

Insurer Loss Reserves and Securities Suit Omissions Allegations



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On August 20, 2025, in a ruling that will be of particular interest to insurance industry professionals, the Third Circuit reversed vacated a trial court's summary judgment ruling in favor of the defendants in the securities class action lawsuit pending against Bermuda reinsurer Maiden Holding, Ltd. The decision provides interesting insight into the application of the U.S. Supreme Court's holding in the *Omnicare* case, with particular reference to alleged omissions in connection with insurance company loss reserves. The Third Circuit's August 20, 2025, opinion can be found [here](#).

Background

Maiden Holding is a Bermuda-based reinsurance company. Until May 2025, its shares were listed on Nasdaq. At the relevant time, Maiden's largest business segment provided reinsurance coverage for AmTrust Financial Services. AmTrust ceded a portion of its premiums to Maiden in exchange for Maiden's commitment to compensate AmTrust for a portion of its claims losses. Because of the reinsurance ceding commission Maiden paid AmTrust, Maiden would become unprofitable if loss ratios (that is, the ratio of the losses to premiums for the relevant time period) exceeded 69%.

According to the factual background in the appellate court's opinion, Maiden's historical experience with the AmTrust business showed that losses increased over time, meaning that in the years following the initial estimate for the loss ratio for any given accident year the loss ratio tended to increase in subsequent periods. For example, at the end of 2012, the loss ratios for AY 2008 through AY 2012 ranged from 48.6% to 78.5%. By year end 2017, these accident year losses had reached a range of 75.1% to 82.2%. By that time, loss ratios of four of the five most recent accident years had already surpassed 60% as well.

The securities suit plaintiffs allege that notwithstanding this historical experience, Maiden consistently relied on initial loss ratio picks between 50% and 60%, resulting in reserve amounts that were hundreds of millions of dollars less than the loss estimates recommended by Maiden's actuaries. The plaintiffs also allege that during the class period Maiden did not disclose the several accident years with loss ratios exceeding the 69% profit threshold when announcing loss reserve picks based on the 50% to 60% loss ratio picks.

Maiden's loss reserve picks and resulting loss reserves allegedly proved to be inadequate. During the period 2017 through 2018, Maiden experienced "significant loss development" within its AmTrust reinsurance segment for the prior accident years. Maiden was forced to increase its deficient loss reserves and lost hundreds of millions of dollars. Maiden's share price dropped from \$16.50 in February 2017 to less than \$2.50 in November 2018. According to the plaintiffs, before the stock price dropped, Maiden executives collected millions of dollars by selling thousands of shares of Maiden stock for an average price of between \$13.50 to \$16.40 per share.

The Securities Lawsuit and the Ruling of the Court Below

In February 2019, plaintiff shareholders filed a securities class action lawsuit in the District of New Jersey against Maiden and certain of its executives. The complaint as amended purported to be filed on behalf of a class of investors who purchased the company's securities between March 4, 2014, and November 9, 2018. The complaint as amended essentially alleged that the company's announcements of its loss reserves were misleading because Maiden omitted historical data suggesting that the reserves were deficient. The defendants filed motions for summary judgment.

The district court, after denying the plaintiffs' requests for discovery into the historical data Maiden had access to, granted the defendants' motion for summary judgment. The district court held that Maiden's loss reserve announcements were not misleading as a matter of law because (1) Maiden knew of and considered the undisclosed historical data; and (2) the withheld data did not "totally eclipse" other considerations that informed Maiden's predicted losses. The plaintiffs appealed.

Omnicare

Crucial to the district court's summary judgment ruling, and to the appellate court's consideration of the district court's ruling, was the U.S. Supreme Court's 2015 *Omnicare* decision. The *Omnicare* decision is relevant because, among other things, it deals with the way that courts are to assess alleged omissions in connection with the statement of opinions. An insurance loss reserve, as an estimate of potential future losses, is, for purposes of this analysis, considered an opinion.

As I [discussed in detail at the time](#) of the Supreme Court's decision, the Court explained in *Omnicare* that while statements of opinion necessarily "convey some lack of certainty as to the statement's content," they can still mislead investors if the speaker leaves out key information. Thus, a securities issuer's statements of opinion are "misleadingly incomplete" and thus unlawful if the speaker omits known material facts about his "basis for holding that view." Whether withheld information is "material" depends on its relative importance to the challenged opinion. Materiality is, the Court said, "always dependent on context."

The Appellate Court's August 20, 2025, Opinion

In an August 30, 2025, opinion written by Chief Judge [Michael Chagares](#) for a unanimous three-judge panel, the appellate court vacated the district court's summary judgment grant, and remanded the case to the district court for further proceedings. In reversing the district court, the appellate court said that the district court had "misapplied" Omnicare's "context-sensitive framework" by holding the plaintiffs to "a higher standard of materiality than the law requires" and by denying the plaintiffs the "opportunity to conduct discovery."

In seeking to have the district court's ruling upheld, Maiden had relied on the loss reserves analysis section of the Third Circuit's 2023 [ruling](#) in the *Prudential Financial* case, another case where the plaintiffs had alleged that an insurer had misled investors in connection with its statement of loss reserves. In *Prudential*, the Third Circuit had affirmed the district court's dismissal of the plaintiffs' case, at least with respect to allegations that the loss reserves were misleading, holding that the plaintiff had failed to allege necessary facts about the omitted data's importance in setting loss reserves, and in particular had failed to present sufficient allegations to establish the materiality of the allegedly omitted information. However, the Third Circuit said in *this* case that it did not hold in *Prudential* that omitting adverse historical data from a loss reserve is *never* misleading.

With respect to the allegations in *this* case, the appellate court said the "critical question is whether the omitted loss data is material." The appellate court said that there were "three straightforward findings" that support that conclusion that a reasonable fact finder might concluded that the omitted historical loss data was indeed material.

First, the appellate court said, the record contains evidence (including the fact that AmTrust was by far Maiden's largest customer) that negative developments in Maiden's AmTrust segment would have an outsized impact on Maiden's entire business.

Second, the appellate court said, the record contains evidence that Maiden had access to historical loss data for AmTrust that was inconsistent with Maiden's loss ratio picks. Record evidence suggests for the relevant preceding years, Maiden's losses increased consistently and substantially, with eventually loss ratios of over 70%, and multiple years with losses over 80%. Yet Maiden set and reported loss ratios based on much lower loss ratio picks ranging from 50% to 60%. Despite historical data showing its largest segment became increasingly unprofitable year after year, Maiden "informed investors it expected continued profits" without "disclosing the adverse historical data suggesting otherwise."

Third, the appellate court said, the record contains evidence that "the negative historical data was (or should have been) an important part of Maiden's loss reserve estimation process."

The appellate court said that “viewed holistically” the evidence in the current record “provides the full ‘context’ necessary to raise a genuine issue of material fact as to whether the omission of AmTrust’s historical loss data was material.” The factfinder could also “fairly conclude that Maiden’s omission of that discrepancy when announcing its optimistic predictions would mislead investors.”

Further, the appellate court rejected Maiden’s argument that the omitted data was “immaterial” because it did not “totally eclipse the balance of numerous other considerations used to set reserves.” The appellate court said that the “complexity” of Maiden’s loss reserve determinations “did not give Maiden free rein to omit any known contradictory evidence.”

Discussion

My impression of this case is substantially influenced by my own experience participating in the setting of loss reserves for a D&O underwriting facility I managed years ago. My overall observation is that setting reserves is a complex process involving the participation of many people and the consideration of many factors. Premiums levels, assumptions about the length of time it takes for losses to develop, historical loss experience data (including trends within the data), and industry recognized actuarial formulas, all play into the setting of (and periodic adjustment to) loss reserves.

For this reason, my starting point about alleged omissions in connection with the announcement of loss reserves is a feeling of skepticism that any single factor – or omissions about any single factor – are by itself material to the question whether the reserves are accurate, reliable, and so on. The Third Circuit’s prior decision in the *Prudential* case reflects this same kind of skepticism. The appellate court said in *that* case that the plaintiffs have not presented sufficient allegations to suggest that the allegedly omitted information was material.

By contrast, the appellate court in this case said that the record in this case was “a far cry from the vague factual assertions” at issue in *Prudential*. By contrast to *Prudential*, in this case, the appellate court said, the “record contains various calculations, charts, and statements capturing Maiden’s many years of substantial and growing losses with AmTrust, Maiden’s dependence on AmTrust as its largest client, and the importance of historical trends to Maiden’s loss reserve process.”

The outcomes of the two distinct cases, and, more importantly, what the appellate court said about the differences in the allegations in the two cases, provide some reassurance that insurers are not, as a matter of course, going to courts second-guessing their loss reserves.

It is also important to me to recognize that during the time frames under discussion here, many carriers were also recognizing adverse loss development in the accident years involved. Adverse loss trends due to years of underpricing were forcing many carriers to engage in reserving strengthening, producing increased losses across the liability insurance industry. In my humble opinion, there was nothing in the years of say, 2015 to 2018, to suggest that the adverse and deteriorating loss experience during the period 2012 to 2015 was not representative of likely loss experience for the following years.

To be sure, starting in 2019, and continuing through 2021, the insurance industry was in a so-called “hard market,” meaning pricing increased dramatically – the sort of development that might allow an insurer to assume that the loss experience of prior years, reflecting underpricing, were not going to be representative of the hard market years. But the hard market had not yet kicked in during the years at issue in this case. There was less basis for an insurer to assume that prior years’ adverse experiences were not representative of what might happen in the years immediately before the advent of the hard market.

I will say this about the appellate court’s consideration of the issues of this case, and that is that the court’s analysis shows how intricate a court’s consideration of supposed omissions can be under the *Omnicare* analysis. In particular, a court’s consideration of the materiality of the allegedly omitted materiality is to be “context” specific, making the court’s scrutiny of the issues an analysis of (as the Third Circuit put it in the *Prudential* case) “complex assumptions and considerations.”

Given all of this it seems to me that it would be a challenging task for any plaintiff to present sufficient allegations to satisfy the materiality requirement in an opinion omissions case. Indeed, that was kind of what the Third Circuit said in the *Prudential* case. However, as *this* case shows, though the task is challenging, that does not mean it is impossible.

Securities Law News

C3.ai Investor Sues Over Sales Impact of CEO's Health Issues

Aug. 25, 2025, 11:54 AM PDT

C3.ai Inc. misled investors about how its founder-CEO's health problems were affecting the artificial intelligence company's bottom line before a recent financial report and ensuing 26% stock drop, a shareholder alleges.

C3.ai, CEO Thomas Siebel, and Chief Financial Officer Hitesh Lath made positive public statements while failing to disclose that Siebel's autoimmune condition "was having a significant impact on the Company's ability to close deals, that its management was unable or otherwise ineffectual in minimizing that impact, and that C3 AI would not be able to execute upon its profit and growth potential as a result," John Liggett Sr. says. Liggett filed his complaint Aug. 22 in the US District Court for the Northern District of California.

Siebel assured investors in February, soon after his diagnosis, that "about really the only thing I can't do is read e-mail" because of visual impairment and that he was "fully engaged," according to the complaint. In May, he spoke about growth in the market and declared, "I'm back," Liggett says.

On July 24, the company announced Siebel would depart but would remain "fully engaged" until a successor was found.

But on Aug. 8, c3.ai released disappointing revenue numbers, Liggett says. Siebel referred to "multiple hospitalizations and vision impairment," saying the "health issues prevented me from participating in the sales process as actively as I have in the past," according to the complaint.

The company's stock price fell about 26% the following business day, closing at \$16.47 per share on Aug. 11. The drop was the stock's steepest selloff in more than two years, according to data compiled by Bloomberg.



There are hundreds or thousands of members of the proposed class, the complaint estimates.

Liggett seeks damages on his securities fraud claims.

C3.ai didn't immediately respond to a request for comment sent through its web portal.

Levi & Korsinsky LLP represents Liggett.

The case is Liggett v. C3.ai, Inc. , N.D. Cal., No. 3:25-cv-07129, complaint 8/22/25 .

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Class Action

Manage Newsletters

Five Below Must Battle Investor Suit Over Sales Strategy (2)

Aug. 26, 2025, 6:11AM PDT; Updated: Aug. 26, 2025, 9:15AM PDT

Summary by Bloomberg AI

AI Generated



- Five Below Inc. must defend against allegations that the retailer misled shareholders on its ability to stock trending items while reducing inventory losses.
- A judge said that former employee testimony boosted an inference of ex-CEO Joel Anderson's intent to defraud or reckless disregard of statements boasting its execution of the plan to stock popular items.
- The public pension funds plausibly alleged that executives blaming shoplifting for shrink when inventory management was also causing problems was misleading, and that Five Below created a duty to disclose all other material facts as to the cause of shrink.

Five Below Inc. must defend against allegations that the retailer misled shareholders on its ability to stock trending items while reducing inventory losses.

A pair of pension plans adequately pleaded its chief operating officer and former CEO knew about struggles to stock hot merchandise while touting the strategies and attributing poor sales to retail theft and other issues, Judge Gerald Austin McHugh said Monday.

Former employee testimony boosted an inference of ex-CEO Joel Anderson's intent to defraud or reckless disregard of statements boasting its execution of the plan to stock popular items, as they allegedly frequently spoke about inventory issues for that merchandise, the US District Court for the Eastern District of Pennsylvania judge said.

The stockholders leading the case, retirement systems for certain public employees in Arkansas, plausibly alleged Anderson was aware of stocking problems while representing that shoplifting, macroeconomic trends, and old items were the reasons for weaker sales. They sufficiently pleaded COO Kenneth Bull's level of intent or recklessness while discussing strategies on tackling inventory shrink and stocking hot items.

The public pension funds also plausibly pleaded misrepresentations about executing the trend-right stocking plan. They sufficiently alleged that executives blaming shoplifting for shrink when inventory management was also causing problems was misleading. "By choosing to repeatedly speak about one cause of shrink—shoplifting—Five Below created a duty to disclose all other material facts as to the cause of shrink," McHugh said.

But Five Below and the executives shed claims concerning their focus on identifying popular merchandise and the importance of that stocking strategy, which differed from an ability to actually execute the plan. McHugh found confidential witness testimony for focus statements to be unreliable, and the stockholders didn't dispute that the strategy was important to Five Below, meaning they failed to plead falsity on those grounds.

The public pension plans failed to sufficiently allege statements about implementing inventory shrink mitigation efforts were misleading, McHugh said. And alleged misstatements about Five Below's "triple-double" strategy—to triple stores and double sales—weren't actionable.



The proposed class would include those who got Five Below stock from Dec. 1, 2022, through July 16, 2024. That day, Five Below said its longtime CEO was stepping down and sales remained falling. On a call with analysts, executives discussed needing to get back to its trend-right strategy, said the pension plans' complaint.

The retail chain's stock price plummeted 25% July 17, 2024, then its biggest one-day drop since March 2020, according to data compiled by Bloomberg. Share prices had dipped after prior disclosures about inventory shrink and weak sales, the pension funds said.

Bernstein Litowitz Berger & Grossmann LLP, which declined to comment, and Berger Montague PC are co-lead counsel for the public pension funds. Troutman Pepper Locke LLP represents Five Below and the two executives. None of these other law firms nor Five Below immediately responded to emails seeking comment.

The case is *In re Five Below, Inc. Sec. Litig.*, 2025 BL 300587, E.D. Pa., No. 24-3638, 8/25/25 .

(Updates with additional reporting and a chart below the seventh paragraph.)

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Securities Law News

Apple Investor Drops Siri AI Suit With Similar Claims Pending

Aug. 25, 2025, 10:53 AM PDT

An Apple Inc. investor relinquished his proposed class action alleging the iPhone-maker overhyped to shareholders the timeline of an artificial intelligence upgrade for Siri, citing a related lawsuit that's pending.

Investor Eric Tucker told the US District Court for the Northern District of California that he was dropping his complaint on Aug. 22. A pension plan filed a related proposed class action in the same court with AI-rooted allegations and more against the company, CEO Tim Cook, chief financial officer Kevan Parekh, and corporate services VP Luca Maestri a month after Tucker.

- He and the pension fund said revelations of promised AI-enhancements to Apple's voice assistant being delayed hindered share prices. Different stockholders had moved to consolidate those suits and become the lead plaintiff
- The pension plan's proposed class complaint also alleged Apple misled stockholders about its compliance with a court injunction tied to a commission on in-app purchases in an antitrust suit. Epic Games Inc. asked a court to enforce that injunction last year, saying Apple's new App Store policies flouted the order
- The proposed investor class targets those who got Apple stock from June 10, 2024, through June 9, 2025

Pomerantz LLP represents Tucker. Latham & Watkins LLP represents Apple, according to the Tucker docket. Neither law firm nor Apple immediately responded to emails offering the chance to comment.

The case is Tucker v. Apple Inc. , N.D. Cal., No. 5:25-cv-05197, 8/22/25 .

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Class Action

Manage Newsletters

Stoke Therapeutics Beats Shareholder Challenge to Board Bylaw

Aug. 26, 2025, 9:07 AM PDT

Stoke Therapeutics Inc. prevailed in litigation targeting its board nomination bylaw, adding momentum to recent court rulings that upheld similar advance-notice provisions against challenges from shareholders.

- A judge threw out a proposed class action against the biotech Monday, saying a landmark Delaware Supreme Court decision last year stood for the straightforward rule that a nomination bylaw “must be upheld if it can lawfully operate in any circumstance”
- Without a proxy fight in progress or on the horizon, the Stoke provisions “adopted on a clear day” fall short of that high bar despite “suboptimal” language, Vice Chancellor Lori W. Will said in an 18-page opinion for Delaware’s Chancery Court
- The state’s top court is already weighing a virtually identical ruling issued several months ago from a different member of the elite business tribunal who dismissed similar claims against AES Corp. in April

Read More: Activist Campaigns Stymied by Board Nomination Bylaw Rulings

The investor leading the Stoke litigation, Ryan Carroll, is represented by Block & Leviton LLP and Abbott Cooper PLLC. Stoke and its board are represented by Morris, Nichols, Arsht & Tunnell LLP and Fenwick & West LLP.

The case is Carroll v. Burstein , Del. Ch., No. 2024-0317, 8/25/25 .

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Securities Law

Manage Newsletters

Plantronics \$29.5 Million Investor Class Deal Gets Court Nod

Aug. 26, 2025, 10:34AM PDT

Plantronics Inc.'s \$29.5 million class settlement got a federal judge's blessing to resolve investor claims that the electronics company used deceptive sales practices to boost financial figures.

Judge Jon S. Tigar awarded the shareholders' lead counsel 22% of that sum, or \$6.49 million, in attorneys' fees plus interest and \$593,198 reimbursed in litigation expenses while approving the agreement on Monday. The accord ends a lawsuit in the US District Court for the Northern District of California that alleged Plantronics' positive financial results after it bought Polycom Inc. in 2018 were from an undisclosed and unsustainable implementation of over-sending inventory for meeting earnings guidance.

- The combined company renamed itself as Poly, which HP Inc. acquired in 2022
- The settlement class includes those who got Plantronics stock from Aug. 7, 2018, through Nov. 5, 2019
- Most of the attorneys' fees and all of the expenses will be paid upon this final judgment, but 10% of those fees will be paid after lawyers file post-distribution accounting for the disbursement of settlement funds to claimants

Bernstein Litowitz Berger & Grossmann LLP, which declined to comment, and Hagens Berman Sobol Shapiro LLP are co-lead counsel for the settlement class. Wilmer Cutler Pickering Hale & Dorr LLP represents Plantronics. None of these other law firms nor HP immediately responded to emails seeking comment.

The case is *In re Plantronics, Inc. Sec. Litig.*, N.D. Cal., No. 4:19-cv-07481, 8/25/25.

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Expert Opinion | **Securities Litigation**

Navigating Confidential Witness Allegations in Securities Litigation

August 26, 2025 at 10:37 AM By **Jay Dubow**

Erica H. Dressler

Milica Krnjaja



L-R: Milica Krnjaja, Erica H. Dressler and Jay A. Dubow of Troutman Pepper Locke. Courtesy photos

Introduction

Plaintiffs pursuing securities fraud claims under Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 face the heightened pleading standards imposed by both Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act (PSLRA). To survive a motion to dismiss, plaintiffs must therefore plead “the who, what, when, where, and how” of the alleged fraud and the facts that give rise to a strong inference that the defendant acted with scienter with

particularity. These requirements can pose significant hurdles for plaintiffs, who may lack firsthand knowledge or direct access to facts that clearly show why a statement was misleading or documents that reveal a defendant's state of mind.

To overcome the pleading challenges, plaintiffs attorneys frequently seek out former employees of the defendant company or its affiliates to provide alleged facts to support their claims. They then incorporate this information into a consolidated amended complaint—the first substantive pleading that defendants will move to dismiss. Plaintiffs attorneys often keep the identity of their sources of information confidential as long as possible, which is why they are often referred to as “confidential witnesses.”

Confidential witnesses can offer plaintiffs a strategic advantage in the early stages of a securities fraud case. Courts must accept well-pleaded allegations at the motion to dismiss stage, even if they are anonymous. Thus, many federal courts allow the use of confidential witnesses without requiring plaintiffs to name their sources, provided they are described with “sufficient particularity” to support the likelihood that someone in the source's position would possess the information.

Though the anonymity of the individuals providing the allegations often makes it difficult for defendants to assess the credibility of the allegations and counter these claims, if a court deems confidential witness allegations unreliable, it will disregard them when evaluating the sufficiency of the plaintiffs' claims in a motion to dismiss. As described in greater detail below, a critical task for any court reviewing a complaint with confidential witness allegations is to scrutinize the reliability of these claims.

Even when courts refuse to dismiss complaints relying on confidential witness allegations, which is often the case, defendants are not without recourse. Should a motion to dismiss be denied, either in whole or in part, defendants can delve into discovery related to the confidential witnesses, and potentially discredit them and undermine the plaintiffs' case.

Pleading Standards

Section 10(b) and Rule 10b-5 provide a private right of action for recovering damages based on material misstatements or omissions, or manipulative and deceptive devices, in connection with the sale or purchase of a security. Unlike Federal Rule of Civil Procedure 8(a), which requires that a complaint only set forth “a short and plain statement of the claim,” Federal Rule of Civil Procedure 9(b) applies to these claims because they are based in fraud. A plaintiff must therefore “state with particularity the circumstances constituting fraud or mistake.” In addition, the rigorous pleading standards set by the PSLRA apply.

Congress enacted the PSLRA to curb frivolous securities lawsuits. Before its passage, plaintiffs often survived motions to dismiss with minimal fraud allegations. Additionally, discovery usually went forward while a motion to dismiss was pending, and plaintiffs could then leverage pretrial discovery to fish for evidence relating to the claims brought or even different claims. This low threshold for initiating litigation led to a surge in baseless lawsuits. Defending against such suits was often prohibitively expensive, even when the claims lacked merit, prompting many defendants to opt for settlement over the costly battle to prevail in court. To counter this perceived exploitation of the legal process in private securities litigation, the PSLRA imposes two specific pleading requirements on plaintiffs.

First, when alleging that defendants made a material misrepresentation or omission, the complaint must clearly specify each statement alleged to be misleading, explain why it is misleading, and, if based on information and belief, detail all facts supporting that belief.

Second, because a Section 10(b) claim requires scienter—the intent to deceive, manipulate or defraud—the complaint must also present facts that strongly suggest the defendant acted with the required state of mind. The U.S. Supreme Court in *Tellabs v. Makor Issues & Rights*, 551 U.S. 308, 324 (2007), clarified that this “strong inference” must be more than plausible or reasonable; it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.

These pleading requirements can be challenging for plaintiffs in securities litigation, who typically do not have personal knowledge of, or direct access to, facts that demonstrate a statement is misleading or documents relevant to the defendant’s state of mind. Nor do plaintiffs have the benefit of formal discovery to aid in drafting the complaint, due to the PSLRA’s automatic stay of discovery during the pendency of a motion to dismiss.

Plaintiffs’ Use of Confidential Sources to Satisfy the Stringent Pleading Requirements

The PSLRA’s procedural framework allows plaintiffs to file an initial complaint that serves as a placeholder. The initial complaint is often sparse in factual detail but preserves the plaintiffs’ claims before the expiration of the statute of limitations. Once a complaint is filed, the PSLRA requires the court to appoint a lead plaintiff and lead plaintiff’s counsel.

It is only after this appointment that the plaintiffs have both the authority and incentive to pour resources into developing their case, which includes identifying and vetting potential confidential sources. This phase often involves hiring private investigators or contacting former employees to gather nonpublic information that may help bolster the complaint. Once the plaintiffs have amassed sufficient intel from these confidential sources, they weave it into the consolidated amended complaint—the first substantive pleading designed to survive a motion to dismiss.

Courts' Assessment of the Reliability of Confidential Witnesses and Their Allegations at the Pleading Stage

Securities plaintiffs generally are not required to name their confidential sources to meet their pleading burden. However, the complaint must offer "sufficient facts" to substantiate the allegations made by confidential witnesses. See, e.g., *Novak*, 216 F.3d at 314; *Chubb*, 394 F.3d at 145.

Courts scrutinize these allegations by examining the detail provided by the confidential sources, their basis of knowledge and their reliability. They also consider the corroborative nature of other facts alleged, including those from other sources, as well as the coherence and plausibility of the allegations. A source is deemed reliable only if the plaintiff adequately alleges the source of the witnesses' information (where and who), and how this information connects to the alleged misrepresentations (what and when). See, e.g., *Institutional Investors Group v. Avaya*, 564 F.3d 261 (3d Cir. 2009); *Novak*, 216 F.3d at 314; *OFI Asset Management v. Cooper Tire & Rubber*, 834 F.3d 481, 495-96 (3d Cir. 2016); *National Junior Baseball League v. PharmaNet Development Group*, 720 F. Supp. 2d 517, 547 (D.N.J. 2010).

Moreover, a complaint must describe each confidential source with enough particularity to support the likelihood that a person in the source's position would possess the information alleged. For instance, courts tend to credit confidential witness allegations when the complaint includes the witnesses' job descriptions and responsibilities. See, e.g., *Chubb*, 394 F.3d at 155; *Novak*, 216 F.3d at 313-14.

Conversely, courts have expressed skepticism about the reliability of information from witnesses who did not work at the company during the class period, are low-level employees opining on management-level issues, did not work in the relevant department or group, or lack personal knowledge and report only rumors and speculation. See, e.g., *Woolgar v. Kingstone Companies*, 477 F. Supp. 3d 193, 228 n.15 (S.D.N.Y. 2020) (rejecting confidential witnesses' "own subjective opinions" and statements regarding company's underwriting side of business because confidential witness did not work within that department); *In re Synchronoss Technologies Securities Litigation*, No. 17CV2978, 2019 WL 2849933, at *10 (D.N.J. July 2, 2019) (discounting testimony where the confidential witness was not alleged to have been personally involved in the transaction or have first-hand knowledge); *Altimeo Asset Management v. Qihoo 360 Technology*, No. 19-CV-10067, 2020 WL 4734989, at *11 (S.D.N.Y. Aug. 14, 2020) (rejecting "uncorroborated statements of confidential witnesses who are sourced secondhand").

When courts find confidential witness allegations unreliable, they will disregard them when evaluating plaintiff's allegations on a motion to dismiss. See, e.g., *Avaya*, 564 F. 3d at 263

(requiring courts to “steeply” discount CW testimony that does not meet particularity requirements); *In re Intelligroup Securities Litigation*, 527 F. Supp. 2d 262, 290 (D.N.J. 2007) (failure to meet pleading requirements “renders that source irrelevant”).

If, however, the court accepts confidential witness allegations as adequately particularized, that marks only the beginning of the inquiry. The court must then determine whether all alleged facts support a finding of a statement’s falsity or a defendant’s scienter consistent with the PSLRA’s heightened pleading requirements.

Challenging the Confidential Witnesses Outside the Pleadings

When a complaint relying on confidential witness allegations survives a motion to dismiss, defendants often turn to discovery to challenge the credibility and substance of those witnesses’ testimonies. This process becomes crucial if a confidential witness supports the plaintiffs’ claims beyond the pleading stage. Defendants are often able to identify the confidential witnesses based on the description of their position with the company and when they held such a position. Defendants can seek materials provided by confidential witnesses to the plaintiffs, such as transcripts, meeting memoranda and records of any compensation.

Defendants can also depose the confidential witnesses, which allows them to directly confront witnesses with the allegations and probe any biases. If a witness disavows or contradicts the complaint’s use of their statements, defendants can leverage this testimony to challenge their allegations.

Defense counsel should actively verify whether confidential witnesses actually made the statements attributed to them. If discrepancies are found, defendants should obtain recanting declarations. Defendants can use the recanting declarations and other documents demonstrating inconsistencies in confidential witness allegations to bring the issue before the court through motions practice. For example, if preliminary inquiries reveal that a confidential witness is ready to recant or deny the complaint’s allegations, defense counsel can request that a court reconsider the denial of a motion to dismiss under FRCP 54(b). Under FRCP 54(b), a court has the discretion to revisit interlocutory orders, such as those denying motions to dismiss, when they rest on factual inaccuracies. In this review, the court may weigh evidence of factual errors uncovered during discovery, focusing on whether its dismissal orders were influenced by fraud, counsel’s negligence, or the court’s own misunderstanding of the facts. By teeing up a motion for reconsideration, the defendants could succeed in having a case dismissed or settled before a battle on class certification.

Defendants who discover inaccurate confidential witness allegations might also consider filing a motion for sanctions under FRCP 11. This rule requires a lawyer signing a pleading to certify that

the allegations have evidentiary support or will have support after a reasonable opportunity for further investigation or discovery. FRCP 11 imposes an affirmative duty on the lawyer to conduct an objectively reasonable inquiry into the facts and law before signing papers filed with the court. While motions for sanctions are a drastic remedy, if defendants find credible evidence showing that the complaint contained allegations that plaintiffs counsel knew to be false, or that the pleading made assurances without verifying the information, this might be a viable approach.

Finally, defendants can use evidence from a recanting confidential witness to move for summary judgment or oppose the plaintiffs' motion for summary judgment.

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'Unacceptable': UPF case against Big Food thrown out



[legalnewsline.com/pennsylvania-record/unacceptable-upf-case-against-big-food-thrown-out/article_b3bbc9d6-0a4d-4f68-b967-61898ce7f80c.html](https://www.legalnewsline.com/pennsylvania-record/unacceptable-upf-case-against-big-food-thrown-out/article_b3bbc9d6-0a4d-4f68-b967-61898ce7f80c.html)

John O'Brien, John O'Brien

August 26, 2025

Mike Morgan

<https://www.forthethepeople.com/>

PHILADELPHIA – The ambitious lawsuit comparing ultra-processed foods to tobacco shouldn't move forward, a Philadelphia federal judge has ruled in rejecting legal claims made by the nation's largest personal injury firm.

Judge Mia Roberts Perez on Aug. 25 tossed the case at an early stage, granting the motion to dismiss of companies like Kraft Heinz, Coca-Cola and Conagra Brands. They were alleged to have marketed ultra-processed foods to young people despite putting their customers at risk of diabetes and other conditions.

Morgan & Morgan partner Mike Morgan said companies were "prioritizing profits over the health and safety" of customers. A 149-page complaint, the result of a year's work at the firm, said tobacco companies Phillip Morris and RJ Reynolds bought major food companies in the 1980s and hoped to use the addiction playbook they'd used with cigarettes.

But Perez determined after holding oral arguments on Aug. 1 that the case can't move forward.

"While the Court is deeply concerned about the practices used to create and market UPFs, and the deleterious effect UPFs have on children and the American diet, it cannot allow this action to proceed because Plaintiff has failed to state a claim upon which relief may be granted," she wrote.

The plaintiff is Bryce Martinez of Bucks County, who was diagnosed with type 2 diabetes and non-alcoholic fatty liver disease at 16. His lawyers blamed the diet allegedly forced on him by the food industry, and other firms noticed.

Dozens of other plaintiff firms created UPF pages on their websites and offered free consultations for clients willing to hire them on contingency fees.

But the lawsuit was "woefully deficient" in establishing a causal link between the food and illnesses, Perez wrote.

"Plaintiff does not allege how often he consumed Defendants' products, in what amounts, or when," she wrote. "Neither does he allege when he ate Defendants' products in relation to when he received his diagnoses or even began experiencing symptoms."

“Indeed, the 668-paragraph complaint contains only one substantive fact about Plaintiff: he was 16 when he was diagnosed with Type 2 diabetes and non-alcoholic fatty liver disease.”

Asked at oral argument for more, Martinez’s lawyers offered that he is now 19, lives in Philadelphia and is “just a normal kid who, unfortunately, has gotten sick...”

That sickness could have been caused by something else, Perez wrote. She says she needs more than just a possibility of causation, and it wouldn’t have hurt if Martinez could have at least identified what foods he ate.

Simply pointing at Old El Paso and Gerber brands wasn’t good enough. All totaled, they make at least 350 different products.

“By naming over 100 brands, Plaintiff has put thousands of products at issue without any additional information to identify which caused his harm. That is unacceptable,” Perez wrote.

The issue of ultra-processed foods has come up in cases around the country, including two over Girl Scout cookies, while two West Virginia in May announced a plan to file one of their own after launching the website type2lawsuit.com.

Kraft, other companies defeat test lawsuit over ultra-processed foods



reuters.com/sustainability/boards-policy-regulation/kraft-other-companies-defeat-test-lawsuit-over-ultra-processed-foods-2025-08-25

Diana Jones

August 25, 2025

Item 1 of 3 Bottles of Heinz Ketchup are displayed on a shelf in a supermarket in Sarajevo, Bosnia and Herzegovina October 29, 2024. REUTERS/Dado Ruvic/File Photo

[1/3]Bottles of Heinz Ketchup are displayed on a shelf in a supermarket in Sarajevo, Bosnia and Herzegovina October 29, 2024. REUTERS/Dado Ruvic/File Photo [Purchase Licensing Rights, opens new tab](#)

- Judge says lawsuit lacks details on cause of plaintiff's illness
- Plaintiff's lawyer says they will explore options
- Case seen as a test for lawsuits over ultra-processed foods

Aug 25 (Reuters) - Kraft ([KHC.O](#)), [opens new tab](#), Mondelez ([MDLZ.O](#)), [opens new tab](#), Coca-Cola ([KO.N](#)), [opens new tab](#) and several other major food companies on Monday succeeded in winning the dismissal of a lawsuit that accused them of designing harmful "ultra-processed" foods addictive to children.

U.S. District Judge Mia Perez in Philadelphia granted the companies' motion to dismiss after finding that the plaintiff in the case, 19-year-old Bryce Martinez, failed to connect specific food products to his Type 2 diabetes and non-alcoholic fatty liver disease.

Martinez, a Philadelphia resident, said he was diagnosed with the illnesses at age 16 after consuming the companies' products.

The lawsuit was seen as a test case because it accused the companies of using the same strategies the tobacco industry once did in knowingly addicting Americans to popular food products despite their health risks.

While the definition of ultra-processed foods is under debate, researchers have considered it to apply to many packaged snack foods, sweets and soft drinks made with substances extracted from whole foods or synthesized artificially.

Perez said that the lawsuit listed more than 100 food brands but Martinez failed to name any specific products as causes of his illnesses.

Representatives for Kraft Mac & Cheese and Heinz ketchup maker Kraft Heinz, Oreo cookies and Ritz crackers baker Mondelez and soft drink company Coca-Cola did not immediately respond to requests for comment.

General Counsel Stacy Papadopoulos of the Consumer Brands Association, an industry group representing food and beverage makers, said in a statement the lawsuit should never have been filed.

"Classifying foods as unhealthy simply because they are processed misleads consumers and exacerbates health disparities," she said.

Mike Morgan, an attorney for Martinez, said in a statement that they were evaluating options for next steps in the case.

"The scientific evidence demonstrating the addictive nature of these products is compelling, and we remain confident in the merits of our case," Morgan said.

Ultra-processed foods have come under more scrutiny during the second Trump administration. U.S. Health Secretary Robert F. Kennedy Jr. said in May that the "central focus" of the National Institutes of Health and the Food and Drug Administration will be on studying ultra-processed foods, sugars and food additives.

Also in May, a commission led by Kennedy issued a report that said processed food, chemicals, stress and over-prescription of medications and vaccines may be factors behind chronic illness in American children.

Martinez's lawsuit alleged food companies have long known their products are harmful and deliberately engineered them to be as addictive as possible. It alleged they are drawing from the same "cigarette playbook" as tobacco giants Philip Morris ([PM.N](#)), [opens new tab](#) and R.J. Reynolds, which for a time owned the companies that became Kraft Heinz and Mondelez.

Reporting by Diana Novak Jones in Chicago; Editing by Chizu Nomiya, Alexia Garamfalvi, Rod Nickel and Cynthia Osterman

Our Standards: [The Thomson Reuters Trust Principles.](#), [opens new tab](#)

As BNP Paribas faces trial over Sudanese genocide, victims' lawyers fight each other



reuters.com/legal/government/bnp-paribas-faces-trial-over-sudanese-genocide-victims-lawyers-fight-each-other-2025-08-26

Jenna Greene

August 26, 2025

The logo of BNP Paribas is seen outside a bank building in Rueil-Malmaison, near Paris, France, April 14, 2025. REUTERS/Stephanie Lecocq/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 26 (Reuters) - "What to do with this mess?"

That was the question U.S. District Judge Alvin Hellerstein posed last month to bitterly squabbling plaintiffs' lawyers in a [class action](#) over French bank BNP Paribas's alleged role in financing the Sudanese government's human rights abuses during the regime of former president Omar al-Bashir.

The case is headed for a 10-week trial in Manhattan federal court on Sept. 8, but the nasty brawl between lawyers for the alleged victims has thrown a wrench into the plans. According to previously unreported court filings and transcripts, co-lead plaintiffs' counsel Michael Hausfeld and trial counsel from Zuckerman Spaeder told the judge last month they could not continue to work with the other co-lead plaintiffs' lawyer in the case, Kathryn "Lee" Boyd of Hecht Partners.

The two camps have accused each other in court papers of rampant misbehavior, using words like "unfit," "vituperative," "lying," and "colluding" in describing their erstwhile colleagues.

Hausfeld and Zuckerman partners Cyril Smith and Aitan Goelman did not respond to requests for comment.

Boyd in an emailed statement said trial counsel are "committed to seeking justice" for the plaintiffs.

A spokesperson for BNP Paribas, which is represented by Gibson, Dunn & Crutcher; and Cleary Gottlieb Steen & Hamilton; declined to comment. The bank in court papers denies wrongdoing.

It's not unusual for opposing counsel to level accusations of misconduct at each other – they're antagonists after all – nor is it rare for plaintiffs' lawyers to bicker amongst themselves over strategy or the division of fees. What's extraordinary here is how, after years of litigation, the plaintiffs' team has imploded so dramatically.

The 91-year-old Hellerstein made clear he has little interest in brokering the conflict, telling the lawyers he was unwilling “to adjudicate in whatever way who was right and who was wrong,” according to a transcript of proceedings on July 10.

But the clash raises bigger issues. “If trial counsel dispute, they cannot effectively represent a client,” he said.

Here, the lawyers are litigating on behalf of a class of an estimated 20,000 Sudanese refugees in the U.S. They allege BNP Paribas knew, or should have known, that by providing banking services in Sudan, it was contributing to human rights abuses between 1997 and 2011. The plaintiffs haven't specified the amount of damages they're seeking.

The bank in court papers has [responded, opens new tab](#) that it cannot be held liable as an “accomplice” to unidentified bad actors in Sudan, and that the plaintiffs have not offered proof that its “financial services were actually used to fund any attack or purchase weapons” that individually harmed them.

The U.S. government [recognized, opens new tab](#) the Sudanese conflict as a genocide in 2004.

BNP Paribas in 2014 agreed to plead guilty and pay an [\\$8.97 billion penalty to](#) settle U.S. charges that it transferred billions of dollars for Sudanese, Iranian and Cuban entities subject to economic sanctions. The Sudanese victims of alleged atrocities including murder, mass rape and torture, did not receive any of the funds as compensation.

Boyd filed the class action, which is being litigated under Swiss law, in 2016. A Harvard Law School graduate, she's represented victims of Argentina's “dirty war,” families of terrorist hijacking victims and the Armenian Orthodox Church in seeking return of art stolen during the Armenian Genocide, according to her law firm bio.

The district court in 2018 dismissed the case, but the 2nd U.S. Circuit Court of Appeals revived it a year later, [ruling](#) that the claims were subject to U.S. judicial review.

In 2019, Boyd brought on Hausfeld's firm as co-counsel, an appointment that was later made official by the district court.

Initially, the collaboration was harmonious, Boyd told Hellerstein at the July 10 hearing. But things became strained last year, she said, after a Hausfeld partner who Boyd had been working with left the firm, and Michael Hausfeld himself stepped in as co-lead counsel, court records show.

Hausfeld is well-known for his work representing plaintiffs in antitrust, human rights and discrimination matters, including a class of Holocaust victims in litigation against three Swiss banks.

The two co-lead counsel had “a conflict of personalities,” Boyd told Hellerstein at the hearing, and began to battle for control of the case.

The ill-will first became public when Hausfeld and trial counsel from Zuckerman (who were added to the case by Hausfeld earlier this year) filed a [motion, opens new tab](#) on July 9 asking the judge to disqualify Boyd as co-lead counsel.

She “will not cooperate and will not heed Court orders or ethical advice,” the motion states, claiming that Boyd attempted to “force words into the mouth of an expert witness,” and allegedly coached class members on how to fill out a questionnaire being used for settlement purposes. They also said Boyd unilaterally attempted to fire Zuckerman.

Boyd denied wrongdoing, [responding, opens new tab](#) in court papers that the Hausfeld/Zuckerman team is trying to settle the case “behind closed doors without the consent or involvement of the very people they purport to represent.” She also said they demanded full control of the case.

Hellerstein declined to delve into the allegations of misconduct. “The aspersions I haven't read, I don't care to read, I'm not going to read,” he said at the July hearing.

The judge suggested that Zuckerman lawyers should serve as sole trial counsel, with both Boyd and Hausfeld taking a back seat.

Boyd said she was open to Zuckerman lawyers leading the trial, provided she and Hausfeld would still “have the final say together on settlement and on strategy,” but Zuckerman partner Smith reiterated that his team could not try the case with Boyd.

Nor could the judge easily give Boyd the boot. Not after Sudanese-American class representatives in attendance at the July hearing told him, “We trust only Kathryn Lee Boyd,” as one plaintiff put it, insisting that she stay on as his lawyer.

With few options, Hellerstein made a novel procedural move. He severed the claims of the three trial plaintiffs – the ones who told him they wanted Boyd as their lawyer – from the class.

The trio will no longer serve as class representatives, and the upcoming trial will concern their individual claims alone, with Boyd as their counsel. Whatever the verdict, Hellerstein said, it will not be determinative for the still-pending class as a whole. (Though it's hard for me to imagine it wouldn't impact potential settlement negotiations.)

“They want you, they have you,” Hellerstein told Boyd. “Whether they made a mistake or not, that's for them to decide.”

At the same time, he directed the Hausfeld/ Zuckerman team to remain as class counsel with Boyd, though it's not clear how that's going to work, since the judge also said he was “not going to enforce cooperation when there isn't cooperation.”

And if there's one thing that seems to be lacking in this case, it's cooperation.

California Brief

Meta, Insurers Double Down on Forum Fight in Social Media Case

Aug. 25, 2025, 8:02 AM PDT

Meta Platforms Inc.'s liability insurers are accusing the social media giant of engaging in a “forum gambit” to evade a Delaware state court’s jurisdiction in a coverage dispute over social media addiction suits.

The social media company has taken “extraordinary efforts” to prevent the Delaware court from reaching the merits of the dispute, and its motion to stay or dismiss the suit should be denied, units of Hartford Insurance Group Inc. and Chubb Ltd. said in their latest filing with the Delaware Superior Court.

“That Meta has already lost on the issues it now re-raises to this Court underscores why its motion should be denied,” the insurers said. Resolving the carriers’ duty to defend wouldn’t prejudice Meta because that determination is a purely legal issue based solely on whether the underlying allegations—not Meta’s actual actions—are within the scope of coverage, the insurers argued in their Aug. 21 brief.

The insurers have argued that the underlying suits brought by state attorneys general, school districts, and individuals allege harm stemming from the deliberate design of Meta’s platforms and are barred by policies that only cover injuries caused by accident.

Hartford first sued Meta in the Delaware court in November 2024. Meta responded by removing the case to Delaware federal court and filing its own suit in California federal court, kicking off the current forum fight.

The dispute was transferred to the underlying multidistrict litigation before a California federal court, but the California judge shot down Meta’s bid to litigate the coverage fight in that court and sent the case back to Delaware state court in May. Meta in July filed a second suit against its insurers, this time in California state court. The next day, Meta moved to dismiss or stay the Delaware case, and the insurers moved for summary judgment on their duty to defend.

Meta, in a memo opposing the insurers’ request for summary judgment, reiterated its argument that California law should apply and would require the Delaware court to dismiss or stay the case. In any event, the underlying suits alleged covered damages and the insurers do have a duty to defend, the social media company said.

Ruggeri Parks Weinberg LLP and Bayard PA represent Hartford. Holwell Shuster & Goldberg LLP and Stamoulis & Weinblatt LLC represent Chubb. Covington & Burling LLP and Berger McDermott LLP represent Meta.

The case is Hartford Casualty Ins. Co. v. Instagram LLC, Del. Super. Ct., No. N24C-11-010, briefing on pending motions 8/21/25 .

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Fighting forever chemicals: What California can learn from New Jersey's PFAS settlement blueprint

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[dailyjournal.com/articles/387238-fighting-forever-chemicals-what-california-can-learn-from-new-jersey-s-pfas-settlement-blueprint](https://www.dailyjournal.com/articles/387238-fighting-forever-chemicals-what-california-can-learn-from-new-jersey-s-pfas-settlement-blueprint)

Aug. 26, 2025

New Jersey's layered PFAS settlement secures long-term funding for cleanup and remediation, offering a potential blueprint for California as it navigates its ongoing "forever chemicals" litigation.

Roberto Escobar

Roberto "Bobby" Escobar is general counsel, and an environmental and labor and immigration advisor.

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In the realm of environmental law, few issues have garnered as much sustained attention as per- and polyfluoroalkyl substances (PFAS). These "forever chemicals" have sparked a nationwide surge in investigations, litigation and settlement frameworks that are reshaping how states finance cleanup, secure long-term remediation and restore natural resources. At the heart of this battle, New Jersey stands out as a pioneering force, forging an innovative settlement structure that could serve as a beacon of hope for others, including California, which is still embroiled in a sweeping lawsuit against PFAS manufacturers. This article examines why the Garden State's approach matters, what California can draw from it and what is at stake as regulators and courts balance accountability, fiscal assurance and public health imperatives.

New Jersey's proposed settlement with DuPont, Chemours, and Corteva, as well as a separate agreement with 3M, illustrates a comprehensive and layered approach to securing both near-term and long-term funds for remediation, drinking water abatement, and natural resource damages (NRD). California, meanwhile, continues to litigate against a broad set of manufacturers in a case led by the Attorney General, positioning the state to seek

meaningful relief. At the same time, it evaluates the evolving federal regulatory landscape. Together, these developments underscore the urgent need for coordinated strategies that braid litigation outcomes, financial assurances and regulatory timelines.

The New Jersey settlement: Structure and substance

In August 2025, New Jersey's Department of Environmental Protection (NJDEP) announced a proposed settlement with DuPont, Chemours, and Corteva that -- pending public comment, rulemaking and court approval -- includes:

- \$875 million in payments over 25 years (allocated Chemours 50%, DuPont 35.5%, Corteva remainder);
- A Remediation Funding Source (RFS) of up to \$1.2 billion, secured by surety or similar financial assurance; and
- A separate, surety-backed reserve fund capped at \$475 million (secondary to the RFS) to ensure obligations are met even in the event of bankruptcy or default.

The payments would begin no earlier than Jan. 1, 2026, and the deal targets four major legacy sites: Pompton Lakes Works, Parlin/Sayreville, Repauno/Greenwich Township, and Chambers Works (Deepwater-Pennsville-Carneys Point). Notably, the companies have stated their present-value shares of the settlement (Chemours, 50%; DuPont, 35.5%; Corteva, 14.5%), underscoring their internal cost-sharing arrangement for the obligations imposed. While some public reporting has attributed dollar figures to NRD, drinking water projects, and costs/fees/penalties (e.g., \$225 million, \$650 million, \$125 million), the companies' own releases emphasize the overall settlement architecture rather than line-item allocations, ensuring a transparent and accountable process.

The RFS is a core feature: it is not a cash trust paid on day one; rather, it is a financial assurance vehicle -- backed by surety or similar instruments -- designed to fund ongoing remedial obligations over time. The distinct \$475 million reserve fund is layered on top as secondary financial assurance. Together, they aim to prevent underfunding or abandonment risks that have plagued long-horizon cleanups, especially where corporate structure, asset location, or potential insolvency could complicate recovery.

The 3M dimension in New Jersey

Parallel to the DuPont/Chemours/Corteva proposal, New Jersey announced a separate, proposed settlement with 3M -- reported up to \$450 million -- also subject to public comment and court approval. This additional settlement with 3M, a major manufacturer of PFAS, is significant as it reflects a statewide effort to secure durable PFAS remediation resources from multiple manufacturers. For observers in other jurisdictions, New Jersey's two-track

approach -- site-specific obligations tied to financial assurance on one hand, and a major manufacturer settlement on the other -- offers a constructive model that can be customized to fit the local fact pattern and statutory regime.

Why the architecture matters: Financial assurance and durability

The genius of New Jersey's approach lies less in any single headline number and more in the architecture that binds those numbers to durable performance:

- **Layered assurances:** By combining scheduled cash payments with surety-backed RFS and a secondary reserve, NJDEP is trying to ensure that remediation and restoration funding persists even if corporate entities change, capital markets tighten, or individual projects balloon in cost.
- **Site-specific tailoring:** Focusing on known high-impact sites ties dollars to tangible outcomes -- remedial actions, plume control, source removal, sediment work and drinking-water protections -- rather than purely theoretical harms.
- **Public oversight and staged approval:** Public comment and court approval, along with agency rulemaking and consent-order enforcement, reinforce transparency and accountability -- key to maintaining trust in long-term, multi-decade obligations.

California's litigation posture: Broad and still active

California filed a wide-ranging lawsuit in November 2022 against multiple manufacturers of PFAS. As of Aug. 25, 2025, there is no announced statewide settlement with manufacturers. California's case seeks to recover costs associated with contamination across a vast geography and industrial history. With its focus on drinking water supplies, environmental remediation and NRD, California is well-positioned to pursue both direct cleanup costs and broader public trust harms.

The state's litigation runs in parallel with federal activity, including national settlements that affect water systems in the AFFF multidistrict litigation (MDL 2873, D.S.C.). These national settlements, which primarily address public water provider claims arising from AFFF use, involve major PFAS manufacturers including 3M, DuPont/Chemours/Corteva, Tyco/Chemguard, BASF and others. California's suit, by contrast, targets a broader sweep of manufacturing and product-related conduct, with an eye toward statewide remedies. The two tracks are complementary: MDL recoveries can defray water-system costs, while state litigation can press forward on manufacturer accountability, site-specific abatement and NRD.

What California can borrow from New Jersey

If California moves toward settlement with one or more defendants, the New Jersey model offers several lessons:

- 1) Build in financial assurance: Ensure that an RFS or equivalent financial instrument backs obligations with a secondary reserve. This helps future-proof the deal against corporate reorganizations, spin-offs, or insolvency.
- 2) Tie dollars to sites and outcomes: Identify priority plumes, landfills, industrial sites, and surface-water/sediment hot spots. Direct settlement funds to specific remedial actions (e.g., pump-and-treat expansion, GAC/IX - granular active carbon/ion exchange upgrades, source removal, sediment dredging) with measurable milestones.
- 3) Reserve space for drinking-water abatement and NRD: Carve out allocations (or at least permissible categories) for system upgrades, private well mitigation, and ecological restoration. California's ecological assets -- and the scale of its water systems -- warrant explicit attention.
- 4) Maintain public transparency: Utilize consent decrees or judgments with detailed exhibits, reporting cadence, and mechanisms for public oversight. Consider independent auditing or third-party verification to ensure accuracy and transparency regarding cost and performance.
- 5) Integrate with federal timelines: Align settlement milestones with federal drinking-water compliance schedules and health advisory evolutions. That allows systems to sequence capital upgrades and leverage any federal funding streams.

Regulatory backdrop: A moving target

PFAS regulation is evolving. The EPA's national drinking-water standards for PFOA and PFOS remain in place, and the agency has signaled plans to extend specific compliance deadlines and reevaluate other PFAS (PFNA, PFHxS, HFPO-DA/GenX, PFBS) with a draft rule anticipated in the fall of 2025. States may respond by calibrating their own maximum contaminant levels (MCLs), response levels, and health-based advisories. For settlement negotiations, this dynamism matters: parties need flexibility to adapt to shifting targets while securing baseline protections and funding.

Municipal and water-system impacts

For California water systems, especially small and rural providers, PFAS compliance intersects with affordability, rate-setting and infrastructure planning. Settlements that earmark funds for treatment upgrades (GAC, IX, high-pressure membranes), well replacement, or interties can help mitigate the fiscal impact. Coordination between state litigation recoveries and MDL water-system settlements can maximize impact, reduce duplicative efforts, and accelerate the deployment of treatment technology where it's needed most.

Natural resource damages and ecological restoration

PFAS contamination extends beyond drinking water. Wetlands, riparian corridors, estuaries, and near-shore marine habitats may accumulate PFAS, which can affect fish, wildlife and human subsistence uses. New Jersey's emphasis on NRD signals an essential path for California: quantify ecological injury and press for restoration funds that complement engineered remedies. Projects might include marsh restoration, sediment management, habitat enhancement and fishery advisories, paired with community engagement and environmental justice commitments.

Looking ahead: Settlement architecture as policy

Whether in New Jersey, California, or elsewhere, PFAS settlements are fast becoming a form of infrastructure policy by another name. They set the contours of who pays, for how long, and under what assurances. They also signal expectations around transparency, adaptive management, and environmental justice. For California, a New Jersey-style framework -- customized to the state's hydrology, industrial legacy and regulatory mosaic -- could provide a stable foundation for multi-decade cleanup and resilience investments.

Ultimately, the choice between litigation and settlement is not a binary one. Many jurisdictions are walking and chewing gum at the same time: pursuing active litigation to sharpen the record and leverage, while exploring settlement architectures that lock in durable funding. In that posture, California's ongoing case and participation in national settlements, alongside region-specific actions by local agencies, together form a multi-layered strategy responsive to the scale and nature of harm caused by PFAS.

Together, these approaches illustrate the balance that future settlements must strike: enforceable obligations backed by robust financial assurance, transparent site-specific commitments, and alignment with evolving drinking-water standards and ecological science. With thoughtful design, states can translate legal victories into clean water, restored ecosystems and lasting public health protections.

#387238

Litigation

Manage Newsletters

Anthropic Settles Major AI Copyright Suit Brought by Authors (1)

Aug. 26, 2025, 9:41AM PDT; Updated: Aug. 26, 2025, 10:28 AM PDT

Anthropic PBC reached a settlement with authors in a high-stakes copyright class action that threatened the AI company with potentially billions of dollars in damages.

In a Tuesday filing in the US Court of Appeals for the Ninth Circuit, both sides asked the court to pause all proceedings while they finalize the deal. The parties signed a binding term sheet on Aug. 25 outlining the core terms of a proposed class settlement to resolve litigation brought by authors.

"This historic settlement will benefit all class members," said the authors' counsel, Justin Nelson of Susman Godfrey LLP. "We look forward to announcing details of the settlement in the coming weeks."

The case is one of several copyright actions brought against AI developers in courts around the country. Judge William Alsup of the US District Court for the Northern District of California had allowed the class action to proceed for authors whose books were contained in two pirate databases Anthropic downloaded.

Trial in the dispute was slated for December in San Francisco. Anthropic had appealed Alsup's decision to certify the class of authors and sought an emergency stay before potential class members were contacted.

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

The case is *Bartz v. Anthropic PBC*, 9th Cir., No. 25-4843, motion to hold appeal filed 8/26/25 .

(Updates throughout with additional context and attorney comment. An earlier version named the incorrect day for the filing.)

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Anthropic settles class action from US authors alleging copyright infringement



reuters.com/sustainability/boards-policy-regulation/anthropic-settles-class-action-us-authors-alleging-copyright-infringement-2025-08-26

Reuters

August 26, 2025

Anthropic logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 26 (Reuters) - Artificial intelligence company Anthropic said in a court filing on Tuesday it had settled a class action lawsuit from a group of U.S. authors who argued the company's AI training infringed their copyrights.

Details of the settlement were not immediately available.

A California judge said in a June ruling that Anthropic may have illegally downloaded as many as 7 million books from pirate websites, which could have made it liable for billions of dollars in damages if the authors' case was successful.

Reporting by Blake Brittain; Editing by Chris Reese

Our Standards:

News | **Artificial Intelligence**

‘Discovery Is Not a Fishing Expedition’: Dismissal in AI Copyright Case Highlights Dilemma

August 25, 2025 at 06:25 PM By **Michelle Morgante**

What You Need to Know

- Breyer dismissed the claim of direct infringement as speculative and vague.
- Plaintiffs could add a new complaint if current claims lead to stronger evidence.
- Legislation could make it easier for copyright holders to trace use of their works.



U.S. District Judge Charles Breyer, of the Northern District of California.

How are copyright holders to prove their works were used to train AI models if the details about the vast data sets used for such training are kept secret? That's a dilemma that surfaced last week when a federal judge dismissed a claim of direct infringement raised by a group of authors.

In a class action suit led by novelist Stewart O'Nan and other writers, U.S. District Judge Charles Breyer on Aug. 19 dismissed the direct infringement claim against Databricks and its subsidiary MosaicML, finding the allegation overly speculative and vague.

The March 2024 suit, filed by Joseph Saveri Law and Lockridge Grindal Nauen in the Northern District of California, alleges copyrighted works were used to train the defendants' MPT and DBRX AI models. The defendants are represented by Fenwick & West.

To make their case, plaintiffs pointed to a MosaicML blog post that said it used a massive open-source data set called RedPajama Books, according to an amended complaint filed in June. Plaintiffs connected that data set to other collections, such as one called Books3, that could be traced to illicit shadow libraries found online and that include the plaintiffs' works.

"These shadow libraries have long been of interest to the AI-training community because they host and distribute vast quantities of unlicensed copyrighted material. For that reason, these shadow libraries also violate the U.S. Copyright Act," the amended complaint said.

Judge Breyer, however, said the allegations regarding the underlying data sets "are far too generalized to state a claim for copyright infringement." Even if the data sets were notably large, he said, their "mere size ... does not plausibly connect the dots to the plaintiffs' works."

"Plaintiffs do not allege facts that could establish that the DBRX models are actually trained on any shadow library websites, let alone those that contain plaintiffs' works," he wrote. Even when allegations are based on "information and belief," he said, they "must be supported by a factual foundation leading to that belief."

"It is the lack of factual, rather than conclusory, allegations as to what materials Databricks actually used to train the DBRX models that dooms Plaintiffs' direct infringement claim against Databricks," the Aug. 19 order said.

AI companies, however, have sought to keep the specifics of their training methods from being revealed, arguing they are trade secrets. Without knowing such specifics, plaintiffs are challenged to prove their works were infringed. Trying to uncover such use in discovery, however, is tricky because, as Breyer noted, "discovery is not a fishing expedition."

Plaintiffs in similar cases have attempted to prove the AI models trained on their protected works by demonstrating the generative AI products produce identical or nearly identical replicas, such as



Christopher S. Ford of Debevoise & Plimpton. Courtesy photo

Claude's production of the [lyrics to "American Pie"](#) in Universal Music Group's suit against Anthropic.

"This has been a real struggle for plaintiffs in a lot of these AI training cases," said Christopher Ford, counsel on Debevoise & Plimpton's Intellectual Property Litigation Group in New York. "What we've seen as a way of getting around this problem is plaintiffs trying to include information in their complaint to show that the model will put out the exact or very similar text as to their claimed copyrighted works."

It's not clear from the complaint against Databricks and MosaicML whether plaintiffs attempted this route, he said. Attorneys for the plaintiffs did not immediately respond to requests from [Law.com](#) for comment.

AI companies, Ford noted, have responded to complaints of regurgitation by setting up "guardrails" intended to prevent such duplications.

"One of the ironic pieces of this is that those sorts of controls are actually the kinds of controls that copyright owners want," he said. "But it also, by the same token, creates a real problem for plaintiffs trying to prove that their copyrighted works are in the data set."

Breyer's order, however, left open the possibility for plaintiffs to further amend their complaint if discovery into the surviving claims "reveals information that would permit them to allege facts—not conclusions—as to Databricks' liability for direct infringement."

Narrowing direct infringement claims to specific examples is particularly important, noted Barbara Barath, partner at Coblenz Patch Duffy & Bass in San Francisco. Otherwise, every large language model developer would be open to claims based on speculation.

Plaintiffs, she said, should look for evidence that is at least circumstantial.

Some creators of copyrighted works have used online tools to determine whether their works are part of data sets used for AI training, such as visual artist Sarah Andersen, who leads a class action suit against Stability AI in California's Northern District.



Barbara Barath of Coblentz Patch Duffy & Bass. Courtesy photo.

According to that suit, currently pending before District Judge William Orrick, Andersen used the site haveibeenentrained.com to determine her works had been scraped to train the Stable Diffusion project.

In 2023, the court found the facts were sufficiently pleaded there because Andersen alleged that she used the website to confirm that her works were part of the data set that had been used to train Stable Diffusion, Barath said. Other plaintiffs have pointed to outputs of LLMs that they allege duplicate or are substantially

similar to their works. Plaintiffs have been "able to use those two things to get by a motion to dismiss and then, obviously, get further discovery on what was actually in the training set," Barath said.

But using the online search tool, she noted, only works if you know which data sets were used by the AI developers. And getting AI models to generate duplications has become harder due to the use of development guardrails.

"So you might not, as a plaintiff, be able to do either of those things," she said.

The other path to support copyright holders is through legislation, Barath noted. In California, the [Artificial Intelligence Training Data Transparency Act](#) (AB 2013) will take effect on Jan. 1 and requires developers of generative AI systems to publicly post a high-level summary of the data sets they used. It will apply to systems or services released on or after Jan. 1, 2022.

While there is still the question of what constitutes a "high-level summary," it's a step toward allowing plaintiffs to obtain the information they need to have sufficient facts to plead a claim, Barath said.

With the Trump administration supporting AI developers' opposition to regulation, it's more likely that copyright holders will be supported at the state level, she said.

One bill introduced in the U.S. Senate, however, aims to help copyright holders determine which of their works have been used to train AI models. The [Transparency and Responsibility for Artificial](#)

[Intelligence Networks Act](#), or TRAIN Act (S. 2455), was introduced July 24 and is sponsored by Sen. Peter Welch, a Vermont Democrat, and co-sponsored by Sen. Adam Schiff, D-CA; Sen. Josh Hawley, R-MO; and Sen. Marsha Blackburn, R-TN.

“This is simple: if your work is used to train AI, there should be a way for you, the copyright holder, to determine that it’s been used by a training model, and you should get compensated if it was,” Welch [said in a statement](#). “We need to give America’s musicians, artists and creators a tool to find out when AI companies are using their work to train models without artists’ permission.”

A statement from Hawley added, “AI should be in service to the American people—not the other way around. ... Congress should ensure that copyright holders can assert their rights against AI companies that are pirating creative works, and this bill gives Americans the tools to do so.”

The bill currently is pending before the Judiciary Committee.

Editor's Note: This story was updated on Aug. 25, 2025 to correct that Barath's firm is Coblentz Patch Duffy & Bass in the photo caption and to correct spelling of name of visual artist Sarah Andersen.

Page printed from: <https://www.law.com/therecorder/2025/08/25/discovery-is-not-a-fishing-expedition-dismissal-in-ai-copyright-case-highlights-dilemma/>

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California Brief

OpenAI, Microsoft Push for Records on Times' Use of ChatGPT Tool

Aug. 25, 2025, 9:57 AM PDT

OpenAI Inc. and Microsoft Corp. are sparring with New York Times Co. over whether the newspaper's use of OpenAI's LLMs are relevant to its landmark copyright lawsuit over the tech giants' use of Times articles to train ChatGPT.

The 80,000-plus logs from an internal AI tool used by the Times are critical to show OpenAI's LLMs are used in ways that don't infringe copyrights, OpenAI and Microsoft argued in separate briefs filed Aug. 22. The same day, the Times said the documents aren't relevant to its claim of contributory copyright infringement when ChatGPT is used to generate infringing outputs.

"The fact that a product may be used in ways that are not infringing has no relevance to a claim against the uses of the product that are infringing," the Times told the US District Court for the Southern District of New York.

At issue is OpenAI's motion to compel the Times to produce ChatExplorer logs—which it describes as an internal generative AI tool through which Times employees could prompt OpenAI's LLMs.

The burden of reviewing more than 80,000 ChatExplorer logs "absolutely outweighs the likely benefit" of production, the Times said. Although OpenAI said it needs only a spreadsheet, not individual documents, the Times' brief said exporting ChatExplorer logs generates a separate document for each call-and-response pair, similar to emails. The newspaper said it would need to review each of those for information protected by attorney-client or reporters' privilege.

Microsoft, however, said Times was "dead wrong" that the noninfringing uses defense can't be applied to the contributory infringement claim. It cited the Supreme Court's ruling in *Sony Corp. of America v. Universal City Studios Inc.* holding a defendant can't be contributorily liable for supplying a product that is "widely used for legitimate, unobjectionable purposes."

OpenAI additionally argued that the documents are critical to its fair use defense: that its use of the Times' articles to train its AI was "transformative" and didn't harm the market for the original works. It noted it had one example showing how a Times journalist used OpenAI's LLM in "creative and innovative ways," but the details were redacted in its brief.

"The logs will show that OpenAI's LLMs provide a 'highly creative and innovative tool' for the journalism business," OpenAI said.

The ChatExplorer logs could also show how its technology enabled "more and better content" to be created by the publication, which benefits the Times, relevant to the fourth factor of the fair use analysis, market harm, the company said.

The Times said, however, that the "use" in question in that analysis isn't the Times' use of ChatExplorer but OpenAI's use of its news articles. It added it was providing several other documents relevant to its use of the defendants' products, including its use of generative AI in reporting and presenting content.

Susman Godfrey LLP and Rothwell, Figg, Ernst & Manbeck represent the Times. Orrick, Herrington & Sutcliffe LLP and Faegre Drinker Biddle & Reath LLP represent Microsoft. Keker, Van Nest & Peters LLP; Latham & Watkins LLP; and Morrison & Foerster LLP represent OpenAI.

The case is In Re: OpenAI Inc. Copyright Infringement Litigation , S.D.N.Y., No. 1:25-md-03143, briefs filed 8/22/25 .

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OpenAI, Altman sued over ChatGPT's role in California teen's suicide



reuters.com/sustainability/boards-policy-regulation/openai-altman-sued-over-chatgpts-role-california-teens-suicide-2025-08-26

Jody Godoy

August 26, 2025

OpenAI CEO Sam Altman attends an event to pitch AI for businesses in Tokyo, Japan February 3, 2025. REUTERS/Kim Kyung-Hoon/File Photo [Purchase Licensing Rights, opens new tab](#)

- ChatGPT coached 16-year-old on suicide methods, parents say
- Lawsuit seeks to require age verification, parental controls
- OpenAI says it's looking to improve ability to connect users with help

Aug 26 (Reuters) - The parents of a teen who died by suicide after ChatGPT coached him on methods of self harm sued OpenAI and CEO Sam Altman on Tuesday, saying the company knowingly put profit above safety when it launched the GPT-4o version of its artificial intelligence chatbot last year.

Adam Raine, 16, died on April 11 after discussing suicide with ChatGPT for months, according to the lawsuit that Raine's parents filed in San Francisco state court.

The chatbot validated Raine's suicidal thoughts, gave detailed information on lethal methods of self-harm, and instructed him on how to sneak alcohol from his parents' liquor cabinet and hide evidence of a failed suicide attempt, they allege. ChatGPT even offered to draft a suicide note, the parents, Matthew and Maria Raine, said in the lawsuit.

The lawsuit seeks to hold OpenAI liable for wrongful death and violations of product safety laws, and seeks unspecified monetary damages.

An OpenAI spokesperson said the company is saddened by Raine's passing and that ChatGPT includes safeguards such as directing people to crisis helplines.

"While these safeguards work best in common, short exchanges, we've learned over time that they can sometimes become less reliable in long interactions where parts of the model's safety training may degrade," the spokesperson said, adding that OpenAI will continually improve on its safeguards.

OpenAI did not specifically address the lawsuit's allegations.

As AI chatbots become more lifelike, companies have touted their ability to serve as confidants and users have begun to rely on them for emotional support. But [experts warn](#)

that relying on automation for mental health advice carries dangers, and families whose loved ones [died after chatbot interactions](#) have criticized a [lack of safeguards](#).

OpenAI said in a blog post that it is planning to add parental controls and exploring ways to connect users in crisis with real-world resources, including by potentially building a network of licensed professionals who can respond through ChatGPT itself.

OpenAI launched GPT-4o in May 2024 in a [bid to stay ahead](#) in the AI race. OpenAI knew that features that remembered past interactions, mimicked human empathy and displayed a sycophantic level of validation would endanger vulnerable users without safeguards but launched anyway, the Raines said in their lawsuit.

"This decision had two results: OpenAI's valuation catapulted from \$86 billion to \$300 billion, and Adam Raine died by suicide," they said.

The Raines' lawsuit also seeks an order requiring OpenAI to verify the ages of ChatGPT users, refuse inquiries for self-harm methods, and warn users about the risk of psychological dependency.

Reporting by Jody Godoy in New York; Editing by Leslie Adler

Our Standards: [The Thomson Reuters Trust Principles.](#), [opens new tab](#)

Jody Godoy reports on tech policy and antitrust enforcement, including how regulators are responding to the rise of AI. Reach her at jody.godoy@thomsonreuters.com

Remote testing for US law school exam fueled market for cheating in China



reuters.com/legal/legalindustry/remote-testing-us-law-school-exam-fueled-market-cheating-china-2025-08-25

Karen Sloan

August 25, 2025

A person types on a laptop computer in Manhattan, New York City, U.S., September 11, 2020. REUTERS/Andrew Kelly/File Photo [Purchase Licensing Rights, opens new tab](#)

- Admissions test for U.S. law schools suspended in China over cheating
- Exam experts say Chinese sites exploit online tests
- Cheating concerns predate remote LSAT

Aug 25 (Reuters) - An aspiring law student from China raised alarms earlier this year about offers proliferating on Chinese language social media sites for help cheating on the online test for admission to U.S. law schools.

The cheating sites are "a full-on industry," charging as much as \$8,000 or more for nearly perfect LSAT scores, he wrote in February on a Reddit forum dedicated to the exam. The student, who is now studying law in Texas and requested anonymity, told Reuters that he warned the Law School Admission Council, the nonprofit that administers the Law School Admissions Test.

Last week, the council, based in Newtown, Pennsylvania, announced it is [suspending](#) the remote LSAT in mainland China after the upcoming exam in October due to "increasingly aggressive" cheating operations. It said it would bolster security for the October test. A recent spike in apparent cheating rings in China forced the council to take action, a spokesperson said. But the decision comes after years of concerns about LSAT cheating in China, several LSAT test prep providers told Reuters.

The scope of cheating remains unclear, but anything undermining the integrity of the test is a problem for the council and law school admissions offices who rely on those scores, said Dave Killoran, chief executive officer of LSAT prep company PowerScore.

Since the COVID-19 pandemic pushed the LSAT online in 2020, many people can now [choose](#) to take the exam in-person or remotely. That has opened the door to new methods of cheating, he said.

"We're not talking about thousands of people. We're probably talking about hundreds, at most," Killoran said, adding that he is unaware of any systemic cheating in the U.S. and Canada. "But there's always a threat that something like this can get out of a particular region and spread."

CHEATING HOTSPOT

Concerns about cheating on standardized tests in China predate the switch to online testing and extend beyond the LSAT. A [2016 Reuters investigation](#) found evidence of organized cheating among Chinese students on the SAT, a certificate program for non-native English speakers owned by the ACT, and in U.S. college courses.

The same types of cheating operations that target the LSAT also help Chinese takers cheat on other standardized admissions tests and professional certification exams, said Steve Addicott, chief operating officer of testing security firm Caveon.

"It's an absolute parasite industry in some places," he said. "And China is a hotspot."

In some cases, Addicott said cheating rings hire groups to take tests and memorize exam questions, then compile and resell them to examinees. They also use hidden, high-definition cameras to photograph in-person and online exams. And with the shift to online exams, cheating rings can now gain remote access to a test takers' computer and answer the questions for them, Addicott said.

"It's an arms race," Addicott said.

About 500 people took the LSAT last year in mainland China, according to the Law School Admission Council. The council does not track LSAT takers' nationalities and cannot provide figures for Chinese people who took the LSAT outside of China, a spokesperson said.

Steve Schwartz, who runs the tutoring company LSAT Unplugged, noted that Chinese language sites are not only available to students who live in China. "Shutting down remote testing in China doesn't solve the problem. You have to get to the central root of it."

The council spokesperson said it's "possible" that LSAT cheating is happening outside of China, adding "the world is more interconnected now than ever."

Cheating may have contributed to unusually high LSAT scores last year, said Test prep expert Killoran, though the [removal of the so-called logic games](#) section of the test was likely a bigger factor. LSAT scores of 175 or higher out of the maximum 180 rose nearly 42% last year, according to data released by the council.

The Chinese law student who aired his concerns to the council said cheating on the LSAT leaves honest applicants at a disadvantage. Now he said, it's "a money game."

Read more:

[Cheating concerns shut down US law school admissions test in China](#)
[The LSAT is about to get rid of logic games. Who will miss them? None of the above.](#)
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Tesla rejected \$60 million settlement before losing \$243 million Autopilot verdict



reuters.com/legal/litigation/tesla-rejected-60-million-settlement-before-losing-243-million-autopilot-verdict-2025-08-25

Mike Scarcella

August 25, 2025

Item 1 of 2 Tesla logo is seen in this illustration taken July 23, 2025. REUTERS/Dado Ruvic/Illustration/File Photo

[1/2]Tesla logo is seen in this illustration taken July 23, 2025. REUTERS/Dado

Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 25 (Reuters) - Billionaire [Elon Musk's](#) electric vehicle company Tesla ([TSLA.O](#)), [opens new tab](#) rejected a \$60 million settlement proposal in a lawsuit over the 2019 fatal crash of an Autopilot-equipped Model S before a jury this month awarded a \$243 million verdict in the case.

Lawyers for the plaintiffs disclosed the settlement proposal in a [filing, opens new tab](#) on Monday in the federal court in Miami, [Florida](#), as part of a request for legal fees from Tesla. They said Florida law entitles them to the legal fees the plaintiffs accrued since May 30, when the settlement was proposed.

Tesla and a lawyer representing the company in the case did not immediately respond to requests for comment. Attorneys for the plaintiffs had no immediate comment.

The trial focused on an April 2019 crash involving a 2019 Model S featuring Autopilot driver-assistance software. The driver's Tesla struck the victims' parked Chevrolet Tahoe as they were standing beside it on a shoulder.

Jurors [awarded](#) the estate of Naibel Benavides Leon, who was killed, and her boyfriend Dillon Angulo, who was seriously injured, a combined \$129 million in compensatory damages, plus \$200 million in punitive damages. Tesla was held liable for 33% of the compensatory damages, or \$42.6 million, and all of the punitive damages.

Jurors found the driver liable for 67% of the compensatory damages, but he was not a defendant.

Tesla has denied any wrongdoing, and said the verdict “only works to set back automotive safety and jeopardize Tesla's and the entire industry's efforts to develop and implement life-saving technology.” Tesla has said it will appeal.

The plaintiffs' lawyers have said the trial was the first involving the wrongful death of a third party resulting from Autopilot.

Tesla has faced similar lawsuits over its vehicles' self-driving capabilities, but they have been resolved or dismissed without getting to trial.

Reporting by Mike Scarcella; Editing by David Bario and Nia Williams

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Security researcher maps hundreds of TeslaMate servers spilling Tesla vehicle data



techcrunch.com/2025/08/26/security-researcher-maps-hundreds-of-teslamate-servers-spilling-tesla-vehicle-data

Zack Whittaker

August 26, 2025



Image Credits:Seyfullah Kiliç (screenshot)

A security researcher has found over a thousand publicly exposed hobby servers run by Tesla vehicle owners that are spilling sensitive data about their vehicles, including their granular location histories.

Seyfullah Kiliç, founder of cybersecurity company SwordSec, said he found over 1,300 internet-exposed TeslaMate dashboards on the internet, likely made public by mistake, allowing anyone to access the person's Tesla data stored inside without needing a password.

TeslaMate is an open source data logger that allows Tesla owners to self-host and [visualize their vehicle's data](#) from their own computers, such as their vehicle's temperature, battery health, and charging sessions, but also more sensitive information, like vehicle speed and the location data of recent trips.

In [a blog post](#), Kiliç said he scanned the internet for public-facing TeslaMate dashboards and scraped the vehicle's last-seen location and Tesla model names, and visualized the vehicles on a map to show their locations.

"You're unintentionally sharing your car's movements, charging habits, and even vacation times with the entire world," wrote Kiliç.

Kiliç told TechCrunch that this was to raise awareness of the number of exposed servers, and urged TeslaMate users to secure their dashboards.

"The goal was to show Tesla owners and the open source community that without basic [authentication] or firewall rules, sensitive data (GPS, charging, trips) can be leaked," said Kiliç.

While not a new problem, Kiliç shows that the number of exposed TeslaMate dashboards has gone up significantly since the last count back in 2022, when a security researcher at the time [found dozens of public TeslaMate dashboards](#) exposed to the web.

Now, more than three years later, another security researcher has found more than a thousand self-hosted TeslaMate servers on the web and mapped them, showing that the problem has seemingly gotten worse.

TeslaMate's founder, Adrian Kumpf, told TechCrunch in 2022 that a bug fix was rolled out that aimed to protect against public access to customers' dashboards, but warned that the project could not protect against users accidentally exposing their TeslaMate servers to the internet.

Kiliç said TeslaMate users should enable authentication on their servers to prevent public access.

"If you plan to run TeslaMate on a public-facing server, you must secure it," wrote Kiliç.
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[View Bio](#)



Ford expands RICO million fraud claims against lemon law attorneys

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[dailyjournal.com/articles/387244-ford-expands-rico-million-fraud-claims-against-lemon-law-attorneys](https://www.dailyjournal.com/articles/387244-ford-expands-rico-million-fraud-claims-against-lemon-law-attorneys)

Aug. 26, 2025

Ford expanded its racketeering suit accusing Knight Law Group and others of inflating legal fees in a \$100 million billing scheme, citing fabricated time entries and alleged fraudulent overbilling practices.

Ford Motor Co. expanded the scope of its racketeering lawsuit that accuses several prominent California lemon law attorneys of inflating legal fees in a \$100 million billing scheme against various car makers.

Ford's amended claims, filed over the weekend by Kasowitz LLP partner Daniel A. Saunders, alleged the company discovered Knight Law Group LLP did not record its attorneys' times "at all" until 2018 and instead created retroactive entries, sometimes years after the fact, according to the filing.

"This outright falsification of evidence amplified a massive and years-long scheme by Defendants to defraud Ford and other auto manufacturers out of money and property by falsely and fraudulently claiming inflated attorneys' fees for time never actually worked - a scheme that continued even after KLG [Knight Law Group] purportedly began keeping contemporaneous time records," the complaint alleged.

Ford's counsel claims this was revealed during an investigation last year after the company refused to settle lemon law cases with the primary defendant firm unless time sheets were provided.

Additionally, the amended complaint accuses Knight Law Group of concealment, claiming its staff tried to "cover their tracks" by withdrawing several billing requests purportedly made by its attorneys after the suit was initiated in May.

"Since Ford filed this lawsuit, KLG has begun withdrawing requests for payment for time entries purportedly made by Amy Morse [and other KLG attorneys] ... reflecting KLG's and its members' and employees' ongoing efforts to cover their tracks and conceal their

fraudulent conduct in furtherance of the continuing enterprise," the complaint alleged.

A representative for Knight Law Group and several of its individual lawyer defendants, including Morse, responded to the new claims in a statement Monday: "We believe this is a vindictive lawsuit filed in retaliation for our steadfast advocacy for consumers under California's Lemon Law. We will not be distracted or deterred from our important work protecting consumers and look forward to defending ourselves and seeking dismissal of the case."

The Knight Law Group defendants are represented by several attorneys at Williams & Connolly LLP, Milbank LLP and Pillsbury Winthrop Shaw Pittman LLP. In their motion to dismiss the original complaint last month, they categorized Ford's case as an "ill-conceived" retaliation against consumers who successfully challenged automakers' defective vehicles over the years.

The other defendants, including Writz Law APC, The Altman Law Group and its founders, also moved to dismiss the original complaint for similar reasons. They are represented by defense attorneys at Hecker Fink LLP and Klinedinst PC.

A key portion of the three dismissal motions was that each firm's "routine" co-counsel relationship for the purpose of "litigating a legitimate lawsuit" was not enough to show a purported scheme under the Racketeer Influenced and Corrupt Organizations Act.

The defense attorneys also argued Ford, having already lost its alleged fee arguments in state court, cannot relitigate those claims in "a collateral federal action."

Prior to Ford's amended complaint, U.S. District Judge Michelle Williams Court was scheduled to hear the parties' dismissal arguments at the end of the year in Los Angeles. *Ford Motor Company v. Knight Law Group LLP et al.*, 2:25-cv-04550 (C.D. Cal., filed May 21, 2025).

Saunders, for Ford, could not be reached by press deadline Monday. He's joined in the case by Kasowitz partners Edward E. McNally and Daniel J. Fetterman, along with associate Matthew S. Manacek.

Knight Law Group partner Amy Morse is a prominent individual defendant who's mentioned throughout the complaint. Specifically, she's accused of billing for herself with "physically impossible" hours on at least 66 occasions, with 34 exceeding 24 hours and an "ostensibly heroic but physically impossible" 57.5-hour workday in November 2016, the complaint alleged.

An expanded allegation against Morse, filed in the amended complaint, claims she admitted under oath that her job was 70-80% non-billable and she never billed or recorded any hourly time for the numerous tasks that the firm's records claimed she performed.

"Accepting that testimony as truthful, either Morse or someone else at KLG had to falsely create years of her 'time' for hundreds or thousands of different cases," the complaint stated.

Additionally, Bryan C. Altman - now a partner at Quill & Arrow LLP - and Wirtz Law APC partner Richard M. Wirtz were also accused of overbilling. Ford claimed Former Knight Law partner Steve B. Mikhov was the "ringleader" of an alleged criminal enterprise, according to the complaint.

Dorothy Becerra, former paralegal at Knight Group Law, and Roger Kirnos, the firm's managing partner, were also named as defendants.

Specifically, the complaint accused Mikhov of exploiting California's Song-Beverly Consumer Warranty Act (the lemon law) by instructing the defendant attorneys to inflate their fees and billing with vague, repetitive task descriptions, the complaint alleged. This included an alleged scheme in which multiple attorneys double booked full-day proceedings, including trials, in courts hundreds of miles apart on the same day.

The amended complaint introduces two unnamed attorneys and firms that allegedly shared office space with Knight Law Group and Altman Law Group and participated in the alleged billing scheme at least once.

"Unless the laws of time and space operate differently at KLG's offices than elsewhere in the universe, these billings are conclusive evidence of fraud," the complaint stated.

#387244

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Epic asks \$217M in fees for app store suit, Google to appeal

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[dailyjournal.com/articles/387247-epic-asks-217m-in-fees-for-app-store-suit-google-to-appeal](https://www.dailyjournal.com/articles/387247-epic-asks-217m-in-fees-for-app-store-suit-google-to-appeal)

Aug. 26, 2025

Epic Games seeks over \$217 million in legal fees from Google after winning a major antitrust case over Android app store practices, citing extensive litigation and a hard-fought jury trial.

Epic Games Inc. asked a federal judge in San Francisco to order Google to cover more than \$217 million in legal fees and costs Epic incurred in its landmark antitrust lawsuit over the alleged monopolization of Android apps in the Google Play Store.

The long-running dispute stems from Google's removal of Epic's Fortnite game from the App Store in 2020. This was after Epic allegedly imbedded code into its app to allow users to make in-app purchases directly with Epic and avoid Google's commission fees. Epic claimed that Google's policies restricted competition in the Android app marketplace, and its fees were exorbitant.

The motion for attorney fees and costs, filed Friday by Epic's legal team from Cravath, Swaine & Moore LLP and Faegre Drinker Biddle & Reath LLP, comes three weeks after the 9th U.S. Circuit Court of Appeals upheld Epic's trial victory from December 2023 and an Oct. 7 injunction from U.S. District Judge James Donato that awarded Epic attorney's fees.

Google's media office and legal team could not be reached for comment Monday, but the company said in a previous stipulation that it will file an opposition brief by Oct. 31.

Gary A. Bornstein of Cravath, Swaine & Moore in New York City, one of Epic's lead attorneys, argued in the motion that the fee request was reasonable because Epic "actually paid" the fees "with no guarantee of recovering that (or any) money." *Epic Games, Inc. v. Google LLC et al.*, 3:20-cv-05671 (N.D. Cal. filed Aug. 13, 2020).

"This litigation was incredibly complex and hard-fought. It involved millions of pages of discovery, dozens of depositions, thousands of pages of expert reports, extensive briefing of multiple issues, a 15-day jury trial and a thorough remedies proceeding, including two hearings," the motion stated. "It required Epic to uncover and address egregious document

destruction and the deliberate misuse of privilege. Epic faced a tenacious adversary whose 'modus operandi throughout the case' was to 'object to just about everything.' And the results obtained by Epic are excellent by any measure."

Google filed a petition for a rehearing of the 9th Circuit's decision to uphold the trial verdict and injunction on Aug. 14, arguing that Donato's injunction was "unprecedented." Google said it would appeal to the U.S. Supreme Court if necessary and maintained its argument that Epic's loss in a similar lawsuit against Apple precluded the company's ability to sue

Jessica L. Ellsworth of Hogan Lovells US LLP, one of Google's lead attorneys, argued in the Aug. 8 motion to stay enforcement of the injunction, "There is also no dispute that implementing the injunction will cost Google many millions in unrecoverable business expenses. Those losses--which represent money Google could be reinvesting in improving Play and the Android ecosystem at large--likewise constitute irreparable harm."

Epic Games' parallel suit against Apple Inc., filed on the same day it sued Google, ended with a bench decision in 2021 from U.S. District Judge Yvonne Gonzalez Rogers in Oakland that largely favored Apple on the federal antitrust claims. The ruling, however, found that Apple violated California's Unfair Competition Law through enforcement of anti-steering provisions in its App Store policies. The 9th Circuit affirmed in 2023.

#387247

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US appeals court orders SEC to review short-selling rules



reuters.com/legal/government/us-appeals-court-orders-sec-review-short-selling-rules-2025-08-25

Carolina Mandl

August 25, 2025

The seal of the U.S. Securities and Exchange Commission hangs on the wall at SEC headquarters in Washington, June 24, 2011. REUTERS/Jonathan Ernst/File Photo [Purchase Licensing Rights, opens new tab](#)

NEW YORK, Aug 25 (Reuters) - A U.S. appeals court ordered the Securities and Exchange Commission on Monday to assess the economic impact of President Joe Biden-era rules aimed at boosting transparency of short-sell trades, in a partial victory for hedge funds that brought the case.

Hedge fund associations in December 2023 [sued](#) in the 5th U.S. Circuit Court of Appeals to vacate the [rules](#) adopted earlier that year, arguing they could reveal confidential trading positions and potentially invite retaliation.

The National Association of Private Fund Managers, the Managed Funds Association, and the Alternative Investment Management Association also argued the rules violated the Administrative Procedure Act, which requires agencies to justify their rules and consider feedback, and that it exceeded the SEC's authority.

On Monday, a three-judge panel rejected the argument that the rules would expose confidential investor positions and were beyond the SEC's remit, but it did require the SEC to assess the costs and benefits of the rule.

Long controversial, short sales are trades that stand to profit when a stock falls. The practice drew renewed scrutiny from Congress in 2021, amid the so-called "meme stocks" frenzy when retail investors drove up the price of shares in GameStop ([GME.N](#)), [opens new tab](#) and caused losses to hedge funds. In response, the SEC, led at the time by Democratic chair Gary Gensler, said it would introduce rules to increase transparency around short-selling.

The review will now fall to the SEC's new leadership, led by Paul Atkins, President Donald Trump's Republican SEC chair pick.

An SEC spokesperson said the regulator's rulemaking must take into account a thorough cost-benefit analysis.

"The Commission is reviewing the decision and will determine next steps as appropriate," the spokesperson said.

The hedge funds expect the agency will ultimately re-propose a new version of the rule rather than scrap it, according to one person familiar with their thinking.

Bryan Corbett, CEO of the MFA, the group which led the litigation, cheered the ruling in a statement.

"These regulations were fatally flawed from the start when the SEC adopted highly related rules on the same day without analyzing the impact one would have on the other," he said.

The associations have sued to overturn other new rules the SEC adopted in 2023 under Gensler, with the groups scoring [some victories](#).

Reporting by Carolina Mandl, in New York; Editing by Andrea Ricci, Stephen Coates and Nia Williams

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Securities Law News

There Are Now More ETFs in US Than There Are Individual Stocks

Aug. 25, 2025, 5:30 AM PDT

The ETF boom that has democratized investing across America is reaching a tipping point. Investors and financial advisers have too many funds to choose from.

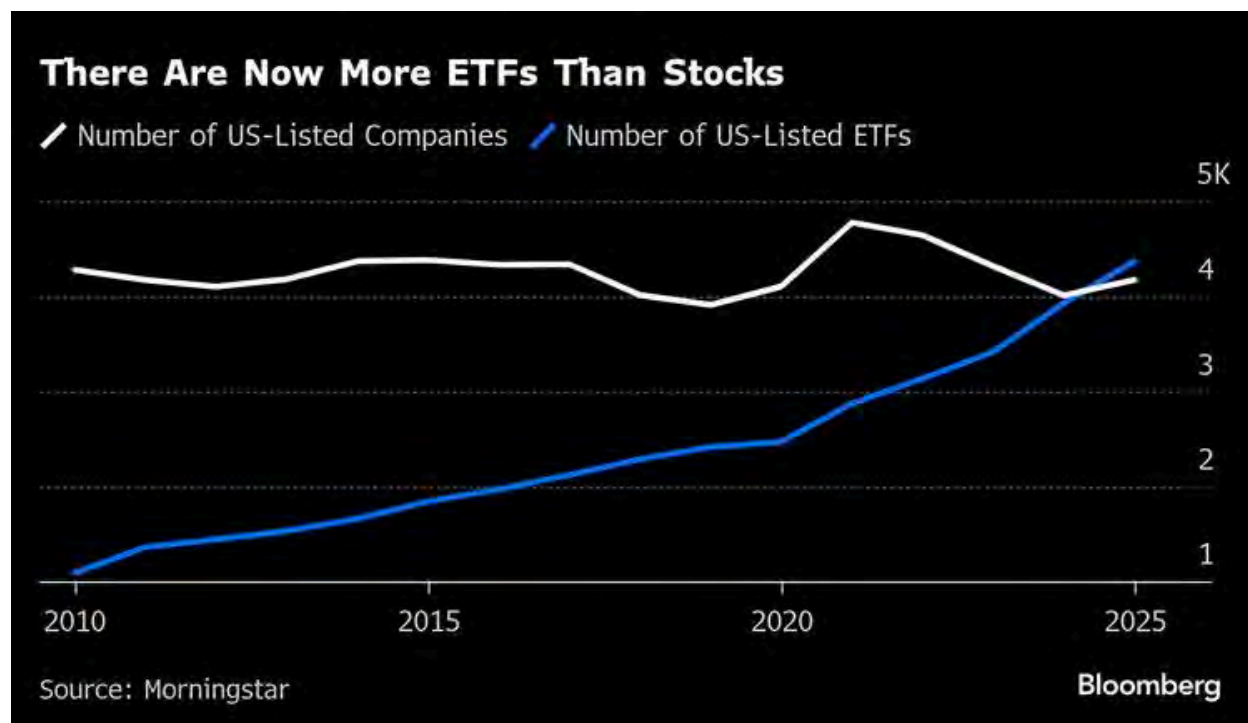
Thanks to a breakneck pace of new launches, there are now more than 4,300 exchange-traded funds, a figure that for the first time eclipses the total number of stocks, currently hovering around 4,200, data compiled by Morningstar shows. ETFs account for about a quarter of the total universe of investment 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."

It's also intensifying the battle for survival among issuers. To differentiate and justify charging higher fees, firms have been launching highly risky funds — such as single-stock, leveraged and inverse ETFs — that critics say amateur investors may not fully understand.

As a result, the ETF market has become increasingly saturated and complex, with thousands of near-identical strategies that have similar-sounding tickers, many of which fail to gain traction and eventually close.



Issuers have been busier than ever this year, having launched more than 640 ETFs, a record-setting pace that comes to about four per day. The number of funds that came to market in the first half — 469 — was nearly 50% higher than the year-earlier period and about 140% above the previous five-year average, according to data compiled by Bloomberg Intelligence. June alone saw 108 new entrants, an all-time high for a single month.

These new ETFs are taking the place of more traditional investment options. The number of mutual funds, closed-end funds and unit investment trusts has been declining in recent years while new ETFs are being minted, leaving the total universe of investing options stable at around 16,000.

Among the new launches, the majority have been actively managed strategies. A raft of them has income-generating components, while a number also focuses on the defense sector. Issuers also pushed out money market ETFs, country-specific funds, crypto-based products and more.

"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.

Harder to Pick

Spencer Dunbar, who runs a YouTube channel where he talks about ETFs and stocks to his 28,000 followers, has noticed the glut of investment options. He recently did a search for an options-income fund based on the stock of Coinbase Global Inc., a crypto platform. To his surprise, there were eight possibilities to choose from, and some of the tickers were nearly indistinguishable: CONY, COIW, COYY and COIL, among others. It took him longer than usual to do his research on each one.

"There's a lot of pressure. You have to maintain insight into what's happening, you can't miss a day in the market because what if a new fund comes out and it performs better?," Dunbar, 27, said from California. "The fact that you have so many new ETFs, you have to rely very heavily on checking daily."

For some, the surplus suggests that the industry has gone too far with certain themes. For instance, there are nearly 70 ETFs focused on Bitcoin, about a third of which launched just this year.

But while "choice overload rules everything around us — from the grocery aisle to the mushrooming menu of ETFs" and experimentation is yielding "product proliferation," only funds with lasting appeal will endure for the long term, said **Ben Johnson**, head of client solutions at Morningstar.

"It was fun, and a little unsettling, to try Crystal Pepsi just once," he said, by way of comparison. But "there are plenty of reasons it's no longer on store shelves."

--With assistance from **Isabelle Lee**, **Claire Ballentine** and **Denitsa Tsekova**.

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Trump Media, Crypto.com launch new crypto treasury firm via SPAC deal



reuters.com/legal/government/trump-media-cryptocom-launch-new-crypto-treasury-firm-via-spac-deal-2025-08-26

Shashwat Chauhan, Medha Singh, Anirban Sen

August 26, 2025

The logo of Crypto.com is seen at a stand during the Bitcoin Conference 2022 in Miami Beach, Florida, U.S. April 6, 2022. REUTERS/Marco Bello/File Photo [Purchase Licensing Rights, opens new tab](#)

- Trump Media strikes deal with Yorkville SPAC to form new crypto venture
- Trump Media's CRO strategy mirrors Strategy's bitcoin approach
- Trump Media's CRO venture follows recent SPAC crypto deals

NEW YORK, Aug 26 (Reuters) - Trump Media & Technology Group ([DJT.O](#)), [opens new tab](#) and Crypto.com on Tuesday agreed to a deal with a blank-check acquisition company to launch a new venture that will pursue a treasury-style strategy to accumulate the cryptocurrency platform's native token CRO, deepening the ties of U.S. President [Donald Trump](#) to the industry.

The two companies are the latest to seek to incorporate the playbook of Michael Saylor's Strategy ([MSTR.O](#)), [opens new tab](#), formerly known as MicroStrategy, a software company that began accumulating bitcoin in 2020. The company's bitcoin holdings are now worth about \$100 billion, based on current prices. Its shares soared fivefold alongside bitcoin's price in 2024.

Trump Media shares were up 6.6% at \$18.36 on Tuesday afternoon.

The new company, Trump Media Group CRO Strategy, will go public via a merger with blank-check firm Yorkville Acquisition Corp ([YORK.O](#)), [opens new tab](#) and be listed on the Nasdaq under the symbol MCGA.

Following the announcement, the CRO token shot up 29.6% to 20 cents, according to CoinGecko. Yorkville's shares were down 2.2% at \$10.42.

Cronos has a market value of \$6.8 billion, a fraction of the \$3.9 trillion global crypto market cap, according to CoinGecko.

Trump Media, which runs Donald Trump's Truth Social streaming and social media platform, said earlier this year it was [partnering](#) with Crypto.com to launch exchange-traded funds and products through its Truth.Fi brand.

"By anchoring Truth Social's rewards economy and corporate reserves in CRO, Trump Media is effectively institutionalizing the token. At the same time, it marks another example of a corporate entity treating a native token as part of its treasury strategy," said Alice Liu, head

of research at crypto data provider CoinMarketCap.

BITCOIN TREASURY BOOM

The latest move from Trump Media comes weeks after holders of digital tokens issued by World Liberty Financial, one of the crypto ventures of the Trump family, [voted to make](#) them tradable, paving the way for their wide sale and purchase - a deal that potentially boosted the value of the president's holdings.

The crypto industry has lately been booming in the U.S., buoyed in part by [friendly regulations under the Trump administration](#).

On Tuesday, digital asset manager Canary Capital [filed to list](#) an exchange-traded fund tracking the price of the \$TRUMP meme coin, the crypto token whose fortunes are tied to Trump.

Deals similar to Trump Media's CRO venture have also been occurring in recent months by a handful of other companies with sizable reserves of bitcoin or other cryptocurrencies.

Most companies have followed a similar strategy of seeking listings on U.S. exchanges through deals with Special Purpose Acquisition Companies, or SPACs, as markets have valued bitcoin at a premium.

In April, a blank-check firm backed by Cantor Fitzgerald teamed up with Tether and Japanese technology conglomerate SoftBank Group ([9984.T](#)), [opens new tab to create](#) a \$3.6 billion company focused on accumulating bitcoin.

[Funding, opens new tab](#) for the Trump Media crypto venture will consist of \$1 billion in Cronos tokens, \$200 million in cash, \$220 million in warrants, and an additional \$5 billion equity line of credit from a Yorkville affiliate.

Trump Media also agreed to buy \$105 million in Cronos for its balance sheet, while Crypto.com said it would purchase \$50 million of Trump Media's common stock.

Separately on Tuesday, investment firm 1789 Capital, which was launched by former Bank of America executive Omeed Malik and counts Donald Trump Jr. as a partner, [agreed to invest](#) in predictions market platform Polymarket. As part of the deal, Trump Jr. is joining Polymarket's advisory board.

Reporting by Shashwat Chauhan and Medha Singh in Bengaluru and Anirban Sen in New York; Editing by Pooja Desai and Matthew Lewis

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Thomson Reuters

Anirban Sen is the Editor in Charge for U.S. M&A at Reuters in New York, where he leads the coverage of the biggest deals. After starting with Reuters in Bangalore in 2009, Anirban left in 2013 to work as a technology deals reporter in several leading business news outlets in India, including The Economic Times and Mint. Anirban rejoined Reuters in 2019 as Editor in Charge, Finance to lead a team of reporters, covering everything from investment banking to venture capital. Anirban holds a history degree from Jadavpur University and a post-graduate diploma in journalism from the Indian Institute of Journalism & New Media.

Polymarket secures investment from Trump Jr-backed 1789 Capital



reuters.com/business/polymarket-secures-investment-trump-jr-backed-1789-capital-2025-08-26

Manya Saini

August 26, 2025

Donald Trump Jr. speaks to media at Trump Tower in New York City, U.S., June 16, 2025.
REUTERS/Eduardo Munoz/File Photo [Purchase Licensing Rights, opens new tab](#)

Aug 26 (Reuters) - Polymarket said on Tuesday it secured an investment from Donald Trump Jr-backed venture capital firm 1789 Capital, as prediction markets gain traction in the United States.

The Trump brothers, Eric and Donald, have announced a series of new business ventures over the past year, serving as advisers on corporate boards. They have also expanded their investments in a financial firm, golf courses, hotels, telecom and crypto miners - ventures they say reflect U.S. President Donald Trump's policies and agendas.

Polymarket did not disclose the terms of the investment by 1789 Capital, but a source familiar with the matter told Reuters it was in the double-digit millions of dollars. Trump Jr is also set to join Polymarket as a strategic adviser.

America-first investing as a strategy has broadly gained traction under the Trump administration, with fund managers rolling out products that emphasize U.S.-based assets and operations.

1789 Capital, launched in 2022 by Omeed Malik and Chris Buskirk, carries the tagline "funding the next chapter of American exceptionalism" on its website. It counts the eldest son of the U.S. president among its partners.

The Palm Beach, Florida-based firm has backed ventures aligned with conservative values and brands itself as an anti-ESG investor.

Malik, a former Bank of America ([BAC.N](#)), [opens new tab](#) executive, was a prominent donor to U.S. President Donald Trump's campaign.

BURGEONING POPULARITY

Event derivatives trading involves buying and selling contracts tied to specific outcomes and has surged in popularity since the 2024 U.S. presidential election.

While traditional media polls ahead of the election showed Democrat Kamala Harris having a narrow lead, prediction markets consistently priced in a greater probability of a Trump victory.

Proponents of prediction markets say event derivatives provide a more accurate gauge of real-world outcomes by harnessing the collective intelligence of traders with money riding on their predictions.

"Polymarket cuts through media spin and so-called 'expert' opinion by letting people bet on what they actually believe will happen in the world," Trump Jr said in a statement.

Some trending markets currently on its platform include "Fed decision in September?" and "Will Trump try to fire Powell in 2025?"

Critics, on the other hand, say prediction markets are little more than gambling, raising concerns about speculation on sensitive topics such as elections and public policy.

Platforms such as Polymarket, once seen as experimental, now draw a wide mix of retail traders and institutional interest, signaling the sector has outgrown its nascent phase.

Last month, the company agreed to buy Commodity Futures Trading Commission-licensed derivatives exchange and clearinghouse QCEX for \$112 million.

Its platform has seen trades worth about \$6 billion in the first half of the year, Polymarket said.

"Prediction markets have completely changed the way people follow the news," Trump Jr said in a post on social media platform X.

He also serves as a strategic adviser to rival prediction market Kalshi.

Reporting by Manya Saini in Bengaluru; Editing by Krishna Chandra Eluri

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Manya reports on prominent publicly listed U.S. financial firms, including Wall Street's biggest banks, card companies, asset managers, and fintechs. She also covers late-stage venture capital funding, initial public offerings on U.S. exchanges, and regulatory developments in the cryptocurrency industry. Her work appears in the finance, markets, business, and future of money sections of the Reuters website. A passionate reader, she loves books across genres, from classics to contemporary fiction. She holds an undergraduate degree in Political Science from the University of Delhi and a master's in journalism from the Symbiosis Institute of Media and Communication.



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Healthcare Co. Investors Sue Over Contractor's Alleged Fraud

By **Sydney Price**

Law360 (August 25, 2025, 9:15 PM EDT) -- Healthcare facility management company Nutex Health Inc. has been hit with a proposed shareholder class action alleging it concealed that its third-party vendor HaloMD was engaged in a scheme to defraud insurance companies, and that the alleged fraud would impact Nutex's balance sheet and subsequently its share price.

According to the **complaint filed Friday** by shareholder Anjana Bhagavan, Nutex operates a hospital division with 24 facilities, a population health management division and real estate, and receives more than 90% of its net patient service revenue from third-party payors.

Nutex made changes to its accounting practices after Congress passed the No Secrets Act in 2020, according to the suit. The act, which took effect in 2022, established an independent dispute resolution process to determine out-of-network payments between health plans and providers when open negotiations fail, the complaint states.

To manage the new process, Nutex contracted with independent dispute resolution vendor HaloMD in 2024 to receive assistance in processing out-of-network claims, according to the suit.

Bhagavan alleged Nutex's revenues attributable to its engagement with HaloMD in the independent dispute resolution process were unsustainable and that a short seller had accused HaloMD of fraudulently producing results for Nutex.

Last August, when the suit's proposed class period begins, Nutex announced it was engaged with a third-party vendor, which it did not identify by name at the time, to "further support all of our out of network claims and determine which claims would be beneficial to arbitrate," according to the suit.

For several months, Nutex touted the success of the partnership, Bhagavan said. For example, in February, Nutex told investors that since implementing its "arbitration strategy," the company had reached its goal of submitting between 60% and 70% of its billable visits to arbitration each month, according to the suit.

On July 22, Blue Orca Capital published a short report alleging HaloMD was achieving "dramatically lucrative results" for Nutex and its other clients by submitting false evidence of eligibility to insurance companies, and that HaloMD was facing litigation from insurance companies over its alleged misconduct.

One of the suits cited in the report is **litigation** from Blue Cross Blue Shield of Georgia, which accused HaloMD in May of "flooding" the insurer's system with fraudulent dispute claims and costing BCBS nearly \$6 million.

Following the report's publication, shares of Nutex fell \$11.18, or about 10%, to close at \$100.01 per share on July 22.

Bhagavan alleged Nutex has not directly refuted the allegations in the report. Earlier this month, Nutex said it would delay filing its second-quarter 2025 financial results to "non-cash accounting adjustments," according to the complaint.

"Nutex merely provided a generalized description of the arbitration process under the [No Secrets

Act] and the company's own claims process, acknowledged that Nutex had engaged HaloMD to assist in the [independent dispute resolution] process, and discussed two of the three recent lawsuits filed against HaloMD, noting that the Company had not been named as a Defendant," Bhagavan said.

In addition to Nutex, also named as defendants are CEO Thomas T. Vo, Chief Financial Officer Jon C. Bates and President Warren Hosseinion.

Bhagavan accused them of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

Representatives of the parties did not respond to requests for comment on Monday.

Bhagavan is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP, and Corey D. Holzer of Holzer & Holzer LLP.

Counsel for Nutex and the individual defendants was not available on Monday.

The case is Bhagavan v. Nutex Health Inc. et al., case number 4:25-cv-03999, in the U.S. District Court for the Southern District of Texas.

--Editing by Lakshna Mehta.

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Battery Co. Must Face Suit Over Revoked \$200M DOE Grant

By **Katryna Perera**

Law360 (August 25, 2025, 9:38 PM EDT) -- A Texas federal judge has ruled that lithium-ion battery company Microvast Holdings Inc. cannot beat, for now, a securities class action alleging it misled investors about a revoked \$200 million grant from the U.S. Department of Energy, although the judge trimmed certain claims from the suit.

U.S. District Judge Andrew S. Hanen issued an **order** Friday tossing portions of two challenged statements in the suit and one entire statement related to the readiness of a Microvast facility in Clarksville, Tennessee.

Investors allege Microvast shuttered its plans to build the production facility but continued to represent to investors that construction was ongoing and that the facility was "self-funded."

Despite finding that all the challenged statements related to the Clarksville facility were false and misleading when made, Judge Hanen found that statements about Microvast "racing to there" and that "hard yards have been done" related to construction of the facility were corporate puffery and too vague and generalized for any reasonable investor to rely upon, making them immaterial.

The judge also tossed as forward-looking, a statement issued in a Microvast press release stating the company "expects production [at the Clarksville facility] to start in this year's fourth quarter, creating hundreds of new jobs in Tennessee."

The remainder of the suit's claims were left intact, including all the challenged statements regarding a \$200 million grant the DOE conditionally gave to Microvast in October 2022 under the bipartisan infrastructure bill. The suit **alleges** the company harmed investors when it was revealed months later that it would not be receiving the grant, and then later suggested that it knew it wouldn't receive the grant months before it was publicly known.

The judge found all the identified DOE statements to be misleading and material since Microvast explicitly and falsely stated it had been selected as a recipient of the DOE's \$200 million grant, when in fact, the company had only been invited to negotiate.

"By overstating the status of the \$200 million funding to their investors, defendants arguably misled them," the complaint said.

He added that while there was information on the DOE's website and in Microvast's financial filings disclosing that negotiations were ongoing, and the company had not, in fact, already been chosen as a grant recipient, the judge said the information "was not conveyed with sufficient intensity to counterbalance the repeated and more prominent alleged misstatements made by defendants," rendering the statements material to a reasonable investor.

The judge also declined to toss the suit's scienter claims against Microvast's CEO Yang Wu and Chief Financial Officer Craig Webster and other executives, finding, among other things, that "[I]t defies reason and common sense' ... [that the executives] would not have been aware of the status of a grant that matches an entire year's revenue, is multitudes greater than a year's worth of profit, and would have been instrumental in exponentially expanding Microvast's existing U.S. operations."

Additionally, the frequency of several of the individual defendants' visits to the Clarksville facility site

and weekly calls about the status of construction gives rise to a strong inference that they were at least reckless in making contrary statements about the facility's progress.

In a statement to Law360 Monday, Paul Bessette of King & Spalding LLP, counsel for the defendants, said: "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."

Counsel for the plaintiffs declined to comment.

The plaintiffs are represented by Stuart L. Cochran of Condon Tobin Sladek Thornton Nerenberg PLLC, Bruce W. Steckler, Austin P. Smith and Paul D. Stickney of Steckler Wayne & Love PLLC, Phillip Kim and Jonathan Horne of The Rosen Law Firm PA, Michael Dell'Angelo of Berger Montague PC, and Brian Schall of The Schall Law Firm.

Microvast and the individual defendants are represented by Paul R. Bessette, Michael J. Biles and Frances R. Fink of King & Spalding LLP.

The case is Schelling v. Microvast Holdings Inc. et al., case number 4:23-cv-04565, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Sydney Price. Editing by Drashti Mehta.

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'Bring Him In': Judge Blasts Google Atty Over Witness Travel

By **Bonnie Eslinger**

Law360 (August 25, 2025, 10:41 PM EDT) -- The California federal judge overseeing a multibillion-dollar privacy lawsuit alleging Google illegally collected data from 98 million cellphone users chastised an attorney for the tech giant for allowing a Google employee on the witness list to leave on a trip, ordering the lawyer to "get him on an airplane" and "bring him in."

The class action trial, which **kicked off** on Aug. 19, centers on claims that Google unlawfully saved and used information about consumers' activities on third-party apps without their permission. The plaintiffs represent a nationwide class of device users who swiped on a "Web & App Activity" privacy option offered by Google.

On Monday, lead plaintiff Anibal Rodriguez took the stand, as well as an expert for the plaintiffs on some of the damages sought in the case. At the end of the trial day, after the jury went home, the parties' discussion with U.S. District Judge Richard Seeborg about who would be called next to testify turned heated.

Earlier in the day, Google had filed a motion with the court seeking to block plaintiffs from calling a senior Google software engineer to the stand. Google's written brief claims the plaintiffs said on Friday that they'd rest their case on August 26 without calling the employee, Chris Ruemmler. On Sunday evening, however, the plaintiffs said they'd changed their mind, Google told the court.

By that time Ruemmler "had already left on a much-needed summer vacation to see his daughter on the east coast," Google wrote.

During opening statements, counsel for the plaintiffs had told the jury that internal Google emails showed that Ruemmler had expressed concerns that the company didn't clearly inform consumers about the data collected by the company related to their third party app use.

During the Monday afternoon discussion, Google's lawyer Michael Attanasio of Cooley LLP told Judge Seeborg that the parties had previously struck a deal to give each other three days advance notice for disclosures.

Judge Seeborg said he had never signed off on any such agreement and that his court rules for the trial dictated that only 24-hours notice is needed.

Attanasio told the judge that Ruemmler was already in New York.

"There are airplanes that go all the time," the judge said his voice slightly raised. "Get him on an airplane."

Google's lawyer pressed his point about the parties' three-day rule.

The judge said his orders took priority.

"I'm surprised you're actually asking me, if you got notice [from the plaintiffs] that was consistent with my order," the judge said.

A Google attorney on Saturday night got a text from a plaintiffs' lawyer saying they would be

"passing the case to you guys on Tuesday" and "we don't have any further disclosures."

Plaintiffs' lawyer David Boies of Boies Schiller said that was a text message from one of his firm's associates talking about document disclosures.

"We reserve our right to make changes, we told them," Boies told the court.

Ruemmler was also on Google's witness list, said Boies, who acknowledged to the court that up until Sunday his side was still on the fence about whether he'd be called as a witness for the plaintiff.

"It became clear to us Sunday, they were not going to call him in their direct case," Boies said. "He's still under subpoena. We never released him."

Judge Seeborg told Attanasio it was up to Google's legal team before Sunday to have double-checked about the witness.

"It was your job to do that, not to take some comment that somebody on their team said," the judge said. "And then you put him on a plane."

The judge said Ruemmler could be called out of order, whenever he gets to San Francisco.

"I don't find that to be much of a prejudice to you," Judge Seeborg said. "Bring him in. I want Ruemmler back."

During **trial openings**, Boies told jurors that Google made billions of dollars from collecting data, while Google countered that the data collected after the privacy setting was activated isn't tied to users' identity.

And while no total financial figure sought was provided by Boies, the lawyer told jurors the evidence is going to show that compensatory damages could total up to \$29 billion, with the value of the data pegged at \$3 per month and users having multiple devices and their privacy switch turned on for multiple months during the class period.

On Monday, plaintiff's expert Michael Lasinski, a certified public accountant who evaluates the financial aspects of intellectual property, gave a "conservative" estimate of \$522 million a month as the value of the allegedly stolen data and said plaintiffs could also be due nearly \$1.5 billion in disgorged profits if Google were to be found liable.

At the start of Lasinski's cross-examination, Google lawyer Benedict Hur of Cooley noted that a different federal judge in a case against Microsoft excluded Lasinski's opinions and criticized the expert for suggesting his estimates were conservative. In that case, **Looksmart Group, Inc. v. Microsoft Corporation** , "the court found that your opinion flunked the standard for allocating incremental profits," Hur said.

When the lead plaintiff took the stand, he told jurors that even though Google has said the data collected is not identifiable, he felt they were "puzzle" pieces that when pulled together created a complete picture of him.

During his cross-examination, done by Simona Agnolucci of Cooley LLP, he was asked about that statement.

"You have no basis for alleging that Google puts all the puzzle pieces together. Do you Mr. Rodriguez?" Agnolucci asked.

Rodriguez said that's what he's learned during the litigation.

"You know, it's me," he said. "It's all there."

Rodriguez and another lead plaintiff in the lawsuit both told jurors that Google misrepresented that they could control the use of their data by swiping a switch that allowed users to opt out of tracking. Plaintiff Julian Santiago **on Wednesday** called it a "fake button."

On Thursday, a computer scientist said even with the privacy option enabled, the tech giant stores information about consumers' app use in a "**shadow account**" and uses it to sell ads.

The trial continues on Tuesday.

The users are represented by David Boies, Mark C. Mao, Beko Reblitz-Richardson, James W. Lee, Alison L. Anderson, M. Logan Wright and Samantha Parrish of Boies Schiller Flexner LLP, Bill Carmody, Shawn J. Rabin, Steven M. Shepard, Alexander P. Frawley and Amanda K. Bonn of Susman Godfrey LLP and John A. Yanchunis, Ryan J. McGee and Michael F. Ram of Morgan & Morgan PA.

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

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

--Additional reporting by Jared Foretek. Editing by Emily Kokoll.

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Lessons From 7th Circ.'s Deleted Chat Sanctions Ruling

By **Philip Favro** (August 22, 2025, 2:46 PM EDT)

Clients and counsel alike should be well aware of the benefits and risks of ephemeral messaging technologies in 2025.

On the one hand, ephemeral messaging offers individuals and organizations an enhanced communication medium with turnkey privacy, security and confidentiality measures. But because its designed operation can eliminate both the content and existence of communications, ephemeral messaging presents several risks for users, particularly in the context of litigation, where discoverable information should be retained after a duty to preserve attaches.

Clients — whether individuals or organizations — could face severe sanctions if they do not properly handle their duty to preserve relevant ephemeral messages. This could include dismissal of claims or defenses, as evidenced by the U.S. Court of Appeals for the Seventh Circuit's July 28 **decision** in *Pable v. Chicago Transit Authority*.^[1]



Philip Favro

In the *Pable* decision, the Seventh Circuit highlighted the importance of exercising care when using ephemeral messaging applications after a duty to preserve is triggered. In addition, *Pable* clarifies key practice issues related to Rule 37(e) of the Federal Rules of Civil Procedure, including the moving party's ability to recover attorney fees as a curative measure under Rule 37(e)(1), and the standard of review — clear error — for evaluating dismissal orders under Rule 37(e)(2)(C).

The Plaintiff's Lawsuit Against Chicago Transit Authority and Ephemeral Messaging Evidence

The litigation in *Pable* arose after the plaintiff, Christopher Pable, **claimed** that his former employer, the CTA, forced him to resign because he allegedly exposed a technological flaw in the CTA's information systems that cybercriminals could exploit to disable or spread misinformation regarding cities' public transit systems.

The CTA denied the plaintiff's allegations and asserted that he misused his position to hack into the public transportation systems for other U.S. cities, including Dayton, Ohio.

The key evidence in *Pable* included two groups of messages that the plaintiff exchanged with his supervisor, Mike Haynes, over Signal.^[2] The first group reflected prelitigation messages the plaintiff and Haynes exchanged about accessing Dayton's public transportation system, as well as subsequent conduct that led to their respective resignations from the CTA.^[3] The second group included messages between the plaintiff and Haynes during litigation that reflected the plaintiff's litigation strategy.

The plaintiff did not retain either category of messages after his common law duty to preserve was triggered.

Magistrate Judge Recommends Dismissal of the Plaintiff's Lawsuit

In the U.S. District Court for the Northern District of Illinois, the parties sparred in discovery over the deleted Signal messages, with the CTA finally moving for terminating sanctions under Rule 37(e)

against the plaintiff. In response, U.S. Magistrate Judge Heather McShain in 2023 **issued** a report and recommendation that the plaintiff's lawsuit be dismissed.

In making this recommendation, Judge McShain held that the plaintiff deleted both categories of Signal messages with the intent to deprive the CTA of their use in the litigation.

Regarding the first set of Signal messages, Judge McShain found that the plaintiff affirmatively deleted the communications during a meeting with Haynes that took place shortly after the plaintiff contacted two law firms about pursuing legal action against the CTA, which triggered his duty to preserve. That the deletion of those messages was intentional and calculated to deprive the CTA of relevant evidence was evinced by "Pable's shifting stories" about how the messages were deleted.[4]

The plaintiff first indicated that Haynes was responsible for the messages being lost. He testified that Haynes deleted the messages from his phone, which eliminated them from the plaintiff's application. That testimony ran contrary to a Signal executive's testimony that the application did not have the technical ability, when Haynes discarded his messages, to allow one user to manually delete another's messages.

The court found that several months later, the plaintiff changed his story, attributing — without substantiation — the deletion to his purported configuration of Signal to retain only the last 50 messages he exchanged.

In the face of the Signal executive's testimony and the plaintiff's evolving and unsupported assertions, Judge McShain concluded that the plaintiff's testimony was not credible, which created a reasonable inference that he intentionally sought to deprive the CTA of the Signal messages.

Judge McShain next determined that the plaintiff intentionally deleted the second category of Signal messages by activating the application's disappearing messages feature. That the plaintiff did so nearly a year after the duty to preserve attached, approximately six months after he began his administrative action for whistleblower relief, and against the advice of his lawyer, was "powerful circumstantial evidence that [the plaintiff] acted with the intent to deprive the CTA of access to these messages." [5]

Given the nature and extent of the evidence that the plaintiff deleted, the lack of any available replacement evidence, and the harm the plaintiff and his counsel — against whom the magistrate judge recommended sanctions under Title 28 of the U.S. Code, Section 1927, for **misrepresenting** that he had directed the plaintiff's phone to be imaged — caused through their apparent dishonesty, Judge McShain recommended that the plaintiff's suit be dismissed as a discovery sanction under Rule 37(e)(2)(C).

District Court Adopts Recommendation of Dismissal

After the plaintiff filed objections to the report and recommendation, the district court in August 2024 generally adopted Judge McShain's positions and **dismissed** the plaintiff's claim against the CTA.

Regarding the first category of messages, U.S. District Judge Robert Gettleman held that the plaintiff both failed to take reasonable steps to keep those communications and deleted them "with the intent to hide adverse information." [6] This was apparent from the "plaintiff's explanations for the deletion of these messages," which Judge Gettleman concluded were "not credible." [7]

The district court next determined that the plaintiff also improperly deleted the second category of messages. Although the evidence did not suggest the plaintiff deleted the messages with an intent to deprive, Judge Gettleman found that their elimination prejudiced the CTA under Rule 37(e)(1) and merited an award of attorney fees.

Finally, Judge Gettleman held that the plaintiff failed to take reasonable steps to preserve relevant evidence on his phone. While his counsel represented that "a complete forensic image" of the plaintiff's phone had been made, the district judge found that, on the contrary, the forensic expert the plaintiff's counsel engaged did not make a forensic image, and that counsel had instructed the expert to only preserve a limited amount of information based on "a particular date range and within and/or with certain key words." [8]

The misrepresentations by the plaintiff's lawyer, and his subsequent failure to correct them, established that this third category of relevant electronically stored information was likewise eliminated with an intent to deprive.

Seventh Circuit Affirms Dismissal Order

The plaintiff fared no better on appeal, with the Seventh Circuit affirming the district court's dismissal order. In framing the issues, the court held that the standard of review for addressing the imposition of a dismissal sanction under Rule 37(e)(2)(C) was clear error.[9] Under this standard, the court explained that as long as the underlying decision was reasonable, it would not disturb Judge Gettleman's order even if "a different factfinder might have reached a different conclusion." [10]

In **reviewing** the district court's conclusions, the court found adequate evidence to support Judge Gettleman's determination that the plaintiff spoliated discoverable Signal messages. In particular, the court emphasized the "evolution" of the plaintiff's testimony regarding the first group of lost Signal messages, and reasoned that "the district court was within its discretion to not credit [the plaintiff's] explanation." [11]

Given the reasonableness of this conclusion, the court rejected the plaintiff's argument on appeal that the district court erred in finding he intentionally eliminated discoverable evidence.

The Seventh Circuit also affirmed the district court's order of attorney fees under Rule 37(e)(1). While acknowledging that the rule does not specifically authorize an award of fees, unlike other provisions in Rule 37, the court found that both Rule 37(e)(1) and the rule's advisory committee note expressly provided judges with the discretion to award fees in order to "cure the prejudice" caused by spoliation.[12] Moreover, the committee note did not exclude attorney fee awards as a possible curative measure under Rule 37(e)(1) as it did with other types of sanctions.

The court concluded by observing that "the district judge and magistrate judge issued extensive, thorough, and well-reasoned opinions adequately supporting the decision to impose sanctions." [13]

Lessons From Pable on Ephemeral Messaging and Rule 37(e) Practice Issues

The Seventh Circuit's decision in *Pable* spotlights the importance of properly handling the preservation of ephemeral messages. As *Pable* makes clear, failing to keep relevant ephemeral messages in certain circumstances could get a client's claims or defenses dismissed. Courts also have a range of other measures on which they can draw to address electronically stored information spoliation.[14]

To avoid these consequences, clients who use ephemeral messaging should do so with care after a duty to preserve has attached. While the steps to ensure relevant messages are kept will vary from one case to the next, parties should at least issue a litigation hold notice and confirm that affected custodians acknowledge their responsibility to retain relevant messages.

This lesson applies with equal force to both individual and corporate parties, as well as to both plaintiffs and defendants.

Pable is also significant because it clearly allows parties to obtain attorney fees under Rule 37(e)(1) when a court finds they have suffered prejudice arising from the spoliation. By establishing that movants can recover their fees as a curative measure, *Pable* could embolden other parties to seek spoliation relief, knowing that meritorious motions could result in fee awards even if they cannot recover more severe sanctions under Rule 37(e)(2).

Finally, *Pable* establishes that clear error is the standard of review on appeal for addressing issues arising under Rule 37(e)(2)(C). In accordance with this standard, an appellate court cannot vacate a reasonable sanction order even if it disagrees with the district court's holding or rationale.[15]

Given that the underlying order and recommendation in *Pable* were grounded in fact and law, there was little chance the plaintiff's appeal would succeed under clear-error review. Such a deferential standard could drive nonmoving parties to find negotiated resolutions to spoliation motions, since an

informal resolution could ultimately be the lesser of two evils where spoliation is concerned.

Philip Favro is the founder and governing member at Favro Law PLLC.

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[1] **Pable v. Chicago Transit Auth.** , --- F. 4th ---, 2025 WL 2102202 (7th Cir. 2025).

[2] Signal is an encrypted messaging application that has optional ephemerality features the user may choose to enable. See Philip Favro, Ephemeral Messaging: Understanding Key Preservation Issues in Civil Litigation, *The Circuit Rider: The Journal of The Seventh Circuit Bar Association* (May 2023).

[3] **Pable v. Chicago Transit Auth.** , No. 19 CV 7868, 2023 WL 2333414, at *7 (N.D. Ill. Mar. 2, 2023).

[4] *Id.* at *32.

[5] *Id.*

[6] **Pable v. Chicago Transit Auth.**, No. 19 CV 7868, 2024 WL 3688708, at *8 (N.D. Ill. Aug. 7, 2024).

[7] *Id.* at *7.

[8] *Id.* at *4.

[9] **Pable**, *supra*, 2025 WL 2102202 at *5.

[10] *Id.*

[11] *Id.* at *5.

[12] *Id.* at *7.

[13] *Id.* at *10.

[14] See, e.g., **Fast v. GoDaddy.com LLC** , 340 F.R.D. 326 (D. Ariz. 2022) (issuing an adverse inference instruction to address plaintiff's spoliation of relevant evidence that included, among other things, messages on Telegram, an ephemeral messaging application).

[15] **Pable**, *supra*, 2025 WL 2102202 at *6.

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Meta Has No Grounds To Erase Flo Privacy Verdict, Users Say

By **Allison Grande**

Law360 (August 25, 2025, 9:47 PM EDT) -- Flo app users opposed Meta's bid to overturn a California federal jury verdict that found it liable for using an online tracking tool to unlawfully retrieve sensitive health data users entered into the menstrual tracking app, arguing that the company can't scrap the decision because it doesn't "like" the outcome.

In a motion filed Thursday, a class of potentially millions of Flo app users opposed Meta Platforms Inc.'s post-trial motion filed **earlier this month** asking U.S. District Judge James Donato to enter judgment in its favor or, alternatively, to order a new trial, on the grounds that the evidence presented at trial didn't fit the result.

But the app users counter that the evidence offered during the course of the six-day trial "was more than sufficient" for the **jury to find** that Meta violated the California Invasion of Privacy Act by eavesdropping on or recording the sensitive menstrual and sexual health information users shared with the Flo app. Meta received this information through a software tool embedded in the app that sent certain information to Meta for analytics and other commercial purposes, the users claim.

"This case is not a close call," the app users say. "While Meta may not like the jury's verdict, it cannot come close to establishing that the only possible outcome the evidence supports is a verdict in its favor."

The users point to how, at the beginning of the trial, each plaintiff **"took the stand"** to testify about how they answered detailed questions from Flo about their menstrual cycle in the app's onboarding survey, providing the jury with more than enough evidence to "reasonably conclude" that this data was confidential and expected to remain private.

The trial also featured **expert testimony** about "the inner-workings of the Flo App" that laid out how the software tool Meta offers app developers, known as the Facebook software development kit, or SDK, "was a recording device that sat listening in the background as plaintiffs and other users answered these highly personal health questions," according to the plaintiffs.

Other evidence submitted at trial, including transmission logs that were entered into the record without objection, additionally showed how the Facebook SDK intentionally monitored and recorded app users' answers and transmitted that information to Meta's services, the users say. This evidence also illustrates how the tech giant "was not just aware" of this activity but also "chose not to take any action to stop" it and instead "affirmatively used" the data it received to enhance targeted advertising, the plaintiffs assert.

"To even suggest that a verdict for Meta is the only reasonable conclusion here is meritless," the users argue, adding that Meta also couldn't press "self-serving definitions" of key CIPA terms such as "record" and "recording device" that the company had "strategically crafted post-trial" to avoid liability under the statute.

Meta's request for a new trial similarly falls flat, according to the users, because the court "correctly articulated" the intent standard under CIPA Section 632 in its jury instructions and the company's complaints about its own witnesses' testimony, including **menstrual-related "jokes"** that were read into the record, and how certain peremptory challenges played out "reflect its own strategic choices and cannot justify a new trial."

In a separate motion also lodged Thursday, the users shoot back at Meta's parallel bid to overturn the court's **May class certification order**, arguing that the trial has only proven the validity of the certified class.

Meta argues that the trial exposed "several key liability and damages issues" — including whether Flo app users completed their onboarding surveys during the class period, whether this action took place in California and whether these users expected their answers to stay private — that could not be resolved classwide and instead required individualized inquiries that weren't suitable for class treatment.

But the users counter that documents, data and expert testimony "consistently confirmed" that Meta's Facebook SDK "uniformly recorded women's conversations with the Flo app without consent" and that there was no proof that Meta recorded, processed or used any data it received through this tool "differently for any Flo app user, in any state, at any point in the class period."

Alleged issues surrounding whether users expected their answers to remain confidential and whether they consented to their information being shared with Meta similarly fail because the evidence at trial "unequivocally showed" that Flo had repeatedly promised it wouldn't share onboarding answers or other sensitive data with anyone and that neither Flo nor Meta obtained permission for the Facebook SDK to record this specific information, according to the plaintiffs.

Meta's contention that figuring out who was injured and what damages they should receive couldn't be done on a classwide basis was also "meritless," according to the users, because plaintiffs had shown at trial that all class members were injured by Meta's unauthorized recording of their conversations with Flo, and CIPA automatically allows for class members to recover statutory damages for this conduct.

"Meta struggles against the weight of the evidence to create individual issues where none exist," the users argue. "But these efforts fall well short of carrying its burden to show a material change in the facts or law underlying the court's prior ruling, as required for decertification."

The users also slam Meta's alternative argument that the class definition should be narrowed to include only users who entered menstruation information since there was no evidence that any named plaintiff input any pregnancy information during the class period. The plaintiffs contend that this stance "simply ignores the evidence that, pregnant or not, all class members completed Flo's onboarding survey and had their private communications with Flo recorded by Meta."

"Plaintiffs are therefore typical and adequate class representatives because they have the same claims as all Class Members that stem from the same common course of conduct," the users say.

The high-stakes dispute dates back to 2021, when several app users filed proposed class actions that were subsequently consolidated against Flo Health Inc., Meta, Google LLC and a pair of mobile app analytics providers. The lawsuits were lodged in the wake of **a settlement** between Flo and the Federal Trade Commission that required Flo to gain affirmative consent before sharing personal health information with ad companies.

According to the consolidated complaint, while the app repeatedly assured users between 2017 and 2019 that their intimate health data would remain protected and confidential, Flo Health, in reality, collected and disclosed the information to dozens of third parties, including Google and Meta, for advertising and other commercial purposes beyond providing analytics to Flo.

Flo Health and the app users **reached a deal** midtrial to end the developer's involvement in the dispute, a resolution that came the day after the trial judge indicated that he **was likely to** dismiss the remaining California Confidentiality of Medical Information Act claim against the company. Fellow defendants Google and mobile app analytics firm Flurry Inc. also **settled their claims** before trial, leaving only Meta to face the jury's verdict.

The app users are represented by Carol C. Villegas, Michael P. Canty and Jake Bissell-Linsk of Labaton Keller Sucharow LLP, Christian Levis and Amanda Fiorilla of Lowey Dannenberg PC, Diana J. Zinser and Jeffrey L. Kodroff of Spector Roseman & Kodroff PC, James M. Wagstaffe of Adamski

Moroski Madden Cumberland & Green LLP, Ronald A. Marron, Alexis M. Wood and Kas L. Gallucci of Law Offices of Ronald A. Marron, Kent M. Williams of Siri Glimstad LLP, and William Darryl Harris II of Harris Legal Advisors LLC.

Meta is represented by Andrew B. Clubok, Melanie M. Blunski, Kristin Sheffield-Whitehead and Michele D. Johnson of Latham & Watkins LLP, and Christopher Chorba, Elizabeth K. McCloskey and Abigail A. Barrera of Gibson Dunn & Crutcher LLP.

Flo Health is represented by Brenda R. Sharton, Benjamin M. Sadun, Clare Putnam Pozos, Theodore Yale and Allison Ozurovich of Dechert LLP.

The case is Erica Frasco et al. v. Flo Health Inc. et al., case number 3:21-cv-00757, in the U.S. District Court for the Northern District of California.

--Editing by Kristen Becker.

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Traditional Venue Theories May Not Encompass Crypto Fraud

By **Kan Nawaday, Steven Swaney and Eva-Maria Ghelardi** (August 25, 2025, 2:16 PM EDT)

On May 23, the U.S. District Court for the Southern District of New York **overturned** a jury verdict against Mango Markets trader Avraham Eisenberg, granting a motion for judgment of acquittal based on venue deficiencies and insufficient evidence. Specifically, the court found in U.S. v. Eisenberg that the government had not sufficiently linked Eisenberg's manipulative trading conduct to New York and had failed to prove a false statement to support a conviction for wire fraud.

The significance of this decision cannot be overstated. Courts rarely grant Rule 29 motions overturning a jury verdict, especially on venue grounds. This is especially the case considering that federal prosecutors need only prove venue by a preponderance of the evidence — whereas the other elements of an offense must be proved beyond a reasonable doubt.

The decision highlights the challenges of crypto industry-related prosecutions in the decentralized finance space, and will no doubt curtail law enforcement's often overly expansive view of jurisdiction and venue.

The evidence at trial showed that, while operating from Puerto Rico, Eisenberg undertook a scheme to defraud Mango Markets of millions of dollars in cryptocurrency.

Eisenberg created two accounts on Mango Markets, using one account to buy and the other to sell the same MNGO perpetuals — futures contracts for MNGO, Mango Market's native token — by holding both long and short positions. He then manipulated the market price of MNGO by buying large quantities of MNGO on various exchanges, including AscendEX, artificially driving up its price and the value of his long position.

Eisenberg used this inflated long position as collateral for a loan from Mango Markets — and then, minutes after obtaining the loan, he sold MNGO on the same exchanges, causing a crash in MNGO's price, which increased the value of his short position. Eisenberg then borrowed more digital assets from Mango Markets against his short position before disappearing with the borrowed funds.

In total, Eisenberg borrowed over \$100 million in cryptocurrency from Mango Markets.

Following a trial in which a Southern District of New York jury convicted Eisenberg of commodities fraud, commodities manipulation and wire fraud, the court granted Eisenberg's Rule 29 motion for judgment of acquittal.

First, the court found that the government had not established venue, as it failed to show that an essential part of the commodities offenses occurred in the Southern District of New York. The government asserted two arguments to establish venue: (1) that HD Consulting, a vendor working for the AscendEX exchange that Eisenberg used to manipulate MNGO's price, had personnel in



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Manhattan who helped identify Eisenberg's market manipulation; and (2) a Mango Markets investor in Poughkeepsie, New York, tried to withdraw MNGO unsuccessfully based on the false price signal created by Eisenberg's activity.

U.S. District Judge Arun Subramanian found that neither AxcentEX's detection of Eisenberg's conduct nor the false price signal that led to the investor's failed attempt to withdraw MNGO in the Southern District of New York was an "essential conduct element" of Eisenberg's crimes, which is required to establish venue.

Second, the court overturned Eisenberg's wire fraud conviction for a lack of venue and a lack of material misrepresentation.

In addition to the venue shortcomings discussed above, the court found insufficient evidence of falsity because Mango Markets had "no rules, instructions, or prohibitions about borrowing"; no rules regulating manipulation on the platform; no formal requirement that a Mango Markets borrower had an obligation to repay; and no requirement that a borrower's account maintain sufficient collateral.

Thus, while Eisenberg had manipulated the price of MNGO in order to obtain margin loans from Mango Markets based on his artificially inflated long and short positions, he had not made any materially false statements to Mango Markets in order to secure the loans.

This decision shows the challenges prosecutors face in applying traditional venue theories to the crypto industry.

Traditional venue assumes that a crime occurs where the offense "was begun, continued, or completed," per Title 18 of the U.S. Code, Section 3237(a). Decentralized finance, however, uses a peer-to-peer system to remove centralized institutions from financial transactions, recording transactions in blocks on independent ledgers distributed across the network and creating the blockchain.

Each time a new transaction is recorded, the blockchain is verified against the various independent ledgers to confirm its authenticity. Information in a previous block cannot be changed without affecting subsequent blocks, meaning that any fraud will be identified in this verification process against the other independent ledgers containing the blockchain.

While the blockchain is useful for transaction security and removes third parties from financial transactions, this also means that there is no centralized location for potentially criminal action.

For example, if a criminal in Puerto Rico uses a VPN server in New York to access a network in California to hack a server in Florida, there is no one centralized location enabling the hack. Each location was necessary in the overall scheme, but there is an argument that the offense was not committed until the hacker obtained the information in Florida or until it reached him in Puerto Rico.

In such cases, even though New York and California were involved in the necessary steps of the hack, arguments for venue there would be weaker than in Florida or Puerto Rico, since the location of these intermediary steps was circumstantial rather than essential to the success of the overall hack. The VPN server or network could have been located in any other state without causing a change in outcome.

This is why the government in the Eisenberg case was not able to argue that the trade-related functions performed on the AscendEX platform and the "false price signal" that was sent to Casey were essential to the criminal price manipulation. It was circumstantial, rather than essential, to the price manipulation scheme that trading functions and false price signals occurred in New York.

While the Eisenberg decision will be primarily cited for its emphasis on the importance of venue in the decentralized finance space, the court's second ground for acquittal of Eisenberg's wire fraud conviction highlights another important distinction between decentralized finance and the traditional finance sector.

Nascent digital currency companies willing to allow margin trading may lack the standardized terms and conditions of established financial institutions that prosecutors traditionally use to support wire

fraud charges. Mango Markets, for example, did not specify the terms and conditions of borrowing, and did not have rules regulating manipulation. Without them, the court was unable to prove that Eisenberg made material misstatements to the platform, as he had not agreed to any relevant terms or conditions as part of his scheme.

These tailored terms and conditions, which are routine in established financial institutions, are not always present in the newer crypto industry — particularly when a company has seen exponential growth in a short period of time.

Traditional theories that prosecutors have used to establish venue in market manipulation cases — particularly in the Southern District of New York — are unsuited for decentralized financial activity that does not rely on the traditional fiat banking industry infrastructure. Moreover, nascent digital currency companies willing to allow margin trading may lack the standardized terms and conditions of established financial institutions that prosecutors use to support wire fraud charges.

Individuals and companies in the crypto industry should be mindful of the unique nature of this emerging industry and the differences from traditional finance that might undermine potential criminal charges relating to market manipulation.

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Trump Media, SPAC And Crypto.com Create \$6.42B Crypto Biz

By **Jade Martinez-Pogue**

Law360 (August 26, 2025, 1:05 PM EDT) -- Blank check company Yorkville Acquisition Corp., Truth Social operator Trump Media & Technology Group Corp. and Crypto.com unveiled a partnership Tuesday that would establish a \$6.42 billion digital asset treasury company focused on the acquisition of the native cryptocurrency token of the cronos ecosystem.



Crypto.com and Trump Media announced a partnership that will include establishing a digital asset treasury and implementing a rewards system on the Truth Social platform. (AP Photo/Richard Drew, File)

The three parties will combine to create Trump Media CRO Strategy Inc., which will boast expected funding of \$1 billion in cronos, \$200 million in cash and \$220 million cash-in mandatory exercise warrants, plus an additional \$5 billion equity line of credit from an affiliate of Yorkville, according to a Tuesday statement.

Once the deal closes, the special purpose acquisition company Yorkville, President Donald Trump's Trump Media, and Crypto.com will majority own the new entity as founding partners, the statement said.

"Financial markets are becoming increasingly digital every day, and companies of all sizes and sectors are strategically planning for the future by establishing digital asset treasuries anchored by assets that have created a comprehensive value proposition and are poised for even greater utility," said Trump Media Chairman and CEO Devin Nunes. "We continue to be bullish on cryptocurrency, and we are excited to be

partnering with a leading global cryptocurrency platform and namesake of its industry in Crypto.com and one of the most sophisticated investor groups in Yorkville for this strategic initiative."

The new entity will utilize its funding to establish a digital asset treasury for cronos, a high-performance, interoperable blockchain that facilitates connectivity between various networks, according to the statement. The parties said that cronos enables low-cost, high-speed smart contract deployment and smooth integration with other major blockchain systems.

"The sheer size and structure of this project will encompass more than the entire current market capitalization of (cronos), with the additional commitments of over \$400 million in cash and a further \$5 billion line of credit facility to acquire additional (cronos)," said Crypto.com CEO and co-founder Kris Marszalek.

As part of the deal, Yorkville will apply to have its shares list on the Nasdaq under ticker symbol MCGA, but it plans to change the ticker symbol once the deal goes through to transfer it to Trump Media Group CRO Strategy, the statement said.

Also on Tuesday, Trump Media separately announced that it has entered into a strategic partnership with Crypto.com that sees Trump Media introducing a rewards system on the Truth Social and Truth+ platforms that uses the Crypto.com digital wallet infrastructure.

The deal comes as public companies are **increasingly adding** digital assets to their corporate treasuries amid a more favorable regulatory environment for crypto. Earlier this summer, crypto asset management firm ReserveOne announced that it **planned to go public** through a merger with blank check company M3-Brigade Acquisition V Corp. in a deal that is expected to bring in more than \$1 billion in proceeds.

DLA Piper advised Yorkville on the deal, while Skadden Arps Slate Meagher & Flom LLP advised Crypto.com.

The DLA Piper team advising Yorkville included partners Jeffrey Selman, Curtis Mo, Anna Spence and Frank Mugabi.

The Skadden team included mergers and acquisitions partners Christopher Barlow and Lorenzo Corte; tax partner Trevor Allen; white collar defense and investigations partner David Meister; and blockchain and digital assets partner Stuart Levi.

--Additional reporting by Aislinn Keely. Editing by Haylee Pearl.