by Home Depot. Providers, meanwhile, continued to litigate until a separate $2.8 billion settlement was reached in October. That deal received **preliminary approval** in December from U.S. District Judge R. David Proctor.

Taken together, the two deals make up one of the largest-ever settlements in an antitrust case, according to Whatley Kallas LLP, lead counsel in the yearslong class action. Nevertheless, at least some hospitals opted out of the deal and chose to **file their own lawsuits,** betting that they'll obtain larger paydays through individual litigation.

Meanwhile, emergency medical provider groups and the HCA Health North Texas Division filed separate objections to the $2.8 billion deal, which is pending final approval before the lower court. Both objections took issue with the proposed settlement's release provision for allegedly being overbroad.

The objecting emergency medical provider groups argued that the deal is also fundamentally flawed due to "unduly burdensome" opt-out procedures and unfair terms that lump together different types of medical providers, and don't provide enough relief to emergency room provider groups that offer out-of-network emergency services.

The groups noted that there are no emergency room providers that are named plaintiffs in the action, and so those providers weren't represented during settlement negotiations, even though they're uniquely subject to certain federal and state laws governing insurance.

"These legal requirements create a fundamentally different set of circumstances for emergency providers, making their damages claims distinct from those of non-emergency medical providers, and in-network providers," the groups argued.

The HCA Health North Texas Division, which is one of the largest healthcare providers in the U.S. operating 190 hospitals in 20 states, argued that the release provision is also overly ambiguous and vague, and it could have the effect of barring viable claims that arise after the settlement is approved.

But the insurer defendants defended the deal in their brief Friday, arguing that the settlement represents a "hard-fought compromise" following more than 12 years of litigation, and the Blue Cross entities have agreed "extraordinary monetary recovery" of $2.8 billion, and to "sweeping, structural injunctive relief that benefits providers and members alike."

The brief argues that the settlement contains a reasonable and enforceable release, which by definition applies only to claims that share a "common nucleus of operative fact" with those claims that were or could have been raised in this litigation, and the release contains an express exception for claims arising in the ordinary course of business that are unrelated.

The defendants added that emergency room providers make a "strawman" argument that they may be forced to unfairly and unknowingly release their claims, when they can opt out of the deal if they wish.

Counsel and representatives for the parties didn't immediately respond to requests for comment Monday.

Objectors Allatoona Emergency Group PC and Alabama Emergency Physician Partners LLC are represented by Barry S. Pollack and Phillip Rakhunov of Pollack Soloman Duffy LLP.

Objector HCA Health North Texas Division is represented by William J. Blechman and Michael G. Dickler of Sperling Kenny Nachwalter.

The defendants are represented by Hogan Lovells, Kirkland & Ellis LLP, Wallace Jordan Ratliff & Brandt LLC, Balch & Bingham LLP, Maynard Nexsen PC, Hill Carter Franco Cole & Black PC, Nelson Mullins Riley & Scarborough LLP, Kilpatrick Townsend & Stockton LLP, Armbrecht Jackson LLP, Redgrave LLP, Allen Overy Shearman Sterling LLP, Bodman PLC, Shamoun & Norman LLP, Campbell Partners LLC, Axinn Veltrop & Harkrider LLP, Richardson Clement PC, Adams and Reese LLP, Brunini Grantham Grower & Hewes PLLC, Phillips Lytle LLP, Lightfoot Franklin & White LLC, Foley & Lardner LLP, Cravath Swaine & Moore LLP, Riley & Jackson PC and Crowell & Moring LLP.

The MDL is In re: Blue Cross Blue Shield Antitrust Litigation, case number 2:13-cv-20000, in the U.S. District Court for the Northern District of Alabama.

--Additional reporting by Ryan Boysen. Editing by Kelly Duncan.

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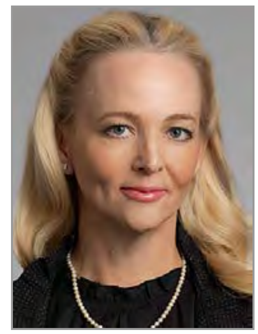
How Attys Can Use AI To Surface Narratives In E-Discovery

By **Rose Jones** (July 14, 2025, 1:29 PM EDT)



Rose Jones

On May 2, the U.S. Judicial Conference's Advisory Committee on Evidence Rules voted 8-1 to advance a **proposed amendment** that would require artificial intelligence-generated evidence to meet the same reliability threshold as expert testimony under Rule 702 of the Federal Rules of Evidence. On June 10, the amendment was **approved** for publication.

The rule, which is expected to enter public comment this summer, signals a growing judicial awareness that AI is no longer just a back-end automation tool. AI is capable of generating work product, including summaries, timelines and synthesized chronologies, that may be offered as evidence.

And with that shift, courts are beginning to grapple with a new reality of narratives created by machines influencing how fact patterns are told and how cases are won.

This moment marks a turning point in e-discovery. For decades, document review has been about managing data, identifying relevance, redacting privilege and producing clean sets of documents. Even with predictive coding and active learning, the goal remained procedural.

Generative AI, by contrast, is substantive. It draws connections, extracts meaning and constructs a coherent picture from disparate sources. Instead of just answering "What documents are responsive?" generative AI lets us ask, "What is the story?"

From Data-Handling to Story-Crafting

Traditional e-discovery workflows are designed around document-level decisions: Is this email responsive? Does this file contain privileged information? But generative AI tools shift the focus from discrete decisions to global understanding. By processing language in a way that mimics human interpretation, generative AI can surface storylines embedded in massive data sets.

Consider a product liability case involving a disputed design change. Rather than simply tagging each document for relevance, a generative AI tool can organize documents into a chronological narrative revealing who raised concerns, what data was considered, when a decision was made and how it was communicated. Suddenly, the case is not a pile of emails, but a story with a beginning, middle and end.

In antitrust litigation, generative AI can group internal slide decks, collaborative threads and analyst reports into thematic clusters that reflect the evolution of a market strategy. In employment cases, it can detect shifts in tone over time in performance reviews or internal communications, revealing subtle signs of bias or retaliation.

In other words, these tools enable lawyers to extract meaning, not just metadata.

Another key advantage is the way generative AI allows discovery teams to reimagine how document repositories are navigated. Historically, linear review meant walking through data chronologically or by custodian. But generative AI can reorganize the data based on narrative structures, automatically identifying causal relationships, key turning points or changes in strategy.

Tools like Altumatim, Relativity ODA LLC's aiR and Everlaw's Storybuilder now enable a more dynamic approach. These platforms can generate entity maps, highlight key players and group documents based on emerging narratives, rather than simple keyword matches.

For instance, Altumatim can synthesize deposition transcripts alongside email threads to build a running timeline of key decisions and communications. And Everlaw's Storybuilder lets teams create visual storyboards linking documents to legal arguments or case themes.

This allows lawyers to answer questions like: What triggered this shift? Who influenced this outcome? What was known, and when?

Aligning Discovery Strategy With Case Themes

The strategic advantage of generative AI lies in its ability to align discovery with litigation themes from the outset. Rather than waiting until late-stage deposition prep to identify key moments, lawyers can use generative AI early in the process to map decision flows, identify inconsistencies and prioritize testimony.

This shift enhances not just efficiency, but also advocacy. Generative AI-derived narratives can shape interrogatories, inform motion practice and even drive settlement posture — not because it replaces human analysis or opinions, but because it empowers lawyers to grasp the concepts of a matter early. And when lawyers understand the shape of the story early, they can frame the case with greater confidence and clarity.

For example, a well-constructed generative AI summary can help a trial team focus depositions around turning points and key information. It can also help outside counsel communicate more effectively with clients, experts and internal stakeholders, who need the big picture without wading through thousands of documents.

These summaries can function as briefing tools customized for different audiences. For clients and executives, the tools translate legal complexity into actionable insights, spotlighting who did what, when and why it matters. For experts, generative AI outputs can provide chronological or thematic maps of relevant data, providing efficiencies in their ability to form opinions. And for internal stakeholders like compliance, human resources or corporate communications, generative AI can produce concise updates that assist with alignment and mitigate misunderstandings.

Furthermore, because generative AI tools can ingest and analyze deposition transcripts, interview summaries, and structured data like spreadsheets or logs, lawyers can refine and update narrative models as the case evolves. This dynamic synthesis means litigators can adjust case theories in real time, incorporating new facts into an existing framework without starting from scratch.

Litigation Prep Meets Strategic Intelligence

The value of generative AI extends beyond traditional litigation. It can be a powerful tool for early case assessment, allowing counsel to evaluate the strength of claims or defenses before discovery really begins. By generating narrative previews from preliminary datasets, lawyers can better advise clients on risk, exposure and settlement posture.

In internal investigations, generative AI can help identify patterns that suggest knowledge, concealment or escalation of key events. For regulated industries including life sciences, banking or energy, this can be critical to building a defensible narrative in the face of government scrutiny. Rather than producing everything and hoping it tells a favorable story, counsel can now test potential theories during document review itself.

Generative AI also has the potential to influence jury consulting and trial preparation. The same summaries used internally to shape discovery can be recreated into storyboards for jurors or mock panels, helping to refine messaging and sequence information in persuasive ways.

In this way, generative AI collapses the traditional gap between the discovery team and the trial team, creating a more seamless, strategy-driven approach to litigation.

Limitations and Cautions

Of course, no technology comes without caveats. Generative AI is only as good as the data it analyzes, and only as thoughtful as the prompts it receives. Its outputs require rigorous human oversight, particularly in high-stakes litigation.

There is also a risk that a generative AI-constructed narrative might be mistaken for the truth. These tools are adept at identifying patterns, such as a key employee sending emails shortly before a product defect was reported, but the generative AI is highlighting correlation, not necessarily causation. Just because two events appear related does not mean one caused the other. Without additional evidence, relying solely on generative AI's narrative may lead to faulty inferences.

The persuasive power of a machine-generated timeline can be powerful, but litigators must maintain a healthy skepticism. Just because the story is compelling does not mean it is complete.

Ethically, lawyers must take care not to present AI-generated outputs as fact without independent validation. Obligations under Rule 11 of the Federal Rules of Civil Procedure still apply, meaning that attorneys must certify that any factual contentions they present to the court have evidentiary support.

And while courts are beginning to assess how these tools fit into evidentiary frameworks, practitioners must proceed carefully to avoid overstating what generative AI can do.

Looking Ahead

The promise of generative AI in e-discovery is not in replacing lawyers, but in amplifying their judgment. By surfacing connections that might otherwise be missed, these tools give legal teams a narrative head start. They transform discovery from a reactive process into a proactive one, one that helps trial teams tell stories that are not only defensible, but persuasive.

As the evidentiary rules evolve to address these new realities, the bar will rise for how AI-generated content is created, vetted and deployed. But for litigators willing to engage with these tools critically and creatively, generative AI offers a rare opportunity. It offers the chance to shape not just what the court sees, but how it understands the case.

Ultimately, the best use of generative AI in discovery may be less about automation and more about insight. In a profession that values narratives, credibility and coherence, the ability to identify and articulate the story buried in terabytes of data is nothing short of revolutionary. The technology may be artificial, but the impact on advocacy is very real.

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New FCPA Guidance May Flip The Whistleblowing Script

By **Markus Funk** (July 14, 2025, 12:41 PM EDT)

Markus Funk

The U.S. Department of Justice's June 9 release of **updated guidelines** concerning investigations and enforcement under the Foreign Corrupt Practices Act spawned a sea of client updates and articles.[1]

These analyses, for the most part, accurately capture the guidelines' broad implications. What has been less discussed, however, is how the DOJ's new incentive structure is poised to significantly increase U.S. company whistleblowing on allegedly corrupt non-U.S. competitors.

As practitioners and in-house counsel know well, white collar work in the FCPA context has historically focused on internal investigations into allegations of wrongdoing by company employees and vendors. The new guidelines, at some level, flip that script.

More specifically, the natural reading of the guidelines' text, and their spirit, will likely motivate U.S. companies to conduct more external investigations into potentially corrupt conduct engaged in by their overseas competitors. The natural result will be ramped-up reporting when actionable evidence of foreign-competitor misconduct is found.

It is, therefore, reasonable to expect the frequency at which U.S. companies find themselves on the receiving end of whistleblower complaints to be measurably reduced, provided the more protectionist guidelines remain in place and are followed by the DOJ's front-line FCPA prosecutors.

Conversely, multinational companies headquartered in the U.S. may well find themselves in the unusual position of being tempted to blow the whistle on their bribe-paying non-U.S. competitors.

Guidelines' High-Level Prosecution Policy Highlights

The guidelines are written straightforwardly. The clear message is that the DOJ will place less emphasis on broad corporate liability and technical violations. Greater attention will be paid to those individuals directly involved in bribery schemes. As the guidelines put it, DOJ "prosecutors shall focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures."

The guidelines also seek to shield U.S. companies doing business abroad from undue burdens. In short, targeted and efficient enforcement, particularly when U.S. interests are at stake and overseas competitors are gaining an unfair business advantage, is the enforcement mantra from now on.

The guidelines also announce a focus on cartels, transnational criminal organizations, and situations threatening key U.S. infrastructure and assets. But in the real world, it is less likely that the DOJ — with its deep reservoir of criminal statutes — will have to hang its prosecutorial hat on the FCPA when it has evidence of such serious criminality.[2]

Enforcement Priority: Protecting U.S. Companies From Corrupt Overseas Competitors

The guidelines leave little doubt that DOJ enforcers will target bribery that hampers U.S. companies' ability to compete on a level playing field. Those under the most explicit guidelines' protection are companies headquartered in the U.S. that have reason to believe a corrupt competitor falls under the FCPA's jurisdiction — for example, those that have engaged in bribery with a U.S. nexus.

The enforcement intention is clear. Under the subhead "Safeguarding Fair Opportunities for U.S. Companies," the guidelines note that bribery negatively affecting U.S. companies undermines the rule of law, allows competitors "to obtain lucrative contracts and illicit profits[,] ... skew[s] markets and disadvantage[s] law-abiding U.S. companies and others for many years."

To underscore this point, the guidelines remind the reader in a footnote that the "most blatant bribery schemes have historically been committed by foreign companies."

This language requires no speculation. The DOJ is inviting U.S. companies to present the DOJ with persuasive evidence of corruption, so that the enforcers can determine whether to initiate an investigation.

Company Whistleblower Protections and Confidentiality

Moving from the general to the specific, in most circumstances, outside counsel should be prepared to blow the whistle on a corrupt foreign competitor.

Although counsel should always request confidentiality, lawyers must appreciate that long-term anonymity — particularly if a criminal case proceeds to discovery, when disclosures might be required — can never be guaranteed. Note, however, that agencies such as the U.S. Securities and Exchange Commission and Federal Trade Commission do allow for anonymous whistleblowing through counsel.

Additionally, False Claims Act suits — or qui tam suits, allowing a private individual, called a relator, to sue on behalf of the U.S. government when they have evidence that someone has submitted false or fraudulent claims for government funds — are only available to individuals, not companies.

That said, and depending on the circumstances, individuals affiliated with the company could file such a suit. Although the relator's identity is initially filed under seal, if the case proceeds, their name will likely be revealed.

So, although a company can take appropriate steps to maximize the chances of anonymity, clients must be reminded that there is no guarantee of confidentiality if the DOJ ends up bringing an enforcement action.

New Challenges for White Collar Counsel

As was true with FCPA investigations involving company employees and vendors, outside counsel will be tasked with locating evidence of potential wrongdoing through basic means such as document review, in-person interviews and forensic financial analysis. As in the past, moreover, outside counsel will be charged with providing PowerPoint presentations explaining in detail to the DOJ and SEC teams what corrupt conduct occurred.

One likely key difference, however, is that counsel will spend less time trying to persuade the DOJ that the company's involvement in the corruption was either nonexistent or explainable. Instead, under the new regime, white collar practitioners can be expected to more frequently focus on persuading prosecutors that the conduct uncovered by the outside counsel team at their client-company's request put the U.S.-based "law-abiding competitor[] [client] ... at a serious economic disadvantage."

This evidentiary hill can also be more challenging to climb. In contrast to internal investigations, outside lawyers for Company A will not have the benefit of access to corrupt Company B's electronic data and financial information. They can't just schedule interviews with the employees they believe are most likely to have relevant information.

Instead, they will have to piece together their case by speaking with willing employees from Company B and others with information, all the while remaining vigilant about confidentiality, privilege, ethics, and potential privacy and related legal issues that could come back to bite the lawyers and their client.

Practitioners will no doubt continue to stay busy investigating allegations of internal misconduct. But this new facet of the FCPA will particularly advantage those who are adaptable and familiar with using informants, persuading competitor-company witnesses to come forward, and otherwise turning over stones in search of evidence of corrupt conduct.

As those who have blown the whistle to the DOJ on corrupt competitors know — and as many more are likely to discover in the coming years — it can be far more challenging to build a case like this from the outside.

T. Markus Funk is a partner at Perkins Coie LLP. He previously served as an assistant U.S. attorney in the U.S. Attorney's Office for the Northern District of Illinois.

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[1] https://www.justice.gov/dag/media/1403031/dl.

[2] https://news.bloomberglaw.com/us-law-week/dojs-fcpa-guidance-protects-us-companies-fights-foreign-bribery.
