News from Bloomberg Terminal

Dick's Sporting Goods Execs Should Face Fraud Claims, Court Says

Aug. 13, 2025, 9:01AM PDT

Summary by Bloomberg AI

AI Generated

- A federal magistrate judge said Dick's Sporting Goods Inc. and its top executives should continue to face investor accusations that they concealed excess inventory and profited from the deception.
- Magistrate Judge Kezia O.L. Taylor said stock sales made by the executives close in time to their purported misstatements about inventory levels bolstered investors' inference that the executives intended to commit securities fraud.
- Taylor recommended that only part of the lawsuit be permitted to move forward, saying the pension funds leading the suit inadequately pleaded that Dick's misrepresented its retail theft level and the risks of sales declines and markdowns.

By Gillian R. Brassil

(Bloomberg Law) --

Dick's Sporting Goods Inc. and some of its top executives should continue to face investor accusations the retailer concealed the volume of its excess inventory post-pandemic, and that those execs profited from the deception, a federal magistrate judge said.

Stock sales made made by the retailer's top brass close in time to their purported misstatements about inventory levels bolstered investors' inference the executives intended to commit securities fraud, Magistrate Judge Kezia O.L. Taylor said. Collectively, executive chairman Edward W. Stack, CEO Lauren R. Hobart, and chief financial officer Navdeep Gupta allegedly reaped about $47 million during the proposed class period.

But the pension funds leading the suit inadequately pleaded Dick's misrepresented its retail theft level and the risks of sales declines and markdowns, Taylor said Tuesday, recommending only part of the lawsuit be permitted to move forward. The funds failed to allege disclosures on increased theft required more detail, or that significant dips in demand had already occurred when related statements were made, Taylor said.

Her ruling now goes to US District Court for the Western District of Pennsylvania Judge J. Nicholas Ranjan for ratification or rejection.

Dick's saw a surge in sales during the pandemic as people sought ways to stay active—but as lockdowns lifted, demand waned and inventory piled up, the funds' most recent complaint said. At the same time, the merchant was contending with increased retail theft. But, Dick's and its corporate overseers downplayed those shareholder concerns and expressed optimism about its profitability, according to Rhode Island's general treasurer, suing on behalf of the state's retirement system, and the Western Pennsylvania Teamsters and Employers Pension Fund Public Employees.

Dick's stock price plunged more than 24%, closing at $111.53 on Aug. 22, 2023, the day the retailer revealed disappointing second quarter profits that year hurt by theft, and company executives discussed inventory markdowns in an earnings call. It was then the stock's steepest single-day decline since Dick's 2002 market debut, according to data compiled by Bloomberg.

Most of the plaintiffs' alleged misstatements about the health of inventory levels were plausibly misleading when made, while some were inactionable declarations of corporate optimism, Taylor said.

She advised against granting the investors leave to amend claims she deemed defective.

The complaint—containing confidential former employee statements on how leaders would've known about excess inventory—sufficiently alleged the level of intent or recklessness to defraud investors, Taylor said. Top brass visits to overloaded stores and access to weekly reports on inventory levels supported an inference of intent or recklessness to deceive investors.

Robbins Geller Rudman & Dowd LLP and Pomerantz LLP are lead counsel for the proposed class, which targets those who got Dick's stock from Aug. 23, 2022 through Aug. 21, 2023. Jones Day and Wachtell, Lipton, Rosen & Katz represent Dick's, Stack, Hobart, and Gupta. None of these law firms nor Dick's immediately responded to emails seeking comment.

The case is *Plumbers and Pipefitters Local Union No. 719 Pension Trust Fund v. Dick's Sporting Goods, Inc.*, W.D. Pa., No. 2:24-cv-00196, 8/12/25.

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

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

Appeals court halts 'shockwave' attorney-client privilege ruling

reuters.com/legal/government/appeals-court-halts-shockwave-attorney-client-privilege-ruling-2025-08-12

Jenna Greene August 12, 2025

Crews work on electrical power lines. REUTERS/Jim Urquhart Purchase Licensing Rights, opens new tab

Aug 12 (Reuters) - When a major Ohio utility was ensnared in a bribery scandal in 2020, it turned to a time-honored playbook for organizations in hot water: The company and its board of directors each hired a large law firm to investigate and advise on how to respond to looming litigation and enforcement actions.

What FirstEnergy didn't expect was for a federal judge in Columbus, Ohio, to rule last year that the probe findings weren't shielded by attorney-client or work-product protections. That's because the utility also made use of the advice for business purposes, U.S. District Judge Algenon Marbley found.

He ordered the company to turn the documents over to plaintiffs lawyers representing a class of investors suing for securities fraud in the wake of the scandal.

The decision sent "shockwaves" through corporate boardrooms and the legal industry, FirstEnergy lawyers said, and prompted more than three dozen blue chip law firms to sign an amicus brief, opens new tab urging the Sixth Circuit U.S. Court of Appeals to intervene. Should the decision stand, the firms said, it would "threaten the success of countless internal investigations necessary to the good governance of companies in the United States." (Left unsaid: their lucrative practices conducting the probes would take a hit as well.)

Exhale, everyone.

Last week, the appeals court [ruled, opens new tab] that all likelihood, Marbley got it wrong. FirstEnergy is apt to succeed on the merits of its mandamus petition, the panel held, and the investigation documents created by Jones Day and Squire Patton Boggs will indeed be shielded from discovery.

“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 unsigned August 7 order stated. “After all, a corporation could hardly justify expending resources on legal advice that wasn’t business-related.”

Sullivan & Cromwell co-chair Robert Giuffra, who represents FirstEnergy in the 6th Circuit appeal and underlying securities class action, told me he was pleased that the decision “reiterates that attorney-client privilege and the attorney work product doctrine apply fully to internal corporate investigations.”

Plaintiffs' lawyer Jason Forge, a partner at Robbins Geller Rudman & Dowd, did not respond to a request for comment.

The fight over the internal investigation documents reflects what can sometimes be a tricky question: Must legal advice be the only primary purpose of a privileged communication?

The U.S. Supreme Court in 2023 had the chance to offer guidance in a case involving an unnamed law firm's bid to designate such “dual purpose” client records as privileged in a tax and cryptocurrency investigation. Rather than weigh in, though, the high court in a one-sentence order [dismissed the case] as improvidently granted a few weeks after oral arguments.

Internal corporate investigations have been around for decades, and FirstEnergy lawyers point to a 1981 Supreme Court [decision, opens new tab] to argue the fruits of such probes have consistently been treated as protected communications.

As chronicled by my former Reuters colleague Alison Frankel, the FirstEnergy case began in July 2020. That’s when the company [disclosed, opens new tab] that it had received subpoenas from the U.S. Justice Department in connection with what turned out to be the biggest political corruption scandal in Ohio history. Almost overnight, FirstEnergy’s share price plunged from nearly $42 to less than $23, and investors lost billions.

The company went on to admit to paying a combined $64 million to entities controlled by then-Ohio House Speaker Larry Householder and the chair of the state’s public utility commission in exchange for favorable legislation and regulatory treatment, Reuters [reported].

While FirstEnergy has since resolved much of the legal fallout, including [paying $230 million] to the U.S. government to settle a federal criminal investigation, it’s continued to fight the securities class action by investors, who are seeking $8 billion in damages.

In seeking the internal investigation documents, the plaintiffs argued that FirstEnergy brought in Jones Day and Squire for two business reasons: to assuage its auditor's concerns about certifying the company's U.S. Securities and

Exchange Commission filings and to determine if the utility should fire any of its executives. The special master and the trial judge agreed that the investigations were not sparked by litigation fears but were intended to provide business advice.

The appellate panel – judges Jeffrey Sutton, Alice Batchelder and John Nalbandian, who were appointed by Republicans George W. Bush, George H.W. Bush and Donald Trump -- disagreed, writing that the lower court "gets it backwards.”

Precedent requires considering “whether a communication primarily seeks ‘to render or solicit legal advice,’ irrespective of a company’s reason for wanting that legal advice,” they held.

Moreover, the work-product doctrine, which covers documents prepared in anticipation of litigation, also likely applies. Here, the “flood of legal and regulatory actions prompting FirstEnergy’s investigations explains why,” the panel held.

“FirstEnergy, simply put, faced an onslaught of civil and criminal investigations while pursuing internal investigations.”

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

BigLaw firms' internal investigation likely protected from lawsuit disclosure, 6th Circuit says

abajournal.com/news/article/biglaw-firms-internal-investigation-likely-protected-from-lawsuit-disclosure-6th-circuit-says

By Debra Cassens Weiss

Law Firms

August 13, 2025, 9:10 am CDT

The fruits of internal investigations conducted by two BigLaw firms for an energy company are likely protected from disclosure by attorney-client privilege and the work-product doctrine. (Image from Shutterstock)

The fruits of internal investigations conducted by two BigLaw firms for an energy company are likely protected from disclosure by attorney-client privilege and the work-product doctrine, a federal appeals court said in an Aug. 7 order.

The 6th U.S. Circuit Court of Appeals at Cincinnati reached that conclusion when it temporarily stayed a federal judge's order for disclosure of investigative materials in a shareholder lawsuit against the FirstEnergy Corp.

Law.com and Law360 have coverage.

The FirstEnergy Corp. and its board hired Jones Day and Squire Patton Boggs after the company was implicated in an alleged scheme to pay bribes in the form of campaign donations to obtain a billion-dollar nuclear plant bailout.

The allegations were revealed in a July 2020 indictment of Larry Householder, a former speaker of the Ohio House of Representatives. He was later sentenced to 20 years in prison in 2023 for leading a racketeering conspiracy to receive nearly $61 million in bribes.

The FirstEnergy Corp. resolved a Department of Justice investigation in 2021 with a $230 million deferred prosecution agreement, according to Law.com and Law360.

The 6th Circuit cited the U.S. Supreme Court's 1981 decision in *Upjohn Co. v. United States*, which held that attorney-client privilege applies when companies seek legal advice through internal investigations in response to criminal and civil investigations.

After Householder's arrest, the FirstEnergy Corp. was facing civil and criminal investigations by the DOJ, as well as suits and regulatory action. The law firms hired to investigate produced "precisely the kinds of communications that *Upjohn* contemplates," the 6th Circuit said.

“The district court thought that none of this mattered because FirstEnergy also used this advice for business purposes. That approach gets it backwards,” the 6th 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. … After all, a corporation could hardly justify expending resources on legal advice that wasn’t business-related.”

Turning to the work-product doctrine, the appeals court said it protects documents created in reasonable anticipation of litigation. The FirstEnergy Corp.’s materials likely meet that standard, given the “flood of legal and regulatory action” that prompted the investigations, the appeals court concluded.

The 6th Circuit also cited a strong public interest in preserving attorney-client privilege and the work-product doctrine, as evidenced by numerous briefs by amici supporting the FirstEnergy Corp.

6th Circuit Chief Judge Jeffrey Sutton and Judge Alice Batchelder and Judge John Nalbandian were on the 6th Circuit panel that granted the stay of discovery.

Securities Law News

Argument Preview

Zillow Appeal Threatens to Curb Stock Drop Suits in Key Courts

Aug. 13, 2025, 2:00 AM PDT

Zillow Group Inc.'s appeal of an investor suit is jeopardizing other class actions over large stock selloffs.

The US Court of Appeals for the Ninth Circuit is expected to hear oral arguments about decertifying a stockholder class Thursday in a suit alleging the website misrepresented its house-flipping business prospects. A victory for Zillow could ward off similar proposed shareholder class actions, attorneys say, because it would mandate a stronger link between the alleged misstatement and the eventual market selloff.

"If the Ninth Circuit decertifies and holds that there needs to be a much closer connection between the corrective disclosure and the alleged misrepresentation, defendants in securities class actions—particularly in the Ninth Circuit—will have a much stronger argument to defeat class certification," said Jesse Bernstein, co-chair of Quinn Emanuel Urquhart & Sullivan LLP's securities litigation practice

There are many cases where corrective disclosures are far more specific than the alleged misrepresentations, he said, making the claims difficult to prove under higher scrutiny.

Cases that are harder to certify as securities class actions are harder to bring in the first place, said Ann Lipton, a professor at the University of Colorado Law School. "And we have a lot more fraud, quite frankly, that goes unredressed."

Goldman Landscape

The Ninth and Second circuits, home to a lot of large public companies, are the most popular arenas for securities class actions.

A 2021 Supreme Court and subsequent Second Circuit decision that dismantled a Goldman Sachs Group Inc. investor class found a defendant can rebut a presumption of classwide reliance by showing a mismatch between alleged misstatements and the corrective disclosure that lowers share prices.

The Third Circuit in July upheld a class of Johnson & Johnson investors, finding that unlike in *Goldman*, there wasn't a "mismatch between the subject of the alleged misrepresentation and the content of the disclosures" in their suit over safety representations of talc products.

"With damages in these cases reaching record levels driven by the strong valuations in the US market, class certification has become more important than ever," said Eric Belfi, chairman of Labaton Keller Sucharow LLP. "It is an opportunity for defendants to either challenge the size of the class—we have certainly seen more cases where courts don't just grant or deny certification outright, but instead narrow the class period or break up the class."

Courts may have a real mix of rulings in part because the Supreme Court's *Goldman* standard doesn't answer whether an alleged false statement impacted stock prices, regardless of what sunk them, Lipton said. "The nexus between the lie and the disclosure at the end has nothing to do with that question, which means courts are just sort of 'gut feeling it.'"

Zillow's Appeal

In certifying a Zillow class, the US District Court for the Western District of Washington said the lead investor was entitled to a presumption that a collective of shareholders relied on the company's stock price under a 1988 Supreme Court decision. *Basic Inc. v. Levinson* lets courts presume stocks trading in an efficient market take in all public information, including pertinent misrepresentations, and that investors rely on the price's integrity. Zillow failed to demonstrate alleged misrepresentations and later corrective disclosures didn't impact its stock price, Judge Thomas S. Zilly said.

Zillow told the Ninth Circuit it sufficiently demonstrated a wide-enough gap per *Goldman*, but the lower court didn't consider its evidence.

But Zillow asserted a mismatch test that would result in class status being denied in almost any securities case, said investor Jeremy Jaeger.

If the Ninth Circuit sides with Jaeger, not much will change, said Neal Potischman, co-head of Davis Polk & Wardwell LLP's Northern California office.

"While the Supreme Court and Second Circuit cracked the door for defendants in their *Goldman* decisions, district courts in the Ninth Circuit have seemed reluctant to let it swing wide open," he said.

Skadden, Arps, Slate, Meagher & Flom LLP and Perkins Coie LLP represent Zillow, co-founder and co-executive chairman Richard Barton, former chief financial officer Allen Parker, and CEO Jeremy Wacksman. Skadden declined to comment and Perkins Coie didn't respond to an email seeking comment.

Hagens Berman Sobol Shapiro LLP, which declined to comment, is class counsel and Kessler Topaz Meltzer & Check LLP is additional counsel for Jaeger.

The case is Jaeger v. Zillow Grp., Inc. , 9th Cir., No. 24-6605, oral arguments 8/14/25 .

Securities Law

Manage Newsletters

iRobot Investor Sues Brass Over Survival Without Amazon Deal (1)

Aug. 12, 2025, 1:10 PM PDT; Updated: Aug. 12, 2025, 2:45 PM PDT

Summary by Bloomberg AI

AI Generated

- A lawsuit said iRobot Corp. management exaggerated the effectiveness of its turnaround after the abandoned Amazon Inc. acquisition, prompting a record selloff.
- iRobot cast doubt over its future while reporting disappointing financial results on March 12, with share prices plummeting almost 36% that day.
- A shareholder's complaint filed in the US District Court for the Southern District of New York said current and former executives and board members hurt iRobot's reputation and wallet by causing it to mislead investors about its turnaround prospects.

iRobot Corp. management exaggerated the effectiveness of its turnaround after the abandoned Amazon Inc. acquisition, prompting a record selloff when the robot vacuum maker said there was substantial doubt about its ability to survive, a lawsuit said.

iRobot cast doubt over its future while reporting disappointing fourth quarter and full year 2024 financial results on March 12. Share prices plummeted almost 36% that day—the stock's biggest single-day plunge since iRobot's 2005 market debut, according to data compiled by Bloomberg. The stock price tumbled almost 52% over two trading sessions to close at $3.06 per share on March 13, 2025.

Current and former executives and board members hurt iRobot's reputation and wallet by causing it to mislead investors about its turnaround prospects after the Amazon rescue collapsed, said a shareholder's complaint filed in the US District Court for the Southern District of New York on Tuesday.

Amazon was originally planning to buy iRobot for $61 per share—a deal valued at approximately $1.7 billion when announced in 2022. But the companies abandoned the acquisition in 2024 due to regulatory antitrust concerns. Their announcement calling off the merger came after European Union regulators threatened to block the deal and US Federal Trade Commission staff had told Amazon they were recommending a lawsuit over it.

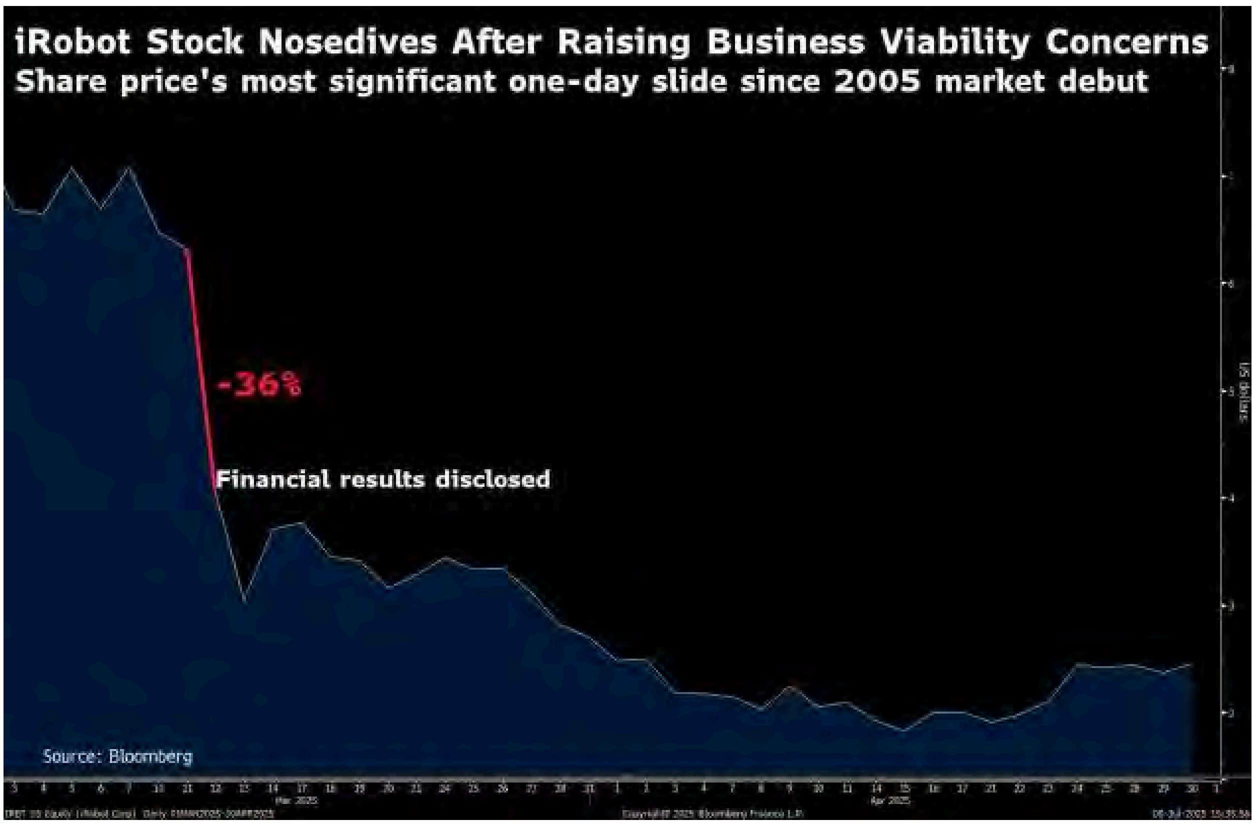
With the deal's collapse, iRobot announced that its former CEO Colin Angle stepped down and it would lay off about 31% of its workforce.

CEO Gary Cohen said in an Aug. 7 press release with iRobot's second quarter of 2025 financial results that the company and leadership "remain steadfast in executing our iRobot Elevate strategy and delivering the trusted products our customers value" while the board reviews potential strategic alternatives for its business.

iRobot said it doesn't comment on litigation in response to an email seeking comment.

Derivative Allegations

iRobot's business has steadily fallen over the past decade as competitors undercut the company's Roomba, with the exception of a pandemic bump, said the shareholder derivative action.



The Brown Law Firm PC represents stockholder Anthony Wren, who claimed wrongdoing by Cohen and other current and former iRobot overseers from Jan. 29, 2024, through March 11, 2025. Wren seeks damages and corporate governance reform for iRobot as a result of alleged breaches of fiduciary duties, unjust enrichment, waste of corporate assets, gross mismanagement, abuse of control, and securities law violations.

Wren's suit cribs off of a proposed class action filed last month against iRobot and four current and former executives.

The suits come as iRobot is defending the dismissal in the US Court of Appeals for the First Circuit of another proposed class action that alleged the company misrepresented the announced acquisition's prospects and Amazon's cooperation with antitrust regulators. Wren previously filed a different shareholder derivative action echoing that proposed class action, which was closed with the ability to reopen after related appellate proceedings.

The case is Wren v. Cohen , S.D.N.Y., No. 1:25-cv-06625, complaint filed 8/12/25 .

(Updates to include iRobot comment response in the seventh paragraph.)

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

To contact the editors responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Tonia Moore at tmoore@bloombergindustry.com

Bloomberg Law

Request a Demo Login

Securities Law News

SelectQuote Investor Sues Over DOJ Insurer Kickback Accusations

Aug. 12, 2025, 11:19 AM PDT

SelectQuote Inc. concealed kickbacks from health insurers for touting their Medicare Advantage plans before federal regulators accused them of conspiring, a proposed class action said.

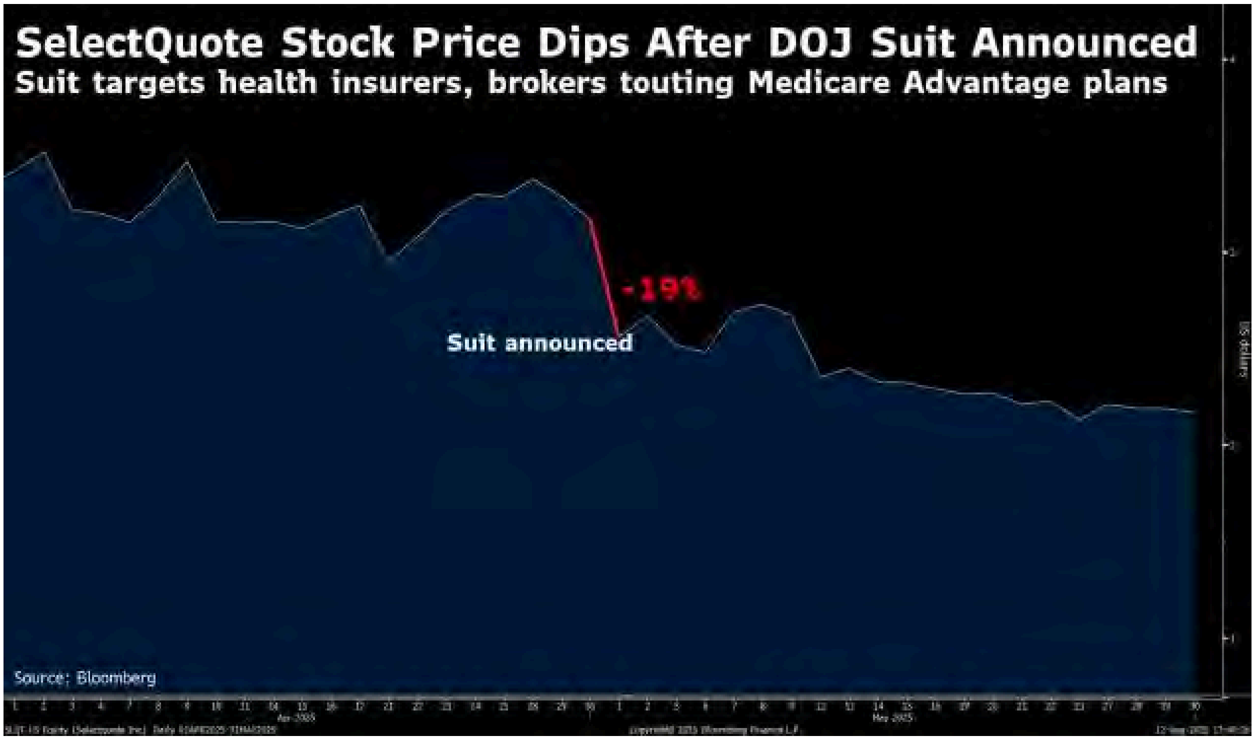
The insurance broker's stock price plunged 19% on May 1, the day the US Department of Justice publicized its False Claims Act complaint against SelectQuote and other health insurance companies and brokers heralding a private version of the government's health insurance for seniors and people with certain disabilities. It was the stock's steepest one-day slide in over seven months, according to data compiled by Bloomberg.

For years, SelectQuote and top brass hid a practice of directing Medicare beneficiaries to insurers offering better pay rather than provide unbiased comparison shopping as promised, a shareholder told the US District Court for the Southern District of New York Monday. SelectQuote covered up getting illegal kickbacks, that it wasn't complying with not certain laws, and was vulnerable to regulatory and legal sanctions, said the investor's complaint.

The DOJ's complaint accused three major insurers with Medicare Advantage plans "paid hundreds of millions of dollars in kickbacks" to three huge brokers to steer beneficiaries to their plans. Two of those insurers, Aetna Inc. and Humana Inc., also used kickbacks to "pressure brokers to enroll fewer Medicare beneficiaries with disabilities, whom the insurers perceived as more expensive to cover." Meanwhile, brokers including SelectQuote claimed to have customers' best interests in mind while sending people to insurers regardless of their quality or fit, the DOJ said.

SelectQuote has disputed the allegations—as have CVS Health Corp., which owns Aetna, Humana, and other defendants in the suit—which was started by a whistleblower in 2021 and unsealed in May.

SelectQuote didn't immediately respond to an email seeking comment Tuesday.



Glancy Prongay & Murray LLP and The Law Offices of Frank R. Cruz represent investor Robert Pahlkotter, who seeks damages for alleged securities law violations by SelectQuote, CEO Tim Danker, chief financial officer Ryan Clement, and former CFO Raffaele Sadun. The proposed class would include those who got SelectQuote stock from Sept. 9, 2020, when the company touted fourth quarter and full-year financial results, through May 1, 2025.

The broker recently beat investor allegations that it overstated its revenue and mischaracterized its sales strategy ahead of its 2020 initial public offering. Pension funds leading that proposed class action have appealed.

The case is Pahlkotter v. SelectQuote, Inc. , S.D.N.Y., No. 1:25-cv-06620, complaint filed 8/11/25 .

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

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

Securities Law News

Perrigo Investor Fund Loses Revival Bid Over Class Exemption

Aug. 12, 2025, 11:52 AM PDT

A Perrigo Co. PLC investor fund lost its bid Tuesday to bring its own lawsuit after an attorney mistake and corporate silence led it to believe it was exempt from a class settlement over statements against a Mylan NV takeover attempt.

Civil procedure faults "litigants who fail to follow their directives," said a US Court of Appeals for the Third Circuit panel. "So when parties deviate from them, even by mistake, they usually have to live with the consequences."

The master fund litigated its separate case for more than three years after a class was certified without Perrigo's objection, Sculptor Master Fund Ltd. and Sculptor Enhanced Master Fund Ltd. had said in their brief imploring the appellate court to let them opt out of the class. Sculptor thought that an associate at a counsel law firm had mailed their opt-out form, but it wasn't until four years later after a lower court preliminarily approved the class accord that Perrigo told Sculptor they'd failed to, they said.

"We expect class members to comply with court orders to pursue and vindicate their rights. The right to opt out is no different," wrote Circuit Judge Cheryl Ann Krause on behalf of the panel in a precedential opinion. "Accordingly, we join the Seventh Circuit in holding what intuition posits. Because Rule 23 requires a district court to prescribe the way for class members to request exclusion, they have to follow those instructions in order to opt out—a mere 'reasonable indication' of an intent to opt out will not do."

Rule 23 governs how class actions are handled.

Sculptor had asked the appellate panel to vacate and reverse the lower court's decision denying their 2024 bid to opt-out, or extend an opportunity to do so; the investor fund claimed Chief Judge Renée Marie Bumb abused her discretion and that it gave a "reasonable indication" of its intention to be excluded from the class.

The panel, which included Paul B. Matey and Peter J. Phipps, disagreed, finding the US District Court for the District of New Jersey judge accurately weighed the "danger of prejudice; length of delay; reason for delay; and whether the movant acted in good faith" against Sculptor's belated opt-out bid.

Sculptor's shares were accounted for in the court-approved $97 million class action settlement, Perrigo countered. Other investor groups took action after noticing that they hadn't opted out on a list class counsel published in the public docket in 2021. Sculptor, which wasn't on the list, did not, said Perrigo and former CEO Joseph C. Papa's joint brief.

The class suit alleged that the pharmaceutical company overstated its value to fight Mylan's 2015 hostile takeover bid, which failed.

Quinn Emanuel Urquhart & Sullivan LLP and Calcagni & Kanefsky LLP represent Sculptor. Fried, Frank, Harris, Shriver & Jacobson LLP represents Perrigo. Gibson, Dunn & Crutcher LLP represents Papa. None of these law firms immediately responded to emails seeking comment.

The case is Perrigo Institutional Inv. Grp. v. Papa , 3d Cir., No. 24-02861, affirmed 8/12/25 .

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

To contact the editors responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com; Drew Singer at dsinger@bloombergindustry.com https://bsky.app/profile/annmlipton.bsky.social/post/3lwby7srk7k2m

Ann M. Lipton
@annmlipton.bsky.social

A point about this: As we all know, Tesla awarded Musk a backup package of stock - maybe $30 bill or so? - only if they lose this case. They are not accounting for it as a current expense, bc - they say - they will win in Delaware so it won't be necessary. They also say -

> **Ann M. Lipton** @annmlipton.bsky.social · 1d
> We have an oral argument date:
>
> RE: *In re Tesla, Inc. Derivative Litigation*
> Nos. 534, 2024; 10, 2025; 11, 2025; 12, 2025 (consolidated)
>
> Dear Counsel:
>
> The above captioned matter has been called for argument on **Wednesday, October 15, 2025 at 10:00 a.m. before the Court en Banc in Dover.** Please arrive prepared at the Court no earlier than **twenty minutes before** your scheduled starting time.
>
> ALT

August 13, 2025 at 6:58 AM · Everybody can reply

2 reposts **3** likes

1 2 3

Ann M. Lipton @annmlipton.bsky.social · 2h
they will reassess the probabilities as more info becomes available.

So a thing to watch is not only whether the Del SCt gives any indication of its leanings, but also whether Tesla responds to oral argument with a reassessment of its chances of prevailing.

1 2

Court says hedge fund's mistake cost it chance to sue over failed Perrigo takeover

reuters.com/legal/government/court-says-hedge-funds-mistake-cost-it-chance-sue-over-failed-perrigo-takeover-2025-08-12

Mike Scarcella August 12, 2025

Birds are seen on the logo of generic drugmaker Perrigo Co outside their new factory in the city of Yeruham, in southern Israel March 2, 2016. REUTERS/Amir Cohen/File Photo Purchase Licensing Rights, opens new tab

Aug 12 (Reuters) - Hedge fund Sculptor Asset Management missed its chance to sue healthcare products giant Perrigo for alleged securities violations and cannot now opt out of a $97 million class action settlement, a U.S. appeals court ruled on Tuesday.

A three-judge panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia said Sculptor Master Fund Ltd and a related fund were barred from opting out of the investor class action more than three years after a deadline came and went.

“Sculptor had the opportunity to opt out early in this litigation, but it failed to do so. Having made that mistake, it has to live with the consequences,” wrote, opens new tab Circuit Judge Cheryl Ann Krause, joined by Circuit Judges Paul Matey and Peter Phipps.
The hedge fund had argued that its intent to pursue its own lawsuit was clear in the record of the litigation in the federal court in New Jersey. The panel upheld a lower judge’s ruling against Sculptor.

Sculptor and a lawyer representing it at law firm Quinn Emanuel did not immediately respond to requests for comment, and neither did Perrigo.

Grand Rapids, Michigan-based Perrigo settled the shareholder class action for $97 million last year, resolving claims that it made misrepresentations and omissions between 2015 and 2017 in connection with a failed $26 billion takeover bid by drugmaker Mylan.

Perrigo has denied any wrongdoing.

Sculptor held about 2.6 million shares of Perrigo stock, owning 5 percent of the company, court records show.

Class action rules can require companies or individuals to formally opt out of settlements if they want to try to sue individually to seek a better deal or a win at trial.

A former lawyer for Sculptor in the case said in a court declaration that her firm, King & Spalding, did not receive the class action notice explaining the process for exclusion.

Still, the attorney said she had asked an associate at the firm to mail a formal opt-out letter to exclude Sculptor from the class action. The attorney said she was unable to determine whether the letter was mailed or whether it was lost en route.

In addition to arguing that the record in the case showed it clearly intended to opt out, Sculptor also told the court that its actions could be deemed “excusable neglect.”

Perrigo countered in a court filing that Sculptor “had ample knowledge of a class action and were represented by sophisticated legal counsel.”

The appeals court said Sculptor "bears the burden of its former counsel’s mistakes."

The case is Perrigo Institutional Investor Group et al v. Joseph C. Papa et al, 3rd U.S. Circuit Court of Appeals, No. 24-2861.

Securities Law News

Sentara Health to Face Suit Over Retirement Plan Fund Returns

Aug. 12, 2025, 6:09 AM PDT

Sentara Health must face litigation over the stable value fund in its retirement plan after a Virginia federal judge said investors bolstered their claims of subpar performance.

Allegations of poor performance coupled with an insufficient monitoring process are enough to state a viable fiduciary breach claim under the Employee Retirement Income Security Act, Judge Jamar K. Walker said Monday for the US District Court for the Eastern District of Virginia.

The hospital system argued the fund's alleged 1.36% underperformance was too small to support an ERISA claim, pointing to court opinions rejecting claims based on underperformance of between 1% and 4%. Walker declined to dismiss the case on this basis, saying the US Court of Appeals for the Fourth Circuit—which has authority over federal courts in Maryland, Virginia, West Virginia, and the Carolinas—hasn't issued a decision to that effect, and it would be inappropriate to create a "bright-line rule" on the topic before allowing the case to proceed to discovery.

The judge also declined to consider whether the other investments held up as better alternatives to Sentara's stable value fund are similar enough to be proper benchmarks. Some federal appeals courts—including the Sixth, Seventh, Eighth, Ninth, and Tenth circuits—have endorsed scrutinizing an ERISA lawsuit's benchmarks in the early stages of litigation, but the Fourth Circuit hasn't and there's "reason to believe" it might not, Walker said. It's therefore more appropriate to assess the lawsuit's benchmarks after allowing discovery, he said.

The seven-month-old lawsuit centers on a stable value fund from Principal Life Insurance Co., which isn't named as a defendant. This fund is an "off-the-shelf product" with uncompetitive returns that lagged both the rate of inflation and similar investments, plaintiffs Tracey Carter and Bonny Davis said in a complaint alleging more than $11.4 million in plan losses.

Though Walker allowed the case to proceed, he dismissed one plaintiff's claims for failure to demonstrate standing, adding that she'd likely be able to fix this problem in an amended complaint. He also cautioned the plaintiffs that his decision "is in no way intended to communicate" that their case will "survive more exacting scrutiny" if it proceeds to the summary judgment stage.

Casey Jones Law Firm, Engstrom Lee LLC, and James White Firm LLC represent the participants. Jones Day represents Sentara.

The case is Carter v. Sentara Healthcare Fiduciary Comm. , E.D. Va., No. 2:25-cv-00016, 8/11/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

Class Actions

Critical Mass with Law.com's Amanda Bronstad: Antitrust Class Actions Hit Higher Education, Coinbase Cases Coordinated in New York

August 13, 2025 | By Amanda Bronstad

Columbia University in Manhattan. Photo: Ryland West/ALM

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

This week: Two new antitrust class actions target elite U.S. universities and the **Law School Admission Council**. The **U.S. Judicial Panel on Multidistrict Litigation** ordered lawsuits over **Coinbase**'s data breach be transferred to New York's Southern District. Find out who got appointed to lead data breach class actions against **LexisNexis**.

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

Benjamin Brown, managing partner of Cohen Milstein Sellers & Toll. Courtesy photo

Colleges and Universities are 'Particularly Vulnerable'

Antitrust class actions targeted higher education this month, with one case accusing the **Law School Admission Council** of overcharging application fees to get into law school, while another accuses several elite U.S. colleges and universities of inflating the price of tuition through the process of accepting early undergraduate applications.

LSAC case: The plaintiffs, in a lawsuit filed by **Hilgers Graben** partners Will Burgess, Peter McCall and Bennett Rawicki, alleged the organization conspires with member law schools to fix the price of its fees, which range from $45 to $215 per applicant.

Early admission case: **Cohen Milstein** partners [Daniel Silverman], [Benjamin Brown], [Richard Koffman], and [Daniel McCuaig], and attorneys from **Langer Grogan & Diver**, filed the class action on behalf of several undergraduate students against dozens of schools, including **Columbia**, **Cornell**, **Duke**, **Northwestern** and **Vanderbilt**.

My colleague **Sulaiman Abdur-Rahman**, who wrote about the latter case, said early admission offerings have been around for years. So, why sue now? He told me:

"I think plaintiffs firms like Cohen Milstein see elite colleges and universities as particularly vulnerable in today's political environment. The Trump administration has aggressively targeted several elite universities, and the U.S. Department of Justice Antitrust Division may consider filing a [statement of interest] favorable to the Sherman Act claims Cohen Milstein filed on behalf of undergraduate students. Proving the existence of an anticompetitive conspiracy between 32 colleges can be difficult, but presumably plaintiffs' firms like Cohen Milstein believe it is easier to prove such an alleged conspiracy today than at any point in the last 25 years. Courts nowadays seem to be more receptive to antitrust complaints, and that's probably why these cases are being filed now."

New York, USA, April 14 2021. Flags of Coinbase and NYSE flying in the wind. On April 14, 2021, Coinbase went public on the Nasdaq exchange via a direct stock listing. Credit: rarrarorro/Adobe Stock

MDL Orders Involve Coinbase, Delta, Procter & Gamble

About 20 data breach cases against **Coinbase** will be transferred to **U.S. District Judge Edgardo Ramos** in the **Southern District of New York**. The Aug. 7 order by the **U.S. Judicial Panel on Multidistrict Litigation** rejected suggestions from many plaintiffs' lawyers to put the cases in the Northern District of California, where Coinbase was founded in San Francisco. Coinbase attorney Alan Schoenfeld (**WilmerHale**) and other plaintiffs' lawyers had argued for New York's Southern District, although most preferred U.S. District Judge Jesse Furman.

The Coinbase transfer comes as investors of another cryptocurrency exchange, **FTX**, narrowed their focus on law firm **Fenwick & West** as part of the multidistrict litigation in **Florida's Southern District**. The panel's order was also one of six to come out of its July 31 hearing. Here are some others:

· An Aug. 8 order transferred more than a dozen lawsuits filed over the Feb. 17 crash landing of a **Delta Air Lines** flight, which flipped upside down on a runway at **Toronto Pearson International Airport**. The panel sent the cases to **U.S. District Judge Jerry Blackwell** of the **District of Minnesota.**

· An Aug. 7 order transferred about half a dozen lawsuits alleging **Procter & Gamble** made false or misleading statements about the sustainability of its Charmin toilet paper and Puffs tissues through its "Protect, Grow and Restore" logo. The panel sent the cases to a new multidistrict litigation judge, **U.S. District Judge Douglas Cole**, of the **Southern District of Ohio**, where Procter & Gamble has its headquarters.

· A dozen class actions over a former **University of Michigan** football coach's cyberattack of **Keffer**'s Athletic Trainer System will be transferred to the **Eastern District of Michigan** before **U.S. District Judge Mark Goldsmith**. The Aug. 8 order says, "Keffer has identified 108 universities across the country that were potentially affected by the breach, so additional cases may well be forthcoming."

Bryan Aylstock of Aylstock, Witkin, Kreis & Overholtz. Courtesy photo

Who Got the Work?

A federal judge has appointed four lawyers as plaintiffs' interim co-lead class counsel over **LexisNexis Risk Solutions Inc**.'s data breach: Bryan Aylstock (**Aylstock Witkin**), MaryBeth Gibson (**Gibson Consumer Law Group**), Gary Klinger (**Milberg Coleman**) and Jeff Ostrow (**Kopelowitz Ostrow**). The Aug. 5 order from **U.S. District Judge Tiffany Johnson**, of the **Northern District of Georgia**, comes in consolidated class actions filed after LexisNexis announced its breach on May 24.

Here's what else is happening:

Hagens Sanctions? A federal judge in Pennsylvania ordered Steve Berman (**Hagens Berman**) to show why he shouldn't be sanctioned for bringing "baseless, dishonest claims" in several lawsuits over thalidomide, the morning sickness pill linked to birth defects. **U.S. District Judge Paul Diamond**'s Aug. 5 order comes two years after a special master recommended sanctions against Berman and his Seattle firm, as well as another former partner, Tyler Weaver (**Angeli & Calfo**). The special master found "misconduct bordering on the criminal," but Diamond gave them an opportunity to respond.

Fire Focus: A lawyer for **Southern California Edison** told a Los Angeles judge on Tuesday that his client is investigating whether to sue more than half a dozen others over this year's Eaton wildfire, which killed 19 and destroyed 10,000 structures. Many of those possible counterclaims would involve public entities that have sued Edison over the Jan. 7 wildfire. The judge told lawyers at the hearing in downtown Los Angeles that she wants to begin planning for bellwether trials, perhaps as soon as next year.

RealPage Settlements: More than 20 companies have settled antitrust claims related to real estate software firm **RealPage**, most recently **Greystone Management Services** on Friday. Although lawyers did not provide a dollar value to the Greystone deal, which also involves the **U.S. Department of Justice**, plaintiffs counsel Patrick Coughlin (**Scott + Scott**) said all the settlements total more than $100 million. Lawyers plan to submit motions for settlement approval by Sept. 30.

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

Suit tossed over anti-Israel blockade of O’Hare highway

legalnewsline.com/cook-county-record/suit-tossed-over-anti-israel-blockade-of-o-hare-highway/article_5a3e9a97-242f-4188-9680-a5f4cca59439.html

Scott Holland, Jonathan Bilyk August 13, 2025

Attorney Ted Frank
HLLI.org

A federal judge has put the brakes on claims from drivers who alleged they were “imprisoned” in their vehicles during a pro-Palestine demonstration that blocked the highway leading into O’Hare International Airport.

U.S. District Judge Mary Rowland issued an opinion Aug. 7 ending a lawsuit stemming from an Interstate 190 demonstration in April 2024. The legal action first landed in Chicago federal court in September 2024, when attorneys with the Hamilton Lincoln Law Institute, of Chicago and Indianapolis, filed suit against the activist organizations on behalf of named plaintiff Christopher Manhart, of Valparaiso, Indiana.

The named defendants include WESPAC Foundation, National Students for Justice in Palestine, Jewish Voice for Peace, Tides Center (which does business as the Community Justice Exchange), a group of dissenters identified in court filings as Organizational Defendants and four individual defendants: Jinan Chehade, identified as a primary organizer of the O'Hare blockade; Superior Murphy, who filmed the blockade; Rifqa Falaneh, identified as present of the SJP's DePaul University affiliate in Chicago and an organizer of the blockade; and Simone Tucker, identified as a JVP organizer and organizer of the blockade.

According to the complaint, the blockade was intended by the activists to not only disrupt traffic leading into the airport, but to maximize economic and societal disruption in an effort to protest Israeli military actions against Hamas in Gaza in response to the deadly October 7, 2023 terrorist attacks Hamas launched in Israel.

“These groups hoped that defendants, and those like them across the world, would draw attention to their cause by bringing economic centers to a halt,” the complaint said. “And on the I-190 expressway, the defendants succeeded, trapping thousands in their cars.”

In asking Rowland to dismiss the second amended complaint, filed at the end of January, defendants also requested sanctions against the plaintiffs and their attorneys for bringing what they called a “baseless” lawsuit intended to “intimidate advocates for Palestinian liberation into silence."

“In service of that goal, plaintiff asserts a private right of action where none exists, colors his time spent in traffic as akin to imprisonment and concocts a broad conspiracy to violate his rights based on little more than social media posts and his own information and belief,’ ” the defendants said. “All the while, the plain text of the complaint attempts to frame defendants’ advocacy as terrorism.”

Regarding false imprisonment, Rowland agreed that although the demonstration prevented cars from driving on I-190, drivers were not “confined” to their vehicles.

“The Second Restatement of Torts squarely addresses the factual situation before the court now,” Rowland wrote, quoting a passage that reads, in part, “one who blocks off a highway, intending to prevent the public from passing along it, is not liable for false imprisonment to one whose privilege to use the highway has been thus denied.”

The plaintiffs pointed to a 1985 Illinois Appellate Court ruling, *Robinson v. Miller*, and said that ruling established false imprisonment liability for blocking public roads. But Rowland labeled *Robinson* "an unpublished, 4-year-old decision" lacking "precedential or persuasive value" outside a few select areas.

"In *Robinson*, the plaintiffs were trapped on a 30-acre plot of wooded land that they owned and which was only accessible by a single dirt road after the defendants blocked the road with a locked chain and a truck," Rowland wrote. "Unlike plaintiff here, who apparently saw several people get out of their cars and walk to their destination without interference, the *Robinson* defendants blocked the plaintiffs' only path out of the area of confinement with a locked chain and barricaded it with a truck."

Rowland said the fact cars appeared behind Manhart's vehicle doesn't add liability to demonstrators and said adopting his "reading requires believing that the drafters of the Restatement were unaware that a traffic jam might result from an obstructed highway and that travelers might be temporarily stuck in traffic as a result." She also said Manhart conflated the concept of "no reasonable means of escape" as intrinsic to the imprisonment allegation when it is a separate inquiry from who committed the confining.

Although Manhart argued state law prevented him from leaving his car on the interstate, Rowland noted the Illinois Vehicle Code section he cited has a narrow definition of abandonment involving either disrepair or leaving a car for at least a week.

"The court does not doubt that plaintiff felt trapped in his car and in fact could not easily go where he wanted to," Rowland wrote. "His frustrations were no doubt exacerbated because he was on the way to the airport. But to state claim for false imprisonment, the confinement must be 'involuntary;' it is not enough for a plaintiff to voluntarily remain in a place even if they believe they are justified in doing so."

Rowland further noted longstanding common law principles "warn against plaintiff's proposed expansion of false imprisonment." She agreed with the defendants that Manhart couldn't bring a complaint of "foreseeable injury caused by intentional breach of duty" in Illinois, but said she would consider that claim as a question of whether the defendants violated a public safety law. However, she said the Illinois Vehicle Code section Manhart cited seemingly addresses effective traffic movement, not public safety. Still, even taking Manhart's position, Rowland said the count fails because the injuries he alleged don't implicate public safety. She also declined to imply a right of action, saying state law precludes such a step.

Regarding a negligence claim, Rowland said Manhart couldn't advance that strategy after already alleging intent on the part of demonstrators. She further disposed of claims for in-concert, aiding and abetting and conspiracy liability saying those could only survive along with his primary tortious conduct claims.

With respect to WESPAC, Manhart alleged it was NSJP's "fiscal sponsor" and therefore bound to control its activities. But Rowland had already found NSJP wasn't liable for any tortious conduct, automatically stripping potential liability from WESPAC.

Rowland sided with Manhart on the issue of standing to sue, noting the U.S. Seventh Circuit Court of Appeals has held loss of time is sufficient grounds. She denied as moot the defendants' motions to strike certain allegations and also said the Illinois Citizen Participation Act can't be used in a federal court to pursue sanctions for allegations of not stating a viable action.

"The court understands that this holding frustrates the important policy goals that the Illinois Legislature furthered in the ICPA and may encourage forum shopping," Rowland wrote. "But neither concern alleviates the court's obligation to follow Supreme Court precedent."

However, she did grant motions for sanctions from individual defendants, dissenters and the Tides Centers under a federal court rule intended to deter baseless complaints. Rowland wrote she believed Manhart's "filings were presented for the improper purpose of harassment and that plaintiff made legal contentions that were neither supported by existing law nor nonfrivolous arguments in favor of the extension or modification of existing law."

She further said Manhart's second amended complaint is "rife with allegations that are irrelevant to plaintiff's stated causes of action and which are only a hair's breadth away from calling defendants terrorists and placing the loss of innocent lives at their feet." She said the larger context of the complaint, some of the work it cited and a request for $36 million for a putative class indicated the "intent in bringing this action was not to recover the damages actually sustained, but instead to harass."

Rowland singled out Manhart's legal representation for actions that "forced defendants to spend time and money shadowboxing a myriad of possible arguments to support a legal theory that plaintiff was not able to sufficiently articulate himself" and, while appreciating that attorney Ted Frank "has a genuine and personal concern" with the alleged conduct, Manhart didn't have "carte blanche to make frivolous legal arguments, ignore controlling precedent, and misrepresent existing law in support of his case."

Manhart will not be able to further amend his complaint.

The organizations and individual defendants are represented by attorneys Sheila A. Bedi, of the Community Justice & Civil Rights Clinic at Northwestern University; Megan Porter; Amanda S. Yarusso; Precious S. Jacobs-Perry and Ali I. Alsarraf, of Jenner & Block, of Chicago; Nora Snyder and Brad Thomson, of the People's Law Office, of Chicago; and Hanna Chandoo and Dan Stormer, of Hadsell Stormer Renick & Dai, of Pasadena, California.

Judge's colleague is a plaintiff, Edison says public entities are liable

DJ
dailyjournal.com/articles/387089-judge-s-colleague-is-a-plaintiff-edison-says-public-entities-are-liable

Aug. 13, 2025

Judge Laura Seigle disclosed a conflict in the Eaton Fire litigation, as fellow Judge Wendy Chang is a plaintiff. Southern California Edison claims multiple public entities share liability.

The judge presiding over the Eaton Fire cases in Los Angeles County Superior Court announced on Tuesday that two of her friends, including a fellow judge, may have claims, and one has already filed a lawsuit. Many superior court judges' homes burned in the January fires, prompting Southern California Edison's attorney to note that more conflicts are likely.

Another complication is that defendant Edison believes up to nine public entities share responsibility for the fire, the company's counsel told the judge.

Referring to the conflict of interest regarding her bench colleague, Judge Laura A. Seigle told the parties in court Tuesday, "My plan is to peel that case off, send it ... for reassignment to another judge. But I want to talk procedurally how to make that happen."

The plaintiff she referred to, Judge Wendy Chang, is part of a long list of plaintiffs in that case, so Seigle suggested having her dismissed from that case and having her file a new case as a sole plaintiff, which would be reassigned. Chang's attorney, Mark J. Leonardo of Dordick Law Corporation, said he would be happy to do so. *Lilian Alvarenga, et al., v. Southern California Edison Company*, 25STCV20461 (L.A. Super. Ct., filed July 9, 2025).

Plaintiffs' co-liaison counsel Amanda L. Riddle of Corey, Luzaich, de Ghetaldi & Riddle LLP said she did not have any issue with Seigle's proposal.

However, Southern California Edison's lead attorney, Douglas J. Dixon, said his firm, Hueston Hennigan LLP, did not believe that transferring the case would fully address any potential conflicts. "This is something we're going to have to discuss with our client, having just learned this, and we are happy to discuss and then report back what Southern California Edison's position is," Dixon said.

"Alright. Well, then, I'm going to then continue all this until I figure out what your position is," Seigle replied.

"I believe we should proceed today so long as all parties agree that we're not waiving any potential conflict or issue. By proceeding today I'd like to make the best use of our time as possible," Dixon responded.

"Your honor, we do just want to point out as others may be aware or may not, Ms. Chang is Judge Chang. So obviously there will be, in all likelihood, a number of departments, if not all, that are going to have a conflict. So we certainly don't believe this in any way would disqualify this court from proceeding with this case," said co-liaison counsel Gerald Singleton of Singleton Schreiber said.

Seigle's announcement was not exactly a surprise. Nearly 5,000 individual plaintiffs have sued Edison over the Jan. 7 wildfire. Thirteen judges in Los Angeles County Superior Court lost their homes in the Eaton and Palisades fires. Seigle told the parties early on that there was a good possibility that somebody she knows would file a claim.

Attorneys for the Eaton Fire victims are pushing Seigle to set trial for June 2026, a move Edison says is premature because investigations are ongoing.

But Edison's recent announcement of a wildfire recovery fund undercuts the utility's argument, according to the plaintiffs.

Edison says the recovery fund is not a concession of causation or liability, and urges the plaintiffs' counsel to inform their clients of their opportunity to participate in the recovery fund.

"I don't think that we can have a trial before we have the Cal FIRE report because it's going to provide a lot of information. It seems like a really important ... source of information for both sides," Seigle said.

"Normally, you'd be spot on that the report would be a necessity for the parties proceeding. This case has taken on a completely different tone than most wildfire cases," Howard D. Maycon of Cozen O'Connor told Seigle.

Maycon pointed out that investigators of past wildfires such as Thomas and Woolsey maintained possession of physical evidence and did not give the parties access for the 18 months or more that it took to produce the investigative report.

He went on to say that the parties in the Eaton cases have access to the evidence, and were doing their own investigations.

Dixon said investigators have evidence from the fire's purported origin area that has not been shared with the parties. Edison also believes that various public entities are responsible for some of the damage.

"I believe that there were eight or nine of them, and the way that this process works is we have submitted those by the public presentation deadline," Dixon said. "They have 45 days now to consider that. If they don't respond within 45 days, it's deemed rejected, and at that point, then we have six months to file claims against them." *Gursey v. Southern California Edison*, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#387089

Antoine Abou-Diwan

Daily Journal Staff Writer
antoine_abou-diwan@dailyjournal.com

Q&A | **Litigation**

Juicy Nuggets About Juror Attitudes Toward Plaintiffs, Litigation Funding

August 13, 2025 | By **Ross Todd**

Orrick Herrington & Sutcliffe 400 Howard Street, San Francisco, CA. (Photo: Jason Doiy/ALM)

Yesterday, we raised the curtain on new research from **Orrick, Herrington & Sutcliffe** about attitudes prevailing in the jury pool across the United States.

The online survey of nearly 1,300 jury-eligible adults across the U.S. followed up on a similar study by the firm in 2022. According to the responses, prospective jurors across generations, geographies and the political spectrum exhibit a growing loss of faith in institutions—especially when it comes to big business.

This morning, we will focus on a couple of other findings that could be significant for corporate litigants. A large majority of respondents agreed that people too often blame others for their problems and that people will bring false claims to get money they do not deserve. Still, in cases where litigation funders are known to be involved, a majority said they'd be likely to *increase* their damages awards.

This morning, **Meghan Kelly** and **Bill Oxley**, the leaders of Orrick's complex litigation and dispute resolution practice, discuss those topics and a couple of their overall takeaways from the survey.

The following has been edited for length and clarity.

Lit Daily: Beyond the loss of faith in institutions, there also seems to be a certain level of loss of faith in humanity and individuals in these numbers, too. The statement: "People too often blame others for their problems"—39% agree strongly with that and 45% agree somewhat. "People will bring false claims to get money they do not deserve"—28% agree strongly with that and 44% agree somewhat. That would play to a corporate defendant's advantage, it would seem.

Oxley: It would, but you have to be really careful. I think you need to lead with yourself in those cases. When I say "yourself," I mean with the company, what its values are and why its products were safe. If you can do that, then the jurors can get to the conclusion. It's risky to start off your case with, "The plaintiff is a liar. The plaintiff isn't really hurt. It's their fault." We saw this a lot in the opioid litigation. There was a lot of victim-blaming that took place. We see that in other areas as well. And if you lead with that, then it's going to play into the idea that you're just a big, bad company looking to take advantage of people. So, I think you can get there, but it's a process.

Kelly: I totally agree. It's something that you need to be aware of as a defense lawyer, that jurors feel that way. But letting jurors get there themselves, as opposed to beating them over the head with it at the start, is much more successful. I also think it's funny you raise that number, because one of the things that's interesting is when you look at the age spread of how people respond to whether or not people bring false claims for money, it is hugely divided across age. 18-to-29-year-olds make up 38% of the "disagree strongly" responses. I think that's one of the areas where we do see some polarization based on age. The views of younger jurors versus older jurors can be really different. This is an area where younger jurors are less likely to believe that people are bringing false claims to make money, and much more likely to stick with their anti-corporate sentiment.

So, additionally, 55% of respondents said they would be likely to increase an award of damages if they learned that a litigation funder would receive any of the damages award. That one was really interesting to me. So, disclosure might not be all that helpful after all for defendants.

Oxley: That's one of my favorite findings in the study. And here's why: I think so many people go in thinking, “Aha, I'm a big corporation, and if I can just show that somebody is getting funding, then that's going to blow the roof off of everything, because everybody's going to think it's all made up.” But it's really more like companies who have insurance—they never wanted to have their insurance policy numbers shown, because that was going to give the jury a bigger number. It's very similar to that, because the jurors are saying, “No, we want all of the money to go to the plaintiff, and we're going to adjust our award in order to get the plaintiff all of the money that we think the plaintiff should have.” I think one of the things we've seen throughout this process, over the last few years, is that a lot of the traditional wisdom is wrong.

Kelly: I think a lot of defendants, in the push for legislation and court rules to require disclosure of funding, have thought that if funding is disclosed, it will level the playing field. The idea is that it's a David versus a Goliath: That's why jurors don't like corporations. They think they have too many resources. They think it's an unfair fight. If we can disclose litigation funding, it will make it a level playing field. It's Goliath versus Goliath. This is being driven by two big corporations, or private equity on one side and a corporation on the other.

This finding really does take away that motivation. I think it says something really profound about how individuals are viewed versus corporations. It's not just about resources. It's really about power and distrust. If someone has to go out and get somebody to support them resource-wise to bring a claim, then jurors aren't going to hold that against them. They still feel like the power imbalance at the time the event occurred is what's upsetting them. They're not upset by who has more money in the lawsuit and who spends more.

I think it just reinforces that sort of sense that we've already talked about: this unanimous view that institutions are failing us and need to be torn down.

Yes. The approach seems to be "if the plaintiff needed this help to get to this point, we shouldn't hold it against them."

Kelly: Right. "We want to make sure that they get what we would have given them, even if they didn't have funding to get there." It's the only way they can fight these really powerful and, as most jurors see it, corrupt structures and institutions that are in place that are hurting individuals and helping corporations. They will not punish plaintiffs for that.

We've been talking a lot about the loss of faith in institutions. Bill, the last time we talked, you expressed your strong belief in the jury system as an institution. Have any of these findings shifted your feelings on that front?

Oxley: No. It's funny. I was going to mention that earlier. I still feel very strongly in favor of our jury system. Like any system, there are issues with it. But I am a huge believer that the folks who are sitting in that jury box are going to be able to reach a decision that they at least feel is fair. But it's our job to help them get to the one that we also think is fair. And so how do we do it? I think these results are so eye-opening in two ways. One, they confirm what we saw before: They show the divides are deeper now, and that the distrust in institutions are even deeper now. And so we're trying more to meet jurors where they are, and this really helps us do that.

So, no. I'm still a big believer in the system and in people, and I definitely feel like when people understand and it's explained to them in a way that makes sense, and they can understand a company's values, they will get with the program and see things our way.

Kelly: My only caveat is that there are certain times and situations where you don't have the ability to understand and uncover some jurors who just don't belong on a jury for a certain case. And I think there are instances where you get such limited voir dire that you really don't have an option of identifying people who, under the rules of the system as they exist now, should not be a juror. Under our current standards, there are certain folks who, in certain cases, just should not be on the jury. Sometimes that takes a little bit longer to figure out than we're given as trial lawyers. One of my takeaways from this is that you really do need an opportunity in voir dire to meaningfully question people, because some of these beliefs are so strongly held that it doesn't matter what you say.

But I agree with Bill. I do trust the jury system. I think the way the rules are supposed to apply is the right way. You should be able to find jurors who are willing to make decisions based on the evidence. I just don't know that we always get the time to make sure that the folks who shouldn't be on a jury don't end up on it.

Oxley: I totally agree with that, but I like to see silver linings. One silver lining is to make use of the time you have. If you have two minutes per juror, don't sit there and talk about where you went to school or what your children do, or whatever. Get to the point and ask the jurors the questions that you want to ask them. We see a lot of lawyers waste a lot of time in voir dire, not focusing on things that are going to give you the information you need to make decisions.

AV RISTORANTE

The perils of using class actions as a replacement for universal injunctions

By Brian Fitzpatrick
on Aug 12, 2025

(Katie Barlow)

AV Ristorante is a recurring series by Brian Fitzpatrick.

Please note that the views of outside contributors do not reflect the official opinions of SCOTUSblog or its staff.

In *Trump v. CASA*, the birthright citizenship case, the Supreme Court held that so-called "nationwide" or "universal" injunctions are usually unlawful because they exceed the powers granted to courts by Congress. Universal injunctions are court orders that tell defendants they can't do something – both to the plaintiffs and anyone else. For example, in the birthright citizenship litigation, courts had barred the Trump administration from applying its executive order against both the plaintiffs who brought the cases and anyone else born in the United States. The controversial part is the last part: including nonparties in the relief. And the controversy is bipartisan: Although federal district courts have entered more universal injunctions against the Trump administration than all other presidents in the history of the United States combined, they entered plenty against former Presidents Joe Biden and Barack Obama, as well.

At the same time the court held universal injunctions unlawful in *CASA*, it noted that there is a lawful mechanism for granting relief to nonparties: a class action seeking injunctive relief. A class action is a lawsuit in which plaintiffs seek to represent themselves and everyone else in a similar position. Plaintiffs state in their complaint that they seek to represent a class, but the case does not actually become a class action unless a judge "certifies" it as one. The Federal Rules of Civil Procedure list the criteria that courts must follow, including that the prospective class must be a certain size, that its members must have "questions of law or fact" in common, and that the plaintiffs must be "typical" and "adequate representatives" of the rest of the class.

Thus, in the weeks since the *CASA* decision was released, litigation against the Trump administration has largely taken the form of class actions. And there are reasons to think the court was right to think class actions will be a good substitute for universal injunctions. For example, there is no reason why class actions cannot include class members all across the nation, especially when the lawsuit is based on federal law as opposed to the laws of many different states. Although some commentators have worried that it will be too difficult to certify class actions, the truth is that it is relatively easy to certify class actions that seek injunctive relief: the certification criteria are less numerous and less demanding than for class actions seeking money damages.

The downside to using class actions is that the certification process can take time. If the defendant contests it, class certification can usually happen only after the parties have taken discovery into the criteria – that is, they have produced information concerning whether they qualify as a class or not. For example, the most contentious certification criterion for injunctive classes is usually whether the plaintiffs are "adequate representatives." The defendant will usually want to probe the plaintiffs' honesty, their relationship with the lawyers representing them, and whether there might be any conflicts of interest between the plaintiffs and other class members. For this reason, it is not uncommon for class certification to take months or even years. Some have worried that this delay will undermine the ability of class actions to serve as a substitute for universal injunctions. The Trump administration can accomplish a lot in just a few months.

But it turns out that class certification has not slowed district courts down at all. Rather, they have turned to something called "provisional" class certification. What's that? There is no known definition, but it appears to be when a court skips discovery and does a quick-and-dirty assessment of whether it thinks the class certification criteria are met so that it can enter a preliminary injunction on behalf of the class. Presumably, at some point later on in the litigation, the defendant will be given discovery and a chance to urge the court to decertify the class. But, until then, everyone in the class gets injunctive relief.

This is what a district court judge in New Hampshire did following *CASA*. The day after the court's decision, the ACLU filed a complaint challenging the same birthright citizenship order, this time on behalf of a nationwide class. Less than two weeks later, the district court provisionally certified the class and entered a preliminary injunction on its behalf.

Is this lawful? As I told the New York Times, I have "grave misgivings" about it. There is nothing in the Federal Rules of Civil Procedure that says courts can do this. But there is also nothing that says they can't. And, according to Harvard professor Bill Rubenstein, courts had been granting provisional certifications before *CASA*.

Indeed, the Supreme Court itself has done something similar. In *AARP v. Trump*, a class action case out of Texas involving immigrants on the verge of deportation to El Salvador, the court prohibited the administration from deporting any of the potential class members in the case even though the case had not even been "provisionally" certified as a class action. At that point, the case was merely a "putative" class action – i.e., a case that the plaintiffs said in their complaint they wanted to turn into a class action one day. In fact, at the time the court granted relief to the putative class in *AARP*, the district court itself had said it did not think class certification would be appropriate. Yet, in evaluating the case, the court didn't even pay lip service to the class certification criteria. If granting relief to a "putative" class – over the misgivings of the district judge, no less – is not unlawful, then it is hard to see how granting relief to a "provisionally certified" class is.

It is tempting to conclude that the court may not have realized what it was doing in *AARP*. After all, the justices do not get very many class action cases and this one was rushed on the emergency docket, to boot. But much of this was pointed out by Justice Samuel Alito in his dissent, which was joined only by Justice Clarence Thomas. Moreover, *AARP* was released only one day after the oral argument in *CASA* and it was clear from their questions that the justices were thinking about the relief they were about to order in *AARP*.

For this reason, my misgivings about provisional certification lie less with its lawfulness and more with its consequences for judicial administration. In particular, I am concerned that provisional certification will simply recreate under a different name all the problems of universal injunctions: extreme forum shopping, rushed decisionmaking, and asymmetrical litigation stakes.

Let's start with extreme forum shopping. You could usually seek a universal injunction against the federal government anywhere in America. As such, plaintiffs suing Trump, just like plaintiffs suing Obama and Biden, understandably gravitated toward courthouses where they were guaranteed a particular judge they liked or at least a judge of the political party opposite the president. But you can just as easily file class actions before the very same judges. Although the ACLU was not as aggressive about this as it could have been in the New Hampshire case – they drew a district court judge nominated by George W. Bush – I am sure it was no accident they filed in the only circuit where all the active circuit judges were appointed by Democratic presidents.

What about rushed decisionmaking? Obviously, going from the initial complaint to certification of a nationwide class and a class-wide injunction in less than two weeks is rushed. Moreover, I think we can all probably agree that rushing is usually not the best way to make decisions. But there is a special problem caused by rushing to shut down an entire federal program or policy: It often then forces appellate courts and even the Supreme Court to make decisions about the merits of the program or policy before the merits have been well developed. Ideally, the court does not have to rule on an issue until several courts of appeals have weighed in, something scholars call "percolation." Universal injunctions tended to cut off percolation because the court felt compelled to take the very first case that came to it in light of the importance of deciding whether a major federal program could take effect.

Class actions may make this problem worse rather than better. As the court in the New Hampshire case observed, there is no mechanism in the Federal Rules of Civil Procedure for class members to "opt out" of class actions seeking injunctions. Thus, once a court certifies a class – even provisionally – it shuts down the ability of members of that class to file their own lawsuit in a different circuit. Indeed, the U.S. Court of Appeals for the 9th Circuit recently **rejected** jurisdiction over individuals challenging the birthright citizenship order because the judge in New Hampshire had already provisionally certified a class that included them. Although the litigation continues there for state plaintiffs, what will happen in cases in which there are no state plaintiffs? I am afraid the class action answer is: no percolation.

Finally, what about asymmetrical litigation stakes? The concern here was that when plaintiffs won a case seeking a universal injunction, they won for everyone in America, but, when they lost, they lost only for themselves. The opposite was true for the government: if it lost, it lost for everyone; if it won, it would have to keep litigating against each and every other potential plaintiff. Many people thought this was simply unfair. The class action was supposed to fix this: Certified class actions – even provisionally certified ones – bind all class members, win or lose. That sounds good in theory, but I am not sure it will pan out in practice: I doubt a district court will grant provisional class certification if it is going to reject the preliminary injunction; it will only do so if it will enter the injunction. Thus, we are right back to where we were before *CASA*: When the government wins in the district court, it will win only against the plaintiffs; when the government loses, it will lose against everyone. The unfairness remains.

In his concurring opinion in *CASA*, Alito warned that the decision would be toothless if district courts could too easily replace universal injunctions with class actions. In particular, he worried about "hasty application" of the class certification criteria that treated the criteria as a "mere pleading standard" rather than the "rigorous analysis" that caselaw required. Is this already happening?

Posted in **AV Ristorante**, **Featured**, **Recurring Columns**

Recommended Citation: Brian Fitzpatrick, *The perils of using class actions as a replacement for universal injunctions*, SCOTUSblog (Aug. 12, 2025, 10:39 AM), https://www.scotusblog.com/2025/08/the-perils-of-using-class-actions-as-a-replacement-for-universal-injunctions/

Recent Posts

VIEW ALL

The morning read for Wednesday, August 13

August 13, 2025

READ MORE

Groups ask Supreme Court to keep in place district court ruling barring immigration stops

August 12, 2025

READ MORE

Supreme Court announces when it will hear oral argument in several important cases

August 12, 2025

READ MORE

The perils of a replaceme injunctions

August 12, 202

READ MORE

Archives

Skip to content

Select Month

Trump using courts as a ‘weapon,’ Hawaii says in climate dustup

legalnewsline.com/trump-using-courts-as-a-weapon-hawaii-says-in-climate-dustup/article_f8435011-d6d8-441c-9c4f-7a59f9722a1d.html

John O’Brien, John O'Brien August 13, 2025

Lopez
https://dems.ag/

HONOLULU - The State of Hawaii says the federal government has no authority to sue it for bringing a climate change lawsuit against Big Oil - though its case was filed after President Donald Trump forbid it.

Trump's executive order prohibited states, cities and counties from suing companies like Exxon and Chevron, warning this litigation jeopardizes the feds' regulation of the international energy market. But Hawaii Attorney General Anne Lopez did anyway, after the Trump Administration had tried to block her from doing so with a federal lawsuit.

Now, Lopez seeks to dismiss that lawsuit with a July 25 motion, calling the case "extraordinary and unprecedented."

"Allowing this case to proceed would give the United States license to wield the federal courts as a weapon against any litigation between nonfederal parties that an incumbent presidential administration dislikes," Hawaii's motion says.

Dozens of climate cases were filed before Trump's executive order. Seven state court judges have thrown them out of court, though two state supreme courts - Hawaii and Colorado - have allowed them to proceed.

Exxon and Suncor last week asked the U.S. Supreme Court to decide once and for all whether local government officials and state court judges can, they say, disrupt emissions standards established by the federal government.

"Boulder, Colorado, cannot make energy policy for the entire country," the companies argued.

The lawsuits were crafted to stay in state court and allege the public wouldn't have used as many fossil fuels as it did had it known about the dangers of climate change. They make state-law claims for consumer protection and public nuisance, though judges have written their real focus is on emissions.

Hawaii says the federal government can't stop it from prosecuting private parties whose actions violated state law. The feds have no standing to sue Hawaii, it adds.

"Its allegations of future harm are far too abstract and inchoate to meet the concreteness requirement, and its alleged injuries are conjectural and hypothetical, not actual or imminent," the motion to dismiss says.

"Its theory of standing is based on potential downstream effects of the State Action that are too speculative and remote to establish a cognizable injury. And the United States does not establish traceability or redressability because its alleged injuries depend on multiple layers of contingencies, including the unpredictable decisions of third parties."

And a federal judge should abstain from interfering with a state-court lawsuit, it says.

Trump also sued Michigan upon learning AG Dana Nessel planned a lawsuit of her own. But she has not filed one, leading her to challenge Trump's case as premature.

Judges in South Carolina, Maryland, New Jersey, New York, Delaware and Pennsylvania have found the cases involve questions of international emissions standards better left to the federal government.

Bucks County, Pa., judge Stephen Corr noted that county's complaint used the word "emissions" more than 100 times, while "deceptive" and "deception" were used only 39 times combined.

Judge Videtta Brown, in Baltimore's case, said the litigation goes beyond the limits of Maryland law, or whatever states other cases are filed in.

"This Court holds that the U.S. Constitution's federal structure does not allow the application of state court claims like those presented in the instant cases," Judge Steven Platt wrote in tossing Annapolis' case.

"The States such as Plaintiffs here... can participate in the efforts to limit emissions collaboratively, but not in the form of litigation... If states and municipalities [or] even private parties are dissatisfied with the federal rulemaking or the outcome of cases, they may seek federal court review."

US law firm Kelley Drye hit with class action after data breach

reuters.com/legal/government/us-law-firm-kelley-drye-hit-with-class-action-after-data-breach-2025-08-13

David Thomas, Mike Scarcella August 13, 2025

The keyboard of a computer is pictured at a computer shop in Ciudad Juarez, October 19, 2017. Picture taken October 19, 2017. REUTERS/Jose Luis Gonzalez/File Photo Purchase Licensing Rights, opens new tab

Aug 13 (Reuters) - U.S. law firm Kelley Drye & Warren is facing a new lawsuit over a data breach that allegedly exposed personal information of thousands of its current and former clients, employees and others.

The proposed class action, opens new tab filed on Tuesday in New York state court said Kelley Drye suffered a cyber attack in March that exposed names, dates of birth, Social Security numbers and driver’s license numbers which the firm possessed.
Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up here.

The lawsuit was filed by a former employee of one of the firm's clients, who was not identified. The plaintiff, Ratna Kanhai, said she received a notice in July of the data breach.

Firm leaders at Kelley Drye did not immediately respond to a request for comment, nor did attorneys for Kanhai.

Kelley Drye, with about 300 lawyers, is the latest law firm to face class action claims over an alleged breach as cyberattacks have plagued the legal industry.

Last year, Orrick, Herrington & Sutcliffe agreed to pay $8 million to settle a lawsuit over a breach that allegedly compromised the personal data of more than 600,000 people.
Florida-based Gunster in November said it would pay $8.5 million to resolve a proposed class action over a 2022 data breach.
Kanhai alleged that in the aftermath of the Kelley Drye breach, she "experienced a dramatic increase in scam and phishing texts and calls."

The lawsuit said Kelley Drye has stated that it recovered data stolen in the breach and that the firm has a "high degree of confidence that the data will never be posted, disclosed, or used."

Kanhai said Kelley Drye's data breach notice was "intentionally misleading, and intentionally downplays the severity of the Data Breach and the threat it poses to thousands of individuals."

The lawsuit seeks class action status for thousands of individuals and unspecified monetary damages.

The case is Ratna Kanhai v. Kelley Drye & Warren, New York County Supreme Court, unassigned.

For plaintiff: Linda Joseph of Schroder, Joseph & Associates; and Raina Borrelli of Strauss Borrelli

For defendant: No appearance yet

Read more:

Law firm Thompson Coburn and healthcare client hit with data breach lawsuit
Another US law firm reaches data breach settlement as cyber risks mount
Law firm Kirkland sued in class action over MOVEit data breach
Law firm Orrick agrees to $8 mln settlement over breach of client data
Reporting by Mike Scarcella

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

David Thomas
Thomson Reuters

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

Judge denies stay in major AI copyright case, denies rush to trial

DJ
dailyjournal.com/articles/387090

Aug. 13, 2025

Judge William Alsup denied Anthropic's bid to pause a major copyright trial over pirated books used to train AI, rejecting claims he was rushing proceedings before taking inactive status.

A San Francisco federal judge rejected Anthropic PBC's bid to halt "possibly the largest copyright class action ever" brought by authors accusing the company of illegally downloading more than 7 million books to train the large language models powering the company's AI assistant Claude.

U.S. District Judge William Alsup denied Anthropic's motions to stay the case and certify an interlocutory appeal that would have pushed back the parties' Dec. 1 trial date. He also defended himself in his order Monday, against the defense attorneys' suggestion that he is rushing the trial so that he can preside over it before he takes senior status.

"Keeping a case on track is not the same as rushing the case to trial," Alsup wrote.

Anthropic sought to pause the litigation while it appeals Alsup's partial grant of summary judgment from June 23 that created "novel and consequential legal questions" regarding AI companies' ability to claim fair use.

Alsup granted summary judgment against Anthropic's fair use defense to the plaintiffs' infringement claims on Anthropic's downloading of books from several book pirating websites. The judge found the company liable for the mass pirating of those books but not Anthropic's use of purchased books that were scanned and stored in the company's servers.

Anthropic's attorneys and media relations office could not be reached for comment on Tuesday but it stated in its motion that it would "move expeditiously for a stay" from the 9th U.S. Circuit Court of Appeals if Alsup did not pause the district court proceedings.

Anthropic appealed Alsup's partial grant of class certification on Aug. 1. Kathleen R. Hartnett, a San Francisco partner for Cooley LLP and one of Anthropic's lead attorneys, suggested in the appeal notice that Alsup is "rushing" the case to the trial before he retires.

Bartz v. Anthropic PBC, 3:24-cv-05417 (N.D. Cal. filed Aug. 19, 2024).

"Anthropic's fair-use defense is meritorious and had it been before U.S. District Judge Vince Chhabria, Anthropic would have prevailed on summary judgment." the appeal stated. They referred to Chhabria granting partial summary judgment in favor of Meta on June 25 in a separate but similar copyright lawsuit by another group of authors. Chhabria found that AI companies' use of pirated books did not infringe because AI chatbots only "reproduce small snippets" of text from the books. *Kadrey et al. v. Meta Platforms Inc.*, 3:23-cv-03417 (N.D. Cal. filed July 7, 2023).

"But Anthropic's pending Section 1292(b) motion rests entirely within the discretion of the same district court that has accelerated this case to hold a trial before taking inactive status," the appeal continued. "Thus, absent a stay and Rule 23(f) review, Anthropic may have no path to appeal the rejection of its fair-use defense."

Alsup rejected these claims in his order Monday.

"It is true that the district judge would like to take inactive status near the end of this year or shortly thereafter. But it is not true that the district judge is rushing this case," Alsup wrote. "The trial date was set long ago at the initial case management conference and has not changed since. Keeping a case on track is not the same as rushing the case to trial. It is important for the sake of effective case management that class notice proceed as set forth in the certification order to go to trial on a class basis in December. A stay would torpedo the trial date and case management schedule."

Alsup found that unresolved fair use issues regarding Anthropic's claim that it only used some, but retained all, of the pirated works to train the large language models (LLMs) "deserves to be explained" in the trial record to a jury before the 9th Circuit weighs in.

"Which works in its collection were actually used to train LLMs, which were not, and why were all retained? Anthropic has refused to come clean on this, even now, and for all we know, most were never used (or not solely used) to train LLMs," Alsup wrote.

Anthropic's attorneys argued in their client's July 24 motion that the 9th Circuit needs to weigh in because several other cases in the Northern District are grappling with similar copyright questions over AI companies' use of pirated materials.

"If either of this court's orders is reversed or revised on appeal, any discovery, class notice, and trial that took place during appeal may well need to be undone or redone, rendering fruitless the time and effort of jurors, class members, the court, and the parties," the motion stated. "Moreover, the groundbreaking legal issues presented by this case and the many others like it should be resolved in a fair and orderly fashion by the Court of Appeals before a class trial here, which carries the specter of unprecedented and potentially business-threatening statutory damages against the smallest one of the many companies developing LLMs with the same books data."

The plaintiffs' attorneys from Susman Godfrey LLP, Lieff Cabraser Heimann & Bernstein LLP and Cowan Debaets Abrahams & Sheppard LLP declined to comment.

Rachel Geman of Lieff Cabraser Heimann & Bernstein LLP, co-lead counsel for the plaintiffs, argued in the plaintiffs' July 28 opposition brief that Anthropic "has shown no basis for a stay" and its motion contradicts the company's previous stance toward the litigation.

"Weeks before summary judgment briefing began, plaintiffs discovered that Anthropic torrented troves of books from two notorious criminal enterprises. The court denied Anthropic's summary judgment motion on this basis and certified a class comprised of the owners of certain registered copyrights in the books Anthropic downloaded from LibGen and PiLiMi," the brief stated. "Despite urgently requesting early summary judgment briefing, Anthropic now changes course and asks the court to pause everything and deprive Plaintiffs--and scores of copyright owners--of their day in court."

The following attorneys also represent Anthropic: Joseph Farris, Douglas Winthrop, Jessica Lim Gillotte, Angel T. Nakamura, Estayvaine Bragg of Arnold & Porter Kaye Scholer LLP; Daralyn J. Durie, Whitney R. O'Bryne, Ramsey W. Fisher, Jackson Lane, Fitz B. Collings, Mary Prendergast, and Aditya V. Kamdar of Morrison & Foerster LLP; Ephraim Mcdowell, Alexander A. Kasner of Cooley LLP; and Mark Lemley of Lex Lumina LLP.

The following attorneys serve as co-lead counsel for the plaintiffs: Rohit D. Nath, Justin A. Nelson, Alejandra C. Salinas, Jordan W. Connors, J. Craig Smyser, and Samir H. Doshi of Susman Godfrey LLP; Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson, Reilly T. Stoler, Jallé H. Dafa, and Betsy A. Sugar of Lieff Cabraser Heimann & Bernstein LLP. Scott J. Sholder and CeCe M. Cole of Cowan, DeBaets, Abrahams & Sheppard LLP serve as additional counsel for the class of plaintiffs.

#387090

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

California Brief

Music Publishers Want to Add Download Claim to Anthropic AI Suit

Aug. 12, 2025, 4:03 PM PDT

Music publishers suing Anthropic PBC over its AI training want to add a claim to their copyright complaint, accusing the Claude-maker of illegally downloading sheet music from pirate sites.

Concord Music Group Inc., Universal Music Corp., and several other publishers requested permission to file an amended complaint on Tuesday arguing they only discovered Anthropic's illegal copying through a July class certification order by Judge William Alsup in another case. That order discussed Anthropic's use of "BitTorrent"—a tool used to quickly download large files—from a shadow library called LibGen, which the publishers said contains "over a thousand illegal copies of sheet music, songbooks, and other lyric-related books."

The publishers' filing in the US District Court for the Northern District of California lands as plaintiffs in AI copyright suits have sharpened their focus on illegal downloads. A fair use decision from Alsup in June in the authors' case said that while Anthropic's training on scanned copies of books was fair use, its downloading of books from pirate sites likely couldn't invoke that shield. Class action plaintiffs suing OpenAI have similarly asked to amend their complaint with a download claim, which OpenAI moved to strike in July.

When Anthropic used BitTorrent to download files, it was "simultaneously uploading unauthorized copies of the same books to other users," publishers said. LibGen's data contains "numerous standalone copies of sheet music and lyrics" including compositions like "Tiny Dancer" by Elton John and Bernie Taupin, "A Thousand Miles" by Vanessa Carlton, and "7 Rings" recorded by Ariana Grande).

Music publishers accused Anthropic of concealing their use of BitTorrent during more than a year of discovery. Anthropic's failure to disclose its BitTorrent activity "necessitates amendment," they said.

Anthropic's counsel didn't immediately respond to a request for comment.

Oppenheim + Zebrak LLP, Coblentz Patch Duffy & Bass LLP, and Cowan Liebowitz & Latman PC represent the music publishers. Latham & Watkins LLP and Wilmer Cutler Pickering Hale & Dorr LLP represent Anthropic.

The case is Concord Music Group Inc. v. Anthropic PBC , N.D. Cal., No. 5:24-cv-03811, motion filed 8/11/25
.

To contact the reporter on this story: Aruni Soni in Washington at asoni@bloombergindustry.com

To contact the editor responsible for this story: Kartikay Mehrotra at kmehrotra@bloombergindustry.com

LAW.COM

Expert Opinion | Alternative Dispute Resolution

Ethical Constraints When Using Artificial Intelligence in Arbitration

August 13, 2025 | By Judith K. Fitzgerald

Judith K. Fitzgerald of Tucker Arensberg. Courtesy photo

Artificial intelligence (AI) is becoming de rigueur in the legal community, with law firms and lawyers independently utilizing a variety of AI resources to streamline research, formulate documents and digest discovery, exhibits, depositions and fee details. In arbitration, AI may expedite proceedings and assist in analysis of large data sets, resulting in cost savings. AI is often extolled as a means of reducing staff and cutting expenses, particularly for tasks that are repetitive or routine. But there is danger in removing nuance and control from a person and giving it to a robot that can manipulate data and fabricate sources to serve the end it contrives based on the task it is assigned. Careful review of AI-generated documents is a professional obligation that must not be overlooked.

Lawyers are subject to rules applicable to professional conduct. To date, AI tools have remained unregulated. Some organizations have implemented guidelines intended to retain privacy and avoid bias that can be built into the question provided or the data AI will search and employ in its answer.

A quick search for resources on ethics in use of AI pulled up an AI-generated introductory paragraph: "AI ethics and risks encompass a broad range of concerns related to the development, deployment, and use of artificial intelligence. These issues include bias, privacy, security, job displacement, and the potential for misuse. AI ethics seeks to address these risks by establishing principles and guidelines for responsible AI development and use." Certainly, this statement is a cautionary tale.

Seemingly ever-expanding into industries and court proceedings, AI has claimed a place in arbitration. Judges have vocalized concerns and occasionally issued sanctions when lawyers submitted briefs and advanced arguments based on AI-hallucinated cases that humans failed to verify. In a courtroom a judge's rulings may be challenged on appeal. But in arbitration, there is no judge presiding over the arbitration process and the ability to appeal is limited. Even though no judicial officer calls the balls and strikes in an arbitration, counsel's professional duties to clients and the tribunal remain. Thus, in arbitration, the obligation to assure the legitimacy of any AI-generated work product and cited cases imperatively resides with counsel.

Some lawyers have expressed concern over the difficulty they encounter in verifying the final product when they may be unaware that any part of it began with AI. They worry that AI is so pervasive in school settings that newly minted lawyers may accept AI output at face value, yet the less experienced attorneys are supervised by an older set of lawyers who may not be as adept at AI and are unaware of its use. They are accustomed to relying on the assigned junior to complete the task after having thoroughly researched the issue but the old model may no longer hold with AI. Some of the time and cost savings resulting from AI are eaten up by additional work required at a more senior level to assess the junior's draft. This review is necessary because a lawyer whose name is on a pleading submitted to an arbitrator is deeply invested in having the information be accurate and legitimate.

Although every lawyer must stay informed of relevant technologies and their impact on the legal practice as part of the duty of competence, AI presents new challenges including learning to ask the right questions about its use and its end product in particular cases. Nonetheless, partners supervising less experienced attorneys cannot escape responsibility for failure to verify the contents of AI-generated documents. ABA Model Rule of Professional Conduct 5.1 provides that a supervising attorney must make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct and imposes responsibility for the other's misconduct if the supervisor has knowledge of the specific conduct and ratifies it. The supervising attorney must bring his expertise to the forefront, review the work and ensure that it is accurate before presenting it to an arbitrator.

Accepting AI work product at face value may well impose a violation of other professional standards as well. One resource of assistance to lawyers trying to comply with professional conduct rules while using AI is ABA Formal Opinion 512. The opinion points out that model rules related to competency (Rule 1.1), communication with the client and obtaining informed consent (Rule 1.4), confidentiality (Rule 1.6) and charging reasonable fees (Rule 1.5) apply to lawyers using AI. In addition, the lawyer's obligation of candor to the tribunal (Rule 3.3) specifically imposes standards of honesty and transparency by forbidding presentation of knowingly false statements of fact or law. If a false statement is made, then the duty to correct it arises as soon as counsel becomes aware.

All these rules apply to arbitration and require diligence by counsel. Diligence in identifying statements that AI has hallucinated requires a simple best practice. That is, a lawyer should treat AI output as a draft but proof every idea and source included in that draft. AI may serve as an enhancement to legal analysis and arbitral rulings, but it is not a substitute for human insight. The AI program you choose will use data to address the problem you give it, but what specific information it accesses is a great unknown. As it extrapolates from multiple sources, AI can combine patterns in imaginary ways that AI will report as though they are real, with no ethical impediment constraining its output. The lawyer who presents AI output to the arbitrator, however, is bound to ethical and professional standards and must not advocate based on fictionalized sources.

As helpful as AI can be, it still is no substitute for human challenges, nuance and judgment. AI is unrestricted by ethics, but lawyers cannot escape their duties to their clients and the tribunal. Lawyers must diligently assure that AI-generated materials are based on and cite to actual resources—not on designs created by an AI tool to support its AI-created analysis of the assigned problem. In arbitration, lawyers must be diligent in presenting real evidence and real law, not non-existent facts or law devised by AI.

Judith Fitzgerald *(Ret.) is a shareholder at Tucker Arensberg and a mediator with FedArb. She has more than 25 years of experience as a bankruptcy Judge where she presided over commercial and consumer matters in the U.S. District Court for the Western District of Pennsylvania, as well as in the District of Delaware, the Eastern District of Pennsylvania, and the U.S. Virgin Islands. She can be reached at jfitzgerald@tuckerlaw.com.*

California Brief

AI Eroded Doctors' Ability to Spot Cancer Within Months in Study

Aug. 12, 2025, 3:30 PM PDT

Artificial intelligence, touted for its potential to transform medicine, led to some doctors losing skills after just a few months in a new study.

AI helped health professionals to better detect pre-cancerous growths in the colon, but when the assistance was removed, their ability to find tumors dropped by about 20% compared with rates before the tool was ever introduced, according to findings published Wednesday.

Health-care systems around the world are embracing AI with a view to boosting patient outcomes and productivity. Just this year, the UK government announced £11 million ($14.8 million) in funding for a new trial to test how AI can help catch breast cancer earlier.

The AI in the study probably prompted doctors to become over-reliant on its recommendations, "leading to clinicians becoming less motivated, less focused, and less responsible when making cognitive decisions without AI assistance," the scientists said in the paper.

They surveyed four endoscopy centers in Poland and compared detection success rates three months before AI implementation and three months after. Some colonoscopies were performed with AI and some without, at random. The results were published in The Lancet Gastroenterology and Hepatology journal.

Yuichi Mori, a researcher at the University of Oslo and one of the scientists involved, predicted that the effects of de-skilling will "probably be higher" as AI becomes more powerful.

What's more, the 19 doctors in the study were highly experienced, having performed more than 2,000 colonoscopies each. The effect on trainees or novices might be starker, said Omer Ahmad, a consultant gastroenterologist at University College Hospital London.

"Although AI continues to offer great promise to enhance clinical outcomes, we must also safeguard against the quiet erosion of fundamental skills required for high-quality endoscopy," Ahmad, who wasn't involved in the research, wrote a comment alongside the article.

A study conducted by MIT this year raised similar concerns after finding that using OpenAI's ChatGPT to write essays led to less brain engagement and cognitive activity.

To contact the reporter on this story:
Harry Black in London at hblack30@bloomberg.net

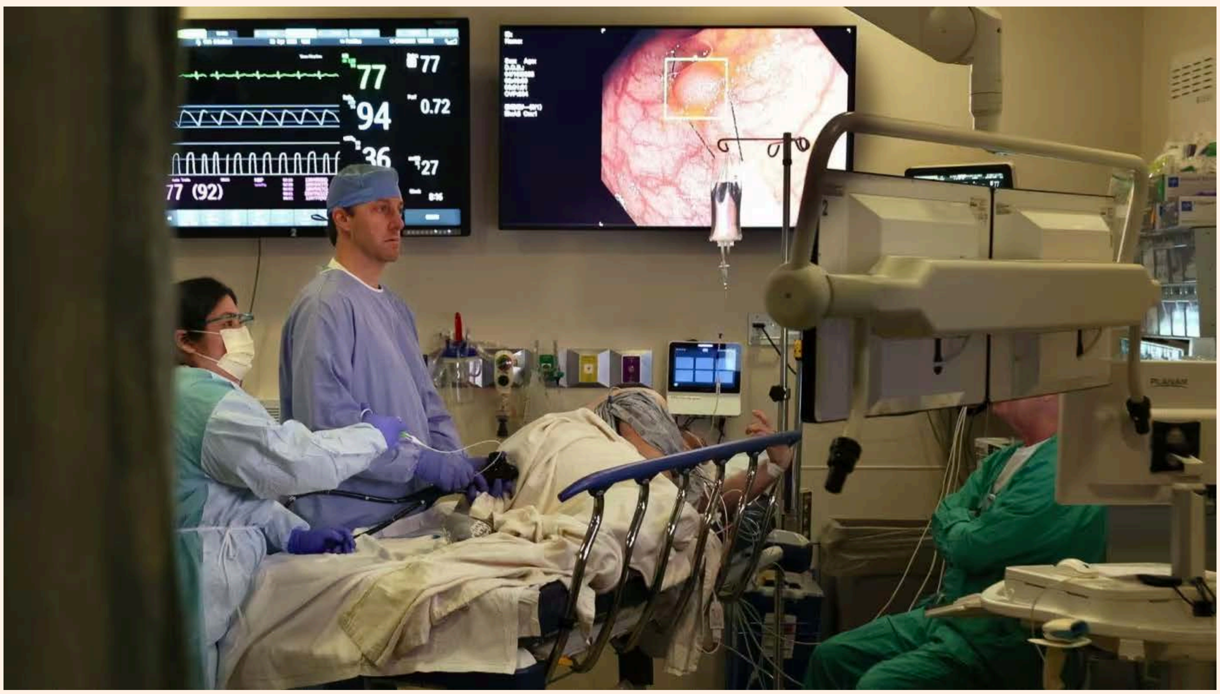
To contact the editors responsible for this story:
Marthe Fourcade at mfourcade@bloomberg.net

Katerina Petroff

Artificial intelligence

Routine AI assistance hits skills of health experts performing colonoscopies

Study comes amid rapid adoption of the fast-developing technology



AI highlights potentially precancerous tissue — adenomas or polyps — in the colon of patients undergoing endoscopy © Stacey Wescott/Chicago Tribune/TNS/Alamy

Clive Cookson

Published YESTERDAY

The skill of health professionals performing colonoscopies was significantly undermined by having routine assistance from artificial intelligence, a study of 1,400 patients in Poland has found.

The rate at which endoscopists detected precancerous growths in the colon without help from AI fell from 28.4 per cent to 22.4 per cent after their hospitals introduced AI assistance, according to the study published on Tuesday in The Lancet Gastroenterology & Hepatology. The detection rate in AI-assisted colonoscopies was 25.3 per cent.

“Our results are concerning, given that the adoption of AI in medicine is rapidly spreading,” said Marcin Romańczyk of the Academy of Silesia, one of the researchers. “To our knowledge this is the first study to suggest a negative impact of regular AI use on healthcare professionals’ ability to complete a patient-relevant task in medicine.”

AI highlights potentially precancerous tissue — adenomas or polyps — in the colon of patients undergoing endoscopy. It is one of the fastest growing medical applications of AI, with enthusiasm for the technology driven by several clinical trials showing that AI assistance substantially improved detection rates.

Yuichi Mori of the University of Oslo, a co-author of the Polish study, said it called into question the findings of earlier trials that compared colonoscopy with and without AI assistance, “as the endoscopists may have been negatively affected by continuous AI exposure”.

Omer Ahmad, consultant gastroenterologist at University College Hospital, London who was not involved in the study, called the results “astounding”. He said other research had shown a 1 per cent increase in colonoscopy detection rate correlated with a 3 per cent reduction in colorectal cancer, “so a decline in detection from 28.4 to 22.4 per cent could be very significant on a population level”.

Ahmad, who has worked on medical AI systems for eight years, said: “I am still enthusiastic about AI and I’ve seen great benefits in my own practice but the endoscopy community would be unwise to ignore the key findings of this study. We must be more mindful about implementation in real world practice.”

The authors acknowledged limitations in the study, which was observational rather than a randomised controlled trial. In particular they called for “more behavioural research to understand the currently under-investigated mechanisms of how AI affects physician capability.”

How the detecting skills of experienced endoscopists could degrade within a few months of using AI needs urgent investigation, said Ahmad. A previous eye-tracking study showed that working with a computer-aided diagnostic system led users to change their “gaze patterns” and spend less time looking at the periphery of the screen.

In response, professional societies could mandate periods of non-AI work to bolster human skills. Maintaining core competencies would be essential as AI was adopted more widely, “to protect against over-dependence on AI algorithms that can be subject to performance drift,” Ahmad said. “Human judgment will need to be available when AI outputs are uncertain or incorrect.”

Texas sues Eli Lilly for allegedly bribing providers to prescribe its medications

reuters.com/legal/litigation/texas-sues-eli-lilly-allegedly-bribing-providers-prescribe-its-medications-2025-08-12

Reuters August 12, 2025

- Eli Lilly and Co

(LLY.N) , opens new tab for allegedly "bribing" providers to prescribe its medications.

The attorney general's office said in a statement that the company bribed and illegally induced medical providers to prescribe its most profitable drugs, including the GLP-1 medications Mounjaro and Zepbound, used for weight loss and diabetes treatment.

"Big Pharma compromised medical decision-making by engaging in an illegal kickback scheme," Attorney General Paxton said.

The lawsuit builds upon Attorney General's previous legal action to hold drug manufacturers accountable for fraud and abuse, the statement added.

Last year, Paxton had sued insulin manufacturers, including Lilly and pharmacy benefit managers (PBMs), alleging that manufacturers artificially raised the prices of insulin and then paid a significant, undisclosed portion back to the PBMs for preferential treatment in return. Lilly said the claims stem from the same corporate relator whose allegations have been dismissed by multiple courts and the federal government. "We intend to vigorously defend against these allegations," a spokesperson said, citing prior rulings that found the accusations lacked factual and legal merit.

Reporting by Jasper Ward in Washington and Bhargav Acharya in Toronto; Mrinalika Roy in Bengaluru; Editing by Alan Barona

Our Standards:

https://www.wsj.com/finance/investing/how-one-big-private-equity-fund-makes-its-numbers-incomprehensible-5268657e

How One Big Private-Equity Fund Makes Its Numbers Incomprehensible

Tricks of the trade gain new importance as 401(k) accounts open up to alternative investments

By Jonathan Weil Follow

Aug. 13, 2025 5:30 am ET

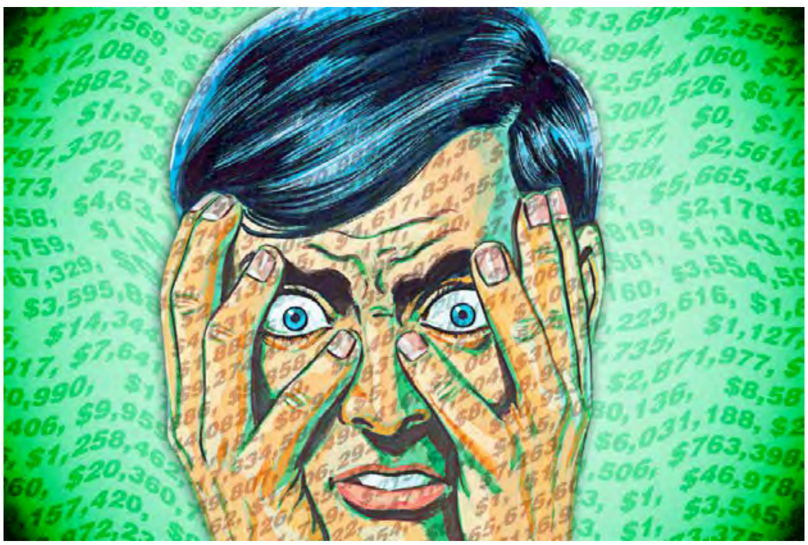


ILLUSTRATION: EMIL LENDOF/WSJ, ISTOCK

Many fund managers strive to be transparent with their financial disclosures. Others are so obstructive that they might as well be kicking sand in investors' faces.

While private equity is synonymous with opacity, the tricks of the trade are taking on greater importance as the industry seeks to broaden its reach among ordinary investors. President Trump last week signed an order seeking to open up Americans' 401(k) retirement accounts to private equity and other alternative investments. Rep. Elise Stefanik (R., N.Y.) made headlines when she asked the Securities and Exchange Commission in June to investigate the way Harvard is valuing its private-equity holdings.

To date, private equity has generally been the domain of institutions and high-net-worth individuals with long-term investment horizons and a high tolerance for risk and illiquidity. Less wealthy, ordinary investors have traditionally had only limited access. Their ability to participate has been growing, however, as more funds register with securities regulators and publicly disclose their financial reports. The funds may invest directly in other private-equity funds, or purchase stakes in them on the secondary market from existing investors.

Such funds should, at a minimum, allow investors to see how much each private-equity holding originally cost and compare that with its latest carrying value. Some funds are making this exercise difficult. This is particularly problematic in light of recent controversies over some of the industry's valuation methods.

Among the hottest flashpoints: Some funds have exploited an accounting loophole by buying stakes in other private-equity funds at big discounts on the secondary market and then marking them up immediately to their official net asset values. Sometimes the technique has resulted in gains of 1,000% or more in a single day.

At many funds, such markups are at least easy to spot. The funds include clear, user-friendly tables in their financial reports that show each investment's cost, the latest fair value and the acquisition date. These data points are required disclosures under federal securities rules. Showing them alongside one another makes comparisons simple.

Partners Group Private Equity (Master Fund), LLC

(a Delaware Limited Liability Company)

Consolidated Schedule of Investments –
March 31, 2025 (continued)

$5,454,677, $7,942,532, $966,531, $3,512,641, $2,299,785, $12,627,224, $644,090, $395,158, $4,614,439, $9,338,118, $1,231,469, $1,631,824, $13,722,969,
$5,671,986, $564,906, $7,965,719, $4,975,069, $1,274,487, $2,781, $0, $4,955,543, $8,153,316, $3,003,935, $3,275,883, $1,032,354, $6,988,253, $6, $0,
$10,516,807, $4,311,354, $1,953,879, $11,122,344, $1,955,378, $2,226,860, $5,461,613, $5,430,738, $6,051,866, $18,706,458, $6,949,329, $6,721,037,
$2,144,830, $2,988,557, $0, $7,716,457, $10,037,119, $223,688, $1,785,490, $3,057,444, $3,426,010, $3,761,619, $2,970,812, $1,980,860, $3,972,574,
$1,401,599, $4,423, $7,949,934, $7,632,117, $5,296,300, $2,175,672, $3,620,472, $1,595,475, $3,425,102, $1,683,840, $1,160,723, $2,881,356, $8,767,805,
$4,751,912, $7,298,570, $27, $3,078, $883,942, $2,872,053, $9,759,574, $5,541,931, $3,840,578, $1,551,460, $9,196,713, $429,915, $3,552,692, $20,709,673,
$4,277,359, $61,672, $4,930,692, $1,634,541, $1,850,033, $4,008,444, $2,045,916, $1,543,960, $6,844,452, $13,766,818, $3,961,369, $6,198,111, $2,028,867,
$3,289,259, $5,793,637, $2,692,774, $3,003,903, $1, $3,880,524, $1,787,689, $8,377,380, $0, $8,455,740, $11,622,070, $3,600,000, $4,030,303, $366,660,
$2,127,430, $1,370,082, $1,077,566, $2,472,675, $200,000, $1,219,975, $3,212,664, $5,526,461, $0, $236, $2,200,000, $3,709,645, $8,196,102, $1,469,140,
$3,190,974, $983,655, $9,637,728, $0, $8,757, $2,760,240, $6,582,727, $4,741,140, $9,584,967, $3,138,681, $4,952,390, $1,649,077, $2,962,003, $1,933,342,
$1,922,957, $2,981,268, $583,333, $2,714,896, $7,042, $1,067,522, $2,865,418, $1,421,354, $1,995,025, $1,323,455, $4,491,410, $7,481,343, $1,512,273,
$13,301,918, $6,394,951, $1,761,970, $3,931,565, $5,647,723, $5,959,657, $10,707,720, $318, $3,953,475, $1,788,319, $2,565,161, $1,967,997, $6,261,200, $1,
$2,596,314, $8,331,952, $5,702,379, $27,263,377, $570,356, $2,153,192, $306,404, $13,692,055, $5,742,856, $5,587,715, $1,526,914, $6,270,683, $375,
$6,681,741, $1,297,569, $2,472,574, $-2,084, $2,804,994, $2,355,570, $68, $1,830,720, $149,143, $3,851,321, $49, $536,019, $0, $8,412,088, $0, $1,482,855,
$1,266,194, $12,554,060, $3,967,942, $550,035, $4,605,079, $3,405,337, $7,714,982, $1,819,067, $882,748, $2,370,885, $20,704,958, $5,300,526, $6,725,752,
$20,283,057, $957,742, $1,648,911, $5,055,466, $5,075,977, $1,344,343, $3,917,172, $0, $6,019,157, $0, $-1,365, $4,717,246, $6,679,103, $3,012,283,
$3,284,655, $42, $3,797,330, $8,180,949, $4,574,369, $2,236,238, $2,561,079, $2,598,143, $5,953,150, $7,639,179, $5,448,887, $16,065,373, $2,213,895,
$4,617,834, $3,896,484, $5,665,443, $4,287,002, $13,519,588, $1,558,833, $36,285,409, $3,691,558, $4,631, $5,241,117, $4,353,289, $-819, $2,178,880,
$4,078,986, $4,153,693, $7,281,848, $6,249,694, $7,102,759, $1,883,515, $7,967,480, $1,106,501, $1,343,206, $1,379,034, $1,362,815, $26,306,409, $1,100,313,
$14,567,329, $9,274,444, $5,398,826, $7,054,160, $3,554,594, $1,881,626, $6,159,759, $1, $4,009,554, $6,625,111, $1, $1, $3,595,886, $9,858,091, $7,938,079,
$10,223,616, $1,821,701, $1,086,782, $1,950,024, $3,239,847, $6,424,042, $-235, $14,344,082, $0, $8,484,128, $5,387,735, $1,127,513, $11,093,401, $2,100,000,
$2,354,676, $6,658,493, $2,437,017, $7,641,182, $6,925,831, $10,151,206, $2,871,977, $6,525,814, $4,179, $11,947,474, $9,015,604, $6,200,538, $2,330,990,
$17,334,584, $5,787,363, $7,080,136, $8,587,883, $2,644,160, $962,637, $11,899,081, $7,097,512, $1,363,406, $9,959,807, $5,498,416, $5,082,522, $6,031,188,
$2,284,329, $1, $455,319, $5,345, $1,452,079, $2,215,711, $214,056, $1,258,462, $1,506,292, $767,204, $371,506, $763,398, $47,367,427, $10,362,003, $1,
$1,206,678, $4,719,912, $7,037,360, $20,360,726, $5,423,912, $8,358,923, $1, $46,978, $1, $1,459,768, $31,837,313, $5,651,257, $1,761, $83,355, $33,157,420,
$801,789, $219,534, $60,993, $1, $3,545,824, $1,597,422, $24,017,734, $4,732,290, $6,285,419, $71,291, $68,872,230, $462,822, $471,221, $435,702, $773,375,
$1, $1,419,228, $282, $327,077, $1,089,361, $186,446, $121,018, $20,043,423, $1, $354,336, $7,263, $256, $2,013,717, $416,540, $21,052,748, $3,917,575,
$105,536, $7,517, $27,422, $2, $818,888, $1, $0, $1, $1, $72,245, $2,311, $102,336, $2,139,275, $1, $20,843,716, $748,369, $3,573,994, $1, $204,488, $234,811,
$65,675,607, $8,632,811, $2,570,172, $2,233,879, $1, $1,185,660, $41,404, $19,775,525, $18,635,379, $11,956,199, $1, $116,996, $1, $32,242,262, $75,189,856,
$345,231, $14,163,763, $1, $24,111, $772,157, $1,135,156, $704,405, $3,055,335, $1,611,335, $123,070,390, $35,810,529, $413,420, $1, $13,932,792,
$5,916,151, $4, $7,300,763, $346,868, $24,892, $6,070,655, $1, $1,293,691, $13,021, $3,750,356, $5,902,708, $494,250, $8,657,632, $192,667, $6,880,500,
$2,102,501, $41,920,638, $1,008,832, $1,898,833, $1,827,005, $14,549,760, $10,050,281, $1, $72,928,665, $18,539,820, $1, $404,780, $14,673, $2, $1,
$9,302,852, $1,271,287, $532,193, $44,353,234, $844,467, $388,157, $31,364,096, $379,874, $211,205, $366,206, $4, $6,940,605, $39,618,188, $116,073, $4,
$322,819, $285,021, $131,615, $1,101,589, $92,701, $176,460, $14,639,947, $3,368,192, $22,386, $1, $1,285,296, $1, $189,098, $1, $2,783,114, $981,706,
$1,030,261, $895,011, $2,763,328, $1,066,609, $3, $5,728,521, $12,671,012, $22,172,117, $38,570,837, $882,596, $56,701, $4,016,292, $16,526,250, $1,736,799,
$1,086,804, $10,076,545, $36,970,726, $3,915,271, $3,349,170, $1, $164,203, $7,690,954, $27,573, $1, $2,181,595, $562,178, $9,049,849, $14,481,798,
$3,473,559, $1, $4,137,429, $513,958, $3, $1, $1, $1, $163,953, $2,016,904, $2,178, $110,957, $302,215, $302,746, $6,498,738, $1, $332,524, $28,576,
$1,074,706, $408,001, $1,916,999, $12,749,518, $1, $14,942, $857,687, $1, $1,195,555, $371,045, $1,409,987, $60,330, $1,924,891, $7,650,524, $2,224,688,
$1,997,564, $37,465,221, $16,749, $5,122,248, $1,610,663, $11,737,112, $11,973,964, $247,167, $1, $41,818,643, $322,750, $16,898,142, $8,919,013,
$30,792,320, $1, $8,537,079, $5,145,015, $83,945, $751,333, $1,875, $1, $1, $1, $0, $102,569, $1,453,010, $1,494,223, $11,606,964, $80,907, $1,157,013, $1,
$563, $232,211, $15,621,320, $3,724,292, $288,770, $71,613, $313,338, $72,602, $2,426,353, $38,178,331, $893,496, $1,973,177, $421,061, $83,196, $352,692,
$30,535, $2,099,795, $35,457,713, $9,726,490, $1, $213,513, $814,818, $4,454,538, $22,713,138, $103,961, $2,126,405, $17,305,825, $1, $2,336,090,
$8,567,627, $5,688,697, $3,767,305, $1,968,049, $73,398, $398,908, $1, $15,585,891, $902,389, $18,351,734, $839,591, $7,636,632, $4,634,657, $1,666,037,
$3,696,970, $241,472, $6,472,945, $3,380,361, $8,336,566, $6,860,438, $4,866,068, $2,517,343, $26,534, $6,458,809, $7,401,515, $2,081,159, $3,288,734,
$13,789,768, $490,224, $15,398,833, $1, $1, $6,163,158, $1,856,545, $94,819, $1, $16,318,219, $0, $6,277,071, $4,659,307, $0, $1,068,047, $36,615,569,
$6,137,881, $988,701, $40,903, $1, $17,378,069, $6,265,366, $1, $14,325,635, $10,218,701, $1,200,473, $1, $1,417,065, $3,296,092, $10,656,000, $0, $375,419,
$4,349,294, $1, $1, $46,538, $10,259,299, $713,833, $2,277,091, $532,868, $0, $1,710,433, $642,712, $8,973,340, $24,496,837, $1,007,440, $3,550,731,
$7,472,270, $6,088,418, $900,652, $9,563,093, $1, $11,255,204, $0, $0, $1,322,506, $5,496,717, $7,388,593, $0, $1,643,762, $1,561,937, $495,336, $4,643,830,
$6,621,777, $922,767, $0,

The accompanying notes are an integral part of these Consolidated Financial Statements.

In its latest annual report, Partners Group Private Equity (Master Fund) listed the cost figures for its private-equity investments in a footnote that spanned three pages. This is the second page of the footnote. PHOTO: SECURITIES AND EXCHANGE COMMISSION

But other funds make comparisons complicated, if not impossible, by listing the cost figures in lengthy footnotes, rather than in the main tables. The only way to determine the size of the markups is to manually match the costs for each investment (in the footnote) with the latest fair values listed on the disclosure table. Even that doesn't always work.

Take, for instance Partners Group Private Equity (Master Fund), which last reported almost $16 billion of net assets. It is the largest SEC-registered private-equity fund, according to Interval Fund Tracker. Individuals investing in the fund must meet certain minimum financial criteria. To exit from the fund, investors submit redemption requests during designated tender periods.

The schedule of investments in the fund's [latest annual report](#) listed 1,089 individual private-equity investments in a table that included the fair value and acquisition date for each. In a footnote to that table, however, it listed 1,095 different cost figures.

That is six more cost figures than there were investments. The footnote spanned three pages, single-spaced.

In other words, there is no way someone reading the annual report could determine which cost figure applied to which investment—and no way to gauge which investments might have fishy markups. A review of previous reports showed the Partners Group fund sometimes had done this before.

Regarding the cost-figure mismatch in the latest annual report, Partners Group spokeswoman Jenny Blinch said that “there were a handful of investments to which the fund made follow-on investments in the same security,” and the cost figures listed for these in the footnote “were disaggregated into the individual transactions.”

After receiving questions about the practice, Blinch also said the fund plans “to start including investment costs in the main table of the schedule of investments, alongside entry dates and current valuations.”

The fund accounted for about 10% of Switzerland-based Partners Group’s PGHN **-1.01%** ▼ assets under management at year-end.

A Wall Street Journal review of disclosures by other similar funds showed they use the same footnote technique. At those funds, however, it was at least possible to match costs to the corresponding investments. That is because the number of cost figures in the footnotes aligns with the number of disclosed investments. These include private-markets funds run by well-known managers such as Hamilton Lane, Franklin Resources, Coller Capital, Pantheon, Pomona and FlowStone.

Ares Private Markets Fund’s annual report shows cost figures in the main disclosure table, not a footnote. It bought stakes in 51 different private-equity funds on the secondary market on March 31, 2025, the last day of its fiscal year. The total cost was $330 million, and the Ares fund marked them up the same day to $377 million. The biggest percentage markup for a single investment was 57%, and the cumulative $47 million of paper gains that day amounted to 12% of the fund’s total unrealized gains for the entire year.

Ares ensured outsiders could at least look up those numbers. Anyone trying the same exercise with the Partners Group fund’s last annual report would be stymied.

Investors would be fair in suspecting that something here doesn’t add up.

Write to Jonathan Weil at jonathan.weil@wsj.com

https://www.wsj.com/finance/currencies/trump-family-crypto-1e7ab14a

MARKETS & FINANCE | CURRENCIES

The Recipe Behind the Trump Family's Crypto Riches: PancakeSwap

The under-the-radar trading platform is quietly administered by Binance, the world's largest crypto exchange, whose founder is seeking a pardon from President Trump

By Angus Berwick Follow *and Patricia Kowsmann* Follow

Aug. 12, 2025 9:00 pm ET

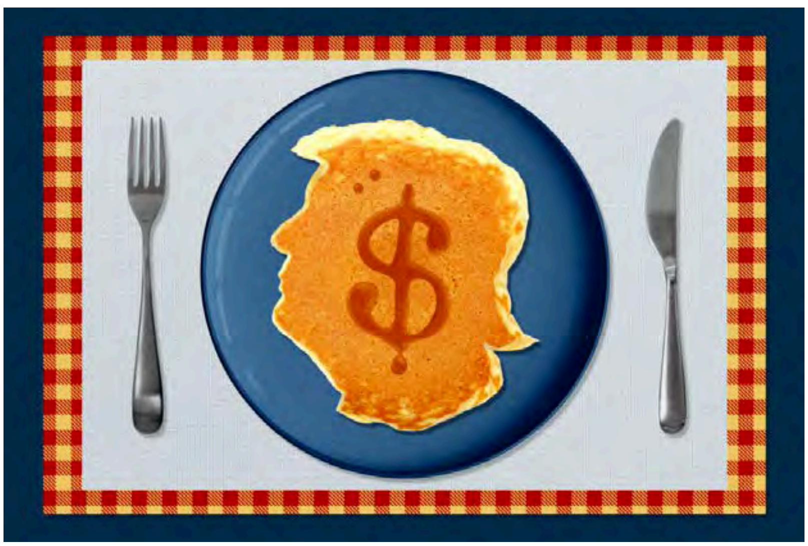


ILLUSTRATION: RACHEL MENDELSON/WSJ, ISTOCK (6)

The Trump family's crypto venture has generated more wealth since the election—some $4.5 billion—than any other part of the president's business empire.

A major reason for the success is a partnership with an under-the-radar trading platform quietly administered by Binance, the world's largest crypto exchange, whose founder is seeking a pardon from President Trump, according to people familiar with the matter.

The online trading platform, PancakeSwap, serves as an incubator of sorts, drumming up interest among traders to use coins issued by the Trump family's main crypto company, World Liberty Financial.

The more World Liberty's flagship coin, USD1, is used, the greater demand to increase its circulation, and the greater the profit for World Liberty and its owners, including the Trump family.

PancakeSwap is an online marketplace for cryptocurrencies. It connects users who trade USD1 with newly created currencies such as Torch of Liberty and Eagles Landing. These patriotic-sounding coins, according to their websites, were launched this year with the main purpose of helping increase the use of USD1.

Traders, mostly writing in Chinese, gather in groups on the Telegram messaging app to talk about competing for rewards paid out to top users of USD1 and advertised by PancakeSwap.

President Trump at the White House on Monday. PHOTO: ALEX BRANDON/AP

World Liberty and PancakeSwap announced their partnership to boost USD1's adoption in June.

Crypto trading platforms often offer rewards or prizes to drum up interest in new coins, similar to the way brokerages offer free trades or casinos give first-time customers free chips.

What wasn't disclosed at the time is that employees inside Binance created PancakeSwap, according to people familiar with the company.

Binance's majority owner and founder, Changpeng Zhao, spent four months in jail in the U.S. last year after Binance agreed to pay a $4.3 billion fine for becoming a global money-laundering hub for criminals, terrorists and sanctions evaders.

His company has deepened its relationship with World Liberty at the same time Zhao has ramped up efforts to secure a pardon from Trump.

Zhao—considered the richest person in the crypto industry and worth over $70 billion, according to Forbes—recently hired Ches McDowell, a lobbyist and friend of Donald Trump Jr., to push for the pardon, a person familiar with the relationship said.

A World Liberty spokesman declined to comment. A Binance spokesman and PancakeSwap didn't respond to requests for comment.

After a March article in The Wall Street Journal, Zhao wrote on X that "no felon would mind a pardon," while at the same time dismissing a connection between deals and a pardon.

Binance founder Changpeng Zhao is seeking a presidential pardon. PHOTO: JASON REDMOND/AFP/GETTY IMAGES

White House press secretary Karoline Leavitt said that the "media's continued attempts to fabricate conflicts of interest are irresponsible" and that "neither the president nor his family have ever engaged, or will ever engage, in conflicts of interest."

'Crypto capital'

Trump announced World Liberty's launch during the presidential campaign last year, posting on social media that the company planned to "help make America the crypto capital of the world."

World Liberty unveiled USD1 in March, saying the token would assist Trump's mission to protect the status of the U.S. dollar as the world's reserve currency.

Binance played a key role from an early stage. USD1 got its first big break when Binance accepted a $2 billion investment from an outside investor paid in the World Liberty coin. The deal caused the amount of the cryptocurrency in circulation to erupt 15-fold and overnight become one of the world's largest.

USD1 is what is known as a stablecoin, a privately invented digital currency that is backed 1:1 with U.S. dollars. World Liberty invests the money backing the coin in government bonds and money-market funds, without paying interest to users of the coin.

With more than $2 billion of USD1 in circulation, it can earn around $80 million a year based on current interest rates.

Binance has been holding the $2 billion in USD1 on its platform, according to blockchain data and a person familiar with the matter. By not cashing in the stablecoin, this ensures that World Liberty continues to earn money from investing the dollars that back them.

Trump and his family own 40% of World Liberty. While the company’s overall value isn’t disclosed, a large portion of it is derived from one of its cryptocurrencies. A stake the Trump family owns in that cryptocurrency is worth $4.5 billion, according to a disclosure published Monday.

Doing business with China

World Liberty’s relationship with PancakeSwap, whose website was registered in Shanghai, and Binance is one of several in which entities and individuals with strong ties to China have supported the Trump family crypto business. One of World Liberty’s largest investors is Justin Sun, the Hong Kong-based billionaire.

This comes even as the White House pushes a trade war against China and seeks to curtail U.S. corporations’ ties to the country over national-security fears. Trump this month called on Intel’s chief executive to resign because of his past connections to China.

China is Binance’s largest market by trading volume, the Journal previously reported, and remained so as of the end of last year. It has been a main base for its software developers, with hundreds of coders, according to former employees, internal records and LinkedIn postings.

Binance has long maintained that it isn’t a Chinese company, saying it left Shanghai shortly after its 2017 launch. Zhao, who is also known as CZ, has said he is no longer a Chinese citizen, and holds Canadian and United Arab Emirates citizenship. The company, which has employees around the world, doesn’t have an official headquarters.

Eric Trump, the president’s son and a World Liberty co-founder, plans to meet more potential partners in Hong Kong in August during a bitcoin conference, according to people familiar with his plans.

World Liberty in recent months talked about taking an investment from the Hong Kong crypto-service provider HashKey, whose main shareholder is the Chinese conglomerate Wanxiang Group, according to people familiar with the talks.

Eric Trump took part in a crypto conference in Dubai earlier this year. PHOTO: GIUSEPPE CACACE/AFP/GETTY IMAGES

Wanxiang's chairman sits on China's National People's Congress. A HashKey spokeswoman said discussions with World Liberty were exploratory and no commitments had been made.

Creating a market

Crypto companies release thousands of new coins every year. Most never catch on. To attract a following among traders, new coins need to show big trading volume.

That is where PancakeSwap stepped in. PancakeSwap doesn't disclose its ownership and says online that it is run by a team of anonymous "chefs" with a "penchant for breakfast foods." It compares trading cryptocurrencies to "flipping pancakes."

According to former Binance employees, Binance staff created PancakeSwap in-house in 2020 because the exchange wanted to establish a foothold in crypto's so-called decentralized finance craze. The platform has remained under Binance's supervision, the former employees said.

PancakeSwap's trading platform is built on Binance's blockchain network, a type of software ecosystem in which developers create new programs.

Starting in late May, USD1 trading exploded on PancakeSwap, rocketing from a few tens of millions of dollars a day to regularly over $1 billion. Over 90% of USD1 trades have taken place on PancakeSwap, according to data from the platform and data tracker CoinMarketCap.

World Liberty touted the soaring customer demand for USD1, saying in June that its trading volumes had briefly outstripped another larger stablecoin's.

"So proud of this achievement," tweeted Eric Trump.

President Trump in the Oval Office in May with his son Eric Trump, a World Liberty co-founder. PHOTO: SAMUEL CORUM/PRESS POOL

Demand for USD1 wasn't because customers were using it for payments or to stash their crypto holdings, which is what stablecoins are typically used for.

It was because crypto investors were chasing prizes worth up to $1 million for generating as much USD1 trading as possible as part of a "Liquidity Drive," according to people who took part in the campaign and researchers who track trading data.

"The main narrative in the ecosystem is that Binance is supporting USD1," said Trevor Xu, the Melbourne, Australia-based founder of the crypto-AI firm Tagger, which competed for the reward.

Binance has helped USD1 in other ways. Around a dozen tokens that trade with USD1 recently joined a Binance program called Binance Alpha, which promotes among its users a select group of early-stage token projects. Binance Alpha encourages featured cryptocurrencies to trade on PancakeSwap, people familiar with the program said.

"Good job CZ! USD1 is taking the reign on Binance," says Eagles Landing's website, which displays a cartoon strip of a bloodied Trump throwing a punch.

It couldn't be learned who is behind Eagles Landing. The lines of code for Eagles Landing's website contain Chinese characters, and most of the administrators of its

Telegram channel are Chinese-speaking. They didn't respond to requests for comment.

Eagles Landing, Torch of Liberty, Tagger and one other were named the contest's winners in mid-July, splitting the $1 million reward. They paid out their own rewards to their users who traded USD1 the most.

Write to Angus Berwick at angus.berwick@wsj.com and Patricia Kowsmann at patricia.kowsmann@wsj.com

Appeared in the August 13, 2025, print edition as 'Trump Crypto Riches Tied To Little-Known Platform'.

Videos

Securities Law News

Ex-Tingo Auditor Suspended by SEC Amid Fraud Cover-Up Claims

Aug. 12, 2025, 2:45 PM PDT

The SEC on Tuesday suspended a Nigerian audit firm it accused of covering up a scheme by fintech company Tingo Group Inc. and its affiliates to inflate the companies' financial performance.

Olayinka Temitope Oyebola and his firm, Olayinka Oyebola & Co., are suspended for six years from practicing and appearing as accountants before the US Securities and Exchange Commission, according to an order. After six years, Oyebola and the firm may ask the commission to consider their reinstatements, the order said.

A judge ordered the firm to pay a civil penalty of $100,000 to the SEC, according to a final judgment filed Monday. The SEC filed a complaint in New York federal court last September, claiming Oyebola and his firm remained silent as Tingo leader Mmobuosi Odogwu Banye and his company concocted and used fake audit reports.

The Nigerian firm had scooped up several former clients of BF Borgers CPA PC, which in May 2024 was accused of massive fraud affecting more than 1,500 SEC filings. In addition to permanent suspensions, Benjamin Borgers and his firm also received a total of $14 million in fines to settle the probe.

Oyebola's clients have steadily dropped his firm—28 have replaced their auditor in the past year, according to SEC filings. Companies cited the SEC's securities fraud-related charges and the auditor's designation as a prohibited provider by OTC Markets Group Inc., which operates trading markets outside stock exchanges like the Nasdaq, to explain the auditor change to investors.

Tingo's founder and his companies were ordered to pay the SEC more than $250 million in August 2024 in a securities fraud suit.

The US audit board found deficiencies in Olayinka Oyebola & Co.'s financial statement audits related to items including revenue and inventory, according to an inspection report made public last December.

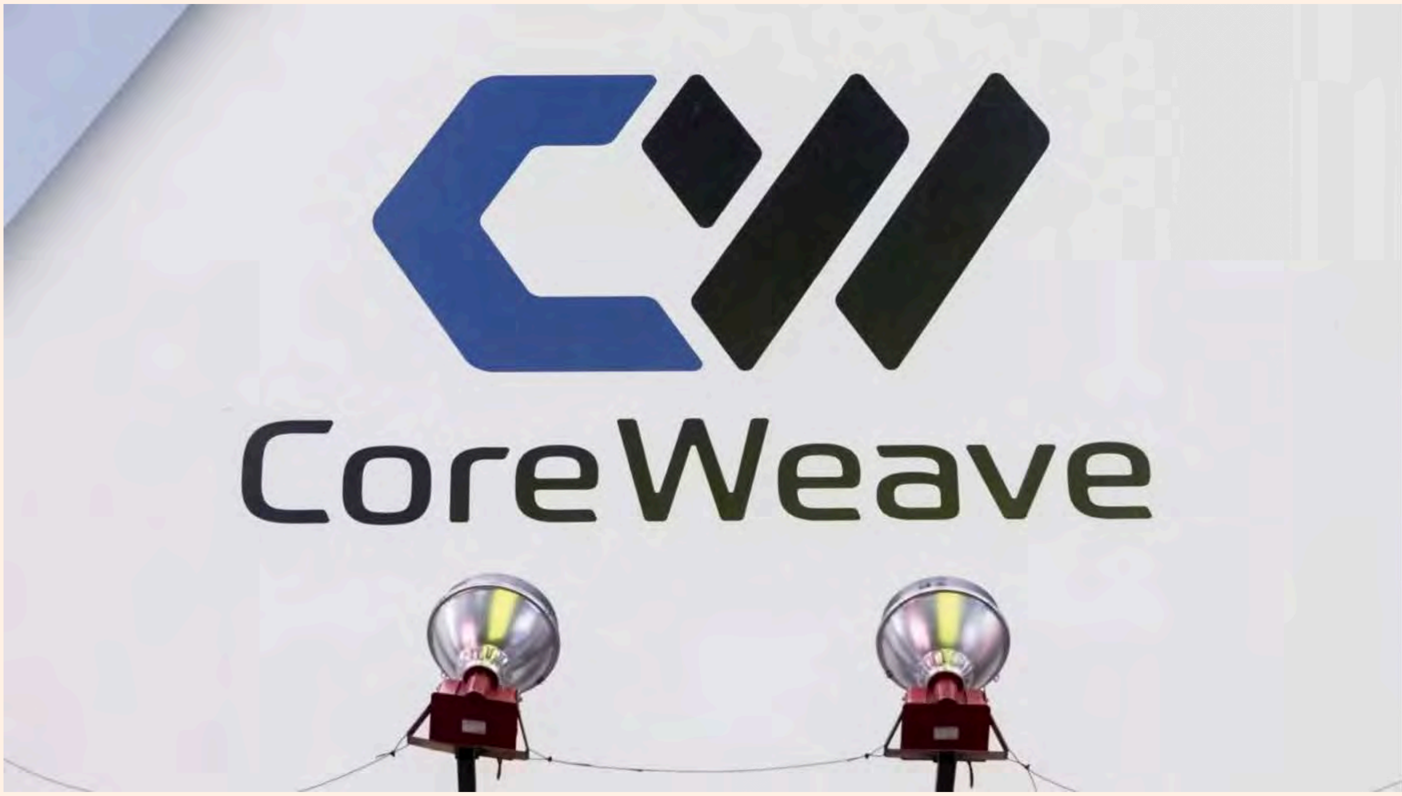
Oyebola didn't immediately return a request for comment.

—With assistance from Amanda Iacone.

CoreWeave

CoreWeave shares slide after bigger than expected losses

Data centre group has ridden a wave of enthusiasm for artificial intelligence



CoreWeave chief executive Michael Intrator said demand for the company's services surpassed its ability to build fast enough © Yuki Iwamura/Bloomberg

Amelia Pollard in New York

Published YESTERDAY | Updated 09:08

CoreWeave's shares dropped as much as 20 per cent on Wednesday, after the artificial intelligence data centre operator reported bigger second-quarter losses than Wall Street expected.

CoreWeave, which leases computing power to AI groups, said on Tuesday that its net losses for the quarter were $291mn, compared with analysts' estimates of $241mn, as the company reported earnings for the second time since its downsized initial public offering earlier this year.

The share price dip highlights investor sensitivity to any disappointing financials at CoreWeave, after shares in the company surged about 270 per cent in less than six months on the public markets.

The company has capitalised on booming demand for AI, borrowing heavily to meet huge demand for infrastructure to run generative AI models.

Revenues more than tripled year on year to $1.2bn for the three months to the end of June, above analysts' estimates of $1.1bn.

Co-founder and chief executive Michael Intrator said demand for CoreWeave's services surpassed its ability to build fast enough. The company's capital expenditure reached a record $2.9bn in the quarter.

Intrator added the group had "expanded" its relationship with financial firms including Jane Street, Goldman Sachs and Morgan Stanley.

"The big banks are really starting to show up," he said. "And they are massive consumers of compute."

CoreWeave has grown rapidly during the AI boom over the past two years through major contracts with OpenAI and Microsoft. It has also taken on big debts to fund that growth, raising billions of dollars over the same period to build data centres.

"When we look at our pipeline, and the contracts in the pipeline we're working on, they're extremely significant," Intrator said. "They will move the needle."

As of the end of June, CoreWeave reported it had $30bn in "remaining performance obligations", or contracts that had been secured but not fulfilled.

This week is potentially pivotal for the company, as a share lock-up will expire in the coming days allowing early investors to sell their shares for the first time since it went public in March.

Raimo Lenschow, an analyst at Barclays, said in a note that the quarter was "healthy", but investors were waiting for the end of the share lock-up, which could cause big share price moves.

CoreWeave's shares fell after its first quarterly results as a listed company in May, after it gave lower guidance on operating income than Wall Street had forecast.

It is in the process of trying to buy competitor Core Scientific, which also rents data centre capacity to tech groups and counts CoreWeave among its biggest customers.

One of Core Scientific's biggest shareholders has come out against the $9bn deal, the Financial Times has reported, and is trying to rally other investors to oppose it. Investors are demanding more certainty on the offer price, which is pegged to CoreWeave's stock without any protections if its shares fall.

Additional reporting by Tabby Kinder

Follow the topics in this article

US companies

Technology sector

Corporate earnings and results

Artificial intelligence

CoreWeave

Opinion **Lex**

Direct-to-consumer IPOs go from boom to bust

Broadly speaking, there is no longer a neat distinction between those pursuing physical and online sales

The high point for DTC came in 2021, with the likes of eyewear purveyor Warby Parker making big, splashy debuts on the public markets © AP

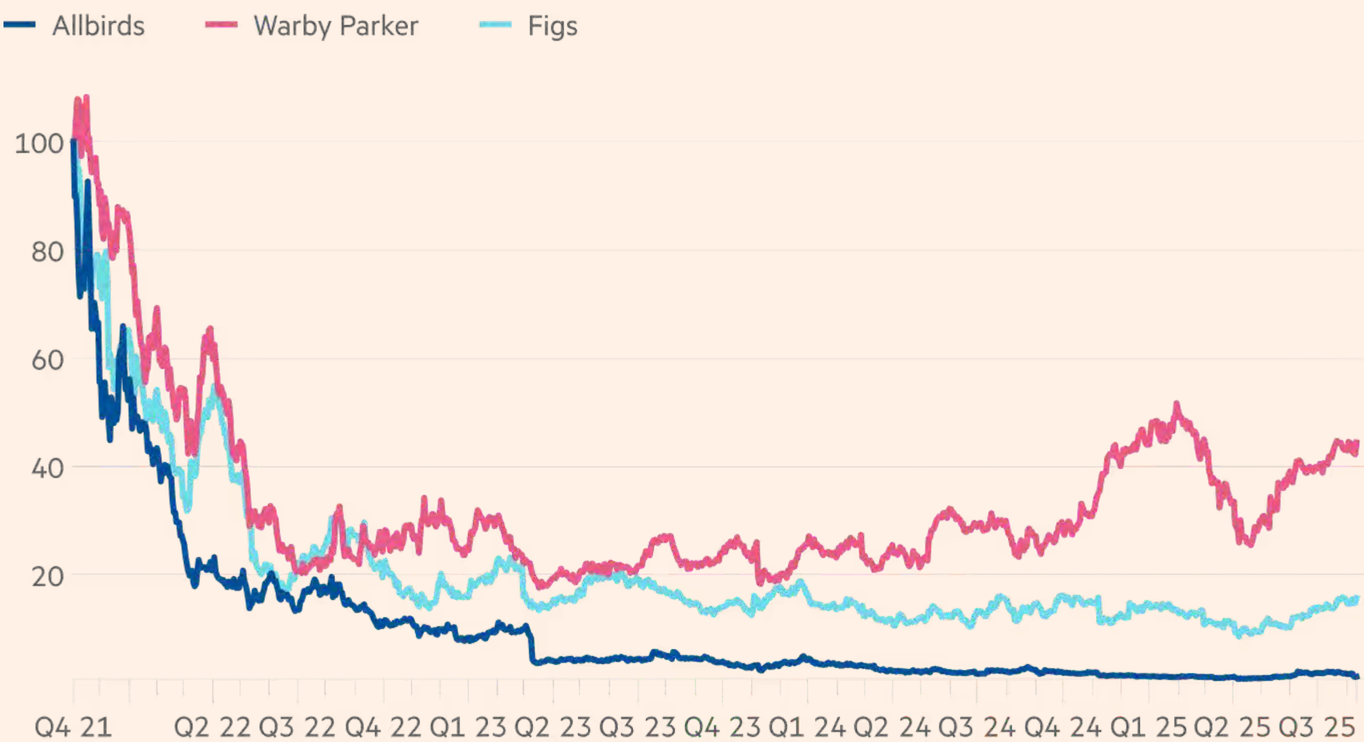
Published 53 MINUTES AGO

Direct-to-consumer start-ups once looked poised to take America by storm. This new breed of retailer takes an everyday product, makes a nicer version of it and sells it directly to shoppers via the internet at a lower price. Riding on the promise of low overheads and no middlemen, and backed by canny marketing and plenty of venture capital funding, at one point they appeared unstoppable.

The high point for DTC came in 2021, with eyewear purveyor Warby Parker, medical scrubs maker Figs, wool-sneaker company Allbirds and online wine club Winc all making big, splashy debuts on the public markets. Established brands took note. That also happened to be the year sneaker giant Nike initiated a significant pullback from wholesale distribution in order to build up its DTC channel.

Shop drop

Direct to consumer companies, share prices rebased



Source: LSEG via markets.ft.com

These days, the DTC boom is looking more like a bust. Winc and SmileDirectClub, which sells clear teeth aligners directly to consumers, have filed for bankruptcy. Warby Parker, whose share price peaked at more than $58 is currently trading at less than half of that. Allbirds, once the go-to shoe of tech elites, has shed nearly 99 per cent of its value after peaking above $520 a share. Figs shares are down 85 per cent from their 2021 highs. Casper, a DTC mattress business, was taken private after its shares slumped. Meanwhile, Nike is pivoting back to wholesale retail after its DTC strategy failed to gain traction.

Why has the DTC model run into a wall? One reason is that, while these companies don't have the same overheads as brick-and-mortar retailers, they do have to spend heavily on advertising to acquire customers. At Allbirds and Warby Parker, marketing spend was equal to about 28 per cent of revenue in the first six months of this year. Ecommerce fulfilment costs also add up. Shipping thousands of small orders directly to consumers is far less efficient than bulk wholesale shipments. Lastly, customer acquisition costs on social media are rising amid increased competition. At Meta the average price per ad rose 10 per cent last year.

Meanwhile, traditional brick and mortar rivals have upped their ecommerce game. In response, DTC companies have expanded into physical stores to boost sales. But that comes with its own drawback, namely higher operating costs. Neither Allbirds nor Warby Parker are profitable. Gross margins fell at both companies in their most recent quarter. Allbirds, which is facing competition from copycat products, has recently decided to close some of its stores and shift to a wholesale distribution model for some overseas markets.

All this points to the fact that retail business models are converging. Broadly speaking, there is no longer a neat distinction between those pursuing physical and online sales, or wholesale and own-store distribution. That leaves the DTC set shopping around for transformational ideas.

pan.yuk@ft.com

Follow the topics in this article

Lex

Personal & Household Goods

IPOs

Tech start-ups

US retail

Securities Law News

Do Kwon Pleads Guilty to Fraud Over $40 Billion Terra Collapse

Aug. 12, 2025, 8:29 AM PDT

Terraform Labs Pte. co-founder **Do Kwon** pleaded guilty to charges in a US fraud prosecution tied to the $40 billion collapse of the TerraUSD stablecoin in 2022.

Kwon pleaded guilty to conspiracy and wire fraud under an agreement with prosecutors at a hearing in New York on Tuesday. The 33-year-old, dressed in a yellow prison jumpsuit, also agreed to forfeit $19.3 million and some properties as part of the plea deal.

“I knowingly agreed with others to defraud, and did in fact defraud, purchasers of cryptocurrencies issued by my company, Terraform Labs,” Kwon said, reading from a statement. “What I did was wrong and I want to apologize for my conduct. I take full responsibility.”

Terraform Labs co-founder and CEO Do Kwon
Photographer: Woohae Cho/Bloomberg

Kwon was charged in both South Korea and the US in connection with the implosion of Singapore-based Terraform's TerraUSD, which shook the crypto world in the spring of 2022 and helped trigger the meltdown of cryptocurrency exchange FTX.

The guilty plea averts a trial set for next year before US District Judge Paul Engelmayer.

He was charged in 2023 and was extradited to the US in January, after spending almost two years in Montenegro, where he'd been arrested and convicted of using a phony passport while a fugitive from charges in his native South Korea.

US prosecutors said the longest sentence they will seek under the plea deal is 12 years. The maximum US sentences are five years for the conspiracy count and 20 years for the wire fraud charge.

Sentencing is scheduled for Dec. 11. He had faced nine charges under the indictment.

After he serves half of his sentence, the US will support Kwon spending the remainder of his prison term in South Korea, if he abides by the terms of his plea deal and qualifies under a transfer program.

Kwon had been a fugitive from the South Korean charges for months when he and Terraform's former chief financial officer were caught with fake passports in March 2023 trying to board a Dubai-bound private jet at the airport in Montenegro's capital, Podgorica.

SEC Case

Terraform and Kwon, who owned 92% of the company, were found liable for civil fraud in a 2024 suit by the US Securities and Exchange Commission. A jury in New York, at the end of a two-week trial, determined that Kwon and Terraform misled investors — a dismal sign for the former crypto mogul's chances of beating criminal charges.

The jury found that Terraform and Kwon falsely claimed that Chai, a popular Korean payment application, was using Terraform's blockchain technology to make transactions. The jurors also found investors were misled about the stability of the stablecoin, which Kwon and Terraform claimed was algorithmically pegged to the US dollar.

Terraform and Kwon later agreed to pay $4.47 billion and to wind down the firm, in a deal to resolve the case.

The case is US v. Kwon, 23-cr-0151, US District Court, Southern District of New York (Manhattan).

(Adds plea starting in first paragraph, sentence possibility in sixth.)

To contact the reporter on this story:
Bob Van Voris in federal court in Manhattan at rvanvoris@bloomberg.net

To contact the editors responsible for this story:
Misyrlena Egkolfopoulou at megkolfopoul@bloomberg.net

Anthony Aarons, David Voreacos

News | Cryptocurrency

'Lies for Money': Terraform Co-Founder Do Kwon Pleads Guilty

August 12, 2025 | By Michael A. Mora

FILE - Montenegrin police officers escort South Korean citizen, Terraform Labs founder Do Kwon in Montenegro's capital Podgorica, Saturday, March 23, 2024. Photo: Risto Bozovic/AP, File

Do Hyeong Kwon, an instrumental figure behind a stablecoin and related cryptocurrencies whose more than $40 billion crash sent shock waves through the digital asset industry, pleaded guilty Tuesday in a Manhattan federal court.

Kwon, 33, walked in the courtroom before U.S. District Judge Paul Engelmayer of the Southern District of New York alongside his attorney, David Patton, a partner in New York at Hecker Fink who also represented Roman Storm of Tornado Cash. And that's where Kwon pleaded guilty to count one, conspiracy to defraud, and count four, wire fraud.

"If past is prologue, there is a danger that we will see something like this again following the passage of the Genuis Act," said Arlo Devlin-Brown, former chief of the public corruption unit at the U.S. Attorney's Office for the Southern District of New York and a partner at a trial and litigation boutique law firm, Treanor Devlin Brown.

"Not because the regulation of stablecoins poses a risk," Devlin-Brown added. "In fact, the Genuis Act regulations are designed to avoid situations like this. But because of the great enthusiasm around stablecoins, there are going to be some bad actors who seek to exploit that by offering products that are not truly regulated stablecoins and have some of the flaws that Luna did."

Kwon, 33, who co-founded Singapore-based Terraform Labs Pte. in 2018, developed TerraUSD, a stablecoin designed to maintain a peg to the U.S. dollar, and Luna currencies, a token used for stalking, governance and maintaining TerraUSD's stability. At its peak in early 2022, the Terra ecosystem reached a market capitalization of $60 billion.

However, in May 2022, TerraUSD depegged from the dollar and collapsed, along with the Luna currencies, wiping out more than $40 billion in market capitalization. Kwon then disappeared for months. South Korea sought his arrest, and he was indicted in the U.S. for charges including market manipulation, money laundering and securities fraud while he fought extradition.

In March 2023, Montenegro authorities arrested him while he was trying to board a Dubai-bound private jet with fake passports. However, he fought extradition. About a year later, a New York jury found him and Terraform liable for civil fraud in litigation brought by the U.S. Securities and Exchange Commission. The defendants later agreed to pay $4.47 billion to resolve the case.

Soon after, Terraform announced it would cease operations and, ultimately, Kwon was handed over to U.S. officials in December. He pleaded not guilty to nine counts and was held without bail since January. But there was a new development on Monday. Engelmayer indicated in an order that Kwon intended to change his plea.

Now, Kwon is facing a maximum of five years in prison for pleading guilty to a conspiracy to defraud and a maximum of 25 years in prison for wire fraud. Kwon may be required to pay restitution in an amount determined by the federal court. And in accepting “responsibility,” prosecutors said they would advocate for a term not to exceed 12 years in prison.

Engelmayer noted that the sentencing hearing will be on Dec. 11.

J. Nicholas "Nick" Bunch, who spent over a decade at the U.S. Attorney’s Office for the Northern District of Texas and is a partner in Haynes Boone’s white-collar and investigations practice in Dallas, said this was a routine case brought to prosecution that happens to involve digital assets.

“Whether you're lying about a stock, you're lying about a car, you're lying about a piece of crypto or you're lying about a blood testing machine and what it can and can't do—it's all kind of the same. It's lies for money,” Bunch said.

With that said, Bunch commended Patton on the plea deal.

“This guy’s looking at sentencing guidelines that’s going to be through the roof with $40 billion in losses," Bunch observed. "Twelve is a pretty good deal.”

Securities Law News

SEC’s Peirce Says Market Will Sort Out Winners in Tokenization

Aug. 12, 2025, 10:05 AM PDT

Market forces will ultimately prove which forms of tokenizing securities and other real-world assets will win out, Securities and Exchange Commission member Hester Peirce said Tuesday.

“We’re willing to work with people who are taking different approaches,” Peirce said about tokenization in an interview on Bloomberg Television. “We’re looking forward to working with folks to try those different models out and see what the markets like.”

Peirce noted it will remain critical that companies properly disclose the nature of the assets being tokenized. “It may be a security with different characteristics and that’s something that needs to be conveyed to investors,” she said.

A tokenized security is a digital representation of a security — but not direct title to the asset itself — that can be traded on a blockchain network, rather than in a brokerage account.

By cutting stocks or other assets into smaller pieces, they can be more affordable to own. Proponents note that trading tokenized securities on blockchain technology would also support 24/7 trading, unlike on traditional exchanges that shutter overnight and on holidays.

Peirce, dubbed “Crypto Mom” by the digital assets crowd, indicated in a statement in July that traditional securities laws would generally still apply to tokenized securities, whether issued directly by a company or by a third-party.

Robinhood Markets Inc. is among the most prominent companies pushing for broader adoption of tokenization and announced earlier this year that some of its European-based customers could start trading tokens that represent shares of US equities. Robinhood CEO Vlad Tenev has since said the firm was in discussions with regulators about the development.

Other groups have recently called for a cautious and deliberate approach on tokenization. Trading behemoth Citadel Securities raised concerns about the potential for regulatory arbitrage if the SEC doesn't delineate clear rules for companies that want to tokenize assets to follow.

Wall Street stalwarts, including JPMorgan Chase & Co., have noted that broad adoption in tokenizing bonds and other traditional assets hasn't taken off. The market for it is currently valued at just $25 billion, with much of the activity in the space driven by crypto-forward firms rather than traditional banks, brokers and publicly-traded companies, according to a JPMorgan strategists.

Read more: Tokenization Boom? Wall Street Still Isn't Biting, JPMorgan Says

--With assistance from **Katie Greifeld**.

To contact the reporter on this story:
Lydia Beyoud in Washington at lbeyoud2@bloomberg.net

To contact the editors responsible for this story:
Megan Howard at mhoward70@bloomberg.net

Lydia Beyoud

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3rd Circ. Spurns Perrigo Investor's Bid To Avoid $97M Deal

By **Carla Baranauckas**

Law360 (August 12, 2025, 7:53 PM EDT) -- A major shareholder in Perrigo Co. PLC has been barred from opting out of a $97 million securities class action settlement, after the Third Circuit held in a precedential opinion on Tuesday that the investor must bear the consequences of its counsel's failure to timely request exclusion.

The three-judge panel's ruling against Sculptor Enhanced Master Fund Ltd. and Sculptor Master Fund Ltd. reinforces strict compliance with opt-out procedures under Rule 23, even when substantial individual claims are at stake.

Although Sculptor had intended to pursue a separate action, its counsel never mailed the opt-out letter by the deadline of Dec. 3, 2020, and the oversight went unnoticed until a proposed **class settlement** in 2024.

"Because Rule 23 requires a district court to prescribe the way for class members to request exclusion, they have to follow those instructions in order to opt out — a mere 'reasonable indication' of an intent to opt out will not do."

Even if the court considered excusable neglect under Rule 6, the panel said, Sculptor's three-and-a-half-year delay doomed its request.

Citing the 1993 U.S. Supreme Court ruling in Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, the judges held that the length of delay and risk to settlement finality "slightly" — and in some respects "strongly" — weighed against excusing the untimely filing.

The court found no evidence of bad faith, but stressed that "clients must be held accountable for the acts and omissions of their attorneys."

Sculptor's challenge to the adequacy of the class notice also failed. The Third Circuit held that the notice sufficiently warned members that they would be "bound by all orders and judgments in this action, whether favorable or unfavorable," unless they opted out, satisfying the Fifth Amendment's requirement to provide an opportunity to protect one's rights.

The dispute stems from Perrigo's defense against a 2015 hostile takeover by the pharmaceutical company Mylan NV, during which Perrigo's board rejected multiple bids and encouraged shareholders to do the same, the opinion said. After the deal fell through, Perrigo's stock price plunged more than 60%, and the company was forced to revise all its financial statements from 2015 to 2017, citing over $1 billion in generally accepted accounting practices violations.

This triggered a wave of investor litigation. A class action was filed in 2016, alleging securities fraud and misleading statements by Perrigo and its top executives.

Sculptor — then one of Perrigo's largest shareholders — opted to pursue its own claims separately. Or so it believed.

In 2019, while class certification was pending, Sculptor filed its own suit against Perrigo, the opinion said. When the district court certified the Roofer's class — named after the lead plaintiff, Roofer's Pension Fund — and sent notice to potential class members, it included clear instructions for opting out.

Sculptor's counsel likely never followed through on submitting the required exclusion letter, the trial court said.

Despite this, both Sculptor and Perrigo proceeded for over three years as if the hedge funds had formally opted out. Perrigo referenced Sculptor's case in regulatory filings as an opt-out action, deposed its corporate representatives and exchanged expert reports. The error only surfaced in 2024 during settlement negotiations for the class action.

After discovering the oversight, Sculptor asked the district court to excuse the lapse, arguing that it had always acted as if it intended to opt out. It claimed its separate litigation and conduct over the years showed a "reasonable indication" of exclusion.

The district court rejected the argument.

U.S. Circuit Judges Cheryl Ann Krause, Paul B. Matey and Peter J. Phipps sat on the appellate panel.

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

Sculptor Enhanced Master Fund Ltd. and Sculptor Master Fund Ltd. is represented by Luke J. O'Brien and Mariellen Dugan of Calcagni & Kanefsky LLP and Jesse Bernstein, Jonathan E. Pickhardt and Owen F. Roberts of Quinn Emanuel Urquhart & Sullivan LLP.

Perrigo Co. PLC is represented by Samuel Groner, Jason S. Kanterman, James E. Anklam and Katherine L. St. Romain of Fried Frank Harris Shriver & Jacobson LLP.

Joseph C. Papa, the former chairman and chief executive of Perrigo, is represented by Reed Brodsky and David F. Crowley-Buck of Gibson Dunn & Crutcher LLP.

The case is Perrigo Individual Investor Group et al. v Joseph C. Papa et al., case number 24-2861, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Nicole Bleier.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

SelectQuote Investor Sues Over Feds' Kickback Probe

By **Emilie Ruscoe**

Law360 (August 12, 2025, 10:57 PM EDT) -- Insurance broker SelectQuote Inc. and three of its current and former executives face a proposed investor class action alleging the company kept investors in the dark as it accepted illegal kickbacks for steering Medicare beneficiaries to certain insurers, precipitating False Claims Act allegations from a whistleblower and subsequently the government.

In a complaint filed Monday in Manhattan federal court, plaintiff Robert Pahlkotter claimed that SelectQuote had misrepresented the state of its affairs to investors by concealing the alleged scheme and its vulnerability to regulatory scrutiny because of the alleged transgressions.

Pahlkotter pointed to market records showing that on May 1, 2025, the day the government filed its False Claims Act allegations against SelectQuote, trading prices for SelectQuote shares fell over 19% from over $3 to under $2.60, hurting investors.

The investor also pointed to the government's False Claims Act allegations that the scheme spanned from 2016 through at least 2021, and the government's estimate that SelectQuote had received "tens of millions of dollars" in exchange for its alleged misconduct.

"As a result of the foregoing, defendants' positive statements about the company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis," Pahlkotter said Monday.

The complaint proposes a class of those who invested in the company between September 2020, when the company stated in a filing that its "agents are trained to offer unbiased advice in order to be more aligned to the specific needs of each customer," and the date the government's kickback allegations were filed in May.

The government's May suit takes aim at SelectQuote, two other third-party insurance marketing organizations, GoHealth Inc. and eHealth Inc., and insurance carriers Aetna, Elevance Health — which was named Anthem Inc. prior to June 2022 — and Humana. The claims represent the government's intervention in 2021 whistleblower claims made by eHealth's former senior vice president of marketing, Andrew Shea.

In the action, the government described the three insurers as among the nation's largest health insurance companies offering Medicare Advantage plans and eHealth, GoHealth and SelectQuote as among the nation's largest insurance brokers. According to the government, the insurers paid hundreds of millions in kickbacks to the brokers so the brokers would steer beneficiaries the insurers' Medicare Advantage plans.

"In public statements, the defendant brokers claimed to be 'unbiased,' 'carrier-agnostic,' and to 'have your best interests in mind,'" the government claimed in its suit. "In private, however, the defendant brokers repeatedly directed Medicare beneficiaries to the plans offered by insurers that paid them the most money, regardless of the quality or suitability of the insurers' plans."

The government accused the brokers of incentivizing their agents to sell those insurers' plans, establishing teams that sold only those plans and at times refusing to sell plans for insurers who didn't pay kickbacks — or didn't pay big enough kickbacks.

According to the government, the kickback payments took the form of contracts and invoices for purported marketing or administrative services, and the suit also alleges the scheme involved discrimination against certain Medicare beneficiaries, such as those who were under 65 and eligible for Medicare based on a disability.

"Insurers received money from Medicare based on the presentation of false claims tainted by kickbacks or rendered false by illegal discrimination against persons with disabilities," the government alleged.

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

Pahlkotter is represented by Rebecca Dawson, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP and Frank R. Cruz of the Law Offices Of Frank R. Cruz.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Pahlkotter v. SelectQuote Inc. et al., case number 1:25-cv-06620, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Hannah Albarazi. Editing by Emily Kokoll.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Solar Aircraft Co.'s Top Brass Hit With Investor Fraud Suit

By **Katryna Perera**

Law360 (August 12, 2025, 9:50 PM EDT) -- A majority shareholder of solar aircraft company Skydweller Aero Inc. has filed suit against the top brass of the U.S.-Spanish aerospace venture, claiming the CEO and others misled the shareholder about the company's "dire" financial condition and denied it access to critical financial information, obstructing its ability to evaluate its investment or exit its equity position.

MIPS Luxemburg SARL filed a **complaint** in Delaware federal court on Friday against Skydweller CEO Robert Miller and several unnamed board members. Skydweller, a Delaware corporation, has subsidiaries in both the U.S. and Spain, and the company focuses on the development of solar-powered unmanned aircraft, according to the complaint.

The Luxembourg-based entity says it invested $1.285 million in Skydweller based on false and misleading representations made by the defendants. As a majority shareholder, MIPS has the right to inspect Skydweller's books, records and financials, according to the complaint.

After Miller emailed a financial adviser working with MIPS in November 2024 seeking a further investment in Skydweller, MIPS declined and requested Skydweller's most recent financial statements.

After repeated requests for financials that allegedly were either ignored or excused, the complaint says Miller eventually sent MIPS three documents in March 2025, which were supposed to be "preliminary" financial reports.

MIPS claims the documents contained numerous red flags and important missing content, such as information about Skydweller's cash flows, year-over-year comparisons and trend analyses. There was also no mention of government contracts or milestone-based revenue, the complaint states, and there were multiple unexplained adjustments to the company's balance sheet.

MIPS says Skydweller convened a call for shareholders on March 22, 2025, during which Miller revealed that the company had miscalculated its finances and was considering selling its main asset, the solar-powered aircraft it had developed. The shareholder then received a spreadsheet on March 29 that contained "disturbing discrepancies when compared to the three previously offered financial statements," according to the complaint.

"While the PDF consolidated income statement represented total government revenue of $12.9 million, the Excel sheet reported the same metric at only $2.76 million," the complaint stated. "The financial statements and communications from the company contained no explanation for the apparent massive over-reporting of the company's revenue in documents previously provided to investors."

In April, investors were told that Skydweller Spain had implemented layoffs and, according to the complaint, the subsidiary is now in liquidation.

Additionally, MIPS claims the company has since contacted its Series A preferred investors seeking to raise $10 million at a pre-money valuation as low as $5 million.

"The company is obviously in dire financial straits, and the financing appears to be a last-ditch effort to avoid winding down the business," the complaint stated. "Throughout all of this, Skydweller's directors and officers ignored multiple 'red flags,' including an absence of financial controls, unreconciled accounts and investor complaints."

MIPS also alleges Skydweller has failed to hold formal annual shareholder meetings as required under Delaware law and has instead convened "sporadic" calls, "which are focused on raising money and trying to resolve the company's cash-flow problems."

Additionally, no one has held the position of chief financial officer at the company since the former CFO, Jilinda Crowley, left in March, according to the complaint. The company's website does not list a CFO on its "about" page.

Finally, MIPS alleges Skydweller's last filed annual report was for fiscal year 2023, and the report stated that the company only had one director.

"This is a complete divergence from control structure contemplated by stockholders in Skydweller's voting agreement, which provides for the election of two directors by Series A common stockholders, two directors elected by preferred stockholders, and three joint directors elected by holders of both common and preferred shares," the complaint stated. "A board with only one director is surely limited in its ability to properly function and perform meaningful oversight of a company of Skydweller's size and scope."

The suit seeks damages, the appointment of a CFO, implementation of Generally Accepted Accounting Principles-compliant financial systems, production of all books and records, and attorney fees.

In a statement to Law360 on Tuesday, Miller said: "It is unfortunate the individuals chose to go down this path. The claims are baseless and without any merit at all. We will vigorously defend this in court."

Counsel for MIPS declined to comment Tuesday.

MIPS is represented by Zhun Lu and Neal H. Levin of Rimon PC.

Counsel information for the defendants was not immediately available.

The case is MIPS Luxemburg SARL SPF v. Miller et al., case number 1:25-cv-00997, in the U.S. District Court for the District of Delaware.

--Editing by Janice Carter Brown.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Reddit Brass Face Investor Suit Over AI-Impacted Web Traffic

By **MJ Koo**

Law360 (August 12, 2025, 5:43 PM EDT) -- Reddit's leadership has been hit with a derivative shareholder suit over allegedly concealing the impact of Google's search algorithm changes and new artificial intelligence-generated answer features, which the suit claims reduced traffic to the social media site.

In a complaint filed Monday in California federal court, shareholder Patrick Ayers claims CEO Steven Huffman, Chief Financial Officer Andrew Vollero, Chief Operating Officer Jennifer Wong and several board members failed to disclose that Google's new generative AI feature — which provides concise search results without requiring users to click through to another website — led to reduced traffic. According to Ayers, when the impact was announced in early May, Reddit's stock price plunged.

"Unbeknownst to investors, senior management was aware that the company was experiencing lower traffic to its platform due to changes in Google's algorithm and in the introduction of AI Overviews," the suit says.

Ayers' suit largely mirrors a proposed shareholder class action filed in **June** by investor Anthony Joseph Tamraz Jr. in the same court.

Ayers notes that Reddit derives most of its revenue from selling digital ads, with sales increasing as click volumes rise, adding that a substantial portion of the site's traffic comes from users turning to Google to find answers to their questions.

From Google's launch of its new AI-powered search tool in 2024 to the May announcement of its impact on Reddit, the company's top executives failed to address concerns that the tool, which allows users to obtain information without clicking through, was hurting Reddit's revenue, the complaint alleges.

In a 2024 third-quarter earnings call, Huffman "focused on users who intentionally seek out Reddit via Google, rather than confronting the central issue: that users increasingly receive answers directly from Google's AI summaries without ever clicking through to Reddit," according to the complaint. Huffman also failed to address the risk that zero-click searches could undermine the platform's future growth and engagement, the suit says.

About three weeks after the impact was announced, Reddit's stock price fell $9.79, or 9.3%, to $95.85 from the previous day's close of $105.64, according to the complaint.

"This disclosure undermined prior representations about the company's performance and prospects, revealing that Reddit's user engagement was faltering despite earlier optimistic portrayals," the suit says. "Investors reacted negatively to the news, reflecting a loss of confidence in the company's prior statements."

Ayers seeks to represent a class of potentially millions of people who purchased Reddit's securities between Oct. 29, 2024, and May 21, 2025, according to the complaint.

The suit alleges the executives violated federal securities laws, breached fiduciary duties and unjustly enriched themselves by tying executive pay to inflated performance metrics. It asserts violations of the Exchange Act and seeks damages, interest, attorney fees and other costs.

Counsel for Ayers declined to comment Tuesday. Representatives for Reddit didn't immediately respond to a request comment.

Ayers is represented by Adam M. Apton, Gregory M. Nespole, Daniel Tepper and Correy A. Suk of Levi & Korsinsky LLP.

Counsel information for the defendants was not immediately available.

The case is Ayers v. Huffman et al., case number 3:25-cv-06752, in the U.S. District Court for the Northern District of California.

--Editing by Drashti Mehta.

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

AstraZeneca, Stockholders Far Apart In Merger Damages Tally

By **Jeff Montgomery**

Law360 (August 12, 2025, 7:00 PM EDT) -- Syntimmune Inc. stockholders and Alexion Pharmaceuticals have landed tens of millions of dollars apart in new tallies of interest owed after a Court of Chancery ruling in June that Alexion failed a "best efforts" duty to fulfill an autoimmune drug candidate deal.

The dispute followed Vice Chancellor Morgan T. Zurn's June finding that Alexion, an AstraZeneca PLC affiliate, owes "expectation damages," plus prejudgment interest, based on failure to employ commercially reasonable efforts, or CREs, to develop an acquired drug prospect for treatment of rare diseases.

In court filings on Friday, Syntimmune stockholders asserted that Alexion owes about $411 million for failure to pay an initial milestone and failure to use commercially reasonable efforts to achieve an additional seven targets, with interest accruing at more than $97,000 daily on the combined number, a total that includes an earlier $180.9 million judgment and $70.6 million for interest as of Aug. 8, with interest continuing to accrue at $66,000 per day.

Alexion took a different approach, arguing that prejudgment interest should be excluded from the calculations for five of eight drug development milestones under consideration, although $95.5 million in damages would apply. Another $162.6 million is due for three earlier milestones, bringing the total interest and principal to about $259.1 million.

The Alexion totals were based on a later, Nov. 30 payment date, with the company arguing in a court brief that the stockholders' method and focus on CREs would create a nearly $46.5 million windfall, among other criticisms.

"The court should reject Alexion's argument that SRS is not entitled to prejudgment interest on damages arising from its CRE breach," Shareholder Representative Services, arguing for the stockholders of Syntimmune said in its brief. "As an initial matter, Alexion's argument is waived. The court already held that SRS is entitled to prejudgment interest 'for Alexion's breach of its obligation to use CREs'. Alexion did not seek reargument and is thus barred from relitigating this issue."

The case stems from an alleged failure by Alexion Pharmaceuticals Inc. — acquired by AstraZeneca for $39 billion in July 2021 — to conduct trials and make agreed-upon development-step payments for the drug after Alexion acquired Syntimmune in 2018.

Alexion asserted that SRS' proposal would create an "inequitable windfall" for SRS, putting the Syntimmune stockholders representative "in a better position than if the contract had been performed."

"This result is inconsistent with agreement and the aims of prejudgment interest," attorneys for Alexion argued in their brief. "Even SRS recognized in its post-trial briefing that prejudgment interest should not accrue until hypothetical payment due dates," Alexion argued.

"However, now that SRS stands to gain more than an additional $46 million in damages based on arbitrage between the discount rate and the prejudgment interest," Alexion said in its brief, the stockholders are arguing "for a different pre-judgment interest methodology."

Eight missed milestone payments are at issue in the case, filed in late 2020 by SRS. The Syntimmune stockholders representative cited for its damage claim the court's posttrial findings last year that Alexion breached contract obligations not to take any action, "the primary purpose of which is to avoid the achievement of any milestone" for the drug.

Also a factor, Alexion said, is a counterclaim filed against Syntimmune related to an Alexion challenge to the quality of acquired drug substances and product.

"Awarding prejudgment interest on milestones that, had the contract been performed, would not have been expected to be achieved for years to come would be contrary to the principles and goals of expectation damages," Alexion argued.

In its brief, Alexion argued that a court order for damage calculations and prejudgment interest is premature given an Alexion counterclaim for indemnification on the seller's part. The company said the court's decision on indemnification "could result in an offset and impact how the court calculates any damages to which SRS may be entitled."

SRS invoked the court's "prevention doctrine" to seek full payment for each milestone, asserting that Alexion wrongly prevented achievement of the milestones by failing to pursue development of the drug and initially seeking $755 million in damages.

Vice Chancellor Zurn ruled instead that stockholders should receive "expectation damages" or the present value of expected values for each milestone after accounting for probability.

Currently a focus of SRS arguments is that compound interest should apply, in part because "simple interest does not compensate SRS for its loss."

According to SRS, a seven-day trial in July 2023 made clear that Alexion "slow-walked" and unjustifiably terminated trials of the drug's effectiveness in treating myasthenia gravis and one form of anemia. The development wound down "in the immediate aftermath of the AZ acquisition as part of a corporate prioritization effort" aimed at eliminating milestone payment costs, the stockholder group alleged.

The former shareholders sued days after AstraZeneca announced plans to acquire Alexion.

Representatives for the sides did not immediately respond to requests for comment.

Shareholder Representative Services is represented by Michael A. Barlow, Andrew M. Berdon, Angus Chen, Courtney C. Whang and Alexandria Deep Conroy, Joseph M Paunovich, David M. Elihu and James Bieber of Quinn Emanuel Urquhart & Sullivan LLP.

Alexion Pharmaceuticals is represented by David E. Wilks and Scott B. Czerwonka of Wilks Law LLC and Deborah E. Fishman, Carson D. Anderson, Daniel L. Reisner, Jeffrey A. Fuisz, Angela R. Vicari and Matthew M. Wilk of Arnold & Porter Kaye Scholer LLP.

The case is Shareholder Representative Services LLC v. Alexion Pharmaceuticals Inc., case number 2020-1069, in the Court of Chancery of the State of Delaware.

--Additional reporting by Dorothy Atkins, Rose Krebs and Matthew Perlman. Editing by Alex Hubbard.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Goldman Sachs Objector's $517K Fee Bid Slashed To $50K

By **Katryna Perera**

Law360 (August 12, 2025, 10:02 PM EDT) -- A Delaware vice chancellor has slashed an objector's counsel fee and expense request from $517,000 to $50,000 as part of a settlement in a derivative suit against Goldman Sachs directors, and awarded the plaintiffs their sought-after $612,500 in fees.

The underlying settlement, approved in **February 2024**, included an agreement by Goldman Sachs to change its compensation practices and reduce executives' pay by an estimated $4.6 million. The approved, **third version of the settlement** removed a claim release from the deal that the Delaware Supreme Court **rejected as overbroad** in August 2022, but otherwise retained all the terms of a **previous deal** that the court had approved in August 2020.

Previous iterations of the deal faced objections from Goldman Sachs shareholder and Fordham University School of Law Professor Sean Griffith. His **initial objection** led Vice Chancellor Sam Glasscock III to reject the first proposed settlement in October 2018. The parties proposed a **second settlement deal** in March 2020, which Griffith also raised an objection over.

For his work, Griffith sought an award of roughly $509,000 in fees and nearly $8,000 in expenses, according to a letter opinion issued by Vice Chancellor Bonnie W. David on Monday. Griffith said his objections to the settlement created "a benefit in the form adversarial litigation, which resulted in both a narrower release in the amended settlement and improvement to 'Delaware's 'ecosystem' of corporate litigation' more generally," the vice chancellor wrote.

Griffith also requested that all or some of his fee bid be paid from the plaintiffs' attorney fee award, the opinion states.

The vice chancellor noted on Monday that earlier in the action, the court awarded Griffith $100,000 plus expenses for the "corporate benefit" he had created through his objection to the first version of the settlement. However, the vice chancellor said Griffith has not identified a precedent that supports his current fee request, which is based on the purported time he spent litigating his objection to the second version of the settlement and subsequent appeal.

"Notwithstanding objector's 'thoughtful, scholarly, and cogent' participation in this action, in view of the $100,000 already awarded and the court's prior finding that the amended settlement conferred (at most) a marginally greater benefit than the second settlement, that [fee] request is too high," the opinion states. "I believe a supplemental award of $50,000, in addition to the $100,000 already awarded, is sufficient to fairly compensate objector for the benefits his efforts achieved in this action."

The vice chancellor also ruled that payment of Griffith's supplemental $50,000 award will be split between Goldman Sachs and the plaintiffs' $612,500 counsel fee award, which had previously been determined as part of the second version of the settlement.

According to the opinion, Griffith also objected to the plaintiffs' attorney fees award, arguing that the "law-of-the-case doctrine does not apply and the benefit of the amended settlement, re-examined today, does not support the award plaintiff seeks."

However, the vice chancellor disagreed on Monday, saying Griffith's challenges to the court's valuation of the settlement are unpersuasive.

"Objector argues that the cost of litigating his objections through appeal offset the benefit of the settlement, but offers no authority to support his position that the benefit achieved in the settlement should be discounted by litigation costs when calculating a fee award," the opinion states.

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

The settlement capped compensation for nonemployee directors of Goldman Sachs at $475,000 for committee chairs and $450,000 for other nonemployee directors through 2024.

The Delaware Supreme Court reversed and remanded Vice Chancellor Sam Glasscock III's approval of the second version of the deal after finding that a term releasing claims against Goldman from shareholders in the future was erroneously approved by the lower court because it was overbroad.

The plaintiffs are represented by Brian E. Farnan, Michael J. Farnan and Rosemary J. Piergiovanni of Farnan LLP and A. Arnold Gershon and Michael A. Toomey of Barrack Rodos & Bacine.

Griffith is represented by Anthony A. Rickey of Margrave Law LLC and Raffi Melkonian of Wright Close & Barger LLP.

The Goldman directors are represented by Robert Giuffra and David Rein of Sullivan & Cromwell LLP and Kevin Abrams and Wade Houston of Abrams & Bayliss LLP.

The case is Shiva Stein v. Lloyd C. Blankfein et al., case number 2017-0354, in the Court of Chancery of the State of Delaware.

--Additional reporting by Kellie Mejdrich. Editing by Emily Kokoll.

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Fed. Circ. Rejects Another Fannie, Freddie Investor Suit

By **Jessica Corso**

Law360 (August 12, 2025, 5:33 PM EDT) -- The Federal Circuit on Tuesday threw out a lawsuit accusing the federal government of profiting off Fannie Mae and Freddie Mac to other shareholders' detriment, saying the case was seeking to rehash arguments the court rejected three years ago.

A three-judge panel upheld the dismissal of a derivative claim brought by three Fannie and Freddie shareholders who accused the U.S. Department of the Treasury of reaping a "windfall" of $133 billion from the financial institutions by keeping all the profits for itself.

The court said a deal the Treasury Department struck with Fannie and Freddie in 2012 that allowed it to be paid those profits as a quarterly dividend did not amount to an unconstitutional taking under the Fifth Amendment.

The Federal Circuit **ruled the same** in 2022 in Fairholme Funds v. U.S. , saying the companies lost their right to exclude the government from their property when they agreed to a congressionally authorized bailout in 2008.

On Tuesday, the circuit court said Fairholme was still good law and had not been overturned by the U.S. Supreme Court's 2023 ruling in Tyler v. Hennepin County . In that case, the justices ruled that a Minnesota county could not keep the proceeds from the sale of property they confiscated from a resident who fell behind on property taxes.

Fannie and Freddie shareholders argued the Federal Circuit in Fairholme "failed to consider the historical property rights afforded to companies in their own net worth" in favor of focusing on post-2008 reforms, adding that it should update its analysis post-Tyler.

But the court said it did discuss the historical status quo before Congress enacted the Housing and Economic Recovery Act of 2008, which created the government agency responsible for overseeing Fannie and Freddie.

The precedents cited in Fairholme "have long established that 'regulated financial entities lack the fundamental right to exclude the government from their property when the government could place the entities into conservatorship or receivership,'" U.S. Circuit Judge Leonard Stark wrote for the panel on Tuesday.

"We additionally pointed to the common-sense notion that the enterprises had 'consented to the conservatorship, and consented to one where the conservator had extremely broad statutory powers,'' the panel said.

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

The ruling was handed down a week after reports began surfacing that the Trump administration is **considering selling stock** in Fannie and Freddie.

U.S. Circuit Judges Leonard Stark, Sharon Prost and Jimmie Reyna sat on the panel for the Federal Circuit.

The shareholders are represented by Patrick Vallely of Shapiro Haber & Urmy LLP and Amber Love

Schubert and Robert Schubert of Schubert Jonckheer & Kolbe LLP.

The government is represented by Gerard Sinzdak, Simon Gregory Jerome and Charles W. Scarsborough of the U.S. Department of Justice's Civil Division.

The case is Fisher v. U.S., case number 24-1167, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Brian Baresch.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Airbnb Wants Conservative Shareholder Proposal Suit Tossed

By **Sarah Jarvis**

Law360 (August 12, 2025, 8:00 PM EDT) -- Airbnb has asked a Delaware federal court to toss a suit alleging the vacation rental company wrongfully excluded conservative shareholders' proposals from its 2025 proxy materials, arguing they haven't alleged anyone at the company knew about the proposals at all.

In a Monday **filing** supporting their **motion to dismiss**, Airbnb and its brass argued conservative think tank the Heritage Foundation and conservative exchange-traded fund American Conservative Values ETF failed to state a claim. Airbnb called the lawsuit baseless and said it had already filed its proxy materials by the time the plaintiffs reached out to the company.

"There is nothing to litigate," Airbnb said.

Counsel for the parties didn't immediately respond to requests for comment Tuesday.

The Heritage Foundation and ACVF **sued** in June, the same month Airbnb held its shareholder meeting, arguing the company violated U.S. Securities and Exchange Commission procedures for excluding proxy proposals while claiming it didn't receive their proposals in the first place, despite proof of delivery.

The Heritage Foundation and ACVF — which say they own Airbnb shares worth $46,000 and $447,000, respectively — alleged Airbnb purposefully excluded their proposals because another proposal, submitted by the "liberal-leaning" Connecticut Retirement Plans and Trust Funds, was included in the 2025 proxy materials.

The Heritage Foundation's proposal asked the Airbnb board to "approve an analysis of how Airbnb oversees the legal and reputational risks connected with politicized divestments."

Meanwhile, ACVF's proposal asked the board to approve a report about how the company oversees risks related to denying or restricting services to users based on their religious or political status or views, and "how such discrimination impacts users, customers, and other individuals' exercise of their constitutionally protected civil rights."

"There was nothing wrong with Airbnb's mailroom, at least when it came to processing proposals submitted by liberal shareholders," the complaint stated.

The complaint further alleged that Airbnb has also refused to agree not to exclude the plaintiffs' proposals from the 2026 proxy materials. The suit seeks damages, attorney fees, an injunction barring Airbnb from excluding the proposals from the 2025 proxy materials and injunctive relief compelling the company to include the proposals in the 2026 proxy materials.

Among other things, Airbnb argued Monday that the Heritage Foundation and ACVF pled "zero facts, particularized or otherwise, to support their suspicion that the proposals ever made their way out of the Airbnb mailroom or that anyone at Airbnb even knew about them — much less, that the proposals were ever considered for (and subsequently excluded from) the 2025 proxy materials."

"Plaintiffs do not allege a single fact even suggesting the individual defendants knew (or should have known) about the proposals — much less, any facts supporting plaintiffs' claim that the individual defendants 'ignored' the proposals in violation of [SEC] Rule 14a-8," Airbnb argued.

The company argued the plaintiffs improperly lumped the individual defendants together and offered no facts indicating they knew about the proposals or acted in their own self-interest or in bad faith. And their complaint doesn't allege any actionable misstatement or omission, Airbnb said, arguing they brought "conclusory allegations" that don't meet the pleading standards for securities claims under the Private Securities Litigation Reform Act.

"Plaintiffs do not identify even a single statement that was rendered false or misleading by the purported omission," Airbnb argued. "That warrants dismissal under the PSLRA."

The company also pushed back against the Heritage Foundation and ACVF's claim that Airbnb will exclude any proposals the plaintiffs submit from their 2026 proxy materials as well, saying the conservative groups haven't alleged that they've taken any steps to submit any proposals for next year or that Airbnb has indicated it would exclude any properly submitted proposal they bring.

"The window for submitting stockholder proposals remains open, and Airbnb invites plaintiffs (and other stockholders) to submit proposals for the 2026 annual stockholder meeting until December 26, 2025," Airbnb said.

The plaintiffs are represented by Stephen B. Brauerman and Ronald P. Golden III of Bayard PA.

The Heritage Foundation is also represented by R. Trent McCotter of Boyden Gray PLLC.

ACVF is also represented by Alexandra Gaiser and Philip A. Sechler of the Alliance Defending Freedom.

The defendants are represented by David E. Ross and S. Michael Sirkin of Ross Aronstam & Moritz LLP and Blair Connelly, Zachary L. Rowen, Ben Harris, Kristin N. Murphy and Allison O'Hara of Latham & Watkins LLP.

The case is The Heritage Foundation et al. v. Airbnb Inc. et al., case number 1:25-cv-00676, in the U.S. District Court for the District of Delaware.

--Additional reporting by Katryna Perera. Editing by Jay Jackson Jr.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3 Firms Get $600K In Fees After DialAmerica Data Breach Deal

By **Brian Steele**

Law360 (August 12, 2025, 3:30 PM EDT) -- A Connecticut federal judge has awarded $600,000 in fees to attorneys with three law firms — Markovits Stock & Demarco LLC, Milberg Coleman Bryson Phillips Grossman PLLC and Federman & Sherwood — that secured a settlement worth more than $2.3 million with DialAmerica Marketing Inc. after a data breach.

U.S. District Judge Omar A. Williams on Monday accepted a magistrate judge's July 22 recommended ruling to approve the fee despite "shortcomings and overstatements as to hourly rates and hours expended" and dismissed **the case** from the District of Connecticut.

In his recommended ruling, U.S. Magistrate Judge Thomas O. Farrish said Judge Williams should authorize the $600,000 in fees plus the payment of about $24,000 in expenses and $2,000 service awards for the three class representatives. But Judge Farrish expressed reservations about the attorneys' claimed lodestar of $330,440 and the multiplier of 1.69 that were used to calculate the fees.

"They claim hourly rates as high as $1,545 for partners, $625 for associates, and $415 for paralegals, but they have not provided the customary information on timekeepers' qualifications nor an affidavit from an expert attesting to market trends," the recommended ruling said. "To begin with, the claimed rates appear to be overstated by at least 40%, based on the slender data provided by the plaintiffs and on publicly available information."

The proper lodestar was actually around $157,000, so the attorneys were asking for a multiplier of about 4, the magistrate judge said, but he noted that courts in the Second Circuit have "embraced" multipliers as high as 6. He also said courts are generally reluctant to overrule negotiated fee agreements that don't reduce the amount class members will receive.

In his order Monday, Judge Williams thanked Judge Farrish "for a meticulous and well-reasoned decision" and adopted it in full.

"The undersigned greatly appreciates the experience, thoughtful review, and data-driven perspective provided by Judge Farrish, because the court ought to take seriously its oversight function, even when parties arrive at a proposed agreement," the order said.

Named plaintiff Allen Moure sued DialAmerica in May 2022, saying the Mahwah, New Jersey-based call center outsourcing company waited months to reveal that an "unauthorized actor" accessed company servers and took data including employee names, Social Security numbers, addresses and internal identification numbers.

The breach occurred between February and July 2021 and the company investigated from July 2021 to February 2022 but did not notify employees or authorities until that April, the complaint said. Moure brought claims including negligence, breach of an implied contract and unjust enrichment.

Judge Williams approved the settlement in April. The deal caps direct monetary relief at $1.3 million, provides all class members — roughly 214,000 — with identity protection services for two years and requires DialAmerica to enhance its cybersecurity.

DialAmerica said in a July 2022 motion that the case should be dismissed for lack of jurisdiction and standing, saying the company does not have the required minimum contacts with Connecticut to confer jurisdiction and "plaintiff does not allege an actual or imminent injury-in-fact." Judge Williams denied the motion when the parties reported their settlement.

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

The class is represented by Gary M. Klinger and David K. Lietz of Milberg Coleman Bryson Phillips Grossman PLLC, Terrence R. Coates of Markovits Stock & Demarco LLC, William B. Federman of Federman & Sherwood and Anja Rusi, Joseph P. Guglielmo and Erin Green Comite of Scott + Scott Attorneys at Law LLP.

DialAmerica is represented by Richard M. Dighello and William S. Shapiro of Updike Kelly & Spellacy PC and Claudia D. McCarron and Jordan S. O'Donnell of Mullen Coughlin LLC.

The case is Moure v. DialAmerica Marketing Inc., case number 3:22-cv-00625, in the U.S. District Court for the District of Connecticut.

--Additional reporting by Aaron Keller. Editing by Stephen Berg.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Meta's Discovery Win Faces 'Immense' Fallout, 9th Circ. Told

By **Craig Clough**

Law360 (August 12, 2025, 10:11 PM EDT) -- The California Attorney General's Office urged the Ninth Circuit on Tuesday to reverse a lower court's order requiring third-party state agencies to respond to Meta Platforms' discovery demands in multidistrict litigation over social media's alleged harms, saying the "egregiously wrong" order will have "immense" consequences.

Bernard Ardavan Eskandari of the California state prosecutor's office told a three-judge panel that the order essentially opens up every single state agency and officer to party discovery in federal court on any legal action brought by the office, even in cases such as the MDL, where the office did not bring the action on behalf of any specific agency or officer.

Eskandari said that as an independently elected state official, the attorney general does not have any direct control over the agencies overseen by the California governor, but the order from the district court requiring third-party state agencies to hand over documents demanded by Meta ignores that aspect of California's dual executive structure.

"The consequences of this are immense, as you can tell from the joinder of 20 state attorneys general to the petition and the amicus submission by a bipartisan group of state governors," Eskandari said. "And the decision from the district court was egregiously wrong."

Mark William Mosier of Covington & Burling LLP, who represents Meta Platforms Inc., told the panel that when the attorney general's office files an action like the one against the social media company, it does so on behalf of the people of the state of California, which "presents a question: What documents does the attorney general have in his control that are held by the people of the state of California?"

The dispute stems from personal injury litigation launched in 2022 against Meta and other social media tech giants, including Snap Inc., TikTok Inc. and YouTube LLC. A coalition of 35 state attorneys general also filed civil enforcement actions seeking to enforce state consumer protection laws against the tech giants.

Since 2022, the litigation has been consolidated and the current MDL involves hundreds of claims by parents of minors, school districts and dozens of attorneys general who allege that the social media platforms, which bring in billions of dollars annually in ad revenues, are designed to be addictive to the detriment of minors' mental health.

On a series of orders last year, U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California trimmed some claims from the consolidated complaints, but she refused to throw out the bulk of the allegations against the tech companies. Meanwhile, the parties have been fighting it out in discovery as they head toward bellwether trials, which are expected to take place sometime in the next year.

In September, U.S. Magistrate Judge Peter H. Kang, who is presiding over the MDL's discovery phase, **ordered** third-party state agencies to hand over documents demanded by Meta, despite arguments by dozens of attorneys general that Meta's requests were irrelevant, overbroad and impractical given the hundreds of agencies implicated in Meta's demands. They also argued that the attorney general's offices don't have the statutory authority to access and hand over state agency documents.

But Judge Kang repeatedly rejected the arguments, and in November, he ordered those offices to provide the names and state bar numbers of agency counsel who have refused to comply. The states appealed Judge Kang's ruling to Judge Gonzalez Rogers, who refused to stay Judge Kang's order after a **lengthy hearing**. Judge Gonzalez Rogers also threatened to **sanction agencies** that refuse to comply, although she held off on issuing a written ruling on the merits of the appeal.

Eskandari argued Tuesday that the attorney general's office does not have any control over the documents, and would not have that control even if it was directly representing any state agency or officers.

"So California is set up completely differently that the federal government, which is a unitary executive, which operates under the authority of the president," Eskandari said. "California has a constitutionally divided, or dual, executive structure. We've got the governor, who is an independently elected statewide official, and we have the attorney general, who is an independently elected statewide official."

"What this means is that one independent officer cannot have control over another independent officer's documents, including the agencies under that officer's control," he added.

The California Supreme Court held that this was the case in 2004's ruling in People ex rel. Lockyer v. Superior Court, Eskandari said. That ruling held "that the people, by prosecuting [that] action, are not deemed to have possession, custody or control over documents of any state agency."

Brian Philip Goldman of the California governor's office told the panel that Rule 45 of the Federal Rules of Civil Procedure should apply to the question before the court, noting that the state agencies are not parties to the suit and had no role in crafting the litigation.

Circuit Judge Johnnie B. Rawlinson asked Mosier several times to explain how the California attorney general was supposed to have direct control over documents held by other state agencies. The judge said the main question before the court is whether the other agencies should be subjected to a Rule 45 discovery motion, where they are subpoenaed directly as third parties, or a Rule 34 discovery motion, which that treats those agencies as parties to the action.

Mosier said that because the attorney general brings the case on behalf of the people of the state, it gives him control over all the state agencies' documents.

"You look to the statutes and the authority given to the attorney general to handle litigation, and that's something we haven't seen in the briefing or from the arguments of the state ever addressing," Mosier said, "those statutes that the district court and magistrate judge relied on."

He also said that various state court rulings in California support the notion that when the attorney general's office is "prosecuting a case on behalf of the people, it also does what they view is in the public interest, they're not just acting as an agent of the agencies, they are making a determination of how to prosecute the case."

"But the agencies aren't parties here," Judge Rawlinson said. "That's the difficulty here. No agency or government official is a party, so that's why it's difficult for me to see how Rule 34 applies as opposed to Rule 45. It's really simple under Rule 45 to be able to get documents from non-parties. But for me, squeezing it into Rule 34 for parties is an abuse of discretion potentially because it's not a fit there."

Circuit Judges Johnnie B. Rawlinson, Bridget S. Bade and Lucy Koh sat on the panel for the Ninth Circuit.

The people of California are represented by Bernard A. Eskandari, Nicklas Arnold Akers and Megan O'Neill of the California Office of the Attorney General.

Meta is represented by Antonio Perez-Marques, James Rouhandeh, Caroline Stern and Corey M. Meyer of Davis Polk & Wardwell LLP, and by Nathan Evans Shafroth, Phyllis Alene Jones and Timothy Channing Hester and Mark William Mosier of Covington & Burling LLP.

The appeal is the People of the State of California et al. v. U.S. District Court for the Northern District of California et al., case number 25-584, in the U.S. Court of Appeals for the Ninth Circuit. The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Karin Roberts.