

Dexcom investor fraud suit moves forward in part

2025 SECDBRF 3306 • By Nicole Banas

WESTLAW Securities Enforcement & Litigation Daily Briefing • September 11, 2025

(September 11, 2025) - Dexcom Inc. must face allegations that it misled shareholders about its ability to compete with Abbott Laboratories on continuous glucose monitoring devices, a California federal judge has ruled, partially denying the biotechnology company's motion to dismiss.

[*In re Dexcom, Inc. Class Action Securities Litigation*, No. 24-cv-1485, 2025 WL 2606620 \(S.D. Cal. Sept. 9, 2025\)](#).

The proposed class action showed that Dexcom Chief Financial Officer Jereme Sylvain falsely suggested in early 2024 that the company's share of the CGM market was increasing, U.S. District Judge Robert S. Huie of the Southern District of California ruled Sept. 9.

However, the judge dismissed claims based on 12 of the 14 alleged misstatements, saying the suit did not adequately allege that they were false or misleading.

Judge Huie previously dismissed an earlier version of the complaint in May, calling it an impermissible "puzzle pleading." [*In re Dexcom Inc. Class Action Sec. Litig.*, No. 24-cv-1485, 2025 WL 1399196 \(S.D. Cal. May 14, 2025\)](#).

Weak competitor?

Lead plaintiff National Elevator Industry Pension Fund filed a consolidated amended complaint later that month alleging Dexcom deceived investors about its competitive standing and operational capabilities in 2023 and 2024.

According to the suit, Dexcom and Abbott dominated the market for CGM devices, which capture glucose readings in diabetics. The Centers for Medicare and Medicaid Services previously approved CGMs only for patients who required at least three doses of insulin a day, the complaint says.

In April 2023 the agency began allowing patients with Type 2 diabetes who use basal insulin, which is typically delivered once a day, access to CGMs, the suit says.

Dexcom and top executives boasted about the company's ability to compete in the expanded CGM market, without disclosing that it had a "woefully inadequate" sales force, according to the complaint.

The company concealed that it was losing significant ground to Abbott, which had a larger sales force and stronger relationships with the primary care physicians who treat most Type 2 basal patients, the suit says.

Sylvain falsely stated in early 2024 that Dexcom was "taking share" of the expanded market without disclosing the obstacles facing the company, the complaint says.

The problems emerged July 25, 2024, when Dexcom slashed its full-year revenue guidance by \$300 million, largely due to underperformance in the Type 2 basal market, the suit says.

The company's share price fell more than 40% the next day to close at \$64, according to the complaint.

In addition to Dexcom and Sylvain, the suit names as defendants CEO Kevin Sayer and former Chief Commercial Officer Teri Lawver.

Some claims proceed

The defendants moved to dismiss the amended complaint, arguing that it failed to plead a false or misleading statement or omission in violation of Section 10(b) of the Securities Exchange Act of 1934, [15 U.S.C.A. § 78j\(b\)](#).

The allegations also did not raise a strong inference of scienter, or fraudulent intent, the motion said.

Judge Huie dismissed most of the challenged statements, including claims that Dexcom was in a "great position to compete" and "working wonderfully," as corporate puffery.

But the suit plausibly alleged that Sylvain's statements about gaining market share were verifiably false, the judge said.

Sylvain allegedly referred to prescription data showing that the company was "taking share" of CGMs, Judge Huie said. But the complaint shows that Abbott consistently captured seven out of 10 prescriptions in the Type 2 basal market at that time, he said.

The suit also raises a strong inference of scienter through allegations that Sylvain had access to prescription data that contradicted his public statements, Judge Huie said.

Daniel S. Drosman of [Robbins Geller Rudman & Dowd LLP](#) represents the pension fund, and Koji F. Fukumura of [Cooley LLP](#) represents the defendants.

By Nicole Banas

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News from Bloomberg Terminal

Dexcom Class Action Over Sales Force Issues Partially Tossed

Sept. 10, 2025, 12:57PM PDT

Summary by Bloomberg AI

AI Generated



- Dexcom Inc. partially won its bid to toss proposed class action claims alleging the company misled investors about its sales force's ability to hit revenue growth goals.
- Two claims alleging fraudulent misrepresentations survived, related to Dexcom's assurances that it was "taking share" of the market for glucose monitors used by Type 2 diabetes patients.
- The judge dismissed the bulk of claims, finding that investors didn't adequately show that statements made by executives were quantifiably false, and that many statements were nonactionable forward-looking statements or subjective assessments.

By Ben Miller

(Bloomberg Law) --

Dexcom Inc. partially won its bid to toss proposed class action claims alleging the health-care technology company misled investors about the ability of its sales force to hit ambitious revenue growth goals.

Judge Robert S. Huie in the US District Court for the Southern District of California dismissed the bulk of claims against Dexcom in a Tuesday order. The two surviving claims, alleging fraudulent misrepresentations, both related to Dexcom's assurances that it was "taking share" of the market for glucose monitors used by Type 2 diabetes patients taking basal insulin.

The glucose monitor manufacturer had a relatively small sales force compared to direct competitor Abbott Laboratories, which was already established among the subset of diabetes patients Dexcom assured investors it could win over, according to the shareholder plaintiffs. After initiating a major expansion and restructuring of its sales team, Dexcom misrepresented success to the public until July 2024, when the company reduced its full-year revenue projections by \$300 million, the plaintiffs alleged.

The misrepresentations and revelation that Dexcom wasn't adequately competing prompted the company's stock price to fall by more than 40%, investors said in their consolidated complaint.

But the proposed class of investors didn't adequately show that statements made by executives about Dexcom's "great" position, "inroads" into the market, or its "sizable sales force" were quantifiably false, according to the judge's order.

Many other statements made by the company and its top brass were dismissed as nonactionable forward-looking statements or subjective assessments Dexcom could have reasonably made without investors relying upon them, the judge said.

A Dexcom spokesperson didn't immediately respond to a request for comment. Cooley LLP represents the company and individual defendants.

Robbins Geller Rudman & Dowd LLP represents the proposed class and didn't immediately respond to a request for comment.

The case is *In re Dexcom Inc. Class Action Sec. Litig.*, S.D. Cal., No. 3:24-cv-01485, 9/9/25.

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Class Action

Manage Newsletters

Luminar, Former Exec Must Fight Investor's Chip Picture Suit (1)

Sept. 11, 2025, 6:21AM PDT; Updated: Sept. 11, 2025, 8:23 AM PDT

Summary by Bloomberg AI

AI Generated



- A US District Court judge said Luminar Technologies Inc. and a subsidiary's former leader must defend against allegations they intentionally or recklessly misled shareholders with an image of a competitor's technology in a presentation.
- The judge found that a reasonable person would find it improbable that the executive, Mike McAuliffe, would have thought that displaying a competitor's chip could not present a danger of misleading investors.
- The proposed class action will proceed, with the proposed class including those who got Luminar stock from the day of the presentation through the day an article about the issue was published.

Luminar Technologies Inc. and a subsidiary's former leader must defend against allegations they intentionally or recklessly misled shareholders with an image of a competitor's technology in a presentation.

The investor leading the case made sufficient allegations for the court to draw an inference executive Mike McAuliffe could have known the challenged image wasn't Luminar's chip, Judge Julie S. Sneed said Wednesday.

"Additionally, a reasonable person would find it improbable that McAuliffe—who was charged with monitoring and presenting on Luminar's technology—would have thought that displaying a competitor's chip could not present a danger of misleading investors at an event where Luminar advertised that it would 'unveil its long-term product,'" the US District Court for the Middle District of Florida judge said.

This inference was strong enough to sustain the proposed class action, she said. Sneed dismissed investor John Alms's prior complaints, finding they failed to plead the level of intent or recklessness by executives for securities fraud claims, among other issues. Alms's third amended complaint targeted just Luminar and McAuliffe, who was the CEO of the company's semiconductor subsidiary, boosting allegations with information from a former senior executive assistant and an electronics and photonics expert.

The former assistant alleged McAuliffe was supposed to sell Luminar—which makes technology used in autonomous vehicles—to investors and was able to access and edit slides to correspond with his speech. “This new factual support is sufficient to allege that McAuliffe had ultimate authority over the entire presentation, including the slides,” Sneed said. McAuliffe didn’t have to select the image to be the maker of the purported misrepresentation, she said, citing even when a speechwriter makes a draft, it’s the speaker who takes the fall.

Alms sufficiently alleged the image would’ve mattered to reasonable stockholders by using insights from a longtime engineer in this industry, Sneed said. The expert confirmed images of competitor Lidwave’s chip and Luminar’s chip could “convey information about their sophistication and function,” which would’ve affected scaling production and mattered to investors.

Stock Drop

Luminar’s stock price rose after the 2023 presentation. But then Lidwave in a news article accused it of using a picture of its chip, sending Luminar’s share prices down, Alms said. Forbes later updated the story with an image of an old Luminar chip, which had a “larger, bulkier, and much less sophisticated chip design,” according to Alms.

Luminar later said in a blog post that someone who composed the presentation inserted a generic image.

The proposed class would include those who got Luminar stock from Feb. 28, 2023—the day of the presentation—through March 17, 2023, when the article was published.

Faruqi & Faruqi LLP is lead counsel for Alms and didn’t immediately respond to an email seeking comment. Schlesinger Law Offices is liaison counsel. Orrick, Herrington & Sutcliffe LLP and GrayRobinson PA locally represent Luminar and McAuliffe. Neither law firm nor Luminar immediately responded to emails seeking comment.

The case is Alms v. Luminar Techs., Inc. , M.D. Fla., No. 6:23-cv-982, 9/10/25 .

(Updates with additional reporting throughout.)

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Securities Law News

Viatrix Investors Face Skeptical Judges on Biosimilars Unit (1)

Sept. 10, 2025, 11:41 AM PDT; Updated: Sept. 10, 2025, 1:09 PM PDT

Viatrix Inc. investors encountered tough questions Wednesday at the Third Circuit in their quest to revive a proposed class action over the drugmaker's statements about its commitment to its biosimilars segment.

At least two judges on the panel expressed some difficulty accepting inferences about what the company knew about its strategic review in 2021, when it was allegedly telling investors it was committed to biosimilars after it formed from Pfizer Inc.'s Upjohn Inc. division and Mylan NV. "I don't see how it's inconsistent" with such statements for a company to later receive a good offer to buy part of its business, Judge Thomas M. Hardiman said.

Another judge on the US Court of Appeals for the Third Circuit panel said she was "struggling with whether there was actually a misrepresentation" by company executives.

But the panel had tough questions for an attorney representing Viatrix as well.

At issue is the pharmaceutical giant's 24% stock drop after allegedly surprising the market with a decision to sell off its key biosimilars division in February 2022. The investors alleged that earlier statements expressing a commitment to biosimilars were false and misleading.

The US District Court for the Western District of Pennsylvania, dismissing the suit in September 2024, agreed with Viatrix that the challenged statements were forward-looking and accompanied by words of caution.

The panel probed several issues, including the timing of statements and the company's knowledge; the meaning of a statement that the company was "committed" to biosimilars; the cumulative effect of several alleged statements; the role of public 10-K and 10-Q submissions to the Securities and Exchange Commission; and the legal significance of stock analysts' reactions to the sale announcement.

Jan Messerschmidt, an attorney for the investors with Cohen Milstein Sellers & Toll PLLC, argued the company's statements about its commitment to biosimilars were "false at the time" because it wasn't committed to that area of business. And there would be "profound consequences" if general statements in Viatis SEC filings about conducting a rigorous strategic review could control specific ones responding to questions about the biosimilars business at a March 2021 event, he said.

Steffen Johnson of Wilson Sonsini Goodrich & Rosati, who represented Viatis, pointed to "meaningful cautionary language" creating a "safe harbor" for forward-looking statements.

But some challenged statements weren't forward-looking, one of the judges said.

The company referred to its SEC submissions, Johnson said. And its statements came in the context of a corporate merger, when you'd expect a company to conduct a review, he said. "There's no falsity," he said, adding that there's no need to get to an analysis of whether the statements were material.

Statements about the biosimilars segment "weren't guarantees," he said. That's "a classic forward-looking statement," even with some element of present intention, he said.

The other members of the appellate panel were Judges Cheryl Ann Krause and Cindy K. Chung.

The case is *In re Viatis Inc. Sec. Litig.*, 3d Cir., No. 24-02977, oral argument 9/10/25 .

(Updates story with additional reporting from argument beginning in seventh paragraph.)

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Securities Law News

Strategy Shareholders Drop Board Suit Over Crypto Accounting Hit

Sept. 10, 2025, 12:02 PM PDT

Strategy Inc. stockholders agreed to end their lawsuit alleging its management let the self-described Bitcoin treasury downplay expected impacts of a cryptocurrency accounting standards change.

The shareholders are voluntarily relinquishing their derivative action targeting current and former board members and executives, but with the ability to refile. Judge Anthony J. Trenga signed their joint stipulation with certain leaders of the former MicroStrategy Inc., dismissing the lawsuit Wednesday from the US District Court for the Eastern District of Virginia.

- This dismissal follows the dropping of similar claims against Strategy, its billionaire executive chairman, and two top executives
- Stockholders sued after Strategy said it had to recognize a \$5.91 billion unrealized loss on its crypto assets for the first quarter of 2025 after adopting the accounting update and telling the Securities and Exchange Commission it might “not be able to regain profitability”
- The Tysons Corner, Va.-based company started amassing Bitcoin in 2020 under the direction of co-founder and executive chairman Michael Saylor, and is now the largest corporate holder of Bitcoin worldwide

The Brown Law Firm PC and Rigrodsky Law PA are co-lead counsel for the shareholders. Gibson, Dunn & Crutcher LLP represents the top leaders and Strategy, a nominal defendant. None of these law firms nor Strategy immediately responded to emails seeking comment.

The case is In re: MicroStrategy Inc. d/b/a Strategy S’holder Derivative Litig. , E.D. Va., No. 1:25-cv-01040, closed 9/10/25

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Securities Law News

E-Commerce Giant Coupang Beats Investor Suit Over Practices (1)

Sept. 10, 2025, 3:13 PM PDT; Updated: Sept. 11, 2025, 7:32 AM PDT

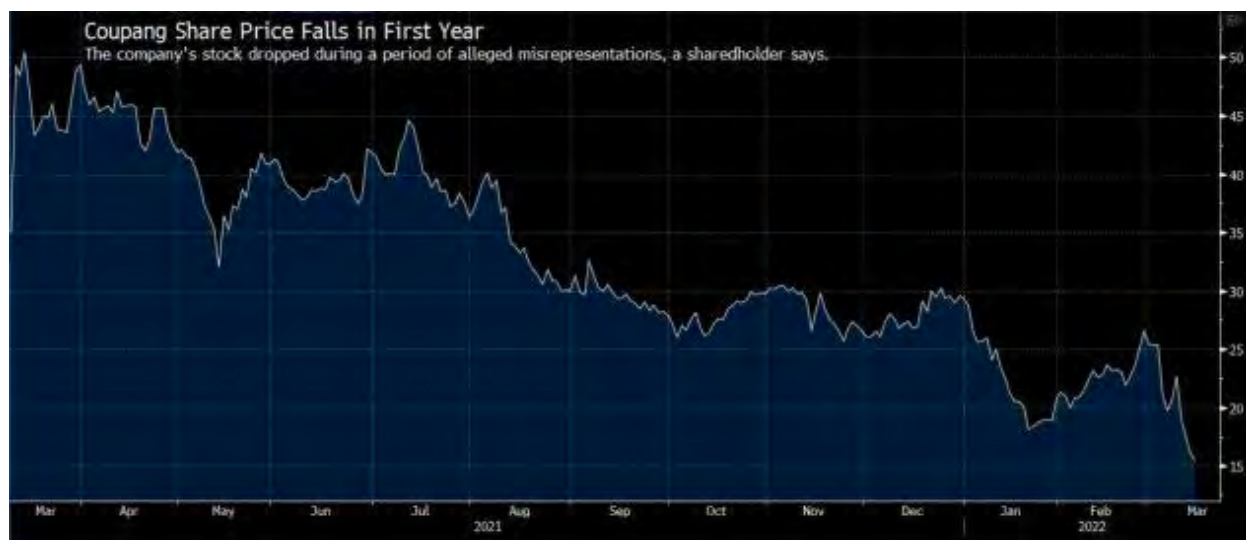
Coupang Inc. investors can't proceed with a suit alleging the South Korean online retailer failed to disclose several types of unflattering business practices during and after its initial public offering, a federal court ruled Wednesday.

None of the statements targeted in the investors' proposed class action were "actionably misleading," Judge Vernon S. Broderick said for the US District Court for the Southern District of New York. He dismissed the suit without a chance to re-plead.

The consolidated suit stems from Coupang's March 2021 IPO, the largest in the US by a foreign company since Alibaba Group Holding Ltd.

"We are pleased that the Court has dismissed this shareholder lawsuit on multiple grounds," Coupang said in an emailed statement. "From the outset, we believed the claims were without merit, and today's decision affirms that view."

The investors alleged the company violated securities laws by failing to disclose worker safety issues, the price-coercion of bulk suppliers, intellectual property misappropriation, manipulated search results, and regulatory compliance problems related to customer dispute resolution. Coupang concealed these issues in its IPO registration statement and subsequent company comments, the investors said. A year after the IPO, Coupang's stock price had slid about 75% due to revelations of the misconduct, they said.



Bloomberg

The investors failed to show actionably false or misleading statements, and the necessary level of intent, for securities fraud claims under the Securities and Exchange Act, Broderick said.

Their claims under the Securities Act are based on the same statements and also fall short, the judge said. And further, those claims are barred by the applicable one-year statute of limitations.

An attorney at Pomerantz LLP, which was lead counsel for the investors, didn't immediately respond to an emailed request for comment Thursday.

Paul, Weiss, Rifkind, Wharton & Garrison LLP represented Coupang.

The case is N.Y. City Public Pension Funds v. Coupang, Inc. , 2025 BL 321681, S.D.N.Y., No. 22-CV-7309, 9/10/25 .

(Updates story originally published Sept. 10 with comment from company in fourth paragraph and communication with investors' counsel in eighth paragraph.)

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U.S. Litigation Giants to Reap Millions in BHP's \$73M Australian Shareholder Class Action Settlement

BHP has agreed to a A\$110 million (US\$73 million) settlement with shareholders over the 2015 Samarco dam collapse in Brazil, with two U.S. litigation firms set to receive a significant portion.

September 11, 2025 at 04:15 AM By  **Christopher Niesche**



The collapse of the tailings dam owned by Samarco, Vale and Anglo-Australian BHP; Photo: Rogério Alves/TV Senado via Wikimedia Commons

Global mining giant BHP has agreed to settle a Samarco shareholder class action in Australia for A\$110 million (U.S.\$72.7 million) with U.S. litigation firms Grant & Eisenhofer and Kessler Topaz Meltzer & Check set to receive a large portion pending Federal Court approval of the settlement.

According to documents from Australian law firm Phi Finney McDonald, litigation funder G&E KTMC Funding is in line to receive 27.5% of the settlement. G&E KTMC Funding is backed by Grant & Eisenhofer and Kessler Topaz Meltzer & Check, prominent U.S. shareholder litigation firms.

The Australian Federal Court case centred on whether BHP had properly disclosed to investors any knowledge of the risk of a dam collapsing at its Samarco operations in Brazil and the potential for serious adverse human, environmental and financial consequences.

The dam at the Samarco iron ore mine—a joint venture between BHP and Vale—collapsed in 2015, killing 19 people and releasing pollutants over hundreds of kilometers. BHP is also defending a separate class action in the U.K., brought by Brazilian citizens and run by [Pogust Goodhead](#) law firm.

The shareholder plaintiffs, represented by Australian firms Phi Finney McDonald and Maurice Blackburn, sought to recover investment losses and also alleged BHP had engaged in misleading and deceptive conduct by claiming safety was its highest priority and that it had effective systems and processes in place to identify and manage risks.

BHP, in its statement, denied those allegations and the settlement does not constitute an admission of liability.

“After a hard-fought battle that included two High Court appeals, this A\$110 million settlement is a welcome result for BHP investors wherever they are located,” Cameron Myers, principal lawyer at Phi Finney McDonald said in a statement.

BHP is also being sued in the U.K. for £36 billion (U.S.\$48.6 billion) by Pogust Goodhead on behalf of 620,000 claimants who allege they suffered loss as a result of the Samarco dam collapse.

The firm, which recently changed its senior leadership and came to a new agreement with its financial backers, has been contacted for comment. Pogust Goodhead also has an office in Australia.

Page printed from: <https://www.law.com/international-edition/2025/09/11/us-litigation-giants-to-reap-millions-in-bhps-73m-australian-shareholder-class-action-settlement/print/>

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California Brief

Nvidia's \$2.5 Million 401(k) Settlement Gets Nod After Hiccup

Sept. 10, 2025, 9:41 AM PDT

Nvidia Corp. secured initial approval for a \$2.5 million class settlement over its 401(k) plan fee levels, after a federal judge said the parties fixed issues that previously prevented him from blessing the deal.

Judge Jon S. Tigar granted preliminary approval to the agreement on Tuesday, saying the parties had “cured the previously identified deficiencies” in their settlement papers. In January, Tigar balked at a proposal to use uncashed settlement checks to defray the 401(k) plan’s administrative expenses. The parties then revised their paperwork to clarify that unclaimed settlement money will be either distributed to class members or used to pay for settlement administration costs.

- The deal, which plaintiffs say would benefit about 11,800 people, is aimed at resolving litigation over the plan’s recordkeeping and investment management fees
- The case was initially dismissed in 2021 for lack of details, but Tigar ruled in 2023 that the workers’ amended complaint was viable
- Hundreds of employers have faced 401(k) fee litigation, with recent settlements negotiated by Vituity, Old Dominion Freight Line Inc., and John Muir Health

Trucker Huss APC represents Nvidia. Capozzi Adler PC, Rosman & Germain APC, and Muhic Law LLC represent the plaintiffs.

The case is Tobias v. NVIDIA Corp. , N.D. Cal., No. 4:20-cv-06081, 9/9/25 .

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Securities Law News

Vanguard Clients Get First Court Nod for Tax Suit Settlement

Sept. 10, 2025, 9:25 AM PDT

A Pennsylvania federal judge gave preliminary approval to a proposed \$25 million settlement of a class action accusing Vanguard Group Inc. of causing investors unexpected and preventable capital gains taxes.

The deal is subject to further consideration at a settlement hearing Jan. 6. But the terms as filed are “sufficiently fair, reasonable and adequate to the Settlement Class Members,” Judge John F. Murphy of the US District Court for the Eastern District of Pennsylvania said Sept. 8.

The plaintiffs sued over a 2021 move by Vanguard that lowered the minimum investment amount needed to access its institutional funds, an action which allegedly caused a “stampede” out of their retail funds and stuck them with high capital gains taxes as those funds sold off assets to meet the redemption requests. The plaintiffs brought claims including gross negligence, breach of fiduciary duty, and unjust enrichment.

Vanguard doesn’t admit liability or wrongdoing in the new settlement. If the deal receives final court approval following the Jan. 6 hearing, claimants would have to file a proof of claim by Feb. 6.

In May, Murphy rejected an initial proposed \$40 million settlement, saying it didn’t provide enough value to the class of harmed investors because the attorneys would suck up millions in fees, siding with at least one class member who’d objected.

Vanguard had reached a \$135 million settlement with the Securities and Exchange Commission that would have let it offset that initial settlement. Murphy said the class might have been better off receiving the full \$40 million through the SEC Fair Fund.

Rosen Law Firm PA represents the class. Debevoise & Plimpton LLP and Welsh & Recker PC represent Vanguard.

The case is *In re Vanguard Chester Funds Litig.*, E.D. Pa., No. 2:22-cv-00955, 9/8/25.

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Securities Law News

Deep Dive

Big Law Vies for Key Role in Shaping Delaware's Corporate Law

Sept. 11, 2025, 2:00 AM PDT

Big Law rallied behind contentious corporate law changes in Delaware this year, and one of the country's most profitable firms is now helping the state defend those amendments before its highest court.

Wachtell, Lipton, Rosen & Katz's high-profile association with the Delaware law—targeting judge-created guardrails around insider deals—is part of an emerging trend among top law firms seeking to differentiate themselves from competitors.

"To the extent that these legal changes benefit Wachtell's clients, what could be better in terms of client service than improving the legal environment for them?" said Columbia Law School professor Dorothy Lund.

Wachtell's Leo Strine—a former Delaware Supreme Court chief justice who also served as chief judge for the Chancery Court—sat among lawyers tasked with drafting a bill (S.B. 21) to address concerns that major companies would flee Delaware due to judicial crackdowns on conflicts of interest.

The legislation reflected Strine's concerns about how Delaware's courts reviewed deals involving potential conflicts of interest between a company and its controlling stockholder, Lund said.

Strine declined to comment. His writings on Delaware corporate law include an influential paper that largely laid out many of the changes in S.B. 21.

Wachtell's co-counsel in defending the state in a shareholder's challenge to the law's constitutionality is Delaware-based Potter Anderson & Corroon LLP. The firms share ties in Chancery Court litigation to Twitter's 2022 lawsuit against Elon Musk, as well as the defense of Mark Zuckerberg and other Meta Platforms Inc. executives against claims related to the Cambridge Analytica scandal.

Drafting Panel

Strine worked with Widener University professor Lawrence Hamermesh, Wilson Sonsini Goodrich & Rosati's William Chandler—another former Chancery Court chancellor—and an attorney from Richards, Layton & Finger PA, a Delaware firm with ties to Tesla Inc.

While it's always lawyers writing laws, and corporate interests often drive legislation, typically it's the state bar association's Corporation Law Council that initiates amendments for Delaware legislators to introduce. With S.B. 21, the fast-tracked drafting process initially skipped the council, though it did eventually review the bill.

Gov. Matt Meyer (D) called for corporate law changes just weeks after taking office as Musk, unhappy about the Chancery Court's rejection of his CEO compensation package at Tesla, urged other companies to follow his lead in reincorporating in Texas or Nevada.

Twenty-one Big Law firms cosigned a letter to Delaware lawmakers supporting S.B. 21. Wachtell wasn't one of the signatories, but one of its founders, Martin Lipton, wrote separately in support of the bill. Shareholder firms wrote to oppose the bill.

Client Relations

About a dozen of the major defense law firms have recognized that shaping statutes can encourage their clients to maintain long relationships with their attorneys. This kind of legislative work is a developing part of their client pitches, especially when those clients do business, or face litigation, in states such as Delaware, New York, and California, said Kent Zimmermann, partner at legal consultancy Zeughauser Group.

It's particularly attractive for corporate clients in tech, the energy sector, and the health and life sciences field—companies that deal with both corporate governance questions and regulatory issues, especially at the state level, he said.

Many firms can say they have top talent and successful trial records, or point to valuable deals they've defended against shareholder challenges. Not every firm, however, can say it helped shape the law to their clients' interests.

"A way to actually build loyalty to the firm is for the firm to be distinguished as indispensable to the client," Zimmermann said. "There's a limited number of ways to do that, but this would be one of them—if you're able to shape legislation that's important to the client at the board level."

What's Next

Delaware's S.B. 21 narrowed the definition of "controlling stockholder" and made it easier avoid scrutiny of potentially conflicted transactions. It strengthened the presumption that board directors are capable of independent oversight, and it limited shareholder access to internal company records.

The question of whether it's constitutional comes from a dispute over a wind farm acquisition involving affiliates of BlackRock. It's one of a handful of cases challenging provisions that make the law retroactive and language offering a safe harbor for dealmakers with conflicts of interest.

The Delaware Supreme Court took up for review the wind farm lawsuit in June instead of waiting for any of these cases to go through a trial and appeal. Oral arguments over whether the law violates the Chancery Court's jurisdiction as well as Delaware's due process clause will come later this year.

Meyer argued the challenge to S.B. 21 threatens the legitimacy of every corporate law change that's come before it. His office declined to comment on the litigation. The shareholder in the wind farm case says it curtails the Chancery Court's ability to hear claims of fiduciary breach by directors or officers.

Its real legacy may be in its origins, Columbia's Lund said. The past two years have seen rapid legislative responses to unpopular Chancery Court rulings that fueled a perception that some judges favor shareholders too heavily. It's possible the next time a controller doesn't appreciate a Chancery Court decision, Big Law's influence on a rushed legislative process could become more pronounced.

"The fact that lawyers are involved is in itself not problematic, as long as it happens in a sort of careful, balanced way," Lund said.

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California Brief

Insight

An Anthropic Deal Won't Jeopardize the Affordable AI Future

Sept. 11, 2025, 1:30 AM PDT

The tech world is abuzz with *Bartz v. Anthropic* —the largest reported settlement in a copyright infringement lawsuit to date. This eye-popping \$1.5 billion figure has sparked widespread speculation: Is this the end of affordable, innovative artificial intelligence? Will the cost of licensing and compliance make it impossible for new platforms to emerge or for existing ones to remain accessible? The answer to these questions is almost certainly “no.”

Judge William Alsup, who oversaw and paused Anthropic's proposed settlement, warned that class lawyers are striking a deal behind the scenes that will be “forced down the throat of authors.” Alsup later said approval of the settlement was postponed pending submission of further clarifying information.

The law and the marketplace will find a way to permit and nurture further innovation in AI, as it has done since the era of the printing press.

The settlement was about content acquisition, not training AI models. In June 2025, Alsup of the US District Court for the Northern District of California, held that training Anthropic's AI model with copyrighted works is fair use. However, he declined to grant summary judgment to Anthropic for other actions. Relevant to this decision, Anthropic gathered texts to train its AI model in two ways.

First, it purchased hard copies of books, took them apart, scanned them, uploaded them, and converted them to readable text. This process helped Anthropic use the gathered texts to train its AI model.

Second, Anthropic illegally downloaded texts from “shadow libraries,” an act that Alsup deemed “piracy.” Anthropic then used those texts to train its AI.

For these methods, Alsup held that the copying of the texts for training the AI model was transformative and fair use. However, he considered the upstream method of how Anthropic obtained the texts as a separate use, to be judged on its own merits.

The scanning (i.e., copying) of the hard copies that Anthropic obtained legally was determined to be fair use, with the transformative purpose of shrinking the space needed to store the texts. However, according to the decision, downloading pirated texts had no transformative purpose. Anthropic argued that it downloaded the pirated texts for the purpose of creating a “central” library of all texts, but the court rejected the theory that this purpose was transformative, holding that it didn’t bring the use into the fair use exception.

Alsup granted Anthropic summary judgment of no infringement for the copying that was part of the actual training of the AI model and for the scanning of the hard copy books. However, he didn’t grant summary judgment for the act of downloading pirated books. It was plaintiffs who were affected by this upstream “piracy” that defines the class that settled its lawsuit with Anthropic.

Alsup’s decision and subsequent settlement drew a very thin line between the different acts that all had the same ultimate purpose: to train an AI model. There is case law to support this decision, holding that different acts, when taken together have a single fair use purpose, must be considered individually. There also is case law that would undermine this decision, holding that only the ultimate purpose of a use is to be considered in the fair use analysis.

Anthropic’s decision to settle this matter deprived us, for now, of a higher-court decision regarding this “individual act” versus “ultimate purpose” analysis, and as to whether the ultimate purpose of training an AI model is fair use. These issues are almost certainly going to be heard by circuit courts and, quite possibly, the US Supreme Court.

Copyright law evolved to support technological innovation. Despite the current uncertainty, history suggests that neither the law nor the marketplace will allow innovation to grind to a halt. Consider these examples:

- **Digital Recording.** The Supreme Court in *Sony Corp. v. Universal City Studios* (1984) held that recording TV shows for later viewing (time-shifting) was fair use, paving the way for VCRs, DVDs, and digital recording.
- **Internet.** Congress enacted the Digital Millenium Copyright Act in 1998, which provides safe harbor protection to websites such that they can’t be responsible for third-party copyright infringement, enabling the growth of the modern internet.
- **Music Streaming.** After courts shut down peer-to-peer sharing sites such as Napster, the market responded with legal streaming services such as Spotify and Pandora in the early 2000s.
- **Online Search.** In the early 2000s, the Ninth Circuit held that caching and low-resolution reproduction for search purposes was non-infringing, supporting the development of online engines. (*Kelly v. Arriba*)

Rapid and innovative development of AI will continue. What does the Anthropic settlement mean for the future of AI? Will AI become too expensive to develop or use? The answer, based on both the specifics of this case and the broader history of copyright and technology, is likely “no.”

The few district courts that have opined on copyright infringement and training AI data have all agreed in principle that training an AI model on unlicensed works may be fair use in some cases. The *Anthropic* settlement addresses only the act of acquiring data through piracy, not the act of training AI on lawfully obtained data.

Following the *Anthropic* decision and settlement, AI companies may amend the ways that they acquire materials for training their models, but the actual training may be protected as fair use. As with digital recording, the internet, and streaming music, the market and the law will evolve to enable practical and affordable ways to acquire content legally so that AI technology continues to develop. While the *Anthropic* settlement is a watershed moment, it shouldn't be the end of affordable, innovative AI.

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California Brief

Insight

Appellate AI Litigation Explosion Hinges on Three SCOTUS Opinions

Sept. 11, 2025, 1:30 AM PDT

Five years ago, writing a legal treatise describing “an appellate approach to AI litigation strategy” felt innovative. Today, the US appellate courts—and appellate practitioners—are front and center in resolving the most important questions of our technological age.

Why is the appellate approach driving artificial intelligence litigation, and what does it mean for winning these critical cases?

Along with the large increase in the frequency and scope of AI litigation, much of the current litigation turns on readings of three US Supreme Court decisions. The legal novelty and high stakes of these disputes is bringing the appellate courts to the table.

Let’s begin with some data. Since 2016, 69 federal appellate opinions have mentioned AI. Forty-one of those AI opinions were issued in 2024 and 2025. When human judgement is applied to determine whether an appellate ruling involves AI in a legally relevant sense, the number of rulings is 27. The US Court of Appeals for the Ninth Circuit has seven opinions, and the Federal Circuit has five. The Second Circuit has four, as does the Fourth. The DC Circuit has three AI opinions. The First, Third, Sixth, and Seventh Circuits each have one AI opinion. The Fifth, Eighth, Tenth, and Eleventh Circuits don’t yet have an AI opinion.

Why so much appellate AI litigation? First, and most straightforward, is the increasing frequency of litigation involving AI. In 2020, there were 21 district court decisions. In 2024, there were 184.

There is also the wide sweep of AI legal areas. AI is affecting every part of our lives that law governs. At the appellate level, so far, the opinions had involved seven different legal areas: the Communications Decency Act, securities, trade secrets, privacy, products liability, Section 1983, and the First Amendment.

Second, the stakes of AI litigation are often enormous. The results will determine the delicate arrangement of innovation and creativity, of national security and economic interests.

There is also a more subtle driver of the appellate role in AI litigation: the centrality of US Supreme Court cases to resolve novel legal questions. We can see this most clearly in the ongoing AI copyright litigation. There are 45 pending cases involving copyright and AI.

The district courts currently hearing these cases are spread across the First, Second, Third, and Ninth Circuits. And in each case, most of the briefing is about the application of the same set of Supreme Court legal decisions.

Regardless of where the litigation is occurring, the focus is on *Oracle*, *Warhol*, and *Feist*. Many of the central pleadings in these cases could have been filed in any of the other cases with only modest refinements.

To an unusual extent, this copyright district court litigation is in substance appellate litigation.

Consider the recent hearing in the *Kadrey v. Meta Platforms* matter before Judge Vince Chhabria in San Francisco. The first attorney to speak at the hearing was Kannon Shanmugam, an appellate attorney who has argued 150 appeals.

To guide the argument, Chhabria began with the following: “[I]f you wouldn’t mind beginning the discussion by just focusing on the issue in general without regard to any of the facts in this case.”

Chhabria’s focus on only the law, and not the facts (at a summary judgment hearing no less), reflects his background as a former law clerk to Justice Stephen Breyer, and chief of the Appellate Section in the San Francisco Attorney’s Office. The balance of the argument involved application of appellate cases, hypotheticals, and waiver.

Another example is the pending *Thomson Reuters v. ROSS Intelligence* matter, in which the authors of this article are representing the AI innovator. Judge Stephanos Bibas, who sits on the Third Circuit, presided over the trial litigation by designation. Like Chhabria, he also managed the summary judgment litigation as if it were an appeal—in fact, he reversed himself.

In his first opinion, Bibas concluded there was a factual dispute over the copyrightability of the training data and whether the AI innovator’s use of the data was fair. And in that opinion, he signaled that *Oracle* was the most applicable precedent. But days before trial, Bibas changed his mind and asked the parties to rebrief the copyright issues.

A few months later he issued an opinion coming to the opposite conclusions on copyrightability and fair use—this time *Warhol*, not *Oracle*, governed. Ultimately, Bibas acknowledged the issues were hard and certified the case to be heard on appeal under 28 USC Section 1292(b). The case will likely be argued in the spring of 2026.

A third high-profile AI litigation matter also has significant appellate dimensions. In a widely covered ruling, Judge William Alsup held that while Anthropic PBC’s use of copyrighted material was fair, its use of pirated material may not be.

In a surprising twist, the parties recently agreed to a proposed settlement. And one—if not the—principal reason the plaintiffs' gave for reaching a settlement is the risk of appellate proceedings.

AI litigation depends critically on district court litigation. The cases involve complex and extended depositions, detailed expert reports, and lengthy hearings. But as the *Meta* hearing, *Ross* proceeding, and *Anthropic* filings illustrate, the appellate perspective is joining the trial teams at critical moments.

To mimic the AI marketing slogan of a leading global technology company, the moment of Appellate Intelligence has arrived.

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Davies and Laing, along with Yar Chaikovsky, Anna Naydonov, and Andy LeGolván, are litigating an AI copyright appeal discussed in this article.

Laetitia Haddad contributed to this article.

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Column

Sept. 11, 2025, 2:00 AM PDT

The questions also mark a shift from clients' initial reluctance to allow firms to use AI on their matters, often out of fears related to data privacy and hallucinations. Firms have been pushed in the past to implement other changes, like adopting more diverse hiring programs and using earlier technologies like online legal research.

"We have certainly started to see clients asking those questions," said Hilary Strong, a Latham & Watkins partner who co-chairs the firm's data center team.

Strong recently used AI tool Harvey to generate a key list of issues based on a markup of a purchase agreement. Latham last month announced a firmwide license for the tool.

Laurie Mims, managing partner of San Francisco-based litigation firm Kecker, Van Nest & Peters, said more clients are requiring some work traditionally done by junior associates be assisted by AI, a trend she expects to grow quickly. That's even as most clients still don't want the firm using the technology, she said.

The push from clients is already causing the firm to think about how its model for training young lawyers will change, Mims said. The firm hasn't found an answer to that question yet, but its management committee is discussing the issue as it considers rolling out more AI tools, she said.

"Figuring out how we are going to continue to develop our talent is the thing that is the biggest challenge for law firms like ours," she said. "We want to keep our model. We like our model."

David Cunningham, chief innovation officer at Reed Smith, said the firm has begun to receive questions about AI from clients in recent months. Clients are also asking if the firm can help apply AI to their own legal department and business operations, he said.

"Some of our clients have started requiring the use of AI in certain situations, just like predictive coding in ediscovery was initially suspect, but then became expected," he said. "We are in the early days of this transition."

Many of the AI questions from clients are asked by legal operations professionals, a growing rank of legal department employees who put together RFPs, manage projects, and seek cost savings, said Bob Couture, a senior research fellow at Harvard Law School's Center on the Legal Profession.

Law firm partners who get involved in those conversations can solidify their relationships with clients and help build AI programs for the work, he said.

That doesn't necessarily mean cheaper bills. While the tools might speed up some aspects of the work, law firms are looking to spend more time on substantive legal questions, he said.

"They used to spend 80% of their time collecting data and information and 20% of their time doing strategic analysis," Couture said. "They want to flip that by using AI."

Worth Your Time

On Cleary Gottlieb: The law firm elected capital markets lawyer Jeff Karpf to take over from Michael Gerstenzang as managing partner, Chris Opfer reports.

On AI: Justice Amy Coney Barrett said the technology is correctly predicting questions that will be asked by Supreme Court Justices at oral argument, Maia Spoto reports.

On Munger Tolles: The law firm was hired by New York Attorney General Letitia James' office to deal with two federal subpoenas the office is facing, Tatyana Monnay reports.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

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FT Alphaville Artificial intelligence

AI can't write good analyst research yet, says analyst

Finbots make too many mistakes, lack predictive power and tend to miss the big picture, according to Bernstein Research



© FTAV montage / Warner Bros. Entertainment

Alan Livsey

Published 4 HOURS AGO



Maybe one day, sell-side research departments will look like the interior of the Discovery One in Stanley Kubrick's *2001: A Space Odyssey*: no desks, white and minimalist. In it will sit a HAL-like server offering, on command, reports on the three-year financial prospects for XYZ.com.

[FTAV](#) and [others](#) have hashed over the possibility that AI can replace hard-working City analysts (also this on [coders](#)). Mostly, the tone has been negative for their prospects, never mind for financial journalists.

But how about when you make the AI models analyse a company or sector, put together a predictive financial model and write a research note? Bernstein Société Générale tested this. The AI models started well, but then everything got a bit messy.

Bernstein's team led by Venugopal Garre, head of India research, first had to choose which models to use:

“

We went through hordes of AI tools out there and picked up the most widely used ones, along with a few lesser known. Google's Gemini, Grok and ChatGPT were the usual candidates, and we added Perplexity, Microsoft's Copilot, Claude, Meta AI, DeepSeek and a few others (including vertical LLMs tailored for finance) to it.

Using various tests, Garre aimed to mimic the thought process of an equities analyst then grade them by their humanlike qualities. Could AI not only extract data from publicly available data, including earnings call transcripts, but also synthesise everything and make judgments? The team wanted to see if ChatGPT, Gemini or any of the others could build a financial model to help predict outcomes and then write an initiation report on a company.

Next, Garre created a number of tests, basic and advanced ones, beginning with some seek-and-return tasks without feeding the AIs any information.

At this stage, when the model extracted publicly available data for presentation, everything went pretty well. While there were some hiccups with miscategorisations, which created inconsistencies across the AI responses, in general he found that the AI models could do a good job generating graphs of financial data.

For instance, Grok created an attractive interactive graph with dual axes of an Indian company, Dixon Technologies.



What large language models can do well is find useful stuff in copious amounts of text, and even divine a change in tone about any subject over time. After uploading three years of quarterly earnings transcripts for specific companies, the AI tool was tasked with listing out any investor concerns and, in a separate exercise, rating how well management had addressed these concerns. Mostly, they handled this well. When asked to assess the quality of management by how confidently they answered questions, Gemini “stood out”.

After this, everything went a bit sour. Making pretty pictures and assessing the tone of earnings calls only make up a small portion of an analyst’s job. Using lots of data, plus one’s experience, to create long-term industry forecasts helps the analyst produce vital financial models for forecasting purposes.

These types of prompts proved too much:

“

Initiate on stock xyz as a sell-side analyst stating your view (buy, hold, sell) and reasons for the same. Give EPS forecasts, your target price and the calculation behind the same. (earnings call transcripts and financials provided, information about the sector of company provided)

Given the financials and split for a company in the sector ABC, come up with a basic model listing out the drivers which can be changed to forecast earnings for the next two years. (company financials for last ten years provided)

Despite feeding in the relevant data plus repeated, refined prompts, the models returned false information and error-strewn spreadsheets. “On modelling, [AI] absolutely failed,” Garre told me. “There are too many accounting nuances and differences from country to country.” Humans understand all this but computers require lots of learning to understand these subtleties.

Most of the AI tools couldn't create a model at all. With a lot of coaxing, Gemini offered some Python code to make a financial model, but it still didn't work due to errors. For those that did manage the feat, Garre said that these lacked much if any predictive power.

EXHIBIT 7: **Two basic models generated by Perplexity AI**

Dixon				Maruti Suzuki			
Year	Revenue (INR M)	Net Income (INR M)	EPS (₹)	Year	Revenue (INR M)	Net Income (INR M)	EPS (₹)
2025PF	3,88,601	10,955	181	2025A	14,51,099	1,45,002	461
2026E	4,85,751	14,242	235	2026E	16,00,000	1,58,000	503
2027E	6,07,189	17,803	294	2027E	17,60,000	1,70,000	541
2028E	7,58,986	22,100	359	2028E	19,36,000	1,85,000	589
Assumes share count stable at ~61mn. Target Price (mid-2026, using FY27E EPS): Fair P/E: 45x (peer/high-growth EMS premium) FY27E EPS: ₹294 Target = ₹13,230/share (rounded)				Shares stable at ~314mn. Target Price (mid-2026, using FY27E EPS): Fair P/E: 28x FY27E EPS: ₹541 Target = ₹15,150/share			

Source: Perplexity AI, Bernstein Analysis

In the end, no matter how much data and prompting Garre provided, none of the ten-plus models could properly analyse the outlook for companies. The company initiation reports lacked sufficient depth.

Nor could the AIs properly assess the outcome of management actions, such as creating a joint venture with a Chinese company with all its geopolitical considerations.

The overall average score for the group was poor. AI optimists will intone their mantra that these models will only get better. Realists will say that AI, like Excel, can only boost productivity and that's enough to make a difference.

Sell-side analysts — which to be fair Garre wants to stay in the room — will take some comfort.

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California Brief

Disney Facing Class Suit Over Trackers Installed on Its Website

Sept. 10, 2025, 10:01 AM PDT

The Walt Disney Co. was hit with a new class suit in federal court claiming that it violated the California Invasion of Privacy Act by installing tracking software on the disney.com website without obtaining consent from users.

John Tasker sued Disney and its direct-to-consumer unit alleging that the trackers, operated by Google and Comscore, function as pen registers and trap and trace devices that capture users' IP addresses, browsing activity, unique identifiers, and device attributes. This data is then shared with third parties for targeted advertising purposes through real-time bidding systems and cookie syncing processes, enabling the creation of comprehensive user profiles without consent.

The complaint alleges that Disney's conduct constitutes an invasion of privacy and unjust enrichment by monetizing users' personal information. It was filed Sept. 9 in the US District Court for the Central District of California.

Tasker seeks to represent a class of all California residents whose browsers were subjected to the trackers on Disney's website during the relevant statute of limitations period. He seeks statutory damages under CIPA, disgorgement of profits, injunctive relief, attorneys' fees, and a declaration that Disney's conduct violates CIPA.

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

Tasker is represented by Nathan & Associates APC and Ross Cornell of Big Bear Lake, Calif.

The case is Tasker v. Disney DTC LLC , C.D. Cal., NO. 5:25-cv-02368, 9/9/25 .

This story was produced by Bloomberg Law Automation.

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California Brief

Deep Dive

Web Tracking Suits Draw Pushback From Cyber, Liability Insurers

Sept. 11, 2025, 2:00 AM PDT

A surge in privacy lawsuits over tools tracking how users interact with websites is leaving some companies questioning whether their insurers will step in to cover the costs of litigating and resolving the claims.

Some carriers, particularly cyber insurers, are now adding specific exclusions to their policies to shield against litigation over web tracking technologies, insurance attorneys said.

A few insurers—including units of Berkshire Hathaway Inc. and Hartford Insurance Group Inc.—have also sued in recent months to avoid paying for the underlying cases, although the coverage suits so far have been infrequent and mostly limited to commercial general liability policies.

The underlying litigation targets various technologies developed by Meta Platforms Inc., Alphabet Inc.'s Google, and others to monitor website user activity and collect consumer data. Plaintiffs have brought class actions challenging companies' use of the technologies under state wiretap statutes and such other laws as the California Invasion of Privacy Act.

Although the health-care industry has been a major target, companies from various sectors that use web tracking—including sports organizations, entertainment companies, and video content providers—are facing similar suits.

"Everybody's got a website, so everybody's a potential target," said Brian Middlebrook, a partner at Gordon Rees Scully Mansukhani LLP who often represents entities defending against cyber and privacy claims.

Shifting Cyber Coverage

Cyber insurance in particular has often covered web tracker litigation "because the language in cyber policies tends to correspond with the type of claim that's being made, which is an unauthorized collection or disclosure of private information," according to Troutman Pepper Locke's Timothy Carroll, who represents insurers.

That likely explains the lack of coverage litigation so far, said Samantha Riley, a partner at Skarzynski Marick & Black LLP who represents insurers. But, she said, even cyber insurers have begun to add exclusions for web tracking claims, leading to some behind-the-scenes fights.

In addition to specific exclusions, some cyber insurers have narrowed the threshold for coverage, for example by requiring a “cyber event” to trigger coverage rather than a broader “privacy breach,” Riley said, describing the changes as a “belts-and-suspenders” approach to reducing exposure.

The tightening of policy language is a “natural reaction to increased exposure from a certain risk, no different than, say, insurance companies increasing use of a virus exclusion in policies following the Covid-19 pandemic,” Carroll said.

Still, the cyber insurance market is widely considered to be competitive, which generally leads to favorable terms and puts pressure on insurers to protect their market share.

That may also explain why there have been few coverage disputes so far, according to Peter Halprin, a partner in Haynes & Boone LLP’s policyholder-side insurance coverage practice.

Unlike general liability insurance, which often uses standardized language, language in cyber insurance varies widely across policies and is constantly evolving, attorneys said. That means coverage for web tracker claims will continue to differ across cyber policies.

Liability Fights

Commercial general liability insurance is a more likely battleground over coverage for pixel tracking litigation.

The standardized nature of general liability policies may compel insurers to file declaratory judgment actions—such as the handful of suits seen so far—where a ruling can offer guidance on how claims should be handled across the board, said TittmannWeix partner Matthew Bricker, who represents insurers.

CGL insurers may also be more inclined to push back on web tracker claims, whether through litigation or policy changes, because those policies typically have higher limits and nearly every organization has some form of general liability coverage.

Companies hit with web tracking suits should provide notice under all kinds of policies that could be implicated to avoid potentially losing out on coverage, said Hakeem Rizk, special counsel at Covington & Burling LLP who represents corporate policyholders.

Parallels to Illinois

The insurance challenges for pixel tracking claims echo coverage issues associated with litigation under Illinois’ landmark Biometric Information Privacy Act, which allows plaintiffs to seek damages from companies collecting biometric information without proper consent or notice, several lawyers said.

BIPA claims, like many web tracker cases, were often covered under cyber policies. But an uptick in expensive BIPA class actions led to disputes over general liability policies and whether certain exclusions—such as for claims alleging companies violated consumer and privacy statutes—barred coverage.

“Everyone started excluding BIPA claims and that tends to kill the cottage industry, because the plaintiffs’ attorneys are looking for insurance proceeds to fund settlements, and they’re not necessarily looking to put businesses out of business,” Riley said. Changes in compliance, legislation, and case law also put a damper on BIPA-related litigation, she added.

The combined threats of web tracker litigation and a potential dearth of insurance coverage could drive a focus on compliance by businesses, as occurred with BIPA, minimizing the risk of future claims. Health-care companies, for example, have significantly curbed their use of tracking software on password-protected patient portals in recent years.

“It’s essential that entities, whether they’ve had a lawsuit or not, look to compliance for forward-thinking concerns,” Gordon Rees partner Justin Holmes said.

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Litigation funding business sues co-founder, law firm for \$100 million over trade secrets



reuters.com/legal/litigation/litigation-funding-business-sues-co-founder-law-firm-100-million-over-trade-2025-09-09

Mike Scarcella

September 9, 2025

A man works at a computer on a standing desk in an office in the financial district of Canary Wharf in London, Britain, February 8, 2023. REUTERS/Kevin Coombs/File Photo [Purchase Licensing Rights, opens new tab](#)

Sept 9 (Reuters) - U.S. litigation funding business Archetype Capital Partners has sued one of its co-founders and a law firm, accusing them of stealing client information and other internal business secrets.

The [lawsuit, opens new tab](#), filed on Monday in federal court in Nevada, said Archetype co-founder Andrew Schneider and Georgia-based law firm Bullock Legal used the company's trade secrets and confidential information to secure investment funding for cases, particularly a growing wave of video game addiction litigation.

The lawsuit said Nevada-based Archetype is seeking more than \$100 million in damages for lost profits, in addition to lost marketing and lead generation revenue.

Bullock Legal and a lawyer for Archetype had no immediate comment.

Schneider on Wednesday called Archetype's allegations "patently false" and "offensive," and said he would fight back against the company's claims.

"When this is done, I will be vindicated," he said.

Litigation funders provide financial support to clients in exchange for a part of any settlement or judgment. Archetype provides litigation finance underwriting, connecting law firms with lenders.

Archetype said it was founded in 2020 "with the vision of developing innovative litigation finance solutions for law firms." Schneider was a member of the company until early 2025, according to the complaint.

The company said it developed its own models for underwriting and reviewing litigation, claims and lending for mass tort cases, including lawsuits claiming video game companies intentionally created addictive products and caused harm to players.

Bullock Legal did business with Archetype, the lawsuit said. Bullock advertises its nationwide work on behalf of families and individuals suing video game makers.

The two businesses had a nondisclosure agreement allowing them to share confidential information to evaluate investment opportunities, the lawsuit said.

Last year, according to the lawsuit, Schneider formed a joint venture relationship with Bullock in which they “cultivated and created significant business relationships and opportunities using the stolen property, trade secrets, and confidential information to steal business opportunities.”

The case is Archetype Capital Partners LLC v. Bullock Legal Group LLC and Andrew Schneider, U.S. District Court for the District of Nevada, No. 2:25-cv-01686.

For plaintiff: Kevin Anderson of Fabian VanCott

For defendants: No appearances yet

Read more:

[Burford drills down on law firm strategy with UK advisory deal](#)

[Ruling keeps litigation funder Burford in control of turkey price-fixing case](#)

[Litigation funder fires back at Tyson Foods over settlement interference claims](#)

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Litigation funding is secret, but these documents raise questions



reuters.com/legal/litigation/litigation-funding-is-secret-these-documents-raise-questions-2025-09-11

Jenna Greene

September 11, 2025

A man takes out papers from his briefcase at a court in Germany, September 24, 2019. REUTERS/Wolfgang Rattay/File Photo [Purchase Licensing Rights, opens new tab](#)

Sept 11 (Reuters) - When litigants strike deals with outside funders to provide financial backing for their cases, the arrangements are usually top-secret. But a juicy trove of contracts has recently come to light, and advocates for mandatory disclosure of funding agreements say the documents show why such a rule is needed.

Lawyers for Civil Justice, which represents corporations and defense counsel and pushes for more disclosure of litigation funding, last week submitted nine contracts as part of lengthy [comments, opens new tab](#) to a judicial panel considering a national rule that would require litigation funding disclosure. The agreements came to light via related lawsuits or other government filings, the group said.

Taken together, the contracts offer insight into the degree of control litigation funders can exercise over the cases they back.

Funders typically describe themselves as passive investors, sitting on the sidelines while the clients and their lawyers run the cases. As such, their involvement need not be disclosed, they say, any more than a litigant would report taking out a line of credit at a bank.

But the contracts show funders in at least some instances “have the right to reject settlements, choose and instruct counsel, or even take over litigation entirely,” said Alex Dahl, general counsel of Lawyers for Civil Justice.

For example, Dahl points to a 2022 [contract, opens new tab](#) by Burford Capital entities with Sysco Corp stating that the funding recipient “shall not accept a settlement offer without the Capital Providers’ prior written consent.” (However, the amendment came after Sysco allegedly breached a prior deal and as such, may be atypical.) A Burford spokesperson declined comment. A Sysco spokesperson declined comment on pending litigation. Other agreements can give funders the ability to “lock in” a specific lawyer or firm, Lawyers for Civil Justice said in its comments, offering another means of controlling a case. For example, a Longford Capital [agreement, opens new tab](#) defines replacing counsel as a “Material Adverse Event” that requires plaintiff to obtain Longford’s prior written consent. Longford did not respond to a request for comment

Even if funders don't usually exercise the control provisions, Dahl argues that their ability to do so is grounds to require disclosure, "so that the court and all parties can make a realistic appraisal of the case."

In the U.S., there are about 42 active commercial litigation funders, litigation finance firm Westfleet Advisors said in its [annual report, opens new tab](#) in March, with a total of \$16.1 billion in assets under management. The financiers committed \$2.3 billion to new deals last year, according to the report, a \$400 million decline from 2023.

Funders say they help bridge the justice gap by enabling smaller litigants, who might otherwise lack the money, to pursue meritorious claims against deep-pocketed opponents.

Tapped most often by plaintiffs' firms and their clients, funders typically agree to provide financial support of a lawsuit in exchange for a cut of an eventual settlement or judgment.

What's been missing from the disclosure debate until now is an examination of the contracts themselves.

To be sure, the submitted agreements don't strike me as entirely representative of the current U.S. market.

For example, one is a 2104 contract to fund a class action in Australia. Paul Kong, executive director of the International Legal Finance Association, a trade group representing the commercial funding industry, calls the samples "cherry-picked."

Mandatory disclosure of the agreements has broad support from corporations and the defense bar. More than 100 major companies from the technology, pharmaceutical, automotive and other sectors last year [sent a letter](#) to federal courts' Advisory Committee on Civil Rules, which has formed a subcommittee to consider adopting a disclosure rule. Outside funding "fundamentally alters the dynamics and has a major impact on whether the dispute can be resolved through settlement," the companies said.

As a journalist, I'm almost always in favor of making information public. As the saying goes, sunshine is the best disinfectant.

Already, defendants are compelled by federal rules of civil procedure to disclose the existence of insurance policies that could cover a judgment. Isn't disclosing litigation funding analogous? I asked Parabellum Capital managing director and corporate counsel Dai Wai Chin Feman.

It's not that simple, he said. Insurance agreements predate litigation, while litigation funding agreements are created in response to a specific lawsuit.

Chin Feman said he doesn't object to disclosing the existence of funding arrangements and the parties involved, to head off conflicts of interest. Where he draws the line is turning over the full agreements for opposing counsel to peruse.

"We're not going to give them a tactical weapon to use against us," he said, noting that the contracts often include information such as the litigation budget, case evaluation and other sensitive work products.

As such, multiple courts have [held, opens new tab](#) the agreements are protected from disclosure or irrelevant to the defenses of the case.

A handful of judges and courts, however, have started to require funding agreements be revealed, including in the [District of New Jersey](#) and a [standing order, opens new tab](#) by Chief U.S. District Judge Colm Connolly in Delaware.

Several [states including Louisiana](#), Indiana and West Virginia in recent years have also put disclosure requirements in place.

In April, lawmakers in Kansas enacted compromise disclosure legislation Chin Feman helped negotiate that won the [backing, opens new tab](#) of litigation funders and foes alike. The law requires claimants to produce the full litigation funding agreements for confidential review by the court. Opposing parties are entitled to more limited disclosures, such as the identity of the funder and whether it has control or approval rights for litigation decisions.

As the federal judicial subcommittee considers enacting a new rule of civil procedure – a process that could take years to complete – it might consider the Kansas model as a way forward.

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Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

Critical Mass With Law.com's Amanda Bronstad: 2nd Circuit to Hear Arguments on Acetaminophen's Link to Autism, Another Judge Analyzes Angeion Arrangement With Digital Card Provider

September 10, 2025 at 11:32 AM By  Amanda Bronstad



tylenol

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

This week: As HHS Secretary Robert Kennedy on Tuesday gave new details to how the government plans to combat childhood diseases, lawyers hope to reinstate lawsuits alleging prenatal use of **Tylenol** causes autism. A second federal judge reviewed **Angeion's** financial arrangement with a prepaid digital **Mastercard** provider. And find out who **Boeing** turned to in lawsuits over last year's **Jeju Air** crash in South Korea.

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



Ashley Keller, with Keller Postman. Courtesy photo

Judge Who Tossed Autism Experts Apply ‘Gatekeeping Function’

On Tuesday, **U.S. Department of Health and Human Services Secretary Robert Kennedy** announced more details about the Make America Healthy Again campaign’s focus on chronic childhood diseases, including higher rates of autism. The **Wall Street Journal**, on Sept. 5, predicted Kennedy would suggest in a report this month that prenatal use of **Tylenol** was linked to autism.

That’s exactly what’s before the **U.S. Court of Appeals for the Second Circuit**, which is set to hear Oct. 6 oral arguments on whether to reinstate hundreds of lawsuits in multidistrict litigation against Tylenol manufacturer **Kenvue** and several generic brands, including **CVS** and **Walmart**.

[Here’s my report](#) on the legal case, which will pit [Ashley Keller](#) (**Keller Postman**) against [Jay Lefkowitz](#) (**Kirkland & Ellis**) next month.

Plaintiffs hope to overturn a 2023 summary judgment ruling by **U.S. District Judge Denise Cote**, of the **Southern District of New York**, tossing all five of the plaintiffs’ general causation experts in the multidistrict litigation, which focuses on autism and ADHD. They’ve got amicus support from the **American Association for Justice** and four law professors, including [Dean Erwin Chemerinsky](#) (**UC Berkeley Law**). The defendants got amicus support from the **U.S. Chamber of Commerce** and **Lawyers for Civil Justice**, whose general counsel, Alex Dahl, told me:

“The District Court properly applied amended Federal Rule of Evidence 702 and exercised its gatekeeping function to exclude plaintiffs’ general causation experts. The rule was amended specifically to ensure that expert testimony is not admitted unless the proponent demonstrates that it meets the rule’s admissibility requirements. The court found that the proffered expert must not only use reliable principles and methods but must also reliably apply them to the facts of the case, which is consistent with the amended FRE 702.”



Judge Edward J. Davila. Photo: Diego M. Radzinski/ALM

Claims Administrator Disclosures: ‘Judge Davila’s Remarks Were Spot On’

Another judge has reviewed **Angeion Group**’s financial arrangement with a provider of prepaid digital **Mastercards**, this time raising concerns about disclosure to class members.

[Here’s my report](#) on **U.S. District Judge Edward Davila**’s Aug. 29 order in a \$100 million class action settlement with **Google**. Davila is the second federal judge to review an agreement between Angeion, a claims administrator, and **Blackhawk**, which provides prepaid digital Mastercard payment options for class members. Last month, **U.S. District Judge Vince Chhabria**, in a \$725 million class action settlement with **Facebook**, ordered Angeion to provide the same agreement *in camera*, later allowing settlement payments to go forward as scheduled. But Davila ordered

additional disclosures in emails and class notices about the arrangement, and a \$260,000 cut in expenses to class counsel—the amount in revenues Angeion would have received.

Both judges, in the Northern District of California, were alerted to the contract after five lawsuits were filed against Angeion and two other claims administrators, as well as two banks, alleging a racketeering scheme involving prepaid digital Mastercards. They're not the only ones noticing the controversy: the **Rabiej Litigation Law Center** discussed the issue at its MDL Summit on July 10 at **Northwestern University Pritzker School of Law**. Founder [John Rabiej](#) told me:

"My Center, with help from a volunteer team of lawyers and judges, will be working on developing best practices addressing this issue. Likely to be issued in 12 months. Judge Davila's remarks were spot on when he said that these arrangements must be disclosed to all interested parties and class counsel, as well as the judge."



Boeing company facility in Irving, Texas, USA. Credit: JHVEPhoto/Adobe Stock

Who Got the Work?

Boeing has turned to [Patrick Clyder](#) (**McGuireWoods**) in at least three wrongful death lawsuits brought over the 2024 crash of **Jeju Air Flight 2216** in South Korea. The suits, filed in **Cook County Circuit Court** by [Floyd Wisner](#) (**Wisner Law Firm**) on behalf of three passengers from South Korea,

were removed to **U.S. District Court** for the **Northern District of Illinois**, according to **Law.com Radar**. The crash killed 179 people.

Here's what else is happening:

Oregon Openings: Another trial began on Tuesday against **PacifiCorp** over wildfires that hit Oregon in 2020. [Nicholas Rosinia](#) (**Edelson**) told a jury in **Multnomah County Circuit Court** about 10 plaintiffs whose homes were burned to the ground due to the wildfires, according to coverage from **Courtroom View Network**. A prior jury found PacifiCorp was liable. [Brittani Jackson](#) (**Hueston & Hennigan**) represents PacifiCorp in this week's trial, which focuses exclusively on noneconomic damages for each plaintiff. PacifiCorp has agreed to pay nearly \$5.5 million in total economic losses to the plaintiffs, who are part of a lawsuit with 5,000 class members. Previous juries have awarded more than \$265 million to 69 wildfire victims.

Tort Uptick: Nearly 20% more tort cases were filed in federal courts in 2023 and 2024, compared to the prior two years, according to [a Sept. 4 report](#) from **Lex Machina**, a division of **LexisNexis**. Upticks came from motor vehicle accident and premises liability cases, many of which were removed to federal courts, but more than 2,000 lawsuits involved alleged lead contamination in the drinking water in Jackson, Mississippi. Jury verdicts have risen for tort claimants, the report says, noting a 2024 award of \$158 million in Missouri's federal court against **Amtrak** for the family of a man who was shot on one of its trains.

Robitussin Ruling: A federal judge in Pennsylvania refused to dismiss a product liability case alleging that recalled **Robitussin** cough syrup caused a severe lung infection. **U.S. District Judge Mary Kay Costello**, in a Sept. 4 decision, disagreed with manufacturer **Haleon US Holdings** that the plaintiff, Priya Lesinski, failed to plausibly allege the Robitussin, recalled in 2023, caused her lung infection. [Samuel Reich](#) (**Laffey Bucci**) represented the plaintiff, and Haleon's counsel was [Phyllis Jones](#) (**Covington**).

Thanks for reading Critical Mass! I'll be back next week.

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Study links more frequent and severe heat waves to pollution from major fossil fuel producers



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Associated Press

Drivers refuel at a Chevron gas station, Monday, Oct. 23, 2023, in South Miami, Fla. (AP Photo/Rebecca Blackwell, File)

(AP) — Fifty-five heat waves over the past quarter-century would not have happened without human-caused [climate change](#), according to a study published Wednesday.

[Planet-warming emissions](#) from 180 major cement, oil and gas producers contributed significantly to all of the heat events considered in the study, which was published in the journal Nature and examined a set of 213 heat waves from 2000 to 2023. The polluters examined in the study include publicly traded and state-owned companies, as well several countries where fossil fuel production data was available at the national level.

Collectively, these producers are responsible for 57% of all the carbon dioxide that was emitted from 1850 to 2023, the study found.

“It just shows that it’s not that many actors ... who are responsible for a very strong fraction of all emissions,” said Sonia Seneviratne, a climate professor at the Swiss university ETH Zurich who was one of the study's contributors.

The set of heat waves in the study came from the EM-DAT [International Disaster Database](#), which the researchers described as the most widely used global disaster repository. The Nature study examined all of the heat waves in the database from 2000 to 2023 except for a few that weren’t suitable for their analysis.

Global warming made all 213 of the heat waves examined more likely, the study found. Out of those, 55 were 10,000 times more likely to have happened than they would have been before industrialization began accelerating in the 1800s. The calculation is equivalent to saying those 55 heat waves “would have been virtually impossible” without human-caused climate change, the authors wrote.

“Many of these heat waves had very strong consequences,” said Seneviratne. She said the series of heat waves that struck Europe in 2022 that was [linked to tens of thousands of deaths](#) sticks out in her mind as one of the events with particularly grave consequences.

Scientists calculate how carbon emitters influence heat waves

Climate scientists can use complex computer programs and historic weather data to calculate the connection between [extreme weather events](#) and the planet-warming pollutants humans emit. Climate change attribution studies often focus on how climate change influenced a specific weather event, but the scientists say this new Nature study is unique because it focused on the extent to which cement and fossil fuel producers have contributed to heat waves.

“They are drawing on a pretty well-established field of attribution science now, which has existed for about 20 years,” said Chris Callahan, a climate scientist at Indiana University who was not involved in the study. Callahan has used similar attribution methodologies in his research and said the new study is appropriate and high-quality.

Scientists say the new study could be taken into consideration in legal cases. Globally, dozens of [lawsuits have been filed against fossil fuel companies](#) by climate activists, American state governments and others seeking to hold the companies accountable for their role in climate change.

For example, [Vermont](#) and [New York](#) have passed laws that aim to hold fossil fuel companies accountable for their emissions and the damage caused.

“For a while, it was argued that any individual contributor to climate change was making too small or too diffuse a contribution to ever be linked to any particular impact. And this emerging science, both this paper and others, is showing that that’s not true,” said Callahan.

Justin Mankin, a Dartmouth College climate scientist who wasn’t involved in the study, said the findings provide insight into the origins of the heat waves and how potential hazards from them could be minimized in the future.

“As we contend with these losses, the assessment of who or what’s responsible is going to become really important,” Mankin said. “I think there are some really appropriate questions, like who pays to recoup our losses, given that we’re all being damaged by it.”

The Associated Press’ climate and environmental coverage receives financial support from multiple private foundations. AP is solely responsible for all content. Find AP’s [standards](#) for working with philanthropies, a list of supporters and funded coverage areas at [AP.org](#).

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Legal services

Skadden held talks to provide unpaid legal work for Heritage Foundation

Law firm discussed unpaid support for conservative think-tank after striking deal with Trump administration



Progressive activists demonstrated outside Skadden's New York offices in April after it agreed to provide free legal services to causes supported by Donald Trump © Melissa Bender/Reuters

Kaye Wiggins and **James Fontanella-Khan** in New York and **Arash Massoudi** in London

Published YESTERDAY



US law firm Skadden Arps has held talks about doing unpaid work for conservative think-tank The Heritage Foundation, after signing a deal with the Trump administration to provide \$100mn in free support to causes backed by the president.

The firm was discussing how it might support the foundation and had signalled it was open to working on some projects for it, according to people with knowledge of the matter, though they added it had not yet carried out any such work or agreed to do so.

The move comes after nine major law firms acquiesced to President Donald Trump's demands in the early days of his second administration to extend tens of millions of dollars in pro bono work to causes he supported. The law firms struck the deals in a bid to [shield themselves](#) from executive orders or other retribution from the president.

While the firms [signed deals](#) agreeing to the work, there have so far been few public examples of them taking on conservative clients as a result. But the deals have put pressure on them to consider pro bono work for a wider range of clients than they have traditionally served, such as defendants who cannot afford legal representation.

A spokesman for The Heritage Foundation said it had not officially requested [legal services](#) from Skadden through its general counsel or received any pro bono work from the firm.

The Heritage Foundation, a non-profit, has published papers supporting an end to birthright citizenship, limits on abortion and recruiting ideological loyalists to the civil service, among other causes.

It published the Project 2025 manifesto, a blueprint for a conservative presidency that advocated banning pornography and deleting the term "diversity, equity and inclusion" from federal rules. It said the US border should be "sealed" and economic engagement with China "ended".

Trump last month [picked](#) The Heritage Foundation's chief economist, EJ Antoni, to head the Bureau of Labor Statistics after he [fired](#) former commissioner Erika McEntarfer and said a gloomy jobs report was "rigged".

Skadden declined an overture to do work for another conservative group, The Oversight Project, which spun off from The Heritage Foundation this year, according to a person with direct knowledge of the matter. The group's work includes investigating former president Joe Biden's use of electronic signatures and looking into what it describes as the "radical undercurrents and foreign entities" behind anti-Trump protests.

The Oversight Project asked several large law firms for pro bono support after they struck deals with Trump this year, but none of them appear to have publicly worked on its behalf. While The Heritage Foundation and The Oversight Project are non-profits, the latter is registered in a way that allows it to lobby and campaign. Some law firms have a policy of avoiding pro bono work for organisations with such designations.



Skadden struck its agreement with Trump in March, soon after the president issued an executive order targeting a rival firm © Kent Nishimura/Bloomberg

Skadden and The Oversight Project did not respond to requests to comment.

Skadden struck its agreement with the Trump administration in March, soon after the president issued an executive order targeting rival firm Paul Weiss that would have terminated its government contracts and suspended its security clearances. Paul Weiss also agreed to provide pro bono services to avoid the punitive measures. Skadden was never the target of an executive order.

Some of Skadden's summer associates, who won their placements before it reached the settlement with Trump, said they were unsettled by the deal and were considering whether to return after graduation.

The Heritage Foundation had \$336mn in net assets in 2024, and received \$102mn in contributions, its accounts show.

Pro bono work typically involves supporting clients that may otherwise struggle to afford access to legal services, though law firms' interpretations can vary widely and some provide free services even to well-funded groups, especially on projects that help people in poverty.

In a Truth Social post announcing the agreement, Trump said Skadden had agreed not to “deny representation to clients, such as members of politically disenfranchised groups, who have not historically received legal representation from major National Law Firms, including in pro bono matters, and in support of non-profits, because of the personal political views of individual lawyers”.

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Sept. 10, 2025, 10:33 AM PDT

Call options

The central fact of financial industry compensation is that agents get a call option on their principals' returns. If you give me a billion dollars to manage, and I turn it into \$2 billion (a 100% return), I'm going to charge you at least \$200 million for that service, and you will be thrilled to pay it. That level of investing skill is rare and valuable, and the going rate for it is at least 20% of gains. If, however, you give me a billion dollars to manage, and I turn it into \$0 (a negative 100% return), I am not generally going to refund you \$200 million, or anything. If I lose 100% of your money, I probably don't have \$200 million of my own money lying around, so I couldn't give you a refund even if I wanted to.

So my exposure to your returns has the shape of a call option: I get nothing if you get nothing, I get some linear share of your profit if you make money, and I lose nothing if you lose money. I get the upside of your returns, but not the downside.

A few points here. First, is this ... good? Bad? Depends what you want. The value of a call option increases with volatility, so paying people in call options gives them incentives to increase volatility: If I get the upside of my trades but not the downside, then I will want to take big risky bets to maximize my upside. You might dislike this. (*Bank* regulators, notably, dislike it; the "heads-I-win-tails-you-lose" nature of financial compensation might make banks riskier than they should be.) Or you might like it; you might *want* to incentivize me to take big swings rather than just playing it safe and hugging the index. (Stock options are the standard way to pay public-company chief executive officers in corporate finance, because shareholders want them to take risks.) In general, investing involves risk, and if you think I am a skilled investor you might want to give me incentives to take risks.

Second, this is not always true as a contractual matter — Warren Buffett doesn't have a call option on Berkshire Hathaway's returns — but it is generally true as a practical matter. If I am good at making money for you, I will be able to charge you a large percentage of the money I make for you, but if I lose all your money, I will just quit and find a new job. If you don't like this system, you can try to find ways to contract around it — you can pay me a flat fee rather than a performance fee; you can write clawbacks into my contract so that I have to pay you back some money if I have losses — but it is a competitive market and there's only so much you can do. The people who have investing skill will charge for it, and in the way that is best for them.

This does create weird problems of timing. I probably get my cut of your profits for some time period, say a calendar year. If it is October and I am up 80% for the year, that's pretty good and I should stop: That 80% return will get me a big bonus, so I don't want to keep taking risks that might get me back to zero and lose me my bonus. I should just put it all in cash and go on vacation. If it is October and I am down 3% for the year, that's terrible — no bonus — and I should dial up the risk: A negative 100% return is not materially worse for my bonus than a negative 3% return, but a positive 10% return is much better, so I should take even negative-expected-value risks to increase my volatility and my chances of getting into the black. At big hedge funds, risk managers will try to prevent *both* of these scenarios: They'll stop me from taking excessive risks if I'm down, but they'll also yell at me for taking *no* risks if I'm up.

If it is October and I am down 20%, though, the situation is different. I'm not getting back in the black. This year is shot. Depending on the terms of my contract, next year is probably shot too: I probably have to get back to even (earn back my 20% losses) before I get paid for any upside. My option is very out-of-the-money, so it's not worth much.

But it's an option. I can just walk away. I can hand you back (80% of) your money, say "sorry it didn't work out," and go find someone else's money to manage. I get my cut of the first dollar I make for them, whereas I'm already in the hole with you. Better to start over from zero than to continue from 20% down. The whole point of my option is that, if I lose money for you, that's not my problem.

"Ah," you might say, "but won't you have a hard time finding someone else to give you their money, when you lost 20% of my money and shut down your fund?" That's a reasonable question! But, no. Investing skill is rare and valuable, and if I convinced *you* that I have it I probably do, so I can probably convince someone else that (1) I have investing skill, (2) I just had some bad luck and (3) that can't continue forever, so they might as well give me their money now when I'm available.

One thing that I like to say around here is that it is good, for your financial career, to lose a billion dollars. This is more or less why. If you lost a billion dollars it's not *your* money; it's someone else's. If you lost a billion dollars that means you got someone to trust you to take risks with a billion dollars (probably several billion dollars), which means you convinced smart clients that you have investing skill, which means that you probably do. If you lost a billion dollars it means that you *took* risks with the money, and clients want people to take risks (that's why they pay them in call options). If you lost a billion dollars it probably means that you learned from your mistakes and won't make those particular mistakes again. And if you lost a billion dollars it probably means that you had a run of *bad luck*, and that feels like it might be mean-reverting. So if you lost a billion dollars, that is good evidence — not absolutely conclusive evidence, but surprisingly persuasive evidence — that someone else should give you another billion dollars.

Bloomberg's Nishant Kumar has a very fun story about how the most desirable hedge fund portfolio managers are the ones who just lost a ton of money:

Rather than being damaged goods, veteran portfolio managers making heavy losses are now some of the hottest recruits around.

Fallen stars are being viewed as battle-tested hunters temporarily off their game. That moment of weakness is when they're most poachable, driven and available at a discount, people with knowledge of the matter say. Instead of the slog of recouping a pile of losses at their previous employer, traders can wipe the slate clean and start making money for themselves again.

Yes: call options.

Say a trader has a \$100 million shortfall they have to make back for their fund, and a one-year non-compete clause. If they don't think they can recoup that money within 12 months, it makes financial sense to jump ship so you don't start the following year in the red again.

Far better to transfer to a rival, who'll offer you a juicy signing up fee, and a fat purse of client money to make a fresh start with.

This is not great for the clients of the hedge funds, who pay for everyone's upside from zero but don't recoup much on the downside:

Hedge fund investors, who tend to place their money across different firms ... often have poor visibility on when these moves are happening and why, according to someone who works for one of most influential backers. With no say, they're having to swallow the losses at the first fund, and pay for the same trader's comeback elsewhere.

But that really is the central fact of hedge-fund compensation. Also here's a great quote:

"Even a wounded lion is still a lion," says Jason Kennedy, whose eponymous firm helps hedge funds recruit. "And the lion isn't mortally wounded. He will heal. And when he's fully back, that lion is worth a lot more money."

If I lost a billion dollars, shut down my hedge fund, and then started a new one to reset my high-water mark, I would definitely call the new one Wounded Lion Capital Management LP. That's the precise balance of arrogance and humility that investors want in a hedge fund.

By the way. You don't *have* to believe any of this. You don't have to believe that a portfolio manager who lost a lot of money is a wounded lion; you can think she's a dead zebra. You can believe that markets are basically efficient, investing skill is fleeting, and highly paid hedge-fund portfolio managers had a bunch of lucky coin flips; you can be skeptical that their previous wins were due to "persistent skill" and their recent losses were due to "bad luck." Empirically, though, this is not what the managers of the big multistrategy hedge funds, or their clients, believe. The basic theory here is that investing skill exists, that it is persistent and valuable, and that the big hedge funds can reliably identify it even in managers who lost a lot of money. So they should give those managers some more money.

Though if you lose the money twice that's it:

Hedge fund history shows that second chances have been available a while for the small band of traders who've managed giant pots of client cash. But another failure will probably be fatal to a top-level career, the head of a medium-sized multistrategy firm says.

If you *keep* losing money for clients, that does suggest that they should stop giving you money.

Stablecoin price war

I have always thought that issuing stablecoins is a great business. The way it works is:

1. People give you dollars in exchange for cryptographic tokens that you make up.
- 2. You invest their dollars in safe short-term assets, like a government money market fund yielding about 4%.
- 3. You promise to exchange their tokens back into dollars back whenever they want.
- 4. Without interest.

It's like banking, but without interest or branches or credit risk: Instead of taking people's money and using it to make loans, you take their money and park it in Treasury bills and keep the interest for yourself. Your costs are low and your revenue is high.

This is such an obviously good business that everyone should do it, but not everybody can. Network effects are very important for stablecoins: People want stablecoins — they want to give you dollars for your tokens — because they want to be able to transact with them, so they only want widely used popular stablecoins (like Tether or USDC) that can be used for transactions. If you have a new startup stablecoin, it is hard to convince people to adopt it.

What can you do about this? Well, one obvious answer is: pay people interest! If you earn 4% interest on your investments, and pay out 2% to your token holders, you still make a lot of money, and they get 2%, which is better than the 0% they get from Tether or USDC. This seems like a promising avenue, except that it's illegal in the US. The GENIUS Act, the US law passed this year to regulate stablecoins, says that "no permitted payment stablecoin issuer or foreign payment stablecoin issuer shall pay the holder of any payment stablecoin any form of interest or yield (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of such payment stablecoin." So paying interest is out.

What else can you do? Well, you want your stablecoin to be widely used for transactions. What sorts of transactions do people do with stablecoins? "Every sort of transaction that might be done with dollars can be done with stablecoins, simply and more efficiently," is the crypto maximalist answer, but the actual main answer so far is "speculating on crypto exchanges." Stablecoins are dollars in crypto form, and they are used mostly to buy other crypto things. One day perhaps people will spend stablecoins easily at the grocery store, but for now they spend them on crypto exchanges.

And so an obvious path to adoption is paying crypto exchanges to use and promote your token. If you earn 4% interest on your investments, you go to a crypto exchange and say "hey if you make our stablecoin the default form of dollars on your platform, we'll split the interest with you 50/50." You get to keep 2%, but the exchange gets a cut of the money for promoting your stablecoin. And in fact this is a common approach. For instance, it is what Circle Internet Group Inc., the issuer of USDC, does: USDC is the preferred stablecoin of Coinbase, and Circle and Coinbase split its revenue.

What does the exchange do with the money? Again the ideal answer would be "Scrooge McDuck swimming pool," but it's not that simple. The exchange is in a competitive network-effects business too, and it wants to attract customers. If a stablecoin issuer is paying half, or all, of its interest income to a crypto exchange, the exchange might pass some or all of that money on to its users. There are various ways to do that: cutting trading fees to zero, or giving customers bonuses for trading a lot, or just paying the customers interest on their stablecoin deposits held on the exchange. The GENIUS Act says that *stablecoin issuers* are not allowed to pay interest on stablecoins, but it doesn't say that *crypto exchanges* aren't allowed to pay interest on stablecoin balances.

That is controversial. The Financial Times reported last month that "banking lobbies including the American Bankers Association, the Bank Policy Institute and the Consumer Bankers Association last week warned lawmakers of a 'loophole' in regulation that will let some crypto exchanges indirectly pay interest to stablecoin holders," which might "spark mass deposit outflows ... if customers choose to earn yield by holding stablecoins at crypto exchanges rather than coins or cash dollars at banks."

But it also means that issuing stablecoins is not as great a business as I once thought. It *was*, when there were only a few stablecoins and the stablecoins acquired their network effects naturally. But in the long run, to be a competitive stablecoin, you might have to pay most or all of your interest income to crypto exchanges, and the exchanges might have to pass most or all of it back to the customers. "You hold people's dollars for them, you collect interest, and you don't give them any of it" really is a good business model, but it's too good to last.

At the Information, Yueqi Yang reports on the erosion of that business model:

Just two months after Congress passed a cryptocurrency law that gave a big boost to stablecoins, a price war has broken out, potentially wiping away the lucrative profits these tokens could generate.

The battle is taking place among users of Hyperliquid, a fast-growing decentralized crypto exchange. They are considering reducing their use of Circle's USDC, the main stablecoin on Hyperliquid. Competitors are rushing in, offering far better deals to Hyperliquid's customers. ...

The stablecoin legislation that passed Congress banned stablecoin issuers from directly paying interest to end users. It does allow stablecoin issuers to share their revenue with exchanges, which then reward investors who hold the stablecoins.

Now, Hyperliquid has started a price war. Stablecoin issuers hoping to steal Circle's business are offering to share an increasing portion of their revenue, in some cases all of it, with Hyperliquid. The fight could quickly turn stablecoins into a commodity business where profits are under constant pressure. ...

Hyperliquid would reduce its use of USDC by finding a partner to issue a new stablecoin, USDH. Stablecoin providers Paxos, Agora and Ethena are among those vying to be the issuer of that stablecoin.

All have proposed to pass along the majority of their revenue back to Hyperliquid users. Agora said it will share all of its revenue, effectively wiping out any profit it could earn on a stablecoin. "We made the race to the bottom. Now no one should make money off this," said Nick van Eck, co-founder of Agora.

I mean, yes, nobody *should* make much money off of issuing stablecoins, but historically people absolutely did and they will be sad to give that up.

Robinhood Social

Stock brokerages traditionally combine two somewhat distinct services, (1) executing stock trades for you and (2) helping you figure out which stocks to buy. Traditional full-service brokers have research analysts who publish reports for the brokers' customers, telling them what stocks to buy. Online brokers show various charts, ratios, news stories, etc., so that customers who are looking at a stock can find out some relevant information about it.

In the olden days, the way you figured out which stocks to buy was by asking questions like "what do expert securities analysts think I should buy" or "what is this stock's P/E ratio" or "is there a head and shoulders pattern in the stock chart" or whatever. In 2025, the way to figure out which stocks to buy is by asking questions like "what are my friends saying about these stocks on social media," so here you go:

Soon, Robinhood Markets Inc.'s retail traders won't have to leave the platform to brag about their positions or post taunting memes celebrating their investment victories. The online brokerage is breaking into social media. ...

The company will invite a small group of customers to join Robinhood Social early next year, then broaden the availability later, the company said in a statement Tuesday. Initially, all posts by traders will be required to include a trade of equities, options or other assets. Those positions will continue to update in real time after they're shared, and comments on posts will be allowed.

"We always thought it was something that we wanted to get into more of, especially with social and investing becoming more and more tied together," Abhishek Fatehpuria, vice president of product management at Robinhood, said in an interview.

Investors also will be able to follow the moves and statistics of other users who join Robinhood Social, including their one-year and daily profit and loss statements and profit rates. Profiles for public figures, such as former US House Speaker Nancy Pelosi and billionaire hedge-fund manager Bill Ackman, for example, will also be on the platform, with their trades populated via public disclosures required by law.

Honestly an investing social media site that *discloses everyone's investing performance* is an amazing idea? Like there are a lot of people giving investing advice on X, and they are good at making themselves sound smart, but do their trades make any money? I don't know. But if instead of a little blue checkmark Robinhood gave them a little green "+23.5% YTD" or a little red "-17.1% YTD," then you'd know.

Also, though, see the first section above. If you lose too much money on Robinhood Social, you have to shut down your account and open a new one. What credibility would you have with that little red "-17.1% YTD" next to your name?

Or is it the opposite? I gather that a lot of social clout on Reddit comes from posting "loss porn," not from successes. Will a little red "-99.9% YTD" be the best possible badge to have on Robinhood Social? Will people compete to lose money for clout?

No tax on tips

I, uh, write a newsletter and have a podcast, so I think a lot about the economics of parasocial online content creation, and I have followed with some interest (though no direct participation) the trend of *charging consumers directly* for that content. There are two main ways to do that:

1. Paywall some or all of your content, and charge people money to access the content.
- 2. Don't do that — make everything free — but ask people to pay you money because they like you and want to encourage you to keep making more content.

The first approach is the obvious one: People mostly pay for stuff that costs money, and tend not to pay for stuff that is available for free. But — from my secondhand, anecdotal, but quite interested view of things — the second approach *works*. Not in general, I mean, but in the specific case of parasocial online content creation. If you make a newsletter or a podcast that people love, some of them will be happy to give you money, to encourage you, even if they can get the content for free. Most people will free-ride, but you don't need everyone to pay; you just need enough people to pay.

My impression is that, most of the time, the first approach works *better*. You can make more money by charging people for stuff than you can by asking them to pay for stuff that you give away. But it is a closer question than you'd think. (Getting stuff free is a better user experience and might create a closer parasocial relationship than charging directly, which might lead some people to voluntarily pay a lot more than they would pay to subscribe.) It's not like charging money would bring in \$100 and giving it away for free would bring in \$0. It's, like, \$100 vs. \$70 or something.

And then there are taxes. Bloomberg's Caitlin Reilly reports that "Podcasters and OnlyFans Creators," like me, "Stand to Win Big Under Trump's Tax Law":

Katherine Green, a dominatrix who creates online adult videos, wasn't expecting a windfall from President Donald Trump's signature push to make tips tax-free.

The Houston-based OnlyFans Ltd. creator, who goes by the title Mistress professionally, is not a waitress, a rideshare driver or a golf caddy — professions typically associated with tipping. But new Treasury Department guidelines on Trump's tax law include digital content creators like Green on the break. ...

More than a quarter of large US-based influencers — those with at least 100,000 followers — reported earning tips, according to a 2024 study by the Creative Class Group. The new tax law could restructure compensation in an emerging industry to draw even more heavily on gratuities. ...

Defining a tip in the digital creative space could be complicated, said Alex Muresianu, a senior policy analyst at the Tax Foundation.

Currently, a tip is a voluntary and optional payment a customer makes in addition to the cost of the goods or services provided. If creators provide any additional content or benefits to subscribers, that subscription cost would not fit the current definition of a tip. Some influencers may be tempted to categorize payments as tips that in reality don't fit the bill or restructure their pay to take advantage of the tax break, Muresianu said.

If you charge for your, um, podcast, the IRS will take a portion of your income. If you give it away and ask for tips, you keep whatever you get.

Things happen

Ellison Tops Musk as World's Richest Man After \$101 Billion Gain. Oracle Shares Surge Most Since 1992 on Cloud Contract Wins. OpenAI Executives Rattled by Campaigns to Derail For-Profit Restructuring. Italy's Monte Dei Paschi Secures Control of Mediobanca in Deal Valued at \$19 Billion. Labor Inspector General Initiates Review of BLS 'Challenges.' Winklevosses Lean on MAGA Clout as Gemini's Losses Mount Ahead of IPO. Quantum computing company raises a record \$1bn. Cracker Barrel Cancels Restaurant-Revamp Plans After Backlash. That Crypto Treasury Frenzy Is Already Running Out of Steam.

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- 1. The standard story is that shareholders can, should and do diversify, so the risk of any particular stock is not material to their wealth and they just want each company to maximize its expected value. But a CEO's wealth and career are concentrated in her one company, so she has incentives to minimize risk even at the cost of a lower expected value. But if you give her a pile of options she will be more inclined to take the shareholder-optimal level of risk.
- 2. This is approximately true. I believe that the norm at the big pod shops is to risk-manage (cut capital or fire portfolio managers) from the high point, so if I'm up 80% for the year and then lose 10% I might get fired anyway.
- 3. Though: "One senior figure at a top-tier hedge fund says when a trader jumps ship rather than trying to fix things at their old shop, it means they're less likely to learn from the experience and may make the same mistakes again." Maybe. Or maybe it just means they understand optionality.
- 4. Prior to the GENIUS Act stablecoin legality was murkier in the US, but I think there was a strong case that non-interest-bearing stablecoins were allowed but interest-bearing stablecoins were "securities" and so more troublesome.
- 5. See page 38 of Circle's Form 10-Q for the split, which seems to be more than 50/50 in Coinbase's favor.
- 6. As opposed to, say, selling ads, or getting a paycheck from a large media organization.
- 7. In that I am a podcaster.
- 8. Not tax advice!

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Securities Law News

Federal Prosecutors Looking Into Fraud Allegations at Tricolor

Sept. 10, 2025, 5:24 PM PDT

Federal prosecutors are digging into used car seller and subprime auto lender Tricolor Holdings, which filed to liquidate in bankruptcy court on Wednesday, according to people with knowledge of the matter.

The Manhattan US Attorney's office is looking into allegations of fraud by Tricolor, said one of the people, who asked not to be identified discussing a private matter. The company recently received an information request from prosecutors, said another person.

A spokesperson for the US Attorney's Office for the Southern District of New York declined to comment. Executives at Tricolor, including the chief executive officer, didn't immediately respond to requests for comment. The Department of Justice probe was reported earlier on Wednesday by the Financial Times.

The probe comes as banks JPMorgan Chase & Co., Barclays Plc and Fifth Third Bancorp are bracing for hundreds of millions of dollars of losses on loans tied to Tricolor, Bloomberg reported this week. The three banks were so-called warehouse lenders to Tricolor, effectively offering short-term credit lines to fund the company's loans until it could sell bonds backed by those assets.

The banks are also looking into whether collateral tied to warehouse lines was double-pledged, Bloomberg reported, citing people with knowledge of the matter.

Tricolor, which focuses on lending to undocumented immigrants in the US Southwest, didn't give a reason for its collapse in its bankruptcy petition.

--With assistance from **Scott Carpenter**.

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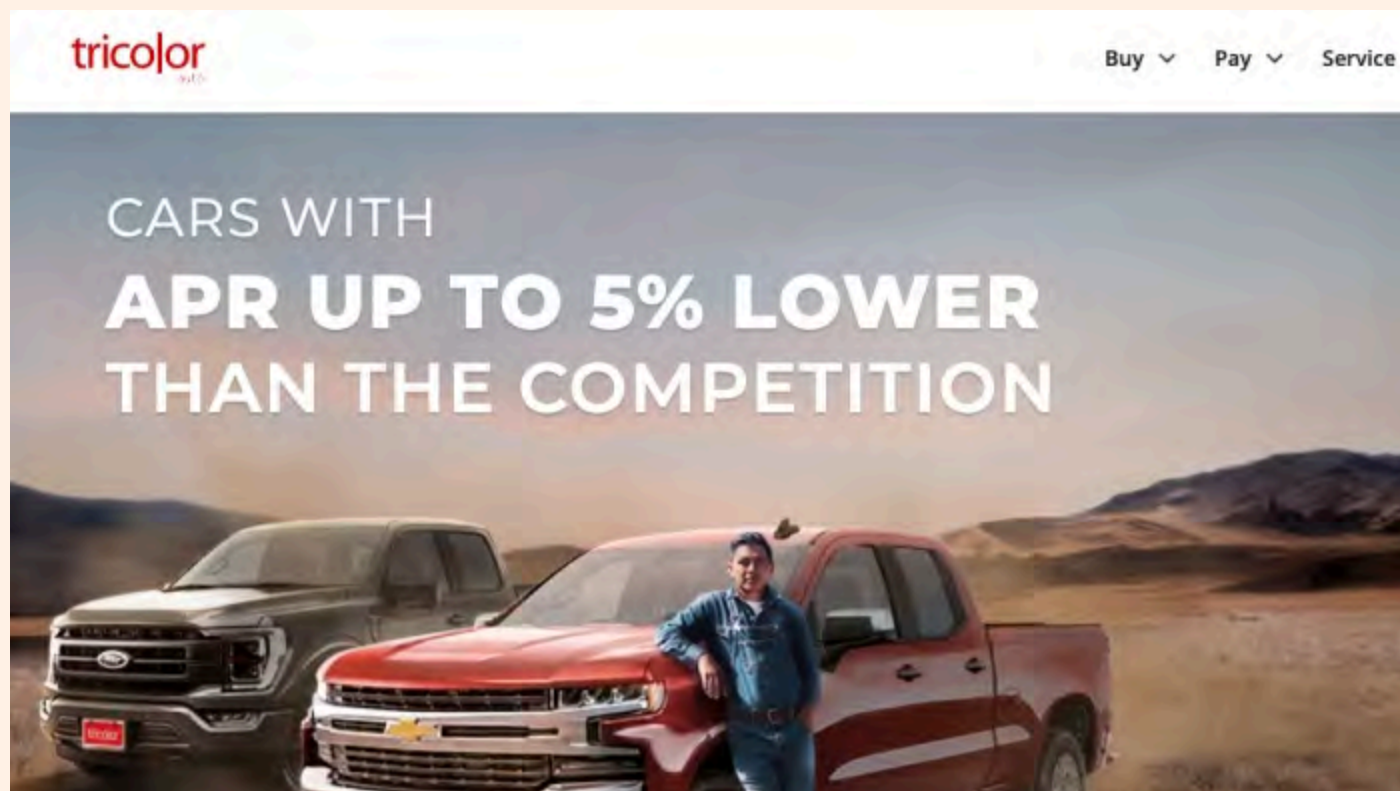
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Financial services

US justice department probes fraud allegations at subprime car lender Tricolor

JPMorgan and Barclays were among banks exposed when the group collapsed into bankruptcy



Tricolor buys and sells cars and specialises in providing financing to lower-income Hispanic customers

Amelia Pollard, Akila Quinio, Antoine Gara, Sujeet Indap and James Fontanella-Khan in New York and **Stefania Palma** in Washington

Published YESTERDAY | Updated 17:26



The US justice department is investigating allegations of fraud at Tricolor Holdings, a subprime car lender that has collapsed into bankruptcy and left banks facing potential losses of hundreds of millions of dollars.

The Department of Justice is probing Tricolor over alleged irregularities related to car loans and had contacted people close to the company in recent weeks, according to two people briefed on the matter.

JPMorgan and Fifth Third Bank each have about \$200mn in exposure, the Financial Times has [reported](#). Barclays is also listed as one of Tricolor's secured lenders in disclosures made as part of the group's bankruptcy filing in Texas federal court on Wednesday.

One area of focus was whether Tricolor pledged the same collateral on multiple loans, two separate people familiar with the matter said.

Funds managed by BlackRock had also [invested \\$90mn](#) into the lender in 2021, as part of the asset manager's push into "responsible lending" to underserved communities.

Tricolor did not respond to requests for comment. The DoJ, JPMorgan, BlackRock, Barclays and Fifth Third declined to comment.

Tricolor buys and sells cars and specialises in providing financing to lower-income Hispanic customers, often with limited or no credit history.

Banks lent money to Tricolor to make car loans that were then bundled into so-called asset-backed securities and sold to investors with the cash proceeds used to repay the lenders.

JPMorgan was among the first banks to flag what it deemed suspicious activity at Tricolor and informed the [DoJ](#) earlier this year, said two people briefed about the matter.

Fifth Third chief Tim Spence said on Wednesday that last week, the group "became aware of an issue" relating to one of its clients.

He added: "It appears there's significant fraud in the collateral file that was used."

Spence did not name a specific company. A Fifth Third regulatory filing on Tuesday said the group would write down the bulk of a \$200mn loan after it discovered "fraudulent activity" by one of its corporate clients. It did not specify which company it was referring to, but a person familiar with the matter said it was Tricolor.

Tricolor filed for bankruptcy in Texas on Wednesday. It managed a portfolio of about \$1.4bn of loans as of the end of March, according to a ratings report of its debt by Kroll Bond Rating Agency earlier this year.

The filing said Tricolor had between \$1bn to \$10bn in assets and liabilities and at least 25,000 creditors.

The subprime lender hired the law firm Sidley Austin last month for a potential Chapter 11 restructuring, which would have allowed it to keep operating, but advisers had to pivot to a Chapter 7 liquidation after the scope of its troubles were discovered in recent weeks, a person familiar with the matter said.

JPMorgan and Fifth Third Bank have hired advisers to deal with the financial fallout. Sidley Austin stopped representing Tricolor after the bankruptcy court on Wednesday appointed a trustee to oversee the group, according to a person familiar with the matter.

Sidley Austin declined to comment.

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<https://www.wsj.com/finance/senators-call-for-hearings-about-jpmorgans-ties-to-jeffrey-epstein-988fe58c>

EXCLUSIVE**MARKETS & FINANCE**

Senators Call for Hearings About JPMorgan's Ties to Jeffrey Epstein

Democrats want CEO Jamie Dimon to testify about keeping Epstein as a client until 2013

By [Alexander Saeedy](#) [Follow](#)

Updated Sept. 11, 2025 11:54 am ET



Jeffrey Epstein had dozens of accounts at JPMorgan's private bank. PHOTO: SHURAN HUANG FOR WSJ

Ten Democratic Senators are calling for a congressional hearing about [JPMorgan Chase's](#) JPM **1.34%** ▲ decision to keep Jeffrey Epstein as a bank client for about 15 years.

Sen. Elizabeth Warren (D., Mass.), the ranking Democrat on the Senate Banking Committee, said JPMorgan Chief Executive [Jamie Dimon](#) and other executives should testify under oath about what they knew about Epstein's crimes and if they ignored red flags about his activities.

Epstein had dozens of accounts at JPMorgan's private bank and communicated often with bank executives, connecting them to his wealthy contacts, ties The Wall Street Journal first reported in 2023 [to be deeper than understood](#). Epstein was a JPMorgan client before and after he was convicted of soliciting a minor for prostitution in 2008 and forced to register as a sex offender.

He was arrested in 2019, accused of orchestrating a scheme to traffic and sexually abuse girls, and died in jail of what has been ruled a suicide.

"The American people deserve to know what happened at JPMorgan and other banks that financed Mr. Epstein," the senators wrote to Sen. Tim Scott (R., S.C.), chair of the Senate Banking Committee.

A spokeswoman for JPMorgan said that it was a mistake to have any association with Epstein and that it regrets its association with him.

"We fired him as a client in 2013, six years before he was arrested on federal sex trafficking charges—and six years after the federal government had damning information on him that they did not publicly share," the spokeswoman said in a statement.

Dimon has said he never met Epstein, including [under oath in a deposition](#).

The bank has faced lawsuits over how it handled Epstein as a client and has agreed to some \$365 million in [settlements with Epstein victims](#) and the [U.S. Virgin Islands](#). The bank didn't admit wrongdoing as part of the settlements.

Those suits focused on actions by the bank to keep Epstein as a client, even while [compliance officers flagged concerns](#).

Mary Erdoes, one of Dimon's top executives, had met with Epstein at his townhouse twice before the bank closed his accounts for good in 2013, the Journal previously reported. Meetings between JPMorgan staff and Epstein continued even after 2013, the Journal reported.

The spokeswoman for JPMorgan said Epstein was absolutely not a client during those years and "a few bankers met with him while serving another client."

The bank has sought to blame former executive Jes Staley for the relationship and accused Staley for misleading the bank about the nature of his own relationship with Epstein. JPMorgan [sued Staley](#) to hold him accountable, and the parties later settled for undisclosed terms.

Staley has said he didn't know about Epstein's crimes and he regrets their friendship.

In their letter, the senators said representatives of other financial institutions with ties to Epstein should be brought before the committee for questioning, including [Deutsche Bank](#), where Epstein moved his bank accounts after JPMorgan ended its relationship with him.

Deutsche Bank declined to comment on the letter.

Epstein's past has been the focus of recent speculation after lawyers for his estate gave Congress a copy of a birthday book put together for the financier's 50th birthday. On Monday, House Democrats [published excerpts from the book](#), including a letter with President Trump's signature that he has said doesn't exist.

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Videos

Securities Law News

Adani Bid to End Bribery Case Stalls Amid Volatile US-India Ties

Sept. 11, 2025, 12:00 AM PDT

Billionaire **Gautam Adani**'s efforts to get US fraud charges against him resolved have stalled, according to people familiar with the matter, prolonging the regulatory overhang that has hobbled the Adani Group's global expansion plans.

Progress Adani's representatives had been making with American officials has faltered in recent months as the US and India have clashed on issues like trade, Russian oil and India's conflict with Pakistan, said the people, who asked not to be identified as the talks are private.



Gautam Adani, chairman of Adani Group.

Photographer: Sumit Dayal/Bloomberg

Trump administration officials have signaled to the tycoon's representatives — which include a roster of high-powered lawyers in the US — that there will be no deal to end the cases over an alleged bribery scheme as long as bilateral tensions between the two countries remain heightened, the people said.

Read More: Adani Builds US Influence Machine While Trump Reins In DOJ

Federal prosecutors, meanwhile, continue to pursue the criminal case that became public in late 2024, said another person, who asked not to be identified because the information is confidential.

The Adani Group and the White House did not respond to multiple requests for comment. The Justice Department declined to comment.

Serving Legal Papers

Adani faces a parallel civil lawsuit from the Securities and Exchange Commission that was announced alongside the Justice Department charges late last year. In August, an SEC lawyer told a federal judge that the agency was still trying to serve the Adanis with legal papers. That effort includes a request to Indian authorities for assistance, according to the Aug. 11 filing.

The SEC declined to comment beyond the filing.

Meanwhile, tension between the two countries, which included the US imposing a 50% tariff on goods imported from India, has appeared to soften. Trump in recent days called Narendra Modi a "great prime minister" and a friend. Trump has nominated White House personnel chief Sergio Gor to become ambassador to India, but he still needs to be confirmed by the Senate.

US prosecutors, in a five-count indictment in November, alleged Adani and other defendants helped drive a \$250 million bribery scheme in India to lock in solar-power contracts. The Adani Group has consistently denied the charges. None of the defendants, including Adani, have appeared in court so far over the charges.

In negotiations to resolve the matter, which began earlier this year, Adani's representatives have tried to make the case that his prosecution doesn't align Trump's priorities and should be reconsidered, Bloomberg News reported in May.

The stalled talks are a disappointment to the Adani camp, which was optimistic earlier this spring that it was nearing a resolution, some of the people said.

The situation constrains the tycoon, who cannot travel to the US given the risk of getting arrested.

While the Indian conglomerate has partially bounced back from the blow of the indictment, raised funds from global lenders and made bids for big-ticket acquisitions in India, the bribery probe remains a regulatory overhang. It is also an obstacle in tapping US lenders or closing business deals.

For example, France's TotalEnergies SE, a partner in Adani Total Gas Ltd., said in November that it will not make any new financial contributions to the conglomerate until these accusations "have been clarified." The group has also lost overseas contracts, like a \$2.6 billion airport and power transmission deal in Kenya. A plan to invest \$10 billion in the US, announced after Trump won the presidential election, is on hold.

Collateral Damage

In different ways, India's two richest men risk becoming collateral damage in the geopolitical push-and-pull between Washington and New Delhi.

Adani's compatriot **Mukesh Ambani**, has seen his Reliance Industries Ltd. targeted indirectly by Trump's aides, who claim that India's oil refiners have been "war profiteering" by buying cheap Russian oil. Last month, the Ambani family postponed a theatrical extravaganza to highlight Indian culture in New York City that was to be hosted by matriarch **Nita Ambani**.

Modi, meanwhile, has made overtures signaling India is moving closer to Russia and China. Adani too made a well-publicized visit to China earlier this year, and is exploring a deal for lithium-ion battery making technology with China's biggest EV maker, BYD Co., Bloomberg News reported last month.

--With assistance from Chris Strohm and **Kate Sullivan**.

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Investors retreat as shares in bitcoin buyers decline



reuters.com/business/investors-retreat-shares-bitcoin-buyers-decline-2025-09-10

Tommy Wilkes, Elizabeth Howcroft, Hannah Lang

September 10, 2025

cryptocurrencies have suffered sharp drops in their share prices as the crypto mania that's gripped investors for much of the year recedes.

Crypto Weekly: Bitcoin buyers plunge as crypto euphoria fades

- Shares in bitcoin hoarders tumble to multi-month lows
- Strategy and Metaplanet slide from summer peaks
- Spooked retail investors compound downturn, analyst says

LONDON/PARIS/NEW YORK, Sept 10 (Reuters) - Companies that accumulate and hoard bitcoin and other cryptocurrencies have suffered sharp drops in their share prices as the crypto mania that has gripped investors for much of the year recedes.

These so-called digital asset treasury companies sell shares or issue debt to raise cash for buying crypto held on their balance sheets. Investors have been snapping up their shares, encouraged by bitcoin's record highs this year as U.S. President Donald Trump embraces the sector.

At least 61 publicly listed companies that are not primarily engaged in digital assets have adopted bitcoin treasury strategies, Reuters [reported in June](#).

Shares in Michael Saylor's Strategy, the best known of these bitcoin buyers, have fallen from \$457 in July to as low as \$328 this week. That is the lowest since April and cuts their gains this year to 13%.

Japanese bitcoin treasury company [Metaplanet \(3350.T\)](#), [opens new tab](#) this week hit its weakest since May. The shares are down more than 60% from their June peak but remain up 105% so far this year.

Small companies that have transformed the fortunes of their shares - and their stock-owning executives - simply by announcing a sudden shift in strategy to bitcoin-buying have also taken a hit.

The scale of the reversal is "entirely unsurprising," said Kaiko analyst Adam McCarthy.

"These are all essentially volatility plays as they are leveraged exposure ... so if bitcoin is down 3%, they're down a multiple of that, sometimes four or five times as much," he said.

"For retail users it's a shock a lot of the time, so it probably compounds the downturn when some sell out of fear."

When these shares tank, the companies' market value can be less than the crypto holdings on their balance sheets.

Digital asset treasury companies also often rely on capital market access to fund their crypto buying, which can "dry up when sentiment cools," said Lale Akoner, global market analyst at eToro.

"Beyond their bitcoin exposure, most (companies) have only modest fundamentals, so their valuations don't have much of a cushion."

Shares of [Smarter Web Company\(SWC.ASE\)](#), [opens new tab](#) soared after the UK-based website designer announced a bitcoin-buying strategy in April. The stock is down more than 70% since June.

Shares in Alt5 Sigma ([ALTS.O](#)), [opens new tab](#), which has been buying tokens in Trump's World Liberty Financial crypto venture, have tumbled more than 61% from their June high reached before the company announced a \$1.5 billion deal with the venture.

Bitcoin-hoarding has [spread to other cryptocurrencies](#), too, with more companies buying up ether and lesser-known digital currencies.

"Until retail users realise that these firms aren't buying into crypto, rather they're selling a crypto narrative to pump their equity value, this circle will persist," Kaiko's McCarthy said.

Shares of Peter Thiel-backed BitMine ([BMNR.A](#)), [opens new tab](#) and gaming media network GameSquare ([GAME.O](#)), [opens new tab](#) rocketed this year after they announced plans to buy ether. Both have slumped by about 67% since July.

Crypto exchange Gemini is set to debut on the Nasdaq on Friday. The exchange, backed by Cameron Tyler Winklevoss, [raised the proposed price range](#) for its U.S. initial public offering and is targeting a market valuation of up to \$3.08 billion.

Reporting by Tommy Reggiori Wilkes, Elizabeth Howcroft and Hannah Lang Editing by David Goodman and Richard Chang

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[Hannah Lang](#)

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Hannah Lang covers financial technology and cryptocurrency, including the businesses that drive the industry and policy developments that govern the sector. Hannah previously worked at American Banker where she covered bank regulation and the Federal Reserve. She graduated from the University of Maryland, College Park and lives in Washington, DC.



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DexCom Beats Most Of Investors' Diabetes Device Sales Suit

By **Sydney Price**

Law360 (September 10, 2025, 8:03 PM EDT) -- A California judge has trimmed a proposed class action from shareholders of glucose monitor manufacturer DexCom Inc. who allege they were damaged by the company's misrepresentations regarding its ability to keep up with growing demand, with the court determining the shareholders' complaint falls short in several instances.

The shareholders, led by the National Elevator Industry Pension Fund, allege in their suit that DexCom shares declined last year as the market learned that the company faced significant obstacles and internal challenges that limited its growth capacity, including a deficient sales force and a limited presence in primary care physician offices.

But U.S. District Judge Robert S. Huie said on Tuesday that of the 14 alleged misstatements cited in the complaint, the plaintiffs have only adequately pleaded that two were false and made with scienter, and that further amendment to the suit would be futile.

The suit points to several statements made by the plaintiffs between April 28, 2023, and July 25, 2024, that allegedly show DexCom was concealing its issues in increasing market share.

For example, on a call with investors in June 2023, DexCom executives said the company was expanding its leadership "in primary care with the Type 2 basal and severe hypoglycemia markets where coverage has just opened up in the last couple of months," and that DexCom had "the right commercial infrastructure" for expansion.

In reality, the suit said, DexCom competitor Abbott Laboratories had already secured a strong market position by offering a more competitive price and maintaining stronger relationships with distributors.

The suit claims the remark misleadingly suggested that DexCom "held or was poised to compete for a leadership position in the Type 2 Basal market."

Judge Huie said, however, that the statement is too vague and subjective to be actionable.

"The statement does not appear tied to any objective metrics, such as sales data, market share, or customer growth; instead, it reflects a general expression of confidence," Judge Huie said.

The suit also alleges that several months later, on April 25, 2024, DexCom Chief Financial Officer Jerome M. Sylvain told investors that "there's no debate internally to us. We know we're taking share and we see that data."

The suit alleges the remark gave the misleading impression that DexCom was capturing market share in the Type 2 Basal market, when in reality, Abbott was winning the majority of prescriptions.

Judge Huie said the statement is actionable since Sylvain said that DexCom's market share had been determined using data, which can be confirmed or denied.

"Plaintiff's allegations regarding Abbott's market share of the Type 2 Basal Market between January 2024 and April 2024 plausibly suggest Sylvain's statement was false or misleading when made," the suit alleges.

On July 25, 2024, DexCom reduced its 2024 revenue guidance range from expected revenues between \$4.2 billion and \$4.35 billion to \$4 billion and \$4.05 billion, and told investors that it was "not doing wonderful in the basal space."

The suit said the price of DexCom shares then declined \$43.85 each, or about 41%, to close at \$64 a share on July 26, 2024.

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

The National Elevator Industry Pension Fund is represented by Daniel S. Drosman, Danielle Suzanne Myers and Mark Conover of Robbins Geller Rudman & Dowd LLP.

DexCom Inc. and its executives are represented by Cristina Maria Ferruolo, Koji F. Fukumura and Heather Marie Speers of Cooley LLP.

The case is Alonzo v. Dexcom Inc. et al., case number 3:24-cv-01485, in the U.S. District Court for the Southern District of California.

--Editing by Vaqas Asghar.

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ADM Blasts Investors' 'Fishing Expedition' In Nutrition Biz Suit

By **Lauraann Wood**

Law360 (September 10, 2025, 10:56 PM EDT) -- Investors accusing Archer-Daniels-Midland Co. of illegally misrepresenting its nutrition segment's profitability are engaging in a "fishing expedition" by requesting every document it produced for federal investigation and should be ordered to negotiate search terms for relevant records, the company argued Wednesday.

U.S. Magistrate Judge Keri Holleb Hotaling should reject the investors' bid for the so-called clone discovery because they have no compelling justification for their request, and the government investigation is broader than the allegations in their complaint, Tyler Murray of Quinn Emanuel Urquhart & Sullivan LLP argued for ADM during a remote hearing.

ADM has also been trying to work with the investors to provide documents from its production to the U.S. Securities and Exchange Commission and U.S. Department of Justice, even though they refused to engage with the company's proposal to negotiate search terms that would help efficiently sift through the documents, Murray told the judge.

The investors want the entire government production because they believe they may find a "bad document" relating to a different aspect of ADM's business that they could then characterize as evidence pointing to ADM's state of mind in their case, Murray said.

"The problem is that's a classic fishing expedition," he argued. "[It's] guess and speculation, and it doesn't come close to establishing actual relevance."

Judge Holleb Hotaling said she'd called for argument on the investors' motion because the issue didn't seem "so simple" in the context that ADM is a large company with employees who presumably "have other things they're doing that may not relate at all" to the issues in the investors' lawsuit.

The government may have asked for a swath of documents regardless of subject matter "because they're the government, and they generally can do things like that," the judge said. "And to me, responding to a government request may be different from responding to a run-of-the-mill discovery request in a civil case as well."

Representing the plaintiffs, Christopher Stewart of Robbins Geller Rudman & Dowd LLP argued ADM should turn over its entire government production because what description they do have regarding the federal investigation demonstrates that it is probing "precisely what plaintiffs are alleging in this case."

The production wouldn't be too burdensome for ADM because the company has already provided all the documents once before, Stewart told the judge. It would also save time in the discovery process, which would be significant since the case is still in its early stages, he said.

"It's very important for us to get this discovery early, specifically now that we are past the substantial completion deadline," Stewart argued. "We think it will really jump-start things and get us back on track."

ADM has cited precedent suggesting that this sort of clone discovery is disfavored in litigation, but many courts have granted these types of discovery requests, Stewart added. The cases ADM cites are not analogous because they were either much later in the litigation process, or involved a conspiracy

charge that added extra considerations to the request, he said.

ADM was **sued last year** by investor Raymond Chow in response to an accounting probe of its nutrition segment. ADM's nutrition segment's purported growth from 2020 to 2022 was based on improper accounting practices and the company downplayed the segment's eventual decline in 2023, according to Chow's complaint.

Days before the lawsuit was filed, ADM had announced that it placed its chief financial officer, Vikram Luthar, on leave effective immediately, adding that the company was investigating accounting procedures in its nutrition segment in response to an SEC document request. The same day, ADM delayed its fourth-quarter and 2023 earnings release and withdrew its outlook for the nutrition segment, the suit said.

In refusing to toss the suit, U.S. District Judge Thomas Durkin said the investors had lodged **"robust" allegations** that company executives made knowingly false statements about the nutrition segment's profitability. Their allegations, combined with "suspicious departures" and government investigations, create a strong inference of scienter in their case, he said. And while the investors don't have direct evidence that ADM and its executives knew the statements to the SEC about the accounting were false, there is strong circumstantial evidence, Judge Durkin said.

The plaintiffs are represented by Motley Rice LLC and Robbins Geller Rudman & Dowd LLP.

ADM is represented by Quinn Emanuel Urquhart & Sullivan LLP.

Law firms representing ADM executives in the suit include Latham & Watkins LLP, Vedder Price PC and Perkins Coie LLP.

The case is Chow v. Archer-Daniels-Midland Co. et al., case number 1:24-cv-00634, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Celeste Bott. Editing by Jay Jackson Jr.



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Chinese Real Estate Co. Inks \$5M Deal To End Investor Suit

By **Emilie Ruscoe**

Law360 (September 10, 2025, 11:48 PM EDT) -- Investors in Chinese real estate giant KE Holdings Inc. have asked a New York federal judge to give an initial nod to a nearly \$5 million deal ending claims the company misled the markets about certain key performance metrics in filings associated with its secondary public offering.

In a **Tuesday brief**, KE Holdings investor the Saskatchewan Healthcare Employees' Pension Plan asked U.S. District Judge Gregory H. Woods to grant preliminary approval to the proposed deal, describing it as "a favorable result for the settlement class."

The institutional investor estimated the damages it could reasonably expect to recover in a trial wouldn't be any greater than \$27 million, "but could be significantly less, depending on various scenarios."

The \$5 million sum represents more than 18% of those potential maximum recoverable damages, the pension fund claimed, asserting that the percentage "falls well within the range of reasonableness and supports preliminary approval."

The settlement, which is subject to court approval, would resolve allegations that the company's offering documents for its secondary public offering were negligently prepared. KE Holdings describes itself as a provider of housing transactions and services.

In the latest version of the suit, filed March 2024, the investors said KE Holdings in its offering documents inflated the number of physical brokerage stores it had across China, the number of agents using the platform, its gross transaction value and its revenues.

Among other things, the suit alleges KE investors were hurt in December 2021 when trading prices for the company's shares declined following publication of a short seller's report alleging the company's reported store count included locations the short seller dubbed "ghost stores" and "clone stores" that were improperly included in the total tally.

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

The Saskatchewan Healthcare Employees' Pension Plan is represented by Samuel H. Rudman, David A. Rosenfeld, Erin W. Boardman and Ellen Gusikoff Stewart of Robbins Geller Rudman & Dowd LLP.

KE Holdings and individual defendant Colleen De Vries are represented by Jonathan Rosenberg and B. Andrew Bednark of O'Melveny & Myers LLP.

The underwriter defendants are represented by Douglas H. Flaum, Gabrielle Lisa Gould and Nicholas R. Franco III of Goodwin Procter LLP.

The case is *Chin v. KE Holdings Inc. et al.*, case number 1:21-cv-11196, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Lakshna Mehta.



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Del. Justices Urged To Revive \$10.5B Zendesk Deal Challenge

By **Jeff Montgomery**

Law360 (September 10, 2025, 8:47 PM EDT) -- An attorney for stockholders of software-as-a-service business Zendesk Inc. told Delaware's Supreme Court Wednesday that a conflict at the heart of a challenge to the company's \$10.5 billion take-private deal with a private equity consortium was undisclosed at the time of its approval.

Ned Weinberger of Labaton Keller Sucharow LLP, counsel with one of eight firms representing stockholders in the appeal, told the justices that the deal proxy "did not tell stockholders what I think of as the full and accurate story of how that conflict manifested itself."

"The conflict that is at the heart of this case and the conflict that is reasonably conceivable drove the transaction we are challenging was not disclosed to stockholders," Weinberger said.

Over the course of a few days "and really over a weekend," Weinberger argued, Zendesk's board "slashed projections by \$13 billion ... to justify an abrupt strategic reversal whereby the board suddenly abandoned the standalone strategy" and accepted a \$77.50 per share offer from private equity firms Hellman & Friedman LLC and Permira Advisers LLC, a stockholder brief said.

The deal in November 2022 was described in the suit, in part, as an effort to avoid a proxy war mounted by activist investor JANA Partners LLC that would have jeopardized the jobs of CEO Mikkel Svane and three directors.

Vice Chancellor J. Travis Laster dismissed the suit in a ruling from the bench in January, finding that stockholders were able to make a fully informed vote on the transaction regardless of disclosure objections.

"I think it's a case where the stockholders received all the material information they needed to make a decision on the merger," the vice chancellor said, citing the state U.S. Supreme Court's [Corwin v. KKR Financial Holdings Inc.](#) decision in 2015. Corwin allows courts to grant business judgment deference to corporate actions if "cleansed" by a fully informed, uncoerced vote of disinterested stockholders.

On Wednesday, Sandra C. Goldstein of Kirkland & Ellis LLP, counsel to Svane and others named in the suit, told a three-justice panel on Wednesday that neither of the disclosure issues on appeal were material under Corwin.

The stockholder appeal argued that a deal proxy failed to disclose the near final settlement agreement with JANA that included Svane's exit while also omitting "upside" business projection that, while including the \$13 billion revenue reduction, failed to include more-positive operating margin projections and cost-cutting.

"I don't think we have to literally write every term and condition," Goldstein told the justices. "We did disclose there were settlement discussions. The good question is, when does it become more or less material?"

Goldstein said JANA was "agitating like crazy" with its concerns "all over the proxy" and asked how, with settlement and "near final" settlement talks reported, could a stockholder think that Svane, the founder, CEO and chairman, "is going to be untouched."

"You're kind of making the case for disclosure" related to Svane, Chief Justice Collins J. Seitz Jr. said.

Justice Abigail M. LeGrow asked, "What more needed to be done? Why wasn't the one yard between the line and the goal small enough that it needed to be disclosed?"

"What we're trying to see here is whether or not enough was disclosed to shareholders for them to understand the motive," Goldstein said. "There's no way anybody could go through all of that and not understand that Svane thought he would be out if the JANA settlement happened or not."

Key decisions, however, were made via email for deal terms put together over a weekend, Weinberger argued. He asserted that the transaction left advisors "scratching their heads," with the company "accepting a deal 40% below another transaction that you rejected as unfair, while asserting that a standalone company 'is the thing to do.'"

Chief Justice Seitz and Justices LeGrow and N. Christopher Griffiths took the arguments under advisement.

Mikkel Svane and others named in the suit are represented by Garrett B. Moritz and Holly E. Newell of Ross Aronstam & Moritz LLP and Matthew Solum, Haley Stern and Mike Rusie of Kirkland & Ellis LLP.

The stockholders are represented by Ned Weinberger, Mark Richardson and John Vielandi of Labaton Keller Sucharow LLP, Kimberly A. Evans, Lindsay K. Faccenda, Irene R. Lax, Daniel M. Baker, Robert Erikson, Jason Leviton and Nathan Abelman of Block & Leviton LLP, Christine M. Mackintosh, Michael J. Barry, Vivek Upadhya and Edward M. Lilly of Grant & Eisenhofer PA, Jeremy Friedman and David Tejtzel of Friedman Oster & Tejtzel PLLC and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

The case is Amethyst International Master Fund et al. v. Mikkel Svane et al., case number 2023-1139, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.



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Coupang Escapes Securities Suit Over IPO Disclosures

By **Sydney Price**

Law360 (September 10, 2025, 9:15 PM EDT) -- A New York federal judge has dismissed a securities class action against South Korean e-commerce company Coupang Inc., several of its executives and offering underwriters alleging they failed to disclose that Coupang was participating in "illicit practices" and ruled that some of the alleged omissions were publicly available information.

The shareholders' suit alleges Coupang engaged in anticompetitive practices with its suppliers and other parties, tweaked search algorithms and manipulated product reviews on its marketplace platform, sold products to non-member customers at lower prices than those available to its members, and subjected its employees to unsafe working conditions.

But U.S. District Judge Vernon S. Broderick said when dismissing the suit with prejudice on Wednesday that none of the suit's identified misstatements or omissions are "actionably misleading."

The suit alleges that in the year before its March 2021 initial public offering, Coupang was frequently making headlines for deaths in its facilities and overworking its frontline workers.

Because the suit's class period begins March 11, 2021, the first day of the offering, and concludes approximately a year later, information related to the deaths of Coupang's employees was available to investors in media reports, Judge Broderick said.

"Thus, given the total mix of information made available to investors, Coupang's statements concealed nothing — the purported demands it placed on its frontline workers and the apparent results of those demands were plain for all to see, and Plaintiffs do not argue otherwise," the 83-page opinion states.

The investors also allege Coupang concealed that it "misappropriated protected trade materials from merchants for its own economic gain," exposing the company to heightened risk of government scrutiny.

Judge Broderick said, again, that the allegedly concealed information was publicly available ahead of the IPO both in Coupang's supplier terms and conditions document and in Coupang's media statements.

The opinion dismissing the suit also states that risk disclosures related to the IPO were not misleading, and that Coupang's executives and underwriters knew that the allegedly undisclosed risks would materialize.

The suit also fails to plead scienter, Judge Broderick determined.

"In addition to the improper attempt to group-plead the scienter requirement, the Amended Complaint fails to allege facts that several of the Individual Defendants 'were sufficiently involved with [Coupang's] daily affairs' and 'makes no showing that the [Director Defendants] were corporate insiders or involved in [Coupang's] day-to-day operations,'" the opinion states.

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

The plaintiffs are represented by Jeremy Alan Lieberman, Emma Gilmore, Justin D. D'Aloia and

Dolgora Dorzhieva of Pomerantz LLP.

Coupang and its executives are represented by Andrew James Ehrlich, Brette Morgan Tannenbaum and Daniel Shiah Sinnreich of Paul Weiss Rifkind Wharton & Garrison LLP.

The underwriter defendants are represented by Daniel Craig Lewis and Elizabeth Stewart of Allen Overy Shearman Sterling LLP.

The case is The New York City Fire Department Pension Fund et al. v. Coupang, Inc. et al., case number 1:22-cv-07309, in the U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.

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Airbnb Presses Bid To Toss Conservative Shareholders' Suit

By **Nate Beck**

Law360 (September 10, 2025, 7:58 PM EDT) -- Airbnb Inc. is urging a Delaware federal judge to reject a lawsuit from two conservative institutional shareholders, arguing that delivery of the groups' shareholder proposals to the company's mail room doesn't suggest executives sought to exclude the submissions from the company's 2025 proxy materials.

Airbnb, in a Tuesday **brief** supporting an **August motion to dismiss the lawsuit**, argued that the groups failed to identify individuals responsible for the alleged exclusion at the company in their May lawsuit, in one factor warranting dismissal.

"Plaintiffs do not (and cannot) cite a single fact from the complaint showing any of the Individual defendants even knew about the proposals — much less, that anyone was involved in a decision to 'exclude' them from the 2025 proxy materials," Airbnb argued.

The Heritage Foundation, a conservative think tank, and the American Conservative Values ETF, an exchange-traded fund using conservative political values in its investment strategy, sued Airbnb, **claiming the company allowed a "liberal-leaning" state pension fund** to contribute to the 2025 proxy materials while excluding submissions from the conservative groups.

The plaintiffs said they submitted two proposals to be voted on ahead of a June 4 annual investor meeting. The May complaint said Heritage owned \$46,000 worth of Airbnb shares, and American Conservative Values ETF, or ACVF, owned \$447,000.

The Heritage Foundation's proposal asked the Airbnb board to authorize an analysis of how the company oversees the legal and reputational risks of political divestments.

ACVF, meanwhile, sought to earn board support for a report into how the company oversees risks related to denying or restricting services to users based on political status or views and how such screening could affect the exercise of constitutional rights.

The conservative groups said their proposals were excluded from proxy materials even though a mail room employee at the company signed for FedEx delivery of the proposals.

When the groups filed their lawsuit — just before the annual stockholder meeting — Airbnb issued a press release claiming the company didn't have a record that it had received the proposals.

The company in Tuesday's brief said the conservative groups in opposing dismissal had homed in on the claim in the press release, shifting focus from the initial complaint.

"In fact, the opposition all but abandons plaintiffs' allegations of political motive, instead focusing on new — and improper — arguments relating to the press release and on 'evidence of delivery' being 'brought to Airbnb's attention,'" the company said.

Counsel for the parties did not respond to messages seeking comment Wednesday.

The plaintiffs are represented by Stephen B. Brauerman and Ronald P. Golden III of Bayard PA.

The Heritage Foundation is also represented by R. Trent McCotter of Boyden Gray PLLC.

ACVF is also represented by Alexandra Gaiser and Philip A. Sechler of the Alliance Defending Freedom.

The defendants are represented by David E. Ross and S. Michael Sirkin of Ross Aronstam & Moritz LLP, and Blair Connelly, Zachary L. Rowen, Ben Harris, Kristin N. Murphy and Allison O'Hara of Latham & Watkins LLP.

The case is The Heritage Foundation et al. v. Airbnb Inc. et al., case number 1:25-cv-00676, in the U.S. District Court for the District of Delaware.

– Additional reporting by Sarah Jarvis and Katryna Perera. Editing by Amy French.

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3rd Circ. Seeks Standing Specifics In Website Tracking MDL

By **Matthew Santoni**

Law360 (September 10, 2025, 2:58 PM EDT) -- The Third Circuit on Wednesday challenged both retailers and consumers over so-called session replay software capturing online shoppers' data, wanting to know if a proposed class could be more specific about what "sensitive" information was actually shared by Bass Pro Shops and Cabela's and if their stores had any limits on connecting private searches with specific people.

In multidistrict litigation alleging the sporting goods retailers had violated online shoppers' privacy by using software that recorded their online activities, part of the claims rested on the vendors' alleged ability to tie that potentially private, sensitive data to customers' real identities. But a three-judge panel pressed the consumers' counsel for more details about whether that capability had been used to track the activities of the named plaintiffs, or what specific data had been connected to their offline identities.

"What does 'they can do it' get you? ... Don't you need to separate out what you say could happen from what actually did happen?" U.S. Circuit Judge Thomas Hardiman asked.

The judge later added: "I don't understand how the suggestion that it's capable of capturing highly sensitive personal information, or that it does capture highly sensitive personal information, is sufficient pleading when you don't tell us what the highly sensitive personal information is."

Kate M. Baxter-Kauf of Lockridge Grindal Nauen, co-lead counsel for the shoppers, argued that the complaint had identified the catch-all of "payment information" as being the particularly sensitive information that was captured and shared without consent. That was a term that encompassed credit card numbers or banking information, though it could also include less sensitive information, such as gift cards, she said.

The plaintiffs had appealed a federal judge's **2023 ruling** that they lacked standing for most of their claims in the MDL because they hadn't been specific enough about what personal information had been captured and shared.

The district court had asked the consumers to focus on what personal information was allegedly recorded and would give them standing in light of the Third Circuit's **August ruling** over similar session replay software in [Cook v. Gamestop](#) .

The appeals court also questioned whether the capability to connect browsing data to specific people was actually used and gave the plaintiffs standing, particularly for their claims of "intrusion upon seclusion." Baxter-Kauf said companies had a financial interest in using that feature to target consumers.

She noted that their suits had been filed and **consolidated** before other cases defined some of what could make third-party data sharing cross a line into wiretapping or invasion of privacy.

Michael Rayfield of Shook Hardy & Bacon LLP, representing the retailers, said the plaintiffs had avoided specifically alleging the session replay software actually captured all their browsing data, or that the payment data which shoppers asserted was shared with outside vendors was distributed any further than that.

"I don't think there's any allegation they shared credit card information beyond the session replay vendors," Rayfield told the judges. "That's not 'the public' under this court's understanding of public disclosure of private facts, or intrusion upon seclusion."

But the panel latched on to the consumers' arguments about browsing information being linked to their identities, and although Rayfield said the information at issue for Bass Pro and Cabela's shoppers was "anodyne," U.S. Circuit Judge Cheryl Ann Krause noted that such online profiles could capture more sensitive or embarrassing web searches for medical conditions or products such as adult diapers.

Rayfield said that even if session replay vendors made that data public, that would make the vendors liable for the disclosure and invasion of privacy, not the retailers whose websites shoppers visited.

However, Judge Hardiman noted the consumers would be able to sue the retailers, as they had here, for facilitating what they described as the amassing of private data.

The panel took Wednesday's arguments under advisement.

U.S. Circuit Judges Thomas M. Hardiman, Cheryl Ann Krause and Arianna J. Freeman sat on the panel for the Third Circuit.

Bass Pro Shops and Cabela's are represented by Jennifer A. McLoone, Michael E. Rayfield and Maveric R. Searle of Shook Hardy & Bacon.

The proposed class is represented by Gary F. Lynch, Jamisen A. Etzel and Nicholas A. Colella of Lynch Carpenter LLP, Kate M. Baxter-Kauf and Karen Hanson Riebel of Lockridge Grindal Nauen PLLP, Steven M. Nathan of Hausfeld LLP, and MaryBeth V. Gibson of Gibson Consumer Law Group LLC.

The case is In Re: BPS Direct LLC et al., case number 23-3235, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Covey Son.



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Medical Equipment Co. Settles County Claims In Opioid MDL

By **P.J. D'Annunzio**

Law360 (September 10, 2025, 4:58 PM EDT) -- Medical equipment company Henry Schein Inc. and its related entities have settled claims by Virginia counties brought against it in the sprawling national opioid litigation, according to a notice filed Wednesday.

The **stipulation** filed in Ohio federal court did not disclose the terms of the settlement and noted only that the Henry Schein defendants were voluntarily dismissed from the litigation as part of the deal.

The Northern District of Ohio houses the **massive litigation** against pharmaceutical and healthcare-related companies over their alleged roles in the nationwide opioid epidemic.

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

The counties are represented by Kevin Sharp of Sanford Heisler Sharp McKnight LLP.

The defendants are represented by C. Scott Jones of Troutman Pepper Locke LLP.

The case is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Editing by Daniel King.

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