Securities Things

businesslawprofessors.com/2025/08/securities-things

Ann Lipton August 22, 2025

Couple of interesting securities law developments this week –

First, the Third Circuit's opinion in *Boilermaker Blacksmith National Pension Trust v. Maiden Holdings Ltd*, interpreting the Supreme Court's decision in *Omnicare, Inc. v. Laborers District Council Construction Industries Pension Fund*, 575 U.S. 175 (2015). *Omnicare* explained that statements of opinion can be actionable under the federal securities laws, if they are either literally false representations of one's own opinion ("haha I said I believed we'd do well this quarter but I don't believe that at all!"), or if they omit material facts regarding a genuinely held belief that render the opinion misleading. The Supreme Court gave the following examples:

> A reasonable investor may, depending on the circumstances, understand an opinion statement to convey facts about how the speaker has formed the opinion—or, otherwise put, about the speaker's basis for holding that view. And if the real facts are otherwise, but not provided, the opinion statement will mislead its audience. Consider an unadorned statement of opinion about legal compliance: "We believe our conduct is lawful." If the issuer makes that statement without having consulted a lawyer, it could be misleadingly incomplete. In the context of the securities market, an investor, though recognizing that legal opinions can prove wrong in the end, still likely expects such an assertion to rest on some meaningful legal inquiry—rather than, say, on mere intuition, however sincere. Similarly, if the issuer made the statement in the face of its lawyers' contrary advice, or with knowledge that the Federal Government was taking the opposite view, the investor again has cause to complain: He expects not just that the issuer believes the opinion (however irrationally), but that it fairly aligns with the information in the issuer's possession at the time.

In *Maiden Holdings*, the Third Circuit – accepting, I believe, framing proposed by plaintiffs – held that this standard actually articulates two separate pathways by which an opinion statement may become misleading. *First*, the statement may impliedly misrepresent the process by which the opinion was formed; *second*, the statement may impliedly misrepresent the speaker's knowledge of contrary facts. As the Third Circuit put it:

> The Supreme Court identified two ways in which an opinion statement may mislead investors "about the speaker's basis for holding that view." First, an opinion statement may mislead investors about what the speaker did by "omit[ting] material facts about the issuer's inquiry into" the facts relevant to the opinion ("inquiry theory"). The statement, "[w]e believe our conduct is lawful," for example, may be misleading if the speaker concealed that he did not consult an attorney before forming the opinion. Second, an opinion statement may mislead investors about what the speaker knew by "omit[ting] material facts about the issuer's . . . knowledge" of the evidence for and against the opinion ("knowledge theory"). The same statement, "[w]e believe our conduct is lawful," may therefore be misleading if the speaker withheld the fact that his own lawyers told him otherwise.

In *Maiden Holdings*, the allegation was that Maiden had misrepresented the adequacy of its loss reserves, given the weak performance of one of its insureds, AmTrust. The case was in an odd posture where the district court ordered very limited discovery, and then granted summary judgment to defendants (meaning, among other things, that the record was more developed than it would be at your typical motion to dismiss stage).

In that context, the Third Circuit held that the district court erred, because it granted summary judgment to defendants on the grounds that Maiden had, in fact, considered AmTrust's historical performance when setting its reserves. But the plaintiffs had not alleged that defendants inaccurately described their *process* – i.e., the plaintiffs did not challenge that Maiden Holdings had indeed considered AmTrust's historical performance. Instead, the plaintiffs had alleged that Maiden Holdings had misled investors by not disclosing its *knowledge of contrary facts*, i.e., AmTrust's performance, which contradicted the performance information Maiden had disclosed to investors. Because the Third Circuit believed there was a genuine issue of fact as to whether Maiden's *knowledge of contrary facts* rendered the opinions misleading, the grant of summary judgment was reversed.

Probably a lot of attorneys will want to study the Third Circuit's discussion of how loss reserve statements may become misleading, but I'm actually more intrigued by the frame, i.e., deficient process vs. contrary facts, which is not something I'd seen before. At a high level, I'd say they collapse in the way the Supreme Court described: the investor is misled about the basis for the opinion. A reasonable process presumably takes contrary facts into account, and if investors expect your process is reasonable, they probably expect there are some number of contrary facts in the mix, and therefore won't be misled if you fail to mention them specifically. By contrast, if your contrary facts are overwhelming and didn't affect your opinion, probably the process is verkakte, you know? Still, I imagine this approach may help clarify the analysis for courts.

Second, we have the Ninth Circuit's opinion in *[Sneed v. Talphera]*, which concerned marketing statements surrounding a new opioid drug. The company used the slogan "Tongue and Done" to refer to easy under-the-tongue administration. The FDA issued a warning letter objecting that the slogan was misleading. But that was not enough for the Ninth Circuit to conclude the slogan was misleading *to investors*. The facts are colorful but Imma skip them; I'm interested in the legal principle here, which is:

> This case provides an example of how FDA regulations may require the disclosure of information to medical personnel that a reasonable investor would not need. … the FDA regulations on misleading marketing conflict with our expectation of how reasonable investors behave. We expect reasonable investors to read an entire document, including the fine print and caveats, while FDA regulations dictate that "a brief statement[]" "in another distinct part of an advertisement" does not correct misleading statements made elsewhere in an ad. 21 C.F.R. § 202.1(e)(3)(i). FDA regulations also explain that an "advertisement does not satisfy the requirement that it present a 'true statement' of information . . . [if it] fails to present a fair balance between . . . side effects and contraindications and . . . benefits." 21 C.F.R. § 202.1(e)(5)(ii). But we expect reasonable investors to pay attention to caveats and disclaimers even if less prominently displayed.

See, this is weird to me. If you think of a single average investor, I'd expect them to pay a lot *less attention* to medical caveats than *the medical professionals with medical degrees* who are expected to administer a drug *without killing their patients.*

That *said*, the specific context of fraud on the market is different. In a fraud on the market case, you're not talking about a single investor, but the entire market of them – some of whom will include people with specialized training. In *that* context, when you're talking about the entire universe of people who will read disclaimers and set the price, sure, I can believe the entire universe of people, who include medical professionals, will weight disclaimers more than any single medical professional or single investor. And, in fact, the Ninth Circuit [has drawn that distinction before].

Sadly, however, in this case, the Ninth Circuit made no distinction between fraud on the market and other contexts – it simply held that average stock trader understands medical disclaimers better than doctors. Which, you know. Here's hoping not.

And then there's Masimo. Mike Levin and I discussed the Masimo activist dispute in our *Shareholder Primacy* podcast, here. (Podcast currently on a summer break; back after Labor Day.)

The latest is: Activist investor Politan, having taken control of Masimo, filed suit against the investor RTW, alleging that it formed a 13d group with founder and former CEO Joe Kiani to fight the Politan attack. In doing so, they are alleged to have coordinated their votes (including empty votes, which is a whole separate thing), and because, together, they counted as insiders for the purposes of Section 16(b), any short swing profits received by RTW would need to be disgorged. A district court recently rejected RTW's attempts to dismiss the case, concluding that Politan adequately alleged – for pleading purposes – that RTW and Kiani had "combined in furtherance of a common objective—a common objective of either acquiring, holding, voting, or disposing of securities," which would make them a 13d group.

What's interesting here is, a 13d group is formed when investors combine to further a common objective, but – absent mindreading devices – it's usually hard to tell when a group exists among apparently-disparate shareholders who take care not to paper their arranegement. And there are precious few actual reported cases that discuss the kinds of allegations that are sufficient to establish, for pleading purposes, the existence of a combination. The Masimo case is unusual for that reason, but – and here's the rub – the actual facts are so outrageous that they're unlikely to transfer to other scenarios. Like, Kiani apparently sent a *text photo of a whiteboard with confidential vote totals* to RTW. That's … pretty good evidence that the two were "combined in furtherance of a common objective." One can only hope that future plaintiffs/enforcers don't need to hit quite so high a bar.

Securities Law News

Snap Investor Sues After Advertising Tool Glitch Hurts Sales (2)

Aug. 21, 2025, 10:36 AM PDT; Updated: Aug. 21, 2025, 12:01 PM PDT

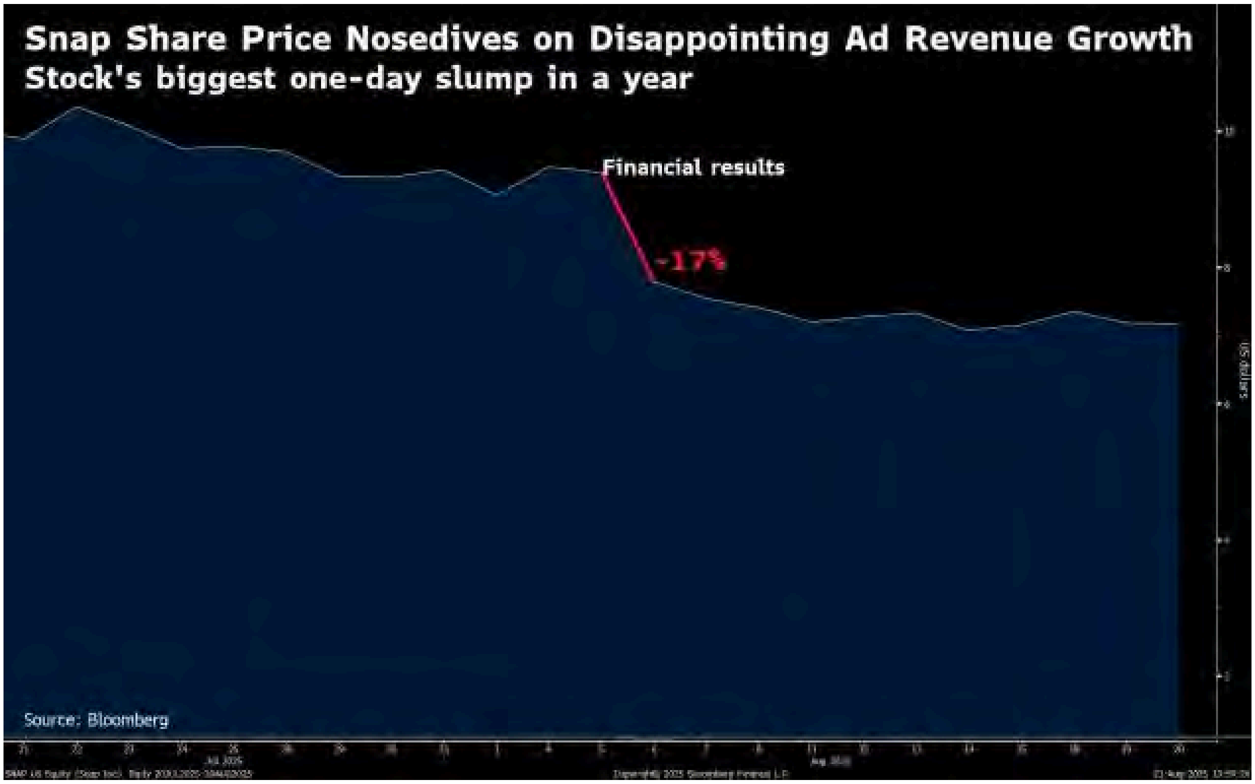
Snap Inc. hid a technical issue and other events before reporting second-quarter sales that missed expectations, a shareholder lawsuit said.

The Snapchat owner's stock price plummeted 17% on Aug. 6, the day after Snap attributed the slowdown to the issue with its ad platform, Ramadan's timing, and other effects, said the proposed class action filed in the US District Court for the Central District of California Thursday. It was share price's sharpest one-day drop in more than a year, according to data compiled by Bloomberg.

Defendants Snap, CEO Evan T. Spiegel, and chief financial officer Derek Andersen previously "created the false impression that they possessed reliable information pertaining to the Company's expected advertising revenue and anticipated growth while emphasizing potential macroeconomic instability" on an April earnings call, the complaint said. But the ad tool error was already impacting the company, said investor Omar Abdul-Hameed.

"Defendants made no mention of an ongoing advertising issue, nor did they suggest the significant degree to which Snap's advertising growth rate had declined in April" on that call, the complaint said.

An update to Snap's ad auction system caused it to mistakenly discount sales to ad buyers, the tech company said in an Aug. 5 letter to shareholders about its second quarter results. In an associated earnings call, Andersen said that the company saw advertising revenue growth drop to about 1% year-over-year in April, and after rolling back the change, saw that metric recovering in May.



Snap reported ad revenue reached about $1.17 billion in the second quarter of 2025, up 4% year-over-year. About 90% of Snap's revenue comes from advertising.

The proposed class would include those who got Snap securities from April 29, the day it discussed first quarter results, through Aug. 5.

Levi & Korsinsky LLP represents Abdul-Hameed, who seeks damages for alleged 1934 Securities Exchange Act violations.

Snap didn't immediately respond to an email seeking comment.

The case is Abdul-Hameed v. Snap Inc. , C.D. Cal., No. 2:25-cv-07844, complaint filed 8/21/25 .

(Updates with additional information about the second quarter results, and adds chart.)

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Class Action

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Rivian Must Battle Investor Suit Over Demand, Backlog Claims (2)

Aug. 22, 2025, 5:48 AM PDT; Updated: Aug. 22, 2025, 9:16 AM PDT

Summary by Bloomberg AI

AI Generated

- Investors alleged that Rivian Automotive Inc. overstated demand based on misleading preorder backlog numbers.
- Judge Consuelo B. Marshall said investors sufficiently alleged that top executives were watching the backlog metrics “daily,” boosting an inference of intent or reckless disregard.
- The proposed class would include those who bought Rivian securities from Aug. 11, 2022, through Feb. 21, 2024, according to the complaint.

Rivian Automotive Inc. must defend against shareholder allegations the electric-vehicle maker overstated demand based on misleading preorder backlog numbers.

Investors sufficiently alleged that top executives were watching the backlog metrics “daily,” boosting an inference of intent or reckless disregard, Judge Consuelo B. Marshall said in an order entered Thursday.

CEO Robert J. Scaringe and CFO Claire McDonough’s compensation being heavily tied to the stock’s value bolstered that inference, the US District Court for the Central District of California judge said. Scaringe’s $13.99 million paid in 2023 was 5% salary and 95% stock and options, Marshall said based on the allegations, while McDonough’s $4.86 million that year was 10% salary and 90% stock and options.

The timing of other executives’ resignations surrounding corporate statements about EV production plus bond offerings also supported the investors’ allegations of intent or recklessness, Marshall said.

“We are pleased by the Court’s thoughtful Order denying defendants’ motion, and that we could deliver this outcome for our clients and the proposed shareholder class,” said Laurence Hasson of Bernstein Liebhard LLP, lead counsel for the investors, “and are now turning our focus to the next phases of the case.”

Sufficient Claims

The investors adequately pleaded statements predicting production numbers and demand on its roadmap to profitability were misleading. These "statements created an impression of a state of affairs that differed in a material way from what actually existed," Marshall said.

And the investors adequately pleaded Rivian's risk-factor disclosures to be misleading as they made positive statements on demand based on that allegedly faulty backlog, Marshall said. Preorders on the backlog could be canceled—making it unreliable to determine demand, which Rivian allegedly didn't share with investors—and a large number of older orders could be sold for lower profits.

In reality, Rivian lacked a reasonable basis to believe that enough demand warranted more production or that vehicles would be sold at a profit to reach its financial goal in 2024, according to the most recent complaint. The company was dealing with EV industrywide issues like its competitors.

The proposed class would include those who bought Rivian securities from Aug. 11, 2022, through Feb. 21, 2024. That day, Rivian announced production guidance below expectations and a 10% workforce reduction. Share prices plunged almost 26% the next day, then its sharpest one-day drop since its 2021 market debut, according to data compiled by Bloomberg.

Morrison & Foerster LLP represents Rivian and the executives. Rivian and the firm declined to comment in emails.

The case is Indiana Pub. Ret. Sys. v. Rivian Auto., Inc. , C.D. Cal., No. 2:24-cv-04566, 8/21/25 .

(Updates to include that Rivian's counsel declined to comment in the 10th paragraph.)

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Securities Law

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UBS, Royal Bank of Scotland Face Revived Rate-Rigging Claim (2)

Aug. 22, 2025, 8:09 AM PDT; Updated: Aug. 22, 2025, 9:44 AM PDT

Summary by Bloomberg AI

AI Generated

- The Second Circuit said a pair of investment funds can proceed with antitrust claims against UBS AG and the Royal Bank of Scotland for allegedly manipulating currency-loan interest rates.
- Some state law claims will also return to the district court for consideration, but the US Court of Appeals for the Second Circuit affirmed the dismissal of racketeering and commodities law claims.
- The investors adequately pleaded a conspiracy involving RBS and UBS for Sherman Act purposes, and sufficiently described antitrust injuries through transactions in a different financial product allegedly tied to Euribor, Judge Richard J. Sullivan said.

A pair of investment funds can proceed with antitrust claims against UBS AG and the Royal Bank of Scotland for allegedly manipulating currency-loan interest rates, the Second Circuit said Friday.

In addition to the Sherman Act claims in the proposed class action over securities linked to the Euro Interbank Offered Rate, or Euribor, some state law claims will also return to the district court for consideration. But the US Court of Appeals for the Second Circuit affirmed the dismissal of racketeering and commodities law claims.

Multiple banks have already settled the US investors' claims against them in the long-running suit. Barclays Plc, HSBC Holdings Plc and Deutsche Bank AG settled the case for a total $309 million; Citigroup Inc. and JPMorgan Chase & Co. settled for $182.5 million; and Societe Generale settled for $105 million.

The suit alleges the banks conspired among themselves to manipulate Euribor and fix the prices of the Euribor-based derivatives the investors held. The plaintiffs asserted claims under the Sherman Act, the Commodity Exchange Act, the Racketeer Influenced and Corrupt Organizations Act, and state common law.

Judge P. Kevin Castel of the US District Court for the Southern District of New York dismissed the claims against UBS and RBS for lack of personal jurisdiction.

“We agree with the district court that Plaintiffs have failed to establish a conspiracy-based theory of personal jurisdiction over the Defendants,” Judge Richard J. Sullivan said for the Second Circuit. But two investment funds established personal jurisdiction for Sherman Act and RICO claims stemming from over-the-counter transactions in the US, he said.

The investors didn’t adequately plead their RICO claims, but the Sherman Act antitrust claims can proceed, he said, joined by Judges Dennis Jacobs and William J. Nardini.

They adequately pleaded a conspiracy involving RBS and UBS for Sherman Act purposes, Sullivan said. A trader at Barclays was allegedly a “key participant” who continued his participation after moving to RBS, and chat and email messages quoted in the complaint give specificity to the allegations of UBS’s involvement in the conspiracy, Sullivan said.

And the investors sufficiently described antitrust injuries through transactions in a different financial product allegedly tied to Euribor, he said. Finally, the funds’ “surviving allegations all pertain to their direct transactions with UBS and RBS,” satisfying another Sherman Act pleading requirement.

With the revival of the Sherman Act claim, the district court can exercise jurisdiction over the state law claims as well, Sullivan said.

Attorneys for the investors included Goldstein & Russell PC, Lowey Dannenberg PC, Berman Tabacco, and Lovell Stewart Halebian Jacobson LLP. Gibson, Dunn & Crutcher LLP represented UBS. King & Spalding LLP represented RBS.

The case is Sullivan v. UBS AG , 2d Cir., No. 19-1769, 8/22/25 .

(Updates story with additional reporting beginning in the eighth paragraph.)

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AI chats aren't privileged: What California lawyers need to do now

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dailyjournal.com/articles/387206-ai-chats-aren-t-privileged-what-california-lawyers-need-to-do-now

The head of OpenAI just set off alarm bells when he said that people commonly share deeply personal information with certain AI tools (like its own ChatGPT) on topics like health, relationships, or legal issues --assumedly not realizing these conversations are not protected under any sort of privilege. Sam Altman's wake-up call should especially jolt members of the bar since many might not consider the fact that conversations with ChatGPT and similar tools are not protected by attorney-client privilege, and providers could be compelled to produce chat logs in litigation. That means anything clients --or lawyers -- type into an AI chat may be discoverable.

Where privilege stops -- and why AI falls outside it

Let's first examine Altman's statement about AI discourse falling outside privilege boundaries to see why that applies to attorney/client communications.

• Cal. Evid. Code § 954protects confidential communications between a client and lawyer. By definition, chats with a third-party AI provider are *not* client-lawyer communications, so § 954 doesn't attach. (Justia Law)

• CCP § 2018.030applies absolute work product protection for writings reflecting an attorney's impressions and qualified protection for other work product. Uploading facts, strategy, or drafts to an AI platform risks *waiver* or at least factual discovery of inputs/outputs.

• Bus. & Prof. Code § 6068(e)(1)actually creates a duty of confidentiality for California attorneys that's broader than privilege and requires lawyers to "maintain inviolate" client confidences. Putting client data into a tool that lacks enforceable confidentiality safeguards can violate this duty, even if privilege technically remains.

What current law does (and doesn't) cover

Are there other arguments attorneys and clients make regarding the confidentiality of the data they input into AI systems? Two key ones would currently fail.

• California's main privacy law (the CCPA) regulates businesses' collection, use, and disclosure of personal information. The CCPA requires contracts obligating "service providers" to comply with comparable protections, but this does *not* create a privilege; at best it imposes data-handling duties and consumer rights (access, deletion, etc.).

• The California State Bar's *Generative AI Practical Guidance* warns lawyers not to input confidential client information into AI tools lacking adequate confidentiality and security. Likewise, ABA Formal Op. 512 stresses confidentiality in client communications when using GenAI.

Practical risks for lawyers and clients

So what are risks if you ignore these alarm bells and use generative AI tools for confidential communications?

First and foremost -subpoena or discovery exposure. If a provider stores chats, litigants can seek them, and no privilege would bar production. Altman acknowledged this risk explicitly.

Next, you could seeerosion of waiver and work-product. Pasting strategy memos or client facts into a third-party system can support arguments that confidentiality was not preserved, narrowing § 2018.030 protections.How longcommunications will be retainedis the great unknown. Provider terms and retention policies vary, and CCPA contractual guardrails don't guarantee deletion or non-disclosure in response to lawful process.

Finally, clients attemptingself-help with AIcould cause you headaches. Clients may feed sensitive details to chatbots and later assume those exchanges are protected, only to find they are discoverable. Altman's remarks highlight how common this is becoming.

5 things California lawyers should do today

Given this new fear, what should you do? Here are five key action steps to consider.

1. Lock down your stack. Seek enterprise tools offering no-retention or short-retention modes, contractual promises of no training on inputs, data localization/encryption, audit logs, and subpoena notice.

2. Treat AI vendors like agents -- or don't use them for client data. If you must use AI with client matters, use tools under written engagement that binds the vendor to confidentiality/security equivalent to your obligations under § 6068(e). Otherwise, do not input client-identifying facts or strategy.

3. Update governance. Adopt an AI use policy for your firm covering use cases, tool approvals, red-teaming, logging, and a ban on uploading privileged content absent client approval.

4. Manage clients' expectations. Add engagement-letter language and client alerts explaining that chats with consumer AI are not privileged and may be discoverable. Just like a patient may seek a "second opinion" through WebMD or other online medical portals, don't be surprised to learn that your clients are turning to ChatGPT to get advice about their case. Warn them directly not to do this.

5. Preserve privilege when drafting. Keep true mental-impressions writings offline or within secure firm systems. If using AI for style/editing, strip client identifiers and sensitive facts, and document your sanitization step.

Sensible reform options for California

No article on this cutting-edge topic would be complete without a quick word on where this area of law should evolve. In a perfect world, the next few years would see the following reforms take hold:

• **Statutory safe harbor for lawyer-directed AI.** The Evidence Code should be amended to recognize privileged status for communications with AI when used by or at the direction of counsel under confidentiality-preserving conditions (e.g., where AI vendor would be an agent of the attorney bound by written terms mirroring § 6068(e) and non-waiver provisions).

• **CCPA enhancements for AI providers.** The state's privacy law should be enhanced to require AI vendors processing Californians' data to offer deletion-by-default for inputs, timely subpoena notice to enterprise customers, and explicit non-training options. All this can be done without suggesting any privilege is created.

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News | **Legal Technology**

Going Rogue: Efficiency Pressures Drive Legal Professionals to Use Unauthorized AI Tools

August 22, 2025 at 11:05 AM By **Ella Sherman**

Credit: Deemerwha studio/Adobe Stock

Many legal professionals who use unapproved artificial intelligence tools at their organizations are driven to do so by pressure to deliver work faster, a desire to access unique functionalities, and recommendations from senior colleagues, according to research from AI-powered translation platform DeepL released Friday.

In a DeepL survey that received 1,000 responses from from law firm, in-house, public sector or independent legal professionals in the U.S. who are impacted by or directly involved in the use of

AI tools in legal work, more than half of the respondents noted that they either frequently (35.3%) or have occasionally (35.6%) used AI tools without formal approval from their organizations.

Ed Crook, DeepL vice president of strategy and operations, told Legaltech News that unauthorized use of AI tools at these organizations, known as shadow AI, is now commonplace.

“Presented with a potential solution to help work more efficiently, to be able to work more fluidly, of course as a professional, you're going to take that opportunity,” he said.

On the other hand, the survey also noted that 55.1% of the respondents’ organizations have communicated and enforced a clear, formalized AI policy, which indicates a wider AI governance gap within organizations that formal policy or approved AI tools available to legal professionals in these organizations do not appear to satisfy.

Crook said that, although using unauthorized tools can put the organization’s data at risk, it is also on the AI company to produce a secure tool.

“People who are working legal professional fields want to work more effectively, want to make use of the tools, the technology that are becoming more and more available to them,” he said. “At the same time, doing it in a compliant way means that they are going to need to partner with AI providers they can trust, and a lot of them are still figuring that out.”

Crook added that regardless of organization policy, legal professionals are under immense pressure and will go the unauthorized route to ease it.

“Legal professionals are often under incredible pressure to deliver quickly, to deliver efficiently at scale, the draws in their time are quite intense,” he said. “You're going to try and supercharge your workflow using AI. … The impetus is, ‘We're under pressure, and we're trying to do more and achieve more and be more impactful in our work.’”

For the respondents that said they used unapproved AI tools, a quarter of them said the top reason they had used them was pressure to deliver work faster (34.9%). Participants also said they used unapproved tools because they needed functionality that approved tools didn't offer (32%).

The top approved AI-powered tools that organizations do make available to legal professionals include general purpose AI tools (50.9%), legal research and analytics AI (44.9%), language translation and multilingual tools (44.9%), contract review and document automation tools (42.8%) and autonomous legal assistants (37.1%).

Crook said that organizations should focus on providing legal staff with more specialized AI tools over general AI tools like ChatGPT or Microsoft Copilot.

“If you give a legal team a Swiss Army knife, knowing what to do with that will lead into time,” he said. “But if you give someone a tool like that solves a very specific challenge and does it really, really well, then the time to value is so much shorter because it's solving a real problem.”

News | Artificial Intelligence

Lawyers Accused of AI 'Hallucinations' in OnlyFans Litigation

August 21, 2025 | By Kat Black

What You Need to Know

- A defense team at Skadden Arps representing adult content platform OnlyFans in a RICO and privacy lawsuit accused plaintiffs' counsel of submitting legal briefs containing AI-generated errors, or "hallucinations."
- Plaintiffs' counsel at Hagens Berman said that their co-counsel resorted to an AI tool to write the briefs because she was dealing with a personal family crisis.
- Plaintiffs' counsel will seek to file corrective briefs and explain the situation to the court, said a Hagens Berman attorney.

Laptop computer displaying logo of OnlyFans, a London-based content subscription service. Credit: monticellllo/Adobe Stock

Defense lawyers in litigation against Fenix International Ltd., the parent company of the subscription-based adult content website OnlyFans, have accused plaintiff counsel in multiple filings of outsourcing their legal research to generative artificial intelligence, resulting in legal briefs allegedly riddled with "hallucinations," or AI-generated errors and inaccuracies.

"Although Plaintiffs had two months to craft their 11,515-word brief, they were evidently unable to find legitimate legal authorities supporting their arguments," alleged Fenix's counsel at Skadden, Arps, Slate, Meagher & Flom.

In five filings Tuesday, Skadden called out at least one allegedly bogus case citation and nonexistent language attributed to judicial opinions, targeting court papers submitted by plaintiffs counsel Hagens Berman Sobol Shapiro.

Skadden, according to the filing, recorded at least 20 such hallucinations in a plaintiffs' response opposing the defendants' motion to dismiss the case.

"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," stated the filing, which argued that—in addition to lack of personal jurisdiction, failure to state a claim and improper venue—the hallucinations and failure to disclose AI use justified granting the defense's motion to dismiss.

Skadden Arps declined to comment on the case.

The underlying class action, captioned *N.Z. v. Fenix International Ltd.*, contends that Fenix engaged in consumer fraud and enabled massive breaches of confidentiality by disclosing users' sensitive, sexually explicit information and media to third parties through a so-called chatters scam, in which

OnlyFans subscribers—known as "Fans"—are allegedly led to believe they are conversing with actual creators of adult content on OnlyFans instead of professional "chatters" hired by the creators to impersonate them.

Hagens Berman filed the lawsuit, which alleged violations of the Racketeer Influenced and Corrupt Organizations Act and federal and state privacy laws, on July 29, 2024, in the U.S. District Court for the Central District of California, Southern Division.

The case has been assigned to District Judge Fred W. Slaughter.

'A Lesson Learned'

In a statement emailed to The Recorder, Robert Carey, a Hagens Berman partner based in Phoenix who is representing the plaintiffs, said that the briefs contained "sections drafted by co-counsel outside our firm."

"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," he wrote. "Our review did not catch those errors, and we take responsibility for that oversight. It should not have happened."

The co-counsel, according to the statement, was a "Yale Law School graduate and trusted colleague who has provided excellent work for over a decade"—and was navigating an "intense family crisis" with her father, who had entered hospice earlier this summer after a long-term battle with Parkinson's disease and other medical conditions.

"While managing his care from afar, she did not share with us how overwhelming the situation had become," wrote Carey. "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. 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."

Carey later said in a phone interview that the plaintiffs' legal team will request to file corrective briefs that remove inappropriate quotations and statements and explain what happened to the court. He asked that the the identity of the co-counsel who used the AI tool not be disclosed until the request was publicly filed.

"It's a mistake," said Carey. "It shouldn't have happened. It's our responsibility to make sure briefs are right no matter who puts the sections together. But it was a little difficult when it's a person we've had a longstanding relationship with, and she's a high-level lawyer and brief writer, and she is helping us finalize the briefs that we just didn't think we needed to check her work."

"And so, lesson learned. We apologize to our opposing counsel ... and we're going to apologize to the court and see what we need to do to make it right. But our firm has filed thousands and thousands of high-level briefs, and this is not our practice. If we knew what was going on, we would've stopped it—but again, a lesson learned."

'Lawyers Need Help'

The case underscores the potential risks associated with increasingly pervasive use of AI in the legal profession—which shows no signs of ebbing, according to a recent Thomson Reuters Westlaw report that recorded, in the month of July alone, 22 different cases in which "courts or opposing parties found non-existent cases within filings, leading to discipline motions or sanctions in many instances."

Carey pointed out that the case also highlights the necessity for lawyers to communicate with their colleagues about the personal experiences or crises that may potentially be impacting their work—and for colleagues to help shoulder the burden.

In a recent case reported by the ABA Journal, U.S. Magistrate Judge James M. Wicks in the Eastern District of New York opted not to impose monetary sanctions on a lawyer who had submitted a court filing containing three hallucinated cases, citing the recent death of her husband as an extenuating circumstance.

Carey said he thinks that the bigger mistake made by his co-counsel was "not talking to us." The legal team representing the plaintiffs was "in the dark" about her personal struggles—and would have readily helped her if asked, he added.

"Lawyers need help," he said. "They're humans, and they go through things in life, and everybody on our team—and I don't just mean my firm, everybody on our team—would've filled in and covered the gap. And it's unfortunate she didn't feel confident enough to ask for help."

Securities Law News

M&A Focus

AI Mega Deals Favor Large Law Firms, Latham's M&A Leader Says

Aug. 22, 2025, 2:02 AM PDT

Large law firms have an edge in landing work on mega deals in the pipeline tied to artificial intelligence, according to Latham & Watkins' new M&A and private equity global co-chair.

The transactions center on artificial intelligence data centers and infrastructure that supports them, partner Alex Kelly said. They require teams operating across industries and practice groups, which smaller firms lack, she said.

"The intersection of technology, infrastructure, real estate, and regulation make a perfect deal for us because you need a firm that can speak all of those languages fluently," Kelly said. "Our clients are gravitating towards firms that can deploy deal teams across jurisdictions overnight."

Kelly's contention that big law firms are in the best position to garner M&A work is bolstered by Bloomberg Law data from the first half of the year. Four of the five firms that brought in the most M&A work were also among the 20 largest for overall revenue.

Latham ranked first among those four with deals worth about $269 billion, including guiding CyberArk Software Ltd. in its $25 billion sale to Palo Alto Networks Inc. Kirkland & Ellis followed at nearly $251 billion, along with Davis Polk & Wardwell ($149 billion), and Paul Weiss Rifkind Wharton & Garrison ($142 billion).

Only Wachtell Lipton Rosen & Katz, which ranked third among the top five with deals worth about $161 billion, is not among the country's 20 highest-revenue firms. The Wall Street firm, known for its lean structure compared to other top deals advisers, ranked 50th among law firms for overall revenue in fiscal 2024, according to data from the American Lawyer.

Latham's M&A lawyers have steered several of the largest AI and data center-related mega deals so far this year. Those include the CyberArk sale, which was announced in July; advising Amphenol Corp. in its $10.5 billion purchase of CommScope Holding Co.'s connectivity and cable solutions business in August; and steering Meta Platforms' $14 billion investment in upstart Scale AI in June.

It falls on Kelly to keep Latham near the top of the leader board. She was tapped in May to co-lead the firm's M&A and private equity practice group, alongside Paul Kukish. Kelly has spent more than 15 years at Latham, beginning as a summer associate.

Running the M&A team comes after several years of leadership positions within the firm, which Kelly says has a culture of giving both associates and partners a role in managing the firm. She participated as a junior partner in Latham's associates committee, which focuses on issues like progression and bonuses.

Kelly's asset management M&A clients include Sixth Street Partners, Ares Management Corporation, PIMCO, and Hunter Point Capital. She has also advised private equity players like Warburg Pincus, Hg Capital, and Entrepreneurial Equity Partners.

Rocky Market

AI's rapid rise puts a spotlight on regulation, as lawmakers and lawyers grapple with antitrust and security concerns related to deals and foreign supply chains.

"We're going to see people thinking about antitrust risks globally where AI seems to be getting aggregated all in the hands of one user," Kelly said.

At the same time, market conditions and tariffs are still top of mind for lawyers, who expect deals to pick up further once tariff policy under the Trump Administration settles. Accepting an unfavorable tariff rate in a key region may still preferable than waiting for it to potentially fall because lawyers and their clients will be able to value a transaction and have stability to make decisions.

"With the yo-yo, tariff policy folks don't have any certainty to what's going to happen," Kelly said.

Broadly, the market is still adjusting after a period of rocky macroeconomic conditions, which have also made going public an inefficient exit option for many large private companies.

Client instead are opting to sell their companies in "dribs and drabs" to multiple sponsors to help owners get liquidity. Meanwhile, private equity owned companies continue to see single-asset continuation vehicles, where sponsors are kicking the can down the road, Kelly said.

"We've seen a significant increase in the amount of minority deals," Kelly said. "In some cases, we've seen hybrid, preferred structured instruments to help sponsors get liquidity."

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Musk, X Corp to settle $500-million lawsuit over Twitter firings

reuters.com/sustainability/boards-policy-regulation/musk-x-corp-settle-500-million-lawsuit-over-twitter-firings-2025-08-21

Dietrich Knauth August 21, 2025

FILE PHOTO: Elon Musk, Chief Executive Officer of SpaceX and Tesla and owner of Twitter, gestures as he attends the Viva Technology conference dedicated to innovation and startups at the Porte de Versailles exhibition centre in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes/File Photo/File Photo Purchase Licensing Rights, opens new tab

NEW YORK, Aug 21 (Reuters) - Elon Musk and his social media company X Corp have reached a tentative agreement to settle a lawsuit filed by former Twitter employees who said they were owed $500 million in severance pay.

Attorneys for X Corp and the former Twitter employees reported the deal in a Wednesday court filing, in which both sides asked a U.S. appeals court to delay an upcoming court hearing so that they could finalize a deal that would pay the fired employees and end the litigation. The financial terms of the deal were not disclosed.

Musk fired approximately 6,000 employees after his 2022 acquisition of Twitter, which he rebranded X. Several employees sued over their terminations and severance pay, and other lawsuits are still pending in courts in Delaware and California.
The settlement would resolve a proposed class action filed in California by Courtney McMillian, who previously oversaw Twitter's employee benefits programs as its "head of total rewards," and Ronald Cooper, who was an operations manager.

A federal judge in San Francisco dismissed the employees' lawsuit in July 2024, and they appealed to the San Francisco-based 9th U.S. Court of Appeals. The 9th Circuit had been scheduled to hear oral arguments on September 17.

Attorneys for Musk and McMillian did not immediately respond to requests for comment on Thursday.

The lawsuit argued that a 2019 severance plan guaranteed that most Twitter workers would receive two months of their base pay plus one week of pay for each full year of service if they were laid off. Senior employees such as McMillian were owed six months of base pay, according to the lawsuit.

But Twitter only gave laid-off workers at most one month of severance pay, and many of them did not receive anything, according to the lawsuit. Twitter laid off more than half of its workforce as a cost-cutting measure after Musk acquired the company.

Reporting by Dietrich Knauth, Editing by Alexia Garamfalvi and Rod Nickel

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

News from Bloomberg Terminal

Musk, X Corp. Settle $500 Million Twitter Severance Lawsuit (1)

Aug. 21, 2025, 5:48 AM PDT

By Jacklyn Wille

(Bloomberg Law) --

Elon Musk and X Corp. reached a tentative settlement in a lawsuit that said about 6,000 laid-off Twitter Inc. employees are owed at least $500 million in severance pay.

The parties announced the class-wide deal on Wednesday, one month before the case was scheduled to be argued before the US Court of Appeals for the Ninth Circuit. Details of the agreement aren't yet public and will require approval from a federal district court judge.

WATCH: A look back at Musk's on again, off again pursuit of Twitter and whether he could have walked away from the deal.

Former Twitter employees have filed multiple severance lawsuits against X and Musk since his 2022 acquisition of the platform. A lawsuit filed by former CEO Parag Agrawal and other high-ranking officers was allowed to advance to discovery, and the company's former chief marketing officer recently advanced a lawsuit claiming her termination was wrongly deemed as being for cause in order to deny her a hefty severance payout.

The instant lawsuit, led by former Twitter employee Courtney McMillian, says about 6,000 people were wrongly denied benefits under the company's severance plan, which allegedly provides payments as high as six months' base pay plus one additional week of pay for each full year of service. A California federal judge sided with Musk and X and granted their motion to dismiss, which argued there's "no such thing" as a Twitter severance plan governed by the Employee Retirement Income Security Act.

The employees appealed to the Ninth Circuit, receiving support from the US Department of Labor. According to the department's amicus brief, the Twitter severance policy qualifies for ERISA coverage because it pays benefits on an ongoing basis, regardless of whether it requires "particularized discretion" to administer.

The case was scheduled to be argued on Sept. 17. The parties jointly asked the court to postpone that date so they could focus on preparing settlement paperwork.

Sanford Heisler Sharp McKnight LLP represents McMillian and the workers. Morgan, Lewis & Bockius LLP represents the defendants.

The case is *McMillian v. X Corp.*, 9th Cir., No. 24-5045, motion to postpone arguments 8/20/25.

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California Brief

Insight

Phantom Discount Claims Haunt CA Retailers, Sparking Settlements

Aug. 22, 2025, 1:30 AM PDT

California's False Advertising Law prohibits advertising that is false or deceptive to the reasonable consumer. One practice—phantom discounting—is when a retailer induces a purchase by promoting a fictitious price reduction. The retailer advertises an artificially-high former price—at which the product was never sold—and then appears to sell the product at a lower, sale price.

To ensure that sales are genuine, California bans using advertisements that purport to convey a former price of a product unless that former price was in fact the prevailing market price for the product within the three months preceding publication of the advertisement (unless the advertisement explicitly specifies when the former price last prevailed).

Phantom discounts are commonly seen in strike-through pricing, where an advertisement shows a stricken-through former price next to a new, lower price. Courts have also applied the law to words and phrases in advertisements such as: "'formerly—,' 'regularly—,' 'usually—,' 'originally—,' 'reduced from ___,' 'was ___ now ___,' '___% off."

Courts have been reluctant to dismiss cases on the pleadings where phantom discounts are alleged. But while most cases are settling, either before or after court orders adverse to the defendants, not all are meritorious.

Plaintiffs sometimes bring these claims based on a misunderstanding of the advertised pricing. For example, retailers frequently offer discounts for multiple-item or bulk purchases. In that context, a strike-through price—which courts have generally ruled may be understood by a reasonable consumer to indicate a former price—isn't indicative of a former or prevailing market price but instead represents a discount premised on order quantity. Bulk pricing is certainly not prohibited under California law.

Similarly, the complaints sometimes fail—intentionally or not—to reference a correct prevailing market price when asserting phantom-discounting claims. The prevailing market price of the product isn't necessarily limited to only the specific channel through which the consumer entered into the transaction. A product may be sold for a different price in-store than it is online, for example, and the burden is on the plaintiff to prove that the alleged prior price wasn't the prevailing market price. But not all demands and complaints take into account all sales channels when alleging the market price.

Steep penalties may be motivating settlements. While many of the filed cases are defensible, the possibility of steep penalties, along with several large settlements, may be motivating defendants to settle. Plaintiffs are eligible to seek injunctive relief, restitution, and civil penalties. Government enforcement actions can also lead to fines of up to $2,500 per violation.

Civil enforcement actions by district attorney coalitions have also resulted in sizeable settlements, including a $2 million settlement with Amazon in 2021 and a $4.1 million settlement in 2024 with Lamps Plus, Inc.

To avoid being involved in litigation, retailers must maintain accurate records showing the dates of publication of their discounts.

Additionally, where a discount is offered for reasons other than a limited timeframe or flash sale (such as bundle discounts), retailers should ensure that the basis for the discount is clearly presented to consumers in the advertising.

Online retailers might also consider incorporating a class action waiver and arbitration provision into their website's terms of service. Finally, retailers should always keep themselves well-informed of trends in California litigation involving pricing claims.

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Write for Us: Author Guidelines

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Can investors buy in to Big Law? Burford Capital bets on it

reuters.com/legal/transactional/can-investors-buy-big-law-burford-capital-bets-it-2025-08-21

Sara Merken, David Thomas August 21, 2025

A boardroom is seen in an office building in Manhattan, New York City, New York, U.S., May 24, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

- Burford eyes a stake in law firms, not just their cases
- US bankruptcy trustee sets sights on Jackson Walker trial
- Lawyers in Blue Cross settlement win $657 million fee award

Aug 21 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab.)
What would it take for outside investors to own a stake in a major U.S. law firm's business? It's a question that's gaining new urgency, after litigation finance giant Burford Capital (BURF.L), opens new tab revealed it is in talks to take such a step.
Publicly traded Burford is already among the largest third-party backers of individual lawsuits or litigation portfolios, which it funds in return for a share of potential settlements or judgments. Now, according to Burford chief development officer Travis Lenkner, it is in "meaningful discussions" with U.S. firms to partner with them more directly.

Burford is exploring two paths, Lenkner said: Investing in firms through Arizona's alternative business structure (ABS) program and backing firms via managed service organizations (MSOs), a model that legal ethics experts and deal advisors said has been gaining traction.

"This is law firms seeing what's happening in other jurisdictions, in other professions, and responding to the competitive challenges in their own market, and looking for a solution to the otherwise inefficiency of the partnership structure," Lenkner said.

He said Burford has fielded interest from firms of different sizes and expects to deploy capital "relatively soon," though he did not name specific firms or provide a timeline for its U.S. plans. Outside the United States, Burford in 2020 acquired a 32% stake in a U.K.-based litigation firm.

Ethical rules in nearly every U.S. state prohibit non-lawyers from owning U.S. law firms or receiving a percentage of their fees. Arizona in 2020 became the first U.S. state to implement a workaround, creating an ABS program to allow co-ownership with court approval. Earlier this year, KPMG became the first of the Big Four accounting firms to win approval from Arizona's Supreme Court to launch a law firm in the state.

Under a managed service organization model, a law firm's back-office operations—billing, IT, marketing—are spun off into a separate MSO entity. That entity, funded by outside investors, provides services to the law firm for a fee. The MSO doesn't share in the firm's profits, sidestepping the provisions against non-lawyers owning law firms or receiving a cut of legal fees.

"It has the promise of modernizing the practice of law in a really material way," said Trisha Rich, a partner at Holland & Knight who is advising both law firms and investors on MSOs.

Rich said such arrangements can help lawyers shift time from administrative tasks to their practices. She said she's currently working on 10 such transactions and has closed others, though she declined to name clients.

Lucian Pera, a partner at Adams & Reese and legal ethics expert who has advised on both MSOs and ABS arrangements, said interest in MSOs is "exploding." While most deals involve a single MSO serving a single firm, there's room for other structures, he added.

Despite the appeal, MSOs face constraints. Existing ethics rules mean an MSO could not charge law firms a percentage of their revenue or profits as a fee, said Paul Haskel, a Crowell & Moring partner.

Lawyers also can't sign non-compete agreements, Rich said, meaning investors must accept that key talent can walk away at any time.

While not specific to MSOs, some attorneys have balked at efforts to expand the financial stakes of non-lawyers in the legal profession. Programs like Arizona's have stalled or been rejected in California and other states after critics warned that client interests could be harmed by the influence of investors or corporations that are not bound by attorney ethics rules.
Ethics aside, some experts said law firm partners might resist an arrangement like an MSO for business reasons.

Bruce MacEwen and Janet Stanton of law firm consultancy Adam Smith Esq predicted "the great majority will reject the notion of an MSO for their firm for (misplaced) fear of its diluting their control of the law firm as a business."

"We see no reason an MSO interest would taint or dilute zealous client representation," they said in an email, since the MSO would not dictate management of the firm.

These structures have been used in other professions, such as healthcare and public accounting, Burford's Lenkner said. He said law practice traditionally didn't require significant upfront investment, but that has changed with the pace of technological change and heightened competition for talent.

“It's not clear why law has been left for last, but it is clear why firms are now realizing the need for these structures,” Lenkner said.

– The Justice Department's bankruptcy watchdog has asked a federal judge to set a trial date in its case challenging legal fees awarded to law firm Jackson Walker by a former bankruptcy judge David Jones, whose undisclosed romantic relationship with one of the firm's partners sparked an ethics scandal and cast uncertainty over the firm's fees in dozens of cases.

The Office of the U.S. Trustee's request was included in a Friday filing in opposition to an individual settlement reached by Jackson Walker with a bankruptcy client whose case was overseen by Jones.

The U.S. Trustee said the proposed settlement with Seadrill Partners would "prematurely and improperly short circuit" its effort to hold the firm accountable.

Five similar proposed settlements totaling more than $2.3 million are now pending before U.S. District Judge Alia Moses, who is overseeing a legal effort by the U.S. Trustee to force Jackson Walker to disgorge all of the fees it was awarded by Jones.

Instead of weighing those individual deals and others that are in the works, Moses should schedule the matter for trial, the Trustee said.

"A full trial is necessary to ensure the Court can consider all evidence and remedies within a single proceeding," the U.S. Trustee said.

– A U.S. judge in Alabama this week approved more than $759 million in legal fees and expenses for lawyers at 38 firms who secured a $2.8 billion antitrust settlement with Blue Cross Blue Shield on behalf of a class of health care providers.
Chief U.S. District Judge R. David Proctor on Tuesday granted the request for $657.1 million in fees and at least $102 million in expenses as part of the settlement, which resolved claims that hospitals, physicians and other health professionals were underpaid for reimbursements.
Read more:

US legal jobs are rising again, but gains are mixed
Optum picks new fight to kick law firm Motley Rice off opioids case
Lawyers face objections to multimillion-dollar fees after no-cash settlement with Schwab
Reporting by David Thomas

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Sara Merken
Thomson Reuters

Securities Law News

SEC Chief Taps Armed Forces Judge to Lead Enforcement Unit

Aug. 21, 2025, 12:58 PM PDT

Margaret "Meg" Ryan will lead the US Securities and Exchange Commission's enforcement division, putting a military judge who once clerked for Supreme Court Justice Clarence Thomas in charge of the agency that polices Wall Street.

SEC Chair **Paul Atkins** announced the selection on Thursday, touting Ryan's decades of experience as a judge in the US Court of Appeals for the Armed Forces.

"She is fulfilling a critical role," Atkins said. "Judge Ryan will lead the division guided by Congress' original intent: enforcing the securities laws, particularly as they relate to fraud and manipulation."

Ryan was nominated to serve as a judge by President George W. Bush in 2006. She received senior status in 2020. She lectures on military law and justice at Harvard University, the SEC said.

Before serving as a judge, she was a partner at Wiley Rein & Fielding and Bartlit Beck Herman Palenchar & Scott, the SEC said.

For its top enforcement job the SEC usually picks attorneys hailing from white-shoe law firms with experience as federal prosecutors or stints at the agency.

Under new leadership, the SEC's enforcement division is expected to pursue traditional fraud and insider trading cases, cracking down on companies and individuals whose actions harm investors, and backing off from the previous administration's more aggressive policing of the cryptocurrency industry. Fines are also expected to shrink.

Sam Waldon, who served as acting director of the division, will return to his previous role as chief counsel for the enforcement unit, the SEC said.

Ryan's Joe Biden-era predecessor, **Gurbir Grewal**, led a crackdown on crypto and Wall Street's use of unofficial communications tools such as WhatsApp, levying billions in fines.

Atkins, who took the helm of the Wall Street regulator in April, has frequently spoken out against large corporate penalties. He's also repeatedly called his leadership "a new day at the SEC."

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News | **In House Moves**

SEC Taps Military Judge Margaret 'Meg' Ryan as Enforcement Chief in Unconventional Move

August 21, 2025 at 05:59 PM By **Michael Gennaro**

U.S. Securities and Exchange Commission building in Washington, D.C. in January 2019. Photo: Diego M. Radzinschi/ALM

The Securities and Exchange Commission today named Judge Margaret "Meg" Ryan, a seasoned military judge, as its new director of the Division of Enforcement, effective Sept. 2, 2025. She will succeed Acting Director Sam Waldon, who had been in the role since January. Waldon will return to his former role as chief counsel of the division.

"I look forward to joining the commission in its important work to ensure that the division is true to the SEC's mission in taking action on behalf of investors harmed by those who break the securities laws and providing an effective deterrent against fraudulent and manipulative activities in our financial markets," Ryan said of her appointment.

SEC Chairman Paul Atkins announced the move and cited Ryan's "decades of experience" as a judge in the U.S. Court of Appeals for the Armed Forces. Ryan was nominated as a judge by President George W. Bush in 2006. She gained senior status in 2020.

"Judge Ryan will lead the division guided by Congress' original intent: enforcing the securities laws, particularly as they relate to fraud and manipulation," Atkins said.

Ryan's selection is highly unconventional for a role typically filled by former criminal prosecutors or securities law specialists.

Ryan, 61, began her professional journey in the U.S. Marine Corps, where she was an active duty communications officer from 1988-1992. After her active duty service, Ryan earned her law degree from the University of Notre Dame Law School before serving as a judge advocate general from 1995-1999 and as aide-de-camp to Marine Corps Commandant General Charles C. Krulak from 1997-1999.

Following law school, Ryan clerked for Supreme Court Justice Clarence Thomas and Judge J. Michael Luttig of the Fourth Circuit. She later practiced law privately at Wiley Rein & Fielding in Washington, D.C., and at Bartlit Beck Herman Palenchar & Scott, which has primary offices in Ryan's hometown of Chicago and Denver.

In addition to her job as a judge, Ryan has held academic roles as a lecturer on military law and justice at Harvard Law School, as a visiting professor at Notre Dame Law School and as a lecturer at The George Washington University Law School, and is a member of the American Law Institute.

In 2016, Ryan was listed as a potential Supreme Court nominee by then-candidate Donald Trump.

Ryan's appointment comes as the SEC markets its plans to deregulate the crypto sector. Earlier this week, Atkins said that few cryptocurrency tokens are securities subject to SEC oversight, a sharp contrast to Ryan's predecessor under Joe Biden, Gurbir Grewal, who heightened enforcement when he handed out billions of dollars in fines to Wall Street firms and the cryptocurrency industry.

Litigation

Manage Newsletters

DOJ Properly Sought Defense Parts Fraud Dismissal Without Bondi

Aug. 22, 2025, 7:30 AM PDT

A whistleblower failed to convince a federal court to reopen a vehicle parts fraud suit against Boeing Co., Lockheed Martin Corp., and other defense contractors, because the dismissal didn't have a procedural flaw.

The US Department of Justice satisfied requirements in the False Claims Act when it secured dismissal of Roger Charles Day Jr.'s fraud claims in April, and didn't need Attorney General Pam Bondi's direct involvement to end the case it viewed as meritless and costly, Judge Robert E. Payne of the US District Court for the Eastern District of Virginia said in a Thursday order.

The FCA empowers whistleblowers to bring fraud suits on the government's behalf, but also allows the DOJ to stop suits it doesn't think should advance.

Day identified arguable tension between two FCA provisions, the court said, but the provision the DOJ invoked to seek dismissal doesn't require the attorney general's consent.

The whistleblower sued under seal in June 2023, alleging that Boeing, Lockheed Martin, Raytheon, General Dynamics, and Northrop Grumman submitted false claims for replacement parts for equipment and vehicles to the Defense Logistics Agency. Day said the contractors sold their parts via sole-source contracts instead of through competitive procedures required by contract regulations.

Payne dismissed the suit April 2, stating the government properly intervened in the suit for the purpose of seeking dismissal, and satisfied its burden of providing reasonable justifications for doing so.

The government provided a "strong argument" the DLA's procurement practices are legal, and that document production in this suit would be too burdensome, the court said in that opinion.

Day's motion here argued that the dismissal was improper, because one FCA provision says dismissal can only occur if the court and the attorney general give written consent and reasons for consenting, which Bondi didn't provide.

But the court said another FCA provision, under which the DOJ sought dismissal, says the government can dismiss an action over a whistleblower's objection if the whistleblower receives notice and has an opportunity for a hearing. The court said this provision has a specialized dismissal procedure that modifies a general rule in the provision Day cited, and controls here.

The court also said the conclusion that the attorney general doesn't need to provide reasoned consent in this FCA situation aligns with the statute's lenient dismissal standard, as discussed in the US Supreme Court's opinion in *United States ex rel. Polansky v. Exec. Health Res. Inc.*

The Supreme Court said the government's views on dismissal are entitled to substantial deference, and didn't mention any role for the attorney general when the government seeks a dismissal.

Harding Counsel PLLC represents Day.

The case is United States ex rel. Day v. Boeing , E.D. Va., No. 23-cv-371, 8/21/25 .

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California Brief

Democrats Probe Paramount-Skydance Merger Over Trump Dealings

Aug. 21, 2025, 10:42 AM PDT

Two House Democrats said they would examine whether Paramount Global and Skydance Media accepted "illegitimate demands" from President Donald Trump to secure approval of their July merger.

Representatives Jamie Raskin of Maryland and Frank Pallone of New Jersey pointed to a financial settlement Paramount reached with the president shortly before the merger was approved and a statement Trump made that Skydance agreed to provide him with millions of dollars worth of free public service announcements.

"Two wrongs do not make a right — illegitimate demands from the FCC or the administration do not absolve your company from wrongdoing," the two Democrats wrote in a letter released Thursday to **David Ellison**, chief executive officer of the combined entity. They asked for documents, communications and detailed answers to questions on the merger.

Paramount Skydance didn't immediately respond to request for comment. The White House and the Federal Communications Commission also did not immediately respond to requests for comment.

The FCC granted approval of the merger in July. Earlier in the month, Paramount Global reached a $16 million settlement with Trump over a lawsuit which accused the company's CBS news network of interfering in the 2024 election by selectively editing a *60 Minutes* interview with Kamala Harris to make her answers more succinct.

Read More: FCC Chair 'Pleased' With Skydance-Paramount Deal Concessions

FCC Chairman **Brendan Carr** praised concessions from Skydance, which included a promise to eliminate the diversity, equity and inclusion programs at Paramount.

Pallone and Raskin would need support from Republicans to compel answers to their questions with a subpoena, though they could use subpoena power for an investigation if their party regains control of the House in next year's elections.

Separately, Senator Adam Schiff, a California Democrat, sent a letter to Carr earlier this week asking about the agency's "terms and conditions for approving" the merger and any role played by Trump.

--With assistance from Kelcee Griffis.

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California Brief

Tesla Probed by US Agency Over Reporting Crashes Months Late (1)

Aug. 21, 2025, 7:46 AM PDT

US auto safety regulators are looking into delays by Tesla Inc. in reporting details of crashes involving driver-assistance technology.

The National Highway Traffic Safety Administration has identified multiple incident reports from the automaker that were submitted “several months or more” after the crashes occured, according to a filing posted to the agency’s website. Under an agency order, companies were generally required to file such reports within one or five days of receiving notice of a crash, NHTSA said.

The delays were “due to an issue with Tesla’s data collection, which, according to Tesla, has now been fixed,” NHTSA said. The agency’s Office of Defects Investigation has opened a so-called audit query to assess the cause of the late reports and mitigation efforts to prevent future occurrences.

Tesla didn’t immediately respond to a request for comment.

The new probe heightens scrutiny of the automaker and its driver-assistance systems, which Chief Executive Officer Elon Musk sees as crucial to the company’s future growth. Tesla markets its technology under names such as Autopilot and Full Self-Driving, and the company recently began a driverless-taxi service in its home city of Austin.

NHTSA has multiple active inquiries targeting Tesla, including a probe of whether its Full Self-Driving system is defective after multiple crashes, including at least one involving a fatality.

Tesla shares fell were little changed at 10:24 a.m. in New York.

Read More: A Fatal Tesla Crash Shows the Limits of Full Self-Driving

Carmakers including Tesla are required under a government order put in place under former President Joe Biden to share details of crashes involving the use of driver-assistance systems and more advanced automated-driving systems. Companies face penalties of as much as $27,874 per violation per day, with a maximum fine of more than $139 million, for violating the reporting provisions of the order.

Under President Donald Trump, NHTSA loosened some aspects of the crash-reporting requirements earlier this year.

(Updates with share trading, additional details beginning in fifth paragraph.)

--With assistance from **Kara Carlson**.

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Tesla raises price of most-expensive Cybertruck by $15,000 in US

reuters.com/business/autos-transportation/tesla-raises-price-most-expensive-cybertruck-by-15000-us-2025-08-22

Reuters August 22, 2025

A Tesla Cyberbeast is on display at the Petersen Automotive Museum in Los Angeles, California, U.S. December 21, 2023. REUTERS/David Swanson/File Photo Purchase Licensing Rights, opens new tab

(TSLA.O), opens new tab has raised the price of its most-expensive Cybertruck pickup truck model by $15,000 in the United States despite softer-than-expected sales and recalls.
The sharp increase follows a long-delayed rollout in which the pickup has struggled to meet Tesla's early promises, with sales so far trailing expectations.

The Cyberbeast variant, which now costs $114,990, comes with a new "Luxe Package" that includes Supervised Full Self-Driving and free access to its Supercharger network. Prices of other Cybertruck models were unchanged.

The pricing of the model is well above CEO Elon Musk's 2019 pitch of a roughly $40,000 starting price. But when it was launched in late 2023, Tesla set the base model at $60,990, more than 50% higher than the earlier target.

Rival models such as Ford's F-150 Lightning and Chevrolet's Silverado EV generally offer lower entry prices on certain trims, fueling competition as Cybertruck prices climb.

Tesla has also been offering hefty discounts of around $10,000 on some Cybertruck units in inventory.

Musk previously said Tesla had the capacity to produce more than 125,000 Cybertrucks annually, with a potential to reach about 250,000 in 2025, while also warning of a difficult production ramp.

The pickup has underperformed expectations, with sales representing a small fraction of the company's overall deliveries and demand fading amid repeated recalls and quality issues.

While Tesla does not disclose Cybertruck deliveries, the March recall covering about 46,000 vehicles built from the start of deliveries in November 2023 through February 27, 2025 suggests the truck's cumulative sales remain well below the annual capacity figures.

Reporting by Akash Sriram and Disha Mishra in Bengaluru; Editing by Nivedita Bhattacharjee and Shilpi Majumdar

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Assessing Federal Securities Class Action Stats In '25 So Far

By **Mark Howrey and Emma Dong** (August 21, 2025, 3:05 PM EDT)

Mark Howrey

Emma Dong

In this article, we analyze recent developments in the size of the market and settlement outcomes for federal securities class actions. Our analysis examines the number of filings, industry distribution and settlement outcomes across various case characteristics to provide current benchmarks for practitioners. We rely primarily on a proprietary database of over 2,000 settled securities cases, supplemented by additional data on filings.

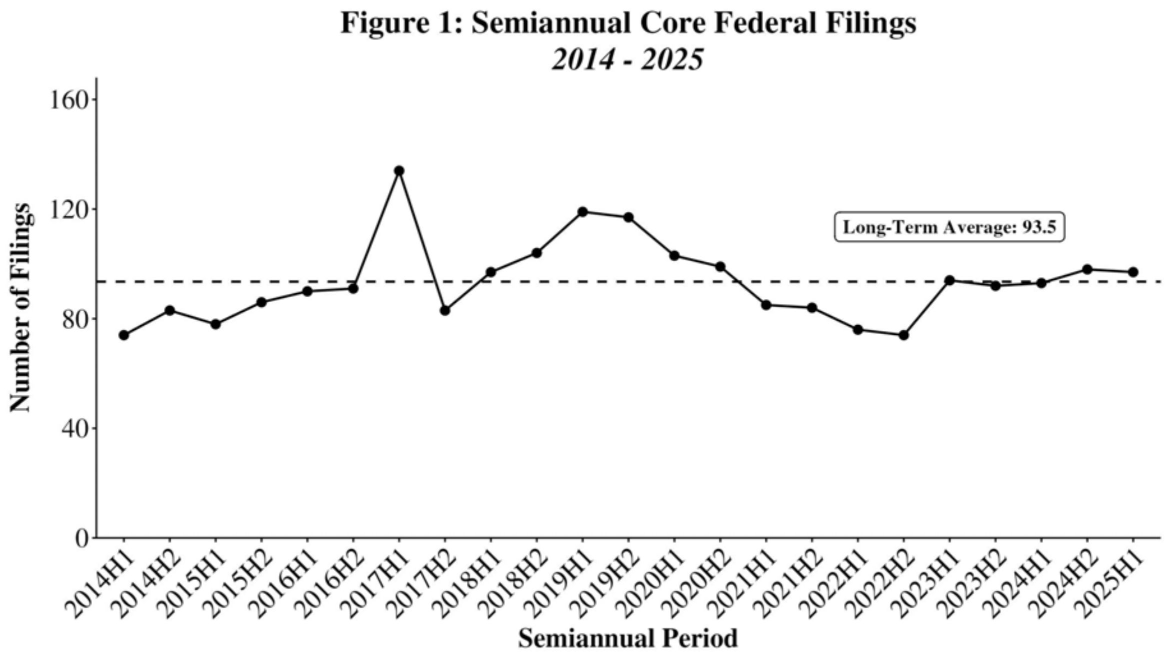
Understanding the size of the market for securities litigation begins with examining the number of federal securities class actions filed. From January through June 2025, there have been no major changes in recent or long-term trends in the number of filings and industries of focus for securities class action filings alleging false and misleading statements that affected a company's stock price.

A key metric that parties typically monitor as cases progress to settlement is the size of the settlement relative to historic trends and benchmarks. For that reason, in this article, we analyze the settlement amount as a percentage of plaintiff-style damages and find that it continued to decline in the first half of 2025. Given the dynamics associated with settlements, caution should be taken when making conclusions about settlement amounts going forward.

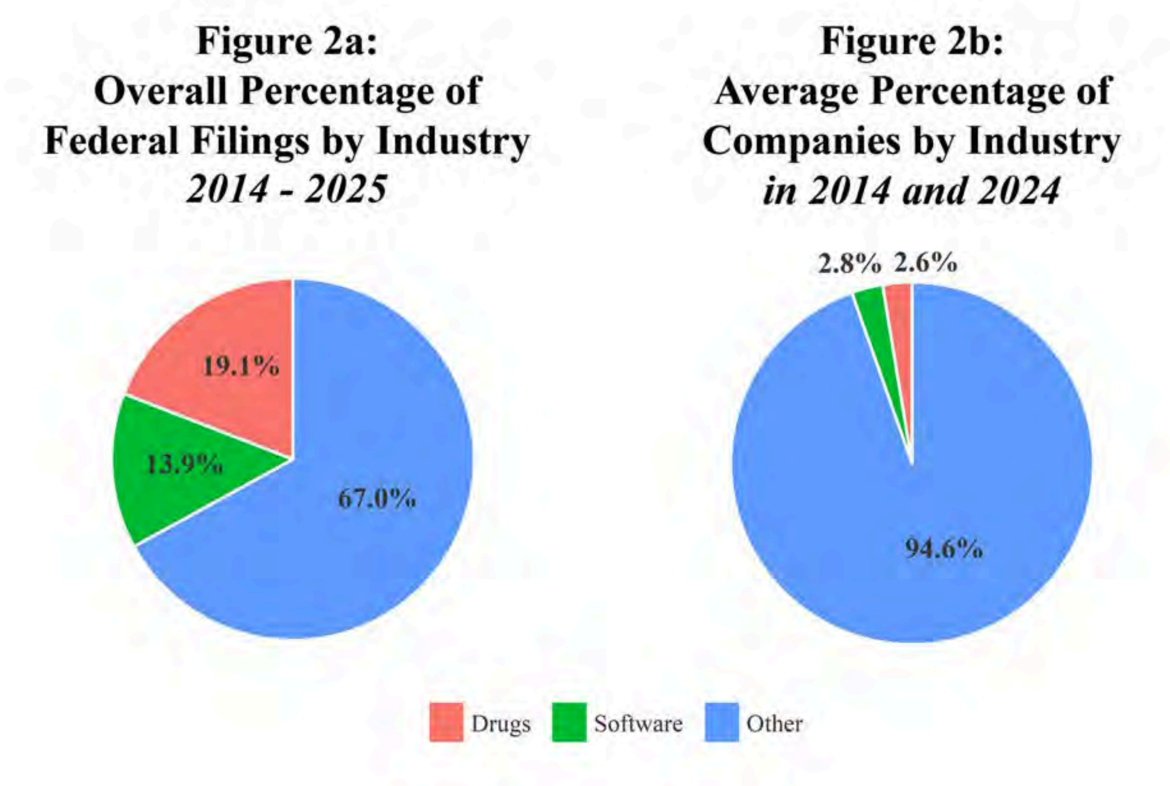
Filings

In the first half of 2025, 97 federal cases with Rule 10b-5 or Securities Act Section 11 claims were filed, excluding cases related to mergers and acquisitions, those brought by the U.S. Securities and Exchange Commission, and actions where the alleged misrepresentations or omissions were associated with securitizations, such as mortgage-backed securities or securities managed by investment firms or funds.

This number of filings is consistent with both the level of the prior six months (98) and the semiannual average of 93.5 over the past 11½ years. While the number of filings increased in 2017 and 2019, the number of cases filed has been declining modestly since 2019. Following a dip in 2022, the number of federal filings has stabilized over the past two years, hovering near the long-term average.



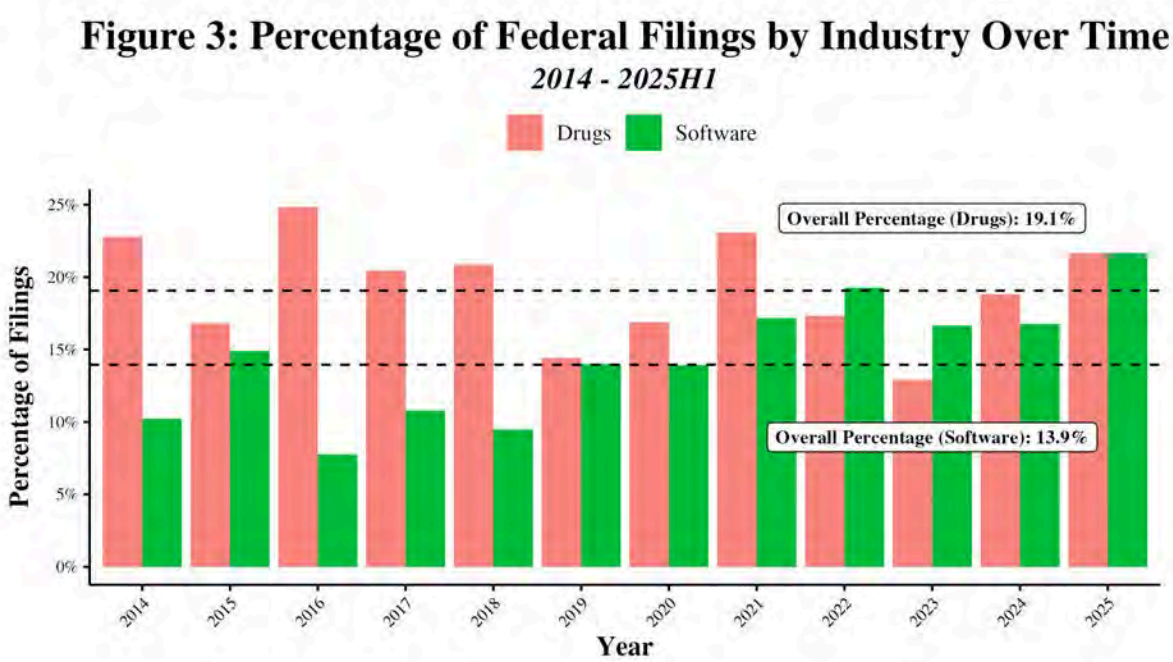
Historically, the distribution of federal filings is disproportionately weighted toward companies in the drug and software industries. As shown in Figure 2, from 2014 through the first half of 2025, 19.1% of filings were brought against drug companies, even though companies in that industry made up an average of only 2.6% of publicly traded companies in 2014 and 2024.[1] Similarly, 13.9% of filings were against software companies, which represented just 2.8% of publicly traded companies.



This result is not surprising. While each case has unique features and allegations, making generalizations challenging, several common factors could contribute to the high frequency of securities actions against companies in these industries.

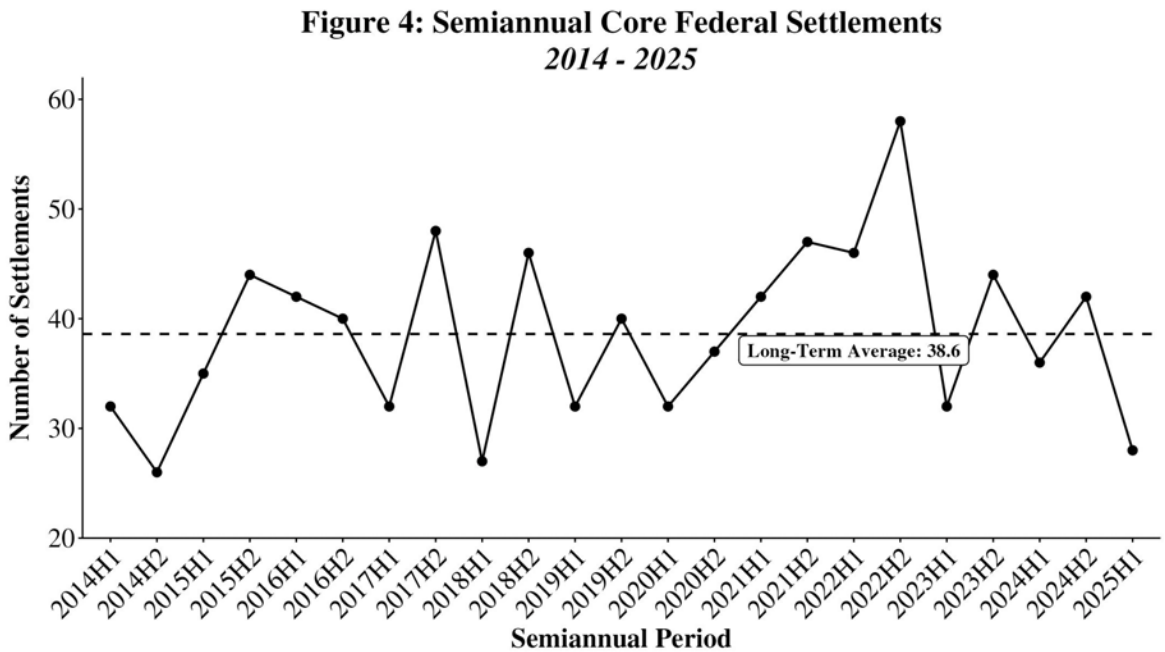
- In the drug industry, many cases involve disappointing clinical trial results and/or actions associated with the failure to receive regulatory approval for products. Such cases are often filed after clinical trial results are disclosed and the company's stock price declines.
- In the software industry, many cases involve new product launches and revenue recognition issues. Given that emerging technologies may fail to meet expectations, and those judgments associated with revenue recognition on longer-term contracts, which are common in this industry, may turn out to be inaccurate, stock price declines and associated litigation are frequent in this industry.

In the first half of 2025, federal filings against companies in both the drug and software industries were responsible for a larger proportion of cases than their respective overall percentages shown in Figure 2a. The percentage of filings against companies in the software industry reached its highest level in any period between 2014 and 2025.



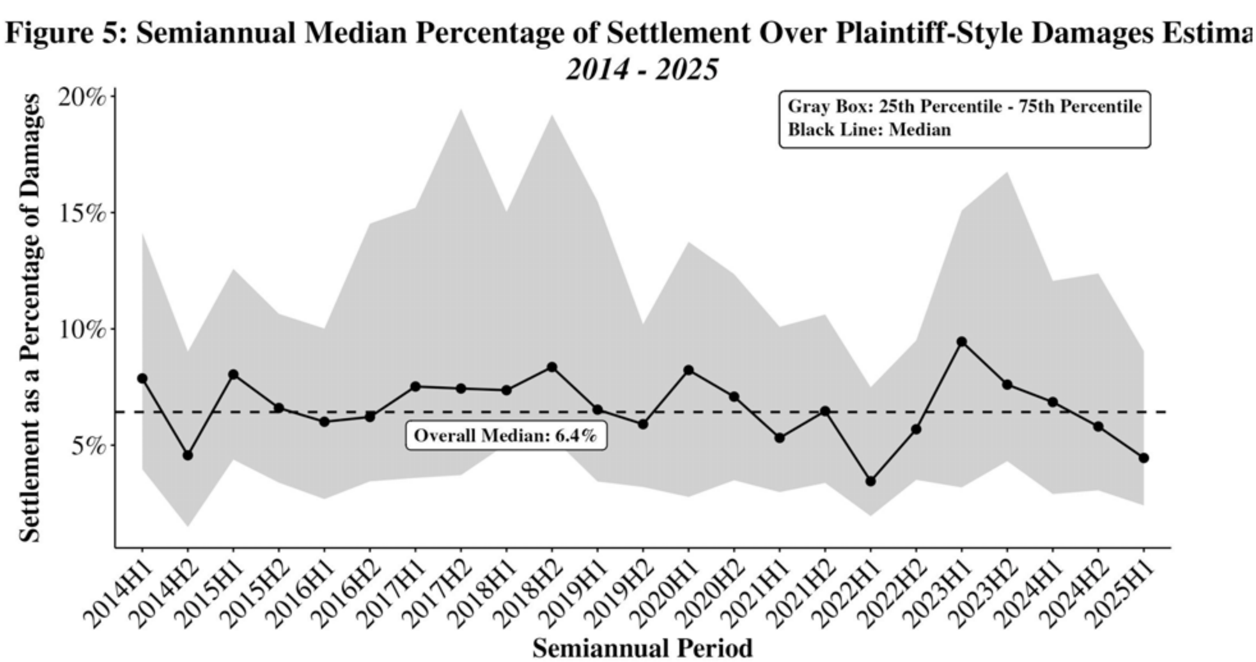
Settlements

In the first half of 2025, 28 federal cases settled, falling below the long-term semiannual average of 38.6 over the past 11½ years.[2] This represents the fewest settlements in a six-month period since 2018.



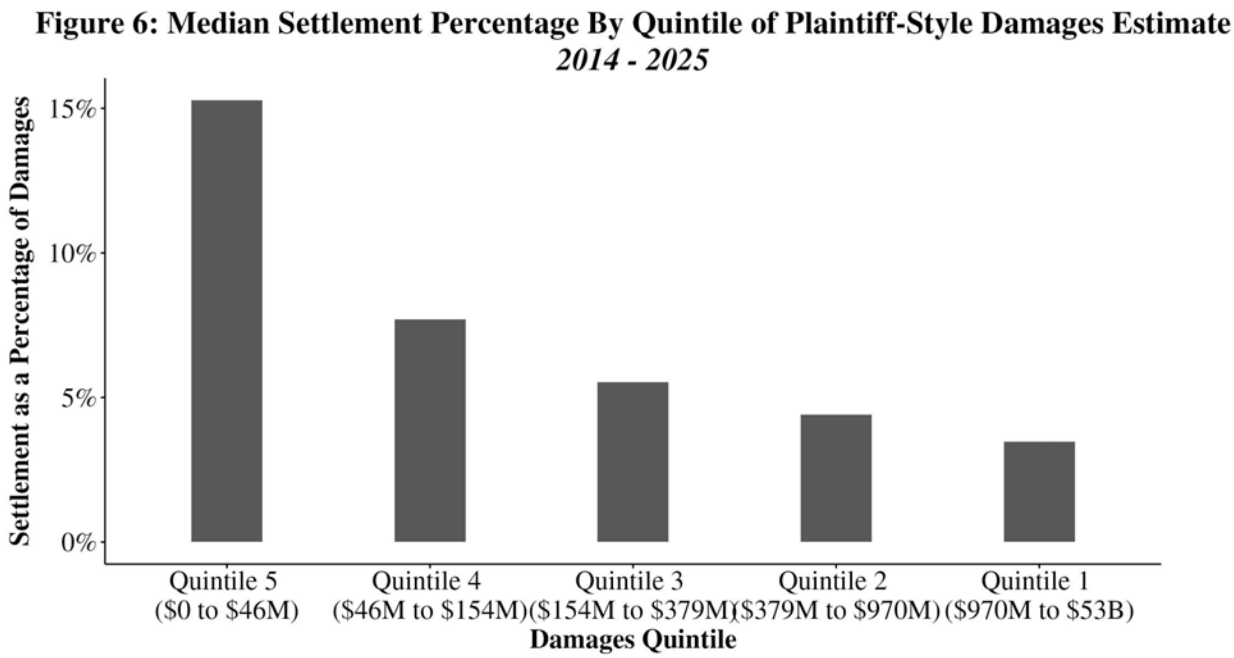
In the first half of 2025, the median settlement amount as a percentage of plaintiff-style damages was 4.5%, which continued a downward trend that began after the first half of 2023.[3] This value also fell below the overall median of 6.4% from 2014 through 2025.

The shaded gray area in Figure 5 shows the interquartile range — i.e., from the 25th to the 75th percentile — of settlement percentages, which suggests a high level of variability in settlement outcomes across cases. While the range has fluctuated over time, it narrowed in the most recent period.[4]



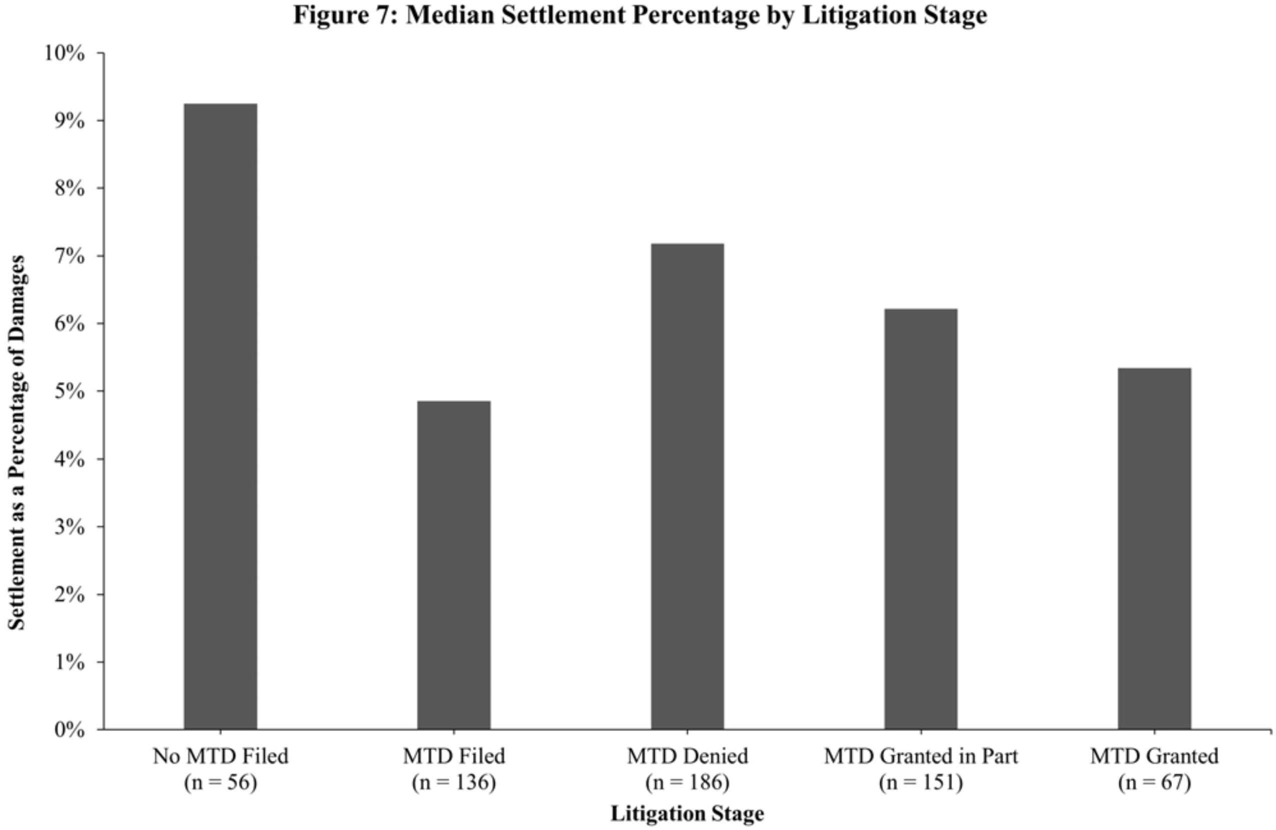
Caution should be taken when interpreting these aggregate statistics as indicating a longer-term trend in declining settlement amounts.[5] For example, as shown in Figure 5, while there was a decline in median settlement percentages from the first half of 2020 to the first half of 2022, that trend reversed soon after.

Moreover, settlement percentages can vary depending on the characteristics of the individual settled cases. For example, cases with higher plaintiff-style damages generally settle for lower percentages.[6]



As another example, settlement percentages vary based on the litigation stage of the case at the time of settlement.[7]

Cases with no motion to dismiss filed have the highest median settlement percentage (9.5%),[8] while cases with a motion to dismiss filed but not yet ruled on settled at a lower median percentage of 4.9%.[9] Among cases with a court ruling on the motion to dismiss, focusing only on the latest motion to dismiss ruling before settlement, those with a denial settle at a median of 7.1%, compared to 5.3% for cases in which the motion to dismiss was granted.



More generally, even among cases with similar plaintiff-style damages estimates, settlement percentages can vary widely due to factors that are difficult, if not impossible, to reliably quantify using public data, such as the available insurance coverage or the perceived strength of claims.

Conclusion

Our analysis shows that the number of filings and industry distribution have remained relatively stable in the first half of 2025, indicating no broad shift in the overall landscape of federal securities class action litigation. We also found that the settlement amount as a percentage of damages has continued to decline.

We note, however, that settlement percentages can be influenced by multiple case characteristics, including the size of estimated damages and the litigation stage at which cases resolve. Closely tracking both future settlements and the characteristics of settled cases will be critical to determining whether this decline reflects a long-term trend or a temporary fluctuation — which, in turn, may be important for assessing exposure and risk in future securities litigation.

Mark Howrey is a managing principal and Emma Dong is a vice president at Analysis Group Inc.

Analysis Group principals Kevin Gold and Eric Korman contributed to this article.

[1] The average percentage of companies by industry is based on data from the Center for Research in Security Prices, which is available through the end of 2024.

[2] The analysis of federal case settlements is based on Analysis Group's proprietary database of over 2,000 securities class actions filed since 1996, which is updated semiannually.

[3] Plaintiff-style damages are calculated using the inflation-based per-share damages specified in the settlement plan of allocation. Trading behavior is estimated using a two-trader model. For benchmarking purposes, shares available to trade and trading volume are not adjusted for short interest or insider holdings. While estimating trading behavior using a trading model is frequently used in settlement negotiations, courts have rejected the approach as speculative. These damages estimates are available for nearly 1,000 cases with 10b-5 claims that settled since 2010 and have sufficient financial data and settlement documents.

[4] The interquartile range decreased from 12.4 percentage points in the second half of 2023 to 6.6 percentage points in the first half of 2025.

[5] For example, if the underlying case characteristics that affect settlement amounts change over time, the temporal change may not reflect a general shift in settlements but rather a change in the case characteristics associated with the settlements in a given period.

[6] The quintile ranges for plaintiff-style damages in Figure 6 are adjusted for inflation using the Consumer Price Index for All Urban Consumers: All Items in U.S. City Average, available at: https://fred.stlouisfed.org/series/CPIAUCSL.

[7] This analysis is based on a structured GenAI-assisted review of securities class action dockets. While a multi-layered framework was used to detect and minimize errors, some inaccuracies may remain.

[8] Cases with no MTD filed have lower median settlement amounts and plaintiff-style damages than other categories. Thus, the high median settlement percentage in this category may reflect smaller case size, rather than a causal relationship with litigation stage.

[9] This analysis includes cases filed after 2010 with fewer than 1,000 docket entries. It focuses on cases without motions for summary judgment and excludes those in which a motion for class certification was filed before an MTD was filed or ruled upon. It also excludes cases in which the latest MTD ruling addressed multiple motions without granting or denying all of them.

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Snap Inc. Hit With Investor Suit Over Ad Platform Glitch

By **Sydney Price**

Law360 (August 21, 2025, 7:09 PM EDT) -- Snapchat's parent company, Snap Inc., was hit with a proposed shareholder class action Thursday in California federal court accusing it of concealing the effects of a glitch on its advertising auction system that caused it to lose revenue.

According to the complaint filed by shareholder Omar Abdul-Hameed, Snap mistakenly auctioned ad inventory in April at a "substantial, unintended" discount. Snap's shares fell 17% after it disclosed earlier this month that its top line growth was negatively impacted by the error, which halted ad growth at 1% before it was fixed, the suit states.

The complaint alleges Snap knew, or should have known, the adverse impact the error would have by April 29, the day the class period begins. On that day, however, the company made no mention of the advertising issue on its earnings call and did not suggest "the significant degree" to which its advertising growth rate had declined in April, the suit alleges.

Snap continued to conceal its advertising error and, at the same time, told investors it could not share formal financial guidance due to the uncertainty of the overall macroeconomic environment, the suit says.

"Defendants created the false impression that they possessed reliable information pertaining to the company's expected advertising revenue and anticipated growth while emphasizing potential macroeconomic instability," the suit stated.

On Aug. 5, Snap revealed during its second-quarter 2025 earnings call that advertising revenue decelerated significantly in the quarter, according to the complaint. Snap Chief Financial Officer Derek Andersen finally disclosed information regarding the advertising platform failure during the call, the suit states.

"We shipped a change that caused some campaigns to clear the auction at substantially reduced prices," Andersen said, according to the complaint. "We have since reverted this change, and advertising revenue growth has improved as advertisers adjust their bid strategies to achieve their objectives."

Analysts reacted swiftly and negatively, and shares of Snap dropped $1.61 each, or about 17%, to close at $7.78 on Aug. 6, according to the complaint.

In addition to Snap and Andersen, company CEO Evan Spiegel is also a defendant in the suit.

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

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

Abdul-Hameed is represented by Adam Marc Apton of Levi & Korsinsky LLP.

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

The case is Abdul-Hameed v. Snap Inc. et al., case number 2:25-cv-07844, in the U.S. District Court for the Central District of California.

--Editing by Janice Carter Brown.

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Digital Ad Co. Misled Investors About Client Loss, Suit Says

By **Katryna Perera**

Law360 (August 21, 2025, 6:26 PM EDT) -- Digital advertising firm PubMatic Inc. and two of its executives have been hit with a proposed shareholder class action in California federal court alleging they failed to inform investors about the loss of a key customer for its digital marketing business, which led to a stock price decline when the truth came to light.

Plaintiff Sidney Hsu filed a **complaint** Wednesday against PubMatic, its CEO Rajeev Goel and its Chief Financial Officer Steven Pantelick. The suit is filed on behalf of a proposed class of individuals and entities that purchased or acquired PubMatic securities between Feb. 27, 2025, and Aug. 11, 2025.

According to the complaint, PubMatic "enables real time programmatic advertising transactions for advertisers, agencies, and demand side platforms." The complaint states that programmatic advertising enables buyers to purchase ad impressions on publisher-supplied inventory "within milliseconds," and the company primarily generates revenue from the use of its platform for the purchase and sale of digital advertising inventory.

Hsu says during the class period, the defendants failed to disclose to investors that a top demand-side platform buyer was shifting a majority of its clients to a new platform, which evaluated inventory differently than PubMatic, and that as a result, PubMatic was seeing a reduction in ad spending and revenue from this top buyer.

The truth came to light on Aug. 11, when PubMatic released its second-quarter financial report for the year. According to the complaint, Pantelick revealed in the report that PubMatic's outlook reflects "a reduction in ad spend from one of [its] top DSP partners." Goel further revealed that a "top DSP buyer" had "shifted a significant number of clients to a new platform that evaluates inventory differently," "causing significant headwinds," according to the complaint.

"Goel stated, in response to the inventory valuation change, the company would 'need to do a better job ... to prioritize across all the hundreds of billions of daily ad impressions that we have, which subset of those impressions that we send to this DSP,'" the complaint states.

On this news, Hsu says PubMatic's stock price fell $2.23, or 21.1%, to close at $8.34 per share on Aug. 12.

The suit seeks damages, attorney fees and a jury trial. Representatives for the parties did not immediately respond to requests for comment Thursday.

PubMatic is facing **another class action** in California over its allegedly vast and unauthorized tracking of the online lives of "hundreds of millions of Americans," which it purportedly shared and sold to third parties in violation of state and federal privacy laws.

The lawsuit filed in April describes a massive and illicit operation in which "billions of dollars" worth of personal information was collected by PubMatic without any option for online users to opt out. The company monitored and recorded "in real time" the personal information of individual users who happened to visit a number of popular websites — such as Zillow, Peacock, Buzzfeed and others — via cookies that latch onto users' browsers, according to the suit.

Hsu is represented by Robert V. Prongay, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay &

Murray LLP.

Counsel information for the defendants was not immediately available.

The case is Hsu v. PubMatic Inc. et al., case number 3:25-cv-07067, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jonathan Capriel. Editing by Drashti Mehta.

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BlockFi Judge Urged To OK $13M Deal As Objector Withdraws

By **Katryna Perera**

Law360 (August 21, 2025, 8:46 PM EDT) -- Investors who reached a $13.2 million settlement with the failed cryptocurrency lender BlockFi Inc. have urged a federal judge to move forward with the plan now that a class member has withdrawn his objections to the deal.

The suit's lead plaintiffs filed **a letter** with the court Wednesday, saying Yacov Baron withdrew his motion to intervene in the suit and his objections to the deal. The investors moved for preliminary approval of the settlement in February and Baron objected shortly thereafter. The suit claims BlockFi's officers made material misrepresentations to investors that led the platform to bankruptcy and financial ruin, exacerbated by the downfall of FTX Trading.

"Now that there are no pending objections to plaintiffs' motion for preliminary approval ... plaintiffs respectfully submit that there are no obstacles to the court ruling on its merits," the letter said.

"Rapid resolution of the preliminary approval motion will allow plaintiffs to commence issuing notice to class members and will reduce the potential for complications to arise in connection with the closing of the bankruptcy of BlockFi Inc., which, as this court may recall, is related to this action," the letter said.

BlockFi filed for Chapter 11 bankruptcy **in November 2022**, during the so-called crypto winter, as it faced a liquidity crunch exacerbated by the infamous FTX failure.

The BlockFi officers who are named as defendants in the current action did not individually file for bankruptcy, but BlockFi's Chapter 11 plan shielded them from claims by holders of BlockFi interest-bearing accounts, except for holders who affirmatively opted out of a third-party release, according to **the February motion** for preliminary approval.

Co-lead plaintiff Cameron Wyatt objected to the release, but the bankruptcy court overruled his objections, and although he appealed the bankruptcy court's order, the parties in the current suit agreed to settle, according to the motion.

"Although Wyatt's appeal of the bankruptcy court's order overruling his objections was pending when the parties agreed to the settlement, it faced significant challenges, including whether Wyatt had standing to challenge the order, given that he had opted out of the release and thus ostensibly was not bound by it," the motion said. "Given these circumstances, the proposed settlement is an outstanding result for the settlement class."

The proposed settlement class includes roughly 89,000 holders of BlockFi interest-bearing accounts, or BIAs, and at least 10,700 of those class members successfully opted out of the bankruptcy release and preserved their right to assert claims against the defendants, according to the motion. However, under the terms of the settlement, all 89,000 proposed class members will receive an equal distribution from the deal.

Baron successfully opted out of the release in the bankruptcy plan and in his objections he said the settlement's plan of allocation is "grossly unfair" to class members who opted out of the third-party release.

"The plan of allocation in the proposed settlement disproportionately favors class members who have already released their claims against defendants and could not proceed in this action in any fashion without the participation of opt-out class members as plaintiffs," Baron said.

Baron did not explain why he decided to withdraw his objections in his notice to the court **earlier this month**.

In addition to the cash payment, the motion for preliminary approval said co-lead counsel from Pomerantz LLP and Squitieri & Fearon LLP will seek an award of no more than $2.7 million for attorney fees, litigation costs and service awards for the lead plaintiffs.

The suit was filed on behalf of all those in the U.S. who enrolled in a BlockFi interest account between March 4, 2019, and Nov. 10, 2022. Investors had hoped their investment with the BIAs would get them a return through BlockFi's deployment of pooled assets — specifically, loans of cryptocurrency to institutional, corporate and other borrowers — as well as loans of U.S. dollars to retail investors and investment in equities and futures, according to court filings.

BlockFi, however, allowed investors to invest in BIAs by depositing certain eligible cash or cryptocurrency before pooling the cryptocurrency assets of the accounts together to fund its lending operations and proprietary trading.

The investors also accused BlockFi of promising investors a variable interest rate, determined solely by the company on a periodic basis, in exchange for cryptocurrency assets loaned by the investors, court filings said. On Nov. 10, 2022, BlockFi announced it would stop customer withdrawals and freeze access to their accounts, leaving the investors without access to their investments.

FTX filed for bankruptcy **the next day**, leaving BlockFi uncertain about whether FTX and its hedge fund, Alameda Research, would meet their obligations on $680 million in loans provided by BlockFi dating back to 2019.

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

The investors are represented by Brian Calandra and Jeremy A. Lieberman of Pomerantz LLP, Lee Squitieri of Squitieri & Fearon LLP, Daryl Andrews and Glen DeValerio of Andrews DeValerio LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Baron is represented by Gary S. Graifman of Kantrowitz Goldhamer & Graifman PC and Howard T. Longman of Longman Law PC.

The defendants are represented by Maureen T. Coghlan of Archer & Greiner and Thad Behrens and Dan Gold of Allen Overy Shearman Sterling.

The case is Greene v. Prince et al., case number 2:23-cv-01165, in the U.S. District Court for the District of New Jersey.

--Editing by Stephen Berg.

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Fintech Co. Ryvyl's $1M Investor Settlement Gets Initial OK

By **Sydney Price**

Law360 (August 21, 2025, 8:04 PM EDT) -- A California federal court has granted preliminary approval to fintech company Ryvyl Inc.'s $1 million cash and stock class action settlement with investors who accused the company of concealing its accounting issues.

U.S. District Judge Gonzalo P. Curiel assessed the settlement as likely to be "fair, reasonable and adequate" upon preliminary review Wednesday. A final approval hearing will be held Dec. 19, according to the order.

Class counsel said it will request up to a third of the settlement fund, or about $333,000, in fees. Judge Curiel said in the order that the court notes this amount is "on the upper end of what courts consider to be typical," and will assess the request closer after counsel submits its application for fees.

The settlement requires the defendants to pay $300,000 in cash and 700,000 shares of freely tradable Ryvyl common stock, the order states. The proposed agreement valued the overall deal at $1 million.

According to the order, lead counsel estimates the best-case scenario for classwide damages in the suit is $1.7 million, and each claimant will receive 4 cents per eligible share.

In the suit, which was most recently amended in November, investors claimed trading prices for shares of Ryvyl, which was previously known as Greenbox POS, fell in January 2023 by nearly 15% to close at 77 cents per share after the company said that its financial statements for 2021 and 2022 "can no longer be relied upon."

The suit was **trimmed** last October after Judge Curiel determined the investors had not sufficiently pled that the defendants knowingly acted recklessly or committed wrongful acts. At the time, Judge Curiel dismissed claims of scienter against two other former officers of Ryvyl, founders Ben Errez and Fredi Nisan, related to misstatements made in the company's 2021 interim reports and accompanying Sarbanes-Oxley certifications.

In March 2024, Judge Curiel tossed all the suit's claims against the underwriter defendants — EF Hutton LLC, a division of Benchmark Investments Inc., and R.F. Lafferty & Co. — and Ryvyl's former Chief Financial Officer Drew Byelick, saying his resignation, followed by a replacement of an interim CFO, does not support an inference of scienter.

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

The investors are represented by Robert V. Prongay, Ex Kano S. Sams II, Charles Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP.

The defendants are represented by Sean T. Prosser and Cesar M. Dulanto of Mintz Levin Ferris Glovsky and Popeo PC.

The case is Cullen v. Ryvyl Inc. et al., case number 3:23-cv-00185, in the U.S. District Court for the Southern District of California.

--Editing by Jay Jackson Jr.

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Nikola SPAC, Related Settlements Reach $33.75M In Del.

By **Jeff Montgomery**

Law360 (August 21, 2025, 9:23 PM EDT) -- A multi-court string of settlements has produced a $33.75 million proposed payout for stockholders who alleged in direct and derivative state and federal actions that they were misled in deals that took electric vehicle maker Nikola Corp. public.

The latest version reflects a $5.45 million addition to a $22 million contribution that had already emerged from derivative damage settlements recently approved in the U.S. Bankruptcy Court for the District of Delaware.

Also up for approval is an earlier $6.3 million deal to end Delaware Court of Chancery direct claims that accused the special purpose acquisition company that took Nikola public of misleading investors about Nikola's prospects.

The pacts emerged from a lengthy, multi-state, multi-court process and multiple mediation sessions in New York City and elsewhere. Up for approval are deals that cover in part a suit filed in 2022 accusing directors of Nikola and the blank check company that took it public — VectolQ — of insider trading, securities fraud and merger related breaches.

Settlement payouts include $27.45 million in cash, secured through Nikola's Chapter 11 proceeding, with the deal financed in part by $17.5 million from Nikola's director and officer insurers and $2.5 million to be paid by Trevor Milton, the Nikola founder who was sentenced to four years in prison in 2024 and pardoned by President Donald Trump in March.

Insiders of the Phoenix-based company allegedly allowed Milton to intentionally mislead investors about the company's prospects and ability to build zero-emission trucks, artificially inflating the company's valuation to as high as $28.77 billion in an "old-fashioned 'pump and dump' scheme," according to one version of the Chancery Court derivative suit, filed in 2022.

"Plaintiffs allege that certain of the individual defendants breached their fiduciary duties, including disclosure violations" and "oversight failures," and participated in insider trading through misappropriation or aiding and abetting misappropriation of non-public information, a notice of the settlement docketed with the court on Thursday said.

The remaining derivative settlement amount includes $6.95 million to be paid in part on behalf of parties associated with Jeffrey W. Ubben, Nikola board member and founder of the investment company ValuAct.

Unopposed by those who were sued is a proposed $1.8 million attorney fee and expense award, according to a court filing. The fee will pay both out-of-pocket costs and expenses actually incurred by counsel for those who sued, along with any service awards to plaintiffs.

In a settlement notice filed with the court, those who sued were said to have alleged that many statements by Milton and the company "were not true, because, at the time the statements were made, Nikola did not possess the claimed proprietary technologies or energy assets and had not yet built a fully functioning zero-emissions semi-truck or a prototype of a zero-emissions pickup truck."

Some of those named in the suit "did nothing to investigate or stop Milton's misrepresentations, which he spread through public social media posts, podcast interviews, and television appearances," the notice said.

Before Nikola went public in 2020 by merging with VectoIQ, the company boasted that it had 14,000 pre-orders for its battery-electric and hydrogen fuel-cell vehicles, representing $10 billion in revenue and years worth of production.

After the merger, when analysts flagged the company as a fraud, Nikola came under scrutiny from the U.S. Department of Justice, the U.S. Securities and Exchange Commission and other government authorities.

The Manhattan U.S. attorney's office filed fraud charges against Milton in July 2021, accusing him of lying to investors to unlawfully raise billions.

The company eventually paid $125 million to settle a probe by the SEC.

The plaintiffs are represented by Peter B. Andrews, Craig J. Springer and David M. Sborz of Andrews & Springer LLC, Blake A. Bennett of Cooch & Taylor PA, Julie Goldsmith Reiser, Richard A. Speirs and Benjamin F. Jackson of Cohen Milstein Sellers & Toll PLLC, Frank J. Johnson, Brett M. Middleton and Jonathan M. Scott of Johnson Fistel LLP and Gregory E. Del Gaizo of Robbins LLP.

Ed Lomont is represented by P. Bradford deLeeuw of DeLeeuw Law LLC and Willem F. Jonckheer and Dustin L. Schubert of Schubert Jonckheer & Kolbe LLP.

Trevor Milton is represented by Henry E. Gallagher and Jarrett W. Horowitz of Connolly Gallagher LLP and Bradley J. Bondi and Sara E. Ortiz of Paul Hastings LLP.

Jeffrey W. Ubben and Inclusive Capital Partners Spring Master Fund LP are represented by C. Barr Flinn of Young Conaway Stargatt & Taylor LLP and Douglas A. Rappaport, Kaitlin D. Shapiro and Fatima Bishtawi of Akin Gump Strauss Hauer & Feld LLP.

Mark A. Russell, Sooyean "Sophia" Jin, Mike Mansuetti, Gerrit A. Marx, Jeffrey W. Ubben, DeWitt Thompson V, Stephen J. Girsky, Kim J. Brady and Britton Worthen and nominal defendant Nikola Corp. are represented by Matthew D. Stachel, Brad S. Karp, Susanna M. Buergel, Gregory F. Laufer and Alison R. Benedon of Paul Weiss Rifkind Wharton & Garrison LLP.

The cases up for settlement are In re: Nikola Corp. Derivative Litigation, case number 2022-0023, and Ed Lomont v. Trevor R. Milton et al., case number 2023-0908, in the Court of Chancery of the State of Delaware.

--Additional reporting by Clara Geoghegan. Editing by Dave Trumbore.

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Tyson Foods Sued In Del. For Docs On Poultry Care, Deaths

By **Jeff Montgomery**

Law360 (August 21, 2025, 4:49 PM EDT) -- A Tyson Foods Inc. stockholder on Thursday sued the company — which is the largest among the nation's chicken producers — for a Delaware Court of Chancery ruling compelling release of records on alleged child labor violations and failures by Tyson to assure proper feeding and treatment of poultry grown on contract farms.

The suit, filed by shareholder Michael Castagna, also seeks information on worker safety and Tyson board discussion of the issues raised in the complaint. Castagna's suit cites stockholder rights to Delaware-chartered Tyson documents under the state's General Corporation Law.

"Shareholders want Tyson to prosper, and the surest path is full transparency about how its people and animals are treated," said Legal Impact for Chicken — an advocacy group that listed three attorneys as counsel in the case, along with Delaware-based firm Farnan LLP — in a news release Thursday.

LIC said in the release that the lawsuit followed "both child-labor allegations and an undercover investigation by the group Animal Outlook," which the complaint says led to a Tyson chicken grower pleading guilty to charges of animal cruelty in November.

"By law, a corporation is required to allow shareholders to inspect records for 'a proper purpose,' such as to investigate alleged wrongdoing, yet Tyson has failed to comply," LIC said in the release.

Tyson did not immediately respond to requests for comment Thursday, and LIC told Law360 that it was unable to discuss details regarding Castagna's background beyond his status as a stockholder.

The suit accused Tyson of maintaining a system that only allows the company to provide food for birds after chicks are delivered to contract grower farms.

"Tyson repeatedly fails to deliver sufficient feed to its farmers, and the birds go hungry. Tyson also repeatedly delivers stale, moldy or unwholesome feed to its birds, and has sent its birds to a Tyson grower farm with bug-infested food trays where Tyson's own employee stated the chicks would not be nourished," the suit said.

Delaware was once one of the nation's top poultry producers, and remains a major contributor to poultry output on the Delmarva Peninsula, where the concentration of birds on so-called "factory farms" has long made the peninsula a target of animal welfare and public water-quality advocates. The Delmarva Peninsula's middle and southern counties are significant contributors to the poultry industry, with the region recording 4.6 billion pounds of chicken and $4.8 billion in sales last year, according to industry reports.

The Court of Chancery suit additionally targeted reports that birds that fail to grow fast enough are left to die or are killed when they are unable to reach food and watering systems that are "physically too high for small or immobile birds to reach."

Also noted in the complaint are past calls for U.S. Department of Labor investigations of alleged child labor violations, including by Missouri Republican U.S. Sen. Josh Hawley.

In a letter to Tyson CEO Donnie D. King in September 2023, Hawley described as "alarming" reports regarding Tyson contracting with companies that employ children for poultry plant work under unsafe conditions. Hawley said in the letter that he was "especially concerned that Tyson is subcontracting illicit child labor to avoid legal liability."

LIC said that attorneys for Tyson and Castagna exchanged letters and sat for two videotaped depositions focused on the document demands before the suit was filed.

Among the prompts for the document demands beyond the child labor allegations, according to the suit, were reports of a farm manager in Virginia acknowledging that, in some cases, birds too sick to raise themselves for food and water were left to die when their numbers made humane euthanasia too time-consuming.

Castagna is represented by Brian E. Farnan and Michael J. Farnan of Farnan LLP, and Arlene Anello, Drew Givens and Kathryn Evans of Legal Impact for Chickens.

Counsel information for Tyson in the case was not immediately available Thursday.

The case is Michael Castagna v. Tyson Foods Inc., case number 2025-0941, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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'Sustainable' Fintech Leader Cops To $248M Investor Fraud

By **Emily Lever**

Law360 (August 21, 2025, 8:52 PM EDT) -- The co-founder of bankrupt financial services company Aspiration Partners Inc. agreed on Thursday to plead guilty to defrauding investors and lenders.

Joseph Sanberg, who confounded Aspiration Partners as a sustainability-focused financial firm, faked assets and revenues to secure $145 million worth of loans and in total helped commit $248 million worth of fraud, the U.S. Attorney's Office for the Central District of California said Thursday.

Aspiration, according to its website, offers "climate-friendly" banking that, for instance, ensures investments are "fossil fuel free" in that they don't fund projects like pipelines or oil drilling.

"This so-called 'anti-poverty' activist has admitted to being nothing more than a self-serving fraudster, by seeking to enrich himself by defrauding lenders and investors out of hundreds of millions of dollars," acting U.S. Attorney Bill Essayli said in a statement. "I commend our law enforcement partners for their efforts in this case, and I urge the investing public to use caution and beware of wolves in sheep's clothing."

Sanberg was arrested in March on the same day that Ibrahim Ameen AlHusseini, who served on Aspiration Partners' board of directors, pled guilty to wire fraud for falsifying documents and information to help Sanberg. According to a plea agreement, AlHusseini had admitted that one investor fund was fleeced of $145 million and that he personally profited from the fraud to the tune of $12.3 million.

Sanberg will plead guilty to two counts of wire fraud, each of which carries a sentence of up to 20 years' incarceration.

Aspiration Partners filed for Chapter 11 protection in Delaware less than a month after Sanberg's arrest. Now known as CTN Holdings Inc., the company said in its initial court filings that it had between $100 million and $500 million of debt, and listed the Los Angeles Clippers and Boston Red Sox as some of its largest creditors.

CTN in July asked a bankruptcy judge to convert its insolvency case to a Chapter 7, saying it has sold off its assets and doesn't have the funds to pursue a Chapter 11 plan, and promised to pivot to a wind-down.

"For years, Joseph Sanberg used his position at Aspiration to deceive investors and lenders for his own benefit, causing his victims over $248 million in losses," acting Assistant Attorney General Matthew R. Galeotti said in a statement Thursday.

Sanberg ran his scheme from 2020 to 2025, according to prosecutors. During that time, they say, Sanberg obtained a $55 million loan from one investor against which he pledged Aspiration Partners stock, enlisting AlHusseini to backstop the loan by guaranteeing he would buy the stock should Sanberg default. But AlHusseini did not have sufficient assets, so the duo faked them using doctored bank statements.

Sanberg refinanced that initial loan more than a year later and then secured another $145 million using the same scheme, offering the "put option" of AlHusseini buying the stock while misrepresenting his assets, according to prosecutors.

From 2021 onward, Sanberg also falsified the company's revenues, according to prosecutors. He booked straw customers to contract with Aspiration for ten of thousands of dollars' worth of tree planting, but in fact the payments came from Sanberg via shell companies.

On the strength of inflated numbers and pledges that Aspiration had $250 million in cash on hand, when in fact it had around $1 million, Sanberg obtained more investments, according to prosecutors.

The U.S. is represented by Theodore Kneller and Adam L.D. Stempel of the U.S. Department of Justice's Criminal Division and Nisha Chandran and Jenna Williams of the U.S. Attorney's Office for the Central District of California.

Counsel information for Sanberg was not immediately available.

The case is U.S. v. Joseph Neal Sanberg, case number not available, in the U.S. District Court for the Central District of California.

The bankruptcy case is In re: CTN Holdings Inc., case number 1:25-bk-10603, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan, Rae Ann Varona, Rick Archer and Emlyn Cameron. Editing by Emily Kokoll.

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States Urge 2nd Look At $185M Metals Fraud Ruling

By **Jessica Corso**

Law360 (August 21, 2025, 8:04 PM EDT) -- State regulators are asking a Texas federal judge to reconsider a ruling that threatens a $185 million fraud case before it can be brought to trial in October, saying that the judge contradicted ruling precedent when he decided that metals like gold and silver don't qualify as commodities in some instances.

Thirty states, including Texas, California and Florida, filed a motion Wednesday urging U.S. District Judge Brantley Starr to overturn a summary judgment ruling he issued in July in a case against Los Angeles-based precious metals dealers Lucas Asher and Simon Batashvili.

While Judge Starr **did not grant summary judgment** to Asher or Batashvili, he did rule that the metals they allegedly sold at inflated prices to thousands of elderly investors did not qualify as commodities under Section 1 of the Commodities Exchange Act.

That butts up against precedent in the Fifth Circuit, where Judge Starr's courtroom sits, and is "fatal" to at least one count of their lawsuit, according to the states. The states filed the lawsuit alongside the U.S. Commodity Futures Trading Commission, which did not join the motion to reconsider Wednesday.

Judge Starr's summary judgment order "also poses a risk of causing confusion for market participants, investors, and regulatory authorities, which have relied on longstanding precedent, and could affect other cases brought by the states with the CFTC which are pending and rely on well-settled commodities law," the states said.

They urged Judge Starr to either reconsider his ruling or to allow them to appeal it before the case goes to trial on Oct. 20.

Asher and Batashvili, on the other hand, are asking Judge Starr to dismiss what remains of the case before it heads to trial in light of the ruling that the gold and silver coins are not commodities under Section 1.

Judge Starr declined to grant summary judgment to the defendants in July because he said he wasn't sure if the CFTC had planned to press any claims under a separate provision of the Commodities Exchange Act known as Section 19, which governs leveraged or margined contracts.

But the duo told the judge Tuesday that the CFTC did not have claims against them under that provision of the CEA because the coins they offered were not sold on a margined, leveraged, or financed basis and were actually delivered to investors.

Asher and Batashvili claim that the CFTC admitted as much in conversations that it had following the issuance of Judge Starr's order.

"This leaves only the individual state law claims to be litigated," the pair said. "The court should decline to exercise jurisdiction over these remaining claims."

The CFTC didn't immediately respond to a request for comment Thursday.

The CFTC alleges that starting in 2017, Asher and Batashvili allegedly advised investors to purchase the precious metals bullion, or currency held in the form of bars or specialized coins, at "grossly inflated prices" between 100% and 300% over prevailing market prices. Those defendants were unregistered as investment advisers.

As part of the ruse, Asher and Batashvili claimed they were friends with an unnamed conservative television and radio personality who recommended the bullion, when in fact they had received a cease-and-desist demand from that individual "to stop touting this purported affiliation," according to the complaint filed in 2020.

At the time of filing, the enforcement action was the largest joint filing in CFTC history with state regulators and the first stemming from a 2018 information-sharing agreement between the CFTC and the North American Securities Administrators Association, which represents state and provincial securities regulators in the U.S., Canada and Mexico.

The other states in the case are Alabama, Alaska, Arizona, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Mexico, New York, Oklahoma, South Carolina, South Dakota, Tennessee, Washington, West Virginia and Wisconsin.

The states are represented by their respective attorneys general's offices.

The CFTC is represented by its own Timothy James Mulreany, Danielle E. Karst and Sarah Matlack Wastler.

Asher and Batashvili are represented by Chris Davis, Angela L. Brown, Drake Rayshell and Ryder McCool of Gray Reed.

The case is Commodity Futures Trading Commission et al. v. TMTE Inc et al., case number 3:20-cv-02910, in the U.S. District Court for the Northern District of Texas.

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