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Elevated Take

Musk's \$56 Billion Pay Appeal Puts Delaware Courts in a Corner

Oct. 16, 2025, 10:12AM PDT

Summary by Bloomberg AI

AI Generated



- Delaware's top court is considering Elon Musk's appeal of a ruling that voided his \$56 billion pay deal with Tesla Inc.
- The court's decision is complicated by concerns that a win for Musk could show "attacking a judge works" and that a loss could lead to an exodus of businesses from Delaware.
- The court may consider a "narrow and technocratic" ruling or finding the transaction fair despite its flaws as a potential way to resolve the case without damaging the Delaware brand and corporate law.

Delaware's top court is stuck between Elon Musk and a hard place.

The state's judges have been getting it from all sides since the chief of its elite business tribunal voided Musk's \$56 billion pay deal with a ruling that said he exploited his "superstar" status to engineer board approval. The billionaire has led the charge with his social media bullhorn.

With the compensation decision finally confronting the Delaware Supreme Court on Wednesday, Musk will get his money either way: If he loses, he has a fresh \$1 trillion deal lined up in Tesla Inc.'s new home state of Texas. But even after leaving Delaware, Musk is continuing to make his mark on a court system still reeling from the ruling's fallout.

"Judges in Delaware are under siege," said retired University of Delaware law professor Charles Elson. "The court itself is really at an inflection point."

The tycoon's barrage turbocharged concerns across the venture capital ecosystem about a crackdown forcing tech's most prolific dealmakers to slow down and stop breaking things. Musk's fusillade was a visible force driving a legislative overhaul this year aimed at restoring the Delaware Chancery Court's foundering reputation with corporate insiders.

His multi-front assault on the ruling also included the Tesla relocation, a shareholder vote to retroactively "ratify" the 2018 pay package, and his formal appeal. But it's not just Musk assailing Delaware, which funds a quarter of its budget with billions in fees on 2 million business entities.

Fears of an exodus from America's corporate capital are real, although the scale of the "DExit" threat remains an open question amid surging competition from Texas and Nevada. This year's Delaware overhaul followed news that visionary founders like Mark Zuckerberg and Marc Andreessen were eyeing the exits.

Musk's appeal leaves the state's high court without easy options.

Upholding the decision by Chancellor Kathaleen St. J. McCormick would take stiff spines and stubborn indifference to power—the features that make Delaware's courts among the world's most admired.

The state's justices have to be worried that a win for Musk would show "attacking a judge works," Elson said.

By the same token, said Columbia law professor Eric Talley, they know tuning out the "ragefest" and pushing hard in the other direction might backfire with a key constituency: business leaders who have Musk's criticisms ringing in their ears.

Wednesday's arguments may point to a somewhat less painful way out—if they're looking for one.

The hearing focused on the remedy of total rescission, the idea that Musk controlled the pay package, and the shareholder ratification vote held after McCormick's initial decision.

Reversing on control or ratification would require "opening up the patient again" to make new law that could do collateral damage to the Delaware brand and corporate law, according to Talley. The court might prefer a "narrow and technocratic" ruling overturning McCormick's decision to rescind the whole package without considering the value of Musk's work, he said.

The CEO famously slept on Tesla's factory floor, as his lawyer noted during Wednesday's court proceedings.

"Then they'd just have to figure out how you put Humpty Dumpty back on the wall" by devising replacement compensation, Talley said.

There's another potentially straightforward off-ramp that barely came up at the appeal hearing, said University of Colorado law professor Ann Lipton: finding the transaction fair despite its flaws.

"It was a lot of money," Lipton said. "But at the end of the day, he got extraordinary results for a shareholder base that loves it. We're done here."

Musk's attorney stressed Wednesday that the package gave Musk "nothing unless he doubled Tesla's value"—the equivalent of creating another Ford or GM—and the full portfolio only if he managed it many times over. Tesla's stock grew tenfold during the vesting period, a fair deal "under any definition," the lawyer said.

But appellate courts have limited leeway to review factual findings like McCormick's conclusion that it was easier than it seemed to hit the Tesla performance benchmarks triggering each tranche of options.

And it's not even clear finding the path of least resistance for placating Musk would save Delaware's golden goose.

"It's too important to split the baby," Elson said.

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Tesla, Musk Counsel Argue That Delaware Case Law Backs Compensation Deal

Chris Michel of Quinn Emanuel Urquhart & Sullivan said based on recent decisions from the Supreme Court, even if transaction-specific control is a valid gauge of when to apply the entire fairness standard and even if Musk's level of influence at Tesla met that metric, the process through which Tesla's board and shareholders approved the deal in 2018 still did not warrant rescission.

October 15, 2025 at 02:07 PM By  **Ellen Bardash**



Elon Musk. Photo: Steve Jurvetson via Wikimedia Commons

Attorneys for Tesla and its directors argued Wednesday that the Delaware Supreme Court can take any of several paths to overturn the Court of Chancery decisions that rescinded Elon Musk's \$56 billion pay package and declined to ratify it following a shareholder vote.

Chris Michel of Quinn Emanuel Urquhart & Sullivan, representing Musk and the other Tesla directors appealing the case, focused on three arguments in favor of reversal, alleging Chancellor Kathaleen St. J. McCormick applied the wrong standard of review in the underlying shareholder case, misapplied entire fairness by asking whether Tesla's directors could have gotten a better

deal on Musk's compensation, and approved complete rescission as a remedy even though it wouldn't restore the parties to where they stood originally.

Michel said based on recent decisions from the Supreme Court, even if transaction-specific control is a valid gauge of when to apply the entire fairness standard and even if Musk's level of influence at Tesla met that metric, the process through which Tesla's board and shareholders approved the deal in 2018 still did not warrant rescission.

"This court has made clear in recent decisions like *Solar City* and *Maffei* that the entire fairness standard is not impossible to satisfy, and if any transaction satisfies that standard, it's this one," Michel said.

Greg Varallo of Bernstein Litowitz Berger & Grossmann, arguing for Tesla shareholder Richard Tornetta, said McCormick found Musk had manipulated the transactional process multiple times and issued a decision that applied clearly established case law and was based on careful fact finding.

"The trial court did its job without regard to the personalities involved," Varallo said. "The chancellor found facts, applied the law and did equity."

Arguing for Tesla and presenting rebuttal for the defense, Jeff Wall of Sullivan & Cromwell said the court should defer to the vote Tesla shareholders took in 2024 to approve Musk's compensation a second time, after McCormick issued her post-trial decision. He said the vote was "likely the most informed stockholder vote in Delaware history."

Justice Karen L. Valihura, noting that it's not disputed that Musk had led Tesla to meet all of the benchmarks that have been required under the plan, asked both Michel and Varallo if they were aware of any other case in which a court has equitably rescinded compensation for a CEO that's had that performance record. Michel said there is no case that has done so, but Varallo said it was done in *Valeant Pharmaceuticals International v. Adam Jerney*, a Chancery case decided in 2007.

"The court said it was disgorgement. This is rescission, and the court found you didn't seek any other remedies," Valihura responded. "You abandoned your other remedies, and if you were to determine that rescission isn't appropriate here, aren't you left with nominal damages?"

Varallo said disgorgement and rescission are two sides of the same coin, and the burden of suggesting an alternative remedy fell on the defense.

"The other side went all-in in this particular case. They decided to gamble 100% on the simple question of whether this grant was fair or not," he said. "That's how they tried the case, and there is a consequence to trying the case that way. If they lose, they lose, and they get nothing."

Wall said the court could reverse McCormick's decisions for any of three reasons: for mischaracterizing Musk's control and conflating it with Tesla directors' independence, for ordering complete rescission of the plan rather than another remedy, or for failing to honor ratification of the plan last year. He said the burden of showing rescission was required to return the parties to where they stood before the plan was approved fell on the plaintiff, and it had not been met.

"The parties here could not be returned to their original positions," Wall said. "Tesla and the stockholders can't give up the benefits of Mr. Musk's incredible labors for the last seven years, nor can Mr. Musk give back all of the work that he put into the company over those years to achieve that extraordinary success."

The justices asked Varallo and Wall about whether there's precedent for post-trial ratification. Varallo said no case has ever ratified a deal in that scenario, and allowing ratification, an affirmative defense, to be brought up after the fact would make litigation interminable. Wall said the Court of Chancery allowed ratification in its 1951 decision in *Kerbs v. Cal. E. Airways, Inc.*

"This is a safety valve, not a floodgate," Wall said. "It will be a very rare case in which a derivative plaintiff successfully seeks relief that a majority of disinterested stockholders, in a fully informed vote, reject. But in the rare circumstance that that happens, it seems to me very important that stockholders be able to say, 'this idiosyncratic derivative plaintiff has managed to achieve relief that we do not believe is in the best interests of the company or of us as stockholders.'"

Page printed from: <https://www.law.com/2025/10/15/tesla-musk-counsel-argue-that-delaware-case-law-backs-compensation-deal/print/>

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Securities

Shareholder Sues Health-Care Company to Block Bitcoin Merger

Oct. 15, 2025, 4:03 PM PDT

A healthcare product manufacturer that holds Bitcoin among its assets faces a securities lawsuit seeking to prevent the consummation of its acquisition by Strive, Inc., a self-described “top Bitcoin treasury company.”

The proposed transaction between Semler Scientific Inc. and Strive is allegedly backed by materially incomplete and misleading statements in violation of the Exchange Act, Semler shareholder Terry Tran claimed in her Tuesday complaint filed in the US District Court for the Northern District of Illinois.

A spokesperson for Semler didn’t immediately respond to a request for comment.

It is “imperative,” Tran said, that the material information allegedly omitted from the registration statement be disclosed “immediately” so public stockholders have time to consider that information and “make a fully and fairly informed determination as to how to vote.” The complaint also requests that the court pause the shareholder voting process until Semler makes “curative disclosures.”

The companies announced the merger Sept. 22. Strive—founded by Republican politician Vivek Ramaswamy and business executive Anson Frericks in 2022—is an asset management company that provides financial services for investors and acquires corporate Bitcoin treasuries. Semler, in addition to developing medical devices and software targeting chronic disease, holds its primary reserves as Bitcoin and is one of the leading corporate holders of Bitcoin, the complaint says.

But the companies’ Oct. 10 registration statement to the Securities and Exchange Commission didn’t fully disclose the calculations behind the deal’s estimated financial impact, the complaint said. Specifically, the statement doesn’t explain “the basis for the \$2.50 per share for Strive’s Class A Common Stock that was used to calculate the Semlar Scientific transaction price,” which allegedly also determines the combined company’s goodwill and total equity balance.

The reasons behind the deal’s assumptions are “obviously material to Semler Scientific’s stockholders because any deviation from the \$2.50 per share fair value assumption could greatly impact the pro forma financial information and the equity stake that Semler Scientific’s stockholders could expect to hold after closing,” Tran claims.

Based on various share prices Strive disclosed in unaudited pro forma condensed combined statements of financial position, shareholders could potentially get millions less of a stake than “Semler Scientific’s historical equity balance of approximately \$384 million,” the complaint estimates.

The complaint seeks an order enjoining Semler from moving forward with the shareholder vote or otherwise consummating the acquisition until it issues disclosures clarifying the proxy statement. Tran also requests rescission of the merger agreement, or alternatively, rescissory damages, along with the defendants being required “to account to Plaintiff for all damages sustained as a result of their wrongdoing” and an award of reasonable attorneys’ fees and costs.

Ademi & Frutcher LLP represent Tran.

The case is Tran v. Semler Scientific Inc , N.D. Ill., No. 1:25-cv-12555, complaint filed 10/14/25 .

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Class Action

Manage Newsletters

Exxon Mobil Shareholder Sues Board Over Automatic Voting Program

Oct. 15, 2025, 1:13 PM PDT

Summary by Bloomberg AI

AI Generated



- A proposed class action says Exxon Mobil Corp.'s program to automatically align individual investors' votes with the board's violates federal law.
- The program is accused of being a "blatant power grab" that impairs the voting rights of Exxon's public shareholders and stifles shareholder activism.
- The pension fund is suing Exxon and its board, seeking to enjoin operation of the program, declare it unlawful, and say the board members breached their fiduciary duty.

Exxon Mobil Corp.'s optional program to automatically align individual investors' votes with the board's violates federal law, a proposed class action said.

Board members enacted this retail investor voting program as a "blatant power grab," a pension fund told the US District Court for the District of New Jersey. Through it, they "seek to weaponize retail shareholder apathy by sock-puppeting retail shareholders' voting discretion without providing the required disclosures under federal law, in order to crush the voting impact of security holders who read the proxy statements, participate in shareholder democracy, and legally vote their shares," said the complaint filed Tuesday.

The program impairs the voting rights of Exxon's public shareholders who opt-in plus those who aren't eligible or choose not to opt in, given their "votes would be diluted through the votes of illegally solicited proxies," the City of Hollywood Police Officers' Retirement System said. The program's meant to keep board members in power against the perceived threat of "troublesome investors," said the pension fund.

The pension fund, an institutional investor, accused the program of being the board's latest attempt to stifle shareholder activism, pointing to battles tied to environmental initiatives.

The pension fund's suing Exxon and its board, including CEO Darren Woods, saying the program "affirmatively violates federal law, and constitutes both an unlawful entrenchment device and a breach of fiduciary duty under New Jersey law." It wants the court to enjoin operation of the program, declare it unlawful, and say the invitation to enroll is an unlawful solicitation. It also wants the court to say the board members breached their fiduciary duty by hindering shareholder voting rights and causing Exxon to commence an unlawful solicitation.

Exxon didn't immediately send a comment in response to a phone call seeking one about the lawsuit.

Grant & Eisenhofer PA and Seeger Weiss LLP represent the pension fund.

No-Action Relief

The Securities and Exchange Commission's Division of Corporate Finance granted no-action relief to Exxon's program last month, essentially saying it can proceed.

The program lets retail shareholders authorize Exxon to vote their shares with the recommendations of the board in all matters, or at least those barring contested elections of directors or major transactions like a merger. The investors can opt out or override that directive on a specific proposal by voting their shares.

Exxon said the program would help close the gap for less-active shareholders who don't have access to services that make voting easier for institutional investors. "Activist groups often exploit this gap to push political goals at the expense of shareholder value," Exxon said in a Sept. 15 press release.

"Our retail shareholders, who overwhelmingly support our board, have not had the benefit of such a service and, as a result, have for far too long been underrepresented at shareholder meetings," Exxon said.

The case is *City of Hollywood Police Officers' Ret. Sys. v. Woods*, D.N.J., No. 3:25-cv-16633, complaint filed 10/14/25.

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Securities

Twitter Buyout Investor Suit Can Proceed to Trial, Judge Says

Oct. 15, 2025, 3:48 PM PDT

A federal judge on Wednesday denied motions from both investors and Elon Musk in a lawsuit alleging Musk fanned uncertainty about his proposed buyout of the social media platform X, formerly known as Twitter, allowing the claims to proceed to trial.

In a single-page order, Judge Charles R. Breyer of the US District Court for the Northern District of California denied the parties' motions for summary judgment because there were genuine issues of material fact. Breyer said he'd carefully reviewed both sides papers and found oral arguments on the motions, scheduled for Oct. 31, to be unnecessary.

The class action alleged Musk violated the Securities Exchange Act by taking steps to lower Twitter's stock price to renegotiate the deal

The investors said Twitter's stock price was artificially lowered when Musk failed to disclose his Twitter holdings exceeded 5% and made public statements that he'd put the buyout on hold

Musk closed the \$44 billion deal to buy Twitter in October 2022

The investors are represented by Cotchett, Pitre & McCarthy LLP and Bottini & Bottini Inc. Musk is represented by Quinn Emanuel Urquhart & Sullivan LLP.

The case is Pampena v. Musk , N.D. Cal., No. 3:22-cv-05937, 10/15/25 .

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Securities

Singapore Wealth Fund Accuses EV Maker Nio of Inflating Revenue

Oct. 16, 2025, 12:15 AM PDT

Singapore's sovereign wealth fund sued Nio Inc. in US court for allegedly inflating revenue, dealing another blow to the Chinese carmaker struggling to maintain its footing in the country's fiercely competitive auto sector.

The lawsuit, filed in August in the Southern District of New York, named the company, Chief Executive Officer **Li Bin** and former Chief Financial Officer **Feng Wei** as defendants, alleging that they made misleading statements that artificially inflated the value of Nio's securities and causing "significant losses" to GIC.

Nio shares dropped as much as 13% in Hong Kong and 9.8% in Singapore on Thursday, as news of the legal action ignited doubts over the company's outlook and its ability to raise more funds. Last month, Nio raised \$1.2 billion through a share sale — one of several equity offerings that have brought in billions over the years — but it has yet to post a profit since founding in 2014.

"The allegations triggered renewed concerns over Nio's governance and financial reporting, contributing to the stock's extended decline," said **Ravi Wong**, first vice president at Yan Yun Family Office. Nio's monthly car sales figures are lagging behind major rivals, and the company's fundamentals are "not good enough" given the continued price war in the Chinese car market, Wong added.



The lawsuit marks a unusual offensive from GIC, which has rarely sued over soured investments. Caixin reported that it's the first such action by a sovereign wealth fund against a Chinese company listed outside the country. The Singapore fund's claims echo those made by other investors, and its case has been stayed by a judge as it's similar to a previous suit filed in 2022 against Nio, according to an Oct. 3 filing.

Nio and GIC declined to comment to Bloomberg News.

The allegations center around an affiliated company called Nio Battery Asset Co. — or Weineng in Chinese — and its role in Nio's battery subscription model that allows car buyers to avoid purchasing batteries outright. Instead, they can pay a recurring fee to access the company's network of battery-swap stations.

GIC's suit contends that Weineng's financial records show it bought batteries upfront from Nio, allowing Nio to immediately record the full revenue from those sales — even though the end users hadn't yet paid for the batteries. The filing argued that such income should have been recognized gradually, not all at once.

After a 2022 report from New York-based Grizzly Research detailed these accounting practices, Nio said it would launch an independent committee to investigate the claims, according to the court filings.

That led Nio's American depositary notes to plunge, resulting in substantial losses, GIC's filing said. The fund is seeking compensation for all losses relating to Nio's wrongdoing and reasonable reimbursement of its legal costs, according to the documents.



A Nio battery-swapping station in Haikou, Hainan Province.

Photographer: Bloomberg

The company said in 2022 that it had completed the review and concluded that the allegations were unsubstantiated.

“Getting sued by GIC will obviously be negative for sentiment on the stock, but such lawsuits are quite common and usually settled with some compensation,” said **Vey-Sern Ling**, senior equity adviser for Asia technology at Union Bancaire Privée. “The major point of contention is whether Nio’s practice of recognizing revenue upfront for selling batteries to an entity under its control is acceptable by US accounting standards.”

Nio was one of several Chinese firms GIC backed as it ramped up efforts to find the next big technology bets based outside of Silicon Valley. The observation that China’s industrial hubs allowed companies to build consumer products with rapidly optimized hardware, software and supply chains — and cutting-edge technology at low prices — led the sovereign wealth fund to back companies including Nio and Xiaomi Corp.

Read More: China Rivals Silicon Valley in GIC Hunt for Next Tech Winner

GIC's investments in Nio aren't the first time it's faced headwinds in China's tech space. It had a near-miss after backing Starbucks Corp.'s Chinese rival Luckin Coffee Inc. through its initial public offering, though the firm trimmed much of its stake before an accounting scandal sent the company's stock price plummeting.

GIC is estimated to manage \$936 billion in assets by consultancy firm Global SWF. It doesn't typically disclose the size of individual company investments, and it's unclear how much the fund has lost on Nio so far.

Read More: Nio's Mass Market Push Draws Scorn as EV Maker Promises a Profit

Despite the legal overhang, Nio is trying to raise its profile overseas and has launched sub-brands in Europe and Southeast Asia. It's also moving away from its origins as a luxury marque and has introduced mass market models to take on BYD Co., with CEO Li reiterating a forecast for Nio to double sales in 2025 and achieve profitability by the end of the year.

The company has faced near-death experiences before. In 2020, it was rescued by the municipal government of Hefei with a \$1 billion bailout package.

In 2023, Abu Dhabi-backed fund CYVN Holdings invested \$738.5 million and later acquired shares in Nio from an affiliate of Tencent for \$350 million. In December 2023, CYVN committed to invest a further \$2.2 billion in return for a 20.1% stake.

(Updates throughout.)

--With assistance from **Felix Tam**, **Dorothy Ma**, **Jing Jin** and **Dave Sebastian**.

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Class Action

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Wells Fargo, Investors Reach \$85 Million Deal in Hiring Row (2)

Oct. 16, 2025, 5:35 AM PDT; Updated: Oct. 16, 2025, 7:20 AM PDT

Summary by Bloomberg AI

AI Generated



- Wells Fargo & Co. agreed to pay \$85 million to resolve investors' class claims that the bank misled them about its diversity hiring practices.
- The lawsuits alleged Wells Fargo touted a policy of considering a diverse slate of job candidates while conducting sham interviews with minority applicants.
- Wells Fargo said the US Justice Department and Securities and Exchange Commission "closed without taking action" investigations regarding the company's diverse hiring practices.

Wells Fargo & Co. agreed to pay \$85 million to resolve investors' class claims that the bank misled them about its diversity hiring practices.

Investors leading the case sought preliminary court approval of the settlement in the US District Court for the Northern District of California. Their motion, including agreement terms, was filed Wednesday—two days after a proposed accord with board members in a parallel shareholder derivative lawsuit.

The lawsuits, both before Judge Trina L. Thompson, alleged Wells Fargo touted a policy of considering a diverse slate of job candidates while conducting sham interviews with minority applicants.

Thompson earlier this year certified a class of investors in this suit who got Wells Fargo stock and claimed they were harmed between Feb. 24, 2021, and June 9, 2022. Class counsel will apply for an award of attorneys' fees of a maximum of 25% of the settlement fund, according to Wednesday's motion seeking the court's initial approval. The settlement would release the class claims against Wells Fargo and certain senior executives.

"We are pleased to have reached a settlement," Wells Fargo said in an email Thursday.

The parallel derivative suit also alleged the San Francisco-based bank's board failed to have a committee or reporting protocol to monitor fairness in its home mortgage lending practice while purportedly extending less favorable offerings to non-White applicants.

Under the derivative settlement, if approved by the court, the bank would commit \$100 million dollars to mortgage assistance for low- and moderate-income borrowers over the next three years. That agreement with Wells Fargo and current and former directors seeks a \$27.5 million fee and expense award for the investors' counsel and their lead plaintiffs. Wells Fargo would get \$10 million from board members' directors-and-officers insurance.

Wells Fargo said in an email Tuesday the US Justice Department and Securities and Exchange Commission "closed without taking action" investigations regarding the company's diverse hiring practices.

Kessler Topaz Meltzer & Check LLP is class counsel. Saxena White PA and Klausner, Kaufman, Jensen & Levinson also represent a public pension fund serving as one of the class representatives. Sullivan & Cromwell LLP represents Wells Fargo, CEO Charles W. Scharf, and two other individuals who were senior executives during the class period.

The case is SEB Inv. Mgmt. AB v. Wells Fargo & Co. , N.D. Cal., No. 3:22-cv-03811, 10/15/25 .

(Updates to include Wells Fargo's response to an email seeking comment in the fifth paragraph.)

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Litigation

Manage Newsletters

Burned Wirecard Shareholders Head to Top German Court for Payout

Oct. 16, 2025, 6:32 AM PDT

Summary by Bloomberg AI

AI Generated



- Wirecard AG shareholders have turned to Germany's top civil court for clarity on their losses in a case that could curb what the defunct fintech's creditors recover.
- The suit centers around whether shareholders' damages claims against Wirecard should rank equally with those of creditors, with lower German courts taking opposing views on the dispute.
- The ruling is consequential for creditors, who face the prospect of a smaller recovery if the shareholders are successful, with shareholders having filed about €8.5 billion in damages claims.

Wirecard AG shareholders have turned to Germany's top civil court for clarity on their losses, in a case that could curb what the defunct fintech's creditors recover following one of the nation's biggest corporate scandals.

The suit at the Federal Court of Justice in Karlsruhe centers around whether shareholders' damages claims against Wirecard should rank equally with those of creditors. Typically, they would only receive a payout in an insolvency case once all other creditor claims have been satisfied.

"There are arguments for both approaches," Presiding Judge Heinrich Schoppmeyer said at the hearing on Thursday. The case was adjourned until Nov. 13.

Lower German courts have taken opposing views on the dispute brought by German asset manager Union Investment Institutional GmbH, which bought shares in Wirecard.

The ruling is also consequential for creditors, who face the prospect of a smaller recovery if Union Investment is successful. Shareholders have filed about €8.5 billion (\$9.9 billion) in damages claims, pushing the total number to around €15.4 billion. That compares to an estimated €650 million in the current insolvency estate.

The long tail of litigation stemming from Wirecard's spectacular bust-up is yet to be wrapped up. The firm was pushed into insolvency in June 2020 after the firm admitted that more than \$2 billion in cash it had previously reported as merely missing likely never existed – that escalated into a corporate and political embarrassment for Germany that was trying to breed a new technology champion rivaling Silicon Valley.

Markus Braun, Wirecard's ex-CEO, has been embroiled in a [criminal trial](#) in Munich since 2022 that's due to end by the end of the year. The former COO, Jan Marsalek, has since been found to have played a [crucial role](#) in a Russian spy ring, while investors are still squabbling over the remains of the once DAX-listed company.

Lawyers for Union Investment argued that its employees relied upon statements published by Wirecard, which later turned out to misrepresent the true financial state of the company.

"We would never have become shareholders if we hadn't been deceived," said lawyer Thomas Winter, who was representing Union Investment Institutional GmbH at the hearing. "Everyone is equally a victim of this criminal behavior."

Lawyers for the insolvency administrator Michael Jaffé however said that shareholders claims should remain subordinated to creditors.

"When you take the step of becoming a shareholder you take on all of the risks and the opportunities," Reiner Hall, a lawyer for the administrator, said during Thursday's hearing. The shareholders "knowingly and willingly" chose to invest in lower-ranking instruments.

--With assistance from **Karin Matussek**.

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Political espionage**Jan Marsalek's grandfather spied for the communist bloc, new evidence shows**

Hans Marsalek's grandson is the fugitive Wirecard fraudster who runs spies for Russia in western Europe



Hans Marsalek conspired against the west, and the country of his birth, under the code-name 'curious man' © MKOE

Sam Jones in Vienna

Published 3 HOURS AGO



In the early years of the cold war Austrian counter-espionage officers were alerted to an “urgent suspicion” that a charismatic resistance fighter turned local police official in Vienna was spying for the communist bloc.

Now, fresh evidence revealed by German newspaper Die Zeit confirms that Hans Marsalek — who was venerated in Austria until his death in 2011 — was indeed recruited by Czechoslovakia's intelligence service, and its Soviet masters.

His grandson Jan Marsalek is also a Russian agent who fled to Moscow after the collapse of Germany's Wirecard, where he worked as chief operating officer and architect of the multibillion-euro fraud propping the company up.

The Financial Times first revealed Jan Marsalek to be a [likely Russian spy in 2020](#), shortly after Wirecard's collapse. And in 2023, it revealed his grandfather Hans to have been [suspected of espionage by Austrian state authorities](#).



A wanted poster with a photo of Jan Marsalek at a Berlin train station © Clemens Bilan/EPA

The familial echo offers a clue as to what had motivated Jan Marsalek.

For more than a decade his grandfather conspired against the west, and the country of his birth, under the code-name “curious man”.

For more than a decade, the younger Marsalek too, worked against western interests — including by running Bulgarian agents in the UK who were [convicted of espionage for Russia](#).

While the evidence of Jan's work for Russia has flooded in since his flight in 2020 — most recently with photographs published by Germany's Der Spiegel of him living in Moscow — the case against his grandfather has remained more elusive.

As the FT reported, Austrian spy-catchers had filed a report in 1956 that urged prosecutors to take action against Hans, the prominent Vienna police official, who they said was under the “urgent suspicion” of treason.

They cited evidence that he had potentially betrayed the identity of certain individuals living in Vienna to the Soviets, leading to their abduction, rendition, and likely murder in the Russian Gulag.

But their suspicions were never proved. And Hans Marsalek lived on to become a celebrated figure in postwar Austria, renowned for his anti-Nazi activism.

Based on extensive archival research in Prague, Die Zeit newspaper on Thursday [published new information](#) about the undercover life of Hans Marsalek. The paper said he was a diligent and valuable source for Czechoslovakia’s cold war intelligence agency, ČSSR.

He would meet with his handlers in the spa town of Marienbad, where he handed over secret Austrian state documents, reports on Austria’s counter-intelligence capabilities, and information about people of interest to eastern bloc intelligence.

Die Zeit said it had reviewed a Czech intelligence file on Hans Marsalek that was nearly 500 pages long in Prague archives.

Hans Marsalek, was, his Czech handler reported in one document quoted by Die Zeit, “a willing and honest collaborator who always helps us when the opportunity arises”.

Hans’s motivations for his actions appear to be as inscrutable as those of his grandson.

A typical reward for his high-risk endeavours, after a rendezvous in a Marienbad hotel room: a bottle of Czech plum brandy.

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Litigation

Manage Newsletters

Walgreens Sued by Rite Aid Bankruptcy Trustee Over Opioid Costs

Oct. 16, 2025, 7:16 AM PDT

Walgreens Boots Alliance Inc. is breaching its pledge to cover opioid-related legal expenses for nearly 2,000 Rite Aid Corp. stores it acquired, according to a lawsuit filed Thursday by Rite Aid's bankruptcy trustee.

The suit in Delaware's Chancery Court says Walgreens is reneging on contract terms requiring the retail pharmacy giant to reimburse tens of millions Rite Aid has spent to defend and settle more than 1,600 civil cases related to the nationwide opioid epidemic. Those lawsuits concern the role allegedly played by Rite Aid's prescription dispensing policies in fueling the public health crisis.

Instead of honoring the deal, Walgreens has argued it only agreed to assume liabilities tied to store operations, not corporate policy, according to Thursday's court complaint. The Chapter 11 trustee, Thomas Pitta, brought the lawsuit after losing a case that sought coverage from Rite Aid's insurance carriers.

Walgreens didn't immediately respond to a request for comment Thursday.

Pitta is represented by Morris James LLP and Herbert Smith Freehills Kramer (US) LLP.

The case is Pitta v. Walgreens Boots Alliance Inc. , Del. Ch., No. 2025-1176, complaint filed 10/16/25 .

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Litigation

Manage Newsletters

Chubb, AIG Meet Skeptical Judge in Forum Fight With McKinsey

Oct. 16, 2025, 8:24 AM PDT

Summary by Bloomberg AI

AI Generated



- A Delaware judge expressed skepticism about arguments from Chubb Ltd. and American International Group Inc. units that a dispute with McKinsey & Co. should be litigated in the state.
- The judge is considering McKinsey's motion to hear the case in New York, with an additional hearing set for Oct. 21, and wants to provide guidance to the New York court before its hearing on Oct. 23.
- The dispute is over insurance coverage for opioid-related suits, with insurers preferring to litigate in Delaware due to favorable rulings on similar claims, while McKinsey argues the court lacks personal jurisdiction over the parent company.

A Delaware judge appeared unconvinced by arguments from Chubb Ltd. and American International Group Inc. units that a dispute with McKinsey & Co. over insurance coverage for opioid-related suits should be litigated in the state.

At a hearing Thursday, Delaware Superior Court Judge Eric M. Davis told the parties he was having trouble identifying sufficient ties to the state to establish jurisdiction over the insurance coverage dispute. He set an additional hearing for Oct. 21 on McKinsey's motion to hear the case in New York.

The forum fight comes as several big-name commercial policyholders square off with their insurers over who should pay for litigation alleging the companies contributed to the opioid crisis. Chubb and AIG units beat CVS Health Corp. at Delaware's top court in August, adding to a string of wins for insurers in similar "public nuisance" suits.

McKinsey encouraged the court to toss or pause the suit in favor of a parallel case it filed in New York state court days after the Chubb and AIG units each sued the consulting firm in Delaware.

Although some of the McKinsey subsidiaries in the case are incorporated in Delaware, the court lacks personal jurisdiction over the parent company based in New York, Dustin Cho of Covington & Burling LLP, representing McKinsey, told the judge.

Insurers would prefer to litigate the dispute in Delaware, where they stand to benefit from several favorable rulings on coverage for similar opioid-related claims. A motion to dismiss by the carriers is pending in the New York case and is set to be heard on Oct. 23. Davis said he wanted to provide the New York court with some guidance prior to its hearing.

Some of the consulting firm's work at issue in the underlying litigation took place in Delaware, which established sufficient contacts to the state for the court to exercise jurisdiction, argued Holwell Shuster & Goldberg's Blair Kaminsky, who represented Chubb.

But Davis appeared skeptical. Establishing Delaware contacts depended on the characterization of the situation and whether the court was looking at the underlying torts or the insurance contracts, the judge said.

Chubb is also represented by Ross Aronstam & Moritz LLP. Willkie Farr & Gallagher LLP and Smith Katzenstein & Jenkins LLP represent AIG. McKinsey is also represented by Potter Anderson & Corroon LLP.

The case is CONSOL'D ACE Property & Casualty Ins. Co. v. McKinsey & Co., Del. Super. Ct., No. N25C-01-353, hearing 10/16/25 .

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Securities

J&J's Earnout Appeal Turns on Gaps in \$3 Billion Robot Deal (1)

Oct. 15, 2025, 9:46 AM PDT; Updated: Oct. 15, 2025, 11:15 AM PDT

Johnson & Johnson's attempt 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 allegedly lackluster efforts 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 hearing required the state's justices to grapple in depth with technical aspects of the Food and Drug Administration's process for medical devices, including an unanticipated change J&J has blamed for its failure to bring the robot to market. Although they probed several technical aspects of the dispute, they largely refrained—as they typically do—from the sort of leading questions that can tip a judge's hand.

The dispute echoes a recurring theme for the elite business tribunal, which regularly hears claims by corporate founders who say acquirers duped them into the deal structure or sabotaged sales to sidestep contingent post-transaction 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.

Rewriting the Contract?

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.

E. Joshua Rosenkranz, an attorney for J&J, focused at length on the judge's conclusion that the company 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.

Will "invoked equity to line-edit a contract and override an explicit contractual condition" when she ruled J&J breached the deal's "efforts" clause by deciding not to pursue the Auris robot further, Rosenkranz said. "This case is all about respecting the contract that the parties actually wrote."

Philippe Z. Selendy, counsel for the Auris ex-shareholders who brought the case, pushed back. The judge looked only at the factors expressly found in the contract to determine that shelving the robot was commercially unreasonable, according to Selendy.

Although the company has framed its argument as an attack on the legal framework Will applied, it's really trying "to relitigate the facts," he said. "J&J lost conclusively despite its efforts to create what the court identified as a new narrative concocted after J&J was sued."

'Free-Roving Power'

Rosenkranz 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 party from taking advantage of the other by exploiting unforeseen contract loopholes. J&J has said its obligations toward the Auris product became impossible to fulfill when regulators changed the device approval process.

The implied covenant "is not some free-roving power to reform contracts to better align them with the court's own sense of equities," Rosenkranz said.

Selendy 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 the circumstances, it made sense for Will to fill the contractual gap by ruling J&J should have pursued an alternative process that involved the same time, expense, and odds of approval, according to Selendy.

Letting J&J walk away from the transaction based on a regulatory surprise would give it "an economically unjustified windfall," he said. "Neither party bargained for or considered any risk allocation in the event of a change in the pathway."

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 .

(Updates with additional reporting throughout.)

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Class Action

Manage Newsletters

Aflac June Cybersecurity Breach Suit Has Interim Class Counsel

Oct. 16, 2025, 8:44 AM PDT

Aflac Inc. will formally face six law firms appointed as interim co-lead counsel for a consolidated data breach suit stemming from an security incident reported in June.

More than 20 cases were filed after Aflac said in June it was a victim of a broader cyber-intrusion campaign against insurance companies and that a preliminary report indicated that hackers used social engineering to access its network. The suits have since been consolidated in the US District Court for the Middle District of Georgia.

Judge Clay D. Land directed class counsel to file an amended complaint within two months

The cybersecurity incident implicated claim and health information as well as social security numbers

Pope McGlamry Kilpatrick Morrison & Norwood PC, Kopelowitz Ostrow PA, Milberg Coleman Bryson Phillips Grossman PLLC, Gibson Consumer Law Group LLC, Morgan and Morgan Complex Litigation Group, and Beasley Allen Crow Methvin Portis & Miles PC were appointed interim class counsel

Page Scrantom Sprouse Tucker & Ford PC and Hogan Lovells US LLP represent Aflac.

The case is In re Aflac Inc. Data Breach Litig. , M.D. Ga., No. 4:25-CV-00183, 10/15/25 .

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Class Action

Manage Newsletters

Meta Unlikely to Escape Hacked Facebook Account Class Action

Oct. 15, 2025, 4:03 PM PDT

Summary by Bloomberg AI

AI Generated



- A proposed class of Facebook users allege Meta Platforms Inc. failed to prevent hackers from taking over and misusing their accounts and are poised to advance most of their lawsuit against the social media giant.
- Judge William Orrick will tentatively deny most of Meta's motion to dismiss, allowing the plaintiffs to proceed with claims involving unjust enrichment, breach of covenant of good faith, and parts of the unfair competition law claims.
- The judge will dismiss the class action's breach of contract claim but will allow the plaintiffs to amend that claim, saying that a theory based on Meta's conduct in maintaining its license of accounts to profit after they were stolen by hackers is plausible.

A proposed class of Facebook users who allege Meta Platforms Inc. failed to prevent hackers from taking over and misusing their accounts are poised to advance most of their lawsuit against the social media giant.

Judge William Orrick of the US District Court for the Northern District of California at a hearing Wednesday said he would tentatively deny most of Meta's motion to dismiss.

The proposed class, led by plaintiff Sarah Isgur, sued Meta last fall, alleging the company failed to prevent hackers from taking over legitimate accounts and harming the account holders' reputation by posting inappropriate content and soliciting their friends and family.

The complaint alleged Meta has made it almost impossible for users who lost account access to hackers to regain control because the company laid off much of its customer support team in late 2022.

At this early stage of the litigation, Orrick said he will allow the plaintiffs' to proceed with claims involving unjust enrichment, breach of covenant of good faith, and parts of the unfair competition law claims.

The judge said he would dismiss the class action's breach of contract claim based on the theory that users were unable to revoke their license agreements with Facebook because their hacked accounts became inaccessible. But Orrick said he would allow the plaintiffs to amend that claim.

"It seems to me that if the claims rest on Meta's conduct in maintaining its license of accounts to profit even after the accounts were stolen by hackers, that's a plausible theory," Orrick said.

A group of 41 attorney generals last spring called on Meta to bolster security measures to prevent account takeovers, pointing to an increase in users contacting AG offices after failing to find recourse with Meta's customer service.

Meta's motion to dismiss said its terms of service agreement and privacy policy doesn't contractually guarantee that users will always enjoy uninterrupted access to their accounts, or that Meta must restore access.

Tycko & Zavareei LLP represents the proposed class. Dunn Isaacson Rhee LLP and Paul Weiss Rifkind Wharton & Garrison LLP represent Meta.

The case is Isgur v. Meta Platforms Inc., N.D. Cal., No. 3:24-cv-06559, 10/15/25 .

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Government Shutdown Halts New Mexico's Groundbreaking PFAS Case

A federal judge granted the U.S. Department of Justice's request to halt New Mexico's environmental contamination case against the U.S. Air Force over perfluoralkyl and polyfluoralkyl substances, or PFAS.

October 15, 2025 at 06:12 PM By  **Amanda Bronstad**

What You Need to Know

- U.S. District Judge Richard Gergel, who is overseeing the PFAS multidistrict litigation, granted the DOJ's request to halt its deadlines in New Mexico's case, which sought to reimburse the state over groundwater contamination costs at various U.S. Air Force and U.S. Army sites.
- New Mexico amended its case last year to bring groundbreaking claims under the federal Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, the federal Superfund law.
- Despite speculation that it might change the CERCLA designation of PFAS-related chemicals as hazardous substances, the EPA on Sept. 17 chose not to do so – for now.



Credit:ChiccoDodiFC/Adobe Stock

The federal government's shutdown has prompted U.S. Department of Justice attorneys to halt a closely watched lawsuit over toxic chemicals at a Superfund site in New Mexico.

On Oct. 3, U.S. District Judge Richard Gergel, who is overseeing the multidistrict litigation over perfluoralkyl and polyfluoralkyl substances, or PFAS, in the District of South Carolina, granted the DOJ's request to halt its deadlines in the case, brought by the New Mexico attorney general's office to reimburse the state over groundwater contamination costs at various U.S. Air Force and U.S. Army sites.

Justice Department lawyers were due to respond this month to New Mexico's partial summary judgment motion alleging the federal government has allowed contamination to continue at Cannon Air Force Base near Clovis, New Mexico, where nearby dairy farms had been forced to shut down with sickened cows.

"Absent an appropriation, Department of Justice attorneys and employees of the federal defendants are prohibited from working, even on a voluntary basis, except in very limited circumstances," DOJ trial attorney Shari Howard, in the environmental & natural resources division's environmental defense section, wrote in an Oct. 1 uncontested motion, adding that "we greatly regret any disruption caused to the court."

Gergel, in his order, stayed the entire case.

"This indicated case is hereby stayed until Congress has appropriated funds for the Department of Justice, and all pending deadlines in this specific matter are extended for the same number of days as the lapse in funding," Gergel ruled.

A DOJ spokesperson did not respond. Howard's email bounced back, stating, "The congressional appropriation that funds my salary has lapsed, and as a result, I have been furloughed, and I am not allowed to work." Another DOJ trial attorney on the motion, Sanya Shahrabi, did not respond to a request for comment.

A representative of the New Mexico attorney general's office did not respond. Assistant Attorney General William Grantham and Zachary Ogaz, general counsel at the New Mexico Environmental Department, and Allan Kanner, of Kanner & Whiteley in New Orleans, are all handling the state's case.

Lead plaintiffs' counsel in the PFAS cases—Michael London of New York's Douglas & London; Baron & Budd's Scott Summy in Dallas; and Joe Rice, of Motley Rice in Mt. Pleasant, South Carolina—did not respond to a request for comment.

Could EPA Change PFAS Designation?

The federal government shutdown has now lasted more than two weeks, following Congress's failure to pass an appropriations bill for the fiscal year 2026 budget.

DOJ lawyers have sought similar stays in [at least two antitrust cases](#), [bankruptcy proceedings in New Jersey](#) and [Harvard's case](#) challenging the termination of its federal grants.

New Mexico's case, against the U.S. Air Force, is distinct from the thousands of cases in the multidistrict litigation brought by water districts and individuals alleging PFAS contamination caused them to get various cancers and ulcerative colitis. Most of those cases have named companies such as 3M and DuPont and allege exposure to aqueous film-forming foam used by firefighters, typically at U.S. military bases, which seeped into public drinking water supplies.

New Mexico amended its case last year to bring groundbreaking claims under the federal Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, the federal Superfund law, one of the first cases to do so, according to its June 25 partial summary judgment motion. It added those claims days after the U.S. Environmental Protection Agency designated two of the most common PFAS chemicals as hazardous substances under CERCLA.

New Mexico Attorney General Raúl Torrez, in an earlier statement this year about the case, said, "This case gives us the opportunity to establish once and for all that the United States can and will be held accountable for poisoning our water, harming our residents, and threatening our agricultural economy. We are proud to lead this fight— not just for New Mexico, but for every community impacted by PFAS contamination."

However, at a June 20 hearing, Howard informed Gergel that the EPA, now under the Trump administration, was reviewing the PFAS-related hazardous substance designations under CERCLA, according to a transcript.

"So the EPA is considering withdrawing the hazardous designation," Gergel replied. "Is that what you're telling me?"

"Yes, your honor," she said. "And we don't have knowledge whether they will or not. So we are waiting to learn what EPA's decision will be."

London disputed that claim.

"They are assessing it, but they are not changing, revoking; there's been no evidence to suggest that except requests to delay," he said.

On Sept. 8, the DOJ sought to hold in abeyance New Mexico's CERCLA-related claims, citing in part the EPA's evaluation of PFAS designations. It also sought its third extension of time to respond to

New Mexico's partial summary judgment motion, stating that both sides "have agreed in principle to engage in mediation to potentially resolve the claims."

Its new deadline to respond was Oct. 8.

The EPA, meanwhile, said on Sept. 17 it would maintain its CERCLA designations—for now—but raised concerns about potential liability against so-called "passive receivers," such as those involved in feedstock, products or waste, that did not manufacture PFAS.

"EPA intends to do what we can based on our existing authority, but we will need new statutory language from Congress to fully address our concerns with passive receiver liability," said Lee Zeldin, the EPA Administrator. "The Trump Administration is fully committed to ensuring all Americans have the cleanest air, land, and water."

Page printed from: <https://www.law.com/2025/10/15/government-shutdown-halts-new-mexicos-groundbreaking-pfas-case/print/>

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J&J faces first UK lawsuits alleging its baby powder caused cancer

 [reuters.com/sustainability/boards-policy-regulation/jj-faces-first-uk-lawsuits-alleging-its-baby-powder-caused-cancer-2025-10-15](https://www.reuters.com/sustainability/boards-policy-regulation/jj-faces-first-uk-lawsuits-alleging-its-baby-powder-caused-cancer-2025-10-15)

Reuters

October 15, 2025

LONDON, Oct 16 (Reuters) - Johnson & Johnson ([JNJ.N](#)), [opens new tab](#) is facing the first lawsuits in Britain over allegations that its talc products cause cancer, as it fights tens of thousands of similar claims in the United States.

The lawsuit was filed at the English High Court on Tuesday against J&J and Kenvue UK Limited, a subsidiary of Kenvue ([KVUE.N](#)), [opens new tab](#), J&J's former consumer health unit which was spun off in 2023.

KP Law said it filed the case on behalf of more than 3,000 people who allege their ovarian cancer, mesothelioma or other diseases were caused by use of J&J's baby powder between 1965 and 2023.

The firm says J&J's talc products contained carcinogenic fibres, including asbestos, which has been linked to deadly mesothelioma. J&J has long maintained that its talc products are safe and do not contain asbestos.

J&J referred queries to Kenvue, which it said "retained the responsibility and any purported liability for talc-related litigation outside of the United States and Canada".

Kenvue said in a statement that J&J baby powder "did not contain asbestos, and does not cause cancer".

LATEST LAWSUITS OVER TALC

J&J is separately facing [tens of thousands of lawsuits](#) in the U.S., where claimants allege they were diagnosed with cancer after using baby powder and other company talc products.

Item 1 of 2 Bottles of Johnson's baby powder are displayed in a store in New York City, U.S., January 22, 2019. REUTERS/Brendan McDermid

[1/2] Bottles of Johnson's baby powder are displayed in a store in New York City, U.S., January 22, 2019. REUTERS/Brendan McDermid [Purchase Licensing Rights, opens new tab](#)

J&J stopped selling talc-based baby powder in the U.S. in 2020, switching to a cornstarch product. It did the same in the United Kingdom in 2023.

The company has sought to resolve the litigation through bankruptcy, a strategy that has been rejected three times by federal courts.

Last week, J&J was [ordered to pay \\$966 million](#) to the family of a woman who died from mesothelioma, one of the largest awarded against the company that could be reduced on appeal.

Damages awarded by courts in England are generally limited to compensation for losses caused by a defendant's actions, whereas \$950 million of last week's award in the U.S. was for punitive damages.

In England, courts can award so-called exemplary damages where, for example, a defendant has wilfully wronged a claimant, though sums are typically far smaller than in the U.S.

KP Law said it had estimated the value of the lawsuit at around 1 billion pounds (\$1.34 billion).

Significantly, these lawsuits – like virtually all civil suits in England – will be determined by a judge, rather than a jury.

Kenvue said in its statement that it believed a judge will conclude its talc-based baby powder does not cause cancer.

(\$1 = 0.7472 pounds)

Reporting by Sam Tobin; Editing by Alexia Garamfalvi and Bill Berkrot

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When Uber drives the case: Plaintiffs' lawyers face RICO roadblock

 [reuters.com/legal/litigation/when-uber-drives-case-plaintiffs-lawyers-face-rico-roadblock-2025-10-16](https://www.reuters.com/legal/litigation/when-uber-drives-case-plaintiffs-lawyers-face-rico-roadblock-2025-10-16)

Jenna Greene

October 16, 2025

Commentary

[Litigation](#)

[Jenna Greene](#)

October 16, 2025 3:26 AM PDT Updated 4 hours ago

Oct 16 (Reuters) - In a bold legal U-turn, Uber Technologies is swerving from defense to offense, invoking the federal racketeering law typically used against organized crime to sue the very lawyers who've been suing it.

The ride-hailing giant in recent months has filed a series of RICO suits against a dozen personal injury lawyers and firms in [New York, opens new tab](#), [Florida, opens new tab](#), [California, opens new tab](#) and [Pennsylvania, opens new tab](#). Uber alleges they schemed with medical providers and others to transform low-value auto accident claims involving Uber drivers into million-dollar-plus lawsuits, to take advantage of the company's hefty insurance policies.

It's a rare - though not unprecedented - legal strategy that could mark a new frontier in how corporations push back against the plaintiffs' bar.

Winning a RICO case can bring a big payoff: treble damages plus attorneys' fees, though Uber likely faces an uphill climb to prevail. Civil racketeering claims require detailed evidence of a pattern of unlawful acts committed by members of an "enterprise" working toward a common purpose.

Even if Uber ultimately falls short, it strikes me that the company will have succeeded in sending a message: Sue us at your peril.

Defendant Downtown LA Law Group said in an email that Uber's suit against it "represents a concerning effort to undermine the rights of individuals and the attorneys who advocate for them."

The other defendants, which include Simon & Simon in Philadelphia; Wingate, Russotti, Shapiro, Moses & Halperin in Manhattan; and the Law Group of South Florida in Miami, did not respond to requests for comment.

The firms are not accused of working together; each lawsuit stands alone. But the complaints all stem from a common circumstance: Rideshare companies like Uber are required to carry higher insurance limits than ordinary drivers.

Uber's liability coverage, which applies when a driver is on the way to pick up a passenger or en route to the passenger's destination, is \$1 million in California, Florida and Pennsylvania, according to the company. In New York State, it's \$1.25 million when a passenger is in the vehicle. Uber says approximately 45% of the fare of every Uber ride in Los Angeles, for example, goes to mandated insurance costs.

Uber says scammers are well aware of this coverage, which allegedly makes the company a target for fake personal injury claims, inflated medical billing and even staged accidents.

"That kind of legal abuse drives up prices, harms accident victims, and erodes the public's trust—so when we see fraud and abuse occur on our platform, we will not hesitate to take action to protect consumers and drivers," Uber spokesperson Adam Blinick said via email.

In each of the RICO suits, Uber alleges plaintiffs' lawyers funneled clients to "unscrupulous" medical providers. These doctors, chiropractors and physical therapists, who are also named as defendants in the suits, allegedly provided unnecessary medical procedures to treat negligible or non-existent injuries, creating false evidence of injuries to drive up the cost of settling the cases.

In exchange, the medical providers got a steady stream of patients and in some instances, the ability to charge premium rates for their services, Uber alleges, calling the arrangements "a kickback."

In the [suit, opens new tab](#) filed in U.S. District Court for the Eastern District of Pennsylvania last month, for example, Uber alleged plaintiffs' lawyers directed a network of medical providers to perform procedures including spinal injections and radio frequency ablations that "bear no relationship with any underlying injury and are in most instances unnecessary," according to the 66-page complaint by lawyers from Perkins Coie.

The RICO allegations have caught the attention of other lawyers in the plaintiffs' bar, who are looking on uneasily.

"I think part of Uber's strategy here is a bit of lawfare," said Hani Habbas of Irvine, California-based HH Law Firm, who has litigated injury cases against Uber in the past but is not involved in the RICO suits.

"RICO is a sledgehammer, when what's needed is a scalpel," he said. "Is the intention here to police fraud or suppress valid claims?"

Uber is not the first company to attempt to invoke RICO against personal injury lawyers.

Tiger Joyce, president of the pro-business American Tort Reform Association, said he believes the first successful case was in 2013, when CSX Transportation sued two attorneys and a doctor in West Virginia, alleging that they conspired to fabricate asbestos claims. A jury sided with CSX, which netted a [\\$7.3 million, opens new tab](#) payout for damages and legal fees.

Other recent cases have fallen short. For example, a federal judge in Chicago in March [dismissed a RICO suit](#) by plastic pipe maker JM Eagle against a plaintiffs' firm that had filed hundreds of asbestos personal injury cases against it. The judge ruled that JM Eagle failed to show that the injury lawyers, asbestos plaintiffs and other witnesses were functioning as an enterprise -- a "continuing unit" and sharing "a common purpose" -- though the company has been given leave to amend its complaint.

For corporations, "these are difficult cases to win, because of the complexity and the requirement to prove an enterprise," Joyce told me. "They are not for the faint of heart."

Reporting by Jenna Greene

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[Jenna Greene](#)

Thomson Reuters

Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

Judge rejects arbitrator bias claim in Tesla ex-employee dispute

DJ [dailyjournal.com/articles/388082-judge-rejects-arbitrator-bias-claim-in-tesla-ex-employee-dispute](https://www.dailyjournal.com/articles/388082-judge-rejects-arbitrator-bias-claim-in-tesla-ex-employee-dispute)

Judge Harold E. Kahn

A San Francisco judge upheld an arbitration decision in favor of Tesla against a former employee who had accused the arbitrator of "changing the rules mid-hand" and favoring the carmaker after receiving a string of arbitration assignments from the company.

Retired 6th District Court of Appeal justice Richard J. McAdams, now a JAMS arbitrator, ruled in 2021 that Tesla owed nothing to the ex-employee for her libel claims.

However, William Moran II of Arthur William LLP, attorney for the plaintiff Cristina Balan, called the arbitrator's ruling "a sham" at a hearing into his petition to vacate the award Monday.

Visiting Superior Court Judge Harold E. Kahn wrote in his minutes of Monday's hearing, "After a full review of all the evidence submitted by the parties, I find no support for the assertions that the arbitrator was not impartial or appeared to be not impartial and/or the arbitration award was a product of bias, corruption, fraud, or undue means."

McAdams was contacted for comment by phone and email through his JAMS case manager but did not respond by press time.

After upholding the arbitrator's decision, Kahn said to Moran, "Take this to the Court of Appeal. If they want to write an opinion on that ... that would be fine with me."

If it is appealed, it would be the second time.

In April, a 9th U.S. Circuit Court of Appeals panel reversed a federal judge in Oakland and ordered him to dismiss Tesla's petition to confirm the arbitration award. Tesla refiled the petition in San Francisco Superior Court in May, resulting in Kahn's ruling.

According to Balan's petition, both parties and the arbitrator operated under Washington law for 30 months of negotiations. Then, the plaintiff's counsel said, Tesla suddenly requested in May 2021 the application of California law, which has a one-year statute of limitations for libel.

The arbitrator declared California law should apply the same day Tesla raised the issue before any briefing, Balan's petition claimed, and the arbitrator then decided in favor of Tesla, finding Balan's claims were time-barred.

According to Balan's petition, "On June 17-18, 2021, the Arbitrator again proposed briefing on the issue [of switching applicable law] but in the same conferences declared, 'I'm sure the California law is going to apply moving forward.'"

Moran said at Monday's hearing, "I think any reasonable member of the public would say there's bias there. He pre-decided the issue."

Kahn called it "a very rare issue," saying at the hearing, "I've never seen a motion like this before in my life. The arbitrator made some statements that are troubling."

Moran asked Kahn, "How does a sham look any different?"

"It's a good question," the judge replied. "But his order does not look like 'I'm trying to cover up after the fact.'"

Referring to the "troubling statements" comment, Michael D. Weil of Morgan, Lewis & Bockius LLP, attorney for Tesla, argued Monday that the arbitrator "was presented with the issue before he made the statement. These are cherry picked statements.

"Until his choice of law ruling, the arbitrator had not definitively stated that Washington law would apply," Weil said in his opposition to Balan's petition to vacate the award.

Weil wrote, "The record is clear that the parties never agreed to apply Washington's statute of limitations to Balan's claims. Balan does not come close to meeting the high standard for vacatur which requires she establish the arbitrator recognized well-defined, clearly applicable law and then ignored it anyway."

The judge wrote that Balan's arguments lacked merit, and there was no binding agreement requiring the application of Washington law. He added that McAdams did not "pre-decide the choice of law against Ms. Balan" but agreed to "add language that the prejudging issue was a close call."

The disputes began, Balan said in her petition, when she was forced out of the company after raising safety concerns about driver-side floor mats in Teslas that she claimed could curl and get in the way of the accelerator and brake pedals. In 2015, Tesla paid her \$320,000 in a separate employment arbitration in Washington, her petition said.

The current case began in 2019 when Balan sued Tesla for alleged libel over a Huffington Post article published four years after her employment. Her petition stated that the company claimed she misallocated company resources, engaged in theft, used company time and travel for a personal project, and engaged in "clearly criminal conduct" while an employee.

Balan contends the arbitrator's reversal on which state law applied was motivated by financial incentives. According to her filing, in the decade before 2021, the arbitrator handled one Tesla case. But within weeks of declaring California law would apply in her arbitration, McAdams received a new Tesla Energy case worth over \$140,000 in fees -- more than his typical annual earnings, Balan's petition said.

Over the next two years, he received seven cases connected to Tesla or its owner, Elon Musk, earning \$277,000 in fees -- more than double his previous average, Balan claimed.

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Class Action

Manage Newsletters

Elite Colleges Fight Back in Early-Decision Collusion Lawsuit

Oct. 16, 2025, 8:53 AM PDT

Summary by Bloomberg AI

AI Generated



- Top colleges filed a motion to dismiss a case accusing them of using early decision admissions policies to inflate the cost of higher education, arguing the student plaintiffs lack antitrust standing.
- The colleges claim the plaintiffs haven't alleged direct evidence of a conspiracy and their claims are time-barred because their alleged injuries occurred more than four years before filing the lawsuit.
- The colleges argue the plaintiffs don't trace their purported injuries to the alleged conspiracy and that early decision is not a classic per se violation of the antitrust laws, but rather subject to the rule of reason.

More than 30 top colleges jointly filed a motion to dismiss a case accusing them of using early decision admissions policies to inflate the cost of higher education, arguing the student plaintiffs lack antitrust standing and haven't alleged direct evidence of a conspiracy.

"No Plaintiff offers factual allegations showing they would have paid less tuition or received more financial aid absent any alleged agreement," according to the motion filed Wednesday by the colleges in the US District Court for the District of Massachusetts. "Plaintiffs' theories of harm simply layer implausible speculation on top of implausible speculation and thus fail to establish standing to sue."

The suit is one of many targeting elite colleges with claims they conspired to raise tuition costs and limit financial aid.

The college defendants, including Penn, Cornell, and Brown, also say that the plaintiffs' claims are time-barred because their alleged injuries occurred more than four years before filing the lawsuit.

The proposed class action was filed in August by four current or former student plaintiffs that allege the colleges shared information about early decision applicants to avoid competing with one another. Early decision allows applicants to apply early but requires a commitment to attend if accepted.

The colleges used early decision to lock in wealthy students who can pay more, giving the schools power to raise tuition and harm more price-sensitive students, the plaintiffs claim.

But, the colleges argue, the plaintiffs don't "trace their purported injuries—increased tuition and decreased financial aid—to the alleged conspiracy."

Early decision is also not a classic per se violation of the antitrust laws, the colleges say.

"Defendants' alleged conduct is subject to the rule of reason, not per se condemnation, because the effects on competition are anything but clear given facially obvious, legitimate, procompetitive ends," they say.

"Per se" violations are considered automatically illegal, but claims falling under the rule of reason allow defendants to justify their actions with procompetitive effects.

Benjamin D. Brown, managing partner for the plaintiffs' firm Cohen Milstein Sellers & Toll PLLC, declined to comment.

The plaintiffs are also represented by Langer Grogan & Diver PC. The colleges are represented by firms including WilmerHale, Paul Hastings LLP, White & Case LLP, and Arnold Porter Kaye Scholer LLP.

The case is D'Amico v. Consortium on Financing Higher Educ. , D. Mass., No. 1:25-cv-12221, 10/15/25 .

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Litigation

Manage Newsletters

SCOTUSblog's Goldstein Must Face Charges in Tax Fraud Case (1)

Oct. 16, 2025, 5:02AM PDT; Updated: Oct. 16, 2025, 5:34AM PDT

Summary by Bloomberg AI

AI Generated



- Tom Goldstein failed to convince a federal judge to toss tax evasion and other charges in an indictment alleging he defrauded the IRS.
- Goldstein allegedly used funds from his law firm to cover personal expenses, including gambling debts, and is accused of creating fake jobs and failing to report or mischaracterizing millions of dollars in gambling income to the IRS.
- Judge Lydia Kay Griggsby rejected Goldstein's bid to suppress statements he allegedly made to federal immigration authorities in 2018 and to dismiss certain charges based on grounds that the limitations period has expired.

Tom Goldstein failed to convince a federal judge to toss tax evasion and other charges in an indictment alleging he defrauded the IRS.

Goldstein failed to show the charges should be dismissed based on grounds that the limitations period has expired, since the government obtained several tolling orders, Judge Lydia Kay Griggsby of the US District Court for the District of Maryland said in an order entered Wednesday. The order memorialized what the judge held during an Oct. 7 hearing.

Goldstein allegedly used funds from his then-law firm, Goldstein & Russel PC, between 2016 and 2022 to cover personal expenses, including millions in gambling debts. He also is accused of creating fake jobs at his firm to conceal payments he made to or on behalf of "at least a dozen women" and failing to report or mischaracterizing millions of dollars in gambling income to the IRS. Goldstein, who co-founded SCOTUSblog, was indicted on 22 counts for violations of federal tax laws and making false statements on mortgage loan applications.

Goldstein argued four of the charges—tax evasion, willful failure to pay taxes, and two counts of aiding and assisting in the preparation of a fraudulent tax return—were time-barred.

But the government obtained several tolling orders because Goldstein spent “hundreds of days travelling” outside the country, Griggsby said. The question of whether the statute of limitations was actually tolled due to Goldstein’s time abroad is for a jury to decide, the judge added.

Griggsby also rejected Goldstein’s bid to suppress statements he allegedly made to federal immigration authorities in 2018. Goldstein allegedly told US Customs and Border Protection officers that the \$968,000 in cash he was stopped with was gambling winnings, but he later told the IRS the money constituted loans.

The case is *United States v. Goldstein*, D. Md., No. 8:25-cr-00006, entered 10/15/25 .

(Updates story with reporting throughout.)

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'Seeing Red Flags,' State AGs Seek Intervention in DOJ's Hewlett Packard-Juniper Merger Settlement

"We are seeing smoke, so we want to see if there's fire," California Attorney General Rob Bonta told reporters after state attorneys general filed a motion seeking to intervene in the California federal court proceedings reviewing whether the U.S. Department of Justice's proposed settlement allowing Hewlett Packard Enterprise to consummate its \$14 billion acquisition of rival Juniper Networks is in the public interest.

October 16, 2025 at 08:15 AM By  **Sulaiman Abdur-Rahman**



California Attorney General Rob Bonta outside California Highway Patrol Oakland Area Office. Image via AG Office Video

California Attorney General Rob Bonta on Wednesday said the U.S. Department of Justice's proposed settlement allowing Hewlett Packard Enterprise Co. to consummate its \$14 billion acquisition of rival Juniper Networks Inc. does not appear to be in the public interest.

"We are seeing red flags," Bonta said during a virtual press conference Wednesday. "We are seeing smoke, so we want to see if there's fire."

Bonta plus the attorneys general of Colorado, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, North Carolina, New York, Oregon, Washington, Wisconsin and the District of Columbia filed a [24-page motion](#) Tuesday seeking to intervene in the Tunney Act proceedings to challenge whether the proposed HPE-Juniper tech merger benefits the public as advocated by the DOJ's Antitrust Division.

The state attorneys general seek a pause in the proposed HPE-Juniper merger pending the outcome of legally required settlement proceedings before U.S. District Judge P. Casey Pitts of the Northern District of California.

Bonta said it is important for state attorneys general to “push back” against Trump administration actions and policies.

If Pitts grants the states' motion, it will allow the state attorneys general to seek records related to the Justice Department's decision to settle its merger-enforcement case against defendants HPE and Juniper.

DOJ attorneys filed a complaint Jan. 30 seeking to block the proposed merger but later [reached a settlement on June 27](#) allowing the defendants to merge if HPE divests its Instant On campus and branch business and licenses the source code for Juniper's wireless local area networking Mist AI Ops software to DOJ-approved licensees.

The Tunney Act requires all antitrust settlements proposed by the United States to be independently reviewed by a court to “determine that the entry of such judgment is in the public interest.”

Bonta and other state attorneys general [wrote a letter](#) to a Justice Department official in September questioning the “allegedly corrupt process” that led to the DOJ's proposed settlement allowing the HPE-Juniper merger plan to move forward subject to a divestiture remedy and court approval.

“The Department has consistently reiterated that resolution of this merger was based only on the merits of the transaction,” DOJ spokesperson Gates McGavick said Wednesday in a statement.

The chief executives of Spring, Texas-based HPE and Sunnyvale, California-based Juniper have previously said their settlement with the Justice Department will benefit consumers and competition in the global networking market.

The states' motion for intervention will be heard on Nov. 18 before Pitts, according to the case docket.

Freshfields and Gibson, Dunn & Crutcher represent the defendants HPE and Juniper.

Opinion **Unhedged**

ESG with Maga characteristics

JPMorgan's Security and Resilience Initiative

ROBERT ARMSTRONG



© FT montage

Robert Armstrong

Published YESTERDAY



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Good morning. More good bank results got the stock market off to a hot start yesterday. More trade [sabre-rattling](#) between the US and China cooled it a bit. Unhedged boldly predicts this sort of back-and-forth will continue for a while. Email with your own predictions: unhedged@ft.com.

ESG changes its stripes

Environmental, social and governance investing — ESG — has always been a bad idea. I've written a lot about why (for example [here](#), [here](#), [here](#), [here](#), [here](#), [here](#) and [here](#)). The short version: ESG rests on conceptual muddles and contradictions, is very unlikely to achieve its stated aims and is a massive boondoggle for consultants, lawyers, academics, journalists and assorted other frictional hangers-on. If shifting political winds in the US are withering the ESG industrial complex, hurrah.

But it is also possible that, like other bad ideas, ESG will change its appearance to survive. The wretched essence of ESG was not that it was lefty or woke (though it was, and that did harm). It was fundamentally wrong, not about politics, but about how corporate capitalism and markets work. The risk is that ESG survives political change by switching its political valence.

On that point, here are a few paragraphs from a JPMorgan Chase [press release](#) that landed earlier this week:

“

JPMorgan Chase today announced the Security and Resiliency Initiative, a \$1.5 trillion, 10-year plan to facilitate, finance and invest in industries critical to national economic security and resiliency. As part of this new initiative, JPMorgan Chase will make direct equity and venture capital investments of up to \$10 billion to help select companies primarily in the US enhance their growth, spur innovation, and accelerate strategic manufacturing.

“It has become painfully clear that the United States has allowed itself to become too reliant on unreliable sources of critical minerals, products and manufacturing — all of which are essential for our national security,” said Jamie Dimon, Chairman and CEO of JPMorgan Chase . . .

The firm had already planned to facilitate and finance approximately \$1 trillion over the next decade in support of clients in these important industries . . . JPMorgan Chase aims to increase this amount by up to \$500 billion — or a 50 per cent increase.

Any time a financial firm tells you it plans to make investments that will make the world a better place, there is a question you should ask: Are these virtuous investments going to earn the same level of profit as the firm's normal, non-world-improving investments, or will the profit be lower? Is the cost of virtue sub-market returns?

If the investments are *not* going to make market returns, that might be fine. Companies do costly things for charity or marketing all the time. And maybe there are some investment projects that can't produce market returns that the world really needs done. But companies have to be up front with shareholders about this, because it's shareholders money that will be used to change the world, in a way those shareholders might not like.

If the investments *are* going to make market returns, on the other hand, all the firm is announcing is its intention to go on being a bank (or asset manager, or venture capital fund, or whatever). You can spare everyone the self-congratulatory press release and simply keep lending and investing money at what you hope will be acceptable returns, allowing the world to take care of itself.

JPMorgan, for its part, has chosen the "we will make market returns" horn of this dilemma. Here is Dimon, speaking to reporters about the Initiative:

“

It will be the same commercial expectation. But every one of our businesses has slightly different risk/reward characteristics. That's a given. As does every sector, as does everything we do, as is what we invest in technology. But [the initiative is] 100 per cent commercial. I don't expect [my lieutenants] to ever come to me and say, "My God, our returns are lower because of this effort."

When I put the substance of my argument to Steve O'Halloran of JPMorgan's communications team, he reinforced Dimon's point, writing (with admirable plainness):

“

You're completely wrong. We had already planned to facilitate and finance about \$1 trillion and are now adding up to \$500 billion more to this effort. It is intended to generate a commercial return and help the country succeed.

This is good news for JPMorgan investors, who can be reassured that the bank will continue to be a bank, rather than running around using their money saving the US from its terrible dependence on foreigners. The “up to” \$10bn in equity and VC investments in manufacturing, defence, energy independence, cyber security and the like could be a bit of a worry, inasmuch as this kind of investing may not be within the bank’s core competence. But for a bank with \$4.6tn in assets, this is a small concern.

It’s dreary news for American capitalism, however. Here is the largest and (in my view) best run American bank setting up a big initiative, which will have to be staffed, generate work, announce milestones and so on, all in order to demonstrate political alignment with the current presidential administration. Because, as readers will have recognised, the framing of JPMorgan’s initiative is Maga from top to bottom: it is all about how the US needs to invest in building up domestic sectors where it currently depends on foreigners.

“It has become painfully clear that the United States has allowed itself to become too reliant on unreliable sources of critical minerals, products and manufacturing,” says Dimon. This is anything but painfully clear: it is a baldly ideological statement about how the world economy should work. You can agree with it (as the White House and many others do) or disagree with it (as I and many other globalists do), but suggesting that it is a neutral statement of fact is bizarre.

This, however, is the sort of knee-bending companies need to do in the current environment. It may very well protect JPMorgan and its shareholders from political interference. And thankfully, JPMorgan seems to have done it in a way that is almost purely performative and therefore unlikely to do much harm, beyond a certain amount of waste. But for those of us who embrace the best of American capitalism, it marks a depressing moment.

One good read

Kevin Williamson [on John Brown](#).

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<https://www.wsj.com/finance/how-jefferies-found-itself-at-the-center-of-first-brands-collapse-290f0a74>

EXCLUSIVE**MARKETS & FINANCE**

How Jefferies Found Itself at the Center of First Brands' Collapse

Investment bank's deep ties to the auto-parts maker are likely to draw questions at its annual investor day Thursday

By [Alexander Gladstone](#) [Follow](#) and [Lauren Thomas](#) [Follow](#)

Oct. 15, 2025 5:44 pm ET



Jefferies CEO Rich Handler, left, and President Brian Friedman. VICTOR LLORENTE FOR WSJ

Quick Summary

- Few firms on Wall Street are facing more questions following First Brands' collapse than Jefferies Financial Group, which had deep ties to the auto parts maker.

View more

The sudden collapse of auto-parts giant First Brands Group has left Wall Street firms sorting through the wreckage. Few are facing more questions than [Jefferies Financial](#)

[Group](#) JEF -7.33% ▼ , a supporting player in the finance world that now finds itself in the harsh spotlight of an accounting scandal.

The firm played important roles with First Brands through both its investment banking and asset-management divisions. First Brands sells billions of dollars worth of parts including oil filters and windshield wipers annually to customers such as Walmart.

The Cleveland-based company [filed for bankruptcy](#) late last month after the market lost confidence in its financial disclosures and use of off-balance-sheet debt. First Brands acknowledged that more than \$2 billion of investors' money is unaccounted for, its intensely private [Chief Executive Patrick James resigned](#) and the Justice Department is [conducting a probe](#).

First Brands' unraveling has raised questions about who could have seen it coming. Jefferies had worked with First Brands for several years without issues when its bankers set out to help the company refinance corporate loans over the summer.

Jefferies initially told prospective lenders that First Brands had roughly \$5.9 billion of debt, according to materials viewed by The Wall Street Journal. First Brands' bankruptcy advisers have since said its debt actually exceeds \$11.6 billion.

In the marketing materials, Jefferies highlighted a financing arrangement for First Brands in which the company sold accounts receivable to financial institutions—but it didn't spell out that in some of those deals, money flowed through First Brands before it was repaid to the institutions. Jefferies told lenders that these financing arrangements weren't "debt-like."

Jefferies' shares—which hit a record-high late last year as the bank executed an aggressive plan to lure top bankers and work on bigger deals—sank roughly 18% since late last month, shaving around \$2.5 billion off the company's market value. It now is valued at a little over \$11 billion.

Earlier this week, Jefferies Chief Executive Rich Handler and President Brian Friedman [issued a statement](#) intended to reassure investors that the bank was fundamentally sound and that its bankers were unaware of any fraud at First Brands. The pair, who have led the bank for two decades, called the reaction in Jefferies' share price and credit perception "meaningfully overdone."

Shares recovered modestly since then. The duo is likely to comment further when Jefferies hosts a previously scheduled investor day Thursday.

Jefferies has suggested that any direct hit to its financials will be immaterial and has stressed it is one of many financial institutions that worked with First Brands. However, its asset-management clients also have money at risk in the First Brands' bankruptcy and larger questions remain about Jefferies' business judgment.

This account is based on conversations with people familiar with Jefferies' involvement, lenders and other individuals close to First Brands.

Deepening ties

Jefferies has worked for First Brands and a predecessor since 2014. Its investment banking and capital markets divisions—which account for the bulk of the firm's revenue—have advised the auto-parts supplier on one acquisition and various financing efforts.

Meanwhile, Jefferies' asset management arm, Leucadia, had become one of First Brands' biggest financiers by purchasing First Brands' accounts receivables, an arrangement known as factoring.

Beginning in 2019, it had been buying the company's expected payments from retailers. The Leucadia entity doing it, Point Bonita Capital, is named after a lighthouse overlooking San Francisco Bay and focused on such investments.

First Brands made near-daily payments to Point Bonita for years, as customers paid invoices on the roughly \$715 million in accounts receivable that Point Bonita held. Jefferies had roughly \$45 million of Point Bonita exposure while the fund's other investors including BlackRock and Morgan Stanley's asset-management arm held the rest. The group had been hoping to get back \$900 million on the \$715 million bet.

Over on the investment-banking side of Jefferies' house, the bank signed an engagement letter June 30 to refinance First Brands' corporate loans and started pitching investors. First Brands was fresh off a private-credit deal in June that raised around \$250 million and didn't involve Jefferies.

Marketing materials Jefferies prepared for prospective investors detailed the auto parts maker's \$5.9 billion of loans. It didn't mention the billions of dollars of off-balance-sheet debt and factoring liabilities later disclosed in bankruptcy court filings, an issue some lenders are grumbling about now. Other people say it is not necessarily typical to detail such arrangements.

Jefferies based the presentation on First Brands' 2024 financial statements, which were audited by accounting firm BDO. The bank included a page noting that 71% of First Brands' roughly \$5 billion of sales were factored, but represented it as something that didn't affect the company's creditworthiness.

"First Brands does not view factoring as debt-like given it is a true non-recourse sale," the presentation said.

The presentation referenced factoring arrangements in which financial institutions collect payments directly from First Brands customers such as AutoZone and Amazon. It didn't mention that in some cases First Brands served as a middleman, collecting payments from customers then passing them on to the financial institutions such as Point Bonita. That type of factoring is considered more risky because it relies on the integrity of the suppliers themselves.



Jefferies headquarters in Manhattan. The company has been on a hiring spree. VICTOR LLORENTE FOR WSJ

Missing pieces

By August, whispers were spreading in the lender community, including that investing giant [Apollo Global Management](#) had bet against First Brands through a so-called credit-default swap trade. Potential investors in the refinancing requested what is known as a quality-of-earnings report, which would provide more detail on First Brands' revenues and financing. First Brands hired the accounting firm Deloitte to produce it.

The report never materialized. As Labor Day approached, jitters were growing within Jefferies.

On Sept. 15, First Brands' near-daily payments to Point Bonita stopped. The company had also stopped communicating with Jefferies' investment bankers, irking people within the firm.

Jefferies pulled the refinancing effort after investors lost confidence in First Brands' financial disclosures and its corporate loans started tanking in the secondary market. The Journal [first reported](#) on Sept. 22 that First Brands was preparing to file for bankruptcy. After it filed the following week, the company's new chief restructuring officer said in court papers that restructuring advisers had discovered irregularities in its factoring arrangements.

That day, those advisers made a presentation to investors detailing liabilities that weren't disclosed earlier.

They included more than \$2 billion of off-balance-sheet asset-backed loans, as well as a \$210 million loan from UBS and a \$77 million loan from Santander. What got the most attention from lenders was a nearly \$2 billion hole tied to accounts-receivable financing. Additional documents viewed by the Journal show only about \$350 million of accounts receivable, compared with about \$2.3 billion of accounts-receivable financing. New independent directors are now examining whether accounts receivable were double- or triple-pledged.

While many creditors feel misled by First Brands, some think that as the company's investment banker, Jefferies was responsible for doing a more comprehensive vetting of its sprawling financial structure.

Jefferies has been on a hiring spree with the goal of becoming [the fifth-biggest investment bank globally](#). It had momentum after landing on a number of big deals and initial public offerings this year.

At the end of September, Jefferies booked record third-quarter revenue, thanks to an uptick in dealmaking. Japan's [Sumitomo Mitsui Financial Group](#), [already a big investor](#) in Jefferies, recently increased its stake to up to 20%.

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Appeared in the October 16, 2025, print edition as 'How Jefferies Found Itself at Center of First Brands Collapse'.

Videos

First Brands Group**The secretive First Brands founder, his \$12bn debt and the future of private credit**

Patrick James borrowed billions — even after presiding over a string of failed businesses

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

Published OCT 15 2025



First Brands chief Patrick James had been here before.

Well over a decade before the lightning-fast collapse of his auto-parts conglomerate shook the highest echelons of Wall Street, the Ohio-based businessman was battling creditors in court over millions of dollars in defaulted debts and fending off allegations of fraud.

James always denied such accusations. He settled and moved on. Soon he was on to his next project, assembling a new group of lenders to help him form a conglomerate from a ragbag collection of factories making spark plugs, brake components and windscreen wipers from Pennsylvania to California.

This time, however, James's borrowing binge coincided with a new boom in risky debt and he enlisted some of the biggest names in US finance.

How he raised billions of dollars with little public scrutiny, after moving on from more conventional forms of borrowing, is a story not just of one man's past practices and the debt and lawsuits that they spawned.

It is also a reflection of the nearly \$2tn [private credit](#) industry — lending by non-bank institutions that can often be opaque — and the broader risks created by its rise.

When James was looking to tap new sources of financing in the 2010s, money was rushing into the private credit market, a new cadre of financiers willing to overlook the occasional red flag. Lenders were now no longer handing him over millions of dollars; they were wiring his businesses billions.

Along the way James amassed the trappings of a billionaire. Having arrived in America decades earlier as an immigrant from Malaysia with little apparent wealth, he collected trophy homes ranging from farmsteads in rural Ohio to ocean-view mansions on both coasts of America.



A rural property in Ohio, US, which was acquired by First Brands founder Patrick James © Adam Dew/Vimeo

A phalanx of private security staff kept careful watch over his prized properties, while elite lawyers gave up the security of their multimillion-dollar partnerships to become his senior lieutenants.

Then, in a blink of an eye, the edifice collapsed.

As questions grew around the finances of James's acquisition-hungry group, First Brands went in a matter of weeks from trying to borrow a further \$6bn to filing for bankruptcy. And, just this Monday, [James stepped down](#) from the company he founded.

"Unfortunately, First Brands experienced financial distress due to a perfect storm of tariffs, volatile interest rates and well-known industry headwinds," a spokesperson for the publicity-shy executive told the Financial Times.

They added that the First Brands founder "has always conducted himself ethically" and is now "focused on doing everything he can to support the maximisation of value for the company's customers, employees and lenders during the restructuring process".

Some fear that, rather than a freak occurrence, [First Brands](#) is an omen of corporate flame-outs to come after years of loosening lending standards.

Jim Chanos, the legendary short seller who predicted the collapse of Enron in the early 2000s, believes the debacle has exposed the myth that private credit is a "magical machine" that can turn lead into gold.

The bankruptcy filing was only the beginning of a harrowing experience for the group's lenders. It was soon revealed that First Brands, which last year made a loss of \$12mn, had racked up close to \$12bn in both conventional loans and off-balance sheet financing. That was billions of dollars more than many of its lenders had realised.

Even worse, an investigation under way as part of the bankruptcy began to probe whether the invoices and inventory underpinning much of the group's financing were pledged "more than once" or "commingled" between lenders. Department of Justice prosecutors are also examining how so much money disappeared so quickly.

Many lenders now fear they may have fallen prey to a shell game, involving hidden off-balance sheet entities and phantom collateral. One lawyer told a Texas courtroom this month that his client was as much a "victim" as a creditor. Another claims that more than \$2bn extended by lenders "simply vanished".



With the US industrial heartlands being reshaped by Donald Trump's tariffs, the auto-parts sector's reliance on invoice factoring has been coming under scrutiny © Mandel Ngan/AFP/Getty Images

Billions of dollars in losses have been collectively inflicted on titans and pioneers of private capital, such as Blackstone and CarVal, to little-known equipment leasing firms.

Financial institutions from Zurich to Tokyo are facing reputational damage for their dealings with a company that was scarcely known outside the murkier corners of credit markets until a few weeks ago. Even insurance firms may now be on the hook after writing policies against the complex financial products that funded First Brands.

Many have been baffled as to how James, a man with a string of failed businesses behind him, was able to borrow billions.

John Pierpont Morgan, a founding father of American capitalism, said the first principle of credit was "character". And yet some First Brands lenders said they had scant information about the man behind the sprawling auto-parts supplier.

So skeletal is James's online presence that two investors who employed external investigators to perform a deep dive on him said that it appeared the privacy-conscious businessman had employed professionals to remove his photos and information from the internet.

A ‘frank and simple guy’

James’s story began in Malaysia’s urban sprawl, nearly 10,000 miles away from the rolling plains of Ohio. Born in 1964 to a Catholic family of Indian descent, he attended a school administered by the De La Salle Brothers religious order in Petaling Jaya, a satellite township of Kuala Lumpur.



James studied in Petaling Jaya, a satellite township of Kuala Lumpur in Malaysia © Getty Images

In the wake of First Brands’ bankruptcy, some lenders have even speculated whether the mogul once changed his name. But a 1983 yearbook for his school lists him as Patrick James, next to a photo of the smiling teenager.

He subsequently moved to America to study at The College of Wooster, in the rustbelt state of Ohio. In a 1984 book of new students, in which his boyish face appears framed by thick glasses, he described himself as a “frank and simple guy”. He added that he was “an outgoing person who loves parties, dancing, music and meeting people”.

Before long he was running Ichabod’s, the on-campus bar, and had what The Wooster Voice described as “ambitious” plans to overhaul it. A later yearbook showed he was also a member of an investment society in which students “used real money to invest in real stocks”.

He stayed in Ohio to remake himself as an industrialist. While the state’s manufacturing base had seen better days, it continued to punch above its weight in turning out parts for planes, trains and automobiles.

Compared with some of the swaggering titans of industry, James had an unassuming presence, with wire-framed glasses and closely trimmed hair. In the 1990s and 2000s, he and various business partners bought up one metalworking plant after another, through investment vehicles such as Viking Industries and Hawthorn Manufacturing.



In a 1984 book of new students at The College of Wooster in Ohio, James described himself as a 'frank and simple guy' © Vkkarri/Dreamstime

Court filings show that James's companies sometimes did business with one another. James also paid himself management fees from several of his ventures, which were variously described as "lucrative" and "substantial" in later lawsuits.

"This guy has an MO," said one Ohio industrial executive who has known James since the 1990s, before listing the names of a string of businesses that collapsed after he took over.

Lawsuits and local newspapers from the 2000s are littered with accounts of closed plants and bankruptcies, leaving aggrieved lenders chasing him through courts to seize his assets.

Worthington Steel, one of Ohio's largest steelmakers, claimed James put \$1.2mn of his personal wealth on the line in 2005, in exchange for "forbearance" on an alleged default. Worthington levelled fraud allegations against him after his business allegedly defaulted once again, including that he had "instructed employees" to "shred" books and records to hide his "gross mismanagement".



Worthington Steel claimed James put \$1.2mn of his personal wealth on the line in 2005, in exchange for 'forbearance' on an alleged default

James said he was "fraudulently induced" into signing the guarantee, strongly denied the allegations and launched a counterclaim.

His spokesperson describes the idea that he ordered the destruction of evidence as "particularly egregious" and "patently absurd". The case was ultimately dismissed after the two parties settled.

Another lender claimed in 2009 that James's companies had made "misrepresentations and omissions relating" to the assets that formed the basis of their collateral. The regional bank behind the lawsuit alleged that James had continued to pay himself management fees even after the business in question had "already shut down all operations". In a further case in 2011, James was accused of creating a "web of companies" to transfer out funds "in an attempt to defraud" creditors.

His spokesman links those "complex disputes" to the aftershocks of the financial crisis, when even the likes of GM and Chrysler filed for bankruptcy protection, adding that "any allegations of improper dealings by Mr James were categorically false".

After settlements were reached for such remaining cases, James was ready to begin anew. As the American economy rebounded, he turned his attention to consolidating the fragmented auto-parts sector, borrowing afresh to do so.

The Ohio-based executive who has known James for decades claimed that his history of debt defaults made it harder for him to tap local banks for financing.

"In asset-based lending, these guys have rubber gloves on when they look at us," he said, adding that experienced banks give even businesses with spotless credit histories the equivalent of a "colonoscopy".

James's spokesperson contended that he was "deeply diligenced without any issue hundreds of times by hundreds of counterparties — including both banks and customers".

He also had a signal piece of good fortune. James's next act dovetailed with the rise of a new breed of lender, flush with capital and not bound by the strictures of [banking regulation](#).

Flexible lenders

As new forms of private lending continued their rise, one Wall Street bank was critical in arranging many of the deals that provided James with new sources of financing.

Jefferies has long been known for its hard-charging style in selling riskier debt to yield-hungry investors. Over his near 25-year tenure at the helm, the firm's swashbuckling CEO, Rich Handler, moulded the bank in the image of his "friend, mentor and hero" Mike Milken, the 1980s junk-bond king.

In 2014, Jefferies was on hand with a loan for the deal that would form the foundation for what became First Brands: James's acquisition of Trico Products, a Michigan-based manufacturer of windscreen wipers.

Handler emphasised at the weekend that First Brands "engaged with a range of banks and Wall Street firms over the last 10 years".



Rich Handler said that First Brands 'engaged with a range of banks and Wall Street firms over the last 10 years' © Brian Ach/Getty Images

But during that period his bank concluded deal after deal with the Ohio-based group.

Jefferies, which does not take deposits, generally did not underwrite such loans. Instead, it passed on much of the risk outside the banking system to collateralised loan obligations, investment vehicles that transform risky loans into bonds with pristine credit ratings through the alchemy of securitisation.

Several CLO managers told the FT that many of their peers were likely to have done only cursory checks on James's business record in their haste to package his company's debt up into tradeable securities.

While Jefferies' stock in trade was selling risky loans to investment funds, James also made heavy use of supply-chain financing — a controversial tool through which a bank pays a company's suppliers, in an arrangement accountants do not class as debt.

In addition, First Brands tapped other forms of borrowing tied to assets, inventory and invoices, although it consistently also took out traditional bank loans.

One early financier was Greensill Capital, which in 2015 began to provide tens of millions of dollars linked to the invoices of James's holding company, Crowne Group, according to documents seen by the FT.

Greensill later imploded in its own financial scandal in 2021. But even though its collapse made some investors wary of such relatively opaque financing, James was able to raise billions of dollars — most of it from private credit firms that argued that “asset-backed” lending was relatively safe.

Such invoice lenders typically dealt with James's older brother, Ed, who became the point man for what First Brands called “working capital solutions”.

Much of the funding linked the group to considerably bigger financial players.

UBS's Chicago-based hedge fund unit O'Connor bought a stake in Raistone, a technology platform that provided supply-chain financing to First Brands. It also directly invested in First Brands' invoices, as did a joint venture between Japan's Mitsui & Co and Norinchukin Bank.

Jefferies also took part in the trade through Point Bonita Capital, a private credit fund focused on invoice lending that assured investors it did “deep research and credit analysis”.

And then came Onset Financial, a Utah-based private lender that claimed to have amassed \$1.9bn of exposure to First Brands' inventory-backed debt by the time of its bankruptcy.

In an online case study that appears to refer to First Brands, the equipment leaser acknowledged it initially provided financing even though a recent reorganisation had “made it tough to assess an accurate financial picture” of the company.



Investors in some funds claimed they were unaware how much of their exposure was linked to James's patchwork of auto-parts makers © Houston Cofield/Bloomberg

Filings show that lenders often booked double-digit yields on First Brands' off-balance sheet invoice and inventory financing.

Investors in some funds claimed they were unaware how much of their exposure was linked to James's patchwork of auto-parts makers. Firms such as UBS O'Connor and Point Bonita said the risk primarily lay with the many blue-chip customers named on its invoices, such as Walmart.

But after the bankruptcy, Raistone and Point Bonita revealed that they never received funds from such customers directly. Instead, the funds were returned to them via First Brands.

Several asset-backed finance specialists said they had either refused to do business with First Brands or had cut back existing credit lines after the company was unable to produce requested documents.

Other potential lenders claimed to have received unsatisfactory answers when asking straightforward questions about its financial statements, with many noting that First Brands' reported margins far exceeded those of its competitors.

One asset-backed lending specialist said that Ed James once rang him to tout a new inventory-backed deal, but the discussion turned tense when the lender explained that his team would need to travel down to First Brands' sites to check a stock-list against the actual inventory.

He recalled the curt reply of Ed James, who could not be reached for comment for this article: "We don't let lenders into the warehouse."

Salvation

By the 2020s, James was the owner of an international conglomerate with an enterprise value in the billions of dollars. He had rechristened his empire First Brands Group and set about enlisting lieutenants with deep ties to Wall Street's biggest lenders.

In 2021 Michael Baker, an affable Canadian lawyer who had spent the previous decade as a partner at law firm Paul Hastings, jumped ship to become First Brands' chief corporate strategy officer. At the time, he was one of America's most successful corporate debt lawyers.

Baker did more than just join the C-suite at First Brands. He also became a trustee of the Sandor Foundation, a non-profit organisation James and his wife Elizabeth established in 2005 that predominantly donated to institutions linked to the Catholic church.

Millions of Sandor's donations were to a non-profit and church connected to Father Robert Stec, the gregarious priest who has served as pastor at Ohio's St Ambrose Church since 2005. Stec also received almost \$1mn for his services as a philanthropic consultant over seven years, according to public documents.

Two people who worked closely with the First Brands founder said that Stec regularly visited James and his wife at their estate in Chagrin Falls, Ohio. James even constructed a chapel on the grounds of the estate, they added, which also includes five houses and two tennis courts.

It was just part of a real estate portfolio that stretched from coast to coast. Property records show that James also bought two farms in Ohio in the 2010s, complete with stables of prized horses. Purchases of oceanfront houses in Malibu and the Hamptons followed, with the \$18.75mn acquisition of the latter in 2021 making headlines, even though the new owner's identity was not public.

A small army of staff, including a security team drawn from the ranks of military veterans, worked round the clock to maintain and protect the luxury homes, along with a fleet of vintage cars.

'Black box'

In the summer of 2025, Jefferies was shepherding First Brands to market with its biggest deal yet, a \$6bn loan to refinance its existing debt. Audit firm BDO had given the company's accounts a clean bill of health months earlier, but this time investors were a little more wary.

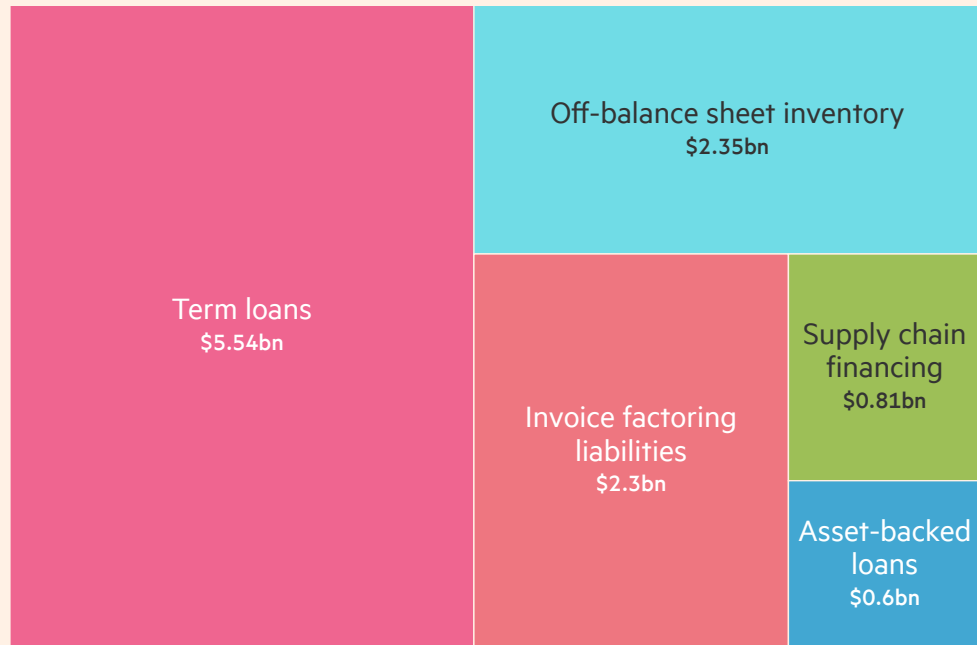
Facing more questions than usual about the company's finances, Jefferies agreed to hit pause while First Brands commissioned another audit firm, Deloitte, to produce a report on its use of off-balance sheet financing to allay lenders' concerns.

The shelved deal was cast as a small bump in the road, with management telling lenders at the end of August that it held more than \$800mn of cash and was evaluating ways of recutting the deal.

But, behind the scenes, First Brands was in trouble. With the US industrial heartlands being reshaped by US President Donald [Trump's tariffs](#), the auto-parts sector's reliance on invoice factoring was coming under scrutiny.

First Brands had already missed hundreds of millions of dollars in interest payments to its main inventory lender, Onset, and James had quietly offered to pledge a 15 per cent stake in his company to keep the lender at bay. Other asset-backed lenders were already growing suspicious about the validity of their collateral.

The debt that sunk First Brands



Source: Bankruptcy filings

FINANCIAL TIMES

The group's loans began to crater after the FT reported in September that Apollo Global Management had quietly built a massive short position against First Brands' debt. Nervous investors wondered what had prompted one of the savviest private debt players on Wall Street to take a massive bet against James's company.

Before long the group's debt was in free fall.

The largest lenders dumped their exposure as it became clear the group, which recorded \$5bn of sales last year, would have to file for bankruptcy.

First Brands shifted \$27mn between bank accounts in a bid to make payroll, only for it to be seized by a creditor.

Little over \$12mn remained in its corporate accounts by the time Patrick James signed the bankruptcy papers. The Chapter 11 petition was filed shortly before midnight on Sunday, September 28, in a Texas court known for adjudicating some of the US's messiest corporate collapses.

The group only avoided a full-scale liquidation due to a new \$1.1bn rescue loan from its largest lenders. A lawyer for such creditors said his clients faced little choice other than to lend more money into a "black box" to keep the lights on.

Until that week, many of First Brands' mainstream lenders were unaware that the group had also raised billions of dollars backed by its inventory through off-balance sheet "special purpose entities".

Not that such asset-backed lenders were in a much better position. Days after the bankruptcy, a lawyer representing Raistone emailed the counsel for the company to ask how much of the nearly \$2bn that First Brands received from invoice lenders remained in a supposedly segregated account. He received a sobering response: “\$0.”

With billions of dollars apparently missing without trace, James has gone from one of America’s least-known billionaires to the face of one of its biggest corporate scandals in years.

His spokesman counters that James has not been accused of any wrongdoing at First Brands “and is confident that the Board’s independent investigation will vindicate him”.

The fiasco has now captured the attention of regulators around the world, eager to learn whether First Brands was a one-off or a symptom of a more systemic malaise affecting Wall Street’s favoured forms of financial innovation.

Lenders used dark humour as a coping mechanism for the embarrassing losses. When First Brands started to teeter in August, one debt fund manager joked that their team was considering staking out James’s Malibu mansion — just so they could catch a glimpse of the man they worried had taken the credit markets for a ride.

James has been a man of mystery for much of his recent career, years in which he borrowed billions only to lose both his capital and, ultimately, leadership of the company that was the source of his wealth.

It is a trajectory he can barely have suspected during his high-school days in Malaysia. But back then he made a joke in his yearbook that has taken on new resonance as his creditors close in: “I’m broke.”

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HSBC Is Not Exposed to First Brands Collapse, Top Executive Says

Oct. 16, 2025, 6:29 AM PDT

Summary by Bloomberg AI AI Generated



- HSBC Holdings Plc is not exposed to the collapse of First Brands Group, according to Michael Roberts, HSBC's head of corporate and institutional banking.
- Roberts warned that fraudsters were "getting better" and that the banking industry needed to up its game, and said HSBC is rolling out fraud-detection technology across its divisions.
- JPMorgan Chase & Co Chief Executive Officer Jamie Dimon warned that failures of First Brands and subprime auto lender Tricolor Holdings were unlikely to be the last, saying "when you see one cockroach, there are probably more".

HSBC Holdings Plc is not exposed to the collapse of scandal-hit auto-parts supplier First Brands Group , whose bankruptcy has left some of the biggest players on Wall Street facing hundreds of millions of dollars in potential losses.

"We were not involved directly in First Brands and don't know how much due diligence was done," **Michael Roberts**, HSBC's head of corporate and institutional banking, said in an interview with Bloomberg Television on Thursday. Roberts warned that fraudsters were "getting better" and that the banking industry needed to up its game.



Michael Roberts

Photographer: Lam Yik/Bloomberg

"You're going to have to respond by being much better on due diligence," said Roberts. Europe's largest bank is in the process of rolling out across its divisions fraud-detection technology originally developed for its trade finance business.

"These types of financing arrangements are going to require much more due diligence, much greater technology, much more understanding of what you are financing," said Roberts. "I am more concerned and it's something we're very focused on."

This week, JPMorgan Chase & Co. Chief Executive Officer Jamie Dimon warned that failures of First Brands as well as subprime auto lender Tricolor Holdings were unlikely to be the last. "When you see one cockroach, there are probably more," Dimon [said](#). "Everyone should be forewarned on this one."



WATCH: HSBC Head of Corporate and Institutional Banking Michael Roberts said the firm is not exposed to the collapse of scandal-hit auto-parts supplier First Brands Group.

Source: Bloomberg

JPMorgan has taken a \$170 million charge against its exposure to Tricolor, but avoided any to First Brands. Discussing the hit from Tricolor, Dimon said it was "not our finest moment" and added that the bank had been scouring its books to look for other potential problems.

Jefferies Financial Group has been hit with redemption [requests](#) from clients who had money in a fund managed by the bank that helped finance First Brands. Point Bonita Capital had about a quarter of one of its portfolios linked to the failed company. Cantor Fitzgerald LP is trying to change the terms of its acquisition of UBS Group AG's O'Connor hedge fund due to the scale of the losses it is facing from the First Brands bankruptcy, Bloomberg News [reported](#) last week.

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US banks

US regional bank shares sink on credit worries after fraud disclosures

Western Alliance and Zions Bank disclose exposure to alleged fraud



Western Alliance affirmed its existing guidance and outlook for the year © AFP/Getty Images

Akila Quinio, Joshua Franklin and Kate Duguid in New York

Published 11 MINUTES AGO



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Shares in US regional banks fell on Thursday after two lenders disclosed that they were exposed to alleged fraud by borrowers, raising broader concerns about the health of bank loan portfolios.

The disclosures by Western Alliance Bank and Zions Bank follow the recent failures by car parts maker [First Brands](#) and auto lender [Tricolor](#), which have left credit investors nursing losses and are under scrutiny from the US Department of Justice.

The KBW regional banking index, which is composed of 50 [banks](#), fell more than 4 per cent on Thursday to its lowest level since August. Shares in Zions fell 9 per cent and Western Alliance by close to 8 per cent. The two are members of the KBW bank index, which comprises 24 of the country's leading lenders and was down 2.3 per cent.

“When credit risk is rising, you just sell off the entire group and you get answers to your questions later,” said Timur Braziler, mid-cap bank analyst at Wells Fargo.

The drop in regional bank stocks helped prompt a move in the wider US stock market, with financials dragging the S&P 500 modestly lower.

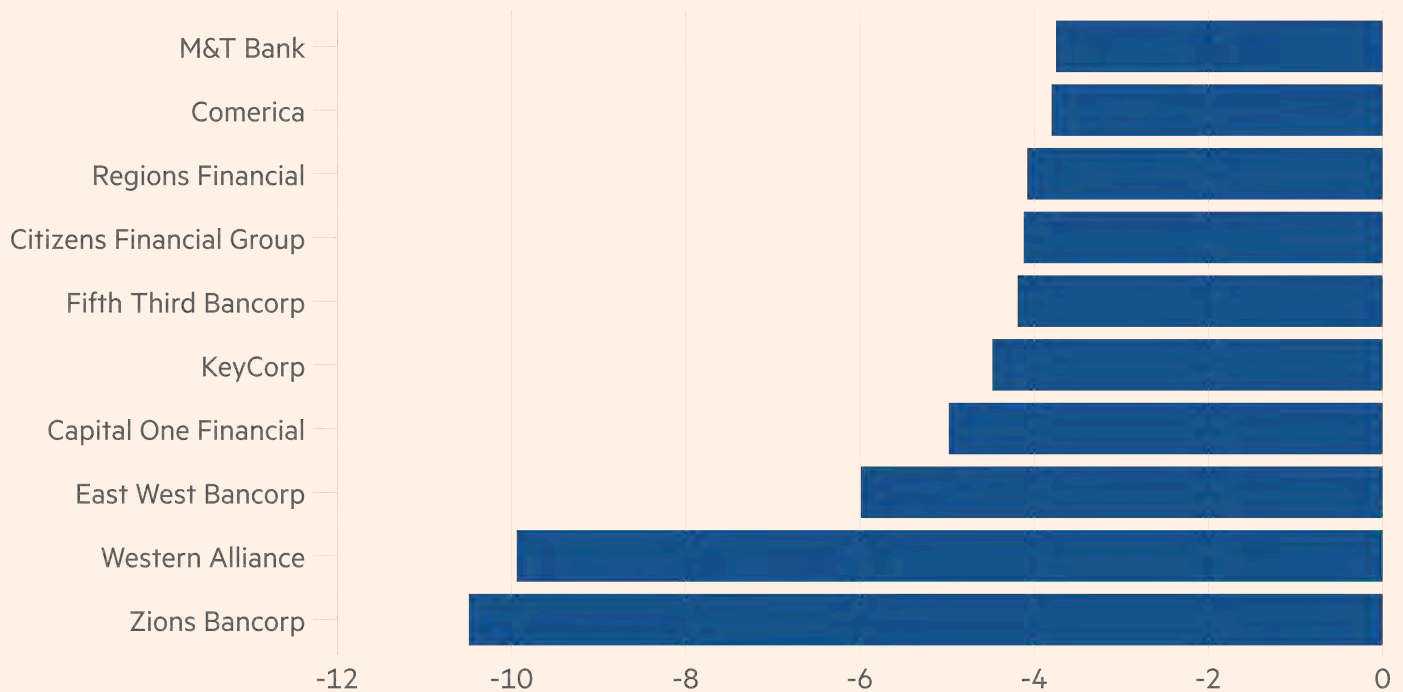
In response to these regional bank worries — as well as the pick-up in trade tensions between China and the US — the two-year Treasury yield sank to its lowest level since September 2022. The two-year yield, which moves with [interest rate](#) expectations, fell by as much as 0.09 percentage points to a low of 3.41 per cent.

“There was no single obvious catalysing incident [for the two-year move]. There are a variety of different factors that are interrelated that prompted it,” said Jonathan Hill, head of US inflation market strategy at Barclays.

“Part of it has to do with some weakness in regional banks, part of it has to do with trade tensions between the US and China, and part of it has to do with worries about stress in the funding market,” he said.

Shares of regional banks were the worst-performers among big lenders

Worst-performing members, % intraday, of KBW bank index



Source: Bloomberg

Utah-based Zions Bank — which has about \$89bn in assets — on Wednesday said in regulatory filings that it would take a \$60mn provision after it had “identified what it believes to be apparent misrepresentations and contractual default” on “two related commercial and industrial loans” affiliated with two borrowers.

The bank also said it had found “other irregularities with respect to the loans and collateral” and that it had commenced a lawsuit in California against the borrowers.

Separately, Western Alliance disclosed in regulatory filings on Thursday that it had initiated a lawsuit alleging fraud by a borrower “in failing to provide collateral loans in first position, among other claims”.

It is seeking to recover approximately \$100mn, according to analysts at Citi.

The bank said on Thursday that it had “evaluated the existing collateral” and believed it covered the obligation. It also said it had “a limited guarantee and full guarantee from two ultra-high net worth individuals under certain circumstances, such as fraud”.

Western Alliance, which has about \$87bn in assets, said that its “total criticised assets” — loans that show early signs of weakness — were “lower than they were on June 30, 2025” and affirmed its existing guidance and outlook for the year.

“The whole industry is being painted by the same brush,” said Catherine Mealor, head of small and mid-cap bank research coverage at KBW. “We are going to have pockets of credit stress as we move into this normalisation period. And so how does that impact the overall multiple that we put on the group?”

While Wall Street banks’ third-quarter results have shown resilient credit quality overall, the collapses of First Brands and Tricolor have [raised concerns about lending standards](#).

“Historically fraud has been very idiosyncratic, very one off,” Braziler said. “And what if we are getting into an environment where more of these nefarious characters bubbled up to the top and fraud becomes a larger part of the conversation? I think that’s really the question at heart here and what investors are trying to figure out.”

Shares in Jefferies, which has exposure to First Brands, fell by more than 5 per cent on Thursday.

Western Alliance declined to comment beyond their filing. Zions did not immediately respond to a request for comment.

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Matt Levine's Money Stuff: Nothing Is Securities Fraud?

Oct. 16, 2025, 10:19 AM PDT

Arbitration

Two popular themes around here are:

1. Everything is securities fraud, and
2. Private markets are the new public markets.

These themes are related. "Everything is securities fraud" means mainly that, if a bad thing happens at a public company, some enterprising shareholder class action lawyers will sue it for securities fraud. "You didn't tell us that the bad thing would happen, so we bought stock, then it happened, and our stock went down, and we were defrauded," etc. We [talk](#) about these [lawsuits](#) all the [time](#) because there is something funny in the accumulation of them. The other day [I mentioned](#) a lawsuit against a public rocket company whose rocket exploded, "thereby injuring investors." Not because the investors were hit by rocket debris. Because the stock went down.

"Private markets are the new public markets" means mainly that lots of large fast-growing capital-intensive household-name tech companies, which 20 years ago would have gone public to raise money to fund their growth, now stay private much longer. There is a lot of capital available in private markets these days, and big companies like SpaceX and OpenAI can repeatedly raise billions of dollars at 12-digit valuations, do frequent tender offers to give employees liquidity, and otherwise get many of the financing benefits of being public without the hassles of being public. So they don't go public. [People worry about this](#) : If the big exciting fast-growing companies stay private, then ordinary investors won't be able to invest in the big exciting fast-growing companies. Ownership of big and fast-growing slices of the economy will be reserved for rich institutions, and ordinary individuals will be frozen out.

The big cool companies stay private because (1) now they can and (2) there *are* hassles of being public. What are the hassles of being public? Various things: Public scrutiny, a fluctuating stock price, short sellers, activists, hostile takeovers, extensive disclosure requirements. But "everything is securities fraud" is *one* of the hassles, at least. Where does it rank on the list? I mean:

1. The actual expected cost, to most public companies, of being sued for securities fraud if they do something bad and their stock drops, is not that high.

2. It is aesthetically pretty annoying.

3. A lot of the expense of having a public-company accounting and disclosure apparatus does arise from the risk of being sued for securities fraud. You have to make sure that all of your financial and business disclosures are accurate, because if they aren't, someone will sue. This is *not* generally true of private companies: Private companies aren't supposed to lie to their investors either, but the investors understand that the companies have better things to do than have lawyers and auditors scrub every communication. "Hey here are our rough preliminary financials for October, could change but we wanted to give you a sense of what's going on" is a reasonable thing for a private company to say to its venture capital investors and an *insane* thing for a public company to say to its shareholders.

So "everything is securities fraud," or at least "public companies get sued when their disclosures are wrong," might not be at the top of the list of hassles keeping companies from going public, but it's not at the bottom either.

If, like a lot of people including Securities and Exchange Commission Chairman Paul Atkins, you think it is bad that companies are increasingly staying private, you might want to address that problem by removing some of the hassles of being public. If you think that getting sued by shareholders is one of the more salient hassles, you might try to remove it. You might say "from now on, if a company's rocket explodes, or if its CEO does some sexual harassment, or for that matter if its financial statements are wrong, shareholders can't sue." That would make being public less of a hassle, and might lead more companies to go public.

Obviously there is a downside! The downside is not so much that more companies would do exploding rockets or sexual harassment: There are *other* deterrents, besides securities fraud lawsuits, for those things. The downside is that more companies would fudge their financial statements. There are other deterrents for that too – if you fudge your financial statements, the SEC might come after you, or prosecutors for that matter – but, unlike in the sillier "everything is securities fraud" cases, the *main* victims of financial misstatements really are shareholders, and if they can't sue then probably no one will.

The SEC can't actually say "from now on shareholders can't sue their companies," but last month it did what it could. From a DLA Piper memo:

The US Securities and Exchange Commission (SEC) recently issued a policy statement reversing its long-standing practice concerning mandatory arbitration clauses in connection with initial public offerings.

Released on September 17, 2025, this policy approved by the SEC Commissioners along party lines states that the SEC will no longer object to the acceleration of a company's registration statement solely because it contains a provision requiring mandatory arbitration of investor claims arising under federal securities laws. The SEC will instead focus on the adequacy of the disclosures regarding the arbitration provision. SEC Chair Paul Atkins characterized this move as an effort to make IPOs more attractive to companies.

Previously, the SEC viewed any provision that waived or impaired the protections of the federal securities laws as contrary to public policy and would not accelerate the effectiveness of a registration statement if the issuer required investors to arbitrate such claims. The SEC and other commentators believed that mandatory arbitration of shareholder claims would effectively put an end to securities class actions because they would require each investor to arbitrate their individual claims, which would be impractical for retail investors that suffered relatively small individual losses.

That is: In theory, a company's charter or bylaws could contain a provision saying "if the shareholders want to sue us, they have to bring the claim in private arbitration, not in a federal court." An arbitration might be more friendly to the company, and since it wouldn't be public it wouldn't set a precedent. More importantly, the company could require *individual* arbitration, making shareholder class actions impossible: If the stock goes down 10%, instead of a law firm bringing a billion-dollar claim on behalf of every shareholder, each shareholder would have to bring her own arbitration case saying "I lost \$18" or whatever. Few shareholders would.

In the past, the SEC thought this was bad – because it could prevent shareholders from suing for fraud – and would refuse to let companies go public with mandatory arbitration provisions. Now the SEC thinks this is good – because it could prevent companies from *being sued* for fraud – and will let them go ahead. Here is Atkins's statement, saying that allowing mandatory arbitration is "among the first steps of my goal to make IPOs great again," to "make being a public company an attractive proposition for more firms by eliminating compliance requirements that yield no meaningful investor protections." Here is a dissenting statement from SEC Commissioner Caroline Crenshaw, saying that actually allowing shareholders to sue for fraud is kind of a meaningful investor protection. Honestly they both make some good points.

Does this matter? It is not clear that those provisions would be legal under state law, at least in Delaware, though probably it's fine for Texas corporations. But if it really is allowed now, will companies take advantage of it? Will big companies start going public with provisions in their charters saying "hey if we do fraud you can't sue us"? I don't know. But ... yes? In theory you could imagine that big institutional shareholders might push back on that sort of provision: Big institutions that care about governance might be suspicious of companies that go public saying "hey if we defraud you you can't sue." But I'm not sure. For one thing, my impression is that big institutional investors will complain about bad governance but ultimately put up with it. For another thing, I'm not sure that securities class actions are net beneficial to institutional investors.

"If this practice became widespread, it would effectively end shareholder lawsuits," writes one insurance blogger, and that does seem right. It's possible that within a few years *nothing* will be securities fraud. *Over the years*, I have *spent* a lot of *time* making fun of everything being securities fraud; I think it is a bad way to regulate public companies. I sympathize with the notion that, if fewer things were securities fraud, it would be easier and more pleasant for companies to be public. But I do think that, like, *securities fraud* is securities fraud. You shouldn't fake your numbers, and if you do you should expect to get sued. I'm not sure that *nothing* being securities fraud is an improvement.

Fat finger

Two other popular themes around here are:

1. Lol Citigroup Inc. sent someone an extremely wrong amount of money, and
2. Blockchain blockchain blockchain.

The first theme came up, for instance, when Citi meant to pay \$7.8 million of interest on a Revlon Inc. loan that it administered, and accidentally [paid \\$900 million instead](#). It came up again when Citi meant to sell \$58 million of European stocks and instead [sold \\$444 billion](#) of those stocks. And then again [when Citi](#) "credited a client's account with \$81tn when it meant to send only \$280." And then also [when Citi](#) "almost shifted about \$6 billion to a customer's account by accident after a staffer handling the transfer copied and pasted the account number into a field for the dollar figure." How we all laughed. "The best job in tech," [I wrote](#), "is designing the user interface for the payments department of Citigroup Inc. As far as I can tell the job is just doing pranks."

The second theme comes up when banks, or people looking to disrupt banks, talk about how with an immutable distributed public ledger of transactions, finance will be more secure and transparent and modern. Maybe! Here's a stablecoin fat finger:

Fintech giant PayPal made an interesting move [yesterday], minting \$300 trillion of its PYUSD stablecoin on the Ethereum blockchain, briefly making it the largest stablecoin in the world by a landslide.

Paxos, which issues PYUSD, minted the supply on Wednesday afternoon and burned it shortly after, confirming it was an accidental mint.

PYUSD, which is backed by U.S. dollars, is the eighth-largest stablecoin in DeFi with a \$2.6 billion valuation. It's unclear whether Paxos intended to mint a specific amount, but any substantial increase in supply would see PYUSD surpass BlackRock's BUIDL USD and potentially World Liberty Financial's USD1.

Like some (not all!) of Citi's oopsies, this is firmly in the no-harm-no-foul, accidental-internal-crediting category: Paxos, which issues PYUSD stablecoins on the Ethereum blockchain, *created* 300 trillion new PYUSD by accident, but it didn't *send* them anywhere, and it uncreated them 22 minutes later.

In general, and by law, each PYUSD is supposed to be backed one-to-one by US dollar cash equivalents, but that is a fact about Paxos's corporate standards and US stablecoin regulation, not a fact about blockchains. Paxos doesn't need to have \$300 trillion in the bank to push the button that mints 300 trillion of PYUSD. For 22 minutes yesterday, Paxos was just holding \$300 trillion of assets that it had created out of thin air by accident. The price of PYUSD did not budge, varying between \$0.9995 and \$1.00015 while this was happening. Presumably if Paxos had *announced* "hey we created \$300 trillion of naked PYUSD, want some?" then the price would have collapsed: The 2.6 billion actually existing PYUSD are worth a dollar each because they are backed by \$2.6 billion of dollar assets; 300.0026 trillion PYUSD backed by \$2.6 billion would be worth considerably less. But by the time anyone cared it was fixed.

In a good financial thriller, the person who accidentally created that \$300 trillion would have sent it all to herself, sold it as quickly as possible and cleared, you know, at least enough to buy a first-class ticket to a non-extradition country. (The market price for \$300 trillion of fat-fingered PYUSD is nowhere close to \$300 trillion, but it's not zero either, and you don't need to get particularly close to \$300 trillion to have a very good day.) But in the real world they just deleted the extra \$300 trillion and went about their day.

Whatever and 25ish

"Hedge funds are a compensation scheme masquerading as an asset class," is the famous line, but that isn't really true anymore. The compensation scheme, famously, is (or was) 2 and 20: Hedge funds traditionally charge their investors 2% of assets each year as a management fee and 20% of returns as a performance fee. The "asset class" was, you know, there were like a dozen important hedge fund strategies, so institutional allocators could think "I want 5% of my money in global macro so let me call some global macro funds." Each hedge fund manager was trying very hard to get high and uncorrelated returns, but there was some empirical correlation among managers in any category.

The modern multistrategy multimanager "pod shop" hedge funds are different. For one thing, they are a different asset class: Each of those funds combine many different "pods" – essentially individual hedge funds with their own portfolio managers, operating quasi-independently with a central management allocating capital to them and overseeing their risks – into one return stream, with the result that a pod shop's returns do not look like "long/short equity" or "global macro" or "managed futures" or whatever, but rather like their own aggregated thing, "pod shop hedge fund returns."

What are those returns? What is the asset class? Well, I think of pod shops of being in sort of a service business, [providing liquidity and price discovery to capital markets](#) . (I think of this business as being analogous to some of the traditional trading businesses of *investment banks*.) That service is valuable, and so it has some expected return, and the pod shops broadly earn that return. There is risk and sometimes they lose money, but they offer a lot of different somewhat uncorrelated services so most of the time they get paid. It is a kind of *business* income. Investing in pod shops is not quite the same as investing in bank stocks, but it's kind of related.

Meanwhile the compensation scheme is also quite different. The compensation scheme is:

1. Investors give the pod shop their money.
2. It uses the money to do its business and generate returns.
3. Out of those returns, it pays its expenses, which include rent and photocopying and data feeds and taking investors out to dinner to solicit their money, but which *mostly* include paying its portfolio managers for generating returns.
4. Those paychecks will generally be commensurate with the returns – a portfolio manager who generates \$1 billion of trading profits will get paid more than one who generates \$10 million – but not in some universal mechanical way. It's not like every portfolio manager in the industry gets paid exactly 20% of the money she generates. A PM who loses money might still get a paycheck if the firm wants to keep her. A PM who was recently hired in a competitive job market might initially get some sort of elevated payout to incentivize her to switch jobs. A PM who generates \$100 million in her own pod but who makes money for the firm in other ways might get paid more than the general rate. Etc. The pod shop is a big sophisticated company in a competitive market for labor, and it will pay its star employees what it needs to pay them, not the mechanical result of a generic formula.
5. The management company and senior executives of the hedge fund also get a cut.
6. The investors get back what is left over.

That is, the compensation scheme is not “you give us money, we make more money, and we give you 80% of the profits.” It's “you give us money, we make more money, we take out whatever we need to keep sustainably making that more money, and we give you the rest.” There's no guarantee, no fixed cut of the return. You sign up for this deal because you think that the hedge fund will make more money for you (after whatever fees it feels like charging) than you'd get elsewhere, and you stay signed up as long as that keeps happening most of the time. If one year the hedge fund tells you “your returns are 2% because all our PMs had to buy yachts,” or for that matter “your returns are 2% because all our PMs did a bad job of picking stocks,” you might say “hmm I guess but this is not what I wanted.” If the next year it tells you the same thing, you will pull your money.

The compensation scheme is “we made \$X of trading profits, we need to pay the PMs at least \$Y to attract and retain good PMs, and we need to return at least \$Z to the investors to attract and retain the investors.” If $X - Y > Z$, everyone is happy. If $X - Y < Z$, somebody is unhappy, which is not good for the long-term health of the hedge fund. In this, too, [the pod shops are like banks](#) : They have some cost of capital, and if they do not earn their cost of capital over the medium term they will not be able to keep their capital, but it is all a bit subjective and negotiable. And they have some cost of labor, and if they do not pay their employees their market value they will not be able to keep their employees, but that too is subjective and negotiable.

The Financial Times reports that the cost of labor is 25% now:

Top traders at some of the biggest hedge funds are taking home almost a quarter of the profits they make for investors, according to a Goldman Sachs report, as the likes of Citadel and Millennium extend their hold over the industry.

A war for talent between multi-manager hedge funds has pushed up pay in the industry, with firms luring traders with packages that can be worth more than \$100mn.

Goldman said that managers at the highest paying firms had this year secured payouts worth 24.5 per cent of the profits they made for investors, compared with 22 per cent in 2022. ...

Whereas traditional hedge funds would usually charge a 2 per cent management fee and 20 per cent on profits made for investors multi-manager hedge funds pass their expenses through to investors, enabling them to invest more in technology and traders to extend their advantage over rivals.

Under the model, costs including client entertainment, portfolio manager bonuses, and technology are charged directly to investors rather than incurred by the fund's managers.

Also "the total managed assets across the 57 hedge funds surveyed by Goldman jumped by 16.1 per cent in 2025 from the year before, driven both by performance and new capital," so apparently they are earning their cost of capital too.

Intrade

We [talked yesterday](#) about the possibility that a trader on Polymarket might have successfully predicted that María Corina Machado would win the Nobel Peace Prize, hours before it was announced, by scraping the Nobel website and seeing it update with information about Machado. I was pleased, writing:

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.

This prompted Serge Ravitch to email me to reminisce (lightly edited):

Back in 2008, there was a brief splash of interest around how [once-popular prediction market] Intrade picked up on the fact that Sarah Palin would be the [Republican vice presidential nominee] six hours or so ahead of the actual announcement. The story has been told several times on random prediction market podcasts listened to by fifty people but I doubt it's ever hit anyone outside that circle, so, in short:

Domer (@domahhhh) and I were trying to figure out the pick and going back and forth with one another looking for clues. At 3 AM EST, I hit upon a random Free Republic post from some guy who had seen a private flight go from Alaska to AZ and back on the 2008 equivalent of flighttracker. We spent the next half hour frantically reading her Wikipedia bio and failing to find any other flights from would be contenders (Tim Pawlenty, for example, had not budged from Minnesota). By 4 AM, we had bought out every possible share of Sarah Palin available online at every political betting market and the rest is history.

"I think we cleared, like, \$10,000 each or something," he adds, so this is not quite institutional-level incentives, but the point is, yes, prediction markets do have some track record of incentivizing people to incorporate quasi-public but not especially widely disseminated information into prices.

Things happen

The Little-Known [Crypto Powerhouse](#) Behind Billions in Trading. Griffin Says GenAI [Fails to Help Hedge Funds Beat Markets](#) . Inside the [Credit Card Battle](#) to Win America's Richest Shoppers. 'Of course it's a bubble': AI start-up valuations soar in investor frenzy. Lifespan of AI Chips: The \$300 Billion Question. "Anthropic probably isn't going to offer some kind of enterprise-grade erotica bot with single sign-on, granular permissions, and detailed logging." Delaware's Highest Court Considers Elon Musk's Tesla Pay Plan. Eisler Imposes 30% Bonus Cut on Traders [Exiting Immediately](#) . How Jefferies Found Itself at the Center of First Brands' Collapse. Dimon's [Cockroach Barb](#) Ruptures Uneasy Truce With Private Credit. "It does not surprise me that we are seeing late-cycle accidents." Paul Singer's [Elliott](#) Is Raising \$7 Billion for a New War Chest. Bank of America, BNY Sued Over Jeffrey Epstein Ties. U.S. Arranging \$20 Billion Private Finance Facility for Argentina. How the Trump companies made \$1bn from crypto. Giving Career Advice to Kids Has Never Been Harder. NYC Mayor Adams Tells Staff He's Been Offered '[Amazing](#)' Job . Gov. JB Pritzker won \$1.4 million in Vegas playing blackjack. The Worm 'Ate Just a Little Bit' of RFK Jr.'s Brain. "Cryptographic science, he argued, could not solve Kryptos – 'but library science could.'" "I was married, but I'm not married anymore. Women don't like the vehicle."

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1. On the Money Stuff podcast a few weeks ago, Katie Greifeld and I discussed a listener question about whether US public companies should disclose earnings *monthly*, rather than quarterly (as is currently required) or semiannually (as President Donald Trump wants). The listener wrote: "Why not MORE frequent reporting? As a CFO of a small, but private equity owned business, I close our books monthly and report out our financial results each month. Every public company in the world is doing the same. It's no additional cost to release those results publicly in some form, even if not a full 10Q. Car manufacturers release their unit sales each month. I am sure there are other industries that also share more regular financial information. It is so easy to prepare monthly results. More information is better." As a matter of management accounting this is surely correct; surely every public company knows its financial results each month, to within some margin of error. But my answer on the podcast was that, as a matter of *getting sued*, that is just too much surface area and too little time to scrub it.

2. From Caroline Crenshaw's dissent last month: "There are two ways to remedy wrongdoing in our markets— (i) by governmental enforcement action or (ii) by private lawsuit. Private lawsuits can be a more efficient

remedy than government action in terms of investor recompense. In 2024, securities class action settlements brought by shareholders returned approximately \$3.7 billion to harmed investors. By contrast, over a similar period, Commission enforcement returned only \$345 million to investors."

3. To go public, a company needs to file a registration statement with the SEC; the SEC reviews it and, when it is satisfied with the disclosure, allows the issuer to "accelerate" its effectiveness. There are other ways to do an initial public offering but they are not normally very practical; effectively this language means that the SEC will approve the company's IPO prospectus.

4. "It cost just \$2.66 in transaction fees to print this gargantuan amount of money," reports Decrypt, though presumably when Citi credits a client's internal account with \$81 trillion the *transaction fees* are zero.

5. A more mechanical but important point is that a PM who loses money won't get paid a *negative* amount of money. This means that, if the pod shop as a whole has uncorrelated return streams, it will generally pay out more than 20% (or whatever) of performance in bonuses: The people who make money will get 20% of the money they make, but the people who lose money won't pay back 20% of the money they lose. If 10 PMs each make \$100 million and get paid \$20 million, and two PMs each lose \$100 million and get zero, the net returns to the fund are \$800 million, but the PMs' payout is \$200 million (25%).

6. Here is an August 2008 Business Insider post making fun of Intrade for incorrectly predicting Palin, which was then updated to apologize because Intrade turned out to be right.

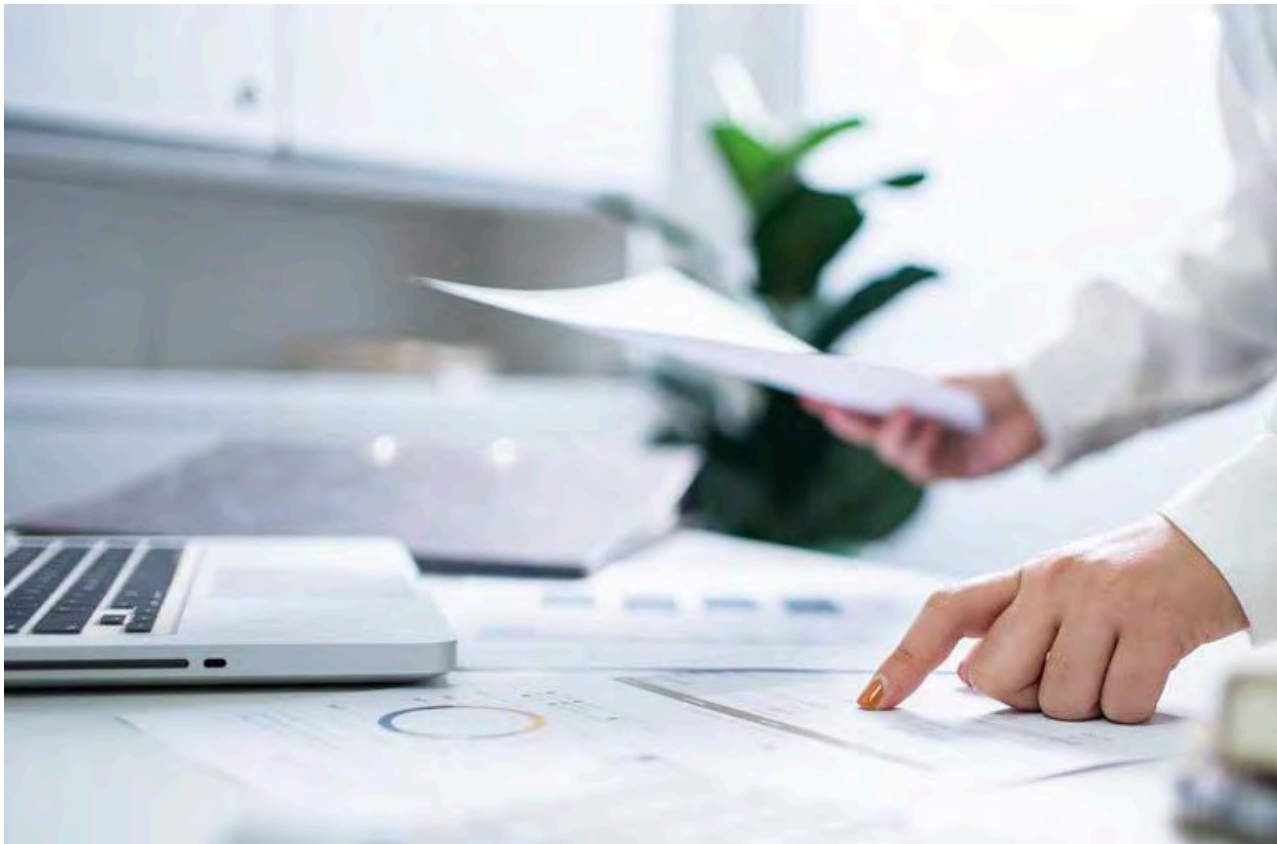
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End of Quarterly Reporting Would Pose New Challenges for U.S. Public Companies

“The challenge is that our whole system is centered around quarterly reporting,” said Rakesh Gopalan, a partner at Troutman Pepper Locke. “I think in the short term there’s going to be a lot of additional costs in terms of redoing these policies.”

October 15, 2025 at 01:52 PM By **Brendan Pierson**



Credit: Charlie's/Adobe Stock

President Donald Trump and Securities and Exchange Commission Chairman Paul Atkins last month both renewed calls to move from quarterly to semiannual reporting for public companies, a change that lawyers say could come with significant challenges, at least in the short term.

Proponents of the change, which may require action from Congress, say it would save companies the cost of preparing frequent reports and encourage more long-term thinking by companies. They also note that it would harmonize U.S. practice with other jurisdictions, including the European Union and the United Kingdom, which already use a semiannual system.

The United States has required quarterly reports since 1970. Critics of the proposed change say it could hurt markets' functioning by lessening transparency and opening up possibilities for misconduct.

"The challenge is that our whole system is centered around quarterly reporting," said Rakesh Gopalan, a partner at Troutman Pepper Locke. "I think in the short term there's going to be a lot of additional costs in terms of redoing these policies."

Most immediately, companies would face logistical challenges in shifting to the new regime. Gopalan said that the most basic thing corporate counsel would need to do if the change happens is to redo the entire corporate calendar, including board meetings, committee meetings and meetings with auditors.

Then, they would need to address the problem of insider trading.

"There's going to be a longer period of silence between reporting, when companies know how they're doing and the market doesn't," Gopalan said.

While not required, most public companies currently impose blackout periods leading up to quarterly reports during which insiders with material non-public information cannot trade in the company's stock. In a semi-annual regime, blackout periods may need to be longer.

"Insiders would need to exercise extra caution in personal trading to avoid the appearance of trading ahead of material announcements," Fenwick attorneys said in a client note.

The longer interval between reports would also mean "more time for things to leak, more time for well-heeled institutions like hedge funds to ferret out information," said Ann Lipton, a professor at Colorado Law who focuses on corporate governance issues, adding to the insider trading risk.

A shift to semiannual reporting could also make it more complicated for companies to raise capital, either from public or private markets. Securities law requires companies to disclose material information to prospective investors, and in the absence of mandatory quarterly reports, they will need to make more decisions about what they need to disclose, Gopalan said.

One way for a company to access liquidity in between reports would be to use pre-planned trades, which would be executed automatically regardless of whatever non-public information the company or its insiders have, the Fenwick attorneys said.

Another strategy would be to make more frequent voluntary disclosures, although this comes with its own risks, Gopalan said, as those disclosures would not necessarily be subject to the same level of review that SEC reports are.

Lipton said it would nonetheless be an attractive option for companies, which “may find that they lower the cost of capital if they commit to some way to disclose quarterly earnings.” Those disclosures would not necessarily need to be as thorough as the quarterly disclosures currently required by the SEC, she said.

Finally, a change to semiannual reporting could have unpredictable effects on the kinds of shareholder lawsuits that are often filed when stocks drop after unfavorable disclosures.

“To some extent, it might lower them because if you’re saying less, there’s less to sue over,” Lipton said.

But at the same time, she added, keeping investors in the dark longer could make the market more volatile, making it hard to predict what the effect would be.

“Big surprises that weren’t telegraphed to the market can be really good fodder for lawsuits,” Lipton said.

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‘Securities and Innovation Commission’: Atkins Pledges to Embrace Financial Tech

“Our real project to focus on is to embed the idea of innovation around the agency to accommodate new products that as they come forward,” Securities and Exchange Commission Chair Paul Atkins said.

October 15, 2025 at 05:16 PM By  **Dan Novak**



Paul Atkins, Chair of the U.S. Securities and Exchange Commission. Photo: Diego M. Radzinski/ALM

The U.S. Securities and Exchange Commission should prioritize enabling and embracing financial technology innovation, SEC Chair Paul Atkins said Wednesday, adding that tackling digital assets is “job one.”

“Our real project to focus on is to embed the idea of innovation around the agency to accommodate new products as they come forward,” Atkins said at the 2025 DC Fintech Week conference of the financial technology industry in Washington. “I like to say that we’re the Securities and Innovation Commission now.”

Atkins called for the commission to create a formal “innovation exemption” to give cryptocurrency and other fintech companies the freedom to invent even if the inventions do not neatly fit within existing SEC rules and regulations. Crypto product developers should be motivated to return to the United States after the commission's earlier regulation-by-enforcement approach to cryptocurrency markets pushed them overseas, Atkins said.

“We have to be basically embracing new ideas,” he added. “And if the idea is no good, then the marketplace will soon tell the developers of that.”

Atkins called distributed ledger technology—which allows users to conduct digital transactions without a centralized authority—the “most exciting part about all of crypto.” The technology makes financial markets faster, safer and more transparent, reducing risk and errors, improving compliance and expanding access through tokenization, he said.

“I think it would solve potential problems,” Atkins added. “We haven't even thought about all the ways that it could morph in over time.”

The SEC must also encourage more companies to go public by reducing exemption requirements for initial public offerings, Atkins said. The commission has recently moved to allowing an IPO even if the company has a bylaw that requires mandatory arbitration and had made it easier for companies to go public during the federal government shutdown.

“We're going to be working on lessening the regulatory burden but making it smart regulation,” he said. “We're not talking about throwing the rule book out, but there's so much information.”

Atkins said the SEC is working on loosening the accredited investor standard, which would expand retail investors’ access to growing private markets.

“I think most portfolio managers and investment advisers would say you should have some exposure to the private markets,” he said. “But let's just say that we have to have guardrails around it. We can't just throw open the gates and have Wall Street dump some of their trash down that particular lane.”

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Securities

Paxos Mistakenly Issues \$300 Trillion of PayPal Stablecoin (1)

Oct. 15, 2025, 2:42 PM PDT

Stablecoin issuer Paxos said it mistakenly minted \$300 trillion of PayPal Holdings Inc.'s PYUSD stablecoin Wednesday before burning the tokens minutes later.

The transactions were visible on Etherscan, the popular block explorer and analytics platform for the Ethereum blockchain that allows users to search and view all data on the network. A representative for Paxos pointed to the company's tweet on X about the incident. Representatives for PayPal didn't immediately return a request for comment.

Plenty of so-called fat-finger errors have happened in crypto before. Many of them, such as when someone sends cryptocurrency like Bitcoin to someone else, are irreversible. But stablecoin issuers have more control over transactions, and even have been able to help law enforcement return stolen funds in the past.

The amount of the erroneous transaction on Wednesday dwarfs the size of conventional currency market, as well as all of crypto. There are about \$2.4 trillion in US dollars in circulation. The world's biggest stablecoin, Tether's USDT, has a \$180.6 billion market value, and the entire crypto market is valued at about \$3.8 trillion.

On Wall Street, such a misfire would spark panic, a regulatory circuit-breaker, and a Congressional hearing. In crypto, it simply happened on-chain, was noticed by data sleuths, and quietly reversed within minutes. No funds were moved. No users harmed. Still, the incident offers a rare window into the quiet powers of stablecoin issuers: in effect, programmable central banks that can create or delete billions in synthetic dollars at will.

Blockchain is often lauded for its transparency, but in moments like these it also looks like a Wild West — instant visibility and real-time danger. What prevents disaster isn't human discretion but code-based constraints or vigilant observers. That makes "fat-finger" errors a recurring subplot in crypto, with stakes ranging from reputational damage to regulatory scrutiny.

This isn't the first such slip. In 2019, for example, stablecoin giant Tether mistakenly minted — and quickly burned — \$5 billion in USDT. In crypto, misrouted transactions have cost users millions, often permanently. But stablecoins like PYUSD exist in a hybrid zone: blockchain-native yet issuer-controlled, regulated yet still governed by software. They are programmable liabilities — money that can vanish with a few lines of code, or proliferate anew.

PayPal has framed PYUSD as an experiment in dollar-backed innovation, offering the speed of crypto with the trust of a public company. Yet the incident reminds investors and regulators alike: trust in stablecoins depends not just on reserves, but on operational discipline and code that doesn't misfire. Especially when that code can, however briefly, create more money than exists on earth.

(Adds context, beginning in the fifth paragraph.)

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Securities

Manage Newsletters

Crypto Treasury Deals Dogged by Unusual Trading Patterns (1)

Oct. 16, 2025, 6:00 AM PDT

Summary by Bloomberg AI AI Generated



- Applied DNA Sciences Inc. shares soared as much as 52% on Sept. 26, before the company announced a \$58 million equity deal to accumulate BNB, a cryptocurrency with close ties to Binance Holdings Ltd.
- The US Securities and Exchange Commission is scrutinizing hundreds of deals involving digital-asset treasury companies, after expert analysts detected significant share price moves preceding the launches of dozens of these firms.
- The crypto treasury model must evolve to survive, with managers trying to distinguish themselves through strategies such as lending, staking and trading derivatives, and focusing on fundamentals rather than short-term gains.

On Friday, Sept. 26, Applied DNA Sciences Inc. shares abruptly soared as much as 52%.

For most people, the reason wouldn't become clear until a few days later, when the biotech firm [announced](#) a \$58 million equity deal to start accumulating BNB, a cryptocurrency with close ties to exchange giant Binance Holdings Ltd. Former Trump official **Anthony Scaramucci** was named as an adviser. The shares climbed another 72%, before plummeting to a little above where they had originally traded, according to data compiled by Bloomberg.

The hedge fund executives behind the deal had spent months searching for a takeover target, negotiating with Applied DNA's management team, wading through legal documents and wrangling investors with the help of Lucid Capital Markets. By Sept. 26, after almost 100 meetings, they began "wall crossing" backers – a legal agreement that temporarily bars trading in the stock, Patrick Horsman, chief investment officer of Applied DNA, said in an interview.

To their surprise, the shares started moving immediately.

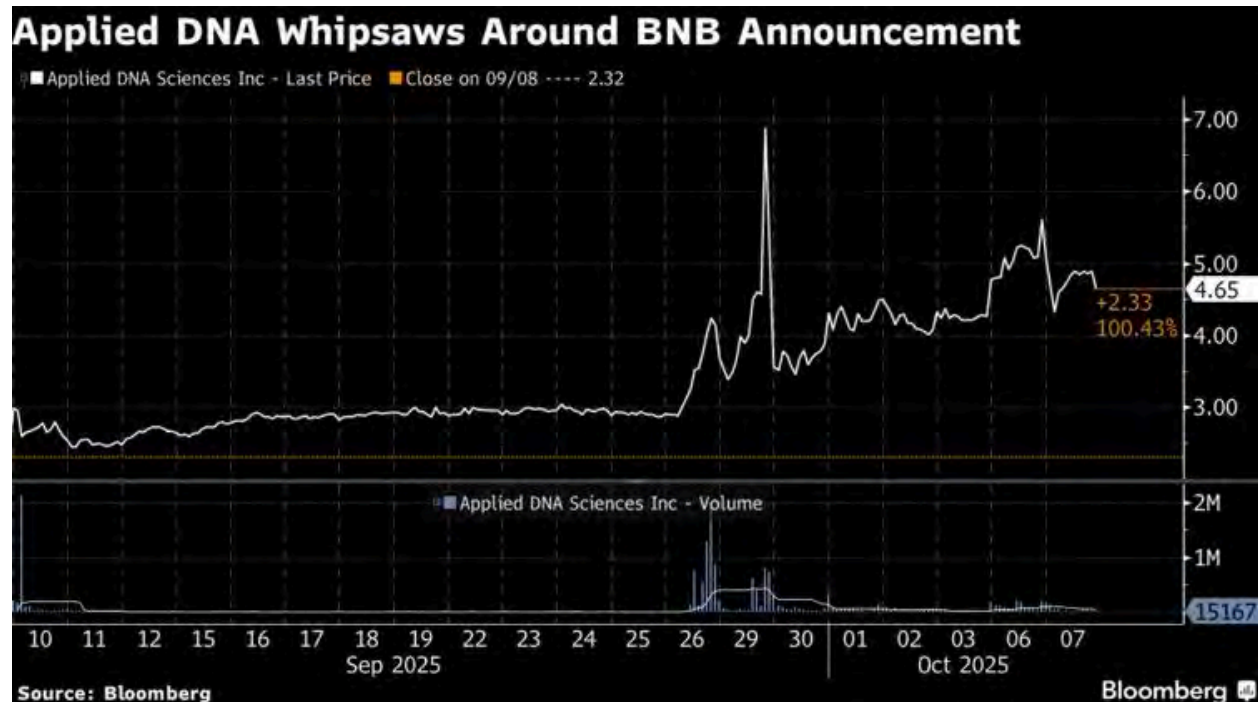
"As you get close to doing the deal, and as you expose the name of the public company to more and more people, it just becomes a bigger risk and harder to contain," Horsman said.

He stressed that there was a rigorous process in place to protect confidential information, and that he and his team don't know how the information leaked. Applied DNA's shares closed at \$3.81 on Wednesday, well above where they started before the whole episode but also well below the peak they hit in September.

Applied DNA is just the tip of the iceberg. Expert analysts have detected significant share price moves preceding the launches of dozens of digital-asset treasury firms. Such is the scale of the problem that the US Securities and Exchange Commission – decidedly friendlier toward crypto under President Donald Trump – is scrutinizing hundreds of deals involving digital-asset treasury companies, or DATs, the Wall Street Journal [reported](#) previously.

Shares of token hoarders including KindlyMD Inc., Brera Holdings and SharpLink Gaming all popped prior to those companies making their plans public, according to data compiled by Bloomberg. An Architect Partners analysis of 35 DATs showed that from five days to one day prior to crypto-related announcements, 20 stocks registered gains, with a median move of 10% for those going upward. Among them, SharpLink and SUI Group Holdings stood out: they rose 79% and 219%, respectively, on the trading days before their announcements.

Spokespeople for SharpLink, Brera and SUI Group declined to comment. KindlyMD didn't respond to requests for comment. Horsman said the Sept. 26 spike had no material impact on pricing, as it relied on the five-day average closing price.

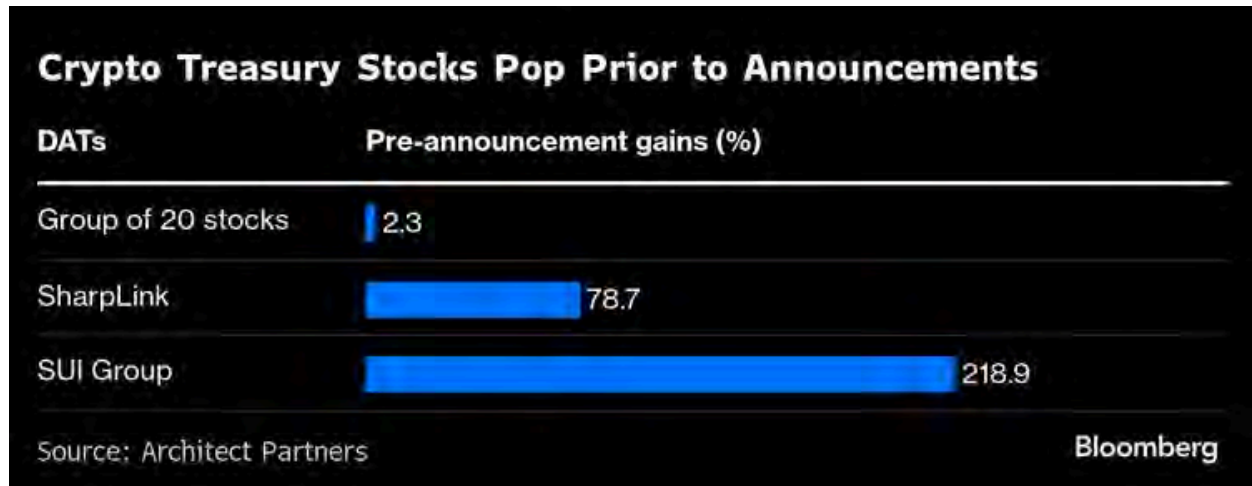


Such episodes are contributing to gathering headwinds for DATs. Far from making a quick buck, their backers tend to be locked into deals for weeks if not months, excluding them from early share price gyrations that have instead become the preserve of day traders and algorithmic investors.

Meanwhile, insiders are in some cases buying both the token and stock associated with an impending treasury launch "and then dumping upon announcement," said Akshat Vaidya, who has overseen investments in several DATs as head of BitMEX co-founder **Arthur Hayes's** family office Maelstrom. Vaidya based his assessment on publicly available data, he added, without naming specific companies.

Conversely, shares bought by investors through private investment in public equity, known as PIPE deals, must be registered before they can be sold. That process has itself spooked traders. **Joe Lubin**, chairman of Ether-buyer SharpLink, sought to assuage investor concerns when the company's shares fell after a filing in June – emphasizing that it was "standard post-PIPE procedure" and not an indication of sales. The stock has nonetheless failed to recover.

Henry Elder, CEO of Satsuma Technology, who invested in DAT deals previously, said some companies may have tried to delay registrations recently to stave off their initial investors' ability to sell their shares. "When you start playing games with your investors' lockup, then you lose market confidence and the entire thing falls apart," he said.



Arguably the hottest trade in crypto this year, DATs have so far amassed some \$140 billion in Bitcoin alone. That helped to drive the original digital asset to record highs before a [widespread selloff](#) triggered last week by US-China trade friction. DAT Bitcoin purchases have also slowed significantly since early summer, coinciding with sagging stock prices.

Read more: [Crypto's Big Anchor Buckles as Corporate Buying Plunges 76%](#)

Some of the more eye-catching gains also appear to be under scrutiny. In late-September, the SEC suspended trading in QMMM Holdings after its shares surged almost 1,000% in less than three weeks, warning that the digital advertising firm's stock may have been manipulated by touts on social media. A representative for QMMM didn't respond to a request for comment.

Under pressure, the crypto treasury model must evolve if it is to survive, **Charles Hoskinson**, co-founder of the Cardano blockchain, said in an interview at a recent conference in Singapore. "They have to go from a trade to an investment," he said. "They have to convert these into blockchain development companies."

At the outset, DATs were little more than listed proxies for a given cryptocurrency, offering investors exposure to the digital-assets boom via a tried-and-tested package. More recently, the managers of these vehicles are trying to [distinguish](#) themselves based on their proficiency at putting balance sheets to work through strategies including lending, staking and trading derivatives.



Anthony Scaramucci, founder and managing partner of SkyBridge Capital II LLC, at the World Economic Forum (WEF) in Davos, Switzerland, on Tuesday, Jan. 21, 2025. The annual Davos gathering of political leaders, top executives and celebrities runs from January 20 to 24.

Photographer: Stefan Wermuth/Bloomberg

Take the example of Applied DNA, whose ticker is now BNBX. Scaramucci, founder of investment firm SkyBridge Capital who did a brief stint in the White House during the first Trump administration, sees it as an "accretive long-term story," he said in an interview. "I like the bloom being off the rose of these DATs, because I think now the focus won't be on the foam and froth, but more on the fundamentals."

Scaramucci was given warrants in Applied DNA as part of the deal, and the DAT has agreed to sponsor his SALT conferences, according to Horsman.

The unusual trading patterns are "a big issue," Scaramucci said. "But the only thing that can solve this is time and good fundamentals."

(Updates with current Applied DNA share price in sixth paragraph.)

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Jafa: 'I was battle tested — I was ed to almost nothing'	Great artists are inspired by history — that's why they also make brilliant...	Cai Guo-Qiang: Why painting with gunpowder is like lovemaking
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Cryptocurrencies

Gaps in crypto rules can be exploited, warns Financial Stability Board

Lack of guardrails could result in ‘cascading failures’, says global watchdog



The FSB warned that many countries still lacked sufficient supervision and enforcement resources for the crypto market © Reuters

Martin Arnold in Washington

Published 10 HOURS AGO



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Financial regulators are leaving too many gaps and inconsistencies when creating rules for the fast-growing cryptocurrency market, the world’s financial stability watchdog has warned.

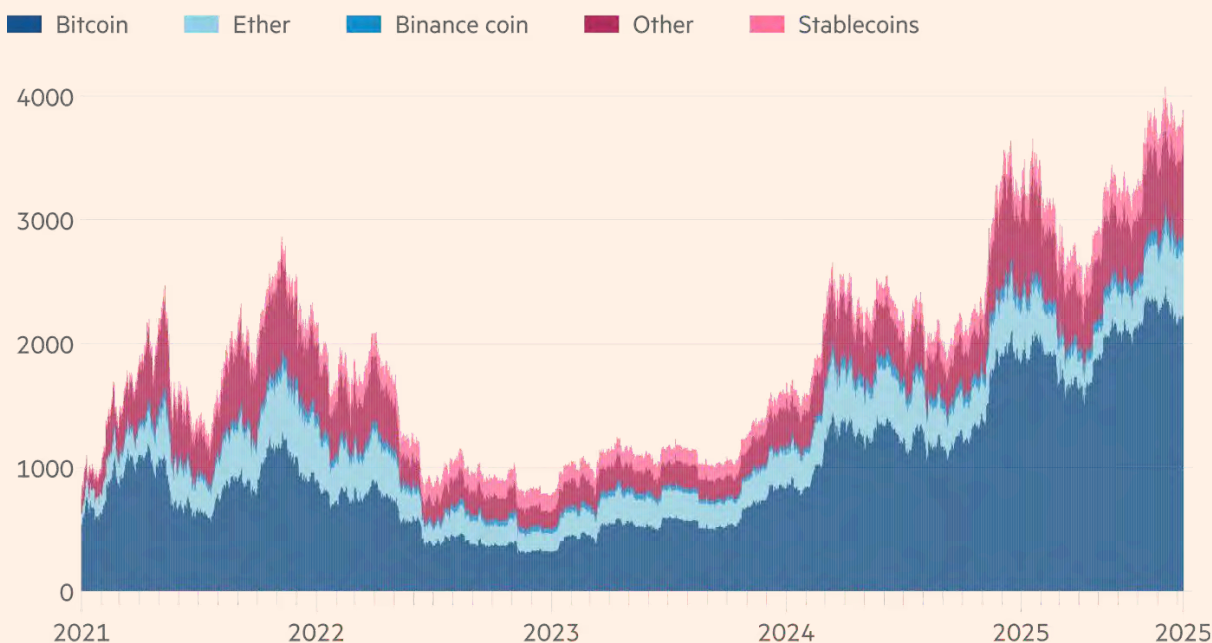
Crypto asset providers and stablecoin issuers could take advantage of the uneven regulations by shopping around for the most compliant jurisdiction, the Financial Stability Board said in a landmark report published on Thursday.

“Different rules could lead to . . . dynamics which could exacerbate shocks,” John Schindler, secretary-general of the FSB, told the Financial Times in an interview. “These are things we wanted to avoid and now we are seeing them appear.”

The FSB’s warning came as the growing [divergence](#) on crypto regulation dominated many discussions between the world’s financial watchdogs as they met for the IMF and World Bank annual meetings in Washington this week.

Growth of crypto reflects permissive environment, report says

Daily crypto asset market value, \$bn



Sources: CCData, FSB calculations

The US has switched to a [crypto-friendly approach](#) since Donald Trump entered the White House this year, but that contrasts with the more sceptical approach of many European countries. China has banned most crypto activities, while other countries such as Mexico and India are yet to regulate the market.

Andrew Bailey, the Bank of England governor who also chairs the FSB, told an event in Washington that some countries were taking a “let a thousand flowers bloom” approach to encouraging crypto markets to develop. But he added there would soon have to be “some coming together” to agree on a more harmonised approach.

The FSB said its assessment of [crypto](#) regulations in nearly 40 jurisdictions had identified “significant gaps and inconsistencies that could pose risks to financial stability and to the development of a resilient digital asset ecosystem”.

Schindler said he was particularly concerned about the lack of regulation in many jurisdictions on the use of leverage in crypto markets, such as allowing users to borrow against their exposures or to use debt to magnify their trading positions.

The FSB said Bermuda and the Bahamas were the only two countries to comprehensively regulate crypto borrowing and lending activities, requiring providers of such services to manage counterparty risks and to maintain capital and liquidity buffers to absorb losses.

It warned that, without such guardrails, leverage in crypto markets could lead to “margin calls and cascading failures during market stress”.

The FSB also warned that many countries still lacked sufficient supervision and enforcement resources for the crypto market, “with many jurisdictions yet to implement the tools necessary for ensuring compliance and oversight”.

It found that interlinkages between crypto markets and traditional [banks](#) were growing but remained small. Big banks held less than \$25bn of crypto assets as custodians for investors and had less than \$5bn of direct crypto exposure by the second quarter of 2024, it said.

Schindler said regulators had made “a lot of progress” in setting rules for the fast-moving market in the past two years since the FSB published its global regulatory framework for crypto activities in 2023.

But he said authorities still needed to collect more information from crypto companies. “The amount of data we have on this sector is still significantly lagging [in areas] where we would need to do a comprehensive financial stability assessment,” he said.

He also warned that the lack of co-operation between global regulators left them vulnerable to “regulatory arbitrage” by highly mobile crypto companies seeking out the country with the most accommodating rules.

“Jurisdictions are saying they need to get their framework in place before they can co-ordinate or co-operate,” he said. “But unfortunately this is already live, moving around and jumping borders.”

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The Little-Known Crypto Powerhouse Behind Billions in Trading

Oct. 16, 2025, 5:01 AM PDT

Summary by Bloomberg AI

AI Generated



- Hyperliquid, a decentralized exchange, has drawn heavyweight investors and billions in trading volume in just two years, with monthly industry volumes above \$6 trillion.
- The platform's success has raised questions about how decentralized it is, with a small circle of insiders and a lack of formal regulatory oversight, despite its popularity among supporters such as Paradigm and Pantera Capital.
- Hyperliquid's model, which includes an automated trading pool and token buybacks, has been flagged as potentially problematic by some crypto experts, who warn of conflicts of interest and the concentration of power among its validators.

In just two years, a little-known decentralized exchange built by a small group of engineers has drawn heavyweight investors and billions in trading volume.

Known as Hyperliquid, it's a booming platform for [perpetual futures](#) – never-expiring contracts that dominate crypto speculation, with monthly industry volumes above \$6 trillion. Though far smaller than Binance, the market leader, Hyperliquid has already surpassed Coinbase Global Inc. in some areas and carved out an edge among decentralized exchanges.

That rise has made it an obsession across crypto's Wild West. While supporters hail its speed and transparency, its very success has made it a focal point in events like last week's unprecedented [route](#), when traders on its platform bore \$10 billion of fast losses.

For all its popularity, Hyperliquid is still anchored by a small circle of insiders, raising questions about how decentralized it is. For supporters such as Paradigm and Pantera Capital, it is both a wager on digital finance's future and a reminder that much of the industry still operates beyond a formal regulatory regime.

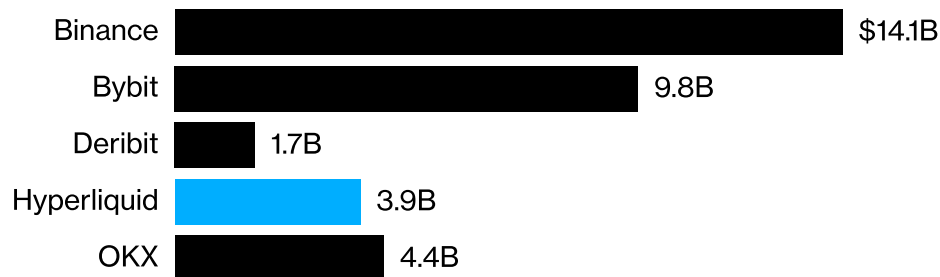
That embrace was on display in a Manhattan ballroom earlier this year. At a Coinbase summit, where executives from BlackRock and Coatue joined crypto insiders to map the sector's next chapter, Jump Trading president **Dave Olsen** singled out Hyperliquid as "the first meaningful competitor" to Binance. A gathering meant to showcase crypto's ties with mainstream finance instead showed how quickly a lightly governed upstart had forced its way in.

Which raises the obvious question: what exactly is Hyperliquid – and how has it managed to capture market share, with the likes of **Eric Rosengren**, the former Boston Fed president, joining the board of a Nasdaq-listed fund tied to its ecosystem?

Hyperliquid Is The New Kid in Town

Hyperliquid's rise to a top exchange for Bitcoin perps

■ Bitcoin Perpetual Swap Open Interest



Source: Velo Data

Bloomberg

At its core, it's a bare-bones trading platform run by a roughly 15-person team at Hyperliquid Labs, based in Singapore. The site's front end blocks US users as per industry practice, but anyone can trade on the blockchain that powers it. The absence of identity checks is central to its appeal, echoing an earlier pattern: fast-growing exchanges under similar models often drew swift regulatory scrutiny.

"The highest growth rates are in the newest and or the least established markets because most existing market participants don't understand why they exist," said **Tarun Chitra**, founder of crypto risk modeling firm Gauntlet.

Hyperliquid was co-founded by Jeff Yan and the pseudonymous "iliensinc." Yan, a former Hudson River Trading trader, ran a crypto trading desk called Chameleon Trading before he went to build a system for raw speed, largely outside traditional oversight.

Read: Hyperliquid Grows Into a Major Player in Crypto Derivatives

But speed alone doesn't guarantee survival. The real test is liquidity. Platforms like dYdX and GMX struggled, relying on token incentives to lure market makers, a fragile model when rewards ran dry. Hyperliquid's answer is its Hyperliquidity Provider, or HLP: an active automated trading pool where user deposits serve as the house bankroll. With more than \$500 million now in the system, its algorithms continuously post buy and sell quotes, ensuring someone is always on the other side of a trade.

"Market makers won't come if there are no users and users won't come if there's no liquidity," said Felix Buchert, an algorithmic trader at market maker Wintermute. "So you have this chicken and egg problem and what Hyperliquid did well was to introduce this HLP vault which basically would quote any sort of market."

Some crypto experts have flagged a potential conflict of interest: the protocol's HLP can act as the counterparty in some trades. "When you run an exchange, you should set the rules, you should be the referees. But you should not be playing on the field," said Vishal Gupta, a former Coinbase executive. That's because "no one can be sure you are applying your rules fairly," he said.

Proponents say that unlike trading systems that have featured in exchange misadventures of the past, every HLP trade is logged on-chain in real time, creating an auditable trail, one of several ways the project says it differs from older venues. HLP's share of total volume also has declined as the platform matures and bigger external market makers join. Even so, the HLP's code has not undergone a publicly confirmed third-party audit, unlike many of its competitors.

"Unlike centralized crypto exchanges, transparency is literally by design with Hyperliquid," said a spokesperson for Hyperliquid Labs. "Every trade, liquidation, and validator action is verifiable in real time, and Hyperliquid never takes custody of user funds."

Hyperliquid's HLP drew attention in the weekend's selloff. According to public data, the vault posted gains of around \$40 million as the platform's largest traders incurred losses. The crash also triggered Hyperliquid's auto-deleveraging (ADL) mechanism, which is standard among crypto exchanges: when buffers are exhausted, the system cuts into winning positions to absorb distressed flow. Some analysts, such as Gauntlet's Chitra, [argue](#) Hyperliquid's ADL rules are unusually textbook aggressive – a factor that may have boosted HLP's profits.

Read:

[Crypto's Record Selloff Sparks Intrigue Over Who Got Wiped Out](#)

Following last week's crash, Yan wrote on X that the HLP remains a "non-toxic liquidator that does not pick profitable liquidations." He also said Hyperliquid only appeared to have outsized liquidations because its data are "fully onchain," whereas liquidations on centralized exchanges are often "undereported."

If the HLP is the engine, validators are the control room. Hyperliquid has around 24, compared with Ethereum's network of over a million. Critics say it concentrates power. The Hyper Foundation controls nearly two thirds of all staked HYPE – its native token – giving it significant influence over validator decisions and governance, though in a few recent decisions its nodes have abstained to defer to community consensus.

"If you have more than two thirds of the stake, you can basically do whatever you want on the chain," said Kam Benbrik, head of research at Chorus One, a blockchain validator firm.

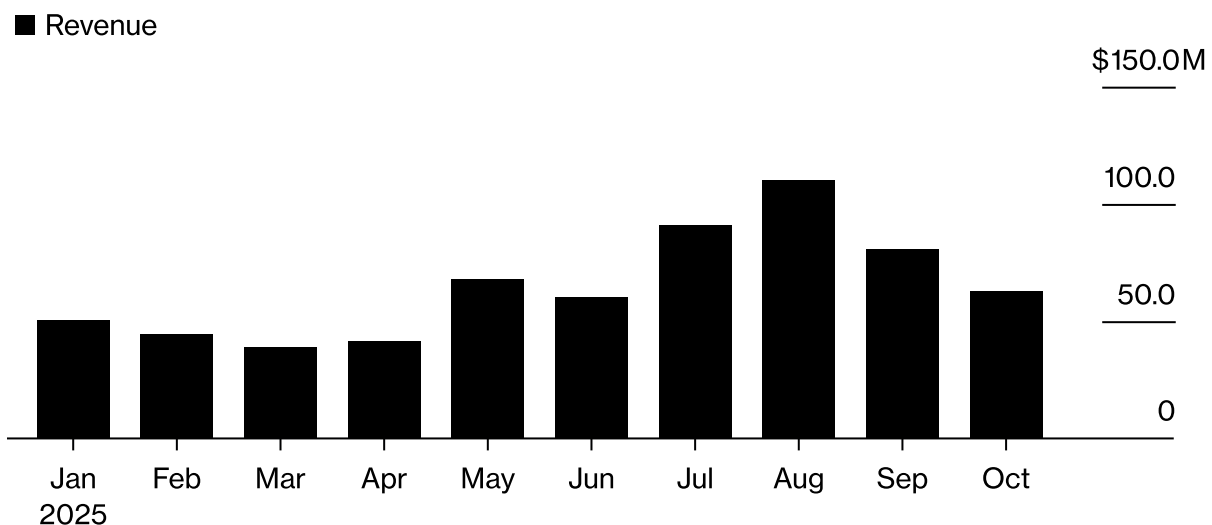
That tension became clear in the so-called JELLY incident, when a big bet on an illiquid token threatened HLP's solvency. Validators voted to liquidate the transaction, and the Foundation reimbursed affected users from its own budget. In that moment, Hyperliquid resembled a market operator staging an intervention, just like an old-school exchange rolling back trades. Yan at the time said that the JELLY incident was an "exceptional situation" that required immediate action by the then-16 validators to protect its users.

Hyperliquid's financial structure adds another layer of risk and reward. It directs most trading fees into buying back HYPE, creating a flywheel where trades can feed its price.

The Assistance Fund, which conducts the HYPE buybacks using platform fees, has amassed more than \$1.4 billion. Supporters hail it as a driver of growth; critics warn that buybacks often boost prices only in the short term.

Hyperliquid Emerges as Crypto's Money-Making Machine

Hyperliquid has generated tens of millions of dollars monthly



Source: Allium, Hyperliquid

Bloomberg

Token buybacks are “highly reflexive,” depending on rising volumes to sustain themselves, and viable only if Hyperliquid keeps gaining ground on larger rivals, said Santiago Roel Santos, a long-time crypto investor.

For an outfit that wears innovation like a badge, the model is a decidedly old-fashioned one by crypto standards: exchanges encouraging user engagement and liquidity with tokens closely tied to the platform’s growth. While Hyperliquid’s approach is transparent and on-chain, previous platforms ran into trouble when demand for their technology turned out to be little more than greed for a rewards protocol that proved precarious.

Still, interest is flourishing. Paradigm backed an \$888 million Nasdaq-listed fund to hold HYPE, giving traditional investors exposure without trading on the platform itself. Its board includes Rosengren. Today, more than 100 projects are building on top of Hyperliquid, according to tracker DefiLlama – giving it an ecosystem comparable to BNB Chain or Solana.

“In a way it’s like Coinbase in that it’s an exchange, and like Ethereum in that it’s a Layer-1 blockchain, all in one system,” said **David Schamis**, co-founder of Atlas Merchant Capital, who will serve as CEO of that vehicle. He added that it is already generating a “run-rate free cash flow of well over \$1 billion with less than 15 full-time employees.”

The next chapter is even more radical. An upgrade that took place on Hyperliquid this week will let well-heeled users spin up a perpetual futures market in minutes, with no listing committee.

To launch one, creators must stake millions of dollars’ worth of HYPE as collateral. Validators can slash deposits if they detect abuse, a safeguard common in proof-of-stake blockchains. In practice, that could enable a market for a new token or one tracking volatility, and more. In effect, Hyperliquid isn’t just opening markets to traders; it’s letting them build the markets themselves.

In May, Hyperliquid Labs said in comments to the US Commodity Futures Trading Commission that its perpetuals already meet, and in some respects surpass, the safeguards US regulators say they want in traditional markets. It was an ambitious claim that a borderless, code-driven exchange could meet the standards of mainstream finance.

Hyperliquid’s success is “exposing some of the gaps in the regulatory framework to have US participation,” Jump’s Olsen said at the Coinbase summit, sitting alongside **Caroline Pham**, CFTC’s acting chair. “But that story got legs.”

For now, Washington’s friendlier stance is helping give Hyperliquid room to grow. The question is how long it can remain off its radar.

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Venture capital investment**Deel shrugs off spy scandal to boost valuation to \$17bn**

HR start-up raises \$300mn from Ribbit, Coatue and Andreessen amid espionage allegations from rival Rippling



Deel was valued at \$12.6bn earlier this year when General Catalyst and Mubadala bought \$300mn in shares from early investors © Rafael Henrique/SOPA/Reuters

Stephen Morris and **George Hammond** in San Francisco

Published 8 HOURS AGO



Deel has completed a \$300mn funding round that boosts its valuation to \$17bn, as the HR software start-up maintains the support of some of Silicon Valley's top venture capital firms despite an alleged spying scandal involving its bitter rival.

The new round, which closed last week, was led by new investor Ribbit Capital alongside existing backers Coatue Management and Andreessen Horowitz, Alex Bouaziz, chief executive at Deel, told the Financial Times.

“We have been profitable for three years, revenue crossed \$100mn for the first time in September and we make circa \$15mn to \$17mn in Ebitda [earnings before interest, taxes, depreciation and amortisation],” said Bouaziz. “That’s a 70 per cent growth rate, not bad.”

The company was valued at \$12.6bn earlier this year when General Catalyst and Mubadala, Abu Dhabi’s sovereign wealth fund, bought \$300mn in shares from some early investors in a secondary transaction.

Deel has been one of the fastest growing start-ups in San Francisco operating in the typically staid world of workforce management software since it was spun out of Y Combinator in 2019.

“We have been tracking Alex and team since they started the company during Covid,” said Micky Malka, founder of Ribbit. “What they are showing with their revenue is the value of their service. You don’t find many that get to that scale in five years in a super-complex business.”

However, its reputation has been hit by [allegations](#) of corporate espionage from its main competitor, Rippling, against the CEO and his father. In a series of US and Irish lawsuits, Bouaziz is accused of recruiting a Rippling employee to pass on secrets and identify potential recruits, using code words and paying him in cryptocurrency.

When confronted, the worker locked himself in a bathroom and deleted data from his phone, which he later smashed with an axe and dumped down a drain, according to his own testimony.

“I can’t comment on ongoing litigation, but it’s a frivolous lawsuit, a distraction,” said Bouaziz.

“New investors coming in and existing ones doubling down is a strong signal.”

Deel has sought to dismiss Rippling’s initial claims of directing [corporate espionage](#) and has filed a lawsuit in Delaware alleging its rival is trying to impugn Deel’s reputation.

Rippling, which offers similar services such as onboarding, payroll and corporate cards, has also attracted fresh capital this year. It [raised](#) \$450mn at a \$16.8bn valuation in May from investors including Goldman Sachs and Baillie Gifford. The pair also share a backer in Coatue.

“We do our own diligence and deep work, we never follow the noise in the news or on Twitter, or the ‘he said, she said’,” Ribbit’s Malka said of the lawsuits. “We approached them, not the other way around . . . the company has to deal with what they have to deal with, I will not comment on that, but we have our eyes wide open.”

Anish Acharya, a partner at [Andreessen](#) who is on Deel’s board, said: “We have been investors since the series A, when it was a wee minnow . . . the company has just had the best six months in its history. It is a public market company in the very near term.”

While also declining to comment on the lawsuit or Bouaziz’s conduct, Acharya added: “The people that know the business most intimately, those are the ones that are doubling down, and credible new investors are joining the cap table.”

Deel will use the money for more acquisitions — adding to the 13 it has made so far — improving its in-house payroll and banking software, as well as investing in artificial intelligence products, said Bouaziz.

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George Hammond

SEC Suit Against Adani Paused Due to Federal Government Shutdown

Patricia Hurtado in Federal Court in Manhattan at pathhurtado@bloomberg.net

Securities

Tech-Focused Bank Founded by Trump Backers Wins US Approval (1)

Oct. 15, 2025, 10:46 AM PDT

A new US bank that aims to serve emerging tech firms in sectors such as crypto and artificial intelligence has received conditional approval to operate from the Office of the Comptroller of the Currency.

Called Erebor, the Columbus, Ohio-based firm was founded this year by a group that includes **Palmer Luckey**, co-founder of military contractor Anduril Industries Inc. Also involved is Joe Lonsdale, head of venture capital firm 8VC and a co-founder of data analytics firm Palantir Technologies Inc., the Financial Times reported earlier. Luckey and Lonsdale were major contributors to Donald Trump's most recent presidential campaign.

The new venture will join a growing list of banks seeking to serve as financial linchpins for a boom in nascent industries including crypto, which struggled in the past to find banking partners that would provide them with financial services.

"Today's decision is also proof that the OCC under my leadership does not impose blanket barriers to banks that want to engage in digital asset activities," Comptroller of the Currency Jonathan Gould said in a statement Wednesday. "Permissible digital asset activities, like any other legally permissible banking activity, have a place in the federal banking system if conducted in a safe and sound manner."

Owen Rapaport, a co-founder of Erebor, declined to comment on behalf of the firm when reached by Bloomberg.

Erebor is one of several firms involved with digital assets or payments that have sought a bank or trust license from federal and state regulators in the US recently. Others include Stripe Inc.'s stablecoin platform Bridge, crypto exchange Coinbase Global Inc. and UK-based payments processing firm Checkout.com.

However, the OCC's decision about Erebor received sharp criticism almost immediately from Democratic Senator Elizabeth Warren, who said it risks setting up "another bailout funded by American taxpayers" that could "destabilize our banking system."

President Donald Trump's family has been involved in various crypto ventures including a decentralized finance platform, World Liberty Financial Inc., and crypto-mining firm American Bitcoin. His sons, Donald Trump Jr. and Eric Trump, have said their own experiences of being debanked have been part of the reason why they are getting involved in crypto, which goes beyond the traditional banking system.

A number of crypto-friendly banks have seen multi-billion dollar windfalls amid the historic bull run in digital assets since Trump won the election and encouraged regulations and legislations that are supportive of the industry. Cantor Fitzgerald, recently led by the US commerce secretary Howard Lutnick, has seen soaring revenue in part driven by a surge in crypto-related transactions such as security issuances and initial public offerings.

(Updates with details of other firms that have applied for licenses recently and Warren comments in sixth and seventh paragraphs.)

--With assistance from **Todd Gillespie**.

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6th Circ. FirstEnergy Ruling Protects Key Legal Privileges

By **Andrew Goldstein and Matthew Kutcher** (October 15, 2025, 5:19 PM EDT)

In a closely watched case, the U.S. Court of Appeals for the Sixth Circuit recently held that the attorney-client privilege and the work-product doctrine protect materials created during internal investigations.

On Oct. 3, in *In re: First Energy Corp.*, the Sixth Circuit **granted** a mandamus petition and vacated an order from the U.S. District Court for the Southern District of Ohio compelling the production of documents generated by outside counsel during internal investigations.[1]

The court found it appropriate to grant the "'extraordinary' [mandamus relief] [b]ecause 'predictable and certain' privilege and work-product standards are essential" for litigants.

The opinion followed an earlier Sixth Circuit decision in August **granting** a stay of the district court's production order. In that prior decision, the Sixth Circuit remarked on the "strong public interest in preserving the attorney-client privilege and work-product doctrine," as evidenced "by the numerous amici" that filed briefs supporting the company, including a **consortium** of 39 law firms.

Background

This case arose from a high-profile scandal involving FirstEnergy and former Ohio House Speaker Larry Householder, who was **convicted** of bribery charges and **sentenced** to 20 years in prison. Early in the investigation, in response to a U.S. Department of Justice grand jury subpoena, FirstEnergy and its board hired two outside law firms, Squire Patton Boggs LLP and Jones Day, to conduct internal investigations.

Following the DOJ investigation, several other state and federal regulators launched investigations relating to the bribery allegations, and FirstEnergy shareholders **filed** a securities class action, *In re: FirstEnergy Corp. Securities Litigation*.[2] During discovery in the class action, the plaintiffs moved to compel FirstEnergy to produce all materials related to the internal investigations, claiming that those materials were not entitled to attorney-client privilege or work-product protection because they were meant to serve business purposes.

The district court — affirming a special master's **conclusions** — granted the plaintiffs' motion to compel. According to the district court, "an internal investigation's predominant purpose must be legal for the attorney-client privilege to apply." The district court held that "pointing to impending lawsuits does not establish that individual communications and documents are privileged because within those materials, attorneys could be acting as business or human resources advisors and not as legal advisors."

As to the work-product doctrine, the district court held that "FirstEnergy had not shown the internal investigation was conducted because of litigation, and not because of employment decisions and business concerns," such as satisfying its auditor and evaluating which executives should be terminated.



Andrew Goldstein



Matthew Kutcher

As a result, the district court held that neither the attorney-client privilege nor the work-product doctrine applied.

FirstEnergy filed a mandamus petition before the Sixth Circuit seeking to overturn the district court's decision, and also moved to stay the discovery order pending resolution of the mandamus petition. FirstEnergy emphasized that "[w]ithout predictability in the application of both the attorney-client privilege and the work-product doctrine, businesses in this Circuit will be 'less likely to disclose facts to their attorneys and seek legal advice,' and thus less able to evaluate misconduct allegations and respond appropriately."

With respect to the attorney-client privilege, FirstEnergy argued that the district court applied the wrong test by focusing on the "motivations behind conducting an internal investigation." FirstEnergy further argued that the district court's ruling would "eviscerate the attorney-client privilege in the business setting," given that "[c]ompanies frequently seek legal advice for a business 'motive,' whether an IPO, merger, or terminating an executive."

As to the work-product doctrine, FirstEnergy argued that the district court erred by focusing on the company's "eventual business uses of the investigations," rather than "why those investigations were originally commenced — in response to government investigations and private litigation."

FirstEnergy argued that the district court's "reasoning would preclude application of work-product protection in most corporate investigations," because companies often use the information obtained through an internal investigation "to address the business implications."

Sixth Circuit Grant of Mandamus Petition

In a significant victory for FirstEnergy, the Sixth Circuit granted the company's mandamus petition. The decision is highly relevant for companies concerned about the disclosure of privileged materials.

The Sixth Circuit held that FirstEnergy demonstrated that the internal investigation materials are privileged under the framework set forth by the U.S. Supreme Court in its 1981 decision in *Upjohn Co. v. U.S.*

The court found that the requested communications, which included attorneys' "analyses about what acts occurred, whether those acts were illegal, and what criminal and civil consequences might ensue[,] all involved requested legal advice." The court rejected the plaintiffs' argument that the internal investigations merely conveyed facts gathered from other sources, reasoning that the law firms provided "legal analyses[] and assessments of potential criminal and civil liability" based on those facts.

The court also rejected the plaintiffs' argument that FirstEnergy waived privilege by sharing its internal investigation with its auditor, finding that FirstEnergy did not share any privileged information, and that it could still claim work-product protection even if it had.

Similarly, the court rejected the district court's focus on the motivations behind the communications, holding that what "matters under the attorney-client privilege is whether a company seeks legal advice, ... not what it later does with that advice." The fact that FirstEnergy later used the legal advice it received to make business decisions did not "transform[] the communications and legal work into something other than legal advice." As the court pointed out in its prior stay order, "a corporation could hardly justify expending resources on legal advice that wasn't business-related."

The Sixth Circuit also held that the internal investigation materials were protected by the work-product doctrine. The court stated that work-product protection turns on whether documents were created "'because of' a party's 'reasonable' anticipation of litigation, as opposed to its ordinary business purposes." The court held that FirstEnergy's internal investigation materials met this standard in light of the government investigations and civil litigation coming out of the bribery allegations.

The Sixth Circuit rejected the district court's conclusion that "employment decision and business concerns" — rather than the anticipation of litigation — prompted the investigations, finding that such reasoning ignores the "onslaught of legal and regulatory action" that FirstEnergy faced.

Lastly, the Sixth Circuit explained why it granted the "drastic and extraordinary remedy" of mandamus in this case. The court found that FirstEnergy had no other alternatives — defying the district court's order would potentially subject it to a criminal contempt citation, and complying with the order would require disclosing the privileged materials, damaging the attorney-client relationship. As the court put it, "[t]here is no way to unring those disclosure bells."

Implications

The opinion confirms that the Sixth Circuit will continue to allow attorney-client privilege and work-product protections to apply to documents and communications generated during an internal investigation. That is critical for clients who are faced with potential compliance concerns and need to conduct a thorough investigation in order to stop and remediate wrongdoing.

Internal investigations play a critical role in corporate compliance and governance. Many companies need to maintain compliance programs requiring such investigations whenever issues arise. The DOJ and other regulatory agencies also offer incentives to companies for voluntarily self-disclosing wrongdoing, which may be uncovered during internal investigations. In some cases, conducting a robust internal investigation to stave off an indictment can be a matter of corporate survival.

If the Sixth Circuit upheld the district court decision, companies and their counsel would not be able to conduct appropriate investigations because, as the Sixth Circuit noted, "'full and frank communication' between companies and their attorneys" is essential to competent investigations.

Without strong attorney-client privilege and work-product protections, clients might be discouraged from disclosing potentially damaging information, precluding their counsel from providing well-informed advice. In turn, this could impede the clients' ability to remediate the wrongdoing or cooperate with government authorities.

The Sixth Circuit's opinion does provide a few caveats. For one, communications of mere facts gathered from other sources are not privileged. However, the court emphasized that this rule did not apply here because the internal "investigations involved legal advice," and outside counsel "gathered facts closely related to that legal analysis."

Secondly, the court cautioned that voluntary disclosure of privileged communications to a third party — including a company's auditor — "generally waives the attorney-client privilege as to those communications." Despite FirstEnergy's disclosure of some of the internal investigation information to its auditor, no waiver occurred here because the disclosure only involved nonprivileged information.

As such, companies and their counsel should ensure fact-gathering is closely tied to legal analysis, and they should limit any necessary auditor disclosures to nonprivileged information.

By confirming that the attorney-client privilege and work-product protections apply to internal investigation materials, the Sixth Circuit's order ultimately advances the public interest by fostering an environment in which companies and their counsel can effectively investigate and address potential wrongdoing — thereby promoting transparency, accountability and sound corporate governance.

Andrew Goldstein is a partner, and the head of the white collar defense and investigations group, at Cooley LLP. He previously served as the chief of the Public Corruption Unit in the U.S. Attorney's Office for the Southern District of New York.

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Cooley resource attorneys Samantha Kirby and Bingxin Wu contributed to this article.

Disclosure: Cooley joined the amicus brief filed by 39 law firms in *In re: First Energy Corp.*

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[1] <https://www.opn.ca6.uscourts.gov/opinions.pdf/25a0272p-06.pdf>.

[2] In re: FirstEnergy Corp. Securities Litigation, No. 2:20-cv-03785.

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3rd Circ. Clears Cannabis REIT In Investor Fraud Suit

By **Katryna Perera**

Law360 (October 15, 2025, 9:31 PM EDT) -- The Third Circuit on Wednesday affirmed the dismissal of a securities fraud class action against a cannabis-focused real estate investment trust that alleged the trust violated securities laws by ignoring red flags about a tenant, with the panel finding that investors failed to show they were intentionally misled.

A three-judge panel for the Third Circuit issued a unanimous published **opinion**, stating that the investors failed to adequately allege that most of the suit's challenged statements were false or misleading, and the one statement that was properly pled failed to give rise to a strong inference of scienter, or knowledge of wrongdoing.

"Many of the challenged statements are opinions — and although those opinions plausibly were ill-advised or wrong, such qualities do not make them fraudulent under the securities laws," the opinion, written by U.S. Circuit Judge Tamika R. Montgomery-Reeves, stated.

"Other statements simply are not false or misleading on the facts alleged. And while one statement is plausibly alleged to be false or misleading, the facts pleaded do not yield a strong inference that the statement's maker uttered it with scienter," the opinion said.

Plaintiffs Alejandro Handal and Stephen Forrester **contend** that Innovative Industrial Properties Inc. and its executives failed to adequately look into information the REIT had in its possession about its tenant Kings Garden and its founder Michael King, who was accused of embezzling millions of dollars from the REIT despite Innovative Industrial Properties publicly praising them and claiming it verified the financial information Kings Garden provided to it.

The REIT should have easily discovered Kings Garden was the defendant in two state court lawsuits, that it provided draw requests and invoices with missing signatures and that it possessed suspicious financial statements, according to investors. Additionally, the REIT also should have monitored the construction sites and confirmed work with contractors and architects, the investors said.

U.S. District Judge Evelyn Padin **tossed the suit with prejudice** last year after finding that Innovative's risk warnings only suggested it conducted sufficient due diligence into Kings Garden, not King, and that the shareholders failed to show how the REIT and its executives knew their statements about the efficacy of Innovative's due diligence were false when the statements were made.

According to Wednesday's opinion, the suit asserts five categories of allegedly false and misleading statements related to Innovative's evaluation and diligence of potential tenants and its ongoing evaluation and monitoring of existing tenants, along with statements of praise made about Kings Garden and its leaders, statements about Innovative's reimbursement arrangements and a statement about Kings Garden's failure to pay rent in July 2022.

The panel found that none of the categories were actionable except for one statement made April 14, 2022, in response to a report published by short-seller Blue Orca Capital, "criticizing" some of Innovative's tenants and arguing that the REIT's stock was overvalued. The report also claimed that one of Innovative's tenants had received "suspicious reimbursements" from the REIT, according to the opinion.

The investors' suit, filed shortly after the report, said they were harmed when the Blue Orca report was released, and the REIT's stock price took a tumble.

Innovative responded to the report the same day it was released, stating that Blue Orca did "not understand the process that [Innovative] employs for underwriting [tenants'] improvements, and that any [Innovative] reimbursements relate only to verified, qualified improvements to the buildings for these purposes, and never as funding for any type of 'loan' to be utilized for any other purpose," according to the opinion.

The Third Circuit panel found Wednesday that the April 14 statement is "plausibly false" because the complaint adequately pleads that by that date, "some Innovative reimbursements were unrelated to verified, qualified improvements."

According to the opinion, the complaint adequately pleads that by April 14, 2022, Innovative had reimbursed Kings Garden for unqualified or unverified improvements.

"Thus, the 'certainty' expressed by Innovative's [April 14] statement was incorrect, and the statement is actionable," the opinion stated.

In determining whether this statement was made with scienter, the panel said the complaint does not claim anyone at Innovative knew or suspected that the REIT was being defrauded by Kings Garden by April 14.

While reasonable investors might be "dissatisfied with the performance of Innovative's personnel on that score," a claim for scienter requires more than "negligent nonfeasance," the panel said.

According to the opinion, the investors argue it is reckless, nonetheless, for a speaker "to turn a blind eye to red flags and then speak about the relevant subject matter publicly, never mind whether the speaker knew about the underlying issues."

The panel noted that other circuit courts have held that such an "egregious refusal" to see the obvious can support a strong inference of scienter; however, it is not "strongly inferable" in the current action.

"We are prepared to believe that Innovative's decision to release a same-day response to Blue Orca's report with a blanket statement about all its reimbursements was rash. But it was not willfully ignorant," the opinion stated. "Appellants do not plead that any particular Innovative employee noticed that something was amiss with Kings Garden's draw requests and then failed to investigate."

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

U.S. Circuit Judges Michael A. Chagares, Tamika R. Montgomery-Reeves and Theodore A. McKee sat on the panel for the Third Circuit.

The investors are represented by Michael A. Cohen, Jacob A. Goldberg and Gonen Haklay of Rosen Law Firm.

Innovative Industrial Properties is represented by Andrew A. Howell and Stacy R. Obenhaus of Foley & Lardner LLP.

The case is Alejandro Handal et al. v. Innovative Industrial Properties Inc et al., case number 24-2829, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by George Woolston. Editing by Kristen Becker.



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Del. Justices Ask How Court Can Uphold Musk Pay Unwinding

By **Jeff Montgomery**

Law360 (October 15, 2025, 4:45 PM EDT) -- A Delaware Supreme Court justice on Wednesday pressed a Tesla Inc. stockholder class attorney on how founder Elon Musk — facing a Court of Chancery strike-down of his \$56 billion, multiyear compensation plan — can be "put back to the status quo ante after six years of achieving what he was asked to achieve."

Justice Karen L. Valihura put the question to Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP during arguments for reversal of Chancellor Kathaleen St. J. McCormick's finding in January 2024 that disclosure failures, murky terms, conflicted director architects and the pressure from Musk's influence warranted rescinding the pay package.

The chancellor followed up the decision with a still-pending \$345 million attorney fee award, which was also at the center of the appeal arguments Wednesday by Tesla, its directors and objectors. The fee reflected 15% of a \$15 billion reversed accounting charge resulting from Chancellor McCormick's ruling.

According to the suit and ruling under appeal, the electric car and renewable energy company's board approved a deal in which Musk allegedly "dictated the timing" of the approval process in 2018. He also purportedly changed "substantive terms immediately prior to six out of the 10 board or compensation committee meetings during which the plan was discussed," the complaint said.

Tesla stockholders nevertheless approved rechartering the company in Texas after Chancellor McCormick's decision, removing the business from Delaware General Corporation Law mandates. The company's market capitalization was reported at \$1.35 trillion Wednesday, six years after approval of a 10-year plan pegged in part on a far-lower, \$650 billion target level in the package.

"Do you have a case where the court has equitably rescinded an executive's compensation after years of work?" Justice Valihura asked. The justice added later that the stockholders sought only rescission of the pay plan, noting, "You abandoned your other remedies. If we were to determine rescission isn't appropriate here, aren't you left with nominal damages?"

Varallo argued that there was "nothing extraordinary" about Chancellor McCormick's decision.

"What makes the case truly extraordinary is that it addresses the largest pay package in human history," granted "to the richest man on Earth, and also one of the most powerful men on our planet," he said.

Christopher G. Michel of Quinn Emanuel Urquhart & Sullivan LLP, counsel to Tesla's individual directors, told the justices that Musk was not a controlling stockholder, and that the stockholders themselves approved the 2018 plan in a fully informed vote, with the economic substance of the pay package disclosed in a proxy.

Justice Gary F. Traynor told Michel that the case pretrial stipulation made clear that the suit sought rescission of the stock award, "and there was no pushback that I saw from the defendants."

"Rescission is only legally available when it restores all parties to their position before the transaction," Michel said. "This doesn't restore any of the parties. Mr Musk cannot reclaim the years of work he did; the nights he spent sleeping on the floor of the factory."

Varallo later argued that the Tesla's board did a "terrible job" of monitoring Musk's conduct, and said that the suit was able to demonstrate his control, with Chancellor McCormick finding that Musk "repeatedly and unilaterally manipulated the timing of the process."

The defense, Varallo argued, conceded after the trial that any material disclosure failure would trigger a more plaintiff-friendly entire fairness standard of review for the claims, rather than business judgment deference.

"They argue you missed the caveat to that: assuming he was a controlling stockholder," Chief Justice Collins J. Justice Seitz Jr. said.

Varallo said "Musk had significant ownership in the company, and according to the [Chancery] court, the maximum influence a manager can wield over a company," with a majority of directors beholden to him.

Jeffrey B. Wall of Sullivan & Cromwell LLP, counsel to Tesla, told the court that an overwhelming 72% majority of the company's stockholders agreed to leave the pay plan in place, "whatever its flaws, and move on."

Delaware's Supreme Court has recognized the legitimacy of posttrial ratification, Wall said, adding that the Tesla shareholder vote was "likely the most informed vote in Delaware history."

"The Chancery Court seems to view the ratification vote as an attack or an attempt to flip the court's decision. It wasn't," Wall said. "They were answering a different question: Given where we are now, what do we wish to do? Keep the plan in place and avoid a massive accounting charge or go back to the table and negotiate with Mr. Musk?"

Corporation and law firm response to the Tesla case and other recent Court of Chancery decisions spawned business-friendly amendments to the state's corporation law in both 2023 and 2024.

One of several friend-of-the-court briefs filed in the case, submitted by the Texas Association of Business, argued that "one thing coming out of this litigation is certain: However you slice it, the [second Tesla shareholder vote] suggests shareholders did not believe that Delaware's formal legal standards were providing them many benefits at all."

Another friend-of-the-court brief filed by former attorneys and law professors cautioned that, "if permitted to stand, the rulings below—which foretell an impractical, litigation-driven approach to numerous transactions, especially executive compensation—draw into question Delaware's long-standing position as the leading jurisdiction in the United States on corporate law."

The stockholders are represented by Gregory V. Varallo, Jeroen van Kwawegen and Thomas G. James of Bernstein Litowitz Berger & Grossmann LLP, Peter B. Andrews, Craig J. Springer, David M. Sborz, Andrew J. Peach and Jackson E. Warren of Andrews & Springer LLC, and Jeremy S. Friedman, Spencer M. Oster and David F.E. Tejtzel of Friedman Oster & Tejtzel PLLC.

The individual directors are represented by David E. Ross, Garret B. Moritz and Thomas B. Mandracchia of Ross Aronstam & Moritz LLP, Michael A. Barlow, Alex Spiro, Christopher D. Kercher and Christopher G. Michel of Quinn Emanuel Urquhart & Sullivan LLP, and Daniel Slifkin and Vanessa A. Lavelly of Cravath Swaine & Moore LLP.

Tesla is represented by Rudolf Koch and John D. Hendershot of Richards Layton & Finger PA, William M. Lafferty and Susan W. Waesco of Morris Nichols Arsht & Tunnell LLP, John L. Reed and Ronald N. Brown of DLA Piper, and Catherine A. Gaul of Ashby & Geddes PA.

The objector defendants are represented by Anthony A. Rickey of Margrave Law LLC, David S. Eagle and Sally E. Veghte of Klehr Harrison Harvey Branzburg LLP, Donald B. Verrilli, Elaine J. Goldberg and Achyut J. Phadke of Munger Tolles & Olson LLP, Joseph A. Grundfest of Stanford Law School, and Thomas R. Grady of GradyLaw.

The case is *In re Tesla Inc. Derivative Litigation*, case numbers 534, 2024; 10, 2025; 11, 2025; and

12, 2025, in the Supreme Court of the State of Delaware. The case under appeal is 2018-0408, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Hertz Must Face Investors' Claims Over EV Statements

By **Emilie Ruscoe**

Law360 (October 15, 2025, 6:00 PM EDT) -- Car rental giant Hertz Global Holdings Inc. can't completely shed securities fraud claims over its statements that it was seeing strong demand for electric cars that artificially boosted stock prices, a Florida federal judge has ruled, while also dismissing other claims in the proposed class action.

In **an order Friday** in Florida federal court, U.S. District Judge Kyle C. Dudek largely granted Hertz's dismissal bid and finding that many of the suit's alleged misstatements weren't shown to be false and other alleged misstatements weren't shown to be relevant to investors.

But the judge did not dismiss claims stemming from two alleged misstatements that were purportedly at odds with the company's actual trends in customer demand for electric vehicles.

One of the statements was made in January 2023 on a business news television show by the company's then-CEO Stephen M. Scherr.

When asked during that interview about electric vehicle demand, Scherr said, "EV rental demand is very strong and strong across all aspects of our business," and when the interview was put on the show's website, it was captioned "Hertz CEO Stephen Scherr: EV rental demand is strong across all aspects of our business."

In his suit, Hertz investor Robert Stephens claimed that statement was false because at the time, Hertz's "overall EV rental demand had been declining since the second quarter of 2022 and had stayed depressed as customers did not want to rent EVs due to a lack of sufficient charging stations and/or because they either did not know how to drive EVs or were dissatisfied with the driving experience."

On Friday, Judge Dudek found that the investor adequately pled that the statement was false and couldn't be described as inactionable puffery.

"To be sure, statements using descriptors like 'strong' are often inactionable," the judge said. "But they can create liability when tied to more concrete facts," such as the company's earlier announcement that it was betting big on electric vehicles.

Judge Dudek also left in place claims over Scherr's April 2023 statement on an earnings call that "We are forecasting nearly 2 million [electric vehicle] rentals in 2023, approximately five [times] the number of the prior year," noting that Stephens said that at the time that statement was made, Hertz had seen lagging demand for electric vehicles.

"It doesn't matter that defendants disclosed [electric vehicle] demand as a risk" elsewhere, Judge Dudek said. "According to Stephens' evidence, that risk had already materialized. The cautionary language accompanying defendants' forecast was thus meaningless."

In dismissing other claims, Judge Dudek also said Friday that in the latest version of the suit, Stephens cited facts about the company's electric vehicle business that were "at best tangential (and at worst irrelevant) to what defendants said" about the electric vehicle demand.

"That won't cut it," the judge said.

In that version of suit, from September 2024, Stephens pointed to market records showing trading

prices for Hertz shares fell about \$1, or 11%, from \$9.35 a share to \$8.34 a share after the company announced in January 2024 that it would sell 20,000 electric vehicles, or one-third of its electric vehicle fleet, to "better balance supply against expected demand."

Along with the company, the suit names Scherr and former Chief Financial Officer Alexandra Brooks.

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

The investors are represented by Shannon Hopkins of Levi & Korsinsky LLP and Cullin Avram O'Brien of Cullin O'Brien Law PA.

Hertz, Scherr and Brooks are represented by Edmund Polubinski, Andrew Ditchfield, Jonathan K. Chang and Deborah S. Mazer of Davis Polk & Wardwell LLP and Michael P. Matthews of Foley & Lardner LLP.

The case is *Doller v. Hertz Global Holdings Inc. et al.*, case number 2:24-cv-00513, in the U.S. District Court for the Middle District of Florida.

--Editing by Stephen Berg.

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Chancery 'Rewrote' \$3.4B Merger Deal, J&J Tells Del. Justices

By **Carla Baranauckas**

Law360 (October 15, 2025, 7:26 PM EDT) -- Johnson & Johnson told the Delaware Supreme Court on Wednesday that the Chancery Court "rewrote" its \$3.4 billion agreement for the acquisition of surgical robotics firm Auris Health, wrongly using the implied covenant of good faith and fair dealing to impose obligations the company never accepted.

J&J and its medical device subsidiary Ethicon Inc. argued the lower court's ruling forcing it to pay \$1 billion to Auris shareholders ignored express contract terms tying milestone payments to a specific U.S. Food and Drug Administration approval pathway — known as 510(k) — and effectively punished the company for adapting to an unforeseen regulatory shift for the iPlatform surgical robot.

At issue is whether J&J's decision to abandon the FDA's premarket notification pathway — after the agency unexpectedly required a more rigorous de novo review — violated the merger agreement or was permitted under its terms.

"This contract is far from silent," E. Joshua Rosenkranz of Orrick Herrington & Sutcliffe LLP, counsel for J&J, told the justices. "The phrase '510(k)' appears more than any other. A contract that explicitly imposes a condition on performance is not silent on performance."

Rosenkranz contended the Chancery Court erred by **substituting its own sense of equity** for the parties' negotiated risk allocation, especially given the increased risk and cost associated with the de novo pathway.

"Ex ante, the parties understood that de novo doubled the risk of failure," he said. "That would have changed the price and the payout terms."

Rosenkranz also challenged the Chancery Court's interpretation of the "commercially reasonable efforts" clause, arguing J&J retained discretion to manage its newly acquired business and prioritize profitability.

"We devoted more people and resources to iPlatform than to any other medical device in our history," he said, citing a \$1.25 billion investment. "That should end the inquiry."

Rosenkranz criticized the lower court's "head to head" comparison between Auris' iPlatform and J&J's other devices, like the Velys, arguing the contract permitted differential treatment based on 10 factors, including commercialization risks and expected profitability.

Philippe Z. Selendy of Selendy Gay PLLC, counsel for Fortis Advisors LLC — the legal proxy for former Auris stockholders — argued the Chancery Court properly applied the implied covenant to preserve the parties' expectations in light of an unforeseeable regulatory shift. The FDA's reversal of its 20-year practice, they said, was not reasonably anticipated and did not justify J&J's abandonment of its milestone obligations.

"The merger agreement was drafted based on what was reasonably foreseeable," Selendy said. "510(k) was the only logical path at the time of contracting. No one in the industry expected the FDA to reverse course."

Fortis emphasized that the contract did not allocate all risk to the seller in the event of a pathway

substitution, nor did it grant J&J a right to walk away.

"There was no reservation of rights to avoid earnouts or efforts," Selendy argued. "To deny the implied duty is to give J&J an unbargained-for windfall."

Fortis also argued that even if the implied covenant claim were reversed, the breach of contract findings on subsequent milestones would still stand. Each milestone was an independent obligation under Section 2.07(a), and J&J's failure to pursue de novo approval for the iPlatform predicate device undermined its ability to achieve 510(k) clearance for later milestones.

"The court found that the data and required efforts for approval remained the same," Selendy noted. "Efforts to get de novo approval were just the same as through 510(k)."

The justices pressed both sides on whether reversal of the implied covenant claim would require revisiting the damages analysis. Fortis responded that the Chancery Court made separate findings of reasonable certainty for each milestone and that J&J's premerger risk-adjusted probabilities supported the award.

Ethicon acquired Auris in 2019 for \$3.4 billion in cash and up to \$2.35 billion in milestone payments tied to the development of Auris' iPlatform surgical robot.

In October 2020, Fortis filed a lawsuit accusing J&J of breaching its contractual obligation to treat the iPlatform as a priority and to support its development regardless of contingent payouts. In September, Vice Chancellor Lori W. Will awarded Auris' former shareholders \$968.8 million in damages plus \$42.4 million in interest, totaling roughly \$1 billion.

J&J and Ethicon are represented by William M. Lafferty, Susan W. Waesco, Elizabeth A. Mullin Stoffer and Kirk C. Andersen of Morris Nichols Arsht & Tunnell LLP, E. Joshua Rosenkranz, Robert M. Loeb, Zachary J. Hennessee, Katherine M. Kopp, Anne W. Savin and Elizabeth A. Bixby of Orrick Herrington & Sutcliffe LLP, and Joshua A. Goldberg and Lauren S. Potter of Patterson Belknap Webb & Tyler LLP.

Fortis is represented by Bradley R. Aronstam, Roger S. Stronach and Dylan T. Mockensturm of Ross Aronstam & Moritz LLP and Philippe Z. Selendy, Jennifer M. Selendy, Oscar Shine, Julie R. Singer, Meredith Nelson, Corey Stoughton and Jeffrey Zalesin of Selendy Gay PLLC.

The case is Johnson & Johnson et al. v. Fortis Advisors LLC, case number 490,2024, in the Supreme Court of the State of Delaware.

--Additional reporting by Rose Krebs. Editing by Adam LoBelia.



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Del. Ruling Reaffirms High Bar To Plead Minority Control

By **Elena Davis** (October 15, 2025, 4:19 PM EDT)

The Delaware Court of Chancery has recently once again rejected stockholder efforts to lower the bar for pleading minority investor control.

In *Witmer v. Armistice Capital LLC*,^[1] Vice Chancellor Morgan T. Zurn on Aug. 14 **reinforced** the strict standard for pleading control, dismissing a complaint against a minority investor that allegedly held a 41% stake in the company and one of seven board seats.

The decision reaffirms that Delaware courts will not impose controlling shareholder liability on a minority investor unless the investor actually exercised control over the corporation's affairs or a specific transaction, such as through steering transaction negotiations or affecting their outcome, and not from the mere potential ability to control.



Elena Davis

Background

Witmer involved a derivative action brought by a stockholder of Aytu Biopharma Inc. against Armistice, a 41% stockholder of Aytu that occupied only one of seven seats on Aytu's board.

Armistice had held a stake in Aytu since 2017. In late 2018, in conjunction with an agreement by Armistice to loan Aytu \$5 million in exchange for a promissory note, Aytu expanded its board by two seats, which were filled by Armistice founder and managing partner Steven Boyd and a non-Armistice-affiliated director.

Starting in late 2019, Aytu entered into two transactions with Armistice portfolio companies.

First, in November 2019, Aytu entered into an asset purchase agreement with Cerecor Inc. to purchase certain of Cerecor's products. At the time, Armistice owned 64.3% of Cerecor's voting stock, and Boyd also sat on Cerecor's board. The plaintiff alleged that the materials shared with the Aytu board about Cerecor did not disclose certain information about Cerecor's profitability, and that the Aytu board approved the transaction without reviewing Cerecor's public filings or any valuations of Cerecor.

Second, in February 2020, Aytu acquired Innovus Pharmaceuticals Inc., in which Armistice held an equity stake of 10%. During the negotiation process, Boyd was a member of a two-member special committee that reviewed the terms of the proposed transaction before they were shared with the full Aytu board.

As alleged by the plaintiff, the board was initially not told of Armistice's stake in Innovus, although the board was told before approving the transaction. The plaintiff also alleged that Boyd withheld material information about Innovus' financial status, and that, when the board learned of this information before the stockholder vote, the board withheld the information from stockholders.

Following the completion of both the Innovus and Cerecor transactions, Aytu recorded nearly \$30 million in goodwill from the transactions and wrote off the entire amount of goodwill recorded from the Cerecor transaction, amounting to approximately \$20 million.

In March and April 2020, Armistice sold off all of its holdings in Aytu. The plaintiff alleged that Aytu's CEO, who authorized these trades, was not independent of Armistice because of his business relationship with Boyd, including because Boyd was his "confidante and advisor," and that Boyd had previously assisted the CEO in arranging financing and a licensing deal for Aytu.

The stockholder plaintiff filed a derivative suit on Sept. 12, 2022, against Armistice, Boyd, and certain other Armistice directors and officers. The plaintiff asserted claims for breach of fiduciary duty, aiding and abetting, and unjust enrichment, alleging that Armistice breached its fiduciary duties as a controlling investor by causing Aytu's board to approve the Innovus and Cerecor transactions, which the plaintiff alleged unfairly benefited Armistice.

The plaintiff also claimed Armistice breached its fiduciary duties by selling off its holdings in Aytu shortly after the completion of the transactions while in possession of material nonpublic information.

After the plaintiff and the director and officer defendants entered into a settlement agreement in March 2024, through which the plaintiff voluntarily dismissed Boyd from the lawsuit, Armistice was the sole remaining defendant. Armistice moved to dismiss the claims against it for failure to plead demand futility under Court of Chancery Rule 23.1 and failure to state a claim under Rule 12(b)(6).

After holding that the demand was excused under Rule 23.1, the court turned to the Rule 12(b)(6) motion to dismiss.

The Court of Chancery's Ruling

In analyzing the plaintiff's breach of fiduciary duty claims, the court focused on the threshold question of whether Armistice controlled Aytu and therefore owed fiduciary duties to Aytu stockholders. The plaintiff argued that he had pled sufficient indicia of control based on Armistice's 41% stake in Aytu, representation on the Aytu board, the alleged business relationships between Boyd and Aytu's CEO, and Aytu's disclosures stating that Armistice "could be able to exert significant control over" Aytu.

As the court explained, unlike a majority stockholder, which is presumed to exercise control and assume fiduciary duties, minority stockholders generally do not owe fiduciary duties to the corporation in which they are invested, but fiduciary duties can arise where a minority stockholder effectively controls the corporation.

Citing the Delaware Supreme Court's Jan. 21 **decision** in *In re: Oracle Corp. Derivative Litigation*,^[2] the Court of Chancery in *Witmer* noted that a minority stockholder may be deemed a controlling stockholder where it exercises actual control over the corporation's business and affairs, or over the board's decision-making process regarding a specific transaction. The court stressed, however, that actual control is not easy to establish; it is a fact-specific inquiry with no "magic formula."

The court then considered each of the plaintiff's arguments in turn.

First, citing Delaware precedent rejecting other claims of transaction-specific control by large minority stockholders, the court swiftly concluded that Armistice's 41% ownership stake, while substantial, was not enough by itself to establish control. The court noted that, unlike a stake of more than 50%, Armistice's stake did not demonstrate control by itself, and it further found that the fact that Armistice held stakes in the counterparties to the challenged transactions similarly did not establish control, even if it established a "motive to exert control."

Second, the court rejected the plaintiff's argument that Armistice had transaction-specific control because of its single director designee on the Aytu board and alleged tainting of the process surrounding the challenged transactions. The court explained that the complaint's allegations of Boyd's participation in the transactions — which comprised his mere presence at board meetings and his review of the proposed terms of the Innovus transaction before those terms were presented to the full board — did not suffice to establish control. Nor did the plaintiff's claims of a faulty process, which did not touch on control.

Third, the court determined that the alleged business relationship between Boyd and the Aytu CEO did not support an inference of control, explaining that the CEO was only one of seven board

members and that the alleged business connections "do not disturb" the well-established presumption under Delaware law that directors are independent.

Finally, the court concluded that the company's public disclosures likewise did not support a pleading-stage inference of actual control. Emphasizing that the Aytu disclosures referred only to "the mere possibility of control," the court distinguished those disclosures from the "outright admission" of control in the Court of Chancery's 2014 decision in *In re: Zhongpin Inc. Stockholders Litigation*,^[3] where the company had expressly admitted the defendant was its controller and held significant influence over the company.

Ultimately, the court concluded that, even when considering the total "constellation of facts" altogether, they did not suffice to plead Armistice's actual control over the challenged transactions. Armistice therefore owed no fiduciary duties, warranting dismissal.

Key Takeaways

The Witmer case highlights and reaffirms three important principles of Delaware law as they relate to minority investor control.^[4]

1. Emphasis on Fact-Specific Inquiry

The decision reinforces prior holdings under Delaware law that control is a nuanced determination that is dependent on the facts of the particular case.

When it comes to establishing the control of a minority investor, there is no particular formula or bright-line rule, and courts will not simply presume control from a large minority stake.

More is required, including at the pleading stage: Notwithstanding the inquiry's fact-specific nature, Delaware courts are willing to dismiss claims under Rule 12(b)(6) where a holistic review of the relevant allegations does not give rise to a pleading-stage inference of control.

2. Actual vs. Potential Control

Further underscoring the high threshold for pleading a minority investor's control over a transaction, the Witmer decision confirms that only the actual exercise of control gives rise to fiduciary duties: The potential ability or motive to control, without evidence of actual influence, is insufficient.

Importantly, a stockholder representative's mere presence on a company board or committee, without specific allegations of steering negotiations or influencing other directors, does not support an inference of control.

3. Director Independence and Control

The Witmer ruling also confirms that the well-established presumption of director independence under Delaware law applies equally in the context of determining allegations of control by a minority stockholder.

Allegations of other directors' social or professional ties to a large minority stockholder's board representative, without more, do not rebut the presumption of director independence such that an inference of control arises. Rather, a plaintiff must allege material ties that, subjectively judged, could have affected a director's impartiality.

Conclusion

Witmer's reaffirmance of Delaware's strict approach to control provides increased predictability for minority investors in their investment and corporate governance decisions.

Minority investors and other company stakeholders can continue to expect that an investor's customary oversight of its portfolio company — even where the investor holds a stake upward of 40% — does not alone give rise to fiduciary duties and risk controlling shareholder liability.

Elena Davis is an associate at Ropes & Gray LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] [Witmer v. Armistice Capital LLC](#) , 2025 WL 2350799 (Del. Ch. Aug. 14, 2025).

[2] [In re: Oracle Corp. Derivative Litigation](#) , 2025 WL 249066, at *12 (Del. Jan. 21, 2025).

[3] [In re: Zhongpin Inc. Stockholders Litigation](#) , 2014 WL 6735457 (Del. Ch. Nov. 26, 2014).

[4] In March 2025, the Delaware General Assembly approved Senate Bill No. 21 ("S.B. 21"), which codifies a definition of "controlling stockholder" that generally requires a minority stockholder to own or control a minimum of one-third of the voting power of a corporation's stock as well as have the power to exercise managerial authority over the corporation's business and affairs. While the impact of S.B. 21 on the continued viability of transaction-specific control theories like the one addressed in *Witmer* is uncertain, the fundamental principles highlighted in *Witmer* are likely to continue to factor into Delaware courts' analyses of minority investor control in the post-S.B. 21 era.

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Mineral Co. Investors Seek Final OK Of \$4.9M Deal

By **Sydney Price**

Law360 (October 15, 2025, 5:47 PM EDT) -- Investors of mineral producer Compass Minerals International Inc. have asked a Kansas federal judge to grant final approval to their nearly \$5 million deal settling claims that the company misled the public about the likelihood it would secure a fire retardant supplier contract with the U.S. Forest Service.

The settlement, which would resolve the allegations first launched in April 2024, is the result of "informed and arm's-length negotiation, confirming that it is fair and reasonable," the investors said in a **motion** filed Tuesday.

The \$4.9 million deal represents about 8% of the total damages recoverable, the investors said.

"While plaintiffs believe that the maximum damages potentially recoverable in this case is around \$60 million, this is plaintiffs' best-case scenario assuming that plaintiffs defeat all of defendants' arguments concerning loss causation, which would likely have come down to a 'battle of the experts,'" the motion states.

Lead counsel will seek \$1.6 million, or about a third of the settlement value, in fees, and approximately \$44,000 in litigation expenses, according to a separate motion. The suit's lead plaintiff and named plaintiff each requested \$7,500 for their time representing the proposed class, which the plaintiffs asked the court to certify for the purposes of the settlement.

The parties notified the court in May that they intended to settle the suit, and U.S. District Judge Eric F. Melgren preliminarily approved the deal in July, according to the suit's docket.

The most recently amended version of the complaint alleges that Compass downplayed known risks affecting its prospects of locking in a 2024 contract with the Forest Service, the agency within the U.S. Department of Agriculture that manages protected forests and grasslands.

In 2023, Compass took over Fortress North America LLC, which produces magnesium chloride-based fire retardant products to fight wildfires, according to the suit.

For months, Compass represented that it was "settled fact" that Fortress fire retardants had passed all of the USFS's tests, but Compass knew that there would in fact be further testing of the Fortress retardant, the suit alleges.

In March 2024, Compass announced it wouldn't have a fire season contract to provide aerial fire retardants to the Forest Service after inspections had found significant corrosion in air tankers that had carried Fortress retardant as part of a field evaluation.

According to the suit, trading prices for Compass shares fell from nearly \$18 to under \$14 following the announcement.

The suit also names as individual defendants Compass' former CEO Kevin S. Crutchfield, its current CEO Edward C. Dowling Jr., its former Chief Financial Officers Lorin Crenshaw and James Standen and Chief Supply Chain Officer Jenny Hood.

The proposed class would include those who purchased Compass shares between Feb. 8, 2023, and March 22, 2024.

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

The proposed class is represented by Phillip Kim and Michael Cohen of The Rosen Law Firm PA and Jason Chambers of the Hollis Law Firm.

Compass Minerals is represented by Sara Fevurly of Husch Blackwell LLP and Susan L. Saltzstein and Jay B. Kasner of Skadden Arps Slate Meagher & Flom LLP.

The case is Valentine v. Compass Minerals International Inc et al., case number 2:24-cv-02165, in the U.S. District Court for the District of Kansas.

--Editing by Linda Voorhis.

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Meta Likely Can't Nix Users' Claims It Profited Off Hackers

By **Bonnie Eslinger**

Law360 (October 15, 2025, 11:03 PM EDT) -- A California federal judge said Wednesday that he's not inclined to grant Meta's request to toss a putative class action claiming the company lets hackers take control of Facebook accounts while it still profits from users' data, but said he'd trim a "plausible" breach of contract claim with leave to amend.

U.S. District Judge William H. Orrick gave an oral tentative ruling at the start of a hearing held over Zoom on Wednesday. He did not provide a final decision at the end but said he'd issue a written ruling.

The complaint alleges that Meta wasn't helpful when the plaintiffs tried to regain access to their hacked Facebook accounts, but instead kept profiting from their posted content. That's because users grant Meta a license to the content when they agree to the social media site's terms of service. But users say they have no ability to delete the accounts they have no access to, and thus they can't revoke that license.

Judge Orrick said he expects to allow the suit's claims for breach of the covenant of good faith and fair dealing, unjust enrichment and violation of California's Unfair Competition Law.

But he was leaning toward dismissing the breach of contract claim with leave to amend.

"I agree with Meta that plaintiffs' license revocation theory isn't clearly presented," the judge said.

Judge Orrick said the claim appears to allege that Meta is maintaining the license with users and their accounts for profit even after the accounts were stolen by hackers.

"That's a plausible theory," Judge Orrick said.

While Meta has argued that it cannot be held liable for breach of contract because the terms of service for use of Facebook include an express limitation of liability, the judge appeared to be leaning on the side of the plaintiffs by noting that a breach of contract claim was brought against Meta in another case before him, [Doe v. Meta Platforms](#).

California Civil Code Section 1668 – which voids a contract if it attempts to exempt a party from liability for willful injury to another party or a violation of law – might apply in this case, the judge said.

The complaint does not appear to sufficiently back a fraud claim under the UCL, but could go ahead on the unlawful and unfair prongs of the state law, the judge said.

Meta's lawyer, Melissa Zappala of Dunn Isaacson Rhee LLP, said the terms of service allow Meta to hold a license for users' personal data and content.

"Something cannot be a violation of the implied covenant if it is expressly permitted by the terms of service," Zappala argued to the court.

Also, while plaintiffs have alleged that Meta is profiting from that license, they have not provided any facts to show that the company is making money from their content.

A lawyer for the plaintiffs, Annick Persinger of Tycko & Zavareei LLP, said Meta says the terms of service states the license is in exchange for the service.

"But keeping the license while not restoring use frustrates that fundamental purpose of the contract," Persinger said. "Especially where the contract also said this license will end when your content is deleted from our systems."

Judge Orrick asked Meta's lawyer about the allegations in the complaint that the plaintiffs attempted to contact Meta after their accounts were hacked, but Meta didn't respond.

Zappala said the plaintiffs don't claim they contacted Meta to try to terminate the license for their intellectual property.

"What plaintiffs allege in the complaint is that they were locked out of their accounts, and they tried to contact Meta to regain access to the accounts," Meta's lawyer said.

In addition, the plaintiffs say they aren't able to use Facebook, but they don't allege how Meta is still able to generate revenue from selling them advertising, Zappala said.

The lawyer for the plaintiffs told the court that Meta is still making money from the accounts because the hackers are using them.

"It doesn't matter to Meta who's using the account," Persinger said.

Plaintiff Sara Isgur first filed her proposed class action in September 2024, saying that Facebook users are doubly harmed when they've been hacked because Meta doesn't provide any process for them to regain access to their accounts. She is joined by four other plaintiffs in a June amended complaint, which alleges breach of contract, breach of the covenant of good faith and fair dealing and violation of California's Unfair Competition Law.

The complaint pegs the number of potential class members at "hundreds of thousands, if not millions."

All Facebook users have to agree to Meta's terms of service, the suit underscores.

"Meta represents in its Terms of Service that instead of collecting monetary payment for its services from users, Meta collects their personal data worth millions to it in ad dollars in exchange for providing its services," the complaint said.

Meta represents in those terms that it will promote the "safety, security, and integrity" of its services, and investigate and prevent unlawful behavior on Facebook.

"By denying access to user's accounts and failing to remedy — or even investigate or otherwise acknowledge — account lockouts or takeovers, Meta fails to abide by its contract," the operative complaint said. "Meta failed to prevent account lockouts and takeovers, failed to mitigate existing account lockouts and takeovers, and failed to provide customer support services to users experiencing such account lockouts and takeovers."

In its motion to dismiss, filed in July, Meta said the plaintiffs can't hold the company liable for the "takeover of their Facebook accounts by third-party bad actors."

The suit doesn't plausibly back any of its claims, and the plaintiffs "imagine promises that Meta never made," Meta said in its motion to dismiss.

Meta does not guarantee users uninterrupted access to their Facebook accounts, the company said.

"Nor does the TOS nor the Privacy Policy promise that Meta will restore access to taken-over accounts or provide any specific type of customer service to assist locked-out users in real time," Meta added.

The plaintiffs are represented by Annick Marie Persinger, Gemma Seidita and Hassan Ali Zavareei of Tycko & Zavareei LLP.

Meta is represented by Meredith Richardson Dearborn and Melissa Brooke Felder Zappala of Dunn Isaacson Rhee LLP, and Walter F. Brown and Sophia Chung of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Sara Isgur et al. v. Meta Platforms, Inc, case number 3:24-cv-06559, in the U.S. District Court for the Northern District of California.

--Editing by Linda Voorhis.

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