Class Action

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Hyzon Motors, SPAC Merger Dispute Ends with $8.8 Million Deal

Oct. 22, 2025, 7:37 AM PDT

The Delaware Chancery Court approved an $8.8 million settlement to end a class action alleging the leaders and backers of a blank-check company that merged with Hyzon Motors Inc. exaggerated the hydrogen-fuel-cell vehicle maker's customer base and financial health.

Vice Chancellor Paul A. Fioravanti Jr.'s order, issued late Tuesday, didn't address objections raised in a filing to the court by the lead plaintiff in a related federal class action.

Fioravanti in 2023 allowed an investor to advance claims over the merger with a special purpose acquisition company, or SPAC, that took Hyzon public because available information about Hyzon's customers may have given investors the wrong impression about potential vehicle orders and business relationships with blue-chip companies.

He dismissed Hyzon and former CEO Craig Knight as defendants in May, after the company declared bankruptcy. The remaining defendants included Riverstone Investment Group LLC, Decarbonization Plus Acquisition Sponsor LLC, and WRG DCRB Investors LLC.

Fioravanti also approved a $1.76 million fee award for the investor's attorneys from Andrews & Springer LLC, Robbins Geller Rudman & Dowd LLP, and Robbins LLP.

The defendants are represented by Young Conaway Stargatt & Taylor LLP and Vinson & Elkins LLP.

The case is Malork v. Anderson , Del. Ch., No. 2022-0260, order 10/21/25 .

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Purdue Pharma gets over 99% voting support for bankruptcy plan

reuters.com/legal/government/purdue-pharma-gets-over-99-voting-support-bankruptcy-plan-2025-10-21

Dietrich Knauth October 21, 2025

A pharmacist holds a bottle OxyContin made by Purdue Pharma at a pharmacy in Provo, Utah, U.S., May 9, 2019. REUTERS/George Frey Purchase Licensing Rights, opens new tab

- Purdue is close to finalizing a $7.4 billion bankruptcy deal
- More than 54,000 opioid victims voted for settlement
- Company and owners faced thousands of lawsuits over opioid sales

NEW YORK, Oct 21 (Reuters) - More than 99% of bankrupt drugmaker Purdue Pharma's creditors voted to accept a $7.4 billion settlement of legal claims related to the company's sales of addictive opioid medication, the company said Tuesday.

The vote puts the company one step closer to concluding a years-long bankruptcy restructuring, after the U.S. Supreme Court forced the company to scale back legal protections for its owners, members of the wealthy Sackler family. Purdue will seek final approval of its revised bankruptcy settlement at a court hearing in November.

“The high level of support for this Plan is gratifying after years of intense work with our creditors to craft a settlement that maximizes value for victims and communities and puts billions of dollars to work for the public good,” Purdue's board chairman Steve Miller said in a statement.

Purdue's latest plan does not fully protect the Sacklers from opioid litigation. Creditors that choose not to accept payment from the bankruptcy settlement can choose to instead litigate claims against the company's owners. That process remains ongoing, Purdue said.

The Sacklers, who are contributing at least $6.5 billion to the settlement, have said they have strong legal defenses against opioid lawsuits, including the argument that they are not directly and personally responsible for the company's opioid sales. Members of the Sackler family have expressed regret for their company's role in the opioid addiction crisis in the U.S., but denied wrongdoing.

Purdue filed for bankruptcy in 2019 in the face of thousands of lawsuits accusing it and members of the Sackler family of fueling the epidemic through deceptive marketing of its highly addictive pain medicine. The company pleaded guilty to misbranding and fraud charges related to its marketing of OxyContin in 2007 and 2020.

Purdue said its bankruptcy plan is the only major opioid settlement to set aside a meaningful amount of money for individual victims of the opioid crisis, who are entitled to receive as much as $850 million from the broader settlement fund. Over 54,000 individuals with personal injury claims voted to accept the settlement, and 218 voted against, according to court documents filed Tuesday.

Other opioid settlements with drugmakers, pharmacy chains, and drug distributors have raised over $50 billion in recent years. Most of that money is set aside for state and local governments in the U.S.

Read more:

Purdue Pharma, Sacklers reach $7.4 billion national opioid settlement
US Supreme Court Purdue ruling makes mass litigation tougher to resolve in bankruptcy
Reporting by Dietrich Knauth

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- Supreme Court of the United States
- Bankruptcy

Securities

Squarespace Defends Withholding CEO Emails on Permira Sale (1)

Oct. 21, 2025, 9:56 AM PDT

Squarespace Inc. argued Tuesday that formal board minutes regarding the company's $7.2 billion sale to Permira Advisers LLC are more revelatory than the CEO's emails sought by a pension fund investigating the transaction.

The Michigan Electrical Employees' Pension Fund's lawsuit in the Delaware Chancery Court alleges the buyout potentially favored insiders on both sides of the deal. CEO Anthony Casalena wasn't named as a defendant.

The company has fought the demand, saying it produced over 5,000 pages of documents and didn't need to add more, particularly anything related to informal conversations before the board officially began considering the proposed transaction.

Casalena called a board meeting as soon as he had something specific for the directors to consider, said Squarespace's attorney, Arthur Bookout of Skadden, Arps, Slate, Meagher & Flom LLP.

Informal conversations he may have had before then didn't require formal minutes, he said. "If they did, corporate business would grind to a halt."

Casalena intentionally avoided corporate formalities in over a year's worth of meetings with Permira with "no board involvement, no oversight, no knowledge," said the fund's attorney, Corinne Amato of Prickett, Jones & Elliott PA.

"Casalena unilaterally authorized himself to continue discussions directly with Permira," and then "notified each director one-on-one about the transaction," she said. "If that's not lobbying, I don't know what is."

The pension fund wants Vice Chancellor Paul A. Fioravanti Jr. to order Squarespace to produce electronic communications, including emails and text messages, related to the sale. The judge adjourned a hearing in Wilmington, Del., without ruling on the motion.

Senior Magistrate in Chancery Selena E. Molina previously denied the pension fund's demand in a June 9 bench ruling. The fund "demonstrated a proper purpose for inspection but is not entitled to additional books and records," according to a docket update.

The pension fund seeks details about the pre-transaction process that already were available to stockholders when they voted on the deal, Bookout said.

"There's nothing irrelevant about the formal record in this case," he said.

Books-and-records cases often reflect an effort to bolster fiduciary breach claims for future litigation. Delaware lawmakers this year narrowed the statute that gives investors access to corporate records if they have credible but preliminary suspicions about self-dealing.

Those new limits "changed the game," Amato said. "With those hurdles, I can't guarantee I've got enough to overcome a motion to dismiss" without securing more electronic communications, she said.

The pension fund is also represented by Bernstein Litowitz Berger & Grossmann LLP and Kessler Topaz Meltzer & Check LLP.

The case is Mich. Elec. Emp. Pension Fund v. Squarespace, Inc., Del. Ch., No. 2024-1041, hearing 10/21/25 .

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Securities

Ex-Lordstown Executives Free From Foxconn Rift Lawsuit on Appeal

Oct. 21, 2025, 1:30 PM PDT

Former Lordstown Motors Corp. leaders escaped allegations they misled investors about the bankrupted electric-vehicle maker's partnership with Foxconn Technology Group before it imploded.

The US Court of Appeals for the Sixth Circuit mostly agreed with a lower court's decision to dismiss the proposed class action Tuesday, with Judge Karen Nelson Moore partially dissenting. Two of the three circuit judges found that the investors failed to allege that any of the alleged positive misstatements about the partnership or omissions were misleading.

"Disagreeing, plaintiffs argue that, given Foxconn's actions purportedly harming the partnership, defendants knew their public statements portrayed the partnership in a falsely positive light and hid the truth," said Judge Richard Allen Griffin's unpublished opinion. "But even if the entire partnership was indeed a scam to benefit Foxconn, the complaint does not plead facts showing that defendants knew of that scam so to render their public characterizations of the partnership false or misleading."

Alleged misrepresentations were mere puffery or corporate optimism, Griffin said, immaterial to reasonable investors and not actionable for securities fraud claims. And they didn't sufficiently plead executives' intent or recklessness to deceive anyway, he said.

Moore mostly agreed but said she would've held the investors stated a claim former CEO Edward Hightower and Chief Financial Officer Adam Kroll made materially false misstatements when not sharing the reason for a new agreement between Lordstown and Foxconn came because the EV-maker determined Foxconn was in breach of contract, and at least acted recklessly.

Oral Argument

During oral argument, Moore dug into the executives' lawyer on whether Foxconn's breaches to its prior joint venture accord being a motivator for its new investment agreement would have been pertinent information to investors.

The second agreement was far better for Lordstown, attorney Jonathan Rotenberg of Katten Muchin Rosenman LLP said on the former officers' behalf, rendering issues from the first deal unimportant.

Investors would've cared how the struggling automaker's business venture was unfolding while Foxconn infractions accumulated, said the investors' attorney, Robert W. Killorin of Faruqi & Faruqi LLP.

Shareholders appealed after a federal judge in Ohio tossed their suit for failing to adequately allege the former Lordstown leadership made actionable misstatements or omissions about the deal pre-collapse. Investors Andrew and Joshua Strickland claimed the leaders artificially inflated Lordstown's stock price by misrepresenting its relationship with Foxconn before it publicly soured.

Hightower, Kroll, and then Executive Chairman Daniel Ninivaggi told the district court that Lordstown was "blindsided" by the deal's failure. The dismissal last year notched a legal victory for the EV-makers' leaders following a series of securities-related settlements.

Lordstown, which emerged from bankruptcy as Nu Ride Inc. in 2024 after selling off assets, alleged Foxconn destroyed its business.

Judge John Baylor Nalbandian concurred with Griffin's opinion.

The law firms didn't immediately respond to emails seeking comment on their client's behalf.

Ohio-based attorney John C. Camillus also represents the investors. Warren Terzian LLP also represents Lordstown's former leaders.

The case is Lim v. Hightower , 6th Cir., No. 24-03960, opinion 10/21/25 .

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Guest Post: Who is an "Officer"? It's Time to Address This

dandodiary.com/2025/10/articles/d-o-insurance/guest-post-who-is-an-officer-its-time-to-address-this

Kevin LaCroix October 22, 2025

By Kevin LaCroix on October 22, 2025
Posted in D & O Insurance

John Orr

D&O liability insurance policies protect "officers." But who is an officer? This is a question that insurers and policyholders have struggled with for years. More recently, questions about various new corporate roles and titles have emerged. In the following guest post, John Orr, D&O Liability Product Leader for Willis's Financial and Executive Risk practice (FINEX), North America, examines the perennial question of who is an officer and proposes a new approach to the issue. The author wishes to express his thanks to his colleague, Lawrence Fine, for his the work they have done together on these issues. This article also appears in Willis's FINEX Observer publication (here). I would like to thank John for allowing me to publish his article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is John's article.

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D&O insurance, by design, broadly protects corporate officers and directors against claims alleging "Wrongful Acts," which term itself is defined to encompass just about any actual or alleged wrongdoing in that individual's official capacity. Perhaps in that vein, the policy's definition of "Director and Officer" has historically been worded with a degree of ambiguity. Policy language referring to "duly elected or appointed" individuals, for example, provided enough flexibility for both insurers and insureds. But that flexibility is now being tested by evolving corporate structures and expanding executive roles.

As new corporate titles emerge – especially in areas such as cybersecurity, artificial intelligence, compliance, and sustainability – requests for clarity are becoming more frequent. It's true that, in public company D&O policies, all organization employees are "Insureds" for purposes of "Securities Claims" and, in some instances, when they are named contemporaneously in a claim with a director or officer, but rarely otherwise.

The traditional approach may no longer be the most suitable long-term solution. We should consider adopting a more functional, sustainable, and reliable solution as to who qualifies as an "officer" for purposes of coverage.

Definitional approaches to date

D&O policies have long included broad coverage grants to “Insured Persons,” including “Directors and Officers,” traditionally defined as “duly elected or appointed” officers and directors. A minority of US policies have dropped the “duly elected or appointed” condition altogether. With either approach, the intent may have been to align coverage with individuals who, under different state corporate laws or governing documents, are treated as directors and officers within their organizations. This circularity (an officer is an officer) has allowed companies and insurers to maintain flexibility across different governance structures and jurisdictions.

The model worked when corporate hierarchies were relatively simple and most officers fell into defined categories, such as CEO, CFO, COO, and General Counsel. In loose terms, most US-based D&O professionals considered “officers” to be C-suite level, Section 16 officers, with there being little or no controversy surrounding that description.

Some policies, particularly those issued in London and, to a lesser degree, the US, open up the definition of “Director and Officer” to include a longer list of individuals, such as de facto, shadow and observer directors. Specific to officers, the definition may extend to anyone in a management or supervisory capacity. In regions outside the US, these wordings are customary and have not given rise to any notable coverage adequacy concerns.

The challenge: new roles

In recent years, companies have been approaching their brokers for clarity on whether their CISOs were included in their D&O coverage with full officer-level status. After [the SEC brought charges against the CISO of Solar Winds]() in 2023, the inquiries have intensified.

But is clarity only required of CISOs? Similar questions also emerge relative to others, among them, compliance officers, “people” or HR officers, finance-related officials, heads of ESG and sustainability and, most recently, those leading artificial intelligence efforts – all individuals who carry important decision-making authority, and who may face legal and regulatory exposure as a result.

Legacy efforts at deliberate ambiguity may no longer work to provide companies the assurances that many of them desire. Does the term “officer” in a title, by itself, or formalities around appointment, automatically determine their status as “officers” under the policy? Perhaps. But if certainty is the expectation, is “perhaps” good enough?

The current workaround: endorsements

To address this, many US brokers and insurers have negotiated endorsements to include individuals by name or title within the definition of “Director and Officer” (or “Executive” or similar verbiage). To be perfectly clear, there is nothing structurally unsound with this approach. It addresses the need, it is customary under the circumstances and, worded properly, it should not be considered an approach with downside coverage risks. But it’s a shorter term solution and not an ideal longer term solution. It cuts against the grain of the policy’s intended breadth. It requires insureds to anticipate what roles might trigger coverage in future claims, and it adds burdens to policy negotiations and renewal processes.

In addition, these types of endorsements are not likely to scale well over time. As new roles are established and executive responsibilities expand, the approach risks falling behind. It also creates inconsistency among insureds with similar risk profiles.

A better approach: indemnification as the North Star

There is a more sustainable alternative to the endorsement that schedules individuals. As one of its core functions, D&O insurance is a backstop to corporate indemnification. Therefore, the definition of “Director and Officer” should be aligned with indemnification rights. If the corporation indemnifies an individual for claims arising from their duties, or would have indemnified them but for factors such as financial insolvency, that individual should be a “Director and Officer” under the policy. Wording exists in the market to achieve this, but it has not been widely adopted. It should be.

To be clear, the approach is intended to be an additional element of the definition, not a replacement of existing wordings. It is designed to reflect the economic reality of D&O coverage. It avoids the need for title-based distinctions and includes individuals based on the functions they perform and the exposures they face. It also syncs up coverage with actual risk management practices, which often involves indemnifying executives beyond traditional C-suite officer ranks.

Adopting an indemnification-based element of the definition provides several advantages:

- Clarity: It reduces uncertainty at the time of a claim.
- Flexibility: It recognizes evolving roles without the need for policy modifications.
- Efficiency: It simplifies underwriting and reduces reliance on narrowly worded endorsements.
- Consistency: It provides a standard that works across industries and corporate structures.

- Reliability: It ensures that individuals performing higher-risk functions, often at the direction of the board or senior leadership, are not left unprotected.

There’s an added benefit in the context of today’s marketplace. At a time when D&O insurers are pressing for rate stabilization, coverage innovation may present an opportunity for them to differentiate themselves.

Is this an issue with private company D&O?

The question of “Who is an Officer” is significantly less of a concern as it relates to private, not-for-profit company D&O policies. For these organizations, the term “Insured Person” is customarily defined to include all organization employees without Securities Claim or co-defendant limitations. Thus, the coverage applies to a wider variety of claims against any employee who commits or allegedly commits Wrongful Acts in their capacities as such – subject, as always, to the policy’s other terms and conditions.

Conclusion: a needed shift

Who qualifies as an “Officer” under a public company D&O policy isn’t an academic subject. It has real-world consequences for risk transfer, claims handling and recovery, and executive protection. As an industry, we should recognize that titles no longer define exposure – functions do. A modern D&O policy should reflect that by treating anyone the company indemnifies (or, in certain situations, would have indemnified) as an Insured Person. The less clear “would have indemnified” proviso can sensibly be addressed by, say, reliance on internal legal or board determinations.

This is not about expanding coverage. It’s about modernizing coverage to address the way companies operate today. The risks have evolved. How we address them should evolve too.

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John M. Orr

Judge orders 41 firms to probe Uber court records leak

DJ **dailyjournal.com**/articles/388206-judge-orders-41-firms-to-probe-uber-court-records-leak

Oct. 22, 2025

A San Francisco judge ordered 41 law firms to investigate potential leaks of sealed court records in Uber sexual assault litigation after media reports emerged ahead of a key bellwether trial.

A San Francisco judge granted a motion on Tuesday to investigate at least 41 law firms over a media leak of court-sealed information that erupted in a sprawling sexual assault litigation against Uber.

The rideshare company accused the plaintiffs' lawyers of violating a court protective order after the New York Times published an article in August citing "sealed court records" ahead of a bellwether trial in September that ultimately concluded with a jury verdict in Uber's favor. It is being appealed.

At a hearing Tuesday, Superior Court Judge Ethan P. Schulman granted a motion to enforce a protective order for every current or former law firm associated with the mass tort case to provide certification that they conducted a "reasonable investigation" as to whether any staff member with access to the case documents was the source of the leak.

The enforcement motion comes as the coordinated proceedings -- which include hundreds of claims alleging Uber failed to protect riders from sexual assault - move toward the second bellwether trial.

Ahead of the hearing, the plaintiffs' leadership team blasted the motion as a baseless attempt to intimidate and distract the court ahead of trial.

"Something clearly happened here," Schulman said at the hearing. "[I don't] plan to spend an enormous amount of time on this. But I'm not going to close my eyes to this."

Attorney for the plaintiffs, Brian Abramson of Texas-based law firm Williams Hart & Boundas LLP, said they were "prepared to accept the tentative order" but asked the judge to remove any mention of Uber's accusation that information was leaked to "taint a jury pool."

"Dissemination of these sealed records to an unauthorized entity, such as a reporter, is a violation of the protective orders entered in both this Court and the MDL," Uber's attorney, Laura Vartain Horn of Kirkland & Ellis, wrote in the motion.

Uber claimed its own investigation ruled out any leak from its employees, outside counsel or agents, and that only plaintiffs' counsel had access to the sealed materials. Uber asked the court to order plaintiffs' lawyers to conduct internal investigations and file sworn certifications that they "have no knowledge of how the New York Times came into possession" of the records.

"Plaintiffs' response is missing an obvious sentence: 'We have no knowledge of how the New York Times received the sealed information,'" Uber wrote in a reply brief to the motion. "That omission speaks volumes."

The plaintiffs' leadership team -- including William A. Levin of Levin Simes LLP and Brooks and Celine Cutter of Cutter Law PC -- fired back in an opposition brief, calling Uber's motion "a bizarre premise" unsupported by evidence or law.

"Uber's motion has no basis in fact or law and should be denied," they wrote. "[It] seeks only to harass Plaintiffs and their counsel while burdening this Court."

The plaintiffs' lawyers said Uber "reached this conclusion--and informed the Court of it--without any evidence," and began investigating itself only after publicly accusing the plaintiffs at a July 31 hearing. *Uber Rideshare Cases* CJC21005188 (S. F. Super. Ct. Filed August 12, 2021).

The plaintiffs' counsel argued the leak could have come from Uber's own "current and former employees," noting that the Times reporter told Uber she had spoken to more than a dozen of them.

Schulman pointed out at the hearing that attorneys for the New York Times did have access to documents in the case at some point, but it was not clear why or whether they were the sealed documents in question.

Plaintiffs also pointed out that Uber publicly filed nearly 200 pages of its own motion exhibits without "any substantive redactions nor did Uber lodge its motion or exhibits under conditional seal."

Uber also cited voir dire transcripts from the September trial showing prospective jurors said the Times story had "made a strong impression" and were "shocking" to them. Uber claimed this was proof that the leak risked tainting the jury pool. The company claimed plaintiffs' firms even used the article to solicit new clients.

"[The] article could hardly have been better timed to have maximum impact on the jury pool in advance of the September 8 trial," Uber wrote, adding, "The article presented a largely one-sided and sensationalized view of the evidence in favor of Plaintiffs."

Uber's attorneys won over the jury anyway.

Afterward, counsel for the plaintiff accused Schulman of allowing references to their client's past sexual encounters to be included as evidence, in violation of California's Rape Shield Law. That motion will be heard on Dec. 1.

#388206

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BNP Paribas genocide verdict sets stage for appeal on multiple grounds

reuters.com/legal/transactional/bnp-paribas-genocide-verdict-sets-stage-appeal-multiple-grounds-2025-10-22

Jenna Greene October 22, 2025

Commentary

Transactional
Jenna Greene

October 22, 20256:58 AM PDTUpdated 2 hours ago

The logo of BNP Paribas is seen outside a bank building in Rueil-Malmaison, near Paris, France April 14, 2025. REUTERS/Stephanie Lecocq/File Photo Purchase Licensing Rights, opens new tab

Oct 22 (Reuters) - When a federal jury in Manhattan on Friday found French bank BNP Paribas liable for aiding Sudan's genocidal regime by providing banking services that violated American sanctions, the decision set the stage for what's likely to be a fierce battle on appeal.
The stakes are huge. Victims' lawyers say the jury's $20.75 million award clears the way for an estimated class of 23,000 Sudanese refugees in the U.S. to "seek billions more in recovery."

The three Sudanese plaintiffs alleged they suffered severe human rights abuses under Sudan's former President Omar al-Bashir. Their cases were selected for a so-called bellwether trial — commonly used in class actions to gauge how juries will respond to a larger set of claims.

BNP Paribas in a statement said it "strongly" believes the verdict should be overturned and "will fight this case and use all recourses available to it." It also downplayed the significance of the verdict, saying it is specific to these three plaintiffs.

Shares of the bank opened sharply lower Monday morning after the Friday afternoon verdict in the five-week trial and fell again on Tuesday. In a call with analysts, BNP Paribas Chief Financial Officer Lars Machenil said on Tuesday that the bank had not set aside any funds to pay out litigation claims, my Reuters colleagues reported.

Assuming the case doesn't settle — always a possibility in any high-stakes fight — what might the bank's appeal look like?

It's hard at this point to put a timeline on next steps. In large part, it will depend on whether the 2nd U.S. Circuit Court of Appeals opts to review the three bellwether verdicts now or will wait until a later stage in the case, after other victims' claims are heard.

Based on court records, three issues stand out as particularly intriguing to me.

First, BNP Paribas may get traction arguing that U.S. District Judge Alvin Hellerstein applied the incorrect legal standard by misapplying Swiss law — more on that later — to hold it liable.

The lawsuit, which was filed in 2016, argued that the bank knew or should have known that by providing financial services, it was contributing to the Sudanese regime's campaign of murder, rape and torture between 1997 and 2011. The U.S. government recognized the Sudanese conflict as a genocide in 2004, and a decade later, BNP Paribas pleaded guilty to U.S. criminal charges related to facilitating transactions for sanctioned entities in Sudan, Iran and Cuba. It paid an $8.97 billion penalty.

In the past, attempts by plaintiffs' lawyers to hold companies responsible for their role in enabling overseas human rights abuses have largely failed, plaintiffs' co-lead counsel Kathryn "Lee" Boyd told me in an interview. Such complaints have been brought under U.S. statutes including the Alien Tort Claims Act or the Antiterrorism Act. Here, Boyd initially asserted tort claims against the bank including negligence and wrongful death.

After a series of procedural twists, however, the case was tried under Swiss law. The judge who initially presided over the case before being elevated to the appeals court in 2022, Alison Nathan, reasoned that the choice of law was appropriate because the bank in dealings with Sudan predominantly operated through its Swiss branch.

The bank has repeatedly argued that Hellerstein didn't apply Swiss law correctly. The Swiss government itself weighed in last month, arguing in a Sept. 2 letter, opens new tab to the court by ambassador to the U.S. Ralf Heckner that BNP Paribas' past conduct in Sudan "was permissible under Swiss law" at the time.

Boyd called the letter "a last-gasp effort," and said BNP Paribas has argued unsuccessfully for years to both Nathan and Hellerstein that Swiss law lets it off the hook.

The trial began on Sept. 11, after Hellerstein denied defense counsel's request to start on a day without terrorism-related associations. "We will open 9/11. It's not a holiday," he said, according to a transcript. However, he granted defense counsel's motion to exclude references to international terrorism, including Sudan hosting Osama bin Laden from 1991 to 1996.

Despite his own guardrails, the judge kicked off the proceedings by sharing at length with jurors his vivid recollections of 9/11: the smoke, the smell and "the skeletal teetering of the remains of the World Trade Center."

Plaintiffs' lawyer Bobby DiCello picked up the theme in his opening, telling the jury that "you heard his Honor speak of survivors, an auspicious day for me to deliver our opening statement. There are three survivors sitting right here," he said, referring to the Sudanese plaintiffs.

In what may emerge as a second potential issue to raise on appeal, BNP trial counsel Barry Berke, a partner at Gibson, Dunn & Crutcher, moved for a mistrial. Berke called the judge's 9/11 remarks improper and prejudicial, according to a transcript of the proceedings.

Hellerstein denied the motion. "I don't think there's anything objectionable," he said.

Defense counsel made another mistrial motion a week later, arguing that testimony from a witness about the relationship between Sudanese officials and BNP Paribas irreparably prejudiced them.

Hellerstein, who struck the testimony as hearsay, denied the motion and said he had no reason to believe jurors would not follow his instructions to disregard the exchange.

Beyond technical legal questions, internal disputes among plaintiffs' counsel could also prompt a third argument by the bank on appeal that alleged lawyer misconduct undermined the fairness of the proceedings.

As I previously wrote, a highly unusual public fight broke out this summer among plaintiffs' lawyers who accused one another of unethical conduct in the case. Co-counsel from Hausfeld and Zuckerman Spaeder in July sought to disqualify Boyd, opens new tab, alleging she tried to "force words into the mouth of an expert witness," and coached class members on how to fill out a questionnaire being used for settlement purposes.
Boyd denied wrongdoing, and responded, opens new tab that the Hausfeld/ Zuckerman team was trying to settle the case behind closed doors "without the consent or involvement of the very people they purport to represent."
At a Sept. 3 hearing, the plaintiffs' team told the judge they had found a way to work together, but Berke indicated the issue wasn't going away.

"We're very concerned about the significant allegations under oath that the experts and fact witnesses, including potentially the plaintiffs, were prepared to testify falsely in this trial," Berke said at the Sept. 3 hearing, according to a transcript.

In an interview on Monday, plaintiffs' counsel Michael Hausfeld said the lawyers recognized it was essential to put aside their personal differences, and that their conflict was "not an appealable issue" for BNP.

As the case moves into its next phase, whether the verdicts will stand remains a pivotal question for BNP Paribas and the tens of thousands of Sudanese refugees still awaiting their day in court.

Reporting by Jenna Greene

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

Analysis | **Litigation**

'Just Silly'?: Civil RICO Claims Skyrocket Following Supreme Court's CBD Decision

The risks and costs for corporate defendants increase substantially if a plaintiff's civil RICO claims survive a motion to dismiss, according to Martin Weinstein, a Cadwalader partner who said the U.S. Supreme Court's April 2025 decision allowing a civil RICO lawsuit to proceed against a CBD producer may encourage plaintiffs to file civil RICO claims in cases alleging predicate acts of wire fraud.

October 21, 2025 at 04:56 PM By **Sulaiman Abdur-Rahman**

Plaintiffs can allege wire fraud as a predicate act in civil RICO litigation against corporate executives and enterprises. Credit: Billion Photos/Shutterstock

Civil lawsuits alleging business executives violated the federal Racketeer Influenced and Corrupt Organizations Act are becoming more commonplace since the U.S. Supreme Court allowed a plaintiff's civil RICO claims to proceed against a cannabidiol or CBD producer in April.

Plaintiffs filed 121 RICO complaints in the third quarter of 2024 compared with 252 in the third quarter of 2025, a 108% year-over-year increase in the wake of the Supreme Court's 5-4 ruling in *Medical Marijuana Inc. v. Horn*, according to Law.com Radar data.

Big Law firms, including Gordon Rees Scully Mansukhani on behalf of plaintiff investors in the U.S. District Court for the Eastern District of Virginia and Quinn Emanuel Urquhart & Sullivan on behalf of plaintiff EAD Group LLC in the Southern District of New York, filed pending RICO claims in September alleging defendants engaged in predicate acts of wire fraud as part of a scheme to obtain money or property through deceptive or materially false statements.

"The whole idea behind RICO, you have to establish two predicate acts, and those could be mail or wire fraud, which means you made a misstatement and it crossed state lines, which can be anything in commerce," said Marc Weinstein, a partner at Hughes Hubbard & Reed and former federal prosecutor of complex financial crimes.

"As long as you have a materially false statement, you are going to be able to meet mail and wire fraud," Weinstein added. "It is so easy to meet the elements as long as you have a false statement. It just gives you that RICO predicate."

Congress passed the RICO statutes in 1970 to address organized crime and included a provision allowing plaintiffs to seek treble damages in federal court under civil RICO.

"The idea that a few misrepresentations can get you a RICO claim is just silly," Weinstein said. "There is no reason to have that law. ... This requires a congressional fix. I don't know if anyone in Congress cares enough to go back and fix this."

The U.S. Supreme Court in its 5-4 decision filed April 2 held plaintiff Douglas Horn is not categorically barred from using civil RICO to sue the manufacturer of CBD products for treble damages. Horn alleged Medical Marijuana Inc. engaged in mail and wire fraud through false advertising that caused him to suffer a business or property injury in the form of lost employment.

"The practical implications of the decision, I think, are not helpful in terms of curbing the misuse of civil RICO," said Martin Weinstein, a Cadwalader, Wickersham & Taft partner who leads the firm's global compliance, investigations and enforcement practice.

"For better or worse, this is not a new debate," added Martin Weinstein, no relation to the Hughes Hubbard partner Marc Weinstein. "Everybody knows in the 1970s this was envisioned as a way to fight organized crime. No one ever equated racketeering with business conduct. The debate about the guardrails of this statute, particularly in the civil context, have been debated for a long time."

The U.S. Court of Appeals for the Fourth Circuit cited the Supreme Court's *Horn* decision in a ruling filed Sept. 16 reviving Amazon.com Inc.'s civil RICO claims against a real estate developer accused of harming Amazon economically with a fraudulent kickback scheme.

U.S. District Judge Waverly D. Crenshaw Jr. of the Middle District of Tennessee in a decision filed Aug. 1 ruled plaintiff Franklin Construction Group "establish[ed] each of the four elements of a civil RICO claim with sufficient particularity to survive a motion to dismiss" in a lawsuit alleging wire fraud.

The risks and costs for corporate defendants increase substantially if a plaintiff's civil RICO claims survive a motion to dismiss, according to Martin Weinstein.

"That's just another bit of leverage to try to get more money out of the defendant," he said. "Surviving a motion to dismiss is really the major thing that plaintiffs' lawyers want to achieve."

Lawfare against Trump: Trial lawyers fuel Democrat machine

legalnewsline.com/attorneys-and-judges/lawfare-against-trump-trial-lawyers-fuel-democrat-machine/article_af08f3e8-fe99-4f87-8591-c42306181147.html

Chris Dickerson, Chris Dickerson October 21, 2025

The Ehline Law Firm has a page dedicated to filing lawsuits against Trump-owned golf courses.

WASHINGTON – Trial lawyers are waging lawfare against President Donald Trump, and America's business leaders by exploiting loopholes in an unregulated system while driving up costs for every family.

In 2022 alone, excessive litigation drained $529 billion from the U.S. economy — the equivalent of $4,207 per household.

These same lawyers then pocket their winnings and funnel money in left-wing politicians. In 2024, lawyers and law firms contributed $205 million to Democrats, including $46.5 million to Kamala Harris and Democratic outside groups. And 75% of lawyers' contributions supported Harris.

President Donald Trump
The White House

Trump, of course, is no stranger to the weaponization of the legal system.

Through the years, trial attorneys have capitalized on his success to go after him in court. As of 2016, Trump's golf courses, hotels, condos, and casinos were named as defendants in 696 personal injury claims.

There are law firms that advertise themselves as "Trump Golf Course Accident Attorneys," with a how-to-guide on "filing a lawsuit against Trump Organization."

And earlier this year, Trump called the lawyer lobby "the strongest lobby in the world" at a press conference following the California Wildfires.

During his first presidency, individuals repeatedly sued Trump properties, including his D.C. hotel, Trump Tower in New York City and his Doral Resort in Florida.

"In Texas and across the country, trial lawyers are weaponizing the courts," said Kathleen Bashur, communications director of Texans for Lawsuit Reform. "They are attacking President Trump and other conservatives and businesspeople.

"Once they pocket massive payouts, they funnel those winnings straight into the campaigns of liberal politicians who try and create even more opportunities for litigation. It's a corrupt cycle that drives up the cost of living for every American family, distorts our economy, and undermines confidence in the justice system.

"The billboard attorneys aren't just suing small businesses — they're funding a political machine."

The executive director of Protecting American Consumers Together agreed.

"President Trump has called the lawyer lobby 'the strongest lobby in the world,' and he's right," PACT's Lauren Zelt said. "President Trump can continue to deliver on his promise of lowering costs for American families by calling on Congress to end lawsuit abuse once and for all."

Trial lawyers contribute heavily to Democrats.

In the 2024 cycle, the trial lawyers' American Association for Justice PAC contributed $2,079,500 to Democrats. That accounted for 96.83% of their total contributions. Notable contributions included $500,000 to House Majority PAC, $500,000 to Senate Majority PAC and $100,000 to Future Forward USA.

According to the National Review, trial lawyers spend millions backing Democrats and get public contracts in return.

"Trial-lawyer groups have spent millions in recent years to support Democrats who then reward their benefactors with lucrative public contracts to represent consumers in lawsuits against deep-pocketed companies, revenue which the lawyers then pour back into the political system," the National Review story states. "The Alliance for Consumers discovered that political action committees tied to trial lawyers spent $26 million supporting Democratic candidates, affiliated committees, and activist groups from 2017 to 2023."

A Fox News report showed that prominent trial lawyer firms – including Lieff Cabraser, Motley Rice, Grant & Eisenhofer, Simmons Hanly and Baron & Budd – donated nearly 100% of their contributions to Democrats in 2024. Collectively, employees of these firms gave more than $15 million to federal campaigns from 2017–2020, $14.85 million of which went to Democrats.

Another report shows similar figures for the time frame of 2017 to 2020.

From left, California Gavin Newsom and California Attorney General Rob Bonta
X.com/AGRobBonta

For example, California Gov. Gavin Newsom received more than $1 million from trial lawyers from 2017 to 2023. They also spent more than $800k to defeat the 2022 recall effort. California Attorney General Rob Bonta, also a Democrat, received more than $340,000, and the California Democratic Party received more than $425,000.

In the same time window, trial lawyers contributed more than $4.5 million to campaigns and committees in Nevada. Gov. Steve Sisolak received $134,500, Supreme Court Justice Lidia Stiglich received $85,600 and Attorney General Aaron Ford received $83,000.

Back in Texas, George Soros and Texas trial lawyers poured millions into First Tuesday PAC, a Democratic turnout machine in Harris County. Soros' network — including Democracy PAC II and Texas Majority PAC — funneled nearly $1 million into First Tuesday, while personal injury attorneys and their firms kicked in more than $1.7 million.

Together, they bankrolled a liberal operation openly dedicated to electing Democrats "from President through local offices" while pushing a far-left agenda in Texas.

Jim Perdue Jr., a past president of the Texas Trial Lawyers Association, firm contributed $100,000 to First Tuesday PAC in the 2024 cycle.

In 2023, Soros personally donated $100,000 to First Tuesday, while his PACs contributed an additional $940,000. According to FactCheck.org, Democracy PAC and Democracy PAC II are liberal SuperPACs created by the billionaire to fund political organizations that help elect democrats.

Other trial lawyer firms contributed at least $1,625,000 to First Tuesday PAC, including Arnold & Itkin ($275K), Abraham Watkins ($300K), and Sorrels Law ($100K).

The First Tuesday PAC paid $1.3 million to Texas Tool Belt, a progressive canvassing firm. The home page of First Tuesday PAC says Texas Republicans are "a threat to democracy."

John Morgan
YouTube

And arguably the most well-known trial lawyer and firm in America – John Morgan of Morgan & Morgan – donates heavily to Democrats and their causes.

Morgan, who calls himself a "longtime friend" of President Joe Biden, raised $1.7 million for at a fundraiser at his home in Biden's 2020 campaign against Trump.

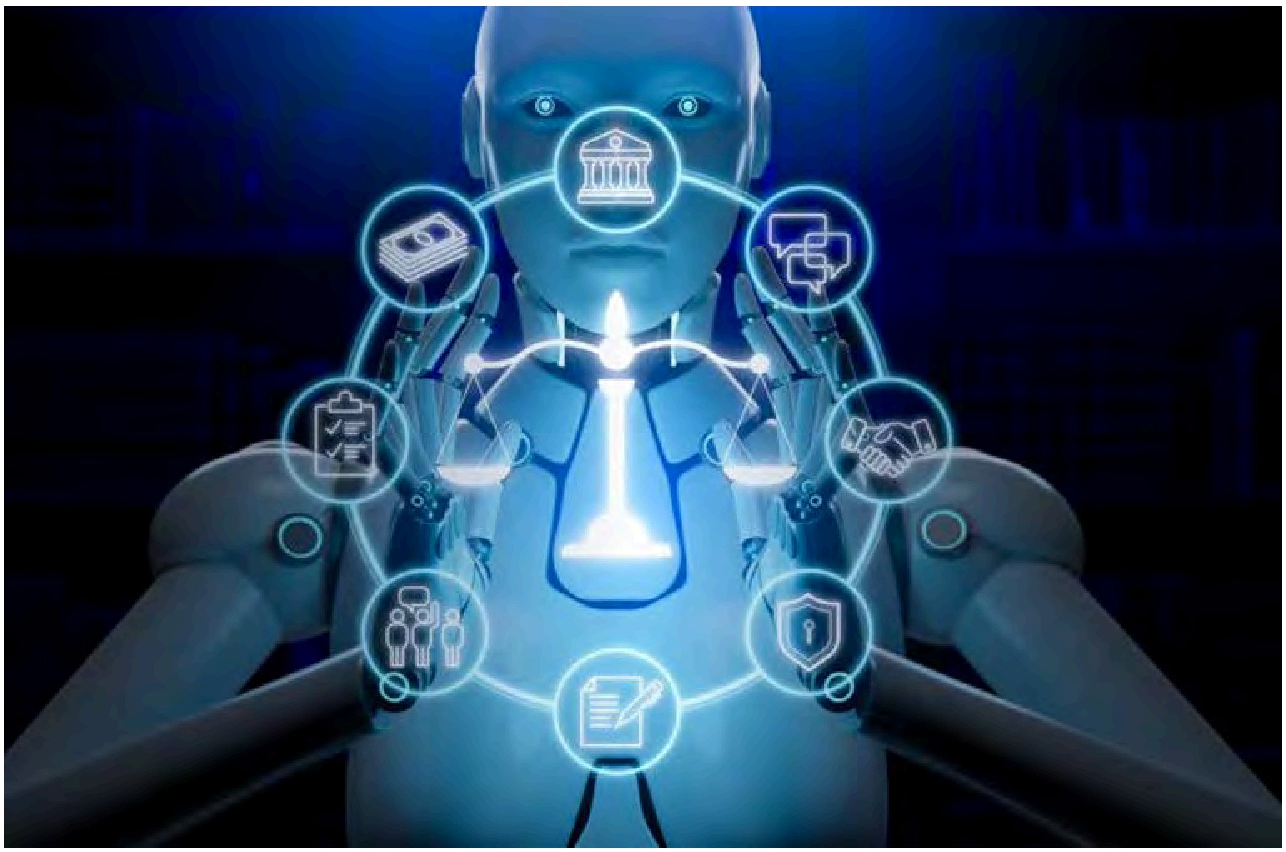
Since 1992, Morgan personally has donated nearly $3 million to Democratic candidates. He has hosted fundraisers at his home for the Clintons, President Barack Obama and Nancy Pelosi as well.

News | **Legal Technology**

Grilled by a Bot: Litigators Are Turning to AI for Trial Prep

Trial lawyers are divided. Some, especially solo practitioners, swear by artificial intelligence's cost-effective ability to predict trial outcomes and simulate jury behavior. But others caution that AI cannot replicate the unpredictable human element at play in courtrooms.

October 21, 2025 at 02:22 PM By **Laura Lorek**



Credit: Yingyaipumi/Adobe Stock

Caleb M. Miller pulls onto the highway for the two-hour drive to court. His iPhone is plugged into the car's audio system.

But he's not listening to music or a podcast.

Instead, the trial lawyer's being grilled by an artificial intelligence assistant on his opening statement, challenged on his cross-examination strategy, and forced to role-play with a hostile witness.

"You may have these small firms that don't have partners or other attorneys that can practice with or try things with," said Miller, an attorney with Aldous Law in Dallas. "Anybody who's a solo practitioner can download an app, pay you know whatever it is—$20 a month—and practice their entire trial 10 times before they step foot in the courtroom."

But other trial lawyers warn that artificial intelligence, no matter how sophisticated, can't predict the one thing that matters most in a courtroom: how human beings actually behave.

"The dirty truth is always much more persuasive than the perfect truth, and the problem with AI is that AI is searching for the perfect truth," said John Zavitsanos, a partner with AZA in Houston.

'I'm Always Surprised'

Since the 1970s, trial lawyers have relied on mock trials and focus groups to test their arguments pre-trial.

Now, artificial intelligence through standalone programs like Verdict Hub, or platforms like Harvey, ChatGPT, and Claude, promise the same preparation for a fraction of the cost.

Law firms have only figured out effective AI use in the past three to four months, with the technology still in its infancy among trial lawyers, Miller said. His firm uses AI for focus group script neutrality testing, voir dire practice, cross-examination preparation, opening statement rehearsal, and visual creation for trial presentations.

Voice-enabled AI allows lawyers to practice entire trials alone, simulating real jury interactions and judge questioning, particularly valuable for solo practitioners, Miller said.

So far, Aldous Law has used AI to prepare for more than a dozen cases and three trials and the attorneys have been very satisfied with its use as an invaluable trial preparation tool, Miller said.

A Dallas litigation boutique, Lynn Pinker Hurst & Schwegmann, uses Harvey, a closed legal AI system built on ChatGPT and now integrated with Claude, for comprehensive trial preparation.

For instance, Chris Schwegmann, managing partner at Lynn Pinker Hurst & Schwegmann, uploaded daily transcripts and exhibits each night during a six-day trial, then used Harvey to extract key testimony, concessions, and dramatic moments for closing arguments. He estimated this reduced his trial prep time from 15 hours to five.

To prepare for court, Schwegmann has Harvey assume opposing counsel's role to identify weaknesses, generate counterarguments, and anticipate the other side's opening statements.

The AI assistant consistently reveals two or three blind spots he hadn't considered.

"If it comes up with 10 points, I will have anticipated seven of them," Schwegmann said. "But I'm always surprised by two or three things that reveal some kind of hole or issue with my case."

Caleb M. Miller of Aldous Law. Courtesy photo

100 Law Firms

Robert Hirschhorn, a jury consultant, launched Verdict Hub using AI to conduct virtual focus groups and mock trials with 500 digital jurors that mirror the demographics and characteristics of specific venues. His firm charges $3,000 for the virtual product, compared to about $75,000 for traditional mock trials or focus groups.

In just three months post-launch, 100 law firms across 23 states are using Verdict Hub, all through word of mouth, Hirschhorn said.

The platform is intentionally designed and priced to help solo practitioners, personal injury lawyers, and criminal defense attorneys who could never afford traditional jury consulting services, its founder said.

Hirschhorn says he refuses to work with big corporations or defense firms with this tool.

That's because of his late wife, Cathy E. Bennett, 41, who died of breast cancer in 1992. She pioneered strategies in jury selection and trial preparation. Hirschhorn, who still calls his firm

Cathy E. Bennett & Associates Inc. in Highland Village, outside of Dallas, says he is focused on helping the little guy.

"Before Cat died, she said to me, 'Robert, you have this amazing gift. Now I need you to figure out a way to give this gift to lawyers that could never afford to hire us," Hirschhorn said. "And for 33 years I couldn't find what Cat Bennett wanted ... and then I said, 'Oh my God, I have found the gift.'"

'They Know It's Monopoly Money'

But despite AI's growing popularity, some trial lawyers remain unconvinced.

Zavitsanos argues AI tools cannot account for crucial human elements in trials, such as body language, credibility assessment, emotional responses, and the "if it sounds too good to be true" instinct jurors use to evaluate testimony.

He also questions the reliability of mock trials themselves, saying they lack witness testimony over extended periods, can't exclude problematic jurors who dominate deliberations, involve "monopoly money" stakes, and create false predictive models.

"They know it's monopoly money. Notwithstanding what these jury consultants say, they know that this is totally fake," Zavitsanos said.

He believes juries after 2021 behave fundamentally differently than before, making pre-pandemic trial data "largely worthless."

Social media echo chambers have also made jurors more conspiratorial, angrier, and less predictable based on traditional demographics, he said.

"Literally everything before like 2021 to me is largely worthless," Zavitsanos said. "It doesn't hold water today."

The litigator argues that regular trial experience develops the "visceral gut instinct" and "sixth sense" necessary for effective litigation, which is something he says neither AI nor mock trials can replicate.

"There is no substitute for someone trying cases regularly so that they can develop that kind of sixth sense that good trial lawyers have," he said.

'A Sparring Partner'

Even AI enthusiasts—like Miller, who uses it for trial preparation—acknowledge limitations.

"After months of playing with the AI, it's hard for me to imagine a competent legal practice without using it. I know that sounds crazy," the Dallas attorney said. But he added, "I don't feel like I'm going to be replaced anytime soon."

Miller warned, though, that over-reliance on AI risks diminishing an attorney's creativity and trial skills.

"You still need to do the preparation as a lawyer, and need to put thought into it and don't take the hard work out of being a trial lawyer," he said. "The more you depend on AI, the less you are creative, and the less you're using your own brain to come up with ideas."

Privacy concerns also remain when using public-facing platforms like Claude and ChatGPT.

Lawyers avoid inputting confidential medical records, sexual assault case details, or sensitive client information due to data security uncertainties, Miller said.

Schwegmann agreed, describing AI's highest use as "a brainstorming tool, a sparring partner, an idea generator" rather than a replacement for legal judgment.

Artificial intelligence excels at document review, Zavitsanos said. It is great at processing information, finding inconsistencies across depositions and summarizing testimony. But it has it limits, and cannot replace human judgment in trial strategy, he said.

"If it sounds too good to be true, then it is, and so when you've got five or six people whose story lines up perfectly like Lego blocks, it comes off as bullshit that this was orchestrated," Zavitsanos said.

Meanwhile, most law schools aren't teaching AI integration—yet—though firms increasingly expect new lawyers to have these skills.

That's why some, like SMU Dedman School of Law in Dallas, just started offering AI classes this year.

And last month, UC Berkeley School of Law allowed student competitors to use an AI assistant, Eve from Eve Legal—an AI platform for personal injury lawyers—for the first time in preparation for its fourth annual National Flash Trial Competition.

Schwegmann concedes, "As our clients start adopting these tools themselves internally ... unless lawyers start to use them too, they're going to get left behind."

News from Bloomberg Terminal

Banks Make Loans to Non-Banks

Oct. 22, 2025, 9:01AM PDT

By Matt Levine

(Bloomberg Opinion) --

NDFIs

Three themes that we have talked about a lot around here recently are:

1. Banking is getting narrower. The classic model of banking is that people need money to buy houses or do business, and they go to banks to borrow the money. This model is risky — if the borrowers don't pay back the loans, the banks' deposits will be at risk — and so post-2008 bank regulation has at various margins discouraged bank lending. But people still need loans, so now they increasingly borrow money from other lenders — "private credit" is the big buzzword, but also fintechs and trade finance firms and all sorts of other "nonbank financial institutions" (NBFIs) or "non-depository financial institutions" (NDFIs). Those lenders have safer funding models than the banks: Instead of being funded with deposits, they lend using long-term locked-up investor capital.
2. The banks are re-tranching. Really this is just a slight variation on the previous theme. The NDFIs lend using their own investors' capital, but not *only* their own investors' capital. They also leverage that capital by borrowing from banks. The banks are not moving away from the business of lending, exactly; they are moving up in seniority. Instead of lending money to businesses and consumers, they lend money to *lenders* who lend it to businesses and consumers. Instead of getting a senior claim on some underlying economic activity, the banks get a senior claim on some pool of senior claims on some underlying economic activity. In theory this should be safer for the banks: The NDFIs bear the first losses on any loans that go wrong, and the banks only have losses if the NDFIs are wiped out. "What's happened is we've moved from the riskier part of the capital structure to the safer part of the capital structure," as a Goldman Sachs Group Inc. executive put it.
3. "When you see one cockroach, there are probably more." There has been a rash of what Marc Rowan called "late-cycle accidents" in credit markets, and they all kind of look the same. There is some company — Tricolor Holdings or First Brands Group or Cantor Group or 777 Partners — that is basically in the business of *making loans*, against cars or car parts or commercial real estate or structured settlements. And that company, in turn, borrows from other lenders, using the loans it made as collateral. [1] And then there are problems with those loans. The problems are partly of the form "something normal went wrong with the underlying loans" — Tricolor's car customers run into financial trouble and can't pay for their cars, etc. — but they are also partly of the form "the underlying loans weren't actually there." The company borrowed money using the loans it made as collateral, but there are allegations that it hadn't actually made those loans, or that it no longer owned them, or that it pledged them as collateral to multiple lenders.

These things are perhaps related. If you are a bank, and you lend someone money to buy a car, you will try very hard to make sure that the car actually exists. You will take the title to the car and keep it in a safe place. You want to get paid back, and the car is your collateral, so you will spend some time thinking about the car.

But if you are a bank, and you lend money to a *company that makes car loans*, you will have a more indirect relationship to the cars. Oh you *might* be rigorous and diligent about checking on the cars. You might say to the company "I assume you have taken the titles to all these cars and put them in a safe, so hand us the safe." But you might not. You might do some diligence on the company and say "ehh, they seem like professionals, we can trust them. And after all they have a lot of skin in the game: They take the first losses if any of these loans go bad, so they have incentives to make sure that the collateral is good."

That is, one tradeoff in the re-tranching of banking is that banks have more *seniority* but less *visibility*. If loans go bad, banks don't take the first losses, because they didn't make the loans. (They made loans to the companies that made the loans.) But because they didn't make the loans, they have less ability to check that the loans are good, or even that they exist in the first place.

Anyway here's a Moody's Ratings report titled "US private credit market reshapes bank lending and risk":

The rise of private credit has altered the competitive landscape for US banks, which have ceded significant lending turf to alternative asset managers on the back of more stringent regulations following the 2007-08 financial crisis. US private credit assets under management (AUM) have tripled over the past decade, a growth rate far outpacing that of most other forms of credit.

Banks have adopted new strategies in reaction to the shifting market environment, with a focus on growing loans to non-depository financial institutions (NDFIs), which reached $1.2 trillion as of late June for domestically chartered US banks. ...

As banks compete with non-bank lenders and simultaneously finance them, asset quality challenges may surface. The recent bankruptcy of Tricolor shows that bank lending to NDFIs can result in significant losses, and underwriting and collateral controls can fail even when loans are secured.

Banks' lending to private credit providers rather than directly to middle-market borrowers offers a diversification benefit from exposure to the providers' wide spectrum of portfolio companies. But this benefit is reduced by the incremental leverage that private credit providers often incur at the portfolio company level, and the inherently lower transparency of indirect lending.

One simplistic way to look at it is this. You are a bank. You have $100 of deposits to put to work. [2] In the olden days, you would make $100 of loans to people and companies. In the new regime of indirect lending, NDFIs will make those $100 of loans to people and companies, and you will lend the NDFIs $50 secured by those loans. But you don't have $50 to lend, you have $100. You need to earn a return on all of it. How do you make $100 of loans in this new, re-tranched world? The simple answer is "the NDFIs will make *$200* of loans, and you will lend them $100 secured by those loans." [3] But you were only making $100 of loans in the olden days. How will the NDFIs find an extra $100 of loans to make? One obvious possibility is by making much worse loans. Another is by making fake loans.

Crypto basis trade

One possible model is that the *basis trade* is a *money-market* trade. This is not the normal way to think about it, but it is roughly plausible. The classic basis trade — the one in US Treasury futures — goes like this:

1. Short-term cash investors (money market funds, etc.) lend money to hedge funds to buy Treasury bonds. These loans have short terms, pay money-market interest rates (something like SOFR, the Secured Overnight Financing Rate, the benchmark US short-term lending rate), and are collateralized by the Treasury bonds.
2. Hedge funds use those loans to buy the Treasury bonds.
3. The hedge funds sell Treasury *futures* to bond fund managers. Simplistically, a Treasury futures contract is "In three months I will give you a Treasury bond and you will give me $100," with no money changing hands upfront.
4. So the bond managers get exposure to Treasury bonds *without paying for them:* Effectively, they own the bonds, but on the hedge funds' balance sheets. They are getting "synthetic leverage," meaning that they are kind of *borrowing money from the hedge funds to buy Treasury bonds.* [4]
5. The hedge funds essentially earn a spread: They borrow from the money market funds at low rates, and lend (synthetically) to the bond managers at somewhat higher rates.

You could loosely summarize this as "what is happening here economically is that the money-market funds are making short-term secured loans to asset managers to buy Treasury bonds," though in reality the hedge funds intermediate the trade. I once wrote:

You could imagine a bond manager saying "I would like to own Treasuries but not put up a lot of cash, so I am going to go across the hall to the money market fund manager at my firm and ask him to lend me the money to buy the Treasuries."

Other basis-ish trades get a bit closer to that approach. We talked once about the S&P 500 index futures basis trade (buy stocks, sell S&P 500 futures), which some cash investors apparently do directly. [5] "Unlevered investors looking to deploy unencumbered cash might step in to finance equity exposures," said a D.E. Shaw & Co. note, "given the attractiveness of the S&P 500 futures spread relative to other common uses of cash." And Janus Henderson investment manager Natasha Sibley said that "it has been a popular play among sophisticated real-money investors, such as pension funds and sovereign wealth funds, those with cash to put to work." If you are a cash investor — not necessarily a *money market fund* per se, but a sovereign wealth fund with some extra cash that would otherwise go into the money markets — financing equity exposures might sometimes be an attractive trade. Not just in the abstract sense of "it pays well," but also in the narrower sense that it *looks like a money-market trade*. You are effectively lending your balance sheet to the equity market, without any market risk (you are long and short the S&P 500) and without much credit risk (your futures contracts are collateralized through a highly rated and too-big-to-fail central clearinghouse), to earn a SOFR-like return.

Or a box spread is in a literal first-order sense a combination of options trades (buy a put, sell a call, buy a call, sell a put), but it is effectively a money-market trade: You synthetically lend money to options traders and get paid a SOFR-ish interest rate. We talked once about an exchange-traded fund that does box spreads; Bloomberg's Zachary Mider explained that it "offers returns that closely track short-term Treasuries, with starkly lower tax bills." That is, the *pitch* was "we pay you short-term risk-free interest rates, though we get them in a weird way." [6] Box spreads obviously *aren't* short-term Treasuries, but they kind of are. And so a box-spread ETF could go around saying "look we're basically a money-market fund when you think about it," and be roughly correct.

Anyway. Who invests in money markets? Well, "unlevered investors looking to deploy unencumbered cash," sovereign wealth funds, corporate treasuries, all sorts of investors. Retail investors often put their cash in money market funds, which then invest it in money-market instruments; some of that money indirectly ends up in basis trades.

But of the big novel interesting modern participants in money markets are *stablecoins*. Big issuers like Tether and Circle own tens of billions of dollars of Treasury bills and other money-market instruments, along with (in Tether's case) assorted odder investments. There is a widespread view that their investments should not be particularly frisky, even compared to money-market funds: In the US, the GENIUS Act restricts stablecoin issuers to mostly bank accounts and Treasury bills, while the UK might just have them hold reserves at the central bank. But from first principles you could stuff all sorts of money-market-ish trades into a stablecoin. Could you make short-term loans to trading firms secured by their portfolios of securities or, let's be real here, crypto? Absolutely, and Tether has some history of doing that.

Could you do basis trades? Crypto basis trades? Oh sure sure sure why not. Basis trades obviously are not Treasury bills but, you know, some distant family resemblance. Last week my Bloomberg Opinion colleague Lionel Laurent wrote about USDe:

The third-largest stablecoin – USDe – briefly lost its dollar peg and fell to as low as 65 cents against the dollar on crypto exchange Binance. Things have calmed down since then, but it's clear that this is not the kind of move investors expect of so-called digital dollars. …

If Circle and Tether resemble tokenized money-market funds, reinvesting dollars into assets like Treasury bills, USDe looks more like a tokenized hedge fund. It makes money from crypto-native revenue like staking Ethereum or hedging crypto derivatives such as perpetual futures – an instrument (unregulated in the US) that allows traders to speculate with leverage around the clock without expiry. These hedges enable the dollar value of the backing assets to remain "relatively stable" in most market conditions, USDe says.

That sounds pretty out-there, but it's been a very lucrative trade – the demand from investors to go long cryptocurrency with leverage provided on trading platforms has been insatiable, according to Jonathan Bier, chief executive officer of Farside Investors, and USDe's market capitalization has swelled to $14 billion. Last year, the yields being earned from USDe were over 20%; last month, Binance offered users a 12% annualized yield for holding USDe. "So far so good," wrote S&P Global Ratings in an assessment of USDe earlier this year. But it warned the token relied heavily on a functional crypto ecosystem of exchanges and had yet to be fully battle-tested; it rated the token's ability to maintain its peg as "weak."

USDe is the stablecoin of Ethena, "a synthetic dollar protocol built on Ethereum that provides a crypto-native solution for money, USDe, alongside a globally accessible dollar savings asset, sUSDe." Here is Ethena's description of how it works. It's a basis trade:

1. You deposit $1 of Ethereum and get back 1 USDe.
2. Ethena keeps your Ethereum and also enters into an offsetting short trade on Ethereum perpetual futures, hedging out its Ethereum price risk. It's long $1 of Ethereum (which you gave it) and short $1 of Ethereum (via futures).
3. Ethereum futures traders, just like Treasury futures traders, want synthetic leverage and will pay for it. "Historically," says Ethena, "due to the mismatch between demand & supply for exposure to digital assets, there has been a positive funding rate & basis spread earned by participants who are short" the futures. [7]

So with $1 of Ethereum and $1 of short Ethereum perpetual futures, USDe is perfectly hedged against market risk, so it should always be worth $1. And it can generate like 12% interest.

Meanwhile SOFR is like 4.2%, so, uh, 12% is quite a bit more. Why does the crypto basis trade pay so much more (unlevered) than the Treasury basis trade? I mean, to ask the question is to answer it: The Treasury basis trade involves Treasuries, while the crypto basis trade involves crypto. If you trade Treasury futures on regulated US exchanges backed by clearinghouses, you tend to think of your futures as having nearly zero credit risk: You expect that you will always receive the payoff of your futures contracts. If you trade crypto perpetual futures on crypto exchanges, you definitely do not expect that! Crypto exchanges sometimes go bust, and even when they don't they sometimes socialize losses; we talked just last week about how perpetual futures sometimes get "auto-deleveraged" and don't pay out as expected. USDe "relied heavily on a functional crypto ecosystem of exchanges and had yet to be fully battle-tested," and the crypto exchange ecosystem does seem somewhat less functional than Treasury futures.

Still: I kind of love it? For many purposes, you want a stablecoin that will be worth a dollar in any scenario that a normal dollar-native person can think of, so you will come up with ideas like the GENIUS Act to make sure that stablecoins invest only in dollars. For other purposes, though, you might want a stablecoin that is always worth a dollar *within the context of your trading on the crypto exchange*. If I offered you a stablecoin whose value is "$1 as long as you are cheerfully trading crypto on your current favorite exchanges, and $0 if any of them go bust," *you might take that deal*, if it paid higher interest. (If you are a big crypto trader and the exchanges go bust the value of the stablecoin is not your only worry; IBGYBG.) The proper *crypto money market rate* is apparently 12%, and that's what USDe pays.

FUN

Six Flags Entertainment Corp. has an obvious nostalgic appeal: It runs amusement parks, so a lot of people probably have fond memories of going to Six Flags as a kid but have not spent a lot of time there recently. It has a well-known consumer-facing brand. It was hit hard by Covid a few years ago. Its stock price peaked in 2017, and a lot of short sellers have bet against it; short interest represents 22% of its float, more than GameStop, AMC or Tesla. It has an equity market capitalization of about $2.6 billion and a good ticker symbol, FUN.

When you read that paragraph, what do you think? Do you think "hmm sounds like a meme stock"? I do. I mean, the meme-stock effect is not as strong now as it was in 2021, and Six Flags — unlike some meme stocks — is not in *financial distress*. Also it does not have a particularly retail-heavy shareholder base; the top 20 holders reported on the Bloomberg HDS page own 77% of its stock. Still it has some meme-y elements.

And so if you are a regular, big, institutional activist investor like Jana Partners, and you have analyzed Six Flags and concluded that it is a good target for an activist campaign, should you be just a touch meme-y about your campaign? I mean, in general, activist investors should be a little meme-y about everything; there has always been a continuum between the techniques of activist investors and people talking up stocks on Reddit. "Activist investing," I wrote last year, "is among other things an indirect way to monetize media," and in the modern media environment that requires a certain savvy with social media. But, sure, Six Flags might call for somewhat meme-ier techniques than a logistics company.

The Wall Street Journal reports:

An activist investor pushing for big changes at Six Flags has teamed up with Travis Kelce.

New York-based hedge fund Jana Partners, the National Football League star and other investors have a combined stake of about 9% of the theme-park operator's shares, or $200 million.

Jana managing partner Scott Ostfeld unveiled the position and detailed their thesis at a conference Tuesday afternoon, confirming an earlier report by The Wall Street Journal.

The news sent Six Flags shares up roughly 18% Tuesday, giving the company a market value of around $2.6 billion. Prior to that, the company's shares had been down roughly 50% year-to-date, weighed down by bad weather and declining visits to its parks. …

"I am a lifelong Six Flags fan and grew up going to these parks with my family and friends," Kelce said in a statement. "The chance to help make Six Flags special for the next generation is one I couldn't pass up."

Kelce shared videos of himself enjoying Cedar Point rides as a child on his Instagram account Tuesday afternoon. "I have some exciting news!!!" he wrote of his investment in Six Flags.

Yeah good stuff, good stuff. Also:

As part of its Six Flags investor consortium, Jana also brought in former Gap CEO Glenn Murphy and Reddit chair Dave Habiger. The two men are potential board nominees, according to Ostfeld, while Kelce isn't.

Right you definitely want a Reddit guy on the board, that could come in handy.

Snail farmer

Apparently if you use a London office building for agricultural purposes, it is exempt from local property taxes. At first glance it seems hard to use a London office building for agriculture, but tax arbitrages bring out the best in human ingenuity, and one guy figured it out. If you get two snails and put them in a box in your office building, you are "breeding snails" and thus doing agriculture. We talked about this a few months ago because how could we not. It is such a pure and perfect tax trade, and one could hope that whoever invented it got a big job at a hedge fund.

But Jim Waterson at London Centric found the guy and talked to him and, no, he's apparently just a guy with (possible Mafia ties and) a deep aesthetic appreciation for snails and evading taxes:

The farmer, a 79-year-old former shoe salesman called Terry Ball who has made and lost multiple fortunes, has been cheerfully telling me in great detail for several hours about how he was inspired by former Conservative minister Michael Gove to use snails to cheat local councils out of tens of millions of pounds in taxes. …

"They're sexy things," chuckles Ball in a broad Blackburn accent, describing the speed with which two snails can incestuously multiply into dozens of specimens if they're left alone in a box for a few weeks. Snails love group sex and cannibalism, he warns. …

Over the ensuing hours, Ball makes confession after confession about his attempts to outwit the taxman with increasingly elaborate plans, his decades-long links to the Naples underworld, and how at this very moment there are buildings across London where he is deploying his unique snail-breeding method in a bid to cheat exasperated local councils out of millions of pounds. ...

The old man is proudly committed to spending his remaining years on this earth finding innovative ways to get revenge on the "bastard" authorities who he feels screwed him over in the past: "I just do it for devilment. I do it just to get away with it."

It is very satisfying to learn that the guy who invented snail-based tax evasion did it for the very best reason to do any sort of tax trade, not to make money but just for the sheer joy of it.

Things happen

Fed Floats Plan With Much Smaller Capital Hikes for Big Banks. Gold Extends Rout in Volatile Pullback From Historic Price Surge. Barclays to Chase More CEOs After Getting Shut Out of Big Deals. Bessent's Plan Runs Short on Time to Line Up Argentina Financing. Trump administration under growing pressure over Argentine intervention. The U.S. Is Trying to Drive a Wedge Between Argentina and China. Tesla Stops Growing So Investors Pivot to Dreams of an AI Future. Anthropic, Google in Talks on Multibillion-Dollar Cloud Deal. Inside Oklo: the $20bn nuclear start-up without any revenue. Crypto Trading Firm FalconX to Buy ETF Manager 21shares. Beyond Meat Shares Surge, Extending Rally to Almost 1,300%. The Murky Underworld Where the Louvre Thieves Hope to Hawk Their Stolen Jewels. Bear Breaks Into California Zoo to Mingle With Other Bears.

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1. It would be convenient for my schematic description here if I could write "and that company, in turn, borrows from banks," but in fact many of these accidents have involved financing from other non-bank lenders (factoring companies, credit funds, insurers, etc.), so it's actually a more indirect process.

2. Obviously I am ignoring capital and liquidity rules in this extremely simplified model.

3. Another, also not great answer is "the NDFIs will make $105 of loans, and you will lend them $100 secured by those loans."

4. Why? The standard story is that they use their own balance sheets to get some credit risk, i.e., they buy corporate bonds, to try to outperform their index. But the index has lots of Treasury bonds and a longer duration than most corporate bonds, so adding credit risk leaves the bond managers without enough duration. They get the extra duration by, effectively, levering up: If they are long 100% corporate bonds and 20% Treasuries, they can match the index's duration while taking more credit risk. But they can't just borrow 20% of their equity to buy more bonds, because they're not supposed to borrow, but they are allowed to do futures.

5. Last week Bloomberg's Yiqin Shen and Lu Wang had a fascinating story about distortions in the S&P 500 futures funding market caused by the rise of Registered Index-Linked Annuities. Basically there's a big demand for synthetic leveraged stock index exposure from insurance products, so funding spreads go up.

6. The weird way was supposed to avoid taxes, though it's not clear that worked.

7. There are other sources of income, mainly staking the spot Ethereum that you gave it, but the futures funding spread is the big one.

Barclays PLC

Barclays suffers £110mn hit from Tricolor collapse as bank's profits fall

London-listed lender announces £500mn share buyback even as it sets aside further £235mn for UK car finance payouts

Barclays' investment bank underperformed relative to US peers © Bloomberg

Ortenca Aliaj and **Laith Al-Khalaf** in London

Published YESTERDAY

Barclays has disclosed a £110mn loss from its exposure to collapsed subprime lender Tricolor Holdings as banks continue to measure the fallout from ructions in US debt markets.

The London-listed bank said it had taken the charge inside its investment bank as it disclosed a decline in profits during the third quarter.

Barclays' exposure to Tricolor "was not a surprise, the surprise was the fraud", chief executive CS Venkatakrishnan said on a media call. "Credit lending has to be prepared for all outcomes, including fraud."

The US justice department is investigating allegations of fraud at Tricolor but has made no findings.

The collapse of Tricolor and auto parts supplier First Brands Group in quick succession has unnerved private debt markets and led to hundreds of millions in losses so far.

JPMorgan Chase last week said it had written off $170mn during the third quarter, linked to Tricolor's bankruptcy.

Venkatakrishnan said Barclays had also been approached to lend to First Brands Group several times but had declined because the bank "did not see support for the financial projections they were making".

Both Barclays and JPMorgan Chase have said they do not have exposure to First Brands Group.

Venkatakrishnan said Barclays was reviewing its entire loan portfolio in the aftermath. "We hope that fraud is one of those things that is very occasional but we are very vigilant," he said.

Barclays also said it had set aside a further £235mn to cover payouts from the UK car finance mis-selling scandal, bringing the total to £325mn, after the Financial Conduct Authority published details of a compensation scheme earlier this month.

The bank reported pre-tax profits of £2.1bn for the three months to the end of September, compared with £2.2bn in the same period last year and in line with analyst expectations. It also announced a £500mn share buyback and slightly increased its 2025 guidance.

Shares rose 4 per cent in early trading on Wednesday.

Barclays' investment bank underperformed relative to US peers, with the business reporting profit before tax of £925mn, up 4 per cent from the same period last year, but below analyst expectations of £1bn.

Wall Street rivals such as Goldman Sachs and JPMorgan Chase reported robust profits in their investment banking and markets businesses last week thanks to a much awaited rebound in dealmaking and equity capital markets.

Barclays' chief financial officer Anna Cross said the bank had missed out on corporate mergers and acquisitions and had been "less able to capture stronger activity in the quarter" including from a slew of public listings.

Separately on Wednesday, Milan-based UniCredit reported net income of €2.63bn for the three months to September, a rise of almost 5 per cent from a year earlier, fuelled by higher dividends from strategic investments, lower costs and lower bad loans provisions.

The results exceeded analyst expectations and offer relief to chief executive Andrea Orcel after his unsuccessful bid for local rival Banco BPM and a complex move to bid for Commerzbank, which was opposed by the German government.

Additional reporting by Silvia Sciorilli Borrelli in Milan

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News from Bloomberg Terminal

More Than 13 Million Memecoins Show Urgent Need for Regulation

Oct. 22, 2025, 8:00 AM PDT

Summary by Bloomberg AI

AI Generated

- The issuance of over 13 million individual memecoins in 2025 signals crypto's regulatory vacuum and its need for US market structure legislation to pass, according to a16z crypto.
- A16z crypto highlights the need for regulation to provide a path to establishing clearer frameworks for crypto builders and investors alike in their 2025 State of Crypto report.
- The passage of the Digital Asset Market Clarity Act will protect consumers with added safeguards, enable oversight of blockchain-based intermediaries, and create a better defined regulatory pathway for digital commodities, according to a16z crypto.

By Judy Lagrou

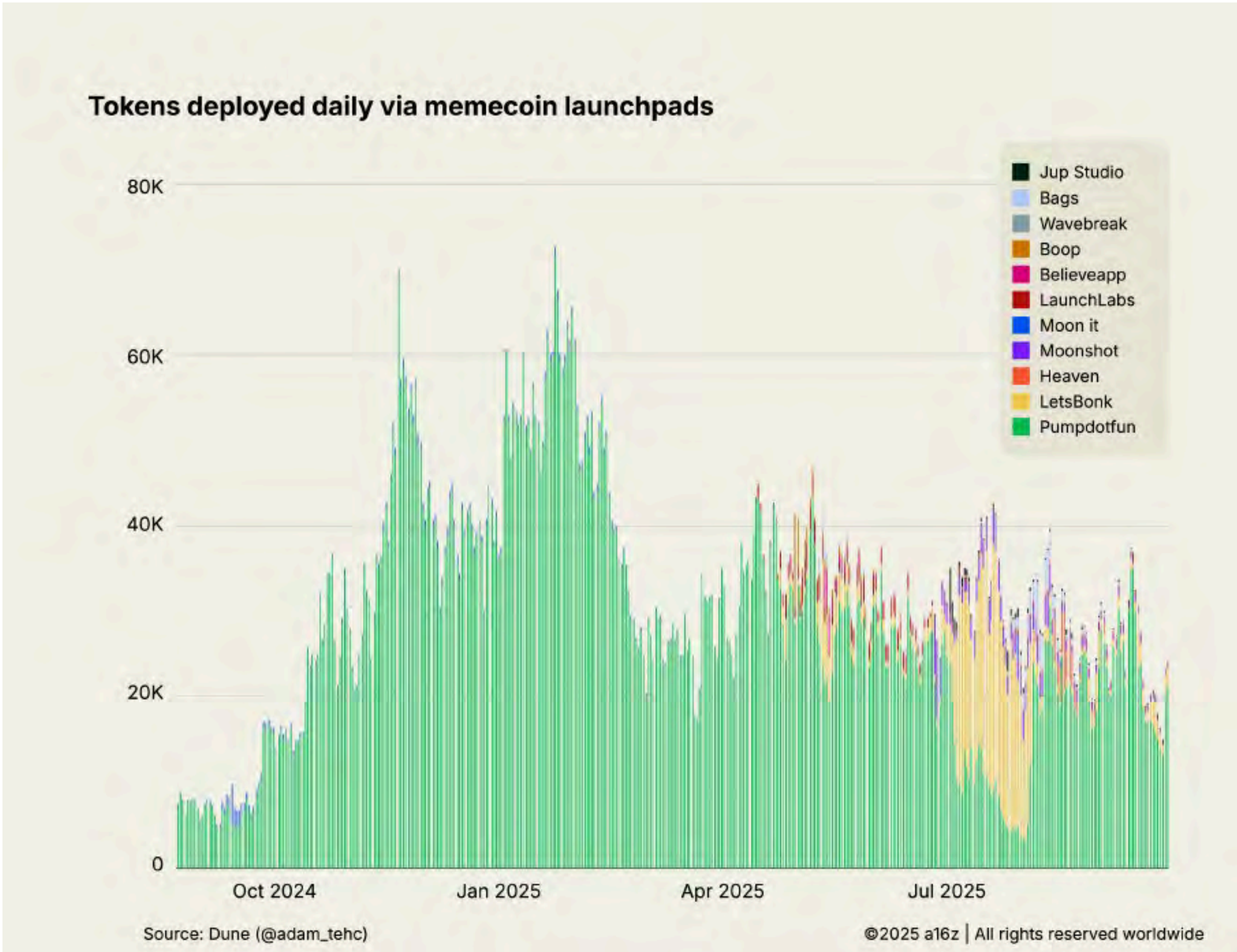
(Bloomberg) --

The issuance of over 13 million individual memecoins in 2025 signals crypto's regulatory vacuum and its need for US market structure legislation to pass, according to a16z crypto, Andreessen Horowitz's digital asset venture capital fund.

In their 2025 State of Crypto report released Wednesday, a16z crypto highlights the need for regulation to provide a path to establishing clearer frameworks for crypto builders and investors alike. The fund says that passage of the Digital Asset Market Clarity Act currently before Congress will protect consumers with added safeguards, enable oversight of blockchain-based intermediaries, and create a better defined regulatory pathway for digital commodities. A16z crypto is one of the largest investors in crypto startups, having raised more than $7.6 billion across four funds.

The lack of regulatory framework is illustrated by the explosion of memecoins in the past year, the report asserts. Steeped in high volatility and unprecedented risk, memecoins represent both the vast potential and well-known dangers of the speculative investing that many associate with cryptocurrency as an asset class.

Memecoins were among the the broad swathe of digital assets known was altcoins that were hit hardest during the crash in crypto prices earlier in the month. The selloff began as risk appetite across markets weakened, but altcoins fell harder due to their inherent fragility. Many are thinly traded, lack real buyer depth, and rely heavily on a small group of players to stabilize prices.



Source: a16z crypto/Dune

"Memecoins, whether you like them or hate them, have been an important part of crypto story," said Daren Matsuoka, a partner on the crypto investment team at a16z crypto. Matsuoka noted that due to a loophole in regulation during the Biden administration, memecoin creation spiked, illustrating the power of the underlying technology upon which cryptocurrency exists. However, as institutional and retail investor interest rises, Matsuoka said, there is an increasing need for regulation that protects investors of all sizes.

"We want more structure to this market," Matsuoka said. "We're not saying a memecoin should be treated exactly like someone building real world assets," he added, but getting "the right rules in place" will "encourage more serious activity."

Venture capitalists Marc Andreessen and Ben Horowitz, the eponymous founders of the venture firm, shocked Silicon Valley when they announced they would support Donald Trump in 2024, in part because of the Biden administration's approach to cryptocurrencies. The crypto industry, which widely supported Trump, was the largest corporate donor in last year's presidential election.

Read more:

Memecoin Platform Pump.fun Raises $600 Million Within 12 Minutes

Stablecoin Backers' Celebratory Hangover Hits: Bloomberg Crypto

Solana's Memecoin Cabals Take Shine Off Hottest Crypto Frontier

While other well-known cryptocurrencies such as Bitcoin and Ether were created in an attempt to emulate and improve on traditional currencies or to pay for online services, memecoins usually start out as jokes or social experiments. The original and most valuable memecoin, Dogecoin, began with a picture of a Shiba Inu dog that had gone viral on the internet. Newer memecoins like dogwifhat and Pepe are, quite literally, references to memes of a dog wearing a hat and a green anthropomorphic frog. There are Donald and Melania Trump tokens that financially benefit the first family.

Matsuoka said that regulatory legislation sits "upstream of everything else" needed for crypto's development, growth, and adoption among institutional investors. This is because legislation can set rules in place that will last for longer than a presidential administration. he said. Clear guidance and regulatory clarity is "something we care a lot about," Matsuoka added.

If legislative efforts are successful, Matsuoka sees a future in which crypto is improved through the increase of builders in the space. "We need people to come in and build," he said. And in Matsuoka's view, the only way that "the smartest people in the world" are going to be able to build is if they can feel assured that what they are building is legal, allowed, and accepted.

"We're in this for the long run," Matsuoka said. "That's why legislation is so important."
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Purdue Touts Wide Support For Latest Ch. 11 Plan

By **Emlyn Cameron**

Law360 (October 21, 2025, 6:28 PM EDT) -- Pharmaceutical titan Purdue Pharma heralded Tuesday that its newest Chapter 11 plan has almost total support from voting creditors, saying the proposal could pave the way to creditors receiving more than $7 billion, after its well-publicized role in the opioid epidemic pushed the company into bankruptcy and the U.S. Supreme Court rejected its original plan.

Purdue Pharma LP announced in a statement that its balloting agent, Kroll, ran the numbers on the preliminary voting results, finding more than 99% of all voting creditors back the plan. The plan would see Purdue settle its civil claims against members of the Sackler family who once ran the company, as well as receive as much as $6.5 billion from the Sacklers, establish a company to offer opioid treatments and settle all the civil claims against the drug manufacturer, it said.

If confirmed, creditors will be allowed to decide whether they want to settle their own claims against the Sacklers, and if all creditors participate, they should see about $7.4 billion in cash, and possibly more from insurance, litigation and sale proceeds from the Sackler family's international business, the debtor noted.

"The high level of support for this plan is gratifying after years of intense work with our creditors to craft a settlement that maximizes value for victims and communities and puts billions of dollars to work for the public good," Purdue Chair Steve Miller said in the statement.

The company, which makes OxyContin, **sought Chapter 11 protection** in 2019 to address mounting claims related to its role in sparking a nationwide opioid epidemic. The U.S. Supreme Court in June 2024 struck down Purdue's initial Chapter 11 proposal — for the Sacklers to contribute to a creditor recovery pool in exchange for releases — finding the Bankruptcy Code does not authorize liability releases for nondebtor third parties without creditors' consent.

In June this year, U.S. Bankruptcy Judge Sean H. Lane set the debtor's second try at a bankruptcy plan on course for a November confirmation hearing, clearing the plan disclosure statement to be sent out for a creditor vote.

"Following the outcome of this vote, we are focused on preparing for the confirmation hearing and ultimately the emergence of a new company with a public minded mission," Miller said Tuesday.

Purdue also said the plan may give individual claimants up to $850 million in compensation under its settlement, and that the Sacklers would make an initial $1.5 billion payment toward the cash portion of the plan on the day it goes into effect. And under the plan, the pharmaceutical company will establish Knoa Pharma to offer treatments for opioid use disorder and overdoses, according to the statement.

An **exhibit** showing the preliminary tabulation, also filed Tuesday, showed 10 classes of creditors. One was deemed to accept the proposal, and the rest voted in the affirmative to do so, according to the filing.

Most of the classes that voted to accept the latest terms gave more than 99% approval, and of those that voted but didn't approve the plan by more than 99%, 97.94% of one group and 85.51% of another voted in favor, the exhibit reflected.

Representatives of Purdue and the unsecured creditors did not respond to requests for comment, and a spokesperson for the ad hoc committee did not provide comment.

The debtor is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, Eli J. Vonnegut and Christopher S. Robertson of Davis Polk & Wardwell LLP.

The official committee of unsecured creditors is represented by Justin R. Alberto and Anthony De Leo of Cole Schotz PC.

The ad hoc committee is represented by Kenneth H. Eckstein, Rachael Ringer and David E. Blabey Jr. of Herbert Smith Freehills Kramer LLP, David J. Molton of Brown Rudnick LLP, Kami E. Quinn of Gilbert LLP and Melanie L. Cyganowski of Otterbourg PC.

The case is In re: Purdue Pharma LP et al., case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Ben Zigterman and Vince Sullivan. Editing by Covey Son.

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Chancery Mulls 'Sufficiency' Ruling In Squarespace Doc Suit

By **Jeff Montgomery**

Law360 (October 21, 2025, 8:43 PM EDT) -- An attorney for a former stockholder of website hosting venture Squarespace Inc. told a Delaware vice chancellor Tuesday that the Chancery Court's senior magistrate erred in declining to order a release of emails for a books and records investigation focused on the company founder's role in a $7.2 billion take-private sale.

During a hearing on exceptions to Senior Magistrate Selena E. Molina's decision, Corinne Elise Amato of Prickett Jones & Elliott PA, counsel to stockholder Michigan Electrical Employees' Pension Fund, told Vice Chancellor Paul A. Fioravanti that none of the materials produced provided "any substantial information" about Squarespace founder and CEO Anthony Casalena's pre-deal communications with buyer Permira Advisers LLC or special committee members.

Casalena's actions are at the center of stockholder exceptions to the senior magistrate's finding on June 9 that, while the fund had received some materials and demonstrated that it had a proper purpose for its demand, the "plaintiff failed to demonstrate entitlement to any additional records" beyond those received.

"They actually double down on this story that the special committee negotiated it," Amato stated, adding, "It wasn't actually a special committee process. It was a Casalena process" that the attorney said made the CEO's control over price, process and alleged interference a major issue for investigations in support of a potential class challenge to the $46.50 per-share deal's fairness.

Arthur R. Bookout of Skadden Arps Slate Meagher & Flom LLP, counsel to Squarespace, described the demands as "sweeping." Attorneys for the company told the vice chancellor that no Delaware court has ever ordered the kind of releases sought after the process and disclosures leading up to the special magistrate's ruling.

"We have a finding by the senior magistrate that there was sufficient evidence to support a reasonable suspicion of wrongdoing," Bookout said, observing that plaintiffs "must be given essential books and records," but the disclosures "stop at what's sufficient."

Senior Magistrate Molina, Bookout said, noted that, instead of "sufficient," the disclosures were more properly characterized as enabling the stockholder to assemble a "reasonably conceivable claim" and, if warranted, follow with a suit.

"The record demonstrates that the special committee here was the principal corporate actor," Bookout said. He told the vice chancellor that "there's no requirement under Delaware law that directors get together and have formal, minuted meetings about what's going on." Otherwise, he said, "business would be grinding to a halt. You can't have a secretary get online every time someone talks" to a director.

Vice Chancellor Fioravanti asked if Squarespace bylaws oblige the taking of minutes for special committee meetings, a practice that Bookout said is not addressed specifically.

"If that's the case and there's a formal decision by the committee but it's not minuted, do plaintiffs get informal materials solely with regard to that meeting?" the vice chancellor asked.

Bookout said there might be a stronger argument regarding a standalone meeting.

Counsel for the union argued without success before the ruling that the fund was entitled to documents involving "critical events" in the deal process if formal board minutes were unavailable.

Included among the targeted documents were communications in which Casalena was described by the stockholder throughout the litigation as "potentially steering the transaction and taking control of the transaction in ways that are possibly improper and give rise to us suspecting possible wrongdoing."

The exceptions notice asserted that the senior magistrate "disregarded the company's lack of contemporaneous meetings, minimized inconsistencies" and imposed an "unprecedented and untenable requirement" that the union must show how Casalena's early communications "infected" the process.

Amato said that, according to formal board materials and a deal recommendation statement, Casalena "reached out to Premira," and the board documents later "suggest perhaps Premira, on its own accord, provided a price bump because it was concerned about stockholder opposition."

"The open question here is, we sought additional documents because we can't tell if Casalena disregarded the clear direction of the special committee that the special committee would be involved," and whether the special committee ever gave him clear directions barring direct communications with Premira, Amato said.

Vice Chancellor Fioravanti said he would take the arguments under advisement.

The Michigan Electrical Employees' Pension Fund is represented by Corinne Elise Amato, Kevin H. Davenport, Eric J. Juray, Caitlin E. Whetham and Brianna V. Manobianco of Prickett Jones & Elliott PA, Daniel E. Meyer of Bernstein Litowitz Berger & Grossmann LLP, and Eric L. Zagar, J. Daniel Albert, Grant D. Goodhart and Michael W. McCutcheon of Kessler Topaz Meltzer & Check LLP.

Squarespace is represented by Joseph O. Larkin, Arthur R. Bookout, Lauren N. Rosenello and Jacqueline M. Dakin of Skadden Arps Slate Meagher & Flom LLP.

The case is Michigan Electrical Employees' Pension Fund v. Squarespace Inc., case number 2024-1041, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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2nd Circ. Weighs Reviving Signature Bank Investor Suit

By **Jessica Corso**

Law360 (October 21, 2025, 7:58 PM EDT) -- The Second Circuit quizzed an FDIC attorney Tuesday over the agency's ability to stop Signature Bank's former shareholders from suing following the bank's collapse, with the judges considering whether to revive a lawsuit accusing Signature's brass and its outside auditor of failing to warn investors about its liquidity problems.

The circuit court heard oral arguments in a case **that was dismissed** by a lower court judge at the behest of the Federal Deposit Insurance Corp., which took over as Signature's receiver after the New York State Department of Financial Services shuttered the bank in March 2023.

The FDIC says only it, and not the proposed class of shareholders, can bring claims that the company's leaders and its auditor, KPMG, defrauded investors in the lead up to the crash.

But the three judges on the Second Circuit panel questioned that narrative Tuesday, with U.S. Circuit Judge Sarah Merriam asking why the FDIC hasn't yet filed such claims.

"Instead of dismissing, why isn't it a substitution of plaintiff?" Judge Merriam asked FDIC attorney Joseph Brooks. "If the FDIC is really stepping into the shoes of these plaintiffs and is empowered and enabled to bring all of the same claims, why is the case dismissed?"

"The FDIC has not yet made a determination about whether it is going to pursue these claims," Brooks said. "It may very well decide to pursue them. It may not."

Suing investors question the bank's decision to massively increase the number of crypto deposits it held in 2021 and say the company's leaders hid the liquidity issues it was facing due to the shift in operations. They contend that KPMG signed off on statements that gave investors confidence in the company's internal controls.

U.S. Circuit Judge Richard Wesley asked Brooks what would happen to the money investors lost after the bank was shut down and whether the regulator, as the successor to Signature, could claim damages on the shareholders' behalf.

"If I had one hundred shares of Signature prior to the disclosure of its financial instability and those shares were worth $100,000 and two days later it's worth nothing, I would personally feel I was the one who lost that $100,000, not Signature," Judge Wesley said.

"Somehow you're entitled to control that?" he asked Brooks.

Brooks said that it was up to the FDIC to pursue recoveries on behalf of shareholders. Any recovery from the banks' assets are distributed "the way Congress has determined," he said, referring to the Financial Institutions Reform, Recovery and Enforcement Act, which the FDIC says defeats shareholders' claims.

"This is a paradigm case of what Congress was trying to prevent when it enacted the succession clause [of FIRREA]," Brooks told the court. "You have shareholders of the bank suing the same defense for the same misconduct and seeking to recover from the same sources that the FDIC can recover from."

U.S. Circuit Judge Raymond Lohier asked Brooks why the claims against KPMG at least can't move forward.

"Let's just say there's a theory under which [the plaintiff] had a viable securities fraud claim just against KPMG for its misconduct. Then could you still have this argument?" Judge Lohier asked.

Brooks said the claims against the auditor were still those "with respect to" Signature's assets and therefore were assigned to the FDIC as receiver.

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

Judge Lohier also asked Sharan Nirmul of Kessler Topaz Meltzer & Check LLP, who represents lead investor and Swedish public pension fund Sjunde AP-Fonden, whether the court could send the case back to U.S. District Judge Frederic Block for a ruling on the merits.

"Would it be enough if we disagree with Judge Block that this was a subject matter jurisdiction issue, as opposed to a merits-based cause of action issue, then we just send it back for him to determine the merits?" the judge asked.

"That's correct," Nirmul said.

Judge Merriam later asked Nirmul why the court shouldn't read FIRREA to disallow the shareholders' claims because they had been handed over to the FDIC.

"'With respect to' is pretty broad phrasing," the judge said. "Why are we supposed to read that to mean less than anything touching or regarding?"

In response, Nirmul attempted to distinguish between the types of derivative rights that shareholders have to sue on behalf of a corporation, which the FDIC has ownership over under FIRREA, and securities fraud cases like the one currently before the Second Circuit.

The lead plaintiff told the judges in its brief to the Second Circuit that it "does not assert any derivative claim on behalf of the bank, does not seek redress for any injury suffered by the bank, and does not seek to recover from bank assets."

"Under the district court's overbroad reading of the statute, investors in a failed bank will never be able to bring claims for securities fraud to recover their own losses," the lead investor said.

Judge Block conceded in his March dismissal of the case that the ruling was "not victimless," but said the court "will not –– and cannot –– disrupt Congress's rational and reasoned decision to compensate depositors over those lower in the priority scheme."

The investors are represented by Sharan Nirmul, Richard Russo, Joshua Materese and Nathaniel Simon of Kessler Topaz Meltzer & Check LLP, and John Rizio-Hamilton, Jeremy Robinson, Alexander McRae Noble, John Esmay and Jonathan D'Errico of Bernstein Litowitz Berger & Grossmann LLP.

The FDIC is represented in-house by Joseph Brooks, J. Scott Watson and Dominic Arni.

The case is Schaeffer v. Signature Bank, case number 25-720, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Rae Ann Verona. Editing by Kristen Becker.

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Investors Tell Chancery CytoDyn Board Ignored Drug Scheme

By **Jarek Rutz**

Law360 (October 21, 2025, 5:55 PM EDT) -- Stockholders of CytoDyn Inc. have filed a consolidated derivative complaint in the Delaware Chancery Court, accusing the company's leadership of wrongfully refusing to investigate and sue its former CEO and others over an aligned scheme to mislead investors about the company's flagship drug.

In a case filed late Monday, stockholders of the Washington-based biotech company said the board acted in bad faith by sitting on four separate litigation demands and letting potential claims grow stale against former CEO Nader Pourhassan and other officials over the drug leronlimab, an experimental cancer, HIV and COVID-19 treatment.

They allege Pourhassan and key colleagues of his, former chief financial officer Michael Mulholland and ex-board chair Scott Kelly, "ran a classic 'pump-and-dump' scheme" from 2019 to 2021, aggressively promoting CytoDyn's experimental drug through over-hyped press releases and paid stock-promotion outlets.

Leronlimab, still in clinical trials and not approved by the U.S. Food and Drug Administration, is a monoclonal antibody drug that targets the CCR5 receptor on immune cells, developed by CytoDyn as an experimental treatment for HIV, cancer and inflammatory diseases such as COVID-19.

"Because the board has constructively, wrongfully refused the litigation demands, plaintiffs commenced this derivative action in order to protect the company, rectify the wrongs detailed herein, and hold the wrongdoers accountable for the damages they caused to CytoDyn," the stockholders said in the complaint.

Investigators then allegedly found that the former CEO had ordered employees to submit an incomplete biologics license application to the FDA in April 2020 "no matter what portion whatever it is that we are short," meaning he wanted the applications submitted even if the drug wasn't ready.

This, the stockholders claim, triggered FDA rebukes and a refusal-to-file letter that revealed "numerous omissions and inadequacies so severe as to render the application incomplete."

Despite the regulatory failure, CytoDyn Inc. issued over 100 press releases, according to the complaint, touting leronlimab as a potential COVID-19 treatment.

The U.S. Securities and Exchange Commission and the U.S. Department of Justice later charged Pourhassan and clinical-trial vendor CEO Kazem Kazempour in December 2024 for securities and wire fraud for manipulating clinical data and misleading investors to inflate CytoDyn's stock price while insiders sold millions in shares.

The derivative plaintiffs say they served detailed litigation demands between June 2022 and January 2025, asking the board to sue those responsible, preserve claims with tolling agreements and overhaul corporate-governance controls. The board, chaired by director Tanya Urbach, allegedly refused each time.

A May 2023 letter to two of the stockholders deferred consideration "indefinitely," citing non-Delaware precedents, while a February 2025 response to later demands promised only an update "in due course," the plaintiffs say.

When pressed in March 2025, the board allegedly admitted it had not launched an independent investigation, hired outside counsel or created a special committee.

Instead, the board asserted that "complete turnover" in board membership rendered further action unnecessary.

But, the complaint notes that at least two current directors served during the alleged misconduct, undermining claims of independence.

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

Stockholders are represented by Peter Bradford deLeeuw of deLeeuw Law LLC and Christopher Quinn of Kahn Swick & Foti LLP.

CytoDyn Inc. and other defendants are represented by Chad Stover of Barnes & Thornburg LLP, and Rae Ra and Francis Pileggi of Lewis Brisbois Bisgaard & Smith LLP.

The case is In re: CytoDyn Inc. Stockholder Derivative Litigation, case number 2024-0072 in the Delaware Chancery Court.

--Editing by Emily Kokoll.

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4th Circ. Dubious Of Class Status In Genworth 401(k) Suit

By **Kellie Mejdrich**

Law360 (October 21, 2025, 5:17 PM EDT) -- The Fourth Circuit seemed likely Tuesday to unravel a nearly 4,000-member class of Genworth Financial employee 401(k) participants who allegedly saw their retirement savings dragged down by underperforming BlackRock target date funds, given that individual investors' returns varied based on how close they were to retirement.

A three-judge panel heard arguments in the appeal from Genworth Financial Inc. seeking review of a Virginia federal court's **class certification decision** from August 2024 in the Employee Retirement Income Security Act suit from former Genworth employees Peter Trauernicht and Zachary Wright. Trauernicht and Wright first sued in August 2022 claiming Genworth selected BlackRock funds based on their low fees and made them the 401(k) plan's default investment option while ignoring lackluster returns, breaching fiduciary duties under ERISA. BlackRock Inc. isn't named as a defendant in the suit, which targets Genworth with ERISA claims.

Early on in the proceedings, panel judges' questions focused on whether differing injuries among BlackRock target date fund investors meant there wasn't enough commonality across members of the group to justify certification of a no-opt-out class under Rule 23(b)(1) of the Federal Rules of Civil Procedure. That certification is also referred to as a mandatory class.

"What's the cleanest way to go? Is there an error on b(1), versus b(3)? Is it standing? Is it commonality? Is it typicality?" U.S. Circuit Judge G. Steven Agee asked Genworth's attorney Eugene Scalia, the former labor secretary during President Donald Trump's first administration. "It seems like to me, if there's an error, there's the same error in typicality there is in commonality. But, that's just me."

Scalia, now a partner with Gibson Dunn LLP, answered that it's "that lack of common injury which is fatal as a matter of standing, and also under Rule 23. We think that's essential for this court to address, rather than leaping to Rule 23(b)(1)."

Genworth **had argued** in appellate briefing that certification should have occurred under Rule 23(b)(3), if at all, because some class members had higher returns from investing in the challenged BlackRock funds than if they had chosen comparator funds referenced in the complaint.

Later during proceedings, Circuit Judge Julius N. Richardson also asked questions that indicated he, like Judge Agee, was thinking about how broadly to pare back certification by the lower court.

"The court is awarding money to a bunch of uninjured people, right? And then letting the fiduciary for those folks decide which one of those gets the money. I mean, that's — that's a wild system," Judge Richardson said in one exchange with the attorney for the 401(k) participants, James Miller, during a back-and-forth about how damages might be distributed to individual participants on a fiduciary breach claim.

Circuit Judge Paul V. Niemeyer, in an exchange with Scalia, also took note of how a lack of injury on the part of some class members could undermine certification.

"It seems to me, every beneficiary suffers a different injury. I mean, it's dependent on the composition and nature of what he selected, or what was put in by default," Judge Niemeyer said.

Genworth declined to comment. Counsel for the class didn't immediately respond to a request for comment. A BlackRock spokesperson didn't immediately respond to a request for comment.

U.S. Circuit Judges Judge Paul V. Niemeyer, G. Steven Agee and Julius N. Richardson sat on the panel for the Fourth Circuit.

Genworth is represented by Eugene Scalia, Max E. Schulman, Alexi Ehrlich, Jennafer M. Tryck and Karl G. Nelson of Gibson Dunn & Crutcher LLP, and by Brian E. Pumphrey and Heidi E. Siegmund of McGuireWoods LLP.

The class is represented by Glenn E. Chappell of Tycko & Zavareei LLP and by James C. Shah, Alec J. Berin, James E. Miller and Laurie Rubinow of Miller Shah LLP.

The case is Peter Trauernicht v. Genworth Financial Inc., case number 24-1880, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Lief Nielsen.

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Uber MDL Judge Sets Litigation Funding Disclosure Deadline

By **Y. Peter Kang**

Law360 (October 21, 2025, 10:14 PM EDT) -- A California federal judge ruled Tuesday in multidistrict litigation accusing Uber Technologies Inc. of failing to prevent drivers from sexually assaulting passengers that plaintiffs' counsel must disclose any ties to third-party litigation funding companies by next week, but stopped short of ordering all plaintiffs' counsel to affirmatively deny any connection.

U.S. Magistrate Judge Lisa J. Cisneros of the Northern District of California **announced** last call for plaintiffs' counsel to align with a court order requiring the more than 2,000 plaintiffs in the MDL to disclose any connection with third parties providing contingent litigation funding. The disclosure is required by a local rule for the Northern District of California.

The final deadline, Oct. 28, was set in response to Uber's insistence that plaintiffs' counsel have made deals with litigation finance companies given some plaintiffs' firms' connections to third-party funders that have been reported by the media.

"Bloomberg Law reports indicate that various plaintiffs' firms — including Johnson Law Group, which represents 67 plaintiffs in the MDL, are known to have ties with litigation funders," Uber said in its Sept. 24 **motion** to compel compliance.

Uber had speculated that plaintiffs' counsel withheld disclosure because they were receiving funding for a tranche of cases rather than one specific case, according to the motion.

But Judge Cisneros said Tuesday that it appears that plaintiffs' counsel has complied with the court's previous order, given that Sarah R. London of Girard Sharp LLP, co-lead plaintiffs' counsel, stated in a declaration that "no firm had litigation funding to disclose."

Therefore, the judge rejected Uber's request that each plaintiff's firm file a certification stating that they have not received third-party funding.

"The court agrees with plaintiffs that requiring each firm to affirmatively disclaim any such interests or entities would be unnecessary busywork," Tuesday's order states. "If no further disclosures are made by Oct. 28, 2025, such nondisclosure shall be equivalent to the affirmative statements Uber now seeks."

Judge Cisneros noted that given the court's orders on the issue, sanctions would be warranted for failure to disclose a litigation finance connection.

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

The sprawling MDL claims that Uber, despite knowing since 2014 that drivers for its ride-hailing app preyed on and sexually assaulted passengers, failed to adopt safety measures such as cameras and enhanced background checks.

About 20 cases have been earmarked to serve as bellwether trials, with an "initial wave" of six cases selected by the district court scheduled to start later this year, according to court papers.

In July, U.S. District Judge Charles R. Breyer **scrapped** some of the bellwether cases' fraud and product liability claims, finding that the plaintiffs had not done enough to show that ads for Uber's "designated driver" marketing campaign were misleading because they didn't mention that intoxicated people, particularly women, have a higher risk of being sexually assaulted by Uber drivers than sober people.

The bellwether plaintiffs are represented by Sarah R. London of Girard Sharp LLP, by Rachel B. Abrams of Peiffer Wolf Carr Kane Conway & Wise LLP, and by Roopal P. Luhana of Chaffin Luhana LLP.

Uber is represented by Laura Vartain, Jessica Davidson, Christopher D. Cox and Allison M. Brown of Kirkland & Ellis LLP, and by Christopher V. Cotton, Michael B. Shortnacy and Patrick Oot of Shook Hardy & Bacon LLP.

The case is In re: Uber Technologies Inc. Passenger Sexual Assault Litigation, case number 3:23-md-03084, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg. Editing by Karin Roberts.