

Nine Years

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Ann Lipton

October 3, 2025



By [Ann Lipton](#) on October 2, 2025

This week, the Second Circuit [issued an opinion reversing a district court's dismissal of a securities fraud complaint filed against The Hain Celestial Group](#). The facts are these.

The plaintiffs alleged that Hain Celestial Group, and certain of its officers, engaged in a channel stuffing scheme by offering various concessions to distributors, so that it could book sales early and meet Wall Street expectations. Allegedly, Hain failed to properly account for the concessions that it offered, which were accomplished through "off book" arrangements. Distributors were granted an "absolute right to return," with one employee reportedly processing hundreds of thousands of dollars in returns in one quarter – but the sales were included in Hain's financial results regardless.

Eventually, as with all channel stuffing schemes, things fell apart, and the whole thing ended in the restatement of several years of financial results and a dramatic drop in sales.

The Second Circuit first held that the plaintiffs had properly alleged misstatements in violation of Section 10(b). Restatements are a per se admission of falsity, so that covered the financials. Further, Hain had engaged in misleading half-truths when it attributed its purportedly positive results to customer demand, rather than the distributor concessions.

As for scienter, Hain's CEO, Chair, and founder sold 66% of his stock during the class period; the CEO of Hain North America sold 74%. Meanwhile, confidential witnesses stated they had personal knowledge of these defendants directing the sales practices at issue. Confidential witnesses also stated that they heard the individual defendants affirmatively attempt to conceal these practices – by telling employees not to talk about them, and so forth.

Finally, Hain had shifted personnel in a suspicious manner. The CFO left in 2015 after only two years, allegedly after objecting to the CEO over Hain's accounting. Another executive in charge of accounting was demoted. Two other finance executives resigned mid class period. The CEO of Hain North America was removed. The CFO resigned with the restatements, new financial personnel were brought on, and the CEO/founder resigned in 2018.

Collectively, then, the Second Circuit concluded that plaintiffs had alleged scienter, and remanded to the district court for further proceedings.

It seems very difficult to quarrel with these conclusions, and normally, I'd leave it as, this is a securities case with overwhelming prima facie indicia of fraud. Not even that interesting, legally, except –

Let's take a step back for a minute.

In 2016, Hain announced that its financial results would be delayed while it reviewed its accounting. In 2017, it still had not filed its financial results, had received subpoena requests from the SEC, and announced that it had expanded its investigation to include historical periods. That's when the CEO of Hain North America was removed, and the company was warned that due to its failure to file financials, it was subject to NASDAQ delisting.

In 2017, Hain finally filed its 2016 financial results, and restated its finances for 2014 and 2015. The restatements revealed that instead of hitting Wall Street consensus earnings predictions for each quarter, it in fact had missed them every quarter. At the same time, several finance personnel, including the CFO, were fired. In 2018, the SEC concluded a two year investigation and settled with Hain on internal books and records charges.

The first securities cases were filed in 2016, and were eventually consolidated into a single action. The district court dismissed the complaint in 2019, and the amended complaint in 2020. The Second Circuit reversed that dismissal and remanded in 2021, at which point, the district court dismissed for a third time in 2023. The second appeal was docketed in 2023, argued in December 2024, and finally decided nearly a year later in September 2025.

It's now been over *nine years* since this company started to unravel, and despite *admitted* extensive accounting problems, despite the ultimate departure of multiple top officers – including the founder/CEO – despite the turnover of almost all the accounting personnel, despite a dramatic shift in financial results, *the plaintiffs will only now get to begin discovery.*

What are we doing here?

I know, I know, nuisance suits, yadda yadda yadda, but doesn't this all suggest that *perhaps maybe* the PSLRA – and the layers of doctrine that have been piled on top of it – *overcorrected* a bit?

And as we head into this period where the SEC is operating (when the government is open) with far less staff, will be conducting (apparently) [fewer enforcement actions](#) and [fewer routine reviews](#), as quarterly reporting will apparently be eliminated, at the same time multiple states race to eliminate fiduciary constraints on managerial behavior – in this period, private securities actions may be one of the few remaining deterrents to corporate misconduct. And we seem to have kneecapped those as well.

Also, quick plug. I was privileged to participate in the 2025 Accountability in a Sustainable World digital conference, sponsored by the Center for Accounting Research and Education. The [full online program is now available here](#); my remarks – *Corporate Sustainability Disclosure: Who's Listening?* – are available if you scroll down a few videos after the lunch break.

And another thing. On this week's [Shareholder Primacy podcast](#), Mike Levin and I talk about mandatory arbitration of federal securities claims. [Here at Apple](#), [here at Spotify](#), and [here at YouTube](#).

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Conflict waiver shields Quinn Emanuel in Masimo shareholder suit

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Oct. 3, 2025

A federal judge ruled that an advance conflict waiver signed by investors' counsel bars the disqualification of Quinn Emanuel in a shareholder lawsuit brought by Masimo Corp., despite claims that one of its attorneys improperly switched sides.

Michael E. Swartz of Quinn Emanuel Urquhart & Sullivan LLP

An advance conflict waiver saved Quinn Emanuel Urquhart & Sullivan LLP from being removed from a case it is handling for Masimo Corp. against investors who allege an "empty voting" conspiracy, a federal judge ruled.

The disqualification dispute centered on claims by defendant RTW Investments, represented by Michelman & Robinson LLP, which argued Quinn Emanuel partner Michael E. Swartz had worked both sides. In its motion, RTW claimed Swartz improperly relied on undisclosed information from his prior firm, Schulte Roth & Zabel LLP - which advised the investors - and later moved firms after the lawsuit was filed to conceal the conflict.

In an order filed Wednesday, U.S. District Judge James V. Selna found that a waiver in RTW's engagement letter with Schulte when the law firm was retained in 2021 doomed the investors' motion. He ruled Schulte's representation of Masimo when it filed the underlying lawsuit in New York last year was unrelated to its advisory role.

"As a sophisticated user of legal services, RTW Clients understood well the risks of signing an advance waiver. So long as Schulte did not represent an adverse party in a matter in which they represented RTW Clients and did not use RTW Clients' confidential information against them, the advance waiver forfeited RTW Clients' rights to assert Schulte's representation of them 'as a basis for disqualifying the Firm from representing another client of the Firm in such other matter,'" Selna wrote.

The judge also rejected claims that Swartz's move to Quinn Emanuel this year created a new conflict.

"Swartz's activity was necessarily covered under the terms of the advance waiver as a partner at Schulte," the order stated. "Swartz's conduct was therefore non-disqualifiable under the same analysis completed for Schulte and does not become disqualifiable simply because he left the firm and joined Quinn Emanuel during the course of this litigation."

The Schulte attorneys who initiated the complaint against RTW were removed from the case days after it was transferred to California in April. To the extent that they remain informally involved in the litigation, Selna noted the same waiver that protects Swartz also applies to the Schulte firm.

In the lawsuit, Masimo founder and ex-CEO Joe Kiani was accused of colluding with the RTW investors to sway a board election. Masimo later dropped Kiani from the case as an individual defendant to streamline the proceedings. *Masimo Corporation v. Kiani et al.*, 2:25-cv-03188 (C.D. Cal., filed April 11, 2025).

Swartz declined to comment on Selna's order and referred to the court filings.

Michelman & Robinson partner Warren A. Koshofer, who filed the disqualification motion for RTW in July, did not respond to an email or phone call by press deadline Thursday.

According to the order, the investor defendants argued the Schulte firm crossed the line last year when one of its partners in New York, Adriana Schwartz, provided a "generic" and brief explanation of empty voting to RTW's in-house lawyer.

Once alerted that the inquiry was in relation to RTW holdings on Masimo, the order recalled, Schwartz immediately told RTW's lawyer she could not give specific investment advice because of a firm conflict and ended the conversation.

In its motion, the investors claimed this exchange barred Schulte attorneys from representing Masimo in litigation that accused RTW of the same practice. The investors also argued the advance waiver was invalid because the current case involved the same securities issues on which Schulte had previously advised them.

In his ruling, Selna said the conversations -- "two successive phone calls lasting a total of 14 minutes" -- were too brief to amount to representation in the same matter as Schulte's work for Masimo.

"While the advice provided by Schwartz was generically relevant," Selna wrote, "no information specific to RTW Clients' holdings in Masimo was disclosed ... and Schwartz did not provide legal advice at that time or any point in the future."

Selna rejected RTW's interpretation of "matter" in this instance, concluding that it would lead to an "absurd result" by invalidating representation against RTW for almost any topic tied to general investment advice.

The judge also rejected RTW's claim that Quinn Emanuel should be disqualified from the case because its attorneys had helped Politian Capital Management, another Masimo shareholder, during the proxy battle.

RTW argued the conflicts should guard against even the appearance of divided loyalties, insisting Schulte failed to put up an ethical wall quickly enough and that Swartz's move to Quinn Emanuel made matters worse.

However, Selna agreed with Masimo's assertion that no confidential information ever reached the company's litigation team and that safeguards were properly implemented.

In a declaration, Swartz claimed his move to Quinn Emanuel in March was unrelated to Masimo's case and he neither participated in nor had access to the disputed sensitive information.

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Litigation

Manage Newsletters

Amylyx Will Battle Investor's Suit Over Withdrawn ALS Treatment

Oct. 3, 2025, 10:15 AM PDT

Summary by Bloomberg AI

AI Generated



- Amylyx Pharmaceuticals Inc. and top executives failed to shake proposed class allegations that they overstated its now-withdrawn treatment's commercial potential within the ALS community to investors.
- A suing shareholder alleged that the top brass had access to data tracking a high number of discontinuations, contradicting alleged misstatements about its opportunity to attract new patients.
- Investor Oliver Shih adequately pleaded that rosy projections about Relyvrio's growth potential that omitted the discontinuation data were misleading in a way that would've mattered to reasonable stockholders.

Amylyx Pharmaceuticals Inc. and top executives failed to shake proposed class allegations that they overstated its now-withdrawn treatment's commercial potential within the ALS community to investors.

The suing shareholder alleged a sufficient inference the top brass had access to data tracking a high number of discontinuations, in this case contradicting alleged misstatements about its opportunity to attract new patients, Judge Nathaniel M. Gorton said in an order entered Thursday.

The Food and Drug Administration approved Relyvrio to treat amyotrophic lateral sclerosis, a deadly neurological disease, in 2022 while a third-phase study was pending.

Investor Oliver Shih adequately pleaded rosy projections in May and August of 2023 about Relyvrio's growth potential that omitted the discontinuation data were misleading in a way that would've mattered to reasonable stockholders, the US District Court for the District of Massachusetts judge said. More than 5,000 of the 9,000 prescribed Relyvrio patients at its peak demand had discontinued treatment, Gorton said based on the allegations.

And Shih satisfactorily alleged market losses were tied to the revelation of that purported misrepresentation, Gorton said.

Amylyx's stock price fell almost 32% the day that it reported disappointing earnings for the third quarter of 2023. In an earnings call that day, executives allegedly pointed to a slowdown in new subscribers and rise in discontinuations, and "admitted that only 60% of patients remained in treatment after six months," Gorton said.

Amylyx's stock price collapsed more than 82% in a day in March 2024 after the company disclosed the study's results showed no statistically significant benefits on treatment goals for ALS patients. It was the stock's worst day since its 2022 market debut, according to data compiled by Bloomberg.

Amylyx announced it was pulling Relyvrio from the market and that it was laying off 70% of its employees in April 2024.

Still, Gorton trimmed claims on statements about initial demand, finding the executives "adequately conveyed their ambivalence" about whether the burst would continue. He held some other assertions were nonactionable corporate puffery.

The proposed class would include those who got Amylyx stock from Nov. 11, 2022, through Nov. 8, 2023—the day before the 32% stock drop.

Certain Amylyx leaders also face shareholder derivative allegations surrounding Relyvrio.

Pomerantz LLP represents Shih. Goodwin Procter LLP represents Amylyx, Co-CEOs Josh Cohen and Justin Klee, chief financial officer James M. Frates, and former chief commercial officer Margaret Olinger.

Neither firm immediately responded to emails seeking comment. Nor did Amylyx, but the company has previously said it doesn't comment on pending litigation.

The case is Shih v. Amylyx Pharm., Inc. , D. Mass., No. 1:24-cv-12068, 10/2/25 .

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Securities

Aramark, Vestis Lose Bid to Toss Investor Suit Over Performance

Oct. 2, 2025, 10:57 AM PDT

Vestis Corp. investors adequately alleged the uniform rental company misled them about operational problems and customer retention before poor financial results caused a 45% stock drop, a federal court ruled.

The investors can also proceed with claims against Aramark, which spun Vestis off in 2023, Judge Steven D. Grimberg said in an opinion docketed Wednesday in the US District Court for the Northern District of Georgia. Grimberg distinguished the situation from cases involving mergers.

The investors alleged on behalf of a proposed class that before and after the 2023 spinoff, executives painted a rosy picture of Vestis' prospects. It had a loyal customer base—with retention rates above 90%—and was expecting at least 4% revenue growth in fiscal 2024, the leaders allegedly said.

But in May 2024, Vestis disclosed low revenue growth and projections; service problems; and customer losses dating to before the spinoff, including large national accounts, the investors said.

Vestis stock fell 45% on May 2, 2024, closing at \$10.16 per share.

Grimberg rejected Aramark's argument that the investors lacked standing to sue it. The shareholders can sue over statements made before the companies' separation, unlike recent cases involving mergers where appeals courts have blocked stockholders of an acquiring company from maintaining claims over the pre-merger target company's statements, he said.

The investors adequately alleged material misrepresentations, he said. And they sufficiently showed fraudulent intent for all the defendants except Aramark's CEO John Zillmer, he said, dismissing Zillmer from the suit.

A shareholder derivative suit over the same issues was voluntarily dismissed in August.

Saxena White PA is lead counsel for the investors. Mayer Brown LLP and Morris Manning & Martin LLP represent Vestis and its executives. Latham & Watkins LLP represents Aramark and Zillmer.

The case is Plumbers, Pipefitters & Apprentices Local No. 112 Pension Fund v. Vestis Corp. , N.D. Ga., No. 1:24-cv-02175, entered 10/1/25 .

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Securities

Activision's Ex-CEO, Board Fail to Beat Suit Over Microsoft Deal

Oct. 2, 2025, 4:08 PM PDT

- Pension fund suit said two sides colluded to underprice merger
- Delaware judge rejects shareholder claims, throws out case

Microsoft Corp. prevailed in court Thursday against claims it exploited a harassment scandal at Activision Blizzard Inc. to take it private for a heavily discounted \$69 billion.

However, the gaming giant's ex-board and former CEO lost their bids to end the case.

A Delaware judge dismissed shareholder litigation against the tech titan, rejecting allegations that it colluded with Activision's directors to drive down the price of the sector's largest-ever transaction. But she let a Swedish pension fund move forward with claims they engineered the merger to get Activision's embattled then-CEO Robert Kotick out of legal trouble and shortchange public investors.

"Under the enhanced-scrutiny standard of review, which the defendants themselves advocate for, the plaintiff has stated a claim against Kotick and Activision's board for breaching their fiduciary duties," Chancellor Kathaleen St. J. McCormick said.

The decision paves the way for the costly and cumbersome pretrial discovery stage, which typically involves witness depositions and voluminous document exchanges. It opens a new chapter in the wide-ranging legal saga sparked by the blockbuster deal, which was announced in 2022 and completed the next year.

The ruling for Delaware's Chancery Court follows nearly five months after a federal appeals court upheld a 2023 antitrust decision signing off on the merger, which also overcame regulatory scrutiny in Europe and the UK.

McCormick previously ruled against the transaction on technical grounds, letting the case move forward with claims the Activision board violated Delaware's corporate merger statute by approving a version of the deal that left important terms open.

The decision in early 2024 prompted a successful legislative push to amend the merger law, a move that effectively overturned the court ruling. The two sides later asked McCormick to retroactively validate the deal, which she did.

The pension fund leading the lawsuit then updated its case to focus on allegations that Kotick arranged the transaction to get out from under the sexual harassment controversies engulfing his company. Kotick, who faced a thicket of damaging media coverage and litigation on all fronts, intentionally signaled to Microsoft that he cared more about getting a deal done than maximizing the price, the amended suit said.

McCormick's ruling allowed those claims to advance, but not against Microsoft.

She held that recent Delaware Supreme Court decisions raised the bar for aiding and abetting claims against third-party acquirers, leaving Microsoft with a more stringent standard than what is required to show a breach of fiduciary duty by directors. The pension fund also failed to allege Microsoft knew Kotick was breaching his fiduciary duties, knew that making a bid under the circumstances was wrongful, or substantially assisted Kotick in his breach.

The decision comes after the case unexpectedly made another round of headlines in April over an attorney change by Microsoft. The company brought on Jenner & Block LLP, a law firm that's fighting one of President Donald Trump's punitive executive orders, replacing Simpson Thacher & Bartlett LLP, a firm that had cut a deal with the White House.

The pension fund, Sjunde AP-Fonden—known as AP7—is represented by Prickett, Jones & Elliott PA and Kessler Topaz Meltzer & Check LLP. Microsoft is represented by Young Conaway Stargatt & Taylor LLP and Jenner & Block LLP. Kotick and the other former board members are represented by Skadden, Arps, Slate, Meagher & Flom LLP.

The case is Sjunde AP-Fonden v. Activision Blizzard Inc. , Del. Ch., No. 2022-1001, 10/2/25 .

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Securities

Barclays, Volatility-Linked Noteholders Row Over Reverse Split

Oct. 2, 2025, 12:08 PM PDT

Barclays PLC's reverse split of volatility-linked exchange traded notes wasn't a sale of securities, the banking giant told an appellate court while asking it to snuff out noteholders' case.

Even if the US Court of Appeals for the Second Circuit finds that was a sale under the 1933 Securities Act, investors can't plead damages, as they didn't pay anything and gave up nothing in that 2021 reverse split of these types of exchange traded notes called VXX ETNs, Barclays said in a brief Wednesday.

The US District Court for the Southern District of New York correctly tossed noteholders' proposed class action with finality this year, Barclays said. Judge Lewis J. Liman later rightly denied the noteholders' bid to reconsider part of that dismissal over the April 2021 split, when Barclays mashed every four VXX ETNs held into one.

Liman ruled investors didn't plausibly allege the reverse split wasn't a sale under the 1933 federal act that governs securities offerings or that they purchased unregistered securities. The Securities Act specifies that the securities offered must be "for value," and investors didn't sufficiently allege that in this case, he said.

Barclays' agreed with Liman's finding, comparing the reverse split to a cashier breaking up a \$20 bill into fives in its brief. "Having one \$20 is the same as having four \$5's. And that exchange certainly is not a sale—the grocery cashier did not sell you \$20."

But the investors said in their brief seeking to revive their suit that Barclays itself had characterized the split as a sale at the time. While not every reverse split is a sale for purposes of securities laws, this particular one—which involved debt instruments rather than common stock—was, they argued.

Even if the appeals court finds the transaction wasn't a sale, the investors argued they still can plead for monetary relief because the pricing supplement tied to the split functioned as a new registration statement that they can trace their VXX ETNs too. That pricing supplement misrepresented the securities' registration status, and the portion of the act they're suing under only requires investors "acquire a security issued under a materially false registration statement, not a purchase for value," they said.

The VXX ETN holders sued after Barclays Bank PLC said in 2022 it discovered an over-issuance problem, in which it inadvertently sold about \$17.7 billion in unregistered securities, and had their rescission claims denied. The over-issuance occurred after Barclays Bank lost its “well-known seasoned issuer” status for shelf registrations with the Securities and Exchange Commission that make offerings less onerous and time consuming.

Barclays made a rescission offer for certain notes, but said because these noteholders purchased VXX ETNs in the secondary market and the 2021 reverse split wasn’t a securities sale, they weren’t subject to the deal.

Sbaiti & Company PLLC represents the investors. Sullivan & Cromwell LLP represents Barclays and current and former senior executives and board members. Neither law firm immediately responded to emails seeking comment. Barclays declined to comment.

The case is *May v. Barclays PLC*, 2d Cir., No. 25-1631, 10/1/25 .

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Securities

Meme Stock Influencers Face Revived Securities Fraud Charges

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Securities fraud charges against social media influencers accused of orchestrating a \$114 million pump-and-dump scheme were revived by the Fifth Circuit Thursday.

The US District Court for the Southern District of Texas had dismissed the charges on the grounds that the indictment failed to state an offense by alleging just that defendants intended to deprive their followers of “potentially valuable economic information,” and not a traditional property interest.

But the government did all that it needed to do to allege the elements of securities fraud, the US Court of Appeals for the Fifth Circuit said.

Had the appeals court affirmed the district court’s decision, it could have cast doubt on prosecutions of non-insider market manipulation cases across the country.

A defendant commits securities fraud when he engages in deception, and getting the victim’s money or property is an object of the fraud. That’s what prosecutors say happened here, the court said.

The indictment alleges the defendants intended to defraud their followers by posting misleading information about certain securities so other investors would be induced to buy the security, the court said.

“Because the fraud statutes do not require actual economic harm, defendants’ followers’ receipt of market-value securities does not obviate the fraud charges,” Judge Kurt D. Engelhardt said.

Although the defendants claimed they only intended to turn a profit and didn’t mean to harm their alleged victims, the court said that was “a distinction without a difference.”

“As the indictment alleges, defendants’ object was to obtain money, and they did so by fraudulently inducing their followers to purchase securities, Englehardt said.

Judges Don R. Willett and Stephen A. Higginson joined the decision.

Rybarczyk is represented by Dynamis LLP and Hilder & Associates PC. Hrvatin is represented by Carlos Fleites of Miami Beach, Florida. Hennessey is represented by Jackson Walker LLP. Matlock is represented by Ashcroft Sutton Reyes LLC. Deel is represented by Neal Davis of Houston. Cooperman is represented by Chip Lewis of Houston. Constantinescu is represented by Ford O'Brien Landy LLP.

The case is United States v. Constantinescu , 5th Cir., No. 24-20143, 10/2/25 .

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Securities

Bored Ape NFT Creator, Celebrity Promoters Win Bid for Dismissal

Oct. 2, 2025, 2:10 PM PDT

Yuga Labs Inc. and a raft of celebrities, including **Madonna**, **Paris Hilton** and **Justin Bieber**, don't have to face a securities suit brought by Bored Ape Yacht Club NFT purchasers, a federal court ruled.

The nonfungible tokens—and one cryptocurrency—don't meet the legal test for securities, Judge Fernando M. Olguin said for the US District Court for the Central District of California. But the token buyers, who sued on behalf of a proposed class, will have a chance to re-plead, he said.

The case is among several targeting celebrities for allegedly promoting unregistered securities. Celebrities and YouTube influencers largely won a dismissal effort in litigation over the FTX crypto platform collapse but are currently fighting a more recent version of the complaint. Some have initiated settlements in that case, including NBA star-turned businessman Shaquille O'Neal, football player William Trevor Lawrence, and personal finance and attorney influencer Erika Kullberg.

In a separate case, O'Neal settled claims by purchasers of his Astrals and Galaxy NFTs. He agreed to pay \$11 million after Judge Federico A. Moreno of the Southern District of Florida ruled that the tokens met the definition of securities—and that O'Neal could be sued as a "seller."

Here, Olguin ordered that the Bored Ape dismissal motions focus on whether the digital assets qualify as securities under federal law because the question is so central to the case.

The NFT holders alleged they were duped into buying the collectibles, which feature unique cartoon pictures of an ape. Blockchain startup Yuga and Hollywood agent Guy Oseary allegedly leveraged their network of celebrities to promote the Bored Ape Yacht Club, Mutant Ape Yacht Club, and other digital products, which the buyers said were securities.

The judge agreed with Yuga, Oseary, and several other defendants that they aren't. The token holders failed to satisfy most aspects of the test for securities under a 1946 US Supreme Court case, *SEC v. W. J. Howey Co.*, Olguin said in his opinion Tuesday.

The buyers didn't show an "investment" of money for "future, as opposed to immediate, consumptive benefits," he said. They also failed to show a "common enterprise" among investors or between investors and those seeking the investment, he said. Finally, the defendants' statements, as alleged, "fail to establish an expectation of profit," he said.

The plaintiffs satisfied only one "sub-prong" of the *Howey* test, he said—that any expected profit would be "produced by the efforts of others."

Scott+Scott Attorneys at Law LLP is lead counsel for the token holders. Attorneys for the defendants include Skadden Arps Slate Meagher and Flom LLP.

The case is *Real v. Yuga Labs, Inc.*, 2025 BL 352851, C.D. Cal., No. 2:22-cv-08909, 9/30/25.

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California Brief

Flagstar Agrees to \$31.5 Million Deal in Accellion-Breach Suit

Oct. 2, 2025, 1:26 PM PDT

Flagstar Bank NA agreed to pay \$31.5 million to settle allegations it failed to protect the personal information of nearly 2.2 million people in data breaches linked to Accellion Inc.'s file-transfer software.

Class members would be eligible for up to \$25,000 in documented monetary losses, three years of credit monitoring services, and a pro rata share of the net settlement fund, according to the plaintiffs' motion for preliminary settlement approval filed Wednesday in the US District Court for the Eastern District of Michigan. Each member of a California subclass would also be eligible for a statutory payment of up to \$100 on a claims-made basis.

The plaintiffs alleged in a consolidated complaint that Flagstar customer information was exposed after the Accellion file-sharing platform was breached on two occasions in 2021

Judge Matthew Leitman denied Flagstar's motion to dismiss their breach of implied contract, breach of confidence, and invasion-of-privacy claims in a March order, finding they plausibly alleged the bank's use of out-of-date software from Accellion was reckless in light of available information

Class counsel intend to seek an award of up to \$10.5 million for fees, up to \$500,000 for litigation expenses, and service awards of \$2,500 each for the class representatives

Morgan & Morgan PA and Stueve Siegel Hanson LLP represent the plaintiffs and the proposed class. Skadden, Arps, Slate, Meagher & Flom LLP and Troutman Pepper Hamilton Sanders LLP represent Flagstar.

The case is Angus v. Flagstar Bank NA , E.D. Mich., No. 2:21-cv-10657, motion filed 10/1/25 .

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California Brief

Talkiatry Patient Advances Class Action Over Meta Info Sharing

Oct. 2, 2025, 2:18 PM PDT

Mental-health treatment provider Talkiatry Management Services LLC must face some claims of a proposed class action alleging it shared the health information of patients with Meta Platforms Inc. without consent in violation of state and federal privacy laws.

The anonymous lead plaintiff adequately stated claims of invasion of privacy and violations of the California statute prohibiting the use of a pen register without a court order, Judge Sunshine S. Sykes of the US District Court for the Central District of California said Wednesday.

Sykes dismissed the plaintiff's claims under the Electronic Communications Privacy Act and the California Invasion of Privacy Act with leave to amend. The judge dismissed her claims under the Computer Fraud and Abuse Act, the Stored Communications Act, and the California Comprehensive Computer Data Access and Fraud Act with prejudice.

The plaintiff alleged that Talkiatry incorporated the tracking "pixel" of Meta's Facebook unit on its website, allowing the social-media company to collect information arising from patients' interactions there, including their health information.

Talkiatry argued in a motion to dismiss that the invasion-of privacy-claim failed because the plaintiff didn't allege the disclosure was "highly offensive," but Sykes said the plaintiff's allegation that the provider disclosed her mental-health information without her consent was enough to state an invasion-of-privacy claim.

Talkiatry also argued that the pen register claim failed because the type of information collected by the Meta pixel wasn't the type contemplated by the statute—dialing, routing, addressing or signaling information related to a communication.

Sykes said the information collected by the pixel included location data and other sensitive personal information, making it plausible at the pleading stage that the pixel should be construed as a pen register.

Sykes dismissed the plaintiff's ECPA claim because she didn't establish that Talkiatry intercepted her communication for the purpose of violating the Health Insurance Portability and Accountability Act, a requirement to establish liability for a party to the communication.

The CIPA claim—that Talkiatry aided and abetted Meta in violating the statute—failed because the plaintiff didn't adequately allege that Meta knew that her information was obtained illegally, Sykes said. Without an underlying violation by Meta, there was no illegally conduct for Talkiatry to aid and abet, she said.

The plaintiff didn't contest the dismissal of her claims under the CFAA, the SCA, and the CCDAFA.

Swigart Law Group APC and Ben Travis of San Diego represent the plaintiff and the proposed class. Ballard Spahr LLP represents Talkiatry.

The case is Doe v. Talkiatry Mgmt. Servs. LLC , C.D. Cal., No. 5:25-cv-00781, order 10/1/25 .

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Class Action

Manage Newsletters

Greystar Reaches \$50 Million Deal in RealPage Rent-Fixing Suits

Oct. 2, 2025, 12:59 PM PDT

Greystar Real Estate Partners LLC, one of the largest housing-property owners in the US, has agreed to pay \$50 million to settle claims it colluded with revenue management firm RealPage Inc. to fix rental prices across the US.

The proposed settlement was filed Wednesday in the US District Court for the Middle District of Tennessee.

Greystar's deal is the largest among 26 landlord defendants totaling \$141.8 million, according to the plaintiffs' motion for preliminary approval. Among other landlord defendants, Bell Partners settled for \$6 million and Bozzuto Management Co. reached a deal for \$4 million.

"The Settlement Agreements between Plaintiffs and Settling Defendants are the product of hard-fought, arm's length negotiations by counsel highly experienced in complex antitrust class actions," the plaintiffs said.

The RealPage case is one of the only suits of its kind to advance past the motion to dismiss stage.

It dates to 2022 when plaintiffs alleged that Greystar and other property managers shared nonpublic sensitive data with RealPage to fix prices for multifamily housing rentals. RealPage's software then allegedly used that data to make rental recommendations adopted by the landlords.

Greystar separately reached a proposed deal this summer with the Department of Justice in a similar lawsuit.

The plaintiffs are represented by Scott & Scott Attorneys at Law LLP and Hausfeld LLP. Greystar is represented by Skadden, Arps, Slate, Meagher & Flom LLP.

The case is *In re Realpage, Inc. Rental Software Antitrust Litig.*, M.D. Tenn., No. 3:23-md-03071, 10/1/25 .

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California Brief

Amazon to Face Negligence Claims in Heavy Metals Baby Food Suits

Oct. 2, 2025, 9:36 AM PDT

Amazon.com Inc. failed to convince a federal judge to trim negligence claims in consolidated litigation alleging Amazon and Whole Foods sold baby foods with toxic heavy metals.

The consumers plausibly alleged Amazon affirmatively told customers that its product safety team investigates and acts on safety complaints, the US District Court for the Northern District of California said Wednesday.

The suit is part of wide-ranging litigation where consumers have alleged baby food makers and retailers knowingly sold baby food products with levels of heavy metals that can cause developmental disorders in children, like autism spectrum disorder.

Amazon argued the consumers couldn't allege a negligent undertaking claim because its product safety team doesn't commit to taking any action in response to customer safety complaints and because it exercised reasonable care by relying on the baby food maker's safety representations.

A negligent undertaking claim arises when a defendant takes on services that are necessary to protect another person and is responsible for the harm that comes from failing to exercise reasonable care for that undertaking.

The consumers alleged that Amazon tells its customers it not only investigates safety concerns, but also that it monitors products and will add warnings or remove certain products if a concerning situation arises, Judge Jacqueline Scott Corley said. The consumers also alleged that Amazon contacted a baby food maker after receiving complaints of heavy metals in a product.

Though Amazon argued its representations specify that it "may" take action, the company "ignores other language that is not similarly qualified," Corley said. The company told customers it "investigates and acts on reported safety complaints," not that it "may investigate" or "may act," Corley added.

The consumers' allegations "permit a plausible inference" that Amazon assumed a responsibility to monitor and investigate the baby food products for potential safety hazards, Corley said.

Corley also rejected Amazon's argument that the complaint alleged it had the duty to test the baby food products for heavy metals which would violate state law establishing there is no duty to inspect products for defects prior to sale.

Amazon didn't cite a portion of the complaint that supported that "narrow" reading, Corley said. And here the consumers alleged something different: that Amazon assumed a duty not typically owed by sellers through its product safety team's actions, she said.

The consumers plausibly alleged a lack of reasonable care by alleging Amazon initiated investigations into Nurture and Hain baby food products based on customer claims about heavy metals, yet permitted the products to stay on the site.

Amazon argued that these allegations still show it relied on manufacturer representations because Nurture made a post about the products' safety before Amazon's investigation.

"If Amazon were simply relying on manufacturers' representations then it would have no need to begin an investigation dated after Nurture's post on the website," Corley said.

Corley dismissed claims against Whole Foods because the consumers didn't allege the grocer received complaints regarding heavy metals in baby food products. She dismissed them without prejudice.

The consumers are represented by Anapol Weiss and Wagstaff Law Firm.

Amazon is represented by Davis Wright Tremaine LLP. Whole Foods is represented by Baker Donelson Bearman Caldwell & Berkowitz.

The case is In re Baby Foods Prods. Liab. Litig. , N.D. Cal., No. 3:24-md-03101, 10/1/25 .

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Plaintiff's counsel blame judge for evidence allowed in Uber assault trial

DJ [dailyjournal.com/articles/387877-plaintiff-s-counsel-blame-judge-for-evidence-allowed-in-uber-assault-trial](https://www.dailyjournal.com/articles/387877-plaintiff-s-counsel-blame-judge-for-evidence-allowed-in-uber-assault-trial)

Torts/Personal Injury,

Civil Litigation

Oct. 3, 2025

Plaintiff's attorneys plan to appeal after losing the first Uber sexual assault bellwether trial, criticizing the judge for admitting evidence they say violates California's rape shield law.

San Francisco Superior Court Judge Ethan P. Schulman

Attorneys for a plaintiff who lost the first bellwether trial against Uber over claims of sexual assault by its drivers blasted the San Francisco judge on Thursday for allowing references to their client's past sexual encounters to be included as evidence.

This goes against the newly strengthened California Rape Shield Law, which limits the admissibility of evidence of a plaintiff's sexual conduct in a civil action, the plaintiff's attorneys, John Taylor and Natalie Weatherford of Taylor & Ring, said.

On Tuesday, a jury found Uber was negligent in this case, but that its negligence was not a substantial factor in the alleged harm caused to the plaintiff.

The plaintiff's attorneys said they were planning to appeal the verdict but there were "a number of things to consider" first.

"The jury was never going to be able to say yes to that question [of a substantial factor] because of evidence that the judge allowed in," Taylor said in a phone call Thursday.

Superior Court Judge Ethan P. Schulman denied several motions for mistrial brought by Taylor and Weatherford. One of these motions was filed on the first day of trial, claiming Uber's attorney, Allie Brown of Kirkland & Ellis LLP, had breached a pretrial order as well as California's rape shield statute that limited the admissibility of the plaintiff's other sexual encounters, including assaults.

Brown was contacted for comment but did not respond by press time. Schulman was not contacted for comment as judges are not allowed to speak about their cases. *Uber Rideshare Cases* CJC21005188 (S. F. Super. Ct. Filed August 12, 2021).

On the opening day of trial, Brown attempted to diminish the plaintiff's ability to accurately recollect the details of what happened between her and the driver, downplayed the number of assault encounters reported by passengers and rejected plaintiff's counsel's use of the term "sexual violence" to describe some reported incidents in her opening statement.

"Uber is exceptionally safe," Brown said. "In the United States there are 2.5 million Uber trips made per day. Only 0.002% end in a report. You're five times more likely to be struck by lightning than be assaulted in an Uber."

Shaana Rahman, who heads up personal injury firm Rahman Law PC, commented Thursday that future bellwether trials may be able to "bridge the gap" between Uber's alleged negligence and whether that negligence was a substantial factor in passengers' harm.

"The jury did find that Uber was negligent, and I think that's significant because the substantial factor part is the hurdle that the rest of the plaintiffs and the rest of these cases are going to have to get over," Rahman said in a phone call Thursday.

"If there's enough evidence for the negligence piece, then it's a question of figuring out what evidence should be presented to get over the second hurdle of the causal element of the substantial factor," Rahman said.

"I think the evidence is out there to bridge that gap between not only Uber being negligent, but that their negligence being a substantial factor in the end result," Rahman added.

Weatherford accused Schulman of almost "opening the door" to her client's sexual history and attempting to "fix what he thought was an unfair statute, the law in California."

"The defense is not allowed to introduce the plaintiff's sexual history in a sexual assault trial to either reduce the plaintiff's damages or argue consent," Weatherford said. "Or to impeach the plaintiff's credibility on either of those issues, and the judge, unfortunately, at the very beginning of the trial, made a ruling that allowed the defense to introduce the plaintiff's sexual history, but not call it sexual history, call it a 'traumatic incident.'"

Taylor added that the judge "said that he found it concerning that this type of evidence couldn't be considered in determining the plaintiff's damages. So, he created a fiction where events were labeled as 'traumatic events' or 'traumatic incidents' without further explanation."

Taylor and Weatherford alleged that Uber's counsel blamed the plaintiff for the assault, ascribing causation of her damages to her past sexual encounters, subjected her to a 12-hour deposition and subpoenaed her parents to come to trial, but did not call them.

They described Uber's approach as "heavy-handed intimidation of people, of women, who have been victimized by drivers."

An Uber spokesperson said in an email Thursday, "It is wrong to suggest we intimidated anyone, and we handled the cross-examination with the utmost care.

"We do not expect nor require survivors to 'prove' their own assault, like the court system, and we rely heavily on the survivor's statement of experience, which we take at face value.

"The plaintiff named several family members as witnesses with pertinent information. That's why we included them as possible witnesses, although we ultimately did not call them (which happens often during trials, just as the plaintiffs subpoenaed Uber employees who they did not call)."

There are another five bellwether trials lined up with the next trial expected to begin in January 2026.

#387877

James Twomey

Daily Journal Staff Writer

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LA Judge Rejects 2026 Wildfire Trial Date as Edison Pitches Payment Plan

Los Angeles Superior Court Judge Laura Seigle refused plaintiffs' request to move up the first trial over the Eaton wildfire to September 2026. The current date is January 2027.

October 02, 2025 at 05:54 PM By  **Amanda Bronstad**

What You Need to Know

- Edison is floating a draft plan, in which Kenneth Feinberg is serving as a consultant, that offers individual wildfire victims potential payments within 90 days.
- In court, Edison's attorney told the judge his client refused to mediate at this time.
- Los Angeles Superior Court Judge Laura Seigle told lawyers to prepare for mediation, and plaintiffs' lawyers have suggested retired Los Angeles Superior Court Judge Louis Meisinger.



Eaton Canyon Fire Spread to Arcadia in Los Angeles 2025. Credit: Kyle/Adobe Stock

A Los Angeles judge on Thursday shut down a request from attorneys representing victims of the devastating Eaton fire who pressed for an earlier trial date in light of a proposed compensation

fund being floated by Southern California Edison.

The draft plan, in which [Kenneth Feinberg is serving as a consultant](#), was announced by Southern California Edison parent Edison International on Sept. 17 and could offer individual wildfire victims potential payments within 90 days, rather than waiting for years of litigation. Feinberg and his firm partner, Camille Biros, have met with lawyers, virtually and in person, and have scheduled meetings this month.

In a downtown Los Angeles courtroom, plaintiffs' lawyers insisted the draft fund warrants moving the planned January 2027 trial to September 2026. Rahul Ravipudi, co-lead plaintiffs' counsel, said Edison had been working on its proposed plan for three months.

"What that means is, at the time they're representing to the court, 'We can't even talk about settlement protocols,' they were already working on one," Ravipudi, at Los Angeles-based Panish Shea Ravipudi, told Los Angeles Superior Court Judge Laura Seigle.

"They wanted no choice for fire victims for 12 months, to wear them out and force them into getting into this program," he said of Edison.

Seigle, who is overseeing more than 5,000 lawsuits sparked by the Eaton wildfire, stuck to the trial date. The January fire killed 19 people and destroyed nearly 10,000 structures in an unincorporated region of Los Angeles County north of Pasadena.



Los Angeles Superior Court Judge Laura Seigle

"My bottom line is, 'no,'" she told lawyers about moving the date. "I understand these trials are incredibly important for all the plaintiffs and the defendants. For plaintiffs, this is a life-changing event that will dramatically affect them for the rest of their lives. And, for defendants, it's really important, as well. But that also means that we have to make sure that we have fair trials for everybody and that we get done what needs to get done before we can figure out the appropriate bellwether plaintiffs and have a trial."

But she also cautioned Edison's lawyers to begin planning for mediation. Edison attorney Douglas Dixon clarified that the draft compensation plan wasn't an admission of liability and not even

finalized, although, so far, it had received "fairly significant participation." Dixon, of Hueston

Hennigan in Newport Beach, California, repeatedly emphasized that Edison wasn't interested in mediation at this time and [planned to countersue others](#). In a case management statement filed ahead of the hearing, he referenced a [Sept. 25 report](#) finding that failures in Los Angeles County's emergency preparedness system contributed to the Eaton fire's destruction.

"I'm not appointing somebody today," Seigle replied. But both sides should discuss who they want as a mediator, she said.

"In other words," she said, "we can start working on mediations in these cases, even while Edison is doing its program, and while you all are moving forward on litigation. All of those things can happen."

Plaintiffs' lawyers had suggested retired Los Angeles Superior Court Judge Louis Meisinger as a special master, but Seigle raised concerns about his availability given that he also could be overseeing distribution of a [\\$4 billion sexual abuse settlement](#) reached this year with Los Angeles County.

Plaintiffs' lawyers also raised the prospect of a substantial number of cases eligible for trial preference under California law that were filed by victims who are elderly or sick. Gerald Singleton, another co-lead plaintiffs' counsel in the cases, told the judge he anticipated more than 100 preference motions could be filed.

"Given the fact we're now looking at such an extended trial date, those motions will be filed," Singleton, of San Diego's Singleton Schreiber, told the judge. "That's going to be coming down the pike, and I think that will influence when this trial ultimately does get set."

"There's no way you'll be ready for trial in five months," Seigle told him.

"We could be..." Singleton replied.

"No you can't," she interrupted.

Singleton said his team had handled several of these cases.

"This isn't a 'who-done-it.' It's on video," he told her.

"When you file motions, I'll deal with them as they come in," she responded. "I really hope you continue to work together to address the many significant, especially discovery, issues that need to be addressed, rather than spend your time on these other things. Because there's a lot of discovery that needs to be handled."

Note: Bronstad is an Edison customer who was affected by the Eaton wildfire

Securities

Insight

Litigation Funding's Influence on Cases Warrants Disclosure Rule

Oct. 3, 2025, 1:30 AM PDT

Third-party litigation funding, or TPLF, is a multibillion dollar industry of financing lawsuits in exchange for a cut of any judgment or settlement. Leaders of these businesses have disavowed any control over the cases they finance.

But a recent analysis of their own contracts reveals that funders have significant control over their clients' litigation, despite their claims to the contrary. To ensure fairness in the legal system, the Advisory Committee on Civil Rules should adopt a rule requiring disclosure of TPLF contracts.

An executive of Burford Capital, the world's largest litigation funder, in 2022 told an audience of judges, "I don't know how to say this any more clearly; we don't control settlement. If we do ... I would find it really loathsome to misrepresent that to a court."

At around that time, Burford was seeking to enforce its contractual rights to prevent its client, Sysco Corp., from consummating a settlement agreement in a lawsuit that Burford had funded.

A new analysis based on the limited number of TPLF contracts that have become public shows that such contracts give non-party funders specific mechanisms of control or significant influence over litigation, including the authority to reject settlement terms if funders don't find their return satisfactory.

The potency of these hidden control mechanisms may be "rather amazing"—as the US Bankruptcy Court of the Northern District of Texas found in *In re Fresh Acquisitions, LLC*—given funders' disavowals of control. Generally, courts and litigants have no awareness of such provisions because the funding contracts typically prohibit the plaintiff and counsel from divulging the agreement's existence or discussing its terms.

Control by non-party funders matters, because our litigation system is set up to enable parties and their lawyers to resolve disputes based on facts (rather than speculation) with the aid of the court.

Control Over Litigation

When non-parties dictate or influence crucial decisions such as going to trial, settling, and replacing counsel, it can have a profound or disruptive effect on the litigation. At a minimum, it prevents parties who are unaware of the funding agreements from making a full and fair appraisal of their case—an ability that is fundamental to our legal system.

Some TPLF contracts expressly give non-party funders complete control over the litigation. Others ensure that funders have indirect (but still powerful) influence by requiring the funded plaintiffs and lawyers to pursue the claims and maximize proceeds, and by allowing funders to stop the cash flow at any time.

TPLF contracts also may give funders remarkable influence over plaintiffs' counsel, including the selection and replacement of counsel. Some extend this influence further by obligating the plaintiff to take directions from counsel.

Provisions of TPLF contracts can shape outcomes and undermine court orders, such as by requiring the plaintiff to pay the funder the monetary value of any injunctive relief or specific performance awarded. This is a strong incentive against non-monetary relief that can skew the remedies presented to, and ultimately ordered by, the court.

Some TPLF contracts require that the plaintiff and counsel provide all documents obtained in the course of litigation to the funders, a provision likely inconsistent with most protective orders, and which may even risk improper dissemination of intellectual property.

And some TPLF contracts undermine court orders to pay costs and sanctions by obligating plaintiffs to pay all such penalties—even where the misconduct being sanctioned originated with the funder or its selected-and-controlled counsel, not with the plaintiff.

Need for Disclosure

As more disputes over TPLF contracts come to light, judges are increasingly recognizing the need to know whether non-parties have control over the named parties' litigation decisions and the ability to influence key decisions in the litigation.

All courts should understand that when funders are participating in litigation, their involvement and agreements should be disclosed just like all other participants in public litigation, who must identify themselves openly with very limited exceptions.

The Federal Rules of Civil Procedure require companies to disclose their insurance agreements so that "counsel for both sides to make the same realistic appraisal of the case." Courts routinely insist that the insurer's decision-makers participate in key events in the litigation, including pre-trial and settlement conferences.

Last year, a letter signed by more than 100 companies representing the technology, financial services, health care, transportation and telecommunications industries called for a rule requiring TPLF investors to disclose their contracts.

Even today, despite the widespread knowledge of its legal maneuvering to wrest control of the Sysco litigation (through provisions in the contracts), Burford still maintains that it “is a passive financier and does not control the legal assets in which we invest, except in extraordinary circumstances agreed to in advance by the client.”

At least one funder thinks it is time for the industry to come clean. A co-founder of RiverFleet said in a Legal Funding Journal podcast: “What do funders care about? They certainly do care about settlements and that should be recognized. They do care about who is the legal counsel and that should be recognized. They care about the way the case is being run. They care about discontinuing the legal action and they care about wider matters affecting the funder.”

The civil rules should require disclosure of TPLF contracts. In the meantime, companies should ask for discovery of TPLF contracts, and courts should order disclosure as a matter of fairness rather than deny them based on a narrow view of relevance. Courts must prioritize sound case management and uphold public trust in a transparent legal process.

Legitimate funders should welcome such sunshine—only those with something to hide benefit from operating in the shadows.

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Write for Us: Author Guidelines

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For these law school application essays, AI is required

 [reuters.com/legal/legalindustry/these-law-school-application-essays-ai-is-required-2025-09-30](https://www.reuters.com/legal/legalindustry/these-law-school-application-essays-ai-is-required-2025-09-30)

Karen Sloan

September 30, 2025

AI (Artificial Intelligence) letters are placed on computer motherboard in this illustration taken, June 23, 2023. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

Sept 30 (Reuters) - Using artificial intelligence for admissions essays is often discouraged or prohibited. For aspiring attorneys hoping to land a seat at two U.S. law schools next fall, it's an opportunity to stand out from the crowd.

The law schools at the University of Michigan and the University of Miami both introduced optional essay questions incorporating AI on their applications this year, reflecting the technology's [growing role in legal education](#) and the practice of law.

The University of Miami School of Law's new essay requires applicants to submit a detailed prompt for a generative AI large language model like ChatGPT to generate a "comprehensive analysis" that will help them make an informed decision about which law school to attend. Applicants must also provide three to five follow-up AI prompts to help explore their law school options in greater depth.

The essay aims to gauge applicants' AI competency and provide insight on their motivations for pursuing a law degree, said Katrin Hussmann Schroll, the school's associate dean of enrollment management.

"It helps me see their maturity level and how they're thinking about these questions, and whether they're coming in with the AI skills that are needed as we are expanding AI in the classrooms," Schroll said.

Advertisement · Scroll to continue

The University of Michigan Law School [bars](#) applicants from using AI in their personal statement or essays, except for the new optional essay question that requires them to use AI to answer the question: "How much do you use generative AI tools such as ChatGPT right now?" The essay also asks them to predict how much they will use generative AI by the time they graduate from law school and why.

Michigan Law's senior assistant dean Sarah Zearfoss said she added the question in hopes of gauging applicants' AI skills and getting to read some interesting essays — with mixed results. It's still early in the applicant cycle, but she estimates only about 5% of Michigan Law

hopefuls have picked the AI essay from among the list of 10 possible topics.

"I've definitely seen some quite good ones—and also many that are, as you would expect, bland or dull," Zearfoss said.

Miami's new AI essay has proven more popular, with 45% of applicants submitting responses so far. And while those essays are just one small part of how the admissions office evaluates candidates, they have provided a fuller picture of applicants, Schroll said.

"It's giving us a unique insight into applicants that we didn't have before," she said.

Read more:

[AI training becomes mandatory at more US law schools](#)

[Students can use AI on applications, Arizona State law school says](#)

Reporting by Karen Sloan

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Paralegals in the AI Era: Replacement or Upskilling?

New artificial intelligence-powered legal tech tools have stoked large fears of job losses for paralegals, but those fears so far have yet to play out, say several legal industry sources.

October 02, 2025 at 01:19 PM By **Ryan Harroff**

 **Benjamin Joyner**

What You Need to Know

- Despite fears of AI-driven job losses among paralegals, experts say there's little sign of a major employment effect yet.
- While the advent of AI-powered tools may change the specific tasks paralegals are assigned, they're unlikely to wipe out jobs in the near term.



Credit: LadiesWin/Adobe Stock

Law firms of all sizes are exploring the use of AI-powered tools to streamline tasks often given to paralegals, such as [deposition prep](#) and citation check. And many tech companies assert that

their products and services can, among other things, [accelerate case preparation](#) and take on a sizable chunk of legal research.

But staffing experts in the industry say the new technology is unlikely to make paralegal professionals obsolete. Instead, it will put a higher premium on paralegals and other law firm staff who can operate AI programs, sources say, adding that paralegals will likely retain a core function in law firms and legal departments for the foreseeable future.

Even though AI-powered tools aren't likely to eliminate many paralegal jobs in the near future, they will still prove a source of disruption. Law firms and in-house teams will look for professionals who have demonstrated the ability to adopt new technologies, sources say, and they may also shift work responsibilities based on employees' competence with new tools and what tasks software can and cannot do at the moment.

"In the next year, I think the firms will have a better idea in terms of what positions may be gobbled up based on AI or positions that will be eliminated, or upscaling those to do other roles that come out of AI," said Deborah Page, a recruiter and vice president at the McCormick Group, adding there will be "some opportunity for those individuals that have a legal background or familiarity to be upskilled and hopefully move around to some other areas of the firm."

Demand for Paralegals

Although some have suggested that AI-powered tools would dampen demand for paralegal employment, available data so far provides little evidence of such a trend.

The Bureau of Labor Statistics [projected](#) in its Occupational Outlook Handbook that the total number of jobs for paralegals and legal assistants will remain roughly flat between 2024 and 2034, with projected net growth of 600 jobs from a base of 376,200. The bureau predicted an average of 39,300 jobs opening up in the field each year through 2034, largely due to current professionals retiring or moving to different industries.

A report from talent agency Robert Half projects entry-level paralegals in low-cost markets will draw a starting salary of \$42,000 in 2026, while senior paralegals and paralegal managers in high-cost markets can expect to receive starting salaries of over \$100,000.

Across the legal sector, Robert Half found that applicants feel they retain leverage in salary negotiations. Ninety-three percent of legal applicants reported feeling comfortable negotiating salary after receiving a job offer, while 77% of legal employers expressed concern about meeting candidates' salary expectations.

"The demand for paralegals, from our perspective, is very strong with both law firms as well as corporations," said Jamy Sullivan, executive director of legal practice at Robert Half. Sullivan

added that the advent of AI-powered tools may actually increase earnings potential for those who are familiar with the technology.

“Clearly, if [firms] are investing in AI, they want to bring in individuals that have those skills,” she said. “They're even willing to pay a premium to those individuals that have those skills for the new roles that they're hiring for.”

Prized skills include the ability to use AI-powered legal research tools in tasks such as cite checks and drafting, as well as comfort using automated programs for data entry-like tasks, such as filling out contract templates with relevant information.

Meanwhile, paralegals still serve a critical function in research and fact-checking lawyers' work, especially when AI is well known for leading to so-called hallucinations in legal writing.

“As paralegals, we have always been the fact checkers of the office, and nothing is more reliant on good fact checkers than artificial intelligence,” said Cheryl Nodarse, president of the National Association of Legal Assistants, in an interview. “We've all heard of the hallucinations that can result from an artificial intelligence search, and particularly in legal drafting, those hallucinations can be legal malpractice. So do we see it as threatening the paralegals' role? Absolutely not. But do we see it as changing the paralegals' role? Absolutely.”

Nodarse agreed that she does not see AI as a threat to paralegals' job security, but it is increasingly entering the day-to-day work of paralegals. “It's not hyperbole to say that it's [AI is] affecting every single discussion we have these days, both as far as workplace flow and as far as work product.”

AI-Skilled Paralegals in Demand

The increased earning potential of some paralegals points to a broader truth about the use of AI in law firms: even with the advent of [agentic AI](#), these tools don't just run themselves. Firms need workers at all levels who can both effectively deploy AI-powered software and continue to do traditional legal and support tasks.

Instead of looking to replace paralegals, firms are likely to seek out those who can use AI tools to work more efficiently and focus on higher-value tasks that current software cannot perform well.

Sarah Johansson, a former paralegal and current head of product at litigation technology provider Theo AI, said in an interview that she has not heard discussions about cutting paralegals in response to increased use of AI. Instead, Johansson said the industry's focus is on how paralegals can make use of AI.

“I think it's simply been a factor of, ‘how do we make more efficient use of our paralegal time and deliver results for our customers in better line with what their expectations may be, meeting deadlines ... and potentially also budget restraints in a more appropriate way?’” Johansson said.

Johansson added that, in her own experience working as a paralegal, she was frustrated by the amount of time she spent doing work that could have been aided with the use of novel technologies, and said that many paralegals may prove better at their jobs when given access to AI-powered tools.

Prepare, Don't Panic

Over time, the ubiquity of AI tools will likely make the work of paralegals less consistent than before, requiring a greater degree of adaptability and flexibility.

David Cohen, founder of access to justice-focused legal tech startup AtJustice and former chair of Reed Smith's records and e-discovery group, said that, while change is coming for the job duties of paralegals and other staff, they should not be dreading it.

“I don't think there needs to be widespread panic, as long as legal professionals realize that they have to go with the flow. They can't do as much business as usual. Their business is going to change over the next several years, and you just can't assume you're going to keep doing what you've been doing,” Cohen said.

For paralegals and other legal professionals, Cohen added, the focus should be on understanding AI and finding a way to remain valuable in the event that generative AI becomes able to automate certain tasks.

The increasing use of AI-powered tools will also present an opportunity for some early-career paralegals, who may be more comfortable or fluent using AI tools than some attorneys within their firms.

“A lot of these junior people could actually be champions of using this technology in really phenomenal ways, coming into the practice, fresh out of school, and really thinking about solving problems with new technology,” Johansson said. “I don't know that law firms have thought about embracing that in the right way yet.”

Speaking on the continued need for paralegals, Johansson pointed out that AI tools may be able to gather information more quickly than a human can, but a paralegal's discerning eye is a valuable component to the research process.

“Technology is good at providing you the upper-level detail, but paralegals are there to essentially provide that detail in the way that the partner wants, potentially, or the team will benefit from,”

Johansson said. “That judgment I don't think can be replaced, at least not yet by any means.”

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Stanford Study: 'AI' Generated 'Workslop' Actually Making Productivity Worse

A abovethelaw.com/2025/10/stanford-study-ai-generated-workslop-actually-making-productivity-worse

Techdirt

October 3, 2025

[Technology](#)

From the I'm-sorry-I-can't-do-that,-Dave dept

By [Techdirt](#) on October 03, 2025 10:03 am

Automation undeniably has some useful applications. But the folks hyping modern "AI" have not only dramatically [overstated its capabilities](#), many of them generally view these tools as a way to [lazily cut corners or undermine labor](#). There's also a weird innovation cult that has arisen around managers and LLM use, resulting in the [mandatory use of tools that may not be helping anybody](#) — just because.

The result is often a hot mess, [as we've seen in journalism](#). The AI hype simply doesn't match the reality, and a lot of the underlying financial numbers being tossed around [aren't based in reality](#); something that's very likely going to result in a massive bubble deflation as the reality and the hype cycles collide (Gartner calls this the "trough of disillusionment," and [expects it to arrive next year](#)).

One [recent study out of MIT Media Lab](#) found that 95% of organizations see no measurable return on their investment in AI (yet). One of many reasons for this, as noted in [a different recent Stanford survey](#) (hat tip: [404 Media](#)), is because the mass influx of AI "workslop" requires colleagues to spend additional time trying to decipher genuine meaning and intent buried in a sharp spike in lazy, automated garbage.

The survey defines workslop as *"AI generated work content that masquerades as good work, but lacks the substance to meaningfully advance a given task."* Somewhat reflective of America's obsession with *artifice*. And it found that as use of ChatGPT and other tools have risen in the workplace, it's created a lot of garbage that requires time to decipher:

"When coworkers receive workslop, they are often required to take on the burden of decoding the content, inferring missed or false context. A cascade of effortful and complex decision-making processes may follow, including rework and uncomfortable exchanges with colleagues."

Confusing or inaccurate emails that require time to decipher. Lazy or incorrect research that requires endless additional meetings to correct. Writing full of errors that requires supervisors to edit or correct themselves:

"A director in retail said: "I had to waste more time following up on the information and checking it with my own research. I then had to waste even more time setting up meetings with other supervisors to address the issue. Then I continued to waste my own time having to redo the work myself."

In this way, a technology deemed a massive time saver winds up creating all manner of additional downstream productivity costs. This is made worse by the fact that a lot of these technologies are being rushed into mass adoption in business and academia before they're fully cooked. And by the fact the real-world capabilities of the products are being wildly overstated by both companies and a lazy media.

This isn't inherently the fault of the AI, it's the fault of the reckless, greedy, and often incompetent people high in the extraction class dictating the technology's implementation. And the people so desperate to be innovation-smacked, they're *simply not thinking things through*. "AI" will get better; though any claim of HAL-9000 type sentience will remain mythology for the foreseeable future.

Obviously measuring the impact of this workplace workslop is an imprecise science, but the researchers at the Stanford Social Media Lab try:

"Each incidence of workslop carries real costs for companies. Employees reported spending an average of one hour and 56 minutes dealing with each instance of workslop. Based on participants' estimates of time spent, as well as on their self-reported salary, we find that these workslop incidents carry an invisible tax of \$186 per month. For an organization of 10,000 workers, given the estimated prevalence of workslop (41%), this yields over \$9 million per year in lost productivity."

The workplace isn't the only place the rushed application of a broadly misrepresented and painfully under-cooked technology is making unproductive waves. When media outlets rushed to adopt AI for journalism and headlines (like at CNET), they, too, found that the [human editorial costs to correct and fix all the problems, plagiarism, false claims, and errors really didn't make the value equation worth their time](#). Apple found that LLMs [couldn't even do basic headlines with any accuracy](#).

Elsewhere in media you have folks building giant (badly) automated aggregation and bullshit machines, devoid of any ethical guardrails, [in a bid to hoover up ad engagement](#). That's not only repurposing the work of real journalists, it's redirecting an already dwindling pool of ad revenue away from their work. And it's undermining any sort of ethical quest for real, informed consensus in the authoritarian age.

This is all before you even get to the environmental and energy costs of AI slop.

Some of this are the ordinary growing pains of new technology. But a **ton** of it is the direct result of poor management, bad institutional leadership, irresponsible tech journalism, and intentional product misrepresentation. And next year is going to likely be a major reckoning and inflection point as markets (and people in the real world) finally begin to separate fact from fiction.

[Stanford Study: 'AI' Generated 'Workslop' Actually Making Productivity Worse](#)

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Expert Opinion | **White Collar Crime**

Is the Writing on the Wall for False Claims Act Qui Tam Suits?

Does the volume of qui tam FCA enforcement mean the system is working, or prove that the “rogues” have gone rogue?

October 03, 2025 at 10:45 AM By **Rebecca Wall Forrestal**



Rebecca Wall Forrestal of Porzio, Bromberg & Newman. Courtesy photo

The False Claims Act (FCA), enacted during the Civil War to combat widespread fraud by Union Army suppliers, prohibits knowingly submitting “false claims” for payment to the government. FCA claims can be initiated by the government or private citizens—qui tam relators—on the government’s behalf, based on new, non-public information. The government can intervene in the case, or allow relators to proceed alone; in successful suits, FCA provides for triple damages and per-claim penalties, and successful relators receive a share of the recovery. That financial incentive is key: as one sponsor of the original FCA explained, the government was “holding out a temptation and setting a rogue to catch a rogue, which is the safest and most expeditious way I have ever discovered of bringing rogues to justice.”

Justice Department statistics reflect the expansion of modern qui tam FCA enforcement. Between 1987 and 2024, the government recovered \$78 billion in FCA settlements and judgments, including \$55 billion in qui tam suits. The proliferation of qui tam suits has escalated; in 1987, qui tam recoveries were outnumbered 10-to-1 by those in government-initiated suits, but since 1995, qui tam actions account for an increasingly large majority of recoveries. In 2024 alone, recoveries in FCA qui tam suits exceeded \$2.4 billion.

Does the volume of qui tam FCA enforcement mean the system is working, or prove that the “rogues” have gone rogue? Critics have long questioned the system’s constitutionality. In 1989, Assistant Attorney General William Barr argued that qui tam relators violate the Appointments Clause, lack Article III standing, and infringe separation of powers by exercising executive authority. He recommended eliminating what he viewed as a “corps of private bounty hunters,” warning that, using such a mechanism, “Congress effectively could ‘privatize’ all civil law enforcement,” to the nation’s detriment. *See* 13 Op. O.L.C. 207.

Since then, while qui tam suits have continued to multiply, these constitutional challenges have repeatedly resurfaced. In *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (1999), the Supreme Court resolved the question of Article III standing, opining that “[t]he FCA can reasonably be regarded as effecting a partial assignment of the government’s damages claim,” and that relators therefore possess “representational” standing based upon “the United States’ injury in fact.”

Recent cases have revived Article II challenges to qui tam. Several Circuits have held that relators are not “Officers of the United States,” and thus are not subject to the Appointments Clause. *See United States ex rel. Stone v. Rockwell Int’l*, 282 F.3d 787, 804-807 (10th Cir. 2002); *Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749, 753-758 (5th Cir. 2001) (*en banc*); *United States ex rel. Taxpayers Against Fraud v. General Elec.*, 41 F.3d 1032, 1040-1042 (6th Cir. 1994); *United States ex rel. Kelly v. Boeing*, 9 F.3d 743, 749-759 (9th Cir. 1993). However, in a pending 11th Circuit appeal, DOJ challenges a decision in which a Florida District Court came to the opposite conclusion, holding that FCA relators do require Article II appointment as “Officers of the United States.” *See U.S. ex rel. Zafirov v. Fla. Med. Assocs.*, 2024 WL 4349242 (M.D. Fla. Sept. 30, 2024).

The separation of powers question remains unresolved. In *United States ex rel. Polansky v. Executive Health Resources*, 599 U.S. 419, 437-38 (2023), the Court held that FCA permits the government to intervene in qui tam suits at any stage to take over and even dismiss the action, regardless of the relator’s objections. Nevertheless, Justices Thomas, Kavanaugh, and Barrett expressed concerns that “[t]he FCA’s qui tam provisions have long inhabited something of a constitutional twilight zone,” in that “there is good reason to suspect that Article II does not permit

private relators to represent the United States' interests in FCA suits." The justices stated that constitutionality of FCA's qui tam provisions should be considered in an appropriate case.

That opportunity could arise from the pending Third Circuit appeal in *United States ex rel. Penelow v. Janssen*, No. 3:12-cv-07758. Janssen, a division of pharmaceutical heavyweight Johnson & Johnson, is appealing a \$1.64B FCA judgment based on alleged off-label promotion of two of its HIV drugs. The case was initiated by two former sales representatives and the government declined to intervene during the initial litigation. On appeal, J&J challenges the constitutionality of the FCA's qui tam provisions, arguing that the case "presents a particularly egregious example of how the FCA's qui tam device offends Article II," in that "[b]y declining to intervene, the government has allowed self-appointed, financially motivated Relators to wield significant executive power," and to "prevail[] on a legal theory with which DOJ disagrees." App. Br. at 51-52.

Several amicus briefs portray the qui tam system as a broken relic of the Civil War era that hinders, rather than advances, the government's interest in combating fraud and waste. The amici describe relators as "unaccountable bounty hunters," who are "motivated primarily by prospects of monetary reward rather than the public good." They argue that the regime infringes on the Executive's authority to enforce the law, directly or through duly-appointed subordinates, asserting that "[t]o uphold a redelegation of that power to private entities would dash the constitutional scheme" enshrined in Article II. They also emphasize that the "sheer volume" of qui tam litigation, much of which they describe as "meritless or contrary to the public interest," makes it impossible for DOJ to adequately supervise FCA enforcement, creating a risk of inconsistent or unfair positions being taken on behalf of the government by rogue relators.

The government intervened on appeal to file a brief in which it pushes back, arguing that the Third Circuit should follow each of the other Circuits that have considered the issue to date and rule that FCA's qui tam provisions are consistent with Article II. The brief highlights key differences between relators and "Officers of the United States." For instance, unlike a special prosecutor, whose office continues even if he steps down, "[i]f a particular relator who has blown the whistle on a fraud by filing a qui tam action decides she is no longer interested in pursuing the action," she cannot be replaced with a different relator, and only the government maintains the suit. DOJ's brief also stresses that in creating a financial incentive for relators, the FCA employs "one of the least expensive and most effective means of preventing fraud on the treasury." According to DOJ, that incentive is cabined and the Executive's authority to enforce the law is preserved, by the government's upfront and continuing ability to intervene in FCA qui tam suits to take over or end the action.

Perhaps the Supreme Court will resolve these constitutional questions about FCA's qui tam provisions, in *Penelow* or another case. Meanwhile, debate continues as to whether qui tam FCA

enforcement is a good idea from a policy perspective. The government describes the system as efficient and effective, while critics view it as improperly incentivizing relators to undertake meritless shakedowns. Which is it?

The FCA's qui tam provisions are not unique in using private incentives to advance government enforcement goals. For instance, SEC's whistleblower program rewards individuals who report securities law violations, with awards that can reach millions of dollars for successful enforcement actions. More broadly, DOJ encourages companies to self-police and self-report using incentives like non-prosecution agreements or reduced penalties and monitoring obligations.

Beyond simply providing information to the government, relators use private resources to advance claims that the government might not choose to pursue. When they succeed, even in non-intervened cases, the Treasury benefits alongside the relator. In a post-qui tam world, the government would have to use its own resources to investigate whistleblower tips and identify viable enforcement actions. Thus, eliminating qui tam would almost certainly reduce FCA enforcement activity. Yet it is not immediately apparent whether *fewer* cases would mean *fairer* FCA enforcement. Fewer enforcements mean less information for companies seeking to respond to enforcement trends. And that smaller number of enforcements may inequitably focus on a handful of companies or industries.

The future of qui tam is uncertain, but what remains clear is the importance, both to the government and to the public, of getting it right. A recent DOJ memorandum identified as the Criminal Division's highest priority combatting "[w]aste, fraud, and abuse, including health care fraud and federal program and procurement fraud that harm the public fisc." A functioning enforcement environment must prevent fraud without unduly hindering good business. While the future of FCA enforcement unfolds, all companies can proactively limit their risk by continuing to maintain robust compliance programs to detect and prevent misconduct.

Rebecca Wall Forrestal *is counsel at Porzio, Bromberg & Newman, where she advises clients in highly regulated industries. Leveraging deep litigation and compliance experience, her practice spans complex disputes, government investigations, and strategic regulatory guidance.*

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Analysis | **Criminal Law**

Companies Remain Hesitant to Self-Report Wrongdoing, Despite DOJ's Efforts to Make Decision Easy

Companies cited multiple concerns about self-reporting, including the financial burden of a DOJ investigation, the time commitment required and potential reputational damage.

October 03, 2025 at 09:26 AM By **Michael Gennaro**



U.S. Department of Justice building in Washington, D.C. Photo: Diego M. Radzinski/ALM

A new survey found that companies remain reluctant to self-report potential misconduct to the Department of Justice, despite policy revisions the agency rolled out in 2023 to incentivize firms to turn themselves in.

The findings were contained in White & Case's Global Compliance Risk Benchmarking Survey, which gathered the sentiments of executives in legal, ethics and risk. Between phone interviews conducted by Mergermarket and online surveys, White & Case received 265 responses.

The survey found that 51% did not consider making a voluntary self-report following the DOJ's 2023 policy revisions. Among those that did weigh self-disclosure, 129 ultimately decided against

it.

The revised Corporate Enforcement Policy adopted in 2023 provides a "presumption of declination" for companies that voluntarily self-disclose misconduct, fully cooperate with investigators, remediate the problems and pay restitution. The presumption of declination means that the DOJ will not prosecute—unless there are aggravating circumstances, such as executive involvement or pervasive misconduct.

If the DOJ does opt to prosecute, self-disclosing companies can be eligible for fines that are 50% to 75% below those outlined in sentencing guidelines.

The agency designed the revisions to tilt companies' cost-benefit calculations toward disclosure, though the survey results suggest many companies fixate on the possibility that if they don't self-report the misconduct might never come to light.

The survey, which closed in February, predated the DOJ's May 2025 policy revision that went even further, guaranteeing declinations to self-reporting companies absent aggravating circumstances.

Liberty Mutual became the [first beneficiary](#) of that strengthened policy in August, when it received a declination despite uncovering evidence of bribery in India.

The survey revealed a sharp divide between private and public companies. More than half of public companies considered self-disclosure, compared with just over one-third of private firms, a gap that may reflect different risk appetites and regulatory pressures among the two groups.

Perhaps most troubling for enforcement authorities: Of the 129 organizations that considered but rejected voluntary self-disclosure, 44% said they did not even internally investigate and remediate the misconduct they had discovered.

Companies cited multiple concerns about self-reporting, including the financial burden of a DOJ investigation, the time commitment required and potential reputational damage.

Anneka Randhawa, a partner at White & Case's London office and one of the report's authors, said that the cost-benefit concerns companies are grappling with are "perennial issues" that persist despite policy enhancements.

"These are considerations that companies are always going to have to weigh up, regardless of tweaks in the framework and frankly regardless of whether you're in the U.S.—although the U.S. does have a more certain and prescriptive process—or whether you're in the U.K. or elsewhere," Randhawa said.

Courtney Andrews, a partner at White & Case's Los Angeles office who co-authored the report, said the survey emerged from companies' desire to understand how their peers are navigating these decisions.

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Securities

World's Biggest Chocolate Supplier Faces Down Short Sellers (2)

Oct. 3, 2025, 1:05 AM PDT

To chocolate lovers the world over, names like Hershey, Nestlé and Mars instantly signal a sweet indulgence. Yet behind the glossy wrappers, much of what's inside branded candy traces back to a company many have never heard of.

From its discreet headquarters in Zurich, Barry Callebaut AG has grown into the world's largest bulk chocolate maker, processing at least 20% of global cocoa. Multinationals and boutique dessert makers alike rely on its cocoa butter, powders and ganache. The Swiss company is the industry's quiet power: one of Europe's most dependable consumer suppliers and an indispensable middleman shaping what ends up on grocery store shelves from Pennsylvania to Paris.

But after years of steady growth, Barry Callebaut is navigating one of its rockiest stretches. The company's shares have nearly halved over the past two years, hit by soaring cocoa prices, higher financing costs and a leadership shakeup.

Today, Barry Callebaut is Switzerland's most heavily shorted stock, with about a quarter of its free float in the hands of bearish investors. Though shares have rebounded in recent weeks, the volatility has rattled investors, who've questioned whether the company, which is worth about 6 billion francs (\$7.5 billion), could eventually be taken private. Its top shareholder — the Jacobs family, a Swiss chocolate dynasty — previously explored that possibility, including consulting with private equity firm CVC Capital Partners Plc, according to people familiar with the matter.

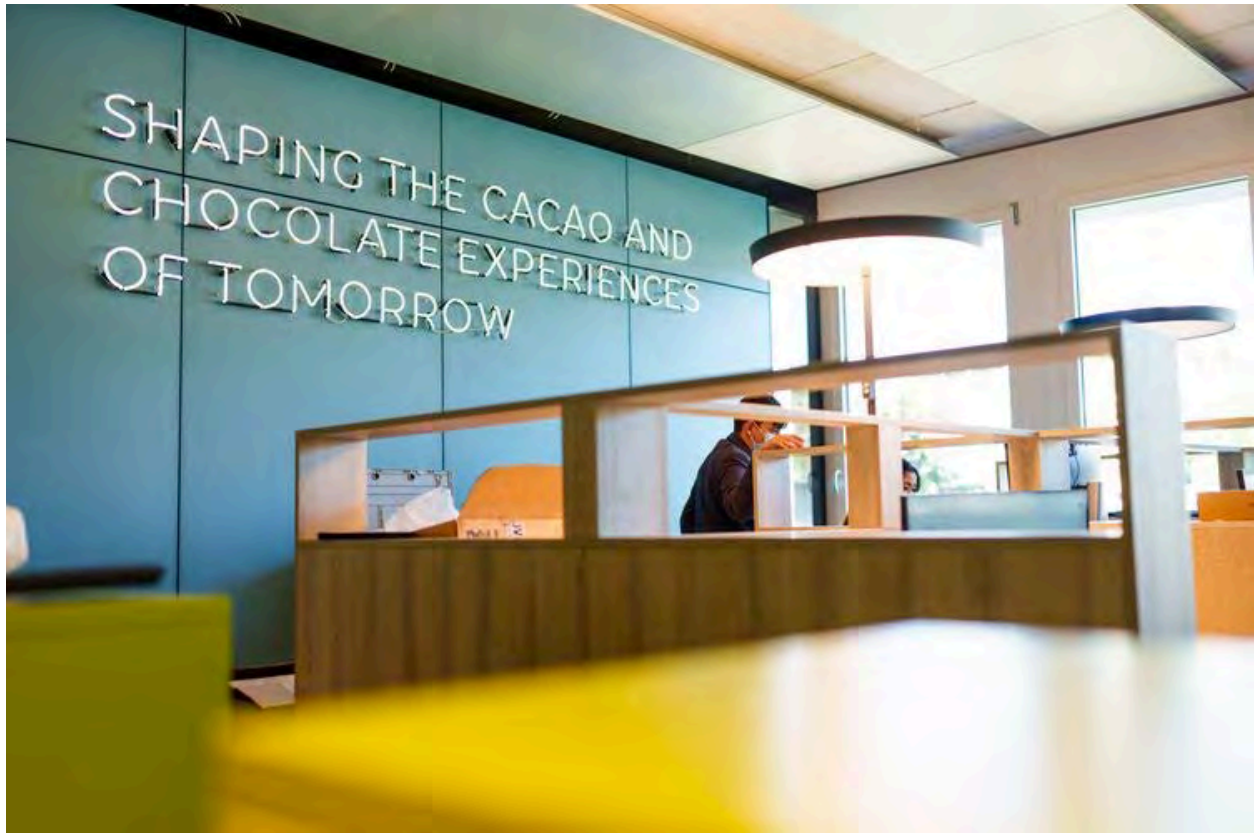
Barry Callebaut rose as much as 8.2% in early Zurich trading Friday, with trading volumes about eight times the average for this time of day.



What happens next could reverberate across a famously secretive industry that closely guards its recipes and supply chains.

Defenders argue that Barry Callebaut is simply paying the price of last year's historic cocoa rally, when benchmark contracts surged to a record high and the global deficit reached the largest since at least the 1980s. No supplier, they say, could have fully insulated itself from that squeeze. Critics counter that rivals weathered the shock more deftly, while Barry Callebaut stumbled through strategic missteps.

In an interview, Chief Executive Officer Peter Feld characterized the challenges as temporary turbulence rather than evidence of existential trouble. For too long, he said, the chocolate business has leaned on tradition and a slow, hands-on way of doing things. While shaking up that staid approach may unsettle some in the near term, Feld said it's essential to put the company on a faster, more competitive footing.



The Barry Callebaut headquarters in Zurich.

Source: Barry Callebaut (CC BY-NC-SA 2.0)

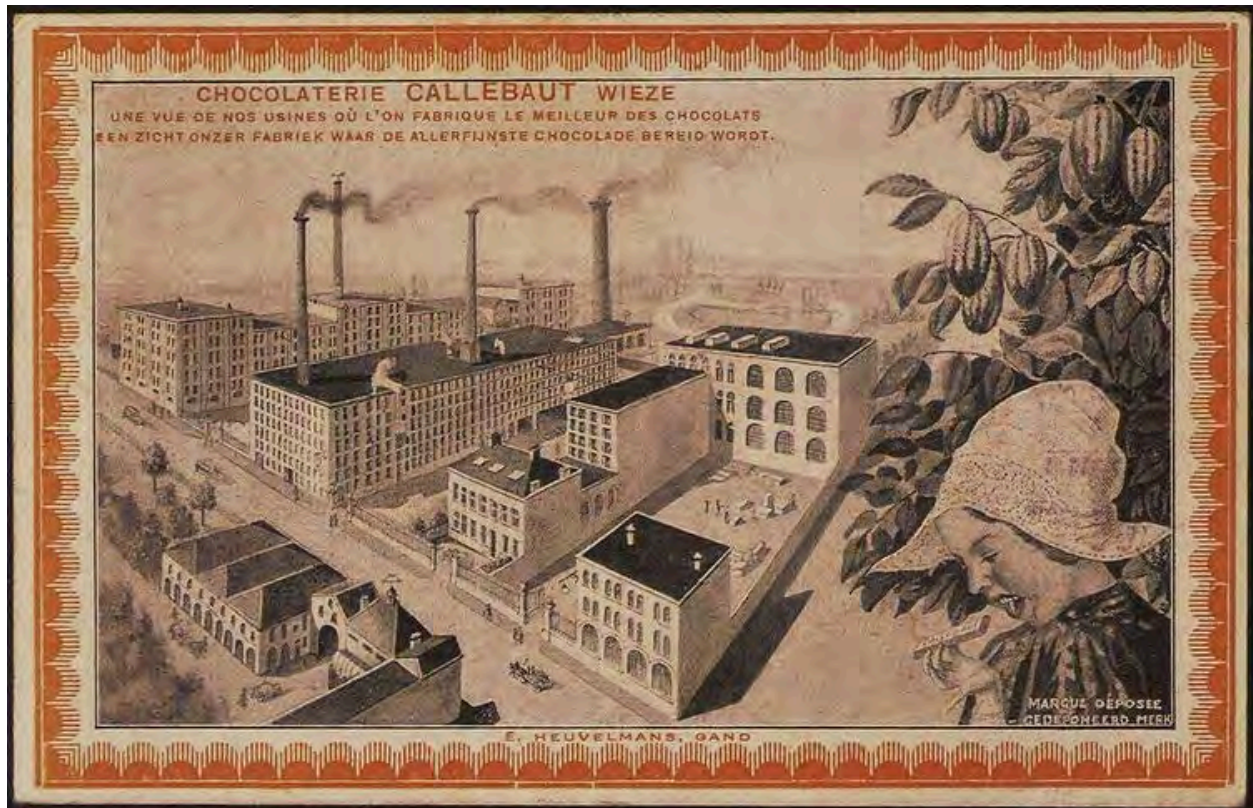
"Barry Callebaut can unlock profitable growth for the next decade, but we have to do a few things differently than in the past," he told Bloomberg News. "I hope that we're through the worst by now."

Whatever the outcome, the company's performance matters far beyond Zurich. Barry Callebaut sells more than two million tons of chocolate annually and its market share is nearly double that of the closest competitor. Any sustained disruption could reshape how chocolate is financed, traded and manufactured in the years ahead. The more costs that Barry Callebaut passes on to clients, the more expensive candy and other cocoa products potentially become.

Corporate customers are "worried about price, but several are more worried about supply," Feld said. "That gives us a very unique position for the future."

CVC didn't respond to a request for comment. A spokesperson for the Jacobs family declined to comment. A Barry Callebaut spokesperson declined to address whether the company would be taken private, saying the firm doesn't generally discuss "market rumors."

Barry Callebaut was formed in 1996 through the merger of France's Cacao Barry and Belgium's Callebaut, two pioneers of Europe's chocolate trade. Backed by businessman Klaus Johann Jacobs and his Jacobs Holding AG, the company was positioned as a wholesale supplier, built on his belief that food sellers would outsource production rather than manage its costly, complex value chain.



An old postcard featuring a Callebaut chocolate factory in Wieze, Belgium.

Source: Barry Callebaut (CC BY-NC-SA 2.0)

The merger cemented its place as a major chocolate maker, with more than 20 factories. Expansion soon followed with acquisitions such as Van Leer in the US and Petra Foods in Asia. The model was straightforward: source cocoa beans from top growers like Ivory Coast, Ghana and Ecuador, process them into ingredients and chocolate, and sell them under long-term “cost-plus” agreements that passed commodity swings on to customers.

For years, that strategy paid off. In the two decades since its initial public offering in 1998, Barry Callebaut quadrupled its profits and locked down contracts with the likes of Nestlé SA and Unilever Plc. The company’s share price peaked in 2021, putting its value at over \$13 billion.

But a string of recent crises exposed vulnerabilities. First, the pandemic cut into global chocolate consumption. Then, in 2022, a salmonella outbreak at the Wieze plant in Belgium — the world’s largest chocolate factory — forced a months-long shutdown. Output rationing strained ties with smaller customers and cost Barry Callebaut more than 2% of volume and about CHF80 million in extra expenses. The company invested heavily in food safety, but reputational damage from the Wieze outbreak was hard to shake.

“Ultimately, you need to strategically choose the customers you serve in these situations,” said Raphaël Felenbok, an independent advisor and former managing director at the company. “Barry Callebaut favored its large corporate accounts, who are also more sophisticated in their purchasing.”

Big changes soon followed. In 2023, the company stunned investors with the exit of then-chief executive Peter Boone, following disappointing first-half results and a cut to its full year volume growth outlook. The Jacobs family, unhappy with the numbers, had pressured Boone to step down, according to people familiar with the matter.

Boone didn't respond to a request for comment.

Feld, a former Jacobs Holding executive, took over and quickly rolled out the "BC Next Level" plan, which targeted CHF250 million in savings but carried major execution risks. The overhaul included job cuts, trimmed product lines and factory closures. Those moves strained some long-standing client relationships, according to people familiar with the matter.

Feld said the changes were made to bring the company closer to markets by cutting complexity and focusing on what customers actually value: "better service, better innovation, better sustainability, better quality."



Key cocoa growers in West Africa suffered weak harvests in recent years, which pushed New York cocoa futures to an all-time high in December.

Photographer: Evgeny Maloletka/Bloomberg

Yet the timing wasn't ideal. Last year's poor harvests in Ivory Coast and Ghana triggered a historic cocoa shortage, sending futures near \$13,000 a ton — four times the long-term average. For Barry Callebaut, the surge turned its hedging model from a safety net into a costly drain. Short positions racked up margin calls, forcing the company to raise financing just to keep trades afloat. Net debt quadrupled in two years to CHF6.1 billion by February 2025.

"Tough market conditions — Covid followed by the cocoa crisis — unfortunately coincided with internal challenges, namely the salmonella incident," Felenbok said.

Sign up to the Business of Food newsletter for more news on how the world feeds itself in a changing economy and climate.

The company's cost-plus model — in which raw material prices were passed on directly to customers for a large part of the business — buckled as cocoa prices outran retailers' fixed contracts. To defend margins, Barry Callebaut hiked prices so sharply — 63% — that some customers cut orders or shifted production in-house. Volumes dropped 6% in the nine months to May, forcing two sales guidance cuts in three months.

"If you look at the chocolate industry, the worst positioned is Barry because they sit in the middle and the beginning of the supply chain," said Bloomberg Intelligence analyst Ignacio Canals Polo.



A production line making chocolate covered wafer biscuits at a Nestlé factory in York, UK.

Photographer: Dominic Lipinski/Bloomberg

Unlike Chocoladefabriken Lindt & Sprüngli AG, which benefited from strong premium demand, Barry Callebaut lacked consumer pull. Its gourmet division, focused on chefs and businesses, was hit hardest as price lists lagged. Even after CHF3 billion in hikes, rising financing costs eroded gains.

Rivals looked for ways to poach clients. Cargill Inc. offered competitive prices and expanded its gourmet line. Other foodmakers rewrote recipes to use cocoa alternatives. And commodity traders like Olam offset weak margins with profits elsewhere. Because many competitors were privately held, they avoided the scrutiny that comes with quarterly earnings reports.

Even after a rocky stretch, Feld said Barry Callebaut's dominance remains intact as clients and end-consumers are adjusting to a new normal.

"I'm very aware that our customers haven't priced through completely yet," he said. "But it's very reassuring to see the resilience that we have, despite the fact that we have to increase prices so much."

The coming months are crucial, with much resting on how Barry Callebaut's new leadership rights the course.

Since taking over, Feld has replaced much of the senior team with executives from private equity and the consumer goods space. Peter Vanneste joined as Chief Financial Officer, a role he held at personal care company Ontex. And Clemens Woehrle brought supply-chain experience from personal care products company Beiersdorf AG and WMF, the German kitchenware maker.

Some employees worried the company was losing institutional knowledge too quickly. Feld defended the leadership shake-up, saying Barry Callebaut needs to adapt to an era where customers place greater emphasis on data and digital tools alongside traditional relationship-building over dinner.



Peter Feld, chief executive officer of Barry Callebaut.

Source: Barry Callebaut (CC BY-NC-SA 2.0)

"During a transformation of that magnitude, you will always have people who don't like it," he said. "Change is never easy, and it's understandable that some would prefer familiar approaches, even as the market moves toward new requirements."

Feld has a reputation for aggressive turnarounds, having overseen the restructuring of WMF before its sale to KKR. That track record appealed to Jacobs Holding.

But investors question whether the Jacobs family still has its doubts about the long-term viability of Barry Callebaut. Jacobs Holding, which is now called Jacobs Capital, has reduced its stake in the company by about 30% over the past decade, though those close to the family point to recent share purchases.

"How do you appoint a new CEO from a holding company that's been quietly selling down?" said Jean-Philippe Bertschy, head of Swiss equity research at Vontobel. "I've never seen a management team behave this way in 25 years of covering the sector."

The Jacobs family also considered taking the company private with buyout firm CVC before discussions broke down over price and commodity-risk concerns. There are no current talks to delist the company, according to people familiar with the matter.

Payoff from the BC Next Level plan has been slower than expected. In April 2025, management acknowledged that some savings would take an extra year to show up in the company's profit numbers, due to extra costs from managing the volatility around tariffs. Analysts remain skeptical even of that timeline. While global cocoa prices have begun to ease, consensus profit growth estimates of more than 60% still appear unrealistic given subdued volumes and high financing costs, according to Canals Polo of Bloomberg Intelligence.



A cocoa rebagging facility in San-Pedro, Ivory Coast. Barry Callebaut sources beans from major growers like this and processes them into products including cocoa powder, butter and ganache.

Photographer: Paul Ninson/Bloomberg

Feld dismissed the critics.

He highlighted measures underway to protect demand and enhance agility and resilience, including developing chocolate with less cocoa ingredients but the same taste. He noted that the stock price has recovered significantly during the second half of the year, showing that recent low levels had more to do with the bean price development. And he said the company's cost-plus model will remain central, even if it needs fine-tuning to capture the increased complexity in today's market of doing business in places like Ivory Coast and Ghana.

Feld said he's confident Barry Callebaut is turning itself around in the most volatile cocoa market in recent memory.

"We are a really young company," he said.

(Updates to include share move. A previous version corrected the name of Peter Vanneste's former workplace.)

--With assistance from Aaron Kirchfeld, Isis Almeida, Charlotte Hughes-Morgan and Lisa Pham.

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Securities

Occidental CEO Says She'd 'Love' to Scrap Quarterly SEC Reports

Oct. 2, 2025, 9:39 AM PDT

Occidental Petroleum Corp. Chief Executive Officer **Vicki Hollub** said she's all for doing away with three-month financial reporting cycles if the US Securities and Exchange Commission allows it.

The shale boss commented in an interview after SEC Chairman **Paul Atkins** pledged to fast-track President Donald Trump's proposal to end quarterly reporting for most companies.



Occidental Petroleum Corp. CEO Vicki Hollub

Photographer: F. Carter Smith/Bloomberg

"We haven't fully considered it yet, but I'd love to do that," Hollub said Thursday. "What I find is that reporting on a quarterly basis, sometimes it's difficult for us to be able to share with our shareholders and our potential investors the complete story of a project as we're kind of in the middle of figuring something out when the quarter happens."

Trump's plan will give companies the option to report on a semi-annual basis and many firms might still choose to publish quarterly results, Atkins wrote in a column for the Financial Times. Hollub said she'll watch to see what other companies do, adding that there are other ways to update shareholders beyond SEC filings, including presentations at investor conferences.

"I think twice a year is plenty," she said. "If the corporations adopt semi-annual, I'll do it. Or if President Trump were to tell the SEC that he expects them not to pressure companies to report more than that, then if the bulk of the corporations are reporting quarterly, we're going to do that too."

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Securities

Oil, Gas Industry's Accounting 'Loophole' Frustrates Investors

Oct. 3, 2025, 1:45 AM PDT

Oil and gas companies are using a gap in US financial reporting rules to omit from their balance sheets hefty obligations to clean up retired refineries and pipelines, climate and investor advocates say.

Under existing guidance, companies leave off these liabilities by citing uncertainty over when the assets will be shuttered, according to groups like the Climate Accounting and Audit Project.

The groups are pushing the Financial Accounting Standards Board to close this "loophole," which they say limits investor insight into a company's financial position. The board will meet on Oct. 8 to discuss its next priorities.

Asset retirement obligations, or AROs, span different industries where companies are ultimately responsible for removing physical equipment or hazardous materials. Common examples include landfill closures and oil well plugging.

Research group Carbon Tracker has estimated that US oil and gas decommissioning costs—including for pipelines and refineries—could exceed \$1.2 trillion.

While the topic would be met with debate at FASB, it's "one of the 'last hurrah' areas for off-balance-sheet accounting," said Sue Harding, consultant at the Climate Accounting and Audit Project. CAAP is among the groups that submitted comment letters earlier this year asking the standard-setter to address the issue.

Phillips 66 Co. is an example that illustrates the impact of "belated" recognition of retirement obligations, CAAP, nonprofit advocacy group Ceres, and Carbon Tracker told FASB in a joint letter.

The energy company announced last year it would cease operations of a Los Angeles-area refinery during 2025, citing significant market pressure.

Phillips 66 increased its ARO balance—primarily due to \$205 million in obligations associated with closing the refinery, according to its 2024 annual financial report. It hadn't previously disclosed the estimated remaining lives of these assets, the groups noted.

The company has said it is committed to transparency in its reporting.

The accounting "loophole" raises concerns given that refineries won't operate in perpetuity amid a shift toward cleaner energy sources, according to consumer advocacy group Public Citizen.

"What's particularly compelling about these issues is they are not theoretical and they are not in the future," said Andrew Logan, senior director at Ceres. "They're very much in the here and now—and they are expensive for investors."

'High Bar'

The question remains whether investors who aren't as plugged into these environment-related issues similarly view ARO rules as an important topic, according to Greg Rogers, founder of environmental financial consulting firm Eratosthenes.

US accounting rules initially written more than 20 years ago require companies to recognize the fair value of a liability for an ARO in the period it's incurred if a "reasonable estimate" of that measure can be made. Fair value is a metric of current market value.

Still, a "minor exception" exists, said Scott Ehrlich, founder and managing director of educational organization Mind the GAAP LLC. If companies don't have sufficient information to estimate fair value when the ARO is incurred, the liability should be recognized when that estimate can be made.

For example, if an asset has an "indeterminate useful life," it may not be possible to estimate when the obligation might be settled, the rules say.

The rules indicate the board at the time of the 2001 guidance felt a "high bar" needed to be met for firms to claim they couldn't put a liability on the books, Ehrlich said.

Measurement might not be possible "if literally no information exists" about settlement timing, the board said in the reasoning for its guidance.

Companies show on investor calls and in press releases that they have some awareness that refineries will be imminently shutting down, Mekedas Belayneh, policy advocate at Public Citizen, said.

Identifying zero costs is the "least accurate" value that companies could give investors, Dwayne Purvis, founder and principal adviser at Purvis Energy Advisors, told FASB.

FASB didn't comment on the push to revisit ARO guidance or the intention behind its rules.

Financial Effects

Phillips 66 said in its 2023 10-K annual report it generally believes its refining and other processing assets "have no expected retirement dates" for purposes of estimating AROs "since the dates or ranges of dates upon which we retire these assets cannot be reasonably estimated at this time."

Still, the company told investors in October 2024 it plans to cease operations of its L.A.-area refinery during the fourth quarter of 2025. The company said it was working with real estate development firms in evaluating the future use of the sites in Wilmington and Carson, Calif.

Phillips 66 Chairman and CEO Mark Lashier told investors in an earnings call for 2024's third quarter that "the continued outlook in California in the face of declining diesel and gasoline demand was a pretty tough one," according to a transcript.

The company said in an emailed statement it's working with local governments and others to propose redevelopment that reduces emissions and maximizes value for shareholders and the community.

"Phillips 66 remains committed to transparency in its financial reporting in accordance with applicable accounting standards and regulations," the company said.

FASB's Role

Institutional asset manager KBI Global Investors recommended FASB clarify that the "indeterminate asset lives" designation "should be limited to rare, well-supported cases" that are accompanied with more disclosure.

Other groups also pushed for further disclosure.

FASB could also retool its measurement approach. Despite being measured at fair value, AROs are "seldom settled through market transactions," researcher and consultant Nick Gibbons said in a letter.

Adopting a "best estimate framework" allowing for a broader range of measurement techniques, like internal engineering estimates, would scrap reliance on "hypothetical third-party pricing" and thus address a barrier to initial recognition, Gibbons wrote.

"Where FASB probably will have a little pause is the idea of introducing any volatility to the financial statements," Gibbons, who is also an adjunct assistant professor at New York University, told Bloomberg Tax.

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Judge Cites Heavier Texas Caseloads Among Reasons to Keep Musk SEC Action in DC

U.S. District Judge Sparkle L. Sooknanan wrote it's feasible the case could have been brought in the Texas court, and the SEC hadn't shown a link between the case and the D.C. forum other than the case being a securities matter, but Musk's argument wasn't enough to supersede courts' deference to a plaintiff's choice of forum.

October 03, 2025 at 11:04 AM By  **Ellen Bardash**



U.S. District Judge Sparkle L. Sooknanan of the District of Columbia. Photo: Diego M. Radzinski/ALM

The SEC's case against Elon Musk will move forward in D.C. federal court, with a judge ruling Thursday there's no compelling reason to move it either to the Western District of Texas or the Southern District of New York.

U.S. District Judge Sparkle L. Sooknanan of the District of Columbia [determined](#) the factors she considered when weighing Musk's motion to transfer were either neutral or weighed slightly against a transfer.

The case, filed in January, claims Musk failed to disclose in 2022 that he had acquired more than 5% ownership in what was at the time Twitter Inc. before the deadline set by federal securities law. The SEC alleges the lack of a timely disclosure allowed Musk to underpay roughly \$150 million for additional shares purchased at a deflated price. Musk eventually took the company private in an acquisition that closed later that year and has rebranded the company as X Corp.

Sooknanan wrote it's feasible the case could have been brought in the Texas court, as both Musk and his wealth manager, Jared Birchall, were in Austin, Texas, during the period of time relevant to the case, and the SEC hadn't shown a link between the case and the D.C. forum other than the case being a securities matter. However, she concluded, Musk's argument wasn't enough to supersede courts' deference to a plaintiff's choice of forum.

Musk moved to transfer the action at the end of August, and the SEC filed its [response](#) in mid-September, including in its argument that moving the case out of D.C. would inconvenience the attorneys who are based there. Sooknanan wrote that argument didn't carry much weight in her decision, as courts have determined previously that plaintiffs counsel being physically located in D.C. shouldn't be a significant factor.

Sooknanan wrote Musk's arguments about the inconvenience of witnesses and evidence located outside D.C. also didn't move the needle in her decision.

One factor Sooknanan did find to be significant was the average number of cases assigned to each judge in the Western District of Texas compared to those on the D.C. court—791 pending cases for the former and 452 for the latter.

"Mr. Musk contends that the Western District's figure is 'artificially inflated' because 'roughly half of all the cases filed there are criminal immigration matters, which are typically quickly resolved by pleas,'" Sooknanan wrote. "The court is skeptical that judges in the Western District would consider their heavy workloads to be 'artificially inflated,' even if many of their cases are resolved quickly. The court concludes that the average cases per judgeship is an indication that the Western District is more congested than this court."

The average length of time from filing to trial in the Western District of Texas, at 32.8 months, is faster than the 52.4 month average in D.C., but Sooknanan wrote that her court remains less congested and able to move the case forward.

SEC attorneys did not immediately respond for comment, with a spokesperson for the agency stating its ability to respond to media inquiries is limited due to the ongoing federal government shutdown.

Musk is represented by Alex Spiro, Sarah Heaton Concannon and Rachel Frank of Quinn Emanuel Urquhart & Sullivan.

Musk's counsel did not respond for comment on the decision.

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Securities

Musk Loses Bid to Move SEC Suit Over Twitter Stake to Texas

Oct. 2, 2025, 9:05 AM PDT

A federal judge rejected Elon Musk's bid to transfer to a court in Texas a US Securities and Exchange Commission lawsuit alleging he was late in disclosing his 2022 stake in Twitter Inc.

"The Court takes Mr. Musk's convenience seriously, but it also notes that Mr. Musk has considerable means and spends at least forty percent of his time outside his chosen forum," US District Judge **Sparkle Sooknanan** wrote in an order Thursday in Washington. "Indeed, although Mr. Musk may have 'rarely' traveled to this District in recent months, Mr. Musk's brief itself indicates that he has spent substantial time here this year."

The SEC sued Musk in January, more than two years after he bought Twitter for \$44 billion and less than a week before President Donald Trump took office. The Wall Street regulator alleged the serial entrepreneur blew the deadline to file a special form saying he had accumulated at least a 5% ownership stake in Twitter before launching a takeover bid of the social media platform.

By waiting too long to reveal his stake, Musk was able to stockpile shares on the cheap. The failure to timely disclose cost Twitter shareholders more than \$150 million, the SEC said.

Musk's attorneys in August sought dismissal of the SEC's suit, calling it a "waste of this court's time and taxpayer resources." The SEC fired back, saying that the evidence of a violation is clear and asking the judge to rule in its favor without a trial.

Musk's attorneys also requested that the case be moved from Washington, where the SEC is headquartered, to Texas, where several of his companies are based.

"Forcing Mr. Musk to litigate in this district would merely perpetuate and compound the harm from the SEC's years-long campaign against him," Musk's attorneys wrote in a filing at the time.

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Elon Musk's \$1 trillion pay plan faces pushback from investors, state officials

 [reuters.com/business/autos-transportation/elon-musks-1-trillion-pay-plan-faces-pushback-investors-state-officials-2025-10-02](https://www.reuters.com/business/autos-transportation/elon-musks-1-trillion-pay-plan-faces-pushback-investors-state-officials-2025-10-02)

Reuters

October 2, 2025

Elon Musk attends the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS/File Photo [Purchase Licensing Rights, opens new tab](#)

Oct 2 (Reuters) - A group of Tesla ([TSLA.O](#)), [opens new tab](#) shareholders including SOC Investment Group and several state officials urged investors to vote against Elon Musk's \$1 trillion pay package at the company's November meeting, a regulatory filing showed on Thursday.

In the letter to Tesla shareholders, the coalition - which also includes state treasurers of Nevada, New Mexico and Connecticut - called on investors to oppose the re-election of directors Ira Ehrenpreis, Joe Gebbia and Kathleen Wilson-Thompson.

The group cited what it called the board's "relentless pursuit" of retaining Musk, saying it has delayed progress on key goals set at the last annual meeting, and pointed to declining operational and financial performance and a "failure to provide meaningful real-time oversight of management."

Despite reporting record quarterly deliveries on Thursday, [Tesla faces worries](#) that the expiration of the U.S. EV tax credit could turn the buying rush into a trickle.

Last month, Tesla's board [proposed a \\$1 trillion](#) compensation plan for CEO Elon Musk in what it described as the largest corporate pay package in history, setting ambitious performance targets and aiming to address his push for greater control over the company.

Among the state officials opposing the package is [New York City Comptroller, opens new tab](#) Brad Lander, a longtime critic of Tesla's board and its oversight of Elon Musk.

Although the city's pension funds are not among top shareholders of Tesla and other large companies, Lander and his staff have often been involved in reform campaigns that focus debates at annual meetings. His term as Comptroller ends Jan. 1, 2026.

In response to Thursday's letter, Tesla said in a post on X that the performance incentive plan aligns Musk's compensation with shareholder value creation "of trillions of dollars."

"If Elon Musk doesn't deliver results, he receives nothing," the company said.

California Brief

Tesla Doors Are Faulted in Suits Over Fatal Cybertruck Crash

Oct. 2, 2025, 2:38 PM PDT

Tesla Inc. was sued over claims that defects in the doors of a crashed Cybertruck made it a “death trap” by preventing three college students from escaping the fiery wreck before they died of smoke inhalation.

The allegations against the world’s most valuable automaker stem from a middle-of-the-night crash in November 2024 on a residential street in the San Francisco suburb of Piedmont. A friend of the Cybertruck’s occupants was able to pull one passenger to safety while three others remained trapped inside.

Tesla’s door handles have drawn attention after a Bloomberg News investigation uncovered a series of incidents in which people were injured or died after they were unable to open doors following a loss of power, particularly after crashes. The National Highway Traffic Safety Administration has received more than 140 consumer complaints related to doors on various Tesla models getting stuck, not opening or otherwise malfunctioning since 2018, Bloomberg found.

NHTSA, the US auto safety regulator, disclosed last month that it’s investigating whether some Tesla doors are defective, citing incidents in which exterior handles stopped working and trapped children and other occupants inside. Tesla’s design chief told Bloomberg the next day that the company is working on a redesign of its door handles intended to make the handles more intuitive for occupants in “a panic situation.”

Elon Musk, the electric-vehicle maker’s chief executive officer, has often called Teslas the safest cars on the road. But the company has been grappling with a growing pile of lawsuits that blame its technology for fatal accidents, including a handful citing post-crash entrapment and several alleging defects in its driver-assistance system Autopilot.

Tesla prevailed in two Autopilot cases that went to trial in 2023. But in its first major setback, it was hit in July for \$243 million in damages after a Miami jury found the company partially responsible for a 2019 Model S collision with a parked vehicle in the Florida Keys that killed a woman and severely injured her boyfriend. Tesla has settled several other cases confidentially before they got to trial.

'Catastrophic' Design

In separate complaints filed Thursday in California state court, the families of 20-year-old Jack Nelson and 19-year-old Krysta Tsukahara alleged that they would have survived but for Tesla's failure to ensure the Cybertruck was crashworthy — despite the company knowing for years that its door handles were problematic.

"This case arises from catastrophic design defects in the Tesla Cybertruck that turned a survivable crash into a fatal fire," according to the Nelson family's complaint.

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

The Cybertruck lacks exterior door handles — the doors open from the outside using buttons next to the bottom corners of the windows. Tesla vehicles are equipped with interior manual releases, but the locations can be hard to find, particularly for passengers in the rear seats.

In the Piedmont crash, the Cybertruck with four students home from college for Thanksgiving was speeding at more than 80 miles (129 kilometers) per hour at about 3 a.m. when it veered off the road, crashed into a tree and a retaining wall, became wedged between the two and caught fire. A toxicology report found that the deceased driver had a high level of alcohol and drugs in his system.

The complaints in Alameda County Superior Court lay out in grim detail the scene that unfolded as the Cybertruck burst into flames.

Matt Riordan, a friend and former high school classmate who was driving behind the Cybertruck, told police he turned the corner and saw it engulfed in a blaze.

He repeatedly pressed the buttons on the front and rear passenger doors in an attempt to save his friends, but neither opened. He grabbed a tree branch to bash open the front window and managed to drag the front passenger to safety. He tried unsuccessfully to extricate Tsukahara, who was screaming from the back seat for help.

Wreckage Inspection

The Tsukahara family initially filed a wrongful death suit against the estate of the driver in April. The family's lawyer, Roger Dreyer, said the decision to add Tesla as a defendant Thursday followed an inspection of the Cybertruck wreckage.

The suit also alleges that "Tesla's 'armor glass' windows and stainless-steel doors, marketed as nearly impenetrable, make forcing entry extraordinarily difficult."

"The evidence is very clear that Tesla manufactured a car that was dangerous to occupants if an event like this happened," Dreyer said in an interview. Krysta Tsukahara "was trapped in that electrical fire, felt the heat, then felt the flames and suffered what has to be the most excruciating way to be killed. The level of fear and panic is hard to comprehend."

Both suits accuse Tesla of negligence and seek punitive damages against the manufacturer on top of compensation for the families' losses.

The Nelson family's suit also names the driver's estate as a defendant, though the family said in a statement that this is just a legal requirement and the Nelsons "do not seek to punish any families." Representatives of the estate of the driver, Soren Dixon, didn't immediately respond to a request for comment.

"This is a case where two things can be true at the same time," said Matthew Davis, a lawyer for the Nelsons. "There can be people responsible for the crash and there is a company responsible for the fact that they couldn't get out."

A trial is set for February 2027 in the Tsukahara case.

The cases are Nelson v. Tesla Inc. and Tsukahara v. Dixon, 25CV120058, both in California Superior Court, Alameda County.

--With assistance from **Dana Hull**.

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Tesla begins selling Cybertrucks in Qatar

 [reuters.com/business/autos-transportation/tesla-begins-selling-cybertrucks-qatar-company-says-2025-10-03](https://www.reuters.com/business/autos-transportation/tesla-begins-selling-cybertrucks-qatar-company-says-2025-10-03)

Reuters

October 3, 2025

By Reuters

October 3, 2025 2:19 AM PDT Updated 8 hours ago

A Tesla Cybertruck drives outside of a Tesla showroom in New York City, U.S., January 2, 2025. REUTERS/Adam Gray [Purchase Licensing Rights](#)  , [opens new tab](#)

Oct 3 (Reuters) - Tesla ([TSLA.O](#))  , [opens new tab](#) has begun selling its Cybertruck in Qatar, the U.S. electric vehicle maker said in a post on X on Friday, following the launch of its operations in Saudi Arabia earlier this year.

The move underscores Tesla's drive to widen its international reach as it faces slowing demand and intensifying competition in its core U.S. and Chinese markets.

Tesla entered Saudi Arabia in April, unveiling the Cybertruck and a refreshed Model Y at an event in Riyadh. The company said it would support regional sales with online ordering, pop-up showrooms, Supercharger stations and service centers.

The Saudi debut marked a symbolic reconciliation after a rift between Elon Musk and the kingdom's sovereign wealth fund, which backed away from his 2018 "funding secured" plan to take Tesla private.

Tesla first entered the Middle East in 2017 with a launch in the United Arab Emirates. Qatar now joins the UAE and Saudi Arabia as part of its first wave of Cybertruck sales outside North America.

The company does not break out sales by regions for the Cybertruck model in its quarterly deliveries reports. However, a U.S. recall filing in March showed 46,096 Cybertrucks had been built between November 2023 and early this year.

Tesla also faces strong regional competition from Chinese automakers BYD ([002594.SZ](#))  , [opens new tab](#) and Zeekr ([ZK.N](#))  , [opens new tab](#), as well as U.S. rival Lucid ([LCID.O](#))  , [opens new tab](#), which is backed by Saudi Arabia's Public Investment Fund.

The Elon Musk-led company posted [record deliveries](#) in the third quarter driven by a rush of U.S. buyers trying to grab a \$7,500 tax credit before it expired on September 30. However,

analysts expect a sharp slump in the fourth quarter as the incentive for EV purchases vanishes.

Reporting by Rhea Rose Abraham in Bengaluru; Editing by Mrigank Dhaniwala

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- [Manufacturing](#)
- [Sustainable & EV Supply Chain](#)

Litigation

Manage Newsletters

First Brands Group Lenders Provide Lifeline to 'A Black Box' (1)

Oct. 3, 2025, 6:21AM PDT

Summary by Bloomberg AI AI Generated



- Lenders provided a \$1.1 billion emergency lifeline to prevent First Brands from completely unraveling, but had to forgo the level of diligence they'd normally demand for such a big loan.
- The cash injection is part of a \$4.4 billion financing that began with an alarming Sept. 4 phone call to lenders and concluded with the judge signing off on emergency funding to save the business.
- Without the emergency financing, a First Brands lawyer said the company would have been forced to liquidate, jeopardizing an operation that employs roughly 26,000 workers and supplies car parts to major retailers.

First Brands Group lenders **burned** by the auto parts supplier's use of off-balance-sheet financing quickly assembled a \$1.1 billion emergency lifeline to prevent the business from completely unraveling. But to pull it off, according to their lawyer, the firms had to forgo the level of diligence they'd normally demand for such a big loan.

The **rush** to put First Brands into Chapter 11 and save the business from collapsing transpired in less than a month, the twists and turns of which were relayed publicly for the first time Wednesday by lawyers in a Texas bankruptcy court. The cash injection is part of a \$4.4 billion **financing** that began with an alarming Sept. 4 phone call to lenders and concluded with the judge signing off on emergency funding to save the business.

Scott Greenberg, a lawyer for the lender group providing the financing, told Judge Christopher Lopez that although his team has taken steps to protect lenders, his clients are funding \$1.1 billion into "effectively a black box."

"It's a true rescue facility negotiated under extreme pressure with our clients bearing out-sized risk," Greenberg said. "The time constraints were brutal, the uncertainty is enormous."

A First Brands lawyer said without the emergency financing the company would have been forced to liquidate, jeopardizing an operation that employs roughly 26,000 workers and supplies windshield wipers, brakes and other car parts to major retailers like AutoZone Inc. and O'Reilly Automotive, Inc.



Instead, Lopez authorized the auto-parts supplier to immediately draw \$500 million and the company will seek permission in the coming weeks to use the rest of the funds. Lenders providing the financing include Beach Point Capital Management LP , Diameter Capital Partners LP , Redwood Capital Management LLC and UBS Asset Management (Americas) LLC, according to court papers.

Read More: [UBS Funds Face \\$500 Million Exposure in First Brands Bankruptcy](#)

The rescue loan also required support from other firms that offered First Brands a form of financing called factoring, which is used to turn promised revenue into immediate cash, and may have competing claims to company inventory. The company's potential commingling of assets is being investigated by an independent board committee.

In court, Greenberg described First Brands' descent into bankruptcy as "a controlled crash landing."

Funds managed by Evolution Credit Partners, which had inventory finance agreements with First Brands-related special purpose vehicles, struck a deal that protects their liens from being pushed down the Chapter 11 repayment line. A lawyer for Jefferies Financial Group's Leucadia Asset Management, which purchased First Brands receivables, said his team negotiated similar protections for his client.

Until he got an unexpected Sept. 4 call from company advisers, Greenberg said his clients were under the impression that an earlier process led by Jefferies to refinance First Brands debt at par was on track. Instead, First Brands was in urgent need of at least \$600 million. That amount ballooned over the past 10 days to \$1.1 billion as advisers continued to assess how much cash would be needed to keep the business afloat, Greenberg said.

Meanwhile, the value of company debt plummeted following press reports on potential problems with the company's balance sheet, Greenberg said. First Brands has disclosed in court its use of roughly \$2.3 billion in off-balance sheet financing is now being investigated by a newly formed independent board committee.

On behalf of the lenders, Greenberg said his colleagues at the law firm Gibson, Dunn & Crutcher LLP and financial adviser Evercore Group LLC performed as much diligence as they could and have been working closely with First Brands' advisers. But to date, Greenberg said their teams have only completed an estimated 10% to 20% of the due diligence that would typically be done for a financing of this scale and complexity.

The financing will compensate lenders with customary fees and interest and stands to roll up billions of dollars in existing debt, pushing those obligations to the top of the repayment line.

While explaining why he'd authorize First Brands to tap the funding, Lopez said "it is clear the debtor needs financing."

The case is First Brands Group LLC, number 25-90399 , in the US Bankruptcy Court for the Southern District of Texas.

(Adds loan chart after fifth paragraph.)

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<https://www.wsj.com/finance/regulation/sec-probes-scientology-connections-at-startup-stock-exchange-cbb4312d>

EXCLUSIVE REGULATION

SEC Probes Scientology Connections at Startup Stock Exchange

Investigators have questioned former Dream Exchange employees about allegations that it misappropriated funds

By [Kevin T. Dugan](#) [Follow](#) and [Alexander Osipovich](#) [Follow](#)

Oct. 3, 2025 7:00 am ET



Dream Exchange founder and CEO Joe Ceca, left, with Dwain Kyles, a board member at the startup, at the company's offices last year. PHOTO: JERMAINE JACKSON JR. FOR WSJ

Investigators at the Securities and Exchange Commission have recently probed Chicago-based startup Dream Exchange and its ties to the Church of Scientology.

Former employees have spoken to investigators from the SEC's Chicago office in recent weeks, people familiar with the matter said. The investigators asked about a whistleblower's allegations that the startup stock exchange had misappropriated investor funds, the people said. They also asked about other connections with Scientology-affiliated organizations, the people said.

The interviews followed reporting by The Wall Street Journal last month that Dream Exchange and its leadership team have [extensive ties](#) to the Church of Scientology

and entities connected to the religious institution.

The SEC's civil investigation into Dream Exchange was in its early stages and might not necessarily lead to any allegations of wrongdoing.

Dream Exchange's lawyer, Dan K. Webb, said that "claims made against Dream Exchange and its founder are false and meritless."

Financial records show that funds moved from Dream Exchange LLC into an account at its parent company, owned by founder and Chief Executive Joe Cecala, which made donations to Scientology-affiliated organizations, the Journal reported.

Some investors have requested their money back after the Journal article, according to records seen by the Journal and people familiar with the matter.

Dream Exchange has denied that it misappropriated investor funds. Webb has said that any donations were Cecala's own personal matter, and the exchange had no knowledge of them.

A representative for the Church of Scientology has said the church doesn't engage in any business activities, and accused the Journal of trying to name and target its believers.

Dream Exchange is a relatively new entrant into the world of capital markets and has applied for an SEC license. It says its mission is to boost Black and minority business owners by helping them list on a stock exchange and get funding from investors.

The SEC has a November deadline to approve or reject the exchange's application, which would allow it to launch a trading platform.

The whistleblower complaint, sent to the SEC in February, alleged that Dream Exchange had misappropriated funds and allowed some of its employees, who were Scientologists, to volunteer for the church on company time.

Webb had previously said that Dream Exchange had no knowledge of any whistleblower complaint and hadn't been contacted by the SEC about such a report.

The whistleblower complaint also accused Cecala, who is white, of making racist comments.

In one meeting last year, Cecala called himself "the whitest n—," using a slur, and claimed he understood Black people better than his own Black employees, according to a copy of a different, internal complaint viewed by the Journal.

Webb said an internal investigation into the incident concluded there was no racial animus. He said the Journal's description of the incident, based on the internal complaint, mischaracterized a confidential personnel matter.

Write to Kevin T. Dugan at kevin.dugan@wsj.com and Alexander Osipovich at alexo@wsj.com

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Aramark, Vestis Can't Nix Investor Suit Over Spinoff's Woes

By **Emilie Ruscoe**

Law360 (October 2, 2025, 8:10 PM EDT) -- Uniform supplier Vestis Corp. and food and facilities services giant Aramark can't shed proposed shareholder class action claims that they misled investors about Vestis' operations and customer relationships prior to its 2023 spinoff from Aramark.

In a Tuesday filing in Georgia federal court, U.S. District Judge Steven D. Grimberg largely denied a pair of dismissal bids brought by the companies, finding, among other things, that certain statements made by the defendants as ahead of the spinoff were clearly material to investors and couldn't be considered inactionable puffery.

"It is self-evident that the alleged statements were made at too pivotal of a moment (during the spinoff), about topics too essential to Vestis's business (customer service and retention), to be ruled immaterial to all reasonable investors as a matter of law," Judge Grimberg said Tuesday.

Despite keeping the suit largely intact, Judge Grimberg dismissed certain fraud claims against Aramark's CEO John Zillmer, finding that "the allegations, on balance, do not raise a compelling reason to impute Vestis's knowledge to Zillmer, and thus fail to raise the requisite strong inference of the latter's scienter."

The suit launched in May 2024, and in the latest version of the claims, the consortium of public pension funds leading the action alleged that amid the spinoff, the companies and certain Vestis and Aramark executives covered up the company's known struggles to retain customers.

The investors cited internal company records and conversations with former employees of the company in support of their claims that "Vestis lost an average of \$9 million in recurring revenue every week in the five weeks before the spinoff," and that the former Aramark unit's customer bleed included "major national accounts such as Tyson Chicken and Whole Foods."

When Vestis significantly missed its earnings in its first fiscal quarter as an independent company, the complaint states, market records show trading prices for its shares fell 49% from over \$18 to \$9.41, hurting investors.

Vestis and Aramark sought dismissal in February, with Vestis arguing, among other things, that where the complaint isn't reliant on "on omissions or non-actionable accurate statements of historic facts, plaintiffs piece together and misconstrue innocuous public statements in an attempt to convince the court that the defendants intentionally deceived the investing public."

Alongside the companies, the suit names Vestis' former CEO Kimberly Scott and former Chief Financial Officer Rick Dillon.

On Thursday, a spokesperson for Aramark said the company can't comment on pending litigation, and representatives for the other parties did not immediately respond to requests for comment.

Lead plaintiffs the City of Atlanta Firefighters Pension Fund, the City of Atlanta General Employees Pension Fund, the City of Atlanta Police Officers Pension Fund, the Employees Retirement System of the City of Baltimore and the Norfolk County Retirement System are represented by Lester R. Hooker, Dianne M. Pitre, Jonathan Lamet, Scott Koren, Steven B. Singer and Kyla Grant of Saxena White PA and W. Thomas Lacy Jr of Lindsey & Lacy PC.

Aramark and Zillmer are represented by Christopher S. Turner of Latham & Watkins LLP.

Vestis, Scott and Dillon are represented by Joseph De Simone, Michelle Annunziata and Max Hirsch of Mayer Brown LLP.

The case is Plumbers, Pipefitters and Apprentices Local No. 112 Pension Fund v. Vestis Corp. et al., case number 1:24-cv-02175, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Sydney Price and Chart Riggall. Editing by Jay Jackson Jr.

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Bain Inside Trade Claims Advance In Del. Cerevel Sale Suit

By **Jeff Montgomery**

Law360 (October 2, 2025, 8:39 PM EDT) -- Delaware's Court of Chancery on Thursday kept alive a pension funds suit alleging that private equity firm Bain Capital Investors LLC and others traded on inside information in the run-up to a secondary sale ahead of biopharmaceutical venture Cerevel Therapeutics Holdings Inc.'s \$8.7 billion acquisition by AbbVie.

Vice Chancellor J. Travis rejected three motions to dismiss the action, including those filed by Bain and by Bain partner Ron Renaud, who was named Cerevel's CEO in June 2023. Months after his appointment, Bain and another fund acquired \$145 million in a Cerevel secondary stock offering during company talks with AbbVie about a take-private merger.

According to the court's docket, the vice chancellor issued oral rulings rejecting all three dismissal motions, which were filed by Bain and Bain-affiliated BC Perception Holdings; Perceptive Advisors; and Perceptive Life Sciences Master Fund Ltd. All were opposed by the stockholder, Service Employees International Union.

Also named in the suit and joining the motions were Perceptive managing director Doug Giordano, Bain partner and Cerevel director Christopher Gordon, and Bain partner and Cerevel CEO and president Renaud.

Alleged in the suit are insider trading, sale process flaw, aiding and abetting, unjust enrichment and disclosure failures.

In a brief opposing Bain's dismissal motion, attorneys for SEIU said the complaint was "based on four dispositive facts that cannot be disputed" at the current stage of the case.

"Defendants were insiders" who "collectively owned more than 40% of Cerevel, had constituency directors on the Cerevel board, and collectively appointed a majority of the board," SEIU argued.

The insiders also had nonpublic information about the merger, SEIU alleges. Cerevel offered nearly 20 million shares of its stock at \$22.81 ahead of the deal, and the company's sale went forward at \$45 per share, paying a 97% premium, some \$100 million, months after the process began.

According to the complaint, Cerevel began an effort to sell the business almost immediately after Renaud was named Cerevel's CEO on June 12, 2023.

Attorneys for Bain and Perceptive argued that the 20 million-share offering diluted the two investing companies' stake by \$75 million ahead of the sale.

"The scenario that could mathematically support the complaint's allegation that Bain received an additional \$121.6 million from the offering is unreasonable on its face," attorneys for Bain argued, in part because it assumed that AbbVie would have paid the same \$45 per share without the presale offering.

Also, Bain asserted, the suit "implies that the offering (which netted \$499 million in proceeds) caused AbbVie to pay over \$1 billion more for Cerevel than it otherwise would have."

Cerevel is a biopharmaceutical company focused on developing drug candidates to treat disorders of

the central nervous system, including schizophrenia, Alzheimer's disease psychosis, epilepsy, panic disorder and Parkinson's disease.

The parties did not immediately respond to requests for comment.

SEIU Pension Plans Master Trust is represented by Christine M. Mackintosh, Vivek Upadhyia and William G. Passannante II of Grant & Eisenhofer PA, Andrew E. Blumberg, Benjamin M. Potts, Daniel E. Meyer, Jeroen van Kwawegen, Christopher J. Orrico and James Janison of Bernstein Litowitz Berger & Grossmann LLP, and Robert E. Bishop and Frank Partnoy of Bishop Partnoy LLP.

Bain Capital Investors LLC, BC Perception Holdings LP, Christopher Gordon and Adam Koppel are represented by A. Thompson Bayliss and Christopher Fitzpatrick Cannataro of Abrams & Bayliss LLP and Peter L. Welsh, Daniel V. McCaughey, Elena Weissman Davis and Martin J. Crisp of Ropes & Gray LLP.

Perceptive Advisors LLC, Perceptive Life Sciences Master Fund Ltd. and Doug Giordano are represented by J. Matthew Belger and Daniel M. Rusk IV of Potter Anderson & Corroon LLP.

The case is SEIU Pension Plans Master Trust v. Bain Capital Investors LLC et al., case number 2024-1274, in the Court of Chancery of the State of Delaware.

--Editing by Linda Voorhis.



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Bored Ape NFTs Aren't Securities, Judge Holds

By **Aislinn Keely**

Law360 (October 2, 2025, 8:12 PM EDT) -- A California federal judge tossed a proposed securities class action against the firm behind the popular Bored Ape non-fungible token collection and its celebrity promoters, saying the token sales didn't amount to securities transactions.

U.S. District Judge Fernando M. Olguin gave the group of Bored Ape buyers another chance to amend their complaint, but opined in a **Tuesday order** that they've so far failed to show how the NFT sales met the characteristics of an investment contract under the U.S. Supreme Court's **Howey** test. The buyers **accused** Bored Ape creator Yuga Labs Inc. in 2022 of duping them into buying the alleged unregistered securities at artificially high prices with the help of a slew of promoter defendants, including NFT investment service MoonPay and celebrities like Justin Bieber.

But Judge Olguin tossed the allegations entirely on Tuesday, finding the buyers failed to plead federal claims for selling unregistered securities and securities fraud, California state law claims and Florida state law claims. The opinion explained that the Bored Ape NFT transactions did not appear to be an investment of money in a Yuga Labs enterprise that gave the buyers an expectation of profits, failing to satisfy those prongs of the Howey test for an investment contract.

While the buyers argued they purchased their Bored Ape NFTs as investments, Judge Olguin was persuaded that Yuga Labs ultimately marketed the assets for "consumptive uses" like conferring status or membership to access exclusive events and benefits. None of the alleged promotional statements could be read to tout the disparately styled cartoon apes as investments, even those that promised future benefits, he wrote.

"But the fact that defendants promised that NFTs would confer future, as opposed to immediate, consumptive benefits does not alone transmute those benefits from consumptive to investment-like in nature," said the order.

The fortunes of investors also weren't tied together with each other or Yuga Labs to create a common enterprise under Howey, according to the decision.

Other cases that have yielded rulings that NFTs could potentially run afoul of securities laws, like investor suits over **Dapper Labs' basketball-themed tokens** or **DraftKings' NFT marketplace**, concerned instances where the NFT issuer also had a hand in maintaining the marketplace where the tokens were sold, Judge Olguin noted. In contrast, Yuga Labs' Bored Apes were sold on the public Ethereum blockchain and through secondary markets separate from Yuga Labs.

For that reason, the spurned buyers failed to allege a similar "interconnected scheme," where the success of the token would grow Yuga Labs' business, thus tying the firm's success to the fortune of buyers.

"In sum, plaintiffs have not alleged the type of 'interplay' between the alleged securities and proprietary 'ecosystem' that underpinned the logic of Dapper Labs and DraftKings, and therefore have not adequately alleged horizontal commonality," said Judge Olguin.

Yuga Labs also didn't make statements that clearly created an expectation of profits for Bored Ape buyers, the opinion found. It was not "objectively reasonable" for plaintiffs to expect profits based on the firm's statements, Judge Olguin said, though he noted that certain statements about NFT prices and trade volumes were a "somewhat closer call."

"Statements about a product's inherent or intrinsic value are not necessarily statements about profit," he said. "That said, statements about NFT prices and trade volumes are a somewhat closer call. But even then, these statements by themselves fail to establish an expectation of profit."

Though the NFTs broadly failed to meet the characteristics of the Howey test, Judge Olguin did note that the buyers were right to assert that any profits would have come from Yuga Labs' efforts — satisfying a final prong of the Howey test. The opinion noted that "it appears that plaintiffs have adequately alleged that defendants, not plaintiffs or other investors, would be responsible for developing and implementing the 'roadmap' upon which the products' future value would depend."

Yuga Labs and its executives moved to toss the suit in October 2024 and a number of celebrity defendants joined the motion, including Bieber, Madonna, late night television host Jimmy Fallon, Reddit founder Alexis Ohanian, basketball star Stephen Curry II and heiress Paris Hilton. A parallel motion to dismiss from auction house Sotheby's was rendered moot by the decision.

The buyers may amend their complaint for a third time by Oct. 10, according to the order.

Counsel for Yuga Labs declined to comment on Thursday.

Counsel for the buyers did not immediately respond to a request for comment on Thursday.

The buyers are represented by John T. Jasnoch of Scott + Scott Attorneys at Law LLP, Aaron M. Zigler and Nidya Gutierrez of Zigler Law Group LLC, and James Q. Taylor-Copeland of Taylor-Copeland Law.

Yuga Labs is represented by Peter B. Morrison, Alexander C. Drylewski, Shaud G. Tavakoli and Eryn Hughes of Skadden Arps Slate Meagher & Flom LLP.

MoonPay USA LLC is represented by Matt Solomon, Sam Levander and Rahul Mukhi of Cleary Gottlieb Steen & Hamilton LLP.

The case is Adonis Real et al. v. Yuga Labs Inc. et al., case number 2:22-cv-08909, in the U.S. District Court for the Central District of California.

—Additional reporting by Katryna Perera and Emilie Ruscoe. Editing by Michael Watanabe.



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Del. Chancellor Advances Pruned \$75B Activision Merger Suit

By **Jeff Montgomery**

Law360 (October 2, 2025, 9:53 PM EDT) -- Delaware's chancellor kept in play late Thursday much of an Activision Blizzard stockholder suit challenging the company's \$75.4 billion merger with Microsoft, rejecting multiple dismissal motions, approving others and writing that a "slimmed-down" version of the complaint can go forward — adding, "Game on."

Dismissed, however, were two counts naming Microsoft Corp. for aiding and abetting and civil conspiracy, ending the tech giant's part in the saga.

The 83-page bridge-crossing came nearly three years after Sjunde AP-Fonden, a Swedish national pension fund, filed its complaint against Microsoft, Activision Blizzard Inc. and its former CEO Robert Kotick, along with several other company directors.

The suit accuses leaders at Activision — which makes popular games like Call of Duty and World of Warcraft — of plotting with Microsoft to shortchange Activision shareholders in the deal in the wake of a sexual misconduct scandal at the company.

On Thursday, Chancellor Kathaleen St. J. McCormick **wrote** that the suit "alleges that Kotick rushed Activision into a transaction with Microsoft to keep his job, secure his change-of-control payments, and insulate himself from liability," and "tainted" the sale process for those reasons.

The two sides restructured the deal after regulatory review, with the merger closing on Oct. 13, 2023. The core of the stockholder suit, meanwhile, survived and entered a new phase on Thursday.

"All of these allegations" that remain "are reasonably conceivable," the chancellor wrote, as are claims against each Activision director named in the suit. Each knew of the sexual misconduct scandal, the decision said, its effect on the company and that the deal timing was good for Microsoft and bad for Activision and the company board's own \$113 to \$128 per share valuation.

Also surviving are claims against directors who allowed Kotick to run the sale process, the decision said, and who approved the deal 12 days after learning about the proposal.

"Given the board's awareness of Kotick's conflicts and the company's higher standalone value, these allegations make it reasonable to infer that they too approved a hasty sale of Activision at \$95 per share to serve Kotick's interests rather than the best interests of the stockholders," the chancellor wrote.

Counsel for the parties did not immediately respond to requests for comment on the decision which dismissed parts of four counts and two counts against Microsoft, and converted two other claims into a motion for summary judgment.

According to the decision, the suit's "Revlon" claim "adequately alleges that Kotick manipulated the process to favor Microsoft," and failed to maximize value for the company, an obligation spelled out in the Delaware courts' bedrock 1986 ruling in [Revlon Inc. v. MacAndrews & Forbes Holdings Inc.](#) The complaint detailed a reasonably conceivable argument, the chancellor wrote, that Kotick "undercut Activision's negotiating leverage by establishing a low negotiating range."

The decision also found it reasonably conceivable that Kotick acted to "avoid termination, secure his

change-of-control benefits, and insulate himself from liability. Put differently, plaintiff has adequately alleged that Kotick was conflicted and acted in bad faith with respect to the merger."

Board members, meanwhile, "failed to manage known conflicts."

Microsoft itself, however, got logged out of the case, based on the chancellor's finding that the complaint failed to support a claim of knowingly aiding or abetting other party breaches against the software giant and likewise failed in pleading civil conspiracy against the company.

Also failing, according to the opinion, were alleged violations of Delaware's General Corporation Law, based on the absence of "reasonably conceivable" evidence of bad faith, along with what the decision described as a "novel theory that merely signing the merger agreement constituted an act of conversion."

Left behind also, the chancellor wrote, are claims that stockholders' share appraisal rights were violated, and inferences that directors named in the suit knowingly violated the DGCL through the merger, "even if it is reasonably conceivable that they breached their fiduciary duties in connection with the merger in other ways."

Plaintiff Sjunde AP-Fonden is represented by Michael Hanrahan, Stacey A. Greenspan, Corinne Elise Amato, Kevin H. Davenport, Christine N. Chappelle and Kirsten M. Valania of Prickett Jones & Elliott PA and Lee D. Rudy, Eric L. Zagar, J. Daniel Albert and Lauren Lummus of Kessler Topaz Meltzer & Check LLP.

The individual defendants are represented by Edward B. Micheletti, Lauren N. Rosenello and Michelle L. Davis of Skadden Arps Slate Meagher & Flom LLP.

Microsoft Corp. and Activision Blizzard Inc. are represented by Elena C. Norman, Daniel M. Kirshenbaum and Y. Carson Zhou of Young Conaway Stargatt & Taylor LLP and Stephen P. Blake, Laura Lin and Eric McCaffree of Simpson Thacher & Bartlett LLP.

The case is Sjunde AP-Fonden v. Activision Blizzard Inc. et al., case number 2022-1001, in the Delaware Court of Chancery.

--Editing by Linda Voorhis.



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Judge Nixes Pegasystems Shareholder Suits Over \$2B Verdict

By **Julie Manganis**

Law360 (October 2, 2025, 2:42 PM EDT) -- A Massachusetts state court has dismissed a pair of investor lawsuits against Pegasystems officials that had sought to hold them responsible for a \$2 billion verdict in a trade secrets case, finding no evidence of bad faith on the part of the software company's board.

In a **decision** entered Wednesday, Suffolk County Superior Court Justice Christopher Barry-Smith pointed to an internal investigation that concluded that officers and directors of the Massachusetts-based company reasonably believed the "competitive intelligence" work of its employees was legal. Therefore, the court found, they were not required to disclose what they considered to be a meritless trade secrets lawsuit brought by Appian Corp. in Virginia in 2020 to shareholders.

Two groups of investors last year brought claims against Pegasystems founder and CEO Alan Trefler and other officers and directors of the company, after an internal review committee of directors rejected their demands for compensation for the lost value of their investments as a result of the litigation and verdict. The \$2 billion award has since been **overturned by an appellate court** in Virginia. Appian's appeal of that ruling is currently pending at the Virginia Supreme Court.

The 2020 trade secrets lawsuit stemmed from conduct investors described as corporate espionage by a consultant at the behest of a Pegasystems marketing executive, who later went to work for Appian, and Trefler and other employees, who the shareholders accused of using fictitious names to sign up for free trials of Appian products.

Pegasystems did not immediately disclose the existence of the litigation to shareholders. It was only after Appian amended the complaint and bumped up its demand to \$3 billion that Pegasystems board members included it in a U.S. Securities and Exchange Commission 10-K filing, shortly before trial began.

Following the **\$2 billion verdict**, the board agreed to bring in outside counsel from Fried Frank to look into whether Trefler and other officers owed a fiduciary duty to the stockholders to disclose the information sooner or step in to halt the corporate spying they alleged.

The investigation found the officers and directors, while "perhaps imprudent," had not engaged in any "actionable misconduct" with regard to the original conduct by Trefler, the consultant and other employees on the Appian site, or in failing to immediately announce the litigation.

The plaintiffs had asserted that the directors who appointed the firm were not independent, despite the recusal of Trefler from the process, because some were on the board at the time of the alleged misconduct and Trefler still had the authority to remove them.

Justice Barry-Smith, who presided over a hearing on Pegasystems' motion to dismiss the shareholder complaint last month, told the parties he could not see any evidence of bad faith by the directors, nor that they had or were obligated to oversee "competitive intelligence" programs conducted by employees or consultants.

The judge also determined that the plaintiffs had not rebutted a reasonable conclusion that the managers didn't consider what they were doing to be theft of trade secrets; that the parts of the site they accessed were available publicly via free trials; and that they reasonably believed when the

Appian suit was filed that it was just a meritless attempt at retaliation over other litigation.

"Thus, a reasonable view of the evidence is that there was no 'red flag' of illegal corporate espionage that these directors failed to discover, consciously turned a blind eye to, or failed to disclose to shareholders in bad faith," Justice Barry-Smith wrote in the decision.

The court also found the plaintiffs had relied too heavily on the original jury verdict in the Virginia case, which "has little persuasive or rebuttal value following the appeals court decision vacating it."

Even if the Virginia case is eventually retried, the judge said, it's likely that Pegasystems would be entitled to introduce evidence it was not allowed to use during the prior trial and to a corrected jury instruction, and therefore, there's reason to believe that any new verdict would be far lower.

A spokesperson for Pegasystems said the company is pleased with the ruling. "We appreciate the court's careful consideration of the facts and arguments," the spokesperson said.

An attorney representing the plaintiffs was unable to immediately comment on the ruling Thursday. Counsel for the defendants did not immediately respond to messages seeking comment.

John Dwyer and Ray Gerber are represented by Joel Fleming and Amanda Crawford of Equity Litigation Group LLP and Jeroen van Kwawegen, Edward G. Timlin, Christopher Orrico, Shiva Mohan and Daniel E. Meyer of Bernstein Litowitz Berger & Grossmann LLP.

Jayne Birch and Robert Garfield are represented by Daniel H. Silverman and Richard Speirs of Cohen Milstein Sellers & Toll PLLC, Peretz Bronstein of Bronstein Gewirtz & Grossman LLC, Rusty E. Glenn and Brett D. Stecker of Shuman Glenn & Stecker, and Michele Carino of Greenwich Legal Associates LLC.

The defendants are represented by Daniel W. Halston, Erika Marie Schutzman and Robert Kingsley Smith of WilmerHale, John F. Sylvia of Mintz Levin Cohn Ferris Glovsky and Popeo PC, Scott B. Luftglass and Ilan Graff of Fried Frank Harris Shriver & Jacobson LLP, and Stephen Riden of Beck Reed Riden LLP.

The cases are Dwyer et al. v. Trefler et al., case number 2484CV01734, and Birch et al. v. Trefler, case number 2484CV03076, in the Suffolk County Superior Court of Massachusetts.

--Additional reporting by Ivan Moreno and Britain Eakin. Editing by Covey Son.

Update: This story has been updated to include a statement from Pegasystems.