

News from Bloomberg Terminal

Swedish Online Gaming Parent Company Fends Off US Investor Suit

Sept. 8, 2025, 10:18AM PDT

By Martina Barash

(Bloomberg Law) --

US investors in Evolution AB can't proceed with a proposed class action alleging the Swedish online gambling giant misrepresented its exposure to regulatory action in some markets, a federal court ruled.

The investors failed to establish that the court has personal jurisdiction over the holding company, Judge Mia R. Perez said Sept. 5 for the US District Court for the Eastern District of Pennsylvania.

The investors alleged regulators targeted Evolution business customers in some countries, including Australia and Sweden, for violating gambling laws. The investors say they hold American depositary shares in the Nasdaq Stockholm-listed company, and sustained losses on their holdings as a result of the noncompliance issues.

The investors didn't show that Evolution could be sued directly in Pennsylvania, and they failed to establish that its actions could be imputed to any of three Pennsylvania-linked subsidiaries, Perez said.

Counsel for the investors included Robbins Geller Rudman & Dowd LLP. Sullivan & Comwell LLP and Blank Rome represented Evolution.

The case is *Skolnick v. Evolution AB (publ)*, E.D. Pa., No. 2:24-cv-00326, 9/5/25.

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Four Decades in Securities Litigation: What's Changed and Why It Matters

The article highlights 40 years of changes in securities litigation, including the impact of the PSLRA, larger institutional plaintiffs, and more event-driven lawsuits. Litigation has increased, with bigger settlements and higher risks, especially from operational issues. Civility among lawyers remains strong, and women's participation has grown, though more diversity is needed.

September 08, 2025 at 09:00 AM By **Tracy Nichols**



securities litigation

When I began practicing securities litigation nearly 40 years ago, the landscape was vastly different. Accounting fraud dominated the headlines, plaintiffs' firms were relatively few and far between, repeat plaintiffs were common, class actions were quickly filed with little pre-suit investigation and derivative actions were generally manageable and often resolved swiftly.

Today, the practice is more crowded, more sophisticated and shaped by forces few anticipated when the Private Securities Litigation Reform Act (PSLRA) was passed. Below are some of the shifts I've witnessed over the years—each with implications for investors, companies and their directors and insurers alike.

1. The PSLRA was meant to discourage repeat plaintiffs and encourage institutional investors to take charge. It mostly did that

Passed in 1995, the PSLRA was designed as a chokehold on frivolous suits. It introduced heightened pleading standards, an automatic discovery stay, and a lead plaintiff requirement intended to deter nuisance filings.

The implementation of the lead plaintiff structure has succeeded in encouraging institutional investors to oversee class actions. Before the PSLRA, institutions rarely served as plaintiffs, but today they lead most of [the large cases](#).

The cases with institutional investors typically result in much higher settlements than those brought by individual plaintiffs. These sophisticated investors have also been effective at negotiating lower attorney fees, thereby increasing the per share investor recoveries.

So from that standpoint, the PSLRA has achieved the objective of encouraging sophisticated institutions to lead the charge.

The result of this increased participation, however, has not resulted in fewer filings and lower costs. The average number of filings in the years since the PSLRA has remained largely the same even though the number of public companies in the U.S. has contracted by more than 35 percent.

While the overall number of securities class actions has not diminished in the past 30 years, the improved investigations by lead counsel and increased oversight by sophisticated plaintiffs has resulted in fewer dismissals and larger settlements.

Moreover, the lead plaintiff structure has led to more frequent collaborations among sophisticated plaintiff firms and a more orderly process with defense counsel fighting fire on one front, not multiple ones.

The benefits of this structure are evident when compared to the absence of such a structure in derivative actions where suits are filed in multiple states and federal courts. There is no orderly process for consolidating the actions or narrowing the number of plaintiffs and their counsel.

While frequent filers have largely been replaced by institutional plaintiffs in the securities class action context, it remains a problem in the mergers and acquisitions suits filed in federal court. A

study in 2022 found that nine individual plaintiffs filed 123 of 127 M&A litigation suits and not a single case ended with any recovery to the [putative class](#).

Paul Parshall—the ultimate serial frequent filer—has filed more than 120 cases since 2014. The vast majority of cases he has filed resulted in settlements of corporate therapeutics with no monetary benefit to the company or its shareholders.

2. The PSLRA was meant to rein in plaintiffs' firms and decrease the cost of settlements. It has not done that

And yet, nearly three decades later, the plaintiffs' bar is more active and aggressive than ever.

Why? For one, the PSLRA spurred the rise of large, well-funded institutional plaintiffs' firms with the resources and expertise to navigate these new hurdles.

Simultaneously, smaller firms have proliferated—many jumping into derivative actions and making it harder to reach resolution. Courts are more likely to dismiss weak cases early, but the median settlement size for meritorious cases remains high, reflecting the risks and costs of defending these actions.

Insurers remain as wary as ever of securities claims. And the large settlements attract more lawyers into the plaintiff's bar.

3. Event-driven litigation has replaced accounting fraud as the primary trigger for lawsuits

While classic accounting principal violations once dominated the docket, today's claims are often event-driven. A data breach, a food safety recall, missed forecasts about AI, cryptocurrency or SPAC-issues can now serve as the basis for a securities suit.

Plaintiffs have also become adept at reframing these operational missteps as breaches of fiduciary duty. Such breach of fiduciary duty claims, which are not subject to the PSLRA's strict pleading requirements, are often harder to dismiss.

This shift isn't merely academic. It has broadened the risk profile for public companies and made it difficult to predict what will trigger litigation or anticipate the costs of defending or settling such litigation.

In the past, derivative claims were generally resolved with the securities class action plaintiffs' counsel sharing a small portion of their fees with derivative counsel. No longer. Now, derivative counsel are seeking significantly higher fees even in non-monetary settlements and have also received significant monetary settlements in more serious cases.

4. Litigation funding and insurance pressures are reshaping the game

Litigation finance has enabled some smaller firms to punch above their weight and its presence can complicate negotiations or prolong disputes. Meanwhile, carriers remain in a bind. Despite their desire to mitigate risk, there has been limited ability to change policy language or manage exposure through traditional means.

The result is an ecosystem where insurers are stuck pricing for risk that increasingly stems from often unanticipated operational failures rather than knowing financial misstatements. Towers remain a concern, and with more complex claims, the demand for coordinated, sophisticated mediation is higher than ever.

5. Civility and integrity are generally more present in this practice area

Despite the polarization in the political arena, civility in the securities litigation arena has been consistently better than in other areas of law. Securities lawyers recognize that the bar is small, lawyers are likely to meet again, and their word is their bond.

Aggressive and rude behavior in one case will undoubtedly lead to distrust or pay-back actions in the next case.

On the other hand, when lawyers treat their opposing counsel with civility and respect, their current and future clients benefit. Since most securities cases settle, it's imperative plaintiff and defense counsel avoid any personal grudges or agendas that could drive up costs or delay resolution.

6. The participation of women and minorities has risen... somewhat

When I first began practicing in this area, there were only a handful of women securities litigators in the entire country. Attending an insurance conference of securities panel counsel some 30 years ago, I was one of two women joining the 100 other male lawyers. The giveaway was a men's golf jacket starting at size medium.

Fast forward to the same conference 15 years later, I was pleased to take advantage of the massage option gift and chat with the insurance company's female general counsel poolside at the spa.

Women have made significant inroads to increase participation both in numbers and seniority as judges, litigators, insurance personnel and in-house counsel.

However, the same level of progress has not been made for minority lawyers. More work is needed to increase the diversity of race, gender, background and viewpoints in this field.

Conclusion

Despite these 40 years of changes, one thing remains constant: securities litigation is a high-stakes, high-impact practice. The tools and skills of those in the trenches have evolved, and the stakes are still just as high.

Understanding these shifts isn't just academic—it's essential for anyone looking to manage risk, resolve disputes, and navigate today's turbulent legal landscape.

Tracy A. Nichols *is a distinguished securities litigator and a panelist at FedArb, where she brings decades of experience to complex securities arbitrations and mediations.*

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Tesla Shareholder Seeks to Muzzle Elon Musk with 'Political Neutrality' Policy

"Publicly visible political activities among Tesla's directors and high-ranking officers are known to have harmed public perception of Tesla and its products," Pennsylvania entrepreneur Jay Butera says in his proposal.

September 05, 2025 at 12:39 PM By  **Chris O'Malley**



Photo: Susan Walsh/AP

A Tesla shareholder and clean energy and climate change activist wants the company's directors and "high-ranking officers" to quit talking politics to protect the automaker's shareholder value.

The ["political neutrality policy" proposal](#) submitted by Gladwyne, Pennsylvania entrepreneur [Jay Butera](#) doesn't name the offenders— but the elephant in the room is clearly Tesla CEO Elon Musk.

Shareholder proposals such as Butera's are purely advisory, but companies that see a proposal rack up substantial shareholder support often feel pressure to revise their practices.

Investors blamed Austin, Texas-based Tesla's [13% drop in sales and 36% plunge in stock price](#) during the first quarter partly to Musk's role as President Donald Trump's "first buddy" earlier this

year. Sales fell 13% in the second quarter, as well, though its shares staged a rally in April and May shrinking the year-to-date loss to 13%.

The billionaire supported Trump for president and briefly led the newly formed Department of Government Efficiency—taking down such agencies as USAID and the Department of Education in the process.

That sent many liberals into a tizzy. Some even torched Teslas parked at repair shops.

Then, in May, Musk infuriated the other side of the political spectrum by describing Trump's spending bill as a "disgusting abomination."

"Publicly visible political activities among Tesla's directors and high-ranking officers," Butera's proposal states, "are known to have harmed public perception of Tesla and its products, damaging customer retention, customer acquisition and brand equity, and revenue."

Without citing any supporting information, the proposal notes "Tesla's politically diverse" customer base and the risk that political activity will alienate some segments of existing and potential customers.

The proposal would prohibit leadership from making "statements, endorsements, contributions, sponsorships, or any other publicly visible actions in support of, or opposition to, any political party, candidate or campaign whether using personal or company resources."

The measure would have Tesla police its leadership through an update to its code of business ethics compliance, along with board oversight and through periodic reviews.

But in its proxy statement filed Friday, Tesla recommends that shareholders vote against Butera's proposal on grounds "that it impermissibly seeks to micromanage the company."

Tesla said it has already asked the Securities and Exchange Commission to issue a no-action letter that would allow the company to exclude the proposal for vote at its Nov. 6 annual meeting.

In its response to Butera's proposal, Tesla counters a ban on political activity "would not only have a chilling effect on free speech, but could also be both impossible and unlawful for the board to implement and enforce."

Tesla noted that enforcing such a policy would violate laws in states that limit the ability of a company to regulate political speech of employees.

The company also noted the impracticality of monitoring speech and the variability in the political landscape.

"As global geopolitical circumstances evolve, a topic, statement or action could be political neutral one day, and later, in hindsight, appear politically charged."

According to Butera's shareholder proposal he owns at least \$25,000 in Tesla stock. Though himself a player in Washington, D.C. political circles via his advocacy for clean energy and climate change policies, Butera's website alludes to his own business background, including the founding of Cedar Fresh Home Products.

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California Brief

Alphabet Loses Bid for Early Appeal in Investors' Google Ad Suit

Sept. 5, 2025, 11:27 AM PDT

Alphabet Inc. won't get immediate review of a ruling allowing investor claims to proceed in a proposed class action over the fairness of Google's advertising bidding process.

Alphabet and its top executives raised fact-specific questions that aren't subject to immediate appeal, Judge Rita F. Lin said for the US District Court for the Northern District of California.

The ruling comes the same day that the European Union fined Google almost €3 billion (\$3.5 billion) and ordered it to stop favoring its own ad technology services. Google also recently agreed to a \$500 million outlay for regulatory compliance reforms in shareholder derivative litigation alleging monopolistic practices, also overseen by Lin. The judge granted preliminary approval to that deal in July.

Here, the investors alleged Google gave advantages such as extra time and information to ad auction bids submitted through its own platforms or a Facebook network that had an agreement with Google.

Although the investors targeted several company statements in their securities fraud suit, Lin allowed claims over just one of them to proceed. The investors adequately alleged CEO Sundar Pichai's written testimony to Congress in 2020 was misleading and made with the necessary level of intent, she ruled in March.

The parties entered private mediation in May, according to the docket.

Pomerantz LLP is lead counsel for the investors. Freshfields US LLP represents Alphabet.

The case is AMI - Gov't Emps. Provident Fund Mgmt. Co. Ltd. v. Alphabet Inc. , N.D. Cal., No. 3:23-cv-01186, 9/5/25 .

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Class Action

Manage Newsletters

iRobot Investor Presses Timeline of Failed Amazon Deal on Appeal

Sept. 8, 2025, 10:10 AM PDT

Summary by Bloomberg AI

AI Generated



- iRobot Corp. and the investor leading a proposed class action focused on the timing of adverse events before Amazon Inc.'s acquisition of the robot vacuum maker collapsed during oral arguments.
- The US Court of Appeals for the First Circuit Judges tried to determine the timing of what iRobot knew about Amazon's compliance with antitrust regulators' requests for information, regulatory setbacks, and the termination of integration meetings between the companies.
- Counsel for iRobot said statements were couched in cautionary language that the acquisition required approvals to complete, and regulatory hurdles were disclosed, while the attorney for lead plaintiff Premca Extra Income Fund LP argued that iRobot building a contingency plan and other events is sufficient to show iRobot's dishonesty to investors.

iRobot Corp. and the investor leading a proposed class action focused during oral arguments Monday on the timing of adverse events before Amazon Inc.'s acquisition of the robot vacuum maker collapsed.

Circuit Judge Sandra L. Lynch pointed to iRobot saying in August 2023 for the first time that it expected to garner the required regulatory approvals for the merger to complete. "I thought it a little odd, given your version of the sequence of events, that they choose in August of '23 for the very first time to actually offer a prediction on what's going to happen," Lynch said to the attorney for lead plaintiff Premca Extra Income Fund LP.

US Court of Appeals for the First Circuit Judges Lynch, Julie Rikelman, and Seth R. Aframe tried to determine the timing of what iRobot knew about Amazon's compliance with antitrust regulators' requests for information, regulatory setbacks, and the termination of integration meetings between the companies. US and European regulators' antitrust concerns led the companies to abandon the acquisition in 2024.

There were signs that the merger would fail—including the European Commission moving its antitrust review to a second stage—but iRobot didn't update investors about pitfalls after its positive August 2023 statement, said Christopher Tourek, of counsel at Pomerantz LLP, for the appealing Premca.

The merger agreement available to investors defined regulatory compliance as providing any material requested by regulators, but iRobot knew Amazon wasn't doing that while it started souring on the deal, he said.

Premca doesn't need a "smoking gun" to show iRobot's dishonesty to investors, Tourek said. iRobot building a contingency plan for the first time in 2023, and other events, is sufficient. It contributes to a timeline that iRobot knew the deal was darkening after Amazon terminated integration meetings and the European Commission and US Federal Trade Commission appeared doubtful of it.

Cautionary Language

Counsel for iRobot said statements were couched in cautionary language that the acquisition required approvals to complete, and regulatory hurdles were disclosed.

Timing wise, there's nothing to suggest then-executives knew about issues endangering the deal when making statements in the summer of 2023, said Alisha Q. Nanda, a partner at Skadden, Arps, Slate, Meagher & Flom LLP, for iRobot. The August statement came after the United Kingdom's antitrust regulator approved the merger that June; earlier statements were made too early in regulatory review processes for casting approval projections.

The US District Court for the District of Massachusetts correctly held Premca's complaint lacked specific enough allegations to meet pleading standards for securities fraud claims, Nanda said. Premca didn't point to any actual communications between iRobot and Amazon to show the robot vacuum maker knew the tech giant wasn't fully cooperating with regulators, and confidential witness statements and vague news articles aren't strong enough to carry a case.

Given the total mix of information available to investors, iRobot didn't have a duty to disclose more than it did, she said. Contingency planning didn't mean abandonment planning, consistent with disclosures to investors.

Lower Court

Premca failed to allege iRobot and then-executives misrepresented Amazon's cooperation with regulators, the merger's status, and risks of the approval process, or that they did so with the level of intent or recklessness to support securities fraud claims, District Judge William G. Young said.

The lower court "wrongly disregarded" confidential witness accounts about Amazon's alleged refusal to cooperate with antitrust regulators' requests for information when tossing the case this year, Premca said in its brief.

iRobot contended in its brief the allegations weren't specific, so Young correctly found that vague news articles and sparse confidential witness accounts couldn't support claims the Roomba maker misrepresented the deal's prospects and regulatory cooperation.

iRobot shareholders recently sued the company and leadership for allegedly overstating its profitability turnaround after the Amazon deal fell through.

Pomerantz attorneys didn't respond to an email seeking comment for after the arguments ended, sent before they started.

Skadden, which represents former CEO Colin Angle and former chief financial officer Julie Zeiler in addition to the company, declined to comment. iRobot said it doesn't comment on litigation.

The case is Premca Extra Income Fund LP v. iRobot Corp. , 1st Cir., No. 25-01192, oral arguments 9/8/25 .

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Securities Law News

Goldman Sachs Investors Get 1MDB Scandal Case Class Status (2)

Sept. 5, 2025, 10:47 AM PDT; Updated: Sept. 5, 2025, 2:23 PM PDT

The Goldman Sachs Group Inc. and former top executives must contend with a class of investors alleging that the banking giant misled them about its involvement in the 1Malaysia Development Berhad scandal.

Judge Vernon S. Broderick of the US District Court for the Southern District of New York certified a class of those who got its stock from Dec. 22, 2016, through Nov. 8, 2018, adopting a magistrate judge's April 2024 recommendation. The bank's arguments against certification—including ones relying on a Second Circuit ruling to dismantle another Goldman investor class—fell short, Broderick said Thursday.

Unlike in that case, Goldman failed here to rebut a presumption that a class of shareholders relied on alleged misrepresentations about its involvement with 1MDB through its stock price.

1MDB was ostensibly made to stimulate economic development in Malaysia, but the wealth fund's officers allegedly misappropriated billions of dollars for extravagant lifestyles, bribes, and political patronage. Goldman helped sell \$6.5 billion of bonds for 1MDB, with it and certain former executives facing legal repercussions for its involvement in the global corruption scandal, including the bank agreeing to pay \$2.9 billion to settle with the US Department of Justice.

Two alleged misstatements survived to support class status, Broderick said, concurring with Magistrate Judge Katharine H. Parker. The Swedish pension fund leading the case sufficiently alleged a 2016 spokesperson statement to the Wall Street Journal and a response from former CEO Lloyd Blankfein at a 2018 New York Times conference painted involvement as derived from rogue employees. Those statements allegedly helped maintain Goldman's artificially inflated stock price before news reports pulled it down 11% across two trading days.

While overruling Goldman's objections, Broderick disagreed that there was a mismatch between the substance of those statements and reports spurring selloffs to undercut the fund's "inflation maintenance" theory of price impact—something that helped the bank derail another investor class. Goldman, Blankfein, and former chief operating officer Gary Cohn didn't show by a "preponderance of the evidence" that the news reports, alleged corrective disclosures, had no price impact on the days of stock drops.

Class Questions

In a different proposed class action against Goldman, the Second Circuit ultimately held the bank rebutted a presumption of classwide reliance on generic corporate statements that investors said had kept the stock price afloat. A 2021 Supreme Court and that subsequent appellate decision said a defendant can rebut a presumption of classwide reliance on the stock price by showing a “mismatch” between the subject of alleged misstatements and the corrective disclosure that lowers share prices.

Goldman questions are among some of the drivers for shareholder class challenges nationwide.

Kessler Topaz Meltzer & Check LLP is class counsel. Bernstein Litowitz Berger & Grossmann LLP is liaison counsel. Paul Weiss Rifkind Wharton & Garrison LLP represents Blankfein and Goldman. Milbank LLP represents Cohn. None of these law firms immediately responded to emails seeking comment.

Goldman in an email declined to comment.

The case is *Sjunde AP-Fonden v. The Goldman Sachs Group, Inc.*, S.D.N.Y., No. 1:18-cv-12084, 9/4/25 .

(Updates to say that Goldman declined to comment in the ninth paragraph.)

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Class Action

Manage Newsletters

Tupperware \$22 Million Investor Settlement Gets First Court Nod

Sept. 8, 2025, 7:13AM PDT

Tupperware Brands Corp. investors' nearly \$22 million settlement earned a federal court's initial assent to resolve claims the container maker misrepresented its profitability turnaround before reporting disappointing results in 2022.

The settlement preliminarily approved by Magistrate Judge Leslie Hoffman Price on Sept. 5 is between investors and former executives Miguel Fernandez and Cassandra Harris. Tupperware had been stayed from this action after it filed for bankruptcy last year. The US District Court for the Middle District of Florida magistrate judge previously denied the investors' request for preliminary approval, requiring them to fix issues on seeking settlement class certification and defining participating parties.

- Shareholders sued Tupperware in 2022 for allegedly over-hyping its turnaround plan with price increases in the face of rising costs
- The settlement class includes those who got Tupperware securities from May 5, 2021, through May 4, 2022. That day, its stock price plummeted more than 32% after Tupperware released disappointing first quarter of 2022 financial results
- Tupperware sold substantially all of its assets through bankruptcy proceedings, the brand and related operating assets now are owned by an investor group

Levi & Korsinsky LLP and Pomerantz LLP are class counsel. Sidley Austin LLP represents Tupperware and the former executives. None of these law firms immediately responded to emails seeking comment.

The case is Edge v. Tupperware Brands Corp. , M.D. Fla., No. 6:22-cv-01518, 9/5/25 .

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Class Action

Manage Newsletters

Corporate Law Challenge Threatens Delaware's Edge, Governor Says

Sept. 8, 2025, 6:52 AM PDT

Summary by Bloomberg AI

AI Generated



- A challenge to Delaware's corporate law overhaul threatens to undo the legitimacy of all prior statutory amendments that shape governance for many companies.
- Gov. Matt Meyer is defending the law, saying it maintains the court's ability to evaluate claims of directors and officers breaching their fiduciary duties while restoring balance to its decision-making.
- The Delaware Supreme Court is considering the constitutionality of the law, which was passed with a bipartisan super-majority, after a shareholder sued a Blackrock Inc. affiliate and asked the court to reject certain statutory provisions.

A challenge to Delaware's contentious corporate law overhaul threatens to undo the legitimacy of all prior statutory amendments that shape governance for two-thirds of the Fortune 500, the governor told the state's highest court.

The law maintains the court's ability to evaluate claims of directors and officers breaching their fiduciary duties while restoring balance to its decision-making, Gov. Matt Meyer (D) said in a brief posted late Friday. He's defending the law (S.B. 21) he championed after reports that Meta Platforms Inc. and other high-profile companies were considering leaving Delaware for other states.

Should the Delaware Supreme Court favor arguments that the law is unconstitutional, that "would undermine the reliability of Delaware corporate law just as the Legislature is acting to stabilize it," Meyer said. "It would neuter the right of the General Assembly to make the law."

The law, which took effect with Meyer's signature in March, rigidly defines controlling stockholders, strengthens the presumption that board members are capable of independent oversight, and reduces investor access to company records.

Meyer's brief was filed in a dispute targeting portions of the law that was supported by corporate defense attorneys and private equity lobbyists. A shareholder suing a Blackrock Inc. affiliate asked the Delaware Supreme Court to reject statutory provisions covering certain types of self-dealing, as well as language making portions of the law retroactive.

Supporters have said S.B. 21's changes restored a level of transactional certainty undermined by Delaware Chancery Court rulings that cracked down on conflicts of interest. Those rulings include a rejection of Elon Musk's \$56 billion CEO compensation package at Tesla Inc.—which the high court is also examining.

The state cites the Chancery Court's expertise as an advantage "unmatched" by competing jurisdictions, but Delaware also needs to keep high-profile corporate leaders happy: it funds over a quarter of its budget with billions in fees generated by the 2.1 million business entities incorporated there.

The constitutionality question before the state supreme court stems from a dispute over a wind farm acquisition by Clearway Energy Inc., which is controlled by a joint venture between Blackrock and TotalEnergies SE. The shareholder leading that litigation says S.B. 21 is unconstitutional because it violates the Chancery Court's jurisdiction as well as Delaware's due process clause.

The shareholder's argument that the law's "safe harbor provisions" diminish the Chancery Court's ability to hear and decide certain types of cases "is mistaken," Meyer said.

The court "retains jurisdiction over claims attacking the fairness of controlling stockholder and going private transactions," he said. "What S.B. 21 changes are the standards the court must apply."

Clearway Energy Inc. and the joint venture likewise asked the high court, in a brief posted late Friday, to uphold the new law. "Its framework for fiduciary duty claims involving interested transactions increases certainty and promotes the use of cleansing mechanisms—reinforcing Delaware's preeminence in corporate law—and its effective date avoids opportunistic lawsuits," they said.

Meyer noted the law passed with a bipartisan super-majority. His brief glossed over its unusual origins: Corporate statutory amendments typically generate from the Delaware State Bar Association's Corporation Law Council before introduction for legislative consideration, but drafting for S.B. 21 began instead with a panel that included former Chancery Court judges now working for prominent law firms, a law professor, and an attorney from the influential Delaware law firm Richards, Layton & Finger PA.

Meyer is represented by Potter Anderson & Corroon LLP and Wachtell, Lipton, Rosen & Katz. The joint venture is represented by Richards, Layton & Finger PA, and Clearway is represented by Young Conaway Stargatt & Taylor LLP and Gibson, Dunn & Crutcher LLP. The investor, Thomas Rutledge, is represented by Bernstein Litowitz Berger & Grossmann LLP, Equity Litigation Group LLP, and Morris Kandinov LLP.

The case is Rutledge v. Clearway Energy Grp. LLC , Del., No. 248,2025, brief filed 9/5/25 .

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Securities Law News

This Week in Chancery Court: Nestlé and Freshly, IRL Documents

Sept. 8, 2025, 2:00 AM PDT

A co-founder of the failed social-media startup IRL will ask the Delaware Chancery Court this week to order the release of internal files on bot activity on the platform before its collapse.

Here's a look at that, plus what else is happening this week in Chancery Court and the Delaware Supreme Court:

Wednesday: S'holder Rep. Servs. LLC v. Nestlé USA, Inc., Del. Ch., No. 2023-0498, hearing 9/10/25.

At issue: Affiliates of Nestlé SA seek summary judgment in a lawsuit where former Freshly Inc. investors claim the Swiss multinational shortchanged them hundreds of millions of dollars in post-deal payments after buying the meal delivery business for \$1.5 billion. The affiliates argue those claims fail because Freshly CEO Michael Wystrach stepped down voluntarily, whereas the earn-out payments required his removal by Nestlé. The investors say the affiliates are misinterpreting the merger agreement and that there "is no question that Nestlé caused Wystrach to separate from Freshly." Oral arguments will be heard by Delaware Superior Court Judge Sheldon K. Rennie; Superior Court judges are assigned some breach of contract litigation to help alleviate the Chancery Court's busy caseload.

Court action: The hearing will be held via teleconference.

Nestlé's \$1.5 Billion Deal for Freshly Draws Nine-Figure Lawsuit

Wednesday: Shafi v. Chien, Del. Ch., No. 2023-1157, hearing 9/10/25.

At issue: Abraham Shafi seeks to compel the production of documents from 2019 through 2021 from now-shuttered technology startup Get Together Inc., where he had been CEO. He says those records could show "IRL's authenticity—demonstrating that it was not a fly-by-night bot operation but a genuine social media phenomenon painstakingly built over years by a deeply committed team of founders and employees." Shafi sued IRL's directors and investing units in 2023, claiming they wrongfully rushed to shut it down while making him a scapegoat for its collapse. Last month, federal prosecutors filed criminal charges against Shafi, alleging he misled investors about IRL's potential and obstructed an SEC investigation.

Court action: The hearing will be held via teleconference.

Busted Social-Media Darling IRL's Founder Sues Softbank Unit (2)

Wednesday: Valhalla Partners II, L.P., v. Vistar Media, Inc., Del., No. 65,2025, oral arguments 9/10/25.

At issue: Venture capitalists and angel investors who provided funding to advertising technology startup Vistar Media Inc. seek to reverse Chancery Court rulings that concluded they didn't have the right to convert their investments into equity. In a brief, Vistar characterized the appellants as "a group of successful, wealthy investors" who were "not content to receive their bargained-for principal-plus-interest as opposed to an equity stake in the now-growing Company."

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

Investment Firms Unable to Convert Vistar Media Notes to Equity

Wednesday: Laborers' Dist. Council and Contractors' Pension Fund of Ohio v. Svane, Del., No. 75,2025, oral arguments 9/10/25.

At issue: Investors seek to reverse a Chancery Court ruling dismissing claims that Zendesk Inc.'s former senior leaders arranged its \$10.2 billion take-private sale to save face amid Jana Partners LLC's campaign to oust them. The appellees say the trial court correctly applied the standard established by the high court for reviewing shareholder approval in merger cases involving fiduciary breach claims.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

Zendesk Won't Face Claims Over Sale Amid Pressure From Jana

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Guest Post: Mixed Crypto Messages



dandodiary.com/2025/09/articles/director-and-officer-liability/guest-post-mixed-crypto-messages

Kevin LaCroix

September 8, 2025

The D&O Diary

Guest Post: Mixed Crypto Messages



Posted in [Director and Officer Liability](#)

Sarah Abrams

Through several different regulatory and legislative actions, including through Executive Orders and the passage of the [GENIUS ACT](#), the current administration has created a favorable environment for cryptocurrency. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, examines the recently adopted legislation and regulatory actions concerning cryptocurrency and considers the D&O insurance underwriting implications. I would like to thank Sarah for allowing me to publish her article on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

In August, Treasury Secretary Scott Besset [confirmed](#) that the United States' Strategic Bitcoin Reserve (SBR), consists of \$15 – \$20 billion in coins. Besset further stated that the [Treasury Department](#) is “committed to exploring budget-neutral pathways to acquire more Bitcoin to expand the reserve.” His position on continuing to accumulate Bitcoin aligns with

President Trump's March 2025 [Executive Order](#) (EO), which directs the U.S. Treasury to establish the SBR. In addition to the Crypto EO and creation of the SBR, the first federal cryptocurrency legislation, the [GENIUS Act](#), was signed into law in July.

Also of note, as of [Q2](#), public companies reportedly purchased around 131,000 Bitcoins. With Bitcoin trading around \$115,000–\$120,000 and rising, companies holding the asset may currently be boosting the value of their corporate treasuries. Even so, will D&O underwriters of companies acquiring Bitcoin face increased exposure as a result?

While the Treasury increases SBR Bitcoin holdings and the GENIUS Act may create some cryptocurrency guardrails, the SEC requires companies to report on Bitcoin ownership. In addition, reports of [criminal activity related to cryptocurrencies](#), including Bitcoin, continue to make headlines. This may leave D&O underwriters and insured companies wondering whether Bitcoin is a good corporate investment or a liability.

The following discusses Bitcoin and the GENIUS Act briefly, disclosure requirements for Bitcoin ownership in SEC filings, as well as recent crypto-related criminal activity, and potential D&O risk stemming therefrom.

What is Bitcoin?

Bitcoin (BTC; ₿) is the first decentralized cryptocurrency. It began operating in 2009, and in 2021, El Salvador became the first country to adopt it as legal tender. As [D&O Diary Readers](#) may recall, Bitcoin is the native asset of its own blockchain, with each unit of value recorded on its distributed ledger. Its price is determined by supply and demand in open markets, meaning it is not a stablecoin. Bitcoin transactions are secured by cryptographic digital signatures and validated through the network's proof-of-work consensus, which prevents double-spending, while private keys ensure only owners can authorize transfers.

Notably, [Besset has indicated](#) that the Treasury SBR's current Bitcoin holdings were mostly derived from past seizures of criminal enterprises and that future Bitcoin additions will be confiscated through law enforcement actions. While the Treasury can seize Bitcoin from criminal bad actors, executives and corporate boards may purchase Bitcoin as part of a corporate investment strategy to diversify or hedge against inflation.

It is important to note that, at this time, the GENIUS Act does not protect corporate Bitcoin holders, since its provisions apply only to stablecoins. While the Act creates federal oversight and consumer protections for payment stablecoins, it does not extend similar safeguards to Bitcoin or other non-pegged digital assets.

Even so, the GENIUS Act may encourage broader crypto adoption in payments and settlement, indirectly boosting corporate comfort with digital assets (including Bitcoin).

[The GENIUS Act](#)

The GENIUS Act is the first federal cryptocurrency legislation enacted in the U.S. The Act establishes a legal framework for the issuance, sale, and redemption of stablecoins — digital assets pegged to a sovereign currency. The Act further provides regulatory clarity for businesses and financial institutions using stablecoins in payments and financial infrastructure. Under the law, stablecoin holders have the right to redeem tokens at face value. Because Bitcoin is non-pegged and its value is based on supply and demand, this type of redemption by companies holding Bitcoin as an investment may not be available if its value plummets.

SEC Filings

Thus, corporations investing in Bitcoin [may be required to file 10K and 10Qs with the SEC that report the risk tied to Bitcoin's price volatility](#). It is also important to note that, under [U.S. GAAP](#), Bitcoin is treated as an intangible asset with an indefinite life (not cash, not a financial instrument). [As of January 1, 2025, a new FASB standard \(ASU 2023-08\) requires certain crypto assets](#), including Bitcoin, to be measured at fair value, with unrealized gains or losses recognized in net income each reporting period. Accordingly, there may be executive and regulatory exposure stemming from corporate reports on Bitcoin ownership and value in public filings.

And, as a result, Bitcoin ownership may come under shareholder scrutiny, especially if its value craters. [Bitcoin was valued as low as \\$76,000 in April of this year](#); however, its current market value is now up 58%. While that is a strong return, corporate treasuries that include crypto may be less versatile when liquidity is needed if Bitcoin's value dips again. Therefore, there may be increased shareholder demands on corporate boards when Bitcoin is disclosed as an investment strategy.

Shareholders may also be concerned by rising reports of crypto-related cybercrime and physical attacks on large holders and their families.

Crypto Crime

As of mid-August, U.S. officials have sanctioned more than a half-dozen crypto exchanges around the world for allegedly serving cybercriminals. This includes Russian cryptocurrency exchange, Garantex, which, [according to the Treasury Department](#), custodied and laundered large sums of crypto, including millions of dollars derived from Russia-linked ransomware attacks. U.S. and European law enforcement agencies have repeatedly [accused](#) the platform of being used by [cybercriminals](#) as well as [gangs and designated terrorist groups](#).

The Garantex platform allegedly allowed people to circumvent sanctions on Russian banks by bringing rubles to the company's offices in Moscow and St. Petersburg and getting cryptocurrency in return, which could then be exchanged for other fiat currencies. Bitcoin was not necessarily identified as a cryptocurrency exchanged on the Garantex platform, however, the association with government-identified criminal actors may impair Bitcoin's reputation.

Another concerning trend tied to cryptocurrency is that [theft of cryptocurrency increased in 2025](#), with total crypto losses, including Bitcoin, reaching nearly \$2.8 billion in the first half of this year. One disturbing development is the rise of so-called "wrench attacks". In a wrench attack, criminals use physical violence or coercion against individuals to access their crypto holdings. Two recent incidents, both in France, involved the daughter and grandson of a prominent cryptocurrency CEO who were [attacked in broad daylight](#) in Paris and the father of a crypto entrepreneur being [abducted and held for ransom](#).

While companies holding Bitcoin may have [Kidnap and Ransom insurance](#), increasing the risk of kidnapping or violence against an executive with access to corporate Bitcoin private keys may also call into question a board and executive team's duty of care and oversight.

Conclusion

As Bitcoin's popularity as a holding, both by the U.S. treasury and by companies, increases, D&O underwriters may want to consider whether existing coverage is sufficient for the follow-on risks. Will the crypto coin's volatility call into question executive financial management decisions? And, will ties to criminal activity degrade shareholder sentiment when companies disclose Bitcoin acquisitions? Time will tell, but in the meantime, D&O insurers may want to be aware of which companies' treasuries now include Bitcoin.

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Arguing Class Actions: Righting a Judicial Wrong—Restoring Michigan's Consumer Protection Act

Arguing Class Actions is a monthly column for the National Law Journal.

September 08, 2025 at 05:00 AM By **Adam J. Levitt**



Adam J. Levitt, founding partner of DiCello Levitt. Courtesy photo

Twenty-five years ago, an act designed to fiercely defend Michigan consumers was rendered toothless by judicial fiat. The Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901, et seq., broadly prohibits “unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” § 445.903(1). Section 4 of the MCPA contains an ostensibly narrow exemption: The act does not apply to “a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.” Id. § 445.904(1)(a). A 1999 Michigan Supreme Court decision, however, interpreted that exemption so broadly that it swallowed the act entirely. Today, the state court and legislature are concurrently considering whether to restore the MCPA to its former glory, and its intended scope.

The MCPA was intended to be liberally construed in favor of consumers. See *Dix v. American Bankers Life Assurance Co. of Florida*, 429 Mich. 410, 417, 415 N.W.2d 206, 209 (1987). In its official analysis of the originating Senate bill, the 1976 Legislature stated that the MCPA was a response to “the need for comprehensive consumer protection in Michigan.” Mich. House Legis. Analysis Sec., S.B. 1 (Dec. 7, 1976). Consumers throughout the state were being victimized by “unscrupulous business practices” against which “existing laws [we]re not broad enough to adequately protect consumers,” and governmental agencies “could rarely act swiftly enough to halt.” As enacted, the MCPA was among the strongest consumer protection acts anywhere in the United States—prohibiting 29 types of conduct, broadly defining “trade or commerce,” and establishing extensive consumer remedies. Mich. 1976 P.A. No. 331 (1976). The 1976 Legislature also explicitly designed the MCPA as a vehicle for class actions. Mich. House Legis. Analysis Sec., S.B. 1 (Dec. 7, 1976), *supra*. The provisions supporting that purpose endure today. See Mich. Comp. Laws § 445.911, § 445.920.

For 23 years, the MCPA served as a bulwark against unfair and deceptive business practices in Michigan, and courts construed the “specifically authorized” exemption narrowly. In *Attorney General v. Diamond Mortgage*, 414 Mich. 603 (1982), the attorney general sued a real estate broker under the MCPA regarding certain convoluted interest rate and brokerage fee terms in its home loan financing plans; as well as using confusing and inconsistent forms to detail those terms. Defendant Diamond Mortgage Co. argued that because it was licensed by a state regulatory body to engage in the real estate brokerage business generally, it was exempt from the MCPA claim. The trial court agreed and dismissed the action. *Id.* at 609–09, 616. The Court of Appeals affirmed.

On appeal to the Michigan Supreme Court, the attorney general argued the exemption was much narrower, stating: “[A] license to engage in an activity is not a basis for concluding that one is ‘specifically authorized’ to employ deceptive practices in that activity. ... If every person or business which engages in an activity authorized by some statute or regulation were exempt from the [MCPA] pursuant to § 4(1), then the [MCPA] would be a cruel hoax on the many legislators.” *Id.* at 616. Persuaded, the Supreme Court unanimously reversed, stating, “While the license generally authorizes Diamond to engage in the activities of a real estate broker, it does not specifically authorize the conduct that plaintiff alleges is violative of the [MCPA], nor transactions that result from that conduct.” *Id.* at 617. See also *Attorney General v. Michigan National Bank*, 110 Mich. App. 106 (1981), *rev’d in part on other grounds* 414 Mich. 948 (1982) (no exemption for particular accounting method used by bank for escrow accounts, where Federal Real Estate Settlement Procedures Act did not specifically authorize that method).

The *Diamond Mortgage* court’s narrow construction of the exemption was faithful to legislative design. A former assistant attorney general who authored much of the MCPA confirmed that the

exemption was never intended to shelter entire industries by virtue of their being generally regulated, stating that: "All persons regardless of their form or regulatory status were intended to be covered under the act. Section 4(1)'s exemption for 'a' specifically permitted transaction or conduct was to be ascertained by reference to the regulatory law which the defendant claimed allowed the particular transaction or occurrence. ... The exemption applies only when the particular transaction or conduct being challenged is specifically permitted by the regulatory statute governing the defendant." Edwin Bladen, "How and Why The Consumer Protection Act Came To Be," State Bar of Mich, Consumer Law Section (2005).

Two decades after its enactment, however, the Michigan Supreme Court gutted the MCPA in *Smith v. Globe Life Insurance*, 460 Mich. 446 (1999). In *Smith*, the private plaintiff claimed that an insurance company made certain misrepresentations about the benefits and terms of its life insurance policy. *Id.* at 449. Globe Life argued that by virtue of it being regulated by the state commissioner of Insurance, the relevant transaction—sale of credit life insurance—was “specifically authorized” and thus it was exempt. *Id.* at 462–63. Recasting *Diamond Mortgage* and the statutory text, the court concluded that “the relevant inquiry is not whether the specific misconduct alleged by the plaintiffs is ‘specifically authorized’” but “whether the general transaction is specifically authorized by law.” *Id.* at 466. Armed with this new logic, the court determined Globe Life was exempt from the MCPA because it was subject to an “extensive statutory and regulatory scheme” under state law. *Id.* at 464–65.

The court transformed a narrowly stated exemption into a near total shield for businesses, excluding entire industries from the MCPA's reach so long as their general business activity is subject to some regulation. If any doubt remained that *Smith* functionally killed the MCPA, *Liss v. Lewiston-Richards*, 478 Mich. 203 (2007), was the final blow. *Id.* at 210–13 (holding that, under *Smith*, because the licensed home builder's “general transaction” of building a residential home was “specifically authorized,” the MCPA could never be enforced against it while engaging in any activity related to building residential homes, regardless of the challenged conduct). In a sharp dissent, Justice Marilyn Kelly stated, “It is apparent to me that the decisions in *Diamond Mortgage* and *Smith* cannot be squared. ... Because the two interpretations are inconsistent, this Court should determine which was intended by the Legislature.” *Id.* at 220 (Kelly, J., dissenting).

Since the court's decisions in *Smith* and *Liss*, consumers have paid the price. In *Lucas v. Awaad*, 299 Mich. App. 345 (2013), for example, private plaintiffs alleged certain commercial practices of a doctor and hospital violated the MCPA, specifically, coding and billing practices predicated on intentional misdiagnoses of epilepsy and seizure disorders for financial gain. *Id.* at 353. The Court of Appeals,

relying on *Smith* and *Liss*, concluded that because the general practice of medicine was authorized and regulated by law, defendants were exempt from the MCPA's reach, regardless of the specifically challenged conduct. Id. at 366–69. More recently, in *Chapman v. Gen. Motors LLC*, 531 F. Supp. 3d 1257 (E.D. Mich. 2021), private plaintiffs brought a putative class action against General Motors regarding an allegedly inadequate fuel injection pump in its pickup trucks. Id. at 1267. General Motors argued that because the general transaction—automobile sales—was state regulated, it was exempt from the MCPA claim. Id. at 1301. Relying on state case law, the federal district court stated that the exemption was “broad,” and concluded General Motors was exempt by virtue of automobile sales being authorized by law. Id. at 1301–02. *Chapman* illustrates that Michigan is an outlier. Indeed, of the 49 state consumer protection acts plaintiffs invoked, only the MCPA claim was dismissed under a regulatory exemption provision.

Now, the Michigan Supreme Court is considering whether *Smith* got it wrong. In 2022, Attorney General Dana Nessel sought to investigate pharmaceutical manufacturer Eli Lilly under the MCPA regarding its insulin pricing scheme, on behalf of a potential class of diabetic Michiganders. *Nessel v.*

Eli Lilly & Co., 2022 WL 20580525, at *1 (Mich. Cir. Ct. July 20, 2022). She also sought a declaratory judgment that Eli Lilly would not be exempt from such an action. The Court of Appeals conceded it was bound to apply precedent: “Simply put, the Court in *Smith* and *Liss* concluded that if a general category of conduct or a general transaction is specifically authorized by law, the § 4(1)(a) exemption applies, even if the granular transaction or conduct might otherwise be improper.” *Attorney General v. Eli Lilly & Co.*, 2023 WL 4141169, at *1 (Mich. Ct. App. June 22, 2023). Because Eli Lilly is authorized by law to manufacture and sell insulin generally, it was held exempt from the MCPA.

On appeal, the attorney general urges the Michigan Supreme Court to overrule *Smith* and *Liss* for defying *Diamond Mortgage* and wrongly expanding the MCPA exemption. *Attorney General v. Eli Lilly & Co.*, No. 165961, 2024 WL 1394213 (Sup. Ct. Mich. Mar. 13, 2024). The court heard oral arguments on Oct. 10, 2024, and ordered the parties to submit additional briefing on the issue, which concluded last month. Businesses that have evaded MCPA liability since *Smith* and *Liss* are doubtlessly watching with bated breath. Indeed, the National Association of Manufacturers, the Home Builders Association of Michigan, Michigan Realtors, and General Motors submitted amicus briefs in favor of preserving a broad exemption.

While the Supreme Court considers restoring the MCPA to its former glory, the legislature may moot the issue. In March, Democratic Sen. Sam Singh introduced Senate Bill 134 to amend the MCPA. As passed by the Senate in June, the proposed amendments would unambiguously

abrogate *Smith* and its progeny. Now, the bill awaits a vote in the House of Representatives, where Republicans have a slim majority.

Whether by judicial correction or legislative clarification, Michigan consumers may soon regain the protection of the MCPA as the legislature originally intended. In either case, companies that have enjoyed the shelter of a wrongfully expanded statutory exemption could once again be held accountable for unscrupulous business practices through attorney general investigations, individual litigation, and class actions.

Adam J. Levitt *is a founding partner of DiCello Levitt, where he heads the firm's class action and public client practice groups. He can be reached at alevitt@dicellolevitt.com.*

Thank you to DiCello Levitt associate Madeline Hills for contributing to this column.

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Litigation

Manage Newsletters

California Wins State Remand of Opioid Case Involving PBM Role

Sept. 8, 2025, 10:50 AM PDT

Summary by Bloomberg AI

AI Generated



- Express Scripts Inc. and OptumRx Inc. must face allegations in California state court that they improperly dispensed opioids, a federal appeals court ruled.
- The US Court of Appeals for the Ninth Circuit rejected the pharmacy benefit managers' appeal to move the case to federal court, saying California sufficiently narrowed its case to focus on actions within the state.
- The decision affirms a lower court's ruling in a case where the state sued the PBMs in the Superior Court of California for the County of Los Angeles in 2023.

Express Scripts Inc. and OptumRx Inc. must face allegations in California state court that they improperly dispensed opioids, a federal appeals court ruled.

The US Court of Appeals for the Ninth Circuit on Monday rejected the pharmacy benefit managers' appeal to move the case to federal court, saying California sufficiently narrowed its case to focus on actions within the state. The decision affirms a lower court's ruling.

The state sued the PBMs in the Superior Court of California for the County of Los Angeles in 2023, but the PBMs argued that their business under state and federal law warranted removal to federal court.

Express Scripts and OptumRx are part of an industry-wide legal fight over allegations they helped fuel the opioid epidemic. PBMs are attempting to consolidate the hundreds of cases against them under multidistrict litigation in the US District Court for the District of New Jersey.

The PBMs' federal and non-federal business were "not inextricably intertwined," Judges Mary H. Murguia, Gabriel P. Sanchez, and Holly A. Thomas wrote.

"Defendants' notice of removal does not demonstrate that their opioids business activity on behalf of non-federal clients was taken under the direction of a federal officer, nor that any business activity allegedly directed by a federal officer causally related to the conduct charged in Plaintiff's amended complaint," the judges wrote.

The PBMs are represented by Quinn Emanuel Urquhart and Sullivan LLP and Alston and Bird LLP. California is represented by Motley Rice LLC and the Office of County Counsel for Los Angeles County.

The case is California v. Express Scripts, Inc., 9th Cir., No. 24-1972, opinion, 9/8/25.

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Anthropic agrees to pay \$1.5 billion to settle author class action



[reuters.com/sustainability/boards-policy-regulation/anthropic-agrees-pay-15-billion-settle-author-class-action-2025-09-05](https://www.reuters.com/sustainability/boards-policy-regulation/anthropic-agrees-pay-15-billion-settle-author-class-action-2025-09-05)

Blake Brittain, Mike Scarcella

September 5, 2025

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

- Settlement largest publicly reported copyright recovery in history, plaintiffs say
- Anthropic to destroy downloaded books, may face future infringement claims
- Fair-use debate continues in other AI copyright cases, Meta case ongoing

Sept 5 (Reuters) - Anthropic told a San Francisco federal judge on Friday that it has agreed to pay \$1.5 billion to settle a class-action lawsuit from a group of authors who accused the artificial intelligence company of using their books to train its AI chatbot Claude without permission.

The plaintiffs in a [court filing, opens new tab](#) asked U.S. District Judge William Alsup to approve the settlement, after announcing the agreement in August without disclosing the terms or amount.

"This settlement sends a powerful message to AI companies and creators alike that taking copyrighted works from these pirate websites is wrong," the authors' lawyers said in a statement. They called it the largest copyright recovery in history and the first of its kind in the artificial intelligence era.

[The proposed deal](#) marks the first settlement in a string of lawsuits against tech companies including OpenAI, Microsoft ([MSFT.O](#)), [opens new tab](#) and Meta Platforms ([META.O](#)), [opens new tab](#) over their use of copyrighted material to train generative AI systems.

Anthropic as part of the settlement said it will destroy downloaded copies of books the authors accused it of pirating, and under the deal it could still face infringement claims related to material produced by the company's AI models.

The \$1.5 billion settlement fund amounts to \$3,000 for 500,000 downloaded books, and it could grow if more works are identified.

In a statement, Anthropic said the company is "committed to developing safe AI systems that help people and organizations extend their capabilities, advance scientific discovery, and solve complex problems." The agreement does not include an admission of liability.

Writers Andrea Bartz, Charles Graeber and Kirk Wallace Johnson filed the class action against Anthropic [last year](#). They argued that the company, which is backed by Amazon

([AMZN.O](#)), [opens new tab](#) and Alphabet ([GOOGL.O](#)), [opens new tab](#), unlawfully used millions of pirated books to teach its AI assistant Claude to respond to human prompts. The writers' allegations echoed dozens of other lawsuits brought by authors, news outlets, visual artists and others who say that tech companies stole their work to use in AI training.

The companies [have argued](#) their systems make fair use of copyrighted material to create new, transformative content.

Alsup [ruled in June](#) that Anthropic made fair use of the authors' work to train Claude, but found that the company violated their rights by saving more than 7 million pirated books to a "central library" that would not necessarily be used for that purpose.

A trial was scheduled to begin in December to determine how much Anthropic owed for the alleged piracy, with potential damages ranging into the hundreds of billions of dollars.

Mary Rasenberger, CEO of writers advocacy group the Authors Guild, in a statement on Friday called the settlement "a vital step in acknowledging that AI companies cannot simply steal authors' creative work to build their AI."

The pivotal fair-use question is still being debated in other AI copyright cases. Another San Francisco judge hearing a similar ongoing lawsuit against Meta [ruled shortly after Alsup's decision](#) that using copyrighted work without permission to train AI would be unlawful in "many circumstances."

Reporting by Blake Brittain and Mike Scarcella in Washington; Editing by David Barrio, Lisa Shumaker and Matthew Lewis

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[Blake Brittain](#)

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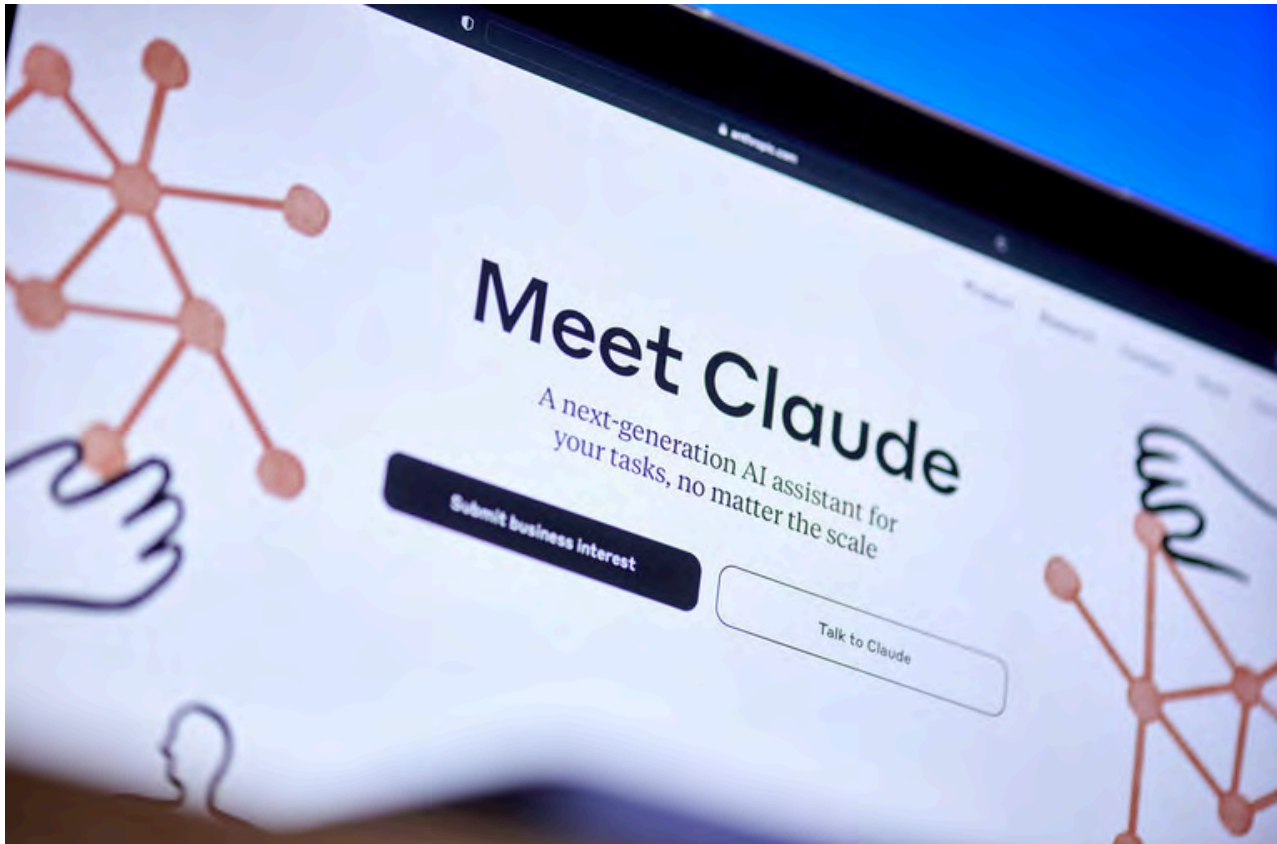
Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

Anthropic Agrees to Pay Record \$1.5 Billion to Settle Author Class Action

In a statement, Mary Rasenberger, CEO of The Authors Guild, called the deal “a vital step in acknowledging that AI companies cannot simply steal authors’ creative work to build their AI just because they need books.”

September 05, 2025 at 04:52 PM By **Michael Gennaro**

[Michelle Morgante](#)



Credit: Gabby Jones/Bloomberg

Anthropic, the San Francisco-based AI developer behind the Claude chatbot, has agreed to pay \$1.5 billion to settle a class-action lawsuit brought by authors who alleged their works were used without authorization to train the company’s AI models, according to [filings submitted Friday](#) in San Francisco federal court.

If the court grants preliminary approval, the settlement would mark the largest publicly reported copyright recovery in history. “It is the first of its kind in the AI era,” Justin Nelson, a partner at Susman Godfrey representing the authors, said in a statement.

The settlement would cover about 500,000 works, with authors who opt into the deal eligible for payments of about \$3,000 per title.

The class action was filed in 2024 by authors Andrea Bartz, Charles Graeber and Kirk Wallace Johnson, who claimed Anthropic unlawfully downloaded and stored their copyrighted books, drawn from so-called “shadow libraries,” to train its AI models.

In June, U.S. District Judge William Alsup of the Northern District of California [issued a mixed summary judgment](#): While concluding that using copyrighted works for AI training could qualify as fair use, he found Anthropic had nonetheless violated rights by retaining more than 7 million pirated books in a central repository.

The parties [disclosed late last month](#) that they'd reached a deal, but they did not disclose terms at that time.

A trial scheduled for December potentially could have saddled Anthropic with damages in the hundreds of billions of dollars.

Under the deal, Anthropic did not admit liability. In a statement, the San Francisco-based company said, "Today's settlement, if approved, will resolve the plaintiffs' remaining legacy claims. We remain committed to developing safe AI systems that help people and organizations extend their capabilities, advance scientific discovery, and solve complex problems."

One of the terms of the settlement is that Anthropic must destroy the downloaded copies of the contested books.

The Authors Guild, the oldest and largest professional organization for writers in the United States, praised the settlement, saying it paves the way for authors to have more control over the use of their work by AI companies.

The agreement is a “a vital step in acknowledging that AI companies cannot simply steal authors' creative work to build their AI just because they need books,” Mary Rasenberger, the organization's CEO, said in a statement.

The agreement calls for Anthropic to pay the settlement in four installments spread over two years.

Lawyers representing the authors will seek no more than 25% of the settlement in fees, according to the court filing. A 25% cut would be \$375 million.

Arnold & Porter leads the legal team representing Anthropic.

Apple sued by authors over use of books in AI training



[reuters.com/sustainability/boards-policy-regulation/apple-sued-by-authors-over-use-books-ai-training-2025-09-05](https://www.reuters.com/sustainability/boards-policy-regulation/apple-sued-by-authors-over-use-books-ai-training-2025-09-05)

Mike Scarcella

September 5, 2025

A man check his phone near an Apple logo outside its store in Shanghai, China September 13, 2023. REUTERS/Aly Song/ File Photo [Purchase Licensing Rights, opens new tab](#)

Sept 5 (Reuters) - Technology giant Apple ([AAPL.O](#)), [opens new tab](#) was accused by authors in a lawsuit on Friday of illegally using their copyrighted books to help train its artificial intelligence systems, part of an expanding legal fight over protections for intellectual property in the AI era.

The [proposed class action, opens new tab](#), filed in the federal court in Northern California, said Apple copied protected works without consent and without credit or compensation. “Apple has not attempted to pay these authors for their contributions to this potentially lucrative venture,” according to the lawsuit, filed by authors Grady Hendrix and Jennifer Roberson.

Apple and lawyers for the plaintiffs did not immediately respond to requests for comment on Friday.

The lawsuit is the latest in a wave of cases from authors, news outlets and others accusing major technology companies of violating legal protections for their works.

Artificial intelligence startup Anthropic on Friday disclosed in a court filing in California that it [agreed to pay \\$1.5 billion](#) to settle a class action from a group of authors who accused the company of using their books to train its AI chatbot Claude without permission.

Anthropic did not admit any liability in the accord, which lawyers for the plaintiffs called the largest publicly reported copyright recovery in history.

In June, Microsoft ([MSFT.O](#)), [opens new tab](#) was [hit with a lawsuit](#) by a group of authors who claimed the company used their books without permission to train its Megatron artificial intelligence model. Meta Platforms ([META.O](#)), [opens new tab](#) and Microsoft ([MSFT.O](#)), [opens new tab](#)-backed OpenAI also have faced claims over the alleged misuse of copyrighted material in AI training.

The lawsuit against Apple accused the company of using a known body of pirated books to train its “OpenELM” large language models.

Hendrix, who lives in New York, and Roberson in Arizona, said their works were part of the pirated dataset, according to the lawsuit.

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Warner Bros. Discovery Claims AI Startup Midjourney Duplicates Its Copyrighted Characters

"It is hard to imagine copyright infringement that is any more willful than what Midjourney is doing here," according to the complaint by Warner Bros. Discovery.

September 05, 2025 at 04:14 PM By **Michelle Morgante**

What You Need to Know

- The suit is the second filed by Jenner & Block against the AI image and video generator.
- Disney/Universal's June 11 suit claims similar copyright infringement by Midjourney.
- Midjourney has replied that its use of the works is allowed under fair use.



Warner Bros. Discovery's copyrighted characters Batman and Superman as generated by an AI prompt. Credit: Image from court documents

Entertainment giant Warner Bros. Discovery claims artificial intelligence company Midjourney willfully violates its copyrights by allowing users to replicate its most iconic characters such as

Superman, Batman, Bugs Bunny and Wonder Woman.

In a complaint filed Thursday in the U.S. District for the Central District of California, Warner Bros. Entertainment and its sister companies—DC Comics, Turner Entertainment, Hanna-Barbera Productions and The Cartoon Network—ask the court to enjoin Midjourney from continuing its “theft and exploitation” of plaintiff’s intellectual property.

“Midjourney thinks it is above the law,” the complaint said. “Without any consent or authorization by Warner Bros. Discovery, Midjourney brazenly dispenses Warner Bros. Discovery’s intellectual property as if it were its own.”

Warner Bros. Discovery is represented by David Singer, Julie Shepard and Lauren Greene of Jenner & Block. Singer referred questions to Warner Bros. Discovery.

“The heart of what we do is develop stories and characters to entertain our audiences, bringing to life the vision and passion of our creative partners,” Warner Bros. Discovery said in a statement shared with [Law.com](#).

“Midjourney is blatantly and purposefully infringing copyrighted works, and we filed this suit to protect our content, our partners, and our investments.”

Counsel for San Francisco-based Midjourney has yet to appear. Midjourney did not immediately respond to a request for comment.

The privately owned company, founded and led by CEO David Holz, also [faces copyright claims from The Walt Disney Co. and Universal City Studios Productions](#) for allegedly using their copyrighted works to create visual replicas.

That claim, filed on June 11 by Jenner & Block, is pending before U.S. District Judge John Kronstadt and is listed as a related case in the complaint by Warner Bros. Discovery.

In the Disney/Universal claim, Midjourney is represented by Cooley. In a response to the complaint filed on Aug. 6, Midjourney said its AI technology is “designed to produce original images in response to user instructions (‘prompts’)” and constitutes fair use.

“The limited monopoly granted by copyright must give way to fair use, which safeguards countervailing public interests in the free flow of ideas and information,” it said. “Training a generative AI model to understand concepts by extracting statistical information embedded in copyrighted works is a quintessentially transformative fair use.”

A scheduling conference in that case has been set for Oct. 10.

“In both the Disney/Universal Action and this action, the plaintiffs are among the largest movie and television studios (Disney, Universal, and Warner Bros. Discovery) and own some of the world’s most valuable copyrighted characters like Darth Vader, Spider-Man, the Minions, Shrek, Superman, and Batman,” according to Warner Bros. Discovery’s notice filed Thursday.

Warner Bros. Discovery’s complaint included images and video stills it says were generated in Midjourney as examples of how easy it is for users to enter prompts that duplicate its copyrighted characters, including a prompt to turn still images into animated videos.

The defendant’s recently launched Midjourney TV streaming channel, the complaint said, “is yet another avenue for Midjourney to promote, advertise and publicly perform the videos that its service has generated and distributed to other subscribers.”

“Despite its knowledge of its infringing outputs of Warner Bros. Discovery’s copyrighted works, Midjourney remains defiant and undeterred,” it said.

The complaint alleges direct and secondary copyright infringement and asserts that Warner Bros. Discovery is entitled to statutory damages of up to \$150,000 per infringed work because of Midjourney’s “willful infringement.”

The complaint included an exhibit listing scores of copyrighted works allegedly infringed by Midjourney.

“Midjourney has made a calculated and profit-driven decision to offer zero protection for copyright owners even though Midjourney knows about the breathtaking scope of its piracy and copyright infringement,” it said.

“It is hard to imagine copyright infringement that is any more willful than what Midjourney is doing here.”

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Litigation

Manage Newsletters

Exxon Must Defend Sierra Club's California Nuisance Lawsuit (1)

Sept. 8, 2025, 5:32 AM PDT; Updated: Sept. 8, 2025, 7:09 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal judge refused to dismiss a lawsuit by Sierra Club Inc. and other environmental groups alleging Exxon Mobil Corp. created a public nuisance by producing plastic polymers and spreading them throughout California.
- The groups adequately claimed Exxon foresaw harm resulting from its single-use plastics, but failed to adequately allege that Exxon's conduct violated California's Unfair Competition Law.
- The court gave the groups 30 days to amend their claim regarding the Unfair Competition Law, allowing the public nuisance claim to proceed because the groups sufficiently claimed Exxon engaged in affirmative conduct that created a hazardous condition.

Exxon Mobil Corp. couldn't convince a federal judge to dismiss a lawsuit by Sierra Club Inc. and other environmental groups alleging it created a public nuisance by producing plastic polymers and spreading them throughout California.

The nonprofits adequately claimed Exxon foresaw harm resulting from its single-use plastics, Chief Judge Richard Seeborg of the US District Court for the Northern District of California said in a Sept. 5 order.

The groups, however, failed to adequately allege that Exxon's conduct violated California's Unfair Competition Law. They have 30 days to amend that claim, the order said.

Sierra Club and three other environmental groups sued Exxon in 2024 for promoting plastics as recyclable when few are, allegedly violating state nuisance and unfair competition laws. California Attorney General Rob Bonta (D) filed a similar suit the same day.

Exxon filed its own lawsuit in January, alleging that Bonta and several environmental groups made defamatory comments about the oil company's ability to recycle plastic.

Exxon argued here that the groups' lawsuit must fail because they raised a products liability claim "in disguise," not a public nuisance claim. But the nuisance claim can proceed, the court said, because the groups sufficiently claimed Exxon engaged in affirmative conduct that created a hazardous condition by producing plastics it knew couldn't be safely disposed of or destroyed.

This claim can also proceed because the groups adequately alleged Exxon's activities are a substantial factor in California's plastic pollution crisis, the court said. Their complaint alleged that without Exxon's promotion, consumers wouldn't have purchased products that harmed the environment, the order said.

But the claim alleging a violation of the UCL—which prohibits unlawful, unfair, or fraudulent business acts—is dismissed because the groups didn't show that Exxon violated statutes that protect fish and wildlife, the court said.

The groups didn't identify any case, Seeborg said, in which such a statute supported liability under the UCL for a product manufacturer "whose products were littered by consumers." And the complaint failed to adequately allege that Exxon engaged in fraud, the order said.

Cotchett, Pitre & McCarthy LLP represents the plaintiffs. Weil, Gotshal & Manges LLP and O'Melveny & Myers LLP represent Exxon.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

The case is *Sierra Club Inc. v. Exxon Mobil Corp.*, N.D. Cal., No. 3:24-cv-07288, 9/5/25 .

(Updates story with additional discussion of the order)

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California Brief

23andMe Seeks Court Approval of \$50 Million Data Breach Deal

Sept. 5, 2025, 11:28 AM PDT

Bankrupt 23andMe asked a court to approve a settlement worth up to \$50 million to resolve claims from a 2023 data breach that exposed the personal information of nearly 7 million US customers.

The proposed deal, negotiated before the bankruptcy, would set up a fund of between \$30 million to \$50 million to handle claims from US clients, according to filings Thursday in the US Bankruptcy Court for the Eastern District of Missouri.

The fund would provide statutory damages for people living in certain states, payments up to \$10,000 for extraordinary losses such as identity fraud and mental health treatment, and five years of identity monitoring services. Customers whose health data was exposed would automatically receive a \$165 check, even without filing a claim, according to court papers.

The DNA testing company, which filed for bankruptcy in March, said the deal would help manage more than 250,000 proofs of claim that have been filed so far—the majority of which were tied to the breach—and worth over \$51 trillion in total.

23andMe said in court papers that the bankruptcy was intended to sell nearly all of its assets, which it did in June despite pushback from states over alleged privacy law violations. The company also plans to address the thousands of claims arising out of the data breach and distribute remaining assets to stakeholders.

23andMe said the settlement with US customers reflects its “business judgment” given the risks and alternatives, including costly litigation.

If a judge doesn’t approve the settlement, the company said it will likely have to spend significant resources resolving those claims in bankruptcy, which would cut into the value available to creditors. A hearing to consider the deal is set for Sept. 25.

The security breach prompted more than 40 class action lawsuits in the US. Federal lawsuits were consolidated into multidistrict litigation in the US District Court for the Northern District of California.

At a hearing on preliminary approval of a proposed class action settlement last year, the California court ruled that US customers who had already filed or begun arbitration claims couldn't join the broader settlement class and that their claims had to be addressed separately.

23andMe later reached a separate settlement with arbitration claimants in March, just before filing for bankruptcy.

Canadian customers also pursued class actions against the company, executives, employees, and the auditor in a case that's still pending.

The company said it settled with the lead plaintiffs in Canadian data breach class actions on Aug. 12, allowing a class proof of claim and addressing its treatment in the bankruptcy. The parties announced the agreement in July after negotiations.

UK clients also filed 3,157 claims related to the breach incident.

23andMe is represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Carmody MacDonald PC.

The case is 23andMe Holding Co. , Bankr. E.D. Mo., No. 25-40976, 9/4/25 .

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Securities Law

Manage Newsletters

Matt Levine's Money Stuff: Ackman Has a Trade for Eric Adams

Sept. 8, 2025, 10:58 AM PDT

Election betting

If you went to a candidate in a US election, and you said to him "I will pay you \$1 million to drop out of this race so that my preferred candidate can win," would that be legal? It sure *seems* illegal, but (1) nothing in this column is legal advice and (2) in US politics these days, people casually do a lot of stuff that they wouldn't have even considered doing a few years ago, so who knows. Here's a [2016 Bloomberg Opinion column by Stephen Carter](#) arguing that it is illegal to pay a candidate to drop out of a race, but that it shouldn't be.

If you were a candidate in a US election, and you decided that you would rather have \$1 million than win your election, could you find a way to get paid \$1 million for dropping out? Let's assume that going to your opponent's richest backer and saying "please give me \$1 million to drop out" would be frowned upon. But in 2025 [there are prediction markets](#), and if your election is high-profile enough, then there might be a trade here. The trade is:

1. If you are trading at, say, a 40% probability of winning, sell 2.5 million contracts on yourself for \$1 million (40 cents each).

- 2. Announce you're dropping out.
- 3. Your contract resolves to zero (you won't win) and you keep the \$1 million.

Does that work? Can you trade \$1 million of election contracts without moving the price much? My sense is that a lot of US election contracts are not especially liquid, and that if you start selling a lot of your contract people, will get suspicious and the price will plummet. But I suppose those markets are getting more liquid by the day. In particular, as prediction markets become a [favored way](#) to *bet on sports* (because somehow they get better US [regulatory](#) and [tax](#) treatment than traditional bookmakers), they should become a more liquid way to bet on politics. A traditional objection to prediction markets is that, as Nick Whitaker and Zachary Mazlish put it, "prediction markets are not a natural gambling device, due to various factors including their long time horizons and often esoteric topics." But that was last year, when prediction markets were separate from sports betting. Now you can bet on sports on prediction markets, and sports (1) are very popular with gamblers and (2) happen constantly. If gamblers have good reason to log into prediction markets every day, probably they'll bet on some elections too. And if the market is full of gamblers, maybe you'll be able to put on a \$1 million trade against yourself.

Is that illegal insider trading? I don't know, man. I guess the three points I would make here are:

1. Nothing in this column is ever legal advice.

- 2. Insider trading rules in prediction markets are variable and unsettled, and it's [not entirely clear to me](#) whether and to what extent, say, Polymarket allows insider trading.
- 3. But let's assume that you are trading on a US prediction market (like Kalshi, or soon enough Polymarket) regulated by the US Commodity Futures Trading Commission as a futures exchange. US commodities regulation *does* have rules against "insider trading." But especially in *commodities trading*, as I like to put it, "insider trading is not about fairness, it's about theft." A trader for an oil company is not allowed to trade on her own account to front-run her company's trade, but *the oil company* is allowed to trade for its account using its own knowledge of its production plans. As CFTC Commissioner (and now Acting Chair) Caroline Pham once put it, commodities insider trading is illegal only if it involves "misappropriated confidential information in breach of a pre-existing duty of trust and confidence to the source of the information," not *any* use of material nonpublic information, because of "the special characteristics of the derivatives markets, where end users necessarily trade on the basis of their own proprietary information in order to hedge their risks." Here, if your campaign manager went and traded ahead of your announcement that you're dropping out, that seems like it might be insider trading. But if *you* trade ahead of the announcement? It's your information! You're the principal! You're trading on your own intentions. That strikes me as the *legal* sort of commodity insider trading, though I should emphasize that we are in extremely uncharted waters here and I really have no idea.

Is it ... an election crime? Is it bribery, or election fraud, or a campaign finance violation, or something? Here again I have no idea. Last year, the then-chairman of the CFTC [argued that](#) prediction markets on elections "would put the CFTC in the role of an election cop." It seems sort of like getting paid to drop out of an election would be ... you know, the sort of thing that election law frowns upon? But in this scenario you are not getting paid by a person who wants you to drop out. You're getting paid by the invisible hand of the prediction market.

There is an election going on for the next mayor of New York City; the candidates are Zohran Mamdani (the betting-market favorite), Andrew Cuomo (the disgraced former governor), Eric Adams (the disgraced current mayor) and Curtis Sliwa (the Republican). As of this morning, I see Mamdani at 80% on Polymarket, with Cuomo at 18% and Adams and Sliwa at 1% each. Most polls show Mamdani getting a plurality of the vote, but not a majority, with Cuomo in second place; it's plausible that if Adams or Sliwa dropped out, most of their support would go to Cuomo and would significantly increase his chances of winning.

Some people might prefer that, most of all Bill Ackman, who supports Cuomo and who loves to have fun on X (formerly Twitter). This weekend he tweeted:

Polymarket gives @andrewcuomo a 15% chance to win and a 7-1 payoff for the win. Andrew's odds improve dramatically if Eric drops out, and even more with @CurtisSliwa out.

The experts I trust predict the odds shift to approximately 50/50 in a one-on-one Cuomo/Mandami election. If the field narrows soon, the odds get even better for Cuomo.

If I were Eric Adams, I would look at myself in the mirror and ask myself whether I should continue to risk my reputation on a 1/100 moonshot when the alternative is taking the high road and doing what is best for NYC.

I strongly believe that what is best for NYC – Eric stepping aside – is also what is best for Eric Adams. Eric should know that goodwill is a very valuable asset and the alternative is a very costly liability. ...

The mirror does not lie. Eric, please take a close and hard look.

And to fund your future, you could place a large bet on Andrew Cuomo and then announce your withdrawal from the race. There is no insider trading on Polymarket.

Well! That's debatable, is I guess my point about the insider trading. But I'm not sure he's wrong? Though I'm also not sure that Adams could "fund [his] future" by betting on Cuomo on Polymarket : When I checked today, the largest Cuomo holder had 530,974 contracts, which would pay off \$530,974 if Cuomo wins, and which would be worth around \$265,000 if Cuomo's chances jump to 50/50. To make, say, a million dollars, Adams would need to buy 3,125,000 Cuomo contracts at \$0.18 each (\$562,500 total) and sell them at \$0.50 each (\$1,562,500 total) when he drops out. That might be hard to pull off.

One more hypothetical. Let's say you want to pay a candidate \$1 million to drop out of an election. You say to him "hey, look, if I hand you \$1 million in cash, that's a crime. But if you want to bet against yourself on prediction markets, you could make a lot of money." He's no dummy, though, and he replies "sure you say that, but this contract is not very liquid and I doubt I could extract \$1 million by betting against myself." You think about this and say "hmm, I see what you mean. But what if someone else stepped into the market to bet \$1 million *on* your contract? Then there'd be plenty of volume to offset your trading, and you'd easily be able to get the \$1 million. Effectively you'd just be betting \$1 million against that mysterious person, though instead of a bilateral bet you'd be doing it on the public prediction market. If that mysterious person showed up and started buying tomorrow morning, would you be interested in a trade?"

And then it turns out that you are the mysterious person, well. Is *that* ... bribery? Is it insider trading? Is it *market manipulation*?

Elon pay again

Depending how you count, Elon Musk owns about 15% of the stock of Tesla Inc. Tesla's market capitalization is about \$1.17 trillion as of Friday's close, making Musk's stake worth about \$178 billion. Musk is the wealthiest person in the world, and roughly half of his fortune is in Tesla stock and options.

Musk has quite notably built Tesla from a small electric-car company to a large electric-car-and-solar-rooftop-and-humanoid-robot-and-some-other-stuff company; he has overseen the growth to a trillion-dollar market cap. And he is ambitious and would like Tesla to grow even more. What if it grew to, say, an \$8.5 trillion company? Well, then, Musk would be even richer than he is now. (Now he is the richest person in the world.) Specifically, at an \$8.5 trillion market capitalization, Musk's current stake in Tesla would be worth about \$1.3 trillion.

What could Musk buy with \$1.3 trillion that he can't buy with \$178 billion? I mean! Various things! Obviously the extra money will not make a material difference to, like, the food he eats or the thread count of the sheets he sleeps on or even the art he could put on his walls if he put art on his walls; he is already extremely post-economic in his consumer spending ability. But he has other, more expensive desires. Could he more easily buy, say, elections with a trillion dollars than he can with a few hundred billion? Conceivably? When he bought Twitter Inc. in 2022, he was *able* to [write a \\$44 billion check](#), but it took him a few days to move money around to do it; perhaps as a trillionaire he could just put that on his credit card. Also his main goal seems to be colonizing Mars, which is expensive. An extra trillion dollars couldn't hurt.

What about an extra two trillion dollars? Bloomberg's Dana Hull reported Friday :

Tesla Inc. proposed a new compensation agreement for Chief Executive Officer Elon Musk potentially worth around \$1 trillion, a massive package without precedent in corporate America.

The long-awaited proposal, designed to incentivize Musk to lead Tesla for years to come, sets a series of ambitious benchmarks he must meet to earn the full payout, including expanding Tesla's nascent robotaxi business and growing the company's market value to at least \$8.5 trillion from around \$1 trillion today. The plan spans 10 years.

The additional shares Musk could receive would push his stake in the electric-vehicle maker to at least 25%, according to the terms detailed in Tesla's proxy filing Friday. Musk has publicly stated he wants a stake of that size.

Here is the proxy filing. I guess my main thought is, yes, giving Musk \$1 trillion to turn Tesla into an \$8.5 trillion company is (1) expensive and (2) ambitious, but even *without* the new compensation proposal, Musk would get \$1 trillion for turning Tesla into an \$8.5 trillion company. (With the new proposal he would get \$2 trillion, give or take.) If you are sitting down to draw up a plan to incentivize behavior, and you think "hmm if we just give Elon a trillion dollars he will create \$7 trillion of shareholder value," then that is kind of a weird thing to think, but also you don't need any more incentives. Just his existing share ownership will make him a trillionaire for doing that. I suppose if your thought process is "\$1 trillion is not enough of an incentive, but \$2 trillion would be," then you have to give him more shares. Why would that be the cutoff? Are there elections you can buy for \$2 trillion that are out of reach with \$1 trillion? This is all very far beyond my experience.

I suppose the obvious point here is that the new share grant is not, at this point in Elon Musk's wealth journey, an *economic incentive*. It is a *grant of ownership*. Musk, the chief executive officer and Technoking and largest shareholder and founder-with-an-asterisk of Tesla, is dissatisfied with his ownership percentage. He would like to own 25%, and he doesn't (in part because he sold some stock to buy Twitter?), and he has threatened to take his robots elsewhere if he can't get to 25%. If he owns only 15%, perhaps an activist shareholder could come in, accumulate a few hundred million dollars' worth of stock, persuade other shareholders that Musk is bad for shareholder value, and take over the company, ahahahahahahahahahahaha no come on that can't happen. But Musk wants more shares anyway. And in the somewhat fraught negotiations between Tesla and Musk – who has a lot of other potentially lucrative demands on his time! – the board wanted to give him what he wants. Which is 25%.

Tesla's proxy includes the report of the special committee of the board of directors that came up with the compensation package; the report is clear that (1) Musk demanded 25% and (2) the committee went and solved for that outcome:

For the remaining meetings between the Committee and Musk, the Committee primarily focused on negotiating the terms of the 2025 CEO Performance Award and understanding what it would take to keep Musk at Tesla and incentivized to achieve extraordinary growth and results for Tesla. During negotiations, Musk reiterated that it was crucial that he both acquire at least a 25% voting interest in Tesla and that he receives assurances that he will be fully paid for his past services under the 2018 CEO Performance Award in order to remain at Tesla. Musk also raised the possibility that he may pursue his other interests and leave Tesla if he did not receive such assurances. The Committee further discussed and tested these positions throughout its negotiations and determined that Musk's sentiment was genuine.

I do not fully understand it, but I believe it. (Bloomberg Opinion's [Liam Denning writes](#) : "Nice stock price tied to faith in the genius of one man you've got there; be a shame if he left.") Musk thinks that he should own 25% of Tesla, but he doesn't. It is not exactly customary for a trillion-dollar public company to hand its CEO 12% of its stock to get him up to his target ownership, but that was the ask, and the special committee figured out how to deliver it. The way to deliver it is to make the extra 12% contingent on very ambitious market-cap and operational goals: Musk wants a lot of stock, but he is extremely self-confident, so telling him "we'll get you to 25% if you hit all these crazy targets" satisfies his need for 25% while also letting the special committee argue that it is paying for performance and maximizing shareholder value. Honestly it's a fine solution to the problem facing the special committee! It's just a weird problem.

Elsewhere in the Tesla proxy, there's a shareholder proposal about investing in xAI. Bloomberg's [Kurt Wagner reports](#) :

Tesla Inc. shareholders will vote in November to decide if the electric carmaker should invest in Elon Musk's closely held artificial intelligence startup, xAI.

The planned vote, which was part of a shareholder proposal disclosed Friday in Tesla's annual proxy statement, could further entwine Musk's business empire. xAI, which Musk started in early 2023, already merged with his social networking company X in March. SpaceX, Musk's private rocket business, also invested \$2 billion into xAI earlier this year.

The board made no recommendation on whether shareholders should vote for or against the proposal.

Here is the proposal, from a Stephen Hawk of Gulfport, Florida. ("The shareholders of Tesla, Inc. request that the Board of Directors authorize an investment in xAI, in an amount and form deemed appropriate by the Board, to capitalize on the synergies between the two companies and strengthen Tesla's position as a leader in AI, robotics, and energy.")

We have [previously discussed](#) the oddity of this. Ordinarily the CEO of a public company is the one making decisions about capital allocation. Companies do not normally make investment decisions based on nonbinding proposals from retail shareholders. If the CEO (Musk) thinks that investing in xAI is a good idea, he should bring the idea to the board, which should consider it; because of the potential for conflicts of interest (Musk is the CEO of Tesla and main owner of xAI), if the board concludes it's a good idea then it should probably ask the shareholders to approve it. But that would be a proposal *from the board*, laying out the proposed investment and potential conflicts of interest. If Musk *doesn't* think that investing in xAI is a good idea, then he shouldn't do it, and the board should probably recommend against the shareholder proposal or even try to exclude it from the proxy. But instead, because everything at Tesla is weird and meme-y, what happened is that Musk went on Twitter and *solicited* a shareholder proposal for Tesla to invest in xAI, and he duly got one, and the board, knowing that Musk asked for it, can't recommend against it. Does Musk think that Tesla should invest in xAI? Should he or the board of directors lay out the case for that? Ehh, no, let's just check the shareholder vibes first.

SpaceX treasury company

One recurring theme around here is that ordinary investors want to buy SpaceX stock, but they mostly can't. SpaceX is a private company; it is not allowed to sell stock broadly to the general public, and it mostly doesn't want to. SpaceX will occasionally arrange trades between its big institutional investors and its employees, but it is not looking to include retail investors in those trades.

But there are various smallish imperfect ways to access SpaceX stock. There are special-purpose vehicles that acquire some SpaceX shares and then sell participations to outside investors. Several brokers, including Robinhood, have created "tokens" intended to reflect the economic value of SpaceX stock. You can buy shares in the Destiny Tech100 closed-end fund, which owns some SpaceX.

Because there is a lot of retail demand for SpaceX exposure, and because there is only so much supply in these smallish imperfect vehicles, "retail SpaceX" tends to trade at a premium. The Destiny Tech100 fund trades at a 400% premium to its net asset value. Some SPVs sell SpaceX exposure at a significant premium to its institutional valuation, and also charge high fees. My general view is that if you have \$100 of SpaceX stock – or OpenAI or Stripe or other big household-name private tech companies, but especially SpaceX – then you can sell it to retail investors for \$200.

Here's a stylized description of EchoStar Corp.:

1. It owns the rights to use a bunch of wireless spectrum.

- 2. It uses some of that spectrum to provide satellite broadband connections, wireless phone service (Boost Mobile) and television (Dish Network) to customers.
- 3. As of last Friday, EchoStar's equity market capitalization was about \$19.3 billion.
- 4. Over the weekend, it sold some of its spectrum to SpaceX for \$17 billion, or about 88% of its market capitalization at the time.
- 5. It would not be quite right to say "EchoStar sold 88% of its assets to SpaceX" – it also has a lot of debt, and the spectrum it sold does not really represent the large majority of its assets – but it is true that EchoStar has been selling off spectrum (it did another \$23 billion deal with AT&T a few weeks ago) and has warned investors about its ability to continue as a going concern.
- 6. So you could have a very stylized model like "EchoStar is in the process of transforming from a collection of wireless service providers and spectrum rights into a pile of cash, which it can use to pay off debt and return the rest to shareholders."
- 7. Except that it didn't sell its spectrum to SpaceX for cash, or not just for cash. It sold the spectrum to SpaceX for \$8.5 billion of cash and \$8.5 billion of SpaceX stock, with the cash going largely to pay down debt.
- 8. Transforming from a wireless company into a pile of cash is one thing. Transforming into a pile of SpaceX stock is more interesting.

EchoStar's stock was up this morning; as of noon, its market capitalization was about \$22 billion. It would not be quite right to say that *EchoStar is a publicly traded SpaceX tracking stock*: EchoStar has lots of assets that are not SpaceX stock, and lots of liabilities besides, and if you buy EchoStar stock you are not getting pure SpaceX exposure.

You are getting a certain amount of SpaceX exposure, though. And over time that exposure might get cleaner, if EchoStar does go and sell off a lot of its spectrum and operating businesses and uses the cash proceeds to pay down debt and return money to shareholders. It could end up as something close to a public company owning mostly \$8.5 billion of SpaceX stock. And that's surely worth more than \$8.5 billion.

ATM Ponzi

This is what a Ponzi scheme looks like (allegedly!):

That is from the complaint in a Securities and Exchange Commission enforcement action against Daryl Heller, who ran an automated teller machine network. He raised money from investors, bought ATMs, gave them a promised fixed return on their investment and kept the rest. In 2017, the ATMs brought in more than he owed investors. In 2018, same. In 2019, they brought in less than he owed investors, so he had to raise more money from new investors to pay out the old ones. That left him with more investors to pay out, so in 2020, while the ATMs brought in a bit more than they did in 2019, he owed investors twice as much, and he didn't come close to covering that. It snowballed from there, until by 2023 he was underwater by about \$130 million. Oops. From the complaint:

Defendants knew that between 2017 and 2024, the ATMs owned by the ATM Funds generated insufficient revenue to pay the promised distributions to investors. Defendants also knew that during this period, they were using new investments to pay earlier investors because of this shortfall and that Heller was taking tens of millions of dollars for other improper purposes, including to support other businesses he owned.

The business started in 2011, so it's not like it was all Ponzi from the get-go. But if you owe investors more than you can pay them, you have a choice of (1) looking them in the eye and delivering disappointing news or (2) doing some Ponzi. Allegedly he went with the second choice.

The most traditional way to do a Ponzi is to take the new investor money and hand it directly to the old investors, without bothering with buying ATMs. But Heller seems to have started legit, and wanted to stay legit, so he allegedly bought ATMs with some of the money, but just barely:

In practice, Heller directed Paramount to use investor monies to buy inexpensive ATMs or used and, at times, damaged ATMs with missing keyboards and hard drives, at prices that were much lower than what Paramount reported to the ATM Funds.

Oftentimes, Paramount, at Heller's direction, then stored the ATMs in warehouses around the country where they remained offline and generated no income at all.

I feel like it would be more efficient to skip buying them entirely, but I guess you feel a little better if there are actually ATMs lying around.

Things happen

U.S. Importers Eye Refund Options as Tariff Fight Goes to Supreme Court. "Light exotics." Companies Kick Off September With Deluge of Bond Sales. US public pension funds pare allocations to private credit. Trump Family Adds \$1.3 Billion of Crypto Wealth in Span of Weeks. Banks Vie With Private Debt to Offer €3 Billion for Zentiva Sale. Robinhood Markets to Join the S&P 500 Index. Scaramucci Struggles to Spin a Trump Tax Break Into Profit for Clients. German Ruling Tests London's Status as Go-To Restructuring Hub. Smuggling Is the Latest Temptation for Wealthy US Travelers. "I've been in government for 22 years and I have never met a billionaire who's done more for Queens." The Billionaires Fueling the Quest for Longer Life. Tech-Savvy Teen Becomes Catholic Church's First Millennial Saint. It's Not Just You: Household Product Scents Are Getting Stronger.

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- 1. Mechanically this could be “you wait until the election is over, your contract resolves to zero, and you keep the million dollars.” Or it could be “the price of your contract plunges from 40 cents to 1 cent and you buy it back to lock in your gains. The Ackman proposal – bet *on* Cuomo in a four-way race – makes more sense if you lock in your gains on jump when you announce.
- 2. Here are client memos from Latham & Watkins, Schulte Roth & Zabel and Norton Rose Fulbright on commodity insider trading under misappropriation theories.
- 3. Polymarket lists various other potential mayors, who are not actually running; they all have lower than 1% probabilities of winning. (Disclosure, one of them is Michael Bloomberg, the majority owner of Bloomberg LP, the parent company of Bloomberg News.)
- 4. Here is an X post from Amanda Fischer arguing that “Commodity Exchange Act Section 6(c)(1) does actually prohibit the misuse of material nonpublic information in derivative markets. Since Polymarket declared itself a ‘futures exchange’ instead of a gambling house, this proposal by Ackman is indeed very illegal!” But as I lay out above I think it’s more nuanced than that.
- 5. He can’t make any money by betting against himself, because he’s already trading at 1% probability. Ackman’s proposed trade relies on his analysis that Adams is not a viable candidate but is a viable spoiler: Dropping out won’t materially change his probability of winning (he can’t win), but will materially change *Cuomo’s* probability of winning.
- 6. Don’t take that too seriously. Tesla’s proxy filing on Friday discloses that there are about 3.2 billion shares outstanding and Musk beneficially owns about 715 million of them, or 19.7%. That, however, counts the 303 million shares underlying options that a Delaware court took away from him ; Tesla is still appealing that decision. My math takes the 411 million shares that he indisputably owns and adds the 96 million restricted shares that the board granted him last month as a down payment on returning those 303 million shares to him; that total of 507 million shares represents 15.3% of the outstanding stock. But you could pretty reasonably use 19.7%, there’s also a case for using 12.4% (just his actual share ownership ignoring various restricted awards), and you might consider adjusting the denominator in any of these calculations.
- 7. When I say “retail” in this section, I mean “public retail investors but also high-net-worth-type clients who are accredited investors but still, you know, dentists.” Some of the stuff I describe is available on the stock exchange to anyone; some of it is sold by financial advisers only to accredited investors. But those accredited investors are not billionaire family offices; they’re still retail-ish.

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Exclusive: Tesla market share in US drops to lowest since 2017 as competition heats up



reuters.com/business/autos-transportation/tesla-market-share-us-drops-lowest-since-2017-competition-heats-up-2025-09-08

Abhirup Roy

September 8, 2025

- Tesla accounted for 38% of August US EV sales
- Its July US market share down most since March 2021
- Rivals launch new vehicles, offer steep incentives

SAN FRANCISCO, Sept 8 (Reuters) - Tesla's [\(TSLA.O\)](#), [opens new tab](#) U.S. market share dropped to a near eight-year low in August as buyers chose electric vehicles from a growing stable of rivals over the aging lineup offered by CEO [Elon Musk](#)'s company, according to data from research firm Cox Automotive shared exclusively with Reuters.

The decline highlights the threat from automakers ramping up EV incentives at a difficult time for the industry. Analysts expect an EV sales bump to continue through September in the United States, then drop when federal tax credits expire at the end of the month, raising financial pressure on Tesla and other automakers.

Tesla, which once held more than 80% of the U.S. EV market, accounted for 38% of the total EV sales in the United States in August, the first time it has fallen below the 40% mark since October 2017, when it was ramping up production of the Model 3, its first mass market car, according to early data from Cox.

While other automakers are rolling out new EVs, Tesla has turned its focus to building robotaxis and humanoid robots, delaying and cancelling plans for cheaper electric vehicle models.

Much of Tesla's trillion-dollar valuation hangs on that bet. The company's board on Friday proposed an [unprecedented \\$1 trillion pay package](#) for Musk that, apart from other operational milestones, is pegged to Tesla's value rising to \$8.5 trillion over the next decade. For now, Tesla's core auto business remains its money maker. Its last new model was the Cybertruck pickup that rolled out in 2023 with nothing of the success of its Model 3 midsize sedan or Model Y midsize SUV. Tesla has refreshed the Model Y, once the world's best-selling car, but the changes [failed to live up to expectations](#), and Tesla is on track toward a second year of sales decline.

"I know they're positioning themselves as a robotics, AI company. But when you're a car company, when you don't have new products, your share will start to decline," Stephanie Valdez Streaty, Cox's director of industry insights, said in an interview with Reuters.

Cox has more complete data for July, when Tesla's market share fell to 42% from 48.7% in June. The drop was the sharpest since March 2021, around the time when Ford ([F.N](#)), [opens new tab](#) launched its Mustang Mach-E EV, according to a Reuters analysis of the data. Musk's right-wing political work and association with President [Donald Trump](#) also has [hurt the brand](#). Musk helped guide Trump's efforts this year to downsize and reshape the U.S. government but [left the administration](#) in May and had a [falling out](#) with the Republican president.

Sales of new EVs jumped more than 24% month over month in July to 128,268, according to the Cox data, driven by the looming end of a \$7,500 tax credit for EVs and attractive deals. Tesla saw sales rise 7% to 53,816, even as its market share fell.

In August, Tesla's growth slowed to 3.1%, and the broader market grew by 14%, the preliminary data showed.

'ATTRACTIVE OFFERINGS'

For years, Tesla as the market leader was able to increase sales rapidly and command a premium price for its vehicles, allowing it to rake in profits. But with weakening sales and a host of competitors, Tesla has had to cut prices in recent years, squeezing its margins and worrying investors.

The falling share reveals Tesla's increasingly difficult choice of supporting sales using higher, profit-destroying incentives for buyers or maintaining profits and giving up market share.

The July data showed rivals outgrowing Tesla. Hyundai ([005380.KS](#)), [opens new tab](#), Honda ([7267.T](#)), [opens new tab](#), Kia ([000270.KS](#)), [opens new tab](#) and Toyota ([7203.T](#)), [opens new tab](#) rolled out higher incentives than Tesla and drove up EV sales between 60% and 120%, boosting market share.

"These legacy manufacturers are all benefiting from this sense of urgency, and they're able to have attractive offerings for their vehicles - and it's working," Streaty said. "I think we're going to continue to see this momentum through September."

Competition against Tesla has turned fierce at EV dealer lots.

While scouring for a car for everyday use last month, Topojoy Biswas, a 41-year-old tech worker in the San Francisco Bay area, was greeted with a range of deals, including zero down payment and zero interest rates, from various EV dealers.

Instead of the Toyota Camry he initially was eyeing, Biswas bought a Volkswagen ([VOWG.DE](#)), [opens new tab](#) ID.4, VW's competition to the Model Y, lured by an attractive lease price and an offer of free fast-charging. Volkswagen sales rose more than 450% in July from the previous month.

"It felt like the deal of the market," Biswas said.

Reporting by Abhirup Roy in San Francisco; Editing by Peter Henderson and Will Dunham

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Tesla's 'Super Ambitious' \$1 trillion deal for Musk could still pass shareholder muster



reuters.com/legal/litigation/teslas-super-ambitious-1-trillion-deal-musk-could-still-pass-shareholder-muster-2025-09-05

Ross Kerber, Dawn Kopecki, Simon Jessop, Arsheeya Bajwa

September 5, 2025

A Tesla logo is seen at a Tesla showroom in Shanghai, China January 7, 2019.

REUTERS/Aly Song/File Photo [Purchase Licensing Rights, opens new tab](#)

- Shareholders likely to approve Musk's \$1 trillion pay package
- Critics argue package is excessive and sets bad corporate governance precedent
- The board met 37 times with its lawyers and 10 times with Musk

NEW YORK, Sept 5 (Reuters) - Tesla's ([TSLA.O](#)), [opens new tab](#) \$1 trillion, 10-year pay package to retain CEO [Elon Musk](#) is likely to be approved by shareholders at the company's annual meeting in November even though the amount is staggering.

That is because it was crafted with an eye on keeping Musk in place, addressing concerns about the company's technical outlook and giving big company owners just enough reason to back the massive amount, investors and executive pay analysts said.

Earlier on Friday, [the automaker's board approved](#) what it called "A Super Ambitious Incentive Package for a Pioneering, Ambitious and Unique CEO" that sets out lofty earnings and valuation targets – awarding Musk millions of shares over the next decade if he hits them. It immediately gives Musk 96 million shares of restricted stock worth more than \$31 billion as of intraday trading on Friday that vests over the next two years, as well as more control over the company. His total 2025 compensation package is worth north of \$113 billion, executive compensation research firm Equilar has estimated.

"The pay package, which makes a big bet on the future of robots, may see shareholder support," said Taufiq Rahim, a SpaceX investor and principal at 2040 Advisory. "But it raises larger social questions about the outsized gains going to relatively few capital holders, which is likely not sustainable and will face public pressures."

The package is designed to keep Musk from leaving and is squarely focused on transforming Tesla into an artificial-intelligence and robotics powerhouse, the board said in a securities filing. It said Musk is the only person on the planet who can unlock Tesla's full potential.

The compensation committee started negotiating Musk's pay package in February, it said, meeting with lawyers 37 times and directly with Musk 10 times over seven months. Certain items were non-negotiable for the idiosyncratic CEO: he wanted 25% of the company, to control Tesla's future direction and to be fully compensated for a 2018 pay package that was hung up in litigation.

THREATS TO LEAVE

Musk threatened to leave more than once, and the board worried the company's AI talent would follow him out the door, it said in the filing.

The \$31 billion in restricted shares, which he cannot sell for at least five years, is partial payback for a \$56 billion 2018 pay plan that a Delaware court voided last year. If Musk wins in court within a certain time frame, he will not receive the one-time payment "so there can be no 'double dip,'" the board said.

"Musk also raised the possibility that he may pursue his other interests and leave Tesla if he did not receive such assurance," the board said.

SHAREHOLDER APPROVAL

The pay plan is by far the largest ever for any CEO, Equilar said. And while it is likely to face legal challenges, compensation experts see it winning shareholder approval.

"Time and time again, Tesla's shareholders have approved these grants over the years," Equilar Research Director Courtney Yu told Reuters. "While it may seem outlandish now, shareholders will get tremendous value out of it if Elon Musk is successful."

None of Tesla's three largest outside investors, Vanguard Group, BlackRock ([BLK.N](#)), [opens new tab](#) or State Street ([STT.N](#)), [opens new tab](#), immediately said on Friday how they would vote. Among them, Vanguard and BlackRock supported Musk's \$56 billion pay package [last year](#), disclosures show, while State Street funds voted against it.

Tesla and top funds can still expect pressure over the pay, however, with a number of union figures and public-sector treasurers voicing concern.

"We urge shareholders to reject Musk's money grab, take away the Tesla board's rubber stamp, and restore basic corporate governance standards," said Randi Weingarten, president of the American Federation of Teachers, in a statement.

Musk, who currently controls close to 13% of the company, would own 25% if the plan is approved, so long as he hits his performance targets and sticks around for at least seven more years. Payable over 12 tranches after hitting certain milestones, the ultimate prize could make Tesla the most valuable company in the world with an aspirational market capitalization of \$8.5 trillion, making it worth more than Microsoft ([MSFT.O](#)), [opens new tab](#), Meta Platforms ([META.O](#)), [opens new tab](#) and Alphabet ([GOOGL.O](#)), [opens new tab](#) combined, today, the board noted.

Kristin Hull, founder and chief investment officer of Tesla investor Nia Impact Capital, called the package irresponsible. "This is investor money that could go into R&D or acquisitions, places that would really benefit Tesla in the long term," she said, adding that she is

considering a challenge with other shareholders.

Dan Coatsworth, investment analyst at AJ Bell, called Musk a visionary but said the pay plan was excessive and could set a bad precedent in corporate governance. He questioned whether Musk was worth that much.

"He also presides over a company that has lost its edge, is being overtaken by rivals, and whose brand has been tarnished by Musk's actions outside of Tesla," he said.

'PICK A NUMBER'

Tesla's shares closed up 3.6% at \$350.84 on Friday. They are down 13% for 2025, although they have recovered from their lows. Investors worry about its deteriorating electric vehicle business and rising foreign competition.

"One minute Tesla's board is wondering if Elon Musk is a liability to the company given his outspoken views and political distractions, the next they're effectively saying 'pick a number, any number' to lock him in for as long as possible," Coatsworth said.

"Surely Musk should be fighting for his job, not Tesla's board fighting to keep him?"

Reporting by Ross Kerber in Boston, Dawn Kopecki in New York, Simon Jessop in London, Arsheeya Barja and Akash Sriram in Bengaluru and Matt Tracy in Washington; Editing by Dawn Kopecki, Mike Colias and Matthew Lewis

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Securities Law News

Trump Family Adds \$1.3 Billion of Crypto Wealth in Span of Weeks

Sept. 7, 2025, 7:00 AM PDT

It took just a few eventful weeks for President Donald Trump's family to rack up about \$1.3 billion from two crypto ventures, each less than a year old.

The haul from crypto firm World Liberty Financial and separate mining operation American Bitcoin Corp. shows how still-nascent projects are already translating into tangible wealth for the first family. The sums rival the values of long-held golf and resort properties that had been synonymous with the Trumps, whose fortune now stands at \$7.7 billion, according to the Bloomberg Billionaires Index.

The president's two eldest sons, **Donald Trump Jr.** and **Eric Trump**, still share the role of executive vice president at the Trump Organization, but are increasingly the faces of the family's growing crypto portfolio.



Eric Trump, left, and Donald Trump Jr.

Photographer: Ronda Churchill/Bloomberg

World Liberty, which they co-founded last year along with the president's youngest son, Barron, reached a key milestone on Sept. 1, opening up the ability for customers to trade its eponymous token. Last month, it clinched a lucrative deal with a public company to stockpile the asset.

Together, those developments added about \$670 million to the Trumps' net worth, according to Bloomberg's wealth index, which now treats it as a family fortune. Bloomberg's calculation excludes roughly \$4 billion worth of tokens owned by the Trumps that remain locked for now.

Eric Trump's stake in American Bitcoin, created in March to mine virtual assets, was worth more than \$500 million when the stock surged in its trading debut on Sept. 3.

The blitz suggests a new reality is setting in for the first family: The properties most closely associated with them, like Trump Tower on Manhattan's Fifth Avenue and even the palm-fringed Mar-a-Lago resort, aren't the fastest path to new wealth. And even for a family that's long attached its name to everything from steaks to vodka, the speed and magnitude of their crypto gains are unlike anything they've done before.

The Trump Organization and the White House didn't respond to requests for comment. David Wachsman, a spokesman for World Liberty Financial, declined to comment.



The Trumps have new ideas in progress, too. Warren Hui, co-founder of Soul Ventures, which invested in Alt5 Sigma Corp., the public company that started buying World Liberty tokens last month, said the crypto company's founders recently suggested they may start "tokenizing" real estate assets — creating a digital proxy for something that exists in the physical world. Eric Trump was among the group pitching the idea, he added.

"We had confidence when we talked to Eric Trump, from his experience with hospitality and real estate," Hui said.

'Buy Right Now'

World Liberty and American Bitcoin are now operating at the intersection of crypto and public markets. While crypto enthusiasts once sought an alternative to traditional finance, increasingly they're using publicly listed vehicles to bolster the value of their tokens. It's a riff on a concept crypto celebrity **Michael Saylor** pioneered and a way to create a more steady source of demand for volatile virtual assets.

Under earlier regulatory regimes, the crypto industry was under greater scrutiny. The Securities and Exchange Commission during the Biden administration cracked down on crypto exchanges for selling unregistered securities, and sued some of the best known companies, including Coinbase Global Inc. and Kraken. Under Trump, who appointed friendlier regulators and promised to turn the US into the "crypto capital of the world," those high-profile cases were dropped.

In response to criticism over the potential for conflicts of interest, given the family's involvement in virtual assets, President Trump's sons have said their businesses are distinct from the government.

Still, during the Bitcoin Asia conference at the end of August, Eric Trump said he had urged his father to address Bitcoin enthusiasts while campaigning in Nashville last year. Eric Trump, who told Bloomberg last week that he's been buying Bitcoin for "several years," often makes a sales pitch for the asset class now helping his family amass substantial new wealth.

"Buy right now," he told the Bitcoin Asia audience in Hong Kong. "Buy this second." He followed up with a mention of Saylor's entreaty to "sell a kidney if you must, but keep the Bitcoin."

World Liberty Financial

World Liberty got its start in September 2024, while Trump was running against Kamala Harris. The Trumps were listed as co-founders, alongside Steve Witkoff, who became the administration's special envoy to the Middle East, and his sons **Zach** and **Alex Witkoff**.

At first, buyers could only use World Liberty Financial tokens to cast votes to "shape the future" of the project. There have been three proposals to date, including whether to make the WLFI token tradeable, according to a snapshot on the company's website.

One matter that wasn't put up for a vote: a deal in August with Alt5 Sigma, a little-known Las Vegas-based firm previously focused on biotechnology.

Publicly-traded Alt5 Sigma said it would buy about \$1.5 billion of World Liberty tokens. The transaction had two legs: The company traded its own shares for about \$750 million worth of tokens at 20 cents each, and bought roughly the same amount using cash. At the time, the WLFI token was still straitjacketed and untradeable.

The Alt5 Sigma deal is worth about \$670 million all-in to the Trumps, according to Bloomberg calculations. Though shares of Alt5 Sigma have lost more than half their value since the tie-up was announced, they're still worth nearly \$170 million to the first family. The Trumps also get 75% of the proceeds from World Liberty token sales, worth roughly another \$500 million.



Donald Trump Jr., from center left, Zach Witkoff, Eric Trump, Zak Folkman and Scott Alper, president and chief investment officer of the Witkoff Group.

Photographer: Adam Gray/Bloomberg

"We are at the tip of the spear," Eric Trump said at Nasdaq's Times Square office, where he gathered with Zach Witkoff and fellow co-founders Chase Herro and Zak Folkman to celebrate the union. "We are really going to rewrite the whole playbook."

The wild card through it all is the Trump family's 22.5 billion WLFI tokens, which they received when the project began. WLFI tokens started partially trading in the past week, at prices that would value the Trumps' haul at \$4 billion.

But unlike the portion of the tokens that became tradeable for early investors, the tokens allocated to the Trumps, Witkoffs and other World Liberty team members remain "locked." The Bloomberg Billionaires Index excludes these tokens from the total value of the Trumps' crypto holdings because they can't yet be traded.

American Bitcoin

American Bitcoin, for its part, emerged about two months after President Trump's inauguration with a plan to mine Bitcoin and backed by Eric Trump and Donald Trump Jr. While Bitcoin mining is an energy-intensive process, dependent on droves of computers, they didn't need to supply any of the specialized equipment — instead, a public company called Hut 8 Corp. offered its own mining machinery in exchange for a majority stake in the fledgling firm.

American Bitcoin became a public company in short order. Rather than pursue the more traditional path of an initial public offering, it had public company Gryphon Digital Mining absorb American Bitcoin's name and business, changing its stock--46--ticker to ABTC.

Eric Trump now owns about 7.5% of the public company, according to Bloomberg calculations, which for a fleeting moment last week made his stake worth close to \$1 billion. Donald Trump Jr. also held a smaller stake in American Bitcoin, but its size wasn't listed in public filings.

When asked about the ballooning size of his American Bitcoin wealth on Bloomberg TV, Eric Trump said only that "we are incredibly fortunate in life with or without this endeavor." But he nodded to the fact that he now spends considerable time promoting crypto and the companies he has backed.

"I want to be a great spokesperson for it," he said.

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Securities Law News

Trump Crypto Project Sours as Billionaire Justin Sun Hits Out

Sept. 5, 2025, 10:56 AM PDT

Justin Sun, the Chinese-born crypto billionaire, has tied himself closely to the Trump family's digital-asset ventures with money, appearances, and public praise.

Now that partnership is under strain — and the fallout is reverberating across the crypto industry.

Just days after WLFI — the token issued by World Liberty Financial, a digital-asset firm backed by Trump and his sons — began trading, Sun said he was blocked from accessing his unlocked coins and denounced the freeze on social media. The unusual development, which came amid speculation that Sun was preparing to sell some of his tokens, has cast a harsh light on a key part of the family's push into digital assets.

Sun had poured \$75 million into World Liberty, appeared at Trump's golf club dinner in May, and promoted the project online.

WLFI was trading nearly 40% below its debut price as the fallout deepened. Retail traders, who dominate crypto markets, are left weighing whether Sun truly intended to sell, why his wallet was frozen, and what the episode reveals about confidence in the project sold as form of financial freedom.

"I believe that a truly great financial brand must be built on fairness, transparency, and trust — not on unilateral actions that freeze investor assets," Sun said on social-media platform X on Friday. "Such measures not only violate the legitimate rights of investors, but also risk damaging broader confidence in World Liberty Financials."

World Liberty blacklisted 269 wallets before the token's launch, according to a note Friday from Galaxy Research. Three more, including Sun's, were blacklisted after trading started, Galaxy said. "Given the scale of Justin Sun's holdings, it seems hard to imagine the action was accidental," the note said.

The project hasn't explained its criteria for blacklisting. Freezes of this scale are rare in crypto and usually tied to law-enforcement requests or confirmed criminal activity.

World Liberty didn't respond to questions on why it blacklisted Sun's wallet, and Sun's post didn't say why he was targeted.

Only one wallet address linked to Sun has received WLFI tokens, according to data from blockchain forensics firm Arkham.

Arkham and other blockchain analytics sleuths identified the wallet based on its transaction history. The wallet received 3 billion WLFI tokens when it started trading on Monday, 600 million of which were unlocked. These data points align with Sun's disclosed \$75 million purchase.

More than 70,000 wallet addresses on Ethereum received WLFI tokens.

Sun said in his Friday X post that "as one of the early investors, I joined together with everyone — we bought in the same way, and we all deserve the same rights." He didn't immediately respond to a request for comment.

The World Liberty Financial website lists Trump and his special envoy to the Middle East Steven Witkoff as co-founder emeritus, while their sons are listed as co-founders.

Moment of Triumph

Sun, worth \$12.4 billion according to the Bloomberg Billionaires Index, invested in WLFI late last year and in January, when he was still under investigation by the US Securities and Exchange Commission over alleged market manipulation. In late February, lawyers for Sun and the SEC sought a stay in regulatory proceedings against him.

There's no evidence that the SEC pause was linked to Sun's support for WLFI, and the agency dropped or suspended several high-profile crypto investigations around that time. But to a crypto industry that donated millions to Trump's reelection campaign after enduring a years-long regulatory crackdown under the Biden administration, it demonstrated the perceived importance of cementing ties with Trump-affiliated crypto ventures.

Read more: Trump's Crypto Project Buys Tokens Associated With Justin Sun

The SEC pause was a moment of triumph for an entrepreneur who had riled authorities before, including in his native China. He was also a major investor in the Trump memecoin, a separate cryptocurrency the president launched just days before his inauguration which has slumped almost 90% from its peak.

Trump Memecoin Dinner

That earned him a ticket to the May 22 dinner at the the Trump National Golf Club near Washington, where Trump spoke with the 35-year-old Sun.

The WLFI deal was lucrative for Sun, at least on paper. His holding is now worth about \$560 million, even after the price swoon. Like other WLFI holders, 80% of Sun's tokens are locked under vesting rules. The blacklisting of his wallet prevents him from moving coins he's allowed to trade.

Sun said in an X post on Sept. 1 that he had no plans to sell any of his unlocked WLFI tokens. "The long-term vision here is too powerful, and I'm fully aligned with the mission," he said. He also pledged to boost support for USD1, the WLFI project's stablecoin.

Three days later, a wallet linked to Sun transferred 50 million WLFI tokens worth around \$9 million to HTX, the exchange he serves as adviser to. Such moves are visible on public blockchains and closely followed in the crypto sector, because they can indicate that a large investor is getting ready to sell. Sun took to X to dispel speculation that he was selling.

A representative for HTX said it was unable to comment on WLFI's actions or Sun's personal holdings.

Roughly six hours after the transfer, Arkham flagged on X that Sun's address had been blacklisted, which Sun later confirmed.

"It's very unusual to freeze and blacklist addresses in this manner," said **Alex Svanevik**, chief executive of blockchain research firm Nansen, speaking generally. "Even stablecoin providers like Circle and Tether only very rarely take such steps, and it's normally for (confirmed) criminal activity."

Tether Holdings SA and Circle Internet Financial Inc. issue the two biggest stablecoins, USDT and USDC.

Svanevik, whose firm operates a "validator" for the TRON blockchain Sun founded, said WLFI and Sun should explain the reason for the freeze, adding that he isn't privy to "privately agreed terms" between the project and investors.

"The best way out of this for both parties is probably to clarify that there was some misunderstanding between the project and its investors," he said. "It doesn't help credibility for the project to blacklist an investor without a clear rationale."

Sun appeared to be mending fences already. He posted later Friday on X that US-listed crypto stocks were undervalued and that he'll purchase \$10 million of ALT5 Sigma shares and an equal amount of WLFI tokens. Sun copied in the Trump sons and those running World Liberty on the message.

(Updates with fresh top)

--With assistance from **Muyao Shen**.

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Drivers Demand GM, OnStar Data 'Snooping' Suit Roll On

By **Chart Riggall**

Law360 (September 5, 2025, 7:14 PM EDT) -- Plaintiffs hoping to represent a nationwide class of up to 16 million drivers who were allegedly covertly surveilled by their General Motors cars urged a Georgia federal judge Friday to keep their suit alive, arguing GM used onboard devices to run a massive wiretapping and data mining scheme.

Fighting a dismissal bid from General Motors Co., OnStar, and data firms LexisNexis Risk Solutions and Verisk Analytics Inc., counsel for the drivers told U.S. District Judge Thomas Thrash they'd been the victims of a bait and switch that promised OnStar systems would be used to aid customers on the road.

Instead, said Norman Siegel of Stueve Siegel Hanson LLP, who represents the drivers, the devices ended up being used as bugs to mine driver data, which GM turned around and "sold to anyone who would pay for it."

"This was GM's goal — that each car would be a data center," he argued.

"[Onstar] was not sold on the basis that we're going to listen to and record everything that happens to you, and sell it," added Roy E. Barnes of the Barnes Law Group LLC, who also represents the drivers. "... It's about the right you have to drive a car and not snoop on you, and make money off that snooping."

Friday's hearing, with 90 minutes of argument from each side, came over a year after the Judicial Panel on Multidistrict Litigation **consolidated** a slew of proposed class actions over GM's alleged privacy abuses before Judge Thrash's court.

The cases — filed in California, Florida, Michigan, New York and Pennsylvania, among other states — accuse GM and OnStar of using the onboard driver assistance devices to collect reams of data on consumers' driving habits. That information was then sold to companies like LexisNexis and Verisk, which in turn passed it along to insurance companies, the plaintiffs contend.

As a result, the drivers say they faced not only invasions of their privacy, but saw their insurance premiums jacked up thanks to unfair representations about their driving.

On Friday, counsel for the companies argued that the plaintiffs have no claim under the Federal Wiretap Act, given that claims under the statute must rely on a third party intercepting two parties' communications in real time. But GM, said King & Spalding LLP's David Balser, was in fact the intended recipient of the transmissions.

"No court has ever applied the Federal Wiretap Act this way," Balser said. "... It doesn't matter whether plaintiffs knew they were communicating with GM or consented to doing so. What matters is that GM was a party to the communication."

"If I could sum up the plaintiffs' complaint in one word," he added, "it would be overreach."

Peter Starr of King & Spalding LLP, who also represents GM and OnStar, said, "The first and most fundamental problem with plaintiffs' claim is that they fail to identify a right to privacy that has been invaded."

As for the data companies, their counsel argued — as they did in their **April dismissal bid** — that the main data points collected from drivers, such as vehicle location and speed, were all publicly observable information obtained from roadways where drivers have no expectation of privacy to begin with.

Jasmeet Ahuja of Hogan Lovells, who represents Verisk, added that the plaintiffs had not shown any relationship between the collection of their data to their purported injuries, arguing that they "fail to connect this alleged increase in premiums to any conduct by [the] defendants."

Judge Thrash declined to rule on the series of dismissal motions Friday.

The drivers are represented by Barnes Law Group LLC, Stueve Siegel Hanson LLP, Cafferty Clobes Meriwether & Sprengel LLP, DiCello Levitt, Scott + Scott Attorneys at Law LLP, Tycko & Zavareei LLP, Bradley Grombacher LLP, Miller Law Firm PC, Motley Rice LLC, Girard Sharp LLP, Cotchett Pitre & McCarthy LLP, Morgan & Morgan PA, Casey Gerry Schenk Francavilla Blatt LLP, Lynch Carpenter LLP, Kopelowitz Ostrow PA, Robbins Geller Rudman & Dowd LLP, Kantrowitz Goldhamer & Graifman PC, Keller Rohrback LLP and Childers Schlueter & Smith LLC.

LexisNexis is represented by Ronald I. Raether Jr., Julie Hoffmeister Smith, Timothy J. St. George and Cindy D. Hanson of Troutman Pepper Locke LLP.

Verisk is represented by Jasmeet K. Ahuja and Allison J. Caplis of Hogan Lovells.

GM and OnStar are represented by David L. Balser, Susan M. Clare, John C. Toro, Peter Starr and Matthew B. Rosenthal of King & Spalding LLP.

The case is In re: Consumer Vehicle Driving Data Tracking Litigation, case number 1:24-md-03115, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Jonathan Capriel and Hope Patti. Editing by Kristen Becker.

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Vein Tech Maker Wants Suit Over DOJ Kickback Probe Tossed

By **Katryna Perera**

Law360 (September 5, 2025, 6:57 PM EDT) -- Vein disease device maker Inari Medical Inc. and its former top brass have asked a New York federal judge to toss a proposed investor class action over claims the company's share price fell after it disclosed an investigation into its compliance with federal anti-kickback laws, arguing the suit fails to allege any specific kickbacks or false statements.

Inari and three of its former executives filed a **dismissal motion** Thursday, arguing that an amended complaint filed in June by lead plaintiff Michiana Area Electrical Workers' Pension Fund fails to state a viable claim.

The proposed class **has alleged** Inari and its former executives misled investors by concealing that the company's financial results and product sales numbers were propped up by "bribes and other improper and illegal payments to healthcare providers."

On Thursday, Inari argued the amended complaint fails to plead, with the required detail, any violations of the federal Anti-Kickback Statute, saying the suit only includes general allegations about Inari's spending and training sessions for doctors but does not identify "any specific improper event or plead details of what happened at the event, when or where it occurred, which physicians attended, what those physicians received, or the value of any alleged kickback."

Inari said companies are allowed to conduct training and marketing programs with physicians and pay for their travel, lodging and meals connected to the programs without violating the AKS, and that the amended complaint does not show how any particular payment by Inari crossed the line "separating a permissible educational or marketing expense from an illegal kickback."

Additionally, the mere existence of a civil investigative demand Inari received from the U.S. Department of Justice does not support an allegation of willful AKS violations, according to the motion.

The complaint asserts four categories of false statements related to revenue, selling, general and administrative expenses, risk disclosures, and contractual provisions, but the company argued that none of the challenged statements are false or actionable.

Inari also argued the suit fails to plead a strong inference of scienter as there is a more compelling nonfraudulent inference.

"The most plausible inference is that Inari intended to design and execute a permissible program for training and educating physicians, and that any excessive or improper expenses (none of which plaintiffs plead with particularity) arose from individual carelessness rather than intentional or consciously reckless misconduct," the company said.

The suit's scienter allegations are also not supported by the individual defendants' stock sales or compensation, or confidential witness or core operations allegations, according to the motion.

In their suit, the investors pointed to market records showing that the company's trading prices declined after it disclosed in February 2024 that the DOJ had demanded information from Inari related to "payments to healthcare professionals relating to meals and consulting services."

When the company announced the civil investigative demand, it also cautioned investors that the Justice Department probe could have a material effect on its business, the pension fund said, adding that the disclosure prompted investment bank analysts to downgrade Inari's stock.

The following day, trading prices for Inari's shares fell from about 21% from over \$58 to about \$46, erasing about \$700 million in market capitalization from the company, the complaint said.

The proposed class includes those who purchased Inari shares between February 2022, when the company allegedly misled investors about why it had seen strong results in its 2021 fiscal year, and February 2024.

Inari makes devices for treating blood clots that form in veins and has warned investors that its products are subject to "extensive regulation" including from U.S. federal healthcare fraud and abuse laws, the suit said.

Medical technology company Stryker Corp. **acquired** Inari in January in a deal worth nearly \$5 billion.

The news of the probe was included as the company announced its full financial results for its 2023 fiscal year, and on an analyst call the same day, former Inari CEO Andrew Hykes said the company received the demand in December 2023. He added the company was cooperating with the Justice Department and that it takes compliance seriously.

The Inari brass named alongside the company includes Hykes, former CEO William Hoffman and former Chief Financial Officer Mitchell Hill.

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

The investors are represented by James S. Notis, Vincent J. Pontrello and Mica A. Cocco of Grant & Eisenhofer PA, David A. Rosenfeld, Samuel H. Rudman, Lucas F. Olts, Jack M. Kelley and Jack A. Gephart of Robbins Geller Rudman & Dowd LLP, and Michael J. Asher, Jacqueline A. Kelly and Cynthia J. Billings-Dunn of AsherKelly.

Inari and the individual defendants are represented by Craig Carpenito, Christopher E. Duffy, Alvina Pillai, Lisa Bugni, Matthew V.H. Noller and Emily Yonan of King & Spalding LLP.

The case is Michiana Area Electrical Workers' Pension Fund v. Inari Medical Inc. et al, case number 1:24-cv-03686, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Emilie Ruscoe. Editing by Lakshna Mehta.



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Motley Rice Fights OptumRx DQ Bid In Utah Opioid Suit

By **Jack Karp**

Law360 (September 5, 2025, 4:26 PM EDT) -- Pharmacy benefit manager OptumRx cannot disqualify Motley Rice LLC from representing Utah in a lawsuit over the opioid crisis, since any information the firm obtained during its involvement in earlier government investigations is available to all other parties in the multidistrict litigation and so isn't confidential, the state has told a federal court.

OptumRx also can't show that Motley Rice was a "public officer or employee" when it represented Chicago, Hawaii and Washington, D.C., in those investigations of the company's role in the opioid crisis, something that's required for disqualification, Utah said in its **opposition** Thursday to OptumRx's effort to remove it from the case.

Nor can OptumRx show that the firm's access to the information puts the company at a "material disadvantage" given its accessibility in the MDL Discovery Repository, Utah added.

"Perhaps recognizing that it cannot succeed in arguing that the company documents produced in response to the subpoenas constituted confidential government information, OptumRx argues that Motley Rice allegedly derived 'mental roadmaps' or 'strategic insights' that constitute confidential government information," attorneys for Utah said. "This argument lacks both legal and factual foundation."

OptumRx moved in July to **disqualify** Motley Rice from representing Utah in the opioid crisis lawsuit, claiming the firm violated ethical rules by investigating OptumRx on behalf of Hawaii, Chicago and D.C., and then suing the company in a private capacity.

OptumRx said Motley Rice's representation of Utah blatantly violates Rule 1.11(c) of the Utah Rules of Professional Conduct, which prevents attorneys from using "confidential government information" obtained when they were "a public officer" in private lawsuits.

But the firm was never "a public officer" during those representations, and each government's retainer agreement specified that Motley Rice's attorneys were independent contractors rather than government employees, Utah argued Thursday. The firm wielded no government authority, and its attorneys worked subject to the government entity's control, according to the state.

OptumRx has also already produced the documents at issue to the MDL discovery repository, making them accessible through routine discovery and thus not confidential, Utah said.

"By its plain language, the rule is precisely and narrowly drawn to protect against the use of information that is 'obtainable only through the lawyer's government service' and no other source," it added in its opposition.

The fact that OptumRx placed the documents at issue into the MDL discovery repository also means Motley Rice's access to those documents can't materially disadvantage the company, a requirement for disqualification of a former government lawyer under Rule 1.11(c), according to the state.

"[A]ll plaintiff counsel in the MDL, as well as counsel in other opioid litigation and law enforcement agencies that signed the MDL protective order, have long had access to the documents," the opposition insisted.

Motley Rice plays a leadership role in the national MDL over the opioid crisis, and OptumRx has already attempted to disqualify it from using the same arguments in other cases. Thus far those attempts have all failed, Utah said.

"Despite an admittedly universal lack of success, OptumRx revives before this court its six-times discredited argument to disqualify Motley Rice," it said Thursday, asking the court to reject that effort once again.

Attorneys for Utah and for OptumRx did not respond to requests for comment Friday.

OptumRx is represented by Bentley J. Tolk and Rodger M. Burge of Parr Brown Gee & Loveless.

Utah is represented by Douglas J. Crapo, Peishen Zhou and Stevenson C. Smith of the Utah Attorney General's Office, and Elizabeth Smith and Linda Singer of Motley Rice LLC.

The case is State of Utah v. Express Scripts Inc. et al., case number 2:25-cv-00088, in the U.S. District Court for the District of Utah.

--Additional reporting by Ryan Boysen. Editing by Adam LoBelia.

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Quantum Corp. Faces Investor Suit Over \$4M Revenue Error

By **Zach Dupont**

Law360 (September 5, 2025, 8:13 PM EDT) -- Data storage company Quantum Corp. is facing a proposed class action from an investor who claimed in Colorado federal court on Thursday the company committed securities fraud by making false representations to investors through earnings reports for the 2024 fiscal year.

Seung Lee said Quantum's stock price dropping more than \$3 per share since June is directly linked to misrepresentations made by the company, which resulted in Quantum discovering its revenue in an earnings report at the end of 2024 was overstated by nearly \$4 million.

Lee said some of Quantum's earnings reports for the 2024 fiscal year were "materially false and misleading" because the company improperly recognized revenue that resulted in it needing to restate its previous reports.

Lee noted the stock price first took a hit in June, dropping from nearly \$10 per share to \$8.97 when Quantum announced it had notified the U.S. Securities and Exchange Commission it would be filing its annual report late because "it was in the process of reviewing its revenue recognition accounting practices."

Another drop in the stock price came in August, when Quantum made new filings with the SEC that announced the company's third-quarter earnings from the 2024 fiscal year "could not be relied upon" and the revenue totals from it needed to be decreased to the tune of \$3.9 million.

Lee said Quantum also announced in the same SEC filings that "there were deficiencies in the company's internal control over financial reporting and the company's disclosure controls and procedures that constituted material weaknesses."

The SEC filing, which is included in the complaint, states that in June, Quantum discovered "certain service and subscription revenue inconsistencies" that resulted in the need for the revenue update.

Lee claimed the August news resulted in a stock drop of \$0.14 per share to \$7.43. The final hit to Quantum's stock price noted in the complaint came later that month on Aug. 18, when the company announced its chief financial officer of just five months, Lewis W. Moorehead, resigned, resulting in a \$0.61 hit and leaving it at \$6.83 — a more than a \$3-per-share drop since the June announcement.

While the complaint only outlines the drop in share price allegedly related to the company's SEC filings, Quantum has taken a massive hit to its valuation since the start of the year. In early January, Quantum's stock was valued at more than \$54 per share — at the time of writing, the share price is listed at \$7.42, a drop in value of more than 85%.

"As a result of defendants' wrongful acts and omissions and the precipitous decline in the market value of the company's common shares, plaintiff and other class members have suffered significant losses and damages," Lee said.

Lee is bringing two claims against Quantum for violating the Securities Exchange Act and is seeking class certification as well as damages.

Counsel for Lee and a spokesperson for Quantum did not immediately respond to requests for

comment on Friday.

Lee is represented by Phillip C. Kim of The Rosen Law Firm PA.

Counsel information for Quantum was not immediately available on Friday.

The case is Lee v. Quantum Corporation et al., case number 1:25-cv-02770, in the U.S. District Court for the District of Colorado.

--Editing by Philip Shea.

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GigaCloud Investors Seek Final OK For \$2.75M Deal In AI Suit

By **Emilie Ruscoe**

Law360 (September 5, 2025, 4:05 PM EDT) -- Investors in large parcel ecommerce company GigaCloud Technology Inc. have asked a Manhattan federal judge to give final approval to their \$2.75 million deal ending claims the company misled investors about using artificial intelligence in its logistics systems.

In Thursday filings, GigaCloud Investors told U.S. District Judge Jesse M. Furman that the settlement agreement, which they reached in April after weeks of negotiations, was "procedurally and substantively fair, reasonable, and adequate, and in the settlement class's best interests."

According to the investors, the settlement sum represented nearly 3.7% of the \$75 million in damages they could have recovered at trial in the best possible scenario. That damages percentage is in line with settlement averages in other securities fraud class actions, the investors said.

The investors added that the settlement sum they had brokered was equal to over 11.5% of the \$23.78 million maximum damages they could expect to recover if they prevailed on claims that had been sustained by Judge Furman in January, when he trimmed the suit's claims.

Under these circumstances, the investors said, "money in settlement class members' pockets now is more valuable than a speculative recovery that settlement class members might obtain after a complex trial, undertaking the substantial risk that the settlement class may end up with nothing given the challenges that plaintiffs face in establishing liability and damages."

If granted final approval, the deal will resolve the investors' allegations that, amid surging investor interest in AI technology, the company invoked AI in certain public filings in an effort to characterize its offerings as sophisticated.

The investors had cited a GigaCloud offering prospectus where the company "emphasized that the key to GigaCloud's technological advantage was 'Data Intelligence Powered by AI,' which the Prospectus listed under 'Competitive Strengths,'" according to the complaint.

The complaint also quoted former Gigacloud employees, including a software engineer and two supply chain managers, who stated that "no AI technology was involved" in GigaCloud's logistics systems.

"Rather, according to GigaCloud's former president of U.S. Operations, GigaCloud used 'AI' and 'Machine Learning' as mere buzzwords, but its warehouse management system was neither state-of-the-art nor sophisticated. Instead, it was similar to what you would see in most other warehouse operations," the investors claimed in the latest version of their suit, from June 2024.

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

The investors are represented by Jeremy A. Lieberman and Jonathan D. Park of Pomerantz LLP, Lesley F. Portnoy of Portnoy Law Firm, Laurence M. Rosen, Phillip Kim and Brian B. Alexander of The Rosen Law Firm and by Brian Schall of The Schall Law Firm.

GigaCloud and the individual defendants are represented by Jeff G. Hammel, Jason C. Hegt, Hanyu (Iris) Xie and Chengliang (Larry) Hong of Latham & Watkins LLP.

GigaCloud's IPO underwriter, Aegis Capital Corp., is represented by Sameer Rastogi and John J. Elliott of Sichenzia Ross Ference Carmel LLP.

The case is In re: GigaCloud Technology Inc. Securities Litigation, case number 1:23-cv-10645, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Vaqas Asghar.

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Evaluating The SEC's Rising Whistleblower Denial Rate

By **Jay Dubow, Ghillaine Reid and Jaycee Parker** (September 5, 2025, 5:18 PM EDT)

This year has seen a record percentage of whistleblower claim denials by the U.S. Securities and Exchange Commission.[1] This rising trend of award denials is a departure from the SEC's previous track record and may reflect a more conservative approach to whistleblower award determinations under the current administration.

Background of the SEC Whistleblower Program

The SEC's whistleblower program was launched in 2011 to incentivize whistleblowers to report credible information about possible federal securities law violations. The program authorizes the SEC to provide monetary awards to eligible individuals who provide original, credible information leading to an SEC enforcement action in which over \$1 million in sanctions is ordered. Eligible whistleblowers receive between 10% and 30% of the monetary sanctions collected.

The whistleblower program has led to numerous enforcement actions and significant award amounts paid to eligible whistleblowers. The largest awards issued under this program range between \$37 million and \$279 million.

In fiscal year 2024, the commission awarded over \$255 million to 47 individual whistleblowers, the third-highest annual amount in the program's history.[2] Since the program's inception, the SEC has awarded more than \$2.2 billion to individual whistleblowers.[3]

The program is administered by the Office of the Whistleblower, an office within the SEC's Division of Enforcement. The Office of the Whistleblower is responsible for assessing and resolving claims for whistleblower awards, protecting the ability of individuals to report potential violations to the SEC, fielding tips from the public, and promoting the whistleblower program through education and public engagements.

Historically, the SEC has gone to great lengths to protect whistleblowers and promote the awards in order to continue receiving high-quality whistleblower tips. To ensure that whistleblowers can report potential securities law violations without fear of interference or retaliation, the SEC has brought a number of enforcement actions against entities and individuals who took actions to impede whistleblowers from reporting.

In doing so, "[t]he Commission sent a strong message that agreements and conduct that impede communication with the SEC will not be tolerated," the Office of the Whistleblower wrote in its annual report to Congress for fiscal year 2024.[4] Many of these enforcement actions were brought when there was only the possibility of impeding reporting and no actual impediment had occurred. These enforcement actions underscore the SEC's commitment to the whistleblower program's success.

In line with this commitment, the SEC devotes significant resources to reviewing and assessing whistleblower claims through a robust, multitiered review process. This includes review by Office of



Jay Dubow



Ghillaine Reid



Jaycee Parker

the Whistleblower attorneys and staff, as well as attorneys in the Division of Enforcement's Office of Chief Counsel and the SEC's Office of the General Counsel.

Denial Trends in Recent Years

Despite the SEC's substantial investment in the whistleblower program, award determinations for 2025 demonstrate a clear upward trend in the number of denials of whistleblower claims for awards.

Through Sept. 4, the SEC has issued 17 award orders and 84 denial orders for whistleblower claims, reflecting a denial rate of just over 83%.^[5] Notably, in May and June of this year, the SEC issued 34 denial orders and 0 awards. The award determination data so far this year alone reflects a significant increase in the percentage of denials compared to the last few years.

In 2024, approximately 67% of the final orders issued by the SEC were denial orders. In 2023, the percentage of denial orders was approximately 75%, and in 2022, roughly 58%.

Possible Rationale for Increased Denials

Although the annual rate of whistleblower claim denials for 2025 is yet to be determined, the current trend suggests that the percentage of denials for 2025 could be significant. This trend may be attributed to a more conservative approach to issuing whistleblower awards under the current SEC leadership. The rise in denials may also indicate that the SEC is more closely scrutinizing whistleblower claims and employing a stricter application of the eligibility criteria.

The increase in denials could also reflect efforts to discourage frivolous and duplicative claims — the SEC's fiscal year 2024 annual report to Congress revealed that over 14,000 of the 24,980 whistleblower tips received in 2024 could be attributed to two individuals.^[6] And of the 18,354 whistleblower tips submitted in 2023, nearly 7,000 could be attributed to those same two individuals.^[7]

Implications

Looking at the last few years of whistleblower award determinations, the most recent year is a clear departure from the relatively consistent rate of awards. If the rate of decline in whistleblower awards continues, this shift could have a chilling impact on whistleblowers coming forward. This may be by design. Such a chilling effect would ultimately undermine the goals of the whistleblower program.

Although the SEC's rationale for the upward trend of award denials may be difficult to discern at present, prospective whistleblowers and their attorneys should be careful when preparing their award claim submissions to make sure that they comply with the stringent requirements of the whistleblower tip process. These requirements include formal procedures for whistleblower applications, as well as specific eligibility requirements for awards.

Procedural noncompliance by award claimants could be one explanation for the recent denials, which can be avoided by strict adherence to the award procedure. Award denials on this basis may reflect a shift to more rigorous enforcement of the reporting and application requirements, contrary to the SEC's prior practice of waiving requirements in certain circumstances.

This departure is reflected in a May 5 order, in which the SEC disavowed its prior "information-focused approach" in favor of a "submission-focused interpretation" of the relevant whistleblower rules.^[8]

This SEC order involved a covered action in which joint claimants submitted information regarding securities law violations to the press prior to submitting that information directly to the SEC. The commission found that their belated submission did not satisfy the whistleblower eligibility rules and declined to exercise discretionary authority to waive the eligibility requirement.

The analysis set forth in this order signals the SEC's interest in ensuring that claims are interpreted consistently and in line with statutory intent.

Looking Ahead

The SEC's award determinations for the rest of 2025 will reveal whether the current pattern of award denials is a strategic and intentional shift from prior years. If the increasing trend of denials continues, this may indicate that current SEC leadership is taking a more conservative approach to granting whistleblower awards, applying stricter enforcement of the eligibility requirements or trying to tamp down the whistleblower program entirely.

Jay A. Dubow is a partner and co-leader of the securities investigations and enforcement practice group at Troutman Pepper Locke LLP. He previously served as branch chief of the SEC's Division of Enforcement in Washington, D.C.

Ghillaine A. Reid is a partner and co-leader of the securities investigations and enforcement practice group at Troutman. She previously served as branch chief of the New York Regional Office of the SEC's Division of Enforcement.

Jaycee E. Parker is an associate at Troutman.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Holland, John, "Whistleblower Awards Slow to Trickle as SEC Raises Bar on Claims," Bloomberg Law, July 22, 2025, https://news.bloomberglaw.com/securities-law/whistleblower-awards-slow-to-trickle-as-sec-raises-bar-on-claims?utm_source=securitiesdocket.beehiiv.com&utm_medium=newsletter&utm_campaign=bloomberg-sec-denying-record-percentage-of-whistleblower-claims&_bhlid=73990f054969dd7f96a1d3286f5f8ef46810e130.

[2] Securities and Exchange Commission Office of the Whistleblower Annual Report to Congress for Fiscal Year 2024, <https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf>.

[3] Id.

[4] Id.

[5] <https://www.sec.gov/enforcement-litigation/whistleblower-program/final-orders-whistleblower-award-determinations>.

[6] Securities and Exchange Commission Office of the Whistleblower Annual Report to Congress for Fiscal Year 2024, <https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf>.

[7] Id.

[8] Order Determining Whistleblower Award Claim, Exchange Act Release No. 102987, File No. 2025-27 (May 5, 2025), <https://www.sec.gov/files/denial-orders-5525.pdf>.

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Fla. Judge Trims Trump Media SPAC Exec Hacking Suit

By **Katryna Perera**

Law360 (September 5, 2025, 8:06 PM EDT) -- A Florida federal judge has sent into discovery a suit alleging a board director for President Donald Trump's social media company and his associate hacked a cloud server to steal documents used to oust the former CEO of the company, finding that several computer fraud and conspiracy claims fail but allowing a breach of fiduciary duty claim to move forward.

U.S. District Judge Rodolfo A. Ruiz II issued an **order** Thursday partially granting a dismissal motion brought by Trump Media & Technology Group Corp. board director Eric Swider, his company Renatus Advisors LLC and Alexander Cano.

Benessere Investment Group LLC and Arc Global Investments II LLC filed their lawsuit in March 2024, alleging Swider, Cano and Renatus hatched a plan in early 2023 to oust Patrick Orlando from his position as CEO of Digital World Acquisition Corp., the special purpose acquisition company that merged with Trump Media to have it listed on the Nasdaq stock exchange. Orlando is also listed as a manager for Benessere and Arc, which owned 19% of DWAC and provided the initial capital to cover the merger's expenses, according to the suit.

The plaintiffs allege in their suit that the purpose of the scheme was to have Swider be able to receive "massive compensation" that wasn't previously available to him as a director.

In order to carry out the scheme, Swider allegedly hired and enlisted Cano, Orlando's former assistant, who had access to Benessere's Box account. Box is a cloud-based platform that provides secure file storage, sharing and other tools.

In their scheme to oust Orlando, the defendants allegedly removed documents from his Box account without authorization and used the information in the docs to discredit Orlando and convince shareholders to vote in favor of Digital World's merger with Trump Media. According to the complaint, the terms of the merger diluted the plaintiffs' ownership percentages.

According to the order, the suit asserts claims under the Federal Computer Fraud and Abuse Act and the Florida Computer Abuse and Data Recovery Act. The court previously dismissed the counts as shotgun pleading, and Thursday, Judge Ruiz reached the same conclusion with respect to four out of the five counts, dismissing them without leave to amend.

"Although plaintiffs have now separated out their claims by plaintiff, Counts IV through VIII remain a shotgun pleading of the third kind: one that 'commits the sin of not separating into a different count each cause of action or claim for relief,'" the order states. "Moreover, plaintiffs advance various theories of liability in the same count."

The judge also tossed the suit's civil conspiracy claim, finding that the plaintiffs cannot maintain such a claim under the intracorporate conspiracy doctrine. According to the order, the intracorporate conspiracy doctrine "provides that 'neither an agent nor an employee can conspire with his or her corporate principal or employer.'"

The plaintiffs argue their civil conspiracy claim can proceed and is not barred by the doctrine, asserting that Cano was involved in the alleged conspiracy during a period after leaving Benessere but before being employed by Renatus.

However, Judge Ruiz said Thursday that this claim ignores the fact that the intracorporate conspiracy doctrine applies to both a corporation's employees and its "agents."

"As plaintiffs themselves allege, 'all actions' taken by Swider and Cano 'were taken on behalf of [themselves], Renatus, and the conspiracy, among others,'" the order states. "Even if there was some period of time during the alleged conspiracy when Cano was not working for Renatus, the amended complaint establishes that Cano was, at all material times, working for the benefit and as an agent of Renatus and its owner. The intracorporate conspiracy doctrine therefore bars plaintiffs' civil conspiracy claim."

Despite tossing these claims, Judge Ruiz retained counts asserted under the Electronic Stored Communications Act, counts of breaches of fiduciary duty, and conversion and tortious interference claims.

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

The plaintiffs are represented by Antonio M. Hernandez Jr., Kevin P. Jacobs, Jose Ortiz and Sabrina Serber of Homer Bonner Jacobs Ortiz PA and Matthew D. Perri and Katharine L. Mowery of Richards Layton & Finger PA.

The defendants are represented by Christopher G. Oprison and Tal Aburos of DLA Piper LLP.

The case is Benessere Investment Group LLC et al. v. Swider et al., case number 1:24-cv-21104, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky. Editing by Jay Jackson Jr.

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