Class Action

Manage Newsletters

Agilon Investors Advance Trimmed Suit Over Profit Margins (1)

Aug. 18, 2025, 9:18 AM PDT; Updated: Aug. 18, 2025, 9:42 AM PDT

Summary by Bloomberg AI

AI Generated

- Agilon Health Inc. and Clayton, Dubilier & Rice LLC must contend with investor allegations tied to financial projections, its business model, and patient utilization costs.
- Judge David Alan Ezra partially dismissed the proposed class action without prejudice, releasing underwriters named as defendants, but CD&R and former Agilon CEO Steven Sell must battle insider trading allegations.
- The pension plans can continue suing CD&R and its affiliates for "control person" liability tied to alleged misstatements made before reducing its ownership to less than 25% in May 2023.

Agilon Health Inc. and Clayton, Dubilier & Rice LLC must contend with investor allegations tied to financial projections, its business model, and patient utilization costs.

The complaint advanced with allegations of Agilon and certain corporate leaders' level of intent or recklessness to sustain some securities fraud claims under the 1934 Securities Exchange Act. But the health care middleman and architects of its market debut shed allegations that paperwork for its public offerings misled investors.

Judge David Alan Ezra partially dismissed the proposed class action on Aug. 15 without prejudice. He released underwriters named as defendants, among them JP Morgan Securities LLC, Goldman Sachs & Co. LLC, and Wells Fargo Securities LLC.

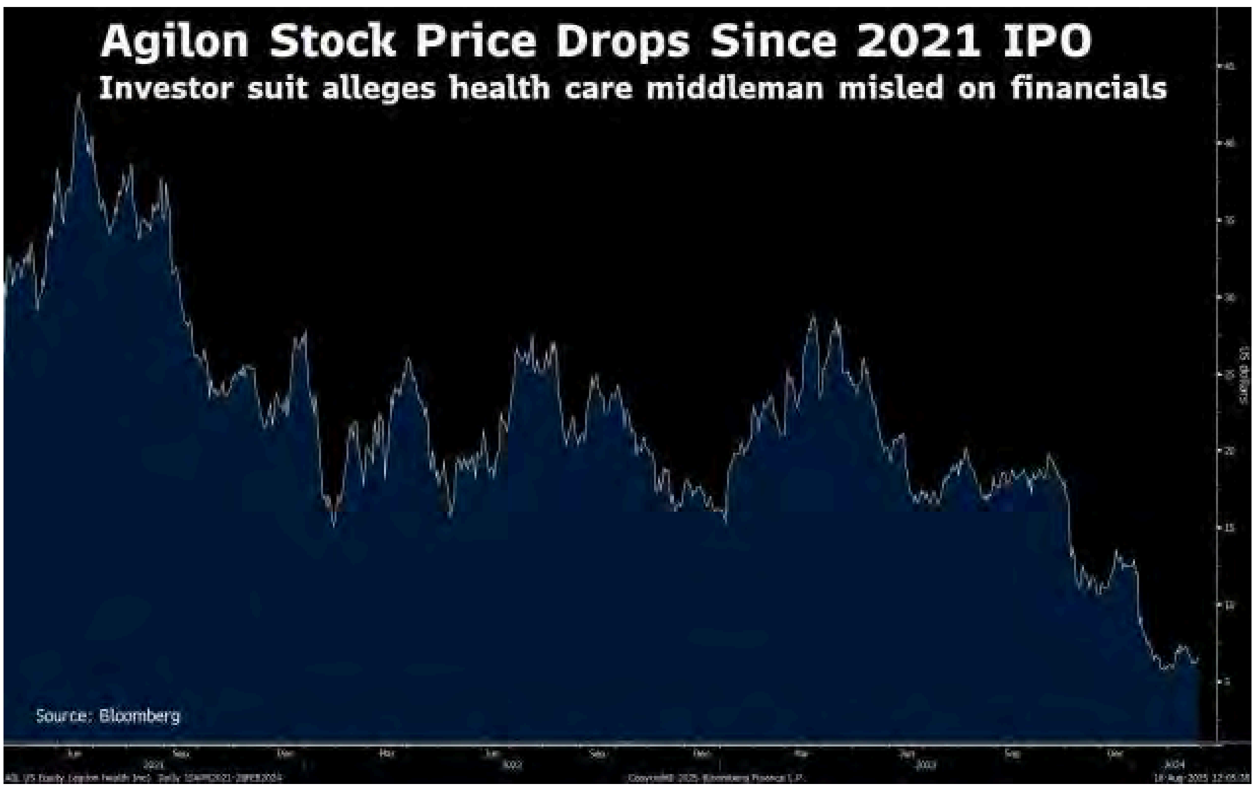
CD&R, the private equity firm that formed the company in 2016, and former Agilon CEO Steven Sell must battle insider trading allegations, Ezra said: CD&R sold almost $2 billion in stock while Agilon was allegedly hiding a patient utilization spike in 2023. The pension plans can continue suing CD&R and its affiliates for "control person" liability tied to alleged misstatements made before reducing its ownership to less than 25% that May.

Agilon takes up financial risks of medical costs of the senior patients enrolled in Medicare Advantage health plans, said the consolidated complaint. In exchange, an insurer gives Agilon some of its Centers for Medicare & Medicaid Services funds. Patient utilization plummeted during the pandemic, and so did medical costs that the company was responsible for, before its 2021 initial public offering.

Financial Outlook

The pension plans sufficiently alleged Agilon overstated its financial performance and hid results were boosted by faulty data while delivering 2023 fiscal year guidance. They adequately pleaded Agilon and certain executives concealed pent-up demand due to the pandemic and that patient utilization spiked in May 2023.

Agilon's stock price declined after the company cut that outlook in November 2023, revealing a hit in key profit metrics and the spiked use, and again in January 2024, the complaint said. Share prices dropped again after Agilon said it missed the forecast in February 2024.



"We're pleased with the court's decision and look forward to presenting the facts to a jury," said Robbins Geller Rudman & Dowd LLP's Darren Robbins. "The court seemed troubled by the billions of dollars of insider trading at opportune times."

The proposed class aims to include those who got Agilon stock from April 15, 2021, through Feb. 27, 2024, including those who purchased shares traceable to registration statements for its public offerings. North Carolina officials on behalf of state retirement funds, the Indiana Public Retirement System, and the North Atlantic States Carpenters Pension Fund and Guaranteed Annuity Fund lead the case.

The ruling landed after the company said Sell stepped down, pulled its 2025 financial guidance, and reported disappointing fiscal results earlier this month.

Agilon declined to comment.

Robbins Geller is lead counsel for the pension plans and Kendall Law Group PLLC is local counsel.

Sidley Austin LLP represents Agilon. A&O Shearman represents the underwriters. Debevoise & Plimpton LLP and Scott Douglass & McConnico LLP in Texas represent CD&R. These firms didn't immediately respond to emails seeking comment.

The case is In re Agilon Health, Inc. Sec. Litig. , W.D. Tex., No. 1:24-CV-297, 8/15/25 .

(Updates with a comment from shareholders' counsel in the eighth paragraph.)

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

NewsRoom

8/18/25 Press Democrat (Santa Rosa, Cal.) (No Page)
2025 WLNR 20871824

Press Democrat, The (Santa Rosa, Cal.)

August 18, 2025

Sonoma County sues Meta, other social media giants, blaming the firms for 'distraction, depression, suicidality' among youth

Phil Barber; The Press Democrat

Sonoma County has joined a growing number of jurisdictions, filing a federal lawsuit under the Racketeering Act against a host of social media companies alleging their actions — and inactions — are harming local youth through unfair business practices. The lead defendant in the case is Meta Platforms, Inc., formerly known as Facebook. But also targeted are Instagram (owned by Meta), TikTok, Snap, Google, Discord, YouTube and Roblox, among other defendants. In suing the social media companies for negligence and public nuisance, Sonoma County adds to existing lawsuits filed by San Diego County, the San Mateo County Board of Education and a scattering of other local public entities around the nation. In October 2023, the California Attorney General's Office joined 32 other states in suing Meta Platforms and its affiliates. The county's case outlines a number of incidents here that it claims social media interactions triggered or exacerbated: a 9-year-old girl who experienced suicidal thoughts after she was bullied on a YouTube "hate page;" a youth behavioral health client reporting that an adult male commented he would rape her; another youth client who, after expressing thoughts of suicide, was offered a gun for purchase on Snapchat. Sonoma County's Mobile Support Team, a crisis intervention service, responded in one instance when a 16-year-old girl kicked and hit her mother after the mom threatened to take away her cellphone and social media access, the suit alleges. Since 2021, online threats of violence have been aimed at West County, Laguna, Petaluma and Casa Grande high schools, and at Altimira Middle School. A 2021 TikTok craze called "devious licks" led to vandalism at several county campuses. As a result, county agencies have shifted resources to youth mental health services that include therapy, case management, crisis intervention and medication support. "A whole array of experts" will testify that social media companies contributed to these local incidents, said Aelish Baig, an attorney for San Francisco-based Robbins Geller Rudman & Dowd, the law firm contracted to handle Sonoma County's case. And the county wants reimbursement. For Lynda Hopkins, chair of the Sonoma County Board of Supervisors and mother of three children between the ages of 12 and 6, it was Jonathan Haidt's book "The Anxious Generation" that opened her eyes to the threats of the online world. "We live in a society where we literally have neighbors who will call and report you for child abuse for letting your kids walk down the block by themselves, but they're allowed to roam free in the dark corners of the internet," Hopkins said. Some of the existing cases were filed in the U.S. District Court's Northern District of California, as was Sonoma County's suit. Each of those will be overseen by Judge Yvonne Gonzalez Rogers. She has signaled the first set of jury trials are likely to begin in 2026, Baig told The Press Democrat. That first round of trials will include a handful of "bellwether cases," she said. Sonoma County's is unlikely to be one of them, Baig noted, because others were filed earlier. Rogers' opinions in the bellwether cases will establish precedent in the others. If a global resolution is proposed, the county would decide whether to opt in. Robbins Geller filed the Sonoma County complaint on July 9 and is working under a contingency agreement. In the event of a judgment or settlement, the Sonoma County Counsel's Office could claim as much as $150,000 for legal work done on the case. The county would receive 85% of whatever proceeds remain after that, with the law firm taking 15%. Robbins Geller has emerged as something of social media giant slayer. The firm secured a $650 million settlement with Facebook over use of facial recognition technology in 2020, an $800 million settlement with Twitter regarding securities fraud in 2021, and a $350 million settlement with Alphabet (the parent company of Google) in 2024 after a data breach compromised users' personal data. The county has partnered with outside counsel in other legal actions that involve big, well-funded adversaries, including opioid manufacturers, PG&E and the Trump administration. "We have brilliant" county staff attorneys, Hopkins said. "But they're very busy with their day-to-day jobs, and they don't have the staff for litigation on this scale." The supervisor emphasized that it would have been difficult to fight this battle alone. Aligning with other public bodies gives the county "strength in numbers," she said. Sonoma County's complaint, filed July 9, rests on familiar themes. "Like virtually everywhere in the United States now, Sonoma County's youth suffer from a high degree of distraction, depression, suicidality, and other mental disorders caused by or worsened by the overconsumption of social media on a daily basis," the complaint states. Social media companies lure young users and prime addictive behavior, the county contends, with machine learning technology that includes artificial intelligence tools. Meta, for example, recently unveiled an AI chatbot with 28 different personae. "It's one of those things where if it looks like duck, walks like a duck and quacks like a duck ... this looks a lot like the opioid settlement," Hopkins said. "Where companies are willingly giving a product that's addictive, and denying it. I'm not drawing an equivalency between the two products. But it feels like the same sort of cover-up." The harm is made worse by the corporations' lack of accountability, according to Baig. If the concerns are nearly universal, the lawsuit contends that Sonoma County's estimated 94,000 minors have been "uniquely harmed" by social media. A Youth Truth survey of nearly 15,000 county high school students conducted in January 2024 indicated 31% felt so sad or hopeless almost every day for two weeks or more that they ceased normal activities, and 10% reported having serious thoughts of suicide. Defendants in the lawsuit include the most prominent social media companies, but the complaint shines particular focus on Discord and Roblox. Roblox is an online gaming platform launched in 2006. The company's website claims that "Roblox is free to play and safe for kids aged 4+." More than half of all American children under 16 have used it, according to a Hindenburg Research report. Roblox restricts certain games to users 13 and older — such as one called "Beat Up Homeless Outside 7/11 Simulator," the Sonoma County lawsuit states. But Roblox makes no substantive effort to verify ages, the county alleges. That has led to rampant child sexual abuse and grooming on Roblox, the complaint argues. Since 2018, police in the U.S. have arrested 24 predators for abusing victims on Roblox, as reported by Bloomberg in July 2024. The messaging platform Discord, meanwhile, launched in 2015 and had 196 million active monthly users by January 2024. More than 60% are between the ages of 13 and 24, the company's CEO told a Congressional committee in 2024. Sonoma County alleges that Discord "has designed, developed, produced, operated, promoted, distributed, and marketed its platforms to attract, capture, and addict youth, with minimal parental oversight." Like Roblox, the company performs no legitimate age verification, according to the suit, and allows adults to send friend requests to children. In an email to The Press Democrat, a Discord spokesperson strongly disputed this, maintaining the company prohibits content or behavior that endangers younger users. "Unlike platforms designed around algorithmic feeds and viral content, Discord is a fundamentally different service that helps people build meaningful connections around the joy of playing games," the spokesperson wrote. "We use both automated systems and human moderation to enforce our policies and to proactively detect and remove content that violates them." Representatives of Meta and Roblox did not respond to requests for comment. You can reach Phil Barber at 707-521-5263 or phil.barber@pressdemocrat.com. On X (Twitter) @Skinny_Post.

---- Index References ----

Company: SAN MATEO COUNTY BOARD OF EDUCATION; ALPHABET INC.; ROBBINS GELLER RUDMAN & DOWD LLP; California Office of Attorney General; META PLATFORMS, INC.

News Subject: (Consumer Protection (1CO43); Crime (1CR87); Criminal Law (1CR79); Data Privacy & Protection (1DA12); Government Litigation (1GO18); Legal (1LE33); Sexual Misconduct & Crimes (1SE01); Social Issues (1SO05))

Industry: (Internet (1IN27); Internet Media (1IN67); Internet Regulatory (1IN49); Online Social Media (1ON38))

Region: (Americas (1AM92); California (1CA98); North America (1NO39); U.S. West Region (1WE46); USA (1US73))

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Other Indexing: (Sonoma County Board of Supervisors; Mobile Support Team; Casa Grande high schools; U.S. District Court; Sonoma County Counsel's Office; San Mateo County Board of Education; Alphabet; Robbins Geller Rudman & Dowd; California Attorney General's Office; Meta Platforms, Inc.)

Word Count: 1255

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Class Action

Manage Newsletters

Akero Defeats Investor Lawsuit Over Liver Drug Trial’s Design

Aug. 18, 2025, 10:41AM PDT

Akero Therapeutics Inc. beat allegations the drug maker knowingly misled investors over its potential liver disease treatment’s clinical trial participants.

The investors’ theory of intent to deceive still contained logical gaps that couldn’t overcome a non-fraudulent inference, Judge Yvonne Gonzalez Rogers said. The US District Court for the Northern District of California judge tossed the proposed class action without leave to amend, saying additional allegations failed to boost their theory.

- “Even accepting plaintiffs’ framing of the study’s timeline, the Court fails to see how this alone strongly indicates an intent to mislead when defendants still had a 60-week ‘follow-up’ period in which they could have stayed silent,” Rogers said in her Aug. 15 order
- Investors Joseph and Dora Klobus alleged Akero and three top executives misrepresented the design of one of its phase two trials for EFX, which targets a form of nonalcoholic fatty liver disease, by creating the impression the study only had cirrhosis patients proven to have this disease
- Akero’s stock plummeted almost 63% the day in October 2023 it delivered a disappointing trial readout that said it included patients with unknown causes of cirrhosis, they said

Robbins Geller Rudman & Dowd LLP and Abraham, Fruchter & Twersky LLP represent the Klobuses. Latham & Watkins LLP represents Akero and executives. None of these firms nor Akero immediately responded to emails seeking comment.

The case is Klobus v. Akero Therapeutics, Inc. , N.D. Cal., No. 4:24-cv-02534, closed 8/15/25 .

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

Charles River Lab Investor Revives Fraud Claims on Appeal

Aug. 15, 2025, 4:51 PM PDT

State Teachers Retirement System of Ohio revived its securities fraud claims against Charles River Laboratory alleging it misled investors about how much a Justice Department investigation impacted its supply chain of Cambodian long-tailed macaques.

The US Court of Appeals for the First Circuit reversed a lower court decision on Friday that rejected investor's claims that CEO James Foster's knowingly made false and misleading statements. The rest of State Teacher's claims were remanded to the US District Court for the District of Massachusetts to determine if it properly alleged its "losses were caused by Charles River's misdirection," Judge William J. Kayatta said on behalf of the panel.

State Teachers sought a class action against the global drug-development company in November 2022 on behalf of itself and other investors that acquired Charles River securities between May 2020 and March 2023. A DOJ investigation led to a November 2022 indictment "alleging the existence of a conspiracy to smuggle long-tailed macaques into the United States for financial gain, including by capturing wild macaques, falsifying their export permits, and exporting them to the United States," the appeals court said.

The First Circuit agreed with State Teachers that Foster's November 2022 interview was misleading under the Securities Act of 1934, concluding a "reasonable investor" watching that interview could've assumed Charles River's supply chain didn't include suppliers "mentioned in or implicated by the DOJ indictment."

But the reality was that Charles River supplier Inotiv Inc. "had already publicly declared that its own 'principal supplier' was a target of the indictment," Kayatta said.

The First Circuit rejected the lower court's determination that Charles River lacked scienter — a "'mental state embracing intent to deceive, manipulate, or defraud.'" Kayatta said, "assuming the allegations of the complaint are true, scienter flows inexorably from our conclusions."

State Teachers also claimed Charles River's Securities Exchange Commission disclosure statements were misleading in saying that it "'may' be required to source macaques from 'non-preferred vendors'" when it was "already relying on suppliers subject to law-enforcement scrutiny.

The First Circuit affirmed the lower court's rejection of that argument, noting there weren't any sufficient arguments explaining how "non-preferred vendors" could be interpreted as vendors facing law enforcement scrutiny.

Kaplan Fox & Kilsheimer LLP and Gupta Wessler LLP represent the investors. Davis Polk & Wardwell LLP and McDermott Will & Emery LLP represent Charles River.

The case is State Tchrs. Ret. Sys. of Ohio v. Charles River Labs. Int'l, Inc. , 1st Cir., No. 24-01705, opinion filed 8/15/25 .

To contact the reporter on this story: Alexis Waiss in Washington at awaiss@bloombergindustry.com

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

Litigation

Manage Newsletters

Monsanto Plaintiffs Intervene in Securities Suit Against Bayer

Aug. 18, 2025, 7:18 AM PDT

Summary by Bloomberg AI

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- The plaintiffs in a multidistrict litigation against Monsanto Co. may intervene in a securities suit against Bayer AG for the sole purpose of accessing discovery from the securities case, Chief Judge Richard Seeborg said.
- Bayer faces suits claiming its glyphosate-based Roundup causes cancer, and the securities plaintiffs alleged that Bayer didn't properly disclose its potential liability from the Roundup cases when it acquired Monsanto in 2018.
- Seeborg granted the intervention and modification of the protective order, allowing the intervenors access to specific discovery items, but refused to modify the order to allow other plaintiffs bringing a Roundup case to use the materials.

The plaintiffs in a multidistrict litigation against Roundup weedkiller maker Monsanto Co. may intervene in a securities suit against Bayer AG, a federal trial court ruled.

Bayer, Monsanto's parent company, hasn't been involved in the Roundup case, and the intervention is for the sole purpose of allowing access to discovery from the securities case, Chief Judge Richard Seeborg said Friday for the US District Court for the Northern District of California.

Bayer—which already has paid out about $11 billion in verdicts and settlements in the seven-year Roundup litigation — still faces 67,000 suits claiming its glyphosate-based Roundup causes cancer, according to its 2024 annual report. The securities plaintiffs alleged that Bayer didn't properly disclose its potential liability from the Roundup cases when it acquired Monsanto in 2018 for $63 billion.

Bayer and the securities plaintiffs undertook discovery and reached a settlement that included a protective order, which the intervenors sought to have modified to grant them access to specific discovery items related to their case. Those items included documents concerning Bayer's acquisition of Monsanto and risks associated with Roundup; interrogatories seeking information about Bayer's review of glyphosate during its acquisition of Monsanto; and documents related to the interrogatories. Bayer is now proposing to put Monsanto into bankruptcy.

Seeborg granted the intervention and modification of the protective order. The intervenors didn't unduly delay filing their motion after the settlement of the securities litigation, he said. They were put on notice of the settlement in the Monsanto case in April, tried to negotiate access to the discovery documents, and filed this motion in June after the negotiations failed.

Granting the intervention won't prejudice Bayer, because it will have little effect on the rights of the parties in the securities suit, Seeborg said.

There were also common questions of law and fact in both cases, centering on Bayer's and Monsanto's knowledge of Roundup's allegedly harmful effects, Seeborg said.

The intervenors also sufficiently established their ground for modifying the protective order, Seeborg said. The protected discovery is relevant, and access to it will eliminate a substantial amount of duplicative work, he said. The intervenors will also be bound by the same restrictions on use and disclosure in the original protective order.

But Seeborg refused to modify the protective order to allow any past, present, or future plaintiffs bringing a Roundup case to use the materials, saying it "would too greatly prejudice Bayer." The relief granted was therefore limited to the plaintiffs within the MDL.

The attorneys who represent the plaintiffs in the Roundup case originally filed the motion to intervene in the securities case, but Seeborg said the plaintiffs in the MDL were the proper intervenors.

Weitz & Luxenberg PC represents the intervenors. Morrison & Foerster LLP and Wachtell Lipton Rosen & Katz LLP represent Bayer.

The case is Sheet Metal Workers Nat'l Pension Fund v. Bayer Aktiengesellschaft , 2025 BL 290341, N.D. Cal., No. 20-CV-04737-RS, 8/15/25 .

To contact the reporter on this story: Bernie Pazanowski in Washington at bpazanowski@bloombergindustry.com

To contact the editor responsible for this story: Blair Chavis at bchavis@bloombergindustry.com

Roundup lawyers can read Bayer’s homework, judge rules

legalnewsline.com/northern-california-record/roundup-lawyers-can-read-bayer-s-homework-judge-rules/article_ccf56f32-15f7-4af9-86b8-58790eefc03c.html

John O’Brien, John O'Brien August 18, 2025

SAN FRANCISCO - The lawyers pushing claims Roundup-brand weedkiller is lethal to people will now have access to the due diligence performed by Bayer before it bought the product's maker, Monsanto.

California federal judge Richard Seeborg on Aug. 15 allowed lead counsel in consolidated lawsuits alleging Roundup's active ingredient glyphosate causes non-Hodgkin's lymphoma to intervene in another case.

That case is brought on behalf of stockholders of Bayer upset with the 2018 purchase of Monsanto and claims executives made false and misleading statements about the due diligence it performed when analyzing the costs of Roundup lawsuits. A $38 million settlement in it is pending final approval.

Bayer is paying nearly $11 billion to settle a large amount of personal-injury cases but still faces plenty more. Victories at trial for the companies are often overshadowed in headlines by massive verdicts, like more than $2 billion in Philadelphia last year.

Weitz & Luxenberg and The Miller Firm are co-lead counsel in a multidistrict litigation proceeding that handles personal-injury claims and recently sought to intervene in the shareholder case to investigate Bayer's due diligence.

"These documents are potentially relevant for many issues within Roundup cases," Seeborg wrote.

"Many Roundup cases assert claims for failure to warn, defective design and negligence, among other causes of actions. Monsanto and Bayer's knowledge, motives and assessment of the exposure associated with potential Roundup litigation before, during and after merger due diligence bears directly on whether they knew of risks about which they were obligated to warn plaintiffs in Roundup cases."

Bayer noted Seeborg's order only applies to cases consolidated in California federal court and not in various state courts and does not resolve whether the MDL judge will allow the documents to be used.

"Bayer maintains that it has already produced more than 3.2 million documents (exceeding 25 million pages) in the Roundup federal multi-district litigation, and believes that the production of additional documents cannot change the core scientific facts that support the safety and non-carcinogenicity of Roundup," the company said in a statement to the *Northern California Record*.

No personal-injury plaintiff had ever requested these records until now. In its response to the law firms' request, Bayer claimed they were jumping into the shareholder case years too late and on the eve of settlement.

Nearly 200,000 lawsuits have been filed over Roundup, though most countries and research groups have found no link between glyphosate and cancer.

The International Agency for Research on Cancer kickstarted litigation in 2015 when it became the only group to find otherwise. Its then-chairman Chris Portier then left the IARC to work as an expert for plaintiff lawyers.

The federal Environmental Protection Agency has forbid Monsanto and Bayer from placing a cancer warning label on Roundup.

Bloomberg Law

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California Brief

View Seeks to Resolve Investor, SPAC Case Coverage in Delaware

Aug. 15, 2025, 8:03 AM PDT

View Operating Corp. asked a California federal court to dismiss its insurer's lawsuit over coverage for litigation over the company's 2021 de-SPAC merger transaction and public offering, arguing the dispute must be litigated in Delaware state court.

The US District Court for the Northern District of California lacks jurisdiction because View and its insurer, Starstone Specialty Insurance Co., are both Delaware corporations, View said in its motion to dismiss Thursday.

Starstone sued View in the California federal court on Aug. 1, arguing there was no coverage under an excess liability insurance policy for lawsuits and third-party subpoenas related to View's "blank check" deal.

View countered with its own suit in Delaware Superior Court on Aug. 5, claiming Starstone must pay for a $1 million portion of a securities class action settlement, as well as legal defense costs incurred in that case and a suit filed by the US Securities and Exchange Commission.

US Commerce Secretary Howard Lutnick, his former firm Cantor Fitzgerald LP, and other architects of View's deal agreed in May to pay $11 million to settle the investor suit.

The California federal court doesn't have diversity jurisdiction over the suit because both companies are Delaware corporations, and there is also no federal question to establish subject-matter jurisdiction, View said in its motion, urging the court to toss the insurer's case.

Cozen O'Connor PC represents Starstone. Farella Braun & Martel LLP represents View.

The case is Starstone Specialty Ins. Co. , N.D. Cal., No. 5:25-cv-06485, 8/14/25 .

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Securities Law News

Argentina Wins Reprieve in US Court Fight Over YPF Shares (2)

Aug. 15, 2025, 1:02 PM PDT

An appeals court ruled that Argentina doesn't need to turn over its controlling stake in YPF SA to holders of a $16 billion judgment while the South American nation tries to overturn a US judge's order requiring it to do so.

The New York-based appeals court in a brief ruling on Friday granted Argentina's request to put US District Judge Loretta Preska's June 30 order on hold during the appeals process, which is likely to take months. The decision by the 2nd US Circuit Court of Appeals relieves some of the pressure on Argentine President **Javier Milei**'s government as the nation moves toward October legislative elections.

In June, Preska ordered Argentina to surrender its 51% stake in YPF to partially compensate YPF shareholders after the country nationalized the energy company in 2012. Preska ruled in 2023 that the shareholders, led by the litigation funding firm Burford Capital, are owed payments for their shares, plus interest.

"The Republic welcomes the Court of Appeals' decision," a spokesperson said in a statement Friday. The nation is confident the court will throw out Preska's order and the underlying $16 billion judgment, which is also being appealed, according to the spokesperson.

A spokesperson for Burford declined to comment on the ruling.

The US government had urged Preska not to force Argentina to forfeit the shares before the appeal is decided. The appeals court also ruled Friday that the US may file arguments in support of Argentina's appeal.

The case is Petersen Energia Inversora v. Argentine Republic, 25-1687, Second US Circuit Court of Appeals (Manhattan).

(Adds comment from Argentina spokesperson in fourth paragraph.)

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

News | **Litigation**

Supreme Court Argument Over 'Safe-Harbor' Provision in New Delaware Corporate Law Set to Be Rescheduled

August 18, 2025 | By Ellen Bardash

Wachtell, Lipton, Rosen & Katz. Courtesy photo

The Delaware Supreme Court has agreed to remove argument in the Clearway Energy case from its October calendar after being notified one of the attorneys involved in the case will be out of the country for an arbitration on the date argument was originally scheduled.

Last week, the court had scheduled argument on two certified questions related to the safe harbor provisions that recently became law in the state for the morning of Oct. 8. Counsel for Gov. Matt Meyer, who is an intervenor in the Clearway case, moved to reschedule on Aug. 15, citing a scheduling conflict for Wachtell, Lipton, Rosen, & Katz partner William Savitt.

In the Clearway matter, Vice Chancellor Lori W. Will agreed to certify two questions to the Supreme Court, citing their potential to have a broad impact on shareholder litigation and Delaware law. Those questions relate to the constitutionality of recently codified safe harbor provisions in a case brought against San Francisco-based Clearway Energy, an independent clean power producer and developer.

According to that motion, Savitt is lead counsel in a confidential arbitration that for 15 months has been scheduled to take place in Singapore between Oct. 5 and Oct. 17. The filing indicated the parties would be available for argument on Nov. 5 or Nov. 12 but have conflicts on the remaining Wednesdays in October.

The Supreme Court's order granting the motion did not set a new date for argument.

Securities Law News

This Week in Chancery Court: Nevada Considers Creating a Rival

Aug. 18, 2025, 2:00 AM PDT

Corporate lawyers will likely get a break from major news out of Delaware this week, as its elite business court has very little on its calendar, while perhaps the most consequential action happens 2,500 miles away, at a public hearing in Las Vegas.

The Nevada Supreme Court is pursuing plans to create a dedicated business court so that the Silver State can better compete with Delaware for incorporations.

Chief Justice Douglas Herndon filed a petition seeking the court's approval for a commission to work out the rules for a business court, including how its judges will be selected. In a May 22 statement, Herndon said Nevada's business court could be operational within a year. The high court's action would "eliminate the need to amend the constitution and the uncertainty associated with waiting years to see if the resolution gets approved," he said.

Silicon Valley venture capital firm Andreessen Horowitz cited Nevada's legislative efforts to create a business court in its decision to pull up its figurative stakes in Delaware and reincorporate there. The legislation, which is separate from Herndon's petition, is sponsored by Assemblyman Joe Dalia (D), who's also lead privacy and product counsel for Meta Platforms Inc.

Meanwhile, here are the highlights from the Delaware Chancery Court's calendar:

Glob. Cap. Partners LLC vs. Green Sapphire Holdings, Inc., Del. Ch., No. 2024-0877. Vice Chancellor J. Travis Laster presides over a three-day trial starting Wednesday in a lawsuit over loans extended to investment management company Green Sapphire Holdings Inc., which filed for bankruptcy in May.

Silicon Power Corp. v. Patel, Del. Ch., No. 2024-1233. Senior managers of Anupam Rasayan India Ltd., a leader in the specialty chemicals industry in India, will seek to dismiss breach-of-contract claims in a hearing on Friday.

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

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

Securities Law News

Cencora Directors Reach $111 Million Deal on Opioid Claims

Aug. 15, 2025, 1:48 PM PDT

Cencora Inc. directors have agreed to a settlement of more than $111 million to resolve claims by pension funds that they ignored years of red flags about the drug distributor's handling of opioid painkillers and failed to set up required systems to monitor sales of the drugs.

The deal would end litigation accusing directors of turning a blind eye to suspiciously large opioid shipments to reap billions for the firm, which was known until 2023 as AmerisourceBergen Corp. before it changed its name.

The settlement disclosed Friday in a filing in Delaware Chancery Court comes after the company has paid at least $6 billion over its alleged mishandling of the highly-addictive drugs, which are blamed for more than 500,000 deaths over two decades. States, cities and investors filed more than 4,000 lawsuits seeking to recoup monies spent battling the opioid epidemic and generated more than $50 billion in recoveries.

Cencora officials said in the filing their handling of opioids didn't violate any law and the firm agreed to the deal to "eliminate the burden, expense, disruption, and distraction inherent in further litigation."

Lawyers for the Lebanon County Employees Retirement Fund and a Teamsters health services and insurance plan didn't immediately respond to an email request for comment.

The funds sued the company's directors in 2021, claiming they violated legal duties to investors by "failing to adopt, implement, or oversee reasonable policies and practices to prevent the unlawful distribution of opioids" and ignoring "evidence of widespread illegal opioid sales," according to court filings.

A Delaware judge threw out the case in 2022 after concluding a ruling by a federal judge in West Virginia "fatally undermined" the shareholder case. The Delaware Supreme Court revived it a year later.

Following negotiations with a mediator in July, Cencora and the funds agreed to resolve the claims "in exchange for a cash payment" of $111.2 million, according to the filing.

The case is Lebanon County Employees Retirement Fund v. Collis, 2021-1118, Delaware Chancery Court (Wilmington).

Class Action

Manage Newsletters

AIG, Chubb Beat CVS in Delaware on Opioid Litigation Claims (1)

Aug. 18, 2025, 8:55 AM PDT; Updated: Aug. 18, 2025, 9:55 AM PDT

Summary by Bloomberg AI

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- The Delaware Supreme Court ruled that CVS Health Corp. isn't entitled to insurance coverage for claims alleging it fueled the opioid crisis.
- The court found that the underlying suits don't seek damages "because of any specific person's bodily injury or damage to any specific property" and therefore don't trigger coverage under liability insurance policies.
- The justices disagreed with CVS' arguments, including that pharmacist endorsements modify the threshold requirement for coverage and that property damage should be treated differently than bodily injury claims.

In a blow to commercial policyholders, Delaware's high court ruled that CVS Health Corp. isn't entitled to insurance coverage for claims alleging it fueled the opioid crisis.

The underlying suits don't seek damages "because of any specific person's bodily injury or damage to any specific property" and therefore don't trigger coverage under liability insurance policies sold by carriers including units of American International Group Inc. and Chubb Ltd., the Delaware Supreme Court ruled Monday.

Litigation against retail pharmacy operators, drugmakers, and other companies over their alleged contributions to the opioid epidemic has sparked insurance fights across the country.

The state's high court delivered a landmark ruling in 2022 siding with Rite Aid Corp.'s insurance carriers on coverage for opioid litigation. The Delaware Superior Court, relying on the *Rite Aid* decision, had concluded the claims against CVS were outside the scope of coverage.

On appeal, CVS argued insurance provisions for pharmacist liability afforded broader coverage than the policies at issue in the *Rite Aid* case.

The justices disagreed, however, writing that the pharmacist endorsements don't modify the threshold requirement that damages must be "because of bodily injury or property damage."

The high court also disagreed with CVS about the nature of the damages sought in some of the underlying suits.

Even suits with allegations specifying the numbers of residents treated, the medication provided, the number of doses, and the cost per dose, and suits with more general allegations of treatment expenses, didn't seek recovery for any specific, individualized bodily injury, Chief Justice Collins J. Seitz, Jr. wrote for the court.

The Delaware Supreme Court also shot down CVS' argument that property damage should be treated differently than bodily injury claims.

"It would be inconsistent to require specific and individualized personal injury damage but permit general economic property damage," Seitz said.

Counsel for CVS didn't immediately respond to a request for comment.

Public Nuisance Claims

The ruling, which largely relies on and expands the high court's position in *Rite Aid*, comes as other corporate policyholders are litigating general liability coverage for opioid and similar public nuisance claims in Delaware.

McKinsey & Co. was sued by AIG and Chubb units in Delaware Superior Court earlier this year over coverage for opioid lawsuits, though the consulting giant is pushing to litigate the dispute in New York state court instead.

Insurers, on the other hand, will likely welcome the Delaware justices' latest decision.

Units of Chubb and Hartford Insurance Group Inc. that sued Meta Platforms Inc. last year over public nuisance litigation alleging the social media giant got minors hooked on its platforms were likely hoping to rely on *Rite Aid* to deny coverage.

Blank Rome LLP and Berger McDermott LLP represent CVS. The insurers are represented by firms including Holwell Shuster & Goldberg LLP, Willkie Farr & Gallagher LLP, Simpson Thacher & Bartlett, BatesCarey LLP, Clyde & Co., and Kennedys Law LLP.

The case is In re: CVS Opioid Insurance Litigation, Del., No. 482,2024, 8/18/25 .

(Updates with additional information throughout.)

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

West Virginia sues 'architect' of state's opioid crisis

legalnewsline.com/west-virginia-record/west-virginia-sues-architect-of-state-s-opioid-crisis/article_d0312030-e358-482e-b331-7c0bdb98625b.html

Chris Dickerson, Chris Dickerson August 18, 2025

File photo

CHARLESTON — West Virginia Attorney General J.B. McCuskey's office has filed a federal lawsuit against Express Scripts claiming the pharmacy benefit manager was the "architect" of the state's opioid crisis.

The lawsuit was filed August 15 in federal court against Evernorth Health, formerly Express Scripts. The complaint says the company played a major role in oversupplying opioids to West Virginia.

McCuskey
File photo

"The opioid crisis is a direct result of greed and evil," McCuskey said. "Opioid manufacturers have been held accountable, now it's time for others who illegally profited behind the scenes to pay the price.

"PBMs, like Express Scripts, not only fueled the crisis through their formulary placements of the pills, but they had every tool at their disposal to alert them to how addictive and destructive opioids are. Instead, for decades they ignored their own data, broke state and federal laws and put profits over people's lives. They have tried to hide their role in creating this crisis, but now it's all coming to light and we will not stop until they pay for what they did to West Virginians."

West Virginia already has obtained settlements totaling $1 billion from companies that helped fuel the opioid epidemic.

The lawsuit claims the company conspired with opioid manufacturers to deceptively market opioids and manipulate public perception regarding their safety and addictive potential. It says Express Scripts had real-time access to comprehensive prescription data that identified red flags, including doctor shopping, dangerous drug combinations and abuse patterns, but for decades the company chose to continue putting profits over public safety.

The complaint alleges Express Scripts' misconduct was complex, far-reaching and violated West Virginia and federal law in multiple ways, including:

- Securing preferred formulary placement for opioids in exchange for substantial rebates and fees—thereby incentivizing increased sales and undermining clinical judgment;

- Eliminating or weakening utilization management ("UM") protocols, such as prior authorization and quantity limits, which are designed to prevent excessive or inappropriate prescribing;
- Ignoring overwhelming internal and external data that signaled widespread abuse, over prescription, and patterns of diversion — choosing profit over public safety; and
- Dispensing opioids through mail-order pharmacies without adequate controls or oversight, in clear violation of West Virginia and federal controlled substances laws.

Other states, including neighboring Kentucky, have sued Express Scripts on similar grounds. In those cases, the company has said it has worked to combat opioid overuse and abuse and would fight the allegations.

West Virginia asserts violations of the West Virginia Consumer Credit and Protection Act, federal RICO violations, negligence and additional equitable and common law claims.

A PBM is a third-party company that manages prescription drug benefits for health insurers, employers and government programs. They negotiate drug prices with pharmaceutical companies, create formularies (lists of covered drugs) and process pharmacy claims.

PBMs do not take physical custody of drugs or directly distribute them. Instead, they sit at the center of prescription drug dispensing – they contract with the drug manufacturers to determine which drugs are covered by insurers and at what reimbursement rates. They also contract with pharmacies to establish dispensing terms and reimbursement structures.

Finally, they are hired by their clients, third-party payors such as consumer health insurance plans, to administer pharmacy benefits for consumers, including processing claims and managing patients' out-of-pocket costs.

ExpressScripts also maintained a mail-order pharmacy which would fill opioid prescriptions.

U.S. District Court for the Northern District of West Virginia case number 5:25-cv-182

News from Bloomberg Terminal

Bayer Reaches Deal Over Seattle-Area School PCB Cases

Aug. 18, 2025, 10:58 AM PDT

Summary by Bloomberg AI

AI Generated

- Bayer AG agreed to settle cases related to a Seattle-area school where more than 200 people were exposed to toxic chemicals made by the company's Monsanto unit.
- The cost of the settlement is covered by a $618.1 million provision taken by Bayer to deal with its liabilities for polychlorinated biphenyls, or PCBs.
- Analysts at Jefferies wrote that "this development suggests progress toward containing PCB liabilities and reducing the risk of swelling".

By Marthe Fourcade and Jef Feeley

(Bloomberg) --

Bayer AG agreed to settle cases related to a Seattle-area school where more than 200 people were exposed to toxic chemicals made by the company's Monsanto unit.

Bayer didn't disclose the financial terms of the accord, but said the cost was covered by a $618.1 million provision taken this month to deal with the company's liabilities for polychlorinated biphenyls, or PCBs, once manufactured by Monsanto. The company's shares rose 2.3% in Germany.

Ex-students and teachers at the Sky Valley School outside Seattle sued Bayer and Monsanto over injuries tied to PCBs contained in aging fluorescent-light fixtures. The deal announced by Bayer – already enmeshed in multiyear litigation over its herbicide Roundup – is seen as a positive development in its handling of a wave of PCB lawsuits over Monsanto building materials made half a century ago.

"This development suggests progress toward containing PCB liabilities and reducing the risk of swelling," analysts at Jefferies wrote in a note.

Bayer, which acquired Monsanto in 2018 for $63 billion, already has agreed to pay almost $2 billion in settlements in PCB cases brought by states, cities and counties. Separate litigation over Monsanto's Roundup weedkiller has created a drag on the German conglomerate's shares.

The company has reserved more than $17 billion for US Roundup suits. Monsanto stopped using PCBs in its products in 1977.

Analysts have cast a wary eye on Bayer's burgeoning PCB problem. Bloomberg Intelligence analyst Holly Froum has projected it may cost Monsanto and two other companies embroiled in PCBs litigation — Eastman Chemical's Solutia and Pfizer's Pharmacia — as much as $3.9 billion to settle the remaining cases.

The settlement announced Monday covers more than 200 plaintiffs with ties to the Sky Valley School, Bayer said. It doesn't wipe out the 10 verdicts in which juries in Washington State already have awarded a total of more than $1 billion, the company said. Those awards are under appeal.

Bayer is asking the Washington Supreme Court to throw out the PCB verdicts based on its legal defenses. The court heard arguments in February, but has yet to hand down a ruling. An intermediate appellate court's backing of Bayer's position on the PCB cases prompted the review by the state's highest court.

"While the company remains confident in its legal strategy and defenses, and is fully prepared to defend cases at trial, it has maintained it will consider resolving cases on appropriate terms when it is strategically advantageous to help mitigate the risks and uncertainties of this litigation," Bayer officials said in a release.

Washington Verdict

Earlier this year, state-court jurors in Washington ordered Bayer to pay $100 million to students and teachers exposed to PCBs, which were used used in electrical transformers, paints and sealants for their fire-resistant properties. The compounds were banned in the US in 1979 after researchers found they posed a cancer risk.

The company still faces dozens of PCB suits by school districts, states and cities over health exposure and environmental contamination in buildings, landfills and waterways, according to Bayer's 2023 annual report.

The case before the Washington Supreme Court is Erickson v. Pharmacia LLC, No. 103135-1, Washington Supreme Court (Olympia)

(Corrects reserve number in second paragraph)

--With assistance from Sonja Wind.

To contact the reporters on this story:
Marthe Fourcade in Paris at mfourcade@bloomberg.net;
Jef Feeley in Wilmington, Delaware at jfeeley@bloomberg.net

To contact the editors responsible for this story:
Eric Pfanner at epfanner1@bloomberg.net
Anthony Aarons

Expert Opinion | Litigation

'If Litigation were a Game, it Would be Cheating' Fraudulent Removal as Denial of Due Process

August 18, 2025 | By Majed Nachawati
Michael Gorwitz

Majed Nachawati, left, and Michael Gorwitz, right, with Nachawati Law Group. Courtesy photos

After seven long years of heated debate, on June 4, 2025, the U.S. Judicial Conference's Committee on Rules of Practice and Procedure finally approved the framework of a new rule of civil procedure specifically directed to multidistrict litigation, Federal Rule of Civil Procedure 16.1. The new rule is set to take effect Dec. 1, 2025. While Fed. R. Civ. P. 16.1 will provide important guidance for managing unwieldy MDLs, which comprised more than 70% of the civil court docket in 2023, the drafters crucially failed to address an ongoing injustice in MDL practice: fraudulent removals.

In a 2021 article in the Harvard Law Review devoted to the topic, (Fraudulent Removal, 135 Harv. L. Rev. F. 87, 88 (2021)), Professors Zachary D. Clopton and Alexandra D. Lahav defined "fraudulent removal" as occurring "when a removing defendant's assertion of federal jurisdiction is made in bad faith or is wholly insubstantial." The authors assert that "fraudulent removal wastes judicial resources, needlessly delays proceedings, and offends notions of federalism. It is different from merely forum shopping, but instead is more like a form of misrepresentation, a fraud upon the court. If litigation were a game, it would be cheating."

While fraudulent removal is a problem throughout the judiciary, it is especially pernicious in MDL litigation. In a December 2024 Louisiana Law Review article, (Get Off My Case: Removal, Remand, and Judicial Federalism in Multidistrict Litigation, 85 La. L. Rev. 1, 4-5 (2024)), surveying the effect of removals, fraudulent or otherwise, in the opioid MDL, *In re* National Prescription Opiate Litigation, Professor Patrick D. Murphree found that "[b]ecause the MDL Court delayed ruling on the vast majority of these [remand] motions, plaintiffs over whom federal courts may have lacked jurisdiction were kept in limbo for nearly five years until the Sixth Circuit eventually ordered the MDL Court to begin ruling." According to Professor Murphree's research, by the time the Sixth Circuit finally intervened in April 2022, "300 remand motions were pending, many for years. The MDL Court's refusal to rule had thus stymied those plaintiffs' right to pursue their cases in their chosen forum." This denial of the fundamental right to be heard has only continued to grow worse in MDL litigation.

The Advisory Committee Notes to Fed. R. Civ. P. 16.1 set to take effect in December acknowledge the importance of addressing the federal court's jurisdiction early in consolidated MDL proceedings, but the rule itself provides no mechanism to do so. Taking just one example, the Advisory Note to Rule 16.1(b)(2)(D) states that "it is important to address other matters that can arise, such as properly handling any jurisdictional or venue issues that might be presented," but Rule 16.1(b)(2)(D) itself provides no mechanism for doing so, nor does any other clause of Rule 16.1. In full, Rule 16.1(b)(2)(D) provides only that the parties' initial management conference report must address "how to manage the direct filing of new actions in the MDL proceedings." Nowhere does Rule 16.1 direct the MDL Court to provide plaintiffs involuntarily swept up by a fraudulent removal a meaningful opportunity to be heard on whether the MDL court possesses federal jurisdiction over their individual action, thereby violating their right to procedural due process.

According to the famous formulation set forth by Justice Powell in *Goldberg v. Kelly* (397 U.S. 254, 262-63, 90 S. Ct. 1011, 1017-18 (1970)), "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss, and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." When it comes to fraudulent removals in multidistrict litigation, the deprivation is of one of the most fundamental rights under the constitution, the meaningful opportunity to be heard. Thus, there are few losses more "grievous" a plaintiff can suffer in civil litigation.

One of the main strategies for plaintiffs who do not want to be caught up in the dragnet of multidistrict litigation is to avoid the existence of federal jurisdiction. As recently recognized by the Supreme Court in *Royal Canin U.S.A. v. Wullschleger*, (604 U.S. 22, 35, 145 S. Ct. 41, 52 (2025)), there is nothing improper with a plaintiff taking strategic steps to have their case heard in the forum of their choosing. "The plaintiff is master of the complaint ... she can establish—or not—the basis for a federal court's subject-matter jurisdiction." Failing to recognize this fundamental principle, defendants, and increasingly lower federal courts, attempt to deny plaintiffs this basic mastery of their complaints and fraudulently force them into federal court, regardless of the existence of subject-matter jurisdiction.

It is axiomatic that the federal judiciary is comprised of courts of limited jurisdiction. Therefore, to force plaintiffs out of state court and into an MDL, defendants must find a purported basis for removal. While fraudulent joinder, federal contractor, and federal question, etc., provide avenues for a federal court to exercise subject-matter jurisdiction over a cause of action (and thereby convey it into an MDL), that jurisdictional question is antecedent to any other action a court of limited jurisdiction can perform. All too often, courts have recently ignored this fundamental requirement and deferred ruling on jurisdiction while acting ultra vires to consolidate cases over which they possess no federal authority. An error that continues to go unaddressed in the new Fed. R. Civ. P. 16.1.

Drawing from language that dates back to 1868, the Supreme Court in *Steel v. Citizens for a Better Env't,* (523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 7 Wall. 506, 514 (1868)), emphasizes that "[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." This essential issue is presently being overlooked by the federal judiciary in an attempt to force plaintiffs against their will into consolidated proceedings.

The effect of a notice of removal is automatic. A defendant wishing to fraudulently force a case into an MDL need only file a notice of removal—with or without genuine legal basis—for the state court to be divested of jurisdiction. Once the state court has been divested of control, a defendant tags the case into the MDL, which results in a conditional transfer order from the Joint Panel on Multidistrict Litigation (JPML), which the plaintiff must then attempt to vacate. Currently however, the JPML does not examine the merits of a removal but instead is tasked only with determining whether the removed action is factually similar to those in the MDL to warrant transfer and consolidation. This order of operations is unconstitutional, because without jurisdiction, a federal court possesses no authority to take any action beyond dismissal.

The entire system is set up to defer ruling on the jurisdictional question until the removed action is squirreled away in an MDL where a plaintiff loses all control over their now consolidated action. Tasked with handling thousands of separate actions, the MDL court becomes a Kafkaesque bureaucratic maze, where plaintiffs are often prevented from bringing motions, and remands are heard on a timeline of the court's choosing, if they are heard at all. All the while plaintiffs are subject to the orders of multiple federal courts that have never addressed the question of their own limited jurisdiction. Rather than remedying this grievous error, Rule 16.1 only serves to reinforce a broken system.

The JPML system is set to operate on the assumption that the jurisdictional question will ultimately be addressed by the MDL court, but there is no guarantee of if or when that will ever occur. Furthermore, if the MDL is settled, then no federal court will ever address the existence of the federal jurisdiction to which a plaintiff is unwillingly subjected. While appearing to be convoluted, the strategy is actually quite simple when it comes to the denial of fundamental procedural due process. Fraudulently remove an action regardless of whether the removal is proper, tag it into the MDL, have the JPML ignore the jurisdictional issues, and get the matter lodged in the MDL for as long as possible. No federal court can take any action without subject-matter jurisdiction, and yet these plaintiffs are subjected to federal jurisdiction for years on end. In a recent *Texas Tech Law Review* article on the related issue of so-called "snap" removal, (Snap Removal and the Anti-Injunction Act, 57 Tex. Tech. L. Rev. 153 (2024)), Michael M. Gallagher has suggested that such removals violate the Anti-Injunction Act, because the baseless removals constitute unauthorized injunctions of state court proceedings. The same is true for the entire concept of multidistrict litigation.

One of the most fundamental obligations of the judicial system is affording a party a meaningful opportunity to be heard. When federal courts defer, and defer, and defer, hearing a motion to remand, they violate not only the plaintiff's fundamental right to procedural due process, but they also violate their own constitutional jurisdictional limitations. If a defendant attempts to fraudulently force a plaintiff into an MDL through a baseless notice of removal, the first question any federal court should address is whether they possess subject matter jurisdiction. Instead, at present it is often the last question they address, if it is ever addressed at all. The new Fed. R. Civ. P. 16.1 could have remedied this injustice, but instead it merely perpetuates it. As the foundational maxim goes, justice delayed is justice denied.

Majed Nachawati *is the founding partner of Dallas-based Nachawati Law Group.* **Michael Gorwitz** *is a senior attorney at Nachawati Law Group.*

Is jury-duty fatigue to blame for $175M Roundup verdict?

legalnewsline.com/pennsylvania-record/is-jury-duty-fatigue-to-blame-for-175m-roundup-verdict/article_d265aab5-4124-4467-8346-d5e4aa5bf2dc.html

John O’Brien, John O'Brien August 18, 2025

PHILADELPHIA - Jurors felt pressured to punish us, Monsanto is telling the Pennsylvania Supreme Court in a case that could also determine the future of hundreds of lawsuits over the weedkiller Roundup in the state.

The company on Aug. 14 asked the high court to review Ernest Caranci's $175 million verdict, awarded by a Philadelphia jury that was already nearing the end of its rope before being told on a Friday that a failure to agree would keep them on jury duty until well into the following week, the company says.

Likening the situation to a case from the 1930s during which a court officer told a jury it would "get the devil" from the trial judge if it did not return a verdict soon, Monsanto attacked the state Superior Court's decision in May to not strike the jury vote based on improper *ex parte* communication.

A common-sense approach is needed to decide whether a court officer telling jurors there would be no mistrial until they deliberated for three more days resulted in a "reasonable possibility of prejudice," considering Monsanto had no knowledge of that statement, the company says.

"That standard is easily met where, as here, a typical juror could feel pressured to reach a verdict based on the threat of being called back for several more days before a mistrial would be declared," attorneys for the company wrote.

"Yet the Superior Court avoided that straightforward conclusion by adopting a rigid test based on whether the communication was 'emotional' or related to a 'central issue in the case,' and by caricaturing a coercive threat to return for more deliberation as a mere matter of 'court procedure.'"

Bayer bought Monsanto in 2018 and the two now face tens of thousands of claims in various courts that the glyphosate in Roundup causes non-Hodgkins lymphoma. They've settled two-thirds of cases for about $11 billion, but plenty remain. Bayer recently asked the U.S. Supreme Court to hear one of them.

When deliberations began in Caranci's case after a long trial, a member of court staff was asked if 10 yes or no votes was enough for a verdict. They told jurors it was, and if that didn't happen that Friday, they'd have to come back for deliberations each day until Wednesday, when a mistrial would be declared.

A juror questioned by Monsanto said that information shifted the tone of the deliberations, with one juror declaring he would not come back past Friday. Monsanto said the jury had been stuck on a 9-3 vote before.

The Superior Court rejected the idea that the trial court needed to hold a hearing on what happened during deliberations, writing in a footnote that it would "unfairly burden jurors who have already given much time to participate in the trial."

Monsanto also claimed the trial was stacked for the plaintiffs because it could not show studies that say glyphosate is not a carcinogen while the judge allowed a controversial study from the International Agency for Research on Cancer saying it is to be introduced.

Chris Portier was the chairman on the International Agency for Research on Cancer, which kickstarted litigation in 2015 when it became the only group to find glyphosate is a probable carcinogen. He later left the IARC to work as an expert for plaintiff lawyers.

Monsanto last year won a ruling in the Third Circuit, which Pennsylvania federal courts are in, that said Roundup does not need a cancer warning. State courts refusing to acknowledge that decision is causing confusion, Monsanto says.

Selling a widely used product with a federally approved label shouldn't open Monsanto to this kind of danger in court, the company added.

"Federal law required Monsanto to use the EPA-approved label, which omits a cancer warning," Monsanto says. "Indeed, EPA has gone further, telling Monsanto that adding a cancer warning to EPA's label would be 'false and misleading' and violate (federal law).

"This is not just a matter of degree like CAUTION and DANGER - the state and federal requirements are diametrically opposed."

The verdict was a trio of losses that started Monsanto's trial experience in the Philadelphia Court of Common Pleas. The others were valued at $3.5 million and $2.2 billion, which was later reduced to $404 million.

Caranci's verdit was made up of $25 million in compensatory damages and $150 million in punitive damages. The court is notorious in the business community for giving out huge awards and has been named the No. 1 Judicial Hellhole in the country by the American Tort Reform Association.

Though the company has had success in trials, i was also hit with a $78 million verdict in Philadelphia with nearly all of it consistering of punitive damages. Recently, the trial judge reduced those damages by more than 60%.

Las Vegas resorts defeat hotel rate price-fixing class action in US appeal

reuters.com/legal/government/las-vegas-resorts-defeat-hotel-rate-price-fixing-class-action-us-appeal-2025-08-15

Mike Scarcella August 15, 2025

Caesars Palace Las Vegas Hotel and Casino is seen on the Las Vegas Strip in Las Vegas, Nevada, U.S. February 26, 2018. REUTERS/Darrin Zammit Lupi/File Photo Purchase Licensing Rights, opens new tab

Aug 15 (Reuters) - Wynn Resorts (WYNN.O), opens new tab, Caesars and Treasure Island convinced a U.S. appeals court on Friday to turn back a consumer class action lawsuit accusing them of using shared computer software algorithms to illegally coordinate on Las Vegas hotel room prices.

Affirming, opens new tab a lower court decision, a three-judge panel of the San Francisco-based 9th U.S. Circuit Court of Appeals said it wasn't enough for the consumers to show that the rival resorts used the same revenue-management service provider amid an alleged rise in room rental rates.

The plaintiffs had accused the resort companies of colluding to overcharge guests by feeding sensitive internal information to a shared software platform operated by Cendyn that offered pricing recommendations. They appealed after a judge in Nevada dismissed the lawsuit in May.

The 9th Circuit panel said the consumers had not shown there was any agreement among the hotels to follow Cendyn's pricing recommendations. The court also said that hotels' independent use of the same software did not restrain their abilities to rent hotel rooms.

"Rather than eliminating competition, pricing one's hotel rooms in a manner calculated to maximize profits is how one competes," wrote Circuit Judge Carlos Bea, joined by Circuit Judge Ana de Alba and U.S. District Court Judge Jeffrey Brown.

A lead attorney for the consumers did not immediately respond to a request for comment, and neither did the lawyer who argued for the defendants.

Cendyn said it welcomed the court's order. Wynn declined to comment. Caesars and Treasure Island did not immediately respond to requests for comment.

The hotels and software provider Cendyn have denied any wrongdoing.

U.S. courts are facing an increasing number of lawsuits claiming hotels and other industries unlawfully use revenue maximization platforms to fix prices.

Last October, a group of major casino-hotel operators in Atlantic City defeated a proposed consumer class action accusing them and a revenue management platform of overcharging for room rentals.
In dismissing the lawsuit in Las Vegas, Chief U.S. District Judge Miranda Du said the system generated pricing recommendations that hotels were not bound to follow.
The consumers in their appeal countered that even non-binding guidelines such as price recommendations can be considered an “unreasonable” restraint within a competitive market.

The case is Richard Gibson et al v. Cendyn Group et al, 9th U.S. Circuit Court of Appeals, No. 24-3576.

For plaintiffs: Steve Berman of Hagens Berman Sobol Shapiro

For defendants: Melissa Sherry of Latham & Watkins

Read more:

US proposes settlement with Greystar to end alleged rental price collusion
US Justice Dept backs consumers in Las Vegas hotel pricing case
Consumers seek second chance in Las Vegas hotel price-fixing lawsuit

Can Zuckerberg duck deposition in Meta privacy class action?

reuters.com/sustainability/boards-policy-regulation/can-zuckerberg-duck-deposition-meta-privacy-class-action-2025-08-18

Jenna Greene August 18, 2025

Facebook CEO Mark Zuckerberg testifies in Washington, U.S., April 11, 2018. REUTERS/Leah Millis/File photo Purchase Licensing Rights, opens new tab

August 18 (Reuters) - Mark Zuckerberg has better things to do than sit for a deposition.

Or so lawyers for Meta Platforms suggest in a pending petition, opens new tab to the 9th U.S. Circuit Court of Appeals, objecting to the billionaire CEO being forced to give testimony in a proposed privacy class action.
The company invokes a controversial principle known as the apex doctrine to claim Zuckerberg should be spared the hot seat, arguing that he has no "unique" knowledge of the case, and plaintiffs' lawyers could get the same information from lower-level Meta employees.

Plaintiffs want to question the CEO about allegations that Meta obtained private health information from millions of Facebook users without their knowledge or consent via its Pixel tracking tool. The claims echo those in a class action by users of fertility tracking app Flo Health, where a San Francisco jury on August 1 found Meta violated the California Invasion of Privacy Act. Damages are yet to be determined, but as I previously noted, the total could be huge.
In June, U.S. District Judge William Orrick in San Francisco agreed with U.S. Magistrate Judge Virginia DeMarchi and gave the plaintiffs a green light to depose Zuckerberg, opens new tab. However, the judge limited the session to a maximum of three hours and narrowed the scope of allowable questions to center on a consent decree Meta entered into with the Federal Trade Commission involving the Flo app and Zuckerberg's role as a final decisionmaker on privacy-related matters.
A Meta spokesperson did not respond to a request for comment. The company in court papers has denied wrongdoing in both cases.

Plaintiffs' lawyers from Gibbs Mura declined to comment for this column.

Defense counsel from Latham & Watkins and Gibson Dunn & Crutcher in July asked the 9th Circuit for a writ of mandamus to nix the deposition, calling it "a critically important issue of first impression" for the San Francisco-based court.

Mandamus is a "drastic and extraordinary" request, plaintiffs' lawyers say, arguing that the trial court judge in allowing the deposition committed no clear error to justify such relief.

But defense counsel say there's a larger issue at stake than a one-off deposition. Multi-billion-dollar companies like Meta face scores of lawsuits, and their leaders have "uniquely crucial and demanding job duties, as well as limited time," they wrote. That makes being called to testify especially burdensome.

District courts within the sprawling 9th Circuit are “deeply divided” on exactly when and how to properly apply the apex doctrine, Meta lawyers said in asking for appellate guidance.

Indeed, spats over deposing CEOs have arisen regularly in court within the 9th Circuit and beyond in cases involving companies including Microsoft, Tesla, Uber, and Alphabet. In some instances, execs were let off the hook, while others were compelled to sit for depositions.
Such demands can be more about harassment than a legitimate need for information, the Meta lawyers claim, arguing that deposition testimony is only justified if the executive has unique, first-hand knowledge that cannot be obtained elsewhere.

Here, they assert, the bid to depose Zuckerberg is “a ploy to increase the burdens of this litigation and obtain perceived leverage."

Plaintiffs' lawyers counter that state and federal procedural rules already allow subpoenaed witnesses to contest demands for their testimony. There should be “no special dispensation from civil discovery for corporate executives simply because of their status as titans of industry,” wrote, opens new tab lawyers from Gibbs Mura; Simmons Hanly Conroy; Cohen Milstein Sellers & Toll; Kiesel Law; and Terrell Marshall Law Group.
The underlying litigation began in 2022, when plaintiffs alleged Meta violated a federal wiretap law and a California privacy law, as well as its own contractual promises governing user privacy on Facebook, my Reuters colleague Jonathan Stempel reported.
According to the complaint, Meta Pixel -- an internet analytics tool that Meta makes available to website developers -- provided sensitive information about users’ health to Meta when they logged into patient portals where it had been installed, enabling Meta to make money from targeted advertising.

Meta in court papers has responded that it should not be held liable if certain healthcare providers allegedly misused Pixel, “a publicly available tool that Meta did not implement or configure on the providers’ websites.”

Plaintiffs' lawyers, in justifying their request to question Zuckerberg, argue that from the start he’s been implicated in the case. “He had personal knowledge of Meta’s intent to receive this information,” they allege, “and he knew about and played a key role in Meta’s collection of sensitive health data.”

The appeals court has not indicated when it will rule on the petition, but Meta lawyers notified the district court that Zuckerberg's deposition may proceed this month in Palo Alto if the 9th Circuit denies its mandamus petition by August 21.

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

Class Action

Manage Newsletters

Pepsi Sued for Installing Website Cookies That Users Rejected

Aug. 18, 2025, 8:27AM PDT

Frito-Lay North America Inc. and PepsiCo Inc. violated California privacy laws by allowing third parties to track users' online activities through cookies even after users rejected such tracking, according to a class complaint filed in federal court.

Lead plaintiff Mary Brown claims the defendants' websites—including doritos.com, lays.com, and gatorade.com—placed third-party cookies on users' devices without consent, even if they reject such tracking via a banner that purports to allow them to reject nonessential cookies.

The illicitly placed cookies allow companies like Google, Facebook, Microsoft, and Snapchat to intercept and collect users' private browsing data and communications on Defendants' websites, the complaint says.

The suit alleges violations of California's constitutional right to privacy, the California Invasion of Privacy Act, common law fraud and misrepresentation, unjust enrichment, and trespass to chattels.

Plaintiffs seek damages, restitution, disgorgement of profits, injunctive relief prohibiting the alleged unlawful practices, and reasonable attorneys' fees and costs.

The suit was filed Aug. 15 in the US District Court for the Northern District of California.

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

Gutride Safier LLP represents Brown and the proposed class.

The case is Brown v. Frito-Lay N. Am., Inc. , N.D. Cal., No. 4:25-cv-06929, 8/15/25 .

This story was produced by Bloomberg Law Automation.

To contact Bloomberg Law Automation: automation@bloombergindustry.com

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

California Brief

Google Beats Ohio AG's Suit to Regulate Search as Public Utility

Aug. 15, 2025, 5:56 PM PDT

Google LLC is not a common carrier that can be regulated as a public utility, an Ohio state court ruled Friday, dealing a blow to the state's attorney general.

The tech giant's search business doesn't transport property, doesn't hold itself out as indifferently providing search results, so it can't be a common carrier under Ohio law, Judge James P. Schuck of the Delaware County Court of Common Pleas ruled.

The ruling ends Ohio Attorney General Dave Yost's (R) 2021 lawsuit against the company seeking a court ruling that Google is a common carrier subject to regulation by the Ohio Public Utilities Commission and prohibited from favoring its own products search results over competitors.

Yost, who didn't immediately respond to request for comment, had argued that Google's search is so ubiquitous that it should follow the same rules the state imposes on public utilities.

The case is Ohio v. Google LLC , Ohio Ct. Com. Pl., No. 21-CV-H-060274, 8/15/25 .

To contact the reporter on this story: Isaiah Poritz in San Francisco at iporitz@bloombergindustry.com

To contact the editor responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com

Securities Law News

SEC Eyes Investor Proposal Change, ‘Material’ Reporting Rule (1)

Aug. 15, 2025, 8:25 AM PDT; Updated: Aug. 15, 2025, 9:10 AM PDT

The SEC is looking to update shareholder proposal rules to ease “compliance burdens” and help companies choose what is considered “material” to disclose to investors, according to a new agenda.

The Securities and Exchange Commission, under Republican control, is considering releasing plans for “Shareholder Proposal Modernization” and “Rationalization of Disclosure Practices” by April 2026, according to the agency’s latest semiannual rulemaking list viewed Friday on an Office of Information and Regulatory Affairs website.

The new regulatory agenda, briefly posted on the OIRA website, is the first in President Donald Trump’s second term. The site was under maintenance as of mid-morning Friday.

The SEC agenda, viewed by Bloomberg Law before the site’s maintenance, had more than 20 rulemaking items in all, including proposals on crypto trading and private offerings, as well as the shareholder proposal and material reporting plans.

An agency spokesperson didn’t immediately respond to a request for comment.

- The proposed changes for rules governing proposals that shareholders bring at companies’ annual meetings would “reduce compliance burdens” for businesses, the agenda said.
- The planned reporting rule would “rationalize disclosure practices to facilitate material disclosure by companies and shareholders’ access to that information,” according to the agenda. A company must make disclosures deemed important to a reasonable investor under the SEC’s materiality standard.
- Companies have long pushed the SEC to ease their efforts to block votes on shareholder proposals and provide more flexibility on environmental, social, and governance disclosures and other reporting.

(Updates with links to SEC agenda)

To contact the reporter on this story: Andrew Ramonas in Washington at aramonas@bloomberglaw.com

To contact the editor responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com

Tesla Banked $11 Billion By Selling Regulatory Credits. Now The Party's Over.

insideevs.com/news/767939/tesla-regulatory-credit-11-billion

Rob Stumpf

August 14, 2025

Photo by: Tesla

- **Tesla made over $11 billion by selling regulatory credits over the past decade.**
- **Its CEO, Elon Musk, called on the federal government to end all subsidies because doing so would "only help Tesla."**
- **The government did end all subsidies, and also ended the fines that incentivized automaker to purchase credits from Tesla.**

Tesla CEO Elon Musk has personally supported the end of U.S. subsidies in the automotive sector. This was mainly a rebuke to those calling for the end of the EV subsidy by also calling for oil and gas subsidies to be scrubbed, but his preferred solution eventually morphed into a push to get rid of *all* subsidies, including the EV tax credit and the like.

Well, Musk got his wish—kind of. With the passage of the Big Beautiful Bill, the EV subsidies are going away, and with it, the monetary implications of automakers not being compliant with fleet-wide Corporate Average Fuel Economy (CAFE) requirements. That single move will eliminate a revenue stream that has made Tesla nearly $11.8 billion over the last decade.

Photo by: InsideEVs

Tesla's electric empire wasn't just built on the back of its battery-powered cars. It was subsidized by automakers who purchased regulatory credits from Tesla in order to continue to build gas-guzzlers while avoiding fines from the U.S. government.

Here's how the scheme worked: All automakers have to hit CAFE and emission requirements set by the Federal government. The CAFE requirements have increased fairly steadily year-over-year since 2010 and sat at 49.2 miles per gallon in 2024, although this number includes EVs, changes based on vehicle size and is massively complicated by a variety of factors. Any automaker that didn't meet this requirement could purchase carbon credits from automakers who had a surplus of credits (like Tesla) to bring themselves below the cap, avoiding fines with (typically) cheaper credits.

It started out small, but as Tesla made more and more vehicles, it began to amass a large number of these credits that it could sell to other brands. Eventually, hundreds of thousands of dollars in revenue turned into millions. Millions turned into billions. And even recently, the sale of regulatory credits have become nearly a third of Tesla's revenue.

“These regulatory credit sales are the reason that Tesla exists today,” said Gordon Johnson, an analyst with GLJ Research. He continued: “Without regulatory credit sales, Tesla loses money in its core business."

To Johnson's point, Tesla is reliant on regulatory credit sales today as a foundational part of its revenue. These credits have been so in-demand in the past that automakers have reportedly turned to long-term contracts with Tesla so that they could purchase them.

These credits will soon become worthless under the new Republican-led tax and spending bill. The financial penalties for automakers not meeting CAFE requirements are removed, meaning that automakers won't be penalized for failing to hit that MPG requirement that incentivized them to spend money with Tesla for the past decade.

Analysts at William Blair and Co. say that the loss of regulatory credit revenue will “result in a direct hit to profitability [for Tesla]” and anticipate demand to fall by around 75% in 2026 before completely disappearing in 2027.

> Take away the subsidies. It will only help Tesla.
>
> Also, remove subsidies from all industries!
>
> — Elon Musk (@elonmusk) July 16, 2024

This is what Musk asked for, after all.

Actually, it wasn't as much of an ask as it was a demand—and eliminating wasteful taxpayer spending was one of the core pushes he had when leading up Trump's Department Of Government Efficiency. Now Tesla is reaping what its CEO sowed as its sales have dipped tremendously worldwide thanks to Musk's political activism.

Tesla's brand image has turned toxic. This has led to a global slippage of sales directly correlated with its CEO's involvement in U.S. politics. Perhaps even worse is that with the $7,500 EV tax credit going away, EV sales are expected to "collapse" in the U.S. Meaning that Tesla's home turf will have fewer people buying EVs while the rest of the world looks to other growing options as Tesla's lineup continues to show its age.

Tesla is also rewarding its CEO with a new $29 billion pay package to incentivize him to continue leading the company despite all of this potentially negative news.

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Tesla's profitability has long leaned on regulatory alchemy. While it hasn't needed these credit sales to be profitable in years, its reliance on them has certainly grown over the last few quarters (especially as sales have slipped in recent months). Soon that lead will no longer shine like gold and Tesla will have to lean into its actual sales performance for all of its income. This could mean that some drastic cost-cutting is on the horizon, or a serious sales push is needed.

Either way, Tesla's CEO got what he wanted: the EV subsidy is gone. And while it might not "help Tesla" like he predicted, at least not in the short-term, it certainly isn't helping any other automaker either.

Got a tip for us? Email: tips@insideevs.com

Tesla almost halves UK monthly lease fee as sales slump, The Times reports

reuters.com/business/autos-transportation/tesla-almost-halves-uk-monthly-lease-fee-sales-slump-times-reports-2025-08-18

Reuters August 18, 2025

(TSLA.O), opens new tab electric vehicle for just over half of what they would have paid a year ago, The Times reported on Monday, citing industry sources.
Tesla has been forced to offer discounts of up to 40% to car leasing companies to shift more units, the report said.

The discounts are also due to the lack of storage space for Tesla vehicles in the UK, the report said.

Reuters could not immediately confirm the report. Tesla did not immediately respond to a Reuters request for comment.

Tesla's July sales in the UK fell about 60% to 987 units in July, according to the latest data from the Society of Motor Manufacturers and Traders (SMMT).

British new car registrations overall fell about 5% year-on-year in July, according to the SMMT.
Battery electric vehicles are now projected to account for 23.8% of new registrations in 2025, slightly up from SMMT's previous forecast of 23.5%.

Reporting by Gnaneshwar Rajan in Bengaluru; Editing by Kim Coghill and Tom Hogue

Tesla says Model Y L is 'coming soon'

reuters.com/business/autos-transportation/tesla-says-model-y-l-is-coming-soon-2025-08-18

Reuters August 18, 2025

People walk past a showroom outside Tesla China headquarters at China Central Mall in Beijing, China July 11, 2018. REUTERS/Jason Lee/File Photo Purchase Licensing Rights, opens new tab

(TSLA.O), opens new tab Model Y L is "coming soon", the electric car company said on Chinese social media platform Weibo on Monday, having previously registered plans to introduce the new model in China.
The Model Y L is a six-seat version of its best-selling Model Y with a longer wheelbase. Tesla also shared a video of the new model in its Weibo post.

Tesla is refreshing its line-up in the face of growing competition that includes Xiaomi's recently launched YU7.
Elon Musk's Tesla registered an 8.4% fall in July sales of its China-made electric vehicles as Chinese competitors continue to offer lower-priced EVs against the backdrop of a price war that has bruised automakers, suppliers and dealerships.
A longer-range, rear-wheel drive Model 3 is also coming to the Chinese market, according to filing information published on China's industry ministry website in July.

Reporting by Beijing Newsroom and Brenda Goh in Shanghai Editing by Joe Bavier and David Goodman

Securities Law News

Integrum Affiliate Defeats Fraud Counterclaim in Delaware

Aug. 15, 2025, 5:38 PM PDT

A private equity affiliate of Integrum Holdings LP escaped fraud allegations in Delaware Chancery court Friday, bringing OPN Holdings Co. Ltd.'s countersuit over alleged stock purchase misrepresentations to a close.

Mars HoldCo Corp. and OPN's failed to plead "actual and intentional" fraud or show liability in their counterclaim against Sam I Aggregator LP, Chancellor Kathaleen St. J. McCormick said in an opinion. Mars and OPN also failed to adequately allege Integrum's knowledge of alleged impropriety on behalf of an affiliate company's chief financial officer, warranting dismissal of the third-party claim and the counterclaim.

Sam I Aggregator executed a stock purchase agreement with OPN and its affiliate in 2022 for card processing platform Merchant E-Solutions Inc, worth roughly $375 million. Sam I later sued the two buyers, alleging a breach of contract regarding a $50 million deferred payment.

The buyers countersued, alleging Sam I made accounting process misrepresentations regarding the sale and failed to disclose certain liabilities. The buyers further alleged Integrum aided and abetted Merchant E-Solutions' CFO's alleged breaches of fiduciary duty.

But the alleged accounting misrepresentations were "expressly" carved out in a disclosure letter, which stated that there hadn't been deficiencies identified in the accounting process representations, McCormick wrote. Absent this, the buyers fail to plead the "actual and intentional" fraud required under the agreement due to the carve-out.

"Put simply, it is not reasonable to infer that seller intended to conceal from buyer allegations expressly referenced five times in the disclosure letter," McCormick said.

The argument alleging withheld liabilities, such as the cost of migrating to Amazon Web Services, also fails since estimated future costs don't constitute a "present obligation" or liability requiring disclosure.

The third-party aiding-and-abetting claim also fails since nothing in the record suggests Integrum viewed it as improper for it to receive confidential information from Merchant E-Solutions.

Potter Anderson & Corroon LLP and Simpson Thacher & Bartlett LLP represent Sam I and Integrum. Morris Nichols Arsht & Tunnell LLP and Mayer Brown LLP represent Mars HoldCo and OPN.

The case is Sam I Aggregator LP v. Mars Holdco Corp. , Del. Ch., No. 2023-1217, 8/15/25 .

To contact the reporter on this story: Quinn Wilson in Washington at qwilson@bloombergindustry.com

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

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Defense Attys Predict Rise In Shareholder Suits, Report Says

By **Jessica Corso**

Law360 (August 15, 2025, 9:31 PM EDT) -- Nearly three-quarters of defense attorneys surveyed by high-risk insurance firm Inigo believe there will be an increase in private securities litigation over the next year, especially in the area of artificial intelligence, according to a report released by Inigo.

Inigo said it interviewed "many of the top securities practitioners in the U.S." to put together its fifth annual report, which attempts to predict the direction of securities litigation and regulatory landscape.

The report, released on Aug. 11, keeps the names of quoted attorneys anonymous and does not state the number of lawyers surveyed. The survey authors didn't immediately respond to a request for comment Friday evening.

Inigo predicted the number of shareholder class actions filed over the next 12 months would rise to prepandemic levels after 72% of the defense attorneys surveyed said they expected a rise in newly filed cases.

According to a July report from Cornerstone Research, 114 securities class action lawsuits were filed during the first half of the year, which is in line with the historic semiannual average.

While filing has slowed slightly since the beginning of the year, Inigo said it expects the volume to increase going forward based on its interviews with defense counsel. Many said the state of the economy would drive new filings as companies may fail to hit their revenue goals in a weak market, with some executives possibly tempted to fudge the numbers, according to some respondents.

"Pressure to drive guidance will drive idiotic behavior," an anonymous attorney reportedly said. "The plaintiffs know that."

Inigo also spoke to defense attorneys about the impact the change in administration could have on enforcement actions taken by the U.S. Securities and Exchange Commission.

The SEC under Chair Paul Atkins has promised to return to its "core mission" and has **begun to comply** with the White House's directive to deregulate the federal government.

Fifty-four percent of survey respondents told Inigo that they expect the current SEC regime to be more defendant-friendly, with deregulation meaning companies are less likely to run afoul of regulators.

Respondents also said staff cuts at the agency, with enforcement staff **expected to be reduced** to pre-Dodd Frank levels, are likely to lead to fewer enforcement actions.

Response times have already slowed down at the agency, both because there are fewer employees and a new reporting structure, with a permanent head of enforcement yet to be announced, respondents said.

"We can't get hold of anyone at the SEC anymore," an anonymous respondent reportedly told Inigo. "Everyone we dealt with has gone and trying to get a response from anyone is impossible."

However, 76% of respondents said they expect state agencies to step in and fill the gaps left by the SEC, with some reporting that they are already seeing this shift happening. Inigo predicts that state attorneys general will file more lawsuits against companies in 2025 than ever before.

--Editing by Drashti Mehta.

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Charter Hid Losses After FCC Subsidies Ended, Investor Says

By **Sydney Price**

Law360 (August 15, 2025, 6:17 PM EDT) -- Charter Communications has been hit with a proposed shareholder class action alleging it misled investors about its ability to offset internet customer losses after the end of the FCC's pandemic-era Affordable Connectivity Program, which 5 million of Charter's customers used.

According to the complaint filed Thursday by shareholder Mark Sandoval, Charter's shares dropped by nearly a fifth of their value in July when the company announced lower-than-expected growth for the year, and year-over-year fall in internet customers of 117,000, nearly double the 66,000 reported in the prior quarter.

For three years, Charter had serviced millions of customers with the FCC's Affordable Connectivity Program, which began in December 2021 and ended in June 2024, according to the complaint. Under the program, the FCC provided funding to Charter and other internet providers in exchange for subsidizing high-speed internet plans for low-income households.

The suit's proposed class period begins July 26, 2024, about a month after the FCC ended the ACP. On that day, the company explained that the loss of residential internet customers during the second quarter of the year due to the termination of the program was being managed, and that Charter had "retained the vast majority of ACP customers so far."

For several months, Charter continued to conceal that the end of the ACP was "actually having a sustaining impact on Internet customer declines and revenue," the suit claims.

For example, in January 2025, Charter told investors during a full-year 2024 earnings call that it "managed the end of the Affordable Connectivity Program successfully," and "the impact of the elimination of the ACP is behind us," which the complaint argues was misleading.

The truth emerged, the suit says, on July 25, the day Charter issued its second quarter 2025 financial results. On that day, Charter reported internet customer losses had increased from the prior year, after adjusting for the impact of the ACP.

"The drop included the impact of approximately 50,000 disconnects related to the end of the ACP in the second quarter of 2024," the suit states. "The Internet customer decrease number also marked a dramatic reversal of slowing customer losses, when compared to the prior quarter of only 66,000 Internet customer decreases."

Analysts reacted swiftly and negatively, and shares of Charter dropped $70.25 each, or about 18%, to close at $309.75 on July 25, according to the complaint.

In addition to Charter, its CEO Chris Winfrey and Chief Financial Officer Jessica Fischer are individual defendants in the suit.

The investor accuses them of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

Charter declined to comment on the suit on Friday. Counsel for Sandoval did not immediately respond to requests for comment on Friday.

Sandoval is represented by Scott Edelsberg and Gabriel Mandler of Edelsberg Law PA, and Andrew J. Shamis of Shamis & Gentile PA.

Counsel information for Charter and the individual defendants was not immediately available Friday.

The case is Sandoval v. Charter Communications Inc. et al., case number 1:25-cv-06747, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

Update: This story has been updated with Charter's response to a request for comment.

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Judge Tosses GitLab Investors' AI Hype Suit

By **Jessica Corso**

Law360 (August 15, 2025, 7:06 PM EDT) -- Software development collaboration platform GitLab has escaped a lawsuit accusing it of overhyping its artificial intelligence technology, but the California federal judge in charge of the case has given shareholders another chance to demonstrate just how the technology allegedly was not up to snuff.

U.S. District Judge Eumi Lee dismissed a proposed class action lawsuit against GitLab and three of its executives on Thursday, saying that lead shareholder Dutch Smith had not shown how the company's AI claims were false.

Accounts provided by Smith "are too generic because they do not identify a single AI feature that was not 'matching' its claimed capabilities, nor do they explain how the features were failing to meet expectations," Judge Lee wrote.

She gave Smith a chance to replead his claims, saying he had thirty days to file an amended complaint that overcomes the deficiencies of the now-dismissed complaint.

"Upon filing the third amended complaint, plaintiff shall also file a redlined version comparing it to the second amended complaint," the judge said.

Neither an attorney for Smith nor attorneys for GitLab immediately responded to a request for comment Friday.

Investors **sued last year**, claiming that GitLab's stock price dropped twice in the wake of revelations that it was not meeting expected revenue goals. Suing investors claimed that the company increased the price of its most popular subscription tier in part because of the supposedly new AI capabilities.

While revenue continued to increase after the price went up, investors argued that it did not increase as much as anticipated by earlier company statements and that the market reacted poorly to the news.

Judge Lee, however, said that statements made about the tier price increase and projected revenue were either corporate puffery or came with standard warnings that the statements were forward-looking and may not come to pass.

"The court cannot infer fraud nor loss causation solely from GitLab's alleged failure to meet its financial projections," she said.

GitLab is one of many companies to be hit by so-called "AI-washing" claims in recent years as the technology becomes more popular and some investors claim that publicly-traded companies are overselling its capabilities.

Cornerstone Research **reported last month** that 12 shareholder class actions containing claims about corporate AI use have been filed so far this year. The number of AI-based securities suits filed this year is projected to surpass the 15 such cases filed over the course of 2024, according to the report.

Smith is represented by Adam M. Apton of Levi & Korsinsky LLP.

GitLab and its executives are represented by Catherine Kevane, Fiona Tang, Julian Sarabia and Felix

Lee of Fenwick & West LLP.

The case is Dolly v. GitLab Inc. et al., case number 5:24-cv-06244, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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Twitter Investor Cites New Del. Backing For Musk Suit Reboot

By **Jeff Montgomery**

Law360 (August 15, 2025, 4:29 PM EDT) -- A Twitter investor who lost a suit for damages after selling his shares when Elon Musk briefly balked at closing on his buyout of the social media giant has asked Delaware's Court of Chancery to reconsider, citing an agency document that purportedly contradicts Musk's defenses.

Software engineer ATM Shafiqul Khalid, acting as his own attorney, said in a **brief** Friday that a U.S. Securities and Exchange Commission notice shows that Musk terminated the deal, in contrast to claims that Musk merely put the deal on hold temporarily. That distinction, Khalid said, supports his right to seek damages from Musk for a prohibited deal cutoff that prompted him to cash out prematurely.

"The court was misled by the defendants' false statements and mischaracterization of the facts, which effectively insulated Musk from accountability for his actions," according to Khalid's pro se brief, which was accompanied by an amended complaint. "The exercise of Musk's contractual right to terminate and abandon the agreement is materially different from the mere act of causing the buyer to send a termination notice."

Chancellor Kathaleen St. J. McCormick **dismissed** all 11 of Khalid's original counts on July 18, finding that the merger closed on the terms as described, with the cashed-out Khalid no longer a stockholder and having no standing.

The case was declared over despite Khalid's arguments that the merger had been terminated — and not paused — by Musk before being taken up again by the court without consideration of the SEC termination notice.

Claims against Musk were said to have failed because Khalid — by then no longer a stockholder — lacked standing to pursue them over an alleged breach of the merger agreement, the chancellor ruled. The decision also noted that "Delaware courts are hesitant to confer third-party beneficiary status to stockholders under corporate contracts for a mix of doctrinal, practical and policy reasons."

Zacharia Chibane, X Corp.'s senior counsel, told Chancellor McCormick in January that Khalid, a Washington state resident, bought $7.4 million worth of Twitter stock at $49.46 per share and could have earned the premium from an eventual $54.20-per-share deal for investors, but he bailed early.

Khalid instead sold early at $39.60 per share, purportedly on news of Musk's alleged exit, a development that sent share prices down. Musk, however, reversed his stand, declared his deal revived and went forward to a $54.20 closing, based on what Khalid said was non-existent authority on Musk's part to undo his exit.

"The merger agreement contains no provision for a temporary hold, the complaint never alleged such a condition, and no facts can reasonably be inferred to suggest that the agreement was 'temporarily on hold' when Khalid sold his shares up to July 11, 2022," Khalid's motion said.

In his brief, Khalid said he consistently argued, based on his allegations, "that the agreement was fully terminated, and the market reflected this complete termination, wiping out all merger premium and causing direct injury to him."

A portion of the agreement, cited in a first amended complaint docketed by Khalid, said damages in the event of a termination would include "lost stockholder premium, other combination opportunities and the time value of money, which shall be deemed in such event to be damages of such party."

In the motion to amend the complaint Khalid cited "new evidence — specifically, the merger termination letter filed by Musk with the SEC — which directly contradicts Musk's prior assertion that the merger was not abandoned. This letter was not previously presented to the court and likely caused a misunderstanding."

Khalid said in the court filings that Musk "misled the court by asserting that the merger was merely 'on hold' and later completed, and by suggesting that Musk only caused the termination letter to be sent" rather than being the person who committed an alleged wrong that led to Khalid's loss.

Counsel for Musk did not immediately respond to requests for comment.

ATM Shafiqul Khalid represented himself.

Elon Musk, X Corp. and X Holdings Corp. are represented by Catherine A. Gaul and Randall J. Teti of Ashby & Geddes and Zacharia M. Chibane.

The case is ATM Shafiqul Khalid v. Elon Musk et al., case number 2024-0443, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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$111.25M Del. Settlement Proposed For Cencora Opioid Suits

By **Jeff Montgomery**

Law360 (August 15, 2025, 6:26 PM EDT) -- Executives and board members of Cencora Corp. — formerly AmerisourceBergen — have tentatively settled for $111.25 million a Delaware Court of Chancery stockholder derivative suit accusing them of taking a "devil may care" attitude toward the illegal distribution of opioid painkillers at the center of a nationwide addiction epidemic.

The terms, still subject to court approval, were described in a brief as seeking to compensate the drug company, after legal fees, for harm traced to alleged failures by its leadership to address mounting risks from inadequately managed and supervised opioid distribution.

Details match a mediator's proposal issued in December for settlement of the case, filed in late 2021 and revived in December 2022 after having been dismissed by Delaware's Court of Chancery. The lower court dismissal relied in part on facts underlying the still-earlier dismissal of a federal opioid case in West Virginia.

Counsel for the company and stockholders did not immediately respond to requests for comment.

Pension fund stockholders had alleged in the original, 154-page complaint that repeated failures by AmerisourceBergen's leadership to respond to "undeniable evidence of widespread illegal opioid sales" led the company to pay almost $7 billion in fines and settlements.

Those same failures "meaningfully exacerbated the opioid epidemic that continues to plague the United States," they alleged.

The proposal approached a $123 million settlement approved by the Chancery Court in December 2024 that ended litigation accusing Walmart of multiyear opioid prescription oversight failures. Vice Chancellor J. Travis Laster approved a $24.6 million attorney fee in that case.

Cencora previously also agreed to pay up to about $6.4 billion over 18 years under a nationwide agreement to settle state and local government opioid damage claims.

The proposed deal in Chancery Court said up to 25% of the Cencora payout in Delaware could be set aside for attorney fees and costs.

The case had been on the ropes in December 2022, when Vice Chancellor J. Travis Laster — after noting that the company knew it was reporting "astoundingly low levels of suspicious orders" for opioids — said that a federal judge in West Virginia had already "expressly" ruled that the company had complied with its anti-drug diversion duties.

In addition, the vice chancellor found, stockholders failed to demand board action on the damage claims before suing on their behalf, and failed to show that a majority of the board was too conflicted to pursue the claims.

Delaware's full, five-member Supreme Court rejected the lower court's reasoning, including the Chancery's reliance on "a contradictory version" of facts underlying the earlier dismissal of the West Virginia case.

According to the Delaware complaint, the company's officers and directors failed "to adopt, implement or oversee reasonable policies and practices to prevent the unlawful distribution of deadly and highly addictive drugs" and repeatedly failed to act "when undeniable evidence of widespread illegal opioid sales emerged."

Instead, the initial suit said, "certain members of senior management and ABC's Board have long reflected just the type of 'devil may care' attitude that is synonymous with a breach of fiduciary duty. As a result, ABC has faced serious threats of the loss of its drug distribution licenses, and has suffered billions of dollars in fines and harm."

The workup to the settlement included stockholder counsel meetings with attorneys for the company's special litigation committee and the equivalent of more than six working days worth of committee legal document reviews.

After the review sessions, the parties met for a full day mediation session with Layn R. Phillips, a former U.S. attorney, former U.S. district court judge and founder of Phillips ADR Enterprises, with Phillips proposing the $111.25 million settlement afterward.

The stipulation asserted that the case was pursued in good faith and produced "fair, reasonable and adequate" terms in light of the risks, costs and benefit of continued litigation. Those named in the suit, meanwhile, continue to deny the allegations of fault, wrongdoing, liability, and the existence of any damages.

The class is represented by Samuel L. Closic, Eric J. Juray, Christine N. Chappelear and Seth T. Ford of Prickett Jones & Elliott PA, Eric L. Zagar and Grant D. Goodhart III of Kessler Topaz Meltzer & Check LLP, Gregory V. Varallo, Andrew Blumberg, Jeroen van Kwawagen and Eric J. Riedel of Bernstein Litowitz Berger & Grossmann LLP, Frank R. Schirripa, Daniel B. Rehns, Kurt Hunciker and Scott Jacobsen of Hach Rose Schirripa & Cheverie LLP, Daniel Tepper of Levi & Korsinsky LLP, and Brian J. Robbins and Craig W. Smith of Robbins LLP.

The Special Litigation Committee of Cencora Inc. is represented by Joseph L. Christensen of Christensen Law LLC and Alan S. Goudiss, Jeffrey D. Hoschander, K. Mallory Brennan and Lauren N. Beebe of Allen Overy Shearman Sterling US LLP.

AmerisourceBergen Corp., now known as Cencora Inc., is represented by Stephen C. Norman, Jennifer C. Wasson, Tyler J. Leavengood and Christopher D. Renaud of Potter Anderson & Corroon LLP and Michael D. Blanchard and Amelia Pennington of Morgan Lewis & Bockius LLP.

The case is Lebanon County Employees' Retirement Fund and Teamsters Local 443 Health Services & Insurance Plan v. Steven H. Collis, et al., case number 2021-1118, in the Court of Chancery of the State of Delaware.

--Editing by Emily Kokoll.

Correction: This story has been updated to correct counsel information.

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Schwab Defends Antitrust Settlement From Iowa AG Objection

By **Sydney Price**

Law360 (August 15, 2025, 9:59 PM EDT) -- The Charles Schwab Corp. has pushed back on objections raised by the Iowa attorney general and others to an investor class action settlement over its merger with TD Ameritrade, saying its plan to implement an antitrust compliance program, among other things, "offers real value to the class."

In the reply brief filed Thursday, Schwab said it is "confident" that evidence would have shown that its acquisition of TD Ameritrade only enhanced the services it delivers to its customers, including with respect to execution quality.

Schwab calculates that 97% of its customers' orders are filled at a price that is better than the applicable benchmark price, the motion states.

The settlement, which ended the suit alleging Schwab's 2020 merger with TD Ameritrade created a monopoly in the relevant market for retail order flow, received initial **approval in February**. U.S. District Judge Amos L. Mazzant gave the proposed settlement the initial green light, finding the deal fair, reasonable and resulting from good faith, arms-length negotiations.

Dozens of objections to the proposed settlement have been filed in recent months, however, including from Charles Schwab clients and class members, court records show.

In July, the state of Iowa **urged the court** not to grant final approval of the settlement "until it reflects fair and adequate relief to the class," arguing the class members are not the primary beneficiaries of the proposed deal. While counsel for the class stands to gain almost $9 million in attorney fees and costs, the class gets "amorphous benefits" under the deal, the state said.

The state said that the **antitrust monitoring program** created by the settlement "may have some effect, but whether that effect is good for the class is unclear."

But Schwab said Thursday that the settlement is "reasonable and offers real value to the class." Schwab also said that no damages could have been awarded to the class at trial since the claims are too individualistic.

"Plaintiffs contended that hundreds of millions of trades transacted over nearly five years would have been executed at different prices if Schwab had never acquired Ameritrade," Schwab said. "Setting aside the merits, that theory could never have been proven on a classwide basis."

The litigation was filed in June 2022, with plaintiffs Jonathan Corrente, Charles Shaw and Leo Williams claiming Schwab's merger with TD Ameritrade violated the Clayton Act.

Schwab also said Thursday that the settlement's proposed antitrust compliance program will sufficiently address the risk of ongoing violations of the antitrust laws in the future.

"Schwab's antitrust compliance program will offer significant value to its customers, and it falls well within the range of reasonable remedies for settling the claim plaintiffs assert," Schwab said.

Iowa argued in its objection that plaintiffs' counsel proposed hourly rates that are "out of step with this court's precedents."

But Schwab said Thursday that the service award and attorney fees do not "offer a basis to reject the settlement."

"The parties expressly agreed that '[t]he approval, finality and effectiveness of this stipulation of settlement shall not be contingent on an award of attorney's fees and expenses, or on any service awards to plaintiffs,'" the motion states.

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

The plaintiffs are represented by Yavar Bathaee, Andrew Wolinsky, Brian J. Dunne and Edward M. Grauman of Bathaee Dunne LLP, S. Calvin Capshaw and Elizabeth L. DeRieux of Capshaw DeRieux LLP, Christopher M. Burke of Burke LLP and Chad E. Bell of Korein Tillery PC.

Charles Schwab is represented by Veronica S. Moyé of King & Spalding LLP, Daniel G. Swanson and Jason J. Mendro of Gibson Dunn & Crutcher LLP and Melissa R. Smith of Gillam & Smith LLP.

The case is Corrente et al. v. The Charles Schwab Corp., case number 4:22-cv-00470, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Katryna Perera and Sarah Jarvis. Editing by Jay Jackson Jr.

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Judge Punts On ProPay Sanctions In TelexFree Suit

By **Jared Foretek**

Law360 (August 15, 2025, 4:28 PM EDT) -- A Massachusetts magistrate judge sent a motion for sanctions against ProPay to a district judge for ruling, saying the payment company failed to take steps to preserve electronic documents but the plaintiffs hadn't proven its intent to destroy evidence in a case over its alleged involvement in TelexFree's "hybrid Ponzi-pyramid scheme."

In an order posted Friday, U.S. Magistrate Judge Katherine A. Robertson held that spoliation of emails, digital records and transaction data related to TelexFree had occurred because ProPay — TelexFree's payment processor up until 2013 — hadn't properly secured it pursuant to a litigation hold. But, she said, the lead plaintiff in the multidistrict litigation action against Wells Fargo, ProPay and others hadn't proven intent on the part of the payment processing company.

"The failure of ProPay's IT department to establish an effective litigation hold at [ProPay counsel Ian] Forrest's direction arose from its failure to exercise reasonable care in performing a legally required task and was, therefore, an act of negligence," Judge Robertson wrote.

Crucially, though, Judge Robertson said that the lead plaintiff — Anthony Cellucci — had other means of collecting much of what he claimed was lost due to ProPay's negligence.

According to Cellucci, the spoliation of the digital records meant that the company couldn't produce documents showing ProPay's knowledge of TelexFree's fraud or its communications with other parties like Wells Fargo. But Judge Robertson wrote that depositions of ProPay employees and other documents from Wells Fargo could likely fill in many of the blanks.

"Thus, even if ProPay failed to produce some [electronically stored information] related to some topics plaintiff has identified, the court infers that much of the information was produced by employees or other sources outside of ProPay," she said. "Plaintiff has not established that all (or even most) of the information he claims was lost by ProPay 'is unavailable in any other location.'"

As for claims from the plaintiff's expert witness that internal ProPay communications would have demonstrated that the company knew of TelexFree's fraud, the judge called it "speculation."

In effect, Judge Robertson kicked Cellucci's sanctions motion back up to U.S. District Judge Nathaniel M. Gorton, granting that spoliation occurred but denying entry of judgment.

"Plaintiff's motion is granted in part and referred to the presiding district judge for consideration, at the appropriate juncture, of the sanction, if any, to be imposed for negligent spoliation of evidence," she wrote.

Attorneys for Cellucci and ProPay did not immediately respond to Law360's requests for comment Friday.

ProPay, Wells Fargo and others are among the various remaining defendants of different lawsuits over the fraud that have been consolidated in Massachusetts federal court, with the plaintiffs claiming that ProPay worked as TelexFree's payment processor despite knowing it was a fraud and that Wells Fargo shouldn't have allowed millions of dollars to be transferred by the Ponzi scheme's operators out of the country as regulators pursued them.

The scheme ran from 2012 to 2014, and the $1 billion fraud involved nearly 2 million individuals, according to the government. The company marketed itself as a Skype-like internet communications company, charging participants to work as promoters of the service on a commissions basis.

A grand jury charged TelexFree's founders, James Merrill and Carlos Wanzeler, with several counts of wire fraud in 2014, the year Cellucci brought his proposed class action. Merrill struck a plea deal for a sentence of six years in prison in 2017. Wanzeler is likely hiding out in Brazil, the government said.

In April, Judge Gorton **denied** Cellucci's motion to certify a class of roughly 500,000 individuals who lost money, ruling that the plaintiffs wouldn't have a reliable way to identify class members and calculate damages. The judge said TelexFree's internal database known as SIG wouldn't suffice, because the vast majority of the company's revenues came from membership payments and nearly "90% of those membership payments were made as a result of triangular transactions," many of which involved off-the-books payments.

"Those 'triangular transactions' purportedly cannot be incorporated into the calculation of participants' net losses because there is no record of them in the SIG database," he said.

Cellucci is represented by Robert J. Bonsignore of Bonsignore Trial Lawyers PLLC, James Wagstaffe of Adamski Moroski Madden Cumberland & Green LLP, Peter A. Barile III of Lowey Dannenberg PC, E. Powell Miller and Ann L. Miller of The Miller Law Firm PC, and Steven Rhodes of Steven Rhodes Consulting.

ProPay is represented by J. Andrew Pratt, David L. Balser, Phyllis B. Sumner, Charles G. Spalding Jr. and Alexandra H. Titus of King & Spalding LLP, as well as Douglas S. Brooks of Libby Hoopes Brooks PC.

The case is In re: Telexfree Securities Litigation, case number 4:14-md-2566, in the U.S. District Court for the District of Massachusetts.

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

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Argentina Can Stay YPF Stake Turnover, 2nd Circ. Says

By **Lauren Berg**

Law360 (August 15, 2025, 10:54 PM EDT) -- The Second Circuit on Friday paused a New York federal judge's order requiring Argentina to give up its 51% equity stake in the nationalized oil company YPF SA to partially pay off a $16.1 billion judgment in investor litigation, while the country appeals.

In a brief **order**, the appellate court stayed rulings in cases brought by Bainbridge Fund Ltd., Petersen Energia Inversora SAU and Eton Park Capital Management LP seeking turnover of the Argentine Republic's 51% of YPF's shares in partial satisfaction of a **$16 billion judgment** issued against the country in September 2023 for breaching a shareholder agreement when the company was nationalized.

A spokesperson for the country applauded the order, saying in a statement Friday that the "extraordinary turnover order ... violates well-established laws of sovereign immunity, would interfere with U.S. foreign policy interests as recognized by the U.S. government, and even would require Argentina to violate its own laws."

"The Republic is confident that the Court of Appeals will also overturn the trial court's deeply flawed and unprecedented judgment and $16.1 billion damages award in the appeal underlying the turnover order," the spokesperson added.

Counsel for the investors did not immediately respond to requests for comment Friday evening.

U.S. District Judge Loretta A. Preska **in June determined** that the YPF shares are not immune from turnover under the Foreign Sovereign Immunities Act because they fall into two exceptions to the law: Argentina uses its controlling shares to direct YPF's commercial activity in the U.S., and it used the shares to effectuate the breach of the shareholder agreement at the heart of the litigation.

The investors have also shown that the assets are subject to turnover under New York law, the judge said.

What's more, the shares are not immune from turnover by virtue of being outside the United States, Judge Preska said, noting that "the FSIA does not supersede [New York law] and prevent the court from ordering the Republic, a judgment debtor over which it has personal jurisdiction, to bring the shares from outside of New York into New York to pay plaintiffs."

In addition, international comity — the principle under which countries choose to respect the laws and judicial decisions of other countries out of courtesy — does not counsel against granting the motion, the judge said.

She rejected Argentina's argument that the investors' requested relief would require the country to "either change its laws or violate them," referring to the "YPF Expropriation Law, which forbids any transfer of the shares without permission of the National Congress by two-thirds vote of its members," according to the order.

"International comity comes into play only when there is a true conflict between the law of the United States and that of a foreign jurisdiction," Judge Preska said. "There is no unavoidable conflict between Argentine law and plaintiffs' requested relief."

Petersen Energia and Eton Park filed their suits in 2015 and 2016, claiming that the Argentine government **breached a shareholder agreement** when it nationalized YPF in 2012 without first tendering an offer to shareholders. They also claim the government leaked news of the impending nationalization to depress YPF's stock price.

In March 2023, Judge Preska **issued a summary judgment** dismissing the breach of contract claims against YPF, and the breach of good faith and fair dealing claims against the Argentine government, but found the government was in breach of contract.

Following the September 2023 judgment, Judge Preska allowed Argentina **to delay payment** of the $16 billion bill while it appealed its loss but told the country it must pledge its equity interest in YPF.

Also in June, a barrister for Argentina told the High Court in London that YPF shareholders cannot enforce the $16 billion New York judgment in England because the decision to nationalize YPF was an act of state, protected by sovereign immunity.

David Railton KC of Fountain Court Chambers said that "after careful consideration and advice.... the government concluded that expropriation was the best and indeed the only way to carry through the public interest."

Argentina made a "deliberate policy decision in the public interest under its constitutional powers" when it expropriated 51% of YPF's stock, Railton said. He added that "the Republic was acting in its sovereign capacity in the public interest and not in a commercial or private corporate capacity."

The shareholders filed a claim in March 2024, seeking enforcement and recognition of the New York judgment in England. Argentina is seeking to set aside an order granting the shareholders permission to serve it out of jurisdiction and a stay of the English action to await the outcome of the New York appeal.

U.S. Circuit Judges Myrna Pérez, Sarah A.L. Merriam and Maria Araújo Kahn sat on the panel for the Second Circuit.

Argentina is represented by Adam R. Brebner, Amanda Flug Davidoff, Robert J. Giuffra Jr., Sergio J. Galvis, Thomas C. White, Morgan L. Ratner and Pedro José Izquierdo of Sullivan & Cromwell LLP.

Petersen Energia and Eton Park are represented by Derek T. Ho, Mark C. Hansen and Andrew E. Goldsmith of Kellogg Hansen Todd Figel & Frederick PLLC, Israel Dahan of King & Spalding LLP and Harker Rhodes and Paul D. Clement of Clement & Murphy PLLC.

Bainbridge is represented by David T. McTaggart and Anthony J. Costantini of Duane Morris LLP.

The appeals are Bainbridge Fund Ltd. v. The Republic of Argentina, case number 25-1686, Petersen Energia Inversora SAU et al. v. Argentine Republic, case number 25-1687, and Eton Park Capital Management LP et al. v. Argentine Republic, case number 25-1689, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Rick Archer, Y. Peter Kang, Ben Zigterman and Sophia Dourou. Editing by Jay Jackson Jr.

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9th Circ. Affirms Dismissal Of Vegas Casino Room Rate Case

By **Matthew Perlman**

Law360 (August 15, 2025, 6:48 PM EDT) -- The Ninth Circuit rejected an appeal on Friday from guests seeking to revive their antitrust case accusing Las Vegas casino-hotel operators of using a vendor's software to inflate room rates, finding that the pricing service helps the hotels compete.

A three-judge panel affirmed a Nevada federal court's **dismissal of the case**, the first appellate decision in a slew of recent antitrust cases targeting allegations of **algorithmic collusion**.

U.S. Circuit Judge Carlos T. Bea wrote for the panel that use of revenue management software from Cendyn Group LLC, which was also named in the suit, by hotel-casinos on the Las Vegas Strip does not violate antitrust law, noting that the guests abandoned their claims that the venues agreed with each other to use the software and to accept the recommendations it provides.

The panel said the guests are now only alleging the competing hotels independently bought licenses for the same software and used the service to get price recommendations.

"Why don't the independent choices of hotel defendants to obtain pricing advice from the same company harm competition, as alleged here?" the court said. "Because here, obtaining information from the same source does not reduce the incentive to compete."

The guests claim that Cendyn's contracts with the hotel-casinos, including Caesars Entertainment Inc., Treasure Island LLC and Wynn Resorts Holdings LLC, for use of its software collectively restrain competition, violating Section 1 of the Sherman Act. The case centers on software services developed by The Rainmaker Group Unlimited Inc., which Cendyn acquired in 2019.

The panel said that without allegations of an agreement among the hotels to use the software, the guests are relying on parallel conduct, where competitors adopt similar policies around the same time in response to similar market conditions. But it wouldn't even matter if the hotels were all aware that their competitors were using the software when they decided to license it, the court said, as long as there was no agreement.

While antitrust law restricts agreements among competitors about how to compete, the panel said it does not require a business to ignore information simply because its competitors also know or to decline to take advantage of a service because its competitors already use it.

"Rather than eliminating competition, pricing one's hotel rooms in a manner calculated to maximize profits is how one competes," the panel said. "Cendyn's revenue-management software, therefore, holds itself out as a tool in the struggle for commercial advantage; by itself, it does not take away that struggle."

Arman Oruc of Goodwin Procter LLP, counsel for Rainmaker, welcomed the ruling in an email to Law360 on Friday and said it could have an effect beyond the current case.

"It is the first Court of Appeals decision in the evolving antitrust landscape for algorithmic optimization or pricing products," Oruc said. "It is an important development which should have a significant — and positive — impact in many tech verticals offering or developing similar products."

The panel found the licensing agreements do not restrain trade in the relevant market where the hotels compete, for hotel rooms on the Las Vegas Strip, because the hotels are free to not accept the price recommendations.

"While a hotel might adopt Cendyn's pricing recommendations at high rates because it trusts the recommendations or wants the ease of implementing the recommendations, the agreement for the provision of the recommendations itself is not a restraint of a hotel's ability to price its hotel-room rentals," the opinion said.

The guests categorized the agreements as "vertical," or between companies at different points in the supply chain, and cited precedent where vertical agreements were found to be anticompetitive. During **oral arguments** in May they even pointed to an opinion by Judge Bea in an antitrust case in 2015 accusing **musical instrument suppliers** of restricting the price retailers could charge.

But the panel rejected the vertical characterization, because Cendyn does not "contribute the raw materials, capital, or labor necessary" for the hotels to rent hotel rooms, meaning they are not part of the same supply chain despite operating in the same industry.

The panel said the relationship is also not horizontal because Cendyn does not compete with the hotels. This makes the licensing agreements "ordinary sales contracts" that generally do not restrain competition, the panel said, especially not in the relevant market for hotel rooms.

The court said there is no mechanism to evaluate the guests' contention that the individual software licenses have an "aggregate" effect on competition, in the form of higher prices. Higher prices can serve as evidence of anticompetitive effects for certain agreements, the opinion said, but that does not mean a company's independent choice to charge higher prices itself harms competition.

Raising prices can be "fully consistent with a free, competitive market," opinion said.

The panel said the guests are asking for a rule-of-reason analysis to evaluate the competitive effect of the claims, based only on the choice of several competitors to use the same service provider followed by higher prices.

"Plaintiffs essentially argue for a rule in which a business's entry into any contract typical in its industry, when followed by higher prices, is sufficient to trigger antitrust scrutiny under the rule of reason as to any other aspect of the business," the opinion said. "This rule does not comport with the logic of Section 1 or our precedents."

Cendyn is also fighting an appeal in the Third Circuit where guests of Atlantic City casino-hotels are trying to **revive similar claims** that were dismissed last year.

Representatives for the guests, Cendyn and the hotel-casinos did not immediately respond to requests for comment Friday.

U.S. Circuit Judges Carlos T. Bea and Ana de Alba and U.S. District Judge Jeffrey V. Brown sat on the panel for the Ninth Circuit.

The Las Vegas guests are represented by Steve Berman and Rio Pierce of Hagens Berman Sobol Shapiro LLP.

Cendyn is represented by Sadik H. Huseny, Brendan A. McShane, Melissa Arbus Sherry, Anna M. Rathbun, Christopher J. Brown and Graham Haviland of Latham & Watkins LLP.

The Rainmaker Group is represented by Alicia Rubio-Spring and Arman Oruc of Goodwin Procter LLP and Nicholas J. Santoro of Spencer Fane LLP.

Caesars is represented by Boris Bershteyn, Ken Schwartz, Michael Menitove and Sam Auld of Skadden Arps Slate Meagher & Flom LLP.

Treasure Island is represented by Patrick J. Reilly, Arthur Zorio, Emily Garnett and Eric D. Walther of Brownstein Hyatt Farber Schreck LLP.

Wynn is represented by Mark C. Holscher and Tammy Tsoumas of Kirkland & Ellis LLP.

Blackstone Inc. and Blackstone Real Estate Partners VII LP are represented by Matthew L. McGinnis of Ropes & Gray LLP.

JC Hospitality LLC is represented by Kasey J. Curtis and Charles P. Hyun of Reed Smith LLP.

The case is Gibson et al. v. Cendyn Group LLC et al., case number 24-3576, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Isaac Monterose, Bryan Koenig and Elaine Briseño. Editing by Brian Baresch.