

Class Action

Stitch Fix Shareholder Sues Founder, Board Over 'Direct Buy' Hit

July 23, 2025, 9:23 AM PDT

Summary by Bloomberg AI

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- Stitch Fix Inc.'s current and former board members allegedly hid that the company's new purchasing option was undercutting its core curated box subscription while some insiders wrongly sold more than \$102 million in stock.
- Investor Melonie Schultz said those corporate caretakers knew Stitch Fix's new "direct buy" option was cannibalizing its core "fix" program, but sold on insider information before the company's financial forecast and stock price were affected.
- Schultz alleged violations of federal securities laws, breaches of fiduciary duties, and unjust enrichment, and wants any insider trading profits to be distributed among other shareholders, as well as damages, restitution, and corporate governance reform for Stitch Fix.

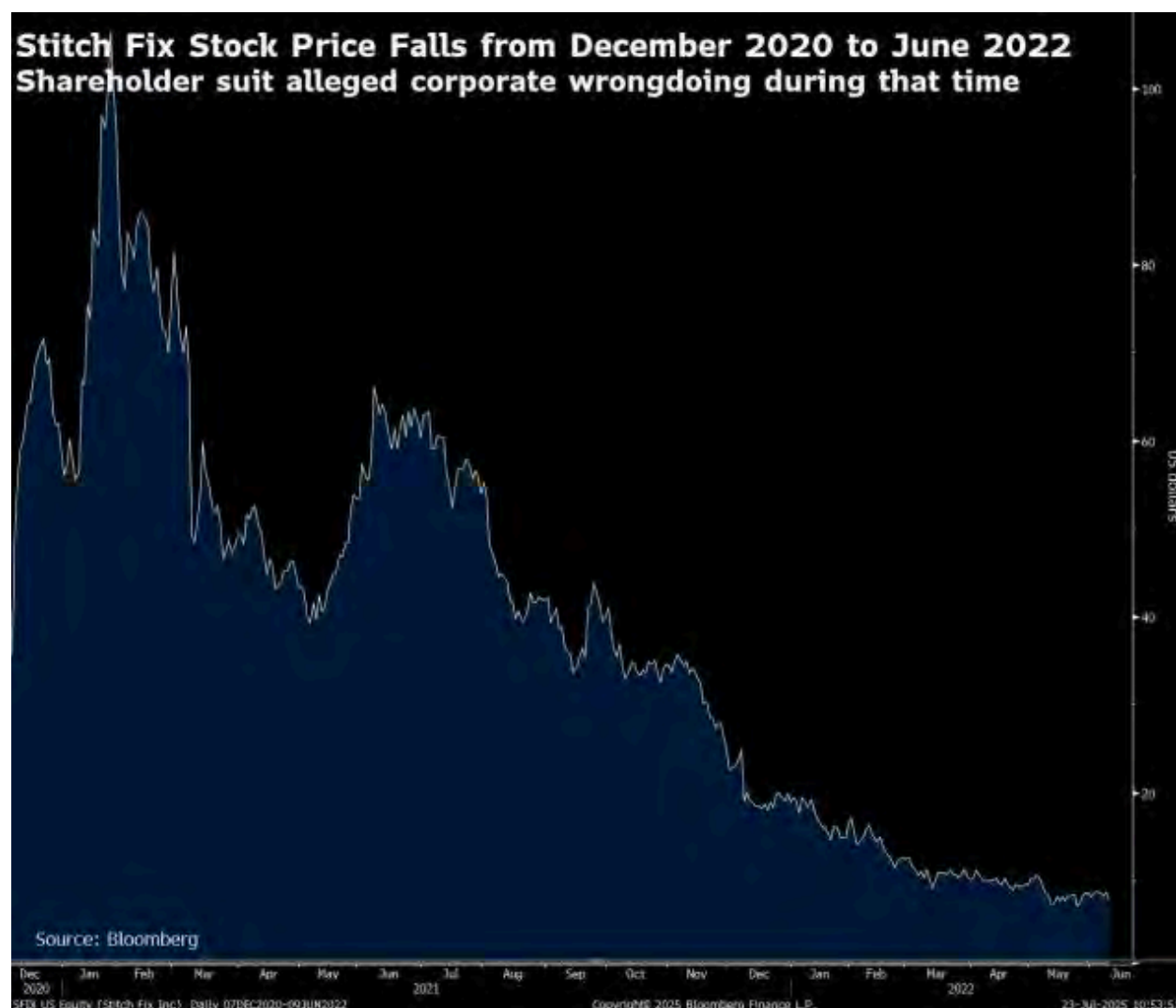
Stitch Fix Inc.'s current and former board members allegedly hid that the clothier's new purchasing option was undercutting its core curated box subscription while some insiders wrongly sold more than \$102 million in stock.

Founder Katrina Lake sold more than \$69.2 million's worth while former CEO Elizabeth Spaulding sold over \$1.47 million, said a shareholder's complaint filed in the US District Court for the Northern District of California on Tuesday. Ex-board members Marka Hansen sold more than \$3.07 million and Mike Smith, who was also once a Stitch Fix executive, sold almost \$18.1 million, according to the shareholder derivative action. And Mitch Lasky—a beneficial owner directly and indirectly through Silicon Valley venture capital firm Benchmark—allegedly sold about \$10 million.

Those corporate caretakers knew Stitch Fix's new "direct buy" option was cannibalizing its core "fix" program, but sold on insider information before headwinds publicly hindered the company's financial forecast and its stock price plummeted, said investor Melonie Schultz. Had they waited to trade until a month after the company shared a weak outlook for its third fiscal quarter of 2022 and cut its full-year revenue guidance, "their sales would have lost tens of millions of dollars."

Stitch Fix's share price dipped after that disclosure in March 2022 and continued to drop—from 2020 to June 9, 2022, "Stitch Fix stock fell from \$60.06 per share to \$6.34 per share, down almost 90%," the lawsuit said.

About a dozen current and former leaders hurt Stitch Fix's wallet and reputation by causing it to mislead shareholders about the impact of "direct buy," Schultz said. They issued misleading Securities and Exchange Commission filings, and the board authorized a stock repurchase program to have Stitch Fix buy up to \$150 million while it was allegedly overly expensive, she said.



Schultz leaned on allegations and confidential witness testimonies from former Stitch Fix employees mentioned in a proposed class action pending in the same court. She sued almost two weeks after Judge P. Casey Pitts allowed securities fraud allegations against Stitch Fix, Lake, and Spaulding over issues with "direct buy" to proceed in that lawsuit.

Schultz alleged violations of federal securities laws, breaches of fiduciary duties, and unjust enrichment. She wants any insider trading profits to be distributed among other shareholders. And she wants damages, restitution, and corporate governance reform for Stitch Fix as a result of purported wrongdoing between Dec. 7, 2020, and June 9, 2022.

Ford & Diulio PC, Squitieri & Fearon LLP, and Moore Law PLLC represent Schultz.

Neither Stitch Fix nor spokespeople for the law firm representing it in the related proposed class action, Cooley LLP, immediately responded to emails seeking comment.

The case is Schultz v. Lake , N.D. Cal., No. 3:25-cv-06152, complaint filed 7/22/25 .

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Securities Law News

Stockholder Sues IGM Biosciences for Alleged SEC Violations

July 22, 2025, 5:08 PM PDT

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [5:25-cv-06108](#) (Bloomberg Law subscription)

A French stockholder sued a California biotechnology company and its board over alleged violations of the Securities Exchange Act of 1934.

Canan Celebi sued IGM Biosciences, Inc. and its board of directors in relation to the proposed acquisition of IGM by Concentra Biosciences, LLC. The complaint alleges violations of Sections 14(e), 14(d), and 20(a) of the SEC related to materially misleading statements or omissions in the recommendation statement. It was filed in the United States District Court for the Northern District of California.

Plaintiff alleges the recommendation statement filed on July 16, 2025 omits material information regarding the sales process, IGM's financial projections, and the financial analyses supporting the fairness opinion. The deal was to be for \$1.247 per share in cash plus a contingent value right.

The plaintiff seeks to enjoin the proposed transaction. The plaintiff also seeks to require the defendants to disseminate a revised recommendation statement without misleading statements or omissions of material facts.

IGM did not immediately respond to a request for comment.

Brodsky Smith represents the plaintiff.

The case is: Celebi v. IGM Biosciences, Inc. et al, No. 5:25-cv-06108 (N.D. Cal. Jul. 21, 2025).

This story was produced by Bloomberg Law Automation.

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California US Judge Blocks Preliminary Injunction in Skechers Merger Dispute, Paving Way for Acquisition

July 21, 2025 | By  **Kat Black**

What You Need to Know

- A California federal judge denied a motion for preliminary injunction in a securities suit against the world's third-largest footwear company, Skechers USA.
- The motion sought to temporarily block the \$9.4 billion merger between Skechers and private equity firm 3G Capital.
- A hearing that was scheduled for Monday in the case has been vacated.



Skechers Shape-ups shoes. May 22, 2012. Photo by Diego M. Radzinski/THE NATIONAL LAW JOURNAL.

A California federal judge has denied a motion for preliminary injunction in a securities suit against footwear company Skechers USA, clearing the path for a \$9.4 billion buyout by private equity investment firm 3G Capital.

U.S. District Judge Percy Anderson issued the [order](#), which held that the plaintiff failed to demonstrate a likelihood of irreparable harm, in the U.S. District Court for the Central District of California on July 18.

A hearing in the case, which was scheduled for Monday, has been vacated after the judge rejected the motion without prejudice.

Skechers is represented by a Latham & Watkins team that includes partners Blair Connelly, Kristin Murphy and Christian Word, as well as associates Tina Jensen and James Clark.

O'Melveny & Myers partners Daniel Petrocelli and Abby Rudzin are defending father-son duo Robert Greenberg, who founded Delaware-based Skechers in 1992, and Michael Greenberg, who serves as Skechers' director and president.

Neither Latham nor O'Melveny could immediately be reached for comment on Monday.

Skechers, the third-largest footwear maker in the world, [entered into an acquisition agreement](#) with New York firm 3G Capital, which is anticipated to close in the third quarter of 2025, on May 4.

The merger offered shareholders two consideration options, which they are required to select five business days before the expected closing date: "a full cash consideration option of \$63 per share in cash" or "a mixed consideration option of \$57 per share in cash plus one unit of the new LLC ... that will own the privately-held Skechers," per court records. As a condition of the agreement, the Greenbergs will continue to lead the company after the transaction is complete.

On May 29, Skechers shareholder Key West Police Officers & Firefighters Retirement Plan, based in Key West, Florida, [sued](#) Skechers and the Greenbergs for allegedly breaching federal securities law by failing to provide shareholders with Schedule 13E-3 disclosures about transactions related to the acquisition as mandated by Section 13(e) of the Securities Exchange Act.

"As a result, immediate action must be taken to prevent Plaintiff from being forced to make the Consideration Election without full and accurate information concerning the Merger, the Company, and its financial condition and prospects," the complaint stated.

The suit sought to prevent the enforcement of consideration elections and block the merger with 3G Capital until the Greenbergs filed with the SEC and distributed Schedule 13E-3 disclosures to shareholders, as well as requesting "declaratory and injunctive relief declaring that the Merger is a 'Rule 13e-3 transaction.'" The plaintiff initially filed a motion for preliminary injunction, which was stricken due to a failure to comply with Local Rule 6-1, on June 3. The motion at issue in Judge Anderson's July 18 ruling was filed on June 23.

Judge Anderson found that the plaintiffs failed to allege "anything beyond a technical disclosure violation" and argued that they did not provide "concrete examples" of the information they demanded from the Schedule 13E-3 disclosures; nor did they articulate how the "unspecified additional information" would impact their consideration elections, he ruled.

"Importantly, moreover, there is no voting decision at issue in this case; the Merger was approved based on the Greenbergs' majority shareholder status, and now Plaintiff is merely deciding between a cash-out or rollover option as compensation for its shares," he wrote. "Thus, this is not a scenario where the Court would be left to 'unscramble the eggs' if preliminary injunctive relief were withheld and Plaintiff were to ultimately prevail on the merits of its claim."

The complaint against Skechers is backed by Eric Zagar of Kessler Topaz Meltzer & Check in King of Prussia, Pennsylvania and Robert D. Klausner of Klausner, Kaufman, Jenson & Levinson in Plantation, Florida. Neither firm responded to requests for comment.

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Foot Locker Investor Claims \$2.4B Sale to Dick's Sporting Goods Is Tainted

July 22, 2025 By Alyssa Aquino



Foot Locker in McLean, Virginia on December 27, 2024. Photo: MelissaMN/ Adobe Stock

A Foot Locker Inc. investor is suing to bust the sports retailer's \$2.4 billion sale to Dick's Sporting Goods, claiming that Foot Locker's chief executive accepted a deal that "substantially undervalues" the company to ensure a \$44.8 million payout.

Robert Garfield argued in [a lawsuit](#) filed in the Supreme Court for the State of New York that the proposed buyout shouldn't move forward until investors receive more information on Foot Locker CEO Mary Dillon's stake in the deal.

"Plaintiff requests an injunction preventing Defendants from closing the Foot Locker shareholder vote on the Sale until Defendants issue a supplemental proxy statement that fully discloses the



questionable economics of the transaction and the troubling motivations and conflicts of interest of Foot Locker's directors," according to the lawsuit, which was filed by The Brualdi Law Firm and the Law Offices of Dennis E. Glazer.

Foot Locker and Dick's Sporting Goods didn't respond to Tuesday's requests for comment.

The lawsuit was dated July 19, more than two months after Dick's Sporting Goods and Foot Locker announced a merger. Under the deal, Foot Locker investors may cash in their stock for \$24 a share, or exchange one Foot Locker share for 0.1168 shares of Dick's Sporting Goods stock.

But Garfield argued that the sale was "fundamentally flawed" and that the share price was artificially depressed by the ongoing global turmoil of tariffs. If Foot Locker had been valued properly, it should have been priced at \$40.85 a share, Garfield claimed.

He alleged that Foot Locker directors greenlit the sale out of self-interest. The transaction not only includes an \$8.8 million severance payment for Dillon, but allows her to collect \$29.5 million for her equity awards, which she otherwise would not be able to sell under company policy, Garfield said.

"The other Director Defendants were motivated to support Ms. Dillon because they, too, are bound by Foot Locker's stock ownership policy," he claimed.

He alleged that the directors collectively owned \$4 million worth of Foot Locker stock.

Garfield further claimed that the sale was tainted by Foot Locker's financial advisor, Evercore Group LLC, which allegedly stands to gain \$40 million if the sale goes through. If the deal fails, Evercore will only gain \$1 million, according to the complaint.

"As troubling, Evercore may stand on both sides of the Sale given Defendants' admission that Evercore and its employees 'may' have undisclosed financial interests in DICK'S Sporting Goods," Garfield claimed.

Evercore didn't respond to a Tuesday request for comment.

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3rd Circuit Upholds Conviction of Man Who Stole Millions of Dollars From Class Action Settlement Funds

July 22, 2025 | By  Aleeza Furman

What You Need to Know

- The Third Circuit upheld the criminal conviction of a New Jersey man who helped run a multimillion-dollar scheme to fraudulently collect money from securities class action settlement funds.
- Defendant Joseph Cammarata had been convicted of various counts of conspiracy, wire fraud and money laundering.
- The ruling delved into a novel issue of who qualifies as the victim of a defendant's efforts to defraud hundreds of certified classes.



The U.S. Court of Appeals for the Third Circuit on Tuesday upheld the criminal conviction of a New Jersey man who helped run a multimillion-dollar scheme to fraudulently collect money from securities class action settlement funds.

The three-judge panel rejected nearly all of the defendant's arguments, delving into a novel issue of who can receive restitution from a defendant that defrauded hundreds of certified classes. The panel wrote in its 64-page precedential [opinion](#) that the appeal involved a “unique intersection of federal sentencing principles and class action settlement practice.”

According to the opinion, defendant Joseph Cammarata and two business partners created what they purported to be a claims aggregator—a business that submits claims to class action settlement administrators on behalf of class-member clients—called Alpha Plus Recovery LLC. Between 2014 and 2021, Alpha Plus submitted fraudulent claims to the administrators of nearly 400 securities class action settlements.

Cammarata and his conspirators fabricated documentation of supposed trades made by fake Alpha Plus “clients” in order to collect money from securities class action settlement funds, ultimately netting more than \$40 million in fraudulently acquired settlement money.

Cammarata and his business partners were indicted in 2021 in the U.S. District Court for the Eastern District of Pennsylvania, and his business partners later pleaded guilty to counts of conspiracy to commit mail and wire fraud and conspiracy to commit money laundering.

Cammarata’s case went to trial, and a jury found him guilty of various conspiracy, wire fraud, and money laundering counts. In 2023, the district court sentenced Cammarata to 120 months’ imprisonment and ordered him to pay restitution and to forfeit certain property.

Among the Cammarata's arguments on appeal was the assertion that the district court’s restitution order did not comply with the Mandatory Victims Restitution Act of 1996.

The district court’s order directed Cammarata to pay restitution to the settlement funds he defrauded. But Cammarata argued that the settlement fund was not a victim and that the order should have identified each individual class member.

The defendant's assertion presented an unfamiliar legal question, according to the Tuesday opinion. The panel noted in its ruling that the Third Circuit had yet to address how the MVRA’s definition of “victim” applies in the context of class actions.

The court determined that the definition “easily” applies to defrauded classes.

“The losses that were suffered as a result of the defendants’ fraudulent scheme were experienced directly by the classes as they were defined in the nearly 400 class actions that were targets of illegitimate claims,” the court ruled. “Accordingly, under the unique facts of this case as the government developed them at trial, the victims of the defendants’ fraud were the classes entitled to settlement funds.”

While the Third Circuit agreed with the defendant that the district court improperly characterized the settlement fund as a victim, the panel nonetheless held that the district court made clear that the restitution was to ultimately be paid to the class members. As such, the Third Circuit declined to reverse the order.

Peter Goldberger of the Law Office of Peter Goldberger, who represented Cammarata, declined to comment. Assistant U.S. attorney Paul Shapiro, who represented the government, did not respond to a request for comment.

The Third Circuit's ruling affirmed Cammarata’s convictions and the restitution order. The court also threw out part of an order that directed Cammarata to forfeit his vacation home, but only so the order could be amended to reflect that the property is forfeitable under a different process than the one the government initially pursued.

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Securities Law News

Claims Fraudster Gets \$31.2 Million Restitution Order Reinstated

July 22, 2025, 9:29 AM PDT

- Restitution was abuse of discretion but must be affirmed
- Original decision vacated restitution because it was too low

Alpha Plus Portfolio Recovery co-founder Joseph Cammarata must pay \$31.2 million in restitution to the people he defrauded of securities class action settlement funds, the Third Circuit said Tuesday after reconsidering an earlier decision.

The court originally tossed the restitution order in February after finding it didn't fully compensate the victims of his scheme. But US Supreme Court precedent prohibited the appeals court from altering the judgment to Cammarata's disadvantage when the government hadn't cross-appealed.

Here, the US Court of Appeals for the Third Circuit again said the district court abused its discretion by awarding restitution in an amount that didn't fully compensate the victims. But it affirmed the order because the government didn't cross appeal and "in fact requested restitution in that underinclusive amount."

In its prior order, the appeals court had instructed the district court on remand to increase the restitution unless it found distributing restitution at all to be impracticable. The Supreme Court's 2008 decision in *Greenlaw v. United States* precluded such a remedy, it said.

The government accused Cammarata of using Alpha Plus, a claims aggregator that recovers funds from securities class action settlements on behalf of corporate clients, to submit phony claims on behalf of three shell companies.

The sentencing judge found a \$40 million actual loss to class members but awarded just \$31.2 million in restitution to be paid to claims administrators tasked with distributing class member funds.

The appeals court said that's problematic because the Mandatory Victims Restitution Act contemplates an "all-or-nothing approach" to restitution.

Judge D. Brooks Smith wrote the decision, joined by judges L. Felipe Restrepo and Theodore A. McKee.

Cammarata is represented by Peter Goldberger of Ardmore, Pa.

The case is United States v. Cammarata, 3d Cir., No. 23-2110, 7/22/25 .

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Securities Law News

Endeavor Buyout Judge Resolves Fiercely Fought Lawyer Battle (2)

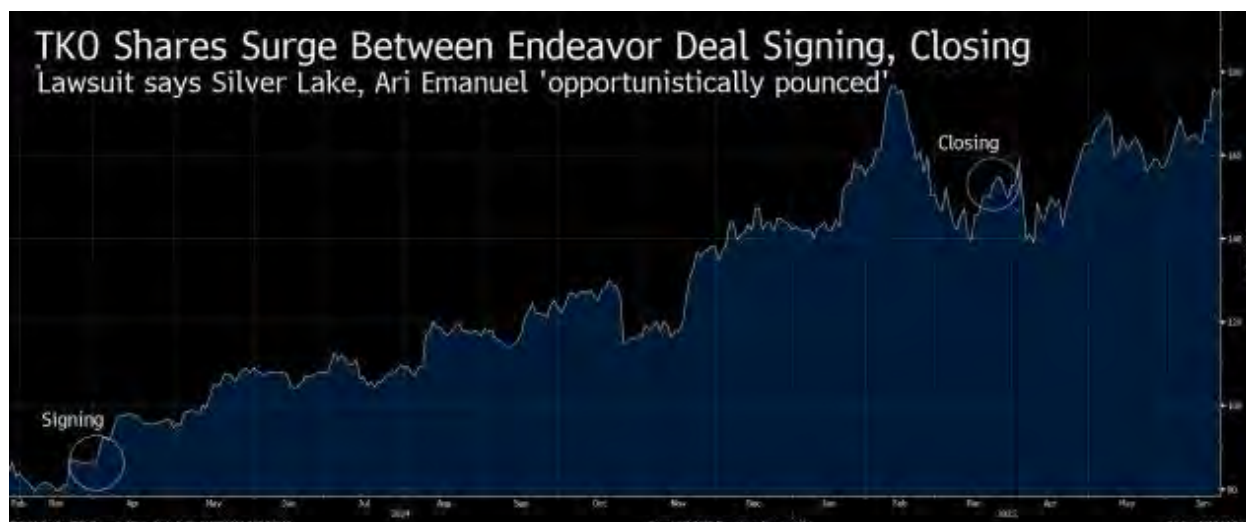
July 22, 2025, 11:06 AM PDT; Updated: July 22, 2025, 2:06 PM PDT

A heated battle among law firms looking to lead what's likely the largest ever buyout arbitrage case ended Tuesday with victory for a group of attorneys billing hourly, who prevailed over rivals looking to take a percentage.

A Delaware judge handed the litigation to Abrams & Bayliss LLP, rejecting a competing bid by Rolnick Kramer Sadighi LLP and Heyman Enerio Gattuso & Hirzel LLP. The consolidated lawsuit challenges Silver Lake's \$13 billion private equity buyout of Endeavor Group Holdings Inc., saying the deal was so underpriced that it undershot the value of just the conglomerate's flagship asset—its majority stake in TKO Group Holdings Inc., parent company of UFC and WWE.

The judge, Vice Chancellor Lori W. Will, said attorneys on both sides of the law firm dispute are "highly skilled and qualified." But "the overwhelming economic stake represented by the second set of lawyers and potential conflicts sparked by the first set's fee structure tip the scales," she said, ruling for the Abrams & Bayliss group.

The case in Delaware's Chancery Court will ultimately test Endeavor's argument that the sale only looks underpriced after a stampede of arbitrageurs turbocharged its stock—a defense also in play in a parallel class action pitting legendary activist investor Carl Icahn against billionaire Hollywood mogul Ari Emanuel.



But Will's first task was to choose who would get a shot at a potential eight- or nine-figure legal payday for taking charge of the statutory appraisal case brought by more than two dozen hedge funds holding shares worth billions at the \$27.50 deal price.

The litigation stems from a statute authorizing wide-ranging valuations by judges tasked with setting a deal price from scratch. With appraisal petitioners sitting out the transaction as the proceedings play out, interest tallied at a highly favorable rate—currently 10%—can start to add up immediately.

Arbitrating the interest is a major part of the draw for funds that couldn't do better in the open market, no matter how their actual price challenge fares.

'Misaligned Interests'

Each side of the law firm battle accused the other of taking a heads-I-win-tails-you-lose approach at the expense of clients. The RKS group contended that an hourly billing structure would drive inefficient litigation practices by Abrams & Bayliss. Tuesday's ruling gave more credence to the counterargument—that by including the potentially huge pool of accumulated interest within its percentage-based fee, the RKS group could have earned hundreds of millions even if it lost.

For instance, in the event of an appraisal decision for neither side—upholding the exact buyout price—interest on the dissenting shares could top \$800 million, yielding \$200 million in legal fees for the RKS group, Will said. That's orders of magnitude more than hourly fees would come to, according to the 17-page opinion.

Delaware corporate law "will not countenance windfalls to counsel from Pyrrhic victories," the judge wrote.

She threw some of the RKS group's words back at it, saying it had changed its tune after "the tides shifted" with a number of client defections. The group, which initially represented the biggest bloc of deal dissenters, reversed itself on both the importance of size and the prospect of sharing the lead role.

“The heated—even ad hominem—attacks between counsel” suggest “compelled cooperation risks dysfunction,” Will said.

The judge also cited other concerns about “bespoke features” of the RKS group’s arrangements with clients, particularly an “early mover” discount that could have set different funds against one another.

She designated Reid Collins & Tsai LLP as additional counsel.

Endeavor is represented by Richards, Layton & Finger PA and Latham & Watkins LLP. Silver Lake is represented in the parallel class action by Potter Anderson & Corroon LLP and Wachtell, Lipton, Rosen & Katz. Other Endeavor executives, including Emanuel, are represented in that case by Quinn Emanuel Urquhart & Sullivan LLP. Two former board members are represented by Morris, Nichols, Arsht & Tunnell LLP and Cravath, Swaine & Moore LLP.

The case is In re Appraisal of Endeavor Grp. Holdings Inc. , Del. Ch., No. 2025-0317, 7/22/25 .

(Updates with additional reporting throughout.)

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Securities Law News

Strategy, Billionaire Saylor Sued Over Preferred Stock Changes

July 22, 2025, 1:23 PM PDT

Cryptocurrency pioneer Strategy illegally raised the liquidation preference on its preferred stock without a vote by investors pushed further from a recovery if the company becomes insolvent, according to a lawsuit filed Tuesday.

A shareholder is suing billionaire co-founder Michael Saylor, other board members, and the business, which bills itself as the world's "first and largest Bitcoin treasury." Strategy failed to get stockholder approval before bumping up the payout preference of its "perpetual strike" shares, which have surged beyond their original liquidation value of \$100, the suit says.

The move—redefining \$100 as a price floor—means common investors won't see a dime if Strategy liquidates until owners of the preferred shares are paid roughly \$1.47 billion, "an increase of more than \$250 million," according to the proposed class action filed in Delaware's Chancery Court. "The holders of the company's common stock were entitled to vote."

Strategy and Saylor, who's personally worth \$9.1 billion, are known for coining the concept of a "Bitcoin treasury" that compiles large reserve funds of the original cryptocurrency—a strategy now followed by businesses in a range of sectors, including President Donald Trump's media company. The new court complaint comes a day after Strategy disclosed it had grown its overall holdings to more than 3% of the Bitcoin ever minted.

The company didn't immediately respond to a request for comment Tuesday.

Although the lawsuit asserts fairly technical statutory violations, Delaware's elite business tribunal is no stranger to similar claims, which have occasionally led to significant disruptions for America's corporate capital. For instance, scores of blank-check firms were forced to seek judicial intervention in 2023 after raising their authorized share limits without shareholder permission.

Later that same year, a dispute over an AMC Entertainment Holdings Inc. recapitalization plan that bypassed its retail investor base led to months of chaotic court proceedings. And lawmakers scrambled in 2024 to reverse two novel rulings that had jeopardized a \$69 billion Microsoft Corp. acquisition and struck down common features of agreements handing the corporate reins to insiders.

The suit against Strategy seeks money damages, along with an order invalidating the charter changes or directing the company to seek investor approval.

The shareholder leading the litigation, David Dodge, is represented by Smith, Katzenstein & Jenkins LLP and Purcell & Lefkowitz LLP. Strategy and its board haven't yet made court appearances.

The case is Dodge v. MicroStrategy Inc. , Del. Ch., No. 2025-0846, complaint filed 7/22/25 .

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Securities Law News

EQT Gets Initial Nod for \$168 Million Investor Settlement (1)

July 22, 2025, 1:47 PM PDT; Updated: July 22, 2025, 2:17 PM PDT

EQT Corp.'s \$168 million settlement of investor claims that the company misrepresented the benefits of its 2017 Rice Energy Inc. acquisition warrants preliminary approval, a federal court ruled Tuesday.

Judge Robert J. Colville said he'll likely be able to approve the deal in the six-year-old case as fair, reasonable, and adequate. The class action is pending in the US District Court for the Western District of Pennsylvania.

EQT allegedly overhyped benefits of acquiring competing oil and gas company Rice and later concealed post-merger difficulties in integrating the companies

- The investors say they suffered damages when information about costs and difficulties came to light
- The court will hold a settlement hearing Oct. 30, according to the preliminary approval order

Bernstein Litowitz Berger & Grossmann LLP and Cohen Milstein Sellers & Toll PLLC represent the investors as lead counsel. Kirkland & Ellis LLP and Reed Smith LLP represent EQT.

The case is In re EQT Corp. Sec. Litig. , W.D. Pa., No. 2:19-cv-00754, 7/22/25 .

(Updates story with additional context and reporting beginning in second paragraph.)

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Trial begins in data privacy case against menstrual tracking app Flo



[courthousenews.com/trial-begins-in-data-privacy-case-against-menstrual-tracking-app-flo](https://www.courthousenews.com/trial-begins-in-data-privacy-case-against-menstrual-tracking-app-flo)

The Phillip Burton Federal Building and U.S. Courthouse stands in San Francisco, California on Wednesday, July 16. (Matt Simons/Courthouse News)

SAN FRANCISCO (CN) — A period tracking app shared users' highly sensitive information to third parties, including Meta, without permission, an attorney for a class of user plaintiffs told a jury in federal court in San Francisco Monday.

Users of the app, operated by Flo Health Inc., [sued](#) the company in 2021, claiming it improperly shared personal identifying information and private health data with third parties, including fellow defendants Facebook — now known as Meta — Google, ad analytics company AppsFlyer and defunct analytics company Flurry.

Earlier this month, Google said it had reached a settlement in principle with the class. Flurry settled with the users in March, and the class voluntarily dismissed its claims against AppsFlyer in 2022.

Left to be decided in the jury trial that began Monday are the claims against Flo and Meta, which the class accuses of using their personal data for advertising and other purposes.

Carol C. Villegas of Labaton Keller Sucharow, an attorney for the plaintiffs, asked the jury in her opening statement to “decide how seriously big tech takes women’s privacy.”

“This wasn’t an accident, this wasn’t a mistake. This is how Meta makes money. This is their business,” she said.

Flo launched its app in 2016 to help users track their periods, ovulation, and pregnancy. Users interested in tracking their menstrual cycle or fertility can download the app and answer a series of questions about their cycle, including date and length of their last period.

The app also helps users document multiple factors that may influence their menstrual cycle or fertility, including their mood, symptoms and sexual activity.

Villegas laid out the plaintiffs' claims that Flo shared sensitive health data and misled users about sharing data with third parties, and that Meta violated the California Invasion of Privacy Act.

She said that the plaintiffs will argue that Flo should be considered as a health application, and should therefore be found to have violated the California Confidentiality of Medical Information Act.

Brenda R. Sharton of Dechert, the lead attorney representing Flo Health, said evidence will show that Flo never shared plaintiffs' health information, that plaintiffs agreed that Flo could share data to maintain and improve the app's performance, and that Flo never sold data or allowed anybody to use health information for ads.

Sharton refuted the plaintiffs' claim that Flo was a health care provider, saying that the app's terms of service include a disclaimer that Flo is "not a licensed medical care provider" and "is not intended to replace professional medical advice."

She also emphasized the statute of limitations in the case, claiming that the plaintiffs' claims are outside the one-year limitation period stipulated in the terms of service, which all the plaintiffs agreed to.

"Is Flo a provider of health care? No. Are Flo's users its patients? No. Did Plaintiffs file their claims on time? No. Did Plaintiffs agree to Flo's privacy policy? Yes," Sharton said in her opening statement.

The lead attorney for Meta, Michele D. Johnson, of Latham & Watkins, told the court that the case should focus on one question: Did Facebook intentionally eavesdrop upon or record plaintiffs' confidential communications without consent?

"Facebook never even received plaintiffs' confidential communications, let alone eavesdrop or record," she said.

She added that Facebook made Flo, like other parties using its business tools, agree to inform users about data sharing and not to send any sensitive health information.

Attorneys for the parties could not immediately be reached for comment.

U.S. District Judge James Donato is presiding over the trial at the Philip Burton Federal Courthouse. It will continue on Tuesday with witness testimony.

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Litigation

AT&T Data Breach Class Members Seek Arbitration Rights on Appeal

July 22, 2025, 11:29 AM PDT

- **Claimants argue deal would wipe out their arbitration rights**
- **Breaches exposed the personal info of 73 million people**

Thousands of AT&T Inc. customers are asking a federal appeals court to lift an injunction barring them from arbitrating their data-breach claims against the company rather than participating in a class action against the telecommunications giant.

Judge Ada Brown of the US District Court for the Northern District of Texas gave preliminary approval in June to a \$177 million settlement of a lawsuit arising from separate data breaches that hit AT&T in 2019 and 2024, enjoining members of the settlement classes from attempting to arbitrate their claims before final approval of the deal.

That injunction was improper in light of the arbitration claimants' contractual and statutory right to opt out of the accord and seek arbitration, claimants Audrey Jones, Osa Massen, and Susan Savala said in a June 13 motion to intervene and object to Brown's approval order.

Attorneys for the claimants, Gibbs Mura LLP, on Monday filed notice of intent to challenge that order at the US Court of Appeals for the Fifth Circuit. The firm is representing around 20,000 claimants.

Two other groups of claimants seeking to arbitrate their claims previously filed notices of their intent to object to the preliminary approval order. These include the "ABL claimants"—57,000 claimants referred to in the case by the first letters of each of the three firms representing them, Aylstock, Witkin, Kreis & Overholtz PLLC, Bradley Grombacher LLP, and Levin Law PA—and another group represented by Stueve Siegel Hanson LLP.

Brown denied the motion to intervene filed by Jones, Massen and Savala in her preliminary approval order, and separately denied a motion to intervene filed by on behalf of the ABL claimants, indicating to the parties that they were "welcome to re-urge the requested relief" at the final approval hearing scheduled for Dec. 3.

Attorneys for the arbitration claimants argue in their court filings that AT&T orchestrated a settlement that impermissibly would wipe out the arbitration claims of thousands of consumers in violation of the mandatory arbitration agreement that it required its customers to accept.

AT&T shouldn't be allowed to break its own agreement to pursue all claims in arbitration, and "drag parties to the arbitration agreement it insisted upon into court," according to a filing by the ABL claimants.

Baker Hostetler LLP, Gibson, Dunn & Crutcher LLP, and Skadden, Arps, Slate, Meagher & Flom LLP represent AT&T.

The case is In re AT&T Customer Data Sec. Breach Litig. , N.D. Tex., No. 3:24-cv-00757, notice filed 7/21/25 .

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DC Circuit tosses child slavery suit against chocolate giants for lack of standing



[courthousenews.com/dc-circuit-tosses-child-slavery-suit-against-chocolate-giants-for-lack-of-standing](https://www.courthousenews.com/dc-circuit-tosses-child-slavery-suit-against-chocolate-giants-for-lack-of-standing)

10-year-old D.P., a plaintiff in a class action against candy giants Mars, Mondelēz and Cargill, seen using a machete to open cocoa pods on a cocoa plantation in Ghana, where he began working when he was 4 years old. (D.C. Superior Court via Courthouse News)

WASHINGTON (CN) — A D.C. Circuit panel on Tuesday dismissed a class action against seven major chocolate companies, including Hershey, Nestlé and Mars, for sourcing cocoa in part from the Ivory Coast, where child labor and modern-day slavery run rampant.

The eight named plaintiffs, each a citizen of Mali, were forced to work as children on cocoa farms in the Ivory Coast after being promised well-paying jobs in remote areas of the West African country, before eventually finding their way back home after months or years.

The three-judge panel found the plaintiffs had failed to clearly demonstrate the causal connection between the chocolate importers' "supply chain venture" and the specific plantations.

"The plaintiffs in this case deserve the greatest sympathy, and the people who took away their childhoods deserve the greatest condemnation," U.S. Circuit Judge Justin Walker [wrote in the court's opinion](#). "But the plaintiffs did not plausibly allege a connection between those people and the importers. The plaintiffs, therefore, lack standing to sue the importers."

They filed their class action in the U.S. District Court for the District of Columbia against Nestlé, Cargill, Mondelēz, Hershey, Olam, Barry Callebaut and Mars, accusing them of violating the Trafficking Victims Protection Reauthorization Act.

Under the statute, victims can seek damages against any person who knowingly benefits from a venture that violates federal slavery and human trafficking laws.

Walker, a Donald Trump appointee, was joined on the three-judge panel by Chief U.S. Circuit Judge Sri Srinivasan and U.S. Circuit Judge Patricia Millett, two Barack Obama appointees.

"The plaintiffs' first mistake is their failure to clearly — or even coherently — define the 'venture' in which the importers allegedly participated," Walker wrote. "Is it the World Cocoa Foundation — an association of the importers themselves, without 'any individual or entity that injured' the plaintiffs? Or are the importers 'in a venture with each other and their cocoa supplies,' who 'were responsible for the forced labor and trafficking' of the plaintiffs? The complaint does not clarify."

Walker further explains that the lead plaintiff, Issouf Coubaly, did not plausibly allege that the small farm he was forced to work on at 15, Guezouba, supplied any of the importers named as defendants.

Nor did he allege that the farm supplied an intermediary company that then supplied any of the importers, instead stating that the farm was in an area of the Ivory Coast that “was primarily supplying cocoa to defendants Nestlé, Cargill and Olam.”

U.S. District Judge Dabney Friedrich, a Trump appointee, granted the companies’ motion to dismiss the suit in May 2021, finding that the plaintiffs’ general “industry-wide allegations” lacked the specificity necessary to link their injuries to any of the defendants. The plaintiffs then appealed to the D.C. Circuit.

Terry Collingsworth, of International Rights Advocates and lead counsel for the plaintiffs, called the panel’s decision disappointing in an emailed statement Tuesday.

“The court rewarded the chocolate multinational defendants, including Nestlé, Mars, Hershey, Mondelez and Cargill, for concealing their cocoa supply chains such that former child slaves are unable to link a specific company to the farms in [the Ivory Coast] where they were enslaved,” Collingsworth said. “The former child slaves never were able to obtain discovery to obtain the information they needed to meet the court’s standard.”

He added that the plaintiffs are currently considering potential next steps following Tuesday’s decision.

Walker wrote that the plaintiffs’ case [relied heavily on the fact](#) that the importing companies buy nearly 70% of all Ivorian cocoa and argues that it is “more likely than not” that the farms they were forced to work on were tied to one or more of the importers.

“To show standing at the motion-to-dismiss stage, the plaintiffs needed to plausibly allege specific facts showing that the importers source cocoa from the farms where they worked — either directly or through intermediaries,” Walker wrote. “It’s not enough to allege only that some importer might (or might not) have bought cocoa from a farm at a time that a plaintiff might (or might not) have been forced to work there.”

The chocolate companies did not respond to a request for comment.

The D.C. Circuit delayed its consideration of the appeal until it ruled in a similar case, [Doe 1 v. Apple Inc.](#), in which former child cobalt miners alleged that American tech companies had violated the same human trafficking statute by participating in a supply-chain venture that supplied them with cobalt from mines in the Democratic Republic of Congo.

There, the D.C. Circuit held that the plaintiffs had standing but failed to state claim under the trafficking statute.

Walker noted that, while both cases seem alike on the surface, the cobalt miners had plausibly alleged the tech companies had sourced cobalt from the suppliers that preyed on their forced labor.

The leading anonymous plaintiff, James Doe 1, had identified the mine where he worked, the company that owned and controlled the subsidiary that operated the mine and plausibly alleged that the company ultimately supplied cobalt to each defendant.

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Hershey, Nestle, other cocoa companies defeat appeal of child slavery lawsuit



reuters.com/sustainability/boards-policy-regulation/hershey-nestle-other-cocoa-companies-defeat-appeal-child-slavery-lawsuit-2025-07-22

Jonathan Stempel

July 22, 2025

An employee shows a Hershey's chocolate bar made in USA in the "American lifestyle" store in Berlin, Germany, August 13, 2018. REUTERS/Fabrizio Bensch/File Photo [Purchase Licensing Rights, opens new tab](#)

July 22 (Reuters) - A federal appeals court on Tuesday rejected a proposed class action by eight Malian citizens who sought to hold Hershey ([HSY.N](#)), [opens new tab](#), Nestle ([NESN.S](#)), [opens new tab](#) and five other companies liable for child labor on Ivory Coast cocoa farms. In a 3-0 decision, the U.S. Court of Appeals for the District of Columbia Circuit found no causal connection between the plaintiffs' forced labor and the defendants' alleged venture to obtain "cheap cocoa harvested by enslaved children."

The plaintiffs said they were required to live in squalor and threatened with starvation if they did not work, after being approached by unfamiliar men who falsely promised paying jobs.

They sued under a federal law protecting children and other victims of human trafficking and forced labor.

Circuit Judge Justin Walker, however, said the plaintiffs alleged at most they worked in areas that supplied cocoa to the defendants, which buy an estimated 70% of Ivorian cocoa, rather than specific farms that supplied the cocoa.

"Is there a 'possibility' that at least some of the importers sourced cocoa from those farms? Yes," Walker wrote. "But is it 'plausible'? Not on this complaint."

Other defendants included privately-held Cargill, privately-held Mars, Mondelez International ([MDLZ.O](#)), [opens new tab](#), Barry Callebaut ([BARN.S](#)), [opens new tab](#) and Olam International.

Mali and the Ivory Coast share a border in West Africa. A trial judge [ruled](#) for the defendants in June 2022.

Terry Collingsworth, a lawyer representing the plaintiffs, said his clients were "extremely disappointed" and considering their legal options.

"The court rewarded the chocolate multinational defendants ... for concealing their cocoa supply chains, such that former child slaves are unable to link a specific company to the Cote d'Ivoire (Ivory Coast) farms where they were enslaved," he said.

In March 2024, the same court dismissed a [similar lawsuit](#) seeking to hold five major technology companies including Apple ([AAPL.O](#)), [opens new tab](#) and Tesla ([TSLA.O](#)), [opens new tab](#) liable for child labor in cobalt mining in the Democratic Republic of the Congo. Collingsworth represented the plaintiffs in the cobalt case.

The case is Coubaly et al v Cargill Inc et al, D.C. Circuit Court of Appeals, No. 22-7104.

Reporting by Jonathan Stempel in New York Editing by Alexandra Hudson

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Exxon plastic waste suit faces first major hurdle



reuters.com/legal/litigation/exxon-plastic-waste-suit-faces-first-major-hurdle-2025-07-23

Jenna Greene

July 23, 2025

The Exxon Mobil gas station in Denver, Colorado United States July 28, 2017.

REUTERS/Rick Wilking/File photo [Purchase Licensing Rights, opens new tab](#)

July 23 (Reuters) - Plastic waste is ubiquitous – from empty water bottles to grocery bags, the detritus litters beaches, parks and roadways.

The question for a federal judge in San Francisco now is whether Exxon Mobil can be held liable for such pollution, or if a novel suit claiming the company has created a public and private nuisance should be dismissed.

A coalition of four environmental groups last year [sued Exxon, opens new tab](#), a leading producer of polymers used to make single-use plastics, alleging the company wrongly led consumers in California to believe that plastic was easily and safely disposed of, when in reality, less than 5% of it is recycled in the United States.

A spokesperson for Exxon, which has denied wrongdoing, did not respond to requests for comment, and the company's outside counsel from O'Melveny & Myers declined comment for this column. Exxon in [court papers, opens new tab](#) said the plaintiffs' theory that consumers purchased more plastic based on statements by Exxon was "to put it mildly, a real stretch."

During an hour-long oral argument last week over Exxon's motion to dismiss, Chief U.S. District Judge Richard Seeborg pushed lawyers on both sides to lay out the parameters of nuisance law, while also hinting he might allow the claim to move forward – but more on that later.

Nuisance, a centuries-old [legal doctrine](#) with its roots in English common law, applies when a defendant's conduct interferes with a public or private right to the enjoyment of life or property. Classic examples include blocking a public road or a factory that emits noxious odors.

In recent years, nuisance claims have also been successfully invoked by state and local governments in litigation against opioid makers for their role in the epidemic of addiction and overdose deaths, netting [close to \\$50 billion](#) in payouts. Lead paint manufacturers also [settled nuisance claims](#) in California in 2019, agreeing to pay \$305 million without admitting wrongdoing.

Unlike personal injury claims, nuisance cases do not seek damages to compensate plaintiffs for an injury. Instead, they seek to make the party responsible for the nuisance pay to abate, or fix, the condition.

The defense bar has called public nuisance a "[super tort, opens new tab](#)," complaining that such claims offer a way to sidestep the more rigorous requirements to prevail in a product liability lawsuit.

Here, the Sierra Club, Surfrider Foundation, Heal the Bay, and San Francisco Baykeeper, which also allege violations of California's unfair competition law, want abatement, injunctive relief, compensatory damages and attorneys' fees, noting in a [press release, opens new tab](#) that California taxpayers shell out an estimated \$420 million each year to clean up and prevent plastic pollution.

Their case was brought in tandem with a [similar action](#) by California Attorney General Rob Bonta. The AG's higher-profile [suit, opens new tab](#) remains bogged down in a fight over venue after Seeborg remanded it to San Francisco Superior Court. Exxon has appealed that decision to the 9th U.S. Circuit Court of Appeals, where the dispute remains pending. In the meantime, the suit by the environmental groups has proceeded in federal court, where Seeborg must now decide if it can survive the motion to dismiss.

"What is the nuisance?" he asked plaintiffs lawyer Tyson Redenbarger, a partner at Cotchett, Pitre & McCarthy. "Is it that these items are plastic (and) plastics cause pollution? Or is it that people acquire it thinking it's more recyclable than it is?"

"It's a very broad claim," Seeborg added. "My problem is, is it so broad that I can't really get my hands around?"

Redenbarger countered that the nuisance standard itself is "quite broad," arguing that Exxon's "years-long campaign to tell the public that plastic can be safely disposed of" led consumers to buy more of it, and that unrecycled plastic waste winds up in waterways or leaks chemicals into landfills.

Redenbarger and spokespeople for the environmental coalition did not respond to requests for comment.

Last year, New York Attorney General Letitia James came up short in a [similar suit](#) accusing PepsiCo of polluting the environment with single-use plastic packaging. In dismissing the case, a New York state court judge ruled it would run "contrary to every norm of established jurisprudence" to punish PepsiCo, because it was people, not the company, who ignored laws prohibiting littering.

But Seeborg, who was appointed to the bench in 2009 by President Barack Obama, offered some indication he might not be so quick to toss the environmental groups' case – at least not at this stage of the litigation.

When Exxon lawyer Dawn Sestito, a partner at O'Melveny, argued that unlike in the lead paint case — where companies allegedly touted the paint for interior use while knowing it was toxic — it's hard here "to imagine that talking about plastics as recyclable could be

considered a promotion for hazardous use,” she said. Moreover, government entities also convey the message that plastic is recyclable, she said.

Seeborg responded that the plaintiffs’ “accusation is that you knew it wasn’t, and you’re in the business of polymer production,” he said. “You may quite possibly prevail in terms of undermining the nuisance claim, but we’re at the posture right now of just whether or not it can even go forward.”

He added, “This case isn’t about whether going into the marketplace and saying ‘Let’s all recycle’ is actionable. They’re claiming something very different.”

A few minutes later, when Sestito took aim at what she flagged as a basic disconnect in the plaintiffs’ case – how is it, she said, that stating “a product or plastics could be recyclable results in more plastic ending up in oceans or beaches or becoming pollution?” – Seeborg again shut her down.

“I don’t want to beat the same drum over and over again, but is that something that would need to be explained at this stage of the litigation?” he said. “It ultimately may need to be explained, but the question really is, have they articulated a legal theory that can advance, if they proved everything.”

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Securities Law News

Insight

DOJ's Focus on FCPA Violations Is Good News for Whistleblowers

July 23, 2025, 1:30 AM PDT

Outten and Golden partner analyzes the Department of Justice's updated guidelines on FCPA enforcement and shares implications for SEC whistleblowers.

The Department of Justice recently released a highly anticipated memo outlining its priorities for Foreign Corrupt Practices Act enforcement. The updated guidelines make it clear that the DOJ won't abandon FCPA enforcement, which should come as a welcome sign to whistleblowers and allay reasonable concerns about foreign corruption and bribery cases.

The announcement follows Executive Order 14209, which directed the US attorney general to halt new FCPA enforcement investigations and actions, and review all existing ones, for 180 days.

The FCPA prohibits offering, promising, or paying anything of value to foreign officials to secure or retain business. The DOJ jointly enforces the FCPA alongside the Securities and Exchange Commission; the former generally handles criminal enforcement, while the latter generally focuses on civil violations by companies that sell securities in the US.

The SEC has historically been concerned with the FCPA's accounting provisions, which require that US issuers maintain accurate and transparent financial records and internal controls. Although paying bribes is illegal in and of itself, the SEC often goes after companies for failing to record the bribes on their books instead.

SEC enforcement of the FCPA relies heavily on information provided by whistleblowers, who may be eligible to receive an award of 10%-30% of total monetary sanctions in a successful enforcement action. In 2023, the agency issued a record \$279 million award to a single whistleblower whose information led to a \$1 billion bribery settlement with Ericsson, a Swedish telecommunications firm. As of fiscal year 2024, the SEC has awarded more than \$2.2 billion to whistleblowers.

Protections

SEC whistleblowers are shielded from retaliation via robust legal protections, including the ability to report corporate wrongdoing anonymously when working with an attorney. These protections ensure that whistleblowers have legal recourse if they're illegally retaliated against, such as through termination and blacklisting, by corporate malicious actors.

The SEC whistleblower reward program has been a success and recently became a model for the DOJ's pilot reward program. Launched in August 2024, this pilot program seeks to fill enforcement gaps by offering financial incentives to individuals who report certain categories of crime not covered by existing whistleblower programs, including FCPA violations. However, unlike the SEC program, the DOJ pilot program doesn't include statutory anti-retaliation protections for whistleblowers—a notable flaw that may ultimately hamper its effectiveness.

Enforcement

Notwithstanding the administration's recent decision to dismiss an FCPA case against two US executives, the DOJ's memo makes clear that enforcement of the FCPA will largely focus on individual criminal misconduct as opposed to "nonspecific malfeasance" by corporate entities. The DOJ also aims to handle investigations as quickly as possible and to consider "collateral consequences" of an investigation on lawful business activity.

The memo directs DOJ prosecutors to also consider the following non-exhausting factors when mulling FCPA investigations: whether they implicate cartels and transnational criminal organizations, whether the alleged bribes put other law-abiding US companies at a serious economic disadvantage, whether they impact national security concerns, and whether the conduct implicates serious corruption, rather than "low-dollar, generally accepted business courtesies."

These guidelines suggest that the DOJ plans to take a slightly more targeted approach to FCPA enforcement, including a shift toward prosecuting cartels. However, its stated priorities are consistent with those of prior administrations, including emphasis on individual accountability and making sure that US companies can compete on a level playing field with their foreign rivals. This is also consistent with the SEC's historical enforcement of the FCPA. The DOJ memo acknowledges that the largest FCPA cases "have been overwhelmingly brought against foreign companies."

Foreign companies that were hit with joint SEC and DOJ sanctions totaling more than \$500 million include:

- Germany-based Siemens agreed to pay \$800 million in 2008 to settle an investigation into bribery and corruption.
- Alstom, a French power and transportation company, agreed to pay \$772 million related to charges of a global bribery scheme in 2014.
- Russian telecommunications firm Mobile TeleSystems PJSC agreed to pay \$850 million in 2019 after being charged with a bribery and money laundering scheme.

- Swiss commodity trading and mining firm Glencore agreed to a \$700 million payment after pleading guilty to bribing foreign officials.
- Israel-based Teva Pharmaceutical settled FCPA charges for \$519 million in 2016.

This should send a clear message to prospective whistleblowers: If you have knowledge of serious foreign bribery activities or related accounting fraud—particularly at foreign companies with US operations—the federal government wants to hear from you.

Further, insofar as SEC whistleblowers can secure 10%-30% of total sanctions from the commission and related actions by other agencies, the incentives to speak up are significant.

Massive penalties are at stake, coupled with the strong employment protections and anonymity available to whistleblowers under the SEC reward program.

Individuals with firsthand knowledge of FCPA violations should consider bringing their information to an experienced whistleblower attorney who can help them weigh the risk of coming forward against the opportunity to protect investors and further US interests.

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

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Write for Us: Author Guidelines

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Securities Law News

Ernst & Young Retaliated Over Whistleblowing, Suit Claims (1)

July 22, 2025, 2:10 PM PDT; Updated: July 22, 2025, 3:38 PM PDT

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-05973](#) (Bloomberg Law subscription)

A former Ernst & Young partner says the accounting giant retaliated against him after he told company leaders about alleged securities law violations by clients, including some connected to organized crime.

Because he'd engaged in "protected whistleblower activities," EY's actions against Joe Howie—including firing him, stripping him of his job roles, and forcing him to take early retirement benefits—violated the Sarbanes-Oxley Act of 2002, his complaint filed in the US District Court for the Southern District of New York says.

Howie had informed EY management that the firm had abetted federal and international securities law violations by its clients, "who were fraudulently misleading investors," he alleges. These violations included actions by publicly traded EY clients "that involved, or appeared to involve, individuals connected to major transnational organized crime groups" that were engaged in operations worth billions of dollars, Howie says.

Contacted by Bloomberg Law, an EY spokesperson said "this claim is without merit, and we wholly disagree with Mr. Howie's characterization of events."

Howie says he communicated with EY managers about securities law violations—including those connected to Chinese organized criminals, also known as the "Triads."

"Howie observed that EY leadership across Global, Area, Regional, and member firms—including leaders within Professional Practice Groups—knowingly permitted the Firm to provide audit and other professional services to companies, particularly in the gaming, casino, and hospitality sectors, that were controlled by or closely connected to organized crime syndicates and other criminal groups and activity," the suit alleges.

EY audit teams failed to perform procedures required by the Public Company Accounting Oversight Board and international auditing standards, Howie alleges. "These failures included deficiencies in auditing 'noncompliance with laws and regulations,' management integrity and material disclosures, he says, which caused EY to fail to prevent fraudulent disclosures as early as 2017.

Before he was fired, Howie says he served as the global process for acceptance and continuance of engagements leader for EY's assurance practice.

EY leadership knowingly permitted the firm and its large roster of member firms to provide audit and other professional services to suspect companies from 2021 through 2024, he alleges.

EY leadership reacted to Howie "with hostility," rather than reevaluate these high-risk client relationships. "They were more upset with Howie for exposing these legal risks than with the teams and leaders responsible for engaging and serving high-risk clients," the complaint says.

Howie, who says he was retaliated against in violation of Sarbanes-Oxley, seeks economic damages, including, as applicable, back pay, front pay, raises, and bonuses; a court order relieving him from his obligations under partnership agreements while maintaining full rights to all retirement benefits and legal protections; as well as orders to prohibit EY "from continuing to engage in the unlawful activity and securities violations," and prohibiting the firm from disclosing any disparaging information about him to third parties, among other demands.

Wigdor LLP represents Howie.

The case is Howie v. Ernst & Young LLP , S.D.N.Y., No. 1:25-cv-05973, complaint filed 7/21/25 .

(Updates fourth paragraph to add statement from Ernst & Young)

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Securities Law News

Glencore Audits by Deloitte Probed by UK Watchdog

July 22, 2025, 11:40 PM PDT

The UK's accounting watchdog is investigating Deloitte LLP's work on Glencore Plc and a UK unit, amid corruption scandals involving the commodity giant.

Glencore and its Glencore Energy UK Ltd. unit "have been subject to investigations by government agencies into misconduct," the Financial Reporting Council said in a statement on Wednesday.

The investigation "will include whether Deloitte LLP gave sufficient consideration to the risk of non-compliance with laws and regulations," it said.

Glencore has paid a heavy price to resolve various investigations around the world. The company in 2022 pleaded guilty to corruption and market manipulation cases in the US and UK, admitting that it had paid bribes to win business in eight countries from Brazil to South Sudan.

Read More: [UK Court Fines Glencore for Bribing Its Way Across Africa \(1\)](#)

The UK probe targets statutory audits of the financial statements for the financial years ended Dec. 31, 2013 to 31 Dec., 2020, the FRC added.

The probe is the latest in a line of investigations focusing on Deloitte's audits — although the UK agency has frequently punished other members of the so-called Big Four accountancy firms.

Recently, it started an investigation into Deloitte's work on units of Stenn Technologies, the trade-finance firm backed by some of the world's biggest banks that unraveled last year amid allegations of fictitious transactions.

In 2022 Deloitte was fined £1.45 million (\$2 million) by the FRC over failings in its 2016 audit of Mitie Group Plc.

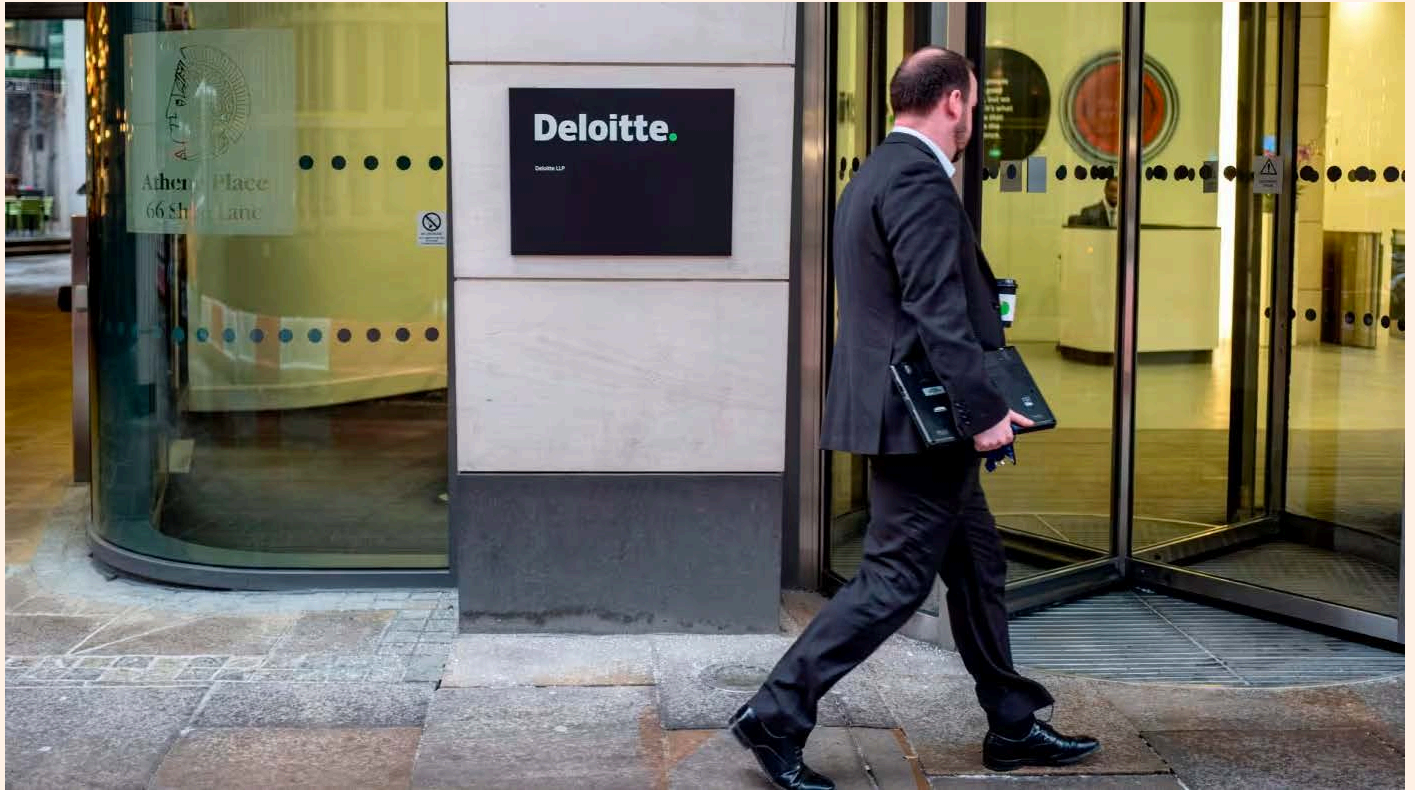
--With assistance from **Samuel Stolton**.

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Accounting & Consulting services**Deloitte probed by UK watchdog over Glencore audits**

Mining group previously paid \$1.5bn after investigations into bribery and market manipulation



Deloitte said it was 'committed to the highest standards of audit quality' and would 'fully co-operate' with the FRC investigation © Tolga Akmen/FT

Ellesheva Kissin and **Camilla Hodgson** in London

Published YESTERDAY | Updated 00:35



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The UK accounting regulator has launched an investigation into Deloitte over its auditing of Glencore, following a corruption scandal at the FTSE 100 mining and commodities trading group.

The Financial Reporting Council said on Wednesday it was probing whether [Deloitte](#) “gave sufficient consideration to the risk of non-compliance with laws and regulations” when it signed off Glencore’s accounts between 2013 and 2020.

Glencore pleaded guilty to criminal charges in 2022 following sprawling investigations by authorities in the US, UK and Brazil, agreeing to [pay about \\$1.5bn](#) of penalties following allegations of bribery and market manipulation.

The US Department of Justice said at the time that Glencore and its subsidiaries had made and hidden “corrupt payments and bribes” in multiple countries over the course of a decade, including to “avoid government audits” and to “make lawsuits disappear”.

In the UK, Glencore pleaded guilty to seven counts of bribery in 2022 and was ordered to [pay almost £300mn](#). Prosecutors told a London court during the trial that a middleman paid by the company had flown cash in private jets across Africa in order to bribe officials.

The UK’s Serious Fraud Office has also charged six former Glencore executives, including its ex-head of oil, in relation to allegations of bribery by the group’s oil trading division in Africa, in a trial that is yet to begin.

Swiss authorities last year also ordered Glencore to [pay \\$152mn](#) after a four-year investigation into alleged bribery of a Congolese public official by one of Glencore’s business partners. Swiss authorities did not find that Glencore staff knew of the bribery, nor that the company benefited financially.

Glencore paid Deloitte \$182mn for its audits between 2013 and 2020, including for audits of its subsidiaries.

The [FRC](#) has the power to impose penalties on auditors, including fines. The watchdog said its probe related to audits of Glencore plc and its subsidiary Glencore Energy UK Limited.

Deloitte’s work on four separate audits is already being examined by UK regulators, including its [audit of Stenn](#), a fintech that collapsed into administration in December after its lenders began probing potentially suspicious transactions.

The other investigations relate to the Big Four firm's work on transport group Go-Ahead, upmarket clothing retailer Joules and car dealership Lookers.

Deloitte said it was "committed to the highest standards of audit quality" and would "fully co-operate" with the investigation.

Glencore declined to comment.

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UK court says HPE owed more than \$940 million in fraud case against late tech tycoon Mike Lynch



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Former British tech star Mike Lynch walks into federal court in San Francisco for another day of a criminal trial accusing him of ripping off Hewlett Packard in an \$11 billion acquisition of software maker Autonomy, March 26, 2024. (AP Photo/Michael Liedtke, File)

LONDON (AP) — Hewlett-Packard is owed more than 700 million pounds (\$943 million) from British tech tycoon Mike Lynch's estate and his former finance director after they lost a fraud case involving Lynch's software company, a U.K. High Court judge ruled on Tuesday.

The court's decision comes nearly a year after [Lynch](#) was killed when his [superyacht](#) sank off Sicily, where he had gathered with friends and family to celebrate his acquittal months earlier in a separate U.S. criminal trial.

The U.S. tech company, now known as [Hewlett-Packard Enterprise](#), had accused Lynch of fraud and conspiracy after it bought Lynch's company, Autonomy Corp., for \$11 billion.

HPE also took Lynch to court in the U.K., seeking up to \$4 billion in damages in a civil case. The High Court had ruled mostly in HPE's favor in 2022, but the judge had said that the amount awarded would be "substantially less" than the company was seeking.

Judge Robert Hildyard was originally due to issue a draft ruling in September but delayed it after Lynch's yacht, the *Bayesian*, sank in the storm off Sicily on Aug. 19. Lynch and his daughter were among seven people who died while 15 others survived, including the captain and most of the crew.

In a written judgment, Hildyard expressed his "sympathy and deepest condolences" to Lynch's wife and family.

Hildyard said HPE suffered a loss of 646 million pounds based on the difference between Autonomy's purchase price and what it would have paid had Autonomy's "true financial position been correctly presented."

HPE is also owed 51.7 million pounds for "personal claims related to deceit and/or misrepresentation" against Lynch and Sushovan Hussain, the finance director, and \$47.5 million for other losses.

Hussain was convicted in a 2018 U.S. trial of wire fraud and other crimes related to Autonomy's sale, and sentenced to five years in prison.

"We are pleased that this decision brings us a step closer to the resolution of this dispute," HPE said in a statement. "We look forward to the further hearing at which the final amount of HPE's damages will be determined."

A hearing to deal with interest, currency conversion and whether Lynch's estate can appeal is set for November.

In a statement written before his death and issued posthumously, Lynch said the ruling shows that HP's original claim "was not just a wild overstatement - misleading shareholders - but it was off the mark by 80%."

"This result exposes HP's failure and makes clear that the immense damage to Autonomy was down to HP's own errors and actions," he said.

—

By KELVIN CHAN AP Business Writer

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Securities Law News

Opinion

Matt Levine's Money Stuff: There's a GameStop Treasury Company

July 22, 2025, 10:47 AM PDT

Quantum BioPharma

Well. The other day, I wrote that the “crypto treasury strategy” trade is very good, but saturated. The US stock market will pay \$2 for \$1 worth of Bitcoin, so lots of companies have acquired Bitcoin to make their stock go up, but the returns are diminishing. Companies have moved into other cryptocurrencies, Ethereum and Tron and Solana and BNB and Trumpcoin, but they are running out of open space. I wrote:

If you want to do this trade now, you might try something else. “Maybe the US stock market will pay \$2 for \$1 worth of _____,” you think, where what goes in the blank is (1) big and attention-getting, (2) relatively liquid (so you can buy it incrementally as money comes in and mark it to market as the price goes up), (3) somewhat crypto-adjacent in spirit but (4) not a big obvious crypto token.

So we talked about a company that pivoted to holding gold: not crypto, but vaguely spiritually aligned. I speculated about other possibilities:

I feel like someone should try a “MicroStrategy treasury strategy.” Like, you take over a small public company and you announce that you are raising \$200 million to buy MicroStrategy Inc. stock. Maybe that would be worth \$400 million?

I’m an idiot. There is one obvious answer, and I am ashamed that I missed it. Quantum BioPharma found it:

Quantum BioPharma Ltd. (NASDAQ: QNTM) (CSE: QNTM) (FRA: 0K91) (Upstream: QNTM) (“Quantum BioPharma” or the “Company”), a biopharmaceutical company dedicated to innovative therapies for neurodegenerative disorders, today announced the purchase of 2,000 shares of GameStop Corp. (NYSE: GME) to hold on the Company’s balance sheet as a strategic investment. This move aligns with Quantum BioPharma’s ongoing commitment to combating market corruption and enhancing shareholder value through prudent financial strategies and advocacy against manipulative trading practices.

Oh sure, sure, sure sure sure. Two thousand shares of GameStop is like \$50,000, which is not going to move the needle even on a \$72 million public company. The stock was down this morning, but good effort!

Heartbeat

The simple way to think about exchange-traded funds is that “an ETF is a mutual fund that doesn’t pay taxes.” If you own shares of a stock mutual fund, that fund will sell stock from time to time (to meet redemptions or change its holdings), and if it sells appreciated stock it will incur capital gains taxes. As a shareholder of the fund, you will have to pay your portion of those taxes: Even if you don’t sell your shares, the fund’s trading creates tax liability for you.

ETFs are, for the most part, not like that. ETFs have found ways to *never sell stock*: If an ETF needs to get rid of stock, it will not sell that stock for cash. It will do an “in-kind redemption”: An “authorized participant” (a trading firm, like a bank or Jane Street) will give the ETF issuers shares of the ETF, and will get back some basket of the underlying stock; the AP will then sell that stock. Under US tax law, this transaction — the ETF’s in-kind exchange of its own shares for its underlying holdings — is not a tax realization event, so the ETF’s holders don’t have to pay taxes. (Technically the taxes are deferred, and the holders eventually pay them when they sell their shares.) There is nothing obvious or inevitable about this — you could imagine taxing these in-kind trades — but that happens to be the rule, and the US ETF industry has been built up around it.

The simple case here is when an S&P 500 index ETF needs to meet redemptions. Investors want to redeem, so they sell their shares of the ETF to an authorized participant. The AP then hands the shares to the ETF issuer, which cancels them and hands back a similar-sized basket of the 500 underlying stocks to the AP, which sells them. The AP makes a tiny bit of money on the trade (it sells the basket of 500 stocks for slightly more than it paid the investors for their ETF shares), the ETF shrinks its portfolio to match its shrinking investor base, and the investors get cashed out for their shares. Everything works as you’d expect.

The more complicated case is when an ETF wants to do a *trade*: It’s not getting rid of stock to meet redemptions, but it wants to sell its holdings of Stock X and buy Stock Y. ETF issuers realized that they can do *that* via in-kind creations and redemptions; the trade is:

1. The ETF provider tells an authorized participant what it wants.
 - 2. The AP buys some Stock Y and delivers it to the ETF as a “special creation basket,” getting back a similar amount of ETF shares.
 - 3. They wait a bit.
 - 4. Then the AP delivers the ETF shares *back* to the ETF and gets in exchange a “special redemption basket” consisting of Stock X.
 - 5. The AP sells the Stock X.

The ETF has traded its Stock X for Stock Y, but without ever handling cash. Only in-kind redemptions, no tax realization event, no taxes for its investors. This trade is called a “heartbeat,” and we discussed it in more detail back in 2019.

Back then, though, the technology was really in its infancy. An ETF was a mutual fund that doesn't pay taxes, but with an emphasis on the mutual fund part: The point of most ETFs was (1) to do normal mutual-fund stuff and (2) not incur taxes on trades or redemptions.

But once you realize “we have a technology to not pay taxes,” all sorts of other possibilities open up to you. If you have any sort of tax problem, you might think “can an ETF fix this?” So we talked a couple of weeks ago about an ETF that avoids taxes on dividends. Ordinarily, if you own a mutual fund or even an ETF, and the underlying stocks pay dividends, you get your share of the dividends and you owe taxes. But an ETF issuer realized that it could heartbeat that problem away: “Sell” stocks right before their ex-dividend date (via in-kind redemptions), “buy” them back right after (via in-kind creations), and avoid the taxable dividend.

What I said about this ETF was: *You* can't do this. If *you* sold stock before the ex date, you'd incur taxes. This is a trade that is not available to normal humans, but that is available to ETFs because of their heartbeat technology.

The most general-purpose use of the technology might be:

You are a person.

- You own a ton of one particular appreciated stock: Perhaps you were an early employee at a tech company, and now it has gone public and you have millions of dollars of your employer's stock with a very low tax basis.
- As part of your retirement planning and risk management, you would like to sell that stock and buy a diversified portfolio (the S&P 500, Treasury bills, whatever).
- If you sell the appreciated stock *yourself*, you will have a big tax bill.
- Can you contribute the stock to an ETF, and then have the ETF heartbeat it away and leave you with a diversified portfolio?

Like the ideal use here would be for issuers to create *custom* ETFs for each person's stock, and then heartbeat the stock away. Bloomberg's Justina Lee reports:

The Twin Oak Active Opportunities ETF ... debuted in February without much marketing. Yet it launched with nearly \$450 million in assets and almost immediately received a \$99 million inflow — amazing numbers for a virtually unknown ETF.

The day after that big inflow, there was an almost identical outflow. A similar pattern repeated in the next two trading days, and then again in the two days after that. And as all that capital rushed in and out, a change took place within TSPX that offers a vital clue as to its true nature.

Having launched with just five positions — around \$245 million across three fixed-income ETFs, a \$99 million stake in Snowflake Inc. and \$92 million in Datadog Inc. — TSPX swiftly replaced its two equity holdings with a roughly equivalent slice of a simple S&P 500-tracking fund. ...

TSPX is one of a breed of exchange-traded funds created via what's known as a 351 conversion. It's a tactic to help rich investors minimize capital gains tax liabilities — one of a plethora of strategies that form Wall Street's flourishing tax-optimization complex.

In a 351, a fund is seeded with appreciated assets before launch so that after listing it can use an infamous ETF industry loophole to rebalance without realizing a taxable gain, usually harnessing artificial flows to do so. While they'll often retain their original strategy afterwards, some — like TSPX — use the process to significantly alter the portfolio without incurring taxes.

Yeah I mean it's a good service! If you own \$100 million of zero-basis stock and sell it, you will pay \$20 million of capital gains taxes. Some wealth manager and ETF issuer will happily go through the work and complexity of setting up an ETF for you, taking your stock and heartbeating it into an S&P 500 fund; that all costs money, but not \$20 million, so it's a good trade for them and you. (Less so for the Internal Revenue Service.) If you own, like, \$500,000 of low-basis stock, probably nobody is going to offer you this trade yet — the tax savings aren't worth enough to pay for the complexity — but one day we'll get there.

Crypto financing

An important business for a bank is making collateralized loans to institutions and wealthy individuals. There is a range of collateral the banks will accept, and different sorts of collateral will have different processes. If you come to a bank and say "I have \$100 million of Treasury bonds and I want to borrow some money against them," you will probably be sent to the repo desk, which will quickly do a very standardized transaction, with a low interest rate and a high loan-to-value ratio. If you say "I have a \$100 million portfolio of stocks and derivatives," you will be sent to the prime brokerage division, which will be slightly slower, more bespoke and more expensive. If you say "I have a \$100 million collection of blue-chip modern art," they'll find you some art lender in the private wealth management division, who will spend more time evaluating the portfolio, and who will probably give you less money and a higher interest rate. If you say "I own a private business that I think is worth \$100 million," you'll be sent to a commercial loan officer who will do a lot of due diligence and lend you less than \$50 million at a pretty high rate.

If you say "I have a collection of sneakers," or data centers or Beanie Babies or port facilities or yachts or speculative lawsuits or rare wine or music royalties or cool rocks or really any other thing that people value and trade, and the collection is valuable enough, *some* banker will sit down with you and come to a valuation and lend you some money against it. That's just what banks do. The interest rate and the loan-to-value ratio will depend on the bank's level of comfort with the category, but for most things there is a price. Not everything. If you come to a bank and say "I have a collection of cocaine with a street value of \$100 million," the bank will absolutely not lend you money against that collateral. But most things.

And then if your stuff loses value, (1) you might not pay back the loan, (2) the bank will have to sell your collateral, (3) it might not get back the full amount of the loan and so (4) it might lose money on the trade. It happens! At some theoretical level, this means that the risk of the banking system is tied to the market price of whatever banks are lending against. But it's a matter of degree, of concentration and correlation. Banks lend a lot of money against Treasuries and stocks, so if the prices of Treasury bonds or stocks move dramatically, that can cause problems for the banking system. If the bottom fell out of the yacht market, a few banks might have embarrassing losses, and a few yacht bankers would lose their jobs, but for the most part everything would be fine. It's not like yacht loans make up a big percentage of the aggregate balance sheet of the banking system. You might convince a bank to lend you some money against your collection of medieval armor, but nobody is going to go around worrying about the systemic risk to the banking system if the medieval armor market collapses, because there are just not very many of those loans.

Anyway:

JPMorgan Chase is exploring lending against clients' cryptocurrency holdings, in the latest sign that the biggest US banks are endorsing the move of digital assets into the mainstream.

The policy would mark a big shift for JPMorgan's chief executive Jamie Dimon, who eight years ago branded bitcoin a "fraud" that would "eventually blow up" and was only useful for drug dealers and murderers.

JPMorgan could start lending directly against crypto assets such as bitcoin and ethereum next year, according to people familiar with the matter, who cautioned that the plans were subject to change. JPMorgan declined to comment.

The move would underscore the extent to which big banks, and the regulated financial industry more broadly, are opening up to closer interaction with cryptocurrencies.

At some level, meh, yes, if you have a \$100 million collection of anything, some JPMorgan banker will want to give you a loan against it, even if Jamie Dimon is not particularly enamored of your particular thing. (He's not *buying* it; he's making a loan.) At another level, in five years, will *some* biggish bank (not JPMorgan!) have a highly concentrated book of loans against crypto? Maybe? Is that a potentially worrying systemic linkage between crypto markets and the banking system? Kind of?

Elsewhere, Coinbase Global Inc. announced yesterday that it's doing perpetual futures in the US:

For years, U.S. crypto traders have looked on as their international counterparts utilized one of the most popular tools in the digital asset marketplace: perpetual futures. These innovative derivatives, offering higher leverage while eliminating the need to navigate monthly expiration dates, dominate 90% of global crypto trading volumes. Due to a complex regulatory landscape, they remained just out of reach for traders in the United States. Until now.

We are thrilled to announce that U.S. customers, starting July 21, 2025, can trade CFTC-regulated perpetual futures via Coinbase Financial Markets (CFM), bringing one of the world's most traded derivatives to a secure and trusted crypto platform. ...

U.S. traders can now access enhanced capital efficiency and amplify their market positions within a secure, regulated framework. For our newly launched crypto perpetual futures, you can trade with up to 10x intraday leverage.

That doesn't exactly say "now Coinbase will make 90% LTV loans against Bitcoin," but it doesn't exactly not say that either.

Libor transition

Floating-rate loans in the US used to be based on Libor, the London Interbank Offered Rate; now they are based on SOFR, the Secured Overnight Financing Rate. Libor was, roughly, the interest rate that big banks paid on unsecured short-term loans; SOFR is, roughly, the interest rate that big banks pay on short-term secured loans collateralized by Treasury bonds. From first principles, SOFR should be lower than Libor: Lending money with no collateral is riskier than lending money secured by Treasuries, so you should charge more. And in fact, when they coexisted (SOFR started in 2018; Libor ended last September), SOFR was normally lower than Libor. Canonically the typical spread between 3-month Libor and 3-month SOFR was 0.26161%.

Floating-rate loans are normally priced at some fixed spread to the floating reference rate: In 2015, a company might have had a loan with an interest rate of "L+300," meaning that each quarter it would pay interest of that quarter's Libor plus 3.00%; in 2025, a company might have a loan with an interest rate of "S+325," meaning that it pays SOFR plus 3.25%. The spread for any particular loan will depend on the company's creditworthiness, the state of the market, the structure of the loan, the negotiating dynamics, etc. But as a very general matter, you would expect spreads over SOFR be *higher*, ceteris paribus, than spreads over Libor. The transition from Libor to SOFR didn't change anything structural about the costs of loans: If the right cost for a company's loan this month is 7%, then the right cost is 7%, which you can express as "SOFR plus 272" (SOFR is 4.28% today) or "Libor plus 246" (if, counterfactually, Libor existed and was 4.54%). You need to add a higher spread to a lower number to get the same answer.

The transition from Libor to SOFR was long and drawn-out, and one aspect of it was that a lot of floating-rate loans with interest rates like "Libor plus 300" had to be renegotiated to say "SOFR plus ____." Plus what? Well, it's a matter of negotiation. The lenders say "it should be SOFR plus 350, because SOFR is lower than Libor and we want more money"; the borrowers say "it should be SOFR plus 300, because it's just a change of risk-free rate and we want to pay less." And then you negotiate. There was not exactly a *correct* answer, though there kind of was: The 0.26161% number that I cited above was based on average actual trading spreads, published by Bloomberg and endorsed by the International Swaps and Derivatives Association and the administrator of Libor. You could do worse than saying "SOFR plus 326," but if a lender said "SOFR plus 326," a borrower could quite rationally have replied "what about 305?"

It is quite a mess to do all of these negotiations one by one, with each borrower negotiating with each lender for each loan. And many loans are syndicated, meaning that each borrower had to negotiate with many lender, some of whom were collateralized loan obligation managers with their own investors. You could imagine some more organized and coordinated process, where some central administrator announced "Libor now means SOFR plus 26 basis points in every contract," and then that automatically happened. Government agencies and benchmark administrators did have some power to do that, and there were various partial efforts in that direction.

On the other hand, if like a dozen CLO managers got together and said "we are all going to agree that Libor now means SOFR plus 26 basis points, and negotiate that into all of our loan agreements," that would be (1) efficient but also (2) an antitrust violation, oops:

The US Justice Department is conducting a criminal antitrust investigation into whether some investors in collateralized loan obligations colluded to bolster their positions as markets transitioned away from the scandal-plagued London interbank offer rate in early 2023, according to people familiar with the matter.

...

In the last few months of 2022 and early 2023 — shortly before the final phaseout of Libor — a flurry of companies in the leveraged loan market rushed to switch the benchmarks on their debt. Often, they tried to exclude an adjustment that was meant to compensate investors for the fact that the Secured Overnight Financing Rate — the debt's new benchmark — consistently printed below Libor.

CLO managers, who repackage leveraged loans into bonds of varying risk and size, saw how some companies were about to reap benefits during that transition if that additional spread wasn't added, as it lowered the interest the companies paid. The most junior holders of the bonds they issued, also known as equity, stood to lose millions as they get paid last after every other investor in the bond has received their payments. ...

Antitrust law bars competitors from colluding for economic gain. Because each CLO investor is a separate entity, it could potentially be illegal for them to agree with each other on the financial terms for an investment.

I often find myself reading about alleged antitrust violations and thinking "no, of course they should have colluded, that was just more efficient for everyone." If everyone agreed on how to replace Libor, that really would be more efficient than renegotiating each loan individually! But not allowed.

Meme-stock capex

I wrote yesterday about what a meme-stock company should do with its meme status. If your stock is temporarily trading at a high price for no good reason, I wrote, you should (1) sell stock into that demand and (2) use the money you raise to make your company permanently valuable. I suggested that the best way to do this, in 2025, is to sell stock to *buy Bitcoin*, because (1) that's very easy and (2) investors love it. There are other approaches, though; perhaps the most obvious is to sell stock to build a good enduring business. This one seems much harder to me, but if you run a meme-stock company you might be tempted. "The market thinks my company is good," you think, "so probably I have unusual insight into capital allocation, so I'm going to build the best movie-theater-and-gold-mining company the world has ever seen."

There is a literature. Here's a fun 2024 paper on "Retail Trading Frenzies and Real Investment," by Clifton Green and Russell Jame, finding that (1) meme stock companies *do* sell stock to invest in building their businesses but (2) it's hard and they're not especially good at it:

Retail frenzies strongly predict equity issuance and increased investment, with the relation strengthening in the post-zero-commission era. The increased investment is associated with incrementally lower future returns and more negative earnings surprises, and it is concentrated among financially constrained firms led by lower-ability managers. Overall, our findings suggest that retail frenzies adversely impact the real economy by relaxing financial constraints, leading to overinvestment by less-skilled managers.

One lesson here is that a meme-stock craze is not a particularly efficient allocator of capital, oh well. Another possible lesson is that crypto solves this: If, instead of selling stock to make bad business investments, meme-stock companies sell stock to buy Bitcoin, perhaps that does not "adversely impact the real economy"? I suppose there is a third possible lesson along the lines of "perhaps when meme-stock managers sell stock to buy Bitcoin, that's not a good idea," but never mind that.

Things happen

The Private Equity Boom Is Leaving Midsize Players Behind. SoftBank and OpenAI's \$500 Billion AI Project Struggles to Get Off Ground. McKinsey Changes How It Elects Its Leaders to Avoid Succession Dramas. Startup Claims Its Green Steel Will Be Cheaper Than Regular Steel. Mike Lynch estate and business partner must pay £740mn to HP Enterprise, court rules. BlackRock Restricts Use of Company Devices for China Travel. UniCredit Wins More Time for Banco BPM Bid as Regulator Acts. Billionaire Fired by His Family Trust From Poland's Cyfrowy. Fusion energy start-up claims to have cracked alchemy. "Heavyweight is a free, online, and open-source tool that lets you give any complaint you have extremely law-firm-looking formatting and letterhead."

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- 1. There may be advanced versions like “never sell appreciated stock but do sell stock with losses.”
- 2. For instance, because it’s an index fund and the index composition has changed, or because it’s an actively managed fund and the manager no longer likes Stock X and prefers Stock Y.
- 3. In the US, this is even true if the fund reinvests the dividends for you: The taxable event is not you receiving the money, but the underlying company paying the dividend.
- 4. In very rough theory, the stock price should drop on the ex date by an amount equal to the dividend, so you should not miss out economically on the dividend by doing this.
- 5. We have talked a couple of times about swap funds, which are a similar but less general idea: You contribute some of your stock, and other people contribute their stock, and you all get a share of the whole pot, which leaves you each more diversified than you were before.
- 6. I’m cheating a little: You’re not *avoiding* \$20 million of taxes, but rather *deferring* them; your basis in the appreciated stock (here, zero) carries over to the ETF, so if you sell the ETF in a year or two or five, you will still pay tax on the \$100 million gain. The deferral is worth something, though, particularly as a matter of estate planning. (If you die with the ETF, your heirs will get a stepped-up basis and avoid the tax entirely.)
- 7. Back in 2022, when FTX collapsed, I wrote about its death spiral, and I contrasted it to Coinbase: FTX offered levered futures trading for crypto, while Coinbase’s main business consisted of holding unlevered crypto positions for customers. “There can’t be a ‘run on the bank’ at Coinbase,” said Coinbase, because its business model was different. Now, less so.

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Opinion **Lex**

Crypto-Spacs put a risky investment in a riskier wrapper

Fusing these together is a bold choice but the acquisition vehicles have a reputation for burning fortunes



Strategy — formerly known as MicroStrategy — raises cash through equity and debt offerings, and then buys more of the digital token © Bloomberg

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Bitcoin recently hit an all-time high of nearly \$123,000. How about buying one today for around \$200,000? Ludicrous as that might sound, this pitch has proved popular with investors. More companies are now rolling out new riffs on the theme, and adding an extra cadenza of financial innovation.

The progenitor is Strategy — formerly known as MicroStrategy — a software company that pivoted to owning bitcoin. It raises cash through equity and debt offerings, and then buys more of the digital token. Its shareholders have rewarded this lavishly: it owns around \$72bn of bitcoin, and has an enterprise value of \$130bn.

Many are copying Strategy's strategy, from online video platform Rumble to heart-medication developer Windtree Therapeutics. In May, a small marketing company called SharpLink Gaming became a shell for investing in ethereum; its market capitalisation has risen from \$2mn to \$2.7bn, double the value of the crypto it now holds.

As crypto goes mainstream, financiers are now combining it with another edgy financial product: the special-purpose acquisition company. These raise money by issuing shares in public markets, then seeking a company to buy. Cantor Fitzgerald, the investment bank formerly led by current US Secretary of Commerce Howard Lutnick, has sponsored two Spacs that are acquiring pools of bitcoin.

And on Monday, another joined the swelling ranks of crypto-treasury Spacs. The Ether Machine, founded by a one-time UBS banker, said it would merge with listed cash shell Dynamix to create a listed, Strategy-like honeypot, filled with around \$1.5bn of ethereum rather than bitcoin.

Crypto cousins

Ethereum and bitcoin vs US dollar, rebased to 100



Source: LSEG via markets.ft.com, Lex calculations

This might be an improvement on Strategy's template, in one way. Unlike bitcoin, which generates no yield, ethereum can be "staked" — essentially, locked up for a period of time in return for a yield of around 3 per cent. On the other hand, the global supply of bitcoin, at \$2.4tn, is five times bigger.

Needless to say, a precondition for engaging in these investments is a belief that bitcoin, or ethereum, or whichever digital token is involved, will keep rising in value, at least for as long as the holder intends to stick around. Those who believe otherwise need not apply.

Even so, fusing crypto with Spacs is a bold choice. These vehicles have a well-deserved reputation for incinerating fortunes. The median return from those that have completed mergers with target companies is minus 83 per cent since 2020, and minus 64 per cent from deals done this year alone, according to data gatherer ListingTrack.

Perhaps crypto treasuries and Spacs will help each other ease into the mainstream. Every non-disaster helps. If The Ether Machine can trade above its merger price for more than a few months, it would expand the universe of 2025-vintage Spac targets to achieve that feat by a third.

In any case, one of the flaws that felled numerous past Spac mergers was the fact that so many of the companies involved, from adult entertainment firm Playboy to electric-car maker Lucid, dismally failed to meet their lofty revenue and earnings targets, leading investors to dump their shares. Crypto treasuries, at least, offer no such goals to begin with.

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Securities Law News

Telix Shares Slide After SEC Seeks Prostate Drug Disclosures

July 22, 2025, 7:48 PM PDT

Telix Pharmaceuticals Ltd. slumped as much as 16%, the most in 21 months, after the Australian developer of radioactive drugs said it received a subpoena from the US Securities and Exchange Commission seeking information about disclosures related to its prostate cancer therapeutic candidates.

The Melbourne-based company said it's cooperating with the SEC and is in the process of responding to the request, according to a statement Wednesday. The update came alongside Telix's second-quarter results, which showed a 63% jump in revenue, even as its top-selling product Illuccix faced ongoing price pressure.

Such requests from the SEC are "not uncommon," Jefferies Australia analysts **David Stanton** and **Vanessa Thomson** said in a note to clients, adding that the steps companies take to gather and share information with investigators can "take some time to play out" — often lasting around 24 months.

The shares fell 12% to A\$22 (\$14) as of 12:13 p.m. in Sydney, after dipping as low as A\$21. Telix said it can't predict when the matter will be resolved or what, if any, action the SEC may take following its investigation.

"At this stage, this matter is a fact-finding request," Telix said, adding that it has notified the Australian Securities and Investments Commission of the subpoena and doesn't plan to comment further on an active regulatory inquiry.

Radiopharmaceuticals — radioactive drugs used to detect or treat disease — are a fast-growing segment of the cancer market, with therapies like Novartis AG's Pluvicto delivering targeted radiation to specific tumor cells throughout the body.

Telix said the SEC's request doesn't extend to its commercial and late-stage precision medicine programs, including Illuccix, Gozellix, Zircaix, Pixclara and Scintimun.

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Tesla's quarterly results: what are investors and fans looking for?



reuters.com/business/autos-transportation/teslas-quarterly-results-what-are-investors-fans-looking-2025-07-23

Akash Sriram, Abhirup Roy

July 23, 2025

Item 1 of 3 Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo

[1/3] Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo [Purchase Licensing Rights, opens new tab](#)

- Tesla seen posting biggest drop in quarterly revenue in over a decade
- Investors worried about Musk's time commitment to politics
- Tesla expected to update on production of cheaper car, robotaxi expansion

July 23 (Reuters) - Tesla ([TSLA.O](#)), [opens new tab](#) is likely to post its biggest drop in quarterly revenue in more than a decade on Wednesday, as the EV maker grapples with issues including increased competition, a lack of new models and consumer backlash against CEO [Elon Musk](#).

Here are the top five issues investors, analysts and Tesla fans are watching closely.

WILL MUSK BE DISTRACTED BY POLITICS?

Musk [formed](#), the America Party, earlier this month, after a public feud with President [Donald Trump](#) over a tax-cut and spending bill. Three months ago, when he was still allied with Trump, Musk said he was pulling back from working in the president's administration. Founding the party has rekindled worries that Musk will be distracted from business as it faces mounting competition, especially in its key China market, and as he tries to turn Tesla into a robotics and AI company.

Musk said on Sunday that he was back to working seven days a week and sleeping in the office when his small children were away.

HOW FAST CAN ROBOTAXI SERVICES EXPAND?

Last month, Tesla [launched a small trial of its self-driving taxi service](#) in Austin, Texas, with roughly a dozen of its Model Y SUVs and several restrictions, including safety supervisors in front passenger seats. Tesla enthusiasts lauded the efforts, although videos showed some driving mistakes.

Musk has said the service would reach the San Francisco Bay Area "in a month or two," depending on regulatory approvals, but Tesla has not applied for necessary permits to test or deploy driverless vehicles, regulators in California told Reuters this month. Investors will want to know how the expansion can go forward.

WHERE IS THE CHEAPER TESLA?

When Musk shifted his focus to robotaxis, he cancelled plans to build a new, cheaper EV platform. Tesla had promised to start producing the first of more affordable EV models by the end of June, but the company has not yet confirmed if it has met that target. Investors are keen for an update on those plans. Sources had told Reuters in April that a stripped-down version of the Model Y was likely to be delayed by months.

Analysts have already cut their 2025 delivery estimate for the cheaper car to below 50,000 vehicles, from 63,500 at the start of the year, according to eight of them polled by Visible Alpha.

CAN THE MODEL Y REFRESH BOOST SALES?

Tesla rolled out a refreshed version of the Model Y this year, a move investors hoped would recharge flagging sales. Deliveries of the SUV and its Model 3 compact sedan - Tesla's volume drivers - plunged in the second quarter.

While Tesla blamed a January production pause to retool plants, some analysts have said the re-styling - including new front and rear light bars and a touchscreen for back-seat passengers - was not enough to boost demand. Investors will want to know Musk's view of the rollout to date and going forward.

With total deliveries falling 13.5% to 384,122 units in the second quarter, the second straight quarterly decline, revenue is expected to fall 11.2% year-on-year, despite aggressive discounting and low-cost financing.

HOW SOON WILL REGULATORY CREDITS DWINDLE?

Sales of regulatory credits - [a silent profit engine for Tesla](#) - are set to dry up after recent legislation. Tesla earned \$2.8 billion in 2024 from such credits sold to legacy automakers to help them comply with emissions rules. Without them, the company would have reported a loss in the first quarter of this year.

Analysts expect pressure on Tesla and they are already resetting their revenue estimates for the year.

Reporting by Akash Sriram in Bengaluru and Abhirup Roy in San Francisco; Editing by Peter Henderson and Matthew Lewis

Tesla says 7th Amendment bans DMV trial over Autopilot advertising

DJ

[dailyjournal.com/articles/386691-tesla-says-7th-amendment-bans-dmv-trial-over-autopilot-advertising](https://www.dailyjournal.com/articles/386691-tesla-says-7th-amendment-bans-dmv-trial-over-autopilot-advertising)

Jul. 23, 2025

Tesla challenges DMV's administrative trial to suspend self-driving car sales, citing Seventh Amendment jury trial rights and First Amendment free speech protections against claims of misleading Autopilot marketing.

The Department of Motor Vehicles faces constitutional challenges to its attempt to use an administrative law court to suspend Tesla's self-driving car sales for 30 days over accusations it deceived consumers with the marketing of its Autopilot feature.

Tesla contends that being forced to defend itself before an administrative law judge violates its right to a jury trial under the Seventh Amendment. It also argues that the state's attempt to punish it for its choice of language to describe its cars violates the First Amendment.

In a trial brief filed by Attorney General Rob Bonta on July 17 for an administrative law trial that began Monday, the DMV claims Tesla misled buyers by using product names and website statements such as "Autopilot" and "Full Self-Driving Capability," suggesting the cars can drive themselves.

Tesla has acknowledged the vehicles require human oversight and has succeeded in several wrongful death and injury lawsuits by arguing it has made that clear to customers, who need to remain alert when driving.

Tesla's attorney, Ariel A. Neuman of Bird, Marella, Rhow, Lincenberg, Drooks & Nessim LLP, wrote in a response to the DMV's first claims in the case, in 2023, that the company denies all the allegations and will defend itself under the First and Seventh Amendments.

The automaker argues that key statutes the DMV is using to bring the lawsuit -- including California Vehicle Code §24011.5 and Civil Code §1770(a)(5) -- are unconstitutional because they restrict commercial speech in violation of the U.S. and California Constitutions.

A 2024 U.S. Supreme Court decision added weight to the Seventh Amendment claim, according to Michael Berger, senior counsel at Manatt, Phelps & Phillips LLP, who is not part of the litigation. *SEC v. Jarkesy*, 22-859 (U.S. Sup. Ct., 2024) held as a matter of federal law that an administrative agency could not try cases involving civil penalties in its own tribunals because the Seventh Amendment guarantees a jury trial in all such cases.

According to Berger, the DMV papers show that it is seeking restitution from Tesla for consumers, which puts *Jarkesy* "in play."

In that case, the SEC sought to have an administrative hearing that could result in imposition of damages, Berger said, and the Supreme Court held that the Seventh Amendment barred such a proceeding without a jury.

"I believe that this Seventh Amendment issue is going to gain prominence. I also believe that such attention is overdue," Berger said in emailed comments Tuesday.

"The Seventh Amendment, as the *Jarkesy* opinion makes clear, was one of the key reasons for our revolution, and its addition to the Bill of Rights was one of the things that saved the Constitution and aided in its adoption."

Meanwhile, David A. Carrillo, executive director of Berkeley Law's California Constitution Center, said in an emailed comment Tuesday that constitutional matters cannot be litigated in administrative courts.

"It's common knowledge among California administrative law practitioners that constitutional law issues like the speech defenses Tesla wants to assert here generally can't be litigated in administrative proceedings, because California Constitution Article III Section 3.5 bars state administrative agencies from ruling on the constitutionality of anything," Carrillo said "You have to wait until the Superior Court administrative mandamus proceeding to make those arguments."

The DMV argues Tesla violated California consumer protection laws, including the Vehicle Code and Civil Code, as well as a 2022 law (SB 1398) specifically banning marketing that implies autonomous operation when vehicles are not self-driving. *In the Matter of the Accusation Against: Tesla Inc. dba Tesla Motors Inc., a Vehicle Manufacturer*, 21-02188, (DMV, Office of Administrative Hearings, filed July 17, 2025).

The DMV is seeking to suspend Tesla's manufacturer and dealer licenses for at least 30 days and order restitution for affected consumers in the administrative trial at Oakland's DMV office that is expected to end on Friday.

Cassandra Roberston, director of the Center for Professional Ethics at the Case Western Reserve University School of Law in Ohio, has written for law reviews about Tesla's claims of autonomous technology in its vehicles.

In a phone interview Tuesday, Robertson said the DMV bringing the lawsuit effectively through its own court was appropriate and "normal."

"Administrative courts have kind of much more of a regulatory role," Robertson said. "And often have proceeding to determine factual matters and potential penalties or sanctions."

But the 30-day suspension of sales is not "well-tailored at all to the scope of the problem that California is trying to address," according to Robertson. Despite the marketing statements made by Tesla, whenever a lawsuit is brought related to its self-driving function, Tesla states that it's the driver's responsibility to pay attention, she noted.

"This has been a real mixed message that I think the law needs to require Tesla to clarify," said Robertson. "I would rather see direct consequences for misstatements and even though there are so many protections for free speech, I think that a direct speech restriction on what can be marketed is warranted under strict scrutiny."

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California Brief

SpaceX Warns Investors Elon Musk Could Return to US Politics

July 22, 2025, 11:20 AM PDT

There's a new warning tucked into the tender offer for Elon Musk's SpaceX: The billionaire may not be done with politics just yet.

Musk previously served as senior adviser to President Donald Trump "in connection with the Department of Government Efficiency and may in the future serve in similar roles and devote significant time and energy to such roles," according to documents reviewed by Bloomberg and people familiar with the content who were not authorized to speak publicly on the matter.

The company added the language laying out such "risk factors" in paperwork sent to investors discussing the transaction. It was the first time this language is believed to have appeared in these tender offers, some of these people said.

SpaceX's most recent offer values the rocket and satellite maker at about \$400 billion, which would make it the most valuable private company in the world.

Representatives for Musk and SpaceX didn't respond to requests for comment.

Musk's Political Shifts

Since formally leaving the Trump administration in late May after playing a substantial role in the president's bid to slash the size of the US government, Musk has waffled over how involved he'd like to remain.

In May, Musk vowed to return his focus to Tesla Inc., his artificial intelligence startup xAI, and the rest of his business empire and pull back his political spending. But after a spat with Trump exploded into the public eye, Musk went after the president and Republican members of Congress for passing a tax and spending package and, in July, vowed to form a new political party to vote members of Congress out of office.

Read More: Elon Musk's Empire Is Creaking Under the Strain of His Antics

A few weeks later, Musk said his attention had returned to his five companies. "Back to working 7 days a week and sleeping in the office if my little kids are away," he said on his social media site, X, on Sunday.

But the warning included in SpaceX's recent offering documents serves as a reminder to investors in any of Musk's businesses that few things in the billionaire's world — or in the Trump administration for that matter — are ever really final.

SpaceX is a key government contractor with both NASA and the US military. Besides launching its Falcon rockets and work developing Starship, which is designed to take humans to Mars, SpaceX oversees a network of roughly 8,000 space-based satellites known as Starlink.

Explainer: Could NASA Function Without Elon Musk's SpaceX?

As part of SpaceX's recent tender offer, certain shareholders will be allowed to sell stakes in the company — an increasingly popular option for startups that are staying private longer, but want to give early employees and investors a chance to cash out.

SpaceX will buy back as much as \$1.25 billion worth of shares from staff and other holders, Bloomberg reported.

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, delivering the inside stories of investments beyond Earth, from satellite networks to moon landings.

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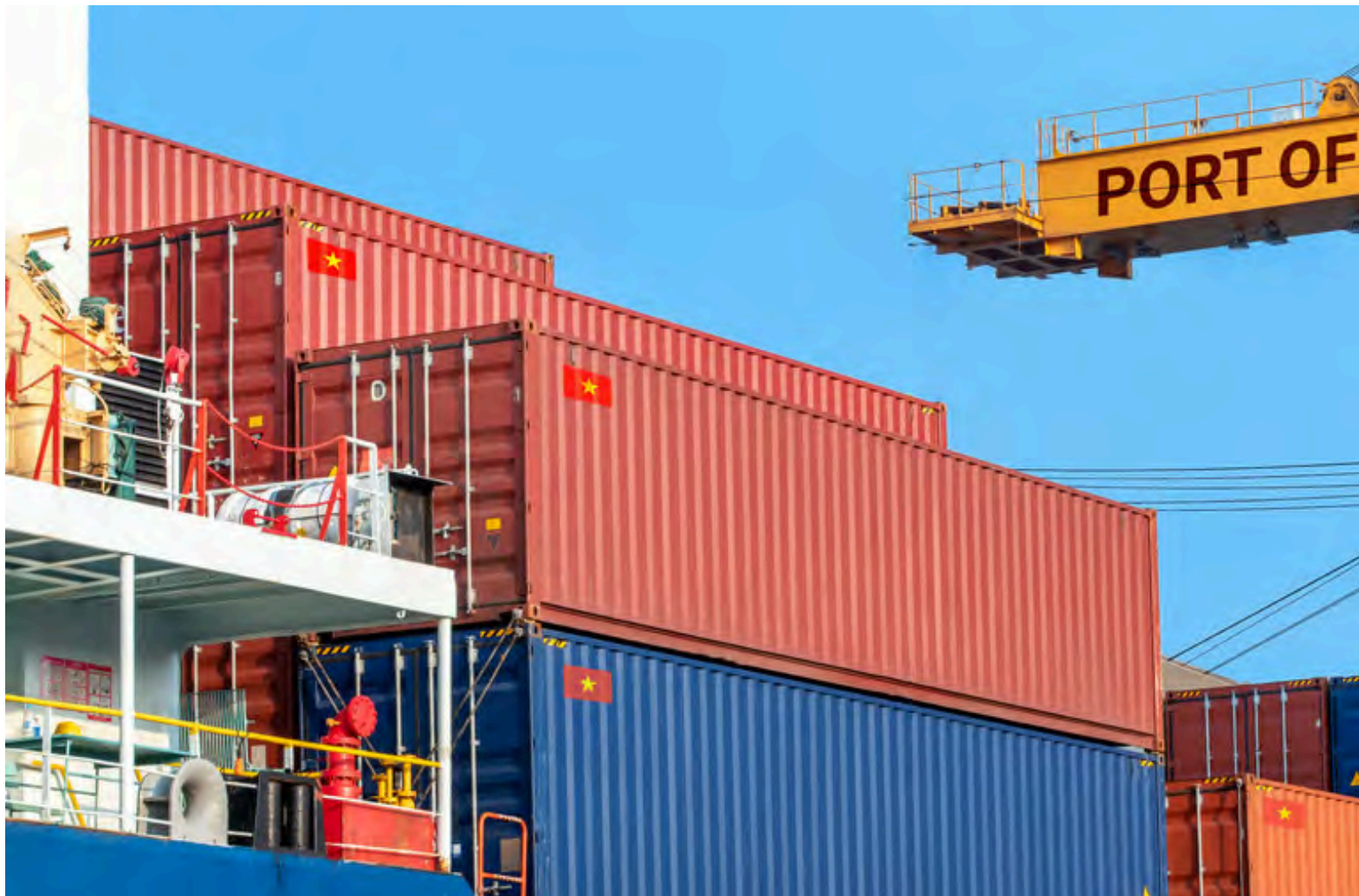
Eric Johnson

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Analysis

Companies Hurt by Tariffs Taking Widely Varying Approaches to Shareholder Guidance

July 23, 2025 | By  Chris O'Malley



Credit: zapp2photo/AdobeStock

Public companies are taking wildly different approaches on how they provide guidance to investors about the likely impact of tariffs, [a survey by Jenner & Block found](#).

The law firm analyzed earnings releases for 100 S&P 500 companies announcing results in April and May 2025. On the extremes, 18% of companies attempted to quantify the earnings impact on a per-share basis or in total dollars, while 20% didn't reflect tariff impact in the guidance they provided.

"If you know you will be impacted it struck me as odd to leave that out," said Alexander May, a partner at Jenner & Block and co-chair of its securities and capital markets practice.

Perhaps that's because some companies "were kind of like, 'Look, things are moving pretty quickly,'" he added.

Indeed, the variability of Trump administration tariffs so far have left companies in the lurch. They're trying to assess how tariffs are likely to settle out while at the same time trying to appease shareholders craving information.

While Trump has pulled back from the eye-popping global tariffs he unveiled at the height of the trade war in early April, the current overall average effective tariff rate is 20.6%, the highest since 1910, [according to the Budget Lab at Yale](#). Before this year, the rate had been in the low single digits for decades.

One challenge for some companies is the impact of tariffs could swing wildly in either direction—depending on when a component or product arrives on a boat, May said.

Yet attempting to quantify impacts by tossing out something like a range of numbers can be perilous if things change later. At that point, "it's going to be much harder to put the genie back in the bottle," May added.

At the same time, many companies are mindful of potential shareholder litigation later stemming from what they did or don't disclose regarding tariff impacts and risks.

The COVID-19 pandemic serves as a cautionary tale. That public health crisis devastated some companies and benefited others, though the initial winners saw their share prices plummet as the pandemic ebbed and life returned to normal. Class action attorneys flooded the courts with suits alleging executives made false or misleading statements, and the trend continues to play out, with [dozens of suits filed this year](#).

Former Indiana Securities Commissioner Mark Maddox recalled numerous instances this year when tariffs were imposed on a country only to be suspended days later.

"You can imagine the difficulty of publicly traded companies trying to make a disclosure about that" on an ongoing basis, said Maddox, founder of securities litigation firm Maddox Hargett & Caruso in Fishers, Indiana.

Asked whether he expects imminent shareholder litigation over the adequacy and accuracy of disclosures, "at this point, I don't," Maddox said, "just because it [tariff fluctuation] is all over the board right now."

For now, "I could see a lot of companies playing a general game" of sorts.

Indeed, most companies surveyed by Jenner & Block seem to be making disclosures of a more general nature.

That is, right down the middle.

Thirty percent "took tariffs into account in their guidance, but they did not quantify the impact of the tariffs or specifically note any offsetting actions," the survey found.

Another 30% took tariffs into account in their disclosures and did not quantify the impact, but specifically noted offsetting or mitigating actions—usually in reaffirming guidance.

Playing it down the middle might be a safe harbor, of sorts, until tariffs are nailed down.

One can imagine disclaimers, May said, such as "our guidance may vary based on the outcome of these tariffs."

Interestingly, among the 30 companies that disclosed tariff-mitigation actions, 12 noted that pricing actions may help mitigate the impact. That is, to raise prices rather than "eat" the cost of tariffs as the administration has suggested.

[A separate study](#) by the accounting giant KPMG found that 94% of the 435 S&P 500 companies that filed their quarterly financials with the Securities and Exchange Commission between April 1 and June 2 discussed tariff-related matters.

While companies may disagree on what kind of information they are obligated to provide shareholders—such as over tariff impact—one attorney argues for more transparency.

Corporate securities lawyer Lenin Lopez, a senior vice president at Woodruff Sawyer, in San Francisco, [argued in an April essay](#) that companies should list their risk factors in their quarterly filings, known as 10-Qs, not just in their annual filings, known as 10-Ks.

By doing so, he wrote, "companies can identify emerging threats or changing risk dynamics" more promptly.

"Clear and timely disclosure of material risks can serve as a critical defense in securities litigation," Lopez wrote, and signal that companies are actively engaged in risk disclosure and management.

"This can be especially valuable during periods of economic volatility or when company-specific risks are evolving quickly. Tariffs, anyone?"

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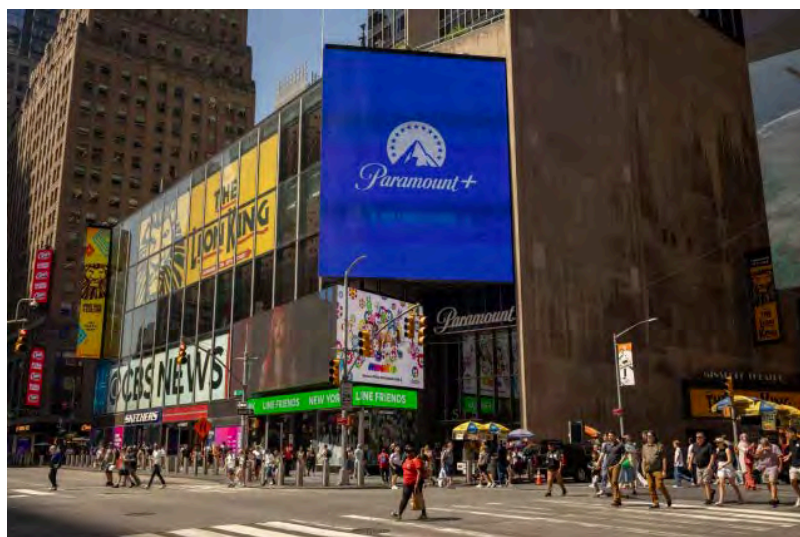
BUSINESS | MEDIA

Trump Expects \$20 Million More in Ad Dollars From '60 Minutes' Settlement

President posts on social media that he will receive more than the already agreed to \$16 million payment

By [Joe Flint](#) [Follow](#)

July 22, 2025 3:53 pm ET



Skydance is awaiting FCC approval for its deal to acquire Paramount Global. PHOTO: YUKI IWAMURA/BLOOMBERG NEWS

President Trump said that he anticipates receiving advertising and public service ad commitments worth \$20 million from Skydance Media, the company in the process of acquiring [CBS](#) PARA 0.61% ▲ parent Paramount Global.

The additional compensation would come on top of the \$16 million the current owner agreed to pay earlier this month to settle Trump's lawsuit alleging election interference by the network's news magazine "60 Minutes."

In a social media post Tuesday Trump said, "We also anticipate receiving \$20 Million Dollars more from the new Owners, in Advertising, PSAs, or similar Programming, for a total of over \$36 Million Dollars. This is another in a long line of VICTORIES over the

Fake News Media, who we are holding to account for their widespread fraud and deceit.”

CBS has previously said its settlement of the “60 Minutes” suit [does not include any additional compensation](#) such as public service announcements.

A Skydance spokeswoman declined to comment.

Earlier this week, senators Elizabeth Warren (D., Mass.), Ron Wyden (D., Ore.) and Bernie Sanders (I., Vt.) sent a letter to Skydance Chief Executive David Ellison also seeking information about a potential side deal with Trump for public service announcements and other forms of compensation separate from the CBS settlement.

“Is there currently any arrangement under which you or Skydance will provide compensation, advertising, or promotional activities that in any way assist President Trump, his family, his presidential library, or other Administration officials?” the letter asked.

Skydance is still awaiting approval from the Federal Communications Commission for its deal [to acquire Paramount Global](#).

Last week, Ellison met with FCC Chairman Brendan Carr and other senior officials at the regulatory agency as part of the approval process.

In an ex parte filing at the agency detailing the meeting, Skydance said it discussed its “commitment to unbiased journalism and its embrace of diverse viewpoints, principles that will ensure CBS’s editorial decision-making reflects the varied ideological perspectives of American viewers.”

Write to Joe Flint at Joe.Flint@wsj.com

Videos

Trump says he received \$16 million payment after Paramount lawsuit settlement



reuters.com/legal/litigation/trump-says-he-received-16-million-payment-after-paramount-lawsuit-settlement-2025-07-22

David Shepardson, Dawn Chmielewski

July 22, 2025

Paramount Global logo is seen in this illustration taken December 17, 2024.

REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

WASHINGTON, July 22 (Reuters) - U.S. President Donald Trump said CBS parent company Paramount ([PARA.O](#)), [opens new tab](#) paid \$16 million on Tuesday as part of a lawsuit settlement.

This month, Paramount agreed to [settle a lawsuit](#) filed by Trump claiming that the CBS news program "60 Minutes" deceptively edited an interview with former Vice President Kamala Harris that the network broadcast in October.

Paramount needs approval from the Federal Communications Commission for [its \\$8.4 billion merger with Skydance Media](#). The FCC did not make a decision by the 180-day informal deadline in mid-May and FCC Chair Brendan Carr has denied Trump's lawsuit was a factor. Paramount declined comment.

Trump and CBS formally agreed on Tuesday to the dismissal of his lawsuit, according to a court filing.

"We have just achieved a BIG AND IMPORTANT WIN in our Historic Lawsuit against 60 Minutes, CBS, and Paramount... Paramount/CBS/60 Minutes have today paid \$16 Million Dollars in settlement, and we also anticipate receiving \$20 Million Dollars more from the new Owners," Trump said in a post on Truth Social.

Skydance declined to comment on Trump's social media post.

Skydance and its investors plan to acquire National Amusements, which holds the family's controlling stake in Paramount. Skydance will subsequently be merged into Paramount, with its CEO, David Ellison, becoming Paramount's next chief executive.

The New York Post previously reported Ellison, son of billionaire Oracle co-founder Larry Ellison, agreed to run up to \$20 million in public service announcements (PSAs) to promote causes supported by the president.

Following publication, Paramount issued a statement that its settlement with Trump "does not include PSAs or anything related to PSAs". Paramount also said it had no knowledge of any promises or commitments made to President Trump other than those put forth by the mediator.

Libor scandal**Tom Hayes' conviction for Libor-rigging quashed by UK's highest court**

Former UBS and Citigroup trader was found guilty in 2015 for rigging interbank rate and sentenced to 14 years in prison



Former traders Tom Hayes, right, and Carlo Palombo celebrate outside the Supreme Court in London on Wednesday © Andy Rain/EPA/Shutterstock

Alistair Gray in London

Published 8 HOURS AGO | Updated 04:12



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Tom Hayes has emerged victorious in his decade-long battle to clear his name for rigging Libor benchmark rates after the UK's highest court quashed his conviction.

The watershed Supreme Court ruling on Wednesday calls into question the UK's other rate-rigging prosecutions, which served as a lightning rod for public anger over the global financial crisis.

[Hayes](#) became the public face of the Libor scandal, which first emerged in the wake of the financial crisis, amid widespread public anger against bankers. His legal team has called for a public inquiry and for the Serious Fraud Office, which prosecuted Hayes, to be abolished.

The manipulation of the now-defunct London Interbank Offered Rate, which was used to set the interest rate on loans and derivatives throughout the financial system, sent shockwaves through markets and the fallout cost banks billions of pounds in fines and settlements.

The former UBS and Citigroup banker was the first trader in the world to be found guilty by a jury of [rigging Libor](#), which was determined daily based on numbers submitted by several large banks. His conviction in 2015 was regarded as a rare example of a banker being held to account — even if the offence had little to do with the origins of the financial crisis.

Hayes was originally handed a 14-year prison sentence, one of the UK's toughest sentences for white-collar fraud. He [served five and a half years in prison](#) after his sentence was reduced to 11 years on appeal.

But in a decision handed down on Wednesday, a panel of five Supreme Court judges overturned his conviction. Carlo Palombo, a former Barclays trader who received a four-year sentence for manipulating Euribor, another benchmark rate, also had his conviction quashed.

Hayes and Palombo were among nine people successfully prosecuted by the SFO for rigging benchmark rates.

The decision on Wednesday fell short of a full exoneration. The Supreme Court judges found there was “ample evidence” during Hayes’ trial that could have formed a basis for conviction.

The SFO nevertheless said it would not seek a retrial in the case. “We have considered this judgment and the full circumstances carefully and determined it would not be in the public interest for us to seek a retrial,” it said.

Hayes was convicted under sweeping fraud laws. However, the UK has since introduced a specific criminal offence of benchmark-rigging.

In their unanimous decision, the judges said on Wednesday that the jury in Hayes' original trial at Southwark Crown Court had not been asked to determine a central question in the case.

Jurors had been told that a Libor rate was inherently not "genuine or honest" if it had been "influenced by trading advantage".

"Hayes was entitled to have his defence to the allegation that he agreed to procure false submissions as well as his denial that he had acted dishonestly left fairly to the jury," Lord Leggatt said. "He was deprived of that opportunity by directions which were legally inaccurate and unfair."

"It is not possible to say that, if the jury had been properly directed, they would have been bound to return verdicts of guilty. The convictions are therefore unsafe and cannot stand."

In jubilant scenes among family and supporters outside the court, Hayes said: "It feels very surreal — a little bit like my conviction."

He added: "My faith in the criminal justice system in the UK at times was largely destroyed and it's been restored."

The UK court's decision comes days after former HSBC currencies trading chief Mark Johnson [had his criminal conviction for wire fraud](#) in the US thrown out. Johnson was convicted as part of the forex-rigging investigation, which probed similar allegations to that of Libor-rigging and for which banks around the world also paid fines totalling about \$10bn.

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Chancery Tosses Derivative Suit For Pharma Lawsuit Costs

By **Jeff Montgomery**

Law360 (July 22, 2025, 6:23 PM EDT) -- A Delaware vice chancellor tossed on Tuesday a Corcept Therapeutics Inc. stockholder suit seeking derivative recovery of millions the company paid out to regulators for "aggressive" off-label marketing and sales of its sole drug, used to treat complications of the rare disease Cushing's syndrome.

Vice Chancellor Bonnie W. David ruled that the complaint failed to show that it would have been futile to demand action by Corcept's allegedly conflicted board members against themselves to recover costs, including \$14 million in insurer-paid penalties.

Also denied were claims that directors knew of the transgressions and ignored red flags that would have revealed the scheme for sales of the drug Korlym, aka mifepristone, among other faults.

"None of the plaintiff's theories supports a viable claim for breach of fiduciary duty against the members of the demand board," Vice Chancellor David wrote in an 11-page decision.

Corcept reached the \$14 million settlement of direct securities fraud claims in April 2023 in California federal court.

The federal court case against Corcept and several of its officers alleged a companywide marketing scheme to "dupe unsuspecting physicians" into prescribing Korlym for off-label uses.

Cushing's is a disorder caused by prolonged exposure to cortisol, the body's main stress hormone. Symptoms can include weight gain, skin changes, weakness and fatigue.

In addition to treating Cushing's, mifepristone is used off-label for medical abortions and as an emergency contraceptive.

"The complaint separately fails to adequately allege that the directors knew of evidence of illegal marketing practices, yet acted in bad faith by consciously disregarding their duty to address the alleged misconduct," the vice chancellor wrote.

Corcept's activities came to public light in January 2019 when the Southern Investigative Reporting Foundation published a report alleging that the company was running a pay-for-play scheme. The arrangement supposedly reimbursed doctors through honorarium payments in exchange for Korlym prescriptions, with off-label prescriptions driving up company revenues.

The company also was accused of relying on a related-entity pharmacy, potentially inflating revenues and sales, with the company suffering harm as the allegations pushed stock prices down.

In January 2022, Corcept stockholder Joel B. Ritchie sued derivatively to recover company costs associated with the federal action. The suit claimed a breach of fiduciary duty by directors or former directors G. Leonard Baker, Joseph K. Belanoff, Sean Maduck, David L. Mahoney, Charles Robb, Daniel N. Swisher and James N. Wilson, all allegedly facing what Ritchie's suit said was a "substantial likelihood of liability."

The suit asserted three theories: a Caremark claim citing a corporate trauma caused by failure to oversee operations; a Massey claim tying the breaches to violations of positive law; and a Malone

theory citing harm to the company resulting from false or misleading disclosures.

"Oversight liability under Caremark is an ill fit for the facts alleged here because Corcept has not suffered 'enormous legal liability,' or indeed any corporate trauma," the vice chancellor wrote. The decision observed that company revenues grew from \$81 million in 2016 to \$251 million in 2018 thanks to the scheme.

"The notion that the corporation should recover for that 'harm' — when the alleged misconduct at issue has not resulted in civil or criminal fines or penalties, and the securities class action resolved in exchange for a \$14 million payment funded entirely by carriers — defies common sense," Vice Chancellor David wrote.

Corcept's efforts to broaden its marketing strategy for Korlym to include nonspecialist physicians "do not constitute a 'red flag' from which the board should have suspected illegal activity," the vice chancellor asserted.

In addition, the vice chancellor wrote, director awareness of medical professional "whales" prescribing Korlym for off-label use failed to support an inference that the board also knew that Corcept was engaged in illegal marketing. Similarly rejected was a claim that Corcept's selection and reliance on a specialty pharmacy amounted to support for an illegal marketing scheme.

Corcept and counsel for Ritchie did not immediately respond to a request for comment Tuesday.

Joel B. Ritchie is represented by Brian D. Long of Long Law LLC and Rusty E. Glenn and Brett D. Stecker of Shuman Glenn & Stecker.

Corcept and other defendants are represented by David E. Ross, Cory Worcester and Hope D. Skibitsky of Ross Aronstam & Moritz LLP.

The case is Joel B. Ritchie v. G. Leonard Baker et al., case number 2022-0102, in the Court of Chancery of the State of Delaware.

--Editing by Brian Baresch.



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Charter Shareholder Drops Suit Over \$37.9B Cox Deal

By **Aaron Keller**

Law360 (July 22, 2025, 5:16 PM EDT) -- A Charter Communications Inc. shareholder has withdrawn from Connecticut state court an 11-day-old lawsuit that sought to block a July 31 vote on the company's proposed \$37.9 billion acquisition of Cox Communications Inc.

A Monday withdrawal filed in Bridgeport superior court does not provide any reasons.

In a July 11 **complaint**, Charter shareholder Martin Siegel claimed the telecommunications company offered to buy Cox for nearly \$37.9 billion in cash plus an additional \$7.3 billion in convertible preferred units, even though Citigroup Global Markets Inc. valued Cox at between \$23.35 billion and \$32.6 billion.

He alleged that the sale "makes no economic sense" to Charter shareholders and serves only to enrich executives and their financial advisers. A proxy statement failed to disclose alleged conflicts, Siegel claimed.

The complaint named Charter, one of its subsidiaries, 12 of its individual directors and CEO Christopher Winfrey as defendants. Also sued were acquisition target Cox Communications and its parent company, Cox Enterprises Inc.

None of the defendants filed appearances before Siegel filed the withdrawal.

Siegel's attorney did not immediately respond to a Law360 inquiry about the withdrawal on Tuesday afternoon.

Siegel is represented by John F. Keating Jr. and The Brualdi Law Firm PC.

Counsel information for the defendants was not immediately available.

The case is Martin Siegel v. W. Lance Conn et al., case number FBT-CV25-6148577-S, in the Bridgeport Judicial District of the Connecticut Superior Court.

--Editing by Patrick Reagan.

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Becton Dickinson Investors Seek Final OK Of \$9M Deal

By **Sydney Price**

Law360 (July 22, 2025, 11:55 PM EDT) -- Investors in medical tech manufacturer Becton Dickinson are seeking final approval of their \$9 million deal that will end derivative claims the company was damaged by its attempts to hide regulatory problems regarding sales of its Alaris pump, which would add to the list of settlements the company has entered over the alleged misrepresentations.

Counsel for the shareholders leading the consolidated derivative action will receive approximately \$3.5 million in fees and expenses, according to Monday's motion for final approval. The settlement, preliminarily approved in June, was reached after months of negotiation facilitated by a mediator, the motion states.

The suit's individual defendants include Becton Dickinson's current CEO Tom Polen and former CEO Vincent A. Forlenza and alleges that the defendants' misconduct exposed the company to financial and regulatory risk, including an **\$85 million securities class action settlement** and a **\$175 million settlement** with the U.S. Securities and Exchange Commission.

"Notably, here, the \$9 million settlement fund actually exceeds the amount BD paid out-of-pocket to resolve the related securities class action — the primary harm for which the derivative actions seek to recover on BD's behalf — further demonstrating the reasonableness and adequacy of the settlement," Monday's motion states.

The settlement also calls for a host of corporate governance reforms, which the investors said "will enhance the company's disclosure and compliance oversight, director independence vetting, and the company's corporate governance, generally."

Among other things, the settlement requires Becton Dickinson to hire an independent corporate governance expert to scope the company's governance practices and compare them to industry best practices.

"The governance modifications will confer immediate and long-lasting benefits on BD and its stockholders, including by helping to prevent the type of wrongdoing alleged and enhancing credibility with regulators and investors," the investors said.

Introduced several years ago, the Alaris pump was a critical product for Becton Dickinson and a leading revenue generator, the plaintiffs alleged. The pump was designed to deliver fluids, medications, blood and blood products to patients, according to the suit.

In November 2019, Becton Dickinson announced that it was making certain "improvements" to Alaris that would simply shift the timing of sales to later in the fiscal year, according to the suit.

The company didn't tell investors until February 2020 that it had stopped shipping the pumps and wouldn't continue normal sales until completing the lengthy U.S. Food and Drug Administration clearance process, prompting a 12% drop in its share price, the suit alleges.

The defendants knew, or should have known, that Becton Dickinson's actions were not in compliance with a consent decree it had signed with the FDA several years prior, leading to additional risk, the complaint claims.

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

The plaintiffs are represented by Serina M. Vash of Herman Jones LLP, Lisa J. Rodriguez of Dilworth Paxson LLP, Brian J. Robbins, Craig W. Smith and Shane P. Sanders of Robbins LLP and Benjamin I. Sachs-Michaels, Matthew M. Houston, Robert V. Prongay and Pavithra Rajesh of Glancy Prongay & Murray LLP.

Becton Dickinson and the individual defendants are represented by Matthew Adam Sklar of McCarter & English LLP.

The case is In re: Becton Dickinson & Co. Stockholder Derivative Litigation, case number 2:20-cv-15474, in the U.S. District Court for the District of New Jersey.

--Editing by Jay Jackson Jr.

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EQT Investors' \$167.5M Deal To End Merger Suit Gets 1st OK

By **Emilie Ruscoe**

Law360 (July 22, 2025, 11:15 PM EDT) -- Investors in energy company EQT Corp. have gotten an initial green light for their \$167.5 million settlement to end claims the company overstated the benefits of its \$6.7 billion merger with Rice Energy, drawing what's purported to be the largest shareholder settlement in the Western District of Pennsylvania closer to a close.

In a Tuesday order, U.S. District Judge Robert J. Colville granted preliminary approval to the settlement deal, finding that he would "likely be able to finally approve the settlement ... as being fair, reasonable, and adequate to the class."

EQT investors, led by the Government of Guam Retirement Fund, Northeast Carpenters Annuity Fund and Northeast Carpenters Pension Fund, sought approval for the settlement deal in June, telling the court that the parties reached the agreement after six years of litigation and three mediation sessions.

The investors touted the settlement's \$167.5 million cash recovery as "notable as it is (by far) the largest securities class action recovery ever in the history of this district and the 14th largest in the history of the Third Circuit."

The deal would end claims that trading prices for EQT shares had been artificially inflated due to misrepresentations about synergies EQT and Rice Energy could realize with their holdings in the Marcellus Shale oil and gas formation.

Judge Colville scheduled a settlement hearing for Oct. 30.

The proposed class is represented by Steven J. Toll, Daniel S. Sommers, S. Douglas Bunch, Christina D. Saler and Benjamin F. Jackson of Cohen Milstein Sellers & Toll PLLC, Salvatore J. Graziano, Adam H. Wierzbowski, Jesse L. Jensen and Robert Kravetz of Bernstein Litowitz Berger & Grossmann LLP, and Michael A. Comber of Comber Miller LLC.

EQT is represented by Courtney Carvill, Lindsey Weiss Harris, Alexander J. Rodney, Ashley Paige Grolog, Daniel R. Cellucci, Jacob Rae, Rachel Fritzler, Sandra C. Goldstein, Sarah Schultes and Stephanie Taylor of Kirkland & Ellis LLP, Danielle Rose, Genna Leigh Sinel and Martine Beverly Forneret of Kobre & Kim LLP, and James L. Rockney of Reed Smith.

The case is In Re: EQT Corp. Securities Litigation, case number 2:19-cv-00754, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Matthew Santoni. Editing by Emily Kokoll.

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Del. Boutique Wins 'Heated' Battle To Lead Endeavor Suit

By **Jessica Corso**

Law360 (July 22, 2025, 9:20 PM EDT) -- Litigation boutique Abrams & Bayliss LLP has been handed the reins to a potential blockbuster lawsuit alleging that sports and entertainment giant Endeavor Group Holdings was undervalued in a \$13 billion take-private deal, with a Delaware vice chancellor on Tuesday settling what she described as a "heated," and at times personal, leadership fight in the case.

Vice Chancellor Lori W. Will rejected calls from other prospective lead counsel to allow them to work together with Abrams & Bayliss, saying "the facts here suggest that compelled cooperation risks dysfunction."

She said there had been "heated — even ad hominem — attacks between counsel."

The opinion did not describe those attacks.

Given that Abrams & Bayliss "represents clients with a relatively larger stake and has a more equitable fee structure that avoids conflicts among dissenting stockholders," it made more sense to appoint them as lead counsel than their competitors, the vice chancellor said.

The competitors were a group of attorneys from Rolnick Kramer Sadighi LLP and Heyman Enerio Gattuso & Hirzel LLP who initially moved to be appointed as sole lead counsel but later sought a co-leadership role with Abrams & Bayliss, according to Vice Chancellor Will's Tuesday opinion.

The vice chancellor said that would not work, however, given the apparent animosity between the groups of attorneys. But she did appoint Reid Collins & Tsai LLP as additional counsel, at Abrams & Bayliss' request.

A representative for Abrams & Bayliss declined to comment. Attorneys for Rolnick Kramer and Heyman Enerio didn't respond to requests for comment.

The Endeavor matter is shaping up to be a landmark case, with Abrams & Bayliss' managing partner Tom Bayliss **telling Law360 in April** that he expects it to be "the biggest appraisal proceeding in the history of the Delaware courts by a significant margin."

Endeavor stockholders holding around 150 million shares valued at more than \$4 billion have filed lawsuits accusing the company and the private equity firm that took it private, Silver Lake, of sticking them with a bad deal.

Silver Lake closed the deal to purchase the company for \$27.50 per share, or roughly \$13 billion in equity value, in March. Now, shareholders are suing to determine whether that price represents the true value of their shares.

The private equity firm didn't respond to a request for comment Tuesday.

The Endeavor stockholders are represented by A. Thompson Bayliss, April M. Ferraro, E. Wade Houston, Michael T. Manuel, Daniel J. McBride, Ben Lucy and Clara E. Hubbard of Abrams & Bayliss LLP.

Endeavor is represented by Raymond J. DiCamillo, John D. Hendershot, Robert L. Burns, John M. O'Toole and Alfred P. Dillione of Richards Layton & Finger PA, and Blair G. Connelly, Colleen C. Smith, Michele D. Johnson and Kristin N. Murphy of Latham & Watkins LLP.

The case is In re Appraisal of Endeavor Group Holdings Inc., case number 2025-0317-LWW, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Lakshna Mehta.

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FCA Draws Heavy Constitutional Fire After \$1.6B J&J Verdict

By **Jeff Overley**

Law360 (July 23, 2025, 12:38 AM EDT) -- Reeling from a record fraud verdict tied to drug promotion practices, Johnson & Johnson is pursuing a sweeping constitutional challenge to the False Claims Act, and in filings this week at the Third Circuit, major industry allies rallied behind its views of whistleblower litigants usurping executive branch power.

J&J's effort to pulverize statutory provisions allowing "qui tam" whistleblowers to sue on behalf of the United States is part of a wider assault on the FCA's constitutionality, and amicus briefs filed Monday showcased the broad support in corporate America and right-leaning think tanks for severely weakening the Civil War-era law.

"The qui tam system is spiraling out of control," the National Association of Manufacturers asserts in one of Monday's amicus briefs. "Much of the systemic breakdown" is illustrated by the "nuclear verdict" of **roughly \$1.6 billion** against J&J unit Janssen Products LP, the association states.

The 10-figure judgment — the largest in FCA history, according to J&J — was the result of a trial last year in New Jersey federal court. There, **a jury found** that the J&J division defrauded Medicare and Medicaid by marketing HIV drugs Prezista and Intelence for unapproved uses. That marketing inflicted \$120 million in damages, automatically tripled to \$360 million under the FCA, and tainted 160,000 billing claims, triggering the FCA's per-claim penalties, adding almost \$1.3 billion on top of the damages.

In its opening brief at the Third Circuit, J&J last week laid out a laundry list of grievances, including objections to jury instructions. Those instructions erroneously conflated off-label marketing, which is generally verboten, and off-label prescribing, which is generally lawful, allowing jurors to hold J&J liable for the latter, according to the company's brief.

Other portions of the brief contend that the FCA unconstitutionally deputizes whistleblowing "relators" — in J&J's case, former Janssen sales representatives Jessica Penelow and Christine Brancaccio. Similar contentions have **popped up periodically** for many years; the idea again caught fire after a 2023 case, **Polansky v. Executive Health Resources** , in which U.S. Supreme Court Justices Clarence Thomas, Brett Kavanaugh and Amy Coney Barrett to varying degrees **suggested** that the qui tam device may improperly grant executive authority to private citizens. J&J is strongly endorsing that suggestion.

"Vesting relators with such sweeping and unchecked executive authority threatens to unsettle the government's reimbursement regime and frustrate patient care," the company's brief states.

The U.S. Chamber of Commerce and the American Tort Reform Association echo that view in a Monday joint amicus brief. Although the Supreme Court's 2023 case confirmed that the U.S. Department of Justice can torpedo disfavored whistleblower suits, the chamber and ATRA portray the qui tam tool as a renegade mechanism, saying it is "wresting the executive power from the president's hands."

In another amicus brief, the right-leaning Washington Legal Foundation makes a virtually identical point after proclaiming that the qui tam components, which include financial incentives for whistleblowers, flout the U.S. Constitution's directive that "executive power shall be vested" in the president.

"The qui tam provisions hand private relators — self-styled bounty hunters — the reins of federal law enforcement, stripping the president of control over litigation brought in the government's name," the Washington Legal Foundation argues.

Following the 2023 Supreme Court case, a Florida federal judge in *Zafirov v. Florida Medical Associates* **agrees** that qui tam cases are unconstitutional. That case is now at the Eleventh Circuit, where numerous amici have waded in with competing views of the issue.

Separately, U.S. Circuit Judge Stuart Kyle Duncan of the Fifth Circuit earlier this year penned a concurring opinion that also deemed qui tam suits untenable. In *Montcrief v. Peripheral Vascular Associates* , Judge Duncan said the Constitution "vests all federal executive power in a president [and] does not allow this outsourcing of prosecutorial power to a private person."

In J&J's appeal at the Third Circuit, the DOJ has intervened to defend the constitutionality of qui tams, and its brief is due in late August. The DOJ has also jumped into the Eleventh Circuit case with **a full-throated defense** of qui tams, and its briefs there may constitute a preview of its forthcoming brief at the Third Circuit.

In one of its Eleventh Circuit briefs, the government notes that a quarter-century ago, the Supreme Court confronted constitutional questions about the FCA's whistleblower section in *Vermont Agency of Natural Resources v. Stevens* . That decision explicitly declined to express a view on whether qui tams flout the Constitution's executive branch clauses. But it did find that "the FCA can reasonably be regarded as effecting a partial assignment of the government's damages claim."

According to the DOJ's brief at the Eleventh Circuit, the "Supreme Court thus made clear that, when relators sue under the False Claims Act, they are not exercising executive power; rather, they are pursuing a personal interest in the share of the government's recovery that the [FCA] assigns to them."

Whistleblowers Penelow and Brancaccio are scheduled to file their own brief in September. Attorneys for the former sales reps didn't immediately respond to requests for comment Tuesday.

Although a sizable list of companies have inked FCA settlements worth hundreds of millions of dollars, or even billions of dollars, trials have historically been rare under the FCA, given the enormous financial risks. But in 2023, the high court **decided another FCA case**, *Schutte v. SuperValu* , that said liability often must explore what a defendant truly believed about its billing practices. That exploration is fact-intensive, and experts predicted that the high court's holding **would make trials likelier**. J&J's trial is one of several cases that have proven that prediction correct: SuperValu went to trial and **prevailed**, and more recently, CVS Health Corp. division Omnicare **went to trial** and **lost**.

For J&J, the verdict represented the latest in a multiyear series of staggering financial blows related to its drugs, devices and consumer products. For example, the company coughed up billions to resolve nationwide opioid crisis litigation, and it has long been mired in sprawling litigation claiming its baby powder causes cancer.

J&J's case at the Third Circuit has teed up several other constitutional issues, including whether \$1.6 billion in penalties and damages violates the Eighth Amendment's prohibition on excessive fines. The healthcare giant's brief said the answer is a resounding yes because "in a case lacking any evidence of patient harm, and where the allegations involve HIV patients receiving life-saving HIV medications," the judgment "is grossly excessive."

There's also a First Amendment issue, according to a Monday amicus brief from two trade groups — Pharmaceutical Research and Manufacturers of America and the Advanced Medical Technology Association. Even if J&J employees made promotional statements about unapproved uses of the prescription drugs, their statements do not "necessarily render all subsequent claims for reimbursement for those drugs false under the FCA," PhRMA and AdvaMed argue.

"To the extent liability was imposed on [J&J] simply because of its protected commercial speech ... such liability would jeopardize [its] First Amendment rights," the trade groups add.

J&J is represented by Covington & Burling LLP.

The Chamber of Commerce and the American Tort Reform Association are represented by Dechert LLP and in-house counsel.

The Washington Legal Foundation is represented by in-house counsel.

The National Association of Manufacturers is represented by Sidley Austin LLP.

PhRMA and AdvaMed are represented by Ropes & Gray LLP and in-house counsel.

Penelow and Brancaccio are represented by Berger Montague and Kellogg Hansen Todd Figel & Frederick PLLC.

The case is U.S. ex rel. Penelow et al. v. Janssen Products LP, case number 25-1818, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Cara Salvatore. Editing by Kristen Becker.

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