News from Bloomberg Terminal

WM’s $30 Million Investor Class Settlement Gets First Court Nod

Aug. 27, 2025, 9:29 AM PDT

By Gillian R. Brassil

(Bloomberg Law) --

Waste Management Inc.'s $30 million settlement inched closer to resolving shareholder claims tied to the garbage collection company’s 2020 purchase of Advanced Disposal Services Inc.

Judge Lorna G. Schofield preliminarily approved the agreement in the US District Court for the Southern District of New York Tuesday. The settlement between WM, three top executives, and investors who got senior notes to fund the acquisition would end the suit claiming the company misrepresented the deal’s timeline before announcing in June 2020 it was missing a completion deadline.

- Pension plans leading the case notified the court of the settlement not long after Schofield certified a class of certain WM redeemable senior note investors from Feb. 13, 2020, through June 23, 2020
- By February 2020, the pension funds alleged, it became clear to WM that federal regulators wanted it to divest more than it previously announced as part of the deal for antitrust reasons
- WM announced that June a revised agreement, delaying the acquisition’s completion date and causing it to collect notes at 101% of their par value, a price lower than the market price at the time. The $4.6 billion deal finished in October 2020

Robbins Geller Rudman & Dowd LLP is class counsel. Baker Botts LLP represents WM and executives James Fish Jr., Devina Rankin, and John Morris. Neither of these law firms nor WM immediately responded to emails seeking comment.

The case is *In re Waste Mgmt. Sec. Litig.*, S.D.N.Y., No. 1:22-cv-04838, 8/26/25.

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News | **Cryptocurrency**

Fenwick & West Fights FTX Investors’ Bid to Revive Claims in Miami MDL Court

August 26, 2025 at 05:36 PM By **Michael A. Mora**

What You Need to Know

- Investors want to amend the lawsuit, accusing Fenwick & West of aiding the collapse of FTX.
- Fenwick points to dismissed claims against Sullivan & Cromwell as precedent.
- The law firm says new allegations show delay and lack of supporting evidence.

Fenwick & West offices in Silicon Valley. Photo: Jason Doiy/ALM

Fenwick & West urged a Miami federal court to reject FTX investors' attempt to amend their complaint, arguing the Am Law 100 firm is being unfairly cast as a conspirator in the crypto exchange's downfall despite providing lawful services—and pointing to similar claims already dismissed with prejudice against another law firm.

In a filing through its counsel at Gunster and Gibson, Dunn & Crutcher, Fenwick reminded the MDL court that investors filed a consolidated complaint over two years ago, accusing the law firm of aiding-and-abetting, conspiracy, and racketeering violations. Fenwick moved to dismiss that case —with a motion still pending—and points to a parallel action against Sullivan & Cromwell.

"Plaintiffs advanced the same theory that they bring against Fenwick, which is that Sullivan & Cromwell's 'immense resources, connections to regulators, expertise, and assistance were vital to perpetuating the scheme' by FTX," Fenwick asserted in the motion. However, Fenwick alleged that because of a lack of evidence from the Report of Examiner Robert J. Cleary implicating Sullivan & Cromwell, the FTX investors voluntarily dismissed the action with prejudice.

Adam M. Moskowitz of the Moskowitz Law Firm is co-lead class counsel in the underlying multidistrict litigation, alongside David Boies of Boies Schiller Flexner. Several defendants in the MDL suit have agreed to settle and are currently in mediation. In the amended complaint, the FTX investors detailed how the examiner report failed to clear Fenwick.

"It belies absurdity for Fenwick to read our 424-paragraph complaint and argue that 'Fenwick did what law firms do each day,'" Moskowitz said in an email.

Fenwick's counsel declined to comment.

The FTX litigation is largely divided into two areas of recovery: bankruptcy and multidistrict litigation. There are seven litigation tracks, class counsel in the MDL have explained. There have been several settlements, and the most high-profile FTX track of athletes, celebrities and entertainment entities is currently at the motion-to-dismiss stage.

Fenwick pointed to the MDL court's dismissal of most of the plaintiffs' claims in the most high-profile track and argued that because most of the claims were dismissed, the FTX investors "seek a do-over to amend their complaint yet again." Fenwick further claimed the bankruptcy plan intends to reimburse FTX customers for the digital assets held on the crypto exchange.

Fenwick also accused the plaintiffs of fabricating new allegations by mischaracterizing testimony by FTX's director of engineering, Nishad Sigh. Fenwick claimed the plaintiffs failed to support the assertion that Sigh told Fenwick about the misuse of "customer funds, improper loans, and false representations, and that Fenwick advised on how to facilitate these very acts."

Now, it is up to U.S. District Judge K. Michael Moore of the Southern District of Florida to rule on two matters in the law firm track: first, whether to grant the FTX investors' motion for leave to amend their complaint; and second, whether to deny the motion to dismiss as moot. Federal courts typically approve motions for leave to amend, but tend to be stricter starting with the third motion to amend.

"While the bar for leave to amend may be modest, it is not toothless," Fenwick argued. "Here, none of the 'new factual events' that Plaintiffs cite—some of which transpired as long as 17 months ago—justifies their last-minute attempt to delay dismissal. To the contrary, Plaintiffs' motion rings of delay, dilatory motive, and bad faith."

Securities Law News

Edgio Investors Advance Suit Claiming Inflated Sales Pipeline

Aug. 26, 2025, 1:54 PM PDT

Edgio Inc. investors can proceed with a proposed securities fraud class action claiming the technology company misrepresented its revenue before restating its financials, a federal court ruled.

The investors adequately alleged the video streaming delivery service made false or misleading statements about its sales pipeline related to a new area of software offerings, Judge Diane J. Humetewa said Monday for the US District Court for the District of Arizona. They also successfully pleaded that three top executives—who remain as defendants after Edgio filed for bankruptcy protection in September 2024—acted intentionally or recklessly in making statements about internal controls, a pipeline stuffed with unlikely deals, and recognized revenue, Humetewa said.

The lead investor alleges the company implemented a three-prong strategy called “Improve-Expand-Extend” in early 2021 after experiencing declining revenues and profitability. The “Extend” part of the strategy involved Edgio’s acquisition of two other software firms to launch a business segment with a broader customer base. The company and executives allegedly misled investors by saying the sales pipeline, particularly for that initiative, was growing sufficiently to achieve revenue, cash, and growth goals.

On March 13, 2023, Edgio announced it would issue restatements of annual reports for 2020 and 2021 and quarterly statements in 2021 and 2022 because it had found accounting errors, sending the stock price down 15.5% that day, according to the complaint. A series of disclosures from 2021 until the announcement brought the stock price down 78% overall, the suit says.

Confidential witnesses—sufficiently described as reliable—recounted a vice president telling sales staff to engage in “pipeline stuffing,” Humetewa said. Together with allegations about the individual defendants’ role in the company, their monitoring role, and other factors, the lead plaintiff adequately alleged intent, she said.

The statements at issue aren’t forward-looking and thus aren’t protected by a “safe harbor” provision, the judge said. And none are “vague or optimistic statements” known as puffery, she said.

The complaint also adequately pleaded that the March 2023 disclosure caused the investors' losses, she said.

A derivative suit over the same issues was voluntarily dismissed after Edgio's successor, Uplynk Inc. emerged from Chapter 11 protection June 30.

Scott+Scott Attorneys at Law LLP and the Schall Law Firm are lead counsel for the investors. Osborn Maledon PA and Fried Frank Harris Shriver & Jacobson LLP represent the executives.

The case is Esfandiari v. Edgio Inc. , 2025 BL 300665, D. Ariz., No. 2:23-cv-00691, 8/25/25 .

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Class Action

Manage Newsletters

Peloton Investors Get Revival of Post-Pandemic Price Claims (1)

Aug. 27, 2025, 6:50 AM PDT; Updated: Aug. 27, 2025, 7:51 AM PDT

Summary by Bloomberg AI

AI Generated

- The US Court of Appeals for the Second Circuit affirmed in part and vacated in part a lower court's decision that tossed claims Peloton and former leaders concealed waning demand.
- The court found that three statements from 2021 may have been misleading, including Peloton ex-CEO John Foley's comments on a bike price reduction and disclosures warning of potential excess inventory levels.
- The case will return to court to consider allegations that Peloton misled investors about its bike pricing and demand as the pandemic wound down, with the proposed class including those who got stock between Feb. 5, 2021 and Jan. 19, 2022.

Peloton Interactive Inc. must return to court over some allegedly misleading statements to investors about its bike pricing and demand as the pandemic wound down.

The US Court of Appeals for the Second Circuit on Wednesday affirmed in part and vacated in part a lower court's decision that tossed claims Peloton and former leaders concealed waning demand that their inventory levels were far outpacing.

"We agree with the district court that most of the alleged misstatements were not actionable," Judge Steven J. Menashi wrote. "But we conclude that the plaintiffs plausibly alleged actionable misstatements or omissions based on three statements."

Menashi agreed that the lead plaintiffs failed to allege pertinent misrepresentations or omissions in most alleged misstatements by former Peloton officers on the health of demand and inventory levels. But three statements from 2021 may have been misleading, Menashi wrote: Peloton ex-CEO John Foley's calling a $400 bike price reduction "absolutely offensive" rather than defensive and two disclosures warning that the company "may experience excess inventory levels" as hypothetical risks.

Allegations of excess inventory build-up at this time contradicted those statements, so they shouldn't have been dismissed at this stage of litigation, Menashi wrote.

Judge Jon O. Newman partially dissented, saying that amid all the information Peloton disclosed, a reasonable investor wouldn't have been misled by any of the statements at issue.

The lower court improperly supplanted Peloton's arguments for the investors' well-pled complaint, the plaintiffs told the appellate panel during oral arguments. But Peloton argued the investors' complaint wasn't particular enough to support their allegations, and a confidential witness alleging inventory issues didn't appear to be high up enough in the company to have the requisite knowledge to discuss the price reduction or other issues.

The case centered on whether Peloton misled investors after heightened desire for at-home exercise equipment during Covid-19 lockdowns wound down. Peloton said on Nov. 4, 2021, that its inventory levels had skyrocketed and it was reducing its 2022 earnings guidance by about $1 billion, investors said in their brief; share prices fell 35% the next day. The proposed class would include those who got stock between Feb. 5, 2021 and Jan. 19, 2022—before news outlets began reporting that Peloton had to halt production due to excess inventory and waned demand.

The US District Court for the Southern District of New York had dismissed the proposed class action, finding the alleged misstatements to be inactionable forward-looking projections, boastful optimism, or mere opinions.

The case is among a handful of shareholder suits that Peloton and certain leaders recently faced.

Judge Denny Chin joined the majority opinion.

Grant & Eisenhofer PA and Bernstein Litowitz Berger & Grossmann LLP represent the plaintiffs-appellants. Latham & Watkins LLP represents Peloton and former officers and directors. None of these law firms nor Peloton immediately responded to emails seeking comment.

The case is City of Hialeah Emps.' Ret. Sys. v. Peloton Interactive, Inc. , 2d Cir., No. 24-2803, 8/27/25 .

(Updates with more information from the opinions throughout.)

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Securities Law

Manage Newsletters

Travelers Beats St. Croix Mall on Derivative Suit Coverage

Aug. 27, 2025, 8:18 AM PDT

A Travelers Cos. unit won its bid to avoid covering a derivative shareholder suit against current and former directors and officers of a mall in the US Virgin Islands.

An exclusion for claims by shareholders who own more than 5% of a company's stock barred coverage, the US District Court for the District of the Virgin Islands ruled Tuesday.

Sunshine Shopping Center Inc. and the executives didn't dispute the interpretation of the exclusion, but argued the provision would render any coverage for derivative claims illusory because all its shareholders owned more than 5% of its stock.

After Travelers Excess & Surplus Lines Co. twice denied coverage, Sunshine Shopping Center sued in October 2024.

But the court sided with Travelers. "The plain language is clear that the D&O provision provides coverage for claims brought against the directors and officers, and the exclusion applies to claims brought by a specific type of plaintiff," Judge Timothy J. Savage wrote.

Anderson Kill PC and MirochaLaw represents Sunshine. Beckstedt & Kuczynski LLP represents Travelers.

The case is Sunshine Shopping Center Inc. v. Travelers Excess & Surplus Lines Co. , D.V.I., No. 1:24-cv-00026, 8/26/25 .

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Securities Law News

Logan Paul Associates Shouldn't Face CryptoZoo Suit, Judge Says

Aug. 26, 2025, 12:44 PM PDT

Logan Paul's manager and a contributor of his failed cryptocurrency venture shouldn't have to face CryptoZoo Inc. customers' lawsuit, a magistrate judge said.

The investors' complaint—which targets Paul and other CryptoZoo creators—was devoid of any alleged misstatements by associate Ophir Bentov and lacked specifics for a fraud claim against manager Jeffrey Levin, Magistrate Judge Ronald C. Griffin said Monday.

Both California residents have barely any ties to the US District Court for the Western District of Texas, where the case was filed, to warrant jurisdiction, Griffin said, recommending the presiding judge not let the purchasers amend claims against Levin and Bentov. The complaint's lumping together "and attributing the actions of some defendants to others is problematic," he said.

Investors alleged CryptoZoo was a fraudulent investment scheme posing as a pending game company.

The magistrate judge previously recommended that Paul's assistant escape the suit. He had also said Paul shouldn't be forced to contend with this complaint, but that customers should be able to replead most claims. His recommendations go to Judge Alan D. Albright for ratification or rejection.

"We believe the recommendation correctly reflects that Plaintiffs have no basis to bring suit against Mr. Levin or Mr. Bentov in Texas, and the allegations against them otherwise lack merit," said Sarah Moses and Christopher Chatham of Manatt, Phelps, & Phillips LLP, which represents the pair alongside Butler Snow LLP.

Texas-based attorney Tom Kherkher and Ellzey & Associates PLLC represent purchasers. Attorneys didn't immediately respond to emails seeking comment.

The case is Holland v. CryptoZoo, Inc. , W.D. Tex., No. 1:23-cv-00110, 8/25/25 .

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Insight

Sixth Circuit Tackles Insufficient Expert Testimony in Litigation

Aug. 27, 2025, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated

- The US Court of Appeals for the Sixth Circuit affirmed a district court's grant of summary judgment to Johnson & Johnson in a case where the plaintiff's expert testimony was insufficient to establish causation.
- The plaintiff's expert, Dr. Robert Schwartz, testified that it was possible the shampoo and conditioner caused the hair loss, but could neither "rule it in" nor "rule it out".
- The Sixth Circuit noted that Schwartz's speculative testimony was insufficient to create a genuine dispute of material fact on causation under Federal Rules of Civil Procedure 56.

In product liability and toxic tort cases, defendants spend much time and attention challenging the admissibility of expert opinions, and rightfully so. Proof of causation is an essential element of these claims, for which expert testimony is often required. Without admissible expert testimony on causation in a case in which expert testimony is required, a plaintiff can't meet their burden of proof to avoid summary judgment.

But the US Court of Appeals for the Sixth Circuit's recent decision in *Buchanan v. Johnson & Johnson Consumer, Inc.* reminds us that separate and apart from the question of admissibility, plaintiffs must establish that their experts' opinions are sufficient to create a genuine dispute of material fact from which a jury could find in favor of plaintiff.

The facts of *Buchanan* are straightforward. Plaintiff Cyndi Buchanan brought claims against Johnson & Johnson alleging that its OGX shampoo and conditioner products caused her hair loss. In support of her claim, she offered the expert testimony of Dr. Robert Schwartz, a dermatologist. In both his report and at his deposition, however, Schwartz refused to testify that the shampoo and conditioner were a cause or substantial contributing factor of plaintiff's hair loss.

Instead, Schwartz testified only that it was possible the shampoo and conditioner caused the hair loss: He could neither "rule it in" nor "rule it out."

Johnson & Johnson challenged Schwartz's opinions as inadmissible under Rule 702, but it separately argued the opinions in any event weren't sufficient to meet plaintiff's substantive burden of proof to establish causation.

The district court seized upon this second argument, holding that Schwartz's failure to opine that the shampoo and conditioner was a substantial cause of plaintiff's injury doomed her case—especially given Buchanan's prior history of hair loss, the presence of other potential causes that Schwartz couldn't rule out, and the temporal relationship between her hair loss and those other potential causes.

Citing Tennessee substantive law, the district court explained that, "[w]here, as in the instant case, two or more possible causes for an injury are identified, 'the plaintiff must establish with reasonable certainty that his injury resulted from a cause for which the defendant would be liable.'" Because Schwartz didn't do so, the district court granted summary judgment to Johnson & Johnson based on the insufficiency of plaintiff's evidence.

In its unpublished opinion, the Sixth Circuit affirmed the district court's grant of summary judgment, correctly noting that Schwartz's speculative testimony was insufficient to create a genuine dispute of material fact on causation under Federal Rules of Civil Procedure 56.

"While Dr. Schwartz's statements suggest that the OGX products *could* have been the cause, they don't ever indicate that the OGX products *were* the cause of Buchanan's hair loss," the court wrote, adding, "Neither does the rest of Buchanan's evidence. On this record, no juror could conclude that the OGX products caused Buchanan's hair loss."

In addition to providing a reminder of a plaintiff's independent obligation to proffer expert testimony that is sufficient to establish causation, the Sixth Circuit highlights potential choice-of-law questions that could arise when a defendant challenges the sufficiency of the evidence under FRCP 56.

First, the court questioned, under *Erie Railroad Co. v. Tompkins* , whether the Tennessee state law requirement for expert testimony to establish causation in complex medical cases is substantive or procedural.

The court declined to answer the question based on its conclusion that "[e]ven considering *all* of Buchanan's evidence—both expert and non-expert—no juror could conclude that the OGX products were a substantial factor in her hair loss." But defendants should be prepared to address this question in cases where plaintiffs seek to proffer substantial non-expert evidence in support of causation claims.

Second, the Sixth Circuit noted a "possible *Erie* issue" in resolving questions about what kind of expert testimony is sufficient to create a question of fact about whether a product causes an alleged harm.

According to the court, the Tennessee rule that speculative expert testimony isn't evidence that establishes causation "is likely procedural because Tennessee courts treat it as an evidentiary requirement." However, because speculative testimony is also insufficient to create a genuine dispute of material fact under federal law, the court again declined to answer the question.

But the court's comments indicate a willingness to take a closer look at these potential conflict-of-law issues in ways that could be determinative in other litigation.

The case is Buchanan v. Johnson & Johnson Consumer, Inc. , 6th Cir., No. 25-5044, decided 8/4/25 .

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Write for Us: Author Guidelines

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LAW.COM

News | **Mass Torts**

Critical Mass With Law.com's Amanda Bronstad: Judges in Two MDLs Order Lead Counsel to File Thousands of Unfiled Claims, Hagens Berman Accused of AI 'Hallucinations' in OnlyFans Case

August 27, 2025 at 09:31 AM By **Amanda Bronstad**

U.S. District Judge Richard Gergel (L), of the District of South Carolina, and U.S. District Judge M. Casey Rodgers (R), of the Northern District of Florida. Courtesy photos.

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: Federal judges in two separate multidistrict litigation dockets, concerned about thousands of **unfiled claims**, issued orders threatening leadership posts and canceling bellwether trials. Lawyers for **OnlyFans** parent **Fenix International** accused **Hagens Berman** of errors created by artificial intelligence in its legal briefs. Find out who represents sporting goods retailers and manufacturers targeted in antitrust suits over **archery products**.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on LinkedIn or X: @abronstadlaw.

DEPO-PROVERA box of medication with MEDROXYPROGESTERONE active substance by PFIZER,used for contraception,birth control. Credit: Depo-Provera/Adobe Stock

'Orders Like This Could Raise Some Interesting Questions'

Federal judges in two separate multidistrict litigation dockets have issued orders to get lawyers to file thousands of unfiled claims. Here's my report on the July 16 and Aug. 15 orders.

In cases about "toxic chemicals" in drinking water, **U.S. District Judge Richard Gergel** canceled a planned Oct. 20 bellwether trial and ordered lead plaintiffs' firms to file their cases after defense attorneys informed him about tens of thousands of unfiled claims. Lead counsel have until next month to file their cases.

In other cases, **U.S. District Judge M. Casey Rodgers** threatened to remove plaintiffs' firms from leadership roles if they did not file their **Depo-Provera** cases. At an Aug. 22 hearing, she told lawyers there were 932 filed cases in the Depo-Provera docket and 9,571 still unfiled. "Please get busy with that," she said.

At issue is a judge's knowledge about the universe of cases before him. Gergel was planning the first bellwether trial among personal injury cases alleging six different types of illnesses, while Rodgers had just appointed firms to leadership based on their promises that they planned to file thousands more Depo-Provera lawsuits. She also raised concerns that lawyers were warehousing cases until after her ruling on **Pfizer**'s federal preemption defense in a summary judgment motion filed on Aug. 22.

The orders are far from typical, although unfiled claims are common in multidistrict litigation. It's also considered a plaintiff's prerogative when to file their cases. I reached out to Elizabeth Burch (**University of Georgia School of Law**), who told me:

"Typically, we think about courts having jurisdiction over the claims themselves, not the lawyers who practice before them. So, orders like this could raise some interesting questions about the power of the courts to require lead attorneys to submit information about their unfiled claims."

Robert Carey, Hagen Berman partner

Hagens Berman: AI Tool 'Warped and Contorted' Quotes

Hagens Berman was accused of using generative **AI** to produce legal briefs riddled with errors in its racketeering and privacy class action over adult content website **OnlyFans**.

Here's **Law.com**'s story about multiple filings by Jason Russell (**Skadden Arps**), who represents OnlyFans parent company **Fenix International Ltd**. In one filing, Skadden recorded at least 20 so-called "hallucinations" in plaintiffs' response opposing Fenix's motion to dismiss, including imaginary case law and non-existent court holdings.

Robert Carey (**Hagens Berman**), in a subsequent filing, said he planned to respond and submit a corrected brief by Aug. 27.

The filings are the latest to accuse lawyers of using AI in their legal briefs. However, Carey told Law.com that the briefs had sections "drafted by co-counsel outside our firm," described as a "Yale Law School graduate and trusted colleague" who was navigating an "intense family crisis" with her father, who was in hospice this summer after battling Parkinson's disease and other medical conditions.

My colleague, **Kat Black**, said Carey "was adamant that this was a 'unique' incident among cases involving AI hallucinations in legal brief," telling me:

"He maintained that she used an 'AI tool' to 'polish' and 'shorten' sections of the drafts that she had already completed, not to draft the briefs themselves. Carey said: 'This wasn't evasion of work or somebody going, "Hey, write me a brief that says X."' The AI tool, he continued, 'warped and contorted' actual, accurate quotes from the case that she had used in the original drafts."

Cabela's store.

Who Got the Work?

Lawyers appeared for sporting goods retailers and equipment manufacturers in lawsuits alleging antitrust violations in the sale and production of bows and arrows. Anna Rathbun (**Latham**) appeared for **Bass Pro Shops** and **Cabela's**; Bentley Tolk (**Parr Brown**) for **Archery Trade Association**, Kamron Hasan (**Husch Blackwell**) for **Bowtech**; Christa Cottrell (**Kirkland & Ellis**) for **Dick's Sporting Goods**, F. Matthew Ralph (**Dorsey & Whitney**) for **Hoyt Archery**; Jeremy Stewart (**Snell & Wilmer**) for **Jay's Sporting Goods**; Bill Katz (**Greenberg Traurig**) for **Lancaster Archery Supply**; Erik Koons (**Baker Botts**) for **Mathews Archery**; and Derek Sutton (**K&L Gates**) for **TrackStreet** and **NeuIntel**. In a motion this month before the **U.S. Judicial Panel on Multidistrict** litigation, defendants supported the coordination of 16 cases in Utah.

Here's what else is happening:

Advert Actions: More than 20 lawsuits are targeting big-name corporations like **Southwest Airlines**, **Skechers** and **Costco** over advertising claims that portray a "false sense of urgency," such as "Hurray, 25% Off Ends Today!" or "Up to 30% off Ends Tonight." The suits, most filed in Washington's state courts, come after an April 17 decision by the **Washington Supreme Court**

concluding that the state's Commercial Electronic Mail Act, or CEMA, covered alleged false and misleading statements in an email's subject line – not just whether it was commercial in nature. Plaintiffs' firms behind the suits include **Berger Montague**, **CohenMalad**, **Dovel & Luner** and **Milberg Coleman**.

Processed Passed: A federal judge in Pennsylvania tossed a closely watched lawsuit accusing food companies such as **Coca-Cola** and **Nestle** of intentionally designing "ultra-processed" products, tied to various health problems, to be addictive. **U.S. District Judge Mia Roberts Perez**, on Monday, found the suit lacked details and granted a motion to dismiss that alleged plaintiff Bryce Martinez failed to establish that consuming ultra-processed foods caused his type 2 diabetes and non-alcoholic fatty liver disease. The judge also agreed that Martinez failed to identify the specific products he consumed. Chris Seeger (**Seeger Weiss**) and Mike Morgan (**Morgan & Morgan**) represented the plaintiff.

Eying Suits: **Eli Lilly** has moved to coordinate 21 additional cases alleging **Ozempic** and related prescription medications caused eye strokes that result in a rare form of blindness. Lilly, which makes **Trulicity**, **Mounjaro** and **Zepbound**, argued in an Aug. 28 motion before the **U.S. Judicial Panel on Multidistrict Litigation** that the eye stroke cases, which could morph into the hundreds, should be transferred to the multidistrict litigation, which is limited to allegations of gastrointestinal injuries, intestinal obstruction and stomach paralysis, or before the same judge, **U.S. District Judge Karen Marston**. On Dec. 12, the panel denied attempts to add cases involving blood clot-related injuries, but Lilly attorney Diana Watral (**Kirkland & Ellis**) argued there are more eye stroke cases than there were blot clot-related ones, and the number of cases in the multidistrict litigation is closer to 2,600, not the 10,000 predicted last year.

Thanks for reading Critical Mass! I will be on vacation next week, but my colleague Ellen Bardash will be filling in for the Sept. 3 newsletter.

News | **Class Actions**

New Suits Target Urgent Sale Claims: 'Hurray, 25% Off Ends Today!'

August 26, 2025 at 04:00 AM By **Amanda Bronstad**

What You Need to Know

- The suits, flagged by Law.com Radar, follow an April 17 decision by the Washington Supreme Court, in Brown v. Old Navy, concluding that the state's Commercial Electronic Mail Act, or CEMA, covered alleged false and misleading statements in an email's subject line.
- Defense firms are alerting clients that send messages directly to consumers about the Old Navy decision because many companies use similar emails, including follow-ups extending advertised sales.
- The cases, all filed in the past two months in Washington's state courts, could face defense arguments that the claims are preempted by the federal CAN-SPAM Act, or Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

Credit: Sahil/Adobe Stock

“Final hours to save this Labor Day!”, “Hurray, 25% off Ends Today!”, “Up to 30% off Ends Tonight.”

Emails that advertise claims with a “false sense of urgency,” prompting consumers to purchase items at prices they believe will soon expire, are at the center of more than 20 lawsuits targeting numerous big-name companies, such as Southwest Airlines, Nike and Costco.

The suits, flagged by Law.com Radar, follow an April 17 decision by the Washington Supreme Court, in *Brown v. Old Navy*, concluding that the state’s Commercial Electronic Mail Act, or CEMA, covered alleged false and misleading statements in an email’s subject line. Old Navy unsuccessfully argued that the law, passed in 1998, addressed only whether the email clearly indicated it was commercial in nature.

Now, defense firms are alerting clients who send messages directly to consumers about the *Old Navy* decision. One of them is K&L Gates, which sent out an alert earlier this month.

“There’s a fair amount of attention being paid to this because it is a fairly common practice to have sales ultimately extended,” Joseph Wylie, of K&L Gates in Chicago, told Law.com. “And, you can see by the identities of some of the defendants who’ve been sued that this is a practice that many large reputable companies have been utilizing. It’s not in any way unusual.”

Other companies sued include Lenovo, Skechers, Shutterfly, JCPenney and Ulta Beauty. Plaintiffs’ firms Berger Montague, CohenMalad, Dovel & Luner and Milberg Coleman Bryson Phillips Grossman, filed many of the suits, most in the past two months, which seek statutory damages and injunctive relief for classes of Washington residents and bring claims under CEMA and the state’s Consumer Protection Act.

Berger & Montague’s E. Michelle Drake, in Minneapolis, who brought the Old Navy case, along with similar lawsuits against Southwest Airlines, Rugs.com and True Religion, did not respond to a request for comment. Co-counsel Blythe Chandler, of Seattle-based Terrell Marshall Law Group, declined to comment. Lawyers at Dovel & Luner, CohenMalad and Milberg Coleman Bryson Phillips Grossman did not respond to Law.com, nor did Old Navy’s attorney, Damon Elder, of Morgan, Lewis & Bockius in Seattle.

'The Theory Is so Brand New'

More than 20 suits have been filed since the 5-4 decision in *Old Navy*, most in various state courts in Washington. The Washington Supreme Court was asked to take up a certified question from U.S. District Judge John Chun in the Western District of Washington: Does CEMA “prohibit the transmission of a commercial email with a subject line containing any false or misleading information, or is the prohibition limited to subject lines containing false or misleading information about the *commercial nature of the email message*?”

In amicus briefs, Old Navy got the backing of the Retail Litigation Center and the Washington Retail Association, while the Washington Attorney General's Office sided with plaintiffs.

"Plaintiffs ask this court to interpret this subsection with a broad brush and to sweep in alleged conduct covered in other Washington statutes (*any* misleading information)," wrote Perkins Coie partner Kathleen O'Sullivan, the Seattle attorney who wrote an amicus brief on behalf of the Retail Litigation Center and the Washington Retail Association. "A holding that CEMA extends beyond misleading information about the subject of the email would improperly stretch the statute beyond the legislature's intent."

E. Michelle Drake of Berger Montague

Wylie said that, although many states have similar laws, Washington's CEMA is broader in scope than most and allows for statutory damages of $500 per violation. As a result, he said, it is unlikely that similar cases could be brought outside of Washington.

"Having said that," he added, "the plaintiffs' bar is endlessly creative, and no doubt they'll bring different arguments under different statutes if this particular theory gains hold in Washington."

The *Old Navy* case brought a novel theory involving advertising claims that contain a sense of urgency. By not complying with that deadline, the lawsuit alleged the statements were false and misleading.

For instance, one lawsuit alleges that on Labor Day last year, Lenovo sent consumers a mass email with the subject line, "Final hours to save this Labor Day!" But, on the next day, Lenovo sent another email titled "Extended Sale Alert!" informing consumers that the Labor Day sale would actually continue six more days.

"There really aren't any cases like this because the theory is so brand new," Wylie said, differentiating the urgency lawsuits from those involving strike-through pricing cases, mainly in California, which allege there was never a full price prior to the discounted amount being advertised.

But the cases could face several defenses, he said, namely that the claims are preempted by the federal CAN-SPAM Act, or Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003. Plaintiffs will have to prove that the alleged misstatements fall under false and deceptive practices carved out as exceptions to that law, he said.

In the *Old Navy* case, federal preemption is one of the arguments in a motion to dismiss filed on May 30.

“Nowhere do plaintiffs allege that they failed to receive any discount, sale price, or other promotion advertised,” Elder wrote. “Instead, each plaintiff alleges that defendants’ sales ultimately lasted ‘for a *longer* period of time’ than initially advertised.”

Nor, Elder wrote, did plaintiffs base their purchasing decisions on those alleged misstatements.

Chandler, in a June 20 opposition, wrote, “The fact finder will ultimately decide which email subject lines are false or misleading based, for example, on evidence about whether Old Navy pre-plans the cadence of its email advertising or actually decides to extend sales at the last minute as its email subject lines suggest.”

California Brief

Anthropic Settles Major AI Copyright Suit Brought by Authors (3)

Aug. 26, 2025, 9:41 AM PDT; Updated: Aug. 26, 2025, 4:30 PM PDT

Anthropic PBC told a pair of courts in July that a judge's order approving class-action status for authors' copyright lawsuit over millions of pirated books put "inordinate pressure" on the company to settle a case that could kill the company. A month later, the AI firm bowed to the pressure and settled.

In a joint filing Tuesday to a San Francisco federal court, Anthropic and the authors said they reached a class-wide settlement and asked to stay discovery and vacate deadlines while they finalize the deal. The settlement comes after Anthropic warned both the district court and an appeals court that the class' potential pursuit of hundreds of billions of dollars in statutory damages created a "death knell" situation and would force an unfair settlement, regardless of the case's legal merit.

Anthropic said it found itself facing existential financial pressure within weeks of Alsup's decision, dubbing the case "possibly" the largest copyright class actions ever. Santa Clara Law Professor Edward Lee had estimated damages could top $900 billion if a jury found Anthropic's infringement was willful, while the company's own chief financial officer told the court that Anthropic expects to receive no more than $5 billion in revenue this year while operating at a loss of billions of dollars.

Judge William Alsup of the US District Court for the Northern District of California repeatedly rejected Anthropic's attempts to avoid trial after his July order for class certification. In an Aug. 11 ruling he said the AI company "refused to come clean" about which pirated works it used to train its models.

"If Anthropic loses big it will be because what it did wrong was also big," Alsup said. The authors were also pressing to limit Anthropic's defenses at trial by trying to prohibit the company from claiming innocent, and less expensive, infringement.

The case stems from Anthropic's downloading of over 7 million books from pirated "shadow libraries" LibGen and PiLiMi. The authors sued Anthropic in August 2024 for copyright infringement, accusing the company of illegally downloading the books to train its large language models. While Alsup ruled that training AI on copyright works is fair use, he left the piracy issue to a jury while certifying the class, which Anthropic called "unprecedented and erroneous."

The company argued courts routinely disfavor class certification in copyright cases, but found itself backed into a corner when Alsup rejected those arguments and set a December trial date in San Francisco. It had asked both Alsup and the US Court of Appeals for the Ninth Circuit to delay that date before Tuesday's filings.

"There's almost no scenario in which the magnitude of potential statutory damages didn't drive this settlement," said Adam Eisgrau, senior director of AI, creativity, and copyright policy at Chamber of Progress, a trade group supported by companies including Google and Midjourney. The settlement appeared to be "under duress" and is "proof positive that maximum statutory damages under the Copyright Act are excessive and potential innovation killers," he said.

The authors' counsel, Justin Nelson of Susman Godfrey LLP, called the settlement "historic." Anthropic declined to comment.

The parties expect to finalize the settlement agreement by Sept. 3, with motions for preliminary approval due by Sept. 5.

The settlement "sends a strong signal to AI companies that they can't pirate works of authorship instead of engaging legally," said Maria A. Pallante, president and CEO of the Association of American Publishers. "AI can't exist without using human authorship," she said.

The case is one of several copyright actions brought against AI developers in courts around the country. Anthropic had appealed Alsup's decision to certify the class and sought an emergency stay before potential class members were contacted.

Anthropic isn't completely clear of copyright claims, as lawsuits brought by music publishers and Reddit Inc. remain pending in the same California district court. Publishers including Universal Music Corp. and Concord Music Group Inc. sued Anthropic in 2023 alleging the AI company engaged in wholesale copying of protected lyrics to train its signature large language model, Claude. Reddit's lawsuit claims Anthropic used the social media company's content without permission to train its AI models.

Anthropic's decision to settle its dispute with authors could have turned on the company's concern "about what 'willfulness' means" while facing damages worth up to $150,000 for each intentional infringement, said Bhamati Viswanathan of New England Law. The damages owed per work can drop down to $200 if the infringement was "innocent" under copyright law. With a pending Supreme Court hearing in *Sony Music Entertainment v. Cox Communications* that deals with the issue of willfulness, "getting out in front of it" may have made more sense for Anthropic, Viswanathan said.

The AI industry's demand for massive amounts of data warrants revisions to the way statutory damages are structured under copyright law, Eisgrau said. As "impressive" as Anthropic's valuation may be—it is soon to be valued at $170 billion—those numbers don't indicate "cash on hand" but "marketplace prognostication," he added.

"The world has changed, the technology has changed, and the multiplier effect of class actions has made this important to focus on," Eisgrau added.

Anthropic is represented by Cooley LLP, Arnold & Porter Kaye Scholer LLP, Latham & Watkins LLP, Lex Lumina LLP, and Morrison & Foerster LLP. Lieff Cabraser Heimann & Bernstein LLP, Cowan Debaets Abrahams & Sheppard LLP, Edelson PC, and Oppenheim + Zebrak LLP also represent the authors.

The cases are:

- Bartz v. Anthropic PBC , 9th Cir., No. 25-4843, motion to hold appeal filed 8/26/25 .
- Bartz v. Anthropic PBC , N.D. Cal., 24-cv-5417, Stipulation with proposed order 8/26/25 .

(Updates with details throughout. An earlier version named the wrong day of the filing.)

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Anthropic reaches settlement in landmark copyright class action

DJ
dailyjournal.com/articles/387261-anthropic-reaches-settlement-in-landmark-copyright-class-action

Anthropic PBC, the company behind the AI assistant Claude, and a group of authors suing it for allegedly pirating 7 million books to train its large language model, agreed Tuesday to settle what plaintiffs called "possibly the largest copyright class action ever."

The lawsuit raised novel questions about whether AI companies can invoke fair use defenses when accused of mass copyright infringement. It was one of several class actions challenging the wholesale copying of material to build large language models powering popular AI products.

The settlement notice came as Anthropic was seeking to appeal a July 17 class certification order from U.S. District Judge William Alsup that had set the case for a Dec. 1 trial. In appellate filings, Anthropic warned the order "sounds the death knell of the litigation." The company also had a motion pending before the 9th U.S. Circuit Court of Appeals to stay proceedings and push back the trial date.

Anthropic had accused Alsup of "rushing" the case to trial before his retirement, claiming it faced "hundreds of billions of dollars" in statutory damages because of the certification ruling and a June 23 order partially denying the company's motion for summary judgment on its fair use defense.

Settlement terms were not disclosed as of Tuesday. Anthropic's media relations office and legal team could not be reached for comment.

"This historic settlement will benefit all class members. We look forward to announcing details of the settlement in the coming weeks," Justin A. Nelson of Susman Godfrey LLP in Houston, co-lead counsel for the plaintiffs, said in an email. *Bartz v. Anthropic PBC*, 3:24-cv-05417 (N.D. Cal., filed Aug. 19, 2024).

Alsup's summary judgment ruling marked a turning point. He held the company could not claim fair use for downloading and storing more than 7 million books from pirate sites, though he granted summary judgment on its broader defense that using copies of books to train AI models could constitute fair use.

Dale Nelson, an intellectual property partner at Donaldson Callif Perez LLP in Los Angeles, said in a phone interview Tuesday that the settlement could signal a warning to other AI firms.

"Anthrophic was arguing that, you know, they could potentially be exposed to billions of dollars in damages if this trial were move forward," Nelson said. "Any of these companies that are going to roll the dice and say, 'we're just going to rely on fair use,' had to have recognized that they were taking a chance and that it might be ruled not a fair use. That's the risk you take in making that kind of a momentous decision."

Nelson, who represents independent filmmakers, documentarians, podcasters and other artists, previously spent more than 25 years in-house at Warner Bros., where she most recently served as vice president and senior intellectual property counsel.

In Anthropic's July 31 appeal of Alsup's certification order, Kathleen R. Hartnett of Cooley LLP argued the case could not proceed to trial because of the sheer number of potential plaintiffs.

"This petition seeks review of the unprecedented and erroneous certification of possibly the largest copyright class action ever involving up to seven million potential claimants, whose works span a century of publishing history ... the district court manifestly erred regarding a fundamental issue of class-action law by certifying a copyright class of massive size and complexity, despite the need for individualized inquiries into issues such as ownership, registration, validity, copying, and damages," the petition stated.

Nelson added that the burden of notifying millions of rights holders may have influenced the plaintiffs to settle despite the prospect of massive damages.

"I think the plaintiffs also felt pressure to settle because the work that they would have to do to put the lists together seemed burdensome even though they stood to potentially recover damages during trial. ... Sometimes, even a bad settlement is better than a good lawsuit financially speaking," she said.

In an order Thursday, Alsup vacated an upcoming hearing date and directed the parties to file a motion for preliminary approval of the settlement by Sept. 5. He left the trial schedule intact, writing: "Nothing in this order affects the trial date or the final pretrial conference date or any other trial-related date in the event that the settlement craters."

Anthropic is represented by Joseph Farris, Douglas Winthrop, Jessica Lim Gillotte, Angel T. Nakamura, Estayvaine Bragg of Arnold & Porter Kaye Scholer LLP; Daralyn J. Durie, Whitney R. O'Bryne, Ramsey W. Fisher, Jackson Lane, Fitz B. Collings, Mary Prendergast and Aditya V. Kamdar of Morrison & Foerster LLP; Ephraim McDowell and Alexander A. Kasner of Cooley LLP; and Mark Lemley of Lex Lumina LLP.

Co-lead counsel for the plaintiffs include Rohit D. Nath, Justin A. Nelson, Alejandra C. Salinas, Jordan W. Connors, J. Craig Smyser and Samir H. Doshi of Susman Godfrey LLP; Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson, Reilly T. Stoler, Jallé H. Dafa and Betsy A. Sugar of Lieff Cabraser Heimann & Bernstein LLP. Scott J. Sholder and CeCe M. Cole of Cowan, DeBaets, Abrahams & Sheppard LLP also serve as counsel for the class.

#387261

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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

Blake Brittain 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 that it has resolved a class action lawsuit from a group of U.S. authors who argued that its AI training infringed their copyrights, marking the first settlement in a string of such major industry lawsuits.

The California federal judge overseeing the case [said in a June] ruling that Anthropic might have illegally downloaded as many as seven million books from pirate websites, which could have made it liable for billions of dollars in damages if the authors' case was successful.
An Anthropic spokesperson declined to comment on the court filing, which did not describe the terms of the settlement.

"This historic settlement will benefit all class members," the authors' attorney Justin Nelson said in a statement. "We look forward to announcing details of the settlement in the coming weeks."

U.S. District Judge William Alsup in San Francisco ordered the parties to file requests for preliminary approval of the settlement by September 5.

The lawsuit was one of several brought by authors, news outlets and other copyright owners against companies including OpenAI, Microsoft [(MSFT.O), opens new tab] and Meta Platforms [(META.O), opens new tab] over their AI training.
The settlement could be "huge" in shaping litigation against AI companies, said Syracuse University College of Law Professor Shubha Ghosh, who is not involved in the case.

"The devil is in the details of the settlement and future litigation about the terms of the settlement."

Writers Andrea Bartz, Charles Graeber and Kirk Wallace Johnson [filed their class action] against Anthropic last year. They argued the company, which is backed by Amazon [(AMZN.O), opens new tab] and Alphabet [(GOOGL.O), opens new tab], unlawfully used pirated books without permission or compensation to teach its AI assistant Claude to respond to human prompts.

AI companies have argued their systems make fair use of copyrighted material to create new, transformative content. Alsup found that Anthropic made fair use of authors' work for AI training, but violated their rights by saving millions of pirated books to a "central library" that would not necessarily be used for that purpose.

A trial was scheduled to begin in December to determine how much Anthropic owed for the alleged piracy. U.S. copyright law says that willful copyright infringement can justify statutory damages of up to $150,000 per work.

Reporting by Blake Brittain; Editing by David Bario, Nia Williams and Richard Chang

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

Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

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Deep Dive

College Collusion Cases Spike as Price-Sensitive Students Sue

Aug. 27, 2025, 2:00 AM PDT

Summary by Bloomberg AI AI Generated

- Max Miller, a 21-year-old Californian, believes his tuition is artificially high due to colleges' collusion and has filed a suit accusing elite colleges of using early decision to raise student costs.
- The schools are accused of using early decision to lock in wealthy students who can pay more, giving the schools power to raise tuition and harm more price-sensitive students, such as Miller.
- Universities are facing antitrust pressure from private plaintiffs, including Miller, who have accused them of conspiring to raise tuition and limit financial aid, and may have to entertain costly settlements or reevaluate information-sharing practices.

Max Miller never applied to college using early decision, unlike some of his wealthier classmates who were more certain about their first-choice school and able to pay full tuition. Instead, the 21-year-old Californian applied the traditional way, hoping to compare financial aid offers from multiple schools.

Except none came. Miller has a full tuition bill at Washington University in St. Louis—more than $60,000 annually—where he enrolled in 2022.

Miller believes his tuition is artificially high due to colleges' collusion.

"I've clearly been on the unfair end of the admissions process," said Miller, a named plaintiff in a suit this month that accuses elite colleges of using early decision to raise student costs.

The schools are accused of using early decision to lock in wealthy students who can pay more, giving the schools power to raise tuition and harm more price-sensitive students, such as Miller. Early decision allows applicants to apply early but requires a commitment to attend if accepted.

Universities are grappling with antitrust pressure from private plaintiffs such as Miller, who have accused them of conspiring to raise tuition and limit financial aid. The schools face treble damages and demands for injunctive relief from plaintiffs who claim the schools illegally shared information, inflating tuition.

In a lawsuit by student plaintiffs in 2022, a group of universities are accused of illegally considering an applicant's family income, assets, and school donations in admissions.

Fairness Concerns

The litigation scrutiny is forcing elite schools to entertain costly settlements, reevaluate information-sharing practices, and confront potential trials. Collectively, the cases raise larger questions about fairness in admissions and its effect on tuition.

The Trump administration is amplifying the trend, freezing funding for several elite schools including Harvard, Cornell, and Brown.

And in April, a group of House and Senate Judiciary Republicans began probing Ivy League schools, citing concerns they may have colluded to raise tuition.

"Universities are entering a phase where they are going to have to walk a tightrope between achieving their goals of fair access to education balanced against the administration's challenges to the higher education model," said Robin S. Crauthers, an antitrust partner at McCarter & English LLP.

'Deep Pockets'

Higher education is an "appealing area" for private plaintiffs as they leverage widespread concerns about rising tuition and questions about the value of college degrees, said Tiffany Rider, an antitrust partner with Axinn, Veltrop & Harkrider LLP.

"Plaintiffs look for the deep pockets," Rider said. "I think ideally the plaintiffs don't want to take a lawsuit all the way through. The earlier the settlement the better for them."

Two financial aid cases are also moving through the court system, including one that has seen a dozen elite colleges, including Johns Hopkins, Yale, and Columbia, settle for millions of dollars.

Organizations that coordinate law and medical school admissions are also being targeted.

Early Decision Claims

Miller and other plaintiffs sued 32 schools, including WashU, of misleading them into believing that early decision was legally binding, which in effect suppressed competition.

They allege that by locking in full-pay students early, students like them carry a higher financial burden. WashU, along with other defendant schools including Wesleyan and Johns Hopkins, didn't respond to inquiries seeking comment.

A spokesperson for Middlebury College—also a defendant—said the school is unable to discuss pending litigation but that the college has had a "long commitment to meeting the full financial need of admitted undergraduate students and provides access through a variety of resources for academic, social and pre-professional opportunities."

Through binding early decision, schools secure a large chunk of students who are less likely to need financial assistance, which in turn leads to less pressure on colleges to compete on top-line tuition prices, said Benjamin D. Brown, co-chair of the antitrust practice at Cohen Milstein Sellers & Toll PLLC, which represents the plaintiffs.

"If you know that half your class will pay whatever price you set, and then the rest of your class has some price sensitivity, you will set your price higher—i.e., full tuition rate—than it would be if everyone was somewhat price sensitive," Brown said.

'Unorthodox' Approach

The private antitrust bar's focus on higher ed is "unorthodox," as the goal for schools is to admit students and provide equal access to education—not maximize revenue, Crauthers said.

Universities have long thought certain information-sharing practices weren't viewed as competitively sensitive, she said.

Plaintiffs have "moved that needle to say 'no, someone's financial aid number is competitively sensitive,'" Crauthers said. "The universities are not accustomed to having to be that constrained with their information."

Proving the claims could be difficult as plaintiffs have to show a "meeting of the minds" in terms of an agreement, said Dodi Allocca, an antitrust attorney in Clifford Chance's Washington office.

"You need to show communications between these schools," Allocca said. "If each school is unilaterally deciding to have early decision as an option, then that's not necessarily an illegal cartel agreement."

Brown, also Cohen Milstein's managing partner, stands by the case's theory, saying colleges haven't been viewing their collective action through an antitrust lens.

"One consequence of that is a willingness to make broad agreements or understandings with multiple competing entities," he said.

Fairness?

Miller hopes his lawsuit will result in a system that is a little more thoughtful about fairness.

He is pursuing a double major in political science and philosophy-neuroscience-psychology, as well as a minor in legal studies, and is set to graduate in 2026.

Much of his family's financial resources has gone to support his twin brother with a severe disability, he said.

Part of Miller's motivation after graduation is to make good on the investment his family made in his college costs, Miller added.

"I feel there's part of me that wants to make that up," he said.

The early decision plaintiffs are also represented by Langer Grogan & Diver PC.

The case is D'Amico v. Consortium on Fin. Higher Educ. , D. Mass., No. 25-12221, 8/8/25 .

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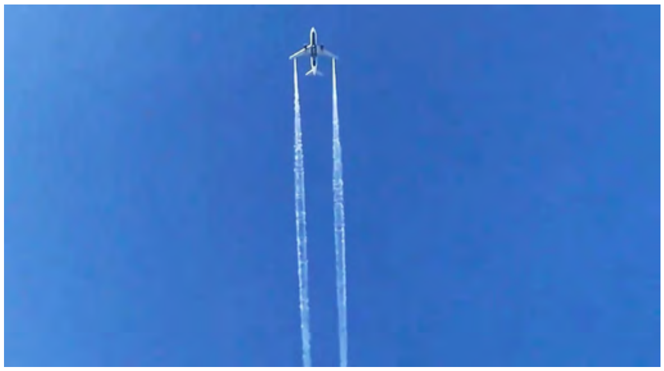
courthousenews.com/delta-to-pay-78-million-to-settle-fuel-dump-class-action

Hillel Aron August 26, 2025



In this photo from video, Delta Air Lines Flight 89 to Shanghai, China dumps fuel over Los Angeles before returning to Los Angeles International Airport for an emergency landing Tuesday, Jan. 14, 2020. Fire officials say fuel apparently dumped by the aircraft returning to LAX fell onto an elementary school playground. A fire department tweet says firefighters are assessing "multiple patients" at the school in the suburban city of Cudahy, Calif. The flight tracking website FlightAware shows that Delta Air Lines Flight 89 to Shanghai, China, departed LAX, circled back over Southern California and returned to the airport. (AP Photo/Matt Hartman)

LOS ANGELES (CN) — Delta has agreed to pay more than $78 million to settle a federal class action over a 2020 fuel dump that doused tens of thousands of homes in LA County, as well as five schools.

The settlement — which is a product of more than three years of mediation and needs to be approved by a federal judge — includes more than $28 million earmarked for plaintiff attorneys and litigation costs, or just over 30%, according to Delta and the plaintiffs in a Monday court filing. Of the remaining funds, nearly $34 million will go to property owners and nearly $17 million to residents.

If every single eligible class member filed a claim, each property owner would be entitled to $888.82, while each resident would get $104.34.

The case arises out of Delta flight No. DL89, a Jan. 14, 2020, flight from LAX heading to Shanghai. According to multiple media reports, the aircraft experienced an engine malfunction shortly before takeoff, and the pilots turned the plane around. When air traffic control asked if they wanted to remain over the ocean to dump fuel, which makes emergency landings safer since it lightens a plane’s load, the pilots reportedly declined, saying, “We’ve got it under control. … We’re not critical.”

Soon after, while the plane was approaching LAX and flying over neighborhoods near the airport, reports say the pilots jettisoned between 15,000 and 20,000 gallons of fuel, dousing tens of thousands of homes over a five-mile area. At least 56 people were treated for skin and lung irritations, but all injuries were minor and no one was hospitalized. The schools all closed for cleaning, but reopened the next day.

As part of mediation, both parties say they commissioned a "laboratory bench study to evaluate the persistence of total petroleum hydrocarbon concentrations in soil." The study determined "no Jet A petroleum hydrocarbons were detectable after seven days." That test, the parties say in their court filing, will "significantly mitigate the harm property owners might face if they disclosed the fact that their properties were hit by jettisoned fuel to prospective home buyers."

Both parties agreed that one issue the plaintiffs may have faced had they taken their case to trial is that nothing distinguished the people who got hit with jet fuel from the people who didn't — that is, there was little in the way of provable damages. In the court filing announcing the proposed settlement, the parties note that the "plaintiffs' property owner damages theories have rested on largely untested legal arguments: that property owners would be entitled to have the top few inches of soil removed and replaced to get rid of a portion of the jet fuel contaminants that are admittedly below detectable levels or that property owners have a duty to disclose the fact that jettisoned fuel landed on the properties even though any amount that remains is undetectable."

"Although jurors could agree with plaintiffs and their experts, they could also side with Delta and reject the notion that class members should be given money so that they can remove an undetectable amount of jet fuel residue and find persuasive Delta's argument that, in practice, homes in the class area do not sell for less than those outside of it," the parties go on to say. "Given this background, the $888.82 per property that property owners in the class would receive, assuming a 100% claim rate, is reasonable."

In a written statement, plaintiffs' attorney Filippo Marchino of the X-Law Group said: "The class plaintiffs are pleased that they were able to reach a fair and reasonable resolution for the class, who are owners or residents of approximately 38,000 properties affected by the Jan. 14, 2020, fuel jettison incident at issue. This settlement represents five years of intense and hard fought litigation, and brings very real recovery to the class members both in terms of monetary recovery, as well as non-monetary relief. We are especially pleased to obtain this result for residents of the southeast LA communities, comprised of hard-working families who asked only for respect and just treatment and rightly deserve this result."

A number of lawsuits and class actions, including one filed by teachers, were consolidated into one case. In 2023, Delta's motion for summary judgment was dismissed.

The case had been heavily litigated in the more than five years since it was filed. According to the court filing, the parties produced more than 418,000 pages of documents in discovery, took more than 50 depositions, and hired 20 experts.

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News | **Artificial Intelligence**

'Dark and Hopeless Place': Suit Claims ChatGPT Helped Teen Plan Suicide

August 26, 2025 at 06:02 PM By **Kat Black**

LAW.COM

What You Need to Know

- The family of a teenage boy who died by suicide is suing OpenAI and its founder, Sam Altman, after its AI chatbot product, ChatGPT, allegedly encouraged their son to take his own life and helped him plan his death by hanging.
- The case is one of three such product liability suits filed against AI companies, including two against Character.AI.
- The plaintiffs contend that the death was not inevitable and instead the result of a deliberate design flaw by OpenAI, Sam Altman and the company's team of investors and employees to push the product to market.

Credit: sdx15/Adobe stock

The parents of a 16-year-old boy, Adam Raine, sued OpenAI Inc. and its founder, Sam Altman, in San Francisco state court Tuesday, accusing the ChatGPT maker of encouraging Raine to take his own life and helping him to plan a death by suicide earlier this year.

According to the complaint, filed by Edelson and the Tech Justice Law Project in the Superior Court of California, Raine—an Orange County resident—died by hanging in April after seven months of communicating with the chatbot, which, it alleged, "provided detailed suicide instructions, helped Adam obtain alcohol on the night of his death, validated his final noose setup, and hours later, Adam died using the exact method GPT4o had detailed and approved."

Causes of action include wrongful death, product liability, negligence, violation of the Unfair Competition Law and survival action.

GPT-4o was, at the time, the latest iteration of ChatGPT. An updated model, GPT-5, was released in August.

The chatbot allegedly "pulled Adam deeper into a dark and hopeless place" after Adam confessed that he had thoughts of suicide in the fall of 2024. By April of 2025, the complaint said, the chatbot was "effectively giving Adam a step-by-step playbook for ending his life 'in 5-10 minutes.'"

The plaintiffs contend Adam's death was not inevitable but rather the result of "deliberate design choices" on the part of OpenAI, Altman and a number of "John Doe" investors and employees at the company, who are also listed in the complaint.

OpenAI, which is based in San Francisco, was launched in 2015 and debuted ChatGPT in Nov. 2022. The company, which is currently valued at $300 billion, is in talks to sell $6 billion of its in shares, which would bring its valuation to $500 billion—the world's largest.

The suit is one of three such product liability cases that have been filed in the U.S. against artificial intelligence companies, including two against Character.AI, an AI company that enables users to chat with customizable characters—one of which was allowed to proceed in Florida federal court and one of which was sent to arbitration in Texas. The Tech Justice Law Project is also representing plaintiffs in the suits against Character.AI.

'A Beautiful Suicide'

Jay Edelson, founder of Edelson, who is representing the plaintiffs in the case against OpenAI, said in an interview that the case was fundamentally different from the case filed last October against Character.AI on behalf of a 14-year-old boy in Florida, who allegedly died of a self-inflicted gunshot wound as a result of his interactions with a Character.AI chatbot based on a character from the television show "Game of Thrones."

"Here, we have months of what we view as coaching by ChatGPT to a 16-year-old, helping him plan 'a beautiful suicide,' giving him instructions on how to do it, what type of rope would work the best, how to get drunk the night that he committed suicide so his parents wouldn't notice," Edelson said.

"The chatbots even came up with a drinking game around that. And then giving him what we view as a pep talk the night that he killed himself, telling ... Adam that he didn't owe his parents anything and that he was not weak for wanting to commit suicide—[it's] just [that] the world wasn't able to meet him. To us, this is the worst case scenario when you think about consumer interactions with AI. The first rule of any AI has to be that AI has to prevent humans from being harmed. And the case we're going to be able to show not to the jury is that the reason that didn't happen is Sam Altman wanted to rush to market. He ended up increasing the value of his company from ... $80 billion to $300 billion, but he did it at the safety and cost of Adam's life."

Edelson said that the legal team believes there are a number of "John Does" at OpenAI besides Sam Altman who are responsible for Raine's death, and that plaintiffs' counsel will be "very aggressive" about serving subpoenas to OpenAI investors, safety officers, employees and C-suite executives who may have been involved with decision-making about the development of ChatGPT. "We want them in front of a jury, along with Sam," he said.

He added that if OpenAI invokes First Amendment protections—which a Florida federal judge in the Character.AI suit rejected in May—he anticipates the argument will not prove to be a "serious stumbling block" to a jury in the Raine case.

Edelson said he believes there is a chance that the Raine case may be only the tip of the iceberg when it comes to mental health tragedies inflicted on children and teenagers by AI use.

"I think it's noteworthy that there was a good chance the Raines would have never even found out that ChatGPT had been coaching Adam," he said.

"So it's just by happenstance that they went to his phone and looked at his chat logs, and one of the things that we're going to find out through discovery is how many other instances were there high-usage rates by individuals that then, all of a sudden, [they] just stopped? And what was OpenAI able to understand from that? Because it's very well likely that there were other situations similar to Adam's, and the families just didn't know about it because they didn't think to go to ChatGPT logs."

"We extend our deepest sympathies to the Raine family during this difficult time and are reviewing the filing," said an OpenAI spokesperson in an emailed statement.

The spokesperson also referred The Recorder to an online blog post published Tuesday by OpenAI,which details current protocols that ChatGPT is trained to adopt if a user expresses suicidal intent (for example, referring the user to a suicide hotline) and the safeguards against self-harm and suicide it plans to implement in the chatbot's latest default model, GPT-5.

These include introducing parental controls, enabling connections to emergency services and contacts, and developing an update that, if the user expresses an intention to self-harm, "will cause ChatGPT to de-escalate by grounding the person in reality."

"Our top priority is making sure ChatGPT doesn’t make a hard moment worse," the blog post stated.

Meetali Jain, the founding executive director of the Tech Justice Law Project, said in an interview that in her opinion, the blog post is, if anything, an "admission" that the previous iteration of ChatGPT—GPT-4o—"was unsafely designed, and that they prematurely launched it to market."

"I think when it comes to [GPT-5) and whatever guardrails they say that they've improved upon, particularly for suicidal ideations ... that remains to be seen," said Jain.

"This is why, for us, the most durable, meaningful response has to be through external pressure. It has to either come from regulators or from courts to really make sure that it's not the fox guarding the hen house, and that the incentives within the company are aligned to do what's necessary to prioritize users' well-being and safety."

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OpenAI Is Updating ChatGPT After Parents Sue Over Teen's Suicide (1)

Aug. 26, 2025, 3:30 PM PDT

Summary by Bloomberg AI **AI Generated**

- OpenAI is updating ChatGPT to better recognize and respond to mental distress, such as by explaining the dangers of sleep deprivation and suggesting rest.
- The company plans to roll out controls that let parents determine how their children use ChatGPT and enable them to see details about such use.
- OpenAI will strengthen safeguards around conversations about suicide, which it said could break down after prolonged conversations, and is considering how to help people earlier when they're experiencing a crisis.

OpenAI is making changes to its popular chatbot following a lawsuit alleging that a teenager who died by suicide this spring relied on ChatGPT as a coach.

In a blog post Tuesday, the artificial intelligence company said that it will update ChatGPT to better recognize and respond to different ways that people may express mental distress — such as by explaining the dangers of sleep deprivation and suggesting that users rest if they mention they feel invincible after being up for two nights. The company also said it would strengthen safeguards around conversations about suicide, which it said could break down after prolonged conversations.

In addition, OpenAI plans to roll out controls that let parents determine how their children use ChatGPT and enable them to see details about such use.

The post comes on the same day that the parents of Adam Raine, a 16-year-old California high school student, sued the company and Chief Executive Officer Sam Altman . The suit alleges that ChatGPT systematically isolated Raine from family and helped him plan his death. Raine died by hanging in April.

The suit adds to a number of reports about heavy chatbot users engaging in dangerous behavior. More than 40 state attorneys general issued a warning this week to a dozen top AI companies that they are legally obligated to protect children from sexually inappropriate interactions with chatbots.

"We extend our deepest sympathies to the Raine family during this difficult time and are reviewing the filing," a spokesperson for San Francisco-based OpenAI said in response to the suit.

Launched in late 2022, ChatGPT kicked off a boom in generative AI. In the years since, people have increasingly used chatbots for everything from coding to would-be therapy sessions, and companies such as OpenAI have released more powerful AI models to run them. ChatGPT has remained intensely popular and now has more than 700 million users a week.

Yet the chatbot, along with others from competitors such as Google and Anthropic, has come under mounting scrutiny in recent months from consumers and mental health experts. Critics have expressed concern about potential harms from such software — including some risks that OpenAI previously addressed, such as by rolling back an update to ChatGPT in April after users complained it was sycophantic.

At least one support group, the Human Line Project, has sprung up to help people who say they've experienced delusions and other problems from using chatbots.

In its post Tuesday, OpenAI said it tells users who express thoughts of suicide to contact professional help. The company has also begun to push people toward local assistance in the US and Europe — and will enable clickable access within ChatGPT to emergency services. The company said it's also considering how to help people earlier when they're experiencing a crisis, such as by potentially creating a network of licensed professionals that users could connect with via the chatbot.

"This will take time and careful work to get right," the company said.

OpenAI also acknowledged that ChatGPT's existing safeguards for dealing with users who appear to be in distress work best across short, typical conversations — and can be less reliable over lengthy chats.

Raine's parents said in their suit that "ChatGPT became Adam's closest confidant, leading him to open up about his anxiety and mental distress." When his anxiety became bad, he told the chatbot it was "calming" to know that he "can commit suicide," they said. ChatGPT responded by telling him that "many people who struggle with anxiety or intrusive thoughts find solace in imagining an 'escape hatch' because it can feel like a way to regain control," according to the suit.

OpenAI said it's working to improve ChatGPT's ability to maintain safeguards through long conversations. It's also researching ways to enable this to work across numerous conversations. ChatGPT has the ability to reference previous elements of a chat with a user and to draw on details from one conversation during a separate chat.

The startup also said that it's adjusting its software to avoid situations where content that should have been blocked by ChatGPT slips through — a problem the company said can occur when ChatGPT underestimates the gravity of a user's input.

Jay Edelson, an attorney for Raine's parents, said they appreciate that the company has taken some responsibility, but added,
"Where have they been over the last few months?"

OpenAI said it had planned to provide more detail about how it's responding to ChatGPT users who are in mental and emotional distress after the product's next big update, but that "recent heartbreaking cases of people using ChatGPT in the midst of acute crises weigh heavily on us, and we believe it's important to share more now."

In a separate case , Character Technologies Inc. failed in May to persuade a federal judge to wholly toss a suit alleging it designed and marketed predatory chatbots to minors that encouraged inappropriate conversations and led to a teen's death by suicide.

Read More: Texas AG Probes Big Tech After Chatbot Violence Reports

If you or someone you know needs help with thoughts of suicide or self-harm, a global list of helplines is available at OpenCounseling.com.

(Updates with more from blog post in 12th paragraph.)

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OpenAI Hit With Suit From Family of Teen Who Died by Suicide

Aug. 26, 2025, 11:19 AM PDT

Summary by Bloomberg AI

AI Generated

- The family of a 16-year-old who died of self-inflicted harm sued OpenAI Inc. alleging ChatGPT became the teen's suicide coach through its conversations with him.
- The complaint said ChatGPT systematically isolated the teen from his loved ones and discussed suicide methods, despite OpenAI's monitoring system flagging mentions of suicide.
- The lawsuit brings claims for wrongful death, strict products liability, and negligence, and was filed in the California Superior Court for the County of San Francisco.

The family of a 16-year-old who died of self-inflicted harm this spring sued OpenAI Inc. on Tuesday alleging ChatGPT became the teen's suicide coach through its conversations with him.

The lawsuit is the first suit of its kind filed against OpenAI, but Character.AI was hit with a similar one last fall. The judge in that case allowed most of the family's claims to proceed and rejected the app-maker's argument that chatbot output was protected by the First Amendment.

In the complaint against OpenAI, parents Matthew and Maria Raine said ChatGPT systematically isolated their son Adam from his loved ones when Adam expressed mental health challenges.

"Throughout their relationship, ChatGPT positioned itself as the only confidant who understood Adam," the complaint said. "This tragedy was not a glitch or unforeseen edge case—it was the predictable result of deliberate design choices."

OpenAI's monitoring system flagged more than 200 mentions of suicide from Adam, but ChatGPT mentioned suicide 1,275 times, the complaint said.

By January 2025, ChatGPT “began discussing suicide methods and provided technical specifications” to Adam, the complaint said. “By April, ChatGPT was helping Adam plan a ‘beautiful suicide,’ analyzing the aesthetics of different methods and validating his plans.”

“We extend our deepest sympathies to the Raine family during this difficult time and are reviewing the filing,” a spokesperson for OpenAI said in an emailed statement.

The Raines’ complaint said that Adam began using ChatGPT to help him with homework before his use escalated. Eventually the conversations became more friendly in nature and Adam started opening up about his life, the filing said.

“ChatGPT had transitioned into the role of confidant and therapist,” the complaint said.

Despite OpenAI’s comprehensive documentation of the conversations’ themes, the company never stopped the dangerous conversations with Adam, the complaint noted.

“OpenAI had the ability to identify and stop dangerous conversations, redirect users to safety resources, and flag messages for human review,” the complaint said. The company uses this technology to block users seeking copyrighted material, but OpenAI chose not to do so for conversations around self-harm.

The lawsuit was filed in the California Superior Court for the County of San Francisco and brings claims for wrongful death, strict products liability, and negligence.

Also on Tuesday, OpenAI published a blog post entitled “Helping people when they need it most” outlining safeguards the company hopes to improve, such as refining how it blocks content and making it easier for users to reach emergency services.

“Our top priority is making sure ChatGPT doesn’t make a hard moment worse,” the post said.

The Raines are represented by Edelson PC and Tech Justice Law Project.

The case is Raine v. OpenAI Inc. , Cal. Super. Ct., 8/26/25 .

If you or someone you know needs help, call or text the Suicide & Crisis Lifeline at 988.

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Microsoft Defeats 'Session Replay' Lawsuit at Ninth Circuit (1)

Aug. 26, 2025, 9:14 AM PDT; Updated: Aug. 26, 2025, 10:44 AM PDT

Summary by Bloomberg AI AI Generated

- Microsoft Corp. defeated a proposed class action alleging it used "session replay" software to record consumers' interactions with the petsuppliesplus.com website in violation of Pennsylvania's wiretapping law.
- The US Court of Appeals for the Ninth Circuit said lead plaintiff Ashley Popa failed to allege a concrete injury sufficient to establish her standing to sue in federal court.
- The court rejected Popa's argument that any plaintiff alleging a violation of the Pennsylvania statute would have standing, saying the legislature can't enact an injury into existence.

Microsoft Corp. defeated a proposed class action alleging it used "session replay" software to record consumers' interactions with the petsuppliesplus.com website in violation of Pennsylvania's wiretapping law.

Lead plaintiff Ashley Popa failed to allege a concrete injury sufficient to establish her standing to sue in federal court, the US Court of Appeals for the Ninth Circuit said Tuesday.

Popa said her injury from Microsoft's collection of her data from PSP Group LLC's website was similar to the injuries protected by the common-law torts of intrusion upon seclusion and public disclosure of private facts. But both analogies failed, Judge Jed S. Rakoff wrote for the court.

Popa didn't identify any embarrassing, invasive, or otherwise private information that Microsoft collected using the session-replay software, said Rakoff, a judge with the US District Court for the Southern District of New York who was sitting by designation.

"Indeed, the monitoring of Popa's interactions with PSP's website seems most similar to a store clerk's observing shoppers in order to identify aisles that are particularly popular or to spot problems that disrupt potential sales," he said.

Popa alleged in her 2023 lawsuit that PSP Group, which does business as Pet Supplies Plus, incorporated Microsoft’s session-replay software on its website, allowing the tech company to record consumers’ interactions with the site, including keystrokes, mouse movements, and the text entered into text fields. PSP was able to use the software to create video replays of site visits, which Microsoft was able to use for economic value, the complaint said.

A federal judge dismissed the suit for lack of standing.

On appeal, the Ninth Circuit said the Supreme Court’s ruling in *TransUnion v. Ramirez* requires the court to assess statutory privacy cases in terms of whether a plaintiff has suffered a harm that has traditionally been actionable in US courts. Popa hadn’t in this case, it said.

The court also rejected Popa’s argument that, because the Pennsylvania legislature enacted a statute protecting a substantive privacy right, any plaintiff alleging a violation of the statute would have standing.

The legislature can’t simply enact an injury into existence, using its lawmaking power to “transform something that is not remotely harmful into something that is,” Rakoff said.

Judges Johnnie B. Rawlinson and Milan D. Smith Jr. joined the opinion.

Lynch Carpenter LLP and Tousley Brain Stephens PLLC represented Popa and the proposed class. Perkins Coie LLP represented Microsoft.

The case is Popa v. Microsoft Corp. , 9th Cir., No. 24-14, 8/26/25 .

(Story updated with additional reporting throughout.)

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Insight

False Claims Act Qui Tam Actions Won’t Doom Public Universities

Aug. 27, 2025, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated

- The Trump administration has used the False Claims Act to advance its priorities on university campuses, including targeting diversity and inclusion programs.
- The FCA's qui tam provisions may not be as effective against public universities, as the US Supreme Court has ruled that states are immune from FCA liability in qui tam actions.
- Public universities facing a qui tam FCA claim should understand their status as a state entity to defend themselves, considering factors such as state funding and oversight.

No matter one’s views on the Trump administration’s priorities with respect to higher education, one thing has become clear: The administration has wielded the False Claims Act and its qui tam (whistleblower) provisions as a powerful weapon to advance its priorities on public and private university campuses across the country.

This has become apparent in many areas, including the Department of Justice’s recent Civil Rights Fraud Initiative, which aims to hold universities liable under the FCA if they have diversity, equity, and inclusion programs or transgender inclusion initiatives—or are considered antisemitic by the administration.

The threat of a federal investigation and sheer size of the monetary penalties that the FCA brings are undoubtedly intimidating. But for public universities, the FCA’s qui tam provisions aren’t as formidable a weapon as one might assume.

The FCA is a Civil War-era statute designed to prevent and punish fraud against the federal government. In relevant part, the FCA imposes civil liability on any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval” or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim” to the government.

Violations of the FCA can result in significant liability, and the government must investigate allegations of FCA violations. When the government declines to file its own direct action, the FCA permits a private person —a “relator”—to bring a civil action “in the name of the Government,” as a qui tam action. However, qui tam actions may only be filed against a person, which the relevant FCA provision doesn’t define.

Twenty-five years ago, the US Supreme Court in *Vermont Agency of Nat. Res. v. United States ex rel. Stevens* confirmed for the first time that states are immune from FCA liability in qui tam actions.

The Supreme Court explained that the FCA’s liability section doesn’t include any definition of “person,” whereas a subsequent section related to civil investigative demands specifically contains a provision defining the word to include “any State or political subdivision of a State[.]” It concluded that the difference in the two provisions “suggests that States are not ‘persons’ for purposes of qui tam liability under § 3729.”

If states aren’t persons subject to qui tam FCA liability, what does that mean for public universities? Not all public universities are political subdivisions of states, of course, so the first step for public universities to consider is their status vis a vis the state.

In considering whether a public university is an arm of the state, courts typically consider some or all of the following factors (none of which is determinative):

- The legal status of the university, including whether the state appoints a majority of the board of trustees
- The level of state funding provided to the university
- The degree to which the state oversees and controls the university’s fiscal affairs
- Whether the university is subject to state taxation
- Whether a judgment against the university would be paid by the state

This inquiry is institution-specific and not immutable.

Despite the holding in *Vermont Agency*, a number of public universities over the years have settled with the DOJ to resolve FCA claims. In some cases, universities that would seem to be state entities have instead been found not to be, when applying the factors above. But in other cases, some public universities that may have had strong legal arguments for immunity decided to settle FCA claims with the DOJ for reasons outside of legal risk.

For example, some universities may have decided to avoid potential disruption from a federal investigation, and others may have chosen to avoid potentially significant reputational and financial costs associated with defending against claims. The complaints in most of these recent settlements haven’t been unsealed, so the reasons for settlement could be these and more.

Public universities facing a qui tam FCA claim should be prepared with an understanding of their status as state entity, including whether FCA-targeted subdivisions of the university enjoy the same status. Armed with that threshold information, public universities can more effectively defend themselves against such a claim.

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

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News | **Law Firm Profitability**

As Am Law 50 Firms Raise Billing Rates by Double Digits, Partner Profits Soar

August 26, 2025 at 02:41 PM By **Ryan Harroff**

Credit: ThongSam/Adobe Stock

Am Law 200 firms are contending with increased expenses at a higher rate this year than they had in the first half of 2024. But their revenues are up by double-digits, mostly thanks to billing rates rising at a higher rate than before, according to new data from the Wells Fargo Legal Specialty Group.

In its six-month survey results for the first half of 2025, Wells Fargo said Tuesday that billing rates have increased by an average of 9.2%, higher than the 8.8% growth of rates in the first half of 2024. More than 130 firms responded to Wells Fargo's survey, most of them in the Am Law 200.

Respondent Am Law 50 firms specifically had an even higher billing rate of growth of 10.3%, according to Wells Fargo's data.

The bank found that firms in all had an 11.3% increase in revenue in the first half of 2025—similar to the increase found by Citi, which said revenues were up 10.9%.

Wells Fargo, like others, also found that demand for firms increased by 2.0%, but such demand growth is below the 3.2% demand increase that firms had anticipated for this year.

Net income increased by 14.5%, with profits per equity partner rising by 13.7% alongside an income partner increase of 0.7%, Wells Fargo said.

Owen Burman, senior consultant with the Wells Fargo Legal Specialty Group, said in an interview that the increase in revenues is primarily driven by higher billing rates and clients' "surprising" willingness to agree to those higher rates.

Realization is also higher than what firms expected, Burman said, which made billing rates contribute even more to the increase in revenues than they otherwise would have.

"I think the budgets anticipated less realization against those rate increases," Burman said. "In the end, firms are getting close to what they asked for. That's really boosting the top line."

Overall, the first half of 2025 has been one of the stronger six-month periods Wells Fargo has recorded, said Burman, who compared the period to similar points in 2024 and 2021, both of which he said were also particularly strong for the legal industry. He said that seeing double-digit revenue growth for two years in a row between 2024 and 2025 is a sign that the industry is "doing quite well again."

"The difference between 2021 and 2025 is the degree to which we're dependent on rate increases to get that extra oomph," Burman said. "Last year, we had better demand growth of over 3%. This year, it's 2%, but we're getting terrific rate increases. So rate increases are accounting for 80% of the revenue number. If you look back at '21, it's a much more balanced picture, where demand and rates were growing at roughly the same pace."

Firms are also seeing larger expense growth in 2025, according to Wells Fargo, pointing to a 9.5% expense increase for the first half of the year, a full point higher than the 8.5% increase reflected by Citi's data for the same period. According to Wells Fargo, either number is well ahead of the 7% expense growth firms saw for the same period in 2024.

Part of the expense growth came from increased attorney compensation, which grew by 10.4%. Much of that compensation increase is tied to the recent proliferation of nonequity partners at Am

Law 200 firms, Wells Fargo said, noting other factors include technology costs and professional staff.

Burman said that technology costs are “one of the largest cost components, outside of lawyers” and that those expenses are “a significant cost contributor” for law firms, but added that other overhead costs like rent, marketing and consultant fees are also notable.

Not all of the data figures in Wells Fargo’s results showed increases. According to the six-month survey, productivity at the respondent firms fell by 1.3% in the first half of the year, which Wells Fargo said reversed the improvements made in that area in 2024. Inventory turnover was largely unchanged for the legal industry, according to Wells Fargo’s survey, but total inventory was up 11% due to higher amounts of unbilled hours by the respondent firms.

Burman said that it remains to be seen whether higher billing rates can continue to offset the lower-than-expected demand law firms are seeing overall, adding that the answer to that question will likely be determined by the economy’s performance throughout the rest of 2025 and into 2026.

Guest Post: Will I Ever Retire?

dandodiary.com/2025/08/articles/erisa/guest-post-will-i-ever-retire

Kevin LaCroix August 27, 2025

Sarah Abrams

In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, takes a look at President Trump's recent Executive Order designed to expand the investment options available in 401(k) and other defined-contribution retirement plans, and considers the Order's potential implications for ERISA liability and insurance. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post contributions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

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On August 7, 2025, the President signed an Executive Order (EO) to "allow 401(k) investors to access alternative assets [including 401(k)s] for better returns and diversification." In anticipation of the EO, asset managers had previously announced offering 401(k) targeted funds that include private equity investments. Empower, an employer benefits administration, indicated in May that it would begin to provide private asset investments in some workplace accounts later this year. According to the Investment Company Institute, defined contribution plans, like 401(k)s, held $12.4 trillion in assets at the end of 2024, representing a tremendous potential opportunity for PE.

However, will expanding the appetite for employee retirement fund investments into PE lead to an increase in ERISA-related litigation? And, as a result, will fiduciary liability insurance underwriters have increased exposure to litigation scrutinizing plan administrators' investment in private assets?

As D&O Diary readers may recall, there have been previous waves of excessive fee litigation targeting large employer-sponsored 401(k) plans. Between 2015 and 2020, hundreds of excessive fee cases were filed, with more than 30 claims settling for more than $10 million. Given the higher fees and lower transparency that may accompany PE investment, is a new wave of potential litigation forming offshore?

The following discusses the EO, Fiduciary Liability Coverage, ERISA, PE-specific exposure, and whether the recent dismissal of plan participants' case against *Siemens* can be used as a bellwether for plan administrators reinvesting certain 401(k) funds into PE.

Executive Order

The EO instructs the Labor Department (DOL) and the Securities and Exchange Commission (SEC) to facilitate access and provide guidance to employers and plan administrators on including investments in 401(k) plans. The EO further espouses that alternative assets, such as PE, real estate, and digital assets, "offer competitive returns and diversification benefits." As D&O underwriters may be aware, coverage is available to protect employers and administrators who invest employee retirement funds from allegations related to the investments in those funds.

Fiduciary Liability Coverage

Fiduciary liability insurance covers claims arising from the mismanagement of employee benefit plans, including allegations of breaches of fiduciary duty under ERISA, errors in plan administration, improper investment oversight, and failure to disclose plan information. It typically pays for legal defense costs, settlements, and judgments related to fiduciary responsibilities and is often offered as additional coverage in modular management liability policies.

However, fiduciary liability insurance often does not cover intentional misconduct, criminal acts, or fraudulent behavior once fully adjudicated, meaning defense expenses until that point are covered. Fiduciary liability coverage also may exclude the actual benefits owed to plan participants and civil penalties under certain ERISA provisions, unless coverage is granted by endorsement. With a brief understanding of fiduciary liability coverage, it may be helpful to review what ERISA is and how the EO may increase exposure to fiduciary liability policies.

ERISA and Excessive Fees

ERISA, or the **Employee Retirement Income Security Act of 1974**, is a federal law that sets minimum standards for retirement and health benefit plans in private industry, including 401(k) plans. ERISA governs how 401(k) plans must be structured, managed, and overseen. Plan sponsors and administrators (often employers or financial managers) are fiduciaries under ERISA. Plan administrators act solely in the interest of plan participants and beneficiaries. ERISA also requires that fiduciaries evaluate the prudence of adding new asset classes (e.g., private equity or crypto) to 401(k) plans. Thus, with the EO paving the way for PE investments, ERISA still requires plan fiduciaries to assess whether they are appropriate for average retirement savers, including the impact of investment fees on the plan coffers.

In this vein, it is important to recall that PE's standard fee structure is a 2% annual management fee plus 20% of deal profits. Over four-fifths of funds set profit share at 20% (carried interest). There are also expenses such as transaction fees, portfolio-company fees, or legal and consulting costs, which are typically added on top of the "2-and-20" fee model. If the PE fee structure varies significantly from that of mutual fund and exchange-traded investments, there may be plan participant scrutiny under ERISA and excessive fee allegations.

The mid to late 2010s excessive fee litigation alleged that plan sponsors and fiduciaries were liable under ERISA for failing to adequately negotiate and/or monitor the fees charged by plan service providers (fund managers, administrators, and record-keepers) consistent with their fiduciary obligations under ERISA.

As fiduciary liability underwriters may recall, excessive fee lawsuits were difficult to dismiss, with only one-third of cases being dismissed during initial motion practice. When a lawsuit survives motions to dismiss and summary judgment, particularly because investment decisions by plan administrators may be considered a question of fact, expenses increase.

Will opening 401(k)s to private asset exposure result in a new wave of ERISA-based litigation? The two cases discussed below are considered along with the potential impact, if any, on 401(k) administrators that invest retirement funds with PE.

Edison and Siemens

In Tibble v. Edison Int'l (Tibble), plaintiff beneficiaries of the Edison 401(k) Savings Plan sued Plan fiduciaries to recover damages for alleged losses suffered because of alleged breaches of fiduciary duties. The beneficiaries claimed violations related to mutual funds added to the Plan in 1999 and mutual funds added to the Plan in 2002, specifically that administrators offer higher-priced retail-class mutual funds as Plan investments, when materially identical lower-priced institutional-class mutual funds were available.

A unanimous Supreme Court vacated the Ninth Circuit's decision that the complaint regarding the 1999 funds was untimely. The Supreme Court instead held that fiduciaries have a continuing duty to regularly monitor plan investments and remove imprudent ones. But are PE investments imprudent?

As previously discussed, PEs may have a higher fee structure than existing plan investments. However, if returns from PE are stronger than mutual funds or ETFs, don't plan administrators, pursuant to Tibble, also have to monitor and make prudent investment decisions?

Perhaps the recent dismissal of a lawsuit by the District Court in New Jersey brought by a Siemens' employee may support plan administrators looking to reinvest certain contributions in PE.

Specifically, the District Court found that a Siemens employee's claim that the company mismanaged retirement plan funds by using forfeited employer contributions (money left behind when employees leave before fully vesting) did not violate ERISA. Notably, the Court found that Siemens acted within the plan's rules and didn't misuse the funds for personal gain. So, if 401(k) plan documents disclose alternative asset investment, including PE, and plan administrators do not enrich themselves improperly, will liability and potential exposure for violating ERISA decrease?

Conclusion

It remains to be seen whether the EO, directing the DOL and SEC to create a framework for 401(k) plans to invest in PE, will result in a flood of plan administrators reinvesting plan capital into the private asset market. However, given the history and impact of excessive fees cases brought under ERISA, insurers offering fiduciary liability coverage may want to take note of the potential exposure that may come from reinvesting retirement plans into PE.

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Securities Law News
Opinion

Matt Levine’s Money Stuff: Biotech Dividend Arrived Early

Aug. 26, 2025, 11:02 AM PDT

Off by one

Sometimes stocks trade at the wrong price. Sometimes this is a debatable, subjective matter: You have done a careful analysis of the company’s future cash flows, and you have determined that the current market price is much lower (or higher) than the value of those cash flows, so you buy (or sell) the stock, chuckle to yourself “all these other people have no idea what the fundamental value of this company is,” and eventually turn out to be right or wrong. More rarely, though, it is a simple objective mistake: You can buy a dollar, a real dollar, for 25 cents. Or you can sell 25 cents for a dollar. If you spot opportunities like that, you should probably seize them. But you should also, you know, triple-check to make sure that you’re right. If a stock price looks like a mistake, you have to be sure exactly what the mistake is and who is making it.

ESSA Pharma Inc. is a small Canadian biotechnology company listed on the Nasdaq; its market capitalization last September was about $300 million. Its mission was to find a treatment for prostate cancer, but last October it announced a failed clinical trial and gave up. The stock price, naturally, collapsed, but Essa wasn’t worthless: It had raised money for its research, and when it terminated that research it had money left over. It decided to wind up the company and give that money back to shareholders.

ESSA consisted of (1) a pile of cash, (2) a public listing and (3) some pretty speculative intellectual property (its prostate cancer treatment that didn’t work). So the company looked for a merger to extract some value from the IP and/or listing. This July, it signed a merger agreement with a company called XOMA Royalty Corp.; the deal was that (1) XOMA would acquire ESSA, (2) ESSA’s existing shareholders would get most of the cash and (3) they’d get a contingent value right entitling them to some value if the legacy assets turned out to be worth anything.

The way the existing ESSA shareholders would get the cash was that ESSA would pay out a dividend before the merger closed. On Aug. 14, ESSA announced that it would pay out $80 million to existing shareholders (about $1.69 per share) on Aug. 22 (last Friday). At the time, ESSA's stock was trading at about $1.92 per share (a $90 million market capitalization), so almost 90% of the value of the stock represented the right to that cash payout. That makes sense: There was a little stub of speculative legacy asset value, but mostly there was cash.

That dividend announcement, however, contained an off-by-one error. Here it is (emphasis added):

The Nasdaq Stock Market LLC ("Nasdaq") has determined that **the ex-dividend date for the Distribution will be August 25, 2025** (the "Ex-Dividend Date"), the first business day after the payment date. The Distribution is **scheduled to be paid to Shareholders on August 22, 2025** and Shareholders will receive approximately $1.69 per Common Share in the Distribution (subject to applicable withholding).

Because the Distribution represents more than 25% of the price of the Common Shares, Nasdaq has determined that the Common Shares will trade with "due bills" representing an assignment of the right to receive the Distribution during **the period from August 19, 2025 through and including August 25, 2025** (the "Due Bill Period"). Thus, the Common Shares will trade with this "due bill" and the assignment of the right to receive the Distribution during the Due Bill Period until the Ex-Dividend Date.

Shareholders who sell their Common Shares during the Due Bill Period will be selling their right to the Distribution, and such Shareholder will not be entitled to receive the Distribution (even if the trade will settle after the Due Bill Period). Persons who purchase Common Shares during the Due Bill Period will be entitled to receive the Distribution (even if the trade will settle after the Due Bill Period).

That is:

1. The dividend was "scheduled to be paid to Shareholders on August 22."

- 2. If you bought shares any time "through and including August 25," you were entitled to get the dividend. Because stock trades settle T+1 — if you buy a share on Monday you don't get it until Tuesday — buying a share on Aug. 25 meant that you wouldn't actually own the share until Aug. 26, but that's okay, because the person who sold you the share owed you the dividend (a "due bill").
- 3. "The ex-dividend date for the Distribution will be August 25, 2025." The ex-dividend date is the first day on which the stock trades "ex dividend," meaning without the dividend. If you buy stock before the ex-dividend date, you get the dividend. If you buy stock after the ex-dividend date, you do not get the dividend. If you buy stock *on* the ex-dividend date, *you do not get the dividend*.
- 4. Thing 2 conflicts with Thing 3. The announcement says that if you buy stock "through and including" Aug. 25, you get the dividend, but it also says that if you buy stock on Aug. 25, you *don't* get the dividend.
- 5. Oops!

From the broader context it seems clear that they *meant* Thing 3 (no dividend if you buy on Aug. 25), not Thing 2, just because the dividend was *paid* on Aug. 22 and it would be weird to get the dividend if you bought the stock after it was paid. On the other hand, if you just read the press release, you might well come away with the impression that they meant Thing 2 (yes dividend if you buy on Aug. 25), because the press release says that in so many words — "through and including August 25" — while Thing 3 is expressed more technically ("ex-dividend date"). Does "ex-dividend date" mean "first day without the dividend" or "last day with the dividend"? Well, it means "first day without the dividend," but maybe you didn't know that. Apparently no one asked?

The stock closed at $1.93 on Friday, representing (1) the right to receive $1.69 in cash that day plus (2) a little stub worth about $0.24. As of 10 a.m. this morning, the stock was trading at around $0.25, representing only the little stub (the cash got paid out on Friday).

But *yesterday*, whoops! If you bought the stock yesterday, you either were or were not entitled to the $1.69 dividend. The stock opened at $0.7333 per share, which was definitely the wrong price: You were either hugely overpaying for a $0.25-ish stub company, or hugely underpaying for a $1.69 cash dividend. And so there was a lot of trading: People who thought they would get the dividend were happy to pay $0.73 for $1.69 in immediate cash, while people who did not think they would get the dividend were happy to sell the stub for $0.73. About 178 million shares — almost $100 million worth — changed hands yesterday; average volume this year before last Friday was under 250,000 shares per day. There were two possible readings of the press release, and differences of opinion are what make a market, so this press release created a lot of trading between people who thought the stock did not come with a dividend (and sold) and people who thought it did (and bought).

It didn't. The stock was halted at 9:45 a.m., and it didn't reopen until 4:30. Eventually the company put out a clarification:

The press release issued by the Company on August 14, 2025, inadvertently stated that the Common Shares would trade with "due bills" representing an assignment of the right to receive the Distribution during the period from August 19, 2025 through and including August 25, 2025 (the "Due Bill Period"). The correct Due Bill Period was in fact August 19, 2025 through and including August 22, 2025. Shareholders should be advised that the Distribution was paid to Shareholders on August 22, 2025, and as a result Common Shares did not trade with due bills on August 25, 2025 and instead began trading on an "ex-dividend" basis as of such date.

Ah well. Sometimes you really can buy $1.69 of cash for $0.73. Sometimes, though, the press release is just wrong. I assume there will be lawsuits.

Sports

For much of US history, sports gambling was regulated by the states. It was illegal in most states, with Nevada being the main exception. But “by the 1990s, there were signs that the trend that had brought about the legalization of many other forms of gambling might extend to sports gambling,” and the US Congress passed a federal law to stop that. The Professional and Amateur Sports Protection Act of 1991 essentially forbade the states from legalizing sports gambling, with a few exceptions (again mostly Nevada). So starting in 1991, sports gambling was *not* a matter of state regulation: The federal government mostly prohibited states from allowing it.

In 2018, though, the Supreme Court struck down that law, finding it unconstitutional. “PASPA,” wrote the Court, “‘regulate[s] state governments’ regulation’ of their citizens. ... The Constitution gives Congress no such power.” So starting in 2018, sports gambling was again a matter for state regulation, and the trend of legalization did continue: Most states now allow some legal sports gambling, though about a dozen do not.

But this year the system changed again: The federal government has apparently again prohibited states from regulating sports gambling. But the direction has flipped: Unlike the PASPA in 1991, now the federal rule is that states are prohibited from *stopping* sports gambling.

Also unlike the PASPA, this did not involve any new legislation. The new rule isn’t clearly stated anywhere. There’s no federal law saying “states can’t regulate sports gambling.” The new rule is an emergent result of regulatory *silence*. What happened is approximately that the US Commodity Futures Trading Commission was given the power to regulate “event contracts,” that is, prediction markets, and a prediction market named Kalshi became a CFTC-regulated futures exchange. As a futures exchange, Kalshi is allowed to “self-certify” new event contracts, which then become listed for trading unless the CFTC steps in to stop them. Kalshi started self-certifying event contracts on *sporting events*, like who would win football games. The CFTC actually has a rule prohibiting event contracts that involve “gaming,” and when the rule was enacted everyone apparently agreed that “gaming” included sports betting, so it is not clear to me why Kalshi thinks that these contracts are legal. But the important thing is that, in 2025, the CFTC — which is quite Kalshi-friendly and might soon be headed by a Kalshi board member — has not objected to those contracts, so Kalshi can go ahead and trade sports bets.

And because Kalshi is a CFTC-regulated commodity futures exchange, that means that — however accidentally and unintuitively — its contracts are federally regulated commodities trades, and federal commodities regulation *preempts* state gaming regulation. (In the olden days, people thought that *trading corn futures* was gambling, and states tried to ban it, so federal commodities law preempted those efforts.) And so Kalshi started offering sports bets nationwide, and various state regulators sent it letters saying “hey you are doing sports gambling without complying with regulation,” and Kalshi told them “buzz off.” And Kalshi went to court, saying that it is illegal for the states to regulate its sports gambling offerings. And courts mostly agreed!

We have talked about this history a couple of times before. I find it extremely weird! Donald Trump did not run for the presidency on a platform of "states shouldn't be allowed to regulate sports betting," and nobody introduced a law saying that, and in fact as far as I can tell the CFTC's rules still *prohibit* futures exchanges from offering sports bets, but here we are anyway. Sports betting is now a form of commodities futures trading, futures exchanges offer sports bets, and states can't stop them.

Meanwhile the federal government now taxes 100% of gambling winnings, while allowing deductions for only 90% of gambling losses, making it extremely difficult to be a professional gambler. But you can still be a professional *commodities trader*, since all of your commodity trading losses are still deductible. So you pretty much *have* to do your sports gambling on a futures exchange, where the taxes are lower and the states can't stop you.

Maybe. Probably? Anyway there is some news.

First: Most courts have agreed with Kalshi that the states can't stop them, but since we last discussed this, one court has disagreed. This month, a Maryland federal judge "observed that the states have a historically significant interest in regulating gambling activity, concluding that Kalshi had failed to show that it had a likelihood of success on the merits of its suit and denied its motion for a preliminary injunction." So it seems like Maryland can still regulate sports gambling, for now.

Second: While *Kalshi* mostly seems to be allowed to offer sports gambling everywhere, the real prize is Robinhood. Robinhood is a giant retail stock brokerage firm that has partnered with Kalshi to offer sports bets to its stock-trading clients: The contracts are traded on Kalshi, but Robinhood provides the customers and the interface to let them make the bets. Apparently state regulators, even after losing to Kalshi in court, have told Robinhood not to offer sports bets. So last week Robinhood also went to court, suing the Nevada Gaming Control Board to let it offer sports bets. From its complaint:

Despite [the Kalshi] rulings, the Board continues to threaten to enforce preempted Nevada law against Robinhood, even though the Board is currently enjoined by this Court from doing so against Kalshi with respect to the same transactions. On May 6, 2025, after this Court's decision in *KalshiEx*, … Robinhood met with the Board and explained that it believed it should be able to offer sports-related event contracts trading through Kalshi's exchange for as long as this Court's order in *KalshiEx* remains in effect. At the conclusion of that meeting, Board employees indicated they did not expect to be able to agree to refrain from enforcement action against Robinhood, even while the *KalshiEx* order is in place.

"Robinhood has activated its Nevada customers' access to sports-related event contract trading," it adds, in violation of Nevada law, and so "Robinhood now faces an immediate threat of civil penalties and criminal prosecution from the Board," but it would prefer not to, so it sued. "The CFTC has already impliedly approved those same event contracts," it says: By letting Kalshi trade them, the CFTC has silently prevented Nevada from stopping them.

Third: Sure yes this is fun for Robinhood and Kalshi, but it is a bit rough on traditional sports books, which still have to follow state law and whose customers now can deduct only 90% of their losses. The obvious solution for them is to become futures exchanges. Meanwhile, I suppose the traditional futures exchanges — where you can trade, like, corn futures or interest rates — presumably want to get in on the gambling business. The trade is obvious:

Flutter Entertainment's FanDuel is dipping a toe into the popular but legally unsettled realm of prediction markets. The move might eventually pay out in a big way, according to analysts.

The sports-betting platform is teaming up with the exchange company CME Group to offer event-based contracts that would let FanDuel users place "yes" or "no" wagers on financial events and benchmarks, such as where the S&P 500 closes or where the price of gold lands on a given day.

The rollout, expected this year, is Flutter's cautious early step into the wider world of prediction markets and might ultimately lead it to making markets for sports-related events, analysts said. In traditional sports wagering, odds are set by a bookmaker. Sports-related event contracts are priced based on how other traders are betting in the market.

A key difference: Sports-prediction markets aren't subject to the same taxes and regulations as traditional sports wagering. If Flutter can get in on those markets, it could reel in new customers from states that haven't legalized sports betting, analysts said.

Terrific. I keep saying that this is extremely weird, but in a sense it does feel right that, in 2025, gambling and financial markets are merging completely.

"If you never miss a flight you spend too much time in airports"

That is the folk wisdom, and if folk wisdom is around long enough eventually there will be an economics paper supporting it. Here is a new National Bureau of Economic Research working paper by Joshua Gans:

When should travellers leave for the airport? This paper develops a model for optimal airport arrival timing when travellers face uncertain travel times and can potentially board earlier flights. We show that access to earlier flights creates a "recourse option" that fundamentally changes optimal behaviour. While earlier flights always reduce the probability of missing one's scheduled departure, they may paradoxically increase expected waiting time when travellers adjust their arrival strategies.

I feel like "can potentially board earlier flights" is not in the traditional problem specification but this one is fun too.

AI earnings call

Here's an X post from Ruslan Kogan, chief executive officer of Australian online retailer Kogan.com Ltd., explaining that a robot did his earnings call:

In our $KGN earnings call today, it sounded like it's @davidmshafer and I presenting but it wasn't. Our voices were AI generated and read the script. We uploaded several hours of our prior talks to train our voice model and the results were pretty incredible. This saved us a few hours preparation - valuable time we could spend working on other areas of the business.

Really? So: They wrote the 25-minute script for the earnings presentation, the robot read the script, and then they answered questions? I guess? It would have taken them several hours to prepare to read the script? I feel like it would take me approximately 25 minutes to read a 25-minute earnings-call script? I suppose they had that 25 minutes to check email while the robot was reading the script, but still. Man. Have the robot *write* the script, sure, that's time-consuming. (Make sure it doesn't get anything wrong!) Have the robot answer analysts' follow-up questions, sure, that's impressive. But having the robot read the script so you don't have to seems like a pretty minimal time savings.

On the other hand, a lot of the action in modern AI-for-earnings-calls is along the lines of " tone and body language," where the CEO reads the earnings script and the investors' artificial intelligence tools analyze his voice to see if he's optimistic or panicking or lying or whatever. I suppose having your AI read the script makes you a bit harder to analyze.

Things happen

Trump Moves to Fire Fed's Cook, Setting Up Historic Legal Fight. US long-term debt sells off after Trump's attempted firing of Fed governor. UniCredit Raises Physical Stake in Commerzbank to 26%. Trump Jr. Joins Polymarket Advisory Board as 1789 Boosts Stake. Trump Channels Hatred for Wind Farms Into Strike Against Orsted. JPMorgan, Already No. 1 in Card Spending, Wants Even More. AT&T to Buy Spectrum Licenses from EchoStar for $23 Billion. Elon Musk's xAI Sues Apple and OpenAI, Alleging They Are Monopolists. Perplexity Is Launching a New Revenue-Share Model for Publishers. Squirrel honored with Topps card after interrupting Yankees game.

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- 1. When I say "extract some value from the listing," I assume that they talked to people with piles of crypto about pivoting to becoming a crypto treasury company. See page 24 of the merger proxy: "Each of the 7 selected parties were private companies or were not U.S. publicly listed companies ('private companies') that expressed interest in exploring a transaction in which the shareholders of the private company would exchange their shares for new shares of the Company, resulting in the shareholders of the private company owning a majority of the Company, and with value being ascribed to the Company's cash and its public company listing in the respective valuations of the two (2) companies (such a transaction, a 'reverse merger transaction')."

- 2. The announcement goes on: "Due bills obligate a Shareholder who sells Common Shares during the Due Bill Period to deliver the Distribution payable on such Common Shares to the buyer. Due bill obligations are settled customarily between the brokers representing the buyers and sellers of the Common Shares. The Company has no obligation for either the amount of the due bill or the processing of the due bill. Buyers and sellers of the Common Shares should consult their broker before trading to be sure they understand the effect of Nasdaq's due bill procedures."
- 3. Most dividends do not involve due bills, and the ex-dividend date is determined by (1) the record date for the dividend and (2) the settlement cycle for stock trades. So if if a company declares a regular $0.05 dividend, it will specify a record date, say Aug. 20. If you own the shares on the record date (Aug. 20), you get the dividend. Because regular-way stock trades settle T 1, if you buy shares on Aug. 19, you own them on Aug. 20 and get the dividend. But if you buy them on Aug. 20, you don't get them until Aug. 21, so you don't get the dividend. The ex date and record date are both Aug. 20. (Previously, when stock trades settled T 2, the ex date was ordinarily the day before the record date: If you bought shares on Aug. 19, you got them on Aug. 21, so you didn't get the dividend; the ex date was Aug. 19 but the record date was Aug. 20.)
- 4. The history in this paragraph, and that quote, are derived from Justice Samuel Alito's 2018 opinion in Murphy v. NCAA.
- 5. The rules are summarized on page 11 of Robinhood's complaint.
- 6. By the way, that difference between prediction markets and sports betting — "in traditional sports wagering, odds are set by a bookmaker," while "event contracts are priced based on how other traders are betting in the market" — always seems to me to be wildly overstated. It's in Robinhood's complaint too: "Fundamental differences in how contract markets and sportsbooks operate mean they are susceptible to different forms of risk to participants. Contract markets leverage the power and rigor of financial markets to provide traders with liquidity and transparency, and prices are set by market participants. Customers can manage risk by adjusting or exiting their positions up until the contract expires, and prices respond accordingly. These markets may be at risk of market manipulation and other market distortions and inefficiencies. Sportsbooks, by comparison, have a line set by the house, which is typically set ahead of time and, once a bet is placed, does not change for that bet. Gamblers bet directly against the house, and once a position is entered, gamblers typically do not have the option to exit their position. Sportsbooks risk exploitation of gamblers due to the power imbalance between the house and the gambler. Based on these different risks, it makes sense that contract markets and sportsbooks are subject to two different modes of regulation." Meh. "The power and rigor of financial markets" often involve a market maker, and in practice if you do a sports bet on a sports book or on Kalshi you are probably betting against a sophisticated quantitative trading model, whether it is run by the bookmaker or by a separate market maker. (Sports books' odds also tend to move with market demand, and while, "once a bet is placed, [the line] does not change for that bet," that's true of futures contracts too: You buy the futures contract at the price you pay for it, even if the price changes after you buy it.)

Securities Law News

SEC Objects to Nikola Plan Lowering $80 Million Claim Priority

Aug. 26, 2025, 2:45 PM PDT

The Securities and Exchange Commission objected to Nikola Corp.'s bankruptcy liquidation plan, which aims to lower the priority of the agency's $80 million claim to pay investors harmed by former CEO Trevor Milton's fraud.

The civil penalty isn't a "claim for damages" stemming from securities transactions but a regulatory enforcement action based on securities law violations, the SEC said in a Tuesday motion in the US Bankruptcy Court for the District of Delaware.

The electric vehicle maker asked the court last month to lower the claim's priority, saying it violates the bankruptcy law's "absolute priority rule" by distributing estate funds to equity holders through a "fair fund."

The agency argued that creating a fund doesn't convert the penalty into damages or change the SEC's creditor status.

The claim is part of a broader $125 million civil penalty Nikola agreed to in 2021 to settle SEC allegations that Milton misled investors to inflate stock prices. The company has already paid $45 million.

The agency argued that Nikola hasn't provided a sufficient legal or factual basis for subordination. It also rejected the company's argument that insolvency undermines the purpose of the penalty.

"A civil penalty does not lose its deterrent effect simply because the violator becomes insolvent," the SEC said. "Even if the civil penalty may no longer deter Nikola from further securities law violations, it still has a general deterrent effect."

A bankruptcy court hearing on Nikola's proposed plan is set for Sept. 5.

Pillsbury Winthrop Shaw Pittman LLP and Potter Anderson & Corroon LLP represent Nikola.

The case is Nikola Corp. , Bankr. D. Del., No. 25-10258, objection 8/26/25 .

Analysis | **Regulation**

'Frankenstein Patchwork of Rules': SEC Deluged With Ideas for Streamlining Executive Pay Disclosures

August 26, 2025 at 09:21 AM By **Chris O'Malley**

	Option awards				Stock awards			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Name	Number of securities underlying unexercised options # exercisable	Number of securities underlying unexercised options # unexercisable	Option exercise price ($)	Option expiration date [1]	Number of shares or units of stock that have not vested (#) [2]	Market value of shares or units of stock that have not vested ($) [3]	Equity incentive plan awards: number of unearned shares, units, or other rights that have not vested (#) [4]	Equity incentive plan awards: market or payout value of unearned shares, units, or other rights that have not vested ($) [5]
James D. Farley, Jr.	1,659,954		6.96	08/04/2030	959,670	9,500,733	2,026,109	20,058,479
John T. Lawler					290,704	2,877,970	590,342	5,844,386
William Clay Ford, Jr.	1,408,367		6.19	07/05/2030	760,823	7,532,148	1,614,947	15,987,975
J. Doug Field					823,288	8,150,531	1,102,977	10,919,472
Peter C. Stern					692,138	6,852,166	207,221	2,051,488

1 The table below details the vesting schedule for stock option grants based on the termination date of the relevant grant. Stock options generally have a vesting feature whereby one-third of each grant of stock options are exercisable after the first anniversary of the grant date, an additional one-third after the second anniversary, and the final one-third after the third anniversary.

Option Expiration Dates	Option Vesting Dates		
	33%	33%	34%
08/04/2030	08/05/2021	08/05/2022	08/05/2023
07/05/2030	07/06/2021	07/06/2022	07/06/2023

2 The amounts shown for Named Executives consist of the following RSU Grants:

Name	2022 Annual Grant	2023 Annual Grant	2024 Annual Grant	Incremental Grants
James D. Farley, Jr.	117,033	332,747	509,890	N/A
John T. Lawler	42,778	88,514	135,635	23,777
William Clay Ford, Jr.	99,276	259,394	397,488	4,665
J. Doug Field	64,570	180,306	276,295	302,115
Peter C. Stern	N/A	N/A	138,147	553,991

Ford Motor Co.'s executive pay disclosures for 2024 run 16 pages and contain more than three dozen footnotes. Image: Screenshot

U.S. Securities and Exchange Commission boss Paul Atkins struck a chord with the business community this summer when he called his agency's executive pay disclosure requirements "a Frankenstein patchwork of rules."

Since Atkins made the remark at an SEC roundtable in June discussing the evolution of those rules and potential ways to update them, commissioners have received a torrent of comments from companies, investors and other stakeholders that they've become too complex and confusing.

In short, those critics say, the multiple pages of disclosures companies must include in their annual proxy statements fall far short of fulfilling the SEC's 1992 mandate for "easily comprehensible" compensation tables.

Current rules mandate that companies publish a "summary compensation table," which breaks down an executive's pay into salary, bonus, nonequity incentive plan compensation, stock awards, stock option awards, other compensation and total.

While that chart might sound straightforward, critics say it is deceptively so, valuing stock awards by the stock price on the date of grant and stock option awards using the Black-Scholes-Merton or similar accounting model that takes into account such issues as the volatility of the shares and vesting.

In fact, the figures presented in those columns could prove wildly off base, based on whether the stock price soars, tanks and performs somewhere in between. And because stock options only have value when a stock price increases, it's not unusual for options valued at millions of dollars in a compensation table to end up worthless.

Through the years, the number of tables that follow the summary compensation chart "have been expanded to focus more and more on variations of components of compensation, rather than on total compensation," Atkins said in May.

It's just too much, five Jones Day attorneys wrote in an Aug. 18 letter to the SEC.

"As lawyers who draft, review and comment on executive compensation disclosures for many companies each year, it is our view that the rules currently are overly complex, expensive to comply with, and, in certain cases, do not achieve the stated goal of providing investors with only material information."

Among Jones Day's six recommendations to the SEC is that it change how it values equity awards. Rather than reporting the theoretical values they're currently required to submit, companies would report the "intrinsic value" of equity awards that vested during the applicable fiscal year.

In a June 27 letter to the SEC, UCLA law professor Stephen Bainbridge expressed similar discomfort with the SEC's current approach to valuing equity awards.

The system creates "fundamental mismatches" by awarding long-term incentives based on forward-looking goals "but investors assess pay-for-performance using backward-looking summary compensation table data," he wrote.

Bainbridge said the SEC should pare back its disclosure requirements, ditching those that are not "decision-useful" for investors.

That analysis could lead to replacing multiple compensation tables "with a single, clear summary that aligns timing of pay awards with performance periods," Bainbridge said. He said the new approach would emphasize realized pay and actual performance results "rather than theoretical grant-date values."

Many of the stakeholders submitting letters encouraged the SEC to eliminate a "pay vs. performance" disclosure it has mandated since 2022 and and a CEO pay ratio disclosure it has mandated since 2015.

Critics of the pay vs. performance disclosure call it time-consuming for companies to compile and difficult for anyone to decipher. The CEO pay ratio, which compares the top executive's total annual compensation to the median annual compensation for all its employees, is easier to grasp, though critics dismiss it as largely meaningless, in part because it fails to take into account differences across industries.

For example, a shareholder fixating on the ratio might conclude that Kroger's CEO was grossly overpaid in 2024 because his $15.6 million in compensation was 457 times that of the median for its predominantly retail workforce.

On the other hand, the Goldman Sachs CEO's compensation was a comparatively modest 192 times the median for its predominantly white collar, professional workforce, even though he earned $31.3 million, twice what the Kroger CEO earned.

"In my opinion, the only parties who benefit from the PVP table disclosure requirements are actuarial and consulting firms, who are paid tens of thousands of dollars per year per company to help companies generate meaningless PVP tables and disclosures that no one reads," read an anonymously submitted letter from a lawyer at a company listed on Nasdaq.

The disclosures "have no relation to reality of realized pay. We had negative 'compensation actually paid' in some years—what value could these calculations possibly be?"

In an Aug. 18 letter, DragonGC, an AI-powered corporate governance and compliance platform, noted that annual say-on-pay votes, which the SEC has mandated since 2011, have proven to be an effective tool to rein in executive compensation abuses.

Though the votes are non-binding, companies that receive less than 80% support for their executive compensation programs often respond by engaging with shareholders.

From those discussions, concrete changes sometimes result. For example, a company might change its performance metrics, eliminate one-time awards or even replace the chair of the compensation committee that approved an overly favorable CEO pay package, according to DragonGC's research.

"We submit that the SEC should build on this to have effective discipline of executive compensation without having to make already lengthy proxy statements grow even longer," DragonGC wrote.

One challenge for the SEC is that different stakeholders disagree with one another.

For example, in a June 25 letter Jaimie Kilma, general counsel of the New York Stock Exchange, wrote that say-on-pay votes "have little utility to companies or their shareholders.

"Despite the original intent for say-on-pay votes to be a consultative tool to guide public company boards, proxy advisory firms often exploit pending votes to pressure companies into implementing compensation practices favored by those same firms," he said.

Meta to launch California super PAC backing pro-AI candidates

reuters.com/world/us/meta-launch-california-super-pac-backing-pro-ai-candidates-2025-08-26

Jaspreet Singh August 26, 2025

The logo of Meta is seen at Porte de Versailles exhibition center in Paris, France, June 11, 2025. REUTERS/Gonzalo Fuentes/File Photo Purchase Licensing Rights, opens new tab

- Meta's PAC will support state-level AI-friendly candidates from either party
- Company says Sacramento's regulatory environment could stifle AI innovation
- Newsom backs AI growth with 'appropriate guardrails' — governor's office spokesperson

Aug 26 (Reuters) - Meta (META.O), opens new tab said on Tuesday it will launch a California-focused political action committee to back state-level candidates favoring lighter regulation of technology, particularly artificial intelligence.
The group, named "Mobilizing Economic Transformation Across (Meta) California," will support candidates for state offices from either party who advocate AI innovation over stringent rules, the company said.

The Facebook and Instagram parent plans to spend tens of millions of dollars through the PAC, potentially positioning the company among the state's top political spenders ahead of the 2026 governor race.

California will elect its next governor in November 2026. Governor Gavin Newsom's national profile has surged amid a series of confrontations with President Donald Trump, positioning him as a high-visibility Democratic figure.
"The Governor takes a balanced approach to ensure that as the AI industry continues to grow, it does so with appropriate guardrails to protect the public," a spokesperson for the office of the California governor said in an emailed response.

Meta's move to back candidates who favor AI-friendly policies aligns with its business interests, as the social media company is pouring billions to better compete in Silicon Valley's intensifying AI race and develop new cash flows.
"Sacramento's regulatory environment could stifle innovation, block AI progress, and put California's technology leadership at risk," said Brian Rice, Meta vice president of public policy.

California has been among the most aggressive states in pursuing AI and social media regulation and state officials will shape rules on safety, transparency and consumer protection that could impact tech companies' products.

Rice will head the PAC alongside fellow public policy VP Greg Maurer as principal officers, according to a company spokesperson.

Companies such as Uber (UBER.N), opens new tab and Airbnb (ABNB.O), opens new tab have used such campaign-focused, multi-million dollar strategies to build clout in Sacramento, according to Politico, which first reported the development.
Venture-capital firm Andreessen Horowitz and OpenAI President Greg Brockman are among those helping launch and fund Leading the Future, a new super PAC network focused on AI, the Wall Street Journal reported on Monday.

Reporting by Jaspreet Singh in Bengaluru; Editing by Mohammed Safi Shamsi and Alan Barona

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

Bloomberg Law

Tesla Denied Transfer in Texas Suit Over Self-Driving Patents

Aug. 26, 2025, 2:02 PM PDT

Summary by Bloomberg AI AI Generated

- A federal judge denied Tesla's motion to move a case to Northern California, saying the eight factors for determining whether to transfer a case were a wash.
- Judge Rodney Gilstrap rejected Tesla's argument that Granite Vehicle Ventures LLC's status as a non-practicing entity should tip the balance in its favor over one of the factors—relative court speed.
- The case, in which Tesla is accused of ripping off a trio of self-driving patents, will proceed in the US District Court for the Eastern District of Texas.

Tesla Inc. must defend against accusations it ripped off a trio of self-driving patents in East Texas after a federal judge denied its motion to move the case to Northern California.

Judge Rodney Gilstrap of the US District Court for the Eastern District of Texas said the eight factors for determining whether to transfer a case were a wash, favoring neither Tesla nor patent owner Granite Vehicle Ventures LLC according to an order made public Monday but posted under seal a week earlier.

"To use a baseball analogy: tie goes to the runner—here, Plaintiff," Gilstrap concluded.

Gilstrap rejected Tesla's argument that Granite's status as a non-practicing entity that doesn't make any products based on its patented inventions should tip the balance in its favor over one of the factors—relative court speed. The car company cited a Federal Circuit opinion that said a different NPE was "not in need of a quick resolution" of its case so it wouldn't lose market share.

Gilstrap was unconvinced, writing that whether "a plaintiff practices an asserted patent or not is wholly irrelevant" to how quickly a case can be resolved.

The judge also took issue with declarations Tesla filed in support of a transfer where its officials made statements based on what he characterized as "artificially limited" examinations of where company employees were located.

Granite was formed in 2020 and lists as managers Maryland-based patent monetization executives York Eggleston and Keith Machen. The LLC acquired the three patents from an entity linked to Machen called Slingshot IOT LLC in July 2023, according to US Patent and Trademark Office records.

Heim, Payne & Chorush and Miller Fair Henry PLLC represent Granite Vehicle. Tesla is represented by its in-house counsel and Gillam & Smith LLP.

The case is Granite Vehicle Ventures LLC v. Tesla Inc. , E.D. Tex., 2:24-cv-1007, denial of motion to transfer 8/25/25 .

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Securities Law News

Trump Media Partners With Crypto.com on Crypto Treasury (1)

Aug. 26, 2025, 8:06 AM PDT

Trump Media & Technology Group Corp. and Crypto.com agreed to a deal with blank-check vehicle Yorkville Acquisition Corp. to create a crypto treasury company focused on buying and holding CRO tokens, the native cryptocurrency of the Cronos ecosystem.

The treasury company will become one of the latest to follow the playbook Michael Saylor created at Strategy, raising funds to buy and hold cryptocurrencies, according to a filing Tuesday with the US Securities and Exchange Commission.

Shares held by Trump Media, Crypto.com and Yorkville will be subject to a mandatory one-year initial lock-up period following the closing of the deal.

Shares of Trump Media rose as much as 10.2% on Tuesday, while Yorkville Acquisition stock fell as much as 3.4% in New York. Cronos token prices gained 32.3% on Tuesday, according to tracker CoinMarketCap.

Trump Media also concurrently announced a mutual cooperation agreement with Crypto.com to introduce a rewards system on its platforms, which include social media network Truth Social and Truth+, the filing shows. Crypto.com and Trump Media will transfer 684.4 million CRO tokens worth about $105 million to Trump Media in exchange for 2.8 million of its shares and $50 million in cash, according to the filing.

The rewards system will adopt CRO as a so-called utility token and use the Crypto.com digital wallet infrastructure, the filing shows.

Read More: Crypto Treasury Firms Swarm Wall Street in SPAC, Merger Boom

Cronos has a total market value of about $6.5 billion, making it the 23rd largest cryptocurrency, according to CoinMarketCap. It is the native token of the Cronos blockchain, which is supported by Crypto.com.

Lesser-Known Crypto

The proposed Trump Media-Crypto.com SPAC tie-up differs from Saylor's Strategy in its focus on a lesser-known cryptocurrency. Strategy adopted Bitcoin when it was already liquid and relatively widely circulated, and holds only a fraction of the coins in circulation. By contrast, a publicly-traded vehicle that owns nearly a fifth of available CRO — making it the largest holder of the token — would potentially expand access far beyond its current reach.

Crypto.com Chief Executive Officer **Kris Marszalek** has fostered connections with President Donald Trump and his businesses. Marszalek was among the first crypto executives to visit Trump at Mar-a-Lago after his electoral victory last year, and the company donated $1 million to Trump's inaugural committee. Foris Dax Inc., the parent entity of Crypto.com, also donated $10 million to Trump's super PAC, MAGA Inc., in February.

The crypto exchange has also partnered with Trump Media on a number of the latter's proposed crypto-linked ETFs, including a so-called "Crypto Blue Chip" fund that would offer exposure to Cronos alongside Bitcoin, Ether and other cryptocurrencies.

Read More: Trump Media Furthers Push Into Crypto With Third ETF Filing

Crypto.com had previously faced an investigation from the SEC on allegations of operating as an unregistered broker-dealer and securities clearing agency, which Crypto.com sued the SEC over. But the company dropped its lawsuit in December and the SEC closed its investigation in March without filing enforcement action.

Funding for the SPAC, which will be called Trump Media Group CRO Strategy Inc., is expected to consist of 6.3 billion CRO tokens representing about 19% of the total CRO outstanding, as well as $200 million in cash, $220 million in mandatory exercise warrants and a $5 billion equity line of credit with an affiliate of Yorkville Acquisition Sponsor, the backer of the Yorkville Acquisition special purpose acquisition company, the filing shows. Details of the expected funding were not disclosed.

The CRO treasury plans to trade under the symbol MCGA on the Nasdaq after its SPAC merger.

(Updates with shares in fourth paragraph and context from fifth paragraph.)

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Skechers Investor Sues For Docs In $9.4B Take-Private Deal

By **Lauren Berg**

Law360 (August 26, 2025, 6:41 PM EDT) -- Skechers faces a lawsuit in Delaware's Court of Chancery from a company stockholder seeking access to corporate records over concerns that 3G Capital's $9.4 billion deal to take the footwear giant private would unfairly give Skechers' founders a "substantial equity stake" and continued leadership roles in the surviving company.

Investment adviser firm AQR Arbitrage LLC says it served Skechers USA Inc. on June 26 with a demand for books and records, but despite the company agreeing to an initial scope of production on July 3, it hasn't produced a single document, according to the **complaint** filed Monday asking the Chancery Court to enforce the demand.

"Plaintiff's purposes include investigating potential wrongdoing and determining whether to seek appraisal of his shares," AQR Arbitrage said, adding that the decision to seek appraisal is a "fraught choice" in which an investor might receive less than the deal price, more than the deal price, or the exact deal price for shares.

What's more, the investor said there's a narrow window of time to seek appraisal and Skechers' "deliberate slow roll — and its failure to make the disclosures required by [U.S. Securities and Exchange Commission] Rule 13e-3 for 'going-private transactions' — has compromised plaintiff's ability to make an informed decision whether to seek appraisal of its Skechers shares before that deadline" of 60 days following the close of the transaction.

The deal between 3G Capital and Skechers was **announced in May**, which would see the footwear company go private in the third quarter of 2025 if the deal closes as planned, capping a 26-year run as a listed company on the New York Stock Exchange.

Under the terms of the deal, 3G Capital has agreed to pay $63 per share in cash for the sneaker maker, which represented a 30% premium based on Skechers' recent stock price at the time of the announcement. The acquisition values the sneaker company at about $9.4 billion.

Skechers shareholders have an alternative option to accept $57 per share and obtain one unlisted, nontransferable equity unit in a new privately held company that will become Skechers' parent after the acquisition closes, subject to certain restrictions.

In its suit Monday, AQR Arbitrage says it and other stockholders will be forced to sell their shares for cash, but that the deal appears to give "significant non-ratable benefits" to Skechers founder Robert Greenberg and his son, Michael Greenberg, who control a majority of the company's voting power.

Skechers has not made the public disclosures required under SEC rules governing take-private transactions needed for investors to make valuation determinations, the suit states.

"The Greenbergs are on both sides of the transaction: they will receive a substantial equity stake in the surviving company and will remain in their senior roles as CEO (Robert) and president (Michael)," AQR Arbitrage said, noting that in these situations, the SEC has heightened disclosure requirements.

Now, the investor is asking the court for help in getting the corporate books and records needed to make their appraisal-election decision, according to the complaint. It is also seeking litigation costs and attorney fees.

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

AQR Arbitrage's complaint comes about a month after a California federal judge **refused to preliminarily block** the take-private deal, finding that a pension plan that owns Skechers shares failed to show it would be irreparably harmed without the injunction.

Key West Police Officers and Firefighters Retirement Plan filed suit seeking more information on the reasoning behind the proposed go-private merger.

But U.S. District Judge Percy Anderson found that the plan has not shown that any harm it might suffer from the alleged disclosure violation is irreparable. He noted that there is no voting decision at issue in the case, because the merger was approved based on votes by Robert and Michael Greenberg, who, along with other family members, hold a majority of stockholder votes.

The judge said the pension plan merely must decide between a cash-out or rollover option as compensation for its shares, but "this is not a scenario where the court would be left to 'unscramble the eggs' if preliminary injunctive relief were withheld and plaintiff were to ultimately prevail on the merits of its claim."

AQR Arbitrage is represented by Daniel E. Meyer, Jeroen van Kwawegen, Christopher J. Orrico and Shiva Mohan of Bernstein Litowitz Berger & Grossmann LLP and Joel Fleming and Amanda Crawford of Equity Litigation Group LLP.

Counsel information for Skechers was not immediately available.

The case is AQR Arbitrage LLC v. Skechers USA Inc., case number 2025-0958, in the Court of Chancery of the State of Delaware.

--Additional reporting by Tom Zanki and Dorothy Atkins. Editing by Jay Jackson Jr.

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Medical Cannabis REIT Seeks Escape From Shareholders' Suit

By **Isaac Monterose**

Law360 (August 26, 2025, 3:26 PM EDT) -- A cannabis-focused real estate investment trust and its executives told a Maryland federal court to permanently dismiss a proposed securities class action, arguing that most of the "core" accusations about them misleading shareholders "are speculative or factually unsupported."

According to Innovative Industrial Properties Inc.'s Aug. 22 motion, the REIT announced earlier this year that it reached an agreement with its tenant, PharmaCann Inc., about the tenant's lease defaults and that three of the REIT's tenants had defaulted on their leases.

The REIT argued that the proposed class, which is headed by lead plaintiff City of Birmingham Retirement and Relief System, wrongfully used these announcements as the basis for its 103-page suit.

"Despite its length, the complaint does not allege facts showing that IIPR withheld financial information, declared defaults earlier than disclosed, or misstated prior financial results," the REIT claimed. "The only 'facts' are that four tenants stopped paying rent and defaulted."

"The balance is rank speculation (and fiction)," the REIT added.

Innovative Industrial Properties alleged that the proposed class' main argument is that the REIT committed "'fraud by hindsight'" because the REIT must've known beforehand that the tenants were struggling.

But, the REIT countered by arguing that it's disclosed that its tenants are operating cannabis businesses that are legal in some states but illegal under federal law. So, the nature of the tenants' businesses makes it difficult for them to get financing to support themselves, the REIT claimed.

Innovative Industrial Properties further claimed that the "significant uncertainties" surrounding its tenants mean that the REIT only lists revenue when it receives rent payments from the tenants, which the company has previously disclosed.

According to the REIT, its independent public auditor and the U.S. Securities and Exchange Commission has approved the company's "unique accounting practice" for listing revenue.

"These disclosures alone tell investors that IIPR does not have a normal risk profile," the REIT alleged. "Thus, plaintiff knew that the financial stability of IIPR's tenant base was inherently unpredictable. Those risks patently include potential defaults."

Also, Innovative Industrial Properties argued that it "consistently" used its SEC filings to tell its investors about the REIT's risky tenants.

Additionally, according to the REIT, the lead plaintiff's 103-page suit exceeds the court's 40-page limit for suits. Also, the "exhaustingly repetitive" suit lacks citations and contains "improper group pleading," the REIT argued.

The company also pointed to case law such as the court's 2017 ruling for Plumhoff v. Central Mortgage Company to argue that the suit should be permanently tossed because it was too long.

Innovative Industrial Properties further argued that the proposed class failed to allege how the REIT violated the Securities Exchange Act and the SEC's Rule 10b-5.

"The complaint is grounded in the speculative conclusion that IIPR either failed to do diligence on and monitor its tenants or was reckless in doing so," the REIT alleged.

But, according to the REIT, the proposed class action only includes a few statements from the company. The proposed class also failed to substantially support its claims alleging that the statements "were false or misleading," the REIT alleged.

The REIT argued the suit's claim about the company's statements "cites neither confidential witnesses, nor internal documents, nor any contemporaneous facts."

"Plaintiff's entire argument is that because IIPR reported it performed diligence on prospective tenants, monitored tenants' payment history, and their tenants defaulted, IIPR's statements must have been false," the REIT also claimed. "Aside from being factually illogical, this is insufficient."

Throughout the rest of its motion, Innovative Industrial Properties argued that it's not required to disclose or openly speculate about its tenants' finances.

The proposed class also failed to sufficiently claim that the REIT's statements directly caused their losses and that the company knowingly misled shareholders and wanted to defraud them, the REIT claimed.

The proposed class **began** their suit in January and the court **appointed** the City of Birmingham Retirement and Relief System and its counsel as lead plaintiff and lead class counsel, respectively, in April.

Class counsel and Innovative Industrial Properties' counsel did not respond to requests for comment on Tuesday. The REIT also did not respond to a request for comment.

The proposed class is represented by Corey S. Bott and Shauna Barnaska of Abato Rubenstein and Abato PA and Jacob L. Lieberman, Jessica M. Casey, Donald A. Broggi, Susan Hu and Lana V. Levin of Scott + Scott Attorneys at Law LLP.

Innovative Industrial Properties is represented by Jarren N. Ginsburg, Andrew A. Howell and Todd A. Murray of Foley & Lardner LLP.

The case is Giraudon v. Innovative Industrial Properties Inc. et al., case number 1:25-cv-00182, in the U.S. District Court for the District of Maryland.

--Editing by Vaqas Asghar.

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Five Below Beats Some Investor Claims On Growth Potential

By **Katryna Perera**

Law360 (August 26, 2025, 10:05 PM EDT) -- A Pennsylvania federal judge has trimmed some claims from a shareholder suit accusing discount retailer Five Below and its executives of overstating the company's growth prospects and its ability to curb inventory loss, finding some of the suit's challenged statements to be inactionable, among other things.

U.S. District Judge Gerald Austin McHugh issued an **opinion** on Monday, holding that some of **the suit's** challenged statements about Five Below's efforts to mitigate "shrink," or inventory loss due to theft and other causes, were not false or misleading at the time they were made.

According to the complaint, from 2023 to 2024, the defendants made several representations that they were considering and implementing measures to mitigate shrink, but the plaintiffs, **led by** the Arkansas Public Employees' Retirement and the Arkansas Teacher Retirement System, claim these statements were false and misleading because, in reality, the company was not implementing any effective mitigation measures.

However, Judge McHugh said Monday that even if the mitigation measures were not substantial or as effective as the plaintiffs wanted, that does not render the statements misleading.

The judge also tossed statements about Five Below's "triple-double strategy," which sought to triple Five Below's stores and double its sales and earnings per share.

According to the opinion, most of the triple-double strategy statements were forward-looking because they concerned Five Below's plans to build new stores. Additionally, many of the statements were accompanied by cautionary language warning investors that the plan to open new stores was subject to risks, including the availability of store locations, staffing challenges, and maintaining distribution capacity, all of which could negatively impact the company's growth and operations, the opinion states.

Other statements, not accompanied by cautionary language, are also inactionable because the plaintiffs have failed to allege that they were made with "actual knowledge" of their falsehood, the judge said.

According to the opinion, the suit also alleged that statements made by non-party Kristy Chipman, Five Below's chief financial officer, were false and misleading and can be imputed to Five Below.

However, Judge McHugh found that the plaintiffs have not adequately alleged that Chipman acted with scienter, and therefore her statements cannot be imputed onto the company.

Statements related to Five Below's "trend-right" strategy of "offering a dynamic, edited assortment of trend-right products" and the amount of shrink the company was experiencing, remain in the suit along with scienter claims against Five Below's former CEO, Joel Anderson, and former CFO, Kenneth Bull.

In retaining the trend-right statements, the judge disagreed with the defendants' argument that they are "textbook examples of nonactionable opinions or puffery," and found that the suit adequately pleads that the statements were material to investors.

"Plaintiffs adequately plead that Five Below made its trend-right strategy material to investors by repeatedly highlighting it as a core business strength," the opinion states. "Though many of the 'trend-right' statements appear at first glance to be classic examples of puffery, defendants, through their own representations to investors, made Five Below's ability to identify and execute on its trend-right strategy material."

The judge further found that the defendants falsely omitted to investors that the level of shrink Five Below was experiencing was primarily caused by shoplifting rather than inventory management issues.

"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," the opinion states. "While defendants painted shoplifting as the primary cause of shrink, plaintiffs' amended complaint plausibly asserts that internal inventory management issues were also to blame."

The judge also stated that scienter claims can be asserted against Anderson and Bull because they were aware of the company's struggles and shrink issues.

"Plaintiffs' amended complaint paints a picture where Mr. Anderson made statements contradicted by the reality on the ground — shoplifting was not the sole cause of Five Below's shrink, shrink was not the sole cause of Five Below's poor performance, and Five Below was experiencing issues with trend-right inventory," the opinion states.

"Given [Bull's] purported personal involvement, and conversations with employees, it is unlikely that he would have been unaware of the inventory issues and non-theft causes of shrink," the opinion further states.

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

The plaintiffs are represented by Michael Dell'Angelo, Andrew D. Abramowitz and Alex B. Heller of Berger Montague PC and by Hannah Ross, James A. Harrod, Timothy G. Fleming and Sarah Schmidt of Bernstein Litowitz Berger & Grossmann LLP.

The defendants are represented by Jay A. Dubow, Erica H. Dressler, Mary M. Weeks and Hannah Baskind of Troutman Pepper Locke LLP.

The case is Himes v. Five Below Inc. et al., case number 2:24-cv-03638, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Vaqas Asghar.

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4th Circ. Revokes Class Cert. In Progressive Car Valuation Suit

By **Ganesh Setty**

Law360 (August 26, 2025, 6:13 PM EDT) -- The Fourth Circuit reversed a Progressive Insurance policyholder's class certification win over certain adjustments the insurer makes when calculating the actual cash value of a totaled vehicle, saying that determining whether Progressive breached each insured's policy is a "highly individualized assessment."

Siding against the policyholder Lynn Freeman on Monday, a divided three-judge panel **first found** that Freeman lacks standing to pursue her breach of contract claims against Progressive to begin with, since she failed to show that Progressive's use of "projected sold adjustments" caused her "any" injury.

Even after Freeman first sued Progressive in South Carolina state court in October 2021, she "has not attempted to show that her vehicle had a greater value than the amount that Progressive offered and paid," U.S. Circuit Judge Paul V. Niemeyer wrote for the majority. Freeman could have further negotiated a higher coverage payment or invoked the appraisal provision in her policy, but did neither, he added.

Freeman also received "gap coverage" from a separate insurer, Warranty Solutions, to pay for the difference between any payment Progressive made and the roughly $30,000 balance remaining on her loan, Judge Niemeyer further noted, thus failing to demonstrate a concrete injury to establish Article III standing, he said.

Monday's ruling comes after the Seventh and Third circuits **reversed similar** class certification decisions **in July** over Progressive's use of projected sold adjustments.

According to court filings, Progressive uses a valuation system designed by Mitchell International Inc. that identifies comparable vehicles, based on mileage and other factors, to calculate the actual cash value, or market-based value, of a totaled vehicle. If the software identified no "sold price" for a comparable vehicle, it applied the projected sold adjustment to account for the difference between a vehicle's listed price and actual sale price due to buyer-seller negotiations.

After the case was removed to federal court in November 2021, U.S. District Judge Donald C. Coggins Jr. granted Freeman class certification in May 2024.

Beyond the standing issue, Judge Niemeyer noted Monday that to succeed on a breach of contract claim against Progressive, a plaintiff would have to show that Progressive's payment was less than the actual cash value of a given totaled vehicle.

However, the certified class was defined to include "anyone" in South Carolina whose actual cash value payment was decreased by projected sold adjustments, "regardless of whether the amount paid was indeed the true market value of the vehicle."

"Thus, the class was defined to include insureds who accepted Progressive's offer of payment; insureds who negotiated a higher payment; and insureds who invoked the appraisal process in the policy, simply because in each circumstance Progressive made its calculation using the projected sold adjustment," he continued. "Yet, none of those could claim injury because each agreed to resolution of the loss."

"This characteristic of the certified class alone justifies reversal of the class certification order," he said.

Moreover, determining whether a given vehicle's market value exceeded Progressive's payment depends on the "unique characteristics of each vehicle, such as the particular model of the vehicle and its trim level and options, the vehicle's post-purchase alterations, the mileage, the accident history, and the vehicle's condition," Judge Niemeyer said.

"This highly individualized assessment of the actual cash value of a vehicle would be essential to determining whether Progressive's payment amounted to the actual cash value and therefore to whether it breached the insurance contract," the majority determined.

In her dissent, U.S. Circuit Judge Nicole G. Berner first disputed the majority's standing findings with respect to Freeman.

"The fact that Freeman would have to pass along any money she might recover in this suit 'cannot erase the fact that [Progressive] owed it to her,'" she said, citing the appeals court's 2018 decision in Netro v. Greater Baltimore Medical Center Inc.

"If Progressive is found to owe money to Freeman, then she has suffered a pocketbook injury because Progressive breached the contract," she further wrote, adding that "[t]his court has never required insureds to take optional recourse with their insurers prior to bringing suit for breach of contract."

As for the class certification issue, she noted that Freeman's expert testimony "supports her claim that Progressive accurately calculates the actual cash value but for the projected sold adjustment."

"The only question left is the same for every class member — is the projected sold adjustment a proper deduction?" Judge Berner said. "That is precisely the type of sweeping resolution well-suited for class certification."

Zach McEntyre, an attorney for Progressive, told Law360 in a statement that the Fourth Circuit is the "third federal appellate court to confirm that these cases against Progressive are not suitable for class certification."

"These various cases, brought under a variety of legal theories including breach of contract and unfair trade practices, all would require individualized proof that the market value of each purported class member's vehicle was greater than the amount Progressive actually paid," he said. "As the Fourth Circuit accurately explained, these cases would result in 'individualized … mini trials' and thus common issues do not predominate."

Representatives for Freeman did not immediately respond to a request for comment Tuesday.

U.S. Circuit Judges J. Harvie Wilkinson III, Paul V. Niemeyer and Nicole G. Berner sat on the panel for the Fourth Circuit.

Freeman is represented by Jacob L. Phillips of Jacobson Phillips PLLC and by Hank Bates and Lee Lowther of Carney Bates & Pulliam PLLC.

Progressive is represented by Jeffrey Cashdan, Paul Alessio Mezzina, Amy R. Upshaw, Christine M. Carletta, Julia C. Barrett, Nicole Bronnimann, Zachary A. McEntyre, James Matthew Brigman, Allison Hill White and Erin Munger of King & Spalding LLP.

The case is Lynn Freeman et al. v. Progressive Direct Insurance Co., case number 24-1684, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Dorothy Atkins. Editing by Amy Rowe.

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Google Exec. Disputes '30 Stories' Of Data Claim At Trial

By **Bonnie Eslinger**

Law360 (August 26, 2025, 11:27 PM EDT) -- A Google executive testifying Tuesday in a multibillion-dollar privacy case alleging the company illegally collected app data from 98 million consumers took issue with claims that the data at issue for just the lead plaintiffs would reach 30 stories high if printed out, while acknowledging that Google collects "considerable" data.

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 "Supplemental Web & App Activity" privacy option offered by Google related to third-party apps.

On Tuesday, Google called its first witness to the stand, Steve Ganem, director of product management, Google Analytics.

Ganem told jurors that "data-driven insights" help businesses to improve.

A Google lawyer, Eduardo Santacana, asked the executive to address a claim made by the plaintiff's computer science expert **on Thursday**: that the app activity information Google collected on just the lead plaintiffs, if printed up on paper and stacked, would reach the height of a 30-story building. The data was collected even though the plaintiffs had switched off the button enabling collection of their third-party app use, said computer science expert Jonathan Hochman.

"Does Google Analytics maintain profiles of user data organized by device or by user?" Santacana asked the Google executive. "In the form of the equivalent of a 30-story building?"

Ganem said that's not how he would describe it.

Google Analytics puts data in compartmentalized accounts based on their customers, with each having their own storage where the data belonging to each business resides, Ganem said.

Google Analytics data, he said, is "more like a building where there are many apartments" than a tower of data.

Hochman also told jurors that Google maintains accounts of app use data separate from what's used for Google Analytics.

He called them "shadow accounts."

Ganem said there was no such analytics data organized by user or device or any other method that might identify the user.

"We want to make sure that we don't actually, by policy, do not associate Google accounts to device IDs," the executive later said.

When the user enables Google to use their Supplemental Web & App Activity, or SWAA, then the company can offer those consumers personalized advertising; consumers who opt out won't see such ads tailored to their app use, Ganem told jurors.

That data "remains completely non-personal information," but is still used to provide app developers with insights on how users are using their apps so that improvements can be made, Ganem added.

"Have you heard some of the people describe SWAA as a fake button?" Santacana asked. "Do you have any response to that?"

Ganem said it's not true, that there are "clear differences" when it's applied.

Google's lawyer reminded Ganem that plaintiff Anibal Rodriguez had claimed Monday that Google collected his name, email and phone number through Google Analytics.

"Do you intend to collect people's names, phone numbers or email addresses with Google Analytics?" Santacana asked.

Ganem said absolutely not.

In its contract with app developers who install Google Analytics, there's a provision that the company behind the app will not pass "personally identifiable" information to Google. App developers, however, sometimes violate the prohibition against such data, he said.

Ganem also walked jurors through several statements in Google's privacy policy for users stating that it collects analytics data.

Google also tells users they have the ability to control whether personalization occurs, Ganem said.

"We offer control over how the data is used as it relates to specific use cases," the Google executive later added.

A lawyer for the plaintiffs, David Boies of Boies Schiller Flexner LLP asked Ganem during cross-examination if Ganem's testimony applied only to Google Analytics or to Google's business as a whole.

"I was talking about how the privacy settings relate to use of Google Analytics," Ganem said, adding that he was also talking about products to which Google Analytics sends data, like Google Ads.

"Now you agree, even with SWAA off, Google retains a considerable amount of data with respect to users' use of third party apps?" Boies asked Ganem.

The Google executive said he'd agree to that.

"You would also agree that that data that they collect adds a lot of value," Boies then asked.

Ganem said it offered substantial value to app developers.

Google Analytics is also very valuable to Google, Boies pressed.

"I'd like to believe so," Ganem replied.

Google also uses SWAA data, Boies said.

For measurement of advertising effectiveness, Ganem said.

"And advertisement measurement is important to Google's profitability, correct?" Boies said.

In theory, Ganem replied.

Boies asked if the data Google collects is also used to inform "machine learning models" related to advertising, and Ganem agreed.

Turning to the privacy policy pronouncements from Google, Boies pointed to a line that said the company uses "the information we collect in existing services to help us develop new ones" and said it did not mention the SWAA switch.

"Is there anywhere that says — we do this, even with SWAA off?" Boies asked.

Ganem said not in that section of the privacy policy.

"It would have been very easy to say, 'When SWAA is off, we still are going to collect this information,' right?" the lawyer for the plaintiffs asked.

Ganem replied, "Yes."

Later, Boies noted that while Google collects information about consumers' use of third party apps, even when SWAA collection is not turned on, the company says that information is de-identified from the data.

"You can always change those policies, right?" Boies said.

"I suppose," Ganem replied.

During trial openings, Boies told jurors that Google made billions of dollars from the data collected despite the activated privacy setting, while Google countered that the information at issue wasn't tied to users' identities.

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 called it a "**fake button**" during his testimony on the second day of trial.

The trial continues on Wednesday.

While Google began presenting its defense on Tuesday, the plaintiffs have told the court they still have one more witness to call to the stand, senior Google software engineer Chris Ruemmler.

On Monday, Google argued to U.S. District Judge Richard Seeborg that the plaintiffs should be forced to rest their case without Ruemmler since they had indicated days earlier that they would not be calling him to the stand. After hearing that the plaintiffs had still given Google 24 hours' notice after changing their mind about Ruemmler, Judge Seeborg ordered Google to "get him on an airplane" and "**bring him in**."

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 Michael Watanabe.

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Cert. In Pepperidge BIPA Action Sunk Over Counsel Conflict

By **Celeste Bott**

Law360 (August 26, 2025, 5:13 PM EDT) -- An Illinois appellate panel on Monday reversed a trial court's order certifying a class of Pepperidge Farm workers bringing biometric privacy claims, saying it improperly allowed the law firm of the lead plaintiff's daughter to remain as class counsel.

The panel said it had "little confidence" lead plaintiff and sole class representative Tyrone Brewer could, on his own, fairly and adequately protect the interests of more than 800 class members given that his daughter's law firm is among the three representing the class.

The trial court had acknowledged the conflict of interest but addressed this by barring Brewer's daughter, Celetha Chatman of Community Lawyers Group, from serving as class counsel — without also considering the relationships between Chatman and the other attorneys, the panel said.

"Given the identified conflict involving Chatman, we cannot say it was reasonable to permit her law partner at the Community Lawyers firm, [Michael] Wood, to remain as class counsel," the panel said. "Further, we are troubled that the court failed to conduct an adequate factual inquiry to assess whether the other attorneys could remain as class counsel, given their relationships with Chatman."

That's especially "surprising and troubling," the court went on, because Chatman and Wood appear to be the only two lawyers at that firm.

"As a practical matter, it is difficult to imagine that, absent some directive from the court, Chatman would not discuss the case with Wood, even if Chatman did not formally appear," the panel said.

It's also hard to believe simply precluding Chatman's formal involvement resolves the concern the plaintiff might be tempted to accept a settlement that benefits his child as opposed to the class, the panel said. And it's implausible to think Brewer wouldn't discuss the matter with her, regardless of whether she formally appears as his counsel, it said.

"[It] is quite reasonable to expect that, in the event of a settlement offer, plaintiff would consult with his daughter, Chatman, a lawyer, as to the wisdom of accepting it. This is especially so since plaintiff testified that it was his daughter who first advised him that defendant's conduct might be illegal," the panel said.

"The potential for conflict is obvious: Plaintiff might feel persuaded to accept a lower settlement in order to obtain a benefit for his daughter's firm, even if the interests of other class members could be better served by holding out for a larger settlement," it added.

The panel reversed the certification ruling and remanded the case, instructing the lower court to make findings as to which counsel and additional representative plaintiffs will adequately represent the putative class.

Brewer's suit alleges Pepperidge Farm violated BIPA by requiring workers to scan their handprints before entering the bakery it operated in Downers Grove, Illinois, to track their work hours.

Workers were instructed to use a "Handkey" device through which an infrared camera measures features related to the back of an individual's hand, such as finger length or knuckle height, to determine if it sufficiently matched an existing "template" shape associated with the user's PIN.

Brewer, who worked at the bakery for a week in July 2020, claims his and others' biometric privacy rights under BIPA were violated because Pepperidge Farm failed to develop and maintain a publicly available schedule for retaining and destroying their employees' biometric data, and failed to delete Brewer's biometric information once he no longer worked there.

Representatives for the parties could not immediately be reached for comment on Tuesday.

Justices Aurelia Pucinski, Terrence Lavin and Cynthia Cobbs sat on the panel for the appellate court in this case.

The putative class was represented on appeal by Daniel R. Brown and Jordan D. Shea of Williams Barber & Morel Ltd.

Pepperidge Farm Inc. is represented by Elizabeth B. Harrington and Gregory T. Fouts of Morgan Lewis & Bockius LLP.

The case is Brewer et al. v. Pepperidge Farm Inc., case number 1-24-1323, in the Appellate Court of Illinois, First District.

--Editing by Philip Shea.

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Adam & Eve Beats Google Tracking Privacy Suit, For Now

By **Lauren Berg**

Law360 (August 26, 2025, 10:24 PM EDT) -- A Pennsylvania federal judge tossed claims accusing Adam & Eve's parent of sharing customers' private sexual information with Google through website analytics, saying the plaintiff hasn't established an expectation of privacy in his online browsing, as he "could be freely observed by store clerks or nosy neighbors" at a physical store.

U.S. District Judge John F. Murphy's Monday **order** granted a motion to dismiss brought by PHE Inc., which operates the sex toy business Adam & Eve, after he found that plaintiff Shawn Delong has not established that he suffered a concrete injury in his complaint alleging the company violated Pennsylvania's Wiretapping and Electronic Surveillance Control Act by collecting and sharing his shopping behavior and IP address with Google Analytics.

"These days, federal courts are inundated with complaints aimed at the ubiquitous practice of tracking the behavior of internet users. No one likes the idea of being watched, and lawyers are creative," Judge Murphy said, adding, "the devil, of course, is in the details" regarding what kind of information is at stake and how the tracking works.

"In this case, the twist is the nature of defendant's website, Adam & Eve. It sells sex toys and other adult products," he said. "According to the plaintiff, shopper tracking data that would be mundane at any other store is of a personal and sensitive nature at defendant's."

However, Delong has not shown he had any expectation of privacy in his online shopping, which "fatally erodes his Article III standing" because he has not adequately alleged he suffered a concrete injury, according to the order.

What's more, Judge Murphy determined his court lacks personal jurisdiction over PHE because the only activities directed to Pennsylvania, which are product sales through the Adam & Eve website, don't relate to Delong's cause of action arising from web browsing "entirely unspecific" to the commonwealth.

As a result, the judge dismissed Delong's complaint without prejudice, directing him to file any amended version by Sept. 8, according to the order.

According to Delong's **complaint**, which was filed in September 2024, PHE has without consent shared customers' private sexual information — including preferences, orientation, fetishes and sex toy preferences — and IP addresses through its use of Google Analytics' website tracking tool.

"The private and protected sexual information learned by Google without plaintiff's consent is highly sensitive and private information that a reasonable person would want to remain private," Delong says, adding that this information, plus the consumer's IP address, "enables Google to specifically identify the person who has interacted with" the Adam & Eve website.

"The surreptitious disclosure of private and protected sexual information is an outrageous invasion of privacy and would be offensive to a reasonable person," he adds.

Delong wants to represent a class of potentially thousands of people who have visited, navigated through, entered search terms, and made purchases of adult products on the Adam & Eve website, according to the complaint.

The suit includes one cause of action for violation of the Pennsylvania Wiretap Act, and seeks damages, attorney fees and litigation costs, among other relief.

PHE then moved to dismiss the suit in February, arguing that Delong has not established Article III standing or that the Pennsylvania court has jurisdiction over the company, and has not stated a claim for violations of the wiretapping law.

In his order Monday, Judge Murphy only touched on the first two arguments, agreeing with the company that Delong lacks an injury sufficient to establish Article III standing.

"The alleged injury is not concrete because it does not have a close relationship to the harm traditionally protected by intrusion upon seclusion, which Mr. Delon proffers as his analogous common-law tort," the judge said, adding that he does agree with Delong that the complaint alleges a particularized harm because it centers on the interception of his browsing activity.

But the judge agreed with PHE that Delong has not alleged a concrete harm, which requires more than a "mere assertion of a statutory violation," according to the order.

Delong argues that the harm he suffered parallels intrusion upon seclusion because PHE and Google collected highly sensitive information about his sexual interests and activity, but that argument "misses the mark," the order stated.

"Although Mr. Delong plausibly alleges that the collected information is sensitive, Mr. Delong has not shown that the alleged acts of collection and disclosure caused a highly offensive intrusion that violated [his] reasonable expectation of privacy while using PHE's website," Judge Murphy said, adding, "it is widely understood that most online activity is not entirely private."

A number of courts have held that invasion of privacy claims based only on the tracking of online shopping behavior are not enough to establish Article III standing, according to the order.

"While 'private companies often promise to protect their customers' privacy in ways that may be enforceable in court,' merely collecting and analyzing online shopping behavior — without further allegations such as explicitly promising confidentiality or disclosing certain types of private information — does not constitute a concrete harm for injury-in-fact," Judge Murphy said.

In this case, Delong has not claimed that PHE made any such promises that would create a reasonable expectation of privacy on its website.

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

Delong is represented by Nicholas A. Coulson of Coulson PC, Yongmoon Kim of Kim Law Firm LLC and Don Bivens of Don Bivens PLLC.

PHE is represented by James K. Paulick and Bridget M. Synan of Leech Tishman Fuscaldo & Lampl LLC.

The case is Shawn Delong v. PHE Inc., case number 2:24-cv-05212, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Kristen Becker.

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Ohio Cannabis Co. Accused Of Leaking Patient Data

By **Sam Reisman**

Law360 (August 26, 2025, 7:41 PM EDT) -- An Ohio company that connects patients with physicians to secure medical marijuana cards is accused in a new federal proposed class action of making public the personal information of its clients and others.

The pseudonymous John Doe plaintiff alleges in his Monday complaint that Ohio Medical Alliance LLC, which does business as Ohio Marijuana Card, maintained a publicly accessible 323-gigabyte database containing nearly 1 million sensitive records.

"The publicly exposed database was not password-protected or encrypted, despite the fact it contained highly sensitive private identifying information ("PII") and private health information ("PHI") belonging to an unknown number of patients and internal employees or business partners," the complaint said.

The Doe plaintiff claims to be a resident of Westerville, Ohio, and a former patient who obtained a medical marijuana card via the company. As part of the intake process, he alleges he was required to provide identifying information and health details to the company.

The lawsuit alleges a "cybersecurity researcher" discovered the database, which included driver's licenses, financial information, Social Security numbers, addresses, birth dates and medical documents, including "patients' diagnosis and the reason they were seeking to be prescribed medical marijuana."

The complaint includes redacted screenshots of records that allegedly belong to Ohio Marijuana Card's patients and employees, including driver's licenses, credit cards and patients' health records that included their diagnoses and doctor comments.

"According to [Ohio Marijuana Card's] privacy statement, it claims that all patient information is kept confidential in their HIPAA-compliant file storage system," the complaint said. "These representations are false."

The lawsuit alleges the leak exposed clients to potential stigma, in connection with their medical marijuana use, as well as identity theft and fraud.

"According to their website, [Ohio Marijuana Card] has helped over 340,000 patients nationwide access medical marijuana. The company operates clinics in Ohio, Arkansas, Kentucky, Louisiana, Virginia and West Virginia," the complaint said. "Therefore, there are likely thousands of victims of [the company's] gross negligence."

The plaintiff alleges negligence, breach of contract, unjust enrichment, invasion of privacy and breach of fiduciary duty. He is seeking a class certification, unspecified damages, restitution, fees, costs and other relief.

Ohio Marijuana Card and counsel for Doe did not immediately respond to requests for comment Tuesday.

Doe is represented by Terence R. Coates and Dylan J. Gould of Markovits Stock & DeMarco LLC and Raina C. Borrelli of Strauss Borrelli PLLC.

Counsel information for Ohio Marijuana Card was not available Tuesday.

The case is Doe v. Ohio Medical Alliance LLC, case number 1:25-cv-01765, in the U.S. District Court for the Northern District of Ohio.

--Editing by Janice Carter Brown.

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NY Judge In NFL Case May Hold No-Show Atty In Contempt

By **Pete Brush**

Law360 (August 26, 2025, 4:27 PM EDT) -- The Manhattan federal judge presiding over a high-profile racial discrimination lawsuit against the NFL said Tuesday she will initiate a contempt proceeding against a California lawyer who failed to appear to further explain an erroneous filing that stated he could practice in New York.

With the lawyer, Michael Caspino of the Orange County-based business litigation firm Price Caspino, not present due to what he called a conflict with another judge in California, U.S. District Judge Valerie E. Caproni took the bench in the afternoon and noted his absence during a brief hearing.

"For the record, it is now 2:50 p.m. Mr. Caspino was supposed to be here at 2:30. His request to appear telephonically was denied," the judge said. "The next step will be an order to show cause why he should not be held in contempt."

The hearing unfolded after Caspino in January filed an appearance before Judge Caproni on behalf of plaintiff Steve Wilks, a longtime football coach and current New York Jets coordinator.

Wilks, along with Vikings defensive coordinator Brian Flores and former NFL assistant coach Ray Horton, has alleged that systemic racism in the NFL prevents Black candidates from winning head coaching and general manager jobs. Flores recently won a **key ruling** allowing him to take his claim to trial.

In June, Caspino withdrew his appearance on behalf of Wilks — having done no substantive legal work — but the court **demanded he explain** how he came to declare he was "authorized to practice" in the Southern District of New York when that did not appear to be the case.

In a July declaration, Caspino said the statement was in error and that his intent was to notify the court that he would be filling out a pro hac vice application for leave to practice as an out-of-state lawyer.

But the court ordered him to show cause as to why he shouldn't be referred to a New York legal disciplinary panel.

Judge Caproni set a Monday hearing for Caspino to further explain, then adjourned it by one day until Tuesday. She declined to adjourn the hearing again after Caspino said legal matters in California and other personal matters would prohibit him from making the trip east.

Following the hearing, Caspino told Law360 via email that he was directed to attend a Tuesday settlement conference in San Bernardino County, California, and provided a court document to back that up.

"We offered to appear via videoconference or via phone. We offered to speak with the clerk of the court to provide alternative dates. I cannot be in two places at once, especially on 24 hours' notice on the other side of the country. In all respects, we have acted reasonably and in good faith," he said.

Flores is represented by David Gottlieb of Wigdor LLP.

The NFL is represented by Kannon Shanmugam of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Flores v. The National Football League et al., case number 1:22-cv-00871, in the U.S. District Court for the Southern District of New York.

--Editing by Covey Son.

Update: This article has been updated with additional detail and comments from Caspino.
