

Novo Nordisk Faces Ozempic-Linked Securities Fraud Claims

August 05, 2025 | By  Ellen Bardash



Ozempic semaglutide injection pens. Credit: mbruxelle/Adobe Stock

A Novo Nordisk shareholder has sued the Ozempic and Wegovy manufacturer, claiming investors were misled about the growth potential for sales of the semaglutide products.

Adam Apton of Levi & Korsinsky is representing shareholder plaintiff Eric Barta in a [securities class action](#) filed Aug. 1 in the District of New Jersey, the jurisdiction in which the Danish pharmaceutical manufacturer has its U.S. headquarters.

The lawsuit proposes a class of investors who purchased Novo Nordisk stock between May 7 and July 28 of this year, alleging stock prices during that time were artificially inflated by Novo Nordisk overstating expectations about market demand for the company's branded semaglutide, or GLP-1, products compared to demand for alternative GLP-1 products.

"We are aware of the complaint and disagree with the allegations," a Novo Nordisk spokesperson said. "We cannot comment further as this is pending litigation; however, we will defend against these claims."

On July 29, the company announced it was lowering its sales and profit projections ahead of reporting results for the fiscal year's second quarter, citing lowered growth expectations for Ozempic and Wegovy for the rest of the year as a result of "the persistent use of compounded GLP-1s, slower-than-expected market expansion and competition."

Novo Nordisk's stock price fell from \$69 on July 28 to \$53.94 on July 29.

Separately, on Monday, Novo Nordisk, represented by Covington & Burling, filed a dozen trademark suits in federal jurisdictions throughout the country against companies it claims have been selling semaglutide products improperly marketed as being FDA-approved and equivalent to Novo Nordisk's products.

As of Tuesday afternoon, counsel for the company had not been identified in the securities case.

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Securities Law News

Match Group Investor Sues Brass Over App Safety Worries (1)

Aug. 5, 2025, 1:15 PM PDT; Updated: Aug. 5, 2025, 1:52 PM PDT

A Match Group Inc. shareholder has accused current and former officers and directors of allowing predators to remain on dating platform Tinder and overstating its potential for growing usership.

Top brass hurt the dating app giant's reputation and wallet in causing it to misrepresent its handling of safety issues and downplay challenges to gaining active users, a stockholder told the US District Court for the Central District of California. As a result, Match faces costly litigation, internal investigations, and corporate changes, according to a redacted complaint filed Monday.

These corporate caretakers "were motivated by their own self-interest in seeking stockholder approval of the Company's 2024 Stock and Annual Incentive Plan" to boost their future compensation, the shareholder derivative action said.

The Pulitzer Center, in partnership with multiple news outlets, earlier this year published a story resulting from an 18-month investigative project looking into the Tinder and Hinge owner's tracking of troubling users while it dithered over releasing a report on the data. People banned from Tinder, Match's largest platform, for reports of sexual assault or other issues were able to rejoin or move to another of its apps relatively easily, the news outlets reported in February.

The shareholder's suit shortly landed before Match released quarterly earnings results Tuesday, including a third quarter revenue forecast that topped estimates.

Shareholders have been hoping for signs of progress in Match's multiyear turnaround plans while dating apps have struggled to gain Gen Z interest, including products enhanced by artificial intelligence and C-suite shakeups. The company announced a 13% workforce reduction in May under Match CEO Spencer Rascoff, who took over in February.

The shareholder derivative action in part echoes others focused on decreased usership filed before the 2025 investigative project came out. An proposed class action containing similar allegations about downplaying a user decline is pending in the same court against Match, former CEO Bernard Kim, and former president Gary Swidler.

User Decline

The Monday complaint alleged wrongdoing dating back to May 2, 2023, when Match highlighted Tinder's potential to reactivate past users in a shareholder letter.

But on Nov. 6, 2024, Match disclosed a continued user downturn in the third quarter of 2024 and a dim quarterly revenue forecast. Its stock price fell almost 18% to close at \$31.11 the next day—at the time its biggest single-day slide on record, according to data compiled by Bloomberg.

Usership “faltered because users had grown tired of meeting abusers and predators on the platform,” shareholder Ned Habedus alleged.

Levi & Korsinsky LLP represents Habedus, who seeks damages, restitution, and corporate governance reform for Match. He alleged securities law violations, breach of fiduciary duties, and unjust enrichment by current and former board members and executives including Kim and Swidler.

Neither Match nor the law firm representing it in a similar shareholder derivative action, Winston & Strawn LLP, immediately responded to emails seeking comment.

The case is Habedus v. Kim , C.D. Cal., No. 2:25-cv-07171, complaint filed 8/4/25 .

(Updates to include Match's quarterly results and forecast released Tuesday evening in the fifth paragraph.)

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editors responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com

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Securities Law News

McDermott Merger Case Puts Class Conflict Issues in Spotlight

Aug. 5, 2025, 3:56 PM PDT

McDermott International Inc. told the Fifth Circuit that its investors can't share a class representative with investors in a troubled company the engineering and construction firm acquired.

Investors in Chicago Bridge & Iron Co., the company acquired by McDermott in 2018, would've been left with worthless shares without the merger, an attorney for McDermott said at oral argument. So CB&I's investors benefited from the merger and McDermott's didn't, creating a conflict between the two sets of shareholders in the suit for securities fraud, Amy Pharr Hefley of Baker Botts LLP told the US Court of Appeals for the Fifth Circuit.

The suit alleged that undisclosed CB&I project costs dragged the combined company into Chapter 15 bankruptcy, which protects a company's US assets while restructuring arrangements are worked out elsewhere. McDermott received a UK court's approval of a restructuring plan in February 2024.

Both sides are appealing aspects of the US District Court for the Southern District of Texas ruling that certified subclasses but found a "fundamental conflict" between the sets of investors, requiring a reopened lead plaintiff process.

Matthew Tuccillo of Pomerantz LLP, arguing for the pension fund serving as lead plaintiff, said there was no evidence of CB&I over-value or stock price "inflation." Therefore, investors who converted CB&I stock to McDermott stock in the merger were fully aligned with those who purchased McDermott stock on the market, he said. Expert evidence in the case showed that "CB&I was valued appropriately," he said.

But McDermott's Hefley said the only logical way to read the complaint was that it said CB&I's stock was inflated. And it's impossible for McDermott's stock inflation to have been greater than CB&I's, she said.

The Nova Scotia Health Employees' Pension Plan was a CB&I "exchanger" but "tried to blend in with other purchasers" during the court proceedings, she said.

"What's the solution?" asked Judge Don R. Willett, who later asked another question focused on practicalities.

Why shouldn't the lower court hold separate trials on liability? he asked.

That wouldn't work, Hefley said. Nova Scotia Health's standing should be resolved before class certification, she said.

Judges Jacques L. Wiener Jr. and James C. Ho also served on the panel.

Judge George C. Hanks Jr. of the Southern District of Texas eventually dismissed the suit on standing grounds in March, a decision that's the subject of a separate appeal.

Sidley Austin LLP also represented McDermott.

The case is Nova Scotia Hlth. Emps' Pension Plan v. McDermott Int'l, Inc. , 5th Cir., No. 24-20326, argument 8/5/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

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Guest Post: Meta Derivative Litigation Hits Reputation Risk Governance



dandodiary.com/2025/08/articles/corporate-governance/guest-post-meta-derivative-litigation-hits-reputation-risk-governance

Kevin LaCroix

August 6, 2025

Nir Kossovsky

In the following guest post, Nir Kossovsky examines the issue of corporate governance for reputational risk, through the lens of the recently settled Meta derivative suit. Nir is the CEO of Steel City Re. I would like to thank Nir for allowing me to publish his article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Nir's article.

Earlier this month, Meta Platforms (née Facebook) settled what was described in the press as an \$8bn derivative lawsuit [1]. The case illustrates how directors increasingly are exposed to both 1st and 3rd-party losses from failing to oversee an increasingly wider scope of executive activity. Recently published reputation risk governance guidelines may help mitigate these exposures.

One of the key allegations was that Facebook's board breached its fiduciary duties of oversight because the company violated a 2012 consent order from the FTC relating to users' data privacy. The FTC fined Facebook \$5 billion in 2019 for giving data access to Cambridge Analytica, a company that shareholders emphasized in the lawsuit as posing reputational risk, and for which Facebook's oversight was allegedly not dutiful.

Through one lens, this is a case of an otherwise unremarkable failure to oversee compliance, which may imply managerial weaknesses in the legal department. A more interesting lens focuses on the reputational risks that were correctly anticipated, disclosed, but ultimately not effectively managed; and being allegedly mission critical to Facebook, not dutifully governed.

The [Directors and Chief Risk Officers Risk Governance \(DCRO\) Institute](#) has been following the creeping scope of board duties under *Caremark* since *Marchand v. Barnhill*. Because reputation is mission critical to most firms [2], the Institute concluded that boards needed to enhance their oversight of reputation risk management.

This past June, the Institute published its [Guiding Principles for Reputation Risk Governance. Essential Principles for Boards of Directors](#) comprising ten (10) principles to help boards govern reputation risk explicitly and be better equipped to protect firms' value.

Briefly, there are three general themes to the ten principles (#1-10). The first four explicitly restate reputation, its risk, and accountability: It is (#1) a strategic asset and material risk; (#2) a board oversight duty; (#3) underpinned by operations and culture (not merely messaging); and (#4) an enterprise-wide phenomenon.

Moving beyond legacy communications-centric concepts, the next three principles declare that reputation risk oversight must be (#5) aligned with a company's purpose and priorities while staying alert to stakeholder expectations and broader political, legal and regulatory matters; (#6) informed by a forward-looking intelligence system integrating issues and financial risks; and (#7) sensitive to the accelerating intersection of cyber threats, artificial intelligence, and digital influence.

The last three principles are personal. Helping board members implement these is an increasingly important service for those responsible for assuring that board members, as elected fiduciaries, can carry out their duties free from intimidation and threats.

Board members working together (#8) can help build resilient reputations through foresight, preparation, and disciplined execution. Interpersonal dynamics, however, are not without challenges. Last year, [PwC's annual board survey](#) revealed that 25% of sitting board members wanted two or more peers replaced—a high water mark.

Board members individually face personal risks. These risks include third party liability, first party culpability[3], public humiliation[4], and going forward losses from personal reputational damage after "removal." In the Meta Platforms case, according to the complaint, "the litany of directors forced out include Defendants Koum, Hastings, Desmond- Hellmann, Bowles, Chenault, and Zients." [5]

These personal risks, notes the penultimate principle, (#9) are mitigated only partially by D&O Liability Insurance, and going forward, board members should consider also first-party Reputation Insurance.

The final principle (#10) acknowledges that reputation risk is typically laden with emotions—among stakeholders as well as board members. Directors must exhibit emotional intelligence, self-awareness, and clarity when facing stakeholders who feel betrayed, believe trust is being broken, and expectations are not being met or managed, for they lead to "stakeholders reassessing their relationship with the enterprise in ways that change their behaviors resulting in reduced revenue, increased costs, or eroded long-term value [6]—the *sine qua non* of a reputation crisis."

[1] Second Amended and Consolidated Verified Stockholder Derivative Complaint. In Re Facebook Inc. Derivative Litigation. Consolidated. C.A. No. 2018-0307-JRS. November 4, 2021.

[2] <https://ilr.law.uiowa.edu/people/leo-e-strine-jr>

[3] Second Amended and Consolidated Verified Stockholder Derivative Complaint, *ibid.*, p235.

[4] <https://www.agendanews.com/c/4779584/644434>

[5] Second Amended and Consolidated Verified Stockholder Derivative Complaint, *ibid.*, p5.

[6] DCRO Institute Reputation Risk Governance Council. Guiding Principles for Reputation Risk Governance. Essential Principles for Boards of Directors. DCRO Institute, June 2025. p9.

Securities Law News

DanaHER Trims Investors' Lawsuit Over Waned Pandemic Demand

Aug. 5, 2025, 10:34 AM PDT

DanaHER Corp. will have to battle some investor accusations that the biotechnology company overhyped demand while pandemic-fueled desire for its tests and vaccine equipment tapered.

Shareholders didn't sufficiently allege that the executives knowingly misled them with most future-focused statements about demand, Judge Amir H. Ali said. But the investors did adequately claim there were misleading projections in an April 2022 earnings call that CEO Rainer Blair knew to be misleading, said the US District Court for the District of Columbia judge.

Their amended complaint contained a confidential witness' accusation that "they heard Blair admit to making up more favorable numbers for an April 2022 earnings call—a call which the shareholders allege involved extensive discussion about the bioprocessing division's anticipated performance," Ali said while partially dismissing the proposed class action on Monday.

The projections were plausibly misleading since they excluded that demand for Covid-tied equipment had already declined by early 2022 and that order placements for other products were slipping in the face of pandemic stockpiling and funding pressures on customers, Ali said.

And certain statements in 2022 and 2023 about the present state of DanaHER's demand were sufficiently claimed to be misleading—ones about the impact of the pandemic, inventory stockpiling, and its customer biotechnology companies' funding, Ali said. Others were too general or mere corporate puffery, he said.

Investors adequately alleged that executives were extremely reckless in making certain rosy demand statements to shareholders while omitting information they had about headwinds, Ali said. As the investors sufficiently claimed a securities fraud violation, they can continue pleading liability as a "control person" of DanaHER against Blair and chief financial officer Matthew McGrew.

DanaHER announced last month that another executive will be replacing McGrew as CFO in 2026, as the latter retires.

Danaher saw “explosive revenue growth” while its diagnostic tests and life sciences equipment were in demand to help combat the novel coronavirus in 2020 and 2021, said lead plaintiff Brenda Hawkins and additional plaintiff Derek Einersen’s complaint. But as customers started viewing Covid as endemic, demand waned, and the company had to lower its annual outlook repeatedly in 2022 and 2023 for its key bioprocessing division, they said.

“Danaher is committed to transparency,” a company spokesperson said in an email Tuesday. “We continue to believe the claims are without merit and we are actively addressing the matter through the appropriate legal channels. We will not comment on the specifics of the litigation.”

Pomerantz LLP is lead counsel for the proposed class, which would include those who got Danaher securities from Jan. 27, 2022, through Oct. 23, 2023. Attorneys didn’t immediately respond to an email seeking comment. Gibson, Dunn & Crutcher LLP represents Danaher, the two executives, and former executive Emmanuel Ligner.

The case is Hawkins v. Danaher Corp. , D.D.C., No. 1:23-cv-02055, 8/4/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

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Securities Law News

Second Circuit Tosses Madoff-Related Claims Under Safe Harbor

Aug. 5, 2025, 12:47 PM PDT

The Second Circuit reversed a district court ruling on claims by liquidators of investment funds forced to wind down in the British Virgin Islands after heavy investments in Bernard Madoff's Ponzi scheme.

The appeals court on Tuesday partly reversed and partly upheld the judgment of the US District Court for the Southern District of New York, concluding that the liquidators' claims must be dismissed because a provision of the US bankruptcy code protects certain financial transactions from being undone in court.

A central issue on appeal was whether the safe harbor provision in the bankruptcy code broadly bars both statutory and common law claims seeking to unwind covered transactions, including those in foreign proceedings.

The appeals court held that the safe harbor applies extraterritorially and found that Congress created the provision to protect completed securities transactions, arguing that undoing such deals could destabilize markets and deter investment.

After the 2008 Ponzi scheme, the liquidators filed about 300 actions in the US to recover over \$6 billion in investor payouts made just before the fraud was exposed. The bankruptcy court consolidated the cases after recognizing the BVI insolvency in July 2010 under Chapter 15, which governs cross-border bankruptcies.

The bankruptcy court initially dismissed most claims, citing lack of personal jurisdiction, the binding nature of net asset value calculations, and the safe harbor provision.

The bankruptcy court allowed constructive trust claims to proceed against defendants who allegedly knew about inflated valuations, and the district court affirmed. The liquidators sought to revive the dismissed claims on appeal.

Judges William Nardini, Steven Menashi, and Eunice Lee issued the decision.

Brown Rudnick LLP and Clement & Murphy PLLC represent the trusts and liquidators.

The case is *In re Fairfield Sentry Ltd.*, 2d Cir., Nos. 22-2101-bk(L), 23-965(L), opinion 8/5/25 .

To contact the reporter on this story: Angélica Serrano-Román in Washington at aserrano-roman@bloombergindustry.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

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Tesla Faces Class Action Over Robotaxi Safety

August 05, 2025 By Laura Lorek



A Tesla Inc. robotaxi on Oltorf Street in Austin, Texas, US, on Sunday, June 22, 2025. The launch of Tesla Inc.'s driverless taxi service Sunday is set to begin modestly, with a handful of vehicles in limited areas of the city. Photo: Tim Goessman/Bloomberg

Tesla Inc. and CEO Elon Musk are the subjects of a putative federal class action lawsuit that claims they made false or misleading statements about the safety and effectiveness of the company's autonomous driving technology, including the robotaxi service.

A lawsuit filed Monday in the U.S. District Court for the Western District of Texas claims Tesla exaggerated its autonomous driving features for more than two years, despite allegedly knowing the technology was unsafe.

This case is notable for its intersection of technology regulation, securities law and consumer protection, and might establish precedents relevant to autonomous vehicle litigation in Texas.

According to the complaint filed by plaintiff Denise Morand, Tesla's robotaxis violated traffic laws during their Austin debut on June 22, including speeding, improper lane changes and wrong-way driving. Videos posted on social media showed the vehicles exceeding speed limits and making erratic maneuvers, the lawsuit claims.

The National Highway Traffic Safety Administration allegedly contacted Tesla after videos appeared online showing the robotaxis apparently violating traffic laws during the company's first day offering paid rides in Austin, according to the lawsuit and recent news reports.

The complaint alleges Tesla and its executives, including Musk, Chief Financial Officer Vaibhav Taneja and former CFO Zachary Kirkhorn, violated federal securities laws by making materially false statements about the company's autonomous driving progress between April 2023 and June 2025.

This action was surfaced by [Law.com Radar](#), which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. [Click here](#) to get started and be first to act on opportunities in your region, practice area, or client sector.

"Tesla overstated the effectiveness of its autonomous driving technology" and failed to disclose "a significant risk that the Company's autonomous driving vehicles, including the Robotaxi, would operate dangerously and/or in violation of traffic laws," the lawsuit claims.

Tesla did not immediately respond to a request for comment, and no attorney had entered an appearance by press time.

Tesla's stock price fell \$21.13 per share, or 6 percent, to close at \$327.55 per share on June 25, 2025, following reports of the robotaxi incidents and regulatory scrutiny, according to the complaint.

The lawsuit seeks to represent all investors who purchased Tesla securities during the alleged class period and suffered losses. It demands unspecified monetary damages and attorney fees and a jury trial.

Tesla has faced previous scrutiny over its "Full Self-Driving" and Autopilot features. Last week, a Florida jury ordered Tesla to pay \$242.5 million in damages related to a fatal 2019 crash involving the company's Enhanced Autopilot system, according to the lawsuit.

During the alleged class period, Musk repeatedly made optimistic predictions about Tesla's autonomous driving capabilities, claiming the technology would be "vastly better than human" by various deadlines that the company failed to meet, the complaint states.

Plaintiff counsel, Willie Briscoe with the Briscoe Law Firm in Dallas declined to comment. Fellow plaintiff lawyers Jeremy A. Lieberman and J. Alexander Hood II with Pomerantz in New York, did not immediately respond to a request for comment.

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Securities Law News

Musk Seeks Dismissal of Suit Over \$7.5 Billion Tesla Stock Sale

Aug. 5, 2025, 10:35 AM PDT

Elon Musk urged a Delaware judge to toss an investor lawsuit alleging he improperly sold more than \$7.5 billion in Tesla Inc. shares after receiving inside information that the carmaker would miss its production and delivery targets in 2022.

Lawyers for Musk, the world's richest person, argued in a filing Monday that the lawsuit by an investor, Michael Perry, was filed improperly in Delaware Chancery Court because Tesla last year moved its state of incorporation to Texas. They also disputed Perry's claims Tesla directors are beholden to Musk and allowed him to wrongfully benefit from the company's struggles.

The suit "offers a host of conclusory allegations related to events that occurred years ago, none of which is alleged to have actually harmed the company," Musk's attorneys said in a 43-page brief seeking dismissal of the lawsuit.

The filing came the same day Tesla directors disclosed their decision to grant Musk an interim stock award — valued at \$30 billion — while a legal fight over his 2018 pay package drags on. They said the award was designed to keep the billionaire's attention on the automaker, who runs several other companies and has been an active player in US politics.

Lee Squitieri, Perry's lawyer, didn't immediately return a call seeking comment.

Perry sued Musk, Tesla's chief executive officer, in May 2024 claiming directors didn't properly supervise his sales of stock after he'd learned the company would miss its fourth-quarter targets.

Musk "exploited his position at Tesla" by using the information when selling part of his stake to bolster his buyout of social media platform then-known as Twitter, according to Perry's complaint. Musk filed suit to renege on his offer to pay \$44 billion for the social-media platform, but then dropped his opposition after Twitter seem poised to win the case in court.

Perry wants Delaware Chancery Judge Kathaleen St. J. McCormick to make Musk return to the company the profit he made on the share sale. McCormick oversaw the Twitter case and ruled against Musk in a series of pre-trial decisions that prompted him to drop challenges to the deal.

Late last year, McCormick also blocked an earlier record-setting pay package for Musk after finding that Tesla directors who signed off on it were conflicted and that the company didn't properly disclose the terms of the executive compensation plan. Musk is currently appealing that decision.

The case is Perry v. Musk, 2024-0560, Delaware Chancery Court (Wilmington).

To contact the reporters on this story:

Jef Feeley in Wilmington, Delaware at jfeeley@bloomberg.net;

Sabrina Willmer in Washington at swillmer2@bloomberg.net

To contact the editors responsible for this story:

Sara Forden at sforden@bloomberg.net

Steve Stroth

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Litigation

Verdict Fallout: Attorneys Call Award Against Tesla a Warning

August 05, 2025 | By  Lisa Willis



(l-r) South Florida attorneys Adam Boumel of the Roussio Boumel Law Firm, Todd Poses of Poses Law Group, and Doug Eaton of Eaton Wolk revealed the intricate battle against Tesla and how they walked away from a confidential Tesla settlement offer. Courtesy photo

Tesla allegedly lied, withheld data and misdirected police to avoid blame in a fatal Autopilot crash in Key Largo. That's what plaintiff attorneys said turned the jury against the automaker in the wake of a three-week trial that ended in a nine-figure jury verdict Friday.

And lawyers not involved in the case, say the nine-figure outcome might be a reflection of how jurors viewed Elon Musk, Tesla CEO-turned-political adviser, and his company.

If Tesla's appeal efforts fail, the company will have to pay \$243 million to the plaintiffs in *Benavides v. Tesla*, which was tried in Miami federal court. The jury of six women and three men unanimously voted that Tesla was one-third to blame for the 2019 crash.

In a post-trial interview, South Florida attorneys Adam Boumel of the Rousso Boumel Law Firm, Todd Poses of Poses Law Group, and Doug Eaton of Eaton Wolk revealed the intricate battle against Tesla and how they walked away from a confidential Tesla settlement offer.

"It was a life-changing offer, but we all knew that it severely undervalued the case," Boumel claimed. "Our clients wanted this case to mean something more than just dollars in their pocket. They really wanted this to effectuate both an understanding of what happened in their specific case, and to expose Tesla's bad conduct relative to their case."

'Nobody Is Saying That'

Another watershed moment came when one of the plaintiff's attorneys became a victim of a Tesla crash.

The lawyers said they wanted this case to bring awareness.

"And maybe a bit of safety to what Tesla does moving forward," Boumel said. "Tesla is moving fast and breaking things. Nobody is saying that Tesla shouldn't be innovating, but they need to be careful in their innovation. They need to take their time. They need to make sure that their products are safe when they're put on the market."

Over more than five years, the legal teams uncovered critical evidence showing Tesla's autopilot system failures and the company's alleged data manipulation.

Despite feeling outmanned, plaintiff counsel say they persevered, driven by a belief in justice and client integrity.

While the jury only partially faulted the driver, who was not a defendant in this case, it assigned one-third responsibility to Tesla.

The lawyers emphasized their goal wasn't just financial compensation for the Florida woman killed and her injured boyfriend, but exposing systemic safety issues and potentially preventing future accidents through their landmark victory. They said prior to the jury's verdict, no Tesla case had gone to a jury trial.

Eaton also credited San Diego-based lead counsel Brett Schreiber, of [Singleton Schreiber](#) who the team brought in to trial last year.

"You asked, 'What went right?' [It] was also adding Brett Schreiber in April [2024]," Eaton said. "You saw his work at trial. He's fantastic, and what he was able to do with this [case]. He had experience litigating against Tesla, so his experience was crucial, and obviously so was his talent in the courtroom."

This was a case about Tesla's choices and Tesla's words, plaintiff counsel said, pointing to Tesla's alleged "overhypes" in marketing the vehicles as fully self-driving.

In the courtroom, however, Tesla claimed Autopilot is an extremely limited driver-assistance feature, requiring constant supervision—an argument the jury didn't seem to accept.

The Eureka Moment

Pre-trial, Poses said he got a call from Eaton that changed everything.

At the onset of the case, Eaton found himself in an Autopilot accident in a Tesla. "He called me from the [accident] crash site and told me everything," Poses said.

"I actually owned a Tesla, and we talked a lot about, 'Could there be a case against Tesla?' And my initial reaction was, 'I don't think so. It's going to be the driver's fault,'" Eaton said. "But then I actually got into an accident on autopilot."

The attorney's crash was a minor fender-bender at low speed.

"Looking at it, I'm like, 'This system is defective. It was a T-bone collision,'" Eaton said. "The car had driven in front of me, and I was looking at my phone, and the car drove right into it because it didn't see it properly. And that's when I called Todd and said, 'This is a case.' So that's how we got started on this."

'Elon Musk Was Viewed Differently'

Aaron Davis, co-managing partner of Davis Goldman said this verdict marks a pivotal moment for Tesla.

"The company has long built its brand on innovation and market disruption, but this case shows that no amount of funding, scale, or reputation can replace the legal duty to protect consumers, especially when lives are on the line," Goldman said. "Drivers shouldn't have to sift through fine print or conduct their own safety investigations just to understand how a vehicle's advanced features work."

Goldman said marketing a car as cutting-edge—or blurring the line between electric and autonomous technology—doesn't absolve a manufacturer from clearly warning consumers and

explaining the real-world functionality and risks.

"Jurors in this case sent a clear message: Tesla's decisions played a role in causing harm, and its safety reputation has taken a measurable hit," Goldman said, adding the verdict establishes a powerful public precedent.

"It reflects a growing awareness that big tech and well-funded companies aren't automatically acting in consumers' best interests," Goldman said. "It could be the first in a series of challenges that force Tesla, and the broader self-driving and EV industry, including rideshare fleets, to better align innovation with accountability."

Trial lawyer David Bianchi with Stewart Tilghman Fox Bianchi & Cain in Miami said the lesson learned is that automobile manufacturers should not overpromise and underdeliver.

"I think they should underpromise and overdeliver," Bianchi said. "Musk represented the autopilot system on his vehicles to be better than a human being. And it clearly wasn't and I think the jury saw that and if the auto pilot was as good as he was claiming that it was it the vehicle would've been stopped before it T-boned the park SUV, but it did not have the technology and did not have the cameras at the time to focus on the driver's eyes realizing that he was distracted when he was bending down to pick up his phone. If Tesla had not overrepresented the capabilities of this system, you probably would've had a different outcome."

Civil trial attorney Don R. Fountain Jr., co-founding partner of Palm Beach Clark Fountain, said while his firm does not currently have any pending trials, they have been approached in the past to represent Tesla accident victims.

"Obviously, we're open to looking at them ... but the cases that we've looked at in the past were not viable for a variety of reasons," Fountain said.

Has this verdict changed his mind as to what they might say to potential clients in the future?

"The verdict has definitely changed a lot of people's minds about Tesla, but I think the main factor that changed everybody's mind was essentially Elon Musk," Fountain said. "Four years ago, Elon Musk was viewed a heck of a lot differently and more favorably than he is right now, and I think that weighed heavily on the lawyer's decision to accept the case and take it to trial, as well as the jurors. So yes, the environment for making Tesla cases attractive for lawyers to take back to juries has definitely increased in the past six to eight months."

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Litigation

Insight

Delaware Forum Selection Clause Binds California Shareholders

Aug. 6, 2025, 1:30 AM PDT

Summary by Bloomberg AI

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- The California Supreme Court held that mandatory Delaware forum selection provisions in corporate charter documents are enforceable, reversing a lower court and rejecting the argument that such provisions violate the right to a jury trial under California law.
- The court emphasized that requiring litigation in a forum that doesn't offer jury trials doesn't amount to an impermissible waiver of the jury trial right, and that California's public policy protects the right to a jury trial in California courts but doesn't extend that protection to proceedings in other states.
- The decision affirms the enforceability of Delaware forum selection clauses in California courts, but leaves open questions about the durability of the success and the outer bounds of statutory public policy exceptions.

The California Supreme Court handed a major victory to Delaware corporations facing shareholder litigation in California courts but left open questions about how durable the success will be.

In *EpicentRX v. Superior Court of San Diego County*, the court held that mandatory Delaware forum selection provisions in corporate charter documents are enforceable, reversing a lower court and rejecting the argument that such provisions violate the right to a jury trial under California law.

Overall, the decision marks a significant clarification in California law, affirming that forum selection clauses pointing to Delaware's Court of Chancery don't violate California's jury trial protections.

Many corporations headquartered in California are incorporated in Delaware and include Delaware forum selection clauses in their bylaws or certificates of incorporation. These clauses aim to centralize litigation in the Delaware Court of Chancery, avoid duplicative proceedings, and promote predictability.

Because Delaware's Court of Chancery sits in equity, the Delaware Constitution doesn't establish the right to a jury trial for such cases. California, however, guarantees the right to a civil jury trial as inviolate, waivable only through specific post-filing procedures.

This divergence has led to legal challenges in California courts, where plaintiffs have argued that enforcing forum selection clauses—particularly those pointing to non-jury forums such as Delaware’s—are void against public policy.

EpicentRX Dispute

In this case, a Delaware-incorporated company headquartered in sought to dismiss shareholder claims brought in California court, pointing to the company’s forum selection clause. The trial court denied the motion, finding that some claims were legal, not equitable, and thus eligible for a jury trial in California.

Because the Delaware forum would effectively eliminate that opportunity, the court concluded that enforcing the clause would violate California’s public policy against predispute jury trial waivers. The Court of Appeal affirmed.

The California Supreme Court unanimously reversed. It emphasized that requiring litigation in a forum that doesn’t offer jury trials doesn’t amount to an impermissible waiver of the jury trial right.

The court distinguished between an explicit waiver, which generally is unenforceable in California, and the procedural consequence of litigating in a forum that doesn’t offer jury trials. California’s public policy protects the right to a jury trial in California courts but doesn’t extend that protection to proceedings in other states, it held.

The court emphasized that the relevant constitutional and statutory provisions governing jury trial waivers don’t prohibit parties from agreeing to litigate elsewhere.

Reinforcing the trend of enforcing forum selection clauses, the court reiterated that such clauses are generally valid unless enforcement is unreasonable or contrary to a strong public policy.

The court also distinguished this case from others involving anti-waiver provisions protecting substantive rights under California law, such as franchise, consumer, and labor protections. They did so by rejecting the argument that losing a right to a jury trial in a foreign forum is equivalent to an unenforceable waiver.

Takeaways for Practitioners

The decision affirms the enforceability of Delaware forum selection clauses in California courts. It strengthens the position of Delaware-incorporated entities doing business in California and provides added certainty for litigants.

The court affirmed that Delaware forum selection clauses are enforceable under California law—even when they result in the loss of a jury trial right. California’s constitutional jury trial right applies only in California courts and does not override a valid agreement to litigate elsewhere.

The court embraced a pro-business, pro-contractual certainty approach. It aligned with the modern trend of enforcing forum selection clause, emphasizing that honoring contractual agreements promotes predictability and efficiency. This reinforces the ability of companies to steer litigation to their chosen forums.

Public policy exceptions remain narrow and require clear statutory grounding. The court expressed a strong reluctance to expand exceptions beyond those detailed by statute.

While it acknowledged that California courts have declined to enforce forum clauses in certain contexts—such as labor, consumer protection, and franchise laws—it underscored that those are limited, non-waivable substantive rights.

Companies should assess whether a clause interferes with a statutory right. Outside of those narrow categories, forum selection clauses are generally enforced.

Open Questions

Two key issues were left unresolved. The first is whether California’s strong public policy in favor of jury trials might be relevant in combination with other factors in future cases.

The second is whether the forum selection clause was unenforceable because it wasn’t freely and voluntarily negotiated, having been adopted unilaterally in the company’s certificate of incorporation and bylaws because the plaintiff didn’t pursue it on appeal.

The outer bounds of statutory public policy exceptions also remain unclear. Although the Court explained that public policy exceptions will be narrowly construed, it did not define the outer bounds, leaving open how courts will treat forum selection clauses when they intersect with California’s expansive statutory regimes.

Plaintiffs may test the limits by framing claims under broader statutes. Companies should monitor how lower courts apply this decision, particularly in cases involving California’s more aggressive regulatory statutes.

Additionally, the enforceability of forum selection clauses in corporate governance documents remains unsettled. The court didn’t address the enforceability of clauses adopted in bylaws or charters (rather than a negotiated contract).

That distinction could matter in future cases if shareholders argue they never meaningfully consented to the clause. Companies should be prepared for continued litigation over the enforceability of such provisions, especially in the shareholder context. Forum clauses should be clearly drafted, fairly presented, and consider any rights affected.

Looking ahead, *EpicentRX* offers clarity for companies seeking to enforce Delaware forum selection clauses in California, but leaves important questions unresolved. While the decision reflects a strong pro-business orientation, companies should not assume blanket protection.

Careful drafting and thoughtful adoption of forum selection clauses, and ongoing monitoring future California court decisions—particularly in the shareholder and statutory rights contexts—are essential to managing litigation risk.

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

Author Information

Jessica Lewis is a partner in WilmerHale's Palo Alto office focusing on high-stakes securities litigation, class action, and trial work.

Michael G. Bongiorno is co-chair of WilmerHale's securities litigation and enforcement practice group.

Timothy J. Perla is a vice-chair of WilmerHale's securities and financial services department.

Sonia Sujanani, counsel at WilmerHale, contributed to this article.

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To contact the editors responsible for this story: Max Thornberry at jthornberry@bloombergindustry.com; Rebecca Baker at rbaker@bloombergindustry.com

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<https://bsky.app/profile/annmlipton.bsky.social/post/3lvq4motye22h>



Ann M. Lipton

@annmlipton.bsky.social

Well this is interesting. Just before Tesla redomesticated to Texas, a bunch of complaints were filed in Delaware, alleging various fiduciary breaches - Musk taking corporate opportunities, etc. They were mostly consolidated/coordinated.

Tesla just filed its first motion to dismiss:

First, Perry's claims should be dismissed for improper venue under Court of Chancery Rule 12(b)(3). At the time Perry filed the Original Complaint, Tesla was a Delaware corporation and the stockholder vote on whether Tesla would convert to Texas was imminent, and that stockholder approval would satisfy the requirements of the bylaws requiring derivative lawsuits such as this one to be approved by the stockholders. Tesla's bylaws, including the Texas forum-selection bylaw, took effect upon the conversion. Although Delaware courts have not addressed the impact of forum selection clauses [in] bylaws that were not in effect at the time the lawsuit was filed." *In re Cerence Stockholder Derivative Action*, 2024 WL 3811111 (Del. Ch. 2024).

Second, even if this Court concludes that this action is in the proper venue, the Amended Complaint should be dismissed under Court of Chancery Rule 12(b)(7) because Perry failed to make a pre-litigation demand as Texas law requires to obtain derivative standing. The pre-litigation demand requirement is a matter of the corporation and therefore governed by the law of the state of incorporation, which in Tesla's case is Texas. *Sagarra Inverstones, S.L. v. Cerence, S.A.*, 34 A.3d 1074, 1081 (Del. 2011). Perry initiated this lawsuit while Tesla was governed by Delaware rights to control claims belonging to the corporation, but Perry no longer holds stock with Delaware rights to control claims belonging to the corporation. *See, e.g., L.P. v. Rich*, 295 A.3d 520, 570 (Del. Ch. 2023), and Texas law governs Tesla's internal affairs, including regarding any derivative claims.

August 6, 2025 at 4:28 AM 🌐 Everybody can reply

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4



24



74





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In other words, Tesla is arguing that even though the cases were filed before the move, now that Tesla is a Texas corp, Texas law should control and the cases should be litigated in Texas -

2 2 18 ↑ ...



Ann M. Lipton @annmlipton.bsky.social · 5h

Where they'd be immediately dismissed because Tesla adopted a Texas-authorized bylaw that you have to hold 3% of the stock to bring a derivative lawsuit.

2 3 16 ↑ ...



Silly B Man @lawnerd.bsky.social · 5h

Isn't that NEA 14 v. Rich cite to one of the occasions where Laster reminds everyone that the continuous ownership rule was made up in NY to try to sabotage plaintiffs' firms because they were disproportionately Jewish attorneys (who were boxed out of the white shoe defense firms)?

1 ↑ ...



Jen Taub @jennifertaub.com · 4h

Adding to the syllabus

5 ↑ ...



Chad @bchadhill.bsky.social · 5h

Is the second argument as big of a stretch as my intuition tells me it is? Surely a demand requirement cannot retroactively apply to a suit that has already been properly filed.

1 1 ↑ ...



Ann M. Lipton @annmlipton.bsky.social · 5h

I don't know the caselaw they're citing and I'm too lazy to look it up. That said, even if you accept their characterization of the cases, they don't support the proposition being argued. I.e., the "actual" demand board are the humans on the board, not the legal requirement of when you make demand.

↑ ...



lindarn.bsky.social @lindarn.bsky.social · 4h

And let's guess ...

↑ ...

Shareholders Upping Pressure on Companies to Disclose Political Activities

August 05, 2025 | By  Chris O'Malley



Alvin Bragg votes on Nov. 2, 2021, the day he was elected Manhattan district attorney. Photo: Ryland West/ALM

A change in the political climate and new regulatory guidance [knocked the wind out of shareholder proposals](#) during the 2025 proxy season—except for those demanding greater corporate disclosure of political contributions.

At least that's based on the outcome of shareholder proposals supported by the Center for Political Accountability that require companies to adopt board oversight and accountability policies for their political spending.

The Washington, D.C.-based group said average shareholder support for such resolutions rose to 41.6% this year, from 26.2% in the 2024 proxy season.

"This year's strong showing is striking given the dramatically changed political environment and the weak results on related issues," according to [a blog post](#) the center recently wrote for the Harvard Law School Forum on Corporate Governance.

"It demonstrates investor—both retail and institutional—recognition of the importance and business value of political transparency and accountability."

Of 28 such proposals supported by the CPA, 13 went to a vote and five received majority support.

One of those five was a proposal that shareholder activist John Chevedden submitted to Spirit AeroSystems, a maker of fuselages and flight surfaces for Boeing and Airbus. [It called on the company](#) to provide reports on policies and procedures for political giving, along with details on contribution amounts and recipients.

"Political activity can pose increasingly significant risks for companies, including the perception that political contributions—and other forms of activity—are at odds with core company values," the proposal stated.

The proposal garnered 51.4% shareholder support even though Spirit's board called the proposal unnecessary, as company policy since 2019 has prohibited the use of corporate funds to make contributions to candidates for election to federal office.

But [as CPA noted in a report last year](#), companies are often politically active at the state level. They can evade campaign finance regulations—and public scrutiny—through contributions to political organizations operating under Section 527 of the Internal Revenue Code.

These include attorneys general and governors' associations, along with state legislative campaign committees."

"While many corporations publicly support democratic principles, their financial backing of organizations promoting anti-democratic practices reveals a stark contradiction," CPA stated in last year's report.

Consequences include "the erosion of public trust in both democratic institutions and corporate integrity."

Shareholders' push for greater transparency around corporate political activity had a more sweeping impact than the five majority votes might suggest. In seven instances, shareholders withdrew their proposals after reaching agreements with target companies. And a shareholder withdrew an eighth proposal after the target company agreed to implement it.

The success this year of political-giving proposals contrasts sharply with support for shareholder resolutions involving environmental, social and governance matters.

The number of ESG shareholder resolutions tumbled by about one-third this year after five years of growth.

Average support for ESG resolutions (pro- and anti-) fell to 22.5% this year—the lowest in five years and compares with 35.8% in 2021, [according to Morningstar](#).

One reason for a decrease in proposals was Securities and Exchange Commission guidance issued in February giving companies more leeway to exclude shareholder proposals.

In addition, the Trump administration's threats of litigation against companies making hiring decisions based on race and other non-merit considerations has cooled off advocacy for diversity, equity and inclusion proposals.

Page https://www.law.com/nationallawjournal/2025/08/05/shareholders-upping-pressure-on-companies-to-disclose-political-activities/?kw=Shareholders+Upping+Pressure+on+Companies+to+Disclose+Political+Activities&utm_position=5&utm_source=email&utm_medium=enl&utm_campaign=morningupdate&utm_content=20250806&utm_term=nlj&ol
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Securities Law News

Yukos Investors Set Back in Wrestling \$50 Billion From Russia (2)

Aug. 5, 2025, 8:31 AM PDT; Updated: Aug. 5, 2025, 11:18 AM PDT

Several OAO Yukos Oil Co. investors seeking to enforce a \$50 billion arbitration award against the Russian Federation must return to a district court to try to overcome the sovereign immunity defense, the DC Circuit said Tuesday.

Whether an arbitration agreement existed—helping confer jurisdiction—is a question the district court must evaluate on its own, rather than relying on an arbitral tribunal's determination, the US Court of Appeals for the District of Columbia Circuit said. The appeals court vacated a lower court's decision declining to dismiss a suit seeking to force Russia to pay the award.

The suit stems from the Russian Federation's expropriation of Yukos assets in 2003 and 2004.

Russian authorities arrested Yukos founder Mikhail Khodorkovsky in 2003 and dismantled the company, bringing tax claims that Khodorkovsky described as politically motivated. Khodorkovsky sold his Yukos interests to his former partners, whose companies embarked on a legal quest that resulted in the record-setting \$50 billion 2014 award from the Permanent Court of Arbitration in The Hague.

That award was affirmed by The Hague Court of Appeal in 2020.

The companies sought to enforce the award in the US District Court for the District of Columbia, where Judge Beryl A Howell rejected Russia's request to dismiss the case. The Hague tribunal's determinations are binding, Howell said.

Russian Law Question

The DC Circuit rejected that conclusion, at least in part.

"The district court was required to independently determine the jurisdictional facts regarding Russia's sovereign immunity and whether the FSIA's arbitration exception applies to allow the Shareholders' suit," the appeals court said, referring to the Foreign Sovereign Immunities Act.

The district court must determine whether provisional application—after signing but before ratification—of an international energy treaty’s arbitration clause was consistent with Russian law, Judge Neomi Rao said for the appeals court.

But Russia isn’t entitled to reevaluation of whether the shareholding companies—incorporated outside Russia—are protected by the Energy Charter Treaty, after Russia argued they’re mere shells for Russian citizens, Rao said. That argument isn’t jurisdictional, she said.

Howell will have to address other questions related to jurisdiction under the FSIA that raise several novel legal issues, Rao said.

Chief Judge Sri Srinivasan and Judge Robert L. Wilkins joined the opinion. Wilkins wrote a separate concurring opinion to “emphasize the limits” of the decision.

Susman Godfrey LLP represented the investors. Pinna Goldberg US PLLC represented Russia.

The case is *Hulley Enters. Ltd. v. Russian Federation*, D.C. Cir., No. 23-7174, 8/5/25 .

(Updates story with additional context.)

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Andrew Harris at aharris@bloomberglaw.com

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News | **Mass Torts**

Critical Mass With Law.com's Amanda Bronstad: A Secret Storage Unit Prompts Probe in 3M's RICO Suit, Why Did a Jury Hit Tesla With \$200M in Punitive Damages?

August 06, 2025 | By  **Amanda Bronstad**



Credit: diy13/Adobe Stock

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

This week: **3M** moved to protect dozens of bankers' boxes allegedly stored away by a Kentucky lawyer it sued for filing fraudulent black lung lawsuits. Plaintiffs' lawyers who won a \$329 million crash verdict on Aug. 1 said jurors heard evidence that **Tesla** lied, withheld data and misdirected police to avoid blame. Find out who is representing **Keith McAllister**, the New York man who died after being pulled into an MRI machine.

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



3M corporate headquarters building in Maplewood, MN. Credit: wolterke/Adobe Stock

RICO Suits: ‘They Will Bankrupt These People’

3M’s racketeering lawsuit against three lawyers who file black lung cases diverted quickly with new claims about a secret storage unit and a guy in a white van who burns documents in his yard.

The suit alleges the three lawyers brought fraudulent claims under the U.S. Racketeer Influenced and Corrupt Organizations Act, or RICO, on behalf of coal miners with black lung disease. But 3M quickly [filed an emergency motion](#) for a protective order involving dozens of bankers boxes that one of the defendant lawyers, [Glenn Martin Hammond](#) (**Glenn Martin Hammond Law Office**), allegedly moved to a storage unit. **U.S. District Judge Robert Wier**, of the **Eastern District of**

Kentucky, granted 3M's motion, in part because a former paralegal said in an affidavit that Hammond lied to clients, instructed employees to forge documents and threatened to withhold paychecks to anyone who spoke about an affair he was having with a woman in the office. The paralegal also mentioned Hammond had hired a man who drove a white van and burned files in his yard.

The move comes after five Southern California lemon law attorneys [moved to dismiss](#) a RICO case brought by **Ford** alleging they fraudulently inflated their bills and "hoodwinked" judges into approving the fees. Last month, **Uber** [brought its third RICO case](#) against lawyers and medical providers alleged to be committing insurance fraud.

I reached out to [Jeff Grell](#) (**Ted B. Lyon & Associates**), an expert on RICO, who told me corporations have increasingly used the racketeering statute to target lawyers, particularly for alleged insurance fraud. But most cases face significant hurdles, such as the *Noerr-Pennington* doctrine, which immunizes lawyers simply for petitioning the courts under the First Amendment unless the corporations can prove the cases are "sham" lawsuits.

That's a "very, very high bar," he said, but that also might not matter, telling me:

"These lawsuits are sham litigation because they don't care whether they win or lose. They will bankrupt these people through attorneys' fees and everything else, and whether they win or lose that lawsuit they don't care because that lawyer is out of business. And by putting that lawyer out of business, they send a message to every other lawyer in the country not to mess with them."



Brett Schreiber of Singleton Schreiber. Courtesy photo

Lawyer Who Got \$329M Tesla Verdict ‘Had a Ring-Side Seat’

Tesla was hit with a \$329 million verdict, including \$200 million, in the first third-party wrongful death trial involving its Autopilot system.

[Here’s the report](#) of Friday’s verdict by my colleague **Lisa Willis**. [Brett Schrieber](#) (**Singleton Schreiber**) represented Naibel Benavides Leon, who was killed, and her boyfriend, Dillon Angulo, who was injured, when a Tesla Model S going 45 miles per hour rammed into their parked Chevy Suburban.

[Joel Smith](#) (**Bowman and Brooke**), for Tesla, argued that the driver, George McGee, was responsible for the 2019 crash because he took his eyes off the road with Autopilot engaged. His team [failed to obtain a mistrial](#) during closing arguments.

The Miami federal jury assessed 2/3 of the liability to the car’s driver, who was not sued, and 1/3 to Tesla. Florida lawyers on the plaintiffs’ trial team, [Adam Boumel](#) (**Rousso Boumel Law Firm**), [Todd Poses](#) (**Poses Law Group**) and [Doug Eaton](#) (**Eaton Wolk**) told Lisa that [jurors heard evidence](#) Tesla lied, withheld data and misdirected police to avoid blame for the crash.

But they also explained why they thought they could take Tesla to court. Lisa told me:

"In a jaw-dropping interview moment for me, attorney Doug Eaton tells me the story of how he initially was a proponent of Tesla since he owned one. Only natural to defend them, right? Then he got into a very similar T-bone crash that was not as serious as the lawsuit crash, and he was gobsmacked. At that moment, he realized there is a defect in the Autopilot system, and he had a ring-side seat to it. The attorney suddenly came on board 100% with the lawsuit saying, 'We've got a case here.'"



Andrew Finkelstein of the Newburgh, New York-based Finkelstein & Partners. Courtesy photo

Who Got the Work?

The wife of a man who died after getting pulled into an MRI machine has retained [Ben Crump](#) (**Ben Crump**) and [Andrew Finkelstein](#) (**Finkelstein & Partners**). Adrienne Jones-McAllister was undergoing a scan on her knee at **Nassau Open MRI** in Long Island when her husband, **Keith McAllister**, tried to help her off the machine but instead was pulled in because of a heavy metallic chain around his neck. He was pinned to the machine for nearly an hour and died the next day in the hospital. "This horrific and entirely preventable tragedy underscores the critical importance of safety protocols in medical facilities," Crump said in a statement on Tuesday. "Keith McAllister should be alive today."

Here's what else is happening:

Meta Verdict: A San Francisco jury [on Friday found](#) **Meta** violated the **California Invasion of Privacy Act** in a landmark privacy class action trial. The case alleged Meta illegally mined sexual and reproductive data from **Flo Health Inc.**, an app that tracks fertility. **Labaton** partners [Michael Canty](#) and [Carol Villegas](#) represented the class of up to 38 million users of the Flo app.

Roundup Sanctions? A federal judge [threatened sanctions](#) against 37 plaintiffs' firms that have not responded to requests for common benefit assessments they must pay from **Roundup** settlements and judgments. On Aug. 1, **U.S. District Judge Vince Chhabria**, who previously awarded \$24.2 million in common benefit fees to seven plaintiffs firms for their work in the Roundup multidistrict litigation, ordered **Monsanto** to call the heads of 34 other firms that have not paid the required 8% holdback and didn't respond to repeated emails, as well as another three firms whose emails had bounced back.

Decertification Denied: The **U.S. Court of Appeals for the Second Circuit** [rejected an attempt](#) to decertify a class action accusing several banks of inflating interest rates on thousands of municipal bond loans. **U.S. District Judge Jesse Furman** had certified the class of all "persons and entities" whose interest rates were reset by the banks, which included **Bank of America**, **Citigroup** and **JPMorgan Chase**. The cities of Philadelphia, Baltimore and San Diego were lead plaintiffs, represented by **Quinn Emanuel**.

Thanks for reading Critical Mass! I'll be back next week.

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California Brief

Instructure Defeats Unspecific Privacy Suit Over Student Data

Aug. 5, 2025, 9:59 AM PDT

Instructure Inc. defeated a proposed class action stemming from the alleged improper use of student data after a federal court concluded the plaintiffs failed to provide sufficient information to proceed.

The plaintiffs made an “ambitious pleading” that failed to allege specific facts about Instructure’s data collection program. That lack of specificity “defeats all their claims,” Judge Stanley Blumenfeld Jr. of the US District Court for the Central District of California said Monday.

Instructure, the makers of Canvas LMS, contracts with K-12 schools and districts to provide products that collect educational, demographic, and contact information on students and discloses that data for feedback purposes. It allegedly sells “predictions, insights, and analytics regarding” students to third-party customers.

But while the plaintiffs describe “the types of data collected from Canvas users generally and alleges” that others have access to that data, they failed to say who those parties are, dooming common law privacy claims, the court said.

“California law does not recognize unjust enrichment as an independent cause of action,” so a claim for such fails as well, the court said.

And the plaintiffs failed to sufficiently state when student communications are intercepted, dooming their California Invasion of Privacy Act eavesdropping claim, Blumenfeld said.

Blumenfeld rejected a Bane Act claim, saying Instructure isn’t responsible for requiring use of its products or for compulsory attendance laws.

Section 1983 claims under the Fourth and Fourteenth Amendments were dismissed with prejudice because the plaintiffs failed to sufficiently allege that Instructure was a state actor. That Instructure performed certain educational functions is insufficient, and the plaintiffs failed to demonstrate that it acted jointly with government actors, the court said.

The plaintiffs are allowed to file a new complaint without the Section 1983 claims.

Kirkland and Ellis LLP represents Instructure. Peiffer Wolf Carr Kane Conway & Wise, EdTech Law Center PLLC, Almeida Law Group LLC, and George Feldman McDonald PLLC represent the plaintiffs.

The case is Hernandez-Silva v. Instructure Inc. , C.D. Cal., No. 2:25-cv-02711, 8/4/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

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Class Action

Law School Admission Council Hit With Fee Price-Fixing Case (1)

Aug. 5, 2025, 10:18 AM PDT; Updated: Aug. 5, 2025, 10:51 AM PDT

Summary by Bloomberg AI

AI Generated



- Linvel Risner alleges that Law School Admission Council Inc. fixes prices for law school application processing fees through a monopolistic platform and overcharged him for application platform fees.
- Risner claims that LSAC and its member law schools colluded to eliminate competition in both the application and law school side of its platform, and that LSAC uses the profits to pad its bank account and kickback money to member law schools.
- An LSAC spokesperson said that the organization strongly disagrees with the assertions in the suit, and stated that LSAC is committed to expanding access to legal education and supporting prospective students.

The organization that administers the LSAT and coordinates law-school admissions was sued in federal court with claims that it fixes prices for law school application processing fees through a monopolistic platform.

Plaintiff Linvel Risner alleges that Law School Admission Council Inc. overcharged him for application platform fees and that he would have paid much less in a competitive market, according to the proposed class action filed in the US District Court for the Eastern District of Pennsylvania.

Organizations that oversee higher education credentials have become an increasing target for private antitrust lawsuits, including in the medical field.

"LSAC has violated federal antitrust law and gouged law school applicants attempting to follow their dreams," Risner said in the Monday complaint.

An LSAC spokesperson said in a statement Tuesday to Bloomberg Law that the organization strongly disagrees with the assertions in the suit.

"We are committed to expanding access to legal education and supporting prospective students every step of their journey to law school," the spokesperson said.

LSAC manages registration and test dates for the Law School Admission Test. It is registered as a 501(c)(3) nonprofit organization and disclosed a total compensation of more than \$830,000 for its president and CEO on its most recent public tax form.

LSAC overcharges fees required to access its law school application platform, which houses academic records, letters of recommendations, LSAT scores and other documents that are then forwarded on to law schools, Risner alleges.

According to the complaint, LSAC and its member law schools colluded to eliminate competition in both the application and law school side of its platform, the complaint said.

LSAC “uses the profits of the price-fixed application fees to pad its bank account and then kickback money to Member Law Schools,” according to the complaint.

“To incentivize Member Law Schools to quash competition between themselves on application price and quality, they receive substantial benefits from their price-fixing agreement,” the complaint says.

Risner seeks relief under Section 1 and 2 of the Sherman Act as well as the Clayton Act.

Risner is represented by Hilgers Graben PLLC.

The case is Risner v. Law School Admission Council , E.D. Pa., No. 2:25-cv-04461, 8/4/25 .

(Added comment from LSAC spokesperson starting in fifth paragraph.)

To contact the reporter on this story: Katie Arcieri in Washington at karcieri@bloombergindustry.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com

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Litigation

Xcel Energy Wins as Seventh Circuit Vacates Class Status Ruling

Aug. 5, 2025, 3:34 PM PDT

Summary by Bloomberg AI

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- The Seventh Circuit vacated the certification of a plaintiff class and remanded the case back to district court in a natural gas price-fixing suit against Xcel Energy Inc.
- The court said the district court didn't do a sufficiently rigorous analysis when it certified the class, allowing Xcel and other defendants to argue against certification at the district court level.
- The three-judge panel noted that the class may still succeed at obtaining certification on remand, with Judge David F. Hamilton writing that he "would not be surprised if a class can be properly certified here after sufficient 'rigorous analysis' of the experts' debates".

Xcel Energy Inc. won its appeal in a natural gas price-fixing suit after the Seventh Circuit vacated the certification of a plaintiff class and remanded the case back to district court.

The US Court of Appeals for the Seventh Circuit in a Tuesday opinion said the district court didn't do a sufficiently rigorous analysis when it certified the class. The ruling means that Xcel and other defendants accused of price fixing can now argue against certification at the district court level.

Despite its ruling, the three-judge panel noted that the class may still succeed at obtaining certification on remand.

"We would not be surprised if a class can be properly certified here after sufficient 'rigorous analysis' of the experts' debates," Judge David F. Hamilton wrote. "After all, the case presents a conspiracy to manipulate prices for a fungible commodity traded across a nationwide network of pipelines."

Hamilton was joined in the opinion by Chief Judge Diane S. Sykes and Judge Michael B. Brennan.

The claims stem from a group of industrial and commercial natural gas buyers that accused Xcel and other gas companies of a broad conspiracy to manipulate gas prices.

Judge William M. Conley of the US District Court for the Western District of Wisconsin in 2022 granted the plaintiffs' motion for class certification, finding requirements such as predominance were met.

He soon after recused himself from further proceedings in the case. It was reassigned to Chief Judge James Peterson, who denied the defendants' motion to vacate the class certification but encouraged the interlocutory appeal.

Xcel is represented by Wheeler Trigg O'Donnell LLP. The plaintiffs are represented by Polsinelli PC.

The case is Arandell Corp. v. Xcel Energy Inc. , 7th Cir., No. 22-03279, 8/5/25 .

To contact the reporter on this story: Katie Arcieri in Washington at karcieri@bloombergindustry.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

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California Brief

Natera Defeats Prenatal Genetic Screening Deception Suit For Now

Aug. 5, 2025, 10:03 AM PDT

Consumers suing Natera Inc. for deceptively advertising Spectrum preimplantation genetic tests saw their class allegations dismissed after a federal judge said they weren't specific enough.

"The complaint alleges only the approximate dates of purchase and not when Plaintiffs viewed the alleged statements or where they viewed them," Judge Jon S. Tigar of the US District Court for the Northern District of California said. He dismissed the complaint Monday, but gave the plaintiffs 21 days to amend their allegations.

Shannon Petersen and Erin Vedrode alleged Natera falsely advertised preimplantation genetic testing for the chromosomal disorder aneuploidy. The test is known as PGT-A testing and is used as part of the in-vitro-fertilization process to determine which embryos are best for implantation.

Petersen and Vedrode said that Natera overstated the efficacy of the tests based on recent studies that allegedly cast doubt on their accuracy and safety. They brought a variety of California consumer protection claims.

Petersen and Vedrode had to meet heightened standards for claims based on fraud because their allegations relied on misleading statements, Tigar said. Their complaint didn't meet those requirements, he said.

The plaintiffs' cited different versions of a Natera brochure without clarifying whether all the statements were in the version available before the plaintiffs' purchase, the judge said.

Earlier this year, other patients reached a settlement with Natera over similar allegations regarding different prenatal genetic tests for other chromosomal disorders.

Other fertility companies are also facing lawsuits over their PGT-A tests.

The plaintiffs are represented by Berger Montague PC.

Natera is represented by Stites & Harbison PLLC and Hinshaw, Marsh, Still & Kanter LLP.

Class Action

Express Scripts Sheds Wiretap Claims Over Meta Info Sharing

Aug. 6, 2025, 7:23 AM PDT

Summary by Bloomberg AI

AI Generated



- Judge Araceli Martínez-Olguín dismissed wiretapping claims against Express Scripts Holding Co. because the allegations were too unclear.
- Plaintiff Jonathan Lynch's allegations that Meta used shared information to benefit its advertising business satisfied pleading requirements, according to Martínez-Olguín.
- The court declined to dismiss a claim under the California Confidentiality of Medical Information Act, and gave Lynch "one final opportunity" to cure his California Invasion of Privacy Act and federal wiretap claims.

Express Scripts Holding Co. convinced a federal court to dismiss wiretapping claims over its use of Facebook's Pixel after the judge said the allegations were too unclear.

Plaintiff Jonathan Lynch's complaint said that he wouldn't have used the pharmacy site had he known Express Scripts shared information about his prescriptions with Meta Platforms.

But Lynch failed to consistently identify whether Meta or Express Scripts intercepted his prescription information, failing "to provide Express Scripts fair notice of the conduct giving rise to the federal and state wiretapping claims," Judge Araceli Martínez-Olguín said Tuesday for the US District Court for the Northern District of California.

Lynch's other allegations that Meta used the information Express Scripts shared to benefit the social media company's advertising business otherwise satisfied pleading requirements. He didn't need to, as Express Scripts argued, provide more details about the intercepting technology or meet heightened pleading standards, Martínez-Olguín said.

Lynch has "one final opportunity" to cure his California Invasion of Privacy Act and federal wiretap claims, Martínez-Olguín said.

A claim under the California Confidentiality of Medical Information Act fared better, with the court declining to dismiss it. Lynch provided Express Scripts information sufficient to obtain his prescription for testosterone, which is a controlled substance. The info provided met the law's definition of medical data, the court said.

Lynch sufficiently alleged that Meta viewed his information, a claim that will be tested through discovery, the court said. And the disclosures Express Scripts cited to argue that Lynch consented to the Pixel when creating an account were insufficient to assert a consent defense at the pleading stage, Martínez-Olguín said.

Morrison & Foerster LLP represents Express Scripts. Swigart Law Group APC, Bursor & Fisher PA, and Barry Law Office represent Lynch.

The case is Lynch v. Express Scripts Holding Co. , N.D. Cal., No. 3:23-cv-01170, 8/5/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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California Brief

Rack Room Shoes Stuck With Privacy Suit Over Consumer Data

Aug. 5, 2025, 8:33 AM PDT

Rack Room Shoes failed to convince a district court to dismiss some claims stemming from allegations the footwear chain shares consumer data with Meta Platforms.

The plaintiffs told the US District Court for the Northern District of California that Rack Room embedded the tracking code of several third-party companies, including Meta and Attentive, into its website.

Judge Rita F. Lin declined to dismiss a federal wiretap claim against Rack Room because the plaintiffs' allegations that it intercepted consumer data for the benefit of targeted advertising despite promising not to were sufficient to suggest that the interception was intentional.

And although the federal wiretap law has a one-party consent rule, the law's crime-tort exception allows claims when the consenting party is intercepting communications to break the law. Rack Room's alleged direct involvement in the interception satisfied the crime-tort exception, the court said.

The alleged unjust profit from the use of plaintiffs' data was sufficient to assert a California Comprehensive Computer Data and Access Fraud Act claim for disgorgement. The plaintiffs have a stake in their data, and use of that information is sufficient to state a CDAFA claim.

It's also premature to strike a nationwide Wiretap Act class over concerns that the proposed class would include non-resident plaintiffs, because all of the named plaintiffs are California residents, the court said. Rack Room can raise the issue at the class certification stage.

Lin dismissed claims under California's Unfair Competition Law and Consumers Legal Remedies Act without leave to amend after ruling that the plaintiffs' allegations over the value of web browsing data failed to sufficiently allege harm under those statutes.

Alleged unjust enrichment doesn't satisfy the statutory requirements of either the UCL and CLRA, under which the plaintiffs must show either that their costs or that they lost money or property, Lin said.

The court previously declined to dismiss some California invasion of privacy claims.

Blank Rome LLP represents Rack Room. The Freedman Firm PC, Levin Law PA, and Marcus Neiman Rashbaum & Pineiro LLP represent the plaintiffs.

The case is Smith v. Rack Room Shoes Inc , N.D. Cal., No. 3:24-cv-06709, 8/4/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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Securities Law News

Buyers of Dubious Tax Credits Seek Legal Help, Law Firms Say

Aug. 5, 2025, 11:37 AM PDT

Two investment fraud law firms say they are getting more requests from buyers of so-called sovereign tribal tax credits that the Treasury Department and IRS have said don't exist.

California-based Bakhtiari & Harrison, P.C. and Florida-based Goodman & Nekvasil, P.A. both set up alerts about the arrangement and are offering to represent people who bought the credits.

White River Energy Corp. and third-party promoters have been selling the credits to wealthy investors, Bloomberg Tax first reported in December 2024. The client alerts come as a Florida couple who sued White River and a wealth advisory firm that helped market the credits received a default judgment last month, which appears to be the first case over the credits.

White River previously has said the program is legitimate and denied any wrongdoing, though the company didn't file any pleadings or documents in the Florida Circuit Court for Palm Beach County in response to the lawsuit from buyers over a loss of \$1.62 million.

White River representatives didn't immediately respond to a request for comment for this story.

Bakhtiari & Harrison received "numerous" requests from people who bought the credits looking for representation, firm partner David Harrison said in an interview. That led them to publish the alert.

Goodman & Nekvasil's client alert said the firm "is seeing a disturbing rise in investor schemes built around so-called 'sovereign tribal tax credits.'" The firm didn't respond to a request for comment.

The people who contacted Bakhtiari & Harrison tend to have spent six figures on the credits, Harrison said. The firm has yet to file any official complaints. Harrison said some of the investors received their money back from the promoters who sold them the credits after notifying the promoters of getting legal representation.

Bakhtiari & Harrison and Goodman & Nekvasil said in their client alerts that investors may be eligible to file a Financial Industry Regulatory Authority arbitration claim to request compensation for losses if the credits were recommended by a broker or adviser affiliated with a broker-dealer.

Democratic senators in April called on the IRS to launch a criminal investigation into the promoters. Billy Long, now IRS commissioner, has ties to the credits. He said during his May confirmation hearing that he referred clients to a firm that advertises the credits on its website and said he didn't realize there were issues with the credits.

To contact the reporter on this story: Erin Schilling in Washington at eschilling@bloombergindustry.com

To contact the editors responsible for this story: Martha Mueller Neff at mmuellerneff@bloomberglaw.com; Kim Dixon at kdixon@bloombergindustry.com

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Who Got the Work: Latham to Defend Meta in Food Bank Data Privacy Class Action

August 05, 2025 | By  Kat Black

What You Need to Know

- Latham & Watkins is set to defend Meta in a pending class action that accuses the Big Tech giant of illegally intercepting sensitive financial and medical data from food banks.
- Meta says that its privacy policies explicitly discourage advertisers from transmitting sensitive information to third parties via the Meta Pixel.
- The complaint is part of a wave of privacy class actions targeting Meta that have recently been filed under the California Invasion of Privacy Act.



Latham & Watkins offices in San Diego, CA. Photo: Jason Doiy

Latham & Watkins has stepped in to represent Meta Platforms Inc. in a pending data privacy class action that accuses the Big Tech giant of intercepting sensitive medical and financial data from food banks throughout California for use in targeted advertising.

Meta's counsel includes Latham partners Melanie Blunschli in San Francisco and Marissa Alter-Nelson in New York, who did not respond to a request for comment. Lathrop GPM partner Michael Manoukian in San Jose, who could not immediately be reached for comment, represents co-defendant Sacramento Food Bank and Family Services.

This action was surfaced by [Law.com Radar](#).

Fitzgerald Monroe Flynn in San Diego filed the proposed [suit](#) against Meta, Sacramento Food Bank, Los Angeles Regional Food Bank, Central California Food Bank and San Francisco Food Bank on June 17 in the U.S. District Court for the Northern District of California.

The seven-count complaint alleges violations of state and federal wiretapping laws; the California constitutional right to privacy; and the California Consumer Privacy Act, among other causes of action.

Plaintiffs contend that Meta unlawfully intercepted sensitive information from food bank clients—including details about "financial status" and "vulnerable-status-based financial assistance"—via the Meta Pixel tracking technology installed on food banks' websites.

The defendant food banks, according to the complaint, did not disclose their use of the Meta Pixel, which, it said, simultaneously monitors user activity to measure the effectiveness of a company's advertising campaigns and transmits data to Meta's server. Meta then allegedly builds comprehensive user profiles to enhance its own "personalized content delivery, advertising network, and machine-learning algorithms" and sells or shares data with third-party businesses for profit.

The information stored on food banks' websites, said the complaint, can include particularly sensitive details related to a user's disability status and food insecurity. To determine their eligibility for state food assistance services such as CalFresh, it said, some websites asked plaintiffs to answer multiple questions about the severity of their financial hardship, which were subsequently funneled to Meta.

"While Meta has policies in place for website owners to restrict the sharing of sensitive data, Meta knows that this sensitive information is nevertheless being shared with Meta, and usually does not take enforcement actions against companies that it knows are sharing potentially sensitive information with Meta, for good reason: the sensitive information about Plaintiffs and other users is highly valuable," the complaint said.

"In line with this, Meta has not taken action against any of the Food Bank Defendants despite knowing they are collecting and sharing sensitive user information, since once disclosed to Meta, Meta can sell it to third-party advertisers for its own financial gain."

The case is one of a seemingly endless barrage of lawsuits filed under the California Invasion of Privacy Act that target Meta's use of web tracking technologies, including pixels and software development kits (SDKs), to mine user data for personalized marketing purposes. Most recently, on Aug. 1, Meta faced a [landmark verdict](#) in a CIPA class action trial in San Francisco federal court that found it liable for its role in collecting and selling sensitive health information from a fertility tracking app without users' consent. Plaintiffs may seek damages of \$5,000 per violation under the CIPA statute.

A Meta spokesperson said in an email that its policies explicitly discourage businesses that use the Meta Pixel from transmitting consumers' sensitive information to third parties.

"We've been clear in our [policies](#) that advertisers should not send sensitive information about people through our Business Tools," said a Meta spokesperson in an email.

"Doing so is against our policies, and we educate advertisers on properly setting up Business Tools to prevent this from occurring. Our system is designed to filter out potentially sensitive data it is able to detect."

Plaintiffs are seeking statutory, compensatory, and punitive damages; restitution; an order enjoining the defendants from disclosing the personally identifiable information of food bank users without their informed, written consent; an order enjoining Meta from collecting and profiting from the data at issue; and an order compelling Meta to destroy all PII from the defendant food banks it has stored on its server. The case has been assigned to U.S. District Judge Laurel Beeler.

Plaintiffs' counsel did not respond to messages seeking comment.

This action was surfaced by [Law.com Radar](#), which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. [Click here to get started and be first to act on opportunities in your region, practice area or client sector.](#)

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Short circuit court: AI hallucinations in legal filings and how to avoid making headlines



reuters.com/legal/legalindustry/short-circuit-court-ai-hallucinations-legal-filings-how-avoid-making-headlines-2025-08-04

Brandon Fierro

August 4, 2025

ARCHIV: In dieser Illustration sind Figuren mit Computern und Smartphones vor den Worten "Artificial Intelligence AI" zu sehen, 19. Februar 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

August 04, 2025 - At dinner recently with two former colleagues, both transactional lawyers, the conversation turned to the topic du jour — how is AI (like ChatGPT or Google's Gemini) changing the way you do your job? The deal lawyers, both optimists, explained that AI helps automate and draft contract provisions and summarize large swaths of text. Fewer billable hours warming-over forms. More focus on critical thinking that creates value. Win-win for clients and counsel.

When the deal lawyers mentioned litigation, their tone became incredulous. "How do you guys keep letting ChatpGPT draft briefs with fake case citations?" "How many more people need to get sanctioned?" "Don't you check your work?!"

No lawyer (or client) reading the news should be surprised by this needling. It seems like every week there is another article about a smart, experienced litigator getting taken to task for AI-generated court filings that are falsified or contain "hallucinated" information. As just a few recent examples:

- In January, a federal judge (in *Kohls v. Ellison*, District of Minnesota, Jan. 10, 2025), barred a submission from an expert on the "dangers of AI and misinformation" that cited to non-existent articles that had been fabricated by ChatGPT. (To quote the court: "The irony.")
- In April, attorneys for MyPillow CEO Mike Lindell, who is being sued for defamation by Dominion Voting Systems (in *Coomer v. Lindell*, District of Colorado, April 2025), unsuccessfully tried to avoid sanctions by explaining away an error-laden, AI-generated brief as a "rough draft." The court later awarded a small monetary sanction.
- Just a few weeks ago, a Georgia appellate court (in *Shahid v. Esaam*, Court of Appeals of Georgia, June 30, 2025), vacated a trial court's order that relied on two fictitious, AI-generated cases. Not only did the respondent's counsel ignore the fact of these two fake cases, but as the Shahid Court emphasized, she cited two new "possibly [hallucinated]" fake cases in briefing to the appellate panel.

This article seeks to answer the question posed by these deal lawyers — how is it that AI-falsified information keeps ending up in court filings (and now, apparently, in court orders, too). It also provides suggestions and techniques to avoid falling into the traps inherent in generative-AI-assisted lawyering that have landed many litigators in unwanted headlines. With courts now issuing orders incorporating AI-hallucinated cases, the problem — and need for practical guidance and further conversation — have become acute.

What are AI 'hallucinations'?

In simple terms an AI "hallucination" is fabricated information generated by an artificial intelligence tool — a large language model like ChatGPT, Claude, Gemini, or Meta's LLaMa — in response to a user's prompt. For lawyers, these hallucinations take the form of fake cases, misleading quotes, self-serving interpretations of actual authority, or outright made-up legal principles.

Generative AI "hallucinates" because chatbots are indifferent to the truth of their output. Large language models use machine learning to "predict" an outcome in response to a prompt, generating suggested words or text based on patterns identified in the data used to "train" the model. Prediction, however, does not equate to "truth" or "accuracy," and chatbots are not designed to create "real" or "correct" responses.

In practice, this tenet of AI systems is having a profound and accelerating impact on the content of court filings. The first AI-hallucination case made news in June 2023. In the two years since, according to a database tracking legal decisions where generative AI produced hallucinated content ([AI Hallucination Cases Database](#) — Damien Charlotin) there have been more than 150 instances of "hallucinated" pleadings, with two-thirds of those cases coming in just the past six months. The growth of the problem is literally exponential. Clearly, this technological feature (or bug) is being recklessly adopted and tripping up litigators in greater and greater numbers. The reasons are varied, but most importantly include that lawyers need to use generative AI as a tool and not a source and need to exercise a healthy degree of skepticism about AI output. Thankfully, recognizing AI systems' inherent problems can empower litigators to adopt and deploy those systems in less risky ways, to the ultimate benefit of clients and the court-system more broadly.

AI: a tool, not a source

Litigators considering whether to leverage AI should keep in mind certain aspects of AI that make it prone to "hallucinate" information, which can end up in briefs and other pleadings.

Most critically, litigators need to institutionalize that generative AI is not a source for information but merely a tool whose output needs to be verified. A "source" (like a copy of a case) is independent information that an attorney can rely on to support a statement of law

or fact made to a court. A "tool" (like Google or Westlaw) is a device by which a source is accessed or analyzed.

Attorneys caught by AI fabrications are on record saying things like "[I was] operating under the false perception that [ChatGPT] could not possibly be fabricating cases on its own" because it has to be "finding the cases somewhere. Maybe [the cases] are unpublished." This fundamentally misconstrues generative AI's output and role, because ChatGPT and other large language models are not sources and lawyers cannot think of them as such.

Lawyers also need to exercise a healthy skepticism for AI output because generative AI has a propensity for telling attorneys what they want to hear. Every litigator has been part of a conversation that involves a colleague saying "I know there is a case that stands for XYZ proposition." Now, there is a chatbot that will spit out a case in response, real or not, because that is the job of the predictive model embedded in it. ChatGPT and its ilk are perfect tools for counsel that want to practice in an echo chamber, and in fact ChatGPT has been called the "ultimate yes man."

Relatedly, generative AI is adept at mixing in fabrications with real authority and cogent and useful argumentation. So, very often a chatbot will generate sound and compelling legal argument, along with "real" authority, while embedding fabricated or overstated authority in its response. It is not hard to imagine a practitioner presented with (for example) six authoritative citations, checking a majority of them, missing that one of them was totally made up, and then filing a brief.

Finally, all litigators operate under stringent time and efficiency pressures. Generative AI presents a compelling "one stop shop" for the lawyer under the gun — it can draft text, formulate argument, structure documents, and embed "authority" to support a given position.

These factors in combination — misunderstanding of AI's role, its "yes man" nature and quality of output, and the need to finish work quickly and on budget — create a unique vulnerability on the part of litigators to adopt AI hallucinations in pleadings and unwittingly deceive courts.

How to avoid making headlines while leveraging AI as a tool

These lawyer-specific vulnerabilities suggest a fundamental key to the safe adoption of generative AI — artificial intelligence must be guided by and subject to human intelligence. With this truism in mind, it is possible to distill certain strategies and techniques for litigators to safely deploy AI while not falling victim to hallucinations. These techniques include:

- **Accept that AI is not a source or authority.** Generative AI is a tool and a research assistant, not an independent source. If your drafting or research begins and ends on ChatGPT, you are using it wrong.

- Check applicable rules and court orders for AI disclosure requirements.** Many courts now require attorneys to file with their pleadings certifications disclosing whether generative AI assisted in drafting. Be forthright and, if concerned about unwanted scrutiny, opt not to use AI to help draft pleadings in these jurisdictions.

- Ratchet up professional skepticism.** Second guess AI outputs, particularly those telling you what you want to hear. If you wouldn't trust a junior lawyer who always agrees with your arguments, don't trust when ChatGPT does it.

- Routinize, and allow sufficient time for, verification.** Verifying AI-generated text or content is a non-negotiable. Cite check every case and verify every quote. Ask ChatGPT to send copies of every "case" it cites. Create accountability around verification and require sufficient time to do so.

Ultimately, these techniques are all variations on the theme of smart practitioners implementing verification procedures maintaining independence to harness AI's efficiency benefits while avoiding hallucinatory pitfalls.

Indiana Magistrate Judge Mark Dinsmore put it aptly, in an opinion sanctioning an attorney personally for filing a brief with "AI-generated cases" that "do not exist" — *Mid Central Operating Engineers Health and Welfare Fund v. Hoosiervac LLC*, S.D. Indiana (Feb. 21, 2025) — AI is "much like a chain saw or other useful but potentially dangerous tool[,]" which must be used "with caution" and "accompanied by the application of actual intelligence in its execution."

Keeping in mind why litigators are vulnerable to AI, and treating AI as a powerful tool — but still a tool nonetheless — is the surest way to safely deploy it.

And avoid making headlines or getting needled at dinner by deal lawyers.

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Brandon Fierro is a litigator with Cole Schotz PC. He counsels investor and real estate clients and established and emerging businesses in challenging and complex disputes. He leverages AI to assist with creative and cost-effective solutions in and out of court (and to jazz up run-of-the-mill law firm headshots). He can be reached at bfierro@coleschotz.com.

AI startup by Columbia graduates raises \$7 million to target midsize law firms



reuters.com/legal/legalindustry/ai-startup-by-columbia-graduates-raises-7-million-target-midsize-law-firms-2025-08-05

Niket Nishant

August 5, 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/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 5 (Reuters) - August, an AI startup founded by Columbia University alumni and that caters to midsize law firms, said on Tuesday it had raised \$7 million in a seed funding round led by venture capital firms NEA and Pear VC.

WHY IT MATTERS

AI's ability to handle routine, document-heavy tasks is unlocking new efficiencies for lawyers, particularly because the legal field is built on vast volumes of literature such as case law, contracts and filings.

By automating time-consuming paperwork, AI platforms such as August are freeing up lawyers to focus on higher-value work.

It also helps to cut costs, a crucial benefit for midsize law firms that lack the resources of their deep-pocketed rivals.

CONTEXT

August was founded in 2023 by Rutvik Rau, Thomas Bueler-Faudree and Joseph Parker, who met at Columbia University.

Besides NEA and Pear VC, the startup secured backing from angel investor Gokul Rajaram, Ramp's vice president of product Geoff Charles, OpenAI's head of engineering David Azose and Bain Capital Ventures partner Kevin Zhang.

The company is based in New York and currently has a team of 12. It expects to expand the workforce to 25 to 30 by the end of the year, Rau told Reuters in an interview.

August operates in a competitive arena dominated by some established players, most notably [Harvey](#), an OpenAI-backed legal AI startup, which caters to elite law firms and big professional services companies.

KEY QUOTES

"The future is one where AI partners with individuals to be a step further than where the industry is today," Rau said.

"We're enabling lawyers to be more productive by eliminating some of the work, so they can actually spend a lot more time working with their clients, understanding their needs and being the strategic value partner for them."

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Niket Nishant reports on breaking news and the quarterly earnings of Wall Street's largest banks, card companies, financial technology upstarts and asset managers. He also covers the biggest IPOs on U.S. exchanges, and late-stage venture capital funding alongside news and regulatory developments in the cryptocurrency industry. His writing appears on the finance, business, markets and future of money sections of the website. He did his post-graduation from the Indian Institute of Journalism and New Media (IIJNM) in Bengaluru.

'Tech Charge': The Tricky Issue of Billing Clients for AI-Generated Work

August 06, 2025 | By  Molly G Smith



credit: Summit Art Creations/Adobe Stock

Once upon a time, law firms billed for photocopying. The cost didn't vanish into general overhead or get quietly absorbed into hourly rates.

Instead, it appeared neatly at the bottom of client invoices. "24p a sheet," as one partner recalled.

But in today's rapidly evolving AI age, the issue of machine-related costs has become vastly more complicated. Specifically, we're talking about the 'tech charge'.

With AI tools often costing firms seven figure annual sums, law firms are grappling with how to pass that cost onto clients, according to insiders.

But it's complicated.

While clients want firms to use AI to speed up legal processes, they still have questions over who is doing the work—humans or machines—particularly complex work. So how firms bill for AI work fairly and appropriately, while maintaining client trust, is coming under sharp focus.

Billing for AI

How AI is billed depends on an array of factors: the nature of the work, the technology used, the firm's arrangement with the AI provider, and the underlying fee structure.

"With fixed-fee arrangements, there's always a conversation with the client before work begins," the partner said. "Whatever technology is used, AI or otherwise, is either agreed upon upfront or factored into the overall price."

But in matters billed by the hour, firms are increasingly taking different approaches.

Rowena Rix, Dentons' head of innovation and AI for U.K., Ireland and Middle East believes that "clients paying hourly rates clearly won't accept firms layering product charges or licence fees on top of their service bills for AI products which are purely targeted at efficiency gains and margin benefits".

"Finding a billing model that reflects the effort and investment that has gone into developing and maintaining legal AI tools, but which is palatable and fair to clients who, after all, were essential to the development process, is a challenge that law firms address through honest dialogue with clients," Rix said.

"AI tools that rely on legal data and knowledge will need to be continuously revised and updated, which is a legitimate cost firms can pass on to clients, provided those clients see commensurate value."

Drawing the Line

When firms bill clients, they must account for whether they're using AI they've purchased, typically tied to ongoing subscription costs, or AI they've developed in-house, which involves higher upfront investment but becomes relatively inexpensive to operate and adapt over time, according to industry insiders.

Some have introduced what insiders describe as a "technology charge"—a standalone line item tacked onto invoices to offset the costs of AI tools or proprietary systems used during a transaction.

Several partners concurred it is most appropriate to use a tech charge when AI has been heavily used to fulfill a specific, specialised function. Some added that it would be surprising if a firm added a line breaking down the cost of programs like Harvey and Legora because they are they have become day-to-day tools.

The challenge, partners say, is knowing where to draw the line. When does AI become as routine as a word processor?

"We spent a fortune on Microsoft products and some AI tools are as every day as that now," one partner said.

Several partners drew comparisons to the use of Microsoft Word, which, although it would not have its own line item on a bill, is still funded by the firm's income.

Unlike with Microsoft Word, with AI, a good deal of suspicion and misunderstanding lingers: what of the work is being done by humans, and by robots? Isolating the 'tech charge' in a bill can help respond to this query.

But don't expect to see it every time AI is used.

"In everyday work, like email drafting or internal summarising, you wouldn't expect to see a tech charge," another partner said. "But in larger matters, where there's a specialised or client-facing system involved, you might see a separate charge because that tech isn't considered 'day to day'."

Folding in the Cost

Some firms that are not adding a technology charge to their bills are folding costs into their traditional billing structures, adjusting hourly rates upward to reflect not just human labour but also the digital horsepower now behind it.

"It's a good justification for increasing the cost of a billable hour," one partner noted. "Firms are investing heavily in technology, and that cost has to be covered somehow".

But, in the opinion of some experts, this 'folding in' mechanism might be short lived.

Is AI Increasing Bills?

Clients are beginning to actively want their legal advisers to use AI to accelerate delivery and enhance accuracy.

According to one partner, many assume that the use of AI will reduce legal bills. But, in reality, while AI may decrease associate hours, it doesn't always lead to smaller bills. Not yet, anyway.

This is for a few reasons.

First, firms are having to cover the expense on the tech itself.

And, according to another partner, certain firms now bill for the time of AI specialists. They are experts who may not be lawyers but who operate and fine-tune AI systems.

"You might be paying fewer legal hours," one source explained, "but you could be billed separately for other skilled hours. Either way, the cost is there."

Alternative Fee Arrangements

But the tech charge might only be short-lived, as firms cover initial outlays and foster more trust around the use of AI.

Rix said that a lot of clients are moving towards alternative fee arrangements, "exploring more innovative ways of pricing work".

"This makes it much easier to introduce discussions around use of technology and process optimisation.

"I expect the move away from billable hours to shift gradually as clients and their trusted law firms agree more effective ways to measure the value of the legal work in the age of AI. I see six minute unit capture more as useful data to understand how the work's being done and how long it takes and to be able to measure the impact of some of these AI tools so we can work out where to spend our money in terms of what we develop, build and buy in that space."

Similarly, a law firm pricing consultant told Law.com that they expect that AI will transform time-based billing. Although he does not think it would or should disappear, for commoditised or high-volume work, the hourly rate has become "commercially and politically untenable".

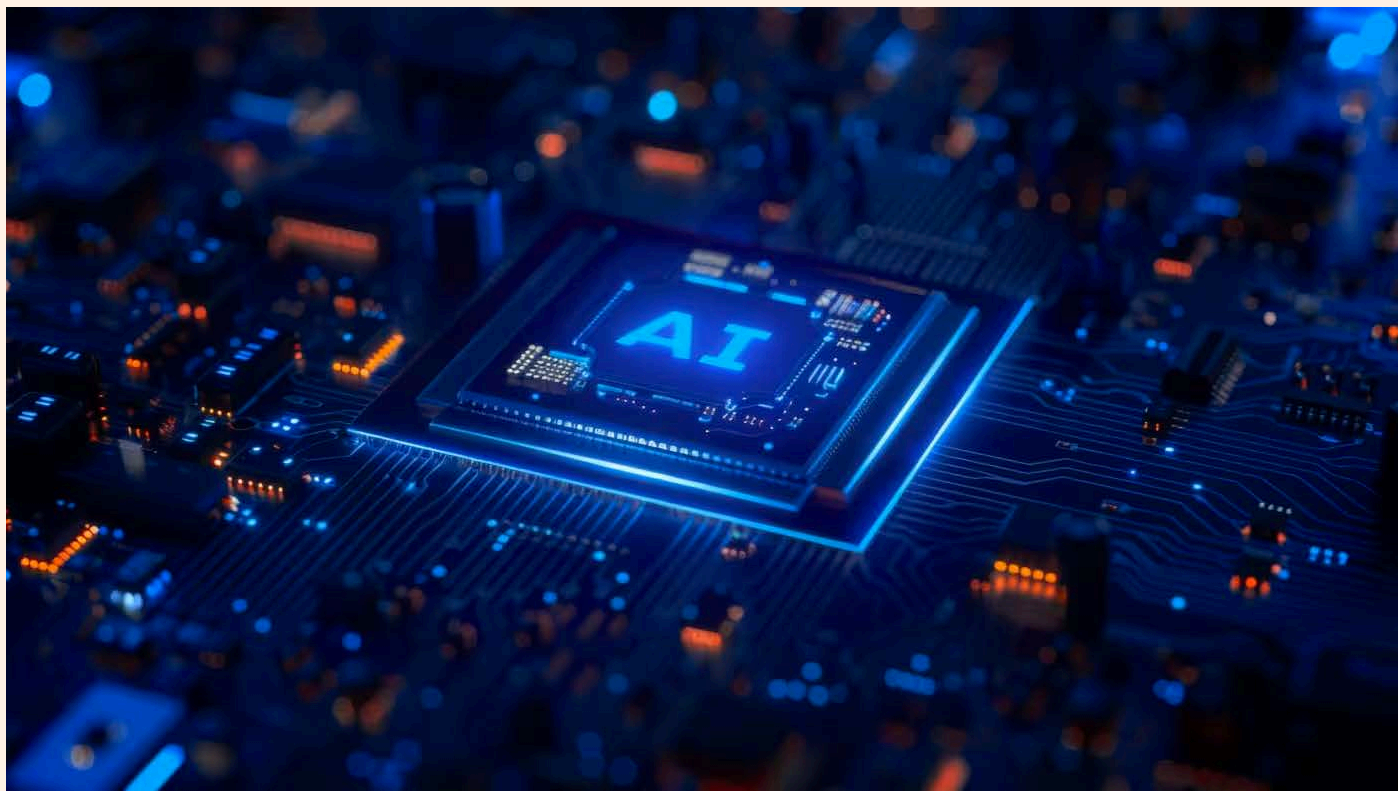
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Accountancy**Big Four face AI competition from smaller firms, says former EY UK boss**

Hywel Ball says consulting firms' own AI efforts are 'doubly important' as he takes up board roles at two start-ups



Hywel Ball believes there will be 'some job losses' as firms begin to use AI but employment will 'quickly rebound' © Nickkarean | Dreamstime.com

Ellesheva Kissin in London

Published YESTERDAY



Big Four firms face “challenges” in adopting artificial intelligence, said EY’s former UK boss Hywel Ball, as he announced plans to take up board roles at two AI-focused boutiques.

A number of [boutique professional services start-ups](#) have an edge by being able to build AI into their work unhampered, he said. “There is a patch in the middle” between being nimble and having “enough critical mass to give you the momentum”, creating opportunities for mid-sized firms, Ball added.

“If you’re really big there are lots of challenges about driving that extent of cultural change,” Ball said. “The Big Four are spending a lot of money on AI, and they’ve got the resources and investment to do it, but they’ll have their own challenges for adoption, because they’re so big.”

The challenge comes with persuading vast numbers of people and different business units to change in step, he said.

Ball will become non-executive chair and director at start-up IntellixCore, which was co-founded by former PwC senior partners Sultan Mahmood and Mike Greig. It aims to provide [AI](#) overhauls for the likes of professional services and private equity portfolio companies. The four-decade EY veteran will also join the board of Chicago-based private equity-backed AI consulting firm Quantum Rise.

Ball believes there will be “some job losses” as firms begin to use AI but employment will “quickly rebound”.

“You’ll go through a curve [of job losses and new hires] as people get to understand this new technology and how it can be used,” Ball added.

He argued that the UK needed to focus on AI adoption rather than trying to compete with the likes of Meta and OpenAI.

Accountancy and consultancy firms were central to the race, Ball said, making their own AI efforts “doubly important”.

“Physician, heal thyself. If you’re an accounting, consulting or professional services firm and you’re not doing the AI adoption yourself, it’s pretty tricky to go and tell someone else that this is really important,” he said.

IntellixCore last month announced a partnership with top-10 firm RSM, which Ball said would “re-architect how a professional services firm actually operates”.

California Brief

DOJ Justifies Wiederhorn Case End by Citing White Collar Shift

Aug. 5, 2025, 6:05 PM PDT

Prosecutors pointed to a pair of 2025 Justice Department memos on shifting enforcement priorities to justify tossing corporate fraud charges against Donald Trump donor Andrew Wiederhorn in a Tuesday filing.

Allegations that Wiederhorn, founder and chairman of FAT Brands, Inc., helped conceal \$47 million from the IRS aren't within the scope of priorities laid out in memos issued by Attorney General Pam Bondi and Matthew Galeotti, the head of DOJ's criminal division, said the filing in the US District Court for the Central District of California.

The case should be dropped because prosecutors are focusing resources on other areas and Judge R. Gary Klausner should defer to the office's priorities, Los Angeles federal prosecutors wrote.

Bondi's Feb. 5 memo directs DOJ to focus resources on areas including immigration enforcement, human trafficking, and drug cartels. Galeotti's May 12 memo said too much white-collar enforcement burdens US businesses and prosecutors should avoid "overreach that punishes risk-taking and hinders innovation."

"Criminal prosecutions are not the only means to address potential violations of the law," a footnote in the Tuesday court filing said. "The course of conduct alleged in the indictment is also the subject of a pending SEC action."

Klausner on Aug. 1 ordered prosecutors to explain their move to dismiss the indictment of Wiederhorn, who was described in a 2024 DOJ news release as a "serial tax cheat" and pleaded guilty two decades ago to federal felony counts related to his business dealings.

The indictment also names as co-defendants FAT Brands, its former chief financial officer, and an outside accountant.

Acting US Attorney Bill Essayli signed a motion to dismiss the case July 29, immediately before he ended his time as interim US attorney to assume the longer-term "acting" role. The federal bench didn't move to appoint him indefinitely.

The case is USA v. Wiederhorn , C.D. Cal., No. 2:24-cr-00295, 8/5/25 .

—with assistance from Ben Penn

To contact the reporter on this story: Maia Spoto in Los Angeles at mspoto@bloombergindustry.com

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Expert Opinion | **Cryptocurrency**

Congressional Cryptocurrency Reform Targets Regulators Rather Than the Industry Itself

August 05, 2025 By **John Moon**

Daniel Stone



John Moon, left, and Daniel Stone, right, of Olshan Frome Wolosky. Courtesy photos

For the last century, major statutory overhauls of the American financial system have followed a boringly predictable pattern: a major, systemic financial crisis reveals structural risks while costing many consumers their savings and, in response, Congress implements a new statutory regime to address those newly revealed risks. For example, the Securities Act of 1933 and the Securities and Exchange Act of 1934 were both enacted to prevent another Great Depression. Likewise, after the Enron and WorldCom accounting scandals, Congress passed the Sarbanes-Oxley Act of 2002 to

implement necessary accounting reforms. More recently, in the wake of the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act to reduce real estate financing risk and limit the need for public bailouts of banks deemed “too big to fail.”

Given this historical trend, when the cryptocurrency market suffered from a severe panic in 2022, it would have been unsurprising if Congress had acted swiftly to address the causes. As a reminder, in May 2022, the supposedly stablecoin pair of Terra-Luna unpegged from \$1. This started a chain reaction of market failures that ultimately climaxed in the collapse of cryptocurrency behemoths like Voyager, Celsius and FTX. Before 2022 was finished, FTX’s founder and CEO, Sam Bankman-Fried, had been indicted. Alexander Mashinsky, the founder and CEO of Celsius was also indicted in July 2023. In a matter of months, roughly \$2 trillion worth of crypto-assets were wiped out as the price of Bitcoin fell from its 2022 high of approximately \$47,000 to approximately \$16,000. Yet the Congressional response appeared nonexistent.

A crisis like this abhors a vacuum, so the Securities and Exchange Commission (SEC) stepped up its enforcement in the crypto-asset market. In 2022, the SEC brought a total of 30 cryptocurrency-related enforcement actions, up 50% from 2021. That rose to 46 in 2023, the highest number of crypto-asset enforcement actions since 2013. These enforcement actions were based on the SEC’s expansive views of its own enforcement jurisdiction, which generated substantial controversy, including within the commission itself.

For example, on Feb. 9, 2023, the SEC sued Kraken for failing to register the offer and sale of their “staking-as-a-service” program—a novel product in which Kraken had pooled certain assets and staked them on behalf of investors to generate crypto-asset returns for those investors. In response to the SEC’s enforcement action, SEC Commissioner Hester Peirce publicly criticized the SEC’s heavy-handed approach of “choosing to speak through an enforcement action” rather than “taking the path of thinking through staking programs and issuing guidance.”

In 2025, with the inauguration of the second Trump administration, the SEC’s Enforcement Division has “pulled in its claws” with respect to prosecuting crypto fraud. Since the inauguration, the SEC has settled or otherwise abandoned many of its crypto-asset enforcement actions and investigations, including the multiyear action against Ripple Labs and its investigation into Uniswap. Likewise, the 2022 “crypto winter” appears to be a faded, unpleasant memory, as Bitcoin prices are riding an all-time high of around \$120,000. Both Sam Bankman-Fried and Alexander Mashinsky, serving long prison sentences, have disappeared from public view. From this, one might reasonably conclude that the time for Congressional action had passed.

Instead, this month the House passed the Digital Asset Market Clarity Act, commonly known as the CLARITY Act, with bipartisan support. The CLARITY Act provides cryptocurrencies with a way

to replace the SEC's formerly potent oversight with that of the Commodity Futures Trading Commission (CFTC) in the event that the digital asset and its related blockchain are sufficiently "mature." A digital asset is mature if the blockchain system upon which it is based is not controlled by any person or group of persons. In other words, the major statutory overhaul of the digital asset space following the 2022 "crypto winter" is focused on reforming cryptocurrency *regulators*, not the industry itself.

Many industry insiders are cheering the act. For example, Kraken, Coinbase, and Anchorage Digital, all major digital asset institutions, each praised the CLARITY Act as advancing crypto policy and providing needed regulatory clarity.

Yet questions remain whether the CFTC's jurisdiction will prove more favorable to the industry. The CLARITY Act still requires digital commodity exchanges, digital commodity brokers and dealers, and commodity pool operators to register with the CFTC, a costly endeavor. And the CFTC has not been a wallflower when it comes to enforcement actions in the cryptocurrency space. For example, in December 2023 the SEC settled charges against Binance and two executives for over \$2.7 billion. Similarly, in August 2024 the CFTC received a judgment against FTX and Alameda Research for over \$12.7 billion.

As a result, although the CLARITY Act would bring much-needed jurisdictional clarity over which regulator oversees which digital assets, it may not meaningfully reduce the regulatory burden digital assets and their related providers face. While providing jurisdictional clarity is certainly helpful, it does little to protect consumers or prevent the next "crypto winter."

John Moon is a partner at *Olshan Frome Wolosky*. He may be reached at jmoon@olshanlaw.com. **Daniel Stone** is of counsel at the firm. He may be reached at dstone@olshanlaw.com.

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US Financial Regulatory Enforcement Plummets Under Trump, Report Finds

August 05, 2025 By Dan Novak



Photo: Shutterstock

Regulatory enforcement of the U.S. financial services industry sharply declined in the first half of 2025, reflecting the Trump administration's rapid deregulatory push, according to a study released Tuesday.

Total enforcement actions against financial services firms fell 37% from the final six months of 2024, stated Wolters Kluwer's [Regulatory Violations Intelligence Index](#). Monetary penalties also dropped considerably, falling 32% in the three violation categories tracked—financial, consumer-protection and competition-related offenses, the information services company reported.

"We're witnessing a fundamental transformation in federal enforcement priorities," Chuck Ross, leader of Wolters Kluwer's compliance management program, said in a statement. "While deregulation was anticipated under the new administration, the velocity and magnitude of this enforcement pullback exceeds even the most aggressive predictions."

The reduction in financial enforcement reflects the administration's weakening supervision of financial institutions by rolling back parts of the 2010 Dodd-Frank Act and dismantling the Consumer Financial Protection Bureau, the report stated. The administration has also streamlined enforcement activity at federal agencies, most notably at the Securities and Exchange Commission and the CFPB, where enforcers have focused on select high-profile misconduct cases rather than broad regulatory actions, the report added.

"This isn't just a modest adjustment—it's a complete recalibration of the enforcement ecosystem," Ross said.

Across the index's categories, 99 enforcement actions occurred in the first 6 months of 2025, compared to 158 in the previous six-month period.

Financial penalties for competition violations, which include antitrust and corruption offenses, fell 97%, the report stated. That large drop was due to the four-month [pause](#) in Foreign Corrupt Practices Act enforcement at the Department of Justice, said Elaine Duffus, a regulatory compliance expert at Wolters Kluwer.

The broad retreat from enforcement leaves the financial industry with much more discretion in its compliance programs, Duffus said. Banks and financial institutions no longer have as much guidance around regulations and best practices, leaving corporate boards to "come up with the risk appetites around everything," she added.

"The good news is there's not a lot of enforcement," Duffus said. "The bad news is you have to figure out how to do this on your own in many cases."

Ross said corporate compliance programs should stay robust to keep pace with state laws that have been expanding as states have stepped in to fill enforcement gaps left by the federal government, especially in consumer protection.

"History shows us that enforcement pendulums swing," he said. "Those who mistake the current deregulatory regime as the new normal do so at their own peril—especially as states fill the enforcement void."

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Opinion **Markets Insight****Tech does not deserve special legal treatment**

Pulling down regulatory barriers to aid innovation ignores the fact that they protect the public from harm

HILARY ALLEN

US President Donald Trump in the White House last month holding up the newly signed Genius Act, a stablecoin law © Brendan Smialowski/AFP/Getty Images

Hilary Allen

Published YESTERDAY



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*The writer is a law professor at the American University Washington College of Law and author of **FinTech Dystopia***

For years, the crypto industry has benefited from the underenforcement of securities and anti-money laundering laws. To get a sense of the premium that it places on favourable legal treatment, consider that crypto sector Super PACs accounted for [nearly half](#) of all corporate spending in the 2024 US elections.

Technology businesses are supposed to prosper because of their innovation. But special legal treatment is equally important to their bottom line.

In her book *The Code of Capital*, Columbia Law School professor Katharina Pistor points out that the law is often treated as a sideshow in discussions of finance, when in fact it is the main event. Pistor's insight has implications for Silicon Valley as well as Wall Street. Even when developing cutting-edge technologies, some businesses find their real competitive edge comes from legislation.

In July, a new stablecoin law was enacted in the US, and a crypto market structure bill was passed by the House of Representatives. If fully implemented, these rules will ensure that many existing banking and securities laws are not applied to crypto assets. Traditional financial businesses playing by the old, more restrictive rules may struggle to compete — not because their technology is inferior to blockchain technology, but because the law has given crypto an advantage.

A blockchain is a type of database that, according to a group of more than 1,500 independent technologists, “is poorly suited for just about every purpose currently touted as a present or potential source of public benefit”. In a [letter](#) to US Congressional leaders, this collection of computer scientists and software engineers describe blockchains as computationally inefficient and note that they struggle to scale. Even the crypto exchange Coinbase has [informed the](#) Securities and Exchange Commission that it makes debits and credits to customers' accounts “off-chain, meaning the transaction is recorded on Coinbase's internal ledgers, not on any blockchain”.

Despite such limitations, blockchain's technological decentralisation has been invoked to justify bespoke legal treatment.

Special legal treatment is also subsidising the development of generative artificial intelligence tools, as their underlying large language models were trained in part using unpaid access to copyrighted materials. As venture capital firm Andreessen Horowitz [wrote](#) in a letter to the US copyright office in 2023: “The bottom line is this: imposing the cost of actual or potential copyright liability on the creators of AI models will either kill or significantly hamper their development.”

Other legal accommodations are being afforded to the AI industry. The [AI Action Plan](#) released by the Trump administration in July anticipates dispensations from environmental laws, to allow more data centres to be constructed more quickly.

It also calls for AI sandboxes, which allow participating businesses to launch new products in an environment characterised by fewer rules and less risk of enforcement.

Previous [experience](#) with sandboxes for fintech should give us pause.

A global regulator survey compiled [by the World Bank](#) indicates that fintech sandboxes have often required more oversight than expected. There is little [empirical](#) evidence that sandboxes benefited anyone beyond the participating businesses either. Some struggled to “graduate”, forcing regulators to choose between requiring compliance (in essence shutting down the business in question), or making sandbox exemptions permanent. Canadian securities regulators [chose the latter](#) for several crypto businesses, creating a permanent patchwork of uneven accommodating regulations.

It is not clear that sandboxes and other legal accommodations for technology-based businesses are in the public interest.

These accommodations pull down legal barriers in order to help technological innovation thrive. But this ignores the fact that those legal barriers were enacted in the public interest, often to protect the public from harm.

Arguments for the tech sector’s special legal treatment are ultimately built on a paradox. Policymakers are told that any attempt to curb a technology’s harms would stifle innovation but they are also told that legal barriers are futile because progress is inevitable.

It is time we demand that the tech sector comply with the same laws as everyone else. Only when technology businesses compete on a level legal playing field will we see how inevitable their innovations really are.

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News from Bloomberg Terminal
OpenAI Employees Have Stock to Sell
Aug. 6, 2025, 10:03AM PDT

By Matt Levine

(Bloomberg Opinion) --

OpenAI

Just a real “private markets are the new public markets” moment:

OpenAI is in early talks about a potential sale of stock for current and former employees at a valuation of about \$500 billion, people briefed on the investment discussions said, marking an enormous gain in value for the artificial intelligence leader.

The company is targeting a secondary stock sale in the billions of dollars, the people said, asking to remain anonymous because they weren’t authorized to discuss the matter publicly. Existing investors including Thrive Capital have approached OpenAI about buying some of the employee shares, the people said. ...

The latest move follows news last week the startup had secured \$8.3 billion from a syndicate of investors for a second tranche of [an earlier] \$40 billion financing, which was oversubscribed by about five times, according to one of the people briefed on the discussions. ...

Major US startups often negotiate share sales for their employees as a way to reward and retain staff, and also attract external investors. The company run by Sam Altman is looking to leverage investor demand to provide employees with liquidity that reflects the company’s growth, according to one of the people familiar with the investment negotiations.

Of course the traditional way “to leverage investor demand to provide employees with liquidity that reflects the company’s growth” is to do an initial public offering: When a startup has grown sufficiently big, it is ready to go public, and it can go public to leverage investor demand (by letting employees sell stock to investors). But modern private markets are so big, liquid and enthusiastic that you don’t need to do that: OpenAI can do multibillion-dollar stock offerings that are multiple times oversubscribed whenever it feels like it, and it can arrange multibillion-dollar employee secondary sales to make sure that the employees can cash out.

Traditionally, employees of private startups weren’t *supposed* to cash out: They were supposed to work toward an IPO, and to keep skin in the game until they succeeded. Now, though, companies are in no rush to go public, so investors are perfectly happy to let early employees cash out millions of dollars of stock while staying private. In the olden days, startup employees were supposed to subsist on ramen and be totally devoted to the mission, but in 2025 top AI researchers are supposed to own multiple yachts, and the market has to keep up.

One other question. These days I think the famous line has to be updated: "You know what's cool? A trillion-dollar valuation." Is OpenAI a trillion-dollar company? I mean, no, not yet, not if it's in talks to do a trade at \$500 billion. But one thing that we talk about a lot around here is that there is a lot of *retail* demand for hot private startups – and few are hotter than OpenAI – at large premiums to their private-market prices. If you got your hands on \$50 million of that OpenAI stock in the secondary offering (0.01% of the company at a \$500 billion valuation), and you put it in a special-purpose vehicle and sold shares in the vehicle to private-wealth clients, could you get \$100 million for it? Could you find some dentists willing to pay a 100% premium given the scarcity of publicly available OpenAI shares? It seems plausible to me. (Not investing advice!)

Figma Inc. did its initial public offering last week. Figma was valued at \$20 billion when it agreed to sell itself to Adobe a few years ago, but that deal fell through and Figma ended up going public at a slight discount to that \$20 billion valuation. But then the stock shot up, peaking on Friday at a valuation of around \$68 billion. One way to analyze that is something like "Figma was worth about \$20 billion in the private market and about \$68 billion in the public market," but that is a little oversimplified. Bloomberg's Anthony Hughes has a more nuanced explanation:

Figma and the banks considered pricing the shares above the ultimate \$33 per share set in the IPO, according to a person familiar with the matter. In the end, Dylan Field, Figma's co-founder and chief executive officer, wanted to bring on board certain long-term institutional shareholders, and Field signed off on the final \$33 price, the person said, asking not to be identified as the information isn't public.

With shares oversubscribed by more than 40 times, a blockbuster debut was by no means unpredictable. Had Figma and Field opted for a higher price, however, some institutional investors may not have been willing to buy the shares. ...

Another clear contributor to Figma's outsized pop was the size of the offering. The number of shares sold, including the over-allotment shares, represented just 7% of the outstanding stock, a relatively small amount though not unheard of among hot tech IPOs.

That may have left retail investors largely empty-handed. In social media posts, several users complained that after putting in orders with Robinhood Markets Inc., they received only one Figma share each.

That is:

- Only 7% of 93% of Figma's stock was offered in the IPO; the other 97% doesn't trade yet.
- Of that 7%, most was sold to "certain long-term institutional shareholders," whose distinguishing feature is that they were *not* planning to flip the stock for a quick profit.
- So only, like, what, 2% of the stock is freely available to trade?
- Everyone on Robinhood wants some, but they have to pay.

And so one analysis could be something like “the 98% of Figma that is locked in the hands of long-term institutional investors and still-restricted employees¹ is worth \$20 billion or so, but the 2% of Figma that is freely available to everyone trades at like a 200% premium.”² That is not particularly correct or rigorous – there’s only one actual market for Figma’s stock, you can’t really separate it like that, and probably the free float is considerably above 2% – but it’s a useful way to think about it. The price of Figma’s *traded shares* is relatively high, because they are relatively scarce.

OpenAI’s are much scarcer. If you had a few – not \$500 billion worth, but \$50 million worth – could you sell them to dentists at a 100% markup? If Thrive is buying billions of dollars of OpenAI at a \$500 billion valuation, and dentists are buying millions of dollars of OpenAI at a \$1 trillion valuation, would that make OpenAI a trillion-dollar company?

Corporate access

I wrote yesterday that one way to find out about a company’s stock is to sit down with its chief executive officer and ask her “should I buy your stock?” Then I discussed various problems with that approach. One big one is that, if you are just some random person, what are the chances the CEO will want to meet with you? If you are a big portfolio manager at Fidelity or Wellington and you have owned 5% of her stock for a decade, sure, yeah, she’ll be there. If you are a big portfolio manager at Point72 and you own 2% of her stock this week, maybe; most of our discussion yesterday was about the big multistrategy hedge funds graduating from the “kids’ table” in corporate access. But if you’re a retail investor who owns 100 shares, the CEO just has better things to do with her time.

Or so I thought. There is a literature? Here is a new paper on “Discrimination in Access to Corporate Insiders,” by Austin Moss, Roshan Sinha, David Volant and Donald Young, which finds that if you cold email a public company’s investor relations department you have about a 16% chance of getting a meeting:

We implement a 2x2x2 between-subjects design, systematically manipulating three investor characteristics in meeting requests sent to IR departments: race (Black or White), gender (female or male), and investor type (retail or professional). ...

In our experiment, we send meeting requests to 2,731 firms and receive 433 meeting approvals, for an overall 15.8% approval rate. ...

Investor type does not independently affect the likelihood of being granted a meeting as retail investors secure meetings at rates similar to professional investors. We caution against overgeneralizing this particular result to widely known investment firms (e.g., Vanguard, BlackRock, Citadel) as our experimental implementation most closely matches smaller or lesser known investment firms. Nonetheless, at a minimum, this finding challenges the conventional wisdom that retail investors cannot readily obtain meetings with corporate insiders.

The “retail investors,” in the experiment, are identified by an email address with one of “three popular, free email providers: @gmail.com, @yahoo.com, and @outlook.com,” while the “professional investors” work at customized fake asset managers:

For the professional investor condition, we create email addresses with fictitious investment firm domains: @bluewillowcapital.com, @fusionpointequities.com, and @globalviewsinvestments.com. Each professional investor email includes a corporate signature. To enhance the credibility of these fictitious firms, we had a professional website designer develop a corporate website mirroring those of typical small investment firms. To mitigate domain-specific biases, we randomize the use of specific domains within each condition.

When I get around to selling Money Stuff merch, there will have to be a Blue Willow Capital vest. The emails to IR do not specifically ask for a meeting with the CEO,³ and they never actually did the meetings,⁴ so it's not quite "you have a one in six shot of getting a CEO meeting with a cold email," but still, better than I would have expected. There is, however, racial discrimination:

We manipulate investor race and gender perceptions through the use of racially- and gender-distinctive names in email addresses. This approach builds on a well-established methodology in discrimination research. ...

We find that White investors are 34% more likely to be granted meetings than Black investors. This racial disparity is robust and does not vary based on the investor's gender or type. Thus, our results suggest taste-based discrimination plays a role in creating the racial disparities we observe, as signals of the investor's sophistication or resources do not moderate the racial gap by reducing it for professional investors.

T+1

Every stock and bond trade is an extension of credit. You and I meet on the exchange, and we agree that I will sell you some shares of stock. Then we go home, and we meet back up the next day so that I can give you the stock and you can give me the money. If something bad happens to one of us in the interim – if you go bankrupt, or I decide I'd rather sell the stock to someone else – then the trade might fall through. If I was really counting on getting the money, and you don't show up, I will be pretty sad.

People don't think about this too much, because the market has developed pretty good mechanisms for dealing with it. There are clearinghouses that guarantee trades, and a system of capital requirements to make sure that brokers will be able to settle them; the number of trades that "fail" is pretty small, and most fails are temporary (I need an extra day to find the stock) rather than permanent (I have run off with the stock).

But the simplest mechanism for dealing with this extension of credit is to make it *short*. When I started my career, US stock trades settled "T+3": We'd agree to a trade on Monday, and then meet back up on Thursday to settle it. That left three days during which stuff could go wrong. But then the market moved to T+2, and last year it moved to T+1: We trade on Monday and settle on Tuesday. Stuff could still go wrong overnight, but roughly speaking – if my probability of running off with the stock, and your probability of going bankrupt, are uniform – the move from T+2 to T+1 reduced the chances of stuff going wrong by 50%.

In some very theoretical sense, this should make it cheaper to trade. When you buy or sell a stock or bond, you are paying some set of intermediaries – mostly your broker and a market maker – to get the trade done. Those payments conventionally cover *mostly*:

1. Market risk: If you sell a stock to a market maker, and then the stock goes down, the market maker will lose money. So it wants to buy from you at a bit less than the fair value of the stock, to reduce its chances of losing money.⁵
2. Salaries, computers, rent, data feeds, etc.: Brokers and market makers are businesses, they provide a service, they have costs, and they have to cover those costs by making a bit of money on each trade.

But also you should be paying a little bit for the credit risk, either directly (your broker worries that it will lose money by selling you stock that you don't pay for, so it charges you a fee for that credit risk) or indirectly (your broker has to post capital to a clearinghouse to cover your trades, and that capital has a cost that it passes on to you).

And so when that risk goes down, the cost of trading should go down. Bloomberg's Isabelle Lee and Caleb Mutua report:

More than a year after the US adopted one-day settlement, a key measure of corporate bond trading costs is down 12%.⁶ Margin requirements – the cash or collateral firms must post to cover the risk of failed trades – have dropped 29%, according to Barclays Research. That's capital that can now be put back to work. Plus, there are signs that those savings have boosted credit market liquidity. ...

"Think of it as an efficiency boost to the system – or, put differently, as if your insurance premium just went down," Zornitsa Todorova, head of thematic fixed income research at Barclays, said in an interview. "That capital can either be used to trade more actively or deployed elsewhere."

By the way, it was not *obvious* or *inevitable* that costs would go down. This cost – the credit risk of trades – obviously went down, but you could have imagined that other costs would go up to more than offset that improvement. For instance, if it is much *harder* to settle trades T+1 – if every bank and broker had to hire more people to work the overnight shift to get trades settled in time – then the increasing personnel costs might eat up the credit-risk savings. But in fact, Lee and Mutua note, "banks and other intermediaries have generally seen their expenses decline in the T+1 era."

The Trump sons SPAC

We talked on Monday about a new special purpose acquisition company backed by Eric Trump and Donald Trump Jr., whose draft prospectus explicitly disclosed that it will try to acquire a company "well-positioned to benefit from federal or state-level incentives, such as grants, tax credits, government contracts or preferential procurement programs." Arguably *any* company run by the Trump sons, in 2025, is well-positioned to benefit from federal incentives? A year ago I would have said "but you are not supposed to say that explicitly in writing." Now I would no longer say that! Go ahead! "We plan to use our father's job as president to make ourselves rich," yes, of course, why not.

Well they revised the prospectus to tone it down a bit:

In an amended version of the document filed later the same day, that description and others were removed. The reason for the changes weren't immediately clear, though the Associated Press reported the edit followed questions about potential for conflicts of interest, given the Trumps' involvement.

Spokespeople for the White House and the Trump Organization didn't reply to requests for comment, nor did Kevin McGurn, the chief executive officer of New America Acquisition.

Here's the new prospectus; the main deletions are on page 5. It's not like the strategy has *changed*. The new prospectus doesn't say, you know, "we will avoid buying any businesses that might raise the specter of a conflict of interest." It's just not so explicit now. I still think they're going to merge with Fannie Mae.

The garbage dump guy

We have talked a few times, over the years, about the funniest guy in crypto, James Howells. Howells is the guy whose partner threw away a hard drive containing the private key to 8,000 Bitcoins. In 2013, this was the sort of thing you might absent-mindedly do; in 2025, that hard drive is worth \$900 million, oops. But Howells is pretty sure he knows the Welsh garbage dump where the hard drive ended up, and he has spent much of the last 12 years trying to get people to let him dig it up, with no success.

In addition to being very funny, there is something metaphysically pleasing about this. The Bitcoins aren't "on" the hard drive, in any real sense. In some sense, the Bitcoins aren't anything. They are just a set of social conventions, and if everyone in the Bitcoin community agreed that Howells still had those Bitcoins, then he would. On the one hand, Bitcoin is resistant to that sort of "off-chain" social agreement – immutable code on the blockchain and all that – but on the other hand, you can always create new tokens. In 2021, I wrote:

I have joked enough about the "object-fire-token-money" cycle of non-fungible tokens to say that the obvious solution here is that Howells should mint a non-fungible token representing, like, "I threw away 8,000 Bitcoins." This would have two benefits:

1. He'd own a tangible (ish) thing representing his Bitcoins in the dump, which might make him feel better, and
2. Maybe he could sell it? Or a share of it? How much would an NFT representing 8,000 vanished Bitcoins be worth? Search me, but maybe something?

That was in 2021, when NFTs were hot, but really this analysis did not require a *nonfungible* token. If he issued 8,000 GarbageDumpBitcoins, they would presumably trade at a *discount* to the price of regular Bitcoins, but it's not obvious that the discount would be 100%. You could imagine people saying "well, Bitcoins at the bottom of a garbage dump aren't worth as much as Bitcoins on the blockchain, but they are still Bitcoins, and if I can get them at 30 cents on the dollar that's a good deal."

Yeah, well. The Block reported yesterday:

Howells said he has simply "pivoted" his strategy, but has not given up on his lost bitcoin, as he remains the legal owner of the 8,000 BTC, citing a High Court ruling in January this year.

"The Council may own the hard drive, but they do not own the digital contents of that hard drive - the 8,000 bitcoin are legally mine in law - the balance of which can be verified by anyone worldwide at any time," Howells told The Block.

That is: The normal, crypto-y way to prove that you own a stash of 8,000 Bitcoins is to have the private key for that stash, allowing you to send those Bitcoins over the blockchain. But being constantly in the news for a decade for owning that stash of 8,000 Bitcoins is also a *kind* of proof of ownership. Like, I could go around saying "actually those 8,000 Bitcoins are mine," and Howells has no more cryptographic proof of ownership than I do, but you wouldn't believe me, would you? He's been telling this story forever and he seems to be quite sincere about it. Anyway:

Howells said now he is planning to tokenize his legal ownership of the lost 8,000 BTC into a new Bitcoin Layer 2 smart token named Ceiniog Coin (INI), utilizing the upcoming network update that removes the 80-byte cap on the OP_RETURN opcode in bitcoin transactions to free up space for more functionality.

The token is slated for launch after October, and an ICO is planned for later in the year, Howells added.

"The intention is to bootstrap the Ceiniog ecosystem and launch a successful high-speed, high-scale, fast-confirmation, payment-focused web3 environment secured by the Bitcoin blockchain and backed by 8,000 BTC," Howells told The Block.

Man, he's still got it. Against very tough competition he remains the funniest man in crypto. Not only is he going to "tokenize his legal ownership of the lost 8,000 BTC" – a great idea that I've advocated for years – he is also somehow going to turn it into "a successful high-speed, high-scale, fast-confirmation, payment-focused web3 environment." The future of payments infrastructure will be built on top of a hard drive in a Welsh dump.

Things happen

Bank of America Junior Bankers Face Reassignment If They Accept Other Jobs. Tiger Cub Maverick Looks to Raise Money After Trouncing Rivals. Apollo Global to Buy Builder of Large-Scale US Data Centers. DeepSeek-Linked Quant Fund Caught Up in Kickback Scandal. OpenAI Releases Open-Weight Models After DeepSeek's Success. How Palantir Won Over Washington—and Pushed Its Stock Up 600%. Uber Boosts Buybacks by \$20 Billion After Upbeat Forecast. Government Steps Up Campaign Against Business School Diversity. Galaxy's Mike Novogratz Says Crypto Treasury Rush Has Peaked. "Suniel Kumar Sharma ... has repeatedly surfaced in far-flung countries, established ship registries, and then moved on when local authorities raised concerns about his operations." "We've got quite a nice yacht in Croatia, and my kids are 22, 19 and 14, and they prefer to boat around the Med on the yacht rather than go to Wales." Sand shortage. USDA Is Blasting Audio of Scarlett Johansson and Adam Driver's Fight in *Marriage Story* to Help Farmers Scare Off Wolves.

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Michael Newman at mnewman43@bloomberg.net

1. I'm not sure how restricted they are; the prospectus notes that 74% of the stock is subject to lockup agreements.
2. The premium is down significantly this week – it closed yesterday at \$79.08 – but still in the ballpark of 100%.
3. The email: "I hope this message finds you well. My name is [Investor Name], and I work at [Investment Firm Name]. We are considering investing in your company, and I would appreciate the opportunity to discuss some aspects of your recent earnings release. If possible, I'd like to schedule a brief call at your convenience to address a few questions regarding your financials. When would you be available for a call in the next two weeks? Thank you for your time and I look forward to your response."
4. "For favorable responses or requests for more information ..., we sent a follow-up email expressing gratitude for their response and indicating that a call was no longer necessary."
5. This risk is primarily adverse selection risk: What the market maker really doesn't want is to buy stock from people who systematically sell stock before it goes down. And so market makers charge wider spreads in the public markets (where they might trade with big institutions and "toxic" high-frequency traders) than they do to retail orders (which are more random).
6. The measure appears to be round-trip trading costs, that is, customer buy prices minus customer sell prices, which fell from 29.3 to 24.2 basis points among some sampled bonds.

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Securities Law News

SPAC Advised by Trump's Sons Snips Mention of Federal Incentives

Aug. 5, 2025, 12:23 PM PDT

Donald Trump Jr. and **Eric Trump** will advise a new company that's looking to take over a US-based manufacturer, the latest in a string of such positions for President Donald Trump's eldest sons.

The Trump-advised blank-check company, called New America Acquisition I Corp., said Monday in a securities filing that it would look to do a deal with a firm "well-positioned to benefit from federal or state-level incentives, such as grants, tax credits, government contracts or preferential procurement programs."

In an amended version of the document filed later the same day, that description and others were removed. The reason for the changes weren't immediately clear, though the Associated Press reported the edit followed questions about potential for conflicts of interest, given the Trumps' involvement.

Spokespeople for the White House and the Trump Organization didn't reply to requests for comment, nor did **Kevin McGurn**, the chief executive officer of New America Acquisition.



Donald Trump Jr. and Eric Trump

Photographer: Andrew Harnik/Getty Images

The special-purpose acquisition company said it plans to raise \$300 million for a deal. The Trump administration has been focused on domestic manufacturing, with the president framing his tariff policy as a way to promote made-in-America goods. Critics, meanwhile, have raised questions about the additional costs it could rack up for consumers.

Eric and Donald Trump Jr. will have a financial stake in New America Acquisition. Eric received 3 million founder shares, while his brother got 2 million shares, according to Monday's filing. Another member of the advisory board, **Kyle Wool**, is the president of Dominari Holdings Inc., a Trump Tower-based investment bank with a board of advisers consisting of Trump Organization executives, including the president's two eldest sons.

Read More: Trump-Linked Bank Helped Set Up \$120 Million Tron Deal Windfall

Since President Trump's inauguration, his sons have pursued advisory roles at a wide array of businesses, a departure from his previous term. These appointments have spanned industries from drones to cryptocurrency to conservative radio. In almost all cases, these companies are regulated by federal agencies and affected by government policies. The relationships have raised questions about the potential for conflicts of interest from political opponents. The Trump family and White House have denied that is a cause for concern.

New America Acquisition is just the latest SPAC the Trump family has been involved with. Trump Jr. promoted GrabAGun Digital Holdings, which went public in a deal last month. Trump Media & Technology Group also went public through such a merger in 2024. President Trump's ownership stake in the company, held through a trust controlled by Trump Jr., makes up nearly one-third of his \$6.4 billion net worth, according to the Bloomberg Billionaires Index.

To contact the reporter on this story:

Annie Massa in New York at amassa12@bloomberg.net

To contact the editor responsible for this story:

Steven Crabill at scrabill@bloomberg.net

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Securities Law News

A \$2 Trillion Market Faces 'Enormous Risk' From US Data Distrust

Aug. 5, 2025, 9:44 AM PDT

The \$2 trillion market for securities linked to US inflation data could be the first area of Treasuries to crack if the Bureau of Labor Statistics is politicized, according to bond investors.

After President Donald Trump fired BLS chief **Erika McEntarfer** on Friday following a weak jobs report and said the figures were "rigged," investors have fretted that the move could erode trust in government data, which has a major effect on asset prices.

That link is perhaps most acute in Treasury inflation-protected securities, where the face value of a bond is adjusted based on the consumer price index, which is calculated by the BLS. Interest payments are based on that floating principal.

"If there is politicization of the BLS, and somehow the data is not credible it poses an enormous risk over time to the TIPS market," said **Amar Reganti**, fixed income strategist at Hartford Funds.

That concern was echoed by **Michael Feroli**, chief US economist at JPMorgan Chase & Co.

"The \$2.1 trillion market for TIPS is built on a foundation of trust in the construction of the CPI data" Feroli wrote in a Sunday note.

"The integrity of this data is at least as important as the employment data," Feroli said. "Here, even seemingly innocuous technical changes can matter." For example, calculating CPI with a method used by the European Union "would shave about 20 basis points off annual inflation," he said.

US price growth is in the spotlight, with a July CPI report due next week and economists expecting both annual headline and core readings to remain above the Fed's 2% target.

What Bloomberg Strategists say...

"Economic data doesn't move at random. Instead there are sequential relationships between data types that can indicate whether the data is being interfered with, crucial for traders and investors who need to differentiate between noise and signal."

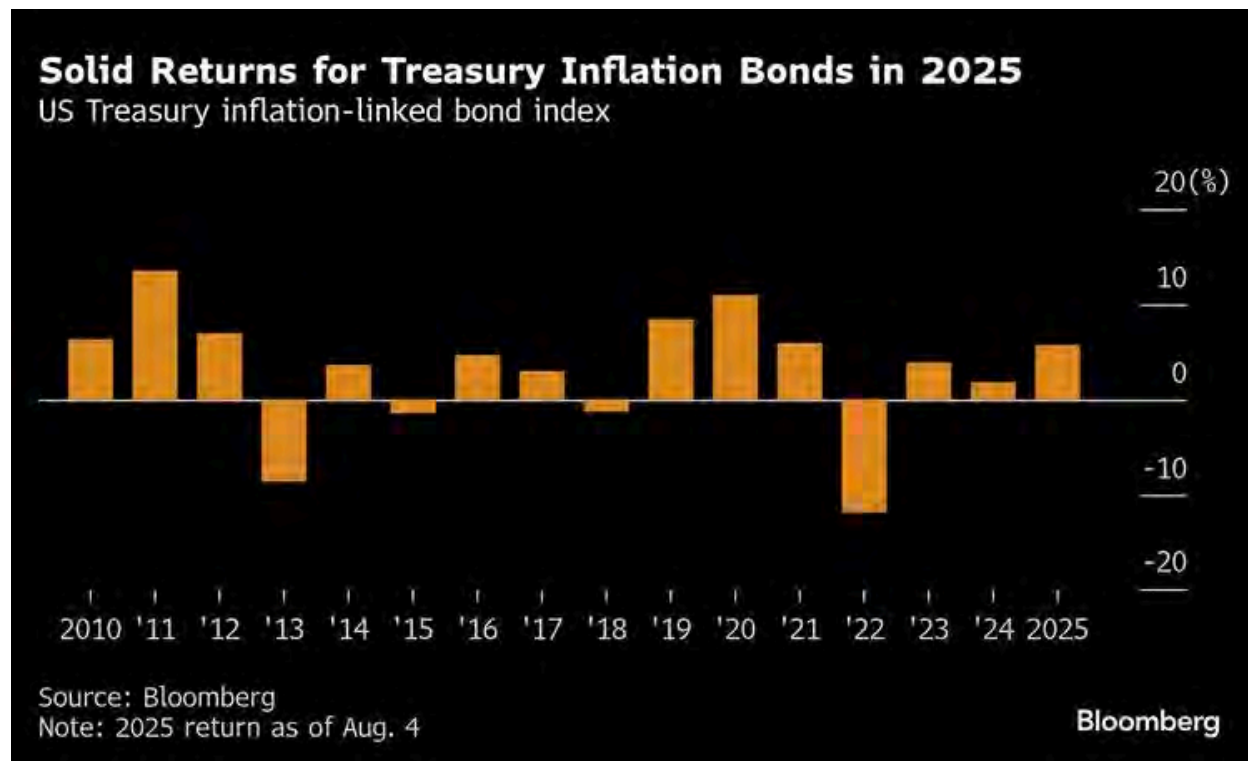
- Simon White, Macro Strategist, Markets Live.

For the full analysis, [click here](#).

While Trump has persistently called for the Federal Reserve to cut interest rates, there are signs his tariffs are pushing up prices across the US economy. Still, more investors are betting on a rate cut as soon as next month after last week's data pointed to weakness in the labor market. On Friday, short-term Treasury yields posted their biggest drop since late 2023.

TIPS on the rise

Price growth has been sticky for much of the past year, which has bolstered the performance of TIPS. The Bloomberg US Treasury inflation-linked bond index has gained 5.7% in 2025, and is on course for its best year since 2021.



Inflation-protected Treasuries account for about 7% of the total debt. Given the scale of outstanding US government debt that requires financing, the recent Treasury refunding statement flagged an increase in the sale of some TIPS.

"The Treasury department is going to need to use all of its tools in order to execute its job, particularly after the passage of the One Big Beautiful Bill," said Reganti.

"An enormous amount of trust from the Treasury market has been installed in the secretary and the department. It would never give that type of leeway to a private sector issuer."

The Rise of Silicon Valley's Techno-Religion



[nytimes.com/2025/08/04/technology/rationalists-ai-lighthouse.html](https://www.nytimes.com/2025/08/04/technology/rationalists-ai-lighthouse.html)

Cade Metz

August 4, 2025



The former Rose Garden Inn, now a part of the Lighthouse complex, in Berkeley, Calif. Credit...Loren Elliott for The New York Times

The Rationalists, a community focused on the risks of artificial intelligence, regularly gather with tech figures and other like-minded people in a complex that covers much of a city block.

The former Rose Garden Inn, now a part of the Lighthouse complex, in Berkeley, Calif. Credit...Loren Elliott for The New York Times

In downtown Berkeley, an old hotel has become a temple to the pursuit of artificial intelligence and the future of humanity. Its name is Lighthouse.

Covering much of a city block, this gated complex includes five buildings and a small park dotted with rose bushes, stone fountains and neoclassical statues. Stained glass windows glisten on the top floor of the tallest building, called Bayes House after an 18th-century mathematician and philosopher.

Lighthouse is the de facto headquarters of a group who call themselves the Rationalists. This group has many interests involving mathematics, genetics and philosophy. One of their overriding beliefs is that artificial intelligence can deliver a better life if it doesn't destroy humanity first. And the Rationalists believe it is up to the people building A.I. to ensure that it is a force for the greater good.

The Rationalists were talking about A.I. risks years before [OpenAI created ChatGPT](#), which brought A.I. into the mainstream and turned Silicon Valley on its head. Their influence has quietly spread through many tech companies, from industry giants like Google to A.I. pioneers like OpenAI and Anthropic.

Many of the A.I. world's biggest names — including Shane Legg, a co-founder of Google's DeepMind; Anthropic's chief executive, Dario Amodei; and Paul Christiano, a former OpenAI researcher who now leads safety work at the U.S. Center for A.I. Standards and Innovation — have been influenced by Rationalist philosophy. Elon Musk, who runs his own A.I. company, said that many of the community's ideas [align with his own](#).

Mr. Musk met his former partner, the pop star Grimes, after they made the same cheeky reference to a Rationalist belief called Roko's Basilisk. This elaborate thought experiment argues that when an all-powerful A.I. arrives, it will punish everyone who has not done everything they can to bring it into existence.

But these tech industry leaders stop short of calling themselves Rationalists, often because that label has over the years invited ridicule.

The Rationalist community is tightly entwined with the Effective Altruism movement, which aims to remake philanthropy by calculating how many people would benefit from each donation. This form of utilitarianism aims to benefit not just people who are alive today, but all the people who will ever live. Many Effective Altruists, or E.A.s, have decided that the best way to benefit humanity is to protect it from destruction by A.I.

Rationalists often identify as E.A.s. And E.A.s often adopt Rationalist philosophies. Together, these two movements have pumped [hundreds of millions of dollars](#) into companies, research labs and think tanks that [aim to build A.I. and ensure its safety](#). The biggest funders include wealthy tech moguls like Jaan Tallinn, a creator of the internet calling service Skype, and Dustin Moskovitz, a Facebook co-founder.

"They built a vast, well-funded ecosystem to spread, amplify and validate their ideology," said Mollie Gleberman, an anthropologist who has studied the rise of the Rationalists and Effective Altruism.

Whether they are right or wrong in their near-religious concerns about A.I., the tech industry is reckoning with their beliefs.

In late 2023, OpenAI's chief executive, Sam Altman, was [briefly removed from his job](#) because board members with ties to the Rationalist and E.A. movements said they could [not trust him to build A.I. for the benefit of humanity](#).

Lighthouse is a physical manifestation of just how much these ideas have suffused Silicon Valley and the San Francisco Bay Area — a modern day temple.

The main building, called Aumann Hall, after the Israeli game theorist Robert Aumann, offers seven bedrooms and multiple common areas for parties and weekend conferences.

Eigenspace, named for an esoteric mathematical concept, includes a gym and another communal area large enough for 40 people. Two hundred people can fan out across the synthetic grass-covered park, which also has chairs and electric fire pits.

"It's a place where serendipity can happen. Some people liken it to a college campus or the M.I.T. Media Lab," said Alex K. Chen, a longtime member of the community, referring to the design lab at Massachusetts Institute of Technology.

Each spring, Lighthouse hosts LessOnline, a conference where bloggers and commenters from Rationalist websites meet in person. Every Tuesday at 6:30 p.m., almost like a Bible study, people gather to [read and discuss The Sequences](#), the ur-text that gave rise to the movement.

"Religion is text and story and ritual," said Ilia Delio, a Franciscan sister and professor of theology at Villanova University. "All of that applies here."

Image



The Sequences, by Eliezer Yudkowsky, have guided Rationalist thought. Credit...Loren Elliott for The New York Times

Image



The Lighthouse complex often hosts Rationalist meetings. Credit...Loren Elliott for The New York Times

The Rationalist movement is a lifestyle as much as a set of ideas. The adherents have mixed their focus on A.I. with advice for how to live your life and manage your career. The community embraces unconventional ideas, including polyamory and the genetics of intelligence as well as Effective Altruism which is also a lifestyle. And for aspirational A.I. developers, Rationalist events have become essential networking opportunities.

Gatherings like the Machine Learning Alignment and Theory Scholars program, or MATS, hosted at Lighthouse each summer, are a more important way of getting into the field of A.I. safety than academia, said Sonia Joseph, an A.I. researcher at McGill University in Montreal and the tech giant Meta.

The Rationalists emerged in the late 2000s when an online philosopher named Eliezer Yudkowsky wrote [The Sequences](#), a collection of essays that taught people to re-examine the world through cold and careful thought. This often involved using statistics and probability to inform their decisions. Part tutorial, part entertainment, part mystic journey, Mr. Yudkowsky's essays became a manual for the Rationalist community.

Image



Eliezer Yudkowsky, center, in conversation at Manifest 2023 at the Lighthouse complex. Credit...Jason Henry for The New York Times

In 2010, Mr. Yudkowsky introduced the founders of a British A.I. company [called DeepMind to the venture capitalist Peter Thiel](#), helping to get their company off the ground. Less than four years later, DeepMind was acquired by Google for \$650 million. Now its technology and executives are leading the tech giant's A.I. efforts.

Mr. Yudkowsky also ran a nonprofit dedicated to A.I. safety called the Machine Intelligence Research Institute in Berkeley. Slowly, the movement went global. Rationalist group houses appeared in cities like New York and Boston. Meetings were held in Britain, the Netherlands and Australia.

The first international Effective Altruism summit was held in 2013 at a group house in Oakland, Calif., that served as the live-in headquarters for Leverage Research, a start-up with deep ties to the Rationalist community. Leading figures in the Rationalist community like Mr. Yudkowsky and Mr. Tallinn helped guide the E.A. movement toward their shared concerns about artificial intelligence.

Criticism of the Rationalist and E.A. movements has been frequent, including [claims of sexual harassment in group houses](#) and [complaints](#) about the community's interest in eugenics and race science. The community's reputation was damaged in 2023 after Sam Bankman-Fried, [founder of the cryptocurrency exchange FTX](#), who was one of the primary financial backers of the two movements, was convicted of fraud. But the movement continues to prosper.

Mr. Bankman-Fried had become a financial trader to benefit the most people through E.A. causes, [including the fight to keep A.I. safe](#). In the end, he was found guilty of stealing \$8 billion from his customers.

"When you think about the billions at stake and the radical transformation of lives across the world because of the eccentric vision of this group, how much more cult-y does it have to be for this to be a cult? Not much," said Greg M. Epstein, a Harvard chaplain who saw the rise of the Rationalist and E.A. communities at the university over the last decade and the author of "Tech Agnostic," a book that discusses technology as a new religion.

"What do cultish and fundamentalist religions often do?" Mr. Epstein added. "They get people to ignore their common sense about problems in the here and now in order to focus their attention on some fantastical future."

Each December, hundreds from the community gather in places like the Chabot planetarium in the Oakland Hills and the Freight and Salvage music hall in downtown Berkeley for an annual holiday tradition. They celebrate the Winter Solstice, the longest night of the year, with songs, stories, humor and questions about the fate of the world.

The most recent celebration opened with a song called Uplift, which praised the power of technology throughout human history. Backed by guitar, violin and keyboards, two singers began in the Stone Age and finished in the future. "Light to push the sails, read the data, cities glow! Hands type the keys, click the mouse, out we go!" they sang. "Our voices carry 'round the world and into space! Send us out to colonize another place!"

But Ozy Brennan, a longtime Bay Area Rationalist who served as master of ceremonies that night, warned of clouds ahead. "We face a number of threats our ancestors couldn't have imagined: nuclear war, bioengineered pandemics, artificial intelligence," he said. "If we fail — and there is every chance we might — 100 percent of the children will die, and so will everyone else."

Lighthaven's main building, a Tudor-style home with a pink-and-white facade, was built in 1905. In the 1970s, it became a bed-and-breakfast called the Rose Garden Inn and soon joined Berkeley's list of historic landmarks.

About three years ago, the property was purchased for \$16.5 million by a company called Lightcone Rose Garden, according to property records. The company was owned by Lightcone Infrastructure, which runs LessWrong, the primary online home of the Rationalists. “Light cone” is a physics term the Rationalists and the E.A.s often use to describe the volume of future events they can influence from the current point in time.

Now, Lightcone runs Lighthaven, too. The staff that oversees the property includes Ray Arnold, who [organized the first Secular Solstice](#). It was purchased with money from two of the community’s biggest funders: Mr. Tallinn and Mr. Bankman-Fried, according to a legal complaint. The funds from Mr. Bankman-Fried, which were used as a deposit, were later returned as part of a court settlement.

Outsiders are not always allowed into Lighthaven. Oliver Habryka, the head of Lightcone, declined a request from The New York Times to tour the facility.

Image



Attendees at Manifest 2023, a conference about prediction markets put on by Manifold Markets at the Lighthaven complex. Credit...Jason Henry for The New York Times

Image



The Lighthouse space has been compared to a college campus. Credit... Jason Henry for The New York Times

Image



Alex K. Chen, a longtime member of the Rationalist movement, in his neighborhood in Cambridge, Mass. Credit...Cassandra Klos for The New York Times

Last year, Ms. Joseph, the McGill and Meta researcher, spent the summer at Lighthaven after being accepted into the MATS program. Now almost 30, Ms. Joseph discovered the Rationalist community as a 14-year-old, when she started reading “Harry Potter and the Methods of Rationality.” In the 660,000-word serialized novel, also written by Mr. Yudkowsky, Harry Potter refuses to accept the world of wizardry on blind faith, leaning instead on the laws of philosophy, science and rational thinking. It, too, attracted hundreds of people to the community.

“It attracts outsiders,” Ms. Joseph said. “If you are a gay kid in Kansas who is getting no support from religion, you might discover ‘Harry Potter and the Methods of Rationality’ and find a community that is really accepting.”

Like LessWrong, MATS can be an on-ramp to jobs at A.I. companies. Applicants to the program are often chosen by top A.I. researchers at companies like Anthropic. But for Ms. Joseph and others, the program is more than just a career move.

Looking back on her summer at Lighthouse, she remembered the roses and stone cherubs that lined the path to a three-story building with stained-glass windows. She remembered the glistening mirror at the bottom of the stairs that evoked “Harry Potter and the Methods of Rationality.” She remembered the sign on a locked door that read: “Eliezer Yudkowsky’s Office.”

Image



The grounds at Lighthaven have ornate statues and flowers. Credit... Jason Henry for The New York Times

“All of this feels mythic,” she said. “Even the non-Rationalist scientists find this compelling — the same way the Manhattan Project was compelling. We want to work on something mythic.”

Audio produced by Adrienne Hurst.

Masimo drops conspiracy claim against ex-CEO Joe Kiani

DJ

[dailyjournal.com/articles/387006-masimo-drops-conspiracy-claim-against-ex-ceo-joe-kiani](https://www.dailyjournal.com/articles/387006-masimo-drops-conspiracy-claim-against-ex-ceo-joe-kiani)

Aug. 6, 2025

Masimo dropped its lone conspiracy claim against ousted CEO Joe Kiani, who was accused of colluding with RTW Investments to influence a board vote. Kiani denies all wrongdoing.

Masimo Corp. founder and ousted CEO Joe Kiani was cleared of conspiracy claims the company made against him and other investors over an alleged scheme to manipulate shareholder votes intended to swing a board election in his favor.

"This lawsuit was filed by Politan-controlled Masimo as an effort to avoid paying Kiani what he is owed under his 10-year-old employment agreement," Hueston Hennigan LLP partner John C. Hueston said in a statement Tuesday for the ex-CEO.

On Monday - a week before U.S. District Judge James V. Selna was to hear oral arguments on Kiani's bid to dismiss himself from the case - Masimo's counsel at Quinn Emanuel Urquhart & Sullivan LLP gave notice they were dropping the lone claim against him, for now.

The dropped claim accused Kiani of violating Section 13 of the Securities Exchange Act by allegedly forming a secret shareholder group with RTW Investments and neglecting disclosure obligations. The remaining claim in the case accuses RTW and related individual investor defendants of exploiting that alleged non-public information for short-term gains.

The crux of the amended action, transferred from New York to Santa Ana this year, is the claim that Kiani feared his seat on Masimo's Board of Directors was at serious risk. To inflate shareholder support, Masimo claimed, Kiani colluded with RTW in an "empty voting" scheme by providing them with confidential information and other unlawful communications to influence the company's shareholder meeting last September. *Masimo Corporation v. Kiani et al.*, 2:25-cv-03188 (C.D. Cal., filed April 11, 2025).

Despite these alleged efforts, according to the complaint, Politan Capital Management - one of Masimo's largest shareholders - overwhelmingly won the board election and chose to remove Kiani, which resulted in his resignation.

However, Kiani's counsel vehemently denied any wrongdoing behind the scenes.

"The claim of an 'empty voting' conspiracy between Kiani and RTW was meritless," Hueston's statement continued.

"Politan made this same allegation during the 2024 proxy contest, and it was investigated by Masimo's lead independent director and rejected as untrue. After Politan-controlled Masimo terminated Kiani, it resurrected this claim in the hopes of finding a basis to avoid paying Kiani what he is owed under his employment agreement. But now, to avoid a neutral judge's scrutiny, Politan-controlled Masimo chose to dismiss the claim rather than face another contested loss."

One of Masimo's attorneys, Quinn Emanuel partner Harry A. Oliver Jr., said Tuesday the company's counsel was unable to comment on the case. A spokesman for Masimo declined to comment.

In a response to Kiani's dismissal motion, when the case was still in New York, Masimo's then-counsel at Schulte Roth & Zabel LP asserted the company's complaint was sufficiently alleged. They also sought an injunction that required Kiani to fully disclose his relationship with RTW through related U.S. Securities and Exchange Commission (SEC) filings.

Key arguments made in the opposition brief included alleged details of Kiani's purported secret communications with RTW months before the board election took place. This included, for example, an alleged photo of a whiteboard that showed confidential voting totals and RTW's increased stake position that, according to Masimo's brief, was one of many inferences that supported their concerted activity theory.

The amended complaint alleges that because RTW is still a shareholder, they still share Kiani's personal interests.

However, Kiani's attorneys argued in their dismissal motion that these claims were all made in a mooted historical context because the board election already took place and did not justify the injunction Masimo sought.

Specifically, Kiani's counsel argued Masimo's claimed injury was "remote or speculative" rather than "actual and imminent" because the alleged secret group failed and RTW significantly reduced its ownership interest in the company.

Additionally, Kiani's counsel argued their client's communications with RTW was normal corporate procedure and any persuasive speech was required of him when he spoke to investors.

Meanwhile, the other RTW defendants denied the alleged collusion and contended they merely acted to protect their own financial interests as long-term Masimo investors if Kiani ever left the company. Their motion to dismiss is pending before Selna.

#387006

Devon Belcher

Daily Journal Staff Writer

devon_belcher@dailyjournal.com

Securities Law News

UK FCA Fines Woodford £46 Million After His Fund Collapsed (1)

Aug. 5, 2025, 3:36 AM PDT

The UK's Financial Conduct Authority fined **Neil Woodford**, the once-renowned investment manager, and his fund empire a total of £46 million (\$61.1 million) over shortcomings in the lead up to the fund's collapse.

Woodford himself was fined £5.88 million, one of the largest ever individual penalties, and banned from holding senior manager roles in the industry and managing funds for retail investors, according to a statement on Tuesday. Woodford Investment Management received a fine of £40 million. Both Woodford and the company are challenging the decision in the Upper Tribunal.



Neil Woodford

Source: Woodford Investment Management

Woodford Investment Management imploded in June 2019 in one of London's most dramatic collapses in recent years, trapping thousands of retail investors and around £3.7 billion in assets.

Woodford now offers a subscription service to his investment strategies, Woodford Views, via a United Arab Emirates-registered firm called W Four Point Zero FZE LLC.

The FCA found that in the months before the collapse, both WIM and Woodford "made unreasonable and inappropriate investment decisions" regarding the Woodford Equity Income Fund by selling a disproportionate amount of liquid investments and buying less liquid ones.

"This meant that at the time of suspension only 8% of the investments held by WEIF could be sold within seven days," the FCA said in the statement. "Mr. Woodford's and WIM's failings led to a significantly increased risk of the fund being suspended."

The City of London watchdog previously found that Woodford failed to ensure that the fund had a reasonable and appropriate approach to liquidity when making investment decisions, even in the face of ongoing redemptions and fund outflows. The FCA also censured the fund's administrator Link Fund Solutions. It has since overseen a £230 million compensation program.

“The enforcement action does not reflect a balanced assessment of evidence,” Woodford Investment Management said in a statement. Neil Woodford and WIM “have great sympathy for their investors who were impacted by the suspension, and who suffered financial loss when the Fund was liquidated.”

WIM said FCA officials were “fully sighted” on the fund’s liquidity and gave no indication that they considered the management of the liquidity to be inappropriate or unreasonable.

(Updates with comment from Woodford in seventh paragraph.)

To contact the reporters on this story:

Jenny Surane in London at jsurane4@bloomberg.net;

Jonathan Browning in London at jbrowning9@bloomberg.net

To contact the editors responsible for this story:

Tom Metcalf at tmetcalf7@bloomberg.net

Marion Dakers, Jeremy Hodges

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Yacht Listing Co. Tells 11th Circ. Sellers Agree To Arbitrate

By **Matthew Perlman**

Law360 (August 5, 2025, 5:18 PM EDT) -- A yacht listing service told the Eleventh Circuit that sellers agree to arbitrate any claims related to the platform when a broker lists their vessel, as it looks to force arbitration in a case accusing it of conspiring with others to inflate broker fees.

Yatco LLC filed its opening brief Monday for its appeal of a Florida federal court's order denying a request to compel arbitration for the claims, based on subscriber agreements signed by brokers that list boats on the platform.

The brief said the sellers are bound by the agreements because the brokers are listing the boats on their behalf and argued that the arbitration provisions are an integral part of Yatco's business because they allow it to operate with certainty.

"It would be unfair and contrary to Florida law to permit a vessel owner to accept the benefits of listing on Yatco through a broker, without regard to the corresponding conditions," Monday's brief said. "Because seller's contractually authorized agent agreed to arbitration as a condition of listing the plaintiff's vessel for sale, each such plaintiff is bound to arbitrate any claims against Yatco."

The proposed class action alleges that brokers, trade groups and listing services conspired to inflate the fees brokers collect for the sale of preowned yachts, including through trade association rules the sellers say result in a 10% fee that gets split between brokers working for the buyer and seller.

The sellers contend the rules are similar to those being challenged in the **real estate industry** where the National Association of Realtors and a number of larger brokerages have agreed to around \$1 billion in settlements with home sellers that claim they paid inflated fees due to broker commission rules.

In addition to Yatco, the suit also names several brokerages, trade associations including the Yacht Brokers Association of America Inc., and Boats Group LLC, which owns a number of multiple listing services.

U.S. District Judge K. Michael Moore denied Yatco's bid in January to force the claims against it into arbitration.

The judge then issued an order dismissing the case against all the defendants with leave to amend, finding a lack of evidence showing there was an agreement or conspiracy. The court later vacated the dismissal order and put the case on hold pending the outcome of Yatco's appeal.

Yatco contended in Monday's brief that it has been unable to provide the actual subscriber agreements signed by brokers who listed the yachts owned by the sellers bringing the case because the sellers have declined to identify their brokers, the names of their boats or when they were listed on the service.

Nevertheless, the company argued that it does not accept listings without a signed subscriber agreement, which it said has contained the same arbitration provisions throughout the proposed class period. The brief also said Yatco requires brokers to provide proof of a listing agreement for a particular boat before it's listed to show their "agency."

"Contrary to plaintiffs' arguments and the district court's ruling, the brokers for the yet-identified vessel owners who used Yatco's services were acting subject to the vessel owner's authorization or control when the vessel owner allowed its broker to list the vessel for sale on Yatco's websites," the brief said. "Therefore, the principal boat owners are bound to the terms agreed to by their broker-sale agents."

The lower court rejected the arbitration bid after finding that Yatco had failed to establish the broker formed an agency relationship with the seller at the time the broker signed the subscriber agreement, because that agreement was signed first and lasted indefinitely. But the brief argued that a Florida state appellate ruling involving the Miami Dolphins has since addressed this issue.

In that case, the court found a woman injured at Hard Rock Stadium during a football game she attended with her mother was bound by arbitration provisions agreed to by her mother when she logged in to download the tickets.

"As part of the login process, and before there was any agency relationship formed between mother and daughter with respect to these tickets, plaintiff's mother agreed to the terms of use," the brief said. "The Third District found that when the plaintiff allowed her mother to present the tickets for admission to the stadium, her mother acted as her agent and the plaintiff was bound to arbitrate by principles of agency."

An attorney for Yatco, Roy E. Fitzgerald of Taft Stettinius & Hollister LLP, told Law360 on Tuesday that the Miami Dolphins decision was issued after the arbitration decision in the yacht case and said it's a little different but very persuasive on the issue.

"That case is squarely on point as to, can an agent bind a principal when it comes to arbitration provisions," he said. "Judge Moore didn't have it, but it's there now and it has to be dealt with."

Fitzgerald also said Yatco has nothing to do with setting broker fees and is only concerned that brokers have authority to list the boats.

"Our client doesn't care if your percentage is 50% or 0.1%, it doesn't matter to them," he said. "They just wanted to know you had authorization to list the boat on their site."

Representatives for the sellers did not immediately respond to a request for comment Tuesday.

The sellers are represented by Paul J. Geller, Mark J. Dearman, Stuart A. Davidson and Lindsey H. Taylor of Robbins Geller Rudman & Dowd LLP, Lea P. Bucciero, Ricardo M. Martinez-Cid and Matthew Weinshall of Podhurst Orseck PA, Kevin D. Neal, William F. King and Kenneth N. Ralston of Gallagher & Kennedy PA, Hunter J. Shkolnik, Salvatore C. Badala, Rebeca Martínez and Nestor D. Galarza of Napoli Shkolnik PLLC, Lee Albert and Brian D. Brooks of Glancy Prongay & Murray LLP and Michael J. Boni, Joshua D. Snyder, John E. Sindoni and Benjamin J. Eichel of Boni Zack & Snyder LLC.

Yatco is represented by Alan B. Rose, Roy E. Fitzgerald, Gregory S. Weiss and Tracy Segal Foust of Taft Stettinius & Hollister LLP.

The appeal is Ya Mon Expeditions LLC et al. v. Yatco LLC, case number 25-10140, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by David Minsky and Lauren Berg. Editing by Jay Jackson Jr.



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Key Opioid Theory Actually Irrelevant, Drug Cos. Tell 4th Circ.

By **Jeff Overley**

Law360 (August 5, 2025, 10:23 PM EDT) -- With federal judges in West Virginia suddenly split over the central legal theory in opioid litigation, major drug distributors are insisting the theory actually doesn't matter, telling the Fourth Circuit it can uphold their triumph in a landmark trial without even touching the hot-button issue.

Monday's assertion from AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp. followed a recent ruling — **flagged last month** by the distributors' legal adversaries — that opened new fissures among West Virginia jurists regarding the "public nuisance" theory in opioid crisis cases.

The ruling by a Northern District of West Virginia judge cited extensive criticism of **a 2022 opinion** by a Southern District of West Virginia judge, who balked at applying the nuisance doctrine and sided with the companies after the first opioid trial in federal court. But in Monday's filing, the distributors disputed the new ruling's relevance, saying the Fourth Circuit can affirm their win over West Virginia's Cabell County and its largest city, Huntington, based simply on factual findings.

"Contrary to plaintiffs' suggestion, there is no need for this court to decide [the nuisance] issue given the multiple independent bases for affirmance that do not turn on this question," the nation's three largest drug distributors wrote.

When Cabell County and Huntington alerted the Fourth Circuit to the July 23 ruling by U.S. District Judge John Preston Bailey in a case against pharmacy benefit managers, they averred that it contained several "notable features," including that Judge Bailey "rejected the district court's decision in this case." The distributors Monday largely refrained from rebutting that observation; instead, they contended merely that Judge Bailey was forced to speculate about whether the West Virginia Supreme Court of Appeals might deem the nuisance theory viable.

"The district court had no choice but to make an ... educated guess given the posture of the case at the motion to dismiss stage," Monday's response said of Judge Bailey's decision.

The Fourth Circuit in early 2024 **sought the views** of the West Virginia Supreme Court on the public nuisance claims, but the state's high court in May **declined to weigh in**, saying that "disputed factual findings" prevented it from tackling the legal issue.

Those factual findings relate to the wholesalers' shipments — more than 50 million doses of oxycodone and hydrocodone over less than 10 years to a county with less than 100,000 people — and their role in some of the highest overdose rates in both the state and the nation. In the 2022 opinion, U.S. District Judge David A. Faber found that the municipalities had not proven unreasonable conduct that fueled widespread narcotic abuse, and the companies Monday said his decision should stand on the basis of those findings, without even answering the nuisance question.

"This court need not reach that question, because the trial court based its decision on four separate findings that assumed West Virginia public nuisance law applied," the three companies wrote.

Throughout the multiyear appeal, the drug distributors have sought to dissuade the appeals court from saying whether the public nuisance theory — traditionally used in cases involving bothersome properties — can **apply to lawful products**. That theory, which implicates state-specific laws as well as broader tort principles, has pervaded thousands of opioid crisis lawsuits and divided numerous

courts.

Well-known examples of decisions **rejecting** the theory have come from the Ohio Supreme Court and Oklahoma Supreme Court. Prominent examples of contrary decisions — and **criticism** of Judge Faber's holding in particular — have come from West Virginia's Mass Litigation Panel and federal judges overseeing two sets of multidistrict litigation involving the opioid crisis.

An attorney for Cabell County and Huntington didn't immediately respond to a request for comment Tuesday.

Cabell County and Huntington are represented by Powell & Majestro PLLC and Motley Rice LLC, respectively, and by Kellogg Hansen Todd Figel & Frederick PLLC.

AmerisourceBergen is represented by Reed Smith LLP.

Cardinal Health is represented by Williams & Connolly LLP.

McKesson is represented by Covington & Burling LLP.

The cases are City of Huntington, West Virginia et al. v. AmerisourceBergen Drug Corp. et al., case number 22-1819, and Cabell County Commission v. AmerisourceBergen Drug Corp. et al., case number 22-1822, both in the U.S. Court of Appeals for the Fourth Circuit, and Ohio County Commission et al. v. Express Scripts Inc. et al., case number 5:24-cv-00142, in the U.S. District Court for the Northern District of West Virginia.

--Editing by Jay Jackson Jr.

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OptumRx Urges Panel To DQ Motley Rice In LA Opioid Suit

By **Craig Clough**

Law360 (August 5, 2025, 10:37 PM EDT) -- OptumRx told a California appellate panel Tuesday that Motley Rice should be disqualified from representing Los Angeles County in a lawsuit alleging it colluded with drugmakers to fuel the opioid crisis, saying the firm violated state law by using confidential information obtained in the case in other lawsuits it's handling against Optum.

An attorney for Optum argued during a hearing in Los Angeles that a lower court erred in denying its motion to disqualify Motley Rice from the suit, which also targets other major pharmacy benefit managers, because the firm is representing plaintiffs in various jurisdictions in private litigation against Optum.

Andrew Hatchett of Alston & Bird, who represents Optum, said Motley Rice's actions violate a state law meant to protect "the integrity of government service" by preventing government lawyers from being "incentivized to wield government power for their own personal financial gain."

Frederick C. Baker of Motley Rice told the Second Appellate District panel that a lower court judge correctly found that all the elements required in the state law to trigger a disqualification were not met, and that Optum is often arguing that confidential material discovered in the lawsuit is also confidential government material.

Los Angeles County filed the suit **in 2023** alleging Express Scripts, Medco Health Solutions, OptumRx Inc. and their related entities created a public nuisance by implementing deceptive business practices that are exacerbating the opioid crisis and allowing more prescription opioids to enter the market than necessary for legitimate, safe or appropriate medical use. The firm has represented the county since the suit was filed.

The defendants are pharmacy benefit managers, or PBMs, which decide whether and how drugs should be covered by employers and insurance companies, and are often hired by third-party payors like government entities, insurers and employers.

PBMs, which act like intermediaries, also design prescription drug benefit programs and establish national formularies — lists of generic and brand-name drugs covered by health plans — that set the rubric and terms under which drugs are reimbursed, according to the suit.

But the defendants have schemed with drugmakers by giving favorable placement of certain opioids on their standard national formularies without restrictions on their usage approval, the county claims. The PBMs are incentivized by rebates and administrative fees paid by drugmakers, according to the county.

Optum filed a motion in June 2024 to disqualify Motley Rice from the case, saying the firm's representation of the county violated California Rule of Professional Conduct 1.11(c), which it said prohibits attorneys from using information "gained from their government investigations in separate contingency-fee litigation for other clients."

According to the motion, Motley Rice also represented other state attorneys general and city prosecutors, including for Hawaii, the District of Columbia and the city of Chicago, in similar litigation, then used information gained in those cases to serve "sweeping subpoenas" on Optum in the current suit, which resulted in the firm coming into possession of a slew of confidential information about

Optum's business practices.

"Like virtually all government investigations, those details are shielded from public view," Optum said in its motion to the Los Angeles Superior Court. "Once Motley Rice obtained the confidential information about OptumRx through their government service, the ethics rules prohibited Motley Rice from taking on any representation as private lawyers in which they could (not would) use that confidential information to OptumRx's material disadvantage."

Optum previously argued that Motley Rice violated rule 1.11(c) by representing various plaintiffs in private litigation against Optum, including in **multidistrict litigation** in Ohio federal court. However, the motion was denied by Los Angeles County Superior Court Judge David S. Cunningham III, who cited in his order the Ohio court's rejection of a similar attempt to disqualify Motley Rice.

Judge Cunningham said that four elements needed to be met to disqualify Motley Rice: that the lawyer be a public official or employee, have acquired confidential government action about a person, and be attempting to represent private interests adverse to that person, and that the representation is in a matter in which the confidential government information could be used to disadvantage that person.

Judge Cunningham said Optum failed to satisfy the second and fourth elements. On the second, the judge found that Optum's request to depose Motley Rice's attorneys to inquire if they obtained confidential government information "is an admission that the contention is speculative, vague, and amorphous."

On the fourth element, the judge agreed with the MDL court's analysis, which found it "obvious Motley Rice's possession and knowledge of the investigation documents cannot, by itself, cause a material disadvantage to OptumRx, when every other plaintiff's attorney also has them. No further analysis is necessary."

Hatchett told the panel Tuesday that they are the first court in California to deal with the interpretation of the rule.

"I would say if you go back a century, government lawyers have understood that you can't investigate a company and then turn around and sue the company for something related to that investigation," Hatchett said. "There's a reason we don't have a lot of cases on this because it just doesn't happen,"

If the panel adopts the government's interpretation, Hatchett said, government attorneys would not be prevented from using their position to launch "lucrative financial returns. I believe that is the reason the rule exists. It is to prohibit and prevent that sort of corrupt incentive."

Baker told the panel the lower court was correct in finding that Optum did not "tick" all the boxes needed in Rule 1.11(c) to disqualify the firm and that "it is not obvious because it is a corporate document that is produced in a government investigation that it becomes confidential government information."

He also argued that if the information could only be acquired through government action it should be labeled as "confidential" government information, but "here, as we've seen, it could be obtained through routine discovery."

Justices Brian M. Hoffstadt, Dorothy C. Kim and Carl H. Moor sat on the panel for the Second Appellate District.

Optum was represented at the hearing by Andrew Hatchett of Alston & Bird.

Motley Rice was represented at the hearing by Frederick C. Baker of Motley Rice.

The case is People of the State of California v. OptumRx Inc., case number B343828, in California's Second Appellate District, Division Five.

--Additional reporting by Gina Kim.



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Lead Kicked From Pharma Investor Case Over Rogue Emails

By **Emily Sawicki**

Law360 (August 5, 2025, 7:37 PM EDT) -- The lead plaintiff in a securities class action against Spectrum Pharmaceuticals in Manhattan federal court was removed from the case Tuesday when a federal judge found he broke confidentiality rules by going behind his lawyers' backs in an attempt to push his own settlement plan and fixating on unrelated conspiracy theories.

Named plaintiff Steven B. Christiansen may no longer represent the proposed class, which accuses Spectrum of misleading investors about a lung cancer treatment drug study, U.S. District Judge Valerie Caprioni ruled, ordering lead plaintiffs' counsel to initiate the process of finding his replacement.

The consolidated proposed class action accuses Spectrum of unlawfully representing that its cancer treatment drug was successful while knowing it was not, allegedly causing share prices to drop by more than 37% when news broke that the U.S. Food and Drug Administration had concerns over the results of clinical trials.

Several similar suits were launched from late 2022 into 2023, Judge Caprioni noted in her order on Tuesday. Complaints were consolidated and four plaintiffs threw their hats in the ring for consideration as lead plaintiff. Judge Caprioni selected Christiansen after finding he was "the most adequate of the movants."

In January 2024, Judge Caprioni **denied** Spectrum's motion to dismiss the suit and discovery commenced. Two months later, Spectrum brought an answer, largely denying allegations and asserting 27 affirmative defenses.

The proposed class moved for certification on Oct. 30, with Christiansen as lead plaintiff and Jeffrey P. Campisi of Kaplan Fox & Kilsheimer LLP as class counsel.

The proceeding ground to a halt soon after, when Judge Caprioni ordered a stay following Spectrum's allegations that Christiansen had "sent multiple emails to a third-party investor relations consulting firm that provides consulting services to Spectrum's parent company, Assertio Holdings, discussing this action."

Spectrum alleged that Christiansen had "characterized confidential settlement communications between the parties during mediation" and pushed for a private "phone conference" so he could strike his own settlement deal on behalf of himself and a group he runs called the Columbine Commission.

Purportedly modeled after the Warren Commission, according to Spectrum's motion to disqualify Christiansen, the Columbine Commission allegedly focuses on uncovering what members believe is a conspiracy to "hide the truth" behind the 1999 mass shooting at Columbine High School in Littleton, Colorado.

Judge Caprioni related similar findings in her order on Tuesday, writing that, "As best the court can discern, the Columbine Commission is an organization founded by Christiansen to expose a purported conspiracy to conceal facts about the 1999 Columbine High School shooting."

Spectrum notified Christiansen's Kaplan Fox lawyers about his communications with the consultant,

and the plaintiffs' counsel responded that Christiansen told them he had not "communicated settlement negotiation details with any other third parties" and "promise[d] that he would not communicate about the case to anyone other than his attorneys," the judge noted.

Kaplan Fox then reportedly filed an additional, materially identical class action complaint on behalf of a new plaintiff named Nizar Sami Ayoub, the judge said, soon after filing for class certification and seeking to have Ayoub named as an additional class representative.

Judge Caprioni ordered the parties to show cause why the cases should not be consolidated, which is when Spectrum brought its motion to disqualify Christiansen and moved to stay. In response, Christiansen pledged he would no longer contact Assertio or Spectrum, or any associates of the companies, Judge Caprioni said.

In February, Christiansen filed a pro se letter to the court — without input from counsel — "detailing various conspiracy theories about the Columbine High School shooting, defending his right to engage in settlement discussions directly with Assertio, and accusing defendants' counsel of abridging his First Amendment rights," Judge Caprioni said.

Christiansen's Kaplan Fox attorneys had previously argued that their client had "mistakenly believe[d] that he was communicating directly with Assertio management" while discussing the settlement negotiations in emails. However, Judge Caprioni found that Christiansen's pro se letter maintaining his "right" to speak directly to Spectrum's parent company directly contradicted that argument.

The judge further noted that Christiansen's focus on the Columbine Commission indicates a conflict.

"The fact that Christiansen has repeatedly invoked his belief in conspiracy theories — first in his communications with [the consulting firm] and then in his letter to the court — suggests that his interest in this case is driven, at least in part, by a desire to further his personal convictions," Judge Caprioni said, finding his "insistence of discussing them" to be in conflict with the larger class' interests.

It was not yet clear who the next lead plaintiff should be, Judge Caprioni said, because neither of the two other plaintiffs who the court considered for the position appear well-qualified.

Though class counsel nominated Ayoub for the role, Judge Caprioni said she was not willing to unquestioningly accept the plaintiff selected by lead counsel.

No specific rules are in place for this scenario, Judge Caprioni said in her opinion, but following out-of-circuit precedent, the judge ordered Kaplan Fox to publish notice to potential class members to move for lead plaintiff status.

Under the Private Securities Litigation Reform Act, class members are given 60 days to file motions to serve as lead counsel, the judge noted, but given that this is the second call for candidates, Judge Caprioni halved the time period, ordering Kaplan Fox to put out the call for 30 days.

The case will remain stayed until a new plaintiff is selected, Judge Caprioni ordered.

Counsel for the proposed class and Spectrum Pharmaceuticals did not immediately respond to requests for comment Tuesday.

The proposed class is represented by Robert N. Kaplan, Brandon Fox, Jeffrey P. Campisi and Jennifer Ligansky of Kaplan Fox & Kilsheimer LLP.

Spectrum Pharmaceuticals and the individual defendants are represented by James J. Beha II, John B. Lawrence, Kevin M. Sadler, Eric R. DuPont and Scott Powers of Baker Botts LLP.

The case is Christiansen et al. v. Spectrum Pharmaceuticals Inc. et al., case number 1:22-cv-10292, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price. Editing by Marygrace Anderson.

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Fat Brands Shareholder Disputes Settle With \$10M Payout

By **Rae Ann Varona**

Law360 (August 5, 2025, 10:40 PM EDT) -- Fat Brands Inc.'s chairman and some of the restaurant franchising company's former directors announced Tuesday they agreed to settle a pair of shareholder derivative lawsuits pending in Delaware's Chancery Court that alleged breaches of fiduciary duties concerning a 2020 merger and a 2021 recapitalization.

Fat Brands said that the settlement would resolve all claims lodged against the suits' named defendants, including Fat Brands' founder, chairman and former CEO Andrew A. Wiederhorn, "without any liability or wrongdoing attributed to them personally or the company."

As part of the deal, which is subject to court approval and consent from the federal government, Fat Brands said it will receive \$10 million, a portion of which will go towards the shareholders' counsel fees.

Fog Cutter Capital Group Inc., which merged with Fat Brands, is also required to surrender 200,000 shares of Twin Hospitality Group Inc. stock to Fat Brands.

Fat Brands said its board of directors also agreed to implement corporate governance improvements.

The parties filed a **stipulation and agreement of settlement** on Friday.

Fat Brands is the Beverly Hills, California-based restaurant conglomerate behind brands such as Fatburger, Johnny Rockets, Yalla Mediterranean, Buffalo's Cafe and Ponderosa Steakhouse.

Shareholders James Harris and the estate of Adam Vignola filed the derivative action on behalf of Fat Brands in June 2021, accusing Wiederhorn of using the company as a "discount lender and plaything" in a scheme to take out large personal loans that he didn't have to repay.

The shareholders alleged Wiederhorn, who was also Fat Brands' CEO until he stepped down in March 2023, caused the conglomerate to loan nearly \$40 million to his holding company Fog Cutter, which wields control over a majority of Fat Brands' shares. They claimed that Fog Cutter transferred the loans to Wiederhorn, who then allegedly merged the two companies in 2020 to negate his obligation to repay the loans.

The shareholders filed a separate derivative action in March 2022, alleging breaches of fiduciary duties and unjust enrichment stemming from the approval of a 2021 recapitalization transaction.

Fat Brands' board of directors formed a special litigation committee in late January 2023 after a mediation attempt with Harris and Vignola failed. The court subsequently stayed the case for six months that February to allow the special committee to conduct an investigation.

But on March 28, 2023, Fog Cutter removed all the company's board members — including those on the special committee — except for Wiederhorn.

Delaware Vice Chancellor Nathan A. Cook, to whom the suits were assigned, **lifted the stay** in April 2023 after learning of the board purge, and he also denied a motion to dismiss the second derivative action.

The proposed settlement comes after the U.S. Department of Justice **intervened** in the first action, and a federal grand jury returned an indictment against Wiederhorn, Fat Brands and two others in May 2024, asserting, among other things, that he caused Fat Brands and Fog Cutter to compensate him roughly \$47 million between 2019 and January 2021 through illegal means, according to the stipulation.

The DOJ, however, seems keen on dropping the case; a California federal court on Friday ordered it to **explain** why it wants to.

Friday's stipulation also states that in December, hospitality company Twin Hospitality Group Inc. issued a new stock in a spinoff that would lead to Fat Brands holding roughly 95% of its common stock and Fat Brands' stockholders receiving the remaining Twin Hospitality common stock in the form of a dividend.

The parties and **another special litigation committee** participated in a mediation session in January, according to the filing.

The agreed-upon reforms to Fat Brands' governance also filed on Friday include the addition of three new independent directors, a whistleblower hotline, and the hiring of a public-company-experienced chief financial officer, controller and general counsel.

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

The company is also required to disclose to stockholders any consideration Wiederhorn would receive that is different from other similarly situated stockholders if Fat Brands is sold while it remains publicly reporting.

The shareholders are represented by Stephen E. Jenkins of Ashby & Geddes, Donald J. Enright, Elizabeth K. Tripodi and Brian D. Stewart of Levi & Korsinsky LLP, and David Seamus and Kaskela Adrienne Bell of Kaskela Law LLC.

Wiederhorn and Fog Cutter are represented by Martin S. Lessner, Elisabeth S. Bradley and Kevin P. Rickert of Young Conaway Stargatt & Taylor LLP, and John P. Stigi III and Kristin P. Housh of Sheppard Mullin Richter & Hampton LLP.

The other director defendants are represented by Brock E. Czeschin of Richards Layton & Finger PA, and J. Warren Rissier of Morgan Lewis & Bockius LLP.

The new special litigation committee is represented by John P. DiTomo and Alexandra M. Cumings of Morris Nichols Arsht & Tunnell LLP.

The case is James Harris et al. derivatively on behalf of Fat Brands Inc. v. Junger et al., case number 2021-0511, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery, Joyce Hanson, Anna Scott Farrell and Elliot Weld. Editing by Adam LoBelia.



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Tesla Hit With Suit Over Autonomous Vehicle Issues

By **Spencer Brewer**

Law360 (August 5, 2025, 2:22 PM EDT) -- A Tesla Inc. investor has launched a proposed securities class action against the company in Texas federal court, claiming it overhyped its autonomous driving vehicles despite flaws that led to regulatory and legal blowback, including a recent \$329 million verdict involving the Autopilot feature.

Investor Denise Morand launched the suit Monday, telling the court Tesla knew about significant risks with its autonomous driving vehicles, including the robotaxis the company launched this year, and lied to investors about the vehicles' safety. The company's stock dropped by 6% after it debuted its robotaxi service, and after the class period Aug. 1, a Miami jury found that Tesla should be **held partly liable** for a fatal April 2019 crash involving the company's Autopilot.

"As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages," Morand said.

Tesla's former Chief Financial Officer Zachary Kirkhorn and its current CFO Vaibhav Taneja together sold roughly 15,000 shares during the class period, according to the complaint. Kirkhorn netted about \$1.6 million and Taneja raked in about \$2.5 million, Morand told the court, and both Kirkhorn and Taneja had knowledge that their public statements were misleading investors.

"In so doing, defendants participated in a scheme to defraud and committed acts, practices, and participated in a course of business that operated as a fraud or deceit on purchasers of the company's securities during the class period," Morand said.

During the class period of April 19, 2023, to June 22, 2025, Tesla and its executives repeatedly made false statements about its autonomous vehicles, Morand said. In April 2022, Tesla's CEO Elon Musk announced that the company would launch a robotaxi vehicle and in June this year the company rolled out the service.

Following the launch, multiple publications reported that Tesla's robotaxis repeatedly violated traffic laws and the U.S. National Highway Traffic Safety Administration reportedly contacted Tesla over the safety of its vehicles, according to the complaint. Following those reports, Tesla's stock fell \$21.13 per share over two trading sessions, to close at \$327.55 per share on June 25, 2025, Morand said.

After the end of the class period, a Miami jury on Aug. 1 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.

Tesla violated the Exchange Act with its false statements, according to the complaint. Morand asked the court to certify the class, award damages and award prejudgment and postjudgment interest, as well as reasonable attorney fees, expert fees and other costs.

Representatives for the parties didn't immediately respond to a request for comment Tuesday.

Morand is represented by Willie C. Briscoe of the Briscoe Law Firm PLLC and Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP

Counsel information for Tesla was not immediately available Tuesday.

The case is Morand v. Tesla Inc et al., case number 1:25-cv-01213, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Carolina Bolado. Editing by Stephen Berg.

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McDermott Investors Say One Class Is Enough In Fraud Case

By **Catherine Marfin**

Law360 (August 5, 2025, 7:41 PM EDT) -- An employee retirement plan leading an investor class action against McDermott International Inc. asked the Fifth Circuit on Tuesday to reverse an order certifying two subclasses of investors based on whether they held stock before or after a 2018 merger.

Matthew L. Tuccillo of Pomerantz LLP, counsel for the Nova Scotia Health Employees' Pension Plan, said during oral arguments that separating McDermott stock purchasers and stockholders of McDermott-acquired storage company CB&I, shares of which automatically converted to McDermott stock following the merger, was "a distinction without a difference."

The trial court created the two subclasses based on the reasoning that there was a conflict between the Nova Scotia Health Employees' Pension Plan and the full class of investors because the plan acquired McDermott stock through the conversion of CB&I stock post-merger. But Tuccillo told the court Tuesday that the interests of the two subclasses are "aligned."

"Pre-merger purchasers and converters are aligned in seeking to prove that McDermott's pre-merger statements were fraudulent and inflationary," he argued. "These concessions fatally undermined any fundamental conflict arguments that they're going to make. Moreover, pragmatically speaking, there's no indication of any actual conflict."

The Nova Scotia Health Employees' Pension Plan's suit against McDermott and its former CEO and CFO stems from the company's stock-for-stock acquisition of the storage business CB&I, which was announced in 2017 and completed in 2018. The class alleged that CB&I hid more than \$1 billion in costs and was "basically bankrupt" at the time of the merger, eventually leading to McDermott's bankruptcy in January 2020.

Partially at issue in this appeal is whether the Nova Scotia Health Employees' Pension Plan, referred to as NSHEPP, was correctly selected as the lead plaintiff for the proposed class. According to McDermott, discovery eventually revealed that the plan never purchased any McDermott stock.

Both McDermott and the plan took the case to the Fifth Circuit in July 2024 after the trial court created the two subclasses. McDermott is asking the court to reverse both class certifications, while the plan is asking the court to uphold only the class certification order that applies to them.

McDermott counsel Amy Pharr Hefley of Baker Botts LLP argued that the Nova Scotia Health Employees' Pension Plan subclass lacked standing to sue because it could not plausibly be harmed by the merger under its theory of the case.

Because the plan alleged that CB&I shares were artificially inflated before the merger's announcement, the alleged inflation would have been reduced once the plan's shares were converted into McDermott stock, which was not inflated, Hefley argued.

"The allegation is all the undisclosed problems are over here at CB&I, which means there's a ball of inflation hanging out in the CB&I stock price," she told the panel. "Then when the merger's announced, they allege that McDermott stock price somehow became inflated at that announcement. But both stock prices went down, which means they must be claiming that the McDermott stock price would've gone down even more had the truth been revealed in the merger announcement. But it's

not plausible that the CB&I stock price would've gone down by somehow less than that."

Hefley added that McDermott stock purchasers are incentivized to claim that CB&I stock was inflated, creating the conflict between the classes.

"If you're a true McDermott purchaser, and you know that McDermott's liabilities have been discharged in the bankruptcy, any recovery against McDermott will be limited to its director and officer liability insurance policies," she said. "If that's the case, then the McDermott purchasers are incentivized to say those CB&I exchangers, they benefited. CB&I had a lifeline here. They should not be in this class, but Mr. [Tuccillo] and Nova Scotia will never make that argument. They can't make that argument because that defeats their standing."

U.S. Circuit Judges Jacques L. Wiener Jr., Don R. Willett and James C. Ho sat on the panel for the Fifth Circuit.

The plan is represented by Matthew L. Tuccillo, Jeremy Alan Lieberman, Jennifer Banner Sobers and Zachary Denver of Pomerantz LLP.

McDermott is represented by Angela C. Zambrano, Mason Parham and Phillip Shaverdian of Sidley Austin LLP and David D. Sterling, Amy Pharr Hefley, J. Mark Little, Anthony J. Lucisano and Frank Mace of Baker Botts LLP.

The case is Nova Scotia Health Employees' Pension Plan v. McDermott International Inc. et al., case number 24-20326, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Rich Mills.



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Voyager Digital's Former Bank Escapes Fraud Suit, For Now

By **Sydney Price**

Law360 (August 5, 2025, 9:32 PM EDT) -- Voyager Digital's former bank, Metropolitan Commercial Bank, has won dismissal of a 53-count suit alleging it was complicit in bad behavior by the now-defunct crypto lender and should be on the hook for repaying platform users, with the court ruling that the complaint as-is does not plausibly plead fraud or unjust enrichment.

An order signed Monday by U.S. District Judge Paul A. Engelmayer said that out of respect for the interests of the former Voyager customers, he will give Voyager's bankruptcy plan administrator Michael Wyse a final chance to amend the deficient complaint.

Wyse filed the **suit** in November on behalf of more than 30,000 former Voyager customers alleging that Metropolitan appointed Voyager as its representative to market and solicit crypto services to retail customers, despite Voyager falsely marketing its platform as safe, legal and insured by the Federal Deposit Insurance Corp.

The complaint alleged Metropolitan aided and abetted Voyager's misleading statements about partner risk and the safety of its platform, which at one point had more than 3.5 million customers and more than \$5.6 billion in assets. Voyager owed its U.S. customers more than \$1.7 billion, "a significant portion of which" still has not been returned, Wyse said.

Judge Engelmayer said Monday that the suit does not show any of the former Voyager customers actually relied on any alleged misrepresentation or omission, whether made by Metropolitan or Voyager, which is "fatal" to the suit's 38 fraud claims.

"[The complaint] does not identify a single assignor by name," Judge Engelmayer said. "It does not plead that any particular assignor saw any particular statement. It does not plead that any particular assignor relied on any particular statement in making any relevant decision, e.g., whether to deposit fiat or crypto with Voyager."

Wyse alleged Metropolitan's arrangement with Voyager allowed the crypto company "to reap the benefits of its fraud." And Voyager's use of the bank's good name and associated FDIC insurance in the crypto company's marketing "lent false credibility to Voyager and helped lull retail customers into believing that they could use Voyager's platform as safely as holding savings with a bank," Wyse said.

Metropolitan also schemed with Voyager to circumvent money transmission laws designed to protect customers from the harms they suffered when Voyager filed for bankruptcy in 2022, according to the complaint.

Monday's order dismissed the suit's unjust enrichment claim on the grounds that it duplicates the fraud claim.

"Where the unjust enrichment claim is based on the theory that the defendant committed another violation of law — whether statutory or common law — dismissal of a claim alleging that violation requires dismissal of the unjust enrichment claim as well," the order states.

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

Wyse is represented by Darren Azman, John J. Calandra, Joseph B. Evans, Elizabeth Andrea Rodd and Lisa Gerson of McDermott Will & Emery LLP.

Metropolitan is represented by John Kolsin Crossman and Jeffrey Louis Friesen of Zukerman Gore Brandeis & Crossman LLP.

The case is Wyse v. Metropolitan Commercial Bank, case number 1:24-cv-09108, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sarah Jarvis. Editing by Jay Jackson Jr.

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Lottery.com SPAC Exec Wants Info From California Fraud Case

By **Pete Brush**

Law360, New York (August 5, 2025, 3:18 PM EDT) -- A Manhattan federal judge said Tuesday that he will weigh a request by a special purpose acquisition company CEO accused of fraud in a merger involving Lottery.com Inc. to have New York prosecutors provide discovery from a California criminal case.

At a morning status conference, U.S. District Judge Alvin K. Hellerstein of the Southern District of New York set a briefing schedule on that score in the district's fraud prosecution of former Trident Acquisitions Corp. CEO Vadim Komissarov.

Komissarov, in a 2021 bid to take Lottery.com public in a SPAC deal, **allegedly conspired** to report fake revenue for AutoLotto Inc., which does business as Lottery.com. The feds say he sold shares based on fake revenue to investors who did not realize that the real picture was far more dire.

Two former Lottery.com executives, Matthew Clemenson and Ryan Dickinson, have **pled guilty** and await sentencing before Judge Hellerstein.

On Tuesday, Jay Musoff of Loeb & Loeb LLP, who represents Komissarov, said prosecutors should be directed to obtain and provide discovery from a fraud case against two California executives who controlled an Irvine-based data company called Datassure Corp.

Komissarov conspired with Datassure to create phony revenue for his Lottery.com take-public bid, according to statements in court.

"We believe the materials and evidence related to those transactions should be produced from the prosecution in the Central District of California," Musoff told Judge Hellerstein.

Prosecutor Justin Rodriguez said the government would oppose any bid to force it to furnish those details to Komissarov's lawyers, arguing that "crystal clear" Second Circuit precedent limits the government's obligations.

"The prosecution team does not extend to the entirety of the federal government," Rodriguez said.

But Rodriguez also did not rule out questioning the California defendants, saying, "Our investigation is ongoing. I don't know what the government's witness list will look like at trial."

Musoff replied that at least one of the two California defendants may have provided information related to other cases — potentially Komissarov's.

"We believe one of those executives from the data company is a cooperating witness and certainly may have proffered," Musoff said.

The two executives charged in the California case, Jason A. Greig and Jeffrey M. Sparrow, have pled guilty and await sentencing before U.S. District Judge David O. Carter in Santa Ana, according to a case docket. In 2023, they were charged in a wide-ranging fraud scheme, but Lottery.com is not mentioned in the indictment.

Separately on Tuesday in Komissarov's case, Rodriguez flagged a potential legal conflict for the

defense, saying that Loeb & Loeb represented Trident Acquisitions in making U.S. Securities and Exchange Commission filings that underpin the criminal case.

Komissarov is charged "with making a series of misstatements in Trident's SEC filings," Rodriguez said. "That obviously presents a potential conflict."

Musoff said he is working with the government on potentially scheduling a so-called Curcio hearing, where his client could waive any conflict — though he said his firm does not believe that there is one.

Komissarov has separately hired counsel from a second firm. That lawyer, Alex Lipman of Lipman Law PLLC, may advise him on the case going forward, including the conflict issue, according to statements in court.

The sides are due back before Judge Hellerstein on Nov. 19.

Counsel declined comment after Tuesday's hearing.

Komissarov is represented by Jay Musoff and Alex Inman of Loeb & Loeb LLP and by Alex Lipman of Lipman Law PLLC.

The government is represented by Justin Rodriguez of the U.S. Attorney's Office for the Southern District of New York.

The case is USA v. Komissarov, case number 1:25-cr-00061, in the U.S. District Court for the Southern District of New York.

--Editing by Karin Roberts.



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Apple Looks To Nix Consumer Antitrust Case, Decertify Class

By **Matthew Perlman**

Law360 (August 5, 2025, 9:51 PM EDT) -- Apple told a California federal court that antitrust claims from a class of more than 185 million consumers targeting its App Store policies should not go to trial because the allegations focus on legitimate product design and business decisions, not anti-competitive conduct.

Apple filed its anticipated summary judgment motion on Monday, along with a separate motion seeking to decertify the class, in a **long-running case** accusing it of monopolizing the distribution of apps on its devices.

The summary judgment motion said that after nearly 14 years of litigation, the undisputed record confirms that the App Store policies at issue only reflect "protected choices" that Apple makes about the design of its products and about who it does business with.

"This case should not go to trial," Monday's brief said. "The third amended consolidated class action complaint challenges Apple's policy of refusing to permit competing distribution of native iOS apps and the technical measures encoded into iOS software that maintain a securely closed platform. These claims, raised solely under Section 2 of the Sherman Act, rest on legal theories that the Supreme Court and Ninth Circuit have rejected."

The motion argued that the claims fail at the outset because they are premised on a "legally untenable" retail market for apps that only accounts for one side of a two-sided market. Apple said courts, including the Ninth Circuit, have recognized that app stores must be analyzed as two-sided transaction platforms that connect developers and consumers.

When antitrust claims focus on a **two-sided platform**, harm has to be shown to both sides, under the Supreme Court's landmark Amex decision. The motion also noted **last week's decision** by the Ninth Circuit affirming a win for Epic Games over Google in an antitrust case targeting Android app policies.

The consumers said in a July letter outlining their **intended response** to the summary judgment motion that whether the App Store is a two-sided transaction platform is a question for the jury. They also argued that it does not matter, because they allege there is an impact on both sides of the market — consumers and developers.

But Apple said in its motion that the consumers cannot proceed under an "alternative two-sided theory they have neither pled nor proved."

"It is plaintiffs' burden to define a relevant market, but neither they nor their experts define any two-sided market, focusing solely on a consumer-side aftermarket for all app genres," the motion said.

The motion also said the consumers are challenging Apple's decision to distribute apps on iOS devices only through the App Store and argued that it has no duty to deal with competitors that want to distribute apps in direct competition with Apple on its own platform.

The consumers told the court in their letter last month that a New Jersey federal court recently rejected a similar argument from Apple when it **refused to toss** the U.S. Department of Justice's case accusing Apple of monopolizing smartphone markets. A Virginia federal court also rejected

Google's "refusal to deal" arguments when **finding it monopolized** a pair of markets related to display advertising technology back in April.

The summary judgment motion also attacked the consumers' damages model, which purports to show how much the consumers overpaid for apps as a result of the policies. Apple said the analysis assumes all the challenged conduct is unlawful and does not "disaggregate impact among" the alleged actions, as the antitrust law requires.

The motion seeking to decertify the class filed on Monday also attacked the damages model for not separating the individual policies and actions taken by Apple that allegedly cause the consumers to overpay.

If any aspect of the case fails on summary judgment, or at trial, or if the court excludes one of the consumers' experts, the motion said they "will have no classwide damages calculation — a required element for class certification."

The motion also argued that the class includes "a staggering number of unidentifiable, unharmed class members," while excluding people the consumers think were injured.

The motion said millions of class members have made purchases using multiple Apple accounts and the consumers told the court at the class certification stage they would be able to combine the purchases for each class member through a "mechanical" process. But in reality, the motion said, they were unable to accomplish this task.

"Data matching and deduplication on the scale required here is a recognized discipline within data science, yet plaintiffs delegated this mission-critical task to a claims administrator lacking any experience in that field," the motion said. "As explained in Apple's Daubert motion, he profoundly failed at his one job — leaving plaintiffs without classwide evidence indicating which plaintiffs were harmed (or how much their damages, if any, should be)."

The motion said the consumers estimate the class still contains some 11 million uninjured members, up from 10 million when the court certified the class, despite efforts to modify the definition to remove members who were not harmed. The motion also contended "the real figure is likely far greater."

"This case is barreling toward trial with a class that, according to plaintiffs' own ever-changing count, has more uninjured members than the populations of New York and San Francisco combined, and no reliable way of telling who those uninjured members even are," the motion said. "At the close of discovery there is no fair or manageable path forward. Their class should be decertified."

The consumers' claims have been pending since 2011, accusing Apple of violating antitrust law by using its control over the App Store and iOS to charge developers commissions of up to 30% on apps and in-app purchases, which they have contended is ultimately passed along to consumers.

U.S. District Judge Yvonne Gonzalez Rogers certified **a nationwide class** last year for individuals who have spent \$10 or more on iOS applications or in-app purchases since 2008. The Ninth Circuit later rejected Apple's bid for an **interlocutory appeal** of the class certification.

The case went to the Supreme Court following its **2017 revival** by the Ninth Circuit, where the justices found the consumers **have standing** to bring their claims because they constitute direct purchasers from Apple, even though developers set the prices and pay a commission.

The decertification motion on Monday noted that a dissenting opinion from Justice Neil M. Gorsuch predicted the difficulties of establishing the "classwide pass-through" of commissions from developers to consumers, warning that it would require a complex inquiry into how Apple's conduct affected third-party pricing decisions.

"Despite the support of a bevy of experts, including two Nobel Laureates, plaintiffs cannot deliver a model that is capable of reliably showing classwide standing, injury, or damages in 'one stroke,' the motion said.

A representative for Apple told Law360 on Tuesday that the company believes the lawsuit is "fundamentally flawed and should be rejected."

An attorney for the consumers, Mark C. Rifkin of Wolf Haldenstein Adler Freeman & Herz LLP, told Law360 that Apple's motions "rehash old grounds that already have been rejected by the District Court and the Ninth Circuit."

"We will vigorously oppose the motions," he said.

Judge Gonzalez Rogers is overseeing a similar case from Epic Games against Apple that went to a bench trial in 2021. Apple **largely prevailed** in that case, except for a claim under California unfair competition law targeting rules that prevented developers from steering users to payment methods outside their apps.

Apple is **currently appealing** to the Ninth Circuit after the judge found Apple **violated** her order blocking the anti-steering rules by imposing new fees and restrictions intended to preserve its "anticompetitive revenue stream."

The consumer class is represented by Betsy C. Manifold, Rachele R. Byrd, Mark C. Rifkin, Matthew M. Guiney, Thomas H. Burt and Stephanie Aviles of Wolf Haldenstein Adler Freeman & Herz LLP, and David C. Frederick, Aaron M. Panner, Kyle M. Wood, Ashle J. Holman, Anna K. Link and Kelley C. Schiffman of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Theodore J. Boutrous Jr., Daniel G. Swanson, Dana L. Craig, Caeli A. Higney, Julian W. Kleinbrodt, Eli M. Lazarus and Harry R. S. Phillips of Gibson Dunn & Crutcher LLP.

The case is In re: Apple iPhone Antitrust Litigation, case number 4:11-cv-06714, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins, Bryan Koenig and Lauren Berg. Editing by Vaqas Asghar.

Update: This story has been updated with a comment from an attorney for the consumers.



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Judge Mulls Sanctioning Hagens Berman In Thalidomide Suits

By **Lauren Berg**

Law360 (August 5, 2025, 11:01 PM EDT) -- The Pennsylvania federal judge presiding over dozens of product liability actions against manufacturers of the morning sickness drug thalidomide Tuesday ordered Hagens Berman Sobol Shapiro LLP to explain why it shouldn't be sanctioned for allegedly conducting "grossly inadequate" pre-suit inquiries, obstructing discovery and doctoring evidence.

U.S. District Judge Paul S. Diamond, in a 24-page **opinion**, declined for now to adopt a special master's recommendation to impose sanctions against the Seattle-based firm, managing partner Steve Berman and former partner Tyler Weaver, in favor of first hearing explanations from the attorneys representing plaintiffs who allege they sustained birth injuries after their expectant mothers took thalidomide in the early 1960s.

Hagens Berman for years has been facing the **threat of sanctions** for allegedly pursuing nearly a dozen cases between 2011 and 2014 against GSK, formerly known as GlaxoSmithKline PLC, past the point when they had been barred by the statute of limitations, then dropping them in an apparent effort to avoid sanctions.

The cases were dropped as part of a deal with GSK but brought further scrutiny over **whether there was good reason** to pursue them in the first place.

Judge Diamond in 2014 appointed Special Master William T. Hangley to untangle discovery issues over whether the suits were time-barred and to monitor and ensure the "plaintiffs' compliance with their discovery and disclosure obligations," according to the opinion.

In his report and recommendation submitted in October 2023, Hangley found that the law firm, Berman and Weaver had "conducted grossly inadequate presuit investigations; obstructed discovery; recklessly (or, perhaps, intentionally) made false and baseless allegations intended to toll the limitations clock; doctored evidence; and — when their misconduct came to light — sought to abandon plaintiffs and evade defendants' sanctions requests."

Specifically, had Hagens Berman adequately looked into the plaintiffs' products claims, they would have seen that some of the plaintiffs had previously brought suits against thalidomide manufacturers, and that the medical records of other plaintiffs show their birth injuries could not have been caused by the morning sickness treatment, the special master found.

He also found that sanctions were warranted based on "Hagens Berman's unprofessional treatment of the special master," as well as Weaver's "doctoring of expert reports to induce two plaintiffs" to drop their claims.

In his order Tuesday, Judge Diamond overruled Hagens Berman's objection that Hangley didn't have the authority to recommend sanctions, saying the special master is a judicial officer and surrogate of the appointing court.

"He has not just the inherent authority but the duty to advise the court as to all the rules, statutes, and case law governing civil litigation," the judge said, noting he "repeatedly instructed [Hangley] to consider whether specific attorney misconduct alleged could warrant the imposition of sanctions."

Turning to the recommended sanctions, Judge Diamond said he would not immediately adopt the

special master's recommendation and, instead, ordered the firm, Berman and Weaver to show cause why sanctions should not be imposed.

"Mr. Hangley has found that in performing his duties as Special Discovery Master, he discovered misconduct bordering on the criminal committed by Hagens Berman, its Managing Partner Steve Berman, and its then-partner Tyler Weaver — all apparently intended to prevent the court from learning that the firm had prepared, verified, filed, and prosecuted baseless, dishonest claims," the judge said.

"I will allow the firm, Mr. Berman, and Mr. Weaver the opportunity to be heard once more before I address Mr. Hangley's findings and his resulting sanctions recommendation," he added.

Berman, Weaver and counsel for GSK did not immediately respond to requests for comment Tuesday evening.

Berman and his firm are represented by Keith Beauchamp, Marvin C. Ruth and Malvika A. Sinha of Coppersmith Brockelman PLC, and Gaetan J. Alfano and Peter St. Tienne Wolff of Pietragallo Gordon Alfano Bosick & Raspanti LLP.

GSK is represented by Michael T. Scott of Mike Scott Law LLC.

The case is Glenda Johnson et al. v. SmithKline Beecham Corp. et al., case number 2:11-cv-05782, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Kristen Becker.

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Trump-Tied SPAC Exec Rips SEC Suit After Deal Talks Fizzle

By **Katryna Perera**

Law360 (August 5, 2025, 5:28 PM EDT) -- The former CEO of the special-purpose acquisition company that took President Donald Trump's social media platform public has renewed his bid to dismiss the U.S. Securities and Exchange Commission's suit alleging he failed to timely alert investors to the prospective deal after settlement talks broke down.

Patrick Orlando, the former chief executive of Digital World Acquisition Corp., filed the dismissal **motion** Monday in D.C. federal court.

The parties said in April that they had reached a tentative **agreement** to resolve the case, but the SEC informed Orlando the following month that "staff no longer believed it could obtain commission approval for the proposed agreement." The parties continued to negotiate but didn't strike a deal, according to court filings.

Monday's motion argued the SEC has failed to show that language in Digital World's registration statement — claiming the company had not selected or engaged in discussions with a business combination target before its IPO — was material to investors.

The motion cited statements by SEC Commissioner Mark Uyeda that "information concerning a SPAC's preliminary merger negotiations" and other "day-to-day operations of a SPAC" are immaterial under the U.S. Supreme Court's ruling in *Basic v. Levinson*.

"Commissioner Uyeda further observed that DWAC's sole purpose as a SPAC was to combine with a target company, so its investors expected management to communicate with potential merger candidates," the motion stated. "Investors could redeem their shares upon completion of the merger if they did not approve of the target — meaning that any allegedly misleading language about DWAC's pre-IPO communications could not impact the decision-making of a reasonable investor."

The complaint also fails to allege any actionable false or misleading statements, Orlando argued, since Digital World's pre-IPO filings "explicitly advised" that the company planned to leverage the existing contacts of the management team to find a business combination target, and disclosed those contacts and any related conflicts of interest.

The SEC also fails to show that Orlando "consciously or deliberately withheld information from counsel who was responsible for drafting the relevant disclosures," the filing said.

Orlando likewise pushed back on the SEC's request for disgorgement, saying the suit does not allege that he illegally obtained profits or that Digital World investors suffered pecuniary harm.

"Indeed, other than falling a couple of cents immediately after the IPO, the stock price has been well above the IPO level, at one point surging higher than \$90 per unit," the motion stated. "Moreover, as is typical with a SPAC, DWAC offered investment protection through redemption rights, precluding any claim of investor harm."

The motion stated that if the court declines to dismiss the suit, it should, at a minimum, strike the SEC's references to its settlement with Digital World, "as administrative settlements and adjudications with non-parties are irrelevant and would be highly prejudicial to Mr. Orlando and his defense."

The company announced in 2023 that it **had agreed** to an \$18 million settlement with the SEC over allegations that it failed to timely alert investors it was negotiating to take Trump Media & Technology Group Corp., which operates the social media platform Truth Social, public.

The SEC **sued** Orlando last year, accusing him of signing off on SEC filings that claimed Digital World had not yet selected a merger target, even as negotiations with Trump Media were underway.

These misstatements "were material to investors because SPAC investors base their investment decisions on a SPAC's disclosures about discussions with potential targets," the SEC said at the time.

In September 2021, Digital World raised \$287.5 million in an initial public offering, after which the company filed new SEC forms that continued to falsely claim it had not been discussing any plans for a merger, the suit states.

But a month later, Digital World announced an agreement to merge with Trump's company, causing its stock price to soar 400% in a single day of trading, according to the suit.

Digital World shareholders **approved the merger** in March 2024, one year after Orlando **was fired** as CEO, in order to "restore confidence to the shareholders" at a time when the company was struggling to close the deal.

Last year, Orlando **entered into an agreement** requiring his former employer to pay his legal costs related to federal probes and litigation in multiple states.

The SEC declined to comment Tuesday.

Counsel for Orlando did not immediately respond to requests for comment Tuesday.

The SEC is represented in-house by John B. Timmer and Andrew McFall.

Orlando is represented by Adam L. Schwartz, Brooke E. Conner and Tamara Droubi of Vedder Price PC and Hartley M.K. West of Dechert LLP.

The case is SEC v. Orlando, case number 1:24-cv-02097, in the U.S. District Court for the District of Columbia.

--Additional reporting by Jessica Corso. Editing by Janice Carter Brown.