

Litigation

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BDO Denied Chance to Bring Auditor Liability Case to High Court

Oct. 6, 2025, 6:51AM PDT

Summary by Bloomberg AI

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- The US Supreme Court denied a petition from BDO USA P.C. to determine the circumstances under which accounting firms can be held liable for shoddy audits.
- BDO sought to overturn a ruling from the US Court of Appeals for the Second Circuit that found auditor missteps could sway investor decisions, meaning the firm should face shareholder fraud claims.
- The case involves a lawsuit filed by investors in 2017 against AmTrust, BDO, and several underwriters for allegedly misleading them about the company's financial position due to accounting errors.

The US Supreme Court on Monday denied a petition from BDO USA P.C. to determine the circumstances under which accounting firms can be held liable for shoddy audits.

BDO sought to overturn a ruling from the US Court of Appeals for the Second Circuit that found that auditor missteps could sway investor decisions, meaning the firm should face shareholder fraud claims over its botched audits for insurer AmTrust Financial Services Inc.

The case was among a batch of petitions the high court rejected as it begins a new term, according to orders the court released Monday.

At issue is whether auditor mistakes are material, or significant, information that could alter investors' decisions and the value shareholders place on the standardized audit report.

The firm's petition to the high court argued that "innocent" mistakes or misstatements by auditors aren't "material."

Investors, represented by Robbins Geller Rudman & Dowd LLP, sued AmTrust, BDO, and several underwriters in 2017 for allegedly misleading them about the company's financial position. The suit came after the insurer restated five years of results to correct accounting for warrant revenue on extended service plans and other accounting errors.

BDO has acknowledged that it skipped certain steps during the audit and initially falsely reported that its work complied with US audit standards. The firm, which later completed those missing procedures, said the missteps didn't alter the audit's ultimate conclusions or the information available to the market about the specialty insurer's performance.

Audit reports follow a pass-fail model informing investors whether they should rely on a company's financial accounting. They also detail which standards the auditor relied on and areas of the audit that were especially complex and required significant judgment.

A Second Circuit panel found last October that BDO had issued a "false certification" that its work for AmTrust met US audit standards. The judges found that BDO acted recklessly and covered up its misstatements that its work complied with standards set by the Public Company Accounting Oversight Board.

The full appeals court in January declined to review the panel's decision. BDO, represented by McDermott Will & Emery LLP, filed its petition for high court review in May.

The case is BDO USA LLP vs. New England Carpenters Guaranteed Annuity and Pension Funds , U.S., No. 24-1151, cert. denied 10/6/25 .

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Class Action

Manage Newsletters

Abengoa Investors Get Accounting, Liquidity Lawsuit Reinstated

Oct. 6, 2025, 10:21 AM PDT

Summary by Bloomberg AI

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- The Second Circuit said Abengoa SA investors successfully stated claims that the company misrepresented its finances in its US initial public offering.
- The investors' claims for securities fraud after the IPO are revived and will go back to the district court for further analysis, with the court citing allegations from confidential witness reports and Spanish criminal proceedings.
- The decision clarifies Second Circuit law on the statute of limitations for IPO registration-related claims under the Securities Act and the use of facts and allegations from other proceedings.

Abengoa SA investors successfully stated claims that the former Spain-based global engineering and construction company misrepresented its finances in its US initial public offering, the Second Circuit said Monday.

The investors' claims for securities fraud after the IPO are also revived for now, and will go back to the district court for further analysis, Judge Richard J. Sullivan said for the US Court of Appeals for the Second Circuit. Materials from confidential witness reports and Spanish criminal proceedings "are replete with allegations that high-level Abengoa executives sought to intentionally misrepresent the company's financial position to obscure the company's losses and to maximize their own bonuses."

The decision clarifies Second Circuit law on the statute of limitations for IPO registration-related claims under the Securities Act, the circumstances in which new claims can be added, and the use of facts and allegations from other proceedings.

The proposed class action alleged Abengoa falsified its accounting by deferring costs into the future, assigning them to newer projects, and accelerating the recognition of revenue. The lead investor seeks to represent a class of holders of American depository shares, which allow companies that trade on foreign exchanges to be listed in the US.

The company misrepresented its financial health in the 2013 ADS offering and in subsequent statements, the investors said. As news of difficulties emerged, the stock sustained two significant price declines in 2014 and 2015. The company and its affiliates filed for creditor and bankruptcy protection in Spain and the US in late 2015 and 2016 as a result of the liquidity problems Abengoa had concealed, the investors said.

Judge Edgardo Ramos of the US District Court for the Southern District of New York dismissed successive versions of the complaint, finally rejecting the suit on timeliness grounds and for failure to state a claim.

The claims under Section 11 of the Securities Act—which include underwriters as defendants—were timely, the Second Circuit said. “We also hold that the district court failed to credit Plaintiffs’ allegations from confidential witnesses and from Spanish criminal proceedings, which gave rise to the plausible inference that Defendants violated section 11,” Sullivan said, joined by Chief Judge Debra Ann Livingston and Judge Steven J. Menashi.

The court’s rejection of Securities Exchange Act claims, “based on its refusal to consider the allegations from the confidential witnesses and Spanish proceedings,” must get further consideration, Sullivan said.

But the complaint falls short in alleging securities fraud against against Abengoa’s former CEO, he said.

Robbins Geller Rudman & Dowd LLP and Levi & Korsinsky LLP represented the investors. Clark Smith Villazor LLP and DLA Piper LLP represented Abengoa. Weil, Gotshal & Manges LLP represented ex-CEO Manuel Sanchez Ortega. Paul, Weiss, Rifkind, Wharton & Garrison LLP represented the underwriters.

The case is *Sherman v. Abengoa, S.A.*, 2d Cir., No. 22-2438, 10/6/25 .

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Litigation

Manage Newsletters

FirstEnergy Can Shield Internal Probes From Suing Investors (1)

Oct. 3, 2025, 12:29 PM PDT; Updated: Oct. 3, 2025, 1:05 PM PDT

Summary by Bloomberg AI

AI Generated



- The Sixth Circuit ruled that FirstEnergy Corp. doesn't have to hand over two internal investigations to suing shareholders, citing attorney-client privilege and the work-product doctrine.
- The appeals court said the Columbus, Ohio-based trial judge erred in ordering the utility to turn over the reports, which were created to "secure legal advice" and in anticipation of lawsuits.
- The ruling is a major victory for FirstEnergy and large law firms, which argued that the release of the investigative documents would create "substantial uncertainty" for corporations.

FirstEnergy Corp. doesn't have to hand over to suing shareholders two internal investigations that stemmed from a federal corruption probe that took down the former Ohio House speaker, the Sixth Circuit said Friday.

Attorney-client privilege and the work-product doctrine "clearly covered" the reports by Jones Day and Squire Patton Boggs, the three-judge panel for the US Court of Appeals for the Sixth Circuit ruled. The Columbus, Ohio-based trial judge who said the utility must turn it over erred, the court said, as both firms were hired after the arrest of Speaker Larry Householder (R) to "secure legal advice" and in anticipation of the lawsuits eventually filed against it.

"The claimants point out how rarely this court grants mandamus petitions in privilege or work-product disputes," the appeals court said. "That is true, but it has little application to this significant discovery dispute, in which the district court made substantial departures from bedrock privilege and work-product principles, some of them barely defended before us."

The ruling comes after the same panel in August stayed the trial judge's order that mandated the investigative documents' release. In all, it's a major victory for the Akron, Ohio-based FirstEnergy and large law firms, which filed an amicus brief opposing their release.

The appeals court noted this in the ruling, saying, "beyond FirstEnergy, the district court's order promises 'substantial uncertainty' for corporations more broadly, as over forty amici have argued in this case."

Householder was arrested in 2020 on a federal racketeering charge that stemmed from conduct FirstEnergy undertook to affect actions in Ohio that ultimately helped its bottom line.

He is serving a 20-year prison sentence, while FirstEnergy admitted to federal violations, agreed to pay hundreds of millions of dollars, and cooperate with authorities.

Eight people have been criminally charged in the probe in state and federal courts, including two former utility executives.

Chief Judge Jeffrey S. Sutton, Senior Judge Alice M. Batchelder, and Judge John B. Nalbandian sat on the panel.

The plaintiffs are represented by Robbins Geller Rudman & Dowd LLP and Murray Murphy Moul + Basil LLP. FirstEnergy is represented by Sullivan & Cromwell LLP.

The case is In re: FirstEnergy Corp. , 6th Cir., No. 24-3654, 10/3/25 .

(Updates throughout.)

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Securities

Amylyx Will Battle Investor Suit Over Revoked ALS Treatment (1)

Oct. 3, 2025, 10:15 AM PDT; Updated: Oct. 3, 2025, 5:53 PM PDT

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.

“We intend to vigorously defend ourselves against this putative class action lawsuit while remaining focused on making continued progress across our pipeline and developing novel therapies for communities with high unmet needs,” an Amylyx spokesperson said in an email.

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.

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

(Updates with Amylyx’s comment in the 11th paragraph.)

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Securities

McDermott Stuck With Investor Class, Subclasses in Merger Suit

Oct. 3, 2025, 2:48 PM PDT

McDermott International Inc. will have to face a class, with subclasses, of investors in a suit over the company's 2018 acquisition of Chicago Bridge & Iron Co., the Fifth Circuit ruled Friday.

There are conflicts between investors who purchased McDermott shares on the market and former CB&I shareholders who received their McDermott shares in the merger, the US Court of Appeals for the Fifth Circuit said.

The ruling affirms a decision of the US District Court for the Southern District of Texas that certified subclasses but found a "fundamental conflict" between the sets of investors, requiring a reopened lead plaintiff selection process.

The suit alleged that undisclosed CB&I project costs dragged the combined engineering and construction company into Chapter 15 bankruptcy, which protects a company's US assets while restructuring arrangements are worked out. McDermott received a UK court's approval of a restructuring plan in February 2024.

Both sides appealed aspects of the district court's ruling. McDermott's attorney said at oral argument that its investors can't share a class representative with CBI's, because the latter group benefited from the merger and the McDermott stock purchasers allegedly didn't.

But a lawyer for the pension fund serving as lead plaintiff said no conflict existed between the subsets of investors.

Pomerantz LLP represented the investors. Baker Botts LLP and Sidley Austin LLP represented McDermott.

The case is Nova Scotia Hlth. Emps' Pension Plan v. McDermott Int'l, Inc. , 5th Cir., No. 24-20326, 10/3/25 .

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Securities

SentinelOne Defeats Investors' Lawsuit Over Accounting Mishap

Oct. 3, 2025, 11:13 AM PDT

SentinelOne Inc. shed investor accusations that the cybersecurity company meant to overstate a key revenue metric.

The investor leading the proposed class action failed again to adequately allege facts that create an inference SentinelOne or top executives intended to defraud investors, Judge Haywood S. Gilliam Jr. said. The US District Court for the Northern District of California judge ordered the case closed Thursday, saying he "declines the invitation to transform every accounting correction into an inference of" intent or deliberate recklessness for securities fraud claims.

Investor Amir Gupta's allegations that SentinelOne changed the way it accounted for the metric and later revised its figures, signaling intent, wasn't sufficient, Gilliam said

Gupta didn't offer allegations to support an inference executives knew or should've known about a double counting issue affecting revenue figures, and stock sales by CEO Tomer Weingarten and former chief financial officer David Bernhardt weren't sufficiently pleaded as suspicious, the judge said

Investors sued after SentinelOne revised downward annualized recurring revenue for the 2023 fiscal year, acknowledging the accounting change and correction, and lowered its projected revenue growth for 2024

Scott & Scott Attorneys at Law LLP, which declined to comment, and The Schall Law Firm were lead counsel for the investors. Fenwick & West LLP represented SentinelOne and the current and former executives. Neither of the latter two law firms nor SentinelOne immediately responded to emails seeking comment.

The case is In re SentinelOne, Inc. Sec. Litig. , N.D. Cal., No. 4:23-cv-02786, 10/2/25 .

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Securities

UiPath Gets Investor Suit Dismissed After Exchange of Documents

Oct. 3, 2025, 11:08 AM PDT

A UiPath Inc. investor can no longer proceed on claims the automation software company misrepresented its ability to compete with Microsoft Corp., a federal court ruled.

Judge Denise Cote's change of course Thursday on proposed class allegations she had previously green-lighted in the US District Court for the Southern District of New York came after the parties exchanged documents in discovery.

The latest version of Paul Severt's complaint didn't adequately allege the company, whose "robot" products automate information technology tasks, made misleading statements or acted with fraudulent intent, Cote said.

Such proceedings—a new complaint and motion for dismissal—after discovery are unusual in securities suits, which often are dismissed or settled before that phase.

Severt initially alleged that UiPath and its top executives understated the competitive threat Microsoft posed to the company and made several categories of other misrepresentations. Cote threw out most of the allegations in 2024 but allowed the Microsoft rivalry claims to proceed.

At the end of discovery, Severt filed a new complaint. It incorporated company documents and reasserted some dismissed claims, as well as filling out the allegations about UiPath's competition with Microsoft.

The previously dismissed claims were "not supported by any new arguments," and the new documents undermined the previously allowed allegations, Cote said.

A central theme of the complaint and the documents it incorporated was "that UiPath was significantly focused on relatively complex unattended Robots, which catered to professional users, while Microsoft focused on relatively simple attended Robots," Cote said.

There was "little indication" in the complaint that Microsoft was offering unattended Robots in the time period at issue, "and certainly no indication that any unattended Robots that Microsoft offered at this time had comparable functionality to UiPath's unattended Robots," she said.

Some documents in the new complaint undercut vague confidential witness statements, she said. And the new complaint didn't demonstrate intent, she said. The documents showed that the executives "fairly characterized the relevant data, and that they characterized it in the same way as the UiPath employees who were most knowledgeable about competition with Microsoft," she said.

Severt had requested that the court certify a class of investors, but Cote denied that request in September as an interim measure until she decided the motion to dismiss.

Scott & Scott Attorneys at Law LLP was lead counsel for Severt and the proposed class. Davis Polk & Wardwell LLP represented UiPath.

The case is *In re UiPath, Inc. Sec. Litig.*, 2025 BL 354459, S.D.N.Y., No. 23-cv-7908, 10/2/25 Litig., 2025 BL 354459, S.D.N.Y., No. 23-cv-7908, 10/2/25.

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Securities

Lovesac Investors Get Final Court Approval for Accounting Reform

Oct. 3, 2025, 12:41 PM PDT

The Lovesac Co. directors and officers earned a federal judge's final blessing for a settlement with shareholders to implement internal corporate reforms related to accounting allegations.

Judge Victor A. Bolden approved the shareholder derivative settlement Thursday in the US District Court for the District of Connecticut, dismissing the lawsuit with finality and without an admission of wrongdoing by the current and former executives and board members. The lawsuit alleged top brass were responsible for accounting improprieties and purported misrepresentations, particularly about the furniture brand's shipping costs—an issue which also drew Securities and Exchange Commission scrutiny.

The dozen reforms would be in effect for at least four years, according to the investors' filing, and includes adding a Disclosure Committee to oversee disclosure and risk management plus written reporting requirements and enhanced responsibilities for the chief financial officer

The shareholders' counsel will get \$335,000 in attorneys' fees and expenses reimbursed, and plaintiffs will get \$2,500 each from that award

A related investor class action settled for \$615,000, with a different judge in the same district granting final approval last year

The Brown Law Firm PC and Rigrodsky Law PA are lead counsel for the shareholders in the derivative action. Proskauer Rose LLP represents the leadership and Lovesac, a nominal defendant. None of these law firms immediately responded to emails seeking comment.

The case is *In re The Lovesac Co. Derivative Litig.*, D. Conn., No. 3:24-cv-01260, 10/2/25 .

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Litigation

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This Week in Chancery Court: Blue Bell Outbreak Investor Claims

Oct. 6, 2025, 2:00 AM PDT

Summary by Bloomberg AI

AI Generated



- Lingering investor claims from a listeria outbreak that killed three Blue Bell Creameries customers get another look from the Delaware Chancery Court.
- A proposed \$4.75 million settlement to resolve litigation alleging the architects of a blank-check merger between Velodyne Lidar Inc. and a special purpose acquisition company duped investors is set for a settlement hearing.
- The Delaware Chancery Court will hear arguments and deliver rulings on several cases, including a lawsuit alleging hotel executives misused funds and a case involving aerospace manufacturer Triumph Group Inc.

Lingering investor claims stemming from a listeria outbreak that killed three Blue Bell Creameries customers a decade ago get another look from the Delaware Chancery Court this week.

Here's a look at more from the court's calendar:

Tuesday: Berger v. Graf Acquisition LLC, Del. Ch., No. 2023-0873, settlement hearing 10/7/25.

At issue: Whether Vice Chancellor Lori W. Will approves a proposed \$4.75 million settlement to resolve litigation alleging the architects of a blank-check merger between Velodyne Lidar Inc. and a special purpose acquisition company duped investors into a doomed deal that produced a windfall for insiders. Shareholders alleged the SPAC's directors rushed into the deal and inflated the value of Velodyne, a company that manufactures automotive lidar devices. Attorneys for the investors leading the litigation seek an \$850,000 fee award.

Court action: The settlement hearing will be held in Wilmington, Del.

Velodyne's Graf-Backed SPAC Deal Draws Challenge From Investor

Wednesday: Marchand v. Barnhill, Del. Ch., No. 2017-0586, oral argument, 10/8/25.

At issue: After the outbreak, a shareholder derivative suit against directors of Blue Bell's top-level holding company led to a landmark decision from the Delaware Supreme Court that widened the path forward for investors pursuing lack-of-oversight claims. When the case returned to Chancery Court, the Blue Bell Creameries USA Inc. board set up a special litigation committee that took the unusual step of handing control of the lawsuit back to the investor who initially filed it. The board members have now moved to end the dispute, arguing that the lawsuit seeks to re-litigate claims covered by a parallel settlement.

Court action: Vice Chancellor Nathan A. Cook will hear argument on the motion for judgment on the pleadings in Wilmington, Del.

Blue Bell Listeria Case May Get New Life After Years-Long Pause

Wednesday: Kituwah LLC v. Schroeder, Del. Ch., No. 2024-1270, bench ruling 10/8/25.

At issue: Will heard oral arguments in July on a motion to dismiss a lawsuit alleging hotel executives steered money intended for developing Sports Illustrated-themed resorts with an arm of the Eastern Band of Cherokee Indians to their other businesses instead. She'll now deliver a bench ruling in the matter. Marketing giant Authentic Brands Group Inc., which owns Sports Illustrated, isn't involved in the lawsuit. The tribal organization, Kituwah LLC, said it had invested \$10.5 million in the venture, Sports Hospitality Ventures LLC.

Court action: Will's bench ruling will be delivered via teleconference.

Sports Illustrated Resorts Backer Sues Co-Investor Over Deal (2)

Thursday: Qarbon Aerospace (Found.) LLC v. Triumph Grp., Inc., Del. Ch., No. 2024-0481, oral arguments 10/9/25.

At issue: Aerospace manufacturer Triumph Group Inc. seeks to exit a lawsuit alleging it orchestrated the sale of a parts-making unit in order to hide a money-losing contract involving Boeing Co. and a US Air Force jet, the T-7A Red Hawk. A Qarbon Aerospace Inc. affiliate "brings a failed breach-of-contract claim in the guise of a fraud claim because the limited relief under the parties' agreement long ago expired," Triumph said. Qarbon says it's adequately argued that Triumph made false representations about the contract's profitability, failed to disclose required financial information, and continued to hide losses even after the sale.

Court action: Oral arguments on the motion to dismiss will be held in Wilmington, Del.

Triumph Group Hit With Fraud Lawsuit Over Qarbon Aerospace Deal

—This report was prepared with assistance from Mike Leonard and Bloomberg Automation.

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Del. Chancery M&A Suit Settlements Increasing in Number and Value

K [dandodiary.com/2025/10/articles/merger-litigation/del-chancery-ma-suit-settlements-increasing-in-number-and-value](https://www.dandodiary.com/2025/10/articles/merger-litigation/del-chancery-ma-suit-settlements-increasing-in-number-and-value/)

Kevin LaCroix

October 5, 2025

By [Kevin LaCroix](#) on October 5, 2025

Posted in [Merger Litigation](#)



The annual number and aggregate value of Delaware Court of Chancery M&A lawsuit settlements has grown significantly in recent years, according to a new report from Cornerstone Research. According to the report, which is entitled “M&A Litigation Settlements in the Delaware Court of Chancery: 2012-2024 Review & Analysis,” the median settlement amount has also generally increased in more recent years as well. The September 30, 2025, report can be found [here](#). Cornerstone Research’s September 30, 2025, press release about the report can be found [here](#).

The Cornerstone Research report analyses settlements in M&A-related litigation in the Delaware Court of Chancery between 2012 and 2024. The report’s analysis is based on 118 settlements during the study period with a known monetary settlement amount. Disclosure-only settlements with no monetary component were not considered. The report’s analysis excludes any settlement amount in related litigation in other courts, such as, for example, related federal securities class action lawsuits.

According to the report, the number and aggregate value of M&A related litigation settlements in the Delaware Chancery Court general increased during the study period, and in particular have been rising since 2019. By way of illustration, in 2019 there were five M&A-related Chancery Court settlements totaling \$110.1 million, compared to 21 such settlements

in 2024 totaling \$618.3 million. In each year during the period 2020-2024, there were more settlements than there were in any year during the period 2012 through 2019. The year with the highest total number of settlements in the study period was 2024 (21).

The three years with the highest total settlement value were the three most recent years in the study period: 2022 (with \$586.6 million in total settlements); 2023 (\$655.1 million); and 2024 (\$618.3 million). During the period 2022-2024, the annual average total settlement amount was \$620 million per year.

The median settlement amount also generally increased during the study period, although not invariably so. The highest annual median settlement amount in the study period was in 2023 (the year that also had the highest total settlement amount), when the median settlement was \$34.4 million. The second highest median settlement amount was actually 2012, the first year in the study period, when the median settlement amount was \$29.0 million. The median settlement amount during the period 2019-2023 ranged from \$20.4 million (in 2020) to \$34.4 million (in 2023). The median settlement amount in 2024 was \$16.5 million.

The majority of settlements in the study's settlement database were below \$50 million. During the period 2022 to 2024, the most frequent settlement amount was in the \$20 million to \$49.9 million range, whereas in earlier periods the most common settlement amount was under \$10 million. Of the ten settlements within the study period that equaled or exceeded \$100 million, four have occurred since 2022.

The trend toward larger settlements may reflect the relatively larger size of the transactions involved; during the period 2022-2024, the median transaction value was \$1.2 billion, whereas in earlier periods the median transaction value was \$0.6 billion. As the report itself expressly notes, reported transaction value is correlated with the settlement amount, with larger transactions implying larger settlement amounts.

In 78% of settlements, the plaintiffs were stockholders in the target company in the M&A transaction, while 74% of settlements included allegations involving actions by a controlling stockholder. Together, these findings suggest that the "typical" settlement is one involving shareholders of the target company alleging unfair consideration paid for their shares due to alleged actions by a controller. It is also worth noting that 60% of settlements between 2012 and 2024 involved allegations of misrepresentations in the transaction proxy disclosure.

Among the settlements in which the plaintiffs' fee amount was disclosed, the average plaintiff counsel fee was \$8.3 million, and the median plaintiff counsel fee was \$4.2 million. The highest plaintiff counsel fee amount within the settlement database was \$72.5 million.

For 2024, the average plaintiff counsel fee was \$5.8 million and the median was \$3.4 million. Almost all of the plaintiff counsel fee awards are within 15% to 34.9% of the settlement amount. Larger plaintiff counsel fees were awarded in larger settlements. Litigation duration was also associated with larger fees awards, with increases in litigation duration associated with an increase in the plaintiff counsel fee percentage.

The report also tested the hypothesis sometimes advanced that lower plaintiff fee percentages are associated with larger settlement amounts. The report found that there is no statistically significant relationship between plaintiff counsel fee awards as a percentage of the settlement amount and the settlement amount.

The report is quite detailed and worth reading at length and in full. In addition to the topics discussed above, there are additional sections of the report discussing types of allegations and transaction characteristics in relation to settlement values.

Judge Adds \$10M Punitive Award: J&J Was ‘Indifferent,’ ‘Willfully Ignorant’ About Talc’s Health Risks

On Wednesday, a Connecticut judge added \$10 million in punitive damages against Johnson & Johnson after a jury's \$15 million verdict last year to a man who alleged its baby powder caused his mesothelioma.

October 03, 2025 at 01:27 PM By  **Amanda Bronstad**

What You Need to Know

- On Thursday, a South Carolina jury sided with Johnson & Johnson in a separate mesothelioma case.
- Dean Omar’s Benjamin Braly handled both cases in Connecticut and South Carolina.
- Johnson & Johnson said it would appeal the Connecticut verdict, which was based on 'paid for science fomented and financed by plaintiffs firms.'



Benjamin Braly of Dean Omar Branham Shirley. Courtesy photo

A Connecticut judge hit Johnson & Johnson with \$10 million in punitive damages this week in a talcum powder case, while a South Carolina jury handed out a defense verdict in another mesothelioma trial.

In an Oct. 1 decision, Connecticut Superior Court Judge Charles Reed found that Johnson & Johnson failed to warn its customers, the public and regulatory agencies about the health risks of its baby powder despite knowing about test results that found asbestos fibers in talcum powder.

“Instead of erring on the side of caution—by giving a simple warning about a health risk at least potentially associated with its product—J&J sought to promote the perception of JBP [Johnson’s baby powder]’s purity and capitalize on the mother-child bond using arguably deceptive marketing and advertising,” Reed found.

At the same time, Reed concluded, Johnson & Johnson had been aware of scientific studies linking asbestos fibers to talcum powder for decades. Johnson & Johnson also used less-sensitive testing methods, which did not find asbestos in its talc products and withheld test results from regulatory agencies that found otherwise.

“These actions,” Reed ruled, “demonstrate that the J&J defendants remained—at a minimum—indifferent to, or willfully ignorant of, the potential adverse health effects of JBP.”

The punitive damages add to [a \\$15 million jury verdict](#) in the Bridgeport Judicial District Court last year in the case, brought by Evan Plotkin, who was diagnosed with mesothelioma in 2021 at age 64. Jurors who awarded the compensatory damages also concluded that Johnson & Johnson had engaged in punitive conduct.

“This opinion is a result of an objective judge looking at the evidence and determining that the evidence against Johnson & Johnson is reprehensible,” Plotkin’s lawyer, Ben Braly of Dallas-based Dean Omar Branham Shirley said about the punitive damages decision. “The Plotkin family is grateful for the court’s careful attention and thoughtful writing. We sincerely hope that Johnson & Johnson will take this opinion to heart and consider the damage they caused to people like Evan Plotkin across the country. ”

Braly handled the trial alongside Dean Omar’s Ethan Horn and Brian Kenney of Early, Lucarelli, Sweeney & Meisenkothen in New Haven, Connecticut. The plaintiffs had asked for \$30 million in punitive damages, the highest amount allowed under the Connecticut Product Liability Act, while Johnson & Johnson’s lawyers argued against an award or, if the judge disagreed, an amount no more than \$5 million, which is in line with other mesothelioma talc cases in Bridgeport Judicial District.

But Reed wrote, “J&J’s efforts to conceal the hazards of its product—or at least to downplay the possibility of harm—were a major theme of the plaintiff’s presentation at trial.”

As to the amount, he concluded, “In the present case, the evidence supports a finding that the J&J defendants engaged in conduct that warrants deterrence, and the recent publicly available financial information about J&J eliminates any concern that any potential punitive damage award, within this court’s jurisdiction, will pose any financial threat to J&J.”

Johnson & Johnson’s Erik Haas, worldwide vice president of litigation, said in a statement that the company planned to appeal what he called “erroneous rulings by the trial judge that prevented us from sharing critical facts with the jury that demonstrate the plaintiff’s exceedingly rare form of mesothelioma was not caused by talcum powder.”

“Those facts show that the verdict is irreconcilable with the decades of independent scientific evaluations confirming talc is safe, does not contain asbestos and does not cause cancer,” he continued. “As we have steadfastly maintained, this litigation is the result of paid for science fomented and financed by plaintiffs firms. This junk science has resulted in widespread misinformation, fostered unfounded fear, and distracted attention and resources from the critical work needed to better understand genetics and the other causes of spontaneous cancer, and the development of interventions to improve survival rates.”

Bill Oxley of Orrick, Herrington & Sutcliffe in Los Angeles represented Johnson & Johnson in the trial.

South Carolina Verdict: 'Litigation-Funded Junk Science'

On Thursday, a South Carolina jury sided with Johnson & Johnson in another mesothelioma trial handled by Dean Omar. Plaintiff Gregory Johnson, diagnosed with mesothelioma in 2023, claimed he used Johnson & Johnson’s talc products for decades, starting in the 1960s, on various parts of his body.



Kim Bueno of Kirkland & Ellis. Courtesy photo

Kirkland & Ellis partners Kim Bueno and Chris Cowan, both in Austin, Texas, represented Johnson & Johnson.

Haas, in a separate statement about that case, which was before Richland County Court of Common Pleas Judge Jean Toal, said, “Once again, another jury has rejected the plaintiff’s lawyers’ baseless claims predicated on junk science.”

“It is a grave injustice that plaintiffs’ lawyers continue to mislead people into thinking talc is dangerous and the cause of their disease when there is no credible evidence that it contains asbestos or causes cancer,” he continued. “Instead, these plaintiffs have fallen victim to the business model of the plaintiffs’ lawyers, who roll the dice in search of jackpot verdicts, fueled

by litigation-funded junk science, without regard to the fact that most claimants recover nothing in the tort system.”

Braly teamed up with Jonathan Holder, also at Dean Omar, for that trial.

Braly told [Law.com](#), "Part of our system of justice requires deference to the decisions of juries, even when disappointing. We respect the decision made by this jury and look forward to telling other juries in Pennsylvania, Connecticut and Maryland how Johnson & Johnson needlessly exposed mothers, children and families to asbestos through their most trusted brand."

Dean Omar has won several other mesothelioma verdicts against Johnson & Johnson across the country, including a [\\$63.4 million](#) verdict last year in South Carolina's Richland County Court of Common Pleas.

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Q&A | Litigators

Attorneys for Authors in Landmark \$1.5B Settlement Against Anthropic Named Litigators of the Week

The settlement works out to about \$3,000 per work that Anthropic downloaded from certain pirated libraries for copyright holders represented by co-lead counsel Justin Nelson of Susman Godfrey and Rachel Geman of Lieff Cabraser Heimann & Bernstein, with Susman's Rohit Nath leading the plaintiffs' summary judgment arguments.

October 06, 2025 at 09:45 AM By  **Ross Todd**



L-R: Rachel Geman of Lieff Cabraser Heimann & Bernstein and Justin Nelson and Rohit Nath of Susman Godfrey. Courtesy photos

*This article was first published by **Litigation Daily**, the exclusive source for sharp commentary on mega court battles, winning strategies and the issues that obsess elite litigators. [Law.com](#) subscribers can sign up for The AmLaw Litigation Daily newsletter [here](#).*

Our Litigators of the Week are **Rachel Geman** of **Lieff Cabraser Heimann & Bernstein** and **Justin Nelson** and **Rohit Nath** of **Susman Godfrey**. Geman and Nelson are co-lead counsel for copyright holders who claim Anthropic committed large-scale infringement by downloading books obtained

from pirated datasets and using them to train the company's AI chatbot Claude. Nath took the lead for plaintiffs at the summary judgment phase.

U.S. District Senior Judge William Alsup agreed with Anthropic that the company's use of copyrighted work to train its AI tool was "transformative" and qualified as fair use. However, the judge held that the company's downloading of millions of book files from two online libraries—Library Genesis, known as LibGen, and the Pirate Library Mirror, or PiLiMi—could constitute "straightforward piracy" at "a massive scale" and [granted class certification](#).

Alsup [expressed initial skepticism](#) to the proposed \$1.5 billion settlement the plaintiffs reached with Anthropic announced early last month. But after they addressed questions about how authors would be identified and notified about the settlement, the judge gave the deal [preliminary approval](#) on Sept. 25.

Lit Daily: Who were your clients and what was at stake here?

Justin Nelson: We represented three brave writers—Andrea Bartz, Kirk Wallace Johnson, and Charles Graeber—who stepped up to sue Anthropic on behalf of hundreds of thousands of other copyright holders. In this case, and other cases, the fate of an industry and the writing profession is at stake. It's critical that we live in a world where humans have an incentive to create.

This landmark settlement far surpasses any other known copyright recovery. It is the first of its kind in the AI era. It will provide meaningful compensation for each class work and sets a precedent requiring AI companies to pay copyright owners. This settlement sends a powerful message to AI companies and creators alike that taking copyrighted works from these pirate websites is wrong.

How did this case come to you and your firms?

Rachel Geman: Our firms had been leading another group of authors and copyright holders—including John Grisham, Jodi Picoult, David Baldacci, Jonathan Franzen, the Authors Guild and George R.R. Martin—in litigation against OpenAI and Microsoft. We received an outpouring of interest from other writers who wanted to help and who wanted to hold other LLM companies accountable.

Nelson: In the middle of 2024, a story broke that uncovered Anthropic's use of a pirated dataset called Books3. That's what led to the case. There were a number of authors who had reached out to us from the OpenAI litigation, where I've been appointed as lead counsel.

Who all was on the team and how have you divided the work?

Nelson: Lief and Susman, as co-lead class counsel, worked as one team every step of the way, dividing up briefing, depositions, discovery and all the other work in the case.

Rohit Nath: In addition to Justin and me, the Susman Godfrey team includes **Alejandra Salinas, Jordan Connors, Michael Adamson, Craig Smyser and Samir Doshi.**

Geman: In addition to myself, the Lief Cabraser team includes **Daniel Hutchinson, Jallé Dafa, Jacob Miller, Danna Elmasry, Amelia Haselkorn and Betsy Sugar.** Elizabeth Cabraser gave invaluable advice as well.

Judge Alsup sided with Anthropic on the transformative nature of Claude, but with you and your clients on the acquisition of certain works. Although piracy-related claims have come up in multiple AI copyright cases, they haven't always stuck. How were you able to make the case that the method of acquisition mattered to Anthropic's fair use argument?

Nath: The key was to frame their piracy as a separate violation of the Copyright Act—that Anthropic committed infringement the moment it copied bootleg books from pirate websites. We had spent some time thinking through this theory, as you can see in [this article we published last year](#). At oral argument, we focused on how Anthropic's decision to get the books it wanted without paying for them from pirate sites was no different from teenagers in the early 2000s using peer-to-peer networks to get movies and music for free. That ended up being the difference in this case, and that win is what propelled us to this settlement.

Statutory damages for willful infringement could have gone as high as \$150,000 per work. Why was this settlement—about \$3K per work—the right deal for plaintiffs?

Nelson: Absolutely. To start, this is the largest copyright recovery ever, and that alone sends a message. Authors, publishers and any other copyright holders will get meaningful relief, and they will get it without carrying the risk of an appeal. The range of potential outcomes was zero if we were to lose all the way to \$150,000 per work if we were going to win and, even then, only if Anthropic could pay on all of that. The statutory damages minimum is \$200 a work if there is innocent infringement and \$750 a work if there is not innocent infringement. According to a study that was just released in 2023, the most common verdict for copyright statutory damages was \$750 a work. We have done this and settled in a way that provides for four times the value of the statutory minimum, even assuming no innocent infringement, to \$3,000 a work.

Judge Alsup had [lots of questions for you](#) when the settlement was first proposed—many directed at how you were identifying and reaching class members. How were you able to address his concerns and get preliminary approval to this settlement?

Geman: We came up with an extraordinarily detailed plan that had as north stars replicating industry contracts and providing fairness and transparency. We worked with our incredible class representatives, industry stakeholders and co-counsel. Each work gets the same amount in good part because they were treated the same by Anthropic. And class members can, in most cases, choose a default percentage, or provide information if they think another split makes sense.

We very much appreciated Judge Alsup's setting forth 34 on-the-nose questions ahead of time so he could make sure we had thought everything through. And he has instructed us to bird dog the implementation, and bird dog we will. It is our honor to do so for this class.

A \$1.5 billion settlement sounds amazing on its face, but with the amount of money being invested into AI companies like Anthropic, you hear the term "rounding error" being thrown around with a settlement of that size. Has this settlement spurred any changes in the AI companies? Will it?

Nelson: This settlement is a turning point for copyright holders. It's the first major victory in any of these cases, and it reflects that these companies face real, significant risk if they decide to ignore copyright law and ask for forgiveness later. The reaction from the copyright community has confirmed this. The settlement has been met with enormous enthusiasm and support from organizations like the Authors Guild, Association of American Publishers, Copyright Alliance and News/Media Alliance.

One of your named plaintiffs [wrote in the New York Times last week](#) that this settlement is "an opening gambit in a critical battle that will be waged for years to come." Do you see it that way? What other matters are you and your colleagues handling against AI companies?

Geman: Absolutely, this is just the beginning. We and Susman Godfrey—with other co-counsel—are continuing to litigate cases against OpenAI, Microsoft, Nvidia and Databricks. My firm, with co-counsel, is also pursuing claims against Meta, with upcoming litigation about the issue that when books are torrented, they can be copied and reproduced to others as well. This is one of the ways that certain AI companies have reinvigorated book piracy.

AI is also a fast-moving and heterogeneous sector, with apparently most start-up money in AI, so things will evolve. What won't change is our commitment to rightsholders.

What can other copyright holders take from what you were able to accomplish here?

Nelson: Piracy can have massive consequences. If someone is exploiting your work—even large, well-resourced technology companies—there are ways you can take action to right the wrong. This settlement is, in many ways, a proof of concept for other pending cases and likely many other cases to come.

What will you remember most about this matter?

Nelson: Our incredible clients. They have dedicated their lives to writing books, and in this case, have dedicated an enormous amount of time and effort in making sure that this settlement is fair to everyone.

Geman: This might sound cliché, but the role of books in our thoughts as well as our language—two different things, thoughts and language, that are at risk for conflation in people’s minds given how AI is often marketed and treated.

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Claims Fluoride Mouthwash Packaging Improperly Targets Children Can Move Forward, Judge Rules

Claims about the mouthwash's packaging purposefully appealing to children are part of a trend of consumer class actions for kids' oral hygiene products.

October 06, 2025 at 09:48 AM By  **Marianna Wharry**



Parents who claim they were duped by cartoon-laden bottles of a fluoride mouthwash cleared their first legal challenge Thursday when an Illinois federal judge allowed their deceptive labeling claims to continue against two oral health care companies.

U.S. District Judge Lindsay C. Jenkins for the Northern District of Illinois denied Perrigo Co. and Ranir's attempt to escape a consumer fraud suit for their kids' fluoride mouthwash, sold as the Firefly Anticavity Fluoride Rinse. Health experts typically recommend fluoride rinses for children six and over, but the parents claim the Firefly mouthwash uses popular cartoon characters, kid-friendly flavors and toy-like packaging to advertise and market the product toward young children.

The plaintiffs alleged the U.S. Food and Drug Administration's warning label recommending parents consult a dentist before letting children six and younger use the mouthwash was not "prominently displayed" and was only visible on the back of the product. The companies claimed no reasonable consumer would be misled by Firefly's packaging and argued that the parents' state-law claims add additional labeling requirements that go beyond the scope of what the Food, Drug, and Cosmetic Act (FDCA) mandates.

Jenkins agreed to let the plaintiffs' claims continue and said the mouthwash's packaging could lead consumers to believe the product was safe for children six and younger despite the warnings printed on the back of its packaging.

"While courts have granted motions to dismiss deceptive business practice claims based on 'unreasonable or fanciful interpretations of labels or other advertising,' the allegations here stand in contrast," Jenkins wrote. "Indeed, the FDA itself has indicated that the use of imagery that appeals to children, such as cartoons, on a product that cannot be used by children is misleading."

The parents claimed Firefly's packaging with popular cartoon characters, like Paw Patrol and Buzz Lightyear, deceives customers into thinking the product is appropriate for young children. Although the back side packaging of the mouthwash does comply with FDA-required warnings, the information is in a hard-to-read font and not entirely noticeable to consumers, the suit said.

Claims about the mouthwash's packaging purposefully appealing to children are part of a trend of consumer class actions for kids' oral hygiene products. Candy flavoring, cartoon imagery and concerns about children consuming fluoride toothpastes are among the common concerns parents in these cases cited. In one example, manufacturing giant [Colgate-Palmolive](#) faced [a cluster of federal class actions](#) filed in February. One suit claimed the strawberry-flavored Tom's of Maine Kid's Natural Fluoride-Free Toothpaste contains unsafe levels of lead and arsenic, and the other alleged that certain toothpaste products were made with bacteria-contaminated water, as revealed in a November report by the FDA.

The defendants argued the mouthwash's packaging would not deceive a reasonable consumer and claimed the mandated FDA warnings negate any claims of misrepresenting the product to consumers. They also claimed FDCA preempts any additional labels or warnings about young children using the product, but Jenkins wasn't convinced by either argument, the opinion said.

Instead, the court cited *Bell v. Publix Super Markets Inc.*, a 2020 decision from the U.S. Court of Appeals of the Seventh Circuit, where the federal appellate panel considered a consumer protection suit determining if "100% grated Parmesan cheese" is misleading to consumers since the cheese contained additives. The Seventh Circuit later sided with the plaintiffs and held that customers "do not instinctively parse every front label or read every back label before placing groceries in their carts," the opinion said.

The defendants claimed *Bell* only applied to low-cost groceries and cannot include over-the-counter drug products like mouthwash. Jenkins rejected this and said the companies were expecting too much of consumers. The court also noted that the *Bell* ruling contradicts the defendants' preemption claims, and Jenkins noted the federal appellate court recognized that the legislation's preemption provision does not apply when consumers want the packaging to comply with the law, the opinion said.

"A reasonable consumer purchasing the 'low-priced, everyday item' of mouthwash—particularly mouthwash presented as a toy (and not as a serious drug)—is not likely to examine the back label to ensure that the toy-shaped, candy-flavored mouthwash depicting cartoon characters from shows popular for preschool children is indeed safe for preschool children," Jenkins said.

Elizabeth Brehm and Michael Connett, of Siri & Glimstad in New York, and Lisa R. Considine, of Nagel Rice in New Jersey, are representing the plaintiffs. Counsel did not return Law.com's request

for comment.

Alex W. Karasik, Christian Palacios, Courtney Baird and Frederick R. Ball of Duane Morris are representing the defendants. Lead attorney Karasik did not return Law.com's request for comment.

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Court Allows Majority of Claims Over 'Rushed' Microsoft-Activision Merger to Proceed

The plaintiff, Swedish pension plan Sjunde AP-fonden, alleges the Microsoft-Activision deal was rushed to avoid fallout from a sexual harassment investigation and failed to meet basic requirements laid out in the Delaware General Corporation Law.

October 03, 2025 at 03:48 PM By  **Ellen Bardash**



Microsoft and Activision Blizzard signs. Credit: Adobe Stock

This article was first published by Delaware Business Court Insider.

The bulk of a shareholder lawsuit alleging Activision Blizzard rushed into a deal with Microsoft can proceed, Chancellor Kathaleen St. J. McCormick [decided](#) Thursday.

The court applied the enhanced scrutiny standard of review and found the plaintiff, Swedish pension plan Sjunde AP-fonden, had shown to the extent needed to survive a motion to dismiss that Activision CEO Bobby Kotick and board members may have breached their fiduciary duties by prioritizing avoiding fallout from a sexual harassment investigation.

"Litigation on the merits of a trimmed-down version of the plaintiff's complaint can now launch," McCormick wrote. "Game on."

Microsoft acquired Activision in the wake of allegations of sexual misconduct at the video game company, with negotiations beginning in 2021 and the \$68.7 billion deal closing in October 2023. The companies are represented in the case by Young Conaway Stargatt & Taylor and Simpson Thacher & Bartlett, and Skadden, Arps, Slate, Meagher & Flom is representing the Activision directors named as defendants.

Sjunde AP-fonden, represented by Prickett, Jones & Elliott and Kessler Topaz Meltzer & Check, filed its case in 2022. It brought breach of fiduciary duty claims related to the transaction and alleged the deal was so rushed it failed to meet basic requirements laid out in the Delaware General Corporation Law.

"The plaintiff 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 that he tainted the sale process to secure these outcomes," McCormick wrote. "All of these allegations are reasonably conceivable."

McCormick wrote that the claims against the Activision director defendants are similarly viable because it's reasonably conceivable that they prioritized Kotick's interests over maximizing value to shareholders when negotiating a merger.

The defense won dismissal of some of the claims alleging DGCL violations, and McCormick converted motions to dismiss other claims in that category into a motion for summary judgment. She also wrote that the plaintiff's aiding and abetting claim against Microsoft failed, citing the Delaware Supreme Court's framing of what's needed for those types of claims through its 2024 *In re Mindbody Inc. Shareholder Litigation* decision and its opinion in *In re Columbia Pipeline Group Inc. Merger Litigation*, published in June.

The decision marks the second time McCormick has partially granted and partially denied a motion to dismiss the case. An [opinion](#) published in February 2024 stated Microsoft and Activision could use Section 205 of the DGCL to seek a court order finding the deal to be valid. The companies [took that path](#) soon after, and the court validated the merger and [awarded](#) the shareholder's counsel a \$2.5 million mootness fee.

Attorneys involved in the case did not immediately respond for comment.

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Pogust Goodhead

Lawyer revolt disrupts multibillion-pound diesel lawsuit in London

Pogust Goodhead asks to step down as lead solicitor after staff departures and friction over hedge fund backer



Pogust Goodhead said it wanted to relinquish its central role representing motorists against 14 car manufacturers over claims they deceived regulators about emissions from diesel vehicles © FT montage/Alamy

Alistair Gray and **Suzi Ring** in London

Published 35 MINUTES AGO



Pogust Goodhead has called on a judge to allow it to stand aside as lead solicitor on a multibillion-pound lawsuit after a staff revolt, disrupting one of the biggest cases at the High Court in London just as it is due to begin.

The law firm said it wanted to relinquish its central role representing motorists against 14 car manufacturers over claims they deceived regulators about emissions from diesel vehicles. [Pogust Goodhead](#) acts for 750,000 of 1.8mn claims in the case, which is due to go to trial next week.

The highly unusual move came after the firm's co-founder and former chief executive, Tom Goodhead, was abruptly [ousted by its funder](#), US hedge fund Gramercy, in August, and replaced by a new board.

Following his departure, several lawyers at the firm have resigned over concerns about Gramercy's role and its involvement in cases.

The Financial Times [reported last month that Pete Gallagher](#), who was running the "dieselgate" litigation, had resigned over such concerns. At least four more lawyers involved in the diesel emissions case have since resigned, according to documents for a pre-trial hearing that took place on Monday.

"The PG staff running this litigation (or a critical cohort of them) are abandoning the ship," Alexander Antelme KC, representing Nissan and Renault, said in a written submission.

The emissions lawsuit is among the most complex in English legal history. The value of the claim has not yet been formally quantified, although claimant lawyers have said the total bill to the car industry could run into several billion pounds.

Pogust Goodhead on Monday asked the judge, Mrs Justice Sara Cockerill, to allow Leigh Day, the other lead solicitor in the case, to take on this role alone.

But lawyers representing the car companies told her they were concerned about the turmoil at Pogust Goodhead and how such a late change would affect the management of the case.

Neil Moody KC, representing Ford, said: "The position appears to be in a state of total flux and uncertainty."

Benjamin Williams KC, for Pogust Goodhead, told the court that while the firm did not believe there was "any legal or ethical imperative" to stand aside, the carmakers were making "attempts to exploit" the situation, which "risked becoming a serious distraction".

While Pogust Goodhead no longer wants to be a lead solicitor, it would continue to act and represent its clients in the case.

In written submissions, the court heard that the firm had last month secured a \$30mn facility from Gramercy, which could be used only to finance the emissions case.

The additional money follows a new \$65mn credit facility provided by the hedge fund to Pogust Goodhead in August. Gramercy has put up more than \$600mn in funding for the law firm since 2023.

Gramercy's role has been contentious because lawyers in England and Wales — bound by duties to their clients and the court — must have independent control of cases, as part of rules intended to ensure decisions are made in the best interest of litigants.

A judgment in another high-profile case involving Pogust Goodhead, against miner BHP, is expected this year.

BHP is [defending a lawsuit](#) brought on behalf of about 640,000 victims of the 2015 Mariana dam collapse in Brazil, one of the country's worst environmental disasters. BHP and Vale, which is also potentially liable for damages, [made a \\$1.4bn offer to settle](#) the case in June, according to people familiar with the matter.

Alicia Alinia, CEO of Pogust Goodhead, said in a statement that the firm "remains entirely independent and is looking forward to continuing to work on the cases".

"Our commitment to access to justice for millions of people is unwavering," she added.

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California Brief

Live Nation Rejected by Supreme Court in Consumer Antitrust Case

Oct. 6, 2025, 6:36 AM PDT

The US Supreme Court turned away an appeal by ticketing giant Live Nation Entertainment Inc. in a consumer antitrust suit, dealing a blow to the company's effort to manage its antitrust woes by channeling cases into arbitration.

The justices without comment left intact a federal appeals court decision that said Live Nation's arbitration agreements with customers were "unconscionable" and couldn't be enforced under California law. Live Nation was trying to funnel cases into group arbitration proceedings run by New Era ADR.

The rebuff lets the consumers press ahead with a suit that claims they paid inflated ticket fees. The customers are seeking class action status in the case, which was filed in federal district court in Los Angeles and also names Live Nation's Ticketmaster subsidiary as a defendant.

Live Nation and Ticketmaster have been heavily scrutinized for more than 15 years, dating back to the 2010 merger of the two companies. The Justice Department is suing to break up the company and has a pending criminal antitrust probe that is also targeting Chief Executive Officer **Michael Rapino**. Last month the Federal Trade Commission sued the company, alleging it facilitated large-scale ticket scalping.

The Supreme Court has previously let companies enforce arbitration accords with customers and employees. Those rulings invoked the 1925 Federal Arbitration Act, which says arbitration agreements must be enforced like any other contract.

In the Live Nation case, the San Francisco-based 9th US Circuit Court of Appeals said the law wasn't applicable to forms of arbitration that didn't exist in 1925, including group proceedings.

Supporters say arbitration is cheaper and more efficient than traditional litigation. Critics say companies are trying to strip individuals of important procedural rights that are available in court.

The case is Live Nation v. Heckman, 24-1145.

--With assistance from **Josh Sisco**.

Judge rejects earlier trial date in high-stakes Eaton Fire litigation

DJ [dailyjournal.com/articles/387879-judge-rejects-earlier-trial-date-in-high-stakes-eaton-fire-litigation](https://www.dailyjournal.com/articles/387879-judge-rejects-earlier-trial-date-in-high-stakes-eaton-fire-litigation)

LA Fires,

Civil Litigation

Oct. 3, 2025

Plaintiffs in the Eaton Fire case pushed to advance the trial date, accusing Edison of delaying tactics while quietly developing a compensation program. The judge denied the request, citing fairness concerns.

Firefighters wet down a home threatened by the Eaton Fire in Altadena, Jan. 8. (The New York Times)

Plaintiffs in the Eaton Fire cases renewed their push for an expedited trial date on Thursday, saying that Southern California Edison is being disingenuous by offering to pay pennies on the dollar to settle claims now while doing everything it can to delay trial. But it was an uphill battle that ultimately failed.

Los Angeles County Judge Laura A. Seigle said at the outset of the hearing that she did not intend to move the date from January 2027 to September 2026 because the parties had discussed the matter at length in previous case management conferences, and a lot of things needed to be done to ensure fair trials for all.

"[I] have carefully considered everybody's arguments and everything that needs to get done and how we can get that done in a reasonable way that accomplishes getting to trial as quickly as we can for plaintiffs, recognizing that if this has been incredibly disruptive for their lives, and recognizing that we need to have a fair trial and due process and an opportunity for defendants to defend themselves," Seigle said.

Rahul Ravipudi of Panish Shea Ravipudi LLP sought to convince Seigle that advancing the trial by four months was critical.

"After the court set the 2027 trial date, your honor ordered that the parties discuss pre-trial deadlines. And at the last hearing, and the last CMC statement, Edison then represented to the court and all the parties that it believed that all of the discovery of fact and expert could be completed by July 31st of 2026. And that supports a September 2026 trial date," Ravipudi said.

"And here, at the June 30th hearing, your honor asked, what about a mediation protocol? Why can't we get talking about that? And counsel for Edison said, 'No, it's too early because liability, causation issues,' whatever, whatever they were saying," Ravipudi continued. "Now, what we've learned at the time of the unveiling of this program by Edison on September 17th, 2025, is that this program has been in the works for over three months. What that means is, at the time they were representing to the court, 'We can't even talk about settlement protocols,' they were already working on one."

Edison announced earlier this year that it was developing a compensation program for Eaton Fire victims who wished to settle their claims early. Edison unveiled the plan on Sept. 17, saying its priority was to support the fire victims.

Plaintiffs' attorneys condemned the move as a self-serving effort that would effectively burn Edison's victims for a second time. Edison continues to dispute liability and insists that the plan is not an admission of any sort.

"Mr. Ravipudi has not identified any arguments that were not already fully addressed in briefs in the court's case management statement," Douglas J. Dixon began. Dixon is a partner with Hueston Hennigan LLP and leads Edison's defense.

"With respect to the July 31st, 2026 trial date, we did not say that all discovery could be completed by that date. They identified a date that was incredibly aggressive ... saying that if you were to have that January date, it would suggest that you have to try and complete it by that date," Dixon said.

"I would just point out, your honor, that we did not raise the direct payment program in connection to this hearing. Plaintiffs' counsel did. We did mention it in prior court proceedings that were working on a program that we would share with plaintiffs' counsel before it was finalized, and we have done so," he continued.

Gerald Singleton of Singleton Schreiber pointed out that the plaintiffs have dozens of preference motions under California Code of Civil Procedure 36A that they intend to file.

"Well, if they get filed, I will deal with them when they're filed. I think you all should be focused on the tremendous amount of work that you have to get done," Seigle said.

"So, I will tell you now, that you say you're going to file preference motions, there is no way that any of these cases will be ready for trial in four months. Impossible. Absolutely impossible. And we don't even have all the discovery from the plaintiffs. It's impossible."

The case is Gursev v. Southern California Edison, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#387879

Antoine Abou-Diwan

Daily Journal Staff Writer

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Commentary | **Class Actions**

Arguing Class Actions: Manchurian Misdirection—False Fears About Chinese Money in Litigation Funding

Arguing Class Actions is a monthly column for the National Law Journal.

October 06, 2025 at 05:00 AM By **Adam J. Levitt**



Adam J. Levitt, founding partner of DiCello Levitt. Courtesy photo

The most recent attacks on litigation funding (the benefits and detriments of which will be more comprehensively discussed in later columns), have taken a decidedly Eastern tilt. Indeed, Sen. Thom Tillis, R-North Carolina, and Rep. Darrell Issa, R-California, among others, have recently sought to “take on” litigation financing, introducing legislation designed to curb it through, e.g., substantial taxes on “qualified litigation proceeds” meant to make it much more costly for funders to invest in U.S. cases. So far, the legislation has failed—in the latest round, those taxes were

removed from a final budget by the Senate parliamentarian. But the criticism has made waves, and, as is sadly typical of the times, carried a not-insignificant tinge of jingoistic paranoia. For example, on his website, Issa highlighted “national security concerns” that allegedly arise because “China-backed funders” were investing in U.S. cases. Issa proclaims that he wants to “advance fair and equal treatment by the justice system and deter bad actors from exploiting our courts.”

This is ridiculous on multiple levels.

First, if Issa cared about actually advancing “fair and equal treatment by the justice system,” he’d full-throatedly support litigation funding. Consider what litigation funding actually is: a device that allows some litigants access to cases that they’d otherwise be cost-precluded from filing. Litigation funders issue non-recourse loans to support years-long litigation—sometimes to cover fees, sometimes just expenses. If the plaintiff wins, some portion of the proceeds go to the funder, and there’s a return on investment. If the plaintiff loses and gets nothing, the funder gets nothing. Funders can create deals with respect to individual cases or broader case portfolios. In all respects, what funders do is provide liquidity to support the years-long effort the toughest cases inevitably require. Litigation of any kind is expensive, time-consuming, and difficult. When it’s against the largest corporations in the world protecting billions in profits and fighting massive potential legal exposure(s), that difficulty only increases. The resources of our nation’s largest corporations will always outstrip those of even the most well-heeled plaintiffs, and companies have been paying their lawyers accordingly. Partners at the largest defense firms are now regularly charging fees in excess of \$2,000 per hour—with some commanding hourly rates of up to \$3,000, or \$50 per minute. Is it really so unreasonable that, against such largesse, some plaintiffs need additional capital to unstack the deck?

Second, the so-called fear of Chinese “exploitation” of U.S.-based litigation and U.S. courts has no basis in reality. The instances of exploitation to which Issa appears to be referring is the recent (2023) revelation that a Chinese company called Purplevine IP had backed several U.S. patent lawsuits, including suits against JBL Bluetooth, a Samsung Electronics subsidiary. What harm actually comes from this backing is unclear, but that has not curbed the paranoia.

One argument is that taking “China-backed” money for patent cases allows the litigation funder to engage in some form of industrial espionage—either by stealing secrets, or by somehow disrupting critical sectors through litigation. In a letter to the chief judges of Florida’s three federal districts following the Purplevine “revelation,” then-Sen. Marco Rubio, R-Florida, contended that he was worried about foreign governments—specifically name-checking China—using funding to “advance frivolous lawsuits, needlessly and excessively prolong litigation disputes, [and] exacerbate domestic discord” and otherwise “exploit the openness of American institutions and undermine critical infrastructure sectors.” The Chamber of Commerce took it even further,

overheatedly claiming that “[t]here’s nothing stopping adversarial governments from using litigation funding to pour money into cases against American companies, including defense and other sensitive industries, in order to...access their intellectual property.”

How any of this parade of horrors would actually occur goes unsaid, and anyone with any knowledge of how litigation funding does and doesn’t work would realize how ridiculous this actually is. If a lawsuit is frivolous, it will be thrown out, and there are far more efficient ways to “exacerbate domestic discord” than by filing litigation against, e.g., Samsung. As for what now Secretary of State Rubio called the exploitation of the “openness of American institutions”—one wonders about the mechanics of such a venture. Let’s say that a Chinese company really wanted to steal an American rival’s trade secrets: would the way to do that really be to file a patent lawsuit in a U.S. court? The following would have to occur: (1) the patent infringement would have to be sufficiently non-frivolous to get past a motion to dismiss, and yet “related” to a new technology worth stealing; (2) during discovery (often years after filing), plaintiff’s expert would need to get access to the secure source code for the subject technology; (3) despite years going by, this source code would have to in reality remain state-of-the-art at the time of source-code review; (4) the expert would need to be able to smuggle out the pertinent bits of source code containing the technological revelation, even though such source code review is subject to court-issued protective orders and substantial security controls, and even though it is highly unlikely the portion of the source code that’s revelatory is the portion that was related to the prior patent; and (5) the lawyers hired would have to be willing to risk their law licenses (and jail time) and provide the super-secret source code that was smuggled out by the expert to the litigation funder; who would, (6) then pass it on the Chinese company; further, (7) by doing so, the funder would be exposing itself to allegations of, among other things, treason, the Defend Trade Secrets Act/Uniform Trade Secrets Act, which criminalizes misappropriation of protected IP, and, not to mention various laws prohibiting espionage, such as 18 U.S.C. §§ 1831-1839; finally, (8) these bad-acting funds/lawyers would somehow be dissuaded by a disclosure requirement and/or additional taxation. As one funder succinctly put it, “The idea that China is going to try and conduct industrial espionage by getting a litigation finance firm to get information is ... so far fetched as to be preposterous.”

Neither does a more generalized fear of “Chinese money” as an item of investment “in America” hold water. Let’s say that it’s true that Chinese citizens and/or Chinese companies or investment funds are among the investors who choose to invest in a litigation funder, or even who have their own litigation funding vehicle. How is that any different than the myriad other ways money flows into the American economy? Consider this: According to a report from the National Association of Realtors, in 2017 Chinese foreign buyers purchased more than \$30.4 billion worth of residential

property in the United States. According to one recent estimate, roughly \$2.3 billion in new commitments were made across the entire U.S. commercial litigation funding market in 2024—roughly half the outlay for stamp collecting over the same time period. Some estimates—which have themselves been criticized as inflated—put the entire size of the third-party litigation funding global market at \$17.5 billion in 2024, or just a little more than half of the “Chinese money” that poured into U.S. real estate in a single year, some eight years ago. And let’s not even look at the amount of U.S. debt that China owns (close to \$800 billion, making it the second largest holder of U.S. debt).

If the fear is direct influence on American companies—the Chamber of Commerce called it a “national security risk” that foreign-backed litigation can “tie down” American companies in litigation—even setting aside the existence of traditional hacking/industrial espionage, surely that influence is felt more directly by actual investment into those companies than through the Byzantine path of “influence-by-adversarial-patent-litigation.” Moreover, and tellingly, we don’t see Tillis or Rubio calling for every Fortune 500 company to ensure that no Chinese entities are holding their stock. Consider even the way these companies are funded in their early stages: Softbank’s Vision Fund—a \$100 billion-plus behemoth called the “world’s largest technology investor,” with investments across the most important sectors in the economy, including robotics and artificial intelligence—was funded by, among others, Saudi Arabia Public Investment Fund’s \$45 billion investment. Where is Issa’s call to investigate the impact of foreign money on the Internet economy? Where is the Chamber of Commerce’s “Report” on the possible infiltration by hostile foreign actors into the most important companies in the world? On those topics, their silence is deafening.

The global economy doesn’t work that way, and Tillis, Issa, Rubio, and the Chamber of Commerce know that. What they also know is that litigation financing—for all of its flaws—is a check on that corporate power. It’s that check—and not “Chinese money”—that they’re actually concerned about. If they’re prepared to speak the truth and have the fight about litigation funding on those grounds, then game on. If not, all of their pearl clutching should be written off as partisan business as usual.

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Thank you to DiCello Levitt partner Dan Schwartz for contributing to this column.

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Litigation

Manage Newsletters

Exclusive

Legal AI Revolution Moves Ahead at Measured Pace, Survey Says

Oct. 6, 2025, 2:00 AM PDT

Summary by Bloomberg AI

AI Generated



- Just 21% of attorneys at law firms and companies say they are using generative AI “about once a day” or more, and another 31% said they use it “a few times a month.”
- About a third of survey respondents said they have “never” used AI in the last six months, indicating that widespread adoption is still elusive.
- Lawyers are feeling pressure to adopt AI from software vendors, law firm partners, and corporate leaders who hope the technology will make legal work more efficient and cut costs.

Adoption of artificial intelligence isn’t transforming the day-to-day practices of many lawyers—at least not yet, according to Bloomberg Law’s new State of Practice survey.

Just 21% of attorneys at law firms and companies say they are using generative AI “about once a day” or more. Another 31% said they use it “a few times a month.”

Yet in a sign that widespread adoption is still elusive, about a third of survey respondents said they have “never” used AI in the last six months.

“We overestimate the impact technology is going to have in the short term and underestimate in the long term,” said Rudy DeFelice, the global head of the legal AI-focused Harbor Labs.

In the short term, lawyers don’t have many incentives to make their work more efficient with AI, DeFelice said.

That dynamic is also reflected in the survey: Only 23% of lawyers said their organizations are early adopters of new technology. Many others say their organizations are moving more slowly.

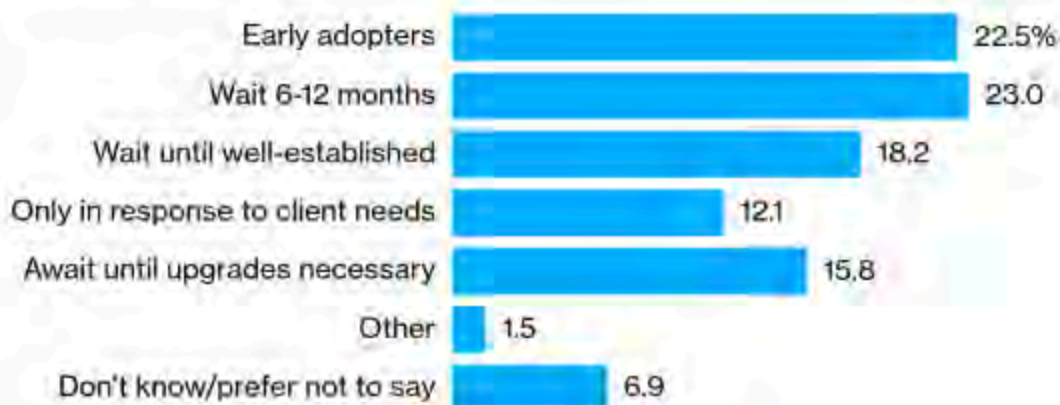
“We’ve got a good thing,” DeFelice said. “We bill by the hour.”

Some lawyers worry about the embarrassing hallucinations that large language models can produce. Others are concerned about giving sensitive client data to an AI vendor. Many others haven't yet seen AI make their work better.

At the same time, there's no question that lawyers are feeling the pressure to adopt AI—not just from software vendors, but from law firm partners and corporate leaders who are hoping the technology will make legal work more efficient and cut costs.

Accepting Gen AI Tools Moves Slowly

How lawyers characterized their organizations' adoption of new technologies



Source: Bloomberg Law State of Practice Survey, September 2025

Bloomberg

AI at Work

Alicia Hawley, of counsel at K&L Gates and a survey respondent, said she wasn't surprised the findings show AI adoption lagging. Among lawyers, enthusiasm about AI varies greatly depending on experience level and what practice group someone is in, Hawley said.

"Those two things in particular impact the level of comfort in experimenting with the tools, the level of comfort in then actually implementing the tools," she added.

Many associates at firms today grew up with cell phones while long-time partners didn't, she notes. "It's a different world as far as just the level of comfort and the accessibility of technology," Hawley said.

At K&L Gates, Hawley said her eDiscovery practice group is more comfortable with gen AI because it's been working with different versions of AI for decades and can easily see the new technology's potential when using it to sift through vast sets of discovery.

Benjamin Cramer, an attorney in the tax practice at Wood + Lamping LLP in Ohio, said he almost always has an AI tool open on his computer. Microsoft Corp.'s Copilot recently saved a client \$600,000 in a settlement with the IRS, he said.

"That's a story I've been telling colleagues who are taking the ostrich approach and want this to go away," said Cramer, who also responded to the survey. "But it's not going away, so let's use it."

Cramer had been struggling to get figures in an IRS report to match with his client's numbers, so he turned to Copilot for help. He uploaded a spreadsheet of 14,000 transactions and asked Copilot to figure out why the numbers didn't line up. The software found a \$50,000 issue that Cramer, his client, and the IRS had all missed. That discovery led him down a path that would ultimately lead to the lower settlement figure, he said.

As much as he said he wishes he could've caught the discrepancy that AI flagged, those 14,000 entries were simply too many to look through.

"Going down that rabbit hole led to a much bigger issue that I wouldn't have known to dig for," he said. "And frankly we wouldn't have thought it was worth the effort."

The Bloomberg Law survey, which had more than 750 respondents and was in the field from Sept. 8 to Sept. 22, is a snapshot in time. As such, it might not capture the full range of AI use by lawyers, including under-the-table use of tools that aren't officially licensed by law firms, DeFelice said.

"Almost everybody is using AI tools pretty regularly, even if its just kind of integrated with their email through Copilot or something like that, or on Zoom," he said. "They don't even know they're using it, but its being used around them, and it might not show up on the surveys."

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Analysis | **Artificial Intelligence**

AI Won't Replace Paralegals, But Experts Say It's Likely to Redefine the Role

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 01, 2025 at 01:57 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-Knowledgable 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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Deloitte LLP

Deloitte issues refund for error-ridden Australian government report that used AI

Big Four firm will repay final instalment after incorrect references and citations found in document



Deloitte was given a A\$439,000 commission to help assess problems with the Australian welfare system © Reuters

Ellesheva Kissin

Published 4 HOURS AGO



Deloitte will partially refund payment for an Australian government report that contained multiple errors after admitting it was partly produced by artificial intelligence.

The Big Four accountancy and consultancy firm will repay the final instalment of its government contract after conceding that some footnotes and references it contained were incorrect, Australia's Department of Employment and Workplace Relations said on Monday.

The department had commissioned a A\$439,000 "independent assurance review" from Deloitte in December last year to help assess problems with a welfare system for automatically penalising jobseekers.

The Deloitte review was first published earlier this year, but a corrected version was uploaded on Friday to the departmental website.

In late August the Australian Financial Review reported that the document contained multiple errors, including references and citations to non-existent reports by academics at the universities of Sydney and Lund in Sweden.

The substance of the review and its recommendations had not changed, the Australian government added. The contract will be made public once the transaction is completed, it said.

The embarrassing episode underscores the dangers posed to consultancies by using AI technology, particularly the danger of “hallucinations”.

The Big Four consulting firms, as well as strategy houses such as McKinsey, have poured billions of pounds into AI research and development in a bid to keep [nimble smaller competitors at bay](#). They hope to use the technology to accelerate the speed at which they can provide advice and audits to clients.

The UK accountancy regulator [warned in June](#) that the Big Four firms were failing to keep track of how automated tools and AI affected the quality of their audits, even as firms escalate their use of the technology to perform risk assessments and obtain evidence.

In the updated version of the report, Deloitte added references to the use of generative AI in its appendix. It states that a part of the report “included the use of a generative artificial intelligence (AI) large language model (Azure OpenAI GPT — 4o) based tool chain” licensed by the government department.

While Deloitte did not state that AI caused the mistakes in its original report, it admitted that the updated version corrected errors with citations, references, and one summary of legal proceedings.

“The updates made in no way impact or affect the substantive content, findings and recommendations in the report,” Deloitte stated in the amended version.

Deloitte Australia said: “The matter has been resolved directly with the client.”

Litigation

Manage Newsletters

Whistleblower Attorney's 'Reckless' AI Use Demands Sanctions

Oct. 6, 2025, 7:43 AM PDT

A whistleblower attorney's "reckless" use of an AI tool in a False Claims Act retaliation suit requires a sanction in the form of attorneys' fees and costs, a Washington, DC judge said.

Glenn Ellis, a Philadelphia-based solo practitioner, included erroneous legal authorities in a brief because of his exclusive reliance on the tool, and the defendant expended unnecessary time and effort because of it, Judge Amit P. Mehta of the US District Court for the District of Columbia said in an Oct. 3 order.

The court will issue a final amount after defendant Athena Construction Group Inc. files an invoice, Mehta said

Because Ellis, who withdrew from the case, already self-reported to the Pennsylvania Bar Association, the court said it will not make a referral to that authority

Ellis represented now-deceased Athena employee William Smith in the suit; he alleged the company filed retaliatory lawsuits against him for calling attention to alleged fraudulent certification to win contracts set aside for HUBZone companies. His widow Vickie Smith took over the case upon William's death

Baron & Budd PC represents Smith. Fluet Huber & Hoang PLLC, Executive Law Partners PLLC, Wilmer Cutler Pickering Hale and Dorr, and Foley Hoag LLP represent Athena.

The case is Smith v. Athena Constr. Grp. Inc. , D.D.C., No. 18-cv-2080, 10/3/25 .

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Litigation

Manage Newsletters

Justices to Skip SEC Whistleblower Awards Over Insurance Fraud

Oct. 6, 2025, 6:33AM PDT

Summary by Bloomberg AI

AI Generated



- The Supreme Court declined to review a ruling siding with the SEC over payments to insurance fraud whistleblowers John McPherson and John Barr.
- McPherson and Barr argued the SEC's narrow payments would damage the whistleblower program, and that their awards should be based on the entire \$38.7 million judgment.
- The SEC can pay whistleblowers 10% to 30% of the money recovered through their tips under the 2010 Dodd-Frank Act, but the agency has denied a record percentage of whistleblower claims during President Donald Trump's second term.

The Securities and Exchange Commission will avoid Supreme Court scrutiny over its payments to insurance fraud whistleblowers who alleged the agency awarded them a fraction of what they were owed.

The justices on Monday declined to review an August 2024 ruling in the US Court of Appeals for the Fifth Circuit siding with the SEC over the tipsters, who had argued the agency's narrow payments would damage the whistleblower program.

Forensic accountant John McPherson and investor John Barr say the information they provided prompted the SEC's 2012 suit against Texas-based Life Partners Holdings Inc. by exposing that the insurer underestimated life expectancies when selling life settlement policies. A federal judge ultimately ordered the insurer to pay \$15 million in disgorgement and \$23.7 million in penalties.

McPherson received just 20%—or around \$21,000—of an amount the SEC was actually set to collect after reallocating its interest when LPHI filed for bankruptcy, while Barr was paid out \$5,000.

Both men argued the awards should be based on the entire \$38.7 million judgment as well as Life Partners' 2015 bankruptcy, which paid out more than \$1 billion to investors as part of its distribution plan.

The agency can pay whistleblowers 10% to 30% of the money recovered through their tips under the 2010 Dodd-Frank Act. But the SEC during President Donald Trump's second term has denied a record percentage of whistleblower claims and even overturned certain previous awards, signaling that it is enforcing rules and scrutinizing claims more closely than before.

The Fifth Circuit panel rejected McPherson and Barr's argument that their tips were linked to the bankruptcy as a "qualifying action" under SEC whistleblower rules. The judges noted that their ruling was narrow and didn't address whether other filings in the bankruptcy context qualified as an "action brought."

McPherson and Barr represented themselves in their petition filed with the Supreme Court.

The case is Barr v. SEC , U.S., No. 24-1233, 10/6/25 .

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California insurance commissioner issues enforcement action against Tesla

 [courthousenews.com/california-insurance-commissioner-issues-enforcement-action-against-tesla](https://www.courthousenews.com/california-insurance-commissioner-issues-enforcement-action-against-tesla)

Alan Riquelmy

October 3, 2025

The accusations could proceed to an administrative law judge, where they might face suspension or revocation of their licenses.

[Alan Riquelmy](#) / October 3, 2025

This July 8, 2018, file photo shows Tesla 2018 Model 3 sedans sitting on display outside a Tesla showroom in Littleton, Colo. (AP Photo/David Zalubowski, File)

OAKLAND, Calif. (CN) — The office of California's insurance commissioner on Friday issued a stark warning to Tesla Companies over what it said were repeated failures to address policyholder claims.

Commissioner Ricardo Lara's office said it issued enforcement actions against Tesla Insurance Services and Tesla Insurance Company, an agent for State National Insurance Company, which also faces potential action. The office accused the companies of ignoring repeated warnings and failing to meet their responsibilities.

They've been noncompliant in handling claims, putting profits above people, the office said.

The insurers must handle policyholder claims or face a hearing before an administrative law judge, who could suspend or revoke their licenses to do business in California. They also risk what Lara's office called significant fines.

They have 15 days to reply to the department's accusations.

Tesla Companies couldn't be reached for comment.

The commissioner's office started seeing an increase in claims-related complaints in August 2022 against State National Insurance Company, the department said in its filing.

"[The department's] concerns included, without limitation, consumers' inability to get in contact with [State National] to submit claims or for follow-up, and [its] delays in resolving claims," the department said.

After meetings with State National and Tesla Insurance Company and department monitoring into 2023, the companies admitted they had underestimated staffing needs and claim volumes and promised to fix the problem, Lara's office said.

But complaints rose again in 2024, with the department noting that at least three people served as the insurance company's head of claims between April 2023 and May 2025.

Over the past three years, the companies racked up many violations, according to the department. Those include 396 failures to respond to inquiries within 15 days, 22 failures to accept or deny claims within 40 days, and 10 instances of forcing claimants to travel unreasonable distances or wait unreasonably long for a replacement, inspection, repair estimate or repair — all between July 31, 2024, and Sept. 22.

"As they previously did — and despite [the Consumer Services Division's] warning — respondents and [the insurance company] concede that they have not been able to keep staffing on pace and acknowledge that they are responsible for the staffing shortfall," Lara's office said.

Lara's office also cited unreasonable denials and delays in paying claims, along with failures to conduct fair, objective investigations, leaving people without the benefits they were owed. The companies also failed to notify policyholders that they could have denials reviewed by the department, which Lara's office called a key safeguard for holding insurers accountable.

Tesla Companies in 2025 had more complaints, justified complaints and more violations than the prior three years combined, Lara's office said.

According to the department, the companies face potential fines of up to \$5,000 for each act that's unlawful, unfair or deceptive, and up to \$10,000 for a willful act.

Lara's office called the case a strong example of how his department examines consumer complaints, seeks a resolution and advances to legal action when it says companies don't properly react to the claims.

The department asked any current or past auto insurance policyholder with Tesla Insurance Company or State National Insurance Company who thinks they face a violation of their rights to contact it at 800-927-4357 or online at www.insurance.ca.gov.

Categories / [Business](#), [Government](#), [Regional](#)

Tesla's German car sales fall in September though wider EV sales jump

 [reuters.com/business/autos-transportation/teslas-german-car-sales-fall-94-september-2025-10-06](https://www.reuters.com/business/autos-transportation/teslas-german-car-sales-fall-94-september-2025-10-06)

Reuters

October 6, 2025

By Reuters

October 6, 2025 4:32 AM PDT Updated 6 hours ago

A Tesla electric vehicle is parked at a Tesla dealership, after Tesla, Inc. released its financial results for the first quarter of 2025, in Berlin, Germany April 23, 2025. REUTERS/Annegret Hilse/File Photo [Purchase Licensing Rights](#)  , [opens new tab](#)

Oct 6 (Reuters) - Tesla's [\(TSLA.O\)](#)  , [opens new tab](#) sales volume in Germany fell by 9.4% in September, the German road traffic agency KBA said on Monday, although overall sales of battery electric vehicles rose by 31.9% year on year.

Registrations of new Tesla cars had risen in parts of Europe in September, lifted by its updated Model Y. But the U.S. electric vehicle maker continues to face pressure from growing competition, political backlash against CEO Elon Musk and an ageing lineup.

KBA said Tesla sold 3,404 cars in Germany in September.

The number of Teslas sold in the January-September period dropped 50.3% to 14,845 units compared with the same period last year.

By contrast, the total number of newly registered electric vehicles rose 31.9% in September to 45,495 units, KBA added.

The German agency also said sales volume of Chinese electric vehicle manufacturer BYD [\(002594.SZ\)](#)  , [opens new tab](#) surged more than twenty-fold year on year in September to 3,255 units, reaching 11,810 units since the beginning of the year.

On October 7, Tesla will host an [event](#) on its shift to more affordable EVs, as the company seeks to gain back customers with low price models.

Reporting by Simon Ferdinand Eibach and Jesus Calero in Gdansk, editing by Miranda Murray and Matthias Williams

Our Standards: [The Thomson Reuters Trust Principles.](#)  , [opens new tab](#)

Tesla teases Tuesday event as focus shifts to affordable EVs

 [reuters.com/business/autos-transportation/tesla-teases-tuesday-event-focus-shifts-affordable-evs-2025-10-06](https://www.reuters.com/business/autos-transportation/tesla-teases-tuesday-event-focus-shifts-affordable-evs-2025-10-06)

Akash Sriram

October 6, 2025

The Tesla logo is seen on a car at the Paris Games Week (PGW), a trade fair for video games in Paris, France, October 27, 2024. REUTERS/Sarah Meyssonier [Purchase Licensing Rights, opens new tab](#)

- Tesla hints at October 7 event with social media video
- Event teaser boosts Tesla shares by 4%
- Tesla's aging lineup faces challenges despite record deliveries

Oct 6 (Reuters) - Tesla ([TSLA.O](#)), [opens new tab](#) teased an October 7 event, in which investors and analysts anticipate a more affordable model to sustain sales momentum, sending the shares of the Elon Musk-led electric automaker 4% higher on Monday.

In a nine-second [video, opens new tab](#) posted on social media platform X on Sunday, Tesla showed a vehicle with its headlights illuminated in a dark setting, while hinting at an event set for Tuesday in a [separate video, opens new tab](#) that had "10/7" at the end.

The teaser follows Tesla's [record third-quarter deliveries](#), driven by a surge in EV purchases ahead of the expiration of the \$7,500 U.S. EV tax credit on September 30.

However, analysts expect Tesla's annual deliveries to fall for a second straight year to about 1.62 million vehicles, as expiring incentives and a demand slowdown linked to CEO Musk's polarizing politics weigh on sales.

Tesla has previously [delayed rolling out](#) a lower-cost version of the Model Y in the U.S. It said in June it had made "first builds" of the vehicle, but would start selling it in the fourth quarter and ramp up output at a pace that would be slower than planned.

The [stripped-down version](#) is designed to be roughly 20% cheaper to produce than the refreshed Model Y and could scale to about 250,000 units a year in the U.S. by 2026.

Wall Street expects Tesla's deliveries to jump next year to 1.85 million vehicles, with the cheaper model accounting for 155,610 units in 2026, according to Visible Alpha estimates.

Tesla deliveries record number of EVs on rush driven by U.S. tax credit expiry

"Tesla is teasing something big as a flurry of X posts has fans bracing for what looks like the launch of a more affordable Model Y tomorrow," said Matt Britzman, senior equity analyst, Hargreaves Lansdown, who personally owns Tesla shares.

"The price tag will be the real tell, offering clues on how far Tesla has pushed cost savings and how much new demand it can unlock."

The company has not introduced a new mass-market vehicle in years, relying heavily on incremental updates to the Model 3 and Model Y to drive sales.

Sales of its last major launch, the Cybertruck, have struggled, with Tesla offering thousands of dollars in discounts for vehicles in inventory in the past few months.

A U.S. recall filing in March showed 46,096 Cybertrucks had been built between its introduction in November 2023 and early this year.

Reporting by Mrinmay Dey and Akash Sriram in Bengaluru; Editing by Jamie Freed, Mrigank Dhaniwala and Arun Koyyur

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[Akash Sriram](#)

Thomson Reuters

Akash reports on technology companies in the United States, electric vehicle companies, and the space industry. His reporting usually appears in the Autos & Transportation and Technology sections. He has a postgraduate degree in Conflict, Development, and Security from the University of Leeds. Akash's interests include music, football (soccer), and Formula 1.

First Brands Group**Jim Chanos slams 'magical machine' of private credit after First Brands collapse**

Investor famed for spotting Enron fraud sounds alarm on Wall Street's booming debt machine



Jim Chanos: 'The opaqueness is part of the process' © Victor J. Blue/Bloomberg

Robert Smith and **Harriet Agnew** in London

Published OCT 2 2025



Jim Chanos, one of Wall Street's best-known short sellers, has sounded the alarm on the private debt boom, telling the Financial Times that First Brands Group's chaotic bankruptcy could augur a wave of corporate collapses.

Some of the biggest names on Wall Street are facing the prospect of multibillion-dollar losses from the [bankruptcy](#) of First Brands, a heavily indebted maker of spark plugs and windscreen wipers based in Ohio.

First Brands has now disclosed almost \$12bn in debt and off-balance sheet financing built up in the years before its Sunday bankruptcy filing, which also ensnared less well-known private lenders such as a [Utah-based leasing specialist](#).

"I suspect we're going to see more of these things, like First Brands and others, when the cycle ultimately reverses," Chanos told the Financial Times, "particularly as private credit has put another layer between the actual lenders and the borrowers."

Chanos, 67, cemented his reputation shorting energy trader Enron, which like First Brands made substantial use of off-balance sheet financing and whose \$70bn collapse heralded the onset of the 2001 stock market crash.

He announced in 2023 that he was closing his [main hedge funds](#) after more than three decades, while continuing to offer bespoke advice on fundamental short ideas as well as some macro insights.

In a 2020 [Lunch with the FT interview](#), Chanos said financial markets were in “the golden age of fraud”. On Thursday he said this phenomenon had “done nothing but gallop even higher” since he made the remark.

First Brands has not been accused of fraud. However, a bankruptcy probe into its byzantine off-balance sheet financing is examining whether the company pledged the [same invoices multiple times](#). This investigation has also uncovered that debt collateral may have been “commingled”.

The FT has [previously reported](#) that the group’s founder and owner, low-profile businessman Patrick James, was previously sued by two lenders that alleged that fraudulent conduct had exacerbated their losses.

James strongly denied the allegations of fraud in the two cases, which were both dismissed after settlements were reached.

First Brands and James did not respond to a request for comment.

Chanos likened the near \$2tn private credit apparatus fuelling Wall Street’s lending boom to the packaging up of subprime mortgages that preceded the 2008 financial crisis, due to the “layers of people in between the source of the money and the use of the money”.

Privately owned First Brands’ eschewed the more public bond market in favour of borrowing money through so-called leveraged loans. It also raised billions of dollars through even more opaque financing backed by its invoices and inventory, which was often provided through private credit funds.

“With the advent of private credit . . . institutions [are] putting money into this magical machine that gives you equity rates of return for senior debt exposure,” he said, adding that these high yields for seemingly safe investments “should be the first red flag”.

The FT has previously reported that some private credit fund managers had estimated returns in excess of 50 per cent on First Brands’ supposedly secured inventory debt.

Even many of the most sophisticated credit specialists on Wall Street were until recently unaware of the existence of the US auto parts maker’s special purpose entities (SPEs) backing its inventory financing.

Traders at Goldman Sachs told clients hours before these financing vehicles separately [filed for bankruptcy](#) last week that they just had discovered indications of high-cost borrowing from these entities that were “hard to reconcile”.

Chanos said: “We rarely get to see how the sausage is made.”

First Brands' bankruptcy has revealed that James controlled both the auto parts conglomerate and some of its off-balance sheet SPEs through the same chain of limited liability corporations. Chanos described this common ownership as a "huge red flag".

His short thesis against Enron was fuelled in part by the realisation that executives at the group were managing SPEs that engaged in complex transactions outside the purview of its corporate balance sheet.

In contrast to Enron, First Brands' financial statements were not publicly available. While hundreds of managers of so-called collateralised loan obligations had access to its financial disclosure, they had to consent to non-disclosure agreements to receive the documents.

"The opaqueness is part of the process," Chanos said. "That's a feature not a bug."

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First Brands Group**Jefferies earned undisclosed fees on First Brands 'side letter' financing**

Lenders to bankrupt car parts group believe arrangement may have breached loan covenant



Jefferies is facing scrutiny over its relationship with First Brands, having placed debt with fund managers who believe they did not have a complete picture of its financial condition © Jeenah Moon/Bloomberg

Eric Platt in New York and **Robert Smith** and **Ortenca Aliaj** in London

Published 40 MINUTES AGO



Jefferies earned undisclosed fees on financing it provided to First Brands Group, in an arrangement other lenders say may have violated terms of their own credit agreement with the bankrupt car parts company.

The existence of the previously unreported “side letter” between Jefferies and [First Brands](#) threatens to become a flashpoint for other lenders as they try to get to grips with the bankrupt company’s labyrinthine balance sheet.

The collapse of the US car parts maker — which raised billions of dollars in poorly disclosed off-balance sheet debt — was accelerated by US President Donald Trump's trade war, with tariffs heaping added financial pressure on the company as its underlying business was deteriorating. First Brands' downfall has prompted recriminations from lenders and an investigation into its [finances as part of its bankruptcy](#).

The US investment bank is under scrutiny for its [long-standing relationship](#) with First Brands, having placed billions of dollars of debt with fund managers who believe they did not have a complete picture of the group's financial condition.

The most recent of these deals — an attempt to refinance \$6bn of First Brands' debt stack — ran aground in August as questions grew around First Brand's financial disclosure. Filings have since shown the Ohio-based maker of spark plugs and brake components had missed interest payments on more than \$1bn of off-balance sheet debt months earlier.

Separate from its banking relationship, an investment unit of Jefferies also provided more opaque financing to First Brands linked to its customer invoices. This lending was not widely known on Wall Street until a [Financial Times report last month](#).

First Brands' borrowing facility with Jefferies was provided through the bank's Leucadia Asset Management division, by a fund known as Point Bonita Capital. First Brands would sell its customer invoices to Point Bonita at a discount, which allowed it to raise cash before customers such as car parts retailer AutoZone or Walmart paid for the parts they had received.

Alongside Point Bonita's lending facility, the Jefferies unit also executed a so-called supplemental fee letter with First Brands.

The car parts company was restricted by terms in its agreement with other lenders from borrowing at high interest rates when it tapped invoice "factoring" facilities, a form of off-balance sheet financing.

The interest rate on those borrowings was capped at 5 percentage points over a floating interest rate benchmark.

The side letter allowed First Brands to sell its invoices at interest rates above that level. Interest on those invoices remained capped at the 5 percentage point spread but First Brands would pay several percentage points more in fees, depending on the invoices it was selling.

First Brands received a so-called non-contravention opinion from lawyers at the time the fee letter was agreed, a legal opinion to reassure the company that the arrangement did not violate terms in its loan agreement, a person briefed on the matter said.

Jefferies and First Brands declined to comment.

Side letters are often used in finance to offer certain lenders additional terms and sweeteners that are not disclosed in their main financing agreement.

Creditors have been perplexed by the Point Bonita fee letter when told by the FT of its existence.

Lenders have pointed to a covenant that dictates the interest on this sort of financing “shall not exceed” 5 per cent over a floating-rate benchmark, according to people who have seen the terms.

The covenant only dictated costs around interest and did not specifically mention fees. That could provide First Brands the legal cover to pay those higher costs without breaching its loan agreement, one lender added.

These covenants are considered to be critical defence measures for lenders, a warning sign that a company's financial health is deteriorating or that its debt load is swelling. A covenant breach is meant to force borrowers and their lenders back to the negotiating table to find a solution, or provide creditors with remedies. For First Brands, a breach would have also prevented it from tapping term-loan lenders for additional money.

Several of First Brands' lenders told the FT they had never seen the side letter in question. Others said they believe the additional fees either violate the covenants that safeguard lenders, or “is not in the spirit” of how the covenant was structured.

Jefferies could face substantial pressure on its Point Bonita fund because of its exposure to First Brands.

Point Bonita — named after a lighthouse overlooking San Francisco Bay — pitched itself as safe and secure to investors, according to marketing materials reviewed by the FT.

“Like its namesake, Point Bonita Capital seeks to serve as a steady beacon in a dynamic environment,” said one investor pitchbook.

But the fund is now listed as an unsecured creditor in First Brands’ bankruptcy.

Ross Berger, president of Point Bonita Capital, was a key engineer of the facility and the unit had more than \$500mn of exposure to First Brands’ invoices, the people said.

The fund’s pitch documents state: “Berger and his team have many decades of combined experience managing complex portfolios across all economic cycles and market disruptions”.

Berger declined to comment through a spokesperson for Jefferies.

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Securities

Tricolor Records Show Same Cars Tied to Thousands of Loans

Oct. 3, 2025, 12:17 PM PDT

An initial review of bankrupt subprime auto lender Tricolor Holdings' records shows that at least 29,000 loans pledged to creditors were tied to vehicles already securing other debts.

Roughly 40% out of some 70,000 active Tricolor loans — which were used as collateral for bank warehouse lines and asset-backed securitizations — contained attributes identical to those of at least one other loan, including vehicle identification numbers, according to people involved in the probe, who asked not to be identified discussing sensitive information.

Lawyers representing Tricolor and Daniel Chu, the company's founder, didn't respond to requests for comment, nor did attorneys for the trustee overseeing Tricolor's liquidation. Representatives for JPMorgan Chase & Co. and Fifth Third Bancorp, both warehouse lenders to Tricolor, declined to comment.

Since Tricolor filed to liquidate last month, Wall Street banks and ABS holders have been scrambling for any clarity into the finances of the auto lender, which had tapped them for more than \$2 billion over the past couple of years.

Banks, the trustee and other parties have placed particular scrutiny on vehicle identification numbers, or VINs, tied to Tricolor's loans. Some have worried they may have been fabricated or duplicated, raising concerns the company used them to disguise bad loans or inflate the value of its portfolio.

Federal investigators are also looking into whether Tricolor pledged the same collateral to different creditors.

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Justices Turn Away BDO's Auditor Fraud Case

By **Jessica Corso**

Law360 (October 6, 2025, 9:48 AM EDT) -- The U.S. Supreme Court on Monday said it would not hear a case that BDO USA LLP claimed could set a "dangerous precedent" for public-company auditors, leaving intact a Second Circuit decision allowing the securities fraud suit against the accounting firm to move forward.

The justices denied BDO's plea to intervene in the case, which was filed in 2020 and claims that the auditor bears some responsibility for AmTrust Financial Services Inc. having to issue financial restatements dating back to 2012 that ultimately sank the company's stock.

BDO had asked the Supreme Court to determine whether an auditor's statement that it complied with professional standards is enough to bring a securities fraud case absent a link to the actual financial misstatements.

The plaintiff investors told the high court that BDO misrepresented the Second Circuit's ruling as imposing a categorical rule that the professional standard's misstatement is always material to investors.

BDO is represented by Paul Hughes, Andrew Lyonsberg, Emmett Witkovsky-Eldred, Timothy Hoeffner and Jason Gerstein of McDermott Will & Emery LLP.

The investors are represented by Samuel Rudman, Andrew Love, David Rosenfeld, Mark Millkey, William Geddish and Robert Gerson of Robbins Geller Rudman & Dowd LLP, Jeremy Lieberman of Pomerantz LLP, Thomas McKenna of Gainey McKenna & Egleston, and Kim Miller of Kahn Swick & Foti LLC.

The case is BDO USA LLP v. New England Carpenters Guaranteed Annuity and Pension Funds et al., case number 24-1151, in the Supreme Court of the United States.

--Editing by Adam LoBelia.

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6th Circ. Says FirstEnergy's Bribery Probe Docs Are Privileged

By **Gina Kim**

Law360 (October 3, 2025, 11:48 PM EDT) -- The Sixth Circuit on Friday vacated a district court's order forcing FirstEnergy to disclose to investors its internal investigation materials amid a \$1 billion bribery scandal involving an Ohio lawmaker, ruling that the materials were "clearly" protected by the attorney-client privilege and work-product doctrine.

In a 14-page per curiam decision, a three-judge appellate panel granted the utility's petition for a writ of mandamus and threw out a document production order issued last year by U.S. District Judge Algenon L. Marbley of the Southern District of Ohio. In a closely watched discovery dispute, FirstEnergy sought to shield materials related to its internal investigations conducted by two BigLaw firms, Jones Day and Squire Patton Boggs.

The internal probes were initiated in the days **following the arrest of Larry Householder**, then the speaker of the Ohio House of Representatives, who was **later convicted of** accepting bribes from FirstEnergy in return for his support of a \$1 billion bailout of two of the company's nuclear plants through legislation known as House Bill 6.

Amid the scandal, FirstEnergy faced a host of suits from private plaintiffs, including potential securities class actions from its investors, as well as regulatory actions from state and federal agencies.

FirstEnergy shareholders sought the fruits of those internal investigations during discovery in their securities case, while the utility fought those requests, arguing that the work done by Jones Day and Squire Patton was privileged, since they were providing legal advice in response to subsequent government probes and private litigation.

After Judge Marbley ordered FirstEnergy to turn over the documents, FirstEnergy **asked the court to allow the issue** of privilege to go before the Sixth Circuit, which U.S. District Judge Algenon Marbley **denied**. That prompted the utility to move for a writ of mandamus, which it described as the "last possible line of defense" to secure what it argued was protected work product.

On Friday, the Sixth Circuit unanimously granted FirstEnergy's writ and threw out the discovery order, finding that the sought-after investigative materials were covered under the attorney-client privilege and work product doctrine, and citing the Supreme Court's 1981 holding in **Upjohn v. United States**.

Upjohn "held that the privilege applies when a company seeks legal advice to assess risks of criminal and civil liability," the opinion said. "What was true for Upjohn is true for FirstEnergy."

In the Upjohn case, the company had hired outside attorneys to do an internal probe after discovering potentially illicit payments Upjohn made. The probe involved communications between Upjohn workers and its attorneys via questionnaires and interviews, which the justices determined were privileged.

The Upjohn decision noted that those communications provided the company's counsel with a basis for legal advice involving Upjohn's compliance with a host of tax and securities laws, and possible litigation, the Sixth Circuit wrote.

That means those communications were a part of the company's effort to get legal advice about any possible civil or criminal wrongdoing, the panel said. Just as in Upjohn, FirstEnergy and its executives hired attorneys to get legal advice into its possible criminal and civil wrongdoing, the opinion explained.

After the U.S. Department of Justice arrested Householder, unsealed the criminal charges and subpoenaed FirstEnergy, the utility hired Jones Day to look into the allegations against Householder and advise it on its response to the DOJ's investigation, the Sixth Circuit noted.

The board of directors did the same thing and subsequently hired Squire Patton to internally investigate the claims about Householder's conspiracy with FirstEnergy, the opinion said.

"In asking for outside counsel's analysis about what happened and in seeking its legal advice about what to do in response to the 'very significant legal risk it suddenly faced,' First Energy and the board clearly sought legal advice," the circuit court panel said. "And legal advice they received."

Furthermore, the investigative documents were created due to a reasonable anticipation of litigation, as opposed to ordinary business-related purposes, which means they're shielded under the work-product doctrine, Friday's ruling said.

Weeks following the scandal, company executives were hit with several shareholder suits and investigations by the Securities and Exchange Commission, the Ohio attorney general, and Ohio's Public Utilities Commission, the opinion continued.

"FirstEnergy's internal investigations produced materials 'because of' actual, not merely anticipated, legal and regulatory threats," the circuit court said. "All in all, the attorney-client and work-product doctrines clearly covered these communications."

Friday's order comes more than a year after FirstEnergy first filed its writ of mandamus in July 2024, which the investors challenged, arguing that the documents weren't privileged and that granting the appeal would be "unprecedented."

The shareholders argued that the Sixth Circuit hadn't granted "a single mandamus petition from a privilege-or-work-product-asserting litigant" in a discovery dispute since the Supreme Court's decision in *Mohawk Industries Inc. v. Carpenter* in 2009.

In *Mohawk*, the high court said orders to produce discovery that may be protected under attorney-client privilege don't qualify for immediate appeal because the issue can be taken up post-judgment.

However, a host of legal ethics scholars, attorney organizations, business groups and dozens of law firms **threw their support behind FirstEnergy**, urging the Sixth Circuit to overturn the lower court's order and warning that it would threaten attorney-client privilege and send "shock waves through law firms and corporate offices" unless the panel stepped in.

On Friday, the Sixth Circuit further ruled that Judge Marbley's explanations for his production order — that the company began with the internal probes and used the results for business-related decisions — don't change the fact that the investigative materials are protected.

"What matters under the attorney-client privilege is whether a company seeks legal advice ... not what it later does with that advice," the opinion said. "Over and over, FirstEnergy showed that it primarily sought and received legal advice from its attorneys throughout the investigations."

The Sixth Circuit also rejected the investors' position that the internal investigations convey mere facts, not legal advice, noting that Jones Day and Squire Patton provided legal analyses and assessments of potential liabilities and that they gathered facts closely related to those analyses.

"There is no such thing as legal advice without facts," the panel said. Nor does the fact that FirstEnergy shared some part of its investigative materials with its existing independent auditor, PwC, mean that it waived its protections, the opinion added.

Representatives for the investors did not immediately respond to inquiries seeking comment Friday.

In a statement to Law360 on Friday, Robert J. Giuffra Jr. of Sullivan & Cromwell, who represents FirstEnergy, said the team was pleased with the Sixth Circuit's decision rejecting the investors' effort to get the investigative materials.

"Thirty-nine law firms, 11 corporate and legal ethics scholars, and several legal and business groups filed supporting amicus briefs emphasizing the importance of protecting the attorney-client privilege and attorney work product doctrine in internal corporate investigations," Giuffra said.

Chief U.S. Circuit Judge Jeffrey Sutton and Circuit Judges Alice M. Batchelder and John B. Nalbandian sat on the panel for the Sixth Circuit.

First Energy is represented by Robert J. Giuffra Jr., Sharon Nelles, David Rein, Nicholas Menillo, Morgan Ratner and Maxwell Gottschall of Sullivan & Cromwell LLP.

The investors are represented by Jason Forge, Darren Robbins and Mark Solomon of Robbins Geller Rudman & Dowd LLP, and by Joseph Murray and Brian Murphy of Murray Murphy Moul & Basil LLP.

The case is In re: FirstEnergy Corp., case number 24-3654, in the U.S. Court of Appeals for the Sixth Circuit.

--Editing by Karin Roberts.

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Slack Investor Won't Get 2nd Shot Before High Court

By **Jessica Corso**

Law360 (October 6, 2025, 9:47 AM EDT) -- The U.S. Supreme Court on Monday turned away a Slack Technologies investor's petition for the justices to hear his fraud dispute for the second time in two years, leaving intact a Ninth Circuit ruling that the case against the messaging software company was impossible to salvage under the 2023 high court ruling.

The justices declined Fiyaz Pirani's **request** to once again hear his case, which accuses Slack of failing to warn prospective investors about the possible financial ramifications of service outages that occurred in the weeks after it went public on the New York Stock Exchange.

The Ninth Circuit **tossed the proposed class action** in February, reasoning that the Supreme Court's **earlier ruling** in the case meant that Pirani couldn't move forward with any of his claims against Slack.

The justices said two years ago that the unusual way in which Slack went public would make it difficult for Pirani to prove his claims under Section 11 of the Securities Act of 1933, which imposes strict liability on companies that misrepresent or omit a material fact ahead of a public offering. The court then sent the case back to the Ninth Circuit for further consideration.

Slack went public via a little-used method known as a direct listing, which allowed its earlier investors to sell their shares in the company on the first day of trading instead of imposing a temporary lock-up period, as is standard under a traditional IPO.

Because those early investor shares cannot be "traced" to the registration statement a company files before going public, the Ninth Circuit ruled on remand from the Supreme Court that the case failed under both Section 11 and Section 12 of the Securities Act.

Pirani had asked the justices to weigh in on the federal appeals court's Section 12 findings, as the court bypassed those last time around.

Pirani is represented by Kevin K. Russell of Russell & Woofert LLC, and by Lawrence P. Eigel, Melissa A. Fortunato and Marion C. Passmore of Bragar Eigel & Squire PC.

Slack is represented by Thomas G. Hungar, Jacob T. Spencer, Matthew Stewart Kahn, Michael J. Kahn, Theodore J. Boutrous Jr., Matt Aidan Getz, Daniel R. Adler and Michael D. Celio of Gibson Dunn & Crutcher LLP.

The case is Pirani v. Slack Technologies LLC, case number 25-44, in the Supreme Court of the United States.

--Editing by Karin Roberts.

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UiPath Beats Investor Suit Over Robot Competition Claims

By **Emilie Ruscoe**

Law360 (October 3, 2025, 11:12 PM EDT) -- Automation software company UiPath Inc. has shed investor claims it misrepresented the competitive risks it faced after a Manhattan federal judge rejected in its entirety a lengthy revised suit that the judge said reintroduced claims she'd tossed earlier.

In a Thursday order in Manhattan federal court, U.S. District Judge Denise Cote dismissed claims UiPath misled investors about the competitive threat posed to its robotic process automation software business by Microsoft, finding, among other things, that the four alleged misstatements at the heart of the suit's remaining claims were neither material misrepresentations nor made with intent to mislead.

The judge added that the latest version of the investor suit repeats claims that she'd already **dismissed** in a November 2024 order. She noted that since plaintiff Paul Severt hadn't defended those reasserted claims in his opposition to UiPath's dismissal bid, the judge found those claims had been abandoned.

For the remaining claims, the judge said, the complaint "fails to plausibly allege that any of the four statements at issue on this motion were material misrepresentations, or that they were made with the requisite scienter."

In the latest version of the suit, from June, Severt claimed UiPath concealed that when it went public in 2021, it had seen stagnating growth and demand as its customers sought out cheaper, simpler robotic process automation software than the company had on offer.

"When the undisclosed [competition] risks that defendants worked to conceal throughout the class period began to materialize in disappointing performance, defendants attributed that performance to the broader 'macroeconomic environment' instead of revealing the truth," the suit states.

In its June dismissal bid, UiPath and two of its executives, who are also named in the suit, argued that the details added to the recent version of the suit failed to support Severt's attempt to replead dismissed claims.

On Friday, counsel for UiPath declined to comment, and counsel for Severt did not immediately respond to a request for comment.

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

The investors are represented by Max R. Schwartz, Jeffrey P. Jacobson, Lana V. Levin, Amanda F. Lawrence and Jessica M. Casey of Scott+Scott Attorneys at Law LLP.

UiPath and the individual defendants are represented by Edmund Polubinski, Patrick Blakemore and Marie Killmond of Davis Polk & Wardwell LLP.

The case is Severt et al. v. UiPath Inc. et al., case number 1:23-cv-07908, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Emily Kokoll.



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Zynex Investors Seek To Merge, Stay Insider Trading Suits

By **Gina Kim**

Law360 (October 3, 2025, 8:41 PM EDT) -- Zynex shareholders who accused company executives of inflating stock prices to cash out on shares asked a Colorado federal judge on Friday to consolidate and temporarily pause their derivative suits to wait and see how a related proposed securities class action involving significant similar facts and circumstances plays out.

According to the plaintiffs' unopposed consolidation motion, Zynex shareholders Patrick Ayers and Daniel Graziano sought to consolidate their verified derivative actions, citing the interests of judicial economy and the efficient resolution of claims and to appoint Johnson Fistel and Rosen Law as lead counsel.

Ayers filed his derivative suit **in July** against five Zynex executives: CEO Thomas Sandgaard, CFO Daniel Moorhead, and board audit committee members Joshua R. Disbrow, Michael D. Cress and Barry D. Michaels. Ayers accused the defendants of scheming to sell inflated Zynex stock by concealing an oversupply scheme that would later reduce the stock's value by more than half.

Graziano filed a similar derivative suit the following month, alleging similar claims made by Ayers, which stem from the same facts and circumstances as the ones cited in Ayers's suit.

Both investors claimed the individual defendants' alleged insider trading, misrepresentations and other conduct violated Zynex's company code and caused significant financial and reputational harm to Zynex.

"Here, consolidation is appropriate because the derivative actions challenge substantially similar alleged conduct and involve overlapping questions of law and fact," Friday's consolidation motion said.

Both suits pursue causes of action for unjust enrichment and breach of fiduciary duty on behalf of the company against the same individual executive defendants, who are current officers and directors, the plaintiffs argued.

The allegations against company executives involve disclosures concerning Zynex's supply-shipping practices, like electrode pads and batteries to patients from at least March 2023 to the present, the motion said.

According to court papers, Zynex's electrotherapy devices are described as small, battery-powered electronic devices that deliver electric pulses via wires and electrode pads. The products are used for physical rehabilitation and pain management.

Ayers and Graziano pointed out that they filed their derivative actions a few months after another Zynex shareholder, **Levent Tuncel**, sued Sandgaard and Moorhead. Tuncel's suit asserted securities violations and claimed shareholders were harmed after the company was booted from at least one insurer network for U.S. military members, allegedly due to oversupplying clients.

Tuncel claimed Sandgaard and Moorhead should face liability after Zynex shares plunged as a consequence of its alleged practice of sending out electrode pads and batteries at inappropriate levels for its customers.

On Friday, Ayers and Graziano argued their derivative suits refer to the Tuncel matter and partially hone in on many of the same statements that were made to investors about the company's business, which are also the focus of the Tuncel suit.

Graziano and Ayers also asked the court to appoint Rosen Law and Johnson Fistel as lead counsel in the consolidated derivative action, which would prosecute the claims in an orderly and efficient manner.

"Johnson Fistel and Rosen Law are well-capitalized, capable of staffing and financing this derivative litigation, and bring extensive experience handling complex shareholder derivative actions," the consolidation request said. "Each firm has served as lead and co-lead counsel in numerous derivative cases around the country, and has consistently demonstrated professionalism in securing significant recoveries."

The motion continued: "Moreover, proposed lead counsel have already worked closely in formulating the proposed leadership structure, preparing this motion and formulating litigation strategy. The firms are confident in their ability to collaborate effectively, and submit that their combined efforts will best serve the interests of Zynex and its shareholders."

According to Ayers's July 9 complaint, which followed the Tuncel suit, the plaintiff accused the company's CEO and CFO of making false statements in its April 2023 press release touting a 36% revenue hike to \$42.2 million, while leaving out that the revenue was driven by fraudulent billing practices.

Ayers further alleged that Moorhead and Sandgaard personally profited from selling company stock inflated from false representations made about Zynex's revenue to investors and the U.S. Securities and Exchange Commission.

Ayer alleged that in 2023, Sandgaard sold 624,000 shares of Zynex stock for over \$5.67 million, while Moorhead sold 85,000 shares for nearly \$700,000.

While Ayers's suit does not accuse Disbrow, Cress and Michaels of selling stock, he had alleged these individuals allowed the trades from Moorhead and Sandgaard, "which exploited material nonpublic information."

Ayers's complaint alleged the scheme began unraveling after two years when Tricare — an insurer for the U.S. military, which represented more than 20% of Zynex's annual revenue — announced in March that it was suspending payments to Zynex stemming from overselling allegations.

The following day, Zynex stock took a dive from about \$7 to just over \$3.40.

According to Tuncel's securities suit, Zynex trading prices fell 5% from \$9.85 to \$9.35 in June 2024, following publication of a report accusing the company of engaging in a plot to pad its bills to insurers. Tuncel claimed that report prompted certain payors to boot the company out of their networks.

Tuncel pointed to Zynex's March 11 reporting on fourth-quarter and full-year results for its 2024 fiscal year, during which Zynex attributed its "significant" fourth-quarter earnings miss to "slower than normal payments from certain payers."

Tuncel's suit further alleged Zynex told shareholders in March that Tricare temporarily suspended payments as it reviewed its prior claims. Tuncel cited market records showing the March financial reporting was followed by an over 51% decline in Zynex trading prices, from about \$7 to just over \$3.40, as it was alleged in Ayers's suit.

On Friday, Ayers and Graziano also filed a separate agreed motion to temporarily stay their consolidated derivative actions while the Tuncel matter plays out, citing significant overlap between the facts and events alleged in both cases.

Ayers and Graziano asked the court to stay the case effective immediately until the Tuncel case is permanently dismissed, and all appeals exhausted, or until the dismissal motion is denied either

wholly or partially, or until a joint request is made by the shareholders and defendants to lift the stay, or the court terminates the stay.

The defendants will not have to answer the derivative complaints either, and all applicable deadlines will be adjourned during the stay, the motion added.

Representatives for the parties did not immediately respond to inquiries seeking comment on Friday.

Ayers and Graziano are represented by Michael I. Fistel Jr., Jeffrey A. Berens and Bryan I. Schild of Johnson Fistel PLLP, Phillip Kim of The Rosen Law Firm PA, and Gregory M. Nespole, Corey A. Suk and Daniel Tepper of Levi & Korsinsky LLP.

Zynex is represented by Bryan M. Westhoff and Kevin M. Hogan of Polsinelli PC and Michael J. Garvey and Sara A. Ricciardi of Simpson Thacher & Bartlett LLP.

Counsel information for the individual defendants was not immediately available.

The cases are Patrick Ayers v. Thomas Sandgaard et al., and Daniel Graziano v. Thomas Sandgaard et al., case numbers 1:25-cv-02117 and 1:25-cv-02499, both in the U.S. District Court for the District of Colorado.

--Additional reporting by Zach Dupont and Emilie Ruscoe. Editing by Vaqas Asghar.

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NCUA, US Bank Settle Crisis-Era RMBS Trustee Lawsuit

By **Katryna Perera**

Law360 (October 3, 2025, 12:17 PM EDT) -- The National Credit Union Administration Board and U.S. Bank told a New York federal judge that they have reached a settlement in principle in a suit over U.S. Bank's role as trustee for crisis-era residential mortgage-backed securities trusts.

U.S. District Judge Louis Stanton issued an **order** Thursday stating that the settlement had been reported to the court. The order did not include any details about the deal but stated that the action is dismissed with prejudice and without costs.

The NCUA's 2018 lawsuit accused U.S. Bank of negligence, breach of contract and breach of fiduciary duty in its role as a trustee for 50 RMBS trusts created between 2004 and 2007 that later went bust.

In 2020, Judge Stanton found that the NCUA had **adequately pled** some of its breach of contract claims against U.S. Bank, and sufficiently raised a plausible inference that U.S. Bank had actual knowledge, and received notice, of failures by the servicers for six of the 50 trusts to fulfill their own obligations, thus triggering post-default duties that U.S. Bank allegedly breached.

However, in 2023, the suit was trimmed when the judge ruled that the NCUA did not provide sufficient evidence that the servicers had a duty to ensure the pool assets were properly maintained.

The NCUA is represented by Scott Attaway of Kellogg Hansen Todd Figel & Frederick PLLC.

U.S. Bank is represented by Michael T. Marcucci of Jones Day.

The case is National Credit Union Administration Board et al. v. U.S. Bank National Association et al., case number 1:18-cv-11366, in the U.S. District Court for the Southern District of New York.

--Editing by Alex Hubbard.

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\$1T Tesla Pay Proposal Sets Ambitious Goals For Musk

By **Kellie Mejdrich**

Law360 (October 3, 2025, 1:29 PM EDT) -- A massive pay proposal for Tesla CEO Elon Musk contains performance metrics that would make it tough for Musk to pull in the maximum pay available, even if the deal gets a green light from shareholders in November.

The electric vehicle maker laid out the proposal in a September **proxy statement** ahead of an annual meeting Nov. 6 where shareholders will get a chance to approve or reject the 10-year deal, under which Musk could earn just over \$1 trillion consisting of restricted stock units.

The massive top-line dollar amount has generated a lot of attention, but performance goals Musk would have to satisfy in order to collect that full amount are noteworthy, too.

Andrew Graw, partner chair of the executive compensation and employee benefits practice at Lowenstein Sandler LLP, pointed out a portion of Tesla's proxy statement that said, to achieve the entire \$1 trillion amount over 10 years, Musk would have to grow the company to a market capitalization larger than that of Microsoft, Meta and Google parent Alphabet combined.

"That is a crazy number to reach, and so these are far, far from certain of being attained," Graw said.

Here are four things about the \$1 trillion pitch that have caught attorneys' attention.

Sky-High Performance Targets

Executive compensation attorneys said an important aspect of the deal comes from how Musk could get ahold of \$1 trillion only if he met a set of ambitious targets over the award's two vesting periods, which are seven-and-a-half and 10 years after the grant date.

According to Tesla's proxy statement, the \$1 trillion in restricted common stock would vest under 12 tranches, with both operational and market cap milestones.

In order for Musk to unlock the full award, Tesla's market cap would have to hit \$8.5 trillion by 2035, the final of 12 market cap award milestones that trigger vesting of restricted stock, Tesla's proxy statement said.

Tesla didn't respond to a request for comment about the Musk proposal.

Graw said vesting conditions were an important aspect of the \$1 trillion deal.

"It's both milestone-based and it's service-based," Graw said. "So they're by no means simple, easy milestones to reach, and the vesting conditions are designed to keep him involved with Tesla for a long time."

The compensation package also sets out 12 operational milestones, measured in both adjusted EBITDA — a measure of profitability that stands for earnings before interest, taxes, depreciation and amortization — and goals for Tesla products. Product goals include having 1 million robotaxis in operation and delivering 1 million robots, which the company said are still in development, "for both commercial and in-home use."

Delaware Appeal Still in Play

Musk's 2018 performance award package, which is subject to a shareholder suit on appeal in Delaware, remains a factor in his total compensation, and items related to his previous pay agreement are also subject to a shareholder vote in November.

According to Tesla's proxy statement, shareholders are set to vote on an amended and restated 2019 equity incentive plan that is related to the 2018 deal, which a Delaware Chancery judge **voided** in January 2024. The proxy statement also noted that oral arguments are scheduled in **Tesla's appeal** in that case for Oct. 15.

Tesla's board of directors in August approved a 2025 interim award of restricted stock shares, valued at \$29 billion, with a two-year vesting period, in an effort to make good on the 2018 award that's pending before the Delaware Supreme Court. The August award also has to be forfeited or returned if options in the 2018 award are restored, the proxy statement said. The 2019 equity incentive plan sets out terms for replenishing the company's general share reserve, which was depleted by the August award.

Graw pointed out language in the proxy statement referring to how Musk can't double-dip between the 2018 award on appeal and other restricted stock awards.

"Because the Delaware case is still outstanding on appeal, it does impact some of the compensation elements of Musk's package, as well as the award that he received in August," Graw said.

Move to Texas Shrinks Exposure

Attorneys representing both shareholders and executives agreed that Tesla's decision to move to Texas from Delaware makes an investor suit over Musk's compensation level highly unlikely, given that Texas now allows corporations to impose a 3% ownership threshold for filing derivative shareholder suits.

Tesla reincorporated in Texas in June 2024, and the state enacted changes to its corporate law to allow for such 3% caps in May 2025.

Andrew Oringer, a partner at The Wagner Law Group and an employee benefits and executive compensation attorney, said Musk's latest pay proposal was "really shining a light on this potential for a jurisdictional move to make these kind of mega-packages possibly easier to withstand scrutiny."

Joel Fleming, an investor-side partner at Equity Litigation Group LLP, said he didn't expect a shareholder suit to be filed challenging the new compensation agreement because of the state's 3% threshold.

"I don't think there is any real risk that he's going to face derivative litigation in Texas," Fleming said. Fleming said 3% shareholders of Tesla probably include only major institutional investors like Vanguard, BlackRock and State Street.

Fleming represented Charles Elson, a retired University of Delaware corporate governance professor and founding member of the university's Weinberg Center for Corporate Governance, on an amicus brief of academic experts who supported the investor challenge to Musk's 2018 pay deal in Delaware.

Fleming said Musk's new \$1 trillion deal was "a great example of what happens when you incorporate in a state that has effectively no way for investors to enforce fiduciary duty claims against directors."

A shareholder proposal at the November meeting could change that calculus for Tesla, however. Under the proposal, Tesla's 3% ownership threshold for derivative litigation, which the company's board added the day after Texas enacted the law, would be removed from its bylaws.

The board urged shareholders to vote against that proposal, calling the move "misleading," and said in an opposing statement that any shareholder could initiate derivative litigation if it gathered 3% support from the company's shareholder base.

"Under Texas law and our bylaws, it is not the case that the threshold must be met by a single proponent. A small shareholder can gather support from other shareholders to meet the 3% threshold," Tesla's proxy statement said.

Approval Could Spur Higher Exec Pay Demands

Elson, the retired University of Delaware professor, predicted other top executives would start asking for higher pay awards if Musk's is approved.

"Once he's done it, others will say, 'Well, I'm a superstar too. Give it to me,'" Elson said. "If someone in the peer group goes way up, everybody goes up."

Elson added that such higher pay demands would come as states' corporate legal standards are shifting. In addition to Texas, Elson pointed out how Delaware has shifted its corporate law "to make it easier for controlling shareholders to do what they wish without a great deal of minority input." Elson has signed on to **an amicus brief from law professors** in support of striking down that law, a dispute that's on appeal at the Delaware Supreme Court.

"Delaware started a race to the bottom, Texas went lower and Nevada was always kind of down there," Elson said.

He predicted that if states are allowed to maintain "watered-down fiduciary duties," including the Delaware changes on appeal, corporate law could be impacted in a number of ways. Another state could change its corporate law to appear more protective, or the states' differing corporate legal standards could spur federal intervention from Congress, he said. Another possibility is that states' recent shifts could ultimately change the makeup of equity markets if institutional investors pull out of single-company stocks, he said.

Institutional investors pulling out of equity markets would be "a very bad thing for new companies," Elson said, "because equity is a great form of financing. Debt never is, for a startup."

When asked about criticisms of the high-level of pay in the package, Graw said shareholders are ultimately the ones to decide whether to approve Musk's compensation.

"As long as shareholders are given accurate, truthful information about it, they can decide whether or not they want to vote for it, or against it, or sell their shares and buy some other company's stock," he said.

Graw agreed that executives' pay requests were likely to increase, noting that compensation packages have been going up for decades, with equity awards often tied to performance milestones.

"What is significant in this case, I think, is just the milestones themselves. They are so far out there that, you know, they really are a stretch. They're probably beyond stretch milestones," Graw said. "And if he's able to do this ... probably, people will look back in hindsight and say that he was worth every penny of it."

Oringer of the Wagner Law Group agreed that other executives might push for more pay.

"Will there be an upward push among some of these people that believe that they are as important to their company as Musk is to Tesla?" he said. "Yeah, I think that might be possible."

--Editing by Aaron Pelc and Emma Brauer.