# Judge certifies class in suit over tech company's stock repurchase disclosures

2025 CORPGDBRF 3458 • By Douglas Mentes

Westlaw Corporate Governance Daily Briefing • September 23, 2025

(September 23, 2025) - A New York federal judge has certified a class action alleging that National Instruments Corp.'s leadership engaged in insider trading by repurchasing company stock while concealing Emerson Electric Co.'s acquisition offers from shareholders.

*In re National Instruments Securities Litigation*, No. 23-cv-10488, 2025 WL 2682172 (S.D.N.Y. Sept. 19, 2025).

Wayne County Employees' Retirement System showed it is entitled to class certification of its lawsuit against National Instruments and the company's top executives, U.S. District Judge Denise Cote of the Southern District of New York said Sept. 19.

The judge appointed the plaintiff's law firm, Robbins Geller Rudman & Dowd LLP, as class counsel.

## Insider trading suit

NI produced automated test equipment and virtual instrumentation software, according to the judge's opinion.

In January 2022, the company's board, which included CEO Eric Starkloff and Chairman Michael McGrath, approved a program to buy back up to $250 million in common stock from shareholders.

Emerson Electric Co. contacted Starkloff in May 2022 and made an offer to purchase 100% of NI's outstanding common stock for $48 per share, the opinion said. The stock was trading at $34.35 at the time, according to the opinion.

NI's board rejected Emerson's original offer and another that it made in June 2022, the opinion said.

NI repurchased over 2 million shares of outstanding stock between Aug. 12 and Sept. 26, 2022, at an average price of $40.25, according to the opinion.

 

Emerson upped its offer in November 2022 to $53 per share and said it would take its bid directly to NI shareholders if the company refused to engage, the opinion said.

According to the opinion, NI announced in January 2023 that it would evaluate its strategic options, including offers to acquire the company, but did not disclose any of Emerson's purchase offers.

Four days later, Emerson issued a press statement reporting its November 2022 offer to purchase the company and disclosed that NI had concealed Emerson's earlier offers from stockholders while undertaking a large stock repurchase. Emerson completed its acquisition of NI for $60 per share in October 2023.

NI shareholders sued the company the next month, asserting that NI, Starkloff and McGrath violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, which prohibit omitting material facts necessary to make statements not misleading, in connection with the sale of securities.

The plaintiffs contended that the defendants engaged in insider trading by repurchasing NI stock without disclosing Emerson's purchase offers to shareholders.

The District Court appointed Wayne County Employees' Retirement System as lead plaintiff in February 2024. WCERS made a motion in May for class certification and for appointment of its law firm as class counsel.

The defendants opposed certification.

## Common questions predominate

WCERS sought certification under Federal Rule of Civil Procedure 23(b)(3), which requires it to show that common questions of law or fact predominate, among other elements, the judge explained.

When a securities fraud claim is premised on an omission, "all that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making their investment decisions," the judge said.

"[T]he defendants' failure to disclose Emerson's offers to acquire NI while repurchasing NI stock may have constituted a material omission," and whether the omissions were material "is a question that is common to the entire class," she said.

  

Consequently, questions common to the class do predominate, the judge concluded.

Chad Johnson of Robbins Geller Rudman & Dowd LLP represents the plaintiff, and James F. Bennett of Dowd Bennett LLP represents the defendants.

By Douglas Mentes

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Securities

# Fate Therapeutics Gets J&J Partnership Class Action Tossed Again

Sept. 23, 2025, 12:33 PM PDT

Fate Therapeutics Inc. sidestepped a proposed investor class action for a second time, after a federal judge granted the drug developer's bid to toss fraud claims alleging it misrepresented a collaboration agreement with Johnson & Johnson unit Janssen Biotech Inc.

The suit failed to show that investor losses stemmed from any misleading statements around the sustainability of Fate's partnership with Janssen to develop cell-based cancer immunotherapies, Judge Ruth Bermudez Montenegro in the US District Court for the Southern District of California said in an order Monday.

Fate's stock price dropped 61% in January 2023 after it announced that the collaboration with Janssen had been terminated, the investor suit alleged. But the drug developer had already disclosed the risks associated with the Janssen collaboration agreement, according to the order.

Montenegro dismissed an earlier complaint in September 2024, after similarly finding that the proposed class action failed to plead loss causation. The case is "atypical" in that the stock drop was allegedly caused by Fate's announcement that it was ending its collaboration agreement with Janssen, and not by any material omission or corrective disclosure, the judge said at the time.

The latest dismissal gives Fate investors until Oct. 17 to file an amended complaint, but the court may dismiss those claims with prejudice if the suit still fails to plausibly state a claim, the judge wrote in her order.

Robbins Geller Rudman & Dowd LLP represents the plaintiffs and proposed class. Goodwin Procter LLP represents Fate.

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

The case is Hadian v. Fate Therapeutics Inc. , S.D. Cal., No. 3:23-cv-00111, 9/22/25 .

To contact the reporter on this story: Ben Miller in New York at bmiller2@bloombergindustry.com

Securities

# BNY Investors Can't Amend Self-Dealing Class Action (Correct)

Sept. 23, 2025, 10:08 AM PDT; Updated: Sept. 24, 2025, 6:07 AM PDT

Bank of New York Mellon Corp. dodged another bullet in a proposed class action that said the bank failed to disclose conflicts of interest created by investing wealth-management money into BNY funds.

Stephen and Leslie Walden's original class claims were preempted by the Securities Litigation Uniform Standards Act, Judge Christopher B. Brown of the US District Court for the Western District of Pennsylvania said last December. But he also said that the Waldens were welcome to try and amend their complaint to include a subclass of individuals who deposited cash into BNY bank accounts and whose assets were placed in cash sweep accounts.

The Waldens argued that cash sweep customers weren't trading securities, and their claims, therefore, weren't preempted by SLUSA

But they sought to expand their class by improperly presenting the novel cash sweep theory for the first time in their motion for class certification, Brown said

Looking at the motion to amend the complaint, the judge said that the Waldens had knowledge of the facts surrounding the cash sweep theory at least two years earlier, and because they didn't diligently attempt to amend their complaint then, they couldn't do so now

DiCello Levitt; Councill, Gunnemann & Chally LLC, and Bernstein Litowitz Berger & Grossmann LLP represented the Waldens. Reed Smith LLP represented Mellon.

The case is Walden v. Bank of N.Y. Mellon Corp. , 2025 BL 337110, W.D. Pa., No. 2:20-cv-01972-CBB, 9/22/25 .

(Corrects story published Sept. 23 in headline and accompanying image to reflect BNY's updated branding.)

To contact the reporter on this story: Bernie Pazanowski in Washington at bpazanowski@bloombergindustry.com

To contact the editors responsible for this story: Patrick L. Gregory at pgregory@bloombergindustry.com; Blair Chavis at bchavis@bloombergindustry.com

Class Action

Manage Newsletters

# Zendesk Wins Again in Claims Over Sale After Pressure from Jana

Sept. 24, 2025, 6:39 AM PDT

## Summary by Bloomberg AI

AI Generated

- Delaware's supreme court said the standard for reviewing shareholder approval in merger cases involving fiduciary breach claims was correctly applied in a challenge to Zendesk Inc.'s take-private sale.
- The court affirmed the Delaware Chancery Court's dismissal of claims that Zendesk's former senior leaders arranged the sale to save face amid Jana Partners LLC's campaign to oust them.
- The dismissal was made under the standard set by the Delaware Supreme Court in Corwin v. KKR Financial Holdings LLC, with the court finding that the disclosures did not contain material misstatements or omissions.

Delaware's standard for reviewing shareholder approval in merger cases involving fiduciary breach claims was correctly applied in a challenge to Zendesk Inc.'s $10.2 billion take-private sale, the state's supreme court said Wednesday.

The order signed by Chief Justice Collins J. Seitz Jr. affirms the Delaware Chancery Court's dismissal of claims that Zendesk's former senior leaders arranged the sale to save face amid Jana Partners LLC's campaign to oust them.

The two-page order didn't elaborate on the court's reasoning. Justices Abigail M. LeGrow and N. Christopher Griffiths also heard the appeal. A panel of three justices typically hears oral arguments, except in death penalty appeals or other cases where it determines en banc consideration is warranted.

Investors alleged the November 2022 deal at $77.50 per share fell below other offers that Zendesk rejected, which reflected an effort to escape a proxy fight after Jana sought to undermine Zendesk's proposed $3.8 billion deal for SurveyMonkey parent Momentive Global Inc.

Vice Chancellor J. Travis Laster said he dismissed the claims under the standard set by the Delaware Supreme Court in 2015 in *Corwin v. KKR Financial Holdings LLC* . “The defendants have shown that the disclosures did not contain material misstatements or omissions, enabling stockholders to make a fully informed vote on the merger,” he said.

The investors, including the Laborers’ District Council and Contractors’ Pension Fund of Ohio, are represented by Labaton Keller Sucharow LLP, Block & Leviton LLP, Grant & Eisenhofer PA, Andrews & Springer LLC, and Scott+Scott Attorneys at Law LLP. The defendants, including former Zendesk CEO Mikkel Svane, are represented by Ross Aronstam & Moritz LLP and Kirkland & Ellis LLP.

The case is Laborers’ Dist. Council and Contractors’ Pension Fund of Ohio v. Svane , Del., No. 75,2025, order 9/24/25 .

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

To contact the editors responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com; Alex Clearfield at aclearfield@bloombergindustry.com

Securities

# Edwards Lifesciences Set to Face Investor Suit Over Sales Growth

Sept. 23, 2025, 2:41 PM PDT

Edwards Lifesciences Corp. investors can proceed with a proposed class action alleging the medical device maker misrepresented demand for a heart valve product, a federal court ruled.

But the investors failed to adequately allege improper insider stock trades by Edwards CEO Bernard Zovighian, Judge Anne Hwang said in an order docketed Monday in the US District Court for the Central District of California.

The investors alleged Edwards made public statements claiming that market factors pointed to accelerated growth in its aortic valve sales, even though it knew of issues that would slow growth.

The revelation in July 2024 of below-expectation financial results blamed on decelerating growth led to a 31% single-day stock drop, the investors said. The drop was the stock's largest since Oct. 31, 2000, according to data compiled by Bloomberg.

The plaintiffs can't base claims on three statements made before the relevant period defined in the complaint, Hwang said.

But some of the company's forward-looking statements weren't protected by "sufficiently meaningful" cautionary language, Hwang said. The investors sufficiently alleged omissions in some statements of opinion, and arguments about optimistic statements, called puffery, are close enough that they should be reserved for a jury, she said.

The investors adequately alleged "actual knowledge of falsity as to Zovighian," satisfying an intent requirement, she said. "The Court concludes that these allegations also sufficiently support a strong inference of at least deliberate recklessness," the judge said.

Bernstein Litowitz Berger and Grossmann LLP is lead counsel for the investors. Latham and Watkins LLP represents Edwards.

The case is Patel v. Edwards Lifesciences Corp. , C.D. Cal., No. 8:24-cv-02221, docketed 9/22/25 .

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

Class Action

Manage Newsletters

# Bausch Health, Teva Hit With Xifaxan Pay-for-Delay Scheme Claims

Sept. 23, 2025, 1:46 PM PDT


## Summary by Bloomberg AI

AI Generated

- Bausch Health Co. and Teva Pharmaceutical Industries Ltd. were sued in federal court by a health and welfare benefit fund, which claimed the companies conspired to delay the generic version of the Xifaxan drug.
- The plaintiff alleges Bausch paid to delay Teva's entry into the market for a generic form of Xifaxan, causing the fund to pay higher prices for the medication.
- The fund claims Bausch's agreement with Teva was designed to help extend Bausch's monopoly profits over Xifaxan, and that Bausch secured years of additional monopoly sales through the alleged unlawful payment.


Bausch Health Co. and Teva Pharmaceutical Industries Ltd. were sued in federal court by a health and welfare benefit fund, which claimed the companies conspired to delay the generic version of the blockbuster Xifaxan drug.

Plaintiff Rhode Island Laborers Health & Welfare Fund alleges Bausch paid to delay Teva's entry into the market for a generic form of Xifaxan until January 2028, causing the fund to pay higher prices for the medication, according to a proposed class action filed Monday in the US District Court for the District of Rhode Island.

Xifaxan is a branded Bausch drug for irritable bowel syndrome with diarrhea in adults.

"Fair competition would have limited the price of a 14-day supply of Xifaxan to less than $200," the complaint says. "Instead, Bausch today is charging more than $2,000 for a 14-day regimen. And it is only able to do so because it violated the law."

"Pay-for-delay" lawsuits such as this case allege that brand-name companies paid a generic drug company to delay launching the cheaper version of a medication. The Federal Trade Commission has aggressively challenged such deals, saying they cost consumers and taxpayer billions of dollars in higher drug costs every year.

This case was brought by the benefit fund using the Sherman Act and Clayton Act's private rights of action. It also brings claims under various state laws.

Knowing its monopoly was under attack, Bausch filed and listed at least 30 patents as claiming Xifaxan 550 mg or its uses in efforts to delay generic entry, the complaint says. The fund alleges Bausch's agreement with Teva was designed to help extend Bausch's monopoly profits over Xifaxan.

"Bausch secured years of additional monopoly sales, while its unlawful payment was worth more than $300 million to Teva," said the fund, which buys and provides reimbursements for prescriptions bought by its beneficiaries.

Bausch declined to comment. Teva didn't immediately respond to a request for comment.

The fund is represented by firms including Kessler Topaz Meltzer & Check LLP, Radice Law Firm, and Hagens Berman Sobol Shapiro LLP.

The case is R.I. Laborers' Health & Welfare Fund v. Bausch Health Co. , D.R.I., No. 1:25-cv-00479, 9/22/25 .

To contact the reporter on this story: Katie Arcieri in Washington at karcieri@bloombergindustry.com

To contact the editor responsible for this story: Rob Tricchinelli at rtricchinelli@bloombergindustry.com

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News | **Mass Torts**

# Critical Mass With Law.com's Amanda Bronstad: Suits Say Roblox & AI Chatbots Cause Youth's Mental Health Problems, Ken Feinberg Wants to Hear From LA Wildfire Lawyers

September 24, 2025 at 09:20 AM By **Amanda Bronstad**


## 2. Roblox Corp. Ordinary Shares (RBLX)

**Industry:** Electronic gaming and multimedia

**Return:** -55.2%

*(Photographer: Gabby Jones/Bloomberg)*

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

**This week**: An increasing number of lawsuits are targeting **Roblox** and AI-driven chatbots for causing adolescents and kids to develop mental health problems. **Ken Feinberg** will meet with lawyers starting this week to get input on **Southern California Edison**'s draft compensation fund for victims of this year's wildfire in Los Angeles. Find out who represents **Boeing** and **Bell Textron** in a lawsuit brought over the 2023 crash of a U.S. Air Force V-22 "Osprey" tiltrotor near Japan.

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.


**Stuttgart, Germany - 10-09-2024: Smartphone with website of Character Technologies Inc. (Character.ai) on screen in front of business logo. Focus on top-left of phone display. Credit: Timon/Adobe Stock**

## Roblox: A 'Haven' for 'Pedophiles'?

More than 30 lawsuits have been brought against **Roblox,** accusing the online videogame company of facilitating the sexual exploitation of minors, with 14 filed last month, according to

**Law.com Radar**. Plaintiffs' firms **Anapol Weiss** and **Girard Sharp** have moved to coordinate all the cases into multidistrict litigation in **California's Northern District**.

Here's the report from my colleague **Kat Black** on the suits, which call Roblox a "haven" for "pedophiles."

The Roblox litigation comes as an increasing number of lawsuits, including three filed by **Social Media Victims Law Center** and **McKool Smith**, target artificial intelligence chatbot platforms, such as **Character.AI**, for causing mental health problems and suicide in teenagers. This month, the **Senate Judicial Committee** heard from families at a hearing.

**Meanwhile**: A judge ruled on Monday that 10 plaintiffs' experts in cases tying social media sites such as **Instagram** and **TikTok** to addiction and mental health problems in America's youth could testify in upcoming trials. **Los Angeles Superior Court Judge Carolyn Kuhl**, who has set the first bellwether trial for Nov. 19, concluded that the general causation experts focused on features of the social media platforms rather than just the content and, as such, were not barred by **Section 230 of the Communications Decency Act**, which immunizes tech companies from the acts of third parties.

Ken Feinberg of Feinberg Law Offices. Courtesy photo

## Ken Feinberg Hosts Town Halls for Wildfire Lawyers

**Ken Feinberg** plans to meet with lawyers to get input on **Southern California Edison**'s proposed compensation fund for victims of one of this year's Los Angeles wildfires.

Here's my story on Feinberg, who, along with **Camille Biros** at his firm, is serving as a consultant to Edison, which announced the idea of a compensation fund earlier this summer for victims of the Eaton fire. Feinberg's first of four virtual town halls with lawyers is set for Sept. 24.

Last week, Edison gave details of its draft plan, which would exclude insurance firms and government entities. It would compensate individuals and businesses for the damages and loss of their properties, personal property, business interruption, physical injuries or deaths. However, some lawyers I spoke with raised concerns that the fund will fail to fully compensate their clients, adding that Edison has refused to mediate the lawsuits in the **Los Angeles Superior Court**.

**Meanwhile**: **Morrison Foerster** reached a settlement with **Neighborhood Legal Services of Los Angeles** on behalf of tenants who sued **Los Angeles County** and the **Los Angeles Department of Public Health** for failing to inspect rental units for contamination caused by the Eaton fire.

**And**: A tenth jury awarded damages to plaintiffs who sued **PacifiCorp** over property damages caused by a series of 2020 wildfires in Oregon. The Sept. 16 verdict awarded nearly $63 million to 10 plaintiffs, who stipulated to $5.5 million in economic damages, which are doubled under Oregon law. When including a previous jury's award of punitive damages, the verdict could end up costing PacifiCorp more than $91 million.

William O'Connor

## Who Got the Work?

Lawyers from **Cooley, Morgan Lewis** and **Hinshaw & Culbertson** appeared for defendants in a lawsuit brought by family members of eight U.S. service members who died in the 2023 crash of a U.S. Air Force V-22 "Osprey" tiltrotor aircraft during a training mission in the Pacific Ocean near Yakushima Island, Japan. The suit, brought last month by **Gagliano Law Offices** and **Wisner Baum**, alleged that mechanical failures in the aircraft's proprotor gearboxes caused the crash. Cooley partners Koji Fukumura and William O'Connor appeared for **Bell Textron Inc.**; Morgan Lewis partner Harvey Bartle for **The Boeing Co**.; and Hinshaw & Culbertson partners Marissa Edwards and Evan Kwarta for **Universal Stainless & Alloy Products Inc.**

Here's what else is happening:

**Talc Appeal**: **Johnson & Johnson** has petitioned the **U.S. Court of Appeals for the Third Circuit** to rehear a securities class action brought over the safety of its talc products. The rehearing petition, backed by amicus groups such as the **U.S. Chamber** and a consortium of law professors and ex-general counsel at the **U.S. Securities and Exchange Commission**, seeks to overturn a Third Circuit panel's July 30 split decision affirming class certification. Johnson & Johnson is relying on the **U.S. Supreme Court**'s 2021 decision in *Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System*, which set up guardrails for defendants to challenge event-driven shareholder class actions.

**Crash Case**: The first lawsuit brought over the June 12 crash of an **Air India** flight soon after takeoff from Ahmedabad, India, was filed against **Boeing** and **Honeywell**. **The Lanier Law Firm**, along with **Dalton & Associates**, **Ali Law Group** and **Panchal Law Firm**, filed the Sept. 16 suit in **Delaware Superior Court** on behalf of four passengers who were killed in the crash. Flight data showed the pilot accidentally shut off fuel to the Boeing 787-8 Dreamliner's engines, causing a loss of thrust, but the final investigative report is not due for about a year.

**Bail Denied**: A Los Angeles federal judge denied **Tom Girardi**'s request to be released on bond pending the appeal of his conviction on four counts of wire fraud and an 87-month prison sentence. Girardi, 86, has been incarcerated since July 17 and is now at a low-security federal correctional institution in San Pedro, California. On Sept. 22, **U.S. District Judge Josephine Staton** rejected Girardi's bond motion, which alleged, among other things, that his personal property was taken in violation of the Fourth Amendment when prosecutors obtained books and records from his law firm, Girardi Keese.

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

Analysis | **Copyrights**

# How Anthropic Was Able to Settle Potentially Ruinous Copyright Litigation for Such a Modest Sum

"The message from Silicon Valley and Wall Street is unmistakable: at this scale, infringement liability isn't so much an existential threat as a line item," Aaron Moss, a partner at Mitchell Silberberg & Knupp, wrote in his Copyright Lately blog.

September 24, 2025 at 10:53 AM By **Michael Gennaro**

Greg Andrews


**Credit: Minh/Adobe Stock**

Plaintiffs in *Bartz v. Anthropic* once claimed the AI developer trained its chatbot Claude on more than 7 million pirated books, drawn from shadow libraries like Library Genesis and Pirate Library Mirror. Now, only about 500,000 works qualify for compensation under a proposed $1.5 billion settlement, with authors eligible for $3,000 per title.

While legal observers say the deal would rank as the largest publicly reported copyright settlement in history, they say it's downright ordinary by other metrics, such as the payout per title or the total payout as a percentage of Anthropic's market value.

The sharp drop in the estimated number of works covered further fans the perception that the settlement would let Anthropic off easy. Had the the number of works ended up at, say, 5 million, the settlement value would swell to $15 billion.

On Thursday, U.S. District Judge William Alsup of the Northern District of California is set to hold a hearing to consider whether to preliminarily approve the settlement. He denied granting preliminary approval during a Sept. 8 hearing, calling the deal rushed and saying it was being "forced down the threat of authors." He also pressed plaintiffs to address gaps in notice, distribution, and how payments would be allocated for works with multiple claimants.

In response, plaintiffs filed an extensive package of materials describing "an exhaustive notice process along with a streamlined, fair, and careful claims process." The plan, developed with input from class representatives, publishers, author groups, and claims administration experts, is supported by 16 sworn declarations and was crafted to answer 34 detailed questions Alsup posed about fairness and due process.

The parties say they trimmed the number of works eligible for compensation for legitimate reasons. For one, they stipulated that eligible titles must carry an International Standard Book Number (ISBN) or Amazon Standard Identification Number (ASIN), eliminating pirated copies without reliable metadata.

Works also had to be registered with the U.S. Copyright Office within five years of publication and before Anthropic downloaded them, a requirement that excluded many late registrations, foreign editions and self-published titles.

The settlement further narrowed eligibility by imposing specific download time frames. Only books downloaded by Anthropic from LibGen in June 2021 or PiLiMi in July 2022 qualified, leaving out works acquired outside these windows even if they had been otherwise pirated and incorporated into training.

The original 7 million figure also included duplicates and corrupted files, which were removed during the verification and reconciliation process, further reducing the pool of compensable works.

The settlement's structure and the court's class definition were designed to be administrable and to reflect the piracy windows at issue. This approach necessitated strict eligibility criteria, the parties said, while ensuring fairness and manageability, resulted in the exclusion of many works that might have otherwise been eligible.

But Jonathan Bailey, a copyright and plagiarism consultant, argued in Plagiarism Today that the myriad restrictions go too far.

"I have long been a critic of the registration requirement in the United States. As a result of that requirement, millions of authors are being denied the opportunity to participate in a settlement. There's no clearer demonstration of how unnecessary this requirement is and how harmful it is to creators," he wrote.

"Worst of all, the authors who suffer the most are international authors and independent ones. They are the ones least likely to have registered their work in a time!"

Bailey added: "Even if you think $3,000 is adequate, the vast majority of creators won't see it."

Aaron Moss, a partner at Mitchell Silberberg & Knupp, noted on his Copyright Lately blog that Anthropic has a valuation of $183 billion and just raised $13 billion from an all-star lineup of investors, making the $1.5 billion settlement nothing more than "a parking ticket" or a "rounding error."

He added: "The message from Silicon Valley and Wall Street is unmistakable: at this scale, infringement liability isn't so much an existential threat as a line item."

He noted that a 2022 study that analyzed real-world copyright verdicts found that the most common award was $750, the statutory minimum, and the second-most common was $3,000, the amount stipulated in the Anthropic settlement.

Moss said that awards topping $30,000 weren't unusual, more than half fell below $6,000.

By that measure, Anthropic essentially paid the market rate for copyright infringement. "These aren't life-changing numbers for individual authors or crippling figures for a $183 billion company," Moss wrote.

# Authors, publishers defend $1.5B Anthropic deal after San Franisco judge's skepticism

DJ
**dailyjournal.com**/articles/387761-authors-publishers-defend-1-5b-anthropic-deal-after-san-franisco-judge-s-skepticism

**Sep. 24, 2025**

Attorneys for authors and publishers filed new responses this week seeking to satisfy Senior U.S. District Judge William Alsup's concerns about their proposed $1.5 billion settlement with AI company Anthropic.

Senior U.S. District Judge William Alsup

Attorneys for authors and publishers, seeking approval of their $1.5 billion copyright infringement settlement with Anthropic PBC, maker of the AI assistant Claude, filed responses aimed at addressing concerns raised by a San Francisco federal judge.

Senior U.S. District Judge William Alsup expressed doubt about the agreement's terms during a Sept. 8 hearing and issued a lengthy list of questions for plaintiffs' attorneys.

The answers, along with a renewed motion for preliminary approval of the settlement, were filed Monday and Tuesday. Lawyers for the Association of American Publishers, The Authors Guild, and other author groups filed declarations supporting the settlement.

Alsup scheduled another hearing for Thursday afternoon.

The judge, known for pressing attorneys with extensive questions when dissatisfied, posed 31 queries to plaintiffs' counsel seeking clarification of the claims process.

Attorneys for Susman Godfrey LLP and Lieff Cabraser Heimann & Bernstein LLP, representing the class, said they had worked since Sept. 8 with Anthropic's counsel -- Arnold & Porter Kaye Scholer LLP, Morrison & Foerster LLP and Cooley LLP -- to address Alsup's questions.

"The Settlement provides an extraordinary monetary recovery to the class, releases only certain past claims, and requires the permanent destruction of the two allegedly pirated datasets," Susman Godfrey partner Justin A. Nelson and Lieff Cabraser partner Rachel Geman wrote.

"The parties have worked around the clock since the Court's initial preliminary approval hearing on September 8 to address the remaining issues the Court raised at that hearing, including related to notice, the Claim Form and process, and the plan of distribution," the class attorneys added. *Bartz et al. v. Anthropic PBC*, 24-cv-05417 (N.D. Cal., filed Aug. 19, 2024).

Maria A. Pallante, president and CEO of the Association of American Publishers, filed a declaration Monday expressing annoyance at what she said was Alsup's expression of concern during the Sept. 8 hearing that her organization "might be negotiating with the Authors Guild behind the scenes, suggesting an improper role in the case that does not exist.

"Given the framework of the case and the process undertaken to get to this point, I believe that the settlement as presented is beneficial to all class members, and I am hopeful that the settlement will receive wide support from copyright owners," she wrote.

"Beyond the monetary terms, the proposed settlement provides enormous value in sending the message that artificial intelligence companies cannot unlawfully acquire literary works from shadow libraries or other pirate sources to use as the building blocks for their businesses," Pallante added.

The settlement, if approved, would resolve one of the major lawsuits by authors and publishers who accused an AI company of using pirated books to "train" large language models, or LLMs, and could serve as a model for future agreements.

Alsup previously ruled that Anthropic's use of books to train AI qualified as fair use if the works were acquired legally but that the company could not claim fair use for pirated works.

A trial in the case was scheduled for December, but that was postponed after the parties reached the tentative settlement.

#387761

**Craig Anderson**

Daily Journal Staff Writer
craig_anderson@dailyjournal.com

News | **Litigation**

# 'Morally Suspect'?: Plaintiff Moves to Consolidate Child-Exploitation Lawsuits Against Roblox

A plaintiff in a lawsuit targeting Roblox over the alleged sexual exploitation of minors on its online gaming platform has moved to transfer the litigation filed across the country to California federal court.

September 23, 2025 at 09:17 AM By **Kat Black**

## What You Need to Know

- A plaintiff in one of a spate of lawsuits targeting Roblox for allegedly enabling the sexual exploitation of minors on its platform has moved to consolidate the cases in California federal court.
- At least 31 lawsuits have been filed against the online-gaming company so far, said a plaintiff's lawyer.
- The lawsuits allege that Roblox failed to implement safety protocols that prevent sexual predators from contacting, interacting with and sexually abusing children on the platform.


**Credit: Rokas/Adobe Stock**

A plaintiff in a lawsuit accusing Roblox Corp. of facilitating the sexual exploitation of minors on its popular online-gaming platform has moved to transfer litigation filed across the country to California federal court.

On Sept. 18, the plaintiff, identified as "Jane Doe," filed a petition with the Judicial Panel on Multidistrict Litigation to consolidate the cases in the U.S. District Court for the Northern District of California. Doe is represented by the firms Anapol Weiss and Girard Sharp.

The lawsuits allege that Roblox effectively cultivates a "haven" for "pedophiles," per court records, by failing to implement children's safety protocols to prevent sexual predators—often adults posing as children—from contacting, interacting with and sexually abusing minors through the platform, which allows users to develop, customize and play their own online games.

"Defendant Roblox Corporation has sparked an online child sexual exploitation and assault epidemic in this country," the petition asserted.

"Each day, countless children are groomed and sexually exploited or assaulted by child predators using online applications that provide easy access to children. It is Roblox's app, marketed to kids with an open and easy portal for predators, that fuels this crisis."

According to a news release published by Anapol Weiss, which has spearheaded much of the litigation, the firm has filed nine lawsuits against Roblox—and, said shareholder Alexandra Walsh in an interview, is reviewing "hundreds" more.

Walsh added that a total of at least 31 lawsuits have been filed so far against Roblox, and Law.com Radar tracked 14 lawsuits targeting the company in California, Texas and Iowa federal courts in August alone. Social media giant Snap Inc. has also been listed as a co-defendant in some of the cases.

"We ... feel that the courageous families who have filed these cases and are coming forward are helping to shine a light on the danger of Roblox, in particular, and some of the messaging apps that are used along with it," Walsh said.

Anapol Weiss filed its first wrongful-death suit against the company, as well as app-based communication platform Discord Inc., in San Francisco state court on Sept. 12.

The complaint states that Roblox is responsible for the death of Ethan Dallas, a 15-year-old boy who died by suicide "after years of being groomed and abused" on the platform by a 33-year-old man who was later arrested on child-exploitation charges.

Walsh said Roblox has indicated that it will oppose the petition and attempt to prevent consolidation of the cases. She noted that, in the vast majority of lawsuits filed against it by

Anapol Weiss, Roblox has moved to compel arbitration.

"We really think that what they're doing is morally suspect and definitely improper, legally," she said. "A child cannot give informed consent to a forced arbitration provision. They don't even know what arbitration means.

"Here, we're dealing with not just kids but, in many cases, survivors of sexual assault. And Congress passed the Ending Forced Arbitration Act just a couple years ago for the express purpose of saying that, if a survivor is brave enough to come forward and tell his or her story, that they can't be forced into secret arbitration—that they will have their day in court."

Walsh added that, in line with recent Senate Judiciary Committee hearings evaluating the risks of AI chatbot use in children and examining allegations that social media titan Meta "buried" research about child safety, the firm is in the process of coordinating with families to meet with congressional representatives to discuss the dangers of using Roblox.

A spokesperson for Roblox said that the company "strongly disagree[s] with the characterization by the plaintiffs' lawyers and will respond in court."

“We always strive to hold ourselves to the highest safety standards," the spokesperson said.

"We dedicate substantial resources, including advanced technology and 24/7 human moderation, to help detect and prevent inappropriate content and behavior, including attempts to direct users off platform, where safety standards and moderation may be less stringent than ours. We are continually innovating new safety features—over 100 this year alone—that protect our users and empower parents and caregivers with greater control and visibility.

"While no system is perfect, Roblox has implemented rigorous safeguards, including restrictions on sharing personal information, links and user-to-user image sharing, and prohibiting sexual conversations. We also partner with law enforcement and leading child safety organizations worldwide to combat the sexual exploitation of children.”

*Editor's Note: An earlier version of the story stated that Anapol Weiss is coordinating with families to testify before Congress. The story has been corrected to reflect that the firm is coordinating with families to meet with congressional representatives. The story has also been updated to include a comment from Roblox.*

Class Action

Manage Newsletters

# PNC Hit With Class Suit Over Breach of 740,000 Customer Records

Sept. 24, 2025, 8:30 AM PDT

PNC Financial Services Group Inc. failed to protect customers' personal information from a data breach that occurred in early September, according to a class action suit filed in federal court.

Madonna Blunt alleges that PNC failed to implement reasonable security measures to protect personal data from unauthorized access in violation of the Federal Trade Commission Act as well as state law. As a result, a group called market Exchange was able to exfiltrate 740,000 customer records including information like names, Social Security numbers, and contact information.

The complaint was filed Tuesday in the US District Court for the Western District of Pennsylvania. It brings claims of negligence, negligence per se, unjust enrichment, breach of implied contract, and breach of fiduciary duty.

Blunt seeks to represent a class of all persons whose information was compromised in the breach, which she believes to be in the hundreds of thousands. She seeks damages and restitution.

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

Blunt is represented by Kopelowitz Ostrow PA and Mileberg Coleman Bryson Phillips Grossman PLLC.

The case is Blunt v. The PNC Fin. Servs. Grp., Inc. , W.D. Pa., No. 2:25-cv-01469, complaint filed 9/23/25 .

*This story was produced by Bloomberg Law Automation.*

To contact Bloomberg Law Automation: automation@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

Securities

Column

# Big Law Leans Left—and Is Moving Further Left, Research Shows

Sept. 24, 2025, 1:30 AM PDT

In 2024, the US electorate moved to the right. In 2020, Joe Biden won the popular vote by 4.4 percentage points, but in 2024, Donald Trump carried the popular vote by 1.5 percentage points—a 6-point swing.

Did Big Law attorneys also become more conservative between 2020 and 2024? Apparently not. New research suggests that Big Law, already quite liberal, moved even further to the left during this four-year period.

University of Notre Dame law professor Derek Muller has been tracking the political contributions of lawyers and staff at large law firms for more than a decade. He first wrote about the topic in 2013, based on data from the 2012 presidential election, then revisited it in 2021, looking at the period from 2017 to 2020.

This year, Muller updated his research yet again. He began with 150 law firms: the Am Law 100—the nation's 100 largest law firms based on revenue, which do primarily defense-side work—and 50 comparable plaintiffs' firms, taken from the NLJ 500 or Legal 500 rankings. He reviewed contributions by lawyers and staff at these firms to the Biden/Harris presidential campaigns, the Trump campaign, major Democratic and Republican party organizations, and two leading aggregators of campaign contributions, ActBlue (Democratic) and WinRed (Republican). He looked at a two-year period, covering 2023 and 2024.

Muller's research captured around $52 million in contributions to Democratic-affiliated groups, compared with approximately $4 million to Republican-affiliated groups. So 92.45% of the funds went to Democrats—roughly a 12-to-1 ratio, significantly up from the 6-to-1 ratio he observed back in 2020.

The overwhelming majority of firms had fewer than 10% of their employees' contribution money going to Republicans, and most of these firms saw less than 5% falling on the Republican side. Only six firms had at least 25% of their employees' funds going to Republicans, and no Am Law 100 firms had a majority of contribution dollars going to Republicans. Compare this with Muller's 2021 research—when more than 20 firms had at least 25% of employees' contribution money going to Republicans, and three Am Law 100 firms had a majority of contribution dollars going to Republicans.

“This represents a pretty significant shift to the left,” Muller told me in an interview. What might explain it? After offering the caveat that this isn’t yet something he has researched, Muller raised two possibilities.

First, during the 2023–2024 period, Biden and Kamala Harris were incumbents. In a phenomenon some have dubbed “money following power,” incumbents tend to receive more campaign contributions—perhaps from donors hoping to curry favor with the current administration.

Second, the 2023–2024 period came after the riot at the US Capitol on Jan. 6, 2021. In the wake of Jan. 6, dozens of prominent companies announced that they would be making changes to their political contributions. Some declared that they would withhold donations from the 147 members of Congress who voted against certifying the 2020 presidential election results, which disproportionately hurt Republicans. It’s reasonable to think that some Big Law attorneys might have followed the lead of their corporate clients by reducing their political giving to Republicans.

Still, even if the direction of the shift toward Democrats might have been predictable, the magnitude of the move was striking. As Muller told me, “I was surprised to see such a stark shift, in only four years.”

I asked Muller to predict what we might see if he repeats this research in 2029. With the disclaimer that offering predictions can be a risky business, he guessed that we’ll see a shift to the right, based on a few factors.

First, Republicans will be in the incumbent party in 2028, at least when it comes to the White House. So they could enjoy the financial benefits of incumbency, discussed above.

Second, some large law firms that reached settlements with the Trump administration witnessed dips in headcount—and at least anecdotally, we know that some of the departing lawyers were liberals or progressives unhappy over Trump deals. These attorneys took their campaign contributions with them—so to the extent that they donate heavily to Democrats, their dollars will no longer show up in surveys of Big Law political donations.

Muller offered one final reason why he expects Big Law campaign contributions to be less skewed toward the Democratic side in the next iteration of his research.

“It would be hard to get farther to the left.”

*David Lat , a lawyer turned writer, publishes Original Jurisdiction . He founded Above the Law and Underneath Their Robes, and is author of the novel “Supreme Ambitions.”*

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To contact the editors responsible for this story: Jessie Kokrda Kamens at jkamens@bloomberglaw.com; Daniel Xu at dxu@bloombergindustry.com

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Analysis | **Law Firm Marketing and Business Development**

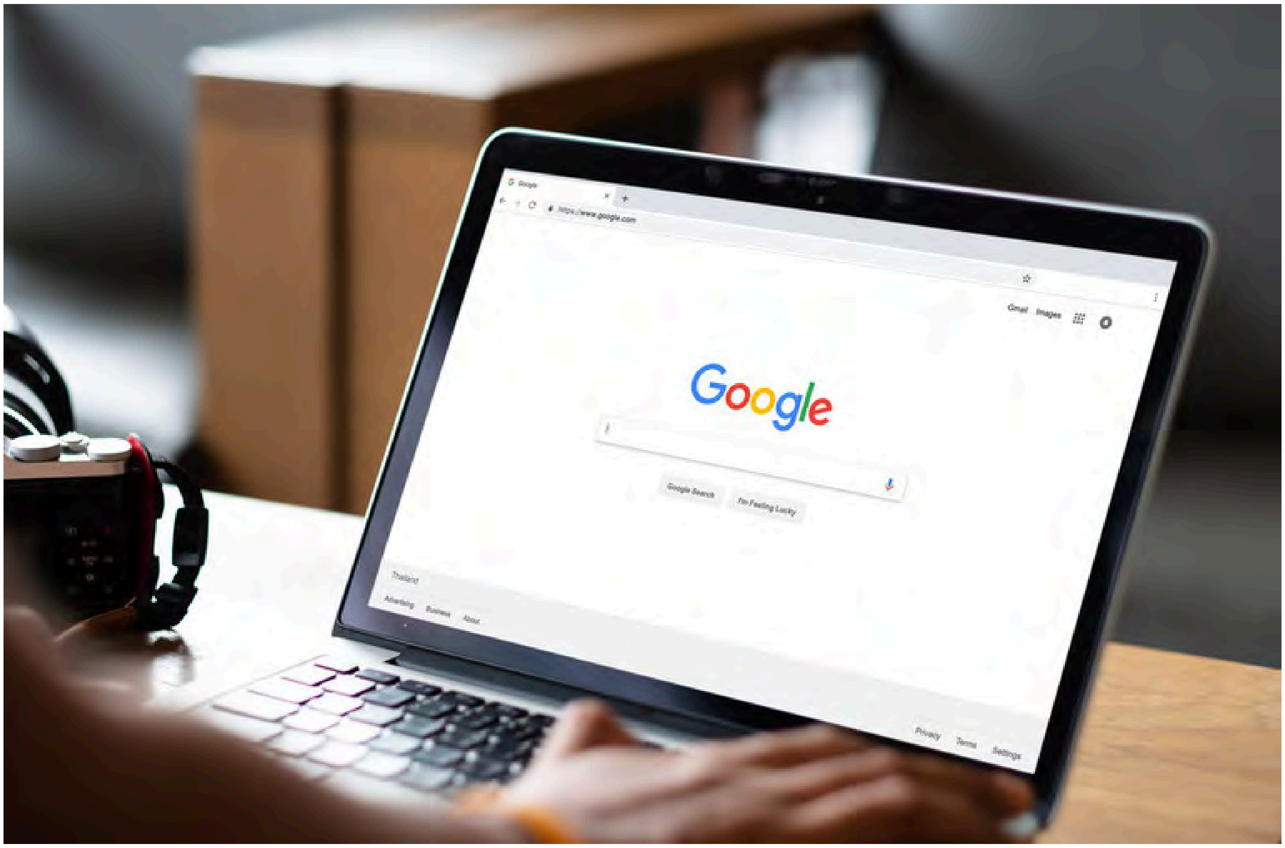
# Can You See Me? Firms Are Redesigning Sites for AI Visibility

“Now you have to keep in mind that filling your site full of keywords or content all around an area needs to be structured in a way where chatbots can see it, read it, associate it with the right firm,” said former LMA president Kevin Iredell.

September 22, 2025 at 02:34 PM By Amanda O'Brien

## What You Need to Know

- As search engines shift their algorithms toward AI searches, law firms are seeing less website traffic.
- Marketing experts noted that firms are concerned with not showing up on internet searches and that the lack of visibility stems from how firm websites are structured.
- As such, firms are spending time redesigning the sites in order to be read by LLMs.




**Credit: Thaspol/Adobe Stock**

Generative AI isn’t just revolutionizing how legal services are provided. It’s also changing how consumers are finding, or not finding, law firms in the first place.

Marketing experts described how modern search engines are turning toward AI to help guide searches, making traditional search engine optimization techniques less helpful in appearing at the top of a search. Furthermore, as AI has become increasingly incorporated into internet searches, firms are concerned they are not showing up in search results, forcing some law firms to restructure their websites to make sure large language models, or LLMs, can process their site content.

The issue with bringing AI into an internet search, explained former Legal Marketing Association president Kevin Iredell, lies in how websites are structured. When a page is dynamically generated, information is pulled from different sources and presented to a viewer or algorithm, said Iredell, who is also chief marketing and business development officer of Hughes Hubbard & Reed.

Take, for example, an attorney bio on a firm webpage: An attorney's education might come from the firm's HR system and is served on one frame on the page, while biographical content might be coming from another system and expertise and clients alerts come from a third source, Iredell explained.

"That's fine for a search engine, fine for a user, but some of the AI agents aren't seeing it all together, depending on how the site is built," Iredell said. "If you go to Google and you search, you may not show up there because the algorithm can't read all of that data the way it was meant to be read."

As a result, Iredell said, some firms are expending some efforts into redesigning their websites in order to make sure those sites still show up in searches.

"You have to keep in mind that filling your site full of keywords or content all around an area needs to be structured in a way where chatbots can see it, read it, associate it with the right firm," Iredell said. "Law firms are looking at their websites to make sure that they are appearing in the results coming up from generative AI-based engines. … That's going to be the focus for most of the big firms for the next 12 to 18 months at least, maybe longer."

Still, AI searches have maintained their roots in traditional search strategies, including SEO. In the words of Rose Moran, chief revenue officer at web design and digital marketing firm ICVM Hawk, AI searches are "based on the foundation of SEO" but also seek out content beyond that targeted under SEO.

"It goes beyond just the site—LLMs look at information across the web about you, how are you listed in directories, how are you mentioned in articles … characterized on your sites and other people's sites," Moran said. "You're not necessarily showing up in links based on keywords or backlinks but on the value you provide and how the information is shared and meaningful to what the AI searched."

Part of that wider base of content, Moran continued, is social media, which serves as another anchor of value provided for the end user" of an AI search. Josh Anisfeld, chief digital strategist at Baretz + Brunelle, also noted that social media is a useful tool for addressing AI in internet searches.

"The focus on social media has really, really jumped up. One of the reasons for that is … because of AI searches, Google AI overviews, Perplexity, ChatGPT, there is less visibility on [firms's] websites now," said Anisfeld. "A lot of firms built their foundation of social media, they've run with it and they have followers…firms are wanting to expand, play more into algorithms, be seen more and drive people over to their websites."

"They're starting to think more deeply on how to do social media from a value perspective rather than just checking that box," Anisfeld explained.

LAW.COM



# How Is This a Product? Uber Liability Test Could Transform Tech Litigation

A jury's award against Tesla of $243 million over its Autopilot system signaled tech companies could face serious penalties when safety concerns arise. That same concept might now affect Uber, as legal experts wonder if the company's app will be classified as product instead of a service.

September 22, 2025 at 04:12 PM By **Laura Lorek**


**Credit: Rafael Henrique/Adobe Stock**

A pivotal question faces Uber: Is it a product or a service?

If courts decide Uber's app is a "defective product" instead of a service, the company could face strict liability for thousands of sexual assault lawsuits.

The ruling would follow legal arguments similar to those used against Tesla in Florida when a jury found Tesla responsible for a $243 million verdict..

Unsealed court records, which a New York Times investigation first reported in August, reveal Uber received more than 400,000 reports of sexual assault or misconduct between 2017 and 2022, which is substantially higher than the rideshare company previously disclosed.

But Uber suggests the number is nuanced.

"While we can't comment on pending litigation, please refer to our blog post here for your story," an Uber spokeswoman wrote in an email. "I do want to clarify the 400K number mentioned in the NYT. Their number includes reports of all types that we received from 2017 to 2022, including flirting, staring/leering, etc., and have been mostly unaudited. In our Safety Report, we publicly disclose the 5 most serious types of sexual assault reports. It wouldn't be accurate to compare them as the same."

## 'Judges Are Starting to Rule in the Other Direction'

In pending lawsuits against Uber, plaintiffs are asserting claims for negligence, misrepresentation, products liability and vicarious liability.

The products liability allegations show how tech companies are viewed by the public is changing, said personal injury attorney Merick Lewin, managing partner of Good Guys Law in Plantation, Florida.

"This used to be more clear-cut that software is intangible, it's just a bunch of code, so that's not a product," Lewin said. "But now we see that as this has become such a bigger part of our lives in our society, judges are starting to rule in the other direction."

Uber explored safety options such as risk-matching technology, women-only rides, and in-car cameras at an early stage, but allegedly did not implement them, according to Lewin.

This alleged decision might allow for negligence claims and products liability arguments that suggest the app does not sufficiently protect riders from predictable risks, he claimed.

Some observers suggest a precedent: In August, a Florida federal jury found Tesla liable for a $243 million verdict.

The jury in that case found Tesla’s autopilot system partially liable for a 2019 fatal crash that killed Naibel Benavides and seriously injured Dillon Angulo, according to a Law.com article. The jury found the Tesla driver 67% at fault. Tesla has stated the verdict is wrong and intends to appeal.

If the courts classify Uber's app as a product, the company could be held responsible for defects, and plaintiffs could only need to show the app failed to prevent foreseeable harm, Lewin said.

## New Challenges for Gig Economy?

The sexual assault cases pending against Uber and Lyft highlight systemic problems in how the companies handle complaints, said Dallas Attorney Charla Aldous of the Aldous Law Firm.

The attorney recently settled a case against Lyft, in which two women had reported inappropriate conduct by a driver 10 days before the alleged armed sexual assault of Aldous' client.

According to Aldous, company policy required three reports of sexual misconduct before a driver would be removed.

Ann Olivarius, a women's rights lawyer in London, said these cases challenge the structure of the gig economy. Companies classify workers as independent contractors to avoid employer obligations while benefiting from their work, she said.

"The core of the gig economy is the idea that the invisible hand of the market is meant to replace labor law and criminal law," Olivarius said.

In May 2018, San Francisco-based Uber ended its policies of forced arbitration and mandatory NDAs for sexual assault and harassment claims, permitting claimants to pursue their cases in open court and settle without restrictions, Olivarius said. Discovery in civil trials has since revealed details of Uber's internal operations, she said.

Allegations of negligence against Uber and Lyft stem from inadequate driver screening, failure to act on warnings, insufficient safety features, prioritizing profit over safety, and lack of transparency and support, Aldous said.

The Uber cases are now consolidated in state and federal multidistrict litigation in the Northern District of California. "As of September 2025, more than 2,500 plaintiffs in over 29 states have joined the MDL, with this number expected to continue rising throughout 2025," according to Miller & Zois law firm in Baltimore, Maryland, which has been tracking them.

The first landmark state case from the multidistrict litigation is currently underway in San Francisco, with legal observers closely watching whether the proceedings will expose more damaging internal documents or prompt Uber to settle before a verdict. The trial represents the first time Uber's internal safety decisions and corporate knowledge will face full public scrutiny in a sexual assault case.

The cases have sparked what legal experts call one of the hottest litigation trends in personal injury law, with attorneys from solo practitioners to major mass tort firms filing similar claims nationwide. "Once you have a couple of lawyers making these arguments and a judge ruling that these apps are products, you have all the other cases come in," Lewin said, describing how successful precedents create momentum for additional filings.

To beef up its safety protocols, Uber introduced new safety measures such as in-app recording, ride tracking, and women-matching in some cities after multiple sexual assault complaints.

## Shift for Tech Firms?

Legal experts say the cases tap into growing public skepticism toward tech companies. "People are tired of being guinea pigs in the experiments of these big tech companies without asking," Lewin said. "No one volunteered for them to test their new policies and procedures and software on the public."

Lewin thinks the precedent set by the court in the San Francisco trial could go far beyond rideshare companies and extend to other gig economy platforms. He says it might apply to other gig economy platforms that connect strangers, such as food delivery services and freelance marketplaces, potentially reshaping how these businesses structure their liability and safety protocols.

"If you profit from somebody's labor, you bear the risk and can't offload it onto the customers, which is what's happening now," Olivarius said.

The San Francisco trial could determine how gig economy companies operate in the future.

"It's a huge moment because now Uber may actually start having to be liable for its drivers," Olivarius said. "And it will change its behavior if it's found liable."

https://www.wsj.com/opinion/tylenol-acetaminophen-autism-donald-trump-rfk-jr-fda-pregnant-women-548bb877

OPINION REVIEW & OUTLOOK Follow

# Trump, Tylenol and the Plaintiffs Bar

The acetaminophen link to autism is based on weak evidence pushed by RFK Jr. and his legal allies.

By The Editorial Board Follow

Sept. 23, 2025 5:48 pm ET


PHOTO: RONALDO SCHEMIDT/AGENCE FRANCE-PRESSE/GETTY IMAGES

We'll admit we didn't see this coming: President Trump advising pregnant women against using one of the most ubiquitous over-the-counter medicines in America. That's what happened Monday when Mr. Trump joined his health advisers in linking acetaminophen, the main ingredient in Tylenol, to autism. What's going on here has less to do with healthcare than with a campaign by the plaintiffs bar.

"Don't take Tylenol," Mr. Trump said standing next to Health and Human Services Secretary Robert F. Kennedy Jr. "Fight like hell not to take it." If a drug company made the unproven claims aired at the White House, the Food and Drug Administration would threaten legal action.

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Start with what we know about the causes of autism, which is being diagnosed far more frequently. Gene mutations play a role, and some 800 genes have been linked to the disorder. Many parents conceive children at older ages, which can increase mutation risk. The prenatal environment and in utero exposures may contribute, but the truth is the causal evidence is weak and ambiguous.

Broader diagnostic criteria and heightened public awareness have also led to more children with less severe symptoms being diagnosed. Rising autism rates are worrisome and deserve more study.

The same goes for the connection between acetaminophen and autism. Some studies have found that neuro-developmental diseases including autism are more common in children of women who use acetaminophen more often during pregnancy. But correlation doesn't prove causation, and even the evidence of the association is mixed.

All of this suggests a need for policy caution, which is why the FDA has for many years declined to change the warning label on Tylenol. One reason is because doctors typically advise that pregnant women take acetaminophen as the safest remedy for fever and pain; anti-inflammatory drugs like ibuprofen can endanger a fetus. Fevers and illnesses during pregnancy increase the risk of congenital defects. They've also been associated with autism.

The FDA acknowledged as much Monday: "There can be risks for untreated fever in pregnancy, both for the mother and fetus" and "there are contrary studies showing no association" between autism and acetaminophen.

So why the sudden alarm, complete with a presidential presser? The Occam's razor answer is the influence of RFK Jr., who is carrying water for his friends in the plaintiffs bar. A who's-who of lawsuit shops are pushing the Tylenol-autism link in federal court. The litigants include the Lanier Law Firm, Beasley Allen, Cooper Law Partners, and Keller Postman. Most have been allies of Mr. Kennedy in other mass torts, such as against the weed-killer Roundup and Merck's HPV vaccine.

Their main lawsuit claim is that Tylenol's marketer, Kenvue Inc., failed to warn users about an autism-acetaminophen link. But a judge overseeing the litigation rejected their claims two years ago, and in damning fashion.

The lawyers are hoping the government will breathe new life into them—conveniently timed for their appeal at the Second Circuit Court of Appeals this fall. Lead attorney

Ashley Keller told Reuters last week that he planned to alert the appellate court "if HHS follows through and does the right thing."

And what do you know, HHS will now promote a "nationwide public service campaign to inform families" about the alleged link. The transparent goal is to drum up more claims to drive a bigger damage award or settlement.

The FDA said it will also initiate "a safety label change for acetaminophen" in response "to prior clinical and laboratory studies that suggest a *potential association* between acetaminophen use during pregnancy and adverse neurodevelopmental outcomes" despite a "lack of clear causal evidence." (Our italics.)

The lawsuits cite small studies that suffer from a variety of methodological problems and don't control for confounding variables like maternal illness and genetics, as federal Judge Denise Cote explained in a 148-page ruling in 2023. She eviscerated the analysis of these studies by the plaintiffs' experts.

"Their analyses have not served to enlighten but to obfuscate the weakness of the evidence on which they purport to rely and the contradictions in the research," she wrote. Their approach "permitted cherry-picking, allowed a results-driven analysis, and obscured the complexities, inconsistencies, and weaknesses in the underlying data."

The best studies have tried to control for maternal genetic risk and fevers during pregnancy by examining a woman's acetaminophen use and autism among different children. Those studies found no link, but the plaintiffs' experts ignored them. Their "testimony does not reflect a reliable application of scientific methods," Judge Cote wrote.

***

Perhaps no one told Mr. Trump about this trial lawyer campaign, but the costs of his intervention aren't benign. He's raising public fear about a useful medicine in a way that could harm maternal and fetal health. Whatever happened to do no harm?

*Appeared in the September 24, 2025, print edition as 'Trump, Tylenol and the Plaintiffs Bar'.*

## Videos

Securities

# Novogratz, Princeton Allies Fuel Crypto's Stock-Market Push (1)

Sept. 24, 2025, 4:49 AM PDT

A tight circle of crypto power players — including Galaxy Digital's **Mike Novogratz** and Pantera Capital's **Dan Morehead** — keeps turning up in deal after deal, shaping one of the boldest bets in crypto's new era: the digital-asset treasury boom.

These public companies — around 85 and counting this year — have raised billions from investors everywhere from the US and the Gulf to Asia. Their gambit: use Wall Street tactics to raise capital, stockpile crypto, repeat. And week after week, many of the same names keep appearing in the industry's boldest trades.

Novogratz. Morehead. And Joe Lubin — Ethereum co-founder, Princeton classmate, and longtime friend. They aren't just crypto veterans. They're central characters in a high-stakes digital-asset push, just as the broader treasury surge starts to buckle — bound by ties that stretch back to their Princeton undergrad days in the 1980s.

Novogratz and Lubin were college roommates then — Novogratz, a wrestler from the East Coast; Lubin, a squash player with a knack for computer science. Morehead, a football player and engineering major, lived nearby. Those bonds have shaped decades of crypto dealmaking.

Dan Morehead, Michael Novogratz, and Joseph Lubin
Photographers: Jeenah Moon, Victor J. Blue, Joe Buglewicz/Bloomberg

While tight-knit networks may be common in traditional finance, crypto was built on promises of decentralization and anonymity. Yet the familiar faces tell a different story, a dynamic that has earned them the tongue-in-cheek "Princeton mafia" moniker from Fortune magazine.

Novogratz leads Galaxy, a digital-asset financial services giant. Morehead is CEO of Pantera Capital, one of the first crypto investment firms. Lubin, a co-founder of Ethereum, runs blockchain software firm Consensys and chairs SharpLink, a public Ether treasury company.

With momentum building and well-known names behind the wheel, the question now is whether DATs can keep the returns coming — or if they're building on unstable ground.

"With a good story and good storytellers, you can bring in more capital to Solana or Ethereum, and do it faster than ever before," said Novogratz in an interview.

Galaxy and Pantera are among the top 10 DAT investors and lenders. This tight orbit extends to dealmakers, with roughly a third of all DAT deals involving the same small group of boutique investment banks. All told, the top 10 DAT investors have been involved in about 14% of treasury deals in the past six months, per PitchBook. Even conservative estimates — excluding the biggest players, such as major moves by **Michael Saylor**'s Strategy Inc. — show DATs have drawn a record $15.4 billion in fresh capital this year.

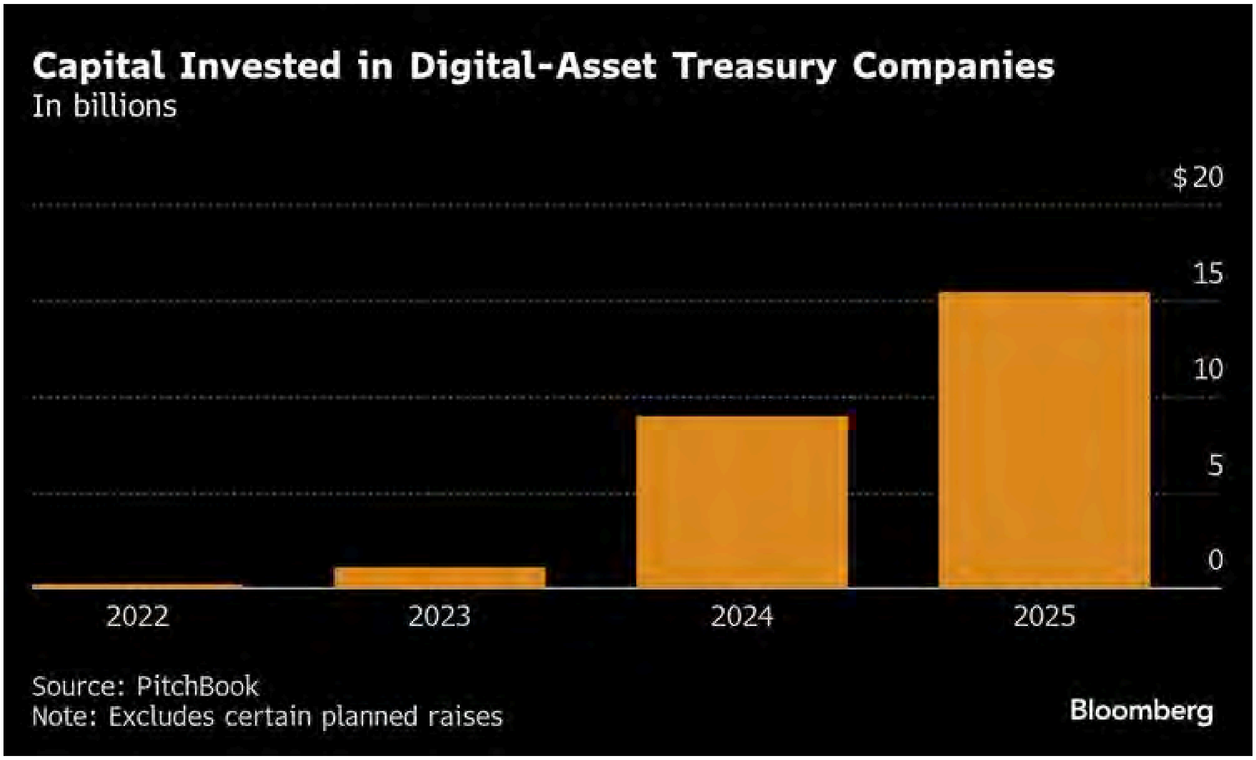
For the Princeton trio, none of this was planned. But something endured from their undergrad days — a blend of risk appetite and conviction that Wall Street could be rewired to run faster, leaner. Each found his own lane in finance or tech. And then their paths began to cross again. For more than a decade they've traded ideas and investments — swapping notes, backing projects, and occasionally buying in together.

More recently, in May, Lubin helped start Ether treasury company, SharpLink Gaming, with Pantera and Galaxy among investors. Lubin said the friends only discussed the DAT after the investors were confirmed. Pantera and Galaxy were both investors in BitMine Immersion, a treasury company holding Ether. "We're friends, we don't see each other every day," Lubin said in a recent interview. "But we have lots to talk about when we do."

Their firms would also compete. In September, Pantera backed a new Solana-focused DAT called Helius. Just days earlier, Galaxy helped launch a rival called Forward Industries. It wasn't coordinated. "By a quirk of coincidence our firms both launched Solana DATs a week apart," Morehead said. Novogratz echoed the sentiment: "We should have just picked up the phone and talked to each other, but we didn't."

Their paths kept crossing, sometimes by accident. The overlaps became surreal, too, when Morehead saw Novogratz moving in next door in Tokyo. Their alma mater now reflects that shared legacy. In 2022, Novogratz, Lubin, Morehead, and Briger helped fund the university's new Center for the Decentralization of Power Through Blockchain Technology.

The dealmaking window opened when the SEC signaled it wouldn't treat most tokens as securities — a shift that cleared the way for a strategy pioneered by Saylor: raise capital, buy crypto, ride stock gains, and repeat. "We did start to get more creative and aggressive in our thinking," Lubin said. "And it made sense."




The approach paid off handsomely, until it didn't. In June, Lubin-backed SharpLink saw its shares plunge 72% in a single day after filing to register an equity sale. BitMine dropped 40% after a similar filing. The selloffs were a reminder of the gut-wrenching volatility inherent in high-wire crypto pursuits.

" SharpLink is in it for the very long term," Lubin said. "Our current strategy is to keep raising money under favorable conditions and keep purchasing Ether and keep holding Ether and continue to look for and deploy ether into favorable yield-adjusted yielding situations."

This week, more than $1.5 billion was liquidated in crypto markets without a clear catalyst.

The players are still expanding their reach. Galaxy often acts as a service provider — staking coins, designing DeFi strategies, and advising teams. Pantera has over $1 billion in DAT exposure and backs more than 15 firms. "DATs really are providing access to the blockchain market to a new kind of investor," Morehead said.

Novogratz isn't calling a top just yet. "I don't think all these DATs will be successful, but if you get critical mass — enhance yield on the underlying token and build the ecosystem — I think they're net positives for crypto. These are public companies that will be around for a long time."

(Adds crypto moves this week in 17th paragraph)

--With assistance from **Dave Liedtka**.

To contact the reporter on this story:
**Olga Kharif** in Portland at okharif@bloomberg.net

Securities

Manage Newsletters

# Gerresheimer Shares Sink as German Watchdog Audits Accounts (1)

Sept. 24, 2025, 3:41 AM PDT

## Summary by Bloomberg AI

AI Generated


- Gerresheimer AG's stock plunged after Germany's markets regulator initiated an audit of its accounts on suspicion of irregularities, including booking revenue for unrealized sales.
- BaFin's probe relates to bill and hold agreements, with Gerresheimer saying revenue from these agreements was a "low double-digit million amount" out of its €2.04 billion in total revenue last fiscal year.
- Gerresheimer said it will fully cooperate with the probe and believes the revenues and profits were "appropriately recognized" in accordance with accounting regulations, while BaFin will disclose its findings to the public regardless of the outcome.


Gerresheimer AG, a German maker of packaging for medicines and cosmetics, saw its stock plunge by the most on record after the country's markets regulator initiated an audit of its accounts on suspicion of irregularities.

BaFin, as the watchdog is known, said in a statement on Wednesday that Gerresheimer may have booked revenue for some client contracts despite the sales not having been realized. The probe of the accounts through Nov. 30 started last week because of "concrete indications," BaFin said.

The stock fell as much as 38% in Frankfurt trading, its biggest-ever intraday drop. The move erased more than €560 million ($659 million), reducing Gerresheimer's market capitalization to €915 million at the day's low. The shares later pared losses, trading down 15% as of midday in Frankfurt.


"Gerresheimer continues to believe that these revenues and profits were appropriately recognized in fiscal year 2024 in accordance with the relevant accounting regulations," the company said in a statement on Wednesday.

BaFin's scrutiny relates to so-called bill and hold agreements, Gerresheimer said. Revenue in the 2024 fiscal year from these were a "low double-digit million amount" out of the company's €2.04 billion ($2.4 billion) in total revenue last fiscal year, it said.

Germany's markets watchdog has taken a tougher tack on policing company accounts after being given more powers in the wake of the Wirecard AG scandal. The 2020 collapse of the payments company highlighted shortcomings at the regulator and undermined confidence in Germany as a place to do business.

BaFin said it will disclose its findings to the public, regardless of whether it identifies errors in Gerresheimer's accounts. Gerresheimer said it takes the probe "very seriously" and will fully cooperate.

**Alexander Neuberger**, an analyst at Bankhaus Metzler, noted that any re-statement of the 2024 fiscal year "would likely have a minor impact on reported revenues and earnings."

Including Wednesday's drop, Gerresheimer's share price has roughly halved this year, amid cuts to its outlook and dividend, as well as takeover speculation. The Dusseldorf-based company has been in the crosshairs for a takeover by buyout firms for years, and has been seen as a prime breakup candidate due to the different nature of its two businesses.

Gerresheimer in July said it had decided to end discussions with private equity investors regarding a potential takeover offer, and last month said it's planning to sell its molded glass business as part of an effort to focus on pharma and biotech customers.

**Wolf Lehmann** started as chief financial officer for the company this month, replacing **Bernd Metzner**.

(Updates throughout)

--With assistance from **James Cone** and **Paul Jarvis**.

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# Stem Cell Co. Beats Investor Suit Over Failed Janssen Collab

By **Emilie Ruscoe**

Law360 (September 23, 2025, 9:08 PM EDT) -- Biopharmaceutical company Fate Therapeutics Inc. has shed a proposed investor class action alleging it concealed manufacturing challenges, precipitating the blowup of a potentially lucrative partnership, after a San Diego federal judge found its investors failed to show how their losses were caused by the company's alleged misstatements.

In a Monday order, U.S. District Judge Ruth Bermudez Montenegro granted Fate Therapeutics' dismissal bid, finding, among other things, that the latest version of the investor claims "do not support the chain of inferences necessary" to link the allegedly concealed facts with the drop in Fate's share price.

Judge Bermudez Montenegro said that while the Fate investors allege that undisclosed issues with the company's stem cell technology led to the end of its partnership with Janssen Pharmaceuticals, the actual announcement "points to a more plausible explanation for Janssen's decision to terminate the Collaboration Agreement — Fate rejected its proposed terms."

The judge further described the suit's loss causation theory deficiencies as "significant," but gave the investors a shot at revising their claims, warning them that she might dismiss rewritten claims with prejudice if the suit still failed to state a claim for which relief could be granted.

The investors launched their suit in January 2023, alleging that Fate's share prices fell about 61% that same month when it disclosed that its collaboration with Janssen had ended.

Prior to the 2023 decline, the investors said, trading prices for Fate Therapeutics had been artificially inflated because investors had been kept in the dark about the company's struggles to replicate its "induced pluripotent stem cells," which direct stem cells to become "programmed" cellular therapies to treat disease.

These stem cells were a key part of Fate's deal with Janssen, the investors said, noting that they had been told in April 2020 when the collaboration was announced that it could be "transformative" to Fate and its business prospects if successful.

Judge Bermudez Montenegro dismissed an earlier version of the investors' suit in September 2024, telling the investors her dismissal order that in their amended suit, she expected them to "connect [the company's] allegedly material omissions to the termination of the collaboration agreement."

But on Tuesday, the judge found that the new version of the claims, "do not connect the causal deficiencies the Court identified in its prior [motion to dismiss] order."

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

Lead plaintiffs the Heating, Piping, and Refrigeration Pension Fund and the United Food and Commercial Workers' Union Local 919 and Contributing Employers' Food Pension Fund are represented by Robert R. Henssler Jr., Trig R. Smith, Ting H. Liu and Sarah A. Fallon of Robbins Geller Rudman & Dowd LLP.

Fate Therapeutics is represented by Sylvia R. Ewald, Caroline H. Bullerjahn and Justin D. Ward of Goodwin Procter LLP.

The case is Hadian v. Fate Therapeutics Inc et al., case number 3:23-cv-00111, in the U.S. District Court for the Southern District of California.

--Editing by Emily Kokoll.

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# Cybersecurity Co.'s Projections Were Inflated, Investor Says

By **Sydney Price**

Law360 (September 23, 2025, 8:47 PM EDT) -- Cybersecurity company Fortinet was hit with a proposed securities class action accusing it of overstating an expected revenue boost related to customer software upgrades, saying its executives knew the projections were unrealistic.

Fortinet sells digital firewalls bundled with software and support services, according to **a complaint** filed by the Oklahoma Firefighters Pension and Retirement System on Monday. Purchasers of Fortinet's firewalls are typically urged to upgrade when the products near the end of their 10-year life cycles, which periodically happens for many customers at the same time, the complaint said.

The suit said that for several months in 2024 and 2025, Fortinet overstated the effect the so-called refresh cycle would have on its financial performance in 2025 and into 2026. The company allegedly touted the size of the refresh, saying it would be larger than its 2023 refresh cycle and would likely generate between $400 million to $450 million in product revenue in 2025 and 2026.

"Defendants knew that the refresh cycle would never be as lucrative as they represented, nor could it, because it consisted of old products that were a 'small percentage' of the company's business," the suit said.

The litigation's proposed class period begins Nov. 8, 2024, the day Fortinet announced its third quarter financial results. During an earnings call, the company told investors it expected a record number of its firewalls, known as FortiGates, to reach the end of their support life cycle and it expected those customers to upgrade their products sometime in 2025, according to the suit.

For the next several months, Fortinet continued to indicate that its refresh cycle would continue, the suit said. For example, on Feb. 6, 2025, Fortinet told investors it was beginning to see the benefits of customers refreshing their products and the benefits would increase as the refresh cycle continued.

"While telling investors that the refresh would gain momentum over the course of two years, Fortinet misrepresented and concealed that it had aggressively pushed through roughly half of the refresh in a period of months, by the end of [second quarter] 2025," the suit said.

The truth emerged, the suit said, on Aug. 6 when Fortinet told investors the total number of units eligible for upgrade was limited and the current refresh was not as successful as the 2023 refresh, which consisted of products that were only four or five years old.

The company also admitted that even if all the products available for the refresh upgraded within one or two years, the upgrades would still not provide much business impact, the suit said.

Following the announcement, shares of Fortinet declined by $21.28 each, or about 22%, to close at $75.30 apiece on Aug. 7, according to the suit.

In addition to Fortinet, several of its executives, including co-founders and brothers Ken and Michael Xie, are individual defendants in the suit. They are accused of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

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

The Oklahoma Firefighters Pension and Retirement System is represented by Lesley E. Weaver, Javier Bleichmar, Nancy A. Kulesa and Ross Shikowitz of Bleichmar Fonti & Auld LLP.

Counsel information for Fortinet and the individual defendants was not immediately available Tuesday.

The case is Oklahoma Firefighters Pension and Retirement System v. Fortinet Inc. et al., case number 5:25-cv-08037, in the U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.

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# Jenzabar Investor Faces Multiple Suit Challenges In Del.

By **Jeff Montgomery**

Law360 (September 23, 2025, 8:49 PM EDT) -- A Delaware vice chancellor pressed an attorney for a trust stockholder of educational software company Jenzabar Inc. Tuesday to explain how another state's court empowered it with standing to bring derivative claims against a Delaware chartered company.

The issue came up more than once during a hearing on multiple motions to dismiss the Gregory M. Raiff 2000 Trust's 13-count, first amended complaint, which accused Jenzabar founder Robert A. Maginn, his ex-spouse and others of lining up "free distributions" to insiders amounting to tens of millions of dollars in cash and hundreds of millions in stock.

Attorneys for those named argued that the trust lost standing to pursue derivative claims on the company's behalf based on the trust's termination in 2002, only to have a Massachusetts court purportedly restore its standing last year, months after it sued in Delaware.

"How can another court confer standing for purposes of this court?" Vice Chancellor Lori W. Will asked David H. Holloway of Shlansky Law Group LLP, counsel to the Raiff trust. "In Delaware, a foreign court can determine standing for purposes of [Delaware] court jurisdiction? I'm wondering how that works as a procedural matter."

Holloway said the fact that the trust had "no awareness of harm because of concealment" was a factor in its revived action.

"Even after the Raiff trust became aware, it took some time for it to even understand what was going on," Holloway said.

Maginn and ex-wife Chai Maginn co-founded Jenzabar in 1998. They married, but Chai Maginn sought divorce in 2019. Litigation followed, in part over Jenzabar stock held by the former couple. A divorce court special master ruled in 2023 that jointly owned shares should be evenly split, along with provisions for distribution of shares indirectly owned through other entities.

Delaware's Supreme Court in January rejected an appeal by Maginn from a $33 million Court of Chancery award favoring shareholders who claimed they were kept in the dark when millions in stock purchase warrants were allowed to expire without notice.

The 13-count, 105-page complaint under argument Tuesday included multiple claims for breach of fiduciary duty, including one for indemnification grants, another seeking a declaration that the trust owns at least 4.82% of Jenzabar's stock, unjust enrichment and corporate waste, among others.

Counsel for the trust faced tag-team dismissal arguments in addition to the vice chancellor's questioning.

Albert H. Manwaring IV of Morris James LLP, counsel to Jenzabar, told the vice chancellor the trust argued wrongful impairment of its voting power and equity dilution, assertions that have failed in previous Court of Chancery decisions.

"They're relying on cases that concern contract rights, voting rights of stockholders independent of harm to the company," Manwaring said. "They're not making claims under the charter — their claims are, in essence, fiduciary duty claims in a dilutive transaction."

Separately, Manwaring argued that the trust's action "flies in the face" of a requirement for continuous ownership of shares in stockholder actions.

Michael D. Blanchard of Morgan Lewis & Bockius LLP, counsel to Robert A. Maginn Jr., told the vice chancellor that the suit has to allege an unfair price and an unfair process. But "the gist of the complaint is, the process must have been unfair because it was done in secret. Just saying it was unfair is not enough."

Thad J. Bracegirdle of Bayard PA, counsel to a former director and the personal representative of a deceased board member, said in a brief that the suit effectively accused those named of having "rubber stamped," or ignored actions that "purportedly enriched or benefitted" founders Maginn, his ex-wife, Jenzabar officers, fellow directors and the company's largest stockholders, at Jenzabar's expense over a period of more than ten years.

But the brief filed by Bayard said the claims are hopelessly vague and unsupported by facts and barred by the statute of limitations and its cousin, laches.

The current first amended complaint argued that directors were co-opted through their economic interests, "including dependence on annual director fees that were and are the major part of their income, as well as promises of future rewards," social connections and prestige.

"Why does that create a conspiracy claim from an alleged breach of fiduciary duty?" Will asked Holloway. "There are a whole lot of counts. I don't understand why you even added that one."

Holloway said his clients "believe that the conduct to do this is a form of fraud — allegedly a fraud claim."

Vice Chancellor Will said she would take the arguments under advisement.

The Gregory M. Raiff 2000 Trust is represented by David H. Holloway, Colin R. Hagan and David J. Shlansky of Shlansky Law Group LLP.

Jenzabar Inc. is represented by Albert H. Manwaring, Kirsten A. Zeberkiewicz and Aubrey J. Morin of Morris James LLP.

Robert A. Maginn Jr. is represented by Jody C. Barillare, Michael D. Blanchard and Andrew M. Buttaro of Morgan Lewis & Bockius LLP.

D. Quinn Mills and Olga Perera San Miguel are represented by Thad J. Bracegirdle and Sarah T. Andrade of Bayard PA.

Ling Chai and the Chai-Maginn Family Limited Partnership is represented by Neil R. Lapinski, Phillip A. Giordano and Madeline R. Silverman of Gordon Fournaris & Mammarella PA.

Jamison Barr is represented by Andrew D. Cordo, Lauren DeBona Zlotnick and Ashleigh L. Herrin of Wilson Sonsini Goodrich & Rosati PC.

The case is The Gregory M. Raiff 2000 Trust v. Jenzabar Inc. et al., case number 2024-0368, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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# Axsome Settles Investors' Drug Approval Suit For $7.8M

By **Sydney Price**

Law360 (September 23, 2025, 8:23 PM EDT) -- Biopharmaceutical company Axsome Therapeutics Inc. and its shareholders have asked a New York federal court to approve a $7.75 million settlement to resolve investors' claims that Axsome hid issues related to gaining regulatory approval for its migraine drug.

The settlement fund represents about 8% of the maximum recoverable damages, which is above the median recovery in similarly sized securities class action settlements, according to the motion for preliminary approval filed Friday.

Lead counsel for the class will request about 30% of the settlement amount, or approximately $2.3 million, in fees and $30,000 to reimburse the lead plaintiffs for their time, the motion states.

According to the parties, they reached a settlement in August, following a full-day mediation session and subsequent discussions. Risks and uncertainties regarding class certification influenced the plaintiffs' decision to settle, they said.

The latest version of the complaint, filed after a **dismissal** nearly two years ago for the lead plaintiff's failure to plead damages, asserted that Axsome and its leadership concealed in filings with the U.S. Securities and Exchange Commission and during conference calls that it struggled to develop AXS-07, a drug to treat migraines.

According to the suit, the U.S. Food and Drug Administration accepted an application for Axsome's depression drug AXS-05 in April 2021 for review, but when Axsome shareholders were told that "deficiencies" with the drug had been identified, shares fell 46.5%, from a closing price of $51.16 per share on Aug. 8, 2021, to $27.37 at the close of next day.

The company presented positive test results in the following months but failed to disclose that it had run into supply and manufacturing issues, which caused significant delays, the suit alleged.

The truth was revealed in April 2022 when Axsome publicly disclosed its manufacturing problems and announced that the FDA had voiced concerns with the drug application related to AXS-07's chemistry, manufacturing and controls. The company's stock price dropped approximately 22% that day, according to the order.

"Defendants should have been on heightened notice for [chemistry, manufacturing and controls] issues with AXS-07 because the company had just experienced a similar issue with its other main product, AXS-05 for the treatment of [major depressive disorder]," the suit said.

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

The investors are represented by Michael Grunfeld, Jeremy A. Lieberman, J. Alexander Hood II and Brandon M. Cordovi of Pomerantz LLP, Erica L. Stone of The Rosen Law Firm, Brian Schall of The Schall Law Firm and Laurence D. Paskowitz of Paskowitz Law Firm PC.

Axsome is represented by Michael L. Kichline, Emily E. Renshaw, Matthew C. McDonough and Michael A. Hacker of Morgan Lewis & Bockius LLP.

The case is In re Axsome Therapeutics Inc. Securities Litigation, case number 1:22-cv-03925, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.

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# Laser Co. Mynaric Investors Get Final OK For $300K Deal

By **Emilie Ruscoe**

Law360 (September 23, 2025, 9:49 PM EDT) -- Investors in laser communication company Mynaric AG have gotten a final nod for their $300,000 deal ending proposed class action claims the company covered up production delays despite allegedly knowing its revenue growth would later take a hit as a result.

In a Monday order in Brooklyn federal court, U.S. District Judge Kiyo A. Matsumoto granted final approval to investor Alex Torstorff's settlement with Mynaric and two of its executives, finding that the agreement was "fair, reasonable and adequate."

Among other things, Judge Matsumoto noted Monday that the settlement sum "represents approximately 37.6% of the maximum estimated recovery, which is above the typical recovery rate that courts have deemed reasonable in other cases."

The judge also noted Monday that the parties began brokering the deal after Torstorff determined that restructuring proceedings the company entered in February "would almost certainly wipe out both Myranic's liability in this action and any equity interests in the [American depositary shares] at issue in this action," and a damages expert told the plaintiff that maximum recoverable damages for the case would be about $797,000.

Also on Monday, Judge Matsumoto granted Torstorff's request for an attorney fee of $100,000, or a third of the settlement fund, and reimbursement of nearly $14,600 to cover certain litigation expenses, finding those requests reasonable after reviewing the legal team's billing entries and costs. Torstorff also received a compensatory award of $5,000 Monday, which the court described as "relatively modest."

In Torstorff's suit, from October 2024, the investor claimed that the company had hidden from its shareholders that was seeing shortages of key components needed to make its CONDOR Mk3 optical communication terminal product, which the company had described in 2024 as a driver of its revenue outlook for its 2024 fiscal year.

Torstorff said that the production delays caused by those shortages, along with lower-than-expected CONDOR Mk3 production yields, led to production delays that hurt the company's bottom line in the short term, ultimately causing the company to incur an operating loss and see an earnings miss for its 2024 fiscal year.

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

Investor Alex Torstorff is represented by Joshua B. Silverman, Diego Martinez-Krippner and Jeremy A. Lieberman of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

The case is Torstorff v. Mynaric AG et al., case number 1:24-cv-07602, in the U.S. District Court for the Eastern District of New York.

--Editing by Emily Kokoll.

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# Rare Del. Oversight Ruling Sends Governance Wake-Up Call

By **Mike Bongiorno, Tim Perla and Jessica Lewis** (September 23, 2025, 2:17 PM EDT)

In a rare direct action brought by a bankruptcy plan administrator, the Delaware Court of Chancery on Sept. 2 **allowed** Caremark oversight claims to proceed against two former directors and two former officers of a company previously known as Teligent Inc., a generic pharmaceutical manufactuer that filed for Chapter 11 in 2021.

Mike Bongiorno

While the decision in Giuliano v. Grenfell-Gardner emphasizes the high bar for Caremark liability, the ruling offers a clear reminder: To avoid litigation, boards and executives must actively monitor and document their oversight efforts when addressing their companies' mission-critical risks.

The case illustrates how sustained inattention to regulatory compliance — particularly in highly regulated industries like pharmaceuticals — can trigger judicial scrutiny, even under Delaware's demanding standards. It also underscores the importance of board-level engagement, committee structure, and meeting documentation in demonstrating good faith oversight and avoiding personal liability.

Tim Perla

Plaintiffs may also point to the decision as support for targeted discovery in future oversight cases, arguing that access to internal records can reveal systemic failures that are not apparent from public filings alone.

**Caremark Overview**

Caremark claims, or the doctrine of Caremark oversight liability, stem from the 1996 decision In re: Caremark International Inc. Derivative Litigation, where the Delaware Court of Chancery held that directors have a duty to attempt in good faith to ensure that a corporation has adequate internal reporting and compliance systems.

Jessica Lewis

Courts have repeatedly emphasized the Caremark ruling's proclamation that such claims are "possibly the most difficult theory in corporation law" for plaintiffs to advance. Indeed, most such claims are dismissed at the pleading stage as Delaware courts seek to preserve directors' ability to exercise business judgment without the constant threat of hindsight-based litigation.

Delaware courts have long emphasized that directors are not insurers of corporate success, and that liability should not attach merely because a company experiences regulatory or financial failure. To that end, the doctrine has been construed narrowly.

Over time, Delaware courts have clarified that liability under Caremark arises in two discrete circumstances: (1) when directors utterly fail to implement any reporting or monitoring system, or (2) when they consciously ignore red flags indicating that such systems are not functioning.

Courts analyze Caremark claims under this two-pronged framework, asking first whether the board made any good faith effort to establish a system for monitoring mission-critical risks, and second, whether the board consciously disregarded warning signs that such a system was failing. Only sustained and systemic failures — rather than isolated missteps — are sufficient to support a finding of bad faith and potential liability.

**Unique Posture and Facts in Teligent**

The Teligent litigation provides a rare example of a Caremark claim surviving the pleading stage — an outcome that underscores both the extremity of the alleged oversight failures and the unusual procedural posture of the case.

Most Caremark claims are brought as derivative actions, where shareholders sue on behalf of the corporation. These suits face significant procedural hurdles, including the demand requirement and limited access to internal corporate records. Plaintiffs in derivative cases typically rely on public filings or narrowly tailored books-and-records requests, which can constrain their ability to plead detailed facts.

In contrast, the plaintiff in the Teligent case, Alfred T. Giuliano, was a bankruptcy plan administrator acting directly on behalf of the company — VJGJ Inc., formerly Teligent. This direct action posture is highly uncommon in Caremark litigation and gave the plaintiff broad access to internal communications and board materials. That access enabled a more granular and fact-specific pleading than is usually possible in derivative suits, and played a critical role in the court's decision to allow the oversight claims to proceed.

The complaint alleged that Teligent, a manufacturer of topical creams and injectable drugs regulated by the U.S. Food and Drug Administration, received multiple warning letters and Form 483s from the FDA between 2016 and 2021, citing serious violations such as inadequate testing and adulterated products.

According to the complaint, despite the centrality of FDA compliance to Teligent's business, the board had no committee charged with overseeing it. The plaintiff alleged that the audit committee focused exclusively on U.S. Securities and Exchange Commission reporting. The plaintiff further alleged that meeting minutes from 30 committee sessions between 2017 and 2021 contained no mention of FDA compliance.

Per the complaint, the communications revealed that management was aware of certain FDA inspections but chose not to present them formally to the board until well after the inspections and, in one instance, expressly decided not to include reference to inspections in a board presentation slide deck.

**Court of Chancery Decision in Teligent**

The court found it "reasonably conceivable" that the directors failed to implement any system for monitoring FDA compliance — a textbook prong-one Caremark theory. As the opinion explained, quoting Caremark, "only a sustained or systematic failure of the Board to exercise oversight — such as an utter failure to attempt to assure a reasonable information and reporting system exists — will establish the lack of good faith that is a necessary condition to liability."

The court emphasized that Caremark's "linguistically extreme" standard is deliberately high, but boards must still make a good faith effort to try to put in place a reasonable board-level system of monitoring and reporting.

The court dismissed the Caremark prong-two theory, rejecting the argument that FDA letters were clear and direct signals of misconduct. It noted that the letters were not "sensational and tragic news events" and were presented to the board at management's discretion.

The court noted that "management has wide latitude to fashion what it reports to the Board," and when "the alleged red flag is delivered and framed by management, it can be hard to understand what the Board was told." Overall, the court concluded that the complaint gave the impression that the board was uninformed of the seriousness of the issues — not that it consciously disregarded them.

The court dismissed claims against the former chief financial officer.

The court reiterated that officer oversight liability under Caremark depends on whether the alleged failure falls within the officer's sphere of responsibility. The court reasoned that a CFO is responsible for financial oversight and must implement systems in that area, but not for legal or regulatory reporting systems. Therefore, the CFO's alleged failure to inform the board about the cost of a consulting firm did not implicate his financial oversight duties.

**Key Takeaways for Boards and Company Executives**

***Companies must identify and monitor their mission-critical risks.***

Boards and executives should regularly evaluate what risks are central to their business and ensure that a reporting system is in place.

***Training matters.***

In evaluating the company's information systems and determining that they were deficient, the court considered that the company lacked training protocols designed to inform employees of central compliance risks, which was an observation relayed by the FDA in its letters and in employee email communications.

***Officer oversight is necessary.***

Officers have a duty to establish reporting systems and to escalate red flags, but liability under a Caremark theory depends on whether the alleged failure falls within the officer's sphere of responsibility. As the court explained, a CFO is responsible for financial oversight and must make a good faith effort to implement systems in that area.

***Focus on corporate formalities.***

The court noted that while internal emails suggested FDA issues may have been relayed to the board, the meeting minutes did not reflect those discussions. Even if such emails were considered, they allegedly did not show that the board had adopted a system for overseeing compliance.

Further, the court noted that no board committees were expressly tasked with FDA compliance oversight. This highlights the importance of allocating monitoring responsibilities expressly and documenting key risk-related discussions at the board level.

**What To Expect in Securities Litigation Post-Teligent**

Time will tell whether Teligent signals a continued expansion of Caremark liability, or merely a special situation limited to its facts. That said, as boards and executives navigate increasingly complex regulatory environments, this decision serves as a pointed reminder that oversight must be intentional, documented and tailored to mission-critical risks.

While the procedural posture here — a direct action brought by a bankruptcy plan administrator with access to internal records — is highly unusual, the underlying facts are not. Rather, the oversight structures and decisions alleged are not far removed from what sometimes surfaces in securities litigation. That's precisely why this ruling may have outsize ripple effects.

For example, companies should expect private plaintiffs to cite this case to argue that meaningful Caremark claims can be substantiated — if only they're granted some discovery. We can also expect to see more books-and-records demands framed as investigations into oversight failures, with the Teligent ruling used to justify the requests.

In defending against early motions to dismiss, plaintiffs may seize on the court's discussion of the interplay between Caremark's two prongs to shape their arguments: If board materials contain frequent references to a critical risk, they could argue those were red flags that were ignored; if such references are absent, they may claim the board failed to implement any monitoring system at all.

In either scenario, companies and their counsel should consider that this decision may embolden plaintiffs to push harder for discovery and test the boundaries of oversight liability in Delaware.

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*Mike Bongiorno is a partner and co-chair of the securities litigation and enforcement practice at WilmerHale.*

*Tim Perla is a partner and vice chair of the securities and financial services department at the firm.*

*Jessica Lewis is a partner at the firm.*

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# Tether Objects To 'Unsound' Class Bid In Crypto Rigging Suit

By **Katryna Perera**

Law360 (September 23, 2025, 8:54 PM EDT) -- Tether, Bitfinex and others have urged a New York federal judge not to grant certification to a class of investors accusing the digital asset companies of rigging the cryptocurrency market, arguing that the investors' expert presented an "unsound and unreliable" methodology for determining common impact, among other things.

A redacted **opposition** to the investors' January motion for class certification was released on Monday. The investors seek certification of a class that includes all individuals and entities who purchased or acquired cryptocurrencies, such as bitcoin or Ethereum, or crypto futures within the U.S. or its territories between March 31, 2017, and Feb. 25, 2019, according to court filings.

The investors also seek certification of a subclass of all individuals and entities that purchased or acquired crypto futures within the U.S. between March 31, 2017, and Feb. 25, 2019.

The suit relies on the findings in a university professor's unpublished report, first made public in June 2018 and updated in October 2019, that concluded Tether and Bitfinex had coordinated to manipulate the price of bitcoin.

Investors allege that the Bitfinex exchange and Tether, the issuer of a stablecoin of the same name, engaged in a "part-fraud, part-pump-and-dump, and part-money laundering" scheme that eventually cost cryptocurrency investors hundreds of billions of dollars.

Stablecoins are advertised as cryptocurrencies backed one-to-one by fiat currency, which should keep the value of the tokens more stable than other cryptocurrencies that experience wild swings in price.

In their memo, Tether, Bitfinex, and others argued that class certification should be denied because the investors do not provide a "reliable and sound methodology for demonstrating" that the companies' alleged conduct artificially inflated the price of the crypto assets.

According to the companies' memo, the methodology proposed by the investors' expert, David DeRamus, is "unsound and unreliable," and the steps of his methodology do not form a "coherent theory."

"DeRamus ... relies on econometric models that violate basic principles of statistical analysis; he proposes an 'overcharge' methodology that relies on broad definitions of 'debased' or 'unbacked' USDT that have no economic meaning and produce facially absurd results; and he speculates, without any methodology at all, as to how the public knowledge of the composition of Tether's reserves might have affected the prices of USDT and bitcoin," the memo states.

"DeRamus's testimony is so utterly unreliable that it should be entirely excluded," the memo added.

The companies further argue that individual issues predominate related to injury, extraterritoriality and reliance, and therefore, several "mini-trials" would be needed for the potentially millions of class members to establish liability.

"Whether a putative class member was injured by any supposed inflation depends on her full set of transactions — both purchases and sales — and, as plaintiffs themselves illustrate, records of those crypto transactions are not readily available, whether from crypto-exchanges or blockchains, particularly given that the relevant trades took place more than six years ago," the memo states.

"There is also no common proof sufficient to establish whether each putative class member's claims are sufficiently domestic, given the inherently global nature of the crypto-economy," the memo further states.

Additionally, Tether and Bitfinex argue that the investors' proposed models of economic loss "create fundamental and irreconcilable intra-class conflicts," since class members traded directly with one another and therefore have conflicting interests about which regression model should be used.

A redacted version of the investors' **reply memo** in support of their bid for certification was also released on Monday. In it, the investors argue that the supposed intra-class conflicts and lack of predominance Tether and Bitfinex point to are based on a "legal error."

"Plaintiffs can prove injury by showing price inflation, a common question, with common evidence. Defendants' speculative concerns about the evidence of individual losses go only to damages allocation," the investors' memo states.

The suit alleges Bitfinex and Tether lied about the stablecoin actually being backed by U.S. dollars, as revealed by expert analysis and Tether's banking history, in order to use the tokens to make carefully timed purchases of other cryptocurrencies whenever their prices threatened to fall below certain thresholds, "thereby fraudulently giving the appearance of price 'floors' in the market."

The scheme created a price bubble for cryptocurrencies that ultimately wiped out $450 billion in value for "ordinary investors" when it burst in early 2018, according to the investors, who said in the initial lawsuit that the defendants would be liable for more than $1.4 trillion if damages are tripled as required by the Racketeer Influenced and Corrupt Organizations Act and antitrust statutes.

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

The investors are represented by Philippe Selendy, Andrew R. Dunlap, Oscar Shine and Laura M. King of Selendy Gay PLLC and Todd M. Schneider and Matthew S. Weiler of Schneider Wallace Cottrell Kim LLP.

The defendants are represented by Maeve L. O'Connor, Elliot Greenfield and Natascha Born of Debevoise & Plimpton LLP, Michael Jason Lee of the Law Offices of Michael Jason Lee APLC, and Sunjina K. Ahuja and Christopher J. Beal of Dillon Miller Ahuja & Boss LLP.

The case is In re Tether and Bitfinex Crypto Asset Litigation, case number 1:19-cv-09236, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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

# How Hyperlinks Are Changing E-Discovery Responsibilities

By **Bree Murphy** (September 23, 2025, 2:15 PM EDT)

Bree Murphy

Hubbard v. Crow, currently unfolding in the U.S. District Court for the Western District of Texas, contains a number of salacious claims.[1]

The charges include years of sex scandals, human and labor trafficking, police misconduct, racketeering, criminal medical malpractice — the list goes on. Yet beneath the headline-grabbing details lies another story — one that could reshape how courts and litigators handle evidence in the digital age.

The case has surfaced a question that cuts to the heart of modern discovery: When evidence may exist as a hyperlink stored in the cloud, who or what maintains possession, custody and control[2] of that data?[3]

As courts grapple with cloud platforms, shared drives and streaming access, Hubbard v. Crow provides crucial lessons for attorneys and custodians. It illustrates how easily critical evidence can slip through the cracks, and why litigation and compliance teams must rethink their responsibilities before the next dispute arises.

**The Discovery Dispute: When Access to a Hyperlink Becomes Control**

At the center of the hyperlink controversy is a podcast where the plaintiff was interviewed after the litigation had been filed. One of the plaintiffs, Julia Hubbard, was given a link that allowed her to stream the audio. After she and her counsel listened to it, they flagged a four-minute segment that they wanted removed, and the podcaster complied by editing it out.

Months later, when discovery obligations kicked in, the unedited version was no longer available through the link, and the plaintiff had never downloaded a copy.

The defendants moved for sanctions, arguing that the plaintiffs had failed to preserve evidence and had effectively destroyed the original file. The plaintiffs countered that they never truly possessed the recording. After all, they argued, the file was hosted by the podcaster, never saved locally and therefore not within their custody.

In her June order, U.S. Magistrate Judge Elizabeth Chestney didn't necessarily agree with the plaintiff's argument. She requested proof that the electronically stored information was or was not within the plaintiff's "possession, custody, or control" and "[could] not be restored or replaced."

While the judge did not determine if there would be an issuance of sanctions, she pointed out that by requesting edits, the plaintiff had "arguably exercised control over the" recording. The fact that the plaintiff never downloaded it did not absolve her of responsibility. The court left the door open to revisit sanctions if the original file could not be recovered from the third-party podcaster.

The lesson is straightforward but sobering: Parties can't hide behind hyperlinks. If you can access, edit or influence the file behind the link, you may be deemed responsible for preserving it.

**Redefining Responsibilities: What Litigation and Compliance Teams Must Do Now**

The discovery dispute in Hubbard v. Crow is part of a larger story. Case law involving hyperlinks has gone from considering proportionality on a case-by-case basis,[4] to hyperlinked or modern attachments solely involving email communications,[5] to data contained on cloud services.[6]

Hubbard v. Crow is further evidence of this trend of courts steadily broadening their view of what constitutes as possession, custody or control in a world where evidence may be more often shared than stored.

Simultaneously, organizations are facing rising spoliation risks as evidence continues to shift into cloud-based and hybrid environments. And with link-based content becoming standard in business communications, litigators can expect to see more disputes like this in the years ahead. As courts consider expanding the definition of control, then litigation and compliance professionals must expand their strategies too.

First, litigation holds must evolve. Notices should explicitly reference hyperlinked content, making clear that files accessible via links are just as important as attached or locally stored documents. Custodians need to understand that simply forwarding a link does not equal preservation.

Additionally, organizations should consider broadening the scope of data being preserved in-place, as many times hyperlinked data can reside in numerous locations — e.g., files shared in a Microsoft Teams group could be saved to a SharePoint site. Custodians may no longer have the knowledge of where the entirety of their data is stored.

Second, education is critical. Employees and clients must be taught that links are fragile. A shared Google Doc or Dropbox file can be edited, deleted or locked at any moment. If the content is potentially relevant, it must be downloaded and archived. Without proactive action, the risk of spoliation is real.

Third, early case conferences under Rule 26(f) of the Federal Rules of Civil Procedure should address hyperlinks head-on. How will parties identify, preserve and produce link-based content? Will both sides agree to treat hyperlinks as within the scope of discovery? Establishing these parameters early reduces the chance of conflict later.

Fourth, documentation is essential. Courts expect good faith efforts to retrieve originals, even from third parties. Legal teams must record their attempts, including when requests were made, how responses were handled and what steps were taken to preserve integrity. This paper trail could be the difference between avoiding or incurring sanctions.

Fifth, organizations must understand that the responsibility to preserve hyperlinked data does not reside solely with employees. They are responsible for collaborating with information technology personnel to understand how and where hyperlinked data is stored, along with how that data can be retrieved and preserved.

Finally, mindsets must shift. The guiding principle should be: If you can access it, you may control it. Waiting for courts to mandate preservation is too risky. Custodians must treat every link as if it carries the same weight as a document in their possession, because in the eyes of the law, it increasingly does.[7]

**Implications for the Future of E-Discovery Protocols**

Looking forward, courts are more likely to demand that the underlying content related to a relevant hyperlink be preserved and produced. Preservation orders may soon spell out obligations to download and archive linked files at the time they are first accessed or received.

Chain of custody, too, will likely expand in scope. It won't be enough to say a file was preserved; parties will need to show when it was downloaded, which version was archived and how its integrity was verified. Hyperlinked evidence introduces new vulnerabilities, and courts will expect litigators to document their preservation steps with precision.

Perhaps most significantly, client education and cross-functional collaboration will become cornerstones of defensible practice. IT, compliance and legal teams will have to work together to ensure that link-based evidence doesn't slip through unnoticed. A single unarchived hyperlink could undermine months of preparation, erode credibility with the court and create unnecessary risk.

**Conclusion**

For organizations, the message is simple: Rethink preservation now. Preserve linked files via downloading or otherwise. Update electronically stored information protocols. Train custodians. Document your efforts. Be diligent with the chain of custody. And shift from a mindset of reaction to one of proactivity.

In a cloud-first world, evidence is fluid, ephemeral and increasingly beyond the four walls of the enterprise. Those who adapt early will not only avoid spoliation risks, but also build a stronger foundation for defensible discovery in the years ahead.

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*Bree Murphy is a senior solutions engineer at Exterro.*

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[1] Hubbard v. Crow , No. SA-23-CV-00580-FB, 2025 WL 1699836 (W.D. Tex. June 5, 2025).

[2] Central Nat Bank in Chicago v. Baime , 112 Ill App 3d 664, 669 (1982) ("A party may be required to produce documents which are in the possession of third parties, where he has custody or control of those documents.")

[3] Federal Rules of Civil Procedure Rule 34(a)(1) specifies that parties may only request the production of documents or electronically stored information (ESI) "in the responding party's possession, custody or control."

[4] In re Meta Pixel Healthcare Litig. case , the statement from the Court is that "the parties should consider reasonable requests for production of hyperlinked documents on a case-by-case basis."

[5] In re Acetaminophen – ASD-ADHD Prods. Liab. Litig - Modern Attachments are addressed as related to emails only: Email attachments and embedded files or "modern attachments" (i.e., hyperlinks pointing to files stored in the cloud or a shared repository such as SharePoint and other types of collaborative data sources, instead of being directly attached to a message as has been historically common with email communications) shall be collected and produced with the parent message.

[6] IQVIA, Inc. v. Veeva Sys., Inc. , No. 2:17-CV-00177-CCC-MF (D.N.J. July 11, 2019) - Special Master on the case, Dennis M. Cavanaugh, says: "The relevancy of the Google Drive documents is not in dispute. IQVIA has requested and Veeva has agreed to produce all Google Drive documents that any custodian authored, edited, reviewed, accessed, or otherwise had access to. The Special Master will instruct Veeva to produce this information within thirty days of the date of this Order… there is no dispute that the linked documents are relevant to the claims and or defenses of this action. While, as Veeva argues, the linked documents are not stored with emails in the ordinary course of business, IQVIA has no way to link the documents, only Veeva is capable of linking the emails to the Google Drive documents. The Special Master is not convinced that relinking these 2,200 documents is unduly burdensome in light of the issues at stake in this matter, the resources of the parties, and the amount in controversy."

[7] P.S. As a podcaster myself, it also makes me very aware of preserving data potentially under a legal hold, and more practically, documenting a retention policy of how long original recordings are stored within the podcast's control. Then, if the question should arise as to why an original, un-edited recording does not exist, the podcast has a policy to fall back on.

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