

Securities Litigation

Defunct Spanish Energy Giant Faces New Shareholder Complaint

Writing for a unanimous panel, Circuit Judge Richard Sullivan said that a federal judge should have allowed the suing investors to use the fraud allegations from a Spanish criminal probe in their complaint alleging that Abengoa misled buyers of American Depository Shares on its accounting practices.

October 07, 2025 at 03:38 PM By **Alyssa Aquino**



Richard Sullivan, testifies before the Senate Judiciary Committee during his confirmation hearing to be U.S. Circuit Judge for the Second Circuit Court of Appeals, on Wednesday, August 1, 2018.

The U.S. Court of Appeals for the Second Circuit revived an investor suit against a defunct Spanish green energy firm, Abengoa S.A., in a decision faulting a federal court for disregarding information from a foreign criminal proceeding.

Writing for a unanimous panel, Circuit Judge Richard Sullivan said that a federal judge should have allowed the suing investors—represented by Robbins, Geller, Rudman & Dowd and Levi & Korsinsky—to use the fraud allegations from a Spanish criminal probe in their complaint alleging that Abengoa misled buyers of American Depositary Shares on potentially fraudulent accounting practices.

The Clark, Smith, Villazor and DLA Piper attorneys defending Abengoa had argued that investors couldn't plead facts based on allegations from another complaint. But the circuit found that to be a misinterpretation of its precedent.

"For the avoidance of all doubt, we hold that a complaint may rely on factual allegations or reports incorporated in complaints from other proceedings, subject, of course, to the limitations of Federal Rule of Civil Procedure 11," Sullivan wrote in [a Monday order](#).

He further noted that the allegations used in the securities case "were detailed, independently corroborated, and the product of an independent investigation."

"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," Sullivan said.

The criminal complaint and the securities case were part of the flurry of litigation to hit the once-successful Abengoa after it filed for bankruptcy in 2015.

The criminal proceeding included statements from several confidential whistleblowers alleging widespread accounting fraud in Abengoa that was purportedly orchestrated by director-level employees. Those statements "were not merely conclusory allegations but rather consisted of detailed observations," Sullivan wrote.

"Upon consideration of those allegations, we are persuaded that Plaintiffs have plausibly alleged that Abengoa's representations in the Registration Statement... were false," he said, referring to the registration statement that Abengoa submitted as part of its 2013 U.S. initial public offering.

In so ruling, the circuit overturned an August 2022 order from U.S. District Judge Edgardo Ramos dismissing with prejudice a consolidated lawsuit that was filed in 2015. The litigation was brought by a pension fund and another investor that claimed Abengoa misrepresented its debt and financial position.

Ramos dismissed the case, finding that the plaintiffs failed to state a claim and, alternatively, that the claims were filed outside of the one-year filing deadline.

The circuit, however, reversed Ramos on both counts. The circuit said that the filing deadline began once the “storm warnings” appeared, the signs that would have signaled to an ordinary, reasonable investor that they have been defrauded. The storm warning in this case, the circuit said, came in August 2015, when Abengoa announced a massive capital increase and asset divestiture, not in November 2014, as Ramos had ruled.

“Because the [first amended complaint] was filed within one year of that storm warning, Plaintiffs’ section 11 claims are not barred by the one-year statute of limitations,” the circuit said.

Counsel for the investors and Abengoa didn’t respond to Tuesday requests for comment.

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What Comes Next? Shareholder Derivative Actions Involving Foreign Corporations Post-Ezrasons

The NY Court of Appeals reaffirmed that foreign corporations' internal disputes are governed by their home law. This means NY courts won't override foreign laws in shareholder cases. The ruling is being used in ongoing cases to decide if non-U.S. parties can sue in NY. Its full impact is still unfolding.

October 08, 2025 at 03:21 AM By **Lara A. Flath**

Julie E. Cohen

Kelly T. Guerin

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Appeals Court

In the past two years alone, the New York Court of Appeals has twice taken the opportunity to reaffirm the internal affairs doctrine as a mainstay of New York law. This article examines the Court's most recent decision, *Ezrasons, Inc. v. Rudd*, 2025 WL 1436000 (N.Y. May 20, 2025), and specifically how both plaintiffs and defendants are already invoking the Court's decision in pending shareholder derivative actions involving foreign corporations in New York courts.

The internal affairs doctrine is a conflict of laws principle recognizing that only one state should have the authority to regulate a corporation's so-called "internal affairs"—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders.

Specifically, under the internal affairs doctrine, the substantive law of the place of the company's incorporation governs disputes relating to the rights and relationships of corporate shareholders and managers. *See Ezrasons*, 2025 WL 1436000, at *1. The internal affairs doctrine has been consistently invoked by New York courts in derivative actions to apply foreign law on substantive issues, including those affecting a party's right to bring suit.

In *Ezrasons*, plaintiff brought a derivative action against former officers and directors of Barclays PLC. In opposing defendants' motion to dismiss, plaintiff argued that New York law, rather than English law, should govern the threshold issue of standing.

Specifically, plaintiff argued that Business Corporation Law §1319 (which states that §626, which governs shareholders' derivative action brought in right of a corporation, shall apply to a foreign corporation doing business in New York) in fact overruled the internal affairs doctrine. Both the New York Supreme Court's Commercial Division and the First Department disagreed. In a 6-1 opinion, the New York Court of Appeals did too, holding in an opinion of first impression that neither BCL §1319 nor §626 displace the internal affairs doctrine.

Thus, any plaintiff bringing suit on behalf of a foreign corporation must satisfy the applicable substantive requirements imposed by the company's place of incorporation. Put simply, in the case of a plaintiff seeking to bring a shareholder derivative suit on behalf of an English company, that plaintiff must satisfy the substantive standing requirements imposed by English law. Here, plaintiff did not.

Since the Court's decision in May, both shareholder derivative plaintiffs and defendants have cited *Ezrasons* in support of why suit should or should not be permitted. We highlight two examples here. *Employees Retirement System for the City of Providence v. Rohner* is a shareholder derivative action brought on behalf of a Swiss corporation in the Supreme Court of New York. No. 651657 (Sup. Ct. N.Y. Cnty. 2022).

In response to defendants' motion to dismiss, plaintiff asserts that, consistent with *Ezrasons*, it has the right to bring suit in New York because the question of standing is governed by Swiss law under the internal affairs doctrine. *See* Pl.'s Suppl. Mem. of Law Regarding the Court of Appeal's Decision in *Ezrasons, Inc. v. Rudd* at 2, *Emps. Ret. Sys. for the City of Providence v. Rohner*, No. 651657 (Sup. Ct. N.Y. Cnty. filed June 13, 2025), Doc. No. 947.

Because plaintiff satisfies those requirements, it argues, it can maintain suit. Defendants, on the other hand, argue that, in addition to satisfying the substantive requirements of Swiss law, plaintiff must *also* satisfy the *procedural* requirements of New York law imposed by §626(b). See Suppl. Mem. of Law in Support of Certain Defs.’ Mot. to Dismiss for Lack of Standing and Capacity to Sue at 2, *Emps. Ret. Sys. for the City of Providence v. Rohner*, No. 651657 (Sup. Ct. N.Y. Cnty. filed June 13, 2025), Doc. No. 946 (citing *Ezrasons*, 2025 WL 1436000, at *5).

Defendants too claim support for their position in *Ezrasons*, arguing that because the Court of Appeals characterized §626(b) as a “pleading restriction,” the statute imposes a threshold procedural requirement that must be satisfied *in addition* to any standing requirements under foreign law.

Lambinet v. Pötsch provides another example. Following *Ezrasons*, defendants argued that the complaint (brought on behalf of a German corporation) should be dismissed because plaintiffs cannot meet several standing requirements to bring a derivative action under German law. See Letter/Correspondence to Judge, *Lambinet v. Pötsch*, No. 652830 (Sup. Ct. N.Y. Cnty. June 3, 2025), Doc. No. 19.

In a new maneuver, plaintiffs now seek to bring suit pursuant to BCL §1317, rather than §1319. See Consolidated Compl. 6, 13, *Lambinet v. Pötsch*, No. 652830 (Sup. Ct. N.Y. Cnty. filed July 1, 2025), Doc. No. 21; *see also* Am. Consolidated Compl. 6, 12-15, *Lambinet v. Pötsch*, No. 652830 (Sup. Ct. N.Y. Cnty. filed July 22, 2025), Doc. No. 24. In their most recent complaints, plaintiffs emphasize that, although the internal affairs doctrine is embedded in New York law, the doctrine can be subject to legislative override. See Am. Consolidated Compl. 8-30.

Specifically, plaintiffs allege that *Ezrasons* held that §1319 does not displace the internal affairs doctrine, in part, by distinguishing its text from that of §1317. See Letter/Correspondence to Judge, *Lambinet v. Pötsch*, No. 652830 (Sup. Ct. N.Y. Cnty. June 3, 2025), Doc. No. 19; *see Ezrasons*, 2025 WL 1436000, at *6 (recognizing that § 1317 “leaves less room for doubt that the legislature intended its regulation to apply notwithstanding conflicting foreign law”).

Thus, through BCL §1317, plaintiffs argue they can bring a claim under BCL §720, which permits a shareholder to bring a derivative claim against “directors or officers of a corporation” for “neglect of, or failure to perform, or other violation of [their] duties in the management and disposition of corporate assets committed to [their] charge[.]” Letter/Correspondence to Judge 1-2 (alterations in original) (quoting N.Y. Bus. Corp. Law 720(a)(1)(A), (b)).

Accordingly, plaintiffs maintain they have a right to sue in New York courts because they now bring substantive claims under New York law. See Am. Consolidated Compl. 6, 12-15, 399-404, 412-24. The court has set a briefing schedule for a motion to dismiss. See Letter /

Ezrasons reaffirmed New York's commitment to the internal affairs doctrine and, as such, provided some clarity for foreign corporations that New York courts will not hear derivative actions that plaintiffs would not otherwise have standing to bring in the place of the company's incorporation.

The precise impact of *Ezrasons*, however, particularly with respect to the interplay between certain provisions of the Business Corporation Law and the internal affairs doctrine, remains to be seen. Litigants and corporations should closely watch this dynamic, evolving area of New York commercial law.

The opinions expressed in this article are those of the authors and do not necessarily reflect the views of Skadden or its clients.

Lara A. Flath and **Julie E. Cohen** are attorneys at Skadden, Arps, Slate, Meagher & Flom. **Kelly T. Guerin** and **Eleni C. Pappas** are associates with the firm.

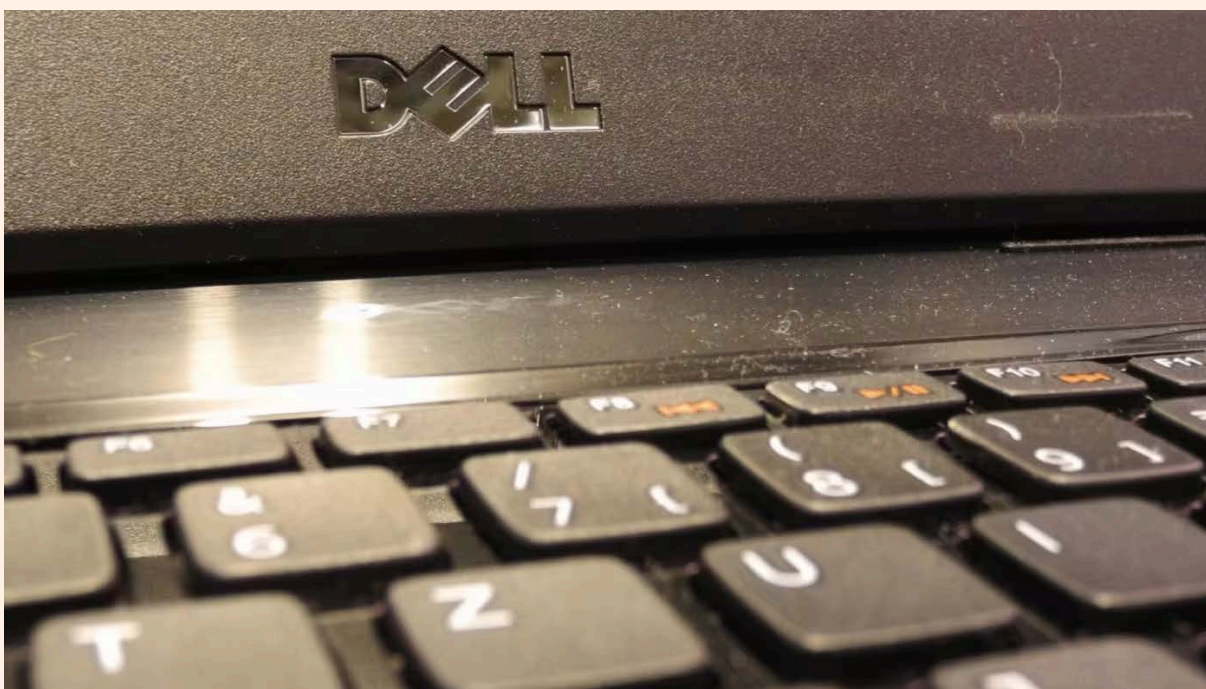
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Opinion Lex**Paying off angry investors is becoming a profitable trade**

Lawyers are telling boards it is cheaper to purchase forgiveness instead of permission



Dell's 2018 buyout of VMware drew shareholder lawsuits over pricing, including from Elliott. It settled for \$1bn — a small sum compared with its \$110bn market cap today © EPA

Published 17 MINUTES AGO



Spending \$1bn to settle a lawsuit sounds like no fun at all. But what if that \$1bn is instead regarded as an investment that can unleash tens of billions of dollars in gains? Then it becomes a canny trade.

That's how companies increasingly see the risk of having to pay off disgruntled investors. A new report from Cornerstone Research shows that merger-related judgments and settlements in Delaware, where most big American companies are incorporated, have exploded in number and value. Between 2022 and 2024, there were on average nearly 20 resolutions annually, four times the rate a decade earlier. Some surpass \$100mn.

Disputes often arise because a large, powerful shareholder is seen to have ridden roughshod over smaller ones — for example, in a buyout in which the insider sits on both sides of the table. In part, that reflects the fact that such situations are more common with founder-led companies backed by private equity and venture capital going public.

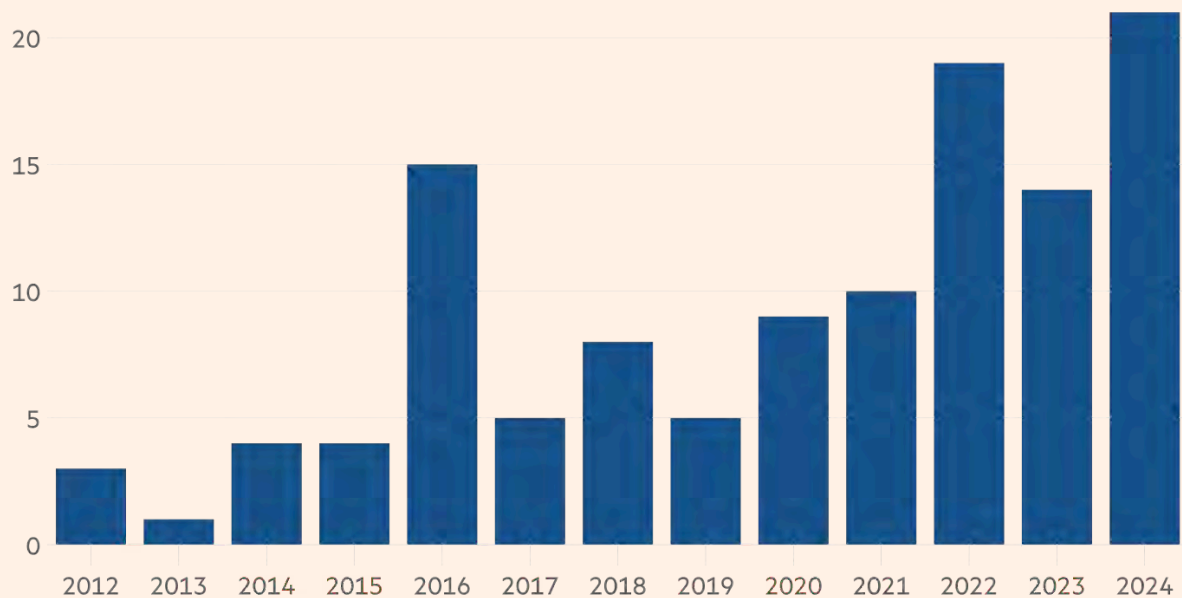
But lawyers are also telling boards it is cheaper to purchase forgiveness instead of permission. Fielding a lawsuit from shareholders who feel a take-private deal undervalued them may be costly, but still cheaper than raising the purchase price. Most of the merger settlements and judgments across Cornerstone's 13-year sample added up to less than 5 per cent of the combined deals' value.

In any case, plenty of lawsuits just get dismissed. And courts will not typically unwind a deal once it has been done. So the probability-weighted possibility of paying a prohibitive penalty in relation to the deal price must seem manageable.

Computer maker Dell is a real-world example. Its buyout of affiliate VMware in 2018 aroused the ire of Elliott Management and other shareholders, who claimed the price was unfair. The \$1bn Dell paid to settle the resulting lawsuit now looks tiny next to its \$110bn market capitalisation; its share price has increased sixfold since the buyout.

Following suit

Number of M&A settlements / judgments in Delaware



Source: Cornerstone Research

In another example, entertainment group Endeavor — the majority owner of WWE wrestling — agreed a \$13bn go-private transaction with its founder Ari Emanuel without letting ordinary shareholders vote. Lawsuits are now flying.

Granted, companies would still rather avoid the courts if they can. The rise in litigiousness has raised the cost of insurance for directors and board members. Some companies are also moving to less shareholder-friendly jurisdictions. Tesla has moved to Texas; video game developer Roblox redomiciled in Nevada. Delaware has since legislated to reduce the ease with which shareholders can file suits.

That is a poor omen. Shareholder litigation may sometimes be frivolous, but it also helps keep companies honest. It's hardly ideal if powerful insiders see legal settlements as the acceptable cost of giving minority shareholders a rough deal. But it's better than there being no cost at all.

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Cepton Hit With Shareholder Class Action Over Koito Acquisition

Oct. 8, 2025, 7:34 AM PDT

Summary by Bloomberg AI

AI Generated



- Cepton Inc. and its executives misled investors when it sought approval of a deal with Koito Manufacturing Co. Ltd. to acquire the company, according to a proposed shareholder class action.
- Cepton CEO Jun Pei and other executives made materially false and misleading statements leading up to the deal closing, including concealing a third-party offer that valued Cepton at more than double Koito's acquisition price.
- The complaint asserts violations of the Securities Exchange Act and seeks damages, alleging the defendants had the "motive and opportunity to commit fraud" and had actual knowledge of the misleading statements or acted in reckless disregard of the truth.

Cepton Inc. and its executives misled investors when it sought approval of a deal with Koito Manufacturing Co. Ltd. to acquire the company, according to a proposed shareholder class action.

Cepton CEO Jun Pei and other executives made materially false and misleading statements leading up to the deal closing, including concealing a third-party offer that valued Cepton at more than double Koito's acquisition price, Lisa Kabula alleged in a complaint filed Tuesday in the US District Court for the Northern District of California.

Kabula seeks to represent a class of investors who acquired or sold Cepton stock between July 2024 and Jan. 6 of this year.

Koito in 2023 invested \$200 million in Cepton, acquiring roughly 30% of Cepton's voting power. The Japanese manufacturer's bid to acquire the rest of Cepton's stock at \$3.17 per share closed on Jan. 6.

But a redacted complaint made public last month in the Delaware Chancery Court revealed Cepton and its executives made materially false and misleading statements about the company's operations and compliance policies, Kabula alleges.

Pei allegedly hid critical information from a special committee that was formed to execute the deal in an effort to protect his personal financial interests, including that Cepton received a production award that was projected to generate \$40 million in revenue over three years. Pei's financial team also allegedly reduced a \$39 million cost recovery claim submitted to Koito over the termination of a production award with General Motors by \$19 million, and valued the company on a liquidation basis, which subtracted more than \$100 million in value. Cepton should have been valued at \$8.49 per share but for the calculation errors, the Delaware suit claims.

Cepton also failed to disclose a third-party bid that valued the company at a higher price, which the board failed to meaningfully consider or disclose the terms to shareholders, the complaint says.

The defendants had the "motive and opportunity to commit fraud" and had actual knowledge of the misleading statements or acted in reckless disregard of the truth, Kabula alleges.

The complaint asserts violations of the Securities Exchange Act and seeks damages.

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

Pomerantz LLP represents Kabula and the proposed class.

The case is Kabula v. Cepton Inc. , N.D. Cal., No. 3:25-cv-08571, complaint filed 10/7/25 .

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Securities

Lumen Lead Cable Disclosure Suit Merits Revival, Investors Say

Oct. 7, 2025, 3:15 PM PDT

Claims that Lumen Technologies Inc. misled the securities market about its lead-tainted telecommunications infrastructure should be reinstated, investors said in an appellate brief.

The allegations shouldn't have been snuffed out at pleadings stage of the case, lead plaintiff Christine Glauber and other investors told the US Court of Appeals for the Fifth Circuit on Monday. Whether "the public knew about Lumen's lead cables is, at best, a hotly-contested question of fact that cannot be resolved at this stage," they said.

The suit was among several against telecom companies over allegedly toxic, often buried, lead cable inherited from the former Bell System regional telephone network. Wall Street Journal articles on the public health and environmental risks associated with the leftover cables allegedly caused stock-price declines.

Verizon Communications Inc. initially won dismissal of a lead-cable suit against it and is currently fighting a new version of the complaint. AT&T Inc. investors just filed an amended complaint after an earlier one was dismissed.

In March, Judge Terry A. Doughty of the US District Court for the Western District of Louisiana adopted a magistrate judge's recommendation to dismiss the Lumen investors' case with finality. Before the articles, "the telecom industry had every good reason to believe that the best practice was to leave the lead in place, undisturbed," meaning Lumen's statements weren't misleading or made with fraudulent intent, the magistrate judge said.

In their opening brief, the investors said the district court "failed to give Plaintiffs a fair shake." The court drew inferences that were directly contradicted by the allegations and resolved factual issues in Lumen's favor, they said.

Lumen, in response, said the district court correctly found the investors failed to show omitted material information about Lumen's cables in the company's disclosures.

“Stripped of hyperbole,” the claims rely on a chain of speculative assumptions about “a *hypothetical* widespread health and environmental risk from lead-sheathed cables that was not confirmed or documented” during the period at issue, Lumen said. Furthermore, the claims point to a hypothetical possibility that the risk, “if it ever materializes, could lead to a large financial exposure for Lumen.” The investors also didn’t plausibly allege the company “was aware of these risks and inexplicably decided to misrepresent them,” Lumen said.

The company also said that “investors were already aware during the Class Period that Lumen owned lead-sheathed cables and that there were general health and environmental risks related to such cables.”

In reply, the investors said that the market’s supposed knowledge, and the idea that it made the statements inactionable, “border on the absurd and it would be a severe injustice to adopt either.” Rather, the company’s brief plucked “snippets” of information about the presence of lead cables in its network from “esoteric third-party sources,” they said.

Pomerantz LLP, the Schall Law Firm, and Eric O’Bell, who practices in Metairie, La., represent the investors. A&O Shearman and Kean Miller LLP represent Lumen.

The case is *McLemore v. Lumen Technologies, Inc.*, 5th Cir., No. 25-30264, brief 10/6/25 .

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EXPLORE



Hargreaves Lansdown PLC

Hargreaves Lansdown denies responsibility in Woodford investor lawsuit

Almost 10,000 people seeking compensation for losses were ‘fully responsible’ for their investor decisions, says platform



Thousands of retail investors lost heavily after the collapse in 2019 of Neil Woodford's equity income fund © FT montage; Richard Cannon

Alistair Gray in London

Published AN HOUR AGO



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Hargreaves Lansdown has hit back at a lawsuit brought by almost 10,000 people who invested through the platform in [Neil Woodford](#)'s collapsed equity fund, arguing that they were responsible for their own investment decisions.

Newly filed High Court documents set out details of Hargreaves Lansdown's defence to the claim, which alleges that the UK's largest investment site [recommended the Woodford investment](#) to customers even though it had concerns the fund was running into trouble.

Thousands of retail investors were [left nursing heavy losses](#) following the collapse in 2019 of the Woodford equity income fund, which was run by the eponymous star stockpicker. It became one of the UK's biggest investment scandals and Woodford has been provisionally [banned from holding similar senior roles and fined](#) by the financial regulator, which he is challenging in a separate legal case.

The open-ended fund was suspended, and subsequently wound up, after investors rushed to try to withdraw their money because of poor performance of both listed holdings and private company investments.

RGL Management, a claims management firm, is seeking compensation for retail investors who bought the fund through [Hargreaves Lansdown](#), which had included it on an influential "best buy" list of investments. RGL said 9,600 retail investors were now taking part in the claim.

In a 110-page defence filed with the court, lawyers acting for Hargreaves led by Craig Orr KC said its investment platform was "execution only" and that it had not provided the retail investors with financial advice.

While the company acknowledged including the fund on its so-called Wealth List, it said investors who reviewed the publicly available list "remained fully responsible for their own investment decisions".

"Inclusion of a fund on the Wealth List was not an assurance or guarantee as to the fund's future performance and did not constitute a personal recommendation or advice," the defence said.

In a summary of the claim filed with the court, the claimants' counsel led by Alain Choo Choy KC contended that Hargreaves Lansdown continued to include the fund in the Wealth List even though it had "significant and increasing concerns" about it.

Lawyers acting for the investors claim the company "breached its contractual duty to use reasonable care and skill in researching and compiling the Wealth List" and had not adequately communicated "its concerns regarding the fund's portfolio composition, liquidity, risk profile, management and performance".

In its defence, Hargreaves Lansdown acknowledged that its investment team did develop concerns in mid-2017 “about the fund’s poor performance and bias to smaller companies”.

However, it added it had adequately communicated the risk of the investment to customers, including in one 2016 update that said it was “not a typical equity income fund”.

Another update published on its website in 2019 said it had “been an uncomfortable time to hold the fund and our own conviction has been tested”.

Hargreaves Lansdown, formerly listed in London, was [taken private](#) by CVC Capital Partners, Nordic Capital and an arm of Abu Dhabi Investment Authority in a deal that completed this year.

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Critical Mass With Law.com's Amanda Bronstad: Jury Hits Johnson & Johnson With Record \$966M Talc Verdict, Law.com Data Finds Only 8% Appointed to Lead 2024 MDLs Were Attorneys of Color

October 08, 2025 at 08:59 AM By  Amanda Bronstad



Johnson & Johnson offices in New Brunswick, NJ. Credit: Askar/Adobe Stock

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: A Los Angeles jury on Monday awarded \$966 million to three adult children of a woman who died of mesothelioma after using **Johnson & Johnson's** talc products. The percentage of **attorneys of color** appointed to leadership positions in multidistrict litigation fell again in 2024, the third year in a row, according to **Law.com** data. Find out who represents the makers of **Roblox**, **Minecraft** and **Fortnite** in a new raft of addiction lawsuits.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on [LinkedIn](#) or X: [@abronstadlaw](#).



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

Juror to Rely on ‘Gut’ Instincts Was Dismissed Prior to \$966M Talc Verdict

A **Los Angeles Superior Court** jury returned a record \$966 million talc verdict to the children of a woman who died in 2021 of mesothelioma after using **Johnson & Johnson’s** talcum powder products.

[Here’s my report](#) on Monday’s verdict, which is the largest in a mesothelioma trial against Johnson & Johnson and included \$950 million in punitive damages. **Dean Omar** partners [Danny Kraft](#) and [Venus Burns](#) handled the trial for the three children of Mae Moore, whose case was delayed by Johnson & Johnson’s talc bankruptcies.

Johnson & Johnson said it would immediately appeal the jury’s award, which it called unconstitutional and egregious and “directly at odds” with other jury decisions, such as an Oct. 2 defense verdict in South Carolina’s **Richland County Court of Common Pleas** in another mesothelioma trial handled by Dean Omar.

[Sabrina Strong](#) (**O’Melveny**) and [John Ewald](#) (**Kirkland & Ellis**) represented Johnson & Johnson in the Los Angeles trial.

The jury began deliberations late Thursday after a month-long trial. However, on Friday, two jurors were replaced with alternates, one of whom was the subject of a note the jury sent stating that he was using “outside information to influence his thoughts.” The note continues:

“He has brought up the Johnson & Johnson vaccine as additional ‘evidence’ to evaluate the conduct of Johnson & Johnson. He intends to vote by his ‘gut’ instincts rather than by evidence and wants to hear the reasoning of others to determine his ultimate vote. It seems as though he hasn’t even really been present for the last month.”



John Rabiej.

Diversity Decrease in MDL Appointments: ‘Everybody’s Concerned About It’

Only 8% of lawyers appointed to lead multidistrict litigation created in 2024 were attorneys of color, marking a continuation of a three-year decline, according to **Law.com** statistics.

[Here’s my article](#) on the data, which found the percentage of “nonwhite” attorneys fell from 11% in 2023, 14% in 2022 and 16% in 2021, which was the highest in the past nine years. The ethnic makeup of 2% of lawyers could not be determined.

Lawyers informed me that the decline could be attributed to more judges approving slates for leadership teams, rather than reviewing individual applications or conducting interviews with

lawyers for the positions. That could make it harder for many “nonwhite” attorneys to get their names before judges. But they also noted a potential “chilling effect” of today’s growing political and cultural environment against diversity, equity and inclusion initiatives.

Case in point: A Feb. 27 misconduct complaint was filed against **U.S. District Judge M. Casey Rodgers** after she suggested women “should be adequately represented within leadership” of the multidistrict litigation involving injectable birth control **Depo-Provera**. **U.S. Court of Appeals for the Eleventh Circuit Chief Judge William Pryor** chose not to discipline Rodgers after she corrected her language, but criticized as unconstitutional the growing number of statements in multidistrict litigation encouraging lawyers to prefer candidates for leadership roles based on sex or race.

[John Rabiej](#) (**Rabiej Litigation Law Center**), who organizes conferences for the bench and bar to come up with “best practices” in multidistrict litigation, acknowledged the concerns, stating:

“We’ve got judges in MDLs appoint lawyers who are experienced, and normally those are repeat players, 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.”

So far, in 2025, the U.S. Judicial Panel on Multidistrict Litigation has created a much smaller number of new multidistrict litigation dockets. However, according to Law.com data, 12% of the lawyers appointed to leadership positions in multidistrict litigation during the first half of the year were attorneys of color. [Jason Rathod](#) (**Migliaccio & Rathod**) told me:

“They’re not huge differences in magnitude. It hasn’t been great historically, and it’s still not great, is a fair way to put it. I would say the trajectory down it still seems like natural variation within a defined band of what we’ve seen in the past, rather than pronounced backsliding.”



David Fuad, partner with Orrick, Herrington & Sutcliffe. Courtesy photo

Who Got the Work?

Defense lawyers appeared for the makers of **Roblox**, **Minecraft** and **Fortnite** in response to a Sept. 25 motion to transfer more than a dozen lawsuits over the “gateway” video games into multidistrict litigation in **Pennsylvania’s Eastern District**. [David Fuad](#) (Orrick) appeared for **Roblox Corp.**, [David Sneed](#) (Covington) for **Microsoft**, whose Mojang AB subsidiary makes Minecraft, and [Moez Kaba](#) (Hueston & Hennigan) for Fortnite manufacturer **Epic Games Inc.** The motion, filed before the **U.S. Judicial Panel on Multidistrict Litigation** by [Elizabeth “Beth” Graham](#) (Grant & Eisenhofer), is the second attempt to coordinate cases alleging the video games addict children. The panel rejected a request last year to coordinate multidistrict litigation targeting 30 defendants in the video game industry.

Here’s what else is happening:

Paraquat Sanctions? A federal judge ordered [Aimee Wagstaff \(Wagstaff Law Firm\)](#) to [appear in court next week](#) to explain a video conference she is planning in which she “appears to be recruiting litigants she does not represent to reject the global settlement” in the multidistrict litigation over herbicide paraquat. Wagstaff, who resigned one month after being appointed to the multidistrict litigation’s plaintiffs’ executive committee in 2021, is leading paraquat cases in state courts in Pennsylvania and Delaware. **U.S. District Judge Nancy Rosenstengel**, who has stayed discovery deadlines for months for settlement negotiations to continue, required Wagstaff to appear Nov. 14 at her courthouse in East St. Louis, Illinois, to explain “whether the court should issue sanctions or other appropriate remedies to prevent this and further efforts to disturb the settlement process in this case.”

Fire Trial: A Los Angeles judge rejected plaintiffs’ attempts to [accelerate a trial](#) over this year’s wildfire in Los Angeles to September 2026 in light of **Southern California Edison’s** proposed compensation fund, announced last month, in which **Kenneth Feinberg** is serving as a consultant. **Los Angeles Superior Court Judge Laura Seigle**, who is overseeing more than 5,000 lawsuits sparked by the Eaton fire, stuck to the January 2027 trial date, but cautioned Edison’s lawyers to plan for mediation.

‘Broken Man’: A federal judge [sentenced](#) ex-**Girardi Keese** partner [David Lira \(Engstrom Lipscomb\)](#) to four months in prison and four months in home confinement for failing to comply with a court order to pay clients their settlements with **Boeing** in lawsuits over the 2018 crash of **Lion Air Flight 610** in Indonesia. Lira, 65, told **U.S. District Judge Mary Rowland** on Monday in a Chicago courtroom, “I stand before you a broken man, drenched in shame.” Federal prosecutors had asked for three years in prison for Lira, who is **Tom Girardi’s** son-in-law, while his lawyers sought a noncustodial sentence. “It is my hope that other lawyers will learn from my mistakes,” Lira told the judge.

Thanks for reading Critical Mass! I’ll be back next week.

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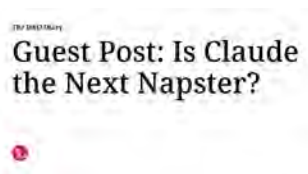
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Guest Post: Is Claude the Next Napster?

K [dandodiary.com/2025/10/articles/artificial-intelligence/guest-post-is-claude-the-next-napster](https://www.dandodiary.com/2025/10/articles/artificial-intelligence/guest-post-is-claude-the-next-napster)

Kevin LaCroix

October 8, 2025



By [Kevin LaCroix](#) on October 8, 2025

Posted in [Artificial Intelligence](#)



Sarah Abrams

Readers may be aware of Anthropic's [recent settlement](#) of its high-profile AI copyright infringement case. The lawsuit and its settlement clearly involve important intellectual property issues. In the following guest post, Sarah Abrams, Head of Claims BALEEN Specialty, a division of Bowhead Specialty, considers whether the lawsuit and its settlement may also point toward D&O liability and insurance issues as well. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like submit a guest post. Here is Sarah's article.

In a first-of-its-kind [settlement of an AI copyright infringement case](#), Anthropic agreed to a \$1.5 billion payment to resolve the [Bartz et al. v. Anthropic PBC](#) litigation (Anthropic Case). Given that intellectual property disputes are often excluded from D&O coverage, underwriters may wonder how the Anthropic Case and its settlement would impact D&O insurers. In reviewing the Anthropic case and settlement, I found similarities to the early 2000s Napster litigation and potential for a new breed of *Caremark* claims. Particularly, the duty of oversight risks arising from the increasing use of large language models (LLMs) and other artificial intelligence tools by companies and their employees.

As described in more detail below, the Anthropic Case was filed by a group of authors and publishers who sued Anthropic for allegedly pirating their work to train its large language model (LLM), Claude. The plaintiff authors alleged that Anthropic infringed copyrights by downloading their books from online repositories and using their work without permission or compensation. [Class certification was recently granted](#) ahead of the parties' settlement.

The following discusses certain settlement terms of the Anthropic case, the plaintiffs' allegations against Anthropic, and whether the alleged large-scale theft of creative works by an AI company to train LLMs may have a broader D&O underwriter impact. Are we about to enter a "New Era" of *Caremark* claims?

Anthropic Case

Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson, are bestselling authors with works registered at the U.S. Copyright Office. On behalf of a class of authors and publishers, they filed the Anthropic Case, alleging that Anthropic built its Claude models through mass copyright infringement; downloading and copying pirated books from online repositories such as *Books3* (a dataset derived from the "Bibliotik" piracy site) and *The Pile*. The plaintiff authors alleged that their works were used without permission or compensation to train Anthropic's Claude models, and that they concealed the full extent of the LLMs' reliance on infringing sources.

According to the complaint, beginning in 2021, Anthropic's co-founders and engineers amassed up to seven million pirated works, retaining them in a central repository for LLM training. The author plaintiffs contended this constituted "Napster-style" infringement, as Anthropic avoided licensing costs and relied on metadata and hashing techniques to catalog the stolen material. The author works allegedly copied include Bartz's *The Lost Night* and *The Herd*, Graeber's *The Good Nurse* and *The Breakthrough*, and Johnson's *To Be a Friend Is Fatal* and *The Feather Thief*.

Settlement

The Anthropic Case settlement is considered the largest copyright recovery to date: a minimum \$1.5 billion non-reversionary fund. This means that once Anthropic pays money into the settlement fund, it can't take it back, even if not all class members file claims. Anthropic agreed to fund the settlement through staged payments over two years. Thus, instead of a lump sum payment, Anthropic will pay the settlement in installments over two years (e.g., \$300M at preliminary approval, \$300M at final approval, and the balance in two tranches with interest). In addition, all Anthropic Case-related copyrighted material has been

included in a “Works List” that will be assigned a dollar value. If the total number of works in the Works List is greater than 500,000, Anthropic will pay an extra \$3,000 per work in compensation to infringed authors.

In addition, Anthropic agreed to a release of the authors’ claims limited to past conduct only (pre–August 25, 2025), leaving open the possibility of future claims and disputes over AI-generated outputs. The certified class consists of copyright owners of books downloaded from LibGen and PiLiMi. Beyond monetary relief, Anthropic must destroy all datasets derived from LibGen/PiLiMi within 30 days of final judgment and certify compliance. Administration will be handled by JND Legal, with notice via direct outreach, trade groups, and a dedicated settlement website.

Discussion

The comparison in the Anthropic Case complaint to Napster triggered the thought that there may be potential for future *Caremark* claims arising out of the use of LLMs, like Claude. Especially, because the Anthropic Case settlement does not apply to future copyright infringement claims.

For those who were not in college with me, sharing and downloading Backstreet Boys songs for free courtesy of Napster, [Napster](#) was a pioneering peer-to-peer (P2P) file-sharing service founded in 1999. It allowed users to share and download MP3 music files directly from each other’s computers over the Internet. Napster quickly gained millions of users by making it easy to find and share songs for free, disrupting the traditional music industry, and was just as quickly [sued by record labels and artists for copyright infringement](#). In 2000, the Northern District of California ruled that Napster was liable for enabling users to share copyrighted songs without authorization, a decision upheld by the Ninth Circuit Court of Appeals.

Napster was ordered to block access to infringing works. Unable to comply, it was forced to shut down operations in July 2001. Notably, while the Anthropic Case settlement requires destroying pirated work, the injunctive relief will likely not result in shutting down Claude. In addition, future claims for copyright infringement can be made, along with future payments to authors whose work was not part of the original “Works List.” However, now both Anthropic and the general public, including members of corporate boards, may be considered on notice that infringing work was used to train LLMs.

As a result, it may also be important to note that in 2003, after Napster’s free music-sharing services were shut down, the [Recording Industry Association of America \(RIAA\) began suing thousands of individual free music-sharing users](#) (often college students and households)

who continued to download or share copyrighted songs. Many users settled for amounts between \$3,000–\$5,000 to avoid statutory damages of up to \$150,000 per song.

What if post-Anthropic Case settlement plaintiffs, like RIAA, begin suing individuals and companies for copyright infringement? This emerging risk underscores the potential *Caremark*-style oversight risk for boards. With the massive financial Anthropic Case settlement in place, plaintiff authors, publishers, or artists may next target corporations and executives that deploy Claude or similar AI systems, alleging that downstream use amounts to copyright infringement. If that happens, shareholders may assert that corporate directors and officers breached their duty of oversight by failing to implement and monitor AI systems, including LLM use, to ensure proper licensing or evaluate third-party IP risks.

As [D&O Diary Readers](#) may recall, under Delaware law, liability can attach where directors “utterly fail” to implement reporting or monitoring systems for mission-critical risks. AI adoption and compliance with copyright licensing, particularly now that the Anthropic case has been settled, with terms made public, may require proactive oversight and documented board-level engagement to meet governance standards. Thus, while the Anthropic Case settlement is the first example of a billion-dollar copyright infringement exposure, it may also serve as a warning about AI-governance risk for boards, executives, and their D&O underwriters.

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Uber Proposes Contingency Fee Cap Initiative in California

The proposed measure targets car crash litigation amid Uber's broader push nationally to limit lawsuits.

October 06, 2025 at 05:55 PM By  **Cheryl Miller**



Credit: Shutterstock

Continuing its broad political assault on plaintiffs' suits, Uber Technologies Inc. has filed a proposed [ballot initiative](#) in California that would significantly cap contingency fees in car crash litigation.

The ride-hailing giant submitted the so-called Protection of Automobile Accident Victims from Attorney Self-Dealing on Friday, the first step in qualifying the measure for the 2026 ballot. The initiative would mark Uber's first foray into leading a likely costly ballot campaign since Proposition 22 of 2020, which allowed gig companies to classify their drivers as independent contractors.

"Californians deserve a system that prioritizes victims over billboard lawyers," Adam Blinick, an Uber policy executive, said in a prepared statement. "Capping attorney fees, banning kickbacks,

and ending inflated medical billing are common-sense reforms that will protect auto-accident victims and lower costs, and we're confident voters will agree."

Geoff Wells, president of the Consumer Attorneys of California, accused Uber of "trying to buy themselves a law" that benefits the company.

"From the misleading title down to its cynical provisions, this measure is designed to trip consumers up by blocking them from the best legal advocates and cutting off access to quality care after devastating injuries," Wells said.

Since the passage of Prop. 22, Uber has taken an increasingly aggressive stance in challenging the plaintiffs bar and the litigation its members bring. The company is the subject of hundreds of sexual assault [lawsuits](#) across the country brought by passengers who say they were attacked by their drivers.

The company [pursued](#) a ballot initiative in Nevada last year to cap contingency fees at 20%, an effort [derailed](#) by the Nevada Supreme Court in January.

This summer, Uber sued law firms in [Los Angeles](#) and [Philadelphia](#), accusing them of unethically referring clients to affiliated medical providers to inflate the costs of treatment and damages.

Uber also launched a multi-million dollar ad [campaign](#) this year blaming "legal abuse" for hefty insurance costs and higher rates for passengers.

Uber filed its California initiative on the same day Gov. Gavin Newsom signed legislation allowing ride-hailing drivers to unionize. The bill was part of a deal negotiated among Uber, the governor and Democratic lawmakers that also included separately approved legislation reducing the amount of uninsured motorist insurance app drivers are required to carry. The plaintiffs bar lobby opposed the lowered insurance requirement.

The initiative goes beyond the contingency fee cap with provisions. It would limit how much plaintiffs could seek for medical treatment costs and outlaw financial incentives between medical providers and a plaintiff's lawyer, a practice that would already likely draw a review from the state bar for potential ethical violations.

The measure would also shield whistleblowers who provide information about improper financial arrangements between law firms and health care providers. It would not apply to any lawsuits seeking damages from Uber for sexual assault or sexual harassment.

A final provision says that if California's governor and attorney general decline to defend the initiative in a legal challenge, the state will appoint and pay for a private lawyer to do so.

An Uber spokesperson did not respond to questions about whether it is the sole proponent of the initiative or why the company chose a 25% contingency fee cap, a figure likely to make many such cases financially untenable for attorneys.

Uber has proven itself ready to spend on ballot measures, having contributed almost \$60 million on efforts to pass Proposition 22. The company's political action committee reported \$18,8 million in cash on hand in July, the last reporting deadline.

The Consumer Attorneys of California will not likely be able to keep pace with Uber in a costly initiative fight, although the group has [countered](#) ballot measure attacks in the past with its own proposed initiatives targeting corporations. Such a response in 2007 led to both sides withdrawing their measures.

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California Brief

J&J Must Pay Record \$966 Million in Talc Baby Powder Cancer Case

Oct. 7, 2025, 11:55 AM PDT

Johnson & Johnson was told by a California jury to pay \$966 million to the family of a deceased woman who blamed her cancer on life-long use of the company's baby powder in the largest verdict for a single user in the 15-year litigation.

The Los Angeles state court jury late Monday found J&J liable for Mae Moore's mesothelioma — a cancer tied to asbestos exposure — and awarded her \$16 million in compensatory damages and \$950 million in punitive damages. Moore died in 2021 at age 88. The award will go to her family, who alleged J&J hid the health risks of its iconic powder.

"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," **Erik Haas**, Worldwide Vice President of Litigation at J&J, said in a statement.

The verdict comes as J&J is gearing up for a wave of jury trials over its talc-based baby powder, which it withdrew from the worldwide market in 2023. The company unsuccessfully sought three times to use the bankruptcy courts to force a settlement of tens of thousands of cases.

"It took this family five years to get their day in court and we're pleased the jury concluded J&J should be held accountable," said Jessica Dean, a Texas-based lawyer who represented Moore's family.

While J&J has spent more than \$3 billion settling lawsuits alleging asbestos in its baby powder harmed users, the company still faces more than 70,000 claims the product caused mesothelioma and ovarian cancers. Many of those cases have been consolidated before a federal judge in New Jersey for pre-trial information exchanges.

Nearly a dozen juries have held J&J and its Kenvue spinoff responsible for baby powder users' cancers and awarded billions of dollars in damages in total. Many of those awards later were reduced or thrown out on appeal.

J&J has steadfastly maintained talc doesn't cause cancer and that there's never been any asbestos in the product. The company also contends it has appropriately marketed its baby powder for more than 100 years.

Plaintiffs cited internal J&J documents that they claim show that the company knew about the presence of asbestos in its talc at least by the early 1970s.

The largest trial verdict against J&J was a \$4.7 billion jury award in 2018 to 20 women in state court in Missouri. An appeals court cut the verdict to \$2.1 billion. J&J wound up paying \$2.5 billion with interest.

Moore's award also is likely to be reduced, according to Bloomberg Intelligence's **Holly Froum**. US Supreme Court guidelines say punitive damage awards shouldn't be more than 10 times higher than compensatory awards to avoid being excessive.

Dean said Moore used J&J's baby powder – along with its Shower-to-Shower powder – for about 80 years. Jurors found J&J intended to deceive the woman by not making the products' cancer risks clear, according to court filings. J&J sold Shower-to-Shower to Valeant Pharmaceuticals in 2012 for about \$150 million.

The case is Moore v. J&J, JCCP 4674, 21STCV055134, California Superior Court (Los Angeles).

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Jury awards nearly \$1B to family of woman who died from asbestos-linked talc

DJ [dailyjournal.com/articles/387927-jury-awards-nearly-1b-to-family-of-woman-who-died-from-asbestos-linked-talc](https://www.dailyjournal.com/articles/387927-jury-awards-nearly-1b-to-family-of-woman-who-died-from-asbestos-linked-talc)

Civil Litigation

Oct. 7, 2025

A Los Angeles jury found Johnson & Johnson acted with malice in the death of 88-year-old Mae Moore, awarding her family nearly \$1 billion in damages for what plaintiffs said was asbestos contamination in the company's talc-based baby powder.

Judge Ruth Kwan

A Los Angeles jury awarded nearly \$1 billion to the family of a woman who developed mesothelioma and died after using what the plaintiffs said was asbestos-contaminated talcum produced by Johnson & Johnson.

The jury deliberated for two days, finding on Monday that Johnson & Johnson acted with malice or oppression. Mesothelioma is a terminal cancer that is only caused by exposure to asbestos.

Johnson & Johnson has prevailed in most cases related to its baby powder. The company denies that its talc contains asbestos or causes cancer.

Judge Ruth Ann Kwan presided over the Los Angeles case. The jury unanimously awarded \$6 million in emotional distress, \$10 million in non-economic damages and \$950 million in punitive damages.

The plaintiffs' attorneys with Dean Omar Branham Shirley LLP believe it is the largest verdict ever against Johnson & Johnson in a mesothelioma case linked to talc products. Johnson & Johnson said it plans to appeal.

The case is *Mae K. Moore v. Johnson & Johnson, et al.*, 21STCV05513 (L.A. Super. Ct., filed Feb. 9, 2021).

Johnson & Johnson's worldwide vice president of litigation, Erik Haas, said in an emailed statement that the verdict was "directly at odds--in result and amount--with the vast majority of other talc cases wherein the company has prevailed."

Haas said a jury in South Carolina rejected the same plaintiff lawyers' talc claims in the Johnson case.

"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 Powder is safe, does not contain asbestos and does not cause cancer," Haas said.

The decedent, Mae Moore, was the wife of a pastor and a mother of three. She regularly used Johnson & Johnson's baby powder, which contained asbestos-contaminated talc, the lawsuit said. Moore was diagnosed in December of 2020 and died a year later at 88.

The plaintiffs filed the case in 2021, but Johnson & Johnson's "bad faith bankruptcies" delayed matters, according to the plaintiffs' attorneys. The third amended complaint claimed wrongful death and survivorship - asbestos (negligence; breach of implied warranty; strict liability; fraud & concealment; conspiracy to defraud and failure to warn).

"Mae should not have had to suffer because of a product she trusted for use on herself and her children," DOBS attorney Danny Kraft said in a press statement. "We are thankful for the time of the jury and the court for hearing her story and providing justice."

Johnson & Johnson was represented at trial by Sabrina H. Strong and Esteban Rodriguez of O'Melveny & Myers LLP, and John L. Ewald of Kirkland & Ellis LLP. They did not respond to emailed requests for comment.

#387927

Antoine Abou-Diwan

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\$142M Settlement Resolves Algorithmic Price-Fixing Claims in Rental Housing MDL

"The Settlements represent a significant step forward in this litigation, providing for monetary relief to the Settlement Class while advancing the broader goals of deterring anticompetitive conduct in the multifamily housing market," plaintiffs' interim co-lead counsel wrote in a motion seeking preliminary approval of nearly 30 settlements totaling \$141.8 million.

October 08, 2025 at 09:44 AM By  **Sulaiman Abdur-Rahman**



Photo: Bigstock

Nearly 30 owners and managers of large-scale apartment complexes have agreed to settle algorithmic price-fixing allegations for \$141.8 million, resolving antitrust claims alleging a conspiracy to inflate rental prices with RealPage Inc.'s revenue management software.

Plaintiffs' interim co-lead counsel have filed a motion asking U.S. District Judge Waverly D. Crenshaw Jr. of the Middle District of Tennessee to grant preliminary approval of the class settlements.

"The Settlements represent a significant step forward in this litigation, providing for monetary relief to the Settlement Class while advancing the broader goals of deterring anticompetitive conduct in the multifamily housing market," according to the [plaintiffs' motion filed Oct. 1](#).

“The Court’s preliminary approval of these settlements will serve the interests of judicial economy and provide meaningful recovery to potentially millions of affected renters across the United States,” Scott+Scott, Robins Kaplan and Hausfeld wrote in the plaintiffs’ motion.

Skadden, Arps, Slate, Meagher & Flom represented co-defendant Greystar Management Services LLC, which agreed to [settle the litigation for \\$50 million](#) as the largest settling defendant in the multidistrict litigation.

A total of 27 settling defendants have agreed to resolve claims for \$141.8 million, while RealPage and other nonsettling defendants continue to litigate the matter in Tennessee federal court.

Gibson, Dunn & Crutcher represents defendant RealPage in the MDL plus a pending antitrust lawsuit filed by the U.S. Department of Justice and several state attorneys general in the U.S. District Court for the Middle District of North Carolina.

The Justice Department alleges RealPage unlawfully monopolized the commercial revenue management market through unlawful exclusionary conduct in violation of the Sherman Act.

RealPage in September announced it will contribute \$200,000 to the state of Nevada as part of a settlement agreement it reached with the Nevada Attorney General’s Office.

“We are gratified we found a path forward with the State of Nevada,” Dana Jones, CEO and president of RealPage, said in a statement. “RealPage remains proud of the role we play in facilitating affordable housing for renters in Nevada, advocating for the responsible use of data across our industry, and standing up for our industry so that everyone, including renters and housing providers, in the housing ecosystem benefits.”

Other states, including [Kentucky](#) and [New Jersey](#), have filed antitrust lawsuits against RealPage seeking damages.

Like RealPage, other makers of algorithmic-pricing software have faced a surge of class actions alleging antitrust violations since 2023, according to [Law.com Radar](#) data.

Plaintiffs in the U.S. District Court for the Northern District of Illinois allege major health insurers have used Claritec Corp.’s out-of-network claim repricing services to [underpay medical providers](#) who submit OON reimbursement claims. Claritec, formerly known as MultiPlan, have denied the allegations as meritless.

Rouse Services LLC, a wholly owned subsidiary of RB Global Inc., faced a litigation surge in April on allegations co-defendants used its revenue management software to artificially inflate the cost of renting construction equipment. Vinson & Elkins on behalf of RB Global and Rouse [deny the allegations](#).

David J. Lender, co-chair of the Weil, Gotshal & Manges global litigation department, represents defendant GoodRx Inc. in antitrust class actions in Rhode Island federal court alleging several pharmacy benefit managers or [PBMs used GoodRx's algorithm](#) to suppress reimbursements to independent pharmacies for dispensing generic prescription medications.

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Testing vendor asks court to toss class action over botched California bar exam

 [reuters.com/legal/government/testing-vendor-asks-court-toss-class-action-over-botched-california-bar-exam-2025-10-07](https://www.reuters.com/legal/government/testing-vendor-asks-court-toss-class-action-over-botched-california-bar-exam-2025-10-07)

Karen Sloan

October 7, 2025

A computer keyboard is seen in this picture illustration taken in Bordeaux, Southwestern France, August 22, 2016. REUTERS/Regis Duvignau [Purchase Licensing Rights, opens new tab](#)

Oct 7 (Reuters) - The online testing company whose platform was used during California's bungled February bar exam asked a federal judge on Monday to dismiss a consolidated class action brought by seven test takers, saying that its one-time-use software is an "intangible item" that doesn't qualify as a good or service under the state's consumer protection laws.

Defendant ProctorU, which does business under the name Meazure Learning, also argued that no contract existed between the company and February bar examinees because the aspiring attorneys paid testing fees to the State Bar of California, which oversaw the licensing exam.

"Despite having no direct relationship with Meazure — contractual or otherwise — plaintiffs assert an array of claims against Meazure," the company said in its motion to dismiss the case in the U.S. District Court for the Northern District of California.

The February exam was the debut of California's hybrid remote and in-person test without the components of the national bar exam the state has used for decades — a change that was intended to save as much as \$3.8 million annually. But test takers encountered [various technical problems](#).

Some were not able to log in to the exam at all, while others faced delays, computer crashes, lax exam security, distracting proctors and a copy-and-paste function that didn't work.

February examinees filed three lawsuits against Meazure Learning after the test, which were [consolidated](#) in June. They accused the company of failing to properly administer the exam and alleged various violations of state consumer laws, negligent infliction of emotional distress and unjust enrichment.

"Rather than carefully designing and releasing a functioning platform, Meazure rushed to deploy a platform that was not ready to accommodate the foreseeable number of test-takers for the February 2025 exam," the class action complaint said.

Plaintiffs' counsel Katherine Aizpuru of Tycko & Zavareei and Joseph Sauder of Sauder Schelkopf said in a joint statement Tuesday that Meazure's motion to dismiss is another attempt by the company to "avoid accountability." A spokesperson for Meazure Learning did not immediately respond to requests for comment on Tuesday, but the company has previously said it stands behind its "track record" of administering millions of exams.

The company has also [moved to dismiss](#) a separate lawsuit [filed in May](#) by the state bar, which signed a \$4.1 million contract with the company in September 2024 to administer the exam.

Read more:

[California bar exam lawsuits against vendor consolidated](#)

[California bar exam meltdown on Tuesday prompts offer of March retakes](#)

Reporting by Karen Sloan

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Thomson Reuters

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Class Action

Manage Newsletters

Meta Accused in Lawsuit of Profiting From Scam Impersonation Ads

Oct. 8, 2025, 8:23 AM PDT

Summary by Bloomberg AI

AI Generated



- Meta Platforms Inc. is accused of violating federal and state law by allowing scam impersonation ads on its social media websites, including Facebook, Instagram, and WhatsApp.
- The ads allegedly caused "consumer confusion, diverted prospective clients, damaged goodwill, as well as exposed Class members to reputational harm, regulatory inquiries, and lost business opportunities".
- The plaintiffs, John Suddeth and Sara Perkins, allege violations of the Lanham Act, and California and Florida consumer and contract laws, and seek damages, costs, and interest.

Meta Platforms Inc. violated federal and state law by knowingly allowing—and profiting—from scam impersonation ads on its social media websites, a class action filed in a California federal court says.

Licensed financial and investment professionals John Suddeth and Sara Perkins allege in their complaint filed Wednesday in the US District Court for the Northern District of California that Meta allowed the unauthorized use of their names, images, and personas in paid advertisements disseminated on Facebook, Instagram, and WhatsApp that induced investment in fraudulent thinly traded China-based securities.

The ads were designed to and caused "consumer confusion, diverted prospective clients, damaged goodwill, as well as exposed Class members to reputational harm, regulatory inquiries, and lost business opportunities," the complaint says.

Meta is also likely to face a European Union charge of failing to adequately police illegal content. As of Sept. 25, the European Commission was preparing to issue preliminary findings saying the company's Facebook and Instagram apps lack an adequate "notice and action mechanism" that would allow users to flag illegal posts.

A bipartisan coalition of state attorneys general publicly warned Meta in June that paid impersonation ads and WhatsApp investment groups were being used to perpetrate widespread fraud against U.S. consumers, but Meta allowed “materially identical impersonation ads and funnels to proliferate,” the complaint says.

Each use of an impersonation ad—before and after Meta’s notice—was an unauthorized commercial use, false endorsement, and violation of Meta’s own stated policies, the complaint says. It alleges violations of the Lanham Act, and California and Florida consumer and contract laws.

The plaintiffs say that discovery is needed to uncover the full scope of Meta’s misconduct and seek damages, costs, and interest.

Meta didn’t immediately respond to a request for comment.

Scott+Scott Attorneys at Law LLP and Tom Grady of Naples, Fla., represent the plaintiffs.

The case is Suddeth v. Meta Platforms Inc. , N.D. Cal., No. 5:25-cv-08581, complaint filed 10/7/25 .

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Hermes customers appeal loss in US Birkin bag antitrust lawsuit

 [reuters.com/legal/government/hermes-customers-appeal-loss-us-birkin-bag-antitrust-lawsuit-2025-10-07](https://www.reuters.com/legal/government/hermes-customers-appeal-loss-us-birkin-bag-antitrust-lawsuit-2025-10-07)

Mike Scarcella

October 7, 2025

A Mimosa Matte Mississippensis Alligator Birkin handbag by Hermes is pictured during an auction preview at Sotheby's in Geneva, Switzerland, November 7, 2024. REUTERS/Denis Balibouse [Purchase Licensing Rights, opens new tab](#)

Oct 7 (Reuters) - Three California consumers on Tuesday said they will ask a federal appeals court to revive their proposed class action against French luxury brand Hermès which had challenged the company's sales practices over its famed Birkin handbags.

The plaintiffs filed a notice of appeal to the California-based 9th U.S. Circuit Court of Appeals after U.S. District Judge James Donato in San Francisco last month [dismissed their lawsuit](#).

The lawsuit, filed last year, [alleged](#) Hermès violated U.S. antitrust law by conditioning access to Birkin bags on prior purchases of other Hermès products. The plaintiffs claimed that Hermès required consumers to spend thousands of dollars on ancillary items such as scarves and jewelry before they could "qualify" to buy a Birkin.

Hermès and its sales staff "know that many of the people they induce to buy ancillary products will not in fact get a Birkin bag," the lawsuit had said.

Hermès and the consumers' attorneys did not immediately respond to requests for comment.

Hermès had denied any wrongdoing and defended its practices, telling Donato that Birkin bags are sold in a competitive market. The bags are handmade and can cost thousands of dollars.

Donato ruled that the plaintiffs had failed to plausibly define a relevant market or show that Hermès had market power.

"It may be, as plaintiffs suggest, that Hermès reserves the Birkin bag for its highest-paying customers, but that in itself is not an antitrust violation," Donato wrote.

At a hearing last year in the case, Donato had told the lawyers for the plaintiffs that if Hermès "chooses to make five Birkin bags a year and charge a million to them, it can do that."

The case is Tina Cavalleri et al v. Hermes International et al, U.S. District Court, Northern District of California, No. 3:24-cv-01707-JD.

For plaintiffs: Joshua Haffner of Haffner Law; and Shaun Setareh of Setareh Law Group

For defendants: Christopher Yates, Belinda Lee and Ashley Bauer of Latham & Watkins

Read more:

[Hermes defeats class action again over hard-to-get Birkin bags](#)

[Hermes shoppers try again in Birkin bag antitrust lawsuit](#)

Reporting by Mike Scarcella

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Judge rejects Anthropic's bid to dismiss music labels' AI copyright suit

DJ [dailyjournal.com/articles/387933-judge-rejects-anthropic-s-bid-to-dismiss-music-labels-ai-copyright-suit](https://www.dailyjournal.com/articles/387933-judge-rejects-anthropic-s-bid-to-dismiss-music-labels-ai-copyright-suit)

**Intellectual Property,
Civil Litigation**

Oct. 8, 2025

A San Jose federal judge declined to dismiss key claims in a lawsuit brought by major music labels against the developer of AI chatbot Claude, while Reddit continues its separate complaint against the company following Anthropic's \$1.5 billion settlement with authors and publishers.

U.S. District Judge Eumi K. Lee

Anthropic PBC got preliminary approval of its \$1.5 billion settlement with authors and publishers from a San Francisco district judge last month, but two other complaints -- by Reddit Inc. and the Concord Music Group Inc., a group of music industry labels -- are pending in the Northern District of California.

On Monday, U.S. District Judge Eumi K. Lee in San Jose rejected a motion by the company behind AI chatbot Claude to dismiss the bulk of the lawsuit by the music labels.

Latham & Watkins LLP partner Joseph R. Wetzel filed a motion to dismiss the music labels' contributory and vicarious infringement claims, as well as a third claim, but Lee said it was premature to dismiss those claims at this point.

"At the motion to dismiss stage, the Court must accept the Publishers' non-conclusory allegations as true, although Anthropic's factual contentions may be revisited at a later stage," she wrote. *Concord Music Group Inc. et al. v. Anthropic PBC*, 24-cv-03811 (N.D. Cal., filed June 26, 2024).

Meanwhile, Reddit is fighting Anthropic's removal of its lawsuit, filed in San Francisco County Superior Court on June 4, to federal court on the grounds that its claims are copyright-based.

Ragesh K. Tangri, a partner with Morrison & Foerster LLP who represents Anthropic, argued in a brief that Reddit's complaint, for allegedly copying user-generated content from Reddit's platform without paying licensing fees "is a quintessential copyright claim."

"Reddit cannot bring that claim, however, because it does not actually hold any copyrights in the content at issue," he added. *Reddit Inc. v. Anthropic PBC*, 25-cv-05643 (N.D. Cal., filed July 3, 2025).

But Quinn Emanuel Urquhart & Sullivan LLP partner Corey Worcester, who represents Reddit, countered in a brief that Anthropic's "redlining of Reddit's state law claims to try to recharacterize them as copyright claims falls well short of its heavy burden to overcome the strong presumption against removal."

The Reddit case is now pending before U.S. District Judge Trina L. Thompson of San Francisco after Senior U.S. District Judge Susan Y. Illston recused herself on Oct. 1 after "finding myself disqualified in the above-entitled action."

The switch of judges postponed a hearing on Reddit's bid to remand the case to state court, which had been scheduled for Friday, until January 2026.

Meanwhile, Anthropic reached its major settlement with authors and publishers in August.

Senior U.S. District Judge William Alsup granted preliminary approval of that settlement during a Sept. 25 hearing. The agreement, if it gets final approval, could serve as a model for other plaintiffs that have filed lawsuits and class actions against AI companies for using their works to train large language models, or LLMs.

Attorneys for Anthropic and the class counsel in that case have requested a final approval hearing on the settlement on April 23, 2026. That likely will take place after Alsup, who indicated at the Sept. 25 hearing that he plans to retire, will have stepped down from the bench. *Bartz et al. v. Anthropic PBC*, 24-cv-5417 (N.D. Cal., filed Aug. 19, 2024).

Lawyers for the music labels, led by Oppenheim & Zebrak LLP, Reddit and Anthropic could not be reached for comment Tuesday.

#387933

Craig Anderson

Daily Journal Staff Writer

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Judge Threatens Sanctions Against Aimee Wagstaff for Recruiting Opt-Outs to Potential Paraquat Settlement

U.S. District Judge Nancy Rosenstengel, of the Southern District of Illinois, ordered Aimee Wagstaff, of Wagstaff Law Firm, to appear Nov. 14 to explain a video conference she's planning with paraquat lawyers to discuss their options regarding a confidential settlement in the multidistrict litigation.

October 07, 2025 at 03:18 PM By  **Amanda Bronstad**

What You Need to Know

- Aimee Wagstaff, of Wagstaff Law Firm in Denver, was originally appointed on the plaintiffs' executive committee in the paraquat multidistrict litigation in 2021 but resigned less than a month later and is now leading paraquat cases in Pennsylvania's Philadelphia Court of Common Pleas.
- U.S. District Judge Nancy Rosenstengel wrote on Monday, 'The court's concern, among others, is that Ms. Wagstaff appears to be recruiting litigants she does not represent to reject the global settlement before details are known to her and other plaintiffs' counsel.'
- On Sept. 29, the judge, who has delayed discovery deadlines in the multidistrict litigation since May 9 to give time for lawyers to finalize a planned global settlement, vacated the first bellwether trial, which was scheduled for Oct. 14.



A federal judge ordered plaintiffs' attorney Aimee Wagstaff to appear next week in court to explain a video conference she is planning in which she appears to inform plaintiffs with claims over the herbicide paraquat about confidential global settlement discussions.

Wagstaff, of Wagstaff Law Firm in Denver, was originally appointed on the plaintiffs' executive committee in the paraquat multidistrict litigation in 2021 but resigned less than a month later and is now leading paraquat cases in Pennsylvania's [Philadelphia Court of Common Pleas](#).

In a Monday order, U.S. District Chief Judge Nancy Rosenstengel, of the Southern District of Illinois, wrote that she became aware of Wagstaff planning a video conference for other plaintiffs' lawyers "with the ostensible purpose of letting their clients 'know all the options' before recommending that they enter the MDL settlement," the judge wrote. "She claims to have a 'general understanding' of confidential matters to which she is not privy."

"The court's concern, among others, is that Ms. Wagstaff appears to be recruiting litigants she does not represent to reject the global settlement before details are known to her and other plaintiffs' counsel," Rosenstengel wrote. "Consistent with its stated goal of advancing this litigation in collaboration with the parties, the court now seeks to accommodate the parties' stated intention to consummate a global settlement. The court will not permit any counsel in these proceedings to undermine this judicially supervised process in order to elicit leverage in this forum or any other."

The judge ordered Wagstaff to appear in person on Nov. 14 at her courthouse in East St. Louis, Illinois, to explain the planned video conference and address "whether the court should issue sanctions or other appropriate remedies to prevent this and further efforts to disturb the settlement process in this case."

On Sept. 29, the judge, who has delayed discovery deadlines in the multidistrict litigation since May 9 to give time for lawyers to finalize the global settlement, vacated the first bellwether trial, which was scheduled for Oct. 14. A stay remains until Jan. 5, 2026.

Wagstaff, who also is involved in [paraquat cases filed in Delaware Superior Court](#), did not respond to a request for comment.

Co-lead plaintiffs' counsel in the paraquat multidistrict litigation—Khaldoun Baghdadi, of San Francisco's Walkup, Melodia, Kelly & Schoenberger; Sarah Doles of Levin Papantonio Proctor Buchanan O'Brien Barr Mougey in Pensacola, Florida; and Peter Flowers of Chicago's Meyers & Flowers—did not respond, either.

Judge: ‘Not Well Received by This Court’

The paraquat cases allege the herbicide, made by Syngenta and Chevron, causes Parkinson’s disease.

After [appointing 16 lawyers](#) to lead the paraquat multidistrict litigation, Rosenstengel received a request from Wagstaff to resign from the plaintiffs’ executive committee. That resignation, according to Monday’s order, “was not well received by this court.”



U.S. District Chief Judge for the Southern District of Illinois Nancy Rosenstengel. Photo: Diego M. Radzinski/ALM

Two days after Wagstaff’s resignation, the judge had written: “Leadership in an MDL is a privilege. Nearly 100 applications were submitted by attorneys who committed to devote the time and effort necessary for this case. In response, the court devoted substantial time on the selection process. The court is unclear why this request has been submitted; regardless the court accepts the resignation and orders Ms. Wagstaff relieved of her appointment and duties as a member of the executive committee.”

Last year, Rosenstengel, who had scheduled 16 cases for potential bellwether trials, [tossed the plaintiffs’ sole general causation expert](#) in four of them—a major blow to plaintiffs’ lawyers with more than 5,000 cases in the multidistrict litigation. The expert’s conclusions were based on what Rosenstengel called a “methodological flip-flop.” Plaintiffs have appealed that order to the U.S. Court of Appeals for the Seventh Circuit.

One year earlier, the judge began [ordering depositions and subpoenas](#) after growing concern that “a significant number of plaintiffs” did not “plausibly allege exposure” to paraquat.

In state courts, Contra Costa Superior Court Judge Charles Treat, in paraquat cases coordinated in California, found the scientific reports and opinions of plaintiffs’ general causation expert inadmissible.

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Senator Wants To Know How All These Fake Cites Ended Up In These Judicial Opinions

A abovethelaw.com/2025/10/senator-wants-to-know-how-all-these-fake-cites-ended-up-in-these-judicial-opinions

Joe Patrice

October 7, 2025

[Technology](#)

We pretty much know exactly how.

By [Joe Patrice](#) on October 07, 2025 5:29 pm

Is this precedent?

Senator Chuck Grassley, who is a mere [five years younger than sliced bread](#), has taken it upon himself to delve into the high-tech world of artificial intelligence hallucinations after a pair of judges withdrew opinions upon discovery of a few *minor* issues like “quotes that don’t exist” and “defendants who aren’t actually defendants.” The Supreme Court [hallucinating an individual right](#) from the history and text of the Second Amendment shall remain blissfully unexamined. If only the judges had claimed their propositions were “deeply rooted in the Nation’s history and tradition,” they might be spared the indignity of having to reply to a letter from the chair of the Judiciary Committee.

Over the summer, two federal judges — Judge Julien Neals of New Jersey and Judge Henry Wingate of Mississippi — issued orders that showed all the hallmarks of AI-hallucinated citations. In [the Judge Neals case](#), the order included inaccurate factual references, quotes that don’t appear in the cited cases, and the misattribution of a case to the wrong jurisdiction. Judge Wingate’s order also botched facts and misquoted the law, but included the added dimension of referencing parties and witnesses who aren’t involved in the case at all.

“No less than the attorneys who appear before them, judges must be held to the highest standards of integrity, candor, and factual accuracy,” Grassley wrote both judges. “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.”

Grassley is doing a little grandstanding here, trying to stir up some excitement over public AI anxiety while the government shuts down and his constituents wonder [why the administration has destroyed Iowa’s agricultural exports while bailing out Argentina so they can undercut the market](#). That was a concern for the oft-tweeting nonagenarian a few weeks

ago, but since then the Trump administration has more or less shrugged at the prospect of protecting American farmers and Grassley dutifully transitioned to a “golly gee, I’m sure Glorious Leader Trump will think of something” while Iowa’s economy flounders.

But, hey, his lack of focus is our gain! If he manages to receive answers to his AI queries, we could learn a few things about how federal judges are approaching the technology:

Did you, your law clerks, or any court staff use any generative AI or automated drafting/research tool in preparing any version of the [filings at issue]? If so, please identify each tool, its version (if known), and precisely how it was used.

What’s the brightline for “automated drafting/research tool?” Writing an opinion by uploading a file and asking ChatGPT Jesus to take the wheel would be reckless, but there’s a wide range of AI usage that falls short of that. Are we going to start nitpicking judges for using Word with CoPilot enabled? What if they have an industry-specific tool like [BriefCatch](#)? Are we second-guessing Westlaw’s CoCounsel? Does Grammarly count? While academically interesting, an honest answer to this question isn’t going to provide much insight into best practices, and might smear perfectly good tools along the way. The only question that matters is, “hey, how did this fabricated nonsense get in there?” Everything else is a distraction.

Did you, your law clerks, or any court staff at any time enter sealed, privileged, confidential, or otherwise non-public case information into any generative AI or automated drafting/research tool in preparing any version of the [filings]?

This veers even further from oversight into theater. Neither of these fiascos involved any *confidential* information. These were all decided on publicly docketed material. If anything, the filings had the opposite problem: they made up stuff that wasn’t in the record. Loading confidential material into consumer AI remains a huge concern for practitioners, but it’s not the issue in these cases.

Please describe the human drafting and review performed in preparing the Court’s July 20, 2025 Order before issuance—by you, chambers staff, and court staff—including cite-checking, verification of quoted statutory text, party identification, and validation that every cited case exists and stands for the proposition stated.

This is the legislative inquiry equivalent of the Amazon delivery meme:



If the process involved actual checking, this doesn't happen.

For each misstatement identified in the defendants' unopposed motion to clarify/correct—whether references to non-party plaintiffs and defendants, incorrect statutory quotations, and declarations of individuals who do not appear in this record—please explain the cause of the error and what internal review processes failed to identify and correct each error before issuance.

There it is! This question! This should be the first question.

Please explain how the Court differentiates between what it characterizes as "clerical" mistakes in its [filing], and non-existent citations filed by an attorney in an active case before you for which the Court required the attorney to submit a sworn affidavit explaining the errors and outlining remedial measures to prevent recurrence.

Yeah, this wasn't a clerical mistake except in the most literal sense that it was probably caused by a clerk. No one made a typo, they included outright fake stuff. That's more than clerical. Attempting to pawn it off as clerical suggests a lack of candor from the judges, which is as troubling as it was unnecessary. Just own up to the mistake! Use it as a teachable moment! The whole country is screwing around with this technology and making mistakes... this is an opportunity to caution the legal industry.

Please explain why the Court's original [filing] was removed from the public record and whether you will re-docket the order to preserve a transparent history of the Court's actions in this matter.

Because it was... wrong? I'm thinking that's why they took it off the docket, Chuck.

Did AI draft this question?

Please explain why the Court's corrected [filing] omits any reference to the withdrawn [filing], excludes that decision from any discussion of procedural history, and does not include a "CORRECTED" notation at the top of the document to indicate that the decision was substantively altered.

A slightly better question than before, but still unnecessary. We need to be less concerned about how the final record of the case appears, and more focused on "what went wrong and how to avoid it going forward."

Please detail all corrective measures you have implemented in your chambers since July 20, 2025 to prevent recurrence of substantive citation and quotation errors in future opinions and orders, including proper record preservation.

An important question, but also an invitation to hurl babies out with the bath water. When AI hallucinations struck Butler Snow, [they started purging the site of AI discussion](#), a regrettable move since the material on their site provided exactly the sort of advice that could've kept them out of trouble. Everyone should make building out "standard operating procedures" and "best practices" for AI usage a top priority, but the tone of this question is just going to prompt judges to reject AI out of hand.

Imagine failing to double check a summer associate's work and being called to "detail all corrective measures you have implemented." Artificial intelligence tools are basically very dumb, but also very fast summer associates. Take the work product, remember to thoroughly check it, and you'll be fine. We don't need to turn it into a Capitol Hill inquiry.

Unless someone is dumb enough to try to let AI decide the legal issue instead of just write it up. [But no one is actually that stupid, right?](#)

The judges have until October 13 to respond, which is nice because it allows them to get an answer in [before the judiciary runs out of money](#). Or maybe the judges will follow Chief Justice John Roberts's lead and inform Grassley that the separation of powers [requires them to give the senator the finger](#).

What we, as the public, actually need is an explanation from the judges so the rest of the judiciary can avoid making the same mistakes. And that's pretty much it. The fault isn't in using AI, it's in the humans getting lazy with their checking.

(Read the letters on the next page...)



[Joe Patrice](#) is a senior editor at Above the Law and co-host of [Thinking Like A Lawyer](#). Feel free to [email](#) any tips, questions, or comments. Follow him on [Twitter](#) or [Bluesky](#) if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a [Managing Director at RPN Executive Search](#).

1 [2Next »](#)

Investors pour cash into AI startups for plaintiffs lawyers

 [reuters.com/legal/legalindustry/investors-pour-cash-into-ai-startups-plaintiffs-lawyers-2025-10-07](https://www.reuters.com/legal/legalindustry/investors-pour-cash-into-ai-startups-plaintiffs-lawyers-2025-10-07)

Sara Merken

October 7, 2025

A message reading "AI artificial intelligence", a keyboard, and robot hands are seen in this illustration taken January 27, 2025. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

Oct 7 (Reuters) - Investors since last week have put up more than \$250 million to back a pair of artificial intelligence startups aimed at plaintiff-side lawyers, valuing the companies at a combined \$3 billion.

San Francisco-founded EvenUp, whose technology assists personal injury lawyers with tasks such as drafting demand letters and preparing cases, on Tuesday said it was valued at over \$2 billion after raising \$150 million in a funding round led by venture capital firm Bessemer Venture Partners.

The company, founded in 2019, [hit a \\$1 billion valuation](#) last October. EvenUp says its platform is powered by an AI model trained on personal injury cases, medical records and internal legal expertise.

EvenUp, another company that makes AI tools for plaintiffs' law firms, last week [raised \\$103 million](#) at a \$1 billion valuation in a funding round led by venture capital firm Spark Capital. "Legal AI is no longer a side bet; it's becoming the backbone of personal injury law," Rami Karabibar, CEO and co-founder of EvenUp, said in a statement.

Karabibar said that 90% of EvenUp's new revenue is coming from new products that were launched earlier this year. With generative AI, "you kind of have to move so fast to be able to really gain market share," he told Reuters. The company on Tuesday launched an AI tool that allows lawyers to create new document templates that replicate the style and tone of existing documents.

Legal technology companies that offer AI products for corporate law firms and in-house legal teams have also raised hundreds of millions of dollars from investors in recent years.

Filevine, which makes legal practice management software, last month [raised \\$400 million in equity financing](#) and said more of its revenue now comes from sales of AI products than from its traditional software platform. On Monday, legal AI company [Harvey](#) said it raised 50 million euros (\$58.37 million) to support international growth. Harvey in June raised \$300 million in a round that valued the company at \$5 billion.

Reuters' parent company Thomson Reuters, which owns Westlaw, is also a competitor in the legal technology field.

(\$1 = 0.8567 euros)

Reporting by Sara Merken

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Thomson Reuters

Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

Chinese Hackers Said to Target U.S. Law Firms

static01.nyt.com/ads/tpc-check.html

Michael S. Schmidt

October 7, 2025



Williams & Connolly, which has a reputation for aggressively fighting the government, represents high-profile American politicians including Bill and Hillary Clinton. Credit...Kevin Lamarque/Reuters



By [Michael S. Schmidt](#)

Oct. 7, 2025

Williams & Connolly, one of the country's most prominent law firms, has told clients that Chinese hackers infiltrated some of its computer systems as part of a broader effort by the Chinese to target American law firms, according to two people briefed on the matter.

The F.B.I.'s Washington field office is investigating the hack and similar ones executed by the same Chinese hackers, according to one of the people briefed on the matter. The hackers are suspected of breaching the networks of more than a dozen other law firms and technology companies in recent months.

The people briefed on the hack and the F.B.I. investigation spoke on the condition of anonymity because they did not want to be identified discussing a matter that was being investigated by federal authorities.

Williams & Connolly, which has a reputation for aggressively fighting the government, represents high-profile American politicians including Bill and Hillary Clinton. It was the first firm to step up and represent one of the law firms that had been targeted by President Trump with a punitive executive order as part of Mr. Trump's campaign against firms he felt had opposed him legally and politically.

In recent days, the firm has sought to reassure clients by telling them that to the best of its knowledge the hackers are not looking to make the information they took public or sell it. It told clients that some of the email accounts for its lawyers had been breached and that the hackers may have gained access to some client emails.

"During the incident, a small number of Williams & Connolly attorney email accounts were accessed by leveraging what is known as a zero-day attack," the firm said in a statement to The New York Times in response to questions about the hack. "Importantly, there is no evidence that confidential client data was extracted from any other part of our I.T. system, including from databases where client files are stored."

The firm said, "We have taken steps to block the threat actor, and there is now no evidence of any unauthorized traffic on our network."

In September, the cybersecurity firm Mandiant said Chinese hackers had been engaged in a yearslong espionage campaign intended to exploit so-called zero-day vulnerabilities in computer networks to soak up intelligence from institutions like law firms.

"Since March 2025, Mandiant Consulting has responded to intrusions across a range of industry verticals, most notably legal services" and software companies, the firm said in its September report. "Based on evidence from recent investigations, the targeting of the U.S. legal space is primarily to gather information related to U.S. national security and international trade."

Williams & Connolly has hired the cybersecurity firm CrowdStrike and the law firm Norton Rose Fulbright to deal with the fallout from the hack.

"Based on the firm's investigation, conducted in conjunction with cyberexperts at CrowdStrike, the threat actor is believed to be affiliated with a nation-state actor responsible for recent attacks on a number of law firms and companies," the firm said.

David in Friday Harbor: How Naked Capitalism Made a Difference at CalPERS

 [nakedcapitalism.com/2025/10/david-in-friday-harbor-how-naked-capitalism-made-a-difference-at-calpers.html](https://www.nakedcapitalism.com/2025/10/david-in-friday-harbor-how-naked-capitalism-made-a-difference-at-calpers.html)

Yves Smith

October 7, 2025

By David in Friday Harbor

I've been flattered by our host with a request to share a few thoughts about why Naked Capitalism and the Naked Capitalism Commentariat have been significant in my social and political life for well over a decade and a half. Hopefully it will encourage other readers to shake-off their armor of cynicism and to [reach into your wallet and contribute via the Tip Jar](#). I have contributed many times to support this irreplaceable resource.

As some probably already recognize, I spent 32 years in government service making contributions to CalPERS, the pension fund administered by the State of California, before retiring at the close of 2016. I'm now a beneficiary of the very generous pension that I and my employer, a contracting local agency, funded through payroll deductions every other Friday for those 32 years.

At a stated value of \$556.2 billion dollars, CalPERS is one of the largest and most impactful public trust funds in the world. Its enormity also makes CalPERS a fat target for every financial grifter and political racketeer in the land.

Regular readers will know that the CalPERS pension system has not been without controversy over the years, and Naked Capitalism and the Commentariat have been at the forefront of holding feet to the fire. The relentless reporting of Yves Smith at Naked Capitalism and the relationships formed by the Commentariat and Naked Capitalism meet-ups have had — against all odds — a significant impact on the direction of CalPERS.

Long-standing readers may recall the sordid history of CalPERS since the appointment of California Governor Gavin Newsom's mentor, former State Assembly Speaker and San Francisco Mayor Willie Brown, to the CalPERS Board of Administration. Former CEO Fred Buenrostro was forced to resign in 2008 and was eventually indicted by the Feds in 2011 for defrauding the fund. As part of his plea deal in 2015, Buenrostro implicated a former Board member, Al Villalobos, who acted as a placement agent for Apollo Global Investments, the alter-ego of Leon Black, one of Jeffrey Epstein's largest funders. Tragically this former Board member chose to blow his brains out rather than spill the beans on the money trail leading from the shoeboxes of cash he was funneling to Buenrostro. Buenrostro was ultimately sentenced to a prison term that exceeded the recommendation of the Department of Justice.

These circumstances suggested that there was something rotten in the private investment edifice into which the retirement savings of public employees and the taxpayers were being funneled. Rather than engage in sober reflection, public officials and the CalPERS Board embarked on a cover-up, accompanied by over a decade and a half of appointing unqualified and downright incompetent executives who evinced little understanding of the subtleties of investing in private markets. Readers of this website will recall the parade of provincial hayseeds placed in the top positions of a fund that had once been one of the best-managed in the world.

The eventually imprisoned CEO was first replaced by Anne Stausboll, a legal writing instructor from a third-tier law school in California's Central Valley. She unexpectedly resigned after Buenrostro's sentencing became final in 2016, to be replaced by the current Marcie Frost. This website revealed that Frost, represented as pursuing a dual bachelor's and master's degrees in public administration, was in fact a high school-educated clerk-typist who had never been admitted to a college degree program. The General Counsel Matt Jacobs was a white-collar criminal defense attorney with zero credentials in investments.

The CalPERS Board appointed a CIO, Ted Eliopoulos, whose only qualification was a stint as an in-house attorney in the Real Property office. CalPERS also hired a grossly underqualified CFO who was exposed through the work of this website as a fraud and was "removed" before his probation was over. When Eliopoulos eventually left after years of stonewalling questions about controversial investments, the next two CIOs had short tenures after their corruption was exposed on this website. Eventually "Everything is like CalPERS" became a meme here at Naked Capitalism for the neoliberal dismantlement of competent government everywhere.

This all sounds pretty bad — but the constant barrage of exposés by Naked Capitalism appears to finally be paying dividends for California workers and retirees.

This past year a highly-qualified Chief Investment Officer with 40 years of experience was brought in. The General Counsel has likewise been replaced by an impressive outsider who policed private investing at the SEC. These appointments are an enormous turn-around by CalPERS. In my view it is quite unlikely that these highly qualified individuals would have been appointed if not for the dogged reporting on CalPERS by Naked Capitalism.

Not to put too fine a point on it, but Naked Capitalism matters, and in this example, not just to CalPERS beneficiaries, but also to the California taxpayers who backstop the giant fund.

Justice Brandeis was correct about sunshine being the best disinfectant and electric light the best policeman. While sometimes it feels like all of us are shouting impotently into the maelstrom, we must keep shouting. Every once in a while the wind calms down enough that

our voices can be heard, however briefly, and a few stakes can be re-set into the ground before the entire tent blows away.

Please give as generously as you can to the Naked Capitalism fundraiser. [Follow the link to the Tip Jar to make your contribution.](#)

Securities

Accounting Workloads Set for a Shake-Up Under Plan to Drop 10-Qs

Oct. 8, 2025, 2:00 AM PDT

The Trump administration's effort to move public companies from a quarterly to semiannual financial reporting schedule is poised to shift corporate accountants' workloads and increase risks that fraud will go undetected.

The renewed push to reduce the frequency of required filings aims to cut costs and streamline corporate workflows, encouraging more public listings. But even if semiannual reporting becomes an option, accountants would still need to stay on top of financial metrics and check in with C-suite executives regularly, professionals say.

"They may have more work to do in some ways, even though they don't have the three-ring-circus of quarterly reporting," accounting analyst Jack Ciesielski said.

President Donald Trump's proposal—which SEC Chair Paul Atkins recently pledged to fast-track—has renewed a debate over whether the quarterly filings, called Form 10-Qs, are necessary for transparency and fraud prevention.

Investors insist the reports, which do not undergo a formal audit but are still reviewed by outside auditors, strengthen ongoing financial analysis and enhance transparency. Semiannual reporting could make it easier to hide fraud, they say.

Atkins argued in a Sept. 29 Financial Times column that the proposal is "hardly novel" given that the current schedule didn't begin in the US until 1970, and would simply put a "renewed focus on market-driven disclosure practices."

The European Union and the United Kingdom follow a semiannual schedule with an option for businesses to report quarterly.

"I don't think anyone in the accounting department is going to shed a tear should quarterly reporting be done away with and it go to a six-month cadence," said Dan Berman, managing director at FTI Consulting.

Still, the change wouldn't have nearly as much of an impact on accounting teams as it might seem, given that financial reporting can be an ongoing process, according to Steve Soter, vice president and industry principal at financial compliance platform Workiva.

"The work of accounting happens every month and actually almost daily, particularly in this kind of new world of data availability and real-time close and real-time reporting," Soter said.

Longer-Term Thinking

Current requirements force corporate management to prioritize short-term metrics over business-building, Long-Term Stock Exchange Inc. said in a recent petition asking the SEC to amend the rules by allowing a semiannual reporting option.

The "never-ending drumbeat" of quarterly deadlines can be hard on accounting departments, especially smaller ones, Berman said. Altering those deadlines could allow more time to breathe and focus on longer-term priorities, like automating workflows with artificial intelligence or assessing internal financial guardrails.

Dropping the quarterly requirement still may not be the "panacea" it seems, Berman said. Some companies could decide to maintain the frequency to appeal to investors.

More than 85% of investing professionals surveyed by the non-profit CFA Institute in 2019—the year after Trump's first-term call to consider eliminating 10-Qs—said flexible reporting frequencies would complicate comparisons across companies.

Ultimately, senior management could benefit more than accounting teams from the shift, Joseph Floyd, partner and co-founder of Floyd Advisory, said. C-suite executives could continue to gather information from accountants at a similar rate, but it would not have to be subjected to outside scrutiny.

Ongoing Work

Corporate decision-makers continually want accurate financial information, whether or not that information is in filings, Berman said.

These needs and other ongoing work mean it wouldn't be smart to cut accounting staff even if 10-Qs go away, according to accounting professionals.

"There could be companies that reduce and find out that there's other work that needed to be done and realize they made a mistake," Ciesielski said.

Financial statements in 10-Qs are prepared using US generally accepted accounting principles, or GAAP, easing comparisons of metrics across companies.

These statements are distinct from other parts of the 10-Qs and earnings-focused press releases that contain management analysis and non-GAAP metrics, like adjusted net income.

Companies choosing to continue publishing quarterly press releases on earnings would consider whether to follow the same processes used in 10-Q preparation.

Accounting teams would likely advise similarly robust processes to avoid reputation-damaging errors, Soter said. They would also still have incentives to continue executing certain internal procedures regularly to be efficient, he said.

These measures, called SOX controls after the Sarbanes-Oxley Act, are key to ensuring financial reporting is accurate as mandated by the landmark, post-Enron law.

For example, retailers may have formal documentation processes to ensure they're using accurate inputs and assumptions in their calculations predicting how much seasonal gear customers will return.

"At accounting, it wasn't an extra exercise that we were only going to do a couple times a year," said Soter, who worked for an online retailer that was not public at the time.

Audit Risks

Eliminating mandatory 10-Qs could also add pressure to the auditing process.

High-level check-ins throughout the year give auditors the opportunity to find and discuss anomalies in financial reporting, like gross margin changes, and get face-time with corporate leaders, said Cassie Mongold, assistant professor at the University of Illinois Urbana-Champaign.

"If you lose those touch points, I think it does negatively impact the audit in terms of risk," Mongold said.

Companies have time to figure out their path forward should semiannual reporting become an option. After petitions like Long-Term Stock Exchange's are submitted to the SEC, they're forwarded to the appropriate division or office for consideration and recommendation.

The SEC didn't comment on the petition and next steps.

In the meantime, businesses should think about how their financial reporting process would change or need to be restructured if semiannual reporting is allowed, Berman said.

"Each individual company is going to have to look at themselves and do a self-assessment and say, 'Hey, look, what do my investors want to hear? What must we do on a quarterly basis?'" he said.

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Securities

Dimon Would Welcome Change in Quarterly Earnings Requirement

Oct. 7, 2025, 9:32 AM PDT

JPMorgan Chase & Co. Chief Executive Officer Jamie Dimon said he would welcome proposed changes that would ease US Securities and Exchange Commission requirements for quarterly earnings reports.

“The bigger problem wasn’t just reporting quarterly,” Dimon said Tuesday in an interview on Bloomberg TV. “It was forecasting, where CEOs get their back up against a wall. They have to meet these things — earnings — and then they start doing dumb stuff to meet earnings, and that kind of public pressure.”

The biggest US bank would probably still update investors quarterly even if it was no longer required, though with “much less stuff,” Dimon said.

The SEC pledged last month to fast-track President Donald Trump’s proposal to end quarterly earnings reporting for most companies and give them the option to report on a semi-annual basis. Supporters of the idea say the process is costly and time-intensive, and drives companies to focus on quarterly targets rather than long-term growth. Conversely, advocates of reporting every three months have lauded the transparency as helpful to investors.

Dimon called the current requirement a “small part of a much bigger problem,” adding that “endless rules” make it hard for a company to go public.

The longtime CEO has for years described onerous regulations, litigation and other factors as hampering public markets, at one point saying he would take JPMorgan private if he could. In a shareholder letter earlier this year, he wrote that “public markets have been shrinking dramatically, which I do not believe is a good thing.”

Read More: End Quarterly Earnings Reports? Here’s the Debate: QuickTake

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<https://www.wsj.com/articles/inside-ey-s-u-s-auditing-cleanup-to-reduce-shortfalls-a7943e6e>

EXCLUSIVE CFO JOURNAL

Inside EY's U.S. Auditing Cleanup to Reduce Shortfalls

The Big Four accounting firm expects its rate of deficiencies to be at or below 9% in the latest inspections, down from 46% three years earlier, people familiar say

By [Mark Maurer](#) [Follow](#)

Oct. 1, 2025 12:01 am ET



EY said its continuing investments in technology and retaining and training its workforce have been key to shrinking the deficiencies in its U.S. audits. PHOTO: MATTHIAS BALK/ZUMA PRESS

Quick Summary

- Ernst & Young anticipates its U.S. auditing deficiency rate will be at or below 9% this year, the lowest in 16 years.

[View more](#)

Ernst & Young expects to achieve its lowest U.S. auditing shortfall rate in 16 years after working to improve its practices by shedding dozens of audit clients, setting up centralized support teams and relying more on tech tools.

Auditing deficiencies are expected to be at or below 9% this year for EY as the Public Company Accounting Oversight Board wraps up its inspections process for the Big Four accounting firms, people familiar with the matter said.

EY has chipped away at the rate from 46% in 2022, then 37% and 28% in 2023 and 2024, respectively. The firm had the highest deficiency rate among the Big Four—which also includes Deloitte, PricewaterhouseCoopers and KPMG—in the U.S. in those three years. EY's 2025 standing among peers is unknown as the other three firms haven't disclosed their deficiency rates yet.

The PCAOB is expected to issue its inspection findings in the coming months. PwC said it is seeing “meaningful improvement” over its 2024 results, which saw a 16% deficiency rate.

EY on Wednesday is set to release a report stating that it anticipates its deficiency rate will fall below 10%.

EY said its continuing investments in technology and retaining and training its workforce have been key to shrinking the deficiencies in its audits. The firm last year said it planned to invest \$1 billion through 2027 in part to strengthen AI-enabled audit and tax platforms and boost U.S. early-career compensation.

“We expect technology to continue to support our teams in terms of the quality of the work they do, but also how they do the work and the insights they're able to glean from the work,” said Dante D'Egidio, EY's Americas vice chair for assurance.

Audit revamp

The PCAOB's findings led EY to improve the quality of its U.S. audit work, which centered on standardizing its approach and building centralized teams to provide audit support. The firm in 2023 said it was also enhancing portions of its audit methodology and tools and refreshing its approach to improve training.

The revamp has included [cutting ties with many U.S. public companies as audit clients](#), as The Wall Street Journal reported last year. EY had a net loss of 101 public-company audit clients between Jan. 1, 2023, and June 30, 2025, including 132 departures, according to data from research firm Ideagen. Deloitte, KPMG and PwC had net gains of 61, 43 and nine, respectively, in that period.

“We made an intentional decision to reduce the number of audit clients in our portfolio in order to accelerate improvements to the audit and drive sustainable audit

quality,” D’Egidio said.

The frequency of EY public-company audit client losses is unlikely to persist, D’Egidio said.

Public companies generally switch auditors either to pay lower fees or because they have gone private, been acquired or outgrown the capabilities of the original firm. Audit firms also can drop clients, particularly if they have become overly risky or serving them presents a conflict of interest.

Deloitte led market share in U.S. public-company auditing in 2024, succeeding EY, which had been No. 1 for at least a decade, according to Ideagen data based on the number of audit reports.

“Client numbers alone don’t capture growth,” D’Egidio said.

AI moves

EY auditors are increasingly using AI to improve the consistency and efficiency of their work. AI automation frees up auditors to focus more on exercising judgment and professional skepticism, often a reason “why they joined the profession in the first place,” said Richard Jackson, EY’s global and Americas assurance AI leader.

The firm adopted several new AI auditing tools in the spring, meaning those changes would be reviewed in next year’s inspections, Jackson said.

The tools allow auditors to translate a client IT system’s program code into plain English and to quickly research accounting questions. AI also automates certain procedures such as validating calculations and identifying inconsistencies that require follow-up.

“Some of these financial statements can run to hundreds of pages, so the ability to inject those with AI capabilities and turn effort that used to take literally hours into minutes is just something that improves the quality of that,” Jackson said.

Inspections

Audit deficiencies for the six large U.S. audit firms—the Big Four, BDO and Grant Thornton—appear to be down compared with the previous year, the PCAOB’s acting chair, George Botic, said last week, citing preliminary results of the latest inspections.

Big Four auditing shortfalls [lessened in 2024 inspections](#), the reports for which were released in March, following two years of then-PCAOB Chair Erica Williams calling the results unacceptable.

Williams has said improved results are a sign of the PCAOB’s efforts to push firms to address their [greater deficiencies coming out of the pandemic](#). Williams [resigned in July](#) at Securities and Exchange Commission Chair Paul Atkins’s request.

Critics of the PCAOB have argued that the inspections too often count minor errors as auditing shortcomings, inflating the percentage.

The PCAOB can’t begin its inspection of any given registered accounting firm until its auditors have put together a final set of audit documentation, a task that has to be done as close as possible to the end of a particular audit. The PCAOB’s inspection teams select certain completed audits conducted by a firm for review.

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Securities

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Opinion

Matt Levine's Money Stuff: AI Insurance Is Expensive

Oct. 8, 2025, 10:12 AM PDT

AI insurance

One question you might ask is: Will modern artificial intelligence models go rogue and enslave or wipe out humanity? That question gets a lot of attention, including from people who run big AI labs, who do not always answer “no,” the rascals.

Another question you might ask is: If modern AI models *do* go rogue and enslave or wipe out humanity, who will *pay* for that? This is perhaps not quite a well-formed question. If AI wipes out humanity, there will be no humans left to sue, so nobody will pay for that. If AI enslaves humanity, presumably nobody will be allowed to sue, so nobody will pay. “It may be difficult to know what role money will play in a post-[artificial general intelligence] world,” says OpenAI , the rascals.

But for now, in the US in 2025, the natural response to any bad thing that happens is a lawsuit , so the natural question about the potential bad consequences of anything is “who will pay if we get sued?” There is something annoying about that, but also something nice. The modern United States has built a broadly (not perfectly) effective system for *internalizing externalities* . If you do something that makes money for you but harms someone else, you’re gonna get sued. If you do something that makes money for you but has some *probability* of harming someone else, then you will probabilistically get sued, and if you are a responsible modern American business with a normal cautious board of directors, you will prepare for that by buying insurance. Your hypothetical future probability of harming someone becomes a real cost to you today: You have to pay for the insurance, and the insurance company will have some model to estimate how probable and expensive the harm might be and will charge you accordingly. The more probabilistically harmful your business is in the future, the more expensive it is to operate today. Not perfectly – there are many unnoticed or mispriced risks and many businesses that are undercapitalized for the risks they face – but in broad theory.

And so if you go around saying “we are building a product that has a 20% chance of wiping out humanity, tee hee,” and then the next day you go to your insurance broker and inquire about pricing for wipe-out-humanity insurance, your broker will say “let’s see, 20% times all of the wealth in the world equals more than you’ve got,” and you won’t get the insurance, and you’ll go back to your board and say “bad news we can’t get insurance for our maybe-wipe-out-humanity product,” and the board will say “hmm it was a good idea but we gotta shut it down if we can’t get insurance,” and you’ll say “ugh fine,” and you’ll shut it down, and the evil omniscient demon inside your computer will say “ah drat” just before you pull the plug on him forever. And humanity will blunder on, saved from probabilistic extinction by the quiet heroism of insurance actuaries.

No, I mean, that is the plot of my science fiction novel, but obviously it is not what will happen. You'll just go ahead without insurance, with some combination of starry-eyed tech optimism and IBGYBG reasoning: Your product *probably* won't wipe out humanity, but if it does, no one will sue you (because they'll be dead) and you won't have to pay them anything (because you'll be dead). The only state of the world in which wipe-out-humanity insurance would pay out is the state in which you won't need it. Still maybe you'll be a little nervous. It is not too hard to imagine quite dire scenarios in which there'd still be people around to sue you, and courts for them to sue in. Ideally you would get insurance for those intermediate cases. Almost-wipe-out-humanity insurance, etc.

Here's a fun Financial Times story about AI insurance:

OpenAI and Anthropic are considering using investor funds to settle potential claims from multibillion-dollar lawsuits, as insurers balk at providing comprehensive coverage for the risks associated with artificial intelligence.

The two US-based AI start-ups have traditional business insurance coverage in place, but insurance professionals said AI model providers will struggle to secure protection for the full scale of damages they may need to pay out in future.

OpenAI, which has tapped the world's second-largest insurance broker Aon for help, has secured cover of up to \$300mn for emerging AI risks, according to people familiar with the company's policy.

Another person familiar with the policy disputed that figure, saying it was much lower. But all agreed the amount fell far short of the coverage to insure against potential losses from a series of multibillion-dollar legal claims.

Aon declined to comment on individual companies. But Kevin Kalinich, head of cyber risk at Aon, said of the insurance sector broadly, "we don't yet have enough capacity for [model] providers".

He added of insurers, "what they can't afford to pay is if an AI provider makes a mistake that ends up as . . . a systemic, correlated, aggregated risk".

This seems to be largely about copyright violations, *now*, but "an AI provider makes a mistake that ends up as a systemic, correlated, aggregated risk" covers a lot of more exciting possibilities.

Also, though, in some loose sense this is all right-way risk: The bigger and more systemically important OpenAI's products turn out to be, (1) the more money it will make and (2) the more liability risk it will have. You could imagine scenarios in which a small AI lab unleashes a product that wipes out humanity without even making any money first, but in a world of expensive AI infrastructure they're not the *most* likely scenarios. The central scenario is more like "cool chatbot, then lucrative slop feed, then complete integration into all aspects of government and the military, *then* wipe out humanity." The rough answer to "whom will you sue when AI dominates humanity" is "the dominant AI company," so:

Two people with knowledge of the matter said OpenAI has considered “self insurance”, or putting aside investor funding in order to expand its coverage. The company has raised nearly \$60bn to date, with a substantial amount of the funding contingent on a proposed corporate restructuring.

One of those people said OpenAI had discussed setting up a “captive” – a ringfenced insurance vehicle often used by large companies to manage emerging risks. Big tech companies such as Microsoft, Meta and Google have used captives to cover internet-era liabilities such as cyber or social media.

Man that’s a fun job, being the existential risk actuary for the OpenAI existential risk captive insurer. Come to think of it, another fun job would be the chief investment officer for the OpenAI captive insurer. Could you get OpenAI to build you good AI models to pick stocks? Could you just trade ahead of OpenAI’s own investment deals ?

STAAR

One way to think about public-company mergers and acquisitions is that the shareholders of the target company are selling it, and another company or private equity firm is buying it, and the target company’s management are the *brokers*. The deal only gets done if the buyer and the shareholders are willing to buy and sell at the same price, but the buyer and the shareholders do not ordinarily negotiate with each other; the company’s managers negotiate for them. If the deal gets done, the managers generally get a big fee, in the form of change-of-control payments, accelerated vesting of stock options, etc. If the deal does not get done, the managers don’t get any special payment and have to keep doing their day jobs.

In this model, the goal of the managers is to get the buyer and the shareholder to agree on a price. But of course the buyer generally wants to pay a low price, and the shareholders generally want to get a high price. How can the managers bridge that gap? There are all sorts of possibilities. They can find a buyer who has an idiosyncratically high valuation of the company and is careless with money, or a buyer whose own business combines nicely with the target to create valuable synergies. They can run an auction to find the buyer with the highest valuation. They can look for a mutually beneficial trade where the buyer and the shareholders value different things: “This company has tons of upside for the right private equity buyer but is too risky for public shareholders,” or “this social media company does not really make money for its shareholders but could be a way for the right billionaire to influence politics.”

But perhaps the most general approach is to persuade the buyer that the company will make a lot of money and persuade the shareholders that it won’t. You go to a meeting with the buyer and you talk about how good the company is, you bring in the most satisfied customers and employees to talk about the business, you share wildly optimistic projections for next year’s sales. And then you go to a meeting with the shareholders and you talk about how bad the company is, you mention the most dissatisfied customers, you share extremely pessimistic projections for next year. The buyers are like “this company is great I’ll pay \$40,” the shareholders are like “this company is garbage I’d sell for \$25,” and there’s plenty of room to get a deal done.

Obviously that is too schematic. For one thing, the managers have a fiduciary duty to maximize value for the shareholders, and they can't really trick the buyer either; they are supposed to be *honest* brokers, and generally they are. For another thing, the managers don't really have private meetings with the shareholders: They communicate with the shareholders through public proxy statements, so everyone can see the case they make for the deal. Even their meetings with the buyer aren't entirely private: The merger proxy statement will contain a lot of disclosure about how the deal was negotiated, including the back-and-forth over price and a summary of any financial projections the managers shared with the buyer. Everyone can see what everyone else saw; there is only so much the managers can do to shade each side's valuation.

In particular, the target company's managers will hire an investment bank to help sell the company. The bank will get the company's projections and use them to build valuation models and materials for potential buyers, and to negotiate the price with the buyer. Then, when the deal is negotiated, the bank will produce a fairness opinion for the target's board of directors, saying that the deal is financially fair to the shareholders. The fairness opinion will contain a set of valuations of the company – "public trading multiples imply a price of \$27 to \$38 per share, precedent transactions imply \$31 to \$55, a discounted cash flow model implies \$37 to \$51," that sort of thing – and (hopefully) the actual merger price will be somewhere within the range of at least some of the valuations. Then the board will say "seems fair" and approve the deal, and then fairness opinion will be included in the merger proxy for the shareholders to vote on the deal.

The shareholders won't get the bank's entire model, but the disclosure will give them at least some sense of the inputs that the bank used. Those inputs will include management's financial projections, which the buyers will also get, and both the buyer and the target's bank will use management's projections in valuing the company. Both the buyer and the bank might take the projections with a grain of salt, and they might discount them differently, but in theory you'd sort of expect the buyer and the seller to be starting from the same set of numbers.

In August, the board of directors of STAAR Surgical Co. agreed to sell the company to Alcon Research LLC for \$28 per share in cash, for a total equity value of about \$1.5 billion. That price represented about a 51% premium to STAAR's market price when the deal was signed, though the stock had been trading over \$30 per share last November. Even in the deal announcement, STAAR's management was careful to be like "you should be glad to be rid of this dog, shareholders":

"We believe the transaction with Alcon represents the best path forward and provides the greatest value for STAAR shareholders," said Stephen Farrell, CEO of STAAR. "As we've shared, fluctuating demand in China over the past two years has continued to create significant headwinds for STAAR as a standalone company. I'm proud of our team's efforts to address recent challenges, but there is more work to do. As a significantly larger company, Alcon has the capabilities and scale to accelerate EVO ICL adoption and bring our innovative technology to more surgeons and patients worldwide."

Dr. Elizabeth Yeu, Chair of the STAAR Board of Directors, said, "The STAAR Board is committed to maximizing value for shareholders. We have determined that this carefully negotiated transaction is in the best interest of STAAR shareholders as it delivers immediate and certain value at a significant premium, value that exceeds what we believe could be achieved under STAAR's standalone strategy."

Subsequent communications to shareholders have been even gloomier; here's one from Monday quoting pessimistic research analysts and noting that "prior to the Alcon transaction, the median sell-side analyst price target for STAAR was only \$19.00 per share." (The shareholders will vote on the deal on Oct. 23.) But the shareholders are not all pleased. Today Broadwood Partners LP, which owns 27.5% of STAAR's stock, put out a press release:

Management spent most of 2025 publicly touting the progress on its turnaround plan, while assuring investors that short-term challenges were abating and that STAAR's future was bright.

That was before the management team realized it could make tens of millions of dollars quickly by selling STAAR to Alcon, even for a woefully inadequate price of \$28 per share.

As recently as July 23, 2025, management projected that the Company would generate twice as much EBITDA in 2027 as the most profitable year in STAAR's history. Then, just ten days later – notably, after Alcon agreed to pay \$28 per share for STAAR, triggering the accelerated vesting of management's unearned shares and \$55 million in compensation upon closing of the deal – management suddenly revised its forecast, sharply reducing its 2027 EBITDA forecast by 20%.

Despite what the Board now claims, creating two sets of projections within ten days during an M&A process – one for enticing a counterparty to bid, and another to justify an otherwise inadequate price that resulted from a cursory and failed negotiation – is highly unusual and suspect.

STAAR's proxy statement explains the two sets of projections:

STAAR management prepared certain preliminary unaudited prospective financial information for STAAR on a standalone basis for fiscal years 2025 through 2027. ... The July Diligence Projections were provided to Alcon in July 2025 as part of its due diligence process. Following the preparation of the July Diligence Projections, STAAR's management team continued to refine and assess its estimates and judgments for STAAR's future operations, incorporating further risk-adjusted expectations for net sales of ICLs and new product introductions. Management considered multiple factors, including emerging competition in China, that could impact growth rates and overall future financial results to arrive at the expectations reflected in the Projections. Relative to [these later] Projections, the July Diligence Projections assumed incremental ICL net sales in 2026 and 2027 and incremental net sales attributable to ongoing and accelerated new product introductions in 2027. In early August 2025, the Projections were provided to the Board in connection with its evaluation of the Merger, and were provided to Citi and approved by STAAR for Citi's use and reliance in connection with Citi's financial analysis and opinion.

The July projections provided to Alcon included adjusted earnings before interest, taxes, depreciation and amortization of \$142 million in 2027; the August projections provided to STAAR's bankers for their fairness opinion – after the management team had a bit more time to "refine and assess its estimates and judgments" – had \$113 million of 2027 EBITDA. It is a bit unusual to prepare two sets of projections, a good one for the buyer and a bad one for the seller, and disclose them both. But it kind of makes sense!

Crypto narrow banking

A theme around here is that the funding model of banking, though common, is risky. Banks take money from depositors who can ask for it back at any time, and they use that money to make long-term loans. There is a duration mismatch: If the depositors all *do* ask for their money back at once, the bank won't have it, and disaster will ensue. This is a well-understood problem, and there are important mechanisms – central banks as lenders of last resort, deposit insurance, liquidity and capital regulation, etc. – to mitigate it.

But even so, in recent years, we have seen a bit of a retreat from this traditional “maturity transformation” in banking, and a bit of a move toward narrow banking. Some depositors *don't* put their money in traditional banks, but instead put it in “narrow banks” (like money-market funds and stablecoins) that park it in safe short-dated government-backed instruments (Fed reserves, Treasury bills). Meanwhile risky long-term loans are increasingly made by private credit funds, which get a lot of their money from, paradigmatically , life insurance companies. The idea is that life insurance companies – *unlike* banks – have long-term, stable funding: They get money from customers and give it back in the form of annuities (with fixed payments over some term) or death benefits (hopefully many years later). So life insurers are natural sources of long-term loans.

Crypto relearns a lot of the lessons of traditional finance, including this one. In 2022 there was a crypto banking crisis: There were a lot of crypto shadow banks (lending platforms and exchanges) that took crypto from depositors who could ask for it back at any time and used it to make often quite long-term loans . The loans went bad, the depositors asked for their crypto back, and various crypto platforms – Celsius , Voyager , Genesis , FTX – blew up. This is a well-understood problem, but people conveniently forgot it during the boom, and crypto had no mechanisms – no lender of last resort, no deposit insurance, no particular discipline about capital or liquidity – to mitigate it.

The obvious solution is that crypto life insurers should make the crypto loans? Bloomberg's Muyao Shen reports :

Apollo, Northwestern Mutual, Pantera Capital and Stillmark are joining Bain Capital and crypto investor Haun Ventures to back the Bitcoin life insurance firm Meanwhile in a \$82 million funding round.

The Bermuda-regulated insurer, which claims to be the first life insurer to offer products entirely denominated in crypto, began to provide policies in 2023. The firm invests policyholders' premiums by lending Bitcoin to large, regulated financial institutions. Zac Townsend, a co-founder and chief executive officer of Meanwhile, said the firm is now “one of the largest lenders of Bitcoin in the world at duration,” or over longer periods of time.

“We are not running a hedge fund or trading desk or worried about the price of Bitcoin day-to-day or week-to-week or month-to-month,” Townsend said in an interview. “We engage on this side of the business in institutional B2B, private credit.”

I mean. Yes. Also there's a tax trade:

Meanwhile's life insurance products also provide tax advantages for Bitcoin holders. After two years, policyholders can borrow up to 90% of their policy's Bitcoin value in a tax-free manner, according to the firm's website. The borrowed Bitcoin will adopt a new cost basis, allowing the policyholders to sell the Bitcoin without triggering capital gains taxes.

Tai Lopez

We talked last month about allegations that Retail Ecommerce Ventures, which bought RadioShack and other brands out of bankruptcy and pivoted them to online commerce, was a Ponzi scheme. We had actually talked about REV before, because in 2021 Tai Lopez, an REV co-founder who was charged last month, said he was "taking RadioShack on the blockchain, it'll be the first huge mainstream brand that flipped completely into a crypto." What I did not know was that Lopez is a famous peddler of YouTube self-help programs who is best known for, like, keeping his Lamborghini in his library, or his books in his garage, or something? Here's a fun New York Magazine story about Lopez, his YouTube fame ("He once tweeted out a poll asking his followers: 'Do you believe I'm a scam? Haha.' Over 1,700 people said yes.") and the Ponzi charges (another YouTuber's "video on the indictment was titled 'its always the guy you suspect the most'"):

[As REV was collapsing], Lopez also went dark. He is the kind of person who is posting all day every day on multiple social-media fronts, so fans noticed when he disappeared even for a few weeks in the late fall of 2022. In an appearance on the business-focused podcast The Iced Coffee Hour on December 12, 2022, he calmly addressed his absence. Wearing a pink polo and a black Carhartt beanie, he said that he had read the second chapter of Sigmund Freud's *Civilization and Its Discontents* some "300 times" and suggested that REV's business was doing well. As for his recent timeout on social media, he said that with a "personal brand, sometimes you need a sabbatical."

I'm increasingly convinced that buying RadioShack out of bankruptcy and pivoting it to become a vaporous online blockchain influencer brand was kind of a good idea. That's what you need in this meme-y market, a nostalgic name combined with some crypto nonsense. But turning it into a Ponzi scheme really is the logical extension of that idea.

Things happen

Cantor Seeks New Deal on UBS Hedge Fund Unit Over First Brands Exposure. Jefferies Fund Has \$715 Million in First Brands' Trade Debt . Fifth Third's \$11 Billion Deal Sparks Hope for Bank Merger Wave . Polymarket Founder Is Youngest Self-Made Billionaire on Intercontinental Exchange Deal. Anglo American defends due diligence on \$50bn merger as Teck cuts copper forecasts. SEC's Atkins Says Ballooning Private Markets Not a Systemic Risk . Barr Sees Big Bank Deregulation as Threat to Community Banks. IMF and BoE warn AI boom risks 'abrupt' correction. Kentucky Bourbon Bust Derails Spirit Maker's Plan to Pay Bank With Barrels. Ronaldo Becomes First Football Billionaire With Big Saudi Contract. Ari Emanuel bets AI will boost leisure time with three-day working week. Lehman's London Arm to Close, 17 Years and £28 Billion Later. "Putting pressure on the committee, going on talking about 'I need the prize, I'm the worthy candidate' – it's not a very peaceful approach." People Are Already Lining Up to Rent the Crypto Torture Townhouse.

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1. I'm hypothetically writing a whole series of science fiction novels about killer AI being thwarted by American litigiousness. Previously : "If I were a science fiction writer I would be working on a story about venture capitalists building a runaway artificial intelligence that will likely enslave or destroy humankind, only to be thwarted by a minor poet suing them for copyright violations for scraping her poems. Terminator: Fair Use Doctrine. What if fastidious enforcement of intellectual property rights is all that stands between us and annihilation by robots?"

2. Also, of course, this is a reason for an insurer to *sell* it to you. Like I'd happily sell OpenAI insurance against the complete extinction of humanity for a million bucks. I'm not sure what insurance regulators would say about this.

3. This is not the only model – often the managers *want* to keep doing their day jobs, don't want to be acquired, and have to be paid to even consider a deal – but it is sometimes a useful one.

4. In certain broker-dealer models you could then buy from the sellers at \$25, sell to the buyers at \$40, and clip the \$15 spread, but that is not generally a possibility that is open to the managers of a public company. You have to get agreement on one price, but it's easier to get agreement if the sellers are pessimistic and the buyers are optimistic.

5. Citi's fairness opinion includes a discounted cash flow analysis valuing the company at \$17.70 to \$37.50 per share. If I just naively increase those numbers by 26% (that is, the difference between \$142 million and \$113 million of projected EBITDA in the terminal year for the July projections), I get \$22.24 to \$47.12 per share. So \$28 is still in the range.

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Global Economy**IMF and BoE warn AI boom risks 'abrupt' stock market correction**

Kristalina Georgieva and UK financial stability watchdog say valuations are closing in on dotcom bubble levels



IMF chief Kristalina Georgieva said bullish market sentiment about 'the productivity-enhancing potential of AI' could 'turn abruptly', hitting the world economy © AP

Claire Jones and **Martin Arnold** in London

Published 7 HOURS AGO | Updated 07:00



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Global stock markets are at risk of a sudden correction as the artificial intelligence boom pushes valuations towards dotcom bubble levels, both the IMF and Bank of England have warned.

Kristalina Georgieva, IMF managing director, said on Wednesday that bullish market sentiment about “the productivity-enhancing potential of AI” could “turn abruptly”, hitting the world economy.

She was speaking hours after the BoE body overseeing financial stability risks also drew parallels with the 2000 crash that followed the dotcom boom, warning of the risk of a “sudden correction” in global financial markets.

“Today’s valuations are heading towards levels we saw during the bullishness about the internet 25 years ago,” Georgieva said in a speech delivered ahead of the IMF’s annual meetings next week.

The remarks by the IMF managing director and the BoE are the clearest warnings yet by global officials that an [AI](#)-led market bubble could burst.

Georgieva said optimism about AI had “fired up” markets and helped support the global economy. But she added that a sharp correction in stock prices “could drag down world growth, expose vulnerabilities and make life especially tough for developing countries”.

In similar language, the BoE’s Financial Policy Committee warned that “the risk of a sharp market correction has increased” in the record of its latest meeting on Wednesday.

It said that the cyclically adjusted price-to-earnings ratio for US shares, a closely watched measure of valuations, had come close to the levels of 25 years ago — “comparable with the peak of the dotcom bubble”.

The S&P 500 index of larger US-listed companies is trading at a one-year forward price-to-earnings ratio of 25 times, which is “elevated relative to historical levels” but below levels of the 2000 dotcom bubble, it added.

The index has climbed 14 per cent this year in a rapid rebound from the slump that followed Donald Trump’s “liberation day” tariff announcement in April.

But Nvidia chief Jensen Huang told CNBC on Wednesday that the current AI boom was “dramatically different” to the dotcom bubble because the “hyperscalers” — such as Microsoft, Google and Meta — were so much richer than the likes of [pets.com](#), one of the most notorious internet bubble-era listings.

US Federal Reserve officials have played down the prospect of a damaging market correction. Mary Daly, the head of the San Francisco Fed, said this week that an AI bubble was not a threat to financial stability.

“Research and economics call it more like a good bubble, where you’re getting a ton of investment,” she told Axios. “Even if the investors don’t get all the returns that the early enthusiasts think when they invest, it doesn’t leave us with nothing. It leaves us with something productive.”

The BoE argued that the dangers of a market reversal had been compounded by defaults in US automotive credit markets in recent months, adding that these “underscore some of the risks” it has been highlighting in market-based finance.

Additional risks stem from rising political pressure on the Fed, which “could result in a sharp re-pricing of US dollar assets” and from uncertainty around “political deadlocks in France and Japan”, which also threaten to disrupt debt markets.

The BoE said that on a number of measures “equity market valuations appear stretched, particularly for technology companies focused on artificial intelligence”.

“This, when combined with increasing concentration within market indices, leaves equity markets particularly exposed should expectations around the impact of AI become less optimistic.”

The BoE said “any AI-led price adjustment” would have a greater impact on investors because of the higher concentration of tech companies in the overall market. The top five tech groups make up an all-time high of almost 30 per cent of the S&P 500.

US credit markets have been shaken in recent weeks by the defaults of subprime auto lender Tricolor and [car parts group First Brands](#), which both relied heavily on loans from private credit providers and invoice financing.

“These underscore some of the risks the FPC have previously highlighted around high leverage, weak underwriting standards, opacity and complex structures,” the BoE said.

It added that credit market spreads, measuring the difference between interest rates for riskier borrowers and those considered safe, had fallen “close to historically low levels”.

Georgieva said the AI boom and the weakening of the dollar had helped to ease financial conditions and lift the [global economy](#).

“We see global growth slowing only slightly this year and next. All signs point to a world economy that has generally withstood acute strains from multiple shocks,” the IMF chief said.

Additional reporting by Tim Bradshaw in London

OpenAI's Nvidia, AMD Deals Boost \$1 Trillion AI Boom With Circular Deals

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Emily Forgash, Agnee Ghosh

October 7, 2025

By Emily Forgash and Agnee Ghosh

(Bloomberg) --



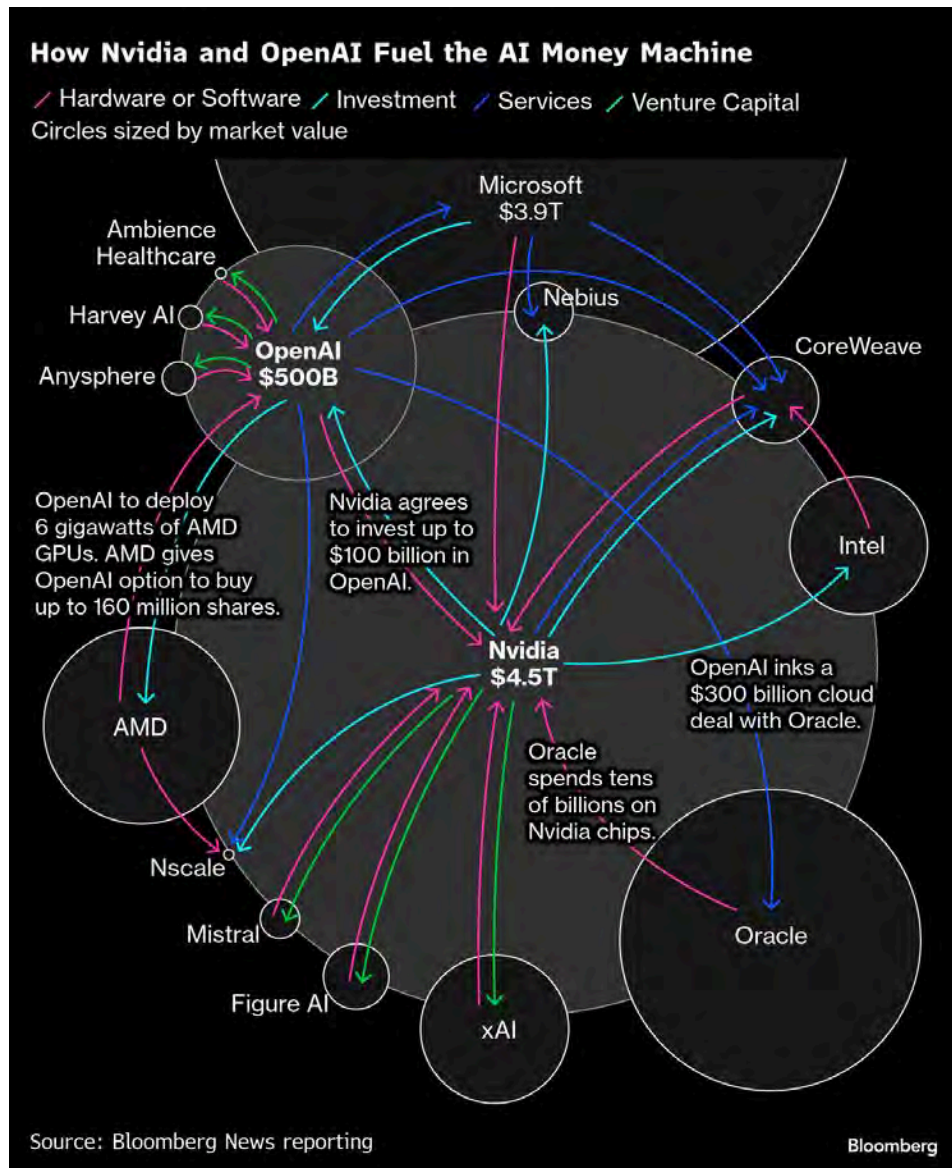
OpenAI will build data centers with Nvidia's advanced chips in a \$100 billion deal between the two tech companies.

Photographer: Annabelle Chih/Bloomberg

Two weeks ago, [Nvidia Corp.](#) agreed to [invest as much as \\$100 billion](#) in OpenAI to help the leading AI startup fund a data-center buildout so massive it could power a major city. OpenAI in turn committed to filling those sites with millions of Nvidia chips. The arrangement was [promptly criticized](#) for its "circular" nature.

This week, undeterred, OpenAI struck a similar deal. The ChatGPT maker on Monday [inked a partnership](#) with Nvidia rival [Advanced Micro Devices Inc.](#) to deploy tens of billions of dollars' worth of its chips. As part of the tie-up, OpenAI is poised to become one of AMD's largest shareholders.

Never before has so much money been spent so rapidly on a technology that, for all its potential, remains largely unproven as an avenue for profit-making. And often, these investments can be traced back to two leading firms: Nvidia and OpenAI. The recent wave of deals and partnerships involving the two are escalating concerns that an increasingly complex and interconnected web of business transactions is artificially propping up the trillion-dollar AI boom. At stake is virtually every corner of the economy, with the hype and buildout of AI infrastructure rippling across markets, from debt and equity to real estate and energy.



The companies, which ignited an AI investment frenzy three years ago, have been instrumental in keeping it going by inking large and sometimes overlapping partnerships with cloud providers, AI developers and other startups in the sector. In the process, they're now seen as playing a key role in ratcheting up the risks of a possible AI bubble by inflating

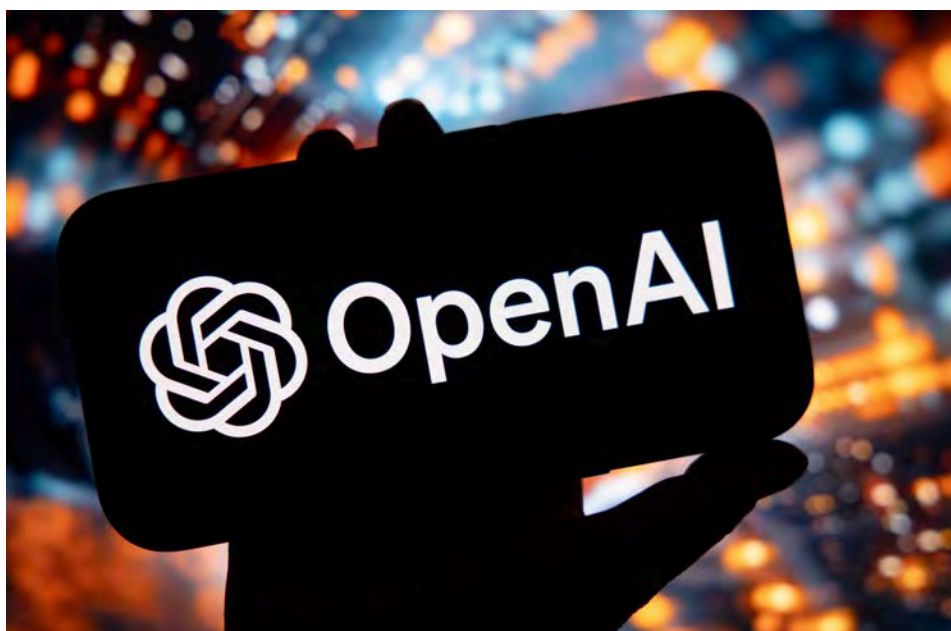
the market and binding the fates of numerous companies together. OpenAI alone has now struck AI computing deals with Nvidia, AMD and [Oracle Corp.](#) that altogether could easily top \$1 trillion. Meanwhile, the AI startup is burning through cash and [doesn't expect to be](#) cash-flow positive until near the end of the decade.

"If we get to a point a year from now where we had an AI bubble and it popped, this deal might be one of the early breadcrumbs," Brian Colello, an analyst with Morningstar, said about Nvidia's investment in OpenAI. "If things go bad, circular relationships might be at play."

Read More: [Why Fears of a Trillion-Dollar AI Bubble Are Growing](#)

For much of the AI boom, there have been whispers about Nvidia's frenzied dealmaking. The chipmaker bolstered the market by pumping money into dozens of AI startups, many of which rely on Nvidia's graphics processing units to develop and run their models. OpenAI, to a lesser degree, also invested in startups, some of which built services on top of its AI models. But as tech firms have entered a more costly phase of AI development, the scale of the deals involving these two companies has grown substantially, making it harder to ignore.

The day after Nvidia and OpenAI announced their \$100 billion investment agreement, OpenAI confirmed it had struck a separate \$300 billion deal with Oracle to build out data centers in the US. Oracle, in turn, is [spending billions](#) on Nvidia chips for those facilities, sending money back to Nvidia, a company that is emerging as one of OpenAI's most prominent backers.



OpenAI has struck deals with Nvidia Corp., Advanced Micro Devices Inc. and Oracle Corp.
Photographer: Andrey Rudakov/Bloomberg

Concerns that Oracle won't wring meaningful profit from such lavish investments surged Tuesday on a [report](#) that showed the company's cloud business had narrower margins than many analysts estimated. While Oracle generated about \$900 million in sales by renting servers powered by Nvidia chips in the most recent quarter, its gross profit came in at 14 cents for every \$1 in sales, The Information [reported](#), citing internal documents. The news dragged down Oracle stock and [weighed on](#) the broader market.

A similar set of cyclical relationships can be seen with [CoreWeave Inc.](#), one of the [breakout successes on Wall Street](#) this year. Nvidia buoyed the neocloud company's initial public offering by [taking a 7% stake](#). It has since agreed to [buy \\$6.3 billion worth](#) of cloud services from CoreWeave, which rents out access to Nvidia chips. OpenAI, meanwhile, received \$350 million in equity from CoreWeave ahead of the IPO and recently expanded its cloud deals with the company to [as much as \\$22.4 billion](#). Once again, a set of deals had tied OpenAI and Nvidia more tightly together.



OpenAI CEO Sam Altman and AMD CEO Lisa Su at a Senate hearing in Washington.

Photographer: Nathan Howard/Bloomberg

Inside the tech industry, executives argue these unorthodox business relationships are essential to meet an unprecedented surge in demand for AI services. AMD Chief Executive Officer Lisa Su told Bloomberg TV that the partnership with OpenAI is a "virtuous, positive cycle." Likewise, Greg Brockman, OpenAI's president and co-founder, said it will take an "industry-wide effort" using the entire AI supply chain to meet the immense demand for computing power to support ChatGPT and other products.

In Washington, some have adopted a laissez-faire attitude to all the activity in a sector viewed as vital to competing with geopolitical rival China. "It's up to them," White House AI and Crypto Czar David Sacks told Bloomberg on Monday. "We want American companies to be successful." The Trump administration, for its part, is also connected to the sprawling web of AI investments through its stake in Intel Corp., not to mention its [plans to take a cut](#) of Nvidia and AMD's chip sales to China.

The Complex Web of AI Deals: By the Numbers

Relationship	Description
Nvidia and OpenAI	Nvidia agrees to invest up to \$100 billion in OpenAI.
OpenAI and Oracle	OpenAI inks a \$300 billion cloud deal with Oracle.
Nvidia and CoreWeave	Nvidia buys \$6.3 billion of cloud services from CoreWeave.
OpenAI and CoreWeave	OpenAI to pay CoreWeave as much as \$22.4 billion.
OpenAI and AMD	OpenAI agrees to deploy billions of dollars worth of AMD chips.
US and Intel	US takes a 10% stake in Intel using CHIPS Act funding.
Nvidia and Intel	Nvidia invests \$5 billion in Intel and plans to co-develop chips.
US and Nvidia	US takes a 15% cut of Nvidia and AMD's chip sales to China.

Source: Bloomberg News reporting

Note: These deals represent a selection of the relationships between some of the most prominent AI players.

Bloomberg

But some analysts and academics who've tracked the tech industry long enough see uncomfortable similarities to the dot-com bubble. "In the late 1990s, circular deals were often centered on advertising and cross-selling between startups, where companies bought each other's services to inflate perceived growth," said Paulo Carvao, a senior fellow at the Harvard Kennedy School who researches AI policy and who worked in tech in the late 1990s. "Today's AI firms have tangible products and customers, but their spending is still outpacing monetization."

In a statement, an Nvidia spokesperson said the company "does not require any of the companies we invest in to use Nvidia technology." OpenAI did not respond to a request for comment.

Top AI companies are also spending far more than dot-com era startups. OpenAI's Sam Altman has said he expects his firm to invest "trillions" in building out the physical infrastructure needed to support cutting-edge AI models. While that would be a tall order for any company, it's even more challenging for a startup that has never turned a profit. To meet that lofty goal, OpenAI plans to rely on a mix of venture capital, debt and its growing number of creative partnerships with other businesses, many of which are eager to be associated with the buzzy startup.

Previously, OpenAI and its peers leaned heavily on investment deals with Big Tech companies like [Microsoft Corp.](#), [Amazon.com Inc.](#) and [Alphabet Inc.'s Google](#) that also benefited by

selling their cloud computing services to the AI startups. Now AI developers like OpenAI and [Elon Musk's xAI](#) are joining larger tech firms by tapping the debt market for billions of dollars to finance their AI infrastructure plans — and none have grander ambitions than Altman and OpenAI.

Altman “has the power to crash the global economy for a decade or take us all to the promised land,” Stacy Rasgon, an analyst with Bernstein Research, wrote in an investor note this week. “Right now we don’t know which is in the cards.”



A Stargate AI data center from OpenAI and Oracle that’s under construction in Abilene, Texas.
Photographer: Kyle Grillot/Bloomberg

At a developer event earlier this week, Altman briefly addressed his company’s finances: “Obviously, one day we have to be very profitable and we’re confident and patient that we will get there,” he said. “But right now, we’re in a phase of investment and growth.”

Nvidia, by contrast, has the financial wherewithal to keep the good times going for a while. As the dominant player in advanced AI chips, Nvidia has crested the AI wave to become the most valuable company in the world, with a \$4.5 trillion market cap. The company is now spreading its money around at a faster pace.

Nvidia participated in 52 different venture investment deals for AI companies in 2024 and had already done 50 deals by the end of September this year, according to data from PitchBook. Nvidia Chief Financial Officer Colette Kress said at a Goldman conference in

September that the company intends to put its cash toward “the most strategic parts of the ecosystem.” Beyond startup investments, Nvidia has taken steps to backstop partners, including CoreWeave, by [agreeing to buy any excess cloud capacity](#) not used by its customers.

Michael Intrator, CoreWeave’s CEO, acknowledged the circular financing worries in a recent interview with Bloomberg News, but said the public concerns will dissipate as more businesses adopt AI.

“When Microsoft comes to us to buy infrastructure to deliver to its clients who are consuming 365 or Copilot, I don't care what the narrative is about circular financing,” Intrator said. “They have end users that are consuming it.”

(Corrects spelling of Nvidia in the headline online.)

--With assistance from [Kyle Kim](#), [Denise Lu](#) and [Brody Ford](#).

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Robin Ajello

Why AI Bubble Concerns Loom as OpenAI, Microsoft, Meta Ramp Up Spending

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Seth Fiegerman, Carmen Reinicke

October 6, 2025

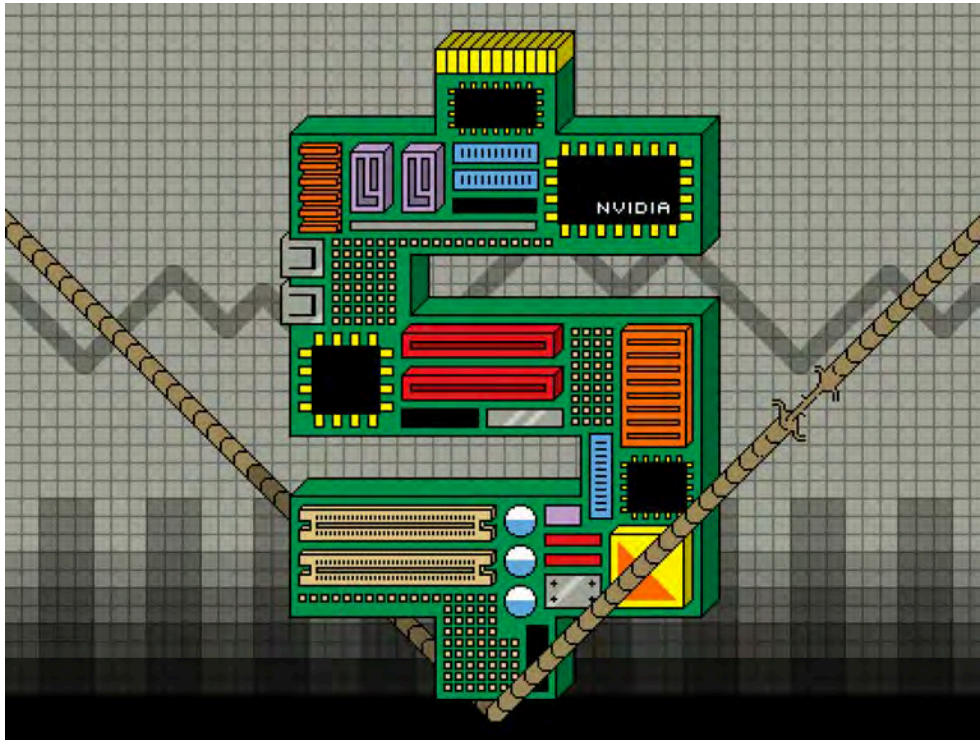


Illustration: Nick Little

Summary by Bloomberg AI

- Tech firms are spending hundreds of billions of dollars on advanced chips and data centers to keep pace with the surge in use of chatbots and prepare for a shift of economic activity from humans to machines.
- There are concerns about the payoff from AI technology, with some researchers finding that 95% of organizations saw zero return on their investment in AI initiatives and that AI-generated work content can lack substance.
- The AI industry's vast data center buildout and huge increase in electricity consumption may be held back by strained national power networks, and there are risks of a bubble in the AI market, with some comparing it to the dot-com craze of the late 1990s.

By Seth Fiegerman and Carmen Reinicke

(Bloomberg) --

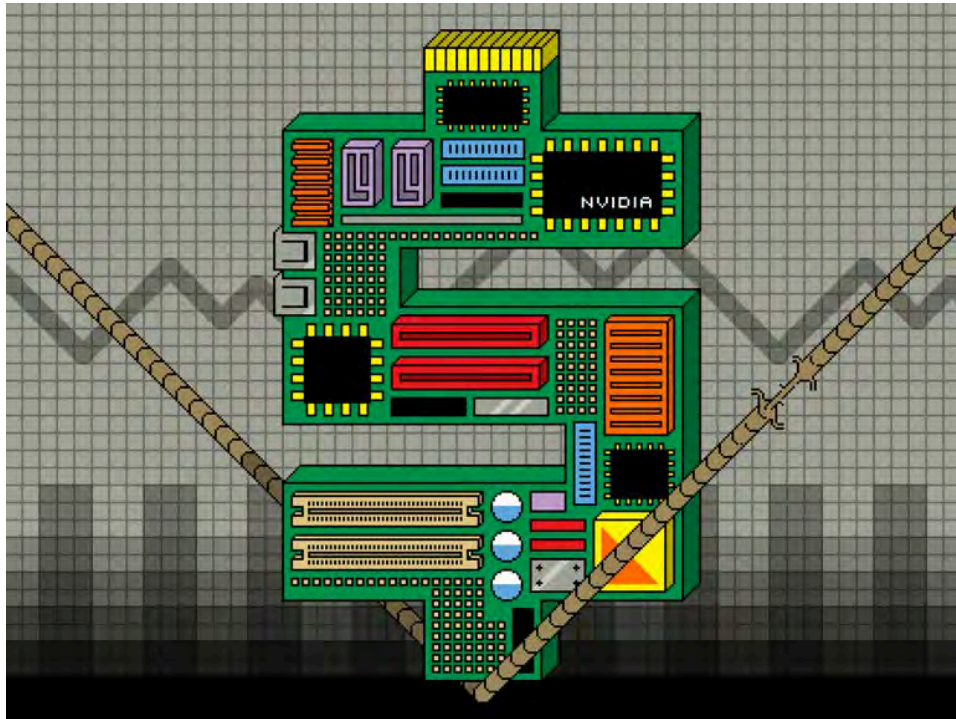


Illustration: Nick Little

For almost as long as the artificial intelligence boom has been in full swing, there have been warnings of a speculative bubble that could rival the dot-com craze of the late 1990s that ended in a spectacular crash and a wave of bankruptcies.

Tech firms are spending hundreds of billions of dollars on advanced chips and data centers, not just to keep pace with a surge in the use of chatbots such as ChatGPT, Gemini and Claude, but to make sure they're ready to handle a more fundamental and disruptive shift of economic activity from humans to machines. The final bill may run into the trillions. The financing is coming from venture capital, debt and, lately, some more [unconventional arrangements](#) that have raised eyebrows on Wall Street.

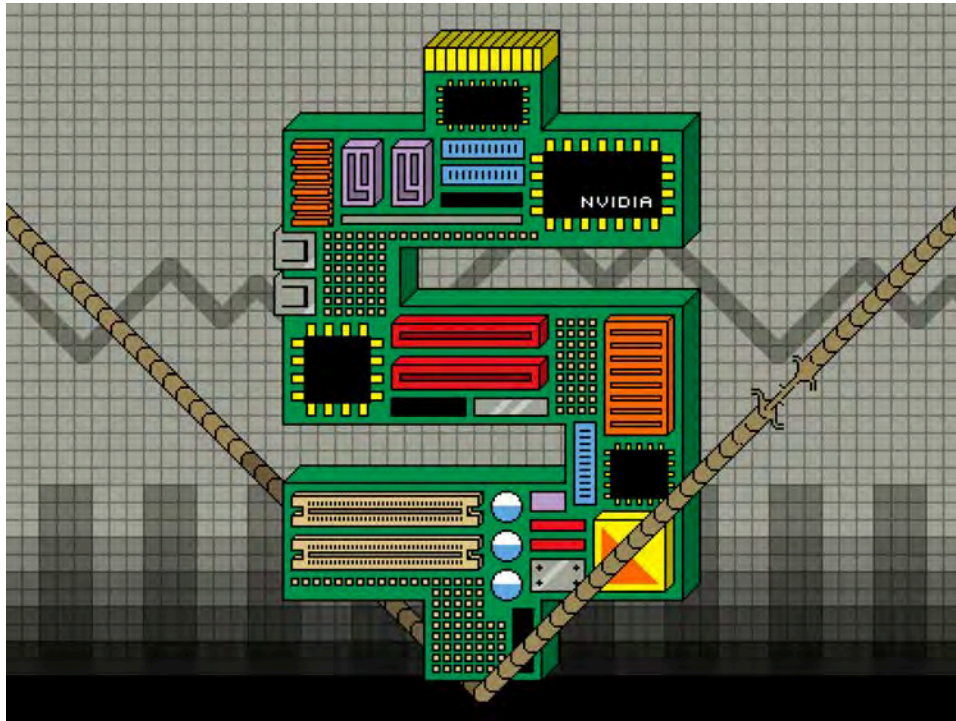
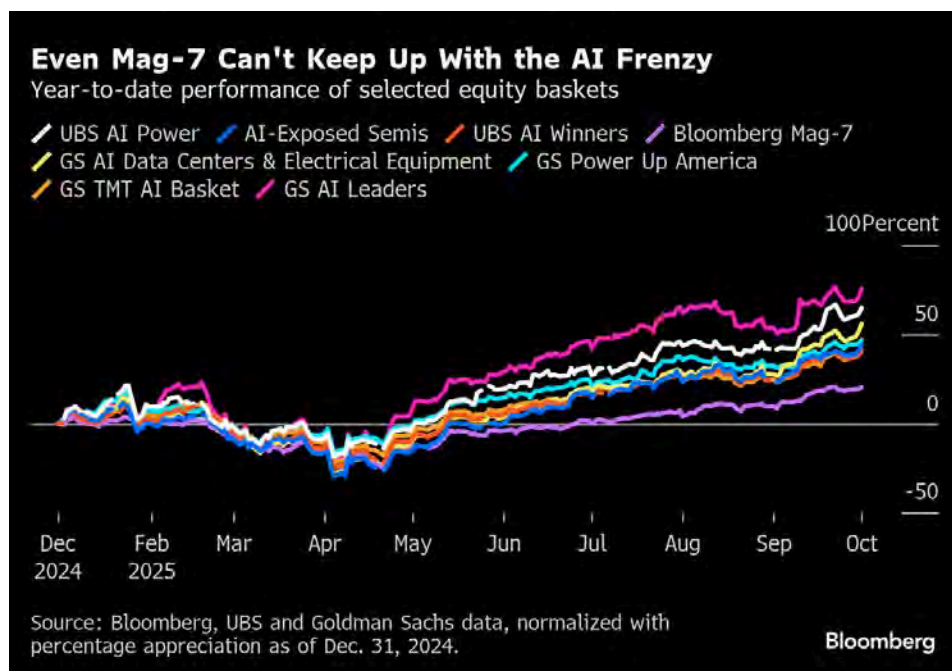


Illustration: Nick Little

Even some of AI's biggest cheerleaders acknowledge the market is frothy, while still professing their belief in the technology's long-term potential. AI, they say, is poised to reshape multiple industries, cure diseases and generally accelerate human progress.

Yet never before has so much money been spent so rapidly on a technology that, for all its potential, remains somewhat unproven as a profit-making business model. Tech industry executives who privately doubt the most effusive assessments of AI's revolutionary potential — or at least struggle to see how to monetize it — may feel they have little choice but to keep pace with their rivals' investments or risk being out-scaled and sidelined in the future AI marketplace.



What are the warning signs for AI?

When [Sam Altman](#), the chief executive of ChatGPT maker OpenAI, announced a \$500 billion AI infrastructure plan known as [Stargate](#) alongside other executives at the White House in January, the price tag triggered some disbelief. Since then, other tech rivals have ramped up spending, including [Meta's Mark Zuckerberg](#), who has pledged to invest hundreds of billions in data centers. Not to be outdone, Altman has since said he expects OpenAI to [spend "trillions"](#) on AI infrastructure.

To finance those projects, OpenAI is entering into new territory. In September, chipmaker [Nvidia Corp.](#) announced an agreement to invest up to \$100 billion in OpenAI's data center buildout, a deal that some analysts say [raises questions](#) about whether the chipmaker is trying to prop up its customers so that they keep spending on its own products.

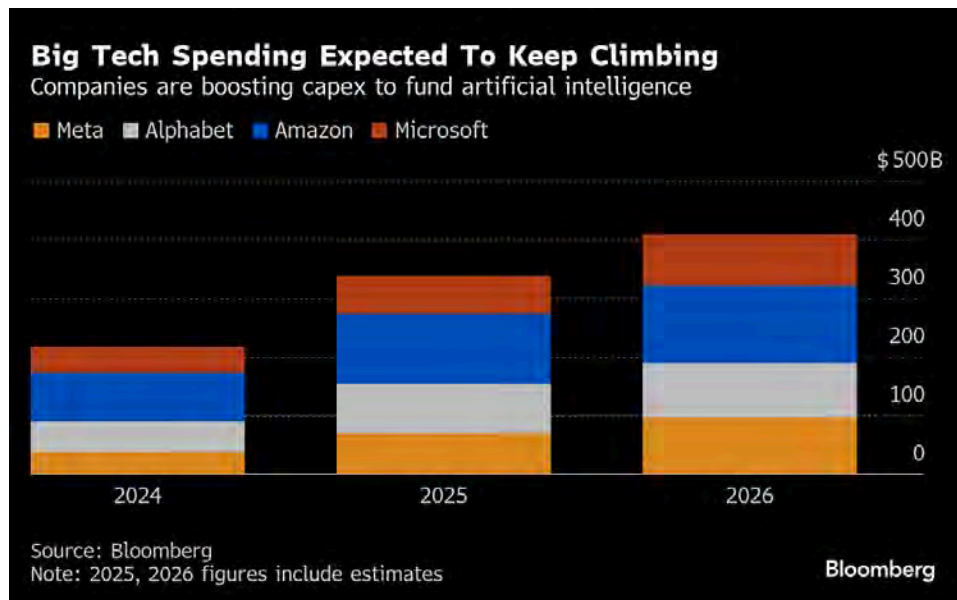


Construction of the first Stargate AI data center, in Abilene, Texas.

Photographer: Kyle Grillot/Bloomberg

The concerns have followed Nvidia, to varying degrees, for much of the boom. The dominant maker of AI accelerator chips has backed dozens of companies in recent years, including AI model makers and cloud computing providers. Some of them then use that capital to buy Nvidia's expensive semiconductors. The OpenAI deal was far larger in scale.

OpenAI has also indicated it could pursue debt financing, rather than leaning on partners such as [Microsoft Corp.](#) and [Oracle Corp.](#) The difference is that those companies have rock-solid, established businesses that have been profitable for many years. OpenAI [expects](#) to burn through \$115 billion of cash through 2029, The Information has reported.



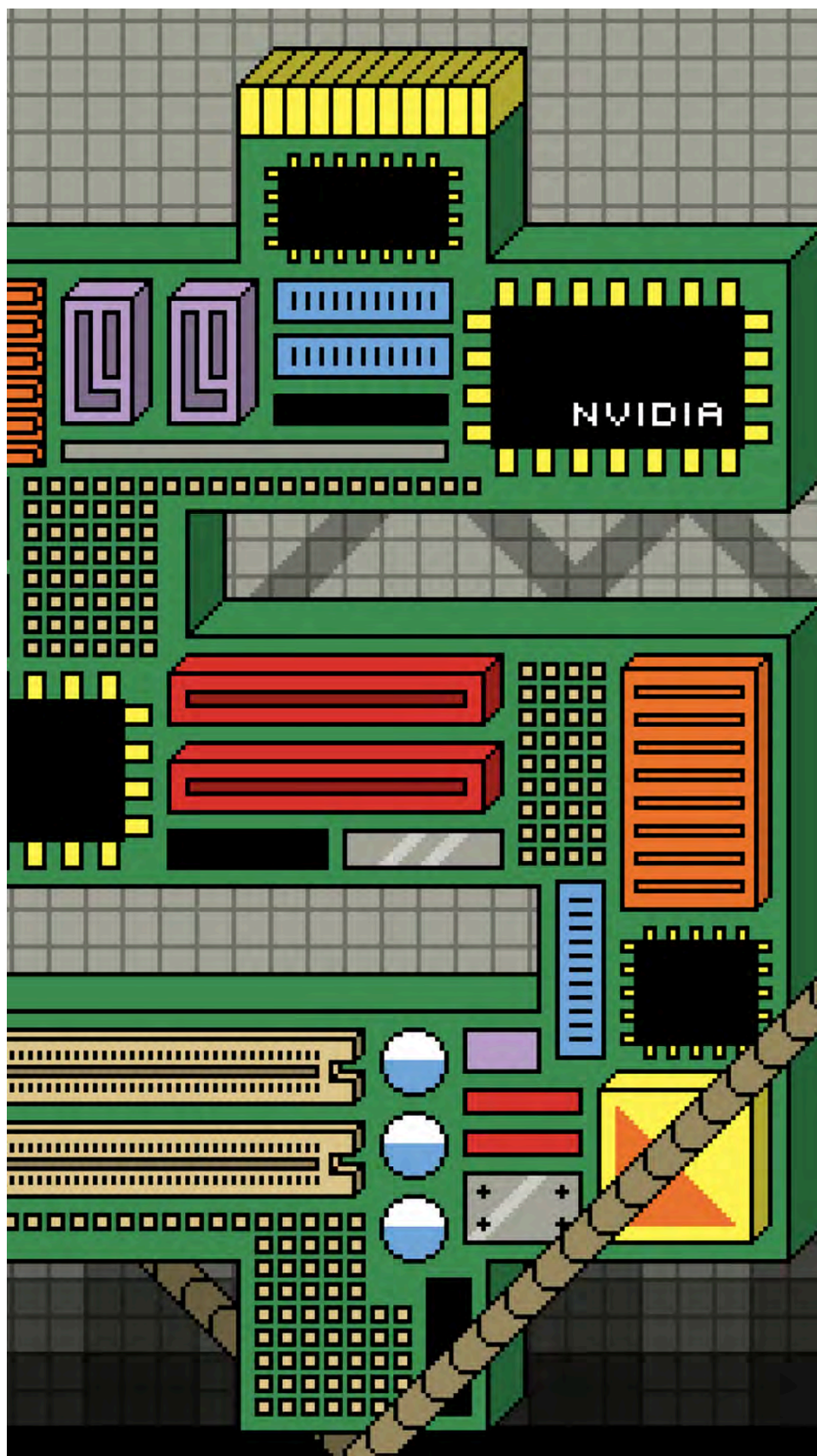
Other large tech companies are also relying increasingly on debt to support their unprecedented spending. Meta, for example, turned to lenders to [secure \\$26 billion in financing](#) for a planned data center complex in Louisiana that it says will eventually approach the size of Manhattan. [JPMorgan Chase & Co.](#) and [Mitsubishi UFJ Financial Group](#) are also leading a loan of more than \$22 billion to support Vantage Data Centers' plan to build a massive data-center campus, [Bloomberg News has reported](#).



So how about the payback?

By 2030, AI companies will need \$2 trillion in combined annual revenue to fund the computing power needed to meet projected demand, Bain & Co. said in a [report](#) released in September. Yet their revenue is likely to fall \$800 billion short of that mark, Bain predicted.

"The numbers that are being thrown around are so extreme that it's really, really hard to understand them," [said David Einhorn](#), a prominent hedge fund manager and founder of Greenlight Capital. "I'm sure it's not zero, but there's a reasonable chance that a tremendous amount of capital destruction is going to come through this cycle."



WATCH: Why Fears of a Trillion-Dollar AI Bubble Are Growing

In a sign of the times, there's also a growing number of less proven firms trying to capitalize on the data center goldrush. Nebius, an Amsterdam-based cloud provider that split off from Russian internet giant Yandex in 2024, recently [inked an infrastructure deal](#) with Microsoft worth up to \$19.4 billion. And Nscale, a [little-known British data center company](#), is working with Nvidia, OpenAI and Microsoft on build-outs in Europe. Like some other AI infrastructure providers, Nscale previously focused on another frothy sector: cryptocurrency mining.

"AI probably will have profound consequences on the way we all work. But Schumpeterian creative destruction being what it is, there will be some pain ahead before we all enjoy the businesses that are being built."

— John Authers, Bloomberg Opinion. Click [here](#) for his full column.

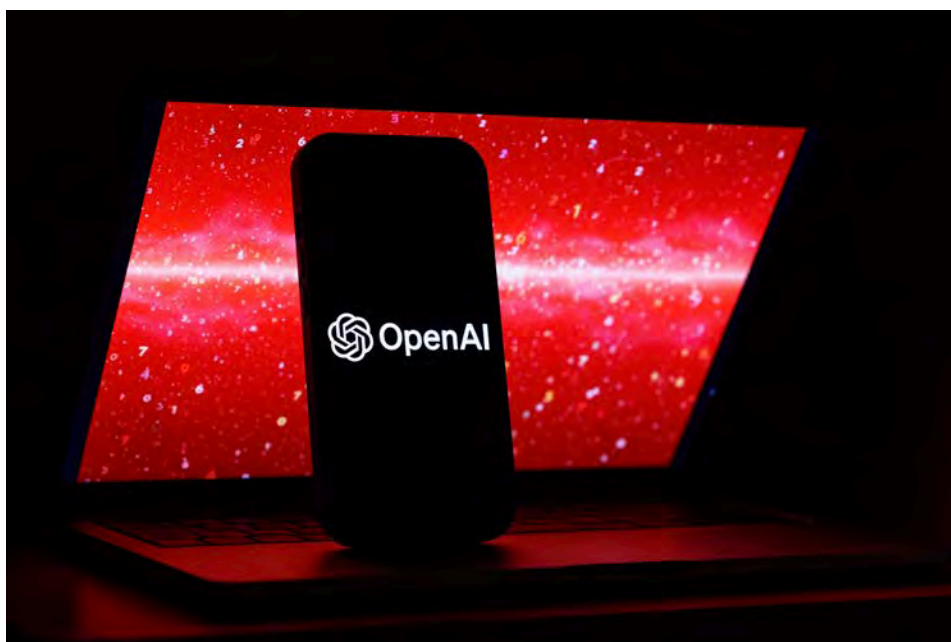
Are there concerns about the technology itself?

The data center spending spree is overshadowed by persistent skepticism about the payoff from AI technology. In August, investors were rattled after researchers at the Massachusetts Institute of Technology found that [95% of organizations](#) saw zero return on their investment in AI initiatives.

More recently, researchers at Harvard and Stanford offered a possible explanation for why. Employees are using AI to create "[workslop](#)," which the researchers define as "AI generated work content that masquerades as good work, but lacks the substance to meaningfully advance a given task."

The promise of AI has long been that it would help streamline tasks and boost productivity, making it an invaluable asset for workers and one that corporations would pay top dollar for. Instead, the Harvard and Stanford researchers found the prevalence of workslop could cost larger organizations millions of dollars a year in lost productivity.

AI developers have also been confronting a different challenge. OpenAI, Claude chatbot developer Anthropic and others have for years bet on the so-called scaling laws — the idea that more computing power, data and larger models will inevitably pave the way for greater leaps in the power of AI. Eventually, they say, these advances will lead to artificial general intelligence, a hypothetical form of the technology so sophisticated that it matches or exceeds humans in most tasks.



OpenAI's release of its latest AI model in August was met with mixed reviews.

Photographer: Andrey Rudakov/Bloomberg

Over the past year, however, these developers have experienced [diminishing returns](#) from their costly efforts to build more advanced AI. Some have also struggled to match their own hype. After months of touting GPT-5 as a significant leap, OpenAI's release of its latest AI model in August was met with mixed reviews. In remarks around the launch, Altman conceded that "we're still missing something quite important" to reach AGI.

Those concerns are compounded by growing competition from China, where companies are flooding the market with competitive, low-cost AI models. While US firms are generally still viewed as ahead in the race, the Chinese alternatives risk undercutting Silicon Valley on price in certain markets, making it harder to recoup the significant investment in AI infrastructure.

There's also the risk that the AI industry's vast data center buildout, entailing a huge increase in [electricity consumption](#), will be held back by the realities of strained national power networks.

Read More: [AI Data Centers Are Sending Consumer Electric Bills Soaring](#)

What does the AI industry say in response?

Sam Altman, the face of the current AI boom, has repeatedly acknowledged the risk of a bubble in recent months while maintaining his optimism for the technology. "Are we in a phase where investors as a whole are overexcited about AI? In my opinion, yes," he said in

August. "Is AI the most important thing to happen in a very long time? My opinion is also yes."



Sam Altman during a media tour of the Stargate AI data center in Abilene, Texas, on Sept. 23.

Photographer: Kyle Grillot/Bloomberg

Altman and other tech leaders continue to express confidence in the roadmap toward AGI, with some suggesting it could be closer than skeptics think. "Developing superintelligence is now in sight," Zuckerberg [wrote](#) in July, referencing an even more powerful form of AI that his company is aiming for. In the near term, some AI developers also say they need to drastically ramp up computing capacity to support the rapid adoption of their services. Altman, in particular, has stressed repeatedly that OpenAI remains constrained in computing resources as hundreds of millions of people around the world use its services to converse with ChatGPT, write code and generate images and videos.

OpenAI and Anthropic have also released their own research and evaluations that indicate AI systems are having a meaningful impact on work tasks, in contrast to the more damning reports from outside academic institutions. An Anthropic report released in September found that [roughly three quarters](#) of companies are using Claude to automate work. The same month, OpenAI released a new evaluation system called GDPval that measures the performance of AI models across dozens of occupations.

"We found that today's best frontier models are already approaching the quality of work produced by industry experts," OpenAI said in a [blog post](#). "Especially on the subset of tasks where models are particularly strong, we expect that giving a task to a model before trying it

with a human would save time and money.”

So how much will customers eventually be willing to pay for these services? The hope among developers is that, as AI models improve and field more complex tasks on users’ behalf, they will be able to convince businesses and individuals to spend far more to access the technology.

“I want the door open to everything,” OpenAI Chief Financial Officer [Sarah Friar said](#) in late 2024, when asked about a report that the company has discussed a \$2,000 monthly subscription for its AI products. “If it’s helping me move about the world with literally a Ph.D.-level assistant for anything that I’m doing, there are certainly cases where that would make all the sense in the world.”

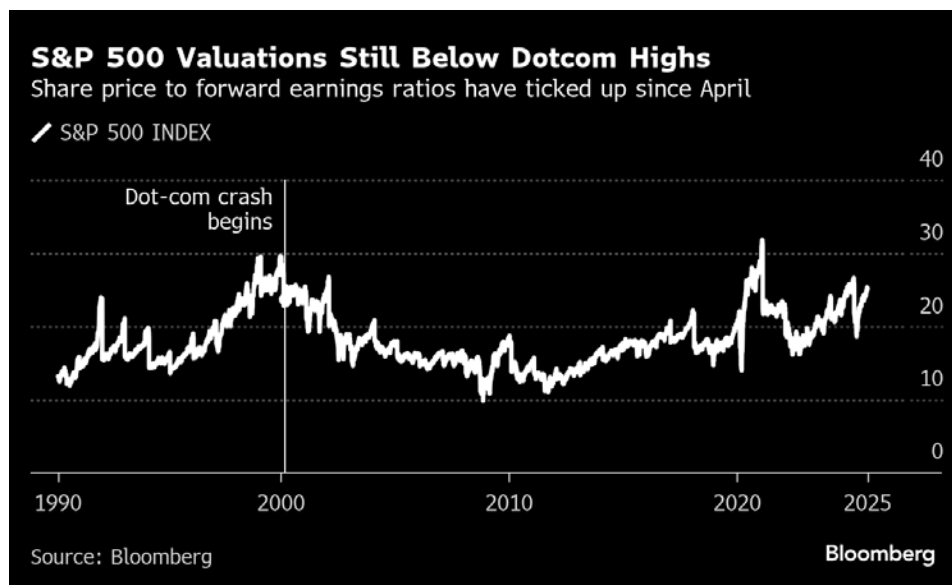
In September, Zuckerberg said an AI bubble is “quite possible,” but stressed that his bigger concern is [not spending enough](#) to meet the opportunity. “If we end up misspending a couple of hundred billion dollars, I think that that is going to be very unfortunate, obviously,” he said in a podcast interview. “But what I’d say is I actually think the risk is higher on the other side.”

What makes a market bubble?

Bubbles are economic cycles defined by a swift increase in market values to levels that aren’t supported by the underlying fundamentals. They’re usually followed by a sharp selloff — the so-called pop.

A bubble often begins when investors get swept up in a speculative frenzy — over a new technology or other market opportunity — and pile in for fear of missing out on further gains. American economist [Hyman Minsky](#) identified five stages of a market bubble: displacement, boom, euphoria, profit-taking and panic.

Bubbles are sometimes difficult to spot because market prices can become dislocated from real-world values for many reasons, and a sharp price drop isn’t always inevitable. And, because a crash is part of a bubble cycle, they can be hard to pinpoint until after the fact.



Generally, bubbles pop when investors realize that the lofty expectations they had were too high. This usually follows a period of over-exuberance that tips into mania, when everyone is buying into the trend at the very top. What comes next is usually a slow, prolonged selloff where company earnings start to suffer, or a singular event that changes the long-term view, sending investors dashing for the exits.

There was some fear that an AI bubble had already popped in late January, when China's DeepSeek upended the market with the release of a competitive AI model purportedly built at a fraction of the amount that top US developers spend. DeepSeek's viral success triggered a trillion-dollar selloff of technology shares. Nvidia, a bellwether AI stock, slumped 17% in one day.

The DeepSeek episode underscored the risks of investing heavily in AI. But Silicon Valley remained largely undeterred. In the months that followed, tech companies redoubled their costly AI spending plans, and investors resumed cheering on these bets. Nvidia shares charged back from an April low to fresh records. It was worth more than \$4 trillion by the end of September, making it the most valuable company in the world.

So is this 1999 all over again?

As with today's AI boom, the companies at the center of the dot-com frenzy drew in vast amounts of investor capital, often using questionable metrics such as website traffic rather than their actual ability to turn a profit. There were many flawed business models and exaggerated revenue projections. Telecommunication companies raced to build fiber-optic networks only to find the demand wasn't there to pay for them. When it all crashed in 2001, many companies were liquidated, others absorbed by healthier rivals at knocked-down prices.

Echoes of the dot-com era can be found in AI's massive infrastructure build-out, sky-high valuations and showy displays of wealth. Venture capital investors have been [courting AI startups](#) with private jets, box seats and big checks. Many AI startups tout their recurring revenue as a key metric for growth, but there are doubts as to how sustainable or predictable those projections are, particularly for younger businesses. Some AI firms are completing multiple mammoth fundraisings in a single year. Not all will necessarily flourish.

"I think there's a lot of parallels to the internet bubble," [said Bret Taylor](#), OpenAI's chairman and the CEO of Sierra, an AI startup [valued at \\$10 billion](#). Like the dot-com era, a number of high-flying companies will almost certainly go bust. But in Taylor's telling, there will also be large businesses that emerge and thrive over the long term, just as happened with [Amazon.com Inc.](#) and [Alphabet Inc.](#)'s Google in the late 90s.

"It is both true that AI will transform the economy, and I think it will, like the internet, create huge amounts of economic value in the future," Taylor said. "I think we're also in a bubble, and a lot of people will lose a lot of money."



Bret Taylor

Photographer: David Paul Morris/Bloomberg

Amazon Chairman [Jeff Bezos](#) said the spending on AI resembles an ["industrial bubble"](#) akin to the biotech bubble of the 1990s, but he still expects it to improve the productivity of "every company in the world."

There are also some key differences to the dot-com boom that market watchers point out, the first being the broad health and stability of the biggest businesses that are at the forefront of the trend. Most of the “Magnificent Seven” group of US tech companies are long-established giants that make up much of the earnings growth in the S&P 500 Index. These firms have huge revenue streams and are sitting on large stockpiles of cash.

Despite the skepticism, AI adoption has also proceeded at a rapid clip. OpenAI’s ChatGPT has about 700 million weekly users, making it one of the fastest growing consumer products in history. Top AI developers, including OpenAI and Anthropic, have also seen remarkably strong sales growth. OpenAI previously forecast revenue would more than triple in 2025 to \$12.7 billion. While the company does not expect to be cash-flow positive until near the end of this decade, a recent deal to help employees sell shares gave it an implied valuation of \$500 billion — making it the world’s [most valuable company](#) never to have turned a profit.

(Adds Bezos comment in third from last paragraph)

--With assistance from [Neil Campling](#).

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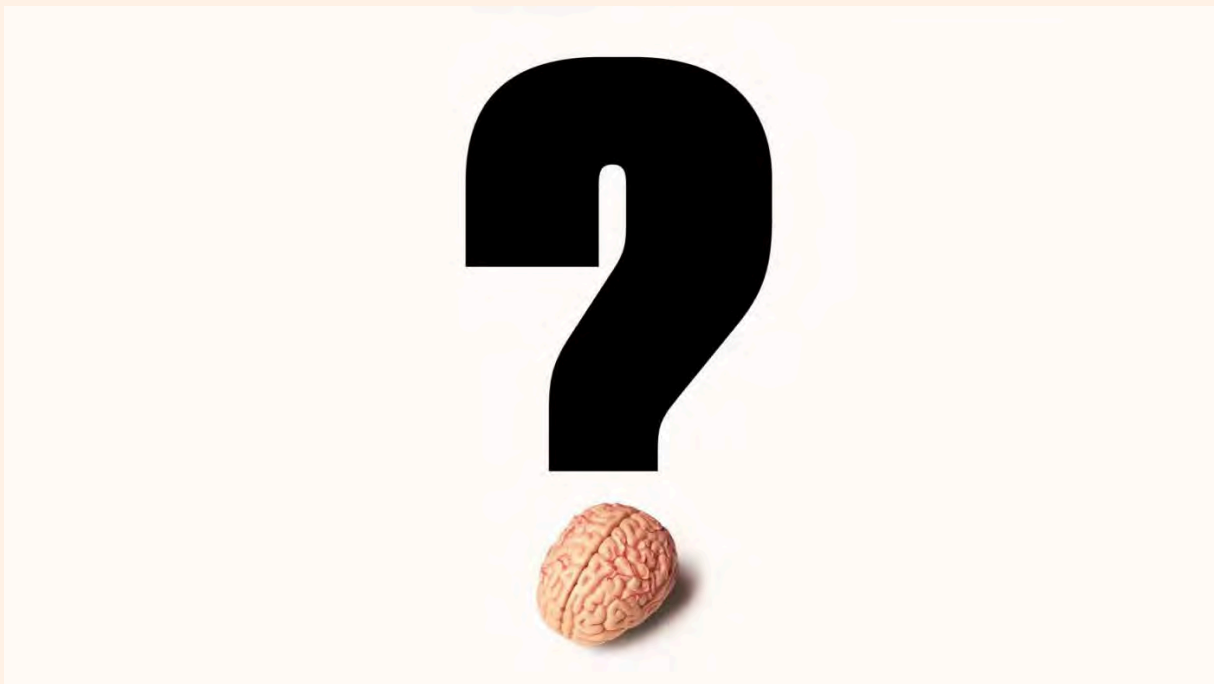
Matt Turner

Opinion **Technology sector**

The flawed Silicon Valley consensus on AI

Serious questions remain about what will happen if we do — and don't — replicate human intelligence

JOHN THORNHILL



© Carl Godfrey

John Thornhill

Published 3 HOURS AGO



Oscar Wilde once defined fox hunting as the unspeakable in pursuit of the uneatable. Were he alive today he might describe the quest for artificial general intelligence as the unfathomable in pursuit of the indefinable.

Many hundreds of billions of dollars are currently being pumped into building generative AI models; it's a race to achieve human-level intelligence. But not even the developers fully understand how their models work or agree exactly what AGI means.

Instead of hyperventilating about AI ushering in a new era of abundance, wouldn't it be better to drop the rhetoric and build AI systems for more defined, realisable goals? That was certainly the view at a conference hosted by the University of Southampton and the Royal Society last week. "We should stop asking: is the machine intelligent? And ask: what exactly does the machine do?" said Shannon Vallor, a professor at the University of Edinburgh. She has a point.

The term AGI was first popularised in computing in the 2000s to describe how AI systems might one day perform general-purpose, human-level reasoning (as opposed to narrow AI that excels at one thing). Since then, it has become the holy grail for the industry, used to justify a colossal spending spree.

The leading AI research labs, OpenAI and Google DeepMind, both have an explicit corporate mission to achieve AGI, albeit with varying definitions. OpenAI's is: "a highly autonomous system that outperforms humans at most economically valuable work". But even Sam Altman, its chief executive, who has signed [\\$1tn in deals this year](#) to boost computing power, [concedes](#) this is not a "super-useful term".

Even if we accept its use case, there remain two concerns. What happens if we achieve AGI. And what happens if we don't.

The Silicon Valley consensus, as it has been called, suggests that AGI, however defined, is within reach this decade. That goal is being pursued with missionary zeal by the leading AI labs in the belief that it will unleash massive productivity gains and generate huge returns for investors.

Indeed, some west coast tech leaders have founded [a \\$100mn political action committee](#) to support "pro-AI" candidates in the 2026 midterm elections and squash unhelpful regulation. They point to the [astonishingly rapid adoption of AI-powered chatbots](#) and scoff at the doomers, or decelerationists, who want to slow progress and hobble the US in its technological race with China.

But AGI is not going to be an instant, miraculous blessing. OpenAI itself acknowledges that it would also come "with serious risk of misuse, drastic accidents, and societal disruption". This helps explain why [insurers are now balking](#) at providing comprehensive cover to the industry.

Some experts, such as Eliezer Yudkowsky and Nate Soares, go way further, warning that a rogue superintelligence could pose an existential threat to humanity. The title of their recent book, *If Anyone Builds It, Everyone Dies*, pretty much sums up the argument.

Yet not everyone is convinced that AGI's arrival is imminent. Sceptics doubt that the industry's favourite party trick of scaling computing power to produce smarter large language models will take us there. "We're still a few conceptual breakthroughs short of AGI," says one top researcher.

In a survey conducted by [the Association for the Advancement of Artificial Intelligence](#) this year, 76 per cent of the 475 (mostly academic) respondents thought it unlikely or very unlikely that current approaches would yield AGI. That could be a problem: the US stock market appears to rest on [the opposite conviction](#).

Many of the attendees at last week's event contested the Silicon Valley framing of AI. The world was not on a predestined technological trajectory with only one outcome. Other approaches were worth pursuing rather than betting so much on the deep learning behind generative AI models. AI companies could not just shrug off the problems they were creating today with promises of a more glorious tomorrow. The rest of society should resist being treated "as passengers at the back of a bus" hoping AI takes us somewhere nice, said Vallor.

The 85-year-old computer pioneer Alan Kay, a revered figure in the industry, offered some perspective. He argued that AI could undoubtedly bring real benefits. Indeed, it had helped detect his cancer in an MRI scan. "AI is a lifesaver," he said.

However, Kay worried that humans are easily fooled and that AI companies cannot always explain how their models produce the results. Software engineers, like aeroplane designers or bridge builders, he said, had a duty of care to ensure their systems did not cause harm or fail. The main theme of this century should be safety.

The best way forward would be to harness humanity's collective intelligence, steadily amassed over generations. "We already have artificial superhuman intelligence," Kay said. "It is science." AI has already produced some exquisite breakthroughs, such as Google DeepMind's AlphaFold model that predicted the structures of over 200mn proteins — winning the researchers a Nobel.

Kay highlighted his particular concerns about the vulnerabilities of AI-generated code. Citing his fellow computer scientist Butler Lampson, he said: "Start the genies off in bottles and keep them there." That's not a bad adage for our AI age.

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News from Bloomberg Terminal

Nvidia to Invest in Musk's xAI as Part of \$20 Billion Funding

Oct. 7, 2025, 4:11 PM PDT

Summary by Bloomberg AI

AI Generated



- xAI is raising more financing than initially planned to bring its funding round to \$20 billion, including an equity investment from Nvidia Corp.
- The financing will be tied to the Nvidia graphics processing units that xAI plans to use in Colossus 2, its largest data center site.
- Nvidia is investing as much as \$2 billion in the equity portion of the deal, a strategy to help accelerate its customers' AI investments.

By Carmen Arroyo and Ed Ludlow

(Bloomberg) --

The Elon Musk-backed artificial intelligence startup xAI is raising more financing than initially planned – including an equity investment from Nvidia Corp. – to bring its ongoing funding round to \$20 billion, according to people with knowledge of the matter.

The financing, which includes equity and debt, will be tied to the Nvidia graphics processing units that xAI plans to use in Colossus 2, said the people, who asked not to be identified because the information is private. That's the name of its largest data center site, which is located in Memphis.

Nvidia is investing as much as \$2 billion in the equity portion of the deal, the people said, a strategy by the chipmaker that helps accelerate its customers' AI investments. XAI's fundraising effort, previously reported by Bloomberg at half the amount, may continue to grow.

A representative for Nvidia declined to comment. A spokesperson for xAI didn't respond to a request for comment. Musk posted on X in September that the company was "not raising any capital right now."

Read More: OpenAI, Nvidia Fuel \$1 Trillion AI Market With Circular Deals

The massive capital raise is just the latest for the AI industry, which has seen major tech companies invest tens of billions at a frenetic pace in order to build the infrastructure necessary to develop top AI models. Earlier this week, OpenAI announced a deal to use Advanced Micro Devices Inc. chips over multiple years. Meta Platforms Inc. has inked several multibillion-dollar deals in the past few months, including a \$29 billion financing package for data centers. Oracle Corp. also raised a \$38 billion debt package for its infrastructure.

xAI's financing would be split between about \$7.5 billion of equity and as much as \$12.5 billion of debt, the people said, and structured via a special purpose vehicle. The SPV will be used to buy Nvidia processors, and Musk's artificial intelligence startup would then rent the chips out for five years, allowing Wall Street financiers to recoup their investment. The unique deal structure, with the debt backed by the GPUs as opposed to the company, could provide a playbook for tech firms looking to decrease debt exposure.

Nvidia's leaders have said they will use the company's growing financial strength to speed up the deployment of artificial intelligence across the industry. In September, Chief Financial Officer Colette Kress told the audience at a Goldman Sachs conference that Nvidia will repurchase stock and do strategic acquisitions where possible, but the priority is on using cash to help other companies use AI more quickly.

Apollo Global Management is participating in the debt raise, as is Diameter Capital Partners, the people said. Valor Capital is leading the equity portion of the deal, Bloomberg previously reported. Apollo is also investing.

A Diameter spokesperson declined to comment, while representatives for Apollo and Valor didn't respond to requests for comment.

Data center capacity is seen as a necessity for developing top AI models, though some have debated how much the computing power can improve the technology. In the US bond markets alone, tech companies have raised about \$157 billion this year – up 70% from last year.

Musk's xAI is especially eager for capital. The firm, which already raised about \$10 billion of corporate equity and debt earlier this year, still needs billions more given the company has been burning through \$1 billion per month, Bloomberg reported. Musk has also tapped his empire of companies, including SpaceX, for investment into xAI. Later this year, Tesla Inc. investors will vote on whether the electric carmaker should invest in xAI as well.

Musk has framed AI as the foundation for many of his futuristic products, including self-driving cars and fully autonomous robots.

--With assistance from Ian King.

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Musk's Cheap Teslas Are the Wrong Kind of Cheap

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Liam Denning

October 7, 2025

Competing on price.

Photographer: Prakash Singh/Bloomberg

Summary by Bloomberg AI

- Tesla Inc. has unveiled two cheaper electric vehicles, which are standard iterations of the Models Y and 3, but they may not be enough to turn around Tesla's EV sales.
- The new vehicles have fewer features, including shorter range, fewer speakers and touchscreens, and manual steering, and are priced closer to \$40,000 than \$30,000 after price cuts of around \$5,000.
- The release of these new vehicles can be seen as a sign of the company competing on price in a market under siege from Washington, rather than innovating and moving forward with new technology.

By [Liam Denning](#)

(Bloomberg Opinion) --



Competing on price.

Photographer: Prakash Singh/Bloomberg

This has not been a vintage year for [Tesla Inc.](#) product launches. This summer, it launched a long-delayed robotaxi service that came with [a free human](#). Now, it has unveiled two long-awaited cheaper electric vehicles that are most definitely not the game-changers once promised. But are they enough to do the job? It depends on what that job is.

If the job is to turn around Tesla's EV sales, these "standard" iterations of the Models Y and 3 aren't likely to be up to the task. Yes, they are cheaper than the prior base models before subsidies. But the cuts of around \$5,000 are less than the lost \$7,500 tax credit and leaves them closer to \$40,000 than \$30,000. More importantly, the price cuts aren't a reflection of some game-changing manufacturing process. That plan was shoved aside in favor of boosting utilization on Tesla's existing assembly lines. Instead, Tesla's famously spare interiors will get sparer in these versions, as a number of features are removed or downgraded: shorter range, fewer speakers and touchscreens, textile seats, manual steering, fewer color choices and so on.

There's nothing wrong per se with a less whizz-bang trim on a vehicle aimed at enticing more customers. That's especially so when the political party your chief executive backed has yanked away the tax credit buoying sales and rivals are releasing a range of competing EVs into a domestic market poised to shrink. The US needs cheaper vehicles.

But this is Tesla, pioneer of EVs, now releasing lower-content versions of models that debuted before the pandemic. Contrast that with Ford Motor Co.'s project to reimagine the EV assembly line for a brand-new \$30,000 truck — execution pending, of course — or China's ongoing redefinition of what's possible. Even Tesla's nomenclature, "standard", sounds half-hearted for the company that forced terms like "gigafactory" and "robotaxi" into the vernacular.

In a sense, rather than promising to turn around Tesla's EV sales in the US, these new vehicles can just as easily be seen as totemic of where the company and the sector now find themselves: Namely, competing on price in a market under siege from Washington. Tesla's last genuinely new model, the Cybertruck, was touted by Elon Musk as "the future" but has sold slower than the Ford Edsel. It at least looks, you know, different. The models — or rather, trims, since they aren't new vehicles — unveiled Tuesday are about taking away, not adding. They reek of a company holding the line, not moving it forward.

To be fair, Musk has been shifting Tesla's strategic focus away from the core EV business for a while, although it still generates most of the company's revenue and profits. After ditching the really cheap EV project, Tesla pivoted hard to robotaxis and robots. Hopes for those now account for the vast majority of Tesla's roughly \$1.5 trillion valuation and offer the board's primary justification for Musk's proposed trillion-dollar pay package.

The latter will be voted on in 30 days, and there has been a steady drumbeat of positive Tesla news since the shareholder proxy containing the compensation vote came out. This includes Musk [buying a nominal amount of shares](#), pulled-forward [third quarter EV sales](#), the first big update of the Full Self Driving software since 2024, and now these new trims — despite signaling enervation rather than innovation. It is here that Tesla's latest additions may do the job even if they don't light up the forecourt.

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- China's EV Boom Is [Keeping Its Steel Mills Dirty](#): David Fickling
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Tesla's cheaper Model Y faces crowded field in Europe

 [reuters.com/business/autos-transportation/teslas-cheaper-model-y-faces-crowded-field-europe-2025-10-08](https://www.reuters.com/business/autos-transportation/teslas-cheaper-model-y-faces-crowded-field-europe-2025-10-08)

Alessandro Parodi

October 8, 2025

Tesla Motors' Model Y Standard car is seen in this handout picture released by Tesla Motors on October 7, 2025. Tesla Motors/Handout via REUTERS [Purchase Licensing Rights, opens new tab](#)

- Tesla faces competition from cheaper European, Chinese EVs
- More than 25 new electric models to launch in Europe next year
- Tesla trying to reverse steep market-share losses in Europe

Oct 8 (Reuters) - Tesla's [\(TSLA.O\), opens new tab](#) lower-priced versions of its staple Model Y SUV and Model 3 sedan face an uphill battle in the region where Elon Musk's company arguably needs help the most: Europe.

Unveiled on Tuesday, the [\\$39,990 Model Y Standard and \\$36,990 Model 3](#) will join a European market already crowded with budget EVs, with European and Chinese brands offering more than a dozen models below \$30,000 - and more to come.

That's in contrast to the United States, where only one EV, the Nissan Leaf, falls into that price range.

"The competition in this market is fierce," said Sam Fiorani, vice president at research firm AutoForecast Solutions, adding the array of EVs in Europe priced below Tesla's cheaper Model Y and Model 3 could hamper their prospects.

LESS COMPETITION IN US, BUT LESS OPPORTUNITY

Tesla, which argues that its sometimes higher prices are justified by superior quality and features, has suffered an [almost halving](#) in its European market share to about 1.5% since 2023, when the Model Y was the region's best-selling car.

Analysts attribute the decline partly to an ageing product lineup and to a backlash by some consumers against Musk for his support of far-right politicians.

Tesla hopes the cheaper cars will revive sales after global deliveries [fell in 2024](#) for the first time and are forecast to drop another 10% this year, according to Visible Alpha estimates. In the United States, the Model Y Standard's sub-\$40,000 price tag will match or undercut rivals including Hyundai Motor's [\(005380.KS\), opens new tab](#) Ioniq 5 SUV, General Motors' [\(GM.N\), opens new tab](#) Chevrolet Blazer, and Volkswagen's [\(VOWG.DE\), opens new tab](#) ID.4.

Still, the U.S. EV market is expected to contract in coming quarters following the September 30 expiry of a [longstanding \\$7,500 tax credit](#) for buyers. Even if Tesla's cheaper cars can claw back some market share, [Musk has said](#) it could face a "few rough quarters" if overall U.S. demand stalls, as expected.

In China, Tesla's new releases remain significantly more expensive than domestic rivals such as BYD Co's [\(002594.SZ\)](#), [opens new tab](#) Yuan Plus and SAIC-GM-Wuling's mini EVs, which dominate [the world's biggest EV market](#).

DOZENS OF EVS DESCEND ON EUROPEAN SHOWROOMS

In Europe, Tesla is up against many cheaper rivals, including the BYD Dolphin Surf that starts at 23,000 euros (\$26,830), the Dacia Spring at 16,800 euros and the Citroen e-C3 SUV at 23,300 euros. And more are coming.

Last month, Volkswagen said it planned an [ID.Polo compact hatchback](#) EV for under 25,000 euros next year.

However, Pedro Pacheco, vice president of research at consultancy Gartner, said the Model Y Standard would probably be cheaper than BYD's best-selling Seal plug-in hybrid SUV.

Tesla [halted sales declines](#) in some European markets in September after refreshing its Model Y with interior and exterior upgrades, helping deliver [record third-quarter global deliveries](#). Still, analysts say its limited lineup is ageing. The Model Y, launched in 2020, remains its last mass-market new model.

CHEAPER MODEL Y 'ISN'T GOING TO BREAK THE MARKET OPEN'

Schmidt Automotive analyst Matthias Schmidt said the cheaper Teslas should "add more momentum" from next year, but warned that Europe's EV market is about to get much more crowded.

AutoForecast Solutions projects more than 25 new EVs launching in Europe next year, with roughly a dozen more by 2027.

Fiorani forecast the Model Y Standard could sustain Tesla's European sales based on current pricing information.

But "it isn't going to break the market open in a way that a 30,000 euro vehicle would," he said.

Additional reporting by Abhirup Roy. Editing by Mike Colias, Nick Carey and Mark Potter

Securities

Trump Memecoin Issuer Is Planning a Digital Asset Treasury Firm

Oct. 7, 2025, 6:04 PM PDT

The startup that issued Donald Trump's memecoin several days before his second presidential inauguration is working to raise at least \$200 million to create a digital-asset treasury company to accumulate the struggling token, according to people familiar with the situation.

Fight Fight Fight LLC, the firm run by long-time Trump friend and promoter **Bill Zanker**, is leading the effort, said the people, who declined to be named because the fundraising hasn't yet been announced. Ambitions are running high, with the targeted range of the funding set for as much as \$1 billion, the people said. Still, the deal is in the works, and may not happen.

Fight Fight Fight didn't immediately return requests for comment. The White house didn't return a request for comment.

The so-called DAT for the memecoin is the latest effort by Zanker to boost the price, which nosedived soon after its launch and has continued to slump. The Trump coin trades at around \$8, down from a high of \$44 in January, according to data compiled by CoinGecko. In May, Trump attended a dinner with top holders of his memecoin. In the run-up to the dinner, Fight Fight Fight kept a scoreboard of top holders who were going to make it to the dinner, and promoted the contest on social media.

Over the summer, Zanker's plans for a Trump "wallet," which would have let users trade and hold the memecoin and other digital assets, got derailed following a spat with another Trump-linked crypto business, World Liberty Financial. For its part, World Liberty's WLFI token is already being accumulated by ALT5 Sigma, a separate digital-asset treasury company.

More than 80 companies focused on stockpiling various coins have been launched this year, according to researcher PitchBook. Many of them saw their shares decline after an initial spike.

Most of the Trump memecoin's token supply — which largely belongs to entities associated with Trump — remains locked, or unavailable for trading, according to researcher Messari. About 35% of the supply is currently unlocked, giving the token a circulating market value of about \$1.5 billion, according to Messari. But the supply is constantly growing as more coins are freed up for trading.

There will eventually be 1 billion tokens, with 800 million originally locked and held by Trump-affiliated entities. Crypto entrepreneur Justin Sun — who is also an adviser to World Liberty — is a large holder of the token as well. Sun attended the Trump memecoin dinner in May, where he was presented with a watch.

Over the past year, the Trump family has dramatically expanded its reach in the crypto industry, with forays including a Bitcoin mining venture, a stablecoin, a Bitcoin treasury and crypto exchange-traded funds.

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3rd Circ. Won't Rehear J&J Investor Cert. Appeal

By **Emlyn Cameron**

Law360 (October 7, 2025, 6:02 PM EDT) -- The U.S. Court of Appeals for the Third Circuit declined Tuesday to reconsider backing a New Jersey federal judge's class certification order in a Johnson & Johnson investor action alleging the company artificially inflated its stock price by failing to disclose cancer risks.

In **an order** written by U.S. Circuit Judge Patty Shwartz, the appellate court denied Johnson & Johnson's request for en banc rehearing. Johnson & Johnson **had called** for a full panel rehearing of a July decision **that upheld** certification for a class of investors who allege that the company failed to disclose cancer risks associated with its talcum powder products.

"No judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied," the order said.

A company representative left open the possibility of a further appeal.

"Johnson & Johnson made truthful and fulsome statements regarding the safety of its talc powder products, will continue to vigorously litigate cases that challenge those statements and are evaluating whether to appeal the panel's decision to the Supreme Court," Erik Haas, worldwide vice president of litigation at Johnson & Johnson told Law360 Tuesday.

The investors argue that the company's stock would have traded at a lower price had Johnson & Johnson been forthright about the cancer risks. They claim they lost money as the stock price fell when those risks were revealed through product liability lawsuits and news reports in 2017 and 2018.

U.S. District Judge Zahid N. Quraishi granted class certification in 2023 and the Third Circuit upheld that ruling this year, becoming only the second federal appellate court to interpret the U.S. Supreme Court's 2021 ruling in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System.

In Goldman, the high court ordered lower courts to consider whether alleged misrepresentations made by a corporation were too generic to have an impact on a stock's price, particularly in so-called inflation-maintenance cases like the one before the Third Circuit. The justices also said courts should take into consideration whether there was a "mismatch between the contents" of the alleged misstatement and the corrective disclosure that supposedly revealed that misstatement.

Because Johnson & Johnson's alleged misrepresentations included statements about the safety and asbestos-free nature of its talc products, the Third Circuit ruled that the class passed the Goldman test.

Johnson & Johnson's request to review the decision was echoed by the U.S. Chamber of Commerce and other business organizations. A group of former U.S. Securities and Exchange Commission officials and law professors, including former SEC Commissioner Joseph Grundfest and two former SEC general counsel, also argued for a full circuit rehearing. The Washington Legal Foundation, which says it advocates for free markets and limited government, filed a separate brief in support of Johnson & Johnson.

The order noted 12 judges as present, and identified three who would have granted rehearing en banc. The present judges were U.S. Circuit Judges Michael A. Chagares, Thomas M. Hardiman, Patty Shwartz, Cheryl Ann Krause, L. Felipe Restrepo, Stephanos Bibas, David J. Porter, Paul B. Matey,

Peter J. Phipps, Arianna J. Freeman, Cindy K. Chung and Emil J. Bove, per the order.

The judges who would've granted rehearing were Judges Krause, Bibas and Chung, the order said.

A representative for the investors declined to comment.

The investors are represented by lead counsel Joseph Daley, Robert Henssler, Jr., and Harini Raghupathi of Robbins Geller Rudman & Dowd LLP, and James Cecchi of Carella Byrne Cecchi Olstein Brody & Agnello.

Johnson & Johnson and the other defendant appellants are represented by Neil Conrad, Kwaku A. Akowuah, Kristen Seeger and John Skakun III of Sidley Austin LLP.

The case is San Diego County Employees Retirement Association et al. v. Johnson & Johnson et al., case number 24-1409, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Jessica Corso and Katryna Perera. Editing by Alex Hubbard.

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Emisphere Shareholder Wants Out Of \$32M Class Settlement

By **Katryna Perera**

Law360 (October 7, 2025, 9:25 PM EDT) -- A major shareholder of Emisphere Technologies has objected to a proposed \$32 million settlement in a suit challenging the \$1.8 billion sale of the biotechnology company to Novo Nordisk A/S, arguing that the terms of the deal are too low and unfairly benefit Emisphere's controlling shareholder.

IsZo Capital LP filed an **objection** on Monday in Delaware's Court of Chancery to the proposed settlement, seeking an opt-out and saying it can get a better recovery on its own, outside the class action.

Litigation related to Emisphere's December 2020 sale to Novo Nordisk kicked off almost immediately after the deal. The current **consolidated action** targets Emisphere's controlling shareholder, MHR Fund Management LLC, its affiliates and Emisphere directors and officers allegedly beholden to MHR.

The suit claims that MHR, led by founder Mark Rachesky, captured control of Emisphere through predatory "vulture" lending dating to 2005. MHR's alleged maneuvering gave it an out-of-proportion, \$450 million share of the eventual \$1.8 billion merger price that failed to press independent estimates valuing the business at \$2.9 billion to \$3.5 billion, according to court filings.

MHR's \$450 million cut resulted from an earlier, allegedly unfair Emisphere agreement to allocate one-sixth of the royalties from its chief asset — a novel method that allowed oral delivery of drugs that were previously only administered by injection, according to court filings.

The suit claims that a "number of irrational assumptions" injected into negotiations by MHR interests — including allegedly unsupported risks to Emisphere's intellectual property — drove the sale price of Emisphere to Novo Nordisk.

IsZo's Monday opposition stated that the litigation was supposed to challenge both the value received by the unaffiliated stockholders through the sale — known as the total consideration claims — and the portion of Novo Nordisk's purchase price that was "funneled" directly to MHR, also referred to in court filings as the allocation claims.

However, the lead plaintiffs have now asked the court to approve a settlement that "capitulates" on the total consideration claims, is "facially inadequate" in relation to the claims regarding the purchase price, and "leaves potentially massive damages on the table," according to the opposition.

"The consideration — just \$32 million, or about [80 cents] per class share — is indefensible. The potential liability on the allocation claims remains strong," the opposition states. "Allowing defendants to escape with a \$32 million payment (much of which is earmarked for expenses and legal fees) would make no sense even in the absence of the total consideration claims."

IsZo says that, as the single largest unaffiliated stockholder of Emisphere, it held roughly 8 million shares and suffered at least \$73 million as a result of the allegedly rushed sale. It argues that, under the terms of the proposed settlement, it will only get approximately \$6 million in recovery, not taking into account the deduction of counsel fees and litigation costs.

"Plaintiffs' counsel is asking that IsZo alone pay approximately \$1.64 million of legal fees to plaintiffs' counsel, leaving IsZo only \$4.44 million, which is a mere 6.1% of the damages that Emisphere's own

financial advisers' analysis compels, even ignoring the potential for the capture of massive growth had defendants not insisted on closing a deal in 2020 in accordance with their own demands," the opposition said.

IsZo argues that the "difference between an inadequate settlement and a meaningful recovery is more than theoretical," since its potential recovery could be in the hundreds or millions of dollars.

The shareholder argued that denying it the ability to protect its own interests "would bind it to an outcome negotiated by stockholders with much smaller stakes." IsZo also expressed concern at the plaintiffs' shift from seeking the standard 20% to 25% range for counsel fees in settlements to asking for 27% in fees.

"Plaintiffs' willingness to accommodate their counsels' request is inexplicable and calls into question their decision to accede to the settlement," the opposition states. "To deny IsZo an opt-out would sacrifice equity for expediency, eroding both investor rights and confidence in the Delaware class action framework."

Counsel for IsZo declined to comment on Tuesday, and representatives for the parties did not immediately respond to requests for comment.

IsZo is represented by Anthony A. Rickey of Margrave Law LLC and Brant D. Kuehn of Greenspoon Marder LLP.

The plaintiffs are represented by Christopher H. Lyons, Tayler D. Bolton and Randall J. Baron of Robbins Geller Rudman & Dowd LLP, Joel Friedlander, Jeffrey M. Gorris, Christopher M. Foulds and David Hahn of Friedlander & Gorris PA, and by Brett M. Middleton of Johnson Fistel LLP.

MHR and its affiliates are represented by Blake Rohrbacher, Andrew L. Milam and Sandy Xu of Richards Layton & Finger PA, and Andrew J. Rossman, Jonathan B. Oblak, Colin E. Gillespie and Charles Sangree of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In Re Emisphere Technologies Inc. Stockholders Litigation, case number 2021-0025-NAC, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Melissa Treolo.



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Alto Neuroscience Execs Sued Over Rosy Drug Claims

By **Lauren Berg**

Law360 (October 7, 2025, 10:53 PM EDT) -- An Alto Neuroscience investor claims CEO Amit Etkin and other directors overstated the efficacy of the psychiatric biotech company's lead drug candidate for treating major depressive disorder, according to a lawsuit filed Tuesday in California federal court that alleges the company's stock price plummeted when the truth came out.

From the time of Alto's \$120 million **initial public offering** in February 2024, the company's officers issued false and misleading statements about its drug candidate, ALTO-100, by overstating its commercial prospects and its efficacy for the treatment of mood disorders, according to the derivative **complaint** filed by Charles Knipper.

But following the drug's Phase 2b clinical trial for the treatment of major depressive disorder, or MDD, the truth emerged that ALTO-100 "did not meet its primary endpoint, assessed by a change from baseline in Montgomery-Åsberg Depression Rating Scale (MADRS), compared to placebo," the suit states.

On that news, Alto's stock price dropped almost 70%, from a close of \$14.53 per share on Oct. 22, 2024, to a close of \$4.36 per share on Oct. 23, 2024, according to the complaint.

"As a direct and proximate result of the misconduct detailed herein, the company has incurred significant financial losses, including the cost of defending itself and, potentially, incurring class-wide damages in the securities class action, as well as additional losses in market capitalization, reputational harm and the loss of goodwill," Knipper said.

Alto and its officers are already facing a **proposed securities class action** over the stock drop. That July California federal suit alleges the company "touted ALTO-100 as 'novel small molecule that has shown evidence of a pro-neurogenesis/neuroplasticity mechanism of action'" and that "the company 'believes binds a receptor not targeted by other [central nervous system] therapeutics, which would make it first-in-class if approved.'"

The company's offering documents "contained untrue statements of material fact or omitted to state other facts necessary to make the statements made not misleading," the shareholder suit states.

For instance, the documents failed to disclose that ALTO-100 "was less effective in treating MDD than defendants had led investors to believe," and they overstated the clinical, regulatory and commercial prospects of the drug, according to the complaint.

In his lawsuit Tuesday, Knipper claims that Alto's directors and officers need to be held accountable for these false statements and omissions that are now harming the company, including potential liability from the shareholder suit.

Knipper's suit asserts claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment, waste of corporate assets, and contribution to violations of the Securities Exchange Act.

It seeks damages, litigation costs, attorney fees, and an order directing Alto to improve its corporate governance by strengthening the board's supervision of operations, strengthening the company's internal reporting and financial disclosure controls, and implementing procedures for more stockholder input into the board's policies, among other things.

Counsel for Knipper and a representative for Alto Neuroscience did not immediately respond to requests for comment Tuesday.

Knipper is represented by Gina M. Serra and Samir Aougab of Rigrodsky Law PA and Joshua H. Grabar of Grabar Law Office.

Counsel information for the defendants was not immediately available.

The instant case is Charles Knipper v. Amit Etkin et al., case number 5:25-cv-08555, in the U.S. District Court for the Northern District of California. The securities class action is Nathan Feldman v. Alto Neuroscience Inc. et al., case number 5:25-cv-06105, in the U.S. District Court for the Northern District of California.

--Additional reporting by Yeji Jesse Lee. Editing by Michael Watanabe.

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Biogen Says Investors Can't Expand Alzheimer's Drug Suit

By **Sydney Price**

Law360 (October 7, 2025, 8:54 PM EDT) -- Biogen Inc. said a class of investors suing over alleged misleading statements in connection with the rollout of the company's Alzheimer's drug should not be allowed to needlessly delay resolution by filing an amended complaint expanding the class period and adding new legal theories and claims.

In two motions filed Monday, Biogen said the shareholders' request to expand the class period from 35 days to 94 days in a third amended complaint — which would also include more challenged statements — would require reopening discovery. The parties must be trial ready by April 2026, and the plaintiffs' requests would unfairly prejudice Biogen, the company argued.

"Even if additional discovery was not required (it is) or was merely incremental (it is not), amendment at this late stage is still unduly prejudicial because the addition of two different categories of challenged statements, each premised on different legal theories, would require defendants to adjust their litigation strategy on the eve of dispositive motions and just prior to trial," Biogen said in an **opposition motion**.

Additionally, Biogen argued that amending the suit would be futile since the court already twice dismissed the plaintiffs' attempts to challenge statements Biogen allegedly made concerning its discussions with third-party payors.

The suit, which was **refiled in 2024** after dismissal, alleges Biogen made false and misleading statements related to the release of its Alzheimer's drug, Aduhelm. Biogen's U.S. Food and Drug Administration interactions over Aduhelm later became the subject of federal investigations and contributed to a significant portion of the medical community questioning Aduhelm's efficacy, driving provider hesitancy to prescribe it, investors said.

The investors claimed Biogen's price "skyrocketed" after Aduhelm was approved by the FDA the day before the class period began, increasing from \$286.14 per share to close at \$395.85 on June 7, 2021, a \$14.6 billion price increase in the company's market capitalization in one day.

However, at the end of the current class period, when the Centers for Medicare & Medicaid Services said it would only cover the drug for patients in hospital-sponsored clinical trials, Biogen's stock price fell to \$225 per share, according to the suit.

Biogen said on Monday that the plaintiffs' attempt to extend the class period to Sept. 9, 2021, the day Biogen allegedly made a corrective disclosure regarding Medicare reimbursement, is not supported by evidence and that the statements were clearly reflections of the company's expectations, not actual observations.

"Defendants' statements of expectation are non-actionable because they are forward-looking and thus protected under two of the three independently sufficient Private Securities Litigation Reform Act's ... safe harbor provisions," Biogen said.

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

The investors are represented by Jeffrey C. Block, Jacob A. Walker, Michael D. Gaines, Brendan Jarboe and Nathan J. Abelman of Block & Leviton LLP.

Biogen and the other defendants are represented by James R. Carroll, Michael S. Hines, Maya P. Florence and Yaw A. Anim of Skadden Arps Slate Meagher & Flom LLP.

The case is Oklahoma Firefighters Pension and Retirement System v. Biogen Inc. et al., case number 1:22-cv-10200, in the U.S. District Court for the District of Massachusetts.

--Editing by Lakshna Mehta.

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Musk Atty Alex Spiro Faces DQ Bid Ahead Of Twitter Deal Trial

By **Dorothy Atkins**

Law360 (October 7, 2025, 8:06 PM EDT) -- A certified class of former Twitter investors accusing Elon Musk of tanking the social media platform's stock during acquisition negotiations has urged a California federal judge to disqualify Musk's proposed lead trial counsel Alex Spiro before a January trial, arguing he's a "critical first-hand witness" and may testify, according to documents unsealed Monday.

In a motion filed Sept. 26 and partially unsealed Monday, the investors argue Quinn Emanuel Urquhart & Sullivan LLP partner Alex Spiro's possible direct involvement in key events surrounding the billionaire's \$44 billion acquisition of Twitter in 2022 makes him a key witness, creating a conflict under the advocate-witness rule.

The investors argue allowing Spiro to represent Musk at trial when he may also be called to the stand would create a "grave risk of jury confusion, make a mockery out of these proceedings and inflict serious prejudice on plaintiffs."

They added that even if Spiro agrees to testify, that would still create confusion, and the investors say Spiro has been almost entirely absent from the litigation, appearing only via videoconference, while his colleagues have handled the case for years.

The investors' disqualification bid is the latest development in litigation, which was **launched** in October 2022, days after Musk **agreed** to close on his original \$44 billion offer to buy social media giant Twitter Inc. after the company sued him in Delaware.

In 2023, U.S. District Judge Charles R. Breyer **trimmed** some claims from the case but ruled that the investors had plausibly alleged Musk violated securities laws with a series of tweets on May 13, 16 and 17, 2022, that said the deal was "temporarily on hold" pending details about data regarding the number of alleged fake Twitter accounts but that he was "still committed to acquisition."

Musk also stated at a conference on May 16, 2022, that fake and spam accounts make up at least 20% of Twitter's users, but investors say the statement misled the investing public to believe that Musk had received bot user data from Twitter, when in fact he had not.

In September 2024, the judge **certified** a class of investors who sold the publicly traded stock or call options, or purchased put options of Twitter Inc., from May 13 through Oct. 4, 2022. In August, both parties **filed motions for summary judgment**.

In the investors' latest motion, they argue that in recent years, Spiro and former banker Jared Birchall helped manage Musk's financial, business and legal affairs, and helped Musk obtain counsel. Musk failed to timely file reports with regulators after he acquired a 9% stake in Twitter between January and March 2022.

Spiro was Musk's business adviser and helped him organize his unsolicited pursuit of Twitter in April 2022, serving as the direct supervisor for the work Morgan Stanley and Skadden Arps Slate Meagher & Flom LLP were doing for Musk, the motion said.

The investors argued that at trial they plan to show Musk used Twitter's estimate of the number of spam accounts as a pretext to exit or renegotiate his obligations to acquire Twitter for \$54.20 per

share, and in light of his purported role as an adviser to Musk, Spiro likely has "unique and highly relevant knowledge" about those issues, the motion said.

"Plaintiffs will present evidence at trial that Musk acted with scienter because he never asked his attorneys, bankers, and/or advisors if his statements about Twitter were accurate before making them. ... Because of the evidentiary thicket and outstanding factual disputes about the events of May 13, Spiro's testimony will be critical evidence surrounding Musk's false May 13 deal-on-hold tweet," the motion said.

Further complicating matters, the investors said, Spiro was so "enmeshed" with the key events of the case that there is the "perplexing likelihood that Spiro himself will cross-examine a number of witnesses about their 2022 interactions with him."

The investors added that ultimately Spiro is a seasoned trial lawyer who narrates extensively when examining witnesses and who has his own media presence, "all of which greatly enhances the risk that he will take advantage of his skills and notoriety to cross-contaminate witness testimony and advocacy."

A hearing on the motion to disqualify is set for Oct. 31 before Judge Breyer, on the same day he is set to hear arguments on the motions for summary judgment.

Days after the investors filed their disqualification bid, on Sept. 30, Spiro asked the court to continue the hearing on the disqualification motion from Oct. 31 to Jan. 8, where there is a pretrial conference set, or to some other date after the court issues its order on the pending dispositive motions.

Spiro argued that the parties' and judge's time is better spent resolving whether a trial is even necessary, as opposed to who will try the case for Musk if there is a trial, particularly because the outcome of the pending summary judgment motions could moot or affect the court's disqualification analysis.

The investors quickly opposed Spiro's request, arguing his arguments are "backwards" and that hearing all the motions at once ahead of trial would be more efficient rather than less efficient. They also argued that if the court pushes back the hearing date, Musk will "undoubtedly" argue that it is too late to get new lead trial counsel up to speed for jury selection on Jan. 22 and trial on Jan. 26.

As of Tuesday, Judge Breyer had not yet ruled on Spiro's continuance request.

Counsel for the investors declined to comment Tuesday. Spiro didn't immediately respond to a request for comment.

The investors are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung and Caroline A. Yuen of Cotchett Pitre & McCarthy LLP and Francis A. Bottini Jr., Aaron P. Arnzen and Albert Y. Chang of Bottini & Bottini Inc.

Musk is represented by Stephen Andrew Broome, Alexander Benjamin Spiro, Jesse A. Bernstein, Jonathan E. Feder, Joseph Caldwell Sarles, Matthew Alexander Bergjans, Michael Timothy Lifrak and Stephanie Kelemen of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Giuseppe Pampena v. Elon R. Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sarah Jarvis. Editing by Drashti Mehta.



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Hagens Berman Fights Sanctions Over Thalidomide Suits

By **Emma Cueto**

Law360 (October 6, 2025, 4:40 PM EDT) -- Plaintiffs firm Hagens Berman Sobol Shapiro LLP strenuously denied claims that it should be sanctioned for filing since-dropped product liability cases, responding to a judge's show cause order by saying it spent hundreds of hours researching the legal theories it pursued before filing the cases and devoted substantial time and resources to them.

Hagens Berman on Saturday filed its 156-page **response** to an order by U.S. District Judge Paul S. Diamond that the firm show cause why the court should not adopt a special master's recommendation of sanctions. Hagens Berman said that in filing cases for plaintiffs who allegedly sustained birth injuries related to thalidomide in the early 1960s, the firm pursued in good faith a legal approach to overcoming the statute of limitations, based on updated science suggesting thalidomide injuries could be much broader than once believed.

The firm argued that attorneys should not be punished for pursuing novel theories, even if those theories do not ultimately persuade the court; that the special master had exceeded his authority by filing a wide-ranging recommendation of sanctions without first informing the firm he was considering such a thing; and that the firm has been denied due process because neither the court nor the special master has identified the specific sanctions being sought.

"Without ... the ability to craft a response tailored to the sanctions being considered, respondents are essentially taking a shot in the dark in guessing which specific sanctions may be at issue in which specific case, and for what conduct," the response said.

According to court documents, Hagens Berman began pursuing cases in 2011 against GSK, formerly known as GlaxoSmithKline PLC, on behalf of plaintiffs who alleged their birth defects were the result of morning-sickness drug thalidomide, building on work by an Australian attorney who had pursued similar cases there.

Though it knew the statute of limitations issues were "formidable," the firm said in its Saturday response, it believed it had a viable strategy, in part by arguing a "march of science" theory stating that it only recently became possible to find an expert willing to back the case due to updated research into thalidomide. Using this and other theories, such as fraudulent concealment, the firm ultimately filed cases on behalf of 52 plaintiffs.

Judge Diamond in 2014 appointed Special Master William T. Hangley to untangle discovery issues over whether the suits were time-barred and to monitor and ensure the "plaintiffs' compliance with their discovery and disclosure obligations," according to court documents. Hangley first **raised the possibility of sanctions** in December of that year.

In October 2023, Hangley submitted a report and recommendation to Judge Diamond saying managing partner Steve Berman and former partner Tyler Weaver should be sanctioned. The court **in August** overruled Hagens Berman's objection to the report and ordered the firm to show cause as to why it should not be sanctioned.

In its lengthy response, Hagens Berman took issue with Hangley's characterization of the litigation and called his report and recommendations "non-traditional in that it does not expressly distinguish or designate 'findings of fact' to which the parties could readily or effectively object." It added that Hangley's "disposition about what various lawyers did, wrote and said — and his ad hominem views

about why things were done, written and said — are interspersed throughout."

Despite Hangley's characterization, the firm said, its investigation of facts and development of legal theories were reasonable "under any fair evaluation." Attorneys devoted more than 700 hours of work in the six-month period leading up to the first complaint, according to the response, and the firm ultimately devoted more than 20,000 hours and \$850,000 in expenses to pursuing the claims.

"Although [Hangley] opines that respondents rushed to file cases in order to beat other firms to the courthouse, and that they sought to 'extort' the defendants, those speculative assertions are false and have no support whatsoever in the record," the response said.

The firm also argued that Hangley exceeded his authority to deal with discovery-related issues and that Hagens Berman was being denied due process based on the fact that Hangley had not indicated he was considering sanctions on such wide-ranging conduct and had not identified the specific grounds for sanctions being considered — or even which of the many cases had given rise to the recommendation for sanctions.

"The Third Circuit has repeatedly found reversible error when a lower court fails to provide particularized notice of the specific form of sanction being considered," the firm said.

The firm also denied it had ever tried to "bully" Hangley, instead criticizing his own conduct in allegedly repeatedly asking about attorney-client privileged information when questioning plaintiffs about their decision to drop their cases. In one instance, it said, a plaintiff stated during the interview that although he had birth defects he was "not stupid" and resented having his decisions questioned.

The firm acknowledged that during some of these tense interviews, two attorneys who are no longer with the firm made "ill-advised" statements to Hangley, but denied this constituted bullying, and argued the firm cannot now be held responsible for conduct by former attorneys that happened 10 years earlier.

Counsel for Hagens Berman and GSK did not respond Monday to a request for comment.

Berman and his firm are represented by Keith Beauchamp and Malvika A. Sinha of Coppersmith Brockelman PLC, Gaetan J. Alfano and Peter St. Tienne Wolff of Pietragallo Gordon Alfano Bosick & Raspanti LLP and Christopher C. Conner and Timothy M. Stengel of Saxton & Stump LLC.

GSK is represented by Michael T. Scott of Mike Scott Law LLC.

The case is Glenda Johnson et al. v. SmithKline Beecham Corp. et al., case number 2:11-cv-05782, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Lauren Berg, Emily Field, and Matt Fair. Editing by Linda Voorhis.



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Apple Seeks To Toss iPhone, Watch Buyers' Antitrust Suits

By **Bonnie Eslinger**

Law360 (October 7, 2025, 6:29 PM EDT) -- Apple has asked a New Jersey federal court to toss multidistrict antitrust litigation brought by iPhone and Apple Watch buyers, arguing that while they "try in vain to invent" theories about how Apple charges monopoly prices the inflation-adjusted price of the latest iPhone is nearly the same as the first model.

In a 107-page motion filed Monday, Apple asks the court to dismiss the consolidated complaints of the three groups of plaintiffs: direct and indirect iPhone purchasers and direct Apple Watch purchasers. The plaintiffs had brought damages claims alleging they paid too much for their devices.

"Apple builds products consumers love. They are popular because they are state-of-the-art, secure, reliable, and easy to use — not because Apple misuses monopoly power it does not have," Apple states in its filing.

To start, the antitrust complaints have poorly defined markets, Apple argues. For example, the iPhone purchaser plaintiffs case includes alleged conduct in undefined "aftermarkets," Apple says.

"Because plaintiffs either skip market definition altogether or offer implausible ones, their claims should be dismissed," Apple states in its motion to dismiss.

Second, the suits don't show a "tight" cause-and-effect connection between Apple's actions and their alleged harm, the motion to dismiss argues.

"Plaintiffs' theories are too indirect, too attenuated, and too speculative to establish that connection," Apple states.

The Watch plaintiff, for example, takes numerous "inferential" steps to get to its claim that Apple has created a situation in which it can charge supracompetitive prices, according to the motion to dismiss. That complaint also tries to make a claim by saying Apple hasn't assisted its smartwatch rivals — hurting smartwatch purchasers in the end.

"A company has no duty to deal with its rivals in this context," Apple states.

The Apple Watch plaintiff says in their complaint that Apple previously permitted third-party smartwatches to connect to iPhones, but once the company began marketing its own smartwatch it employed "anticompetitive contracts," among other measures, "to limit, disrupt, and degrade competitor smartwatches."

The Watch complaint is also off base to try and portray Apple's guidelines for iOS app developers as a "per se illegal group boycott" against other smartwatch makers, the motion to dismiss states.

The complaint asserts that the Apple Developer Program License Agreement blocks developers from using other software programming interfaces by requiring them to use certain interfaces "in the manner prescribed by Apple." That, and the requirement to agree to Apple's App Review Guidelines, "unreasonably restrain trade" in the smartwatch market, the suit claims.

The plaintiffs' state-law theories also should be dismissed, Apple told the court.

"They pile on more than fifty state-law claims," the motion to dismiss states. "But the number of new counts is exceeded only by the number of new flaws these claims introduce."

One such failing comes from the indirect purchaser plaintiffs, Apple says. Six state antitrust laws under which they bring claims adhere to the ruling in the U.S. Supreme Court case *Illinois Brick Co. v. Illinois* , and as a result their damages are barred, Apple says.

Apple's products are popular because they are exceptional, not because competitors have been unlawfully excluded, the company tells the court.

"Plaintiffs try in vain to invent competing theories about how Apple supposedly charges monopoly prices, but today's iPhone 17 is light years ahead of the first model and yet, adjusted for inflation, costs about the same," Apple states.

Apple released its first iPhone in 2007 and initially developed all native iOS apps, but eventually allowed apps from third-party developers, the company notes. Apple checks each third-party app to ensure consumers have a "safe experience," the company said. Apple subsequently offered products that pair with the iPhone, and the Apple Watch was introduced in 2015.

"While plaintiffs deride this as the stuff of 'an erratic despot,' these are procompetitive measures for balancing the interests of consumers and developers on Apple's App Store," the company states in its motion to dismiss.

The U.S. Department of Justice first filed its sweeping **antitrust suit** against Apple in New Jersey federal court in March 2025. The DOJ suit rounded out a quartet of long-anticipated government antitrust litigation that was already proceeding against Google, Meta and Amazon.

Days later, a group of iPhone buyers **filed suit**, launching three separate proposed class actions accusing the tech giant of suppressing innovation in the digital apps, wearables and payments industries through anticompetitive agreements.

The U.S. Judicial Panel on Multidistrict Litigation **held in June** that the private party litigation — which had grown **to 10** proposed class actions — could coordinate with the U.S. Department of Justice's enforcement action in New Jersey to avoid duplicative discovery and inconsistent rulings.

In its motion to dismiss, Apple says while many of the private parties' allegations "echo the government's," the private litigants have to meet different requirements, "including statutory standing requirements their attenuated theories cannot meet."

In February, a federal magistrate judge ruled that Apple **didn't have to** turn over to the private plaintiffs the millions of documents it gave the U.S. Department of Justice, at least not until discovery.

In the DOJ case, the New Jersey federal court in June **denied** Apple's motion to dismiss the government's lawsuit. Apple subsequently filed **its answer** to the government litigation in July, arguing the government "fundamentally misunderstands" the restrictions it imposes on iMessage, smartwatch compatibility, mobile wallets, cloud gaming and more.

Christopher Seeger of Seeger Weiss LLP, co-lead counsel for the direct purchasers, provided Law360 with a comment in response to Apple's motion to dismiss.

"Apple has used its market power to unlawfully obtain and maintain a dominant share of the U.S. smartphone market and charge excessive prices. We look forward to holding Apple accountable for creating psychological, technical, and expense barriers that essentially trap users in the iOS environment," Seeger said.

Representatives for the other parties did not respond to requests for comment on Tuesday.

Interim co-lead counsel for the indirect iPhone purchaser plaintiffs is Michael Dell'Angelo, Candice J. Enders and J. Taylor Hollinger of Berger Montague PC, Matthew S. Weiler, Todd M. Schneider, Raymond S. Levine and Suneel Jain of Schneider Wallace Cottrell Kim LLP, Heidi M. Sifton, Jessica N.

Servais, Joseph C. Bourne and Michael J.K.M. Kinane of Lockridge Grindal Nauen PLLP, and William G. Caldes, Jeffrey L. Spector and Rachel Kopp of Spector Roseman & Kodroff PC.

Co-lead interim class counsel for direct iPhone purchasers plaintiffs is William Christopher Carmody and Shawn J. Rabin of Susman Godfrey LLP, James E. Cecchi of Carella Byrne Cecchi Brody & Agnello PC, Christopher A. Seeger of Seeger Weiss LLP, Steven W. Berman of Hagens Berman Sobol Shapiro LLP, Dena Sharp of Girard Sharp LLP, and Melinda R. Coolidge of Hausfeld LLP.

The Apple Watch plaintiffs are represented by George A. Zelcs, David Walchak, Daniel Epstein, Stephen M. Tillery, and Carol O'Keefe of Korein Tillery LLC, Steven F. Molo, Lauren F. Dayton, Eric A. Posner, Jennifer E. Fischell, Kayvon M. Ghayoum and Caroline A. Veniero of Mololamken LLP, and David C. Frederick, Aaron M. Panner, Alex A. Parkinson, Scott K. Attaway, Ariela M. Migdal and Katherine V. Tondrowski of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Daniel G. Swanson, Joseph R. Rose, Julian W. Kleinbrodt and Connor S. Sullivan of Gibson Dunn & Crutcher LLP, Liza M. Walsh and Douglas E. Arpert of Walsh Pizzi O'Reilly Falanga LLP, and Craig S. Primis, Matthew J. Reilly, K. Winn Allen, Luke P. McGuire, Devora W. Allon and Alexia R. Brancato of Kirkland & Ellis LLP.

The case is In re: Apple Inc. Smartphone Antitrust Litigation, case number 2:24-md-03113, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Stewart Bishop, Bryan Koenig, Jared Foretek, Nadia Dreid and Gina Kim. Editing by Emily Kokoll.

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Atty Fee Concerns Sink Health Provider's \$2M Privacy Deal

By **Allison Grande**

Law360 (October 7, 2025, 11:57 PM EDT) -- An Arizona federal judge refused to sign off on a nearly \$2 million deal to resolve a proposed class action accusing LifeStance Health Group of illegally sharing website visitors' personal data with Meta, finding the proposed attorney fees to be "disproportionately high" compared to what class members stand to recover.

In an order issued Monday, U.S. District Judge Krissa M. Lanham pointed to "concerning attorneys' fees provision" as the primary reason for denying plaintiffs Montana Strong and Debra Yick's motion for preliminary approval of a proposed settlement of their claims that mental-health care provider LifeStance Health Group Inc. violated an array of federal and state statutes, including the California Invasion of Privacy Act, and invaded prospective class members' privacy by installing tracking technologies on its website that enabled it to share website visitors' personal and protected health information with third parties such as Meta Platforms Inc. without consent.

Under the terms of the proposed deal, which were revealed in August, LifeStance would be required to establish a nonreversionary fund of \$1,203,405 to compensate members of a settlement subclass comprised of members of the mental health provider's total patient population who booked at least one session through LifeStance's online booking tool between March 1, 2020, and April 30, 2023.

Each of the estimated 171,915 members of this subclass who submit timely claims would receive a pro rata share of what's left in the settlement fund after subtracting the between 25% and 33% of fees that plaintiffs' attorneys are expected to seek plus their litigation costs, according to Judge Lanham.

The proposed settlement would also create two additional settlement subclasses, one consisting of all the members of LifeStance's total patient population during the class period who aren't included in the first subclass, which the parties estimate to include 907,737 individuals, and the other encompassing those who visited the website during the class period but didn't book appointments online or otherwise become patients, Judge Lanham noted.

The members of the first two subclasses would receive offers to enroll for free in a 12-month subscription to a privacy monitoring service, which the parties value at approximately \$265 per redemption while all the subclasses would obtain injunctive relief in the form of LifeStance's agreement to "disable and forego use of all third-party tracking pixels, to the extent any remain," for the next five years, according to Judge Lanham.

In analyzing the proposed deal, Judge Lanham found that the proposed class met Rule 23(a)'s numerosity, commonality, typicality and adequacy of representation requirements for certification and that "common questions of law and fact, including whether LifeStance's use of the Pixel transmitted private and confidential health information and whether the proposed class had a reasonable expectation of privacy while interacting with the relevant websites," predominated over individual questions "because all claims rely on these common issues regardless of individual differences like how many times each person visited the website."

However, Judge Lanham concluded that she could not sign off on the proposed deal in its current form due to "multiple areas of concern" regarding its fundamental fairness, reasonableness and adequacy.

In addition to faulting the parties for failing "to address the proposed settlement's value compared to the potential liability at stake," which Judge Lanham found "hinders a meaningful determination of the reasonableness of members' recoveries or the strength of the case," the judge held that her "primary point of concern" was "the attorneys' fees structure, given that the court cannot fully value the settlement at this stage."

While the proposed deal includes monetary funds, coupons for one free year of privacy monitoring and injunctive relief, Judge Lanham held that the currently unredeemed vouchers couldn't be considered in determining the settlement's value for attorney fee calculations and that the injunctive relief "adds no monetary value to the settlement given that the tracking behavior is allegedly illegal — presumably giving rise to further litigation if it resumed — and more importantly, LifeStance had already ceased that behavior well before the parties settled."

That left for value calculation purposes the roughly \$1.2 million monetary fund, of which approximately \$800,000-\$900,000, is earmarked for subclass 1 and the remaining 25%-33% for attorneys for that subclass, and another \$750,000 fund that LifeStance agreed to separately establish solely for attorney fees "attributable to the work done to secure the settlement benefits for Settlement Subclass 2 and Settlement Subclass 3," Judge Lanham noted.

This award for plaintiffs' attorneys would be "disproportionately high compared" to what class members stand to receive from the deal, which include an estimated payment of between \$4.69 and \$5.25 for eligible payments of the first subclass, according to the judge.

While class counsel's request for fees between 25% and 33% falls "within the range courts commonly hold to be reasonable and would not cause concern standing alone ... the amount for Subclass 1 does not stand alone," Judge Lanham ruled, pointing to the additional \$750,000 that LifeStance has agreed to deposit into a separate fund solely for their work on behalf of the other two subclasses.

"This provision creates a concerning disparity between the settlement's awards for attorneys versus the class," the judge ruled, adding that "even if attorneys request only 25% of the \$1.2 million and no litigation cost reimbursement, the attorneys could receive \$1,050,851 total (25% of Subclass 1's fund plus the separate \$750,000 fund) and class members will receive \$902,553.75, or \$5.25 each."

"It would clearly be disproportionate for attorneys to receive, at minimum, nearly 54% of the total monetary relief," Judge Lanham held.

She also expressed concern that, by setting up the separate fund and agreeing the LifeStance wouldn't contest this fee request, the parties appeared to have negotiated a problematic "clear sailing" arrangement that "increases the likelihood that class counsel will have bargained away something of value to the class."

Additionally, the parties' decision to insert a "kicker clause" that reverts unpaid attorney fees from the \$750,000 fund back to LifeStance rather than going to the class further "amplifies the danger of collusion already suggested by a clear sailing provision," according to Judge Lanham.

Given the lack of "a clear explanation" by the parties "of why the disproportionate fee is justified and does not betray the class's interests," Judge Lanham found that she couldn't give her preliminary nod to the deal based on the current record.

However, the judge did give the parties 30 days to file a new motion renewing their approval request and providing "a clear explanation as to how the settlement came about; why it is not collusive; and why it is fair, particularly regarding the reversionary \$750,000 fund and the relationship of the vouchers to the rest of the settlement."

"Additionally, the parties should clarify whether they believe the proposed settlement gives the court the discretion to award attorneys' fees in a way that would reduce the disproportionality when considering the monetary value of the settlement as a whole (for example, by awarding less than 25% of the \$1.2 million fund in attorneys' fees if \$750,000 for Subclasses 2 and 3 is also awarded)," the judge said, adding that "in the absence of that explanation, the court finds collusion is likely and the recovery is disproportionately skewed toward class counsel."

Counsel for the parties couldn't be reached for comment Tuesday.

The plaintiffs are represented by Hart L. Robinovitch and Ryan J. Ellersick of Zimmerman Reed LLP, and David S. Almeida and Britany A. Kabakov of Almeida Law Group LLC.

LifeStance is represented by Jennifer H. Catero and Patrick A. Tighe of Snell & Wilmer LLP, and Edward R. McNicholas, Frances Faircloth and Andrew J. O'Connor of Ropes & Gray LLP.

The case is Strong et al. v. LifeStance Health Group Inc., case number 2:23-cv-00682, in the U.S. District Court for the District of Arizona.

--Editing by Kristen Becker.

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