News from Bloomberg Terminal

WM Agrees to $30 Million Investor Class Settlement (Correct)

Aug. 27, 2025, 6:06 AM PDT

Summary by Bloomberg AI

AI Generated

- Waste Management Inc. agreed to pay $30 million to resolve class action claims stemming from the garbage collection company's 2020 purchase of Advanced Disposal Services Inc.
- The settlement would end the suit claiming the company misrepresented the deal's timeline before announcing it didn't meet a June 2020 deadline.
- The case involves investors who got five series of senior notes to fund the acquisition, including senior notes with coupon rates of 2.95% due 2024, 3.20% due 2026, 3.45% due 2029, and 4.00% due 2039.

By Gillian R. Brassil

(Bloomberg Law) --

Waste Management Inc. agreed to pay $30 million to resolve class action claims stemming from the garbage collection company's 2020 purchase of Advanced Disposal Services Inc.

The pension funds serving as class representatives sought preliminary approval of the agreement in the US District Court for the Southern District of New York on Thursday.

The settlement between WM, three top executives, and investors who got five series of senior notes to fund the acquisition would end the suit claiming the company misrepresented the deal's timeline before announcing it didn't meet a June 2020 deadline.

- By February 2020, it became clear to WM that federal regulators wanted it to divest more than it had announced for the deal, the suit said
- WM announced a revised agreement and missed a deadline that caused it to collect the notes at 101% of their par value that June, the suit said. The $4.6 billion acquisition completed in October 2020
- Judge Lorna G. Schofield in March certified a class of those who were damaged after getting WM redeemable senior notes from Feb. 13, 2020, through June 23, 2020. This included senior notes with coupon rates of 2.95% due 2024, 3.20% due 2026, 3.45% due 2029, and 4.00% due 2039

Robbins Geller Rudman & Dowd LLP is class counsel. Baker Botts LLP represents WM and executives James C. Fish Jr., Devina A. Rankin, and John J. 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, 7/10/25.

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

To contact the editor responsible for this story: Jeffrey Horst at jhorst@bloombergindustry.com
(Corrects July 11 story with defense counsel's firm name.)

LAW.COM

Securities Litigation

Split 2nd Circuit Revives Stock-Drop Case Against Peloton

August 27, 2025 at 03:46 PM By **Alyssa Aquino**

Peloton bike.

Peloton Interactive Inc. must face investor claims of covering up allegedly reduced demand for its stationary bikes and treadmills after pandemic-era restrictions lifted, a split federal appeals court ruled on Wednesday, overturning a trial court's dismissal of the case.

A panel from the U.S. Court of Appeals for the Second Circuit ruled 2-1 that a pension fund and investment firm had sufficiently identified three statements that could have led investors astray on Peloton's financial position as gyms began reopening in 2021.

“We conclude that the plaintiffs have plausibly alleged actionable misstatements or omissions,” wrote Circuit Judge Steven Menashi.

Peloton was represented by Latham & Watkins. Counsel for Peloton didn’t respond to a request for comment.

The revived case is one of the many securities fraud cases that were filed as the COVID-19 pandemic receded and companies issued revised forecasts that reflected new consumer demand.

In it, City of Hialeah Employees’ Retirement System and Robeco Capital Growth Funds SICAV—respectfully represented by Bernstein Litowitz Berger & Grossmann and Grant & Eisenhofer—alleged that interest in Peloton’s fitness products surged at the height of the pandemic.

But the investors argued that the company misled investors on falling demand and excess inventory issues throughout 2021, as pandemic restrictions lifted and consumers could return to their gyms.

The investors sought to represent a class of shareholders who purchased Peloton stock between February 5, 2021, and January 19, 2022, the day when reports broke that Peloton had stopped producing bikes to manage excess inventory.

The Manhattan federal court has dismissed the case twice, finding that the investors hadn’t alleged any false statement.

But on Wednesday, a majority panel found that Peloton CEO John Foley’s statement during an earnings call that a decision to cut Peloton bike prices by $400 “was absolutely offensive” could support the case. That definitive statement appears inconsistent with allegations that the company had high excess inventory, according to the majority, which was joined by Circuit Judge Denny Chin.

The majority also deemed actionable two other statements in August and November 2021 regulatory filings in which Peloton disclosed the potential risks of excess inventory.

“The [Second Amended Complaint] plausibly alleged that by August 26, 2021, the specific financial consequences described in these disclosures were not merely hypothetical ‘but had already materialized and resulted in significant disruption to [Peloton’s] business,’” the majority said.

But Circuit Judge Jon Newman disagreed with his colleagues, finding that none of the allegedly false statements could support a securities fraud claim.

The judge argued that Foley’s “offensive” price reduction statement wasn’t misleading, as a decision to reduce prices could serve both an offensive and defensive business purpose.

He further argued that the risk warnings weren't misleading in light of the "total mix" of publicly available information, specifically Peloton's Nov. 4, 2021 disclosure that 91% of its inventory was unsold and that it was reducing its revenue forecasts by $1 billion.

"No reasonable investor could have regarded Form 10-Q as misleading when simultaneously apprised of this $1 billion reduction," the judge said.

Although Newman disagreed with the majority, he pointed out that his colleagues had only remanded the case for the trial court to consider whether the investors had sufficiently pleaded that Peloton had knowingly misled shareholders.

"I have a high degree of confidence that the complaint will ultimately be dismissed for lack of an adequate pleading of scienter and that the heavy pressure often felt to settle a class action securities fraud case will not yield a monetary recovery for the class in this case," he said.

Counsel for the investors didn't respond to requests for comment.

Peloton must face shareholder lawsuit over post-pandemic outlook

reuters.com/sustainability/boards-policy-regulation/peloton-must-face-shareholder-lawsuit-over-post-pandemic-outlook-2025-08-27

Jonathan Stempel August 27, 2025

A Peloton logo is seen after the ringing of the opening bell for the company's IPO at the Nasdaq Market site in New York City, New York, U.S., September 26, 2019. REUTERS/Shannon Stapleton/File Photo Purchase Licensing Rights, opens new tab

- US appeals court revives claims over inventory levels
- Shareholders say Peloton inflated stock price
- Dissenting judge expects eventual dismissal

NEW YORK, Aug 27 (Reuters) - Peloton Interactive (PTON.O), opens new tab must face a lawsuit claiming it defrauded shareholders by masking excess inventory of its home exercise equipment as the worst of the COVID-19 pandemic passed, a divided federal appeals court ruled on Wednesday.
Reversing a lower court ruling, the 2nd U.S. Circuit Court of Appeals in Manhattan said shareholders can try to prove that the maker of stationary bikes and treadmills made three false and misleading statements that inflated its stock price.

The statements included former Chief Executive John Foley's claim in an August 26, 2021 earnings call that a $400 bike price cut was an "absolutely offensive" strategy to boost sales, rather than a defensive strategy to counteract weakness.

They also included two warnings in Peloton regulatory filings of hypothetical risks regarding "excess inventory levels."

Circuit Judge Steven Menashi said shareholders offered evidence that the price cut was actually a defensive move to clear out three months of inventory, and that the risks of excess inventory had already materialized.

"In sum, we conclude that the plaintiffs have plausibly alleged actionable misstatements or omissions," Menashi wrote for a 2-1 majority.

Shareholders sued after the stock price of New York-based Peloton fell more than 80% from February 5, 2021 to January 19, 2022, a period when vaccines became widely available and gyms began reopening.

The decline included a 35% one-day plunge on November 5, 2021, after Peloton reduced its full-year earnings forecast by as much as $1 billion and said 91% of inventory was unsold.

Peloton's stock price has fallen approximately 95% since early 2021.

Wednesday's decision upheld the August 2024 dismissal by U.S. District Judge Andrew Carter in Manhattan of claims based on six other Peloton statements, and returned the case to him.

Circuit Judge Jon Newman dissented, saying Foley's and Peloton's statements were not false and misleading in light of other information available to investors.

He also expressed a "high degree of confidence" the lawsuit will be dismissed because shareholders won't prove Peloton intended to defraud them.

Peloton did not immediately respond to requests for comment. Lawyers for the shareholders did not immediately respond to similar requests.

On August 7, Peloton posted a surprise fourth-quarter profit and forecast fiscal 2026 revenue above analyst forecasts, while announcing it would shed 6% of its workforce to cut costs.
The case is City of Hialeah Employees' Retirement System et al v Peloton Interactive Inc et al, 2nd U.S. Circuit Court of Appeals, No. 24-2803.

Reporting by Jonathan Stempel in New York; editing by Diane Craft

Securities Law News

DocGo Insiders Traded Before NYC Scrutiny, CEO News, Suit Says

Aug. 27, 2025, 10:02 AM PDT

DocGo Inc. leaders are responsible for the health transportation company's mishandling of a New York City contract and its CEO's resume embellishment, and some must return insider profits, an investor alleges.

Five of the officers and directors sold DocGo stock for more than $4 million while possessing material nonpublic information about its prospects and then-CEO Anthony Capone's educational background, Jung Jae Hyung says on behalf of the company. Hyung filed his derivative suit Tuesday in the US District Court for the Southern District of New York.

The company's leadership also caused the company to repurchase its own shares at artificially inflated prices, overpaying by more than $2 million, Hyung says.

DocGo has also been harmed by its exposure to a proposed class action about some of the same alleged underlying misconduct, Hyung says: that Capone lied about his educational background to gain investor trust in the ambulance and mobile health company's artificial intelligence capabilities, falsely claimed that DocGo had enrolled 3,000 asylum-seekers in New York State Medicaid through UnitedHealthcare, and inflated the value of a federal contract the company was bidding for. Judge Katherine Polk Failla of the Southern District of New York in March allowed the securities fraud claims over Capone's professional biography and the migrant enrollment to proceed, partially denying the company's request for dismissal of the class action.

Hyung says the other directors knew or recklessly disregarded that Capone overvalued the prospective federal contract and overstated the company's credibility and ability to win the engagement, given the difficulties with the existing city contract and scrutiny by the city comptroller.

Several disclosures in September 2023—including the announcement of Capone's resignation—and a short-seller report in January 2024 brought the company's stock price down, Hyung says.

He seeks to recover officer and director stock profits before those disclosures, as well as damages and corporate reforms, on behalf of the company.

Hyung asked the board to act on behalf of the company but got no response, according to the complaint. That step eliminates the need for Hyung to justify not making a litigation demand on the board, a requirement for a shareholder derivative suit.

He brings claims for breach of fiduciary duties, gross mismanagement, waste of corporate assets, gross mismanagement, unjust enrichment, securities fraud, and insider trading.

DocGo didn't immediately respond to an email requesting comment on behalf of the company and the individual defendants.

Gainey McKenna & Egleston represents Hyung.

The case is Hyung v. Bienstock , S.D.N.Y., No. 1:25-cv-07059, complaint 8/26/25 .

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

To contact the editor responsible for this story: Brian Flood at bflood@bloomberginindustry.com

Securities Law

Manage Newsletters

Armistice Capital Free of Vaxart Inside Trading Suit on Appeal

Aug. 28, 2025, 8:39 AM PDT

Summary by Bloomberg AI

AI Generated

- Armistice Capital LLC and its founder escaped investor allegations that they were liable for short-swing profits of a biotechnology company, with the US Court of Appeals for the Second Circuit affirming the dismissal of the lawsuit.
- The plaintiff, Andrew E. Roth, had argued that Armistice and its managing partner Steven Boyd violated Section 16(b) of the 1934 Securities Exchange Act by amending stock warrants and then exercising and selling them.
- The court ruled that an exemption to the short-swing transaction rule applied because Vaxart's board knew that Armistice's representatives were insiders and unanimously approved of the warrant changes, shielding Armistice from liability under a Securities and Exchange Commission rule.

Armistice Capital LLC and its founder escaped investor allegations that they were liable for short-swing profits of a biotechnology company.

The shareholder's argument that board members lacked the "novel knowledge" to exempt the trading lacked support in law or regulations, the US Court of Appeals for the Second Circuit said, affirming his lawsuit's dismissal Thursday.

Plaintiff Andrew E. Roth wanted Armistice to give Vaxart Inc. its alleged short-swing profits of $87 million from liquidating its position. He had said Armistice and its managing partner Steven Boyd, Vaxart insiders, violated Section 16(b) of the 1934 Securities Exchange Act by amending stock warrants to let the hedge fund own 19.99% of the vaccine developer's shares, then exercising those warrants and selling its stock. That requires insiders to return to the company any money earned off of buying and selling its shares within a six-month period—a short-swing transaction.

Roth told the appellate court that an exemption to that rule didn't apply because Vaxart's board didn't know that Armistice was a "director by deputization"—it wasn't enough that Boyd and another Armistice manager Keith Maher, who's not a party to this suit, served as the fund's representatives while on the company's board.

"Roth's contention that some sort of additional but undefined 'formal' notice of Armistice's legal status as a director was required is not grounded in applicable law or regulations," Judge Barrington D. Parker said in the opinion.

Boyd and Armistice said they were shielded from liability under a Securities and Exchange Commission rule because Vaxart's board knew they were insiders and unanimously approved of the warrant changes. That regulation, Rule 16b-3(d), exempts inside traders from liability if they got equity directly from the corporation and the issuer's board approves the short-swing transaction in advance.

The US District Court for the Southern District of New York correctly agreed, Parker said, granting Armistice summary judgment without considering whether the warrant changes constituted a Section 16(b) violation. Circuit Judges Beth Robinson and Myrna Pérez joined the opinion.

Armistice, its fund, Boyd, and Maher recently lost their bid to thwart trial in a Vaxart investor class action in the US District Court for the Northern District of California. That suit says Armistice's leaders acted to deceive Vaxart investors as it worked to develop an experimental oral Covid-19 vaccine early in the pandemic. Vaxart previously settled related shareholder allegations.

Roth's lost several legal battles tied to short-swing trading.

Ostrager Chong Flaherty & Broitman PC and Paul D. Wexler of New York represent Roth. Akin Gump Strauss Hauer & Feld LLP represents Armistice Capital, Armistice Capital Master Fund Ltd., and Boyd. Neither side's counsel immediately responded to emails seeking comment.

The case is Roth v. Armistice Cap., LLC , 2d Cir., No. 24-950, affirmed 8/28/25 .

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

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

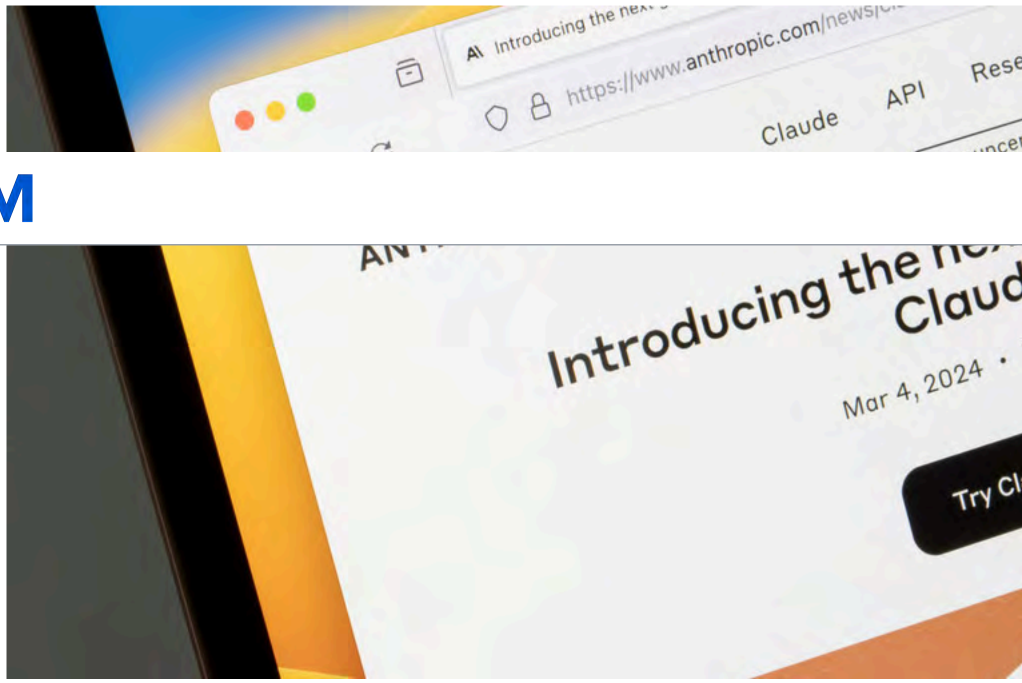
News | **Artificial Intelligence**

Notice of Settlement Filed in Landmark AI Copyright Case Against Anthropic

August 26, 2025 at 06:31 PM By **Michelle Morgante**

What You Need to Know

- Trial in the class action suit had been scheduled to begin Dec. 1.
- The two sides went through mediation on Aug. 19.
- The parties asked for a hearing on the proposed settlement on Sept. 8.



Introduction to Claude 3 as seen on the Anthropic website on a computer. Credit: Tada Images/Adobe Stock

Attorneys in the class-action copyright suit against Anthropic filed a notice of settlement Tuesday, signaling the artificial intelligence company likely will avoid a potentially “ruinous” damages verdict in the landmark case.

Anthropic and a group of authors led by novelist Andrea Bartz entered the notice following mediation. The two sides said they expect to finalize a full settlement agreement on Sept. 3 and would request a hearing on their motion for approval on Sept. 8 before U.S. District Judge William Alsup in the Northern District of California.

Anthropic, a privately held company founded by former members of rival OpenAI, is alleged to have downloaded some 7 million files from online pirated collections to train the company's large language models. The company's lawyers had argued that statutory damages for the class–with fines of up to $150,000 per infringement–would pose a “business-threatening injury,” according to court documents.

The company likely faced damages of $10 billion to $25 billion, according to an analysis run by Law Professor Ed Lee of Santa Clara University, who has closely followed this case on his site Chat GPT Is Eating the World.

Given the pressure put on Anthropic by the class certification and other recent decisions, Anthropic was “in retreat,” Lee said in an interview Tuesday. “I think the momentum had clearly swung to the plaintiffs.”

News of the tentative settlement followed Alsup’s Aug. 11 order rejecting Anthropic’s requested stay as it appealed the class certification to the Ninth Circuit, with the judge saying he intended to stick to the schedule for a Dec. 1 trial start. Calling Anthropic’s use of the downloaded works “straightforward piracy,” Alsup noted that if it were to lose “big” before a jury, “it will be because what it did wrong was also big.”

The notice of settlement is the first of the major AI-copyright cases pending in various courts. If approved, it will likely impact the outcome of those disputes, Lee said.

Santa Clara University law professor Ed Lee. Courtesy photo

"I think this has the potential to dramatically change the landscape of most of the other lawsuits," Lee said. "It could be a domino that has an effect, and others start settling too and I think that is certainly more likely, more in play than it was before this announcement."

The filing Tuesday was somewhat surprising, given Anthropic's vigorous efforts to appeal, but also to be expected in light of the potentially disastrous risk it faced for damages, according to Lee and Professor Matthew Sag of Emory University School of Law.

"I'd been fairly confident this case would settle," Sag told Law.com.

There are two main issues in the case, he noted. First, as Alsup held, fair use allows AI developers to use copyrighted materials for transformative training of AI models. But, as the judge further held, downloading copyrighted material from illicit sites is not covered by fair use.

"Anthropic got undone by a far more specific argument, which was that they had sourced their training material from what you might call sites of known infringement," Sag said. "We're talking about vast repositories of pirated books."

Alsup noted Anthropic held onto those pirated books, regardless of whether they were used for AI training, "just to have a vast general library of useful books lying around. And that's clearly not fair use. It's just not strongly tied to their transformative purpose."

Anthropic is represented by a team from Arnold & Porter Kaye Scholer, Morrison & Foerster and Cooley. Bartz and the other plaintiffs are represented by Susman Godfrey and Lieff Cabraser Heimann & Bernstein. Messages sent to the attorneys seeking comment Tuesday were not immediately answered.

Anthropic declined to comment. A message sent to Bartz's representative went unanswered.

The Authors Alliance, a Berkeley-based non-profit that facilitates access to authors' works, said creators should pay close attention to details of the settlement.

"The stakes are very high here," staff attorney Yuanxiao Xu said in a statement to Law.com. "As the failed Google Books settlement showed, the settlement terms can grant significant market power to a defendant, especially if the terms extend to future licensing. We would want to watch if the settlement risks creating monopolistic control over training data, or binding authors who are unaware of the deal through an opt-out approach."

Anthropic's surprise settlement adds new wrinkle in AI copyright war

reuters.com/legal/government/anthropics-surprise-settlement-adds-new-wrinkle-ai-copyright-war-2025-08-27

Blake Brittain August 27, 2025

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

- Anthropic faced potential liabilities in the billions due to piracy ruling
- OpenAI, Microsoft, Meta battling similar lawsuits
- Fair use defense remains contentious in AI copyright cases

Aug 27 (Reuters) - Anthropic's class action settlement with a group of U.S. authors this week was a first, but legal experts said the case's distinct qualities complicate the deal's potential influence on a wave of ongoing copyright lawsuits against other artificial-intelligence focused companies like OpenAI, Microsoft (MSFT.O), opens new tab and Meta Platforms (META.O), opens new tab.

Amazon (AMZN.O), opens new tab-backed Anthropic was under particular pressure, with a trial looming in December after a judge found it liable for pirating millions of copyrighted books. The terms of the settlement, which require a judge's approval, are not yet public. And U.S. courts have just begun to wrestle with novel copyright questions related to generative AI, which could prompt other defendants to hold out for favorable rulings.

Anthropic was in "a unique situation," said Cornell Law School professor James Grimmelmann, with as much as $1 trillion in piracy damages at stake in its worst-case scenario.

"It's possible that this settlement could be a model for other cases, but it really depends on the details," he said.

The authors in Anthropic's case accused the AI company of using millions of pirated books without permission or compensation to teach its AI assistant Claude to respond to human prompts.

Anthropic, like other AI copyright defendants, countered that its actions were legal under the doctrine of fair use, which allows the use of copyrighted works without permission in some circumstances.

U.S. District Judge William Alsup in San Francisco ruled in June that Anthropic made fair use of the authors' work to train its AI, but said the company violated copyright law by saving pirated books to a "central library" that would not necessarily be used for AI training. That created potential liabilities of billions of dollars for Anthropic, which faced an upcoming trial in December.

The two sides told the court on Tuesday that they had settled the case in principle, the first accord reached in a copyright lawsuit over generative AI training. Alsup, who must approve the settlement, ordered the parties to submit details to the court by Sept. 5.

Chris Buccafusco, a law professor at Duke University, said he was surprised Anthropic chose to settle. Anthropic was "in a position of decent strength" because of Alsup's fair-use determination, Buccafusco said, despite the piracy decision.

"Given their willingness to settle, you have to imagine the dollar signs are flashing in the eyes of plaintiffs' lawyers around the country," he said.

Anthropic and an attorney for the authors did not immediately respond to requests for comment on Wednesday. Universal Music Group (UMG.AS), opens new tab, which has separately sued Anthropic over its alleged misuse of song lyrics to train Claude, also did not respond to a request for comment.

OpenAI, Meta and Microsoft did not respond to questions about how the Anthropic settlement could shape their ongoing AI litigation.

FAIR USE QUESTIONS

The fate of the pending generative AI lawsuits could hinge on fair use, a still-evolving concept that no court had addressed in the cases until June.

Grimmelmann said Anthropic's settlement removes an early opportunity for a federal appeals court to consider fair use and issue a decision that would be binding on other cases and likely tee up the issue for the U.S. Supreme Court.

Two days after Alsup's ruling on fair use and piracy, another judge in the same San Francisco court took a different approach in a similar author lawsuit against Meta. The decision by U.S. District Judge Vince Chhabria mostly ignored piracy issues like those Alsup addressed, but found that Meta's conduct may not be protected because its AI could be used to "flood the market" with replacements for the authors' work.

Chhabria ruled for Meta on fair use but said he did so only because "these plaintiffs made the wrong arguments." Alsup, meanwhile, downplayed fears of market displacement in the Anthropic case.

An attorney for the authors suing Meta declined to comment on Anthropic's settlement.

Reuters News has licensed its content to Meta for AI use, and its parent company Thomson Reuters (TRI.TO), opens new tab is involved in a lawsuit against Ross Intelligence that argues Ross misused copyrighted material to train an AI-powered legal search engine.

Decisions on fair use in dozens of other AI cases are unlikely before next year. Given the stakes, unpredictability surrounding the rulings could provide an impetus to settle, experts said. But it could also encourage them to hold out in hopes of a sweeping win like Google (GOOGL.O), opens new tab obtained from the Supreme Court in 2016 in a fair-use dispute over its Google Books project.

"The one thing that was clearly going to help was an across-the-board, as-a-matter-of-law fair use ruling" in the Anthropic case, Buccafusco said. "That would have been the real solution for all of the AI platforms."

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.

California Brief

Anthropic Settlement Unlikely to Spur Wave of AI Copyright Deals

Aug. 28, 2025, 2:03 AM PDT

Authors, news outlets, and artists suing OpenAI Inc. and other tech giants face significant hurdles to recreate the circumstances that pushed Anthropic PBC to settle copyright infringement claims this week.

Author plaintiffs notched several key wins against Anthropic that gave them critical leverage against the Claude chatbot-maker: their complaint included a piracy claim, the judge had already decided illegal downloads likely weren't fair use, and he had signed off on a sprawling class certification with a trial date just months away.

Other plaintiffs have begun to emulate authors' strategies against Anthropic. A group of music publishers also suing the company pushed to add a piracy claim to their complaint, saying they only recently discovered Anthropic downloaded books with song lyrics from pirated datasets. Proposed class plaintiffs in a consolidated suit against OpenAI are similarly trying to maintain a claim based on the company's use of pirate sites, which the AI giant has sought to dismiss, and have yet to have their class certified.

Intellectual property attorneys say plaintiffs in those cases need to secure more building-block wins before the defendant companies would feel pressure to settle.

"I don't think we can responsibly and very confidently say now this is going to create a domino effect" until the specific settlement terms are disclosed, intellectual property attorney Vivek Jayaram said.

The financial terms of the settlement could be a significant factor for companies considering a deal. Edward Lee, a Santa Clara Law professor, said Microsoft Corp. and Meta Platforms Inc. could "withstand practically anything" regarding damages, but would want to avoid a hefty payment. Jayaram said if the Anthropic settlement amount is lower than expected—such as hundreds of millions instead of billions—that could change the settlement calculus for others.

Some AI companies might be glad to "get out of this whole mess for a couple hundred million," Jayaram said.

The Piracy Strategy

The authors and Anthropic on Tuesday notified the US District Court for the Northern District of California they reached a class-wide settlement. That agreement came after the AI company said the certified class, which included millions of pirated books and could've put the company on the hook for as much as $1 trillion in damages, created significant pressure to settle.

Music publishers' case accusing Anthropic of copying protected song lyrics is distinct from the authors' case, as it's not a class action and has far fewer works at issue. But Anthropic might be willing to settle "just to make it go away, rather than still be on the hook for the maximum amount of statutory damages," said Kevin Madigan, Senior Vice President of Policy and Government Affairs at the Copyright Alliance.

"If I was one of their lawyers, I would think I don't want to now proceed to trial in this case given what we've seen other courts say about piracy," he said.

Publishers on Aug. 11 sought permission to amend their complaint to add piracy claims. Anthropic on Monday opposed the request and called it a "bait and switch." Anthropic said it tried to relate the two cases, but the music publishers relied specifically on the piracy allegations in the authors' case to differentiate themselves and successfully oppose the effort. Now, Anthropic argued, they're trying to "transform this case at the eleventh hour."

The piracy claims "are very fraught right now" and "pose quite a bit of risk" for the AI companies, said Bloomberg Intelligence analyst Tamlin Bason. "Trying to limit the risk there is going to be essential for these firms."

OpenAI and Microsoft didn't return a request for comment. A lawyer for the author plaintiffs who sued Meta declined to comment.

OpenAI faces a much more complex situation in the US District Court for the Southern District of New York, where a dozen cases against it are consolidated for discovery. Claims from news outlets and creatives include copyright infringement, trademark dilution, and Digital Millennium Copyright Act violations. Only some of the cases are proposed class actions.

OpenAI is in "the hardest position to strike settlements," Lee said.

Still, Anthropic's settlement could prompt OpenAI's lawyers to seriously consider cutting a deal, Madigan said, since it demonstrates Anthropic didn't think it could win on the piracy issue that OpenAI also faces.

"There will probably be others who say, 'Hey, we got all the money in the world and the best lawyers in the world and are going to litigate,'" he said.

To contact the reporters on this story: Aruni Soni in Washington at asoni@bloombergindustry.com; Annelise Levy in San Francisco at agilbert1@bloombergindustry.com

California Brief

Anthropic Says Attacker Used AI Tool in Widespread Hacks

Aug. 27, 2025, 9:07 AM PDT

A hacker leveraged technology from Anthropic PBC as part of a vast cybercrime scheme that's impacted at least 17 organizations, the company said, marking an "unprecedented" instance of attackers weaponizing a commercial artificial intelligence tool on a widespread basis.

The hacker used Anthropic's agentic coding tool in a data theft and extortion operation that affected victims in the last month across government, health care, emergency services and religious institutions, according to the company's August threat intelligence report published this week. The attacks using the Claude Code tool resulted in the compromise of health care data, financial information and other sensitive records with ransom demands ranging from $75,000 to $500,000 in cryptocurrency.

The campaign demonstrated a "concerning evolution in AI-assisted cybercrime" in which a single user can operate like an entire cybercriminal team, according to the report. The company said the hacker used AI as a consultant and active operator to execute attacks that would otherwise have been more difficult and time-consuming.

Anthropic, an AI startup founded in 2021, is one of the world's most valuable private companies and competes with OpenAI and Elon Musk's xAI as well as Alphabet Inc.'s Google and Microsoft Corp. It has positioned itself as a reliable safety-conscious AI firm.

Read More: Anthropic in Talks to Raise Up to $10 Billion in New Funding

Anthropic also reported malicious use of Claude in North Korea and China. North Korean operatives have been using Claude to maintain fraudulent remote, high-paying jobs at technology companies intended to fund the regime's weapons program. These actors appear to be completely dependent on AI to perform basic technical tasks such as writing code, according to Anthropic.

A Chinese threat actor used Claude to compromise major Vietnamese telecommunications providers, agricultural management systems and government databases over a nine-month campaign, according to the report.

While Anthropic's investigation focuses specifically on Claude, the company wrote that the case studies show how cybercriminals are exploiting advanced AI capabilities in all stages of their fraud operations. Anthropic has found that AI-generated attacks are able to adapt to defensive measures in real time while making strategic and tactical decisions about how to most effectively exploit and monetize targets.

Other AI firms have also reported malicious use of their technology. OpenAI said last year that a group with ties to China posed as one of its users to launch phishing attacks against the AI startup's employees. OpenAI has also said it has shut down propaganda networks in Russia, China, Iran and Israel that used its technology.

To contact the reporter on this story:
Emily Forgash in New York at eforgash@bloomberg.net

To contact the editors responsible for this story:
Andrew Martin at amartin146@bloomberg.net

Jeff Stone, Andrew Pollack

Delta agrees to $78 million to end fuel dumping case

DJ
dailyjournal.com/articles/387275-delta-agrees-to-78-million-to-end-fuel-dumping-case

Filippo Marchino of The X-Law Group

After five years of litigation, Delta Air Lines agreed to a $78 million settlement with property owners over jet fuel that was dumped on some 38,000 homes in Los Angeles and Orange Counties.

If the deal is approved by U.S. District John A. Kronstadt next month, the class counsel will receive over $26 million in fees and costs.

The proposed agreement was filed in Los Angeles federal court Monday by Filippo Marchino of The X-Law Group PC, who leads the class members. The filing says up to 160,000 people could share more than $50.5 million.

"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," Marchino said in a statement Wednesday. "We are especially pleased to obtain this result for residents of the southeast L.A. communities, comprised of hard-working families who asked only for respect and just treatment and rightly deserve this result."

In a follow-up email, Marchino added the settlement followed several mediations over three years before retired Los Angeles judge Louis M. Meisinger at Signature Resolution.

"Since then, we've been working at finalizing the settlement, including the non-economic part of the class's recovery and are now pleased to have been able to file this settlement for preliminary approval," Marchino said.

The proposed settlement cites a jointly commissioned bench study between the class and Delta, which found jettisoned fuel became undetectable in soil after seven days and eased concerns about potential property value impacts. The filing asserts Delta was confident it would have proven at trial there was no property damage, diminution in value or lasting harm to the residents because of the study.

Delta, represented by several attorneys at King & Spalding LLP and Clyde & Co LLP, settled without admitting liability and said it "vigorously" denied the claims. "Delta recognizes the benefits of settling this action on the terms ... solely for the purposes of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings," the proposed settlement stated.

The consolidated action was initiated in January 2020, days after a Delta plane carrying 167 passengers and crew left Los Angeles for Shanghai but lost some power soon after takeoff. According to the complaint, the pilots dumped about 15,000 pounds of fuel before returning to Los Angeles International Airport. The lawsuit said tens of thousands of homes and some schools were sprayed over a five-mile area. *In re Delta Air Lines Inc.*, 2:20-cv-00786 (C.D. Cal., filed Jan. 24, 2020).

In his email, Marchino described the effort to resolve the years-long mass tort case.

"I think the largest key in the case was the technical aspects of the litigation: We were able to get a lot of leverage by understanding the facts and doing very intense fact discovery," he wrote.

"During the case, there were over 50 depositions taken, most of technical nature, and almost 500,000 pages of documents exchanged between the parties. This was no simple case, but given our background in aviation and aerospace engineering, we were able to perform well in this highly complex and legally challenging case," he added.

Marchino said he has a master's degree in aerospace engineering.

He was joined by X-Law Group attorneys Carlos X. Colorado and Thomas E. Gray.

Delta was defended by King & Spalding attorneys David K. Willingham and Arwen R. Johnson, along with Jeffrey J. Ellis and David F. Knapp of Clyde & Co.

#387275

Devon Belcher

Daily Journal Staff Writer
devon_belcher@dailyjournal.com

Delta to pay $78.75 million to resolve fuel dump lawsuit

reuters.com/sustainability/boards-policy-regulation/delta-pay-7875-million-resolve-fuel-dump-lawsuit-2025-08-27

Jonathan Stempel August 27, 2025

A Delta Airlines passenger jet approaches to land at LAX during the outbreak of the coronavirus disease (COVID-19) in Los Angeles, California, U.S., April 7, 2021. REUTERS/Mike Blake/File Photo Purchase Licensing Rights, opens new tab

Aug 27 (Reuters) - Delta Air Lines (DAL.N), opens new tab agreed to pay $78.75 million to resolve a class action lawsuit over a 2020 fuel dump that doused tens of thousands of properties, including homes and schools, in Los Angeles and Orange counties in California. A proposed preliminary settlement was filed this week in Los Angeles federal court, and requires a judge's approval.

The case stemmed from a January 14, 2020 incident in which Delta Flight 89 to Shanghai from Los Angeles, carrying 167 passengers and crew, lost thrust soon after takeoff. Delta pilots jettisoned about 15,000 pounds (6,804 kg) of jet fuel from the Boeing 777 before returning to Los Angeles International Airport, to reduce the risks of an overweight emergency landing. Several dozen people on the ground were treated for minor injuries.

Property owners said the pilots unnecessarily dumped fuel at a low altitude over densely-populated areas, instead of dumping fuel over the Pacific Ocean or at a high altitude so it would dissipate, or burning fuel by flying in a holding pattern. They demanded that Delta clean up the mess.

Delta denied wrongdoing, and said it settled to avoid the uncertainty, distraction and cost of litigation.

The Atlanta-based carrier also said Flight 89's pilots and cabin crew "did exactly what federal regulations and their FAA-approved training required them to do to respond to that in-flight emergency and ensure the safety of the passengers, crew, and people on the ground."

A Federal Aviation Administration investigation later cleared the pilots of wrongdoing, Delta said.

The net settlement, after legal fees and costs, may total $50.6 million, and be distributed to owners or residents of an estimated 38,000 properties, court papers show.

Filippo Marchino, a lawyer for the plaintiffs, in a statement said the settlement was fair and reasonable, and would compensate "hard-working families who asked only for respect and just treatment and rightly deserve this result."

The case is In re Delta Air Lines Inc, U.S. District Court, Central District of California, No. 20-00786.

Reporting by Jonathan Stempel in New York Editing by Bill Berkrot

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

Judge rejects secrecy bid by State Farm, state agency in $1.19B rate case

DJ
dailyjournal.com/articles/387279-judge-rejects-secrecy-bid-by-state-farm-state-agency-in-1-19b-rate-case

LA Fires,

Insurance,

Government

Aug. 28, 2025

An administrative judge denied State Farm and the state Department of Insurance's bid for secrecy in a $1.19 billion rate case, reinforcing Proposition 103 transparency protections and ordering scrutiny of wildfire claims handling.

An Administrative Law Judge has denied requests by State Farm and the California Department of Insurance to move pre-hearing proceedings in the insurer's pending rate case out of public view.

"This is a victory for consumers and open government," said Harvey Rosenfield, founder of advocacy group Consumer Watchdog and author of Proposition 103, in a news release on Wednesday. "Proposition 103 was designed so that rate hikes happen in public, not behind closed doors. Today's ruling keeps that promise."

The ruling by Department of Insurance Administrative Law Judge Karl-Fredric J. Seligman addressed the growing controversy over State Farm's handling of wildfire claims, according to the news release. Consumer Watchdog said survivors of recent Los Angeles County wildfires have alleged that the company has delayed or denied payments even as it seeks an unprecedented $1.19 billion homeowner rate hike.

The release further said that while the Department of Insurance had requested that review of State Farm's claims-handling practices be postponed until after a rate decision, the judge's ruling rejected that request, warning that splitting the process would risk confusion, delay, and challenges to the fairness of the proceeding.

The court also ordered State Farm to disclose its expert witnesses, ensuring their testimony can be properly scrutinized, according to the advocacy group, with the judge also granting in part discovery requests by an intervenor, attorney Merritt D. Farren of Pacific Palisades, allowing the development of additional evidence relevant to the case.

Consumer Watchdog is challenging State Farm's request for major rate increases while widespread policyholder complaints remain unresolved. With the judge's latest orders, the proceedings will remain open to the public, the group said.

#387279

Skyler Romero

Daily Journal Staff Writer
skyler_romero@dailyjournal.com

Class Action

Manage Newsletters

Insurance Trade Group Backs Carriers in Publix Opioid Appeal

Aug. 28, 2025, 8:20 AM PDT

Summary by Bloomberg AI

AI Generated

- An insurance industry group is supporting liability carriers in a dispute over coverage for claims alleging Publix Super Markets Inc. contributed to the opioid epidemic.
- The group, Complex Insurance Claims Litigation Association, argues that insurance policies don't cover "generalized financial losses untethered to specific, individualized bodily injury".
- The US Court of Appeals for the Eleventh Circuit is expected to hear oral argument in the case in December, with the industry group seeking to uphold a lower court order in its proposed amicus brief.

An insurance industry group is throwing its weight behind liability carriers in a dispute over coverage for claims alleging Publix Super Markets Inc. contributed to the opioid epidemic.

The insurance policies sold by units of Chubb Ltd., Berkshire Hathaway Inc., and other carriers don't cover "generalized financial losses untethered to specific, individualized bodily injury," the Complex Insurance Claims Litigation Association said in a proposed amicus brief filed Wednesday in the US Court of Appeals for the Eleventh Circuit.

CICLA has frequently sought to back insurers in coverage disputes with high stakes for the industry, including in previous cases related to the opioid epidemic as well as a dispute over coverage for litigation seeking to hold firearm companies accountable for gun violence. These fights often involve the interpretation of policy language that could dramatically broaden or narrow coverage available under general liability insurance policies.

Publix is appealing a ruling by a Florida federal court holding that the underlying suits against the grocer are uncovered because they don't allege damages caused by bodily injury.

CICLA argued in support of upholding the lower court order in its proposed amicus brief. “What is spent by the government entities responding to social issues is speculative and discretionary; it is untethered to a compensation award for any individual’s bodily injury and is therefore outside the scope of the insurance contract,” the trade group said.

The court is expected to hear oral argument in the case in December.

Publix on Wednesday separately won an order from a Florida federal judge tossing a whistleblower’s complaint alleging the company submitted fraudulent reimbursement requests for opioid prescriptions.

Lavin Rindner Duffield represents CICLA. Cohen Ziffer Frenchman & McKenna LLP and Friedman PA represent Publix. O’Melveny & Myers LLP, Holwell Shuster & Goldberg LLP, Skarzynski Marick & Black LLP, and Dentons US LLP are among the firms representing carriers in the case.

The case is Publix Super Markets Inc. v. Ace Property & Casualty Ins. Co. , 11th Cir., No. 25-11185, CICLA’s motion for leave to submit amicus brief 8/27/25 .

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Class Action

Manage Newsletters

Hartford, Travelers Sued Over Coverage for Hair Product Cases

Aug. 28, 2025, 8:58 AM PDT

Hartford Insurance Group Inc. and Travelers Cos. units were hit with a suit alleging they failed to defend and indemnify a hair product company in proposed class actions claiming the products contained dangerous chemicals.

The underlying lawsuits fall within the policies' coverage for bodily injury and property damage caused by an "occurrence," which is defined as an accident including continuous exposure to harmful conditions, Hair Zone Inc. said in a complaint filed Wednesday in the US District Court for the District of New Jersey.

Hair Zone, doing business as Sensationnel, stands accused of making and selling synthetic braiding hair, weaves, extensions, and wigs containing dangerously high levels of various carcinogens, lead, and volatile organic compounds.

Hair Zone seeks a declaratory judgment that the Hartford and Travelers policies cover the underlying lawsuits, as well as damages from Hartford for its alleged breach of contract.

Hartford and Travelers didn't immediately respond to requests for comment.

Anderson Kill PC represents Hair Zone.

The case is Hair Zone Inc. v. Hartford Fire Ins. Co. , D.N.J., No. 2:25-cv-14960, complaint filed 8/27/25 .

This story was produced by Bloomberg Law Automation.

To contact Bloomberg Law Automation: automation@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Class Action

Manage Newsletters

Chubb Unit Sues Crock-Pot Maker Over Exploding Cooker Claims

Aug. 27, 2025, 1:51 PM PDT

A Chubb Ltd. unit is suing the company that makes Crock-Pot pressure cookers, seeking to limit insurance coverage for product liability claims over cookers that exploded and injured consumers.

Umbrella liability insurance policies issued to Newell Brands Inc.—naming its subsidiary Sunbeam Products Inc. as an additional insured party—only afford coverage in excess of other applicable insurance policies and once certain retentions have been exhausted, Ace Property & Casualty Insurance Co. said in a complaint filed Tuesday in the US District Court for the Northern District of Georgia.

Underlying claimants alleged that the pressure cookers exploded without warning, resulting in burns and other injuries.

"The ACE Umbrella Policies do not provide coverage to Newell and/or Sunbeam in connection with amounts covered under other 'valid and collectible' insurance until the limits of the 'other insurance' is fully and properly exhausted by payment of Claims that may also be covered under the ACE Umbrella Policies," the Chubb unit said.

Even when other insurance is exhausted, Newell and Sunbeam must meet several retentions before coverage is triggered, the insurer added.

The policies also don't cover damages because of bodily injuries that occurred outside the policy periods running from September 2018 to September 2023, the complaint said.

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

Mozley, Finlayson & Loggins LLP represents Ace.

The case is ACE Property & Casualty Ins. Co. v. Newell Brands Inc. , N.D. Ga., No. 1:25-cv-04837, complaint filed 8/26/25 .

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Bloomberg Law

Request a Demo Login

California Brief

Rivals OpenAI, Anthropic Team Up for Research on AI Model Safety

Aug. 27, 2025, 10:06 AM PDT

OpenAI and Anthropic, two of the biggest rivals in artificial intelligence, recently evaluated each others' models in an effort to better understand issues that their own tests may have missed.

In posts on both companies' blogs on Wednesday, OpenAI and Anthropic said that over the summer they ran evaluations for safety on the other company's publicly available AI models. They also tested for any propensity to make up facts and misalignment, a term commonly used to refer to an AI model not doing what the people building it want it to do.

The companies are high-profile competitors — Anthropic was founded by former OpenAI employees — making the collaboration notable. OpenAI called the joint safety effort the "first major cross-lab exercise in safety and alignment testing," adding that the group hoped it would provide a "valuable path to evaluate safety at an industry level."

AI companies are under increasing pressure to focus on the safety of their products following a string of reports of harmful behavior linked to heavy use of the models. Most recently, a lawsuit was filed against OpenAI earlier this week alleged a teenager died by suicide after using the chatbot as a coach.

The companies carried out the evaluations before OpenAI released its new flagship AI model, GPT-5, and Anthropic rolled out the latest update to its Claude Opus model, Opus 4.1, in early August

To contact the author of this story:
Rachel Metz in San Francisco at rmetz17@bloomberg.net

To contact the editor responsible for this story:
Anne VanderMey at avandermey@bloomberg.net

Michael Shepard

LAW.COM

Analysis | Law Firm Associates

Inflating Hours is Widespread, Lawyers Say After Associate's Ban

August 27, 2025 at 06:52 AM By Paul Hodkinson

Krishnan Nair

The sanctioning of an Irwin Mitchell senior associate for overstating chargeable hours has sparked a broader debate across the industry about billing practices.

The U.K. individual was banned by regulators from working as a lawyer due to inaccurate and misleading time records, which included one case of her billing for almost 23 hours in one day. But several lawyers have responded to the punishment by saying the practice of inflating hours is widely accepted and that firms place unreasonable demands on their workers.

A Big Law associate, who spoke with Law.com on condition of anonymity, said that there was undoubtedly a “temptation” to inflate hours as there “is only one winner” in the situation; associate fees are routinely written off, meaning the client doesn’t lose out while the associate gets to show leaders that they are hitting their targets.

Though the associate stressed that they did not have direct knowledge of colleagues inflating hours, they said that there was an instance at the London office of their U.S. firm where it was “known” among lawyers that a counsel was inflating their hours, but leaders were disinclined to make a formal accusation against them as they would then “have to call everyone out on it”. It led to a culture of silence on the perceived issue, they added.

Another associate at a large international law firm said that, in one episode, when they came back from holiday, hours had been logged on their behalf. When they attempted to report the matter, they were mistreated by seniors at their firm.

A third Big Law senior associate indicated that, when trying to staff juniors, they were told "all are too busy", when looking purely at utilisation figures based on hours billed, "which I have sometimes found odd, when you actually drill down deeper into the actual tasks being undertaken".

The person also cited an instance when they were an NQ and a senior associate "had once recorded three hours for supervising them. The person said it was "questionable" whether they "actually received such support and supervision".

They added that they felt inflating numbers was more an issue among juniors, "not so much as you go up the ranks".

"As a junior you are more mindful that you are judged by your hours—and some firms payout bonuses linked to hours—and you are still trying to establish yourself," they added.

"As you get more senior and you get involved in quoting for work, billing etc you have more appreciation for the value of time unit and the knock on impact it can have. Also by that point you have established yourself so you have a good workflow pipeline and are able to be more efficient."

Several partners at large firms privately admit there is little stopping lawyers from adding small amounts to billed hours and in response to the story, several people spoke out on social media about the issue.

Commenting on Law.com post on LinkedIn, one person working in the U.K. legal industry, who asked not to be named, said they believed 100% of trainees, associates and partners will have at some point adjusted their time recordings, adding: “23 hours in one day is insanity, but smaller adjustments are very common, especially when you include typical ‘running up the clock’ methods.”

One lawyer working in-house in the U.K. said: “I'd wager that 90% of associates do this—but especially in U.S. firms where you bill in 10-minute periods. Technically, if I do one minute of work and then go to the toilet for 9 minutes, why can I not bill for the 10-minute unit?”

Another U.K. in-house lawyer added: “While not condoning dishonesty, in financial services the company is judged by regulators on its systems and processes, training and embedding culture. [I] think the SRA has a LOT more to do in holding partners to account for poor cultures and behaviours. There is the data in the form of billable hours—if these are too high there should be consequences not congratulations!”

Anna Elena Brolis, an Italy-based lawyer, executive coach and trainer, said: “What happened here is not as extraordinary as it may sound. The practice of inflating hours—at least to some extent—is widely accepted.

“After all, if you divide annual targets such as 2,000 or even 2,400 billable hours by the actual working days in a year, you quickly realize that this level of ‘billable productivity’ is hardly achievable—especially for lawyers who are not directly responsible for managing client relationships or leading matters.”

“From this perspective, the sanction in this case feels disproportionate: it does not punish the associate for the tolerated practice itself, but rather for having managed that tolerated practice poorly.”

Kimberley Whitaker, a general counsel at a U.K. company, said via LinkedIn: “I think there’s a lot of work to do in terms of firm culture that drives these actions. It isn’t unique to just this firm. Anywhere with very high chargeable hour billing targets may mean those who haven’t hit the mark may feel the pressure to pad hours.

“Absolutely, it’s 100% incumbent on individuals to behave honestly, but clearly some do crack under pressure (and possible exhaustion).”

Referring to her time in private practice, Whitaker added: “There absolutely was pressure put on associates to keep billing more, and I can’t see with recent salary hikes that this will have reduced since my private practice days.” However, she added that “it’s drilled into us from very early in our careers that we can recover from most things, but not dishonesty offences. So whilst it is a harsh lesson to learn, there does have to be a line drawn somewhere.”

Outside of Europe, several other lawyers voiced similar opinions.

Matthew Herlihy, New York-based managing partner of Herlihy, said: "Firms put their thumb down so aggressively on associates that the associates feel they have to bill like that to appease the partners. They think if they don't bill like that then they will never advance or be promoted. The issue is a top-down issue.

"I have always said that the billable hour is the worst thing about the legal industry, as well as the most fraudulent thing going."

James Kibe, a partner at a local firm in Kenya, added: "In an 8-5 job and even assuming one works overtime, there's no way you'll work for a cumulative six hours in a day. And this is an honest conversation that people are not ready to have."

Have a view? Get in touch: phodkinson@alm.com, knair@alm.com

With reporting by Molly G Smith.

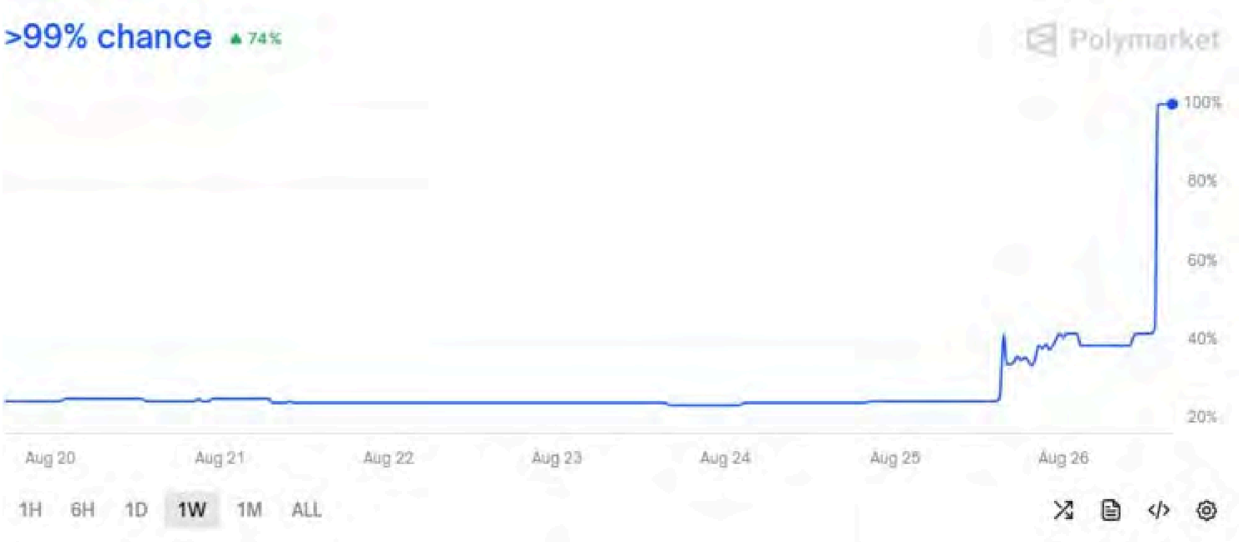
Securities Law News

Matt Levine's Money Stuff: The Taylor Swift Wedding Trade

Aug. 27, 2025, 10:28 AM PDT

Romantic

Here's the one-week chart of "Taylor Swift and Travis Kelce engaged in 2025?" on Polymarket, the prediction market:



That spike yesterday afternoon — from about 43% to about 100% — came from Swift's and Kelce's official engagement announcement; the market has now resolved to "Yes." The spike *Monday* afternoon — from about 25% to about 40% — did not come from the official announcement. Someone bought a lot of Yes contracts on Monday; Polymarket has an activity log, so you can see that user "romanticpaul" was a heavy buyer, starting at around 25 cents on Sunday; as of yesterday he was the top Yes holder, with 5,062 contracts. Each Yes contract pays out $1, so he made, you know, $3,500 or something on the trade.

Romanticpaul had good timing. Did he have inside information, or did he just get lucky? I have no idea. Also he didn't get *that* lucky; I suspect that $3,500 won't buy the cheapest item on Swift's and Kelce's wedding registry. Still, it raised eyebrows. The internet tells me they actually got engaged two weeks ago. Surely somebody knew before yesterday. In the past, if you knew about Taylor Swift's engagement before anyone else, you could have felt cool about it, or perhaps you could have sold the story to a tabloid. Now you can use prediction markets to turn it directly into, well, some money. You can be rewarded for making the market on Taylor Swift's engagement more efficient.

Three themes that we have talked about around here are:

1. Insider trading in the US *stock market* is illegal; there is lots of law about it and the rules are enforced pretty enthusiastically. But insider *betting* — using material nonpublic information to make sports bets — is more of a legal gray area, because legal sports gambling in the US is still fairly new. There is a decent argument that insider sports betting is a form of wire fraud (by analogy to insider trading being a form of securities fraud), and there have been some prosecutions, but there's also a decent argument that it isn't, and there haven't been that *many* prosecutions. (Not legal advice.)

- 2. For weird and accidental reasons, a new and appealing way to do sports gambling — really any gambling — in the US is through prediction markets that are regulated as commodity exchanges by the US Commodity Futures Trading Commission. Kalshi, a CFTC-regulated prediction market, now lists sports contracts, and those contracts seem to get better regulatory and tax treatment than ordinary sports bets would get. (Kalshi also lists Taylor Swift wedding contracts.) And Polymarket also now has a CFTC-registered derivatives exchange.
- 3. Insider trading on *prediction markets* is also a bit of a gray area. Kalshi bans insider trading. Manifold Markets, a play-money, non-CFTC-registered prediction market, *loves* insider trading, because it makes predictions more accurate. Polymarket is a little grayer; here is a 2024 Decrypt article saying that "a person familiar with Polymarket's operations who requested anonymity to speak candidly told Decrypt that insider trading 'is strictly prohibited' by the company's terms of service," but noting that the terms of service don't actually say that. What they say is that you can't do anything that violates applicable law. Does insider trading on Polymarket violate applicable law? Maybe!

So, if you use inside information to bet on sports or weddings on a CFTC-registered futures exchange, is that … commodities fraud? The traditional answer is "insider trading is not about fairness, it's about theft": If you have inside information *and* some obligation to the owner of the information not to use it, then it's illegal to trade on it. (If you shot Swift's and Kelce's engagement photos and signed a nondisclosure agreement, you can't trade.) If you have inside information and you *are* the owner of that information, whatever, go nuts. (If romanticpaul *is Kelce*, fine? Also very cool.) Most conceivable *sports* insider trading would probably be illegal: Sports leagues are normally quite strict about prohibiting their players and employees from betting, certainly on their own games, so a player betting based on inside information would surely be violating a duty of confidentiality. But this is all speculation and not legal advice.

And there is a lot of non-sports betting — sorry, predicting — where the rules are even fuzzier. Bloomberg's Francesca Maglione reports:

Taylor Swift’s engagement to football star Travis Kelce has sparked a flood of online bets on the billionaire singer’s life.

On prediction market websites like Kalshi and Polymarket, traders are putting money behind their expectations for the couple. … Gamblers on Kalshi can now make wagers on the wedding timeline, with about $80,000 worth of bets already placed in the hours after Swift’s post, according to the company. On Polymarket, bettors are going so far as to gamble on when the couple might have a baby, while also growing more convinced that the singer will headline the 2026 Super Bowl halftime show.

Anyway I look forward to the first CFTC insider trading enforcement action about sports betting. Or sports-adjacent proposition betting. Or wedding date betting. Everything is sports, and everything will be commodities fraud.

Cronos

I sometimes describe crypto treasury companies as “ perpetual motion machines.” The idea is:

1. You issue 100 shares of stock for $1 per share, raising $100, and buy $100 worth of Bitcoin.
- 2. Now you have a net asset value of $100 (the Bitcoin), but for some reason your stock trades at $2 per share, for a $200 market capitalization. The stock market will pay $2 for $1 worth of Bitcoin, and you benefit from that anomaly.
- 3. You sell 100 more shares of stock for $2 per share, raising $200, and buy $200 more of Bitcoin.
- 4. Now you have 200 shares outstanding, your net asset value is $300 ($1.50 per share), your market cap is $600, and your stock is worth $3 per share.
- 5. You keep doing this forever, buying more Bitcoin and increasing your stock price.

Obviously I am kidding a little. There is no such thing as a perpetual motion machine. This has to end. But how? Well, my point in laying it out like this is mostly that you can’t sell stock at 200% of net asset value forever: Eventually people will stop paying a premium to buy your stock, and then the trade doesn’t work anymore. You can’t sell infinite shares to buy infinite Bitcoins, because eventually you will run out of people to sell stock to. And there are some signs that the generic “the stock market will pay $2 for $1 of crypto” trade has stopped working as well as it used to. MicroStrategy Inc., which invented this idea, still trades at a premium to its Bitcoin value, but that premium is no longer 100%, and some other crypto treasury announcements have fizzled.

But there’s another reason this trade can’t go on forever, which is that there will only ever be 21 million Bitcoins in the world. You can’t issue infinite shares to buy infinite Bitcoins, because there are not infinite Bitcoins. I am a skeptic of this trade, so I assume that you’ll run out of buyers for your shares long before you run out of Bitcoins to buy, but if you are very bullish on crypto treasury companies you might take the opposite view. One theoretically conceivable endgame for MicroStrategy would be:

1. Right now, the total supply of Bitcoin is worth about $2.2 trillion; MicroStrategy owns about $70 billion worth (about 3% of the total supply) and has a market capitalization of about $100 billion.
- 2. It keeps issuing more shares to raise more money to buy more Bitcoins.
- 3. It buys so much that it pushes up the price of Bitcoin, but the price of its stock goes up to match, so it can keep raising more money to buy more Bitcoins.
- 4. Eventually the total supply of Bitcoin is worth, say, $10 trillion, MicroStrategy owns $9.99999 trillion worth — all of the Bitcoins but one — and its stock trades at $13 trillion.
- 5. Then MicroStrategy goes and buys the last Bitcoin in circulation: Now it owns 100% of the Bitcoin in the world, and the only way to get Bitcoin exposure is to buy MicroStrategy stock.
- 6. ???

I don’t know if that would be desirable, or why, or what would happen next. Nor do I think that this is practically possible, for reasons like “not everyone would sell their Bitcoins to MicroStrategy” and “there are a bunch of *other* Bitcoin treasury companies these days” and “come on people are not going to buy MicroStrategy stock at a $13 trillion valuation, this is all stupid.” But I guess it is all theoretically possible. If a crypto treasury company really is a perpetual-motion-ish flywheel, then the natural endpoint is for the treasury company to own all of the crypto. If the crypto is worth twice as much in a treasury company as it is outside of the treasury company, it will migrate to it most valuable use.

Again: stupid! But here is a Trump Media & Technology Group Corp., uh, thing:

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. …

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. ...

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. …

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 fact that the special purpose acquisition company's stock fell (it trades at roughly its cash value) suggests that in fact you can't sell Cronos tokens on the stock exchange for much of a premium, but whatever. The point here is that the crypto treasury company is planning to raise something like $6.6 billion to buy tokens with a total market cap of $6.5 billion. Perhaps its buying will push up the market cap, but we are talking roughly 100% coverage. Weird? The press release leans into this, saying that the company will have "what we believe to be the largest digital asset treasury company to market cap ratio in history," definitely a ratio that will be in the next edition of all the finance textbooks. Also:

"The sheer size and structure of this project will encompass more than the entire current market capitalization of CRO, with the additional commitments of over $400 million in cash and a further $5 billion line of credit facility to acquire additional CRO," said Kris Marszalek, Co-Founder and CEO of Crypto.com. "This, combined with share lock-ups by each party and the treasury's validator strategy, make it a unique and compelling offering compared to all other digital asset treasuries."

Is the plan to … buy all the tokens? No? "The Cronos ecosystem is already thriving with DeFi protocols, multi-asset marketplaces and more, anchored by the CRO token as both a utility and governance asset," says the press release, and the CRO token doesn't have much utility if you put 100% of it in a treasury company. Still I suppose if you put *almost* all of the tokens in a treasury company, that would support its price, possibly more than utility would. If the most valuable use of crypto tokens is stashing them in publicly traded treasury companies, eventually that's where they will all end up.

Numerai

At some level of abstraction, the way a big hedge fund works is that it hires some researchers, it asks them to find ways to predict stock prices, and then it trades stocks based on their predictions. If they work, the hedge fund makes money, and the researchers get a cut of the money. If they don't work, the hedge fund loses money, and the researchers get fired. This is a generic description, and it covers both fundamental analysts (who cover a smallish universe of companies, understand them deeply, and make high-conviction bets on the particular companies they think will outperform) and quantitative researchers (who cover all the stocks, look for statistical relationships and make thousands of low-conviction probabilistic bets on which sorts of stocks tend to outperform). So the key skills of the researchers will vary; they could be financial analysis or machine learning or whatever. But the key skills *for the fund* are :

1. Hiring good researchers;
2. Checking their predictions to make sure they are good before trading on them;
3. Managing risk to make sure that, when a prediction stops working, the fund stops trading on it; and
4. Firing researchers whose trades don't work.

And those are the essential attributes of the big hedge funds: They're good at hiring ("We are a massive filter of talent," Gappy Paleologo said on the Money Stuff podcast), they're good at allocating capital and managing risk, and they're quick to fire portfolio managers who have big drawdowns. A successful multi-manager hedge fund is an analytical, medium-term investor *in investors*.

The normal way to do this is with a hiring process and a human resources department and a risk management department. Basically a fundamental approach. But you could imagine a quantitative, probabilistic approach, too. Here's a Bloomberg News story about Numerai:

A crowdsourcing hedge fund backed by the billionaire Paul Tudor Jones looks poised to more than double in size with a big influx of cash from JPMorgan Asset Management.

San Francisco-based Numerai LLC says it has secured a commitment of as much as $500 million from JPMorgan Chase & Co.'s asset-management arm to be deployed over the next year. The quantitative firm currently runs about $450 million.

Numerai, which launched its first fund in 2019, buys and sells stocks based on trading ideas sourced from freelance finance quants. The latter are compensated in the firm's native cryptocurrency, which they also use to signal confidence in their forecasts. …

Numerai itself lost 17% in 2023. [Richard Craib, Numerai's founder] said his team then tweaked the fund's playbook so that it ditched losing trades more quickly. A smaller pool of high-quality users contributed to the subsequent recovery.

The normal approach at a big hedge fund is to interview a smallish universe of potential portfolio managers, understand them deeply, and make high-conviction bets on which of them will outperform. (And then fire them quickly if they don't work out.) The Numerai approach is to hire everyone, look for statistical signals of predictive ability, make more but lower-conviction bets on them, and then, of course, fire them quickly if they don't work out.

Things happen

OpenAI Employee Stock Sale Could Rise to $8 billion. Microsoft talks set to push OpenAI's restructure into next year. Hedge Funds Are Shorting the VIX at a Rate Not Seen Since 2022. Convertible arbitrage is doing well. Trump's Fed Gamble Risks Pushing Key Bond Rates Even Higher. Alex Gerko earned £682mn from trading firm XTX in 2024. Spy Satellites, Road Cameras, Phone Trackers: How Alternative Data Companies Are Changing Investing. Venture Debt Firms Tilt Toward Mature Companies. An 83-Year-Old Pizza Tycoon Fights to Save 3,500 Domino's. Young European Backpackers Are Being Lured to Australia for Mining Jobs. Lamborghini CEO says tariffs are causing even the wealthiest buyers to pause. Cracker Barrel Scraps New Logo After Backlash. Prosecutors Fail to Secure Indictment Against Man Who Threw Sandwich at Federal Agent.

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

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

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

- 1. Only in crypto prediction markets do people request anonymity to say candidly "we don't allow crimes."
- 2. We talk about this a lot in connection with stock insider trading, but it's even more important in commodities, because *of course* some big commodities traders have inside information. Supermajor oil companies will trade oil futures, but they also know things about their own oil production that (1) other people don't know and (2) could move the price of oil. In general, commodities market participants can both influence the supply and price of commodities, and also trade those commodities. (This is different from the stock market, where companies really aren't supposed to trade their own stock while in possession of material nonpublic information: They're supposed to disclose material news before buying or selling stock.) There are commodities insider trading enforcement actions, but they're about misappropriation: If you get an oil company's production or hedging plans in confidence, and then you trade on them for your own account, *that's* insider trading.
- 3. In particular some Bitcoins are burned or otherwise inaccessible, because their owners have lost their private keys or whatever. So Satoshi Nakamoto, James Howells, and various other big Bitcoin holders might never sell to anyone; the 21 million cap is not the actually available supply.
- 4. That is, 19% of the tokens (worth about $1.2 billion at a $6.5 billion market cap), plus $400 million of cash from the current deal and up to $5 billion in "equity line of credit." "Equity line of credit" is an annoying way to say "we will sell stock to retail at market prices."
- 5. I'm being too cute and oversimplified, and there are other important skills like "getting good data sources and scrubbing them carefully" and "having a good tech platform." And, of course, "raising money from investors with good lockup terms."
- 6. My impression is that most big hedge funds don't say "human resources" for this function, they say things like "business development," because a portfolio manager is not so much an employee as she is an acquisition.

Bloomberg Law

Request a Demo Login

Securities Law News

SEC Staff Cuts Threaten Company Filing Reviews, Watchdog Says

Aug. 27, 2025, 2:05 PM PDT

The SEC staff exodus under President Donald Trump risks hindering efforts to ensure truthful corporate disclosures, unless the regulator works to mitigate brain drain, the agency inspector general's office has said.

The Securities and Exchange Commission has lost 27 of its 299 disclosure review employees since February, according to an Aug. 26 Office of Inspector General report released Wednesday. The agency should prepare for more departures and the loss of institutional knowledge, the IG's office said. The filing reviewers currently are working with "inconsistent documentation and a lack of comprehensive guidance," it said.

The SEC should "consider developing a plan that prioritizes Disclosure Review Program goals and requirements in the event of significant staffing decreases and/or significant workload increases," the report said.

- SEC management said in a response included in the report that the agency would "consider and, if deemed necessary, formulate the plan by December 2025." An SEC spokesperson declined to comment to Bloomberg Law.
- The agency reviews more than 7,400 companies' annual reports once every three years, or more frequently, depending on various risks.
- Companies in 2023 and 2024 most frequently received SEC comments about their disclosures on business performance, financial measures concerning non-Generally Accepted Accounting Principles, and foreign ownership tied to China, according to the IG report.

To contact the reporter on this story: Andrew Ramonas in Washington at aramonas@bloomberglaw.com

To contact the editor responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com

Bloomberg Law

Request a Demo Login

Securities Law News

Crypto Scheme Operators Ordered to Pay $46 Million in SEC Suit

Aug. 27, 2025, 2:47 PM PDT

The SEC is entitled to a default judgment against two founders of a fraudulent cryptocurrency mining company, a federal court said in imposing about $46 million in disgorgement, interest, and civil penalties.

Judge K. Michael Moore previously froze assets including funds, luxury cars, and boats held by Luiz Carlos Capuci Jr. and Emerson Sousa Pires in the Securities and Exchange Commission's enforcement case brought in the US District Court for the Southern District of Florida. The court retains jurisdiction to enforce the judgment, which was rendered Tuesday.

- The SEC said the pair used Mining Capital Coin Corp. to sell unregistered securities that purported to give investors a stake in crypto mining operations, but they then diverted those funds into their own cryptocurrency wallets
- The MCC founders are liable for more than $28 million in disgorgement, $7.8 million in interest, and civil penalties of $6 million for Capuci and $4 million for Pires, according to the judgment
- Moore's order adopts Magistrate Judge Ryon M. McCabe's recommendation for the monetary awards and an officer and director bar against the men, who fled to Brazil after learning of the SEC investigation, according to the magistrate

The SEC represents itself. The defendants represent themselves in the case.

The case is SEC v. MCC Int'l Corp. , 2025 BL 303345, S.D. Fla., No. 2:22-cv-14129, default judgment issued 8/26/25 .

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

To contact the editor responsible for this story: Tonia Moore at tmoore@bloombergindustry.com

Securities Law News

Recused Manhattan Judge Says She Wasn't Aware of Stock Trade

Aug. 27, 2025, 1:59 PM PDT

A Manhattan federal judge recused herself from a criminal case after she said her financial adviser bought stock in a company implicated in the matter without her knowledge.

US District Judge Mary Kay Vyskocil has presided over the case, which alleged a conspiracy to defraud Medicaid, Medicare, and private insurers through the trafficking of black-market HIV medication, since 2023. She said in an order on Tuesday that she'd recuse even though she believes she can be impartial.

The case was largely resolved when the judge disclosed to the parties on July 22 that she was notified on June 12 about a trade by her financial adviser in a managed brokerage for shares of Gilead Science, which has sought restitution from defendants in the case.

The Donald Trump appointee said she immediately called the adviser and asked him to void the trade, as well as other recent purchases of Gilead shares. "The Court is confident that there is absolutely no conflict here," the judge wrote, but said she wanted the parties to be aware of the facts.

Juan Hernandez, a co-defendant who entered a plea deal with the government, is appealing a nearly $2.4 million restitution order to Gilead, on top of $16,000 he'd already agreed to.

Hernandez's attorney Steve Zissou asked for the judge to recuse herself "to avoid the appearance of impropriety." Zissou also noted that Vyskocil didn't notify the parties for over a month after the trades were disclosed.

Federal judges have faced scrutiny over their financial holdings, after a Wall Street Journal investigation in 2021 found that over 100 federal judges have heard cases in which they or their family members had a financial interest, in violation of federal law and judicial ethics rules.

Congress in response passed new reporting requirements for federal judges, mandating they disclose stock purchases within 45 days of trades over $1,000, and that the federal judiciary create an online database for the public to view those reports.

‘Possible Appearance’

Vyskocil said in her order that she’s “firmly of the view that my impartiality cannot be questioned.” She added that she “immediately followed the sanctioned course of action” after learning of the trades, and that no other party sought her recusal after the disclosure.

Still, Vyskocil wrote, she understands that the recusal standard “is not about the reality, but any possible appearance of impartiality,” and noted that the Second Circuit has said before that recusal is appropriate even when holdings are divested before a judge makes any substantive decisions. She said that even though she took quick action, she is “concerned that the confidence in the fair administration of justice not be undermined.”

Vyskocil said that, given it’s a criminal case and Hernandez is challenging the restitution order to Gilead, she’ll step back from the case.

She also said there was “no nefarious reason” behind her delay in making the disclosure, as she wanted to confirm herself that the trades were voided and was trying to find a time to notify the parties in-person.

The case is now assigned to US District Judge Jesse Furman, according to the docket.

Reuters first reported on the recusal.

The case is USA v. Aminov et al , S.D.N.Y., No. 1:23-cr-00110, 8/26/25

To contact the reporter on this story: Jacqueline Thomsen at jthomsen@bloombergindustry.com

To contact the editors responsible for this story: Seth Stern at sstern@bloomberglaw.com; John Crawley at jcrawley@bloomberglaw.com

California Brief

Websites Turn to Charging AI Scrapers They've Struggled to Block

Aug. 28, 2025, 2:00 AM PDT

Unnerved by AI-powered bots able to extract data from websites at tremendous speeds, companies are considering a new tactic startling to some: allow scraping for a fee.

Online platforms TollBit and Cloudflare are two pioneers of this strategy—known as a pay-per crawl model—which enables companies to either block, allow, or monetize web scrapers' access to their content.

Companies that can't stop increasingly sophisticated bots—either through through their own technology or in the courts—face the loss of their proprietary data, an existential threat for small firms. Selling information to scrapers, however, comes with its own perils, from copyright infringement to privacy law violations, ushering online platforms into uncharted legal territory.

Pay-per-crawl models change the nature of the claims users or copyright holders could wield against companies, said Austin T. Chambers, partner at Dorsey & Whitney LLP.

"Given the complex copyright, data protection types of issues, any client considering this has to kind of come at this from multiple angles," he said, "And make sure that they're well advised in thinking through sort of the concrete risks here."

Do Not Scrape

Web crawlers have been scraping online content since the dawn of the internet.

In response, many companies wanting to block them have relied on publicly-facing instructions for bots about what crawlers can or can't access. But the instructions guide—called robots.txt—lacks legal weight and has largely served as a warning.

Most scraping bots now "ignore it," Chambers said. "It's just sort of a passive signaling mechanism that doesn't actually block it."

Some platforms have coupled their do-not-scrape signs with more aggressive language in their terms of use, giving them legal grounds to sue crawlers under federal statutes like the Computer Fraud and Abuse Act. Others have put some of their content behind paywalls or deployed traffic-control-like tools to block IP addresses belonging to bots.

Companies with more resources have been able to fend off scrapers despite the CFAA's limitations. Microsoft Corp.'s LinkedIn sued Proxycurl in January under the federal law after it said the startup scraped millions of its users' profiles. Proxycurl shut down in July, pointing to LinkedIn's "unlimited war chest."

But small website owners face tougher challenges.

"Maybe a small artist goes and puts up their website with all their art, and they had a thriving business. And then, three weeks later, any of the text-to-image models can generate their style flawlessly," said Shayne Longpre, who leads the Data Provenance Initiative, a volunteer group of AI researchers. "They don't have the tech savvy to block it."

Some businesses now get 95% of their web traffic from AI scraping bots, according to statistics from HUMAN, a cybersecurity company. One e-commerce business was hit by 725 million scraping attempts in April 2024 alone, the company said.

Companies need to start thinking about how they want to control this web traffic, said Bryan Becker, senior director of product management at HUMAN. "What specific things do they want to allow it to or not allow it to do?," he said.

Legal Questions

Financial deals with AI companies are attractive for platforms that have lost key revenue streams, but they may open them up to more legal risks.

"The monetization part gives me more pause, because we already have a regime for monetizing content: and it's intellectual property," said Andy Sellars, partner at Albert Sellars LLP. "And it is much more complicated than sort of a yes, no paywall thing."

Content publishers including Dow Jones & Co., New York Times Co. and Reddit have sued generative-AI platforms like OpenAI Inc., Perplexity AI Inc., and Anthropic PBC over copyright infringement. The landmark lawsuits, still making their way through US courts, seek to answer whether AI companies' use of publishers' works to train their large language models counts as fair use. The risks to the AI companies aren't insubstantial, either: Anthropic, warning that it faced hundreds of billions of dollars in statutory damages, said Tuesday that it had settled a class-wide settlement with authors in a copyright lawsuit over millions of pirated books.

For website owners, any monetization of personal information would have to abide by privacy laws. While many state privacy statutes include exemptions for publicly-available personal information, laws give consumers rights over how their data gets sold.

Companies operating in California or Colorado, for example, need to notify users and give them a chance to opt out of the sale or sharing of their personal information.

Selling Data

It's too soon to say if pay-per-scrape models will be pervasive.

Cloudflare's offering is still in beta, and the company doesn't yet have a timeline for a broader release, according to its VP of product, Will Allen.

The company is engaging with both sides of the marketplace, he said, to determine how "publishers feel about it? Is it working for them?" They're also learning what crawlers are asking for, like content safety scores and other classifications.

"It's not obvious to me that this is going to be scalable across the full ecosystem of publishers on the internet," said Marc McCollum, chief growth officer at Raptive, which helps sell digital ads for independent creators and supports Cloudflare's model. "It's also not obvious to me that AI companies are going to be willing to pay per crawl, so there's a lot that would have to come together for that to work at scale."

Financial arrangements with scrapers may also be out of the question for certain industries.

Platforms operating in the retail, airline, financial services, or social media industries, for example, may have stronger incentives to protect their data, said Amy Mushahwar, chair of the data, privacy and cybersecurity practice at Lowenstein Sandler LLP.

Scraped financial data could impact a platform's ability to set competitive prices, for instance, while allowing bots to scrape user data could hurt consumer trust and trigger lawsuits.

She added, "There is a camp of 'scraping must be limited.'"

To contact the reporters on this story: Cassandre Coyer in Washington at ccoyer@bloombergindustry.com; Kaustuv Basu in Washington at kbasu@bloombergindustry.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; David Jolly at djolly@bloombergindustry.com

LAW360

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

Investors Push 4th Circ. To Revive Auto Parts Fraud Suit

By **Katryna Perera**

Law360 (August 27, 2025, 7:32 PM EDT) -- Investors who accused Advanced Auto Parts and its top brass of misleading them about the failure of a new pricing strategy and purposefully inflating the impact of price reductions have urged the Fourth Circuit to revive their suit, arguing that they can't downplay the allegedly false accounting as insignificant, among other things.

The investors filed a reply **brief** Monday, further supporting their appeal of the January **dismissal** of their suit. A North Carolina federal judge found at the start of the year that the lead plaintiff, the City of Southfield General Employees' Retirement System, has plausibly pleaded the materiality of the suit's alleged misrepresentations and omissions, but failed to plead knowledge of wrongdoing by the individual defendants.

On Monday, the plaintiffs argued that the lower court failed to analyze their complaint and allegations holistically, and that if such an analysis were done, the court would have found that the suit's allegations give rise to a strong inference of scienter.

"Allegations can collectively create a strong scienter inference, regardless of whether each is enough standing alone," the brief states.

The plaintiffs argue that the significance of over $100 million in unreported costs over three years that falsely inflated Advanced Auto Parts' operating income "is far from trivial," and supports an inference of scienter, even though the defendants now allegedly claim that $100 million "doesn't matter," given the company's total revenues.

"What defendants are saying now cannot be squared with what they said then ... [former Advance Auto President and CEO Thomas Greco and former Chief Financial Officer Jeffrey Shepherd] told investors at the time that they were 'laser focused' on margins, down to sub-percent shifts," the brief states. "Every unreported expense dollar directly (and falsely) inflated profits, and thus margins — with a compounding outsized impact on earnings per share. It blinks reality to suggest now that the amounts are so trivial that no one would have cared."

Adding even a fraction of a percentage point to the operating income margin could have generated double-digit percentage increases in earnings per share, the brief states. Therefore, Greco and Shepherd leveraged inflated margins to capitalize on bonus increases and obtain shareholder approval for their compensation packages, according to the plaintiffs.

"The district court was flatly wrong when it stated that plaintiff did not allege Greco and Shepherd 'profited or attempted to profit,'" the brief states.

According to the plaintiffs, the defendants "fault" the complaint for not including an internal company document or other communication proving actual knowledge by Greco and Shepherd, but the plaintiffs argued Monday that such knowledge is not required and allegations of severe recklessness are sufficient.

"Plaintiff need not produce documents proving the fraud. Those would be the 'smoking gun[s]' that the Supreme Court has made clear are unnecessary," the brief states.

The plaintiffs also pushed back against the defendants' claim that the complaint relies on shotgun and group pleading, saying the suit specifies "which defendants said and did which things," and that the complaint "explains how these allegations support a strong inference that Advance Auto, Greco and Shepherd knowingly committed fraud."

Investor Miguel Suarez first sued Advance Auto on behalf of a proposed class of shareholders in 2023, alleging the company withheld the negative impacts from its "strategic pricing initiative," which Greco had announced in November 2022 with the aim of boosting margin growth.

According to the complaint, the company told investors at the end of 2022 that the pricing initiative had succeeded. Advance Auto also allegedly downplayed the effects of inflation on sales, creating the false impression that inflation and other economic factors did not have a real impact on the company's margins.

Suarez said the truth finally emerged on May 3, 2023, during an earnings call where Advance Auto disclosed that its financial results for the first quarter of the year were well under expectations. The company's stock price subsequently plummeted 35% in a single day, he said.

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

The plaintiffs are represented by Dana Kaersvang, Hyland Hunt and Ruthanne M. Deutsch of Deutsch Hunt PLLC, Christopher M. Wood and Ashley M. Price of Robbins Geller Rudman & Dowd LLP and Robert N. Hunter Jr. of Higgins Benjamin PLLC.

Advanced Auto Parts and the individual defendants are represented by William Michael Regan, Allison Michele Wuertz, Jacey Lara Gottlieb and Christine Jiha of Hogan Lovells US LLP and by Clifton L. Brinson of Smith Anderson Blount Dorsett Mitchell & Jernigan LLP.

The case is City of Southfield General Employees' Retirement v. Advance Auto Parts Inc., case number 25-1188, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Jay Jackson Jr.

LAW360

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

Waste Management Gets Initial OK For $30M Settlement

By **Sydney Price**

Law360 (August 27, 2025, 9:02 PM EDT) -- Waste Management Inc. and its note purchasers have received a New York federal court's initial approval of their $30 million deal ending the purchasers' claims that the company concealed information regarding the U.S. Department of Justice's approval timeline of its acquisition of Advanced Disposal Services.

U.S. District Judge Lorna G. Schofield said in an **order** Tuesday the court will likely approve the settlement as "fair, reasonable and adequate to the class."

The lead attorneys for the investors intend to request up to a third of the settlement fund, or about $10 million, in fees, and no more than $1 million in expenses, according to the settlement motion filed in July.

The buyers of Waste Management's senior notes alleged in the suit, which was most recently amended in 2023, that Waste Management's October 2020 **acquisition** of Advanced Disposal was intended to be completed several months earlier on July 14, 2020, the date on which Waste Management was required to redeem the senior notes.

The company issued the notes in 2019 to fund the acquisition, the suit said. The notes included a "special mandatory redemption" feature requiring Waste Management to redeem the notes at 101% of par if it did not complete the acquisition by July 14, 2020, according to the complaint.

On June 24, 2020, Waste Management revealed a revised agreement to acquire Advanced Disposal, which, among other things, reduced the purchase price of American Depositary Shares by about $300 million.

The investors alleged Waste Management knew or should have known the DOJ's antitrust scrutiny of the deal threatened the completion of the transaction and would harm the note buyers.

The announcement "eviscerated the notes' premium," causing the price to drop to "approximately 103 cents on the dollar in anticipation of the special mandatory redemption, and continuing to decline until the Notes' redemption at 101% of par on July 20, 2020," the investors said.

"Throughout the class period, notes investors had been willing to pay premium prices well above par value, with the notes assigned investment grade ratings and trading as high as 121 cents on the dollar based on defendants' repeated assurances about the status of the DOJ's antitrust review and consequent timing to complete the ADS acquisition," according to the complaint.

Waste Management urged the court to dismiss the suit in 2023, but its motion was denied last year, when the court determined the plaintiffs had sufficiently alleged the company "created an impression" that the acquisition would be approved on time.

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

The investors are represented by Chad Johnson, Noam Mandel, Desiree Cummings, Jonathan Zweig and Ellen Gusikoff Stewart of Robbins Geller Rudman & Dowd LLP.

Waste Management is represented by Brendan Quigley, David D. Sterling, Jessica Pulliam, Amy P.

Hefley, James Joseph Beha II and Ryan Ward of Baker Botts LLP.

The case is In re Waste Management Securities Litigation, case number 1:22-cv-04838, in the U.S. District Court for the Southern District of New York.

--Editing by Covey Son.

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

Judge Unsure AI Drugmaker Investors Backed Retooled Suit

By **Brian Steele**

Law360 (August 27, 2025, 10:48 PM EDT) -- A Connecticut federal judge seemed open to dismissing a securities suit alleging an artificial intelligence-driven drugmaker's executives misled investors about compliance issues plaguing a dementia drug, suggesting during a hearing Wednesday that the amended complaint may not have enough factual support.

Fending off a dismissal motion by BioXcel Therapeutics Inc. in federal court in Hartford, counsel for the proposed class argued that the U.S. Food and Drug Administration closed an investigation into the drugmaker's clinical trial data because the company agreed to start over, not because the agency was satisfied with the lead researcher's explanations.

But U.S. District Judge Sarala V. Nagala said the defendants have a "plausible alternative explanation" that would be a "difficult issue for me" as she considers whether to dismiss the case a second time.

The defendants want the current August 2024 complaint dismissed, while the plaintiffs, led by a Florida-based investor and the Oklahoma Law Enforcement Retirement System, have moved to amend it further to add "new substantive allegations" that would bolster theories of falsity and scienter.

Judge Nagala **dismissed** a prior complaint in July 2024, finding it failed to adequately plead that the Connecticut-based company intended to deceive or defraud investors with statements about a clinical trial known as Tranquility II.

The latest complaint alleged that investors "were stunned to learn" in June 2023 that trial data for BXCL501, a drug intended to treat agitation in Alzheimer's patients, "was virtually useless" after the FDA found protocol violations. Investors lost millions of dollars when the stock price plummeted, according to the putative class.

The complaint said BioXcel and its leaders "waited six months to disclose the truth" about the Tranquility II trial to investors "and timed the disclosure deliberately to allow BioXcel's Chief Executive Officer, defendant Vimal Mehta, to realize millions of dollars in gains from exercising his options pursuant to a trading plan that had pre-established when these transactions would occur."

Counsel for the putative class, Adam M. Apton of Levi & Korsinsky LLP, said that the timing of the sale and the percentage of Mehta's holdings that would change hands — 14.5% — were predetermined by a 10b5-1 plan, but he could still manipulate the price.

"He controlled what he could. He sat on the bad information," Apton said. "It's a different kind of insider trading analysis."

The FDA conducted an onsite inspection of Tranquility II and issued a Form 483 in December 2022, alleging that Dr. Caitlin Meyer had enrolled some patients in the study without determining they met the criteria, obtaining informed consent or conducting necessary urinalysis tests, "among other transgressions," the investors said. She also fabricated an email to convince the agency that she had reported a serious adverse event in a timely manner, according to the complaint.

Meyer, who worked for Florida-based Segal Trials, responded to the Form 483 with a letter confirming that she had no experience running clinical trials and including statements that made it clear the data could not be used to support BioXcel's planned supplemental new drug application, or sNDA, for BXCL501, the investors alleged.

"How could they possibly believe that the data from the Tranquility II trial was going to be acceptable?" Apton said in court on Wednesday, calling the data "fundamentally irreparable."

Apton said the FDA kept its investigation open for years until it issued an Establishment Inspection Report, or EIR, in March. The plaintiffs' expert, former FDA regulatory attorney Dr. Alyson Wooten, said the agency would not have closed its probe because of Meyer's letter, according to Apton.

"A lot occurred in the wake of that Meyer response, including the redo of Tranquility II," he said. "The investigation was open throughout this entire period."

Judge Nagala expressed skepticism that Wooten was stating a fact rather than an opinion.

Arguing for the defense, Latham & Watkins LLP attorney Colleen C. Smith offered another view of the FDA's actions.

She explained that Tranquility II was studying Alzheimer's patients in assisted living and residential care facilities, while another trial known as Tranquility III was targeted to nursing homes, and they were both intended to support the sNDA application. But BioXcel will instead hold another trial, called Tranquility In-Care, that essentially combines the earlier two, rather than serving as a repeat of Tranquility II, she said.

According to the defendants' September dismissal memorandum, the company said in August 2023 that it was pausing Tranquility III "because participants in the study exhibited a higher-than-expected number of agitation episodes," and that BioXcel may not be able "to continue as a going concern," tanking the stock price even further.

The memo referred to the Tranquility II data as "positive" and said "a 60mcg dose of BXCL501 resulted in a statistically significant reduction in agitation symptoms after two hours."

Smith said the FDA wants to see more data from Tranquility In-Care, not scrap what was learned in Tranquility II.

The FDA's issuance of the EIR shows that it was satisfied with Meyer's response, she said, calling the move "a significant problem" for the plaintiffs.

The proposed amended complaint includes allegations from a confidential witness who alleged that Meyer "perpetuated fraudulent patient enrollments in order to meet and/or exceed targets and, in turn, receive prize money from Segal Trials and/or BioXcel Therapeutics," according to the investors' motion for leave to amend.

Those claims help to belie the company's statements that Tranquility II was fully enrolled, the investors said.

Apton said the filing contained "a laundry list of quite shocking accusations against Dr. Meyer," and that "Mehta had motive to sit on it." But Smith said those allegations did not come to the defendants' attention.

"There is a reasonable basis for defendants to have believed … that those patients were eligible to be enrolled," Smith said. "If that opinion is, sort of, subjectively reasonable at the time, then it's not a false statement."

The putative class is represented by Adam M. Apton of Levi & Korsinsky LLP and Caitlin M. Moyna of Grant & Eisenhofer PA.

The defendants are represented by Colleen C. Smith, Jessica Bengels, Michele D. Johnson, Sarah Tomkowiak and Meryn C.N. Grant of Latham & Watkins LLP.

The case is Tonya Hills et al. v. BioXcel Therapeutics Inc. et al., case number 3:23-cv-00915, in the U.S. District Court for the District of Connecticut.

--Editing by Dave Trumbore.

LAW360

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

2nd Circ. Partially Revives Suit Over Peloton COVID-19 Sales

By **Katryna Perera**

Law360 (August 27, 2025, 8:40 PM EDT) -- A split Second Circuit panel Wednesday revived a shareholder suit accusing Peloton of intentionally misleading investors to believe that its pandemic-era spike in demand was sustainable, finding that three statements at issue in the complaint are actionable.

A three-judge panel for the appeals court issued an **opinion** written by U.S. Circuit Judge Steven J. Menashi, finding that the suit plausibly pled three actionable and material misstatements made by the defendants. U.S. Circuit Judge Jon O. Newman partially concurred and dissented.

Of the three statements identified by the panel majority as actionable, one was a statement made by Peloton Interactive Inc.'s former CEO John Foley during an earnings call in August 2021, describing the company's decision to reduce the price of its bike by $400 as an "absolutely offensive" business strategy.

More specifically, Foley stated that demand for the bikes was "robust," and the company had felt good about the entire year's forecast, according to the opinion.

The panel said Wednesday that while Foley's assertion about "robust demand" was tied to guidance that Peloton ultimately met, his characterization of the bike price reduction as an "absolutely offensive" strategy was plausibly false or misleading because, according to the complaint, the former senior director of Peloton's operations and supply chain management had stated that the price reduction was an attempt to increase sales due to the company's excess inventory.

"The [second amended complaint] also alleged numerous statements from other confidential witnesses who reported details about the company's inventory build-up. According to the second amended complaint, by August 2021, Peloton had three months of excess inventory sitting at shipping ports," the opinion stated. "These allegations 'present inconsistencies with [Foley's] definitive statement[]' that the price reduction was an offensive move to expand market share rather than a defensive attempt to mitigate the losses from the excess inventory."

The other two statements found to be actionable by the majority were Peloton's warning of hypothetical risks regarding "excess inventory levels" made in two filings with the U.S. Securities and Exchange Commission in August and November 2021, according to the opinion.

The opinion said Peloton warned in the filings that if it were to fail to forecast consumer demand accurately, it might experience excess inventory levels or a shortage of products available for sale, which would result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices, which would impact its gross margins.

The panel said these risk disclosures made in August and November 2021 filings were false and misleading because the second amended complaint plausibly alleged that by August 2021, the disclosed risks had already materialized.

"The SAC alleged that following the earnings call on Aug. 26, 2021, Peloton reduced the price of the original bike by $400. According to [confidential witness-1], this reduced price was a direct response to Peloton's 'excess inventory,'" the opinion stated. "Moreover, on Nov. 4, 2021, Peloton disclosed that 91 percent of its inventory was unsold and reduced its earnings guidance by approximately $1 billion. In other words, Peloton was already engaging in 'the sale of excess inventory at discounted prices.'"

According to the opinion, Peloton alternatively argued that the claims should be dismissed because the second amended complaint fails to adequately plead scienter, but the district court did not consider this argument because **it held** that the complaint failed to plead any actionable misstatements or omissions.

On Wednesday, the Second Circuit panel stated that the lower court may consider, on remand, whether scienter had been adequately pled regarding the three statements it revived. Additionally, the panel vacated the district court's dismissal of the suit's control personal liability claims with respect to the three actionable statements.

In a partially concurring and dissenting **opinion**, Judge Newman said he disagreed with remanding the three actionable statements for further consideration. Assessed in the context of the "total mix" of information, the judge said these statements could not be considered false or misleading by reasonable investors.

Specifically, Judge Newman said Foley's statement about the bike price reduction being "offensive" was true because it was made to increase sales.

"Foley did not say that the price was reduction was not defensive. He simply asserted that the statement was offensive, which it was ... when a price reduction succeeds in increasing sales (the offensive purpose), it also reduces inventory (the defensive purpose)," the opinion stated. "Any reasonable investor, hearing that the price reduction was offensive would understand that the reduction would also be defensive because Peloton would reduce inventory (where else would the bikes come from?). That reasonable investor would not regard Foley's statement as false or misleading."

The statements made in the SEC filings were also not false or misleading because the plaintiffs simply claim that by August 2021, Peloton already had excess inventory levels, but not that write-downs, write-offs, sales at discounted margins, and a decrease in gross margins had already occurred.

Peloton did not warn of the excess inventory, it warned of the consequences, the judge noted, and the second amended complaint "lacks particularized allegations about the write-downs, write-offs, sale at discounted prices, or a decrease in gross margins during the class period."

Additionally, Judge Newman said Peloton's revenue guidance precludes any allegedly misleading statements because the company's revenue guidance was a "proxy for expected demand, reasonable investors would not have been misled about demand when the guidance disclosed that demand would decline to pre-COVID seasonal trends, predictions that proved to be correct."

"When announcing the decline in revenue guidance, Peloton explained that the revision was necessary because of 'reduction[s]' to Peloton's 'demand forecast.' Not only was the relationship between revenue guidance and demand explained to investors, that relationship was understood," the opinion stated.

"The revenue guidance figures, which Peloton expected to be, and were, understood as a proxy for demand, and which must be assessed in the total mix of information disclosed, preclude any reasonable inference that Peloton's statements about demand were grounds for a securities fraud lawsuit," Judge Newman said.

Finally, Judge Newman said that, in his view, it is "highly unlikely" the plaintiffs' scienter claims will survive on remand and that he has a "high degree of confidence," that complaint will be dismissed by the lower court for an inadequate pleading of scienter, "and that the heavy pressure often felt to settle a class action securities fraud case will not yield a monetary recovery for the class in this case."

The City of Hialeah Employees Retirement System in November 2021 filed the original complaint against Peloton, which has since been amended and consolidated. Robeco Capital Growth Funds was named the lead plaintiff in May 2022.

The latest version of the suit claims that the increased demand Peloton experienced in 2020 and 2021 had been pandemic-driven. The plaintiffs say the company surprised investors in November 2021 by announcing it had revised its full-year revenue guidance from $5.4 billion to a range of between $4.4 billion to $4.8 billion "due to declining demand as its customers were increasingly free to exercise outside the home."

On the news, Peloton's shares declined by 35%, falling $30.42 per share in one day, the second amended complaint says.

Additional disclosures from Peloton on Jan. 20, 2022, revealed that contrary to previous representations, the company's demand had been declining, and costs were rising. As a result, it lowered guidance, the complaint says.

In response to these disclosures, Peloton's stock price fell 24% in a day to a closing price of $24.22 on Jan. 20, 2022, the investors note.

The latest version of the complaint also claims that some individual defendants, including former Chief Legal Officer Hisao Kushi, former Chief People Officer Mariana Garavaglia and Chief Product Officer Thomas Cortese, profited from the alleged misrepresentations to investors.

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

U.S. Circuit Judges Jon O. Newman, Denny Chin and Steven J. Menashi sat on the panel for the Second Circuit.

The investors are represented by Karin E. Fisch, Daniel E. Berger, Cecilia E. Stein and Mica A. Cocco of Grant & Eisenhofer PA, and Hannah G. Ross, Avi Josefson, Jonathan D. Uslaner and Caitlin C. Bozman of Bernstein Litowitz Berger & Grossmann LLP.

Peloton and the individual defendants are represented by Melissa Arbus Sherry, Andrew B. Clubok and Michele D. Johnson of Latham & Watkins LLP.

The case is City of Hialeah Employees Retirement System et al. v. Peloton Interactive Inc. et al., case number 24-2803, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Kristen Becker.

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

Chancery Pressed For Faster Track In Skechers Doc Suit

By **Jeff Montgomery**

Law360 (August 27, 2025, 7:56 PM EDT) -- Citing post-deal deadlines for share appraisal demands, attorneys for Skechers USA Inc. stockholders asked Delaware's chancellor on Wednesday for an emergency reargument on expediting a books and records demand suit, saying that the court's "more leisurely" timetable might have overlooked the urgency.

Chancellor Kathaleen St. J. McCormick docketed a letter Wednesday directing attorneys for both sides and a magistrate in chancery to set up a 60-day summary proceeding to resolve the stockholder records demands, after Skechers stockholders had requested a trial within 20 days.

Looming over the decision: an imminent closing on 3G Capital's $9.4 billion deal to take footwear company Skechers private, with the current litigation schedule potentially setting too long a fuse, counsel for Skechers stockholders argued.

"If this case is litigated on the typical, 60-days-trial schedule set out [in] the court's standard assignment letter" on Wednesday for books and records actions, "plaintiff's appraisal election deadline will likely expire before it could secure an enforceable order requiring production," Daniel E. Meyer of Bernstein Litowitz Berger & Grossmann LLP, counsel to Skechers stockholder AQR Arbitrage LLC, said in a letter to the court.

The request, filed on behalf of AQR Arbitrage and Skechers stockholder Kevin Barnes, argued that "the company could simply run out the clock by taking exceptions to produce documents" under the chancellor's decision.

Counsel for the two stockholders sought records directly from Skechers on June 17 and June 26. They received what was described as "two heavily redacted presentations" from company legal adviser Latham & Watkins LLP. Also provided was an engagement letter for financial adviser Greenhill & Co., a letter disclosing "certain of Greenhill's conflicts" and three financial adviser presentations.

The stockholders' motions to expedite "explained why they sought a faster-than-usual schedule and cited extensive authority supporting the request," the emergency motion said. "Yet the chancellor's assignment letters were substantively identical" to standard assignment letters for all books and records demands, the motion said.

Absent from Chancellor McCormick's decision was an explanation regarding what the stockholder attorneys said was an order "effectively denying" fast-tracking. The response instead "contemplated that the parties might 'seek a more leisurely schedule,' which suggests that plaintiffs' request for a trial within twenty days was simply overlooked," according to the motion.

Skechers did not immediately respond to a request for comment.

Kevin Barnes and AQR Arbitrage LLC are represented by Daniel E. Meyer and Christopher J. Orrico of Bernstein Litowitz Berger & Grossmann and Joel Fleming and Amanda Crawford of Equity Litigation Group LLP.

Counsel information for Skechers in the new cases was not immediately available.

The cases are Kevin Barnes v. Skechers USA Inc., case number 2025-0951, and AQR Arbitrage LLC v.

Skechers USA Inc., case number 2025-0958, in the Court of Chancery of the State of Delaware.

--Editing by Linda Voorhis.

LAW360

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

Plantronics Investors Get Final OK For $29.5M Settlement

By **Emilie Ruscoe**

Law360 (August 27, 2025, 3:27 PM EDT) -- Investors in electronics company Plantronics have gotten final approval for their $29.5 million deal ending class action claims the company engaged in a "channel-stuffing" scheme to bolster its revenues, hurting investors when trading prices fell after it acknowledged fallout from the scheme.

In Monday filings, U.S. District Judge Jon S. Tigar granted final approval to the deal, finding the unopposed settlement "in all respects, fair, reasonable, and adequate" to those who invested in the company between Aug. 7, 2018, when the company first reported revenues reflecting the relevant "undisclosed sales practice," and Nov. 9, 2019, when the company allegedly disclosed the impact of the practice. The disclosure precipitated a nearly 37% drop in trading prices for Plantronics shares from over $39 to about $25, the suit said.

Judge Tigar also approved a fee of $6.49 million, or 22% of the settlement fund, for attorneys from Hagens Berman Sobol Shapiro LLP and Bernstein Litowitz Berger & Grossmann LLP who represented the investors, plus over $593,000 for certain litigation expenses.

The investors sought preliminary approval for the deal in July 2024, describing their proposed settlement as a "meaningful percentage of damages" the investors could have recovered if the case went to trial.

In the best scenario at trial, the investors said, they might have recovered as much as $248 million. But they noted they might have won less, or nothing at all, giving the example that if Plantronics persuaded the court to shorten their class period, their maximum recovery would have been $112.9 million. The agreed-upon settlement sum is an "excellent result" considered alongside the risks posed by continued litigation, the investors said in July 2024.

The settlement agreement came after over four years of litigation and two formal mediation sessions, co-lead plaintiffs Ilya Trubnikov and Roofers' Pension Fund told the court in the preliminary approval bid.

The deal ends claims, launched in November 2019, that Plantronics and certain members of its leadership kept investors in the dark about how a change to its sales practices increased inventory to its channel partners.

"The result was a deceptively achieved boost in revenue and that enabled the company to meet guidance at quarter-end by stealing sales from the next quarter, a practice commonly referred to throughout the company as unsustainable sales practices, 'channel stuffing' or 'hockey stick' sales," the investors state in their operative complaint.

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

The lead plaintiffs are represented by Steve W. Berman, Sean R. Matt, Reed R. Kathrein and Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP and John Rizio-Hamilton, Alexander M. Noble, and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP.

Plantronics and the individual defendants are represented by Susan S. Muck, Kevin P. Muck, Peter J. Kolovos and Sonia Sujanani of WilmerHale.

The case is In re Plantronics Inc. Securities Litigation, case number 4:19-cv-07481, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim and Lauren Berg. Editing by Alyssa Miller.

LAW360

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

Fenwick Fights New Claims In FTX Crypto Scam MDL

By **Ryan Boysen**

Law360 (August 27, 2025, 3:14 PM EDT) -- Fenwick & West LLP has asked a Florida federal judge to shut down a bid by victims of the infamous FTX Trading Ltd. cryptocurrency scam to bring new claims against the firm, calling allegations that it knew about FTX's misuse of customer funds an "irresponsible falsehood."

In an opposition brief filed Monday, Fenwick urged U.S. District Judge K. Michael Moore of the Southern District of Florida to deny a request by customers of the now-defunct cryptocurrency trading platform to amend their complaint, saying the effort to bring new allegations against the firm "rings of delay, dilatory motive and bad faith."

"There is simply no way to interpret plaintiffs' motion as anything other than an attempt to stave off the court from ruling on Fenwick's motion to dismiss and to further delay this litigation," the firm said.

"Now is the time to stop this improper strategy in its tracks and foreclose plaintiffs from sullying Fenwick's reputation publicly based on additional false and misleading allegations that infect the proposed amended complaint," the motion continued.

The customers' initial claims against Fenwick have been pending since 2023, and the firm's motion to dismiss is fully briefed and awaiting a ruling.

Fenwick was outside counsel to FTX alongside Sullivan & Cromwell LLP, and that 2023 amended complaint includes civil conspiracy, aiding and abetting fraud and other claims against Fenwick, alleging that the firm was "in a unique position to gain deep insight into the FTX entities' … dubious business practices" because former Fenwick attorneys Daniel Friedberg and Can Sun left the firm to work directly at FTX.

Judge Moore recently **tossed similar claims** against celebrity FTX promoter defendants in the case, however. The customers also voluntarily **dropped similar claims** against Sullivan & Cromwell last year, after an FTX bankruptcy examiner's report found there was "no merit" to the allegation that a law firm, even one as deeply embedded as Sullivan & Cromwell, ''knew or should have known that customer funds were misappropriated," Monday's brief said.

Earlier this month, the FTX customers asked to **amend their complaint** against Fenwick, adding claims that the firm acted as a promoter for the sale of unregistered securities.

Those state securities law claims are the only claims left against the celebrity promoter defendants after Judge Moore's May ruling wiping out the conspiracy claims.

Fenwick now accuses the customers of trying to add those state securities claims to its complaint against the firm simply because it sees the writing on the wall and wants to delay a ruling on Fenwick's motion to dismiss.

"The strategy plainly is to pad the pleadings with false and distracting accusations that do nothing to address the core problem with plaintiffs' claims against Fenwick — all the while saddling Fenwick with false allegations that procedurally the court will be forced to accept as true in connection with any motion to dismiss," Fenwick said.

The customers claim that they have new information about the trial of FTX founder Sam Bankman-

Fried in 2023, in which FTX's director of engineering, Nishad Singh, testified that he "informed Fenwick of misuse of customer funds, improper loans and false representations, and that Fenwick advised on how to facilitate these very acts," according to the customers' proposed amended complaint.

In Monday's brief, Fenwick called that accusation a blatant lie, however, saying Singh only testified that the firm helped FTX structure loans, and "never testified that he told Fenwick about the 'misuse of customer funds.'"

Fenwick also said there's no reason why the customers couldn't have included the state securities law claims in their initial complaint. In any case, the firm said, those laws make no sense when applied to lawyers.

"Fenwick is aware of no case in which a law firm was held liable for securities violations simply because it advocated on behalf of its client — and this case should not be the first," Fenwick said.

The sprawling FTX multidistrict litigation stems from a putative class action filed in November 2022 that accuses FTX, founder Bankman-Fried and a slew of celebrity "brand ambassadors" of scheming to take advantage of unsophisticated investors across the United States by convincing them to invest with FTX.

Founded in 2019, FTX was a pioneer in normalizing cryptocurrency and marketing it broadly to run-of-the-mill retail investors with no prior experience in the insular crypto world. The exchange presented itself as the "safest and easiest way to buy and sell crypto" and engaged in a vast marketing campaign involving paid promoters, purchasing the naming rights to the arena where the NBA's Miami Heat play, and major political donations, according to court documents.

"At its peak, the exchange's trading volumes reached approximately $21 billion per day, and its valuation topped $32 billion within three years of its founding," according to the customers' since-withdrawn complaint against Sullivan & Cromwell.

In the summer of 2022, FTX faced a liquidity crisis caused by the broader decline of cryptocurrency values. After several months of scrambling to stay afloat and a failed buyout bid from a competitor, FTX **filed for bankruptcy** in 2022.

It soon became apparent that FTX had been a massive fraud all along, and that Bankman-Fried and other executives had raided FTX customer funds to fund lavish personal purchases, finance business dealings like the LedgerX acquisition and make political donations, among other things.

"Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here," John Ray III, the attorney brought in to serve as FTX's CEO during its bankruptcy, **said during his first update** on the situation.

Neither party responded Wednesday to requests for comment.

The plaintiffs are represented by Adam M. Moskowitz and Joseph M. Kaye of the Moskowitz Law Firm PLLC, and by William M. Audet and Ling Yue Kuang of Audet & Partners LLP.

Fenwick is represented by Kevin S. Rosen, Michael Holecek and Samuel Eckman of Gibson Dunn & Crutcher LLP, and by David R. Atkinson and Nicole K. Atkinson of Gunster.

The case is In re: FTX Cryptocurrency Exchange Collapse Litigation, case number 1:23-md-03076, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Rae Ann Varona, Vince Sullivan, Aislinn Keely, Lauren Berg and Jack Karp. Editing by Karin Roberts.

LAW360

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

$75K In Atty Fees Awarded After $1M Ask In Trump Media Case

By **Jeff Montgomery**

Law360 (August 27, 2025, 9:56 PM EDT) -- After much wrangling, a Delaware vice chancellor has granted a $75,000 attorney fee for ARC Global Investments II LLC, the investment sponsor behind the deal that took Trump Media & Technology Group public in 2024 — far from ARC's most recent ask of $1 million.

In an order Monday, Vice Chancellor Lori W. Will rejected the $1 million request. She previously commented in a July **letter** that most of the benefits ARC claimed its counsel had provided were "unattributable"or "yielded no benefit to Digital World Acquisition Company," the special purpose acquisition company that took Trump Media public via a merger in March 2024.

The letter was a notice proposing the $75,000 award, which was finalized Monday, to ARC's counsel with Richards Layton & Finger PA and Digital World, leaving only a "mootness" fee for the otherwise hollowed-out dispute. In it, Vice Chancellor Will said that while Richards Layton "spent significant time on the litigation as a whole," the efforts giving rise to the fee were more muted.

The only benefit eligible for fee calculations, the vice chancellor wrote, was a Digital World disclosure March 1, 2024, detailing a range of potential stock conversion ratios for early investors. Those details, the opinion said, were issued in an apparent attempt to moot ARC claims that Digital World had previously issued misleading prospects for stockholders.

The $75,000 is far from the **$1.5 million once sought** by former Digital World CEO Patrick Orlando. He was fired from the position in 2023 after reporting concerns about the venture's "headwinds." His claims for litigation reimbursement included costs for responding to U.S. Securities and Exchange Commission and U.S. Department of Justice probes of the blank-check company and activities surrounding it.

Trump Media, which operates the social media platform Truth Social, reported a $4.95 billion, $18.12-per-share market capitalization as of Wednesday afternoon, well off its pre-de-SPAC high of $97.54 on March 4, 2022, and $61.96 days after going public on March 26, 2024.

Digital World itself opposed the $1 million fee award, arguing that ARC "at most" created a common fund of preferred shareholders "to which it has waived any claim" and that its "incrementally helpful" disclosures were not significant and substantial, among other criticisms.

Now-President Donald Trump founded Trump Media in 2021. Digital World went public in September 2021 after completing a $250 million initial public offering and announced in October 2021 that it would take Trump Media public in a deal that was then valued at $1.7 billion.

On Sept. 16, 2024, **Vice Chancellor Will ruled** in a 44-page post-trial opinion that Digital World breached its contract with ARC Global Investments II LLC by diluting its equity from the deal with an improper conversion rate for the investment sponsor's shares.

The vice chancellor interpreted Digital World's certificate of incorporation to set a public share conversion rate of 1.49 to 1 — higher than the 1.35 to 1 ratio Digital World was pushing for, but lower than ARC's contention the rate ought to be 1.82 to 1.

"I cannot conclude that the descriptions of the conversion ratio in the proxy statement were materially false or misleading," Vice Chancellor Will wrote. "This litigation demonstrates that the conversion ratio is complicated in application."

The vice chancellor added that "ARC itself" changed its preferred calculation approach multiple times.

In the same decision, the vice chancellor rejected a suite of affirmative defenses from Digital World about alleged misconduct from ARC managing member Patrick Orlando, who is considered the architect of the deal, ruling they were "diversions" that were "meritless, irrelevant, or untimely."

Orlando was at one point CEO of Digital World until his firing in 2023 as the transaction came under regulatory scrutiny.

ARC Global Investments II LLC is represented by Matthew D. Perri, Daniel E. Kaprow, Elizabeth J. Freud and Rae Ra of Richards Layton & Finger PA.

Digital World Acquisition Corp. and Trump Media & Technology Group Corp. are represented by John L. Reed and Ronald N. Brown III of DLA Piper LLP (US).

The case is ARC Global Investments II LLC v. Digital World Acquisition Corp. et al., case number 2024-0186, in the Court of Chancery of the State of Delaware.

--Editing by Amy French.

LAW360

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

Attys Say Fee Concerns Do Not Bar Student Aid-Fixing Class

By **Matthew Perlman**

Law360 (August 27, 2025, 11:14 PM EDT) -- Three law firms representing students in a case accusing elite universities of fixing offers of student aid told an Illinois federal court that concerns about attorney fees are unfounded and should not serve as a basis for denying a pending class certification motion.

The proposed class, represented by Freedman Normand Friedland LLP, Gilbert Litigators and Counselors PC and Berger Montague, filed a supplemental brief on Tuesday in the U.S. District Court for the Northern District of Illinois, opposing **arguments made** last week by the five remaining schools in the case.

The University of Pennsylvania, Georgetown University and the other schools argued that **concerns raised** by one of the students' attorneys about billing records precludes the court from granting the class certification bid.

But the students said in response that there is no evidence of wrongdoing and contended that the three firms that have worked on the case for more than three years and have secured $320 million in settlements are the best suited to prosecute the claims through trial and appeal.

"Defendants have fallen far short of meeting the legal standard required for showing proposed class counsel inadequate," Tuesday's brief said. "Defendants have pursued this gambit for one reason: it would help their clients and harm the class. The court should grant plaintiffs' motion for class certification and appoint class counsel as requested."

The filing comes after a nonpublic hearing earlier this month, where Freedman Normand associate Peter Bach-y-Rita provided documents and testified in support of his allegations that attorneys for the students submitted inflated billing records in their fee requests.

The schools raised concerns after the hearing in a supplemental brief about the fee rates charged for work on the case and about "repeated misrepresentations" allegedly made by attorneys for the proposed class. The brief contends the evidence shows that the proposed class action is "a case by lawyers, for lawyers," and urged the court to deny the certification bid.

An attorney for the students, Eric L. Cramer of Berger Montague, told Law360 in a statement on Wednesday that the allegations of ethical violations are unfounded and said the schools' effort to derail the class should be rejected.

"We are confident that defendants' transparent efforts to leverage unsupported claims of class counsel misconduct to benefit themselves at the expense of the thousands of students and former students of their institutions that we represent will fail," Cramer said. "We look forward to a ruling that certifies the class, appoints us as class counsel, and puts us on track to try this case to a Chicago jury next year."

The brief on Tuesday said there is no evidence that class counsel billed for tasks they did not perform or time they did not spend on the case. The students also urged the court to reject the schools' "alternative theory," not advanced by Bach-y-Rita, alleging that the students' counsel reallocated work among the firms as part of a conspiracy to cover up inflated hours.

The reallocation of work, the students said, was to bring the billings from each firm inline with target percentages established at the outset of the litigation.

"Defendants' theory of conspiracy is incoherent — there would be no reason to reallocate necessary work if, as defendants further contend, class counsel supposedly had no qualms about 'ginning up unnecessary work,'" the response said. "In short, no one has presented any evidence amounting to fraud on the court, or any reason to believe there is any such evidence — because there is none."

The students also submitted a declaration with their brief from Harvard Law professor William B. Rubenstein, an expert on class action ethics, who concluded that dislodging any of the class counsel would "significantly disadvantage" the class. He also found the evidence of malfeasance weak or nonexistent and said the firms have rebutted any lingering concerns.

Another attorney for the students, Robert Gilbert of Gilbert Litigators & Counselors, said in a statement on Wednesday that the declaration from Rubenstein, along with the other submissions by the students, make clear that the schools' "speculative allegations are nothing more than a meritless, self-interested effort to harm the students whom we represent."

The students initially sued 17 schools in 2022, accusing the universities of violating **federal antitrust law** by agreeing to limit the student aid they provide through the 568 Presidents Group. The group is named for Section 568 of the Improving America's Schools Act, which allows universities to collaborate on financial aid opportunities as long as they admit students on a "need-blind basis," or without considering their financial standing.

U.S. District Judge Matthew Kennelly refused to **dismiss the case** after finding that the students reasonably alleged that the universities had considered their financial situation during admission decisions. They have accused the elite institutions of favoring the children of wealthy donors.

The University of Chicago was the **first to settle**, in a $13.5 million deal, followed by deals with Yale, Emory, Brown, Columbia and Duke universities totaling **$104.5 million**. The court most recently approved an $18.5 million settlement between the students and Johns Hopkins and a $16 million deal with the California Institute of Technology.

The five remaining schools in the case are the University of Pennsylvania, Georgetown University, Cornell University, University of Notre Dame and Massachusetts Institute of Technology. They have moved for **summary judgment**, arguing that the evidence proves that they compete vigorously for students, have expanded their financial aid programs and reduced student costs.

Bach-y-Rita first raised the ethical concerns against his colleagues during a **hearing in June** and in a letter to the judge, alleging that attorneys for the students committed "a fraud on the court."

The schools then lodged a **discovery motion** saying the concerns raise questions about the ability of the students' counsel to adequately represent the interests of the class and could support denying the pending class certification bid.

The students argued that the discovery bid was a "maneuver" designed to undermine the class while claiming to protect it. They also contended that Bach-y-Rita has "obvious alternative motives" since he's in the midst of a compensation and employment dispute with his firm that's in arbitration.

The judge then held a hearing where Bach-y-Rita testified and provided documents about his claims.

Representatives for the schools did not immediately respond to requests for comment on Wednesday.

The students are represented by Devin "Velvel" Freedman, Edward J. Normand, Ivy Ngo, Joseph Delich, Peter Bach-y-Rita and Richard Cipolla of Freedman Normand Friedland LLP, by Robert D. Gilbert, Elpidio Villarreal, Robert S. Raymar, David Copeland and Natasha Zaslove of Gilbert Litigators & Counselors PC, and by Eric L. Cramer, Ellen T. Noteware, David Langer, Jeremy Gradwohl, Daniel J. Walker, Robert E. Litan, Hope Brinn and Richard D. Schwartz of Berger Montague.

The University of Pennsylvania is represented by WilmerHale and Miller Shakman Levine & Feldman LLP.

Cornell University is represented by Kirkland & Ellis LLP.

Georgetown University is represented by Mayer Brown LLP.

The Massachusetts Institute of Technology is represented by Freshfields LLP and Goldman Ismail Tomaselli Brennan & Baum LLP.

The University of Notre Dame is represented by Williams & Connolly LLP and Michael Best & Friedrich LLP.

The case is Sia Henry et al. v. Brown University et al., case number 1:22-cv-00125, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Bryan Koenig, Katherine Smith and Lauraann Wood. Editing by Karin Roberts.

LAW360

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

Google Expert Says Its Disclosures Avoid 'Cognitive Overload'

By **Bonnie Eslinger**

Law360 (August 27, 2025, 11:28 PM EDT) -- Google's user-interface expert witness testified Wednesday in a multibillion-dollar data privacy case that Google's decision not to tell users up front that it collected some information despite an activated privacy switch was "good UI design" that protected users from "cognitive overload."

The class action trial, which **kicked off** on Aug. 19, centers on claims that Google unlawfully saved and used information from 98 million consumers about their 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 Wednesday, Google called George Washington University professor Donna Hoffman to the stand as an expert in online behavior, specifically how consumers respond to a site's "user interface" design.

Consumers have different online privacy expectations and needs, Hoffman said. To meet them all, Google employed a principle called "progressive disclosure," where "the most important information" is presented first. Then, it provided opportunities for users to go down different "paths" to get the information they want, she said.

Google's use of progressive disclosure "reflects the application of good design principles," Hoffman said.

A lawyer for Google, Simona Agnolucci of Cooley LLP, asked Hoffman to discuss how users with different privacy preferences might interact with the disclosures on Google privacy policy pages. Hoffman said Google has names for users based on how they treat such disclosure text.

"Google calls people skippers, skimmers and readers," the professor said.

The first group includes people who "don't really care about their privacy preferences" so they'll just skip over the disclosure and consent to what Google presents or choose options without digging into the matter. The second category is made up of users who skim the disclosure to find information that is of interest before consenting or changing the settings. People in the third category are most interested in knowing what they're being asked to agree to and are more likely to read the privacy policy or the terms of service.

"As you can imagine, there's no way to design a single interface that would satisfy all these different people and all their different preferences," Hoffman said.

With progressive disclosure, the most important and primary information is provided first, then online users are provided with links, pop-ups and other navigational aids to find the information they're looking for, the expert said.

"If you present too much information at one time to a person, they are going to suffer what is called cognitive overload," Hoffman said. "That means they're going to have difficulties comprehending the information."

As an example of progressive disclosure, Hoffman pointed to Google's Web & App Activity controls page, which is found through a link on the company's Data & Privacy page. Hoffman read from a picture of the page Google presented to jurors on poster board.

"It says, 'the data saved in your account helps give you more personalized experiences across all Google services. Choose which settings will save data in your Google Account,'" Hoffman said.

On that page, there's a boldfaced blue notice with a hyperlink to "Learn more about Web & App Activity," the expert noted, adding that there are other such invitations to "Learn more" on the pages.

There's also a button to turn "Web & App Activity" on or off, and when users toggle it off, a pop-up notice appears to ensure their choice, Hoffman said.

On another page, Google tells users that they can "learn about the data that Google continues to collect and why at policies.google.com."

Hoffman told jurors that it's a lot of information and a lot of text.

"You cannot put all this information on a single screen, or even a few screens that you might have to scroll down," Google's expert said. "It could be difficult in terms of cognitive overload."

Google's lawyer asked Hoffman to address the plaintiffs' assertions that when they turned off the Web & App Activity, known as WAA, and also "supplemental" WAA, which applies to third-party apps, Google didn't notify them that it would continue to collect other information.

Hoffman said that wasn't true.

Through progressive disclosure, Google "provides the information to users who are interested in accessing it," she said.

Amanda Bonn of Susman Godfrey LLP conducted Hoffman's cross-examination.

"Fair to say you have significantly more time spent reading, studying, analyzing Google's disclosures before your deposition than any Google user?" Bonn asked.

Hoffman said she followed her assignment.

Later, Bonn asked Hoffman to think back to testimony she provided in a deposition for the case.

"Isn't it also true, ma'am, that at the time of your deposition, you did not have any opinion on whether Google's WAA and SWAA disclosures were accurate?"

Bonn had the video-recorded deposition played. In it, Hoffman answered the question by saying her expert report "does not concern the technical specifications of Google's disclosures."

Toward the end of the cross-examination, Bonn reminded Hoffman that during her deposition, a lawyer for the plaintiff asked whether she thought there was any ambiguity in Google's disclosures about the Web & App Activity and SWAA collected.

"Your answer was that the only way for an expert in your field to know that would be to conduct a consumer research survey, which you had not done," Bonn said.

Hoffman said she had also opined that Google's disclosures were user-friendly.

During trial openings, lead plaintiffs' lawyer David Boies of Boies Schiller Flexner LLP 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.

The next day, Julian Santiago, one of three lead plaintiffs, called the SWAA privacy switch a "**fake button**" when he took the witness stand.

A computer science expert for the plaintiffs followed on Aug. 21 and told the jury that Google stores information about their app use in a "shadow account" and uses it to sell ads.

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

On Tuesday, Google's first witness, the company's director of product management for Google Analytics, rejected the "shadow accounts" characterization and said there was no data organized by device or any other method that might **identify the user.**

The trial will continue Thursday; Google told the court on Wednesday that Ruemmler will take the stand.

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 Linda Voorhis.
