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Securities

BDO Denied Chance to Press Auditor Liability at High Court (1)

Oct. 6, 2025, 6:51 AM PDT; Updated: Oct. 6, 2025, 10:14 AM PDT

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 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 warranty 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.

"Auditors have to conduct their audits in line with professional standards and they cannot lie about that. It's that simple," Sam Rudman, lead counsel for shareholders seeking to sue BDO and a partner with Robbins Geller Rudman & Dowd LLP, said in a statement. "Investors will be glad to see that point reinforced here."

BDO did not respond to a request for comment.

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 .

(Updates with statement from investors' lead counsel in paragraph eight.)

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Molina Healthcare Investor Sues Over Undisclosed Obamacare Costs

Oct. 6, 2025, 10:59 AM PDT

Summary by Bloomberg AI

AI Generated

- Molina Healthcare Inc. concealed unexpectedly raised costs in its government-sponsored insurance plans, according to an investor's proposed class action.
- The complaint alleges that Molina and its top executives didn't tell investors about a mismatch between its premium rates and medical cost trends.
- Investor Jeffrey Hindlemann filed the proposed class action seeking damages for alleged Securities Exchange Act of 1934 violations by Molina, CEO Joe Zubretsky, and Chief Financial Officer Mark Keim.

Molina Healthcare Inc. concealed unexpectedly raised costs in its government-sponsored insurance plans as it twice lowered 2025 earnings guidance an saw sltock prices plummet in a month, an investor's proposed class action said.

Molina and its top executives didn't tell investors about a mismatch between its premium rates and medical cost trends, or that short-term growth relied on patients not using "behavioral health, pharmacy, and inpatient and outpatient services," according to the complaint filed in the US District Court for the Central District of California on Oct. 3.

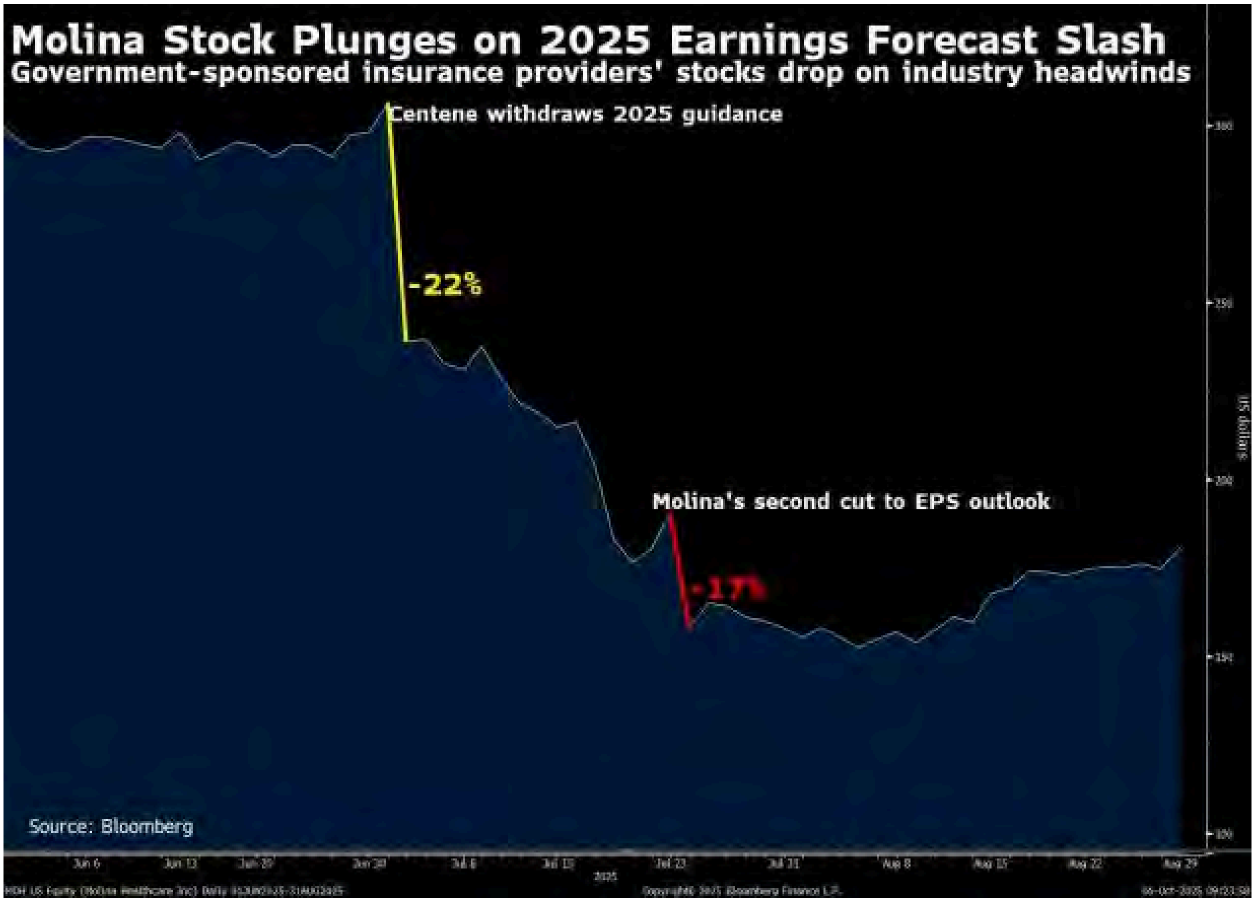
Investor Jeffrey Hindlemann filed the proposed class action seeking damages for alleged Securities Exchange Act of 1934 violations by Molina, CEO Joe Zubretsky, and Chief Financial Officer Mark Keim.

Molina's stock had its biggest one-month decline on record in July 2025, slipping 47%, according to data compiled by Bloomberg.

The health insurer, which serves low-income individuals on Medicaid and Medicare programs and through state health insurance marketplaces, had said July 7 it expected its 2025 adjusted earnings to be between $21.50 and $22.50 per share. Its stock price dipped 2.91% that day.

Then Molina on July 23 said it expected its "2025 adjusted earnings to be no less than $19.00 per diluted share" when releasing its second-quarter financial results. Its stock price fell almost 17% to close at $158.22 the next day, hitting its lowest price in nearly five years, according to Bloomberg data.

Molina said at the time the lowered outlook reflected "new information gained in the quarterly closing process and implications for medical cost trend assumptions for the second half of the year." The company said the change was "disproportionately attributed" to its marketplace, state-run health insurance plans offered under the Affordable Care Act.



Molina also said July 23 it "experienced medical cost pressure due to continued utilization" of the aforementioned services in its Medicaid plan services, "partially offset by the rate updates that went into effect in the first and second quarters."

Molina's not the only insurer that took stock hits earlier this year while the industry's contended with rising costs in its government marketplace health care plans. UnitedHealth Group Inc., Centene Corp., and Elevance Health Inc. all at some point either lowered or pulled their 2025 financial projections.

Molina's share prices fell 22% on July 2 to close at $239, its sharpest one-day plunge since 2012, per the data. That was the day after Centene withdrew its previously issued 2025 guidance, weighing on its and other insurers' stock prices.

The proposed class would include those who acquired Molina securities from Feb. 5, 2025—when the company said it expected 2025 adjusted earnings per share to be at least $24.50 while reporting 2024 financial results—through July 23, 2025.

Hindlemann's complaint said that as a result of the undisclosed issues pertaining to costs, positive statements about its business were misleading to investors, lacked a reasonable basis during the proposed class period, or both.

Molina didn't immediately respond to an email seeking comment.

Glancy Prongay & Murray LLP represents Hindlemann.

The case is Hindlemann v. Molina Healthcare, Inc. , C.D. Cal., No. 2:25-cv-09461, complaint filed 10/3/25 .

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Litigation

Manage Newsletters

Trade Desk Leaders Hit With Latest Insider Trading, Ad Tool Suit

Oct. 6, 2025, 1:58 PM PDT

Summary by Bloomberg AI

AI Generated

- An investor alleges that leaders of The Trade Desk Inc. improperly hyped the prospects of a new algorithm for digital advertising and sold nearly $500 million worth of stock while prices were inflated.
- The investor claims that the company's executives and directors misled investors about the adoption and revenue growth of the product, called Kokai, and that insider sales flourished while the price was artificially inflated.
- The investor brings claims for securities fraud, breach of fiduciary duty, waste of corporate assets, and unjust enrichment, and seeks damages, restitution, a constructive trust, and internal governance reforms.

Leaders of The Trade Desk Inc. improperly hyped the prospects of a new algorithm for digital advertising despite sluggish uptake and sold nearly $500 million worth of stock while prices were inflated, an investor alleges.

The harm to the company includes a $272 million overpayment for $1.1 billion in stock repurchases, damage to its reputation and goodwill, and its legal defense costs and exposure to liability in a related class action, Ahmed Ibrahim says. He filed the shareholder derivative suit on behalf of Trade Desk on Oct. 3 in the US District Court for the District of Nevada.

The derivative suit joins others in that district and the Central District of California, and contains similar allegations to those in the proposed class action on behalf of investors over its artificial intelligence-based tool for advertisers, called Kokai.

Ibrahim alleges Trade Desk executives and directors “highlighted Kokai adoption as evidence of long-term momentum, telling investors the product would fuel accelerated revenue growth.” Executives “touted Kokai as ’the best that we’ve ever shipped,’ and assured investors that its adoption across agencies and advertisers was proceeding at a ‘phenomenal’ pace,” Ibrahim says.

But the product had flaws, clients weren't transitioning to it as quickly as represented, and users didn't increase their spending, he says.

"Instead of promptly disclosing these material facts, the Individual Defendants continued to mislead investors, maintaining inflated revenue projections and growth expectations for Kokai," he says.

Insider sales flourished while the price was artificially inflated, he says. CEO Jeffrey Green in particular sold his own stock for more than $443 million while in possession of material nonpublic information, including selling $48 million of it "just one day before the truth began to emerge," Ibrahim says.

The investor brings claims for securities fraud, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. He seeks damages, restitution, a constructive trust, and internal governance reforms.

Trade Desk didn't immediately respond to an emailed request for comment on behalf of itself or the individual defendants.

The Aldrich Law Firm Ltd. and Robbins LLP represent Ibrahim.

The case is Ibrahim v. Green , D. Nev., No. 2:25-cv-01892, complaint 10/3/25 .

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Securities

First Republic Bank Investors Invoke Justices' Jarkesy on Appeal

Oct. 6, 2025, 1:04 PM PDT

First Republic Bank shareholders' lawsuit against the collapsed financial institution's former executives and auditor hinged on independent wrongdoing and shouldn't have been tossed, the suing investors told a federal appeals court.

The dismissal order "effectively immunizes bank executives, auditors, and other third parties from securities fraud liability for their own misconduct," contrary to the meaning of the federal act that the lower court cited, the investors said in their brief filed Oct. 3 in the US Court of Appeals for the Ninth Circuit.

The US District Court for the Northern District of California's ruling also violates Article III of the US Constitution as well as its Seventh Amendment promise of the right to a jury trial, and separation-of-powers principles, the shareholders said, pointing to a 2024 Supreme Court ruling. That decision in *Securities and Exchange Commission v. Jarkesy* said defendants from whom the SEC seeks financial penalties for alleged securities fraud have a constitutional right to make their case to a federal jury.

The shareholders assert that as plaintiffs, they too had a right to a jury trial in an Article III court given they seek monetary relief and their securities law claims are closely related to common law fraud ones. Their suit alleges First Republic's brass and KPMG misled shareholders about the bank's condition before it failed and the Federal Deposit Insurance Corp. became its receiver in 2023.

The district court tossed the proposed class action in June, finding shareholders didn't exhaust administrative remedies after the FDIC assumed receivership, before they sought judicial review. This was required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, said Judge Araceli Martínez-Olguín, finding she lacked subject matter jurisdiction while granting the FDIC's request to dismiss the case.

Both the Supreme Court and Ninth Circuit "recognized the serious constitutional concerns of forcing claims in the nature of a suit at common law into a receivership scheme administered by an executive agency," according to the investors' brief. In the First Republic suit, that agency's the FDIC. And the issue's worse here because "the District Court granted the FDIC the authority to determine private rights between parties who are all not in receivership," the Swedish pension fund and another appealing investor said.

Martínez-Olguín wrongly held the lawsuit didn't involve misconduct independent of the bank's, the brief said. Officers and directors who personally made alleged misstatements or engaged in a fraudulent scheme should bear primary liability. Her reasoning "was even more untenable" regarding the bank's independent auditor, KPMG LLP, which is responsible for its own report, the brief said.

At the very least, a lead plaintiff appointed by a court under the Private Securities Litigation Reform Act of 1995 isn't asserting a "claim" within the meaning of FIRREA's jurisdictional bar, the investors said.

Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check LLP represent the investors.

Morrison & Foerster LLP, which represented First Republic chief banking officer Mike Selfridge, declined to comment on the appellants' argument. Other firms representing bank executives and KPMG in the lower court didn't immediately respond to requests for comment, nor did KPMG. The FDIC, which intervened in lower court to seek dismissal, declined to comment.

The case is Alecta Tjanstepension Omsesidigt v. Herbert , 9th Cir., No. 25-4361, 10/3/25 .

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Securities Litigation

Manhattan Federal Court Dismisses Another Securities Lawsuit Against UiPath

U.S. District Judge Denise Cote found that a Scott + Scott-represented investor hadn't plausibly alleged that UiPath Chief Executive Officer Daniel Dines or Chief Financial Officer Ashim Gupta had lied about UiPath's financial prospects.

October 06, 2025 at 04:44 PM By **Alyssa Aquino**

A logo on a wall inside the UiPath Inc. offices in Bucharest, Romania, on Friday, May 14, 2021. Photo: Andrei Pungovschi/Bloomberg

The Manhattan federal court dismissed another shareholder complaint against robotic process automation software company UiPath, rejecting claims that the company's top brass misled investors on how the company was faring after Microsoft entered the field.

U.S. District Judge Denise Cote found that a Scott+Scott Attorneys at Law-represented investor hadn't plausibly alleged that UiPath Chief Executive Officer Daniel Dines or Chief Financial Officer Ashim Gupta had lied about UiPath's financial prospects.

"The [third amended 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," Cote wrote in a decision issued Thursday. “It is unnecessary to reach the defendants’ alternative argument that the TAC fails to adequately allege loss causation.”

Plaintiffs counsel and UiPath, which was represented by Davis Polk & Wardwell, didn’t respond to Monday's requests for comment.

The lawsuit was just one of many to be filed against UiPath over the past few years. The company, which creates tools that automate routine work-related tasks, such as data entry, had gone public with a $35 billion valuation in 2021, only to be worth $10 billion a year later.

Scott + Scott sued on behalf of investor Paul Severt and alleged that UiPath misled investors on the expense of its products, stagnating demand and its rivalry with Microsoft.

The case initially turned on dozens of UiPath statements, but most of the case was tossed by Cote in November. In that dismissal order, Cote only allowed claims centered on two statements made during earnings calls, which concerned Microsoft’s entrance into the robotic process automation software industry.

Scott + Scott refiled the case and reasserted claims over two other alleged misstatements, which also concerned Microsoft.

In her Thursday dismissal order, Cote explained that only one of the four statements required “any extended discussion”—Dines’ remark at an October 2021 conference that Microsoft “doesn’t even compete” in the market for advanced unattended robots that require less human interaction than attended robots.

Cote had dismissed that statement a year prior and did so again.

“Viewed in context, Dines’ statement consists of entirely reasonable comments regarding differences in software functionality between UiPath and Microsoft Robots,” she said.

She further remarked that a “central theme” of the third amended complaint had been that UiPath had focused on unattended robots, while Microsoft focused on attended robots.

“There is little indication in the TAC that Microsoft was offering unattended Robots as of October 2021 —and certainly no indication that any unattended Robots that Microsoft offered at this time had comparable functionality to UiPath’s unattended Robots,” Cote wrote.

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Litigation

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Capital One Shareholder Drops Rates Lawsuit Against Executives

Oct. 7, 2025, 7:27 AM PDT

A Capital One Financial Corp. stockholder relinquished his derivative lawsuit accusing the bank's board and top executives of misleading customers about savings-account interest rates.

Shareholder Michael Reiter told the US District Court for the District of Delaware Monday he was voluntarily dismissing his case, while preserving the chance to refile. Judge Jennifer L. Hall said two weeks ago she doubted the merits of his sole federal claim because she didn't see how the pleadings supported a derivative allegation, saying the complaint might be an attempt to manufacture jurisdiction. Hall gave Reiter until Tuesday to demonstrate why this lawsuit, which also had state law claims, shouldn't be tossed.

Reiter alleged Chairman Richard D. Fairbank, Chief Financial Officer Andrew M. Young, and other current and former leaders breached their fiduciary duty to Capital One by knowingly engaging in a two-tiered interest rate scheme and violated securities laws by misleading investors

Capital One agreed to settle customer class-action claims for $425 million and was sued by the New York attorney general for allegedly cheating online savings account customers out of millions in interest payments

Robbins LLP and Cooch & Taylor PA represented Reiter. Morrison & Foerster LLP and Young Conaway Stargatt & Taylor LLP represented the brass and Capital One, a nominal defendant. None of these law firms nor Capital One immediately responded to emails seeking comment.

The case is Reiter v. Fairbank , D. Del., No. 1:25-cv-01037, notice of voluntary dismissal filed 10/6/25 .

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LAW.COM

News | Diversity

A ‘Chilling Effect’? Lawyers of Color Lose Leadership Gains in Multidistrict Litigation

Lawyers of color made up 8% of appointments in plaintiffs’ leadership positions in multidistrict litigation in 2024, down from 11% in 2023, according to Law.com’s statistics.

October 07, 2025 at 10:11 AM By Amanda Bronstad

What You Need to Know

- Lawyers told Law.com that one factor potentially affecting diversity is that many judges last year turned to the bar to come up with their own slates, rather than review individual applications.
- Another factor impacting diversity discussions is the growing political and cultural environment against diversity, equity and inclusion initiatives.
- Firms that had the most lawyers appointed to multidistrict litigation roles in 2024 were Seeger Weiss, Berger Montague and Hausfeld, which topped the list with seven of its attorneys receiving leadership positions.

Sabita J. Soneji, partner with Tycko & Zavareei. Courtesy photo

Lawyers of color made up 8% of the appointments to plaintiffs' leadership positions in multidistrict litigation in 2024, falling to half what it was three years ago, according to Law.com's statistics.

In total, 343 lawyers were appointed in 2024. The percentage of "nonwhite" attorneys fell from 11% in 2023, 14% in 2022 and 16% in 2021, which was the highest percentage in the past nine years. The ethnic makeup of 2% of lawyers could not be determined.

Lawyers told Law.com that one factor potentially affecting diversity is that many judges last year turned to the bar to come up with their own slates, rather than reviewing individual applications or holding hearings to interview each of them for the appointments. Generally, lawyers said, that process makes it harder for "nonwhite" attorneys to get their names out in front of judges.

"Consensus always favors the majority," Sabita Soneji, who was appointed to leadership roles in four multidistrict litigation dockets last year, said. "There are a handful of other minority applicants who will try to get in on a consensus slate, or they will file a separate competing application, although that's rare."

Another factor is the growing political and cultural environment against diversity, equity and inclusion initiatives that has chilled efforts on the bench and bar to openly discuss those issues in leadership appointments. On Feb. 27, a conservative judicial group called Article III Project filed a misconduct complaint against U.S. District Judge M. Casey Rodgers, of the Northern District of Florida, after she suggested women "should be adequately represented within leadership" of the multidistrict litigation involving injectable birth control Depo-Provera.

The U.S. Court of Appeals for the Eleventh Circuit chose not to discipline Rodgers after she corrected her language, but Chief Judge William Pryor criticized as unconstitutional the growing number of statements in multidistrict litigation encouraging lawyers to prefer candidates for leadership roles based on sex or race: "Commentators openly encourage judges who preside over these actions to consider impermissible characteristics like sex or race when they appoint leadership counsel."

"It's frankly just a difficult issue," John Rabiej, whose Rabiej Litigation Law Center hosts regular bench-and-bar conferences on "best practices" in multidistrict litigation, told Law.com. "What the judge is faced with is a code of conduct where they can't make a decision based on favoritism or discrimination—race, sex or age. They all know that."

'There Just Aren't a Lot of Minorities in the Plaintiffs' Bar'

From 2016 to 2019, white attorneys dominated multidistrict leadership with 95% of appointments, according to Law.com's statistics. Men continue to hold the majority of roles, but women have made significant inroads in leadership positions, consistently securing more than 30% of the appointments. In 2024, for example, 36% of appointments went to women.

Of the 10 attorneys who received appointments to three or more multidistrict litigation dockets last year, only one, Soneji, wasn't white. All four cases she was appointed to involved data breach or privacy class actions, not product liability matters. Soneji, who heads Tycko & Zavareei's privacy and data breach group, in Oakland, California, told Law.com that areas of the class action bar can be even less diverse than mass torts.

"The reality is there just aren't a lot of minorities in the plaintiffs' bar," she said. "There needs to be more women, but obviously there needs to be more Black and Brown lawyers."

On top of that, she said, more judges allowed lawyers to create their own leadership teams last year, rather than select the attorneys themselves, which often takes more resources and time. In the Snowflake data breach case, U.S. District Judge Brian Morris of the District of Montana appointed the co-lead counsel, who then selected Soneji to join their team.

"Most of my appointments in 2024 were because I have very strong relationships," she said. But she wanted more lawyers to have such opportunities.

"There are many lawyers, many white men and women, who care and want to emphasize this issue, but the discussion is, will this matter to the judge?" she said. "It's an important thing, and it would be easier if the judges were drivers."

One of the lawyers Morris appointed as co-lead counsel in the Snowflake cases, Jason Rathod, told Law.com that he was encouraged to participate because the judge requested individual applications. But he agreed that fewer judges did that in 2024.

"If you have private ordering of slates where people present a slate of people, that lends more to repeat dynamic and less to diversity," Rathod, of Washington, D.C.'s Migliaccio & Rathod, said. "Once you open it up beyond the lawyers' self-organization, it lends itself to more diversity."

But it is also more work for judges, particularly when they're already overseeing a docket of potentially dozens to thousands of cases.

"It adds another thing on an already busy to-do list when you've got an MDL and that might already seem overwhelming, particularly to first-time MDL judges," Elizabeth Burch, a professor at the University of Georgia School of Law, told Law.com. "So anytime you have lawyers who agree on something, why would you not do that?"

Elizabeth Chamblee Burch

Firms that had the most lawyers appointed to unique multidistrict litigation roles in 2024 were Seeger Weiss, Berger Montague and Hausfeld, which topped the list with seven of its attorneys receiving leadership positions. Most firms had one attorney of color among those appointees.

In a statement, Hausfeld Managing Partner Melinda Coolidge told Law.com, “While we don’t have control over decisions the judiciary makes, Hausfeld is deeply committed to diversity in the legal profession. We focus on recruitment and retention of the best lawyers in the plaintiffs’ bar that reflects the diverse communities we serve, and mindfully develop litigation leadership skills across our ranks of attorneys so that when opportunities arise, we have a large pool of talent ready to lead these complex cases.”

‘Threading the Needle’ in Today’s Political Environment

When it comes to discussing diversity, the atmosphere in the courtroom has also changed. In the Depo-Provera case, the Eleventh Circuit concluded that Rodgers took “appropriate voluntary correction action that acknowledges and remedies the problems created by her statements.”

In a March 14 letter to the court, Rodgers wrote, “Although I have never engaged in impermissible discrimination when selecting attorneys for MDL leadership positions or in any other facet of my work, I acknowledge that my statements could be construed as creating a preference for female attorney representation in leadership positions during the selection process.”

The Eleventh Circuit, in its conclusion, noted that Rodgers, when interviewing nearly 70 lawyers for leadership roles, later told them she would not “give any preference to female attorneys in order to avoid the appearance of any impermissible sex discrimination.”

“Judge Rodgers acknowledged the concerns created by her statements at the case-management conference,” Pryor wrote in the March 20 decision.

The shifting cultural norms have raised concerns among federal judges who are assigned to oversee MDLs, Rabiej said. The MDL guidelines, he said, attempted to “thread the needle.”

“What they’re doing is trying to make sure the opportunities are there,” he said of judges. “We’ve got judges in MDLs appoint lawyers who are experienced, and normally those are repeat players,


U.S. District Judge Casey Rodgers

and it's tough to get around it. So that's why judges come up with innovative ways, and sometimes the other people will say that's too aggressive. But everybody's concerned about it, and they're trying to figure out the best way to handle this."

One way has been to create so-called "leadership development committees" whose members are often younger and more diverse lawyers interested in gaining experience in multidistrict litigation. On May 30, nine members of a "leadership development committee" in the multidistrict litigation over recalled Philips CPAP breathing machines, created by U.S. District Senior Judge Joy Flowers Conti, in the Western District of Pennsylvania, issued a report and recommendations about their experience.

The report found that the committee's members came from various backgrounds, including geography, age and ethnicity, which included white, Black, Filipino, Cuban and Native Hawaiian. Some went on to get leadership appointments in future multidistrict litigation.

"LDCs cultivate the next generation of MDL leaders and represent a vital investment in the future of the legal profession," they wrote.

Rabiej praised the concept of a leadership development committee. "It's an example of where threading the needle correctly—providing opportunities to lawyers, not necessarily targeting a specific group," he said.

Some lawyers, when applying for leadership roles in 2024, proposed leadership development committees. U.S. District Judge J. Philip Calabrese of the Northern District of Ohio, in the multidistrict litigation over Suboxone, a medication used to treat opioid addiction, named seven lawyers to a leadership development committee.

But the current climate of not discussing diversity has left some lawyers hesitant to bring up diversity as a factor in appointing them individually, or in preferring their team over others.

"I do think there can be a chilling effect," Rathod said, with some people "walking on eggshells."

"That's something that some applications have not quite caught up to—that reality that you have to speak in a different register now than maybe you used to," Rathod said.

In his application for leadership of the Snowflake case, he highlighted his "outside-the-box perspective," writing, "My path is atypical: I had a rural upbringing as the son of immigrants in the plains of Nebraska and now live and work in the urban core of Washington D.C.”

Burch said lawyers and judges shouldn’t underestimate the importance of what she called “cognitive diversity,” which lawyers new to multidistrict litigation can provide on a leadership team.

“The type of diversity that’s been getting so much slack lately in terms of identity diversity is very different,” Burch said. “If you have someone who thinks about things differently, and has different training experiences, you can overcome problems everyone else gets stuck on.”

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Law

Drop in class action cases sparks warnings over litigation funder curbs

Investors behind collective lawsuits say limits to their share of damages hamper public access to justice

Law firms have warned justice secretary David Lammy that 'investment from funders is draining away from the UK legal system' © Anna Gordon/FT

Alistair Gray in London

Published YESTERDAY

Lawyers and investors behind UK class action lawsuits have warned that restrictions on litigation funders are curbing access to justice, after a drop in the number of group cases.

Only three so-called collective proceeding cases have been brought this year at the Competition Appeal Tribunal — the main venue for such claims — according to figures from litigation intelligence provider Solomonic. That compares with 11 for all of 2024 and 17 the year before.

Law firms including Mishcon de Reya, Stewarts and Freeths have written to new justice secretary David Lammy to warn that "investment from funders is draining away from the UK legal system".

Funders say their appetite to back new claims has diminished since a 2023 Supreme Court ruling known as Paccar, which prevented them from receiving a percentage cut of damages in antitrust class action claims.

The Civil Justice Council, a body set up to make recommendations to the Lord Chancellor about possible changes to the civil justice system, this year recommended the government legislate to overturn Paccar.

In the letter to Lammy, seen by the Financial Times, the signatories write: "The independent experts have provided the evidence that this issue needs fixing, yet this Government refuses to act, delaying justice for some and denying justice for future claimants."

Neil Purslow, who chairs the International Legal Finance Association's executive committee, said the UK government "must act" to reverse Paccar "before this small trickle of cases dries up altogether".

However, analysts and lawyers said a series of other setbacks, beyond Paccar, had also made funders more wary of backing new class action lawsuits.

While a plethora of claims has been brought, funders' financial returns from high-profile cases have disappointed.

The Competition Appeal Tribunal this year approved a £200mn settlement between Mastercard and former financial ombudsman Walter Merricks, who brought a class action claim on behalf of about 46mn consumers.

The sum was a fraction of the £14bn the claimants had originally sought, sparking a spat between Merricks and funder Innsworth, which said he should never have agreed to the deal.

Edward Bird, chief executive of Solomonic, said the data showed that funders were "more cautious in these opportunities" than they once were. "You don't need to look much further than the Mastercard case to see why."

Despite the drop in the number of class actions this year, the cases that have been brought include new multibillion pound claims against Alphabet and Microsoft, and the threat of such litigation remained a "substantial risk" for companies in the UK, said Bird.

The Department for Business and Trade is conducting a review of the class action regime. Legislation in 2015 allowed collective legal actions to be brought in the UK over alleged breaches of competition law on an “opt-out basis”, under which consumers are automatically included unless they state they do not want to take part.

Kenny Henderson, a litigation partner at law firm CMS, said the regime “has led to an explosion of litigation with almost no benefit to consumers but hugely beneficial to lawyers and litigation funders”.

He said: “There is simply no rational case for parliament taking the highly unusual step of reversing a Supreme Court decision.”

Seema Kennedy, executive director of Fair Civil Justice, a group that campaigns against the growth of class action lawsuits, said: “The Civil Justice Council’s recent report made 58 recommendations, including statutory regulation of the third-party funding sector.

She added: “It is only right that government considers these proposals in the round — including greater regulation and transparency — rather than rushing to legislate on one single item.”

But Purslow, who founded litigation funder Therium Capital Management, which financed a lawsuit against the Post Office by sub-postmasters who were wrongly accused of fraud, said the restrictions on funders meant “meritorious claims are going unfunded”.

“We’ve been warning successive governments for more than two years about the potential impact this uncertainty will have on consumers and small businesses’ ability to access justice,” he said.

The Ministry of Justice said: “Third-party litigation funding plays a critical role in ensuring access to justice. That is why we are committed to ensuring it works fairly for all.

“We welcomed the Civil Justice Council’s review earlier in the year, which will help inform our approach to potential reforms in this area and we’ll outline next steps in due course.”

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News | Commercial Litigation

Rival Multi-Billion Pound Google Class Actions Face Off in UK Competition Appeal Tribunal

One of the two proposed claims against Google is thought to be one of the largest ever heard by the Competition Appeal Tribunal.

October 07, 2025 at 04:23 AM By Jack Womack

Google office building in the South Lake Union neighborhood of Seattle. Credit: IanDewarPhotography/Adobe Stock

Two competing multi-billion pound proposed class action lawsuits against Google have begun their court battle in London to decide which one will proceed.

The U.K. Competition Appeal Tribunal (CAT) must decide whether to certify a proposed claim fronted by retired deputy high court judge Roger Kaye KC—valued between £15.2 billion and £25.2 billion—or a claim fronted by competition law associate professor Dr Or Brook, which is valued at £5 billion.

Both class actions allege that Google abused its dominance in the online search market to stifle competition and overcharge advertisers.

The Kaye claim is led by the law firm KP Law, a specialist group action firm, instructing Monckton Chambers barrister Mark Brealey KC. KP Law has claimed that its class action, filed on May 27 2025, was "thought to be the biggest ever brought before the Competition Appeal Tribunal".

Earlier this year, Brealey appeared for Walter Merricks in the closely watched class action lawsuit against Mastercard which ended in a £200 million settlement approved in February.

Meanwhile, the Brook claim is funded by litigation funder Burford Capital, with law firm Geradin Partners instructing Blackstone Chambers barrister Kieron Beal KC.

The CAT will hear arguments for both claims this week, before deciding which one to certify. At a hearing earlier this year, a tribunal judge said: "My intuition is this is going to be one of those cases where both sides put forward a very competent way of managing the claim and it's going to be a finely judged call".

Simmons & Simmons is representing Google in the competition claims. Google did not provide a comment by the time of publication.

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News | Mass Torts

LA Jury Awards $966M in Talc Verdict Against J&J

Monday's verdict, by a jury in Los Angeles Superior Court, is the highest talcum powder verdict involving a plaintiff who died of mesothelioma.

October 06, 2025 at 07:39 PM By **Amanda Bronstad**

Danny Kraft, of counsel with Dean Omar Branham Shirley. Courtesy photo

A Los Angeles jury awarded a $966 million verdict to the children of a woman who died from mesothelioma after using Johnson & Johnson's talcum powder products.

Monday's award is the largest against Johnson & Johnson in a mesothelioma case. The jury's verdict awarded $950 million in punitive damages, $6 million in past noneconomic damages to Mae Moore, who died of mesothelioma in 2021, and $10 million in noneconomic damages to her children, Joy Moore, Kathryn Pratt and Carol Farquharson. The jury did not find partial liability against other cosmetic talc manufacturers Avon Products Inc., Chanel Inc., Colgate-Palmolive Co. or Revlon Inc., which were not parties in the case.

Danny Kraft and Venus Burns, of Dallas-based Dean Omar Branham Shirley, represented the three plaintiffs.

"Ms. Moore's case began in 2021 but was delayed by Johnson & Johnson's bad faith bankruptcies," Dean Omar partner Trey Branham said in a statement. "While justice was slow in coming, the jury spoke and spoke loudly. We remain ever hopeful that Johnson & Johnson will finally accept responsibility for these senseless deaths."

The firm has won multiple mesothelioma talc verdicts against Johnson & Johnson across the country, the highest of which was $260 million in Oregon's Multnomah Circuit Court last year.

"We will immediately appeal this egregious and unconstitutional verdict that is directly at odds — in result and amount — with the vast majority of other talc cases wherein the company has prevailed, including the defense verdict last week against the same plaintiff law firm that brought this baseless action," said Johnson & Johnson's Worldwide Vice President of Litigation Erik Haas said Johnson & Johnson in a statement.

That Oct. 2 verdict, in South Carolina's Richland County Court of Common Pleas, a jury sided with Johnson & Johnson in a mesothelioma case brought by plaintiff Gregory Johnson.

"As in the *Johnson case*, the plaintiff lawyers in this *Moore* case based their arguments on 'junk science' that never should have been presented to the jury, as it is refuted by decades of studies demonstrating Johnson's baby sowder is safe, does not contain asbestos and does not cause cancer, Hass said. "The company is confident that the *Moore* verdict will be reversed on appeal, for the same reasons as virtually all the other plaintiff verdicts rendered by juries similarly misled by the false narratives fed by experts on the plaintiff's payroll. The punitive damages amount also on its face is unconstitutional and cannot stand."

O'Melveny & Myers partner Sabrina Strong, in Los Angeles, and John Ewald, of Kirkland & Ellis in Chicago, represented Johnson & Johnson.

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Bloomberg Law

Manage Newsletters

Anthropic Must Face Claims Over Users' Song-Lyric Infringement

Oct. 6, 2025, 1:47 PM PDT

Summary by Bloomberg AI

AI Generated

- Judge Eumi K. Lee denied Anthropic's motion to dismiss claims of contributory infringement, vicarious infringement, and violation of the Digital Millennium Copyright Act.
- The music publishers alleged Anthropic knew its users were using Claude to get song lyrics, that it could have profited from that infringing activity, and that it removed copyright management information to conceal any infringement.
- Lee said it's "plausible" that users' access to lyrics through Claude benefits Anthropic because Claude would not be as popular and valuable without the underlying text corpus that includes the music publishers' copyrighted lyrics.

Anthropic PBC failed to escape claims from music publishers that the AI developer knew its users were infringing copyrighted song lyrics through its flagship AI model, Claude.

Judge Eumi K. Lee denied Anthropic's motion to dismiss claims of contributory infringement, vicarious infringement, and violation of the Digital Millennium Copyright Act in an order filed Monday in the US District Court for the Northern District of California.

Lee dismissed secondary infringement and DMCA claims from the music publishers' original complaint in March, but ruled differently this time, saying the plaintiffs' amended complaint plausibly alleged Anthropic could have known its users were using Claude to get song lyrics, that it could have profited from that infringing activity, and that it removed copyright management information to conceal any infringement. Anthropic didn't try to axe the direct copyright infringement claim in its motion to dismiss filed in May.

The music publishers, including Concord Music Group Inc. and Universal Music Corp., pointed to Anthropic's move to set up guardrails to prevent users from generating infringing outputs as evidence it knew its users were using Claude to extract song lyrics, Lee said. Although Anthropic disputed those allegations, Lee said at the point of a motion to dismiss, she must accept the publishers' "non-conclusory allegations as true, although Anthropic's factual contentions may be revisited at a later stage" of litigation.

Lee said it's "plausible" that users' access to lyrics through Claude benefits Anthropic—an element of vicarious infringement—because, "as Publishers contend, Claude would not be as popular and valuable as it is but for 'the substantial underlying text corpus that includes Publishers' copyrighted lyrics.'"

The music publishers sued Anthropic in October 2023 and have a pending motion to amend their complaint again, this time to add a piracy claim. Anthropic reached a settlement deal in August in another copyright lawsuit over Claude's training filed by a group of authors last year.

Oppenheim & Zebrak LLP, Coblentz Patch Duffy & Bass LLP, and Cowan Liebowitz & Latman PC represent the music publishers. Wilmer Cutler Pickering Hale & Dorr LLP and Latham & Watkins LLP represent Anthropic.

The case is Concord Music Group Inc. v. Anthropic PBC , N.D. Cal., No. 5:24-cv-03811, order filed 10/6/25 .

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News | **Cybersecurity**

Boyd Gaming Says Data Breach Wasn't Devastating, but the Lawsuits Keep Coming

“People will see a data breach notice and say, 'Where there’s smoke there has to be fire,'" said Paul Greene, a partner at Harter Secrest & Emery.

October 06, 2025 at 01:30 PM By **Brendan Pierson**

Credit: SeanPavonePhoto/Adobe Stock

Gambling and hospitality company Boyd Gaming has been hit with at least 14 lawsuits in Nevada federal court over a data breach that it disclosed last month, even though it has said the breach primarily targeted its employees and has not affected its operations, highlighting the risk posed by private litigants for data breach victims even in relatively favorable scenarios.

What Happened

In a filing with the U.S. Securities and Exchange Commission, Boyd, a publicly traded company that owns 28 gaming properties in 10 states, said that an unauthorized third party had accessed its systems and obtained “information about employees and a limited number of other individuals.” It said that it would not incur any financial cost from the incident thanks to its comprehensive cybersecurity coverage.

“It’s actually a really good story for Boyd,” said Paul Greene, who heads Harter Secrest & Emery’s data security and privacy practice. He contrasted it with cyberattacks on gambling giant MGM Resorts in 2019 and 2023 that resulted in the leak of more than 10 million customer records, extensive disruption of its operations and eventually a $45 million settlement.

“This is like the antipode of what happened at MGM,” Greene said.

The first lawsuit was filed on Sept. 25 by Scott Levy, a Boyd employee. Since then, further lawsuits have been filed by people who say they were notified that they were affected by the attack. According to the notices that the people received, the unauthorized access took place from Sept. 5 through Sept. 7 and involved names, social security numbers and birth dates.

The lawsuits accuse Las Vegas-based Boyd of negligently failing to maintain adequate cybersecurity practices, such as using anti-malware software and training employees. They are asking the court to order the company to pay the future costs of preventing or mitigating identity theft resulting from the breach.

Boyd did not immediately respond to a request for comment.

How We Got Here

The gaming and hospitality industry is an inviting target for cybercriminals because it handles a large amount of personal data and is highly regulated, similar to other frequently targeted industries like healthcare. In addition to the MGM breaches, Caesars Entertainment suffered a breach in 2023 that compromised about 65 million people’s personal information, and continues to face litigation over the incident. In November of that year, the Federal Bureau of Investigation issued a memorandum warning of increasing cyberattacks against the casino industry.

The apparently much smaller scope of the attack on Boyd has not shielded it from class actions because plaintiffs’ firms have become adept at filing quickly whenever companies make a mandatory SEC disclosure of a breach, and will sometimes do so based on limited information, Greene said.

“People will see a data breach notice and say, 'Where there’s smoke there has to be fire,' he said.

What's Next

Even if Boyd’s data breach is as limited as its initial disclosure suggests, it will now have to prove that in court, as well as shouldering the ordinary costs of discovery.

The litigation "is highly likely going to outstrip any costs that Boyd incurs from the incident itself."

Going forward, gaming companies can turn to the 2023 FBI memo for guidance on how to protect themselves. It advises firms to encrypt their stored data, review the security of third-party vendors and limit access to high-level files.

Law.com Radar

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Litigation

Manage Newsletters

Maryland High Court Judges Skeptical of State's Climate Suits

Oct. 6, 2025, 12:53 PM PDT

Summary by Bloomberg AI

AI Generated

- A panel of state justices at the Maryland Supreme Court questioned whether climate tort lawsuits against oil and gas companies center on deception or actual emissions.
- The plaintiffs' attorney, Vic Sher, argued that the cases are about the oil and gas industry's campaigns of misinformation about how their products worsen climate change.
- The panel's decision will determine whether the cases will proceed towards trial or be dismissed, like a growing majority of similar tort cases in recent months.

A panel of state justices grappled with the nature and scope of three climate tort lawsuits at the Maryland Supreme Court on Monday, appearing doubtful that the cases center on deception and not actual emissions.

Baltimore, Anne Arundel County, and Annapolis appealed the dismissals of their climate tort suits against oil and gas companies this year, and the resulting decision will determine whether they'll join Honolulu and other state and local plaintiffs to proceed towards trial, or follow a growing majority of similar tort cases that have been quashed in recent months.

The panel pressed plaintiffs' attorney Vic Sher of Sher Edling on the question central to oil companies' defense: whether these cases are over corporate fossil fuel deception or governing greenhouse gas emissions. Justices also questioned what kind of warnings companies would need to give if plaintiffs were ultimately successful.

"It seems like your theory of injury and your relief are all tied and necessarily depend on interstate and international emissions," Justice Brynja M. Booth said.

Sher held that the oil and gas industry's campaigns of misinformation about how their products worsen climate change is the wrongful conduct at the center of these cases, and raises no federal issues that trample on government authority over global interstate emissions.

"You can tell this by the kind of relief that is sought, and the kind of relief that is not sought," Sher said. "There will not be any capping, enjoining, or regulating any emissions by anybody in anywhere. There won't be any challenge to or any modification to any pollution related regulation or permit."

Judges in Maryland, Delaware, South Carolina, and other states have dismissed similar cases this year, citing the same doubts about what is at the heart of these cases and ultimately ruling that state courts don't handle interstate emissions.

The Supreme Courts of Hawaii and Colorado, however, sided with plaintiffs and have pushed those cases closer to trials.

"The injury here does not come from the mere production and sale of the products," Sher said. "It comes from the additional tortious conduct which is not governed, regulated, or in any way conflict with the state laws."

The panel seemed to have an easier time with arguments from Chevron Corp. attorney Ted Boutrous of Gibson, Dunn and Crutcher LLP, who argued that plaintiff's injuries all boil down to global, interstate emissions.

"They want Maryland law to apply to the conduct and activities, the speech and the warnings around the United States, around the world," Boutrous said.

The more than two dozen similar climate tort suits around the country are in various stages of the legal process, including a pending petition to the US Supreme Court appealing the Colorado Supreme Court's decision.

The case is Mayor & City Council of Baltimore v. BP PLC, Md., No. 11, Arguments 10/6/25 .

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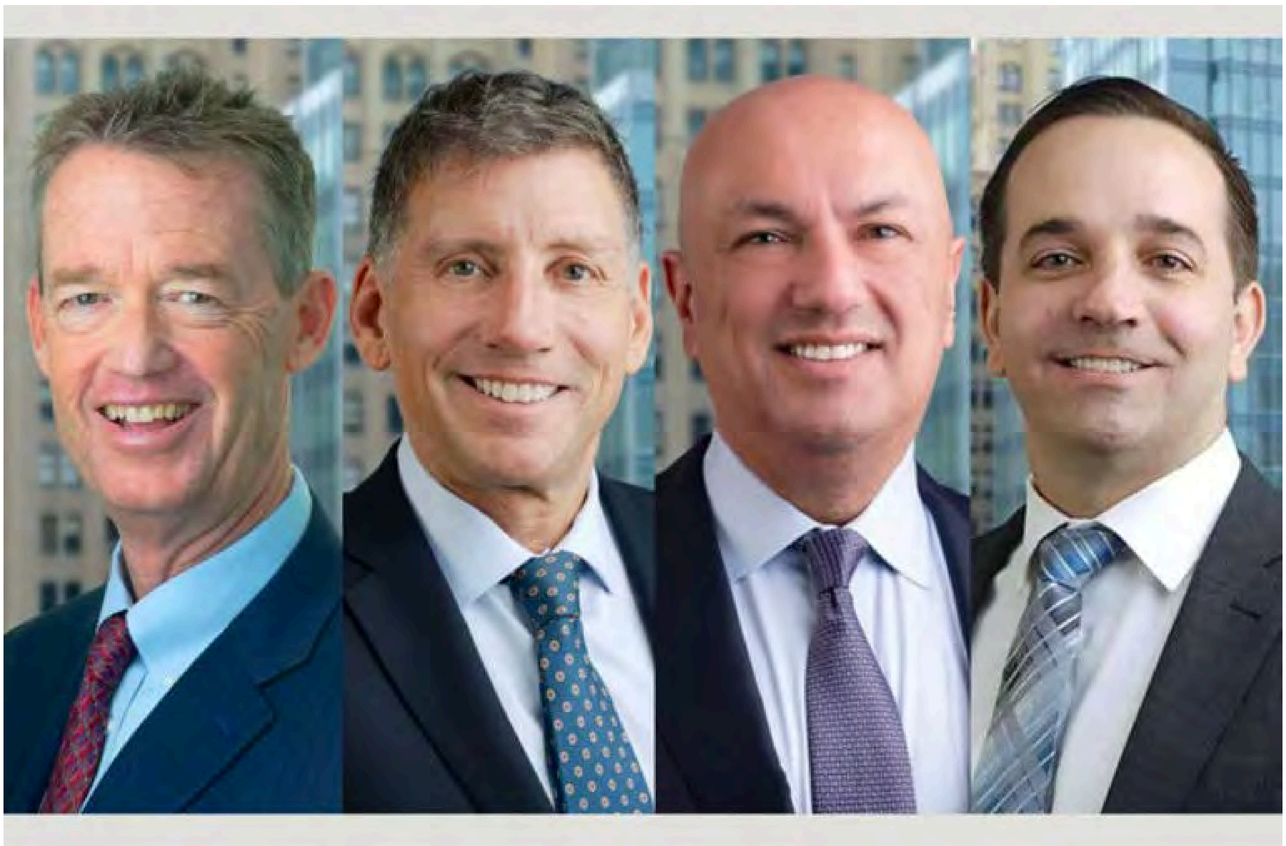
News | **Wrongful Death**

Families Sue Tesla Over Deadly Cybertruck Fire

They allege fatal design flaws in the Cybertruck trapped their college-age children inside a burning vehicle after a 2024 crash.

October 06, 2025 at 02:46 PM By Lisa Willis



(l-r) Richard H. Schoenberger, Matthew D. Davis, Khaldoun A. Baghdadi, and Andrew P. McDevitt, with Walkup, Melodia, Kelly & Schoenberger. Courtesy photos

The parents of two college students killed in a fiery Tesla Cybertruck crash have filed wrongful death lawsuits in Alameda County Superior Court, accusing the automaker of designing a vehicle that turned survivable injuries into fatal tragedies.

On Thursday, Todd and Stannye Nelson filed suit against Tesla Inc. over the death of their son, Jack Nelson, 20, who was trapped inside the vehicle and died from smoke inhalation and burns. The complaint, which also names the estates of the driver and another victim as required by California law, follows a lawsuit filed one day earlier by the parents of Krysta Tsukahara, 19, another passenger killed in the crash.

The Nelson family is represented by San Francisco firm Walkup, Melodia, Kelly & Schoenberger, including attorneys Richard H. Schoenberger, Matthew D. Davis, Khaldoun A. Baghdadi and Andrew P. McDevitt.

The Tsukaharas are represented by Roger A. Dreyer and Natalie M. Dreyer of Dreyer Babich Buccola Wood Campora in Sacramento.

“Dealing with manufacturers is like running down the darkest hole you possibly can in terms of discovery and getting information," Dreyer said.

The Tsukahara complaint was originally filed in April. On Thursday, the family filed a motion to amend, adding Tesla as a defendant, coinciding with the Nelsons’ initial filing.

The lawsuits stem from a Nov. 27, 2024, crash in Piedmont, California, when a Cybertruck carrying four friends struck a retaining wall and tree before catching fire. Driver Soren Dixon, 19, also died. A fourth passenger survived.

Roger A. Dreyer, left, and Natalie M. Dreyer, right, of Dreyer Babich Buccola Wood Campora. Courtesy photos

“Our client was absolutely alive and capable," Dreyer said. "She could have gotten out if Tesla had allowed her an opportunity to do so, and when she got out, she undoubtedly would have been able to bring Mr. Nelson out with her.”

Both complaints allege that design defects made escape impossible once the truck ignited.

The Cybertruck’s doors, which open via 12-volt electronic buttons, allegedly failed when the vehicle lost power. The manual interior releases, plaintiffs say, were “hidden and unlabeled,” while the stainless-steel exoskeleton and Tesla’s “armor glass” windows prevented bystanders from breaking in, the complaint noted.

McDevitt described the core issue: “You’ve got a vehicle that’s got an unconventional way of being opened … that is entirely dependent on the existence of battery power.”

He said that after the crash, “the friend of the group who was in a vehicle behind the Cybertruck … pressed the buttons for both the doors … and neither would open,” forcing a bystander to break a window in a failed rescue attempt.

“There’s a new hazard that has been introduced by virtue of how they design the handles from the exterior, or the access from the exterior, and then also on the interior,” McDevitt added. “The most pronounced danger is for the rear seat, because for the front row occupants … there’s a mechanical release that’s typically within hand's reach … but for reasons I cannot explain, [Tesla] has taken a different approach for the rear seat for all their vehicles.”

McDevitt said his firm has taken on Tesla before. “Our office has handled the *Huang v. Tesla* case, the Model X crash, which confidentially settled. So we’ve got experience litigating with them, and … are familiar with the challenges that come with that.”

The Nelson complaint accuses Tesla of negligence, failure to recall or retrofit unsafe vehicles and ignoring known risks. It seeks punitive damages.

“The four young people in the Cybertruck were close friends and outstanding individuals, each on the verge of making meaningful contributions to the world,” the Nelsons said in a statement. “They were all victims of Tesla’s unsafe design.”

Attorneys for the Tsukahara family say their daughter’s death was both agonizing and preventable.

“When you look at the amended complaint, you will see that we have laid out chapter and verse of the prior history," Dreyer said. "I wanted to put enough in the complaint that lays out what's going on so that we can defeat a motion to strike. We must prove, by clear and convincing evidence, that they are consciously disregarding the safety of others."

The lawsuits allege that Jack Nelson survived the initial impact with minor injuries but could not escape as flames spread. Tsukahara, seated beside him, faced the same fate. Both died from smoke inhalation and burns, the attorneys said.

Tesla, which has faced prior litigation over alleged safety defects in its Model S and Model X vehicles, has not publicly commented on the new suits and did not return an email seeking comment. Counsel has not yet appeared for Tesla. The company touts the Cybertruck as one of its safest designs, emphasizing its stainless-steel body and unbreakable glass.

Those concerns surfaced again Wednesday after a Cybertruck crash in North Miami, where an SUV allegedly struck the electric vehicle, sending it into a cement utility pole before it burst into flames. Despite efforts by first responders, the driver could not be saved.

The Tsukahara lawsuit cites more than 30 publicized examples of problems with Tesla's door systems and claims the plaintiffs' daughter survived the initial Piedmont crash, but was trapped after the vehicle lost power.

The National Highway Traffic Safety Administration has also opened an investigation into complaints that Tesla doors can remain stuck after power loss, with some drivers saying they had to break windows to free trapped passengers.

In August, a Florida jury awarded $240 million to the family of a college student killed by a runaway Tesla in an unrelated case, highlighting the automaker's growing legal exposure.

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Analysis | **Regulation**

Tech Companies Expected to Challenge Australian Law Banning Social Media Use by Kids

The law requiring social media users to be at least 16 will apply to platforms such as Snapchat, TikTok, X and Meta's Facebook and Instagram.

October 06, 2025 at 10:05 AM By **Christopher Niesche**

Credit: insta_photos/Adobe Stock

This article was first published by Law.com International Edition.

Australia will implement the world's first ban on people under the age of 16 using social media later this year—a law that includes fines of over $30 million for non-compliance and is likely to prompt legal challenges from global tech companies.

Under the ban, the government will require social media companies to remove anyone under the age of 16 from platforms beginning December 10. The companies will also be responsible for stopping anyone under age 16 from joining and will be required to prevent them from circumventing the ban.

Online safety has become a growing concern globally. While Australia is at the forefront of imposing a regulatory age requirement for social media platforms, other governments have discussed similar moves. European Commission President Ursula von der Leyen recently stated publicly that she is in favor of a European Union minimum age for social media usage, although it's unclear that the commission has the power to implement such a ban, as this may be up to the national member states of the EU.

In Australia, the eSafety Commissioner, the nation's regulatory body that oversees online safety and the world's first dedicated government organization established for that purpose, will oversee the new law. It has written to 16 social media companies, including Pinterest, Discord, and Tinder operator Match, informing them they might be classified as an age-restricted service and subject to the ban.

The companies will have to complete a self-assessment to determine whether they believe they should be subject to the new law, which the eSafety Commissioner will take into account.

The regulator has also written to gaming companies and software development platforms that have messaging services, including GitHub, Lego Play and Roblox.

Buy it has already formed a preliminary view on some social media platforms.

"We note that Facebook, Instagram, Snapchat, TikTok, X (formerly Twitter), and YouTube meet many of the conditions the legislation uses to define an 'age-restricted social media platform,'" eSafety said in written responses to questions, adding that it has also written to these companies.

The new law is the first of its kind in the world, and it won't be entirely clear how it will operate until it comes into effect, said Veronica Scott, a partner at Pinsent Masons who works in cyber, data and media law. She noted recent comments from eSafety Commissioner Julie Inman Grant, saying, "We may be building the plane a little bit as we're flying it."

Inman Grant also said earlier last month that those social media platforms that don't believe they are an age-restricted service will likely file legal challenges. Most believe they should not be subject to the ban, she said.

For social media platforms, detecting users under age 16 will present technical challenges, and the eSafety Commissioner has said it expects companies to take a layered approach, deploying more than one technical solution, which could include requiring identity documents, facial screening, or analysis of online behavior and activity.

Social media companies will be required to take "reasonable measures" rather than achieve zero under-16s on their platforms, the regulator said.

Social media platforms that don't take "reasonable steps" to prevent underage users from having accounts face court-ordered fines of up to A$49.5 million (US$32 million).

Look for Litigation

Under the law, social media platforms will be age-restricted if they have the sole, or a significant purpose, of enabling online social interaction between users; allow users to link to or interact with other users; and allow users to post material on the service.

This may leave room for interpretation—and litigation.

"The question of the degree of regulation, whether it works, remains to be seen. It's contentious because it's new, it's more onerous," Scott said."It puts a lot of the onus back onto the regulated community to make those decisions within certain guardrails or guidance as to whether they need to comply."

Scott also noted that the self-assessment isn't "set and forget" for companies. They'll have to reassess regularly.

She expects that media companies will file challenges, especially if they conclude, based on a self-assessment, that they should not be subject to the law, yet the eSafety Commissioner disagrees and takes action against them anyway.

"You never want to be that organization, but maybe it will provide further clarity," Scott said. "Digital services, in and of themselves, can be quite complex."

In a statement to Law.com International, TikTok said it would work with the eSafety Commissioner and "has no intention of challenging the law."

X, Facebook and Instagram owner Meta, Snapchat, and YouTube owner Google, did not respond to requests for comment.

However, in a submission to a parliamentary inquiry earlier this week, X, which is owned by Elon Musk, said it has "serious concerns as to the lawfulness of the Social Media Minimum Age" and it could affect the human rights of children and young people, including their rights to freedom of expression and access to information.

"We would also submit that the Social Media Minimum Age is setting up a punitive regime. This singular focus on social media platforms promotes an adversarial approach and fails to incentivize parents and caregivers to take responsibility for the online activities of the young people in their care," the platform, formerly called Twitter, said.

Dean Levitan, a disputes lawyer and media and communications partner at Australia's MinterEllison, said it's highly probable there will be legal challenges from social media companies. Some companies will be deliberately obstructive from the outset, he said.

"They will make litigation part of their strategy and then if they are regulated or penalized or investigated, then, in accordance with their strategy, they may well seek to litigate these issues," he said.

Other companies might accept that they are subject to the ban and might believe they are taking "reasonable steps" and acting in good faith. But they, too, may be penalized for non-compliance, and then they might also litigate, Levitan added.

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Litigation

Manage Newsletters

Senator Grassley Asks Federal Judges If AI Used for Rulings (1)

Oct. 6, 2025, 11:24 AM PDT; Updated: Oct. 6, 2025, 1:59 PM PDT

Summary by Bloomberg AI AI Generated

- Two federal judges, Julien Neals and Henry Wingate, are facing congressional inquiries for issuing orders with made-up citations, driving speculation they used AI tools.
- Senate judiciary committee chairman Chuck Grassley sent letters to the judges asking if they or their staff entered confidential information into generative artificial intelligence tools to produce rulings.
- The judges have until Oct 13 to respond to the senator's inquiry, which comes after they rescinded and replaced rulings that lawyers in the cases flagged as problematic.

Two federal judges are facing congressional inquiries for issuing orders that contained made-up citations and drove speculation they used AI tools.

Senate judiciary committee chairman Chuck Grassley (R-Iowa) on Monday sent letters to New Jersey District Judge Julien Neals and Mississippi District Judge Henry Wingate, asking if they or their staff entered confidential information into generative artificial intelligence tools to produce rulings. Grassley's letters, which were emailed to Bloomberg Law by a representative for the senator, ramp up the scrutiny both judges face after they issued orders over the summer that contained several made-up elements.

"No less than the attorneys who appear before them, judges must be held to the highest standards of integrity, candor, and factual accuracy," Grassley said in the letters. "Indeed, Article III judges should be held to a higher standard, given the binding force of their rulings on the rights and obligations of litigants before them."

The judges, who have until Oct. 13 to respond to the senator, didn't immediately return requests for comment Monday. The US Constitution allows members of Congress to remove judges after impeachment by the House of Representatives and conviction by the Senate. A Grassley representative said the senator didn't want to pre-empt what might come out of the inquiry.

Grassley's letters come after both judges rescinded and replaced rulings that lawyers in the cases flagged as problematic.

Judge Neals, who was nominated by President Joe Biden in 2021, has overseen notable cases such as a lawsuit brought by several states accusing Apple of anticompetitive behavior. Judge Wingate, nominated by President Ronald Reagan in 1985, was responsible for the nearly 20-year sentence handed down to Chris Epps, the former Mississippi Department of Corrections Commissioner, in 2017 on bribery charges.

Entered "In Error"

Judge Neals on June 30 issued an order that contained case quotations that didn't exist, according to a Willkie Farr & Gallagher defense litigator who flagged the mistakes. The court on July 23 said the order was entered "in error" and issued a new order in August, which had the same effect of denying the defendants' motion to dismiss in a case involving a biopharma company sued by its shareholders.

Meanwhile, Judge Wingate rescinded and replaced a July 20 order that referred to parties, allegations, and quotes unconnected to the case brought by a group challenging a ban on teaching concepts related to diversity, equity and inclusion. Among other made-up elements, most of the plaintiffs Judge Wingate named in the original TRO are not parties in the case, which prompted lawyers in the case to request clarification.

Judge Wingate in August denied the lawyers' motion for clarification.

Grassley's letters to both judges elevate the speculation that the judges used generative AI from social media chatter to the level of congressional scrutiny. The senator asked the judges if they or their staff used artificial intelligence and if they entered any privileged information into an AI tool.

"These events prompted public concern that generative artificial intelligence ("AI") may have been used in preparing the order with little or no human verification," Grassley wrote in the letter to Judge Wingate.

Lawyers in recent years, including multiple instances this year, have borne the brunt of criticism over AI use in litigation proceedings.

As recently as June, the Court of Appeals for the Fifth District of Texas imposed a $2,500 sanction against an attorney who filed a brief citing multiple nonexistent cases. In April, a Colorado federal judge excoriated lawyers for MyPillow CEO Mike Lindell for submitting a brief that referred to cases that didn't exist.

Cautionary Tale

Judge Neals and Judge Wingate are unlikely to experience much more than embarrassment from the issuance of the fake citations, which will serve as a cautionary tale to members of the legal system, said Professor Stephen Gillers, Elihu Root Professor of Law Emeritus at New York University School of Law.

"I think the judges will apologize and other judges will say there but for the grace of God go I," Gillers said. "They'll double down on the accuracy of their citations."

He said lawyers and judges will need to learn to work alongside generative AI tools because of how prevalent they have become among lawyers and alternative legal service providers. AI, he said, "is going to be developed for the practice of law and judicial opinions as it gets more sophisticated."

"It's inevitable that it will bring structural change to how law firms and judges behave," he said.

(Adds more background on judges and comments from Professor Gillers.)

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Matt Levine’s Money Stuff: OpenAI Is Good at Deals

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OpenAI/AMD

The basic situation is that if OpenAI announces a big partnership with a public company, that company’s stock will go up. Today OpenAI announced a deal to buy tens of billions of dollars of chips from Advanced Micro Devices Inc., and AMD’s stock went up. As of noon today, AMD’s stock was at $213 per share, up about 29% from Friday’s close; it had added about $78 billion of market capitalization.

How do those negotiations go? Like, schematically:

OpenAI: We would like six gigawatts worth of your chips to do inference.

AMD: Terrific. That will be $78 billion. How would you like to pay?

OpenAI: Well, we were thinking that we would announce the deal, and that would add $78 billion to the value of your company, which should cover it.

AMD: …

OpenAI: …

AMD: No I’m pretty sure you have to pay for the chips.

OpenAI: Why?

AMD: I dunno, just seems wrong not to.

OpenAI: Okay. Why don’t we pay you cash for the value of the chips, and you give us back stock, and when we announce the deal the stock will go up and we’ll get our $78 billion back.

AMD: Yeah I guess that works though I feel like we should get some of the value?

OpenAI: Okay you can have half. You give us stock worth like $35 billion and you keep the rest.

I don't know. This is not, you know, *correct* in any respect. (In particular, the total cost of the deal was not disclosed, "but AMD said it costs tens of billions of dollars per gigawatt of computing capacity"; I'm using the probably-too-low $78 billion number for narrative convenience.) But there is some crude justice to it. This deal between OpenAI and AMD was obviously going to create a lot of stock-market value: The announcement of the deal would predictably increase the market value of AMD, and it's not like it *decreases* the market value of OpenAI commensurately. Why not *use* that value to subsidize the deal? Schematically, OpenAI could buy AMD stock to predictably profit from the stock-price bump it created. Just going out and doing that in the market would be awkward — it might look like insider trading — but buying the stock *from AMD* is fine. So that's what they did:

OpenAI will receive warrants for up to 160 million AMD shares, roughly 10% of the chip company, at 1 cent per share, awarded in phases, if OpenAI hits certain milestones for deployment. AMD's stock price also has to increase for the warrants to be exercised.

The warrants vest based on operational and stock-price milestones (some of them require the stock to hit $600 per share), but 160 million shares times the $213 price at noon today is about $34 billion. In rough numbers, OpenAI is getting back half of the value it created for AMD.

I have to say that if I was able to create tens of billions of dollars of stock market value just by announcing deals, and then capture a lot of that value for myself, I would do that, and to the exclusion of most other activities. OpenAI can do that, and does, though not to the exclusion of everything else. Bloomberg's Ryan Vlastelica writes :

OpenAI may not be publicly traded, but the world's most valuable startup is increasingly making waves in the stock market.

Just last week, OpenAI sent shares of e-commerce companies Shopify Inc. and Etsy Inc. soaring after unveiling an instant buy option in ChatGPT. Then a blog post detailing new features the company is using internally sent a fresh wave of jitters through software stocks like Atlassian Corp., already reeling from fears about AI disruption.

On Monday, it inked a deal with Advanced Micro Devices Inc. that could generate tens of billions of dollars in new revenue for the chipmaker. AMD shares soared 38%, its biggest intraday percentage gain since April 2016, and the news sent shockwaves through the rest of the industry. Nvidia Corp. and Broadcom Inc. both slid.

I am always impressed when tech people with this ability to move markets get any tech work done. OpenAI still seems to be building a lot of AI products; if I were them I'd just be day-trading Shopify stock.

Antifraud Company

The essential idea is that, if you find something *bad* at a public company, you can turn that into money. There are at least five broad categories of ways to turn bad stuff into money:

1. *Business*. Like, if you find that the leading car company makes cars that explode, you could build a car that *doesn't* explode, and advertise it by saying "our cars don't explode, unlike the other guy's," and people would buy it and you would make money. (Or if you find that the leading sneaker company makes sneakers that are awesome and cheap but made by workers in horrible conditions, you could make somewhat more expensive sneakers made by workers whom you treat well, and try to appeal to consumers who care about this difference.) This is, in the broad sweep of capitalism, the *main* way to profit from other companies' badness, and surely the most socially beneficial. You see a company doing bad stuff and you try to do better stuff.

2. *Finance*. If you find out that a public company is doing bad stuff that nobody knows about, you can *short its stock*. Then, when the bad stuff comes out — probably because you publish it — the stock will go down and you will make a lot of money. There are variations on this. (If you find out that a company has breached its credit agreements , you can buy its debt and buy even more credit-default swaps, etc.)

3. *Law*. In the US in the 21st century, this one is really really important: If you find out that a public company is doing bad stuff, *you can sue*. You can sue it for the bad stuff. You can sue it for securities fraud: As I often say around here, every bad thing that a public company does is also securities fraud, and the damages are big. (This ties nicely to short selling: You find out the bad thing, you short the stock, you announce the bad thing, the stock drops, you take profits on your short, *and* you organize a shareholder class action to sue for fraud.) Or you can bring the case to the government, which might sue the company and give you a cut (as a whistleblower or *qui tam* relator). (Again this ties to short selling: If the government goes after the company, the stock will drop.)

4. *Government*. In the US in 2025 specifically, there is a variation on Path 3 of the form "if you've got the ear of Donald Trump, you can make him go after a company that does something he dislikes, and probably turn that into money for him at least and maybe for you." Somehow TikTok being a vehicle for Chinese propaganda turned out to be very good for Larry Ellison?

5. *Media*. People love stories about bad stuff! If you have a juicy story about bad stuff, you can put it in your magazine or television broadcast or podcast or newsletter, and people will like it and you can sell ads or subscriptions.

There are probably others, but those seem like the main ones. The key thing to notice is that you don't have to choose. If you have bad stuff, you can monetize it as many ways as possible. You can be a short-selling hedge fund and also file whistleblower complaints . Or, like Hunterbrook, you can be a hedge fund that's also a newspaper : You can publish stories (media!), short stocks, lead class-action lawsuits and file whistleblower complaints. Use every part of the bad news.

This seems like a big enough niche that there's room for more than one "hedge fund that is also a newspaper," for different audiences or political persuasions. Here's "The Antifraud Company":

The Government Accountability Office estimates that American taxpayers lose $500 billion a year to fraud which is almost $1,500 per citizen. Our thesis is that much of this fraud is organized lawbreaking by giant corporations. We think that's unacceptable.

That's why we raised over $5 million from Abstract Ventures, Browder Capital, and Dune Ventures to start The Antifraud Company.

The Antifraud Company operates as a new age journalism company, using the power of AI-enabled forensics, rigorous investigation, and public awareness to help arrest unlawful corporate conduct.

The Antifraud Company plans to investigate and publicize corporate fraud in critical government programs. Our business model is to additionally monetize our investigative work through a variety of government whistleblower programs.

Here's their launch video, where they call themselves "a private-sector DOGE" and boast about how many congressional investigations they've already sparked. Honestly the video is very good and they're going to go far.

Treehouse

Speaking of Hunterbrook. One point that I sometimes make around here is that there is a continuum between "journalism" and "insider trading." One thing that you might do in life is talk to people inside companies and try to get them to reveal secrets about those companies that they are not supposed to tell you. If they tell you a particularly juicy secret — a scoop, something like "we are about to announce a merger" or "we discovered a cure for cancer" or "we are doing a huge fraud" — then you might try to use that secret to advance your career.

If you are an investigative journalist, you can advance your career by *publishing* your scoop. This will be good for your employer (it will get more subscription or advertising revenue) and thus for you (you will get a congratulatory Slack from your editor). If, on the other hand, you are a hedge fund analyst, you can advance your career by *trading on* your scoop: You buy the company's stock if the scoop is good, or short it if it's bad. This will be good for your employer (it will make money on the trade and thus get more performance-fee revenue) and thus for you (you will get a big bonus). The difference is that, if you do this as a hedge fund analyst, you might go to prison for insider trading, while if you do it as a journalist you probably won't.

If you are very skilled at getting people inside companies to talk to you and give you scoops, what career should you pursue? Well, you could be a journalist: You'd be good at it, but nobody goes into journalism in 2025 to get rich. Or you could be a hedge fund analyst, which is a better way to get rich, but if you use this skill set too much at a hedge fund you will go to prison and that's not great.

Is there a way to get the best of both worlds? Conceptually what you want is a private newspaper for hedge funds. Like, you go to a hedge fund and say "hello, I can reliably get information for you from inside public companies. But if I did that on your payroll, or even as a consultant, it would be insider trading and you and I might both go to prison. If I did that at a newspaper, it would be investigative reporting, but you'd get my scoops at the same time as a lot of other people and you couldn't make much money on them. But I'm going to do it at a special newspaper with very few subscribers and a very high subscription price. If you pay me $1 million a year, I'll send my scoops to you and four other hedge funds, and you can trade on them, but it won't be insider trading because it's journalism instead."

This is absolutely not legal advice in any way, but clearly *something* like this works. Lots of news organizations (disclosure, including Bloomberg News) provide information to paying subscribers, who can then trade on it because it came to them as a journalistic scoop rather than an insider tip. I suppose one could do some sort of line-drawing exercise: News disclosed to *five* subscribers who pay $1 million a year might look like a tip, while news disclosed to five million subscribers who pay $100 a year is surely journalism. But I do not know where the line is, or why you might draw it in any particular place.

We've talked about this a few times before, and I once guessed at where the line might be:

If you find stuff out and email it to five hedge funds, that feels like you are a "consultant" and it's insider trading. If you email it to 100 newsletter subscribers, 90 of whom are hedge funds, you're probably okay. Not legal advice!

I then went on to talk about the leading case, which involved Reorg Research. Reorg is a "corporate intelligence company" covering distressed debt, and there was a dispute (involving disclosing sources, not insider trading) about whether it was in the business of *journalism* or the business of, you know, business. Many journalistic organizations (including Bloomberg LP) supported Reorg, and a New York court found that Reorg was doing journalism and could use a journalism shield law to protect its sources. I wrote:

At the time, it had "about 375 subscribers who 'manage trillions of dollars in assets'" and paid "between $30,000 and $120,000 a year" for subscriptions. So the line between journalism and insider trading is probably lower than 375 subscribers.

That was a couple of years ago, and Reorg is now called Octus. ("The leading voice in credit intelligence. Octus delivers proprietary data and actionable intelligence.")

Recently, in the course of her reporting, a Reorg correspondent got a good scoop: "London-based private equity firm Investindustrial is preparing an approximately $3 billion bid to take US food processing company TreeHouse Foods private, said sources." That's public now; she posted it on her LinkedIn last week, and TreeHouse's stock shot up when she did. But she also posted:

Octus subscribers got it first over a dinner, maybe while dining at Eataly, majority owned by Investindustrial.

If you go to dinner at Eataly with a handful of your hedge fund friends, and someone at the dinner is like "I talked to someone at Investindustrial and they're working on a bid to take TreeHouse Foods private," and you go trade on that news, is that insider trading? Not always!

Contingent sports tickets

We talked a few months ago about "multiverse finance." This is a prediction-market-inflected idea from Dave White at Paradigm about trading financial assets contingent on certain events. So if you have a thesis like "interest rates will go down if the Democrats win the midterms," you could buy a contract that (1) resolves into $1 million of Treasury bonds if the Democrats win and (2) resolves into $0 if the Democrats lose. The prices of ordinary financial instruments reflect entangled market-implied probabilities and expected impacts of many possible real-world events; the prices of prediction markets isolate market-implied probabilities of particular events. Multiverse finance could combine these things so you can get "asset prices conditional on one particular event I care about."

I don't know how practical that is but it's fun to think about. Of course, "prediction markets" in 2025 mostly means *sports gambling* . There are not a lot of financial assets whose value is contingent, in any obvious way, on some particular team winning some particular game. But there are some. Tickets to the final match of the World Cup, for instance, will vary in value based on the teams that make the final. More to the point, tickets to *see England in the final* will be worth a gazillion dollars if England make it to the final, and nothing if they don't. So if you could buy that — "tickets to the 2026 World Cup Final, conditional on England playing in it" — that would be, uh, cool I guess? Fun to think about? Like:

1. Buying that *now* should cost you less than buying just an unconditional ticket to the World Cup final match, because the conditional ticket is worthless in the majority of future states of the world (the ones where England don't make it to the final). So this could be a way to get reasonably affordable World Cup final tickets.

2. You might *want* exactly that conditional ticket: You might really want to see England in the final, and not care about seeing the final if it's anyone else.

3. Let's face it, you might enjoy sports gambling, and the conditional ticket nicely combines (1) an actual consumption good (the ticket) with (2) a sports gamble (you only get it if your team wins).

Apparently this is how the *actual* 2026 World Cup ticketing system works, because all of sports has become 100% about gambling. Also because it's 2025 this gambling takes place on the blockchain sure sure sure sure sure sure sure. Bloomberg's Emily Nicolle and Giles Turner describe the system :

FIFA last year started selling so-called Right to Buy tokens, providing buyers the right to instead purchase guaranteed entry to a World Cup game. …

Some of these tokens are tied to a national squad — but come with greater risk. The Right to Final token, for example, offers fans an opportunity to purchase a ticket to the World Cup final match, but only if the team whose collectible they've bought makes it that far. …

The Right to Final: England token cost $999, and those tokens are now sold out. If England makes the final, those token holders will be entitled to a ticket to the match, but it's not yet clear how much more they will have to pay to secure an actual ticket.

It's not even a contingent ticket, just a contingent right to buy a ticket. Anyway the point of that story is that Swiss regulators are investigating whether this is gambling:

Switzerland's gambling regulator has opened a preliminary probe into sales of blockchain-based tokens backed by FIFA which fans can exchange for tickets to games at the 2026 World Cup.

Gespa, which also oversees lotteries and sports betting, is examining whether FIFA is selling the potential to win tickets to a sporting event, or offering something closer to gambling.

Of course it's gambling! And it's also something else! Like everything these days.

Elsewhere, Bloomberg's Ira Boudway interviewed Robinhood Markets Inc.'s head of sports gambling. Wait, sorry, no, that's, "JB Mackenzie, the retail trading platform's vice president and general manager of futures and international," whose "job includes overseeing Robinhood's event contracts business." Mackenzie explains that sports gambling and the stock market are basically the same thing when you think about it:

I don't know if customers define them as entertainment or not. You have people that are just staunch believers in companies. You've got people who are Tesla bulls. They believe in Tesla. With these prediction markets, on the sports side, it's just a slight flip because you already have that affinity because you were a Jets fan with your dad.

Yep! You can be a Jets fan and bet on the Jets, or you can be a Tesla fan and bet on Tesla's stock, what's the difference really . I tend to think that capital markets have some purposes outside of gambling and fandom, but I recognize that that is an old-fashioned view.

Off-channel communications

Sorry this is just good comedy:

US House Republicans have told Securities and Exchange Commission Chair Paul Atkins that they are investigating the loss of text messages from former SEC Chair Gary Gensler from when he led the agency.

The SEC's Office of Inspector General's findings in early September cast doubt on whether the Gensler-led SEC acted with transparency and integrity while serving between 2021 and 2025, House Financial Services Committee Chairman French Hill said in a letter to Atkins on Tuesday. …

The letter, also signed by House Ranking Members Ann Wagner, Dan Meuser, and Bryan Steil, said that Gensler sued several financial firms for "widespread record-keeping failures," collecting more than $400 million worth of fines to settle charges alone in 2023.

The deleted text messages highlight a clear double standard, the House Republicans claimed.

They are not quite right about that, though. As we discussed a lot over the previous four years , one of the Gensler SEC's top enforcement priorities was fining financial firms whose employees used personal cell phones to text about work. The theory was that SEC regulations require banks, brokers, etc. to retain copies of their business communications. Most business communications these days are electronic, so firms try to comply with that rule by keeping archives of employee emails, Bloomberg messages, etc., for the requisite amount of time. But sometimes bank employees would send business texts from their personal phones or by WhatsApp: They'd text colleagues to discuss strategy or to plot fraud; they'd text clients to provide market updates or to say "I'm stuck in traffic but I'll be at the meeting in 10 minutes." The Gensler SEC took the view that these texts were all business communications subject to the record-keeping rules, but banks did not (at the time) reliably keep copies of all their employees' personal texts, so they were breaking the rules. "Off-channel communications," as the SEC called them, were forbidden.

I thought this theory was kind of nuts, but I cannot deny that it brought a lot of money into the SEC, so, sure. And now har har har it turns out that Gensler was texting about SEC enforcement from his personal phone. Except he wasn't! He was texting from his SEC-issued work phone, which *did* keep copies of his communications. The problem is that the SEC accidentally deleted them:

The SEC Office of Inspector General (OIG) investigated how nearly a year's worth of text messages from Gary Gensler were permanently lost between October 2022 and September 2023, during the height of the agency's crypto enforcement action campaign.

In a report released on Wednesday, the OIG revealed that the SEC's IT department "implemented a poorly understood and automated policy that caused an enterprise wipe of Gensler's government-issued mobile device," which deleted stored text messages and operating system logs.

The loss was worsened by poor change management, lack of proper backups, ignored system alerts and unaddressed vendor software flaws.

Honestly much worse! Imagine the fines if the Gensler SEC had inspected a bank and the bank was like "well, good news, nobody at our bank has ever texted about work from a personal phone; they all use their work email like they're supposed to; bad news is we deleted all the emails."

Midnight Madness

I am a puzzle hunt guy, and the premier New York financial industry puzzle hunt is Midnight Madness (formerly Compass), and it was this weekend. Sadly I did not participate this year, though we did have the organizers on the Money Stuff podcast a few months ago. Anyway congratulations to this year's winning team, Regenwolk 3000, as well as the runners-up Citadel Insecurities (lol) and Midnight Marauders.

Things happen

Fifth Third to Buy Comerica in Year's Biggest US Bank Deal. Tricolor Records Show Same Cars Tied to Thousands of Loans. If Trump's Tariffs Are Ruled Illegal, Businesses Expect Refund Chaos . Hedge Funds Targeting Fire Insurance Hit a Wall in California. Why Insurers Are Taking Your Money to the Cayman Islands. 'Gold-plated Fomo' powers bullion's record-breaking rally. How China Secretly Pays Iran for Oil and Avoids U.S. Sanctions. Kremlin-backed crypto coin moves $6bn despite US sanctions. Ferrari-Loving Trader Burned Wall Street With Bond Bet Leveraged 11,000-to-1. Centerview Partners to face trial over junior banker's long hours. Why America's Fridges Are Overflowing With Sauce . Bill Ackman Says He's 'Uncancelable.' Treasury Department Has Plans To Mint Dollar Coin Featuring Donald Trump's Likeness.

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1. OpenAI is not publicly traded, so I cannot really prove that hypothesis, but, you know. The ARK Venture fund, which holds a chunk of OpenAI, was up slightly today.

2. I don't want to overstate this. In the sneaker example, it's possible that you really can't compete because consumers care only about price and not about labor conditions. More generally, there are lots of ways for a company to do bad stuff that *helps* it in product-market competition (you can charge lower prices if you don't pay to safely dispose of waste, etc.), so while the "just outcompete them" approach is nice to think about, it doesn't always work.

3. Consider the theory that DeepSeek should have shorted AI-related stocks to profit from disrupting them. "Disrupting them" is classic Path 1, but why not short some stock too?

4. Though Hunterbrook does not sell ads or subscriptions, as far as I know.

5. Kalshi has England at about an 11% chance to win the World Cup, which does not translate directly into chances of making the final, but surely the implied probability of that is less than, like, 30%.

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Securities

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Opinion

Matt Levine’s Money Stuff: Sports Bets at the Stock Exchange

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Polymarket

You can think about financial markets at different levels of abstraction. Most working traders and analysts spend most of their time thinking at the level of making correct predictions: You analyze some data about the world, form a hypothesis about what some asset prices will do, and test the hypothesis by trading the assets. Often this analysis is informed by experience and connoisseurship and intuitive pattern-matching, though increasingly these days the pattern-matching is done using machine learning techniques.

Then there is the level of adaptive niches : Why do these patterns exist, and why should you be able to make money trading on them? A pattern with no explanation is a bit suspect; you want some psychological or structural explanation for why asset prices will move the way you expect and why they haven’t already. ”Long-only asset managers like to take some credit risk and get their duration via futures , so we can make a bit of money buying cash Treasuries and selling futures ” is an explanation of this form. (While “futures usually pay a bit more than cash Treasuries” is a first-level explanation.) Or “index funds rebalance on particular dates so if we buy the stocks they need to buy ahead of time we can sell to them at a profit.” Or ”retail investors are buying meme stocks at irrational prices so I can make money *very carefully* selling them those stocks.” Some sort of story about regulations or institutional constraints or mass psychology or something, some satisfying intuitive reason for the patterns.

And then there is the level of social purpose. Why is anyone doing any of this? How would you explain what you do to your grandparents? There seem to be two main social purposes to financial markets, or one purpose looked at from two ends: Financial markets allow people to save and participate in economic growth to meet their future material needs, and they help allocate resources to their most productive uses. When you run your machine-learning model that looks at piles of market data to figure out which 500 stocks to buy and which 500 stocks to short, you are doing your small part to make prices efficient and allocate capital to its best uses. I used to be a corporate equity derivatives investment banker, and I once watched with uncomfortable awe as my boss explained that a derivatives deal we did for a biotech company lowered its cost of capital and thus allowed it to develop a promising cancer treatment, so if you really thought about it we were basically curing cancer. Did I believe that? Did he believe that? I mean. Perhaps his grandparents did.

These things all loosely tie together: If you are a hedge fund analyst, you largely spot patterns that exist because of some structural inefficiency, and then you trade against those patterns to profit from that inefficiency and make money for yourself, but your trading pushes the markets in the direction of efficiency and moves capital a bit closer to its best uses.

But there is no reason to think they will fit neatly together *all* of the time. “Retail investors are buying meme stocks at irrational prices, and they’re going to keep doing that for the next month, so I’d better buy meme stocks” is a perfectly satisfactory first- and second-level explanation that tends to allocate capital to *bad* uses and make retirement savers *worse* off. But if it makes money you should do it. Your *overall* role in the market is to nudge capital toward its best uses, even if sometimes you trade the opposite way to make a quick buck.

One way to think about *crypto* is that it created an enormous lucrative playground for traditional finance people (or their interns) to practice their first- and second-level skills — spotting patterns and understanding market niches — without worrying at all about the third level. That is quite rude and not the only way to think about crypto: There are lots of crypto believers who argue that crypto has created important innovations for the world, so allocating capital to crypto projects is a social good even if many individual projects are pretty bubbly.

But my impression of the *glee* with which a lot of traders jumped into crypto was that they were not particularly worried about the social good of crypto, about allocating capital to its best uses. They had all these tools for pattern recognition, and in traditional financial markets their application was difficult and constrained by economic reality, but crypto was a pure abstract casino for traders. You could spot patterns and turn them into money without anyone having to believe anything at all about capital allocation. As I once said to Sam Bankman-Fried : “You’re just like, well, I’m in the Ponzi business and it’s pretty good.”

That was practice, man. Sports gambling is exactly like that, and it is being colonized by finance. Quantitative trading firms are dipping their toes into sports betting: If you are good at finding patterns in data that predict future outcomes, modern sports have tons of data and tons of outcomes. There are structural inefficiencies in how people bet, inefficiencies that provide steady opportunities for people who are good at the first-level skills to exploit. By doing that, do you push the point spreads of National Football League games toward efficiency? Sure, probably! Is that a social good? I mean! The answer is not so much “no” as “who cares?” It might be! You could tell a story like “people want to be entertained, a little sports gambling is a more cost-effective form of entertainment for many people than various alternatives, and accurate point spreads improve their well-being.” Who am I to judge. You’re not curing cancer, or allocating capital to curing cancer. You’re making it a bit more fun for some people to watch the Jets game, and a bit less fun for other people.

I used to say this sporadically, but now I say it all the time: Financial markets and sports gambling are merging, and some big financial firms now go around acting like there is no difference between them. We have talked a lot about Robinhood’s move to become a sports betting app, and now here’s this :

Intercontinental Exchange Inc., owner of the New York Stock Exchange, plans to invest as much as $2 billion in cash in Polymarket, a crypto-based betting platform.

The transaction values the company, which lets traders wager on the outcome of real-world events such as elections and sports, at roughly $8 billion, ICE said in a statement Tuesday.

ICE will become a global distributor of Polymarket's event-driven data, providing customers with sentiment indicators on topics in the market, according to the statement. The exchange operator and Polymarket have also agreed to partner on future tokenization initiatives. …

"Together, we're expanding how individuals and institutions use probabilities to understand and price the future," [Polymarket founder Shayne] Coplan said in the statement. "Realizing the potential of new technologies, such as tokenization, will require collaboration between established market leaders and next-generation innovators," he said.

Perhaps I am way too cynical. Polymarket's and ICE's statement barely mentions sports, and Polymarket is not really explicitly a sports betting platform: It's a general-purpose prediction market, and a lot of its volume and popular perception involve election betting. (It traded billions of dollars on the 2024 US presidential election, and there's currently $130 million of volume on the New York mayor's race.) But Polymarket is reportedly *mostly* a sports market these days, and it sure seems to me that the rapidly rising valuations of prediction markets (and the *falling* valuations of traditional sportsbooks) have something to do with the fact that they have moved into sports betting in a big (and government - favored) way. Predicting election outcomes is a niche business with a lot of seasonality; predicting sports outcomes is a large popular lucrative constant business.

And so the story here is kind of "the New York Stock Exchange is getting into the sports betting business." Because the thing that you do, on a first-order basis, at the New York Stock Exchange, is make bets on stocks. You use gut instinct or data or whimsy or computers to pick the stocks you think will go up, and you buy them. And at some level the purpose of the New York Stock Exchange is to allocate capital to its best uses, but at another level the purpose of the New York Stock Exchange is to give you the bets you want, and if you want to bet on sports then bet on sports. Bloomberg's Joe Weisenthal writes today :

It seems like every company in the trading world is melding into some prediction market/sports betting/crypto conglomerate. All the lines between speculation and hedging or gambling and investing are going away.

Or I'm completely wrong! The alternative story here is what Coplan says: "We're expanding how individuals and institutions use probabilities to understand and price the future," where "the future" means something broader than this weekend's NFL slate. Economists have long been fond of prediction markets on efficient-allocation-of-capital, complete-markets grounds: If you had market prices reflecting the probabilities of lots of important future events, you could better understand the world, be more prepared for the future, and hedge bad potential futures. *Right now*, the *business* of prediction markets involves a lot of sports betting, but that won't necessarily be true forever. Perhaps the path to a robust prediction market for understanding and pricing the future runs through sports, because that's what people already want, but it ends up in a more interesting and useful place. I wrote the other day :

One way to think about it is the Grossman-Stiglitz paradox: To get an efficient market (here, prediction markets that accurately predict important events), you need to create conditions where informed traders can make a lot of money making prices correct, which means that you need some noise traders willing to trade at incorrect prices to entice the informed traders. And you entice the noise traders with football.

ICE's and Polymarket's *overall* role is to nudge capital toward its best uses, even if sometimes they trade the opposite way to make a quick buck.

Pump and dumps

Everything is securities fraud, I often say, but this is the most securities fraud :

1. I buy 1 million shares shares of Penny Stock X for $0.01 each.
2. I go on social media and tell my hundreds of thousands of followers, "I just got off the phone with the chief executive officer of Penny Stock X, she tells me that they used their proprietary quantum computers to find a cure for cancer, this is going to add $500 billion to their market cap, you'd better buy as much as you can right now."
3. My hundreds of thousands of followers believe me, so they rush to buy the stock.
4. Their buying pushes the stock up to $0.20 per share.
5. I sell my million shares for $200,000, a $190,000 profit.
6. Obviously the stuff about quantum computers and a cure for cancer is a lie and the stock falls back to $0.01 per share.

This is called a "pump and dump." In Step 2, I lie to pump up the price of the stock. In step 5, I dump the stock that I pumped. It is a very standard form of securities fraud, people have been doing it in some form or another for many decades, the US Securities and Exchange Commission and the Department of Justice regularly bring cases against people who try it, and they regularly win those cases.

But *is* this securities fraud? I mean, yes, it absolutely is, come on. But could you make an argument that it isn't? The argument that it isn't might go like this:

1. "Fraud" means lying to someone to get money from them.
2. "Securities fraud" means lying to someone about securities to get money from them.
3. Here, yes, sure, I lied to my social media followers about securities.
4. But I didn't get money from them!
5. Oh, I got money. But I got money *from the stock market*. I got money from hitting the "sell" button at my brokerage account. The person who bought my stock from me gave me money, but there's no particular reason to think that that person read my social media posts. Perhaps my broker sent my order to the stock exchange, and my stock was bought in an anonymous transaction and we'll never know who bought it. More likely my broker sent my order to an electronic market maker like Virtu or Jane Street or Citadel Securities, who bought my stock from me, and none of those guys even follow me on social media.

6. Similarly, my social media followers *spent* money to buy the (worthless) stock. They sent money by hitting the "buy" button at their brokerage accounts. But, again, they don't know whom they bought the stock from, and there's no reason to think it was me. It was probably Virtu or Jane Street or Citadel Securities.

7. So whom did I defraud? I lied to my followers, but they didn't give me money. The market makers gave me money, but I never lied to them. No fraud!

This is mostly stupid. The money in some obvious intuitive sense flows from my social media followers (who have been told lies, and believed them, and paid money) to me (who told the lies and got the money). It didn't flow *directly* from them to me; there were a few steps in the middle. But those were all pretty mechanical steps. The market makers — and the *market* — respond to the information encoded in prices. When my followers saw my lies and started buying the stock, that mechanically pushed the stock price up. The higher stock price reflected demand from my followers, which in turn reflected my lies. The higher stock price *was* a lie: The higher stock price *encoded* the information "this company cured cancer with quantum computers," which was false. In some sense I *did* trick Virtu or Jane Street or whoever was on the other side of the trade from me: They didn't see or believe my lies directly, but their picture of the world was distorted by my lies, and I expected and intended and caused and profited from that distortion.

This is called the "fraud on the market theory," and it is essential to modern securities fraud enforcement: Modern securities trading mostly occurs electronically and anonymously, so you'll rarely be able to find cases where I lied about securities directly to the person who bought them from me. The US Supreme Court said in 1988:

The fraud on the market theory is based on the hypothesis that, in an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business. Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements. The causal connection between the defendants' fraud and the plaintiffs' purchase of stock in such a case is no less significant than in a case of direct reliance on misrepresentations.

This is all obvious stuff, this is the basic architecture of modern financial regulation, this is why people are not allowed to go around lying about stocks all the time. I apologize for explaining it at length, because, while many people probably haven't *thought* about it, nobody is actually *confused* about it. Nobody goes around thinking "actually pump and dumps are legal because you're not taking money directly from the people you lie to."

Except this one judge? We talked in March of last year about what I called "an absolutely wild opinion" in a Texas federal district court, dismissing an indictment against some alleged pump-and-dumpers — who had nicknames like "MrZackMorris" and "Mystic Mac" and "The Stock Sniper" and who said stuff like "I'll never get sick of pumping … money into my followers bank accounts," because the judge found that actually pump-and-dumps aren't fraud. He wrote:

Unlike a traditional fraud case, in which the victim directly surrenders their property to the defendant (or an entity in the defendant's control), the investors here surrendered their property to the stock market at market prices, and in return, received the benefit of the bargain in the form of securities. Thus, the scheme did not deprive investors of their money or property through any misrepresentation; the misrepresentations deprived them only of accurate information necessary to make discretionary economic decisions. …

Even accepting as true that the alleged victims ultimately lost money on the stock market because the value of their shares went down, the Defendants did not obtain something of value from the entity to be deceived. The investors' trading losses are one step too far removed from the Defendants' alleged fraudulent misrepresentations.

That was weird! But maybe not *that* weird. The Supreme Court has issued a bunch of opinions over recent years narrowing the range of fraud and corruption laws, finding that various sorts of obvious fraud are not *actually* fraud because they do not "deprive people of traditional property interests." One possibility was that the Texas judge looked at those precedents, thought "ehh they're legalizing everything these days, probably pump-and-dumps are fine," and got out ahead of things. One possibility was that he was right! Maybe that *is* where things are going. "Pump and Dumps are Legal Now," was my headline at the time. That was not legal advice, and I didn't *really* believe it, but I worried. If it's right, I wrote, "the stock market, and social media, are going to get pretty weird." I want to point out that things really have gotten a lot weirder since then (you can bet on football on Robinhood!), though mostly not because of that decision.

That said, last Thursday that opinion was overturned on appeal in a short, sensible, unanimous opinion of the US Court of Appeals for the Fifth Circuit:

While it is true that a defendant cannot be convicted of fraud for depriving an individual of potentially valuable economic information alone, the indictment here went further, properly alleging defendants' scheme to defraud their followers of money. …

The indictment does not mention the right-to-control theory. Rather, it alleges that defendants induced their followers, through misrepresentations, to purchase securities — that is, to part with their money or property. The indictment alleges a "fraudulent-inducement theory," under which a defendant "uses a material misstatement to trick a victim into a contract that requires handing over her money or property." … Unlike the right-to-control theory rejected in *Ciminelli*, the fraudulent-inducement theory advanced here "protects money and property." …

As the indictment alleges, defendants' object was to obtain money, and they did so by fraudulently inducing their followers to purchase securities. The indictment's allegation that defendants pumped and dumped to gain a profit shows that they "had money in mind." … "[A] fraud is complete when the defendant has induced the deprivation of money or property under materially false pretenses"—regardless of whether the victim suffered a net pecuniary loss. The indictment's allegation of defendants' fraudulently inducing their followers to purchase securities is sufficient to allege an injury.

So pump and dumps are illegal again. For now. I guess this could still go to the Supreme Court.

Consulting

The two basic possible paths for generative artificial intelligence and the consulting industry are:

1. Consultants will master AI to produce better and more useful consulting engagements with fewer resources, making themselves more indispensable to clients while also improving their own profit margins; or

2. *Clients* will master AI well enough that, instead of paying a consulting firm for advice about critical business decisions, they can just ask ChatGPT and get a good enough answer, making the consultants completely dispensable and putting severe pressure on their margins.

Not to pick on consultants; really those are the two possible paths for most sorts of knowledge work. We've talked about the same conundrum for homeowners' association management companies ; also, please do not ask ChatGPT to write Money Stuff for you. But especially consultants.

So if I ran a consulting firm I would be very interested in simultaneously:

Making sure that my consultants were really good and creative and cutting-edge about using AI to do consulting; and

Making sure that their work product was highly *differentiated* from the raw output of large language models. If I was charging clients hundreds of thousands of dollars to answer a question like "how can we increase sales of our widgets," I would be very very careful to give them answers that were not simply what you'd get by typing the same question into ChatGPT.

Deloitte apparently made different choices? The Financial Times reports:

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

Australia's Department of Employment and Workplace Relations ... 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. …

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. ...

In the updated version of the report, Deloitte added references to the use of generative AI in its appendix. … 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.

"Well if we just type our question into ChatGPT we'll get a decent answer, but it might contain hallucinations, whereas if we pay hundreds of thousands of dollars to a big consulting firm we can at least avoid that risk," you might think, incorrectly.

If a rocket explodes, is that securities fraud?

Buddy:

Glancy Prongay & Murray LLP, a leading national shareholder rights law firm, today announced that it has commenced an investigation on behalf of Firefly Aerospace Inc. ("Firefly" or the "Company") (NASDAQ: FLY) investors concerning the Company's possible violations of the federal securities laws. ...

On September 29, 2025, Firefly disclosed that during testing, the first stage of its Alpha Flight 7 rocket "experienced an event that resulted in a loss of the stage."

On this news, Firefly's stock price fell $10.29, or 27.8%, over two consecutive trading days to close at $26.67 per share on October 1, 2025, thereby injuring investors.

I should say that the answer to the question "if a rocket explodes, is that securities fraud" is not *always* "duh of course everything is securities fraud." If a NASA rocket explodes, probably not securities fraud: NASA is a government agency and does not have securities. If a SpaceX rocket explodes, probably not securities fraud: SpaceX is a private company, its shares do not trade regularly in a public market, and so there is (probably) not some pool of investors who bought the stock last week and can say with a straight face "we overpaid for the stock because we thought your rockets wouldn't explode but then your rocket exploded so, fraud." But every bad thing *that a public company does* is securities fraud, and Firefly is public, and there you go.

Things happen

OpenAI's Golden Touch Spreads as Stocks Soar Off Mere Mentions. Investors Place Bets on Trump Team's Next Investment Target . Elon Musk names former Morgan Stanley banker as new xAI CFO. Market for Synthetic Risk Transfers Is Riddled With Gaps in Disclosure, IMF Officials Say. Rising Fees Force Premium Credit-Card Holders to Choose Sides. Bitcoin Life Insurance Provider Meanwhile Raises $82 Million. CFA Level I Success Drops to 43% as AI Models Ace Final Exam. JPMorgan replaces European banking boss who was doing job from New York. JPMorgan paid $115 million for Charlie Javice's lawyers . Fannie Mae and Freddie Mac have "perhaps the strangest IPO 'bake-off' ever."

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1. Though I am fond of Robert Mercer's line (from More Money Than God): "The signals that we have been trading without interruption for fifteen years make no sense. Otherwise someone else would have found them."

2. This is perhaps one way to tell the story of the Jane Street Indian options trades ?

3. Not literally: It's a big investment, and a data-and-tokenization partnership, but not actually listing Polymarket contracts on the exchange. (They're commodities contracts anyway, so they wouldn't be listed on NYSE.)

4. Yesterday I quoted Robinhood's JB Mackenzie saying : "I don't know if customers define them as entertainment or not. You have people that are just staunch believers in companies. You've got people who are Tesla bulls. They believe in Tesla. With these prediction markets, on the sports side, it's just a slight flip because you already have that affinity because you were a Jets fan with your dad."

5. No, that's exaggerated for rhetorical effect. The most securities fraud is "I start a company, I go out and tell investors that I have used my proprietary quantum computers to find a cure for cancer, I raise $100 million from those investors and I steal it." Primary securities fraud is even fraudier than pump-and-dumps. Still. Both quite fraudy.

6. An interesting question is: What if they don't? What if they say "oh that guy is a famous pump-and-dumper, and he is obviously lying about the quantum computers and the cancer. But every time he pumps a stock, the stock does go up. So I will buy some Penny Stock X to profit from the pump, and then sell it before it collapses." Then the stock goes up and I get rich from my lies. My impression is that this is *usually* how pump-and-dumps work: The people on penny-stock message boards are looking for fun pumps, not cures for cancer. But that is just a hunch: I can't prove that in this footnote (as the columnist writing these words), and I also couldn't prove that in the hypothetical (as a criminal defendant charged with a pump-and-dump). Like if I was charged with doing a pump-and-dump and I said "no you don't understand everyone knew I was lying about the cancer," I don't think I'd get a very sympathetic hearing. The prosecutors could point to the lies, and they could point to the stock going up, and a judge and jury would intuitively understand that the stock moved up on my lies, and if I said "no it's just a game we are all playing, they knew I was lying" I'd sound like, you know, a fraudster. I'd be a fraudster! I might be right though.

7. These two statements are mostly right. The civil securities fraud rule is mostly section 10(b) of the Securities and Exchange Act, which makes it illegal "to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." The criminal rule is mostly 18 U.S.C. 1348, which makes it illegal to "knowingly execute[], or attempt[] to execute, a scheme or artifice—(1) to defraud any person in connection

with … any [publicly traded] security … ; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any [such] security."

8. Don't email me to say "Treasury bonds," come on. Also, in both this case and the SpaceX case, it's possible that some public-company contractor made some part that contributed to the explosion, etc., and could get sued, but that's less obvious.

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Capital Markets

SEC Faces Mounting Backlog With 91% of Staff Furloughed, Based on Agency Shutdown Plans

“The longer the shutdown extends the more opportunity there is for problems,” said former U.S. Securities and Exchange Commission attorney Ryan Adams.

October 06, 2025 at 05:33 PM   By **Dan Novak**

U.S. Securities and Exchange Commission builing in Washington. Photo: Diego M. Radzinski/ALM

U.S. Securities and Exchange Commission staff will face a large backlog of work if a prolonged government shutdown takes hold, former SEC attorneys said Monday.

Just 9% of SEC staff is working, according to the agency’s August plan for a lapse in appropriations, severely weakening the agency’s oversight and enforcement capabilities.

“The longer the shutdown extends, the more opportunity there is for problems,” said attorney Ryan Adams.

Despite the shutdown, companies can still file registration statements and applications that require SEC staff engagement, but those—and any investigations—are all on hold, said attorney David Fredrickson.

Staff “will have to come back and pick up the pieces and figure out how to make up lost time and move quickly as possible,” said Fredrickson, now a Covington & Burling partner.

Frederickson said that, while the SEC now has a well-worn playbook in dealing with shutdowns, the commission’s 15% reduction in force this fiscal year makes matters more difficult. The Trump administration has also threatened mass layoffs of federal workers during the funding lapse.

While it is unclear whether SEC staff will be further reduced, “it's certainly not outside the realm of possibility that they could come back with less people to deal with the backlog,” said Adams, now a partner at Morrison Foerster.

For as long as the shutdown extends, staff will be unable to provide interpretive guidance on legal questions, and any initial public offerings will be delayed, according to the SEC's Division of Corporation Finance. The commission’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, however, will remain fully functional, the division added.

Adams and Fredrickson said they are confident in the ability of commission staff to work through the backlog of work and maintain order of markets when the government reopens.

“One silver lining to the fact that we've had numerous shutdowns in the past decade is that, at least with every shutdown, you get more experience in dealing with it and then reintegrating when everyone comes back online,” Adams said.

In the meantime, however, the agency’s ability to oversee markets remains severely diminished.

Fredrickson said a skeletal staff will maintain certain market surveillance functions to monitor major movements and any international market developments that might affect the United States.

“I don't recall in the past that there being heightened periods of kind of fraud or anything like that during shutdowns—but I mean, it certainly is an opportunity for bad actors to take advantage of,” Adams said. “It's like the police office has shut down.”

Page printed from: https://www.law.com/2025/10/06/sec-faces-mounting-backlog-with-91-of-staff-furloughed-based-on-agency-shutdown-plans/print/

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Securities

AppLovin Probed by SEC Over Its Data-Collection Practices (2)

Oct. 7, 2025, 3:22 AM PDT

The Securities and Exchange Commission has been probing the data-collection practices of the mobile advertising tech company AppLovin Corp., according to people familiar with the matter. The company's shares slid.

The agency has specifically looked into allegations that AppLovin violated platform partners' service agreements to push more targeted advertising to consumers, said the people, who asked not to be identified discussing private matters. SEC enforcement officials assigned to cyber and emerging technologies have been handling the matter, the people said.

AppLovin declined to comment, saying it generally doesn't speak on potential regulatory matters. "We regularly engage with regulators and if we get inquiries we address them in the ordinary course," the company said by email. "Material developments, if any, would be disclosed through the appropriate public channels." The SEC didn't comment. "During the shutdown, the SEC's public affairs office is not able to respond to many inquiries from the press," the agency said by email.

AppLovin shares fell 14%, the most since April, on Monday. They continued to slide early Tuesday, falling 3% in premarket trading.

The SEC is responding to a whistleblower complaint filed earlier this year, as well as multiple short-seller reports published in the past several months, the people said. SEC probes don't always result in enforcement actions by the regulator, but they can lead to fines for companies or corporate officials if the agency determines there were violations. The regulator hasn't accused AppLovin or its officials of wrongdoing, and it wasn't clear how advanced the review was.

AppLovin, which helps mobile app developers find users and sell advertising in their apps, has nearly doubled its market valuation this year to more than $230 billion as of last week, rivaling the market cap of the software giant Salesforce Inc. The company, which has been riding a wave of interest in artificial intelligence tools and ad placement, was added to the S&P 500 Index in September.

AppLovin's shares have soared despite a series of short-seller reports this year. Reports from Fuzzy Panda and Muddy Waters accused AppLovin of abusing its position within the mobile advertising ecosystem to harvest proprietary identifiers from other platforms in an unauthorized manner to track users across different websites and apps and retarget them with advertising. This so-called fingerprinting is prohibited by Apple's App Store and was barred by Google until a February policy change.

AppLovin Chief Executive Officer **Adam Foroughi**said that the short reports were "littered with inaccuracies" and denied creating "alternative accurate and persistent identifiers, typically called device fingerprints," in a blog post in March.

AppLovin also said in late March that it had hired A-list litigator Alex Spiro of law firm Quinn Emanuel Urquhart & Sullivan to conduct an "independent review and investigation into recent short report activity." The company said by email Monday that Spiro was brought in specifically to investigate the provenance of the short reports and why "clearly false reports" were published, adding that "the work continues."

AppLovin's platform partners include Meta Platforms Inc., Amazon.com Inc. and Alphabet Inc.'s Google, according to the company. Apps that use AppLovin's ad-delivery technology also need to follow the app store rules established by Google and Apple Inc. It's unclear which of the partner relationships the SEC is scrutinizing but there is no indication the agency is looking at the conduct of those partners as part of the probe.

Read More: AppLovin Hires Law Firm to Probe Short-Seller Allegations

AppLovin was one of several companies that declared an interest in buying TikTok's US operations, before President Donald Trump's administration announced a plan to hand over control of the social media app's US operations to a consortium including Oracle Corp.

(Updates with premarket shares in fourth paragraph)

--With assistance from **Nicola M White**.

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Securities

ASIC: Third of Surveyed Auditors Likely Breached Requirements

Oct. 6, 2025, 6:00 AM PDT

A review of Australia's auditing industry has found a number of likely breaches in rules governing independence and conflict of interest obligations, the Australian Securities and Investments Commission says in report Tuesday.

The corporate watchdog reviewed 48 auditors and 19 audit firms. Of those, 15 auditors were "found to be in likely breach of rotation requirements, relationship prohibitions or providing a prohibited non-audit service."

"Unfortunately, our review found that many auditors failed to meet the basic independence requirements, and others failed to identify and critically evaluate potential threats to their independence," ASIC Commissioner Kate O'Rourke says in statement

Nine auditors failed to demonstrate how they complied with mandatory rotation requirements that prevent auditors from auditing a listed client for more than five consecutive years

Five appeared to hold prohibited relationships with clients, including one auditor who was also an officeholder of its client

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Tesla unveils lower-cost Model Y in drive to reignite sales

reuters.com/business/autos-transportation/tesla-expected-unveil-lower-cost-model-y-push-reignite-sales-2025-10-07

Abhirup Roy October 7, 2025

Item 1 of 2 Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS

[1/2]Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS
Purchase Licensing Rights, opens new tab

- Tesla unveils affordable Model Y and Model 3 to boost sales
- Musk emphasizes affordability amid rising competition and sales challenges
- Affordable models crucial for Tesla's 20 million vehicle target and Musk's pay plan

Oct 7 (Reuters) - Tesla (TSLA.O), opens new tab unveiled more affordable versions of its best-selling Model Y SUV and its Model 3 sedan on Tuesday at $39,990 and $36,990, respectively, as the electric-vehicle maker seeks to reverse falling sales and waning market share amid rising competition.
Tesla shares fell 2.1% in afternoon trading.

Chief Executive Elon Musk has for years promised mass-market vehicles, though last year he canceled plans to build an all-new $25,000 EV, Reuters first reported.

Late last year, Musk said the vehicle would be priced below the "key threshold" of $30,000 including U.S. EV tax credits.

In the United States, prices effectively rose by $7,500 at the end of last month, when the credit ended. That helped goose quarterly sales to a record, but expectations are that they will slow down for the rest of the year, unless the affordable car comes to the rescue.
"The desire to buy the car is very high. (It's) just (that) people don't have enough money in the bank account to buy it," Musk said in July during Tesla's second-quarter earnings call. "So the more affordable we can make the car, the better."

Tesla had posted two clips on X over the weekend, igniting excitement among fans. One video shows headlights peering out of the dark and another shows what looks like a wheel spinning for a few seconds, followed by "10/7" — the U.S. format for the date October 7.

CRUCIAL TO $1 TRILLION PAY PLAN

Musk initially promised that production of the vehicle would start by the end of June. But Tesla only made what it called "first builds" of the car, it said in July, adding that it would be available for customers sometime in the last three months of the year.

Tesla has already been grappling with slowing sales of its aging lineup as competition has grown rapidly, especially in China and Europe, where Musk's far-right political views have also undermined brand loyalty.
Earlier this year, Tesla launched a refreshed version of the Model Y with improvements including new light bars and a rear touchscreen.

Musk has been pivoting the company toward artificial intelligence, focusing on robotaxis and humanoid robots. Tesla has said it will launch more affordable vehicles in its lineup but has not provided details.

Sources have told Reuters the EV maker also plans to roll out a stripped-down version of its Model 3 midsize sedan.
Affordable cars will also be key to Tesla delivering 20 million vehicles over the next decade - one of the several operational and valuation milestones set by the company's board as part of its proposed $1 trillion pay package for Musk.
Reporting by Abhirup Roy in San Francisco and Akash Sriram in Bengaluru; Editing by Peter Henderson, Richard Chang, Sriraj Kalluvila and Alan Barona

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2nd Circ. Revives Investors' Green Infrastructure Co. Suit

By **Jessica Corso**

Law360 (October 6, 2025, 8:57 PM EDT) -- The Second Circuit on Monday revived a proposed class action against defunct green infrastructure firm Abengoa SA, ruling that details from Spanish criminal proceedings against the firm could be used to claim that the company had defrauded its U.S.-based investors.

A three-judge panel of the court ruled that the lower court judge who tossed the case in 2022 should have credited testimony from confidential witnesses as well as information revealed in criminal proceedings against Abengoa and its executives in Spain, where the company was based.

While its 1976 decision in Lipsky v. Commonwealth United Corp. prevented plaintiffs from pointing to consent judgments that are "the result of private bargaining" as evidence, the Second Circuit ruled that the case did not foreclose plaintiffs from relying on any information obtained from other court proceedings.

"To the extent that our prior case law is ambiguous, we clarify that a complaint may rely on factual allegations or reports incorporated in complaints from other proceedings," the court said in a decision written by Circuit Judge Richard Sullivan.

"While this is inherently a case-specific inquiry that will turn on the nature and substance of the allegations made in the other proceedings, the allegations relied on by plaintiffs here were detailed, independently corroborated, and the product of an independent investigation, which distinguishes them from those of our prior precedents in which we rejected pleadings that merely relied on conclusory allegations asserted in other proceedings," he later clarified.

The plaintiffs are investors that purchased American depository shares in Abengoa after the Spanish company first offered them on the Nasdaq Global Select Market in October 2013.

Two years later, Abengoa had declared bankruptcy in Spain. The company is currently in liquidation, according to its website.

Investors allege that the engineering firm inflated the revenue on its construction projects, which included solar plants and water pipelines, in order to make the company seem more profitable than it actually was.

When U.S. District Judge Edgardo Ramos dismissed the case, he said the claims had been filed too late because Abengoa first revealed to investors in 2014 — a year before the lawsuit was filed — that it was suffering from liquidity issues.

But the Second Circuit said the claims were not time-barred as they related to new information that the investors allegedly learned in 2015 that called into question the accounting practices that Abengoa said it used when pitching itself to American investors in 2013.

The appellate court also said Judge Ramos didn't properly credit the former Abengoa employees who served as confidential witnesses to the investors. The lower court judge had said the witnesses' testimony was flawed for a number of reasons, including a lack of specificity about who they were.

But the Second Circuit said the suing investors had provided sufficient detail about each witness's former position at the company, alongside what they knew of the alleged fraud, for the lawsuit to move forward.

The appellate court also said that an internal audit performed by KPMG also observed some of the same earnings inflation issues as those described by the Spanish court and the confidential witnesses.

"And while it is true that plaintiffs ultimately may not be able to prove those allegations at a later stage of the proceedings, it is not for the district court to presume as much on a motion to dismiss," the court said.

Attorneys for the parties didn't immediately respond to a request for comment Monday.

Chief Circuit Judge Debra Ann Livingston and Circuit Judge Steven Menashi joined Judge Sullivan on Monday's opinion.

The investors are represented by Andrew Love, Robert Rothman and Erin Boardman of Robbins Geller Rudman & Dowd LLP and Nicholas Porritt and Adam Apton of Levi & Korsinsky LLP.

Abengoa is represented by Richard Hans, Jeffrey Rotenberg and Marc Silverman of DLA Piper LLP US.

The case is Francisco v. Abengoa SA, case number 22-2438, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Marygrace Anderson.

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Bernstein, Robbins Geller Vie For Top Co-Counsel In Deal Row

By **Jarek Rutz**

Law360 (October 6, 2025, 5:06 PM EDT) -- Bernstein Litowitz Berger & Grossmann LLP and Robbins Geller Rudman & Dowd LLP are vying to be co-lead counsel in a Delaware Chancery Court class action over the $14.30-per-share, $8.9 billion buyout of a healthcare management company, arguing its clients have a stronger case than others.

In a motion filed late Friday, the two firms claim their clients, who have a bigger financial stake, have shown "superior vigor" and unearthed "game-changing" evidence that other potential plaintiffs and firms missed, asking Vice Chancellor Morgan T. Zurn to appoint them as co-lead counsel for stockholders challenging R1 RCM Inc.'s 2024 take-private acquisition.

"Only proposed lead counsel pursued an investigation under 8 Del. C. § 220 to the brink of trial, obtaining critical evidence of significant conflicts of interest on the part of the special committee's financial advisor," the firms said in the motion.

The firms said that their investigation revealed undisclosed conflicts by R1's financial adviser Barclays, producing a stronger complaint than competing law firms and demonstrating the plaintiffs' superior ability to represent the class effectively.

The firms' clients include the City of Pontiac Police and Fire Retirement System, City Pension Fund for Firefighters and Police Officers in the City of Miami Beach, and hedge fund Empyrean Capital Partners LP. Labaton Keller Sucharow LLP is competing with the firms for the lead spot, and its clients are the Employees' Retirement System of Rhode Island, the City of Dearborn Police & Fire Revised Retirement System, The City of Providence and Jay Teasley. Labaton's motion for lead counsel remained under seal Monday.

Bernstein and Robbins Geller say their investigation also revealed that Joseph Flanagan, an R1 director and its former CEO, used his influence to tilt the sale process toward his preferred acquirer to get a high-paying job in the post-acquisition company, which the firms claim culminated in a fraud on the board.

"The Labaton complaint, by contrast, lacks this detail and contains an erroneous disclosure count based on purportedly omitted information that was actually in the proxy," the firms said in the motion.

In November 2024, a group of R1's joint controllers, TowerBrook Capital Partners, Ascension Health alliance, and Clayton Dubilier & Rice, took R1 private in a $14.30-per-share merger worth $8.9 billion.

Several institutional investors, including pension funds and asset managers, allege that the buyout was unfair to R1's stockholders because its controlling parties and certain executives manipulated the sale process to favor their own interests.

Bernstein and Robbins Geller point out its clients have a financial stake of nearly 3.2 million R1 shares worth $45.6 million, about 2.8% of the company's public float at the time of the deal.

"This economic stake is unlikely to be matched by the competing movants," the firms said. "This 'skin in the game' incentivizes the proposed lead plaintiffs to seek the best recovery for the class and effectively monitor their counsel."

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

The City of Pontiac Reestablished General Employees' Retirement System is represented by Daniel Meyer of Bernstein Litowitz Berger & Grossmann LLP.

The City of Pontiac Police and Fire Retirement System is represented by Christopher Lyons and Jason Avellino of Robbins Geller Rudman & Dowd LLP and Daniel Meyer of Bernstein Litowitz Berger & Grossmann LLP.

The City Pension Fund for Firefighters and Police Officers in the City of Miami Beach is represented by Daniel Meyer of Bernstein Litowitz Berger & Grossmann LLP.

Empyrean Capital Partners LP is represented by Daniel Meyer of Bernstein Litowitz Berger & Grossmann LLP.

Defendants' counsel information was not immediately available on Monday.

The case is City of Pontiac Reestablished General Employees' Retirement System, et al. v. TowerBrook Capital Partners L.P., et al., case number 2025-1077, in the Delaware Chancery Court.

--Editing by Emily Kokoll.

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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 company asked for a high court review in May, arguing that the Second Circuit in **revised opinion** last year "adopted an unprecedented per se rule that an auditor's statement that it complied with professional auditing standards is always material."

AmTrust investors filed the lawsuit in 2020, claiming that BDO was partially responsible for a series of misstatements the insurer made about its finances that required it to issue financial restatements dating back to 2012 and ultimately sank the company's stock.

AmTrust hired BDO as an outside auditor to review its 2013 statement, and suing investors claim that the accounting firm falsely stated that the audit had been performed in compliance with standards laid out by the Public Company Accounting Oversight Board.

In 2018, the SEC temporarily **barred** three former BDO accountants from auditing publicly traded companies for releasing an AmTrust audit report before the underlying auditing work was completed.

BDO **told** the Supreme Court that it quickly discovered that certain mandatory procedures had been omitted and quickly fixed the error, ultimately finding that the audit report was unaffected by the initially missing procedures.

It urged the court to reverse the circuit's "dangerous precedent" that it said could subject nearly half of all public company audits to securities fraud lawsuits.

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.

The investors waived their right to respond to BDO's Supreme Court petition, but the justices asked them to reconsider, requesting a response in June.

In their response, the investors argued that the accounting firm's "dire predictions" of what would happen if the Second Circuit ruling stood were based on a misreading of that court's decision.

"In fact, the court of appeals held only that, on the facts of this case, petitioner had failed to show that its statements were so clearly immaterial as to support dismissal on the pleadings," the investors told the justices.

Neither attorneys for BDO nor for the investors immediately responded to a request for comment Monday.

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.

Update: This story has been updated with additional information about the case.

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