

# Tariff-Related Securities Suit Filed Against Dow Chemical



dandodiary.com/2025/09/articles/securities-litigation/tariff-related-securities-suit-filed-against-dow-chemical

Kevin LaCroix

September 2, 2025



Since the outset of President Trump's efforts to conduct trade policy through an active use of tariffs, I have been concerned about the possibility of tariff-related corporate and securities litigation. Inevitably, I have been concerned, investors will say that companies tried to soft-pedal the likely impact of tariffs on the companies' financial results. But while I have worried about the prospects for this type of litigation, I have not been able to provide an example of what I was concerned about – that is, until now. Late last week, a plaintiff shareholder filed a securities class action against industrial materials company Dow, Inc., alleging that the company made misleading statements about the impact the Trump tariffs would have on the company. A copy of the new complaint against Dow can be found [here](#).

## *Background*

Dow is an industrial materials company located in Michigan. According to the complaint, the company has historically touted its "industry-leading dividend." The complaint alleges that during the class period, the company made statements reassuring that a number of adverse factors, including the impact of the Trump tariffs, would not affect the company's financial results nor would it affect the company's dividend.

For example, the complaint alleges that during the class period, the company said in various statement that it "was well positioned to weather macroeconomic and tariff-related headwinds while maintaining sufficient levels of financial flexibility to support the Company's lucrative dividend." The company also allegedly referred to its "industry-leading flexibility to navigate global trade dynamics."

On July 24, 2025, the company when the company released its 2Q25 earnings, it announced disappointing financial results. In a call with analysts, the company's CEO blamed the poor results on "the lower-for-longer earnings environment that our industry is facing, amplified by recent trade and tariff uncertainties." The company also announced that same day that it was lowering its dividend. According to the complaint, the company's share price declined nearly 18% on the news.

## *The Lawsuit*

On August 29, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Eastern District of Michigan against Dow and certain of its executives. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between January 30, 2025, and July 23, 2025.

The complaint alleges that during the class period the defendants failed to disclose that "(i) Dow's ability to mitigate macroeconomic and tariff-related headwinds, as well as to maintain the financial flexibility needed to support its lucrative dividend, was overstated; (ii) the true scope and severity of the foregoing headwinds' negative impacts on Dow's business and financial condition was understated, particularly with respect to competitive and pricing pressures, softening global sales and demand for the Company's products, and an oversupply of products in the Company's global markets; and (iii) as a result, Defendants' public statements were materially false and misleading at all relevant times."

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

## *Discussion*

As far as I know, this lawsuit is the first securities suit to be filed related to the Trump tariffs. I suspect strongly it will not be the last. I think there will be more to follow, perhaps many more.

My concern is that when companies announce disappointing results, with the disappointment in whole or in part due to the adverse global trade conditions resulting from the impact of the tariffs, plaintiffs' lawyers armed with hindsight will comb through prior company statements looking for optimistic comments about the company's ability to weather the tariffs. The kinds of statements the plaintiffs' lawyers will be looking for will touch on the company's supply chain resilience, or its ability to source materials from lower-tariff countries, or its ability to have its suppliers or customers absorb the tariff-related costs. One particularly complicating factor has been the Trump administration's variable and changing approach to tariffs, with increase tariffs or trade deals arising unpredictably.

The unpredictability may prove to be particularly challenging to many companies, and not just to the extent it increases the uncertainty of future results. Many companies may find the unpredictability challenging to planning and setting strategy. Some companies may find it expedient to refrain from strategic investments, in light of the uncertainty, which could in and of itself weigh on financial results. All of these conditions could be exacerbated to the extent rising prices contribute to lower consumer sentiment, as well as to lowered business

expenditure. Companies reporting disappointing financial results in the months ahead may face heightened scrutiny for their prior statements about their ability to weather the global trade disarray.

The possibility of future tariff-related securities suits and other corporate litigation is definitely something to watch for in the months ahead.

**Securities Law News**

# This Week in Chancery Court: Albertsons, Kroger, Pritzker, Juul

Sept. 2, 2025, 2:00 AM PDT

The country's largest grocery chains will argue in Delaware Chancery Court this week over whether the sudden resignation of The Kroger Co.'s CEO is relevant to a dispute over a botched merger blocked on antitrust grounds.

Here's more from the court's post-holiday calendar:

**Tuesday:** Lien v. Eagle Equity Partners II LLC, Del. Ch., No. 2022-0972, settlement hearing 9/2/25.

At issue: Whether Vice Chancellor Paul A. Fioravanti Jr. approves a \$10 million cash settlement to end class action claims over a blank-check transaction that took online gaming platform Skillz Inc. public. The attorneys representing the investor leading the litigation seek a \$1.75 million fee award, according to a brief supporting the deal. The architects of the merger between Skillz and a special purpose acquisition company include CBS Entertainment ex-president Jeff Sagansky and former MGM Studios chairman Harry Sloan.

Court action: A settlement hearing will be held in Wilmington, Del.

Jeff Sagansky, Harry Sloan Pay \$10 Million to Settle Skillz Case

**Wednesday:** Bower v. Pritzker, Del. Ch., No. 2024-0985, hearing 9/3/25.

At issue: Hotel billionaire Nick Pritzker, venture capitalist Riaz Valani, and Juul Labs Inc. seek the dismissal of a lawsuit challenging the rescue financing that allowed the vaping company to avert bankruptcy over its marketing practices. It's the second lawsuit in Chancery Court in which Valani and Pritzker have faced claims that they exploited Juul's crisis and steered value from the company to themselves and their investment vehicles. The \$1.9 billion debt-to-equity conversion "was obviously in the best interests of all stockholders," according to Juul's brief supporting the motion to dismiss.

Court action: Oral arguments will be held in Wilmington, Del.

Nick Pritzker Hit With New Lawsuit Over Juul Corporate Bailout

**Thursday:** Albertsons Companies, Inc. v. The Kroger Co., Del. Ch., No. 2024-1276, hearing 9/4/25.

At issue: Vice Chancellor Lori W. Will considers the demand from Albertsons Cos. for Kroger to provide details about ex-Kroger CEO Rodney McMullen's personal conduct. McMullen resigned suddenly this year, following Kroger's failed \$24.6 billion merger with Albertsons. An Ohio court blocked lawyers from questioning McMullen about his resignation in a breach-of-contract lawsuit brought by the singer Jewel and an events company Kroger hired to stage a wellness festival. In the Delaware case, Albertsons seeks billions of dollars in damages, while Kroger has said Albertsons undermined the deal.

Court action: A hearing will be held in Wilmington, Del.

Albertsons Wants Details on Ex-Kroger CEO's Personal Conduct (1)

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**Securities Law News**

# Robinhood Court Revives Investor Suit Over Post-IPO Selloff (2)

Aug. 29, 2025, 9:26 AM PDT; Updated: Aug. 29, 2025, 3:09 PM PDT

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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 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.

Information about declines in certain metrics merely needed to be “material” to prompt updated disclosures in registration and prospectus documents between regular quarterly reports, Judge Milan D. Smith Jr. said for the court.

The US District Court for the Northern District of California incorrectly used a stricter standard from the First Circuit for the investors to meet when it dismissed the case, Smith said. That standard, requiring such intra-quarter disclosures only when there’s been an “extreme departure” from historical results, “is not the law of this circuit,” he said.

The court also sent one claim alleging a misleading Securities and Exchange Commission filing back to the district court but affirmed the dismissal of another claim based on a different SEC filing.

Judge Johnnie B. Rawlinson dissented in part, saying the court should have affirmed the dismissal of all the claims. “In light of Robinhood’s significant disclosures regarding the panoply of risks it faced, there is simply no basis under our precedent for this litigation to proceed,” she said.

Robinhood said in an email that the investors’ claims are meritless. “We are pleased with the Ninth Circuit’s decision that affirms the District Court’s dismissal of one of plaintiff’s legal theories, and we look forward to demonstrating again that all claims should be dismissed,” it said.

The investors alleged Robinhood failed to disclose declining performance measures and cryptocurrency trading in the registration statement for its July 2021 IPO. It disclosed strong transaction-based revenue figures for 2020 and the first quarter of 2021—the period of frenzied meme stock trading and a surge in Dogecoin transactions—but allegedly didn't provide final results for the second quarter, or early third quarter, of 2021. And it made additional statements in the offering documents that the investors said were misleading.

In October 2021, the company posted disappointing financial results for the third quarter, causing its stock price to decline by about 10%, the investors said.

Smith said that while registrants “have no duty to disclose interim sales” when they lag behind internal projections, this case alleges “Robinhood’s interim results lagged behind its last reported results,” he said.

“If Robinhood had disclosed the difference between its interim results and last reported results, then it would have revealed its results but it would not have speculated about the future,” he said, joined by Judge Jed S. Rakoff of the Southern District of New York, who sat by designation.

Attorneys for the investors didn't immediately respond to an emailed request for comment.

Counsel for the investors included Scott & Scott Attorneys at Law LLP. Counsel for the defendants included Cravath Swaine & Moore LLP and Orrick Herrington & Sutcliffe LLP.

The case is *Sodha v. Golubowski*, 9th Cir., No. 24-1036, 8/29/25 .

(Updates story with comment from Robinhood in seventh paragraph and request for investor comment in 12th paragraph.)

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## Class Action

### Manage Newsletters

## **2U Co-Founder, Executives Avoid Claims of Misleading Investors**

Sept. 2, 2025, 10:27 AM PDT

### **Summary by Bloomberg AI**

AI Generated



- A shareholder lawsuit against current and former top executives at 2U Inc. was dismissed without prejudice by Judge Adam B. Abelson of the US District Court for the District of Maryland.
- The lawsuit claimed the executives misled investors leading up to the company's bankruptcy filing, but Judge Abelson wrote that the plaintiff, Michael Beaumont, failed to allege any material omissions or misrepresentations that violated federal securities laws.
- The judge said the executives' statements were either "inactionable puffery" or not adequately alleged to be false at the time they were made, and that Beaumont failed to sufficiently allege that certain statements were false.

Current and former top executives at the online education platform 2U Inc. escaped, for now, a shareholder lawsuit claiming they misled investors leading up to the company's bankruptcy filing last year.

Michael Beaumont failed to allege the executives made any material omissions or misrepresentations that violated federal securities laws, Judge Adam B. Abelson of the US District Court for the District of Maryland wrote in an Aug. 29 order dismissing the case without prejudice.

2U, which works with colleges and universities to deliver content to students seeking online degrees, acquired the nonprofit course provider edX in 2021. The company sought to consolidate its offerings into a single platform with hopes of reaching an international audience with lower advertising costs.

But 2U began to terminate contracts with institutions in 2023, as universities "increasingly opted to offer their own online classes." 2U in February last year disclosed its revenue for 2023 was \$946 million—nearly \$20 million below estimates—and announced revenue guidance for 2024 of \$805 to \$815 million. The company's stock price fell nearly 60% that day, the opinion said.

2U filed for bankruptcy in July last year.

Beaumont accused 2U co-founder and former CEO Christopher Paucek and other executives of misleading investors starting in February 2022. The complaint alleged statements from Paucek in 2022 describing the acquisition of edX as gaining a “powerful driver of profitable growth and margin improvement” were false or misleading because the edX launch was ““rough”” at the beginning. Beaumont also alleged various statements to investors over the course of two years about the company’s increasing confidence in its platform strategy were false or misleading.

But all of the challenged statements either “fall squarely in the category of inactionable puffery,” or weren’t adequately alleged to be false at the time they were made, Abelson said.

The executives’ statements in 2022 that 2U “has been demonstrating resilience” and that its partnerships help make institutions more sustainable are puffery and statements that any reasonable investor would “understand to convey personal beliefs rather than objective facts.” Beaumont also failed to sufficiently allege that statements from Paucek and former CFO Paul Lalljie in 2022 that 2U was focused on ““unlocking the potential of edX,”” investing in its degree programs, and completed its strategic realignment were false, Abelson wrote.

The complaint doesn’t allege with particularity that the company wasn’t focused on “unlocking the potential of edX or improving profitability,” and whether the company was successful in doing so or executing its realignment strategy doesn’t render those statements false, the judge said.

Statements by the executives that they believed 2U would meet its revenue targets for 2023 are also forward-looking statements that aren’t actionable under securities laws. And even if Beaumont’s argument that 2U’s partners were already in the process of terminating their contracts at the same time Paucek was reassuring investors were taken to be true, that information was disclosed to investors. It’s therefore “unclear” how Beaumont would have relied on the optimistic, “albeit, possibly naïve,” statements that the platform strategy was working, Abelson said.

Weisbrod Matteis & Copley PLLC represents Beaumont. Latham & Watkins LLP represents the defendants.

The case is Beaumont v. Paucek , 2025 BL 308380, D. Md., No. 8:24-cv-01723, 8/29/25 .

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**Securities Law News**

# Ford Investor Drops Claims to Demand Board File Suit Instead

Aug. 29, 2025, 2:15 PM PDT

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A Ford Motor Co. investor obtained the voluntary dismissal of his suit against the board after telling a federal court that he'll ask the directors to initiate a lawsuit themselves.

Judge Linda V. Parker ordered the dismissal of Richard Rich's derivative suit in the US District Court for the Eastern District of Michigan on Thursday. Rich alleged in his suit that Ford board members are responsible for the automaker's failure to disclose quality control problems and higher-than-expected warranty costs stemming from those issues.

- Their actions harmed Ford by causing it to overpay for stock repurchases by about \$116 million and by subjecting it to a proposed securities class action, he said
- Rich told the court he's dropping the suit "to pursue his remedies under Delaware state law, specifically, to make a demand upon Ford's Board of Directors to initiate litigation to pursue claims substantially similar" to his
- Other derivative suits with similar allegations are also pending, according to the court order

The Rosen Law Firm PA and Wolf Haldenstein Adler Freeman & Herz LLP represented Rich. Latham & Watkins LLP and Bush Seyferth PLLC represented the directors.

The case is Rich v. Farley , E.D. Mich., No. 2:24-cv-12906, 8/28/25 .

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## Securities Law

### Manage Newsletters

## **Lightstone REITs Win Reprieve from Shareholders' Liquidity Suit**

Sept. 2, 2025, 11:59 AM PDT

### **Summary by Bloomberg AI**

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- A US District Court judge said investors didn't plead facts to infer that Lightstone REITs' CEO and others failed to disclose an improper motive behind charter changes.
- The 2022 paperwork sufficiently disclosed limits on giving out lists of shareholders and other issues, according to the judge.
- The investors can file an amended complaint within 45 days of the judge's order, after he agreed that their claims were direct, not derivative, under Maryland law.

A trio of Lightstone real estate investment trusts, their advisors, and directors beat allegations they gave shareholders deficient documents to vote on amending their charters.

The investors didn't plead any facts for the court to infer that Lightstone REITs' CEO and others failed to disclose an improper motive behind the changes, Judge Michael A. Shipp said Sunday. The 2022 paperwork sufficiently disclosed limits on giving out lists of shareholders, an extension of time limits for liquidation, and other issues, the US District Court for the District of New Jersey judge said in a Sunday opinion.

The investors said since the amendments were instilled in 2023, there's been an "indefinite delay of liquidation or other liquidity events that would permit shareholders to monetize their investments, which in many instances date back more than ten years." A REIT invests in and manages a real estate portfolio, distributing income to shareholders.

The three suing investors claim CEO David Lichtenstein's financial interest would've been worthless if they liquidated in 2024 to 2025 under two of the trusts' pre-amendment charters, and that Lightstone entities wanted to keep collecting on advisory fees, prompting them to recommend amendments putting off a liquidating event.

But they didn't plead facts to back up their theory of an undisclosed motive; the 2022 proxy statements "explicitly identify" Lichtenstein's financial interests, Shipp said. And reasonable stockholders would understand a recommendation on changing durational provisions for liquidation "was given to provide additional flexibility in pursuing liquidity, not that liquidity would be pursued more quickly."

The investors' proposed class action lacked factual allegations to support how they were "denied their benefit of the bargain" from the prior charters, Shipp said.

### **Direct, Not Derivative**

Still, Shipp agreed that investors' claims were direct, not derivative as the defendants had argued, under Maryland law where the REITs are incorporated—the fiduciary duties that the advisors allegedly breached would be owed directly to shareholders. Derivative claims seek remedies for the company. Direct claims instead seek to recompense its investors.

Shipp said the plaintiffs, who hold illiquid shares of these non-traded REITs, can file an amended complaint within 45 days of his order.

Lightstone leaders had removed the case to federal court after shareholders sued in a New Jersey court, alleging the REIT's directors and advisors breached their fiduciary duties by recommending amendments not in their best interests and sharing allegedly misleading proxy statements.

They said in flouting these duties, defendants breached prior charters as contracts in Maryland. The investors wanted 2023 amendments rescinded, a declaration of breach of fiduciary duties and terms of the prior charters, and damages, among other relief.

Levi & Korsinsky LLP and attorney Christopher J. Gray of New York represent shareholders Kenneth N. Ayer, Martha Harvey, and Larry Melton. Baughman Kroup Bosse PLLC and Hartmann Doherty Rosaberman & Bulbulia LLP represent Lightstone and the other defendants. Neither side's lawyers immediately responded to emails seeking comment.

The case is *Ayer v. Lightstone Value Plus Reit I, Inc.*, D.N.J., No. 24-10371, unpublished 8/31/25.

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## Class Action

### Manage Newsletters

## **Scynexis Released from Investor's Lawsuit Over Drug Recall Risk**

Sept. 2, 2025, 12:23 PM PDT

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Scynexis Inc. and top executives defeated shareholder allegations it didn't properly disclose cross-contamination risks of an antifungal drug before a voluntary recall and 34% stock drop.

The investor leading the case won't file an amended complaint or appeal a ruling that dismissed his most recent pleading, he and the pharmaceutical company told the US District Court for the District of New Jersey. While lead plaintiff Brian Feldman's claims are dismissed with prejudice, investors with similar allegations can file their own lawsuits, according to the joint agreement signed by Judge Brian Martinotti on Aug. 29.

- Feldman's complaint didn't adequately allege statements were false or misleading when made, Martinotti said in July, letting him replead. Statements concerned compliance with federal regulations and other factors about manufacturing equipment being separated enough to prevent the risk of cross contamination for its ibrexafungerp tablets
- Scynexis issued a recall in 2023 after licensing partner GSK plc reviewed vendor manufacturing equipment, finding potential risk of a cross-contaminant

Glancy Prongay & Murray LLP is lead counsel for Feldman, who wanted to represent a class of those who got stock from March 31, 2023, through Sept. 22, 2023. Cooley LLP represents Scynexis, CEO David Angulo, and Chief Financial Officer Ivor Macleod. Neither law firm nor Scynexis immediately responded to emails seeking comment. Attorney Frank R. Cruz in Century City, Calif., is Feldman's additional counsel and Carella, Byrne, Cecchi, Olstein, Brody & Agnello PC is his liaison counsel.

The case is Feldman v. Scynexis, Inc. , D.N.J., No. 2:23-cv-22082, closed 8/29/25 .

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## Class Action

### Manage Newsletters

## **Freddie Mac Beats Ohio's Investor Suit Over Mortgage Crisis (2)**

Sept. 2, 2025, 6:17AM PDT; Updated: Sept. 2, 2025, 9:57AM PDT

### **Summary by Bloomberg AI**

AI Generated



- The Federal Home Loan Mortgage Corp, known as Freddie Mac, defeated a long-running lawsuit alleging that the lender misrepresented its exposure to risky, nontraditional mortgage loans before the housing crash.
- The Ohio Public Employees Retirement System failed to establish a dispute of key facts over whether Freddie Mac made false statements about its subprime and other semi-risky loan exposure before its stock price plummeted in November 2007.
- The US District Court for the Northern District of Ohio's judgment in favor of Freddie Mac and three former executives seemingly ends an almost 18-year legal saga brought by the public pension fund.

The Federal Home Loan Mortgage Corp. defeated a long-running lawsuit alleging that the lender, known as Freddie Mac, misrepresented its exposure to risky, nontraditional mortgage loans before the housing crash that spurred the Great Recession.

The Ohio Public Employees Retirement System, which previously was denied shareholder class certification, failed to establish a dispute of key facts over whether Freddie Mac made false statements about its subprime and other semi-risky loan exposure before its stock price plummeted in November 2007, Judge Benita Y. Pearson said.

The US District Court for the Northern District of Ohio's judgment in favor of Freddie Mac and three former executives seemingly ends, barring another appeal, an almost 18-year legal saga brought by the public pension fund. The suit previously took trips to the US Court of Appeals for the Sixth Circuit.

OPERS argued that Freddie's internal management systems recognized substantial subprime risk while publicly touting limited exposures. But evidence presented throughout litigation showed "internal tools served different purposes than the public disclosures," Pearson said Aug. 29. In context, public "statements accurately reflected the Company's exposure based on disclosed methodology."

There's no universal definition of subprime or "Alt-A" loans, Pearson said, drawing from defendants' arguments. "The evidence, viewed in the light most favorable to OPERS, does not create genuine disputes sufficient to survive summary judgment on whether the credit risk statements were false or misleading." And OPERS failed to establish actionable misrepresentations or omissions regarding Freddie Mac's underwriting guidelines.

### Financial Crisis

OPERS also didn't establish it relied on alleged misstatements in investing decisions, Pearson said. It failed to prove damages or loss causation tied to a 29% stock drop on Nov. 20, 2007, when Freddie Mac posted a \$2 billion loss amid the housing market's downturn.

"The fundamental problem with OPERS' loss causation claim is that it fails to demonstrate that the November 20, 2007 corrective disclosure revealed risks that were previously concealed rather than risks that were already known to the market," she said.

Partner James K. Goldfarb of Davis Wright Tremaine LLP said client and former Freddie Mac chief financial officer Anthony S. Piszal "has always maintained that the lawsuit lacked merit, factually and legally. He is delighted that the court reviewed the evidence closely and determined that no reasonable juror could find for the plaintiff on any element of its claims."

The mortgage lender's victory in this shareholder suit comes while the President Donald Trump weighs a public offering for Freddie and its counterpart Fannie Mae. The companies have been under federal government conservatorship since the 2008 financial crisis. They were later delisted from the New York Stock Exchange and now trade over the counter.

Markovits, Stock & DeMarco LLC and Strauss Troy serve as special counsel to Ohio Attorney General Dave Yost, the state's chief litigator.

Morgan, Lewis & Bockius LLP and Porter Wright Morris & Arthur LLP represent Freddie Mac. Sidley Austin LLP and Dechert LLP represent other former Freddie Mac executives who were also defendants.

None of these law firms immediately responded to emails seeking comment. Nor did Yost's office or Freddie Mac.

Squire Patton Boggs (US) LLP also represented some defendants locally, but deferred comment to their lead counsel.

The case is Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortg. Corp. , N.D. Ohio, No. 4:08-cv-00160, 8/29/25 .

(Updates with a comment from a former executive's attorney in the eighth paragraph.)

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## Class Action

### Manage Newsletters

## **Bank of America, Goldman Escape Corporate Bond Collusion Claims**

Sept. 2, 2025, 11:55 AM PDT

### **Summary by Bloomberg AI**

AI Generated



- A federal judge granted the banks' motion to dismiss, saying the claims are time-barred due to the four-year statute of limitations on antitrust claims.
- The judge said the claims were "too conclusory" to support a finding that the banks actively tried to conceal a conspiracy, and the plaintiffs' allegations were based on information available as early as 2000.
- The plaintiffs' suit, which claimed the banks colluded to restrain trading of "odd lots" of corporate bonds, was dismissed, with the judge denying them leave to amend due to insufficient allegations of a conspiracy.

Bank of America Corp., Goldman Sachs Group Inc., and other big banks convinced a federal judge Tuesday to toss claims that they suppressed corporate-bond trades, freeing them from a suit brought more than five years ago by investor plaintiffs.

Judge Valerie E. Caproni of the US District Court for the Southern District of New York granted the banks' motion to dismiss, saying the claims are time-barred due to the four-year statute of limitations on antitrust claims. Caproni also said the claims were far "too conclusory" to support a finding that the banks actively tried to conceal a conspiracy.

The Wall Street giants have been targeted by antitrust plaintiffs for a range of claims in recent years, including that they worked as a cartel to block competition in the stock loan market.

Investors brought this case against the banks in 2020, claiming they colluded to restrain trading of "odd lots" of corporate bonds, smaller trades made mainly by individuals.

The conspiracy allegedly began as early as Aug. 1, 2006 and caused the plaintiffs to pay more when buying corporate bonds.

Plaintiffs claimed their suit was still timely and that the continuing violation doctrine applied.

But Caproni said that the plaintiffs derived many of their allegations from articles, press reports, and data that were available as early as 2000, information that put them on notice of the conspiracy.

The plaintiffs allege the banks' concealing conduct prevented them from discovering earlier that they were injured, despite the exercise of reasonable due diligence.

"That is plainly inadequate," Caproni said in her ruling. "General assertions of due diligence without more specific allegations of what diligent actions the plaintiffs took do not satisfy the pleading standard."

Caproni also denied the plaintiffs leave to amend, saying they are still asserting the same disparate allegations without pleading facts sufficient from which the court can infer a conspiracy.

The case was dismissed in 2021 by Judge Lewis J. Liman, who later recused himself because his wife owned stock in Bank of America while he was hearing the case.

Bank of America is represented by A&O Shearman. Goldman is represented by Sullivan & Cromwell LLP. The plaintiffs are represented by firms including Korein Tillery.

The case is Litovich v. Bank of Am. Corp. , S.D.N.Y., No. 1:20-cv-03154, 9/2/25 .

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# Ten big banks defeat antitrust lawsuit in US over bond trades



reuters.com/sustainability/boards-policy-regulation/ten-big-banks-defeat-antitrust-lawsuit-us-over-bond-trades-2025-09-02

Jonathan Stempel

September 2, 2025

Item 1 of 2 A view shows signage on a branch of Barclays Bank in London, Britain, March 17, 2023. REUTERS/Peter Nicholls/File Photo

**[1/2]**A view shows signage on a branch of Barclays Bank in London, Britain, March 17, 2023. REUTERS/Peter Nicholls/File Photo [Purchase Licensing Rights, opens new tab](#)  
NEW YORK, Sept 2 (Reuters) - A U.S. judge on Tuesday dismissed an antitrust lawsuit accusing 10 large banks of conspiring to rig corporate bond prices at the expense of ordinary investors, after the original judge recused himself because his wife owned stock in one of the banks.

Investors accused Bank of America ([BAC.N](#)), [opens new tab](#), Barclays ([BARC.L](#)), [opens new tab](#), Citigroup ([C.N](#)), [opens new tab](#), Credit Suisse ([UBSG.S](#)), [opens new tab](#), Deutsche Bank ([DBKGn.DE](#)), [opens new tab](#), Goldman Sachs ([GS.N](#)), [opens new tab](#), JPMorgan Chase ([JPM.N](#)), [opens new tab](#), Morgan Stanley ([MS.N](#)), [opens new tab](#), NatWest ([NWG.L](#)), [opens new tab](#) and Wells Fargo ([WFC.N](#)), [opens new tab](#) of overcharging them by billions of dollars since 2006 on "[odd-lot](#)" trades.

Make sense of the latest ESG trends affecting companies and governments with the Reuters Sustainable Switch newsletter. Sign up [here](#).

Such trades involve fewer than 1,000 bonds or are worth less than \$1 million, and comprise most corporate bond trades. Investors said the banks illegally charged spreads 25% to 300% higher than on larger "round-lot" trades, inflating profits.

U.S. District Judge Valerie Caproni in Manhattan said the investors failed to prove the banks conspired to operate the Bond Desk, Trading Edge and Trade Web platforms as a "catch-and-kill" operation to thwart fair prices, while boycotting rival platforms that promoted fair prices.

Though the banks controlled an estimated 65% of U.S. underwriting and 90% of U.S. trading volume in corporate bonds, "it does not follow that defendants have the power to control pricing of the bonds in the secondary market," Caproni said.

The judge also found no overt acts by the banks to advance the alleged conspiracy in the four years before the lawsuit was filed in April 2020, dooming the Sherman Act case.

Lawyers for the investors did not immediately respond to requests for comment. Caproni's dismissal is with prejudice, meaning the case cannot be brought again.

The case was originally dismissed by U.S. District Judge Lewis Liman in October 2021.

Four months later, Liman's clerk disclosed that the judge's wife owned Bank of America stock while the case was pending, but it didn't affect the judge's decision making.

In July 2024, the federal appeals court in Manhattan [revived](#) the case, saying Liman's conflict was "almost certainly" unknowing but could call his impartiality into question. Liman was not accused of wrongdoing.

The case is Litovich v Bank of America Corp et al, U.S. District Court, Southern District of New York, No. 20-03154.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler

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

# Tesla taps high-powered legal team to battle \$243 million Autopilot verdict



reuters.com/legal/government/tesla-taps-high-powered-legal-team-battle-243-million-autopilot-verdict-2025-08-29

Mike Scarcella

August 29, 2025

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

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

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

Aug 29 (Reuters) - Elon Musk's electric vehicle maker Tesla ([TSLA.O](#)), [opens new tab](#) has hired a trio of prominent new lawyers as it tries to overturn a jury's \$243 million verdict in a lawsuit over the fatal crash of a Model S equipped with Tesla's Autopilot self-driving feature. Tesla, in a [filing, opens new tab](#) in the federal court in Miami, Florida, on Friday asked a judge to find the jury's August 1 verdict legally unjustified and throw out the case, or to order a new trial.

Spearheading the effort are Theodore Boutrous Jr and Miguel Estrada, both top appellate lawyers at law firm Gibson Dunn, and former U.S. Solicitor General Paul Clement.

Clement is a leading advocate at the U.S. Supreme Court who has argued more than 100 cases there. Boutrous and Estrada have for years defended major companies in communications, energy and other sectors.

Tesla did not immediately respond to requests for comment. Its previous lawyers at Bowman and Brooke remain on the case as well.

In a statement, Boutrous said the Tesla "verdict is a true outlier given the facts and law and we look forward to setting things right."

Brett Schreiber, an attorney for the plaintiffs, in a statement on Friday said they were confident the court would uphold the verdict against "Tesla's reckless and unsafe development and deployment of its Autopilot system."

The trial focused on an April 2019 crash in Key Largo that struck the victims' parked Chevrolet Tahoe as they were standing beside it. One person was killed, and another was seriously injured.

The lawsuit accused Tesla of defective design and alleged the company misled customers about Autopilot's capabilities. Tesla said the Model S driver was to blame.

Tesla told U.S. District Judge Beth Bloom that the verdict would “invite future juries to punish manufacturers who bring new safety features to market with sweeping and unpredictable tort liability.”

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

Tesla's new legal team argued that Florida law prohibits punitive damages in the case and challenged expert testimony presented by the plaintiffs.

“Tesla’s design and warnings, and plaintiffs’ proof, came nowhere near establishing that extraordinary level of culpability,” the filing said.

Tesla previously [rejected a proposed](#) \$60 million settlement in the case.

The case is Neima Benavides v. Tesla Inc, U.S. District Court, Southern District of Florida, No. 1:21-cv-21940-BB.

Read more:

[Tesla rejected \\$60 million settlement before losing \\$243 million Autopilot verdict](#)  
[Autopilot verdict deals Tesla a 'black eye', threatens Musk's robotaxi ambitions](#)  
[Tesla ordered by Florida jury to pay \\$243 million in fatal Autopilot crash](#)  
[Tesla wins ruling to limit damages in US lawsuit over Autopilot crash](#)

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

**California Brief**

Perspectives

# Sue Or Be Sued: California Courts Lead Way Testing DAO Rights

Sept. 2, 2025, 1:30 AM PDT

*Professional Perspectives give authors space to provide context about an area of law or take an in-depth look at a topic that could benefit their practice.*

**The Bottom Line**

- To date, only California courts have tackled thorny questions about the capacity of decentralized autonomous organizations (DAOs) to participate in litigation.
- DAOs have faltered when they haven't argued their capacity to sue or be sued.
- There are concrete steps a DAO can take to shield and empower itself, and avoid jurisdictional complications.

As the cryptocurrency industry matures, inconsistencies remain as to the treatment of decentralized autonomous organizations, or DAOs, in regulatory proceedings and civil or criminal litigation. To date, the issue has only been litigated in California federal courts applying state law, and has yet to reach a full, merit-based disposition.

In no instance has a court issued an opinion on a DAO's capacity to sue or be sued in an action in which the DAO appeared or had direct representation in the proceedings.

This article will review factors that help determine a DAO's capacity to sue and be sued for alleged violations of US law, and will demonstrate how it has become increasingly clear that they should have the foresight to create a structure to sue or be sued and actively litigate the question of capacity.

**What Is a DAO?**

DAOs are self-governing organizations managed through smart contracts that rely on blockchain technology to accomplish voting, financial operations, and other business. Membership in the DAO is typically established by holding the DAO's native or governance token, which grants voting rights and possibly other benefits to holders.

The work of the DAO is accomplished through voting on proposals via smart contracts recorded on a public blockchain, which affords DAO members special benefits in operating an organization in this form, including smart contracts that streamline and automate processes, minimize the need for intermediaries and generally lead to faster execution on decision; increased community participation via empowering all members with voting rights; global accessibility to diversify participation and enhance remote collaboration; and greater transparency, auditability and accountability because all conduct takes place on a public blockchain.

At the same time, DAOs have certain drawbacks: consensus-based voting can slow decision-making; without delegated authority, the absence of clear leadership can make it more difficult for DAOs to adapt to changing circumstances; reliance on blockchain technology and smart contracts makes DAOs susceptible to hacking attempts and requires robust security measures; and the legal status of DAOs is often unclear given the absence of uniform regulations, caselaw or guidance on how to determine jurisdictional issues.

Accordingly, how a DAO is structured beyond the smart contracts can be critical to determining whether it can minimize the inherent drawbacks to operating as a DAO; the structure should be determined with a view to the services and functions the DAO wishes to accomplish and its community goals as there is no one-size-fits-all.

### **Capacity for Litigation**

In US federal court, the capacity to sue or be sued is governed by Federal Rule of Civil Procedure 17(b). For entities other than individuals or corporations, capacity is a function of the applicable state law; for partnerships and unincorporated associations with no capacity under state law, capacity must be determined under federal common law.

The caselaw makes plain that variability in a DAO's structure has important implications for determining whether a DAO can sue or be sued.

The determination of a DAO's capacity to sue or be sued often focuses on whether the DAO is an unincorporated association or a general partnership, or was established with a specific corporate wrapper, such as a Wyoming limited liability company.

All definitions of an unincorporated association require two or more persons joined by mutual consent, but don't necessarily require that all its members be identifiable.

Under the common law of a jurisdiction, an unincorporated association arises from the voluntary actions and agreements of the individuals in the association, and thus an unincorporated association may be created inadvertently. Importantly, only unincorporated associations recognized at common law have the capacity to be sued under Rule 17(b)(3)(A).

On the other hand, a general partnership is usually an association of two or more persons to carry on a business for profit.

The existence of a general partnership is governed by state law, which outlines the characteristics and obligations of general partnerships and their partners. As a default rule, general partners have unlimited joint and several personal liability for the debts and obligations of the partnership, and profits and losses are passed through to the individual partners' personal tax returns.

Whether a DAO is an unincorporated association or general partnership is a mixed question of fact and applicable law. Difficulty establishing mutual consent to a common purpose and, in some jurisdictions, the absence of an identifiable membership will undermine finding that a DAO is an unincorporated association.

On the other hand, the absence of a well-defined control structure through which actions taken by the DAO can be identified to specific actors (including DAO delegates), an inability to identify DAO members who agreed to operate a business and share profits and losses, or mandatory dissolution of an alleged DAO partnership upon departure of any member will undermine finding that a DAO is a general partnership.

In addition, a DAO's structure may not meet either organizational form.

### DAOs Gone Wrong

To date, no court has found on the merits that a DAO, in any form, has the capacity to be sued under the Federal Rules of Civil Procedure or the capacity to sue to enforce rights. However, DAOs have failed to avoid suit when they haven't litigated their capacity to be sued, erroneously assuming that courts would deem DAOs to be smart contracts that lack capacity and are immune from liability.

The first US court to substantively grapple with the question of whether a DAO has capacity to be sued was the US District Court for the Northern District of California in *Commodity Futures Trading Comm'n v. Ooki DAO*. In that case, the US Commodities Futures Trading Commission alleged that Ooki DAO—to which bZeroX LLC, operators of the underlying bZx Protocol, had transitioned control of the bZx Protocol—violated the Commodity Exchange Act “by enabling users to engage in retail commodity transactions without abiding by CEA requirements, including registering its ‘platform’ and conducting certain customer due diligence.”

The CFTC brought a motion for alternative service after it was unable to serve the DAO via traditional means, arguing the DAO was an unincorporated association. In response to the CFTC's motion, several amici curiae submitted briefs in opposition, arguing, *inter alia*, that Ooki DAO wasn't an unincorporated association and therefore lacked capacity to be sued under Rule 17(b).

The court agreed with the CFTC, finding that the complaint adequately pled that Ooki DAO was an unincorporated association under California and federal law. The court rejected the argument that the DAO was “a technological tool” because the CFTC alleged the DAO was comprised of individual token holders who were persons.

The court also found that the complaint adequately alleged that two or more persons (the two bZeroX founders) joined Ooki DAO by “mutual consent,” rejecting the argument that “different persons casting different votes at different times does not constitute mutual consent.” The court also found the CFTC sufficiently demonstrated a “common lawful purpose” of “governing the DAO . . . through the use and distribution of funds from its central Treasury.”

When the CFTC moved for a default judgment, the court reaffirmed its finding that Ooki DAO was an unincorporated association under California and federal law and therefore had capacity to be sued. In *Sarcuni v. bZx DAO*, another California court concluded that a DAO that didn’t appear to defend itself in the action had the capacity to be sued.

Plaintiff alleged various individual token holders were jointly and severally liable as general partners of the DAO. The DAO didn’t appear in the case, and the general partner defendants moved to dismiss the suit for failure to properly allege the DAO was a general partnership or that they themselves were general partners.

The court found the complaint satisfied the test for a general partnership under California law, which required pleading facts to demonstrate that the DAO was “(1) an association of two or more persons (2) carrying on as co-owners of (3) a business for profit.” The participating litigants didn’t dispute the first or third prongs and found the second prong had been met because the BZRX token afforded holders governance rights over the DAO and token holders may share in the DAO’s profits.

In the face of a result that potentially exposed all token holders to joint and several liability, the court reasoned that the decision by the DAO’s creators to avoid corporate forms that limited liability was intentional, pointing to evidence that the co-founders of the LLC who had originally controlled the bZx protocol transitioned to the DAO to “future-proof” the protocol from liability.

Other California courts have reached similar findings in lawsuits in which a DAO didn’t appear to defend the claims against it.

Courts have similarly permitted DAOs to protect their interests in court.

For example, in *PleaserDAO v. Shkreli*, PleaserDAO, which presented itself as an “exempted foundation company” under Cayman law, sued to enforce its intellectual property rights against businessman Martin Shkreli in connection with the DAO’s purchase of the sole copy of a music album and its associated intellectual property rights for more than \$4.7 million.

Shkreli had purchased the album subject to an 88-year prohibition on making copies or exploiting the album, but had played portions of the recording on the internet, boasted that he maintained MP3 copies, and distributed copies on numerous occasions. The court issued a permanent injunction ordering that Shkreli produce the remaining copies of the recording and identify those who received copies.

## Structuring For Certainty

Protecting DAO members and certainty regarding a DAO's capacity to sue and be sued should motivate structuring a DAO to establish affiliated entities to control certain DAO activities. While there may be jurisdictions in which a DAO that has no obvious corporate form might escape liability because capacity can't be established, this is unlikely to be true in every jurisdiction in which the DAO wishes to operate.

Therefore, failing to attend to capacity to be sued could lead to inconsistent assertions of liability against the DAO and its members across jurisdictions. Further, it is unlikely that a DAO lacking capacity to be sued in a jurisdiction could simultaneously assert claims against others in the same jurisdiction.

Accordingly, if a DAO hasn't taken steps to form a partnership, unincorporated association, or some other corporate form (adopting the corporate form that is most advantageous to the functioning of the DAO), its token holders or participants may be liable, as natural persons, for any legal obligations that may accrue to their activities, including tort and tax liability.

On the contrary, if the organizers of a DAO ensure that the DAO either directly, or through an affiliate, opts-in to an entity form, this enables the DAO to engage in conduct that furthers the DAO's purpose, such as engaging counsel to protect the DAO's interests in court.

For example, a DAO could designate a special purpose entity to instruct legal counsel and act as the DAO's representative for the purpose of making decisions about a lawsuit in which the DAO has been named or that it wishes to pursue, and thereby establish a privileged relationship to represent the DAO and preserve the DAO's interests.

If a DAO doesn't attend to a corporate form that is most advantageous to the DAO ecosystem, the DAO exposes itself to costly litigation concerning the DAO's capacity, potential default judgments against the DAO, and the risk of inconsistent judgments across jurisdictions.

An appropriate organizational form that takes into consideration jurisdictional advantages, tax treatment, and appropriate limits on liability benefits the DAO and its members by affording them the protections of state and federal corporate law, and can set the path toward engaging in the full range of commercial activities necessary to achieve the DAO's purpose.

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

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**Write for Us: Author Guidelines**

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## Class Action

### Manage Newsletters

## **Meta Hits Setback as Vermont Court Says Addiction Case Can Go On**

Sept. 2, 2025, 11:24AM PDT

### **Summary by Bloomberg AI**

AI Generated



- Vermont's Supreme Court affirmed a trial court's finding it has personal jurisdiction over Meta Platforms Inc. in a lawsuit claiming the company deliberately designed Instagram to be addictive to teenagers.
- The court found that Meta "purposefully availed itself of the Vermont social-media and advertising market" and can "fairly expect" potential users to rely on its public representations that Instagram is safe.
- The case alleges Meta designed Instagram to be addictive to teens despite knowing the negative effects, in order to increase advertisement revenue, and that Vermont teens accessed Instagram in Vermont and suffered consequences there.

Vermont's Supreme Court affirmed a trial court's finding it has personal jurisdiction over Meta Platforms Inc. in a lawsuit filed by the state claiming the company deliberately designed Instagram to be addictive to teenagers.

"Meta has purposefully availed itself of the Vermont social-media and advertising market and although the State's complaint does not allege that any misrepresentation or omission about the safety of the application was specifically aimed at Vermont users, or made in Vermont," the company can "fairly expect" potential users to rely on its public representations that Instagram is safe, Judge Karen R. Carroll said Aug. 29.

The case is part of a growing onslaught of lawsuits against social media companies that argue tech giants like Meta, TikTok Inc., and Snap Inc. purposely designed their apps to get children hooked, contributing to a widespread youth mental health crisis. The companies are involved in federal multidistrict litigation brought by families and dozens of state attorneys general.

States have also started bringing such claims in state courts across the country.

Here, Vermont alleged Meta designed photo-sharing app Instagram to be addictive to teens despite knowing what negative effects that could have on them, in order to increase the company's advertisement revenue.

Meta moved to dismiss the complaint for lack of personal jurisdiction, but the lower state court found the state had sufficiently alleged jurisdiction because Meta entered contracts with Vermont users, sold advertisements to Vermont businesses, and studied Vermont teens' Instagram use.

On appeal, Meta argued it doesn't have a physical presence in the state.

### **Engagement**

Carroll noted that neither the Vermont Supreme Court nor the US Supreme Court have "directly addressed how specific personal jurisdiction is analyzed when out-of-state defendants operate an internet-based application with no physical presence in the forum state."

Without deciding whether Meta's virtual presence is comparable to its physical presence, the company's "engagement with Vermonters on its platform and with Vermont businesses is an affirmative act that displays its 'specific intent to target' Vermont and continuously and deliberately exploit the Vermont market," Carroll said.

Meta also argued that its contacts with the state are only because Instagram users make the unilateral decision to sign up for the app in Vermont.

"But the mere fact that the users initiate a relationship between the defendant and themselves is not dispositive," Carroll said. A user's choice to engage with the platform "does not undermine Meta's deliberate choice" to solicit engagement from Vermont consumers and businesses, the judge added.

### **Accessed in Vermont**

Carroll also rejected Meta's argument that the alleged misrepresentations weren't directed at Vermont so the state court lacks jurisdiction.

The test requiring specific statements demonstrate a defendant's contacts with the forum state doesn't also require each alleged misrepresentation has to be directed at the forum state too, Carroll said. Not only did the state properly show that Meta has minimum contacts with Vermont, it also showed that the claims arise out of Meta's connections with the state.

The complaint alleged "Vermont teens accessed Instagram in Vermont, suffered consequences in Vermont, and became addicted to Instagram in Vermont and that Meta's unfair practices and misrepresentations contributed to this harm in Vermont," Carroll said.

Though Meta rightly argued there are limits on the level of connection between claims and activities that can support specific jurisdiction, here that concern is "clearly extinguished," Carroll said.

Meta is represented by Covington & Burling LLP and Paul Frank + Collins PC.

The case is State of Vermont v. Meta Platforms Inc. , Vt., No. 24-AP-295, 8/29/25 .

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# Hagens Berman slams delay in noticing its AI-tainted briefs

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[dailyjournal.com/articles/387318-hagens-berman-slams-delay-in-noticing-its-ai-tainted-briefs](https://www.dailyjournal.com/articles/387318-hagens-berman-slams-delay-in-noticing-its-ai-tainted-briefs)

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**Sep. 2, 2025**

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Plaintiffs in the OnlyFans RICO case seek delay of dismissal hearing after AI-generated hallucinations in briefs surfaced. Hagens Berman blames lack of notice by opponents who discovered the problem, while co-counsel admits errors from personal struggles.

Nearly two weeks after failing to catch AI-generated hallucinations in opposition briefs intended to keep their lawsuit alive, plaintiffs' attorneys at Hagens Berman Sobol Shapiro LLP asked a federal judge to delay an upcoming dismissal hearing due to an alleged lack of transparency from their opposing counsel.

At issue are three opposition briefs that defense attorneys at Skadden Arps Slate Meagher & Flom LLP found contained fake cases and fabricated legal language.

While taking responsibility for the incident, Hagens partner Robert B. Carey explained the briefs were drafted by co-counsel outside the firm.

However, in a continuance motion and his declaration filed last Friday, he claimed the Hagens team was not made aware of the hallucinations until reply briefs were filed in the Central District of California court docket on Aug. 18. This last-minute notice, according to Carey, diverted significant attention away from his team's preparation to fight Skadden's pending dismissal arguments.

That hearing is scheduled for Sept. 4 before U.S. District Judge Fred W. Slaughter in Santa Ana. The underlying case relates to a Racketeer Influenced and Corrupt Organizations Act class action against Fenix International Limited, the parent company of online platform OnlyFans, and related agencies.

"The Fenix Defendants have unclean hands in opposing a continuance because they never notified Plaintiffs that their briefs were defective, despite numerous meet and confers regarding discovery on issues related to the pending motions," the plaintiffs' stay motion stated.

"Instead, the Fenix Defendants hid the defects, limiting the time available to ensure the record is correct and assess the errors and corrections necessary. The Fenix Defendants cannot now claim they are prejudiced by a short continuance of the hearing date."

If the plaintiffs' bid to delay the hearing is granted, the defendants' motions to dismiss the case will be heard on Sept. 25. The original motions were filed on May 23. The hallucinated opposition briefs were filed on July 17.

Skadden Arps partner Jason D. Russell said in an email Friday that his team has no comment at this time and will respond to the matter in future court filings.

As of press deadline Friday, an opposition to the plaintiffs' continuance request was not filed.

Carey, for the consumer plaintiffs, did not respond to an email or voice message.

Meanwhile, Oakland attorney Celeste H.G. Boyd, the co-counsel who drafted the hallucinated briefs, said in a declaration last Thursday that "those mistakes are mine alone," and explained how her father's death created a personal struggle she was "ashamed" to let others know about. According to court filings,

"Unfortunately, as my personal stress mounted, I failed to follow my own protocols for using AI," Boyd's declaration stated.

"The mistakes I made in doing my part on these opposition briefs, which included blending together sections from co-counsel, resulted from being overwhelmed and under-resourced. They didn't come from a general lack of awareness of my own particular needs, but from a deep fear of admitting weakness and exposing myself to the judgment of others."

Boyd added her explanation was not to seek sympathy or excuse the errors, but to affirm the briefs were not an intentional attempt to avoid her professional duties. She admitted she wrongly relied on ChatGPT instead of consulting co-counsel and failed to verify whether her prompts reduced hallucinations.

In Carey's declaration, he said he took full responsibility for the errors and indicated Boyd was no longer on the case. Accompanied by a motion to file corrected briefs, Carey's declaration said his investigation of the matter took significant time away from properly preparing to defend the merits of his team's lawsuit. This was further complicated, he added, because Boyd "would have been an integral member of the argument-preparation team and essential to the September 4 hearing."

The underlying action centers on fraud claims from a putative class of OnlyFans subscribers who accused the company of running "chatter scams" by having its adult content creators prioritize automated chatbots over human communication during private

messaging sessions. The complaint alleges OnlyFans promises subscribers "authentic" and "direct" connections but instead exploits them in deceptive schemes to get more money. *N.Z. et al. v. Fenix International Limited et al.*, 8:24-cv-01655 (C.D. Cal., filed July 29, 2024).

The Fenix defendant companies denied liability, arguing the plaintiffs failed to show how Fenix knew of, or could detect, third-party contractors allegedly managing the chats. Fenix's counsel also argued the plaintiffs did not prove their client had any intent to mislead the subscriber plaintiffs, let alone conduct a racketeering scheme to do so.

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## Devon Belcher

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# Amazon must face US nationwide class action over third-party sales



reuters.com/legal/government/amazon-must-face-us-nationwide-class-action-over-third-party-sales-2025-09-02

Mike Scarcella

September 2, 2025

Amazon logo is seen in this illustration created on February 11, 2025. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

Sept 2 (Reuters) - Amazon.com ([AMZN.O](#)), [opens new tab](#) must face a class action on behalf of hundreds of millions of U.S. consumers over claims that the online retail giant overcharged for products sold by third-party sellers, a federal judge in Seattle has ruled. U.S. District Judge John Chun in an [order, opens new tab](#) unsealed on Friday certified a nationwide class involving 288 million customers and billions of transactions, marking one of the largest-ever in the United States.

The class includes buyers in the United States who purchased five or more new goods from third-party sellers on Amazon since May 26, 2017.

The consumers' 2021 lawsuit said Amazon violated antitrust law by restricting third-party sellers from offering their products for lower prices elsewhere on rival platforms while they are also for sale on Amazon.

Amazon's policies have allowed the company to impose inflated fees on sellers, causing shoppers to pay higher prices for purchases, the lawsuit said.

Amazon has denied any wrongdoing. It has already appealed Chun's class certification order, which was first issued under seal on Aug. 6.

Amazon and attorneys for the consumers did not immediately respond to requests for comment.

Amazon [argued, opens new tab](#) that the class was too large to be manageable and that the plaintiffs failed to show its alleged conduct had a widespread effect. Amazon also said that since 2019 it has not used a pricing program that the plaintiffs challenged.

Chun found there was no evidence at this stage that the size of the class was overbroad. Other federal courts had certified class actions with millions or hundreds of millions of class members, the judge said.

The case is Elizabeth De Coster et al v. Amazon.com Inc, U.S. District Court, Western District of Washington, No. 2:21-cv-00693-JHC.

For plaintiffs: Steve Berman and Barbara Mahoney of Hagens Berman Sobol Shapiro; Zina Bash of Keller Postman; and Steig Olson of Quinn Emanuel Urquhart & Sullivan

For defendant: Karen Dunn, William Isaacson and Amy Mauser of Dunn Isaacson Rhee, and John Goldmark of Davis Wright Tremaine

Read more:

[Amazon must face US class action over Alexa users' privacy](#)

[US judge admonishes Amazon over disclosures in FTC lawsuit over Prime service](#)

[Amazon must face authors' lawsuit over audiobook distribution, US judge rules](#)

[Amazon must face part of online retailer's pricing lawsuit, US judge rules](#)

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## Class Action

### Manage Newsletters

## **NHL Likely to Defeat Video-Privacy Suit Over Use of Meta Pixel**

Sept. 2, 2025, 10:00 AM PDT

### **Summary by Bloomberg AI**

AI Generated



- A federal magistrate judge recommended dismissing a video-privacy lawsuit against the National Hockey League over its use of tracking technology from Meta Platforms Inc.
- The plaintiffs didn't show that the NHL allowed Meta to collect personally identifiable information as defined in the Video Privacy Protection Act, according to Magistrate Judge Barbara Moses.
- Moses also recommended dismissing the plaintiffs' state-law claims after finding that New York law doesn't recognize the tort of intrusion upon seclusion or allow private civil suits for wiretapping.

A video-privacy lawsuit against the National Hockey League over its use of tracking technology from Meta Platforms Inc. on NHL-related websites should be dismissed, a federal magistrate judge recommended.

The plaintiffs in the proposed class action didn't show that the NHL allowed Meta to collect personally identifiable information as defined in the Video Privacy Protection Act, or that the league's conduct triggered liability under the federal Electronic Communications Privacy Act despite being a party to the communications, Magistrate Judge Barbara Moses of the US District Court for the Southern District of New York said Aug. 29.

Moses also recommended dismissing the plaintiffs' state-law claims after finding that that New York law doesn't recognize the tort of intrusion upon seclusion or allow private civil suits for wiretapping.

The plaintiffs, subscribers to NHL team websites, alleged in an amended complaint that the NHL incorporated "pixel" technology from Meta's Facebook unit on team websites, allowing the social media giant to collect information arising from subscribers' interactions there, including their Facebook IDs and titles of videos they watched.

Under US Court of Appeals for the Second Circuit case law, personally identifiable information under the VPPA includes only information that would allow an ordinary person to identify a consumer's video-watching habits, not information that only a technology company could use to do so, Moses said.

It was implausible that an ordinary person would recognize video titles in the form they were disclosed to Meta, with characters, numbers, and other letters interspersed, she said.

The ECPA claim failed because the NHL was a party to the communication and therefore exempt, aMoses said. And without an underlying VPPA violation, the plaintiffs couldn't point to a criminal purpose sufficient to trigger ECPA liability for a party to the communications, she said.

The fate of the plaintiffs' state-law claims hinged on whether they were evaluated under New York law or the laws of the states where the plaintiffs resided, including Pennsylvania, Illinois, and Nevada, Moses said.

Because the allegedly tortious conduct—placing the pixel on the NHL website and the websites of individual teams—occurred in New York, that state had the greatest interest in applying its law to that conduct, leading to the claims' dismissal, she said.

Levi & Korsinsky LLP represents the plaintiffs. Holland & Knight LLP represents the NHL.

The case is *Joiner v. NHL Enters. Inc.*, S.D.N.Y., No. 1:23-cv-02083, report & recommendation 8/29/25 .

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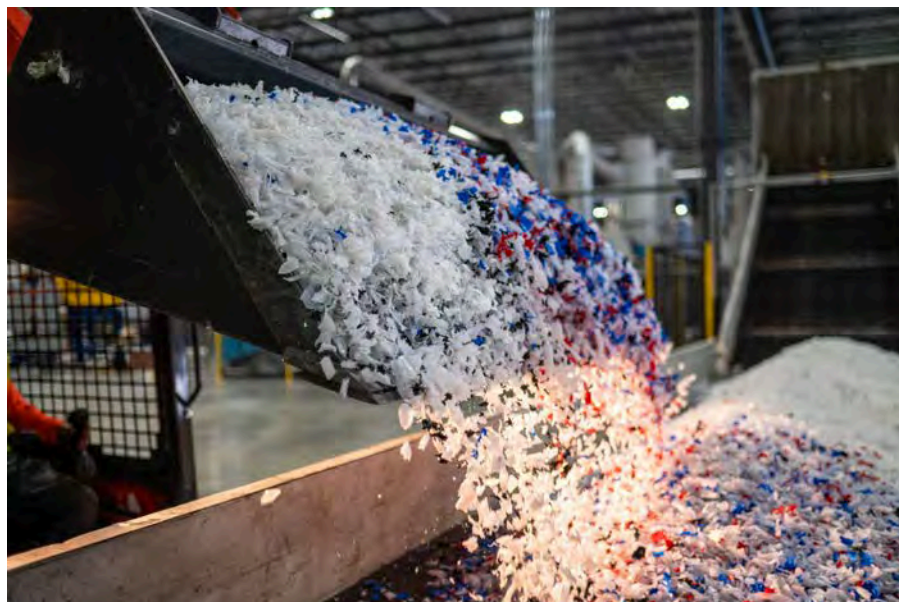
# Exxon and California Spar in Dueling Lawsuits Over Plastics



[nytimes.com/2025/09/01/climate/exxon-california-plastics-defamation-lawsuit.html](https://www.nytimes.com/2025/09/01/climate/exxon-california-plastics-defamation-lawsuit.html)

Karen Zraick

September 1, 2025



An Exxon Mobil's chemical recycling unit in Baytown, Texas. Credit... Sergio Flores/Agence France-Presse — Getty Images

Did California's attorney general and several other groups defame Exxon Mobil when they sued the oil giant last year over its role in widespread plastic pollution?

That was the question looming over a recent hearing in federal court in Beaumont, Texas, where Exxon Mobil has countersued Attorney General Rob Bonta of California and the nonprofit groups, accusing them of mounting a conspiracy to destroy its recycling business. Exxon's aggressive move signaled a sharp escalation by the oil giant as it tries to ward off similar suits in the future.

During the daylong hearing on Aug. 20, lawyers for Mr. Bonta and the nonprofit groups tried to persuade Judge Michael J. Truncale to toss the case, or at least transfer it to California so it could be adjudicated alongside the original lawsuits. The lawyer for Exxon, Michael P. Cash, shot back that the "attack" had been aimed squarely at Texas and the matter should be litigated there.

He summarized the case this way for the judge: "We have advanced recycling down here, we make plastics down here, we do a good job of it, and you're messing with our customers and you're messing with their livelihood in Texas by lying about us."

To illustrate his position, Mr. Cash displayed a graphic showing a missile aimed at Texas from California. At another point, he juxtaposed images of the TV show “The Sopranos” with a screenshot of a news conference held by Mr. Bonta and the nonprofits.

Mr. Bonta sued Exxon in California state court in September, accusing it of deceiving Californians by “promising that recycling could and would solve the ever-growing plastic waste crisis.” Four nonprofit organizations — the Sierra Club, Baykeeper, Heal the Bay and Surfrider Foundation — filed a parallel suit the same day. The suits alleged violations of state nuisance and unfair-competition laws and sought damages that Mr. Bonta estimated would amount to “multiple billions of dollars.”

“The company has propped up sham solutions, manipulated the public and lied to consumers,” Mr. Bonta said at the [news conference](#). “It’s time Exxon Mobil pays the price for its deceit.”

Image



Rob Bonta, the California attorney general, announced the lawsuit against Exxon in September. Credit... Shannon Stapleton/Reuters

Exxon Mobil produces polymers used to make single-use plastics and has invested millions of dollars in recycling facilities in Baytown, Texas, about an hour’s drive from the courthouse. The lawsuit took aim at the process known as advanced recycling, which Exxon says it has used to process more than 100 million pounds of plastic waste to date.

Traditional recycling methods typically involve shredding, melting or otherwise reusing plastic material but not necessarily altering the chemical makeup. Advanced recycling takes a different approach: It uses techniques that break down plastics into liquid and gas molecules.

The technology has sometimes [struggled to deliver on its promises](#). But its supporters say the process produces new materials that can then be used in products such as fuels or “high performance chemicals and plastics,” according to the Exxon lawsuit. The company also noted that advanced recycling can take on a greater array of hard-to-recycle materials such as chip bags, motor oil containers or artificial turf.

In January, Exxon hit back with its Texas lawsuit. It accused Mr. Bonta and the nonprofit groups of defamation, tortious interference and civil conspiracy, and sought damages and an injunction to force the defendants to retract their statements.

Days later, the company’s chief executive, Darren Woods, [discussed the suit on CNBC](#). He said Mr. Bonta’s action was part of a growing trend of activists and state attorneys general “hijacking and abusing legitimate processes to advance their own selfish agendas.”

“The way we’ve looked at it, if not us, then who, who stands up to stop the abuse?” he said.

The suit argued that the California proceedings had been engineered by an Australian mining billionaire who wanted to damage Exxon’s business. It alleged an elaborate conspiracy in which the billionaire, Andrew Forrest, acted through a charity called the Intergenerational Environment Justice Fund. That group, based in Australia, had hired a California law firm, Cotchett, Pitre & McCarthy, to enlist the nonprofit groups as proxies and file the lawsuit against Exxon, according to the complaint. The suit also pointed to donations from Cotchett, Pitre & McCarthy to Mr. Bonta’s election campaign.

Niall McCarthy, a partner at the firm, called Exxon’s lawsuit “smoke and mirrors” at the time. He said its goal was to “distract people from the allegations in the California lawsuit.”

Image



The federal courthouse in Beaumont, Texas. Lawyers for Mr. Bonta argued the case should be dismissed or transferred to California. Credit...Rex Wholster/Alamy

The Australian charity was also named as a defendant in the Texas lawsuit. A lawyer for the charity, Joshua Matz, said during the hearing that, in the American legal system, it is commonplace for litigation to be funded by third parties, but that did not mean the law firm was directing the nonprofit groups. Exxon had “nothing to show that they were controlling the nonprofits,” he said. (The law firm is not a defendant in the case.)

The claims in both cases fundamentally revolve around speech: Did Exxon mislead people with deceptive marketing, as California has alleged? And did Mr. Bonta and the nonprofit groups defame Exxon with their statements, as Exxon alleges?

During the Aug. 20 hearing, Scott Gant, a lawyer for Sierra Club, made this point. He noted that the judge in the California case, Richard Seeborg, had previously said that Exxon had put itself in an “ironic position” by arguing the company’s statements should be protected by free speech laws, while suing other organizations for defamation over their statements.

Mr. Gant argued that there were many reasons to transfer the Texas case to California, including that Sierra Club could not compel its volunteers to attend depositions in Texas. Judge Truncale asked him and other lawyers to weigh a question about the venue: If a gun is fired in Louisiana and the bullet crosses the state line and hits someone in Texas, where did the violation occur?

Will Setrakian, a lawyer for Mr. Bonta, also argued that the attorney general should have immunity from the lawsuit because he was carrying out his official duties. (The lawsuit was against Mr. Bonta in his personal capacity.)

Image



An Exxon recycling unit in Baytown. Credit...Sergio Flores/Agence France-Presse — Getty Images

Paul Nolette, a professor at Marquette University in Milwaukee and author of a book on state attorneys general, said that a company filing a defamation lawsuit against an attorney general was highly unusual. He said it was most likely a tactic to push back on what he described as the “soft power” that state attorneys general possess, such as the ability to pursue legal investigations and make public statements that can influence public opinion and potentially pressure corporate defendants.

He also noted the similarities between Mr. Bonta’s plastics lawsuit and another batch of litigation: the roughly three-dozen suits filed by state and local governments since 2017 against oil companies over their role in climate change. Those cases allege that the oil companies covered up what they knew about global warming to protect profits.

The climate change lawsuits are generally being filed by states led by Democrats, Mr. Nolette noted, which has the effect of making them look more political, which in turn encourages companies like Exxon to push back more aggressively.

He added that he thought Exxon was trying to raise the costs of bringing plastics-related litigation to discourage other states from following California’s lead. There have been lawsuits related to plastics pollution filed by officials in New York and Minnesota, for example, but they are far fewer in number than climate change lawsuits.

“It’s something of a branch off of the existing climate litigation,” Mr. Nolette said of the plastics lawsuit. “I think, from the company’s perspective, once the genie is out of the bottle, or whatever cliché you want to use, then it becomes a lot more difficult for them to deal with

these claims. So they're trying to push back early."

James Tierney, a former attorney general of Maine who directs the Attorney General Clinic at Harvard Law School, said he saw the case as a strategic move by the defendant to move the discussion of the case to Texas. "These lawsuits are really public policy debates," he said. "Debates that, in a better time and place, would be held in Congress. But it's not, so they're transported over into the judicial system."

Judge Truncale did not offer a time frame for his ruling on whether to dismiss or transfer the case. He noted the balance he needed to strike — in protecting a litigant's right to their day in court without allowing a case to continue unnecessarily — and acknowledged his awareness of the legal precedent he could be setting.

"I'm not thinking just about Exxon here," he said, but of the possibility that other organizations might well try to file similar lawsuits in the future, "in my court or some other court."

# DOJ antitrust head blasts Big Law for obstructive tactics



reuters.com/sustainability/boards-policy-regulation/doj-antitrust-head-blasts-big-law-obstructive-tactics-2025-08-29

Jody Godoy

August 29, 2025

The seal of the United States Department of Justice is seen on the building exterior of the United States Attorney's Office of the Southern District of New York in Manhattan, New York City, U.S., August 17, 2020. REUTERS/Andrew Kelly/File Photo [Purchase Licensing Rights, opens new tab](#)

- Assistant AG Slater criticizes Big Law for obstructive tactics in antitrust cases
- DOJ leadership allegedly influenced by politically connected lobbyists
- Slater forms task force to address abusive practices in antitrust cases

Aug 29 (Reuters) - The head of the U.S. Department of Justice's antitrust division criticized what she said were problematic tactics used by some Big Law firms in antitrust cases on Friday, saying recent incidents where [courts have chastised](#) Alphabet's ([GOOGL.O](#)), [opens new tab](#) Google and Apple ([AAPL.O](#)), [opens new tab](#) for hiding or destroying evidence are "just the tip of the iceberg."

Assistant Attorney General Gail Slater went on the offensive against "tactics of obstruction and gamesmanship" in her first public address since DOJ leadership fired [two of her deputies](#) after Slater pushed back on orders to settle a case on the eve of trial. One of the deputies has spoken out, alleging that DOJ leadership allowed politically connected lobbyists to override prosecutors.

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"Unfortunately, we at the Antitrust Division have concluded that a few actors — many of them at Big Law firms — can undermine sound antitrust enforcement for everyone," Slater said at a Federalist Society event in Columbus, Ohio, according to her prepared remarks.

A longtime antitrust attorney and former economic adviser to JD Vance, Slater was appointed in March to lead the DOJ's antitrust division, which enforces laws blocking anticompetitive business conduct.

She has spoken often about how antitrust enforcement can deliver economic benefits for U.S. President [Donald Trump's](#) working-class base, by going after practices that raise the cost of food, housing and healthcare.

But that populist mission is running up against "MAGA-In-Name-Only lobbyists" who seek to leverage influence to settle cases, Roger Alford, Slater's former deputy, said in a speech in Aspen, Colorado, on August 18.

After Slater pushed back on orders from DOJ leadership to settle a case that sought to block Hewlett Packard Enterprise's ([HPE.N](#)), [opens new tab](#) \$14 billion acquisition of Juniper Networks, Alford and another deputy were fired by DOJ leadership in July. Democratic lawmakers have called on the court overseeing the case to probe how the settlement was reached.

Slater said on Friday that she is convening a task force within the antitrust division to crack down on abusive practices. She dubbed the effort "comply with care" — a riff on Google's "[communicate with care](#)" policy, which prosecutors said allowed Google to wrongly withhold tens of thousands of documents by labeling them "attorney/client privileged."

"For parties that choose to push the boundaries of fair play or even flout them outright, we will not shy away from pursuing them, taking advantage of the full range of available penalties. And we will not hesitate to bring issues to court," she said.

Reporting by Jody Godoy in New York; Editing by Matthew Lewis

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

Profile | **Litigators**

## 'Broader Than Grinding Out Litigation:' Attorney of the Year Finalist Jeroen van Kwawegen Invests Time in Thought Leadership

August 31, 2025 at 09:30 AM By  **Brian Lee**



**Jeroen van Kwawegen of Bernstein Litowitz Berger and Grossmann. Photo: Ryland West/ALM**

Jeroen van Kwawegen was into an "enjoyable" legal career in his native Netherlands when he left for New York City at age 27 to be with a girlfriend and enroll at Columbia Law School.

After the relationship flamed out, the now 52-year-old partner in Bernstein Litowitz Berger & Grossman opted to stay in the U.S., and has since carved out a highly successful career in the shareholder rights and securities class-action space.

He says BLB&G has much to be proud of, especially of late.

The litigator co-lead a team that took Elon Musk to trial—and won—in a challenge to his \$55 billion executive pay package at Tesla, a landmark nullification that shook public markets.

More broadly, BLB&G, which also has offices in corporate capital of Delaware and Los Angeles, Chicago and New Orleans, has “professionalized the shareholder bar in the governance space,” said van Kwawegen, a member of the firm's executive team.

It started taking cases to trial when most other litigation would result in settlements, said van Kwawegen, who also heads its corporate governance department.

“That changed the dynamic in a lot of these cases,” he said. “We’ve had six or seven trials the last five years, and sometimes you win, sometimes you lose. We started winning some, including Musk, and the defense bar went completely nuts and changed the law because they felt we were winning too much.”

The litigator suggests the pendulum has now swung toward an “anti-shareholder” climate in Delaware, though he said the environment isn't as bad as in Texas or Nevada, as the debate rages on.

He said his firm's governance group doesn't take the daily approach of simply burying itself in litigation, as it's actively involved in thought leadership.

Along those lines, van Kwawegen is a member of the advisory board at both the Millstein Center at Columbia Law School and the Institute for Law & Economics at the University of Pennsylvania's Penn Carey Law School.

He frequently speaks at bar association and industry events on shareholder litigation and corporate governance, and regularly publishes pieces on topics of interest to institutional investors.

"We're very much part of that ecosystem, in part out of need, because the defense bar has always been part of that ecosystem and nobody was really hearing from the shareholder bar, talking about what the interest of institutional investors are," van Kwawegen said.

“In some ways, we see our role and I see my role as broader than just grinding day-to-day litigation, although I really enjoy that,” van Kwawegen said.

Although his practice areas concern wealth, van Kwawegen says he did not grow up wealthy, and was the first in his family to attend college.

"I never thought I'd become this hot-shot lawyer doing arguments all over the country, or taking Tesla to trial," van Kwawegen said.

A 1998 University of Amsterdam School of Law grad, he spent 16 months at the Dutch firm Schut & Grosheide before coming to the U.S. and graduating from Columbia Law in 2003.

He then spent six years at Latham & Watkins before joining his current firm in 2009.

Mentoring attorneys, in the same way senior colleagues embraced him, remains a priority, van Kwawegen said.

The litigator reflected about how a partner in Schut & Grosheide took interest in him as a young associate. He was given "enormous freedom" while being allowed to argue national arbitration cases.

He remembered representing a sesame seed grower from Ethiopia who wasn't getting paid for the seeds he delivered to a Dutch buyer.

Mostly he remembered becoming an honorary member of the partner's family.

"I would go to his house, sit in his garden and we'd review my notes for the next day's arguments. I would have dinner with his family, and then he would kick me out of his house because he still needed to work and I needed to work."

After van Kwawegen's breakup, the Dutch partner thought his protege would return to the Netherlands, but he was told, " 'No, I kind of like it here.' So I stayed and built career here."

It's quite the understatement.

He also prosecuted a stockholder derivative action against the board of directors of FirstEnergy Corp., resulting in a \$180 million settlement and unprecedented corporate governance improvements. It's the largest derivative action recovery ever affirmed by the Sixth Circuit Court of Appeals.

He also led the BLB&G trial team that achieved a partial settlement of \$79 million for claims against Columbia Pipeline's chief executive and financial officers, respectively.

TransCanada, the acquirer in the Columbia Pipeline merger, was found liable for aiding and abetting breaches of fiduciary duties by Columbia's management, in a 2023 Delaware Court of Chancery ruling reversed by the Delaware Supreme Court earlier this month.

His securities class actions including litigation against Meta Platforms, NVIDIA, and Silicon Valley Bank, as well as breach of fiduciary duty actions involving Santander, Warner Brothers, Continental Resources, Sirius XM, among others.

His team recently settled a derivative class action against the board and senior executives at Credit Suisse, after filing litigation alleging inadequate risk management procedures. The claim resulted in the closure of Credit Suisse's prime brokerage in New York. Ultimately the firm merged into UBS.

He intends to continue litigating, but says his "real goal is to have that next generation of people who are now in their mid-30s to mid-40s" achieve their own successes at trial.

"And look—it's scary because you can also lose," he said. "But if it wasn't scary, you wouldn't have half the fun."

A member of the military police before attending law school in the Netherlands, van Kwawegen said he adheres to the doctrine of putting as much responsibility and ownership for a particular task as low as possible in the chain of command.

"You find people—motivated, smart—tell them what the objective is, and provide them with means, support, and training to do it, then you let them do it," he said of his approach with litigation teams.

Also been outspoken about ongoing attacks on the rule of law, van Kwawegen said: "It doesn't matter whether it's Republicans or Democrats—but if you don't have the rule of law when you're not the dominant political faction, your rights are going to be curtailed in a way that will make it more difficult and less free for you."

"If there's no space for people to be different from the norm, whatever that norm in that situation is, I think all of us, including people who are on that particular issue, are poorer for it. Because it allows less freedom of thought, creativity and being different. And the truth is, one of the reasons why I stayed and did not go back to the Netherlands is I felt that freedom here."

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Securities Law News

# Norway's Leader Defends Wealth Fund in Message to US Senator (2)

Aug. 29, 2025, 6:20 AM PDT

An outburst by US Senator Lindsey Graham at Norway's sovereign wealth fund over its divestment of Caterpillar Inc. prompted a response by the Nordic nation's prime minister to explain the government has no role in the fund's decisions, his office said.

Premier **Jonas Gahr Store** sent a text message to Graham and got a confirmation that it was received, a spokesperson at prime minister's office said. Store's message included information about the fund's mandate and how its oversight is set up, the spokesperson said, underlining that the sale of Caterpillar wasn't a political decision.



Jonas Gahr Store

Photographer: Al Drago/Bloomberg

The Republican Senator criticized the \$2 trillion wealth fund - the world's largest - in two social media posts on X earlier this week, threatening tariffs and visa denials because of its recent divestments from the Texas-based firm.

The fund said this week it had sold its holdings in Caterpillar based on Israel's use of the firm's bulldozers to destroy Palestinian property in Gaza and in the occupied West Bank. The fund held about \$2.1 billion worth of shares in the company as of June 30.

Read More: Norway's \$2 Trillion Fund to Sell Off More Israeli Companies (1)

The reaction from the US lawmaker came at a delicate time for the fund and for the Norwegian government. Norway holds parliamentary elections on Sept. 8, and there has been pressure for the fund to divest from Israeli companies contributing to the war in Gaza.



US Senator Lindsey Graham at a news conference in Tel Aviv, on Aug. 28.

Photographer: Amir Levy/Getty Images

Graham first promised that the fund's "BS decision" would have consequences, then spoke specifically about tariffs and possible visa denials. The Trump administration has already placed a 15% tariff on imports from Norway while the two nations remain engaged in trade negotiations.

Norges Bank Investment Management operates under a mandate set by the Norwegian parliament with ethical guidelines on issues ranging from land mines to climate change. It is advised by an external ethics council, which assesses the portfolio on an ongoing basis and recommends companies for exclusion or observation.

More than half of the fund's investments were in US equities and bonds as of June 30.

(Updates with details from 7th paragraph.)

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## Securities Law

### Manage Newsletters

Opinion

## **Matt Levine's Money Stuff: The Tariffs Are Still Illegal**

Sept. 2, 2025, 10:31AM PDT

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### **Tariffs**

Well, sure, [right](#) :

Most of President Donald Trump's global tariffs were ruled illegal by a federal appeals court that found he exceeded his authority by imposing them through an emergency law, but the judges let the levies stay in place while the case proceeds.

The US Court of Appeals for the Federal Circuit on Friday upheld an earlier ruling by the Court of International Trade that Trump wrongfully invoked the law to hit nations across the globe with steep tariffs. But the appellate judges said the lower court should revisit its decision to block the tariffs for everyone, rather than just the parties in the case.

"The statute bestows significant authority on the President to undertake a number of actions in response to a declared national emergency, but none of these actions explicitly include the power to impose tariffs, duties, or the like, or the power to tax," the court said.

Here is the opinion. We have [talked](#) about this case a few times, including [when it was filed](#) and when the lower court [struck down the tariffs](#) , and it has always struck me as quite straightforward. The United States has a Constitution, and the Constitution gives Congress, not the president, the power to impose tariffs. Trump made up his own tariffs without any input from Congress, so they are unconstitutional.

The argument for the tariffs is that there is a statute, called the International Emergency Economic Powers Act of 1977, or IEEPA, in which Congress gave the president the power to "regulate ... importation" in order to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." Trump's lawyers argued that IEEPA gave him the power to impose tariffs in an emergency, and the US trade deficit is an emergency, so he needs to have unlimited power to impose tariffs on every country. I have always found that argument pretty suspect; I wrote :

The idea seems to be that every trade policy of every country in the world, over the past several decades, constitutes an "unusual and extraordinary threat." This is a strange way to use words! How can every instance of trade with every country be *unusual*? How, after decades of trade deficits, is a trade deficit *extraordinary*?

I still think that, but the appeals court had an even simpler reason for rejecting Trump's arguments, which is that the IEEPA doesn't actually say anything about tariffs at all:

Contrary to the Government's assertion, the mere authorization to "regulate" does not in and of itself imply the authority to impose tariffs. The power to "regulate" has long been understood to be distinct from the power to "tax." In fact, the Constitution vests these authorities in Congress separately. ...

Indeed, there are important examples where Congress has granted the power to regulate to the executive branch without delegating the power to impose tariffs. ... The Government's suggestion would mean, for example, that Congress delegated to the SEC power to tax substantial swaths of the American economy by granting the SEC the authority to regulate various activities. ...

Since IEEPA was promulgated almost fifty years ago, past presidents have invoked IEEPA frequently. But not once before has a President asserted his authority under IEEPA to impose tariffs on imports or adjust the rates thereof. Rather, presidents have typically invoked IEEPA to restrict financial transactions with specific countries or entities that the President has determined pose an acute threat to the country's interests. ...

For the reasons discussed above, we discern no clear congressional authorization by IEEPA for tariffs of the magnitude of the Reciprocal Tariffs and Trafficking Tariffs. Reading the phrase "regulate . . . importation" to include imposing these tariffs is "a wafer-thin reed on which to rest such sweeping power."

Also seems right. Anyway I am not sure what will happen here. The tariffs remain in place for now, even though they are illegal, which seems like an odd outcome. There will be an appeal to the Supreme Court, which has generally been more willing than lower courts to ignore precedent and declare that Trump can do whatever he wants, so that might still happen here. Or, as Bloomberg's [Isabel Gottlieb explains](#), there are various other statutes that *do* authorize the president to impose tariffs, and Trump could go back and use some of those. But:

In general, these alternatives come with more limits and procedural restrictions, meaning there's less leeway for Trump to impose tariffs virtually immediately and set the rates as high as he chooses.

"The difference between them is how much process they require," said Ted Murphy, co-leader of the global arbitration, trade and advocacy practice at law firm Sidley Austin. "Why they chose IEEPA, I think in part, was because it comes with no required process. It's a determination that the president can make on his or her own initiative: There's no hearing, there's no report, there's no nothing."

Yes, arguably the point of a constitutional legal system is to prevent the president from creating whatever taxes he wants with no process.

### **People are worried about reinsurance market liquidity**

I used to have a running section in this column called "people are worried about bond market liquidity," because people were worried about bond market liquidity. These worries took various forms, but one went something like this:

1. Bonds used to be traded by big banks, which would buy and sell bonds for their own account based on customer demand.

- 2. Sometimes all the customers would get scared and would want to sell their bonds at once.
- 3. When this happened, the big banks would maintain orderly markets by buying the bonds from the customers at prices that were not *that* much lower than they were before the customers panicked.
- 4. Why would the banks do that? One reason is that they had big balance sheets and could take a longer-term view than the customers: They knew that if they bought the bonds at a modest discount during panics, they could sell them at a nice profit in a week when markets stabilized. Another reason is that their long-term economics involved a *customer franchise*: Banks made their money, year after year, by trading with customers, so when the customers panicked the banks would quote them nice prices to keep them happy. A third, more nebulous reason is that it had always been that way: Bank traders *conceived of themselves* as being in the business of quoting tight prices and maintaining orderly markets, so when the customers panicked the banks would selflessly step in to help them.
- 5. This ended, though. Now bonds are increasingly traded by proprietary trading firms on electronic markets, or by banks arranging trades between customers without using their own capital.
- 6. Partly this is because the old, bank-driven model was expensive. The banks had to employ lots of expensive traders to quote prices, and lots of expensive salespeople to take customers out to steak dinners, and because they took lots of balance-sheet risk they had to make a lot of money on each trade. Faster, more computerized trading firms could quote tighter prices because their costs were lower.
- 7. Partly it is because the banks had a rough time in 2008 – *not* primarily because of their customer-facilitation bond trading, mind you – so new post-crisis regulations made it harder for banks to do this business. They were less inclined to use their balance sheets to trade bonds with customers, so other firms stepped in.
- 8. The new system is mostly pretty good – you can trade bonds pretty fast at tight spreads, etc. – but people were worried that it would break down in a crisis. If all the customers got scared and wanted to sell their bonds at once, who would buy them? The banks were no longer in the business of using their capital to maintain orderly markets, and the new electronic prop trading firms didn't care much about that. They had smaller balance sheets and couldn't take a longer-term view: If markets crashed, they'd just shut down their computers and go home. They had no customer franchise: They traded with faceless counterparties on electronic exchanges; they didn't care about keeping customers happy. They had no institutional sense that maintaining orderly markets was their job.
- 9. So the worry was that, if a lot of customers wanted to sell bonds, there would be no one to buy them, and liquidity would collapse.

I don't want to *endorse* this story, exactly; there were various problems with it, and honestly I [mostly made fun of it](#). But in a broad directional sense I think it was plausible; really I think it is a *standard* story of financial markets. The standard story is:

There is a thing that is done by hand by traditional specialist experts.

- This thing is expensive (the specialists are inefficient and well-paid) but pretty robust (they like their franchise and want to keep the customers happy).
- Eventually some disruptor comes in and can do the thing more quickly and cheaply using computers.
- Now the thing is cheap and fast *most of the time*, but the disruptor is not very well-capitalized and does not have deep customer relationships, so *in a crisis* the thing will be worse. In a crisis, you can't get a person on the phone to do the thing, because everyone stopped using phones, and people for that matter.

You get better liquidity and pricing 99% of the time, at the cost of much worse liquidity 1% of the time. The system is more efficient but less stable.

It's a useful lens for a lot of things. Here's a Financial Times story from last week about reinsurance:

Hedge funds and private investors muscling into reinsurance threaten to destabilise the centuries-old market for catastrophe cover, a director at Munich Re, the world's biggest reinsurer, has warned.

The growing presence of private investors such as hedge funds and family offices in the sector has intensified competition for dominant players such as Berkshire Hathaway, Munich Re and Swiss Re.

But the sector's shifting shape has introduced new risks and greater volatility into the reinsurance market, Stefan Golling, a board member of 145-year-old Munich Re, told the Financial Times.

After a big payout event, private investors could lose their nerve, potentially raising the price of insurance, he said.

"In the traditional market, a big hurricane will not be a surprise," Golling said. By contrast, he added, "capital is getting involved that is not informed in the same way as an underwriting company". ...

These new entrants challenged Munich Re and other traditional suppliers of reinsurance capital in a business built on personal relationships cemented at the industry's annual conference in Monaco.

See, in the olden days, reinsurance was done by well-capitalized specialists and "built on personal relationships" formed by hanging out together in Monaco. You can get a lot of efficiencies by securitizing reinsurance in the form of catastrophe bonds, selling them to hedge funds, and not bothering with trips to Monaco. But when there's an actual catastrophe, the people who bought the bonds will stop buying the bonds; they don't care. They just want to make money; they have no deep relationships and nostalgic memories of their Monaco trips. And if they compete the old-school reinsurers out of business – because they are more efficient in normal times – then who will be left to provide reinsurance when things get bad?

## Deal contingent

We [talked last week](#) (and above) about how big hedge funds are creeping into some of the economic roles that used to be filled by investment banks. There are various sorts of trades – the Treasury futures basis trade, the dispersion trade, index rebalancing, merger arbitrage, etc. – where traditional real-money investors all want to do the same thing at the same time, creating a supply and demand imbalance. (Asset managers want to buy more Treasury futures than they want to sell, they want to buy more index options and sell more single-stock options, they want to buy new index additions all at once, they want to sell merger targets all at once, etc.) Once upon a time, investment banks used their balance sheets to offset these imbalances: They would buy what everyone wanted to sell, taking the other side of their customers' trades and charging a spread for doing so. Now banks are not as good at taking risk, and big hedge funds compete to do some of these trades.

One important difference between the banks of 2005 and the hedge funds of 2025 is that the banks had (and have) customers, and the hedge funds mostly don't. If an asset manager wanted to sell a bunch of stock or buy a bunch of Treasury futures or whatever in 2005, it would call up its salesperson at a bank, and the salesperson would arrange a trade using the bank's money. But the big hedge funds mostly don't have salespeople, so the mechanism is different. The asset manager just does the trade in the market – it pushes buttons to buy Treasury futures on an electronic platform, etc. – and hedge funds do broadly offsetting trades in the market without ever talking to the asset manager. It's not that the hedge funds are directly facilitating customer trades; it's just that they know that there is broad predictable asset-manager demand for certain trades, so they take the other side.

We [talked last year](#) about deal-contingent hedges. Sometimes a company announces a cross-border acquisition: A US firm might agree to buy a French company for 1 billion euros. The buyer wants to hedge its currency risk (it wants to buy euros today), but it also worries about the risk that the deal won't close for antitrust, regulatory, tariff, whatever reasons. Ideally the firm would do a trade like "buy 1 billion euros at today's price, to be delivered when the deal closes, but if the deal doesn't close we tear up the contract and don't buy the euros." This is not a standard sort of trade that is available by pushing a button on a foreign exchange trading platform, but it is a trade that you can call up your bank and ask about. The bank, for a fee, would be happy to arrange this sort of trade for you.

Back in 2005, it would arrange this trade by taking the other side itself: It would hedge the currency risk, evaluate the merger risk, and try to make a profit by charging you more than the expected cost of the trade. Last year, though, we were talking about an International Financing Review article about how hedge funds were increasingly taking the other side of the trade: The banks had the customers and the salespeople, and would arrange the trades, but the hedge funds had the risk appetite, so the banks would offload the risk to the hedge funds. The banks were essentially arranging trades between companies and hedge funds.

How much is that worth? Well, not nothing. The banks are communications hubs; they have relationships with hedge funds and also with companies, and they get a cut for connecting them. On the other hand you could imagine trying to cut out the middleman. Last month another IFR article reported that that's happening:

Hedge funds have approached private equity firms about trading complex currency derivatives hedging risks on cross-border acquisitions directly with them, industry insiders say, a move that threatens to cut investment banks out of a business they have dominated for years.

Banks offer these "deal-contingent" derivatives to private equity and corporate clients looking to shield themselves against adverse moves in foreign exchange rates around the time of large mergers and acquisitions. The hedges only come into force if the underlying M&A deal completes, a feature that makes them fiendishly hard to handle for the banks that sell them. ...

"We are seeing hedge funds going directly to the largest private equity sponsors and pitching the idea of facing them directly on deal-contingent trades," said Mark Beaumont, head of European risk management at financial consultancy PMC Treasury. "That's a threat to the banks because it potentially cuts them out of the process." ...

The prospect of hedge funds pitching these trades directly to their private equity clients may alarm banks, which are already facing growing competition from shadow banks like hedge funds, trading firms and private credit funds in everything from trading securities to lending money to companies. It also shows the delicate balancing act banks must perform when looking to recycle some of their riskiest and most commercially sensitive client exposures.

Historically the role of the big investment banks was *both* to have the customer relationships *and* to use their own balance sheets to facilitate trades. As the second part declines, the first part might decline as well.

### **Commercial paper is back**

I always vaguely thought that non-financial commercial paper was kind of a myth. Banks, of course, borrow from the capital markets with very short terms; [that's what a bank is](#) . And yes some big industrial companies would finance some of their operations by selling short-term debt to investors. But most companies want to lock in their financing for years, not come back to the market every week. And most investors who want to park their cash somewhere for a week will want somewhere very *safe* to put their cash; they don't want to do credit analysis on industrial companies.

Also, the traditional big buyer base for commercial paper was prime money-market funds, and after the 2008 crisis those funds fell into regulatory disfavor. "Regulators introduced reforms aimed at strengthening those funds' ability to withstand future shocks," notes the Investment Company Institute, but "these changes significantly reduced the demand for institutional prime MMFs – all but killing them off."

But Bloomberg's Alex Harris and Ethan Steinberg report that [commercial paper is back](#) :

Once a \$2 trillion cornerstone of global finance, the US commercial paper market was left in disarray following the 2008 crisis. Now, after years in the shadows, it's staging an unexpected comeback.

Uber Technologies Inc. rolled out a \$2 billion commercial paper plan in June, according to its latest quarterly filing. That followed Netflix Inc.'s \$3 billion facility a month earlier. Coca-Cola Co., PepsiCo Inc., Philip Morris International Inc. and Honeywell International Inc. have all tapped the market in recent months, selling billions worth of the short-term IOUs, which typically range in maturity from 30 to 90 days.

The renewed embrace of commercial paper is fueling the biggest expansion in the market since 2006, and underscores just how dramatically corporate America has been shifting its funding mix. Faced with elevated interest rates and tariff turmoil, companies have moved to shore up cash buffers while avoiding locking in higher long-term borrowing costs, especially with potential Federal Reserve rate cuts on the horizon. The pivot mirrors a similar move by the Treasury, which has ramped up issuance of short-term T-bills to cover the US budget gap.

One way to think about this is that both investors and companies tend to [target some level of volatility](#), formally or intuitively. If you are an investor, you will sleep better at night knowing that you are unlikely to lose more than X% in a week; if you are an investment-grade bond investor X will be pretty low. As interest rates are high and the future path of rates is uncertain, your portfolio becomes more volatile, but you can reduce that volatility by reducing duration: If you buy 30-year bonds and rates go up, you will lose a lot of money, but if you buy 30-day paper and rates go up, it's fine. And roughly vice versa for corporate treasurers: If you sell 30-year bonds and rates go down, you will look stupid, but if you sell 30-day paper you can only look so stupid.

### Things happen

[Kraft Heinz](#) to Separate Into Two Publicly Traded Companies. Elliott Plans Major Activist Campaign at PepsiCo With \$4 Billion Stake. Klarna, Backers Seek \$1.27 Billion in IPO After Tariff Pause. 'Easier to Pump': [Trump-Tied Crypto Token](#) Opens for Trading. CoreWeave tumbles as top shareholder Magnetar dials down position, puts on huge collar trade. How secretive hedge fund Magnetar went all in on AI. Data Centers That Don't Exist Yet Are Already Haunting the Grid. Yale's Trendsetting Private-Equity Strategy Is Getting Harder to Pull Off. A €2 Trillion [Dutch Pension Headache](#) Is Coming for European Bonds. Developing countries swap out of dollar debt to cut borrowing costs. Apollo to launch \$5bn sports investment vehicle. Software becomes the next frontier for building quantum computers. China's [Margin Trades](#) Surge to a Record Amid Stock Rally. EV Deals Are Booming Ahead of Tax-Credit Expiration. Winklevosses' Crypto Firm [Gemini](#) Seeks \$317 Million in IPO. Nestlé Picks Insider to Replace CEO [Fired Over Affair](#). US sliding towards 1930s-style autocracy, warns Ray Dalio. "It is not hard to imagine how an administration that is already pressuring companies to change their behaviors on everything from hiring policies to branding could exploit the Fed's latent supervisory powers for a wide range of ends." Tesla Will Derive 80% of Its Value From Optimus Robot, Musk Says. "The most photographed trader on the New York Stock Exchange" reflects. Strangers Come Together to Deliver Baby Girl at Burning Man.

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- 1. Sometimes they know this because of events (a merger is announced, the index composition changes). Other times they know it because of price signals (the price of Treasury futures is higher than the price of Treasury bonds, so the hedge funds buy bonds and sell futures).

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# Lutnick Family Angling To Make Astronomical Sums Off Court Nixing Tariffs



[talkingpointsmemo.com/edblog/lutnick-family-angling-to-make-astronomical-sums-off-court-nixing-tariffs](https://talkingpointsmemo.com/edblog/lutnick-family-angling-to-make-astronomical-sums-off-court-nixing-tariffs)

Josh Marshall

September 1, 2025



NEW YORK, NY - SEPTEMBER 12: (L-R) Brandon Lutnick, Chairman and CEO of Cantor Fitzgerald, Howard Lutnick, US Republican presidential nominee Donald Trump, and Daniel LaVecchia attend Annual Charity Day hosted by... MORE

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This is not new. But I at least hadn't heard any of these dots connected. I wasn't even aware of the dots. A friend mentioned to me over the weekend that he'd heard about Wall Streeters buying up the rights to tariff refunds from big corporate importers. So the idea is that a Wall Street firm goes to an importer and says, you've now paid \$10 million in tariffs. I'll pay you \$2 million right now for the right to collect the refund if courts ever end up deciding the tariffs were illegal. My friend had also heard that one of the most aggressive buyers was Cantor

Fitzgerald, the firm until recently headed by Commerce Secretary Howard Lutnick and now run by Lutnick's sons. Twenty-something Brandon Lutnick, pictured above on the left in a 2016 photo, is the current chairman of Cantor Fitzgerald. (He must be hella talented!)

Damn, I thought: That's a hot story, crooked as the day is long. But I'm not sure how I or we would track it down without better finance world sources. Still, it was worth some quick googling. It turns out this *is* happening and Cantor's role has already been reported. [Wired and others reported this more than a month ago](#).

In mid-July, according to Wired, Cantor was buying up the rights to your potential tariff refund at between 20 and 30 cents per dollar. Needless to say, I bet that price has gone up a lot since last Friday's federal appellate court upheld the lower court ruling that almost all of Trump's tariffs are illegal. So in paper terms Cantor has probably already made a ton of money on this.

Now, before going any further I want to make clear that *in itself* this transaction is fairly unremarkable. A huge amount of modern finance is about making bets on uncertain outcomes, bets which can be structured in various ways. It might be commodities futures. In this case, it's the right to collect a refund that may never happen. The sale of debt — a ubiquitous feature of modern finance — is similar. Purchasing debt, whether it's a government bond or your home mortgage, is fundamentally a bet on the likelihood of repayment. I don't want to belabor the point, only to make clear that the transaction in concept is neither outlandish or suspect, at least no more than any other part of modern finance.

All that said, it's hard to imagine anything more emblematic of the Trump Era than what is for all intents and purposes still the Commerce Secretary's company (*yes, yes, arms length hand off to his twenty-something sons*) making bets on something Lutnick himself has significant influence over. Indeed, far more important than whatever influence Lutnick has over tariff policy is that significant visibility he has into the bet's probable outcome.

Lutnick can't be certain what's in a judge's mind any more than Trump can. But he'll have lots of visibility into what the government's lawyers think, how they rate their odds of success, what their arguments will be. On top of that, given the immense corruption of the current Supreme Court I would put say there's at least a 50%-50% shot that Trump and thus Lutnick will gets signals from one or more of the justices about how the Court will rule. Any way you look at this it's corrupt as hell. And on a more metaphoric level it typifies the heads I win tails you lose rules the billionaire class and their sub-billionaire toadies live by.

What's not clear is how much of this stuff the Lutnick Boys have actually purchased. In July the US government brought in \$29.6 billion in tariff revenue compared to \$8.7 billion in July 2024. So that's more than \$20 billion in probably illegal tariffs before many of them had even

kicked in. The current market for these refund rights is already in the tens of billions and could hit the hundreds of billions by years end. According to Wired, Cantor said in July that it had “the capacity to buy the rights to hundreds of millions of dollars” of tariff refunds. So the amounts we’re talking about, both at risk and in potential windfalls, is very, very big.

In mid-July Cantor was buying for about 25% of the face value of the refunds. Just looking at the logic of the situation, I’d be shocked if you couldn’t sell that today for 50% of the face value and quite possibly substantially more. The initial court decision and Friday’s appellate decision (tariff cases have their own set of courts) have both gone decisively against the White House and the legality of the tariffs. In any normal universe SCOTUS’s decision would be all but a *fait accompli*. The only thing weighing in the White House’s favor is SCOTUS’s propensity to give Trump almost everything he wants. But even in this degenerate timeline, the odds for these tariffs don’t look great. If Cantor was able to buy up a lot of tariff refund rights at 20 or 30 cents to the dollar the payoff could be vast.

It’s good to be the King, or even the King’s toady.

*Late Update:* I did a little more poking around on the details of Lutnick’s “divestment” from Cantor Fitzgerald. The Journal [reported](#) in May that on his confirmation as Commerce Secretary he turned over the leadership of Cantor Fitzgerald to his sons. Brandon became Chairman and Kyle became executive vice chairman. He turned over his equity interest in Cantor Fitzgerald over to a trust to benefit his adult children – that is, Brandon, Kyle and whatever other children he has. Meanwhile two businesses which are owned by Cantor will buy back from Lutnick the equity he personally owns in those businesses. The two purchases together will total just over \$360 million. Under government ethics rules, since Lutnick has to do this sale as part of his government ethics agreement, [he will pay no capital gains tax](#) on this sale so long as he places the money in something like a mutual fund. I don’t think we know what counted as gains on those buy-backs. But that has to have been a massive tax savings. Meanwhile, Lutnick’s divestment from Cantor – his sons run it; his equity in the company is now in a trust for his sons – seems extremely nominal.

# It's Time to Name the "Wall Street Financiers" in the Epstein Files

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wallstreetonparade.com/2025/09/its-time-to-name-the-wall-street-financiers-in-the-epstein-files

Pam Martens

September 2, 2025

## An Open Letter to Congressman James Comer, Chair of the House Oversight and Government Reform Committee ~

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Dear Chairman Comer:

On August 31 you sent a letter to U.S. Treasury Secretary Scott Bessent seeking, no later than September 15, all Suspicious Activity Reports (SARs) filed by banks "in reference to or relating to Mr. Jeffrey Epstein and/or Ghislaine Maxwell."

Your letter of August 31 follows [a letter dated July 21](#) that Senator Ron Wyden, the Ranking Member of the U.S. Senate Finance Committee, sent to U.S. Attorney General Pam Bondi. In that letter, Senator Wyden reveals that bipartisan staff of the Senate Finance Committee were allowed earlier this year to look at the SARs material you are seeking from the U.S. Treasury, but not make copies. Senator Wyden writes:

"On February 14, 2024, bipartisan staff of the Senate Finance Committee conducted in camera review of thousands of pages of Treasury Department files documenting the flow of money in and out of Jeffrey Epstein's accounts. The Treasury Department's Epstein file contains significant information on the sources of funding behind Epstein's sex trafficking activities. For example, one of the documents in the Treasury Department's Epstein file indicates that between 2003 – 2019, there were more than 4,725 wire transfers totaling \$1.08 billion involving Jeffrey Epstein and his associates, including Darren Indyke, Harry Beller, Richard Kahn and Erika Kellerhals. The Treasury Department's Epstein file also contains details of hundreds of millions in payments to Epstein from Wall Street financiers..."

I want to call your careful attention to the fact that Senator Wyden is using the plural form in his phrase "Wall Street financiers." Thus far, the only Wall Street *financier* that has been publicly named for wiring huge sums to Epstein-related accounts is Leon Black, whom Senator Wyden confirms wired \$170 million to Epstein's accounts.

Black is the founder and former CEO of Apollo Global Management, a private-equity firm deeply engaged with Wall Street. Black paid \$62.5 million to the U.S. Virgin Islands to resolve its Epstein-related claims against him, including the charge that his money spigot to Epstein helped to keep the sex-trafficking enterprise in operation. Black has been alleged by multiple females to have engaged in sexual abuse including the rape of a minor, [the latter allegedly occurring in Epstein's Manhattan mansion](#).

If there is a coterie of other Wall Street financiers that are known to the U.S. government to have financed or participated in Jeffrey Epstein's sex trafficking of underage girls then it's long past the time for the American people to be made aware of these names and for federal prosecutions to begin in earnest.

If the Justice Department had filed its 60-count indictment against Epstein in 2007 and put him away in prison for the decades-long sentence he deserved, the lives of hundreds of his young future victims would have had a different outcome.

The 11<sup>th</sup> Circuit Appellate Court reviewed the Justice Department's handling of the Epstein case and its failure to inform his victims about its sneaky non-prosecution agreement and [issued a scathing opinion on April 15, 2021](#). The court wrote:

"The facts underlying this case, as we understand them, are beyond scandalous—they tell a tale of national disgrace.

"Over the course of eight years, between 1999 and 2007, well-heeled and well-connected financier Jeffrey Epstein and multiple coconspirators sexually abused more than 30 young girls, including Ms. Wild, in Palm Beach, Florida and elsewhere in the United States and abroad. Epstein paid his employees to find girls and deliver them to him—some not yet even 15 years old. Once Epstein had the girls, he either sexually abused them himself, gave them over to be abused by others, or both. Epstein, in turn, paid bounties to some of his victims to recruit others into his ring."

While the current President of the United States is calling the Epstein matter "a hoax," attempting to undermine the public's legitimate outrage and demand for real answers, the Justice Department confirmed [in a July 7 memorandum](#) that "...Epstein harmed over one thousand victims. Each suffered unique trauma."

Other than Leon Black, what the American people do know at this point is that the only other individual to be publicly named as providing vast sums of wealth to Epstein is Leslie Wexner, who is decidedly not a Wall Street financier. Wexner hails from New Albany, Ohio and is the retailing billionaire and former Chairman and CEO of L Brands, which previously owned such retail chains as Abercrombie & Fitch, Victoria's Secret, Lane Bryant, Bath & Body Works and others. The value of Epstein's assets originating from Wexner were estimated at over \$100 million at the time of Epstein's death on August 10, 2019.

Joining the mountain of secret documents related to Epstein and his money men that the American people have yet to see are two separate outside counsel investigative reports on Wexner's dealings with Epstein. In order to get a fuller picture of Wexner's involvement with Epstein, you will need to obtain those reports.

In 2019, the Board of Directors of L Brands hired the Big Law firm, Davis Polk & Wardwell, to investigate the ties between Epstein and Wexner after their close relationship became public following Epstein's arrest in 2019 on federal sex trafficking charges. Wexner's wife, Abigail, had been a lawyer at Davis Polk prior to her marriage to Wexner and the law firm was the longstanding outside counsel to the company. After a shareholder sued L Brands over Davis Polk not having adequate impartiality in the matter, L Brands hired a second law firm, Wachtell, Lipton, Rosen & Katz, to conduct a second investigation.

Although serious outside counsel investigations such as these of publicly-traded companies are typically filed with the SEC and made public, both of these legal reviews of Wexner's relationship with Epstein remain a dark secret.

In 2023 we filed a Freedom of Information Act (FOIA) request with the SEC to obtain the outside counsel reports conducted by Davis Polk and Wachtell. On August 23, 2023 we [received a letter](#) via email from the SEC advising that nothing would be forthcoming to us in the way of documents under our FOIA request. The SEC based its refusal to share relevant information with us on the following:

"We can neither confirm nor deny the existence of any records responsive to your request. Even to acknowledge the existence of such records could interfere with the personal privacy protections provided by FOIA Exemptions...Under Exemption 6 the release of this type of information would constitute a clearly unwarranted invasion of personal privacy...."

Clearly that is a bogus response from a taxpayer-funded federal agency overseeing the integrity of U.S. markets. The firm where Leon Black had worked, Apollo Global Management, had no problem making its Dechert (outside counsel) report public [by filing it with the SEC](#) regarding Black's relationship with and gargantuan payments to Jeffrey Epstein. Senator Wyden has since found that Dechert's report missed at least \$12 million of money flows from Black to Epstein, bringing the current known tally to \$170 million.

There is no dispute that Wexner transferred to Epstein the Manhattan mansion where dozens of underage girls have alleged they were raped or sexually assaulted. There is no dispute that a Wexner-related company had previously owned the Boeing 727 that ended up owned by Epstein. It too was alleged to have been the venue for sex trafficking of underage girls.

Virginia Giuffre, one of Epstein's underage sex slaves who died by suicide in April, [gave a deposition under oath in 2016](#) where she alleged that Epstein had trafficked her for sex to Wexner on multiple occasions. She provided the names of witnesses to the encounters and provided the information to the FBI according to her deposition. And yet the Justice Department's July 7 memorandum tells us that "We did not uncover evidence that could predicate an investigation against uncharged third parties."

That statement is as much a “national disgrace” as the Justice Department’s failure to file its 60-count indictment against Epstein in 2007.

The Attorney General's office for the U.S. Virgin Islands has already built a very strong case against the largest bank in the United States, JPMorgan Chase, that its money laundering for Epstein should be a top priority for criminal prosecution by the U.S. Department of Justice. Its [civil complaint against the bank](#), which JPMorgan Chase paid \$75 million to settle in 2023 to avoid a public trial, stated this:

“The investigation revealed that JP Morgan knowingly, negligently, and unlawfully provided and pulled the levers through which recruiters and victims were paid and was indispensable to the operation and concealment of the Epstein trafficking enterprise...JP Morgan facilitated and concealed wire and cash transactions that raised suspicion of—and were in fact part of—a criminal enterprise whose currency was the sexual servitude of dozens of women and girls in and beyond the Virgin Islands. Human trafficking was the principal business of the accounts Epstein maintained at JP Morgan.”

JPMorgan Chase was charged with two felony counts by the Justice Department in 2014 for looking the other way at Bernie Madoff’s obvious money laundering inside the bank. The bank failed to file the mandatory Suspicious Activity Reports with the U.S. (even after telling U.K. regulators that it suspected Madoff was running a Ponzi scheme). Now it turns out that while JPMorgan Chase was facilitating Madoff’s Ponzi scheme impacting thousands of victims, it was simultaneously ignoring Jeffrey Epstein’s money laundering that facilitated sexual assaults on girls as young as 14.

JPMorgan Chase was Epstein’s primary bank, wiring money around the world for him, providing him with hundreds of thousands of dollars in hard cash year after year and giving him a \$50 million line of credit according to court filings. JPMorgan Chase held dozens of Epstein-related accounts. We located among court filings [an expert report written by a former FBI agent](#) of 23 years, Shaun O’Neill, who indicated in writing that JPMorgan Chase had “impeded” the federal criminal investigation of Epstein.

A major revelation in the document is that former FBI agent O’Neill had been allowed to read the full deposition given in the case by William Langford, an anti-money-laundering (AML) executive at JPMorgan Chase, who had previously worked for the U.S. Treasury’s FinCEN, the agency where SARs are filed.

According to O’Neill, Langford indicated in his deposition that Epstein became a JPMorgan client in 1985, not in 1998, the date that major news media has heretofore reported that the relationship began. If Langford is correct, that would mean that JPMorgan Chase has

financial transaction files on Epstein dating back 40 years – which would certainly open a window into who provided Epstein's early seed money and who his largest financial funders were over the decades.

An internal document filed with the court by JPMorgan Chase [lists accounts at the bank that have been coded as "Epstein related" as of October 18, 2007. \(See data beginning on page 21 of 29.\)](#) Those include accounts belonging to Epstein's clients (despite a DOJ/FBI joint memo telling the public that no such client list exists.) The table also indicates the date that the account was first opened. An early Epstein-related account is for Leslie Wexner. It was opened on March 9, 2000. A trust for Wexner's children, of which Epstein was Trustee, was opened on January 21, 1999.

If the House Oversight Committee wants to be taken seriously about its investigation into Epstein's sex trafficking ring and its financing, it will expand its subpoenas to JPMorgan Chase.

Sincerely,

Investigative Staff at Wall Street On Parade

# Musk Has a New Master Plan for Tesla. Uh Oh.

**B**[bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/T1Z0I2GQ7LCO](https://www.bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/T1Z0I2GQ7LCO)

Liam Denning

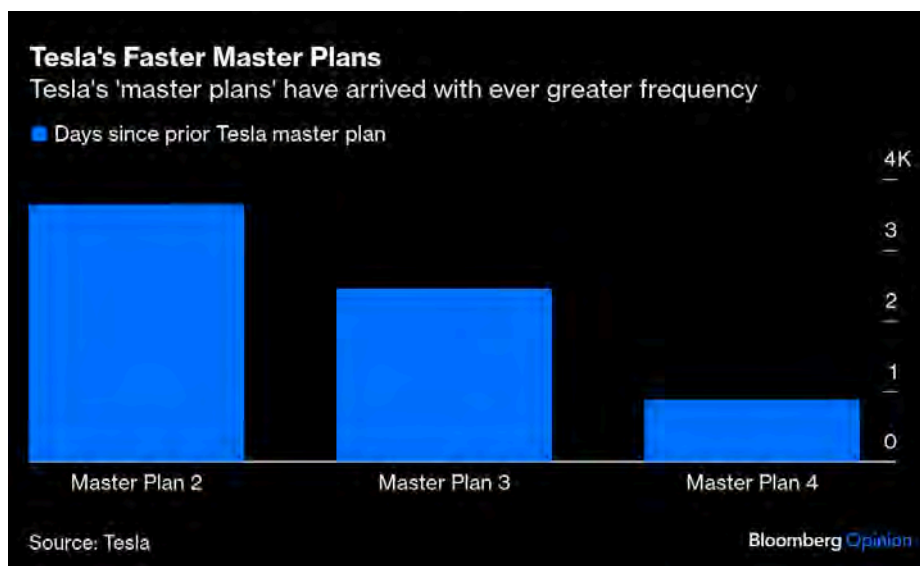
September 2, 2025



Moving on.

Photographer: David Paul Morris/Bloomberg

The lifespan of Tesla Inc.'s "master plans," strategic missives from Chief Executive [Elon Musk](#), has declined dramatically. The first held for a decade. The third, just [superseded by Master Plan Part IV](#), didn't even make its third birthday.



An optimist, of which Tesla's shareholder ranks have no shortage, might take that as a sign that the future is arriving faster and plans must shift accordingly. In reality, it is a sign that Tesla has been unable to will its future into being quickly enough and must therefore redefine it again. The most compelling evidence for this is that Master Plan Part IV isn't a plan. Generously, and borrowing a favorite phrase of one of Musk's more prominent frenemies, it might be described as a concept of a plan. Far from laying out a blueprint for tomorrow, it offers nostalgia for yesteryear and the sort of vague futurism you might plausibly conjure up on Grok with a spare half-hour (it was actually published on X, Musk's social media platform, rather than Tesla's website).

The first master plan read more like one, outlining a standard bootstrapping strategy of building an expensive electric vehicle, then using the money from that to make a cheaper one to grow the market and so on. Tesla mostly delivered on that, although its claim in the latest version that it leveraged profits from early models to build new ones rather overlooks the lack of profits and [reliance instead on accommodating capital markets](#) through the 2010s.

Back when 'part deux' was released in 2016, however, I noted that it read [less like a plan and more like a manifesto](#). The overarching ambition of fostering sustainable energy was still there, but the steps to get there were more diffuse. They now encompassed solar roofs-plus-storage home energy systems, electric trucks and buses and self-driving cars. By 2023, when the third plan was unveiled, Musk recapitulated the sustainable energy themes again in something like an extended TED talk, only this time with a [mysterious, forthcoming low-cost EV](#) playing the starring role.

As the ambition broadened, the achievements narrowed. The solar roof promise was made at a time when Musk was drumming up support for Tesla's dubious acquisition of another, and [struggling, venture he was involved in, SolarCity](#). Tesla no longer even reports solar installations. The electric semi truck, meanwhile, is like the giant squid of transportation: We know it's there but it is rarely seen in the wild. The smaller Cybertruck has been a dud and the electric bus has appeared as a concept. Tesla's low-cost EV, meanwhile, was ditched about a year after it was teased. After that, Tesla [went all-in on robotaxis](#). Yet, almost a year-and-a-half on, and years since Musk first pledged autonomous vehicles roaming the land, the company operates a [limited, invite-only service in part of Austin](#) and a glorified Uber service in the Bay Area. Tesla also just lost a potentially [landmark liability case involving its Autopilot](#) driver-assistance system.

This is the essential context for the latest master plan. While the sequels have delivered Hollywood-esque diminishing returns in terms of innovation, they have helped to keep faith in Tesla's most important product, its stock. Despite having fallen 18% so far this

year, its multiple of forecast 2025 earnings recently cracked 200 times for the first time. Tesla's core EV business has been shrinking since 2023, the same year it was talking of selling 20 million units by 2030, or more than 10 times what it is forecast to sell this year.

Hence, the latest plan reiterates Tesla's as-yet-unproven autonomy chops but really goes all in on humanoid robots, complete with images of its Optimus droid serving drinks and watering a plant. The aim now is nothing less than the transformation of the concept of labor and human society itself. The tagline is "sustainable abundance," twinned with statements like "growth is infinite" and that all "worthwhile stories ... begin with a first step." I think we can all agree that a future with robots taking over more manual tasks would indeed be transformational, welcome in some respects and perhaps problematic in others, and is likely over some timeframe. But bromides about that, as opposed to some specific breakthrough or timeline or literally anything with a number or deadline attached to it, do not constitute a recognizable plan.

Not so long ago, one of the more bullish analysts covering Tesla was [ascribing hundreds of billions of dollars of value](#) to the company's in-house artificial intelligence chip effort, dubbed Dojo. That is [now being disbanded](#). Yet now, on the back of the flimsiest master plan yet, Musk claims Optimus will account for ["~80% of Tesla's value."](#) The approximation there lends a comedic touch. More importantly, while bulls may swoon at the implication of Tesla morphing into a robotic pioneer, they would be overlooking all the other things it was supposed to become, and at an ever quickening pace, but somehow didn't.

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# Tesla's sales rout in some European markets extends to eighth month



reuters.com/business/autos-transportation/teslas-sales-rout-some-european-markets-extends-eighth-month-2025-09-01

Nick Carey, Amir Orusov

September 1, 2025

- Tesla sales fall in August in France, Sweden, Denmark, Netherlands, Italy
- Sales rise in Norway and Spain but by much less than BYD's
- Tesla's lineup relatively small and ageing
- A consumer backlash against CEO Musk has also hurt sales

LONDON, Sept 1 (Reuters) - Tesla's ([TSLA.O](#)), [opens new tab](#) sales rout this year in a number of European markets continued in August amid fierce competition from China's BYD and a backlash against CEO Elon Musk, although Norway, Spain and Portugal bucked the trend.

Tesla has a small lineup and has not released a new mass-market model since the Model Y in 2020, while new Chinese rivals and traditional automakers alike are flooding the market with fresh models.

Registrations of new Tesla cars in France were down 47.3% in August from August 2024, while the overall car market grew nearly 2.2%, data showed on Monday.

Tesla registrations fell more than 84% in [Sweden](#) - where electric vehicle sales were flat and the overall market was up 6% - and dropped 42% in Denmark. Tesla registrations were down 50% in the Netherlands and 4.4% in Italy.

Norway, where Tesla has [deep roots](#) and virtually all new car sales are electric, saw a [21.3% jump](#) in registrations for the U.S. EV maker. But BYD's ([002594.SZ](#)), [opens new tab](#) registrations jumped 218%.

## UNCONVINCING RISES IN TESLA SALES IN SPAIN AND PORTUGAL

After seven months of declines, Tesla's registrations in Portugal rose 28.7% in August.

And in Spain, which provides EV subsidies of up to 7,000 euros (\$8,200), Tesla's sales rose 161% to 1,435 cars from 549 in August 2024. But BYD's sales rose more than 400% to 1,827 cars.

In the year so far, BYD's sales in Spain have surged 675% to 14,181 cars, while Tesla's sales have risen 11.6% to 9,303 vehicles.

"Disappointing Tesla volumes can partially be attributed to a more competitive market environment," said Matthias Schmidt, European autos market analyst at Schmidt Automotive.

Schmidt said Musk's insistence during an investor call in July that "there are no issues with Tesla volumes on the European market", when its market share in western Europe fell to 1.7% in the first half of the year from 2.5% in 2024, made him sound "delusional".

Earlier this year Tesla representatives in Europe argued that the sales decline was largely because production was shifting to a revamped version of the Model Y that had been Europe's top-selling car in 2023.

Deliveries began across much of Europe in June, but Model Y sales were down 46.5% in Denmark in August and 87% in Sweden.

## PRICE CUTS FUEL SECONDHAND MARKET

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Tesla's competitive problems have been compounded by Musk's politics - he helped [bankroll](#) Donald Trump's U.S. presidential election win last year and has [championed](#) European far-right parties - which have sparked a fierce [consumer backlash](#).

Ginny Buckley, CEO of the EV advice website Electrifying.com, said Musk's influence on the brand had become "increasingly polarizing".

Over half of those surveyed by Electrifying.com said Musk was putting them off buying a Tesla, signalling that "Tesla's dominance is no longer a given".

Andy Leyland, co-founder of supply chain specialist SC Insights, said sales were also being undermined by the low cost of secondhand Tesla EVs since it slashed the price of new cars dramatically in 2023.

Marketcheck, which collects used vehicle data in Britain, said that sales of used Teslas hit a record in July, jumping 270%, while the average price of a used Model Y hit a new low, down 41% in two years.

(\$1 = 0.8542 euros)

Reporting By Nick Carey; Editing by Susan Fenton

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

# Trump's World Liberty token falls in first day of trading



reuters.com/business/trumps-world-liberty-token-falls-first-day-trading-2025-09-01

Reuters

September 1, 2025

Zach Witkoff, Co-Founder and CEO of World Liberty Financial, Donald Trump Jr. and Eric Trump pose before they ring the opening bell to celebrate the closing of ALT5's \$1.5 billion offering and adoption of its \$WLFI Treasury Strategy at the Nasdaq Market, in New York City, U.S., August 13, 2025. REUTERS/Eduardo Munoz/File Photo [Purchase Licensing Rights, opens new tab](#)

NEW YORK, Sept 1 (Reuters) - The digital tokens backing the Trump family's cryptocurrency venture, World Liberty Financial, fell in value on Monday in their first day of trading.

The World Liberty tokens, known as \$WLFI, were sold to investors after the Trump family and its business partners last year launched the venture, a decentralized finance platform that has also issued a stablecoin.

Investors in the tokens [voted in July](#) to make them tradable, paving the way for their sale and purchase - and potentially boosting the value of the president's holdings of them. Early investors can sell up to 20% of their holdings, World Liberty has said.

The tokens initially traded above \$0.30 in their Monday debut but later fell in price. They were down about 12% at \$0.246 as of 1840 GMT, according to CoinGecko data.

That gave the token a total market capitalisation of just below \$7 billion, making WLFI the 31st largest crypto token in circulation, CoinGecko data showed.

Several of the world's biggest cryptocurrency exchanges, including Binance, OKX and Bybit, are offering the tokens on their platforms.

Since World Liberty's launch last year, the Trump family has made around \$500 million from the project, according to Reuters calculations based on the company's terms and conditions, transactions traced by crypto analysis firms, and publicly disclosed deals.

The tokens were not made tradable at their initial sale. Instead, they gave holders the right to vote on some changes to the business, such as its underlying code. Early investors have said the primary draw of \$WLFI was the connection to Trump and their expectations that the tokens would grow in value due to his backing.

Making the tokens tradable allows investors to determine their price, enabling speculation, earning trading fees for exchanges that list them, and likely stoking interest from a wider swath of crypto investors.

World Liberty and Trump's other crypto businesses have faced criticism from Democratic lawmakers and government ethics experts who say the Trump family's forays into the cryptocurrency businesses, at the same time as the president reshapes the regulatory framework that governs digital currencies, represent profound conflicts of interest.

The White House has said repeatedly that Trump's assets are in a trust managed by his children and that there are no conflicts of interest.

Reporting by Michelle Conlin, Tommy Reggiori Wilkes and Zaheer Kachwala; Editing by Alex Richardson, Rod Nickel and Edmund Klamann

Our Standards:

# Nestle plunged into crisis as CEO fired for hiding romance with staffer



reuters.com/business/nestle-plunged-into-crisis-ceo-fired-hiding-romance-with-staffer-2025-09-02

John Revill, Oliver Hirt

September 2, 2025

- CEO's exit is second CEO departure at Nestle in a year
- Company struggles with share price decline, underperforms peers
- Share price closed down 0.7% on Tuesday

ZURICH, Sept 2 (Reuters) - Nestle ([NESN.S](#)), [opens new tab](#) has fired CEO Laurent Freixe after just a year in the job for concealing a romantic relationship with a subordinate, throwing the Swiss food giant into a leadership crisis that compounds a share price slump and slowing sales.

Freixe is replaced by Nespresso chief [Philipp Navratil](#), 49, a rising star at the world's largest food company, as it struggles to deal with the impact of [U.S. tariffs](#), a darkening global economic outlook and dwindling investor confidence after years of underperformance. Laying bare wider tensions, Tuesday was a whipsaw day for global consumer companies as Japan's [Suntory parted with its CEO](#) and [Kraft Heinz announced a split](#) and activist investor Elliott Management called for a turnaround at [PepsiCo](#).

"The loss of two CEOs and a chairman in a year is of historic proportions for Nestle," said Ingo Speich, head of Corporate Governance and Sustainability at Deka, a top-30 Nestle investor.

"The new CEO needs to fix the business model and bring volumes back. He needs to do better M&A and focus more on emerging markets."

Freixe, a 63-year-old Frenchman, was sacked just over a year after his predecessor Mark Schneider was ousted for failing to turn Nestle around.

The company also said in June that Paul Bulcke, CEO from 2008 to 2016, will [step down as chair](#) in April 2026 and be replaced by Pablo Isla, a former CEO of Spanish fashion retailer Inditex.

Freixe's dismissal follows an investigation into an undisclosed romantic relationship with a direct subordinate that breached Nestle's ([NESN.S](#)), [opens new tab](#) code of business conduct, Nestle said late on [Monday](#).

Shares in the maker of Nescafe instant coffee and KitKat chocolate bars closed 0.7% lower in Zurich, paring earlier losses when the stock fell as much as 3.6%.

## SPEAK UP

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The company said concerns about a possible relationship were first raised by staff via the company's internal reporting channel Speak Up, although an initial investigation was unsubstantiated.

Freixe initially denied the relationship to the board, a company spokesperson said.

When staff concerns persisted, Nestle ordered an investigation, overseen by Bulcke and Isla, with the support of Swiss lawyers Baer & Karrer, Nestle said.

The report was completed in recent days, leading to a board meeting and Freixe's dismissal on Monday.

Freixe, who spent 39 years with Nestle, will receive no exit package following his departure, the company told Reuters.

In a short statement, Bulcke thanked Freixe for his service at Nestle, but said the dismissal was a "necessary decision".



Item 1 of 2 Nestle CEO Laurent Freixe attends the Annual General Meeting of Nestle in Ecublens near Lausanne, Switzerland, April 16, 2025. REUTERS/Pierre Albouy/File Photo

**[1/2]**Nestle CEO Laurent Freixe attends the Annual General Meeting of Nestle in Ecublens near Lausanne, Switzerland, April 16, 2025. REUTERS/Pierre Albouy/File Photo [Purchase Licensing Rights, opens new tab](#)

His removal adds to a list of chief executives forced to resign following investigations into their relationships with colleagues.

Energy giant BP's former CEO Bernard Looney and McDonald's CEO Steve Easterbrook were both removed for failing to disclose relationships.

Swiss financial news website Inside Paradeplatz reported that Freixe met the woman in 2022, before he became CEO, when he was head of Nestle's Latin America business.

Freixe was not immediately available to comment when contacted via email. The female subordinate, whose identity has not been made public, left Nestle over the summer, a company spokesperson said.

Swiss law does not prohibit relationships between senior executives, although most large companies - including Nestle - have internal codes of conduct that require them to be disclosed. If there is a conflict of interest, one of the people has to switch roles.

At Nestle, direct reporting relationship between family members, partners and close associates is not allowed, while indirect reporting lines are assessed on a case-by-case basis.

Corporate governance expert Peter V Kunz, from the University of Bern, said he was not familiar with Nestle's rules, but that requirements at most public companies were broadly similar.

"In this respect, Mr Freixe's behaviour – regardless of whether it was legal or not – seems to me to be simply stupid and incomprehensible in this day and age," Kunz told Reuters, adding that he did not think investors had grounds for legal action against Nestle.

## STABILITY SOUGHT

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As price-sensitive consumers have turned to cheaper alternatives, Nestle's shares, a bedrock of the Swiss stock exchange, have lost almost a third of their value over the past five years, underperforming European peers.

Freixe's appointment failed to halt the slide, with the company's shares shedding 17% during his leadership, disappointing investors.

One top-20 Nestle investor said Freixe had been a disappointment and that bringing in Navratil was an opportunity for a more ambitious overhaul.

The new CEO needs to slim down the company, cut costs and above all reduce the headcount, said the investor who declined to be named due to the sensitivity of the matter. It was also crucial that the company raise organic growth to boost volumes.

In July, Nestle [launched a review](#) of its underperforming vitamins business that could lead to the divestment of some brands after first-half sales volumes missed expectations.

AJ Bell investment director Russ Mould said that the company would likely face a period of uncertainty.

"While Navratil is also an internal appointment, he will want to put his own mark on strategy and that suggests the clock could be reset when it comes to the turnaround plan," he said.

Writing by John Revill, Dave Graham and Louise Heavens; additional reporting by Paolo Laudani; Editing by Andrea Ricci, Muralikumar Anantharaman, Louise Heavens, Emelia Sithole-Matarise and Barbara Lewis

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## 3 Rulings Show Hurdles To Proving Market Manipulation Fraud

By **Matthew Beville and Alexandra Rahill** (August 29, 2025, 5:04 PM EDT)

Establishing that criminal defendants engaged in market manipulation is extremely difficult, often due to the difficulty in establishing that they created prices that did not reflect legitimate sources of supply or demand.

These challenges are particularly acute in matters involving so-called micromanipulations, in which the artificial price impacts may be short-lived or confounded by other market activity, and open-market manipulations, which are accomplished solely through trading activity without allegedly fraudulent statements.

In response to these challenges, prosecutors have often sought alternative avenues to charge this activity, such as by imposing duties of confidence between arm's-length counterparties or suggesting that the defendant's activities constituted implicit misrepresentations. Three recent decisions from New York federal courts highlight the challenges of that approach.

### District Court Overturns Jury Verdict in **U.S. v. Eisenberg**

The first is *U.S. v. Eisenberg*, a May decision from the U.S. District Court for the Southern District of New York **overturning a jury verdict** against a trader based, in part, on insufficient evidence to support a conviction of wire fraud.

On Jan. 9, 2023, the U.S. Department of Justice charged crypto asset trader Avraham Eisenberg with commodities fraud, commodities manipulation and wire fraud for allegedly stealing over \$100 million in cryptocurrency by defrauding a decentralized crypto trading platform that offered a native crypto token, MNGO, and a derivative product called the MNGO perpetual, a perpetual future on the MNGO token.[1] As relevant to this matter, the platform also allowed participants to borrow against the value of their positions on the platform, secured only by the value of their on-platform positions.

As set forth in the court's order, in October 2022, Eisenberg created two accounts on the crypto trading platform and established offsetting positions in MNGO perpetuals. Eisenberg then bought large quantities of the spot MNGO token on three other trading platforms, which allegedly artificially inflated the value of his long MNGO perpetual position.[2]

He then borrowed against the long position on the original platform. After obtaining the loan, Eisenberg sold MNGO on the other three platforms, causing the MNGO price to fall and increasing the value of his short MNGO perpetual position. He then borrowed more from the platform, using his short position as collateral. In total, he borrowed — with no intent to repay — over \$100 million in cryptocurrency, effectively all of the assets on the platform.[3]

Following a nine-day jury trial, Eisenberg was convicted of commodities fraud, commodities manipulation and wire fraud. In May, the court granted Eisenberg's motion under Rule 29 of the Federal Rules of Criminal Procedure, overturning the jury verdict and acquitting Eisenberg of the wire fraud charge and vacating his commodities fraud and commodities manipulation convictions.[4]



Matthew Beville



Alexandra Rahill

With respect to the manipulation claims, the court found that Eisenberg had manipulated the MNGO price to obtain loans based on the positions he had artificially inflated. However, the court overturned his commodities fraud and commodities manipulation convictions based on lack of venue because the prosecution did not introduce sufficient evidence that the offenses occurred in New York.[5]

With respect to the wire fraud charge, the court found that the government had not established a material misrepresentation. Eisenberg argued that his conduct was not prohibited by the platform, as it was a "permissionless and automatic" protocol, and accordingly, that what he represented to the platform could not influence the platform's decision to lend to him.[6]

The court agreed, holding that there was "insufficient evidence of falsity" to support a wire fraud charge because the platform had no "rules, instructions, or prohibitions about borrowing," no prohibition against manipulation, no formal requirement that a borrower repay, and no requirement to maintain sufficient collateral.[7]

In reaching this conclusion, the court rejected the government's argument that Eisenberg "implicitly represented" that his collateral had not been manipulated and was valuable because the platform did not have rules prohibiting such conduct or otherwise imposing conditions on loans to participants beyond the market price of the collateral.[8] Thus, while the court found that Eisenberg had engaged in manipulation — that was potentially chargeable in another district — he did not make a material misrepresentation sufficient to establish wire fraud.

Interestingly, this decision highlights the limits of Eisenberg's arguments that his actions were entirely lawful because they were permitted by the exchange's functionality. While a platform's code-enabled functionality can be relevant in determining whether conduct on the platform is fraudulent or manipulative — because the platform's functionality can define the expectations and conditions on which participants interact — the court did not find those factors relevant in assessing the lawfulness of conduct that occurred on, or otherwise affected, prices on other trading platforms.

That conduct, and specifically the alleged manipulation of MNGO tokens on other platforms, was judged based on its impact to the broader market, and not within the confines of the platform.

## **Second Circuit Voids Prior Conviction in Johnson v. U.S.**

The second decision is the U.S. Court of Appeals for the Second Circuit's July 17 ruling in Johnson v. U.S. **overturning** the conviction of Mark Johnson, the former head of foreign exchange trading at a large international bank.

In 2017, Johnson was **convicted** of wire fraud and conspiracy to commit wire fraud by a jury in the U.S. District Court for the Eastern District of New York.[9] Johnson served a **two-year prison sentence**.

The underlying facts related to Johnson's alleged attempt to manipulate the 3 p.m. fix price for British pounds.[10]

The foreign exchange market does not have a closing price like the stock market; instead, vendors publish a fix price, which is a benchmark exchange rate for the pair of currencies being traded. In a fix transaction, the dealer agrees to sell currency to the client at a rate determined by the fix at a set future time. The dealer must first buy sufficient currency to fulfill the order, or fill it from the dealer's proprietary account.

For large transactions, market participants often accumulate currency prior to the fix through a practice known as prehedging, which can help protect the dealer against adverse price movements and the market impact that would result if it were forced to accumulate the entire position in the fixing window. If done appropriately, this practice can provide better execution costs to counterparties and reduce uncertainty for dealers.[11]

As stated in the Second Circuit's order, in October 2011, Johnson secured a mandate from a corporate client relating to its plan to sell a subsidiary for U.S. dollars, convert the dollars to British pounds and pay the proceeds to shareholders.[12] On Dec. 7, the client placed orders for approximately £2.25 billion at the 3 p.m. fix.[13]

Before the client placed the order, traders on Johnson's desk began accumulating inventory, ultimately acquiring more pounds than required to fill the client's order.[14] The bank bought £1.2 billion in the final six minutes before the 3 p.m. fix. The price of pounds reached the highest point of the day at the 3 p.m. fix, which caused the client to express concern about the price increase.[15] The bank thereafter sold the remaining pounds to third parties, resulting in earnings for the bank's proprietary books.[16]

In 2016, Johnson was **indicted** on 10 counts of wire fraud and one count of conspiracy to commit wire fraud.[17] At **trial**, the government advanced two theories of wire fraud.

First, under the misappropriation theory, [18] Johnson allegedly breached a duty by using the client's confidential information to trade for his proprietary account. Second, under the right-to-control theory, Johnson allegedly breached an implicit representation that the bank would not intentionally affect the price of spot pounds, depriving the company of pricing information central to the deal.[19] Johnson was convicted under both theories. On appeal in 2019, the Second Circuit **upheld** his conviction under the right-to-control theory and did not reach the misappropriation theory.[20]

In 2023, two months before Johnson completed his sentence, the U.S. Supreme Court invalidated the right-to-control theory of wire fraud in *Ciminelli v. U.S.*,[21] **finding** that wire fraud only applies to deprivations of traditional property interests. Shortly after the Supreme Court's ruling, Johnson filed a petition for a writ of coram nobis with the sentencing court, which was denied.[22]

On appeal, the Second Circuit overturned the conviction. Although not explicit, the court suggested that the "pricing information that went to the core of the deal," which the client was allegedly deprived of, was not a traditional property interest.[23]

The court also rejected the government's argument that the error was harmless because the jury also convicted Johnson on the misappropriation theory. The court found that the government's case under the misappropriation theory was "so weak" that it was "highly unlikely that a reasonable jury would have reached unanimous agreement on the more complicated and contestable misappropriation theory." [24]

To prevail on the misappropriation theory, the government was required to demonstrate that

- (1) the Defendant entered into a relationship of trust and confidence with [the client];
- (2) [the client] provided the Defendant with confidential information in the course of such a relationship;
- (3) the defendant ... secretly used that information for his own benefit, under circumstances where that use could or did result in a tangible harm to [the client];
- and (4) the defendant acted with knowledge and fraudulent intent.[25]

With regard to the first element, the court found it unlikely that a jury would have unanimously found that the element was met because the bank explicitly disclaimed any fiduciary duty to the client.[26] With regard to the third element, the court found that the government did not convincingly prove that Johnson actually misappropriated any information because the trader in charge of the execution testified that he did as he normally would, which was inconsistent with the government's theory that Johnson used the client's confidential information in a "knowingly impermissible way." [27]

As a result, the court found that the inclusion of the erroneous right-to-control theory was not harmless and that reversal was warranted.

## **Second Circuit Vacates Insider Trading Conviction in U.S. v. Chastain**

Third, on July 31, 2025, the Second Circuit **vacated** a wire fraud and money laundering conviction for Nathaniel Chastain, the manager of a non-fungible token marketplace, who was accused of misappropriating confidential information to purchase NFTs that he knew would be featured on the marketplace's homepage and selling them after the price increased following the feature.[28]

At trial, Chastain argued that the selection of which NFTs to feature did not provide commercial value to the company. The Southern District of New York instructed the jury that it could still find the defendant guilty even if the allegedly misappropriated information lacked commercial value to his

employer.[29]

On appeal, the Second Circuit agreed with the defendant that "confidential business information must have commercial value to a company to qualify as its property under the wire fraud statute." [30] Under this standard, "Information cannot qualify as a traditional property interest if its holder has no economic interest in its exclusive use or in otherwise keeping the information confidential." [31]

While this does not require a showing of actual economic loss, it does require proof that the defendant's actions "deprived [the information's owner] of its right to exclusive [use] of its proprietary information" and that the defendant did more than "depart[] from traditional notions of fundamental honesty and fair play." [32] Because the evidence did not conclusively establish that the marketplace treated information about its NFT selections as having commercial value, the court vacated the conviction and remanded for further proceedings.

U.S. Circuit Judge José Cabranes dissented in part, finding that the court "devise[d] a new requirement" that the government show that "the information possesses commercial value." [33] Judge Cabranes said he would have affirmed the conviction, writing that the decision ignores Second Circuit and Supreme Court precedent holding that confidential business information on its own can be considered property for purposes of a wire fraud conviction. [34]

## Takeaways

These decisions highlight the challenges that prosecutors face in establishing fraud and market manipulation and suggest that courts are becoming increasingly reluctant to apply novel theories to find criminal fraud liability for alleged market manipulation. [35]

Together, these matters suggest that prosecutors may face continued difficulty in bringing novel fraud or manipulation cases, such as where, like in Eisenberg, there were no express violations of platform rules; or like in Johnson, the distinction between illegitimate front-running and legitimate prehedging risk is hard to define.

They also suggest that prosecutors will be required to establish that the allegedly misappropriated information had demonstrable commercial value. As a result, prosecutors may be more reluctant to charge conduct, like prehedging and inaccurate trader talk, that could be viewed as commercial matters between arm's length counterparties.

For defense counsel, these matters also provide a framework for rebutting allegations of market misconduct. Having a deep understanding of market conventions and expectations can be crucial for advancing arguments that alleged misconduct was, in fact, accepted practice and would not have been viewed as misleading or inconsistent with the terms of participating on the relevant venue.

Similarly, understanding the economic rationale and necessary market impact of trading strategies is extremely important for establishing that the conduct had a legitimate purpose and did not result in artificial prices. More fundamentally, these matters provide a foundation for resisting attempts to expand the scope of criminal liability in market conduct cases, particularly in cases that may be difficult to prove under traditional concepts of fraud and manipulation.

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*Matthew Beville is a partner and Alexandra Rahill is counsel at WilmerHale.*

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[1] **United States v. Eisenberg** , No. 23-CR-10 (AS), 2025 WL 1489248 (S.D.N.Y. May 23, 2025).

[2] *Id.* at \*3.

[3] *Id.* Notably, four days after this activity, Eisenberg posted a statement on Twitter admitting to engaging in the conduct, which he called a "highly profitable trading strategy," but asserted his

actions were "legal open market actions."

[4] *Id.* at \*27.

[5] In particular, the court noted that Eisenberg was not in New York when the offense occurred and that there were no allegations that Mango Markets or the other third-party trading platforms were located in New York. While the government alleged that one of Mango Markets' users was in New York and that one of the trading platforms relied on a New York-based technology vendor, the court found that these contacts were insufficient to support the convictions.

[6] *Id.* at \*23.

[7] *Id.* at \*24-25.

[8] *Id.* at \*25.

[9] *United States v. Johnson* , No. 1:16-CR-00457-NGG, 2018 WL 10517628, at \*1 (E.D.N.Y. May 10, 2018).

[10] *Johnson v. United States* , No. 24-1221, 2025 WL 1966390 (2d Cir. July 17, 2025).

[11] The FX Global Code, which has been adopted by most major FX market participants, provides guidance for when pre-hedging is appropriate. See FX Global Code, Principle 11: A Market Participant should only Pre-Hedge Client orders when acting as a Principal, and should do so fairly and with transparency (Dec. 2024), available at [https://www.globalfx.org/uploads/fx\\_global.pdf](https://www.globalfx.org/uploads/fx_global.pdf). Principle 11 states that market participants may pre-hedge "in a manner that is not meant to disadvantage the Client or disrupt the market" and should communicate pre-hedging practices to clients "in a manner meant to enable Clients to understand their choices as to execution." *Id.* In July 2023, the European Securities and Markets Authority (ESMA) published a report warning of the risks of pre-hedging but finding that the practice should remain legal. See ESMA Report on the Call for Evidence on pre-hedging (July 12, 2023), available at [https://www.esma.europa.eu/sites/default/files/2023-07/ESMA70-449-748\\_Feedback\\_report\\_on\\_pre-hedging.pdf](https://www.esma.europa.eu/sites/default/files/2023-07/ESMA70-449-748_Feedback_report_on_pre-hedging.pdf).

[12] 2025 WL 1966390 at \*2.

[13] *Id.* at \*4.

[14] Before the transaction, Johnson also allegedly purchased pounds in his proprietary trading account.

[15] *Id.* at \*5.

[16] *Id.*

[17] *Id.*

[18] The misappropriation theory is based on insider trading prosecutions under Section 10(b) of the Securities Exchange Act of 1934.

[19] *Id.* at 6. In support of this theory, the government alleged that Johnson implicitly represented that he would not intentionally impact the fixing price when he warned one of the client's advisors that other banks could trade in such a way that it inflates the fix.

[20] *United States v. Johnson* , 945 F.3d 606, 608 (2d Cir. 2019).

[21] 598 U.S. 306 (2023).

[22] Coram nobis is a common law writ used to correct errors after a final conviction. The Second Circuit has found that a writ of coram nobis should issue "when a petitioner shows '1) there are circumstances compelling such action to achieve justice, 2) sound reasons exist for failure to seek

appropriate earlier relief, and 3) the petitioner continues to suffer legal consequences from his conviction that may be remedied by granting of the writ." *Johnson v. United States* , 2025 WL 1966390 at \*6.

[23] *Id.*

[24] *Id.* at \*7, \*10.

[25] *Id.* at \*7 (citations omitted).

[26] *Id.* at \*9.

[27] *Id.*

[28] *United States v. Chastain* , No. 23-7038, 2025 WL 2165839, at \*1 (2d Cir. July 31, 2025).

[29] *Id.*

[30] *Id.* at \*5.

[31] *Id.* at \*17.

[32] *Id.* at \*19-21.

[33] *Id.* at \*13.

[34] *Id.* at \*13-14.

[35] These setbacks are compounded by prior decisions that rejected prosecutors' attempts to impute duties of confidence between arms-length counterparties. In *United States v. Litvak* , 889 F.3d 56 (2d Cir. 2018), the Second Circuit overturned the conviction of a former trader under Section 10(b) of the Securities Exchange Act of 1934 for alleged misstatements to a counterparty regarding his profit on a transaction, finding that the district court improperly admitted testimony that the counterparty believed Litvak was acting as a fiduciary agent when such relationship did not exist. Similarly, in *United States v. Bogucki* , No. 18-CR-00021-CRB-1, 2019 WL 1024959 (N.D. Cal. Mar. 4, 2019), the District Court for the Northern District of California granted a directed verdict in favor of the defendant, the former Head of FX Trading at a large bank, in an alleged frontrunning scheme to manipulate the FX options market prior to a corporate client's transaction. The court found that the government had not satisfied the materiality element of wire fraud, because the operative agreement disclaimed any fiduciary relationship, and "no reasonable jury could conclude beyond a reasonable doubt that it was objectively reasonable for [the client] to be influenced by the [defendant's] statements." *Id.* at \*7.



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## 3rd Circ. Backs Walmart In Opioid Securities Disclosure Suit

By **Corey Rothauser**

Law360 (August 29, 2025, 6:31 PM EDT) -- A proposed class action by Walmart investors claiming the company misled them by failing to disclose a federal opioid investigation was rejected Friday by the Third Circuit, which held the retailer's U.S. Securities and Exchange Commission filings were not false or misleading.

In a **precedential decision**, the appeals court unanimously affirmed U.S. District Judge Colm F. Connolly's **dismissal** of the case, finding that Walmart's filings adequately disclosed potential risks once the scope of the investigation became clearer and did not misstate its liabilities beforehand.

"Because 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, plaintiffs' first theory fails," the panel said.

The court said that simply being the target of a government probe is not itself a disclosable liability.

"We are not persuaded either of these factors converted the early-stage investigations into a reasonably possible liability," the panel noted, adding that "at this early stage, it was not plausible to infer a 'reasonabl[e] possib[ility]' that [Eastern District of Texas'] search warrants and broad document demands could be a liability, much less a loss that 'may be material.'"

The litigation stemmed from a yearslong investigation by federal prosecutors in the Eastern District of Texas into Walmart's pharmacies and opioid dispensing practices, which nearly resulted in an indictment in 2018 before the U.S. Department of Justice ultimately declined to charge the company, according to court documents.

The probe resurfaced in a 2020 ProPublica article, after which Walmart's stock price dropped. The DOJ later filed a **civil case** in Delaware under the Controlled Substances Act, which remains ongoing.

Investors **alleged** in a lawsuit filed in 2020 that Walmart's quarterly and annual filings from 2017 to 2020 were misleading because they didn't mention the government's scrutiny.

But the appeals court said Friday that Walmart's June 2018 filings were sufficient because they disclosed Walmart was under investigation, identified opioids as the subject of the probe and warned the company could provide no assurance about the scope or outcome of the investigation.

The panel also rejected claims that Walmart's filings violated accounting industry rules known as Accounting Standards Codification Topic 4504, which require disclosure of certain "loss contingencies." The court said ASC 450 requires judgment calls by management, and the early investigations were too indeterminate to qualify as disclosable loss contingencies.

"No investor could read" these disclosures "without understanding what was true — ... that Walmart potentially faced losses if the investigation resulted in criminal charges or civil claims and that the scope of any such losses was indeterminate," the panel said, echoing the district court.

The panel also upheld Judge Connolly's denial of the investors' request to further amend their complaint, concluding it would have been futile because additional allegations of intent would not cure the lack of a misleading statement.

The panel turned aside a separate argument that Walmart's risk disclosures were inadequate. According to the ruling, investors had claimed the company violated SEC "Item 105," a rule that requires companies to spell out the most significant factors that could affect their business or stock price. The court found Walmart's warnings about possible government investigations were sufficient.

Finally, the judges emphasized that Walmart's June 2018 statements — saying the company could provide "no assurance" about the scope and outcome of investigations — were treated as opinions under the U.S. Supreme Court's *Omnicare* decision.

The panel explained that *Omnicare* holds opinion statements are only misleading if the speaker does not actually believe them, hides contrary facts or embeds false facts. Because Walmart disclosed that it was under investigation, what the probes involved and that the results were uncertain, those opinion statements were not misleading, the panel said Friday.

The judges closed with stressing that while Walmart may still face accountability over its opioid practices, "not everything is securities fraud — a public company's mischief is not actionable under the securities laws unless the company's disclosures contain a misrepresentation or misleading omission of material fact."

In response to Law360's request for comment, a spokesperson for Walmart said the company is pleased with the court's decision but did not comment on the separate DOJ civil matter noted in the opinion.

Counsel for the investors did not respond to a request for comment Friday.

U.S. Circuit Judge Anthony Scirica, Michael A. Chagares and Marjorie Rendell sat on the panel for the Third Circuit.

The investors are represented by Sara Fuks of the Rosen Law Firm.

Walmart is represented by Roman Martinez of Latham & Watkins LLP.

The case is *In re Walmart Inc. Securities Litigation*, case number 24-1818, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Lakshna Mehta.



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# Concrete Co. Challenges Stockholder's Second Books Suit

By **Jeff Montgomery**

Law360 (August 29, 2025, 3:38 PM EDT) -- Attorneys for a concrete company taken private in an \$11.5 billion merger in February have called for dismissal of a stockholder's document suit, saying he lost standing to sue for deal-related books and records when he dropped an earlier books demand and challenged the merger outright.

Arguing for dismissal of shareholder Michael O'Neill's books and records action in a pretrial brief, Summit Materials Inc. said O'Neill's full-on suit carried an implicit concession under Delaware law that he had enough information to proceed with a full-on complaint, ruling out document demand rights outside case discovery.

Complicating the picture: Delaware lawmaker passage in March of new, retroactive restrictions on books and records demands in a corporation law amendment package approved one month after O'Neill docketed his full suit.

O'Neill certified to the court in filing the suit that he had "sufficient information to file a plenary suit without first inspecting books and records," attorneys for Summit said.

"But plaintiff now has done an about-face, voluntarily dismissed his plenary action, and — after nearly a three-month delay — filed this action, seeking to pursue the demand he abandoned" when he sued the company over its merger.

Although there are exceptions to postlawsuit books and records demand rights, Summit said none cover O'Neill's case and he failed to show that he was "prejudiced by anything other than his own strategic choices."

Summit's acquisition by Quikrete Holdings Inc. in February ended the company's public listings, and followed Summit's \$3.2 billion acquisition of the U.S. operations of Columbia's Cementos Argos SA, a subsidiary of Grupo Argos SA, by about six months. Rights under a preclosing document access agreement that O'Neill had reached with Summit ended Jan. 29, however.

Targeted in the latest document suit are allegations that Grupo Argos SA sought and received a buyer agreement to waive a no-compete term that Summit secured in an earlier transaction in exchange for Grupo Argos' support for the Quikrete merger.

O'Neill's prior premerger demand for Summit documents said Grupo Argos received nonmonetary, special benefits not shared with other stockholders, including the value of a noncompetition provision, along with claims that the deal price and process were unfair.

Summit Materials Inc said in a pretrial brief on the books demand that stockholder Michael O'Neill has wrongly claimed that corporation law amendments approved in Delaware earlier this year give him a second chance that otherwise would have been unavailable.

"He now seeks a second bite at the apple and claims that he needs more information to state a class action claim," Summit said, and "the fact that plaintiff now lacks a proper purpose for pursuing the demand is a problem of his own making."

Attorneys for O'Neill said in an earlier brief that Delaware's Supreme Court has previously concluded

that a "bright line" prohibition on document suits based on filing of a full lawsuit is inconsistent with Delaware law "or sound policy." The court also has indicated that it will fast-track a review of S.B. 21.

O'Neill "conveniently ignores that he and his counsel made a tactical decision to race to the courthouse and file the plenary action on February 25, 2025." Summit said.

"Plaintiff is clinging desperately to the revival of his prior demand, because the merger extinguished plaintiff's status as a stockholder, he does not have standing to serve a new books and records demand under Section 220, and only has standing to pursue his demand as a result of the access agreement," Summit said.

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

O'Neill is represented by Daniel E. Meyer and Christopher J. Orrico of Bernstein Litowitz Berger & Grossmann LLP and Joel Fleming and Amanda Crawford of Equity Litigation Group LLP.

Summit Materials Inc. is represented by Douglas D. Hermann and Cassandra L. Thompson, J. Timothy Mast, Mary M. Weeks and Bianca N. DiBella of Troutman Pepper Lock LLP.

The case is Michael O'Neill v. Summit Materials Inc., case number 2025-0695, in the Court of Chancery of the State of Delaware.

--Editing by Stephen Berg.

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## NJ Judge Tosses REIT Shareholders' Liquidation Suit

By **Isaac Monterose**

Law360 (September 2, 2025, 1:34 PM EDT) -- A New Jersey federal judge has rejected a proposed class action filed by shareholders accusing several real estate investment trusts and other parties of misleading them in order to avoid liquidating the REITs, ruling the claims must be thrown out without prejudice.

In his order filed on Aug. 31, U.S. District Judge Michael A. Shipp initially determined the proposed class' claims are direct claims and not derivative ones because the class alleged they were harmed in a way that's distinct to them.

In their suit removed to New Jersey federal court in November 2024, the shareholders **sued** Lightstone Value Plus REIT I Inc., Lightstone Value Plus REIT II Inc. and Lightstone Value Plus REIT III Inc., along with their external advisers and multiple directors.

The defendants were accused of filing misleading proxy statements and FAQs to compel shareholders to approve 2023 charter amendments for the REITs. The proposed class alleged the charter amendments prevented the REITs from being liquidated and wrongfully allowed one of the defendants, David Lichtenstein, to collect advisory fees for as long as he wanted.

According to Judge Shipp, the proposed class wants the court to rescind the charter amendments, award the class compensatory damages and attorney fees, rule the directors breached their fiduciary duties, and rule the defendants violated the legacy charters for the REITs.

As such, the judge determined the proposed class is seeking relief that would benefit them and not the REITs, rejecting the defendants' argument the claims should be tossed for being derivative ones and not direct ones.

However, Judge Shipp ruled the challenged proxy statements and FAQs sufficiently explained how the charter amendments would work. For example, the judge pointed out that a 2022 proxy statement explained Lichtenstein had "subordinated partnership interests" in the REITs that he could benefit from.

"To the extent that plaintiffs allege that defendants failed to disclose an improper motive behind the 2023 charter amendments, the [proposed class action complaint] does not plead any facts to allow the court to make such an inference," Judge Shipp said. "As such, the court finds that plaintiffs fail to plead that Lichtenstein's subordinated partnership interests were not fully disclosed."

The judge further ruled the 2022 proxy statements explained that the 2023 charter amendments would get rid of the fiduciary duties the directors owed to the shareholders.

The judge reached similar conclusions when he ruled the proxy statements sufficiently disclosed specific rollup transaction protections being removed, stockholder meeting changes, stockholder list changes, and indemnification and exculpation changes for directors.

Judge Shipp also rejected the proposed class' breach of contract claim alleging the defendants violated the legacy charters, ruling the claim must be tossed because the proposed class has failed to show how the defendants violated their fiduciary duties.

In a related Aug. 31 order, the judge ruled the proposed class has 45 days to file an amended complaint.

Class counsel and the defendants' counsel did not immediately respond to requests for comment on Tuesday.

The proposed class is represented by Donald J. Enright and Jordan A. Cafritz of Levi & Korsinsky LLP and Christopher J. Gray of Law Office of Christopher J. Gray PC.

The defendants are represented by Jeremy B. Stein and Kelly A. Zampino of Hartmann Doherty Rosa Berman & Bulbulia LLP and John F. Baughman, Andrew C. Bosse and Alexander R. Kalyniuk of Baughman Kroup Bosse PLLC.

The case is Ayer et al. v. Lightstone Value Plus REIT I Inc. et al., case number 3:24-cv-10371, in the U.S. District Court for the District of New Jersey.

--Editing by Philip Shea.

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## Split 9th Circ. Revives Suit Over \$2.1B Robinhood IPO

By **Jessica Corso**

Law360 (August 29, 2025, 8:05 PM EDT) -- A divided Ninth Circuit on Friday revived a proposed investor class action suit accusing Robinhood Markets Inc. of failing to disclose a downturn in user interest ahead of its \$2.1 billion initial public offering, ruling that corporations planning to go public have a duty to disclose material financial information even from quarters that have just ended.

Two of the three judges sitting on the Ninth Circuit panel ruled in favor of overturning **the dismissal** of a lawsuit that accuses Robinhood and its executives of hiding falling revenues in the second quarter of 2021 from prospective investors in its IPO. Although that quarter had just ended when Robinhood announced it was going public in July 2021, the majority said Robinhood may have had a duty to disclose to investors what it knew about the results.

"On remand, the district court shall ascertain whether plaintiffs adequately alleged that the omitted information was material," the panel said in an opinion written by U.S. Circuit Judge Milan Smith. "If they did, then they have adequately alleged that Robinhood had a duty to disclose the omitted information."

While the majority revived some claims against the popular trading app, it upheld the dismissal of claims that Robinhood was required to provide a breakdown of its second-quarter revenue sources when discussing its risk factors.

In a dissent on Friday, U.S. Circuit Judge Johnnie Rawlinson said the majority "fails to focus on what Robinhood knew when the prospectus was issued."

Judge Rawlinson argued that Robinhood made "expansive disclosures" ahead of its IPO, including by informing prospective investors that it expected a possible slowdown in growth in the later half of 2021 and use of its platform to fluctuate from quarter to quarter.

"In light of Robinhood's significant disclosures regarding the panoply of risks it faced, there is simply no basis under our precedent for this litigation to proceed," the judge wrote.

The investors, who sued in 2021, argued that Robinhood failed to alert them that the huge spike in revenue it experienced over the first three months of the year would not continue, as it was largely reliant on trading in so-called meme stocks and the cryptocurrency Dogecoin.

When interest in those trades dipped in the second quarter, so did Robinhood's revenue, suing investors claim. But they said that the company hid that fact until after its IPO went live, and published third-quarter results in October, causing its stock price to decline.

A Robinhood spokesperson told Law360 in an email on Friday that the investors' claims are "meritless."

"We are pleased with the Ninth Circuit's decision that affirms the district court's dismissal of one of plaintiff's legal theories, and we look forward to demonstrating again that all claims should be dismissed," the spokesperson said.

Investors' counsel didn't immediately respond to a request for comment.

U.S. Circuit Judges Johnnie B. Rawlinson and Milan D. Smith Jr., and U.S. District Court Judge Jed S. Rakoff sat on the panel for the Ninth Circuit.

The investors are represented by Deborah Clark-Weintraub, Emilie Kokmanian, Thomas Laughlin, Hal Cunningham and John Jasnoch of Scott + Scott Attorneys at Law LLP.

Robinhood and its executives are represented by Kevin Orsini, Antony Ryan, and Brittany Sukiennik of Cravath Swaine & Moore LLP.

The case is Sodha v. Robinhood Markets Inc. et al, case number 24-1036, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Alanna Weissman.

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