Globe Life Must Fight Investors’ Fraud, Misconduct Allegations

Sept. 30, 2025, 9:27AM PDT

Summary by Bloomberg AI

AI Generated

- Globe Life Inc. shareholders advanced their lawsuit alleging the insurance conglomerate concealed relying on fraudulent practices to boost its financial growth before a record stock drop.
- The US District Court for the Eastern District of Texas judge denied Globe Life’s bid to toss the lawsuit, saying the investors adequately alleged securities fraud claims.
- The lawsuit alleges Globe Life misrepresented its life insurance sales growth, claiming it was due to stellar recruitment and operations when in reality it was the product of "rampant fraud and deceit" at numerous agencies.

Globe Life Inc. shareholders advanced their lawsuit alleging the insurance conglomerate concealed relying on fraudulent practices to boost its financial growth before a record stock drop.

The investors adequately alleged securities fraud claims, Judge Amos L. Mazzant said Monday. The US District Court for the Eastern District of Texas judge denied Globe Life’s bid to toss the lawsuit, but didn’t pinpoint what allegations allowed the shareholders meet the pleading standards to advance their lawsuit.

Globe Life’s stock price plummeted more than 53% on April 11, 2024 when a short seller accused the company of widespread misconduct and insurance fraud, including writing policies for fake or dead people and forging signatures. It was the stock’s biggest one-day drop recorded by Bloomberg data.

Fuzzy Panda Research’s report said executives at Globe Life and its largest subsidiary American Income Life Division were aware of these issues, and that some of them were involved in a bribery and kickback scheme. The short seller said it found Globe Life and AIL’s structure operated like a pyramid scheme after performing an undercover investigation. And, citing employee lawsuits, said sales agents and bosses proliferated a culture mired in misconduct, including drug use and sexual assault.

Globe Life refuted the report as "wildly misleading" and said it was disheartened to see "self-motivated short sellers push inflammatory allegations." Another short seller echoed Fuzzy Panda's claims later that month, the same day an investor sued Globe Life in this action.

The proposed class would include those who got Globe Life stock from May 8, 2019, through April 10, 2024. During this time, shareholders alleged Globe Life misrepresented AIL's life insurance sales were steadily growing as a result of stellar recruitment, training, and a shift toward virtual operations. The company allegedly vaunted operating with high ethics and accountability standards when in reality, "Globe Life's reported growth was the product of rampant fraud and deceit at numerous AIL agencies."

The company argued the complaint should be dismissed for lacking its own particularized allegations and cribbing off of Fuzzy Panda, calling it "a biased short-seller with a direct financial motive to drive down Globe Life's stock price." But the investors said their counsel conducted their own investigation to independently corroborate Fuzzy Panda's report.

Robbins Geller Rudman & Dowd LLP and Motley Rice LLC represent the asset manager and pension fund leading the case, KBC Asset Management NV and City of Birmingham Retirement and Relief System. King & Spalding LLP represents Globe Life and current and former executives. None of these law firms nor Globe Life immediately responded to emails seeking comment.

The case is City of Miami Gen. Emps' & Sanitation Emps' Ret. Trust v. Globe Life Inc. , E.D. Tex., No. 4:24-cv-00376, 9/29/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

News from Bloomberg Terminal

Oil Fund Investors Fail to Show Fraud as Covid Pandemic Began

Sept. 30, 2025, 9:38 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal court ruled that United States Oil Fund LP shareholders can't proceed with a proposed class action alleging the oil futures investment firm failed to disclose risks related to the Covid-19 pandemic.
- The investors failed to adequately allege that the fund had a clear understanding or unique knowledge about the global effects of the pandemic and didn't show that the fund's disclosures were actionable and misleading.
- The investors can ask the court for a chance to amend their complaint, but they must explain how their proposed changes will correct each defect, the judge said.

By Martina Barash

(Bloomberg Law) --

United States Oil Fund LP shareholders can't proceed with a proposed class action alleging the oil futures investment firm failed to disclose risks related to the Covid-19 pandemic, a federal court ruled.

The investors failed to adequately allege the exchange-traded fund had a clear understanding or unique knowledge about the global effects of the pandemic in late February 2020, Judge Paul G. Gardephe said Monday for the US District Court for the Southern District of New York. They also didn't show that the fund's disclosures about net asset value and other metrics were actionable and misleading, he said.

And the investors failed to sufficiently claim the necessary level of intent for securities fraud, he said.

The suit is among many over the economic effects of shifts in consumer demand and other factors during the pandemic.

The investors sued over registration statements for Feb. 25 and March 23 public offerings as Covid spread in 2020. They brought claims for misleading registration statements under the Securities Act—including underwriters as defendants—and for securities fraud under the Securities Exchange Act.

Factors that United States Oil didn't warn of, such as volatility in the oil market and a price war between Saudi Arabia and Russia that resulted in cheap oil flooding global markets, led to fund losses of $1.2 billion in March and $2.6 billion in April of that year, the investors said.

The fund and its general partner agreed in 2021 to pay $2.5 million to settle Securities and Exchange Commission claims that they made misleading statements to investors.

The investors' complaint doesn't adequately allege false and misleading statements, Gardephe said. The allegations "demonstrate that the price of crude oil dropped in February 2020, and that China had already begun taking significant measures to address the pandemic," he said. "But the global effects of the pandemic, the likely duration of those effects, and the catastrophic effect on the oil markets was far from clear as of February 25, 2020."

And the investors didn't plead facts "suggesting that Defendants had any unique knowledge as to these matters," he said.

Further, an allegation about share purchases by retail investors who wanted to buy low undermined the claims because it "suggests that investors correctly concluded that the negative effects on the oil markets of the pandemic and the Saudi/Russian oil price war would be temporary," he said.

The investors can ask the court for a chance to amend their complaint, but they must explain "in detail" how their proposed changes will correct "each defect," the judge said.

Robbins Geller Rudman & Dowd LLP is lead counsel for the investors. Ropes & Gray LLP represents United States Oil. Counsel for the underwriters includes A&O Shearman.

The case is *In re US Oil Fund, LP Sec. Litig.*, 2025 BL 346425, S.D.N.Y., No. 1:20-cv-04740, 9/29/25.

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

To contact the editor responsible for this story: Brian Flood at bflood@bloomberglaw.com

News | Civil Appeals

2nd Circuit Revives 'Channel Stuffing' Lawsuit Against Organic Food Company

The appeals court said shareholders plausibly alleged that Hain Celestial Group put out "half-truths" in failing to disclose its reliance on "channel stuffing," or offering distributors concessions at the end of each fiscal quarter to accept more product than they needed as a way to meet financial benchmarks. Hain denies the allegation.

September 29, 2025 at 04:31 PM By Avalon Zoppo

The United States Court of Appeals for the Second Circuit in the Southern District of New York. Photo: Ryland West/ALM

The U.S. Court of Appeals for the Second Circuit on Monday revived a class action lawsuit that alleges organic food manufacturer and seller Hain Celestial Group violated federal securities law by hiding a "channel stuffing" scheme to inflate its stock price and revenues.

In the suit, investors claim the company and four executives breached the 1934 Securities Exchange Act by allegedly inadequately disclosing its practice of offering distributors concessions at the end of each fiscal quarter to accept more product than they needed. The practice, known as "channel stuffing," increases current sales while hurting revenue for future quarters and is used by some companies to meet Wall Street analysts' financial benchmarks.

The Second Circuit said shareholders plausibly alleged that Hain put out “half-truths” in failing to disclose its reliance on “channel stuffing” when discussing its financial success and inventory levels, and knew or should have known that the statements were misleading.

Those “half-truths” included repeatedly attributing its financial results to factors such as “expanded distribution and brand contribution” and “momentum for organic and natural products,” while not disclosing that the alleged channel stuffing played a “not small” role, the Second Circuit said.

“Because of the size of the restatement, the importance of the end-of-quarter practices to meet financial targets, and the distributors affected, we infer that the Individual Defendants would have ‘monitored [these operations] closely,’ and knew or should have known information contradicting their public statements,” wrote Judge Robert Sack, joined by Judges William Nardini and Eunice Lee.

“Put simply, it would strain credulity to conclude that the Individual Defendants were unaware of channel stuffing and its potentially insidious implications for investors,” Sack added in the Second Circuit's unanimous reversal of U.S. District Judge Joanna Sybert's dismissal of the case in the Eastern District of New York.

The lead plaintiffs who brought the suit were Rosewood Funeral Home and Salamon Gimpel, who each invested in Hain and claim losses of more than $1.5 million and $800,000 respectively. The company offered cash, product discounts and spoils coverage for distributors, such as Walmart and United Natural Foods, Inc., to accept more inventory than people would likely buy, according to the Second Circuit opinion.

The Second Circuit held the plaintiffs adequately alleged knowledge—or "scienter"—of wrongdoing by the company, adding the alleged fraud “touched on large swaths of Hain’s U.S. business and areas of critical import to Hain and its executives.” The company adjusted its net sales by 2.1%, 2.9%, and 1.9% in 2014, 2015 and most of 2016, accounting for about $167 million of $7 billion in net sales over the period, the New York-based appeals court stated..

“The total size of this alleged fraud is comparable to other cases in which we have credited scienter allegations… although the figures are not eye-popping as a percentage of net sales,” the Second Circuit added in sending the case back toward trial.

Hain has denied the plaintiffs' allegations.

Lawyers for the plaintiffs and New Jersey-based Hain did not respond immediately to requests for comment Monday.

Hain was the subject of a U.S. Securities and Exchange Commission investigation over its channel stuffing practices that ended in 2018 when the agency entered into a consent decree with the company. As part of the agreement, the SEC declined to bring charges and Hain acknowledged lacking adequate internal controls and improperly recognizing revenue.

The Second Circuit issued its decision in *Gimpel v. Hain Celestial Group Inc.*, No. 23-7612.

Hain Celestial Investors Get Distribution Practices Suit Revived

Sept. 29, 2025, 4:09 PM PDT

Summary by Bloomberg AI

AI Generated

- The Second Circuit revived a suit against Hain Celestial Group Inc., saying investors adequately alleged securities fraud in the company's description of its distributor sales practices.
- The investors alleged Hain made misstatements and omissions about giving distributors concessions to buy more product up front, and did so with the necessary level of intent.
- The case will proceed to discovery, with the court finding that several factors, including executives' stock sales, sufficiently establish intent at the pleading stage.

Hain Celestial Group Inc. investors adequately alleged securities fraud in the natural foods company's description of its distributor sales practices, the Second Circuit said Monday, reviving the suit for a second time.

The investors adequately alleged Hain and its top executives made misstatements and omissions about giving distributors concessions to buy more product up front, and did so with the necessary level of intent, Judge Robert D. Sack said for the US Court of Appeals for the Second Circuit.

The proposed class action about accounting misrepresentations dates to 2016. Judge Arthur D. Spatt of the US District Court for the Eastern District of New York dismissed it shortly before his death in 2020. The Second Circuit asked Judge Joanna Seybert, who assumed oversight of the suit, to look at it "afresh."

Seybert dismissed the case in 2023, saying the investors hadn't proven intent, or scienter, for securities fraud.

The investors alleged Hain knew it couldn't meet its previously announced financial projections in the face of weakening demand and resorted to "stuffing" distribution channels with product that distributors didn't need for customers yet. .

"But channel stuffing may exact a heavy toll: By pulling sales forward, the company artificially inflates its present sales at the expense of its future performance—it robs Peter to pay Paul," Sack said.

"Channel stuffing is not necessarily fraudulent," but the investors alleged Hain misled them about it, he said.

"Hain made actionable misstatements when it stated, among other things, its financial results, the existence of adequate internal controls, and its compliance" with accounting principles, he said. "That Hain restated its financials and admitted deficiencies in its practices suffices to establish that they were false at the time they were made."

Several factors, including executives' stock sales in the tens of millions of dollars, sufficiently establish intent at the pleading stage, Sack said.

"Accordingly, this long-pending case should proceed to discovery," he said, joined by Judges William J. Nardini and Eunice C. Lee.

Labaton Keller Sucharow LLP, Glancy Prongay & Murray LLP, and the Schall Law Firm represented the investors. DLA Piper LLP (US) represented Hain.

The case is Gimpel v. Hain Celestial Grp., Inc. , 2025 BL 346565, 2d Cir., No. 23-7612, 9/29/25 .

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

To contact the editor responsible for this story: Amy Lee Rosen at arosen@bloomberglaw.com

Bloomberg Law

Manage Newsletters

Teradata Sheds Investor Lawsuit Over Customer Cloud Expectations

Sept. 29, 2025, 11:28 AM PDT

Summary by Bloomberg AI AI Generated

- Teradata Corp. beat stockholder allegations that it concealed headwinds to its annual recurring revenue growth while boosting its cloud-storage business.
- A US District Court judge said the investor leading the lawsuit failed to allege that Teradata's statements contradicted the reality that ARR growth would miss expectations.
- The judge tossed the suit for now, but said the investor could re-plead by Oct. 10.

Teradata Corp. beat stockholder allegations that the data analytics company concealed headwinds to its annual recurring revenue growth while it boosted its cloud-storage business.

The investor leading the lawsuit failed to allege Teradata's statements about rising client scrutiny, economic trends, and elongated deals contradicted the reality that ARR growth would miss expectations, Judge Cathy Ann Bencivengo said.

While shareholder Brian Jurko said he alleged "pervasive customer scrutiny of deals and elongated deal cycles" backed up by former employee accounts to plead materially misleading omissions, those facts didn't necessarily contradict "statements that there was customer scrutiny and volatility, but no significant changes to customer behavior nor deals disappearing."

Even if Teradata and top executives knew two customers intended to reduce spending for on-premises data management, that wasn't necessarily inconsistent with statements that part of its business was steady in 2022 or the company wasn't seeing major headwinds as of 2023, the US District Court for the Southern District of California judge said Sept. 26. And other alleged misrepresentations were nonactionable corporate puffery or forward-looking projections, falling short of heightened pleading standards to bring securities fraud claims.

Bencivengo said Jurko could re-plead by Oct. 10, tossing the suit for now.

Jurko said Teradata hid that large customers using its on-premises option had told the company they intended to leave, deals for its cloud subscription services were taking a long time to close, and it wouldn't meet projected ARR growth as a result. ARR growth helps measure whether a business is growing by reflecting predictable revenue streams, a key pulse-check for subscription-based companies.

The proposed class would include those who got Teradata securities from Feb. 13, 2023, through Feb. 12, 2024—the day the company announced disappointing ARR growth while sharing fourth quarter and full-year 2023 financial results. The stock price plummeted almost 22% on Feb. 13, it's sharpest one-day drop since its 2007 market debut, according to data compiled by Bloomberg.

Glancy Prongay & Murray LLP and Holzer & Holzer LLC represent Jurko. Attorneys there didn't immediately respond to an email seeking comment. Gibson, Dunn & Crutcher LLP represents Teradata, CEO Steve McMillan, and former chief financial officer Claire Bramley. Teradata declined to comment.

The case is Ostrander v. Teradata Corp. , S.D. Cal., No. 3:24-cv-01034, 9/26/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

Class Action

Manage Newsletters

EV-Battery Maker Kandi Beats Investor Class Suit Over Finances

Sept. 30, 2025, 6:57 AM PDT

Summary by Bloomberg AI AI Generated

- Kandi Technologies Group defeated shareholder accusations that it misled investors on its ability to remediate issues with its financial reporting.
- Judge Dale E. Ho ordered the case closed, saying the investor leading the class action didn't offer timely evidence to demonstrate loss causation and damages tied to stock selloffs.
- The court excluded the investor's expert analysis, which was presented nine months after the close of discovery, and without it, the class representative lacked evidence to support his securities fraud claims.

Kandi Technologies Group trounced shareholder accusations that the electric vehicle parts maker misled them on its ability to remediate issues with its financial reporting.

The investor leading the class action didn't offer timely evidence to demonstrate loss causation and damages tied to stock selloffs, Judge Dale E. Ho said while ordering that the case be closed.

The stockholder first presented his expert's analysis on those points nine months after the close of discovery as an attachment to summary judgment papers, the US District Court for the Southern District of New York judge said. The court's prior scheduling order had been "crystal clear," Ho said Monday, that shareholder Tom Brooks was to finish expert discovery by May 16, 2024—and his "noncompliance with that order is wholly unjustified."

Ho excluded Brooks' expert analysis. Without it, the class representative lacked "evidence from which a jury could find loss causation or damages, two essential elements of his securities fraud claims."

Monday's order averted a trial in the five-yearlong spat between Kandi and investors who alleged the off-road EV-maker misrepresented its ability to fix weaknesses in its financial reporting and oversight system before announcing it had to restate certain results in 2017. Shareholders sued the same year a short seller accused Kandi of faking sales to boost revenue among other issues—allegations the company denied.

Ho last year certified a class of investors who got Kandi shares from Aug. 10, 2015, through March 13, 2017, the day the company announced the need for restatement. Its stock price fell by $0.30 the next day to close at $4.05. Brooks alleged the restatement announcement and other prior disclosures related to oversight of financial reporting spurred selloffs to investors' detriment.

Glancy Prongay & Murray LLP was lead counsel for the class. Stinson LLP represented Kandi and certain current and former executives and board members. Neither of these law firms nor Kandi immediately responded to emails seeking comment.

The case is Venkataraman v. Kandi Techs. Grp., Inc. , S.D.N.Y., No. 1:20-cv-08082, dismissed 9/29/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Patrick L. Gregory at pgregory@bloombergindustry.com

Bloomberg Law

Manage Newsletters

GrafTech Investors Release Brass from Green Compliance Suits

Sept. 29, 2025, 1:47 PM PDT

GrafTech International Ltd. shareholders agreed to drop lawsuits against certain directors, executives, and affiliates that alleged they boasted the company's environmental compliance while it polluted neighborhoods near its facility in Mexico.

Giulia Carponi, Lawrence B. Hollin, and Steven Simons told the US District Court for the Northern District of Ohio on Sept. 26 that they would each drop their shareholder derivative actions after meeting with various defendants, including retired CEO David Rintoul and a major stockholder Brookfield Capital Partners Ltd.

Their lawsuits echoed a proposed securities class complaint against the graphite electrode maker that Judge Donald C. Nugent recently tossed in the same court

All four lawsuits alleged that GrafTech failed to take action to remedy the problems at its Monterrey, Mexico, plant, leading Mexican regulators to temporarily suspend its operations in 2022

The plaintiffs alleged that leadership from that time caused the company to mislead investors about the effects of that closure on its business and financial performance

The Brown Law Firm PC represents Carponi, Rigrodsky Law PA is lead counsel for Hollin, and DiCello Levitt LLP and Morris Kandinov LLP represent Simons. Among counsel for various defendants is Jones Day, DLA Piper LLP (US), and Davis Polk & Wardwell LLP. None of these law firms nor GrafTech immediately responded to emails seeking comment.

The case is Carponi v. Rintoul , N.D. Ohio, No. 1:25-cv-01216, 9/26/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

Bloomberg Law

Manage Newsletters

Snap Shareholders Agree to Drop Federal Suits, Eyeing Delaware

Sept. 29, 2025, 12:22 PM PDT

Summary by Bloomberg AI

AI Generated

- Snap Inc. stockholders suing the company's top brass agreed to let go of federal lawsuits and will instead seek remedies under Delaware law.
- The derivative lawsuits alleged the board and executives hurt Snap's reputation and wallet by misleading investors, bringing on potential costs of litigation and internal investigations.
- The Snapchat owner's stock price plunged more than 17% on Aug. 6, the day after Snap attributed a revenue growth slowdown to the issue with its ad platform.

Snap Inc. stockholders suing the tech giant's top brass for allegedly hiding a glitch that impacted its advertising revenue agreed to let go of federal lawsuits and will instead seek remedies under Delaware law.

A trio of investors said in separate lawsuits on Sept. 26 they each wanted to voluntarily dismiss their cases after conferring with Snap's board and executives, according to court filings compiled by Bloomberg Law. Their shareholder derivative complaints echoed a proposed securities class action that's pending against Snap, CEO Evan T. Spiegel, and chief financial officer Derek Andersen filed in the same court last month, the US District Court for the Central District of California.

The derivative lawsuits—belonging to investor Alan Moisio, Nathan C. Silva, and Joseph Kelly—alleged the board and executives hurt Snap's reputation and wallet by misleading investors, bringing on potential costs of litigation and internal investigations

The Snapchat owner's stock price plunged more than 17% on Aug. 6, the day after Snap attributed a revenue growth slowdown to the issue with its ad platform, the timing of Ramadan, and other effects

It was the share price's biggest one-day drop in more than a year, according to data compiled by Bloomberg

The Brown Law Firm PC represents Moisio, Rigrodsky Law PA represents Silva, and Rowley Law PLLC and California-based attorney Francis J. Flynn Jr. represent Kelly. Paul Weiss Rifkind Wharton & Garrison LLP represents the brass and Snap, a nominal defendant. None of these law firms nor Snap immediately responded to emails seeking comment.

The case is Moisio v. Spiegel , C.D. Cal., No. 2:25-cv-08275, 9/26/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Amy Lee Rosen at arosen@bloombergindustry.com

Plaintiffs move to disqualify Musk's lead counsel in Twitter securities case

DJ
dailyjournal.com/articles/387824-plaintiffs-move-to-disqualify-musk-s-lead-counsel-in-twitter-securities-case

Sep. 30, 2025

Shareholders suing Elon Musk over 2022 tweets about his Twitter acquisition argue Quinn Emanuel partner Alex Spiro's role as both trial counsel and firsthand witness would confuse a jury and violate ethical rules.

Alex Spiro of Quinn Emanuel Urquhart & Sullivan LLP

While Elon Musk's attorneys are asking a San Francisco federal judge to dismiss a securities class action over allegations that a series of May 2022 tweets caused Twitter Inc.'s value to plunge before its acquisition, attorneys for the plaintiffs filed a motion to disqualify Quinn Emanuel Urquhart & Sullivan LLP partner Alex Spiro from the case.

In a Friday motion, Cotchett, Pitre & McCarthy LLP senior associate Caroline A. Yuen and Bottini & Bottini Inc. partner Francis A. Bottini Jr. argued that Spiro's dual role as both a firsthand witness to the events and Musk's lead trial counsel requires his removal.

"Allowing Spiro to unfairly play both of these roles would violate the advocate-witness rule, create a grave risk of jury confusion, make a mockery out of these proceedings, and inflict serious prejudice on Plaintiffs," Yuen and Bottini wrote.

"One or more jurors would likely suffer serious confusion if Spiro were permitted to play the dual role of fact witness and trial counsel," Yuen and Bottini wrote.

The new filing, along with Musk's motion asking Senior U.S. District Judge Charles R. Breyer for summary judgment and the plaintiffs' motion for partial summary judgment, are scheduled to be considered Oct. 31. *Pampena et al. v. Musk*, 22-cv-05937 (N.D. Cal., filed Oct. 10, 2022).

The class action was filed by Twitter shareholders who sold their stock starting on May 13, 2022, when Musk tweeted that his deal to buy the company for $54.20 per share was 'temporarily on hold' pending verification of spam and fake account data -- a statement plaintiffs allege was false.

The agreement eventually went through at the original $54.20 per share price, but plaintiffs said they had sold their stock in the interim.

Spiro and Quinn Emanuel partner Stephen A. Broome, who represents Musk, could not be reached for comment Monday on the plaintiffs' bid to disqualify Spiro. But Quinn Emanuel associate Alex Bergjans argued in a brief filed in July that the plaintiffs' planned motion to disqualify Spiro was "meritless" and was nothing more than "gamesmanship."

Quinn Emanuel attorneys also filed a motion arguing that the shareholders' class action should be dismissed on summary judgment.

"Because the record overwhelmingly confirms that there is nothing remotely inaccurate about Musk's tweets, this case should be dismissed," Broome wrote last month. He followed up Friday, reiterating in a brief that the class action should be dismissed on summary judgment.

"He simply stated that the deal was 'temporarily on hold pending details' -- 'details' Plaintiffs now admit Twitter agreed to provide before Musk's tweets," he wrote. "That concession, alone, confirms Musk's tweet was accurate and requires summary judgment in his favor."

But if Breyer allows the case to proceed, plaintiffs' attorneys do not want Spiro -- Musk's highest-profile outside counsel, who they say was directly involved in the transaction -- to participate in the trial.

"Given his pervasive presence and involvement throughout the deal -- which will be readily evident at trial -- the jury would be hard-pressed to separate what Spiro knew about the deal first-hand from what he argues as an advocate," Yuen and Bottini wrote. "Worse, the jury may be more inclined to accept Spiro's assertions as an advocate because of his direct and personal participation in the deal in real time."

Musk was successful in 2023 at fighting off a securities fraud complaint for writing on Twitter that he had secured funding to take Tesla Inc. private. A San Francisco jury ruled that neither Tesla nor Musk, the company's CEO, was liable for the 2018 tweet. *In re: Tesla Inc. Securities Litigation*, 18-cv-04865 (N.D. Cal., filed Aug. 10, 2018).

Spiro successfully defended Musk and Tesla during that trial, which involved another plaintiff's firm.

In the case involving Twitter, which Musk renamed X Corp. after buying the company, Cotchett partner Tyson C. Redenbarger argued in a brief that Breyer should rule that the plaintiffs satisfied the elements of falsity and scienter.

"The undisputed evidence shows that Musk knowingly (and very publicly) waived due diligence, signed a 'seller-friendly' merger agreement, and knew he did not have rights to the information he demanded or to put the deal on hold," he wrote.

Attorneys for the plaintiffs declined comment Monday.

#387824

Craig Anderson

Daily Journal Staff Writer
craig_anderson@dailyjournal.com

Securities

Manage Newsletters

Regions Financial Directors Ordered to Face $191 Million Lawsuit

Sept. 30, 2025, 9:48 AM PDT

Summary by Bloomberg AI

AI Generated

- A Delaware judge let a lawsuit move forward, saying it's conceivable the bank's senior leaders condoned illegal overdraft policies, turning a blind eye to red flags.
- The judge said the board "took no immediate action" after hiring a law firm to investigate, and it's reasonably conceivable they intentionally continued the illegal practices.
- The ruling advances lack-of-oversight claims toward a potential trial, with the judge rejecting the argument that the board members just hadn't gotten around to fully implementing reforms.

Regions Financial Corp. board members lost their bid to end shareholder litigation blaming them personally for a $191 million enforcement settlement stemming from its illegal overdraft policies.

A Delaware judge let the lawsuit move forward Monday, saying it's conceivable the bank's senior leaders steered it into a "corporate trauma" by condoning the practices while they tried to drum up offsetting revenues. If the allegations are true, the CEO and other directors turned a blind eye to red flags—including a whistleblower complaint—instead of working to head off legal trouble, the judge said.

Although the board hired a law firm to investigate, it otherwise "took no immediate action," Chancellor Kathaleen St. J. McCormick said in a 36-page opinion. "It is reasonably conceivable that they intentionally continued the illegal practices to give the bank time to develop a replacement revenue source, just as the CFPB concluded."

The ruling for Delaware's Chancery Court was the second recent decision by McCormick, its chief judge, advancing lack-of-oversight claims toward a potential first-of-its-kind trial. The notoriously hard-to-win cases require proving corporate leaders paid virtually no attention to core business matters or deliberately looked away from flashing warning signs.

Even after a wave of decisions earlier this decade widened the path forward for shareholders, only about a third of oversight suits clear the initial litigation hurdles, and settlements have inevitably followed. The most recent high-profile example, in July, involved Mark Zuckerberg and other Meta Platforms Inc. directors who disclosed a legal accord one day into a landmark trial.

McCormick sounded a note of caution about the preliminary nature of Monday's ruling, acknowledging the board's efforts to discredit the whistleblower complaint its members allegedly ignored. The former deputy general counsel who filed the complaint also made "unusual allegations of reverse gender discrimination," and the evidence may ultimately show his allegations weren't reliable, she said.

But the judge rejected the argument that Regions board members over a three-year period just hadn't gotten around to fully implementing reforms they were gradually putting into place. "Everyone knows that delay" is sometimes "a tactic to avoid the consequences of acting appropriately," she said. "The CFPB found that Regions could have eliminated illegal overdraft fees but intentionally delayed."

McCormick did, however, let several current and former directors out of the case, saying they served on the board either entirely before or entirely after the violations occurred.

The investor leading the lawsuit, Katherine Richards Brewer, is represented by Rigrodsky Law PA. The bank and its board are represented by Richards, Layton & Finger PA and Gibson, Dunn & Crutcher LLP.

The case is Brewer v. Turner , Del. Ch., No. 2023-1284, 9/29/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

News | **Litigation**

Bernstein Litowitz, Grant & Eisenhofer Named Lead Shareholder Counsel in Delaware Endeavor Merger Litigation

Vice Chancellor Lori W. Will appointed Icahn Enterprises and Handelsbanken Fonder AB co-lead plaintiffs, stating the institutions' significantly larger economic stake in the outcome of the case compared to that of a retail investor gave them a greater incentive to litigate toward the best possible outcome for all shareholders who become class members in the case.

September 29, 2025 at 02:33 PM By **Ellen Bardash**

Vice Chancellor of the Delaware Court of Chancery Lori W. Will. Credit: Rdubrodd1959 via Wikimedia Commons .

Vice Chancellor Lori W. Will appointed Bernstein Litowitz Berger & Grossmann and Grant & Eisenhofer co-lead plaintiffs counsel in an Endeavor Group Holdings shareholder suit on Monday, selecting the legal team that's representing institutional shareholders over one backing a retail shareholder plaintiff.

Will's decision appoints Icahn Enterprises and Handelsbanken Fonder AB co-lead plaintiffs and names Woolery & Co. and Equity Litigation Group as additional counsel for the shareholders who are pursuing breach of fiduciary duty claims against Endeavor related to its acquisition by Silver Lake in March. Endeavor and Silver Lake are both based in Southern California.

The decision stated the institutions' significantly larger economic stake in the outcome of the case compared to that of retail investor Ricardo Garcia, whose counsel filed a competing leadership motion, gave them a greater incentive to litigate toward the best possible outcome for all shareholders who become class members in the case. Icahn Enterprises and Handelsbanken held a combined 27.5 million shares of Endeavor stock prior to the merger, valued at the deal price at $757 million, compared to Garcia's 27 shares worth less than $750 at the same share valuation.

The institutional shareholders and Garcia originally filed two separate cases that were consolidated in July, and Will heard argument on leadership in August. Garcia had moved to be appointed the sole lead plaintiff with Labaton Keller Sucharow and Friedman Oster & Tejtel as lead counsel and Saxena White, Kessler Topaz Meltzer & Check and Kaskela Law as additional counsel.

Garcia had raised concerns about "claim buying" by South Florida-based Icahn Enterprises, which purchased its shares in Endeavor after the Silver Lake deal was announced but before it closed. Will wrote that while that argument may be found to have merit at the class certification stage of the case, Handelsbanken, whose website lists the U.K. and several EU countries as its home markets, doesn't face the same potential issue.

"If the choice were confined to the retail stockholder and larger institutional investor, I would face a dilemma," Will wrote. "But the smaller institutional investor, which acquired a considerable stake before the merger was announced, serves as the tiebreaker. It is well positioned to press forward should its co-lead plaintiff prove problematic at a later stage."

Will concluded that several of the factors relevant to selecting leadership weighed equally in both sides' favor, including counsel's competence, experience, and performance in the litigation so far, as well as the quality of each side's pleadings. She wrote that the institutional shareholders held an edge on the question of fee structuring.

"The Icahn/Handelsbanken group has an advantage. It negotiated a fee cap of 22%, which serves as an early check on attorney self-interest and demonstrates that the plaintiffs are mindful of protecting the class from excessive fees," she wrote. "This arrangement contrasts with the Garcia group, whose proposal is silent on fee expectations, leaving the court without a corresponding assurance."

Will is also presiding over an ongoing appraisal action in which Endeavor shareholders claim they were underpaid for their shares in the acquisition. Two leadership structures were proposed in that case, as well, and Will appointed Abrams & Bayliss as sole lead counsel in July. The appraisal suit and the breach of fiduciary duty suit are proceeding separately, though both involve the same transaction.

Bloomberg Law

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Wells Fargo, Others a Step Closer to Avoiding Ponzi Scheme Class

Sept. 29, 2025, 2:10 PM PDT

Summary by Bloomberg AI

AI Generated

- A magistrate judge said approximately 700 investors in an alleged $155 million Ponzi scheme shouldn't receive class status in a suit against Wells Fargo Bank NA and investment advisers.

- The plaintiffs have failed to demonstrate that the case is fit for class-wide resolution because individualized issues outweigh common ones, Magistrate Judge Derek T. Gilliland said.

- Gilliland recommended that Judge Alan D. Albright deny class certification, saying the court will likely have to engage in a transaction-by-transaction inquiry to determine each defendant's liability.

Approximately 700 investors in an alleged $155 million Ponzi scheme shouldn't receive class status in suit against Wells Fargo Bank NA and investment advisers, a magistrate judge said.

The plaintiffs seeking to represent victims of the alleged scheme involving two companies, Clean Energy Technology Association Inc. and Freedom Impact Consulting LLC, "have failed to demonstrate that this case is fit for class-wide resolution" because individualized issues outweigh common ones, Magistrate Judge Derek T. Gilliland of the US District Court for the Western District of Texas said Sept. 26.

The alleged victims received varying pitches and relied on misrepresentations to varying degrees, Gilliland said. His report will go to Judge Alan D. Albright for a final determination.

The case parallels one brought by the Securities and Exchange Commission against the allegedly fraudulent companies and their principals, Roy Hill and Eric Shelley, in the same district. But the investors' suit targets Wells Fargo NA and two advisory firms and their principals. Another bank, Citizens & Northern Bank, won dismissal in March.

Ponzi schemes can ensnare banks in significant liability, with Umpqua Bank reaching a $55 million settlement in May after a mistrial in California. The settlement received final approval this month.

The plaintiffs here allege Hill and Shelley induced investments in the CETA business by claiming it used "carbon capture units" to remove carbon dioxide from natural gas and store it underground, while enhancing oil and gas production. The advisers made misrepresentations in business plans and substantially assisted the scheme, the investors say. And the banks "had at least a general awareness of the Ponzi scheme," according to the suit.

Gilliland recommended Albright deny class certification. The court "will likely have to engage in a transaction-by-transaction inquiry to determine each defendants' liability," the magistrate judge said.

"The need to conduct such an individualized inquiry defeats the predominance requirement" for class certification, he said.

The Law Offices of Patrick Zummo represents the investors. Thompson, Coe, Cousins & Irons LLP represents advisers Premier Law Group and Mauricio Rauld. Brackett & Ellis PC represents PV Advisors PLC and Timothy Gertz. McGuireWoods LLP represents Wells Fargo.

The case is Goldovsky v. Rauld , 2025 BL 345497, W.D. Tex., No. 6:24-CV-00159, 9/26/25 .

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

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

Litigation

Manage Newsletters

McKinsey Wins Dismissal of Most Endo Trustee Opioid Sales Claims

Sept. 30, 2025, 9:59 AM PDT

Summary by Bloomberg AI

AI Generated

- McKinsey & Co. won dismissal of most claims brought by a bankruptcy trustee who accused the company of causing harm to Endo International Plc through its advice on marketing and selling opioids.
- The trustee can pursue recovery of $584 million in defense and professional fee costs unrelated to settlements, according to Judge David S. Jones of the US Bankruptcy Court for the Southern District of New York.
- The judge dismissed claims accusing McKinsey of helping destroy Endo's value, saying "hindsight-backed assertions" that McKinsey's advice proved harmful have not been shown to excuse Endo's contractual obligation to pay for that advice.

McKinsey & Co. won dismissal of most claims brought by a bankruptcy trustee who's been pushing the consulting giant to pay for alleged harm it caused pharmaceutical maker Endo International Plc through its advice on marketing and selling opioids.

Eight of nine claims accusing McKinsey and its affiliates of helping destroy billions of dollars of Endo's value were tossed. But the trustee can pursue recovery of $584 million in defense and professional fee costs unrelated to settlements, Judge David S. Jones of the US Bankruptcy Court for the Southern District of New York said in a 110-page decision issued Monday.

"Hindsight-backed assertions that McKinsey's advice proved harmful have not been shown to excuse Endo's contractual obligation to pay for that advice when the services were rendered and the payment was due under the governing contracts," Jones said.

While the judge dismissed the remaining claims, he allowed the trustee an opportunity to amend his complaint.

The suit, filed in August 2024, was brought on behalf of a trust created to pay Endo's unsecured creditors. Endo in March 2024 won court approval of a Chapter 11 plan that resolved its major opioid liabilities and handed the company to its lenders. Jones heard oral arguments in March.

The trustee, Matthew Dundon, accused McKinsey of spearheading an aggressive sales force blitz to increase sales from 2015 through at least 2016 of Endo's branded oxymorphone drug, Opana ER. The suit alleged the tactics by McKinsey, Endo's strategy consultant, led to widespread addiction, large corporate liabilities, and Endo's financial ruin.

McKinsey attorneys argued the trustee's suit improperly tried to shift blame by arguing that the firm was legally an insider, but it was Endo's leaders who were to blame for the company's demise.

The trustee can pursue the indemnification claim under an agreement between Endo and McKinsey for an estimated $344 million in defense costs and $240 million in professional fees. But Jones dismissed a larger claim for more than $1.2 billion based on opioid litigation settlement and damages payments.

The trustee failed to plausibly show Endo obtained McKinsey's prior written consent for the settlement, the judge said.

Allegations that McKinsey aided and abetted breaches of fiduciary duty by Endo's officers and directors by steering them towards a reckless sales-maximization strategies were dismissed as untimely.

Jones also rejected the trustee's push to recover about $8.5 million in payments between Endo and McKinsey during 2015 and 2016, finding the trustee couldn't prove that they were made without fair consideration or reasonable value.

Endo is among several pharmaceutical companies that declared bankruptcy in recent years to try to shepherd thousands of opioid victim claims, including Purdue Pharma LP and Mallinckrodt Plc. Opioid lawsuits have also plagued Johnson & Johnson, which also worked with McKinsey but hasn't filed for bankruptcy.

A McKinsey spokesman declined to comment. Dundon declined to comment.

McKinsey is represented by Glenn Agre Bergman & Fuentes LLP. The trustee is represented by Seward & Kissel LLP.

The case is Matthew Dundon of the Endo GUC Trust v. McKinsey & Company, Inc. et al. , Bankr. S.D.N.Y., No. 24-07027, decision 9/29/25 .

To contact the reporter on this story: James Nani in New York at jnani@bloombergindustry.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

Meta defeats antitrust lawsuit over Facebook user data

reuters.com/legal/government/meta-defeats-antitrust-lawsuit-over-facebook-user-data-2025-09-30

Mike Scarcella September 30, 2025

Woman holds smartphone with Facebook logo in front of a displayed Facebook's new rebrand logo Meta in this illustration picture taken October 28, 2021. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

Sept 30 (Reuters) - Facebook owner Meta Platforms (META.O), opens new tab convinced a federal judge in San Francisco to throw out a lawsuit that accused the company of misleading users about its privacy practices in order to maintain dominance in the social media market.

U.S. District Judge James Donato on Monday granted summary judgment to Meta, canceling a trial that had been set for November. The judge's order, opens new tab barred a key expert from testifying for the plaintiffs, leaving them unable to prove harm.

Attorneys for the plaintiffs, three Facebook users, declined to comment.

Meta in a statement said the ruling "confirms what we have known from the beginning — the plaintiffs' claims are without merit."

The lawsuit claimed that Meta misrepresented its data protection practices to gain consumer trust and suppress competition. The plaintiffs argued that Facebook users merited pay for handing over their data to use the platform. They had planned to call CEO Mark Zuckerberg at the trial, according to court records.

Meta denied the claims, telling the court that it is not a monopolist and that it competes fairly with platforms including YouTube and TikTok.

Donato in January rejected the plaintiffs' efforts to band together to sue as a class action, drastically limiting the scope of the case. The judge said the plaintiffs could not rely on an expert's findings that Meta would have paid its users $5 a month for their personal data in a competitive market.

The plaintiffs at trial wanted a court order that they said would restore competition in the personal social networking space. They also sought compensatory damages of about $240 per plaintiff.

Meta still faces a related antitrust lawsuit from advertisers who allege they paid inflated prices for marketing on Facebook. Donato has not yet ruled on whether that case can proceed as a class action.

The case is Maximilian Klein et al v. Meta Platforms, U.S. District Court, Northern District of California, No. 3:20-cv-08570-JD.

For user plaintiffs: Shana Scarlett of Hagens Berman Sobol Shapiro and Kevin Teruya of Quinn Emanuel Urquhart & Sullivan

For Meta: Sonal Mehta, David Gringer and Ari Holtzblatt of Wilmer Cutler Pickering Hale and Dorr

Read more:

Meta faces antitrust lawsuit over Instagram Shopping 'monopoly'
Facebook must face DC attorney general's lawsuit tied to Cambridge Analytica scandal
Meta must face shuttered photo app’s antitrust lawsuit, US appeals court rules
Our Standards: The Thomson Reuters Trust Principles., opens new tab

News | **Antitrust**

Quinn Emanuel Challenges Meta's Alleged Unlawful Social Commerce Monopoly With Antitrust Suit

"Instagram Shopping did not win because it was better than Winstag—it was a copycat," Quinn Emanuel Urquhart & Sullivan wrote in a complaint filed on behalf of plaintiff Ollywan Ltd. seeking treble damages and an injunction to end Meta's alleged monopolization of online tag-based shopping.

September 29, 2025 at 05:33 PM By

Meta Platforms logo in Menlo Park, California. Credit: Michael Vi/Shutterstock.com

A United Kingdom-based ecommerce company has filed an antitrust lawsuit alleging Meta Platforms Inc. exploited its social networking monopoly to monopolize online tag-based shopping in violation of the Sherman Act.

Ollywan Ltd. alleges Meta unlawfully launched Instagram Shopping in November 2016 by copying Ollywan's tag-based shopping platform Winstag, illegally preventing competition from emerging and causing multiple well-funded social commerce startups to fail.

"Instagram Shopping did not win because it was better than Winstag—it was a copycat," Quinn Emanuel Urquhart & Sullivan wrote in the complaint filed Sept. 26 on behalf of Ollywan.

"Instagram Shopping succeeded because Meta illegally tied it to Instagram's two billion users, creating an insurmountable advantage no independent competitor could overcome, regardless of product quality or innovation," according to the allegations in the 32-page complaint filed in the U.S. District Court for the Northern District of California.

Ollywan seeks treble damages and injunctive relief allowing it to reenter the relevant market and compete as a provider of tag-based shopping solutions on social network platforms.

Ollywan's complaint cites the Federal Trade Commission's pending antitrust case against Meta, which alleges the Menlo Park, California-based company harmed competition and consumers by acquiring Instagram for $1 billion in 2012 and WhatsApp for $19 billion in 2014.

"Meta's anticompetitive efforts to wield its social media dominance to stymie Ollywan and tag-based social commerce echo similar types of concerns that [caused] the Federal Trade Commission to file suit against Meta," Ollywan alleged in its complaint.

In addition to federal Sherman Act claims, Ollywan accuses Meta of violating California's unfair competition statutes.

Meta did not immediately respond to a request for comment.

This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

Law.com Radar

News | **Privacy**

Clearview AI, Class Counsel Defend Novel Settlement: 'Hypothetical Concern Is Unfounded'

Clearview AI filed a joint response with class counsel on Friday defending a privacy settlement now on appeal that gives class members a 23% stake in the facial recognition firm.

September 29, 2025 at 06:29 PM By **Amanda Bronstad**

What You Need to Know

- Objectors, and attorneys general in two dozen states, raised concerns before the U.S. Court of Appeals for the Seventh Circuit about the Clearview AI settlement.
- The settlement, which does not provide injunctive relief, grants class members potential liquidated funds through three different possible future events, such as an initial public offering or sale of Clearview.
- Clearview and class counsel insisted that a fourth option, as a backup, would allow a settlement master to demand funds that are equal to 17% of its revenues by Sept. 30, 2027.

A businessman as bank and telephone bank protection has facial recognition, thanks to increased reality and futuristic technology. Concept of: cyber security, business, technology and future

Clearview AI Inc. defended its novel privacy-related class action settlement after two objectors and attorneys general from two dozen states challenged the deal on appeal.

The agreement, which received final approval earlier this year, gives class members a 23% stake in Clearview, a facial recognition firm, while resolving claims that it was unjustly enriched by violating the privacy of a nationwide class of people whose "face print" is on the Internet. The objectors appealed final approval of the settlement, which provided no injunctive relief to halt Clearview AI's conduct and, according to their brief before the U.S. Court of Appeals for the Seventh Circuit, only speculative monetary relief.

Attorneys general from Washington D.C. and 24 states, including California, Connecticut, Delaware, New Jersey and New York, sided with objectors, insisting that affirming the settlement would "leave millions of Americans' biometric data exposed, and fail to achieve the actual purpose of this litigation—to protect American's privacy."

"Worse," the states wrote in an amicus brief on appeal, "the approved settlement sanctions the unlawful conduct that gave rise to this lawsuit and requires class members to release all claims against Clearview nationwide (including in the amici states) in exchange for what amounts to an uncertain speculative monetary benefit."

On Friday, Clearview and class counsel filed a joint response before the Seventh Circuit defending the deal.

"The court exercised its discretion to conclude that this relief was sufficient, in light of the claims asserted and the reality that continued litigation would almost certainly have resulted in no monetary recovery to the class," wrote Clearview's lawyer, James Thompson, of Chicago's Lynch Thompson, and class counsel Tom Hanson, of Loevy & Loevy in Dallas.

They disagreed that they hadn't provided the class with a "ballpark valuation," noting that, given Clearview AI's market valuation in 2023, the 23% stake could be worth about $51.75 million. And although the payments would come through three possible means—an initial public offering, a sale or merger, or a sale of the stake—a fallback option allowed a settlement master to demand a cash payment provided by 17% of Clearview AI's revenues before Sept. 30, 2027.

"This alleged, hypothetical concern is unfounded and requires this court to ignore the protections for the class that are built into the settlement," they wrote. "Those reserved funds are available for a single purpose – to fund the settlement stake if the settlement master determines that a liquidation event is too speculative, or remote in time, to be worth waiting for."

Neither Thompson nor Hanson, as well as other class counsel, Loevy & Loevy's Jon Loevy and Michael Kanovitz, in Chicago, responded to requests for comment.

Public Citizen Litigation Group's Michael Kirkpatrick, in Washington D.C., who represents the objectors, told Law.com, "This is just a very unusual settlement because the value of the settlement fund is unknown. So it's hard to say that people are going to get fair compensation when we don't know how much money is ever going to be in that settlement fund."

Kirkpatrick continued, "You also have this odd situation where class members essentially have to root for the financial success of Clearview if they want to recover anything significant, and yet they sued to stop Clearview from doing what it does, which is essentially taking their facial biometrics without their permission and without compensation and turning around and selling it to people who want to use it to identify people."

'They Have Different Interests'

Clearview AI, with a database of 20 billion images from the Internet, primarily works with law enforcement and government agencies. The settlement, reached through JAMS mediator Wayne Andersen, a retired U.S. District Judge of the District of Illinois, provides a 23% stake to five separate classes: A national class and state classes of residents in Illinois, California, New York and Virginia. Those states have privacy statutes, most notably Illinois, where the Biometric Information Privacy Act has resulted in multimillion-dollar settlements with tech firms, such as Facebook's $650 million agreement.

In the Clearview AI settlement, class members in the subclasses would receive a larger share than the national class, which includes individuals living in all the other states. That's why the objectors, in another argument, insist they weren't fairly represented in the settlement.

"They have different interests," Kirkpatrick said. "And that's part of our objection is there wasn't anybody that was a client, or a plaintiff, a named class rep, who was looking out for the interests of the nationwide class because all the class reps were in the state subclasses."

U.S. District Judge Sharon Johnson Coleman, of the Northern District of Illinois, agreed with class counsel that the 23% stake was preferable to monetary relief, which could put Clearview AI out of business. She also found the nationwide class claims to be significantly weaker than those in the subclasses, according to the response brief filed by Clearview and class counsel, and that injunctive relief had already been provided through a separate settlement in an earlier case brought in the Cook County Circuit Court by the American Civil Liberties Union.

The states, which had raised similar concerns in an amicus brief prior to the settlement's approval, argued on appeal that class members have "longstanding and well-recognized privacy interests" under common laws of all states. They should, at a minimum, have the right to opt out of the settlement.

Tom Hanson of Loevy & Loevy

“The district court’s failure to impose any meaningful injunctive relief for the nationwide class renders the settlement unfair,” the states wrote. “Amici states are not aware of another class action settlement like this where the monetary relief is completely unknown, may or may not subsequently be worth something, and gives class members an interest in the very company that harmed them.”

Amazon, Apple win dismissal of US consumer lawsuit over iPhone prices

reuters.com/legal/government/amazon-apple-win-dismissal-us-consumer-lawsuit-over-iphone-prices-2025-09-29

Mike Scarcella September 29, 2025

The iPhone 17 series stands on display at the Apple Store in New York City, U.S., September 19, 2025. REUTERS/Shannon Stapleton Purchase Licensing Rights, opens new tab

Sept 29 (Reuters) - Apple (AAPL.O), opens new tab and Amazon (AMZN.O), opens new tab won a ruling on Monday dismissing a consumer antitrust lawsuit in Seattle federal court that accused them of conspiring to inflate prices of iPhones and iPads sold on Amazon's platform.
U.S. District Judge Kymberly Evanson in her ruling, opens new tab faulted the plaintiffs' lawyers for dragging out the litigation after the original plaintiff sought to withdraw from the 2022 case.
Evanson said the attorneys misled the court, Apple and Amazon about the plaintiff's intent to abandon the proposed class action while attempting to add new plaintiffs.

The judge said she relied on representations that the plaintiff had not withdrawn when she allowed his lawyers in May to amend the complaint and add two more consumers.

The plaintiffs, represented by Hagens Berman Sobol Shapiro, urged Evanson not to revisit her earlier order allowing the lawsuit to be amended, arguing that proposed class actions can proceed even if the lead plaintiff exits.

Lawyers for the plaintiffs did not immediately respond to requests for comment. Apple, Amazon and lead attorneys for the companies also did not immediately respond to requests for comment.

The plaintiffs were U.S. residents who bought new iPhones and iPads on Amazon starting in January 2019. They alleged that a 2019 agreement between Apple and Amazon violated antitrust laws by restricting the number of competitive resellers.

According to the lawsuit, Amazon had about 600 third-party Apple resellers in 2018. Apple allegedly agreed to give Amazon product discounts if Amazon reduced the number of resellers on its marketplace.

Apple and Amazon have denied wrongdoing.

In May, Hagens Berman said it would not oppose a combined sanction of $223,000 in legal fees to Amazon and Apple after the court concluded, opens new tab that the plaintiffs failed to "candidly and/or accurately describe their client's intentions."
The firm in a court filing then said with hindsight "the situation could have been handled better" and vowed to ensure the case was conducted with "the highest degree of professionalism by all involved."

Evanson's order on Monday said the plaintiffs could file an amended complaint.

The case is Floyd v Amazon.com Inc, U.S. District Court for the Western District of Washington, No. 2:22-cv-01599.

For plaintiffs: Steve Berman of Hagens Berman Sobol Shapiro

For Apple: Mark Perry of Weil Gotshal & Manges; Mark Parris of Orrick, Herrington & Sutcliffe; and Anna Pletcher of O'Melveny & Myers

For Amazon: Mark Hopson of Sidley Austin; John Goldmark of Davis Wright Tremaine; and Jon Dugan of Redgrave

Read more:

Amazon to pay $2.5 billion for allegedly duping millions to sign up for Prime, opens new tab
Amazon must face US nationwide class action over third-party sales
Amazon, Apple seek legal fees as sanction in US consumer lawsuit
Our Standards: The Thomson Reuters Trust Principles., opens new tab

Judge reviews Hyundai-Kia settlement in airbag class action

DJ
dailyjournal.com/articles/387827

Sep. 30, 2025

A federal judge reviewed a proposed $62.1 million Hyundai-Kia settlement resolving claims over defective airbags, with objections over fees and injury rights addressed; final approval still pending.

U.S. District John A. Kronstadt

A federal judge Monday reviewed the terms of a $62.1 million settlement which, if approved, would end a six-year multidistrict lawsuit that accused Hyundai and Kia of selling vehicles with defective airbags.

Like the other automakers in the case, Hyundai-Kia denied wrongdoing and settled to avoid further risk, costs and delays for the class. The companies and their suppliers maintain the disputed vehicles do not have faulty airbag control units and that the failures were not due to design or manufacturing defects.

During a Zoom hearing, U.S. District John A. Kronstadt in Los Angeles took the matter under submission after reviewing a $20 million attorney fee request that was objected to by three class members.

Despite receiving invitations, Kronstadt noted, the objectors did not attend the hearing. However, the judge found the proposed fees - about a 32% share of the class fund - were reasonable.

"I'm mindful and respect ... the concerns expressed, but I'm overruling the objections," Kronstadt told the parties.

Other concerns from the objectors related to whether they could recover damages for personal injuries caused by defective airbags. Kronstadt noted the agreement specifically preserves those rights upon final approval.

An additional matter Kronstadt said he had to consider before finalizing a ruling was the designation of Patrick J. Hron as the case's special settlement master. The Louisiana practitioner took over the role this year for Patrick A. Juneau, who died in late 2024.

Present at the hearing for the consumer class was Roland K. Tellis of Baron & Budd PC and Lieff Cabraser Heimann & Bernstein LLP partner David S. Stellings.

Skadden Arps Slate Meagher & Flom LLP partner Lance A. Etcheverry represented Hyundai and Kia.

In 2023, Kronstadt approved a $78.5 million settlement between Toyota and consumers in the same multidistrict airbag case. He also approved an $8.5 million settlement with Mitsubishi in April. *In re: ZF-TRW Airbag Control Units Products Liability Litigation*, 2:19-ml-02905 (C.D. Cal., filed Aug. 8, 2019).

In the pending Hyundai-Kia agreement, about 3.7 million owners and lessees nationwide would share a $48.6 million reimbursement and compensation fund. The class would also get recall-related benefits, including a new parts warranty and a 10-year inspection program to track airbag non-deployments.

According to the proposal, the settlement is non-reversionary, meaning unused funds will not be returned to the companies. The deal was reached after roughly 2 1/2 years of negotiations - "a timeline that reflects the complexity of the issues and the parallel efforts to support negotiations with substantial discovery and investigation," the agreement stated.

The settling defendants filed several motions to dismiss the case and successfully argued for dismissal of foreign entities, Hyundai Mobis and Kia Corp., on jurisdictional grounds.

The class counsel said the agreement secures "certain, substantial relief" after six years of good faith litigation, noting the difficulty of overcoming pleading challenges and the complexity of proving a multi-year fraud case against several corporate defendants through trial.

The class action litigation was part of a larger multi-district litigation that stemmed from a 2015 National Highway Traffic Safety Administration's investigation of airbag control units. The matter was expanded in 2018 to include Hyundai and Kia.

The consumer class alleged the car companies misled them by intentionally concealing knowledge of the defective units, causing economic damages to those who purchased or leased the affected vehicles. According to the complaint, the allegations date back to 2010, covering several vehicle models from the defendant manufacturers.

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News | Litigators

Plaintiffs Lawyers Settle Dispute With Wigdor Firm Over Allegations of Client Poaching

Plaintiffs attorney Anthony DiPietro accused Wigdor Law partner David Gottlieb of "inducing" a client to terminate DiPietro and retain Gottlieb to negotiate her own settlement with Columbia University over sexual misconduct by an obstetrician-gynecologist. Gottlieb then accused DiPietro of misconduct.

September 29, 2025 at 02:11 PM By **Emily Saul**

Columbia University in Manhattan. Photo: Ryland West/ALM

Prominent plaintiffs attorneys Anthony DiPietro and David Gottlieb have ended their lawsuits against each other over allegations of client poaching and misconduct amid a global settlement with Columbia University to resolve more than 100 claims of sexual abuse against former gynecologist Robert Hadden.

The terms of the stipulation between the lawyers, which is dated Sept. 16 and was first made public Sept. 26, were not clear.

Neither attorney immediately returned messages seeking comment.

DiPietro began the action in 2023, alleging the Wigdor Law partner “induced” DiPietro’s former client, “Jane Doe 2,” to abandon the settlement DiPietro was negotiating and retain Gottlieb in order to file her own suit. She settled months later during her representation by Gottlieb for a greater, unspecified amount than was available to her under the settlement agreement, according to court papers.

DiPietro’s lawsuit sought a lien on Gottlieb’s contingency fee.

Gottlieb, in his own countersuit, accused DiPietro of attempting to pressure Doe into accepting terms that were not in her best interest and argued DiPietro forfeited the lien when the firm was terminated for cause over alleged violations of the New York State Rules of Professional Conduct.

The duo's respective law firms, the Law Office of Anthony T. DiPietro and Wigdor Law, were also parties to the suit.

Manhattan Supreme Court Judge Mary Rosado denied a motion to dismiss the counterclaims in April.

DiPietro in May secured a $750 million settlement with Columbia University, resolving claims from hundreds of women that they were abused by Hadden under the guise of legitimate medical care.

Hadden was convicted and sentenced in 2023 to a 20-year prison term by a federal judge in Manhattan. Prosecutors alleged he'd sexually assaulted and abused patients from 1987 to 2012 during the years he worked in obstetrics-gynecology at Columbia University Irving medical center and New York-Presbyterian hospital. He was arrested in 2012 after a patient reported that he’d licked her during an exam.

LAW.COM

News | **Social Media**

TikTok Moves to Halt Lawsuits While DOJ Pursues Case Over Minors’ Privacy

On Monday, plaintiffs’ lawyers opposed granting a stay of their lawsuits, which allege privacy violations against TikTok users under 13.

September 30, 2025 at 01:17 PM By **Amanda Bronstad**

What You Need to Know

- Plaintiffs’ lawyers insisted TikTok’s real motivation for a stay of the litigation is to destroy evidence.
- The Department of Justice sued TikTok last year for violating the Children’s Online Privacy Protection Act, or COPPA.
- Plaintiffs’ lawyers also opposed dismissal of the lawsuits, which bring claims of unjust enrichment and negligence, plus violations of statutes governing unfair businesses and privacy in various states.

Daniel Petrocelli, with O’Melveny & Myers. Courtesy photo

Lawyers suing TikTok for violating the privacy of users under 13 pushed back against the social media platform’s attempt to halt their cases, insisting its real motivation is to destroy evidence.

In a Monday filing, plaintiffs' attorneys opposed TikTok's motion to halt a dozen class actions coordinated into multidistrict litigation until after the U.S. Department of Justice resolves its case. The DOJ is alleging TikTok violated the Children's Online Privacy Protection Act, or COPPA, and lawsuits followed.

"Tired of plaintiffs' zealous data-preservation efforts as well as this court's interest in reaching a resolution, and standing on the doorstep of discovery, defendants seek to avoid this action entirely," Derek Loeser, of Seattle's Keller Rohrback, and Eric Kafka, of Cohen Milstein Sellers & Toll, in New York, wrote in Monday's opposition to the stay. "Defendants plainly state that if a stay is issued, they will continue their blanket destruction of relevant evidence, indefinitely. This court should take defendants at their word and see this motion for what it is: a transparent effort to avoid preservation obligations and gain a tactical advantage in a manner that would be highly prejudicial to plaintiffs."

In the stay motion, TikTok attorney Daniel Petrocelli said discovery in the DOJ's case would overlap with the class actions, potentially leading to inconsistent rulings.

"The statutory framework enacted by Congress makes clear that the federal government has priority over competing COPPA enforcement actions brought by states, and that state enforcement efforts are *barred* from proceeding where litigation is already being pursued by the federal agencies," Petrocelli, of O'Melveny & Myers in Los Angeles, wrote in the Aug. 25 motion.

"These facts lie at the core of the fundamental problem presented here: private plaintiffs, who have *no* right or ability to enforce COPPA, are seeking to advance claims expressly predicated on alleged COPPA violations at the same time DOJ is exercising its statutory authority to enforce COPPA—even though COPPA makes clear that other actions cannot and should not be filed while a federal enforcement action is already pending," Petrocelli added. "This puts defendants—and the court—in an untenable position."

The class actions, coordinated in the Central District of California, allege that TikTok has knowingly allowed children under 13 to create user accounts without parental consent, then shares their personal information with third parties for advertising purposes. Because COPPA does not allow for a private right of action, the suits bring claims of unlawful business practices and invasion of privacy under various states, including California, Connecticut, Florida, Georgia and Pennsylvania, and unjust enrichment and negligence, plus class-wide damages.

TikTok also moved to dismiss the lawsuits on similar grounds: that the DOJ's case should take precedence over the class actions. Further, the motion says, the plaintiffs misrepresented their age, and TikTok, which has a "Kids Mode" for those under age 13, fully disclosed what it called "routine data collection" for regular users.

In a separate filing Monday opposing dismissal, plaintiffs' lawyers wrote that blaming children for misreporting their age was a "red herring." TikTok ignored requests from parents to delete the accounts, which it knew were created by kids under 13, they wrote.

"TikTok has profited off the systemic invasion of privacy of millions of children in the United States under the age of 13," they wrote. "Defendants engaged in this unlawful behavior for one reason: profit."

Loeser declined to comment. Neither Petrocelli nor TikTok, which is based in Los Angeles but owned by Chinese company ByteDance, responded to requests for comment. The DOJ also did not respond.

U.S. District Judge George Wu, of the Central District of California, has scheduled a Nov. 6 hearing on TikTok's stay motion.

'A New American TikTok'?

The stay request comes as President Donald Trump, on Sept. 25, signed an executive order designed to reduce Chinese ownership of TikTok to less than 20%. Among the possible American investors are Oracle co-founder Larry Ellison.

In 2019, the DOJ, acting on behalf of the Federal Trade Commission, obtained an injunction against TikTok's predecessors, Musical.ly and Musical.ly Inc., and a $5.7 million civil penalty for COPPA violations. But the DOJ filed a new complaint in 2024 in the Central District of California for potential civil penalties against TikTok, which allegedly violated the terms of that injunction by continuing to collect the personal information of children under 13. A 10-day jury trial in the DOJ's case is planned for May 11, 2027.

But that trial could get delayed again, according to the plaintiffs' opposition.

"And it remains to be seen whether the DOJ action is delayed—or even survives—in light of the announced deal to create a new American TikTok," Loeser and Kafka wrote.

A consolidated complaint in the multidistrict litigation "relies heavily on the allegations in the DOJ action," TikTok wrote in its stay motion.

"Although the court is currently coordinating the DOJ action with these consolidated cases, they are separate and distinct legal proceedings," Petrocelli wrote. "Plaintiffs' claims will be adjudicated by different factfinders compared to the DOJ action, which opens the door for completely different outcomes in each case."

Derek Loeser of Keller Rohrback. Courtesy photo

But in the plaintiffs' opposition, Loeser and Kafka argue that Congress never intended to prohibit lawsuits related to COPPA. And with a stay in place, witnesses could forget facts.

They also questioned why TikTok didn't file its stay motion sooner.

"Defendants do not explain why the motion to stay was filed over a year after the first private case was filed, nor why they did not raise this motion *at any prior time*," they wrote. "Their silence and delay demonstrate that their motion is motivated by strategic concerns, not legitimate concerns about hardship or need."

Securities

Manage Newsletters

Opinion

Matt Levine’s Money Stuff: Hedge Funds Have To Be Big

Sept. 30, 2025, 10:03 AM PDT

Eisler

One possibility is that investing skill exists but is very hard to identify. The biggest asset managers would love to hire the people with the most investing skill, and they have the most money to pay those people, but they can’t find them in any particularly reliable or comprehensive way. Somewhere out there is a person who’s spent years running a 4 Sharpe ratio at her $5 million friends-and-family hedge fund, or her Robinhood personal account, but she never gets a job at a big hedge fund. Why? Perhaps there is no way for information about her performance to diffuse through the market; perhaps the big funds have some set of biases or constraints — they only hire people with the right background, etc. — that prevent them from hiring some of the most skilled people.

And so the skilled investors are distributed somewhat haphazardly. Some of them run multibillion-dollar portfolios at big multimanager multistrategy “pod shops” like Citadel or Millennium. Some of them run their own multibillion-dollar hedge funds with their names on the door. Others manage mutual funds, or the local teachers’ pension fund, or their personal accounts, or the investment opportunity that you just saw advertised on Instagram.

In some ways this is a hopeful story — you never know, maybe that Instagram investment opportunity is a great one! — but it is not very *efficient*. The point of a financial market is to allocate capital to its most productive uses. Someone who is very good at allocating capital should be allocating a lot of capital, not her own Robinhood account. And an efficient market would allocate a lot of capital *to her:* If she reliably earns high risk-adjusted returns on the capital she invests, she should get a lot of capital to invest.

Another possibility is that, over the last few decades, the market for investing talent has become incredibly efficient, and now the biggest hedge funds can pretty reliably hire the best investors and allocate the most capital to them. In many ways that is an appealing story. For one thing, it suggests that capital is being allocated to its highest and best uses: The best investors get the most money to allocate, and they allocate it in the best way to the best businesses.

For another thing it is just a nice story of intellectual accomplishment. Identifying investing skill is not a trivial task, and if humanity has collectively figured it out then that’s sort of cool. The big hedge funds “are a massive filter of talent,” as Gappy Paleologo puts it , and the filtering works.

This story is a bummer, however, if you run a medium-sized hedge fund. If all the best investors go work at the biggest hedge funds for the most money, where does that leave you? Closed. Bloomberg’s Nishant Kumar reports :

Eisler Capital Multi Strategy Fund is winding down and returning capital to investors, the firm told clients on Monday in a letter seen by Bloomberg News. … The London-based firm said its returns failed to keep pace with expectations, while the battle to recruit and keep top traders capable of deploying capital at scale has only grown more expensive. …

“After careful consideration of these factors and others, including the application of projected 2026 costs on an anticipated smaller capital base, we are no longer confident of our ability to achieve the fund’s investment objective,” the letter said. “The most responsible course of action now is to return capital to our investors.” ...

Organizations like Ken Griffin’s Citadel and Izzy Englander’s Millennium have reached such scale that they can pay millions of dollars to lure the best traders — forcing competitors to spend big, often by charging investors pass-through fees, in order to keep up.

“The economics of the multistrategy model — with its heavy infrastructure, high pass-through expenses, and dependence on large teams of traders — favor those with vast capital bases and diversified revenue streams,” said Bruno Schneller, managing partner at Erlen Capital Management. “Without sufficient scale, even well-regarded firms can find the operational and financial demands of this business model unsustainable.”

Yes in an efficient market there would not be that many well-regarded multistrategy firms without vast capital bases. If you’re good at investing, Ken Griffin will give you vast amounts of capital to invest, which is better than investing less.

Double pledging

It is very hard to sell the same car twice. If you simultaneously sell a car to me and to someone else, one of us will show up and drive it away, and then the other one of us will show up and *not* drive it away, and you will quickly have a problem. Similarly with car parts: If you sell me a set of windshield wipers, you will collect money from me, but you will not have the windshield wipers anymore to sell to someone else.

What if you really want to sell a car twice? Well, this problem can be surmounted, for a while, with a little creativity. The trick is that, when you sell me a car, I probably don’t just hand you the cash and drive away. I probably take out a loan to pay for the car, and you might get the loan for me. You give me the car, the bank gives you the money upfront, and over the next few years I pay you back and you pay back the bank. But the bank isn’t sitting with us as we fill out the forms. You could just fill out the forms twice, for two banks. Tell Bank 1 that you sold me a car for $20,000, tell Bank 2 that you sold me the same car for $20,000, and get $20,000 from each bank, for a total of $40,000 for the same $20,000 car. Each bank will want the car as collateral for its loan, but in a somewhat abstract sense. (It’s not like the bank locks the car in its vault: I have to drive it.) Perhaps you can fudge this.

Of course now I owe you only $20,000 (plus interest), while you owe the banks $40,000 (plus interest), but, you know. That’s a problem for later. You have the $40,000 now, which will cover your double payments for a while. Perhaps your business will boom and you can grow out of the problem. Perhaps you will sell the next car three times.

You might think this would be harder to do with windshield wipers — people *don’t* normally take out loans to buy windshield wipers — but it depends where you sit in the supply chain. If you sell windshield wipers to car dealerships or auto part stores, your customers (the retailers) probably *do* pay on credit. You give them windshield wipers and you get back an invoice saying that they owe you some money. And then you can borrow from a bank with that invoice as collateral (this is called “factoring”). Maybe twice!

I guess the point is that it is hard to sell the same physical product more than once, but it is easier to sell the same abstract financial product (like a loan) more than once, and in a world where products are normally sold on credit, you can kind of sell anything twice.

That said, it is a bad idea? I mean, it is fraud. But also, it is *relatively* easier to sell a loan twice than it is to sell a car twice, but it’s not *particularly* easy. There are a lot of ways to get caught. The two main ones are:

1. People will check? I said above that each lender will want the car as collateral “in a somewhat abstract sense” — they won’t hold the car in their vault — but this is a thing that people think about. There are public filing registries for vehicle liens, so that lenders can check to make sure that no one else has claimed the same collateral. Invoice factoring firms do due diligence, asking questions like “did you already sell this invoice to someone else,” which you and your employees will have to answer with a straight face. It’s a lot of work to fool everyone.
2. You have to pay back the two loans. I said above that “that’s a problem for later,” and perhaps you can grow out of the problem, but (1) later comes eventually and (2) perhaps you can’t.

There have been two big car-related bankruptcy filings this month. Earlier this month Tricolor Holdings, which sells cars and makes loans, filed for bankruptcy ; yesterday First Brands Group Holdings, which sells auto parts, also filed . In each case, there are rumors of double-pledging. When Tricolor filed, the Financial Times reported:

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

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

And the first-day declaration from First Brands’ chief restructuring officer reports that it’s looking into potential similar problems:

Following diligence performed by the Company's Advisors, the Debtors believe that an unpaid prepetition balance of approximately $2.3 billion has accrued with respect to the Third-Party Factoring arrangements as of the Petition Date. The Debtors' factoring practices are subject to the Special Committee's ongoing Investigation including (i) whether receivables had been turned over to third party factors upon receipt, and (ii) whether receivables may have been factored more than once. …

Recently, the Company Advisors became aware that certain inventory subject to a security interest in favor of Evolution [*Credit Opportunity Master Fund, one of First Brands' asset-based lenders*] pursuant to the Evolution Facilities may have been commingled with collateral securing the ABL Facility [*a different asset-based term loan and revolving facility led by Bank of America*]. Subsequently, the Debtors and their advisors reached out to the applicable stakeholders to make them aware of the foregoing and begin work to understand the facts (the "Evolution Collateral Dispute"). The Evolution Collateral Dispute is subject to the Investigation by the Special Committee, which is ongoing.

I don't really know what to make of this. Perhaps it's nothing — perhaps neither company actually double-pledged anything and these are just misunderstandings. Or perhaps they did, but it is just a weird coincidence that two double-pledging disasters came to light in the same month. Or perhaps this is the sort of thing that happens in booming credit markets. Traditionally, when investors have lots of money and are desperate to lend it to someone, they do things like lend to risky businesses, or make loans at low rates, or make loans with few covenants. But I guess "not checking to see if the collateral is real" is another way to make loans quickly.

Private markets are the new public markets

The basic situation is that individual investors want to buy stock in SpaceX and OpenAI and Stripe, but they can't. Those companies' stocks don't trade on the stock exchange. They are private. But they *have* lots of stock (they are big companies) and lots of shareholders (employees, former employees, etc.), so somebody can find stock somewhere. You just have to, like, know a guy, and go to a back alley, and hand over a sack of cash, but then you can get some SpaceX stock that fell off the SpaceX stock truck. There are various forms of this, including forwards , special-purpose vehicles and some weirder stuff .

This is an unsatisfactory state of affairs for individual investors (who want to be able to get SpaceX stock by pushing a button on their brokerage app), and for the companies (who don't want individual investors buying their stock at all!), but it is a particularly unsatisfactory state of affairs for *brokerage firms*, who really want to attract individual investors by giving them what they want (SpaceX stock). And so there are various brokerage firm attempts to build a "Buy SpaceX Stock" button into their apps that abstracts away from the visit to the back alley to meet the guy who has the knockoff SpaceX stock. We have talked about Robinhood Markets Inc.'s plans to "tokenize" SpaceX stock to sell to its retail investors on its app. Robinhood's app is not a back alley! Robinhood's app is the Times Square of investing! Getting SpaceX stock in your brokerage app is, like, 50% of the goal of modern retail finance! The other 50% is getting football bets in your brokerage app! Why is everything like this!

Anyway here's this:

As investors of all types seek new opportunities and greater choice in their investment options, Monark Markets ("Monark"), a fintech startup that embeds private market investments and trading solutions within traditional brokerage and wealth platforms, and Apex Fintech Solutions Inc ("Apex"), an innovation launchpad for the global investment ecosystem, have teamed up to streamline investor access to a range of private markets. …

Through the Apex Alts platform that brings alternative investments into the same brokerage accounts as traditional asset classes, Apex is removing barriers and simplifying access to private market assets previously reserved for the ultra high-net-worth and institutional investors. The first private asset class unlocked by Monark and Apex will be the Pre-IPO market, enabling investment opportunities in companies like SpaceX, Perplexity and Stripe with minimums as low as $5,000. Accredited investors* in the Apex network will be able to invest in single-asset Special Purpose Vehicles (SPVs) that provide access to private companies with high-growth potential through a familiar digital experience, funding transactions from the cash balance in their Apex brokerage accounts.

Why not. I'm not entirely clear what the secondary market is going to look like here — what price will you get when you *sell* your single-asset SPV? — but that's not the point. The point is there's gonna be a button in your brokerage app to buy SpaceX.

Earlier this month, the US Securities and Exchange Commission's Investor Advisory Committee put out a set of recommendations on "Retail Investor Access to Private Market Assets." From the summary:

In the Committee's view, the optimal way for retail investors to access private market assets is through *registered funds*, which allow retail investors to invest in broadly diversified funds that contain private market assets, often alongside public market assets. The investor protections embedded in the registered funds framework include Commission review, audited financials, professional fund management, diversification, various levels of liquidity, and the protections of the Investment Company Act.

That is: We seem to be hurtling inevitably toward a world in which ordinary investors are going to be pushed to invest in private equity and private credit. One way to do that is by letting ordinary investors buy stock directly in private companies. Another way to do it is by letting ordinary investors invest in professionally managed SEC-regulated funds that have access to good private investments, do due diligence, and construct diversified portfolios of private companies. The SEC advisory committee wants professional funds, because (1) those might do a better job than individuals in their brokerage apps but also (2) of course a committee of professional investors wants retail investors to pay fees to professional investors.

Anyway the actual answer is going to be both.

Affinity

Yesterday I was … perhaps somewhat dismissive of the role that Affinity Partners is playing in the $55 billion leveraged buyout of Electronic Arts Inc., in that (1) the lead investor in the deal is Saudi Arabia's Public Investment Fund, (2) PIF already owned a big chunk of EA, (3) PIF is also an investor in Affinity's fund and (4) Affinity just doesn't have that much money so could not have provided much of the equity in the deal. But Bloomberg and the Financial Times both have stories about how, actually, Affinity — which is run by Jared Kushner — was crucial to getting the deal done. From Bloomberg:

Jared Kushner brokered the initial connection between the Redwood, California-based video game maker and Saudi Arabia's Public Investment Fund, and for months acted as a central figure in the talks, according to people familiar with the matter, who requested anonymity to discuss private conversations. When the deal's momentum slowed around mid-year, Kushner pushed to keep it going, some of the people said.

And from the FT:

Electronic Arts has for years been coveted by Saudi Arabia's sovereign wealth fund and the billionaire dealmaker Egon Durban. But it was Donald Trump's son-in-law Jared Kushner who unlocked its $55bn takeover.

Kushner, who is married to Trump's eldest daughter Ivanka, began sketching out the largest buyout in Wall Street history earlier this year with Durban, who co-heads tech-focused private equity group Silver Lake. …

Durban had been studying a takeover of EA for more than a decade. But it was Kushner who convinced PIF to go for the take-private bid, said people briefed on the matter.

So Affinity earned its cut of the deal. Though both stories mention the other thing. From the FT:

While a deal of this kind could face regulatory scrutiny in Washington, several people said they expected the transaction to go through fairly easily, citing the influence of Kushner and Saudi Arabia on the White House.

"We are in a regulatory environment that is welcoming of [Saudi Arabia]. We are not in what was the previous regime," said a person briefed on the transaction. They said Kushner's participation in the consortium could prove valuable if the deal were to unexpectedly hit a snag.

Or, as another person close to the inner workings of the Trump administration put it: "What regulator is going to say no to the president's son-in-law?"

Charlie Javice

Is it better to defraud dumb people or smart people? I mean, intuitively it's probably easier to defraud dumb people, but if you get caught and prosecuted and convicted and are facing sentencing, would you rather have dumb victims or smart ones? This is not legal advice — don't defraud anyone! — but I would have thought that defrauding dumb victims would go worse for you. "Your Honor, my victims were all sophisticated wealth professional investors who did their due diligence and could easily bear their losses": fine, sure, better. "Your Honor, my victims were dum-dums and stealing their money was so easy that nobody could have resisted": wait, no, bad.

Charlie Javice, who founded the financial technology company Frank and sold it to JPMorgan Chase & Co. for $175 million, is in an odd situation in that (1) arguably JPMorgan is the single most sophisticated and well-funded possible victim of a fraud but (2) everyone seems to agree that, in this particular case, JPMorgan was a dum-dum and stealing its money was so easy that nobody could have resisted. Yesterday Javice was sentenced to seven years in prison, and there was at least some debate about whether her victim's stupidity was a *mitigating* factor. Bloomberg News reports :

On Monday, one of Javice's lawyers, Ronald Sullivan, suggested that JPMorgan's failings should be considered in the "background" of her sentencing. But Hellerstein indicated he wouldn't be taking "JPMorgan's very poor due diligence" into account.

"A fraud is a fraud, whether you outsmart someone who's smart or someone who's a fool," the judge said, adding that he was focused on "her conduct, not JPMorgan's stupidity."

And the Wall Street Journal reports:

Javice's attorneys told Hellerstein that JPMorgan's failure to conduct proper due diligence should weigh in favor of her receiving a more lenient sentence. Other financial firms, such as Capital One, considered buying Frank but declined after looking at a sample of the company's user data.

"We would never ask you to punish JPMorgan Chase's stupidity," said Ronald Sullivan, one of Javice's lead attorneys. "But we submit that it's a relevant factor."

I feel like normally it's the opposite? "My victims trusted me so completely that they didn't ask any questions" does not normally make your fraud look *better*.

Head of macro

Remember James Fishback? He worked at Greenlight Capital Inc. for a while, where he was an analyst (according to Greenlight) or the "head of macro" (according to him), and then he left and he and Greenlight sued each other over whether or not he was the head of macro. He later moved on to a career of running anti-woke exchange-traded funds , suing the Federal Reserve , and yelling repeatedly at Lisa Cook at Jackson Hole. Anyway last week he settled one of his lawsuits with Greenlight, "admitted sharing confidential information and agreed to pay the hedge fund's costs to resolve a lawsuit it filed against him." From the stipulation:

At multiple points during his employment with Greenlight, Defendant [Fishback] electronically accessed and transmitted certain files between Greenlight's systems and his own personal email addresses, without seeking or obtaining authorization from personnel at Greenlight. …

Those instances include but are not limited to … the August 15, 2023 email … (the "Port Sheet Email") … which contained Greenlight's entire portfolio of investments. ...

Defendant transmitted the Port Sheet Email to his personal email address on August 15, 2023, his final day of employment with Greenlight. Greenlight sent Defendant an email on August 15, 2023 informing the Defendant that he lacked authorization to transmit the Port Sheet Email to his personal email address, and that such transmittal was a violation of Defendant's obligations under the Employment Agreement. Greenlight also requested Defendant to delete the Port Sheet Email, and Defendant responded the same day indicating that he deleted the Port Sheet Email. This statement later proved to be false as Defendant not only did not delete the Port Sheet Email, but the Port Sheet Email was later produced by Defendant in discovery in this case.

Yeah you're not really supposed to take a hedge fund's entire portfolio out the door with you when you quit. What are you going to do with it? Well:

Defendant also maintained a personal trading account in his name while employed at Greenlight and did not disclose the existence of such account to Greenlight. Defendant made investments in this account in the same instruments that Greenlight had invested in around the same time. Defendant did not seek or obtain authorization from Greenlight to make any such investments.

Yeah you're not supposed to shadow your firm's trades either. Fishback also discussed Greenlight's trades with another person "on at least thirty-three (33) occasions during his employment with Greenlight," though the stipulation doesn't say who that person was. Bloomberg News has a hint :

In a statement, Fishback said Greenlight found only a few dozen texts and emails out of 100,000 in which he said he was just "speaking about my work with friends and family."

"There is literally nothing damaging about telling your dad what you did at work," Fishback said. "This was a frivolous lawsuit from the get-go."

I bet that most hedge fund analysts *don't* tell their dads what trades they did at work? Anyway Fishback's exchange-traded fund that buys Tesla stock and call options started trading today.

Things happen

Private Credit Could Amplify Shock in Next Crisis , Fitch Says. SEC Is Moving to Allow Stocks to Trade Like Cryptocurrencies. Elon Musk hit by exodus of senior staff over burnout and politics. OpenAI Lets Users Buy Stuff Directly Through ChatGPT. AI Data Centers Are Sending Power Bills Soaring. CoreWeave Inks $14 Billion Meta Deal, Highlighting AI Demand. JPMorgan Files Plans to Put Private Credit Into an ETF Wrapper. CSX Appoints New CEO Following Activist Pressure. Exxon to Cut 2,000 Jobs in Global Restructuring. Anthropic Says New Model Can Code on Its Own for 30 Hours Straight . Steve Cohen apologizes to Mets fans. Octopuses Invade the English Coast, 'Eating Anything in Their Path.'

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To contact the author of this story:
Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Michael Newman at mnewman43@bloomberg.net

1. I am being very loose in saying "the most money"; obviously the big multistrategy hedge funds manage far less money than, you know, BlackRock Inc. The story is more like "the most money to pursue alpha in medium-term active strategies"; much of investing is passive or semi-passive and doesn't demand the sort of skill we're discussing here. (Similarly I am using "investing skill" in a somewhat narrow way to mean the sort of alpha generation prized by hedge funds; arguably there are other sorts of skills that are useful to other sorts of investors.)

2. Actually, frequently, I pay back the bank directly rather than funneling the money through you. (That seems to be the norm in prime US new car transactions; the buyer faces the lender directly.) But Tricolor was a car dealer and lender (funded by banks), and First Brands did a lot of third-party factoring, and in each case the description in the text is more or less accurate.

3. Item 22 in the bankruptcy docket. The FT also reported on this inquiry earlier.

4. I realize that "Times Square" and "a back alley" are opposites in some respects and, uh, not opposites in other respects; that is what I'm going for in this metaphor.

Insight

Senate Report on SVB Fails to Recognize Accounting Illiteracy

Sept. 30, 2025, 1:30 AM PDT

Summary by Bloomberg AI AI Generated

- A new report from Senate Democrats faults KPMG LLP for issuing clean audit opinions before Silicon Valley Bank's collapse and suggests auditors should have raised louder alarms about SVB's mounting risks.
- The report and comments from JPMorgan Chase & Co CEO Jamie Dimon rest on a fundamental misunderstanding of what accounting is designed to do—and what it already revealed, as accounting didn't hide the risks that toppled SVB, it spotlighted them.
- The challenge lies not with the reporting rules themselves, but with the widespread lack of familiarity in using and interpreting financial information, and the solutions will be complicated and multifaceted, requiring a reimagining of the approach to financial literacy.

They say that hindsight is 20/20, but US senators and CEOs are having a hard time remembering the role of accounting in Silicon Valley Bank's demise.

A new report from Senate Democrats faults KPMG LLP for issuing clean audit opinions before the bank's collapse and suggests auditors should have raised louder alarms about SVB's mounting risks.

Senators aren't the only ones under this impression. In a July episode of the *Acquired* podcast, JPMorgan Chase & Co. CEO Jamie Dimon made several comments about accounting standards and their effects on SVB, including that "you can drive a truck through accounting rules."

At first glance, these critiques seem compelling. But both Dimon and the Senate report rest on a fundamental misunderstanding of what accounting is designed to do—and what it already revealed. Accounting didn't hide the risks that toppled SVB; it spotlighted them.

That one of the most respected business leaders of our time, and now a group of US senators, misses this point underscores a deeper issue: The challenge lies not with the reporting rules themselves, but with the widespread lack of familiarity in using and interpreting financial information.

Risks in Plain Sight

SVB collapsed in March 2023. The bank had loaded up on long-dated US treasuries during the low-interest-rate era. As rates climbed, the market value of these "safe" investments plummeted.

The bank categorized most of these securities as "held to maturity," meaning the bank wasn't required to adjust their balance-sheet value as prices fell—at least not directly. That's the loophole Dimon referenced.

But the "hidden" risks weren't hidden at all. US accounting rules require all public companies to disclose the decline in value of held-to-maturity investments in the footnotes offered as a companion to the financial statements.

In SVB's annual report, filed just weeks before the collapse, those footnotes clearly showed more than $15 billion in unrealized losses (about a 17% decline). SVB even went further, reporting the fair-value losses directly on the face of the balance sheet.

Anyone who actually looked at the balance sheet would have had a hard time missing the bank's exposure.

Senate Misdiagnosis

The Senate report makes the same mistake. It suggests that it would have had to disclose the decline in value only because the bank was at risk of selling its held-to-maturity investments in March when, again, this decline was clearly disclosed in SVB's annual report filed weeks earlier.

This wasn't the senators' only confusion about accounting. The Senate report levels its harshest criticism at KPMG for not warning more loudly about SVB's risks. But that critique misses the mark entirely.

Under US auditing standards, auditors are responsible for checking whether the financial statements comply with US accounting standards, not for predicting future bank runs or evaluating business strategy. By treating "business risk" as "audit failure," the Senate report confuses the role of auditors with that of regulators, investors, or management.

This isn't a minor slip—it reflects a deeper confusion of accounting itself. Auditors verified that SVB's financial disclosures were accurate and complete under the rules.

And they were—the decline in the value of their investments was reported on their balance sheet. The report's claim that the risks weren't flagged loudly enough is really an indictment of how disclosures were interpreted (or ignored), not of whether they existed.

A Broader Problem

Our system is awash with financial information, but far too few people know how to use it. Our experience as researchers and educators points to two reasons.

One is a decline in general financial literacy. Accounting is considered the language of business, yet interest in learning accounting has been falling for years. Another reason is that the greater availability of financial statement data has made deep reading obsolete.

Although increasing the spread of information is generally a good thing, the proliferation of standardized platforms has shifted *how* financial data is consumed. Analysts and investors increasingly rely on summaries, dashboards, and generic metrics scraped from filings and stripped of context.

What gets lost in this shift is often the most critical information: footnote disclosures that offer essential context, nuanced classifications that provide clarity, and company-specific insights that can best illuminate a company's financial position. The irony is that as availability of information has grown, meaningful human engagement with that information has diminished.

The solutions will be complicated and multifaceted, but our experience at the McCombs School of Business is instructive. Our recently overhauled version of the introduction to financial accounting course allows undergraduates to move past traditional bookkeeping lessons and explore the interdisciplinary nature of financial information, gain a broader context from footnotes from companies such as Apple Inc. and Starbucks Corp., and be able to ask better questions.

Even with this progress, there is more work ahead, as the demand from finance majors is exceptionally low. Only about 12% choose the undergraduate financial statement analysis elective.

That's troubling, because finance without accounting is like sailing without a compass. You might keep afloat, but you'll have no idea where you're headed or what's lurking beneath the surface.

The downfall of SVB was a failure of attention, judgment, and perhaps humility—not of accounting. Financial reports didn't hide the risk; they revealed it.

But the signals went unheeded. That should prompt less handwringing about the rules underlying all financial information and more reflection on how we teach, learn, and apply them in practice.

If we want capital markets to function effectively—and to avoid future SVBs—we must foster a culture where financial statements aren't just parsed by machines but read by people with the skills to synthesize and interpret them thoughtfully. That means reimagining our approach to financial literacy across disciplines and resisting the temptation to blame the rulebook when the problem actually is how little of it we choose to read.

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

Author Information

Andrew Belnap is an assistant professor of accounting and Patrick Badolato is a professor of instruction in accounting at the McCombs School of Business at the University of Texas at Austin.

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To contact the editors responsible for this story: Rebecca Baker at rbaker@bloombergindustry.com; Melanie Cohen at mcohen@bloombergindustry.com

Securities

SEC Halts Trading in Firm That Rose 959% on Crypto Plan (2)

Sept. 29, 2025, 3:55 PM PDT

The US Securities and Exchange Commission suspended trading in QMMM Holdings Ltd. after its shares surged almost 1,000% in less than three weeks, saying the digital media advertising firm's stock may have been manipulated by touts on social media.

QMMM's stock has surged 959% since before the company said earlier this month that it was establishing a "diversified cryptocurrency treasury" that would initially reach $100 million and target Bitcoin, Ethereum and Solana.

In its Sept. 9 release, QMMM also said it was announcing its "strategic entry into the cryptocurrency sector," citing the use of artificial intelligence and blockchain technology.

Recommendations on social media by "unknown persons" to buy QMMM may have manipulated the share price, the SEC said Monday. The regulator didn't say when the posts were made. The SEC said the suspension was temporary, ending at 11:59 p.m. ET on Oct. 10.

Crypto treasury firms, which accumulate various tokens, have become increasingly popular this year. Some of these firms have seen sharp share declines.

Read More: Novogratz, Princeton Allies Fuel Crypto's Stock-Market Push

The SEC also suspended on Monday the trading of Smart Digital Group Ltd., citing similar reasons. That suspension is set to end at 11:59 p.m. ET on Oct. 10.

The firm said last week it was establishing a "diversified cryptocurrency asset pool" that would focus on investing in digital assets like Bitcoin and Ethereum. Its stock price plunged since the announcement.

QMMM and Smart Digital Group didn't immediately respond to requests for comment sent outside of normal business hours. Nasdaq, where the companies trade, declined to comment.

During both the first Trump and Biden administrations, the SEC pursued enforcement actions that focused on touts on social media related to digital assets.

Worrying Signs in Bankruptcy Statistics?

dandodiary.com/2025/09/articles/bankruptcy/worrying-signs-in-bankruptcy-statistics

Kevin LaCroix September 30, 2025

For those who, like me, watch bankruptcy filing developments for signs about the current and possible future state of the economy, recent data may be worrisome. Just Monday, the *Wall Street Journal* cited two recent auto parts companies' bankruptcy filings as evidence of potential trouble in the U.S. credit markets, saying the developments and raising concerns that "something more profound is ailing American borrowers." Consistent with these concerns, a recent report from Cornerstone Research shows that large company bankruptcy filings are indeed trending upward, with the largest increases in the most recent period. Signs are that these trends will continue going forward, as well.

The September 24, 2025, Cornerstone Research report, entitled "Trends in Large Corporate Bankruptcy and Financial Distress: Midyear 2025 Update," can be found here. Cornerstone Research's September 24, 2025, press release about the report can be found here.

The Cornerstone Research Report

The Cornerstone Research report is based on the firm's analysis of bankruptcy filings of firms with assets over $100 million. The report also separately looks at filings of companies with over $1 billion in assets, what the report calls mega bankruptcies. The report's analysis is based on comparisons of twelve-month periods running from July 1 in the prior year to June 30, meaning that the most recent period the report considers runs from July 1, 2024 to June 30, 2025 and compares that 12-month period to equivalent prior twelve month periods.

According to the report, in the twelve months ending June 30, 2025, there were 117 large bankruptcy filings, representing a 4% increase over the 113 large filings in the preceding twelve-month period. The figures for the most recent period represent the third consecutive twelve-month period increase. The 117 large filings in the most recent twelve-month period represents a 44% increase over the historical twelve-month average of 81 between 2005 and 2024.

Of arguably greater significance than the 4% increase in filings in the most recent twelve-month period is the fact that the 59 bankruptcy filings in the first half of 2025 were nearly 50% higher than the historical semiannual average of 41 filings between 2005 and the first half of 2025. In other words, recent large bankruptcy filings are up significantly in the most recent semiannual period compared to long term semiannual historical averages.

With respect to so-called mega-bankruptcies (that is, involving companies with assets over $1 billion) the figures show similar filings trends. In the twelve-month period ending June 30, 2025, there were 32 mega bankruptcies, an increase from 24 in the preceding twelve-month period, and well above the 2005-2024 annual average of 23. Of arguably even greater significance, there were 17 mega bankruptcies in the first half of 2025, the highest number in any half-year period since the COVID-19 outbreak in 2020.

And further with respect to the mega bankruptcy filings in the twelve months ending on June 30, 2025, the most commonly cited causes of financial distress were: (i) impacts of high inflation; (ii) reduced demand due to consumer preferences or market competition; (iii) high interest rates; and (iv) challenges in the regulatory, legal, and policy landscape.

This last point – relating to challenges in the regulatory, legal, and policy landscape – is, to me, particularly interesting. According to the report, filers citing these concerns most often related to “public policies involving renewable and clear energy or international trade and tariffs.”

The report quotes several filers with respect to the trade and tariff issues, for example citing one mega filer as having said that “introduction of broad-based tariffs caused significant unpredictability and disruption to the retail industry and put retailers… in a difficult operating position.” Another mega filer, an auto parts supplier, is quoted as having reported that the company “was severely affected by tariffs due to its import/export focused business and the imposition of tariffs specifically against automotive manufacturers and suppliers.”

In the twelve months ending June 30, 2025, the industry sector with the highest share of bankruptcy filings was the Manufacturing Industry, accounting for 30% of the filings across all industries. Among the twelve mega bankruptcies in the Manufacturing industry, challenges in the regulatory, legal, and policy landscape were the most commonly cited driver of financial distress. One such company cited “the macroeconomic headwinds associated with the imposition of tariffs in countries around the world” as one of the drivers of its financial distress.

Looking Ahead

As troubling as the statistics are for the twelve months ending June 30, 2025, signs are that the financial distress that led to the elevated level of filings during that period are likely to continue as we finish out 2025 and head into 2026.

A number of factors may contribute to these circumstances, including, among other things, continued elevated interest rates; record levels of household debt and increasing consumer delinquencies; stubbornly elevated inflation levels (including for example for food products); and the exhaustion of pandemic-era buffers (including, among other things, pandemic-era forbearance on educational debt).

In addition to those other factors, another key factor going forward will be the current administration's tariff policies, especially those targeting Chinese imports, steel, aluminum, pharmaceuticals, furniture, and trucks. As discussed at length here, tariffs have raised operating costs, disrupted supply chains, and forced companies to either absorb costs or pass them to consumers—both of which reduce demand and profitability. A quick survey of recent headlines suggests that the industries that are likely to be hit hardest include: retail and consumer goods; casual dining and restaurants; manufacturing; automotive; furniture and home goods; healthcare and pharmaceuticals; and agriculture and food production.

Given what the Cornerstone Research report said about the causes of financial distress, and in particular that references to the impact of tariff and trade policies, it doesn't seem like a stretch to say that in the upcoming financial periods, tariffs will continue to be a source of financial tension and potentially a contributing factor in bankruptcy filings.

The pressure from tariffs may be felt most acutely with respect to smaller businesses. In that regard, it is worth noting that the Cornerstone Research report is focused on larger businesses, but it may be smaller businesses that are feeling the stresses the most.

New York Times article entitled "Small Businesses Wither Under Trump's Tariffs" (here), notes that the tariffs are hitting small businesses particularly hard. Among other things, the article states that "President Trump's tariffs are straining the backbone of the United States economy."

Whereas many larger businesses have flexibility to help them adapt to the tariffs, many smaller businesses do not – as, for example, smaller businesses are much more likely to source their goods from a single country or even a single source than are larger businesses. The *Times* article quotes one analyst as saying that "Small importers may be relatively more constrained in their ability to weather higher trade costs or switch suppliers, and, as a result, might experience defaults and bankruptcies."

The *Times* article notes further that most economic data does not yet reflect the strain from tariffs that small businesses are under, in part because many of the most onerous tariffs have only been in place since August. In other words, there may be worse trouble ahead than we have seen in the recent past, particularly among small businesses. Economists expect more evidence to emerge once the tariffs have been in place longer. And of course the current data do not reflect the impact of the new 100% tariffs that President Trump announced last Thursday with respect to drugs, furniture, and trucks.

The challenge for D&O Insurance underwriters is that at the moment we are in the midst of a slow-motion and slowly developing emergence of financial distress for at least some companies, distress of a kind that could indicate at a minimum a continuation of the current trend toward increased numbers of bankruptcy filings. The fact is that for many businesses, especially smaller business, the full impact of the tariffs is yet to be felt. That makes the task of underwriting for the next twelve months of any given business enterprise particularly challenging.

For now at least it seems that D&O underwriters should not only – as they would be doing in any event and in the ordinary course – considering the impact on businesses of high interest rates and economic inflation on a firm's likely future financial performance. The underwriters will also have to consider the likely future impact on the enterprise of the tariffs, many of which have only recently been increased.

The bottom line for me is that the upcoming financial reporting periods, financial risk, arising from a host of factors including the impact of the tariffs, is likely to be a significantly more important concern, in a period in which signs suggest bankruptcies are likely to be increasing.

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Hain 'Channel-Stuffing' Securities Suit Revived By 2nd Circ.

By **Katryna Perera**

Law360 (September 29, 2025, 7:56 PM EDT) -- The Second Circuit on Monday reversed a district court's dismissal of a proposed class action accusing food and personal care company Hain Celestial of "channel-stuffing," or asking distributors to take more product than they can sell in order to cover up flagging demand, finding the class had adequately alleged actionable misrepresentations and false statements by the company.

The three-judge panel's **opinion** reversed a finding by the New York district court that the investor plaintiffs, led by Salamon Gimpel and Rosewood Funeral Home, failed to plead scienter, or knowledge of wrongdoing.

The suit claims that Hain "robbed Peter to pay Paul, cannibalizing future revenues to make present sales look more impressive." To bulk up the sales numbers, the suit says, the defendants were channel-stuffing, meaning they offered Hain's distributors concessions at the end of each quarter to take more product than they could sell while simultaneously hiding the practice from investors and not accounting for its financial implications.

On Monday, the panel said the defendants made several actionable misstatements about the company's financial results and accounting practices, and did so with scienter.

"The plaintiffs have plausibly alleged that the defendants made a series of material misstatements about, among other things, Hain's financial results, its compliance with [Generally Accepted Accounting Principles], the existence of effective internal controls, its description of its revenue-recognition policies, and its certifications in its U.S. Securities and Exchange Commission filings," the opinion said.

The panel pointed to Hain's restatement of its financial results and disclosures of material weaknesses in its internal controls and financial reporting and said these facts are sufficient to establish that the previous statements from the company were false or misleading when made.

The appeals court also found that Hain and the individual defendants made a series of misleading "half-truths" by failing to disclose the company's reliance on channel-stuffing when discussing the company's financial success and inventory levels at its distributors.

"In making these statements, Hain triggered the 'half-truth' doctrine — that 'once a company speaks on an issue or topic, there is a duty to tell the whole truth' — by repeatedly attributing its financial results during the class period to factors such as 'expanded distribution and brand contribution,' 'strong demand for [its] organic and natural brands as demonstrated by the increasing consumption of [its] products,'" the opinion said. "But it did not disclose that it allegedly achieved its financial results in no small part by granting distributors credits, incentives, spoils coverage, or a right to return product."

The panel further concluded that the investors properly asserted scienter claims. Suspicious stock sales by individual defendants, combined with the fact that their compensation packages were directly tied to the metrics that Hain overstated, establish motive and opportunity to commit fraud, it said.

The suit's allegations also support "strong inference" that the individual defendants knew about the channel-stuffing practices, the panel said.

"Start with the plaintiffs' allegations that individual defendants negotiated the concessions and directed Hain employees to push product on distributors. The individual defendants' involvement continued through concession negotiations and top-down directives to accounting and reporting," the opinion said. "Notably, [the individual defendants] received weekly reports on sales, inventory, and guidance targets. Such allegations suggest actual knowledge of the alleged unsustainable practices and improper revenue-recognition practices."

The panel also pointed to the fact that Hain never had an internal audit or compliance department, "the importance of this alleged fraud to Hain" and the departure of several executives and other key personnel under "suspicious circumstances" as evidence of scienter.

Finally, the panel revived the suit's loss causation and control personal liability claims.

Counsel for the investors declined to comment on Monday, and counsel for the defendants did not immediately respond to requests for comment.

The action is a 2022 consolidated version of several securities proposed class actions filed against Hain nearly a decade ago, all making similar claims. The consolidation came after the Second Circuit **revived one of the actions** in 2021, finding the district court had misinterpreted the requirements to bring claims under different clauses of the Securities Exchange Act.

The suits originated from a press release Hain issued in August 2016 revealing that it couldn't file its 2016 annual report and a quarterly report on time. It also announced an internal investigation into whether revenue associated with certain concessions given to U.S. distributors was accounted for in the correct period.

Investors say the market responded to the news quickly and severely, as stock prices fell 26%. The decrease erased $1.4 billion in market capitalization, according to the suit.

Hain later expanded its probe to review previously issued financial information, and the SEC then launched its own investigation.

According to court filings, the SEC completed its investigation in 2018 and settled with Hain, concluding that from at least 2014 until May 2016 Hain's U.S. sales staff gave incentives to distributors to promote sales at the end of quarters.

The settlement did not include allegations of securities fraud, but it did declare that Hain had violated various sections of the Securities Exchange Act.

U.S. Circuit Judges Robert D. Sack, William J. Nardini and Eunice C. Lee sat on the panel for the Second Circuit.

The investors are represented by Christine M. Fox, Carol C. Villegas, James M. Fee and Matthew J. Grier of Labaton Keller Sucharow LLP, Robert V. Prongay, Leanne Heine Solish and Jonathan M. Rotter of Glancy Prongay & Murray LLP and Brian Schall of The Schall Law Firm.

Hain and the individual defendants were represented by John M. Hillebrecht and Marc A. Silverman of DLA Piper.

The case is In re: The Hain Celestial Group Inc. Securities Litigation, case number 23-7612, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Brian Baresch.

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Lithium Co. Beats Investor Suit Over Extraction Rate Claims

By **Sydney Price**

Law360 (September 29, 2025, 10:47 PM EDT) -- Canadian extraction plant operator Standard Lithium Ltd. on Monday escaped a proposed shareholder class action accusing it of misleading investors about the production capabilities of a U.S. plant after a federal judge determined the suit does not show investors were harmed by inconsistencies between its public statements and disclosures it made to a state government agency.

Standard Lithium and several of its executives touted the company's "proprietary" LiSTR DLE technology for several years, which purports to extract battery-grade lithium from brine with a recovery rate of 90%, the investors alleged. They claimed short sellers' reports "revealing" that the company was extracting far less lithium from an Arkansas plant than it represented to the public led to a drop in its share price.

But U.S. District Judge Eric R. Komitee said Monday that Standard Lithium reported the risks that the investors blame for their losses.

"Standard Lithium disclosed to investors that the ninety-percent figure was based on laboratory-scale testing, and never said this figure had been achieved at the plant," Judge Komitee **said in the order**.

Judge Komitee also said that even though the U.S. Patent and Trademark Office had denied patent protection to LiSTR on the grounds that it was insufficiently novel, Standard Lithium's use of the words "novel" and "proprietary" to describe its technology is not false or misleading. A product can be "novel" without being novel enough to receive a patent, the judge determined.

"Standard Lithium did clearly disclose the origins of the LiSTR patent applications in its 2020 annual report to shareholders, and therefore cannot have misled its investors about them," the judge said.

The suit filed in 2022 and led by shareholder Curtis Arata seeks damages on behalf of investors who purchased Standard Lithium shares on the over-the-counter marketplace OTCQX between May 19, 2020, and July 12, 2021, and on the New York Stock Exchange between July 13, 2021, and Feb. 3, 2022.

The investors' arguments for scienter rely on Standard Lithium's disclosure of data to the Arkansas Oil and Gas Commission that allegedly contradicted the company's public statements about its recovery rates and proof of concept, according to the order.

In the complaint, the investors claimed short seller Blue Orca Capital's November 2021 report caused Standard Lithium's shares to fall 19% after its publication "revealed," among other things, that Standard Lithium's average recovery rate for the year was only 13%.

The company denied the short seller's claims, but its shares declined again by 27% a few months later when Hindenburg Research reported that Standard Lithium's Arkansas plant was operating at a fraction of its boilerplate capacity, the investors said in their complaint.

But Judge Komitee said Monday the investors had not adequately alleged a specific motive for the defendants to defraud them outside the general motives possessed by virtually all corporate insiders: keeping stock prices high. This is not sufficient to bring a securities suit, he said.

"Here, the complaint does not allege that the individual defendants realized any concrete and personal benefit from the alleged fraud, such as the sale of their own shares of stock," Judge Komitee said.

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

The investors are represented by Gregory B. Linkh, Kara M. Wolke and Natalie S. Pang of Glancy Prongay & Murray LLP.

Standard Lithium and the individual defendants are represented by Alexander C. Drylewski, Sarah E. Danehy and William J. O'Brien III of Skadden Arps Slate Meagher & Flom LLP.

The case is Gloster v. Standard Lithium Ltd. et al., case number 1:22-cv-00507, in the U.S. District Court for the Eastern District of New York.

--Editing by Lakshna Mehta.

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Del. Heavyweight Firms Get Lead Spot For Endeavor Deal Suit

By **Jarek Rutz**

Law360 (September 29, 2025, 10:16 PM EDT) -- The Delaware Chancery Court tapped Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer PA on Monday as lead co-counsel for the shareholder class action over sports and entertainment company Endeavor Group Holdings Inc.'s $13 billion take-private merger.

In an **opinion letter**, Vice Chancellor Lori W. Will ruled that the two law firms' clients, Icahn Enterprises investors and Handelsbanken Fonder AB, had a vast economic stake in the case accusing Endeavor Group, the majority owner of UFC and WWE, of **lowballing their value in the merger** in March 2024.

The vice chancellor wrote that the competing plaintiff, retail investor Ricardo Garcia, held too little stock to credibly supervise the litigation with his representation, Friedman Oster & Tejtel PLLC, and Icahn Enterprises' large investment outweighed Garcia's concerns about the timing of his stock purchases.

Icahn Enterprises, an investment giant, holds more than $700 million worth of Endeavor shares with Handelsbanken Fonder AB, the other co-lead plaintiff.

Vice Chancellor Will selected Icahn Enterprises over Ricardo Garcia, even though the former bought its shares "just before the merger closed, suggesting it is a litigation arbitrageur rather than an aggrieved stockholder." The more than 27 million shares of Endeavor Group represent a higher stake and incentive in the litigation, she said.

"The retail stockholder's [Garcia] trivial stake provides little incentive to effectively oversee the lawsuit," she said in her ruling.

The consolidated class actions, filed originally in April 2024, alleges Endeavor Holdings undersold itself by a billion dollars or more, and that Endeavor Group and affiliate Silver Lakes breached their fiduciary duties by undervaluing Endeavor to advantage themselves at the expense of shareholders.

Endeavor initially merged its UFC subsidiary with WWE to form the publicly traded TKO Group Holdings in September 2023. In February 2025, TKO acquired three companies from Endeavor, which was then taken private by Silver Lake in March 2025, leaving Endeavor as a privately held company with a controlling stake in the now-larger TKO.

While Vice Chancellor Will acknowledged both Icahn Enterprises and Garcia had highly qualified attorneys and well-pled complaints, Garcia owned just 27 shares, valued under $750, a stake that pales in comparison to the roughly $757 million that Icahn Enterprises and Handelsbanken own.

"Icahn Enterprises and Handelsbanken's collective interest is more than one million times larger than Garcia's," Vice Chancellor Will said in her ruling.

She said differences in proposed fee structures were also an important factor, as they bear directly on counsel's alignment with the class.

Icahn Enterprises and Handelsbanken negotiated a fee cap of 22%.

"[This] serves as an early check on attorney self-interest and demonstrates that the plaintiffs are mindful of protecting the class from excessive fees," Vice Chancellor Will wrote. "This arrangement contrasts with the Garcia Group, whose proposal is silent on fee expectations, leaving the court without a corresponding assurance."

Although Vice Chancellor Will said appointing Handelsbanken alone could have avoided future challenges, she declined to alter the alliance proposal with Icahn Enterprises, saying it protects the class.

Representatives for plaintiffs and defendants didn't immediately respond for comment Monday.

Lead plaintiffs are represented by Gregory V. Varallo, Benjamin Potts, Margaret Rockey, Daniel Meyer and Mae Oberste of Bernstein Litowitz Berger & Grossmann LLP, and Michael J. Barry, Christine M. Mackintosh and Vivek Upadhya of Grant & Eisenhofer PA.

Ricardo Garcia is represented by Ned Weinberger, Brendan W. Sullivan, Carol C. Villegas, John Vielandi, Joshua M. Glasser, Jiahui (Rose) Wang and Tae Kyung Yang of Labaton Keller Sucharow LLP and Jeremy Friedman, David Tejtel, Lindsay La Marca, Alexander Krischik and David Rosenfeld of Friedman Oster & Tejtel PLLC.

Silver Lake Group LLC is represented by Kevin R. Shannon, Berton W. Ashman Jr., Mathew A. Golden, Callan Jackson and Megan Thomas of Potter Anderson & Corroon LLP.

Endeavor Executive PIU Holdco LLC is represented by Raymond J. DiCamillo, Robert L. Burns, John M. O'Toole and Alfred P. Dillione of Richards Layton & Finger PA.

This case is In re: Endeavor Group Holdings Inc. Stockholders' Litigation, case number 2025-0663, in the Delaware Chancery Court.

--Additional reporting by Jeff Montgomery. Editing by Linda Voorhis.

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Chancery Mulls Bid To Toss AI-Linked Battery Co. SPAC Suit

By **Jeff Montgomery**

Law360 (September 29, 2025, 8:30 PM EDT) -- Attorneys representing a blank-check company that took artificial intelligence-driven energy storage business Stem Inc. public in April 2021 argued in Delaware's Court of Chancery on Monday that investors suing over the deal are following a "free pass to trial" strategy that the court has cautioned against.

Byron Pacheco of Kirkland & Ellis LLP, counsel to the special purpose acquisition company parties who assembled the deal, told Chancellor Kathaleen St. Jude McCormick that the investors "could not draw any reasonably conceivable inference that the pre-merger SPAC board could have known of pre-merger information that made the proxy misleading."

Chancellor McCormick in August 2024 ordered consolidation of suits naming directors and sponsors of the SPAC, Star Peak Energy Transition Corp. The suit alleged fiduciary breaches, unjust enrichment and disclosure failures in connection with a $1.3 billion deal that took "smart" battery storage venture Stem Inc. public on April 28, 2021.

Star Peak investors Ralph Hekscher and Liyan Ouyang sued the deal sponsor within a month of each other, alleging failures to inform stockholders about the weaknesses in the transaction and the target company. Since early 2021, the company's share value has fallen from more than $46 per share to just over $1 per share.

Central to the complaint were short-seller report allegations that Stem was misleading its shareholders and falsely recording revenue from artificial intelligence-guided battery management software — the company's major selling point and focus — that actually derived mainly from more basic energy-storage hardware.

"Even assuming information from both those sources is accurate, neither of the sources directly claims or even infers that director defendants were aware of anything false or misleading," Pacheco said.

Those sued argued the suit relied heavily on information from activist investment firm Blue Orca. Pacheco argued that "given that reliance on the source, plaintiffs provide no basis for courts to infer the director defendants knew" of the information when they signed off on disclosures about the company.

Lawrence P. Eagel of Bragar Eagel & Squire PC, counsel to the investors, told the chancellor the arguments are similar to those made in other SPAC-related lawsuits alleging false or misleading proxies in "value destructive" transactions that "generate a return to sponsors at the expense of public shareholders."

"There are more than enough facts pled in this case to make it reasonably conceivable" that those named breached their fiduciary duties through failure to provide accurate information to those considering whether to redeem SPAC shares or stay with the deal.

Star Peak raised $350 million when it went public in August 2020. The company was described as operating in "back of the meter" and "front of the meter" markets, with behind-the-meter projects allowing users to generate and use electricity without interacting with regional power grids. Front setups, in contrast, manage delivery of power into regional grids.

According to the complaint, despite Stem's claims of automation, Stem's system for front-of-the-meter setups "was only a prototype and essentially an Excel spreadsheet that required Legacy Stem's employees to manually operate the software."

Public stockholders who bought into Star Peak for $10 per share before the take-public transaction wound up with shares worth only $8, compared with $10 plus interest they could have received had they exited the deal before consummation.

Pacheco argued there was no reason to view the $10-per-share figure as materially misleading when the market itself valued the business at more than $10 per share the day before the merger was announced.

"This is exactly the kind of strict liability claims for net cash per share that the court has warned against," Pacheco said.

The suit accused the company's directors and controlling investors of breaching their fiduciary duties and alleged all were unjustly enriched.

Eagel said the SPAC deal, upon which $87 million in shares rested, created a "perverse incentive" to get a deal done.

"That perverse incentive led to perverse conduct" that included "knowingly presenting a blind eye" to facts about the business and "selling a company that was not a software company," Eagel said.

Chancellor McCormick said she would take the arguments under advisement.

The SPAC entities and individuals named in the suit are represented by Elena C. Norman, Anne S. Gaza and Jillian A. Tyson of Young Conaway Stargatt & Taylor LLP and Stefan Atkinson, Byron Pacheco and Ahson Azmat of Kirkland & Ellis LLP.

The investors who sued are represented by P. Bradford deLeeuw of deLeeuw Law LLC, Seth D. Rigrodsky, Gina M. Serra and Herbert Mondros of Rigrodsky Law PA, Eric Lechtzin and Marc H. Edelson of Edelson Lechtzin LLP, Lawrence P. Eagel, J. Brandon Walker and Melissa Fortunato of Bragar Eagel & Squire PC, and Phillip Kim of The Rosen Law Firm PA.

The case is In re Star Peak Energy Transition Corp. Stockholders Litigation, case number 2024-0175, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Hagens Berman Misstep Ends Amazon-Apple Suit, For Now

By **Rachel Riley**

Law360 (September 29, 2025, 8:38 PM EDT) -- A Washington federal judge threw out a proposed class action targeting an alleged pact between Amazon and Apple to limit device sales on the e-commerce platform, agreeing on Monday to revisit an earlier ruling after fresh facts surfaced showing that the former lead plaintiffs' counsel misled the court for months.

Apple and Amazon say the deal targeted in a 2022 suit is meant to protect consumers from falling prey to counterfeit electronics sellers and not stifle competition. (@felipepelaquim on Unsplash)

In her **order**, U.S. District Judge Kymberly K. Evanson walked back a May 2024 ruling **allowing** Hagens Berman Sobol Shapiro LLP to file an amended complaint with two new consumer plaintiffs after the initial proposed class representative abandoned the case. The judge agreed with Apple that the earlier ruling is undermined by the revelation that the former plaintiff, Steven Floyd, had told his attorneys he wanted out of the case much earlier than they indicated to the court.

"The court is now aware that since September 2023 Floyd had not been actively participating in discovery and then, when his counsel explained what kind of information they would need from him in order to respond to discovery requests, he expressed a desire to withdraw from the litigation entirely and confirmed that intention shortly thereafter," Judge Evanson wrote.

Since Floyd was already ousted from the case and the court will no longer allow the revised suit to move forward, the case must be dismissed, Judge Evanson said. However, the consumers who were poised to step in as substitute plaintiffs — Jolene Furdek and Jonathan Ryan — or any other putative class member may still file a new suit.

"The court is mindful of the equities in this scenario, aware that a putative class of plaintiffs — not responsible for Floyd's change of heart nor counsel's lack of candor — should not be negatively impacted by the court's reconsideration," the judge wrote.

In May, Judge Evanson ordered Hagens Berman to pay Amazon and Apple a combined **$223,000 in attorney fees** for bringing a motion to compel and a motion for discovery sanctions related to Floyd. The judge **dismissed** him from the case that month after he failed to respond to a show cause order.

Floyd was the **sole plaintiff** when the putative class action was first filed in 2022, accusing the companies of illegally restricting competition by forging a pact that eliminated third-party Apple resellers on Amazon's platforms. The case challenges a 2018 deal under which Amazon allows only Apple-approved third-party vendors to sell iPhones and iPads on its online marketplace. The companies have argued their "Global Tenets Agreement" is meant to protect consumers from falling prey to counterfeit electronics sellers and not stifle competition.

The judge agreed in May 2024 to let Hagens Berman file an amended complaint naming the two new consumer plaintiffs based on the understanding that Floyd intended to remain a member of the class.

Amid repeated accusations from Apple and Amazon that Hagens Berman had **misrepresented Floyd's intentions**, the judge conducted an in-camera review of the firm's communications with him to determine whether he should be dropped from the case. After viewing the communications, the judge found Floyd told Hagens Berman in early January 2024 that he no longer wanted to participate in the case; and she **sanctioned** the firm in April for failing to accurately disclose its client's wishes.

Once Floyd was ejected from the case, Apple called on the court to reconsider its May 2024 ruling allowing revision of the complaint, arguing that Floyd had already told his lawyers that he wanted to withdraw when they moved to amend.

The consumers **countered** that the court had already addressed that argument when refusing to force Hagens Berman to provide the companies with its communications with Floyd. The firm further contended that even if its attorneys had shared more with the judge about their client's intentions, the court still would've granted the motion to amend the complaint.

After Apple's reconsideration bid was fully briefed, the court ordered the plaintiffs to submit additional communications between Floyd and his counsel from September 2023 through January 2024 for in-camera review. Based on the recent review of those records, Judge Evanson concluded that Hagens Berman had "concealed Floyd's intentions and mischaracterized it as simply his failure to communicate for unknown reasons, possibly a 'personal emergency,' while at the same time insisting that Floyd had not withdrawn."

Hagens Berman should've recognized in January 2024 a replacement plaintiff was needed and sought to amend the complaint earlier, the judge said Monday. But instead, it "misled defendants and the court for many months afterward, denying that Floyd had said anything at all about withdrawal and reiterating that his silence must not be interpreted as a withdrawal, as if silence was all they had been given."

"If counsel was unclear as to the extent of the withdrawal that Floyd intended, as they have repeatedly claimed to be, they should have asked him to clarify," Judge Evanson wrote. "Yet counsel did not contact him for that purpose until after the motion for leave to amend was filed and the additional plaintiffs had been identified, and even at that time, counsel did not inform Floyd that they had found new class representatives or that they were seeking leave to amend the complaint to add them."

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

The plaintiffs are represented by Steve W. Berman, Theodore Wojcik, Ben Harrington, Benjamin J. Siegel and Meredith Simons of Hagens Berman Sobol Shapiro LLP.

Amazon is represented by John Goldmark and MaryAnn Almeida of Davis Wright Tremaine LLP, Mark D. Hopson, Jacquelyn E. Fradette and Benjamin M. Mundel of Sidley Austin LLP, and Jon Dugan of Redgrave LLP.

Apple is represented by Mark S. Parris and Eric Hochstadt of Orrick Herrington & Sutcliffe LLP, Mark A. Perry, Brian G. Liegel and Morgan MacBride of Weil Gotshal & Manges LLP, and Anna T. Pletcher, Benjamin Bradshaw and Sergei Zaslavsky of O'Melveny & Myers LLP.

The case is Floyd et al. v. Amazon.com Inc. et al., case number 2:22-cv-01599, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Bonnie Eslinger, Bryan Koenig, Ryan Boysen and Matthew Pearlman. Editing by Adam LoBelia.

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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Boeing Using Rejected Args In 737 Max Fraud Suit, Fund Says

By **Linda Chiem**

Law360 (September 29, 2025, 9:07 PM EDT) -- An investment fund has told an Illinois federal judge that Boeing cannot escape a lawsuit alleging it misrepresented the overall safety of the 737 Max 8 after two deadly crashes in 2018 and 2019, saying it has pinpointed specific misstatements that judges in similar cases have already deemed actionable.

Massachusetts-based Value Recapture Partners LLC has asked U.S. District Judge Virginia M. Kendall to reject a motion to dismiss from The Boeing Co. and former CEO Dennis Muilenburg, saying in a Friday **opposition brief** that "courts in this district are intimately familiar with defendants' fraud."

Value Recapture has accused Boeing and Muilenburg of making misleading public statements about the 737 Max's safety and reliability, regulatory compliance, production rate and backlog, as well as the true nature of an automated flight-control software feature that was unique to that line of jets.

In fact, Boeing convened an internal safety review board shortly after the October 2018 crash of Lion Air Flight 610 that quickly flagged the automated feature, known as the Maneuvering Characteristics Augmentation System, as a potential cause of that crash, according to Value Recapture.

Yet, Boeing and Muilenburg — who was president, CEO and chairman of the board at the time of the two accidents, and was later ousted in late 2019 — still embarked on a "sustained campaign to shift attention away from Boeing and reassure customers, passengers, and investors that the Lion Air crash did not reflect a fundamental problem with the 737 Max," according to Value Recapture.

"The amended complaint is replete with allegations that defendants were aware that the safety misstatements were false when made," it said. "For example — and contrary to defendants' assertion that the 737 Max was 'as safe as any airplane that has ever flown the skies' — defendants were specifically aware that the [safety review board] had identified MCAS as an 'airplane safety issue' that needed to be remediated before the 737 Max could be flown safely."

Along with those reassurances, Boeing kept reminding pilots of procedures in the flight manual for how to respond to "uncommanded stabilizer movements," which were the "black-and-white steps that defendants instructed pilots to follow in the event of an erroneous MCAS activation," according to Value Recapture.

"Every single court to consider the existing procedures misstatements has found them to be materially false or misleading," the fund said, pointing out that a judge in a similar case had already said that "the information provided to pilots was dangerously incomplete and misleading," and that it was false for Muilenburg to "repeatedly invoke [existing procedures] as proof that pilots could fly the plane safely."

Many of the claims in the suit are tied to alleged misstatements that U.S. District Judge Franklin U. Valderrama **determined** in September 2024 were, in fact, actionable. That **pending case** is known as The Boeing Co. Aircraft Securities Litigation, and had been initially titled Seeks v. Boeing.

But Boeing and Muilenburg in this case "pretend as if Seeks II does not exist and repeat the same tired and shopworn arguments that three judges in this district have already rejected," Value Recapture said in its opposition.

Boeing and Muilenburg last month moved to dismiss Value Recapture's amended lawsuit, arguing that the fund **didn't even have standing** to sue because it never actually purchased or sold a single share of Boeing stock. They also argued that the claims were time-barred.

Value Recapture's suit points to more than two dozen allegedly false and misleading statements from Boeing and Muilenburg in the wake of the Lion Air crash, as well as the second 737 Max crash in March 2019 of Ethiopian Airlines Flight 302 that killed 157 people.

Following that second crash, 737 Max jets were **grounded globally** until November 2020. They had been outfitted with MCAS, which affected the plane's flight control system, and accident investigators and other official review panels have since determined that the MCAS was vulnerable to faulty sensor readings that could inadvertently trigger the system and push the plane to nosedive.

Over the years, Boeing has been hit with securities fraud suits alleging it waged a disinformation campaign by reassuring investors and the public that the 737 Max jets were safe, despite knowing and failing to disclose that they were flawed and wouldn't easily clear sharp regulatory scrutiny following the crashes.

Boeing, meanwhile, has maintained that it made general statements about its commitments to safety and core values, and repeatedly cautioned investors and the public about the potential duration of the grounding and **production stoppages** while the 737 Max jets awaited the all-clear from aviation regulators.

Counsel and representatives for the parties could not be reached for comment Monday.

Value Recapture is represented by Lawrence M. Rolnick, Marc B. Kramer, Michael J. Hampson and Nicole T. Castiglione of Rolnick Kramer Sadighi LLP, and Jordan A. Finfer of Patzik Frank & Samotny Ltd.

Boeing and Muilenburg are represented by John F. Hartmann, Brenton A. Rogers and Kenneth Monroe of Kirkland & Ellis LLP.

The case is Value Recapture Partners LLC v. The Boeing Co. et al., case number 1:23-cv-16550, in the U.S. District Court for the Northern District of Illinois.

--Editing by Adam LoBelia.

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State AGs, Not Local Officials, Should Lead Public Litigation

By **John Swallow** (September 29, 2025, 6:32 PM EDT)

John Swallow

Local governments across the country have advanced lawsuits on issues as varied as opioids, climate change and PFAS contamination, often testing the limits of their legal authority. A recent legal ruling underscores why it matters.

On Aug. 6, City of Charleston v. Brabham Oil Co., Charleston's climate change nuisance and fraud lawsuit against fossil fuel companies, was dismissed by the South Carolina Court of Common Pleas. The court found it to be both constitutionally improper and preempted by federal law. But the larger problem here is that nearly three dozen climate lawsuits have been filed by localities, creating a chaotic and inconsistent litigation environment.[1]

This case illustrates how localities' initiation of such litigation can raise constitutional and jurisdictional challenges, reinforcing the principle that state attorneys general — not municipalities — are best positioned to litigate on behalf of citizens when it is warranted.

Contingency fee arrangements with law firms can make such actions affordable, even for a budget-poor municipality. However, such affordability can remove a guardrail that could otherwise cause a local government leader to slow down and really focus on the public costs and benefits of local government-led litigation.

As the former attorney general of Utah, I watched as Salt Lake County filed a lawsuit, Salt Lake County v. Purdue Pharma LP, in the Third District Court for Salt Lake County, Utah, in 2018.[2] At the time, the state attorney general, Sean Reyes, had not yet filed a statewide action, even though other states had initiated opioid litigation. The county's decision to move forward in the absence of a state-led response illustrates how local governments may act independently when statewide action may be viewed as delayed.

Notwithstanding the fact that a state-led response to a public concern may be slow or may not happen at all, when government litigation in the name of citizens is driven more by local priorities than by statewide interests advanced or protected by constitutional stakeholders, it not only offends constitutional principles but risks causing a litany of problems.

Under constitutional principles, political subdivisions such as cities, counties and school districts, are creatures of the state. As they exist only by authority granted to them by the state, they are not only answerable to the state, but they also lack the sovereign right to represent the broader public interest in court.

This tension was evident in the opioid crisis, where locally filed lawsuits sometimes conflicted with statewide settlement strategies, delaying resolution and risking uneven distribution of relief.[3]

State attorneys general, by contrast, hold constitutionally created statewide offices. Also, unlike a local mayor, for instance, elected attorneys general are more insulated from regionalized politics and more connected to statewide priorities.

Another constitutional principle lies in the doctrine of parens patriae, which is Latin for "parent of the country." In practical terms, it means that when a governmental organization acts for the benefit of the people, it must be imbued with the right to so act.

Some legal scholars believe such authority resides only in the state, unless that right has been specifically delegated to another governmental authority, either constitutionally or by specific grant in statute. This concern was underscored in a recent Washington Legal Foundation white paper by former Nebraska Attorney General Doug Peterson, which warned that the growing trend of local governments asserting parens patriae authority risks stretching constitutional limits and undermining the state's exclusive role.[4]

Thus, constitutionally, as political subdivisions of the state, local governments risk stretching their authority when bringing nuisance lawsuits.

Practically speaking, locally led litigation creates other challenges as well. Those were manifest during recent opioid litigation, which serves as a cautionary tale about what can happen when localities pursue major public health litigation independent of their own state's oversight.

Unlike prior national public health crises addressed by state attorneys general, the opioid crisis involved a unique situation where over 2,700 municipalities and political subdivisions engaged various private law firms to file lawsuits against opioid manufacturers, distributors and pharmacies.[5]

Tobacco cases, conversely, were largely driven by state attorneys general and did not target the whole of the tobacco industry supply chain with nearly the same breadth.

As can be imagined, this virtual spaghetti bowl of lawsuits made meaningful settlements difficult with regard to opioid litigation. While most state attorneys general worked to negotiate multibillion-dollar deals designed to deliver broad, equitable relief to affected communities, locally driven interests often interfered.

With settlements often requiring near-unanimous agreement among participating jurisdictions, even a small group of holdouts could block or delay a deal. This left local governments in a position to risk delaying or even threatening the viability of the broader resolution framework if outside counsel or elected officials thought it wise to pursue such a course of action. This fragmentation undermined the coordinated legal strategy of state attorneys general in litigation meant to serve the public interest at scale.

With public nuisance now used by litigants who have sued on things ranging from climate change[6] to perfluoroalkyl and polyfluoroalkyl substances (or PFAS),[7] it's not hard to imagine that other politically undesirable industries, such as manufacturers of firearms or ultra-processed foods, could be the next front for locality litigation.

Local officials may be acting to protect public health, but they may be taking a risk on novel theories of liability with shaky legal grounding, while potentially failing to obtain meaningful justice for their constituents.

Some attorneys general are starting to take matters into their own hands. Earlier this year, Kansas Attorney General Kris Kobach intervened in two climate cases — Board of County Commissioners of the County of Ford v. Exxon Mobil Corp, in the U.S. District Court for the Western District of Missouri, and Rodriguez v. Exxon Mobil Corp. in the U.S. District Court for the District of Kansas.

Both cases were class actions brought on behalf of a nationwide class of consumers, states and local governments.[8] In Kobach's brief seeking dismissal of Ford County's complaint against Exxon Mobil, he argued the county lacks the legal authority to exercise the state's sovereign powers; that the county cannot seek relief on behalf of all citizens, the state, or other cities and counties; and that the lawsuit was filed in an improper venue, since no part of the alleged misconduct occurred in Missouri.

As Kobach correctly argued, the solution here is to restore constitutional principles of control when it comes to government civil litigation through the use of parens patriae authority.

State legislators, with the help of attorneys general, should draft legislation to provide rational guardrails, and when a local municipality wishes to engage in parens patriae lawsuits, it should be done through the attorney general. Or, at a minimum, state law should allow for the attorney general to intervene and control the litigation.

This would satisfy the constitutional challenges described above, while advancing the administration of justice and helping to curb the rise and risk of excessive or contradicting lawsuits filed by local governments.

By restoring clear and constitutional lines of authority and accountability, we can ensure that public nuisance litigation serves the public interest as a whole, rather than in part.

Empowering states, through their attorneys, general to lead these efforts safeguards both the integrity of the legal system and the citizens it is meant to protect.

John Swallow is a solo practitioner in Utah. He formerly served as a member of the Utah House of Representatives and as the state's attorney general.

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[1] Center for Climate Integrity, "Big Oil Accountability Lawsuits" (last updated Aug. 11, 2025), via https://climateintegrity.org/uploads/media/CCI-BigOilAccountabilityLawsuits.pdf.

[2] Salt Lake County v. Purdue Pharma LP et al., Third District Court for Salt Lake County, State of Utah (original filing April 2018).

[3] Nora Freeman Engstrom and Robert L. Rabin, Pursuing Public Health Through Litigation: Lessons from Tobacco and Opioids, Stanford Law Review 73, no. 285 (2021), accessed via Stanford Law School, https://law.stanford.edu/publications/pursuing-public-health-through-litigation-lessons-from-tobacco-and-opioids-2/.

[4] Former Nebraska attorney general Doug Peterson discusses this topic further in a recent white paper for the Washington Legal Foundation. See Public Health and Parens Patriae: How Attorneys General Can Preserve States' Exclusive Litigation Authority, Working Paper no. 236 (Washington Legal Foundation, July 2025), https://www.wlf.org/wp-content/uploads/2025/07/7.16.2025-Peterson-WP-full-copy.pdf.

[5] See 3.

[6] Board of County Commissioners of Boulder County et al. v. Suncor Energy (U.S.A.) Inc. et al., Colorado Supreme Court (original filing: April 17, 2018; ruling: May 12, 2025, affirming denial of motion to dismiss); City of Chicago v. BP p.l.c. et al., U.S. District Court for the Northern District of Illinois (filed 2024; remanded to state court May 16, 2025; U.S. Court of Appeals for the Seventh Circuit denied stay Aug. 1, 2025).

[7] The Mayor and Aldermen of the City of Savannah, Georgia, v. 3M Co. et al., U.S. District Court for the District of South Carolina (originally filed March 14, 2025; removed and transferred into MDL No. 2873 on June 3, 2025); Santa Clara County v. 3M Co., DuPont et al., Superior Court of California, Santa Clara County (filed Feb. 6, 2025).

[8] The Board of County Commissioners of the County of Ford et al. v. Exxon Mobil Corp. et al., Case No. 4:24-cv-00803-SRB, U.S. District Court for the Western District of Missouri, 2024; Kobach's motion to dismiss was filed March 3, 2025; Rodriguez et al. v. Exxon Mobil Corp. et al., U.S. District Court for the District of Kansas (case no. 2:25-cv-02195; complaint filed Feb. 4, 2025; Kansas attorney general granted limited intervention by order dated Feb. 7, 2025).
