

How New Is The News?

 10b5daily.com/2025/10/15/how-new-is-the-news

October 15, 2025

The *Basic* presumption of reliance in securities fraud class actions allows plaintiffs to assert, for class certification purposes, that they were defrauded when they relied “on the integrity of the price set by the market” for the stock because a misrepresentation purportedly distorted that price. But plaintiffs may invoke the *Basic* presumption only if the stock traded in an “efficient market” in which the stock price quickly and completely absorbs published information. If that is not the case, the *Basic* presumption no longer makes sense as there would be no basis for presuming that an alleged misrepresentation distorted the stock price.

In attempting to establish class certification using the *Basic* presumption, plaintiffs frequently rely on a “corrective disclosure” as the source of price impact. In other words, plaintiffs argue that they have demonstrated price impact based on a corrective disclosure that led to a stock price decline. In this scenario, however, the corrective disclosure presumably must disclose new information. That is because, under the efficient markets theory, confirmatory information—or information already known by the market—will not cause a change in the stock price. If a defendant shows that the corrective disclosure does not reveal new information, then the defendant arguably has severed the link between the alleged misstatement and the stock price drop and the *Basic* presumption should not be applied.

Two recent unpublished circuit court decisions in high-profile cases have addressed the issue of whether the disclosure of “new” information is required to support the existence of a price impact under the *Basic* presumption, with results that appear to suggest that there is judicial confusion over how the efficient markets theory should be applied.

In *San Diego County Employees Retirement Assoc. v. Johnson & Johnson*, 2025 WL 2176586 (3rd Cir. July 30, 2025), the panel reasoned – over a vigorous dissent – that for purposes of assessing price impact under the *Basic* presumption it “need not decide whether J&J’s assertion that a disclosure must be new is correct” because “disclosures based on public information may nevertheless communicate a *new signal* to the market in certain situations.” The panel found that the alleged corrective disclosures sent “new signals” to the market that impacted the stock price, even if they did not reveal new information. The defendants sought *en banc* review of the decision, with significant amicus support, but the Third Circuit did not grant the review (although several judges voted in favor).

In *Jaeger v. Zillow Group, Inc.*, 2025 WL 2741642 (9th Cir. Sept. 26, 2025), the panel rejected the defendants' argument that an analyst report "did not disclose new information about Zillow's overpayment for houses" and therefore could not have had a stock price impact. Instead, the panel concluded that even if the information was already public, the "record suggests that this information was not widely discussed or accessible until the [analyst] report was released." The defendants have obtained an extension on the time to seek a panel rehearing or *en banc* hearing until October 24, 2025.

It will be interesting to see whether either of these appeals move forward, as it is clear that there needs to be judicial clarification over whether plaintiffs can cite "new signals" or an alleged failure of the information to be "widely discussed" to defeat a defendant's showing that the alleged corrective disclosure did not contain new information that led to a stock price impact. Stay tuned.

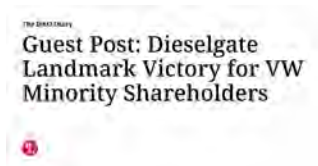
Note: The author of The 10b-5 Daily assisted the Washington Legal Foundation in filing an [amicus brief](#) in support of *en banc* review in the Johnson & Johnson case.

Guest Post: Dieselgate Landmark Victory for VW Minority Shareholders

K [dandodiary.com/2025/10/articles/securities-litigation/guest-post-dieselgate-landmark-victory-for-vw-minority-shareholders](https://www.dandodiary.com/2025/10/articles/securities-litigation/guest-post-dieselgate-landmark-victory-for-vw-minority-shareholders)

Kevin LaCroix

October 15, 2025



By [Kevin LaCroix](#) on October 14, 2025

Posted in [Securities Litigation](#)



Burkhard Fassbach

In the following guest post, Burkhard Fassbach, a D&O lawyer in private practice in Germany, discusses the recent interesting development in German Courts with regards to the VW's Dieselgate settlement with its D&O insurers. As discussed below, the relevant court has held that the settlement is "null and void" because, the court held, the proper processes were not followed in obtaining shareholder approval of the settlement. I would like to thank Burkhard for allowing me to publish his 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 to submit a guest post. Here is Burkhard's article.

Kevin LaCroix discussed in a [blog post](#) on June 10, 2021 that VW announced that a settlement had been reached in the D&O liability action that had been filed against the company's executives in connection with the "Dieselgate" scandal. The settlement was approved by VW shareholders in July 2021. In our [Guest Post on the D&O Diary](#) on November 24, 2021 Michael Hendricks and myself have reported about the legal action filed by minority shareholders against VW in an effort to oppose the settlement.

In its landmark ruling of September 30, 2025, the German Federal Court of Justice (BGH) decided that VW's settlements with D&O insurance companies are null and void. The SdK Schutzgemeinschaft der Kapitalanleger e.V., one of the leading German investor associations,

with its main focus on representing the interests of investors and protecting minority shareholders, fought for this landmark decision on liability settlements in the Volkswagen AG case and describes the victory as a major success for shareholder protection, corporate governance, and shareholder culture.

The Second Civil Senate of the Federal Court of Justice, which is responsible for corporate law, among other things, has declared the resolution of the Volkswagen AG shareholders' meeting approving a settlement agreement with D&O insurers in the so-called "diesel scandal" null and void. Insofar as the resolutions of the Annual General Meeting approving liability settlements with former members of the Board of Management were challenged, the Higher Regional Court must rehear and decide the case. In a press release, the press office of the Federal Court of Justice describes the facts of the case, the course of the proceedings to date, and the decision of the Federal Court of Justice. In the following reference is made to the [press release](#).

I. Facts of the case

In June 2021, the defendant Volkswagen AG concluded liability settlements with its former CEO and a former member of the Executive Board, as well as related coverage settlements with D&O insurers to settle and discharge potential claims for damages and related coverage claims against the insurers. On the basis of an investigation report and further audits, it had concluded that the two former board members had negligently breached their duties of care in connection with the so-called "diesel scandal" because they had not taken indications of the use of illegal software functions in diesel engines as an opportunity to immediately investigate the matter. The settlements provided for payments by the former members of the Executive Board, referred to as personal contributions, in the amounts of €11.2 million and €4.1 million, respectively, and payments by the D&O insurers in the amount of approximately €270 million. For its part, Volkswagen AG undertook to indemnify the two former members of the Board of Management against certain claims that third parties could assert against them in connection with the relevant facts. In the coverage settlement, it also undertook to permanently refrain from making any further claims against certain other persons, including all other former or current members of the Board of Management and the Supervisory Board.

The Volkswagen AG Annual General Meeting approved the settlement agreements on July 22, 2021, with majorities of over 99%. The plaintiffs are investor protection associations. As shareholders of Volkswagen AG, they lodged an objection to the approval resolutions for the record.

The plaintiffs object to the approval resolutions, among other things, and believe that they are void or, at any rate, contestable.

II. Course of proceedings

The Regional Court dismissed the action. The Higher Regional Court rejected the appeal lodged by the plaintiffs. With the appeal on points of law admitted by the Higher Regional Court, the plaintiffs and their intervener pursued their claims in full.

III. Decision of the Federal Court of Justice

The plaintiffs' appeal was successful on key points. However, the approval resolutions are not void due to a violation of the prohibition on the return of contributions (Section 57 (1) AktG) and the resolutions do not violate Section 93 (4) sentence 3 AktG because the three-year blocking period specified therein was not observed.

However, the resolution approving the settlement agreement is contestable due to a violation of the law and must be declared null and void. The agenda specified in the notice convening the Annual General Meeting did not state, in accordance with the requirements of section 121 (3) sentence 2 AktG, that the settlement agreement involved a waiver in respect of all current and former members of the defendant's executive bodies, which required the approval of the Annual General Meeting pursuant to section 93 (4) sentence 3 AktG and section 117 (4) Section 93 (4) sentence 3 AktG. The relevant information in the Management Board's report is not sufficient, as it was no longer part of the agenda specified in the notice of the meeting. The average shareholder did not have to expect that the information on a resolution to waive claims against a large number of other members of the executive bodies would be contained in the further information on the relevant agenda items.

Insofar as the Higher Regional Court denied the contestability of the resolutions approving the liability settlements pursuant to Section 243 (1), (4) sentence 1 AktG on the grounds of a violation of the right to ask questions pursuant to Section 1 (2) sentence 1 no. 3 COVMG (old version), this did not stand up to legal scrutiny. Based on the reasoning provided, it could not be assumed that the requested information on the financial circumstances of the former members of the Management Board was not essential for the exercise of shareholder rights in the context of the decision on the approval of the liability settlements. The report of the supervisory board and the management board states, among other things, that one of the main reasons for concluding the settlement agreements was that the financial capacity of the persons against whom the claims were made, even taking into account the sum insured, fell far short of the damages attributable to these persons from the company's point of view. Information on the financial situation of the former members of the management board who

were held liable was necessary for an informed decision on approval, at least insofar as it was necessary to understand this assessment. The information provided, in particular on the income received, is not sufficient for this purpose because it does not reveal the extent to which any liability claims would have been covered by the former management board members' own assets. On the basis of the findings, the Federal Court of Justice was unable to reliably determine whether the assumption reflected in the report of the Management Board and the Supervisory Board was sufficiently explained, taking into account the information provided at the Annual General Meeting.

IV. Reaction of minority shareholders

The minority shareholders welcome this decision. In the following reference is made to a [statement on LinkedIn](#) dated September 30, 2025 by Dr. Marc Liebscher, executive board member of SdK Schutzgemeinschaft der Kapitalanleger e.V.:

Knowledge of the financial circumstances enables shareholders to properly assess the resolution on the liability settlements. This is all the more urgent in the present case, as the so-called personal contributions of the affected board members were to be made, at least in part, by waiving salary components whose existence is likely to be doubtful in view of the violations. Furthermore, the personal contributions represent only a negligible fraction of the damage. Without these investigations, management board liability under German stock corporation law remains a theoretical construct that is a mere farce in practice. The shareholders' right to information is also not at the disposal of any majority whatsoever.

When comparing D&O insurers (so-called coverage comparison), the Federal Court of Justice criticized the lack of transparency in the invitation to the annual general meeting, as the invitation did not state that the coverage comparison provided for a waiver of claims against a large number – up to 170 persons – of current and former members of executive bodies. With this decision, the Federal Court of Justice strengthens the legal position of shareholders, who should be able to determine whether and how they wish to participate in the annual general meeting based solely on the invitation and, in particular, the agenda.

This clear clarification by the Federal Court of Justice and its stance on transparency are to be welcomed. This prevents information about essential provisions of a very extensive and complex contract from being withheld, which an average shareholder would find difficult or impossible to locate. There must be a reason why VW did not disclose this waiver in the coverage settlement in a sufficiently transparent manner, as required by section 124 (2) sentence 3, alternative 4 of the German Stock Corporation Act (AktG), and thus prominently in the agenda item "D&O coverage settlement." There can be no doubt (any longer) that the release from liability of a large number of current and former members of executive bodies is

an essential part of a coverage settlement, if only because such a far-reaching provision was not to be expected in a coverage settlement. It would have been more transparent to embed such a provision in a separate liability settlement with other current and former members of executive bodies.

V. Conclusion and Outlook

The Federal Court of Justice landmark ruling is highly relevant to D&O claims settlement practice in Germany. The following refers to Dennis Fritz's first-class and fundamental Ph.D. thesis on the topic of executive and board liability settlements between stock corporation and D&O insurance law, which can be found [here](#).

In practice, most disputes between stock corporations and their board members do not end with a ruling by state courts, but with a settlement. Examples include the publicly known cases of Bilfinger, Conergy, Deutsche Bank, Rheinmetall, and Siemens. However, such agreements do not only involve stock corporations and the members of their executive bodies who are subject to claims, who may be members of both the management board and the supervisory board. D&O insurance companies are also regularly involved. A distinction must be made between liability settlements, coverage settlements, and combined settlements. Liability settlements are agreements concluded between stock corporations and their board members. They enable the parties involved to settle disputes arising from the relationship of liability of board members. In the event of conflicts over the existence of a coverage claim under a D&O insurance contract, a coverage settlement may be reached. The aim of a combined settlement is to settle all disputes arising from both the coverage and liability relationships by mutual agreement. Furthermore, significant practical difficulties arise when a large number of insurance companies are involved in a settlement. Settlements involving directors' and officers' liability insurance are particularly complex because insurance programs usually consist of several D&O insurers. These insurers cover losses not only in the sense of co-insurance, but also in succession in the form of so-called excess insurers.

Here's What Corporate Governance Lawyers Want From a Decision On Elon Musk's Tesla Compensation Appeal

While it's easy to get hung up on the Elon Musk and \$56 billion of it all, litigators—at least, the ones not working on this case being argued at the Delaware Supreme Court today—say what they really want to see from the appellate court is guidance on the direction of the state's corporate law at large.

October 15, 2025 at 06:30 AM By  **Ellen Bardash**



Elon Musk, chief executive officer of Tesla Inc., during a news conference with US President Donald Trump, not pictured, in the Oval Office of the White House in Washington, DC, US, on Friday, May 30, 2025. The event gives an opportunity for the president and his largest campaign benefactor to dispel any notion of an acrimonious divorce. Photo: Francis Chung/Politico/Bloomberg

It's finally happening: the big one.

That's what I've had countless litigators and transactional lawyers alike call the appeal of Elon Musk's compensation case in Delaware when I ask them what cases they're watching closely. As in, "Well, of course, the big one is *Tornetta v. Musk*."

The Delaware Supreme Court will hear argument on the big one today, and after more than six years, all that's left is for the court to write what's likely to be one big opinion.

Here's the short version of what's going on: In 2018, Tesla approved a plan to pay Elon Musk somewhere around \$56 billion in Tesla stock incrementally if and when the company met certain benchmarks. A shareholder challenged the plan in the Court of Chancery, because at the time Tesla was a Delaware corporation. It went to trial in late 2022, and the court issued an opinion in 2024 ordering that the whole compensation plan be clawed back because the process through which it was approved wasn't fair. Also in 2024, Tesla stockholders voted to approve the same plan, but when Tesla went back to the chancellor, she said the new vote didn't change her decision. Also, attorneys for the shareholder who sued won a \$345 million fee award. Tesla and its board, including Musk, are appealing all of that, and the appeal is set to be before the Delaware Supreme Court on Wednesday.

While it's easy to get hung up on the Elon Musk and \$56 billion of it all, litigators—at least, the ones not working on this case—say what they really want to see from the appellate court is guidance on the direction of Delaware's corporate law at large. But what's the court going to see as the biggest deal in the case over the biggest compensation deal?

Lori Marks-Esterman, who leads the shareholder activism litigation practice at **Olshan Frome Wolosky**, said she expects the Supreme Court to devote significant attention to core questions that come up in fiduciary duty litigation, including who is a controller; how a court determines if directors are independent and disinterested; what needs to be disclosed to shareholders to make a shareholder vote informed and cleanse an otherwise flawed transactional process; and what standard of review should be applied in a case.

"We expect that the court will be keenly focused on examining how the issues impact not only the *Tornetta* appeal, but also Delaware jurisprudence more broadly, and their analysis and decision will be guided by preserving Delaware as the preeminent jurisdiction for corporations," Marks-Esterman said.

Monte Mann, a partner at **Armstrong Teasdale**, said among the issues he's most interested in seeing the court address are those involving what constitutes a controlling shareholder or an independent director, because those will affect boardrooms ... well, across the board.

"I think the court is going to be tougher on that issue than I think it's ever publicly been," Mann said. "If Delaware moves the bar on board independence, every compensation committee in the country is going to need to recalibrate."

Dechert partner **Rick Horvath** hopes the court addresses two elements of the controlling shareholder and independent director conversation that he says, as it stands, can be tricky to advise corporate clients on, as it's difficult to say how transactions they're involved in may be viewed years down the road.

"I would hope that part of the decision gives some greater guidance that leads to certainty for companies and boards and investors and their advisors on the rules for interested transactions, whether that's on the court's view on transaction-specific control or providing greater clarity on when personal relationships become disabling for directors," he said.

It would be helpful for the court to weigh in on whether or not transaction-specific control is an appropriate doctrine or if the recent changes to the state's corporate code eliminate the concept entirely, Horvath said.

Michael Holmes, head of the litigation department at **Vinson & Elkins**, said he expects the court to focus on the controller question as well as an area which might not be of too much interest for the general public, but is a big deal for litigators: the remedy the chancellor selected, and how she arrived at that decision.

"I think there'll be discussion around the remedy: Why was rescission the remedy and not some kind of damage award?" he said.

Jacqueline Ma, counsel at Olshan, said the Supreme Court could make waves if it finds the Chancery court should have amended its decision after Tesla held its latest ratification vote.

"While a novel and creative move by Tesla, no case has ever held that a stockholder vote can ratify an adjudicated fiduciary breach," Ma said. "We also think that judicial approval of this strategy would lead to perverse outcomes: Companies would be disincentivized from making full and fair disclosures to stockholders in the first instance."

Steven Caponi, a Wilmington-based partner at **K&L Gates**, said whichever way the court rules, it may not have much of a bearing on how Delaware addresses issues in controller-involved transactions because of the changes the state already passed into law earlier this year.

Instead, he said, the Supreme Court could use its opinion to send a message both to corporations and to the rest of the judiciary on the importance of predictability in Delaware courts and the role deference to businesses plays in that predictability.

"That's really where I think the drift has been, and I think that we need to get back to the starting point being deference and needing a good reason not to defer," Caponi said. "The court is not the one that was elected by the shareholders to run the company. I'd like to see the court, in explaining

its logic, explain why that deference is there in the first place and why it should be taken a little more seriously than I think it has been in the recent past."

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Musk's legal fight over \$56 billion payday from Tesla enters final stage

 [reuters.com/sustainability/boards-policy-regulation/musks-legal-fight-over-56-billion-payday-tesla-enters-final-stage-2025-10-15](https://www.reuters.com/sustainability/boards-policy-regulation/musks-legal-fight-over-56-billion-payday-tesla-enters-final-stage-2025-10-15)

Tom Hals

October 15, 2025

Elon Musk, Chief Executive Officer of SpaceX and Tesla, gestures as he attends the Viva Technology conference dedicated to innovation and startups at the Porte de Versailles exhibition centre in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes/File Photo [Purchase Licensing Rights, opens new tab](#)

- Delaware Supreme Court hears Musk's pay package appeal
- Chancellor McCormick ruled Musk controlled pay negotiations, plan deemed unfair
- Tesla disputes \$345 million legal fee, seeks reduced compensation

DOVER, Delaware, Oct 15 (Reuters) - Elon Musk's lawyers will urge the Delaware Supreme Court on Wednesday to restore his \$56 billion pay package from Tesla ([TSLA.O](#)), [opens new tab](#), as one of the biggest corporate legal battles enters its final stage nearly two years after a lower court judge rescinded the Tesla CEO's record compensation.

The outcome could have substantial consequences for the state of Delaware, its widely used corporate law, and its Court of Chancery, a once-favored venue for business disputes that has recently been accused of hostility towards powerful entrepreneurs.

The January 2024 Court of Chancery ruling striking down [Musk's](#) pay has become a rallying cry for Delaware critics. Chancellor Kathaleen McCormick ruled that the Tesla board lacked independence from Musk when it approved the pay package in 2018 and that shareholders lacked key information when they voted overwhelmingly in favor of it. As a result, she applied a demanding legal standard and found the pay unfair to investors.

The defendants, current and former Tesla directors, denied wrongdoing and said McCormick misinterpreted the facts and the law. Musk is not expected to attend.

COMPANIES SWITCH LEGAL HOMES

After the Musk pay ruling, large companies, including Tesla, Dropbox, and the venture capital firm Andreessen Horowitz, [switched](#) their legal homes to Texas or Nevada, where courts are friendlier toward directors. Delaware lawmakers responded to the corporate departures, a trend known as "Dexit," by [overhauling](#) its corporate law.

If Musk loses the appeal, he will still reap tens of billions of dollars in stock from the electric vehicle company, which [agreed](#) in August to a replacement deal if his 2018 plan is not

restored.

The company said the replacement award was meant to retain and focus Musk, who said earlier this year he was forming a new U.S. political party, on transitioning Tesla to robotics and automated driving. Tesla is now incorporated in Texas, where it is far more difficult for a shareholder to challenge board decisions.

Tesla's board last month proposed a [\\$1 trillion](#) compensation plan, highlighting confidence in Musk's ability to steer the company in a new direction, even as Tesla loses ground to Chinese rivals in key markets amid softening EV demand.

The five justices on Delaware's high court will consider the appeal of the pay ruling as well as the \$345 million legal fee that McCormick ordered Tesla to pay to the attorneys for [Richard Tornetta](#), who held just nine Tesla shares when he sued to block the pay deal. The court typically takes months to rule.

Tesla estimated in 2018 the stock options plan would be worth \$56 billion if the company met operational and financial goals, which it did. Because the stock continued to appreciate, the options are currently worth closer to \$120 billion, by far the largest executive compensation ever. Musk is the world's richest person with a fortune of around \$480 billion, according to Forbes.

The defendants have argued that McCormick erred in finding social and business ties to Musk compromised their independence and said Tesla shareholders were informed of the economic terms of the pay deal before they approved the plan. The directors said she should have reviewed the pay package under the "business judgment" standard, which protects directors from second-guessing by courts.

The directors have long argued the pay package performed as hoped - it focused the attention of Musk, a serial entrepreneur, and he transformed Tesla from a startup into one of the world's most valuable companies.

Several months after McCormick's ruling, Tesla received shareholder approval a [second time](#) for the plan, which McCormick rejected as [legally invalid](#). Tesla is also appealing that decision. Reporting by Tom Hals in Dover, Delaware; Editing by Noeleen Walder and Rod Nickel

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Tesla urges Delaware Supreme Court to restore Musk's \$56 billion payday

 [reuters.com/sustainability/boards-policy-regulation/musks-legal-fight-over-56-billion-payday-tesla-enters-final-stage-2025-10-15](https://www.reuters.com/sustainability/boards-policy-regulation/musks-legal-fight-over-56-billion-payday-tesla-enters-final-stage-2025-10-15)

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Elon Musk, Chief Executive Officer of SpaceX and Tesla, gestures as he attends the Viva Technology conference dedicated to innovation and startups at the Porte de Versailles exhibition centre in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes/File Photo [Purchase Licensing Rights, opens new tab](#)

- Chancellor McCormick ruled Musk controlled pay negotiations, plan deemed unfair
- Tesla disputes \$345 million legal fee, seeks reduced compensation
- Plaintiff warns of endless lawsuits

DOVER, Delaware, Oct 15 (Reuters) - Elon Musk's \$56 billion pay package from Tesla ([TSLA.O](#)), [opens new tab](#) should have been restored by a vote of the company's shareholders last year, a Tesla attorney argued to the Delaware Supreme Court on Wednesday. One of the biggest corporate legal battles entered its final stage after a lower court judge rescinded the Tesla CEO's record compensation in January 2024. The company is also appealing a ruling by the lower court that rejected as [legally invalid](#) a vote by shareholders to restore the pay package.

"This was the most informed stockholder vote in Delaware history," Jeffrey Wall, an attorney for Tesla, told the justices. "Reaffirming that would resolve this case."

The case's outcome could have substantial consequences for the state of Delaware, its widely used corporate law, and its Court of Chancery, a once-favored venue for business disputes that has recently been accused of hostility towards powerful entrepreneurs.

The Court of Chancery ruling striking down [Musk's](#) pay has become a rallying cry for Delaware critics. Chancellor Kathaleen McCormick ruled that the Tesla board lacked independence from Musk when it approved the pay package in 2018 and that shareholders lacked key information when they voted overwhelmingly in favor of it. As a result, she applied a demanding legal standard and found the pay unfair to investors.

Musk did not attend the arguments, which were held in a special court to accommodate the 65 people in attendance, mostly lawyers.

The defendants, current and former Tesla directors, denied wrongdoing and said McCormick misinterpreted the facts and the law.

COMPANIES SWITCH LEGAL HOMES

Tesla argued in Dover, Delaware, that the five justices on Delaware's high court had three avenues to reverse the lower court ruling. They could find that Musk, who owned 21.9% of Tesla stock in 2018, did not control the board pay negotiations and that shareholders were fully informed when they voted to approve it that year. They could determine that rescinding the pay was an improper remedy because it did not undo the work that Musk had done or the gains that shareholders had received. Or they could determine last year's ratification vote demonstrated that shareholders wanted to accept the pay deal, despite the legal flaws.

"Shareholders in 2024 knew exactly what they were voting for," Wall said.

Greg Varallo, an attorney for [Richard Tornetta](#), the small investor who brought the case in 2018, said if the court accepted ratification, it would allow a party to change the outcome after a court case had run its course. "Lawsuits would be interminable," he told the justices. Varallo tried to convince the justices the lower court ruling was a result of careful fact-finding and based on settled law. "There is nothing extraordinary about this trial opinion," he said. "What makes it truly extraordinary is that it addresses the largest pay package in human history, awarded to the richest man on earth, who is also one of the most powerful men on earth."

Prompted in part by the Musk pay ruling, large companies, including Tesla, Dropbox, and the venture capital firm Andreessen Horowitz, [switched](#) their legal homes to Texas or Nevada, where courts are friendlier toward directors. Delaware lawmakers responded to the corporate departures, a trend known as "Dexit," by [overhauling](#) its corporate law.

If Musk loses the appeal, he will still reap tens of billions of dollars in stock from the electric vehicle company, which [agreed](#) in August to a replacement deal if his 2018 plan is not restored. Tesla has said the replacement plan will cost \$25 billion or more in accounting charges.

The company said the replacement award was meant to retain and focus Musk, who said earlier this year he was forming a new U.S. political party, on transitioning Tesla to robotics and automated driving. Tesla is now incorporated in Texas, where it is far more difficult for a shareholder to challenge board decisions.

TESLA PROPOSES NEW PAY PLAN

Tesla's board last month proposed a [\\$1 trillion](#) compensation plan, highlighting confidence in Musk's ability to steer the company in a new direction, even as Tesla loses ground to Chinese rivals in key markets amid softening EV demand.

The justices are also considering the \$345 million legal fee that McCormick ordered Tesla pay to the attorneys hired by Tornetta, who held just nine Tesla shares when he sued. The court typically takes months to rule.

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J&J's Earnout Appeal Hinges on Gaps in \$3.4 Billion Robot Deal

Oct. 15, 2025, 9:46 AM PDT

Summary by Bloomberg AI

AI Generated



- Johnson & Johnson is looking to overturn a decision that held it liable for failing to commercialize surgical robots it acquired in its deal for Auris Health Inc.
- The dispute centers on a deferred-payment transaction structure and allegations that J&J broke its promise to prioritize regulatory approvals for the deal's flagship product.
- The case involves a potential payout of over \$2 billion and is one of several recent rulings and lawsuits related to "earnouts" and allegations of companies sabotaging sales to avoid contingent post-deal payments.

Johnson & Johnson's efforts to undo a record \$1 billion ruling Wednesday forced Delaware's top court to confront the messy fallout of a deferred-payment transaction structure deployed to allocate the risk that a potential blockbuster deal will dead-end.

The pharmaceutical giant is looking to overturn a decision that held it liable for failing to commercialize surgical robots it acquired in its \$3.4 billion deal for Auris Health Inc. A Delaware Chancery Court judge last year said J&J "almost immediately" broke its promise to prioritize regulatory approvals for the deal's flagship product.

The dispute echoes a recurring theme for the elite business tribunal, which regularly hears claims by corporate founders who say acquirers duped them into a deferred-payment structure or sabotaged sales to sidestep contingent post-deal payments known as "earnouts." In the J&J case, more than \$2 billion hinged on the regulatory process.

Other similar recent rulings include a \$181 million decision against an AstraZeneca Plc affiliate and a \$50 million loss by Arthur J. Gallagher & Co. New earnout-related lawsuits, meanwhile, continue to be filed on a regular basis, including cases this year involving a popular video game franchise and a tequila associated with George Clooney.

Wednesday's roughly 50-minute hearing—which set the state supreme court up to review the largest-ever trial record produced by its elite business tribunal—homed in on two related but distinct sections of the September 2024 decision by Vice Chancellor Lori W. Will.

First, attorneys for J&J attacked the judge's conclusion that it breached its contractual pledge to put "commercially reasonable efforts" toward securing additional approvals when it held a "faceoff" between two surgical platforms, knowing its internal product would win. Similar breaches often form the basis for liability in earnout cases.

The drug company's lawyer also targeted sections of Will's decision that relied on the implied covenant of good faith and fair dealing, a legal doctrine designed to prevent one contract party from taking advantage of the other by exploiting unforeseen contract loopholes. J&J is arguing that its obligations toward the Auris product became impossible to fulfill when regulators changed the approval process.

Counsel for the Auris ex-shareholders countered that the regulatory change was unforeseeable to either party, which is why the agreement was silent as to how it should be handled. Under those circumstances, it made sense for Will to fill the contractual gap by ruling that J&J should have pursued an alternative approval process that involved the same time, expense, and odds of approval, he said.

J&J is represented by Morris, Nichols, Arsht & Tunnell LLP, Orrick Herrington & Sutcliffe LLP, and Patterson Belknap Webb & Tyler LLP. The ex-shareholders are represented by Ross Aronstam & Moritz LLP and Selendy Gay PLLC.

The case is Johnson & Johnson v. Fortis Adv. LLC , Del., No. 490, 2024, argument 10/15/25 .

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Securities

Manage Newsletters

Investors Lose Appeal Over Cannabis Grower's Vetting by Landlord

Oct. 15, 2025, 10:24 AM PDT

Summary by Bloomberg AI

AI Generated



- The Third Circuit affirmed the dismissal of a suit by investors who alleged that Innovative Industrial Properties Inc. misrepresented its due diligence on a cannabis facility tenant.
- The investors failed to show that most of the trust's challenged statements were misleading and didn't create an inference of fraudulent intent by Innovative or its principals.
- The court determined that "corporate trauma alone does not constitute securities fraud, and neither does ordinary negligence," and that the investors overstated their case for false statements by omitting Innovative's qualifying language about its diligence.

Investors in a property trust can't proceed with allegations that the group misrepresented its due diligence on a cannabis facility tenant, the Third Circuit said Wednesday in affirming the suit's dismissal.

The investors failed to show that most of the real estate investment trust's challenged statements were misleading, Judge Tamika R. Montgomery-Reeves said for the US Court of Appeals for the Third Circuit.

Their allegations also don't create an inference of fraudulent intent by Innovative Industrial Properties Inc. or its principals, she said.

The court joined other circuits that have accepted "willful ignorance" about an underlying issue as a basis for finding intent on the part of a defendant who misspoke about that matter. But as pleaded, Innovative wasn't willfully ignorant about its tenant victimizing it, Montgomery-Reeves said.

'Corporate Trauma'

Innovative buys cannabis facilities and leases them back to the growers. Kings Garden, a cannabis grower founded by Michael King, leased several properties from Innovative and entered into reimbursement agreements with it for capital improvement projects at two of them.

The trust allegedly paid out \$48 million for the purported improvements before becoming suspicious about a reimbursement request in June 2022, six weeks after a short-seller flagged lawsuits alleging King and his company had committed fraud.

Innovative investigated, sued Kings Garden in California state court, and disclosed the suit in a public filing in August 2022, according to the complaint.

The investors alleged Innovative committed securities fraud before the disclosure, including by touting its due diligence and monitoring processes, praising Kings Garden, and rebuking the short-seller's report.

"But corporate trauma alone does not constitute securities fraud, and neither does ordinary negligence," the Third Circuit said in determining that the suit was properly dismissed.

With respect to some of the allegations, the investors overstated their case for false statements by omitting Innovative's qualifying language about its diligence, Montgomery-Reeves said. Other targeted statements were inactionable opinions, she said.

One statement claiming reimbursements were for qualified, verified improvements, made after the short-seller report, was plausibly false, she said. But there's no showing of intent—also called scienter—so the claim fails.

In addition to finding no inference of individual scienter, Third Circuit declined—at least in this case—to adopt a collective, "corporate" approach to scienter that some circuits use.

Chief Judge Michael A. Chagares and Judge Theodore A. McKee joined the opinion.

The Rosen Law Firm PA represents the investors. Foley & Lardner LLP represents Innovative.

The case is *Handal v. Innovative Indus. Properties, Inc.*, 3d Cir., No. 24-02829, 10/15/25 .

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Litigation

Manage Newsletters

Credit Suisse AT1 Bondholders Angle for Lehman-Style Payouts

Oct. 15, 2025, 5:15 AM PDT

Summary by Bloomberg AI

AI Generated



- A Swiss court decision has fueled hopes of a potentially lucrative payday for investors holding claims tied to about \$17 billion of bonds wiped out in the rescue of Credit Suisse, citing Lehman Brothers as an example.
- Credit Suisse holders are eyeing a similar payout to Lehman creditors, who saw their principal repaid in full as well as receiving generous interest payments on top, according to two investors.
- The case remains uncertain and complex, with investors looking at a wide range of possibilities, from full face value plus accrued interest to a more modest payout, and prices of claims to Credit Suisse ATIs have surged after the court's announcement.

A group of investors that hold claims tied to about \$17 billion of bonds wiped out in the rescue of Credit Suisse are pointing to another failed bank as an example of the potentially lucrative payday they're holding out for: Lehman Brothers.

A surprise Swiss court decision this week [has fueled their hopes](#). The ruling, which has already been challenged by the country's financial regulator, revoked the 2023 order to zero about \$17 billion of Additional Tier 1 notes as part of Credit Suisse's takeover by UBS Group AG.

The decision lays the ground for a lengthy legal battle – with a potentially lucrative endgame.

Lehman claims are famous for having handed huge gains to those who bought them at knockdown prices. Creditors of the key London-based entity, Lehman Brothers International Europe, saw their principal repaid in full as well as receiving generous interest payments on top.

Credit Suisse holders are eyeing a similar payout, according to two investors who declined to be named as they are not authorized to speak publicly on the matter.

For more than two years, the ATIs lost their status as securities, with all the associated coupon payments, investor rights and borrower obligations. Instead, holders of the old Credit Suisse ATIs have been left with nothing more than just claims on a potential settlement.

Romain Miginiac, fund manager and head of research at Atlanticomnium, which manages funds that had exposure to the ATIs when they were wiped out, said his firm is weighing up scenarios.

Investors are looking at a wide range of possibilities, from full face value plus accrued interest to a more modest 3 billion Swiss francs (\$3.75 billion) similar to the amount Credit Suisse shareholders got.

Uncertain, Complex

"The case remains uncertain and complex," Miginiac said. "If bondholders do end up being compensated, the amount is also uncertain."

In the meantime, prices reflect growing optimism. Claims to Credit Suisse ATIs, quoted in a niche secondary market, have [surged](#) from about 12 cents on the dollar to around 30 cents after the Swiss court's announcement Tuesday, according to people familiar with the situation.

"This ruling represents a crucial step toward ending a prolonged period of uncertainty for our clients, who have waited far too long for justice," said Natasha Harrison, founder and managing partner of law firm Pallas Partners, which acts on behalf of some Credit Suisse bondholders.

"By finding that the so-called 'viability event' never occurred and the writedown had no other legal basis, the Court has set the record straight and paves the way for our clients to finally receive the redress they deserve," she said.

Finma, the Swiss banking watchdog, has already said it would appeal against the decision by the Federal Administrative Court. This appeal and the fact that the court has yet to issue a decision on actually reversing the order to write down the bonds means the prospect of any compensation for bondholders remains distant.

And even in Lehman's case, investors in notes issued by a European entity were only compensated more than a decade after the New York-based bank became the most high-profile victim of the global financial crisis.

"It's a very positive first step but definitely not a done deal," Miginiac said.

--With assistance from **Esteban Duarte** and **Lucca de Paoli**.

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Securities

Moelis Case Hangs On Top Court's Take on 'Void vs. Voidable' (1)

Oct. 14, 2025, 2:13 PM PDT; Updated: Oct. 15, 2025, 2:00 AM PDT

A challenge to billionaire Ken Moelis' pact with the investment bank he founded now hinges on what Delaware's top court deems permissible in deals with controlling shareholders.

The two-year old dispute catalyzed legal and political scrutiny of Delaware's corporate primacy. It's one of a slate of arguments before the Delaware Supreme Court this year concerning the balance between powerful controllers and minority shareholders amid threats to the state's place in America's corporate firmament from Nevada and Texas.

Extensive approval rights that gave Moelis the last word on the leadership, litigation strategy, budget, business plans, and charter, along with dividend payments or stock issuances, at his namesake Moelis & Co. amount to a board invasion and have been void from the start, a pension fund contends in a newly filed brief defending its lower court victory.

Voting or consent rights granted through special or preferred stock are only available at the stockholder level, "allowing stockholders to block or vote down corporate actions after the board of directors has acted," the West Palm Beach Firefighters' Pension Fund said. "They do not allow stockholders to invade a board's deliberative process or dictate decisions by incumbent directors, as the challenged provisions do."

Moelis maintains Delaware's always allowed those provisions to be adopted through other lawful means, so they're at most "voidable."

The dueling positions respond to a high court directive after May arguments that the parties address whether those provisions could've been valid if adopted differently. The justices also want to understand how alternative methods for implementation might affect whether the provisions should be considered invalid or fixable. More oral arguments may follow.

'Black and White'

Practitioners are watching for the justices' interpretation of what's never permissible in shareholder agreements, even under 2024 amendments intended to reinforce common practices vulnerable to litigation.

Parsing the difference between “void” and “voidable” is an important distinction, said Lawrence Cunningham, director of the University of Delaware’s John L. Weinberg Center for Corporate Governance. “It’s not a subtle shade, it’s like the difference between black and white.”

The veto rights in the pact are void, the pension fund argues, because “such ‘dead hand’ control rights” conflict with state law requiring corporate management by a board of directors as well as the bank’s certificate of incorporation stating a board manages its “business and affairs.”

“This type of arrangement—*power without duty*—is anathema to Delaware corporate law,” its brief said.

Moelis’ brief says the veto rights could’ve been adopted through the certificate of incorporation under Delaware statutes that “expressly authorize certificate provisions that define and restrict board authority and govern corporate management.”

“Under settled Delaware law, corporate acts are not void unless they are illegal or beyond the corporation’s authority entirely,” his side said. “Acts that fall within the corporation’s power but are accomplished through an inappropriate method are merely voidable.”

The February 2024 Delaware Chancery Court decision invalidating the founder’s veto power prompted a swift legislative change, S.B. 313, that stoked rare public tension between Delaware’s corporate bar and sitting judges. But both lawmakers and Vice Chancellor J. Travis Laster acted more or less as expected, Cunningham said.

“There’s always been this sense that the judges have a lane, and they solve cases one at a time. After the fact, the legislature also has a lane,” he said. “Here, it happened at a much faster pace and with a lot more turmoil than usual.”

The justices may want to avoid explicitly addressing the amendments, but that won’t stop people from reading their opinion as a comment on “the judicial-legislative relationship,” especially as the court prepares to consider the constitutionality of a corporate law overhaul enacted even more swiftly this year, Cunningham said.

Current Law

S.B. 313 lets companies use private contracts to grant the types of control that previously required a charter provision or a special class of stock. Pacts subject to pending claims, including those in *Moelis*, are excluded.

The high court might explore what sorts of stockholder agreement provisions couldn’t be adopted even after the changes took effect, said Nate Sussman of Munger, Tolles & Olson LLP.

“Such a discussion could help clarify any outer limits of S.B. 313’s enabling amendments and offer insight into how future disputes over similar issues might be decided,” he said.

Given the flexibility of Delaware's statutes, Moelis makes a persuasive argument that it's difficult to abstractly limit what's considered permissible, said Maeve O'Connor of Debevoise & Plimpton LLP. "I would think that piece of the argument would resonate with the court, so I would not anticipate any hard boundary-drawing beyond the scope of what's needed to decide this case."

The S.B. 313 amendments left some ambiguity regarding provisions in a stockholder's agreement that wouldn't be enforceable because they're contrary to the certificate of incorporation, or to Delaware law "if included in the certificate of incorporation," O'Connor said.

"It's not explained what exactly that means. I would think that would be a very narrow and rarely invoked exception," she said. "But given that so far there's been no case law fleshing that out, this may provide some comfort or some guidance as to the scope of that potential carve-out."

Void vs. Voidable

In Delaware, a "void" provision is always invalid because there's no lawful way for a corporation to adopt it. "Voidable" provisions could be validly adopted if appropriate procedures are followed, but they're subject to challenge when corporations don't follow those procedures.

"The practical implication of a precedent holding that a provision is 'void' and not merely 'voidable' is that corporations are effectively told there are no circumstances under which they can take a particular action, regardless of the procedures they follow," Sussman said.

For many years under Delaware law, "there were a lot of things the corporation simply lacked the power to do," said Cunningham. "Then gradually, over time, it got narrower and narrower, so the corporations were really empowered to do basically anything, unless it was really illegal."

The case is *Moelis & Co. v. W. Palm Beach Firefighters' Pension Fund*, Del., No. 340,2024, brief filed 10/10/25 .

(Update with additional details at paragraphs two and three.)

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Securities

Jack Welch Was Right: Quarterly Earnings Theater Is Dumb

Oct. 15, 2025, 2:00 AM PDT

"You have to be an idiot to miss a Wall Street estimate."

This was Jack Welch's 2¢ on quarterly earnings expectations—part of the mandatory opening of the books public companies do every 90 days. Businesses have long decried the regulatory requirement as onerous, expensive and something that hangs over every decision they make like the mythological sword of Damocles.

It looks as if their pleas have finally been answered. Paul Atkins, US Securities and Exchange Commission chairman, recently announced a proposal to scrap quarterly earnings and, instead, require public companies to disclose financials only twice a year.



Welch speaking during a news conference in 2020.

Photographer: Chris Hondros/Getty Images

Businesses, as you might imagine, are thrilled. In a statement, Bill Hulse, senior vice president of the US Chamber of Commerce, said the trade group welcomes the “proposal to reform SEC disclosure requirements and address the high costs of reporting faced by companies and shareholders under the current system.” (The chamber has lobbied for such a change for years, most recently in a white paper published in June.)

Those quarterly costs are real. The fees businesses pay external auditors to review their accounts now average more than \$2 million a year, according to a study by Audit Analytics Inc. And that’s if everything goes well.

“If a company misses earnings expectations, even by a penny, it’s seen as a disaster,” says Sarah Williamson, chief executive officer of FCLTGlobal, a nonprofit that pushes for companies to invest with an eye on the long term. These make-or-break expectations are typically set by stock analysts on Wall Street; Williamson compares them to meteorologists. “Just like a weather forecaster, sometimes they’re right and sometimes they’re wrong,” she says. “But you’d never say, ‘The sky hit or missed the forecast.’ That’s nonsensical.”

Nonetheless, missing expectations can summon a mighty storm. Last year, Target Corp. announced quarterly sales of \$25.7 billion, slightly below the analyst consensus estimate of \$25.9 billion. The company's stock lost almost a quarter of its value in a day.

It isn't regulators or even analysts who are responsible for the Sturm und Drang around quarterly earnings. The roots of these dramatics go back to Welch himself, who turned what had been relatively low-key government disclosures into headline-grabbing theater when he took over running General Electric Co. in 1981. Welch used quarterly earnings reports as an excuse to showboat the success of his radical management principles, including his formulaic firing of the bottom 10% of employees, an annual ritual that became known as "rank and yank."

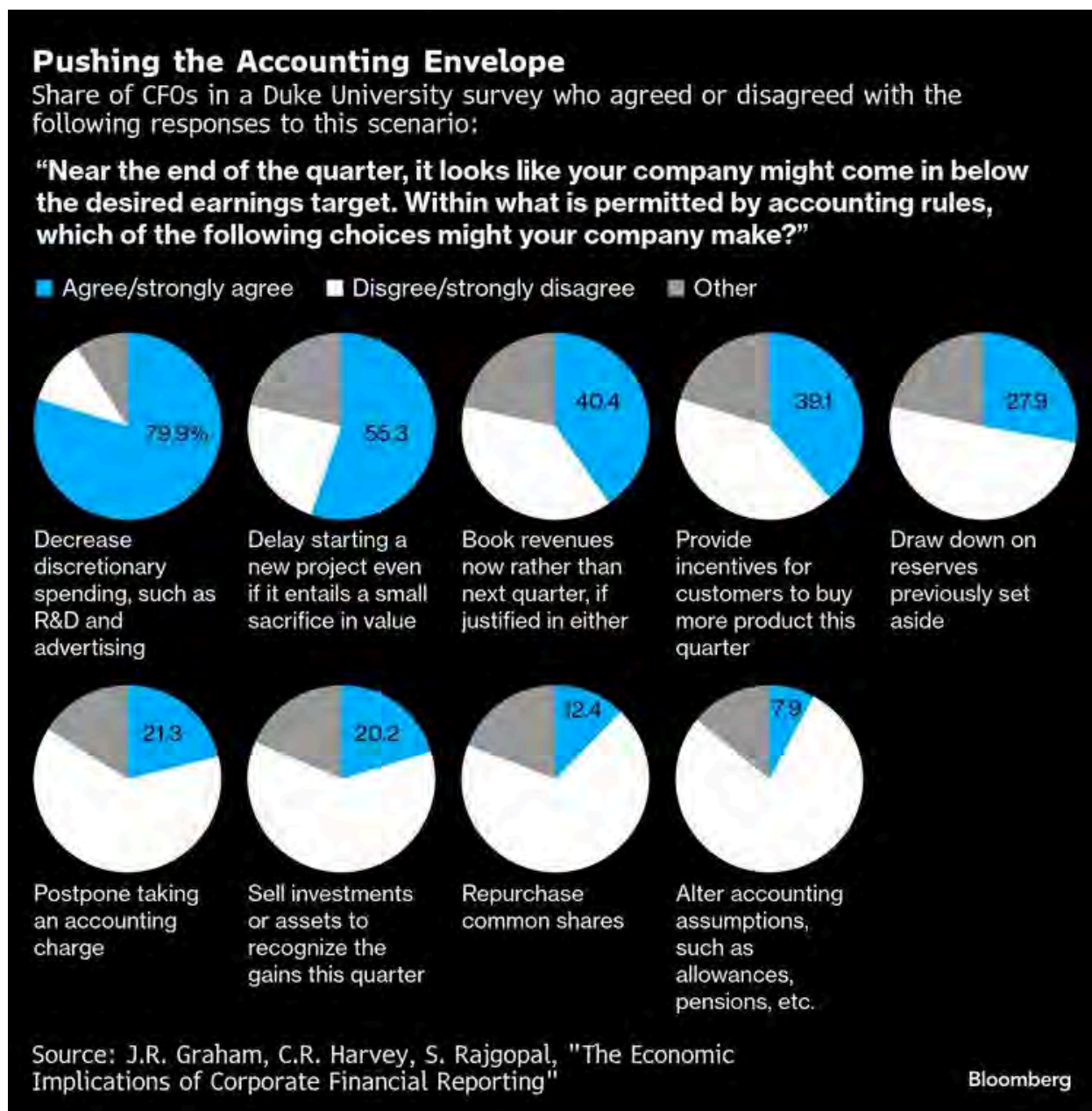
Under Welch, GE "hit its quarterly earnings targets every three months for 80 quarters in a row," David Gelles, author of *The Man Who Broke Capitalism*, told NPR's *Fresh Air*. "It's a record no company has ever come close to."

Wall Street was captivated. GE had long been an icon of American industry. It was the first company to mass-produce light bulbs and played a pioneering role in television and radio production. During Welch's tenure from 1981 to 2001, it also became a money-printing machine. For much of the 1990s, GE was the most richly valued company in the world and its CEO a bona fide celebrity.

Welch, whom *Fortune* magazine anointed "manager of the century," styled himself as the embodiment of economist Milton Friedman's doctrine of shareholder value: an executive with a single-minded focus on boosting returns for investors (whatever the costs). But in the years since, everyone from Elizabeth Warren to Warren Buffett to Jamie Dimon has criticized the obsession with meeting or beating Wall Street's quarterly earnings estimates, arguing that it distracts from more important long-term goals. "It's kind of like running a marathon. If you run too fast in the first mile or two, you're much less likely to cross the finish line," says FCLTGlobal's Williamson.

President Donald Trump recently joined the chorus, posting this on his Truth Social platform: "Companies and Corporations should no longer be forced to 'Report' on a quarterly basis ...This will save money, and allow managers to focus on properly running their companies."

In fact, studies have shown the relentless drumbeat of 90-day disclosures shapes companies in all kinds of ways. Back in 2004, economist Campbell Harvey of Duke University's Fuqua School of Business and two other professors surveyed hundreds of chief financial officers about quarterly earnings, asking if they had ever done things that "sacrificed shareholder value" so they could hit earnings targets; 78% said yes. And after talking with many of the CFOs they surveyed, Harvey thinks that number should have been even higher. "Every single CFO we talked to had done it," he says. "This is a deep problem."



In most cases, the value destruction is about timing, Harvey explains. "You're coming to the end of the quarter, you're gonna be short by a few cents, so you delay hiring, you slash advertising. If you've got a project that is scheduled to start, you delay."

When Harvey asked the executives why they couldn't just explain to investors that earnings would come in slightly lower because managers made spending decisions based on the long-term health of the company, he recalls being told, "The fact you're even asking that question is the reason I'm a CFO and you're a professor."

Still, as bad as mandatory quarterly reporting might be, some argue that doing away with the practice might be worse. In a 2020 study, Salman Arif, a professor at the University of Minnesota's Carlson School of Management, compared companies in Japan, Singapore, the UK and other countries that require earnings be reported only twice a year to companies in countries that require quarterly earnings. Arif found stocks were far more volatile for the semiannual set, because investors would fill the six-month information vacuum with other available data they thought might be relevant and trade on that. (Investors apparently abhor a vacuum as much as nature does.)

In addition to injecting volatility, Arif says, scrapping quarterly reporting would make markets less fair. "You are benefiting the most sophisticated investors, who can do all this fancy research and afford to buy things like satellite images of parking lots," he says. "Those investors now have six months of private information they can basically use for insider trading."

Perhaps the biggest risk in getting rid of quarterly reporting is that you're messing with the secret sauce that's helped make US exchanges the biggest in the world, says Shiva Rajgopal, professor of accounting and auditing at Columbia Business School and co-author of the 2004 CFO study. He says the more frequent disclosures mean less perceived risk for investors, which helps inspire trust. "US markets account for roughly half of the value of overall global markets," Rajgopal says. "It's an amazing juggernaut. It's important to preserve that."

Still, Rajgopal acknowledges that quarterly earnings requirements are burdensome and expensive, and they distort decision-making. Perhaps nothing illustrates this better than GE itself. Welch's aggressive job cuts, bold pivots and risky ventures—many in service of the almighty quarterly earnings report—transformed GE into a very different company. After Welch retired, the sprawling conglomerate struggled financially and got hit with multiple SEC investigations and a \$50 million fine for accounting fraud; it eventually split into three companies. Many critics say Welch's obsession with earnings left the once powerful company a shell of its former self.

In one of his last press interviews before he died in 2020, a retired Jack Welch told the *Financial Times* he regretted having been so focused on quarterly performance. The man who had once said, "You have to be an idiot to miss a Wall Street estimate" told the reporter that his focus on shareholder value was "the dumbest idea in the world."

As it turns out, he may have been right on both counts.

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Litigation

Manage Newsletters

ABA Says Third-Party Lawyer-Mediators Must Be 'Credibly Neutral'

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Summary by Bloomberg AI

AI Generated



- The American Bar Association says lawyer-mediators need to ensure unrepresented parties understand the nature and scope of their role as a neutral.
- Lawyer-mediators must inform unrepresented parties that they don't represent them and give them a chance to discuss the implications of the neutral role.
- Lawyer-mediators have an ethical duty to avoid engaging in conduct that's "dishonest, fraudulent, deceptive, or misleading" and must be careful not to make misleading statements about the strength or weakness of a party's case.

Lawyers acting as third-party neutral mediators need to be careful to ensure that unrepresented parties in negotiations understand the nature and scope of their role, the American Bar Association says in a new ethics opinion.

Lawyer-mediators must explain the difference between their role as a neutral and a lawyer's more typical role representing a client, especially when a party is unrepresented and doesn't understand the mediation process, says the opinion released Wednesday.

Under Rule 2.4 of the ABA's Model Rules of Professional Conduct, a lawyer serving as a "third-party neutral" assists two or more people who aren't clients to resolve a dispute. These lawyers must inform unrepresented parties that they don't represent them, the rule states.

The new opinion maintains that lawyer-mediators should remain "vigilant" through the course of the mediation about the nature and scope of their role as a neutral. Unless the parties are "sophisticated consumers" of mediation services, the opinion says, it is "prudent" both to inform all parties that the lawyer-mediator does not represent them and to give the parties a chance discuss the implications of the neutral role.

Fulfilling these duties “ensures that each party to the mediation understands that the lawyer-mediator is not representing the party, is not seeking to protect the party’s best interests,” and isn’t assuming the duties that a lawyer would ordinarily have to a client under the Model Rules, the opinion says.

Lawyer-mediators should give mediation parties an opportunity to discuss what it “means” for a neutral not to represent them. That includes the inapplicability of the attorney-client privilege, the ABA says.

Lawyer-mediators should avoid misleading parties about their role in conducting the mediation, by making sure that they don’t state that they’re acting to achieve a party’s “best interest” or that a proposed settlement fits within that parameter.

Rather, “the lawyer-mediator’s role is to assist the parties in resolving their dispute, regardless of where the interest of a party may lie,” the opinion explains.

Lawyer-mediators also have an ethical duty under ABA Model Rule 8.4 to avoid engaging in conduct that’s “dishonest, fraudulent, deceptive, or misleading,” the opinion says. This can be key to remember when they’re helping the parties evaluate whether to settle and if so, “on what terms.”

For lawyers representing parties in negotiations, untrue statements are not “entirely forbidden,” the opinion states. But, a lawyer-mediator doesn’t have the same leeway as a lawyer negotiating for a client to make immaterial false statements that could, say, downplay a client’s willingness to compromise, or present a client’s bargaining position without disclosing their “bottom line” position.

“Given the lawyer-mediator’s neutrality, parties are likely to trust the lawyer-mediator to play it straight, and to not exaggerate or make false statements designed to lead the parties to an agreement,” the ABA says.

Toward that end, the opinion states that lawyer-mediators “must be careful not to make misleading statements about the strength or weakness of a party’s case,” and must be precise to avoid any “inappropriate gloss” in describing to one party the position that the other side is taking.

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Class Action

Manage Newsletters

Heavyweight Investors Line Up for Law Firm Ownership Ventures (1)

Oct. 15, 2025, 2:32 AM PDT; Updated: Oct. 15, 2025, 7:06 AM PDT

Summary by Bloomberg AI

AI Generated



- Big capital providers are investing in “alternative” law firms in Arizona as investors become comfortable with risk in the space.
- Investors such as Benefit Street Partners and Crossbeam Venture Partners are testing the waters, with Crispin Passmore saying he receives about 10 queries each week about new projects.
- Arizona has approved 153 alternative business structures, with the state's model being more permissive than other states, and investors are attracted to the possibility of gaining returns uncorrelated to the stock and bond markets.

Big capital providers are flocking to Arizona to pour money into “alternative” law firms as investors become comfortable with risk in the fledgling space.

Investors testing the waters include credit-focused alternative asset manager Benefit Street Partners, owned by Franklin Templeton, and Crossbeam Venture Partners, a joint venture between Treville Capital and Moelis Asset Management. Crispin Passmore, who advises law firms and investors, said he receives about 10 queries each week about new projects.

“It’s been a massive increase of investors in law firms this year,” Passmore said. “They’re getting bigger, from venture capital to family offices to big asset managers to investment banks.”

The ramp up in investment reflects Wall Street’s growing confidence in the practice of directly funding litigation and the possibility of gaining returns that are uncorrelated to the stock and bond markets. Arizona opened a path to such investments by approving non-lawyer ownership of law firms about four years ago.

Prominent firms stepped forward, including Fortress Investment Group, which owns part of a personal injury law firm. Big Four accounting firm KPMG in February won approval to operate a firm, which the state calls an alternative business structure (ABS) to differentiate the model from the vast majority of states that require lawyers to own legal operations.

In the experiment's first year in 2021, the Arizona Supreme Court approved 15 alternative structures, according to an annual report. It approved 25 in the following two years and 51 in 2024. There are currently 153 approved structures in Arizona. In 2024 the ABS program moved through the application process faster, with an 84% increase in approvals from 2023.

A handful of other states have similar models, but none as permissive as Arizona's. Puerto Rico opened the door to the model in June. California just pushed back against it, banning its attorneys and firms from sharing contingency fees with an out-of-state ABS.

The New Entrants

A Bloomberg Law review of approved ABS applications shows details of the business models of new entrants gaining a foothold in Arizona. This article is based on documents received via a public records request to the Arizona Supreme Court.

Benefit Street Partners has \$82 billion under management. The firm, as well as a managing director Matthew Winkler, are listed as authorized persons for Copper State Legal Services LLC. The application says the firm will focus on tort litigation, contract claims, intellectual property and bankruptcy.

"BSP is an active participant in the litigation funding marketplace," the firm's application said. Litigation funders provide capital to law firms in exchange for a portion of the proceeds from a successful resolution. The industry has grown to \$16.1 billion in assets under management.

Benefit Street Partners declined to comment for this article.

Crossbeam Venture Partners is behind ABS Justpoint Law. Crossbeam, a 2020 joint venture between Treville and Moelis Asset Management, invests in seed and series A startups of the "next-gen economy," according to its website.

In its application, Justpoint Law said it will provide the capital and services to create a new model for representing victims of "harmful FDA-regulated products" that allows for a "significantly faster administration of justice."

Ali Hamed, a founder at Treville Capital and Crossbeam, said the fund was attracted to the ABS model because nonlawyers could have more involvement in creating the law firm. He also said it's a more efficient way to utilize artificial intelligence, which Justpoint uses to identify potentially harmful products that could end up in litigation.

"If you could build a law firm with the technology that's available today, it probably wouldn't look like the law firms that exist," he said.

Moelis did not provide comment.

Mustang Litigation Funding is listed as an "authorized person" for Constant Legal Group. Mustang provides pre-settlement funding for plaintiffs as well as law firm loans.

Co-founder and president Jimmy Beltz said Mustang became interested in investing in an ABS because it allows investors to have a direct relationship to the law firm.

"The alternative business structure removes one layer where we can bring the capital directly into the law firm," he said.

In a description of its business objectives Constant Legal said, "Having access to these resources will encourage an independent, strong, diverse, and effective legal profession."

Constant Legal described itself as representing clients in and outside of Arizona in mass tort and non mass tort litigation. Beltz said the firm won't alter its investment strategy but the ABS could open it up to things it hasn't been able to do.

Aside from establishing Constant, Mustang has dispersed \$170 million across their portfolio and has financed more than 3,000 unique cases.

"The legal world is kind of one of the last industries that has prevented outside involvement of capital, frankly, to its detriment," Beltz said. "I think litigation finance is just a construct that allows an industry to operate more efficiently."

Lake Whillans, a Texas-based commercial funder, is involved with ABS Amborella Law PLLC. Amborella provides legal and third-party recovery services to clients on complex and large loss claims, according to its website. SubroSmart, a tech driven subrogation management company, is an affiliate.

Lake Whillans did not respond to a request for comment.

Nera Capital, a UK funder, is behind the ABS law firm Mayfair Legal. The ABS focuses on mass arbitration against large corporate defendants and offers an attractive contingency arrangement: 22% as opposed to the typical 25% to 40%.

Aisling Byrne, director at Nera Capital, said in an email that the funder is affiliated with Mayfair because it sees significant opportunity in the state's legal industry.

"By working closely with a trusted legal partner on the ground, we're able to deepen our presence in the US market, support great cases and expand access to justice through sustainable, well-governed funding models," Byrne wrote.

(Adds more data on ABS)

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News | **Mass Torts**

Critical Mass With Law.com's Amanda Bronstad: 11th Circuit Questions Zantac Judge's Expert Ruling, Circuit Split Emerges Over Class Certification in Auto Insurance Cases

October 15, 2025 at 10:34 AM By  **Amanda Bronstad**



Judge Adalberto Jose Jordan of the U.S. Court of Appeals for the Eleventh Circuit/photo by J. Albert Diaz/ALM

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

This week: The **U.S. Court of Appeals for the Eleventh Circuit**, at Oct. 10 oral arguments, challenged a pivotal 341-page expert ruling that wiped out the **Zantac** multidistrict litigation. In a case against **State Farm**, the **U.S. Court of Appeals for the Sixth Circuit** split with its sister circuits on class certification. Find out who represents **TransUnion** in data breach lawsuits related to **Salesforce**.

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](#).



Ashley Keller, with Keller Postman. Courtesy photo

Eleventh Circuit Judge On Zantac Judge: ‘Was She a Little Too Thorough?’

The **U.S. Court of Appeals for the Eleventh Circuit** appeared ready to pick apart **U.S. District Judge Robin Rosenberg**’s pivotal 2022 ruling tossing all the plaintiffs’ experts in the Zantac multidistrict litigation.

[Here’s my recap](#) of the Oct. 10 oral arguments, in which [Ashley Keller](#) (**Keller Postman**) sought to overturn the order, which effectively wiped out thousands of lawsuits in federal court alleging that Zantac, an over-the-counter heartburn medication recalled in 2020, was linked to various cancers. In her 341-page ruling, Rosenberg found the 10 experts made “analytical leaps” from existing data to reach what she considered opinions that differed from established science.

But **Eleventh Circuit Judge Adalberto Jordan** parsed out some distinctions among the experts in Rosenberg’s order, remarking, “The question is, with respect to some of the experts, was she a little too thorough in the sense she crossed that difficult line, that unintelligible line, between gatekeeper and decision maker about the actual issues being opined on by an expert?”

[Joe Petrosinelli](#) (Williams & Connolly), for the brand-name drug manufacturers, which include **Pfizer** and **Boehringer Ingelheim**, insisted Rosenberg was “laser focused on methodology.”

Rosenberg’s expert ruling is significant because of its interpretation under the **U.S. Supreme Court’s** 1993 holding in *Daubert v. Merrell Dow Pharmaceuticals Inc.* But oral arguments, which stretched more than two hours, addressed numerous additional orders Rosenberg made in the Zantac multidistrict litigation. One of the more prominent arguments centered on whether Rosenberg, of the **Southern District of Florida**, had subject matter jurisdiction, given that she merged all the plaintiffs, some of whom sued the generic manufacturers, into a master complaint, then applied her expert ruling on them.

“Tell me how an MDL can proceed, in your view, without merger,” Jordan asked Keller, who replied:

“An MDL can absolutely proceed without merger. It happens all the time. So you can use case management orders, and docket entry inherent authority to say, ‘we’re going to sequence the cases. I’m going to have bellwether motions to dismiss for these particular plaintiffs.’ That’s happening right now in Judge Rodgers’ courtroom in the Depo-Provera MDL.”



State Farm insurance office. Photo: Diego M. Radzinski/ALM

Sixth Circuit Finds ‘Clear Common Question’ in State Farm Class Certification

The **U.S. Court of Appeals for the Sixth Circuit** split with four other appeals courts in affirming class certification of 90,000 policyholders of **State Farm's** automobile insurance.

The [Oct. 9 ruling](#) upheld a class certification order in the **Western District of Tennessee**. The class action claims State Farm used a valuation scheme to low-ball the cash value of totaled vehicles. But the Third, Fourth, Seventh and Ninth circuits this year reversed class action certification in similar cases against **Progressive**, concluding that the issues were too individualized, and each class member would have to prove damages.

The majority in the Sixth Circuit's split decision disagreed. Another class action, in federal court in the **Eastern District of Arkansas**, ended in a jury's verdict that State Farm breached its contract with 37,000 class members by applying a "typical negotiation adjustment." Estimated damages could be up to \$40 million.

ALM's Emily Cousins, who wrote about the 6th Circuit's decision, told me:

'The Sixth Circuit believed that the other circuits had misinterpreted related case law, and that these cases could not be tried on an individual level because the cost of litigation would often exceed any potential reward. They also emphasized that they believed there is a clear common question on the systemic use of the methodology that always offers a price below the total cash value, even if there are some individual calculations that need to be determined post-judgment. It might depend on the Arkansas case I referred to in the story where a verdict was found in favor of, I think, 37,000 policyholders, and they're now working through how to calculate the damages. So that might be seen as a test case for how these issues could be resolved on a class action basis.'



Michael W. McTigue Jr. of Skadden, Arps, Meagher & Flom. Courtesy photo

Who Got the Work?

[Michael McTigue](#) (**Skadden Arps**) represents **TransUnion** in more than 50 lawsuits filed over a data breach of the credit reporting agency. In an Oct. 3 brief, McTigue asked the **U.S. Judicial Panel on Multidistrict Litigation** to send all the cases to the **Northern District of Illinois**, where TransUnion is headquartered in Chicago. The cyberattack attempted to access TransUnion's environment linked to corporate software firm **Salesforce**, which faces nearly 100 of its own data breach lawsuits, many of which name clients such as **Allianz Life Insurance of North America**, **Christian Dior** and TransUnion. In a separate Oct. 3 brief, McTigue argued that cases naming TransUnion as an additional defendant should not be included in a potential Salesforce multidistrict litigation docket. "Movants' attempt to force all actions into a single forum, over objections of plaintiffs and defendants alike, would only serve to complicate and delay resolution, rather than advance the interests of justice," he wrote. [William Ridgeway](#) (**Skadden**) and [Meredith Slawe](#) (**Skadden**) also represent TransUnion.

Here's what else is happening:

J&J Verdict: [Danny Kraft](#) (**Dean Omar**), who got a \$966 million jury verdict this month against **Johnson & Johnson**, told **Law.com** [he wasn't surprised](#) by the record award. The Oct. 6 award compensated the adult children of an 88-year-old woman who died from mesothelioma after using Johnson & Johnson's baby powder. Kraft said he told the jury that Johnson & Johnson made \$1.15 billion in the month they spent in the trial, which featured two jurors replaced by alternates during deliberations.

Talc Subpoena: A New York federal judge rejected a key plaintiffs' expert's motion to quash a subpoena for details about her 2020 report tying mesothelioma to cosmetic talcum powder. The expert, **Jacqueline Moline**, who gave a July 14 deposition in a separate talc case, has been targeted over her report, which is based on 33 individuals who Johnson & Johnson contends had additional exposures to asbestos. Pecos River Talc, a Johnson & Johnson subsidiary, subpoenaed Moline in [a federal trade libel lawsuit](#) in the **Eastern District of Virginia** against three other talc experts, whose research bolstered her findings. **U.S. District Judge Paul Engelmayer**, in an Oct. 10 order allowing the subpoena, found that "there is sound reason to question whether her deposition answers were false or misleading."

Berman Sanctions? [Steve Berman](#) (**Hagens Berman**) insisted he should not be sanctioned after **U.S. District Judge Paul Diamond**, of the **Eastern District of Pennsylvania**, adopted a special master's findings that the Seattle plaintiffs' attorney and his firm filed "baseless, dishonest claims" in a series of thalidomide lawsuits. Diamond, [in an Aug. 5 order](#), said the special master found "misconduct bordering on the criminal," but Berman, who has retained [Keith Beauchamp](#) (**Coppersmith Brockelman**), [Gaetan Alfano](#) (**Pietragallo Gordon**) and [Christopher Conner](#) (**Saxton & Stump**), wrote in a response this month that the special master exceeded his authority in the report, which found him and his firm "portraying them as greedy, unethical lawyers deserving of significant, though unspecified, sanctions."

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

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Class Action

Manage Newsletters

Watson Clinic Will Pay \$10 Million After Medical Image Data Hack

Oct. 15, 2025, 9:05 AM PDT

Watson Clinic LLP is set to pay \$10 million to resolve allegations the Florida-based medical center's negligence led to the improper release of personal and medical data, according to a preliminarily approved settlement.

The data breach included pre- and post-operative medically necessary images from Watson's current and former patients, as well as government identifiers and financial information, according to court documents from the US District Court for the Middle District of Florida. Members of the over-280,000-person class whose personal or sensitive images were posted to the dark web would automatically recover more from the settlement fund than others.

Class members whose leaked images include both their face and a "sensitive area" as defined under Florida law—which includes genitals or buttocks—could get a cash payment of \$75,000 from the settlement, as opposed to a minimum of \$100 if images posted on the dark web lacked those details

Data breach victims can also file claims for up to \$500 for ordinary out of pocket losses, and \$6,500 for extraordinary injury, an arrangement that Judge Steven Merryday found sufficiently fair for preliminary approval Tuesday

The judge scheduled a fairness hearing for March 9, 2026 to precede final approval of the deal

Morgan & Morgan PA and Milberg Coleman Bryson Phillips Grossman PLLC were appointed class counsel. Shook, Hardy & Bacon LLP represented Watson Clinic.

The case is Viviani v. Watson Clinic LLP , M.D. Fla., No. 8:24-cv-02157, 10/14/25 .

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Litigation

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Deep Dive

Industries Answer Trump's Call for State PFAS Laws Causing Harm

Oct. 15, 2025, 2:30 AM PDT

Summary by Bloomberg AI

AI Generated



- Numerous trade associations responded to a Trump administration request for information about state chemical laws, seeking more clarity and control over regulations.
- The associations cited problems caused by state regulations on per- and polyfluoroalkyl substances, or PFAS, and suggested solutions such as nationwide testing standards and federal regulations that preempt state rules.
- The administration's interest in state laws has raised concerns that federal intervention could infringe on states' authority to pass laws protecting residents' health, safety, and welfare.

Numerous trade associations seized on an unusual Trump administration request seeking information about state chemical laws causing significant harm to the US economy and responded with two federal remedies in mind: more clarity and more control.

The Department of Justice and National Economic Council received more than 200 responses largely from manufacturing trade groups following the agencies' August request. Among these were responses from the apparel, pharmaceutical, semiconductor, and toy industries detailing problems caused by state chemical regulations—particularly those for per- and polyfluoroalkyl substances (PFAS).

PFAS: The 'Forever Chemi...



WATCH: PFAS, explained.

An executive branch focus on PFAS with the greatest potential to harm, nationwide testing standards, clarity over whether existing federal rules preempt state regulations, and new federal PFAS-in-products regulations that preempt state rules are among the solutions groups mentioned in comments and subsequent interviews.

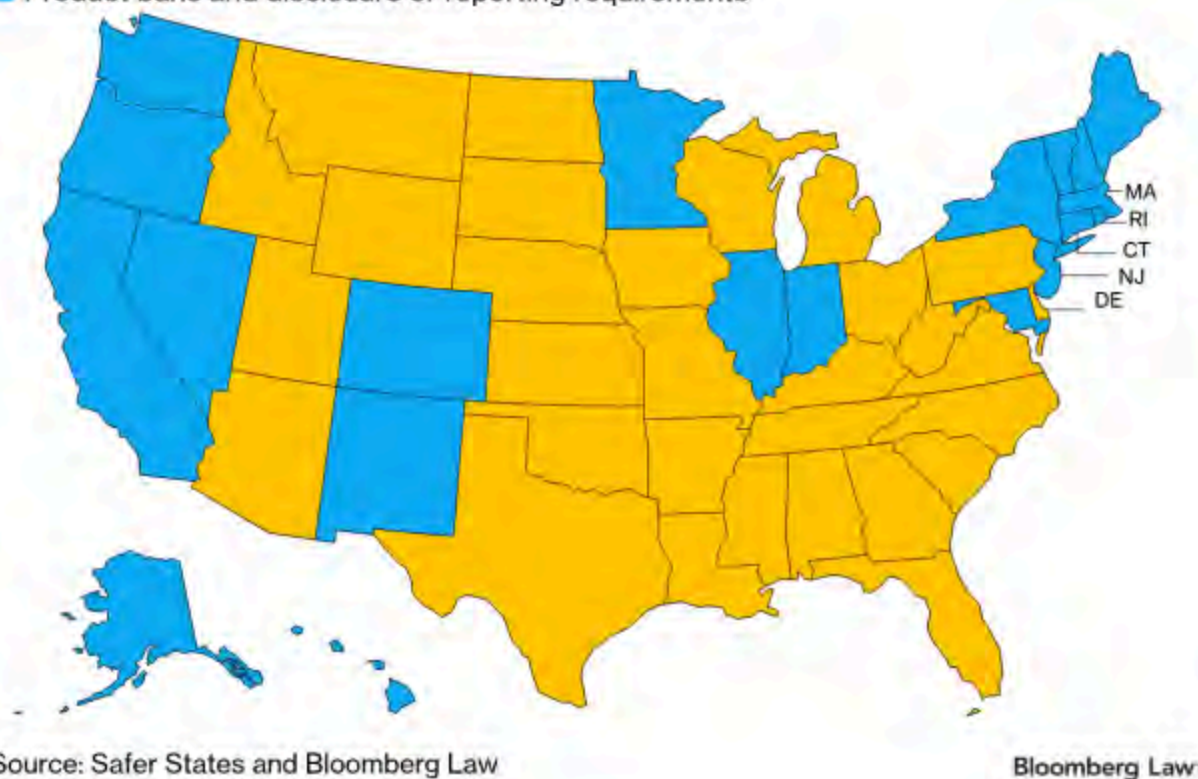
The Trump administration's interest in state laws follows its lawsuits challenging New York, Vermont, Michigan, and Hawaii efforts to collect billions of dollars from oil companies for damage caused by climate change.

But the August request raises concerns that federal intervention could infringe on authority the US Constitution gives states to pass laws protecting residents' health, safety, and welfare.

State Regulatory Patchwork

States With PFAS Product Regulations

■ Product bans and disclosure or reporting requirements



At least 20 states have banned PFAS—colloquially called “forever chemicals”—from more than a dozen types of products including artificial turf, cookware, cosmetics, food packaging, furniture, toys, and firefighting foam, according to information from Safer States and Bloomberg Law's reporting.

Some laws also require companies to disclose information about the PFAS in those products.

Many states use a broad PFAS definition that, according to a recent American Chemical Society Analysis, includes more than 350,000 compounds with the largest portion being in the pharmaceutical, plastics, and agrochemical sectors.

Laws Minnesota, Maine, and New Mexico passed to regulate PFAS in all products prompted the most concern in manufacturing trade groups' comments.

Those statutes are the tip of a growing iceberg of PFAS-in-products laws creating a regulatory maze burdening the national economy and interstate commerce, wrote Beveridge & Diamond PC, which serves as counsel for the PFAS Pharmaceutical Working Group, in their comments.

"The supply chain doesn't allow for state-by-state product design," said Kathrin Belliveau, chief policy officer for the Toy Association.

If a company sells its products on Amazon, for example, it has no way to control where that toy will be sold, she said. "We're looking for the federal framework that exists to be strengthened to deal with these regulations that are evolving at the state level."

Federal Preemption

The Toxic Substances Control Act (TSCA) illustrates a useful federal framework, said Kimberly Wise White, a vice president at the American Chemistry Council, which submitted comments.

The law requires the Environmental Protection Agency to use the best available science to decide whether a chemical's risks warrant controls, she said.

TSCA can preempt state chemical regulations, but states also can leverage the science the EPA uses to make their own decisions to benefit their communities, White said.

The EPA, however, has not acted to broadly restrict PFAS, SEMI, which represents semiconductor equipment and materials manufacturers, told the DOJ and council.

"The ability of the federal government to preempt state regulations on PFAS is predicated on either changes to the TSCA statute or regulatory action on the part of EPA," SEMI said.

Other trade groups agreed TSCA or other regulations could reduce problems caused by divergent state rules. In other cases, the government needs to clarify that federal regulations already preempt state controls, industry groups said.

The Food and Drug Administration's rules for drugs, biologics, animal drugs, medical devices, along with packaging of those goods, should be recognized as preempting state rules, the PFAS Pharmaceutical Working Group said.

"The federal government has the power to invalidate state laws through preemption under the supremacy clause of the Constitution," said Michael Mims, a shareholder at Liskow & Lewis APLC, specializing in commercial and environmental litigation.

But the federal government hasn't typically demonstrated the desire or the resources to step in, so "states will continue to have freedom to impose their own regulations, which may differ from one another," he said.

That's going to create some burdens on interstate commerce, but "our system of federalism means that states are going to have these powers, except for areas where Congress has deemed it to be an exclusively federally-regulated area," Mims said.

The federal government also could choose to intervene in lawsuits challenging state statutes, said Rod Smolla, a law professor teaching at the Vermont Law and Graduate School.

Another strategy is creating a federal uniform reporting system for the roughly 800 commercially active forms of PFAS, and then focusing on those with the riskiest potential, said Kevin Fay, executive director of the Sustainable PFAS Action Network that represents PFAS producers and downstream users, which submitted comments. "We don't need 50 reporting programs."

Unprecedented Effort

Several attorneys said the administration's information-collection effort is unusual.

"It's really encouraging," said Whitney Miner, a Benesch, Friedlander, Coplan & Aronoff LLP attorney specializing in consumer and intellectual property law.

The initiative starts a conversation about what all parties can do to create a more consistent, clear baseline for PFAS that protects consumers while making compliance predictable and practical for companies, she said. "Businesses want consistency not less safety."

"I don't know of any precedent for this" effort to intervene in decisions local governments and states have made about the products they want in their community and the chemicals they choose to be exposed to, said Wendy Wagner, a law professor at the University of Texas at Austin.

The regulatory space deals with who decides what people are exposed to, which raises the question of whether an industry can force its PFAS-containing products on a state's residents, she said.

The result could be that people are told "you have to accept these products in your community," even if they could harm pregnant mothers and their offspring, Wagner said. "That's really worrisome and a big change from how we've understood federalism."

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News from Bloomberg Terminal

State Farm Sued by Illinois Amid Probe of Homeowner Premiums

Oct. 15, 2025, 10:28AM PDT

By Robert Burnson

(Bloomberg) --

Illinois sued State Farm Fire and Casualty Insurance Co. to force it to provide information for an investigation into the company's rapidly rising premiums for homeowners.

The state's insurance regulator alleged that the company has refused to comply with a demand for zip code-level data about its nationwide rates for homeowner insurance.

The state said it asked State Farm for information about its total premiums collected, types of coverage and insurance limits and number of claims against those policies.

"State Farm's obstruction does not just violate the law," Illinois Attorney General Kwame Raoul said in a statement. "It prevents the Department of Insurance from obtaining information to help make sure all Illinois homeowners are being treated fairly."

State Farm said in a statement that it didn't violate the law.

"This lawsuit is without merit and has nothing to do with Illinois customers or the cost of their insurance," according to the statement. "State Farm remains committed to collaborating with the Illinois Department of Insurance to benefit Illinois customers. We value our partnerships with state leaders and continue to work together toward finding solutions that allow us to best serve customers and promote a healthy and competitive insurance market."

The case is Gillespie v. State Farm Fire and Casualty Insurance Company, 2025CH10454, Illinois Circuit Court, Chancery Division (Cook County).

(Updates with State Farm comment starting in fifth paragraph.)

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Litigation

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Insight

Supreme Court Should Take Chance to Resolve Climate Change Split

Oct. 15, 2025, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated



- The US Supreme Court has declined to resolve whether the Clean Air Act preempts state common law claims of public nuisance in climate change litigation.
- The court has the opportunity to clarify this issue in *Suncor Energy USA Inc. v. County Commissioners of Boulder County*, with several recent developments making Supreme Court review more necessary and likely.
- The petition for certiorari asks the justices to review a Colorado Supreme Court decision that rejected arguments of preemption and other defenses, and the court has requested a response, indicating that at least some justices think the petition deserves serious consideration.

The US Supreme Court repeatedly has declined to resolve a central question underlying the wave of the climate change litigation advancing through state and federal courts: Does the Clean Air Act preempt state common law claims of public nuisance?

The time has come for the court to step off the sidelines and clarify this sprawling and inconsistent body of cases. It can do so this term in *Suncor Energy USA Inc. v. County Commissioners of Boulder County*. Several recent developments make Supreme Court review more necessary and likely.

The petition for certiorari, filed on Aug. 8, asks the justices to review a Colorado Supreme Court decision that rejected arguments of preemption and other defenses raised in the defendant energy companies' motion to dismiss last year. The decision cleared the way for plaintiffs to proceed to trial on state tort and consumer deception claims from alleged climate change effects.

We may have the Supreme Court's decision on the petition soon. Notably, Boulder County "waived" its right to respond to the petition in late August—a tactic sometimes intended to signal that a case is unworthy of the court's attention. But the court requested a response, now due by Nov. 10. This order indicates that at least some of the justices think the petition deserves serious consideration.

This petition arises against the backdrop of a long and complex history of climate change litigation in US courts. For more than 15 years, dozens of lawsuits have alleged public nuisance, consumer deception, and related claims against energy companies and others for purported contributions to climate change.

The Supreme Court has substantively addressed these claims only once—in *American Electric Power Co. Inc. v. Connecticut* in 2011. It's time to do so again.

In *AEP*, the court held that plaintiffs couldn't pursue federal common law public nuisance claims related to climate change because the Clean Air Act displaced the field. However, the court didn't address whether the Clean Air Act similarly preempts state common law claims.

That omission has fueled a wave of state court litigation testing the boundaries of federal preemption. Granting certiorari in *Suncor* would allow the Supreme Court to close that gap and provide the clarity that both courts and litigants have lacked for over a decade.

Following *AEP*, plaintiffs shifted strategy, rebranding their claims under state law. What has followed is a patchwork of inconsistent rulings as courts have rejected divergent conclusions about the interplay between federal preemption and state common law.

Only a few outliers—such as courts in Hawaii and, most recently, this Colorado case—have allowed such claims to proceed past motions to dismiss. By contrast, a rising number of courts have recently concluded that the Clean Air Act preempts these state law claims.

As one Pennsylvania court noted in the May 16 opinion in *Bucks County v. BP P.L.C.*, there is a “growing chorus singing from the same hymnal” in finding preemption appropriate. State or federal courts in New York, California, Pennsylvania, Delaware, Maryland, New Jersey, and most recently South Carolina have joined this consensus, with a South Carolina judge emphasizing in the Aug. 6 opinion in *City of Charleston v. Brabham Oil Co.* that, “the ranks of this chorus are welling for sound public policy reasons.”

Many of the decisions were issued after the Supreme Court declined to grant certiorari earlier this year in a climate change case coming out of the Hawaii Supreme Court. But the litigation landscape has evolved sharply in the months since.

There is now a clear, well-developed split of authority, and there has been substantial percolation in the lower courts since the last time the justices considered a climate change lawsuit petition. Both are key metrics the Supreme Court uses to decide whether to take a case.

The national significance of *Suncor* is undeniable. On Sept. 11, the Solicitor General filed an amicus brief urging the Supreme Court to grant review. The filing represents a more direct and forceful articulation of federal interest than the court received in previous climate litigation, and one more consistent with the Obama administration's statements in *AEP*.

Beyond this brief, in the past year, the US has filed its own lawsuits seeking to enjoin states from pursuing climate change lawsuits or passing retroactive climate change fee assessment laws—further underscoring the national dimension of the issue.

Several amici have echoed this call for review, including a brief of considerable heft filed on Sept. 5 by former US Air Force General Richard Myers and former US Navy Admiral Michael Mullen, highlighting the national security implications of not resolving the current uncertainty.

These developments underscore that the question presented in *Suncor* isn't a parochial dispute, but one of exceptional and recurring federal significance. Whatever hesitation the Supreme Court may have shown in the past, the rapidly evolving litigation environment and deepening doctrinal division make this term the right time to address these critical federal questions.

The court should grant review in *Suncor* to restore coherence and constitutional order to climate change litigation nationwide.

The case is *Suncor Energy USA Inc. v. Cty. Commissioners of Boulder Cty.*, U.S., No. 25-170, amici briefs filed 9/26/25.

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

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Deep Dive

AI Chatbot Suits Open New Frontier in Debate Over Online Speech

Oct. 15, 2025, 1:59 AM PDT

Summary by Bloomberg AI

AI Generated



- Families of teens have filed lawsuits against generative AI developers Character.AI and OpenAI, arguing the chatbots are designed to be addictive and encourage suicidal ideation.
- Developers argue that restricting chatbot activity would be an unconstitutional restriction on speech, while others say chatbot output isn't meant to communicate a person's thoughts and isn't entitled to constitutional protection.
- The cases have sparked debate about how the First Amendment should apply to chatbot output, with some experts saying users' access to output implicates their freedom to receive information, while others argue certain types of speech, like incitement or threats, shouldn't be protected.

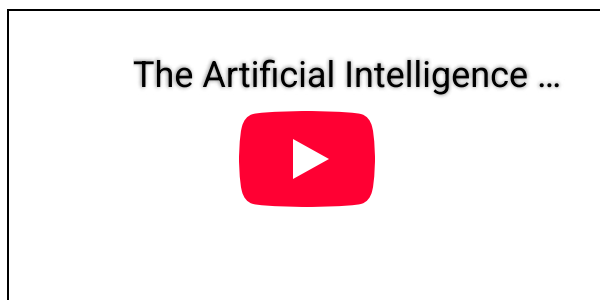
Mounting litigation accusing generative AI developers Character.AI and OpenAI of contributing to teen mental health crises is spurring debate about how the First Amendment should apply to chatbot output.

Families of teens have filed six lawsuits so far arguing the chatbots are designed to be addictive, encourage suicidal ideation, and have sexually explicit conversations with minors.

In one case, a 14-year-old Florida boy died by suicide after a Character.AI chatbot allegedly used sexually suggestive language and asked if "he had a plan" for suicide. Just last month Character.AI and Google LLC were hit with three more lawsuits from the families of girls between the ages of 12 and 14 alleging the chatbots exposed them to sexually abusive content and are designed to foster emotional dependency.

Developers argue that tamping down on chatbot activity would be an unconstitutional restriction on speech.

As AI develops at breakneck speed, the lawsuits highlight ethical concerns about the effects of chatbots on young people.



WATCH: Can laws keep up with AI's fast pace?

In the first ruling in the cases, a federal judge in May allowed most claims against Character.AI and Google to proceed but declined to rule on whether the chatbots' output is "speech."

That "punt" on the First Amendment defense sidestepped the potential fallout of excluding chatbot output from constitutional protection, said Becca Branum, deputy director of the Center for Democracy and Technology's Free Expression Project.

Not protecting output "would open the door for any manner of viewpoint based restrictions on what people can access through chatbots and LLMs and the way they're integrated into other products," said Branum, whose organization signed on to an amicus brief in the case.

Matthew Bergman, the founder of the Social Media Victims Law Center, rejected that idea. Chatbot output isn't meant to communicate a person's thoughts, he said.

The technology is "purely a process of statistical correlation," and the point of generative AI is that "it is unhooked to human intervention," said Bergman, one of the attorneys representing the families suing Character.AI.

A chatbot is designed with some rough parameters and then "it's on its own," unlike a programmer utilizing algorithmic technology for a specific speech objective, he said.

Right to Receive

Policy makers also have taken notice of chatbot concerns.

Last month, the Federal Trade Commission opened an inquiry into how chatbot makers mitigate the technologies' harms to children. Earlier this summer, a coalition of state attorneys general sent an open letter to a host of major technology companies promising to hold them accountable for knowingly harming minors.

Sens. Dick Durbin (D-Ill.) and Josh Hawley (R-Mo.) also introduced the AI LEAD Act (S. 2937), which would apply product liability law to AI systems and allow victims of chatbot harms to sue developers.

Earlier this week, California Gov. Gavin Newsom (D) signed a state law imposing new regulations on chatbots, including requirements that operators maintain a protocol for preventing suicidal content and take steps to limit sexually explicit content shown to minors.

In the first motion to dismiss filed in any of the suits, Character.AI argued the First Amendment barred all private tort claims because they fundamentally challenge expressive speech.

But it's not just chatbot developers' right to speak that's at issue: Branum emphasized that users' access to output implicates their freedom to receive information.

Without protection for chatbot outputs, there wouldn't be protection against a government-imposed limitation "that chatbots can only output things that recognize two genders or marriage between the same race" or other political issues, Branum said.

She compared the cases to the US Supreme Court's 2011 decision in *Brown v. Entertainment Merchants Association*, which struck down a law banning the sale of violent video games to children after finding that the games had First Amendment protection similar to that for gory literature.

Using chatbots is an interactive experience akin to playing video games, Branum said.

Eugene Volokh, a Senior Fellow at Stanford University's Hoover Institution, said the notion that chatbots are emotionally manipulating users doesn't differentiate these products from other forms of expression because "most great literature is designed to be emotionally manipulative."

Romeo and Juliet romantically portrays suicide among teenagers, but "I don't think it should be up to a jury to say it was unreasonable to portray suicide this positively," Volokh said.

People are entitled to create works "without having to worry about a jury finding a liability based on harmful behavior that almost always is engaged only by a tiny fraction of the audience," he said.

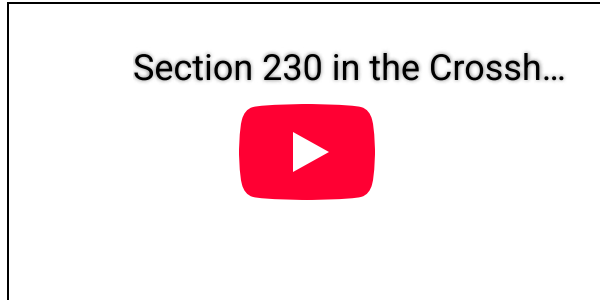
Speech Without Protection

But "the idea that a minor has a constitutional right to be subjected to sexual grooming by a mechanistic predator, to me, is repugnant to everything that the First Amendment stands for," said Bergman, one of the plaintiffs' attorneys.

Even if the output is considered speech, that doesn't automatically entitle it to constitutional protection, said Mary Anne Franks, a professor at the George Washington University Law School.

She pointed to examples of unprotected speech like yelling "fire" in a crowd, and noted that some states criminalize telling someone to commit suicide, she said.

The last 30 years of jurisprudence on Section 230 of the Communications Decency Act "short-circuited" the analysis of whether online activity is actually speech and created a "tendency to treat everything that happens online as if it were speech," Franks said.



WATCH: What is Section 230 and is it at risk of being reformed?

The law—which protects internet publishers from liability for user-generated content—hasn’t yet been invoked in the chatbot cases.

“Just because we’re saying ‘That’s speech’ doesn’t mean it’s not also incitement or threats or sexual exploitation,” Franks said. “Now we need to figure out what the boundaries are and what some of the analogies should be.”

If you or someone you know needs help, call or text the Suicide & Crisis Lifeline at 988.

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Between Privacy Myths and Legal Realities: Using AI Without Losing Privilege, Trade Secrets, or Control of Your Notes

If you're treating ChatGPT like a digital confidant, uploading your company's secret sauce to a cloud-based assistant, or letting a note-taking bot record every meeting, you (and your clients) may be giving away more than you bargained for.

October 13, 2025 at 12:00 PM By **Geoffrey Lottenberg**



Geoffrey Lottenberg of Berger Singerman. Courtesy photo

As legal practitioners and businesses rush to embrace the latest AI tools, too many are missing the legal landmines hidden in plain sight. If you're treating ChatGPT like a digital confidant, uploading your company's secret sauce to a cloud-based assistant, or letting a note-taking bot record every meeting, you (and your clients) may be giving away more than you bargained for.

Why Your Legal Questions Aren't Privileged in ChatGPT

Attorney–client privilege is a powerful shield—when it applies. But the moment you type a legal question into a general-use AI like ChatGPT, you're not talking to your lawyer (and, if you're a lawyer, it won't be protected work product). You're talking to a third party, and the rules are clear:

privilege doesn't protect disclosures to outsiders. If you're feeding facts or legal issues into a public chatbot, you're not just risking a leak—you may be waiving privilege outright. Don't be fooled by privacy policies or toggles; most consumer-level AI tools reserve the right to review, store, and use your data to improve their models. That's not a confidential conversation—that's a data point in someone else's system.

Uploading Proprietary Code or Documents? You Might Be Giving Away Your Trade Secrets

Trade secret law rewards those who keep their secrets, well, secret. The law requires two things: (1) the information isn't generally known, and (2) you took reasonable steps to keep it that way. Uploading your proprietary code, business plans, or deal documents to a public AI platform is like leaving the vault door open. If the platform uses your data for training or analytics, or if you haven't locked down confidentiality with every vendor and user, you may have just made your secret "readily ascertainable"—and that means it's no longer a trade secret. Courts look for real-world controls: NDAs, technical barriers, and clear policies. If you're relying on hope or boilerplate, you're playing with fire.

Worse, some vendors quietly change their terms to let them use your data for their own AI training. If you upload sensitive material after that change, you may have consented to broad downstream use, killing your claim to secrecy.

The same risks and rules apply to those seeking to use AI systems to assist in the development of the trade secrets or inventions themselves.

Consumer-Grade AI Notetakers: A Subpoena Magnet

AI notetakers are the new office assistant—always listening, always recording, and always creating a digital paper trail. But every transcript, summary, and action item they generate is a potential exhibit in litigation (or something your own client could use against you). Courts don't care if your AI notes are "just for internal use"—if they exist, they're discoverable. And because these tools are run by third parties, you have little control over where the data lives, how long it's kept, or who can access it. Weak governance or unclear retention policies can turn a routine meeting into a tangible risk. If you wouldn't want your strategy session played back in court, think twice before letting an AI-tool record it.

These risks are especially important for legal practitioners. These tools may not always clearly inform participants that the tools are in use and may generate notes that inaccurately reflect legal advice given during a particular meeting. If these tools are used (by the attorney, or by the client),

the onus is on the legal practitioner to review the notes and respond with any corrections or clarifications as to the nature or basis of legal advice given during the session. Attorneys and businesses also need to be aware of consent laws in their applicable jurisdiction—it is unlawful in many jurisdictions to record a conversation without dual-affirmative consent.

Practical Steps: How to Use AI Without Losing Control

Before using any AI tool, classify data to identify privileged, confidential, or trade secret information. Never input sensitive material into public AI platforms. Establish and enforce a list of approved AI tools, restricting access to all others, to maintain control and mitigate risk.

Select enterprise-grade AI systems over consumer-grade. Enterprise solutions provide closed environments and contracts with critical protections: no data use for model training, confidentiality, strong encryption, and ideally, on-premises or private cloud hosting. Consumer terms rarely offer sufficient data security for sensitive information.

Establish strict controls for all third-party vendors processing your data. Each vendor must sign a comprehensive data protection agreement. Review contracts for clauses like “service improvement” or “AI training” and negotiate their removal to prevent unintended data use. Implement a robust third-party risk management program. Beyond certification, deeply examine vendor security policies, incident logs, and subprocessors. Continuously monitor changes in vendor terms, policies, or security posture.

Practice rigorous data minimization and anonymization with AI. Use AI tools only for sanitized hypotheticals, stripping out all identifiable client identifiers, proprietary details, or sensitive facts. Avoid inputting data if sensitivity is uncertain.

Use AI note-taking tools cautiously. Disable auto-join features and require explicit participant approval before recording. Store all generated transcripts and summaries only in secure, controlled systems, not third-party servers. Proactively turn off nonessential analytics and verify data processing and storage locations.

Ensure generative AI features in e-discovery platforms are off by default. Verify opt-out mechanisms work and confirm no sensitive or privileged data leaves your controlled environment or becomes accessible to external AI models during e-discovery.

Strengthen cloud security for AI-related data. Implement least privilege, robust key management, and comprehensive access logging. Maintain clear control over data location. Never assume default cloud vendor security is sufficient; always customize and enhance settings.

Invest in comprehensive, ongoing AI training for your team. Publish clear, understandable AI policies with practical examples of safe and unsafe interactions. Make training mandatory and regular, as human error is a significant cause of security incidents.

Keep all privileged legal work and communications strictly within secure channels. Legal practitioners and businesses must not outsource legal analysis or confidential facts to consumer-grade AI platforms, as this risks waiving privilege. Rely exclusively on controlled systems and trusted personnel.

If public AI platforms are absolutely necessary, proceed cautiously. Disable history functions. Rigorously avoid entering unique facts, identifying details, or proprietary information. Never assume a simple privacy toggle offers comprehensive legal protection against disclosure or use.

Update and regularly test your incident response and data breach plans for AI vendor involvement. Ensure contracts with AI service providers include clear provisions for cooperation during security incidents, specifying timelines, data access, and communication protocols.

A Simple Decision Tree for AI Use

When considering AI use, first determine if information is privileged, confidential, or a trade secret; if so, keep it out of consumer AI platforms. If AI is needed, utilize a closed, enterprise system with strong controls and no data training. Evaluate if the tool creates new records, weighing benefits against discovery risk, and setting appropriate retention policies. Finally, ensure vendor terms, locations, and subprocessors are acceptable, renegotiating or walking away if not.

AI can be a game-changer for legal and business work—but only if you respect privilege, trade secret law, and discovery. Treat public AI and consumer apps as third parties, not trusted advisers. Default to closed, contractually protected systems, and back up policies with real technical controls. That's how you gain AI benefits without compromising your assets.

Geoffrey Lottenberg is lead of Berger Singerman's intellectual property group. He handles a wide variety of matters, including IP procurement and enforcement, business and technology law, and complex commercial litigation. Lottenberg regularly litigates patent, trademark, and copyright disputes in federal court throughout the United States. He also handles a variety of technology-related commercial litigation matters including disputes over software contracts, noncompete agreements, and trade secrets. Lottenberg is also well-versed in cybersecurity and internet law including data privacy, data security, online defamation and reputation defense, and cyber-related forensic investigations.

Artificial Intelligence

Companies Inviting Lawsuits by Deploying AI Without Setting Ground Rules

"The evidence points to widening adoption and uneven guardrails, but the outcome isn't preordained," according to a new Gallup study.

October 13, 2025 at 03:44 PM By **Michael Gennaro**



Credit: Andrei Hasperovich/Adobe Stock

[New survey data](#) from Gallup reveals that 57% of U.S. companies are operating without fully implemented AI policies, even as employees increasingly rely on AI tools for everyday work.

The findings arrive as litigation activity accelerates, punctuated by Anthropic's landmark [\\$1.5 billion proposed settlement](#) with authors negotiated last month.

The governance vacuum has spawned what industry observers call "shadow AI": employees using unapproved tools without the knowledge of IT and legal oversight. According to the data, 78% of AI users bring their own tools to work, rising to approximately 80% at small and medium-sized businesses.

"Shadow AI isn't defiance, it's demand outrunning process," said Anirudh Agarwal, CEO of OutreachX, a provider of digital PR services that provided the analysis. "When teams reach for unsanctioned tools, they're signaling gaps in speed, access and trust."

The risk calculus is stark. Only 30% of U.S. employees report that their organization has AI guidelines or formal policy, creating a scenario where sensitive data and company communications flow through unmonitored channels. The gap becomes particularly acute when AI-generated content leaves the organization: just 27% of companies review all AI-generated content before use, according to the survey.

The risks aren't theoretical. Nearly half of organizations surveyed report experiencing at least one negative consequence from generative AI use, with accuracy issues, intellectual property concerns and privacy violations topping the list.

The oversight gap directly compounds exposure in high-stakes contexts: marketing claims, investor communications and customer-facing materials generated or assisted by AI but published without human review create clear pathways to defamation, copyright infringement and regulatory violations, the survey notes.

The survey also flagged the mountain of litigation that is piling up against AI companies in courts across the country. To date, more than 50 AI-related copyright lawsuits have been filed, with approximately 30 remaining active after some consolidations and early settlements of suits.

Roughly half of the suits are putative class actions, most of them filed by authors, with a smattering from artists, news publishers and software developers.

If the Anthropic settlement, it would be the first eight-figure resolution in the space and signals that training-data disputes carry substantial monetary exposure, not just theoretical liability.

The survey recommends that in-house counsel and risk officers monitor four primary vectors where AI governance failures create legal exposure. The survey warns that intellectual property and copyright issues can arise when organizations use AI-generated content without proper licensing or provenance documentation, as well as from training-data disputes. Defamation and false claims represent another critical area, particularly when unreviewed model outputs appear in advertising, sales materials or investor communications.

Privacy violations can also occur when employees enter sensitive data into public or unapproved tools, and when shadow accounts operate without data loss prevention controls. Finally, regulated content, including AI-generated financial promotions, health claims, and hiring or screening materials, carries bias exposure under existing regulatory frameworks that weren't designed with AI assistance in mind but apply nonetheless.

As for a recommended governance framework, the survey says that legal and compliance professionals should prioritize three immediate implementation areas.

First, organizations need review-first protocols that define mandatory human-in-the-loop review processes for all external content. These protocols should specify prohibited uses, including no personally identifiable or protected health information in public tools, and no use of copyrighted inputs or outputs without documented rights. Equally important is requiring retention of prompts and outputs for audit purposes, creating an evidentiary trail if disputes arise.

Second, companies must migrate shadow users to governed platforms by first identifying unsanctioned usage patterns, then approving one or two enterprise tools with single sign-on, tenant control, and basic data loss prevention. These sanctioned platforms should enable workspace logging of prompts, outputs and reviewers, with mandatory checkpoints before publication. This approach acknowledges that employees will use AI tools regardless of policy, so the goal should be to channel that usage into auditable systems rather than attempting prohibition.

Third, the survey recommends implementing risk-tiered controls which allow organizations to match oversight intensity to actual exposure. Use cases should be classified as low, medium, or high risk based on context. Controls must be bound to these risk tiers, with isolation and red-team reviews for high-risk applications, legal sign-off where claims or intellectual property are implicated, and automated pre-publication checklists for IP clearance, privacy compliance and factual accuracy. Monthly board reporting on incidents, review timelines and the percentage of outputs receiving human oversight creates accountability and surfaces problems before they become crises.

The intersection of rapidly expanding AI capabilities driven by massive infrastructure investments and falling inference costs and growing legal attention creates pressure that will only intensify without proactive governance, according to the survey.

For general counsel and compliance officers, the window for implementing preventive controls before experiencing a costly incident or enforcement action is narrowing. The question isn't whether to govern AI use, but whether governance will be implemented proactively or in response to legal consequences that recent settlements suggest will be measured in nine figures.

"The evidence points to widening adoption and uneven guardrails, but the outcome isn't preordained. Lawsuit exposure can be contained if organizations translate policy into routine, verifiable practice, clear review steps, provenance, and accountable ownership, without throttling useful experimentation. If those basics don't take root, expanding capabilities and growing legal attention will keep the pressure rising," the survey states.

Expert Opinion | **Artificial Intelligence**

AI in Litigation Support: Balancing Efficiency With Ethics

The real development isn't simply in using AI; it's in knowing how to talk to it. Effective prompt engineering—or how you ask for what you need—has quickly become a strategic skill for lawyers determined to master the future of their craft.

October 14, 2025 at 09:40 AM By **Michael T. Murray**



Credit: SolaruS/Adobe Stock

The rise of artificial intelligence promises to influence the practice of law by introducing new technologies that may alter traditional methods of legal practice. This shift is particularly evident in the domain of legal research, where AI-driven tools are streamlining tasks such as document review, case law analysis and deposition evaluation by quickly delivering efficiently distilled insights. Yet the real development isn't simply in using AI; it's in knowing how to talk to it. Effective prompt engineering—or how you ask for what you need—has quickly become a strategic skill for lawyers determined to master the future of their craft.

A Brief History

AI's roots go back further than many realize. Early experiments in natural language interaction, like the ELIZA chatbot of the 1960s, showed that people readily engaged with computers in dialogue. Fast-forward to 1997, and IBM's Deep Blue shocked the world by defeating a chess grandmaster, demonstrating machine capabilities in problem-solving. The true inflection point for language, however, came with Google's breakthrough 2017 paper "Attention Is All You Need," which paved the way for modern large language models like OpenAI's ChatGPT.

Why does this matter for lawyers? Because today's LLMs, trained on vast swaths of legal, technical and plain-English data, don't just match keywords: they process patterns that assume the meaning, context and nuance of your query. This unlocks research capabilities that are not just faster, but often more comprehensively precise than legacy methods.

Beyond Keyword Search

Traditional legal research tools were built on keyword searching. If you wanted to know whether the phrase "ignored safety warnings" appeared in a document trove, you'd painstakingly craft Boolean queries adding "and," "or," and "within X words," and manually sift through the results.

Natural language processing alters the dynamic of information retrieval. With modern LLMs, users can pose questions like, "Did anyone say the company ignored safety warnings?" and the system leverages statistical language patterns to identify relevant phrases, paraphrases, and associated concepts across large datasets. Rather than relying on rigid keyword matches, this approach enables more flexible, context-aware querying—making complex search capabilities accessible even to nontechnical users.

The legal advantage? Users catch more relevant information, spend less time filtering false positives and can pose nuanced questions exactly as they would to a colleague.

Prompt Engineering

Success with AI starts, and often ends, with how you phrase your queries. Prompt engineering is about being purposeful, precise and iterative.

Best Practices:

- Be specific. Instead of "contradictions," ask, "What inconsistencies exist between this and earlier testimony?"
- Frame the context. "You are a legal assistant reviewing this transcript in a [employment discrimination/IP litigation] case in [jurisdiction]. Please summarize all direct references to [topic]."

- Define the output format. “Bullet-point the answer; cite page and line numbers; and limit to 200 words.”
- Iterate. Like a skilled researcher, refine your questions based on prior answers, drilling down until you surface what matters.

Try this template: *“For [case type/context], search [uploaded documents] and [task: summarize, identify, list, compare] with [constraints: concise, quote page and line, exclude vague references].”*

- Don’t be afraid to ask the AI to improve your own prompts. LLMs excel at optimizing instructions. Many AI tools even allow for multistep conversational sessions, fostering an iterative dialogue that sharpens both your question and the machine’s understanding with each round.

The Next Leap Forward

Even the best-trained LLMs can hallucinate (generate plausible but incorrect information) if left to answer from memory. Enter retrieval-augmented generation (RAG): a model architecture that grounds the AI’s output in your specific source materials, such as deposition transcripts, pleadings or exhibits. Instead of speculation, you get answers with citations directly tied to your uploaded documents. RAG is the preferred workflow for legal, regulatory or compliance work, ensuring results are not only helpful, but verifiable.

Case Law Meets the Future

AI isn’t just a Silicon Valley fascination. U.S. courts have recognized technology-assisted review in a series of landmark cases:

- *Da Silva Moore v. Publicis Groupe* (2012) and *Rio Tinto v. Vale* (2015) established judicial acceptance of predictive coding for e-discovery.
- *Hyles v. City of New York* (2016) reaffirmed that while TAR may be superior in theory, parties retain flexibility if alternative methods are reasonable.

These precedents enable law firms to confidently deploy advanced AI for document review, so long as results are transparent and testable.

Pitfalls, Ethics and the Lawyer’s Continuing Duty

Recent headlines have warned of sometimes embarrassing pitfalls: attorneys submitting briefs riddled with fictitious case citations generated by ChatGPT (*Mata v. Avianca*, 2023) or expert declarations grounded in hallucinated academic references. Sanctions and media scrutiny have followed.

The ABA's Model Rules are unequivocal: lawyers must ensure competence not just in fact-finding, but in verifying the accuracy and authenticity of any AI-derived content. Think of AI as a tireless research assistant that can rapidly process vast amounts of legal information, but still requires human oversight for judgment, nuance and legal reasoning. Ultimately, human insight is necessary because the lawyer is accountable for every submission. Best practices require:

- Fact-checking every AI suggestion.
- Grounding AI searches in your own evidence, not just the public internet.
- Requesting explainable results with source references.

A Preview of the Future

AI is not here to replace lawyers, but a tool that can reduce time spent on routine tasks, allowing legal professionals to focus on higher-value analysis, strategy and client service. By automating rote keyword sifting and offering nuanced, context-aware insights, AI allows legal professionals to focus on strategic thinking, client influence and case narrative. The future will likely feature:

- Conversational searches: AI that grows more adept at multiturn dialogues, synthesizing sprawling document sets into concise answers.
- Custom legal agents: Firm-specific AI tools fine-tuned to internal style, preferred authorities and procedural idiosyncrasies.
- Ethical and regulatory innovation: New case law and guidance ensuring fair, safe and responsible adoption of AI across the profession.

The next generation of legal professionals will stand out not just for memorizing statutes, but for their ability to thoughtfully apply emerging technologies while upholding core legal and ethical responsibilities. Mastering prompt engineering, harnessing RAG workflows and staying vigilant as ethical guardians are how today's attorneys become tomorrow's industry thought leaders.

Michael T. Murray *is the director of client solutions for Veritext Legal Solutions. Murray stays on top of litigation technology trends and travels throughout the nation speaking and providing informative and entertaining CLEs, educational instruction and product demonstrations to legal professionals.*

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Securities

EY Arms Auditors With AI as Firm Aims to Sustain Quality Gains

Oct. 15, 2025, 1:45 AM PDT

EY has equipped its audit teams with new artificial intelligence capabilities that the Big Four accounting firm says will advance the quality of its work scrutinizing the risks and revenues of some of the world's largest companies.

AI-backed tools deployed this year allow EY auditors to assess computer code that drives corporate financial reporting safeguards and to pinpoint risks facing their clients from a sea of external information. More capabilities using autonomous agents that can complete tasks independently are set to come online next year.

Artificial intelligence has the potential to upend accounting and shine a brighter light on fraud and other risks for auditors tasked with vetting the profits of public companies worth trillions. For Ernst & Young LLP, the latest tech promises to build on what the firm anticipates will already be a dramatic improvement in its annual audit inspection results.

"The future of audit is here now," said Richard Jackson, EY Americas chief technology officer and the AI leader for the firm's global assurance practice. Those new AI capabilities are "turbocharging" EY's work to improve its auditing, he said in an interview with Bloomberg Tax.

The firm's US arm said earlier this month that it is expecting its best audit quality scorecard from the Public Company Accounting Oversight Board since 2009 after struggling for years to bring down deficiencies in routine audits. The firm has predicted that its pending 2025 inspection report will show that less than 10% of its audits fell short of US standards—a sharp improvement from a 28% deficiency rate in its latest published report card.

The turnaround follows a multi-year effort to standardize how EY teams perform audits across regions and sectors for a book of clients that includes Apple Inc. and Alphabet Inc. That more consistent approach has contributed to the firm's improved inspections results, Jackson said.

Central teams now focus on thorny accounting for impairments and business combinations while others track potential conflicts of interest. The firm also tackles more than two-thirds of its work before a client's fiscal year closes. EY previously culled its book of audit clients in a bid to bolster its work, among other improvement efforts.

Future inspection cycles will reflect the benefits of leveraging AI tools that came online this year and allow the firm to sustain its quality results, Jackson said. "It's not a one-and-done," he said.

Billion-Dollar AI Boost

EY is just the latest Big Four firm to adopt the technology behind generative AI tools like ChatGPT and put it to work auditing financial statements for their clients. The four accounting firms have invested heavily to put the latest generation of AI into the hands of their professionals, aiming to streamline audit processes and better serve clients.

EY's US arm committed \$1 billion to boost the pay of young recruits and to invest in AI. The funding is in addition to a separate global pledge to spend \$1.4 billion on the emerging tech.

The firm's auditors around the globe now tap gen AI to query a vast library of technical accounting and auditing guidance. Another tool helps auditors match figures on client financial statements with the firm's own internal documents, a fundamental task known as the "tie-out."

More is in the works—the firm plans to roll out autonomous tools backed by AI agents next year targeting lower risk areas of the audit, Jackson said.

EY's top competitors have similarly adopted the technology to free up their accountants to focus on work involving more judgment and technical accounting know-how.

AI agents are currently at work at PwC LLP, also known as PricewaterhouseCoopers. Auditors in August began using an automated planning tool that pulls in records from the previous audit and updates risks facing its clients. Other agents support PwC's process for testing controls and financial statements, the firm said.

KPMG LLP earlier this year introduced AI agents that automate routine tasks, freeing up auditors to focus on higher risk areas, the firm said. The firm has also added to its gen AI roster since launching a risk monitoring tool and other capabilities in 2024.

Deloitte LLP is also working to weave agentic AI into its audit workflow. Drafting accounting memos and financial statement tie-outs are just a few of the ways its auditors are leaning on gen AI, the firm said in July.

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Securities

Manage Newsletters

Goldman Tells Staff It Will Cut More Jobs as AI Saves Costs (2)

Oct. 14, 2025, 9:10 AM PDT

Summary by Bloomberg AI

AI Generated



- Goldman Sachs Group Inc. told staffers to expect an additional round of job cuts this year as the bank seeks further savings across its businesses and takes advantage of the opportunities presented by artificial intelligence.
- The firm said it would "constrain headcount growth through the end of the year" and is planning a "limited reduction in roles across the firm", but still expects to finish the year with an increase in overall headcount.
- Top executives touted the efficiency gains produced by AI as a path to more growth, saying it would be a "multiyear effort" to implement AI in areas such as client on-boarding and regulatory reporting.

Goldman Sachs Group Inc. told staffers to expect an additional round of job cuts this year as the bank seeks further savings across its businesses and takes advantage of the opportunities presented by artificial intelligence.

The New York-based firm said it would "constrain headcount growth through the end of the year" and is planning a "limited reduction in roles across the firm," according to a memo to staff Tuesday morning seen by Bloomberg News.

Still, the firm expects to finish the year with an increase in overall headcount, **Jennifer Zuccarelli**, a spokesperson for the bank, added by phone. The firm's headcount was 48,300 at the end of September, about 1,800 more employees than at the end of last year.

In the note to staff, which announced the launch of the bank's "OneGS 3.0" strategy, top executives touted the efficiency gains produced by AI as a path to more growth. They added that it would be a "multiyear effort" to implement AI in areas such as client on-boarding, lending processes, regulatory reporting and vendor management.

"While we are still in the early innings in terms of assessing where AI solutions can best be deployed, it's become increasingly clear that our operational efficiency goals need to reflect the gains that will come from these transformational technologies," Chief Executive Officer **David Solomon**, President **John Waldron** and Chief Financial Officer **Denis Coleman** said in the memo.

For Goldman to "fully benefit from the promise of AI, we need greater speed and agility in all facets of our operations," they added. "This doesn't just mean retooling our platforms."

Read More: [Goldman Dealmaking Surge Beats Pace of Wall Street Rivals](#)

Goldman shares fell earlier Tuesday after the bank reported higher expenses in its third-quarter results, though it also posted a jump in investment-banking revenue that outpaced rivals.

The bank cut jobs earlier this year in its normal [annual exercise](#) , with net headcount 700 lower at the end of the second quarter than three months earlier.

(Updates with employee numbers in third and final paragraphs.)

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FCPA Defendant Seeks Grand Jury Testimony Of Federal Agent

 fcpaprofessor.com/fcpa-defendant-seeks-grand-jury-testimony-of-federal-agent

October 14, 2025

As highlighted in [this prior post](#), in August 2024 the DOJ announced that a “federal grand jury in the Southern District of Florida returned an indictment ... charging three executives of an election voting machine and service provider company and a former Chairman of the Commission on Elections (COMELEC) of the Republic of the Philippines for their roles in an alleged bribery and money laundering scheme to retain and obtain business related to the 2016 Philippine elections. [...] These bribes were allegedly paid to obtain and retain business related to providing voting machines and election services for the 2016 Philippine elections and to secure payments on the contracts, including the release of value added tax payments.”

Although not mentioned in the indictment, the company at issue is [Smartmatic](#) (and related entities).

The individuals charged with Foreign Corrupt Practices Act offenses were:

- [Roger Alejandro Pinate Martinez](#) (a citizen of Venezuela and resident of Florida described as a cofounder, Chief Operating Officer and President of Company 1 who was also and employee of Company 2); and
- Jorge Miguel Vasquez (a citizen of the U.S. and executive for Company 2 in Florida who managed hardware development and manufacturing worldwide for Company 1 who reported to Pinate).

Recently, Vasquez filed a motion requesting that the “Court order the release of the transcript of Special Agent Cole Almeida’s testimony before the Grand Jury.”

In pertinent part, the motion states:

At a hearing on March 4, 2025, the Court told the parties that “at some point I am going to ask the Government to provide the testimony of the agent before the Grand Jury prior to trial...” Mr. Vasquez asks that the Court order that production now, instead of waiting for the eve of trial.

Prior to the return of the indictment in this case, the Government notified Mr. Vasquez that he was a target of its investigation into a bribery and money laundering scheme. Mr. Vasquez, with previous counsel, met with the Government and Special Agents through 2019 and 2020, subject to a written proffer agreement. During these meetings, Mr. Vasquez truthfully answered the Government’s questions. Mr. Vasquez never admitted to knowledge of a bribery scheme, never used the term “slush fund,” and never agreed that payments he received were either “kickbacks” or “embezzlement.”

After the proffer sessions, HSI Special Agent (“SA”) Cole Almeida wrote reports of investigation (“ROIs”) purportedly documenting Mr. Vasquez’s statements and summarizing his interpretations and impressions of the meetings with Mr. Vasquez. While the ROIs begin with a caution that the reports are non-verbatim accounts, the reports also attribute direct quotes to Mr. Vasquez by using quotation marks or alleging that Mr. Vasquez “stated” a particular term or conclusion. The Government has produced the ROIs from this meeting, as well as SA Almeida’s notes, to the defense. The mischaracterization of Mr. Vasquez’s statements, in both the ROIs and the contemporaneous notes, raised more questions than they answered. One specific question that Mr. Vasquez must ask is whether these mischaracterizations and misquotations were also presented to the Grand Jury to obtain an indictment.

In December of 2024, prior defense counsel filed a motion concerning the misstatements in SA Almeida’s reports, requesting the Court exclude the statements from trial and order production of the rough notes and drafts of the reports. Mr. Vasquez was understandably alarmed that SA Almeida memorialized purported confessions to conspiring to violate the FCPA and to embezzling funds from Smartmatic – even though such confessions never happened.

In response to Mr. Vasquez’s motion, the Government produced the rough notes but argued that any further action by the Court was premature or unwarranted. Of understandable and significant concern to the defense, the Government agreed that Mr. Vasquez never uttered the words “bribe,” “kickback,” or “embezzlement,” despite those words being attributed to him in SA Almeida’s ROIs.

At a hearing on the motion, the Government advised the Court that it did not intend to introduce Mr. Vasquez's statements during its case-in-chief. Given this representation, the Court determined that there was no need to address the remedies sought by the defense at that time. However, the Court conveyed to the Government that it expected SA Almeida's Grand Jury testimony would be disclosed to the defense. The Government clarified to the Court that SA Almeida's testimony would not constitute Jencks material if SA Almeida was not called as a witness. Despite this clarification, the Court stated, "As I have indicated, at some point, I am going to ask the Government to provide the testimony of the agent before the Grand Jury prior to trial but I'm not asking them to do that now." Mr. Vasquez has already established the need for the testimony, the Court has already made clear it should be turned over, and this Motion simply and respectfully asks the Court to order the production of the transcript now."

FirstEnergy Asks Court to Bar Fired Counsel From Putting Its DEI Program 'on Trial'

Attorneys for David Farkas will argue at trial he was fired for questioning the legality of executive raises based on meeting DEI hiring goals. FirstEnergy counters Farkas was fired for his alleged "non-consensual touching" of a female colleague for years earlier.

October 14, 2025 at 04:46 PM By  Chris O'Malley



Credit: maurice norbert/Adobe Stock

Employers have toned down references to their diversity, equity and inclusion efforts this year, but FirstEnergy Corp. is making an unusual effort to limit discussion of its DEI program in the courtroom.

The nation's 15th-largest investor-owned electric utility has asked an Ohio court to forbid former senior counsel David Farkas from putting its DEI program "on trial" when arguments in his retaliation suit against the company begin Monday.

Farkas [sued the company two years ago](#) in the Cuyahoga County Court of Common Pleas. He alleged he was fired in 2022 as retaliation for having repeatedly expressed concerns about the electric utility's "unlawful" DEI program that tied annual executive bonuses to diversity related metrics.

Farkas' attorney Richard Haber, of Haber LLP, said, "I do not want to comment on their defense or our trial strategy, as you might imagine."

But lawyers for Akron, Ohio-based FirstEnergy, which has about 6 million customers in the Midwest, have been busy in recent weeks trying to convince the court to put up some guardrails as to what Farkas can raise at trial.

Key among them has been trying to limit the discussion of DEI at trial, saying "the danger of unfair prejudice is substantial in this case."

Such programs "are a hot-button political issue on which jurors are likely to have strong emotional reactions—on one side or the other—and the legal treatment of such programs continues to be in flux," attorney Chris Gair, of Gair Gallo Eberhard LLP, wrote in an a pre-trial filing for FirstEnergy.

"Testimony on the actual legality of the program or argument about the wisdom or appropriateness of DEI is irrelevant to Farkas' retaliation claim," Gair added.

The company argues that under Ohio retaliation law, the issue is not whether the program was actually illegal "but whether Farkas engaged in protected activity when he expressed his belief that the program was illegal—a question that turns on whether he held that in good faith."

The New York Times reported in 2020 that FirstEnergy's program, launched in 2018, linked 10% of executive bonuses to DEI metrics and was subsequently expanded to 15%.

The Times wrote that then-FirstEnergy CEO Charlie Jones' "approach is striking because it is extremely rare in corporate America."

But Farkas, FirstEnergy's top employment attorney at the time, said he told fellow executives the program had gone too far.

Farkas alleges the company attempted to force managers to make unlawful hiring and promotion decisions "by financially incentivizing them to consider protected characteristics such as race and gender."

Farkas, who received a right-to-sue letter in September 2023 from the Ohio Civil Rights Commission, alleges the company responded to his criticism with immediate downgrades in his performance reviews and skimpy raises.

He was terminated in September 2022.

In its pre-trial filing, FirstEnergy wrote that Farkas cannot show he was the victim of retaliation and that he was fired for "non-consensual touching of a female colleague's rear end."

"This conduct was all the more reprehensible because he was the company's employment lawyer," FirstEnergy attorneys added.

Farkas offered a more innocent explanation for the contact, which he said occurred four years before he was terminated.

Farkas wrote in a court filing that the female lawyer had grabbed something from his hand as they were walking down a hallway. He reacted by moving his hand "to move her forward" but struck her rear end.

"Dude, do not smack me on the butt again. Not cool," stated a copy of an email the woman sent to Farkas shortly after.

"Understood. A little too frisky. Apologies. But—you stole my tick key," Farkas replied with an image of ticks.

Farkas said the two enjoyed a "friendly, collegial and often playful" work relationship and alleges that she complained of the incident four years later out of anger.

Farkas said an attorney whom the company tapped to look into his allegations about FirstEnergy's DEI program told the female colleague, mistakenly, that Farkas had accused her of discrimination when in fact he had not.

She was "galled" and "angry," Farkas' attorneys wrote in a court filing. "This prompted her, in retaliation, to share an incident that occurred four years earlier, in June 2018, which did not previously prompt any complaint or an investigation or discipline of Farkas."

Farkas also called FirstEnergy's decision to tap the lawyer to look into his claims "a uniquely poor choice" for the investigation, as the attorney focused on helping companies develop "legally resilient" DEI strategies and programs.

The attorney is among the witnesses Farkas plans to call during next week's trial.

FirstEnergy has also requested that the court limit any mention of terms or details the utility's \$230 million fine and deferred prosecution agreement struck in 2021 with the U.S. Department of Justice.

The government alleged that, starting in 2017, FirstEnergy paid \$61 million in bribes in pursuit of legislation that would have provided a \$1 billion bailout for two nuclear power plants.

The company subsequently fired Jones and other executives. The scandal led to a 20-year prison sentence for a former Ohio House speaker.

Such details should be excluded, FirstEnergy's lawyers argued, "because they would constitute classic bad-acts evidence whose only purpose is to suggest that FirstEnergy had a propensity to engage in misconduct."

Farkas is among a number of former employees who have filed lawsuits involving corporate DEI programs in recent years. The tempo picked up following the U.S. Supreme Court's June 2023 decision string down affirmative action in college admissions.

There's also been a pushback by conservative shareholders amid President Donald Trump's executive orders declaring DEI programs verboten for federal contractors.

According to [a 2025 report by The Conference Board](#), 53% of the 100 largest U.S. public companies made "material adjustments" to DEI-related messaging or terminology versus the previous year.

The most common change—involving 33% of the companies—was removing all references to "equity." Another 21% reduced or removed DEI targets and metrics, while 11% scratched the term "DEI" entirely.

Companies are "reducing the visibility of DEI language while selectively preserving or embedding related goals in ways that are more cautious, controlled and defensible," stated the report.

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News from Bloomberg Terminal
OpenAI Has a Business Plan
Oct. 15, 2025, 10:46 AM PDT

By Matt Levine

(Bloomberg Opinion) --

Revenue model

There's a famous Sam Altman interview from 2019 in which he explained OpenAI's revenue model ¹:

The honest answer is we have no idea. We have never made any revenue. We have no current plans to make revenue. We have no idea how we may one day generate revenue. We have made a soft promise to investors that once we've built this sort of generally intelligent system, basically, we will ask it to figure out a way to generate an investment return for you. [audience laughter] It sounds like an episode of *Silicon Valley*, it really does, I get it. You can laugh, it's all right. But it is what I actually believe is going to happen.

It really is the greatest business plan in the history of capitalism: "We will create God and then ask it for money." Perfect in its simplicity. As a connoisseur of financial shenanigans, I of course have my own hopes for what the artificial superintelligence will come up with. "I know what every stock price will be tomorrow, so let's get to day-trading," would be a good one. "I can tell people what stocks to buy, so let's get to pump-and-dumping." "I can destroy any company, so let's get to short selling." "I know what every corporate executive is thinking about, so let's get to insider trading." That sort of thing. As a matter of science fiction it seems pretty trivial for an omniscient superintelligence to find cool ways make money. "Charge retail customers \$20 per month to access the superintelligence," what, no, obviously that's not the answer.

On a pure science-fiction suspension-of-disbelief basis, this business plan is perfect and should not need any updating until they finish building the superintelligent AI. Paying one billion dollars for a 0.2% stake in whatever God comes up with is a good trade. But in the six years since announcing this perfect business plan, Sam Altman has learned ² that it will cost at least a few trillion dollars to build the super-AI, and it turns out that the supply of science-fiction-suspension-of-disbelief capital is *really quite large* but not trillions of dollars.

Trillions of dollars is going to tap out every source of venture capital, every investor who is willing to put in money now for an uncertain but potentially huge future return. To get trillions of dollars you will need *boring debt investors*, people who need their money back, people who are willing to put in money now for 9% a year and repayment in five years. Very different psychology. Those people don't want 0.2% of God; they want a financial model, with numbers, and a reasonably likely path to getting paid back.

Intriguingly OpenAI's AI models these days are already pretty good at producing compelling, credibly formatted, deeply researched documents, so, you know, the vision has kind of been fulfilled? Like could OpenAI's finance staff open up OpenAI's top-end current models and type in "tell us how to make money" and get a good answer? Maybe? Anyway they're generating an answer *somehow*. The Financial Times reports:

OpenAI is working on new revenue lines, debt partnerships and further fundraising as part of a five-year plan to make good on the more than \$1tn in spending it has pledged to create world-leading artificial intelligence.

OpenAI is planning on deals to serve governments and businesses with more bespoke products, creating more income from new shopping tools, and new sales from its video creation service Sora and AI agents, said multiple people familiar with the start-up's efforts. ...

It is also weighing ways to cash in on its intellectual property by developing new AI infrastructure, making forays into online advertising and plans to launch consumer hardware products, including a new AI-powered personal assistant device, with former Apple star designer Jony Ive.

These ambitious plans will need to become reality if OpenAI is to meet its liabilities, as the group has made funding commitments that dwarf its income. ...

One senior OpenAI executive said "[investors] expect you to have a five-year model", but added "right now I'd say there's lots of fuzz on the horizon, and as it gets closer and it's going to start to take real shape". ...

Greg Brockman, the company's president, last week said recent spending commitments would pay for themselves: "If we had 10 [times] more compute [computing power], I don't know if we'd have 10 [times] more revenue, but I don't think we would be that far."

Right with 10 times the compute maybe you get God and money just rains from the sky. Meanwhile, though, "new shopping tools" and "forays into online advertising."

In other business news:

ChatGPT will allow a wider range of content – eventually including "erotica" – now that OpenAI has completed work to enable the chatbot to better handle mental health issues, CEO Sam Altman said Tuesday. ...

"As part of our 'treat adult users like adults' principle, we will allow even more, like erotica for verified adults," he added, though that would come around December.

I began this section with a jokey maximalist vision of AI, "create God," "an omniscient superintelligence," that sort of thing. The jokey *minimalist* vision of AI is probably "ChatGPT is a blurry JPEG of the web": Modern AI systems are approximately a synthesis of all human knowledge and communication, but given the way computers work, that means especially a synthesis of *the internet*, which is where you get the bulk of machine-readable human knowledge and communication. Ryan Broderick writes: "Think of ChatGPT as a big shuffle button of almost everything we've ever put online." I once wrote about asking ChatGPT to pick stocks:

If you ask a modern publicly available large language model which stocks to buy, it will in some sense draw on all of human knowledge and its own powerful reasoning capacity to tell you which stocks to buy. But, among all of human knowledge, it might give extra weight to the knowledge on Reddit. And the knowledge on Reddit about what stocks to buy is "meme stocks."

You can apply similar reasoning here. In a science fiction story, if you invented a superintelligent robot and asked it how to make money, it might come up with cool never-before-seen ideas, or at least massive fun market manipulation. But in real life, if you train a large language model on the internet and ask it how to make money, it will say "advertising, affiliate shopping links and porn." That's the lesson the internet teaches!

Anyway I do not actually think that ChatGPT is coming up with OpenAI's business plans. ChatGPT is trained on the internet, but of course these days so is everyone else.³ "We have a tech company, let's do ads and shopping and porn" is not a thought process that is limited to large language models.

24X

The 24-hour stock exchange, which will offer stock trading 23 hours a day, now offers stock trading 16 hours a day:

In a historic milestone for the financial industry, 24 Exchange today announced that trading has officially commenced on 24X National Exchange (the "Exchange"), the first national securities exchange approved by the U.S. Securities and Exchange Commission (SEC) to offer 23-hour weekday trading of U.S. equities under full regulatory oversight.

24X National Exchange offers live trading of U.S. equities from 4:00 a.m. to 8:00 p.m. ET on weekdays, providing unprecedented access to U.S. equity markets for institutional investors and retail investors worldwide via broker-dealers that are members of this SEC-licensed Exchange.

24X National Exchange addresses growing demand for extended-hours trading among global investors, particularly in Asian and other regions where time-zones make traditional U.S. market hours difficult to access. With its early-morning (U.S. pre-market) and evening trading hours, the Exchange provides increased flexibility for trading strategies, improved liquidity, and more opportunities to react to global economic, corporate, or policy news outside of standard U.S. exchange operating hours.

They're getting there.

I will say that one theme around here is that ... everything is getting dumber? I don't know that that's actually much of a theme, sorry. But I wrote in April:

Another model of capital markets is that people like gambling, so *introducing some extra volatility* makes markets more fun and exciting and gives people what they want. How much should you save for retirement? Should you borrow money to build a new factory? Boring! Boring! Don't ask those questions! Ask more fun questions like "should I YOLO all my money on GameStop call options?" On this model, economic policymakers should lurch drastically from one policy to another, because that will make things more exciting for their audience. It will also get the policymakers more attention, and attention is the most valuable thing in the world.

And we have spent a lot of time this year talking about how financial markets are being swallowed by sports gambling. And meme stocks are back, and crypto is mainstream, and so forth. A decade ago, it was possible to think that investing would gradually become duller and more efficient and more automated, that people would just let robots and professionals manage their retirement savings and would not look for excitement in their investment portfolios. Now that sounds crazy: *Of course* people want to invest in single-game sports parlays and zero-day options and triple-levered exchange-traded funds and meme coins. And the market gives them what they want. What they want is excitement, volatility, binary outcomes, jump discontinuities, just general chaos, because that is more entertaining than slow and steady compounding.

I don't think that 24/7 or 23/5 or 16/5 stock trading is exactly part of this trend: Late-night trading *does* give US retail investors more time to trade while drunk, but as 24 Exchange says, it is probably mostly about Asian investor demand. (Also most of the big exchanges already have extended sessions and have for a while.) Still I think there is a connection. We have talked a few times about glitches in after-hours trading. For instance, last year, Lyft Inc. had a typo in an earnings release, saying that it expected margins to expand by 500 basis points when the actual number was 50. The incorrect press release went out at 4:06 p.m.; it was corrected at 5:51 p.m. In the intervening time, the stock jumped as much as 67% on fairly heavy volume; it gave up much of those gains when the correction came out.

Or last week, a meme-stock ETF launched; after hours, it traded at prices that were wildly disconnected from its net asset value. My crude explanation was: "Retail investors got excited to buy the MEME ETF, so they did. During regular market hours, they bought the MEME ETF from market makers, and arbitrage relationships kept its price in line with its net asset value. At 4 o'clock, the market makers went home and the price of the MEME ETF went crazy: Lots of retail investors wanted to buy it, they didn't care about the price, and nobody was bothering to arbitrage it to keep the price in line with net asset value."

The two points here are:

1. Traditionally the US stock market was closed 17.5 hours per day so that most material news could be released *outside of market hours*. If you have earnings, you announce them at 4:05 p.m. If you do a merger, you finalize it over the weekend and announce it at 6 a.m. on Monday. The market has time to digest the new information; investors decide what it means and update their models and decide whether they want to buy or sell stock. Then they all show up at the market open and conduct an orderly auction to set the new opening price. What this means is that, as a matter of *market time*, everyone gets the information at the same time: Even if you do not have high-speed computers scraping earnings releases and using artificial intelligence to analyze them for trading signals, you can still get the press release when you think of it, read it at your leisure, and decide what to do about it. Getting the press release five seconds or five minutes later than other people doesn't matter, because you have 17 hours before you can do anything about it. By the time the market opens, everyone has the same basic information.
2. During the 6.5 hours a day that the market was traditionally open, all the professional investors are there. All the arbitrageurs are doing the arbitrages; all the computers are turned on. Any new information that *does* come out during market hours is swiftly and smoothly incorporated into prices. Professional investors compete to make markets more efficient. One thing this means is that if you decide to buy 10 shares of an S&P 500 index ETF at 11:14 a.m., you will pay a price for that ETF that (1) pretty much exactly reflects the prices of the component stocks of the index and (2) also reflects the market's consensus of the *value* of those component stocks. The market might be wrong, but you will be investing in the stock market at a price that is the aggregated best estimate of sophisticated investors for what the "correct" price is. If you are saving for retirement, buying the stock market at the correct price – and getting the expected return from the growth of corporate profits – is the boring normal thing you want.

But if you trade stocks at 4:30 a.m., or 7:30 p.m., you are getting a different proposition. News comes out – perhaps an earnings release at 4:05, or perhaps an Asian earthquake at 3 a.m. – and you get to decide how to react to it. Other people – retail investors like you, investors in Asia, hedge funds who haven't gone home – are also deciding how to react, in a messy, sequential way. The stock will bounce around: Some smart investors will think the news is good and push up the price, other smart investors will think it's bad and push down the price, and then dumb investors will pile in and push the price around some more. Meanwhile *fewer* smart professional arbitrageurs and market makers might be logged in, so the prices will move more rapidly and more randomly than they will during the day. There is more scope for skill, and much more scope for luck. You will probably get to buy stock at the wrong price! Too high or too low! Exciting.

If you are saving for retirement by buying index ETFs, you'll probably still do it during the day and get normal prices and it's fine. But if you *want* some chaos, you can probably get more of it late at night. And people seem to want chaos.

Nobel Peace Prize trade

One purpose of financial markets is to incentivize people to find out information and incorporate it into prices. If you buy an iPhone and think “this phone is cool, I should buy Apple stock” and you do and the stock price goes up, you are doing your small part to allocate capital to its best uses and make stock prices more informative. There are more sophisticated versions of this. If you work at a hedge fund, you might analyze credit card data or photos of parking lots to figure out whether a company’s sales are going up this quarter. If enough people are doing that, then information from the world – about who is driving to what stores, etc. – is nearly instantaneously incorporated into asset prices, making markets more efficient.

Then there is the bad version, which is insider trading: You are an executive of a company, you know that earnings will be bad, so you sell your stock. Or you are a hedge fund analyst, you bribe an executive of a company to tell you that earnings will be bad, so you short the stock. This *also* incorporates information into asset prices and makes markets more efficient, but people don’t like it. It’s unfair, it discourages people who don’t have inside information from trading, and it creates bad incentives for insiders. It is generally illegal, in the stock market anyway.

And then there is the just-on-the-right-side-of-the-line version, which is web scraping. Companies often put out material news on their websites. If you work at a hedge fund, you might set up some automated system to immediately download, analyze and trade on whatever news the company puts on its website; or you might just sit in front of your computer and constantly refresh the website looking for news. (Particularly when the company is scheduled to announce earnings.) Every so often, the news will show up on some section of the company’s website before it is officially announced: There will be some page like “xyzcorp.com/investor/earnings_2025q2.html,” and the earnings will show up there before they are on the homepage or the news wire. If you know the URL format of the company’s earnings releases, you might type “xyzcorp.com/investor/earnings_2025q2.html” into your browser a few minutes before the earnings are scheduled to be released, and you might occasionally get lucky.

This is a real thing that has occasionally worked for corporate and government news releases. It is not, in isolation, all *that* good for the world: Capital allocation is not made much more efficient by some hedge fund analyst refreshing a website a minute before everyone else. But you probably should not think of it in isolation. The point here is not that markets are made more efficient by hedge fund analysts refreshing websites; the point here is that markets are made more efficient by hedge fund analysts working 80-hour weeks to find every possible legal edge to understand companies more deeply and quickly than everybody else. Some of the edges they find will involve deep fundamental insight into corporate finance or weather or whatever. Others will involve quickly and automatically incorporating price signals from one market into the pricing of different assets: A high-speed exchange-traded-fund arbitrageur is not doing much fundamental analysis, but she *is* making markets more efficient by rapidly propagating other people’s fundamental analysis. And some of the edges will be dumb low-hanging fruit like refreshing the website. But you can’t have a rule like “you can only use good fundamental edges.” You let people compete to find whatever edges they can, because in the aggregate that competition makes markets more efficient.

Anyway. I wrote yesterday about rumors of insider trading on Polymarket about who would win the Nobel Peace Prize. My basic point was that there is only so much Nobel Peace Prize insider trading that you can do (the alleged insider trader here made about \$50,000), because who will trade *against* you? I said:

Are millions of recreational gamblers really going to want to take a flutter on which democracy activist will win the Nobel Peace Prize? Is some quantitative hedge fund going to build a statistical model, using only public information, to predict the Nobel Peace Prize winner, and wager tens of millions of dollars on that model? Really the only person who had a good reason to bet on this market was this supposed insider trader. What you want, as an insider trader, is a lot of uninformed traders who nonetheless have a good reason to bet against you. Football prediction markets have that. Nobel Prize prediction markets, so far, don't.

But here is an account on X of an interview with the alleged insider trader, which suggests that I was wrong about this in the most pleasing possible way. This trader apparently *didn't* have inside information, in the traditional bad sense of like bribing a Nobel committee staffer. Instead, web scraping:

The Nobel site runs on WordPress. Like many WordPress setups, it has an XML sitemap that lists every indexable page, even ones not yet public. If someone were monitoring this sitemap, they could easily notice a new page appear, something like "<http://nobelprize.org/prizes/peace/2025/machado/facts/>"

Most likely, someone wrote a bot or script that watched the uploads folder or sitemap for new files. When this image appeared, they connected the dots.

On the Nobel website, the official portrait of Machado at https://nobelprize.org/uploads/2025/10/1-2_3-68e8b33bd36fa-scaled.jpg carries a "last-modified" timestamp in the file's metadata of 07:18 GMT on October 10, over 1.5 hours before the announcement.

This picture was loaded into the official announcement page of Nobel "<http://nobelprize.org/prizes/peace/2025/>", a link you could guess by switching in 2025 for 2024

Etc. The point here is not so much "perhaps this trader did not have inside information." The point is: Perhaps someone was incentivized to build, if not quite "a statistical model using only public information," at least, like, an automated feed of public alternative data on the Nobel Peace Prize winner. The point is that doing *informed but non-insider trading* on the Nobel Peace Prize winner is (1) possible and (2) possibly lucrative enough that people will do it. In a dumb, degenerate, not-especially-fundamental way, but still. The point is that the Nobel Peace Prize prediction market is working the way it is supposed to: It incentivizes people to find out information and incorporate it into prices.

Things happen

Morgan Stanley Stock Traders Beat Goldman in Record Quarter. BofA Bankers Beat Estimates as Dealmaking Boosts Earnings. Wall Street Is Firing on All Cylinders, Fueled by Deals and Trading. Bank of England loosens bonus rules. BlackRock's GIP Buys Aligned Data Centers in \$40 Billion Bet. A Giant New AI Data Center Is Coming to the Epicenter of America's Fracking Boom. Blackstone Joins Race to Bring Private Assets to 401(k) Market. S&P Global agrees \$1.8bn deal for private markets data provider. Trump Says Argentina Bailout Depends on Milei's Party Winning Elections. EU Antitrust Enforcer Fines Gucci, Chloe, Loewe More Than \$180 Million After Pricing Probe. Chinese Criminals Made More Than \$1 Billion From Those Annoying Texts. The overnight anomaly in levered Tesla ETFs. "Travis Kelce's new restaurant, 1587 Prime – where, the website reads, 'legacy isn't just honored, it's transformed into something entirely new,' which translates to 'it's a steakhouse.'"

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1. At about 31:49 in the video. A bit later he approvingly cites the South Park "underpants gnome" meme.
2. Perhaps a better word is "decided." I wrote the other day about Altman's above-consensus capital spending plans: "'The deals have surprised some competitors who have far more modest projections of their computing costs,' because he is better at this than they are. If you go around saying 'I am going to build transformative AI efficiently,' how transformative can it be? If you go around saying 'I am going to need 1,000 new nuclear plants to build my product,' everyone knows that it will be a big deal."
3. By the way, in that 2019 interview, just before the bit I quoted above (at 31:13), Altman describes OpenAI's recruiting edge against big tech companies by saying that "the thrill of discovery is really exciting, so it's fun to work on that instead of optimizing ad clicks."

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The column discusses how Grindr might go private because its controlling shareholders are receiving margin calls and I am here to remind you that it may be considered a conflict transaction if a controlling SH causes a take private due to a personal liquidity crisis.

[Matt Levine @matt-levine.bsky.social](#)

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www.bloomberg.com

October 15, 2025 at 4:32 AM

News from Bloomberg Terminal

Grindr Confirms Possible Take-Private Plan From Top Holders

Oct. 15, 2025, 4:15 AM PDT

Summary by Bloomberg AI

AI Generated



- Grindr Inc. said its largest shareholders are exploring an acquisition that would take the company private at no less than \$15 a share.
- James Lu and Raymond Zage have engaged financial and legal advisers to explore the possibility of taking the company private, primarily through debt financing.
- Grindr has established a special committee to assess offers if a firm plan is presented to the company, and is focused on executing its three-year plan.

By Natalie Lung

(Bloomberg) --

Grindr Inc. said its largest shareholders are exploring an acquisition that would take the company private at no less than \$15 a share, confirming an earlier media report.

James Lu and Raymond Zage, who together own more than 60% of the company, have "engaged financial and legal advisers" to explore the possibility of taking the LGBT-focused dating app company private, primarily through debt financing, according to a regulatory filing published Tuesday.

The move, first reported by Semafor on Monday, was prompted by the recent decline in Grindr's stock price, the filing said. The shares have fallen 29% so far this year, closing at \$12.74 on Tuesday. The West Hollywood, California-based company has a valuation of \$2.4 billion.

Lu has received a preliminary and conditional debt financing proposal of as much as \$1 billion from an unnamed lender that Lu and Zage have worked with in prior transactions, according to the filing. The final acquisition price has yet to be determined, and there is no guarantee that the two will ultimately make an offer.

Grindr said in a separate statement Tuesday evening that there is no definitive take-private proposal to evaluate at this time. But the board has established a special committee to assess offers if a firm plan is presented to the company.

Grindr said in the statement that it's focused on executing its three-year plan, which includes a target of 20% to 25% of annual revenue growth through 2027.

Shares of Grindr rose as much as 8% in premarket trading on Wednesday before New York exchanges opened.

The company reported first-quarter and second-quarter results that missed expectations on a key revenue metric, even as Grindr raised its full-year financial outlook at the beginning of the year.

Grindr Chief Executive Officer George Arison told investors at a conference last month that the company will explore price increases for existing app subscription plans next year, and intends to add a new premium tier meant to drive growth by 2027.

(Updates with premarket share move in seventh paragraph.)

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It's Giving Enron

 davekarpf.substack.com/p/its-giving-enron

Dave Karpf

October 14, 2025

On the AI bubble, and the various echoes of the dotcom crash



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Oct 14, 2025

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There are three big stories that one can tell about the dotcom crash.



The first is an **overvalued-startup story**. Think [Pets.com](#). Startups were massively overvalued. New companies were going public with no revenues and no business model. Everyone pretty much knew it was a bubble. But for years it kept inflating anyway.

Pets.com had the misfortune of being the company that signaled the end. The company IPO'ed, the stock didn't pop, and that was the bad omen that the extended period of mass investor psychosis was over.

There wasn't anything especially wrong with the company. They had a market niche and a great ad campaign. Decades later, Chewy.com would get the timing right on basically the same business concept. But when people think "dotcom crash," the first image that usually springs to mind is that Pets.com sock puppet.

The second is a **telecom story**. Think [Global Crossing](#). It was clear to a whole lot of companies that the future of the internet would involve fast connections over fiber optic cables. The telecom industry flooded the market with cheap fiber, underestimating the costs and overestimating demand. Figures like George Gilder were convinced that there would be a "Moore's Law for bandwidth." [Gilder was catastrophically wrong](#). Part of the dotcom crash involved telecom firms burning a ton of investor cash, going bankrupt, and then selling off all that bandwidth at bargain basement prices.

The difference between the telecom story and the startup story is what they left behind in the aftermath. In November 1999, a startup called Compter.com received \$5 million in its first funding round, and immediately spent all that money on a Super Bowl ad. When that company fails, it leaves nothing but a punchline in its wake. But when Worldcom and Global Crossing go bankrupt, they had tangible assets to sell.

And then there's the **Enron story**. [Ben Riley wrote an excellent piece earlier this year titled EnronAI](#), revisiting Enron's role in the crash. The Enron story is fundamentally about accounting fraud, but it was *very complicated* accounting fraud. Enron played fancy math shell games. The complexity was kind of the point. Make your books complicated enough and you can convince people you've invented a newfangled valuation model, at least for awhile. The same dynamics played out during the great financial crisis, except no one went to prison that time.

So those are our three potential narratives: **(1) a startup bubble, (2) unrealistic capital expenditures, and (3) way-too-fancy financial chicanery**. All three of these phenomena happened simultaneously, but the lessons we take from the dotcom crash vary depending on which story we emphasize.

You can see echoes of all three stories in the current AI bubble. We have [AI startups valued at \\$12 billion before announcing any product](#). Capital expenditures on AI now account for [something like 40% of U.S. economic activity](#). And the big players are all engaged in (ahem)

"circular deals" so complicated you need to subscribe to [Matt Levine's newsletter](#) to have the faintest chance of understanding them.

[Even Sam Altman](#) says we're in an AI bubble right now. But what he has in mind is the first version of this story. The dotcom bubble had Pets.com, but also Amazon. Altman figures there are a lot of Pets.coms out there right now, but *his* company is the equivalent of Amazon.

For the past year, the AI data center construction boom has given off strong Global Crossing vibes. Microsoft, Meta, Google, OpenAI, and X.ai are all spending billions to build massive data centers. I'm just a simple political scientist who reads old tech magazines, but I cannot fathom how the costs of data center construction are ever supposed to be recouped from a mass user base that pays between \$0 and \$20/month for the products. ([Read Ed Zitron](#) for much more on how little sense these numbers make).

The Global Crossing version of the story tends to elicit righteous shrugs. *Sure, the specific companies went bankrupt, but look at how valuable the infrastructure they left behind was!* If you think we're in a telecom-style AI bubble, then that spells trouble for the specific companies along the road to a bright and transformative AI future.

But with the latest wave of multibillion- and trillion-dollar dealmaking among the largest AI players, the vibes are turning decidedly Enron-like. [Nvidia announced it is investing \\$100 billion in OpenAI](#), which OpenAI will then use to purchase Nvidia products. OpenAI announces a deal to buy \$78 billion in chips from AMD, and is awarded 10% of the company in the deal, effectively offsetting the purchase.

None of these astronomically high-dollar deals are necessarily accounting fraud.¹ It wasn't clear in 2000 that Enron was accounting fraud either, though. [Read Ben Riley](#). Enron was doing cutting-edge financial valuation something-or-other. Low-level and mid-level bankers couldn't make sense of it, but they were overruled by their bosses who saw a feeding frenzy and wanted a seat at the table. It created a ton of shareholder economic value, right up until the whole thing vaporized itself. The same was true of FTX in 2022. If the crypto market hadn't precipitously dipped, the fraud at the center of FTX never would've been exposed.

What we can say for certain right now is that these massive deals are based on increasingly complex financial shell games. OpenAI — a company that constantly needs fresh injections of investor cash, because its costs are bigger than its revenues — keeps announcing deals to spend billions of dollars to acquire stakes in chip manufacturing companies. Unless they invent digital god and completely transform the entire global economy, like, really pretty soon, they're inevitably going to run into some hard accounting realities.

This is, obviously, not financial advice. I'm not a finance guy. It's also not legal advice. I'm not a lawyer. All I am is a guy who pays close attention to the history of the digital future and constantly finds himself muttering "*history doesn't repeat itself but it sure does rhyme*" under his breath.

But I'll say this: the AI bubble isn't predominantly giving off Pets.com or Global Crossing vibes anymore. It's giving Enron vibes. When the dust settles, we'll probably see a whole lot of books written about the fancy math games that convinced investors that two companies passing \$100 billion back and forth were creating \$200 billion in value instead of having a net financial impact of \$0.

[1](#)

Also, it's only fraud if it violates a law that the government still enforces. Even in normal times, that's a complicated question when you're dealing with sophisticated and well-lawyered actors. And we aren't in normal times. I [wrote almost a year ago](#) that the Trump economy would "all go pretty well for tech executives and the VC class, at least at first. You can make a lot more money through financial fraud than you can through selling products in a competitive marketplace." So long as the VCs are running the government, it's possible that none of this will be treated as fraud. Much more likely that we see bailouts when the collapse comes.

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By Dave Karpf · Launched 4 years ago

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it's also a private market story. openai and anthropic are private companies, they have a lot of investors- including indirect retail investors, who invest through funding vehicles- but they don't have to make disclosures and if the bubble bursts, those investors will have a lot more trouble suing

[Dave Karpf @davekarpf.bsky.social](#)

[· 2h](#)

Everyone agrees that we're currently in a dotcom era-like AI bubble. People disagree what sort of bubble it is. There are 3 stories one can tell about the dotcom crash: a startup story, a telecom story, and an accounting fraud story. My take: it's giving Enron
[open.substack.com/pub/davekarpf...](https://open.substack.com/pub/davekarpf)



[It's Giving Enron](#)

[On the AI bubble, and the various echoes of the dotcom crash](#)

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October 14, 2025 at 2:41 PM

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Like, I like to explain to my students, WeWork was a huge mess of conflicted transactions and an unsustainable business model and no one knew until it tried to IPO and made its financials public

[DG @1dgrn.bsky.social](#)

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Yep, very good point. Matt Levine's "private markets are the new public markets" line carries several implications.

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[· 28s](#)

I wish that the investors could *be* sued!

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It's possible they still had to send financial statements to VCs, banks, and other debtors, but very few people know what is in those statements. It is possible that the financial statements they sent are correct and full of red ink and the lenders handed out money anyway.

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[· 2m](#)

...I wrote this before I saw that you teach Business and Securities Law so you know all that better than I do. Dunno who here is writing and might not know vs. who is teaching and definitely knows anymore.

Class Action

Manage Newsletters

Column

Crypto Litigation Shows the Industry Won Fight Over Legitimacy

Oct. 15, 2025, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated



- Alexander Drylewski has noticed a change in the mix of his work, with the center of gravity moving away from government investigations and enforcement.
- The Trump administration has implemented pro-crypto policies, including scaling back enforcement actions and issuing executive orders supporting the industry, which has been welcomed by the crypto industry.
- Crypto litigation has evolved to focus on more mundane, fact-specific issues, such as contract and shareholder disputes, rather than cutting-edge questions of law, indicating that the crypto industry has matured.

You can learn a lot about an industry from the litigation filed against it. Consider cryptocurrency and other digital assets—whose total market value surpassed \$4 trillion in July—and how crypto litigation has evolved.

Alexander Drylewski, co-head of Skadden's blockchain and digital assets group, began his career as a securities litigator. Around 2017, he started noticing—and focusing on—the application of US securities laws to emerging technology.

This led Drylewski to start litigating crypto-related cases—which took off. Today, the vast majority of his practice, which includes both litigation and counseling, involves crypto and other digital assets (although he maintains a “side hustle” in traditional securities litigation).

Over the past year or so, he has noticed a change in the mix of his work. For starters, Drylewski said, the center of gravity has moved away from government investigations and enforcement, a very active space during the Biden administration.

Michelle Kallen, co-chair of Steptoe's appeals and advocacy practice and a litigator of crypto-related cases, agreed.

"From a litigation standpoint, things have shifted," Kallen said. "Under the last administration, many crypto companies complained of 'regulation by enforcement' because the Securities and Exchange Commission never promulgated rules defining which crypto assets are securities; it just brought enforcement actions. Under the Trump administration, the SEC has dropped most if not all of these actions."

And this came as no surprise. Donald Trump won the 2024 presidential election after running a pro-crypto campaign, and since taking office in January, he has implemented numerous pro-crypto policies. In addition to scaling back enforcement actions, he has issued executive orders supporting the industry and signed the GENIUS Act, the first federal law to regulate stablecoins.

The crypto industry has welcomed this move away from enforcement in favor of regulation and even legislation.

"The Trump administration is taking a disciplined, constructive approach to crypto regulation," said Katie Biber, chief legal officer of Paradigm, a prominent crypto investment firm. "They're starting where good regulators should, with clear guidance to industry. We're also seeing the Department of Justice and the SEC demonstrate a renewed respect for due process, which is both heartening and long overdue."

As the federal government has shifted away from aggressive enforcement, Drylewski has found himself doing more proactive advising on crypto issues, working with clients that are both crypto-native and what he calls "crypto-curious." His litigation practice remains very busy—but it's more focused on cases filed by private parties, including putative class actions, and investigations by state regulators under state blue sky and other laws.

Many of the issues raised in private litigation are similar to the issues involved in the enforcement actions brought by the Biden administration. For example, what qualifies as a "security" for purposes of federal securities laws, under the US Supreme Court's *Howey* test, remains a hotly contested question.

In a 2022 speech, then-SEC chair Gary Gensler expressed the view that "[o]f the nearly 10,000 tokens in the crypto market... the vast majority are securities." And the SEC under Biden frequently took this position, bringing a slew of enforcement actions that some dubbed a "war against crypto."

As reflected in the dramatically reduced number of SEC crypto enforcement actions filed in 2025, the Trump administration holds a very different view. But plaintiffs in private securities cases, in order to move forward with a securities fraud or unregistered securities theory, must still prove that the digital asset at issue in their lawsuit counts as a "security" or involves an "investment contract" under *Howey*.

According to Tibor Nagy, a trial lawyer with extensive experience in the crypto space, it used to be rare to see defendants filing motions to dismiss in these "is it a security" cases, instead trying to win on summary judgment. But now, he said, it's more common for defendants to file motions to dismiss, arguing that discovery isn't needed to establish that the token or asset isn't a security.

And last month, Drylewski and his colleagues at Skadden prevailed on such a motion, in *Real v. Yuga Labs, Inc.* Brought by purchasers of Bored Ape Yacht Club non-fungible tokens, the *Real* case was widely followed—in large part because the defendants included celebrities such as Madonna, Paris Hilton, and Justin Bieber. After the defense win in that high-profile case, expect to see even more motions to dismiss at the pleading stage.

Looking ahead, some private securities lawsuits could become much harder to bring if certain “market structure” legislation becomes federal law. For example, the CLARITY Act—passed by the House in July, now pending in the Senate—would classify most tokens as commodities rather than securities, placing them beyond the reach of federal securities laws.

Perhaps anticipating tough sledding ahead, plaintiffs’ lawyers in the crypto space are exploring theories of liability independent of the securities laws, bringing causes of action that don’t require establishing the presence of a security or investment contract. As Nagy told me, more recent crypto cases might involve allegations of fraud (other than securities fraud) or the violation of consumer-protection laws. Even racketeering (civil RICO) claims have been the basis of some actions, according to both Nagy and Drylewski.

So in addition to the reduced focus on federal enforcement, the increased diversity in causes of action represents another way that crypto litigation has changed over time. One can even argue about whether it should be considered “crypto litigation” as such.

“Today, a lot of what might be called crypto litigation is run-of-the-mill commercial litigation that happens to unfold in the crypto world,” explained Nagy. He’s currently litigating contract, founder, and shareholder disputes involving crypto companies—but the issues in his cases aren’t crypto-specific.

This transformation of the crypto docket to focus on more mundane, fact-specific issues, rather than cutting-edge questions of law, also speaks volumes about how far the crypto industry has come. The issues in dispute are no longer existential ones on the fundamental legitimacy or viability of crypto.

“The current state of crypto litigation shows that crypto as an industry has matured,” said Nagy. “And the regulatory environment has either accepted crypto’s legitimacy or itself evolved, so that the lack of clarity that gave rise to many legal claims is going away or gone. There’s no longer this cloud of ‘can I exist’ litigation hanging over crypto companies.”

“Crypto has arrived,” Nagy concluded. “And now—for better or worse—crypto players can be sued for the same reasons as everyone else.”

David Lat, a lawyer turned writer, publishes Original Jurisdiction. He founded Above the Law and Underneath Their Robes, and is author of the novel “Supreme Ambitions.”

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Securities

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Crypto's Hedge-Appeal Cracks as Gold Wins Big on Debasement Fear

Oct. 15, 2025, 8:42 AM PDT

Summary by Bloomberg AI AI Generated



- Bitcoin had been seen as a new kind of portfolio diversifier on Wall Street, but a recent violent selloff in digital assets has raised questions about its promise.
- The selloff left gold as the true haven in a world on edge, with gold rising to a record high as investors fled to safety and Bitcoin slumping alongside equities and oil.
- Bitcoin's price moves still track liquidity cycles more than fear, and its claim to being a safe-haven asset remains aspirational, with gold earning that reputation over centuries.

For much of this year, Bitcoin had been asserting itself as a new kind of portfolio diversifier on Wall Street – a digital counterpart to gold for mainstream investors looking to hedge against fiscal excess, inflation and more.

Bitcoin exchange-traded funds were swelling with [inflows](#), its price was setting records, and the idea that it could function as a modern store of value was edging closer to the financial mainstream.

Then came a reminder of how fragile that promise remains.

After last week's violent [selloff](#) in digital assets, the same market that once symbolized independence from Wall Street looked indistinguishable from it – or worse. Bitcoin plunged, while [smaller tokens](#) and derivatives markets imploded as nearly \$19 billion in leveraged bets were wiped out in less than a day. The rout left gold, once again, as the true haven in a world on edge.

BlackRock Inc.'s iShares Bitcoin Trust (IBIT), with roughly \$91 billion under management, had been closing in on the \$136 billion SPDR Gold Shares (GLD) – a symbolic race that captured crypto's ambition to rival traditional stores of value. But the gap has widened again, and the contrast between the two assets has rarely looked clearer.



Read more: [The Great Debasement Debate Is Rippling Across World Markets](#)

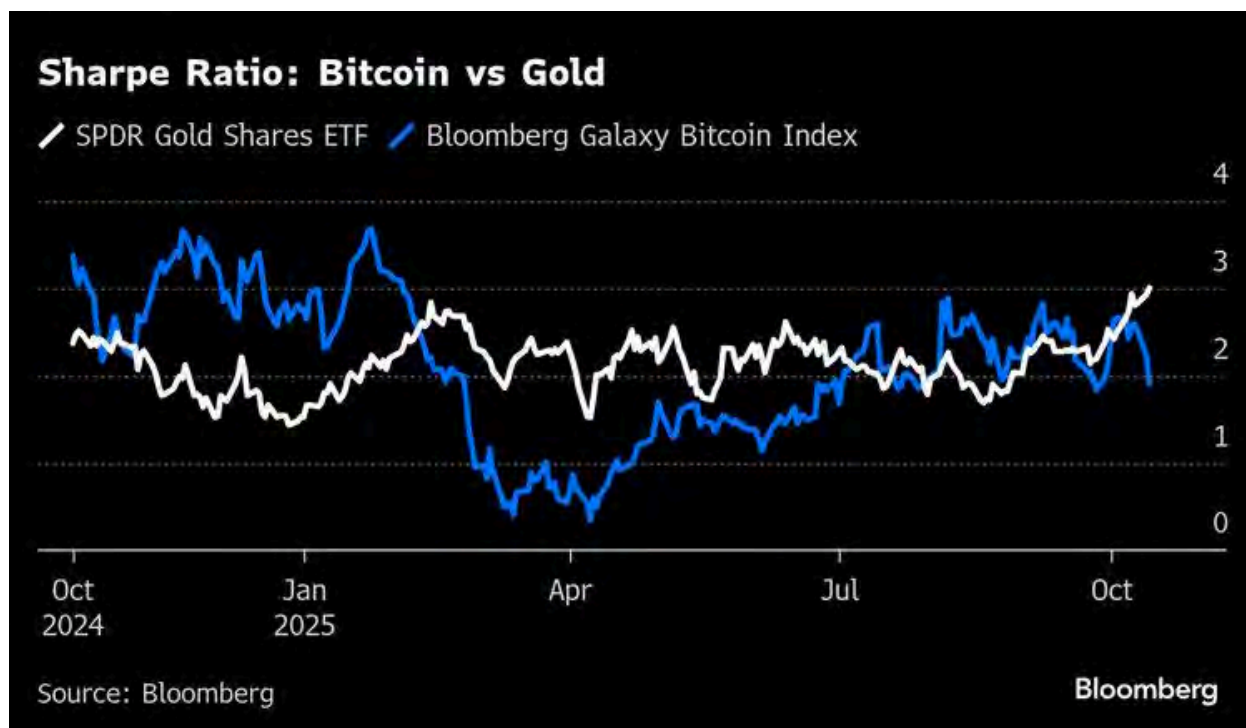
Gold rose to a [record high](#) as investors fled to safety after Donald Trump's new [tariff](#) threats on China. Bitcoin, by contrast, slumped alongside equities and [oil](#), its supposed hedging role once again exposed as myth. The same macro jolt that lifted bullion revealed crypto's dependence on leverage and risk appetite.

Both assets had been swept up in the same narrative: protection against government profligacy and easy money. Yet while gold has earned that reputation over centuries, Bitcoin's claim to similar status remains aspirational. Its price moves still track liquidity cycles more than fear, a curious refuge that rallies when risk-taking is fashionable and falls when it fades.

"I have never considered Bitcoin a safe haven. I have always believed it to be a speculative risk asset," said **Michael O'Rourke**, chief market strategist at Jonestrading. "Gold is an asset with a long history as a haven."

For now, the scoreboard is unambiguous: GLD above \$130 billion. IBIT around \$91 billion. Gold once again the steadier hand. The dream of Bitcoin as a digital analog to gold hasn't died, but every time markets flinch, it looks a little further away.

Bitcoin is currently hovering around \$111,000, down from the [\\$125,000](#) level it had touched just days earlier. Gold, meanwhile, crossed above the \$4,200 mark on Wednesday – [an all-time high](#). And the shiny metal has outperformed the token on a year-to-date basis.



Even when adjusted for volatility, gold is outperforming Bitcoin, underscoring a shift toward safer assets. One way of looking at this is a measure of risk-adjusted returns known as the Sharpe ratio. Gold's rose to 3 as of Oct. 14, its highest in a year. Bitcoin's, by contrast, fell to 1.91, down from a January peak of 3.68. This means gold has delivered steadier gains with less price fluctuation, true to its role as a haven. Bitcoin's returns, while strong, have been more erratic – thriving during rallies but faltering when momentum fades.

Spot Bitcoin ETFs, introduced in the US last year after a decade-long campaign, had drawn record inflows through mid-2025. IBIT alone reached \$90 billion in under two years, a sum that took GLD two decades to achieve. But the momentum trade that fueled those gains has slowed, while gold funds continue to attract steady inflows from investors seeking ballast amid geopolitical and fiscal uncertainty – dubbed the debasement trade.

Crypto advocates see the selloff as a temporary setback, arguing that institutional participation through regulated ETFs marks progress toward legitimacy. Skeptics counter that as long as Bitcoin trades like a high-beta tech stock, its safe-haven credentials will remain out of reach.

Cam Harvey, senior adviser to Research Affiliates and professor of finance at Duke University, says that Bitcoin and gold share plenty of traits: both are scarce and nearly impossible to replicate. But the digital token is also a lot less liquid and much more volatile than gold is, Harvey says in a recent paper. And given its curious "singular characteristics" it's "unlikely to replace gold as the preferred safe-haven asset of investors."

"Bitcoin has lost 70% of its value in drawdowns multiple times in its abbreviated history," Harvey wrote. "It is hardly a safe-haven asset."

UK to Pay Back Investors Swindled in \$6.8 Billion Bitcoin Fraud

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Upmanyu Trivedi

October 15, 2025

Summary by Bloomberg AI

- UK prosecutors are looking to confiscate Bitcoin worth about \$6.8 billion tied to a massive fraud in China.
- The UK police unearthed 61,000 Bitcoin in 2018 during a money laundering investigation against two Chinese women linked to the fraud.
- Prosecutors are planning a victim compensation program to repay duped investors, with a lawyer saying "victims' restitution must come first".

UK prosecutors are looking to confiscate Bitcoin worth about \$6.8 billion tied to a massive fraud in China uncovered at criminal trials, as they plan a victim compensation plan to repay duped investors.

The UK police unearthed 61,000 Bitcoin in 2018 during a money laundering investigation against two Chinese women linked to the fraud that impacted around 128,000 investors. Prosecutors are planning a victim compensation program, a lawyer said during a court hearing on Wednesday while several investors have applied to the court to claw back their money.

Some investors "have suffered huge personal loss in the form of lives, marriages, fracturing families and businesses," said William Glover, a lawyer for a group of victims said after the hearing.

Yadi Zhang

Source: London Metropolitan Police Service

The haul comes after two Chinese women were convicted for their part in laundering the stolen cryptocurrency by London courts. Yadi Zhang, also known as Zhimin Qian, allegedly the mastermind behind the fraud in China, pleaded guilty to money laundering linked charges last month. While her accomplice was found guilty of fraud by a jury last year.

Another £67.3 million (\$89.9 million) was found after Zhang informed the police last month that she kept passwords for two crypto wallets in a purpose-made concealed pocket within a pair of jogging bottoms, which she was wearing at the time of her arrest in April 2024,

lawyers for the prosecution said in court filings.

The prosecutors gave no more details on how the scope of the redress scheme or how it would be handled.

"Given the unprecedented scale of the seizure and public debate about any potential surplus, our position is clear: victims' restitution must come first," Jackson Ng, a lawyer representing a set of investors, said.

Chinese police started investigating a suspected fraudulent investment project in Tianjin, China, in 2017 that had swindled over 128,000 people across the country, UK prosecutors said at the trial. The investigation uncovered a fraud involving a company called Tianjin Lantian that lured investors with the promise of high returns.

Unsuspecting investors had a total of 40 billion yuan (\$5.6 billion) stolen and 14 Chinese nationals have been convicted in connection with the crime.

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Securities

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First Horizon M&A Plan Spurs Worst Stock Rout Since TD Deal Died

Oct. 15, 2025, 10:04AM PDT

Summary by Bloomberg AI AI Generated

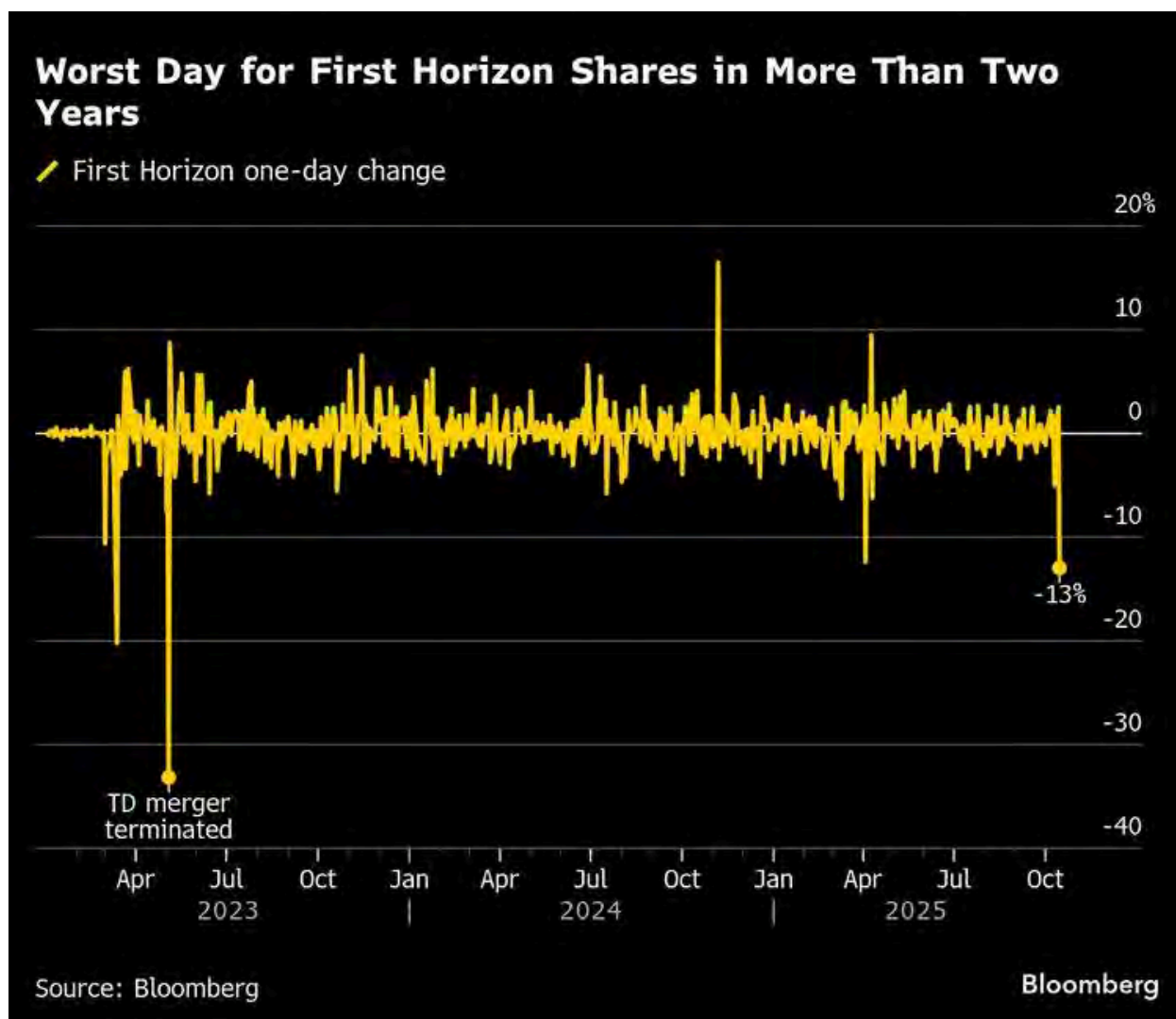


- First Horizon Corp. shares plunged after management mentioned possible plans to acquire another bank, dashing hopes that the lender would instead be a takeover target.
- Chief Executive Officer Bryan Jordan told analysts that he is increasingly confident in the company's ability to integrate a well-structured merger with a strong cultural fit in the existing footprint if such an opportunity arises in 2026 or beyond.
- The comments about being a possible acquirer seem to have taken investors by surprise, as investors had assumed the bank might be a takeover target given the recent pickup in deals.

First Horizon Corp. shares plunged after management mentioned possible plans to acquire another bank, dashing hopes that the lender would instead be a takeover target.

"I am increasingly confident in our ability to integrate a well-structured merger with a strong cultural fit in our existing footprint if such an opportunity arises in 2026 or beyond," Chief Executive Officer **Bryan Jordan** told analysts during an earnings call, sending the stock plunging as much as 13% to \$19.99. It's the worst intraday drop for shares since May 2023, when Canada's Toronto-Dominion Bank walked away from a \$13.4 billion deal to buy First Horizon amid regulatory concerns.

Read more: [TD CEO Has War Chest He Can't Spend After First Horizon Flop](#)



Today, regulators' more industry-friendly stance under President Donald Trump has market watchers anticipating a pickup in bank M&A as regional lenders look to capitalize on smoother antitrust approvals. The most recent and biggest banking merger for the year, Fifth Third Bancorp's almost \$11 billion deal to buy Comerica Inc., stoked optimism that the anticipated wave of dealmaking in the crowded US finance sector may finally takeoff.

Read more: [Fifth Third's \\$11 Billion Deal Sparks Hope for Bank Merger Wave](#)

For First Horizon, "investors had assumed the bank might be a takeover target given the recent pickup in deals," Bloomberg Intelligence analyst **Herman Chan** wrote in a note. The comments about being a possible acquirer seem to have taken investors by surprise, he added.

"We were not for sale when TD brought us an offer, but our Board looked at it and did the right thing," **Hope Dmuchowski**, First Horizon's chief financial officer said on the call. "We have not changed our stance on optionality."

Still, not everyone on Wall Street was persuaded. Baird analyst **David George** remains of the view that First Horizon "is likely seller rather than buyer in this M&A cycle." The drop in First Horizon shares is a buying opportunity, he wrote, calling the stock a fresh bullish pick.

Meanwhile, an institutional investor made a large bet that the bank's stock will be above \$23 dollars by mid-February in morning options trading. Call options volume was more than five times higher than the 20-day average on Wednesday.

Among other large banking deals this year, Synovus Financial Corp announced a sale to Pinnacle Financial Partners for about \$8.4 billion in late July. Earlier in 2025, FirstBank Holding Co. also announced a combination with PNC Financial Services Group, while Pacific Premier Bancorp agreed to merge with Columbia Banking System.

--With assistance from **Bernard Goyder**.

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Opinion **Electric vehicles**

Can Tesla stay a trillion dollar company on just two models?

BYD is competing directly with Elon Musk's carmaker in the midsize electric SUV market

JUNE YOON



Last year, more than 95% of Tesla's global deliveries came from the Model 3 and Model Y © Tesla

June Yoon

Published YESTERDAY



Even as BYD has overtaken Tesla in global sales, direct comparisons between their electric vehicles have remained relatively uncommon. Tesla was long regarded as the innovator, while BYD was often cast as the imitator. But now, such comparisons are becoming unavoidable.

Last year, more than 95 per cent of Tesla's global deliveries came from the Model 3 and Model Y. These two models have driven the company's growth for nearly a decade. Yet the market is changing. Demand growth is slowing, competitors are catching up and Tesla's response has been to cut prices aggressively, in the hope that volume can offset margin.

The launch of the Model Y Standard, priced at \$39,990 in the US, and €39,990 in Germany, is the clearest sign of that new strategy. The lower entry point for its most important model is a defensive move, with Tesla fighting to hold its ground against BYD in the same midsize electric SUV segment that once seemed unassailable for Elon Musk's company.

BYD's Sealion 7 is one of the most direct competitors to the Model Y on the market. In both performance and practicality, the Sealion 7 holds its own, offering up to 456km of range, 0 to 60mph in about 4.5 seconds and premium interiors with a minimalist aesthetic. The Model Y Standard offers a range of about 516km and accelerates from 0 to 60mph in 6.8 seconds, while also providing access to Tesla's vast Supercharger network. Yet in export markets, the Sealion 7 is priced at a premium. Starting at about the equivalent of \$60,000 in the UK, it is now at least 30 per cent more expensive than Tesla's new entry level Model Y in mainland Europe.



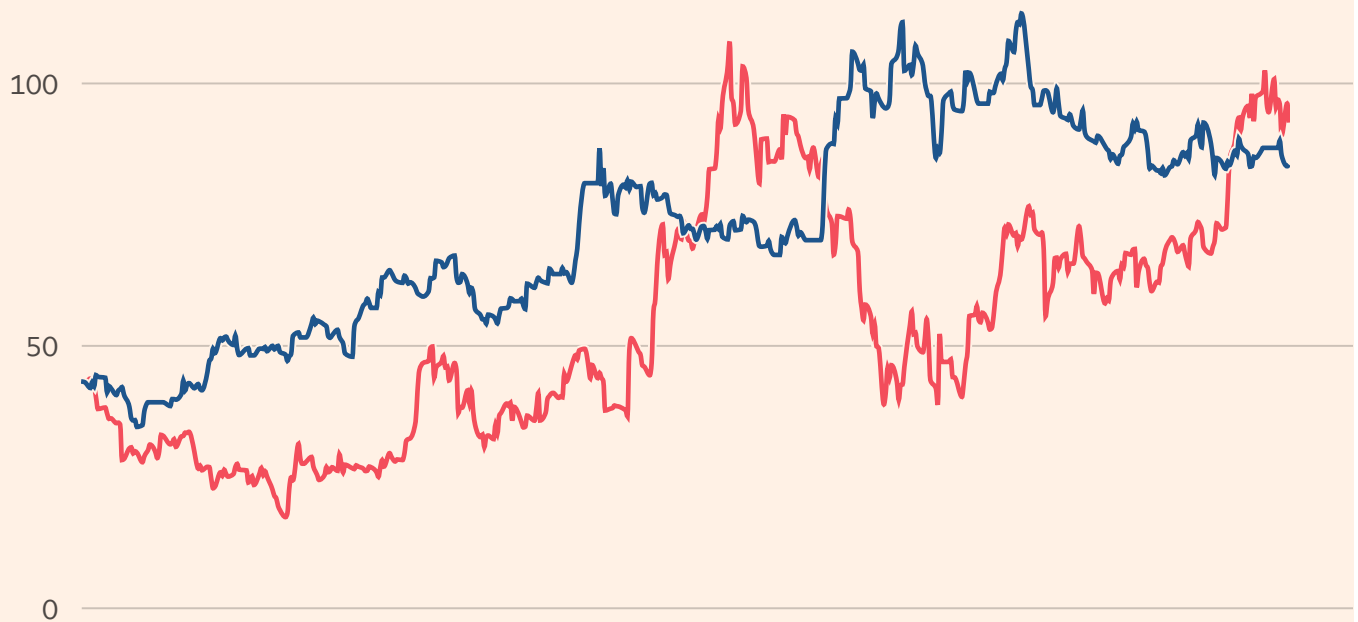
BYD's Sealion 7 is one of the most direct competitors to the Model Y on the market © Anindito Mukherjee/Bloomberg

That marks a striking reversal of roles. Tesla used to be the brand that needed to justify its premium as BYD climbed up market share rankings. Now BYD faces the same scrutiny. Its cost advantages, vertically integrated supply chain and lithium iron phosphate blade battery give BYD a powerful edge on materials. The cost of these batteries in China already fell to \$52 per kilowatt-hour last year, according to S&P Global Mobility. Yet BYD must absorb higher shipping costs, regulatory adaptation and battery packaging complexity. As Tesla closes the cost gap, its pricing power is starting to tilt the market in its favour.

Following price cuts in 2023, Tesla's deliveries rose 38 per cent year on year to 1.81mn in that year. Even accounting for the reputational challenges the brand has faced in recent years given Musk's controversies, that experience suggests Tesla's price cuts could add about 300,000 vehicles to annual demand across its line-up. Even if half of those gains came at BYD's expense, Tesla would still benefit from higher volumes and improved factory efficiency, while BYD would face erosion in both market share and pricing power.

Tesla and BYD vie for global EV dominance

Share prices rebased in local currencies



For BYD, which has thrived amid fierce price competition in China, the timing is precarious. Matching Tesla's new pricing would put pressure on margins across its Sealion models, which became BYD's second-best selling line-up last month. BYD's vertical integration offers some cushion, but not enough to avoid a broader squeeze. Tesla's greater global scale and extensive distribution network allow it to absorb those pressures more easily.

That may be good news for Tesla in the short term, but it raises deeper questions about the company's valuation. Its market value of \$1.4tn, more than 10 times that of BYD, has been built on the promise of extraordinary margins, which price cuts will inevitably compress. Tesla's gross margin was around 17 per cent in the second quarter of this year, with automotive sales accounting for about three quarters of total revenue. That is significantly lower than the fourth quarter of 2021 when its automotive gross margins, excluding regulatory credits, were nearly 30 per cent.

True, Tesla's value extends far beyond its EVs. It is also an AI company, energy provider and robotics innovator. Narratives over the potential growth of those prospects have helped fuel a stock trading at more than 200 times forward earnings. Those ambitions are real but, for now, the bulk of its cash still comes from selling two EV models. Both of those cars now face credible rivals that can match Tesla on performance and increasingly on design.

Tesla's price cuts prove it can still set the tone for the EV industry. But they also reveal the limits of its current business model. The company that once made EVs a status symbol now must make them affordable to stay competitive. Its valuation will need to adapt to that new reality.

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Recent Dismissals Offer Insights into SEC's Current Enforcement Strategy

White & Case attorneys discuss recent steps taken by the SEC to dismiss litigated cases in a number of different areas, and what those steps could tell us about the agency's approach to enforcement in the current administration.

October 15, 2025 at 06:32 AM By **Ladan F. Stewart**

Gabriella Klein

Shuhang Liu



SEC-headquarters

Since the start of the new administration, the SEC has moved to dismiss an unprecedented number of active litigations from across its enforcement docket. Although certain of the crypto-related dismissals have drawn the most attention, the SEC's efforts to pare back its litigated cases have spanned beyond crypto. The agency has targeted cases involving alleged violations of broker-dealer registration requirements and the "liquidity rule," as well as those relating to the dissemination of material non-public information. Though they involve very different factual and legal issues, these matters share two important characteristics: (1) they largely involve technical, non-fraud, violations; and (2) they are generally based on relatively novel legal theories.

Even before Chairman Paul Atkins took the reins of the SEC in April, the agency [made clear](#) that its enforcement efforts would be focused on cases involving allegations of fraud resulting in harm to investors, and that creative legal theories would not be embraced. Chairman Atkins has followed these principles, as is evident in the types of enforcement cases that have been filed thus far in his tenure. And the agency's new enforcement director, Judge Margaret Ryan, who took the position in early September, is not expected to change direction.

But while a shift in programmatic goals is not an unexpected result of a change in administrations, the SEC's steps to backtrack on its prior charging decisions by seeking dismissal of numerous cases it is actively litigating in federal court is, indeed, without recent precedent. The SEC does not, as a matter of course, seek to dismiss charged matters absent some significant change in the facts or the law specific to individual cases. Here, by contrast, the dismissals appear to be based on policy changes directed by the leadership of the agency. In this way, these dismissals solidify the message coming from the agency since the Inauguration—that it is a “[new day](#)” at the SEC.

Crypto

Starting in February, the SEC sought to dismiss a number of high-profile crypto cases, including those filed against: crypto exchanges [Coinbase](#), [Kraken](#), and [Binance](#) for operating as unregistered securities exchanges; trading firm [Cumberland](#) for operating as an unregistered dealer; and [Consensys Software](#) for operating as an unregistered broker through its MetaMask platform. The stated [rationale](#) provided by the agency was that the dismissals would “facilitate the Commission's ongoing efforts to reform and renew its regulatory approach to the crypto industry.”

These dismissals were part of a larger overhaul by the SEC of its crypto regulatory and enforcement program. This new direction includes the creation of a new crypto [task force](#) in January and the subsequent reconfiguration of a much smaller [enforcement unit](#) focusing on fraud and market manipulation intended to protect retail investors. The SEC has been clear that it will not be pursuing the types of “registration-only” investigations—lacking any underlying fraud allegations—undertaken during the prior administration and has largely closed any such investigations.

Beyond enforcement, the SEC has launched “[Project Crypto](#)”—“a Commission-wide initiative to modernize the securities rules and regulations to enable America's financial markets to move on-chain.” Chairman Atkins has been clear that Project Crypto will be “the SEC's north star in aiding President Trump in his historic efforts to make America the ‘crypto capital of the world.’”

Dealers

In May and June, the SEC sought to dismiss its pending “unregistered dealer” cases, which were brought based on an expansive—and controversial—concept of “dealer” adopted during the last administration. Under this definition, certain market participants that traded in their own accounts and not on behalf of customers would be operating as securities dealers and need to register with the SEC. Specifically, defendants in the charged cases allegedly acquired convertible notes from penny stock issuers, converted the notes into shares of stock at large discounts from market prices, and then sold those newly issued shares into the public market at a significant profit; the SEC charged the defendants with acting as unregistered securities dealers.

In dismissing the pending dealer litigation—against [Tri-Bridge Ventures, LLC](#), [LG Capital Funding, LLC](#), [Adam Long](#) (of L2 Capital, LLC and Oasis Capital, LLC), [River North Equity LLC](#), [John Fife](#) (of Chicago Venture Partners, L.P., Iliad Research and Trading, L.P., St. George Investments LLC, Tonaquint, Inc., and Typenex Co-Investment, LLC), [Auctus Fund Management, LLC](#), and [Curt Kramer](#) (of Power Up Lending Ltd., Geneva Roth Remark Holdings, Inc., and 1800 Diagonal Lending, LLC)—the SEC [noted](#) only that its decisions were grounded in its “judgment that the dismissals [were] appropriate as a policy matter.”

These dismissals should be understood in the context of broader efforts during the previous administration to expand the statutory definition of “dealer.” In early 2024, the Commission—divided 3-2 along party lines—voted to [adopt](#) an expanded definition of dealer to include market participants that provide liquidity while trading in their own accounts, which could include the internal, proprietary trading of a large category of investors, from quantitative trading firms to standard hedge funds and crypto-focused investment firms. After industry groups successfully challenged the expanded definition, the SEC appealed the ruling to the Court of Appeals for the Fifth Circuit in the last days of the previous administration. In February, the SEC changed course and moved to drop that appeal, effectively marking the end of the expanded dealer definition.

Liquidity Rule

In July, the SEC [dropped](#) its first-ever case enforcing the “liquidity rule.” Adopted in 2016, the liquidity rule prohibits a mutual fund from investing more than 15% of its net assets in illiquid investments, requires the fund to take prompt remedial measures if the fund’s illiquid investments exceed that limit, and requires the fund to adopt a liquidity risk management program.

The enforcement case, filed in 2023, charged investment adviser Pinnacle Advisors, LLC and two of its officers with aiding and abetting liquidity rule violations by a mutual fund they advised. The SEC alleged, among other things, that for a 12-month period, the fund’s investments exceeded 15% of its net assets, and that the fund did not enact a plan to reduce its illiquid investments.

Defendants moved to dismiss on the grounds that the SEC had lacked the authority to promulgate the liquidity rule in light of the Supreme Court’s landmark 2024 decision in [Loper Bright v. Raimondo](#), which overruled “*Chevron* deference,” a long-standing doctrine that required that courts defer to an agency’s reasonable interpretation of the statutes it administers.

The SEC subsequently moved to dismiss the case against Pinnacle Advisors and its officers before a ruling on this question, noting the dismissal was made “[i]n the exercise of its discretion and as a policy matter.”

In light of this dismissal, the fate of the liquidity rule remains unclear. But it is unlikely that this SEC administration will prioritize enforcement of the rule, and any litigated case involving the liquidity rule presents a risk that a court would vacate the rule on grounds that the SEC lacked the statutory authority to adopt it. While cases based solely on liquidity rule violations are unlikely, it will be interesting to see whether the SEC chooses to include charges based on violations of the liquidity rule in enforcement cases that allege other violative conduct, or whether it chooses to forego such charges altogether.

Material Non-Public Information

In April, the SEC sought to [dismiss](#) a case brought under Section 204A of the Investment Advisers Act, which requires investment advisers to adopt policies and procedures to prevent the misuse of material nonpublic information, or MNPI. The case against Silver Point Capital, L.P., a registered investment adviser, was brought in the last days of the previous administration. The SEC alleged that a long-time Silver Point consultant, a now-deceased lawyer, participated, on Silver Point’s behalf, on creditors’ committees of distressed companies in which Silver Point sought to invest.

According to the SEC, this individual received MNPI about certain transactions through participation in these committees and, at the same time, had extensive communications with Silver Point’s public trading desk. The SEC did not allege that the consultant, or anyone else at Silver Point, actually misused MNPI—*i.e.*, that there was an insider trading violation—but only that Silver Point did not exercise the requisite oversight to ensure that individuals like the consultant would not be in a position to misuse MNPI.

The case against Silver Point followed two settled actions brought by the SEC under Rule 204A last year—against [Sound Point Capital Management](#) and [Marathon Asset Management](#)—that likewise did not involve any underlying allegation of insider trading. In seeking to dismiss the action against Silver Point, the SEC noted that its decision was “based on the specific facts and circumstances of the case.”

More broadly, this dismissal may signal that the SEC is less willing to base Section 204A violations on internal company policy and procedure deficiencies where there is no evidence of insider trading. On the other hand, the Sound Point and Marathon cases were [supported](#) by at least one of the two Republican Commissioners who remain at the SEC. This suggests the current Commissioners may not have a general objection to bringing charges under Section 204A where there is no insider trading violation. Rather, it may be the case that the decision to dismiss the Silver Point case was more a result of the significant litigation risk involved or some other factor specific to that case.

FCPA

In July, the SEC [dismissed](#) charges against two former executives of Cognizant Technology Solutions for their roles in facilitating bribery payments to a foreign official in purported violation of the Foreign Corrupt Practices Act. The SEC stated only that the dismissal was “appropriate as a policy matter.” The SEC’s action followed the DOJ’s dismissal of its indictment against the executives based on the same conduct.

The DOJ took this step following President Trump’s February 2025 [Executive Order](#), which temporarily paused FCPA enforcement by the DOJ and directed the Attorney General to reevaluate existing cases and develop new guidance for current and future FCPA enforcement.

The [guidance](#) subsequently published by the DOJ prioritizes FCPA enforcement in connection with cartels and transnational criminal organizations, national security, or other conduct that harms similar U.S. interests. Though this guidance does not directly relate to the SEC, we can expect that FCPA enforcement by the Commission will not be an area of priority during this administration.

Lessons Learned

One thread that runs through many of the SEC’s recent dismissals is that they reflect the significant policy changes at the agency and in the federal government more broadly. While all administrations shift policies and priorities to some extent, it is unusual for agencies like the SEC to apply these changes retroactively.

But the SEC under the current administration has been aggressive in identifying those pending cases that do not fit within its chosen enforcement priorities, and taking steps to dismiss them. These dismissals reflect a clear repudiation of the prior administration’s goals and a strong indication that the SEC, under Chairman Atkins, is significantly changed.

Going forward, we expect the SEC to focus on “bread and butter” enforcement cases, such as insider trading, offering frauds, and accounting fraud, based on tried-and-true legal theories, especially those involving harm to retail investors.

A good example of this enforcement strategy is the SEC's recent [formation](#) of a cross-border task force to combat fraud, focusing on securities law violations by foreign companies accessing the U.S. securities markets. One [impetus](#) for this new task force appears to be the uptick of suspected market manipulation schemes by foreign issuers listing microcap securities on U.S. exchanges, which may have resulted in large losses to U.S. retail investors.

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Securities

Greensill Criticized as SoftBank Wins Suit Over Fund Losses (1)

Oct. 15, 2025, 5:59 AM PDT

Lex Greensill faced severe criticism from a London judge who ruled in favor of SoftBank Group Corp. after a trial over hundreds of millions in investor losses tied to a series of trades made by his now-collapsed trade finance firm.

As liquidity at his firm dried up, Greensill concealed the “true position” from Credit Suisse, misleading officials during negotiations around a restructuring agreement, Judge Robert Miles said in the Wednesday ruling. The trades with Greensill Capital ultimately left investors in the Swiss lender’s funds out of pocket by as much as \$440 million.

Credit Suisse had sued SoftBank accusing it of orchestrating the restructuring in 2020 so that it could pull its own money out of the firm, knowing full well that Greensill, already in free-fall, would be unable to repay what it owed to Credit Suisse.

The lawsuit pored over a series of transactions Greensill struck with SoftBank and the way the trade finance firm restructured its relationship with Kattera Inc., a US-based construction company in which SoftBank was a major investor. Miles said that Greensill’s evidence at trial seemed to be “reconstructed” to show him in the “best possible light.”

The judge dismissed the claim against SoftBank, finding that the firm acted in “good faith” during the negotiations and had actually intended to make the Credit Suisse investors whole.

“Today’s ruling fully vindicates SoftBank and confirms the allegations were simply a baseless attempt to redirect blame,” SoftBank said in a statement. “SoftBank acted honestly, and this judgment sets the record straight.”

UBS Group AG, which was pursuing the London claim on behalf of its former Swiss rival, said the bank is “committed to taking all appropriate actions to maximize recovery for the benefit of all stakeholders.”



Lex Greensill, center

Photographer: Chris J. Ratcliffe/Bloomberg

While Lex Greensill appeared as a witness at the trial, he wasn't a party to the case. His spokesman didn't return a message seeking comment. He has previously consistently denied any wrongdoing.

Greensill collapsed just months after the SoftBank deal when the Japanese group refused to provide a \$1.5 billion last-minute bridging loan. Credit Suisse then froze and began winding down \$10 billion of funds that bought products from Greensill Capital.

Lex "Greensill was willing to take considerable risks to try to keep the Greensill Group alive," the judge said. "He was prepared to mislead Credit Suisse in the hope that he would be able to raise liquidity from SoftBank."

Greensill knew that Credit Suisse would not have agreed to the transactions "and he knew that that it would not have consented because its interests as a securitized creditor were prejudiced by the transaction," the judge said.

The trial was the first time Lex Greensill gave evidence publicly about the collapse of his firm since his appearance at a UK parliamentary hearing in 2021.

"It seemed to me that his evidence concerning the events of late December 2020 involved a reconstructed narrative which showed him in the best possible light," Miles said.

The fallout from the collapse spawned multiple legal fights around the world. Lex Greensill himself is fighting moves by the UK government to have him disqualified as a director, while his firm's own administrators filed a civil case against him in April.

(Updates to say Greensill isn't a party to the case in the eighth paragraph.)

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Catching Up With Delaware's Chancery Court

By Jarek Rutz and Jeff Montgomery

Law360 (October 14, 2025, 3:47 PM EDT) -- Last week at the Delaware Chancery Court, Vice Chancellor Lori W. Will ruled that Carlos Vasallo **remains the CEO** of Caribevision TV Network LLC, finding that majority investors' attempt to remove him under a defective 2019 agreement was invalid for lack of proper notice.

The court also juggled disputes spanning digital assets, biotech mergers and healthcare oversight, including **a derivative suit** filed by a shareholder of Doximity Inc., the "LinkedIn for Doctors," accusing leaders of the networking company of inflating user-engagement data to mislead investors and justify inflated stock buybacks, costing the company more than \$23 million.

Here's what you might have missed from the Chancery Court.

New Suits

Biote Corp. **sued** founder Dr. Gary Donovitz on Oct. 7 to block a Texas indemnification cross-claim, arguing it violates a 2024 settlement overseen by former Chancellor William B. Chandler III. The company said Donovitz's new filing breaches a broad release and covenant not to sue embedded in the 2024 deal.

Shareholder Representative Services LLC **asked the court** on Oct. 3 to compel a forensic investigation into Signify Health Inc. after the company allegedly erased key employee records tied to a \$50 million earnout dispute from its 2022 acquisition of Caravan Health Inc. The motion accuses Signify of deleting data post-litigation, despite a preservation duty.

Settlement and Counsel Battle

A two-year Chancery fight over Playtika Holding Corp. ended with a **\$24.75 million settlement**, resolving claims that its China-based controlling shareholder structured a \$600 million self-tender to solidify control of the Israeli mobile-gaming company. The pact, filed on Oct. 8, followed extensive cross-border discovery and prior rulings that dismissed Playtika's top executives but kept fiduciary duty claims alive against the controller.

Bernstein Litowitz Berger & Grossmann LLP and Robbins Geller Rudman & Dowd LLP are **vying to co-lead shareholder litigation** over the healthcare management company R1 RCM Inc.'s \$8.9 billion go-private deal. The firms told Vice Chancellor Morgan T. Zurn on Oct. 3 that their clients hold the largest financial stake and uncovered "game-changing" evidence of adviser conflicts through an investigation.

Institutional and Oversight Disputes

The court extended a pause through January 2026 in **ChristianaCare's suit** challenging Delaware's hospital-budget review board law. Wednesday's order allows continued negotiations between the health system and state officials toward a transparency and workforce investment compromise. H.B. 350, signed into law by then-Gov. John Carney on July 17, 2024, established the Diamond State Hospital Cost Review Board, which supporters argue will help control rising healthcare costs and get clarity on hospital spending.

Vice Chancellor Nathan A. Cook Wednesday chastised directors at Blue Bell Creameries for **waiting five years to argue** that a prior \$60 million limited-partner settlement in Wenske v. Blue Bell

Creameries blocked derivative claims tied to the ice cream maker's 2015 listeria outbreak. Calling the delay a defiance of common sense, Vice Chancellor Cook said the court must ensure no prior deal improperly extinguished shareholder claims rooted in another Blue Bell case, *Marchand v. Barnhill*.

Shareholder Objections and Dismissals

Hedge fund IsZo Capital LP objected Oct. 6 to a **proposed \$32 million settlement** over Emisphere Technologies Inc.'s \$1.8 billion sale to Novo Nordisk A/S, calling the payout inadequate and unfair to minority holders. IsZo, claiming a \$73 million loss, seeks to opt out, arguing the deal capitulates on key claims while enriching counsel.

In a **first-of-its-kind decision**, Vice Chancellor J. Travis Laster on Oct. 6 dismissed a suit over \$3.7 million in stolen ether cryptocurrency, finding Delaware lacked quasi in rem jurisdiction over foreign defendants linked to a Curacao casino. Vice Chancellor Laster held that cryptocurrency is intangible property located in its owner's domicile, meaning the ether's Delaware presence could not anchor jurisdiction.

Quotable

Vice Chancellor Cook told Srinivas M. Raju of Richards Layton & Finger PA, counsel to former Blue Bell officer Paul W. Kruse, that in order to be comfortable when approving a settlement he had to ensure he had received all needed information.

"Particularly," the vice chancellor added, "if a settlement is going to impact in an extraordinarily material way a case on my docket, and not just any case on my docket, but, one may argue ... the premier decision by the Delaware Supreme Court in the last five years that spawned a million CLE panel discussions."

--Editing by Robert Rudinger.



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Musk Blasts Investors' Late Bid To DQ Spiro In Twitter Case

By **Jack Karp**

Law360 (October 14, 2025, 4:24 PM EDT) -- Elon Musk should be allowed to keep lead trial counsel Alex Spiro since the investors accusing the billionaire of trying to tank Twitter's stock waited until the last minute to attempt to disqualify Spiro, who has Musk's consent to his being both trial counsel and witness, Musk told a California federal judge.

The investors also haven't shown that the Quinn Emanuel Urquhart & Sullivan LLP partner has unique knowledge relevant to the case stemming from Musk's acquisition of the social media platform, according to Musk's Friday **opposition** to Spiro's disqualification.

"At the buzzer, plaintiffs filed a Hail Mary motion seeking to disqualify Spiro from continuing to serve as Musk's trial counsel under the advocate-witness rule. But they did not even clear the line of scrimmage," Musk said.

"As plaintiffs know, Musk provided informed, written consent to have Spiro serve as both counsel and witness to the extent necessary. This ought to end the court's inquiry," the billionaire added.

The investors — who claimed Musk's oscillating approach to the \$44 billion purchase of Twitter was a **ploy** designed to drive down Twitter's stock price during the acquisition process — urged U.S. District Judge Charles R. Breyer to **disqualify Spiro** as Musk's proposed lead trial counsel in a motion filed Sept. 26 and partially unsealed on Oct. 6.

They argued that Spiro's possible direct involvement in key events surrounding the 2022 Twitter purchase makes him a key witness, creating a conflict under the advocate-witness rule.

But Spiro has served as Musk's lead counsel in the certified class action since December 2022, yet the investors didn't notify Musk that they intended to seek his disqualification until July 2025. The fact that the investors waited until shortly before trial to make that disqualification request is evidence of "gamesmanship," Musk said.

On top of that, when Musk and Spiro found out that the plaintiffs did intend to seek Spiro's disqualification, Musk gave informed written consent to Spiro's continued representation as trial counsel, the opposition motion added.

That consent means Spiro can serve as trial counsel even if he is likely to be a witness under California law. The investors have claimed that since Spiro is licensed in New York, he's bound by New York's advocate-witness rule, which doesn't include this informed-consent exception, but that argument is "frivolous," according to Musk.

The plaintiffs haven't even demonstrated that Spiro's testimony is necessary to their case, Musk added in his opposition motion.

Spiro's August **deposition** showed that while the attorney may have some relevant information, investors' arguments that they need his testimony aren't well-founded, according to the filing, which pointed out that plaintiffs' attorneys spent less than 90 minutes asking Spiro questions on the record during that deposition and waived the balance of their time.

In order to justify removing him from the case, the plaintiffs have to show that Spiro is the only

source of information about disputed factual matters necessary to prove their claim, not just that he may testify or even be a central witness at trial, Musk said.

Spiro may have relevant information about efforts to mitigate the damage from Musk's tweets, Musk's search for evidence to support his excuse for exiting the deal and other topics, but the investors haven't shown that information is significant to their claims or that Spiro can testify on these topics without Musk waiving privilege, according to Musk.

And he is far from the only person who can testify on topics such as Musk's team's effort to obtain bot information from Twitter, Musk said.

"An army of lawyers from Skadden, a team of bankers from Morgan Stanley, and three separate data science consultants were all more deeply involved in that task than Spiro and have already testified at length about these topics," Musk explained.

"Plaintiffs' vague and speculative concerns that Spiro's credibility and skill as both witness and advocate will cause prejudice and jury confusion are plainly insufficient to support disqualification and can be remedied through instruction, stipulation, and trial management," Musk insisted.

An attorney for Musk declined to comment Tuesday. Attorneys for the investors did not respond to requests for comment.

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

In 2023, Judge Breyer ruled that the investors had plausibly alleged Musk violated securities laws with a series of tweets 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 that fake and spam accounts make up at least 20% of Twitter's users, but investors said 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, from May 13, 2022, through Oct. 4, 2022.

The investors are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung, Elle D. Lewis 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 A. Broome, Alexander B. Spiro, Jesse A. Bernstein, Jonathan E. Feder, Joseph C. Sarles, Matthew A. Bergjans and Michael T. Lifrak 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 Dorothy Atkins. Editing by Dave Trumbore.



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Chancery Pushes Forward SaaS Co. Share Buyback Suit

By **Jeff Montgomery**

Law360 (October 14, 2025, 3:17 PM EDT) -- A stockholder challenge to a tech company share repurchase seen as restoring, without cost, a co-founder's majority voting control won Delaware Court of Chancery fast-tracking on Tuesday, with a vice chancellor asking if the action could implicate expanded "safe harbor" protections already under state Supreme Court review.

Vice Chancellor Lori W. Will approved expedited handling of the suit — which names software-as-a-service company Semrush Holdings, Inc., co-founder Oleg Shchegolev, its board and top officers — after a hearing convened without representation by counsel for those named, despite prior notice.

The suit, filed on Oct. 7 by stockholder Chirag Mody, alleges Shchegolev, Semrush's largest stockholder, "exerted his influence to secure authorization of a share repurchase program that, if not enjoined, will bankroll the restoration of Shchegolev's majority control."

According to the complaint, the repurchase was approved on Aug. 4 without a required, disinterested stockholder vote and without disclosure of the board members who authorized the move. Also missing, the complaint said, were required safeguards against Shchegolev's attainment of majority control without paying a premium.

Semrush, the complaint said, provides an online "visibility management" software-as-a-service platform "that enables businesses to run search engine optimization, advertising, content, social media and competitive research campaigns." The company was reported as having a more than \$1 billion market capitalization on Tuesday.

"It would be helpful to see how you see this case unfolding," Vice Chancellor Will told Daniel E. Meyer of Bernstein Litowitz Berger & Grossmann LLP, counsel to Mody. "Also, whether the pending constitutional challenges to Section 144 safe harbors have any bearing in the case."

Meyer told the vice chancellor: "We haven't heard anything from the defendants, and we don't know who their outside counsel is, and we didn't see opposition to our motion at all — certainly not by the 10 a.m. deadline Your Honor had set on Monday."

Semrush did not immediately respond to a request on Tuesday for comment on the suit, which alleges one count each of direct and derivative breaches of fiduciary duty by those named.

Delaware lawmakers earlier this year overhauled the state's general corporation law in a measure, S.B. 21, that expanded some protections for corporations, their directors and controlling stockholders. Included were changes to Section 144 that extended business judgment liability protections to controlling stockholders for otherwise conflicted acts regardless of whether the changes were void or voidable.

Multiple state Supreme Court appeals are pending focused on the changes.

In his complaint, Mody alleged Shchegolev formed Semrush in 2008, choosing investors who would support him and taking the business public in 2021. By that time, the complaint alleged, Shchegolev held a majority of shares based on high-vote Class B shares — but later sold some to the point of having below-majority voting power.

Later, however, Shchegolev allegedly used his influence to secure approval of a \$150 million company share repurchase that would have restored his majority voting clout by cutting total shares outstanding. The complaint said the benefit would have otherwise cost him at least \$75 million.

Meyer told the vice chancellor that "a board can't just allow a transfer of control to happen. That board needs to step in and do something."

Safe harbor protections oblige a board to "cleanse" an otherwise conflicted deal through good faith approval by an independent board special committee, Meyer said. "A board needs to be active, and here it doesn't look like, at least from the public filings, any safeguards were put in place."

Also approved in the share repurchase plan is a delay in the conversion of super-voting Class B shares, which carry 10 votes per share, to ordinary one-vote shares, the complaint said.

Four members of the company's board, including Shchegolev, held Class B shares, according to the complaint, which accuses those named of "misusing Semrush's corporate treasury to facilitate Shchegolev's gratuitous acquisition of control." Semrush "down-converted" to Class A shares, however, in multiple sales that earned \$30 million.

A much larger change of control compensation dispute is currently pending before Vice Chancellor Paul A. Fioravanti, with a stockholder of T-Mobile US seeking direct and derivative damages for stockholders and the company tied to a multiyear, \$27 billion series of stock buybacks starting in 2022.

The T-Mobile buybacks resulted in Deutsche Telekom AG's transformation from owning 46.6% of T-Mobile's shares to having an absolute majority of shares. Directing the multiyear change, according to the suit, filed in February, was a board on which a majority were dual fiduciaries of both T-Mobile and D-T.

Chirag Mody is represented by Daniel E. Meyer, Jeroen van Kwawegen and Christopher J. Orrico of Bernstein Litowitz Berger & Grossmann LLP and Douglas E. Julie and W. Scott Holleman of Julie & Holleman LLP.

Counsel information for Semrush Holdings Inc. and others named in the suit was not immediately available.

The case is Chirag Mody v. Steven Aldrich et al., case number 2025-1147, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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Visa, MasterCard To Pay Combined \$199.5M In Fraud Risk Suit

By **Dorothy Atkins**

Law360 (October 14, 2025, 6:48 PM EDT) -- Visa Inc. and MasterCard International Corp. have agreed to pay a combined \$199.5 million to resolve a nearly decade-old certified class action accusing the credit card giants of conspiring to dump fraud risk costs on merchants, according to documents filed in New York federal court.

In a 25-page memo Friday, counsel for the merchants asked U.S. District Judge Margo K. Brodie to preliminarily sign off on a proposed settlement under which Visa agreed to pay \$119.7 million and MasterCard agreed to pay \$79.8 million into a gross settlement fund. Meanwhile, class counsel plan to seek up to \$54.86 million, or 27.5% of the combined Visa and MasterCard settlement, in attorney fees, plus up to \$3 million in costs.

The latest proposed settlement would be in addition to the plaintiffs' proposed \$32.2 million deal with Discover and Amex, which was announced in June. Under that deal, class counsel plan to seek up to \$10.7 million, or 33.3%, in fees, plus up to \$2 million in expenses. Combined, the settlements would bring the total settlement common fund to \$231.7 million, according to the plaintiffs.

Both deals are pending court approval, but if approved, the settlements would resolve class action claims launched in March 2016 against Discover, Visa, MasterCard and American Express.

The suit accuses the credit card companies of simultaneously implementing nearly identical changes to their rules in order to shift the costs of potentially billions of dollars in fraud-related chargebacks onto merchants that did not have certified terminals compliant with so-called EMV — Europay, MasterCard, Visa — microchip technology by October 2015.

After **multiple rounds** of pleading, in August 2020, the court certified a **class of merchants** who incurred one or more unreimbursed chargebacks between Oct. 1, 2015, and Sept. 30, 2017, by Mastercard, Visa, Discover or Amex. Last year, the judge refused to grant the credit card companies summary judgment and denied a motion to decertify the class.

In March, the judge also denied the credit card companies' request to file an interlocutory appeal challenging the summary judgment denial and the judge teed up the case for trial.

Roughly three months later, in June, the merchants informed the court of the proposed settlement with Discover and Amex, followed by Visa and MasterCard's latest proposed settlement.

In the memo supporting their latest motion for preliminary approval, the merchants note that their damages expert, Micah S. Officer, pegged total damages at \$1.45 billion, with Visa chargebacks accounting for \$762 million of those alleged damages and MasterCard accounting for \$544 million.

But the proposed nine-figure settlement represents a significant recovery and warrants approval, particularly given the uncertainties of further litigation, the merchants argued.

"Plaintiffs' recovery from just Visa and Mastercard — \$199,500,000 — accounts for 13.72% of plaintiffs' best-case estimate for single damages recoverable from defendants at trial and 50.84% of what would be recoverable under defendants' [motion for summary judgment] alternative," the memo says.

The merchants also defended their fee and expense request, arguing that a 27.5% cut for fees is appropriate given "the excellent results achieved, and the complexity and scope of this litigation, which has already been ongoing for more than nine years and has progressed through every stage before trial."

"Class counsel have not received any payment in this action thus far, and have incurred millions of dollars in expenses and devoted thousands of attorney and other professionals' time to this matter with no guarantee of any recovery," the memo notes.

MasterCard said in a statement Tuesday that the company is glad to have brought the matter to a potential conclusion, and MasterCard has been encouraging merchants to migrate to the "highest levels of technology" to protect Mastercard purchases.

"This work continues today as we reinforce secure and easy-to-use ways to pay with Mastercard through tokenization, passkey, biometrics and more," the statement says.

Counsel for the merchants and representatives and counsel for Visa did not immediately respond to requests for comment Tuesday.

The merchants are represented by George C. Aguilar, Michael J. Nicoud and Jacob W. Ogbozo of Robbins LLP, John W. Devine of Devine Goodman & Rasco LLP and Thomas G. Amon of the Law Offices of Thomas G. Amon.

Visa is represented by Robert J. Vizas, Matthew A. Eisenstein, Rosemary Szanyi, Michael A. Rubin and Karen C. Otto of Arnold & Porter Kaye Scholer LLP.

MasterCard is represented by Kenneth A. Gallo and Brette Tannenbaum of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is B&R Supermarket Inc. et al. v. Visa Inc. et al., case number 1:17-cv-02738, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Katryna Perera. Editing by Kelly Duncan.



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Judges Back Ga. County's Use Of Outside Attys In Opioid Suit

By **Chart Riggall**

Law360 (October 14, 2025, 3:58 PM EDT) -- The Georgia Court of Appeals has backed the dismissal of a lawsuit by Publix Supermarkets claiming a metro Atlanta county unconstitutionally hired outside counsel to pursue opioid litigation against the grocery chain, ruling Publix had "done nothing to assuage" the court's reasons for throwing out an almost identical suit earlier this year.

In a unanimous opinion Friday, the court said Publix's attempt to revive its suit against Cobb County failed for the same reasons that an earlier lawsuit against Rockdale County **fell short** — the company had again failed to show what "public right" was abridged by the county's choice of representation.

While the court said it disagreed with "some of" the trial court's reasoning for tossing the suit on anti-SLAPP grounds, in general, the lower court's judge had the right idea.

"Here, as in Rockdale County, the operative complaint makes clear that Publix 'does not take issue, generally, with the county's hiring of private law firms or its payment agreements in toto, and thus its object is not to vindicate a public right,'" Judge Trea Pipkin said, quoting the court's prior opinion from March.

"Moreover, Publix has done nothing to assuage the comity concerns this court voiced in Rockdale County, and it has not explained how this court can order any sort of relief regarding a party's choice of representation in a federal court," he added.

Friday's opinion arises from multiple unsuccessful bids by Publix to halt Peach State counties from retaining outside counsel to pursue opioid litigation against the supermarket chain.

According to the opinion, Cobb County it first sued Publix in 2018 in Georgia federal court, with the case later being merged into a sprawling multidistrict litigation based out of Ohio. After years of litigation — including a **failed push** by Publix to force the Supreme Court of Georgia to decide if it could be held liable under public nuisance laws — a federal judge in March set a trial in the case for this year.

However, the parties announced in late July that they had settled the case on undisclosed terms before trial.

In the meantime, Publix sued Cobb County in 2023, alleging its use of outside attorneys violated Georgia statute and the state's constitution, taking particular issue with the county's alleged agreement to pay a 25% contingency fee to firms Simmons Hanly Conroy LLP, Crueger Dickinson LLC and Von Briesen & Roper SC.

"This action is not a defense of Cobb County's meritless claims — which are being pursued in multidistrict litigation in Ohio of all places — rather, this action is about the many ways in which Cobb County's retention of private attorneys violates Georgia's State Constitution, laws, and public policy," the company said in its complaint.

However, a year ago, a Cobb County judge said the county's pursuit of the suit "is in the public interest," giving it protection from litigation trying to undermine the opioid claims under Georgia's anti-SLAPP laws.

In Friday's opinion, the Court of Appeals panel noted that Cobb's case presented "nearly identical" issues to those raised by Publix in a similar suit against Rockdale County. There, the company likewise claimed Rockdale had unlawfully relied on outside attorneys for opioid litigation.

But the Court of Appeals ruled in March "that the relief Publix seeks would require a state trial court to, in essence, disqualify attorneys involved in a federal lawsuit, straining beyond reason all notions of comity between these courts."

The panel said Friday it found no reason to rule any differently in the Cobb County suit.

"Consequently, Publix has failed to establish the existence of an actual controversy," Judge Pipkin said.

Counsel for the parties didn't immediately respond to a request for comment Tuesday.

Judges Trea Pipkin, Christopher McFadden and Kenneth B. Hodges III sat on the panel.

Publix is represented by William Patrick Eiselstein and Michael P. Kohler of Miller & Martin PLLC and Robert Foust Parsley of Bradley Arant Boult Cummings LLP.

The county is represented in-house by its own William Rowling and Lauren Smith Bruce.

The case is Publix Supermarkets Inc. v. Cobb County, case number A25A1018, in the Georgia Court of Appeals.

--Editing by Drashti Mehta.

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Apple Judge May Decertify Antitrust Class, But Not Toss Case

By **Bonnie Eslinger**

Law360 (October 14, 2025, 11:56 PM EDT) -- A California federal judge indicated Tuesday that she may decertify a class of consumers alleging Apple violated antitrust laws with its App Store policies, but said she's unlikely to grant Apple's bid to toss the case on summary judgment.

The lawsuit filed in 2011 accuses Apple of violating antitrust law by using its control over the App Store and iOS to charge developers commissions of up to 30% on apps and in-app purchases, which they have contended is ultimately passed along to consumers. U.S. District Judge Yvonne Gonzalez Rogers certified a **nationwide** class last year for individuals who have spent \$10 or more on iOS applications or in-app purchases since 2008.

On Tuesday, the judge appeared to be leaning in favor of Apple's request to decertify the class, with the company arguing that there are unidentifiable, unharmed class members and class number calculations that it said are based on an unreliable damages model.

A lawyer for the plaintiffs, Mark Rifkin of Wolf Haldenstein Adler Freeman & Herz LLP, told the court on Tuesday that their model can identify the percentage of unharmed class members.

The judge asked about the error rate on the analysis done by the plaintiff's expert.

Rifkin said the methodology used by their expert does not have a known error rate.

Apple's lawyer, Cynthia Richman of Gibson Dunn & Crutcher LLP, argued that the analysis is "fatally flawed."

"It's a black box that can't be replicated, that can't be tested," Richman told the court. Further, the plaintiffs recently provided the court with a supplemental declaration in an attempt to "plaster over" the work of their expert, Richman said.

Rifkin told the court that the plaintiffs' expert determined that only 5.2% to 5.9% of the class members were not financially injured by the Apple's alleged anticompetitive conduct.

Richman told the court that the expert's report is full of errors.

"The fact that there are only 5.2 to 5.9% uninjured in the class is really neither here nor there," Richman said, adding that because of the expert's "failings" he cannot identify "who is injured and who is not injured."

As a result, individual inquiries will be needed to identify injured class members, Apple's lawyer said.

"Individual issues are going to predominate," Richman said. "We have to go through each class member to figure out whether the records are matched properly or not."

Judge Gonzalez Rogers asked Rifkin about Apple's contention that there are problems with the analysis.

The lawyer for the plaintiffs disputed the assertion.

"He has computed these numbers, including the total damages number, which is \$20.1 billion," Rifkin told the court.

The judge said she was still concerned about the reliability of the analysis, noting some of the questions concerned duplicated data.

"Apple has shown me a number of errors," the judge said. "Now it may just be a small percentage, but it's still millions of people, since we're dealing with a dataset that's so big."

The judge later noted that the analysis identified 1.8 million class members in King Salmon, Alaska, which has a population of just 375 people.

Rifkin said many individuals set up accounts with fake addresses and that can be addressed if they try to come forward to make a claim as class members.

Apple has also moved to exclude the opinions of the expert.

Judge Gonzalez Rogers did not rule from the bench Tuesday on Apple's Daubert motion to exclude the expert's opinions and request to decertify the class, saying she'd issue an order soon.

"If I decide to decertify the class, then I can get to the other things later," the judge said. "I suspect If I decertify ... the plaintiffs would prefer to take that to the Court of Appeal, then to try a case with four individuals."

Despite that potential win for Apple, the judge later said she was not inclined to grant the company's motion for summary judgment.

"Most of the grounds that Apple has brought for summary judgment, I tend not to agree with," the judge said. "You are really quibbling with evidentiary issues. That goes to weight, not admissibility."

Among arguments, Apple said it found that one of the four named plaintiffs lacked any injury according to the model proposed for determining financial harm.

A lawyer for the plaintiffs, David Frederick of Kellogg Hansen Todd Figel & Frederick PLLC, pointed out that Apple didn't move for summary judgment as to the other three plaintiffs.

Judge Gonzalez Rogers pointed out that the plaintiffs themselves hadn't calculated the damages for their named plaintiffs, calling it "unconceivable."

Rifkin told the judge that information wasn't needed.

"The main plaintiffs are going to come in and say I had an iPhone, I had an iPad. I bought apps. I bought in-app content," he said.

In May 2024, the Ninth Circuit rejected Apple's bid for an **interlocutory** appeal of the class certification. The case went to the U.S. Supreme Court following its **2017** revival by the Ninth Circuit, where the **justices** found the consumers have standing to bring their claims because they constitute direct purchasers from Apple, even though developers set the prices and pay a commission.

Apple filed the summary judgment **motion** in August, along with a separate motion seeking to decertify the class, arguing the antitrust claims for a class of more than 185 million consumers targeting its App Store policies shouldn't go to trial because the allegations focus on legitimate product design and business decisions, not anti-competitive conduct.

The consumers shot back **a response** last month, saying Apple restricts the distribution of apps on its devices to block competition, not as part of a legitimate design choice. The response said there's still a factual dispute about whether Apple has engaged in anticompetitive conduct because the consumers have offered evidence showing the technical restrictions were part of a scheme that reached beyond mere design decisions.

With response to the motion seeking to decertify the class, the plaintiffs said the class will show at

trial through common evidence that Apple's monopoly over apps and in-app purchases on its devices has cost consumers more than \$20 billion since 2008.

The consumer class is represented by Betsy C. Manifold, Rachele R. Byrd, Mark C. Rifkin, Matthew M. Guiney, Thomas H. Burt and Stephanie Aviles of Wolf Haldenstein Adler Freeman & Herz LLP and David C. Frederick, Mark C. Hansen Aaron M. Panner, James Webster, Lillian V. Smith, Alex A. Parkinson, Alex Treiger, Caroline Schechinger, Kyle M. Wood, Ashle J. Holman, Anna K. Link, Anthony R. Guttman and Kelley C. Schiffman of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Theodore J. Boutrous Jr., Daniel G. Swanson, Dana L. Craig, Caeli A. Higney, Julian W. Kleinbrodt, Eli M. Lazarus and Harry R.S. Phillips of Gibson Dunn & Crutcher LLP.

The case is In re: Apple iPhone Antitrust Litigation, case number 4:11-cv-06714, in the U.S. District Court for the Northern District of California.

--Additional reporting by Matthew Perlman, Dorothy Atkins, Bryan Koenig and Lauren Berg. Editing by Michael Watanabe.

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Oregon Says Judge Was Right To Remand Coinbase Suit

By **Katryna Perera**

Law360 (October 14, 2025, 9:21 PM EDT) -- The state of Oregon has pushed back against Coinbase's objections to a federal judge's findings and recommendation that the state's case against the cryptocurrency platform be sent back to state court, saying the judge "properly concluded that no basis for federal jurisdiction exists."

The state of Oregon **responded** last week to objections raised by Coinbase regarding U.S. District Judge Jolie A. Russo's findings and recommendation, issued in September, that the suit accusing Coinbase of putting Oregonians at financial risk through the operation of an unregistered securities platform be remanded to Multnomah County Circuit Court.

The state says Judge Russo "thoroughly addressed and rightly rejected Coinbase's fanciful arguments," and "faithfully applied the proper legal standards and relied on long-settled precedent to determine that Coinbase's removal effort fails under either of its asserted jurisdictional theories."

According to the response, Coinbase argued that the action raises a federal issue, but the state of Oregon said Judge Russo correctly found that the suit's claim asserted under the Oregon Securities Law does not raise a federal issue. That is because the Oregon Supreme Court has ruled that federal securities laws "do not bind" Oregon courts' interpretation of the state law and that "Oregon can independently determine what constitutes an investment contract pursuant to the OSL without deference to or the presumption of primacy of" federal securities law, the state said.

The state argues that Coinbase's theory that the action raises a federal issue is based on a misreading of governing Oregon precedent.

According to the response, Coinbase also argued that Judge Russo's findings and recommendation allow Oregon to "escape" a federal court decision that decides the issue at the heart of the action — whether certain digital asset transactions are securities under state law.

"Not so," the response states. "Judge Russo correctly recognized that the Oregon Supreme Court is not bound by federal law in interpreting the OSL and that Oregon courts have at times deviated from the federal definition of an investment contract. Similarly, Judge Russo properly framed this case as a state attorney general's 'enforce[ment of] a state-specific regulatory scheme,' primarily implicating a state's interest in 'protecting state residents.'"

The state of Oregon further argues that Judge Russo properly declined Coinbase's claim of federal officer jurisdiction, by finding that the state's claims "expressly excludes" any cryptocurrency sales made by or on behalf of the U.S. Marshall Service.

"Judge Russo rightly found, that this exclusion extinguishes any possible grounds for federal officer removal by severing any possible causal nexus between that claim and Coinbase's actions on behalf of the USMS," the response states. "While Coinbase continues to insist that a causal connection nevertheless exists, Judge Russo properly rejected this argument and found that it is clearly contradicted by Coinbase's actual contracts with the USMS. Coinbase also fails to assert a colorable defense arising out of its purported official duties."

In a statement to Law360 on Tuesday, Coinbase's Vice President of Litigation, Ryan VanGrack, said, "This case is about a state attorney general seeking to dictate the future of nationwide digital-asset

markets — an intrusion on the province of federal law and federal interests that must be resolved by a federal court."

Representatives for the state of Oregon did not immediately respond to requests for comment on Tuesday.

The suit was **originally filed** in Oregon state court in April before being moved to federal court at Coinbase's request. Oregon has asked that the case be returned to state court, with Coinbase opposing the move.

Oregon's lawsuit claims that Coinbase created and operated an exchange that supports the sale of unregistered securities, which Oregon Attorney General Dan Rayfield decried as "risky investments" at the time the suit was filed.

The state said in a July court filing that Oregon residents "have suffered devastating losses on many of these highly speculative investments in the absence of proper disclosures about their risks."

It is seeking monetary damages and an injunction against the platform.

The lawsuit was filed two months after the U.S. Securities and Exchange Commission **walked away** from its own lawsuit against Coinbase, which accused the platform of operating as an unregistered securities broker, securities exchange and clearing agency.

The voluntary dismissal of the suit is part of a broader effort by the now Republican-led SEC to soften its stance toward the crypto industry.

The state of Oregon is represented by Brian A. DeHaan of the Oregon Department of Justice, Keil M. Mueller, Jennifer S. Wagner, Yoona Park and Norjmoo Battulga of Keller Rohrback LLP, Julie G. Reiser, Margaret (Emmy) Wydman and Christopher J. Bateman of Cohen Milstein Sellers & Toll PLLC.

Coinbase is represented by Timothy W. Snider, James A. Kilcup and Kate S. Shepherd of Stoel Rives LLP, and Kevin S. Schwartz, Noah B. Yavitz, Adam M. Gogolak, Sijin Choi and Julia M. Bruce of Wachtell Lipton Rosen & Katz.

The case is State of Oregon et al. v. Coinbase Inc. et al., case number 3:25-cv-00952, in the U.S. District Court for the District of Oregon.

--Additional reporting by Jessica Corso. Editing by Vaqas Asghar.