

News from Bloomberg Terminal

Reinsurer Maiden Investors' Fraud Lawsuit Revived on Appeal (1)

Aug. 20, 2025, 9:33 AM PDT

Summary by Bloomberg AI

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- The US Court of Appeals for the Third Circuit said a lower court erred when freeing Maiden Holdings Ltd. from a case, sending the lawsuit back for further discovery proceedings.
- Chief Judge Michael A. Chagares said the lower court misapplied a "context-sensitive framework" and held shareholders to a higher standard on pleading misleading belief statements than they were required to.
- Chagares said there was enough evidence to suggest that Maiden's omission of historical loss data was material to investors under a holistic analysis, citing the Supreme Court's explanation in *Omnicare, Inc. v. Laborers District Council Construction Industries Pension Fund*.

By Gillian R. Brassil

(Bloomberg Law) --

Maiden Holdings Ltd. must contend with shareholder allegations that the reinsurer misleadingly hid historical data on reserve funds.

A lower court erred when freeing Maiden from the case, the US Court of Appeals for the Third Circuit said Wednesday, sending the lawsuit back down for further discovery proceedings.

The US District Court for the District of New Jersey misapplied a "context-sensitive framework" and held shareholders leading the proposed class action to a higher standard on pleading misleading belief statements than they were required to, said the opinion written by Chief Judge Michael A. Chagares. The lower court granted Maiden, which this year combined with another group to form insurance company Kestrel Group Ltd., summary judgment and limited discovery proceedings that might have bolstered the investors' case.

Judge Christine P. O'Hearn held that Maiden's omission of historical loss data wouldn't have mattered in investment decisions. But there was enough evidence to suggest that it was material to investors under a holistic analysis, Chagares said.

The Supreme Court in *Omnicare, Inc. v. Laborers District Council Construction Industries Pension Fund* explained that stock issuers' opinion statements can "misleadingly incomplete" if they withhold known facts that form the basis of that opinion which are important to investment decisions. Whether or not a fact is pertinent to investors—material—depends on "its relative importance to the challenged opinion" and the context, Chagares said.

Reinsurance entities, or the insurers of insurance companies, set aside funds for future claims—loss reserves. They're treated as liabilities in financial reports, so a company that perhaps has too few funds can inflate the perception of its financial wellbeing. Adverse events facing this reinsurer's biggest client, AmTrust Financial Services Inc., "required Maiden to pay out claims in greater amounts than it had budgeted for, causing it to lose hundreds of millions of dollars while its stock price dropped more than 80%" over a couple years, Chagares said.

During discovery, a magistrate judge denied shareholders Boilermaker Blacksmith National Pension Trust and Taishin International Bank Co. Ltd.'s request to learn more about whether underlying data was available to Maiden during the proposed class period and the severity of historical loss ratios, Chagares said. The magistrate judge did so under unique circumstances, however, since it was related to a motion to dismiss, leading O'Hearn to cut off discovery proceedings early.

"Whatever limitations on discovery were imposed for purposes of Maiden's renewed motion to dismiss, Boilermaker should have received 'typical discovery under the rules' before facing an adverse summary judgment ruling," Chagares said.

Summary judgment should be granted when there isn't a genuine dispute of material fact. In this case, there was, he said.

Judges David J. Porter and Cindy K. Chung were also on the opinion.

The Rosen Law Firm PA, which declined to comment in an email, and Robbins Geller Rudman & Dowd LLP represent the shareholders. Quinn Emanuel Urquhart & Sullivan LLP and Marino Tortorella & Boyle PC represent Maiden. None of these other law firms nor Kestrel immediately responded to emails seeking comment.

The case is *In re: Maiden Holdings, Ltd. Sec. Litig.*, 3d Cir., No. 24-1118, vacated and remanded 8/20/25.

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(Updates with additional reporting throughout.)

Latham Wins Dismissal of Securities Action Involving Liver Disease Drug Developer

August 19, 2025 | By  **Ellen Bardash**



Judge Yvonne Gonzalez Rogers. Credit: Jason Doiy / The Recorder

A Latham & Watkins team prevailed Aug. 15 on a motion to dismiss a securities class action filed against Akerio Therapeutics Inc. in the Northern District of California.

U.S. District Judge Yvonne Gonzalez Rogers [dismissed](#) a second amended complaint without granting leave to further amend, concluding the plaintiffs hadn't adequately pled the element of scienter.

The case involved a clinical trial of Akerio's only product, a drug candidate called efruxifermin, known as EFX, which is aimed at treating nonalcoholic steatohepatitis, or NASH, a liver disease.

"We are thrilled that the court agreed with our arguments and issued a well-reasoned decision, putting an end to this matter," said Latham & Watkins partner Jamie Wine. "Akeru looks forward to putting this matter behind them and continuing their vital work in developing this potentially life-saving drug."

The plaintiffs, Akeru shareholders Joseph and Dora Klobus, were represented by Robbins Geller Rudman & Dowd and Abraham, Fruchter & Twersky. Their complaint alleged Akeru misled investors by claiming only people with biopsy-confirmed NASH were enrolled in a clinical trial of EFX. Instead, they claimed, about 20% of those included in the trial had cryptogenic cirrhosis, altering the risk levels Akeru faced while testing EFX.

Akeru's stock price dropped in October 2023 after announcing the interim results of a Phase 2b trial in which the targeted number of patients whose fibrosis improved without NASH worsening had not been met.

The case was originally filed in April 2024, with an amended version filed in September 2024. Gonzalez Rogers granted dismissal with leave to amend in May of this year. Argument on the motion to dismiss was heard Aug. 5.

Gonzalez Rogers wrote that the timing of Akeru releasing an update on the clinical trial doesn't point to scienter and the plaintiffs hadn't addressed the logical gaps identified in her previous decision.

"As defendants note, there are no allegations that plaintiffs had to report the relevant subgroup when they did," she wrote. "If the intent were truly to mislead, defendants would likely have taken advantage of the remaining 60-week period in the study, even if it were simply a safety follow-up, to find a way out of their alleged conundrum."

Counsel for the plaintiff shareholders did not immediately respond for comment.

Page printed from: <https://www.law.com/therecorder/2025/08/19/latham-wins-dismissal-of-securities-action-involving-liver-disease-drug-developer/>

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Securities Law News

Billionaire Mario Gabelli Challenges Paramount-Skydance Deal (1)

Aug. 19, 2025, 12:38 PM PDT; Updated: Aug. 19, 2025, 2:02 PM PDT

Billionaire money manager Mario Gabelli has jumped into a widening court fight challenging Paramount Global's \$8 billion sale to Skydance Media LLC, which closed this month.

The lawsuit, made public Tuesday, is the latest of several cases brought by investors targeting the deal in Delaware's Chancery Court. The transaction has drawn renewed scrutiny over potential "corrupt side deals" after Paramount-owned CBS canceled "The Late Show with Stephen Colbert," which frequently skewers President Donald Trump, and settled the president's defamation lawsuit.

Gabelli's 114-page court complaint, originally filed under seal Aug. 13, doesn't directly address those allegations. Like the pending shareholder suits, it says the \$23-per-share deal—handing Paramount's reins to producer David Ellison and backers led by his father, Oracle Corp. founder Larry Ellison—steered hundreds of millions from public investors to affiliates of media mogul Shari Redstone.

Abuses of corporate control comprise a recurring theme for Delaware's elite business tribunal, which regularly hears self-dealing claims against founders, financiers, and majority investors.

Redstone "crammed through the merger using a rigged bidding process to direct the transaction toward Skydance," which was willing to funnel "outsized and unlawful" side payments to her holding company, Harbor Lights Entertainment Inc., then called National Amusements Inc., the suit says. It names Redstone, other former Paramount board members, and Skydance as defendants.

Redstone's attorneys declined to comment Tuesday. Skydance didn't immediately respond to a separate request for comment.

Wrong Sheikh

The lawsuit is the third shareholder class action taking aim at the merger. A battle to lead the broader litigation has been brewing between lawyers for an individual investor who sued last year and counsel for various pension funds, including New York City's, which sought to force open a bidding war after a last-minute bid by a secretive investment consortium called Project Rise Partners.

Those cases are currently sidetracked by efforts to learn more about Project Rise's financing, including allegations that it fabricated backing from an Emirati sheikh. The group's attorneys have said their legal adversaries mixed up the sheikh supporting their bid with an uncle who has a nearly identical name.

According to Gabelli's suit, Redstone's affiliates held greater than 77% voting power before the transaction. But Gabelli's 12% overall stake in the Class A stock allegedly represented 52% of minority shares, giving him an effective veto over any separate vote by minority investors.

That's why they went around him by forcing the merger through without majority-of-the-minority approval, according to the filing, which says the deal's structure cost him nearly \$30 a share.

The legal complaint is technically the second Gabelli has brought over the transaction, after an earlier case seeking deal documents from Paramount. The company, which won that dispute, is now appealing its loss in a similar lawsuit brought by Rhode Island's public pension funds, arguing a judge gave too much weight to news reports based on unnamed sources.

Gabelli is represented by Farnan LLP and Entwistle & Cappucci LLP. Redstone, who hasn't yet made a court appearance, is represented in the parallel litigation by Abrams & Bayliss LLP and Ropes & Gray LLP. Skydance is represented in those cases by Latham & Watkins LLP and Ross Aronstam & Moritz LLP.

The case is Gabelli Value Fund 25 Inc. v. Harbor Lights Ent. Inc. , Del. Ch., No. 2025-0921, complaint unsealed 8/19/25 .

(Updates with additional reporting starting in third paragraph.)

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Musk's advice-of-counsel defense faces test in Twitter lawsuit



reuters.com/legal/government/musks-advice-of-counsel-defense-faces-test-twitter-lawsuit-2025-08-19

David Thomas

August 19, 2025

SpaceX, Twitter and Tesla CEO Elon Musk looks on as he attends a roundtable during the 6th edition of the "Choose France" Summit at the Chateau de Versailles, outside Paris, France on May 15, 2023. Ludovic Marin/Pool via REUTERS/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 19 (Reuters) - Investors suing Elon Musk are crying foul in a [class action](#) over the billionaire's delayed disclosure of his Twitter stake in early 2022, arguing that he wants to escape liability by citing legal advice he received from two prominent law firms without providing details about it.

Attorneys for the plaintiff, an Oklahoma firefighters pension fund, [said Monday, opens new tab](#) that Musk and his co-defendants should be forced to clarify whether they will rely on legal counsel's involvement to argue they acted in good faith. They accused Musk of using a "classic 'sword and shield' strategy" by invoking their lawyers' advice as a defense while also refusing to turn over documents relating to that defense, citing attorney-client privilege. Lawyers at Bernstein Litowitz Berger & Grossmann asked U.S. Magistrate Judge Gabriel Gorenstein in Manhattan federal court to compel Musk to "provide a binding election as to any reliance on counsel or good faith defense" before he is scheduled to give testimony in the case early next month, and to extend a deadline for producing evidence.

The dispute could shape Musk's defense in the securities fraud case, potentially forcing him to choose between exposing internal legal communications or forgoing a potentially powerful defense.

Musk and the other defendants are represented by a team of lawyers from Quinn Emanuel Urquhart & Sullivan, including Alex Spiro, a top partner at the firm. Musk had also hired lawyers from McDermott Will & Emery days before he amended a key filing in April 2022 that revealed his 9.2% stake in Twitter.

Defense lawyers in the case, including Spiro, did not immediately respond to requests for comment, nor did lawyers at Bernstein Litowitz.

Spokespersons for Quinn Emanuel and McDermott Will & Schulte also did not immediately respond. McDermott Will & Emery merged with Schulte Roth & Zabel earlier this month.

The lawsuit [accuses Musk](#) of defrauding Twitter shareholders who sold stock in the social media company at artificially low prices because they were kept in the dark about Musk's

growing share.

Musk eventually purchased Twitter for \$44 billion in October 2022, and renamed it X.

Musk [has said](#) he had intended to reveal his Twitter stake at the end of 2022, but disclosed it promptly after realizing he misunderstood the U.S. Securities & Exchange Commission's disclosure rule. He has denied wrongdoing and said this was "not a scheme to defraud." If the defendants plan to cite their good-faith reliance on legal counsel as a defense, then Bernstein Litowitz said the plaintiffs want to see those documents before deposing Musk and a top aide, Jared Birchall. Birchall and Musk's depositions are currently scheduled for Aug. 25 and Sept. 4, respectively.

Bernstein Litowitz also said that Gorenstein could "bar defendants' reliance on counsel as any part of their defenses at trial."

The SEC [filed a similar civil lawsuit](#) against Musk in January, during the waning days of the Biden administration. That lawsuit is still pending — last month, the agency and Musk [agreed to give the billionaire](#) more time to respond to the SEC's allegations.

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Securities Law News

McDermott Investors Insist Tossed Suit Was Direct Not Derivative

Aug. 19, 2025, 1:56 PM PDT

McDermott International Inc. shareholders told an appellate court that they were robbed of their chance for recompense after a shoddy vote for the engineering company's \$6 billion Chicago Bridge & Iron Co. NV acquisition.

The claims were litigated for four years before a lower court upended the law of the case, denied class certification, and dismissed the suit for lack of legal standing, a trio of Teamsters funds told the US Court of Appeals for the Fifth Circuit. They, alongside the lead plaintiff, sought to represent a shareholder class of those allegedly deprived of their right to a fully-informed vote on the 2018 deal.

Now, those investors are asking the New Orleans-based tribunal to reverse that March ruling and reinstate their case. At issue is whether their claim was brought to directly benefit the shareholders, or as a derivative action meant to confer a benefit on the company at the expense of allegedly errant officers and directors.

In their brief filed Monday, the funds say they want the Fifth Circuit to rule that Southern District of Texas Judge George C. Hanks Jr. was correct in 2021 when he said the lead plaintiff Public Employees' Retirement System of Mississippi "is entitled to bring, and has pled, a direct claim."

The stockholders say the energy industry construction company and top brass violated Section 14(a) of the Securities Exchange Act of 1934, which bars pertinent misrepresentations and omissions in proxy statements sent to stockholders, by overstating its review of four CB&I projects. The funds and others suing McDermott alleged that undisclosed costs pushed the combined company into bankruptcy in 2020.

An English court approved its restructuring plan last year.

'Erroneous Understanding'

A magistrate judge in 2023 recommended that their class not be certified, saying the Mississippi retirement system lacked standing to sue under a rule governing how shareholder derivative lawsuits work—that its "theory of liability may be direct, but its damages claim is derivative."

Hanks, who at first rejected the 2023 recommendation, adopted it this year.

A Delaware Supreme Court ruling supports their contention that a “Section 14(a) claim—and the damages theory based on a decline in share price—is direct because it belongs to Plaintiffs, not McDermott,” the Teamsters funds say. Hanks’ decision “was based on an erroneous understanding of federal and Delaware law—and so the District Court abused its discretion in reversing itself and upending the law of the case.”

The Fifth Circuit is separately reviewing cross appeals over another certification decision for subclasses in a related securities fraud action also under this litigation’s umbrella.

Wolf Popper LLP and Bernstein Litowitz Berger & Grossmann LLP represent the Teamsters Local 813 Insurance Trust Fund, Local 813 Pension Trust Fund, and Local 1034 Pension Trust Fund. Baker Botts LLP represents McDermott and other defendants-appellees. Sidley Austin LLP also represents former McDermott chief financial officer Stuart Spence. None of these law firms nor McDermott immediately responded to emails seeking comment.

The case is Local 813 Ins. Trust Fund v. McDermott Int’l , 5th Cir., No. 25-20147, 8/18/25 .

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Guest Post: Standing, Scierter, and SPAC Exposure



dandodiary.com/2025/08/articles/securities-litigation/guest-post-standing-scierter-and-spac-exposure

Kevin LaCroix

August 20, 2025



Sarah Abrams

In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, takes a look at the recent dismissal of a securities class action lawsuit arising out of a failed merger, and considers the implications for the dismissal, particularly with respect to securities suits involving SPAC transactions. I would like to thank Sarah for allowing me to publish her article on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

Does a recent [dismissal](#) of proposed securities class action, [Water Island Event-Driven Fund v. MaxLinear, et. al.](#), (Water Island case), provide insight into future case outcomes involving failed merger opportunities, including those involving SPACs? It may. The procedural and substantive hurdles identified in the Water Island case decision may exist for shareholder plaintiffs bringing securities fraud claims tied to failed or troubled SPAC mergers. These hurdles may be significant in limiting exposure for D&O insurers if identified early.

The following summarizes the *Water Island* case and the Southern District of California's decision, highlighting its findings that the plaintiffs lacked standing, did not make material misrepresentations, and that the [Core Operations Theory](#) did not apply. The analysis then draws comparisons to dismissal decisions in two SPAC-related securities class actions, offering prospective takeaways for D&O underwriters.

First, a brief background of the Water Island case. The plaintiffs were investors who purchased American Depositary Shares (ADS) in Taiwanese chipmaker Silicon Motion (SIMO). In May 2022, American telecommunications company MaxLiner announced that it would acquire SIMO for \$3.8 billion, which resulted in an \$8 billion valuation of the future combined company (the Merger). In June 2023, MaxLinear's CEO stated during a business conference panel that, even with both company revenues down, "the basic rationale [for the

Merger] has not changed at all.” MaxLinear filed a [Form 425 SEC disclosure](#) statement regarding his comments the next day. On July 26, 2023, a day after Chinese regulators approved the Merger, MaxLinear issued a press release stating that it was unilaterally terminating the Merger.

According to the Water Island case plaintiffs, MaxLinear’s announcement that it was pulling out of the Merger deal caused “the immediate collapse of the price of [SIMO ADS].” Specifically, the plaintiffs alleged that MaxLinear had already determined that the Merger would be terminated if Chinese regulators approved the transaction, despite overt signals that MaxLinear was fully committed to the deal. And yet, both SIMO and MaxLinear purportedly signaled to the SIMO ADS investors that the merger was on track to close. In addition, the plaintiffs alleged that SIMO omitted that there may be a condition to prevent the deal closing (specifically, merger approval by Chinese regulatory authorities), failed to properly follow merger investigation procedures, and failed to review MaxLinear’s statements or its update prior statements regarding the Merger breach. As a result, plaintiffs alleged that MaxLinear, SIMO, and company executives made materially false and misleading statements in violation of [Sections 10\(b\) and 20\(a\) of the Securities Act Exchange Act](#).

For D&O underwriters, the Water Island case fact pattern and subsequent securities complaint may feel like a familiar one; particularly the resulting scrutiny from shareholders when a merger deal is called off. However, the Water Island Court’s decision is interesting in that it may inform prospective exposure from a SPAC-related securities case. As an initial matter, the decision and bases for dismissal are considered.

The Water Island Court’s ruling to dismiss the securities class action was based on its determination that (1) SIMO did not make false statements or omit material information and thus did not commit securities fraud, and that (2) SIMO ADS shareholders did not have standing to bring 10(b) Claims against MaxLinear. The following discusses the court’s findings and rationale, beginning with the issue of shareholder standing.

Following the bright-line ([Birnbaum Rule](#)) rule that limits standing to bring such a securities class action claim to “purchasers or sellers of the stock in question,” the Water Island Court dismissed the SIMO ADS plaintiffs’ 10(b) claims against MaxLinear. The SIMO ADS plaintiffs did not own shares in MaxLinear or a combined company because the deal did not close. It is noteworthy that the Water Island Court cited [Churchill Capital IV. v. Lucid Motors](#) (Lucid Motors case) to support its decision. The Lucid Motors case highlights that SPAC shareholders bringing a securities class action may face a fate similar to that of the SIMO ADS shareholders: dismissal for lack of standing.

[As D&O Diary](#) readers may recall, the Lucid Motors case involved the SPAC deal where Churchill Capital Acquisition Corporation IV (Churchill IV) merged with Lucid. Before the merger was announced, Lucid’s CEO made declarations about production and prospective

revenue during appearances on various media outlets. The evening the merger was announced, Lucid's CEO went on another media program to announce a delay in vehicle production. After the merger closed, the company announced further reductions in production and a revised production timetable. Pre-merger purchasers of the SPAC stock filed their securities class action against Lucid and its CEO. The case against Lucid and its CEO was dismissed because the plaintiff SPAC stock purchasers lacked standing.

The second of the two bases on which the Water Island Court granted dismissal was its finding that SIMO did not commit securities fraud because, in part, the Court found SIMO's public statements to be factually accurate. The Court reasoned that SIMO referencing one closing condition did not require disclosing all risks, such as an alleged breach, and thus, there was no omission of a material fact. The Court further found that there were no specific allegations or documents showing actual knowledge of the Merger breach by SIMO executives.

In addition, the Court's basis for dismissing the 10(b) claims against SIMO included finding that SIMO ADS shareholders failed to prove scienter under the Core Operations Theory. Specifically, [the Core Operations Theory \(or "core operations inference"\)](#) is a judicial doctrine used primarily in securities fraud litigation under Section 10(b) and Rule 10b-5. It allows a court to infer scienter (i.e., fraudulent intent or severe recklessness) when a plaintiff alleges that a misstatement or omission concerns a matter so significant and central to the company's operations that senior executives must have known it was false or misleading.

In the Water Island case, the SIMO ADS plaintiffs alleged that SIMO executives knew of MaxLinear's lack of merger integration activity and lack of intent to close the deal should China regulators approve the transaction, because the SIMO executives were in some ways involved in merger-related activities. The court disagreed, finding that there was not "a single particularized fact about any information" the executives knew or should have known during merger preparation.

The Water Island Court noted that "It is 'unusual' and 'exceedingly rare' to find the core operations inference—without any detailed allegations of actual knowledge—sufficient to clear a 12(b)(6) motion under the PSLRA.... This case is especially rare in that Plaintiffs seek to establish a strong inference not of a company's management's knowledge of internal activity at their own company, but at *another* company." For D&O underwriters considering whether Core Operations Theory allegations in a SPAC securities class action may face a similar fate, the answer is perhaps.

The Southern District of New York took a similar view in [the In Re Lottery.com, Inc. Securities Case](#), which involved a SPAC of Lottery.com. Once the transaction had closed, it was subsequently uncovered that internal controls, cash balances, and revenue had been overstated, leading to executive departures and a stock drop. The Lottery.com Court

rejected the security class action plaintiffs' argument that the Core Operations Theory should apply to find that executives acted with scienter. Specifically, the Lottery.com Court found that it is not enough for plaintiffs to argue that defendants must have known that their statements were false or misleading just because of the magnitude of the restatement of revenue.

Conclusion

The dismissal of the Water Island case and its parallels to SPAC-related litigation, like Lucid Motors and Lottery.com, may provide important legal and strategic lessons for prospective plaintiffs and D&O underwriters evaluating securities claims in failed SPAC merger contexts. Specifically, who has standing to bring the securities case? In both the Water Island and Lucid cases, the plaintiffs were investors in a target or SPAC entity, not in the company alleged to have made the misstatements. SPAC or target company investors generally cannot bring Section 10(b) claims against the *other* party to a failed deal.

Also, which scienter allegations will survive a motion to dismiss a SPAC securities case? Courts, such as those deciding the Water Island and Lottery.com cases, may require particularized facts demonstrating actual knowledge or recklessness; speculative arguments that executives "must have known" due to the deal's size or importance will not be sufficient. For D&O insurers, early identification of these two failure points, lack of standing and weak scienter allegations, may help mitigate exposure when a SPAC securities claim is made.

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Securities Law News

Insurer Drops California Suit Following View's Bid to Dismiss

Aug. 19, 2025, 9:32 AM PDT

Starstone Specialty Insurance Co. dropped its California lawsuit against View Operating Corp. over coverage for proceedings related to a 2021 de-SPAC merger transaction and public offering, opting instead to litigate the case in Delaware.

Starstone filed a stipulation of voluntary dismissal without prejudice in the US District Court for the Northern District of California on Monday.

- The insurer sued View on Aug. 1 over coverage for proceedings related to the “blank check” deal orchestrated by Cantor Fitzgerald LP, previously led by US Commerce Secretary Howard Lutnick.
- View countered with its own suit in Delaware Superior Court on Aug. 5, then filed a motion to dismiss in the California court, arguing the dispute should be litigated in Delaware where both parties are incorporated.

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

The case is Starstone Specialty Ins. Co. v. View Operating Corp. , N.D. Cal., No. 5:25-cv-06485, notice of dismissal 8/18/25 .

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Securities Law News

Mitsubishi Chemical Will Face Trimmed 401(k) Plan Fee Lawsuit

Aug. 19, 2025, 11:18 AM PDT

Former Mitsubishi Chemical America Inc. employees advanced portions of a proposed class action challenging the company's retirement plan management when a federal judge greenlighted claims over certain fund share classes while dismissing other allegations.

The workers can press claims that Mitsubishi Chemical violated federal benefits law by failing to obtain the cheapest available share classes for seven of the plan's mutual funds, Judge Jennifer L. Rochon said. The company argued these extra fees benefited the plan by offsetting administrative expenses through a revenue sharing arrangement, but whether or not this insulates them from liability under the Employee Retirement Income Security Act can't be sorted out at the motion-to-dismiss stage, Rochon said Tuesday for the US District Court for the Southern District of New York.

The workers also challenged their plan's annual recordkeeping fees, which they said ranged between \$84 and \$211 per person and were excessive when compared to similar plans. Rochon dismissed these allegations, saying they flunked the test set forth by the IUS Court of Appeals for the Second Circuit, which requires challenges to 401(k) recordkeeping fees to include specific details about the type and quality of services provided to both the challenged plan and the plans held up as better-run alternatives.

Hundreds of 401(k) plan fee challenges have been filed in federal courts over the past several years, and appellate rulings have been mixed. Judges weighing these cases often look for specific details about a given plan's administrative service levels, and a lack of detail on this topic has been a stumbling block for cases against Sonoco Products Inc., Telephone & Data Systems Inc., Amy's Kitchen Inc., and others.

Rochon first considered the claims against Mitsubishi Chemicals in 2024, dismissing an earlier complaint but giving plaintiffs a chance to try again.

Mayer Brown LLP represents Mitsubishi Chemicals. Pomerantz LLP represents the employees.

The case is *Humphries v. Mitsubishi Chem. Am., Inc.*, S.D.N.Y., No. 1:23-cv-06214, 8/19/25 .

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Class Action

Manage Newsletters

B-K Lighting Stock Plan Suit Settles With Cash, Debt Reduction

Aug. 20, 2025, 8:08 AM PDT

Summary by Bloomberg AI

AI Generated



- A former B-K Lighting Inc. worker reached a class-wide settlement valued at \$2.25 million in her lawsuit challenging a transaction she says drained money from the company's employee stock ownership plan.
- The deal includes a \$1.5 million cash payment and a \$1 million reduction in B-K's debt, which "substantially increases the value of the B-K Lighting stock owned by the ESOP by an estimated \$750,000", according to a motion.
- The proposed settlement, which resolves claims against B-K and other defendants, is subject to approval from Magistrate Judge Stanley A. Boone of the US District Court for the Eastern District of California.

A former B-K Lighting Inc. worker reached a class-wide settlement valued at \$2.25 million in her lawsuit challenging a transaction she says drained money from the company's employee stock ownership plan.

The deal, which is slated to benefit about 200 people covered by the lighting fixture manufacturer's stock plan, includes a \$1.5 million cash payment earmarked for plan participants, along with a \$1 million reduction in B-K's debt. This debt reduction "substantially increases the value of the B-K Lighting stock owned by the ESOP by an estimated \$750,000," according to a Tuesday motion asking that the deal be approved.

The two-year-old lawsuit, which partially advanced last year, takes aim at a 2017 transaction in which B-K's stock plan paid more than \$25 million to purchase 100% of the company's stock from founder Douglas Hagen.

Plaintiff Linna Chea says this price was inflated because it was based on unrealistic financial projections that didn't reflect the Madera, Calif.-based company's declining sales, its stockpile of obsolete inventory, and other allegedly poor financial decisions, like the purchase of a jet that was used "almost exclusively" for the Hagen family's personal travel.

The proposed settlement is subject to approval from Magistrate Judge Stanley A. Boone of the US District Court for the Eastern District of California. It resolves claims against B-K, the stock plan committee, plan trustee Prudent Fiduciary Services LLC, and other defendants.

Feinberg Jackson Worthman & Wasow LLP and Cohen Milstein Sellers & Toll PLLC represent Chea. The defendants are variously represented by Moore & Van Allen PLLC, CDF Labor Law LLP, Faegre Drinker Biddle & Reath LLP, and Holland & Knight LLP.

The case is Chea v. Lite Star ESOP Comm. , E.D. Cal., No. 1:23-cv-00647, settlement motion 8/19/25 .

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Class Action

Manage Newsletters

Russelectric Stock Plan Suit Yields Another Partial Settlement

Aug. 20, 2025, 6:23 AM PDT

Summary by Bloomberg AI

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- Current and former employees of Russelectric Inc. settled with Argent Trust Co. for \$4.5 million in their lawsuit saying their employee stock ownership plan was raided of value after the company founder's death.
- The settlement provides gross payments of about \$11,400 to nearly 400 class members and resolves claims that Argent approved a transaction that workers say seriously underpaid them for their shares in the company.
- The workers said "By settling with Argent before trial, the Class can devote their energies to prosecuting their case against the most culpable Defendants, thereby strengthening their chances of obtaining a favorable judgment against the non-Settling Defendants" in their motion asking that the partial deal receive preliminary approval.

Current and former employees of power control systems manufacturer Russelectric Inc. settled with Argent Trust Co. for \$4.5 million in their lawsuit saying their employee stock ownership plan was raided of value after the company founder's death.

The partial class settlement resolves claims that Argent, which served as trustee for the Russelectric stock plan, approved a transaction that workers say seriously underpaid them for their shares in the company. It would provide gross payments of about \$11,400 to nearly 400 class members.

The deal, announced Tuesday in the US District Court for the District of Massachusetts, comes two weeks after the workers announced a proposed \$3 million settlement with defendant Denise Wyatt, a Wells Fargo & Co. employee who served on Russelectric's board of directors. It doesn't affect their pending claims against other defendants, including the company founder's children and certain board members, which are scheduled to go to trial in September.

"By settling with Argent before trial, the Class can devote their energies to prosecuting their case against the most culpable Defendants, thereby strengthening their chances of obtaining a favorable judgment against the non-Settling Defendants," the workers said in their motion asking that the partial deal receive preliminary approval.

The lawsuit centers on Russelectric's stock plan, which held a 30% stake in the company after it was established by founder Raymond Russell in 2010. Employees claim they were significantly underpaid for their shares when the plan was terminated after Russell's death and that they lost out on about \$7 million after the company's 2019 sale to Siemens AG. A clawback provision allegedly allowed them to receive additional amounts if the company was sold for a higher price than they were paid for their shares at termination.

The settlement is subject to approval from Judge Patti B. Saris, whose prior rulings allowed the case to advance and certified it as a class action.

Argent is represented by Groom Law Group. The employees are represented by Engstrom Lee LLC, Block & Leviton LLP, and Morgan & Morgan PA.

The case is *Bowers v. Russell*, D. Mass., No. 1:22-cv-10457, partial settlement motion 8/19/25 .

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In Onlyfans case, Hagens Berman filed AI-generated briefs with fake case citations

DJ

[dailyjournal.com/articles/387178-in-onlyfans-case-hagens-berman-filed-ai-generated-briefs-with-fake-case-citations](https://www.dailyjournal.com/articles/387178-in-onlyfans-case-hagens-berman-filed-ai-generated-briefs-with-fake-case-citations)

Plaintiffs' attorneys at Hagens Berman Sobol Shapiro LLP are accused of using AI to draft multiple opposition briefs that cited a fake case, misquoted real ones and included language that does not appear in a previous order from the judge, according to opposing counsel.

The alleged hallucinated documents, filed last month by Hagens partner Robert B. Carey in Arizona, were prepared by an attorney outside the firm undergoing a family health crisis, he said in a statement Tuesday.

The documents were meant to keep alive a Racketeer Influenced and Corrupt Organizations Act action against online platform OnlyFans.

The complaint, on behalf of five consumers, accuses the site's parent company and internet provider of authorizing its adult content creators to prioritize the use of automated chatbots over human communication during private messaging sessions with subscribers in alleged "romance scams."

In a statement Tuesday, Carey acknowledged the matter. He said his team's review of the briefs failed to catch the hallucinations, which he said was drafted by a "trusted colleague" who was going through a tough time with family and used AI to draft the documents.

"Our firm was alerted by Skadden Arps that briefs we filed included material that did not meet our standards. The briefs--overall the product of extensive and careful research and writing--included sections drafted by co-counsel outside our firm," Carey said in a statement. "In those sections, quotation marks were improperly placed on the holdings of real cases, and inaccurate statements and citations appeared, including one citation to a case that did not exist. Our review did not catch those errors, and we take responsibility for that oversight. It should not have happened."

He went on to explain, "One of our co-counsel, a Yale Law School graduate and trusted colleague who has provided excellent work for over a decade, was in the midst of an intense family crisis. Her father, who had long battled Parkinson's and other serious conditions, entered hospice earlier this summer. While managing his care from afar, she did not share with us how overwhelming the situation had become.

"Under that strain, she turned to an AI tool to help polish her drafts, not realizing that in doing so, the tool had introduced or altered citations and text," Carey's statement continued. "Because she did not alert us to her situation, and her material arrived late in the process, our usual review protocols could not be fully applied. She will demonstrate to the court that the flawed content was preceded by careful and responsible research, writing, and development of arguments. While late submissions are a reality in litigation, we are strengthening our procedures to ensure that our review process accounts for this issue in the future. We remain fully committed to the integrity of our work, our clients, and our obligations to the court."

In a reply to the opposition documents - filed Monday in Santa Ana federal court by Skadden Arps Slate Meagher & Flom LLP partner Jason D. Russell - the defense attorney for Fenix International and Fenix Internet - claimed the consumers' lawyers "were evidently unable to find legitimate authorities" over the past two months to support their arguments against the companies' pending dismissal motion.

"On at least 20 occasions, Plaintiffs' Opposition cites imaginary caselaw, quotes invented language in real cases, summarizes non-existent court holdings and analysis, or responds to arguments Fenix did not make," the reply brief stated. "Fenix had to spend real time and money figuring out how to respond to the hallucinations in Plaintiffs' Opposition. Now the Court must expend resources to address it too."

In an email Tuesday, Russell said neither he, nor his clients, had any additional comment on the matter outside of their court filings. He referred to a 22-page declaration - also filed Monday - written by Skadden associate Or-el S. Vaknin. The document, according to Vaknin, details the instances where he believed AI was used in Hagens' opposition.

The declaration cites several cases the plaintiffs' counsel purportedly used that either included misquoted language or misrepresented claims. Most notably, a case cited "*Doe v. Match Group*, 2022 WL 4551600 (C.D. Cal., Aug. 12, 2022)" was alleged to be fabricated completely.

"I ran a nationwide search for dockets or cases matching this case name via Bloomberg Law and Westlaw, and for any cases involving a Doe plaintiff and Match Group defendant. I was unable to find any docket or order matching Plaintiffs' citation or characterization of the case," Vaknin wrote in his declaration.

On the 13th page of the plaintiffs' opposition brief, numbered 141 on the Central District of California court docket, the case was cited and referenced to explain why a forum-selection clause - a contractual agreement that designates court location for legal disputes - was not enforceable against their clients on the claims based on deception.

Based on a Google search of that exact case citation on Tuesday, results showed a handful of California cases involving Match Group as defendants. However, those cases included named plaintiffs. Another case involved a \$14 million FTC settlement that was announced by the government on Aug. 12.

Other instances of the alleged artificial hallucinations regarding the three separate opposition briefs, according to Vaknin's declaration, included misquoted language of an April 9 order from U.S. District Judge Fred W. Slaughter. Several other alleged hallucinations included case language, from real legal disputes, that did not exist or misrepresented certain claims.

The consumer's class action against OnlyFans was initiated in 2024. It was amended in April after Slaughter narrowed the scope of the claims. *N.Z. et al. v. Fenix International Limited et al.*, 8:24-cv-01655 (C.D. Cal., filed July 29, 2024).

In the pending motion to dismiss the suit, the Fenix defendants denied they were liable for any alleged deception and that the case should be dismissed because it fails to sufficiently plead facts that indicate Fenix knew about or was able to detect any alleged use of third-party contractors to manage the chats.

They also claimed the complaint did not prove Fenix had any specific intent to mislead the subscriber plaintiffs.

Slaughter is scheduled to hear the motion on Sept. 4.

#387178

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Generative AI does nothing for 95 percent of companies • The Register



theregister.com/2025/08/18/generative_ai_zero_return_95_percent

Thomas Claburn

August 18, 2025



US companies have invested between \$35 and \$40 billion in Generative AI initiatives and, so far, have almost nothing to show for it.

According to [a report](#) [PDF] from MIT's NANDA (Networked Agents and Decentralized AI) initiative, 95 percent of enterprise organizations have gotten zero return from their AI efforts.

Only 5 percent of organizations have successfully integrated AI tools into production at scale.

The report is based on 52 structured interviews with enterprise leaders and on analysis of more than 300 public AI initiatives and announcements, and a survey of 153 business professionals.

The report authors – Aditya Challapally, Chris Pease, Ramesh Raskar, and Pradyumna Chari – attribute this GenAI Divide not to insufficient infrastructure, learning, or talent, but to the inability of AI systems to retain data, to adapt, and to learn over time.

The GenAI Divide is starkest in deployment rates, only 5 percent of custom enterprise AI tools reach production

"The GenAI Divide is starkest in deployment rates, only 5 percent of custom enterprise AI tools reach production," the report says. "Chatbots succeed because they're easy to try and flexible, but fail in critical workflows due to lack of memory and customization."

As an unidentified CIO put it in an interview with the authors, "We've seen dozens of demos this year. Maybe one or two are genuinely useful. The rest are wrappers or science projects."

The authors' findings echo [other recent research](#) showing a decline in confidence about AI initiatives among corporate leaders.

The NANDA report does say that a small percentage of companies have found GenAI helpful and that the technology is having a material impact on two out of nine industrial sectors – Technology and Media & Telecom.

For the remaining sectors – Professional Services, Healthcare & Pharma, Consumer & Retail, Financial Services, Advanced Industries, and Energy & Materials – Generative AI has been inconsequential.

An unidentified COO at a mid-market manufacturing firm is quoted as saying, "The hype on LinkedIn says everything has changed, but in our operations, nothing fundamental has shifted. We're processing some contracts faster, but that's all that has changed."

One thing that is changing is the employment landscape, at least in affected industries. In the Technology and Media sectors, the report notes, "[more than] 80 percent of executives anticipate reduced hiring volumes within 24 months."

According to the authors, the GenAI-driven workforce reductions have been occurring in non-core business activities that often get outsourced, such as customer support operations, administrative processing, and standardized development tasks.

"These roles exhibited vulnerability prior to AI implementation due to their outsourced status and process standardization," the report says, suggesting that, in the affected sectors, between five and 20 percent of support and admin processing has been impacted.

- [AWS pricing for Kiro dev tool dubbed 'a wallet-wrecking tragedy'](#)
- [UK drafts AI to help Joe Public decipher its own baffling bureaucracy](#)
- [Generative AI isn't just a matter of life and death. It's far more important than that](#)
- [Nabiha Syed remakes Mozilla Foundation in the era of Trump and AI](#)

The Register has been told that Oracle's [recent layoffs](#) reflect efforts to balance AI capital expenditures, [an albatross around the necks of US tech giants](#). At IBM, staffers have argued that [AI has been used as an excuse to offshore jobs](#).

Whatever the stated rationale and actual motive for job cuts may be, Generative AI is having an impact on the Tech and Media & Telecom sectors, where it has seen the broadest adoption.

While about 50 percent of AI budgets get allocated to marketing and sales, the report authors suggest that corporate investment instead should flow toward activities generating meaningful business results. This includes lead qualification and customer retention on the

front end and, in the elimination of business process outsourcing, ad agency spending, and financial service risk checking on the back end.

Looking at the way Generative AI has been successful for certain companies, the report argues that generic tools like OpenAI's ChatGPT do better than bespoke enterprise tools, even when those enterprise tools use the same AI models under the hood.

The stated reason is that workers tend to be more familiar with ChatGPT's interface and thus use it more – a consequence of employee-driven shadow IT. The report cites an interview with a corporate lawyer who described her mid-size firm's dissatisfaction with a specialized contract analysis tool that cost \$50,000.

"Our purchased AI tool provided rigid summaries with limited customization options," the attorney told the researchers. "With ChatGPT, I can guide the conversation and iterate until I get exactly what I need. The fundamental quality difference is noticeable, ChatGPT consistently produces better outputs, even though our vendor claims to use the same underlying technology."

Companies that bridge the GenAI divide approach AI procurement as business process outsourcing customers rather than as software-as-a-service clients, the authors argue.

"They demand deep customization, drive adoption from the front lines, and hold vendors accountable to business metrics," the report concludes. "The most successful buyers understand that crossing the divide requires partnership, not just purchase." ®

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News | **Class Actions**

Suits Against Claims Administrators Throw Wrench Into Facebook's \$725M Privacy Settlement

August 19, 2025 | By  **Amanda Bronstad**

What You Need to Know

- The order comes after a series of groundbreaking lawsuits alleged Angeion and other claims administrators had engaged in a racketeering scheme with financial tech companies.
- The first distribution payments in the Facebook settlement were set to arrive later this month to 19 million class members, 28% of whom opted to receive a prepaid Mastercard.



Credit: Ink Drop / AdobeStock

A federal judge ordered the claims administrator in Facebook's \$725 million privacy settlement to submit its financial agreement with the processor of prepaid Mastercards after lead counsel raised concerns following multiple racketeering lawsuits.

Monday's order, by U.S. District Judge Vince Chhabria, requires Angeion Group, the claims administrator, to submit, *in camera*, its revenue-sharing agreements with Blackhawk, which provides branded payment cards. The order comes after a [series of groundbreaking lawsuits](#) alleging Angeion and other claims administrators had engaged in a racketeering scheme with financial tech companies.

The first distribution payments in the Facebook settlement were set to arrive later this month to 19 million class members, 28% of whom opted to receive a prepaid Mastercard. But, on Thursday, lead plaintiffs' counsel informed Chhabria, of the Northern District of California, about the lawsuits, which could impact potential distribution.

"The parties have worked cooperatively and collaboratively once the additional information came to light, and they have devoted substantial time investigating the issues, analyzing potential solutions, and negotiating options to ensure that settlement funds reach the intended recipients," wrote class counsel Lesley Weaver, of Bleichmar Fonti & Auld in Oakland, California, and Keller Rohrbach's Derek Loeser, in Seattle, in an Aug. 14 joint status report with Christopher Chorba, of Los Angeles-based Gibson, Dunn & Crutcher, counsel for Meta Platforms Inc., which owns Facebook. "The parties share the goal of ensuring that settlement class members receive all funds set aside for class distribution in the most fair and efficient manner possible."

Weaver declined to comment, and both Meta and Chorba did not respond to a request for comment.

A spokesman for Angeion, which received \$9.26 million to administer the Facebook settlement, said in an emailed statement, "We approach our role as court-appointed administrator with the utmost diligence and believe the highly successful notice program in this case speaks for itself. The declaration filed with the court highlights Angeion's collaborative work with the parties to design distribution methods that provide an important choice that the market clearly demands. In this case, over five million consumers selected the prepaid e-Mastercard evidencing the strong consumer demand by class members for products like these."

In an Aug. 14 declaration, CEO Steven Weisbrot said Angeion works with two vendors: Digital Disbursements, which provides payments through Venmo, PayPal, Zelle and direct deposit, and Blackhawk, which processes prepaid digital payment cards.

“Angeion does not receive any portion of unused digital payment card balances from the digital payment card issuer or any other source,” he wrote. That includes any portion of any inactivity service fee applied to any class member, he added. And any compensation Angeion receives through its Blackhawk agreement, he wrote, does not add costs to the settlement fund or reduce funds available to class members.

Blackhawk, he wrote, is a reliable vendor that is responsible for unspent balances, which remain in the cardholder’s name.

“In other words,” he wrote, “it is my understanding that unused funds remaining on any digital payment card will always remain the property of the cardholder and will at no time revert to the settlement fund, to Blackhawk, or to Angeion.”

Angeion’s statement continued, “Angeion’s efforts here have delivered tremendous value to class members and the parties, including favorable payment card terms that go well beyond those generally available in standard commercial payment card products which are also considerably more consumer-friendly than what is generally available on the open market.”

‘Class Counsel and Meta Were Not Informed’

The \$725 million settlement resolved privacy claims alleging that Facebook sold information about its users to third parties through an app called Cambridge Analytica. Earlier this year, the U.S. Court of Appeals for the Ninth Circuit [rejected two objections](#) to the settlement.

The suits, which include three brought by Boies Schiller & Flexner, allege an anticompetitive scheme in which financial technology companies paid undisclosed kickbacks in exchange for deposits of hundreds of millions of dollars in class action settlements. In addition to Angeion, the defendants include Epiq Systems Inc. and JNC Legal Administration, as well as two banks, Huntington National Bank and Western Alliance Bank.

The alleged kickbacks, paid through special purpose entities, or SPEs, come from “breakage,” which is the revenue from unredeemed gift cards and digital payment cards obtained by financial technology companies and shared as rebates to claims administrators. The lawsuits allege violations of the Sherman Antitrust Act and the U.S. Racketeer Influenced and Corrupt Organizations Act.

In the status report, class counsel said they reached out to Angeion one day after the first case was filed.

“Through subsequent discussions,” they wrote in the status report, “class counsel learned that Angeion has a master services agreement with Blackhawk, the prepaid Mastercard distributor.



Lesley Weaver of Bleichmar Fonti & Auld. Courtesy photo

Angeion states that under that master agreement, Angeion receives an undisclosed sum that does not result in any increased cost to the settlement fund and does not reduce the funds available to be distributed to the settlement class members. Class counsel and Meta were not informed or aware of this agreement between Angeion and Blackhawk prior to these discussions. Angeion's position is that it was not required to disclose it."

Angeion refused to provide the Blackhawk agreement to the lawyers but agreed to submit it *in camera* to the judge.

In the meantime, they wrote, the lawyers began "lengthy negotiations" on how to revise the settlement's distribution methods. They came up with two alternatives. Meta's lawyers supported the less costly option of continuing with Angeion but ensuring that the distribution payments remain in a qualified settlement fund, which would earn interest, until a class member registers his prepaid Mastercard. This option also was more convenient for class members.

"Asking for this kind of information at this stage of the process may be viewed skeptically by some class members who made their selection long ago, and may have chosen the prepaid card option precisely because they did not wish to provide bank account or mailing address information," Meta's lawyers wrote in the report.

A second option, supported by class counsel, would eliminate prepaid Mastercards as a payment option and send emails to class members requesting they choose another method, such as direct deposit, checks, PayPal, Venmo or Zelle.

"Had all of the terms about the prepaid Mastercards been disclosed in 2020, the court, the parties and the class could have made fully informed decisions," class counsel wrote in the report. "But the terms were not disclosed. Because of this, the parties were not able to evaluate this distribution method with a full understanding of its costs and benefits."

Litigation

Manage Newsletters

Blue Cross Blue Shield Gets Final Approval of \$2.8 Billion Deal

Aug. 20, 2025, 7:52 AM PDT

Blue Cross Blue Shield gained final approval of a \$2.8 billion class action antitrust settlement, putting to rest claims by doctors, hospitals, and other health-care providers that the insurer shortchanged them on reimbursements.

The deal provides “historic, transformative, procompetitive injunctive and equitable relief that will greatly benefit the Settlement Class Members,” Judge R. David Proctor of the US District Court for the Northern District of Alabama said in a Tuesday order that also approved \$657.2 million in plaintiffs’ attorneys fees.

The deal is one of the largest ever in a US health-care antitrust case, resolving litigation that started more than a decade ago when subscribers first accused BCBS and its affiliates of illegally dividing the US health insurance market into regional areas to avoid competing with one another. Dozens of cases were consolidated in the Northern District of Alabama.

In addition to monetary relief, BCBS agreed to upgrade its technical systems to make claims information more readily available to providers, establish a monitoring committee to oversee settlement compliance and address class member grievances, and make other changes to its programs.

The deal doesn’t cover opt-out plaintiffs that decided to pursue their claims separately.

BCBS is represented by firms including Cravath, Swaine & Moore LLP. The plaintiffs are represented by firms including Whatley Kallas LLP and Simons & Associates Law PA.

The case is *In Re Blue Cross Blue Shield Antitrust Litigation* , N.D. Ala., 8/19/25 .

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Class Action

Manage Newsletters

Deep Dive

CVS Opioid Insurance Loss Hits Companies Fighting Nuisance Suits

Aug. 20, 2025, 8:47 AM PDT

Summary by Bloomberg AI

AI Generated



- The Delaware Supreme Court ruled in favor of American International Group Inc. and Chubb Ltd. units, finding that suits alleging CVS contributed to the opioid crisis failed to meet the threshold for insurance coverage.
- The court found that the suits didn't seek damages due to "specific and individualized" bodily injury caused by CVS, and that the company's national settlement agreement does not change this fact.
- The ruling may have implications for other "public nuisance" claims, with Matthew Bricker saying that "Delaware has made clear that liability insurance covers injuries to people, not the economic costs of a public health crisis".

Companies looking for insurance carriers to pay for opioid-related lawsuits or other "public nuisance" litigation face an uphill climb in Delaware following a decision by the state's top court siding with liability insurers over CVS Health Corp.

The Delaware Supreme Court on Aug. 18 ruled in favor of American International Group Inc. and Chubb Ltd. units, finding that suits alleging CVS contributed to the opioid crisis failed to meet the threshold for insurance coverage because they didn't seek damages due to "specific and individualized" bodily injury caused by the retail pharmacy giant.

Commercial policyholders and their insurance carriers are locked in battle across state and federal courts over coverage for opioid and other "public nuisance" claims—including those stemming from gun violence and social media addiction litigation.

Insurers have scored several other high-profile wins on opioid liability claims in recent years, beating Publix Super Markets Inc. in Florida federal court and defeating McKesson Corp. in California.

The Delaware high court's ruling adds to policyholder concerns that insurers could seek to wield the decisions to deny coverage for a wide range of claims.

"Delaware has made clear that liability insurance covers injuries to people, not the economic costs of a public health crisis," said Matthew Bricker, a partner at TittmanWeix who represents insurers.

"Going forward, the same reasoning will likely apply to other government suits seeking to recover public expenditures, whether for climate change, environmental cleanup, pandemic response, or gun violence," Bricker added.

The state's high court rejected, among other things, CVS' argument that its roughly \$5 billion, 10-year national settlement with states and cities over opioid claims announced in 2022 demonstrates the company had been sued because of bodily injury.

"The national settlement agreement funds expenses in response to the opioid crisis at-large, but it does not change the fact that the underlying lawsuits do not seek specific damages tied to individualized injuries and trigger coverage," Chief Justice Collins J. Seitz Jr. wrote for the court.

Policyholder Options

Several other opioid-related insurance disputes are still pending in Delaware, including cases involving Albertsons Cos., Cencora Inc., and McKinsey & Co.

But this week's ruling leaves policyholders with few options to argue for coverage under commercial general liability policies unless they can find a way to prove their cases are distinct from the CVS suit.

"Coverage for settlements and judgments may be compromised if the coverage court is not presented with a full picture of the underlying litigation as it has developed," said Cristen Rose, a policyholder-side partner at Haynes & Boone LLP. "This decision emphasizes the importance of using a more developed record from the underlying litigation to inform the coverage action."

Because the ruling is based on the facts and underlying allegations CVS put before the court, companies facing different allegations could reach a different outcome in other coverage disputes, said Jenner & Block LLP partner David Kroeger, who represents policyholders.

The CVS decision could also serve as a roadmap for underlying plaintiffs seeking to plead into coverage, he added.

Expanding on *Rite Aid*

The Delaware high court's decision builds on its landmark 2022 ruling against Rite Aid Corp., in which the justices also held that lawsuits brought by governmental entities over the opioid epidemic didn't seek damages because of bodily injury.

This time around, the court rearticulated the "specific and individualized" standard and clarified that it applies to claims for property damage as well as bodily injury.

The logic should apply in other contexts as well, Bricker said. "If the claim is for economic losses, not tied to a specific person's injury, then there's just no coverage under the standard CGL language."

In addition to confirming governmental suits weren't covered, the court ruled out coverage for lawsuits brought by hospitals, medicals, and third-party payors seeking to recover costs incurred treating patients with opioid-related conditions.

Policyholders may still be able to make the case for coverage in suits brought by individual claimants. For example, some of the social media addiction suits at issue in a coverage dispute between Meta Platforms Inc. and its insurers were brought by individuals alleging they suffered harm stemming from the social media giant's platforms.

Other commercial policyholders actively litigating coverage for claims related to the opioid crisis in Delaware may be short on options.

"The tide seems to be shifting" in favor of insurers, Bricker said.

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

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Litigation

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CVS Caremark Ordered to Pay \$290 Million in Drug Fraud Suit (2)

Aug. 20, 2025, 5:16 AM PDT; Updated: Aug. 20, 2025, 9:02 AM PDT

Summary by Bloomberg AI

AI Generated



- CVS Caremark Corp. must pay nearly \$290 million after a federal judge tripled damages and assessed False Claims Act penalties for making drug price misrepresentations to Medicare.
- Judge Mitchell S. Goldberg said treble damages and a per-claim penalty aren't excessive under the US Constitution, and the penalty doesn't violate due process in light of the company's fraud and concealment.
- A CVS spokesperson said the company plans to appeal, and whistleblower Sarah Behnke alleged that CVS Caremark violated the FCA by causing insurers to misrepresent to the government the amount spent on prescription drugs on behalf of Medicare beneficiaries.

CVS Caremark Corp. must pay nearly \$290 million after a federal judge tripled damages and assessed False Claims Act penalties against the pharmacy benefit manager for making drug price misrepresentations to Medicare.

Treble damages and a per-claim penalty aren't excessive under the US Constitution, said Judge Mitchell S. Goldberg of the US District Court for the Eastern District of Pennsylvania in a Tuesday order. The penalty also doesn't violate due process in light of the company's fraud and concealment, Goldberg said.

The ratio of tripling and statutory penalty damages to actual damages is about 2-to-1. The court said that's lower than the 4-1 ratio in a July FCA ruling against Omnicare Inc. and CVS Health Inc., and it's also lower than the 10-to-1 ratio in a March FCA ruling against Janssen Products LLP.

Neither the US Court of Appeals for the Third Circuit nor the US Supreme Court has clearly addressed whether the FCA's treble damages requirement is punitive under the Eighth Amendment, Goldberg said. The Third Circuit could confront this issue when it hears Janssen's appeal.

The company plans to appeal, a CVS spokesperson said in an email. "We are pleased that the Behnke ruling in June was in our favor as to certain issues for CVS Pharmacy and CVS Health Corporation's liability, and disappointed the court found against Caremark on other issues," the spokesperson said.

Whistleblower Sarah Behnke, who sued in 2014, alleged that CVS Caremark violated the FCA by causing insurers to misrepresent to the government the amount spent on prescription drugs on behalf of Medicare beneficiaries, which caused Medicare to overpay subsidies.

She said that CVS Caremark contracted with pharmacies to pay a fixed average price for drugs, but actually reported individual sale prices that were higher.

Following an eight-day trial, the court ruled June 25 that CVS Caremark is liable for \$95 million in actual damages. Goldberg here tripled that amount to \$285 million, as statutorily required.

Behnke proved that CVS Caremark acted with reckless disregard and deliberate ignorance by causing the submission of about 513 false reports to Medicare, Goldberg said.

Given the seriousness of the misconduct, the court said, a per-claim penalty "near the top" of the statutory range—\$9,500—is required. The result is a nearly \$4.9 million civil penalty. The FCA's penalty range is \$5,500 to \$11,000 per claim.

These damages and penalties against CVS Caremark don't violate the excessive fines clause in the Eighth Amendment, the judge said, because they aren't grossly disproportionate to the gravity of the company's misconduct.

The government's \$95 million fraud loss is significant, the court said, and evidence at trial showed that the fraud didn't result from an innocent or mistaken belief.

This type of fraud reduces the public's confidence in government, Goldberg said, adding that CVS Caremark's conduct broke the US Centers for Medicare and Medicaid Services' trust, and the public's trust in the agency.

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

Williams & Connolly LLP represents CVS Caremark. Berger Montague and Miller Shah LLP represent Behnke.

The case is United States ex rel. Behnke v. CVS Caremark Corp. , E.D. Pa., No. 14-cv-824, 8/19/25 .

(Updates story to include comment from CVS spokesperson)

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Litigation

Manage Newsletters

Illinois AG, Law Firms Accused of Probing Energy Firms for Cash

Aug. 20, 2025, 8:09 AM PDT

Summary by Bloomberg AI

AI Generated



- Two alternative electric suppliers, Residents Energy and IDT Energy, have accused the Illinois Attorney General and three private law firms of a scheme to investigate their industry "with the goal of profiting from enormous fines extracted through threats".
- The suppliers allege that Attorney General Kwame Raoul "has an institutional and political interest in maximizing enforcement revenue", and that the private law firms are working with Raoul "with the goal of extracting a lucrative contingency-fee payday for themselves".
- The law firms were "deputized" to work as special assistant attorney generals, and "have repeatedly cloaked themselves with the power of the state, demanding rights no private litigant ever could, all while enforcing penal statutes for private profit".

Two alternative electric suppliers have accused the Illinois Attorney General and three private law firms of a scheme to investigate their industry "with the goal of profiting from enormous fines extracted through threats," according to a complaint filed Wednesday in Chicago federal court.

Attorney General Kwame Raoul's office, working with the law firms, has repeatedly taken action against alternative retail electric suppliers, generally alleging they use deceptive practices to persuade people to switch from default public utilities to significantly more expensive contracts. Some of the actions have resulted in multimillion-dollar settlements.

In a complaint filed in the US District Court for the Northern District of Illinois, Residents Energy and IDT Energy, two alternative retail electric suppliers, allege those investigations are inappropriate and motivated only by profit. Raoul "has an institutional and political interest in maximizing enforcement revenue," they argue, and the private law firms are working with Raoul with "the goal of extracting a lucrative contingency-fee payday for themselves."

The law firms—Miner Barnhill & Galland, Edelson PC, and Hughes Socol Piers Resnick & Dym—were “deputized” to work as special assistant attorney generals and “have repeatedly cloaked themselves with the power of the state, demanding rights no private litigant ever could, all while enforcing penal statutes for private profit.”

The Attorney General’s office sued Residents Energy in Cook County Circuit Court in 2023, alleging their salespeople used unfair tactics to get people to switch to more expensive contracts; that case is pending.

According to Wednesday’s complaint, the law firms have accused IDT Energy, which is affiliated with Residents Energy, of violating the terms of a 2019 consent decree. That enforcement letter “is plainly a set-up to demand financial penalties,” the companies claim.

Raoul’s office did not immediately return a request for comment.

The plaintiffs are represented by Lasko Legal Services and Cyrulnik Fattaruso.

The case is Residents Energy v. Raoul, N.D. Ill., No. 1:25-cv-09929, complaint filed 8/20/25 .

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Class Action

Manage Newsletters

Musk, DOGE Will Face Class Action Claims in USAID Suit (Correct)

Aug. 19, 2025, 11:46 AM PDT; Updated: Aug. 20, 2025, 7:48 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal court said US Agency for International Development employees who will lose their jobs when the agency shuts down may pursue their claims against Elon Musk and the Department of Government Efficiency as a class action.
- The plaintiffs claimed that the Department of Government Efficiency's actions violated the appointments clause and the separation of powers by subverting the powers of Congress.
- The certified class includes all USAID employees who were US citizens or working in the US between Jan. 27 and the present, excluding administrators, deputy administrators, and foreign nationals working abroad.

US Agency for International Development employees who will lose their jobs when the agency shuts down may pursue their claims against Elon Musk and the Department of Government Efficiency as a class action, a federal court said.

After the US Supreme Court curbed the use of universal injunctions, advocates for federal workers subject to mass layoffs are turning to the use of class actions.

The Trump Administration tasked Musk and DOGE with cutting the federal budget. As part of their mandate, they sought to merge USAID with the US State Department and terminate the 5,000 to 10,000 USAID employees. To that end, on March 28, DOGE Team Lead Jeremy Lewin sent an email notifying the employees that they would receive reduction-in-force notices, requiring separation by either July 1 or Sept. 2.

DOGE's activities have been legally challenged at almost every turn. But the US Supreme Court ruled in June that DOGE can have access to Social Security data. Musk left DOGE in May.

The plaintiffs here claimed that DOGE's actions violated the appointments clause and the separation of powers by subverting the powers of Congress. They were granted a preliminary injunction on March 18 and the defendants' motion to dismiss was denied Aug. 13—only claims against President Trump were dismissed.

At the time of the proposed RIF, USAID had personnel classifications that included civil service employees, foreign service employees, foreign service limited and national employees, and personal services contractors. They also had cooperating country and third-country national personal service employees, who weren't US citizens and worked for USAID in foreign countries. But Judge Theodore D. Chuang of the US District Court for the District of Maryland pared from the class foreign nationals working abroad, saying that they don't possess any rights under the US Constitution.

The class certified by Chuang was all USAID employees who were US citizens or working in the US between Jan. 27 and the present. It specifically excluded administrators and deputy administrators.

Under his modifications, Chuang said that the class isn't overbroad. He added that the class is sufficiently large and the plaintiffs have common issues of law and fact.

The common issues for the appointments clause claim are whether Musk made the initial decision to dismantle USAID and whether that decision should have been made by a duly appointed US officer. They also include whether Musk was the de facto DOGE administrator, and whether Musk's position was "continuing" for appointment clause purposes. For the separation of powers claim, the common issues are whether the defendants' actions eliminated USAID as an independent agency, and whether that elimination violated separation of powers, Chuang said.

The plaintiffs' claims are also typical of the rest of the class, and the plaintiffs will adequately represent the class, Chuang said. He added that a single injunction or declaratory judgment will provide relief for the entire class.

State Democracy Defenders Action, Marziani, Stevens & Gonzalez PLLC, and Lieff Cabraser Heimann & Bernstein, LLP represent the plaintiff. The US Department of Justice represents the defendants.

The case is *Does v. Musk*, 2025 BL 291150, D. Md., No. 25-0462-TDC, 8/18/25 .

(Corrects last sentence in 9th paragraph to make clear that it is USAID's status as an independent agency that is at issue regarding the separation of powers claim.)

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Tesla Cybertruck Sales Fall Dramatically To Their Lowest Level In A Year



insideevs.com/news/766162/tesla-cybertruck-sales-q2-h1-2025

Iulian Dnistran

July 17, 2025



- Tesla Cybertruck sales fell to their lowest level in a year.
- In the second quarter, the Cybertruck was surpassed by two competitors.
- In the first six months, Tesla sold fewer Cybertrucks compared to last year.

The [Tesla Cybertruck's fall from grace](#) continues as the controversial electric pickup just recorded its third consecutive drop in quarterly sales.

According to data from [Cox Automotive](#), the American-made angular pickup sold 4,306 units in the second quarter of this year, which opened the door for two competitors to surpass it on the sales charts.

The GMC Hummer EV surpassed the Tesla Cybertruck in the second quarter.

Photo by: GMC

The [Ford F-150 Lightning](#) continues to be the best-selling electric pickup in the United States, a title it earned in the previous quarter. With 5,842 units sold, the Lightning is also on a downward trend, with sales going down for the second quarter in a row.

Meanwhile, combined sales of the [GMC Hummer EV](#) SUV and pickup surpassed the [Tesla Cybertruck](#) and landed the GM-made duo in the second spot on the list with 4,508 sales. That's up from the previous quarter's 3,479 units.

The [Chevrolet Silverado EV](#) is also slightly up, with 3,056 sales in Q2. That's 673 more units quarter-over-quarter and 860 more year-over-year. At the bottom of the list is the [Rivian R1T](#), which barely managed to find more buyers in the second quarter compared to the first

quarter. Rivian sold just 1,752 R1Ts in Q2, an increase of just 25 units over the previous quarter, but a massive 47% drop year-over-year. In last year's second quarter, Rivian sold 3,309 R1Ts.

The Tesla Cybertruck went from internet darling to a sales flop.

Photo by: InsideEVs

Getting back to the Tesla Cybertruck, its sales numbers are the worst recorded over the course of a year. Compared to the first quarter, sales of the stainless steel EV went down by 32% in Q2. Year-over-year, the drop was even bigger, at 50%.

In the first half of the year, sales decreased 7%, going from 11,588 units in the first six months of 2024 to 10,712 units this year. The only quarter when sales were lower than now was at the beginning of 2024, when Tesla had its first full quarter for the pickup.

Revealed in 2019 as a prototype, the Tesla Cybertruck went into production at the end of 2023 with an ambitious goal of delivering as many as 250,000 units every year. That never happened, though, as the EV's first full year on the market resulted in a little over 41,000 deliveries.

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Tesla's six-seat Model Y variant may not be launched in US



reuters.com/business/autos-transportation/teslas-six-seat-model-y-variant-may-not-be-launched-us-2025-08-20

Reuters

August 20, 2025

Customers sit in a Tesla Model Y electric vehicle (EV) at the carmaker's delivery centre in Beijing, China January 8, 2025. REUTERS/Florence Lo/File Photo [Purchase Licensing Rights, opens new tab](#)

[\(TSLA.O\), opens new tab](#) CEO Elon Musk said the company's new six-seat Model Y variant, launched in China this week, might never enter production in the United States, citing the rise of self-driving vehicles.

The Model Y L, built at Tesla's Shanghai factory, features a longer wheelbase and three rows of seats, and is priced at around \$47,200. It went on sale in China on Tuesday, where Tesla faces mounting competition from domestic EV makers such as BYD ([002594.SZ](#)), [opens new tab](#) and Xiaomi ([1810.HK](#)), [opens new tab](#).

"This variant of the Model Y doesn't start production in the US until the end of next year," Musk said in a response to a post from an X user. "Might not ever, given the advent of self-driving in America."

Musk did not elaborate on how the rise of autonomous driving would negate the need for a six-seater vehicle. Tesla did not immediately respond to a request for comment.

Gas-powered SUVs with three rows have long been popular among American families.

However, making profitable three-row EVs is still a challenging business for automakers. Recent policy changes by the Trump administration are also set to make electric vehicles more expensive, prompting automakers to focus more on smaller, cheaper variants.

Tesla is also preparing to launch a cheaper Model Y variant, likely with fewer premium features, later this year, which Musk has described as "just a Model Y".

Tesla has increasingly shifted focus in the U.S. to its robotaxi ambitions. The company launched a limited robotaxi service in Austin in June and aims to scale operations to half of U.S. population by the end of this year.

Musk told investors last year that building traditional vehicles would be "pointless" in a self-driving future. Next year, Tesla is set to start production of the Cybercab, a dedicated two-seater robotaxi model without a steering wheel and pedals.

Google settles data privacy suit over children's YouTube tracking

DJ

[dailyjournal.com/articles/387176-google-settles-data-privacy-suit-over-children-s-youtube-tracking](https://www.dailyjournal.com/articles/387176-google-settles-data-privacy-suit-over-children-s-youtube-tracking)

Aug. 20, 2025

Google and YouTube agreed to pay \$30 million to settle a long-running lawsuit alleging they illegally collected data from millions of children under 13 for targeted advertising, without admitting wrongdoing.

Seven months after most of the plaintiffs' claims were dismissed, Google LLC and YouTube LLC agreed to pay \$30 million to settle a lawsuit that alleged the personal data of up to 35 million children under 13 was collected to direct "behavioral advertising" toward them from 2013 to 2020. The companies denied wrongdoing.

Monday's motion for preliminary approval followed more than six years of hotly contested litigation that cycled through five judges and included a precedent-setting ruling from the 9th U.S. Circuit Court of Appeals regarding the federal Children's Online Privacy Protection Act ability to preempt state law claims.

The case was filed one month after Google agreed to a \$170 million settlement and consent decree with the Federal Trade Commission and New York attorney general's office in September 2019. The agreement was meant to resolve the government's claims that the company's harvesting of minors' YouTube data violated the act, known as COPPA.

The plaintiffs' lawsuit sought additional relief under state privacy laws.

Google's press office and attorneys could not be reached for comment Tuesday. *Hubbard v. Google LLC*, 5:19-cv-07016 (N.D. Cal. filed Oct. 25, 2019).

The company denied liability in Monday's settlement terms, "Defendants Google LLC and YouTube LLC will pay \$30 million to fully resolve, without any admission of liability or wrongdoing by Defendants, the claims asserted against them in the litigation."

Jonathan K. Levine of Pritzker Levine LLP, one of the lead attorneys for the plaintiffs, said in the joint motion, "The proposed settlement in this case creates a cash fund of \$30 million, which represents a significant recovery in relation to the potentially recoverable class-wide damages for plaintiffs' privacy claims if plaintiffs were to prevail in the litigation, which can be viewed in three ways."

The motion also stated, "First, based on information produced during discovery and Plaintiffs' preliminary damage analyses, plaintiffs estimate potential class-wide damages of approximately \$52 million based on the amount of alleged improper revenues Google realized during the Settlement class period from the alleged illegal conduct."

The motion also stated that the plaintiffs' attorneys will seek up to \$9 million in fees for working "more than 8,900 hours" on the case.

U.S. District Judge Susan Van Keulen in San Jose dismissed most of the plaintiffs' claims against Google from the sixth amended complaint on Jan. 5. The judge also dismissed all claims against YouTube channel owners accused of intentionally creating content to attract children to YouTube to facilitate Google's collecting of the children's information. Those companies included Cartoon Network Inc. and toymaker Hasbro Inc.

In a December 2022 opinion by U.S. Circuit Judge M. Margaret McKeown, a three-judge panel overturned San Jose-based U.S. District Judge Beth Freeman's 2021 dismissal of the third amended complaint on the grounds that Google and YouTube's alleged actions constituted violations of COPPA which preempt the plaintiffs' state law privacy claims.

"The statute includes a preemption clause that provides that 'no state or local government may impose any liability . . . inconsistent with the treatment of those activities or actions under this section,'" the opinion stated. "Hewing closely to the language of the preemption clause, we determine that Congress intended to preempt inconsistent state laws, not state laws that are consistent with COPPA's substantive requirements, such as the state law causes of action pleaded in the complaint here."

The appeals court remanded the case, and the litigation continued.

The following attorneys represented the plaintiffs and could not be reached for comment Tuesday: Levine, Elizabeth C. Pritzker, Caroline C. Corbitt of Pritzker Levine LLP; David S. Golub, Steven L. Bloch, and Ian W. Sloss of Silver Golub & Teitell LLP.

The following attorneys from Hogan Lovells US LLP represented Google and YouTube: Adam A. Cooke, Amber M. Trincado, and Christine Wang.

#387176

Target's New CEO Michael Fiddelke Confronts an Identity Crisis

B[bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/T1AL37GPFHQG](https://www.bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/T1AL37GPFHQG)

Andrea Felsted

August 20, 2025



On to the next.
Source: Bloomberg

On Wednesday, Target Corp. [named long-serving executive Michael Fiddelke](#) to succeed Brian Cornell as chief executive officer.

Fiddelke's mission is Target turnaround 2.0. And his task will be even harder than the revival Cornell pulled off after he took the top job in 2014.

This time around, the challenge for the current chief operating officer, who joined the company as an intern in 2003, is not just about getting the right products onto shelves in a pleasant environment. Revitalizing Target involves deciding what the retailer stands for, and imbuing this identity into every aspect of its business, to win back disillusioned customers and make the "Target run" relevant once more. Cornell will also remain as executive chairman.

Cornell's tenure, to borrow a sporting metaphor, was a game of two halves. When he took the helm 11 years ago, the chain had lost some of its "Tar-zhay" sparkle, after having to focus heavily on value in a more fragile economic environment. A headline-grabbing data breach in 2013 and failed foray into Canada the same year didn't help.

Cornell sought to fix Target by focusing on the areas he thought the retailer should be famous for: fashion, home, kids, baby and wellness. Then in 2017 he made his most ambitious bet — sprucing up its about 1,800 stores. At a time when many rivals were closing swaths of physical outlets, he remodeled locations to make them better places to shop and, importantly, to act as hubs for e-commerce. He introduced new private labels, such as Good & Gather in food and All in Motion in athleisure, and there were plenty of cheap chic tie-ups, for example with Victoria Beckham in 2017.

All this paid off when the pandemic hit in 2020. Consumers took advantage of its same-day delivery and flocked to its stores for curbside pickup of their online orders. Between 2019 and 2022, Target added \$30 billion of revenue — more than the entire annual sales of Macy's Inc.

But like sellers of everything from designer handbags to drinks, Target thought the good times would last forever. At an investor day in March 2022, the company set out plans to lift its operating margin to 8% from 6% before the pandemic.

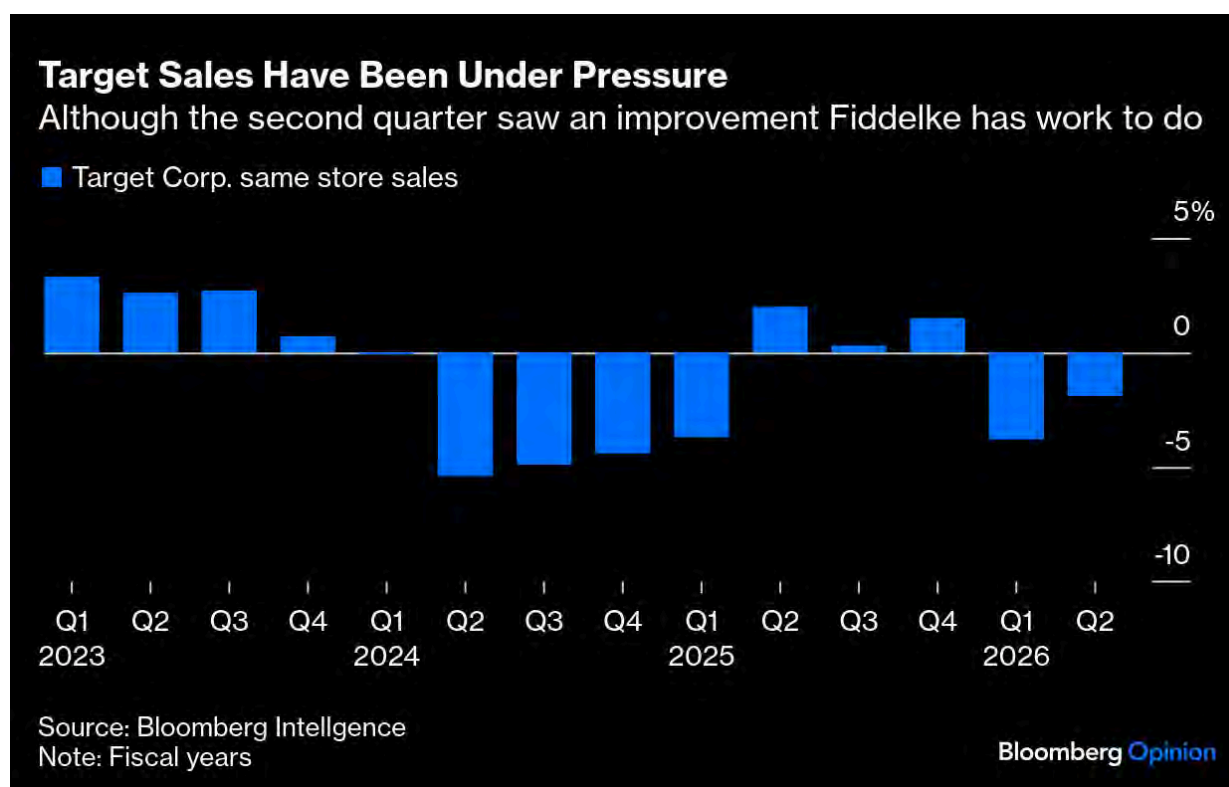
The party ended sooner than anyone could have imagined. Within three months, the company [warned that profits](#) would be hurt by a surfeit of stock, as beefed up inventories meant to beat supply chain issues coincided with a downturn in demand. Walmart Inc. also suffered from a mountain of unsold goods, but it recovered more quickly, thanks in part to the fact that it generates about 60% of its sales from food and other essential items. For Target, the figure is about 50%, according to Global Data.

The stock snafu was the first in a series of missteps. In 2023, Target angered certain shoppers by selling products tied to LGBTQ Pride Month. The company bungled the response to the backlash. Then earlier this year, Target [rolled back its diversity, equity and inclusion initiatives](#). The company had historically supported the Black community and Black-owned brands, so the reversal stung for loyal shoppers, prompting a boycott. Same-store sales have been positive in only three quarters over the past two years. The shares have more than halved from their peak in November 2021.



As CEO, Fiddelke now needs to get back to basics — ensuring that Target has enough desirable products on its shelves and that consumers can find them. A rethink of the operating model is needed. Fulfilling online orders from stores may have given Target an edge, but it's led to store staff being stretched thin, Neil Saunders, managing director of GlobalData, has noted. More recently, shoppers have taken to [complaining about items such as toiletries being locked away in display cases](#).

The incoming chief also needs to redefine Target's identity. The retailer's standing has fallen in the eyes of consumers, as the boycott, which led to lower foot traffic, demonstrates. Fiddelke needs to determine the retailer's values and communicate them clearly to its customers. (Target shoppers have traditionally been more affluent than, say, Walmart's, allowing them to prioritize personal preferences over saving money.)



These tasks are made all the more difficult by Walmart increasingly encroaching on Target's turf. The world's biggest retailer is seeking to keep the wealthy customers who traded down amid spiraling inflation with more appealing stores, trendier fashions and private labels, such as Bettergoods, which wouldn't look out of place in Target or even Trader Joe's for that matter.

Tackling this laundry list of problems won't be easy, but listening to customers would be a good start. Getting into stores and talking to staff and shoppers, as well as conducting focus groups to find out what people want from Target, would be smart. If the outcome is that Target should reinstate its inclusivity efforts, then the company should follow through, even if it risks angering the White House. Administrations change. Consumers have long memories.

While an outsider would have brought a fresh pair of eyes to Target's challenges, Fiddelke should know how Target can connect with customers. He has been with the company for over 20 years and held roles in finance, store operations and merchandising. He's seen the good times and the not-so-good. Indeed, while the retailer looks to the future with its values, it should go back in time in other ways. That means returning to cutting-edge fashion and a pipeline of exciting collaborations.

If Fiddelke can pull this off, it's not too late for Target to bounce back. After all, everyone deserves a second chance. Even a retailer that has lately been missing the bullseye.

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<https://www.wsj.com/business/retail/target-new-ceo-michael-fiddelke-969cb13f>

BUSINESS | RETAIL

Target Shares Tumble After Retailer Names a Lifer to Steer Its Turnaround

Chief Operating Officer Michael Fiddelke, who will take the top job in February, says his two decades at the company are an asset

By [Sarah Nassauer](#) [Follow](#)

Updated Aug. 20, 2025 10:06 am ET



Target Chief Operating Officer Michael Fiddelke started as an intern more than two decades ago.

PHOTO: YASMIN YASSIN FOR WSJ

[Target](#) TGT **-7.32%** ▼ thinks a lifelong employee can lift the company out of its funk. Investors aren't buying it.

Shares of Target fell more than 8% Wednesday after the company said its chief operating officer, Michael Fiddelke, would become Target's new chief executive officer in February. He succeeds Brian Cornell, who has held the top job for 11 years. Cornell will become executive chairman of the board, the company said.

Target's stock had risen slightly in recent months, as investors hoped that the retailer's turnaround plans and sales results could bring a stock surge. They didn't.

“Mr. Fiddelke was the most likely internal candidate,” said Zhihan Ma, a retail analyst at Bernstein. “However, it is likely hard for the market to get behind a turnaround led by a long tenured insider.”

Fiddelke will take over a company that is in a prolonged sales slump, losing out to such rivals as [Walmart](#) and [Amazon.com](#). Among [shoppers' complaints](#): Target's prices seem too high, its products aren't as exciting as they once were, and its stores are messy and understocked.

Target also angered shoppers because of a controversy regarding its 2023 Pride month product selections and more recently when the company pulled back on corporate diversity, equity and inclusion policies. Employees are frustrated with the retailer too. A [companywide survey](#) in June showed that 40% of workers didn't have confidence in Target's future, The Wall Street Journal previously reported.

On a call with analysts Wednesday, Fiddelke framed his more than two decades of experience as a positive. “There's real power in drawing on 20 years of knowing what makes Target, Target,” he said. That “gives me a clear focus on who we are in retail and what our unique path is.”

Target needs to revive its focus on stylish, unique merchandise and great customer experiences, he said.

“We've got to get back to growth. That is mission 1, 2, 3, 4, 5,” Fiddelke said in a joint interview with Cornell earlier this week on the 26th floor of the company's Minneapolis headquarters. “We haven't had enough of it over the last few years. We know that. I know that.”

Target Wednesday said its comparable sales, those from stores and digital channels in operation for at least 12 months, fell 1.9% in the latest quarter. That is better than the 3% decline expected by analysts, but marks the 11th consecutive quarter of flat or falling sales, a sign that Target continues to lose market share in some categories.

Fiddelke said Target lost some of its magic amid the supply-chain chaos and skyrocketing sales of the early pandemic.

In some product categories, “We leaned into the core of that category, and the second we did that, we lost a little bit of the fashion and trend that was our hallmark,” said Fiddelke. “We need to bring that back.”

“Our unique lane in retail is when we lead with style and design,” he said. “That’s the North Star.”

He acknowledged that the shopper experience has degraded, with products too often out of stock and stores strained by the need to act both as e-commerce shipping hubs and as in-person shopping destinations.

In a Chicago-area test, Target is limiting which stores serve e-commerce orders, fulfilling those orders through stores that serve fewer in-person shoppers, he said. The company is also using new metrics to gauge out-of-stock levels better at peak shopping times on weekday afternoons and weekends, he said.

“We’ve got some work to do to untangle that complexity because what we can’t have is any hiccups in the store experience,” he said. A faster embrace of new technology will also be important for Target’s turnaround, Fiddelke said.

Brian Cornell himself faced a turnaround job when he become Target's CEO. PHOTO: MARK LENNIHAN/AP

Constant feedback

Fiddelke grew up in Manchester, Iowa, an agricultural town with a population of 5,200. His family farmed beef, sheep, corn and soybeans, but gradually spent more time building small businesses, including a local liquor store and a handful of Super 8 hotels.

He received an engineering degree at the University of Iowa, worked as a consultant at Deloitte and then got a business degree at Northwestern University. While in business school, he landed a summer internship at Target.

Fiddelke said he liked the people and the pace. "I didn't know how much I was well-wired for that—the constant feedback loop of, we try things, we figure out fast what works and what doesn't, and we need to iterate on that. I am built for operating in that environment."

His predecessor, Cornell, also faced a turnaround job, when he left [PepsiCo](#) in 2014 to become Target's first outsider CEO. A reputation-damaging [data breach](#) at Target the year before had compromised 40 million debit and credit cards. Target's botched expansion into Canada had resulted in more than \$1 billion in losses.

Cornell quickly closed the company's [Canadian operations](#) and said he would refocus the business on the [stylish items](#) Target was known for. By 2017, Cornell [announced a plan](#) to invest billions of dollars to improve stores, lower prices and expand Target's e-commerce business, an acknowledgment at the time that trendy items alone weren't enough to propel sales growth. [Sales rose](#) as the strategy progressed. When the pandemic hit, shoppers flocked to Target's home goods, apparel and newly

expanded online pickup services. But as the pandemic receded, [so did Target's sales growth](#).

Cornell said he was proud that on his watch, Target became a larger retailer both online and off. But “retail is about constant improvement, so probably every week for 11 years there’s something where I said, ‘Boy, we could do that better or do that different,’” he said.

Write to Sarah Nassauer at Sarah.Nassauer@wsj.com

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Target Corp.**Target shares drop as retailer picks insider to lead turnaround drive**

Michael Fiddelke promises to restore 'swagger' at US chain when he succeeds veteran Brian Cornell



Target store sales boomed during the pandemic, but have weakened since in the face of competition from ecommerce and other retailers © Allison Dinner/EPA/Shutterstock

Gregory Meyer in New York

Published 6 HOURS AGO | Updated 06:35



Target shares fell more than 10 per cent after the retail group picked an insider to succeed veteran chief executive Brian Cornell to engineer a turnaround after years of disappointing sales.

Michael Fiddelke, [Target's](#) chief operating officer, will replace Cornell in February 2026, the company said. The 49-year-old has worked at Target for 20 years, starting as a finance intern.

"I'm stepping in with urgency to rebuild momentum and return to profitable growth," Fiddelke told reporters, adding that he wanted the business to have "swagger".

But some analysts questioned whether Fiddelke was the right person to reinvigorate the business.

“We expect a smooth leadership transition, although we are unsure of how Mr Fiddelke will change the strategy he helped create,” said Joe Feldman, an analyst at Telsey Advisory Group.

Once a magnet for customers for its affordable style, Target has lost some of its draw in recent years.

Comparable sales declined 1.9 per cent year on year in the second quarter, the company said on Wednesday, the latest in a string of [weak sales figures](#) over the past two years. At the market close on Tuesday, Target [shares were down](#) 22 per cent this year.

Target's comparable sales

Change year on year (%)



Sources: Target, S&P Visible Alpha

The incoming chief executive has held jobs at the retailer in merchandising, human resources and as chief financial officer. He was named chief operating officer last year, and in the spring created and took charge of an “Enterprise Acceleration Office” aimed at cutting red tape.

The announcement of Fiddelke's appointment came as Target reported second-quarter net sales of \$25.2bn, down 0.9 per cent year on year but higher than estimates compiled by Visible Alpha. Net profit of \$935mn was down 22 per cent year on year and in line with estimates.

Fiddelke said that as CEO he would pursue a three-part agenda for turning the business around: sharpening product design, improving shoppers' experiences and accelerating technology investments.

Cornell, 66, became chair and chief executive of Target in 2014. In 2022, he committed to remain for another three years as Target's board dropped a requirement for chief executives to retire by 65.

A former executive at groups including PepsiCo and Walmart, Cornell had been praised for sustaining growth and building Target's digital platform in the face of competition from ecommerce. The group's sales soared during the pandemic as consumers flocked to its stores to buy necessities in a single location.

But after revenue peaked at \$109bn in 2022, same-store sales have since disappointed investors. Competitors such as Amazon, Costco and Walmart have gained share of the discount shoppers' dollar, in some cases with stylish products of their own.

Target also made costly inventory miscalculations and became ensnared in culture wars over LGBT+ themed products and a retreat from [diversity policies](#).

Consumer belt-tightening has disproportionately hit Target, whose inventory skews towards more discretionary merchandise. The company is also managing the costs of [US tariffs](#) on imported products.

Cornell, who will become executive chair, said the board picked Fiddelke unanimously after reviewing internal and external candidates over multiple years.

Christine Leahy, Target's lead independent director, said in a statement that Fiddelke's tenure "gives him unmatched enterprise insight and a base of strong team trust".

Fiddelke told analysts said the company needed to “recapture our merchandising authority and signature style”, one that is “unapologetically and unmistakably Target”.

Asked by a reporter how Target would differentiate itself in an era of tougher competition, Fiddelke responded: “The word that comes to mind for me is swagger.

“When we’re leading with swagger in our merchandising authority, when we have swagger in our marketing and we’re setting the trend for retail — those are some of the moments I think that Target has been at its highest in my 20 years.”

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Meta Platforms**Meta inflated ad performance and bypassed Apple's privacy rules, tribunal hears**

Former product manager alleges social media platform misled marketers in push for revenues



The tribunal heard that Meta tracked user activity on other websites without their permission, despite Apple explicitly requiring consent © Alex Wheeler/FT montage/Anadolu/ Getty Images

Rafe Uddin in London and **Hannah Murphy** in San Francisco

Published 33 MINUTES AGO



Meta inflated a crucial advertising metric by nearly 20 per cent and deliberately bypassed privacy rules on Apple iPhones in a bid to boost revenues, a former staff member has told an employment tribunal.

The social media platform is alleged to have misled advertisers over the financial performance of its “Shops Ads” — adverts introduced in 2022 for brands that host digital storefronts on Facebook and Instagram — by using gross rather than net sales figures, according to legal filings submitted on Wednesday.

Former Meta product manager Samujjal Purkayastha said the approach contrasts to how it calculated the performance of non-shopping advertising, which typically excluded the value of shipping and taxes, as well as the approach typically taken by rivals such as Google.

He claimed Meta was aware of the discrepancy but failed to disclose it to brands, alleging that an internal investigation had found that the performance of Shops Ads had been inflated by between 17 and 19 per cent.

Meta also secretly linked user data with other information to track users’ activity on other websites without their permission — despite Apple in 2021 introducing measures explicitly requiring consent, according to Purkayastha’s filings.

The claims were part of an application submitted to the Central London Employment Tribunal by Purkayastha to remain an employee until his claim of unfair dismissal had been adjudicated. The former Meta product manager said he was laid off in February this year after repeatedly raising concerns internally at Meta about the practices.

On Wednesday, employment judge Timothy Adkin concluded that Purkayastha’s application for interim relief would not proceed. A full hearing is still expected in the coming year.

The social media network in its response said it had no “interest in retaliating” against Purkayastha and that it considered the issues he raised “routine commercial matters” that “did not indicate any wrongdoing or breach of legal obligations”.

In a witness statement submitted to the tribunal, a different Meta employee said that the value of a sale was self-reported by advertisers and that the social media group did not know whether this included or excluded tax and shipping costs.

Meta has long faced scrutiny over its advertising metrics, including a class-action lawsuit claiming its so-called Potential Reach metric, used to inform advertisers of their potential audience size, was knowingly inflated.

Purkayastha was laid off earlier this year alongside roughly 5 per cent of Meta's workforce after chief executive Mark Zuckerberg told employees he planned to "raise the bar on performance management and move out low performers faster".

The social media platform said Purkayastha was dismissed after his "performance did drop" and that "he did have weaknesses which were beginning to show" alongside "significant health and other personal issues".

Purkayastha acknowledged several health and personal issues, which his lawyer described as "uniquely stressful" but maintained that these were not sufficient grounds for dismissal.

Purkayastha said that Meta was relying on Shops Ads to build more user data after Apple in 2021 introduced a feature called App Tracking Transparency (ATT), which banned apps and advertisers from collecting information about iPhone owners without their explicit consent.

Most Apple users declined to grant permission, severely restricting advertisers' ability to track users' behaviour on their device to target ads.

Former Meta CFO David Wehner told investors in 2022 that the company estimated the move would impact its revenues by approximately \$10bn that year.

Purkayastha said the financial losses from Apple's privacy changes meant Meta was "motivated to drive Shops Ads as a product" and that "misleading and inflated Shops Ads performance metrics would further this objective".

The former Meta product manager said the company had also failed to disclose to ad buyers that the service was heavily subsidised, claiming that Zuckerberg personally authorised a \$160mn budget to fund free ad placements during the testing of the ads, further skewing results.

In the witness statement submitted on behalf of Meta, the issue of subsidies was described as “widely known within Meta” and that “possible adjustments” were referred to publicly in an online help centre.

Purkayastha said that Meta sought to use machine learning to predict users’ likely activity, but that this failed to adequately address “signal loss” — where it was unable to track user activity across multiple platforms.

Instead, a “closed and secretive” team at Meta is alleged to have used “deterministic matching” — gathering identifiable information that could then be used to connect data across multiple platforms in violation of Apple’s new privacy policies.

Meta did not respond to claims it circumvented Apple’s ATT rules during Wednesday’s session.

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Margin Calls Force CEO to Shed Majority of Stock He Held in Firm

Aug. 20, 2025, 4:30 AM PDT

Summary by Bloomberg AI AI Generated



- Dave Schaeffer's commercial real estate portfolio has lost more than half its value since 2022.
- Schaeffer has given up 84% of his stake in Cogent Communications Holdings Inc. this year, with JPMorgan & Chase Co. and Royal Bank of Canada seizing more than \$82 million of shares he'd pledged as collateral for loans.
- Schaeffer is weighing his path forward, having begun negotiations with his real estate lenders to try to buy more time and change the terms of his debt, as he fears that his inability to inject cash from his stock holdings could lead to defaults.

Dave Schaeffer is running out of options to stave off the collapse of the Washington, DC, property empire he built over three decades.

It was bad enough that his commercial real estate portfolio has lost more than half its value since 2022. But shares of the internet service provider he founded in 1999 – which he's sold in record amounts to pay down debt on his properties – have also plunged this year. That selloff reached such extremes earlier this month that JPMorgan & Chase Co. and Royal Bank of Canada seized more than \$82 million of shares he'd pledged as collateral for loans.

In total, Schaeffer has given up 84% of his stake in Cogent Communications Holdings Inc. this year. Analysts at Wells Fargo & Co. are cautiously optimistic that the worst is over, but acknowledge the margin calls were "optically very challenging."



Dave Schaeffer

Photographer: Andrew Harrer/Bloomberg

Schaeffer, who at times had pledged as much as 80% of his stake in Cogent against loans to cover his tax bills, is weighing his path forward. Schaeffer said that while he doesn't have a "crystal clear plan," he's begun negotiations with his real estate lenders to try to buy more time and change the terms of his debt.

"The sales that I had made had been under duress, most of them completely involuntary," Schaeffer, 69, said in an interview. "I'm in a particularly tough real estate position because my lenders could actually look to my Cogent holdings and realize that there was a pool of capital that they could access."

Schaeffer's experience is a stark example of how margin loans can backfire. He said he tried to keep his two primary assets – his Cogent stake and his property portfolio – separate, but his lenders knew about both. This meant he couldn't simply "extend and pretend," a favored practice in the real estate industry when bankers extend the terms of a loan and pretend the asset's value hasn't changed.

Share Pledges

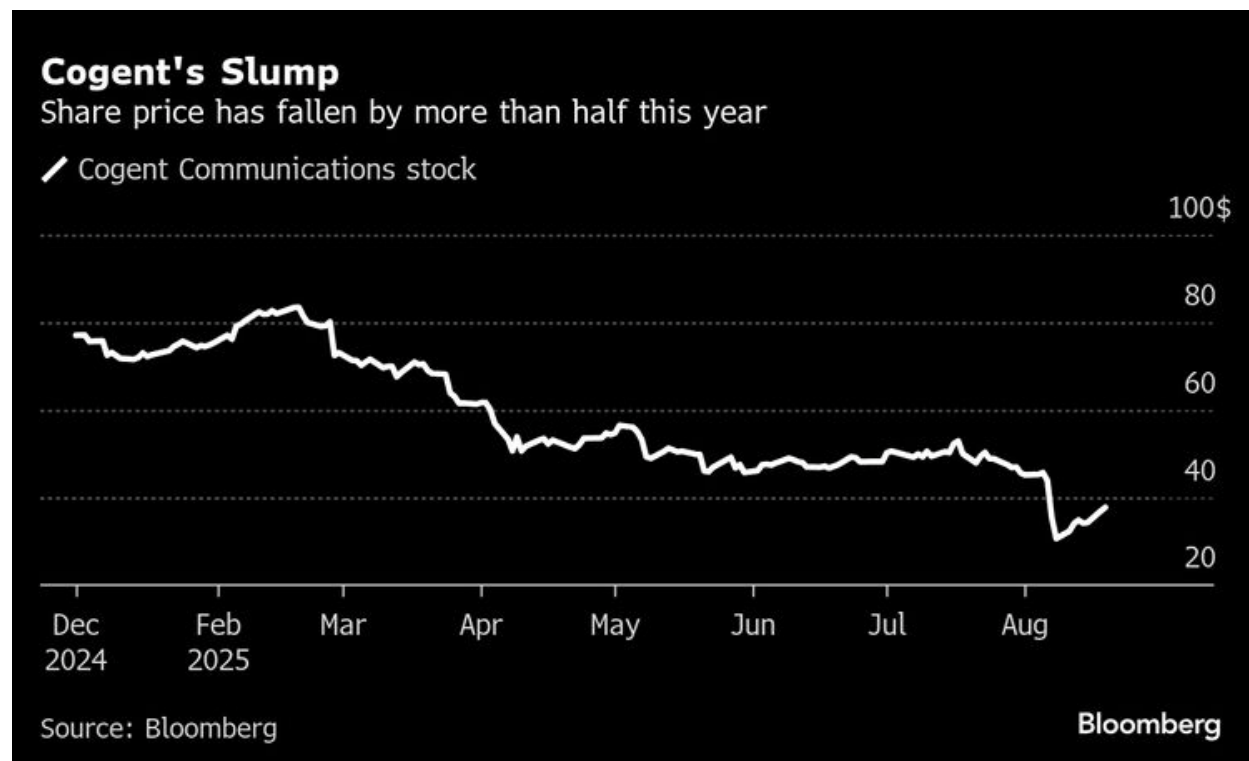
Schaeffer, the son of a taxi driver, gradually built his personal real estate empire, typically buying a building or two a year. He owns 42 office buildings in Washington and its suburbs, a market that was hit particularly hard by the pandemic and the Department of Government Efficiency's campaign to shrink the federal workforce. The value of that portfolio has lost \$600 million of its \$1.1 billion value over the past three years, he said.

"I had a stable portfolio that was consistently appreciating. And then when Covid hit, the portfolio began to depreciate," Schaeffer said. "The DOGE overhang and the additional pressure that put on the entire market turned the DC market from one of the best into one of the worst markets nationally."

Read More: [DOGE Risks a New \\$5 Billion Headache for Struggling US Landlords](#)

A 30-year low in Washington's office pipeline activity helped drive a 22.6% vacancy rate for the first half of the year, according to a June report from real estate firm CBRE Group Inc. Schaeffer's portfolio, largely made up of less-desirable Class B buildings, has performed even worse: He said his properties' overall vacancy rate rose from about 10% before the pandemic to about 35% today.

This has been exacerbated by a slump in Cogent shares, which are down more than 50% this year. Schaeffer hasn't taken a salary at Cogent for a decade, primarily drawing his compensation through stock awards, while also receiving cash through dividends. As his shares vested, he pledged large chunks of his stake to lenders to pay his taxes.



As of March 1, about 60% of that stake was pledged to secure his loans, above the maximum of 50% specified in the company's pledging policy, which applies except under "exceptional circumstances." He said he also personally guaranteed the loans.

Cogent's audit committee regularly reviews Schaeffer's stock holdings and his personal financial health and concluded "there was not a material risk that he could be forced to sell Cogent shares involuntarily," according to the company's March 26 [proxy statement](#). Cogent declined to comment.

However, JPMorgan and RBC moved separately to seize a total of 2.66 million shares earlier this month after a [weak earnings report](#) triggered a slump in Cogent's stock to the lowest level in a decade. That came after Schaeffer sold more than \$50 million of shares in May and June to pay down debt on his property portfolio. The overall sales left him with a 1.4% stake, down from about 9% at the beginning of the year.

A spokesperson for JPMorgan declined to comment. RBC didn't respond to a request for comment.

Schaeffer said he fears that his inability to inject cash from his stock holdings could lead to defaults that "could cascade across the whole universe" of his real estate lenders.

Property Downturn

The national commercial real estate market has been stabilizing since the pandemic. But older office buildings are struggling to lure tenants, and some regional markets are suffering, especially Washington, with its high density of government leases.

In 2022, Schaeffer bought a 207,000 square foot (19,230 square meter) tower in Washington and four buildings totaling more than 575,000 square feet in Fairfax County, Virginia, for a combined price of \$157 million, according to public records. Tax assessments show the properties are currently valued at about \$122 million total.

He has few easy options in front of him. Sales volume for commercial properties in the Washington region last year totaled just \$1.6 billion, the lowest annual figure since 2020 and 70% below a decade ago, according to a report from Lincoln Property Co.

Schaeffer believed it made sense to have a diversified strategy in two different asset classes. Now, he said, "I kind of feel like those guys in the trash compactor in *Star Wars*, where the walls are closing in from both sides."

--With assistance from **Natalie Wong**.

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Securities Law News

Starbucks' \$130 Million CEO Switch Shows Cost of C-Suite Ouster

Aug. 19, 2025, 2:00 PM PDT

When Starbucks Corp. tapped Brian Niccol as chief executive officer in 2024, it cited the “critical need for a transformative leader” in justifying the hire. If performance significantly improves, the corner-office switch could cost the company \$130 million.

That figure includes estimated exit payments to outgoing CEO Laxman Narasimhan as well as so-called “make whole” awards of cash and stock sufficient to entice Niccol to leave his job running Chipotle Mexican Grill Inc. Starbucks deemed the payments “necessary” to recruit Niccol. But some observers balked.

“The price of the transition is staggering,” concluded proxy-advisory firm Glass Lewis, in a February report that criticized the company’s succession planning and urged shareholders to vote against its executive compensation plan. “Shareholders should be critical of the costly nature of a CEO transition.”

They rarely are, though. Starbucks’ shareholders approved the pay packages at the company’s annual meeting in March, displaying the same optimism in Niccol’s turnaround ability that lifted the company’s shares 25% on the day his appointment was announced.

Perhaps if shareholders knew the full cost of a CEO ouster, they’d be more wary, as the price tag goes well beyond severance and sign-on payments made public in filings. There’s heavy turnover in the top job, much of it unplanned. According to Exechange.com, there were 134 CEO force-outs last year at Russell 3000 firms.

To give a proper accounting for unplanned CEO departures, Bloomberg News consulted with compensation consultants, academics, corporate lawyers, executive-search advisors and public-relations experts. Farient Advisors, an executive compensation and corporate governance consultant, crunched the numbers and provided estimates based on a sample of last year’s departures at big US firms like Starbucks, Intel Corp. and Nike Inc.

Deciphering the convoluted payments to the outgoing and incoming CEOs was just one element of the analysis. Corporate boards typically hire a bevy of advisors to handle the hunt for a new CEO and other critical aspects of the transition. Tasked with working fast and under scrutiny, none of them comes cheap. Sometimes boards also give retention bonuses to other senior leaders during the transition. The new CEO might then bring in fresh C-suite members, which results in additional replacement costs. (Niccol's new chief financial officer, Cathy Smith, received cash and stock worth an estimated \$11.4 million to come aboard at Starbucks.)

Other indirect costs of a CEO ouster are harder to measure, but still very real, like the impact on employee morale, productivity and turnover, or business opportunities that might get sidelined when the board is consumed with finding a new chief. And then there's the potential hit to the stock.

As with layoffs, which Bloomberg analyzed last year, the true cost of a CEO ouster is rarely straightforward, but always steep.

Unlike Kohl's Corp.'s recent firing of CEO Ashley Buchanan, who was found to have channeled millions of dollars of business to a paramour, most CEOs are rarely fired "for cause," a determination reserved for especially egregious behavior. Often, CEOs who know they're in danger will voluntarily (and quietly) resign to save face. A formal "retirement" can also mask a firing. Companies are not always required to disclose the true reason for a departure, so lawyers and public-relations reps often work hard to make a dramatic ouster look like a ho-hum transition.

To help determine whether a CEO was actually forced out, we relied on the experts at Exexchange.com, whose analysis of leadership transitions cuts through corporate jargon and platitudes like "pursuing other opportunities" to determine the true cause of an executive exit. Exexchange scores executive departures on a scale of 0 to 10. Those with a score of 8 or higher are considered to have been forceouts or firings.

Along with Starbucks, other high-profile companies that dumped their CEOs in 2024 included Nike, Wendy's Co., Peloton Interactive Inc., Under Armour Inc. and CVS Health Corp. The pace of push-outs has accelerated since then amid the tumult of tariffs, uncertainty about the coming impact of artificial intelligence and other boardroom anxieties, with 42% of 157 departing CEOs being forced out or fired in the first half of 2025, Exexchange data show. That's up from an average of about one in three over the previous eight years.

"In the current environment of rapid technological advancement and geopolitical volatility, boards are rigorously replacing CEOs who are not up to the new challenges," said Exexchange founder Daniel Schaubert.

1. Payments to the exiting CEO

TAKEAWAY: The median payment to forced-out CEOs last year was \$6.7 million, including payouts for unvested stock awards and other equity-based compensation.

Once the board decides to make a switch — often in an emergency meeting — the costs start accruing. Public-company executives typically receive at least a partial payout of unvested stock awards if they are terminated without cause. Farient's analysis of CEO push-outs in 2024 at a sample of more than two-dozen Russell 1000 index firms found that about three-quarters of companies accelerated some equity payments for outgoing CEOs. (Sometimes, CEOs will receive short-term "advisory" contracts purportedly to smooth the transition to the new leader, but they're often just hanging around to continue to vest their equity.)

Some CEOs are sent packing with the promise of assistance from outplacement firms or other career advisors, according to Robin Ferracone, Farient's CEO. Sima Sistani, who was ousted in 2024 from WW International Inc. (formerly known as WeightWatchers), walked away with up to \$37,500 in executive coaching.

Often these benefits are built into the executives' employment contracts. It's not uncommon, though, for departing CEOs to try and capitalize on the urgency of the situation and negotiate for more severance or other perks, according to Helenanne Connolly, a partner at the law firm Cooley LLP who represents corporate clients.

Severance arrangements for CEOs can vary widely, and often aren't directly correlated to a company's size or industry. Farient's analysis of ousters in 2024 found companies paid a median \$3.1 million in cash. For those paying out equity, the median total payment landed at \$6.2 million. All to say goodbye to someone who, in most cases, screwed up.

Narasimhan, after leaving Starbucks, is due to receive more than \$9 million in cash, and the company estimated his potential equity payout at just under \$20 million, according to its regulatory filings. Not bad for 17 months' work. (The actual value won't be finalized until the company's 2026 fiscal year concludes, due to some multi-year performance awards that extended past his departure and will be prorated by his time served during those periods.)

2. Payments to incoming CEO

TAKEAWAY: The median sign-on payment for new CEOs last year was \$9 million, but some got much more.

Finding a new CEO to right the ship is an even steeper cost when the board is in a rush. The main reason: make-whole payments, which seek to replace the estimated value of the cash and stock that the incoming chief is sacrificing at his or her old employer.

In Niccol's case, the make-whole payments — \$10 million in cash and \$80 million in equity — were "mammoth," according to Glass Lewis. What's more, the proxy-advisory firm said it's not entirely clear how Starbucks arrived at its estimate for what Niccol was giving up, which was one reason why it recommended a vote against Starbucks' compensation plans.

Estimating what any CEO might have stood to make based on performance at their previous employer is subject to interpretation. Starbucks, for its part, said the make-whole payment to Niccol covered forfeited grants that would have been paid not long after he departed Chipotle.

"We brought in a proven leader with a strong track record to set Starbucks up for success and create long-term value for all stakeholders," a Starbucks spokesperson said in a statement. "He is backed by an experienced team, and much of his compensation is tied to future financial performance."

While Niccol's big payday was an outlier, Farient's analysis found that the median sign-on payment was \$9 million, which again is just the enticement to pry the new CEOs from their old job. It doesn't include their first-year salary or bonus in the new job. These amounts are often comparable to what the previous CEO was making. (Niccol's performance-based cash bonus in his first year could be as much as \$7.2 million.)

What tempers those payments are instances where the new CEO isn't an external hire, like Niccol or Intel's Lip-Bu Tan was, but promoted from within, as was the case at discount chain Dollar Tree Inc. and technology manufacturer Jabil Inc. Still, though roughly half of the new CEOs in Farient's analysis were internal promotions, three-quarters of all the new CEOs received some sort of sign-on award.

3. Payments to Other Executives

TAKEAWAY: Boards sometimes give retention awards to other senior leaders to encourage them to stay or to step up as an interim CEO.

CEO transitions don't happen in a vacuum — they impact other leaders across the organization. The board might be concerned about losing other members of the C-suite who were staunch allies of the deposed CEO or who perhaps felt they deserved the top job. Other times, retention bonuses go to leaders who step up as an interim CEO while the board searches for a permanent replacement. In those and other cases, boards will hand out retention awards of cash and stock to one or more senior executives.

Those payments can add up: At health-care company QuidelOrtho Corp., for instance, retention bonuses paid to five separate senior executives totaled \$6.8 million. Kibble retailer Petco Health & Wellness Co. pledged to pay \$4 million "to establish continuity among key members of the leadership team during our search for a permanent CEO."

That sought-after continuity can be fleeting, though. In Petco's case, none of the three executives who were granted retention awards stayed long enough to fully vest and as a result received just a fraction of their potential payout. Their departures, in turn, necessitated exit payments and recruitment expenses of their own, compounding the cost of the CEO ouster even further.

Let's not forget the executives left standing when a CEO jumps ship, as happened at Chipotle when Niccol resigned. The restaurant chain delivered retention awards valued at \$38 million to a half-dozen leaders for their service "during the period of uncertainty that inevitably follows a change in top leadership," it said in a filing.

"The executive ranks get demoralized, they're bombarded with job offers, and everyone is nervous about the new CEO," said Joseph Fuller, a management professor at Harvard Business School. "Nobody in their right mind thinks they are in a secure position."

4. Payments to Advisers

TAKEAWAY: The cost of executive search firms, lawyers, public-relations consultants and other advisers can reach into the seven figures quickly.

Finding the new CEO, negotiating his or her new contract and communicating the change in leadership to investors, the media, employees and other stakeholders are tasks typically delegated to outside experts.

The process often starts with an executive search firm like Spencer Stuart, Korn Ferry or Russell Reynolds Associates, whose partners specialize in specific industries and maintain vast networks of seasoned executives, up-and-coming leaders and corporate directors. A search firm's standard fee is one-third of the total cash compensation (salary, bonus and sign-on payment) paid to the CEO in the first year, though some clients prefer to negotiate a fixed fee instead, according to search-firm executives who requested anonymity to discuss the inner workings of their firms.

With CEO pay skyrocketing — median compensation for the 100 highest-paid CEOs at companies with at least \$1 billion in revenue rose 22% to \$30.9 million last year, according to pay consultant Equilar — it's not unusual for a big-company search to cost \$3 million, according to one executive recruiter who's worked on many CEO searches. A few even reach \$5 million.

Ousting a CEO can prompt the departures of other senior leaders. One study found that an external CEO hire leads to more than double the rate of C-suite departures than if the new CEO is an internal pick. At Nike, more than half the members of the senior leadership team are new to their jobs since Elliott Hill replaced John Donahoe last year.

On top of that, search firms do more than search nowadays: Many tout their "leadership advisory" services, providing everything from succession planning advice to CEO coaching and onboarding. For that ongoing, longer-term work, they can charge between \$250,000 and \$500,000 a year, the veteran search consultant said.

Then there are lawyers, who handle everything from assuring regulatory compliance to drafting non-compete agreements to hammering out the new CEO's contract. At \$2,000 an hour, those costs can sometimes reach into the seven figures. Compensation consultants — like Farient — are often employed to provide guidance and analysis on the CEO's pay package. Crisis communications experts will help get the company's message (or spin) out, often at \$1,000 an hour.

Clients "usually want you 25 hours a day and eight days a week," said Davia Temin, founder and CEO of crisis-communications firm Temin & Co. A CEO ouster and replacement "will take even more time," she added. How much more? Temin shrugged: "I can't even begin to estimate."

The point is, anything can happen, and the advisers' job is to make sure it doesn't leave the boardroom and harm the company's reputation.

Dramatic ousters over the decades illustrate the risks. The 2005 firing of Carly Fiorina by the board of Hewlett-Packard Co., soon followed by a spying scandal that involved board chairwoman Patricia Dunn, tarnished the legacy of one of the original pioneers of Silicon Valley. Almost 20 years later, Nike's reputation declined by 6 points on a 100-point scale during its 2024 succession surprise, according to RepTrak, a reputation research and advisory firm.

"Public-company CEO exits often have unanticipated left turns, which require nuanced and thoughtful coordination on several fronts," Connolly, the lawyer at Cooley, said. "Legal, investor relations, public communications, human resources, tax and finance elements are usually involved, and the pace of these exits is typically accelerated and unforgiving."

5. Lost Shareholder Value

TAKEAWAY: In one study, a CEO ouster versus a planned succession was found to cost companies an average \$1.8 billion in lost shareholder value.

Finally, there's the hit that investors take.

A 2015 study by PwC's "Strategy&" consulting unit estimated that forced turnovers at the world's largest public companies cost each firm an average \$1.8 billion in foregone shareholder value. PwC analyzed CEO transitions at 2,500 listed companies across three years to determine the figure, which it calculated from median shareholder returns, relative to the index they traded on, in the year before and after each switch. Its conclusion: "There's a stark difference between companies able to plan their turnovers and those forced into them."

Another study, by FTI Consulting, found that news of a CEO shake-up made investors more than twice as likely to sell shares in a given company as they were to buy them. And nearly 40% of investors in the same survey said they would sell a stock solely on the basis that a CEO was new.

Even if a company's stock price rises when a new CEO is named, as happened at Starbucks, the shares have likely suffered in the months or years leading up to the switch as the company floundered under previous leadership. And don't read too much into any one-day gains when the new CEO is announced: Since Niccol officially started on the job at Starbucks, the coffee chain's shares are essentially unchanged.

When it comes to CEO ousters "institutional investors and hedge funds tend to get nervous" that a board under pressure could make another bad pick, said Fuller, the management professor.

That anxiety should extend to the board itself. A CEO ouster might signal that the board needs to change its composition, its advisors or its overall approach, according to Ashley Summerfield, leader of the global CEO and board practice at the leadership search and advisory firm Egon Zehnder. There's a cost for that as well, but Summerfield believes it can pay off in the long run.

"A CEO ousting is a window into the governance at a company," he said. "It has costs, but what worries me more is companies that don't fix their governance in light of the ousting. If it takes a board three years from the first amber lights flashing to get rid of their CEO, why did it take that long? And why were the lights amber, and not red?"

At Kohl's, the board missed warning signals about Buchanan, according to Blue Heron Research Partners, which analyzes management teams on behalf of investors and found that there were concerns about the former CEO's business judgment in prior roles with other retail chains. Now, Kohl's is replacing its CEO for the third time in as many years — an expensive proposition for any big company.

Major search firms typically offer to do another search for free if their initial recommendation flames out within the first year of employment. But after the misstep with Buchanan, Kohl's was considering hiring a new search advisor.

As the retailer's board weighs its options, sales remain lackluster, along with employee morale, and the stock is well off its price from the start of the year. And no matter who is eventually hired as CEO, there will be another steep price to pay.

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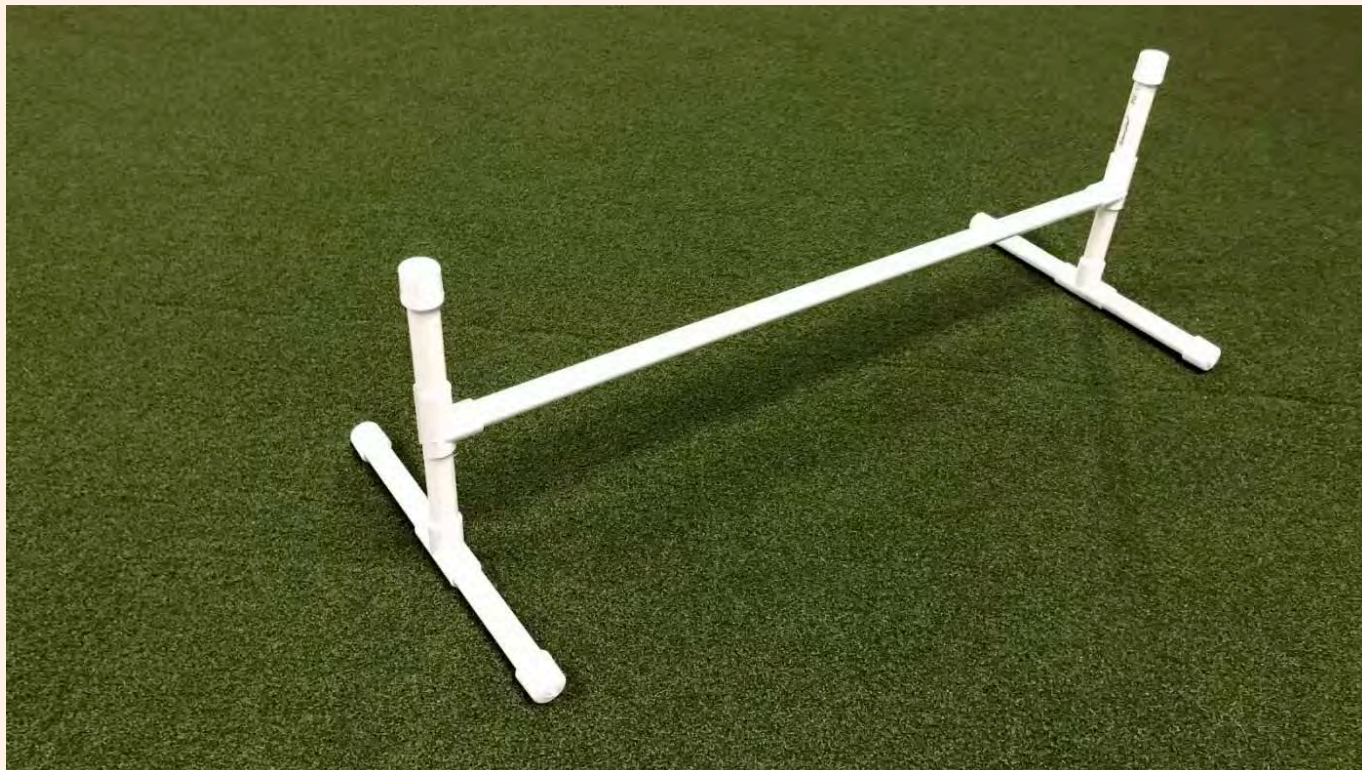
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FT Alphaville Corporate earnings and results

Earnings season roundups are stupid

EPS reverse-limbo, charted



A very low bar © Amazon

Bryce Elder

Published 6 HOURS AGO

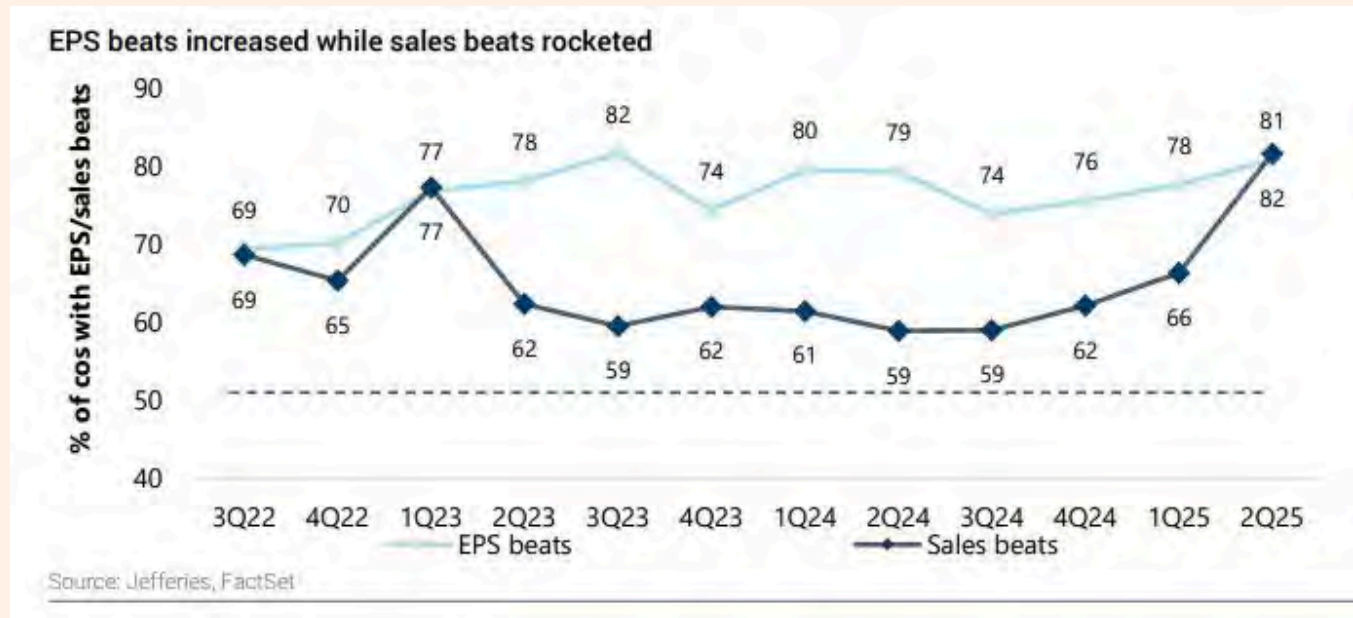


The year is 2025, and people are still writing this kind of thing:

“

The broad-based resilience in 2Q25 results (81% beats) should help dispel some of the concerns surrounding the US economy and support the rich market valuations. AI and Mag 7 led from the front, but strength was also visible in financials, suggesting a resilient macro.

The quote's from Jefferies' quantitative strategy desk, though it could be from any one of dozens of earnings season summaries clogging our inbox. Jefferies concludes that it's been the best US quarter relative to expectations for yonks:



MSCI USA constituents

Great! But what happened to forecasts *before* earnings season?

S&P 500 consensus earnings forecast



FINANCIAL TIMES

Sources: Bloomberg, FTA

Right.

Everyone knows already how things work. SG Securities strategist Andrew Lapthorne calls it the “just-in-time” consensus, where . . .

“

. . . . individual analysts' consensus estimates would suddenly drop one by one prior to a company's quarter end, only for said company to 'surprise' a few weeks later. The result are US reporting seasons that almost always beat the consensus, and good company headlines and perhaps even a good share price reaction on the day.

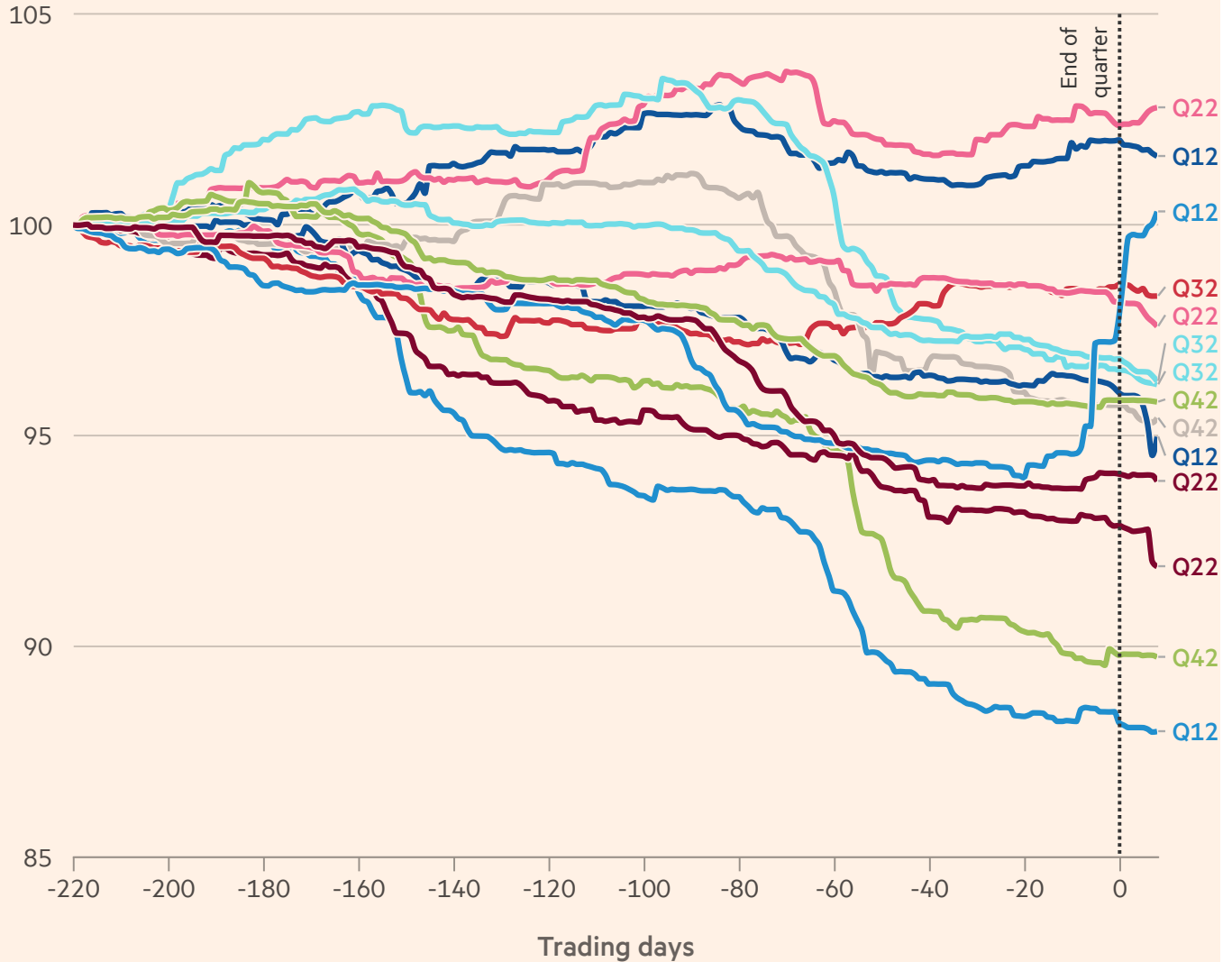
The data supports his view. Using a (completely arbitrary) starting point of consensus forecasts 220 trading days before the end of the quarter, every US earnings season since Q2 2022 has cleared a lowered bar:

S&P 500 quarterly earnings 2022-25

Consensus expectations, normalised to 100 at start of period

All ▼

EPS (normalised)



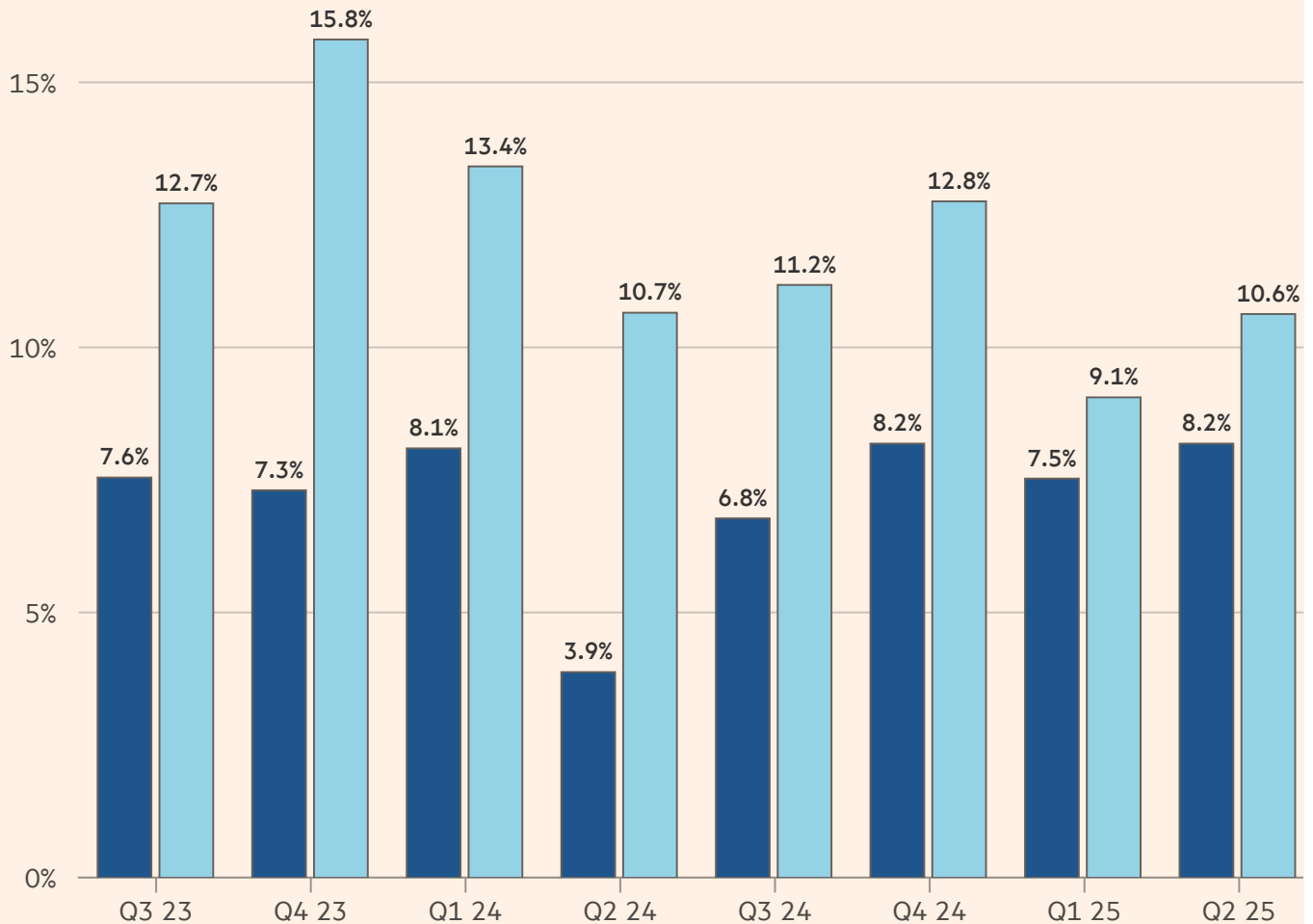
FINANCIAL TIMES

Sources: FTAV, Bloomberg

This quarterly forecast kayfabe would be just about acceptable if the beats being delivered at results were bigger than the downgrades needed to achieve them. Unfortunately, the opposite is true:

S&P 500 EPS beats

■ % beat versus consensus ■ % downgrade from series-high consensus forecast to end of quarter



FINANCIAL TIMES

Sources: FTA, Bloomberg • Data sample covers six quarters to period end

Everyone knows the game by now. The mystery is why brokers still believe it's worth compiling these earnings season scorecards. As Jefferies writes:

“

Stock performance after the results [has been lacklustre](#), with stocks barely outperforming even when they beat expectations. Misses were heavily penalised. However, beats resulted in substantial upgrades, the best in 2 years, while misses led to downgrades below the last few years norm.

Yeah, maybe the jig's up.

Further reading:

— [Dilbert: Beating Earnings Estimates](#) (The Big Picture)

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Due Diligence **Mergers & Acquisitions**

Spacs are back: no crying at the casino

Plus, the investor buying US law firms and Intel gets a boost from Trump



Chamath Palihapitiya © Bloomberg

Published YESTERDAY



One thing to start: Donald Trump's administration has [dropped](#) a Joe Biden-era probe into a gun sales financing company backed by Donald Trump Jr, saying the initial investigation was "conducted in a biased manner".

Welcome to Due Diligence, your briefing on dealmaking, private equity and corporate finance. This article is an on-site version of the newsletter. Premium subscribers can sign up [here](#) to get the newsletter delivered every Tuesday to Friday. Standard subscribers can upgrade to Premium [here](#), or [explore](#) all FT newsletters. Get in touch with us anytime: Due.Diligence@ft.com

In today's newsletter:

- 'Spac king' Chamath Palihapitiya is back
- The investor eyeing US law firms
- Intel's Trump-inspired boost

The Spac king's return

It's starting to feel a lot like 2021. Cryptocurrencies are surging and dozens of special purpose acquisition vehicles have gone public over the past year led by many of the promoters behind the last bubble.

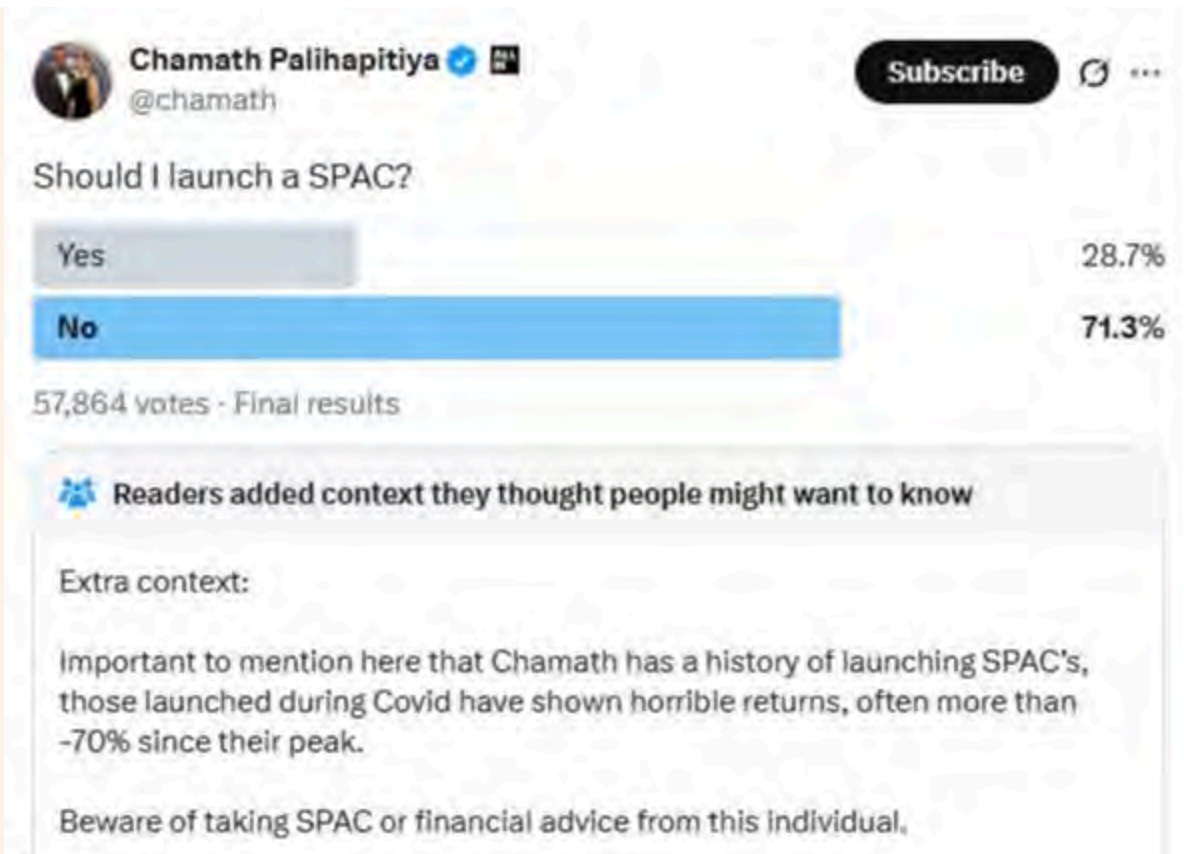
But the most flamboyant of them all, the "Spac king", so to speak, remained on the sidelines. Now he has re-emerged to reclaim his throne.

Chamath Palihapitiya, the pied piper of the pandemic-era Spac boom, is [launching](#) a new vehicle, capitalising on a resurgence in interest in such speculative deals.

The vehicle, called **American Exceptionalism Acquisition Corp**, plans to raise \$250mn and list on the **New York Stock Exchange** under the ticker symbol AEXA.

Spacs list on public markets and then use the cash they've raised to find target companies to merge with. The process is seen as a less onerous way for businesses to go public.

Palihapitiya had been teasing a Spac comeback for months. In June, he put the question of whether he should launch a new vehicle to his followers on X, who responded with a resounding no.



But that was not a deterrent for Palihapitiya, who was among the first to pile into the vehicles with his 2019 deal to take **Virgin Galactic** public.

The ex-**Facebook** executive's latest foray into the Spac universe comes with a Trumpian twist.

AEXA will focus on companies "reinforcing American exceptionalism" and "fixing the fundamental risks that come from our interconnected global order", Palihapitiya suggested in a [letter](#) addressed to "friends and supporters" of his venture capital firm.

The deal will be underwritten by **Santander**, which hired dozens of bankers from **Credit Suisse**, the bank that [lent](#) \$200mn to Palihapitiya to fund his Virgin Galactic and **Clover Health** Spac deals.

And in a sign of just how much demand he's expecting, those buying into the Spac will not receive any warrants, which provide protection for investors by allowing them to sell their shares at a pre-determined price.

Palihapitiya once [positioned](#) himself as the next **Warren Buffett**. This time around, he's doing nothing of the sort and making clear that those who want to hitch a ride on his Spac wagon should be prepared to lose all the money they put in.

For retail investors, Palihapitiya has a warning: “[If] they do lose their entire capital, they will embody the adage from President Trump that there can be ‘no crying in the casino’.”

America's law firms get a Wall Street makeover

The US legal industry is, in some ways, an investor's dream.

It's an enormous market, packed with firms that generate relatively steady revenue streams, and its biggest players rake in billions of dollars each year.

But ethics rules have long prevented outside investment. Most US states ban non-lawyers from owning firms, a measure designed to insulate legal advice from an excessive focus on profits.

Even private equity groups, which have stepped into so many aspects of life over the past few decades, have not gained much of a foothold in the industry.

New business structures could get around the restriction. **Burford Capital**, a key player in litigation finance with a \$3bn market capitalisation, is in talks with several US law firms about [buying a minority stake](#), its co-founder **Jonathan Molot** told DD's Kaye Wiggins and the FT's Stephen Foley.

The model that could enable this involves an entity known as a “managed service organisation”, or MSO.

Essentially a law firm would split its operations into two: a lawyer-owned business that does client work, and an MSO that owns assets and sells back-office services to the law firm.

The MSO extracts a chunk of the law firm's profits in the process.

A similar model has already been used to allow outside investors into accounting and medical practices.

“It’s a crazy thing that the capital markets and the market for legal services have had no interaction historically,” Molot said. He added that he had talked to “some of the largest firms in the US”, though he declined to name them.

He is expecting a significant overhaul in the nature of the law firm model: “In the years ahead this will become a bigger part of our business and of the market”.

Intel’s Trump-backed fundraising windfall

The **Trump** administration last week expressed interest in taking a slice of **Intel**. Now **SoftBank** wants in too.

The Japanese bank has agreed to [buy \\$2bn in the chipmaker’s shares](#) after the news last week that the White House was considering its own deal with the company.

SoftBank’s billionaire founder **Masayoshi Son** has also been [in talks](#) with Intel’s chief **Lip-Bu Tan** about buying the US company’s contract chipmaking business, the FT reported.

DD has [previously written](#) about the deals businesses have struck with the Trump administration to operate in China, secure tariff exemptions and allow mergers to proceed.

Yet the US government’s Intel investment is closer in theme to its agreement with **MP Materials**, in which the Pentagon agreed to put \$400mn in the rare earths producer.

The government is increasingly stepping in with cash to shore up industries it feels are threatened by competitors elsewhere in the world.

Trump’s interest in Intel, which included a call for its CEO to resign over his ties to China, came after the company has fallen behind competitors like Taiwan’s **TSMC**.

That matters to the president because Intel is one of only a handful of American companies able to produce the best chips at scale. MP Materials meanwhile holds the US’s only rare earth mine.

For investors such as SoftBank, following the US government into a company like Intel seems a smart bet, at least in the short term.

Yet one day, the interests of shareholders might not align with those of the state and that could prove troublesome. For more on this, [go deeper with Lex](#).

Job moves

- **Tether** has [hired Bo Hines](#), who previously headed Trump's crypto advisory council, as a strategic adviser.
- **Palo Alto Networks** founder and chief technology officer **Nir Zuk** has retired. He has been succeeded as CTO by chief product officer **Lee Klarich**.
- **Jefferies** has hired veteran banker **Bill Derrough**, ending a nearly two-decade stint at **Moelis**, where he co-headed the restructuring team, [according](#) to the Wall Street Journal.
- **Evercore** has named **Lars Ingemarsson** to lead its expansion into the Nordics. Ingemarsson is head of Nordic investment banking at **Citigroup** and will be joined at Evercore by **Kristoffer Elshult**, a director at Citi.

Smart reads

Crypto conference Jackson Hole has long been synonymous with the annual gathering of the world's top central bankers. This year, an hour's drive south, crypto executives are [hobnobbing with policymakers](#), the FT reports.

Selling out This year Shari Redstone succeeded in offloading Paramount, the business she spent most of her adult life trying to wrestle control of. She [tells The New York Times](#) why she did it.

Changing fortunes Where once bankers ruled the roost in the City of London, traders are [now back on top](#), Rupak Ghose writes in The Times.

News round-up

[CEO pay at top US companies accelerates at fastest pace in 4 years](#) (FT)

[SoftBank held talks with Intel on buying contract chipmaking business](#) (FT)

[Peabody pulls out of \\$3.8bn Anglo American coal deal](#) (FT)

[N26 co-founder leaves joint CEO role after investor tensions](#) (FT)

[Trump embarks on \\$104mn bond-buying spree while in office](#) (Bloomberg)

[BHP demands answers over hedge fund's role in law firm behind £36bn claim](#) (FT)

[Hedge fund Man Group sparks backlash over non-compete agreements](#) (FT)

Due Diligence is written by [Arash Massoudi](#), [Ivan Levingston](#), [Ortenca Aliaj](#), [Alexandra Heal](#) and [Robert Smith](#) in London, [James Fontanella-Khan](#), [Sujeet Indap](#), [Eric Platt](#), [Antoine Gara](#), [Amelia Pollard](#), [Maria Heeter](#), [Kaye Wiggins](#), [Oliver Barnes](#), [Jamie John](#) and Hannah Pedone in New York, [George Hammond](#) and [Tabby Kinder](#) in San Francisco, [Arjun Neil Alim](#) in Hong Kong. Please send feedback to due.diligence@ft.com

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Cryptocurrency

Most Crypto Tokens Should Not Be Treated as Securities, SEC Chair Says

August 19, 2025 | By Dan Novak



Paul Atkins, chair of the U.S. Securities and Exchange Commission. Photo: Diego M. Radzinski/ALM

Few cryptocurrency tokens are securities subject to U.S. Securities and Exchange Commission oversight, SEC Chair Paul Atkins said Tuesday as the agency markets its ambitious plan for deregulation across the crypto sector.

"The token itself is not necessarily a security," Atkins said at the SALT Blockchain Symposium in Jackson Hole, Wyoming. "There are very few, in my mind, tokens that are securities."

Under the so-called and long-followed Howey Test, a token would be considered a security if it is "centralized"—that is an investment "derived from the efforts of others.

But Atkins said too much emphasis has been placed on centralization in determining whether a crypto token is a security.

"We're going to be going in a different direction," he said, adding that centralization is a "red herring."

The SEC has already determined that Bitcoin is decentralized and thus not subject to the securities laws.

Crypto advocates have argued that the Howey Test—established in the 1946 Supreme Court decision *SEC v. W. J. Howey Co.*—is outdated and should not be applied to crypto assets. If a token is classified as a commodity, it would be overseen by the Commodity Futures Trading Commission, which many in the crypto industry view as a more favorable regulator than the SEC.

In late July, the SEC launched "Project Crypto," an agency-wide effort to quickly implement President Donald Trump's vision of making the United States the "crypto capital of the world." Atkins has repeatedly said his main priority as SEC chair is to bring regulatory clarity to crypto.

More clarity may also be coming from Capitol Hill, Senate Banking, Housing and Urban Affairs Committee Chair Tim Scott, R-South Carolina, said Tuesday. He predicted that 12 to 18 Democrats could vote for a crypto market structure bill, which would lay out the legal and regulatory framework for digital assets in U.S. markets.

Eighteen Democratic senators voted for the GENIUS (Guaranteeing Essential National Infrastructure in U.S. Stablecoins) Act, which Trump signed into law last month and establishes regulatory oversight of stablecoins—crypto assets pegged to national currencies or commodities. But the market structure bill is a “far more complicated piece of legislation,” Scott said.

That bill would need to pass through the banking committee and the Senate Committee on Agriculture, Nutrition and Forestry, which oversees the CFTC. Then, at least seven Democratic senators would need to sign on to reach a 60-vote majority to defeat a Senate filibuster before a floor vote would be taken.

The bill would also have to be passed by the House of Representatives.

Scott said Sen. Elizabeth Warren of Massachusetts, his committee's ranking Democrat, could be a hurdle to the market structure bill.

“Let me just say it clearly,” Scott said. “Elizabeth Warren standing in the way of Democrats wanting to participate is a real force to overcome.”

Warren's office did not immediately return a request for comment Tuesday afternoon.

In an MSNBC interview Aug. 10, she criticized a Republican draft market-structure bill for being shaped by the crypto industry, saying it lacks sufficient consumer protections and should restrict elected officials from trading crypto.

“Look, we need crypto regulation,” Warren said. “But we don’t need the regulation written by the crypto industry that supercharges this kind of corruption.”

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NJ Judge Files Corrected Version Of Error-Filled Opinion

By **Hailey Konnath**

Law360 (August 20, 2025, 12:15 AM EDT) -- A New Jersey federal judge Tuesday filed a new, corrected version of an opinion he withdrew last month in securities litigation against CorMedix Inc. after an attorney for the biopharmaceutical firm pointed out the opinion contained "a series of errors."

In his renewed, much lengthier opinion, U.S. District Judge Julien Xavier Neals again denied CorMedix's motion to dismiss investors' suit claiming that the company's share value plummeted when the public learned that previously undisclosed manufacturing issues were delaying regulatory approval of its antibacterial product candidate. The judge largely scrapped what was in his first, 33-page opinion, replacing it with an almost entirely rewritten 60-page version.

In July, CorMedix attorney Andrew Lichtman of Willkie Farr & Gallagher LLP filed a letter raising concerns about several apparent errors in the decision, including made-up quotes and incorrect case outcomes.

"While defendants do not seek reconsideration of the opinion ... we wish to bring to the court's attention a series of errors in the opinion — including three instances in which the outcomes of the cases cited in the opinion were misstated (i.e., the motions to dismiss were granted, not denied) and numerous instances in which quotes were mistakenly attributed to decisions that do not contain such quotes — so that the court may consider whether amendment or any other action should be taken," the **letter states**.

Judge Neals once again concluded Tuesday that, at this stage in the litigation, the investors have adequately alleged the company made material misrepresentations to investors regarding U.S. Food and Drug Administration approval of DefenCath, a solution to prevent catheter-related infections.

For one, CorMedix and its top brass made statements that DefenCath was "on track" for approval, statements that are actionable because they may have misrepresented the status of the drug at the time they were made, according to the new opinion.

"Moreover, courts have consistently determined alleged misstatements that selectively disclosed to investors what information was provided to the FDA are actionable," the judge said. And the company knew or should've known at that time that, based on FDA guidelines and other standards, there were factors that would affect DefenCath's approval, he said.

According to the consolidated, amended complaint, CorMedix's directors and officers misled investors in press releases, earnings calls and regulatory filings.

Painting a rosier-than-reality picture of how the FDA process was going steadily increased CorMedix's stock price, and when the truth about manufacturing concerns came out, shares plunged, the investors say. Specifically, they said that CorMedix's stock price closed at \$6.42 per share on July 22, 2021, representing a 26% decrease from the average \$8.69 per share sold by the end of 2020, and a 42% decline from the average \$11.10 per share sold in the six months before June 30, 2021.

And on Oct. 10, 2022, the closing price was \$2.85 per share, a 25% decrease from the average \$3.78 per share sold in the six months before June 30, 2022, according to the complaint.

The plaintiffs are looking to represent a class of all people who purchased CorMedix securities between Oct. 16, 2019, and Aug. 8, 2022, and to recover damages caused by the company's alleged violations of federal securities laws.

CorMedix has argued that the investors are trying to turn setbacks in the FDA approval process into a securities fraud case.

"What is missing, however, is the fraud," CorMedix argued in its motion to dismiss, noting that the complaint lacked specific allegations that the company and its officers knew certain things — such as deficiencies in the new drug application or other red flags about the status of the application — that contradicted their public statements to investors.

Judge Neals initially filed his now-withdrawn opinion on June 30. Nothing in CorMedix's filings or the court's docket order withdrawing the opinion suggested the errors could be attributed to the use of generative artificial intelligence. But nonexistent case law in legal filings is becoming a growing headache for courts across the country, with many judges warning lawyers to be careful with how they use these tools.

In Tuesday's corrected opinion, the judge said that investors have also plausibly alleged that CorMedix made misstatements and omissions related to the FDA's support for DefenCath. The statements "contradicted information known by defendants and failed to disclose unfavorable information that would have painted a fuller, more accurate picture for investors," Judge Neals said.

And all of the alleged misrepresented and omitted information was material, he said. Beyond that, the investors have adequately alleged the element of "scienter," or that CorMedix and its executives knew what they were doing when they made the alleged misrepresentations, the judge said.

Judge Neals also rejected CorMedix's argument that the challenged statements fall within the Private Securities Litigation Reform Act's exceptions.

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

The investors are represented by Josh Silverman and Thomas H. Przybylowski of Pomerantz LLP, Ivy T. Ngo and Velvel (Devin) Freedman of Freedman Normand Friedland LLP, Brian Schall of The Schall Law Firm and Peretz Bronstein and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC.

CorMedix is represented by Andrew J. Lichtman, Brady Sullivan and Charles Dean Cording of Willkie Farr & Gallagher LLP.

The case is In re: CorMedix Inc. Securities Litigation, case number 2:21-cv-14020, in the U.S. District Court for the District of New Jersey.

—Additional reporting by Lauren Berg. Editing by Jay Jackson Jr.



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Sotera Urges 6th Circ. To Toss Investors' Toxic Gas Suit

By **Katryna Perera**

Law360 (August 19, 2025, 9:40 PM EDT) -- Sotera Health Co. urged the Sixth Circuit to affirm the dismissal of a lawsuit accusing it of concealing the carcinogenic nature of a gas used at its sterilization plants, saying "defending yourself in litigation is not securities fraud."

Sotera filed a **brief** Monday, arguing it properly disclosed to investors its litigation risks regarding allegations that a carcinogenic gas was used at a Sotera subsidiary Sterigenics U.S. LLC's sterilization plant and cautioned that it might not prevail in the litigation.

A proposed class of Sotera shareholders is **appealing** for a **second chance** at a lawsuit that was tossed in March after an Ohio-based federal judge found that the company warned investors there was a risk it would lose litigation surrounding a former plant, even as it denied the lawsuits' underlying allegations.

But the investors told the Sixth Circuit in June that the lower court judge ignored evidence that, for decades, Sotera and its leaders hid the cancer risks tied to its use of ethylene oxide, a colorless gas that the U.S. Environmental Protection Agency says can cause cancer after long-term air exposure.

Sotera pushed back Monday, arguing that the plaintiffs are repeating the same "flawed" theory, which claims that by defending itself in "dully disclosed lawsuits," the company committed fraud.

"If plaintiffs' theory were right, public companies in essence could not defend themselves in lawsuits without triggering liability under the securities laws," the brief states.

Sotera argues that the lower court correctly dismissed the suit's securities fraud claims because none of the suit's challenged statements made by the company were false or misleading.

Specifically, regarding the allegedly misleading compliance statements the company made, Sotera says the plaintiffs fail to identify the regulations Sotera is supposed to have violated, and they overlook the fact that Sotera informed investors it might not always comply with applicable regulatory requirements.

"Moreover, Sotera's compliance statements are non-actionable corporate optimism and opinions, not the kind of verifiable, concrete statements that can give rise to a securities law claim," the brief states.

Additionally, the challenged litigation-related statements are non-actionable opinions, the brief argues.

According to the brief, the plaintiffs also argue on appeal that the district court erred by dismissing their scheme liability claims. However, Sotera says, the operative complaint "falls short" of pleading an actionable scheme.

"Plaintiffs focus on conduct that occurred decades before Sotera ever sold shares to the public, which necessarily means the purported scheme did not relate to the purchase and sale of securities," the brief states.

Finally, the company argues the suit fails to adequately plead scienter by the individual defendants.

Identified stock sales by executives are not suspicious, there is no divergence between internal reports and external statements, and the defendants' knowledge of Sotera's "core business" does not support a strong inference of scienter, the brief states.

The existence of litigation surrounding the company's use of ethylene oxide also does not support a strong inference of scienter, Sotera argues, because the company disclosed the lawsuits and won of them.

"The nonfraudulent inference is stronger: although Sotera believed that Sterigenics had consistently complied with applicable regulations, it cautioned that Sterigenics still may not prevail in pending lawsuits, which could harm Sotera," the brief states.

The suing shareholders say that evidence the company concealed the use of ethylene oxide came to light in a 2022 trial over Sterigenics' now shuttered Willowbrook, Ill., plant, with a **jury awarding \$363 million** to a woman named Sue Kamuda who said she developed breast cancer after living near the plant.

Shareholders say Sotera's share price "immediately lost a third of its value" following the trial's "shocking" revelations.

In 2023, the company **agreed to pay** \$408 million to settle more than 870 personal lawsuits tied to alleged air pollution at the plant where Sterigenics sterilized medical supplies like syringes.

The current lawsuit, **filed in 2023**, accuses the company of inflating the price of Sotera's stock ahead of its initial public offering in 2020 and a secondary public offering in 2021 by falsely representing that it maintained "a proactive [environmental, health and safety] program and a culture of safety and quality."

The complaint claims that documents unveiled at the Kamuda trial demonstrated that the company had learned about the toxic effects of ethylene oxide long ago but still delayed installing pollution control equipment and undermined federal regulations that would have required expensive upgrades and improvements at Sterigenics' sterilization facilities.

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

The investors are represented by Hannah Ross, James Harrod and Timothy Fleming of Bernstein Litowitz Berger & Grossmann LLP, and Serena Hallowell, Gregg Levin and William Norton of Motley Rice LLC.

Sotera is represented by BJ Trach, Gary Feinerman, Jeff Hammel, Nicholas Siciliano, Ben Harris and Renatta Gorski of Latham & Watkins LLP, and Kip T. Bollin of Thompson Hine LLP.

The underwriter defendants are represented by John M. Alten of UB Greensfelder LLP and Daniel C. Lewis and Daniel Kahn of Allen Overy Shearman Sterling.

The case is Oakland County Employees' Retirement System et al. v. Sotera Health Co. et al., case number 25-3311, in the U.S. Court of Appeals for the Sixth Circuit.

--Additional reporting by Jessica Corso. Editing by Kristen Becker.



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3D Systems Brass Sued Over Revenue Projections

By **Sydney Price**

Law360 (August 19, 2025, 9:45 PM EDT) -- Executives and directors of 3D Systems Corp. have been hit with a shareholder derivative suit accusing them of concealing issues that negatively impacted the 3D printer company's revenue prospects, including an update to a partnership agreement with a large customer to develop artificial lungs.

3D Systems operates healthcare solutions and industrial solutions segments, according to the **suit** filed by shareholder Wendy Milligan on Monday. Its healthcare solutions segment focuses on the development of dental and medical products and operates a partnership with United Therapeutics Corp. focused on creating printed lungs for end-stage lung disease patients, the suit says.

The complaint filed in South Carolina federal court alleges 3D Systems and United Therapeutics updated their milestone payments criteria — which allows 3D Systems to get paid based upon the achievement of certain set objectives — in 2024 to "reflect a shift in testing methodology," which investors discovered in May adversely impacted revenue. At the time, 3D Systems reported "disappointing" financial results for the second quarter in a row and withdrew financial guidance issued less than two months earlier, according to Milligan.

The suit's relevant period begins Aug. 13, 2024, the day 3D Systems filed its 2023 annual report with the U.S. Securities and Exchange Commission. About a week later, 3D Systems said in its first-quarter 2024 earnings announcement that it was targeting revenues for the full year between \$450 million and \$460 million, according to the suit.

The complaint alleges that for several months, 3D Systems did not disclose how its revised milestone criteria in its partnership with United Therapeutics, as well as general industrywide reductions in customer spending, would impact revenue.

The truth began to emerge, the suit alleges, on March 26 when the company reported sales in the previous year of \$440.1 million, a 10% decline from the prior year, which the company attributed to "lower hardware systems sales due to macroeconomic factors that are negatively impacting demand." The company also announced that accounting changes associated with its United Therapeutics partnership were negatively impacting its 2024 balance sheet, the suit states.

Following the announcement, shares of 3D Systems declined 57 cents, or about 21%, to close at \$2.15 per share on March 27, according to the suit.

The defendants continued to conceal the true impact of overall consumer spending reductions until May 12, the suit alleges. On that day, 3D Systems told investors that "due to the risk of protracted weakness in customer capital investment spending," it would withdraw its full-year guidance for 2025.

On this news, shares of 3D Systems declined 68 cents per share, or about 27%, to close at \$1.87 per share on May 12, according to the suit.

In addition to nominal defendant 3D Systems, the suit's individual defendants include its CEO Jeffrey Graves, Chief Financial Officer Jeffrey Creech — who recently announced plans to resign, effective Sept. 12 — and several company directors.

The suit accuses the individual defendants of violating the Exchange Act, breaching their fiduciary duties, being unjustly enriched and wasting corporate assets.

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

Milligan is represented by James M. Griffin and Badge Humphries of Griffin Humphries LLC, Gina M. Serra and Samir Aougab of Rigradsky Law PA and Joshua H. Grabar of Grabar Law Offices.

Counsel information for 3D Systems and the individual defendants was not immediately available Tuesday.

The case is Milligan v. Graves et al., case number 0:25-cv-11177, in the U.S. District Court for the District of South Carolina.

--Editing by Michael Watanabe.

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9th Circ. Backs Approval Of LoanDepot Investor Settlement

By **Sydney Price**

Law360 (August 19, 2025, 8:54 PM EDT) -- The Ninth Circuit has dismissed a challenge brought by a LoanDepot shareholder to a \$3.5 million settlement ending a lawsuit that accused the company of misleading investors ahead of its initial public offering, saying the district court applied proper scrutiny when approving the settlement last year.

According to **the order issued Monday** by a three-judge panel, LoanDepot shareholder Eljon Lako appealed the U.S. District Court for the Central District of California's decision granting final approval to **the settlement** on the grounds that the court "overlooked various signs of collusion and defects in the class action notice."

Lako claimed in his appeal that the class action notice was inadequate because it was unclear on how the "meager" \$3.5 million settlement compared to what might have been recovered had the case proceeded through discovery and trial. He also raised concerns about the representation provided by lead plaintiffs Arthur Gary LaFrano and Adam Doban.

But the appellate judges said those claims are forfeited because they were never raised before the district court, and, contrary to Lako's assertions, the attorney fees and damages granted were proper.

The now-settled suit said the registration statement filed in connection with LoanDepot's 2021 IPO was negligently prepared and failed to disclose several relevant facts to investors, including that the company's refinance originations had already declined substantially at the time of the IPO due to industry overcapacity and increased competition.

In his appeal of the settlement, Lako said the common fund settlement amount was "too low" and the settlement fund calculations improperly limited damages related to Section 11 of the Securities Act to "the period of time preceding the release of a second batch of shares after the IPO's lockup period ended."

But the Ninth Circuit said the district court's calculations reasonably excluded certain months from the Section 11 damages period that overlapped with the Section 10(b) period.

"In addition, Lako's qualms about disparate 'per share price inflation figures' mistakenly relied on plaintiffs' secondary, more conservative damages estimate," the order said. "The final common fund value of \$3.5 million, meanwhile, was based on plaintiffs' primary estimate of \$32 million."

The Ninth Circuit also said the district court fulfilled its obligation to ensure that the attorney fees were reasonable.

"[The district court] rejected class counsel's request for a 28% fee, finding no justification for an upward departure from the benchmark 25%," the order said.

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

Judges Jacqueline H. Nguyen, Danielle J. Forrest and Lawrence VanDyke sat on the panel for the Ninth Circuit.

Lako is represented by Francis A. Bottini Jr. and Albert Y. Chang of Bottini & Bottini Inc.

The class is represented by Jeremy A. Lieberman, Jonathan D. Park and Jennifer Pafiti of Pomerantz LLP and Brian Schall of The Schall Law Firm.

LoanDepot is represented by Craig Varnen, Alexander K. Mircheff and Michael J. Kahn of Gibson Dunn & Crutcher LLP.

The case is Eljon Lako v. Loandepot Inc. et al., case number 8:21-cv-01449, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Stephen Berg.

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Inovalon Investor Suit Over \$7.3B Nordic Deal Gets Class Cert.

By **Gina Kim**

Law360 (August 19, 2025, 10:17 PM EDT) -- A Delaware chancellor has certified a class of Inovalon Holdings common stockholders who challenged the \$7.3 billion go-private sale of the company to Nordic Capital and claimed Inovalon failed to disclose that the investors who bought it paid \$400 million in fees to its financial adviser before the transaction.

In a Monday order, Chancellor Kathaleen St. Jude McCormick signed off on the plaintiffs' stipulation and granted class certification in a lawsuit by City of Sarasota Firefighters' Pension Fund, Steamfitters Local 449 Pension Fund and Steamfitters Local 449 Retirement Security Fund related to Nordic Capital's purchase of the healthcare data company.

In its August 2022 complaint, Sarasota **alleged** Inovalon, its founder and CEO Kenneth R. Dunleavy, Inovalon's independent special committee and several others approved a \$41 per share merger — down from an initial offer of \$44 per share — without adequate disclosures and with assistance from advisers who allegedly had conflicts.

The suit stemmed from the Nordic Capital transaction with Inovalon that was **announced in August 2021**. Inovalon, which was founded in 1998, develops data tools intended to reduce healthcare costs. It hit public markets in 2015 through an initial public offering that raised approximately \$600 million, according to a statement at the time.

Inovalon investors alleged that, as part of the deal, private interests of Nordic Capital, Insight Partners and 22C Capital secured terms that allowed Dunleavy and controlling investor Andre Hoffmann to roll over \$1.3 billion of their shares — tax-free — into the merged business, to the common stockholders' detriment.

Meanwhile, no public stockholders got the chance to roll over their shares, the plaintiffs alleged. The suit claimed, among other things, that advisers including J.P. Morgan Securities LLC and Evercore Group LLC had conflicts of interest.

In July 2023, Chancellor McCormick tossed all five counts of the Sarasota Firefighters' Pension Fund's suit, **finding it "fell short"** on claims that shareholders weren't adequately informed, that the advisers were conflicted or that the special committee members failed in their duty when evaluating the deal.

The investors appealed, and the Delaware Supreme Court held **oral arguments on Feb. 21, 2024**, where the investors contended the shareholder vote on the go-private deal wasn't informed because the proxy disclosure left out key information about the nature and scope of the special committee's adviser's conflicts and Evercore's role in the market outreach to potential bidders.

Additionally, the shareholders contended Dunleavy was conflicted when he negotiated the deal because Nordic informed him he would have the chance to participate in a rollover of his shares, putting him on "both sides of the bargaining table." The special committee defendants' counsel previously said Dunleavy didn't discuss the rollover with Nordic early in the process.

On May 1, 2024, the Delaware high court reversed dismissal and remanded the case, finding the chancellor erred when finding the minority investors were adequately informed about the deal and purported conflicts of interests by the special committee. The justices noted that, according to the

investors' allegations, Evercore's mitigation role was affected not only by its own conflicts but also its secondary and "more limited role in the outreach process."

"It would not have been a stretch to say that it is reasonably conceivable that the alleged facts could make a difference to stockholders in analyzing and weighing the advice of the advisors and in evaluating the overall effectiveness of the market outreach," the Delaware Supreme Court said.

In June, Chancellor McCormick issued a letter that included her ruling on the defendants' supplemental dismissal motions raised on remand, and sent the case into discovery, finding it was "reasonably conceivable" the defendants acted in bad faith.

The chancellor also noted that the deal's proxy statement only suggested Evercore "may" have a material conflict, even though the committee defendants knew of Evercore's actual conflict.

"The proxy statement similarly described J.P. Morgan's fees as 'customary compensation' without context, which obscured the nature of J.P. Morgan's material relationship with consortium members from stockholders to mislead them about the significance of its participation in the sale process," the June letter stated.

Chancellor McCormick also agreed with the plaintiffs' second claim that the proxy statement materially overstated Evercore's role in market outreach and that the committee members knowingly made the overstatement.

But, the chancellor dismissed the investors' claim that Inovalon and its directors breached the covenant of good faith and fair dealing because the stockholder vote was uninformed.

"Parties to alternative entity agreements have the freedom to eliminate or modify fiduciary obligations that cannot be altered in the corporate context," the chancellor's June letter said. "Because fiduciary duties cannot be eliminated in the corporate context, I do not need to speculate as to the parties' expectations when displacing a fiduciary regime here. There is no space for or purpose to the implied covenant in this context."

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

The investor class is represented by Mark D. Richardson, Ned Weinberger, Brendan W. Sullivan, Domenico Minerva, John Vielandi and Tae Kyung Yang of Labaton Keller Sucharow LLP, Jeremy Friedman, David Tejtelt and Christopher M. Windover of Friedman Oster & Tejtelt PLLC and Lee D. Rudy, Eric L. Zagar, J. Daniel Albert, Grant D. Goodhart III, Kevin M. Kennedy and Cory D. Conley of Kessler Topaz Meltzer & Check LLP.

The committee defendants are represented by William M. Lafferty, Ryan D. Stottmann and Alexandra M. Cumings of Morris Nichols Arst & Tunnel LLP.

Dunleavy, Meritas Holdings LLC, Meritas Group and Dunleavy Foundation are represented by A. Thompson Bayliss, Eric A. Veres and Caleb R. Volz of Abrams & Bayliss LLP.

Inovalon is represented by Raymond J. DiCamillo and Kevin M. Gallagher of Richards Layton & Finger PA.

The case is City of Sarasota Firefighters' Pension Fund et al. v. Inovalon Holdings Inc. et al., case number 2022-0698, in the Court of Chancery for the State of Delaware.

--Additional reporting by Jade Martinez-Pogue, Jeff Montgomery and Katryna Perera. Editing by Jay Jackson Jr.



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Sony, PlayStation Gamers Revive Bid For \$7.85M Settlement

By **Rae Ann Varona**

Law360 (August 19, 2025, 9:11 PM EDT) -- Gamers who struck a \$7.85 million settlement with Sony Interactive Entertainment to resolve their antitrust claims over downloadable game card prices have renewed their motion for preliminary approval of the deal, addressing issues a California federal court found in a previous request, including Sony's provision of account credits.

The gamers said in an unopposed **motion** for preliminary approval filed Monday that PlayStation Network account credits, which are to be electronically distributed to gamers' accounts in lieu of cash, are not "coupons" under factors established by the Ninth Circuit.

The gamers said settlement class members won't need to hand over more of their money to take advantage of the account credit. Eligible class members can also freely use the credits on any digital game or add-on content available for sale at any time on the PlayStation Store, they said.

"There are no product, price, timing, black-out dates or other restrictions," the gamers wrote. "Indeed, once the credit is deposited into a class member's account, it is immediately part of the other funds that a class member may have in his or her digital wallet for general use."

And while the account credit isn't transferable, the credit "never expires."

"Lack of expiration weighs against being a coupon when considered with lack of transferability," they said.

The gamers also told the court that the \$7.85 million settlement amount, "less fees and costs, represents an excellent recovery for the proposed class, with plaintiffs' anticipated damages models estimating a ceiling of \$29.6 [million] based on the number of existing games that increased in price at least \$5 post April 2019."

"This approximately 25% single damages recovery falls within the range of reasonableness," the gamers wrote in their motion.

When Santa Monica, California, gamer Agustin Caccuri **first filed** the litigation in 2021, he sought to represent over 10 million people who he said were overcharged billions of dollars on allegations that PlayStation's online store became a monopoly after Sony on April 1, 2019, blocked retailers from selling PlayStation game download codes for a digital version of its games. Sony had previously allowed third-party retailers like Best Buy, Target, Walmart, Amazon and GameStop to sell PlayStation game-specific vouchers, according to his complaint.

The suit's operative consolidated class action complaint, filed in December with plaintiffs Adrian Cendejas and Allen Neumark, asserted that Sony established a monopoly over the sale of digital PlayStation games to consumers.

That monopoly, they asserted, allowed Sony to "charge supracompetitive prices for digital PlayStation games, which are significantly higher than their physical counterparts sold in a competitive retail market, and significantly higher than they would be in a competitive retail market for digital games."

The complaint also acknowledged a smaller proposed class of 4.4 million and said eligible class members will need to have purchased, through the PlayStation Store, one or more video games for

which a game-specific voucher was available at a retailer prior to April 1, 2019 — and for which a total of at least 200 GSV redemptions were made prior to April 1, 2019.

The gamers moved for **preliminary approval** of the settlement on Dec. 13, 2024, on the same day they filed the latest complaint, saying the deal would provide compensation to some 4.4 million gamers in the form of cash-value PlayStation Network account credits to be electronically distributed directly to their PSN accounts.

U.S. District Judge Araceli Martínez-Olguín, however, **denied** the motion in July after finding "glaring shortcomings" in the deal.

Judge Martínez-Olguín said the motion was "insufficient" for several reasons, including its failure to "completely address the procedural guidance" and not providing required information about the potential class recovery if plaintiffs had fully prevailed on each of their claims.

She said the court also saw the PlayStation Network account credits as "settlement coupons, which are generally disfavored," noting the Ninth Circuit's 2013 **In re: HP Inkjet Printer Litigation**  **decision**.

"Any renewed motion for preliminary approval must address the propriety of such settlement coupons and whether the value and structure of this settlement remain defensible," Judge Martínez-Olguín had said.

She said a renewed motion also had to provide a chart with information about the expected distribution of the \$7.85 million settlement, including amounts estimated for attorney fees, service awards, costs, administration expenses and other amounts to be paid.

She also called for a "ballpark estimate or range of amounts" of the credits that will be given to each settlement class member.

In the new motion, the gamers said even if the account credits are viewed as coupons, they shouldn't be disfavored "because of their positive characteristics."

According to their motion, the estimated range of recovery for each eligible account is 91 cents to \$33.66, assuming other expenses. It said that the average recovery is estimated to be \$1.14.

The gamers also said they plan to seek attorney fees not to exceed 25% of the settlement amount. That would amount to \$1.96 million, according to the motion.

Costs and expenses are estimated to be roughly \$660,000, while administrative costs are estimated to be around \$160,000, they said.

The three named plaintiffs are to receive \$10,000 each under the settlement, according to the motion.

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

The gamers and the proposed class are represented by Michael M. Buchman of Motley Rice LLC.

Caccuri is also represented by Jeff S. Westerman of Zimmerman Reed.

Cendejas is also represented by Joseph R. Saveri, Ronnie S. Spiegel and Elissa A. Buchanan of Joseph Saveri Law Firm LLP.

Neumark is also represented by Peggy J. Wedgworth and Elizabeth McKenna of Milberg Coleman Bryson Phillips Grossman PLLC.

Sony is represented by Brian Hauser, Matt Modell, Patrick T. Hein and Kaleigh Ramsey of Allen Overy Shearman Sterling and Randall S. Luskey and Shawn M. Estrada of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Agustin Caccuri et al. v. Sony Interactive Entertainment LLC, case number 3:21-cv-03361, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bryan Koenig, Gina Kim and Bonnie Eslinger. Editing by Michael Watanabe.

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Google Should Pay Billions To App Users For Data, Jury Told

By **Bonnie Eslinger**

Law360 (August 19, 2025, 10:11 PM EDT) -- Google made billions of dollars collecting data from the cellphones of tens of millions of Americans despite their opting out of tracking, a lawyer for consumers in a class action told a California federal jury Tuesday, while Google countered that the data collected after the privacy setting was activated isn't tied to users' identity.

The trial that kicked off Tuesday centers on claims that Google violated the law by saving and using information about consumers' app-based activities without their permission.

The plaintiffs' lawyer, David Boies of Boies Schiller Flexner LLP, told the jury the information is gathered from third-party apps that users downloaded onto a cellphone or other mobile device — and which incorporate analytics software provided by Google to evaluate user behavior while on the app.

"Every case is important," Boies said. "This case is particularly important because of the principles at stake and because of the money at stake."

Google uses the data from those apps without permission, Boies said.

"The evidence is going to show Google did in fact, take, copy [and] use data from our clients using those third-party apps," the lawyer said. "Our clients never gave permission or consent."

The class the plaintiffs represent are those device users who chose an option offered by Google in which they were told their data would not be collected from third-party apps, Boies said.

People's use of apps can tell you a lot about them, the lawyer told the jury.

"What they looked at, what they search for, what they purchased, where you live, what kind of food you like, where you travel, whether you're married or single or dating," Boies said. "Whether you're pregnant or trying, health issues, [whether you're] looking to buy a house."

The data is very valuable, he added.

"Google described it as, quote, 'Data is the gold of the 21st century,'" Boies told jurors.

Google makes most of its money selling advertising to businesses and others who want to put their messages in front of Google users, the lawyer for the plaintiffs said.

There are about 98 million class members who opted out of having their third-party app data collected, Boies said. The time period at issue is from July 2016 to September 2024.

"Google was told not to collect data. Google collected their data anyway," the lawyer said, adding that the tech giant profited "billions of dollars" from that data.

And while Google is expected to tell the jury that the data collection was disclosed to users by the third-party apps and in Google's terms of service, emails and other internal company communications show Google executives and software engineers expressing uncertainty about the data's use.

If they "can't figure out by looking at disclosures what's being saved, what's being used, how can

ordinary users?" Boies told the jury.

Toward the end of his opening statement, Boies said the plaintiffs would be asking for a verdict that awards compensatory damages, disgorgement of profits, money for emotional distress and punitive damages from Google, the last being to "punish and deter the conduct."

And while no total financial figure sought was provided by Boies, the lawyer told jurors the evidence is going to show that the value of the data was \$3 per month and the number of devices for the plaintiffs is about 173 million — because consumers often have more than one device. That adds up to about \$520 million for just one month.

"The amount of money is so large here because the conduct went on for so long and there were so many people affected by it," Boies said.

There are 98 months in the class period, but the average number of months that consumers opted for the privacy setting is about 56 months — adding up to \$29 billion on just compensatory damages alone, the lawyer said.

Google lawyer Benedict Hur of Cooley LLP told jurors they had been given an incomplete picture of what type of data is collected by the app development software — called Google Analytics for Firebase — and how it's being used. Jurors also weren't told that when app developers sign up for the software, they agree to disclose to their users that the app is using Google's analytics tool and that it collects data, Hur said.

"You also didn't hear plaintiffs talk about many of the disclosures in this case that Google makes to its own users," Hur added.

The lawyer reminded jurors that the case is about third-party apps, not the information Google collects to give device users a personalized experience on its apps.

"This case is about nonpersonal data, data that isn't tied to any user's identity," Hur said. "It's data that contains no name, email address, home address or billing information."

When enabled by users, Google Analytics data can be used to personalize ads, but Google doesn't do that when that option is turned off, he said.

All that's gathered in that instance is "aggregated data that isn't tied to any particular user," Hur told jurors.

Further, Google's lawyer said, the plaintiffs have not shown they've been harmed.

"There was no data breach, there was no information that was provided to a third party who used it nefariously," Hur said. "Yet, the plaintiffs' counsel came up here and basically told you that he's going to ask for billions and billions of dollars."

The users first filed suit **in 2020**, calling Google a "voyeur extraordinaire" that deceives users into thinking they have some agency over what the company can track when they use its apps.

The complaint covers conduct between July 2016 and September 2024 and alleges three claims under California law: invasion of privacy under the California Constitution, common law intrusion upon seclusion, and violation of the Comprehensive Computer Data Access and Fraud Act. Google denies the claims.

In January, U.S. District Judge Richard Seeborg **rejected** a summary judgment bid by Google seeking to toss the case, putting the litigation on the path to trial. As with the Ninth Circuit's **ruling** last year in another recent intrusion upon seclusion case involving the company, **Calhoun v. Google LLC** , Judge Seeborg said the key question about consent — even with disclosures — is whether "a reasonable user reading them would think that he or she was consenting to the data collection."

The users are represented by David Boies, Mark C. Mao, Beko Reblitz-Richardson, James W. Lee, Alison L. Anderson and M. Logan Wright of Boies Schiller Flexner LLP, Bill Carmody, Shawn J. Rabin,

Steven M. Shepard, Alexander P. Frawley and Amanda K. Bonn of Susman Godfrey LLP, and John A. Yanchunis, Ryan J. McGee and Michael F. Ram of Morgan & Morgan PA.

Google is represented by Michael A. Attanasio, Benedict Y. Hur, Simona Agnolucci, Eduardo E. Santacana, Argemira Flórez, Naiara Toker, Harris Mateen, Thilini Chandrasekera, Isabella Mckinley and Corbo Chelsea Hu of Cooley LLP.

The case is Rodriguez et al. v. Google LLC et al., case number 3:20-cv-04688, in the U.S. District Court for the Northern District of California.

–Additional reporting by Jared Foretek. Editing by Linda Voorhis.

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