

Judge taps Ford investor to lead suit over warranty costs

2025 SECDBRF 3491 • By Nicole Banas

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(September 24, 2025) - A federal judge has chosen Ford Motor Co. shareholder represented by [Robbins Geller Rudman & Dowd LLP](#) to lead a consolidated proposed class action alleging the automaker concealed rising warranty costs that hammered its profitability.

Guzman v. Ford Motor Co. et al., No. 24-cv-12080, 2025 WL 2694126 (E.D. Mich. Sept. 22, 2025).

Clark D. Crippen has the largest financial interest of the lead plaintiff candidates, with more than \$904,000 in alleged losses, U.S. District Judge Linda V. Parker of the Eastern District of Michigan said in a Sept. 22 opinion.

The judge granted Crippen's motion for lead plaintiff appointment and denied two competing motions filed by Ronald Ferrante and the Teamsters Local 710 Pension Fund.

The lead plaintiff decision came nearly 10 months after the District Court consolidated two lawsuits filed by Ford shareholders Albert Guzman and Robert Sklodowski.

Suits: Warranty costs skyrocket

The suits relate to Ford's disclosure July 24, 2024, that higher warranty costs and an increase in warranty reserves had negatively impacted profitability in the second quarter of that year.

The Associated Press and other media outlets reported that Ford's \$2.3 billion in warranty and recall costs were \$800 million more than they were in the first quarter, according to Guzman's complaint.

The company's share price fell more than 18% to close at \$11.16 on July 25, 2024, the suit says.

Guzman and Sklodowski's complaints say Ford and two executives misled investors about the sufficiency of warranty reserves and concealed deficiencies in the quality of vehicle models.

Guzman proposed a class period that runs from April 27, 2022, to July 24, 2024, but Sklodowski's suit identified a longer period starting Oct. 28, 2021, and ending on the same date.

Four shareholders filed motions for lead plaintiff in Guzman's suit, each asserting that they had the largest financial stake in the litigation.

The Private Securities Litigation Reform Act of 1995, [15 U.S.C.A. § 78u-4\(a\)\(3\)\(B\)\(iii\)\(I\)](#), requires courts to appoint as lead plaintiff the movant with the largest financial interest in the suit, provided that they satisfy typicality and adequacy requirements for class representatives.

Crippen asserted more than \$904,000 in losses during the longer proposed class period, while Ferrante and Teamsters alleged losses of about \$621,000 and \$260,000 during the shorter period proposed by Guzman.

A fourth movant, Michael M. Press, filed a notice of non-opposition to the competing motions in October 2024.

Longer class period prevails

Judge Parker appointed Crippen, who acquired no shares during the class period proposed by Guzman, after ruling that Sklodowski's longer proposed class period should determine which investor had the most at stake.

The allegations supporting the longer period, which coincided with financial metrics issued by Ford in late 2021, were not "obviously frivolous," the judge said.

She rejected as "speculative" Ferrante's argument that Crippen could be vulnerable to unique defenses based on the timing of his securities transactions.

The judge also declined to appoint Teamsters, which had argued that as an institutional investor, it was the most adequate lead plaintiff. Any judicial preference for institutional investors assumes that they will have the largest financial interest, but that is not the case in this suit, she said.

Judge Parker also approved Crippen's choice of Robbins Geller as lead counsel, saying the firm is "competent, experienced and qualified" to represent class members' interests.

Adam M. Apton of [Levi & Korsinsky LLP](#) represents Ferrante, and Francis P. McConville of [Labaton Keller Sucharow LLP](#) represents Teamsters.

Andrew B. Clubok and Susan Engel of [Latham & Watkins LLP](#) represent Ford.

By Nicole Banas

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Securities

Insight

Why One Securities Appeal Deserves the Supreme Court's Attention

Sept. 25, 2025, 1:30 AM PDT

Earlier this year, the US Supreme Court disappointed observers and defendants in securities cases by dismissing—without issuing opinions—two securities law appeals it had previously agreed to hear. While it's not uncommon for the court to take up two securities cases in a single term, it's unusual to dismiss both without a substantive ruling.

Now, the court has a chance to correct course. Two new certiorari petitions are pending, each addressing important issues under the federal securities laws: *BDO USA, LLP v. N.E. Carpenters Guar. Annuity & Pension Funds* and *Pirani v. Slack Technologies, LLC*. were distributed for the court's Sept. 29 conference and decisions on whether the court will hear these matters are imminent.

Materiality and Why Context Matters. Of the two pending petitions, the *BDO* petition presents a stronger case for review and would be most beneficial to defendants who wish to argue that no liability exists for statements or silence on matters that are unimportant to investors—i.e., the “materiality” requirement for securities law claims.

BDO contests the US Court of Appeals for the Second Circuit's conclusion that an auditor's representation of adherence to professional standards during a public company audit is per se material, given its perceived importance to investor confidence.

No type of statement should be automatically material under Supreme Court precedent. The court has previously emphasized, and may accept this petition to reiterate, that the materiality inquiry is necessarily contextual, requiring consideration of the “total mix of information” available to shareholders. BDO contends that its compliance statement didn't alter the total mix of information available to investors since the subsequent completion of additional audit requirements didn't change its audit opinion.

Any erosion of the materiality standard would be an unwelcome development for defendants and should be foreclosed by prior Supreme Court precedent. Therefore, the court may grant the appeal to reaffirm established standards and deter shareholders from advancing similar claims against defendants who assert compliance with applicable rules and regulations.

The Second Circuit's heavy caseload of securities matters also weighs in favor of granting the petition in that a nonconforming view could lead to forum shopping.

Additionally, the Supreme Court's directive that plaintiffs file a response brief, notwithstanding their initial decision to forgo doing so, underscores its potential interest in granting review.

Tracing Trouble: A Second Slack Cert Petition. In 2023, the Supreme Court ruled in the first *Slack* appeal that "tracing" was required for claims brought under Section 11 of the Securities Act of 1933 based on an allegedly false and misleading registration statement. Tracing requires a shareholder to show that shares bought are registered under the specific registration statement being challenged. The Supreme Court refused to create an exemption from the tracing requirement for Section 11 claims when companies go public using a "direct listing," which allows for the simultaneous trading of registered and unregistered shares.

The Supreme Court, however, remanded to the US Court of Appeals for the Ninth Circuit the question of whether the text of Section 12(a)(2) of the 1933 Act similarly required tracing. The Ninth Circuit had previously assumed the result reached under Section 11 would necessarily apply to Section 12(a)(2). The Ninth Circuit on remand performed the requested textual analysis and concluded that tracing was required for Section 12(a)(2) and that the plaintiff in *Slack* had previously conceded he couldn't trace his shares. Accordingly, it dismissed the plaintiff's claims with prejudice.

The court is unlikely to accept a second appeal from the *Slack* case, and this is no loss for defendants. While the court was interested in these issues initially, they're unlikely to accept a second appeal where the Ninth Circuit executed on the court's instructions and reached a conclusion on tracing with which the court may agree.

Having already affirmed the tracing requirement for Section 11, the Supreme Court is unlikely to grant certiorari in a second appeal to reverse course on Section 12. Moreover, the plaintiff can't point to any present disagreement among the circuits on the issue of tracing, further weakening the case for continued review.

Although the fate of these petitions is still unknown, the court is most likely to accept just one, with *BDO's* facts positioning it as the stronger contender.

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Securities

Deep Dive

SEC Shift on Arbitration Sparks Strategies to Counter Its Effect

Sept. 25, 2025, 2:00 AM PDT

An SEC policy change enabling companies going public to shunt securities fraud claims into binding arbitration before they're ever filed in court is already prompting ideas about how to turn the tables to the advantage of investors and their attorneys.

Securities and Exchange Chairman Paul Atkins announced the shift last week, touting it as "eliminating compliance requirements that yield no meaningful investor protections." Critics promptly decried the potential loss of class actions, calling them a common, cost-effective, and public way to recoup losses and fight fraud.

If there's a change in access to court, it wouldn't do away with securities litigation entirely, said investors' class action lawyer Thomas Laughlin of Scott & Scott Attorneys at Law. Instead, "it would lead to a very messy, very expensive, and very fractured landscape."

"Large institutional investors who really feel they were victims of securities fraud are probably well positioned to pursue those claims and get redress, even under a mandatory arbitration regime," said Matthew Close of O'Melveny & Myers LLP.

Initially, plaintiffs' lawyers will at least be fighting the legality of the provisions, Close said. "In the short term, it's going to lead to more work" for securities lawyers, "not less."

And even if courts accept the provisions, those attorneys and their clients may be able to use the new arrangement to their advantage, some attorneys say. One such stratagem could fairly be called flood-the-zone: using mass arbitration to try to create leverage through the volume of arbitrations.

Filing by the Thousands

"There have been plaintiffs' attorneys who have adopted these really interesting business models to file tens, if not hundreds or thousands, of arbitration cases all at once," said University of Southern California law professor Adam Zimmerman.

That doesn't happen more broadly because "the dollar value of an individual claim might not be worth it in certain circumstances," he said. "But in securities cases, you can imagine that if we started going down the path of arbitration, we might see plaintiffs adopting a mass arbitration approach where they just file thousands of arbitration cases against the same defendant."

Some arbitration provisions allocate some costs to the defendant, according to Zimmerman and Laughlin.

"The arbitration provisions and rules of the applicable arbitration forum specify who pays for costs and fees," said Laughlin. Some arbitration provisions provide that the companies pay for the costs because it would otherwise be held unconscionable and therefore unenforceable, he said.

"Now, if a plaintiffs' attorney files a lot of lawsuits on behalf of smaller investors, simply the cost of paying for all of those individual arbitrations might be so expensive that that itself might be a form of leverage that could be used to extract settlements," Zimmerman said.

Reputations at Risk

The issue isn't limited to newly public companies, said Ann Lipton, a professor at University of Colorado Law School. "Nothing stopped any company once they were already publicly traded from adopting that kind of provision, but the SEC wasn't going to let you go public with it."

Companies that were already public didn't bother adopting the provisions because the fraud claims they faced under the Securities Exchange Act were more difficult for plaintiffs to prove than IPO-related claims, so the clauses "weren't worth the fight" over their legality, she said.

Now there are "two trends to watch," said Jonathan Polkes of White & Case LLP. One is whether companies just going public will take the SEC up on this new ability, he said. "And if it does become a thing, what about all the legacy companies? Are they going to start trying to take advantage of it? Those are two huge issues that we're now going to see unfold."

"I'm going to be looking carefully to see if any companies are really adopting the arbitration provision," Laughlin said, noting companies will have their reputations to consider.

"You want to be seen as an honest and good company that investors want to buy in," he said. "That lowers your capital costs, and also potentially leads people to buy your stock."

'The Holy Grail'

Still, being able to prevent investors from proceeding as a class could prove a powerful incentive for startups looking to go public.

That's "the Holy Grail," Lipton said. The individualized aspect "will kill most claims entirely," she said.

For plaintiffs' attorneys who "depend on a rich portfolio of different kinds of class actions, sometimes to cross-subsidize other kinds of class actions, then the loss of the ability to bring securities class actions could be very meaningful," USC's Zimmerman said.

The long-term result will depend on legal challenges, said O'Melveny's Close. If the provisions withstand those challenges and proliferate, "it will shift the relative balance between companies, executives, and directors and officers insurers on the one hand, and the retail investor and plaintiffs' class action bar on the other."

But the consequences for plaintiffs' attorneys depend, in part, on how many companies decide to write in those provisions. Reputational considerations, the need to attract investors, legal hurdles, and potential costs may all weigh against such clauses.

— With assistance from Ben Miller and Mike Leonard.

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Failure to Launch



dandodiary.com/2025/09/articles/securities-litigation/failure-to-launch

Kevin LaCroix

September 24, 2025

Sarah Abrams

Securities class action lawsuits in the U.S. are very much subject to the rules of civil procedure regarding class action certification. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, examines a recent district court class action certification decision and considers its implication. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

The recent voluntary [dismissal](#) of a putative [securities class action lawsuit](#) (SCA) provides an interesting case study on the likely fatality of a securities case once a court [denies class certification](#) for failing to meet certain [Federal Rule 23](#) (Rule 23) prerequisites. As discussed in more detail below, the Eastern District of Michigan District Court (district court or court) found, in part, that there was no [predominance](#) and the proposed class representatives did not adequately represent the class.

To appreciate the impact of certain defenses to certifying a class of plaintiff shareholders on D&O underwriting exposure, the following reviews the underlying SCA allegations, denial of class certification, and the broader potential implications for D&O insurers in receipt of similarly tendered claims.

The SCA

In February 2024, shareholders Carl Shupe and the Construction Laborers Pension Trust (plaintiff shareholders) for Southern California filed their Second Amended Securities Class Action Complaint alleging violations of the Securities Exchange Act of 1934 (§10(b), Rule 10b-5, §20(a), and §20A for insider trading against an executive and major shareholder.

The plaintiff shareholders alleged that, during the first quarter of 2021, executives communicated to investors that there was “strong consumer demand” and that rising interest rates would not harm business. However, the company was allegedly experiencing shrinking profit margins. The complaint further asserted that executives had real-time access to internal dashboards and forecasts reflecting this business decline.

A negative financial forecast was reportedly presented at a company board meeting on March 23, 2021, which included a nearly \$1 billion revenue drop, an 80% decrease in refinancing volume, and reduced profitability. Within days of that board meeting, an executive allegedly sold 20.2 million shares through a controlled entity for approximately \$500 million. Plaintiff shareholders claimed this was the executive's first public sale of stock and that it was executed outside normal trading windows.

In May 2021, the company issued public guidance, including indications that a key profitability metric had fallen to its lowest level in two years. Plaintiff shareholders alleged that once this negative outlook was disclosed, the company's stock price fell by 17% and financial analysts issued downgrades citing reduced earnings power and margin compression. The SCA sought certification of one class of investors who purchased shares between February 25 and May 5, 2021, and a subclass of investors who traded contemporaneously with the alleged March 29 insider sale.

The above SCA allegations may sound familiar to D&O underwriters, particularly claims of company misstatements and securities sales by executives. However, the basis for the district court's order denying class certification may serve as a reminder for D&O carriers that Rule 23 procedural hurdles can quickly end litigation without pressure to settle.

Denial of Class Certification

In September 2024, the district court issued [its opinion and order](#) denying the plaintiffs' renewed motion for class certification. While the court found that the SCA plaintiffs sufficiently demonstrated certain Rule 23 prerequisites, the defendant company and executives successfully rebutted the "fraud-on-the-market" presumption by demonstrating that alleged misstatements by executives had no measurable impact on the stock price.

The district court further found that the putative class action was not the "superior method" of adjudication, that the proposed subclass definition was not ascertainable, and that the named plaintiffs were not adequate representatives due to conflicts and misunderstandings about the claims. The following discusses the reasoning behind each of these prongs.

Predominance and "fraud-on-the-market"

The SCA plaintiff shareholders relied on the [Basic v. Levinson](#) presumption of reliance, which allows courts to assume that investors in an efficient market rely on public statements incorporated into the company share price. While the district court agreed that the stock traded in an efficient market, it held that the defendant company and executives successfully rebutted the "fraud-on-the-market" presumption under [Halliburton Co. v. Erica P. John Fund, Inc.](#) (*Halliburton II*), 573 U.S. 258, 279–83 (2014).

As [D&O Diary Readers](#) may recall, to prevent class certification in a securities class action, a defendant can rebut the “fraud-on-the-market” presumption by proving that the alleged misrepresentation did not impact a company’s share price. Thus, the defendant has the burden of providing evidence that severs the causal link between the alleged misstatement and the company share price. If the presumption of reliance is rebutted at the class certification stage, the class will likely fail since individual reliance issues predominate.

According to the district court, the SCA’s alleged misstatements by executives regarding “strong consumer demand” had no measurable price impact, which broke the link between the misstatements and market price. Without that causal link, reliance could not be established on a class-wide basis, [defeating predominance](#).

Superiority

Because the presumption of reliance was rebutted, each investor would need to litigate reliance individually. The court emphasized that under Rule 23, common issues must predominate, and [a class action must be the “superior” means of adjudication](#). The absence of class-wide reliance on alleged misstatements meant individual shareholder issues would overwhelm common ones, so the superiority requirement was not satisfied.

Ascertainability of Subclass

In addition, the SCA plaintiffs sought certification of a subclass of investors who traded contemporaneously with the alleged insider sale. The court found that, consistent with [precedent](#), the shareholder plaintiffs had not articulated a reliable method to determine who qualified as “contemporaneous,” and the subclass definition was too vague to be administratively feasible.

Once class certification was denied, only individual claims against the company and executives were left.

Conclusion

In May 2025, the SCA shareholder plaintiffs’ counsel [published a nationwide notice](#) inviting new investors to step forward as lead plaintiff for the narrowed insider trading claims. There was no response, not even from the original shareholder plaintiff. In July 2025, both parties to the SCA filed a joint stipulation of [voluntary dismissal](#).

For D&O insurers, denial of the class certification and voluntary dismissal of a securities suit may favorably impact defense expenses and settlement demands. Lessons learned from this recent district court denial under Rule 23 may include requesting defense counsel to engage an expert to provide a pricechange analysis to demonstrate that the company’s share price did not change when the alleged misstatement was made.

In addition, it may be important to consider that the fraud-on-the-market presumption only applies to an efficient market, one where new information quickly changes stock prices. If a defendant company can provide evidence that the market was not efficient, the presumption of reliance falls.

Even where executives' statements and insider trading look damning, a defendant public company can defeat an SCA class certification by showing a lack of price impact or inadequate representation. As a result, D&O insurers may want to initially consider whether predominance exists as soon as an SCA is filed.

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Securities

CleanSpark Investor Class Certified in Suit Over Crypto Pivot

Sept. 24, 2025, 3:20 PM PDT

A CleanSpark Inc. investor is entitled to represent a class of shareholders on claims that the company misrepresented its shift from clean energy to Bitcoin mining, a federal judge ruled Wednesday.

CleanSpark's arguments that individualized issues outweigh common ones are unpersuasive, Judge Loretta A. Preska said for the US District Court for the Southern District of New York. Its argument that it disproved the investors' allegations of reliance, for example, "requires an inquiry into the merits that is inappropriate for the class certification stage," Preska said.

The company's challenges to lead plaintiff Darshan Hasthantra's standing and his typicality as an investor also fail, she said.

But Preska modified the class definition to exclude investors who didn't sustain a compensable loss. The Supreme Court recently dismissed, as improvidently granted, an Americans with Disabilities Act case raising that issue over a dissent by Justice Brett Kavanaugh, she said. "Given this warning, the Court exercises its authority to modify the proposed class definition," she said.

The suit arose from CleanSpark's acquisition of ATL Data Centers Inc., which it allegedly called "a perfect fit." But CleanSpark didn't disclose that another ATL suitor had withdrawn an offer after discovering adverse information; omitted that ATL consisted of the assets of a bankrupt company; and misrepresented a power expansion timeline for ATL, the investors said.

The investors said the value of their shares dropped significantly after a short seller published negative reports about the wisdom of the ATL acquisition.

Preska appointed Glancy Prongay & Murray LLP as class counsel. Wilk Auslander LLP represents CleanSpark.

The case is Hasthantra v. CleanSpark, Inc. , S.D.N.Y., No. 1:21-cv-00511, 9/24/25 .

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Class Action

Manage Newsletters

Fastly Investors Advance Suit Over Decelerating Growth, Selloffs

Sept. 25, 2025, 9:49 AM PDT

Summary by Bloomberg AI

AI Generated



- Fastly Inc. investors have adequately alleged securities fraud claims over one statement by the company that its growth wasn't slowing, a federal court ruled.
- The investors showed the falsity of other statements and the company's level of intent, but didn't adequately connect later "revelations" to the fiscal quarters discussed in those statements, Judge Jon Tigar said.
- The plaintiffs will be able to re-plead their claims in the proposed class action, Judge Jon Tigar said.

Fastly Inc. investors have adequately alleged securities fraud claims over one statement by the cloud platform company that its growth wasn't slowing, a federal court ruled.

The investors showed the falsity of other statements and the company's level of intent, but didn't adequately connect later "revelations" to the fiscal quarters discussed in those statements, Judge Jon Tigar said Wednesday for the US District Court for the Northern District of California. The plaintiffs will be able to re-plead their claims in the proposed class action, he said.

The investors alleged San Francisco-based Fastly touted its progress following a strong 2023, amid consolidation in the "content delivery network" industry. But it allegedly didn't tell investors it was experiencing a slowdown in growth and likely wouldn't meet its own revenue guidance.

The company's Q4 2023 revenue results were on the lower side of guidance and missed analyst estimates, causing a 31% stock drop, closing at \$16.34 on Feb. 15, 2024, the investors said. But the stock price allegedly didn't fully reflect the news because company executives withheld a key reason for the miss: declining revenues from its largest customers.

When releasing financial results for Q1 2024, the company lowered its revenue guidance for the rest of the year, sending the stock down 32% to close at \$8.79 on May 2, 2024, they said. The company lowered its 2024 guidance again when releasing the Q2 figures, leading to a 14% stock drop, closing at \$5.86 per share on Aug. 8, 2024, they said.

The investors used a “materialization of the risk” theory—accepted by some courts within the Ninth Circuit—to explain the cause of their losses based on a statement that competitors were seeing a slowdown in growth but Fastly wasn’t, Tigar said. “According to Plaintiffs’ allegations, the materialization of the risks of the concealed decline in usage and revenues from Fastly’s large customers caused the lower-than-expected revenues for Q4 2023,” he said.

In turn, those lower-than-expected revenues allegedly caused the first stock drop. That’s enough to show loss causation under the materialization theory, he said.

The plaintiffs used a different causation theory for the other targeted statements, and can’t proceed with them as pleaded, he said.

Pomerantz LLP and the Schall Law Firm are lead counsel for the investors.

The case is *In re Fastly, Inc. Sec. Litig.*, 2025 BL 341913, N.D. Cal., No. 4:24-CV-03170, 9/24/25 .

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Class Action

Manage Newsletters

Liberty Mutual Beats AmTrust on Insurance for Shareholder Suits

Sept. 25, 2025, 8:33 AM PDT

Summary by Bloomberg AI

AI Generated



- A Liberty Mutual Insurance Co. unit is not responsible for the costs of two shareholder suits against AmTrust Financial Services Inc., according to a US District Court for the District of Delaware decision.
- The court held that the 2017 shareholder lawsuits fall under insurance policies preceding those issued by Liberty Insurance Underwriters Inc. due to a prior notice exclusion.
- The decision concluded that there is a "meaningful link" between the 2017 lawsuits and a 2015 notice, and therefore AmTrust's costs are excluded under the 2016-2017 policy period.

A Liberty Mutual Insurance Co. unit is off the hook for the costs of two shareholder suits against AmTrust Financial Services Inc.

The 2017 shareholder lawsuits fall under insurance policies preceding those issued by Liberty Insurance Underwriters Inc., the US District Court for the District of Delaware held in a Wednesday decision.

AmTrust sued Liberty in 2021 seeking coverage for the two suits, which alleged the insurance holding company's financial statements were false or misleading due to accounting improprieties.

Questions regarding AmTrust's accounting began to surface in 2013, prompting an SEC investigation, according to the order. In 2014, the president of investment firm Alistair Capital Management published a letter to AmTrust's audit committee alleging the insurance company's financial statements contained discrepancies suggesting they were materially misstated.

AmTrust reported the letter to its insurers in a January 2015 "notice of circumstance."

Liberty participated in a tower of coverage for AmTrust from September 2016 to September 2017. A prior notice exclusion, which precludes coverage for claims noticed during an earlier policy, barred coverage because the suits arose out of circumstances disclosed in the 2015 notice under a different tower, Liberty argued.

Whether claims are linked—or related—is often litigated, as it can determine which policies afford coverage for a claim, and thus which insurers may be on the hook.

Relying on a recent Delaware Supreme Court decision, the federal district court concluded there is a “meaningful link” between the 2017 lawsuits and the 2015 notice.

“Most importantly, they involve the same alleged conduct—specific accounting improprieties and material misrepresentations in financial statements regarding those specific improprieties,” Judge Jennifer L. Hall wrote, granting summary judgment to Liberty.

“AmTrust’s costs incurred with respect to the Securities and Derivative Lawsuits are excluded under the 2016-2017 policy period,” Hall said. “Those costs are properly slotted under the 2014-2015 policy period.”

Pillsbury Winthrop Shaw Pittman LLP and Berger McDermott LLP represent AmTrust. Smith Katzenstein & Jenkins LLP and Hangle Aronchick Segal Pudlin & Schiller represent Liberty.

The case is AmTrust Financial Services Inc. v. Liberty Insurance Underwriters Inc. , D. Del., No. 1:21-cv-00374, 9/24/25 .

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AI-Generated Citation Errors Prompt Investigation in Boies Schiller Case Against Church of Scientology

Erroneous case citations appeared in a Boies Schiller court filing in July.

September 24, 2025 at 03:25 PM By  **Dan Roe**

What You Need to Know

- Boies Schiller Flexner asked a California state appellate court for permission to file a corrected response brief after an initial brief included erroneous, AI-generated case citations.
- A firm partner admitted to the error and said an investigation into how it occurred was underway.
- Several other Am Law 200 firms have apologized for errors caused by AI this year.



Boies Schiller Flexner offices in Washington, D.C. Photo: Diego M. Radzinski/ALM

Boies Schiller Flexner is investigating its own use of artificial intelligence after a partner filed a response brief that included citation errors apparently caused by AI.

The erroneous case citations occurred in a July filing in *Bixler v. Church of Scientology International*, in which Boies Schiller is representing victims of actor and convicted rapist Danny Masterson in claims of harassment and defamation by Masterson and the Church of Scientology, of which Masterson was a member.

In a July response brief in the California Court of Appeal, Second Appellate District, Los Angeles-based partner John Kucera used case citations that appear to have been AI-generated, opposing counsel from Horvitz & Levy and Winston & Strawn called out in a reply brief earlier this month.

Kucera's July filing included mistitled cases, citations that mischaracterized case holdings or referred to unrelated areas of law, and one case that was entirely fabricated, the appellants noted in their Sept. 8 reply brief.

Kucera took responsibility for the erroneous case citations, stating that he was regretted the errors and was embarrassed by them in a Sept. 19 motion for leave to file a corrected response brief.

Kucera confirmed that AI had been used in the preparation of the July response brief with the consent of his clients and added that Boies Schiller has "adopted policies and implemented trainings intended to protect against the improper use of artificial intelligence tools" and that "firm lawyers are always expected to scrupulously proofread and cite check the accuracy of the factual and legal claims in court filings."

Boies Schiller is investigating why its AI controls failed, Kucera said in the September filing. A firm spokesperson did not immediately respond to a request for comment.

The snafu is the latest in a [string of AI-generated errors](#) in court filings from major firms. In May, [K&L Gates](#) and Los Angeles trial boutique Ellis George were fined \$31,000 after an AI-generated brief included fake citations and quotes. Around the same time, a [Latham & Watkins](#) associate failed to notice that AI tool Claude incorrectly titled and attributed a statistical research article.

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AI Opinion-Drafting Tools Are Emerging, but Will They Gain Traction With Judges?

Some on the bench are already employing gen AI to help draft routine orders, but even as specialized tools become available, judges remain cautious about just how far the tech's uses extend.

September 24, 2025 at 12:10 PM By  **Aleeza Furman**

What You Need to Know

- Tools are beginning to crop up that offer judges the ability to use generative AI to draft orders and opinions.
- The emergence of judiciary-focused offerings is a more recent development and comes as a growing number of judges explore how to integrate gen AI into their own work.



Credit: btiger/Adobe Stock

In an expanding marketplace of generative artificial intelligence-powered legal drafting platforms, tools are beginning to crop up that offer judges the ability to automate parts of their writing process.

While lawyer-focused legal drafting tools are nothing new, the emergence of judiciary-focused offerings is a more recent development and comes as a growing number of judges explore how to integrate gen AI into their own work.

Still, it's not full-speed ahead. Even judges who are already embracing gen AI say we're not quite in the era of bot-written opinions. When and how judges should use gen AI is a question many courts are [grappling](#) with.

"People are afraid of having robo-judges, of course," U.S. Magistrate Judge Allison H. Goddard of the Southern District of California told Legaltech News. "But at the same time, if the budgets are getting cut back, especially on the state side, and judges don't have time, it takes them so long to get to things. Justice delayed is justice denied. So what are some easy ways we can pick off to see if you can use AI to really streamline decision making?"

Goddard is among the growing number of judges who employ gen AI to draft orders and other judicial documents. While Goddard said she uses the tech frequently in her work, she added, "It's not an easy button" and human input remains a key part of the process. Goddard said gen AI-powered tools can be helpful for drafting orders, and even longer opinions, but it is most effective if used to craft "pieces and parts" of a document rather than everything at once.

For instance, Goddard explained that she often uses gen AI to summarize the parties' arguments or allegations, which both saves her the time of trying to paraphrase and provides her with a reference against which she can compare her own understanding of the issues. In another example, Goddard said she created a database of her previous Social Security orders in NotebookLM and CoCounsel, which she then uses to draft the legal standards for other Social Security cases.

According to Goddard, platforms built for attorneys do not always translate well to judicial work, as a judge's approach to a case is very different from a lawyer's. However, that landscape is starting to change.

Emerging Tools

Gen AI offerings specifically designed for judges are starting to hit the market. One such tool is LexisNexis's [planned addition](#) of judicial workflows to its legal assistant Protégé. The expansion, which is still in development and expected to launch later this year, includes an AI agent that can craft opinions based on case files the user uploads. Protégé's judicial workflow seeks frequent input from the user as it creates the draft, asking for review along the various steps of its analysis and allowing the user to adjust the relevant facts and legal issues.

According to Claire Jacobson, marketing director at LexisNexis, the company has worked with judges across a wide range of jurisdictions and case types to gauge their interest in and reservations about using gen AI to draft court filings. Naturally, some on the bench are more willing than others to leverage gen AI. .

“There are still some judges asking for paper copies to be brought to their chambers, even when we're e-filing something, all the way up to judges that are really engaging with a lot of the new technology,” Jacobson said. “So we're seeing a wide spectrum, but we are seeing a ton of judges that are either actively exploring or already using some form of AI tool. ... We were hearing it across both the federal and state judiciaries.”

While there's an appetite among judges for AI drafting tools, that interest is tempered by a healthy dose of caution.

“What's been most critical to them is that their discretion is reflected very accurately in whatever that AI-generated output is,” Jacobson said. “That will really impact the adoption, because if they are involved in that process and can make sure that all of the relevant facts are accurate to how they're going to rule, that all of the legal issues are lining up with how they're going to frame that ruling, that's been the most critical part to them.”

The Rise of AI-Drafted Opinions?

While judge-specific AI tools are becoming available, sitting and former judges told Legaltech News that AI-drafted opinions likely won't become widespread right away.

Katherine B. Forrest, chair of Paul Weiss's artificial intelligence group and a former U.S. district judge for the Southern District of New York, said judges are using generative AI for all kinds of routine orders. But, she added, she does not know any judges who have used the tech to craft an analytical opinion and, from what she has observed, judges do not seem particularly interested in doing so.

“A lot of judges like to write, and they like to have things in their voice,” Forrest said. “One of the main reasons judges became judges—it's certainly why I became a judge—is you want to put your voice into an opinion that's going to make law. So you're not looking for something else to do your job, but you are looking for something else to perhaps relieve a load that is repetitive and standardized and not particularly analytical.”

Meanwhile, Forrest added, courts systems have to be careful about what tools they adopt given the sensitivity of the data they handle. And not all court systems have the resources to employ specialized tech.

“The tools have to get advanced enough that the judges and those who are responsible for the purse strings feel that it's worth bringing these tools in house,” Forrest said.

Judge Scott U. Schlegel of the Louisiana Fifth Circuit Court of Appeal suggested that there are many judicial functions where gen AI can be helpful, such as the drafting of administrative orders or bench memoranda. But there is still some debate about whether and how the tech should be used for longer, more complex opinions.

Schlegel said judges tend to be more hesitant about adopting gen AI because they understand the importance of their roles. If a lawyer gets it wrong, they may be sanctioned, but if a judge gets it wrong, their mistake could become law.

When judges opt to use gen AI to create a first draft, he advised, they should do so only after they have already read up on the case, and they should maintain control over the process.

“At least you're telling the bot how to do it,” he said, “You're telling the [large language model], ‘Look, here are the relevant facts. Here's the relevant case law. Here is the answer to the question. Motion granted. Motion denied. Here is what I'm thinking. Now, give me a first draft.’”

Basically, Schlegel said, the judge should be the one doing the judging, not the tool. He warned, “Make sure that you don't turn over, essentially, your job, the judicial decision making, the human judgment, to the bot overlords.”

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Judge Permits 10 Plaintiffs' Experts to Testify in Social Media Addiction Cases

Monday's ruling by Los Angeles Superior Court Judge Carolyn Kuhl allowed 10 of the 11 plaintiffs' experts on general causation to testify at trials.

September 23, 2025 at 04:17 PM By  **Amanda Bronstad**

What You Need to Know

- The ruling was a big win for plaintiffs ahead of a Nov. 19 bellwether trial, the first in the nation to hold social media companies liable for a mental health crisis among America's youth.
- Los Angeles Superior Court Judge Carolyn Kuhl concluded that the experts were not barred by Section 230 of the Communications Decency Act and that their methodologies were reliable.
- The defendants are Meta Platforms, which owns Facebook and Instagram; YouTube's Google; ByteDance, owner of TikTok; and Snap Inc., which owns Snapchat.

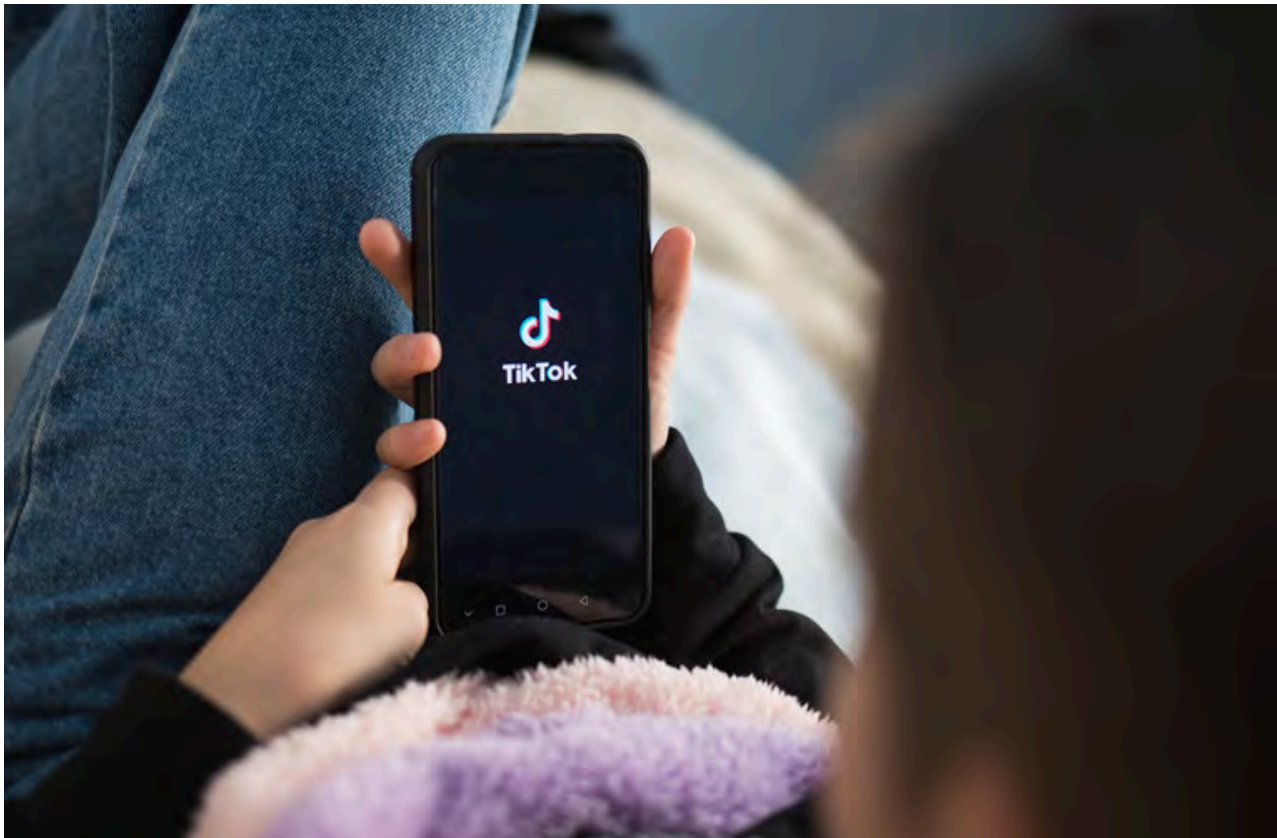


Photo: Natalia/Adobe Stock

A judge has allowed plaintiffs' experts to testify in the first trial blaming social media sites such as Instagram and YouTube on addiction and mental health problems in young people.

Monday's ruling by Los Angeles Superior Court Judge Carolyn Kuhl was a big win for plaintiffs ahead of [a Nov. 19 bellwether trial](#). Kuhl, who is overseeing cases against social media companies in California's state courts, greenlighted 10 of the 11 experts who plan to testify that social media was generally the cause of a mental health crisis among America's youth, many of whom have become addicted and diagnosed with depression or committed suicide.

Kuhl concluded that their opinions, which focused on features of the social media platforms rather than just the content, were not barred by Section 230 of the Communications Decency Act, which immunizes tech companies from the acts of third parties.

"Here, liability for negligence cannot be based on a defendant's decision to allow certain content to appear on its platform," she wrote in an 87-page ruling. "However, a defendant may be held liable for harm caused by a feature or activity that was part of the design or operation of the defendant's social media platform if a jury finds that the defendant was negligent in the design or operation of the social media platform and also find that the design or operation of the social media platform was a substantial factor in causing a plaintiff's injury."

Kuhl found that many of the studies on which plaintiffs' experts relied were based on correlations between mental health effects and social media, regardless of the content the minors were viewing.

"This ruling affirms the strength of the scientific evidence supporting our claims," said plaintiffs' lead counsel Joseph VanZandt of Beasley Allen in Montgomery, Alabama; Mariana McConnell of Kiesel Law in Beverly Hills, California; Rachel Lanier of The Lanier Law Firm in Los Angeles; and Rahul Ravipudi of Los Angeles-based Panish Shea Ravipudi. "The court recognized that social media platforms are not just passive conduits of content—they are engineered environments that can profoundly affect adolescent brain development and harm mental health."

Kuhl also found the experts had reliable scientific methodologies, adding that defendants could cross examine the experts during trial. She also rejected defense arguments that the experts could not testify about internal documents at the social media companies, or that the features on their sites were too different from one another to lump together in research. The defendants, in an omnibus motion, had cited "over-extrapolating from the data" and "cherry-picking across and even within studies" as among their criticisms of the experts.

The cases are against Meta Platforms Inc., which owns Facebook and Instagram; Snap Inc., parent of Snapchat; ByteDance, owner of TikTok; and Google's YouTube. A Meta spokesperson

declined to comment, and representatives and lawyers for the other three companies did not respond to requests for comment.

'Beyond The Expertise Required'

The social media cases in front of Kuhl are separate from the multidistrict litigation pending before U.S. District Judge Yvonne Gonzalez Rogers, in the Northern District of California, where the first case involving a school district is gearing up for a trial next summer. Gonzalez Rogers has scheduled 11 cases for trial to serve as bellwethers in the multidistrict litigation, which involves lawsuits across the country, including those brought by state attorneys general.



Los Angeles Superior Court Judge Carolyn Kuhl.Courtesy photo.051-2010

The bellwether case in Los Angeles is the first of nine individual cases planned for bellwether trials, scheduled in batches of three. Kuhl has scheduled a second set for March 9, and a third on May 11.

Last year, Kuhl [struck claims brought by four school districts](#) under Section 230, so the California cases now all involve individual claims, most of them minors.

The only expert Kuhl did not allow to go forward in Monday's ruling was a licensed clinical psychologist and psychotherapy specialist in Denmark focused on adolescent mental health. That expert did not provide a methodology for her opinions, Kuhl wrote, and has not done research.

"The opinion she seeks to provide here goes beyond the expertise required to diagnose an individual patient and to opine about the factors contributing to that patient's injury," Kuhl wrote.

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<https://www.wsj.com/tech/amazon-reaches-2-5-billion-settlement-over-allegations-it-misled-prime-users-63b2c735>

TECHNOLOGY

Amazon Reaches \$2.5 Billion Settlement Over Allegations It Misled Prime Users

Agreement requires the e-commerce giant to give money back to customers and change its subscription practices

By [Erin Mulvaney](#) [Follow](#) and [Dave Michaels](#) [Follow](#)

Updated Sept. 25, 2025 1:42 pm ET



PHOTO: DAVID ZALUBOWSKI/ASSOCIATED PRESS



Quick Summary



- Amazon reached a \$2.5 billion settlement with the FTC over allegations of manipulating customers into Prime subscriptions.

[View more](#)

[Amazon](#) has reached a \$2.5 billion settlement with the Federal Trade Commission, [just days into a civil trial](#) examining whether the company duped customers into signing up for its signature Prime service and created a confusing process to cancel.

The e-commerce giant will pay a \$1 billion civil penalty, the largest in FTC history, and create a \$1.5 billion fund to pay back to consumers, according to court documents. It will also be required on its Prime interface to include a simple way to cancel.

Amazon agreed to settle the case without admitting or denying the FTC's allegations that it misled customers in violation of federal consumer protection laws. The company said Thursday that the resolution allows it to move forward and focus on its business.

"We work incredibly hard to make it clear and simple for customers to both sign up or cancel their Prime membership, and to offer substantial value for our many millions of loyal Prime members around the world," Amazon said.

Consumers who used three or fewer Prime benefits during any 12-month period from June 2019 to June 2025 are automatically eligible for a \$51 payment, according to the settlement. People who used Prime benefits fewer than 10 times in that time frame will be eligible to receive the same amount through a claims process.

Amazon will also be required to inform customers about the terms and cost of any trial subscription, how frequently they will be charged for the service and the steps needed to cancel. The settlement requires that the cancellation process be as easy for consumers to navigate as signing up, a demand the FTC has made in [other recent enforcement](#) actions against online merchants.

"The evidence showed that Amazon used sophisticated subscription traps designed to manipulate consumers into enrolling in Prime, and then made it exceedingly hard for consumers to end their subscription," FTC Chairman Andrew Ferguson said. "Today, we are putting billions of dollars back into Americans' pockets, and making sure Amazon never does this again."

The FTC has said nearly 40 million consumers were affected by Amazon's alleged conduct.

Amazon's Prime membership, the largest paid subscription program in the world with at least 200 million users, has helped the company become an integral part of consumers' shopping habits. Launched in 2005, it offers [free and fast shipping](#), access to Amazon's streaming service and other perks. [It currently costs](#) \$139 annually, or \$14.99 monthly.

The commission sued Amazon in 2023, alleging the company intentionally designed its Prime interface to sign up users without their express consent and made it far too

difficult to drop the service afterward. The FTC says Amazon required customers to navigate four webpages and choose from 15 options to cancel. The company streamlined the process in April 2023, ahead of the filing of the lawsuit.

A civil trial began this week in Seattle.

The company will be required to post links to the settlement website on its landing pages and mobile application. Eligible consumers will be notified via email and through the mail.

Write to Erin Mulvaney at erin.mulvaney@wsj.com and Dave Michaels at dave.michaels@wsj.com

Videos

Amazon to pay \$2.5 billion to settle Prime deception allegations



reuters.com/world/amazon-pay-25-billion-settle-prime-deception-allegations-2025-09-25

Reuters

September 25, 2025

A downtown building is wrapped in Amazon Prime advertising ahead of Comic-Con International, in San Diego, California, U.S. July 22, 2025. REUTERS/Mike Blake/File Photo [Purchase Licensing Rights, opens new tab](#)

[\(AMZN.O\), opens new tab](#) will pay \$2.5 billion in fines and redress to Prime subscribers to settle the U.S. Federal Trade Commission's case alleging the retail juggernaut signed users up for the subscription without their consent and made it difficult to cancel, the FTC said on Thursday.

Of that, \$1.5 billion will go into a fund to repay eligible Prime subscribers and Amazon will not admit wrongdoing as part of the settlement, the FTC said.

Shares of Amazon were nearly unchanged after the news. Amazon didn't immediately respond to a Reuters request for comment.

Amazon must now make it easy to cancel Prime as part of settlement.

At a trial in Seattle federal court, the FTC accused Amazon of duping tens of millions of Prime customers by signing them up without consent and locking them in with overly complex cancellation methods.

The FTC started probing Amazon's subscription practices during President Donald Trump's first term and the case was filed during Joe Biden's presidency.

The settlement is the second-largest restitution amount ever for an FTC action, agency officials said, and represents a major win for the FTC's tough on tech agenda, which began during the first Trump administration.

Reporting by Jody Godoy in New York and Ryan P. Jones in Toronto

Our Standards:

State AGs Challenge Capital One's \$425M Settlement, Say Deal 'Perpetuates' Deceit

"The premise of the Proposed Settlement is that class members will remain in 360 Savings accounts that pay materially lower interest than otherwise-identical 360 Performance Savings accounts, and Capital One will continue to profit from an artificial distinction of its own making. The parties call this an 'excellent result,'" 18 state attorneys general argued, pushing a Virginia federal court to reject the deal.

September 24, 2025 at 02:53 PM By **Alyssa Aquino**



Photo: Ken Wolter/Afobe Stock

Eighteen state attorneys general came out against Capital One's proposed \$425 million deal to resolve nationwide claims concerning its 360 Savings accounts, arguing the settlement allows the bank to continue the scheme that allegedly cost customers \$2 billion in unpaid interest.

The attorneys general, led by New York Attorney General Letitia James, urged U.S. District Judge David Novak of the Eastern District of Virginia to reject [the proposed settlement](#), arguing that blessing the deal would allow Capital One to keep customers on lower interest 360 Savings accounts, instead of the significantly higher interest 360 Performance Savings accounts.

"The premise of the Proposed Settlement is that class members will remain in 360 Savings accounts that pay materially lower interest than otherwise-identical 360 Performance Savings accounts, and Capital One will continue to profit from an artificial distinction of its own making. The parties call this an 'excellent result,'" [they alleged](#) in an amici brief filed Tuesday.

The brief was submitted by the attorneys general for Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Nevada, Ohio, Oregon, Rhode Island and Washington state.

The brief was filed in a consumer complaint that has unfolded over the past year in the U.S. District Court for the Eastern District of Virginia, where Capital One is headquartered. In the suit, Wolf Popper and the Kaplan Law Firm accuse Capital One of defrauding customers who opened 360 Savings accounts.

The bank had marketed 360 Savings as high-interest savings accounts. But in September 2019, the bank launched the similarly named 360 Performance Savings. The products shared similar features, with the main difference being that the 360 Performance Savings offered much higher interest rates—rates that at one point was 14 times that of 360 Savings'.

Wolf Popper and the Kaplan Law Firm argued that the bank hid the 360 Performance Savings accounts from 360 Savings account holders, locking into their old accounts' 0.3% interest rates.

But in May, Capital One, Wolf Popper and the Kaplan Law Firm announced a \$425 million settlement.

The deal includes \$300 million in direct payments for those who opened 360 Savings accounts after the 360 Performance Savings accounts were launched, and \$150 million in additional interest payments for class members who choose to keep their 360 Savings accounts.

Chet Waldman, a Wolf Popper partner, defended the settlement in a Wednesday statement to the New York Law Journal and Law.com, saying the deal is "one of the biggest ever against a bank" and is good in light of the risks of continuing the lawsuit.

"As noted on the settlement website (<https://www.capitalone360savingsaccountlitigation.com/>), 360 Savings accountholders can convert their accounts to higher yielding 360 Performance Savings accounts by calling Capital One at 1-833-248-5026," Waldman said.

A representative for Capital One didn't respond to a request for comment.

But the state attorneys general protested the settlement, arguing that the \$300 million fund represents less than 7.5% of the interest that Capital One avoided paying to 360 Savings customers.

They were especially vocal about the \$125 million in additional interest payments, saying they only offer “illusory value” and perpetuate the “two-tier” savings account system. 360 Savings account holders would earn 0.78% under the deal, while 360 Performance Savings account holders would earn 3.5%, the attorneys general estimated.

“By the time Capital One has paid \$125 million in additional interest to 360 Savings customers, it will have avoided paying over \$800 million compared to what it would have paid at the 360 Performance Savings rate,” they said.

The attorneys general also argued that the “any settlement” reached between Capital One and the class should make clear that it does not bar litigation from governmental entities.

“Capital One has taken the position that the Proposed Settlement would preclude monetary relief for consumers in the separate and currently pending enforcement action brought by the Attorney General of New York ... Capital One is wrong, and any effort to use a private agreement to impede an ongoing government enforcement action should be unequivocally rejected,” according to the brief.

Capital One's 360 Savings has previously drawn government scrutiny. After Wolf Popper and the Kaplan Law Firm filed the case, the Biden administration submitted its own complaint against Capital One. The Trump administration later withdrew that lawsuit, only for New York's James to [take up the abandoned litigation](#). The settlement between Capital One and the nationwide class was announced days after James filed her lawsuit.

The final approval hearing for the \$425 million settlement is Nov. 6.

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Securities

Capital One \$425 Million Savings Deal Is Unfair, State AGs Say

Sept. 24, 2025, 1:09 PM PDT

Capital One NA's deal to settle for \$425 million claims over the advertising of its 360 Savings account interest rates is unfair and a federal judge should reject it, eighteen state attorneys general said in court filings.

The deal allows Capital One to continue deceiving customers "with the court's blessing," because class members would keep using 360 Savings accounts that pay significantly lower interest rates than otherwise-identical 360 Performance Savings accounts, the coalition said in a Tuesday brief of amici curiae.

The average account holder would receive less than \$54 directly after losing out on more than \$717 in interest, the brief said.

"The parties call this an excellent result," the brief said. "And it is for Capital One, but not for the class."

Judge David J. Novak of the US District Court for the Eastern District of Virginia in June granted preliminary approval for the deal. A final approval hearing is scheduled Nov. 6.

The case is *In Re: Capital One 360 Savings Account Interest Rate Litigation*, E.D. Va., No. 1:24-md-03111, 9/23/25 .

To contact the reporter on this story: Maia Spoto in Los Angeles at mspoto@bloombergindustry.com

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Securities

Google's \$30 Million Young YouTube User Accord Gets First Nod

Sept. 24, 2025, 9:10 AM PDT

Google LLC's \$30 million's deal settling a children's privacy suit over collecting data from young YouTube viewers and targeting them with behavioral advertising was preliminarily approved by a federal court.

YouTube watchers who were under the age of 13 between 2013 and 2020 would qualify for a pro rata payment from the settlement fund the Alphabet Inc. unit agreed to pay into, according to the order signed Tuesday by Magistrate Judge Susan van Keulen, of the US District Court for the Northern District of California.

The order schedules a final approval hearing for January 2026

"Assuming a 1-2% net claims rate after vetting for fraudulent and otherwise invalid claims," class members can expect to get between \$30 to \$60 from the settlement before deduction for other costs, according to the order. Class counsel previously estimated that the class contains at least 35 million people, given the popularity of YouTube, but used a higher number—50 million—for the sake of projecting claims and response rates

Silver Golub & Teitell LLP and Pritzker Levine LLP represented the plaintiffs. Hogan Lovells US LLP represents Google and YouTube.

The case is Hubbard v. Google LLC , N.D. Cal., No. 5:19-cv-07016, 9/23/25 .

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Attorneys urge court overseeing Tylenol autism lawsuits to consider Trump administration's stance



reuters.com/legal/government/attorneys-urge-court-overseeing-tylenol-autism-lawsuits-consider-trump-2025-09-25

Diana Jones

September 25, 2025



- Trump administration turned to an expert whom plaintiffs had relied on
- Plaintiffs lawyer cites "separation of powers concerns"
- Kenvue says claims lack legal merit, scientific support
- Appeals court slated to hear arguments next month

Sept 24 (Reuters) - Families appealing the dismissal of their lawsuits alleging that Kenvue's Tylenol or generic versions of the pain-relief medication caused their children's autism are asking an appeals court to consider President Donald Trump's new advice that pregnant women avoid the pain killer as it decides whether to revive their lawsuits.

Ashley Keller, an attorney representing the plaintiffs, filed a letter Wednesday alerting the New York-based 2nd U.S. Circuit Court of Appeals to the Trump administration's stance on the alleged link between Tylenol and autism. In a news conference at the White House on Monday, Trump [delivered medical advice](#) to pregnant women, repeatedly telling them not to use acetaminophen, the active ingredient in Tylenol.

A judge last year dismissed hundreds of lawsuits alleging a connection between Tylenol or generic versions of the drug and autism or ADHD diagnoses, saying that the experts the plaintiffs relied on had failed to support their conclusions with scientific evidence.

In Wednesday's letter, Keller told the appeals court that a ruling upholding the lower court's decision would pose "grave separation of powers concerns," because the Trump administration had turned to one the same experts in developing its position.

Keller noted that during Monday's press conference, U.S. Food and Drug Commissioner Marty Makary, Health Secretary Robert F. Kennedy Jr. and Trump cited the research on Tylenol and autism done by Andrea Baccarelli, currently dean of the faculty at the Harvard T.H. Chan School of Public Health, one of the plaintiffs' experts.

In a statement, a Kenvue spokesperson noted that the FDA said a causal relationship has not been established between Tylenol and autism and said the company believes it will continue to be successful in the litigation as the claims lack legal merit and scientific support.

MORE THAN 500 LAWSUITS DISMISSED

U.S. District Judge Denise Cote in Manhattan last year [dismissed](#) more than 500 lawsuits against Kenvue ([KVUE.N](#)), [opens new tab](#) and retailers that sold store-brand acetaminophen, which alleged that the drugs caused autism spectrum disorder, or ADHD. Cote [had ruled](#) the previous year that none of the expert witnesses offered by the plaintiffs to testify at trial that acetaminophen could cause the conditions had used a sound scientific methodology. She said the experts' "unstructured approach" allowed "cherry-picking" and a "results-driven analysis."

Product liability lawsuits, like the ones over acetaminophen, rely on experts to establish that a product is capable of causing the alleged harm.

The 2nd Circuit is slated to hear arguments on October 6 in the plaintiffs' appeal of Cote's decision.

In Wednesday's letter, Keller argued that a decision "holding that a jury may not hear the same expert evidence that the executive branch credited will badly damage the public trust required for the executive to take care that the public-health laws are faithfully executed."

Legal experts have said it would be unusual if the appeals court gave the administration's actions and Trump's comments much weight in considering how to move forward with the cases.

"It's not as if there's been a new study that has been announced that has a different conclusion," Elizabeth Chamblee Burch, a professor at the University of Georgia's School of Law whose research focuses on cases like the Tylenol litigation, said on Tuesday before Keller filed the letter.

[Researchers say](#) there is no firm evidence of a link between the use of Tylenol and autism. A 2024 study of nearly 2.5 million children in Sweden found no causal link between in utero exposure to acetaminophen and neurodevelopmental disorders.

A 2025 review of 46 earlier studies that Baccarelli participated in did suggest a link between prenatal acetaminophen exposure and increased risks of these conditions, but the researchers from the Icahn School of Medicine at Mount Sinai, Harvard University and others said the study does not prove the drug caused the outcomes.

Reporting by Diana Novak Jones; Editing by Alexia Garamfalvi and Leslie Adler

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[Diana Novak Jones](#)

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Class Action

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Texas PFAS Lawsuit Against 3M, DuPont Will Remain in State Court

Sept. 25, 2025, 10:04AM PDT

Summary by Bloomberg AI

AI Generated



- A judge denied a request by 3M Co. to move a lawsuit brought against it by Texas to federal court, killing the latest attempt by the company to change the jurisdiction of an array of lawsuits from states suing over PFAS pollution.
- The judge said the state is the party in the case because it's trying to enforce its own laws and penalize 3M, and the Class Action Fairness Act doesn't apply in this case.
- 3M has had mixed success in steering lawsuits filed against the company over products containing per- and polyfluoroalkyl substances to federal court from the state courts.

A judge denied a request by 3M Co. to move a lawsuit brought against it by Texas to federal court, killing the latest attempt by the company to change the jurisdiction of an array of lawsuits from states suing over PFAS pollution.

3M alleged the case should be moved to federal court because it concerns consumers in Texas as opposed to the state. Texas alleged that because it's trying to enforce its own laws and penalize 3M, the state is the party in the case.

Individuals wanting to go after a company as part of the state's Deceptive Trade Practices Act would have to sue a firm under a different statute than the one the state employed in this case, according to Wednesday's opinion issued by the US District Court for the Northern District of Texas. Judge Sam A. Lindsay also said the Class Action Fairness Act doesn't apply in this case as 3M alleged it does.

3M has had mixed success in steering lawsuits filed against the company over products containing per- and polyfluoroalkyl substances (PFAS) to federal court from the state courts.

Earlier this year, the US Court of Appeals for the First Circuit denied 3M's request to move a lawsuit brought against the company by the state of New Hampshire to federal court, saying 3M didn't make its request in time. The company won, however, its effort to have lawsuits brought against the company by Maryland and South Carolina moved to federal court. And last year, a judge ruled against the company's attempt to move a lawsuit from Illinois to federal court from state court.

In the Texas case, Corteva Inc., EIDP Inc., and DuPont De Nemours Inc. are also listed as defendants.

3M is represented by Gibson Dunn & Crutcher. The remaining defendants are represented by Shook, Hardy & Bacon LLP.

The state of Texas is represented by the state's attorney general's office, Kelley Drye & Warren LLP, The Lanier Law Firm, Taft Stettinius & Hollister LLP and Maclean Law Firm PC.

The case is Texas v. 3M Co. , N.D. Tex., No. 25-00122, 9/24/25 .

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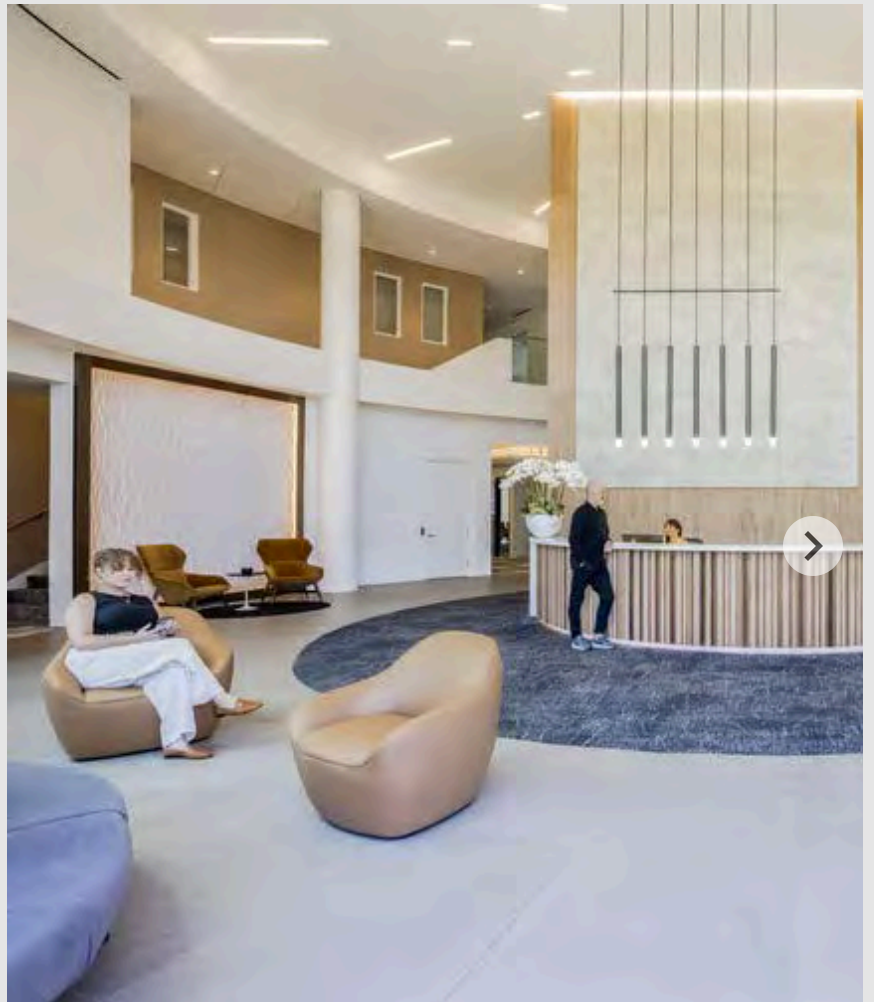
Wilson Sonsini Revamps 190,000 Square Feet of Office Space in Palo Alto

The firm is in the process of renovating its offices across the country, chief workplace officer Kristin Ashby says.

September 23, 2025 at 03:11 PM By  **Samson Amore**

What You Need to Know

- Wilson, Sonsini, Goodrich & Rosati renovated its 90,000 square-foot office in Palo Alto this month.
- The upgrades include a 100-person conference room, revamped lactation and Zen rooms, and new courtyard furnishings to encourage lawyers to get outside.
- Wilson Sonsini is on a quest to modernize all of its offices, and has recently either upgraded or moved into new space in Boulder, Salt Lake City and Los Angeles.



Wilson Sonsini Goodrich & Rosati's newly renovated Palo Alto office



Wilson Sonsini Goodrich & Rosati 's office in Palo Alto. Courtesy photo

Wilson Sonsini Goodrich & Rosati completed a renovation of its Palo Alto office earlier this month, refreshing the 190,000-square-foot space that is home to about 282 lawyers.

The firm opted to stay in the space it has occupied since 1994 at 650 Page Mill Road near the Stanford University campus because of its proximity to clients, and the lease was renewed in 2022. The renovation has been in the works for several years. In 2022, during the COVID-19 pandemic, the firm started discussing “what the future of our space was” as it mulled over people coming back to work, said chief workplace officer Kristin Ashby.

Ashby is in charge of the firm’s physical presence in 19 offices worldwide. She joined the firm some 13 years ago after working with real estate company Hinds.

“A big focus of this project was the standardization of office sizes,” Ashby said. Wilson Sonsini is following the trend of many of its other Am Law compatriots by doing away with the oversized office for partners. “There are financial reasons to do it,” she said, but mainly, “it’s a lot about equity of space, and acknowledging that everybody’s bringing a huge amount of value to our organization, and wanting to treat them all as well as we can.”

In addition to the revamped office layout, the firm also embraced transparency, literally. Following the trend of many Big Law offices these days, Wilson Sonsini opted for glass doors on the offices, allowing for more natural light and less isolation. Ashby said the firm has made similar changes in

other offices, and they were well received, especially by associates who felt they now had a view even if they weren't afforded a window.

Ashby also supervised other changes, like turning a small gym that was created in an old case room into an upgraded fitness facility for the lawyers. The firm also upgraded its large, central courtyard with new furnishings and installed a 100-person conference center.

"Coffee definitely is a big deal," Ashby said, half-joking. The firm also added upgraded coffee bars and renovated its cafe to keep its lawyers caffeinated.

"The last few years we've really been focusing on, you know, our teams want to collaborate probably more than they ever did, because I think they got more used to collaborating during COVID for so many reasons, it just became a more natural part of the practice of law," Ashby said. "We've had quite a bit of opportunity to experiment with different communal spaces and seeing how they work for collaboration," she said, adding this includes nooks for reading and other outposts across the office that allow lawyers to seek out quiet and work solo as well as networking.

The firm also made other changes to improve the quality of life for its lawyers, including upgrading its lactation room, creating a "Zen room" for relaxation, and "improved wellness rooms and facilities," Ashby said. "We basically reimagined all of the workspace areas of the office and renovated and brought up to speed with technology," she added.

Renovations in Palo Alto are just part of the firm's overall strategy to modernize its offices. Ashby said the firm is undergoing construction on a fresh New York City office, and in recent years has opened new offices in Boulder, London and Salt Lake City. The firm also just renovated a floor of its San Francisco office, and moved into a new space in Downtown Los Angeles' trendy and industrial Arts District neighborhood. In addition, Ashby is soon taking on a renovation in the firm's Washington, D.C., outpost.

Firmwide managing partner Doug Clark said the changes in Palo Alto have, so far, been well-received by both staff and clients. "The client feedback has been outstanding in the space for meetings that they attend with Wilson Sonsini team members, and when we have clients host their own meetings or events here," he said. "The reception has been fantastic, as to usability, look, feel, really all fronts."

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Securities

Opinion

Matt Levine's Money Stuff: There Was a RadioShack Ponzi

Sept. 24, 2025, 10:32 AM PDT

RadioShack ponzi

Does this sound familiar?

REV's primary business was purchasing distressed retail companies with name brand recognition and converting them into e-commerce only businesses. The securities offerings at issue involved offerings by REV and eight REV portfolio companies: Brahms LLC ("Brahms"), Dress Barn Online, Inc. ("Dress Barn"), Franklin Mint Online, LLC ("Franklin Mint"), Linens 'N Things Online, Inc. ("Linens 'N Things"), Modell's Sporting Goods Online, Inc. ("Modell's"), Pier 1 Imports Online, Inc. ("Pier 1"), RadioShack Online, LLC ("RadioShack") and Stein Mart Online, Inc. ("Stein Mart").

Franklin Mint! RadioShack! Bed Bath & Beyond! GameStop! No wait. Not those. Just the first two. Not Bed Bath, not GameStop. Bed Bath & Beyond sure was distressed; it filed for a horrific bankruptcy in 2023. But before that it raised tons of money from retail investors in absolutely doomed at-the-market offerings. As its bankruptcy lawyers later put it, it raised that money as "part of the 'meme-stock' movement started and fueled on Reddit boards and social media websites," because it "checked the two boxes needed to become a meme-stock: (i) a troubled financial situation and (ii) nostalgia value." And because it checked those boxes, Bed Bath was able to go out to ordinary investors and get them to shovel money into a furnace.

GameStop was also part of that movement — GameStop *was* that movement — because it was troubled and nostalgic, but it did so well out of being a meme stock that it is no longer particularly distressed. Definitely some pivoting to e-commerce though.

My point here is that if you go to retail investors and say "hey, let's teach those fat cats on Wall Street a lesson; we're going to revive RadioShack but with e-commerce," you are tapping into some deep and obvious patterns, and you will undoubtedly raise a bunch of money. Then you can steal it. The quote at the top is from a Securities and Exchange Commission enforcement complaint against Taino Adrian Lopez, Alexander Mehr and Maya Burkenroad. Bloomberg News reports:

A company that snatched up distressed brick-and-mortar brands including RadioShack and Pier 1 Imports and promised investors big returns in a pivot to e-commerce operated as a Ponzi-like scheme, the US Securities and Exchange Commission alleged.

When the pandemic sparked a wave of retail bankruptcies, Retail Ecommerce Ventures picked up a slew of iconic brands on the cheap, with the aim to revive them as online-first businesses. Its portfolio also includes Dress Barn, Modell's Sporting Goods and Stein Mart.

To attract investors, REV bragged in promotional videos that its portfolio companies were "on fire," the regulator alleged in a lawsuit filed Monday in federal court in the Southern District of Florida.

But, says the complaint, "while some of the REV Retailer Brands generated revenue, none generated any profits," "at least \$5.9 million of the returns distributed to investors were, in reality, Ponzi-like payments funded by other investors," and also the defendants "misappropriated approximately \$16.1 million in investor funds, which was diverted for Defendants Lopez's and Mehr's personal use."

The complaint also explains the business strategy, or at least the fundraising strategy:

REV's primary business was identifying distressed companies with name brand recognition, raising funds from investors in order to purchase the brand's assets, and converting them into successful e-commerce-only businesses. In one promotional video publicly available on the internet, Defendant Lopez touted REV's business approach as "one of the best strategies you can invest in."

"A troubled financial situation and nostalgia value," the two best things you can have to raise money from individual investors in the 2020s.

Tether

Man alive this is the best business in the world:

Tether Holdings SA, issuer of the world's largest stablecoin, is in talks with investors to raise as much as \$20 billion, a deal that could propel the crypto firm into the highest ranks of the world's most valuable private companies. ...

Depending on the stake offered, the deal could value the company at around \$500 billion, putting it into the same league as OpenAI and Elon Musk's SpaceX, an extraordinary achievement for the lightly regulated crypto business even as rivals multiply and falling US interest rates threaten its windfall earnings. ...

Tether is at the forefront of stablecoins, a type of digital asset that pegs its value to fiat currencies. Its USDT token is tied to the US dollar with a market value of \$172 billion. It is by far the largest, with Circle's No. 2-ranked USDC stablecoin worth about \$74 billion.

Tether has made a fortune by parking the reserves that back its token in cash-like assets including US Treasuries, and earning interest. It booked \$4.9 billion in profit during the second quarter, according to a company blog post in July. Ardoio recently claimed Tether has a 99% profit margin. The figures Tether cites are not subject to the same reporting standards as those disclosed by publicly traded companies.

OpenAI is trying to build artificial superintelligence. SpaceX is trying to go to Mars. What is Tether? One simple model is that Tether is an asset management firm with unusual economics. The economics are:

1. People give Tether money — currently \$172 billion — to invest.
2. Tether invests that money with absolute discretion, though for various reasons it invests mostly (not entirely) in US Treasury bills and other safe short-term assets.
3. Tether keeps 100% of the investment returns for itself as a management fee.

The first two features are not that unusual. The third is wild! The Vanguard Federal Money Market Fund has about \$362 billion of assets — roughly twice Tether's assets — and invests in US Treasury bills; it charges an 0.11% annual fee. Tether charges, in round numbers, 40 times as much.

I write sometimes about a crude valuation model for asset management firms. Basically a low-fee index-y asset manager charges fees on the order of basis points of assets under management, and the management company — the stream of fee earnings for managing those assets — should be worth on the order of 1% of assets. A high-fee alternatives-type asset manager charges fees on the order of percentage points of assets, and the management company should be worth on the order of 10% of assets.

Tether is trying to raise money at *300% of assets under management*. Which: sure! If you pay that valuation, it is a bet that:

1. Tether's assets are poised to grow enormously (because it is coming back into regulatory favor in the US, because stablecoins are the future of money and because Tether will continue to dominate the stablecoin business); and
2. It will continue to be able to keep 100% of its returns for itself.

As for the first bet:

Tether has spent the last few months laying the groundwork to return to the US, in a bid to capitalize on President Donald Trump's pro-crypto policies. It recently unveiled a plan for a US-regulated stablecoin and appointed Bo Hines, a former White House crypto official, to lead it.

And:

The El Salvador-based group is expected to Hoover up even more Treasuries in the near future. Treasury secretary Scott Bessent has signalled that large stablecoin operators will become a key source of demand for the deluge of US government debt required to fund the administration's spending plans.

As for the second bet ... look, what do I know, nothing here is ever investment advice, and there is reason to doubt it. We talked just yesterday about the growing norm of stablecoin issuers passing along most of their interest income, indirectly, to depositors, which makes this a much less lucrative business than if the issuers keep 100% of the income themselves. But Tether, as the biggest and most ... Tether-y ... stablecoin issuer, might be able to resist that trend. If Tether ends up owning a trillion dollars of Treasury bills, collecting 5% per year, paying 0% to the people who deposited the trillion dollars and having a 99% profit margin, then ... I don't know how to end that sentence? That will justify a \$500 billion valuation, sure. (That's like a 10x P/E ratio.) But also ... what? I feel like I write a lot about all the complex and sophisticated ways people have found to make money with other people's money, and Tether is just like "why don't you give us all the money and we'll collect all the interest" and it works.

Crypto treasury buyback

One trade is: You buy \$100 worth of Bitcoin, you put it in a pot, you sell shares in the pot for \$200, you use the extra \$100 to buy more Bitcoin, now you have \$200 worth of Bitcoin, the shares are worth \$400, you sell more shares, etc. This is the "crypto treasury trade" that we talk about a lot around here. I have called it a "perpetual motion machine," but it isn't, and now crypto treasury companies are having a harder time keeping their premiums to net asset value.

Another trade is: If you have \$200 worth of Bitcoin in your pot, but this trade has become oversaturated and now shares of the pot trade for just \$100, you sell \$100 of your Bitcoin, you use the \$100 to buy back all the stock, and now you have \$100 worth of Bitcoin that you own free and clear without any shareholders. It's possible that, with the right mindset, a *volatile* crypto treasury company premium is even better than a *consistently high* one. Probably not. This reverse crypto treasury trade seems if anything *harder* than the regular one, but in small size it's fine. The Financial Times reports:

Struggling crypto-hoarding companies are launching share buybacks in an attempt to boost their stock prices, in the latest sign that this year's "crypto treasury" craze is unravelling.

An online gaming company and a maker of golf carts are among lightly traded companies that pivoted to buying cryptocurrencies as little as two months ago, yet are now embarking on share buybacks in an effort to lift their falling stock prices. Some are taking on debt to fund the purchases.

At least seven companies have taken such steps in recent weeks — five of which have a market value that has sunk below the value of their crypto holdings, as investors worry about a saturated market and raise questions about the crypto treasury business model.

"It's probably the death rattle for a few [of these companies]," said Adam Morgan McCarthy, senior research analyst at crypto analytics company Kaiko. ...

"It's only been six months and we're already talking about their demise," said Elliot Chun, partner at crypto advisory firm Architect Partners. "A very small percentage are going to succeed."

Raising money to buy back shares instead of spending it on tokens was "antithetical" to the crypto treasury concept, he said.

No, right, yes, the concept was "we can sell shares at a premium to net asset value and get rich," and if your shares trade at a discount to net asset value the thing doesn't work as well.

Elsewhere: "Scaramucci-Backed Crypto Treasury Company Launches With \$550 Million Fundraising Plan." And: "Inside the Princeton Network Fueling a Crypto Treasury Boom."

Is bribing your tax auditor with trips to the strip club securities fraud?

I mean:

1. Every bad thing that a public company does is also securities fraud.
2. We talked last week about New York criminal charges against RCI Hospitality Holdings Inc., a company that owns and operates strip clubs and that allegedly lowered its sales tax bill by bribing a state tax auditor with lap dances. Bad if true!
3. RCI is a publicly traded company.

So the syllogism requires:

A securities fraud class action was filed in federal court against RCI Hospitality Holdings Inc., which operates a chain of strip clubs throughout the US.

The claims stem from the tax fraud and bribery charges filed last week against the company and several officers by New York Attorney General Letitia James (D). The company allegedly provided a New York Department of Taxation and Finance auditor with trips to clubs in Florida in exchange for favorable audits. RCI allegedly didn't pay \$8 million in sales taxes to New York City.

Between Dec. 15, 2021, and Sept. 16, 2025, the company's chief executive officer Eric Langan and chief financial officer Bradley Chhay filed statements with Securities and Exchange Commission that failed to disclose the schemes, understated the company's lack of proper design and implementation controls, or downplayed the James investigation, the complaint filed Sunday by Alex Hernandez in the US District Court for the Southern District of Texas says.

The value of RCI stock dropped from \$34.32 to \$25.80 by Sept. 17 due to the charges, the complaint says.

Yep: Bad stuff, stock went down, securities fraud lawsuit.

Incidentally RCI is about a \$260 million company, and that \$8.52 stock-price drop represents about \$74 million of lost market value. RCI allegedly saved \$8 million in sales tax with the bribes. Arguably the shareholders' securities lawsuit (for \$74 million in damages) is worth more than New York's bribery case (over \$8 million in taxes). "Everything is securities fraud" because securities fraud is the most *valuable* sort of lawsuit.

Corporate rap parody

Nothing in this column is ever investing, legal, tax, accounting, etc., advice, but I do have one long-running, sincerely held, urgent piece of aesthetic advice, which is: Do not under any circumstances participate in your company's corporate rap parody video. Anyway here's Klarna's version of "Not Like Us." ("Finna max out this quarter, we in Stockholm, shop shop shop shop shop in your own way, pay pay pay pay pay in a smart way," etc.) Nope!

Things happen

The Trillion-Dollar Race for European Money Management's Future. Wall Street Is Poaching Bankers in a Red-Hot Job Market. Bessent Says US Negotiating \$20 Billion Swap Line With Argentina. Milei Is Counting on Trump to Bail Argentina Out of an Economic Mess. Big banks unwind Hong Kong retreat as dealmaking booms. Tricolor Interest Payouts Clawed Back From Bondholder Accounts. US debt investors raise alarm over lending standards. Wall Street Hedges Backfire as Volatility in Rates Market Sinks. Marshall Wace Sues to Block Crypto Data Firm's New Financing. Oracle Looks to Raise \$15 Billion From Corporate Bond Sale. Stripe's Valuation Rises Above Its 2021 Peak to \$106.7 Billion. Alibaba Shares Soar After Hiking AI Budget Past \$50 Billion. Nvidia's OpenAI Deal Fuels 'Circular' Financing Concerns. Cocoa Rebounds as Attractive Prices Lure in Bean Buyers. Households should keep emergency cash, ECB study suggests. Diddy, SBF and Bill Hwang Are Relying on Wall Street's Last-Chance Lawyer. Peter Thiel Wants Everyone to Think More About the Antichrist. Trump's UN Escalator Mishap Prompts Secret Service Investigation. CNBC's Jim Cramer pulled out his catheter in shock after GameStop rally, needed 24/7 security.

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1. Do I have to add "not legal advice"? Not legal advice.
2. That is: The Vanguard fund's yield is about 4.1%; if you figure Tether achieves roughly the same yield but keeps all of it as a fee, then it collects about 4.2% of assets annually for itself. On the other hand, Tether made \$4.9 billion of profit in the second quarter, on about \$162 billion of (end-of-period) assets, or about 3% of assets *that quarter*. (In the first half it "generated \$3.1 billion in recurrent profits, excluding mark-to-market

contributions from gold and bitcoin,” which works out to a more sensible 1.9% of assets, or 3.8% annualized, in line with collecting 100ish percent of money-market returns.)

3. We talked last year about Pershing Square selling a stake in its management company for more than 50% of assets under management, and I said: “That’s ... impressive? A crude way to think about it is that the market thinks that, in the long run, Pershing Square will be able to extract about half the value of its clients’ portfolios for itself. Seems high! But that’s probably not really the right way to think about it. Instead, this is probably more of a bet that, in the future, Pershing Square’s clients’ portfolios will be much bigger.”

4. Current bill rates are more like 4% or lower, but I write “5%” in reaction to the word “deluge.” In a world in which ... US fiscal profligacy is funded by Tether???? ... rates would be higher? I guess?

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News from Bloomberg Terminal
Quantum Bond Trading
Sept. 25, 2025, 10:27 AM PDT

By Matt Levine

(Bloomberg Opinion) --

Quantum computing

One model that I have of financial markets is that they are a very general and efficient way for turning *skill* and *intelligence* and *knowledge* into money. People want money. Therefore financial markets create incentives for people to:

- Develop skill, intelligence and knowledge, and
- Apply them to win at zero-sum-ish games of trading stocks and bonds and derivatives.

Is this socially beneficial? Well:

1. If people devote a lot of skill, intelligence and knowledge to financial markets, those markets will probably become better, in the sense of providing faster and tighter liquidity, more efficient price discovery, etc. That seems good. Normal people do not get especially excited about these social goods – ooh, the bond market is more liquid, ooh – but they seem better than the alternative. On the other hand these games often are zero-sum, and it's plausible that a lot of the skill, intelligence and knowledge that professionals devote to financial markets are in the service of extracting money from other, normal people. (The ARK ETF IPO pop trade we discussed last week was quite clever but probably *bad* for ordinary investors.)
2. If people devote a lot of skill, intelligence and knowledge to financial markets, then *those* skilled, intelligent, knowledgeable people aren't doing something else. The conventional something-else they could be doing is "curing cancer," though the more relevant alternative is probably "astrophysics." In any case, though, many smart people who are good at solving problems are solving problems like "how can we quote tighter bid/ask spreads on interest-rate futures" rather than problems like "how can we cure cancer," because the money is better (and the feedback more immediate) with the interest-rate futures.
3. If a lot of young people think "I would like to have a lot of money," many of them will look around and conclude that the most general and straightforward way to do that is by succeeding in financial markets. And then they will ask "how can I do that," and the answer will be some form of "develop a lot of skill, intelligence and knowledge, preferably about machine-learning techniques though people skills are also pretty good." And so they will go off and develop lots of skill, intelligence and knowledge. Surely that will have positive spillover effects. Not *all* of them will end up as hedge fund traders; some of them will enjoy astrophysics so much that they will grow up to be astrophysicists, or cancer researchers I suppose. Some of them will cure a little cancer during gardening leaves. I think a lot about the "high-frequency trading arms race," in which a handful of proprietary trading firms spend billions of dollars to get data from Chicago to New Jersey microseconds faster than their competitors, so that they can buy shares of stock at stale prices when futures move. Seems socially useless, when you put it like that, but surely "smart people developing ways to send information around the world faster" can have other benefits.

Point 2 is arguably bad – "finance wastes our best and brightest minds" – but Point 3 is arguably offsettingly good – "finance provides incentives to create more best and brightest minds." If the lure of hedge fund riches draws 100 extra people into physics, but 90 of them go to hedge funds and only 10 end up doing physics, that's still a net gain for physics.

So I have one-quarter-jokingly suggested that some of the seeds of the modern artificial intelligence boom were planted by lots of people (including the founder of DeepSeek) learning machine-learning techniques because that's a good way to get a job at a hedge fund. Now, of course, the most lucrative way to turn those skills into money is to make brief eye contact with Mark Zuckerberg, but financial markets are an always-available option that probably incentivized a lot of people to get into machine learning.

Or we have talked about the weather. Surely at some point in modern history some smart mathematically inclined young person has thought “what I really want to do with my life is study meteorology and learn to predict the weather, but how much money is there in that?” And then a hedge fund was like “tons actually, have you heard of natural gas trading?” And then she followed her (unexpectedly lucrative) passion and studied meteorology and can now advance the state of the art of predicting the weather, and those advances will *first* be useful in making natural gas futures prices more efficient but will eventually end up helping farmers or saving people from hurricanes or whatever. It just has to be good for humanity, collectively, in the medium term, if we get better at predicting the weather, even if the most immediately lucrative effect might be on natural gas futures pricing.

Meanwhile I am sure that quantum computing will do some very cool science-fictional stuff and solve some very deep problems, but what problems does it solve *now*? Obviously the first problem is providing tighter and faster bond quotes:

HSBC Holdings Plc said it’s achieved a world-first breakthrough in deploying quantum computing in financial markets, as a race intensifies among some of Wall Street’s biggest firms to embed the cutting-edge technology in their daily operations.

The London-headquartered bank said Thursday that it used International Business Machines Corp.’s most-advanced Heron quantum processor to attain a 34% improvement in predicting how likely a bond will trade at a given price. HSBC and the US technology giant applied quantum processing to an anonymized set of European bond trading data and found it could significantly enhance the efficiency of the market. ...

HSBC’s trial involved examining how quantum computing could be used in over-the-counter trading markets where assets are bought and sold between two counterparties without any exchange or a broker in the middle. ...

Josh Freeland, global head of algo credit trading at HSBC, said that at one point in the trial, a team of 16 physicists, machine learning and artificial intelligence experts were “working around the clock,” trying to replicate what the quantum computer had been able to do.

“If you could get something like this result everyday, that would be quite something,” said Freeland. “We spend all day looking for single-digit improvements, because when you repeat that thousands of times a day, it can really make a difference.”

In some ways this is the most boring imaginable demonstration of the power of quantum computing – people successfully traded bonds over the counter long before computers were invented, and now they are 34% more efficient – but (1) incremental progress in financial market efficiency doesn’t hurt and (2) cool technology! Is it socially beneficial for 16 physicists and AI experts to work around the clock to produce tighter bond quotes? Maybe! Will quantum computing breakthroughs free them up to spend more time doing astrophysics? Maybe!

Trends

The classical explanation for trend-following investment strategies is that investors react slowly to information. Some fundamental event occurs that significantly increases the present value of the future cash flows of some financial asset. The market initially underreacts to this event, so the asset's price goes up only a little bit. Then more people catch on, and the price goes up a bit more. This keeps happening, until eventually people are jumping on the bandwagon and the asset's price goes up *more* than is justified by the change in fundamental value.

And so a simple investing strategy is "buy stuff that has been going up, because it will probably keep going up." This is called "momentum," or "trend following," and it has a pretty good track record in different asset classes. It tends to work over periods of multiple months: Stuff that has been going up for the last six months will probably go up for another month, etc.; going up for two days, or two years, is less predictive of future returns.

If you combine that result (multiple-month trends) with the classical explanation (slow reactions to fundamental news), you get a crude intuitive model like "one important thing happens each year, and the market reacts slowly to it." Obviously that's not *right*. Lots of things happen all the time, and many of them are important to different degrees, and many of them offset each other. Still there is a human-scale plausibility to that model. Stuff does tend to persist; people who pursued one goal yesterday will probably pursue a similar goal today, and the results will compound. Ten years from now, if someone asks you "why did Nvidia go up in 2025" or "why did gold prices go up in 2025" or whatever, you will probably give a one-sentence answer referencing large-scale trends that only became apparent gradually in real time. And you'll forget about a lot of the day-to-day details.

Again, this is an intuitive story about world events and how humans process them, but it's not an absolute law of nature. Ten years from now, if someone asks you "why did Nvidia go down in 2025" and you answer "well there was a big AI boom that played out in stages over much of the year, but then of course the asteroid hit," that's two different things.¹ The slow reaction to some important information can be interrupted by the slow, or fast, reaction to some entirely unrelated and opposite information.

It doesn't have to be an asteroid. People who pursued one goal yesterday will probably pursue a similar goal today, but who knows, man. What if every day the world resets to a brand-new state with no memory of the state the day before? What if global macroeconomic policy is made by flipping a coin each day? Well. Then no trend would be likely to persist for a month, and if it did that would be just an accident and not predictive of the next month's trend. Trend-following wouldn't work, not because of a failure of math but because of a ... change in human nature? Change in the observed results of human nature? Change in the humans whose natures determine financial asset prices? "People just do random stuff each day" is not what is baked into traditional quantitative trading models, but that is because those models are built on historical data and regimes change.

This is all half-joking and exaggerated but here's a Financial Times story about Man Group, which has had "three years of lacklustre performance" in "a 'particularly unfavourable' trading environment for the type of trend-following strategy that Man is famous for":

Trend-following strategies, however, have faltered across the industry as markets have yo-yoed. When markets turn on the whim of the US president, it is difficult to bet on clear trends in asset prices – and to make money for investors. As AHL's trend-following strategies have struggled, the group's performance fees have also weakened.

Again, I'm exaggerating for effect, and it can't literally be like "Truth Social has destroyed trend-following as an investment strategy," but it is fun to think about. I wrote in April that "one model of capital markets is that volatility is bad and stable policy is good," but:

Another model of capital markets is that people like gambling, so *introducing some extra volatility* makes markets more fun and exciting and gives people what they want. How much should you save for retirement? Should you borrow money to build a new factory? Boring! Boring! Don't ask those questions! Ask more fun questions like "should I YOLO all my money on GameStop call options?" On this model, economic policymakers should lurch drastically from one policy to another, because that will make things more exciting for their audience. It will also get the policymakers more attention, and attention is the most valuable thing in the world.

And last month we discussed the hard times for trend-followers and I wrote:

When the world is basically stable, the stuff that went up last month will probably go up this month. When the US imposes huge tariffs one month and walks them back the next month, the stuff that went up last month will probably go down this month. The regime has changed; a new and stronger source of irrationality has been added to the market. It's hard to make a living following trends when there are no trends.

But I also pointed out an oddity here: The long-term success of trend-following strategies is embarrassing; it seems like a sign of market inefficiency. The market, historically, has been slow to incorporate information into prices, so you could fairly reliably make money by just buying stuff that has been going up. Now it's harder. I wrote:

In general I do not have a ton of sympathy for hedge fund managers who say things like "the market has become too irrational now, so it is hard for me to make money." That's not how it's supposed to work! When the market is irrational, there are lots of opportunities for smart rational hedge fund managers; if it is hard for you to make money using your old tricks, that suggests that the market has become *more* rational. If I had told you in 2015 that trend following wouldn't work in 2025, you might have said "ah, yes, as artificial intelligence becomes more sophisticated and hedge funds get more competitive, it should be harder to make money by just buying the stuff that went up last month." But that is probably not quite what happened.

If aggregate human behavior is less predictable, then financial market prices will be less predictable, which can look like an increase in market efficiency but might instead be a decrease in, like, everything else efficiency.

Anyway the FT reports:

In May, London-based hedge fund Man Group handed its quant teams a three-month long mission: figure out what was ailing its computer-driven hedge fund unit AHL.

Shares in the world's largest listed hedge fund had fallen 36 per cent in the past year, key strategies were in the red and wealthy individuals were pulling their money.

The conclusion? "Nothing is broken," said one person familiar with the review.

The algorithms are fine; it's the market that is broken.

Reversibility

There is a deep weird tension in stablecoins, which I alluded to the other day. A stablecoin is simultaneously two slightly different things:

1. A stablecoin is a *crypto token*. It lives on the blockchain. It can be transferred permissionlessly between two parties. It is in a sense "digital cash," the electronic equivalent of a \$1 bill in your wallet. Nobody can stop you from transferring it to someone else, and once you do that there are no provisions for you to get it back. This is a foundational idea of crypto: The original Bitcoin white paper is titled "Bitcoin: A Peer-to-Peer Electronic Cash System," and Bitcoin was designed to solve the problem that "completely non-reversible transactions are not really possible, since financial institutions cannot avoid mediating disputes." Stablecoins apply the same basic principles, but unlike Bitcoin a stablecoin is worth a dollar, not a fluctuating value.
2. A stablecoin is an *obligation of a company*.² It lives on the balance sheet of an issuer like Circle (for USDC) or Tether (for USDT). You can transfer the stablecoin to me, and I can transfer it to someone else, and we can send it around indefinitely, but the *reason* it is worth \$1 is because at any point someone could bring it to the issuer and say "give me back a dollar" and the issuer would do that. The transfers are not recorded on the balance sheet of the issuer (the way transfers of bank money are): If I send you a USDC, we don't have to ask Circle to update its ledger; the transfer occurs on the blockchain. But of course Circle can see the blockchain: The blockchain is public and immutable, for one thing, but also, Circle *needs to know who owns USDC* if it is going to redeem them for dollars. If I go to Circle and say "here are 100 USDC, please give me \$100," I will demonstrate that I have the USDC by pointing to the blockchain. In a sense the blockchain serves as an external objective ledger of Circle's liabilities, to which Circle has (sort of) read-only access.

Point 1 is central to crypto: irreversible, uncensorable, permissionless transfers. But Point 2 effectively means that *the issuer can reverse transactions*. If I send you 100 USDC, because you have done a scam and tricked me, then you irreversibly have those 100 USDC on the blockchain. But if I call up Circle and say “hey that was a scam, I want my 100 USDC back, can you help me,” Circle ... *could* help me, no? Circle could announce “hey those 100 USDC” – which are identifiable to Circle and everyone else on an immutable public blockchain – “are not real USDC anymore, in the specific sense that if you bring us those USDC, we will not redeem them for dollars.” And so no one should accept those USDC as being worth dollars, because the link between *those* USDC and actual dollars has been severed. (Meanwhile Circle could make me whole by issuing me 100 more USDC, backed by the \$100 of reserves that it held to back the USDC that I sent to you, which are now canceled.)

Same story if instead of a scam the transfer was a fat-finger mistake. Or if you are a terrorist, or a money launderer, or a drug trafficker, or a sanctioned person, and government authorities call Circle and ask it to reverse the transaction. Circle can’t *actually* reverse the transaction – the transaction occurs on the immutable blockchain, which Circle does not control – but because the transaction concerns *liabilities of Circle*, it could do things that have the *economic effect* of reversing the transaction.

My impression is that this does not particularly *happen*, for some combination of reasons including “it would undermine confidence in a still-nascent payments system that governments are for some reason encouraging,” “most stablecoin transactions actually occur at centralized exchanges and other custodial intermediaries (which do know-your-customer checks and try to prevent mistakes) rather than peer-to-peer on the permissionless blockchain,” and “nobody has gotten around to trying this yet.” But it does seem like the sort of thing that *could* happen. Also ... maybe ... should? Like part of the *point* of the modern US dollar financial system is to prevent or reverse bad transfers, where “bad transfers” is a loose regulatorily defined category including fraud, mistake and money laundering. If stablecoins are a growing parallel *government-favored* US dollar financial system, they should have similar mechanisms to serve that policy purpose.

Anyway the Financial Times reports:

Circle, the world’s second-biggest issuer of stablecoins, is examining ways to make it possible to reverse transactions involving its tokens, in a rare admission by a major crypto firm that it needs to take lessons from the traditional financial sector.

Circle president Heath Tarbert said a mechanism that allowed money to be refunded in cases of fraud or disputes would help the stablecoin industry’s push to become part of the financial mainstream.

“We are thinking through . . . whether or not there’s the possibility of reversibility of transactions, right, but at the same time, we want settlement finality,” Tarbert told the Financial Times.

Right, yes, the traditional financial system has spent many years trying to find the right balance between “settlement finality” and “obviously we have to reverse some bad transactions.” (Just ask Citigroup Inc.) Crypto’s founding ethos was to *just not do that*, to turn the dial all the way to “settlement finality” and not worry too much about mistakes or money laundering. Which is fine for a rebellious new financial system, but bad for a “push to become part of the financial mainstream.”

Payments

Elsewhere in “Bitcoin: A Peer-to-Peer Electronic Cash System,” here is a fun Kansas City Fed research briefing finding that, while no one ever really used crypto to buy a sandwich, the incidence of using crypto to buy a sandwich is now *decreasing*:

The share of U.S. consumers who report using cryptocurrency for payments—purchases, money transfers, or both—has been very small and has declined slightly in recent years. The light blue line in Chart 1 shows that this share declined from nearly 3 percent in 2021 and 2022 to less than 2 percent in 2023 and 2024.

I suppose it is often the case that a technology is introduced with great hype to solve one particular problem, and then turns out to be more or less irrelevant to that problem but quite useful for some other problem. Here Bitcoin was introduced to allow for peer-to-peer permissionless payments, for which it has turned out to be a dud. But Bitcoin is very good at an unrelated thing, which is “going up in price.” (You can see why that would make it bad as a payments medium!) So it has caught on and become widely adopted, even though its original premise was kind of wrong.

Incidentally the point of that Kansas City Fed research note appears to be to express skepticism about *stablecoins* as a payments mechanism, in the face of growing optimism elsewhere. I don’t know if that follows. Crypto is not widely used for payments for a number of reasons, including (1) prices are volatile, (2) you can’t reverse payments and (3) you can’t send crypto *from your bank’s app*. Stablecoins fix the first problem and, with a certain amount of pushing to become part of the financial mainstream, could solve the other two as well.

Free riding

We talked last week about a cool ETF trade. ARK Invest runs some actively managed exchange-traded funds, and those funds sometimes get allocations in hot initial public offerings. If you buy shares in an ARK ETF the day before a hot IPO, and sell it the day after, you can participate in the IPO pop: Those IPO shares will trade up, the ARK ETF’s value will increase, and you will share in that value. Of course the ARK ETF also has a bunch of other stocks, and maybe those will go down. Ideally you would do this trade on a hedged basis: Buy the ARK ETF, sell the underlying stocks, and participate *only* in the IPO pop. The mechanically simple way to do that is to *borrow* all the underlying stocks, deliver them to ARK to *create* new ETF shares, wait until the IPO pop, and then *redeem* your ETF shares by handing them back to ARK, getting back the underlying stocks and returning them to your stock lenders.

Taking that trade one step further, I asked: What about *not* borrowing the underlying shares? Like, you go to ARK, you say “I’ll give you \$1 billion of underlying stocks for \$1 billion of ETF shares,” ARK says “sure we’ll settle that trade tomorrow,” tomorrow the IPO opens and pops and you call up ARK and say “I’ll give you back \$1.05 billion of ETF shares for \$1.05 billion of underlying stocks,” ARK says “sure we’ll settle that trade tomorrow,” you’re like “actually it precisely offsets our trade from yesterday so let’s just rip them both up,” ARK is like “uh sure I guess that works,” and all that has happened is that you got the IPO pop without any other cash or securities or anything else changing hands.

This is probably too cute, I said, though it is reminiscent of certain sorts of crypto trades where you can borrow money, do arbitrages, make a profit and return the money all in a single unit of blockchain time, with each transaction contingent on all of the others. If a trade works, you can do it without any financing (it retrospectively finances itself); if it doesn't work, you can just not do it.

There is an old, popular, quite illegal form of this in traditional financial markets. It's called "free-riding." You write yourself a check for \$1 million and deposit it in a brokerage account. Your broker is like "okay we got your check, what are you going to buy with the \$1 million?" You are like "obviously zero-day call options on GameStop bro." You buy the options. If they pay off, you have \$5 million in your account; if they don't, you have \$0. Your check does not clear (because you have no money). Your broker calls you to ask for the \$1 million. If the options paid off, you are like "oops minor cash-flow glitch, sorry, just take the \$1 million out of my winnings." (Now there is \$4 million in your account.) If the options did not pay off, you do not answer the phone. (Now there is negative \$1 million in your account.) The trade was self-financing if it worked and, you know, something else if it didn't.

There are various ways for this to go wrong, with the main ones being:

1. Your broker will probably do some due diligence and might not give you access to the \$1 million as soon as you deposit your fake check; and/or
2. Jail.

Here is a US Securities and Exchange Commission enforcement action 3 against a guy named Aaron Freeman, who is accused of free-riding in various brokerage accounts. For a while he allegedly tried the traditional approach (writing himself checks), but it never worked, because the brokers never let him trade before the checks cleared (they didn't). Then he allegedly moved on to the slightly more sophisticated approach of *writing checks to his aunts*, opening accounts in their names, and doing trades in their accounts. This occasionally worked, to the tune of \$889,087.04 in purchases and \$5,463.26 of losses (and no gains). It is illegal, but amusing and impressive, to free-ride and do good trades, or even high-risk high-reward trades that don't work out. Consistently losing 1% on your trades sort of misses the point.

Things happen

First Brands-Linked Financing Units File for Bankruptcy. Private credit CLOs. Corporate AMT. OpenAI and Databricks Strike \$100 Million Deal to Sell AI Agents. The Investment Bankers Winning at the AI Deal Game. UBS emergency plan is not 'executable', says Swiss regulator. Germany's Merz backs using frozen Russian assets for Ukraine. Brunello Cucinelli shares suspended as short seller makes new Russia claims. The Tech Fashion Darling Accused of Swindling Investors Out of \$300 Million. There Are More Robots Working in China Than the Rest of the World Combined.

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1. Not, uh, investing advice.
2. This is true of a traditional stablecoin like USDC or USDT. It is not necessarily true of algorithmic stablecoins, which is an advantage of that approach, though there are of course disadvantages.
3. So, no jail. "The SEC seeks permanent injunctive relief, a conduct-based injunction, disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil money penalty."

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Memecoins Are Coming to the Stock Market



wired.com/story/memecoins-are-coming-to-the-stock-market

Joel Khalili

September 25, 2025



[Dogecoin](#), a meme-based cryptocurrency created on a lark more than a decade ago, is now available to investors through the US public market.

On September 18, investment fund management firms REX Financial and Osprey Funds jointly [launched a dogecoin exchange-traded fund](#) (ETF). The launch marks the first time that US investors are able to bet on [memecoins](#)—which serve no purpose and promise no utility—through a traditional brokerage, without [handling crypto directly](#).

ETFs are designed to track the price of an underlying asset—whether metals, gold, or crypto. Loosely, for every dollar invested in an ETF, the operator stockpiles a dollar's worth of the asset, earning a fee as a percentage of the fund's total value.

“If you ignore stablecoins, dogecoin is the sixth largest [cryptocurrency] by market cap in the world,” Greg King, CEO and founder of REX and Osprey tells WIRED. “It’s really just following the demand that’s already out there in the native crypto space and providing access via a regulated vehicle.”

The extent of that demand is evident: With a first-day trading volume of almost \$18 million, the dogecoin fund performed better on debut than many other ETFs launched in the US this year, according to James Seyffart, ETF research analyst at Bloomberg. “People obviously want to trade it,” says Seyffart.

But it’s less clear whether the arrival of memecoin ETFs is a net positive for the investing public. The purpose of capital markets is to create a more efficient means of funding endeavors likely to return value to society, some analysts contend, and memecoins promise nothing of the sort.

“I still don’t really understand why a memecoin should be in an ETF wrapper to begin with,” says Bryan Armour, director of ETF and passive strategies research for North America at investment research firm Morningstar. “Something started as a joke with a Shiba Inu as its character—why should that be a part of capital markets?”

Before regulators at the Securities and Exchange Commission approved the first US-listed bitcoin ETFs [in January 2024](#)—only after the [courts had forced the agency’s hand](#)—members of the crypto industry had [fought for more than a decade](#) for permission to package coins into funds.

However, since Donald Trump returned to the White House, the US government has taken a far more permissive stance toward crypto, instructing prosecutors to [deprioritize certain crypto-related offences](#), passing [crypto-specific legislation](#), and appointing a [crypto czar](#) to oversee policy strategy. The SEC, for its part, has [retreated from numerous lawsuits](#) against high-profile crypto firms.

The dogecoin ETF launch last week coincided with the release of a [new ruleset](#) by the SEC that will allow issuers to bring crypto-based ETFs to market without seeking specific permission on a case-by-case basis.

“By approving these generic listing standards, we are ensuring that our capital markets remain the best place in the world to engage in the cutting-edge innovation of digital assets,” said SEC chair Paul Atkins. “This approval helps to maximize investor choice and foster innovation by streamlining the listing process and reducing barriers to access digital asset products within America’s trusted capital markets.”

Most Popular

Though REX and Osprey did not launch the dogecoin ETF under the new ruleset, instead taking an alternative route involving separate legal provisions to ensure it won the race to market, analysts expect the SEC’s new listing standards to tee up a proliferation of crypto ETFs in the US. Under the ruleset, any crypto coin already listed on a market—like Coinbase Derivatives—that participates in the Intermarket Surveillance Group, a network of organizations that monitors for fraudulent activity, would [automatically qualify](#) for the ETF treatment.

“It’s a spaghetti cannon. They’re going to cook up all these ETFs—whether levered versions, inverse, or pure spot exposure—and they’re going to frickin shoot this cannon at the wall and see what sticks,” says Seyffart. “That’s what these ETF issuers do.”

Before the approval of bitcoin ETFs in 2024, proponents [argued](#) that they would create a valuable avenue for both laypeople and financial institutions to invest through a regulated vehicle in an asset marketed as a digital equivalent to gold, a hedge against inflation, and so on.

Whatever the merits of the bitcoin investment case, the argument for memecoins is shakier. Typically modelled after a celebrity or popular internet reference, memecoins generate no revenue or cash flow, so their price depends entirely on caprices of the public mood and the vibes among investors. In the case of dogecoin, the supply of coins is even periodically diluted. “With a memecoin, it would be hard for a financial adviser to feel comfortable buying that for a client,” says Armour.

One’s stance on the prospect of memecoin ETFs coming to market in droves might depend on personal politics.

“I’m very much libertarian in the way the SEC should be operating ... The SEC’s job is not to be a merit regulator. Its job is to be a disclosure regulator,” says Seyffart. “I personally don’t own or trade any memecoins and probably won’t own any memecoin ETFs. But it’s a free market. People can do what they want.”

Others, including Armour, believe it’s the joint responsibility of regulators, issuers, and investors to ensure that public markets aren’t polluted with assets likely to inflict large and sudden losses.

“Does the SEC approving putting it into an ETF make people who don’t know what these things are think they are more legitimate?” asks Armour. “It pulls more attention and assets toward speculation, which typically is not a good long-term strategy for investors,” he claims.

The SEC declined to comment.

In King’s opinion, moralizing over which assets should and should not be stuffed into an ETF is besides the point; the government has defined what is permitted. REX and Osprey “primarily view it as providing access to investments that already exist,” says King. “[If there’s] investor demand, it’s something we’ll consider launching.”

In January, REX and Osprey [filed for permission](#) to launch ETFs for a variety of other crypto coins, among them a [memecoin promoted by Trump](#). The TRUMP memecoin has been roundly condemned by critics as an [unethical money-grab](#) that opens up a [potential vector for bribery](#).

“We just play by the rules,” says King. “The lines have been drawn ... by the administration.”

Securities

Wall Street Wraps the Stock Market's Crypto Hype Into a New ETF

Sept. 24, 2025, 6:38 AM PDT

First came the digital-asset treasuries — public companies that raised equity, bought crypto and watched their stock prices soar. It was a kind of financial alchemy: tap the stock market to buy tokens, then let the market reward you for holding them.

Now comes the effort to scale that trade. GSR, a crypto market-maker, filed to launch a fund that bundles such companies into a single investment — just as the frenzy shows signs of cooling.

The proposed GSR Digital Asset Treasury Companies ETF would be the first to formalize the strategy.

At the core of the trade is an inversion of the usual playbook. Instead of crypto firms tapping equity markets to raise capital, public companies have been using equity markets to buy tokens.

Many did so by issuing stock — often at inflated valuations — and plowing the proceeds into Bitcoin, Ether or Solana. Effectively, they turned their own shares into a financing vehicle for token accumulation. GSR's ETF would package that behavior, investing in firms that hold digital assets in their corporate treasuries.

The fund would also look for what are called private investments in public equity, or PIPEs, through which investors buy shares directly from companies. That portion of the fund would be limited to 15% due to certain ETF illiquidity restrictions, the filing says.

It's a familiar Wall Street move, taking a volatile, hard-to-access trade and wrapping it in something easier to buy. For GSR, it's a way to add institutional heft to a trade born out of narrative, momentum and retail demand.

Yet the timing is tricky. Activity in these deals peaked in July, according to data from financial advisory Architect Partners. And many of the companies that made these announcements have seen their shares fall in recent weeks as overall market reception cools and investors become more discerning.

Read more: Michael Saylor's Model Shows Cracks as Crypto-Stock Losses Mount

Other ETFs offer exposure to similar themes. The Grayscale Bitcoin Adopters ETF (ticker BCOR) tracks firms that hold Bitcoin in their treasuries, while the REX Bitcoin Corporate Treasury Convertible Bond ETF (BMAX) focuses on convertible bonds issued by those same types of companies.

It's GSR's first foray into ETFs and the endeavor is part of its newly formed US asset-management division. As part of its expansion plans, it recently opened a new office in New York City. In addition to the DATs fund, GSR is eyeing the launch of four other US ETFs, including an "Ethereum Staking Opportunity" fund and a "Crypto Core3" product, which would look to provide "balanced exposure" to Bitcoin, Ether and Solana, the filing says.

Founded in 2013, GSR is one of the biggest market-makers in crypto, helping clients trade more than 250 tokens, according to its website, with over \$1 trillion traded. It already has experience with DATs, including Upexi Inc.'s accumulation of Solana — GSR offers portfolio management, for instance, for such deals.

Still, it's entering a highly competitive American ETF landscape, where more than 4,400 funds already trade, over 90 of them crypto-minded. And analysts expect competition only to increase going forward after regulators last week approved a rule change allowing exchanges to fast-track listings for commodity-based ETFs, including those tied to various cryptos.

--With assistance from **Olga Kharif** and **David Pan**.

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Brandon Harden

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Securities

Accounting Board Skeptical It Should Rein in Unofficial Metrics

Sept. 24, 2025, 1:51 PM PDT

The board that sets US accounting rules is unconvinced whether to create formal standards for earnings and cash flow metrics that corporate managers frequently hype to investors.

The Financial Accounting Standards Board is weighing whether it should write rules for ubiquitous financial data points such as adjusted net income and free cash flow. The board took no formal action Wednesday but is considering a laundry list of accounting updates as it sets its next slate of priority projects.

“What is the problem we’re trying to fix?” said board member Marsha Hunt. “Is this really something we need to address when we had a number of stakeholders telling us they don’t think these are disclosures that need to be required?”

The board last November sought feedback on whether it should standardize “financial key performance indicators” and whether disclosing the figures in corporate financial statements should be optional or mandatory.

Figures that offer an alternative view of a company’s performance typically deviate from generally accepted accounting principles, and are often referred to as non-GAAP metrics. Commonly used financial measures can vary by industry and companies often put their own spin on the data points.

That makes it harder for investors to compare results across companies. The figures can also mask problems in companies’ official results by portraying a rosier view of their performance.

Several FASB members said they didn’t want to mandate that non-GAAP measures such as earnings before interest, taxes, depreciation, and amortization be disclosed in financial statements.

The information would be stale by the time it was included in the financial statements, said board member Christine Botosan.

Newly updated rules, however, could improve the underlying accounting and also provide more insights that could shape a future project on the measures, several board members said.

FASB Chair Rich Jones cautioned that the debate over adjusted metrics and the relevance of accounting standards will continue.

"If investors are continuously using these measures, does it make sense that the only place you can't find them is the financial statements," Jones said. "Probably not to me."

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Securities

Assets Driving AI Economy Vie for US Accounting Board Refresh

Sept. 24, 2025, 10:45 AM PDT

The US accounting board signaled support to continue modernizing its rules for assets like patents and copyrights that drive the modern economy.

Any future project from the Financial Accounting Standards Board should target specific types of intangible assets rather than a broad rewrite of its rules, board members said during a meeting Wednesday. The board took no formal action, but plans to consider such a project—along with a wish list of other accounting updates—as it sets its next rule-writing agenda.

The board heard mixed feedback earlier this year when it asked stakeholders whether it should address corporate reporting of intangibles such as brands and intellectual property. These assets back soaring market caps for tech companies like Nvidia Corp. and pharmaceutical firms like Eli Lilly & Co. but are largely missing from corporate balance sheets.

Board members said they would prefer to build on recent work addressing individual asset classes rather than pursue a fundamental rewrite of existing rules that spell out how to value and book intangible assets—guidance that reflects a manufacturing-heavy economy of the past and not the artificial intelligence era.

“One-size-fits-all accounting for intangibles simply doesn’t work,” said board member Frederick Cannon. He pointed to recent board efforts involving software, cryptocurrency, and mortgage servicing rights—three distinct types of assets that each “deserves its own appropriate accounting and disclosures.”

Improving the definition and accounting for research and development is one area the board could pursue, including potentially aligning guidance for purchased intangible assets and those under development, members said.

The board could also look at marketing and advertising costs that support brand values and how those expenses are disclosed, said FASB Chair Rich Jones.

“I didn’t hear a real groundswell of support to put more assets on the books. What I did hear was understanding of the spend,” Jones said of the public feedback.

The board last December sought input on whether to update its intangible asset rules. The board has separately asked for feedback on whether to standardize commonly used earnings and cash flow metrics and which slate of projects the board should prioritize in the coming years.

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Brunello Cucinelli SpA

Brunello Cucinelli shares sink as short seller makes new Russia allegations

Morpheus Research alleges luxury brand continues to trade in Russia and misled investors over its operations in the country



Cucinelli chief Luca Lisandrone said last week that its stores in Russia remained closed but that the brand continued to offer one-to-one client services in a Moscow showroom © Bloomberg

Silvia Sciorilli Borrelli in Milan

Published 5 HOURS AGO



Shares in Italian luxury group Brunello Cucinelli tumbled on Thursday after a London-based short seller alleged it had “misled shareholders” over its operations in Russia, reigniting controversy around the brand’s conduct in the country.

Morpheus Research, a London-based firm “dedicated to exposing fraud and corporate misconduct”, said a three-month investigation had found that [Cucinelli](#) “continues to operate several stores in Moscow with a wide offering of items priced at thousands of euros”.

The firm disclosed that it had built a short position in Cucinelli shares, which finished the day 17 per cent lower after being temporarily suspended in Milan on Thursday. The sell-off wiped over €1bn off Cucinelli's market capitalisation.

In 2022, the EU imposed a ban on the export of luxury goods valued at more than €300 to Russia, in the wake of its full-scale invasion of Ukraine.

Last week, Cucinelli chief executive Luca Lisandrone [told the Financial Times](#) that the luxury group continued to sell a limited selection of items in Russia as permitted by EU law.

Lisandrone said its stores in Russia remained closed but that the brand continued to offer one-to-one client services in a Moscow showroom, and also continued to work with wholesalers.

Morpheus said [its investigation](#) — which involved interviews with former Cucinelli employees and partners, an “extensive analysis” of trade data and visits to Cucinelli's Russian stores — cast doubt on the company's claims.

“We found that Cucinelli continues to operate several stores in Moscow with a wide offering of items priced at thousands of euros,” Morpheus wrote.

A spokesperson for Cucinelli said the value of exports to its Russian subsidiary had fallen from €16mn in 2021 to €5mn in 2024, and that the Russian market now accounted for roughly 2 per cent of group revenue, down two-thirds over the same period.

“We believe these figures provide a clear and accurate perspective on this matter and rule out any speculation regarding the use of the Russian market to reduce stock or clear excess inventory,” the spokesperson said. Cucinelli was “evaluating legal action to protect its reputation”, the person added.

The allegations are potentially damaging for Brunello Cucinelli, founder of the eponymous brand, who is [renowned for](#) his advocacy of “humanistic capitalism” — whereby economic and environmental sustainability and the wellbeing of workers are prioritised over profit.

Morpheus's report follows claims made by hedge fund Pertento Partners, which alleged this summer that the Italian luxury label continued to operate its Russian stores in violation of the EU's sanctions and that it used Russian sales channels to dump excess inventory.

It alleged Cucinelli's three Russian stores remain open and sell current collections for "prices many times higher than sanction ceilings permit".

Lisandrone told the FT the claims were false and that only products with a wholesale price of €300, such as cotton trousers and T-shirts, were still being sold in Russia. The €300 limit imposed by the EU corresponds to the value of goods on the export declaration form, which typically equals the wholesale price.

Morpheus said it had sent "secret shoppers" to some of Cucinelli's Moscow stores in August and September 2025 who confirmed that the stores are open and "selling multi-thousand euro luxury goods".

It added the tags showed the garments had been manufactured in Italy over the past two years, after sanctions against Russia were imposed.

The report also echoed Pertento's concerns over Cucinelli's relatively high inventory levels, arguing the brand had "resorted to aggressive discounting" and that items ended up in discount chain TJ Maxx.

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Tech's Fashion Darling Allegedly Swindled Investors of Millions

Sept. 25, 2025, 2:00 AM PDT

Christine Hunsicker was in her friend's Palo Alto, California, backyard in 2011 wondering how every woman could have the kind of infinite clothing closet she'd grown up with. As a kid in rural Pennsylvania, her family wasn't particularly wealthy, yet she was always playing dress-up in outfits, like a penguin-print maxi dress or a shimmering sequin skirt, made by her seamstress aunt. A clothing-rental subscription company could be a blockbuster business, she thought. She even had a name for it, inspired by a character from a book she'd once imagined but never wrote: Gwynnie Bee.

Hunsicker was obsessed with Rent the Runway—the startup that had sparked the clothing-rental category two years earlier. Gwynnie Bee would essentially be the same idea, just for a different crowd. Rather than renting out designer evening wear and office essentials, she'd focus on zany styles such as psychedelic flower-print moto jackets and paint-splatter dresses for plus-size women.

At the time, direct-to-consumer e-commerce startups, from makeup and pet food to toothbrushes, were raising billions of dollars from venture capitalists. Hunsicker, who'd previously worked at several tech startups, knew how to use the era's lingua franca to get investors to open their wallets. She also had gotten her hands on a copy of an early Rent the Runway pitch deck. She'd go on to innovate, curate and revolutionize her way to millions in funding injected by companies including Shervito Ventures, an early-stage investment firm run by a founding member of Google's board, and KCP Capital in Dubai. In a brainstorming session with her employees, she preached one of her core beliefs when it came to building a business: "You can't disrupt without disrupting."



Hunsicker, center, observes a fitting at Gwynnie Bee's office in Queens, New York, in 2016.

Photographer: Nicole Bengiveno/NYT/Redux

But seven years into Gwynnie Bee, she hadn't disrupted much, so Hunsicker gave her original business an ambitious twist. The real money at the time was in enterprise software, known as software-as-a-service. With its immense scalability and recurring revenue streams, SaaS startups such as Slack and Dropbox were being valued at more than \$5 billion. Instead of her company only renting out clothes, it could become retail's equivalent of enterprise software—selling the technology, the logistics and the physical infrastructure to any brand that wanted to run a clothing-rental business but didn't want the hassle. If she could make that leap, she wouldn't be playing with millions, but billions. She told employees this was the plan all along.

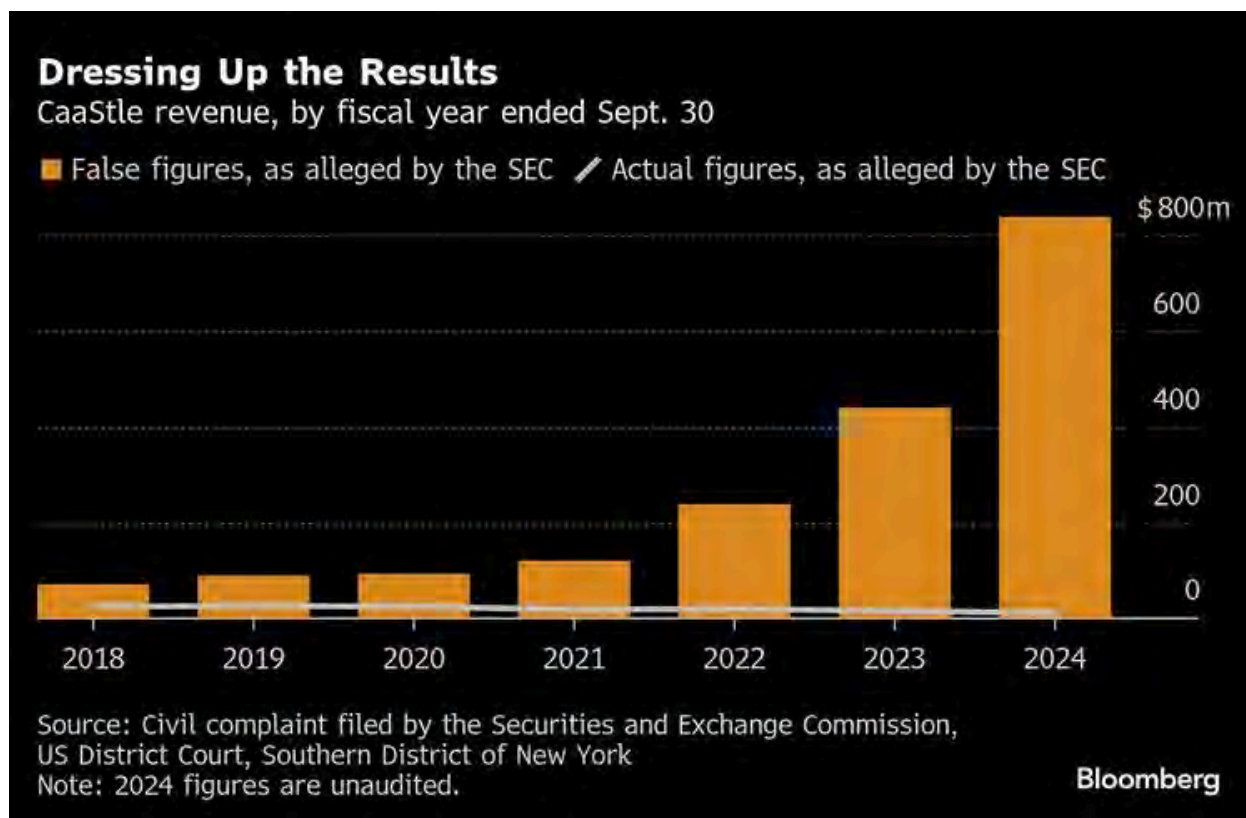
Hunsicker renamed the company CaaStle Inc.—meant to be a play on what she dubbed “clothing-as-a-service”—and relegated Gwynnie Bee and a second, budget-friendlier brand, Haverdash, to become the company's private-label offerings. CaaStle would solve a problem for beleaguered mall retailers desperate for revenue: Typically when brands had excess inventory, they'd liquidate it at steep markdowns. With CaaStle, they'd be able to monetize it not just once but many times over by renting out the clothing, including unused inventory from past seasons.

CaaStle would build rental websites for its clients' brands, then operate the unwieldy back-end logistics, including distribution centers that handled an endless loop of clothing cleaning, storage, shipping and returns. CaaStle's overhead costs would be enormous, but Hunsicker knew how to raise capital. By the time she flew to Las Vegas in 2018 to deliver a keynote speech at Shoptalk, one of the retail industry's biggest annual events, she declared that her freshly pivoted company would steal market share from Amazon.com Inc. "Disruption that isn't," one of her slides read.

Within months, Hunsicker nabbed a half-dozen mall retailers and new investors. She also had big news to share with her employees: The company was on the verge of becoming a unicorn. "Our valuation now is \$950 million," she said during one meeting, according to former employees. Hunsicker scored television appearances on CNBC, where she was declared "the CEO changing retail with clothing rental"; took the stage at a *Vanity Fair* event; and persuaded John Hennessy, the chairman of Alphabet Inc. and former president of Stanford University, to become an investor and board member.

Some CaaStle then-employees say they had their doubts at the time. Why, they whispered, wasn't their chief executive officer sharing basic financials with them? If the company was doing so well, those who did have access to the numbers wondered, why hadn't sales improved in more than two years? Weren't the warehouses still half-bare? "I didn't see how we were going to make money," says one of Hunsicker's former executives who asked not to be named so they could freely discuss private business matters. "They were constantly changing the business model."

By March 2025, employees weren't the only ones with serious doubts. Officials from the US Department of Justice and the US Securities and Exchange Commission allege that for six years, Hunsicker had lied to her investors about CaaStle's performance and financials, even though she'd kept raising millions more in funding until the very end. An indictment handed down by the Justice Department outlines allegations of a brazen fraud scheme of more than \$300 million in which she raised money by forging income statements and falsifying audit reports, reducing her losses and ballooning her revenues. Prosecutors laid out allegations that, if true, amount to one of the biggest financial heists in recent tech history, putting her up there with Theranos founder Elizabeth Holmes. In a separate lawsuit filed by the SEC, the agency accuses Hunsicker of exaggerating her operation's revenues more than 70-fold.



When reached for comment, a representative for Hunsicker, who has pleaded not guilty and is awaiting trial after being released on a \$1 million bond, referred to a statement from her lawyers Michael Levy and Anna Skotko issued in July: “Although Ms. Hunsicker has been fully cooperative and transparent with the Department of Justice, the US Attorney for the Southern of New York nonetheless has chosen to present to the public an incomplete and very distorted picture in today’s indictment. There is much more to this story, and we look forward to telling it.”

“This was not a case of business missteps,” investor KSV Global wrote in one of the civil lawsuits from Hunsicker’s investors accusing her of lying about her company’s financials. “It was a meticulously orchestrated deception, engineered to attract funding and inflate valuation at the expense of truth.” (KSV won the suit and was awarded upwards of \$46 million.) Interviews with more than 30 former CaaStle employees, business partners and investors, most of whom spoke under condition of anonymity so they could discuss private business matters, and dozens of internal documents suggest that Hunsicker was a hypercompetitive manipulator who blew past the startup ethos of fake-it-till-you-make-it. “There were times when I saw her walk right up to the line of what would be considered vision, and what would be considered false—just completely outside of reality,” says one of her former employees. “Where does the vision stop and the delusion begin?”

Around the time Hunsicker rebranded her company as CaaStle, she showed up to the company's New York office with a new look. For as long as her employees had known her, Hunsicker had mousy, shoulder-length soccer-mom hair and often dressed in an inoffensive suburban office-park uniform of blouses and trousers. She'd even worn flip-flops held together by duct tape, and those close to her would beg her to look more professional for the sake of the company's image. "Christine was the antithesis—like as a person—the antithesis of fashion," says Kaeya Majmundar, one of her former employees. "It would be shocking for her to start pitching a fashion business at all. Period."

There was a collective gasp when Hunsicker strode into headquarters that morning. Her hair was buzzed short on the sides, rising into a pompadour. She started wearing loose jeans, tees and leather jackets, like the tech girlbosses in California. She began going to conferences wearing blazers in leopard and snakeskin prints, with the occasional shock of ruby-red lipstick for a photo shoot. A pair of clear, thick-rimmed eyeglasses completed the look.

Hunsicker grew up in a small farming town where her dad worked in a steel mill and her mom prepared people's taxes. She attended schools she's described as some of the worst in the country, so she devoted herself to sports, playing varsity soccer, basketball and field hockey, where she said she developed a fierce competitiveness that even she's admitted may be extreme. "Someone who worked for me said, 'You're the most competitive person I've ever met, and I don't mean that as a good thing,'" Hunsicker said in a 2022 book she was interviewed for about women and leadership.

A couple of years after graduating from Princeton University, she got a data analyst job at a tech services company in New York, where she was eventually laid off. Soon, she was introduced to a fellow Princeton alum named Brian O'Kelley, a tech executive who was impressed by her marketing instincts, and he hired her at an enterprise software company called Cetova. O'Kelley says the two embarked on an affair that would end his marriage and her relationship at the time. Hunsicker often told O'Kelley that she was like Dagny Taggart, the brilliant industrialist heroine in Ayn Rand's libertarian bible *Atlas Shrugged*, who exhibits a supreme belief in her abilities and refuses to compromise her ideals even when everything falls apart. "She would say it's all of our job to be selfish, and if you're not selfish, you're weak and you're going to get taken advantage of," O'Kelley says.

A year before they got married in 2005, O'Kelley brought Hunsicker over to Right Media, where he was developing the internet's first advertising exchange. Hunsicker rose to become president and chief operating officer, working with Jaswinder Pal Singh, O'Kelley's former professor at Princeton, who O'Kelley, the company's chief technology officer, had brought on as an adviser. Yahoo! Inc., then one of the biggest internet companies in the world, wanted to acquire it in 2007, but O'Kelley opposed the sale because he thought it was too early to exit. The board fired O'Kelley and made Singh the interim CTO. Yahoo then acquired Right Media for \$850 million. (Singh declined to comment.)

In the years after his ouster, O'Kelley said he had been fired because of a conflict with the CEO about the company's future. O'Kelley now says Hunsicker had a hand in forcing him out as their marriage was falling apart. (A representative for Hunsicker said in a statement: "It's obvious that Christine's ex-husband has a weird ax to grind over his exit from Right Media and has told different stories about his departure. He will blame anything and anyone for it regardless of the truth.")

After the divorce, the two rarely spoke, and O'Kelley went on to found AppNexus, a Right Media rival that he sold to AT&T Inc. for \$1.6 billion in 2018. He describes his ex-wife as cunning, with little regard for ethical boundaries. "I still can't understand what the hell I was thinking or how that happened," O'Kelley says of their marriage. "At some level, she takes pleasure from seeing her power and what she can get away with."

At Yahoo, another programmer entered Hunsicker's orbit. George Goldenberg was a Stanford-trained engineer who had a command of ad marketplaces and inventory systems and became her choice to help her build the tech infrastructure for her new project: a plus-size clothing-rental service. Hunsicker had become COO at drop.io, an online file-sharing company, but after it sold, she left to turn the side project into a full-fledged business with Singh and Goldenberg. (Goldenberg did not respond to a request for comment.)

Hunsicker set off to raise money for what by then was named Gwynnie Bee. Former employee Majmundar says Hunsicker seemed to adopt a mindset that founders often do, pursuing growth at all costs. "I don't really care what it is, but I need it to be bigger. Not that I want it. I need it. And I'm willing to do absolutely anything it takes to get there," she says.

Hunsicker began raising money at a frenetic pace, attending multiple dinners every week to court investors. Rather than approach big firms for major funding rounds, Hunsicker preferred to quietly add small investors one by one. She went to angel investors and built a network of rich friends who could write big checks. Hunsicker would give them the pitch and the price, and tell them she was always open to take on more funds, according to a person with knowledge of her fundraising tactics. In 2014 she was introduced to hedge fund billionaire Bill Ackman and persuaded him to put in a small personal investment.

Among her investors was Monica Graham, a former hedge fund manager who wrote Hunsicker checks for millions of dollars. Graham asked her out, and the two dated for a time. At her home in New York's Hamptons, Graham would host parties for her friends that Hunsicker and her early employees would use to find new contacts and raise more funds for Gwynnie Bee by mingling with the wealthy crowd, according to people familiar with the matter. Hunsicker even met the Clintons in January 2016, posting a photo with them. "Bill and Hillary were jazzed for the photo op!" reads the caption. (Graham declined to comment.)

As the investor checks kept coming, Hunsicker hired a publicist. She was featured on the *Today* show's website and scored an appearance on *CBS This Morning* in 2016, where she said she'd delivered 3 million rental boxes. A month later she did an interview with *Forbes*, which declared Hunsicker "no ordinary online fashion entrepreneur."

At headquarters, meanwhile, it was becoming clear that the service wasn't attracting enough subscribers. In a feedback session with one department near the end of 2016, an early employee bluntly expressed concerns: "Everyone feels like the company is doing very poorly," the employee told Hunsicker, claiming she'd misled him about the company's financials when he'd interviewed for the job. "People know, and people are scared."

Then came Hunsicker's big break. She was selected as one of the hosts of *Project Runway: Fashion Startup*, a *Shark Tank*-esque spinoff of the popular fashion design show. Contestants would pitch their idea to a panel of fashion and beauty bigwigs including designer Rebecca Minkoff and Birchbox co-founder Katia Beauchamp—and, in the role of no-nonsense tech dynamo, Hunsicker. She tried to outmaneuver the other judges, who were also competing to invest in these companies, by bluffing to them backstage about her level of interest. "We would speak off camera, and then I would come on and do something completely different to what I had just committed to," Hunsicker said at the time in a promo video for the show.



Hunsicker, a judge on the show *Project Runway: Fashion Startup* in 2016.

Source: YouTube

Investors, many of whom knew little about fashion or retail, couldn't get enough of Hunsicker, who had tech bona fides and knew just how to deploy industry jargon and dangle enviable financial projections. In the spring of 2017, she gathered her 150 or so employees at Gwynnie Bee's headquarters inside an old Macy's warehouse in New York to spill the big news about Hennessy—the "Godfather of Silicon Valley," as venture capitalist Marc Andreessen once called him—becoming an investor and a board member. "It's quite a coup," she told her staff.

When the company rebranded itself as CaaStle the following year, Hunsicker upgraded its digs. She hired dozens of new engineers, merchandisers and marketers, and moved her growing staff to a sleek office building in Midtown Manhattan outfitted with a rooftop terrace, a fitness center and a golf simulator. She told her employees about the importance of communication, motivation and passion. They had to be data-driven, collaborative and tenacious if the company was to succeed, she said. "Together, we foster an environment that is direct, transparent and trusting," one internal presentation on office culture stated, "in which honesty, respect, ownership and accountability are paramount in everything we do."

Beginning in late 2017, Hunsicker told employees and friends that she had suffered a brain injury. While trying to take a bathroom mirror down, it popped off and hit her on the top of the head. She told them she'd started to experience short-term memory loss, even asking an employee to follow her around the office to take notes at her meetings, so she'd be able to reference what she'd said. Hunsicker told her board of directors, too, and stayed on as CEO, according to a person with knowledge of the discussions.

Meanwhile, Hunsicker was luring new clients, mostly mall retailers desperate for new revenue. Ann Taylor, Express and New York & Co. signed on, along with a couple of smaller, design-forward brands including Vince and Rebecca Taylor. With investor money flowing in, CaaStle invested in distribution centers in Ohio and Arizona, engineering talent in India, and more technology and logistics staff in Mountain View, California. It started a branding department and expanded its merchandising division. Hunsicker even persuaded landlords of the Ohio distribution center to reduce a deposit by selling them on her startup's vision. But as Hunsicker spent that new capital, her executives admitted in a 2018 internal presentation that they were having trouble bringing in revenue. "Did not hit our 2017 Acquisition targets," reads a note that the executives prepared. "Were aware of this by Q2."

Hunsicker created an enemy for her staff to rally against: Rent the Runway and Jennifer Hyman, its co-founder and CEO. The hot startup was valued at \$1 billion and was in the early stages of planning an initial public offering. Magazines, including the *New Yorker*, wrote gushing profiles about Hyman, a Harvard Business School graduate, as the face of subscription commerce. Representative Alexandria Ocasio-Cortez (D-NY) applauded Hyman when the company equalized benefits for hourly and salaried employees. The *New York Times* said using Rent the Runway was "transformational bliss."

Those close to Hunsicker describe her as fixated on Hyman, who at the time she had yet to meet. Hunsicker regularly criticized Rent the Runway's technology and logistics to investors, claiming its business model didn't work, according to a person familiar with the talks. "It was never friendly competition. We're going to do better than them. We're smarter than they are," says one of Hunsicker's former employees about their old boss. "That's who we want to knock out of the game."

According to the lawsuit filed by the SEC, in 2019 Hunsicker's finance department sent her an income statement with all the numbers from the previous fiscal year: The company was losing more than \$47 million annually with just \$23 million in revenue. Gwynnie Bee had been hemorrhaging money for years, and now CaaStle—with its high labor and shipping costs and client revenue-share agreements—wasn't bringing in enough revenue either. So, the SEC alleges, Hunsicker whipped up a new income statement, one that cut her losses to \$24 million and almost tripled revenue to \$72 million, and sent the fake document to at least 10 other investors. They bought it, and millions in new capital began flowing in. Officials from the Justice Department and the SEC allege that this was the first instance of Hunsicker's altering her books and laid out in an indictment and lawsuit a pattern of consistent manipulation and fabrication of CaaStle's finances over six years.

By early spring 2020, suddenly home-bound office workers didn't need fresh outfits and women didn't need to rent dresses to attend weddings over Zoom. Hunsicker furloughed some of her corporate staff. Former employees say she and others instructed account managers who were dealing with clients to spin a positive story out of the data, even as it was clear to them that every prized metric—conversions, retention, utilization, engagement—was in decline.

Hunsicker needed to raise more money and went to existing and new investors for help. Court filings later showed that she'd amassed an impressive list of financiers, including a venture capital firm led by early Facebook investor Jim Breyer; hedge fund billionaire Seth Klarman's nonprofit; and the investment manager for Henry Kravis, the billionaire co-founder of one of the world's largest private equity firms, KKR & Co. (None of these investors responded to a request for comment.)

In April 2020, according to the SEC lawsuit, an investor asked for a status update, but CaaStle's financials had deteriorated even more. So Hunsicker allegedly put together another fake income statement, according to court documents. Ninety-million dollars, she wrote, with minimal losses. Authorities accused her of using those same numbers to persuade an investor to wire her an additional \$1.5 million. In the spring of 2021, Hunsicker went on the hunt again, telling one of her existing investors that she was looking to raise as much as \$20 million more in funds. And again, the SEC alleges, Hunsicker sent a fake income statement, in which she wrote: "I would love for you to do some more." The investor wired her an additional \$2 million.

Meanwhile, Hunsicker's reputation as a badass woman in tech only continued to grow. She racked up media accolades from *Inc.* magazine's "Female Founders" and *Fast Company's* "World's Most Innovative Companies." Employees grumbled that the business didn't make any money and resorted to asking the human resources department about the company's true valuation, but they couldn't get a straight answer. Neither did some investors, who complained that Hunsicker was slow to follow up even when she promised to. One says they noticed that the financials Hunsicker shared in an Excel spreadsheet looked like something thrown together in a high school computer lab, not one created by a sophisticated multimillion-dollar company.



Hunsicker (second from right) on a panel at the Fast Company Innovation Festival in 2019 in New York. Photographer: Brad Barket/Fast Company/Getty Images

Hunsicker's personal financial strains also mounted as she put more money into her business. She'd gotten married again—this time to Phaidra Knight, a former rugby player for the US national women's team. The couple lived in a newly renovated 6,500-square-foot complex with a koi pond and an indoor spa in Lafayette, a quiet township in the rolling hills of northern New Jersey. Hunsicker took out a \$20 million loan from Emigrant Bank to put back into CaaStle and gave her shares as collateral, according to state filings and a person with knowledge of the matter.

In March 2021, Hunsicker scored a high-profile deal that bolstered CaaStle's reputation. Ralph Lauren Corp. agreed to allow Hunsicker to operate the Lauren Look, a rental service for women's wear. The designer's son and company's chief branding and innovation officer, David Lauren, gushed about its potential. "Ralph Lauren is making a business model out of it," Lauren told *Women's Wear Daily* at the time. "We're doing a lot more than just partnering with a company. We've built a whole style guide around it, we've done special marketing programs around it." (A spokesperson for Ralph Lauren declined to comment on the partnership.)

Even so, that fall, Hunsicker's investors were growing concerned that she wasn't sharing enough information with them and told her she needed to send them audited financials along with more regular updates, according to court filings. Investigators say that when investors pressed for 2021 numbers, she told them that it was delayed because CaaStle wasn't high on the auditing firm's priority list. According to the SEC complaint, what investors didn't know was that the auditor, BDO USA, had already provided its report, showing \$18.6 million in revenue and \$32.3 million in operating losses.

The SEC claims that Hunsicker figured out a workaround: She told her finance team to send her the audit report that had already been published, but to email a draft of it in Word. She bumped up the numbers and removed the auditor's warning that the company was at risk of folding, then added the word "DRAFT," saved it as a PDF and sent it to her investors. According to the SEC lawsuit, she added a note: The audit firm was still working through versions of the report, but the draft was "further along than expected." Her document boasted CaaStle's best numbers yet: more than \$120 million in revenue. It went out to at least eight investors, and Hunsicker sent a "final" version that went to more than a dozen. This time, the SEC alleges, she appended an auditor's signature to her doctored report, lending some relief to her anxious investors.

Hunsicker, meanwhile, was losing some of her most vital retail partners who weren't seeing the dollars they were promised. Ralph Lauren, her star signing, decided to fold its rental project and didn't renew its contract. Bloomingdale's and Banana Republic did the same. When Express, one of its longest-standing customers, wanted to exit its deal, CaaStle began writing checks of \$250,000 per month to the retailer. Hunsicker told staff that it was paying Express for "utilization rights," which meant she was paying the brand to use its inventory, say former employees. (Bloomingdale's, Banana Republic and Express did not respond to requests for comment.)

The SEC complaint says that while revenue dried up, Hunsicker announced to her investors a new milestone: CaaStle was suddenly profitable. Once again, investors clamored for audited results, and she complied. She told them revenue doubled from her last report to \$238 million, and the money flowed in. One prospective investor went to the investment committee the day after receiving the report and ultimately wired more than \$7.5 million. Again, the numbers she'd provided were fake, the SEC alleges.

By now, Hunsicker was getting sloppy. According to authorities, one investor noticed errors in the report and emailed the real auditor. BDO allegedly told the investor that it hadn't prepared the report, then demanded an explanation from Hunsicker. She needed a doozy of an excuse for this one and allegedly searched the internet for "created an audit firm fake," according to court documents. Hunsicker told the company she'd mistakenly sent the investor a marked-up version of the report that she was going to use for a lecture she was giving at Princeton on "ethics and entrepreneurship," the SEC alleges. The investor didn't press any further and cashed out their shares.

Hunsicker needed a new way to bring in revenue. This time she'd recruit influencers to CaaStle to help them build their own personal rental websites using clothes from her company's existing inventory. All it would take is one big-name influencer to get things rolling, then everything would be OK, she told people close to her. In 2024 she hired a team of business development executives with six-figure salaries to build a roster of influencers, but the new business model left staff baffled, and the service, which mostly attracted small influencers, flopped. Cash was drying up, and former staff say that Hunsicker's management team told employees to delay payments to vendors that were sending invoices.

Even so, in September 2024, Hunsicker doubled CaaStle's revenue one more time and declared a cash balance of approximately \$113 million, authorities allege. The real statements showed the company in a dire state, with about \$16 million in revenue, its largest losses to date and less than \$1 million in cash remaining. In her haste, Hunsicker had prepared a messy report that was missing a page and contained notes that were out of date, according to the SEC lawsuit. She then offered two investors a chance to see the document in her office in October 2024.

One of those investors, Jed Lenzner—who manages KKR co-founder Kravis' investments—noticed those errors. According to a person familiar with the situation, Lenzner called the auditor BDO, which told him that it hadn't prepared the report he'd seen in her office—in fact, CaaStle was no longer a client. After Lenzner confronted Hunsicker, she offered him a choice: He could do nothing, because there was value in the company, or he could redeem his investment in the company. Lenzner chose neither and instead reported Hunsicker to her board of directors.

Lenzner's whistleblowing didn't lead to a full-blown ouster. Instead, in December, CaaStle's board removed Hunsicker as a member but kept her on as CEO. The board began an internal investigation, hiring law firm Cravath, Swaine & Moore to look into any misconduct, and prohibited Hunsicker from fundraising or signing new contracts. Hennessy, her star board member from Alphabet, stepped down, distancing himself from the impending scandal. (Hennessy did not respond to requests for comment.) The company purchased a \$2 million insurance policy, effective Dec. 18, to protect directors and officers from fiduciary personal losses if they were sued, according to a copy of the policy. The SEC claims that the board didn't inform investors that any of this was happening.

At a board meeting in January, Singh, as the new chairman, stated the obvious: The business was unlikely to become profitable. According to minutes from the meeting, Singh encouraged his peers to focus on another new opportunity that Hunsicker had conjured up. They'd team up with a new company she'd co-founded called P180, which would invest in brands and work in tandem with CaaStle. Hunsicker was the only way they could close that deal, he said, which needed to happen for CaaStle to have a chance at survival. Even so, its top executives had already been cashing out their shares in the months prior. Singh pulled out \$6 million and Goldenberg redeemed close to \$3 million, according to bankruptcy filings.

Later that month, Hunsicker gathered her staff at headquarters to announce a round of layoffs and tell the remaining employees that CaaStle would refocus on partnerships through the P180 business. Hunsicker's P180 co-founder, veteran retail executive Brendan Hoffman, started working out of the CaaStle office, but employees remained confused about the arrangement and how it would work. "Big opportunities have just come our way in that space," Hunsicker told them. "It resonates a ton with brands and retailers, and it's going to help us build the new economy faster and better." (Hoffman did not respond to a request for comment.)

During this time, Hunsicker kept trying to raise funds for CaaStle, even though she was banned by the board from doing so, prosecutors allege, and she started selling off \$13 million of her shares and convertible notes in her companies. According to the indictment, Hunsicker tried after that to jettison an additional \$19 million in her own shares, and following a meeting with an investor to discuss the potential deal, she was worried enough to type these words into an internet search: "bank fraud vs. wire fraud severity."

Early one morning in March, officials from the Justice Department showed up at her New Jersey mansion to seize electronic devices. The US Attorney for the Southern District of New York's office, led by its securities unit, had been investigating CaaStle for potential fraud, according to a person familiar with the probe. It's the same branch involved in financial fraud cases including the FTX crypto scheme and the racketeering conspiracy operated by executives from Archegos Capital Management.

Several senior executives at CaaStle received subpoenas, and Goldenberg and his peers on the board prepared a letter telling shareholders they'd removed Hunsicker from her position as CEO, with Goldenberg taking over. The board review found Hunsicker had violated company policies, and the board told investors that if they'd ever received financial information from her, those numbers couldn't be trusted. CaaStle was now "facing a severe and immediate liquidity problem," the board said, while adding that no one else on the management team was involved in the alleged misconduct. "The performance to date has not matched what Christine claimed," the board said in the letter. "We have learned that Christine provided certain investors with misstated financial statements and falsified audit opinions, as well as capitalization information that understated the number of company shares outstanding."

Goldenberg and Singh, the acting board chair, convened CaaStle's employees and told them they were being put on unpaid furlough for two weeks, effective immediately. Singh spoke to staff on a call he took from his car, absolving everyone but Hunsicker. "It's important for you to know that no one on the management team has been found to be aware of, or complicit in, the violation of company policies." Goldenberg told them that they were experiencing a severe cash shortage because the company loaned money to its new partner, P180. "Christine, as you know, was CaaStle's primary fundraiser," Goldenberg said. "She's no longer able to perform this function."

Then came the lawsuits. EXP Topco, which owns the Express brand, sued in New York, alleging that CaaStle had infringed on trademarks and breached various agreements. Investor KSV filed that lawsuit against Hunsicker in Florida claiming that it was “misled through false financials and doctored reports” that CaaStle’s business was booming. P180 sued CaaStle and its executives, including Hunsicker, for fraud, arguing that it would never have worked with her if management knew the truth about CaaStle’s finances, calling Hunsicker “a world-class fraudster ranking alongside the likes of Bernie Madoff and Elizabeth Holmes.” (Hunsicker has denied the allegations in a filing.)

On a Friday afternoon in July, Hunsicker showed up at a federal courthouse in downtown Manhattan to appear before a judge. She walked up to a courtroom on the fifth floor wearing a white floral button-down tucked into black pants, reminiscent of the humdrum style she’d traded in years ago. She nervously rocked back and forth on the balls of her feet as she waited to enter. She was charged with one count of wire fraud, two counts of securities fraud and one count of money laundering—each carrying a maximum sentence of 20 years in prison—in addition to one count of making false statements to a financial institution and one count of aggravated identity theft. Hunsicker pleaded not guilty to all charges.



Hunsicker on July 18, 2025, leaving federal court in New York, where she pleaded not guilty to defrauding investors out of more than \$300 million.

Photographer: Michael Nagle/Bloomberg

By then, the Gwynnie Bee store had been taken down, CaaStle was liquidating its assets in bankruptcy proceedings, all employees had been laid off, and investors were trying to figure out how to recoup some of the \$534 million in funding they'd sunk into Hunsicker's company. CaaStle has listed its assets at \$10 million to \$50 million, but a court-appointed trustee is now sifting through its corporate remains to figure out what's recoverable.

There's remarkably little. The company had some patents of unknown value for things such as clothing inspection processing methods, along with some subscriber lists and domain names. There was only about \$886,000 worth of its own inventory left in warehouses. It didn't have any real estate, just leases.

Meanwhile, Hunsicker's nemesis Rent the Runway is enduring its own recovery from the pandemic. Hyman, still running the company, says she isn't surprised by CaaStle's downfall. "Over the past 14 years, she copied our public statements, lied to investors about our business model, and lied about us to the designer community," Hyman said in an email. "Now, with her paper thin veil of legitimacy torn away, the world can now see that the emperor has no clothes—not even rented ones." —*With Ava Benny-Morrison, Chris Dolmetsch and Steven Church*

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UnitedHealth Fights Investor Suit Over DOJ's Merger Probe

By **Sydney Price**

Law360 (September 24, 2025, 9:04 PM EDT) -- UnitedHealth and its executives have asked a Minnesota federal judge to toss a proposed securities class action accusing it of, among many things, not disclosing that the U.S. Department of Justice had reopened an antitrust investigation into the health insurer, saying the complaint consists of unsupported "scattershot allegations."

In the **motion filed Tuesday**, UnitedHealth said the 208-page complaint by the California Public Employees' Retirement System offers only "parroted bad news coverage and length," but no actionable misrepresentations regarding the DOJ's revived investigation into UnitedHealth's acquisition of healthcare payment technology company Change Healthcare.

"It is black-letter law that a decline in a company's stock price following a negative event — including after purported misconduct is revealed — does not alone constitute securities fraud," UnitedHealth said.

The merger ultimately proceeded after the DOJ lost a high-profile **bench trial** during which a Washington, D.C., federal judge said UnitedHealth was sufficiently committed to preventing the sharing of data across its segments.

"Plaintiff piggybacks on DOJ's highly publicized (and ultimately failed) antitrust action in 2022 to block UnitedHealth's Change acquisition," UnitedHealth said.

The insurer also denied the suit's other allegations, including that it misdiagnosed patients in its Medicare Advantage program. Under the program, the government pays insurers a set fee per patient based on each individual's predicted health status, according to the motion.

The suit alleged UnitedHealth used its "HouseCalls program" to dispatch nurse practitioners to members' homes to perform physical assessments in search of new diagnoses, even if they were not medically supported.

UnitedHealth said, however, that the complaint does not show the program was not valuable to seniors, or that it never resulted in legitimate diagnoses.

"Plaintiff relies on cherry-picked allegations from press reports about these visits and a [DOJ] civil investigation into those allegations," UnitedHealth said. "Such thin allegations do not state a claim for securities fraud."

The suit's individual defendants include former UnitedHealth CEO Andrew Witty and current Chairman Stephen Hemsley, who have said the insider trading claims against them are also baseless because they do not allege any material nonpublic information that allegedly motivated stock sales.

UnitedHealth's former CEO Brian Thompson, who was shot and killed in New York City last December, is also accused in the suit of having sold more than 21% of his UnitedHealth shares for \$211 million in proceeds during the class period running between March 14, 2022, and February 27, 2024. A motion to substitute Thompson's estate has not been filed, according to Wednesday's motion.

Counsel for the defendants declined to comment on Wednesday. Counsel for the investors did not immediately respond to a request for comment.

California Public Employees' Retirement System is represented by Tim F. Sullivan of Tim Sullivan PLLC, and Darren J. Robbins, Sam S. Sheldon, Laurie L. Largent, Robert R. Henssler Jr., Matthew I. Alpert, Jeffrey J. Stein and Jack Abbey Gephart of Robbins Geller Rudman & Dowd LLP.

UnitedHealth, Witty and Hemsley are represented by Robert J. Giuffra Jr., Matthew J. Porpora, Jeffrey T. Scott, Morgan L. Ratner, Jacob E. Cohen and Rishabh Bhandari of Sullivan & Cromwell LLP, and Peter C. Magnuson, Matthew Kilby, Jeffrey P. Justman and Anderson C. Tuggle of Faegre Drinker Biddle & Reath LLP.

The case is California Public Employees' Retirement System v. UnitedHealth Group Inc. et al., case number 0:24-cv-01743, in the U.S. District Court for the District of Minnesota.

--Editing by Lakshna Mehta.

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Del. Justices Uphold \$10.5B Zendesk Take-Private Deal

By **Jeff Montgomery**

Law360 (September 24, 2025, 5:57 PM EDT) -- Delaware's Supreme Court early Wednesday upheld the Court of Chancery's Sept. 10 dismissal of a stockholder challenge to the \$10.5 billion take-private deal for software as a service business Zendesk Inc., closing the book on the case in two sentences issued two weeks after appeal arguments.



Zendesk's November 2022 deal was described in the suit as an attempt to avoid a proxy war by activist investor Jana Partners that would have jeopardized the jobs of CEO Mikkel Svane and three directors. (Artur Widak/NurPhoto via AP)

Vice Chancellor J. Travis Laster likewise dismissed the suit with few comments in January, in a from-the-bench finding that "stockholders received all the material information they needed to make a fully informed decision on the merger."

The vice chancellor found after dismissal arguments that the company's disclosures and workup to the deal put the transaction "in an irrebuttable business judgment rule world" under the state high court's [Corwin v. KKR Financial Holdings Inc.](#) decision in 2015.

Corwin allows courts to grant business judgment deference to corporate actions if "cleansed" by a fully informed, uncoerced vote of disinterested stockholders.

Chief Justice Collins J. Seitz Jr. and Justices Abigail M. LeGrow and N. Christopher Griffiths heard the appeal and upheld it "on the basis of and for the reasons stated" by the lower court on Jan. 22.

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

Stockholders that brought the suit included a public employee union and three individual investors. Their complaint accused company founder and former CEO Mikkel Svane and four others of accepting a \$77.50 per share offer in November 2022 from private equity firms Hellman & Friedman LLC and Permira Advisers LLC in part to avoid a proxy war mounted by activist investor Jana Partners LLC.

Jana's pressure was seen as putting the tenures of Svane and other insiders in jeopardy.

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

Ned Weinberger of Labaton Keller Sucharow LLP, counsel for one of eight firms representing stockholders in the appeal, told the justices on Sept. 10 that the deal proxy "did not tell stockholders what I think of as the full and accurate story of how that conflict manifested itself."

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

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

During the same appellate argument, Sandra C. Goldstein of Kirkland & Ellis LLP, counsel to Svane and others named in the suit, told the three justices that neither of the disclosure issues on appeal were material under Corwin.

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

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

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

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

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

The case is Amethyst International Master Fund et al. v. Mikkel Svane et al., case number 75-2025, in the Supreme Court of the State of Delaware.

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

--Editing by Stephen Berg.

Update: This story has been updated with additional counsel details.



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Skechers Investor Seeks Chancery Appraisal Of \$9.4B Deal

By **Jarek Rutz**

Law360 (September 24, 2025, 8:36 PM EDT) -- A Skechers shareholder is asking the Delaware Chancery Court for an appraisal to determine the fairness of the \$63-per-share buyout price of nearly 700,000 shares in the footwear company after its \$9.4 billion take-private deal with 3G Capital.

In its petition filed late Tuesday, FourWorld Global Opportunities Fund Ltd. claims it's entitled to a judicial determination of "fair value" plus interest on its 49,500 shares and affiliates' 651,300 shares of Skechers, after the shoe company's merger closed on Sept. 12.

The \$9.4 billion deal, in which private equity firm 3G Capital acquired Skechers through a merger subsidiary called Beach Acquisition Co. Parent LLC, was announced on May 5.

"The company is required to pay petitioner the fair value of the appraisal shares, as determined by the court in this appraisal action," FourWorld said in its petition.

Other shareholders have also filed books and records requests for potential appraisal or other actions related to the deal.

FourWorld, which didn't state in the petition why it wants the appraisal, emphasized that it lawfully demanded appraisal within 20 days of receiving the share price in the mail.

FourWorld's petition also asks the court to order Skechers to pay all its incurred expenses in connection with determining the per-share fair value, including costs, attorney fees, and fees and expenses of experts, or to order that these expenses be apportioned pro rata among all dissenters based on the percentage of their respective shares of Skechers' stock subject to appraisal demands.

Representatives for FourWorld and Skechers did not respond to requests for comment Wednesday.

FourWorld Global Opportunities Fund Ltd. is represented by Catherine A. Gaul and Marie Degnan of Ashby & Geddes PA.

Counsel information for Skechers was not available Wednesday.

The case is FourWorld Global Opportunities Fund Ltd. v. Skechers U.S.A. Inc., case number 2025-1081.

--Additional reporting by Jeff Montgomery. Editing by Marygrace Anderson.

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HHS Allocates \$1.5B To States, Tribes To Combat Opioid Crisis

By **Crystal Owens**

Law360 (September 24, 2025, 4:02 PM EDT) -- The U.S. Department of Health and Human Services has allocated more than \$1.5 billion to states and tribal communities that the agency says will provide critical resources in addressing the country's opioid overdose crisis.

The funding, part of fiscal year 2025 continuation awards for State Opioid Response and Tribal Opioid Response grants through HHS' Substance Abuse and Mental Health Services Administration, will provide states and tribes with prevention tools, overdose reversal medications, treatments and recovery support, the agency said.

"With the rise of polysubstance abuse and increasing role of stimulants in overdose deaths, it has never been more important to comprehensively address the disease of addiction and the root drivers of this crisis," SAMHSA Principal Deputy Assistant Secretary Dr. Art Kleinschmidt said in a Monday statement. "State and Tribal Opioid Response funding provides critical resources to help prevent addiction, provide evidence-based treatment, and support long-term recovery and sobriety."

The allocations include \$1.48 billion for State Opioid Response and nearly \$63 million for Tribal Opioid Response, HHS said.

The State Opioid Response program began in 2018, and since then, states have reported that nearly 1.3 million people have received treatment services, including more than 650,000 who received medications for opioid use disorder, according to the Monday announcement.

In addition, it said, nearly 1.5 million people have received recovery support through the program.

SAMHSA grantees reported distributing more than 10 million opioid overdose reversal kits, with opioid overdose reversal medications being used to reverse more than 550,000 overdoses, HHS said.

Since the Tribal Opioid Response program started in 2018, tribes report that approximately 16,500 patients have received treatment services, and SAMHSA grantees reported distributing more than 116,500 naloxone kits, with opioid reversal medications being used to reverse more than 1,750 overdoses, according to the agency.

--Editing by Patrick Reagan.



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How New Rule On Illustrative Aids Is Faring In Federal Courts

By **Aasiya Glover, Prachi Patel and Li Yu** (September 24, 2025, 6:40 PM EDT)

Effective use of illustrative aids like diagrams, models and, increasingly, computer simulations is critical to explaining complex cases to a jury.

When Rule 107 of the Federal Rules of Evidence took effect in December 2024, it codified for the first time "standards for the use of illustrative aids" in federal trials.[1]

Rule 107 clarifies three key issues.

First, the accompanying committee notes aim to eliminate confusion by drawing clear distinctions between illustrative aids, demonstrative evidence and summaries of voluminous evidence.[2]

Second, Rule 107 specifies a standard on the use of illustrative aids at trial.[3]

Third, the new rule delineates the procedural requisites for providing illustrative to the jury during deliberations.[4]

Since last December, more than a dozen trial and appellate courts have addressed Rule 107 in resolving motions in limine, post-trial motions and appeals in both civil and criminal cases.

Here, we begin with a summary of the changes made by Rule 107. We then assess the impact of this new rule by looking at court decisions in the past 10 months. Finally, we offer some suggestions for utilizing Rule 107 to present one's case more effectively at trial.

Rule 107's Categorization of Illustrative Aids, Demonstrative Evidence and Summaries of Voluminous Evidence

The committee notes accompanying Rule 107 define illustrative aids as "any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument." [5]

An illustrative aid, thus, is a nonevidentiary "pedagogical device" that may help the jury "understand what is being communicated ... by the witness or party presenting evidence or argument." [6]

For example, a chart used in a closing argument to show where to find the amount owed for 74 hours of work each week from the data in ADP payroll and Venmo records is an illustrative aid under Rule 107.[7]

By contrast, the committee notes for Rule 107 explain that demonstrative evidence is "substantive evidence offered to prove, by demonstration, a disputed fact." [8]

BB guns recovered from the scene of an allegedly unlawful arrest, for example, can be admitted for demonstrative purposes at a Section 1983 trial subject to proper authentication.[9]



Aasiya Glover



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Li Yu

Finally, Rule 107 also draws a distinction between illustrative aids and summaries of voluminous admissible evidence.

For example, charts summarizing "information regarding the number of placements children in [state government] custody" experienced in a six-year span was admitted in *Mary B. v. Kovol*, a case in the U.S. District Court for the District of Alaska, because the underlying data was admissible and could not "be conveniently examined in court."^[10]

If a chart or exhibit solely summarizes otherwise admissible data or other records, then Rule 1006, rather than Rule 107, applies to determine its admissibility.

Rule 107's Standard for Permitting the Use of Illustrative Aids at Trial

Before Rule 107, the use of illustrative aids often was analyzed under different standards based on whether illustrations were used as presentation of evidence or used to illustrate a party's arguments.

A single balancing test now governs all uses of illustrative aids at trial in federal cases. Specifically, using similar language as Rule 403, Rule 107 allows a party to present an illustrative aid, if the court finds that the dangers of unfair prejudice, confusion, misleading the jury and undue delay do not substantially outweigh the utility of the aid.^[11]

Rule 107's Procedural Requirements for Providing Illustrative Aids for Jury Deliberation

The committee notes accompanying Rule 107 recognize that providing illustrative aids, which are not substantive evidence, for jury deliberations presents a risk of the jury giving undue weight to certain arguments or testimony associated with an illustrative aid, or misunderstanding the aid.^[12]

But, instead of categorically barring this, Rule 107 establishes procedural prerequisites for when such aids can be provided to the jury.

Specifically, illustrative aids are permitted to go to the jury room only if either (1) all parties consent or (2) the court, for good cause, orders otherwise.^[13]

Further, if the jury is permitted to review an illustrative aid during jury deliberations, Rule 107 also requires the trial judge, upon a party's request, to instruct the jury not to consider the aid as evidence or proof of any fact.^[14]

How Courts Have Addressed Rule 107

At least 18 federal court decisions have addressed Rule 107 since it took effect last December.^[15] These decisions foreshadow recurring issues that are likely to arise when parties seek to introduce illustrative aids at trial under Rule 107.

First, courts will be asked to decide whether material offered constitutes demonstrative evidence or a summary of voluminous evidence (which are admissible), or constitutes an illustrative aid (which is not admissible as substantive evidence)

For example, on Sept. 5, in *Gardens v. U.S.*, a regulatory taking case, the U.S. Court of Federal Claims denied a motion for reconsideration that argued, among other things, the court had incorrectly prohibited the plaintiff from using certain charts and tables as demonstratives.^[16]

Per *Gardens*, the clear statement in Rule 107 that an "illustrative aid is not evidence" underscores the principle that permitting a party to use "demonstrative aids does not mean that the demonstrative itself is admitted as 'substantive evidence.'"^[17]

Thus, there is nothing inconsistent with allowing charts and tables to be used for illustration purposes and deciding that such "charts and tables could not be relied upon as evidence."^[18]

Similarly, in a trade secrets dispute in the U.S. District Court for the Southern District of New York, *Automated Management Systems Inc. v. Rappaport Hertz Cherson Rosenthal*, the court held that

"videos comprised of various screenshots of the two software programs" at issue in the case could be introduced as substantive "evidence comparing the key features of the two software programs, subject to proper introduction and authentication" of the screenshots.[19]

Even absent that authentication, however, the court held that the videos could still be proffered as nonevidentiary illustrative aids.[20] This holding suggests that one key distinguishing factor between Rule 611(a) summary evidence and Rule 107 illustrative aids is the ability to authenticate and admit the sources of the visual representation as evidence.

Second, in closing arguments, attorneys may seek to show the jury summaries of their clients' theory of liability, without giving the summaries to opposing counsel in advance.

In *U.S. v. Agbaje*, a criminal defendant sought a judgment of acquittal on the ground that the prosecution had improperly shown the jury a demonstrative exhibit in its closing argument.[21]

The U.S. District Court District of North Dakota denied the motion on Aug. 6, holding that the prosecution's use of an illustrative aid complied with Rule 107 because it "was helpful to explain the [prosecution's] rebuttal argument and how the evidence fit with its theory." [22]

The court also found there was no obligation to show the illustrative aid to the defendant in advance of showing it to the jury, as the aid "simply summarized the evidence already in trial to support the United States' rebuttal." [23]

Agbaje suggests that further disputes can be expected to arise over what illustrative aids counsel may show in closing arguments and when they must be disclosed to the other side.

Finally, courts will be asked to consider the appropriateness of sending illustrative aids to the jury for use during deliberations.

In a recent patent appeal, *Roland Corp. v. inMusic Brands Inc.*, the defendant sought a new trial on the ground that the district court should not have permitted the jury to use the plaintiff's infringement claim chart during deliberations.[24]

On March 27, the U.S. Court of Appeals for the Federal Circuit held that any error in sending the chart back to the jury was harmless because it "did not substantively and materially differ from admitted testimonial and documentary evidence." [25]

Application of this standard to whether good cause exists to send illustrative aids to the jury for use in deliberations may mean that courts will be more willing to send aids to the jury if they rely only upon or organize already-admitted evidence.

Practical Suggestions

Rule 107 reflects a recognition that nonevidentiary pedagogical devices may be needed to enable jurors to understand complex arguments, concepts and facts.[26] The first takeaway for practitioners, therefore, is to be proactive in identifying helpful ways to use illustrative aids to unpack or clarify key arguments, concepts and facts.

Instead of simply telling the jury how two computer programs are similar, showing the jury a video montage of screenshots showing the similarities between the programs — as done in the *Automated Management* case discussed above — may be both more impactful and more memorable.[27]

Second, practitioners also should be proactive in conferring with opposing parties about the use of illustrative aids, which may include seeking agreement to provide certain illustrative aids used by each side to the jury during deliberation.

By its text, Rule 107 encourages collaboration between opposing parties in a case when it comes to illustrative aids.[28] This reflects an important insight: Notwithstanding the adversarial nature of litigation, all parties may benefit from the use of such aids to clear away conceptual or factual underbrush.

While the prosecution in the Agbaje case did not suffer a post-trial acquittal from using an illustrative aid in rebuttal argument without showing it to the defense, it is better to avoid that risk by discussing aids in advance.

Third, Rule 107 not only expressly directs courts to consider "the danger of unfair prejudice" and confusion in deciding whether to allow illustrative aids to be used during trial,[29] but also warns about prejudice and confusion in the context of giving such aids to the jury during deliberation.[30] Practitioners, therefore, should analyze each potential illustrative aid in terms of how it can be criticized as confusing or unduly prejudicial.

This analysis should consider not only the accuracy of the information presented, but also whether the presentation may create a confusing or prejudicial "net impression." [31] This analysis also should take into account whether the goal is to use an illustrative aid solely during the trial or to seek leave to provide the aid to the jury during deliberation.

In sum, though less than a year has passed since Rule 107 took effect, courts have already begun to clarify its application in different contexts and the rule's boundaries. The early decisions show that to effectively utilize illustrative aids at trial, litigators should follow the practical and proactive approach that drafters of Rule 107 sought to encourage.

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[1] Fed. R. Evid. 107 advisory committee notes (2024).

[2] Id.

[3] See Fed. R. Evid. 107(a).

[4] See Fed. R. Evid. 107(b).

[5] Fed. R. Evid. 107 advisory committee notes (2024).

[6] Id.

[7] See **Keefe v. Britt's Bow Wow Boutique Inc.** , 2025 WL 1483009 at *13-14 (11th Cir. May 23, 2025).

[8] Fed. R. Evid. 107 advisory committee notes (2024).

[9] **Clerkley v. City of Oklahoma City** , 2023 U.S. Dist. LEXIS 141309 (W.D. Okla. Aug. 14, 2023).

[10] **Mary B. v. Kovol**, 2025 WL 2307867 at *1-2 (D. Alaska Aug. 11, 2025).

[11] See Fed. R. Evid. 107(a).

[12] Fed. R. Evid. 107 advisory committee notes (2024).

[13] Fed. R. Evid. 107(b).

[14] Fed. R. Evid. 107 advisory committee notes (2024).

[15] These decisions illustrate the variety of ways that Rule 107 can arise in different stages of litigation. In one case, for example, the court denied a motion in limine to exclude "computer generated images and video animations created by" an expert witness because these illustrative aids

can be used under Rule 107. See *Heil v. Batie Cattle Co.*, 2025 WL 2244617, at *3 (D. Neb. Aug. 6, 2025). In a less common scenario, the court permitted the jury to conduct site visits of correctional facilities as illustrative aids subject to Rule 107. See *Davis v. Hughes*, 2025 WL 2418443, at *2 (S.D. Ill. Aug. 21, 2025).

[16] *Gardens v. United States*, 2025 U.S. Claims LEXIS 2485, at *24 (Fed. Cl. Sept. 5, 2025).

[17] *Id.* at 25.

[18] *Id.*

[19] *Automated Mgmt. Sys., Inc. v. Rappaport Hertz Cherson Rosenthal, P.C.*, 2024 WL 4987018, at *7-9 (S.D.N.Y. Dec. 4, 2024).

[20] *Id.* at *9.

[21] 2024 WL 3673104, at *3 (D.N.D. Aug. 6, 2024).

[22] *Id.*

[23] *Id.*

[24] *Roland Corp. v. inMusic Brands, Inc.*, 2025 WL 926703, at *9 (Fed. Cir. Mar. 27, 2025).

[25] *Id.* at *10.

[26] Fed. R. Evid. 107 advisory committee notes (2024).

[27] *Automated Mgmt. Sys.*, 2024 WL 4987018, at *7-9.

[28] Fed. R. Evid. 107(b)(1) (allowing illustrative aids to go to the jury if "all parties consent").

[29] Fed. R. Evid. 107(a).

[30] Fed. R. Evid. 107 advisory committee notes (2024).

[31] See, e.g., *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006); *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 42-43 (D.C. Cir. 1985).