Class Action

Manage Newsletters

Kennedy Center Subpoenaed in $344 Million Carlyle Group Case

Aug. 22, 2025, 11:49 AM PDT

Summary by Bloomberg AI

AI Generated

- The pension fund challenging a $344 million payout from Carlyle Group Inc. to its founders has subpoenaed the Kennedy Center for information on its former board members, including Anthony Welters and Janet Hill.
- The subpoena seeks documents and communications since 2010 about Welters and Hill, including files shedding light on their connections to Carlyle co-founder David Rubenstein.
- The lawsuit, filed in 2022, says Rubenstein and other co-founders pushed Carlyle into an excessive payment terminating their virtually worthless tax benefits when the private equity giant shifted from an umbrella partnership into an ordinary corporation.

The pension fund challenging a $344 million payout from Carlyle Group Inc. to its founders has subpoenaed the Kennedy Center for information on its former board members, including one linked to Justice Clarence Thomas.

The subpoena disclosed this week seeks documents and communications since 2010 about Carlyle directors Anthony Welters and Janet Hill, "including but not limited to" files shedding light on their connections to Carlyle co-founder David Rubenstein.

Welters is a businessman whose financial ties to Thomas have drawn public scrutiny. Hill, who died in 2022, was the mother of retired basketball great Grant Hill.

The legal request, submitted Aug. 20, also targets Williams & Connolly LLP, a white-shoe law firm representing Carlyle in Delaware's Chancery Court.

The filing seeks information on the firm's potential involvement in pushing for changes to the governance structure of Washington's John F. Kennedy Memorial Center for the Performing Arts, which was led by Rubenstein until President Donald Trump appointed himself chairman earlier this year.

The lawsuit, filed in 2022, says Rubenstein—along with billionaire co-founders William Conway Jr. and Daniel D'Aniello—pushed Carlyle into an excessive payment terminating their virtually worthless tax benefits when the private equity giant shifted from an umbrella partnership, or Up-C, into an ordinary corporation.

The dispute is part of a growing wave of shareholder litigation that says influential insiders manipulated similar restructurings to seize value for themselves. The companies embroiled in parallel suits include Apollo Global Management Inc., Atlas Energy Solutions Inc., GoDaddy Inc., KKR & Co., and others. Most of the lawsuits, including the Carlyle case, are headed for trial.

'Intricate Matrix'

But a ruling dismissing similar claims against Cantor Fitzgerald LP and US Commerce Secretary Howard Lutnick created a split in April among colleagues on the elite business tribunal, who usually present a united front as they deliver rulings that set the nationwide tone on board battles, merger fights, executive liability, and shareholder rights.

Those relatively rare disagreements generally draw the attention of Delaware's top court, although the appeal deadline in the Cantor case has passed. The other disputes are still ongoing at the trial court level.

Carlyle's corporate directors initially tried to derail the litigation against them on technical grounds, arguing that the pension fund leading the lawsuit failed to demand an internal investigation first. Vice Chancellor Morgan T. Zurn rejected that argument, saying a majority of board members were too closely linked to the founders to impartially consider their liability.

The ruling in January 2024 cited "the broad and intricate matrix" of social ties between Rubenstein and Welters. Zurn went on to call the legal claims "reasonably conceivable" in a decision three months later that kicked off the costly and cumbersome pretrial discovery stage, which involves voluminous document exchanges and witness depositions.

The City of Pittsburgh Comprehensive Municipal Pension Trust Fund is represented by Friedlander & Gorris PA, Robbins Geller Rudman & Dowd LLP, and Shobe & Shobe LLP.

The co-founders are represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP. Carlyle and certain board members are represented by Richards, Layton & Finger PA, in addition to Williams & Connolly. Other current and former directors, including Welters and Hill's estate, are represented by Ross Aronstam & Moritz LLP and Gibson, Dunn & Crutcher LLP.

The case is City of Pitt. Comp. Mun. Pension Trust Fund v. Conway , Del. Ch., No. 2022-0664, subpoena filed 8/20/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

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

California Brief
Big Law Spotlight

Big Law White Collar Teams Breathe Easy After Key Privacy Ruling

Aug. 25, 2025, 2:05 AM PDT

Big Law won a reprieve for a little-discussed yet crucial selling point they offer during moments of crisis: privacy.

A federal appeals court ruling this month in a case related to the FirstEnergy Corp. bribery scandal overturned a lower-court decision that would have made it more difficult for firms to keep communications between clients and lawyers confidential.

The ruling protects white collar investigations practices and shows how changes in the law can affect the bottom lines of law firms. White collar practices have become major revenue drivers at Big Law firms, with top partners in the practice often charging some of the highest billing rates in their firms.

“If you don’t have attorney-client privilege, clients won’t hire lawyers, and the lawyers won’t look for things,” said Sam Buell, a professor at Duke University School of Law who studies white-collar crime. “And that’s not good for the legal system.”

The ruling that sent a chilling signal to Big Law investigations practices came in a shareholder lawsuit against stemming from a bribery scheme involving former Ohio House Speaker Larry Householder (R).

The company hired Jones Day and Squire Patton Boggs for investigations. Plaintiffs’ lawyers sought documents and information related to the probes.

A district court judge ruled the documents must be turned over, saying they were procured to render business, not legal, advice. The US Court of Appeals for the Sixth Circuit disagreed, ruling it doesn’t matter why the lawyers were hired, only that the company sought legal advice.

“The court did a good job of clarifying that there can be too much of a focus on the business purpose of the investigation versus a legal purpose, because there is always a business purpose,” said Greg Brower, a shareholder at Brownstein Hyatt Farber Schreck.

‘Trusted Advisers’

The 39 Big Law firms who filed an amicus brief urging the appeals court to intervene in the case were both arguing points of law and, in effect, also lobbying for the benefit of their own business.

A high ratio of white-collar lawyers was found to correlate with higher law firm profitability in a 2011 paper studying the rise of the practice at the nation’s largest firms. The practice has less rate pressure since the work is urgent and insurers often pay the bills, the paper found.

Covington & Burling partner and former US Attorney General Eric Holder in 2021 was billing $2,295 an hour for a public investigation into discrimination and sexual harassment at Oregon Health & Science University. Rates in Big Law have since grown higher than $3,000 an hour.

Without the protections offered by attorney-client privilege and the work product doctrine, lawyers digging into wrongdoing would be perceived by clients as “threats,” Eric Chaffee, a law professor at Case Western University, wrote in an amicus brief. The benefits of those protections help lawyers become “trusted advisers,” he wrote.

That is common marketing language for Big Law firms. But even so, lawyers don’t typically “sell” those benefits, Chaffee said in an interview.

“I don’t think firms will market attorney-client privilege or the work product doctrine for purposes of really selling their services, but they are important in terms of getting internal corporate investigations done,” he said.

Law firms frequently offer trainings on the issue. And they draft client notes about best practices for “maintaining privilege” so frequently that Chaffee joked they might seem like “nuisance documents.” The hope is that a well-counseled client will more frequently include lawyers in their communications, he said.

“It becomes really important to have those policies in place and to train employees to ensure that privilege is in place and they aren’t disclosing documents that should be protected,” Chaffee said.

White Collar Win

It’s not the first time that a court ruling has protected the economics of Big Law’s white-collar practices.

A prosecution of KPMG executives was dismissed in 2007 when a court ruled government prosecutors had wrongly coerced the company against paying for the legal defense fees of its employees—denying them their counsel of choice.

The ruling helped cement that companies and their insurers would pay Big Law rates, according to a 2011 paper co-authored by Berkeley law professor Charles Weisselberg.

The ruling pointed to a “developing norm” that corporate employees should be represented “by a certain type of counsel—those at the nation’s leading corporate law firms,” Weisselberg wrote.

Some 15 years later, that norm has fully developed. Big Law firms have solidified their grip as the go-to counsel for major corporate investigations. And that stands to remain as courts reinforce the importance of attorney-client privilege.

“Without the privilege, companies might say, ‘Don’t hire lawyers and don’t do the work,’” Buell said. “That may mean less work. But that’s the whole point—to have a rule that incentivizes people to retain lawyers to get the facts and get legal advice based on the facts.”

The case is: In re: FirstEnergy Corporation , 6th Cir. App., 24-03654, 8/7/25 .

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloombergindustry.com

To contact the editors responsible for this story: John Hughes at jhughes@bloombergindustry.com; Chris Opfer at copfer@bloombergindustry.com

What Do You Say When the CEO is Sick?

dandodiary.com/2025/08/articles/securities-litigation/what-do-you-say-when-the-ceo-is-sick

Kevin LaCroix August 24, 2025

What are the disclosure obligations of a publicly traded company when the CEO is ill? That is the question raised in a new securities class action lawsuit filed on August 22, 2025, against C3.ai, in which the plaintiffs allege that the defendants insufficiently disclosed the seriousness of and potential impact from the illness of the company's CEO, Thomas Siebel. The lawsuit touches on long-standing concerns about company disclosures concerning senior executives' health. A copy of the complaint can be found here.

Background

C3 is an artificial intelligence application software company. Thomas Siebel is the company's founder, and its CEO and Chairman. In February 2025, Siebel circulated a note internally reporting that he had "suffered a health setback." He said that he had contracted "an autoimmune disease" that resulted in "significant vision impairment." He also said that it would not affect his ability to continue to actively manage the business in a hands-on manner.

In a February 25, 2025, analyst conference call, Siebel was asked about his health. Among other things, he said that "I am fully engaged, managing every detail of the business every day… My health is excellent, okay? So beyond all the infirmities that I had, I just can't see." In this and subsequent calls, Siebel his health would not affect his ability to continue to serve as the company's CEO.

In July 2025, the company announced that it had initiated a search for Siebel's successor as the company's CEO. The announcement quoted Siebel as saying that he would continue his engagement until a successor was found.

On August 8, 2025, the company announced its quarterly financial results, in which, among other things, the company quoted Siebel as saying that its sales results for the quarter "were completely inacceptable." It quoted Siebel further as saying that this was attributable to two factors: "One: It is clear that in the short time, the reorganization with new leadership had a disruptive effect. Two: As we previously announced, I have had a number of health issues in the past six months… Dealing with these health issues prevented me from participating in the sales process as actively as I have in the past. With the benefit of hindsight, it is now apparent that my active participation in the sales process may have had a great greater impact than I previously thought."

According to the subsequently filed securities lawsuit, the company's share price declined more than 25% on this news.

The Lawsuit

On August 22, 2025, a plaintiff shareholder filed a securities class action lawsuit against C3.ai, Siebel, and other company executives. The complaint purports to be filed on behalf of investors who purchased the company's securities between February 25, 2025, and August 8, 2025.

The complaint alleges that during the class period the defendants tried to reassure investors that Siebel was in sufficient health to effectively conduct his role, without any indication that his health or the necessary accommodations would jeopardize the company's health or financial performance. The complaint further alleges that "In truth, C3 AI's optimistic reports of growth, earning potential and anticipated margins fell short of reality as they relied far too heavily on the health and effectiveness of the Company's CEO. Despite repeated assurances, Defendant Siegel had not sufficiently recovered from his ailments to act in the same capacity for C3 AI as he had previously."

The plaintiffs allege that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the class.

Discussion

There have been numerous past high-profile examples where a company's disclosures about their CEOs' health have been questoined. Readers will recall the controversy that followed the death of Steve Jobs, and the questions that followed about whether the company should have told investors earlier about his pancreatic cancer. In another example, investors also questioned Oracle's handling of issues surrounding CEO Mark Hurd's health, after Hurd took a medical leave and died shortly thereafter.

The situation with Siebel's health at C3 arguably is different. This is not a case where there was a cover-up that Siebel was having health issues. Siebel himself distributed the note revealing his illness and the impact on his vision. The plaintiff's theory in this case would seem to be not that the illness was not reported, but rather that the seriousness of and impact from Siebel's illness was soft-pedaled, and in particular the extent to which Siebel's health issues would impact the company's financial performance was under-reported.

It may be that there was a lot of wishful thinking in Siebel's messages about his health. It may also be that both he and the company underestimated what the impact from his health issues will be. Establishing falsity could be a challenge in this case; while it is true that in retrospect that the statements about Siebel's health could be questioned, it will be hard to show that the statements were false at the time they were made. It will also be a challenge for the plaintiffs to establish that the statements were made with scienter, unless somehow positive thinking about one's health in the face of adversity can be said to be tantamount to fraud.

As the examples above about Steve Jobs and Mark Hurd show, the questions about disclosure duties with respect to the CEO's health are perennial concerns. For readers interesting in thinking more about these issues, I recommend the January 2020 memo from the Fenwick & West law firm, published in the *Harvard Law School Forum on Corporate Governance* and entitled "Best Practices for Disclosing Executive Health Issues." The memo helpfully reviews the legal principles governing the issues and examines specific instances where companies have taken different approaches to the issue.

Securities Law News

Luminar Shareholder Sues Board Over CEO's Resignation, Selloff

Aug. 22, 2025, 12:53 PM PDT

Luminar Technologies Inc.'s board concealed undisclosed conduct by the company's founder-CEO meriting an internal probe, a shareholder lawsuit said.

The Lidar sensor maker's stock price fell almost 17% on May 15, the day after it announced Austin Russell's resignation.

Luminar had said the previous day that Russell left as CEO and board chairman "following a Code of Business Conduct and Ethics inquiry by the Audit Committee of the Board of Directors." The company didn't disclose what the conduct was.

Executives and board members including Russell, who retained a board seat, hurt Luminar's reputation and wallet by failing to disclose his conduct and risks of his departure, said the stockholder derivative action filed Thursday. They potentially exposed it to liability in a related proposed securities class action pending in this same court, the US District Court for the Middle District of Florida.

A March 28 quarterly financial report touting Russell's importance to Luminar omitted that he "was engaged in undisclosed conduct that would make him the subject of an inquiry," and that the conduct would risk his departure, shareholder Dean Buttrey said.

Russell's then-looming likelihood of departure CEO would create a risk to Luminar's competitiveness that wasn't properly disclosed, Buttrey said. As a result of those risks, Luminar's announced 2025 financial guidance lacked a reasonable basis, he said.

Buttrey pointed out that Luminar cut its 2025 revenue guidance on Aug. 12. He alleged wrongdoing from at least March 20, when it shared business goals for 2025, through the announcement of Russell's resignation.

He alleged breaches of fiduciary duties, aiding and abetting of those breaches, unjust enrichment, and waste of corporate assets against all the defendants, which includes Russell, the rest of the board—with the exemption of current CEO Paul Ricci—a former director, and chief financial officer Tom Fennimore.

Buttrey also alleged federal securities law violations by Russell and Fennimore, who are defendants alongside Luminar in the related proposed class action.

Rigrodsky Law PA, Grabar Law Office, and Cook Law PA represent Buttrey, who seeks damages against the Luminar leaders.

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

The case is Buttrey v. Luminar Techs., Inc. , M.D. Fla., No. 6:25-cv-01592, complaint filed 8/21/25 .

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

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

Securities Law

Manage Newsletters

Skechers Sued on $9 Billion Deal Info by Holder Eyeing Appraisal

Aug. 25, 2025, 10:24AM PDT

Summary by Bloomberg AI

AI Generated

- A shareholder sued Skechers USA Inc. for internal files, seeking more information about a planned private equity sale to 3G Capital Partners LP.
- The lawsuit claims Skechers is trying to "run out the clock" on investors considering whether to challenge the price in court by not providing necessary information.
- The shareholder alleges that Skechers founder Robert Greenberg and his son Michael are trying to qualify for more relaxed legal scrutiny under Delaware's new law by refusing to make securities filings.

Skechers USA Inc., set to be acquired for $9.4 billion, is trying to run out the clock on investors considering whether to challenge the price in court, according to a new lawsuit.

A shareholder sued the footwear business for internal files, seeking more information about a planned private equity sale to 3G Capital Partners LP that could close as soon as Monday. Skechers is foisting an impossible choice on investors with only a brief window to weigh the wisdom of seeking court appraisal, a type of case that can backfire if a judge lowers the transaction price, the suit says.

The company's "deliberate slow roll" is aimed at gaming Delaware's recent corporate law overhaul, which carved out federally defined go-private transactions from its new dealmaking safe harbor, according to the Aug. 22 court complaint.

The legislative changes reversed several landmark rulings cracking down on conflicts of interest in an effort to address fears that founder-led firms are eyeing other states. They followed a yearlong barrage of attacks on Delaware's judiciary by Elon Musk, who moved Tesla Inc. to Texas after a $56 billion court loss.

Skechers founder Robert Greenberg and his son Michael are trying to qualify for more relaxed legal scrutiny under the new law by refusing to make securities filings that would concede the go-private label, according to the shareholder lawsuit. "The potential for abuse was obvious and this transaction shows why," the court filing says.

A spokesperson for Skechers said Monday that it doesn't comment on pending litigation. 3G—led by two of Brazil's richest men—isn't named as a defendant.

The dispute echoes several recurring themes for Delaware's Chancery Court, which regularly hears cases alleging abuses of corporate control, particularly in the context of cash-out transactions. State Senate Bill 21 directly overrode a decision by the state's top court that upheld elevated legal scrutiny of deals presenting controlling stockholder conflicts.

The legislation—which divided the legal community in a state that funds a quarter of its budget with billions in corporate fees—is now in the hands of Delaware's Supreme Court.

Appraisal Arbitrage

The elite business tribunal is also confronting a potential resurgence of appraisal litigation, which involves wide-ranging valuations by judges tasked with setting a transaction price from scratch. With deal dissenters forgoing any payout over the course of the case, interest tallied at a highly favorable rate can start to add up immediately.

Arbitraging the interest is a major part of the draw for investors, particularly hedge funds that couldn't do better in the open market, no matter how their actual price challenge fares. The cases were considered an endangered species after a wave of rulings made them riskier, but ongoing litigation over Silver Lake's $13 billion acquisition of Endeavor Group Holdings Inc. is likely the largest ever of its kind.

Shareholders cashed out in a go-private deal have only 20 days to initiate appraisal proceedings after receiving notice of the transaction, followed by a deadline 60 days after closing for dropping their claims or pressing forward in court. The Greenbergs and their allies are interfering with that process by sitting on necessary information, the Skechers lawsuit says.

It seeks documents under a law giving investors broad access to corporate records if they cite preliminary self-dealing concerns. Skechers recently defeated a pension fund's federal securities suit demanding more information about the transaction.

The shareholder, Kevin Barnes, is represented by Bernstein Litowitz Berger & Grossmann LLP and Equity Litigation Group LLP. Skechers hasn't yet made a court appearance.

The case is Barnes v. Skechers USA Inc. , Del. Ch., No. 2025-0951, complaint filed 8/22/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Class Action

Manage Newsletters

Microvast Set to Face Investor Row Over DOE Grant, Plant (1)

Aug. 25, 2025, 6:27 AM PDT; Updated: Aug. 25, 2025, 9:14 AM PDT

Summary by Bloomberg AI

AI Generated

- Microvast Holdings Inc. must defend shareholder allegations that the company misled them over receiving a grant from the US Energy Department and the readiness of its Clarksville, Tenn., facility, Judge Andrew S. Hanen said.
- The investors sufficiently bolstered an inference of the executives' mental state to deceive them around the grant because of its importance to the company, Hanen said.
- Microvast shed a handful of the investors' claims about the facility, with Hanen finding statements contained corporate puffery or were forward-looking.

Microvast Holdings Inc. must defend shareholder allegations that the battery maker misled them over receiving a grant from the US Energy Department and the readiness of its Clarksville, Tenn., facility.

The investors sufficiently bolstered an inference of the executives' mental state to deceive them around the $200 million grant because of its importance to the company, Judge Andrew S. Hanen said. The money "would have matched an entire year's worth of revenue and would have been equivalent to 22 times the yearly profit," the US District Court for the Southern District of Texas judge said.

And the investors adequately alleged executives' intent to deceive or reckless disregard on completing the Clarksville battery-manufacturing plant, Hanen said. Frequency of visits and weekly calls with the equipment-providing company boosted an inference that CEO Yang Wu and others were at least severely reckless in delivering statements on its progress.

Microvast shed a handful of the investors' claims about the facility, with Hanen finding statements contained corporate puffery or were forward-looking.

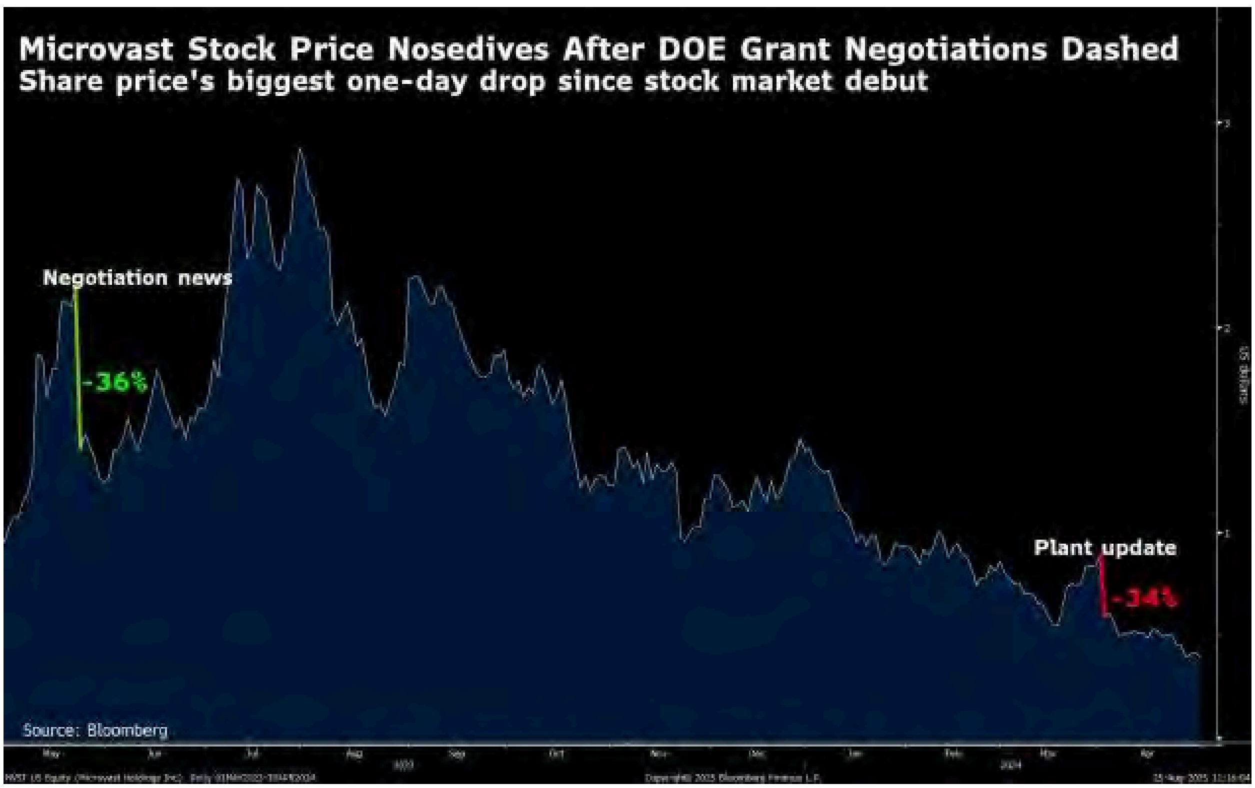
While Microvast pointed to some language about risks of the DOE grant falling through while it was negotiating, that information wasn't shared with enough intensity to offset more prominent statements about getting the domestic battery-processing grant, Hanen's order said. Additional cautionary language that the lithium-ion battery maker said contextualized grant statements "was also arguably misleading because it downplayed the remaining steps left and overstated the likelihood of successful negotiations."

The DOE in 2022 had announced grant applications for electric car battery makers to reduce dependence on foreign manufacturers, particularly from China. But Microvast conducted almost all its business through a Chinese subsidiary, got financial support from the country's government, and misrepresented its ties to China in its grant application, the investors' most recent proposed class complaint said.

Stock Drops

The market learned on May 22, 2023, that DOE ended negotiations. Microvast's share price plummeted more than 36% to close at $1.40 on May 23, then the stock's largest single-day drop on record, according to data compiled by Bloomberg.

On April 1, 2024, Microvast said it was suspending construction on the Clarksville plant pending more funding. Microvast's stock price plunged about 34% to close at $0.59 a share on April 2, its sharpest single-day fall since that 2023 one, per Bloomberg data.



"We generally do not comment on ongoing litigation, but I can say that while we are disappointed with the ruling on the motion to dismiss, we look forward to litigating the case on the evidence rather than on allegations," said Paul R. Bessette of King & Spalding LLP, which represents Microvast, Wu, and former executives.

The proposed class includes those who got Microvast stock from Oct. 19, 2022, through April 1, 2024, and who held shares through May 22, 2023, or April 1, 2024.

The Rosen Law Firm PA and Berger Montague PC are co-lead counsel for the investors. Attorneys didn't immediately respond to an email seeking comment.

The case is Schelling v. Microvast Holdings, Inc. , S.D. Tex., No. 4:23-cv-4565, 8/22/25 .

(Updates with additional reporting starting in the second paragraph.)

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

To contact the editors responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Kiera Geraghty at kgeraghty@bloombergindustry.com

Securities Law News

Rite Aid Execs Defeat Securities Suit Over Opioids, Retail Plan

Aug. 22, 2025, 3:17 PM PDT

Rite Aid Corp. investors can't proceed with a proposed class action against several executives over the drugstore chain's opioid liability and a disrupted retail strategy, a federal court ruled.

The investors didn't adequately allege the current and former officers of the now-bankrupt company made false or misleading statements, Judge Kelley B. Hodge of the the US District Court for the Eastern District of Pennsylvania said.

They also failed to tie their losses to news reports, press releases, and earnings calls that they characterized as corrective disclosures, Hodge said in an order docketed Friday.

The suit stems in part from regulatory action and product liability litigation that targeted a number of retail pharmacy chains, including Rite Aid, for allegedly filling unnecessary and suspicious opioid prescriptions. The investors allege that Rite Aid, burdened by debt from unprofitable acquisitions, ignored red flags related to thousands of prescriptions from at least 2015 to 2019.

The suit also alleged that after the opioid debacle, Rite Aid developed a strategic plan called RxEvolution, focusing on customer engagement by pharmacists, in-store telehealth "wellness rooms," and other retail changes.

The Covid-19 pandemic interrupted the strategy and resulted in a chaotic diversion of resources to Covid-related needs.

The investors voluntarily dismissed Rite Aid itself as a defendant following the resolution of its Chapter 11 bankruptcy in 2024. The retailer filed for a second bankruptcy in May of this year.

Hodge's order dismissed the case against the Rite Aid executives who remained as defendants. She found that targeted statements they made in Securities and Exchange Commission filings about regulatory and liability risks were protected as opinions and weren't false. Some were inactionable expressions of optimism, as were many statements about the RxEvolution initiative, she said.

The loss causation allegations also fell short, she said. Earnings calls and press releases related to RxEvolution, for example, “only reveal the poor financial situation that Rite Aid was in—a fact known to investors for the past ‘three decades,’” the judge said, citing the investors’ complaint.

Hodge also dismissed a separate suit over Rite Aid’s pharmacy benefit management division in April.

Levi & Korsinsky LLP was lead counsel for the investors. Morgan, Lewis & Bockius LLP represented the defendants.

The case is Holland v. Standley , E.D. Pa., No. 2:23-cv-02962, 8/21/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Laura D. Francis at lfrancis@bloomberglaw.com

Class Action

Manage Newsletters

Terran Orbital Beats Investor Suit Over Liquidity, Fire Sale

Aug. 25, 2025, 8:58 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal court ruled that Terran Orbital Corp. investors can't proceed with class claims that the company concealed a cash reserve problem, according to Judge Robin L. Rosenberg.
- Judge Rosenberg said that many of the alleged misrepresentations are "non-actionable forward-looking statements, opinions, and puffery," and that the company didn't disguise its cash situation in its public filings.
- The investors fell short in pleading the necessary level of intent for securities fraud, but they will have another chance to plead their claims, Judge Rosenberg said.

Terran Orbital Corp. investors can't proceed with class claims that the satellite maker concealed a cash reserve problem that led to its discounted sale to Lockheed Martin Corp., a federal court ruled.

Some of the allegations are "troubling," Judge Robin L. Rosenberg said in an order docketed Aug. 22 in the US District Court for the Southern District of Florida. But the complaint against the company and top members of its leadership falls short under the standard for pleading securities fraud, Rosenberg said.

The statements targeted in the proposed class action began after Terran went public through a merger with a special purpose acquisition company in 2022, touting anticipated demand for small satellites. The company allegedly burned through cash in late 2022 and 2023 as it expanded operations, despite additional investments infusing money.

Terran's CEO made statements denying that the company was seeking a buyer—which he retracted in the face of a public filing—and that it needed to raise more money, the investors said. He also represented that Terran was "doing just fine," and in the wake of a withdrawn Lockheed bid, that "we feel very comfortable with our liquidity position as it stands today," the investors said.

In August 2024, Lockheed made a successful bid at a 75% discount from the amount of its previous bid.

Rosenberg concluded “that many of the alleged misrepresentations are non-actionable forward-looking statements, opinions, and puffery,” or statements of optimism.

“The Court also concludes that certain statements might be actionable because they could be materially misleading: Plaintiffs allege that Defendants knew of the liquidity risk at Terran Orbital and knew that a sale of the company was likely necessary, yet Defendants repeatedly downplayed the seriousness of the liquidity risk and disavowed the measure ultimately needed to correct the problem—the sale of the company,” she said. On the other hand, Terran didn’t disguise its cash situation in its public filings, she said.

Where the investors clearly fell short was in pleading the necessary level of intent for securities fraud under the high standard within the Eleventh Circuit, she said.

The investors will have another chance to plead their claims.

Terran previously fought off a securities suit over its SPAC merger. It was also sued over a board fight in the wake of Lockheed’s first offer.

Pomerantz LLP is lead counsel for the investors. Hogan Lovells represents Terran and the individual defendants.

The case is Verzwyvelt v. Terran Orbital Corp. , 2025 BL 298567, S.D. Fla., No. 24-CV-81191, entered 8/22/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Securities Law News

Gingko Bioworks Investors Get Initial OK to Settle With Leaders

Aug. 22, 2025, 11:34 AM PDT

Gingko Bioworks Holdings Inc.'s investor settlement infusing the company with about $4 million from leadership that allegedly overvalued its IPO deserves preliminary approval, a federal court ruled.

Corporate reforms—and the termination of a management service contract with a third party—are also expected to benefit the company, Judge Kandis A. Westmore said Thursday for the US District Court for the Northern District of California.

The settlement amount and the cost savings from ending the contract would total about $7 million to $8 million, Westmore said in green-lighting the derivative suit agreement. A nearly $2.8 million attorneys' fee award, greater than the 25% benchmark used within the Ninth Circuit, doesn't weigh against approval now but will be subject to further analysis before final approval, Westmore said.

A pair of investor suits on behalf of the company targeted Gingko's merger with a special purpose acquisition company in 2021. The tie-up with Soaring Eagle Acquisition Corp. was one of the largest SPAC initial public offerings, raising more than $1.7 billion, according to the investors. The investors sued directors, officers, and controlling shareholders of Gingko and Soaring Eagle.

Insiders' incentives embedded in so-called de-SPAC mergers are one way that many of these once-popular deals have stumbled and led to litigation. Investors point to condensed merger deadlines as the culprit leading to alleged lapses in due diligence and other problems.

Here, investors Weining Hu and Eric Bowers said Soaring Eagle's leaders valued the biotech startup at $15 billion, even though its $100 million in losses outweighed its $80 million in revenue. Further, its purported customers were related parties often operating out of Gingko's own headquarters, they said.

In December, Westmore granted final approval to a nearly $18 million class action settlement over the same issues.

Bottini & Bottini Inc. is lead counsel for the investors. Wachtell, Lipton, Rosen & Katz and Morrison & Foerster LLP represent the defendants.

The case is Hu v. Baker , 2025 BL 297793, N.D. Cal., No. 4:23-CV-02077, 8/21/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

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

Securities Law News

BDO Employee Stock Ownership Plan Suit Axed on Standing Grounds

Aug. 22, 2025, 6:50 AM PDT

BDO USA PC notched an early win in a lawsuit over its employee stock ownership plan when a federal judge said the complaint didn't identify a tangible injury that would give workers standing to sue.

The proposed class action centers on an August 2023 transaction in which a newly established ESOP purchased 42% of BDO's common stock from executives and other principals for about $1.3 billion in an exchange financed by a private credit deal with Apollo Global Management affiliates.

Plaintiff Tristin Taylor said the transaction was done at an inflated purchase price that gave workers a bad deal, but his complaint doesn't include enough details suggesting he was injured by the transaction, Judge Richard G. Stearns said in a Thursday opinion dismissing the complaint without prejudice for lack of standing.

"The Complaint does not allege that Taylor made any monetary contribution to the ESOP Transaction or that he was saddled with any obligation to repay the loan to Apollo, much less even venturing a guess as to the actual then and now value of Taylor's ESOP account," said Stearns, who sits in the US District Court for the District of Massachusetts. "Without a showing that any harm flowed from the Transaction to Taylor, including any post-Transaction decline in the value of his ESOP account, the court cannot conclude, beyond mere speculation, that Taylor has suffered a constitutionally cognizable injury."

Taylor said he'd been injured by BDO's "pre-Transaction misconduct," which allegedly included pressuring employees to mischaracterize financial data in a way that led to an inflated valuation of the accounting firm's stock.

Stearns wasn't persuaded, saying the complaint contains "only mere conjecture" that the defendants personally contributed to the overvaluation of BDO stock.

Cohen Milstein Sellers & Toll PLLC represented Taylor. McDermott Will & Schulte represented BDO.

The case is Taylor v. BDO USA, PC , 2025 BL 297319, D. Mass., No. 1:25-cv-10128, 8/21/25 .

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

News | **Antitrust**

ATM Operator Alleges Unlawful Visa and Mastercard Price-Fixing Conspiracy

August 22, 2025 at 02:37 PM By

What You Need to Know

- Boies Schiller Flexner filed an antitrust complaint against Visa and Mastercard on behalf of plaintiff Cardtronics alleging the defendants enforce anticompetitive ATM access rules.
- The case is assigned to Senior U.S. District Judge Richard J. Leon of the District of Columbia.
- Cardtronics opted out of a related pending class action.

Credit: Daniel Acker

The largest independent ATM operator in the United States has opted out of a pending antitrust class action and filed its own lawsuit alleging Visa Inc. and Mastercard Inc. harmed ATM operators and consumers for years with an unlawful price-fixing conspiracy.

Atlanta-based Cardtronics USA Inc. alleges it paid millions of dollars in excessive or "supracompetitive" acquirer fees to Visa and Mastercard since October 2007 as a result of anticompetitive restraints enforced by the defendant card payment networks in violation of the Sherman Act.

Boies Schiller Flexner, on behalf of Cardtronics, filed a 61-page complaint Wednesday in the U.S. District Court for the District of Columbia seeking treble damages and an injunction blocking Visa and Mastercard from enforcing their alleged anti-steering rules.

"Cardtronics has suffered antitrust injury because the injury caused by the ATM Restraints is the type of injury that flows directly from the anticompetitive effects of the violation, and is the type of injury the antitrust laws were intended to prevent," the ATM operator alleged in the complaint.

Cardtronics alleges San Francisco-based Visa and Purchase, New York-based Mastercard use access rules to prevent independent ATM operators from steering ATM cardholders to lower-cost networks.

The complaint alleges a "horizontal price-fixing conspiracy" forces Cardtronics to pay inflated acquirer fees to Visa and Mastercard and forces consumers to pay "unreasonable" surcharges whenever they make ATM transactions routed over the Visa or Mastercard networks.

"Cardtronics has been injured by supracompetitive fees that greatly exceed the fees that would be paid by ATM Operators for network services in a competitive market not governed by the ATM Restraints," the company alleged in its complaint. "Cardtronics seeks to recover for overcharge damages that have been directly imposed upon it by the Defendants."

Visa and Mastercard did not immediately respond Friday to requests for comment.

In 2011, a trade association plus independent ATM operators filed an antitrust class action in the U.S. District Court for the District of Columbia naming Visa and Mastercard as defendants. Cardtronics opted out of that pending class action to file its own complaint against the card payment networks on Wednesday.

Arnold & Porter Kaye Scholer represents Visa and Paul, Weiss, Rifkind, Wharton & Garrison represents Mastercard in the related class action.

Counsel for the defendants have not entered an appearance in the separate Cardtronics case as of Friday. The case is assigned to Senior U.S. District Judge Richard J. Leon of the District of Columbia, who also presides over the pending class action.

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

Law.com Radar

LAW.COM

News | **Mass Torts**

Judge on 9,500 Unfiled Depo-Provera Cases: 'Get Busy With That'

August 22, 2025 at 04:26 PM By **Amanda Bronstad**

What You Need to Know

- In an order last month, U.S. District Judge M. Casey Rodgers told lead plaintiffs' firms to certify their number of unfiled claims or risk losing their leadership roles.
- Friday's hearing comes on the same day that Pfizer plans to argue the Depo-Provera cases should be tossed out on summary judgment based on federal preemption.
- The judge told lawyers on Friday, 'If you're in leadership and haven't investigated your cases, the time to do so is now.'

Judge M. Casey Rodgers, U.S. District Court, Northern District of Florida. Courtesy Photo

A Florida federal judge told lawyers at a Friday hearing that the number of lawsuits brought over injectable birth control Depo-Provera had jumped to almost 1,000—but that's far less than the 9,500 cases still unfiled.

At the start of the hearing, U.S. District Judge M. Casey Rodgers, in the Northern District of Florida, said 382 additional Depo-Provera lawsuits were filed since her July 16 order requiring lead plaintiffs' firms to certify their number of unfiled claims. Rodgers said the total number filed in the multidistrict litigation is now at 932.

But 9,571 unfiled claims remain in the inventory of the lead plaintiffs' firms, the judge said.

"I do appreciate those efforts to get those additional nearly 400 cases filed in the last month, but there are still, as you can see, with 9,571 cases in inventories, there are still thousands of cases that I would anticipate being filed," Rodgers said. "If you're in leadership and haven't investigated your cases, the time to do so is now. Or, frankly, yesterday. Please get busy with that."

The remarks come as another federal judge, overseeing a separate multidistrict litigation docket of "forever chemicals" in drinking water, canceled a planned Oct. 20 bellwether trial after discovering tens of thousands of unfiled claims involving individuals with six different types of illnesses. In an Aug. 15 order, U.S. District Judge Richard Gergel, of the District of South Carolina, overseeing more than 12,000 lawsuits over perfluoralkyl and polyfluoralkyl substances, or PFAS, gave plaintiffs' counsel 21 days to file their cases on behalf of personal injury claimants.

Pfizer's Federal Preemption Defense

Friday's hearing in the Depo-Provera multidistrict litigation, which primarily addressed experts, also comes on the same day that Pfizer Inc., the defendant, represented by Williams & Connolly, planned to file a summary judgment motion focused on its key defense of federal preemption. Depo-Provera, approved by the U.S. Food and Drug Administration in 1992, is a contraceptive that stops a woman's menstrual cycle for three months.

And lawsuits allege recent studies found women who used Depo-Provera had a 550% higher risk of developing an intracranial meningioma, a benign brain tumor. But Pfizer, in its preemption defense, plans to argue that in 2024, the U.S. Food and Drug Administration rejected its request to include a brain tumor warning on its label.

Plaintiffs are set to respond on Sept. 19, and Rodgers has scheduled a Sept. 29 oral argument on the preemption motion.

Last month, Rodgers, who appointed 56 lawyers to leadership positions, raised concerns that lawyers were "warehousing cases" until after her ruling on federal preemption. Her order noted that she appointed lawyers to leadership under the assurance that they would file large numbers of lawsuits in the multidistrict litigation. Should they file a “vastly disproportionate number of cases” after her preemption ruling, she plans to consider “whether counsel from those firms should be allowed to remain in a leadership position,” according to the order.

In addition to the multidistrict litigation, lawyers conveyed to Rodgers on Friday that 82 Depo-Provera cases have been filed in state courts, primarily in New York, California and Delaware.

California Brief

Meta Fails to Get Documents From States in Child Addiction Case

Aug. 22, 2025, 1:50 PM PDT

Meta Platforms Inc. can't force the California attorney general and nearly 20 other states to turnover documents from other state agencies in a wide-ranging adolescent addiction case against the social media company.

A three-judge panel for the US Court of Appeals for the Ninth Circuit granted the states' petition Friday to halt Meta from obtaining the documents through the traditional discovery phase of litigation. The court found that the AG's offices don't control documents under other state agencies, such as the governor's office or state health department.

The states have shown that they face prejudice without intervention from the appeals court.

"California, for example, has represented that complying with the discovery orders has required the expenditure of millions of dollars in public funds and 'strained' the ability of California state agencies 'to perform essential public functions,'" the opinion said.

The ruling is a blow to Meta's defense strategy against a sweeping, consolidated lawsuit from dozens of state AGs who allege the Facebook and Instagram owner violated federal child privacy laws and intentionally created algorithms to addict teens and harm their mental health. The suit was consolidated alongside thousands of other civil addiction lawsuits from parents and school district before a federal judge in Oakland in a multidistrict litigation.

As the case proceeded through the discovery phase, Meta sought documents from other state agencies that would provide insight into state health policy and youth mental health.

The state AGs objected to the discovery, arguing that they don't have legal control over other agencies, but the trial court judge allowed Meta to continue collecting documents from nonparty agencies. The states petitioned the Ninth Circuit to block the order.

The Ninth Circuit's Friday ruling said the trial court's "orders were clearly erroneous because they failed to require a showing of the existence of an attorney-client relationship between the Attorneys General and nonparty state agencies."

Without that relationship, Meta can only obtain documents from the nonparty agencies through a subpoena, the appeals court ruled.

The ruling only denied the petition from the Pennsylvania AG, finding that state law explicitly grants the AG's office control of documents from other state agencies.

Judges Lucy Koh, Bridget Bade, and Johnnie Rawlinson served on the panel.

The case is People of the State of California v. US District Court for the Northern District of California , 9th Cir., No. 25-584, 8/22/25 .

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

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

Bloomberg Law

Request a Demo Login

California Brief

Betterhelp Bid to Reveal Plaintiffs' Names in Privacy Suit Fails

Aug. 22, 2025, 7:41 AM PDT

Betterhelp Inc. can't require plaintiffs in a proposed class action to publicly disclose their names as they sue the mental health platform for improperly disclosing their information to third-party advertisers.

"Requiring plaintiffs to disclose their actual names will arguably cause a further and greater privacy intrusion" than the alleged failure to maintain confidentiality that animates the case, Judge Richard Seeborg of the US District Court for the Northern District of California said Thursday.

- Betterhelp's counsel has the names, but argued that the Federal Rules of Civil Procedure require plaintiffs to disclose their names, especially as proposed class representatives, to promote the importance of open courts, among other things
- People might not want to bring privacy cases if they must link their names to the information they seek to protect, thus it wouldn't be in the public interest to require it, Seeborg said
- The issue could be revisited later, if class members are asked whether they want to opt out, or if the case proceeds to trial and plaintiffs testify, Seeborg said

King & Spalding LLP represents Betterhelp. McShane & Brady LLC, Tusan Law PC, Milberg Coleman Bryson Phillips Grossman PLLC are interim co-lead class counsel.

The case is In re Betterhelp, Inc. Data Disclosure Cases , N.D. Cal., No. 3:23-cv-01033, 8/21/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Vermont could be losing home-court advantage in PFAS case

legalnewsline.com/state-ags-and-supreme-courts/vermont-could-be-losing-home-court-advantage-in-pfas-case/article_989d45e5-c1b4-4c03-8f9d-dcc684808145.html

John O’Brien, John O'Brien August 25, 2025

Clark
https://www.naag.org/attorney-general/charity-clark/

NEW YORK – It’s now possible Vermont won’t get to pursue its environmental lawsuit against 3M in its preferred court and will instead have its case grouped with others in South Carolina.

Plenty of states have filed lawsuits over PFAS, so-called “forever chemicals” used for decades in consumer products and firefighting foam. Their exact effects are unknown, but what is known is that they stay in the human body.

Vermont hired noted environmental attorney Matthew Pawa for its case, plus other lawyers at Seeger Weiss. Pawa was instrumental in starting climate change litigation that has had trouble moving ahead and could possibly be taken up by the U.S. Supreme Court.

PFAS litigation alleges harm to the environment and drinking water. Cases that end up in federal court are usually put in a multidistrict-litigation proceeding in South Carolina with hundreds of others.

But, like in the climate change cases, government officials and the private lawyers they hired have strived to stay in state court, where they expect more success before juries made up of the citizens their lawsuits purport to represent.

Vermont’s lawsuit alleged contamination in water, wildlife, soil and sediment at the Rutland City landfill and 3M’s facility in Rutland. The latter wasn’t identified until July 2023, about four years after the case was first filed.

In October 2023, the Vermont Department of Environmental Conservation told 3M it was a “potentially responsible party” and was obligated to investigate its Rutland facility. The next month, Vermont’s lawyers emailed a copy of that letter to 3M’s counsel.

It did not refer to its manufacture of copper-clad laminates at the facility that was done according to U.S. military specifications. 3M discovered the products at issue on its own.

On Jan. 3, 2024, 3M removed the case to federal court under the federal officer removal statute because the laminates were made as required by the military. Vermont AG Charity Clark and her lawyers challenged removal as outside the 30-day window 3M would know removal would be possible on a federal defense, pointing to their November email.

A trial judge sided with Vermont but 3M appealed to the U.S. Court of Appeals for the Second Circuit, which reversed in an Aug. 18 decision. It found 3M couldn't have ascertained the issue of the copper-clad laminates from the November email between lawyers.

"Instead, Vermont focuses on the argument that 3M knew or should have known of the possible basis for removal when it received the DEC letter in November 2023," the court wrote.

"But both the degree of inquiry notice as to potentially relevant jurisdictional facts and the difficulty of inquiry in response to that notice bear on when the basis of removal 'may first be ascertained' – and our review of the record convinces us that this is not a case where the jurisdictional facts relevant to removal were within the defendant's ready knowledge and control – for example, its place of incorporation or principal place of business."

The trial court did not reach the issue of whether the federal officer defense is enough to keep the case in federal court and must do so now. It had only ruled on the timeliness of the removal.

California Brief

This Week in the Circuits: Anthropic Pushes for Early Appeal in AI Fair Use Case

Aug. 23, 2025, 4:00 AM PDT

Welcome to This Week in the Circuits, a look at the most significant cases before federal appeals courts.

Anthropic PBC will push for the Ninth Circuit's early involvement in a closely watched case concerning the copyright law implications of training generative artificial intelligence tools like its Claude chatbot.

The company is seeking permission to bring an interlocutory appeal to resolve what it describes as conflicting rulings by federal trial court judges on the appropriate fair use standard for analyzing AI tools. A group of authors brought a copyright infringement lawsuit against Anthropic, alleging it trained its AI on more than seven million stolen books taken from online pirate libraries.

Judge William Alsup of the US District Court for the Northern District of California on **Thursday** will hear arguments over whether to allow the early appeal. Alsup in June held that while training large language models using copyrighted material can qualify as fair use, the case should proceed to trial because Anthropic's use of pirated data to build "a general-purpose library" wasn't a protected activity.

Anthropic said that opinion is at odds with a subsequent ruling dismissing a case against Facebook parent Meta Platforms Inc. over its Llama generative AI model. Anthropic urged Alsup to allow early appeal rather than risk holding a trial that could ultimately be nullified by the Ninth Circuit's eventual ruling on the legal issue in question.

"This Court should obtain guidance from the Ninth Circuit on the issue now instead of holding a trial that may need to be redone under a different legal framework—or may not be necessary at all," Anthropic said in its motion. The company is already appealing an Alsup order establishing the class of authors who are seeking damages.

The plaintiffs oppose Anthropic's latest request, accusing the company of trying to delay a jury trial scheduled to begin Dec. 1 by requesting an exceedingly rare type of relief.

“Faced with an emphatic rejection of its core position—that it could steal books with impunity—Anthropic urges this Court to get out of the way so it can jump straight to the Ninth Circuit,” the authors said. “That is not how litigation works.” **Docket**

Calendar Check

The circuits have largely cleared their schedules ahead of Labor Day weekend, with just two courts set to convene.

The **Second Circuit** on **Monday** considers various immigration appeals on its non-argument calendar.

The **Ninth Circuit** on **Tuesday** hears an ERISA appeal involving biotech company Genentech, Inc., the court’s lone scheduled argument for the week. A former Genentech employee is appealing a lower court’s dismissal of his case, which alleges a breach of fiduciary duty over the inclusion of various target date funds in the company’s retirement plan. **Docket**

The Trump administration has a **Thursday** briefing deadline in one of several pending **DC Circuit** cases that test President Donald Trump’s ability to fire officials at independent agencies. While a federal trial court judge ruled in favor of the fired board members at the US Institute of Peace earlier this year, the DC Circuit stayed that court order, finding the government is likely to prevail on a claim that the board’s job removal protections are unconstitutional. **Docket** .

To contact the reporter on this story: Patrick Ambrosio in Washington at PAmbrosio@bloombergindustry.com

To contact the editors responsible for this story: Adam M. Taylor at ataylor@bloombergindustry.com; Alex Clearfield at aclearfield@bloombergindustry.com

California Brief

Authors' Groups Fire Back At Anthropic Request To Delay AI Suit

Aug. 22, 2025, 11:37 AM PDT

A slate of authors' groups urged the Ninth Circuit to reject Anthropic PBC's request to delay a scheduled copyright trial to revisit an order certifying a class action against the AI company.

Anthropic's argument that identifying each rightsholder in the approved class would create disputes over who owns the copyrights is a "red herring," as authors and publishers have a "long and productive history of cooperation" to address digital piracy, groups including the Authors Guild said in a friend-of-the-court brief Thursday.

"Anthropic's infringements have caused significant harm to amici's members and should be resolved without the unnecessary and unwarranted delay of an interlocutory appeal on the issue of class certification," they said. The US District Court for the Northern District of California is scheduled to hear arguments on issues including whether to allow a midstream appeal focused on its rulings on fair use on Aug. 28.

Anthropic asked the US Court of Appeals for the Ninth Circuit in July to revisit the "erroneous" certification of "possibly the largest copyright class action ever," which ropes in as many as 7 million potential claimants. The dispute over Anthropic's training of its flagship AI model—initiated by a group of authors including Andrea Bartz a year ago—has been whittled down to a piracy case over whether the company flouted copyright law when it downloaded books from shadow libraries LibGen and PiLiMi using a file-sharing protocol known as BitTorrent.

The number of books whose authors Judge William Alsup certified in the class action could spell financial ruin for Anthropic if they're found liable for infringement, lawyers have said.

But the author groups said Anthropic's claims the difficulty of the process to verify the ownership of each work is no reason to revisit the class certification order.

"Addressing third party infringement is squarely and clearly addressed in publishing agreements, with standard terms across the industry, which contemplate exactly the kind of cooperation that is occurring now between authors and their publishers," the author groups' brief said.

The groups also countered Anthropic's argument that "chain of title" issues may lead to "extensive individual adjudication." They gave as examples books with joint authorship, noting that such works "in virtually every case" identify a single rightsholder—usually the publisher—who has exclusive reproduction rights, the interest implicated in the piracy claims.

"Anthropic and its amici have hypothesized conditions which are in fact quite rare and have not come forward with any non-speculative basis for this Court to conclude otherwise."

Reitler Kailas &Rosenblatt LLP represent The Authors Guild, Inc., International Thriller Writers, Romance Writers of America, and the Science Fiction and Fantasy Writers of America.

The case is Bartz v. Anthropic PBC , 9th Cir., No. 25-4843, amicus brief filed 8/21/25 .

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

To contact the editor responsible for this story: Adam M. Taylor at ataylor@bloombergindustry.com

Securities Law News

Column

'Off-Label' AI Uses Can Expand In-House Team's Reach Beyond Legal

Aug. 25, 2025, 1:30 AM PDT

The current generation of legal AI tools is automating tasks that previously required substantial staffing. But here's what's crucial about this new efficiency: These aren't just cost-saving tools—they're capacity multipliers. Legal departments can now expand their portfolio beyond their previous resource constraints.

In our legal department, we've deployed contract review tools that have made that process much more efficient. But the additional revelation has been AI's ability to seamlessly integrate complex concepts within existing frameworks.

I've always prided myself on weaving elaborate concepts into the drafting frameworks developed by counterparties. It's a skill honed over many years: Junior lawyers often simply cross out existing sections and substitute their preferred new language. But I've now seen firsthand that AI can operate as a sophisticated drafter.

The business impact is measurable. Our AI-enabled contract review and management systems allowed legal to absorb functions historically handled by finance, displacing their outdated and underutilized tools. The transformation expanded legal's reach within the enterprise, while reducing overall costs by several hundred thousand dollars annually.

'Off-Label' Use

The opportunity extends beyond the nominal purpose of these tools by synthesizing their broader potential with the demands of a particular in-house practice. For example, in our legal department, we're finding new "off-label" use cases and deploying legal tech in ways the developers hadn't envisioned.

Our company operates television and radio stations. During election seasons we receive a high volume of political advertisements that must be reviewed carefully for defamation risks. What we discovered was that technology improving contract review processes could be adapted to improve our responsiveness with our business team selling political ads. This enhanced our ability to both ensure compliance and increase the speed of closing valuable advertising deals.

The legal department’s ability to combine enhanced technology with skilled deployment has saved hundreds of thousands of dollars annually while reducing the risk of legal bottlenecks and maximizing business agility.

READ PART ONE: GCs, Look Beyond Automation. Al Will Spark Legal Team Reinvention

Quantifying the Transformation

When AI handles even routine tasks, legal teams experience dramatic productivity gains. Contract velocity improvements are transforming deal-making timelines. Orangetheory Fitness reports that it reduced franchise agreement review from more than two hours to roughly 30 minutes—an 80% improvement. Open, a neo-bank, cut average contract-approval time by 90% after deploying AI review engines. This accelerated due-diligence cycles during critical funding rounds.

The economics of litigation discovery have been revolutionized entirely. In high-volume cases, AI-led technology-assisted review now processes document sets in 26 seconds that previously required 92 minutes of lawyer time. This saves about 94% of review hours and associated costs.

According to a 2024 outlook report on legal professionals, AI could free up four hours of a professional’s time per week. This translates to approximately $100,000 in new billable time per lawyer annually. A study published in Minnesota Law Review found 10% to 30% increases in speed across core attorney work.

Some specialized applications show even greater gains. Harvard Law School’s Center on the Legal Profession documented cases where AI-powered systems reduced associate time from 16 hours to three or four minutes for high-volume litigation tasks.

Some Assembly Required

Despite these wins, not every product is a home run. Sometimes technology that dazzled in demos proved cumbersome and inefficient to implement. We’ve acquired tools that are undeniably powerful but required levels of training or upfront resource investments that, as a practical matter, prevented us from fully realizing the anticipated efficiency gains.

This reveals a critical gap in legal technology adoption. The “some assembly required” element can be sufficiently taxing that the drag it puts on implementation almost negates the value of the product.

A plug-in that works immediately can be far more valuable than sophisticated software requiring complex system integration. Legal professionals aren’t looking to write code or become system architects.

But when implementation works, the applications can extend far beyond initial use cases—and extend the reach of the legal team. The tools we used for both contract review processes and internal communications reflect what makes AI adoption successful—a culture in which the team is encouraged to think expansively about technology, where success in one area spurs others to look for opportunities for process improvements and multidimensional efficiencies.

The next article of this series will explore how AI tools through their pattern recognition capabilities can be used as strategic advisers that supplement—but don’t replace—human judgment in high-stakes matters.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

An immaterial amount of this content was drafted by generative artificial intelligence.

Author Information

Eric Dodson Greenberg is executive vice president, general counsel, and corporate secretary of Cox Media Group.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Daniel Xu at dxu@bloombergindustry.com; Jessie Kokrda Kamens at jkamens@bloomberglaw.com

California Brief

Deep Dive

AI-Powered Tech Opens Potential for Affordable Legal Help

Aug. 25, 2025, 2:00 AM PDT

Legal technology innovators are getting creative to bring AI-powered tools to the masses.

Generative AI is expensive, so tech vendors have to find clever ways to pay for it if they want to give it away cheaply or for free. They're borrowing legal tech from startups, handing out free versions of enterprise software, and offering pay-as-you go services to small businesses and giant corporations alike.

AI enthusiasts believe these efforts will expand access to legal services, potentially enabling a wider group of people and businesses to solve their problems without paying for a lawyer. The technology could close the gap between those who can pay for any lawyer they want, and those who don't have that option.

"Generative AI has more potential to improve access to justice than any other development I've ever seen," said James Sandman, president emeritus of the Legal Services Corporation.

There's no guarantee that potential will be reached. Venture capitalists are investing hundreds of millions of dollars into legal technology for Fortune 500 companies and Big Law firms, leading some justice access advocates to worry that the technology will lead to AI-powered super lawyers at the top and little benefit to others. Impact-focused work doesn't usually generate the quick profit that some investors want, and free AI chatbots have pitfalls as legal-specific tools.

"If pricing isn't addressed, artificial intelligence actually presents the risk of widening the justice gap because it will make cool new tools available to rich clients and their lawyers that are off limits to low-income people and their lawyers," said Sandman, a former Arnold & Porter managing partner.

Some legal tech companies are using their top-shelf software to subsidize cheaper or free versions. The eDiscovery company Everlaw, whose corporate clients include United Airlinesand HP, also has relationships with 200 nonprofits, law schools, and other organizations that access their tech via Everlaw for Good. The free legal housing tool Roxanne is powered by the AI behind Josef, which counts L'Oréaland Bumble among its clients.

“This opportunity for AI really is a generational opportunity,” Joanne Sprague, the head of Everlaw for Good, said. “But I don’t think it’s a foregone conclusion that this is going to be good for legal aid or broader society.”

Chatbots Aren’t Enough

General-purpose AI chatbots, while widely available, aren’t a perfect alternative to AI legal tools. Anyone with an internet connection can access free versions of top chat bots including ChatGPT, but those tools haven’t been trained as much on legal-specific data and have been responsible for many notable hallucinations in court documents. The makers of legal-specific AI tools try to cut back hallucinations by having lawyers check AI-generated outputs or by making the AI provide links to source materials.

The threat of general-purpose chat bots inundating courts was one reason Garfield AI secured regulatory approval to provide assistance in small claims court, its founder, Philip Young said. Garfield uses AI to provide legal documents for debt collection in England and Wales.

“If people don’t have access to a regulated solution, they’ll just go to an unregulated thing, like a consumer grade ChatGPT product,” Young said. “And they’re really worried about that because of the number of people walking up in front of judges who’ve just run their case through ChatGPT.”

Young, a former partner at a litigation UK boutique tapped some friends as angel investors.

Small businesses and large corporations use Garfield, and it’s priced to be accessible, Young said. Instead of a subscription model, it charges by the document: A polite letter asking for repayment costs £2, or just under $3.

A Chase for Dollars

Many legal tech companies are backed by venture capitalists who are looking for a quick return and expect companies to scale up quickly, Kelly Bryan, director of US ventures at Village Capital, said.

“The incentives from VC end up creating a growth-at-all-costs mentality which is not ideal for an impact-minded entrepreneur,” Bryan said.

Everlaw and Robin are among the legal tech companies that have raised big sums from venture capitalists. Enterprise software sales bring in revenue, but both companies also have free versions.

Robin has sold its contract review software to companies including PepsiCo Inc., PwC, and Yum! Brands Inc. But it also offers a free version that has more users than the paid version, a spokesperson said.

“I believe that legal advice is too expensive, and with the right technology it can be considerably cheaper, faster and simpler,” Robin CEO Richard Robinson said in a statement on the company’s website. “And I believe that addressing these problems is critical if we want to empower people to protect themselves and to restore trust in the legal industry.”

Depositron and Roxanne are bringing legal services to New York City tenants without direct lawyer involvement. Depositron, which recently launched statewide and has about 500 users, helps people get their security deposits back by generating a letter to landlords from a user's phone. Nori partnered with LawDroid, an AI legal assistant platform, to create Depositron.

Roxanne, which launched at the beginning of the year and has about 5,000 users, helps tenants with issues like housing repairs.

"No one wakes up in the morning and says, 'I hope I meet a lawyer today,' " said Sateesh Nori, the legal aid attorney who founded Depositron and Roxanne. "But they say, 'I hope my problem gets solved.' "

Nori said he'd like to explore other ways to pay for low-cost legal services. About 200,000 people move in New York City every year, and if enough of them pays a few dollars to use Depositron, it could be self-sustaining, Nori said.

"We have this moral imperative to be the best we can with what we have, which includes these AI tools," he said.

To contact the reporter on this story: Evan Ochsner in Washington at eochsner@bloombergindustry.com

To contact the editors responsible for this story: Catalina Camia at ccamia@bloombergindustry.com; Jeff Harrington at jharrington@bloombergindustry.com

Lawyers Hold Newborn For Ransom In Scheduling Dispute

abovethelaw.com/2025/08/lawyers-hold-newborn-for-ransom-in-scheduling-dispute

Joe Patrice August 25, 2025

In the grand tradition of turning every shred of human decency into a bargaining chip, a motion in a bankruptcy action seeks a filing extension from the court after the words “my wife is in the hospital being medically induced eight months into pregnancy” were apparently met with: *Sure — but only if you cave on this other procedural demand we’ve been pestering you with.*

Nothing says professionalism and collegiality like a hostage negotiation with a newborn as collateral!

Let’s back up. *Byju Alpha* is a Chapter 11 proceeding in Delaware. As the defendants prepared a reply for the motion to dismiss, Delaware counsel learned that his wife’s pregnancy required a medically necessary induction. Between hospital delays, shuttling back and forth with Maternal Fetal Medicine, and the whole “bringing an actual human life into the world” thing, counsel wasn’t in a position to assist with the reply brief and sought an extension. This is not a frivolous extension to go watch football or catch a baseball game. An induced, 8-month pregnancy is no joke.

On August 18, counsel asked the other side for another couple days to get everything in order. According to the filing, here’s what happened next.

> 7. Plaintiffs' counsel replied to Defendants' counsel's Request that Plaintiffs would agree to an extension if Defendants' counsel would agree on an omnibus hearing for all outstanding motions in this Action – a proposal Plaintiffs' counsel had first made to Defendants' counsel last week.
>
> 8. Defendants' counsel understood that Plaintiffs' counsel was conditioning its support for the Request on Defendants providing them with an answer concerning Plaintiffs' omnibus hearing proposal. Defendants' counsel therefore stated in response that Defendants could not agree to an omnibus hearing, but that it would make an alternative proposal to Plaintiffs for the upcoming hearings. In the same email Defendants' counsel thanked Plaintiffs for agreeing to the Request.
>
> 9. Plaintiffs' counsel responded that it had not agreed to Defendant's Request, and that it only would do so if Defendants agreed to an omnibus hearing.

You've got to appreciate that counsel "understood that Plaintiffs' counsel was conditioning its support," but went ahead and "thanked Plaintiffs for agreeing to the Request." You miss 100 percent of the shots you don't take. And, presumably, he thought providing opposing counsel an opportunity to come to their senses might provide everyone an off-ramp. Instead, they doubled down.

It's unclear who ordered this unprofessional code red. The other side is represented by Quinn Emanuel, Kirkland, and Young Conaway. One would've hoped some lawyer in that triumvirate would've stepped up to counsel against acting like douchebags, but here we are.

Deadlines matter, of course, but this is not a discovery dispute where someone "forgot" to review a million emails. This is the *emergency birth of a child*.

Judges shouldn't need to police this. If I were asked to waste my time on an extension the parties should've worked out themselves, I'd be pretty pissed to learn it got held up because one side tried to use the lawyer's personal emergency as leverage to make the client compromise their rights. According to the docket, there's now an omnibus hearing scheduled, but just because everyone ultimately agreed doesn't make it acceptable to condition the extension on it in the first place.

This is just asshole behavior. This is why no one likes lawyers.

Thankfully, the couple's second child was born on August 16 and have already been released from the hospital.

(Check out the filing on the next page…)

Headshot

is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter or Bluesky if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

1 2Next »

Trump files appeal to revive executive order against law firm Susman Godfrey

reuters.com/legal/government/trump-files-appeal-revive-executive-order-against-law-firm-susman-godfrey-2025-08-22

David Thomas August 22, 2025

Signage is seen at the entrance of the United States Court of Appeals for the District of Columbia Circuit in Washington, D.C., U.S., August 30, 2020. REUTERS/Andrew Kelly
Purchase Licensing Rights, opens new tab

Aug 22 (Reuters) - President Donald Trump's administration on Friday appealed a judge's decision that had struck down an executive order targeting law firm Susman Godfrey, asking the U.S. Court of Appeals for the District of Columbia Circuit to weigh the fate of Trump's legal industry crackdown.

The government now has four related challenges pending before the appeals court, after four different judges ruled that Trump's respective executive orders aimed at law firms Perkins Coie; Jenner & Block; WilmerHale; and Susman Godfrey were unconstitutional.
The U.S. Justice Department's notice, opens new tab in Washington, D.C., federal court did not detail the legal arguments it used in its appeal. A White House spokesperson did not immediately respond to a request for comment.
Susman in a statement said it will "fight the administration's unwarranted appeal and continue to defend the rights of our clients and our colleagues."

Trump's order had suspended security clearances for lawyers for each of the firms, and restricted their access to government buildings, officials and federal contracting work. He accused the firms of "weaponizing" the legal system against him and his allies through past cases and hires and said they engaged in employment discrimination.

Susman in its lawsuit called the executive order 'retaliation' for its defense of the integrity of the 2020 presidential election that Trump lost to Democrat Joe Biden.

The firm represents election technology supplier Dominion Voting Systems in cases that challenged false claims that the election was stolen from Trump through widespread voting fraud.
U.S. District Judge Loren AliKhan in June ruled that Trump's order unlawfully retaliated against Susman for cases it has taken and its efforts to promote racial diversity, violating the firm's rights to free speech and due process of law under the U.S. Constitution.

Trump's executive order "goes beyond violating the Constitution and the laws of the United States," AliKhan wrote. "The order threatens the independence of the bar — a necessity for the rule of law."

Paul Weiss & Kirkland Doing Free Trump Commerce Department Work As Part Of ‘Please Don’t Hurt Us, Daddy’ Deals

abovethelaw.com/2025/08/paul-weiss-kirkland-doing-free-trump-commerce-department-work-as-part-of-please-dont-hurt-us-daddy-deals

Joe Patrice August 21, 2025

‘This is such surprising news,’ said nobody.

Ever since the Surrendergate Nine capitulated to the Trump administration, pledging nearly a billion dollars worth of free legal work, the firms have bent over backward to shrug it off as no big deal. As the months dragged on, and the firms lost more talent and more clients, stories started cropping up suggesting that the firms viewed the deals as unenforceable all along and that it’s business as usual over there. The firms never *officially* said this, of course. None of them would stick their head above the trench to say such a thing directly. But news article fodder kept drip, drip, dripping out that the firms were really just fine — in fact, they still take on a few matters that challenge the administration! Earlier this week, the American Lawyer ran a piece wondering “has leverage shifted?” in the Trump-Biglaw relationship, chronicling work the firms are doing against the administration.

At the time, I mused that the headline all but guaranteed the other shoe was about to drop. And here we are.

It turns out, despite the firms providing the media with flashy exceptions to prove the rule, the Trump administration indeed still holds the leverage. The New York Times reported last week that Kirkland and Skadden were doing trade work for the Commerce Department, but couldn’t confirm if they were getting paid for it. Now the Times can confirm that Kirkland *and Paul Weiss* are repping the Commerce Department for free, presumably as part of their pro bono payola deals. Skadden’s situation is still up in the air.

> In the past, some law firms have done work for the federal government at a reduced rate. But coming just months after they struck deals with the president, the free work is likely to raise new questions about whether the firms felt compelled to do so to stay in Mr. Trump’s good graces.

So much for those grand declarations the firms sent to Congress just a few months back. Despite explicit claims from the administration that, under the deal, the firms would be conscripted to paper up nonsense tariff deals, the firms hand-waved it all away as preposterous. Nonetheless, those letters dripped with bravado about how the firm would *never* be coerced into abandoning principles. Paul Weiss specifically promised that its free work would be limited “to assist our nation’s veterans, to combat anti-Semitism, and to promote the fairness of the justice system." Kirkland's response offered fewer specifics but declared that its pro bono work would be delivered on "a non-partisan basis to a wide range of underserved populations." Apparently, the *Commerce Department* is one of those underserved populations. It's not established that Skadden is doing this work for free, but its response to Congress included similar bullshit.

We didn't believe them at the time. It's refreshing when cynicism ages like a fine wine.

Could the firms be doing more objectionable work for the administration? Sure! The Trump administration suggested drafting the firms to [defend police brutality claims](). They aren't doing that… yet. But this misses the point. Pro bono work is, functionally, zero-sum. Law firms aren't giving up billable time to other pro bono tasks after sacrificing $125 million to the feds. Every hour spent trying to convince [Penguin Island]() to import more, I don't know, more Trump 2028 hats or something, isn't going to a homeless shelter. And all that time has to be made up by real, paying work to pay for those partner summer homes.

Not that this is really "pro bono publico" work. The fact that it was even a question whether or not this was paid work, demonstrates how phony the "pro bono" claim is. Not all free legal services are pro bono or everyone would claim summer associate write-offs as pro bono. The Model Rules specifically frame pro bono — even pro bono work for the government — as services in support of those with "limited means" or where normal fees would "significantly deplete" organizational resources. The U.S. government, shockingly, is not indigent — though the Trump tax cuts may drive it there soon enough.

Nor can lawyers claim the community service they're doing to clear up that DUI toward their pro bono awards either. As the American Lawyer article concludes:

> Still, ethics experts were doubtful that Kirkland could claim the work as "pro bono," in the traditional meaning of the word. "I don't view it as pro bono work. The U.S. government is not an individual or organization of limited means. This work was also coerced," Levin said.

There's a word for this kind of relationship, and it isn't "charity." It's "complicity."

[Two Big Law Firms Said to Be Doing Free Work for Trump Administration]() [NY Times]
[In Trump's Battle With Big Law, Has Leverage Shifted?]() [American Lawyer]

Earlier: [Biglaw Firms Surrendering To Trump Furiously Backpedaling: 'LOL, What Pro Bono Deals?']()
[Trump's Biglaw Bootlickers Say Quiet Part Out Loud In Letters To Congress]()

is a senior editor at Above the Law and co-host of [Thinking Like A Lawyer](). Feel free to [email]() any tips, questions, or comments. Follow him on [Twitter]() or [Bluesky]() if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a [Managing Director at RPN Executive Search]().

Securities Law

Manage Newsletters

Opinion

Matt Levine's Money Stuff: There Are a Lot of ETFs

Aug. 25, 2025, 10:50 AM PDT

More ETFs than stocks

My theory of exchange-traded funds is that they are an easy way to *package trades*. Anyone — any broker or financial adviser or individual investor — can think up a trade, and there are infinite possibilities. "Buy Tesla stock" is a trade, and "borrow money to buy more Tesla stock" is a different trade , and "buy Tesla stock and also buy Ford stock" is a third trade, and "buy Tesla stock and short an equal dollar amount of Ford stock" is yet another trade , and "buy Tesla stock and also buy some Dogecoin ," and "buy Tesla stock and sell call options on Tesla," and "buy Tesla stock and also put options on Tesla," and "buy Tesla stock and buy puts and sell calls ," and "buy Tesla stock and buy puts and sell calls but with different strike prices," and "buy Tesla stock on Mondays and sell it on Wednesdays," and so on, a tedious infinite list of potential trades just involving Tesla.

All of these are potential trades that someone could do, and many of them exist as actual trades that someone has done, but if *enough* people all want to do roughly the same trade — or if some enterprising marketer thinks she can get enough people to want to do the same trade — then they can be packaged into an ETF. And then, if you want to do "buy Tesla stock and buy puts and sell calls," you don't have to go to your brokerage and get approved to trade options and calculate how many options to buy and sell and worry about margin and click a lot of different buttons. You just click the one button — "buy the Tesla collar ETF" — and you get the trade.

Some investors — mostly high-net-worth ones — have financial advisers or brokers who will call them up with complicated trades, where the complication is part of the sales pitch; "I can put you in this bespoke handcrafted trade with all sorts of different derivatives" seems like good differentiated customer service. But many other investors have financial advisers or brokers who can't or don't want to do that, and "I can put you in this ETF that replicates a complicated trade with all sorts of derivatives" is easier for them to manage. Still other investors have just a brokerage app on their phone, and they have to do their trades themselves; they will be attracted to trades that involve just clicking one button.

So as ETFs become more popular and technology makes them cheaper to implement, more trades that were once bespoke and handcrafted will become standardized ETFs. And there are many, many, many, many more potential trades than there are *stocks*. I just listed 10 possible Tesla trades off the top of my head, and Tesla is just one stock. (Some of those trades involved *other* stocks, but that vastly expands the possibility set: "Buy Tesla and Ford," "buy Tesla and short Ford," "buy Tesla and Toyota," "buy Tesla and Toyota and Ford," "buy Tesla and Toyota and short Ford," etc. are all potential trades that could be ETF-ized.) In the long run the possible universe of ETFs is capped by the (infinite) number of *trades*, not by the (dwindling) number of *stocks*.

This is a change from the old-timey view that ETFs were essentially a way to package *index funds*. You don't need that many index funds: Sure every possible combination of stocks *could* be an "index," but the goal of indexing is to roughly replicate "the market" or a sector of it, and there are only so many useful categorizations. Certainly fewer than there are stocks. Traditionally ETFs were a way to *simplify* investing. Now they are a way to *complicate* it.

Anyway Bloomberg's Vildana Hajric reports :

Thanks to a breakneck pace of new launches, there are now more than 4,300 exchange-traded funds, a figure that for the first time eclipses the total number of stocks, currently hovering around 4,200, data compiled by Morningstar shows. ETFs account for about a quarter of the total universe of investment vehicles, up from 9% a decade ago, according to Investment Company Institute data.

While that variety drives down costs and tax rates for investors, it's also creating a headache for them. Sifting through page after page of ETFs can be a daunting task.

"Choice is great until it becomes a burden," Douglas Boneparth, whose Bone Fide Wealth manages approximately $115 million from New York. "There's a paradox of too many options where investors can feel paralyzed rather than empowered." …

"There's an ETF for everything now — AI, pets, cannabis, woke and anti-woke portfolios," said Boneparth. "It's hard to tell whether you're investing in something meaningful for the long term or you're filling out an online quiz for Buzzfeed."

This has helped convince many people that they need outside help. The share of self-directed investors — meaning those who are making their own investment selections — has dwindled to 25% in 2024 from 41% in 2009, according to data from researcher Cerulli.

"People are turning to advice because they don't even know where to start," said Scott Smith, Cerulli's senior director of advice relationships.

I guess that is a problem. In my model, rich people have good financial advisers, and those advisers put them in the bespoke trades that they want; self-directed investors have no advisers, but the availability and marketing of ETFs allows them to get into more or less whatever trade they want. But they have to be able to *find* the trades they want, and hear about trades that they might want, and with 4,300 ETFs you need an adviser just to read through them all.

Intel

Is this a good trade ?

President Donald Trump sealed a deal that gives the US government a nearly 10% stake in Intel Corp., part of an unconventional bid to reinvigorate the beleaguered company and boost domestic chip manufacturing.

Under the agreement, the US will receive 433.3 million shares of common stock — representing 9.9% of the fully diluted common shares in Intel — according to a statement from the company. The $8.9 billion investment will be funded by grants from the US Chips and Science Act and Secure Enclave program that had previously been extended but not yet paid, Intel said, confirming a report by Bloomberg News.

That is: The US government had previously awarded Intel $8.9 billion of grants, but those grants hadn't yet hit Intel's bank account. Trump decided to tear up the deal and require that, to get the already-awarded money, Intel should have to hand over 9.9% of its stock. (An apparently arbitrary number: The stock closed at $24.80 on Friday, but the purchase price on the deal was $20.47 per share; the government got about $10.7 billion of stock for its $8.9 billion.) Paying $10.7 billion of stock for money that Intel was supposed to get for free seems like a bad trade.

On the other hand, if you're supposed to get $8.9 billion for free you should expect some risk, and Intel is in a repeated game. Getting $8.9 billion of already-awarded cash from a grudging Trump is probably worth less than $8.9 billion, and there's always the chance that he'd find a way to back out of the deal. But making Trump a 9.9% shareholder of Intel is perhaps worth more than $10.7 billion: Instead of going around trying to get Intel's chief executive officer fired, now Trump will go around cheerleading for Intel and trying to maximize the value of his investment. ("Trump will likely need to find more ways to support Intel, not wanting it to fail on his watch," hypothesizes the Wall Street Journal.) For a few hours, anyway. I don't know. I used to have an " Elon Markets Hypothesis ," where the value of a company was determined not by its cash flows but by its proximity to Elon Musk. But now we have a world where President Trump can inflict arbitrary harm on companies he doesn't like, and confer arbitrary benefits on companies he does like, and he does both all the time. Giving him a 9.9% stake for *free* might be a good deal, just to get him on your side.

Virgin Orbit guy

A very fun guy is Matthew Brown, who did a fake takeover of Virgin Orbit Holdings. In March 2023, as Virgin Orbit was sliding into bankruptcy, Brown lobbed in a last-minute bid to inject $200 million of capital to keep the company afloat. Virgin Orbit grasped at that lifeline, news of the offer became public, Virgin Orbit's stock went up, and Brown got to go on CNBC to talk about his background in space investing and his plans for Virgin Orbit. But nothing came of it because the offer was fake: "Brown sent Virgin Orbit a fabricated screenshot of his company's bank account purporting to show a balance of over $182 million," but in fact "the bank account actually had less than $1," discussions quickly broke down, and in April 2023 Virgin Orbit filed for bankruptcy.

Last year, the US Securities and Exchange Commission sued Brown for securities fraud because you obviously can't do that, that's fraud. But there are two versions of this sort of fraud:

1. You buy some short-dated call options on the company, you announce your fake takeover, the stock goes up and you sell the options at a profit.

- 2. You just like space, and mergers, and going on television, so you do the fake takeover offer for sport, not for profit.

It did seem to me at the time like Brown was in the second category. He likes space! He wanted to be on television! This was a way to be on television! The SEC never alleged that he traded Virgin Orbit stock, or that he made any money from this. Obviously it's *fraud*, but, you know, fun jokey fraud, not money-stealing fraud.

Anyway last week a federal judge granted summary judgment to the SEC, finding that (1) there is no dispute about the relevant facts in the case and (2) it's obviously fraud. From the opinion:

Brown sent Virgin Orbit an edited screenshot of his company's bank account that purported to show the account had over $182 million when, in reality, it held less than $1.39 Accompanying the screenshot was Brown's email message, stating "I hope this can get the ball rolling. I do not have access to my [JPMorgan] brokerage acct but this should hopefully paint a decent picture until we get further down the road." There is no doubt Brown knew, or at least was severely reckless in not knowing, that he was falsely representing his company as holding millions of dollars. These misrepresentations were designed to elicit action on the part of Virgin Orbit. Indeed, Brown testified that he sent the screenshot "[t]o get in the door" with Virgin Orbit.

Sure. But here is a very pro-Brown blog post explaining that no no no no no no the check was in the mail:

In a dramatic docket plot twist, **it turned out Brown actually did have access to the money** , just not in a form the SEC could mentally process. (Possibly space crypto, ancient Mesopotamian bearer bonds, IOUs signed by Poseidon, or, heaven forbid, **actual cash** . Spoiler: It was the latter.)

Brown testified that he had arranged a "funding facility," a standard practice in venture capital and strategic transactions, similar to how Elon Musk publicly referred to his Twitter acquisition as being backed by his "personal" capital, when in fact it was a funding group. Brown's was the same, because that's how deals work: shared risk, syndicated funding, and managed capital. Not illegal. Not deceptive. Just… venture capital. The SEC simply couldn't grasp it… like a dog watching a card trick.

Wildly, Brown confirmed under oath at his deposition that he's the beneficiary of a **quarter-billion-dollar generational West Texas oil & gas trust** . His "negative net worth"? A minimalist's truth: he claims he pays himself $1 annually, lives on $5–$10 daily (he's a vegetarian and *lentils are cheap*), and calls hotel suites and his Gulfstream's fuel "corporate overhead." Minimalism, now with in-flight catering.

It is genuinely the case that every takeover offer is on a continuum from "real" to "fake." When Elon Musk first offered to buy Twitter, he really didn't have the money he would need to do it. He was confident that he would be able to find the money, but other people — including me — were not . And then he did . He's a guy with a lot of assets and a lot of rich friends and a lot of investors who like him and a lot of banks who want his business, so it was *reasonable* for him to think that he might be able to scrape together $44 billion to buy Twitter, and he did. But there are closer cases, people who are pretty rich and have a pretty good number of rich friends and some investors who like them sometimes and some banks who will consider doing business with them, and who lob in not-fully-financed bids to buy companies that they hope will work out but that sometimes don't. And then there's whatever this guy was up to. Eating lentils?

Stock splits

As of January of this year, Mullen Automotive Inc. was a small Nasdaq-listed public company with a market capitalization of about $37 million, with a stock price of about $0.83 per share and about 44.5 million shares outstanding. This was a problem, because under Nasdaq's rules, if your stock trades below $1 per share for too long you can get delisted. There is an ordinary solution, which is the reverse stock split: If your stock is below $1, you ask shareholders to approve a reverse stock split in which every (say) 10 shares of stock get consolidated into one share. Each new share represents 10 times as much of the company, so it should in theory be worth 10 times as much, assuming that the value of the company is unaffected by how the shares are divided. So if the stock is at $0.83, and you combine 10 shares into one share, then each share should mechanically be worth $8.30. For small enough companies things do not work quite that reliably — it's not like that $0.83 stock price reflected a rigorously accurate valuation of the company's future cash flows — so you want to leave some margin for error. As it happens, Mullen did a 1-for-60 reverse split in February, which should have provided ample breathing room.

Just kidding! While Mullen was reducing its share count by reverse splits, it was also issuing a ton more shares, largely to investors who bought convertible notes in 2024 and got warrants with them. The value of the company did not notably increase, though, so Mullen kept running into Nasdaq trouble. There is an ordinary solution, which is the reverse stock split, which Mullen did over and over again, leading to this breathtaking passage in its most recent quarterly report:

On June 2, 2025, the Company effected 1-for-100 reverse stock split of its common stock, and on August 4, 2025, the Company effected a 1-for-250 reverse stock split, as further described in Note 20 - Subsequent events, which were applied retroactively to these consolidated financial statements.

In addition to the reverse stock splits referred to above, the Company previously effected an 1-for-25 reverse stock split on May 4, 2023, a 1-for-9 reverse stock split on August 11, 2023, a 1-for-100 reverse stock split on December 21, 2023, a 1-for-100 reverse stock split on September 17, 2024, a1-for-60 reverse stock split on February 18, 2025, and a 1-for-100 reverse stock split on April 11, 2025. The Company retroactively adjusted its historical financial statements to reflect the reverse stock splits.

So since the start of 2025, the company — which in July changed its name from Mullen Automotive to Bollinger Innovations Inc., and now trades under the ticker BINI — has done four reverse stock splits totaling 1-for-150,000,000: 150 million shares in January have been smushed down to a single share today. Of course there weren't 150 million shares in January; there were 44.5 million. Its entire share count as of January represents less than half a share today.

They did round up, though. The result is that, for accounting purposes, Bollinger/Mullen had *one share outstanding* in 2024 (adjusting for stock splits). Its quarterly report notes that, in the quarter ended June 30, 2024, its net loss was $96 million, and its net loss *per share* was also $96 million. I don't know if that's the worst earnings-per-share result in the history of US public companies, but it has to be pretty high up there.

Anyway I mention all of this because what do you think Bollinger is up to now? Its most recent stock split happened three weeks ago, but the stock closed at $0.42 on Friday, so it announced last week:

We are asking stockholders to approve a proposed amendment to our certificate of incorporation to implement, at the discretion of the Board at any time prior to the one-year anniversary of the Special Meeting, a reverse stock split of the outstanding shares of common stock in a range of not less than 1-for-2 shares and not more than 1-for-250 shares, with the exact ratio to be determined by our Board of Directors at its discretion without further approval or authorization of our stockholders (the "Reverse Stock Split"). The Board may effect only one reverse stock split as a result of this authorization.

The good news is it's the last one:

If the Company elects to effect a reverse stock split, such reverse stock split will be the Company's final reverse stock split. Final reverse stock split means that the Company will not effect another reverse stock split for a period of 36 months from the date of such reverse stock split that is a result of approval of this Proposal 1.

Ah.

Leveraged continuation funds

The basic idea is that private equity sponsors raise funds from investors ("limited partners" or LPs) to buy companies, they buy the companies, they spruce them up, they sell them, and they return the proceeds of those sales to the LPs. In recent years, private equity funds bought a lot of companies, but they are now having a hard time selling them, which is a really critical part of the process. (It's how the LPs get their money back.) There are in concept two broad fixes to this problem:

1. The sponsors could raise *new equity* for the companies. That is, roughly, they can sell the companies to themselves: You have a company worth $1 billion in your current fund, your current LPs are getting antsy, so you go out and raise a new $1 billion fund from new LPs and use that money to buy the company from your current fund and cash out your current LPs. This is ordinarily called a " continuation fund ."

- 2. The sponsors could raise *new debt* for the companies. That is, roughly, they can go out and borrow money from lenders (who are sort of desperate to make buyout loans) and use the money to cash out their existing LPs. The collateral for the borrowing can be an individual portfolio company (a " dividend recap ") or the sponsor's whole fund (a " net asset value loan ").

And in fact private equity sponsors do both sorts of deals. You can mix and match. For instance, if you have a $1 billion company, I suppose you could borrow $500 million to do a dividend recap, and then do a $500 million continuation fund for the rest, why not. Or you can mix and match *in time:* Borrow money for a little while to cash out your old LPs, and then pay down the loan with equity from new LPs. This is called, approximately, " subscription line financing ," and Bloomberg News reported this weekend :

Firms including Bain Capital and Leonard Green & Partners have started using commitments to continuation funds as collateral, giving them another way to borrow money. …

While continuation vehicles have been around for years, they're growing in popularity and spawning new variants. The latest twist? Adding leverage by borrowing against the commitments to the funds. Banks extending these loans are generally willing to lend 20% to 25% of the value at a cost of about 3 percentage points over benchmarks, people with knowledge of the matter said.

Such loans allow private equity firms to bridge price disagreements between buyers and sellers by delaying asking investors in a continuation fund to hand over the cash they promised or waiting longer to close the deal, the people said. That can increase the internal rate of return by more than 2.5 percentage points.

The debt, known as a subscription line, credit line or net-asset-value loan, is taken out by the investment fund, generally with the knowledge and support of buyers, the people said.

Sure why not. The core problem in private equity is that the sponsors want to raise more money (for new investments, or for continuation funds), but the LPs don't have money to give them because it is all locked up in existing funds. This way I guess you can bridge that: Borrow money, give it back to LPs, and then call them a few months later to get it back.

Don't call your bribes potato chips

I don't know anything about former New York City mayoral adviser Winnie Greco's alleged attempt to bribe a reporter by handing her "a wad of cash in a red envelope stuffed inside an opened bag of Herr's Sour Cream & Onion ripple potato chips," but I write a lot about bribery technique around here and I can't really ignore this one. The best part is that the reporter, Katie Honan of The City, initially assumed that the bag of chips was just a bag of chips, but *turned it down anyway* due to journalistic ethics:

Greco and Honan walked to the Whole Foods next door. While inside the store, Greco handed Honan the opened bag of chips with the top crumpled closed. Honan, thinking it was an offer of a light snack, told Greco more than once she could not accept the chips, but Greco insisted that she keep them.

If your target is too ethical to accept a presumed light snack because that would create an apparent conflict of interest, maybe it's not a good idea to put cash in the bag.

Things happen

Keurig Dr Pepper to Buy JDE Peet's for $18 Billion in Revamp. Private equity fundraising slides as sector's downturn deepens. Weather Traders Are Hedging Against the Next German Wind Drought . Jefferies tells senior bankers to collaborate for biggest bonuses. JPMorgan to Pay $330 Million to Malaysia to Settle 1MDB Case . HSBC's Swiss Bank Said to Exit 1,000 Mideast Clients Amid Revamp. EU speeds up plans for digital euro after US stablecoin law. OnlyFans hands record $701mn dividend to owner ahead of sale. Cars Are So Expensive That Buyers Need Seven-Year Loans . The Weeknd Looks to Raise $1 Billion Backed by His Music.

If you'd like to get Money Stuff in handy email form, right in your inbox, please subscribe at this link. Or you can subscribe to Money Stuff and other great Bloomberg newsletters here. Thanks!

To contact the author of this story:
Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Michael Newman at mnewman43@bloomberg.net

- 1. Bloomberg's historical stock price data (unadjusted for splits) shows a $0.8276 closing price on Jan. 7, which is the date I have shares outstanding for. (The default data, adjusted for splits, shows about $124 million per share.)
- 2. Also somewhat to stock-based pay. The 10-Q lists equity issuances (page 5), and the proxy (page 16) discloses the major shareholders, who seem to be investors who backed the company's equity line of credit in 2024. The chief executive officer, embarrassingly, is listed as owning one share.
- 3. Also here's a fantastic stock price chart from Bollinger's website, with a sawtooth pattern showing a big price spike on each stock split and then a quick dwindling back toward zero.
- 4. "Secondaries funds" — where a sponsor raises new equity to buy stakes in other sponsors' existing funds — serve a somewhat similar purpose, buying out old LPs with new equity, though secondaries funds are normally buying fund stakes rather than portfolio companies.

Securities Law

Manage Newsletters

Downtrodden Biotechs Pile Into Crypto to Win Back Wary Investors

Aug. 25, 2025, 6:47 AM PDT

Summary by Bloomberg AI

AI Generated

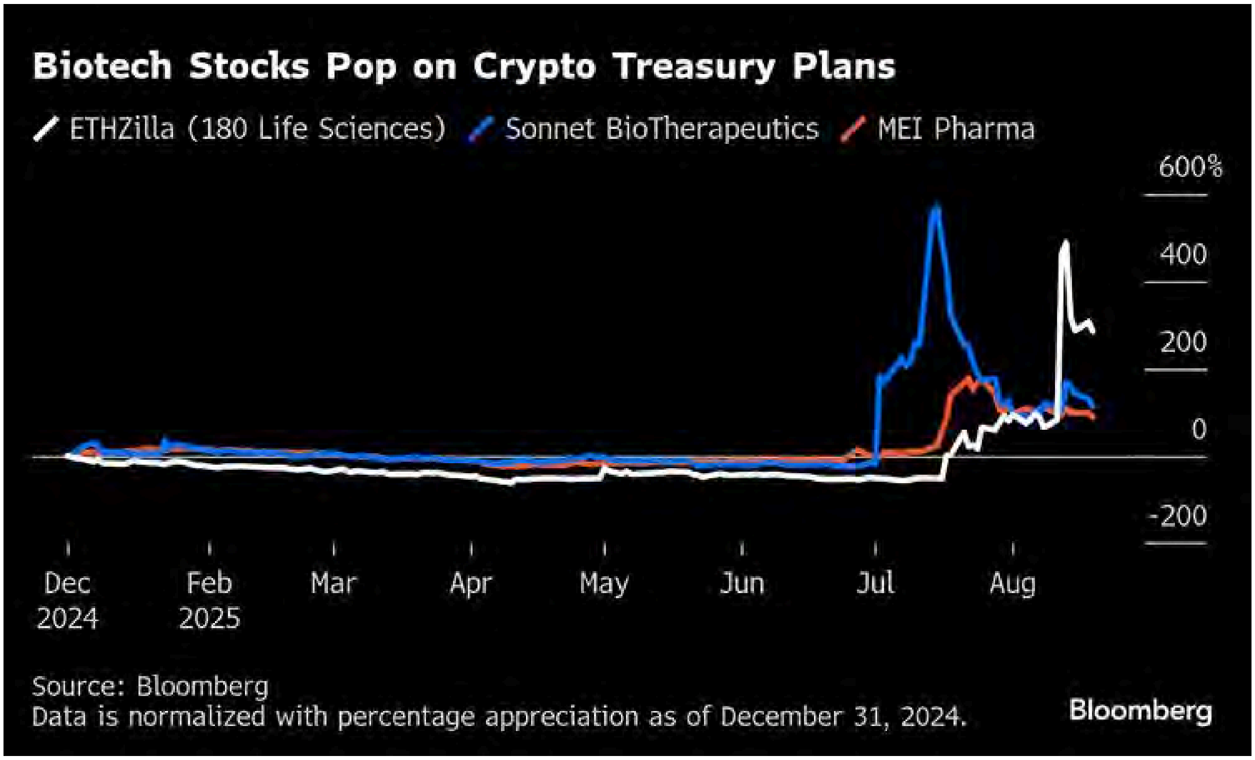
- Some tiny biotech companies are pursuing a new cure-all: Cryptocurrencies, with at least 10 biotechs announcing a pivot into digital assets in 2025.
- According to Mike Taylor, lead portfolio manager of the Simplify Health Care ETF, biotech executives are using digital coins to pump new life into flagging shares, saying "if they're low on ideas, if they can't find relevance in drug development, they're going to try to justify their existence as management in another way".
- RIA Advisors portfolio manager Michael Lebowitz said, "It's clear that the CEOs and the boards see adding crypto as a way to boost the stock price, and in theory earnings because they think they'll make a profit on crypto".

They're supposed to be on the cutting edge of medicine. Yet some tiny biotech companies, largely left behind in the stock market's breakneck rally, are pursuing a new cure-all: Cryptocurrencies.

Shares of 180 Life Sciences Corp., now doing business as ETHZilla, tripled after the **Peter Thiel**-backed company said it had accumulated Ether tokens worth over $350 million. Less than two weeks later, the stock's gains have been erased. In July, Sonnet BioTherapeutics Holdings soared 243% in one volatile session on plans to transform into a public crypto treasury while MEI Pharma Inc. initially doubled on plans to sell shares to fund a Litecoin treasury.

Such about-faces are a tried-and-true formula for small firms when funds are low and shares are under pressure. For drugmakers it can be a sudden shift to chase after trendy new treatment targets, still other companies rebrand with buzzwords like artificial intelligence to juice returns. Now some biotech executives are using digital coins to pump new life into flagging shares. So far in 2025, at least 10 biotechs have announced a pivot into digital assets. The announcements frequently spark frenzied, but short-lived, spikes in shares.

"If they're low on ideas, if they can't find relevance in drug development, they're going to try to justify their existence as management in another way," according to **Mike Taylor**, lead portfolio manager of the Simplify Health Care ETF. "You have a handful of companies trying to reinvent themselves into some other tangent. And, most, if not all won't work out."



Sonnet BioTherapeutics and MEI Pharma didn't respond to requests for comment.

At ETHZilla, Chairman **McAndrew Rudisill** said that shareholders were happy with the change in direction. The company will continue to fund its work on neurology drugs, but "the Ethereum business will probably end up being a bigger business over time."

The crypto pivots come as biotechs with little to no revenue try to navigate still high interest rates and a stalled funding market. It's been a yearslong letdown for a sector that was snagging billion dollar valuations at the height of the Covid-19 pandemic. The uncertainties from the Trump administration's research cuts and trade war have further dampened enthusiasm in 2025.

The most widely watched gauge of the sector's performance, the Nasdaq Biotechnology Index, has tumbled around 13% from its 2021 all-time high while the S&P 500 Index is up about 46% over the same span.

Typically, drug developers that have made little progress on bringing a new medicine to the market have to resort to reverse mergers or bankruptcies to return cash to holders.

"It's clear that the CEOs and the boards see adding crypto as a way to boost the stock price, and in theory earnings because they think they'll make a profit on crypto," RIA Advisors portfolio manager **Michael Lebowitz** said.

'Last-Ditch Effort'

Since the last US presidential election it's only gotten harder for drug developers to raise cash through sales of new shares to public investors.

US-listed health-care companies have raised about $17.1 billion via sales of new and existing shares so far this year, compared to $29 billion over the same stretch last year, data compiled by Bloomberg show. IPOs are also continuing to lag in the sector, with new entrants on US exchanges raising $2.2 billion in the year to date, down by more than half versus the same period in 2024, the data show.

Monthly inflows into health-care funds have also stalled and are virtually non-existent compared to a nearly $6 billion peak in April 2020. Only four months since November 2022 have seen fund inflows, according to data compiled by Bloomberg Intelligence.

Read More: Activist Investors Target $30 Billion Tied Up in Biotech Stocks

At Jefferies, veteran health-care analyst **David Windley** called the crypto-biotech hybrid “a last-ditch effort to reignite investor interest.”

While shares of the companies tend to surge after the changes in strategy, RIA Advisors’ Lebowitz said the firms risk losing the original investors who made their investment decisions based on the biotechs’ ideas.

“You turn off people that are looking to buy specific companies, specific industries, specific products, and you’re enticing people that all they care is that there’s crypto,” Lebowitz said.

Fading Fancy

To be sure, some companies have notched sustained gains after switching gears. Take Riot Platforms Inc., one of the first companies to make the pivot , when it changed its name from Bioptix Inc. and moved into the blockchain business in 2017. Riot shares are up more than 60% since then. Still, those gains trail the broader market and the stock is down over 80% from a 2021 peak.

There are other risks from shifting focus. It’s not just in biotech where companies are raising debt or selling equity only to sink the proceeds into digital tokens in the hopes of replicating the success of **Michael Saylor**’s Strategy Inc. The model has had limited success for Saylor’s imitators.

If crypto prices fall, the companies’ stock prices could decline in tandem. And as other small firms keep piling into crypto treasuries, investors are starting to look elsewhere.

Raising funds to buy digital assets also doesn’t necessarily help fund the businesses. If the company diverts too much of the proceeds toward the core biotech operations, or worse, if it sells off some of the accumulated assets, its appeal to investors seeking exposure to crypto comes under threat.

“While the crypto-biotech trend is intriguing, it may simply enable large crypto holders to offload coins while biotechs speculate on digital assets to grow cash reserves and attract attention,” Windley wrote in an August note.

To contact the reporters on this story:
Monique Mulima in Toronto at mmulima@bloomberg.net;
Angel Adegbesan in New York at aadegbesan3@bloomberg.net

To contact the editors responsible for this story:
Esha Dey at edey@bloomberg.net

Cristin Flanagan, David Morris

Australia Orders Binance Audit, Flagging ‘Serious Concerns’ (1)

B

news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTk4LWQxNjAtZGY5YS1hZmI4LWQzZjM0OWU5MDAwMyIsImN0eHQiOiJTTE5XIiwidXVpZCI6InA3cmczUlorK3REcEFTeWhCcEZTRXc9PURvcmI0cWdjcExVNlVlaVBDUThlQkE9PSIsInRpbWUiOiIxNzU2MTIwNTg2MDM2Iiwic2lnIjoiaG1vaVZWdkNja0grQjV0eEZQK1dod2hnUzJFPSIsInYiOiIxIn0=

By Richard Henderson

Securities Law News

Aug. 21, 2025, 10:49 PM PDT

Richard Henderson

Australia’s financial crimes agency ordered Binance Holdings Ltd.’s local arm to appoint an external auditor after finding “serious concerns” with money laundering and terrorism financing controls at the cryptocurrency exchange.

The Australian Transaction Reports and Analysis Centre, known as Austrac, said its concerns were sparked by issues including Binance Australia’s latest independent review, which it described as “limited in scope relative to its size, business offerings and risks.” Austrac has given the company 28 days to nominate auditors, from which the agency will make a selection, it said in a statement Friday.

Austrac also raised concerns about high staff turnover along with a lack of local resourcing and senior management oversight at the Australian unit of Binance, the world’s largest crypto exchange by volume.

“Big global operators may appear well resourced and positioned to meet complex regulatory requirements,” Brendan Thomas, chief executive officer of Austrac, said in the statement. “But if they don’t understand local money laundering and terrorism financing risks, they are failing to meet” obligations around such activities in Australia.

“We have engaged openly and transparently with Austrac over the past several months and continue to value their guidance, expertise, and oversight,” said Matt Poblocki, general manager of Binance Australia and New Zealand, in an emailed statement. “We remain committed to maintaining best-in-class compliance standards and will continuously enhance our capabilities.”

LISTEN: Who’s up and who’s down on Australia’s billionaire list in 2025 (Podcast)

Subscribe to
The Bloomberg Australia Podcast
on
Apple
,
Spotify
, on
YouTube
, or wherever you listen.

The move is the latest attempt by Austrac to crack down on illegal activities that have been associated with the crypto world. In June, Austrac placed a A$5,000 ($3,210) limit on cash deposits and withdrawals from crypto automatic teller machines and warned a sharp rise in digital asset ATMs had attracted fraudsters and scammers.

In 2023, Binance and its founder Changpeng Zhao pleaded guilty to anti-money laundering and sanctions charges and agreed to pay $4.3 billion in a sweeping settlement with the US.

“Understanding specific risks of criminality in the Australian context is crucial to ensure they’re meeting their reporting obligations here,” Thomas said.

(Updates with Binance response in fifth paragraph)

To contact the reporter on this story:
Richard Henderson in Melbourne at rhenderson81@bloomberg.net

To contact the editors responsible for this story:
Sid Verma at sverma100@bloomberg.net

Chris Bourke, Ainslie Chandler

LAW360

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

Rite Aid Execs Dodge Investor Suit Over Opioid Litigation

By **Sydney Price**

Law360 (August 22, 2025, 8:14 PM EDT) -- Several of Rite Aid's executives have escaped a securities fraud suit accusing them of making misleading statements about the pharmacy retailer's opioid-related liabilities, with a Pennsylvania federal court finding they sufficiently cautioned investors about the company's ongoing legal battles.

U.S. District Judge Kelley B. Hodge **said in an order** Thursday that the investors' claims that the risks of litigation against the **now-bankrupt Rite Aid** had already transpired by 2018 and that the defendants "knew" the company was distributing illegal prescriptions fail since Rite Aid is not required to accuse itself of "unadjudicated wrongdoing."

The order releases several current and former Rite Aid executives from the suit, including former CEO Heyward Donigan, current CEO Matthew C. Schroeder and former Chief Operating Officer James Peters.

The court also found the executives disclosed "opinions" on active opioid-related multidistrict litigation during the class period, and, therefore, the statements are not actionable.

"The Supreme Court has held that even though an opinion on the outcome of a litigation or the legality of a company's actions may turn out to be wrong, it is not actionable under the [Private Securities Litigation Reform Act,]" Judge Hodge said.

According to the amended complaint filed in September 2023, Rite Aid and its leadership knew, but failed to inform investors, that its pharmacies were recklessly dispensing opioids without valid prescriptions or medical reasons in a bid to boost retail sales and pay off its ballooning debt.

The investors also said that while sales at the onset of the COVID-19 pandemic, such as vaccines and tests, camouflaged Rite Aid's debt load briefly, executives knew the influx of revenue was temporary, even as they told investors the growth would be sustained.

For example, the plaintiffs alleged Rite Aid's declaration in September 2020 that an increase in retail pharmacy segment revenue was driven by an increase in same-store sales of 3.5% was misleading because the statement "failed to disclose" the increased revenues were related to the pandemic.

But Judge Hodge said the defendants used sufficient cautionary language to explain that the COVID-19 pandemic could have a material impact on Rite Aid's operations in addition to its ability to implement a new business strategy known as "RxEvolution" — which the investors claimed was a three-prong plan Rite Aid developed to offset negative publicity for its role in the opioid crisis and a large debt load.

"Plaintiff only makes a conclusory statement that the statement was false without providing any substantive allegations to support that proposition," Judge Hodge said. "For that reason, this statement is not actionable."

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

The investors are represented by David M. Klauder and Ryan M. Ernst of Bielli & Klauder LLC, and Shannon L. Hopkins and Gregory M. Potrepka of Levi & Korsinsky LLP.

Rite Aid's executives are represented by Karen Pieslak Pohlmann of Morgan Lewis & Bockius LLP.

The suit is Holland v. Rite Aid Corp. et al., case number 2:23-cv-02962, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Lakshna Mehta.

LAW360

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

2nd Circ. Revives Some Rate-Rigging Claims Against Banks

By **Jessica Corso**

Law360 (August 22, 2025, 6:50 PM EDT) -- The Second Circuit on Friday partially revived claims that UBS AG and the Royal Bank of Scotland PLC manipulated a key interest rate for the lending of euros, allowing a pair of funds to press forward with claims that the banks' actions harmed U.S. investors trading derivatives tied to the rate.

A three-judge panel largely upheld a 2017 lower-court ruling that dismissed proposed class action claims tied to the alleged rigging of the Euro Interbank Offered Rate, or Euribor — a daily average of the interest rate that leading banks charged each other to borrow euros.

U.S. investors trading in derivatives dependent on the Euribor benchmark claim that some of Europe's top banks conspired to set prices in their favor. But the Second Circuit agreed with U.S. District Judge Kevin Castel that the investors failed to demonstrate that Netherlands-based Cooperatieve Rabobank UA's alleged actions harmed anyone in the U.S.

"Because no such conspiratorial conduct was alleged to have occurred in the United States here, we hold that plaintiffs have failed to establish a conspiracy-based theory of jurisdiction," the court said in an opinion authored by U.S. Circuit Judge Richard Sullivan.

The circuit court also upheld the dismissal of allegations against intermediary ICAP PLC along similar lines.

While it upheld the dismissal of some allegations against UBS and RBS — including allegations that they violated the Racketeer Influenced and Corrupt Organizations Act — the circuit court revived claims that the banks may have violated the Sherman Act and sent the case back to the lower court for further development.

The Second Circuit said that at least two of the plaintiffs, Frontpoint Australian Opportunities Trust and the California State Teachers' Retirement System, had submitted evidence that they traded Euribor-based derivatives with UBS and RBS during the time period when the price-rigging was allegedly taking place.

The court also revived state claims for unjust enrichment and breach of the implied covenant of good faith and fair dealing against the two banks.

The ruling is the latest in a long-running dispute over the alleged rigging of the Euribor and other interbank lending rates between 2005 and 2011.

Some of the banks accused of participating in the scheme have already settled, with Société Générale SA **agreeing to pay** $16.8 million to exit the case in 2023 and JPMorgan Chase & Co. and Citigroup Inc. penning a **$182.5 million settlement** in 2018.

UBS declined to comment. Representatives for RBS, Rabobank and ICAP didn't immediately respond to a request for comment. Attorneys for the proposed class of investors didn't immediately respond to a request for comment.

U.S. Circuit Judges Dennis Jacobs and William Nardini joined Judge Sullivan on the opinion.

Investors are represented by Vincent Briganti, Geoffrey Horn, Margaret MacLean and Peter St. Phillip of Lowey Dannenberg PC, Patrick Egan of Berman Tabacco and Christopher Lovell of Lovell Stewart Halebian Jacobson LLP.

UBS is represented by Eric Stock and Jefferson Bell of Gibson Dunn & Crutcher LLP.

RBS is represented by Paul Alessio Mezzina and David Lesser of King & Spalding LLP.

Rabobank is represented by David Gelfand, Tawfiq Rangwala and Mark Villaverde of Milbank LLP.

ICAP is represented by Shari Brandt of Perkins Coie LLP.

The case is Sullivan v. Barclays PLC, case number 19-1769, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Emily Kokoll.

LAW360

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

Kroll Catches Class Suit Over Crypto Bankruptcy Data Breach

By **Aislinn Keely**

Law360 (August 22, 2025, 9:51 PM EDT) -- Kroll has been hit with a proposed class action in Texas federal court from an FTX creditor who says the claims and noticing agent should've done more to secure user data and notify claimants of key bankruptcy deadlines after it suffered a data breach that exposed creditors to a bevy of email attacks.

FTX creditor Jacob Kevyn Repko brought the **suit** Tuesday, claiming Kroll continued to rely exclusively on email to communicate "critical notices" in crypto bankruptcies even as claimants experienced a wave of so-called phishing attacks impersonating the company that discouraged them from opening any of its messages.

In addition to Kroll's email-only communications, Repko said he and others experienced problems with the FTX claims portal that continue to keep him from uploading documents required to receive distributions from the estate, and that "countless emails to Kroll went unresolved."

The suit, which brings negligence, breach of implied contract and state law claims, asks a Texas federal court to direct Kroll to address the allegedly deficient practices.

"Plaintiff seeks a declaration that Kroll's post-breach email-only noticing and gated portal were unreasonable under the circumstances and that Kroll must employ processes reasonably calculated to reach and protect claimants going forward," said the suit.

Repko is suing on behalf of himself and all those whose information was jeopardized in the breach after they shared data with Kroll as part of the FTX, BlockFi or Genesis bankruptcies. The suit proposes subclasses for the specific bankruptcies, as well as subclasses based on the injury users may have suffered because of the breach.

Kroll did not immediately respond to a request for comment Friday.

The suit stems from an August 2023 **data breach** that saw an attacker SIM-swap a Kroll employee to access and steal claimant data from the FTX, BlockFi and Genesis crypto bankruptcies. SIM-swapping occurs when an attacker dupes another person's subscriber identity module, or SIM card, to gain access to their phone number, which is often used to access other accounts.

Shortly after the data breach, the crypto estates told customers to be wary of emails from scammers that may portray themselves as legitimate actors in the bankruptcy process, also known as phishing attacks.

Repko said in his suit that the Kroll breach exposed "precisely the metadata criminals exploit to target crypto victims," including names, addresses, email addresses, phone numbers and claims information. The complaint noted that some bankruptcy courts have sealed creditor information due to the risk of real-world harm.

Repko himself suffered a theft of 1.9 ETH, worth around $9,000 today, in the wake of the breach, the suit said.

But as crypto creditors experienced a wave of scam activity, Kroll continued to solely use email to communicate deadlines for tax forms and claim verification, Repko said. Kroll could've utilized the postal service or another means of communication beyond email, he argued.

This became a particular problem as Repko encountered a bug in the FTX claims portal, according to the suit. While it initially verified his identity, he said the portal suddenly put his verification "on hold," blocking him from uploading the necessary tax forms and jeopardizing his chance to make recoveries.

"In an environment where claimants are trained to avoid 'Kroll' emails due to active impersonation, a gated, online-only tax-form step without a first-class mail fallback was not reasonably calculated to apprise or enable completion," said Repko.

He also accused Kroll of initially downplaying the scope of the breach and failing to warn claimants that bad actors were impersonating the company.

"These statements and omissions were material, consumer-oriented, and misleading, and they induced reasonable claimants to underestimate risk, continue using email-only channels, and delay stronger remediation, contributing to phishing loss, time-value damages, and missed deadlines resulting in expunged claims," Repko said.

According to Repko, Kroll shouldn't be able to force the claims to arbitration because the FTX portal is not Kroll's site as defined in Kroll's terms of use, and he claims he didn't agree to any Kroll terms while using the portal.

The suit requests an injunction requiring Kroll to use multiple channels for communicating significant deadlines in the bankruptcy process, create an alternative to online portals to submit documentation, and implement certain security measures to protect users from scammers.

"This is a servicing case — after a known security incident and impersonation wave, you can't run deadlines on email-only and offer no mailed confirmations or manual fallback," said Repko's counsel Nicholas Hall of Hall Attorneys PC in a statement Friday.

Repko is represented by Nicholas Andrew Hall of Hall Attorneys PC.

Counsel information for Kroll was not immediately available.

The case is Repko v. Kroll Restructuring Administration LLC, case number 1:25-cv-01319, in the U.S. District Court for the Western District of Texas.

–Additional reporting by Henrik Nilsson. Editing by Adam LoBelia.