Class Action

# Compass Minerals' $48 Million Investor Accord Gets Court Sendoff

Aug. 1, 2025, 6:38 AM PDT


## Summary by Bloomberg AI

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- Compass Minerals International Inc.'s $48 million class settlement received a federal judge's final blessing to resolve allegations it misled investors about the costs and abilities of its salt mining upgrade.
- Lead counsel will get more than $11.3 million in attorneys' fees and $368,527 in litigation expenses, according to Judge Eric F. Melgren.
- The class approved for the settlement covers investors who got Compass stock from Oct. 31, 2017, through Nov. 18, 2018.


Compass Minerals International Inc.'s $48 million class settlement garnered a federal judge's final blessing to resolve allegations it misled investors about the costs and abilities of its salt mining upgrade.

Lead counsel will get more than $11.3 million, about 24% of the total, in attorneys' fees and $368,527 in litigation expenses, Judge Eric F. Melgren said. The US District Court for the District of Kansas judge awarded the retirement and welfare funds leading the lawsuit $10,000 each, asking the case to be closed Thursday. The class approved for the settlement covers investors who got Compass stock from Oct. 31, 2017, through Nov. 18, 2018.

- The final approval comes about a week after Melgren preliminarily approved Compass' $4.9 million settlement in another proposed investor class action that relates to projections for its wildfire retardant. The company closed its retardant unit this year
- Melgren oversees shareholder derivative actions carrying similar accusations about the miner's systems and materials that combat fire and ice
- Compass paid $12 million to stave off Securities and Exchange Commission claims in 2022 that it misrepresented the costs of its salt mining upgrade and failed to properly assess some financial risks

Robbins Geller Rudman & Dowd LLP and Kirby McInerney LLP are lead counsel for the fund serving as lead plaintiff. Cleary, Gottlieb, Steen & Hamilton LLP and Husch Blackwell LLP represent Compass. None of these law firms nor Compass immediately responded to emails seeking comment.

The case is IBT Emp’r Grp. Welfare Fund v. Compass Minerals Int’l, Inc. , D. Kan., No. 2:22-cv-02432, 7/31/25 .

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Securities Law News

# Apellis Says Investors' 'Reframed' Appeal Still Scientific Spat

July 31, 2025, 12:57 PM PDT

Apellis Pharmaceuticals Inc. investors' allegations concerning its injectable eye drug, SYFOVRE, were correctly determined a scientific disagreement over clinical trial protocols, not the basis of a valid securities fraud lawsuit, the biopharmaceutical company told an appellate court.

A district court rightly held stockholders failed to allege misstatements about the frequency and adequacy of testing for eye inflammation caused by the drug in a pair of later-stage studies, Apellis and CEO Cedric Francois said in their brief filed in the US Court of Appeals for the First Circuit Wednesday.

The investors attempted to reframe their theory on appeal to be that Apellis and Francois omitted the trials weren't designed to detect vasculitis after the US District Court for the District of Massachusetts tossed their proposed class action, the brief said.

The shareholders' brief said Apellis and Francois' repeated statements about the absence of retinal vasculitis—a form of inflammation in eye blood vessels that can lead to blindness—amounted to half-truths that the clinical trials properly tested for it but didn't.

Apellis said it didn't find instances of vasculitis in its final phase clinical studies of the injection made to treat a form of macular degeneration, and had followed the Food and Drug Administration's approved testing protocol. It's still a low risk, the brief said: Physicians have widely accepted its treatment.

Five months after the FDA approved Apellis' eye injection for geographic atrophy, a leading cause of blindness, the American Society of Retina Specialists published a letter saying physicians reported six patient instances of retinal vasculitis. After the specialists' report came out in 2023, Apellis' share price plummeted 38% in one trading day—at that time a record single-day drop amid the stock's worst trading month since opening in 2017, according to data compiled by Bloomberg.

### Intent

The stockholders also failed to allege that Apellis or Francois intentionally or recklessly disregarded that investors were deceived based on "truthful statements that no cases of retinal vasculitis were observed during the trials," the defendants' brief said. Their complaint was devoid of typical claims to support their theory of intent, such as confidential witness statements.

While the district court didn't need to address this point, the investors failed to allege they suffered losses based on alleged misrepresentations of the clinical trials, Apellis' brief said. The society's letter concerned physician-found cases and didn't tie back to the studies—it "may have been bad news, but it was not corrective news."

And district Judge Julia E. Kobick correctly said company actions taken after alleged misstatements were made didn't demonstrate a "propensity to lie" in earlier statements about an absence of vasculitis—investors failed to demonstrate they were misleading, Francois and the drug company said.

Robbins Geller Rudman & Dowd LLP and Pomerantz LLP represent the plaintiffs-appellants, Ray Peleckas and Michigan Laborers' Pension Fund. Wilmer Cutler Pickering Hale and Dorr LLP represents Apellis and Francois. None of these law firms nor Apellis immediately responded to emails seeking comment.

The case is In re: Apellis Pharm., Inc. Sec. Litig. , 1st Cir., No. 25-01383, brief filed 7/30/25 .

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Class Action

# Centene Shareholder Sues Board Over Revoked Earnings Forecast

Aug. 1, 2025, 9:06 AM PDT

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Centene Corp.'s board and top executives overhyped its 2025 profit outlook before withdrawing its guidance on slow growth and underestimated costs in its Affordable Care Act plans, a shareholder lawsuit said.

The health insurer's stock price plunged more than 40% on July 2, the day after it withdrew the forecast, according to the complaint filed in the US District Court for the Southern District of New York. It was the stock's biggest one-day tumble since its initial public offering in 2001, according to data compiled by Bloomberg.

Centene's corporate caretakers hurt its reputation and wallet by letting it issue rosy statements concealing the reality of its enrollment and morbidity rates for its insurance plans and retention rates in its Medicare business, said the shareholder derivative action filed Thursday. And they overstated the adequacy of their oversight, including in an allegedly misleading 2025 proxy that solicited stockholders' votes to re-elect board members.

Centene's not the only insurer taking earnings hits this year as the industry contends with issues tied to government health-care programs. UnitedHealth Group Inc., Elevance Health Inc., and Molina Healthcare Inc. have all lowered or pulled their 2025 forecasts.

President Donald Trump's administration vowed to crack down on what it deems inappropriate ACA enrollments as it aims to curtail former President Barack Obama's health-care law.

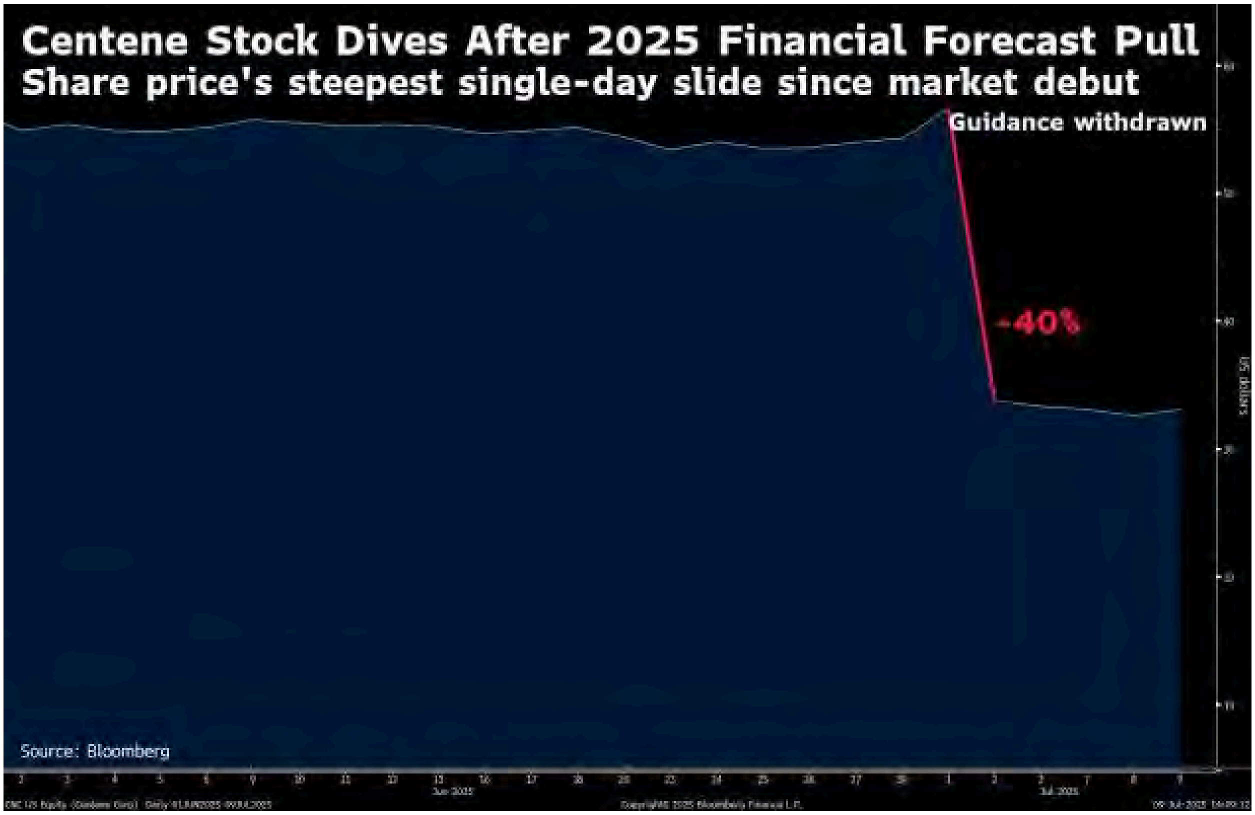
Centene said July 1 preliminary data from most of the states where it offers ACA marketplace plans showed slower-than-anticipated market growth and implied a higher rate of higher-risk enrolled people who require more care. This suggested a $2.75 reduction to its adjusted diluted earnings per share estimate.

The insurer also said its Medicaid business experienced increasing costs. After a pandemic-era policy ended and states redetermined eligibility for the plans, healthier members lost coverage, and the ratio of costlier patients who needed more care increased.

"Despite the shifting landscape, we believe that the staying power of Medicaid, Medicare and the Individual Marketplace is as strong as it has ever been," CEO Sarah M. London said last week while delivering disappointing second quarter results.

**Derivative Claims**

Shareholder Adam Franchi's derivative complaint alleged wrongdoing from Dec. 12, 2024—when Centene announced an adjusted diluted EPS guidance of more than $7.25—through June 30, 2025. Franchi's suing the board, including London, a former board member, and Chief Financial Officer Andrew Lynn Asher.




Rowley Law PLLC represents Franchi, who seeks damages, restitution, and corporate governance reform for Centene. Franchi alleged breaches of fiduciary duties, gross mismanagement, and waste of corporate assets by all the defendants; a securities law violation by the board; and that the CEO and CFO were unjustly enriched.

The derivative echoes an investor's proposed class action against Centene, London, and Asher.

Centene didn't immediately respond to an email seeking comment. Nor did the law firm representing it in the proposed class action, Davis Polk & Wardwell LLP.

The case is Franchi v. London , S.D.N.Y., No. 1:25-cv-06297, complaint filed 7/31/25 .

*An incorrect AI summary previously at the top of this story was removed.*

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Securities Law News

# Lordstown-Foxconn Rift Focus of Investor Suit Revival Bid (1)

July 31, 2025, 9:37 AM PDT; Updated: July 31, 2025, 10:07 AM PDT

An appellate judge squeezed Lordstown Motors Corp. on whether knowledge of Foxconn Technology Group's breaches of their partnership deal before it unraveled completely would've mattered to investors in real-time, perhaps a ray of hope for shareholders asking to revive their case against the e-vehicle maker.

Judge Karen Nelson Moore dug into the former Lordstown executives' lawyer in a back-and-forth on whether disclosing that the new investment agreement resulted from Foxconn breaching the prior joint venture accord would have been information those suing would have wanted to know when deciding whether they wanted to maintain their investments on the eventually bankrupt company.

The infractions could've demonstrated the tech company was untrustworthy and might've made a difference, she emphasized Thursday during oral arguments before the US Court of Appeals for the Sixth Circuit.

Shareholders appealed after the federal judge in Ohio tossed their proposed class action last year, ruling they failed to adequately allege the former Lordstown leadership made actionable misstatements or omissions about the deal pre-collapse.

The second agreement was far better for Lordstown, attorney Jonathan Rotenberg of Katten Muchin Rosenman LLP said on the former officers' behalf, rendering issues from the first deal unimportant. The now-former executives had no duty to disclose any ongoing negotiations, even if they had a "poor tenor," he said.

The investors' case was fraud by hindsight built off of Lordstown's own Foxconn challenge in 2023 after the deal collapsed, Rotenberg said. And there's a high burden to plead the level of intent or reckless disregard to carry securities fraud claims, which the stockholders had failed to do. There are often "hiccups" in an agreement, he said, and it only became apparent toward the end of the partnership that it was sour.

Investors would've cared how the struggling automaker's business venture was unfolding while Foxconn infractions accumulated, said the investors' attorney, Robert W. Killorin of Faruqi & Faruqi LLP. Their complaint was built on allegations from before the company filed for bankruptcy and sued Foxconn in 2023, including from former employees, meaning it wasn't fraud by hindsight, he said.

**At the Lower Court**

The district court lacked an appreciation of the context in which purported misstatements and omissions were made when it tossed the suit last year, Killorin said. Rather than taking the plaintiffs' well-pled allegations as true, as it was supposed to at this stage of litigation, the US District Court for the Northern District of Ohio judge wrongly relied on executives' findings to craft her dismissal.

Former CEO Edward Hightower, Chief Financial Officer Adam Kroll, and Executive Chairman Daniel Ninivaggi misrepresented or omitted facts about its joint venture with Foxconn to help design and develop electric vehicles, the investors alleged. The individuals touted the deal, investors Andrew and Joshua Strickland claimed, inflating Lordstown's stock price before its bankruptcy filing.

The executives told the district court that Lordstown was "blindsided" by the Foxconn deal's collapse and the lawsuit was built on a baseless theory of wrongdoing. The dismissal last year notched a legal victory for the EV-maker following a series of settlements.

Lordstown agreed to a $25.5 million settlement with the Securities and Exchange Commission in 2024 to resolve allegations it overhyped its Endurance pickup truck's sales outlook to stockholders. Founder and ex-CEO Stephen Scott Burns also consented to pay the SEC $175,000 to settle claims he inflated demand for the Endurance. And architects of Lordstown's blank-check merger to go public in 2020 reached a $15.5 million shareholder accord last year.

Lordstown, which emerged from bankruptcy as Nu Ride Inc. in 2024 after selling off assets, alleged Foxconn destroyed its business.

Judges Richard Allen Griffin and John Baylor Nalbandian also participated in the three-judge panel.

Faruqi & Faruqi LLP, which didn't respond to an email seeking comment, and Ohio-based attorney John C. Camillus represent the investors on appeal. Katten Muchin Rosenman LLP, which declined to comment, and Warren Terzian LLP represent Lordstown's former leaders.

The case is Lim v. Hightower , 6th Cir., No. 24-03960, oral arguments 7/31/25 .

(Updates to add a law firm declined to comment in the 14th paragraph.)

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Securities Law News

# Scynexis Beats Investor’s Suit Over Drug Recall Risk for Now

July 31, 2025, 11:40 AM PDT

Scynexis Inc. and its top executives defeated allegations it didn’t properly disclose the contamination risks of a drug to treat fungal infections from investors before a 2023 recall.

The investor’s claim that the biopharmaceutical company misrepresented compliance with regulatory manufacturing standards was “conclusory and insufficient” without providing details that it failed to monitor standards, Judge Brian Martinotti said. The US District Court for the District of New Jersey judge tossed the proposed class action Wednesday but is letting the shareholder file an amended complaint within a month of his order.

The investor, Brian Feldman, didn’t allege any internal information to undercut Scynexis’ belief that they and any contractors complied with regulatory standards, Martinotti said. As it stands, the complaint argues “fraud by hindsight” in alleging that licensing partner GSK plc uncovered the potential cross-contamination issue, leading to Scynexis’ voluntary recall of its fungal-fighting drug and the subsequent collapse of its stock price.

Scynexis issued a voluntary recall of its oral treatment—ibrexafungerp tablets, sold under the name Brexafemme—in 2023 after GSK reviewed the vendor’s manufacturing equipment and cleaning supplies, finding the potential risk of cross-contamination with another substance that can cause allergic reactions. The company’s share price fell 34% to close at $2.18 the day it disclosed the recall and that it was placing a temporary hold on clinical studies of the drug in a federal filing. It was then the stock’s steepest single-day drop since May 2017, according to data compiled by Bloomberg.

The Jersey City, N.J.-based company, CEO David Angulo, and Chief Financial Officer Ivor Macleod allegedly filed rosy disclosures about compliance that omitted information about the potential for contamination, recall, and the halting of clinical trials, Feldman said.

The Food and Drug Administration later concurred with Scynexis’ voluntary hold, placing its own clinical hold on testing treatment ibrexafungerp in 2023. The FDA lifted that hold in April.

Glancy Prongay & Murray LLP is lead counsel for Feldman, who seeks to represent a class of those who got stock from March 31, 2023, through Sept. 22, 2023. Cooley LLP represents Scynexis and its top executives. Neither of the law firms nor the company immediately responded to emails seeking comment.

The case is Feldman v. Scynexis, Inc. , D.N.J., No. 2:23-cv-22082, 7/30/25 .

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Securities Law News

# Trade Desk Told in Preliminary Ruling to Turn Over ‘DExit’ Files

July 31, 2025, 12:15 PM PDT

Trade Desk Inc. should have to give internal files to a shareholder investigating its move from Delaware to Nevada, a magistrate judge said Thursday.

The preliminary ruling is the latest to grapple with fears of an exodus from Delaware, where corporate fees fund more than a quarter of the annual budget, as founders and other insiders say a judicial crackdown on insider conflicts of interest is driving them to relocate.

The lawsuit cited a “credible suspicion” that the reincorporation was part of a larger scheme to cement billionaire CEO Jeff Green’s corporate control by facilitating potential transactions aimed at preserving the company’s dual-class structure, which is set to sunset in December.

Those worries are serious enough to justify forced disclosure of any board materials discussing the dual-class sunset provision, Magistrate in Chancery Loren Mitchell said Thursday. Given “the benefit flowing to Mr. Green as primary owner of Class B stock, it is reasonable to have concern that the decision to reincorporate was not made on a clear day,” Mitchell wrote in a 28-page opinion.

The ruling is subject to review by a more senior judge on Delaware’s Chancery Court, the elite business tribunal that’s spent two years trying to balance fidelity to the state’s best-in-class corporate laws against the mounting “DExit” pressure.

**‘DExit’ Backdrop**

Several high-profile businesses have already shifted their charters elsewhere, saying the legal swing toward smaller investors is gumming up deals and even routine decisions.

Elon Musk initially led the push, following up a $56 billion court loss by moving Tesla Inc. to Texas and slamming Delaware’s judges with a year of escalating rhetorical attacks. The 2024 ruling is currently before the state’s top court.

The narrative gained momentum this year, when a handful of major firms including Meta Platforms Inc. announced they were leaving Delaware or seriously considering it. The news prompted a major corporate law overhaul on an aggressive timeline that divided the state's legal community.

The legislation imposed a rigid definition of controlling stockholders, created a safe harbor for certain types of self-dealing, bolstered the presumption that board members are capable of independent oversight, and weakened a statute giving investors access to company records if they raise preliminary concerns. The bill was drafted by a panel that included former judges now practicing law at firms linked to Musk and Mark Zuckerberg.

**Clear Day**

Thursday's ruling tied the Trade Desk case to a landmark decision delivered by the Delaware Supreme Court in the shadow of a DExit debate that continues to reverberate despite the legal overhaul.

That ruling, in February, made it easier for companies to leave Delaware without paying an "exit tax" to shareholders. The state high court rejected claims that TripAdvisor Inc.'s relocation to Nevada—where officers and directors face little liability risk—handed insiders the types of personal perks that call for elevated legal scrutiny.

But the justices were careful not to say reincorporation never raises self-dealing concerns, according to Thursday's decision. Instead, they stressed that TripAdvisor's move came on a clear day, without a transaction on the horizon that could have siphoned benefits away from public investors, Mitchell said. There's evidence suggesting Trade Desk's shift may have been different, she found.

Still, official meeting minutes and related documents should be sufficient to investigate those concerns, absent any reason to think communications are necessary, the magistrate said. "It is only in circumstances where the provided materials are insufficient where the court will order emails be produced," Mitchell wrote.

The investor leading the litigation, Richard Scarantino, is represented by McCarter & English LLP, Fields Kupka & Shukurov LLP, and RM Law PC. Trade Desk is represented by Wilson Sonsini Goodrich & Rosati PC and Latham & Watkins LLP.

The case is Scarantino v. Trade Desk Inc. , Del. Ch., No. 2025-0442, 7/31/25 .

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# BlackRock loses bid to dismiss Texas climate collusion lawsuit

**reuters.com**/sustainability/boards-policy-regulation/blackrock-loses-bid-dismiss-texas-climate-collusion-lawsuit-2025-08-01

Reuters August 1, 2025

A specialist trader works at the post where BlackRock is traded on the floor of the New York Stock Exchange (NYSE) in New York City, U.S., July 21, 2022. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights, opens new tab

(BLK.N), opens new tab to dismiss a lawsuit filed by Texas and 12 other Republican-led states that said the companies violated antitrust law through climate activism that reduced coal production and boosted energy prices.

U.S. District Judge Jeremy Kernodle in Tyler, Texas agreed to dismiss just three of the 21 counts in the states' lawsuit, which also names institutional investors State Street (STT.N), opens new tab and Vanguard.

The lawsuit is among the highest-profile cases targeting efforts to promote environmental, social and governance goals.

"Despite the plaintiffs' efforts to advance a new and dangerous antitrust theory, this lawsuit remains baseless and without merit," State Street said in a statement. Representatives for Vanguard and BlackRock did not immediately respond to requests for comment.

The ruling by Kernodle, who was appointed by President Donald Trump, means the states can move forward with their claims that the asset managers violated U.S. antitrust law by joining Climate Action 100+, an investor initiative to take action to combat climate change, and used their shareholder advocacy in furtherance of its goals.

The companies have denied wrongdoing and called the case "half-baked." But the states' theories have garnered support from Trump-appointed antitrust enforcers at the U.S. Department of Justice and Federal Trade Commission.

The outcome of the lawsuit could have major implications for how the companies, which together manage some $27 trillion, approach their holdings and passive funds.

One possible remedy sought by the plaintiffs would be for the fund firms to divest holdings in coal companies, which BlackRock has said would harm the companies' access to capital and likely raise energy prices.

Reporting by David Shepardson in Washington and Jody Godoy in New York; Editing by David Holmes and Paul Simao

Our Standards:

# Lawyers face objections to multimillion-dollar fees after no-cash settlement with Schwab

**reuters.com**/legal/government/lawyers-face-objections-multimillion-dollar-fees-after-no-cash-settlement-with-2025-07-31

Mike Scarcella, David Thomas July 31, 2025

The company logo for Financial broker Charles Schwab is displayed at a location in the financial district in New York, U.S., March 20, 2023. REUTERS/Brendan McDermid
Purchase Licensing Rights, opens new tab

- Challengers oppose $8 million attorney fee bid in class action over Schwab merger
- Milbank defends Hawaii gun law pro bono at U.S. Supreme Court
- Jackson Walker inks more settlements over bankruptcy judge scandal

July 31 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab.)
A proposed settlement involving Charles Schwab is giving the federal courts a fresh chance to consider what lawyers deserve to be paid for resolving class actions without securing a settlement fund for class members.

Schwab agreed last year to settle the 2022 proposed class action, which said its 2020 merger with TD Ameritrade's brokerage businesses decreased broker competition and caused the plaintiffs to make less money from their trading accounts.

Schwab, which denied any wrongdoing, agreed to settle with the plaintiffs by implementing an antitrust compliance program, with no payment fund for about 36 million class members.

Lawyers for the plaintiffs at law firms Bathaee Dunne, Burke LLC and Korein Tillery this month asked the court, opens new tab to award them more than $8 million in legal fees for their work on the case.
A judge in February preliminarily approved the accord, which would still allow individual customers to sue separately to pursue their own damages claims. But with a final fairness hearing set for next month, some objectors are taking aim at the lawyers' fee request.

"Sometimes, a lawsuit — even a class action lawsuit — will not lead to a large recovery. That happens," the Iowa Attorney General's Office told the court, opens new tab in a filing. "But when the class receives a minimal benefit, there should not be an outsized reward for counsel."
Iowa is not a party but filed an objection, it said, to protect its citizens as part of the nationwide accord.

Another challenger, Ted Frank, director of litigation at the Hamilton Lincoln Law Institute and the founder of the Center for Class Action Fairness, in a filing, opens new tab this week said there's nothing wrong with lawyers bringing a good faith lawsuit that doesn't yield a big payout in the end.
"What they are not entitled to do is use the class action device to pay themselves and their attorneys for a meritless class action," Frank's objection said.

In a filing this month, the plaintiffs told the court that their settlement "would provide meaningful injunctive relief to current and future retail investors." They pointed to other injunction-only settlements to argue that the Schwab settlement class members "gave up very little" to obtain the deal.

The plaintiffs' attorneys did not immediately respond to requests for comment.

In a statement, Schwab defended the proposed resolution and said the firm was focused on its business priorities. The company agreed to the fees requested by the plaintiffs, court records show.

Schwab is represented by lawyers from Gibson Dunn and King & Spalding.

-- Prominent law firm Milbank and its partner Neal Katyal are representing Hawaii in a firearms case, opens new tab at the U.S. Supreme Court for free, the state told Reuters.
Katyal is lead counsel for Hawaii, which is defending a state law requiring a person to obtain a property owner's express consent before bringing a gun onto private property that is open to the public.

Katyal took the case for Hawaii while he was at law firm Hogan Lovells. He jumped to Milbank this year, and now leads the firm's appellate and Supreme Court practice.
It is common for big law firms to provide free or reduced-fee legal services to state and local clients in litigation.

Milbank did not immediately respond to a request for comment.

Separately, Milbank and Katyal are charging reduced rates for legal work defending two New Jersey cities in a lawsuit the Trump administration filed over their immigration policies. In that case, Katyal disclosed that he typically otherwise charges a $3,250 hourly rate. Milbank said it was reducing all of its billers' rates in the case to $300 an hour.
Milbank is one of nine firms that reached deals with Trump in March and April, after he began issuing executive orders against law firms that restricted their access to government officials and federal contracting work.
Milbank, which had not been hit with an order, in its deal said it earmarked $100 million in free legal services for mutually agreed-upon initiatives with the White House.

-- Jackson Walker has reached more settlements with ex-clients that are seeking to recover legal fees they paid the law firm in bankruptcy cases before U.S. Bankruptcy Judge David Jones in Houston, whose undisclosed romantic relationship with a Jackson Walker partner sparked an ethics scandal and cast uncertainty over the firm's fees in dozens of cases.

Five proposed settlements totaling more than $2.3 million are now pending before U.S. District Judge Alia Moses, who is overseeing a legal effort by the U.S. Trustee, the U.S. Justice Department's bankruptcy watchdog, to force Jackson Walker to disgorge all of the fees it was awarded by Jones.
The trustee has opposed Jackson Walker's prior efforts to reach individual settlements with its former clients, as the deals would allow the firm to retain part of the fees Jones awarded.
Read more:

Uber dials up new fights with plaintiffs lawyers
New law firms bank on 'boutique' edge
Clock ticks for Jackson Walker, US Trustee in ethics case involving ex-judge
Reporting by Mike Scarcella



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David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter @DaveThomas5150.

LAW.COM



# Death Threats, Doxxing & Dark Web Searches: US Judges Share Intimidation They Faced

July 31, 2025 | By Avalon Zoppo

**Chief Judge John McConnell Jr. of the U.S. District Court for the District of Rhode Island. Courtesy photo**

U.S. District Judge John McConnell Jr. received an expletive-laden voicemail from a shouting caller who expressed hope that someone would assassinate the Rhode Island jurist.

The call was one of more than 400 recent harassing voicemails to his court, McConnell said at a Speak Up for Justice event Thursday where organizers played a recording of the voicemail. McConnell had been at the center of political attacks in March after he ordered the Trump administration to unfreeze certain federal funding.

The webinar marked the first time McConnell publicly spoke about threats he has faced, though he did not specify the ruling or event that preceded the attacks. He was joined by two other federal judges—all urging leaders in the United States to tone down rhetoric demonizing judges for their decisions.

"I've been on the bench almost 15 years, and I must say it's the one time that actually shook my faith in the judicial system and the rule of law," McConnell said of the voicemail.

“I didn't want to be here. It took me a long time. I've never spoken about what's happened to me personally, because I'm not looking for pity. I'm not looking for sympathy. I want to be able to just do my job again,” said the Barack Obama appointee, who is chief judge of the U.S. District Court for the District of Rhode Island.

Republican lawmakers have filed judicial misconduct complaints and articles of impeachment against McConnell over his decision. GOP Rep. Andy Ogles of Tennessee put up a “wanted poster” with McConnell's and other judges’ photos outside the congressman’s office.

McConnell said there have been six credible death threats against his life and that a person was searching on the dark web for his address because they “wanted Smith and Wesson to pay me a visit at my home.”

He is one of dozens of judges who have received anonymous pizza deliveries to his house, meant to send a message that his home address is known. The pizza boxes have been delivered with the name of U.S. District Judge Esther Salas’ deceased son on them. Daniel Anderl was killed by an angry litigant in 2021.

“I called my friend Esther because I thought she needed to know what was going on," McConnell said. "And we had a good cry over it. But at the end, [we made] a good attempt to right ourselves and know that we had a battle at hand and we had a cause to fight for.”

McConnell said his daughter was doxxed after conservative influencer Laura Loomer posted tweets accusing the judge of having a conflict of interest because his daughter once worked at the Department of Education as a policy adviser. McConnell added his daughter did not work for the federal government when he was assigned the case.

“I don't know that the public understands how the rule of law and the independence of the judiciary is so violently under attack like I'm not sure we've ever seen in this country,” McConnell said.

U.S. District Judge John C. Coughenour of Western Washington, whose house was swatted recently, also spoke at the webinar. Coughenour issued a ruling in February temporarily blocking President Donald Trump’s birthright citizenship executive order.

Coughenour said police arrived at his house with their weapons drawn after receiving a false report that he had killed his wife. He said he later received a mailbox bomb threat sent to the F.B.I. that proved to be a hoax.

“It’s just been stunning to me how much damage has been done to the reputation of our judiciary, because some political actors think that they can gain some advantage by attacking the independence of the judiciary and threatening the rule of law,” said Coughenour, a Ronald Reagan-appointee.

“Historically, if you look around the world, the rise to power in 1930s Germany, 1970s Cambodia, Rwanda, the former Soviet Union—[it] was all preceded by an attack upon the rule of law and the independence of the judiciary,” he continued. “We need a call to action in this country from our lawyers and from our judges to say, ‘Not in this country, not on our watch.’”

U.S. District Judge Robert Lasnik, also of Western Washington, spoke of how he and his adult children were sent anonymous pizza boxes in the name of Judge Salas’ son Daniel after Lasnik gave a local NPR interview calling on Trump’s supporters to tone down hostile language toward the courts.

Lasnik said he had asked not to be assigned cases challenging the administration’s actions so he could speak freely about threats to the federal judiciary.

The Bill Clinton appointee said he too worried the heated rhetoric against judges for their decisions is undermining the rule of law and independence of the judiciary.

“When you go to other countries where they do not have a constitution and they do not have an independent judiciary, what you hear from the judges is, ‘I get a phone call from the prime minister or the premier or whoever [saying], 'We need you to rule this way, and if you don't rule this way, you're going to be out of a job,’” Lasnik said. “And that's not what we have here.”

# Discovery beyond the basics: using checklists and workflows to ensure defensibility

**reuters.com**/legal/legalindustry/discovery-beyond-basics-using-checklists-workflows-ensure-defensibility-2025-07-28

David Shargel July 28, 2025

A message reading "AI artificial intelligence", a keyboard, and robot hands are seen in this illustration taken January 27, 2025. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

July 28, 2025 - As the e-discovery landscape grows more complex, practitioners must be prepared to look beyond the prototypical EDRM model towards consistent and repeatable checklists and workflows. Deploying these tools promotes discovery defensibility, ensuring completeness and accuracy amidst ever-expanding sources of data and new artificial intelligence technologies.

### The EDRM model

Whether they know it or not, most lawyers whose practice includes electronic discovery follow the Electronic Discovery Reference Model. The model outlines, at a high level, steps in the e-discovery process, from identifying, preserving and collecting discovery materials, to processing, reviewing, and producing relevant information.
Introduced in 2005, the EDRM model has withstood the test of time, and continues to provide a reliable framework for the discovery process. But the explosion of electronic data (by some estimates, we send 16 million text messages and 150 million emails each minute), together with the advent of new review technology like artificial intelligence that makes reviewing that data easier and faster, requires that we dig deeper. Using standardized processes at each stage of the EDRM model can help to ensure success.

### Identification and collection

Identifying and collecting potentially relevant materials at the outset set the stage for a defensible discovery process. At best, failing to do so could require going back to your data sources throughout the process to re-collect — a process that results in fractured or overlapping data and potentially an exasperated client. At worst, collection deficiencies could result in sanctions. The old adage "measure twice, cut once" applies, and practitioners should consider using checklists during the identification and collection phase.

To start, during the initial meeting with the client's IT personnel, lawyers should be prepared with a comprehensive checklist concerning possible data sources, ranging from the basics — the nature of the company's email and document management systems — to the details, such as the company's document preservation practices, whether backup sources will need to be accessed, and whether employees use other applications in their work. Counsel must also understand whether employees use company-issued laptops, and whether and how those laptops are backed up.

Given that almost every case now involves mobile data, lawyers must also be prepared to inquire as to the company's mobile device policies, including whether employees are issued phones or if the company has a "Bring Your Own Device," or BYOD program.

A simple checklist of all of these data sources and questions — which can also be used during interviews of individual custodians — can ensure no stone is left unturned.

**Data processing**

Once data is identified and collected it must be processed, another step that benefits from an established workflow that takes into account issues like deduplication, email threading, and factors unique to emerging data sources, such as whether mobile or desktop chats should be broken up into 24-hour segments.

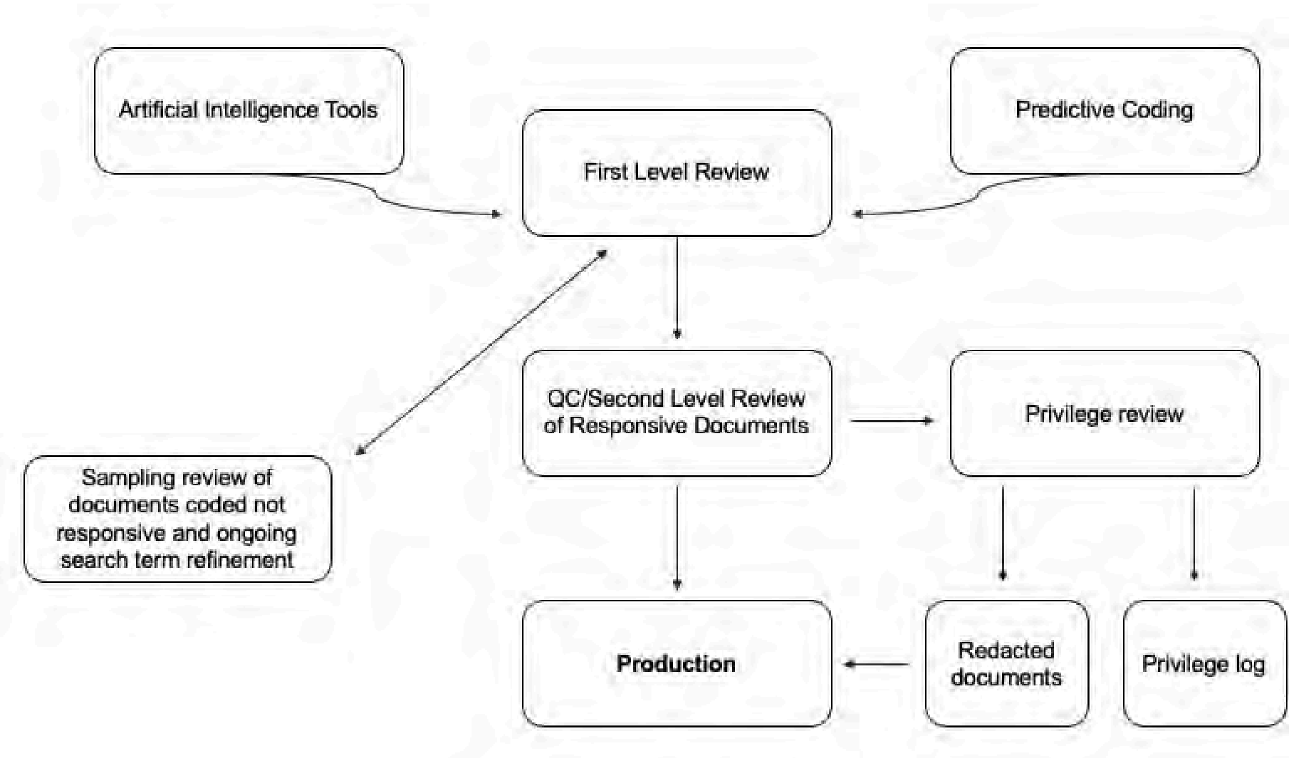
The data processing exercise should also consider the treatment of forensic collections from sources like phones and tablets. These collections will often include troves of irrelevant or unreadable system data, i.e., files and information used by the device's operating system and applications.

While search terms can help to weed this data out, practitioners can also eliminate large swaths of system data during processing by identifying and segregating the associated file types. Addressing system data as part of your processing workflow not only can streamline review, but could also reduce data hosting costs.

Of course, search terms and other metadata conditions are another key element of the processing stage, and good workflows should include testing and sampling to ensure search terms are retrieving relevant materials, and not returning false hits.

**Document review**

If there is any stage of the EDRM model that would benefit most from a planned workflow it is the document review process. This is especially so given the widespread availability of artificial intelligence and other review technologies, which add layers of both opportunity to complexity to the review stage.




Source: the author [Purchase Licensing Rights, opens new tab]

This sample workflow includes the basics with which most practitioners are familiar (phases of review followed by production), but adds important components related not only to new technologies but also quality control.

Reflecting advances in e-discovery technology, a review workflow must first take into account the extent to which the case team will leverage either artificial intelligence (AI) or predictive coding. Many review platforms now offer generative AI components by which the user can prompt the database to automatically code documents according to the needs of the case.

Predictive coding — also known as technology-assisted review (TAR) or computer-assisted review (CAR) — can be thought of as generative AI's older, less sophisticated cousin, and has been available for several years. In most instances, predictive coding systems learn from existing manual review decisions, resulting in the software predicting how the case team will code unreviewed documents.

By any measure, either AI or predictive coding — or a combination of both — can dramatically increase the speed and efficiency of the first pass review.

From there, the next phase of a good review workflow should involve a quality control (QC) or second level review process, where determinations made during the first pass review, such as for responsiveness or privilege, are confirmed. AI or TAR may also have a place at this phase, but whether assisted by technology or done manually it involves re-reviewing all of the documents coded for production at the first step, reviewing a discrete set of those documents based upon issues, keywords, or custodians, or performing a review based on random sampling.

Regardless, omitting the quality control step could result in the inadvertent production of privileged information, inaccurate issue coding, or an overproduction of materials that are not responsive.

Review workflows usually also involve a discrete secondary review of documents initially coded as privileged. This work involves confirming the privilege designation, populating information that must be included on a privilege log, and, as necessary, applying redactions to partially-privileged materials.

The quality control process should also include a review of documents determined in the first pass review to be non-responsive to ensure the review team is coding correctly. These documents can also be used to further assess whether search terms utilized at the outset (during processing) are effective or need to be refined.

Following the EDRM model, document production follows these review stages and requires the careful compilation of documents confirmed to be produced. This stage also benefits from its own set of workflows and checklists aimed at ensuring that documents not meant for production are not included, and that the production complies with the applicable production specifications. These workflows are usually built into the review platform which, for example, will flag documents within a production set coded as privileged.

## Conclusion

In sum, the discovery process in most complex litigations and investigations involves massive amounts of data from a variety of sources, ranging from email to text messages. While the EDRM model continues to provide a high-level roadmap, implementing detailed checklists and workflows throughout each step of the model is key to a defensible process.



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Class Action

# Period-Tracking App Flo Settles Data Sharing Class Action (1)

July 31, 2025, 11:00 AM PDT; Updated: July 31, 2025, 1:03 PM PDT

## Summary by Bloomberg AI

AI Generated

- Flo Health Inc. reached a settlement partly resolving a privacy case about sharing sensitive health data with Meta Platforms Inc. and Google LLC.
- The agreement comes before closing arguments were set to be provided to the jury in a trial concerning whether companies shared data about users' periods without permission.
- Flo said the settlement included no admission of wrongdoing and that "we have always maintained that the claims lacked merit" according to the company.

Flo Health Inc., maker of a popular menstrual tracking app accused of sharing sensitive health data of millions of women with Meta Platforms Inc. and Google LLC, reached a settlement Thursday, partly resolving a sweeping privacy case.

The agreement comes a day before Flo and Meta were set to provide closing arguments to the jury at the end of a two-week long trial in San Francisco concerning whether companies shared data about the dates and lengths of users' periods without their permission, violating a range of privacy laws.

Meta remains as the lone defendant in the case, which is one of the first major privacy cases against tech giants to reach a trial. The settlement would avoid a jury verdict on whether Flo violated its privacy agreements.

Flo's notice of settlement said the parties had reached an agreement in principle but didn't provide any details about the terms of the agreement. Google settled the case a few weeks before it was set for trial.

Flo said in a statement that "we have always maintained that the claims lacked merit, and as the case progressed, the lack of evidence to support these allegations became increasingly clear" and that the settlement included no admission of wrongdoing.

The company had moved to dismiss the plaintiffs' claims on Wednesday, arguing the evidence presented at trial showed the plaintiffs couldn't prove their claims under the California Confidentiality of Medical Information Act.

Judge James Donato told the attorneys Wednesday that he was prepared to grant Flo's motion based on the evidence he saw, according to trial transcripts.

"It's going to potentially be confusing and highly unproductive to let a claim for which I see virtually no evidence—in fact, probably zero evidence—to go forward," Donato said.

Flo said it would communicate details of the settlement, which is subject to court approval, to class members in the coming weeks.

An attorney for the plaintiffs didn't immediately return requests for comment.

Flo, founded in London in 2015, is among the most popular period and fertility tracking apps on the market with 60 million active users. The startup had already faced criticism of its handling of user data before the trial, with the Federal Trade Commission reaching a settlement with Flo in 2021 requiring it to notify users of how it shared data with third parties.

The class action was brought by a group of women who used the app between 2016 and 2019.

Donato of the US District Court for the Northern District of California narrowed the case but determined earlier this year that a jury must decide whether Meta violated the California Invasion of Privacy Act, a 1960s era wiretap law, as well as the claims against Flo.

Dechert LLP represents Flo. Lowey Dannenberg PC, Spector Roseman & Kodroff PC, and Labaton Keller Sucharow LLP are the plaintiffs' co-lead counsel.

The case is Frasco v. Flo Health Inc. , N.D. Cal., No. 3:21-cv-00757, 7/31/25 .

(Updates throughout.)

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News | **Class Actions**

# Actos Drugmakers Want Rehearing in $7B 'Class-Action Behemoth'

July 31, 2025 | By **Amanda Bronstad**

## What You Need to Know

- The U.S. Chamber of Commerce and others in the defense bar that filed amicus briefs in the Actos case are pushing for the U.S. Court of Appeals for the Ninth Circuit to take up class certification again.
- The Ninth Circuit, in a 2-1 unpublished opinion, found that the district judge conducted a 'rigorous analysis' of predominance when allowing a plaintiffs' expert's estimate that only 1.5% of the class wasn't harmed.
- On June 2, the Ninth Circuit held off ruling until the U.S. Supreme Court addressed a class certification ruling in Laboratory Corporation of America Holdings v. Davis.

**Robert Wick of Covington & Burling. June 23, 2015. Photo by Diego M. Radzinschi/THE NATIONAL LAW JOURNAL.**

The defense bar is pushing for the U.S. Court of Appeals for the Ninth Circuit to take up the issue of class certification again in hopes of reversing an unprecedented "multi-billion-dollar class-action behemoth."

Lawyers for the manufacturers of diabetes drug Actos petitioned the Ninth Circuit for an *en banc* panel to rehear a June 16 decision allowing a potentially $7 billion class action to be certified. The case, brought by thousands of third-party payors, such as plaintiff Painters & Allied Trades District Council 82 Health Care Fund, a small employee benefits plan, alleged Takeda Pharmaceutical and Eli Lilly conspired under the U.S. Racketeer Influenced and Corrupt Organizations Act to keep Actos on the market for years despite its known risks of bladder cancer.

The Ninth Circuit, in a 2-1 unpublished opinion, found that U.S. District Judge John Holcomb conducted a "rigorous analysis" of predominance when allowing a plaintiffs' expert's estimate that only 1.5% of the class wasn't harmed. But, in a July 16 rehearing petition, defense attorney Robert Wick, of Covington & Burling in Washington D.C., noted that is still thousands of uninjured class members and runs counter to prevailing case law.

"In this action, the certification order transformed an individual plaintiff's dubious RICO claim into a multi-billion-dollar class-action behemoth," Wick wrote. "More broadly, the certification order here is likely to become the playbook for using dubious fraud and RICO theories to convert doubtful failure-too-warn and personal injury allegations into irresistible class-action juggernauts."

This week, the U.S. Chamber of Commerce and the Pharmaceutical Research and Manufacturers of America filed a joint amicus brief supporting the rehearing.

"One of the reasons it's so significant is when you read the opinion, there's a very strong dissent by Judge Miller," Cory Andrews, general counsel of the Washington Legal Foundation, which filed its own July 25 amicus brief, told Law.com.

Among other things, Circuit Judge Eric Miller wrote in that dissent that individual issues predominated in the "sprawling class action" and that Holcomb did not conduct a "rigorous analysis" of the plaintiffs' expert who used a statistical model to determine the size of the injured class. "Had it done so," Andrews said, "it would have determined the theory failed to establish reliance on a class-wide basis."

Chris Coffin, of Pendley Baudin & Coffin in New Orleans, who is class counsel, told Law.com, "We are very confident in the thorough analyses of the class certification issues by both the district court and the Ninth Circuit. We see the defendants' petition for rehearing as nothing more than unnecessary delay, and we are eager to get the case past this point so that we can move on to trial."

Coffin is handling the plaintiffs' case with R. Brent Wisner, of Los Angeles-based Wisner Baum.

Wick and another Covington & Burling partner, Andrew Soukup, in Washington D.C., for Takeda, and Kirkland & Ellis partner John O'Quinn, also in Washington D.C., for Lilly, did not respond to requests for comment.

## Predominance a 'Rubber Stamp'?

The case, brought on behalf of purchasers of Actos over an 11-year period, is separate from the personal injury cases, which led to a $9 billion verdict in 2014 and Takeda's $2.4 billion settlement of 9,000 lawsuits in 2015. The case has already been up before the Ninth Circuit, which in 2019 reversed dismissal. Defense lawyers unsuccessfully petitioned the U.S. Supreme Court to hear the case, insisting that members of the class lacked standing under Article III of the U.S. Constitution.

**Judicial nominee John W. Holcomb, to be U.S. District Judge for the Central District of California, appears via video teleconferencing before the Senate Judiciary Committee during his confirmation hearing on Wednesday, June 17, 2020.**

Holcomb, of the Central District of California, certified a class of third-party payors, prompting the current appeal before the Ninth Circuit, which addresses that order.

Both Public Justice and the American Association for Justice filed amicus briefs supporting the class.

On June 2, the Ninth Circuit held off ruling until the Supreme Court addressed a class certification ruling in *Laboratory Corporation of America Holdings v. Davis*. That case also addressed the certification of injured class members, but the Supreme Court, on June 5, sent it back to the Ninth Circuit due to a procedural issue.

In this month's rehearing petition, defense lawyers said the Ninth Circuit's holding "exacerbates the circuit split" that prompted the Supreme Court to take up *LabCorp*, citing a dissent by Justice Brett Kavanaugh, who would have decided the case by concluding that, in a damages class, common questions do not predominate when there are uninjured members.

The rehearing petition said, "The panel's contrary approach threatens to turn the predominance requirement into a rubber stamp, and it conflicts with decisions of the Supreme Court, this court, and other circuits."

Securities Law News

# DraftKings’ $10 Million NFT Settlement Gets Final Court Nod (1)

July 31, 2025, 6:33 AM PDT; Updated: July 31, 2025, 8:49 AM PDT

DraftKings Inc.’s $10 million settlement with a class of customers who purchased its non-fungible tokens got final approval from a federal court, resolving allegations the sportsbook sold unregistered securities and led buyers to expect profits that didn’t materialize.

Class counsel will get $3.33 million in attorneys’ fees plus nearly $53,000 in litigation expenses, Judge Denise J. Casper said Wednesday. The US District Court for the District of Massachusetts judge previously approved a $50,000 award for lead plaintiff Justin Dufoe, who claimed he expected to make a profit but sold some NFTs at a loss and many he held during litigation were worthless.

- The proposed settlement funds are to be disbursed to those who purchased, held, or sold DraftKings NFTs dating back to Aug. 11, 2021
- Casper ruled Dufoe sufficiently pleaded that DraftKings’ NFTs were investment contracts and that that he reasonably expected profits after their purchase
- DraftKings shut down its NFT marketplace following that ruling last year

Kirby McInerney LLP; Berman Tabacco; Hannafan & Hannafan Ltd.; and G. Dowd Law LLC were named class counsel. Wilmer Cutler Pickering Hale and Dorr LLP and Sullivan & Cromwell LLP represent DraftKings. None of these six law firms nor DraftKings immediately responded to emails seeking comment.

The case is Dufoe v. DraftKings Inc. , D. Mass., No. 1:23-cv-10524, final judgment 7/30/25 .

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Class Action

# Rite Aid $6.8 Million Data Breach Settlement Gets Final Nod

July 31, 2025, 12:40 PM PDT

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Rite Aid Corp's $6.8 million deal to settle a proposed class action that followed the 2024 notice of an earlier data breach received final approval from a federal judge.

The settlement administrator received 69,451 claims, a small percentage of which was for documented losses, according to Judge Harvey Bartle III of the US District Court for the Eastern District of Pennsylvania. The pro rata payment for most class members will be approximately $38.28, but California residents in the 2.2 million person class will recover about twice that amount due to the availability of statutory damages.

- Class counsel sought $2,380,000 in attorneys' fees, 35% of the settlement, which the court approved
- Bartle said class counsel was "notably efficient in resolving these claims before Rite Aid declared bankruptcy," an event that likely barred further recovery
- The settlement will be paid through Rite Aid's insurance, rather than its own assets

Ahdoot & Wolfson PC, Shub Johns & Holbrook LLP, Laukaitis Law LLC, Cotchett Pitre & McCarthy LLP, and Hausfeld LLP represented the plaintiffs and the proposed class. Holland & Knight LLP represented Rite Aid.

The case is Bianucci v. Rite Aid Corp. , E.D. Pa., No. 2:24-cv-03356, 7/30/25 .

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Class Action

# Microsoft Unit Nuance Settles MOVEit Claims for $8.5 Million

July 31, 2025, 11:22 AM PDT

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Nuance Communications, a Microsoft subsidiary that provides clinical documentation services to healthcare professionals, reached an agreement to pay $8.5 million to settle a complaint stemming from the MOVEit data breach.

Government agencies, financial institutions, universities, and businesses around the world used MOVEit. Under the agreement class members can file for two years of credit monitoring, and reimbursement of either pro rata or for documented losses.

- Had litigation continued, Nuance may have argued that because it received the information from downstream data custodians, the amount of liability it had was limited, according to a motion Wednesday to preliminarily approve the settlement
- The personal information of approximately 1.2 million people was taken from Nuance's MOVEit environment, the motion said
- The lawsuits stemming from the 2023 data breach were consolidated in the US District Court for the District of Massachusetts before Judge Allison D. Burroughs

Berger Montague PC, Lynch Carpenter LLP, Cohen Milstein Sellers & Toll PLLC, Lockridge Grindal Nauen PLLP, Levin Sedran & Berman LLP, and Hagens Berman Sobol Shapiro LLP represent the plaintiffs. Dechert LLP represents Nuance.

The case is in re: MOVEit Customer Data Security Breach Litigation , D. Mass., No. 1:23-md-03083, motion for preliminary approval 7/30/25 .

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# Facebook must face DC attorney general's lawsuit tied to Cambridge Analytica scandal

**reuters.com**/legal/government/facebook-must-face-dc-attorney-generals-lawsuit-tied-cambridge-analytica-scandal-2025-07-31

Mike Scarcella July 31, 2025

A keyboard is placed in front of a displayed Facebook logo in this illustration taken February 21, 2023. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

July 31 (Reuters) - Meta's Facebook must face a consumer protection lawsuit brought by the District of Columbia's attorney general accusing the social media giant of misleading consumers about its data-privacy practices, an appeals court ruled on Thursday.

The District of Columbia Court of Appeals revived the District's lawsuit for now in a unanimous three-judge ruling, opens new tab, finding that a lower court judge applied the wrong legal standard in dismissing the case in 2022.


The District's lawsuit was part of a wave of court and regulatory actions stemming from revelations in 2018 that Facebook had allowed the now-defunct British political consulting firm Cambridge Analytica to access data from as many as 87 million users. The consultancy's clients included President Donald Trump's 2016 election campaign.

Facebook has denied any wrongdoing, and said that it made clear and appropriate disclosures to users about its privacy policies. It still can seek dismissal of the lawsuit.

In a statement, Facebook said it was weighing its options and remained confident it will prevail.

D.C. Attorney General Brian Schwalb in a statement called the decision a "significant victory." He said Meta "misled District residents and failed to protect their privacy, representing to users that protecting their privacy was paramount."

The District's lawsuit accused Facebook of duping users into thinking the company had strong enforcement measures to audit third-party applications. The lawsuit said Facebook allowed third parties like Cambridge Analytica to harvest user data without consent on a widespread basis.

In the lower court ruling, Judge Maurice Ross of the Superior Court for the District of Columbia concluded that "Facebook did not materially mislead consumers as to their response to Cambridge Analytica."

The appeals court said the attorney general should have a lower burden of proof in making renewed arguments that Facebook made unintentionally misleading claims to the platform's users about their control over their information shared on the site.

Meta chief executive Mark Zuckerberg and current and former directors and officers of the company this month agreed to settle claims seeking $8 billion for alleged damage caused by allowing repeated violations of Facebook users' privacy. The accord, filed in the Delaware Court of Chancery, did not disclose a settlement amount.
Facebook in 2022 said it would pay $725 million to resolve a class action in federal court in California over the Cambridge Analytica scandal.

In 2019, Facebook agreed to pay a record-breaking $5 billion fine to resolve a U.S. Federal Trade Commission probe into its privacy practices.
The case is District of Columbia v. Facebook, District of Columbia Court of Appeals, No. 23-CV-0550.

For plaintiff: Jeremy Girton of D.C. attorney general's office

For defendant: Joshua Lipshutz of Gibson, Dunn & Crutcher

Securities Law News

Opinion

# Matt Levine's Money Stuff: You Can Insider Trade NFTs Now

July 31, 2025, 10:59 AM PDT

**The OpenSea guy**

OpenSea was, and as far as I can tell still is, a big marketplace for trading nonfungible tokens. These tokens had a vogue in crypto a few years ago, when NFTs from popular series like Bored Ape Yacht Club would sell for millions of dollars. Anyone can create NFTs, and they generally have no intrinsic value; their value is strictly memetic. If a lot of people have heard of Bored Apes and think they are cool, then they will be valuable; if not, not.

Given this, OpenSea played an important role in the NFT boom. Specifically, OpenSea has a website, and it would feature some NFTs prominently on its homepage. People would go to OpenSea's website to buy NFTs, and they would see the NFTs featured on the homepage, which would make them more likely to buy those NFTs, so those NFTs' prices would go up. So if you could buy an NFT *before* it was featured on the homepage, and then sell it *after* it was featured, you could pretty reliably make money. It is hard to convey how weird 2021 was.

Anyway the guy who picked the NFTs for the homepage in 2021, an OpenSea employee named Nathaniel Chastain, naturally insider traded on his picks:

On August 9, 2021, CHASTAIN purchased ten of the NFT "Flipping and spinning" before it was featured on OpenSea's homepage, and then sold them at prices 250% to 300% higher than where they were before the NFT was featured.

On September 14, 2021, CHASTAIN purchased the NFT "Spectrum of a Ramenfication Theory," as well as three other NFTs by the same creator, shortly before the NFT was featured on OpenSea's homepage. CHASTAIN made over four times the amount of money when he sold "Spectrum of a Ramenfication Theory" early the next morning.

I cannot emphasize enough that his profits on "Spectrum of a Ramenfication Theory" did not come from art connoisseurship or insight into the fundamental value of these NFTs. You put it on the website, it goes up. Chastain made about $57,000 from about 15 trades.

Is that legal? Well, nothing here is legal advice, but in 2022, Chastain was arrested and charged with wire fraud. We talked about it at the time. It was an interesting case in that “insider trading” is normally a variety of *securities fraud*, and these NFTs are (almost certainly) not securities. But wire fraud is arguably a generalization of securities fraud. I wrote:

Securities fraud is doing fraud about securities. Wire fraud is doing fraud about absolutely anything, as long as you do the fraud using email or the phone or text messages or a chat app, and in 2022 you certainly do. So every fraud is wire fraud.

You might put these things together and conclude: If insider trading in securities is securities fraud, then insider trading in anything is wire fraud. If insider trading — using information from someone else, to whom you have a duty to keep it confidential, to buy for your own account — is a “device, scheme, or artifice to defraud” under securities law, then surely it is also a “scheme or artifice to defraud” under wire-fraud law.

That was how I characterized the government’s position when Chastain was arrested. It has an obvious intuitive appeal. This *seems* bad, you know? He was convicted and sentenced to three months in prison.

But today the US Court of Appeals for the Second Circuit overturned his conviction. Here is the opinion. “Insider trading,” I like to say, “is not about fairness, it’s about theft.” Lots of people trade securities with an *information advantage*; you are very much allowed to trade while knowing things that other people don’t know. What makes insider trading illegal in the US is mostly that you are misappropriating that information from someone else. As I put it last year:

In the US, most of the time, it is illegal to trade on inside information about a company not because that’s unfair to everyone else who doesn’t have the information, but because you have some *duty* to somebody else not to misuse their information. So if you work for a public company, you have a duty to the shareholders not to trade on inside information before disclosing it to them. Or if you are the spouse or golf buddy or therapist of an executive at a public company, and she tells you about an upcoming deal, you have a “duty of trust or confidence” to her not to go trade on it, and if you do that’s a crime.

The same logic applies to wire-fraud insider trading in NFTs. Chastain’s alleged crime is not quite “he ripped off NFT holders by trading on inside information.” It’s “he ripped off *OpenSea* by misusing its confidential information.” The wire fraud statute forbids “any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.” You might think “yes, insider trading on NFTs is a scheme to defraud the people on the other side of your NFT trade,” but that is not how lawyers apparently think about it. Insider trading on NFTs is a scheme to steal OpenSea’s property, which is its confidential information about which NFTs will be featured on the website.

And the appeals court concluded that this is not real property because there was no evidence that it was valuable:

"To be guilty of wire fraud, a defendant must (1) 'devise' or 'intend to devise' a scheme (2) to 'obtain money or property' (3) 'by means of false or fraudulent pretenses, representations, or promises.'" …

Under these standards, not all information kept confidential qualifies as property. Neither the Supreme Court nor our court has held that confidential information that lacks commercial value will qualify as property under the wire fraud statute. …

Because "the wire fraud statute reaches only traditional property interests," we must decide whether confidential business information qualifies as a traditional property interest even if it lacks commercial value to the business. … We conclude that it does not. … Confidential information does not qualify as a traditional property interest unless it has commercial value to the company that holds it. …

The [trial court's] jury instructions would allow a conviction under the wire fraud statute even if OpenSea thought it was merely unseemly to reveal the planned featured NFT before it appeared on the website — and even if the evidence showed that treating the featured NFT as confidential had no commercial value. … In other words, the instructions allowed the jury to convict based the government's "view of[] integrity" in business conduct rather than the misappropriation of "property rights only." ...

If the wire fraud statute criminalized conduct that merely departed from traditional notions of fundamental honesty and fair play, "almost any deceptive act could be criminal."

Because there was no proof that Chastain stole anything valuable from OpenSea, he wasn't properly convicted of wire fraud.

Two points here. One, this is a strange result, because *obviously* the information about which NFTs would be featured on the website was valuable. You can tell because Chastain (1) traded on it and (2) made money. OpenSea itself did not regularly *exploit* this value — it didn't *itself* insider trade on its homepage picks — presumably because it thought it was better business not to. This is a weird feature of "insider trading is not about fairness, it's about theft": Chastain was charged with stealing something from OpenSea (information about its homepage) that obviously *had value* (he made money from it), but the theft didn't obviously *cost* OpenSea anything (*it* wasn't making money from the information). Chastain didn't exactly make his $57,000 at the expense of OpenSea; he made it at the expense of other NFT traders. And insider trading laws do not protect other traders.

Two: What does this mean for actual insider trading law? Maybe nothing; the wire fraud statute is different from the securities fraud statute. But there are connections. And I wonder a little whether, in this more fraud-friendly era, courts will be more hesitant to convict people of crimes for misusing corporate inside information. In particular, I wonder if this decision will mean anything for "shadow trading" cases, where an insider at a company gets information about that company (a merger, earnings, etc.) and uses that information to make trades in another, correlated company's stock. Does that deprive the insider's company of a "traditional property interest"? Is information about a pending merger a traditional property interest? If insider trading is about theft, not fairness, do you have to prove that the insider stole something that the company was using? How do you prove that? Or is insider trading a little bit more legal now?

**Builder.ai**

There is just so much money being thrown at artificial intelligence these days. Meta Platforms Inc. keeps hiring AI researchers with nine-digit pay packages. Presumably these are people with excellent reputations in their field and a long track record of publications, all of which is hard to fake. But for $100 million, surely someone should *try* to fake it? Like, go to the right parties, have ChatGPT write some fake papers for you, get really good at interviewing, try to catch Mark Zuckerberg on an off day, see what happens? From Mark Zuckerberg's perspective, that's fine. If he hires 100 people and gets 98 world-class AI researchers and two complete scammers, that's a great outcome; spending $200 million on the scammers is pocket change.

And getting hired at Meta is a relatively *hard* target. The *easy* version is, you start a startup, the startup is "we will do AI for ______," you spin up a product that is some combination of (1) just asking ChatGPT for the answers and (2) having offshore programmers pretending to be AI, and you go out to venture capitalists to raise money in one of the greatest gold rushes in the history of capital markets. "Hi I am doing AI for—," you begin, and the VCs say "shut up and take my money." And from *their* perspective that's fine! If they invest $50 million in each of 10 AI startups, and they get two world-class AI companies and *eight* complete scammers, that is a *tremendous* outcome; they'd be thrilled with that. Flinging money at scammers is a small price to pay to get as many lottery tickets as possible.

The point here, which is not any sort of advice, is that if you are a scammer and you're *not* doing an AI startup, you're wasting your time. And the other point is that in the next couple of years we are going to see a bunch of scam AI companies collapse, and each time there will be stories like "this is very embarrassing for the VCs who threw money at them," and the VCs will be like "no it isn't, this is fine, cost of doing business."

Anyway Bloomberg's Newley Purnell, Yazhou Sun, and Mark Bergen have a story about Builder.ai and its charismatic founder, Sachin Dev Duggal:

Builder.ai's audit committee uncovered a web of dubious transactions. The London-based company booked $142 million in sales from resellers that never paid any money and claimed an additional $107 million from customers who made deposits of as little as $1. Such methods, the audit committee found, were used to overstate revenue by 300% as Duggal secured an emergency loan last year. A law firm hired by the company also determined that Duggal "orchestrated a scheme" with a high-profile Indian startup to exaggerate sales through what's known as "round tripping," according to documents viewed by Bloomberg News.

Duggal's alleged financial transgressions fueled the most spectacular collapse yet of the generative AI era. Builder.ai had seized on the fervor around ChatGPT to earn a $1.5 billion valuation on the promise of AI systems that made building apps, as Duggal often put it, as easy as ordering pizza. He described wanting to build a trillion-dollar company. EY named him Entrepreneur of the Year in the UK. …

Duggal had no trouble finding investors, including Microsoft Corp. and the Qatar Investment Authority, and created one of Europe's largest AI startups — despite a past full of legal troubles and spurned associates. The startup's unraveling raises critical questions about how closely venture capitalists, law firms and consultants vet startups in hot industries like AI, where the fear of missing out in a boom can trump more careful deliberations.

He raised $450 million, which is like, what, three or four Meta hires? Eventually he was pushed out and the company went bankrupt; we have previously discussed the fake-sales allegations. Here's a LinkedIn post from Duggal's successor as CEO, whose first bullet point is "the AI was real," which is not how you want to lead off your LinkedIn post about your AI startup.

Some of Builder.ai's money came from Insight Partners, which is doing just fine:

Insight's investment in Builder.ai has been an embarrassment internally, but its failure isn't a big concern because the firm has been able to make record distributions to investors, according to a person familiar with the matter.

Yes! Right! Nobody wins any awards for *passing* on a bad AI deal, but *missing* a good AI deal is disastrous. There should be a lot of AI scams!

**Boring**

The simple model of Elon Musk is that he runs a bunch of companies with distinct but overlapping investors, employees, missions, etc., all of which have a single broad purpose, which is to facilitate human life on Mars. Humans do not currently live on Mars, though, and getting them there will require a lot of capital, so for now most of Musk's entities do some Earth-relevant business to pay the bills. Tesla's *telos* is to build (1) Cybertrucks that look ridiculous driving around the suburbs but would look cool on a Martian landscape and (2) droids to work on the Martian moisture farms or whatever, but for now it sells electric sedans to keep the lights on. SpaceX's ultimate purpose is obvious (you need rockets to go to Mars), but it's lucrative right now to launch communications satellites. Artificial general intelligence will obviously be useful in getting to Mars, but for now an AI chatbot will lure consumers to X; X is somehow a laboratory for "how a citizen-led government that rules by consensus might work on Mars," but for now it's a way to get in fights online and serve ads.

The Boring Co., a Musk entity that makes tunnels, is very important for life on Mars, because Mars doesn't have much of an atmosphere, and if you lived there you might prefer to be underground. It is much, much, much less important for life on Earth, because Earth *does* have an atmosphere, and you can just, like, build a house or walk around or drive a car or whatever on the *surface* of the Earth. There are uses for tunnels on Earth — subways, crossing rivers and mountains, secret lairs — but they are relatively small niches. You could imagine a fairly nice and not-too-distant future where everyone has an electric car, but a future where everyone lives in tunnels is obviously dystopian and hopefully quite distant.

But Musk (1) wants to go to Mars and (2) can't resist a good name, so the Boring Co. exists now. It just doesn't have much to do. It sits around making jokes about flamethrowers. Bloomberg's Kiel Porter checks in:

Musk first hyped Boring nearly a decade ago. He vowed to build a futuristic, ultra-fast underground hyperloop as a revolutionary solution to the world's "soul-destroying" traffic problems, raising more than $900 million from the likes of Sequoia Capital and Peter Thiel's Founders Fund.

Since then, the company has started digging just one public project: An underground loop in Las Vegas that ferries conference-goers to and from a convention center and to several hotels. While the city has approved 68 miles of tunnels, Boring has dug about eight miles, and less than four miles are operational. Arguably, its most notable commercial endeavors, in keeping with the company's tongue-in-cheek name, have been, quite literally, jokes: flamethrowers and a burnt hair-scented perfume.

The tunneling venture has either pitched or been selected to carry out more than a half dozen other US municipal projects since 2017, but there's no evidence that the company has broken any ground outside of Vegas. Most recently, it has pledged to dig 10 miles of tunnel in Nashville and 10 miles in Dubai. Some initiatives have been stalled or mothballed, while the company has walked away from others. These days, the company is building tunnels to connect Musk's own properties, according to people familiar with the plans. They say the aim is to allow Boring, SpaceX, Tesla and X employees to shuttle back and forth underneath a road in the rural Texas town of Bastrop, where the billionaire has been expanding his business empire.

It is just not at all a terrestrial company. But wait until you need a place to live on Mars, then you'll be glad that Musk has figured out tunneling.

**Harvard**

Harvard University has a pretty good brand, with that brand symbolizing, roughly, "smart." People want to be associated with that brand. The trick for Harvard, as a business, is to ruthlessly monetize that brand while also preserving it. Harvard has about 1,600 undergraduates a year. If it sold all 1,600 of those spots to the highest bidders, it would get a lot of money, once, but word would get out, the brand would quickly deteriorate, and it would have a tough time selling spots in the future. If it admitted 1,590 students based on meritocratic criteria and sold 10 spots to the highest bidders, it would (1) get a *lot* of money for those spots and (2) more or less preserve the brand. For various legal and reputational reasons Harvard does not *explicitly* do that, but, you know.

There are cleaner, more ruthless, more scalable approaches. One possibility is:

1. Keep admitting those undergraduates based mostly on meritocratic criteria, thus preserving the brand for the core product; and

- 2. Sell a lot of noncore products to anyone who wants to pay to be associated with the brand.

That is, you want "going to Harvard" to be an impressive thing that money can't buy, but you want to offer some sort of "going-to-Harvard-with-an-asterisk" experience that money definitely *can* buy. You want that experience to be *somewhat* easy to confuse with "going to Harvard," but not *too* easy. You want people to pay for the asterisked experience because they think it is a good substitute for going to Harvard, but you also want some deniability, so that people with the un-asterisked going-to-Harvard experience can say "well *that* person didn't really go to Harvard, they just paid a lot for a fancy souvenir" and the core brand is maintained.

Bloomberg's Janet Lorin reports on that business model:

Harvard University is drawing an increasing share of its revenue from helping businesspeople beef up their résumés, giving America's oldest institution of higher learning a lifeline as it confronts its largest-ever crisis. …

Executives looking to step up their management skills or get up to speed on new technology have eagerly shelled out for expensive in-person and online courses at the storied university out of their own pockets, or with help from their employers. Those programs are now providing Harvard with revenue that's relatively insulated from US President Donald Trump's efforts to deprive Harvard of federal funds — and helping soften the blow as administrators watch expenses rise, endowment returns sag and donations drop.

Overall, executive education and continuing education for nontraditional students delivered nearly $600 million last year, up from $155 million two decades ago, publicly available data from the university shows.

Alumni of Harvard's undergraduate and graduate programs have sometimes scoffed at such programs, posting memes to social media implying that they lack Ivy League gravitas. … But putting the Harvard imprimatur on classes that let corporate managers burnish their bona fides and expand their networks is providing the embattled university with an important safety net at an uncertain time for US colleges and universities.

Arguably the story here is that Harvard has spent almost 400 years building up the brand and now is as good a time as any to monetize it. And arguably part of the goal of the Trump administration is to *reduce* the value of the Harvard brand, so they might as well sell high now.

**Alignment**

Here is a post from the UK AI Security Institute looking for economists to "find incentives and mechanisms to direct strategic AI agents to desirable equilibria." One model that you can have is that superhuman AI will be terrifying in various ways, but extremely *rational*. Scary AI will not be an unpredictable lunatic; it will be a sort of psychotic pursuing its own aims with crushing instrumental rationality. And arguably that's where you need economists! The complaint people have about economics is that it tries to model human behavior based on oversimplified assumptions of rationality. But if super AI is super-rational, economists will be perfectly suited to model it. Anyway if you want to design incentives for AI here's your chance.

**Things happen**

Treasury Secretary Says Trump Accounts Could Pave Way to Privatizing Social Security. Trump Just Crashed the Copper Market. Trump and Dimon Are Talking Again After Yearslong Rift. KKR Raises $6.5 Billion for Private Asset-Backed Finance Deals. Blue Owl chief warns of manic market for second-hand private equity stakes. Private Credit Has a 'Real Place' in 401(k)s, Centerbridge Says. How Podcast-Obsessed Tech Investors Made a New Media Industry. "People feel emotionally tied to Excel."

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- 1. There are two important exceptions. One is that a company itself is not supposed to "insider trade" against its shareholders; it is not supposed to buy or sell stock when it has material nonpublic information. (Thus it has to put out a prospectus when it sells stock, and it normally announces buyback plans with earnings when it is "clean" of MNPI.) The company has a fiduciary duty to its shareholders not to exploit information asymmetries. The other is tender offers.
- 2. OpenSea co-founder Alex Atallah testified at the trial "that OpenSea did not trade featured NFTs because doing so 'was not aligned with [its] main goals as a company' and 'would have kind of compromised on OpenSea's brand of neutrality.' … OpenSea 'wouldn't have wanted people to think that OpenSea was trying to make money on its own featuring of artists, because we wanted artists to all feel they had a chance and it was a meritocracy to be selected.'"
- 3. We have talked about an opinion reading the "traditional property interests" stuff into securities fraud as well.
- 4. Please do not email me to explain that in fact US college admissions are not especially meritocratic, it's fine, I get it. Also, sorry, disclosure, I did go to Harvard.

# Tesla sales drop again around Europe despite Model Y revamp

**reuters.com**/business/autos-transportation/tesla-sales-drop-again-around-europe-despite-model-y-revamp-2025-07-31

Alessandro Parodi July 31, 2025

Tesla electric vehicles are pictured at one of the company's delivery centers in Valenton, near Paris, France, April 24, 2025. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights, opens new tab

- Tesla July registrations down 86% in Sweden, 27% in France
- They were up 83% in Norway and 27% in Spain
- Model Y sales down 88% in Sweden, up fourfold in Norway
- Musk: regulatory issues make it harder to sell in Europe

Aug 1 (Reuters) - Registrations of new Tesla (TSLA.O), opens new tab cars in several key European markets fell in July, despite a revamp to its signature Model Y, as the EV maker struggles with a backlash against CEO Elon Musk's political views, regulatory challenges and rising competition.
Tesla's aging lineup is facing a wave of low-cost EV rivals, especially from China. It is rolling out a revamped Model Y and starting to produce a new, cheaper model, but production of that will only ramp up next quarter, later than initially expected.

The brand's registrations - a proxy for sales - fell 86% year-on-year in July to 163 cars in Sweden, 52% to 336 cars in Denmark, 27% to 1,307 in France, 62% to 443 in the Netherlands and 58% to 460 in Belgium, official industry data showed, marking a seventh straight monthly drop in all of those countries.

They also fell by 5% to 457 cars in Italy and 49% to 284 in Portugal.

Tesla sales dropped by over a third in Europe in the first six months of the year.

Norway and Spain bucked the trend, with Tesla's July registrations up 83% and 27% to 838 cars and 702 cars, respectively.

Spain recorded a 155% jump in total sales of electrified cars - either battery electric or plug-in hybrid. Tesla's Chinese competitor BYD (002594.SZ), opens new tab sold 2,158 cars in Spain in July, almost eight times more than in July 2024.
With no more affordable-end vehicles on the horizon until the last three months of the year and the upcoming end of a $7,500 U.S. tax break for EV buyers, Musk acknowledged in July that Tesla (TSLA.O), opens new tab could have "a few rough quarters".

He said tough automated driving regulations in Europe made it harder to sell the Model Y in some countries, as the vehicle's optional supervised self-driving is "a huge selling point".

"Our sales in Europe, we think will improve significantly once we are able to give customers the same experience that they have in the U.S.," he told analysts.

Tesla began selling a long-range four-wheel version of the revamped Model Y in Europe in March 2025, while sales of the two rear-wheel drive variants began in May.
Model Y registrations in Sweden and Denmark fell by 88% and 49% respectively in July, while they jumped more than fourfold to 715 cars in Norway.

Norway, where almost all new cars sold are fully-electric and where Tesla has been the best-selling brand since 2021, has seen a surge in orders for the model since May after the automaker launched 0% interest loans in some Nordic countries to drum up demand.
Tesla launched in June a trial robotaxi service in Austin, Texas, using about a dozen Model Y SUVs controlled by its autonomous-driving software. But the roll-out of its self-driving features elsewhere in the U.S. is bogged down because it hasn't received the required permits.
Overall car sales were up 20% in Denmark, 6% in Sweden, 48% in Norway, 17% in Spain, 9% in the Netherlands and 21% in Portugal, while they slid 8% in France, 5% in Italy and 2% in Belgium in July, industry data showed.

Germany and the UK are expected to release July car sales next week.

European automakers Volkswagen (VOWG.DE), opens new tab, Mercedes-Benz (MBGn.DE), opens new tab, Stellantis (STLAM.MI), opens new tab, Renault (RENA.PA), opens new tab and BMW (BMWG.DE), opens new tab have published downbeat second-quarter results, warning of pressure from U.S. import tariffs and falling demand.
Reporting by Alessandro Parodi, Camille Raynaud, Louise Rasmussen, Marie Mannes, Terje Solsvik, Inti Landauro, Javi West Larrañaga and Bart Meijer; Editing by Himani Sarkar, Mark Potter and Louise Heavens

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

Alessandro is an Italian journalist based in Gdansk reporting on European markets, with focus on Italian companies. Previously, he worked as a multimedia freelancer in South Africa covering general news and cultures.

# Tesla ordered by Florida jury to pay $329 million in Autopilot crash

**reuters.com**/legal/litigation/tesla-ordered-by-florida-jury-pay-329-million-autopilot-crash-2025-08-01

Reuters August 1, 2025

Tesla logo is seen in this illustration taken July 23, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

(TSLA.O), opens new tab liable in the 2019 fatal crash of an Autopilot-equipped Model S, and ordered Elon Musk's automaker to pay $329 million to the family of a deceased woman and an injured survivor.
The payout includes $129 million of compensatory damages and $200 million of punitive damages.

Tesla was sued by the estate of Naibel Benavides Leon, and by her former boyfriend Dillon Angulo.

The lawsuit concerned an April 25, 2019 incident where George McGee drove his 2019 Model S at about 62 mph (100 kph) through an intersection into the victims' parked Chevrolet Tahoe as they were standing beside it on a shoulder.

"Tesla designed Autopilot only for controlled access highways yet deliberately chose not to restrict drivers from using it elsewhere," Brett Schreiber, a lawyer for the plaintiffs, said in a statement. "Today's verdict represents justice for Naibel's tragic death and Dillon's lifelong injuries."

Tesla did not immediately respond to requests for comment.

Reporting by Jonathan Stempel in New York; Editing by Sandra Maler

Our Standards:

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Litigation

# Miami Jurors Have Questions as They Weigh Tesla's Fate

August 01, 2025 | By Lisa Willis


**Tesla car charging outside a home in Baltimore, MD. Photo: Diego M. Radzinschi/ALM**

A Miami jury gathered Friday to decide whether Texas-based automaker Tesla shares any responsibility in a 2019 fatal Key Largo car crash, despite the defense's failed attempt to ask the judge for a mistrial in the midst of closing arguments on Thursday.

Shortly before 1 p.m. on Aug. 1, the court summoned attorneys to hear a jury question regarding the allocation of punitive damages, as jurors deliberated.

It's the first-of-its-kind wrongful-death lawsuit to reach a jury in Tesla's litigation history, attorneys said. And at stake for the automaker: $345 million, including $109 million in compensatory damages and $236 million in punitive damages.

As closing arguments unfolded Thursday in Miami federal court in the high-stakes trial of *Benavides v. Tesla Inc., a/k/a Tesla Florida Inc.,* attorneys, plaintiffs, journalists and observers entered Miami federal court to see Tesla mount a robust defense of its Autopilot system, emphasizing driver error over technological flaws in the crash that killed 22-year-old Naibel Benavides Leon and seriously injured her boyfriend Dillon Angulo.

"Consumers exhibit too much trust," plaintiff lead counsel Brett Schreiber said in addressing the jury Thursday morning. "Tesla knew for years their product was defective."

Defense lead counsel Joel H. Smith's argument focused on the safety of Tesla's Autopilot system, alleging the driver of the car, George McGee, alone was responsible for the crash because he chose to take his eyes from the road.

"Mr. McGee was distracted because he was looking for [his dropped] cell phone," Smith said. "This is a driver issue, not a car issue."

The trial is in its third week before Judge Beth Bloom in the Southern District of Florida.

After Schreiber rested his Thursday morning closing statements, Bloom called for a lunch break.

At that point, defense co-counsel Wendy F. Lumish challenged plaintiff's counsel's comments, and renewed a request for a mistrial. She cited a section in Schreiber's closing concerning "punitive damages language" referring to the drivers' "consciousness of guilt."

Bloom noted defense concerns, but stated the issue had previously been addressed. The judge again declined a mistrial, all within the earshot of the jury.

Bloom instructed the jury, which began deliberation late Thursday, that their decision must be unanimous.

## The Attorneys

The lawsuit has pitted mid-sized plaintiffs firm San Diego-based Singleton Schreiber and a pair of boutique Miami firms against Tesla's legal team.

Plaintiff co-counsel included Satyasrinivas M. Hanumadass, and Carmela S. Birnbaum at Singleton; and Douglas F. Eaton of Eaton & Wolk. Schreiber is also joined by Miami co-counsel Adam T. Boumel of the three-attorney Rousso Boumel Law Firm, and Todd Poses of the two-lawyer Poses Law Group.

Tesla's defense, meanwhile, is headed by Columbia, South Carolina-based Joel H. Smith of Bowman and Brooke, with co-counsel Whitney V. Cruz, Wendy F. Lumish, Thomas P. Branigan, Drew P. Branigan; and Hilarie Bass of Hilarie Bass Esq. LLC.

Bowman is a 175-attorney firm that ranks 246 in the NJL 500.

And Smith has handled vehicle-acceleration cases for auto industry giants such as Toyota.

## Defense Arguments

Smith stuck to three main talking points on behalf of his client Tesla Inc., telling the six-women-and-three-men jury:

1. The driver of the car, who is not a defendant, admitted to talking on the phone and retrieving a dropped cell phone at the time of the crash.
2. Car data showed the driver pressed the accelerator pedal seconds before the crash-allegedly disengaging the Autopilot.
3. The case centered around a car whose capabilities did not exist in 2019.

Tesla argued throughout the trial that driver error alone caused the accident, insisting Autopilot enhances safety when used properly.

Exhibits included Tesla's crash-rate charts, vehicle data logs showing alerts and braking, and diagrams of the T-intersection crash site.

Attorneys on both sides are using the car's internal data to prove their points when it comes to laying blame.

In closing, Smith pointed to the driver of the car, labeling him as "distracted" and "reckless."

"As much as Tesla would love to have been able to stop this vehicle in this crash … the technology just didn't exist [in 2019]," defense counsel argued. "It was not state-of-the-art at the time."

## The Crash

The case stems from a collision on a rural two-lane stretch of Card Sound Road in the Florida Keys, near the exclusive Ocean Reef enclave. McGee, who was not a defendant in this trial, was driving a Tesla Model S with Autopilot engaged.

McGee admitted on the stand that he became distracted while on the phone, dropping his cellphone.

Testimony and car data showed McGee traveling at one point in excess of 90 mph on the road in a 45-mph zone. Attorneys alleged he was traveling 61 mph at the T-intersection when the vehicle failed to stop. The car ran into a Chevy Suburban parked in a clearing off the road, striking and killing Leon and severely injuring Angulo, who were standing near the vehicle.

Plaintiffs claim Tesla's semi-autonomous system failed to prevent the crash despite detecting hazards, and that it shouldn't have been activatable on non-highway roads.

Class Action

# Tesla Faces Class Privacy Suit Over Use of Twitter, Other Pixels

Aug. 1, 2025, 9:38 AM PDT

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Tesla Inc. violated Californa's privacy laws by secretly installing tracking software on its website to collect users' personal data without consent, according to new class suit filed in federal court.

Peter Dawidzik claims that Tesla deployed various third-party tracking technologies operated by Twitter, Google, and Optimizely on its website. These trackers allegedly capture and transmit users' IP addresses, device information, mouse movements, IP-based geolocation, and other personal data to the third-party servers without authorization.

Dawidzik says this practice violates the California Invasion of Privacy Act, which prohibits the unauthorized use of pen registers and trap and trace devices to capture dialing, routing, addressing, or signaling information.

He seeks to represent a class of California residents whose browsers were subjected to the installation of these tracking tools by Tesla's website.

The complaint seeks an injunction to stop Tesla's alleged unlawful data tracking practices, statutory damages under CIPA, attorneys' fees and costs, and other appropriate relief.

The case was filed Thursday in the US District Court for the Central District of California.

Tesla didn't immediately respond to a request for comment.

Dawidzik is represented by Nathan & Associates APC and Ross Cornell of Big Bear Lake, Calif.

The case is Dawidzik v. Tesla, Inc. , C.D. Cal., No. 5:25-cv-01982, complaint filed 7/31/25 .

*This story was produced by Bloomberg Law Automation.*

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Class Action

# X Stuck Paying Fees to Arbitrate With Laid Off Twitter Workers

Aug. 1, 2025, 9:18 AM PDT

## Summary by Bloomberg AI AI Generated

- The US District Court for the Central District of California said X Corp. must pay the bulk of the initial fees for arbitrating claims over layoffs, as directed by the private arbitration organization handling the proceedings.
- Former Twitter workers allege they were targeted based on race, sex, age, or disability, and that X Corp. stiffed them on severance payments or skipped legally required advance notice of their firings.
- Judge R. Gary Klausner rejected X Corp.'s bid to force former employees to pay more of the fees, and also rejected the workers' bid to sanction the company for dragging them back to court.

X Corp. lost its bid to force former employees to pay more of the fees necessary to arbitrate claims over layoffs following Elon Musk's takeover.

The private arbitration organization handling those proceedings already directed X to pay the bulk of the initial fees and it isn't appropriate to intervene in that decision, the US District Court for the Central District of California said. Judge R. Gary Klausner also rejected the workers' bid to sanction the company for dragging them back to court when they'd already paid their share of the fees.

Former Twitter workers allege the widespread layoffs after Musk purchased the company in 2022 targeted them based on race, sex, age, or disability. Other suits say X stiffed them on severance payments or skipped legally required advance notice of their firings. The company faces dozens of court cases and more than 2,000 individual arbitration proceedings stemming from the layoffs.

X could be looking at millions of dollars in arbitration fees for those proceedings, an attorney representing the company told a US Court of Appeals for the Second Circuit panel reviewing one arbitration fee dispute earlier this year.

JAMS—formerly known as Judicial Arbitration and Mediation Services—said the X arbitrations triggered its rules on procedural fairness in employment disputes. Under those rules, workers are responsible for $400 of the initial $2,000 fee for each individual arbitration proceeding, with X on the hook for the rest. X balked at footing the majority of the initial bill and argued that only an arbitrator, not JAMS itself, can decide fee apportionment. But the parties can't get in front of an arbitrator until someone pays the initial fees.

X filed a handful of cases seeking to force workers to resume arbitration, arguing that a judge should resolve the fee dispute in the arbitrator's absence. But fee payment is a "procedural issue best suited for the arbitrator to decide, not a district court," Klausner said. The court can't conclude that the seven worker defendants in this suit refused to arbitrate when they declined to pay a higher share of the fees, he added.

Just because the court shut down X's arguments doesn't mean they're frivolous or unreasonable, Klausner said. They don't appear to have been "outright foreclosed by a controlling authority," so sanctions aren't appropriate, according to the order.

Lichten & Liss-Riordan PC represents the workers. Morgan, Lewis & Bockius LLP and Clement & Murphy PLLC represent X.

The case is X Corp. v. Bahr , C.D. Cal., No. 2:25-cv-02766, motions denied 7/31/25 .

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Securities Law News

# Accounting Rules Gap Means Chaos Over Carbon Credit Reports (1)

July 31, 2025, 8:01 AM PDT; Updated: July 31, 2025, 11:56 AM PDT

A lack of guidance over how to account for carbon credits and similar instruments has led to wide variations in corporate reporting, according to a new analysis.

The Association of Chartered Certified Accountants and the Adam Smith Business School at the University of Glasgow published the results of a survey of 300 companies globally, concentrating on high-polluting sectors. This found that, in the absence of any dedicated accounting rules, there was no consistency in the reporting of carbon-related instruments such as carbon credits, which allow companies to offset the pollution they cause.

- “Without guidance from standard setters, companies are developing their own accounting policies and providing information based on their own discretion,” Ioannis Tsalavoutas, professor of accounting at the University of Glasgow, said in a statement.
- The research found that companies were recording carbon-related instruments on their balance sheets in a wide variety of ways. They were most commonly reported as intangible assets, but also as physical assets in inventory or financial assets.
- “The lack of a global accounting standard for carbon-related instruments is already creating challenges for investors and companies alike,” the ACCA said in a statement.
- The International Accounting Standards Board, which sets global reporting rules, said in an emailed statement that it had been researching pollutant pricing mechanisms over the past year. The standard-setter added it was “aware of diversity in accounting practice” and was considering “how best to respond to evolving financial reporting needs in this area.”

(Adds a statement from the International Accounting Standards Board.)

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Securities Law News

# Mid-tier Auditors Struggle to Shed High Error Rates in US Exams

July 31, 2025, 2:56 PM PDT

Larger mid-tier audit firms continue to have trouble meeting core standards for how they vet the revenues and cash flows of public companies, according to their US regulator.

The Public Company Accounting Oversight Board released annual inspection findings for eight mid-sized firms on Thursday, showing missteps in about half of the audits inspected on average. Their results reflect halting improvements across the industry, with the board finding problems in 39% of all audits it inspected in 2024, compared to nearly half the previous year.

The mid-tier reports landed in the aftermath of a leadership upheaval at the PCAOB as its previous Chair Erica Williams stepped down and the Securities and Exchange Commission said it would seek candidates to fill all five board seats in a bid to reset the agenda of the Enron-era regulator.

These latest board inspections reflect work on 2023 financial statement audits that largely predated a string of mergers and private equity deals that shook up the mid-tier accounting firm market.

In response to the board's findings, firms said they are focused on boosting the quality of their work and protecting investors, according to separate statements from Baker Tilly US LLP, Crowe LLP, and Forvis Mazars LLP.

RSM US LLP also said it had already resolved issues the board noted in its 2024 results. The other four firms did not respond to requests for comment.

Marcum LLP, now part of CBIZ Inc., failed to pass muster in 81% of the audits the board picked to review, the same rate as its prior inspection. The firm struggled with revenue, inventory, and going concern testing, according to its report.

Forvis Mazars , which formed through a 2024 merger, had a similarly high rate of deficiencies, with inspectors finding fault with 71% of its selected audits. The reports showed a notable advance from its 90% deficiency rate the previous year.

Competitor WithumSmith+Brown PC saw its violations increase to 60% from just 40% in its prior inspection.

Both RSM and private equity-backed Baker Tilly saw fewer of their audits fall short of PCAOB standards. Violations fell to 41% for RSM and 58% for Baker Tilly, which merged with peer Moss Adams LLP in June.

Inspectors found slightly more problems among Moss Adams' pre-merger work with half of its selected audits missing the mark, compared to just 42% the year before. Crowe similarly saw its violations rise to 18% compared to just 7% previously.

Cohen & Co. held steady with just one of its audits found to be faulty, according to its report, the same as its 2023 inspection. The firm said in October that it planned to accept outside capital from Lovell Minnick Partners.

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https://www.wsj.com/articles/tech-giants-are-revising-ai-product-claims-that-faced-scrutiny-69f8671e

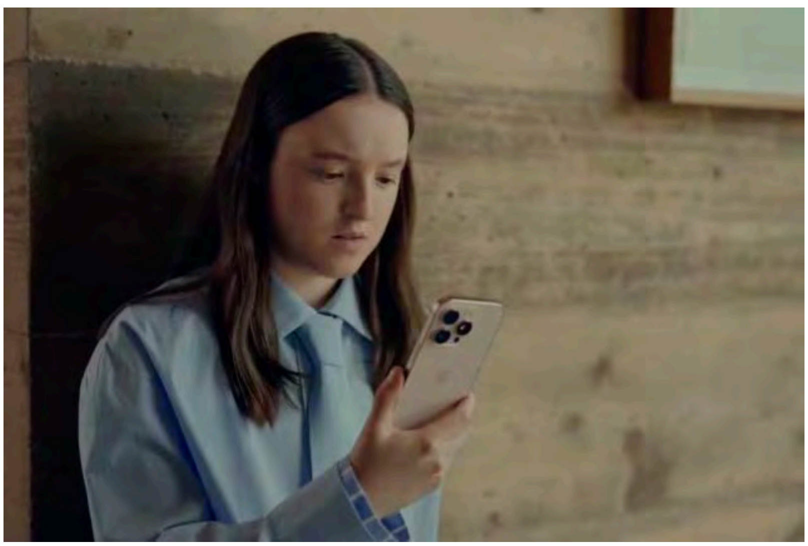
CMO TODAY

# Tech Giants Are Revising AI Product Claims That Faced Scrutiny

An ad-industry group has probed Apple, Google, Microsoft and Samsung marketing materials, saying consumers need help evaluating assertions about the technology

*By Patrick Coffee* Follow

*July 31, 2025 6:00 am ET*



A still from an Apple ad showing actor Bella Ramsey showcasing Apple Intelligence features.

Apple, Google, Microsoft and Samsung have been revising or retracting certain claims about their newest, hottest artificial intelligence products.

The tech giants made the changes over the past year in response to a probe by an ad-industry self-regulatory group into whether marketers are overstating the capabilities or availability of AI features.

The Federal Trade Commission has also been studying the sector's advertising, in September announcing several legal complaints as part of a crackdown it called Operation AI Comply.

The scrutiny comes as the biggest names in tech seek returns on their massive investments in the AI race, holding splashy events, publishing demonstration videos and running advertising to bring in customers. AI developers including OpenAI and Anthropic ran commercials during the Super Bowl, the biggest television event of the year. But it can be challenging to describe AI features quickly and compellingly if also giving all the caveats.

"That is the struggle in a lot of these cases around AI tools and products," said Laura Protzmann, an attorney at the National Advertising Division of BBB National Programs, the industry group that has probed the issue.

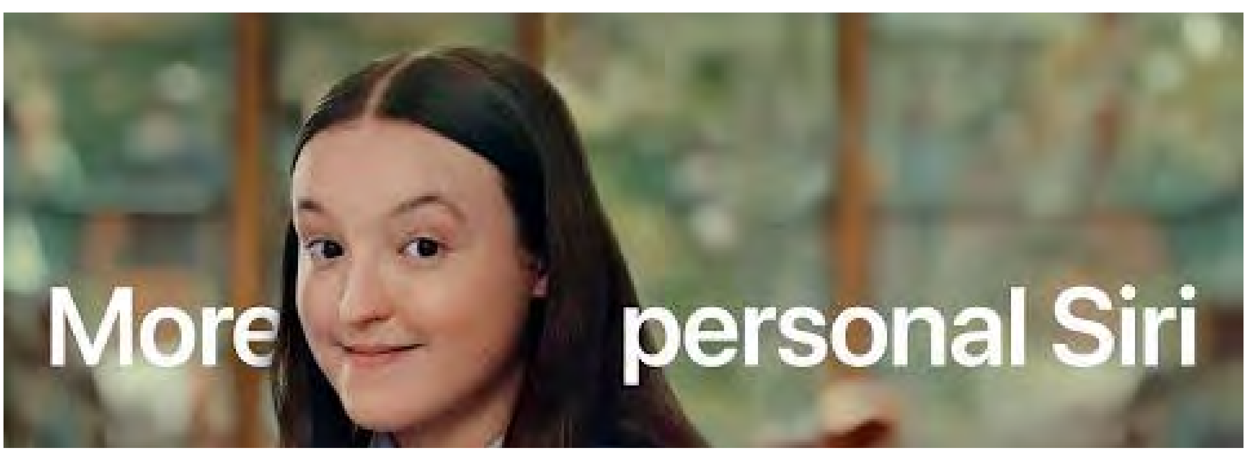
NAD typically referees complaints that companies lodge against competitors in categories like light beer and cellphone service. But it began proactively examining AI marketing when more companies started promoting claims about their new tools to the public, according to Protzmann.

"We thought that it was an important area to focus on, in part because these are hard claims for consumers to evaluate themselves," she said.

While NAD found that some of the marketers' claims had support, it identified notable exceptions.

NAD found in April that Apple's website had prominently advertised unreleased AI features for the newest iPhone as "available now," for example, and that its small-print disclosures weren't clear or conspicuous enough.

Most of those features have since arrived, but Apple's site now more visibly warns that new capabilities for its Siri digital assistant remain in development. Apple also pulled an ad, released last year, that depicted Siri checking the iPhone calendar of "The Last of Us" star Bella Ramsey to summon the name of an acquaintance from a meeting months earlier. That ability has yet to see the light of day.




Although Apple disagreed with the conclusions, according to NAD, it pledged to follow the group's recommendations.

The company didn't respond to requests for comment. An Apple executive in June told The Wall Street Journal, however, that the features it promoted had worked enough to demonstrate but didn't "converge in the way quality-wise that we needed." Siri is now getting a new underlying architecture, the executive said.

Google last year unlisted a YouTube video showcasing the Gemini assistant—including a brief disclaimer that the depicted actions of Gemini had been "shortened throughout"— after NAD began examining its depiction of performance and speed. The 2023 video, which shows Gemini doing everything from identifying a picture being drawn to composing music, now lives mainly on a company blog post discussing the kinds of prompts used to assemble it. The video shouldn't be seen as an accurate depiction of how the product works, according to a Google spokeswoman.

Microsoft removed a page promoting the Business Chat function of its Copilot assistant that claimed the product works "seamlessly across all your data." An NAD decision released last month concluded that the phrase might lead consumers to think Copilot could perform tasks like switching from one Microsoft application to another and generating a new document there. Users still have to take manual steps to do that, NAD said.

Microsoft also added a disclaimer to survey results, including a finding that 75% of respondents reported greater productivity after using Copilot for 10 weeks, clarifying that the numbers reflect people's perception rather than objective measurements.

Microsoft disagrees with some conclusions about misleading language but agreed to follow the NAD's recommendations, said Jared Spataro, chief marketing officer of Microsoft's AI at Work division.

The removal of the Business Chat page preceded the release of the NAD decision, according to a Microsoft spokeswoman. Microsoft created a new page for the renamed Copilot Chat in its place.

A Samsung AI refrigerator was displayed at an event in Seoul in March. PHOTO: SEONGJOON CHO/BLOOMBERG NEWS

And Samsung last month agreed to drop assertions that its AI-powered refrigerator "automatically recognizes what's in your fridge, so you always know what's inside" after NAD began an inquiry. Protzmann said the NAD found that the camera behind Samsung's "AI Vision Inside" product can recognize just 33 specific food items and only if they are clearly visible, but the group didn't issue an official judgment because the language in question had been abandoned already.

The FTC has used its own power to pursue penalties over allegedly false AI claims.

A proposed court order against a company called Ascend Ecom, whose ads promised that customers could make $10,000 a month by purchasing an AI-powered e-commerce operation, would permanently ban its founders from marketing similar services and require them to forfeit related assets as part of a $25 million monetary judgment.

Ascend Ecom's attorney declined to comment.

As AI worms its way into almost every industry, customers should expect a surge in questionable marketing, according to George Heudorfer, adjunct professor of marketing at the University of New Haven's Pompea College of Business.

"When you market AI like magic, you're going to invite scrutiny," said Heudorfer. "Sometimes that exaggeration isn't just puffery. It's a performance claim, and you need to back that up with something more than a keynote and a catchphrase."

Write to Patrick Coffee at patrick.coffee@wsj.com

Securities Law News

# Epstein's Work for Leon Black Deserves IRS Probe, Wyden Says (1)

Aug. 1, 2025, 7:25 AM PDT

A key Senate Democrat broadened his attack on the Trump administration's handling of records about the financing of **Jeffrey Epstein**'s sex trafficking network, urging the Internal Revenue Service to investigate his tax and estate planning work for private equity titan Leon Black.

Ron Wyden, the Senate Finance Committee's top Democrat, wrote Thursday to IRS Commissioner Billy Long to question why the agency had not audited at least $158 million in payments that Black made to Epstein between 2012 and 2017 for complex tax-related transactions. A spokesman for Black denied that he engaged in wrongdoing.

"It is unthinkable that transactions amounting to tens of millions of dollars paid to a known criminal for the purpose of helping a mega-wealthy individual dodge billions in taxes were never audited or investigated," wrote Wyden, an Oregon Democrat. "When Americans think the system is rigged, this is the kind of abuse they think about."

Wyden is accelerating his attack on President Donald Trump's Treasury Department for failing to release any information about more than $1.5 billion in Epstein transactions that flowed through several US and Russian banks. His criticism comes amid widespread pressure for the Justice Department to release criminal records about the investigations of Epstein, who died in prison as he faced sex-trafficking charges, and **Ghislaine Maxwell**, his longtime associate who is serving a 20-year prison term.

Black retired as Apollo Global Management Inc.'s longtime chief executive officer in 2021 amid controversies.

An independent review done by an outside law firm for Black four years ago concluded that he "had not engaged in any wrongdoing," according to a spokesperson for Black. It says he "had no awareness of Epstein's criminal activity and all of the fees paid were for legitimate tax, estate and philanthropy planning services and were vetted and approved by outside law firms."

Wyden began investigating Black's activities with Epstein in 2022, when Joe Biden was president and Democrats controlled the Senate.

A spokesman for the Treasury Department said Friday in a statement: "IRS takes all requests seriously and will review Senator Wyden's letter. That said, clearly the Senator's antics are politically motivated. If this was so pressing, where was the Biden administration the last four years and Senator Wyden when he was chairman of the Senate Finance Committee?"

Wyden's staff has pursued a "follow the money" strategy as it investigates the flow of funds in and out of Epstein's accounts before his 2019 death in prison. In a July 21 letter to Attorney General Pam Bondi, he said his investigators found the Treasury Department has documented 4,725 wire transfers.

The transfers were detailed by banks in so-called suspicious activity reports that are supposed to serve as an early-warning system to investigators about possible criminal activity. Some of the banks did not file the reports until years later.

In his letter to Bondi, Wyden urged the Justice Department to "immediately investigate" evidence in the Treasury files and subpoena records on Epstein from Bank of America Corp., JPMorgan Chase & Co., and Deutsche Bank AG. Spokespeople for Bank of America and JPMorgan declined to comment. A Justice Department spokesperson didn't immediately respond to a request for comment.

"The bank regrets our historical connection with Jeffrey Epstein," Deutsche Bank said in a statement. "We have cooperated with regulatory and law enforcement agencies regarding their investigations and have been transparent in addressing these matters in parallel."

In 2023, JPMorgan reached a $290 million settlement with Epstein's victims. It separately reached a $75 million settlement over Epstein with the US Virgin Islands, where he had a private retreat and took some of his victims. Deutsche Bank also agreed to pay $75 million to Epstein's victims. Black agreed to pay $62.5 million to the US Virgin Islands. That settlement agreement said Epstein "used the money Black paid to him to partially fund his operations in the Virgin Islands."

Wyden spoke to reporters on Thursday, accusing the Treasury Department under Trump of suppressing critical information about Epstein's suspicious financial transactions, while he said banks were "sleepwalking" over the matter.

"The longer this administration stalls, the more it becomes clear that there is something to hide," Wyden said. "There has been a concerted effort by the Trump administration to play down that these important records are at the Treasury Department."

Wyden said it's clear to him that banks helped fund Epstein's global sex-trafficking operations.

"I think they should be making as much of that information available as possible. I think everything should come out. Period," Wyden said.

(Updates in eighth paragraph with Treasury Department comment.)

--With assistance from **Ava Benny-Morrison**.

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# Compass Minerals Investors Get Final OK For $48M Deal

By **Sydney Price**

Law360 (July 31, 2025, 11:17 PM EDT) -- A Kansas federal judge on Thursday granted final approval to a $48 million settlement between salt producer Compass Minerals International and investors who claim they were harmed by the company's failure to maintain sufficient production levels at its Canadian mine.

Lead counsel for the investors will receive approximately $11.3 million in fees, which is equal to about 24% of the settlement fund, in addition to $369,000 in expenses, according to the order signed by U.S. District Judge Eric F. Melgren. The suit's two named plaintiffs will both receive $10,000 awards, the order states.

The $48 million settlement represents 14% to 21% of estimated total recoverable damages and is four times greater than the $12 million civil monetary penalty the U.S. Securities and Exchange Commission obtained when it resolved non-fraud based claims against the company regarding its production disclosures in 2022, according to a motion for preliminary approval of the settlement filed in March.

In its settlement with the SEC, Compass Minerals paid $12 million to end claims it had a deficient disclosure process in which statements to investors were not reviewed by personnel sufficiently knowledgeable about both Compass Minerals' operations and its disclosure obligations.

The shareholders' complaint, which was most recently amended in March 2023, alleges Compass Minerals' shares fell 19% after the company announced in October 2018 that its transition to a new continuous mining and continuous haulage system in Canada had not actually saved it money.

The salt mine located in Goderich, Ontario, Canada, is the biggest underground salt mine in the world and accounted for approximately a third of Compass Minerals' earnings during the class period, which began in October 2017, according to the complaint.

The suit alleges that the $15 million the defendants had "repeatedly stated" they saved in Compass Minerals' salt segment had been completely negated by a $15 million earnings reduction in the third quarter of 2018 due to "lower-than-expected production" by the new system.

The foundation of Compass Minerals' cost-savings model was that the system in Canada would produce 7.5 million tons of salt per year, but, prior to and during the class period, the system "was not close" to producing that amount, the suit alleges.

The suit's settlement notice states that the parties began discovery after the court denied a motion by the defendants for interlocutory appeal in March 2024 and agreed to settle in February 2025 after participating in mediation.

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

The shareholders are represented by Bradley Wilders and Norman Eli Siegel of Stueve Siegel Hanson LLP, David Bishop, Lauren Wands, Andrew M. McNeela, Ira M. Press and Thomas W. Elrod of Kirby McInerney LLP, and Ellen Gusikoff Stewart, Heather G. Geiger, Darryl J. Alvarado, Erin W. Boardman and Joseph J. Tull of Robbins Geller Rudman & Dowd LLP.

Compass Minerals is represented by Andrew O'Connor, Andrew Weaver, Katherine M. MacAdam, Rishi N. Zutshi, William Baldwin and Victor L. Hou of Cleary Gottlieb Steen & Hamilton LLP and Sara Fevurly and Catherine L. Hanaway of Husch Blackwell LLP.

The case is IBT Employer Group Welfare Fund v. Compass Minerals International, Inc. et al., case number 2:22-cv-02432, in the U.S. District Court for the District of Kansas.

--Editing by Michael Watanabe.

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# Walnut Co. Says Firm Misled Court To Lead Super Micro Case

By **Gina Kim**

Law360 (July 31, 2025, 9:20 PM EDT) -- A Hagens Berman client who lost the fight against Universal Investment to lead investor claims against Super Micro Computer has blasted the fund's opposition to its bid for a California federal judge to reconsider the denial, arguing Universal's attorneys from Bernstein Litowitz Berger & Grossmann LLP have a "documented history" of "misleading courts."

In a Tuesday brief, walnut processing company Crain Walnut, represented by Hagens Berman Sobol Shapiro LLP, rebuked arguments made by Universal-Investment-Gesellschaft mbH contesting Crain Walnut's request asking U.S. District Judge Edward Davila to reconsider his decision that **disqualified** Crain Walnut from steering the proposed securities class action.

Super Micro Computer Inc.'s shares fell roughly 20% after a short seller report accused it of violating its previous settlement with the U.S. Securities and Exchange Commission over accounting improprieties, **according to the plaintiffs**.

Crain Walnut asked the judge to reconsider, which Universal opposed on July 23, reiterating Crain Walnut's "reluctance to engage in discovery" and "its lack of care, particularly when making sworn representations to the court."

Judge Davila considered several things when disqualifying Crain Walnut, including repeated errors in company founder Charles Crain's declarations regarding ownership of the company, failure to disclose the existence of a trust in the ownership chain, untimely disclosures of its margin agreement — which related to margin trading in Super Micro securities — and Charles Crain's testimony maintaining the company won't produce his financial records even if called to do so, Universal contended.

On Thursday, Crain Walnut responded, arguing Universal's opposition is painting a false narrative while portraying its discovery responses as improper, without attempting to meet and confer to resolve those issues. Tellingly, Universal didn't include in its opposition Crain Walnut's letter sent on March 19 regarding the margin agreement and other productions that complied with the judge's order, Crain Walnut explained.

Nor did Universal ever respond to the March 19 letter, which led Crain Walnut to think the issues were resolved.

"This is damning," Crain Walnut said. "Universal's entire argument on tardiness, which this court adopted, is inconsistent with that March 19 letter. The simplest explanation for Universal's omission of the letter is that it knew CW had promptly clarified the location of supplemental terms, and it knew CW had no opportunity to respond to its final supplemental brief."

Universal hid this from the judge to manufacture Crain Walnut's supposed "reluctance," which was part of the reason why the judge chose to deny Crain Walnut's bid to steer the case, the reply brief noted.

"Notably, Universal's counsel, [Bernstein Litowitz] has a documented history of similarly withholding key facts and misleading courts, including in this very jurisdiction," Crain Walnut said. "Judicial findings have included 'misleading' explanations, violations of court orders, and 'unacceptable' 'lack of candor.'"

Crain Walnut rattled off a series of investor class actions across the country involving Bernstein Litowitz, including one against health administration company Mednax, where a Florida magistrate judge recommended in 2018 that Spector Roseman & Kodroff PC be tapped as lead counsel and choosing Northern Ireland Local Government Officers' Superannuation Committee in the contest to be lead plaintiff.

U.S. Magistrate Judge Lurana Snow picked NILGOSC over a combined bid by the Mississippi Public Employees' Retirement System and the Cambridge Retirement System, raising concerns of claims that she discovered in her own research **of an alleged kickback scheme between its proposed counsel**, Bernstein Litowitz, and the Mississippi Attorney General's Office.

Judge Snow also cited allegations **in a 2014 lawsuit filed against Bernstein Litowitz by former member** Bruce Bernstein, claiming the firm engaged in the kickback scheme. Bernstein alleged the firm — while representing MPERS in a case against Satyam Computer Services Ltd. — made $112,500 in undisclosed payments to a solo practitioner who lacked securities law experience, but was married to a Mississippi special assistant attorney general.

The case was dismissed in March 2016 after the parties settled, according to court records, but the allegations also had not been denied, Judge Snow noted. A few days later, Bernstein Litowitz asked the judge to delete references to the kickback scheme allegations, expressing concerns that her statements questioning the relationship could be used unfairly by adversaries, **but Judge Snow refused**.

Crain Walnut referenced another case, SEB Investment Management AB v. Symantec Corp. before U.S. District Judge William Alsup, where Bernstein Litowiz was representing lead plaintiff SEB. In that case, Robbins Geller Rudman & Dowd **raised conflict concerns**, telling the judge that Bernstein Litowitz surreptitiously hired former SEB executive Hans Ek to be its senior adviser for European investor relations even as it was litigating on the company's behalf.

Ek was at the helm of SEB when it hired Bernstein Litowitz, but the firm contended hiring Ek wasn't a conflict, arguing it had no clue he would leave SEB until a year after the asset manager was picked as lead plaintiff.

Judge Alsup at the time ruled it wasn't clear there was a quid pro quo of sorts, but found it "crystal clear" that Bernstein Litowitz and Ek didn't tell him that Ek left SEB to take a job with the firm. When the person named as lead plaintiff ends up an employee of the law firm, it potentially compromises the objective of the Private Securities Litigation Reform Act, the judge said.

"[Bernstein Litowitz] and SEB surely knew all these ramifications and knew how the undersigned judge felt about these issues," Judge Alsup's **April 2021 order** said. "The appearance alone raises eyebrows, arched eyebrows. [Bernstein Litowitz] should have avoided this spectacle. So should have SEB, and so should have Mr. Ek. This is true even though discovery could not establish a clear-cut quid pro quo."

Universal's attorney's omitting the March 19 letter "is a page out of this same playbook," Crain Walnut said Thursday.

Thursday's reply brief comes more than a month after Judge Davila picked Universal after citing filing inaccuracies by Crain Walnut, among other things, including initial statements by Charles Crain who said he was the company's "sole owner" but didn't disclose all entities that also have ownership over it until it was unveiled in discovery.

While it's true Charles Crain holds sole decision-making power over Crain Walnut, despite not being the sole owner, the plaintiff failed to provide the precise details about its ownership, Judge Davila had ruled.

Judge Davila gave Crain Walnut an opportunity to file a motion for reconsideration, which was submitted on July 10.

Crain Walnut argued the court's factual findings were premised on a one-sided and inconclusive record about its discovery participation, which was based almost entirely on Universal's final supplemental brief that Crain Walnut couldn't even respond to, depriving it of the chance to address the judge's concerns and fix any misrepresentations by Universal.

Crain Walnut contended that Universal tried to mislead the judge by continuing to claim Crain Walnut didn't produce the margin agreement on time, but it did so by the March 14 deadline, and also provided a brokerage application that complied with the court's orders.

After Universal accused Crain Walnut on March 18 of only handing over the brokerage application, and asked about the margin agreement's additional terms and conditions, the nut company sent another letter on March 19, explaining it did indeed produce the agreement and additional terms were publicly available via hyperlinks that were already given to Universal on March 14.

Crain Walnut nevertheless obliged and downloaded the public records itself that Universal had in its possession, its reconsideration bid said.

On Thursday, Crain Walnut also questioned Universal's standing to bring the suit as an investment manager of 200 separate German funds, without identifying these third-party funds by name despite that these entities are the ones with financial interests, not Universal.

Furthermore, a large cut of Universal's purported losses come from investments in stocks that aren't listed on any exchange in the U.S., which means these aren't domestic transactions, Crain Walnut explained.

Crain Walnut further pointed out Universal was picked as lead plaintiff in five other securities class actions in the last three years, which violates the PSLRA.

"Despite [Crain Walnut's] compelling evidence of Universal's inadequacy, no other competing movants — including the SMCI Investor Group, who claimed a larger financial interest than Universal — contested Universal's appointment after the June 26 order," the reply brief concluded. "This lack of opposition is highly suspicious and is probative of an undisclosed backroom deal between competing movants' counsel, a practice the court has repeatedly rebuked."

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

Crain Walnut is represented by Reed R. Kathrein and Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP and Brian J. Schall and Andrew J. Brown of The Schall Law Firm.

Universal is represented by Jonathan D. Uslaner, Gerald H. Silk, Avi Josefson and Scott R. Foglietta of Bernstein Litowitz Berger & Grossmann LLP.

The case is In re Super Micro Computer Inc. Securities Litigation, case number 5:24-cv-06147, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg and Nathan Hale. Editing by Jay Jackson Jr.

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# Zoom Investor Gets Final OK For Derivative Suit Settlement

By **Katryna Perera**

Law360 (July 31, 2025, 7:49 PM EDT) -- A Delaware federal judge granted final approval on Thursday to a settlement reached in a shareholder derivative suit accusing the top brass of Zoom of pulling in $172.9 million via insider sales after its 2019 initial public offering and before shares fell during the early days of the COVID-19 pandemic.

U.S. District Judge Gregory B. Williams issued an **order** stating that the reached settlement, which requires Zoom to adopt and implement several corporate governance reforms, was fair and reasonable. The reforms include enhancing the independence and accountability of the company's board, Zoom's whistleblower controls and oversight of its financial statements and disclosure controls, among other things.

The judge also awarded class counsel $1.3 million in attorney fees and a $5,000 service award each to the current and former plaintiff.

The suit, launched in 2020, **accused** all but one of Zoom's nine board members, as well as its chief financial officer, of giving the investing public a "false impression of the company's business, operations and its cybersecurity" that was allegedly laid bare when the pandemic-fueled surge in Zoom use led many to question its data privacy and security measures.

The action also alleged that six of the defendants, including Zoom's CEO Eric Yuan, netted nearly $173 million in proceeds in the 12 months after Zoom's April 2019 IPO from "lucrative insider sales" based on nonpublic information.

When the Zoom IPO closed on April 23, 2019, the company had sold nearly 10 million shares at $36 apiece and continued to tout the reliability of its technology and infrastructure, saying, among other things, that end-to-end encryption could be enabled on its video communications service, according to the suit.

But in reality, Zoom's platform and primary application "were riddled with security deficiencies that exposed its network, including users' webcams, to unauthorized intruders," the suit said. The company was also allegedly providing unnecessary personal data to third parties, such as Facebook, without users' consent, and did not actually offer end-to-end encryption as previously represented.

Zoom's security vulnerabilities were first reported as early as July 2019, when a research article first detailed a flaw that allowed hackers to overtake Zoom users' webcams, leading a public interest group to file a complaint with the U.S. Federal Trade Commission and causing a stock price decline, the suit claimed.

Still, Zoom's price remained artificially inflated until the "true extent of vulnerabilities inflicting the company's privacy and security" was revealed in March and April 2020, when a number of published articles revealed Zoom didn't support end-to-end encryption. Additionally, on April 1, 2020, it was reported that one of the company's largest customers had banned employees from using Zoom, ultimately leading to stock drops, the suit claimed.

More reporting about suspicious stock sales by Zoom's CEO came in the following days, as did news of a state attorney general's investigation into the company. Finally, on April 6, 2020, the New York City Department of Education said it would no longer be using Zoom for remote learning, causing the company's share price to drop from $128.20 to $122.94. The investor suit was filed the next day.

Counsel for the defendants declined to comment on Thursday, and counsel for the plaintiffs did not immediately respond to requests for comment.

The plaintiffs are represented by Thomas J. McKenna and Gregory M. Egleston of Gainey McKenna & Egleston, Timothy Brown and Saadia Hashmi of The Brown Law Firm PA, Brian J. Robbins, Stephen J. Oddo and Kevin A. Seely of Robbins LLP, Blake A. Bennet of Cooch & Taylor PA, Brian E. Farnan and Michael J. Farnan of Farnan LLP, and Ryan M. Ernst of Bielli & Klauder LLC.

The defendants are represented by Dean McKinley Measley and Alexandra M. Cumings of Morris Nichols Arsht & Tunnell LLP, and Koji F. Fukumura, Patrick E. Gibbs, Ryan E. Blair and Timothy W. Cook of Cooley LLP.

The case is In re Zoom Video Communications Inc. Stockholder Derivative Litigation, case number 1:20-cv-00797, in the U.S. District Court for the District of Delaware.

--Editing by Vaqas Asghar.

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# BREAKING: Tesla Hit With $329M Verdict In Trial Over Fatal Autopilot Crash

By **Carolina Bolado**

Law360, Miami (August 1, 2025, 2:18 PM EDT) -- A Miami jury in a highly publicized trial over Tesla's autopilot on Friday found the product to be defective and awarded the victims of a 2019 fatal Florida Keys crash $329 million in damages.


The Miami jury found Tesla to be 33% at fault for the 2019 crash. (Photo by Justin Sullivan/Getty Images)

The jurors awarded $59 million in compensatory damages to the parents of 22-year-old Naibel Benavides Leon, who was killed in the April 2019 crash, and $70 million to Benavides' boyfriend Dillon Angulo for the injuries he suffered in the crash.

The jurors also hit Tesla with $200 million in punitive damages.

The jury found that the autopilot contributed to the crash on the night of April 25, 2019, on Card Sound Road in Key Largo, where driver George Brian McGee was speeding down the road in his 2019 Tesla Model S. McGee was found to be 67% at fault for the crash, while jurors pinned 33% of the fault on Tesla.

McGee testified that he dropped his phone and took his eyes off the road to look for it, not realizing he was fast approaching a T-intersection. He sped past a stop sign and into a parked Chevrolet Tahoe, killing Benavides, who was standing next to the Tahoe with Angulo, then 26.

McGee had engaged the autopilot on the road, but shortly before the crash, he put his foot on the accelerator pedal to go over the speed limit, triggering a message that the cruise control would not brake.

Throughout the course of the three-week trial, Benavides' family and Angulo **argued** that Tesla's autopilot is defective because Tesla allowed drivers to engage it on roads for which it was not designed, like Card Sound Road, and because it does not sufficiently monitor whether drivers are paying attention to the road.

They argued that Tesla — and in particular its CEO Elon Musk — "**set the stage**" for the crash by overhyping its autopilot software's capabilities despite knowing about vulnerabilities in the program.

"Tesla's lies turned our roads into test tracks for their fundamentally flawed technology, putting everyday Americans like Naibel Benavides and Dillon Angulo in harm's way," plaintiffs' attorney Brett Schreiber said after Friday's verdict. "Today's verdict represents justice for Naibel's tragic death and Dillon's lifelong injuries, holding Tesla and Musk accountable for propping up the company's trillion-dollar valuation with self-driving hype at the expense of human lives."

Tesla pointed to McGee as the sole cause of the crash, calling him an aggressive driver who got distracted by his dropped cellphone. Tesla **argued** that McGee had traveled safely through that same intersection between 30 and 40 times in the four months prior to the crash that he had owned his Tesla Model S, as he commuted from his office in Boca Raton to his home in Key Largo a few times a week.

Tesla said McGee often engaged autopilot on that commute, including on Card Sound Road, without incident. The only change that day was the dropped cellphone, which happened when McGee was pressing the accelerator pedal and overriding the autopilot, according to the automaker.

In a statement, Tesla said the verdict "only works to set back automotive safety and jeopardize Tesla's and the entire industry's efforts to develop and implement life-saving technology," and indicated the company plans to appeal.

"Even though this jury found that the driver was overwhelmingly responsible for this tragic accident in 2019, the evidence has always shown that this driver was solely at fault because he was speeding, with his foot on the accelerator — which overrode autopilot — as he rummaged for his dropped phone without his eyes on the road," the company said. "To be clear, no car in 2019, and none today, would have prevented this crash. This was never about autopilot; it was a fiction concocted by plaintiffs' lawyers blaming the car when the driver — from day one — admitted and accepted responsibility."

In his testimony at trial, McGee **admitted** he was "potentially too comfortable" with the autopilot and "trusted the technology too much."

The family and Angulo have settled the claims they filed against McGee. He was charged in October 2019 with careless driving, which he did not contest. He was ordered to complete 16 hours of traffic school, according to court records.

The plaintiffs are represented by Adam T. Boumel of the Rousso Boumel Law Firm PLLC, Brett Schreiber, Satyasrinivas M. Hanumadass and Carmela S. Birnbaum of Singleton Schreiber LLP, Todd Poses of Poses Law Group PA and Douglas F. Eaton of Eaton & Wolk PL.

Tesla is represented by Whitney V. Cruz, Wendy F. Lumish, Thomas P. Branigan, Drew P. Branigan and Joel H. Smith of Bowman and Brooke LLP and Hilarie Bass of Hilarie Bass Esq. LLC.

The case is Benavides v. Tesla Inc., case number 1:21-cv-21940, in the U.S. District Court for the Southern District of Florida.

--Editing by Daniel King.