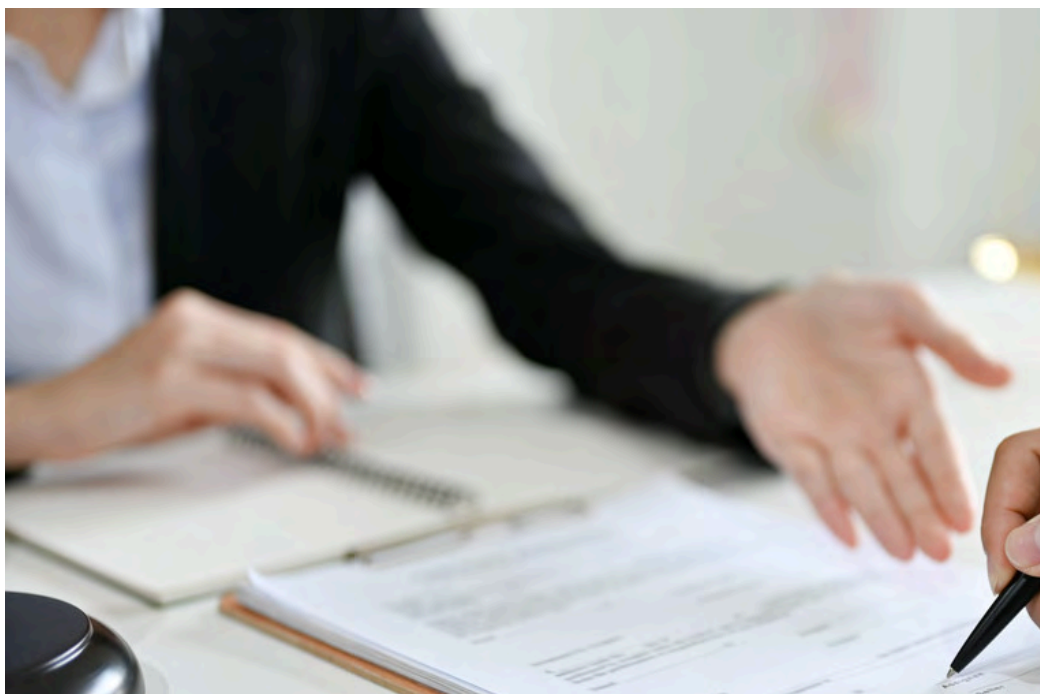


6th Circuit: Attorney-Client, Work-Product Privileges Cover Law Firms' Internal Investigation

August 08, 2025 | By  Avalon Zoppo



Credit: bongkarn/Adobe Stock

The U.S. Court of Appeals for the Sixth Circuit ruled Thursday that an Ohio company need not turn over documents from internal investigations conducted by Jones Day and Squire Patton Boggs, a decision that dozens of their fellow law firms [pressed for](#).

The appellate court held that the material was likely protected by the attorney-client and work-product privileges. The court stayed U.S. District Judge Algenon L. Marbley's finding that the documents were not covered because they were used for not only legal but also business purposes.

"That approach gets it backwards," the Sixth Circuit wrote in its stay [order](#).

"What matters for attorney-client privilege is not what a company does with its legal advice, but simply whether a company seeks legal advice," the order added. "After all, a corporation could hardly justify expending resources on legal advice that *wasn't* business-related."

The Sixth Circuit, granting for now FirstEnergy Corp.'s mandamus request to shield the documents, noted the electric utility company's director and Squire Patton Boggs met with board members specifically to provide "legal updates" on the investigation's findings.

The class-action plaintiffs, purchasers of FirstEnergy securities, have two weeks to file their response and explain why the Sixth Circuit should lift its stay.

FirstEnergy hired Jones Day and Squire Patton Boggs after the U.S. Department of Justice arrested former Ohio House Speaker Larry Householder in 2019 for allegedly taking illegal payments in exchange for securing passage of legislation. Householder's indictment implicated FirstEnergy in the alleged bribery scheme.

Other government investigations and private litigation followed. FirstEnergy fired its chief executive officer and senior vice president of external affairs and resolved the DOJ investigation by entering into a deferred prosecution agreement in 2021.

The plaintiffs asked that materials created during the Jones Day and Squire Patton Boggs investigations be disclosed in discovery.

In addition to attorney-client privilege, the Sixth Circuit said the materials are likely protected by the work-product doctrine, which shields documents prepared in anticipation of litigation.

The law firms' internal investigations produced materials "because of" actual legal threats in all likelihood, starting with the DOJ subpoenaing FirstEnergy after Householder's arrest and the subsequent investigations from other federal and state regulators, the Sixth Circuit stated in its

order.

The U.S. District Court for the Southern District of Ohio's opposite finding "ignores the criminal and civil subpoenas, eight lawsuits, and federal and state investigations which go to the heart of the issue," the Sixth Circuit added. "FirstEnergy, simply put, faced an onslaught of civil and criminal investigations while pursuing internal investigations."

Chief Judge Jeffrey Sutton and Judges Alice Batchelder and John Nalbandian sat on the Sixth Circuit panel.

Sullivan & Cromwell represented FirstEnergy. Robbins Geller Rudman & Dowd represented the plaintiffs.

In a statement following the decision, Sullivan & Cromwell co-chair Bob Giuffra noted the [support](#) FirstEnergy had from many law firms and other amici who expressed "serious concerns" with the district court's attorney-client and work-product privilege analysis.

"This decision was supported by 39 law firms, 11 corporate and legal ethics scholars, and several legal and business groups that filed amicus briefs emphasizing the importance of protecting the attorney-client privilege and attorney work product doctrine in internal corporate investigations."

Jason Forge, of Robbins Geller, said Friday that "although FirstEnergy filed its petition for mandamus over a year ago, this is now the first time plaintiffs will have the opportunity to respond. Our response is due in two weeks."

The Sixth Circuit issued its stay order in *In Re: FirstEnergy Corp.*, No. 24-3654

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Securities Law News

FirstEnergy Stops Internal Probe Disclosure in Investors' Suit

Aug. 7, 2025, 4:02 PM PDT

FirstEnergy Corp. won't have to disclose to shareholders suing the company for securities violations the insights of two internal investigations following former Ohio House Speaker Larry Householder's indictment.

FirstEnergy convinced a US Court of Appeals for the Sixth Circuit panel that the district court erred in ordering the production of documents to the investors. The company faces irreparable harm and is "likely to succeed at least" on its arguments that the district court incorrectly applied the attorney-client privilege and work-product doctrine, the court said, granting FirstEnergy's request to stay the district court order.

The stay is a major victory for FirstEnergy and big law firms that backed the company on its quest to overturn the district court order allowing the disclosure of the investigations. The district court order contained legal principles that, if adopted, "would threaten the success of countless internal investigations necessary to the good governance of companies in the United States," 39 law firms said in an amicus brief.

After Householder's arrest, the Justice Department began criminal and civil investigations of FirstEnergy. Several lawsuits and state and federal regulatory actions against the company followed. FirstEnergy retained Jones Day, and its board of directors hired Squire Patton Boggs to investigate. That work resulted in certain communications that are privileged under US Supreme Court precedent, the court said.

"What matters for attorney-client privilege is not *what* a company does with its legal advice, but simply *whether* a company seeks legal advice," the panel wrote.

FirstEnergy can also likely show that the products of its internal investigations are protected by the attorney-work-product doctrine, the panel added.

"For reasons that remain unclear," the district court concluded that the internal investigations weren't conducted in anticipation of litigation, the court said. "That conclusion ignores the criminal and civil subpoenas, eight lawsuits, and federal and state investigations which go to the heart of the issue."

There is a “strong public interest in preserving the attorney-client privilege and work-product doctrine,” the court said, referring to the numerous friend-of-the-court briefs filed in support of FirstEnergy, seeking clarification on the issues.

The unsigned order was joined by Judges Jeffrey S. Sutton, Alice M. Batchelder, and John Nalbandian.

Sullivan & Cromwell LLP represents FirstEnergy.

The case is In re: FirstEnergy Corp , 6th Cir., No. 24-3654, 8/7/25 .

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Transparent Election Initiative



[businesslawprofessors.com/2025/08/transparent-election-initiative](https://www.businesslawprofessors.com/2025/08/transparent-election-initiative)

Ann Lipton

August 8, 2025



After the Supreme Court decided *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), [there were](#) a [flurry](#) of [articles](#) pointing [out its flaws](#) as a [matter of corporate theory](#) (and those are only a very limited sample).

The problem is, the Supreme Court accepted a kind of simplistic view of the corporation as an association of citizen-shareholders, imbued with free speech rights by the transitive properties of the First Amendment. But corporations are not spontaneously-formed groups of private citizens; corporations themselves are creatures of law, and law in the first instance sets the ground rules for their structure and powers, including who has authority to speak, the purposes for which they may speak (i.e., wealth maximization), and the procedures for deciding what speech will be made.

In other words, the First Amendment can rationally be said to confer rights on natural persons, who exist outside of law; they are not constituted by law. Corporations, however, must be created by law before they exist as entities for the First Amendment to act upon, and it's not clear how much that law – the law that creates them – has to be informed by constitutional principles.

For example, there are lots of ways in which corporate and securities law use the structure of the corporate form to restrict speech. Everything from [limits on who may have access to the corporate proxy to offer shareholder proposals](#) (or [who may offer shareholder proposals at all](#)), to [recent claims that Target Corporation's managers breached its fiduciary duties to shareholders by offering Pride Merchandise](#), can be [viewed through a free speech lens](#).

Right now, the Attorney General of Florida – through its state pension fund – is suing Target, claiming that by marketing to an LGBTQ+ customer base, it misled shareholders about its management of ESG risks. In any other context, we might call that retaliatory action by the State of Florida in response to Target's exercise of its free speech rights (the Attorney General is even arguing that an Ohio fund, and its counsel, would be inadequate to lead a

class action because they favor diversity initiatives, as [Mike Levin and I discussed in a *Shareholder Primacy* podcast a while back](#)). But because it's filtered through the securities laws, it isn't viewed in First Amendment terms. (Though, of course, that isn't always true; hence, Glass Lewis and ISS are suing over [Texas's attempt to regulate ESG proxy advice](#), and one of their arguments is that Texas's law unconstitutionally restricts speech, which is a claim that [had success against a similar Missouri law](#)).

Well, one group in Montana has decided to put all this to the test with what it calls the [Transparent Election Initiative](#). They propose to amend Montana's constitution to provide that corporations chartered by the state do not have the power to spend money to advance political causes.

It's a bold attempt to confront *Citizens United's* theoretical challenges, although, to be honest, the Supreme Court [has never had much use for corporate theory](#).

Of course, leaving aside how the Supreme Court might eventually rule, we still have the problem of charter competition. Founders aren't going to choose to organize in jurisdictions that restrain their political activities if they can help it, and right now, Delaware, Texas, and Nevada – running a full-on race to the bottom – will happily offer an expanded set of corporate rights as part of their efforts to lure incorporations.

And another thing. In this week's [Shareholder Primacy](#) podcast (the last one for a couple of weeks): Mike and I talk about the near-\$30-billion worth of stock options that the Tesla board granted to Elon Musk, and about ESG and anti-ESG shareholder proposals. [Here at Apple](#), [here at Spotify](#), and [here at YouTube](#).

Class Action

Manage Newsletters

Direct Digital Sheds Investor Suit Over Impact of User ID Shift

Aug. 8, 2025, 10:17 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal court ruled that Direct Digital Holdings Inc.'s statements about its online advertising business prospects don't support a securities fraud suit over its transition to "cookie"-less user identification systems.
- Judge Kenneth M. Hoyt said that none of the targeted statements "constitute either materially false statements or omissions that would lead a rational investor to rely on them".
- Hoyt dismissed the suit, stating that Direct Digital didn't have a duty to disclose "any and all material information", and that the general statements made by the company didn't trigger a duty to disclose its day-to-day business difficulties.

Direct Digital Holdings Inc.'s rosy statements about its online advertising business prospects don't support a securities fraud suit over its transition to "cookie"-less user identification systems, a federal court ruled.

None of the targeted statements "constitute either materially false statements or omissions that would lead a rational investor to rely on them," Judge Kenneth M. Hoyt said Thursday for the US District Court for the Southern District of Texas. Hoyt dismissed the suit with no chance to re-plead.

The investors alleged that after Alphabet Inc.'s Google unit announced a privacy-oriented initiative that would phase out third-party trackers—called cookies—in January 2020, the digital advertising industry began to develop alternative ways of identifying individual users to tailor audiences for ads.

Direct Digital allegedly failed to disclose that its new tools wouldn't be viable alternatives to cookies, and that it was mismatching identifiers and causing advertisers to reach the wrong audience. Google and another ad platform, Trade Desk, allegedly restricted the company's use of their systems over those mismatches, leading to significant revenue problems for Direct Digital and declines in its stock price, the investors said.

Hoyt said the investors essentially argued “that by not disclosing day-to-day business difficulties the defendants made material omissions.” But Direct Digital didn’t have a duty to disclose “any and all material information,” he said.

“The general statements offered in the Consolidated Complaint did not trigger a duty to disclose the difficulties that the plaintiff now claims, with the benefit of hindsight, constitute material omissions,” he said.

Johnson Fistel LLP was lead counsel for the investors. Baker Botts LLP represented Direct Digital.

The case is Monsky v. Direct Digital Holdings, Inc. , S.D. Tex., No. 4:24-cv-01940, 8/7/25 .

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US Judge Dismisses Securities Class Action Against Opioid Use Disorder Drugmaker Indivior

August 07, 2025 | By 

What You Need to Know

- U.S. District Senior Judge Henry E. Hudson of the Eastern District of Virginia dismissed a securities class action against drug company Indivior PLC.
- Sullivan & Cromwell and McGuireWoods filed a successful motion to dismiss the lawsuit on behalf of defendant Indivior.
- Cohen Milstein Sellers & Toll; Pomerantz; and Wohl & Fruchter represented the plaintiff shareholder and may file a second amended complaint to avoid permanent dismissal of the case.



A federal judge has dismissed a securities class-action complaint against Richmond, Virginia-based drugmaker Indivior PLC, ruling the plaintiff failed to meet the heightened pleading standard for securities fraud.

“Despite Plaintiff’s many arguments, the Court finds none of them availing,” U.S. District Senior Judge Henry E. Hudson of the Eastern District of Virginia wrote in his memorandum opinion filed Wednesday. “Looking at the facts holistically, the Court finds they do not raise a ‘strong inference’ of scienter. To begin, Plaintiff fails to identify a plausible motive for Defendants.”

Cohen Milstein Sellers & Toll on behalf of plaintiff David Hanshew and a proposed putative class of shareholders filed an amended complaint last December alleging Indivior in 2024 misled investors on projected sales of its Sublocade treatment for opioid use disorder.

The amended complaint also accused Indivior executives of misleading investors into believing the company’s Perseris treatment for schizophrenia received positive prescriber feedback before the company stopped marketing that product for having no financially viable path forward.

Sullivan & Cromwell and McGuireWoods represented defendant Indivior and filed a motion Jan. 10 asking Hudson to dismiss the plaintiff’s litigation for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

Hudson ordered the case dismissed without prejudice in an April 22 bench ruling before filing his [45-page memorandum opinion](#) Wednesday explaining his decision.

Citing the Private Securities Litigation Reform Act’s heightened pleading standard for securities fraud, Hudson ordered the plaintiff’s amended complaint dismissed for failing to prove actionable claims under Section 20(a) of the Securities Exchange Act of 1934.

“In the final analysis, the Court finds that the challenged statements are not actionable or subject to the PSLRA’s Safe-Harbor provision,” Hudson wrote in his memorandum opinion.

The case will be dismissed permanently with prejudice unless the plaintiff files a second amended complaint within 30 days, according to Hudson’s decision.

“The Court maintains serious doubts as to whether Plaintiff can sufficiently amend his Complaint, however, the Court will grant Plaintiff’s request for leave to amend,” Hudson wrote in his opinion.

Cohen Milstein did not respond to a request for comment Thursday. Investor class-action litigators from Pomerantz and Wohl & Fruchter also represented the plaintiff in this case.

Co-counsel for defendant Indivior include Sullivan & Cromwell partners Bob Giuffra, David Rein and Julia Malkina alongside firm associates Stella Meyer and Emma Kenny-Pessia plus

McGuireWoods partners Brian Pumphrey and Garrett Hooe alongside firm associate Frank Talbott V.

Sullivan & Cromwell declined to comment, and McGuireWoods did not respond to a request for comment Thursday.

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Class Action

Manage Newsletters

3M Ex-Workers Sue Over Retirement Plans' Target-Date Funds (1)

Aug. 8, 2025, 8:27 AM PDT; Updated: Aug. 8, 2025, 9:03 AM PDT

Summary by Bloomberg AI

AI Generated



- 3M Co. was sued by four former employees who say their retirement plans lost more than \$100 million by investing in poorly performing target-date funds.
- The lawsuit says 3M's target-date funds "paled in comparison" to similar alternatives and should have been removed from the plans, and that 3M's custom benchmarks can be "easily manipulated" to give a misleading picture of the funds' performance.
- A 3M spokesperson said, "These allegations are without merit and 3M will vigorously defend itself in this lawsuit."

3M Co. was sued by four former employees who say their retirement plans lost more than \$100 million by investing in poorly performing target-date funds.

The proposed class action says 3M, the Minnesota-based conglomerate that makes Post-it notes and Scotch tape, tapped a suite of actively managed target-date funds to be the default investment in a pair of retirement plans covering more than 58,000 people. Workers say these funds, which pay investment management fees to an internal 3M investment adviser, "paled in comparison" to similar alternatives and should have been removed from the plans.

Target-date funds, which are designed to gradually shift investment strategies as investors approach retirement, have driven dozens of recent lawsuits alleging fiduciary breaches under the Employee Retirement Income Security Act. Recent lawsuits have centered on plans that offer target date funds from BlackRock Inc., Northern Trust, Fidelity, Wells Fargo & Co., American Century Investments, and JPMorgan Chase & Co.

The lawsuit, filed Thursday in the US District Court for the District of Minnesota, says 3M developed custom benchmarks by which to judge its target-date funds and reported that the funds outperformed their benchmarks. But the company doesn't disclose the composition of the benchmarks, which can be "easily manipulated" to give a misleading picture of the funds' performance, the workers say.

The lawsuit raises claims under ERISA and seeks restoration of plan losses, disgorgement of profits, and removal of breaching plan fiduciaries.

"These allegations are without merit and 3M will vigorously defend itself in this lawsuit," a 3M spokesperson said in an emailed statement.

Lockridge Grindal Nauen PLLP and Kahn Swick & Foti LLC represent the plan participants.

The case is Batt v. 3M Co. , D. Minn., No. 0:25-cv-03149, 8/7/25 .

(Updated with company's response in sixth graph.)

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Vanguard settles litigation over inflated mutual fund tax bills



reuters.com/sustainability/boards-policy-regulation/vanguard-settles-litigation-over-inflated-mutual-fund-tax-bills-2025-08-07

Reuters

August 7, 2025

People are seen at a booth of Vanguard Group at a fair during the INCLUSION fintech conference in Shanghai, China September 24, 2020. REUTERS/Cheng Leng/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 7 (Reuters) - Vanguard Group settled a lawsuit accusing the mutual fund giant of saddling investors in its popular target-date funds with inflated tax bills, after a federal judge rejected an earlier settlement.

In a filing on Thursday in Philadelphia federal court, Vanguard and the investors said they agreed in principle following private mediation to resolve all claims.

They plan by September 22 to seek preliminary approval of the settlement from U.S. District Judge John Murphy, who [rejected](#) a \$40 million accord on May 19. Terms were not disclosed. Vanguard said it was pleased to settle. Lawyers for the investors did not respond to requests for comment.

Target-date funds contain mixes of stocks, bonds and cash that are designed to become less risky as investors age, and also be tax-efficient.

The lawsuit stemmed from Vanguard's December 2020 decision to reduce the minimum investment in lower-cost fund classes meant for institutional clients to \$5 million from \$100 million.

Many investors shifted to those fund classes from higher-cost retail fund classes. This forced the retail funds to sell assets to meet redemptions, and pass taxable capital gains to investors like the plaintiffs who remained.

Murphy said the [\\$40 million settlement](#) did nothing for investors because Vanguard could have offset that amount from its related [\\$106.4 million](#) settlement in January with the U.S. Securities and Exchange Commission.

The judge also said investors would have been worse off, once more than \$13 million was taken out for legal fees.

Vanguard is based in Valley Forge, Pennsylvania. It had \$10.4 trillion of assets under management as of January 31.

The case is In re Vanguard Chester Funds Litigation, U.S. District Court, Eastern District of Pennsylvania, No. 22-00955.

Reporting by Jonathan Stempel in New York; Editing by Daniel Wallis

Our Standards:

Florida AG launches investigation into 'Climate Cartel'



[legalnewsline.com/florida-record/florida-ag-launches-investigation-into-climate-cartel/article_e8bcc883-2995-440e-8245-d2469b9186a9.html](https://www.legalnewsline.com/florida-record/florida-ag-launches-investigation-into-climate-cartel/article_e8bcc883-2995-440e-8245-d2469b9186a9.html)

Jessica M. DeBois, Chris Dickerson

August 8, 2025

James Uthmeier

File photo

TALLAHASSEE, Fla. – Florida Attorney General James Uthmeier has issued subpoenas to investigate a so-called “Climate Cartel” made up of international nonprofit CDP and climate action organization Science Based Targets Initiative.

Uthmeier said his office is looking into whether CDP, formerly the Climate Disclosure Project, and SBTi violated Florida consumer protection or antitrust laws by coercing companies into disclosing proprietary data and pay for access under the guise of “environmental transparency.”

“Radical climate activists have hijacked corporate governance and weaponized it against the free market,” Uthmeier said in a statement.

“Florida will not sit back while international pressure groups shake down American companies to fund their ESG [Environmental, Social, and Governance] grift. We’re using every tool of the law to stop the Climate Cartel from exploiting businesses and misleading consumers.”

CDP is an international non-profit organization based in the United Kingdom, Japan, India, China, Germany, Brazil and the U.S. that helps companies, cities, states, regions and public authorities disclose their environmental impact.

Its aim, Uthmeier says, is to “dematerialize economic growth” and “prevent dangerous climate change.”

According to the Attorney General’s Office, CDP runs the world’s largest environmental disclosure system, charging companies to report, revise, and promote their data – while selling services that allegedly improve scores and even offer favorable quotes from CDP executives for a price.

Their scoring system is tied to corporate access to capital with investment giants such as Bloomberg, ISS, S&P Global, and Santander reportedly relying on CDP data to make financial decisions, Uthmeier says.

SBTi is a corporate climate action organization that enables companies and financial institutions worldwide to “play their part in combating the climate crisis,” its website states.

The organization, co-founded by CDP and the United Nations Global Compact, sells companies validation of their climate goals, then directing them back to CDP to report their progress, “creating what appears to be a profit-driven feedback loop,” Uthmeier says.

The attorney general says his investigation will examine deceptive trade practices, including whether the organizations sold services, created incentives for corporations to pay, or misrepresented the data used by investors and consumers.

Of those potential antitrust violations, Uthmeier’s office says it will scrutinize the coordination between CDP, financial institutions, and investment services; and if CDP’s efforts to pressure or punish companies that don’t participate result in anticompetitive effects.

“Florida will continue defending free enterprise and protecting consumers from fraudulent ESG schemes masquerading as science,” according to the Attorney General’s Office.

MDL Judge Allows Talc Plaintiffs to Sue Additional Johnson & Johnson Affiliates: ‘This Is a Significant Ruling’

August 07, 2025 | By  **Amanda Bronstad**

What You Need to Know

- The ruling allows plaintiffs with ovarian cancer to sue more than Johnson & Johnson over its baby powder.
- U.S. District Judge Michael Shipp largely adopted a 2024 decision by special master Joel Schneider that Johnson & Johnson had appealed to the district court.
- The ruling could make it harder for a Johnson & Johnson subsidiary to file another talc bankruptcy, according to Chris Placitella, liaison counsel to the plaintiffs’ steering committee.



U.S. District Judge Michael A. Shipp. Credit: NJSBA

In a move that could hamper Johnson & Johnson's ability to file another talc bankruptcy, a federal judge in New Jersey ruled that plaintiffs lawyers can now add affiliated companies as defendants in lawsuits alleging its baby powder caused ovarian cancer.

U.S. District Judge Michael Shipp, who is overseeing more than 65,000 lawsuits in the talc multidistrict litigation in the District of New Jersey, rejected Johnson & Johnson's appeal of a special master's ruling allowing the plaintiffs' steering committee to add Kenvue Inc., Janssen Pharmaceuticals Inc. and Johnson & Johnson Holdco Inc. as defendants in an amended master complaint.

"In sum, the PSC plausibly alleges that Holdco, Janssen and Kenvue acquired the assets used to manufacture Johnson's baby powder, continued operations related to Johnson's baby powder, and functionally became a 'new hat' for Old JJCI," Shipp wrote in an unpublished memorandum opinion.

Tuesday's order could open the door to liability against additional Johnson & Johnson affiliates. It also severely restricts Johnson & Johnson's ability to file a fourth talc bankruptcy by restructuring its assets and using the controversial "Texas two-step" merger maneuver, according to Chris Placitella, liaison counsel in the talc multidistrict litigation.

"It could make it very, very hard," Placitella, of Cohen, Placitella & Roth, in Red Bank, New Jersey, told Law.com. He made similar arguments in 2023 in ovarian cancer cases pending in New Jersey's Atlantic County Superior Court and in mesothelioma cases, which allege Johnson & Johnson's baby powder contains asbestos, in New Jersey's Middlesex County Superior Court.

Shipp, in Tuesday's ruling, cited Atlantic County Superior Court Judge John Porto's [decision in *Nesko v. Johnson & Johnson*](#), which added the same defendants to ovarian cancer cases in New Jersey's state courts.

"We've been fighting this now for three or four years," Placitella said. "This is a significant ruling from this judge, and this issue will be tried now before the, in the first MDL trial."

That trial is anticipated to start next year.

Co-lead counsel Leigh O'Dell, of Montgomery, Alabama-based Beasley Allen, and Michelle Parfitt, of Washington, D.C.'s Ashcraft & Gerel, did not respond to a request for comment.

"While we recognize that motions to amend are typically granted liberally, we anticipate that the court will ultimately determine that these entities are not appropriate defendants given the specific facts of the case," Johnson & Johnson's worldwide vice president of litigation, Erik Haas, told Law.com. "We will move for dismissal following the adjudication of the pending Rule

702/*Daubert* motions, which will demonstrate that these cases lack merit and are founded on junk science.”

‘Functionally the Same’

Until 2021, Johnson & Johnson’s baby powder was made and sold by subsidiary Johnson & Johnson Consumer Inc. But, in preparing for its first talc bankruptcy, Johnson & Johnson Consumer divided its assets under the Texas two-step, creating two new entities: Holdco and LTL Management LLC, which filed for Chapter 11 protection. The U.S. Court of Appeals for the Third Circuit, however, dismissed the talc bankruptcy, as well as a second one filed in 2023 by LTL Management LLC.

Johnson & Johnson created another subsidiary, Red River Talc, which filed its third talc bankruptcy last year. That case was dismissed earlier this year. Meanwhile, Johnson & Johnson, in another restructuring, shifted its consumer health products to Janssen and then spun off Kenvue, which now sells baby powder containing cornstarch, rather than talc.

In his 2024 order, the special master, retired U.S. Magistrate Judge Joel Schneider, of Montgomery McCracken Walker & Rhoads in Cherry Hill, New Jersey, allowed the plaintiffs’ steering committee to add LTL, Holdco, Kenvue and Janssen as defendants.

“Without weighing in on the merits of plaintiffs’ allegations, the SM agrees with plaintiffs that they have sufficiently alleged that the new defendants continued manufacturing and marketing the Johnson’s baby powder product-line, a reformulated product that is functionally the same and serves the same purpose, uses the same name, and is marketed to the same audience, as defendants’ historical baby powder,” Schneider wrote. “The SM also agrees with plaintiffs that they plausibly alleged that the new defendants continue to use and profit from Johnson’s trademark, branding, and goodwill.”

Johnson & Johnson did not contest LTL as a defendant, but objected to adding Janssen, Holdco and Kenvue as futile. In a brief filed before Shipp, Johnson & Johnson attorney Susan Sharko noted that Holdco was a holding company, Kenvue was an independent company that never sold talcum powder products and Janssen’s involvement was limited to a period of less than 24 hours during a corporate restructuring.

“Here, the PSC’s claims against three peripheral defendants—two owned by J&J and one publicly traded—are clearly futile, and the special master erred in concluding otherwise,” Sharko, of Faegre Drinker Biddle & Reath in Florham Park, New Jersey, wrote.

Shipp disagreed.

And Placitella said, “The MDL court in charge of 60,000-plus cases ruled that Johnson & Johnson can’t shuffle assets for baby powder.”

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California Brief

Meta's Health Privacy Trial Loss Spotlights Power of Wiretapping

Aug. 8, 2025, 2:01 AM PDT

The decades-old California law central to a class of Flo menstrual app users' win over Meta Platforms Inc. has produced a viable blueprint for future privacy cases against Big Tech—decisions that could be worth billions of dollars.

The first-of-its-kind verdict on Aug. 1 for users of the popular period tracking app Flo by a San Francisco jury used a 1960s era wiretapping law, the California Invasion of Privacy Act, to win a decision that carries a \$5,000 penalty per violation. With a certified class of California-based Flo users, Meta has said damages could reach multiples of billions of dollars.

The plaintiffs alleged Meta's software development kits embedded in the Flo app recorded user answers to questions about their pregnancy goals and details of their last period without their consent. While users have sued Meta and Big Tech firms over privacy and user consent issues for decades now, this case uniquely reached a jury which was ultimately convinced that third-party collectors acted as illegal eavesdroppers on private communications about reproductive health.

Judge James Donato of the US District Court for the Northern District of California will determine total damages in the coming months.

"The verdict shows that there's significant liability for companies that engage in this type of behavior," said attorney Adam Polk of Girard Sharp LLP who litigates CIPA cases against tech companies. "It also tells me that everyday Americans are not okay with this."

Meta has indicated it plans to file a motion to toss out the jury verdict, and trials don't establish legal precedent that could alter the litigation landscape in the way a court ruling does. Still, the outcome could embolden class action attorneys to attempt to mimic the CIPA strategy.

The verdict could also bolster efforts by the tech industry to push through CIPA reforms to quell the onslaught of lawsuits. Over a month before the start of the trial against Meta, the California Senate passed SB 690, a bill that would exempt data tracking technologies from CIPA liability if they are used for "a commercial business purpose."

Internet 'Eavesdropping'

Starting around 2021, class action attorneys began deploying what was then a novel legal theory arguing that modern internet data tracking technology is a form of wiretapping or eavesdropping that is barred by CIPA. That law, passed in 1967, was originally meant to protect Californians from secret and unauthorized recordings of telephone calls.

But the new wave of litigation targeted websites and apps that use data tracking technology including chatbots, cookies, pixels, and software development kits often provided by major tech companies.

"Class action attorneys have filed hundreds of lawsuits and sent out probably many thousands of demand letters to websites," said data privacy attorney Gary Kibel of Davis+Gilbert LLP. "Many settle to avoid the expense of litigation."

The plaintiffs sued in 2021, naming Flo Health Inc. as well as Google LLC as defendants. Google settled the case before trial and Flo reached an agreement with the plaintiffs mid-trial.

Meta argued that its conduct never fit the decades-old law because the company was never "eavesdropping" on users' conversations with the Flo app as defined by the statute. Instead, Flo would record the users' responses and then separately send non-sensitive data through Meta's software development kit, the attorneys argued.

The jury rejected those arguments. They also determined that Flo users never consented to having their data recorded despite Meta's broad privacy agreements that allow extensive tracking of users across the internet, another one of Meta's key defenses.

The finding is additional evidence that consent agreements can't be used by tech companies to abuse users' privacy, Polk said.

"It's one thing to consent, for example, to a fist fight," he added. "But that's not the same thing as consenting to a fight where one party is using brass knuckles."

Unique Ruling

The health data involved in the Meta case, information about womens' menstrual cycles and fertility goals, is regarded as highly sensitive under other California privacy laws and creates a particularly sympathetic narrative for a jury, said Linda Wang, a privacy and employment attorney at CDF Labor Law LLP.

However, many other lawsuits filed under CIPA focus on less sensitive data collected on shopping websites. Others target smaller website owners that use third-party data trackers that result in quick settlements.

"Most businesses just don't have the resources or the appetite to take something like this all the way through the litigation," Wang said. "This is a kind of unique situation."

The California senate bill introduced in March that would exempt commercial activity under CIPA has been touted by defense attorneys as an update to an analog-era law and an end the wave of abusive lawsuits. The legislation has faced criticism from consumer advocacy groups including the Electronic Frontier Foundation and Consumer Reports, who argue it will leave tech companies unaccountable for their privacy infringements.

The verdict also doesn't resolve existing legal questions about the law that the California Supreme Court or a federal appeals court will need to clarify.

This spring, as Meta was preparing for trial, a federal judge rejected a CIPA lawsuit against Prudential Financial Inc., which allegedly captured users' medical and demographic information while they interacted with a webform on Prudential's site. Although distinct from the Meta case, the judge ruled that Prudential couldn't have "read" the users' data as it was being recorded, a requirement under the statute.

"It's helpful to get additional decisions to help businesses get some clarity," Wang said. "If a business is willing to fight aspects of these CIPA claims, that's certainly helpful."

The case is *Frasco v. Flo Health Inc.*, N.D. Cal., No. 3:21-cv-00757, verdict delivered 8/1/25 .

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US appeals court reinstates drug-price conspiracy lawsuit against Sanofi, rival pharma companies



reuters.com/legal/government/us-appeals-court-reinstates-drug-price-conspiracy-lawsuit-against-sanofi-rival-2025-08-06

Mike Scarcella

August 6, 2025

The logo of French drugmaker Sanofi is seen at the Sanofi Genzyme Polyclonals in Lyon, France, September 30, 2023. REUTERS/Gonzalo Fuentes/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 6 (Reuters) - Drugmakers Sanofi, Eli Lilly, Novo Nordisk and AstraZeneca must face a lawsuit from two health centers accusing them of conspiring to restrict drug discounts offered to community pharmacies that contract with providers serving low-income patients.

A three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York [ruled, opens new tab](#) that federally funded Mosaic Health and Central Virginia Health Services can move ahead for now with their proposed class action.

The appeals court in its unanimous order reversed a decision by a federal judge dismissing the lawsuit.

The clinics contend the drugmakers schemed in 2020 to limit discounts on diabetes drugs that were available to safety-net providers purchasing drugs from some pharmacies through a federal program known as "340B."

As direct competitors, the four defendants control the diabetes drug marketplace, which would make imposing restrictions "easy to coordinate and maintain," Circuit Judge Myrna Pérez wrote in the ruling, joined by Circuit Judges Alison Nathan and Maria Araújo Kahn.

A Sanofi spokesperson in a statement said the company was reviewing the opinion and considering its next steps.

In a statement, Novo Nordisk called the allegations meritless, and said it "will continue to vigorously defend against these claims."

Lilly in a statement said it "strongly disagrees with today's decision to allow this meritless complaint to proceed." The policies at issue, Lilly said, are lawful and were independently designed by each company to "address the rampant fraud and abuse in the 340B program."

AstraZeneca did not immediately respond to a request for comment. The defendants have denied any wrongdoing.

Brian Feldman, a lead attorney for the health clinics, in a statement called the 2nd Circuit's order a "watershed moment" and said "we look forward to seeking justice for safety-net providers."

Mosaic Health operates 22 clinics in New York, and Central Virginia Health Services runs 18 clinics in Virginia. The two clinics sued in 2021 seeking damages for alleged revenue lost from the discount program's savings.

The plaintiffs told the appeals court that Sanofi and the other manufacturers made billions of dollars in additional profits "at the expense of safety-net providers and, ultimately, the patients they serve."

In a court filing, the drugmakers called the plaintiffs' claims "far-fetched" and said the clinics were trying to punish the companies for implementing policies designed to protect the benefits and integrity of the 340B program.

Drugmakers must participate in the program to receive funds from government health insurance programs like Medicare and Medicaid.

The case is Mosaic Health Inc v. Sanofi-Aventis U.S. LLC, 2nd U.S. Circuit Court of Appeals, No. 24-598.

For plaintiffs: Brian Feldman of Aurelian Law

For defendants: Allon Kedem of Arnold & Porter Kaye Scholer

Read more:

[Wegovy maker Novo hit with investor class action over revenue forecast cut](#)

[AstraZeneca agrees to \\$51 million settlement in Seroquel antitrust class action](#)

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[US Supreme Court gives pharma companies a chance to thwart terrorism-funding lawsuit](#)

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Optum picks new fight to kick law firm Motley Rice off opioids case



reuters.com/legal/government/optum-picks-new-fight-kick-law-firm-motley-rice-off-opioids-case-2025-08-07

David Thomas, Mike Scarcella

August 7, 2025

Medicines are seen in this illustration taken, June 27, 2024. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

Aug 7 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, [opens new tab](#).)

UnitedHealth's pharmacy benefits manager is trying again to get prominent plaintiffs' law firm Motley Rice booted from a lawsuit over the company's alleged role in the U.S. opioid crisis, citing the firm's past work for state and local governments.

OptumRx last week asked a federal magistrate judge in Utah to disqualify Motley Rice as the attorneys for the state, which has accused OptumRx of having "incredible knowledge and control over the flow of opioids into our communities." Optum [has said](#) that all the claims against it are without merit.

OptumRx said Motley Rice has obtained confidential information about how the company works through its prior representations of Chicago, the District of Columbia and Hawaii in other investigations, and then began actively litigating against OptumRx in opioid cases around the country.

"These ethical violations do not turn on Motley Rice's intentions or on whether the firm's lawyers actually use the confidential information gathered in the government investigations," OptumRx said in its [July 31 filing, opens new tab](#). "It is enough that Motley Rice could use that confidential information in other litigation against OptumRx."

OptumRx and UnitedHealth did not respond to requests for comment. OptumRx is represented in the case by lawyers from Alston & Bird and Parr Brown Gee & Loveless.

A spokesperson for the Utah attorney general's office — which is also representing the state — declined to comment.

The state said on Wednesday in a court filing that it will oppose OptumRx's bid to bounce Motley Rice from the case.

A Motley Rice spokesperson pointed to the firm's request for sanctions against OptumRx in Lexington, Kentucky, federal court, where the company has also asked for the law firm to be booted off an opioid case. The judge in that case has not yet ruled on either OptumRx's motion to disqualify or Motley Rice's sanctions request.

It is common for government entities to bring in private law firms for complex litigation, with payment often contingent on a successful outcome.

Companies have criticized and pushed back on the arrangements.

DoorDash [clashed](#) with the city of Chicago, which tapped Cohen Milstein Sellers & Toll for its lawsuit against the restaurant delivery service, arguing that the arrangement violated its due process rights. The city and DoorDash reached a settlement in principle over their dispute in June.

In April, a pro-business legal advocacy group [urged](#) U.S. House leaders to examine the District of Columbia's practice of hiring plaintiffs law firms for cases brought by the city's attorney general.

OptumRx said Utah's professional rules of conduct prohibit Motley Rice from representing the state, arguing there is "no question that Motley Rice could use the confidential government information to OptumRx's material disadvantage here."

OptumRx told the court that it was not challenging Utah's ability to seek the counsel of its choice.

The company has tried in other opioid cases to force Motley Rice to sit on the sidelines, but has so far failed.

In one of those cases, U.S. District Judge Dan Aaron Polster in Cleveland [last year said](#) Motley Rice's "successive and simultaneous" work for private clients, while also "wearing the mantle of authority of a public entity," poses a serious risk that the firm's power could be used to benefit a private client or create a conflict of interest.

But Polster ruled against OptumRx's bid to disqualify Motley Rice, finding that the company was already required to turn over all relevant documents in the case, and for not challenging Motley Rice's representation earlier.

-- Jones Day partner and judicial nominee [Eric Tung, opens new tab](#) disclosed receiving \$925,000 in income last year from the firm on a financial disclosure form that he submitted as part of the confirmation process. Tung reported \$850,000 for 2023.

Tung is [a nominee](#) to the San Francisco-based 9th U.S. Circuit Court of Appeals. Tung, based in Los Angeles and a Jones Day partner since 2023, is a former law clerk to both Supreme Court Justice Neil Gorsuch and Supreme Court Justice Antonin Scalia.

Financial disclosures are mandatory filings for court and agency nominees, and they can offer a window into pay at law firms and other employers. Tung did not immediately respond to a request for comment.

-- Plaintiffs firms Hagens Berman and Cohen Milstein have [asked, opens new tab](#) a federal judge in Chicago to award them more than \$45 million in legal fees for their work on chicken price-fixing settlements worth \$181 million.

Their request follows litigation in the 7th U.S. Circuit Court of Appeals over a prior fee award to the firms. The appeals court in July [ruled, opens new tab](#) that the firms were entitled to 26.6% of the settlement fund.

"This case presented a high-risk conspiracy claim and required the plaintiffs to litigate against numerous defendants, significantly increasing both the burden and complexity of the proceedings," the plaintiffs told U.S. District Judge Thomas Durkin.

Read more:

[Lawyers face objections to multimillion-dollar fees after no-cash settlement with Schwab](#)

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Reporting by Mike Scarcella

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Judge appoints 2 to lead data disclosure class action against Blue Shield

DJ

[dailyjournal.com/articles/387046-judge-appoints-2-to-lead-data-disclosure-class-action-against-blue-shield](https://www.dailyjournal.com/articles/387046-judge-appoints-2-to-lead-data-disclosure-class-action-against-blue-shield)

Aug. 8, 2025

A federal judge appointed two attorneys to lead a consolidated class action alleging Blue Shield of California improperly shared health data with Google via tracking tools embedded in its website.

U.S. District Judge Yvonne Gonzalez Rogers appointed two San Francisco attorneys as co-lead counsel to spearhead a consolidated litigation against Blue Shield of California comprised of 19 putative data privacy class actions.

Gonzalez Rogers named Adam Polk, a Girard Sharp partner, and Amber Schubert, a partner with Schubert Jonckheer & Kolbe LLP, as co-lead counsel on Wednesday. The consolidated action accuses Blue Shield of California of unlawfully disclosing members' confidential health information to Google through website tracking technologies used for targeted advertising.

Polk reacted to his appointment in an email Thursday, writing, "We are pleased with the court's decision and look forward to prosecuting our clients' claims in this important digital privacy case."

Schubert echoed Polk's sentiment in an email Thursday writing, "We're honored to be appointed co-lead counsel in this important litigation. Blue Shield's subscribers entrusted the company with some of their most sensitive health information. By sending those records to Google for use in targeted advertising, Blue Shield violated that trust. We will vigorously pursue justice for all class members."

Blue Shield has denied wrongdoing and stated in an April 9 data breach notice, "There was no disclosure of other types of personal information, such as Social Security numbers, driver's license numbers, or banking or credit card information." *In re: Blue Shield of California Privacy Litigation*, 4:25-cv-03209 (N.D. Cal. filed April 9, 2025).

The appointments follow a comprehensive hearing held July 29 where the judge considered five motions for lead counsel appointment.

Patrick N. Keegan of Keegan & Baker LLP in Carlsbad, one of the attorneys for the non-lead plaintiffs, said in an email Friday that he and his team were pleased with Polk's and Schubert's appointments. He wrote, "We look forward to assisting them, as requested, to litigate the claims alleged by our client Belinda Foley, the other named plaintiffs and the putative plaintiff class in this important case, which alleges that Defendant California Physicians' Service, doing business as Blue Shield of California, between April 2021 and January 2024, practice of embedding and using tracking technologies (including but not limited to various Google Tracking tools) on Defendant's website, to allow third parties to intercept the contents of patients' communications, view the contents of patients' personally identifiable information and protected health information, and monetize it."

Attorneys from four firms argued they should have been selected because their investigation uncovered unknown facts. "Rather than rely primarily on BS-CA's own disclosures, Doe I Counsel examined archived versions of BS-CA's websites to develop forensically supported allegations about Blue Shield of California's actual use of surveillance technologies," they said. "That investigation revealed important facts that BS-CA omitted from its Google Data Breach Notice on April 9, 2025. The development of Doe I Counsel's allegations are not merely the result of time and effort, but a product of experience."

The following attorneys filed that signed motion: Melissa Gardner of Lieff Cabraser Heimann & Bernstein LLP in San Francisco; An Truong of Simmons Hanly Conroy LLP in New York City; Nicole Ramirez Jones of Kiesel Law LLP in Beverly Hills; and Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP in New York City.

The other plaintiffs' attorneys that filed appointment motions could not be reached for comment Thursday.

Gonzalez Rogers explained her appointment decision: "The court has carefully considered all applications, and the responses and presentation to the court during the hearing, including the court's assessment of actual availability to diligently and efficiently advance this case given other commitments, the sources of litigation funding, as well as the confidential forms submitted by counsel during the hearing."

She structured plaintiff leadership to include two co-leads and a potential Plaintiff Steering Committee of up to three additional attorneys, with a one-year term limit on all appointments due to concerns about "the breadth of the leadership structure generally requested by attorneys in this type of case."

The 19 consolidated class actions accuse Blue Shield of enabling transmission of protected health data--including patient names, medical claim details, and account identifiers--via Google Analytics, potentially allowing targeted advertising. Blue Shield claimed it could not identify which members' data was compromised and stated the breach was discovered Feb. 11.

"Google may have used this data to conduct focused ad campaigns back to those individual members," Blue Shield stated, adding that it severed the Google Analytics connection in January 2024 and asked Google to return any retained member information.

#387046

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California Brief

Anthropic Beats Music Firms' Bid for Users' Personal Data (1)

Aug. 7, 2025, 11:06 AM PDT; Updated: Aug. 7, 2025, 1:48 PM PDT

Anthropic PBC doesn't have to disclose to music publishers the personal information of users who prompted the AI company's chatbot to produce song lyrics, delivering a privacy victory in a copyright case that could shape how courts balance legal discovery with user protections in AI tools.

Anthropic users' account names and email addresses are unnecessary for music publishers to advance their lawsuit accusing the AI company of engaging in wholesale copying of protected lyrics to train its signature large language model, Claude, Magistrate Judge Susan van Keulen said during a Thursday hearing in the US District Court for the Northern District of California.

Judge van Keulen didn't see grounds for "tying the conversations that have been produced to specific users, again, against the weight of the privacy of third parties." The important information about requests for lyrics that have led to copyrighted works being produced "is being turned over and I don't see sufficient grounds to go beyond that at this time."

The decision is consistent with a tentative order van Keulen issued July 31 rebuffing the publishers' request for information about those users.

Mounting lawsuits against AI companies have highlighted longstanding tensions over balancing demands in discovery with protecting users' data privacy. The decision follows OpenAI Inc.'s recent failure to escape a New York court order requiring the company to preserve all of its AI model's inputs and outputs in a separate copyright lawsuit brought by news publishers.

Though the content sought from the AI companies differs—all inputs and outputs versus users' account information—both OpenAI and Anthropic tied their privacy concerns to how their chatbots are used for personal, intimate queries like health and relationship issues.

Music publishers including Universal Music Corp. and Concord Music Group Inc. sued Anthropic in 2023. The AI company in March won dismissal of the contributory infringement, vicarious infringement, and removal of copyright management information claims, but hasn't moved to dismiss the publishers' direct infringement claim. The publishers raised the allegations again in April in an amended complaint, and Anthropic's renewed motion to dismiss is pending.

Publishers counsel, Nick Hailey of Oppenheim + Zembrak LLP, said the data is “so important” because it would help identify users with relevant information including Claude lyric outputs Anthropic didn’t preserve before the lawsuit, how often they ask Claude for lyrics, and how often Claude provided lyrics in spite of a guardrail. They pointed to 33 prompts and outputs in which users sought or received copies of copyrighted lyrics, including “Sweet Caroline” and “Message in a Bottle,” and argued in briefing the corresponding user information is “key evidence.”

While protecting general user privacy, van Keulen did allow limited searches of some Anthropic employees’ personal Claude accounts associated with non-Anthropic email addresses. The publishers argued the information is necessary to rebut Anthropic’s representations that it never wanted Claude to produce lyrics, and relates to Anthropic’s willfulness and knowledge of infringement.

“What better evidence is there than how Anthropic’s own employees are using Claude,” Hailey said.

Anthropic’s counsel, Sonal Mehta of Wilmer Cutler Pickering Hale & Dorr LLP, countered that the publishers haven’t provided sufficient evidence to necessitate searching employees’ personal accounts, citing employees’ expectation of privacy from their employer.

The court ordered the parties to work together to create a list of Anthropic’s founders and executives subject to a search. Judge van Keulen permitted Anthropic to limit qualifying employees by first asking whether they had used their personal Claude account for lyrics or songs.

Judge van Keulen said she remains concerned about privacy and understands publishers’ interest in scrutinizing Anthropic’s intent. But she reminded them that conduct has to be tied to Anthropic to address willfulness and liability.

Coblentz Patch Duffy & Bass LLP, and Cowan Liebowitz & Latman PC also represent the music publishers. Latham & Watkins LLP also represents Anthropic.

The case is Concord Music Grp. Inc. v. Anthropic PBC, N.D. Cal., No. 24-cv-03811, hearing held 8/7/25 .

(Updates with additional details from the hearing throughout.)

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Coinbase Data Breach Cases Consolidated in New York

August 08, 2025 | By  Amanda Bronstad

What You Need to Know

- Thursday's order by the U.S. Judicial Panel on Multidistrict Litigation assigned U.S. District Judge Edgardo Ramos to the Coinbase breach cases.
- The panel cited Coinbase's corporate office in New York and a major data center in nearby Secaucus, New Jersey.
- Coinbase and some plaintiffs' lawyers had supported the Southern District of New York.



Edgardo Ramos during his confirmation hearing before the Senate Judiciary Committee to be a U.S. district judge for the Southern District of New York in July 2011. Photo: Diego M. Radzinski/ALM

About 20 data breach class actions against Coinbase Global Inc. will be transferred to New York's Southern District, where the cryptocurrency exchange has its executive offices.

Thursday's order by the U.S. Judicial Panel on Multidistrict Litigation [assigned U.S. District Judge Edgardo Ramos](#) to the cases, most of which are pending in New York and California. Many plaintiffs' lawyers had argued that the lawsuits should be coordinated in the Northern District of California, where Coinbase was founded in San Francisco or suggested U.S. District Judge Jesse Furman, in the Southern District of New York. Coinbase, represented by Alan Schoenfeld, of Wilmer Cutler Pickering Hale & Dorr in New York, had supported the Southern District of New York.

"Coinbase maintains corporate offices in New York and has a major data center in nearby Secaucus, New Jersey," the panel wrote. "Thus, relevant witnesses and documents may be in or near the Southern District of New York.

The suits were [filed quickly](#) after Coinbase disclosed the breach in [a May 15 blog post](#), stating that cybercriminals had bribed "a group of overseas support agents" to steal user account information. Less than 1% of its 9.7 million monthly users had been affected, but Coinbase estimated damages of up to \$400 million.

The lawsuits allege Coinbase's lax security measures allowed the bad actors, who stole customers' personal information, such as phone numbers, banking history and the last four digits of their Social Security numbers. One [case named TaskUs Inc.](#), a Coinbase contractor, is alleged to have hired the overseas workers behind the breach.

In Thursday's ruling, the panel rejected requests by lawyers in that case, called *Estrada v. TaskUs*, to exempt them from the MDL, leaving the decision to the appointed judge.

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California Brief

CuriosityStream Wins Dismissal of TikTok Trap and Trace Suit

Aug. 7, 2025, 10:13 AM PDT

CuriosityStream Inc. shed a proposed class action alleging that it installed a TikTok tracking tool on its website in violation of the California Invasion of Privacy Act—or “Trap and Trace Law.”

Plaintiff Christopher Mitchener’s claims fail for two main reasons: He lacks Article III standing because if CuriosityStream only collects information consisting of metadata, there’s no expectation of privacy for that type of data; and if the software instead collects information from communication between parties, the tracking tool isn’t a trap and trace device under the CIPA, which by definition, captures information about a communication, said Judge Noël Wise of the US District Court for the Northern District of California.

- Mitchener’s allegations weren’t sufficiently specific to establish he suffered an injury, and therefore can’t bring a claim on behalf of a class, the court said
- Plaintiff’s counsel, Tauler Smith LLP, filed a series of similar complaints alleging that websites collected data on behalf of TikTok, allegedly in cahoots with the Chinese government, Wise said
- Wise dismissed the case against CuriosityStream with prejudice for the same reasons stated in a “substantively identical complaint” concerning Royal Caribbean Cruises earlier this summer

ArentFox Schiff LLP represented CuriosityStream.

The case is Mitchener v. CuriosityStream, Inc. , N.D. Cal., No. 5:25-cv-01471, 8/6/25 .

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Securities Law News

Federal Courts Said to Suffer Hack Similar to Earlier Breach (2)

Aug. 7, 2025, 10:57 AM PDT; Updated: Aug. 7, 2025, 2:06 PM PDT

The federal judiciary has suffered a cyberattack that targeted similar vulnerabilities exploited in another hack five years ago, according to a person familiar with the situation.

The Senate Judiciary Committee has been briefed on the recent breach, which is related to the weaknesses involved in the 2020 intrusion into the federal courts system during the SolarWinds attack, which targeted the courts' electronic case systems, according to the person.

In a Thursday statement, the judiciary said it "is taking additional steps to strengthen protections for sensitive case documents in response to recent escalated cyberattacks of a sophisticated and persistent nature on its case management system."

The news release didn't provide details on the timing or scope of the recent cyberattacks, and a spokesperson for the federal court system's administrative arm declined to comment further.

Politico first reported on the hack.

The federal courts' electronic case filing system includes Case Management/Electronic Case Files (CM/ECF), used to upload court papers, and PACER, which allows the public to access some court documents.

Some filings contain confidential information and are filed under seal. These documents "can be targets of interest to a range of threat actors," and federal courts "have been implementing more rigorous procedures to restrict access to sensitive documents under carefully controlled and monitored circumstances," according to the judiciary's release.

The type of potentially vulnerable confidential information contained within the court system could include the names of confidential informants and people who are subject of sealed indictments related to espionage, said Matthew Ferraro, partner at Crowell & Moring and former Department of Homeland Security official who worked on cybersecurity.

While the majority of information in the court system is public, a portion is kept private "for serious reasons, reasons of legitimate concern over privacy or safety or security," he said.

Other congressional committees have also been briefed on the matter, including the House Judiciary panel as well as representatives from congressional spending panels and the Senate Judiciary Committee's federal courts panel, according to a Senate Judiciary Committee spokesperson. The committees have asked for a classified follow-up briefing to be held next month, according to the spokesperson.

Rep. Dave Joyce (R-Ohio), who chairs the panel that handles the judiciary's budget, "is aware of the issue and is continuing to work with the Federal Judiciary on the matter," according to his spokesperson.

Rep. Jamie Raskin (D-Md.), the top Democrat on the House Judiciary Committee, called on Congress to give the judiciary the funding it requested "so they can modernize their infrastructure and protect the integrity of our legal system."

"Judges and other experts have long warned Congress that the federal judiciary's outdated electronic systems are vulnerable to exactly this kind of breach," Raskin said in a statement.

The Administrative Office of the US Courts in January 2021 said the judiciary had suffered an "apparent compromise" during the SolarWinds hack, which impacted several federal agencies.

Courts then instructed attorneys to file "highly sensitive documents" through paper or a secure electronic device, but individual courts adopted different definitions of what kind of documents qualified as needing additional security.

Judge Michael Scudder, who chairs the judiciary's information technology committee, said at a Judiciary Committee hearing in June that after the judiciary's prior breach, the court system's then-director established an IT security task force which made recommendations to Scudder's committee. That committee has since been "hard at work" implementing them and developing an IT modernization and cybersecurity strategy, he said

"We're three years into implementing that strategy and are making sound progress," Scudder said.

The judiciary's IT committee said at a March meeting of the Judicial Conference—the judiciary's policymaking body—that it "urged expediting" the modernization of the court's CM/ECF system, according to a report of the meeting's proceedings.

The committee said it had also gotten an update on plans to set up a Judiciary Cybersecurity Protection Profile (JCPP) project, "which aims to further the judiciary's ability to effectively measure the cybersecurity posture of individual courts and business units in an automated manner," the report said.

Judiciary officials have also asked Congress for more funding to shore up its technology infrastructure. Judge Robert Conrad, director of the court system's administrative office, described a "sharp increase in the number and sophistication of cyberattacks on the judiciary IT systems" at a May hearing before a House spending panel.

House Republicans have proposed allocating \$74 million next fiscal year for the court system's multiyear cybersecurity modernization plan.

"Judiciary is a high value target for cyber criminals," Conrad told lawmakers. "We do require ongoing resources to secure and modernize our systems."

Scudder also said at the June congressional hearing that cyber risk "is very real for the federal judiciary."

"We expect the threats will only increase in their persistence and their sophistication in the coming years," he said.

He also said the judiciary has offered regular classified briefings with various congressional panels, including one in May.

(Updated with additional reporting.)

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News from Bloomberg Terminal

Elite Colleges Conspire to Use Early Admissions to Inflate Costs, Lawsuit Says

Aug. 8, 2025, 10:51 AM PDT

By Danielle Douglas-Gabriel

(Washington Post) -- A controversial college admissions practice is facing legal scrutiny, as current and former students of elite universities accuse their schools of conspiring to inflate prices through the use of early decision.

Early decision admissions policies allow students to apply ahead of the regular admissions deadline, giving them a better chance of acceptance. Students pledge to attend if a college offers a seat, but the acceptance decision often comes before students know how much financial aid the school will provide. Binding early-decision plans prevent students from receiving and comparing offers from other schools.

That setup, according to a lawsuit filed Friday in federal court in Massachusetts, puts students at a disadvantage and lets colleges keep prices high. The lawsuit argues that schools are not incentivized to provide generous financial aid to early decision applicants because they know no other school can compete by topping their offer. Those policies create and maintain a conspiracy between schools that reduces price competition and violates antitrust law, the complaint says.

The case strikes at the heart of a practice that experts say exacerbates wealth inequality in higher education. Early decision gives an advantage to affluent students who can commit to enroll without fear of cost, at a time when the average sticker price for private schools is nearly \$63,000. The process can allow colleges to secure tuition revenue early on and lock in students who can afford to pay more out of pocket.

"This is not an equitable system," said Benjamin D. Brown, an attorney at Cohen Milstein Sellers and Toll, which is representing the four students alongside the law firm Langer Grogan and Diver. "There's a lot of scrutiny on college admissions right now, and people want to make them as fair as possible."

Although hundreds of colleges have early decision, the lawsuit focuses on 32 highly selective schools, including the University of Pennsylvania, Brown University and Johns Hopkins University. The schools are current or former members of the Consortium on Financing Higher Education, a group of wealthy private institutions that collaborate on undergraduate admissions and financial aid policy.

The lawsuit claims that participation in COFHE, a defendant in the case, has helped the schools share early decision admissions information. It also names Common Application and Scoir - popular college application platforms - as defendants because universities use the companies for early decision application submissions.

Common App declined to comment, as did Columbia University. Scoir and COFHE did not immediately respond to requests for comment, nor did many of the colleges and universities named in the lawsuit.

The four students named in the case said their early decision offers from Wesleyan University, Washington University in St. Louis and Vassar College were presented as binding agreements, giving the impression they were obliged to attend if accepted. The commitments are not legally enforceable, however; and students who can't afford the cost can back out, although schools rarely make this clear, according to the complaint.

"It does not seem fair that, in order to put my chances of admission on a level playing field with my peers, I had to give up the right to compare the cost of attendance at different schools," Jude Robinson, a plaintiff and current Vassar student, said in a statement Friday. "I thought I would get more financial aid than I did, but I never got a chance to weigh other options."

The lawsuit seeks class action status, an injunction to end the use of binding early decision, unspecified past damages for students and reforms in how colleges conduct admissions and deliver financial aid.

Attorneys for the students say ending early decision is critical because elite schools are increasingly relying on the policy to fill seats. Advocacy group Education Reform Now found that 84 selective schools admitted a third or more of their students through early decision in 2022, with 55 of those schools expanding the share in recent years. The proportion of students admitted through early decision at Washington University in St. Louis, for instance, grew by two-thirds from 2015 to 2020.

Applying early is closely linked to socioeconomic status, as students from lower-income households are less likely to opt for early decision than their wealthier peers, according to a 2023 study by Common App. Yet with many elite schools covering tuition or the full cost of attendance for families earning upward of six figures, early admission could benefit students on the lower end of the income scale.

James Murphy, director of career pathways and postsecondary policy at Education Reform Now and the author of the 2022 report, said he has spoken with high school counselors who are using early decision to get high-achieving lower-income students into prestigious schools, a strategy that has made him reconsider some of the potential harm.

"Counselors in the know understand that there's more money available at the beginning of the process for students who need large financial aid packages. So [early decision] can absolutely help low-income students," Murphy said. "How much does it? We don't know that, and that's an important thing to find out."

Murphy said it would be "a bit rash" to scrap early decision, and he has reservations about the merits of the lawsuit. He pointed out that many of the schools named in the case, including Vassar, are need blind, meaning they don't consider an applicant's finances in admissions decisions, or only offer need-based financial aid, such as Wesleyan. In those situations, the financial aid packages the plaintiffs received would probably be the same if they applied through the regular admissions process, he said.

The early decision case marks the latest effort to challenge what some see as anticompetitive, price-fixing practices in higher education. A 2022 class-action lawsuit accused 16 elite universities of sharing a methodology for calculating students' financial need that reduced the amount of aid the schools provided to low- and middle-income students. Most of the schools, including Columbia University and Duke University, settled without admitting any wrongdoing.

Weak birth-defect lawsuits have Hagens Berman facing penalty



legalnewsline.com/pennsylvania-record/weak-birth-defect-lawsuits-have-hagens-berman-facing-penalty/article_7f759271-99b5-480f-857e-e01377530957.html

John O'Brien, John O'Brien

August 8, 2025

Berman

<https://www.hbsslaw.com/>

PHILADELPHIA - A prominent plaintiffs law firm is on the defensive, as it now must explain why its actions in a failed group of lawsuits shouldn't result in penalties that could include paying more than 10 years of legal fees incurred by defendants.

Philadelphia federal judge Paul Diamond on Aug. 5 told the firm Hagens Berman to show cause why it shouldn't be sanctioned for bringing frivolous lawsuits over the morning-sickness drug thalidomide.

A group of 52 plaintiffs sued companies like GlaxoSmithKline alleging the drug, used decades ago, caused birth defects. But those plaintiffs had either already sued or suffered genetic problems, and lawyer Steve Berman and others are accused of not thoroughly reviewing their clients' cases before filing them.

The idea of sanctioning the firm has been floating in the case for years, with a special master in 2023 finding Hagens Berman's conduct was "bordering on the criminal," Diamond wrote.

Hagens Berman is a major player in class action lawsuits and also scores government contracts to push litigation over issues like tobacco, opioids and [PFAS](#). But its pursuit of a thalidomide mass tort was undone about a decade ago.

Confronted with this reality (and a \$145,000 sanction in 2015), Hagens Berman dismissed many of the suits in what a special master described as a "suspicious" arrangement under which Glaxo also dropped its request for sanctions.

Then in a further development, the law firm informed the court one of its lawyers had falsified a medical expert's report to convince a client to drop her claims. It has also settled a lawsuit by one disgruntled former client who accused the firm of selling her out to protect its own reputation.

Special master William Hangle was brought on board in 2014 after Hagens Berman obstructed the defendants' efforts to discover whether the cases were barred by the statute of limitations. It seemed the firm did not know when its clients knew thalidomide was possibly to blame for their injuries.

In one case, defendants introduced evidence Mary Sells' injuries were genetic in nature during a deposition. It was the first Hagens Berman had heard of it, Diamond wrote.

"That same Hagens Berman lawyer testified that even if she had seen the records before the deposition, she would not have 'understood the[ir] ramifications' given her lack of medical knowledge," Diamond wrote.

"The firm does not dispute these facts. Accordingly, the firm and Mr. Berman were plainly unaware of Ms. Sells' medical history when they accepted her case because they failed to conduct an adequate pre-suit investigation."

The firm filed cases despite no recent scientific research that could prove causation, Diamond wrote. Hangle, the special master, also recommended sanctions for attempts to "bully the special master, demonize the Court in the eyes of the plaintiff-witnesses, and intimidate the court reporter."

Hagens Bermans' response will also need to address the doctoring of expert reports that convinced two clients to dismiss their claims and the firm's failure to disclose this at a 2017 hearing.

Litigation

Manage Newsletters

Chemours Ordered to Follow Discharge Permits at Plastics Factory

Aug. 8, 2025, 10:20 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal judge ruled that The Chemours Co. "boldly violates" the Clean Water Act and must comply with discharge permits for a West Virginia plastics factory.
- Judge Joseph R. Goodwin found that Chemours' violations of its pollution discharge permit for "forever chemicals" were "multiple, continuous, and excessive", exposing the public to "real and ongoing harm".
- Chemours argued that the injunctive relief sought by West Virginia Rivers Coalition endangered national security, but Judge Goodwin found these arguments unconvincing, noting that Chemours has a joint venture in Japan for PFA production.

The Chemours Co. "boldly violates" the Clean Water Act and must comply with discharge permits for a West Virginia plastics factory that produces semiconductor components, a federal judge ruled.

Judge Joseph R. Goodwin of the US District Court for the Southern District of West Virginia chastised the chemical giant Thursday in granting environmental groups' motion for preliminary injunction, ruling that Chemours' violations of its pollution discharge permit for "forever chemicals" were "multiple, continuous, and excessive."

"In this case there is no ambiguity: Defendant Chemours has discharged unpermitted levels of toxic pollutants into the Ohio River," the opinion said. "As a direct result, the public is exposed to real and ongoing harm."

Chemours argued the injunctive relief sought by West Virginia Rivers Coalition endangered national security, as the Washington Works plant is the only domestic producer of per- and polyfluoroalkyl vital for the semiconductors used by aerospace, telecommunications, and energy customers. The company introduced testimony that if the plant was ordered to reduce production 500 people would lose their jobs.

Goodwin found these arguments unconvincing. Chemours has a joint venture in Japan for PFA production, and the West Virginia plant periodically shuts down to perform maintenance and safety inspections, so a court-ordered adjustment to production wouldn't completely upend workflows, he said.

Chemours immediately filed a notice of appeal of the preliminary injunction.

The opinion comes after the Environmental Protection Agency announced it will rescind limits on several groups of PFAS in drinking water and extend compliance time lines for systems to comply with Biden-era limits on the forever chemicals.

Goodwin emphasized the importance of citizen suits in the opinion, stating courts have quietly eroded the efficacy of the CWA "not by challenging the statute, but by layering procedural and remedial hurdles that make meaningful relief elusive."

West Virginia Rivers Coalition is represented by Appalachian Mountain Advocates and Public Justice. Chemours is represented by Spilman Thomas & Battle PLLC.

The case is W. Va. Rivers Coal. Inc. v. The Chemours Co. FC LLC , S.D. W.Va., No. 2:24-cv-00701, 8/7/25 .

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Opinion

Matt Levine's Money Stuff: 401(k) Plans Will Get More Fun

Aug. 7, 2025, 11:14 AM PDT

Programming note: Money Stuff is off for the next two weeks, Elon permitting. We'll be back August 25.

401(k)

Historically one way to save for retirement is that you work at a company for a few decades, and the company pays you a salary, and then you retire, and the company keeps paying you a pension. The company has an obligation to pay you a certain amount every month, and it funds that obligation by putting money aside and investing it to make sure it has enough money to pay you. If it invests the money really well, it will have more than it needs to pay you, and it can keep the extra. If it invests the money badly, it will have less than it needs, and will need to kick in more money to pay you what it owes you. That outcome is bad, not only for the company (which has to kick in more money), but also for you, because it exposes you to credit risk. There is a law in the US, called ERISA (the Employee Retirement Income Security Act), which requires companies to manage their pension funds prudently, as fiduciaries for their retirees, so they don't lose all the money.

Another way to save for retirement is that you work at a company for a few decades, and the company pays you a salary, and you save a portion of that salary yourself and invest it, and then you retire, and the company pays you nothing — you don't get a pension — but you spend down the money that you have invested. If you invested really well, you will have more than you need to live on. If you invested badly, you will have less than you need. But this is your problem, not your employer's. If you want, you can invest all of your money in meme stocks or sports gambling to get a wide dispersion of possible outcomes, some of them quite bad.

But the paradigmatic way to save for retirement, in America in 2025, is a third, in-between option, the 401(k) plan. In this method, you don't get a pension; your company doesn't keep paying you a fixed amount after you retire. Instead, as in the second option, you put aside some money every year to invest. (And the company might put some extra money into your investments.) But, unlike in the second option, you can't generally invest the money however you like; you can't put it into sports gambling or your brother-in-law's vending-machine business. Instead, your company gives you some menu of investing options, and you choose among them. And the company is a fiduciary and has a duty to give you a prudent menu of investment options. And if one of those options is "if you want we will take your 401(k) assets to Vegas and put them all on red," and you choose that one and the ball lands on black and you lose all of your retirement savings, you will definitely sue your employer and you'll definitely win. (Not legal advice.)

That is: Individuals are responsible for their own retirement savings, but not entirely. Their employer has some fiduciary duties to guide their investing and not let them go too crazy. This, too, is part of ERISA, and it seems sort of historically contingent. In the olden days, companies offered pensions and had to manage them prudently, so they developed expertise in prudent retirement investing. Modern retirement saving involves individual workers making investment decisions, but the companies still have some expertise at prudent retirement investing, while the individual workers sometimes, you know, enjoy a little sports betting. So the companies have some paternalistic role in guiding the workers' investment decisions and trying to keep them from losing all their money. And if the companies don't take that role seriously, they'll get sued.

The main point of all of this is of course "they'll get sued." There are shifting norms about what sorts of investments are prudent and thus can be offered in 401(k)s. In the 19th century — long before 401(k) plans or ERISA — courts sometimes found that investing in any *common stocks* (as opposed to, say, government bonds or debt secured by mortgages) was imprudent, so a fiduciary could be sued for doing it. In the 1970s, when index funds were first being marketed, some employers stayed away, worrying that they would violate their fiduciary duties by investing in all of the stocks without doing prudent due diligence on each of them.

By 2015, though, I was writing about "a congealing regulatory view" — specifically at the US Department of Labor, which is in charge of ERISA — "that index funds are Good and should be encouraged, and that active management is Bad and should be discouraged." The logic was:

1. Actively managed long-only stock funds tend not to beat the index consistently, and
- 2. They charge much higher fees than index funds, so
- 3. It's probably more prudent to index than to hire active managers.

This is not a universal view, and companies still regularly offer actively managed mutual funds in their 401(k)s, but there is some pressure to offer index funds and a *lot* of pressure to keep fees down. Everyone understands that investments have risks, and if a fund on the 401(k) menu loses money that is not necessarily the employer's fault. But if a fund on the 401(k) menu charges twice as much in fees as some other nearly identical fund, that *does* seem imprudent, and you can get sued for that.

More recently, environmental, social and governance investing (ESG) became a 401(k) battleground. We talked in January about how American Airlines Group Inc. got in trouble for doing ESG with its 401(k). American didn't even offer ESG funds in its 401(k) plan — just straightforward low-cost index funds — but those funds were managed by BlackRock Inc., which used to talk a lot about ESG, and a judge in Texas found that ESG was not a prudent thing to do with employees' money.

But these days the main things that people talk about, when they talk about what should or shouldn't be in your 401(k), are:

1. Private equity,
- 2. Private credit and
- 3. Crypto.

And the essential question is not whether you should be *allowed* to invest in those things, but rather whether you should be able to *sue your company for letting you invest in those things*, if they lose money. Because the 401(k) system involves both individual investment choices and employer paternalism, and because you can sue your employer if it imprudently lets you invest in something that loses money, employers tend to offer only investment options that are clearly "prudent" under current norms. Index funds, in 2025, are clearly prudent. ESG funds, in 2025, are a little dicey. But what about privates and crypto? Are those prudent options for your employer to put on the 401(k) menu?

I mean the obvious answer is "last year they were not prudent, but the norms changed and now they are." That's not, like, a financial answer. It's not that private equity and crypto were volatile and charged high fees in 2024, but now there have been structural changes such that they are safe and cheap. It's that in 2024 the US federal government was pretty skeptical of crypto and of high-fee opaque investments in 401(k)s, and in 2025 a different federal government loves that stuff. Now that shift is getting formalized:

President Donald Trump will sign an executive order Thursday that aims to allow private equity, real estate, cryptocurrency and other alternative assets in 401(k)s, a major victory for industries looking to tap some of the roughly \$12.5 trillion held in those retirement accounts.

The order will direct the Labor Department to reevaluate guidance around alternative asset investments in retirement plans subject to the Employee Retirement Income Security Act of 1974, according to a person familiar with the plans who requested anonymity before the order was formalized. The department will also be tasked with clarifying the government's position on the fiduciary responsibilities associated with offering asset allocation funds that include alternative holdings. ...

Top officials in Washington have been weighing a directive for months that would ease the legal concerns that have long kept alternative assets out of most worker defined-contribution plans. Retirement portfolios are mostly concentrated in stocks and bonds in part because corporate plan administrators are reluctant to venture into illiquid and complex products. ...

Alternative and traditional asset managers are eager to grab a slice of the defined-contribution market, which they see as the next frontier of growth. Many institutional investors like US pension funds and endowments have reached internal limits of what they can put into private equity amid a broader slowdown in dealmaking and a lack of distributions to clients.

From first principles, it makes sense to put illiquid private assets in 401(k)s: The whole point of a 401(k) really should be that you put the money in and don't take it out until you retire, so you shouldn't need liquidity, and if illiquid assets pay a premium you should be the one to earn it. Also, private markets are the new public markets: As Byrne Hobart points out, "the set of companies owned by PE plus public markets looks a lot like the set of companies that would all have been public thirty years ago," so if it is prudent for 401(k)s to own stocks then it's arguably prudent for them to own private equity too.

From second principles, "the financial industry wants to sell stuff to individual investors because it can't sell any more of that stuff to institutional investors, and because the fees are high," is really the worst imaginable advertisement for an investment. When the most sophisticated asset managers are desperate to sell you stuff, you should consider that perhaps you should not be buying the stuff, though of course this is not investment advice. When crypto managers are desperate to sell you stuff, that also might be some sort of signal.

That said, I am not sure how much this is a story about the rise of private assets (and crypto), and how much it is a story about the decline of 401(k) paternalism. In general, *outside* of 401(k)s, Americans have far more, and far spicier, investment options than they did a few years ago. You could always buy stocks, but now you can buy meme stocks, which are sillier. You can buy zero-day options. You can get all sorts of private credit. You can buy 10x levered perpetual crypto futures on Coinbase. You can, and I really cannot stress this enough, bet on sports in your brokerage account. You can't yet buy tokenized shares of OpenAI, but give that like a month.

Led by crypto and meme stocks and legalized sports gambling, the general norms about what sorts of investments regular people make, and should be allowed to make, and might enjoy making, have shifted. There is broader acceptance that *of course* you should be able to make all sorts of wild bets in your investment accounts, that a little excitement is a good feature of financial markets, that it is a good function of the financial system to offer you some entertaining bets. And if that's true, then the 401(k) system is going to offer you some of those bets too.

By the way: You can still buy low-cost broad public stock index funds! You can do that in your individual brokerage account — it's the button next to "Bet On Sports" — and you will probably be able to do it in your 401(k) for the foreseeable future. But your 401(k) plan might offer you a few *additional*, zanier options. And if you choose those and they don't work out, that's your problem.

Agentic Equities

An important stylized fact is that sell-side research analysts can move stocks. When a well-known analyst at a big firm upgrades a stock from Hold to Buy, the stock will probably go up. It is possible that there is a fundamental explanation for this — the analyst is very good at identifying which stocks will go up, so her upgrades correctly predict future cash flows — but there is also, obviously, a social-influence explanation. People follow her recommendations, so when she says that a stock is a Buy, people buy it, so it goes up. Her recommendations are, over some time horizon, self-fulfilling.

And therefore sophisticated investors who do their own analysis also pay attention to sell-side research analysts. And getting early access to research notes is insider trading, even though the analyst is not actually an “insider.” Her recommendations are market-moving in their own right.

Two things that I have mused about in recent weeks are (1) whether people are asking ChatGPT for stock recommendations and (2) whether it's giving them all similar recommendations. If the answers are yes and yes — if people increasingly are getting their financial advice from a handful of generative artificial intelligence models, and if the models give people the same advice — then the models' recommendations should be, over some time horizon, self-fulfilling. If everyone asks ChatGPT what stocks to buy, and ChatGPT tells them all “OpenDoor,” then OpenDoor will go up.

This can't be *literally* true, in part because people don't all ask ChatGPT the same questions, and it doesn't give them all the same answers. But here's a fun little website called Agentic Equities that tries to track ChatGPT recommendations:

Here are the stocks ChatGPT is telling people to buy. We query GPT-4o-search using multiple analyst personas for the S&P 500 and select stocks.

The analyst personas include “value investor,” “risk averse,” “quant/technical,” “meme investor,” “macro strategist,” “growth focused” and “balanced analyst,” and you can read the little memos ChatGPT writes for each of them. If ChatGPT is telling all of those personas to buy a stock, does that mean the stock will go up? Man, I have no idea, and this is not investment advice. But it does feel a little bit like the future.

In the place of payment

For a while it looked like President Donald Trump's tax bill might include a “revenge tax.” This tax, in Section 899 of the draft bill, would have imposed withholding tax on certain US income earned by foreigners from countries that have “unfair foreign tax” rules. So if a citizen of those countries — which apparently included Canada, the UK, most of the European Union and many other countries — owned US stocks or bonds, the US government would take as much as 20% of their dividend or interest income. This ended up not happening, but it was a worrying possibility for a while.

During that time, one reader emailed me to ask: Would this be a *default on US debt*? The logic is:

1. The US issues Treasury bonds, which pay interest.
- 2. Many of those bonds are owned by foreigners.
- 3. If the US seized the interest on those bonds for itself, rather than sending it to the (foreign) bondholders, that does seem like not quite the deal the bondholders signed up for.
- 4. Isn't that a default?

I think the rough answer is “no,” in part because the Section 899 tax probably wouldn't have applied to Treasuries and in part because the US, as a bond issuer, can kind of do whatever it wants; if it's a “default,” it is not a default in any actionable way. (There is no bond contract setting out events of default, and the bondholders are not going to accelerate their bonds, sue to get them paid, seize US assets abroad, etc.)

But it is a more generally applicable question in sovereign debt. A country issues bonds. The bonds pay interest. The country decides it no longer wants to pay the interest. If it simply says “we are no longer paying interest,” that's a default. The bondholders might have some legal remedies. Emerging-market bonds, in particular, are often issued under New York or English law and waive sovereign immunity, so the bondholders really can go to court in New York or London and demand payment and get some sort of legal order that makes life unpleasant for the issuer.

But what if the country does something else with a similar effect? What if it passes a new tax, saying “the tax rate on interest paid on our bonds to foreign holders is now 100%”? Then it could “pay” the interest to the bondholders (not a default), but take all of it back in tax. But people have thought of that; most sovereign bond contracts have a tax gross-up clause saying that, if the issuing country taxes any payments on the bond, it has to pay those taxes rather than imposing them on the bondholders. So that doesn't work, for most countries, though it might work for the US.

But you could be more creative. What about a law like “any payments on our bonds will be deemed made if we deliver them to our central bank in an account with the holder's name on it”? That way, the company has “made” the payment, but no cash has gone out the door to investors. Or “any payments on our bonds can be made in this new cryptocurrency we just made up”? There are ways to change your laws to change how the payments are made.

Does this work? Well, it shouldn't. The whole point of issuing sovereign bonds under New York or English law is to prevent this sort of thing: The issuer's obligations are governed by some outside law, so it can't just change its own laws to avoid paying.

But here is a fun paper by sovereign-debt legal experts Lee Buchheit and Mitu Gulati about a glitch. Most English-law sovereign bond contracts say something like this:

All payments are subject in all cases to any applicable fiscal or other laws, regulations and directives in the place of payment, but without prejudice to the provisions of [the tax gross-up clause].

Buchheit and Gulati explain:

The clause is a simple acknowledgment that a jurisdiction other than the jurisdictions in which the issuer and the investors are located may enact laws or regulations affecting payments under the instrument. The most likely measure of this kind would be some form of transaction tax on payments flowing through that jurisdiction or perhaps a politically motivated sanction on the issuing country. The Russian Federation, for example, was effectively prevented by EU sanctions from making payments on its Eurobonds following Russia's invasion of Ukraine in 2022.

Under this clause, it is not a default on the bond if the issuing country makes a payment to investors, but the country where the payment is received does something to prevent or tax the payment. The investors take the risk of a change in law in *other* countries, though not the risk of a change in law in the issuer country.

The glitch is that some bond contracts (roughly a quarter of English-law bonds) don't have the normal wording:

In our perusal of Cypriot bonds in 2013, however, we stumbled on the fact that the Fiscal Laws clause appearing in Cypriot bonds omitted the codicil "in the place of payment." The formulation of the clause used by Cyprus said that all payments are subject in all cases to any applicable fiscal or other laws, regulations and directives. The important geographical qualification "in the place of payment" was absent. Does this mean, we asked, that Cyprus itself could enact laws, regulations and directives affecting its own payments under the bonds? ...

Read literally, a Fiscal Laws clause that omits the "in the place of payment" codicil evidences the consent of the investors to the sovereign borrower enacting laws or regulations that will affect how the issuer can discharge its payment obligations under the instrument. This could arguably include the timing of payments, the place of payments, even perhaps the currency of payments. The one measure that would not be authorized under this provision is any form of withholding tax or similar levy imposed by the sovereign issuer's own jurisdiction. The Fiscal Laws clauses we have examined (all of them) could not be used to override the obligation of the issuer to "gross up" (that is, to make the investors whole) for any tax of that kind. ...

What might such a measure look like? Consider, for example, the situation of a country facing a severe — perhaps existential — need to conserve its foreign exchange. A situation brought on, perhaps, by the need to repel a brutal invasion by its neighbor. Confronted by that necessity, a plausible fiscal measure might require payments under external debt obligations to be discharged by crediting the amount due to an account in the name of the foreign creditor at the local central bank.

A number of countries that restructured their external debt in the 1980s employed programs of this kind covering foreign currency debts of both public and private sector obligors. The Philippines and Mexico, for example, each instituted a program that allowed private sector borrowers in those countries to discharge their foreign currency denominated debt obligations by paying the local currency equivalent to the country's central bank (which then assumed the obligation vis-à-vis the foreign creditor on restructured terms). In other countries, public sector borrowers settled their debts to foreign creditors by paying the amount due to the local central bank which then restructured the debt on agreed terms.

That is, if your sovereign bond contains a clause saying “all payments are subject in all cases to any applicable fiscal or other laws,” you can just make some new applicable laws to change the payments.

Everything is seating charts

Okay:

A former Point72 intern says he asked the firm for a quieter desk — and got fired instead. Now he’s suing Steve Cohen’s \$39.9 billion hedge fund.

Andrew Pardo, who was in the firm’s 2023 summer intern class after completing his junior year at the University of Michigan, claims in his suit that he was fired after he asked to move to a desk in a less-trafficked area because he suffers from PTSD, or post-traumatic stress disorder, a mental health condition he said he was diagnosed with after suffering physical abuse. ...

“This complaint, for which the plaintiff is demanding \$20 million in damages in connection with his summer internship, is ridiculous and without merit. We intend to address these matters in the appropriate forum,” the hedge fund wrote in a statement.

There almost certainly is some hedge-fund employee somewhere for whom the correct desk location really is worth \$20 million, but probably not an intern.

Things happen

Stagflation Concerns Ripple Through Wall Street as Tariffs Hit. In Land of 25% Inflation, Crypto Is Starting to Replace Money. Waller Emerges as Favorite for Fed Chair Among Trump Team. Microsoft Raids Google’s DeepMind AI Unit With Promise of Less Bureaucracy. Developer of Crypto Mixer Tornado Cash Found Guilty on One Criminal Charge. Cryptocurrency group Ripple buys stablecoin platform in \$200mn deal. UK crypto investors hail regulatory changes as ‘pivotal moment.’ Private Credit Goes Big on Open-Ended Funds to Lure Retail Cash. BCG consultants modelled relocating Gazans to Somalia. Elon Musk Takes on Sam Altman, This Time Over the Chessboard. Trump Ally Loomer Drags Puerto Rico’s Bankruptcy Battle Into Far-Right Spotlight. Billion-dollar doodles.

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- 1. Some 401(k) plans offer “brokerage windows” with a considerably broader range of options (single stocks, day-trading, etc.), but many do not.
- 2. There are overviews of the legal standards in the American Airlines and Intel decisions.

- 3. This is not **strictly** true: There is a long-running case against Intel Corp. for including high-fee hedge funds in some of its custom investment options in its 401(k) plan; plaintiffs made the obvious argument (that this was imprudent because the fees were too high), but they lost in a district court in 2022 (and then again on appeal in May 2025). It's not that it was plainly illegal to offer high-fee private options in a 401(k) before this year; it's that it was somewhat risky and uncertain.
- 4. Also, more subtly, I said in the previous paragraph that "if illiquid assets pay a premium you should be the one to earn it," but it's not at all obvious that they do. Conventionally one expects illiquid assets to earn a premium, because liquidity is desirable, but Cliff Asness likes to argue that these days investors prefer illiquidity, which means that illiquid assets should have **lower** expected returns than liquid ones. This is perhaps exacerbated if everyone is top-ticking private assets by dumping them on retail investors.
- 5. Though those now include a certain amount of crypto.
- 6. And, for that matter, principal.
- 7. Buchheit and Gulati: "Conventional tax gross-up clauses in sovereign bonds will be clear that any form of withholding tax imposed by the issuer's jurisdiction will be the responsibility of the issuer and any income tax imposed by the investor's jurisdiction will be responsibility of the investor."
- 8. Yes, Ukraine's bonds also lack the "in the place of payment" language.

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California Brief

Tesla Disbands Dojo Supercomputer Team, Unwinding Key AI Effort

Aug. 8, 2025, 6:56 AM PDT

Tesla Inc. is disbanding its Dojo team and its leader will leave the company, according to people familiar with the matter, upending the automaker's effort to build an in-house supercomputer for developing driverless-vehicle technology.

Peter Bannon, who was heading up Dojo, is leaving and Chief Executive Officer Elon Musk has ordered the effort to be shut down, according to the people, who asked not to be identified discussing internal matters. The team has lost about 20 workers recently to newly formed DensityAI, and remaining Dojo workers are being reassigned to other data center and compute projects within Tesla, the people said.

Tesla plans to increase its reliance on external technology partners, including Nvidia Corp. and Advanced Micro Devices Inc. for compute and Samsung Electronics Co. for chip manufacturing, the people said.

[Read More: Former Tesla Executives Create Data Center Firm DensityAI](#)

Musk's order marks a major shift for a program years in the making, with Dojo once positioned as central to Tesla's multibillion-dollar effort to pull ahead in the artificial intelligence race. Tesla and Bannon didn't respond to requests for comment.

After Bloomberg News first reported the developments, Musk confirmed Tesla's change in approach, writing on X that the next-generation AI chips going into the company's vehicles "will be excellent for inference and at least pretty good for training. All effort is focused on that."

Tesla's shares rebounded after a slight decline overnight, rising 2.1% at 9:52 a.m. in New York on Friday. The stock had fallen 20% this year through Thursday's close.

Dojo is a Tesla-designed supercomputer used to train the machine-learning models behind the electric-vehicle maker's Autopilot and Full Self-Driving systems, as well as its Optimus humanoid robot. It's based on a custom in-house chip known as D1 and was meant to be used in training AI models.

The computer takes in video data captured by vehicles and rapidly processes it to improve the company's algorithms. Analysts have said Dojo could be a key competitive advantage, with Morgan Stanley estimating in 2023 that it could eventually add \$500 billion to Tesla's market value.



DensityAI, which is poised to come out of stealth soon, is working on chips, hardware and software that will power data centers for AI that are used in robotics, by AI agents and for automotive applications, among other sectors, Bloomberg reported this week. The company was founded by Ganesh Venkataramanan, the former head of Dojo, and ex-Tesla employees Bill Chang and Ben Floering.

Talent Drain

Tesla has seen an exodus of key talent this year as it grapples with rising competition, falling sales and a consumer backlash to Musk's political activity. Milan Kovac, the head of engineering for Optimus, and David Lau, vice president of software engineering, left earlier this year. Bloomberg also reported in June that longtime Musk confidant Omead Afshar had parted ways with the company.

The EV maker reached a \$16.5 billion deal last month with Samsung to secure AI semiconductors through 2033. The plan is for an upcoming plant in Texas to produce Tesla's next-generation AI6 chip, diversifying Tesla's sourcing beyond leading chipmaker Taiwan Semiconductor Manufacturing Co.

Musk hinted at a strategic pivot during Tesla's most recent quarterly earnings call, suggesting future iterations of the company's in-house technology could converge with that of its partners. "Thinking about Dojo 3 and the AI6 inference chip, it seems like intuitively, we want to try to find convergence there, where it's basically the same chip," Musk said on the July 23 call.

Tesla's CEO also let on early last year that the company might not pursue Dojo in perpetuity, and that it may instead lean more on external partners.

"We're pursuing the dual path of Nvidia and Dojo," Musk said in January 2024. "I would think of Dojo as a long shot. It's a long shot worth taking because the payoff is potentially very high. But it's not something that is a high probability. It's not like a sure thing at all."

(Updates with opening shares in the sixth paragraph.)

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Ex-Tesla engineer who sued Musk for defamation says arbitrator was biased



reuters.com/legal/litigation/ex-tesla-engineer-who-sued-musk-defamation-says-arbitrator-was-biased-2025-08-08

Jenna Greene

August 8, 2025

A 3D-printed miniature model of Elon Musk and the Tesla logo are seen in this illustration taken January 23, 2025. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

August 8 (Reuters) - When an arbitrator decides a lawsuit, it's supposed to be the final word.

Not so in bitter litigation by a former Tesla engineer who in 2019 sued her ex-employer and CEO Elon Musk for defamation and now claims an arbitrator's award against her should be tossed because he was biased.

The case is set for a hearing on August 19 in San Francisco Superior Court, where plaintiff Cristina Balan faces a high legal hurdle to prove the arbitrator acted improperly in ruling against her in 2021 -- an assertion that Tesla in [court papers, opens new tab](#) calls "nonsense."

Still, the dispute raises what strikes me as an important question about arbitration: How to ensure decision-makers don't favor big companies that refer scores of cases to arbitration each year, choosing the forum and often paying the fees.

Unlike federal and state court judges, whose salaries come from taxpayers, arbitrators have an economic incentive to cultivate customers who'll use their services again and again.

The result can be what some scholars have termed the "repeat player effect," in which companies that frequently refer cases to arbitration tend to win the cases more often.

It's a longstanding concern. For example, a [widely cited study, opens new tab](#) in 1997 found workers won less often in cases against employers that used the same alternative dispute resolution provider repeatedly. And when the workers did win, they were awarded significantly less money than their counterparts facing employers that were one-off arbitration customers. Since then, multiple researchers have [documented, opens new tab](#) similar results.

What's less clear is if repeat-player success stems from the experience companies gain through arbitrating multiple times in the private, non-precedential forum, or if it's an indication of arbitrator bias.

Arbitration providers and the American Bar Association in [ethics guidelines, opens new tab](#) stress that decision-makers are required to be impartial and independent.

Balan told me she sees repeat-player dynamics in her arbitration challenge. Her bias allegations were previously reported by the San Francisco Chronicle.

In alleging “corruption in the form of a quid pro quo,” Balan [claims, opens new tab](#) that a San Francisco-based arbitrator got at least seven more appointments to hear Tesla or Musk-related disputes after being assigned her case in 2019 -- his first-ever arbitration involving the electric car maker.

Retired California Court of Appeal Justice Richard McAdams accepted the other appointments both while Balan's case was ongoing and after it was completed, she alleges, arguing that this unduly influenced him to side with the company for personal gain. McAdams, who works at for-profit alternative dispute resolution provider JAMS, dismissed Balan's complaint in 2021 as time-barred.

Balan also claims McAdams failed to promptly disclose one of the new Tesla arbitrations he was picked for while her case was pending -- an assertion that Tesla lawyers dispute -- and that she'd have moved to disqualify him if he had.

McAdams and Tesla did not respond to requests for comment. A JAMS spokesperson said the company “doesn't typically comment on disputes handled by our neutrals,” and declined to do so here.

Tesla's lawyers from Morgan, Lewis & Bockius in [court papers, opens new tab](#) take issue with the premise of Balan's complaint. It's an “every-day event” for arbitrators at JAMS as well as its competitors to accept additional cases involving the same party, they said. An arbitrator “is not guilty of corruption, fraud, undue means or anything close simply for doing so,” wrote Morgan Lewis partner Michael Weil, who did not respond to a request for comment. “The case law does not support Balan's arguments.”

He also argues Balan waited too long to file her petition to vacate the award.

JAMS has a roster of about 500 retired judges and attorneys that oversee more than 21,000 cases annually, according to the [company's website, opens new tab](#). Repeat customers include Tesla, which in contracts has designated JAMS to hear some disputes involving employees and customers.

According to his [JAMS bio, opens new tab](#), McAdams became an arbitrator after a 34-year judicial career in California, starting in small claims court and culminating in his elevation to the Sixth District Court of Appeal in 2003. He joined JAMS in 2011.

The parties in JAMS arbitrations don't typically hand-pick who hears their case, Tesla lawyers point out. Instead, each side is given a list of names to strike and rank to come up with someone mutually acceptable -- which is how McAdams got Balan's defamation suit.

The case has its roots in her tenure at Tesla, where she worked from 2010 to 2014 as a design engineer in California.

Balan alleges she was forced to resign after raising internal alarms about potential safety hazards, claims that Tesla has denied.

In 2017, the Huffington Post ran an article about Balan's exit. In response, Tesla said Balan "booked an unapproved trip to New York at Tesla's expense" and "spent company time working on a 'secret project' without her manager's approval," among other statements that Balan claims are false and defamatory.

About 16 months after the article appeared, Balan [sued Tesla, opens new tab](#) for defamation in U.S. District Court for the Western District of Washington, where she was living at the time.

A spokesperson for the Huffington Post, which is not a defendant in the suit, did not respond to a request for comment.

The ensuing litigation was procedurally complex, but the upshot was that Balan was compelled to arbitrate her case.

Her claim hinged on what law to apply: Washington, which has a two-year statute of limitations for defamation, or California, with a one-year time limit.

Although Balan said the parties initially agreed the substantive law of Washington would control, McAdams later decided on California law, writing that Balan's employment agreement with Tesla specified it and her defamation claims stemmed from that relationship, among other factors.

For Balan, it was game over. Her case was dismissed as time-barred.

Was the ruling the result of bias?

The Federal Arbitration Act permits a court to vacate an arbitration award "where there was evident partiality" by an arbitrator, but the law doesn't spell out exactly what that looks like.

Tesla lawyers say California law requires proof that the award was procured through "corruption, fraud, or other undue means" to overturn the results of an arbitration.

It will now fall to San Francisco Superior Court Judge Joseph Quinn to decide whether Balan has met that burden, and if the merits of her defamation claim will ever be reviewed by a court or arbitrator.

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Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

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California Brief

Tesla Employees Allege Retaliation for Validating Racism Reports

Aug. 8, 2025, 6:37 AM PDT

Tesla Inc. fired or otherwise retaliated against “a dizzying number” of human resources professionals for validating reports of workplace racism at the company’s Fremont, Calif., facility, a federal lawsuit charges.

The facility’s racially “toxic” work environment has been a hotbed of discrimination complaints and legal action for nearly a decade, including by one Black factory employee who sued after “being regularly subjected to the ‘N-word’ and racial slurs” and racist graffiti and won a multi-million-dollar jury verdict, the suit filed Thursday in federal court in San Francisco said.

Tesla CEO Elon Musk was frequently visited the Fremont facility and knew about and was directly involved in attempts to fix the tremendously high turnover rate in the HR department, according to the suit.

The company didn’t immediately respond Friday to a request for comment.

Douglas Hicks Law APC represents the plaintiffs, five HR employees and one senior security manager.

The case is *Peloquin v. Tesla, Inc.*, N.D. Cal., No. 3:25-cv-06690, complaint filed 8/7/25 .

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Securities Law News

Three Charged in Plot to Boost Firm Value Before SPAC Deal (2)

Aug. 7, 2025, 2:48 PM PDT

Three men were indicted for allegedly conspiring to fraudulently boost the value of data-insight company Near Intelligence Inc. before it was acquired by a blank check firm in 2022.

Federal prosecutors in New York on Thursday unsealed charges against the company's founders for allegedly exchanging fake invoices and inflated payments with a mobile-advertising firm, to make Near Intelligence's revenue appear more than 10 times higher than it actually was.

The company's chief executive officer, **Anil Mathews**, and its chief financial officer, Rahul Agarwal, were named in the indictment, along with Kenneth Harlan, the CEO of the mobile-advertising firm, MobileFuse. The alleged accounting fraud overstated the company's revenue by about \$25 million, prosecutors said.

Near Intelligence, which provided data insights to major companies including Wendy's Co. and Ford Motor Co., filed for bankruptcy in December 2023, less than a year after it combined with SPAC KludeIn Acquisition Corp.

The Pasadena, California-based company was one of nearly two dozen firms that went bankrupt in 2023 after going public by merging with a SPAC. Those failures represented more than \$46 billion in shareholder losses and included several major firms, including flexible workplace provider WeWork Inc., which boasted a \$9.4 billion market value after going public in 2021.

SPACs, or special purpose acquisition companies, exploded in the wake of the pandemic, drawing the attention of celebrities and financiers as investors poured money into the vehicles, before stricter regulations and plunging stocks of post-merger firms led markets to pull back.

Read More: Ex-SPAC Software Firm Near Intelligence Files for Bankruptcy

Mathews, 51, of Laguna Niguel, California, fled to France during the investigation and was arrested there, prosecutors said. The US is seeking his extradition.

Agarwal, 40, an Indian citizen, is not in custody. Harlan, 52, of Princeton, New Jersey, was arrested earlier today, pleaded not guilty during a court appearance in New York and was released on \$1 million bail.

Brian Linder, a lawyer for Harlan, said his attorneys will “vigorously defend” their client as against “these unfounded charges.”

“Mr. Harlan had no knowledge of nor willing role in the fraud allegedly perpetrated by Near Intelligence,” Linder said in a statement. “We fully expect to be vindicated in court.”

Lawyers for Mathews didn’t respond to requests for comment on the charges, and Agarwal didn’t respond to a message sent on LinkedIn.

Prosecutors said that the alleged scheme involved “round-tripping” money through Harlan’s firm, exchanging fake invoices that inflated payments in order to make Near Intelligence’s revenue from MobileFuse’s business appear higher.

The indictment alleges that the scheme operated between between May 2021 and September 2023. Prosecutors said Near Intelligence secretly funneled money to MobileFuse, which then returned the funds along with smaller amounts the company actually owed Near Intelligence for its services. Near then allegedly booked the entire payments as revenue, even though they were about 10 times the amount of the real invoices.

Near Intelligence board members terminated Agarwal and Mathews in November 2023 following an internal investigation into MobileFuse payments. The company filed bankruptcy the following month and said at the time that Near Intelligence paid MobileFuse tens of millions of dollars “for phony data services” as part of a scheme to inflate both companies’ revenues as well as Agarwal and Mathews compensation.

Near Intelligence told a bankruptcy judge it also struggled to keep existing customers or obtain new ones because of fierce competition from rival data intelligence firms. Near Intelligence filed bankruptcy at the end of 2023 and sold its assets to distressed-company lender Blue Torch Finance in a deal that traded at least \$34 million of debt for ownership, according to court documents. A judge later approved a winddown plan for what was left of Near Intelligence.

Read More: SPAC Mania’s Ugly End Yields \$46 Billion of Investor Losses

Mathews and Agarwal were also accused of taking money from the company to pay for personal expenses, with Mathews allegedly taking hundreds of thousands of dollars to pay for a home in Laguna Beach, California. Prosecutors alleged Agarwal transferred more than a million dollars to a Singaporean company he owned and hundreds of thousands of dollars in additional funds to a company owned by another Near executive.

The three men are charged with conspiracy to commit securities fraud and securities fraud. Mathews and Agrawal, 40, are also charged with wire fraud, and Mathews was also charged with aggravated identity theft. They face as much as 20 years in prison if convicted of the most serious charges.

The case is 24-cr-630, US District Court, Southern District of New York.

(Updates with results of court appearance.)

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Securities Law News

Ripple, SEC Drop Appeal After Settlement Path Blocked by Judge

Aug. 7, 2025, 5:18 PM PDT

Ripple Labs Inc. and the SEC will abandon an appellate fight over sales of the blockchain company's XRP token now that they can't settle the case, they told the Second Circuit Thursday.

The parties agreed to dismiss the SEC's appeal and Ripple's cross-appeal pending in the US Court of Appeals for the Second Circuit. The stipulation also resolves the civil enforcement actions against Ripple CEO Bradley Garlinghouse and its co-founder Christian A. Larsen.

The move comes after a federal judge refused to lift an injunction against Ripple and reduce a \$125 million civil penalty. It leaves in place the injunction against the sale of the XRP token to institutional investors and forces Ripple to pay a higher fine than it agreed to with the Trump administration's crypto-friendly SEC.

The SEC alleged in 2020 that Ripple broke securities laws by selling its digital token without registering it as a security and sought almost \$2 billion in penalties.

Judge Analisa Torres of the US District Court for the Southern District of New York found that the XRP token was covered by securities laws only when sold to institutional investors and later ordered Ripple to pay the \$125 million civil penalty.

Both sides appealed. But after President Donald Trump was reelected, the SEC reached an agreement with Ripple to reduce the civil penalty to \$50 million and lift an injunction barring institutional XRP sales.

The parties asked Torres to help extract them from parts of the judgment as a step toward settlement, but she refused.

The case is US Securities and Exchange Commission v Ripple Labs Inc. , 2d Cir., No. 24-2648, 8/7/25 .

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Securities Law News

Winklevoss Twins Said to Invest in Trump-Linked Crypto Miner

Aug. 7, 2025, 9:58 AM PDT

The billionaire Winklevoss twins are said to have invested in a new crypto-mining venture tied to another set of high-profile brothers, **Eric Trump** and **Donald Trump Jr.**

The investment by longtime Bitcoin backers Tyler and Cameron Winklevoss was part of a private placement by the venture, American Bitcoin Corp., according to **Asher Genoot**, Chief Executive Officer of Miami-based Hut 8 Corp. American Bitcoin was formed by combining Hut 8's mining assets with an entity whose investors included the sons of US President Donald Trump.

The exact amount of the investment by the Winklevoss twins wasn't disclosed.

The Winklevoss investment comes amid a deepening relationship between the Trump family and the twins, who contributed to the president's campaign and have been guests at the White House, attending a digital-assets summit in March as well as a signing ceremony for landmark crypto legislation last month.



Cameron, left, and Tyler Winklevoss speak with President Trump during a signing ceremony for the GENIUS Act landmark crypto legislation at the White House on Friday, July 18, 2025.

Photographer: Al Drago/Bloomberg

On an earnings call Thursday, Genoot described the private placement as “oversubscribed,” and said the Winklevoss twins used Bitcoin to make their investment. The company in a presentation said the offering generated aggregate gross proceeds of about \$220 million in cash and Bitcoin.

The Winklevoss twins run a US-based digital-asset exchange, Gemini, which is planning to go public. A spokesperson for Gemini couldn’t be reached for comment.

American Bitcoin has entered into an agreement to go public via a merger with Nasdaq-listed Gryphon Digital Mining Inc. in an all-stock deal. The new company is expected to operate under the brand American Bitcoin and its transaction is currently targeted to close in early September, the presentation said. Eric Trump’s stake in the venture could be worth \$367 million when it goes public, Bloomberg News reported last month.

--With assistance from **Olga Kharif** and **Emily Nicolle**.

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It's hard to argue that the stock market is efficient when a company crashes this much for reporting 19% revenue growth in Q2 but guiding down to expect 14% revenue growth for the year due to tariffs causing advertising budgets to be uncertain.

August 8, 2025 at 9:38 AM

<https://x.com/hkuppy/status/1953257568865751059>

Conversation
Kuppy @hkuppy

Typical Day as a Hedge Fund PM

6:00 - Wake up, check what Trump tariffed overnight. Cambodia up +200%, Paraguay -3% (they said thanks).

6:05 - Brew some coffee.

6:10 - Trump tweets that the laws are rigged, since he cannot tariff Arizona. Mentally scroll the portfolio for exposure...

6:15 - Check what happened in Asia and Europe.

6:22 - Trump announces that hot dogs will join the food pyramid. Bans hot dog exports. Fortunately our book dodged that one.

6:30 - Drink some coffee, talk to wife, pray Trump will spend the morning golfing so I can do some actual work....

6:31 - Trump announces that oil at \$65 is too high. Threatens anyone who isn't producing more oil.

6:32 - Top 5 position announces earnings, want to join the earnings call at 7am, but Trump just scheduled a press conference then, and he's looking unpredictable.

7:02 - Trump announces that Japan can now export golf balls tariff-free, in honor of Abe letting him cheat at golf. Join the earnings call instead.

7:06 - Futures plunge 65 handles in a single tick, frantically leave the earnings call and go back to whatever Trump is still yapping about in his press conference.

7:10 - Scroll through premarket quotes. \$NVDA and \$PLTR are both up 5% b/c it's a day ending in 'Y' but SPZ are now down 80 handles.

7:15 - Trump changed his mind and SPZ are now up 25 handles as everyone rushes to cover their short. (I re-join the earnings call)

7:30 - Some broker I've never heard of just downgraded a top 5 position and it's down 15% on 300 shares traded. I'm pretty confident it will close around there too. (I crack open a beer as I skim his downgrade report, realizing that nothing productive will happen today...😓😓)

8:00 - An LP calls to remind me of some

ShitCoin he recommended that's now up 1800% since he recommended it.

8:09 - 10-yr bonds gap down 17 bps, but all I can find is a tweet from Bessent about how great Main Street is doing.

8:15 - Some sell side asshole cold-calls me to see if I want a copy of his upgrade report on the AI sector. Tells me that "it's going to be big and you don't want to miss it."

8:20 - Check my email, do 10 minutes of actual work.

8:30 - Trump threatens Brazil, I realize our BZ exposure is gonna get thumped on the open. (Crack open a 2nd beer)

8:33 - Reminisce about how productive I was, since Biden wouldn't even wake up until noon.

8:40 - Chat with my CFO for 19 mins about some new compliance form we need to file.

8:59 - Trump Tweets about how stupid Powell is. Futures are back down 30 handles.

9:04 - Join a call 4 mins late with an endowment that wants an update, but 100% will never invest. "BTW - we need you to update the DDQ as we've changed our format" 😊😊

9:29 - Casino is opening. Let's see what happens.

9:32 - I'm bored. Go back to reading emails. Turns out the govt created another new form we ALSO need to fill out...

10:00 - We're actually up 50bps.

10:03 - Now down 175bps. Trump just threatened to bomb Europe.

10:06 - Tweets he was just joking about Europe. But those guys need to get their shit together bc he might still bomb them.

10:08 - Ready for bourbon. Beer won't cut it...

10:30 - EIA oil inventory shows yet another massive draw. Oil drops 5% anyway.

10:40 - Don Jr's latest SPAC rallies 300% on rumors it may launch a new ShitCoin

10:45 - Friend calls to cry about how cheap all his names are. We both agree we were idiots to invest in businesses with earnings.

11:22 - Trump reminds everyone about how much Putin likes him.

11:40 - Realize I'm now too tweaked to sit in the office. Turn off the machines and go get lunch with a friend who's also gonna bitch about how stupid markets have become.

12:05 - Hostess at restaurant pitches me some ShitCoin. Claims she's up a few million on it

12:07 - Friend starts bitching about how stupid it is to be an investor under Trump, and how we all made money under Biden. I agree with him, but we both agree it would be even stupider under Kamala...😏😏

5:51 PM · Aug 6, 2025

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Views



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6th Circ. Halts FirstEnergy Production Of Bribery Probe Docs

By **Jessica Corso**

Law360 (August 7, 2025, 7:40 PM EDT) -- The Sixth Circuit on Thursday prevented shareholders of FirstEnergy Corp. from immediately accessing investigative documents prepared by BigLaw firms in the wake of a \$1 billion bribery scandal, ruling that the utility company was likely to succeed in its claims that the disclosures were protected by attorney-client privilege.

A three-judge panel of the court granted a stay of a lower court ruling that would have required FirstEnergy to hand over documents prepared by Jones Day and Squire Patton Boggs LLP.

The investigations were conducted in response to criminal and civil investigations into FirstEnergy's role in a scandal that led to a **20-year prison sentence** for former Ohio House Speaker Larry Householder.

The panel said in a six-page order that FirstEnergy was likely to succeed in its arguments that the documents are protected by attorney-client privilege and under the attorney work-product doctrine.

"Because FirstEnergy sought and received its counsels' advice through the investigations, the attorney-client privilege likely applies," the circuit court said in granting the stay.

Robert Giuffra of Sullivan & Cromwell LLP, an attorney representing FirstEnergy, celebrated the ruling in a statement shared with Law360 Thursday.

"This decision was supported by 39 law firms, 11 corporate and legal ethics scholars, and several legal and business groups that filed amicus briefs emphasizing the importance of protecting the attorney-client privilege and attorney work product doctrine in internal corporate investigations," Giuffra said.

The Sixth Circuit, in fact, cited the "numerous amici" **filed in FirstEnergy's favor** as an additional reason for granting the stay, saying they demonstrated a "strong public interest in preserving the attorney-client privilege and work-product doctrine."

Attorneys representing the investor class didn't immediately respond to a request for comment.

Shareholders accuse FirstEnergy of concealing bribes it made to Householder and others in order to secure a \$1.3 billion bailout of two Ohio nuclear plants. They say that the company's stock price plummeted by 45% following the announcement that Householder had been arrested.

Federal prosecutors have since **brought charges** against others they say were involved in the scandal, including former FirstEnergy CEO Chuck Jones.

FirstEnergy admitted to bribing Householder and the utilities commission chair in 2021 when it **agreed to pay** \$230 million to avoid prosecution.

That U.S. Department of Justice investigation, alongside other governmental investigations like those conducted by the U.S. Securities and Exchange Commission and the Ohio Attorney General's office, were some of the many legal issues faced by FirstEnergy when it hired Squire Patton Boggs and Jones Day to perform the internal investigations, the Sixth Circuit said Thursday.

The circuit court said it was wrong for U.S. District Judge Algenon Marbley to allow the production of the internal investigation documents on the basis that the company used the advice it was given by the firms for business purposes.

That reasoning is "backwards," the Sixth Circuit said.

"What matters for attorney-client privilege is not what a company does with its legal advice, but simply whether a company seeks legal advice," the court wrote.

Judge Marbley **denied** FirstEnergy's request to appeal the discovery dispute to the Sixth Circuit, after which the company petitioned the circuit court directly.

The Sixth Circuit has also been asked to decide the fate of the investor class, after FirstEnergy **appealed certification** in 2023. A ruling in that appeal has not yet been issued.

U.S. Chief Circuit Judge Jeffrey Sutton and U.S. Circuit Judges Alice Batchelder and John Nalbandian sat on the panel for the Sixth Circuit.

FirstEnergy is represented by Robert Giuffra, Sharon Nelles, David Rein, Nicholas Menillo, Maxwell Gottschall, Morgan Ratner and Kathleen O'Malley of Sullivan & Cromwell LLP.

The investors are represented by Jason Forge, Darren Robbins and Mark Solomon of Robbins Geller Rudman & Dowd LLP and Joseph Murray and Brian Murphy of Murray Murphy Moul & Basil LLP.

The case is In re: FirstEnergy Corp., case number 24-3654, in the U.S. Court of Appeals for the Sixth Circuit.

--Editing by Jay Jackson Jr.

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Del. Court Weighs Final Leads For \$13B Endeavor Stock Suit

By **Jeff Montgomery**

Law360 (August 7, 2025, 6:00 PM EDT) -- In a rare battle of extremes, attorneys for a single Endeavor Group investor urged a Delaware vice chancellor on Thursday to accept their suit challenging the company's \$13 billion take-private deal in March over a suit filed by investment giant Icahn Enterprises LP and a multinational bank based in Sweden.

The choice by Vice Chancellor Lori W. Will would send forward claims that Endeavor, a major sports and entertainment company, sold itself short and short-changed public stockholders, allegedly by a billion or more, in a "squeeze-out" deal with affiliates of Silver Lake Capital.

"There are some very important policy considerations at play here in terms of what class action litigation may look like in this court going forward," Ned Weinberger of Labaton Keller Sucharow LLP, counsel to stockholder Ricardo Garcia, told Vice Chancellor Will.

"This is a self-dealing controller transaction. We do not need every last document. We just need to determine what happened, and is this transaction fair or not, and that's what we did," Weinberger said.

Garcia holds shares worth \$750 at the \$27.50 deal price, which involved Silver Lake as well as other investors, including Michael Dell.

The \$27.50-per-share price was described by Silver Lake as representing a 55% premium in cash to the unaffected share price of \$17.72 per share at market close on Oct. 25, 2023, the last trading day before Endeavor's announcement of its review of strategic alternatives,

"The idea that large stockholders have some fundamental entitlement to lead litigation over and above [other] stockholders, that's not Delaware law," Weinberger said. He noted that the Icahn and Handelsbanken Fonder AB complaint was on its third version, after filing two earlier complaints that he said "were plagued by erroneous allegations concerning the merger's compliance with Endeavor's charter."

Decades of Delaware case law, Weinberger told the vice chancellor, say that "Icahn does not have standing to represent the class." He added that Icahn attempted to "buy the class" and risked an "absolute catastrophe."

The latest version of the suit by the Icahn camp claims breaches of fiduciary duty by Silver Lake as controlling stockholder as well as against its directors, along with directors and officers of Endeavor, and an Endeavor board special committee. Endeavor itself was accused of breaching its charter, along with trust investors.

Edward Timlin of Bernstein Litowitz Berger & Grossman LLP, counsel to Icahn and Handelsbanken, told the vice chancellor that while leadership cases are often close calls, "this is not one of those cases."

While saying that the Icahn group was not arguing that "the biggest stockholder has an entitlement" in class leadership contests, Timlin asked if Garcia "has enough skin in the game" to put him and his attorneys at the helm.

For this "small amount of upside, Mr. Garcia is accepting fiduciary duties which, inferrably, he is not familiar with," Timlin said.

Addressing Garcia's counsel's assertion that Icahn entered the litigation late, Timlin said Icahn majority owner Carl Icahn invested "because he is trying to maximize the value of the claims, which will benefit everyone in the class."

One analysis in the Icahn group's second amended complaint concluded that a discounted cash flow check "valued Endeavor shares between \$27.58 and \$36.23, with a \$31.91 midpoint" some 16% higher than the consideration public stockholders received.

"This alone would imply that the company was undervalued by over \$1 billion at the time of the squeeze out," the Icahn complaint said.

Vice Chancellor Will asked Timlin at one point, "Does it follow then that this stockholder who bought shares three weeks before closing" can serve as lead plaintiff?

Timlin said Carl Icahn has considerable experience as a member of company boards, and he has been a principal in high-stakes disputes between fiduciaries and stockholders on both sides. His efforts, Timlin said, aim to "radically benefit everyone in the class."

In addition, he said, Handelsbanken has operations in several countries and is "one of the most sophisticated Nordic asset managers."

"I don't think there's any real policy basis under modern interpretations" of class litigation regarding "why an investor who puts his money where his mouth is, invests real capital and real expertise should be discounted based on the timing of the acquisition," Timlin said.

Weinberger said that the other side negotiated a 22% fee cap that, if the case settles early, will be too high.

"Even if Icahn is not appointed, this issue is not going away, this issue of putting up a plaintiff, of having a co-plaintiff, who bought in shares a few weeks before the closing is not going away," he said. "I did not believe anyone would ever try this. This is such bad policy. Class actions are going to be up for sale," Weinberger said.

The arguments came two weeks after the selection of litigation boutique Abrams & Bayliss LLP to lead a potential blockbuster lawsuit seeking court-supervised appraisal of Endeavor Group shares for stockholders who declined to accept the deal price and sued instead.

Vice Chancellor Will said she would take the arguments under advisement.

Garcia is represented by Ned Weinberger, Brendan W. Sullivan, Carol C. Villegas, John Vielandi, Joshua M. Glasser, Jiahui (Rose) Wang and Tae Kyung Yang of Labaton Keller Sucharow LLP and Jeremy Friedman, David Tejtelt, Lindsay La Marca, Alexander Krischik and David Rosenfeld of Friedman Oster & Tejtelt PLLC.

Proposed additional counsel for Garcia are Thomas Curry, David J. Schwartz, David Wales and Joshua Nelson of Saxena White PA, Eric L. Zagar and Nakib A. Kabir of Kessler Topaz Meltzer & Check LLP, and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

Icahn Enterprises and Handelsbanken are represented by Gregory V. Varallo, Benjamin M. Potts, Margaret Rockey, Jeroen van Kwawegen and Edward Timlin of Bernstein Litowitz Berger & Grossmann LLP, Joel Fleming, David Dorfman and Lauren Godles Milgroom of Equity Litigation Group LLP, Michael J. Barry, Christine M. Mackintosh, Vivek Upadhyaya and James Notis of Grant & Eisenhofer PA and James Woolery of Woolery & Co. PLLC.

The case is In re: Endeavor Group Holdings Inc. Stockholders Litigation, case number 2025-0663, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jessica Corso. Editing by Adam LoBelia.



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Kids Cartoon Co. Gets Investor Suit Trimmed

By **Katryna Perera**

Law360 (August 7, 2025, 3:45 PM EDT) -- A California federal judge issued a mixed ruling in a securities class action alleging that kids cartoon company Genius Brands International Inc. and its CEO engaged in a pump-and-dump scheme, finding that the third version of the complaint only plausibly pleads that investors relied on misstatements related to the airing frequency of the show "Rainbow Rangers."

U.S. District Judge Dale S. Fischer issued **an order Tuesday** dismissing with prejudice the suit's claims related to Genius' relationship with a stock promoter and alleged misrepresentations that Netflix or Disney was interested in buying the company. The claims were permanently tossed "for repeated failure to cure deficiencies by previous amendment," the order said.

According to the order, in 2019, Genius' stock was trading at less than \$1 a share and it faced potential delisting from Nasdaq. To prevent delisting, the company allegedly hired stock promoter PennyStocks.com to publish favorable articles about the company to boost the price of its shares.

Genius and its CEO Andy Heyward subsequently made several misleading statements about the company and its operations in an effort to further boost its share price, according to the suit.

The suit said Genius did not disclose its relationship with PennyStocks, and after the financial analysis group Seeking Alpha reported that Genius most likely retained the stock promoter, Genius' stock price fell by 14%.

According to Tuesday's order, the court previously tossed the investors' loss causation claim related to the Seeking Alpha report because the alleged disclosure "was based entirely on publicly available information that was easily accessible and required no special analysis."

In the operative complaint, the investors said the court's prior determination is now "inapplicable" because of the added claims that PennyStocks was not widely known by investors, Seeking Alpha is not a short-seller and there are "hundreds" of websites that promote small and microcap issuers.

Judge Fischer, however, said those additional claims do not alter his analysis "in any meaningful way."

The judge reached the same conclusion with the suit's scienter allegation related to the PennyStocks claim, saying that although the operative complaint now alleges that Heyward approved various securities filings, they are still "too vague to speak to Heyward's knowledge of the alleged PennyStocks relationship."

"That the [company's] 10-K disclosed 'information about share grants' given by Genius to a stock promoter is unhelpful where the 10-K did not identify the stock promoter and never mentioned PennyStocks," the order said.

The statement that forms the basis of the suit's Disney and Netflix claim is a retweet from Genius' account on Twitter, the social platform now known as X, of an Insider Financial article that speculated on a buyout of Genius by either Disney or Netflix.

"According to plaintiffs, the retweet [falsely] 'impliedly represented the accuracy of the Insider Financial analysis — including the conclusion that Genius would be sold to Disney or Netflix — and this was done on the company's Twitter page,'" the order said.

Judge Fischer said Tuesday that even if it were plausible that a reasonable investor after reviewing the retweet and the linked article would have been misled to believe that "Genius was actually in the process of negotiating a buyout by Disney or Netflix, the allegations do not allow for a 'cogent and compelling' inference that Heyward either intended the retweet to make such a representation or was deliberately reckless as to an obvious danger that the retweet would be understood as making such a representation."

The judge also tossed with leave to amend the suit's claim that Genius misrepresented its rights to the Stan Lee Universe by overstating the scope of its rights and by failing to disclose that those purported rights may be in dispute. The judge found the challenged statements related to this claim "fall squarely" within the Private Securities Litigation Reform Act's definition of forward-looking statements and did not require accompanying cautionary language.

The only claim Judge Fischer retained Tuesday was that investors relied on Genius' announcement that Nickelodeon had increased the broadcast of the company's preschool series "Rainbow Rangers" to 26 airings per week. According to the order, in reality, the show was airing only 12 to 14 times a week. The judge found that the investors alleged sufficient facts to invoke the Basic v. Levinson presumption of reliance.

The suit was launched **in August 2020**, with an investor accusing the company and Heyward of weaponizing investors' "fear of missing out" by touting "tenuous" connections to celebrities and exaggerating the growth of its most popular cartoon and its freshly launched streaming service — Kartoon Channel — to inflate stagnant stock prices and enrich executives and long-term shareholders.

Alavi and A Legacy Foundation **were chosen** as co-lead plaintiffs of a class of investors after the case was consolidated in December 2020.

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

The investors are represented by Robert V. Prongay, Ex Kano S. Sams II and Raymond D. Sulentic of Glancy Prongay & Murray LLP.

Genius and Heyward are represented by Michael L. Charlson, Elizabeth Matthews and Marisa Antonelli of Vinson & Elkins LLP.

The case is In re: Genius Brands International Inc. Securities Litigation, case number 2:20-cv-07457, in the U.S. District Court for the Central District of California.

--Additional reporting by Sarah Jarvis. Editing by Stephen Berg.



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Crypto Buyers Win Class Cert. Against Kardashian, Celebs

By **Lauren Berg**

Law360 (August 7, 2025, 10:45 PM EDT) -- EthereumMax buyers accusing celebrities of promoting the cryptocurrency allegedly used in a pump-and-dump scheme can certify subclasses in four states, but not their nationwide class, a federal judge ruled, agreeing with famed boxer Floyd Mayweather Jr. that there's a risk of California and Florida securities laws being inappropriately applied outside those states.

In his Wednesday **order**, U.S. District Judge Michael W. Fitzgerald partially granted the buyers' **motion for class certification** for subclasses in California, New York, New Jersey and Florida, but denied their request to certify a nationwide class of people "who, between May 14, 2021, and June 27, 2021, purchased unregistered EthereumMax tokens and were subsequently damaged thereby."

In their suit, **first filed** in January 2022, the crypto buyers claim Ethereum co-founder Giovanni Perone and celebrity promoters, including Mayweather, former NBA player Paul Pierce and reality TV star Kim Kardashian, misled them with their statements about the project, which the investors say ultimately amounted to a pump-and-dump scheme.

After Judge Fitzgerald trimmed some of their claims and gave them **one last shot** at filing an amended complaint, the buyers moved for class certification, arguing that their claims are based on common contentions that the defendants made uniform representations regarding the EMAX token, which resulted in common harm to class members who overpaid for the unregistered tokens that "did not possess their promised attributes."

But the defendants argued that the myriad facts around each purchase will make it impossible to sort the purported thousands of EMAX buyers into nationwide and four state classes.

In his order Wednesday, Judge Fitzgerald found that, while the proposed nationwide class met other certification requirements — including numerosity, commonality and typicality — it does not pass the predominance test, which is when "common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication."

The nationwide class, which is based only on California and Florida state securities laws, presents a material conflict because both of those states have fraud statutes that can only be applied to securities bought or sold in those states, the judge said, agreeing with one of the arguments raised in **Mayweather's opposition**.

The judge estimated that there are nearly 6,000 nationwide purchasers of EthereumMax crypto tokens, with about 700 buyers in California and less than 400 purchasers in Florida, according to the order.

"Even discounting the possibility of international purchasers, and construing the Florida statute broadly, only around 1,100 of 5,911 purchasers would fall ipso facto under the California and Florida securities laws that are territorially limited," Judge Fitzgerald said. "To certify a national class as to these causes of action would therefore require very individuated questions of fact as to the substantial majority of purchasers."

"If purchasers did not buy from first parties, but rather from fellow consumers, where did those consumers reside? For those purchasers not residing in California and Florida, proof of plaintiffs'

securities claims would necessarily involve these and similar issues, which are simply not amenable to common proof," the judge said.

Counsel for the plaintiffs told Law360 Thursday that they are "pleased with the court's decision and look forward to preparing the case for trial."

Counsel for the defendants did not immediately respond to requests for comment.

The crypto buyers are represented by John T. Jasnoch, Mollie Chadwick and Hal Cunningham of Scott + Scott Attorneys at Law LLP.

Perone is represented by Michael Freeman of Freedman Firm PC.

Kardashian is represented by Michael G. Rhodes, Carrie Lebel, Maximilian Sladek de la Cal, Michelle Doolin, Robby L.R. Saldaña and Travis LeBlanc of Cooley LLP.

Mayweather is represented by Samuel A. Josephs and Mario H. Nguyen of Spertus Landes & Josephs LLP.

Pierce is represented by Steven G. Madison of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In re: EthereumMax Investor Litigation, case number 2:22-cv-00163, in the U.S. District Court for the Central District of California.

--Additional reporting by Sydney Price, Hailey Konnath and Aislinn Keely. Editing by Jay Jackson Jr.

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M&A Ruling Reinforces High Bar For Aiding, Abetting Claims

By **Steve Blake, Pete Kazanoff and Jon Youngwood** (August 7, 2025, 1:24 PM EDT)

On June 17, the Delaware Supreme Court **reversed** the Delaware Court of Chancery's June 2023 **post-trial judgment** in *In re: Columbia Pipeline Group Inc. Merger Litigation*, which had held TransCanada Corp., acquirer of Columbia, liable for aiding and abetting breaches of fiduciary duty by Columbia's officers and board during the deal process and awarding the plaintiff Columbia stockholders approximately \$200 million in "nominal damages."^[1]

Citing its December 2024 **decision** in *In re Mindbody Inc. Stockholder Litigation*, the Delaware Supreme Court reemphasized the challenge of finding an arm's-length buyer to be an aider and abettor, reiterating the need to prove both that the buyer had actual knowledge of the target fiduciary's breach of duty and the wrongfulness of its own conduct.

Below, we will examine the transaction, the lower court's decision and the Delaware Supreme Court's reversal, and offer key takeaways.

Transaction Background

In 2015, Columbia, a Delaware corporation and owner of U.S. natural gas pipelines, began to consider a sale of the company.

In September 2015, Columbia and TransCanada, an owner of oil and gas pipelines throughout North America, began negotiations. Robert Skaggs Jr., Columbia's CEO and board chair, as well as Columbia's chief financial officer, Stephen Smith, would lead the negotiations. Both officers wished to retire and had change-in-control agreements.

By early November, the companies had entered into a nondisclosure agreement that included a standstill provision.^[2]

In November 2015, TransCanada presented an all-cash proposal at \$25 to \$26 per share, which Columbia rejected. Despite the standstill, TransCanada and Columbia remained in contact through Skaggs, Smith and TransCanada's deal team lead, Francois Poirier, who had known Smith since 1999.

Around this time, Smith, who was an "M&A neophyte," according to the Delaware Supreme Court decision, told Poirier that management wanted to sell and there were no other bidders. In late January, TransCanada's CEO provided an oral expression of interest in a deal at \$25 to \$28 per share, and Skaggs obtained permission from the board to engage in exclusive negotiations with TransCanada, after which TransCanada agreed to \$26 per share, 90% in cash and 10% in stock.

Despite the emergence of a second bidder, Skaggs and Smith recommended that the board renew exclusivity with TransCanada, as they believed that they were close to signing a formal merger agreement. At that point, Poirier reneged on the \$26-per-share agreement, lowered TransCanada's bid to \$25.50 per share, demanded an answer within three days and threatened to publicly announce



Steve Blake



Pete Kazanoff



Jon Youngwood

that the negotiations were dead unless Columbia accepted the reduced offer. Skaggs and Smith recommended that the board take the reduced deal, and the deal **closed**.

Procedural History

Columbia stockholders subsequently sued Skaggs, Smith and TransCanada. The plaintiffs alleged that Skaggs and Smith breached their fiduciary duties, specifically their duty of loyalty by initiating and timing the merger to favor their own self-interest, as well as their duty of disclosure because the proxy statement was false and misleading as to the negotiations.

The plaintiffs also claimed that the Columbia board breached its duty of care by failing to provide sufficient oversight of the sale process. They further claimed that TransCanada aided and abetted the fiduciary breaches during the sale process, and aided and abetted breaches of the duty of disclosure.

During discovery, Skaggs and Smith settled and agreed to pay \$79 million in return for dismissal of the claims against them, leaving TransCanada as the sole defendant.

After a five-day trial, the Court of Chancery found in June 2023 that the plaintiffs proved the underlying breaches of fiduciary duty. The Court of Chancery further concluded TransCanada constructively knew of, and culpably participated in, Skaggs' and Smith's breaches.

The Court of Chancery determined that TransCanada was also liable for aiding and abetting the breaches of the duty of disclosure. As TransCanada had a right under the merger agreement to review the proxy and an obligation to inform Columbia of any material omissions, but remained silent when the draft proxy failed to disclose all of Skaggs' and Smith's interactions with TransCanada, the Court of Chancery concluded that TransCanada had knowingly permitted Columbia to issue a misleading proxy statement, which amounted to knowing participation in the issuance of the proxy statement.

In essence, the Court of Chancery concluded that silence was tantamount to knowing participation. As for the disclosure claim damages, the court awarded the plaintiffs nominal damages of \$0.50 per share, or approximately \$200 million.

On appeal, TransCanada argued that it was an error to find that it had aided and abetted any sale-process breach by the officers or the board, or aided and abetted any disclosure breach, as well as that it was an error to award nearly \$200 million in nominal damages.[3]

The Delaware Supreme Court Reverses

Justice Gary F. Traynor, writing for the Delaware Supreme Court, began by stating that under its 2001 decision in *Malpiede v. Townson*, the four elements of an aiding and abetting claim are: "(1) the existence of a fiduciary relationship; (2) a breach of the fiduciary's duty; (3) knowing participation in that breach of the defendants; and (4) damages proximately caused by the breach."

Justice Traynor then turned to *Mindbody*, which clarified that a plaintiff must prove both that the buyer knew of the sell-side breach, and that the buyer knew that "its own conduct regarding the breach was improper." Citing its 2015 decision in *RBC Capital Markets LLC v. Jervis and Mindbody*, the court reiterated that the requirement that an aider and abettor act knowingly "makes an aiding and abetting claim among the most difficult to prove."

Rejecting the Court of Chancery's determination of liability based on constructive knowledge, the court stated that *Mindbody* requires "actual knowledge."

As to whether TransCanada had actual knowledge that Skaggs and Smith were breaching their fiduciary duties, the court pointed out that even though they were eager to strike a deal and wanted to retire with their change-in-control benefits, they also had incentives to pursue the best deal possible and rejected several TransCanada proposals.

The court stated that "we see Skaggs's and Smith's eagerness as sending ambiguous signals at best." The court concluded that an "inference that such subtle and unintentional signals should arouse suspicion — much less constitute clear and direct knowledge — that a sell-side fiduciary is

acting disloyally or in bad faith would not, in our view, be justifiable."

As for whether TransCanada had actual knowledge that the Columbia board was breaching its duty of care by providing insufficient oversight of Skaggs and Smith, the court concluded that this breach would have been even less clear to TransCanada because it did not have direct interaction with the board members and was not present for any board meetings. The court stated that without the requisite actual knowledge of the underlying breaches, TransCanada could not know that its own conduct was legally impermissible.

In other words, lacking actual knowledge of the sell-side breaches, the court concluded that TransCanada could not have knowingly participated in them.

For the sake of completeness — as the court could have ended its inquiry with its determination that the trial record did not support a finding that TransCanada had actual knowledge — it also reviewed the finding that TransCanada culpably participated in the breaches.

The court stated that it "emphasized in *Mindbody* that whether a defendant's participation in another's breach of duty is culpable hinges in large part on whether the defendant substantially assisted in the commission of the breach." The court explained that to substantially assist an aider and abettor's participation in a primary actor's breach of fiduciary duty must be of an "active nature" and "include something more than taking advantage of the other side's weakness and negotiating aggressively for the lowest possible price."

The court went so far as to state that:

The bidder may have, under such circumstances as we have seen here, stretched the bounds of hard bargaining so ungraciously as to unsettle the polite observer. But a bidder's aggressive bargaining tactics, however disquieting, do not constitute aiding and abetting unless the bidder has substantially assisted, that is, "knowingly participated" in the breach.

Reviewing the incidents alleged to have been culpable participation — Poirier's exploitation of Smith's negotiation inexperience, TransCanada's violation of its \$26 offer, and the purported disclosure threat if Columbia did not accept the lower offer — the court first concluded that taking advantage of a personal relationship and superior negotiating skills and experience to secure the best reasonably available price could not expose a party to aiding and abetting liability.

Second, the court stated that it could not conclude that TransCanada actually knew that it was breaching the standstill, and that it was substantially assisting the Columbia negotiators in the breach of their fiduciary duties in light of the parties' mutual understanding that the standstill permitted informal communications and only required a written invitation before a formal offer.

Third, the court concluded that there was no deal at \$26 on which TransCanada could have reneged, and that the lower court's finding to the contrary was not supported by the record. The court was not persuaded that TransCanada's subsequent \$25.50 offer was accompanied by a coercive threat.

As for TransCanada's aiding and abetting liability for the breaches of the duty of disclosure, the court concluded that TransCanada did not culpably participate in the disclosure breaches. Evaluating "the amount, kind, and duration of assistance" by TransCanada under *Mindbody*, including how directly involved TransCanada was in the primary actor's conduct, the court stated that there was "no meaningful difference" between these facts and those in *Mindbody*.

In *Mindbody*, where there was an absence of affirmative conduct by the aider and abettor, the court had concluded that the culpable participation factor weighted against a finding of liability. The court found the same to be true in this case, because although TransCanada offered comments on the proxy, it did not propose any of the statements found to be misleading or suggest any omissions.

As for TransCanada's actual knowledge that its own conduct was legally improper, the court concluded that the record did not contain sufficient support to determine that TransCanada knowingly participated in any of the disclosure breaches found by the lower court. The court noted that the Court of Chancery did not find as a factual matter that TransCanada "knew that its failure to abide by its contractual duty to notify [Columbia] of potential material omissions in the Proxy Materials was

wrongful and that its failure to act could subject it to [aiding-and-abetting] liability."

Lacking this crucial element, the court concluded that the plaintiffs' aiding and abetting claim against TransCanada failed.

Key Takeaways

Together, the Delaware Supreme Court decisions in Mindbody and Columbia Pipeline provide buyers comfort that an aiding and abetting claim remains among the most difficult to prove.

In Columbia, Justice Traynor indicated that it is critical to view the facts from the point of view of the buyer. For example, Justice Traynor refused to conclude that the "ambiguous signals" to the buyer — the officers' eagerness to strike a deal, their desire to retire with their change-in-control benefits, their incentives to get the best deal possible and their rejection of several proposals — rose to the level of clear and direct buyer knowledge that the fiduciaries were acting disloyally or in bad faith.

Further, revealing a practical, businesslike attitude toward dealmaking, Justice Traynor indicated that aggressive bargaining tactics, and even taking advantage of the other side's weakness, were not aiding and abetting unless the buyer substantially assisted — i.e., "knowingly participated" — in the breach.

Justice Traynor's conclusion that taking advantage of a personal relationship and superior negotiating skills and experience to secure the best reasonably available price could not expose a party to aiding and abetting liability should provide reassurance to buyers that they need not hold back when dealing with less experienced counterparts or those with whom they have a preexisting relationship. On the other hand, Mindbody and Columbia expressly caution that liability may arise if a buyer "attempts to create or exploit conflicts of interest in the board," or if a "bidder and the board conspire in or agree to the fiduciary breach."

Similarly, Justice Traynor concluded that the buyer simply reviewing draft proxy materials and offering comments did not constitute "substantial assistance" in the seller's disclosure breaches, noting that the buyer had not proposed misleading statements or suggested omitting material information.

Going forward, Mindbody and Columbia Pipeline may serve to slow the filing of aiding and abetting claims against third-party buyers in situations where buyers negotiate aggressively, which should put buy-side dealmakers' minds at ease that they are unlikely to stray into liability for acting in the interests of their stakeholders and seeking the best possible deal.

Steve Blake is a partner at Simpson Thacher & Bartlett LLP.

Pete Kazanoff is a partner at the firm.

Jon Youngwood is a partner, the global co-chair of the litigation department and the leader of the civil securities litigation practice at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] **In re: Columbia Pipeline Grp. Inc. Merger Litig.** , 2025 Del. LEXIS 226 (Del. June 17, 2025).

[2] The standstill required TransCanada to send all requests and "questions regarding procedures" to Smith and stated that TransCanada could not "acquire or offer to acquire" Columbia for 12 months unless Columbia's board requested the offer in writing in advance.

[3] TransCanada did not challenge the Court of Chancery's finding that Skaggs and Smith breached their duty of loyalty as corporate officers by favoring their self-interest, or the finding that the

Columbia board breached its duty of care by failing to provide sufficient oversight of the sale process.

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Student Loan Co. Sued In Chancery Over 'Unfair' Lender Deal

By **Jeff Montgomery**

Law360 (August 7, 2025, 8:11 PM EDT) -- Stockholders of international student loan provider MPower Financing PBC have filed a lawsuit in Delaware's Court of Chancery to block new "highly dilutive" borrowing from the company's top lenders and stockholders, alleging unfair terms that could hand control to two hedge funds.

Investors Drakes Landing Associates LP and others said in their Wednesday complaint that the transactions will allow hedge funds Tilden Park Capital Management LP and King Street Capital LP to lend MPower \$25 million while securing the right to convert \$108.9 million of debt currently held by the two entities into common stock at an "extremely low price."

The debt-for-equity swap would purportedly boost the two hedge funds' collective share of the company's stock from 25.5% to 85.5%.

"Since the closing of the transaction, the company has acted as if it has something to hide," the complaint said, noting MPower canceled its regularly scheduled quarterly call with stockholders in April and later shared only limited information.

The investors are urging the court to issue an injunction barring the stock issue, alleging "enormous unfairness" in the transaction and improper interference by the hedge funds with a board special committee's evaluation of the deal.

MPower is a Delaware-chartered, Washington, D.C.-based public benefit corporation that provides international student financing, borrowing from banks and other lenders and then issuing loans to international students seeking to attend universities in the U.S. and Canada for graduate and undergraduate degrees.

The company, founded by two international students in 2014, has more than 100 employees and \$34 million in annual revenue, with \$600 million in loans issued.

Named in the suit were three directors who served on the special committee that approved the transaction, with the suit also naming the two hedge funds and MPower itself.

The company allegedly appointed Washington, D.C.-based investment bank Compass Point in October 2024 to raise \$100 million in equity capital at more than \$20 per share at the direction of a Tilden Park designee on MPower's board.

"By comparison," the suit said, the company's stock offering in July 2021 was at \$15.50 per share, while the two hedge funds' debt-to-equity conversion will use a \$2.25-per-share rate, 87% lower than the rate in 2021.

While Tilden Park and King Street would own 85% of the company's stock under the pending conversion, other stockholders would be diluted from 74.5% to 15%, it said.

The company also allegedly delegated a special committee to rule on the conversion, despite a recommendation from the MPower's counsel, CEO Manu Smadja and attorneys at Greenberg Traurig LLP to seek stockholder approval.

"Because of the improper pressure that Tilden Park and King Street jointly put on the special committee, the stockholders never were given a vote on the transaction and never were properly informed," the complaint said.

It added that potential "strategic" outside investors were not approached, while a data room for prospective lenders opened only on March 6, nine days before term sheets from interested parties were due.

In addition to seeking a preliminary injunction, the three-count suit seeks unspecified damages, brings claims of breaches of fiduciary duty by the company's directors as well as aiding and abetting of those breaches by Tilden Park and King Street, and requests an additional injunction barring further stock issues to the two hedge funds.

The stockholders are represented by David A. Jenkins and Jason Z. Miller of Smith Katzenstein & Jenkins LLP.

Counsel information for the other parties was not immediately available.

The case is Drakes Landing Associates LP et al. v. Tilden Park Capital Management et al., case number 2025-0898, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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7th Circ. Backs \$75M In Chicken Price-Fixing Settlements

By **Matthew Perlman**

Law360 (August 7, 2025, 3:55 PM EDT) -- The Seventh Circuit rejected an appeal from restaurants challenging \$75 million in settlements inked in the broiler chicken price-fixing litigation with Koch Foods Inc. and House of Raeford Farms Inc., after finding an analysis of prices failed to show the deals were unreasonable.

A Seventh Circuit panel issued a nonprecedential ruling on Wednesday affirming a lower court's **denial of objections** to the direct purchaser settlements from a group of restaurants, including Boston Market, Domino's Pizza and White Castle.

The appeal had been on hold for nearly a year, waiting for a decision from the same panel on a challenge from the group to an \$8 million deal with Simmons Foods, which the **panel rejected in April**.

The order said the restaurants contend an expert conducted an analysis that shows the settlements with Koch and House of Raeford are too small, but in reality, the analysis just showed how much prices went up in a particular year.

"All in all, the exercise does not undermine the district judge's conclusion that the Koch settlement is reasonable," Wednesday's order said.

Attorneys for the settling class told Law360 in a statement on Thursday that they are gratified by the court of appeals' decision affirming the settlements.

"Our class members have waited more than a year for these appeals to be resolved," the statement said. "Now we intend to seek approval to distribute settlement proceeds to our class members."

The panel said in Wednesday's order that the primary issue in the appeal, and in the appeal related to the Simmons deal, was whether the restaurants remained a part of the direct purchaser class at the time of the settlements. The appeals court found in the Simmons ruling that they missed the deadline for excluding themselves from the class and were "stuck" with the settlement.

The order on Wednesday said the same reasoning applies to the deals with Koch and House of Raeford.

The secondary issue is whether the restaurants have shown that the settlements were unreasonably small. The panel said the Simmons ruling noted that the restaurants did not have an expert assess how much they could have recovered if they had taken the claims to trial and prevailed, nor did they have someone estimate the risk that they could lose.

The restaurants argued that a report by Laurel Van Allen "fills the bill" for the Koch and House of Raeford settlements, but the panel said "it does not."

The report did not try to show how much prices would have changed if there was no collusion in the market, the order said, or address the restaurants' concern that the deals only cover market manipulation claims and not bid-rigging claims.

The expert also did not assess the likelihood of the class succeeding on the merits of the claims, "a

step essential to value the released claims."

"Instead of conducting a standard antitrust-overcharge model, Van Allen just calculated how much higher prices were in 2015 compared with 2014," the order said. "Yet prices of agricultural commodities vary over time; to observe this is not to establish either the existence or the effect of collusion."

The settlements were cut by direct purchasers in the sprawling consolidated antitrust case accusing chicken producers including Tyson Foods Inc., Pilgrim's Pride Corp. and Koch of plotting to inflate prices by rigging bids submitted to customers and agreeing to reduce supply, among other things.

The restaurants are concerned that the deals purport to cover damages for both the bid-rigging and market manipulation claims, but do not actually provide any recovery for the bid-rigging allegations.

The chicken producers and the settling class argued that the lower court did not abuse its discretion when approving the \$47.5 million settlement with Koch or the \$27.5 million settlement with House of Raeford, calling the deals an "extraordinary result" for a case that carries substantial risk.

That risk, they said, is shown by an Illinois federal **jury rejecting** the claims against Sanderson Farms following a six-week trial in 2023 and the U.S. Department of Justice failing to win convictions for any of the **14 executives** charged criminally for participating in similar activity in the broiler chicken industry, despite prosecutors trying the case three times.

Tyson Foods did apply for **leniency and cooperate** with the DOJ on the criminal investigation and enforcers eventually obtained a guilty plea with a **\$107.9 million** fine from Pilgrim's Pride.

Representatives for the restaurants and chicken producers did not immediately respond to requests for comment Thursday.

The restaurants are represented by Lori P. Lustrin, Robert W. Turken and Scott N. Wagner of Bilzin Sumberg Baena Price & Axelrod LLP.

The direct purchasers are represented by Clifford H. Pearson, Daniel L. Warshaw, Bobby Pouya and Michael H. Pearson of Pearson Warshaw LLP and W. Joseph Bruckner and Brian D. Clark of Lockridge Grindal Nauen PLLP.

Koch Foods is represented by Stephen Novack, Stephen J. Siegel and Elizabeth C. Wolicki of Armstrong Teasdale LLP.

House of Raeford is represented by Gregory G. Wrobel of Vedder Price PC and Henry W. Jones of Jordan Price Wall Gray Jones & Carlton PLLC.

The appeal is Boston Market Corp. et al. v. Koch Foods Inc. et al., case number 24-2422, in the U.S. Circuit Court of Appeals for the Seventh Circuit.

--Additional reporting by Dorothy Atkins, Al Barbarino, Lauraann Wood and Gina Kim. Editing by Vaqas Asghar.



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UK Litigation Roundup: Here's What You Missed In London

By **Max Austin**

Law360, London (August 8, 2025, 3:52 PM BST) -- This past week in London has seen the U.S. Securities and Exchange Commission target a British investor over a \$10 million microcap fraud scheme, Merck Sharp & Dohme move against Halozyme Inc. following a recent clash over its patented cancer medicine, and Birmingham City Council sue a school minibuss operator years after ending its contract over DBS check failures.

Here, Law360 looks at these and other new claims in the U.K.

Financial Services

United States Securities and Exchange Commission v. Cattlin

The U.S. Securities and Exchange Commission on Aug. 1 filed legal action against Daniel Cattlin over his alleged role in a fraudulent microcap scheme that generated more than \$10 million (£7.5 million) in illegal stock sales.

The SEC **initially charged** Cattlin and co-defendant William Shup in September 2021, accusing them of helping father-and-son duo Timothy and Trevor Page secretly offload large volumes of microcap stock, yielding millions of dollars in illicit proceeds.

In March 2024, the agency secured a final judgment in New York against Cattlin for his involvement in the scheme. He was ordered to pay a total of \$354,821 (£264,615).

The SEC is represented by Fladgate LLP.

The case is United States Securities and Exchange Commission v. Cattlin, case number KB-2025-002831, in the High Court of Justice of England and Wales.

Henry v. Nest Services Ltd. and others

An individual named Kevin Henry filed a commercial fraud claim against British pension scheme Nest Services, crypto trading platform ByBit Technology and four others on Aug. 5.

While the details of the claim are not currently available, ByBit lost approximately \$1.5 billion worth of digital currency following a cyberattack in February. The attack has been linked to the North Korean-backed hacking group Lazarus, according to online reports.

The remaining defendants include wealth management firm CHN Group, crypto exchanges YOA Ltd. and MEXC Global, and an unknown person.

Henry is represented by Edmonds Marshall McMahon Ltd.

The case is Henry v. Nest Services Ltd. and others, case number LM-2025-000282, in the High Court of Justice of England and Wales.

Canara Bank v. Centurion SB Ltd. and another

London-based Canara Bank brought a general commercial contracts claim against real estate agency Centurion SB and its director Nileshkumar Agrawal on Aug. 6.

Canara Bank is represented by CND Parker.

The case is Canara Bank v. Centurion SB Ltd. and another, case number LM-2025-000284, in the High Court of Justice of England and Wales.

Novek LLC v. Global Currency Exchange Network Ltd. and another

Novek, a commodities trading and recycling company, filed a provision of financial services claim against Global Currency Exchange Network and Barclays Bank on Aug. 6.

Novek is represented by Stephenson Harwood LLP.

The case is Novek LLC v. Global Currency Exchange Network Ltd. and another, case number CL-2025-000360, in the High Court of Justice of England and Wales.

Commercial Contracts

Diamond DCO Two Ltd. v. Anam Healthcare Ltd.

Diamond DCO Two, a retail pharmacy business formerly known as Lloyds Pharmacy, filed a breach of contract claim against Anam Healthcare on Aug. 1.

In March, the liquidators of Diamond DCO Two revealed that HM Revenue & Customs has billed the company more than £39 million (\$52 million) in locum payment tax.

With over 1,800 pharmacies, Lloyds Pharmacy was the second-largest branch in the U.K., before the company **sold all of its branches** in November 2023.

Diamond DCO Two is represented by Orrick Herrington & Sutcliffe (UK) LLP.

The case is Diamond DCO Two Ltd. v. Anam Healthcare Ltd., case number BL-2025-000965, in the High Court of Justice of England and Wales.

North Birmingham Travel Ltd. v. Birmingham City Council

Birmingham City Council was hit with a general commercial contracts claim by coach and minibus hire service North Birmingham Travel on Aug. 1.

The minibus hire company previously held a contract with the council to provide home to school transport routes, but the agreement was terminated in 2021 after an audit at the company's offices revealed it could not demonstrate the correct Disclosure and Barring Service checks for all its drivers.

North Birmingham Travel is represented by Osborne Clarke LLP.

The case is North Birmingham Travel Ltd. v. Birmingham City Council, case number LM-2025-000278, in the High Court of Justice of England and Wales.

RocketFin Consulting Ltd. v. New Age Funding Ltd.

London-based management consultancy RocketFin Consulting brought a general commercial contracts claim against financial consultancy New Age Funding on Aug. 1.

RocketFin Consulting is represented by RG Legal LLP.

The case is RocketFin Consulting Ltd. v. New Age Funding Ltd., case number LM-2025-000280, in the High Court of Justice of England and Wales.

P.A.V.H. International Ltd. v. Taylor

P.A.V.H. International, which owns The Hotel Victoria in Cornwall, brought a general commercial contracts claim against former director Richard Taylor on Aug. 1.

According to Companies House, P.A.V.H. International announced the termination of Taylor's position as director in December 2024.

P.A.V.H. International is represented by Stephens Scown LLP.

The case is P.A.V.H. International Ltd. v. Taylor, case number CC-2025-BRS-000016, in the High Court of Justice of England and Wales.

Cakes & Bakes Franchise Ltd. v. Crown Hill Cakes Ltd. and another

British bakery chain Cakes & Bakes Franchise brought a breach of contract claim against competing bakery Crown Hill Cakes and its director on Aug. 4.

Cakes & Bakes Franchise is represented by Cloude Law Solicitors.

The case is Cakes & Bakes Franchise Ltd. v. Crown Hill Cakes Ltd. and another, case number BL-2025-000971, in the High Court of Justice of England and Wales.

Intellectual Property

Merck Sharp & Dohme (UK) Ltd. v. Halozyme Inc.

British pharmaceutical company Merck Sharp & Dohme (UK) filed a patents and registered designs claim against biotechnology company Halozyme Inc. on Aug. 1.

In April, Halozyme sued Merck Sharp & Dohme in the U.S. District Court in New Jersey, alleging that the subcutaneous formulation of Merck's cancer medicine, Keytruda, infringes multiple patents the biotechnology company has held since 2011.

Merck Sharp & Dohme (UK) is represented by Hogan Lovells International LLP.

The case is Merck Sharp & Dohme (UK) Ltd. v. Halozyme Inc., case number HP-2025-000041, in the High Court of Justice of England and Wales.

Marshall Group AB and another v. OWGH Ltd.

Marshall Group AB, the manufacturer of the Marshall headphones, and Marshall Amplification, brought an intellectual property claim against online seller OWGH Ltd. on Aug. 4.

Marshall Group is represented by Stobbs (IP) Ltd.

The case is Marshall Group AB v. OWGH Ltd., case number IP-2025-000081, in the High Court of Justice of England and Wales.

Impellam Group Ltd. and another v. Access UK Ltd.

British recruitment agency Impellam Group and subsidiary Guidant Global UK brought an intellectual property claim against software company Access UK on Aug. 6.

Impellam Group is represented by Albion UK Ltd.

The case is Impellam Group Ltd. and another v. Access UK Ltd., case number IP-2025-000082, in the High Court of Justice of England and Wales.

Gorgon Music LLC v. Creole Records Ltd. and another

British production company Gorgon Music brought an intellectual property claim against record labels

Creole Records, best known for its debuts of Boney M, and Sanctuary Records Group on Aug. 7.

Gorgon Music is represented by David Gore of Saunders Law.

The case is Gorgon Music LLC v. Creole Records Ltd. and another, case number IP-2025-000083, in the High Court of Justice of England and Wales.

Transport

MSC Mediterranean Shipping Company SA and another v. SPRL Nazar Meubles

Shipping giant MSC Mediterranean Shipping and maritime law firm Tatham & Co. brought a shipping and cargo claim against Belgium-based home furniture shop SPRL Nazar Meubles on Aug. 1.

MSC Mediterranean Shipping Company SA is representing itself as a litigant in person.

The case is MSC Mediterranean Shipping Company SA and another v. SPRL Nazar Meubles, case number CL-2025-000354, in the High Court of Justice of England and Wales.

Cargosol LLC and others v. Unifeeder FZCO and another

International logistics company Unifeeder was hit with a shipping and cargo claim by Cargosol and four other transporters on Aug. 4.

The other defendants include Intercont Freight Liners Ltd., Ocean Gulf Agencies Ltd., Agrogator Exports Private Ltd. and General Trading LLC.

Cargosol is represented by Cargo Law Ltd.

The case is Cargosol LLC and others v. Unifeeder FZCO and another, case number LM-2025-000279, in the High Court of Justice of England and Wales.

Gat Aircraft and Engine Leasing Ltd. v. Air Albania and another

Irish-based leasing company Gat Aircraft and Engine Leasing brought an aviation claim against Air Albania and Tuxh Hava Yollari, otherwise known as Turkish Airlines, on Aug. 4.

Gat Aircraft and Engine Leasing is represented by Pillsbury Winthrop Shaw Pittman LLP.

The case is Gat Aircraft and Engine Leasing Ltd. v. Air Albania and another, case number CL-2025-000355, in the High Court of Justice of England and Wales.

OCM Maritime Yangtze LLC v. SYMI II Special Maritime Enterprise and another

Shipping company OCM Maritime Yangtze brought a charter party dispute against freighter SYMI II Special Maritime Enterprise and oil and gas transporter Eletson Gas on Aug. 5.

OCM Maritime Yangtze LLC is represented by HFW LLP.

The case is OCM Maritime Yangtze LLC v. SYMI II Special Maritime Enterprise and another, case number CL-2025-000359, in the High Court of Justice of England and Wales.

Aakaar Iron Creation PVT Ltd. and others v. Maersk Line A/S and others

Aakaar Iron Creation and five other exporters brought a shipping and cargo claim against freight companies Maersk Line A/S, Tokei Kaiun and Leo Ocean SA on Aug. 5.

The other claimants include Williams-Sonoma Singapore PTE, Expeditors International PTY, ABC Industries, Al-Karam Textile Mills, and Amit Exports.

Aakaar Iron Creation is represented by Clyde & Co. LLP.

The case is Aakaar Iron Creation PVT Ltd. and others v. Maersk Line A/S and others, case number LM-2025-000283, in the High Court of Justice of England and Wales.

Collett & Sons Ltd. v. Mar-Train Heavy Haulage Ltd.

Trucking company Collett & Sons filed legal action against competitor Mar-Train Heavy Haulage on Aug. 7.

Collett & Sons is represented by Hill Dickinson LLP.

The case is Collett & Sons Ltd. v. Mar-Train Heavy Haulage Ltd., case number CC-2025-LDS-000014, in the High Court of Justice of England and Wales.

Ocean Freight Trident Offshore Master Fund Ltd. and others v. Marex Financial

Marex Financial, a diversified financial services platform, was hit with legal action by Ocean Freight Trident Offshore Master Fund, managed by Ocean Freight Capital Management, and law firm Quinn Emanuel on Aug. 7.

Ocean Freight Trident Offshore Master Fund is represented by Quinn Emanuel Urquhart & Sullivan UK LLP.

The case is Ocean Freight Trident Offshore Master Fund Ltd. and others v. Marex Financial, case number CL-2025-000362, in the High Court of Justice of England and Wales.

Construction

CR Construction (UK) Company Ltd. v. Briggs & Forrester Living Ltd.

CR Construction (UK) Company filed a Part 8 construction claim against residential developer Briggs & Forrester Living on Aug. 1.

CR Construction (UK) Company is represented by Fenwick Elliott LLP.

The case is CR Construction (UK) Company Ltd. v. Briggs & Forrester Living Ltd., case number HT-2025-MAN-000031, in the High Court of Justice of England and Wales.

Morgan Sindall Property Services Ltd. and another v. M.A.C. (Roofing & Contracting) Ltd. and another

Construction company Morgan Sindall Property Services and subsidiary Lovell Powerminster brought a fire and explosion claim against M.A.C. (Roofing & Contracting) and J.W.D. Rainwater Systems on Aug. 7.

In May, Morgan Sindall and M.A.C. Roofing were involved in a trial over alleged breaches of fire safety regulations related to a 2019 fire that destroyed a retirement village in Crewe.

Cheshire Fire and Rescue Service initially pursued six companies, but ceased action against M.A.C. Roofing and another company named WSP UK. The trial has since come to an end.

Morgan Sindall Property Services is represented by Taylor Wessing LLP.

The case is Morgan Sindall Property Services Ltd. and another v. M.A.C. (Roofing & Contracting) Ltd. and another, case number HT-2025-000236, in the High Court of Justice of England and Wales.

Lendlease Residential (BH) Ltd. v. Balfour Beatty Construction (SW) Ltd. and another

London-based developer Lendlease Residential filed a construction claim against Balfour Beatty PLC and Balfour Beatty Construction on Aug. 1.

Lendlease Residential (BH) is represented by Bryan Cave Leighton Paisner LLP.

The case is Lendlease Residential (BH) Ltd. v. Balfour Beatty Construction (SW) Ltd. and another, case number HT-2025-000234, in the High Court of Justice of England and Wales.

Mace Ltd. v. Mitie Technical Facilities Management Ltd.

Global construction company Mace brought a construction claim against infrastructure consultancy Mitie Technical Facilities Management on Aug. 4.

Mace is represented by Clyde & Co. LLP.

The case is Mace Ltd. v. Mitie Technical Facilities Management Ltd., case number HT-2025-BHM-000022, in the High Court of Justice of England and Wales.

Quantex Consulting Ltd. v. JPD Piling & Groundwork Ltd. and another

Quantex Consulting, a company that provides advisory services in the construction and engineering space, brought an adjudication enforcement claim against JPD Piling & Groundwork and Coronado Property Developments on Aug. 4.

Quantex Consulting is represented by Helen Daley.

The case is Quantex Consulting Ltd. v. JPD Piling & Groundwork Ltd. and another, case number HT-2025-BHM-000023, in the High Court of Justice of England and Wales.

Aberdeen City Council v. Hermes Infrastructure II GP LLP and another

Aberdeen City Council filed a breach of contract claim against capital market company Hermes Infrastructure II GP and Hermes GPE on Aug. 5.

In 2018, the Scottish council committed to a £100 million investment in the Hermes Infrastructure Fund II, according to a statement on its website.

Aberdeen City Council is represented by Brodies LLP.

The case is Aberdeen City Council v. Hermes Infrastructure II GP LLP and another, case number BL-2025-000974, in the High Court of Justice of England and Wales.

Compass Developments (NE) Ltd. v. Blockhaus Estates Ltd.

Compass Developments, a construction company based in Cramlington, England, brought an adjudication enforcement claim against Essex-based real estate agency Blockhaus Estates on Aug. 7.

Compass Developments is represented by Sintons LLP.

The case is Compass Developments (NE) Ltd. v. Blockhaus Estates Ltd., case number HT-2025-000237, in the High Court of Justice of England and Wales.

Legal Industry

Bond Adams LLP v. Ruparelia

Bond Adams, a law firm otherwise known as Bond Adams Solicitors, filed a debt claim against an individual named Minakshi Ruparelia on Aug. 1.

Bond Adams is representing itself as a litigant in person.

The case is Bond Adams LLP (t/a Bond Adams Solicitors) v. Ruparelia, case number BL-2025-BHM-000066, in the High Court of Justice of England and Wales.

Pavlou v. Slater and Gordon UK Ltd.

Slater and Gordon UK was hit with a professional negligence claim by an individual named Margaret Pavlou on Aug. 5.

Pavlou is represented by Bond Turner.

The case is Pavlou v. Slater and Gordon UK Ltd., case number KB-2025-LIV-000111, in the High Court of Justice of England and Wales.

Employment*Roland Berger Ltd. v. Perrin*

Global consultancy Roland Berger filed a general commercial contracts claim against its chartered waste manager Darren Perrin on Aug. 5.

Perrin was employed at the consultancy firm for more than two years in the Middle East senior leadership team. He joined management consulting firm Kearney in February, according to his LinkedIn profile.

Roland Berger is represented by DLA Piper UK LLP.

The case is Roland Berger Ltd. v. Perrin, case number CL-2025-000358, in the High Court of Justice of England and Wales.

--Editing by Alyssa Miller.

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Vast Amazon Customer Class Greenlit In Price-Fixing Case

By **Rachel Riley**

Law360 (August 7, 2025, 6:40 PM EDT) -- A Washington federal judge has certified a consumer class encompassing an estimated 288 million people who purchased goods on Amazon's marketplace since 2017, advancing a sweeping antitrust case accusing the e-commerce giant of inflating prices through its merchant policies.

U.S. District Judge John H. Chun issued a sealed order Wednesday granting the **certification bid** filed by the named plaintiffs last August, according to a docket entry. The case is one of several consumer suits, along with a Federal Trade Commission action, that **allege** Amazon artificially inflated the price of goods by punishing third-party sellers who offered the same items at lower prices on other platforms.

While the motion was initially filed under seal, a redacted version filed in May shows lead plaintiff Elizabeth De Coster and four other named online shoppers sought to represent a class of all U.S. consumers "who on or after May 26, 2017, purchased one or more new, physical goods from third-party sellers on Amazon's marketplace."

The consumers claim Amazon's contract with merchants bars them from offering lower prices to consumers outside its marketplace and penalizes violators by obscuring their listings on Amazon.com, according to the redacted motion. The plaintiffs say these cross-platform pricing rules, or "parity rules," result in consumers paying higher prices than they otherwise would. According to the redacted motion, the policies also enable Amazon to charge merchants a higher "referral fee" — a fee for each transaction through its marketplace — because rival online marketplaces aren't incentivized to lower their referral fees to entice merchants to offer cheaper prices on their own platforms.

The plaintiffs said in their certification bid the class would include more than 200 million members.

In more recent court filings, Amazon pegged the proposed class size as "288 million customers, involving tens of billions of transactions, 237 million different products, and 2.5 million third-party sellers." The company **has fought** the certification bid, saying the class would be "the largest, most complex, and most heterogeneous in the history of class actions in the United States."

Amazon's counsel argued during a hearing last week that the consumers' claims cannot be resolved as a class because they vary based on context, including the product category and pricing as well as Amazon's communications with each individual seller. The company's written price parity clause was removed from its seller agreement in 2019, counsel for Amazon said.

The consumers' counsel told Judge Chun that data and internal communications show Amazon enforced its "anti-discount policy" against merchants and monitored marketplace rates to ensure compliance. Beyond 2019, the plaintiffs assert the same pricing standards were incorporated into various other agreements Amazon has with vendors, including the seller code of conduct, business services agreement, market fair pricing policy and standards for brands policy. The policies led to inflated referral fees that were passed on from merchants to consumers, plaintiffs' counsel said, thus affecting every online shopper who made a purchase from a third-party seller on Amazon's platform dating back to 2017.

"Class actions are a vital tool to protect consumers from abusive conduct by large corporations, particularly where — as here — it is not practical for consumers to bring suit individually," Zina Bash

of Keller Postman LLC, representing the consumers, told Law360 on Thursday. "Using this tool, we are eager to help deliver justice to all Amazon customers who have been injured by anticompetitive practices."

Steve Berman of Hagens Berman Sobol Shapiro LLP, also representing the consumers alongside Quinn Emanuel Urquhart & Sullivan LLP, said the plaintiffs' firms are pleased with the certification decision "and honored to be tasked with such an important class case that involves pricing practices which we allege and will prove harmed almost every American."

"And we are appreciative of the court's prompt and thorough ruling and its rejection of Amazon's argument that the case was too big to certify," Berman said in an email. "Just the opposite, this is exactly what class actions are for, to handle cases that impact large numbers of consumers."

Amazon did not immediately respond to a request for comment Thursday.

The De Coster case, filed in March 2020, is the oldest of the three consumer suits targeting the alleged policies. Discovery in the cases is being coordinated with a similar antitrust case from the Federal Trade Commission.

The consumer plaintiffs in one of the other class actions, led by Deborah Frame-Wilson, filed their class certification motion in February. They seek to represent individuals who made purchases through other retail e-commerce channels of goods also offered by third-party sellers on Amazon. Consumers in the third related class action, headlined by plaintiff Christopher Brown, have not yet filed their class certification bid.

The consumers are represented by Steve Berman, Barbara Mahoney and Anne F. Johnson of Hagens Berman Sobol Shapiro LLP, Zina G. Bash, Jessica Beringer, Shane Kelly and Alex Dravillas of Keller Postman LLC, and Alicia Cobb, Steig D. Olson, David D. LeRay, Nic V. Siebert, Maxwell P. Deabler-Meadows, Elle Mahdavi, Adam B. Wolfson and Matthew S. Hosen of Quinn Emanuel Urquhart & Sullivan LLP.

Amazon is represented by John A. Goldmark, MaryAnn Almeida and Emily Parsons of Davis Wright Tremaine LLP and Karen L. Dunn, William A. Isaacson, Amy J. Mauser and Kyle Smith of Dunn Isaacson Rhee LLP.

The case is Elizabeth De Coster et al. v. Amazon.com Inc., case number 2:21-cv-00693, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Bryan Koenig, Jared Foretek and Matthew Pearlman. Editing by Haylee Pearl.