Robinhood seeks dismissal of class action over cash sweep

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dailyjournal.com/articles/387298

Aug. 29, 2025

Robinhood urged a San Francisco federal judge to dismiss investors' unfair business practices class action over its cash sweep program, arguing plaintiffs failed to show reliance on alleged misstatements or omissions.

Attorneys for the Robinhood stock trading app asked a federal judge in San Francisco to dismiss a proposed unfair business practices class action over the company's brokerage cash sweep program. The company also wants to bar the investor-plaintiffs from refiling the case because, "Plaintiffs cannot say they laid eyes on a single alleged misstatement."

The investors accuse Robinhood of misrepresenting the profitability of its "IntraFi Network Deposit Sweep Program." The program automatically transfers uninvested cash into interest-earning deposit accounts at partner banks to help customers earn interest and gain FDIC insurance on their idle investment funds.

According to the July 21 consolidated complaint, which combines allegations from two related lawsuits, Robinhood manipulated the deposit sweep program to "retain nearly all" of the customers' interest. The company is said to have generated hundreds of millions of dollars in profit by offering "unreasonably low" interest rate returns on the transferred funds. The complaint alleges competitors offered interest rates up to 450 times higher on swept cash.

Robinhood's motion to dismiss, filed Wednesday by Kirkland & Ellis LLP, came four months after U.S. District Judge Rita Lin dismissed four of the five causes of action. These include the lead plaintiff's request for an injunction under California's Unfair Competition Law requiring Robinhood to affirmatively disclose all terms of the cash sweep program.

Lin granted leave to amend most of the dismissed claims but noted, "Plaintiff has failed to allege that he actually relied on the misrepresentations or that such reliance was justifiable. ... plaintiff's complaint contains only a conclusory allegation that he 'justifiably relied on Robinhood's representations and omissions regarding the program,' but does not allege any facts about his actual reliance, such as stating that he reviewed the Deposit Sweep Program Agreement."

David I. Horowitz, a Los Angeles partner at Kirkland, argued Wednesday that there is still no evidence the lead plaintiff read the program's terms. He asked that the case be dismissed with prejudice. *In re Robinhood Cash Sweep Program Litigation*, 3:24-cv-07442 (N.D. Cal. filed Oct. 30, 2024).

"Notwithstanding an attempt to disguise the basis of their UCL claim by striking the word 'fraudulent' from the title of their claim, the consolidated complaint demonstrates that plaintiffs' UCL claim is still based on alleged 'deceptive' and 'fraudulent' conduct," the motion stated. "Proving a UCL claim based on fraud requires reliance, but plaintiffs removed [lead plaintiff's] allegation that he relied on Robinhood's alleged 'misrepresentations and omissions of material facts' ... the consolidated complaint does not even attempt to plead reliance."

The plaintiffs' attorneys could not be reached for comment Thursday.

In the latest complaint, Melissa L. Yeates of Kessler Topaz Meltzer & Check LLP, interim co-lead counsel for the plaintiffs, accused Robinhood of "pocketing" the difference between the interest rates its affiliate banks offer on the swept funds and the interest rates Robinhood pays to its customers.

The following attorneys also serve as interim co-lead counsel for the plaintiffs: Jennifer L. Joost, Joseph H. Meltzer, Tyler S. Graden, Jonathan F. Neumann, Justin J. Swofford of Kessler Topaz Meltzer & Check; and James E. Cecchi, Michael A. Innes, Kevin G. Cooper, Grant Y. Lee, Jason H. Alperstein of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC.

The following attorneys represent the named plaintiff in the later filed case: Stephen R. Astley, Andrew T. Rees, Rene A. Gonzalez, Scott I. Dion, Alex Kaplan of Robbins Geller Rudman & Dowd LLP; and Shpetim Ademi, Guri Ademi of Ademi LLP.

The following Kirkland & Ellis attorneys also represent Robinhood: Mark Holscher, Jake A. Feiler, Robyn E. Bladow, and Matthew B. Summers.

#387298

Wisdom Howell

Daily Journal Staff Writer

Class Action

Manage Newsletters

Robinhood Court Revives Investor Suit Over Post-IPO Selloff

Aug. 29, 2025, 9:26 AM PDT

Robinhood Markets Inc. investors are entitled to a new assessment of their claims that the trading platform omitted revenue trend information before its initial public offering, the Ninth Circuit ruled Friday.

The proposed class action alleging nondisclosure of trading trends following the so-called meme stock craze of early 2021 will return to the district court on two of the three claims in the case, the US Court of Appeals for the Ninth Circuit said in a divided opinion.

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Class Action

Manage Newsletters

Lincoln National Escapes Investor Suit on Insurance Reserves

Aug. 29, 2025, 11:21AM PDT

Lincoln National Corp. was freed from a proposed class action in federal district court alleging it misled investors about factors affecting reserves in its life insurance business.

The pension trust fund leading the lawsuit said it would appeal rather than file another amended complaint, prompting Judge John F. Murphy to order the case closed Thursday. The US District Court for the Eastern District of Pennsylvania had tossed the suit with room to replead last month, saying Local 295 IBT Employer Group Pension Trust Fund had failed to adequately allege statements were misleading when made or the level of intent for securities fraud claims.

- The suit alleged Lincoln withheld knowledge of lapse rates and downplayed industry concerns before taking out a nearly $2.2 billion charge in 2022, largely driven by updates to its guaranteed universal life insurance policyholder lapse assumptions
- Due to Covid-19, more life insurance policyholders were keeping policies active, forcing insurance companies to more closely monitor activity to establish lapse assumption estimates, the suit said
- The proposed class would include those who got Lincoln stock from Dec. 8, 2021, through Nov. 2, 2022

Robbins Geller Rudman & Dowd LLP is lead counsel for the fund. Faegre Drinker Biddle & Reath LLP and Jenner & Block LLP represent Lincoln. None of these law firms immediately respond to emails seeking comment.

The case is Meade v. Lincoln Nat'l Corp. , E.D. Pa., No. 2:24-cv-01704, closed 8/28/25 .

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Walmart defeats shareholder lawsuit over opioid probe disclosures

reuters.com/legal/government/walmart-defeats-shareholder-lawsuit-over-opioid-probe-disclosures-2025-08-29

Jonathan Stempel August 29, 2025

A Walmart store is shown in Oceanside, California, U.S., May 15, 2025. REUTERS/Mike Blake/File Photo Purchase Licensing Rights, opens new tab

Aug 29 (Reuters) - Walmart (WMT.N), opens new tab defeated an appeal by shareholders who said the world's largest retailer defrauded them by failing to disclose that federal prosecutors were investigating its opioid-dispensing practices.
The 3rd U.S. Circuit Court of Appeals in Philadelphia said Walmart did not commit securities fraud by waiting until June 2018 to reveal it was being investigated, 1-1/2 years after the probe began and 10 weeks after a Texas prosecutor warned she intended to indict the company.

Walmart learned of the opioid probe after federal agents raided one of its stores, seeking records concerning two Texas doctors who were prescribing vast amounts of the painkillers.

The company was not indicted, but was hit with a U.S. Department of Justice civil lawsuit in December 2020. A trial is scheduled for November 2027. The Bentonville, Arkansas-based retailer has more than 5,000, opens new tab Walmart and Sam's Club pharmacies.
Shareholders sued Walmart after ProPublica reported on the near-indictment on March 25, 2020.

Walmart shares fell 5.1% that day, wiping out about $16 billion of market value, and fell after the Justice Department announced its civil lawsuit.

In Friday's 3-0 decision, Circuit Judge Anthony Scirica said "not everything is securities fraud," and that while Walmart did not reveal the indictment threat it "did what it had to do" to avoid misleading disclosures.

"The complaint does not plausibly allege the investigations into Walmart constituted a liability or a reasonably possible liability, or that Walmart's disclosures implied it was not under investigation," Scirica wrote.

"Once the contours of the investigation were clearer," he added, "Walmart disclosed it was under investigation, what it was under investigation for, and that it faced possible losses."

Friday's decision upheld an April 2024 dismissal by Chief Judge Colm Connolly of the Delaware federal court.

Lawyers for the shareholders did not immediately respond to requests for comment. A Walmart spokeswoman said the company was pleased with the outcome.

In November 2022, Walmart reached a $3.1 billion nationwide settlement, opens new tab of opioid claims by state, local and tribal governments.
The case is In re Walmart Inc Securities Litigation, 3rd U.S. Circuit Court of Appeals, No. 24-1818.

Reporting by Jonathan Stempel in New York; Editing by Cynthia Osterman

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

Class Action

Manage Newsletters

Walmart Investors Lose Appeal to Revive Opioid Probe Suit (1)

Aug. 29, 2025, 7:19 AM PDT; Updated: Aug. 29, 2025, 8:51 AM PDT

Walmart Inc. investors won't get to pursue claims the retailer misled them when it was under investigation for contributing to a nationwide opioid crisis, after a Third Circuit ruling Friday.

The retailer's statements in its Securities and Exchange Commission filings weren't misleading and its disclosures as the probe progressed were sufficient, the US Court of Appeal for the Third Circuit said.

The panel's decision affirmed an April 2024 dismissal by the US District Court for the District of Delaware.

The investors alleged Walmart failed to sufficiently disclose US government criminal and civil investigations in certain annual and quarterly filings. In March 2020, a news article about the criminal and civil investigations allegedly caused a nearly 5% stock drop.

In December 2020, the Department of Justice announced a lawsuit accusing Walmart of violating the Controlled Substances Act by filling thousands of invalid prescriptions and failing to report suspicious orders of opioids and other drugs.

Shares fell about 2% when the DOJ filed the civil suit, the investors said.

Two specific theories of fraud were at issue on appeal, according to the Third Circuit panel. First, Walmart's affirmation in its 10-K and 10-Q SEC filings that it disclosed all "reasonably possible," "material" liabilities was misleading because it omitted investigations by federal prosecutors in the Eastern District of Texas. And second, the company violated an accounting rule requiring "loss contingencies" to be disclosed.

On the facts presented in this case, one prosecutor's statement that she intended to indict the company didn't "transform the investigation into a 'reasonably possible,' 'material' liability," Judge Anthony J. Scirica said for the appeals court.

During the part of the class period between the prosecutor's communication to Walmart and the time it updated its disclosures, "we cannot see how the investigations constituted a liability or a reasonably possible liability," Scirica said.

The investors also fell short on their accounting theory based on Walmart's alleged nondisclosure of "loss contingencies," he said. A "loss contingency can be thought of as a liability that may occur in the future," he said. "Not every possible loss, however, is a loss contingency, and not every loss contingency needs to be disclosed."

The information Walmart did disclose was adequate, "describing that it was under investigation, what it was for, and that there was not an estimated liability," Scirica said, joined by Chief Judge Michael A. Chagares and Judge Marjorie O. Rendell.

Oral argument took place April 17.

Farnan LLP and the Rosen Law Firm PA represented the investors. Latham & Watkins LLP and Richards Layton & Finger PA represented Walmart.

The case is In re Walmart Inc. Sec. Litig. , 3d Cir., No. 24-01818, 8/29/25 .

(Updates story with additional analysis from court opinion in the seventh through 11th paragraphs.)

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Class Action

Manage Newsletters

Live Nation’s $20 Million Investor Class Deal Gets Final Nod

Aug. 29, 2025, 7:23 AM PDT

Live Nation Entertainment Inc.’s $20 million settlement earned a court’s final blessing to resolve allegations it misled investors over its compliance with antitrust laws.

Class counsel will get 30% of that sum in attorneys’ fees, Judge Kenly Kiya Kato said while approving the agreement Thursday. The US District Court for the Central District of California also awarded lead counsel $130,113 in litigation expenses, plus $7,500 for lead plaintiff Brian Donley and $5,000 for lead plaintiff Gene Gress.

- The class includes those that got Live Nation stock from Feb. 23, 2022 through May 22, 2024
- Shareholders alleged that Live Nation failed to disclose it engaged in monopolistic practices and the risks of regulatory scrutiny, with revelations tied to US Justice Department and Senate subcommittee probes weighing on share prices
- The DOJ and over two-dozen states sued Live Nation last year, seeking to break off Ticketmaster Entertainment Inc. after the two combined in 2010

Glancy Prongay & Murray LLP and Rosen Law Firm PA, which declined to comment in an email, are lead counsel for the investors. Latham & Watkins LLP represents Live Nation, CEO Michael Rapino, and Chief Financial Officer Joe Berchtold. Neither the law firm nor Live Nation immediately responded to emails seeking comment.

The case is Donley v. Live Nation Ent., Inc. , C.D. Cal., No. 2:23-cv-06343, 8/28/25 .

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Live Nation to pay investors $20M over antitrust missteps

DJ
dailyjournal.com/articles/387299-live-nation-to-pay-investors-20m-over-antitrust-missteps

Aug. 29, 2025

U.S. District Judge Kenly Kiya Kato approved a $20 million settlement Thursday in Riverside federal court. The resolution comes as the entertainment giant faces multiple lawsuits over its Ticketmaster subsidiary.

RIVERSIDE - A federal judge approved a $20 million settlement Thursday, resolving investor claims that Live Nation Entertainment misled them about its antitrust compliance, causing significant losses.

Attorneys for the entertainment giant are in the midst of defending several separate lawsuits that accuse it of monopolizing the live concert ticket market, restricting buyers' ability to resell tickets on competing platforms and retaliating against venues that don't use its Ticketmaster subsidiary.

At the hearing, U.S. District Judge Kenly Kiya Kato said class counsel's resolution of the case -- with no objections after two years -- warranted $6.1 million in attorney fees and costs, or 30% of the $20 million settlement fund. This is slightly above the 9th U.S. Circuit Court of Appeals' 25% lawyer fee benchmark for class actions, Kato said.

"Here, class counsel obtained an expeditious settlement for a fairly large number of class members, avoiding what probably would have been contentious litigation over many areas of legitimate dispute," Kato told the parties.

"There were also no objections and only three opt-outs, which indicates the class members reacted favorably to the settlement. The requested fees and costs are reasonable in light of the fact that the monetary benefit to each class member is substantial."

Appearing for the roughly 2,550 investors who made claims were Glancy Prongay & Murray LLP partner Ex Kano S. Sams II and Rosen Law Firm partner Phillip Kim. They were joined in the case by others at their firms, as well as Los Angeles attorney Frank R. Cruz.

After attorneys are paid, about $13.8 million will be distributed to investors who acquired Live Nation stock between February 2022 and May 2024.

Live Nation is represented by Latham & Watkins LLP in the case. Firm partner Morgan E. Whitworth represented the company at Thursday's hearing.

All three of the lawyers declined to comment on the approved settlement outside of Kato's courtroom.

According to the investors' complaint, the Department of Justice launched its antitrust investigation of Live Nation in 2022, which was intensified by public backlash the company faced over a botched presale for Taylor Swift's "Eras Tour." In 2024, the government, along with several state attorneys, filed an antitrust complaint in the Southern District of New York, which asks Live Nation and Ticketmaster to be separated.

The two companies merged in 2010.

In California, around the same time as the government's investigation, the ticketing conglomerate was hit with two similar complaints -- one from a putative consumer class and another from Swift's fans who were unable to purchase tickets for the pop star's world tour. These claims were filed separately in the Central District of California.

The investor plaintiffs said media coverage of Live Nation's alleged anticompetitive conduct caused the company's stock to drop significantly by the time the government announced its lawsuit. *Donley v. Live Nation Entertainment Inc. et al*., 2:23-cv-06343 (C.D. Cal., filed Aug. 4, 2023).

Specifically, the investors alleged Live Nation failed to disclose its alleged anticompetitive practices to the investors and misled them about its cooperation with government investigators.

Live Nation's bid to drop the investors' complaint was denied by Kato last February. The parties settled in March.

Even after the agreement was reached, court filings showed Live Nation was prepared to challenge the claims at trial. For example, the company planned expert testimony to argue the alleged fraud did not cause the stock drops, or that they were partly due to unrelated issues. *Donley v. Live Nation Entertainment Inc. et al*., 2:23-cv-06343 (C.D. Cal., filed Aug. 4, 2023).

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Securities Litigation

2nd Circuit Panel Rejects Vaccine Co. Shareholder Suit Over $87M Short-Swing Profit

August 29, 2025 at 01:45 PM By **Alyssa Aquino**

Judge Barrington Parker of the U.S. Court of Appeals for the Second Circuit. Courtesy photo

The U.S. Court of Appeals for the Second Circuit wouldn't revive an effort to claw back the $87 million that an investment firm made selling a COVID-19 vaccine maker's stock, saying the sales are exempt from a law preventing corporate insiders from profiting from quickly buying and selling company stock.

A three-judge panel said that Armistice Capital's sales of Vaxart Inc. stock were exempt from restrictions on so-called short-swing trades as Armistice had purchased the securities directly from Bay Area-based Vaxart with the approval of its board of directors.

In its ruling, the Second Circuit rejected a shareholder's arguments that Armistice, which was represented by Akin Gump Strauss Hauer & Feld, didn't qualify as a corporate insider. The firm was a director by deputization of Vaxart based on its chief investment officer's board membership, according to the circuit.

"The District Court correctly recognized that both Armistice and [Steven] Boyd were statutory insiders," wrote Circuit Judge Barrington Parker. "Boyd was a textbook insider because he served on the board of Vaxart. Armistice was an insider because 'an investor becomes a statutory insider when it deputizes an individual to serve as its representative on an issuer's board of directors.'"

Parker sat on the appeals panel alongside Beth Robinson and Myrna Pérez

Their ruling, issued on Thursday, largely aligns with U.S. District Judge Jennifer Rochon's March 2024 decision freeing Armistice and Boyd from litigation filed under Section 16(b) of the Securities Exchange Act. Under Section 16(b), company insiders must disgorge any profits made from buying and selling stock within a six-month timeframe.

Andrew Roth, a Vaxart shareholder represented by Ostrager Chong Flaherty & Broitman, had argued that Armistice had violated the Exchange Act by obtaining and selling warrants for Vaxart shares over a four-week period in June 2020. The sales, which netted Armistice $87 million, were made after Vaxart announced that its oral COVID-19 vaccine had been selected for a federal study.

Counsel for Roth didn't respond to a Friday request for comment.

Short-swing trades can be exempt from Section 16(b) if they are made by company insiders with the approval of the board of directors. But Roth argued that the exemption doesn't apply, reasoning that Armistice needed to formally disclose its status as an insider director to the board for the board to understand that it was a director by deputization.

The Second Circuit disagreed.

"To ensure that short-swing profits are not 'at the expense of uninformed shareholders,' an issuer's board simply needs to be aware that one of its members serves as the eyes, ears, voice, and vote of an investor when deciding whether to approve a transaction with that investor," Parker wrote.

He highlighted attestations from Vaxart directors stating that they understood that Boyd—and another Armistice executive—were acting as Armistice's representatives to the 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," according to the decision.

Armistice's Akin Gump team included Douglas Rappaport, Kate Shapiro, James Tysse and Michael Chen.

Class Action

Manage Newsletters

Strategy Investors Drop Suit Over Crypto Accounting Change Hit

Aug. 29, 2025, 8:41AM PDT

Strategy Inc. investors agreed to end their lawsuit alleging the self-described Bitcoin treasury downplayed the expected effects of an update to cryptocurrency accounting standards.

The lead plaintiffs and a shareholder who filed the initiating complaint are voluntarily releasing their claims against the former MicroStrategy Inc., according to a joint agreement. The dismissal, "but not absent class members' claims, is with prejudice," they told the US District Court for the Eastern District of Virginia on Thursday.

- An investor filed a proposed class action against Strategy, its billionaire executive chairman, and two top executives after the company said it had to recognize a $5.91 billion unrealized loss on its crypto assets for the first quarter of 2025 post update. Strategy told the Securities and Exchange Commission in April it might "not be able to regain profitability in future periods, particularly if we incur significant unrealized losses related to our digital assets"
- Similar shareholder derivative claims against executives and board members are pending in the same court
- The Tysons Corner, Virginia-based company started amassing Bitcoin in 2020 under the tutelage of co-founder and executive chairman Michael Saylor. It's the largest corporate holder of Bitcoin worldwide

Pomerantz LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents Strategy and the top leaders. Neither of these law firms nor Strategy immediately responded to emails seeking comment. Cohen Milstein Sellers & Toll PLLC is liaison counsel for the investors.

The case is Hamza v. MicroStrategy Inc. , E.D. Va., No. 1:25-cv-00861, 8/28/25 .

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Securities Law News

PubMatic Shareholder Sues Board Over Ad Spend Hit to Forecast

Aug. 28, 2025, 9:54 AM PDT

PubMatic Inc. brass concealed that revenue tied to a top advertisement-buying partner was slipping as the buyer shifted clients to a new platform, a stockholder lawsuit said.

Board members and executives harmed the company's reputation and wallet in having it mislead investors before releasing a disappointing third quarter revenue forecast this month, a shareholder told the US District Court for the Northern District of California.

The board caused PubMatic to buy back 3.9 million of its own artificially-inflated shares for roughly $43.6 million, said the shareholder derivative action filed Wednesday—overpaying by about $11.5 million, given the wrongfully high stock price.

They ignored issues with PubMatic's "internal controls, practices, and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence," said stockholder Joshua Steffens. His derivative complaint echoes an investor's proposed class action filed in the same court last week.

PubMatic connects ad buyers, so-called demand-side platforms or advertising agencies, with online publishers. PubMatic's sell-side platform helps publishers manage ad inventory, the space they supply to advertisers. A DSP helps advertisers manage their ads and bid on placing them.

Steffens alleged wrongdoing by the board and top executives from Feb. 27, 2025, through Aug. 11, 2025. In the those six months, PubMatic failed to disclose that one of its top DSP purchasers was moving a "significant number of clients to a new platform which evaluated inventory differently," impacting revenue.

Share price's sunk more than 21% on Aug. 12, the day after PubMatic shared a disappointing third quarter revenue forecast with its 2025 second quarter financials. It was the stock's steepest single-day slump in about six months, according to data compiled by Bloomberg. That prior dive, on Feb. 28, came the day after the digital advertising technology company issued a first-quarter 2025 outlook below estimates with its 2024 fiscal results. PubMatic's stock price fell then almost 24%.

"While our outlook includes a reduction in ad spend from one of our top DSP partners, the underlying health of the business remains strong while we mitigate the impact," chief financial officer Steve Pantelick said in a press release with the third quarter outlook.

Rigrodsky Law PA and Grabar Law Office represent Steffens, who alleged wrongdoing from Feb. 27, 2025, through Aug. 11, 2025. Steffens seeks damages and corporate governance reform for PubMatic. He alleged securities law violations, breaches of fiduciary duty, aiding and abetting of those breaches, unjust enrichment, and waste of corporate assets.

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

The case is Steffens v. Goel , N.D. Cal., No. 3:25-cv-07224, complaint filed 8/27/25 .

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

Class Action

Manage Newsletters

Ex-Credit Suisse Leaders Settle Risk Suit for $115 Million (1)

Aug. 29, 2025, 8:17 AM PDT

A group of former Credit Suisse Group AG executives and directors led by ex-chairman Urs Rohner agreed to pay $115 million to settle a shareholder suit alleging they failed to maintain adequate risk management, resulting in losses between 2020 and 2021.

The settlement, which was preliminarily approved by a New York judge on Thursday, will be paid to UBS Group AG as the successor to Credit Suisse and will be funded by the insurers of the directors and officers, according to court documents.

"We are pleased that this long-running litigation has been resolved by settlement," a UBS spokeswoman said in an emailed statement.

The shareholders, led by the Employees Retirement System for the City of Providence , claimed risk management failures let to losses when multiple counterparties defaulted, including Malachite Capital Management , Greensill Capital Management and Archegos Capital Management .

UBS has been working down a list of Credit Suisse-linked litigation ever since it agreed to take over its rival as part of rescue engineered by the Swiss government in 2023. At the time, Credit Suisse was on the verge of collapse following a series of adverse events. It was the largest counterparty of Archegos and ultimately lost more than $5 billion after **Bill Hwang**'s family office imploded in March 2021.

Rohner left his post as Credit Suisse chairman in April 2021, two years before its ultimate demise.

The Providence pension fund suit was filed as a "derivative claim" by shareholders on behalf of Credit Suisse. As a result, the money, plus any earned interest, goes from the defendants' insurers to UBS, with a deduction for legal fees to be paid to the investors' attorneys. Those fees have not been agreed by the parties, but will be disclosed to the court later in the process.

Lawyers for the shareholders told the court the resolution follows three years of "fiercely-contested litigation" in New York, Zurich and Valais, Switzerland, and is the result of mediation that began in May 2023.

The case is Employees Retirement System for the City of Providence v. Rohner, 651657/2022, New York State Supreme Court, New York Co. (Manhattan).

(Updates with UBS statement, details of settlement and background.)

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Compare and Contrast – Midyear 2025

10b5daily.com/2025/08/28/compare-and-contrast-midyear-2025

August 28, 2025

NERA Economic Consulting and Cornerstone Research have released their 2025 midyear reports on securities class action filings. The different methodologies employed by the two organizations usually lead to slightly different numbers.

The key findings include:

(1) The reports agree that filings held steady as compared to 2024, with only a handful of merger objection cases. NERA found that there were 108 filings in the first half of 2025, while Cornerstone found that there were 114 filings in the first half of 2025.

(2) The categories of filings that both reports identify as growth areas are artificial intelligence (12-13 filings) and cryptocurrency (6-8 filings).

(3) Both reports find that the number of filings against non-U.S. issuers continues to decline, with 12 filings in the first half of 2025. On an annualized basis (24 filings), this would be the lowest number of filings against non-U.S. issuers in ten years.

(4) The dismissal rate for cases is up sharply. NERA finds that there were 121 cases resolved in the first half of 2025, of which 87 were dismissed and 34 were settled (there were a total of 124 dismissals in 2024).

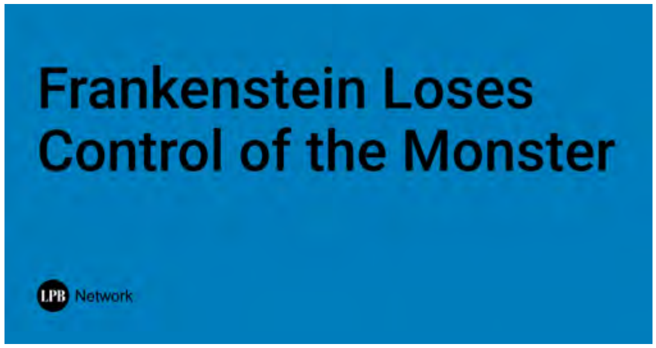
The NERA report can be found here and the Cornerstone report can be found here.

Frankenstein Loses Control of the Monster

businesslawprofessors.com/2025/08/how-do-you-solve-a-problem-like-spvs

Ann Lipton

August 28, 2025



I have previously blogged about the SPV phenomenon, whereby investors can get access to private company shares by investing through a vehicle dedicated to that purpose. As I previously explained, the trend has recently exploded, with numerous LLCs selling interests to retail investors through platforms like EquityZen, often with high fees and opaque pricing. Among other things, the SPV phenomenon allows capital-hungry startups to raise money while (nominally) staying below the 2,000 investor threshold that would trigger mandatory reporting – and startups are increasingly pushing the limits of the law by coordinating with SPV sponsors.

Which is why I was fascinated by recent reports that some startups – particularly Anthropic and OpenAI – have gotten concerned about the number of uncontrolled SPVs selling interests in their shares.

I agree it's a wild west, and for sure some retail investors are being taken advantage of. The more interesting question is why companies like Anthropic would care. Investors in SPVs – and SPVs of SPVs – don't have a direct relationship with the company and don't have rights against it, so what are they concerned about? I have a couple of thoughts.

First, as the Financial Times article explains, OpenAI and Anthropic both have government contracts that require disclosure of their investors, out of concern for foreign investment that might pose a national security risk. The use of far flung SPVs might make it impossible for both companies to comply.

Second, the original SPV, the one that actually holds the shares – if at some point those managers choose to assert some kind of rights against the entity on behalf of their own (unknown, shifting) retail investors (either by choice, or because the retail investors force action), that might be a problem for the company, especially if those retail investors' interests diverge from the interests of the venture capital firms who have done most of the sponsoring. We can spin out scenarios; what if the SPV is leveraged and forced to sell its assets? What if the company mergers and the SPV has appraisal rights? Etc etc

Third, the fees that are layered on top of LLC shares represent, well, rents that could have gone to the operating companies. And if you assume the LLC interests trade, or new LLCs constantly offer interests on internet platforms, that means the operating company loses control over how its shares are priced.

Fourth, I suppose the operating companies may simply want to protect their images. To the extent there are shady LLC operators who mislead their investors or even claim to have access to shares they don't have, the operating company may want to avoid any air of scandal, even if it is not at fault. And it's kind of like Hermes handbags, you know? The company may keep its valuation high by avoiding association with all those… people.

The fifth reason, though, is the most interesting. Suppose an officer of Anthropic publicly makes some kind of false statement about its finances (I am not accusing Anthropic of anything! This is just a thought experiment). It's not *impossible* the company will face 10b-5 liability from its direct shareholders, but it's unlikely. Most investors who bought directly from Anthropic probably got truthful information, and even those that didn't may not want to burn their relationship enough to file a lawsuit. The fraud would have to be fairly extreme, in other words, before we could expect 10b-5 claims from direct investors.

But what about a retail investor who buys shares in an SPV that holds Anthropic shares? Can that investor sue Anthropic under 10b-5? *I have absolutely no idea*. On the one hand, the SPV is simply a vehicle for investing in Anthropic; Anthropic's fraud could easily induce a retail shareholder to make a purchase, and injure the shareholder when the truth is revealed. But, then, there's been this line of caselaw recently requiring that the false statement only concern the entity in which the plaintiff bought shares, although how that standard is defined is … opaque, to me. (Most recent blog post here.)

Plus, in *Stoyas v. Toshiba*, 896 F.3d 933 (9th Cir. 2018), the Ninth Circuit held that if American investors buy unsponsored ADRs of a foreign issuer, the foreign issuer's false statements may not have been made "in connection with" the ADR purchases. *Maybe.*

Frankly, this is all very confusing which means the only real certainty I have is that there *is no certainty* as to whether these cases would, or would not, bar an investor in an Anthropic SPV from suing Anthropic directly under 10b-5. And god only knows what the common law fraud standards might look like.

So, yeah, I can see why these companies are fine with coordinated SPVs, and less fine with uncoordinated ones.

Of course, then, that gets back to the original problem – the more coordination, the more risk that these arrangements look like a mechanism to avoid the requirements of public reporting.

Which, to be fair, they are.

Class Action

Manage Newsletters

Envato Subscribers Advance Privacy Suit Over Meta Data Sharing

Aug. 29, 2025, 9:02 AM PDT

Media-assets provider Envato Pty Ltd. must face a proposed class action alleging it shared the video-viewing histories of subscribers with Meta Platforms Inc. in violation of the Video Privacy Protection Act.

Lead plaintiffs Stephen Plotsker and Michael Kleemann had standing to sue in federal court and adequately pleaded the elements of their VPPA claims, Judge Maame Ewusi-Mensah Frimpong said.

Frimpong denied Envato's motion to dismiss Tuesday, also finding that the Australia-based company failed to show that its home country was a more proper forum for the lawsuit.

The plaintiffs alleged that Envato incorporated tracking software from Meta's Facebook unit on its website, allowing the tech company to collect information arising from subscriber interactions there, including the names of videos they watched.

The VPPA prohibits providers of video content from disclosing information linking consumers to videos they watched or requested.

Envato argued that the plaintiffs lacked Article III standing because they were "content creators" who watched videos on the Envato website with the intention of re-purposing them for public use, but Frimpong said they had plausibly alleged the lawsuit concerned the disclosure of their personal video-viewing activities.

"It is reasonable to infer that even content creators watch or download such videos with non-public purpose or use in mind," she said.

The company's argument that it wasn't a "video tape service provider" as defined under the VPPA fared no better.

Envato said it wasn't principally engaged in the business of renting or selling videos, but Frimpong said the plaintiffs' allegations concerning the revenue it received from subscriptions to its video library and the number of videos it contained were enough to survive the motion.

"The statute does not require that the sale or delivery of video content be the primary focus of the business, and the court will not add this requirement," she said.

The plaintiffs also adequately alleged that Envato disclosed information to Meta in a form that would permit an ordinary person to identify them and learn their viewing habits, the judge said.

Hammondlaw PC represents Plotsker and the proposed class. Goodwin Proctor LLP represents Envato.

The case is Plotsker v. Envato Pty Ltd. , C.D. Cal., No. 2:24-cv-04412, order 8/26/25 .

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Zantac makers win again at trial vs cancer causing claims

legalnewsline.com/cook-county-record/zantac-makers-win-again-at-trial-vs-cancer-causing-claims/article_404b7115-c8ba-4bb4-9387-43b88ec95b8d.html

Jonathan Bilyk, Jonathan Bilyk August 28, 2025

Richard J. Daley Center, Chicago
Jonathan Bilyk

CHICAGO - The maker of once-popular heartburn medication Zantac has secured yet another win in court against claims the active ingredient in that medication increased cancer risk in those who took the drug.

On Aug. 27, a jury in Cook County Circuit Court rendered a verdict in favor of pharmaceutical company Boehringer Ingelheim.

The new verdict closed out a trial in a case brought against the drugmaker by plaintiff Jeffrey Halter and his legal team from the law firm of Keller Postman, of Chicago. According to court documents, Halter claimed his use of Zantac caused him to develop colorectal cancer.

According to a release from Boehringer Ingelheim's attorneys at the law firm of King & Spalding, the jury returned its verdict in just three and a half hours after a trial that lasted 10 days.

Boehringer Ingelheim was represented at trial by King & Spalding attorneys Cory Hohnbaum, Antonio Lewis and Corinne Nabors.

King & Spalding said the verdict marked the eighth time a jury has declined to find Boehringer Ingelheim liable in cases seeking to make the company pay for allegedly causing cancer in people who took over-the-counter Zantac.

Some of those eight cases have resulted in verdicts in favor of Boehringer Ingelheim, while other trials have resulted in hung juries.

Trials have consistently resulted in failures by plaintiffs' lawyers since the first case went to trial in Cook County Circuit Court in May 2024, as juries have consistently rejected what has been called anti-scientific claims of a link between ranitidine, the active ingredient formerly used in Zantac for most of its commercial existence, and cancer.

Plaintiffs in the case have claimed the makers and sellers of Zantac, including pharmaceutical companies GlaxoSmithKline and Boehringer Ingelheim, owe them hundreds of millions of dollars each.

In Cook County and elsewhere in the U.S., thousands of lawsuits have been lodged against the drugmakers over claims of a causal link between ranitidine and colorectal, prostate, bladder and kidney cancers.

Attorneys for the drug companies have consistently told jurors the cancer causation claims presented by the plaintiffs cannot be supported by scientific evidence.

Zantac and its generic equivalents containing ranitidine were sold for decades in the U.S., as the drug became one of the most popular anti-heartburn medications available.

However, in 2020, the Food and Drug Administration recalled ranitidine, allegedly over its potential link to cancer.

A heartburn medication is still sold under the Zantac brand name, but it now contains a diferent active ingredient.

The recall was based on testing conducted by an organization known as Valisure LLC.

In recent years, a report produced by Valisure in 2019 spawned both headlines and tens of thousands of lawsuits nationwide, when it claimed its testing showed the heartburn medicine contained an ingredient that changed to a compound known as NDMA, a known carcinogen.

In court filings, plaintiffs' lawyers have repeatedly cited Valisure's report in their filings, calling Valisue an "independent" lab.

However, the FDA and the federal judge have since found fault with Valisure's methods. To cause ranitidine to break down into NDMA, for instance, the tests reportedly required subjecting the medication to temperatures as high as 260 degrees and lethal levels of salt in a so-called "artificial stomach."

According to court documents, Valisure detected no NDMA in ranitidine when testing it under normal human conditions.

The FDA declared Valisure's testing methods were unreliable, and a Florida federal judge in 2022 dismissed about 50,000 lawsuits after finding Valisure's methods didn't fit expert witness standards.

Judges in Delaware and California disagreed with those conclusions, allowing lawsuits there to proceed. However, in July, the Delaware Supreme Court sided with the companies, ruling that a trial judge in that state improperly admitted evidence and expert testimony that defendants have called "junk science."

That ruling came after GSK also settled some Zantac cancer causation claims in Connecticut.

In May 2024, drugmaker Pfizer also agreed to pay $250 million to settle more than 10,000 lawsuits lodged over ranitidine claims.

In the meantime, however, Boehringer Ingelheim, in particular, has continued to contest the lawsuits in court, winning repeatedly at trial.

The string of plaintiffs' losses, coupled with the Delaware evidentiary ruling, appear to have also led plaintiffs' firms to begin refusing to take on any more Zantac cancer causation cases.

The law firms of Keller Postman, in Chicago, and Miller & Zois, of Baltimore, Maryland, both of whom have filed Zantac-related lawsuits, for instance, have both stated on their sites that they are not accepting any more such cases.

Law firm rates, revenues soar but costs pile up in AI era

reuters.com/legal/legalindustry/law-firm-rates-revenues-soar-costs-pile-up-ai-era-2025-08-28

David Thomas, Mike Scarcella August 28, 2025

Artificial Intelligence words are seen in this illustration taken March 31, 2023. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

- New survey data shows rates, revenues and expenses all rising at big law firms
- Cravath seeks $205 million in Epic-Google fight
- Lawsuits continue after Philly firm folds

Aug 28 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab.)
Billing rates just keep rising at major U.S. law firms, driving double-digit revenue gains in the first half of the year, fresh survey data showed this week.

The rate growth is helping firms absorb ballooning expenses, legal industry consultants said, as firms are both paying their lawyers more and adopting new artificial intelligence tools that could supplant many attorney tasks.

Spending on generative AI tools and other technology has helped drive up overhead costs excluding attorney compensation by 8.6% during the first half of 2025, according to data released on Tuesday by Wells Fargo's Legal Specialty Group.

But AI has yet to advance to where firms can replace lawyers en masse, so firms are paying for both the headcount and the technology, said Owen Burman, a senior consultant and managing director of the Wells Fargo unit.

"In the meantime, you have both the associates and the AI, and there aren't any expense savings right now, it's just expenses," Burman said.

Law firm revenues during the first half of 2025 increased 11.3% on average compared to the same period last year, and profits per equity partner rose 13.7% across more than 130 firms surveyed by Wells Fargo, driven by a 9.2% increase in billing rate growth.

"It's very strong growth, and rates are a huge part of it," Burman said.

Top partners in at least three law firms – Milbank; Quinn Emanuel Urquhart & Sullivan; and Susman Godfrey – have begun charging more than $3,000 an hour this year, with Milbank's Neal Katyal, a former acting U.S. solicitor general during former President Barack Obama's administration, charging $3,250 an hour.

The rate growth is necessary to support the expense growth, Burman said. Wells Fargo's survey found that increases in attorney and non-attorney compensation helped push up expenses by 9.5% during the first half of the year.

Law firms are also facing increased occupancy costs and costs relating to professional liability insurance, said Kristin Stark, a principal at law firm consultancy Fairfax Associates.

"Expenses are up across the board," she said.

Bruce MacEwen, a law firm consultant at Adam Smith Esq., said generative AI is a "looming unknown" on the legal industry's horizon. He said the technology could force law firms to switch to a project fee-based revenue model.

The billable hour model doesn't make economic or commercial sense if, for instance, generative AI can draft a 15-page motion in less than five minutes, MacEwen said.

Law firm consultant Peter Zeughauser said it's too early to predict the impact generative AI will have on billing rates. He cautioned, however, that people said earlier technological advances like computerized legal research and e-discovery would force "firms to go to value billing."

"It didn’t happen," Zeughauser said.

In the meantime, the pipeline of flesh-and-blood lawyers is growing, and employers appear willing to hire them.

Law schools saw an 18% year-over-year increase in applicants as of August, according to the Law School Admission Council. Last year's graduating class had the highest employment rate ever recorded by the National Association for Law Placement, with 93.4% of them landing jobs within 10 months of graduation, the job-tracking group said last month.
– Lawyers for Epic Games at Cravath, Swaine & Moore and other firms said the "Fortnite" video game maker should receive more than $205 million in legal fees for defeating Google in a major antitrust case over the Alphabet unit's app store practices.
Google is now fighting to undo an appeals court decision that upheld a jury verdict and court order directing the company to make sweeping reforms to its app store.
– Wiley Rein litigation partner William Lane III disclosed receiving more than $1.12 million in salary and bonus from the law firm on a financial disclosure form he submitted as part of his nomination to serve as general counsel to the Air Force.

Lane disclosed he had provided legal work for clients including Amazon.com, Boeing, U.S. Chamber of Commerce and the Firearms Policy Coalition. He did not immediately respond to a request for comment.

– Defunct Philadelphia-based law firm Schnader Harrison Segal & Lewis is facing a $5.4 million lawsuit from the landlord of its former office in New York City's Financial District.

140 BW LLC alleges that Schnader Harrison stopped paying the rent on its New York office space in January 2023, seven months before the firm said it was dissolving.

Leslie Corwin, a Duane Morris lawyer who serves as counsel to Schnader Harrison's wind-up committee, said they are aware of the complaint and will respond. Lawyers for 140 BW LLC did not immediately respond to a request for comment.

Schnader Harrison earlier this month agreed to pay $675,000 to settle class action claims made by one of its former non-equity partners that it unlawfully used pension contributions to help run the firm.
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Reporting by David Thomas and Mike Scarcella

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David Thomas
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David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter @DaveThomas5150.

Litigation

Manage Newsletters

Paralegal's AI Usage Lands Florida Lawyer Discipline Referral

Aug. 29, 2025, 9:28 AM PDT

A Tampa, Fla. attorney is being referred to disciplinary officials by an appellate court after submitting a brief with phony cases, citations, and quotes, in the latest example of Sunshine State attorneys undermined by artificial intelligence.

The Florida Second District Court of Appeals said "sanctions are appropriate" personal injury and criminal defense lawyer J. Tony Lopez, who submitted an appellate answer brief that misrepresented holdings of opinions nine times, fabricated quotes from opinions 10 times, and cited a case that doesn't exist. Lopez is being referred to the Florida Bar.

"Efficiency, expertise, and cost savings are some of the reasons why attorneys delegate work and use technological tools such as generative artificial intelligence in representing their clients," the court said Friday in its unauthored opinion. "But this case is another reminder that an attorney who does so remains responsible for the work product that is generated."

Lopez admitted to the "grave errors" in his brief and blamed the problems on a failure to review and correct a brief he hired out to a contracting paralegal. He said he leaned on the paralegal due to his lack of expertise in appellate litigation and the fact he was taking the case pro bono.

Last year the Florida Supreme Court issued guidance warning that usage of generative AI should be checked, and that a lawyer who signs their name to a brief is responsible for the accuracy of the work of their legal assistants, paralegals, and associates. In that time both federal and state courts in Florida levied sanctions for AI "hallucinations" adding fake citations, quotes, or reasoning to legal filings.

The court noted that Lopez said he was "deeply remorseful" and that this was a lapse "of judgment in this isolated case. He requested that any sanctions be placed on him and not his client, and suggested he be required to perform 100 hours of pro bono work and complete continuing legal education courses.

Chief Judge Matthew C. Lucas and Judges Morris Silberman and Craig C. Villanti heard the case.

Smith, Tozian, Daniel & Davis, P.A. represents Lopez. Akerman LLP represents Hillsborough County officials in the underlying case.

The case is Clerk of the Court and Comptroller for the 13th Judicial Cir., Hillsborough Cnty, Fla. v. Rangel , Fla. Dist. Ct. App., 2d Dist., No. 2D2024-1772, 8/29/25 .

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Litigation

New Drivers in Tesla Litigation Seat: Gibson Dunn, Clement & Murphy Called In After $329M Verdict

August 29, 2025 at 03:24 PM By Lisa Willis

L-R: Theodore J. Boutrous Jr., Miguel A. Estrada, Thomas H. Dupree Jr., & Julian W. Poon of Gibson, Dunn & Crutcher, and Paul D. Clement of Clement & Murphy. Courtesy photos

Tesla made its first post-trial motions Friday in *Benavides v. Tesla*, asking the court to set aside the massive jury award, and then some.

This go-around, the Elon Musk-owned automaker has brought in heavy legal artillery to try to undo what a Florida jury awarded in a civil action, enlisting powerhouse firms Gibson Dunn and Clement & Murphy to spearhead its appeal of a $243 million product liability verdict in Florida's Southern District.

Now in the driver's seat for post-trial and appellate efforts are Gibson Dunn partners Theodore J. Boutrous Jr., Miguel A. Estrada, Thomas H. Dupree Jr., and Julian W. Poon. Paul D. Clement of Clement & Murphy will also represent Tesla as the litigation continues.

“This is an important case because unfounded and unconstitutional verdicts like this one against Tesla pose real dangers to safety innovation and technological advancement, creating perverse incentives for manufacturers by discouraging new safety enhancements," Boutrous said. "And the Supreme Court has repeatedly warned about the due-process dangers of arbitrary and grossly excessive punitive-damages awards. This verdict is a true outlier given the facts and law, and we look forward to setting things right.”

The team from Gibson Dunn and Clement & Murphy was brought in after a jury awarded $129 million in compensatory damages and $200 million in punitives on August 1. Tesla's share of the verdict is $243 million, with the remainder against the driver.

Court records show that Tesla argues that compensatory payments should be cut nearly in half—from $129 million to no more than $69 million—leaving Tesla liable for $60 million if the jury’s apportionment stands.

On Friday, Tesla asked the Court in the Southern District of Florida to set aside the jury’s verdict in its entirety or, in the alternative, to order a new trial, and eliminate or significantly reduce the punitive-damages award. Tesla also seeks to reduce or strike punitive damages, citing Florida’s statutory caps.

The case stems from a 2019 crash in Key Largo, where driver George McGee’s Tesla Model S, operating on Enhanced Autopilot, struck and killed 22-year-old Naibel Benavides and seriously injured her boyfriend, Dillon Angulo.

Tesla maintains that driver recklessness, not vehicle design, caused the tragedy, alleging the driver of the car, George McGee, was responsible for the crash.

"Auto manufacturers do not insure the world against harms caused by reckless drivers. For as long as there have been cars, there have been reckless, self-absorbed drivers like McGee," Friday's motion read.

One attorney not associated with the case believes Tesla made a wise choice.

"Tesla’s decision to add Gibson Dunn shows they are taking this verdict very seriously," Merick Lewin, Founder and Managing Partner of Good Guys Law said. "This is a firm known for handling the toughest appellate fights, and their involvement signals Tesla is already thinking well beyond the trial court," Lewin said. "Their concern would not just be the size of the award but the precedent it could set for autonomous driving cases going forward. Tesla is likely bringing in Gibson Dunn to fight the verdict at every level, from this motion, all the way up to the Supreme Court if necessary."

[Read the post trial motions here]

“For as long as drivers remain at the wheel, any safety feature may embolden a few reckless drivers while enhancing safety for countless others,” Tesla's appeal to the court stated. "The $243 million judgment against Tesla flies in the face of basic Florida tort law, the Due Process Clause, and common sense."

Immediately after the verdict, Tesla pushed back on the outcome. “[The] verdict is wrong, and only works to set back automotive safety and jeopardize Tesla’s and the entire industry’s efforts to develop and implement life-saving technology," the company said in a statement.

Plaintiff's counsel says it's déjà vu.

"The same arguments were raised by Tesla at multiple points both before and during trial, which the Court denied, said Florida attorneys Todd Poses and Adam Boumel of today's motion. "We did not believe that Tesla’s arguments had any merit then, and we do not believe that they have any merit now."

L-R: Brett Schreiber of Singleton Schreiber, Todd Poses of Poses Law Group and Adam Boumel of Rousso Boumel Law, and Doug Eaton of Eaton Wolk. Courtesy photos

Brett Schreiber of Singleton Schreiber, lead trial counsel for plaintiffs Dillon Angulo & Naibel Benavides said, "This motion is the latest example of Tesla and Musk’s complete disregard for the human cost of their defective technology."

Schreiber said the jury heard all the facts.

"[They] came to the right conclusion that this was a case of shared responsibility, but that does not discount the integral role Autopilot and the company's misrepresentations of its capabilities played in the crash that killed Naibel and permanently injured Dillon. We are confident the court will uphold this verdict, which serves not as an indictment of the autonomous vehicle industry, but of Tesla's reckless and unsafe development and deployment of its Autopilot system."

"This fight is just beginning."

Lewin theorizes that Tesla's valuation is built on the promise of autonomous driving. "If a precedent emerges that makes those systems legally toxic, the company's entire strategy might be at risk. Those stakes explain why Tesla is bringing a powerhouse firm like Gibson Dunn on board," the South Florida attorney said.

Merick Lewin, founder and managing partner of Good Guys Law. Courtesy photo

Lewin thinks this is just the start.

"By adding Gibson Dunn, Tesla is signaling that this fight is just beginning."

"I think it's a smart move."

West Palm Beach attorney Ian S. Duncan says Tesla's bid to overturn this massive verdict in Florida relies on decades-old tort reform tactics—and an aggressive "kitchen sink" motion strategy.

"They're really focusing in on the deterrent to innovation component," Duncan explained, noting the company's argument that "if we're going to allow verdicts like this, no one in the product development community … is going to put products out there, because they're going to be afraid of massive verdicts coming their way."

Ian S. Duncan of Duncan Injury Group. Courtesy photo

While not connected to the case, Duncan, a trial attorney specializing in catastrophic personal injury cases, described Tesla's approach as invoking the "slippery slope" of public policy. "I think, yes, it's a smart move. I've had cases in the past where you've got large verdicts, and you're dealing with a situation where they go to that overarching scenario … of 'where does this take us next?'"

In addition, Duncan noted Tesla is "throwing the kitchen sink in," seeking a new trial or judgment as a matter of law by pinning fault on the "reckless driver … doing all these things to override the technology."

Yet, he said the core legal question remains: "Why do you have the technology if it can't be relied upon?"

And with the addition Gibson Dunn and Clement & Murphy, Duncan thinks Tesla is signaling it wants the credibility of powerhouse appellate firms to drive home its 'deterrent-to-innovation' arguments and maximize traction with the courts. "They're bringing in some very big, heavy hitters on the product side of things, nationwide firms. It's going to carry a lot of clout with those names."

Bloomberg Law

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Securities Law News

Matt Levine's Money Stuff: Pod Shops Are the New Banks

Aug. 28, 2025, 11:18 AM PDT

Event-driven

One thing that I think about a lot around here is that the big modern multimanager, multistrategy hedge funds — "pod shops" like Citadel, Millennium, Point72 and Balyasny — have gotten into many of the businesses that big investment banks were in 20 years ago. The investment banks used to be well capitalized, lightly regulated, adventurous, and willing and able to commit their own capital to make markets more liquid and efficient. Now they are more regulated and risk-averse, and the hedge funds have stepped into some of those roles.

In particular, the big hedge funds are now in the business of committing their own capital to provide liquidity to customers. Well, the banks would call them "customers." The hedge funds mostly wouldn't. But there are a lot of institutional investors who need help to do certain trades, who used to get that help by calling up their investment banks, and who now often get it, indirectly, from hedge funds. Trades like:

The basis trade: Big asset managers often want exposure to long-term US Treasury rates, but they do not want to buy Treasury bonds directly; they want to buy Treasury *futures*. Somebody needs to manufacture those futures, by borrowing money, buying bonds, and selling offsetting futures. Manufacturing derivatives used to be a standard investment bank business, but now hedge funds do a lot of it. The asset managers don't *call hedge funds* looking for futures; they buy the futures on electronic exchanges. But on the other side of the trade, there's probably a hedge fund that is selling futures and buying bonds to hedge.

- The dispersion trade: Lots of investors want to buy stock index options to protect them against a broad crash in the stock market, and lots of other investors want to sell single-stock options to get income from their stock holdings. There is a natural net supply of single-stock options and a natural net demand for index options. These things sort of offset — the index is made up of single stocks — but not entirely, so some intermediary needs to take the other side of those trades and manufacture index options out of single-stock options. Again, manufacturing derivatives out of other derivatives is a standard traditional investment-bank business, but this is increasingly a hedge fund trade.
- The index rebalance trade: Index funds own the stocks in a big index, and sometimes the index changes, getting rid of one stock and replacing it with another. The index funds all need to buy the new stock and sell the

old stock, at the same time, to continue tracking their index. That is very messy: If the index funds all sell a ton of the old stock and buy a ton of the new stock on the rebalancing date, you might expect the price of the new stock to spike up and the price of the old stock to collapse. Someone needs to be on the other side of the trade, selling a ton of new stock and buying a ton of old stock to provide liquidity to the index funds. Again, providing liquidity for block trades is a traditional investment bank business, but now this is a hedge fund trade.

- Merger arbitrage: Sometimes a company announces that it will be acquired by another company or a private equity firm. Big asset managers own the company’s stock for reasons of their own (they like its fundamental prospects, it’s in the index, etc.), but after the merger is announced the asset managers no longer want to own it: The stock stops being an equity-like bet on the company’s prospects and starts being a specialized fixed-income-like bet on whether the merger will close. If the company is selling itself for $50 a share, payable at some uncertain date six to 18 months in the future, a stock investor might prefer to get $46 per share now rather than wait around for closing. So hedge funds will provide liquidity by buying up the stock at $46.

Merger arbitrage quite famously used to be a trade done by investment banks; Goldman Sachs Group Inc.’s merger arb desk of the 1980s created many of the hedge fund managers of the 2000s. But it is not a trade that banks do as much these days, because it takes big lumpy asymmetric risks: If you buy a lot of stock at $46 to bet that the merger will close at $50, and then the merger collapses and the stock trades to $30, you will lose a lot of money. And the way to *make* a lot of money in merger arb is *for things to go wrong:* The really lucrative trades are the ones where there is bad news, the stock trades to $30, you *buy more*, and then the merger closes and you get your $50. (Volatility makes liquidity provision riskier but more lucrative.) That sort of doubling down on risk is not attractive for a bank in 2025.

On the other hand, the big multimanager multistrategy funds increasingly look like the banks did 20 years ago. They are not swashbuckling takers of concentrated risks with long-term locked-up capital; they are huge, systemically important, highly leveraged financial institutions that prioritize survival and steady returns. They lever up low-volatility trades; they don’t take wild risks. They quickly fire traders who lose too much money. It’s not clear that merger arb is a good fit for *them* either. Bloomberg’s Liza Tetley and Nishant Kumar report:

[Ed] Cooper is among a slew of portfolio managers opting to run their event-driven strategies outside of the giant firms, as some of the podshops balk at the inherent volatility of the long-time industry staple that wagers on corporate events, including success and failure of deals. …

“There are certain strategies that fit very well within the big podshops and there are others that are much more challenging,” Donald Pepper, co-chief executive officer and head of multi-strategy at Trium Capital, said in an interview. “Merger arbitrage is one — I don’t really think its natural home is in a podshop.” ...

Berry Street’s founder and Chief Investment Officer [Orkun] Kilic said it’s impossible to run the strategy effectively with 5% draw-down limits, especially in an environment where rates are high. “The only way to make money is by going big when other people get scared, and outside a podshop there is more flexibility to do that,” he added.

In fact, when a deal reaches the point when pods are forced to sell, that often presents a buying opportunity, Kilic said, adding he caps his deals universe to 20-25 situations that he is fully familiar with and waits for something to trigger pricing volatility.

Pentwater Capital Management, for example, stuck to its United States Steel Corp. bet throughout the 18-month saga of Nippon Steel Corp.'s controversial acquisition of the company that divided the US steel industry and became a flashpoint in American politics. The bet, worth more than $1 billion until recently, contributed to a 21% gain for the fund during the first half of the year.

Relative to modern banks, big multistrategy hedge funds are more nimble and more willing to commit capital and take big risks. But as they get bigger and more bank-like, there are limits to that. If you are in the business of taking concentrated volatile proprietary bets, the big hedge funds might not be the right fit for you.

Strategy

I don't really know what is left to say about the MicroStrategy Inc. Bitcoin treasury trade. I mean:

1. MicroStrategy (which now calls itself Strategy) sells securities to raise money to buy Bitcoin.
- 2. If it can *sell common stock* at a premium to net asset value to buy Bitcoin, this is a good trade. That has nothing to do with Bitcoin. It's just, if selling $1 of common stock increases your market value by $2, you should do that, because it is good for existing shareholders. (It is less obviously good for the people *buying* the new stock at a premium to net asset value.)
- 3. If it can *borrow money* cheaply to buy Bitcoin, and if Bitcoin's price goes up a lot, this is a good trade. If you can borrow money at 5% interest to buy Bitcoin, and Bitcoin goes up by 20% a year, then you make 15%.
- 4. MicroStrategy does all of this, a lot. It sells stock to buy Bitcoin, and it borrows money to buy Bitcoin, though these days it borrows the money mostly in the form of weird preferred stock deals with names like Strife and Stretch. The advantage of preferred stock is that MicroStrategy never needs to pay back the money it borrows (it's a perpetual instrument); the disadvantage is that the interest rate is higher. (Stretch pays a 9% coupon and trades at about a 9.25% yield; Strife pays 10% and trades at about 9.1%.)
- 5. If it can keep doing this forever — borrowing lots of money at single-digit interest rates while Bitcoin grows faster than that, and selling stock at a large premium to net asset value — then, you know, great trade, can't fault it. A "perpetual motion machine," I have called it.
- 6. But why would that work? Why would new investors be willing to buy stock at a premium to net asset value forever? Why would people be willing to lend MicroStrategy money at decent rates forever? *Some* people obviously believe in this strategy, and it turns out that MicroStrategy can raise tens of billions of dollars from them. But other people *don't* believe in the strategy, so they won't buy MicroStrategy's stock or lend it money; MicroStrategy probably (?) can't raise *hundreds* of billions of dollars.
- 7. But the whole thing only really works if you *keep doing it*

: People bought MicroStrategy stock at a premium to net asset value because they expected it to raise more money to increase its Bitcoin holdings per share. If it runs out of people to buy new stock, it can't buy more

Bitcoin, which means that buying MicroStrategy stock is no better (arguably worse!) than just buying Bitcoin directly, which means it shouldn’t trade at a premium.

I said in Point 6 — and also wrote yesterday — that MicroStrategy probably can’t raise hundreds of billions of dollars, but that’s just my gut intuition; maybe it can. If you think it can, then go buy the stock I guess: There’s plenty more room for this strategy to run, MicroStrategy will keep increasing its Bitcoin holdings, and it will earn its premium. If you think that the trade has reached saturation and there’s no room to raise any more money, then the stock is probably overpriced. (Not investing advice.)

Today Bloomberg’s Sidhartha Shukla and David Pan report that the trade is, uh, maybe reaching saturation:

Michael Saylor’s once-celebrated Bitcoin experiment is mired in a market backlash, raising questions about the sustainability of the corporate-treasury model he pioneered.

Shares of Strategy Inc., formerly MicroStrategy, have fallen 15% this month, erasing much of the premium the firm long enjoyed over its Bitcoin holdings. The company, long a bellwether for crypto sentiment, is now drawing fresh skepticism.

At the center of the concern is the firm’s financing tactics. Strategy’s new preferred stock — billed as its main vehicle for future Bitcoin purchases — has drawn tepid demand. A recent sale raised just $47 million, well short of Saylor’s ambition for blockbuster capital raising. To make up the shortfall, the company has returned to common-share issuance, despite earlier pledges to limit dilution. That reversal has rattled investors. …

In late July, the company pledged not to issue shares at a multiple below 2.5, with narrow exceptions. Two weeks later, the guidance was loosened, and on Aug. 25, the company sold nearly 900,000 new shares.

Some investors online viewed the move as a breach of trust. And issuing equity below mNAV now risks a negative flywheel: falling stock weakens the ability to buy Bitcoin, eroding confidence, further driving down the premium.

Right, yes, issuing stock at above net asset value to buy more stuff is accretive to shareholders, and Strategy’s *essential pitch* is “we can keep doing that.” Issuing stock at below net asset value to buy more stuff is of course dilutive. If you can’t sell stock at a premium then the whole thing stops working. Your ability to sell stock at a premium depends on your ability to sell stock at a premium. It is circular, and thus fragile.

I should say that the failure mode here is, you know, fine. For MicroStrategy's *premium* to be justified, it needs to keep finding new investors to buy new stock at a premium; when it runs out of new investors the trade collapses. But when trade collapses, MicroStrategy will just be a giant pile of Bitcoins. Which are worth a lot. Like, assuming that the price of Bitcoin holds up, MicroStrategy would still be worth tens of billions of dollars even if it couldn't sell more stock at a premium. For Saylor, at least, this is a very good trade even if it ends: He has, through hype and crypto and clever use of the capital markets, transformed a small software company into a giant investment company with tens of billions of dollars of permanent capital.

IPO pops

A well-known problem in crypto is extrapolating a "market cap" from a trading price. You invent some crypto token, you issue 999 billion tokens to yourself for free, and you issue 1 billion tokens to other crypto traders for free. Then someone sells you 100 of their tokens for $1. Now each token is worth $0.01, so the token has a market capitalization of $10 billion and your stash of 999,000,000,100 tokens makes you a multibillionaire. This is correct as a matter of arithmetic but quite misleading as a matter of economics. Nobody has invested $10 billion of capital into your token, and if you tried to sell all your tokens you would not clear $9.99 billion, or probably $9.99 million for that matter. The trading price of a teeny tiny sliver of tokens does not necessarily reflect the economic value of the total supply of tokens.

This is not really a crypto thing, though; it's true of every traded fungible thing, including stocks. The Bloomberg Billionaires Index tells me that Mark Zuckerberg's net worth is $262.5 billion, consisting mostly of $257.5 billion of Meta Platforms Inc. stock. You get that number by multiplying his share holdings by Meta's trading price. Meta's stock trades about $9 billion per day; if Zuckerberg wanted to sell all his stock it would take months. Also people would notice, and they'd be like "wait Zuckerberg is selling out his Meta stock??" and the stock would go down. The conversion rate between Zuckerberg's Meta stock and dollars is not exactly the rate implied by the market price; that's just the best estimate you're going to get.

People notice this more in crypto, because crypto tokens sometimes push it to extremes. You can, and people do, print as many tokens as you want and get very high market capitalizations without much trading. Meta's stock *does* trade $9 billion a day, so its market cap is pretty reflective of real supply and demand. But that's not true of every stock. Some companies have a lot of shares outstanding, but for whatever reason most of them are not available to trade, and the ones that do trade do not necessarily reflect the value of the whole company.

This sometimes happens for weird idiosyncratic reasons. For instance, we have discussed QXO Inc., Brad Jacobs's building products rollup company, which for a while had $4.5 billion of investor capital in locked-up shares, and a tiny sliver of publicly traded shares that traded at a price implying a $110 billion market cap. That was a product of a weird reverse merger and retail investor enthusiasm and inattention; you don't see that too much at big companies.

But there is one very common situation where the stock price might not reflect real supply and demand, which is: initial public offerings. When a company goes public, here is roughly what happens:

1. The company has, say, 100 million shares outstanding.
- 2. It sells 10 million of them in its IPO; the other 90 million are held by executives, employees and venture capitalists, and are *locked up*, meaning that they can't be sold into the market for months after the IPO.
- 3. It tries to sell the 10 million shares mostly to good enthusiastic institutional shareholders who will be long-term holders of the stock and *won't flip it* as soon as the stock opens for trading. Which means that, when the stock does open for trading the day after the IPO, most of the stock *won't trade*, because it will be held by those long-term committed investors.
- 4. So only like 1 million shares — 10% of the stock sold in the IPO, but just 1% of the company's total shares outstanding — will be available to trade on the first day.
- 5. Meanwhile lots of investors who didn't get shares in the IPO want to buy that stock in the market.

These numbers are just illustrative and probably too low, but they're in the right ballpark. If a lot of people want to buy a company's stock, but only 1% of the stock is available for sale, then that stock will probably trade at a high price. If you just multiply that price by the number of shares outstanding, you will get a very high market value for the company. But that value is not necessarily a fundamentally accurate valuation of the company. It also reflects the short supply of the company's shares.

(In modern markets you see a similar situation with big *private* companies: They have even less stock available for ordinary people to buy, but not none; there are secondary markets and special-purpose vehicles that allow outsiders to buy stock in SpaceX or OpenAI or whatever. As we often discuss, those shares can trade at big premiums to the actual values of the companies in institutional fundraising markets, but again this is a matter of restricted supply rather than valuation. The other day I speculated that OpenAI might be a trillion-dollar company, judging by its retail trading price, but I am not sure that makes it "officially" a trillion-dollar company.)

This is a big part of the explanation of the "IPO pop." A company goes public, it sets an IPO price for its stock that entices long-term institutional investors to buy 10% of its stock, and then it opens for trading and trades to the price that entices short-term retail investors to buy 1% of its stock. The demand curve slopes down; you can get a higher price per share for 1% of your stock than for 10%. So the IPO prices at the 10% price, and then the stock trades up to the 1% price. The people who bought in the IPO have an instant profit, though for most of them (the long-term holders) it is unrealized.

And then people complain that the company left money on the table by not selling shares at the higher trading price. But it couldn't have sold 10% of its stock at that price. That's the price for 1% of its stock.

This is not the only explanation for the IPO pop (the pop also compensates investors for taking risk, etc.), but it's an important one. Here's a new paper by Joseph Henry and Terrence O'Brien titled "How much money is really left on the table? Reassessing the measurement of IPO underpricing":

IPO issuers are thought to collectively leave billions of dollars "on the table" by underpricing shares relative to the initial trading price. However, this trading price corresponds to relatively small share volume. Because some investors are more optimistic about the shares' value than others, the trading price exaggerates the maximum feasible IPO price for the larger IPO quantity. We assess the extent of the mismeasurement by introducing a new measure of underpricing that incorporates both share prices and their associated quantities. Using data from 2,937 IPOs from 1993-2023, our evidence suggests that IPOs are underpriced by substantially less than is commonly believed, perhaps up to 40% less.

In particular, my schematic numbers above appear roughly plausible: In their sample of 2,937 IPOs, on average roughly 10% of the shares sold in the IPO become available for trading on the first day. So it's not surprising that the price goes up.

Firing

My basic view is that working in the financial industry is an essentially mercenary career: The money is pretty good, the job security is not so good, and you should be ready to be fired unsentimentally at any time. Still this is a bit rough:

ANZ has issued an apology and offered psychological counselling to more than 100 senior bankers after they received an email sent in error instructing them to return their computers, ahead of the news that they were going to be fired.

The Australian bank sent out the automated emails ahead of schedule on Wednesday. It held an online call with the staff later that day to confirm that those who had received them would be losing their jobs. …

ANZ had been planning to tell staff about the job cuts next week. An ANZ spokesman said the bank had "apologised unconditionally to our staff impacted".

The Financial Sector Union, which represents employees in the finance industry, said it had been contacted by members over the emails, which had caused "panic and distress".

"This is a disgusting way for workers to learn about job cuts — through a botched email instead of a respectful conversation," said the union's national president Wendy Streets.

Yeah, I guess, but the outcome is the same? Like ANZ "apologized unconditionally" for the email, but it didn't hire them back.

Meme-stock hedge fund management

One thing you could do, as a hedge fund manager, is conduct rigorous fundamental analysis of public companies and buy the stocks that you think are fundamentally undervalued. Another thing you could do, as a hedge fund manager in the 2020s, is try to predict which stocks will capture the attention of retail investors online and become meme stocks.

A third thing you could do, though, is buy stocks and try to *make* them meme stocks. We have talked a few times about meme-stock activism, in which professional(ish) investors buy shares of actual or potential meme stocks and then tweet moon emojis and stuff to try to make them meme-ier. In 2025, the determinant of stock prices is not always fundamental value; sometimes it is Reddit popularity. It is hard, as a hedge fund manager, to influence fundamental value; you can try to push management to make strategic changes, but that is expensive and they might not listen to you. It's not *easy* exactly to be cool online, but it might *look* easier. It's relatively easy to tweet moon emojis.

Anyway we have talked a little bit about Eric Jackson, who runs a firm called EMJ Capital and who has tweeted early and often about Opendoor Technologies Inc., which became a big meme stock last month in part because of his efforts. His latest schtick on X is apparently that he is …. standing outside of Drake's house in Toronto "until he buys at least ONE share of $OPEN"? I'm sure that there is some reason for this, though I don't know what it is and don't especially want to find out. He's holding up signs each day, saying things like "BUY $OPEN" and "KENDRICK SUCKS." Apparently Drake isn't even there? Eventually Citadel is going to hire someone to do this sort of thing.

Things happen

Lisa Cook Sues Trump Over His Move to Oust Her From Fed Board. After Cracker Barrel Uproar, Activist Investor Seizes the Moment. Tariffs Turn Aluminum Maker Rio Tinto Into a Buyer in US Market. Three Accused of Stealing TSMC Chip Secrets to Aid Japanese Supplier. Exxon Says Global Emissions Goals Have Slipped as Coal Use Rises. Net-Zero Banking Alliance Suspends Activities Amid Wave of Departures. Wineries and Whiskey Makers Tap Private Credit for Financing. Top-Paid Partner at Al Gore Fund Got $19.5 Million Bonus in 2024. "The number of zeros is quite large" for 20-somethings in AI. Chief Rizz Officer. F-35 pilot held nearly hour-long conference call mid-air to fix fighter jet before it crashed. "ETF slop."

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- 1. Intuitively: Single-stock options are priced based on the expected volatility of each stock; index options are priced based on the expected volatility of the index, which is determined by (1) the volatility of each stock and (2) the *correlation* among stocks. The dispersion trade — buying single-stock vol and selling index vol — is effectively a bet against stock-market correlation: You make money if stocks aren't very correlated (their moves cancel each other out, so index vol is lower than average single-stock vol), and you lose money if they all move together.
- 2. It used to do a lot in the form of convertible bonds, which have the advantage of monetizing MicroStrategy's high volatility, but the disadvantage that they have to be paid back (or converted into common stock). They also have the same market-capacity problems as everything else. Now that approach seems to be

deprecated; Shukla and Pan report report that “Strategy has previously said it plans to retire all of its convertible notes over the next four years and shift to preferred stock: securities whose principal will never come due.”

- 3. I have suggested that some of MicroStrategy’s imitators are looking for this benefit. If you run a small hype-driven company, you might worry that one day the hype will fade and your stock will go to zero. But if you use the hype to raise money to buy Bitcoin, you will at least have the Bitcoin. “Bitcoin is the smooth exit for meme stocks,” I said.
- 4. We talked a few weeks ago about Figma Inc.’s IPO, which involved about 7% of the stock. My vague rule of thumb is that IPOs are more like 15% of outstanding shares, but obviously there is a range. The idea that only about 10% of the IPO shares become available on the first day has some empirical support; see below.
- 5. That’s very crude, because it’s based on shares that trade in the *opening auction* on the day after the IPO, which is a rough way to measure how many shares are flipped. (If you buy in the IPO, don’t sell your shares in the opening auction, but sell them at 2 p.m. on the first trading day, they don’t count your shares as available for trading, but arguably they should.) But see Figure 1 (page 17) and Table 1 (page 23) of the paper; the “opening share volume” represents an average of 9.7% of the shares issued in the IPO, with an interquartile range of 7.2% to 13.4%.

Musk seeks dismissal of SEC lawsuit on his 2022 Twitter stake

reuters.com/business/musk-seeks-dismissal-sec-lawsuit-his-2022-twitter-stake-2025-08-29

Reuters August 29, 2025

Elon Musk attends the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo
Purchase Licensing Rights, opens new tab

Elon Musk filed a motion on Thursday to dismiss the U.S. Securities and Exchange Commission's (SEC) civil lawsuit that accused him of waiting too long in 2022 to reveal his large stake in social media platform Twitter, later renamed as X.
In a complaint filed in Washington, D.C. federal court in January, the SEC said Musk violated federal securities law by waiting 11 days too long to disclose his initial purchase of 5% of Twitter's common shares. It sought to force Musk to pay a civil fine and give up profits that the SEC said were a result of the violations.
Lawyers for Musk said on Thursday the billionaire stopped purchasing additional shares of then-publicly-listed Twitter and filed his disclosure one business day after his wealth manager consulted securities disclosure counsel about potential filing requirements.

An SEC rule requires investors to disclose within 10 calendar days when they cross a 5% ownership threshold, which would have been by March 24, 2022 in Musk's case.

The SEC said that at the expense of unsuspecting investors, Musk instead bought more than $500 million of Twitter shares at artificially low prices before finally revealing his purchases on April 4, 2022, by which time he owned a 9.2% stake.

The SEC sued Musk on January 14, six days before Republican President Donald Trump took office and made Musk a special adviser to slash the federal workforce and spending. Musk faced a deadline to respond to the court by Friday.

Musk's lawyers said the case should have not been brought and the billionaire did not mean any harm. They said the SEC's action against Musk "reveals an agency targeting an individual for his protected criticism of government overreach."

"The SEC does not allege that Mr. Musk acted intentionally, deliberately, willfully, or even recklessly... Rather, the SEC alleges that Mr. Musk late-filed a single beneficial ownership form three years ago, and fully corrected any alleged error immediately upon its discovery. There is no ongoing violation," the Tesla (TSLA.O), opens new tab and SpaceX CEO's lawyers said.
The SEC declined to comment.

Musk has long feuded with the SEC, including after it sued him in 2018 over his Twitter posts about possibly taking Tesla private and having secured funding to do so.

Reporting by Shubham Kalia in Bengaluru; Editing by Himani Sarkar and Jamie Freed

Our Standards:

Securities Law News

Musk Seeks to Dismiss SEC Suit Over Twitter Stake Disclosure (1)

Aug. 28, 2025, 9:09 PM PDT

Elon Musk asked a federal judge to dismiss a US Securities and Exchange Commission lawsuit over his growing stake in Twitter Inc. in 2022, calling allegations that he cheated investors government overreach.

The Wall Street regulator alleged Musk blew the deadline to file a special form saying he had accumulated at least a 5% ownership stake in Twitter before launching his $44 billion takeover bid for the social media platform. By waiting too long, Musk cost Twitter shareholders more than $150 million, the SEC said.

"The SEC does not allege that Mr. Musk acted intentionally, deliberately, willfully, or even recklessly. The SEC does not allege that Mr. Musk caused any investor harm," Musk's attorneys wrote in a court filing late Thursday. "There is no intent. There is no harm. Simply put, this action is a waste of this court's time and taxpayer resources."

The SEC sued Musk in January, less than a week before President Donald Trump took office. The case was closely watched because Musk was at the time a key Trump ally who had donated hundreds of millions of dollars to help him get elected in November 2024. Once Trump took office, Musk oversaw a massive restructuring of the federal government before he had a public falling out with the president and left Washington.

Read More: Musk Facing SEC Claims in Trump Era Means 'All Bets Are Off'

The case has also been fraught within the agency. Commissioner **Mark Uyeda**, a Republican who later would serve as the SEC's acting chairman, took the unusual step of asking enforcement staff members to declare the case wasn't motivated by politics, Bloomberg reported in February.

The lawsuit said Musk flouted US securities laws by failing to file within 10 days the form indicating that he had accumulated at least 5% of Twitter's stock. Musk missed the deadline by 11 days, according to the SEC.

The SEC said the billionaire taking a huge position in the company would have sent the stock price soaring if his stake was public. The agency said investors who sold their shares during this time missed out on big gains. Musk also stockpiled shares at an unfair discount behind the scenes, according to the lawsuit.

Once he properly disclosed his purchase, Twitter shares surged 27%, the agency alleged.

The SEC first started probing Musk's Twitter purchases in 2022. In September 2024, Musk stood up SEC attorneys who flew to Los Angeles for his deposition in the case, choosing to attend a rocket launch for his SpaceX company instead. Musk offered a few thousand dollars to cover the government lawyers' travel expenses. The SEC balked.

When the SEC filed its suit, Musk's attorney accused the agency of waging a multiyear "campaign of harassment" against the billionaire. He said at the time that the type of allegations against Musk would normally only carry a nominal penalty.

In a separate filing Thursday, Musk asked for the case to be transfered from federal court in Washington, DC, to western Texas, where X Corp. set up its headquarters after Musk changed the company's name from Twitter.

"The location of the SEC's headquarters cannot dictate the appropriate outcome of defendant's motion to transfer where, as here, every other consideration weighs strongly in favor of transfer," his lawyers wrote. "Forcing Mr. Musk to litigate in this district would merely perpetuate and compound the harm from the SEC's years-long campaign against him."

(Updates with details from court filing starting in third paragraph.)

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FT Alphaville US equities

The mysterious, massively lucrative, multibillion-dollar ARKK trade

Hot IPO, meet the ETF creation-redemption magic

© Bloomberg

Robin Wigglesworth

Published 10 HOURS AGO

Earlier this month something very weird happened with Cathie Wood's flagship actively-managed fund, the ARK Innovation ETF.

Take a look at this wild chart of its assets under management:

wait what?

Assets under management of ARK Innovation ETF ($bn)

Source: Bloomberg

The fund (known by its ticker ARKK) mysteriously saw its AUM suddenly balloon from $7.1bn on August 8 to $12.8bn on August 14, before swiftly falling back to $7.2bn on August 20. It's now resting fairly steady at ca $7.5bn. So what caused this massive and sudden inflation and deflation of ARKK?

ETF.com reckons that it was a huge "heartbeat trade", an old trick that ETF managers pull to limit capital gains tax bills. This involves pushing money into an ETF and almost immediately redeeming it in the form of shares, which are then sold.

We're not convinced. The pattern of massive inflows and outflows does look a *little* like an ETF heartbeat trade. But heartbeat trades tend to be two-day things — in and out — not things that happen over *several* days. The timing is also . . . curious.

So what actually happened?

We're speculating, but FT Alphaville wonders it was actually a funky and extremely profitable trade related to the initial public offering of the Peter Thiel-backed cryptocurrency exchange Bullish on August 13.

On August 4 Bullish revealed in an SEC filing that BlackRock and Cathie Wood's ARK Investment Management had each indicated an interest in buying up to $200mn worth of shares in its IPO. On August 11, Bullish said in a new filing it was increasing the size of the offering because of the strong demand. By the end of that Monday, Bloomberg reported that bankers on the deal had stopped taking orders even for the enlarged deal, which was set to begin trading on Wednesday, August 13.

Allocations to hot IPOs are often extremely sought after, as a first-day pop can hand investors a quick profit. That is particularly true when the stock is likely to catch the attention of retail investors — such as Bullish's own users — who usually have no way of acquiring shares in or ahead of the IPO, and have to wait until it begins trading to grab what they can.

Even big institutions often struggle to snag the shares they want, and the Bullish IPO was reportedly over 20 times oversubscribed — making any allocation extremely valuable.

However, a funky arbitrage at the heart of the ETF mechanism opened up an avenue for someone to stealthily engineer indirect exposure to the Bullish IPO.

Most investors that want exposure to an ETF simply buy its shares, just like any stock. But there's also a process known as "creation and redemptions" that ensures that the value of the ETF constantly reflects the value of its underlying stocks. If the ETF is overvalued you can buy all the cheaper constituents, hand them to a specialised ETF market-maker known as an "authorised participant" and get shares in the ETF. If the ETF is undervalued compared to its holdings, you can ask the authorised participant to redeem your shares for a slice of the underlying holdings, and sell them off.

This is what appears to have happened with ARKK in mid-August. Anticipating that the IPO would enjoy a massive pop and hand an immediate windfall for ARKK, it looks like someone quietly spent billions of dollars on shares that replicated ARKK (minus Bullish) to create a whopping 68.8mn shares in the ETF.

On Aug 13 — the day of the Bullish IPO — this someone in practice represented about 41 per cent of **all** of ARKK's shares outstanding. That made them by far the biggest owner of ARKK, holding far more of the ETF than the next 10 biggest owners *combined*.

That day, ARK also revealed in a standard trade notification that it had in fact acquired 2.53mn shares in Bullish across three of its actively-managed ETFs — most of which was parked inside ARKK — at the IPO price of $37.

Then, after Bullish had soared 83 per cent to $68 on its first day of trading, the money began to gush out of ARKK again as someone redeemed shares just as aggressively as they had created them. The ETF's shares outstanding peaked at 166.5mn on August 13, and fell back down to 114.3mn on August 15.

Put a bit more simply and succinctly, it looks like someone in practice managed to finagle a large synthetic allocation to the Bullish IPO by aggressively creating shares in ARKK. And once the windfall materialised they immediately redeemed those shares to crystallise the gain, sending ARKK back to earth.

How much did they make? This is very back-of-the envelope stuff, but Bullish jumped from the IPO price of $38 to close at $68. ARKK received an allocation of 1.714mn Bullish shares, so it made a swift $51.4mn profit on the day of the IPO.

Assuming that our mystery trader accounted for all the 68.8mn shares created in the days leading up to the IPO, it means they would have made — very roughly — $21.2mn over a couple of days. Nice.

So who could it be?

Unfortunately, Alphaville hasn't been able to find that out. And we should stress again that this is just our theory for what happened. But would probably have to be a very large, sophisticated and daring investor — or possibly a small club of investors.

After all, this was not a riskless trade. Although the IPO did look like it would trade well, there was no guarantee that the price would pop the way it did. Indeed, Bullish fell back to a low of $57.9 on August 19, and at pixel time is trading at about $64. That's obviously still well above its IPO price but down from its first close and the peak of $118 it hit on the first day of trading.

And the size of the trade was humongous. ARKK's assets peaked at $12.83bn on August 14, but by then the share count had already begun to contract, so the best proxy for how much was spent is probably the $2.9bn its assets grew by on Aug 11-12, when share count was ballooning.

Moreover, ARKK is a very volatile ETF, so ploughing several billion dollars into it even for a few days is pretty ballsy. A big drop in something like Tesla (over 11 per cent of the fund) could conceivably have wiped out any profits from the Bullish IPO.

Plus, it looks like there were similar short-term trades happening in two other smaller ARK ETFs that also got some allocations to the Bullish IPO — the ARK Next Generation Internet ETF (ARKW) and the ARK Fintech ETF (ARKF). The size and multiple distinct legs of the trade implies that it was someone big, clever, and ballsy doing it.

Does all this matter? Well, the main obvious losers from all this were pre-existing ARK investors, whose stakes in Bullish and subsequent windfall from the IPO were diluted.

Because of the ETF creation-redemption mechanism, they saw someone barge in to the feast they were about to enjoy, scoff down a lot of the food, chug the wine and then suddenly disappear without even a thank-you. The size and violence of the money flows might also have had a knock-on impact on some of the underlying stocks in ARKK, especially smaller ones where Cathie Wood's ETF is a particularly large shareholder. We reached out to ARK Invest to get their thoughts but haven't heard back from them.

However, Alphaville is particularly interested in this case because of the ongoing ETFisation of markets and the consequences that flow from that.

This ARK-Bullish situation is a pretty unique case — most ETFs are passive funds that don't partake in IPOs — but as they continue to grow in size and funkiness they are going to leave increasingly large and complex footprints on financial markets. Some people will bemoan that, while others will try to profit from it.

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US Audit Board Delays Rollout of Governance Rule Overhaul (2)

Aug. 28, 2025, 12:45 PM PDT; Updated: Aug. 28, 2025, 2:49 PM PDT

Facing pressure from the accounting industry, the US audit regulator said Thursday that it will give firms an extra year to adopt a sweeping overhaul of governance requirements finalized by the Biden administration.

The Public Company Accounting Oversight Board said the reprieve responds to concerns from "various sources" that "some firms" would not be able to meet the looming deadline.

Accounting firms were on track to adopt in December a new standard for how they manage their audit practices from staff training to their roster of clients. The Securities and Exchange Commission approved the new quality control rules in September 2024.

Auditors ready to roll out the new measures can adopt the rules before the extended December 2026 effective date, interim board Chair George Botic said in a statement. "Investors will benefit to the extent that firms do so."

Auditors sought to delay adoption of the new standard to give firms more time to pilot their new safeguards and for the board to issue formal, written guidance answering common questions among other demands laid out in a July 23 letter from the Center for Audit Quality, which represents auditors. The center also sought to delay adoption of updated rules for how auditors analyze digital information.

The original timeline was "unduly aggressive and ultimately counterproductive," board member Christina Ho, who voted against the standard, said in a statement. She urged the board to take advantage of the extra time to provide written guidance and consider "targeted" amendments to the rule.

The board approved the extension in a meeting on Thursday, according to a document filed with the SEC to amend the effective date.

The quality control project was among a suite of standard changes ushered in under former PCAOB Chair Erica Williams, who left in July under pressure from SEC Chair Paul Atkins.

Atkins is looking to replace all five members of the board and named Botic as its temporary steward.

The new quality control standard sets a higher bar for how firms ensure they provide effective, reliable audits and replaced rules written by the profession that predate the PCAOB. The board aligned its project with similar international quality management rules but expanded on those requirements.

Under the PCAOB rules, the largest audit firms will have to set up independent oversight of guardrails intended to mitigate risks firms face in their daily practice that could undermine audit quality, such as overworked auditors or risky clients. The largest firms must also automate their system for tracking conflicts of interest that could undermine auditors' independence.

Related governance rules for audits of private companies, set by an industry-run body, take effect in December.

(Updates with a statement from Christina Ho and additional reporting in paragraphs six and seven. A previous update provided additional details.)

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Securities Law News

Co-Founder of Social Media App IRL Charged with Securities Fraud

Aug. 28, 2025, 8:54 AM PDT

The co-founder and former CEO of now-shuttered technology startup Get Together Inc. is facing criminal charges over claims he misled investors about the promise of social media app IRL.

Federal prosecutors accuse Abraham Shafi of misleading investors about IRL's user base and marketing spending in the lead up to a Series C fundraising round that raised around $170 million from investors.

Shafi has been defending a related civil lawsuit by the US Securities and Exchange Commission for over a year. And Tokyo-based SoftBank Group Corp., which invested around $150 million in the social media company, sued Shafi and others in 2023, claiming he lied about user metrics.

Prosecutors here say Shafi assured investors that IRL achieved its user base without spending a lot on marketing and claimed the company's growth was driven primarily by direct SMS-based, non-incentivized invites. In reality, IRL had been spending millions on "incent advertisements," which offer users incentives to download the app. Users recruited that way tend to be less valuable because they're "less likely to be longtime and invested users of the platform," the indictment, filed Wednesday in the US District Court for the Northern District of California, says.

Shafi concealed payments to the mobile advertising marketing vendor by funneling them through a third-party company that disguised the true nature of the payments in its invoices to IRL, the indictment says.

He also allegedly misused investor funds, spending over $1 million on personal expenses before and after the Series C fundraising round. Hundreds of thousands of dollars went to his April 2022 wedding, prosecutors claim.

Prosecutors also accuse Shafi of obstructing the SEC's investigation. After subpoenas started to drop in 2022, Shafi allegedly instructed one of his employees to hide and delete computer files and to lie to internal investigators about the marketing payments and related invoices. He also allegedly restored an older backup on his phone in order to delete most of the more recent data just before it was supposed to be imaged as part of an internal investigation.

Shafi faces six counts of wire fraud, one count of securities fraud, and one count of obstruction of justice.

His lawyers at Swanson & McNamara LLP and Seward & Kissel LLP, who are representing him the related SEC matter, didn’t immediately respond to Bloomberg Law’s request for comment.

The court is United States v. Shafi , N.D. Cal., No. 4:25-cr-00258, indictment 8/27/25 .

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Securities Law News

Crypto Exchanges to List Trump-Linked World Liberty Token

Aug. 29, 2025, 3:03 AM PDT

Crypto exchanges including Kraken, HTX and KuCoin said they plan to list WLFI, a crypto token backed by the Trump family.

World Liberty Financial Inc., a project co-founded by President Donald Trump, his sons and business allies, initiated a process in July that would allow its flagship token, WLFI, to be listed on crypto exchanges. The token is expected to be activated for trading broadly on Sept. 1, the project said earlier this month.

Read More: Trump Family Crypto Venture Preps Vote With Billions at Stake

Kraken said in a post on social media platform X on Friday that support for the token was "coming soon," without specifying a date that it would be available to trade. HTX and KuCoin said the token would be listed for trading on Sept. 1.

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Anna Irrera

Securities Law News

Eric Trump Calls China ‘a Hell of a Power’ in Digital Assets (1)

Aug. 29, 2025, 2:00 AM PDT

Eric Trump, the son of US President Donald Trump, called China “a hell of a power” in crypto even though the nation has largely banned digital-token trading since 2021.

“There’s no question that China is a hell of a power when it comes to this world,” Trump said in a question-and-answer session with crypto investor David Bailey at the Bitcoin Asia conference in Hong Kong on Friday. He was responding to Bailey’s remark that China is the “other Bitcoin superpower,” along with the US.

WATCH: Eric Trump speaks on stage at Bitcoin Asia.
Source: Bitcoin Asia

China issued a blanket ban on cryptocurrency trading four years ago, the culmination of a years-long clampdown on the industry. Yet signs have persisted that mainland residents have found ways to circumvent the restrictions.

The US, meanwhile, has embraced the industry under Trump, and his family’s businesses have embarked on several crypto ventures. Neither Eric Trump nor Bailey elaborated in detail on why they consider China a power in crypto.

Donald Trump is seeking to secure a summit with his Chinese counterpart Xi Jinping, Bloomberg reported in July. The two countries have sought to de-escalate trade tensions following Trump’s announcement of sweeping global tariffs in April.

Asked about whether Trump and Xi would discuss digital assets during any summit, Eric Trump quipped that “I would certainly love for them to talk about Bitcoin,” adding that “they’ve probably got larger things to talk about.”

He also said he spends “90% of my time in this community now” and predicted Bitcoin will hit $1 million in the next few years. “Buy right now, close your eyes, hold it long term, do not get rid of it,” he said.

As Trump spoke, Bitcoin dipped below $110,000. It was trading at around $109,600 as of 9:57 a.m. in London on Friday.

(Updates with background in fifth paragraph.)

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Securities Law News

Michael Saylor Hit by Market Revolt as His Bitcoin Premium Sinks

Aug. 28, 2025, 6:00 AM PDT

Michael Saylor's once-celebrated Bitcoin experiment is mired in a market backlash, raising questions about the sustainability of the corporate-treasury model he pioneered.

Shares of Strategy Inc., formerly MicroStrategy, have fallen 15% this month, erasing much of the premium the firm long enjoyed over its Bitcoin holdings. The company, long a bellwether for crypto sentiment, is now drawing fresh skepticism.

At the center of the concern is the firm's financing tactics. Strategy's new preferred stock — billed as its main vehicle for future Bitcoin purchases — has drawn tepid demand. A recent sale raised just $47 million, well short of Saylor's ambition for blockbuster capital raising. To make up the shortfall, the company has returned to common-share issuance, despite earlier pledges to limit dilution. That reversal has rattled investors.

The stakes extend far beyond one company. Saylor's playbook — raise debt and equity, buy Bitcoin, watch the market assign a premium, repeat — inspired a wave of treasury firms that collectively hold more than $108 billion, or 4.7% of Bitcoin's supply, according to BitcoinTreasuries.net. If Strategy's premium collapses, confidence in the model itself could unravel.

"The decreasing premium is a natural reaction to competition and alternative ways for traders to gain exposure to digital assets," said **Jake Ostrovskis**, principal analyst on Wintermute's OTC Desk. "Additionally, walking back guidance around no share issuance under 2.5x mNAV has forced short-term reassessments of the corporate strategy."

Bloomberg

Strategy was never just a stock. It became a proof of concept: that a corporate balance sheet could be weaponized as a speculative engine — a permanent source of demand for Bitcoin. The wager rewired how markets imagined corporate finance and inspired a boom in imitators.

The company was a modest enterprise software firm until 2020, when Saylor jolted Wall Street by shifting money into Bitcoin. The stock ceased trading on earnings potential and began trading on a multiple of its Bitcoin — known as mNAV.

That multiple has swung before. It collapsed during the Terra-Luna crisis, rebounded to 3.4 after Donald Trump's re-election, and now sits at 1.57. But this time is different: the decline comes not during a crypto winter, but amid a boom. Treasury-style companies are proliferating. Yet Strategy — the originator — is now issuing shares into a falling multiple, and the market is starting to resist.

In late July, the company pledged not to issue shares at a multiple below 2.5, with narrow exceptions. Two weeks later, the guidance was loosened, and on Aug. 25, the company sold nearly 900,000 new shares.

Some investors online viewed the move as a breach of trust. And issuing equity below mNAV now risks a negative flywheel: falling stock weakens the ability to buy Bitcoin, eroding confidence, further driving down the premium.

Online, Saylor dismissed the criticism, posting an AI-generated image of himself walking past a giant bear. The company didn't respond to requests for comment. His supporters argue that maintaining flexibility may benefit the company should it gain inclusion in the S&P 500 or if Bitcoin booms anew.

The broader cohort is under pressure. According to Capriole Investments, nearly a third of publicly traded companies with Bitcoin on their balance sheets now trade below the value of those reserves. Smaller firms are particularly vulnerable: limited liquidity makes equity issuance more painful, and reliance on convertible notes brings interest burdens and maturity risk.

Strategy has previously said it plans to retire all of its convertible notes over the next four years and shift to preferred stock: securities whose principal will never come due. Most of its smaller peers, lacking both scale and creditworthiness, are unable to replicate that engineering.

“What happens when Bitcoin drops 50%?” said **Charles Edwards**, the founder of Capriole. “Enthusiasm for treasury companies will wane, mNAVs will compress and you will have 100s of companies start to question their treasury strategy altogether.”

The field has also grown more crowded. Over the past year, influencers and politically connected figures have rushed to launch crypto vehicles through SPACs and reverse mergers. Many lack the scale or trading liquidity of Strategy, and could prove less durable in a downturn.

“Is this market frothy? I think it is,” **Jack Mallers**, co-founder and chief executive officer of Twenty One Capital Inc., said during a Bloomberg TV interview Wednesday. “What we learned is, creating a Bitcoin treasury company is not a scarcity within itself. Anyone can register a business, attempt to go public and try to raise money to buy Bitcoin.”

Michael Saylor, Strategy’s executive chairman, says the vast majority of capital flowing into the digital asset space is still going to Bitcoin, and it’s the clear global monetary commodity right now.
Source: Bloomberg

A further challenge has emerged from the rise of spot Bitcoin ETFs. Initially, Strategy and the exchange-traded funds both benefited from a post-election rally. But the comparison has grown less favorable. Funds offer exposure to Bitcoin without the risks tied to corporate governance, leverage or dilution.

“Investors are momentum investors,” said **Campbell Harvey**, a professor at Duke University. “When the price is going up, they are buyers. When the price goes down or remains flat, there is less enthusiasm.”

At the same time, attention is shifting toward other digital assets like Ether and Solana, seen by some as better suited to decentralized finance. Ether-focused treasuries alone have committed more than $19 billion.

Bitcoin itself has eased back from highs reached earlier this month, but remains buoyed by institutional allocations. Many newer treasury firms bought in above $100,000 and lack underlying businesses to sustain them if the market turns.

“There is nothing behind Bitcoin other than sentiment,” said Hilary Allen, a law professor at American University.

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Securities Law News

DOJ Drops Another Fraud Case For a Client of Bondi's Brother (1)

Aug. 28, 2025, 10:56 AM PDT; Updated: Aug. 28, 2025, 1:38 PM PDT

The Justice Department dismissed a criminal wire fraud indictment of two St. Louis real estate developers, the second reversal this month benefiting a white-collar client of Attorney General Pam Bondi's brother.

Brad Bondi, a Paul Hastings partner who represented one of the construction company owners accused last September of 11 counts of wire fraud to earn millions in unlawful tax incentives, successfully convinced DOJ to seek a court dismissal Wednesday. The judge approved it.

The interim US attorney in St. Louis justified the move by arguing that the women and minority business programs the defendants allegedly defrauded are unconstitutional.

It marked an about face from a motion he signed Aug. 4 defending the merits of the prosecution. Interim US Attorney Thomas Albus's latest filing—which didn't include the signature of the case's sole line prosecutor—focused on a June letter from DOJ Solicitor General John Sauer invalidating aspects of race and sex-based business enterprise programs.

Bondi's firm had defended co-defendant Sid Chakraverty from the get go but he entered his first court appearance July 15.

In a post on LinkedIn, Bondi said he'd been involved in the case for "several years." He congratulated the defendants, writing that the government agreed with his contention "that the St. Louis program (under which our clients were being prosecuted) was unconstitutional."

Bondi and his firm didn't respond to questions about whether he communicated with the attorney general or other members of her leadership team about this case.

"This decision was made through proper channels, and the Attorney General had no role in it," said DOJ spokesman Gates McGavick in a statement.

The dismissal comes less than three weeks after another Bondi client, Carolina Amesty, secured an identical outcome. Amesty, a Republican state legislator in Florida, had been charged in January—three days before Trump took office—with stealing government property related to Covid-19 relief fraud.

The chief prosecutor in the Middle District of Florida, Gregory Kehoe, moved for Amesty's dismissal Aug. 6 "in the interest of justice." The judge has also signed off on that resolution.

Brad Bondi's successive victories come after he was overwhelmingly defeated in June in his bid for DC bar association president. That race garnered unusually wide attention and voter participation amid criticism—which he denied—that Bondi would interfere with disciplinary proceedings against allies of President Donald Trump.

The attorney general has been welcoming defense lawyers to make arguments as to why particular criminal prosecutions should be ended due to what she's called the Biden administration's weaponization.

The more recent dismissal was reported on earlier by the St. Louis Business Journal and the St. Louis Post-Dispatch.

In a statement from their spokesman, Chakraverty and his business partner and co-defendant Vic Alston credited "the wisdom and integrity of their counsel, especially Brad Bondi, Renato Mariotti, and Jeff Jensen, who righteously and compellingly made clear that this case should never have been brought."

Jensen, who was US attorney in St. Louis during Trump's prior term, made his first docket appearance Aug. 7. A day later the district court judge presiding over the case recused himself and reassigned it to avoid an appearance of impropriety. The judge, Matthew Schelp, founded a law firm with Jensen in 2010.

(Updated with additional reporting in final two paragraphs.)

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Member Newsletter

August 26, 2025 3:15 p.m.

NOVI, MI - APRIL 8: A new Pulte Homes Inc. subdivision is shown April 8, 2009 in Novi, Michigan. Pulte announced today they acquired Centex Corporation for $1.3 billion in a stock-for-stock deal making Pulte the larg... **MORE**

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I'm by no means the first one to note this. But it's so important that I want to make sure it's at the top of your mind. Have you noticed that out of the blue all of Donald Trump's enemies seem to be getting investigated for mortgage fraud? Letitia James, Adam Schiff and now Fed Board member Lisa Cook; and it's the pretext for her purported firing by President Trump?

Well, it turns out there's a reason. Bill Pulte is Trump's Director of the Federal Housing Finance Agency, an agency created as part of the Global Financial Crisis reforms. From that post he finagled his way into being the head of Fannie Mae and Sallie Mae, the quasi public institutions which back a huge percentage of American home and student loans.

This is a kind of out of the way appointment, the administrator of an agency that oversees the housing market. You'd expect the person to have a relatively low public profile. But that's not the case here. Pulte is heir to one of the biggest residential home building companies in the US. He's also believed to be angling for his own appointment to the Fed. (Residential housing heir in charge of mortgage rates … what could go wrong?) He is also a full-time Twitter warrior on behalf of Donald Trump. Pulte has more than 3 million followers on Twitter, which if you're not familiar with these things is a huge, huge number. By comparison, the President's extremely online son, Don Jr., has just 5 million. So Pulte is federal housing loan administrator by day, MAGA Twitter warrior/influencer by night. And in fact, if you look at the date-stamps, he's that by day as well.

Each of these investigations and more have originated with Pulte.

Put the pieces together: as Director of the FHFA and the two Fannies, Pulte has access to the financial data of virtually everyone in the country. You need to have gotten a home mortgage or a student loan of course. So it's not literally everyone. But obviously that covers quite a lot of people. And, critically for him, it covers probably literally everyone in public life.

The process goes like this. Pulte clearly has a Trump enemies list. Whether he gets directed explicitly by the White House or just knows on his own what's wanted really doesn't matter. He sifts through everyone's mortgage records, finds something that he claims is evidence of fraud and immediately makes a referral to the DOJ. Now it's a "federal investigation." From there he heads on to Twitter and announces that James or Cook or Schiff is guilty of mortgage fraud and under investigation. He goes beyond that and starts selectively releasing documents on Twitter or making claims about their guilt.

We tend to think of the weaponization of federal government power as mostly centering on the Justice Department. But as you can see here, that's hardly the case. It is a glaring example of the rules of the road under the second Trump administration. All the powers of the state are unleashed against the people who displease the president. Full stop.

It's worth noting that every target of Trump's degenerate 'justice' does not need to be squeaky clean. It's possible one of these people has some discrepancy in some mortgage paperwork. But that's hardly the point. The Trump system is impunity for friends and infinite scrutiny for adversaries. In the case of Lisa Cook it hardly matters if there's anything really wrong with one of her mortgages. He's clearly happy to release anything on Twitter regardless of the rules. And so far it's been innuendo and inconclusive documentation at best. But Pulte and Trump don't care about that. They want her seat on the Fed board. That's all that matters.

That's the system we're now living under. It's operating in the open. You should know about it.

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Securities Law News

Cook Signals 'Clerical Error' May Be Behind Mortgage Dispute (2)

Aug. 28, 2025, 2:29 PM PDT

Federal Reserve Governor **Lisa Cook**'s lawyers suggested that an unintentional "clerical error" may have been behind the mortgage dispute over which President Donald Trump wants her fired.

Cook sued Thursday to block Trump's "illegal attempt," saying he's using a phony pretext that doesn't amount to sufficient "cause" to remove her from the US central bank. In court papers, her lawyers laid out for the first time a potential defense to allegations that she fraudulently listed homes in Michigan and Georgia as a "primary residence" when she obtained mortgages in 2021.

Read More: Lisa Cook Suit Says Her Firing by Trump Puts US Economy at Risk

Trump's director of the Federal Housing Finance Agency, **Bill Pulte**, claimed she made that declaration to secure more favorable loan terms, and has referred the matter to prosecutors.

Cook's lawyers offered an explanation to blunt the fraudulent intent that Trump and Pulte have ascribed to her over the past week. They suggested that if there were errors, she didn't mean to deceive anyone, and no one was harmed, a standard known as materiality.

The potential that Cook "mislabeled a home's purpose on a mortgage application well before her Board appointment without any allegation of its intentionality or materiality would not be the type of 'offense' that would constitute 'cause'" for her removal, Cook's lawyers wrote in a court filing seeking a temporary restraining order.

Trump and Pulte "have not even alleged explicitly that Ms. Cook benefited from any clerical error, or that such an error was intentional," wrote Cook's lawyers, led by Abbe Lowell.

Pulte has attacked Cook in a series of social-media posts over the past week. After Cook filed her lawsuit Thursday, Pulte posted: "No one is above the law." He also posted a graphic that he said shows matching signatures on mortgage documents for the properties in Michigan and Atlanta.

Cook said in a court filing that Trump attempted to fire her without giving her a chance to respond to Pulte's allegations, denying her the constitutional right to due process. She also said she was entitled to a hearing under the Federal Reserve Act.

The lawsuit is a major escalation of the growing clash between the White House and the Fed, which has resisted Trump's demands to lower interest rates even as Trump has repeatedly attacked Jerome Powell. The Fed chair has also resisted the president's demands to resign. In her suit, Cook suggested the attempts to remove both her and Powell are part of Trump's effort to seize control of the Fed.

"It is clear from the circumstances surrounding Governor Cook's purported removal from the Federal Reserve Board that the mortgage allegations against her are pretextual, in order to effectuate her prompt removal and vacate a seat for President Trump to fill and forward his agenda to undermine the independence of the Federal Reserve," according to the complaint.

US District Judge **Jia Cobb**, who was nominated by former President Joe Biden, has set a hearing for Friday in Washington federal court on Cook's request for a restraining order. The hearing is set for 10 a.m. local time.

The administration has also made mortgage fraud claims against two high-profile critics of the president, California Senator Adam Schiff and New York Attorney General Letitia James. Both have denied wrongdoing, while Democrats have accused the president of weaponizing federal law enforcement against his perceived enemies.

(Updates in 10th paragraph with details of complaint)

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The Big Read US economy

The calculated silence of America’s business and finance leaders

As Donald Trump has launched a series of blunt interventions in the corporate and financial worlds, he has received little pushback from industry or investors

James Fontanella-Khan, **George Steer**, **Claire Jones**, **Aiden Reiter** and **Ian Smith**

Published 3 HOURS AGO

When Zohran Mamdani resoundingly won the Democratic mayoral primary for New York in June, Wall Street and Silicon Valley erupted in outrage at his promises of free buses, rent freezes and city-run groceries.

Hedge fund billionaires Bill Ackman and Dan Loeb, Jamie Dimon of JPMorgan Chase and tech entrepreneur Brian Armstrong of Coinbase all warned about the risk of heavy-handed interference in the city’s economy.

David Solomon, chief executive of Goldman Sachs, took to LinkedIn to slam Mamdani’s proposal to freeze city-controlled rents. “When New York tried it in the 1920s and 1960s, it limited affordable housing, narrowed investment in new housing, and made housing outside the control area more expensive,” he wrote.

The reaction over the past few weeks as US President Donald Trump has unveiled a series of blunt interventions into the workings of both the financial system and the operations of private companies has been very different.

On Monday evening, he announced the firing of Federal Reserve governor Lisa Cook — part of a broader campaign by his administration to exert greater political control over the central bank as the president pushes for lower interest rates.

Lip-Bu Tan, CEO of Intel, leaves after a meeting at the White House this month. The US administration has announced it will be taking a 10 per cent stake in the chipmaker © Alex Wroblewski/Bloomberg

Last Friday, the administration announced it would be taking a 10 per cent stake in chipmaker Intel, using funds initially granted during the Biden administration in a bid to boost manufacturing. Intel agreed to the deal two weeks after Trump had called for the company's chief executive, Lip-Bu Tan, to resign.

Commerce secretary Howard Lutnick said this week that the administration would consider taking stakes in defence and munitions companies. The administration is to take a cut of the profits made by Nvidia and AMD from selling advanced chips to China and has negotiated a "golden share" in US Steel.

Cracker Barrel, a quirky restaurant chain that offers southern-style comfort food mostly along American highways, announced on Tuesday that it was abandoning a rebranding effort that had been criticised by the president and his allies for being "woke". The original logo, known as "Old Timer", is being restored.

Yet as Trump has stepped up his attacks on the Fed, Wall Street's leading figures have offered only limited criticism. And while many of his corporate interventions amount to the sort of European-style dirigisme that the US business elite once loved to deride, the response to Trump's agenda has been near silence.

Indeed, some business leaders have offered praise of the president's attempts to direct the economy. Satya Nadella, chief executive of Microsoft, which has long been an important Intel customer, hailed "President Trump's bold strategy to rebuild this critical industry on American soil".

Taylor Budowich, White House deputy chief of staff, said Cracker Barrel had called to thank Trump for "weighing in" on its rebranding. "They wanted the President to know that they heard him," he said on X.

The opening of a Cracker Barrel in Sacramento in 2018. The restaurant is abandoning a rebranding effort the president and his allies attacked for being 'woke' © Hector Amezcua/The Sacramento Bee/ZUMA/Reuters

The juxtaposition with Mamdani is striking: vociferous criticism of the frontrunner to be New York's mayor from business leaders, but calculated restraint as the president reshapes the rules of free enterprise in America.

There are many reasons for the reticence, from buoyant financial markets to a hope that private persuasion is a better tactic with this president than public arguments.

But several chief executives and advisers say that the principal explanation lies in fear. Criticising Trump, they argue, is risky business.

"They're more afraid of the guy in power in Washington than of the potential mayor of New York," says Ilya Somin, a law professor at George Mason University and scholar at the libertarian Cato Institute. "Even if Mamdani does become mayor of New York, he will not have the kind of power that the president of the US has."

The backdrop to the relative silence from business and financial leaders has been the muted reaction in markets to the president's interventions.

After Trump announced he was firing Cook over unproven mortgage-fraud allegations, markets barely flinched. Two-year Treasuries rallied, 30-year bonds sold off and the yield curve steepened, but the moves were modest and stocks kept rising.

> **What is there to react to? Nothing has changed . . . If Trump, say, made [his son] Eric head of the Fed, then we'd get a market reaction**

Cook, the first Black woman to serve on the Fed's board, has refused to step down and has launched a lawsuit challenging her dismissal, which she says infringes her constitutional rights.

Robin Brooks, a Brookings Institution fellow, says the foreign exchange market was more exercised by the speech last Friday by Fed chair Jay Powell at the Jackson Hole conference of cental bankers, when he talked about the possibility of rate cuts, than it was by the Monday announcement of Cook's firing.

Markets are "cynical", he says, focused on near-term rate signals rather than the longer-term damage to the Fed's credibility. "Markets are fully aware that — under heavy pressure from the White House — the Fed is making another dovish pivot."

Some economists say they expected a stronger response from the sort of bond market investors who usually criticise over-reach by governments.

"For the sort of people that go to Jackson Hole, this is a Defcon 1 event," says Anil Kashyap, an economist at the University of Chicago's Booth School of Business who advises the research department at the Chicago Fed, referring to the highest state of military readiness. "I'm very surprised that the market hasn't reacted more."

The New York Stock Exchange building. After the news of Lisa Cook's firing, markets barely flinched and stocks continued to rise © Michael Nagle/Bloomberg

Some investors see the muted reaction as evidence of a new paradigm: so-called fiscal dominance, where central bank policy bends to politics.

"Whether or not people like the process of politicising central banks, when you're dealing with ballooning deficits, this is the way it goes," says Charlie McElligott, a derivatives strategist at Nomura.

Markets are behaving exactly as expected "if you assume that easy monetary policy supporting hot fiscal policy will help embed inflation", he adds, citing the sell-off in long-dated Treasuries and rallies in gold and bitcoin, popular hedges against inflation. "Lisa Cook's firing doesn't change anything, it's confirmation of what we've already been trading."

James Bianco, president of Bianco Research, says the lack of reaction has not been a surprise. "What is there to react to? Nothing has changed. The Fed is going to cut rates whether [Cook] is there or not," he says. "If Trump, say, made [his son] Eric head of the Fed, then we'd get a market reaction."

Steven Grey of Grey Value Management argues that calm markets do not equal support for Trump. “The bond market doesn’t need to react immediately,” he says. “Investors have been desensitised, which is a natural and logical response. And the protections afforded to Cook are strong, even considering Trump’s sway over the courts.”

But some warn that the focus on the short-term impact on rates ignores that fact that Trump is pushing for a fundamental shake-up in the way the US economy is run.

“If you ask why one country is rich and another country is poor . . . it’s the institutions, stupid,” says Frederic Mishkin, a professor at Columbia Business School and a former Fed governor.

“In the short-term, Cook’s firing is not going to change what the Fed is going to do on rates. And markets focus on the short-term. In the long run, [Trump’s attacks] are a huge deal. The destruction of the institutions that have served us so well, for so long, is a disaster.”

Will there be any resistance to Trump?

The biggest obstacle to the president would be concerted opposition from leading Republicans in Congress, many of whom see themselves as defenders of business interests.

But there have been few signs of public criticism from Republican leaders to either his attacks on the Fed or interventions in business — much to the derision of Democrats.

Zohran Mamdani, NYC mayoral candidate, at a news conference outside the Jacob K. Javits Federal Building in New York this month. ‘Even if Mamdani does become mayor of New York, he will not have the kind of power that the president of the US has,’ says law professor Ilya Somin © Victor J Blue/Bloomberg

“Pushback? From the Republicans in Congress?” Elizabeth Warren, the top Democrat on the Senate Banking Committee, asked on CNBC this week. “These guys are going to need spine transplants.”

There has been some criticism from Republican and libertarian intellectuals who have strongly condemned Trump’s interference in the running of corporations such as Intel.

Joel Griffith, a senior fellow at Advancing American Freedom, wrote on X that the “partial nationalization of Intel reflects disturbing reality: economic policy is increasingly a mix of ‘internationalist’ socialism on the Left and ‘nationalist’ socialism on the so-called ‘New Right’.”

“I am sorry, no, this is terrible. This is socialism,” conservative pundit Erick Erickson said on his podcast about the Intel deal. “This is actual socialism happening by a Republican administration.”

Somin, the law professor at George Mason, says that Trump has moved the Republican party from being a relatively conservative, generally free market party, to being more like a European rightwing nationalist party that supports big government.

Nationalists have a long history of these sorts of interventionist policies that have a lot in common leftwing socialist policies, but the rhetoric is different

“Nationalists have a long history of these sorts of interventionist policies that have a lot in common with sort of leftwing socialist policies, but the rhetoric and symbolism is different,” he says.

The other key factor would be public opposition from some of the leading figures on Wall Street.

Dimon at JPMorgan has criticised the attacks on the Fed. In a call with analysts last month, he said that “the independence of the Fed is absolutely critical” and added that “playing around with the Fed can often have adverse consequences”.

But Dimon, who last month dismissed Mamdani’s economic views as “the same ideological mush that means nothing in the real world” and criticised “idiots” in the Democratic party, has stopped short of criticising Trump directly.

The historic Marriner S Eccles building in Washington, which is the headquarters of the Federal Reserve governors. President Trump fired Fed governor Lisa Cook as part of a campaign to exert more political control over the central bank © Stefani Reynolds/Bloomberg

Goldman's Solomon, too, has defended Fed independence, which he told CNBC last month was "something we should fight to preserve", without directly calling out Trump.

Trump recently said that he would "love" it if Powell were to resign, but that he feared firing him would "disrupt the market". Some observers believe that the absence of criticism from investors, business leaders or Republican senators will be interpreted by the administration as a green light for further attacks on Fed independence.

Others believe that a form of self-interest will prevent corporate and financial leaders from taking a public stand against Trump's interventionist policies.

"I find what he is doing abhorrent, but the truth is I've been a huge beneficiary of Trump's policies," says a senior finance executive and longtime Democratic donor. "The 'big, beautiful bill' cut my taxes, boosted cash flow for my company, and pumped stimulus into the market — so my portfolio keeps growing."

Meta Platforms

Zuckerberg's AI hires disrupt Meta with swift exits and threats to leave

Longtime acolytes are sidelined as Big Tech chief directs biggest leadership reorganisation in two decades

Hannah Murphy, **Cristina Criddle** and **George Hammond** in San Francisco

Published 10 HOURS AGO

Within days of joining Meta, Shengjia Zhao, co-creator of OpenAI's ChatGPT, had threatened to quit and return to his former employer, in a blow to Mark Zuckerberg's multibillion-dollar push to build "personal superintelligence".

Zhao went as far as to sign employment paperwork to go back to OpenAI. Shortly afterwards, according to four people familiar with the matter, he was given the title of Meta's new "chief AI scientist".

The incident underscores Zuckerberg's turbulent effort to direct the most dramatic reorganisation of Meta's senior leadership in the group's 20-year history.

One of the few remaining Big Tech founder-CEOs, Zuckerberg has relied on longtime acolytes such as chief product officer Chris Cox to head up his favoured departments and build out his upper ranks.

But in the battle to dominate AI, the billionaire is shifting towards a new and recently hired generation of executives including Zhao, former Scale AI CEO Alexandr Wang and former GitHub chief Nat Friedman.

Current staff are adapting to the reinvention of Meta's AI efforts as the newcomers seek to flex their power while adjusting to the idiosyncrasies of working within a sprawling $1.95tn giant with a hands-on chief executive.

"There's a lot of big men on campus," said one investor who is close with some of Meta's new AI leaders.

Adding to the tumult, a handful of new AI staff have already decided to leave after brief tenures, according to people familiar with the matter.

This includes Ethan Knight, a machine-learning scientist who joined the company weeks ago. Another, Avi Verma, a former OpenAI researcher, went through Meta's onboarding process but never showed up for his first day, according to a person familiar with the matter.

In a tweet on X on Wednesday, Rishabh Agarwal, a research scientist who started at Meta in April, announced his departure. He said that while Zuckerberg and Wang's pitch was "incredibly compelling", he "felt the pull to take on a different kind of risk", without giving more detail.

Meanwhile, Chaya Nayak and Loredana Crisan, generative AI staffers who had worked at Meta for nine and 10 years respectively, are among the more than half a dozen veteran employees to announce they are leaving in recent days. Wired first reported some details of recent exits, including Zhao's threatened departure.

Meta said: "We appreciate that there's outsized interest in seemingly every minute detail of our AI efforts, no matter how inconsequential or mundane, but we're just focused on doing the work to deliver personal superintelligence."

A spokesperson said Zhao had been scientific lead of the Meta superintelligence effort from the outset, and the company had waited until the team was in place before formalising his chief scientist title.

"Some attrition is normal for any organisation of this size. Most of these employees had been with the company for years, and we wish them the best," they added.

Over the summer, Zuckerberg went on a hiring spree to coax AI researchers from rivals such as OpenAI and Apple with the promise of nine-figure sign-on bonuses and access to vast computing resources in a bid to catch up with rival labs.

This month, Meta announced it was restructuring its AI group — recently renamed Meta Superintelligence Lab (MSL) — into four distinct teams. It is the fourth overhaul of its AI efforts in six months.

“One more reorg and everything will be fixed,” joked Meta research scientist Mimansa Jaiswal on X last week. “Just one more.”

Overseeing all of Meta’s AI efforts is Wang, a well-connected and commercially minded Silicon Valley entrepreneur, who was poached by Zuckerberg as part of a $14bn investment in his Scale data labelling group.

The 28-year-old is heading Zuckerberg’s most secretive new department known as “TBD” — shorthand for “to be determined” — which is filled with marquee hires.

In one of the new team’s first moves, Meta is no longer actively working on releasing its flagship Llama Behemoth model to the public, after it failed to perform as hoped, according to people familiar with the matter. Instead, TBD is focused on building newer cutting-edge models.

Multiple company insiders describe Zuckerberg as deeply invested and involved in the TBD team, while others criticise him for “micromanaging”.

Wang and Zuckerberg have struggled to align on a timeline to achieve the chief executive’s goal of reaching superintelligence, or AI that surpasses human capabilities, according to another person familiar with the matter. The person said Zuckerberg has urged the team to move faster.

Meta said this allegation was “manufactured tension without basis in fact that’s clearly being pushed by dramatic, navel-gazing busybodies”.

Wang’s leadership style has chafed with some, according to people familiar with the matter, who noted he does not have previous experience managing teams across a Big Tech corporation.

One former insider said some new AI recruits have felt frustrated by the company's bureaucracy and internal competition for resources that they were promised, such as access to computing power.

"While TBD Labs is still relatively new, we believe it has the greatest compute-per-researcher in the industry, and that will only increase," Meta said.

Wang and other former Scale staffers have struggled with some of the idiosyncratic ways of working at Meta, according to someone familiar with his thinking, for example having to adjust to not having revenue goals as they once did as a start-up.

Despite teething problems, some have celebrated the leadership shift, including the appointment of popular entrepreneur and venture capitalist Friedman as head of Products and Applied Research, the team tasked with integrating the models into Meta's own apps.

The hiring of Zhao, a top technical expert, has also been regarded as a coup by some at Meta and in the industry, who feel he has the decisiveness to propel the company's AI development.

The shake-up has partially sidelined other Meta leaders. Yann LeCun, Meta's chief AI scientist, has remained in the role but is now reporting into Wang.

Ahmad Al-Dahle, who led Meta's Llama and generative AI efforts earlier in the year, has not been named as head of any teams. Cox remains chief product officer, but Wang reports directly into Zuckerberg — cutting Cox out of overseeing generative AI, an area that was previously under his purview.

Meta said that Cox "remains heavily involved" in its broader AI efforts, including overseeing its recommendations systems.

Going forward, Meta is weighing potential cuts to the AI team, one person said. In a memo shared with managers last week, seen by the Financial Times, Meta said that it was "temporarily pausing hiring across all [Meta Superintelligence Labs] teams, with the exception of business critical roles".

Wang's staff would evaluate requested hires on a case-by-case basis, but the freeze "will allow leadership to thoughtfully plan our 2026 headcount growth as we work through our strategy", the memo said.

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Telehealth Co. Faces Investor Suit Over Revenue Reversal

By **Emilie Ruscoe**

Law360 (August 28, 2025, 2:43 PM EDT) -- Telemedicine company LifeMD Inc. and two of its executives face a proposed investor class action alleging they "recklessly" raised revenue expectations for the 2025 fiscal year in May, only to lower their forecast three months later after seeing increased costs affecting the company's men's health and weight management offerings.

In a complaint filed Wednesday in New York federal court, LifeMD investor Tyler Johnston took aim at LifeMD, its CEO, Justin Schreiber, and its chief financial officer, Marc Benathen, with claims that the company set goals for itself earlier this year that would "be impossible to achieve if even relatively normal or expected headwinds were to materialize."

The issue dates back to May, the investor said, when Benathen cited "the outperformance of our Telehealth business" as the company announced its first-quarter earnings and said it would raise the lower end of its full-year total revenue guidance by $3 million, to $268 million from $265 million.

But in August, the company reversed course, significantly lowering its expected revenue range to between $250 million and $255 million, Johnston said.

According to Johnston, the company said it was forecasting lower revenues for the full year in connection with higher than expected customer acquisition costs for its men's health segment RexMD in the second quarter of the year, and a higher than expected refund rate for its weight management segment in the second quarter of 2025.

Following the announcement, trading prices for LifeMD shares fell nearly 49% from nearly $12 to under $7, Johnston said.

Johnston alleged the company ratcheted up earnings expectations in May when it "recklessly issued heightened 2025 guidance, as defendants did not properly account for increased customer acquisition costs in its RexMD business, as well as customer acquisition costs associated with selling drugs designed to treat obesity" such as the branded GLP-1 agonist drugs Wegovy and Zepbound.

The investor also cited Benathen's assertion in May that "we tend to take a relatively conservative view to revenue," which the finance executive made in response to an analyst question about revenue expectations.

The investor also noted that the May earnings statements were framed by Schreiber's announcement that in the beginning of 2025, the company had seen its first-ever quarter of profitability "well ahead of expectations."

Johnston's proposed class includes those who purchased LifeMD shares between May 7, the day after the company's May earnings call, and Aug. 5, the day of the company's August earnings call.

On Thursday, counsel for Johnston declined to comment and a representative for LifeMD did not immediately respond to a request for comment.

Johnston is represented by Phillip Kim and Laurence M. Rosen of the Rosen Law Firm PA.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Johnston v. LifeMD Inc et al., case number 2:25-cv-04761, in the U.S. District Court for the Eastern District of New York.

--Editing by Patrick Reagan.

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2nd Circ. Affirms Hedge Fund Win In $87M Short-Swing Suit

By **Katryna Perera**

Law360 (August 28, 2025, 9:10 PM EDT) -- A unanimous Second Circuit panel on Thursday upheld a summary judgment win for hedge fund Armistice Capital LLC and its managing member in a derivative suit brought by a shareholder of biotechnology company Vaxart Inc., which sought disgorgement of $87 million in short-swing profits that allegedly were wrongfully obtained by the investment adviser.

A Second Circuit panel said in a published opinion that the challenged transactions in the lawsuit were exempt from insider trading rules because Vaxart's board approved them. (AP Photo/Mary Altaffer, File)

A three-judge panel for the Second Circuit said in a published **opinion**, written by U.S. Circuit Judge Barrington D. Parker, that the challenged transactions in the suit were exempt from insider trading rules because Vaxart's board approved them.

The suit focused on board-approved amendments to Vaxart warrants acquired by Armistice that increased the warrants' "blocker" provision, which governed the percentage of outstanding shares of Vaxart common stock that Armistice could own. Plaintiff Andrew Roth claimed the defendants illegally obtained millions in short-swing profits due to the amendments.

In March 2024, U.S. District Judge Jennifer L. Rochon **granted an early win** to Armistice, its chief investment officer, Steven Boyd, and one of the adviser's master funds. The complaint identifies the chief investment officer as Stephen Boyd. Specifically, Judge Rochon found the qualifications for exemption from insider-trading rules under U.S. Securities and Exchange Commission Rule 16b-3 had all been met.

According to court filings, transactions are exempt under the rule if "the defendant acquires the issuer's equity securities from the issuer; the defendant is an officer or director (including a director by deputization) of the issuer at the time of the transaction, and the issuer's board of directors approves the transaction in advance."

The Second Circuit panel on Thursday agreed with Judge Rochon's findings, saying that by amending the warrants' equity cap, Vaxart's board authorized Armistice's purported short-swing transaction, and that Judge Rochon correctly recognized that Armistice and Boyd were statutory insiders of Vaxart.

"Boyd was a textbook insider because he served on the board of Vaxart. Armistice was an insider because 'an investor becomes a statutory insider when it deputizes an individual to serve as its representative on an issuer's board of directors,'" the opinion states.

According to the opinion, Armistice deputized Boyd and nonparty Keith Maher to serve as its representatives on Vaxart's board.

It is also undisputed that the transaction at issue involved the defendant acquiring issuer equity securities from the issuer, the panel said, rendering it exempt under the relevant SEC rule.

"Vaxart's board approved amendments to the blocker provision that increased the maximum percentage of Vaxart stock Armistice could hold to 19.99%. Appellees then exercised their warrants and acquired additional Vaxart shares," the opinion states.

According to the opinion, Roth argued on appeal that the Rule 16b-3(d) exemption does not apply because the Vaxart board did not know that Armistice was a "director by deputization."

"Under Roth's theory, it was not enough that the rest of the Vaxart board understood Boyd and Maher served as the representatives of Armistice during their tenures as directors of Vaxart. Instead, the Vaxart board had to understand that Armistice itself was a director, and thus, Armistice had to formally 'disclose[] to Vaxart its status as a director by deputization,'" the opinion states.

But the panel said Thursday that through this theory, Roth is articulating a "new knowledge requirement" for the Rule 16b-3(d) exemption to apply, and that the district court correctly rejected his theory.

"The issuer's board need not be on notice of the investor's formal, legal status as a 'director by deputization' to understand that it is approving a transaction with an insider," the opinion states. "Instead, to ensure that short-swing profits are not 'at the expense of uninformed shareholders,' an issuer's board simply needs to be aware that one of its members serves as the eyes, ears, voice, and vote of an investor when deciding whether to approve a transaction with that investor."

The panel added that the Vaxart board needed to at least understand that Boyd and Maher were acting as Armistice's representatives, and it is undisputed that the board had such knowledge based on board and company filings, as well as attestations from individual Vaxart directors.

Vaxart develops vaccines that are administered through tablets instead of injections. In October 2019, Armistice owned roughly 65% of Vaxart's outstanding common stock. That same month, Vaxart's board approved changes requested by Boyd to increase the size of the board by two seats and install himself and three of his appointees in the open seats.

Earlier in 2019, Armistice acquired approximately 20,000 warrants from Vaxart in two separate transactions. Each transaction contained a "beneficial ownership limitation" provision, otherwise known as a "blocker" provision, limiting the percentage of outstanding Vaxart common stock that Armistice could own.

After joining the board, Boyd discussed amending the warrants' blocker provisions with other members. In June 2020, the board, excluding Boyd and Maher, approved amendments to the warrants that increased the beneficial ownership thresholds in the blocker provisions to 19.99%, according to the order.

Before trading began on June 26, 2020, the order stated, Armistice owned 7 million shares of Vaxart common stock, constituting about 9.4% of the company's outstanding shares. That day, Vaxart announced that its oral COVID-19 vaccine had been selected to participate in a study sponsored by the federal government. Following this announcement, Armistice exercised the warrants for roughly 16.6 million and 4 million shares, respectively, at prices of 30 cents and $1.10 per share, according to the order.

Armistice also sold approximately 27 million shares of Vaxart common stock — 20 million of which Armistice had received after exercising the warrants, and ultimately, through the transactions, Armistice liquidated virtually all of its Vaxart holdings, according to the order.

Roth alleged that through these transactions, Armistice wrongfully realized short-swing profits of at least $87 million, directly resulting from the warrant amendments.

Counsel for Armistice declined to comment Thursday and counsel for Roth did not immediately respond to requests for comment.

U.S. Circuit Judges Barrington D. Parker, Beth Robinson and Myrna Pérez sat on the panel for the Second Circuit.

Roth is represented by Glenn F. Ostrager and Joshua S. Broitman of Ostrager Chong Flaherty & Broitman PC.

The defendants are represented by Douglas Rappaport, Kate Shapiro, James Tysse and Michael Chen of Akin Gump Strauss Hauer & Feld LLP.

The case is Roth v. Armistice Capital LLC, case number 24-950, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Michael Watanabe.

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Mylan Must Face Generic Drug Price-Fixing Claims In MDL

By **Jared Foretek**

Law360 (August 28, 2025, 6:41 PM EDT) -- A Pennsylvania federal judge shot down most of Mylan's request for an early win in multidistrict litigation claiming price-fixing of the generic antidepressant clomipramine, finding sufficient evidence for the company to have to face direct buyers' claims at trial, but trimming claims that it inflated the drug's price at CVS.

In an **opinion** issued Wednesday, U.S. District Judge Cynthia M. Rufe ruled that extensive circumstantial evidence pointed to a conspiracy between the three major defendants in the MDL — Mylan and fellow generic-makers Taro and Sandoz — to artificially inflate the prices for the antidepressant commonly used to treat obsessive-compulsive disorder.

Between extensive phone communications between executives of the three companies from April to July 2023 and price increases at the same time, as well as testimony from former Sandoz employees about agreements to raise prices in concert with competitors, the judge said the direct purchaser plaintiffs, or DPPs, had cleared the summary judgment bar.

"That the manufacturers all increased, or are on record as intending to increase, their [wholesale acquisition cost] prices at substantially the same time (within a matter of weeks) to a reasonably similar price is sufficient evidence of conscious parallelism in these circumstances to move DPP's claims past summary judgment," Judge Rufe said.

The clomipramine suit is among the bellwethers in a sweeping MDL claiming price-fixing antitrust violations by the generic-makers.

In her Wednesday opinion, Judge Rufe spent significant time focusing on alleged phone calls between the executives: Ara Aprahamian and Michael Perfetto of Taro, Michael Aigner of Mylan, and Chris Bihari of Sandoz.

Shortly after Aprahamian began working at Taro, the plaintiffs say he created a pricing decisions document with 10 generic drugs, including clomipramine, on April 3, 2013. The next day, the plaintiffs claim, he spoke to Aigner on the phone for 15 minutes and then phoned Bihari immediately.

While Aigner hasn't described the subject of the phone call with Aprahamian, the judge wrote, Bihari "testified that his communications with Aprahamian included an agreement that Sandoz would follow Taro's price increases and not take market share."

In the following days, Mylan noted that clomipramine was a "Taro price increase item."

Further phone calls ensued, the plaintiffs claim, all coinciding with price increases. Ultimately, the plaintiffs say, all three companies raised prices between 1,500% and 3,400% within weeks of each other.

"Viewed in the totality, the evidence that Aprahamian and Aigner spoke for 15 minutes on April 4, and that Aprahamian immediately called Bihari after speaking with Aigner and that, four days later on April 8, Mylan identified clomipramine as a 'price increase item,' weighs in favor of establishing an inference of conspiracy," Judge Rufe wrote.

On Wednesday, the judge also rejected a summary judgment motion from Taro and Sandoz due to a pending settlement with the plaintiffs. She also denied summary judgment for Mylan on most of the end-payor plaintiffs' claims, relying on the same reasoning as the direct purchasers, though Judge Rufe did cut their claims regarding CVS pharmacy sales, saying there was no evidence that CVS paid inflated prices for the drug.

The CVS sales ruling could be significant, as Mylan claims that CVS accounts for a quarter of the clomipramine sales in the case. Mylan said that Taro was CVS' clomipramine supplier until March 2013, when Mylan offered a lower price for the drug. CVS and Mylan ultimately reached a deal, with Mylan supplying the drug at prices 19% and 28% lower than Taro's, Mylan said.

"Following this negotiation, CVS did not pay prices for clomipramine above what it had paid before the alleged conspiracy," the judge wrote.

The end-payor plaintiffs argued that while CVS didn't end up paying inflated prices compared to the period leading up to the conspiracy, Taro actually ceded CVS as a buyer to Mylan as part of their deal. As a result, the purchasers claimed, CVS paid more than it could have had the companies continued competing legitimately. They pointed to Taro canceling a proposed price cut for CVS, arguing that the move was made as part of the conspiracy to cede CVS to Mylan.

But the judge ruled that the plaintiffs didn't have enough evidence to back up their theory.

"This evidence is too sparse to permit an inference that CVS paid an inflated price for clomipramine," she wrote.

In their summary judgment motions, the companies had argued that their parallel increases were the natural result of competitive behavior in an oligopolistic market. The clomipramine market only had three players, the companies said, and their decisions to raise prices simply reflected rational, independent decision-making.

But Judge Rufe said that the companies aren't entitled to summary judgment just because there may be an innocent explanation.

"Defendants ... are not entitled to summary judgment just by arguing that there is a plausible explanation for their potentially anticompetitive behavior," the judge wrote.

Attorneys for the plaintiffs and for Mylan did not immediately respond to requests for comment Thursday.

The direct purchaser plaintiffs are represented by Dianne M. Nast of NastLaw LLC, Thomas M. Sobol of Hagens Berman Sobol Shapiro LLP, Linda P. Nussbaum of Nussbaum Law Group PC, David F. Sorensen of Berger Montague PC, Robert N. Kaplan of Kaplan Fox & Kilsheimer LLP, and Michael L. Roberts of Roberts Law Firm US PC.

The end-payor plaintiffs are represented by Roberta D. Liebenberg and Paul Costa of Fine Kaplan & Black RPC.

Mylan is represented by Chul Pak, Michael Sommer, Jeffrey C. Bank and Seth Silber of Wilson Sonsini Goodrich & Rosati PC.

Sandoz is represented by Matthew D. Kent of Alston & Bird LLP.

Taro Pharmaceuticals is represented by Robert L. Maier of Baker Botts LLP.

The case is In re: Generic Pharmaceuticals Pricing Antitrust Litigation, case number 2:16-md-02724, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Adam LoBelia.

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Unicoin Says SEC's $100M Fraud Suit 'Twists' Its Disclosures

By **Aislinn Keely**

Law360 (August 28, 2025, 8:40 PM EDT) -- Crypto firm Unicoin told a New York federal judge that the U.S. Securities and Exchange Commission's claim that it ran a $100 million fraud is based on "cherry-picked" statements taken out of context and "ignores" the firm's warnings to investors within its own disclosures with the agency.

Unicoin Inc., its CEO and Chairman Alex Konanykhin, its former Chief Investment Officer Alex Dominguez and its former president and current board member Silvina Moschini moved to dismiss the SEC's suit in a Wednesday **brief** that argued the agency's complaint "twists Unicoin's disclosures in the company's own SEC filings and improperly recasts these disclosures as proof of deception."

The agency accused the firm and its executives in May of promoting a "massive securities offering fraud" by raising more than $100 million through the sale of its "Unicoin rights certificates" that purportedly gave buyers the right to forthcoming tokens called unicoins. The agency claimed the company misled investors about "fundamental attributes" of the tokens and overstated the financial success of the company in some instances.

But Unicoin and its executives argued that the allegations are based on "snippets of communications" taken out of context and "routine financial projection and optimism" recast as fraud.

"Securities fraud demands more," they argued. "It requires a false statement, made with scienter, that reasonable investors would have relied on. Where, as here, the very risks the SEC identifies were disclosed openly and repeatedly, those elements cannot be met."

The executives argued the complaint can't stand since it "lumped together" allegations against all the defendants, leaving it unclear as to which claims and conduct are attributed to each individual. The complaint also doesn't describe a motive or claim that any of the defendants personally benefited from the purported fraud, focusing instead on allegations of recklessness, the defendants said.

They also fired back at the SEC's claims they misled investors with statements that indicated the tokens would be "backed" by real-world assets. According to Unicoin, in many instances the executives were stating that the company was backed by the assets it acquired, rather than the tokens themselves.

In cases where the company did claim the tokens were asset-backed, Unicoin didn't mislead investors into thinking the tokens would grant investors interests in a portfolio of real-world assets akin to a fully collateralized investment, the defendants said.

"A reasonable investor in the crypto space would have understood that the term 'asset-backed' was meant to differentiate between the meme coins flooding the market, which have no function or underlying value, with tokens such as unicoins, which 'won't just be thin air based on supply and demand,'" they said.

Additionally, because the tokens themselves hadn't been minted yet, the SEC can't claim the firm lied about characteristics of a token that doesn't yet exist, Unicoin argued.

"In short, the SEC's action here has prevented Unicoin from minting tokens, thereby depriving it of the opportunity to back them with its assets, while also seeking to hold defendants liable for failing to create tokens that are fully collateralized by real-world assets," the defendants said.

The SEC brought the Unicoin case under current Chairman Paul Atkins, who has committed to refocusing the SEC's crypto enforcement approach on fraud rather than registration requirements that many have decried as unclear. The agency has continued to pursue the Unicoin matter despite dropping other crypto enforcement cases amid the policy shift.

The agency's suit also claims the firm misled investors on the value of the assets "backing" the enterprise. Though the firm said it owned $1.4 billion worth of real estate, it never took hold of the property titles and the numbers were inflated far beyond the price the company paid in the deal, the complaint charged.

But Unicoin said in its motion that it disclosed in investor presentations that the deals were still in the process of closing. Its numbers were also based on third-party appraisals of the values the properties were expected to have once the company developed them, with, for instance, a resort on land in Thailand, the firm said.

The appraisals were opinions, so the SEC "cannot merely assert that they were false," the firm argued.

"None of the defendants are alleged to have fabricated any of the valuations they disclosed," the defendants said. "At worst, they relied on shaky appraisals by third parties they weren't entirely sure of. But that simply is not enough for scienter under the securities laws."

The company also didn't falsely claim that the token was SEC-registered, the defendants argued. According to Unicoin, it accurately claimed that the firm itself was SEC-registered, and disclosed to investors that it intended to register its tokens prior to listing them on a U.S. exchange. It also disclosed that it did not plan to register the Unicoin certificates with the SEC, the motion said.

As for the alleged inflation of its sales numbers in social media posts, the defendants said the SEC's complaint conflates sales with proceeds. The firm can fairly include the "unrealized value" of the contracts when it touts its sales, and its disclosures and other statements clarified the distinction, according to the firm.

While the SEC said Unicoin overstated how much runway it had based on the allegedly overvalued properties, Unicoin said the statements "were plainly forward-looking expressions of optimism."

Claims that former CEO Konanykhin unlawfully sold Unicoin certificates to unaccredited investors on the secondary market also can't pass muster, since they're only backed by assertions that he inquired about selling to unaccredited investors at one point and later sold the certificates, according to the motion. The complaint makes a logical leap that the sales must've gone to unaccredited investors, Konanykhin argued.

Counsel for Unicoin, Michael Homer of Dynamis LLP, said in a statement that the SEC's suit "sends a chilling message" around responsible innovation since Unicoin is "the rare crypto company that tried to play by the SEC's rules."

"They voluntarily chose to register with the SEC, they filed audited financial statements, they built their business with full transparency," said Homer. "And now the SEC is punishing them. It's a baffling move, and we intend to fight it every step of the way, beginning with this motion to dismiss the SEC's spurious complaint."

The SEC did not immediately respond to a request for comment Thursday.

The SEC is represented by its own Adam B. Gottlieb, Russell J. Feldman, W. Bradley Ney, Jason D. Schall and Jocelyn Berteaud.

Unicoin and the executives are represented by Michael B. Homer, Eric S. Rosen and Yusef Al-Jarani of Dynamis LLP.

The case is Securities and Exchange Commission v. Unicoin Inc. et al., case number 1:25-cv-04245, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Hailey Konnath. Editing by Linda Voorhis.
