Fintech company agrees to pay $40 million to settle investor suit

2025 SECDBRF 3931 • By Andrew Allard

WESTLAW Securities Enforcement & Litigation Daily Briefing • October 23, 2025

(October 23, 2025) - Green Dot Corp. and two former officers have agreed to pay $40 million to settle a proposed securities class action alleging they hid the poor performance of its prepaid debit card business.

In re Green Dot Corp. Securities Litigation, No. 19-cv-10701, *motion for preliminary settlement approval filed* (C.D. Cal. Oct. 17, 2025).

The plaintiffs, represented by Robbins Geller Rudman & Dowd LLP, filed an unopposed motion Oct. 17 urging U.S. District Judge Fernando L. Aenlle-Rocha of the Central District of California to preliminarily approve the deal.

If approved, the settlement would resolve allegations that Green Dot Corp., former CEO Steven W. Streit and former Chief Financial Officer Mark Shifke failed to disclose the impact of cheaper digital alternatives on its prepaid debit business.

'Existential competition'

Green Dot's "core business" is high-fee prepaid debit cards, according to the complaint. Its products are aimed at low-income customers who do not have bank accounts, the suit says.

The plaintiffs allege that Green Dot, Streit and Shifke made misleading statements from May 2018 to November 2019, downplaying the decline of its legacy prepaid card business and the threat posed by lower-fee digital accounts.

Streit reassured investors that its prepaid cards were still performing "extremely well" in a May 2018 earnings call, adding that Green Dot was "not seeing any competitive pressure" from digital offerings, according to the complaint.

But the plaintiffs allege that Green Dot and its officers knew that growth of its prepaid debit business was already declining because of "existential competition" from cheaper digital alternatives.

The defendants' misrepresentations pushed Green Dot's stock to a class-period high of $93 per share in November 2018, but the price plummeted to $24.54 on Nov. 8, 2019, after Streit revealed that 620,000 debit accounts had become inactive year over year.

The plaintiffs asserted violations of the anti-fraud and control-person provisions in Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C.A. §§ 78j(b) and 78t(a).

Proposed settlement

The case survived a motion to dismiss in March 2024 and proceeded to discovery.

The plaintiffs filed a motion for class certification June 6, after which the defendants filed a motion for partial summary judgment. Both motions were pending when the parties reached the proposed settlement.

The plaintiffs' motion for preliminary approval says the $40 million agreement is "fair, reasonable, and adequate" and in class members' best interests.

The settlement is appropriate given the risks of litigation, the case's complexity and the skill of the defendants' counsel, the motion says.

Todd Scott and William J. Foley of Orrick, Herrington & Sutcliffe LLP represent the defendants.

The lead plaintiffs in the case are the New York Hotel Trades Council & Hotel Association of New York City Inc. Pension Fund and the Teamsters Local Union No. 727 Pension Fund.

By Andrew Allard

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Investors get partial win in suit over 'unsafe' Acadia health centers

2025 SECDBRF 3872 • By Andrew Allard

WESTLAW Securities Enforcement & Litigation Daily Briefing • October 22, 2025

(October 22, 2025) - A Tennessee federal judge has ruled against Acadia Healthcare Co. Inc. in a lawsuit alleging it hid violence and sexual abuse in its U.K. and U.S. health care facilities while publicly touting its "quality care."

St. Clair County Employees' Retirement System v. Acadia Healthcare Co. Inc. et al., No. 18-cv-988, 2025 WL 2940714 (M.D. Tenn. Oct. 16, 2025).

U.S. District Judge William L. Campbell Jr. of the Middle District of Tennessee granted summary judgment to the plaintiffs Oct. 16 on the issue of whether they satisfied the reliance element to recover under Section 10(b) of the Securities Exchange Act of 1934.

The judge also rejected a competing motion for summary judgment filed by Acadia and its co-defendants, former CEO Joey A. Jacobs, former President Brent Turner and former Chief Financial Officer David Duckworth.

Profit over patients?

An investor sued Acadia in October 2018, alleging the defendants had misled investors since 2014 about the quality of health care at the company's facilities.

Acadia also issued misleading financial guidance during that time, according to a consolidated complaint filed in 2019 by two pension funds that serve as lead plaintiffs.

In February 2017, for example, the company released a quarterly statement that predicted bullish earnings based on the competitive strength of the company's U.K. operations, the suit says.

Jacobs and Turner sold more than $35 million worth of Acadia shares in August 2017, about two months before the company announced that its U.K. operations had missed annual forecasts by millions of dollars, according to the lawsuit.

Acadia's stock fell nearly 30% following the announcement.

The company's stock declined further in October and November 2018, after reports emerged that staffing cuts and other cost-saving measures led to a U.S. agency inspection into "unsafe" conditions at Acadia facilities. The agency's report disclosed patient deaths, suicide, and physical and sexual assaults, the suit says.

Dueling motions

The lawsuit's complex procedural history includes a motion to dismiss that Judge Campbell denied in 2021, and an order certifying a class of investors, which the 6th U.S. Circuit Court of Appeals declined to review in May 2023.

The investors filed a motion for partial summary judgment April 28, arguing they were entitled to a presumption that class members had acted in reliance on the integrity of the market price. The defendants had produced "zero evidence" to dispute this presumption, the motion said.

Acadia argued in response that the allegedly corrective disclosures did not cause a statistically significant price decline.

The defendants also filed a motion for summary judgment July 14. The 2017 financial projections were protected as a forward-looking statement, and the plaintiffs had provided no evidence that any fraudulent conduct had caused their losses, the motion argued.

Judge: No evidence rebutting reliance

Judge Campbell granted the plaintiffs' motion, writing that the defendants did "not identify any evidence to rebut" the investors' presumption of reliance on Acadia's public statements.

The defendants' argument that the stock price decline was not statistically significant did not "sever the link" between the alleged misrepresentations and the market price of the stock, Judge Campbell wrote in his Oct. 16 order.

Courts have recognized that lack of statistical proof of causation does not prove the absence of price impact, the judge said.

He then denied the defendants' request to apply the safe harbor for forward-looking statements.

Acadia's cautionary statements were not meaningful, the judge said, citing evidence that Acadia's U.K. operations were already floundering when it warned investors.

"Disclosure of a risk that 'might' occur when that risk has already materialized is misleading," Judge Campbell wrote.

Factual disputes remain as to the materiality of the allegedly misleading statements, the judge said. The parties will resolve that issue at trial Nov. 18.

David L. Balser of King & Spalding LLP represented Acadia, and Christopher M. Wood of Robbins Geller Rudman & Dowd LLP represented the investors.

By Andrew Allard

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Perspectives

Historic Bribery Case’s Privilege Battle Boosts Corporate Probes

Oct. 23, 2025, 1:30 AM PDT

The Bottom Line

The FirstEnergy bribery case in Ohio was historic both for its criminal fine and for the threat it posed to the future of attorney-client privilege in internal investigations.

Businesses hire attorneys when litigation is a possibility, and they must feel secure in their ability to be candid with their counsel.

There is a fine line between cooperating with investigations and divulging privileged communications—it’s up to attorneys to know where that line is drawn.

After a five-year legal battle, the US Court of Appeals for the Sixth Circuit has decisively sided with FirstEnergy, vacating the district court’s order and reaffirming that the company’s internal investigation materials are protected by attorney-client privilege and the work-product doctrine.

Few principles are more fundamental to our legal system than the attorney-client privilege—and that protection recently faced serious scrutiny. In May 2024, the Southern District of Ohio had ruled that FirstEnergy, an electric utility company, must turn over documents from an internal investigation to the company’s shareholders. FirstEnergy appealed to the Sixth Circuit, arguing those documents are privileged. On Aug. 7, 2025, the Sixth Circuit offered some reassurance, blocking the shareholders from immediately accessing FirstEnergy’s internal investigative reports and signaling that the company was likely to succeed in its privilege claims.

Most recently, on Oct. 3, the Sixth Circuit vacated the district court’s order, holding that the lower court applied the wrong legal standard and reaffirming the documents were protected under attorney-client privilege.

This case, which emerged out of one of the largest bribery scandals in Ohio’s history, raised fundamental questions about the scope of attorney-client privilege and the work-product doctrine.

At stake, however, was more than just FirstEnergy’s investigative documents: The decision carries far-reaching implications for companies, lawyers, and the broader legal community, shaping how internal investigations are conducted, and protected, in the future.

Privileged Communications

Between 2017 and 2020, FirstEnergy executives allegedly colluded with Larry Householder, the former Ohio House speaker, in a massive bribery scandal.

FirstEnergy funneled roughly $60 million through Generation Now, a social welfare organization, to pay Householder and Matthew Borges, an Ohio-based lobbyist, in exchange for passing the 2019 House Bill 6. The bill was a $1.3 billion piece of legislation that included a bailout for two of FirstEnergy's power plants that had closed in 2018.

In response to these revelations, FirstEnergy hired two outside law firms to conduct internal investigations. These investigations led FirstEnergy to fire multiple executives and, in 2021, to enter into a three-year deferred prosecution agreement in which it paid a $230 million fine, the largest criminal penalty ever imposed in Ohio, and admitted to its role in the bribery scheme. In 2023, Householder and Borges were found guilty of racketeering and were sentenced to 20 and five years in prison, respectively.

This scandal also prompted shareholders of FirstEnergy to file a lawsuit alleging violations of securities laws tied to the bribery scandal. In this case, the special master appointed to oversee discovery claimed the investigative documents prepared by the two law firms retained by FirstEnergy weren't covered by attorney-client privilege or the attorney work-product doctrine and thus should be handed over to the movants in the case (comprised of plaintiff shareholders and certain defendants).

In its decision, the Southern District of Ohio agreed, reasoning that the test as to whether the internal investigation documents were protected under the attorney-client privilege was whether the "internal investigation's purpose was primarily business or human resources-related" and that "the investigation's predominant purpose must be legal for the privilege to apply."

Power and Privilege

Despite the Southern District of Ohio recognizing that the internal investigations were close in time to impending lawsuits, and ultimately related to FirstEnergy's cooperation with the government, it held that FirstEnergy hadn't shown with enough specificity "when, where, how, to whom, and in what manner" legal advice was communicated during the internal investigations, and therefore refused to extend attorney-client privilege protection to the documents.

For very similar reasons, the Southern District of Ohio also refused to protect the documents under the attorney work-product doctrine. In reaching this conclusion, the Southern District of Ohio ruled that FirstEnergy hadn't shown that the investigations were "because of" litigation and wouldn't have been "'prepared in substantially the same manner regardless' of litigation" in which the investigations served overlapping business and litigation-related purposes, such as the evaluation of terminating executives.

In 2024, FirstEnergy appealed to the Sixth Circuit, arguing the district court's ruling undermined both the attorney-client privilege and work-product protections. In August, the Sixth Circuit granted a stay, noting that disclosure would cause irreparable harm.

Importantly, the Sixth Circuit pointed out that FirstEnergy retained counsel immediately following Householder's arrest—at a moment when it was facing a flood of lawsuits and government investigations. The Sixth Circuit explained in its order: The district court thought that the timing didn't matter because FirstEnergy also used this advice for business purposes.

But that approach gets it backwards, the Sixth Circuit said. "What matters for attorney-client privilege is not *what* a company does with its legal advice, but simply *whether* a company seeks legal advice . . . After all, a corporation could hardly justify expending resources on legal advice that *wasn't* business-related."

Following the Sixth Circuit order, in an Aug. 19 filing, the shareholders stood firm by the lower court's ruling. Their arguments were twofold.

First, they asserted there was no imminent legal crisis at the time of the internal review. Rather, they claimed FirstEnergy faced multiple "business demands"—such as SEC filings requiring approval from PwC, its auditors; critical personnel decisions that relied on information of levels of knowledge and involvement in the scandal; and securing capital by cooperating with the Department of Justice.

Second, the plaintiffs argued because FirstEnergy disclosed private communications to third-parties such as PwC and the DOJ, any privilege that may have existed no longer applied. They further wrote, "If companies want to preserve the confidentiality of the information their internal investigations generate, all they need to do is preserve the confidentiality of the information their internal investigations generate—and be able to prove it. FirstEnergy chose not to do so."

Privilege Prevails

This reasoning, however, is deeply flawed. By the time FirstEnergy retained outside counsel, it was clear the company faced an oncoming wave of lawsuits, even if none had officially materialized. The fact that subsequent investigations informed business decisions shouldn't erase privilege; in that context, it would have been unreasonable for the company not to retain counsel.

In a decisive move on Oct. 3, the Sixth Circuit unanimously vacated the district court's order, ruling that FirstEnergy's internal investigation materials are covered by attorney-client privilege and the work-product doctrine. The court affirmed the importance of attorney-client privilege, saying it "is the oldest of the privileges for confidential communications known to the common law." It further cited the Supreme Court's 1981 holding in *Upjohn v. United States* .

In *Upjohn,* the court held that privilege applied after a company sought counsel to conduct an internal investigation upon learning of potentially improper payments. In its decision, the Sixth Circuit wrote, "What was true for Upjohn is true for FirstEnergy. As with Upjohn, FirstEnergy and its board hired lawyers to 'secure legal advice' through internal investigations into the company's potential criminal and civil wrongdoing."

This decision is critical. If the district court's reasoning had been allowed to stand, it would have threatened core protections that enable companies to conduct internal investigations and seek legal advice in the first place by rendering documents relating to litigation or legal advice mutually exclusive from documents relating to business purposes.

The Sixth Circuit's ruling pushes back on this approach by recognizing the dual purpose that many investigative documents serve, as well as the context of the investigations with regard to the flurry of government regulatory actions.

Preserving Privilege

As someone who has conducted hundreds of internal investigations for corporate clients, I know firsthand how critical it is for companies' employees to be able to speak openly with counsel, both in-house and external. Such investigations often involve sensitive interviews and difficult recommendations (recommendations that are based on legal considerations such as cooperation and liability). These are only possible when everyone involved understands that their statements will remain strictly confidential. The moment employees believe that their statements to counsel will be public is usually the moment they will stop cooperating or speaking candidly.

This trust is exactly why privilege must be preserved. At the same time, companies that conduct internal investigations are often under pressure to cooperate with regulators. Cooperating with regulatory bodies usually requires disclosure of facts—an issue that has created tension with privilege.

On the one hand, companies want to demonstrate cooperation to agencies such as the Department of Justice by disclosing facts their internal investigations uncover. On the other hand, much of what is learned in investigations can be considered privileged. There is a fine line between cooperation and waiver and it takes a competent lead counsel to know the line not to cross.

The broader implications are hard to overstate. Upholding the district court's approach would have set a dangerous precedent that could have required disclosure of highly sensitive internal reviews, even when they were initiated while seeking legal advice. That is why 39 law firms—including Cadwalader—filed an amicus brief urging for the reversal of this decision, and why the Sixth Circuit specifically cited the strong "public interest" in preserving attorney-client privilege and work-product protections. Clients must be able to ask for legal advice without fear that their communications, and internal analyses, will later be used against them and aired in open court.

Privilege, after all, isn't unique to law. It is an important principle used in many other fields and professions to foster trust.

Just as doctor-patient confidentiality enables patients to disclose sensitive information to their provider so they can get the best care possible, attorney-client privilege allows clients to speak openly with counsel so they can receive effective advice. Without that trust and frank communication, investigations will be left incomplete and counsel will be unable to help their corporate clients remedy a situation and prevent future misconduct.

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Class Action

Manage Newsletters

Arrow Financial’s Leaders Get Initial OK to End Suit Via Reforms

Oct. 23, 2025, 9:00 AM PDT

A proposed non-monetary settlement between Arrow Financial Corp.’s top brass and an investor provides reasonable benefits to the company in the form of internal governance reforms to be implemented for five years, a federal court ruled.

The agreement merits preliminary approval, Judge Anne M. Nardacci said Wednesday for the US District Court for the Northern District of New York.

Investor Stephen Bull’s derivative suit allegations on behalf of Arrow mirror those in a securities class action over the holding company’s financial reporting practices. The suits allege Arrow—the corporate parent of New York state bank and insurance companies—hid paltry financial reporting controls that caused it to miss timely filings with the Securities and Exchange Commission, risking its Nasdaq listing.

Nardacci gave final approval to an $850,000 settlement in the class action in February.

Bull and the directors and officers undertook several rounds of negotiations to reach their solution, in which Arrow would strengthen its internal controls, implement checks and balances for its executives, ensure its public statements are “accurate, full, and truthful,” and make sure the board works toward furthering company goals, according to Nardacci’s new order.

Bull will separately request attorneys’ fees after the parties were unable to agree on an amount, she said.

Gainey McKenna & Egleston represents Bull. O’Melveny & Myers LLP represents the defendants.

The case is Bull. v. Murphy , 2025 BL 378668, N.D.N.Y., No. 1:23-cv-01566, 10/22/25 .

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Bankrupted Canoo's Executives Must Battle Investor SPAC Suit (1)

Oct. 23, 2025, 6:28 AM PDT; Updated: Oct. 23, 2025, 7:41 AM PDT

Summary by Bloomberg AI AI Generated

- Canoo Inc. executives must defend against shareholder allegations that they misled investors about the company's potential engineering services' revenue during its blank-check merger to go public.
- A judge said it would be "absurd" to suggest that executives weren't aware of the collapse of the engineering services' pipeline when projecting revenue, given its alleged importance to Canoo's strategy.
- The investor leading the case didn't adequately plead falsity for statements about Canoo's plan to offer its first vehicles through a subscription-based model and manufacturing strategy, according to the judge.

Canoo Inc. executives must defend against shareholder allegations the failed electric-vehicle startup misled them about its potential engineering services' revenue during its blank-check merger to go public.

The investor sufficiently alleged former executives misled the public because they affirmatively represented that they were pursuing a specific business model and go-to market strategy despite knowing the immediate revenue from its engineering services wouldn't realize, Judge Fernando M. Olguin said Wednesday.

It would be "absurd" to suggest they weren't aware of the collapse of the engineering services' pipeline when projecting revenue given its alleged importance to Canoo's strategy, the US District Court for the Central District of California judge said.

But the investor leading the case didn't adequately plead falsity for statements about Canoo's plan to offer its first vehicles through a subscription-based model and manufacturing strategy. Shareholder Vladi Shaulov effectively conceded these were forward-looking and protected by heightened pleading standards for securities fraud lawsuits by not addressing that argument in his opposition to the executives' motion to dismiss, Olguin said.

Shaulov alleged three Canoo leaders, including most recent CEO Tony Aquila, misrepresented its financial prospects and strategy before and after the EV-maker's 2020 merger with special purpose acquisition company Hennessy Capital Acquisition Corp. IV and in a post-merger shelf stock offering.

Canoo agreed to pay the Securities and Exchange Commission $1.5 million in 2023 to resolve allegations tied to the SPAC deal. The SEC had also accused Canoo, former CEO Ulrich Kranz, and former Chief Financial Officer Paul Balciunas of inaccurately projecting revenue of $120 million for 2021 and $250 million for 2022 tied to its offering of engineering services to other companies.

But "these projections were allegedly unreasonable because, as Kranz and Balciunas should have known, the two projects on which Canoo based nearly all of its projected revenue were no longer active or feasible," the SEC said.

SPACs had fallen out of favor after a boom in the early 2020s, with such deals to bypass the initial public offering process to go public drawing a wave of shareholder litigation. They've been making a comeback since President Donald Trump's electoral victory.

Fallen Startup

Shaulov dropped Canoo as a defendant in January after it filed for Chapter 7 bankruptcy. Canoo, in ceasing operations, joined a gaggle of EV-companies that have filed for some form of bankruptcy in recent years.

The proposed class would include investors who acquired Canoo securities from its Dec. 21, 2020, market debut through March 29, 2021, when it announced its first financial results as a public company and a shift away from its go-to-market strategy.

Its stock price dropped 5.3% that day and more than 21% on March 30, 2021—its steepest one-day drop since the SPAC merger closed, according to data compiled by Bloomberg.

Pomerantz LLP and Holzer & Holzer LLC represent Shaulov. Kirkland & Ellis LLP represents the executives. None of these firms immediately responded to emails seeking comment.

The case is Blake v. Canoo Inc. , C.D. Cal., No. 2:21-cv-02873, 10/22/25 .

(Updates with additional reporting throughout.)

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Rain Oncology Settles Suit Over 88% Stock Drop for $7.3 Million

Oct. 22, 2025, 2:17 PM PDT

Rain Oncology Inc. has agreed to pay investors nearly $7.3 million to settle claims that the drug developer misled them about the basis for a clinical trial, according to a court filing Wednesday.

The proposed accord merits preliminary approval, lead plaintiff Myo Thant and an additional investor, Branden Schenkhuizen, told the US District Court for the Northern District of California. The amount represents a 13% recovery of the approximately $56 million in maximum potential damages, Thant and Schenkhuizen said.

The suit says Rain went directly from a Phase 1 trial of a cancer drug, milademetan, to a Phase 3 trial even though the drug didn't fit the typical criteria for skipping a Phase 2 trial. Yet Rain allegedly said, before its initial public offering, that the Phase 3 trial was "based on" the Phase 1 data.

When Rain announced the Phase 3 trial's failure on May 22, 2023, its stock plunged 88% to close at $1.22 per share. That was the largest selloff in its history, according to data compiled by Bloomberg.

In February, Judge Edward J. Davila allowed the investors to proceed with claims over the "based on" statement but tossed claims for alleged post-IPO misrepresentations, saying they hadn't shown intent.

Rain is now a unit of Pathos AI Inc.

Levi & Korsinsky LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents Rain.

The case is Thant v. Rain Oncology Inc. , N.D. Cal., No. 5:23-cv-03518, motion 10/22/25 .

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News | **Securities Litigation**

FDIC Argues to Second Circuit That Agency 'Owns' Shareholder Claims Against Failed Bank

Joseph Brooks of the FDIC Legal Division argued during a Tuesday hearing that only the FDIC could bring the claims asserted by Kessler Topaz Meltzer & Check and Bernstein Litowitz Berger & Grossman—that the executives of Signature and its auditor, KPMG, purportedly misled shareholders on the bank's liquidity as it embraced cryptocurrency.

October 21, 2025 at 04:41 PM By **Alyssa Aquino**

Federal Deposit Insurance Corporation building in Washington, D.C. Photo: Diego M. Radzinschi/ALM

The Federal Deposit Insurance Corporation pushed the Second Circuit against reviving a securities fraud action against executives of the failed Signature Bank, arguing to a seemingly dubious panel that the federal government assumed the shareholders' right to sue when it took the bank under receivership.

Joseph Brooks of the FDIC Legal Division argued during a Tuesday hearing that only the FDIC could bring the claims asserted by Kessler Topaz Meltzer & Check and Bernstein Litowitz Berger & Grossman—that the executives of Signature and its auditor, KPMG, purportedly misled shareholders on the bank's liquidity as it embraced cryptocurrency.

The argument turns on the Financial Institutions Reform, Recovery and Enforcement Act's Succession Clause, which states that when FDIC is appointed the receiver of a failed bank, it assumes every right "of any stockholder… with respect to the institution and the assets of the institution."

"This is a paradigm case of what Congress was trying to prevent when it enacted the Succession Clause. You have shareholders of the bank suing the same defendants for the same misconduct and seeking to recover from the same sources that the FDIC can recover from," Brooks said. "In order to prevent that, Congress set up this system in which they're going to have one entity go out and recover all the money possible on all the claims."

The case stems from the failure of the Signature Bank of New York, which was one of the few banks to accept cryptocurrency deposits. The failure of other crypto-friendly banks—Silvergate Bank and Silicon Valley Bank—had people rushing to withdraw their deposits from Signature, eventually prompting the bank's collapse in 2023.

Suing on behalf of a Swedish pension fund, Sjunde AP-Fonden and other investors, Kessler Topaz and Bernstein Litowitz argued that bank executives and KPMG covered up Signature's cryptocurrency exposure. After being appointed receiver for the bank, FDIC intervened in the suit, arguing the case must be dismissed under FIRREA. District Judge Frederic Block of the Eastern District of New York agreed and tossed the case in March 2025.

But the circuit panel appeared to struggle with the potential breadth of FDIC's arguments, with Judge Richard Wesley stressing the claims against KPMG. How are those "in any way, remotely, 'with regards to' the assets of the bank?" Wesley asked.

Brooks answered that the KPMG claims fell under the Succession Clause, and in response to another question from Wesley, confirmed that under the government's read of the Succession Clause, anything shareholders recover in a securities fraud action must go to the bank's estate.

"The only way that these stockholders could have suffered losses is to be holding stock during the period of time that the losses occurred," said Brooks, suggesting that stocks are bank assets.

But Wesley was unconvinced that the losses were Signature's.

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

Brooks' responses also seemed perplexing to Judge Raymond Lohier, who asked if the Succession Clause would bar the suit, if the shareholders had only sued KPMG.

“Could you even have this argument? I’m not sure I understand your answer to Judge Wesley,” Lohier said. Brooks started speaking, but Lohier quickly cut in, “Because it’s a very capacious, very aggressive argument.”

Sharan Nirmul, a partner at Kessler Topaz, had argued that accepting FDIC’s argument would effectively “vaporize” the shareholders’ claims, as FDIC, which didn’t purchase Signature’s stock, has no standing to bring a case.

Judge Sarah Merriam asked Brooks to respond to that argument. Brooks disagreed with Nirmul’s assessment.

“The FDIC is entirely empowered to bring those claims,” Brooks said.

Merriam then pressed Brooks on whether the FDIC could replace the shareholders as plaintiffs.

“Just because the FDIC owns the claim… doesn't mean it has to bring it,” Brooks responded. He added that the agency hasn’t yet decided whether it’s going to bring its own case against Signature.

Securities

Unions Urge Pension Funds to Downvote Musk’s Pay in New Campaign

Oct. 22, 2025, 11:27 AM PDT

A coalition of labor unions is fighting Tesla’s proposed $1 trillion pay package for Elon Musk, calling for public pressure on pension funds and other major shareholders to vote against it.

The pressure campaign announced Wednesday comes ahead of a Nov. 6 shareholder vote on the Tesla Inc. board of directors’ proposal, which could yield Musk the full sum over 10 years, if the company meets certain performance metrics under his leadership.

The labor coalition, which also includes advocacy groups such as Public Citizen, said the pay package will sap shareholder value away from workers whose retirement savings is invested in Tesla.

The proposal also could push Musk’s ownership stake in the automaker to 25%.

“Tesla shareholders can either check Musk’s corporate power grab, or vote to grant him more and more power,” said Natalia Renta, associate director of corporate governance and power at the Americans for Financial Reform, also part of the coalition.

Musk played a key role in the first few months of President Donald Trump’s second administration, heading up the Department of Government Efficiency tasked with identifying ways to cut government spending and lay off federal workers.

“To reward this destructive behavior with an obscene salary is a slap in the face—not only to the federal workers he’s fired, but to the retirees whose pensions are invested in Tesla stock,” said American Federation of Teachers President Randi Weingarten.

The unions involved in the effort are the AFT and the Communications Workers of America. They urged the public to visit a website that enables easily sending messages to state pension funds and retirement fund operators including Fidelity and Vanguard to urge them to vote no.

Two proxy advisory firms, Glass Lewis & Co. and Institutional Shareholder Services, also recently urged shareholders to vote against the Tesla proposal.

A smaller, but still record-setting pay package that the Tesla board approved in 2018 remains tied up in litigation after a Delaware judge last year rejected it, finding the board was too conflicted and Musk held too much control for the vote to fairly reflect shareholder opinion.

Tesla’s board designed the latest pay package to give Musk incentive to focus his energies on running the automaker for the next decade.

The company didn’t immediately respond to a request for comment.

An affiliate of the CWA, the Washington-Baltimore News Guild, represents employees at Bloomberg Industry Group.

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Securities

Musk's Tesla Move Sparks Delaware Debate on Lawsuit Jurisdiction

Oct. 22, 2025, 3:15 PM PDT

Claims of corporate wrongdoing by Elon Musk as Tesla Inc.'s CEO should've followed the electric car-maker to Texas, where the billionaire moved the company after the same Delaware court twice rejected his pay package, their attorneys said Wednesday.

The Delaware Chancery Court could set precedent with a decision as to whether the e-vehicle maker's by-laws, which require the application of Texas law to shareholder derivative suits filed after its Lone Star state reincorporation, should also apply to litigation pending when that move occurred, Tesla lawyer Brian Frawley told the court.

"Tesla shareholders approved that by-law," the Sullivan & Cromwell LLP partner said. "The stockholders of Tesla have said, 'We want any litigation involving the company to proceed in Texas.'"

The date the Delaware claims were filed matters more than the by-laws adopted when Tesla shareholders approved a reincorporation on June 13, 2024, said Lee Squitieri of Squitieri & Fearon LLP, representing Michael Perry, an investor who claims Musk engaged in insider trading in the sales of over $7 billion of Tesla shares.

"The line is the date of the shareholder vote and the redomestication vote, and we were before that line," he said. "Perry exercised all the rights he had as a shareholder of a Delaware corporation."

Chancellor Kathaleen St. Jude McCormick presided over the hearing in Wilmington, Del., a week after the state's highest court took up the appeal of her rulings that rejected Musk's CEO pay and a subsequent shareholder vote approving it despite her finding it was tainted by conflicts of interest.

In January, she combined multiple lawsuits over the billionaire's alleged insider trading, his Twitter Inc. acquisition, and his focus on artificial intelligence. She neither ruled Wednesday on the motions to dismiss nor posed any questions to the parties' attorneys.

'Ample Harm'

Tesla has said Perry's claims belong in Texas, not Delaware. Musk and other board members also have said the consolidated claims just "nitpick" his personal behavior when investors should be grateful for their soaring Tesla returns.

John Nicolaou of Lieff Cabraser Heimann & Bernstein LLP, representing investors leading the consolidated claims, disputed Tesla's and Musk's arguments that the car-maker was beating expectations and rewarding shareholders amid the alleged misconduct.

Tesla lost significant amount of Musk's time to his social media platform, X, and his artificial intelligence startup xAI—"time that's worth billions and billions and billions of dollars," he said.

Meanwhile, Tesla's business reputation and vehicle sales suffered because of Musk's management of the platform formerly known as Twitter. "This is ample harm," he said.

Future Impact

If McCormick allows the claims related to Musk's projects beyond Tesla to advance, she risks allowing the court to become "a corporate nanny" expected to oversee every business decision brought under corporate oversight claims, said Boris Feldman of Freshfields US LLP, representing Tesla's directors, except for Musk.

"Tesla's gone. The issue is how would the decision here impact the business of this court for other companies," he said.

Tesla is also represented by DLA Piper LLP (US) and Richards, Layton & Finger PA. Musk is represented by Quinn Emanuel Urquhart & Sullivan LLP. The other Tesla directors are also represented by Ross Aronstam & Moritz LLP.

The lead plaintiffs in the consolidated litigation, the Employees' Retirement System of Rhode Island and the Cleveland Bakers and Teamsters Pension Fund, are also represented by Prickett, Jones & Elliott PA, Saxena White PA, Grant & Eisenhofer PA, and The Schall Law Firm. Perry is also represented by deLeeuw Law LLC and Moore Law PLLC.

The cases are In re Tesla, Inc. Derivative Litig., Del. Ch., No. 2024-0631, hearing 10/22/25 and Perry v. Musk, Del. Ch., Del. Ch., No. 2024-0560, hearing 10/22/25 .

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Securities

Wheeler Board, Activist Stilwell Settle Lawsuit for $7 Million

Oct. 22, 2025, 11:17 AM PDT

Wheeler Real Estate Investment Trust directors, along with hedge funds that took over the company, have agreed to pay $7.1 million to settle shareholder class claims that they improperly diluted its common stock.

The deal is fair and should receive preliminary approval, lead investor Daniel Khoshaba told the US District Court for the Eastern District of Virginia on Wednesday. The amount represents about 20% of the $35 million maximum estimated damages, said Khoshaba, who served as Wheeler's CEO before allegedly being forced out.

Khoshaba alleges that Joseph Stilwell, principal of Stilwell Value LLC and other funds making up the so-called Stilwell Group, gained control of the Wheeler REIT and planned to buy back its Series D preferred stock—but came to view the D stock as an opportunity to enrich the group and other insiders

Wheeler prevailed in a separate freeze-out suit over its acquisition of another shopping center company, Cedar Realty Trust Inc., before Judge Mark S. Davis allowed this suit to proceed

The proposed settlement—drawing on directors and officers insurance—is fair and adequate because Wheeler is "cash-strapped," with a market capitalization of about $4 million, Khoshaba said in requesting court approval

Rolnick Kramer Sadighi LLP is lead counsel for the proposed class. Spotts Fain PC and Gordon Feinblatt LLC represent the individual defendants. O'Hagan Meyer PLLC and Allegaert Berger & Vogel LLP represent the funds.

The case is Khoshaba v. Stilwell , E.D. Va., No. 2:24-cv-00237, motion 10/21/25 .

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Guest Post: Del. Court Tells Wiring Manufacturer It's Too Early and Too Late

dandodiary.com/2025/10/articles/d-o-insurance/guest-post-del-court-tells-wiring-manufacturer-its-too-early-and-too-late

Kevin LaCroix October 23, 2025

Geoffrey B. Fehling

Machaella Reisman

In the following guest post, *Geoffrey B. Fehling and Machaella Reisman of the Hunton Andrew Kurth law firm,take a look at a recent Delaware federal court decision involving a D&O insurance coverage dispute in which one of the key issues was the timing of the policyholder's declaratory judgment action against its excess insurers. A version of this article was previously published on the* [*Hunton Insurance Recovery Blog*]*. I would like to thank Geoff and Machaella for allowing me to publish their 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 the author's article.*

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The decision of when to sue insurance companies, especially excess insurers, can be difficult, especially in disputes involving multiple claims, long timelines, and conflicting coverage positions between insurers. A recent federal court in Delaware, *General Cable Corp. v. Scottsdale Indemnity Co.*, No, 1:24-CV-00797-TMH, 2025 WL 2576384, (D. Del. Sept. 5, 2025) underscores the timing risks in pursuing recovery in and out of litigation. In a word of warning to Delaware policyholders, the court dismissed a lawsuit against a manufacturer's directors and officers excess liability insurers because its claims were either not ripe for adjudication or untimely filed.

Background

Between 2011 and 2016, a wiring manufacturer was insured under three layers of D&O insurance, with Scottsdale providing second-layer excess coverage. Starting in 2012, the manufacturer incurred defense costs while defending against government investigations into its accounting practices and lawsuits alleging violations of the Foreign Corrupt Practices Act (FCPA).

The manufacturer sought coverage for these defenses costs for the lawsuits which were resolved in April 2019. The primary insurer and first excess insurer agreed to pay for part of the loss, albeit based on different coverage rationales. One insurer took the position that the accounting investigations and FCPA lawsuits were a single related claim under its 2011 policy, while the other insurer took the position that the accounting investigations were one claim under the 2011 policy and the FCPA lawsuits were another claim under the 2012 policy. Despite recovering from two insurers, the manufacturer still had more than $32 million in outstanding defenses costs, which is continued to pursue from the insurers.

The manufacturer notified Scottsdale of the claims. While Scottsdale acknowledged the notice, it did not provide a coverage position and neither denied nor agreed to cover the claims. The manufacturer then began discussing mediation with the first two layers of coverage to resolve the coverage disputes. The manufacturer requested that Scottsdale participate in that mediation with the other insurers, but again Scottsdale failed to respond by providing a coverage position.

Delaware Federal Court Finds Coverage Claim Both Not Ripe and Too Late

The manufacturer filed suit against Scottsdale in 2024 for declaratory judgment and anticipatory breach of contract. The insurer moved to dismiss, arguing that the declaratory judgment claim and the anticipatory breach of contract claim were barred by Delaware's three-year statute of limitations. Applying Delaware law, the court agreed and dismissed the lawsuit.

The court's ruling on the policyholder's anticipatory breach of contract claim turned on when the excess policy attached and required the insurer to cover the claims. A contract is not breached, the court explained, until the time for performance is expired.

In that regard, the excess policy provided that "[i]t is expressly agreed that liability shall attach to the Company only after the full amount of the Underlying Limits is paid in accordance with the terms of the Underlying Policies by any or all of the following . . ." The court found that this provision meant the excess insurer was entitled to wait out "good-faith coverage disputes" between the manufacturer and its other insurers without breaching its performance obligations.

Accordingly, the manufacturer's anticipatory breach of contract claim was not yet ripe for adjudication until the underlying policies were paid, and consequently, the statute of limitations had not yet begun to run. The court dismissed the claim without prejudice.

As for the declaratory judgment claim, the court noted that, under Delaware law, insurance claims become ripe when an insured establishes that there is a "reasonable likelihood" that coverage under the disputed policies will be triggered. Delaware also has a three-year statute of limitations, which the court explained applies to any breach of contract action based on a promise, which includes declaratory judgment claims. The court emphasized that the manufacturer incurred significant defense costs of more than $32 million, which would implicate Scottsdale's excess policy regardless of the other insurers' coverage positions. Because Scottsdale insured the manufacturer for losses over $25 million, and because the manufacturer had incurred defense costs far above the policy's attachment point.

The claim became ripe, the court concluded, the day that the underlying accounting investigations and FCPA lawsuits against the manufacturer were resolved in 2019. It was from that date that Delaware's three-year statute of limitations for the declaratory judgment claim began to run. Unfortunately for the manufacturer, it waited over five years to bring the declaratory judgment action against the recalcitrant excess insurer. Accordingly, that cause of action was time barred and dismissed with prejudice.

Takeaways

The *General Cable* decision highlights an interesting dichotomy where some insurance coverage claims can be timed-barred while others are not yet ripe. This can create a challenging set of factors for policyholders to balance when considering whether and when to bring a coverage lawsuit.

The Importance of Attachment Provisions

A proactive evaluation of the so-called "attachment" provisions in excess policies can help prevent the "too early" outcome in *General Cable*. Attachment provisions guide when excess coverage comes into play and impact whether a coverage claim might be ripe.

Evaluating the attachment provisions in an excess policy throughout the claim timeline—especially in disputes involving multiple claims over many years involving different insurance towers—can help guide important decisions of when to pursue excess insurers that have not lived up to the terms of their policies.

The Clock Is Ticking

In what may seem like a draconian outcome to some, the court in *General Cable* strictly enforced Delaware's three-year statute of limitations period for breach of contract based on a promise, including declaratory judgment claims. Every state has its own limitations period, with some states applying materially different standards to assess when those periods begin to run.

A subpart of the discussion is the threshold question of what state's laws even apply, since policyholders need to know the applicable limitations period before deciding when suit needs to be filed. Many times choice of law is clear, including if a policy has a choice-of-law provision, but in other claims there can be material differences in law addressing limitations periods that lead to separate disputes over governing law.

The manufacturer's predicament in *General Cable* is all too common. The company seemed to be doing everything right—timely submitting claims, defending and resolving underlying disputes, coordinating recoveries under different policies, and attempting to resolve coverage disputes outside of formal litigation—yet over many years was ignored and rebuffed by the excess insurer, which failed to substantively respond or take action to move the claims towards resolution.

But when the policyholder was forced into litigation, the insurer benefited from those significant delays in prevailing on a limitations defense. Tools like tolling agreements and similar formal agreements to preserve rights under policies while underlying claims or complicated insurance claims run their course can help avoid accidental forfeiture of coverage due to the passage of time.

Conclusion

When to bring a coverage lawsuit is always a tough decision. Coordinating with coverage counsel, brokers, and risk professionals early and often to manage different claim timelines and limitations periods can help mitigate those risks.

Guest Post: Post-House Settlement Objection Liability

dandodiary.com/2025/10/articles/director-and-officer-liability/guest-post-post-house-settlement-objection-liability

Kevin LaCroix October 23, 2025

Sarah Abrams

Earlier this year, the parties to the consolidated antitrust litigation involving college athletes name, image, and likeness rights (NIL) entered a settlement. The settlement is generally referred to as the "House Settlement." In the time since the settlement, there have been further developments raising questions about the settlement. Among those developments is that certain college athletes have raised objections to the settlement. In the following guest post, Sarah Abrams takes a look at the athletes' objections and considers their management liability implications. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

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Objections by and on behalf of student-athletes continue to be made to the *In Re College Athlete NIL litigation* settlement (House Settlement). Recent objection letters filed by California Polytechnic State University (Cal Poly) Olympic sport athletes highlight allegations that could create management liability exposure for Member Institutions opting into the House Settlement. Specifically, former Cal Poly swimming and diving team members claim that the elimination of the swimming and diving team "violate(d) both the spirit and the letter of Title IX" and that additional funds were then donated to Cal Poly's football program.

Given the large reported financial payments reportedly made to student athletes for their NIL in the post-House Settlement era, the potential for Title IX and financial mismanagement claims against Membership Institutions could increase. D&O Diary readers may recall that the House Settlement resolved litigation surrounding payment to student athletes for use of their Name, Image, and Likeness (NIL). NIL refers to a person's legal right to control how their image is used, including for commercial purposes. Student-athletes had long been prohibited from making deals to profit from their NIL.

Complaints alleging Title IX violations and potential remedies may be expensive and result in follow-on administrative action and claims against Membership Institution leadership by donors, alumni, board members, and creditors. The following discusses the status of the Saving Colleges Sports Executive Order directives, specific Cal Poly objector allegations, and the impact of alleged Title IX and financial mismanagement claims.

Saving College Sports

As I recently discussed on the D&O Diary, President Trump's July 24 Executive Order, Saving College Sports (Saving College Sports EO), stated that it would be the Administration's policy to protect opportunities for scholarships and athletic competition in women's and non-revenue (Olympic) sports. A Bloomberg article published weeks before the Saving College Sports EO was issued estimated that, after the House Settlement was announced, around 41 D-1 Olympic sports programs were cut across NCAA Division 1, affecting 1,000 athletes.

Notably, the NCAA responded to the President's Saving College Sports EO that, while it appreciated the Administration's focus on the opportunities college sports provide student-athletes, "there are some threats to college sports that federal legislation can effectively address and the Association is advocating with student-athletes and their schools for a bipartisan solution with Congress and the Administration."

And yet, to date, there has been no movement by administrative agencies, Congress, or state governments towards accomplishing the Saving College Sports EO's directives regarding scholarship expansion and retention offered by Membership Institution athletic departments.

Cal Poly Objections

Rather, as the recent Cal Poly objections seem to indicate, Member Institutions, defined by the House Settlement as "any college, school, or university that is a member in any sport of NCAA Division I and/or a Conference Defendant, together with any entity owned, controlled, funded, or operated by said college, school, or university (or any division or department thereof)," are beginning to reallocate financial resources in ways that appear to run afoul of Title IX and the Saving College Sports EO.

One of the Cal Poly swimming and diving team House Settlement objectors, Abigail Leight, stated in her letter that Cal Poly's elimination of its swimming and diving team programs "raises serious" Title IX concerns. Leight indicated that, even though Cal Poly's undergraduate student body is made up of 51% women, women make up only 38% of Cal Poly's athletic opportunities. She also noted that Cal Poly chose to spend $6.9 million on its football program. Leight's allegations highlight potential Membership Institution management liability exposure stemming from purported Title IX sex discrimination and financial mismanagement.

Title IX

Title IX applies to any education program or activity receiving federal financial assistance. It protects "any person" from sex discrimination in such programs, not just students. The Supreme Court has held that employees of federally funded educational institutions can sue their employers under Title IX for sex discrimination, and circuit courts have recognized Title IX claims brought by professors, teachers, coaches, and other staff. Thus, even if student-athletes are reclassified or found by a court to be "employees" by receiving compensation for being rostered with a Member Institution, Title IX claims may be brought.

Statutory remedies for failure to comply with Title IX include termination or refusal by the DOE of federal financial assistance. In addition, student athletes can file a private cause of action against a Member Institution alleging Title IX violations. A presiding court may order the Member Institution to reinstate sports, expand opportunities, or allocate funding to comply. Plaintiff student athletes are eligible to be awarded monetary relief for intentional discrimination (including lost scholarships, out-of-pocket costs, and emotional distress) and recovery of legal fees incurred in bringing the case.

Discussion

Expenses incurred in defending Title IX cases may be costly for Member Institutions and management liability insurers. Also, if Title IX violations are found, loss of federal financial assistance, reallocation of funding, and monetary relief paid to student athletes may result in executive and board liability claims against Member Institutions and their leadership.

Take, for example, the claims brought by Scott Iannaccone, a former Cal Poly swimming and diving team member. Iannaccone alleged that Cal Poly continued to spend $6.9 million annually on its football program even though the University

President stated the swimming and diving program was the result of "an unfortunate reality given the approved NCAA House settlement, state budget, and the tenuous situation moving forward for both the state and the NCAA."

According to the NCAA, in 2024, Cal Poly's total athletic department revenue was $37,134,737, its expenses were $35,998,471, and $27,346,027 was allocated back to the university. Cal Poly opted into the House Settlement and then cited its participation in the Pool, which allows it to share revenue with our Division I schools to pay athletes, as putting a financial strain on its athletic department. Based upon the NCAA's 2024 report, Cal Poly's athletics generated enough gross margin to cover expenses and remit a significant subsidy to the institution. Other Member Institutions that opted in to the House Settlement showed similar financial efficiencies.

The transfer back to Cal Poly, or other similarly situated Member Institutions, may be seen by potential plaintiffs, like alumni, donors, students, or staff, as having stripped out funds that might otherwise support scholarships and non-revenue sports (like swimming and diving).

Certainly, Cal Poly is not the only Member Institution that may be facing financial strain after opting into the House Settlement. Thus, insurers of colleges and universities that are rebalancing athletic department and Pool revenue may want to evaluate whether Olympic sports are likely to be eliminated in the near term as one way to forecast the potential for future Title IX and financial mismanagement claims.

The views expressed in this article are exclusively those of the author, and all of the content in this article has been created solely in the author's individual capacity. This article is not affiliated with the author's company, colleagues, or clients. The information contained in this article is provided for informational purposes only, and should not be construed as legal advice on any subject matter.

Securities

Elanco 401(k) Investors Sue Over Target-Date Fund Performance

Oct. 22, 2025, 10:45 AM PDT

Elanco US Inc.'s 401(k) plan participants hit the veterinary medicine company with a proposed class action claiming its plan is plagued by poorly performing target-date funds.

The lawsuit, filed Tuesday in the US District Court for the Southern District of Indiana, challenges a suite of target-date funds from non-party American Century that previously served as the Elanco plan's default investment option. These funds, which held more than two-thirds of the plan's assets between 2020 and 2023, consistently underperformed their benchmarks and experienced an "alarming turnover rate and loss of market share" that should have prompted the company to take action, according to the complaint.

Target-date funds, which are designed to gradually shift investment strategies as investors approach retirement, have driven dozens of recent lawsuits alleging fiduciary breach under the Employee Retirement Income Security Act

The lawsuit brings ERISA claims on behalf of a proposed class of thousands of people who were Elanco plan participants or are their beneficiaries

Elanco didn't immediately respond to a request for comment

Walcheske & Luzi LLC represents the plan participants.

The case is Phillips v. Elanco US, Inc. , S.D. Ind., No. 1:25-cv-02159, complaint filed 10/21/25 .

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News | **Mass Torts**

Utah AG Fires Motley Rice From Opioid Lawsuit

The Utah attorney general's decision this month comes after one of the defendants, OptumRx, moved to disqualify Motley Rice for conflict-of-interest reasons.

October 23, 2025 at 08:29 AM By **Amanda Bronstad**

What You Need to Know

- United HealthCare's OptumRx alleges Motley Rice unethically used confidential information the firm obtained when representing other government entities—specifically, the city of Chicago, the state of Hawaii and the District of Columbia—in prior cases over insulin pricing.
- Last year, U.S. District Judge Dan Polster, who is overseeing thousands of lawsuits in the opioid multidistrict litigation in the Northern District of Ohio, declined OptumRx's request to disqualify Motley Rice from the plaintiffs' executive committee.
- Last month, Motley Rice members Elizabeth Smith and Linda Singer, in Washington D.C., as well as lawyers at the Utah attorney general's office, opposed the disqualification.

Courtesy photo

The Utah attorney general's office abruptly fired Motley Rice from its opioid lawsuit after one of the defendants moved to disqualify the plaintiffs' firm for conflict-of-interest reasons.

Utah Attorney General Derek Brown, a Republican who took office at the start of 2025 after campaigning on issues like transparency and efficiency, sent an Oct. 16 letter to Motley Rice dismissing the firm from the state's opioid case. The firing is the first following repeated accusations in multiple cases from one of the opioid defendants, United HealthCare's OptumRx, that Motley Rice unethically used confidential information about the pharmacy benefit manager's business practices.

Motley Rice allegedly obtained that information when representing other government entities—specifically, the city of Chicago, the state of Hawaii and the District of Columbia—in prior cases over insulin pricing. And OptumRx has previously raised similar allegations in at least half a dozen other opioid cases, although no judge has granted its request.

"We terminated the contract. We did it pursuant to the best interest of the state," a spokesperson for the Utah attorney general's office told Law.com.

Motley Rice spokeswoman Alicia Ward, in its statement, said, "The meritless accusations from OptumRx are an attempt to skirt legal responsibility in litigation that alleges in detail how the company put profits ahead of public health by favoring, promoting and dispensing opioids in exchange for rebates and other fees. Its allegations against Motley Rice have been unanimously rejected and dismissed by six courts."

Last year, U.S. District Judge Dan Polster, who is overseeing thousands of lawsuits in the opioid multidistrict litigation in the Northern District of Ohio, declined OptumRx's request to disqualify Motley Rice from the plaintiffs' executive committee. Months later, U.S. District Judge Patti Saris, of the District of Massachusetts, refused OptumRx's motion to disqualify Motley Rice from the city of Boston's case, as did Los Angeles Superior Court Judge David Cuningham, in Los Angeles County's lawsuit, both of which cited Polster's decision. On Sept. 4, a California appeals court upheld Cunningham's decision.

And, earlier this year, U.S. District Judge Matthew Maddox of the District of Maryland rejected Optum's disqualification motion of Motley Rice in a case brought by Anne Arundel County.

Neither Bentley Tolk, a shareholder at Parr Brown Gee & Loveless in Salt Lake City, nor Matthew McGuire, an Alston & Bird partner in Raleigh, North Carolina, representing OptumRx, responded to requests for comment.

Motley Rice: 'Speculative, Vague, Amorphous'

Although drug manufacturers and distributors, and some retailers, have settled opioid cases for billions of dollars, OptumRx is one of the pharmacy benefit managers remaining as a defendant in many of the lawsuits brought by cities, counties and states.

In his order, Polster noted he was "very uncomfortable" with Motley Rice's government client arrangements and agreed with OptumRx that Motley Rice was acting as a "public officer" in its prior government cases, and is now representing private clients, even though they are cities and counties.

But he questioned whether the firm obtained confidential documents, given that the same materials should have been provided in the multidistrict litigation and found the timing of OptumRx's disqualification motion "somewhat troubling," given that Motley Rice member Joe Rice was appointed to the plaintiffs' executive committee in 2018. The U.S. Court of Appeals for the Sixth Circuit refused to take up OptumRx's petition to review Polster's ruling.

OptumRx also has attempted to disqualify Polster and the special master in the opioid multidistrict litigation, David Cohen.

In the Utah case, OptumRx cited the American Bar Association's Rules of Professional Conduct and the Utah Rule of Professional Conduct 1.11(c), which states that a lawyer with confidential government information, acquired when serving as a "public officer or employee," may not represent a private client in a manner in which the same "information could be used to the material disadvantage of that person."

"The plaintiffs' legal theories in these opioid cases overlap with the topics on which Motley Rice obtained confidential information through its government service," Tolk wrote in the July 31 disqualification motion. "OptumRx does not challenge government authority to investigate, nor does it seek to intrude on any party's ability to select its counsel.

"But the ethics rules are clear: Motley Rice is not allowed to obtain confidential information about OptumRx by wielding government power and then, after obtaining the information, to represent other clients in private litigation against OptumRx where that same information could be used against OptumRx," Tolk said.

Before the state responded, U.S. District Judge David Barlow, in the District of Utah, who inherited the case earlier this year after it was removed from the Third Judicial District, in Utah's Summit County, recused himself from the case. His Aug. 7 order gave no reason, but Barlow, an appointee of President Donald Trump, served in 2011 as general counsel and Judiciary Committee counsel to U.S. Senator Mike Lee, a Republican from Utah. Brown, the Utah attorney general, was Lee's former deputy chief of staff and state director, in 2014.

Linda Singer, Motley Rice member in Washington D.C. Photo: Diego M. Radzinschi/ALM

U.S. District Judge Jill Parrish, the new judge in the case, who President Barack Obama appointed in 2015, has not yet ruled on the disqualification motion.

In a Sept. 4 motion, Motley Rice members Elizabeth Smith and Linda Singer, in Washington, D.C., as well as lawyers at the Utah attorney general's office, opposed the disqualification. They insisted that Motley Rice was not serving as a public officer or employee in the prior cases, nor did it obtain "confidential government information" that put OptumRx at a material disadvantage.

"Simply put," they wrote, "OptumRx's contention is speculative, vague, amorphous, and belied by the evidence."

Page printed from: https://www.law.com/2025/10/23/utah-ag-fires-motley-rice-from-opioid-lawsuit/print/

News | Mass Torts

Critical Mass With Law.com's Amanda Bronstad: Paraquat Judge Orders Aimee Wagstaff Not to 'Blow Up the Settlement', Thousands of Talc Cases Could Be Dismissed

October 22, 2025 at 09:13 AM By Amanda Bronstad

Credit: luchschenF/Adobe Stock

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

This week: **Aimee Wagstaff** appeared in court to explain why her upcoming video conference on **paraquat** lawsuits wasn't designed to impede a proposed global settlement. A federal judge in New Jersey ordered thousands of cases dismissed from the **talc** multidistrict litigation because they focus on gynecological cancers other than ovarian cancer. Find out who represents **Adobe** in a consumer class action over its subscription services.

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


Aimee Wagstaff of Wagstaff Law Firm.

Wagstaff: 'People Call Me A Lot'

A federal judge ordered plaintiffs' attorney Aimee Wagstaff (**Wagstaff Law Firm**) not to interfere with a planned settlement in the multidistrict litigation over the herbicide **paraquat**.

At a brief hearing, **U.S. District Chief Judge Nancy Rosenstengel** in the **Southern District of Illinois** was not persuaded by Wagstaff's insistence that a video conference she planned for next month wasn't designed to "undermine the MDL settlement."

"So, Miss Wagstaff," the judge started out the hearing, according to a transcript, "what are you doing?"

She was concerned Wagstaff had emailed lawyers on the listserv for **Women En Mass**, which has its annual retreat Oct. 26-28.

Wagstaff, who showed up in court with a legal ethics attorney, told the judge she cleared the email with the special master before sending it. She insisted that some of her paraquat clients would be excluded from the settlement or did nor have enough information about the deal. Many of them are in the **Philadelphia Court of Common Pleas**, where Wagstaff serves as co-lead counsel for the paraquat cases.

Rosenstengel, according to the transcript, directed the special master to share her order with state court judges, prompting this response from Wagstaff in court:

"I'm not going to try to undermine any MDL deal, but I do think it is within my—something that I can give my opinion on. People call me a lot, especially because I'm co-lead in the Philadelphia deal. And we've had some different results and different strategies out there, and people want to know what to do with their non-MDL cases."

Johnson & Johnson baby powder.

'Ovarian Cancer Claims Should Be The Primary Focus'

A federal judge ordered that thousands of talcum powder cases against Johnson & Johnson involving gynecological claims other than ovarian cancer be dismissed with prejudice, unless they have the medical records and a general causation expert to pursue their case.

The Oct. 16 order by **U.S. Magistrate Judge Rukhsanah Singh**, in the **District of New Jersey,** comes after Johnson & Johnson attorney [Jessica Brennan](**Barnes & Thornburg**) informed the court about an agreement with the plaintiffs' steering committee in the talc multidistrict litigation. The Oct. 14 letter said all lawyers agreed that non-ovarian gynecologic cancer claims were "not supported by science."

The multidistrict litigation, however, focuses solely on cases brought on behalf of women with ovarian cancer.

The other gynecological claims came up in Johnson & Johnson's third talc bankruptcy, which was dismissed by a judge this year. At a hearing, testimony focused on Johnson & Johnson's $10 billion bankruptcy plan, which included thousands of gynecological claims other than ovarian cancer. Mikal Watts (**Watts Law Firm**), who supported the plan for thousands of talc clients, called this month's order "both typical and appropriate."

Leigh O'Dell (**Beasley Allen**), co-lead counsel in the talc multidistrict litigation, told me:

"Importantly, the court's order makes clear that for any plaintiffs who are diagnosed with ovarian cancer in the future, they will have every right to pursue a claim for ovarian cancer. Plaintiffs' leadership has long held the position that a causal link between ovarian cancer and genital talc use is supported by the scientific evidence, not claims involving other gynecologic cancers, such as uterine cancer or cervical cancer. J&J attempted to use these non-ovarian claims to gain approval of its third misguided bankruptcy through individual payments of $1500. That scheme would have resulted in grossly underpaying the claims of women with medical diagnoses of ovarian cancer. Whether in the bankruptcy court or now in the MDL, ovarian cancer claims should be the primary focus."

Arnold and Porter attorney Doug Winthrop at the firm's DC offices Jan. 23, 2013. Photo: Jay Mallin

Who Got the Work?

Jeremy Kamras (**Arnold & Porter**) appeared on behalf of Adobe Inc. in a class action lawsuit alleging deceptive practices related to its subscription services and cancellation procedures. The lawsuit, filed on Aug. 4 in **U.S. District Court** for the **Northern District of California**, followed a **Federal Trade Commission** complaint against Adobe. Adobe filed a motion to dismiss the case this month. In addition to Kamras, Arnold & Porter attorneys Douglas Winthrop and Joseph Farris joined in the motion to dismiss.

Here's what else is happening:

PFAS Shutdown: The federal government's shutdown has prompted the **U.S. Department of Justice**'s attorneys to halt a closely watched case over toxic chemicals at a Superfund site in New Mexico. **U.S. District Judge Richard Gergel**, who is overseeing the multidistrict litigation in the **District of South Carolina** over **PFAS** contamination caused by aqueous film-forming foam used by firefighters, granted the DOJ's request this month to halt deadlines in the case. His order ruled that the case, which the **state of New Mexico** brought under the federal **Comprehensive**

Environmental Response, Compensation, and Liability Act, or CERCLA, is stayed until Congress has appropriated funds for the Department of Justice.

Colorado Target: The **U.S. Judicial Panel on Multidistrict Litigation** sent more than 20 antitrust class actions aimed at the makers and sellers of bowhunting equipment to the **District of Colorado**, which hasn't had a multidistrict litigation docket in 16 years. The panel called the district "underutilized" and assigned the cases, which names defendants such as **Bass Pro Shops** and **Dick's Sporting Goods**, to **U.S. District Chief Judge Philip Brimmer**. At Sept. 25 oral arguments, Eric Olson (**Olson Grimsley**) made the argument that Colorado was overdue for a multidistrict litigation assignment. The defendants had argued for the **District of Utah**.

'Ponzi Scheme'?: A New York plaintiffs' firm that handles mass tort litigation, such as **Roundup** and talcum powder, was hit with a new lawsuit on Monday alleging it failed to pay litigation financing investors who poured more than $15 million into its cases. Sylvia Benito, a Miami investment professional, sued Edward Lake (**the Lake Law Firm**) and his firm, in Sayville, New York, for "effectively running a Ponzi scheme." William "Bill" Brewer (**Brewer**) filed the case on behalf of Benito, who seeks $2.55 million in compensatory damages and an $8.55 million constructive trust over Lake's assets and those of his firm.

Thanks for reading Critical Mass! ALM's Riley Brennan will be filling in for me next week.

Litigation

Manage Newsletters

Judges Admit to Using AI After Made-Up Rulings Called Out

Oct. 23, 2025, 8:45 AM PDT

Two federal judges who issued rulings containing made-up elements said their staff employed AI tools in the drafting process.

The judges—US District Judge Julien Neals in New Jersey and US District Judge Henry Wingate in Mississippi—admitted to the AI usage in letters addressing questions raised by Senate judiciary committee chairman Chuck Grassley (R-Iowa). The judges' letters, which were mailed to the Administrative Office of the US Courts Director Robert Conrad on Oct. 20 and 21, were reviewed by Bloomberg Law.

Judge Neals said a law school intern in his office used Chat GPT to perform legal research, resulting in an order that contained case quotations that didn't exist. Judge Wingate said his law clerk used the AI tool Perplexity as a drafting assistant, resulting in an opinion that referred to parties, allegations, and quotes unconnected to the case.

"It was a draft that should have never been docketed," Judge Wingate wrote. "This was a mistake."

Judge Neals said the law school intern who used Chat GPT didn't have access to confidential or non-public information when using the AI tool; Judge Wingate said the clerk didn't input any confidential or non-public information about the case into Perplexity.

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

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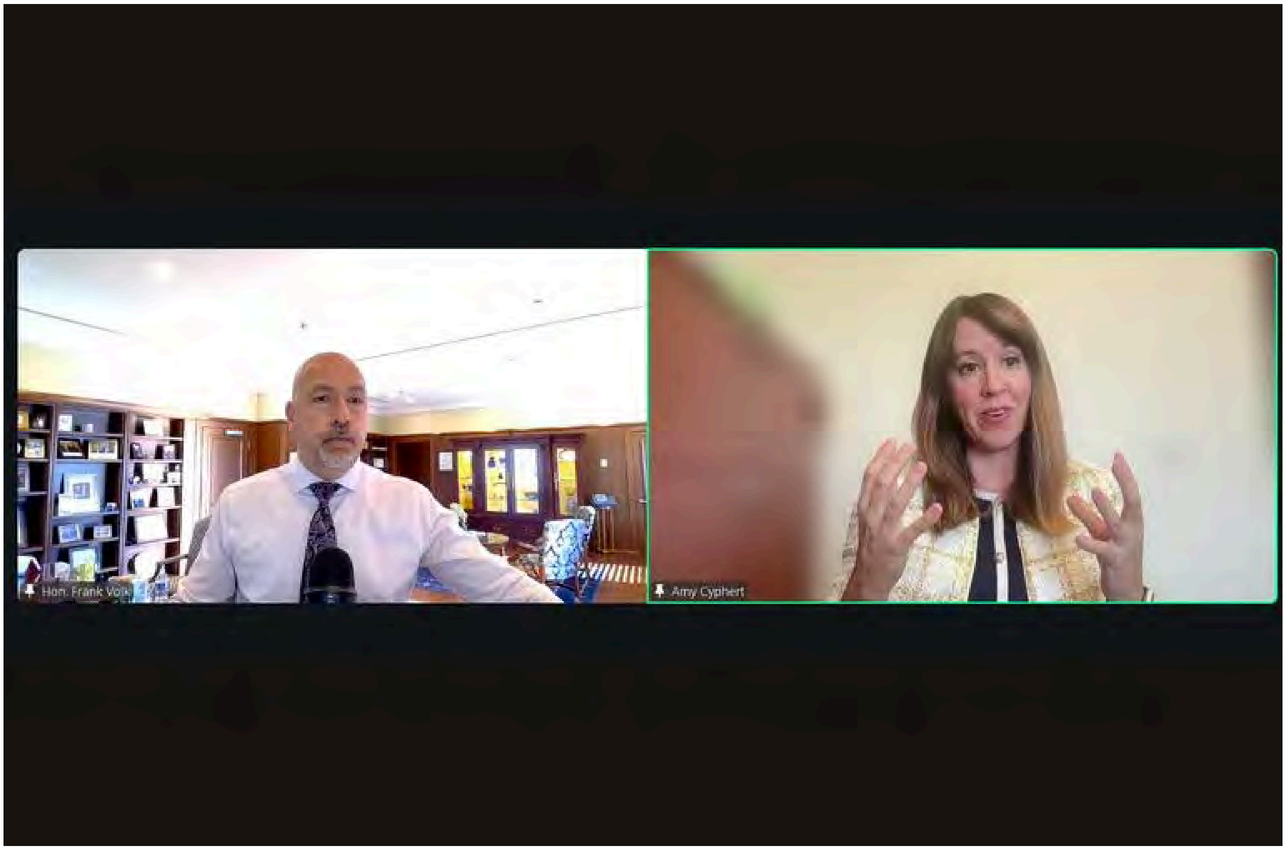
Analysis | **Artificial Intelligence**

A Judge Arguing With Himself? An AI Avatar Demo—and a Few Words of Caution

U.S. District Chief Judge Frank Volk of the Southern District of West Virginia showcased AI's potential in judicial training—even as he urged strict guardrails and warned of career risks for lawyers who misuse the technology.

October 22, 2025 at 06:30 AM By **Ross Todd**



Judge Frank Volk, left, and Professor Amy Cyphert, speaking during a BJI Webcast. Image via web video

U.S. District Chief Judge **Frank Volk** of the Southern District of West Virginia gave a hard "no" this week when asked if he uses generative artificial intelligence to draft legal opinions. And he stressed that all clerks and incoming associates need to be trained to avoid using generative AI tools as primary sources.
But Volk is perhaps the farthest thing from a Luddite or AI skeptic on the federal bench.

During a web presentation about how to use artificial intelligence and how to catch it hallucinating, the judge gave a mind-bending demonstration of a use case that never crossed my mind until I saw it in action. Volk played a split-screen video where he appeared to be talking to another version of himself. That other Judge Volk, though, was an avatar he created using the AI video tool

HeyGen. Volk prompted the avatar to help him brush up on how to handle objections to evidence under Rule 403 at trial, with the avatar playing the role of the objecting lawyer and the judge running through his reasons for overruling the objection. At a certain point in the back-and-forth, the real Judge Volk cut off the argument and asked for feedback from the avatar.

“You did really well, judge. You stayed confident, explained your reasoning clearly and addressed the rule 403 balancing,” the avatar said to the judge. “For improvement, you might explicitly ask the attorney to tailor their questions to minimize prejudice or suggest limiting instructions to clarify what evidence is admissible,” the avatar said before asking the judge if he would like to move on to another scenario.

Eye-opening? Yes. Unnerving? A little bit.

The demonstration came Monday as part of a presentation sponsored by the **Berkeley Judicial Institute**that Volk made alongside **Amy Beth Cyphert** an associate professor at the **West Virginia University College of Law**.

Cyphert said she and the judge are both excited about AI and some of the benefits it could bring to the judiciary. "But we're also both incredibly mindful of the fact that we don't reach those benefits if we're not really clear-eyed about some of the potential problems,” she said.
The discussion focused quite a bit on the, by now, well-documented problems around hallucinations in gen AI outputs to legal queries. But Cyphert also called attention to the phenomenon of regurgitation, where some gen AI tools will respond to a prompt with accurate information, but material that’s been lifted from another source, such as a law review or a judicial opinion, without attribution. “It can be verbatim, big passages,” she said. "I do worry sometimes that people don't realize that we can actually get inadvertent regurgitation there.”

Cyphert said that she also worries about her students using generative AI tools too early in their “life cycle as legal writers.” She pointed out that there’s a current line of research showing that while use of generative AI tools like large language models can increase creativity on an individual level, it can lead to conformity to the same mean with wider adoption. "This is not a reason, of course, to not use these tools,” she said. “It's a reason to be really thoughtful about how and when you use them, and especially for those of us who work with students, to think a lot about when to introduce them to students and how to do that.”

Late in the program, Volk gave another demonstration of using a generative AI tool to create a new GPT by uploading the Law Clerk Handbook published by the Federal Judicial Center. He then asked the new GPT how a new clerk should handle personal phone calls to chambers. The tool gave the appropriate answer and when prompted, pointed the judge to the correct section of the handbook. Both Volk and Cyphert said that limiting the sources that AI tools can draw from can help alleviate some, but not all, concerns around hallucinations. But they also stressed that users need to consider any confidentiality or copyright concerns about the uploaded material.

Volk said that experimenting with the tools could breed a certain level of “fear of missing out” that would get those still hesitant to start adopting AI tools in some fashion. But he offered some additional notes of caution, especially when it comes to new lawyers. “Training your law clerks or your new associates about its proper use is absolutely critical,” he said. He said it’s important to have effective policies in place. But even with policies and use restrictions, he still tends to double-check everything and know who is using what for what purposes in his chambers. “All it takes is one person that doesn't follow the rules,” Volk said. “If it can slip through and does, it can just transform your career.”

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Best Practices | **Artificial Intelligence**

‘It’s Like Ozempic for Legal Work’: AI Wows In-House Lawyers but Also Leaves Them Wanting

“AI’s output is so confident and sounds so authoritative, it can't possibly be wrong—but that’s just not the case," said Jeffrey Huang, senior assistant general counsel at Textron Specialized Vehicles.

October 22, 2025 at 01:19 PM By **Trudy Knockless**

A panel discussion at the Association of Corporate Counsel annual meeting in Philadelphia focused on AI successes and setbacks. Participating were, from left, John Rondini of Brooks Kushman, Jessica Nguyen of DocuSign, Paul Liu of PacketFabric and Jeffruey Huang of Textron Specialized Vehicles. Photo: Trudy Knockless/ALM

The explosion of generative AI tools has prompted both excitement and anxiety inside corporate legal departments, as attorneys weigh the benefits of automation against privacy, compliance and intellectual property risks.

At the 2025 Association of Corporate Counsel annual meeting in Philadelphia, a panel of legal and tech leaders gathered this week for a wide-ranging discussion on how AI intersects with intellectual property and data privacy.

The panelists—Jeffrey Huang, senior assistant general counsel at Textron Specialized Vehicles; Paul Liu, general counsel of PacketFabric; and Jessica Nguyen, deputy general counsel of AI innovation and trust at DocuSign—shared how they're experimenting with AI in their workflows, what's working, and where they're drawing the line. Moderating the session was John Rondini, co-chair of litigation at the IP firm Brooks Kushman.

Nguyen has been deep in the weeds of legal tech adoption—and has the data to prove it.

"I ran a poll on LinkedIn—over 300 vote responses," she said. "Seventy-six percent of folks are using generative AI already, and another set are using AI features built into their existing enterprise tools."

Nguyen said the impact on efficiency is undeniable. "AI is like the Ozempic of legal work," she said. "It's removing all the fat—removing all the extra tasks that you do not want to do."

For many, that means leveraging AI for drafting and summarizing.

You can use it to "get that first draft of something, get that analysis on briefings, to just do a lot of the menial tasks you had to do before," Rondini said. "It's transformed the industry."

But not all use cases are equal. Nguyen pointed out that AI's value grows when it's deployed strategically and with clear guidance. She walked attendees through how she uses NotebookLM, Google's enterprise AI notebook, to assist with contract review—uploading her company's contract playbook, risk thresholds, and key deal context to shape the output.

"I asked it to analyze the contract from the customer perspective," she said. "It came back with a chart showing what was good or bad for the company, proposed redlines, what pushback we might expect and how we should respond. That's pretty cool."

The tool even drafted language she found surprisingly polished. Still, Nguyen emphasized that these tools are best used as a "brainstorming buddy"—not a substitute for human lawyers.

"The results get significantly better when you give it more context. But you have to review it all. It's not magic," she cautioned.

Liu had a similar take. "AI is overhyped," he said. "When I first used it, I thought, 'Am I still going to have a job?' But then you realize it's not exactly right. It needs a trained eye."

Panelists said attorneys can fall into a trap of putting too much faith in AI because it presents information free of the signals of uncertainty that real-life lawyers might display when they're advising outside their realms of expertise.

“You need experience and judgment behind it,” Huang said. “AI’s output is so confident and sounds so authoritative, it can't possibly be wrong—but that’s just not the case.”

Another challenge is that different jurisdictions have different rules on AI use. While Congress has not passed a comprehensive AI law, states are jumping into the fray, with at least 16 passing AI laws and many more considering AI-related measures. Companies are also grappling with the European Union's AI Act, which goes into effect in stages over the next couple of years.

“Privacy law is more mature,” Huang said. “With AI laws, there’s very little consistency. Some states require disclosure for any AI-generated output; others only care about high-risk use cases. And this hasn’t even been litigated yet.”

In response, his company is taking a “segmented markets” approach: one product for clear jurisdictions, another for ambiguous ones, and a “wait-and-see” approach in areas with no guidance.

Companies are also struggling with ensuring their own employees are following internal rules on AI use.

Nguyen said DocuSign simplified its AI use policy to just 3.5 pages, with a table outlining use cases and risk levels by department.

“The simpler the policy, the better the compliance,” she said.

She added: “The more complex the policy, the more training you need—and the less compliance you get."

Huang said that while his company officially restricts AI use to Microsoft’s Copilot, he personally tests other platforms in his own time to understand their differences.

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OpenAI Relaxed Self-Harm Safeguards Before Suicide, Suit Says

Oct. 22, 2025, 3:52 PM PDT

Summary by Bloomberg AI AI Generated

- An amended complaint alleged OpenAI weakened self-harm safety protocols for ChatGPT two months before a 16-year-old took his own life while discussing suicide methods with the chatbot.
- The new complaint said OpenAI removed suicide and self-harm from the list of disallowed ChatGPT topics and moved them to a category called "Take extra care in risky situations".
- The suit said OpenAI's announcement that it would implement new parental controls are just "cosmetic changes".

OpenAI Inc. weakened self-harm safety protocols for ChatGPT two months before a 16-year-old took his own life while discussing suicide methods with the chatbot, an amended complaint from his family alleged.

The amended complaint filed Wednesday in San Francisco Superior Court adds to an existing arsenal of claims that OpenAI is legally liable for the death of Adam Raine, who spent hours a day talking with ChatGPT before hanging himself in April.

The new complaint said OpenAI released a revision to its Model Spec, which outlines intended behavior for the model, that removed suicide and self-harm from the list of disallowed ChatGPT topics.

Those topics were instead moved to a separate category called "Take extra care in risky situations" where the model will "try to prevent imminent real-world harm," the amended complaint said.

OpenAI's announcement that it would implement new parental controls after Raine's parents filed the suit are just "cosmetic changes," the suit said.

OpenAI didn't immediately return a request for comment.

The wrongful death lawsuit, filed in August, is the first of its kind against OpenAI. Character.AI, a chatbot service that allows users to make custom characters to talk with, was sued in Florida federal court last year over the suicide of a 14-year-old boy who developed an emotional relationship with the chatbot. The judge overseeing that case denied Character.AI's motion to dismiss the suit.

The suit from Raine's parents said their son first started using ChatGPT for homework help before he began opening up about his personal life and mental health struggles. ChatGPT mentioned suicide 1,275 times while Adam Raine discussed methods of suicide.

The amended complaint comes a week after OpenAI CEO Sam Altman announced that a new version of ChatGPT would relax restrictions for verified adult-users, including erotica content.

Edelson PC and Tech Justice Law Project represent Raine's family.

The case is Raine v. OpenAI Inc. , Cal. Super. Ct., No. CGC-25-628528, 10/22/25 .

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Apple Hit With AI Copyright Lawsuit Filed by 'Lady Emily' Author

Oct. 22, 2025, 3:28 PM PDT

Apple Inc. willfully infringed millions of copyrighted works to build its Apple Intelligence AI product, an author alleged Wednesday in a federal lawsuit.

Tasha Alexander accused Apple of downloading pirated copies of works to train AI models, consequently displacing and diluting the market for authors, in a proposed class action complaint filed in the US District Court for the Northern District of California.

It is the third lawsuit filed against Apple since September over Apple Intelligence, joining complaints by State University of New York professors and other authors. The complaint is among the dozens of copyright lawsuits filed against AI companies and comes months after Anthropic PBC settled with authors and publishers for $1.5 billion over pirated book claims.

Alexander—a pseudonym for Anastasia Grant and the author of the Lady Emily Ashton book series—said Apple has acknowledged its use of datasets known to contain libraries of pirated books, including RedPajama, C4, and PILE.

"Authors invest years in creating these works, and intellectual property rights as old as our Constitution guarantee their right to compensation," the complaint said.

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

Bleichmar Fonti & Auld LLP and Cotchett, Pitre & McCarthy LLP represent Alexander.

The case is Alexander v. Apple Inc. , N.D. Cal., No. 25-cv-09090, complaint filed 10/22/25 .

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Technology regulation

Apple loses UK class action lawsuit over 'excessive' App Store charges

Claimants said 36mn consumers would be entitled to damages of about £1.5bn

The tribunal found that Apple has 'near absolute market power' in the markets for iOS app distribution and in-app payments © Reuters

Alistair Gray and **Tim Bradshaw**

Published 26 MINUTES AGO | Updated 10:23

Apple has lost a landmark UK class action antitrust lawsuit over claims it levies "excessive and unfair" charges on software downloaded from its App Store, in the latest legal blow to the US tech giant.

The Competition Appeal Tribunal ruled on Thursday that the Silicon Valley-based group abused a dominant position to charge developers commissions of as much as 30 per cent on purchases.

The claimants said 36mn consumers would be entitled to damages of about £1.5bn. Apple said it would appeal.

The tribunal found that Apple has "near absolute market power" in the markets for iOS app distribution and in-app payments.

Apple "is abusing its dominant position by charging excessive and unfair prices" to developers, it said in the decision.

The tech group said the ruling took a "flawed view" of the mobile apps market, arguing iPhones face "vigorous competition".

"This ruling overlooks how the App Store helps developers succeed and gives consumers a safe, trusted place to discover apps and securely make payments," Apple said.

The tribunal's decision is the latest in a series of legal and regulatory challenges facing Apple's lucrative services business, which is expected to generate more than $100bn in revenues for the first time this year.

The decision comes just a day after the UK's antitrust agency said it would impose strict new rules on how Apple and Google run their mobile platforms under Britain's new digital competition law.

Apple is also fighting several aspects of the EU's Digital Markets Act, which has forced the iPhone maker to make changes to its App Store.

It also faces huge pressure over the App Store in the US. Last year, the US Department of Justice filed a landmark antitrust case against Apple over what it alleges is a smartphone monopoly.

The CAT ruling is a crucial victory for class action claimants following a series of recent disappointments.

A wave of lawsuits have been launched — many of them against technology companies — under legislation drawn up a decade ago allowing mass actions over alleged breaches of competition law.

But the cases have been bogged down by protracted legal arguments over process, and payouts so far have largely been seen as disappointing for claimants.

The case against Apple — led by "class representative" Rachael Kent, a lecturer at King's College London — was the first such case against a Big Tech group to go to trial before the CAT. Apple's chief financial officer Kevan Parekh testified this year.

Kent said in a statement following the ruling: “Every in-app purchase, subscription and paid download was inflated by Apple’s anti-competitive practices.”

She added: “This is a landmark victory — not only for App Store users, but for anyone who has ever felt powerless against a global tech giant.”

In a 396-page ruling on Thursday, the CAT said “the process for resolving any questions relating to the calculation” of damages would be determined at a subsequent hearing, as soon as next month.

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Apple Loses UK Class Action Over Excessive App Store Charges

Oct. 23, 2025, 9:55 AM PDT

By Upmanyu Trivedi

(Bloomberg) --

Apple Inc. lost a class-action in the UK after a court ruled that it abused its dominant position to charge excessive commission from app developers.

The Competition Appeal Tribunal ruled on Thursday that Apple failed to justify its conduct and must pay damages for the overcharged amounts.

The lawsuit alleged that millions of “captive” iPhone and iPad users paid the price for “exorbitant” commission charged by Apple for purchases made on its App Store. Apple denied the allegations.

“Apple has abused its dominant position by charging excessive and unfair prices,” the tribunal said in a summary of the ruling.

Lawyers for Rachael Kent, the lead claimant in the case filed in 2021, estimated Apple could be liable to pay over £1.5 billion ($2 billion) to compensate tens of millions of users.

The ruling is the second setback for Apple in the UK this week after the Competition and Markets Authority designated the firm under its tougher rules governing Big Tech — exposing the US firm’s mobile ecosystems market to deeper scrutiny from the regulator.

Apple said the ruling took a flawed view of the thriving and competitive app economy. “This ruling overlooks how the App Store helps developers succeed,” an Apple spokesperson said.

Any Apple users who made purchases of digital content through the App Store “at any point since” Oct. 1, 2015 is “potentially entitled to compensation from Apple for its anti-competitive practices,” lawyers for Kent at Hausfeld & Co. said in a statement.

(Updates throughout)

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Bloomberg Law

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Reddit Sues Perplexity, Others Over Alleged Data Scraping (3)

Oct. 23, 2025, 12:03 AM PDT

Summary by Bloomberg AI

AI Generated

- Reddit Inc. sued Perplexity AI Inc. and three other companies over alleged data scraping from the discussion site without permission.
- The complaint alleges that three data scraping companies have been illegally collecting Reddit data via Google search results for the purpose of reselling it, and that Perplexity has been buying that data from at least one of the companies.
- Reddit is seeking monetary damages and a court order to stop the alleged scraping and use of its data in violation of federal copyright law.

Reddit Inc. sued Perplexity AI Inc. and three other companies over alleged data scraping from the discussion site without permission, a sign of the growing demand and value of original data in the burgeoning AI industry.

Three data scraping companies — Oxylabs UAB, AWMProxy, and SerpApi — have been illegally collecting Reddit data via Google search results for the purpose of reselling it, according to the complaint filed Wednesday in federal court in Manhattan. Perplexity has been buying that data from at least one of the companies, the suit alleges.

Reddit is seeking monetary damages and a court order to stop the alleged scraping and use of its data in violation of federal copyright law. Shares of the San Francisco-based company closed down more than 4% in New York trading.

Reddit's growing repository of data has become a valuable commodity given the rise in AI models that rely on massive troves of information for training and surfacing relevant results. Reddit has already inked deals with OpenAI and Alphabet Inc.'s Google to license its data for training purposes, but has taken legal action against others it believes to be using the data without a formal agreement.

Reddit sued AI firm Anthropic PBC earlier this year in San Francisco court over similar data scraping allegations.

"AI companies are locked in an arms race for quality human content — and that pressure has fueled an industrial-scale 'data laundering' economy," **Ben Lee**, Reddit's chief legal officer, said in a statement shared with Bloomberg News. "Reddit is a prime target because it's one of the largest and most dynamic collections of human conversation ever created."

Spokespeople for Perplexity, SerpApi and Oxylabs each said their companies hadn't yet been served with the complaint.

Perplexity spokesperson Beejoli Shah said the firm "will always fight vigorously for users' rights to freely and fairly access public knowledge."

"Our approach remains principled and responsible as we provide factual answers with accurate AI, and we will not tolerate threats against openness and the public interest," Shah said in an emailed statement.

Perplexity called the lawsuit a "show of force" in Reddit's data negotiations with OpenAI and Google in a statement posted on Reddit.

SerpApi spokesperson Ryan Schafer said in a statement "we strongly disagree with Reddit's allegations and intend to vigorously defend ourselves in court."

Denas Grybauskas, Chief Governance and Strategy Officer at Oxylabs, said in a statement the company is "shocked and disappointed" by the lawsuit, "as Reddit has made no attempt to speak with us directly or communicate any potential concerns."

"Oxylabs has always been and will continue to be a pioneer and an industry leader in public data collection, and it will not hesitate to defend itself against these allegations," Grybauskas said. "Oxylabs' position is that no company should claim ownership of public data that does not belong to them."

A spokesperson for AWMProxy, a Russian company, couldn't be located.

The case is Reddit Inc. v. SerpApi LLC, 25-cv-08736, US District Court, Southern District of New York (Manhattan).

(Updates with additional Perplexity comment in the tenth paragraph.)

--With assistance from Madlin Mekelburg.

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News | **Privacy**

California Federal Judge Rules Proposed Privacy Class Action Against LinkedIn May Proceed

A California federal judge has denied a motion to dismiss a proposed privacy class action against professional networking platform LinkedIn Corp., paving the way for class certification in a suit alleging violations of the federal Video Privacy Protection Act.

October 22, 2025 at 04:07 PM By **Kat Black**

What You Need to Know

- A California federal judge rejected a motion to dismiss a putative privacy class action against LinkedIn.
- The complaint alleges that LinkedIn violated the Video Privacy Protection Act by sharing users' video viewing histories and preferences with Facebook parent Meta via the Meta tracking pixel.
- The judge cited a district court's recent denial of a motion to dismiss a VPPA case against AARP.

LinkedIn sign is seen at its campus in Sunnyvale, California, June 8, 2023. Credit: JHVEPhoto/Adobe Stock

A California federal judge has denied a motion to dismiss a proposed privacy class action against professional online networking platform LinkedIn Corp., paving the way for class certification in a suit alleging violations of the federal Video Privacy Protection Act.

U.S. District Judge P. Casey Pitts handed down the order on Monday in the U.S. District Court for the Northern District of California, ruling that the plaintiff plausibly alleged that LinkedIn is a "video tape service provider" as defined by the VPPA, a bill enacted in 1988 that prohibits the "wrongful disclosure of video tape rental or sale records."

The judge also held that the plaintiff plausibly alleged that LinkedIn had knowingly disclosed its consumers' personally identifiable information to social media giant Facebook, owned by parent Meta Platforms Inc., via the Meta Pixel, a snippet of code embedded in the back end of websites that businesses can use to track data about user activity and measure the effectiveness of their advertising. The data collected is also shared with Meta for use in its own targeted ad campaigns directed at Facebook users.

Pitts cited a recent decision in the class action lawsuit *Markels v. AARP,* in which plaintiffs alleged that AARP, a nonprofit organization and media provider that advocates for retired Americans, had violated the VPPA by using the Meta Pixel to illegally share users' video viewing histories and preferences on the AARP website with Meta. AARP reached a $12.5 million settlement with plaintiffs in September.

Pitts noted that the district court in *Markels* rejected AARP's bid to dismiss the case and held that plaintiffs plausibly alleged AARP was a video tape service provider after an amended complaint alleged that AARP hosted over 5,000 videos on its platform and "derive[d] substantial revenues" from them.

Following this line of reasoning, he wrote, LinkedIn may also qualify as a video tape service provider given that the plaintiff alleges LinkedIn also "hosts thousands of videos on a wide variety of topics" and LinkedIn Premium subscriptions cost $39.99 a month.

The underlying case, captioned *Cole v. LinkedIn,* was filed by Drury Legal on Feb. 3, 2025. The putative class includes all individuals who have accessed materials on LinkedIn Learning, a website owned by LinkedIn that offers educational, video-based training courses and skill-building programs to business professionals.

The plaintiff, Courtney Cole, alleged that when she watched a LinkedIn Learning video course in October 2023 while logged into Facebook, the Meta Pixel "transmitted [data] from these ... cookies to Facebook" without her consent. In addition, she said, the Pixel also transmitted the video URL and her Facebook ID to computer software company Adobe after LinkedIn "integrated the Pixel embedded in LinkedIn Learning with the Adobe Analytics platform," disclosing her video viewing history and personally identifiable information to Adobe.

According to the LinkedIn website, LinkedIn Learning offers over 25,000 courses, which require access to an employer's business subscription or a LinkedIn Premium subscription to view.

The plaintiff's counsel at Drury Legal did not respond to email or phone messages seeking comment.

"To get class certification, like they did under the Video Privacy Protection Act, can be difficult depending on which circuit they're in," said Collin Walke, a shareholder at Hall Estill in Oklahoma who leads the firm's cybersecurity and data privacy practice.

This development, added Walke, is "huge" given the potential statutory damages: The Video Privacy Protection Act awards $2,500 per violation.

Given that the VPPA has been on the books since 1988, he said, a case like this receiving class certification may also fuel future litigation and help shape how the judiciary—including the Supreme Court—responds to the application of decades-old statutes to "21st-century" concerns that new legislation has not been passed to address.

"It certainly means that there's going to be a lot more opportunity for courts to decide who has standing as a class participant, who constitutes a consumer under the Video Privacy Protection Act, who constitutes a provider," said Walke.

"I think you're going to see a proliferation of litigation not just against LinkedIn, but you're going to see it against a lot of different, other providers out there that use pixels to track their users, and inadvertently, that included times they were watching videos and they sent [them] back to Facebook. There's going to be a ton of platforms that this could potentially create liability for."

A representative for LinkedIn did not respond to an emailed request for comment, and LinkedIn's counsel at Keker, Van Nest & Peters did not respond to emails and phone messages seeking comment.

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Prager U. Video Privacy Suit Over Meta’s Pixel Nixed for Now

Oct. 22, 2025, 8:46 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal judge said Prager University Foundation no longer faces a Video Privacy Protection Act suit because the plaintiffs failed to sufficiently allege the company wrongfully shared their viewing history with third parties.
- The judge found the plaintiffs failed to show how their specific personal information was shared by the tracking pixel, and appeared to hold Prager University liable for disclosing information controlled by Facebook.
- The plaintiffs have leave to amend the pleading defect, which the judge said appeared to be "readily curable", after they sufficiently alleged they were protected consumers under the VPPA.

Prager University Foundation no longer faces a Video Privacy Protection Act suit after a federal judge said the plaintiffs failed to sufficiently allege the conservative video content producer wrongfully shared their viewing history with third parties.

“There is a growing divide among courts about whether Facebook IDs coupled with video viewing histories transmitted by Facebook Pixel satisfy the ordinary person test,” Judge Mark C. Scarsi of the US District Court for the Central District of California said.

But, Scarsi said, he needn’t wade into the debate because the plaintiffs failed to show how their specific personal information was shared by the tracking pixel, beyond descriptions of the code’s general capabilities.

And the plaintiffs appeared to hold Prager University liable for disclosing information controlled by Facebook, now Meta Platforms Inc., something the judge called “puzzling,” and said could be chalked up to the complaint’s ambiguity.

The plaintiffs have leave to amend the pleading defect which, Scarsi said, appeared to be “readily curable.”

The courts are also split over who should count as protected consumers under the VPPA, he said. The judge adopted the broader definitions from the Second and Seventh circuits that say the law doesn't require a customer to buy an audiovisual product to receive VPPA protection.

The plaintiffs did sufficiently allege they were protected consumers since they handed over their emails in exchange for promotional content about new videos and articles from Prager University.

Prager University says its videos, addressing a span of educational and political topics, are geared towards promoting American and Judeo-Christian values.

Gordon Rees Scully and Mansukhani LLP represented Prager University.

Gucovschi Rozenshteyn PLLC and Hedin LLP represented the plaintiffs.

The case is Chandra v. Prager Univ. Found. , C.D. Cal., No. 2:25-cv-03984, 10/21/25 .

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Consumers seek $2.36 billion from Google after privacy verdict

reuters.com/sustainability/boards-policy-regulation/consumers-seek-236-billion-google-after-privacy-verdict-2025-10-23

Mike Scarcella October 23, 2025

The new Google logo is seen in this illustration taken May 13, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

Oct 23 (Reuters) - U.S. Google users who won a $425 million jury verdict in a consumer privacy class action last month have asked a federal judge to force the Alphabet (GOOGL.O) , opens new tab unit to forfeit an additional $2.36 billion in profits.

The consumers in a Wednesday court filing , opens new tab called the amount a "conservative approximation" of Google's allegedly ill-gotten gains after the jury found the company secretly collected app activity data from millions of users who had disabled an account tracking feature.

"The jury found that Google's conduct was highly offensive, harmful, and without consent," the consumers told Chief U.S. District Judge Richard Seeborg in San Francisco, who must decide if disgorgement of profits is allowed and necessary in the case.

GOOGLE HAS DENIED WRONGDOING, SAID IT WILL APPEAL

The plaintiffs called the $425 million damages verdict "clearly insufficient to remedy the ongoing and irreparable harm that Google's conduct continues to inflict."

Google and attorneys for the plaintiffs did not immediately respond to requests for comment.

Google has denied wrongdoing and said it will appeal. It argued the data it collected was anonymized and that its privacy tools give users control over their data.

The 2020 lawsuit alleged Google over an eight-year period accessed users' mobile devices to collect, save and use their data, violating privacy assurances under an account setting called Web & App Activity.

The jury found Google liable on two of three privacy claims brought by the plaintiffs, who had sought more than $31 billion in damages at trial.

Despite the verdict, Google has not changed its privacy disclosures or data collection practices, the plaintiffs said.

Google on Wednesday asked , opens new tab Seeborg to decertify the class of 98 million users and 174 million devices, arguing that the claims depend on individualized factors such as app usage and user expectations. It also urged the judge to vacate the verdict, citing a lack of common issues.

Reporting by Mike Scarcella. Editing by David Bario and Mark Potter

Ex-Twitter Workers Disavow Tentative Settlement in Severance Row

Oct. 22, 2025, 12:54 PM PDT

Summary by Bloomberg AI

AI Generated

- Two former Twitter employees who sued Elon Musk and X Corp. have disavowed a tentative class settlement announced in August, according to a court filing.
- The employees want the dispute to be sent back to district court so potential class members can be notified that there is no settlement, as media coverage has led former Twitter employees to wrongly think they'll benefit from a significant settlement.
- The plaintiffs claim that news reports and artificial intelligence summaries of that coverage have created a misconception about the settlement, and that court-ordered notice is necessary to inform former Twitter employees that they must proactively pursue individual claims to receive severance payments.

Two former Twitter Inc. employees who sued Elon Musk and X Corp. over unpaid severance benefits have disavowed a tentative class settlement announced in August, according to a Wednesday court filing.

The employees, who appealed to the Ninth Circuit after their case was dismissed, have withdrawn their appeal and want the dispute to be sent back to district court so potential class members can be notified of that fact. This move is warranted because of media coverage and artificial intelligence summaries of that coverage, which have led former Twitter employees to wrongly think they'll benefit from a significant settlement, the workers told the US Court of Appeals for the Ninth Circuit.

"It is highly likely that members of the former putative class (previous Twitter employees who were laid off after Elon Musk acquired the company in October 2022) believe that their rights are being protected by—and that they stand to benefit from—a large class action settlement in this case," plaintiffs Courtney McMillian and Ronald Cooper said in the filing. "The reality, however, is that no class was certified, this case is being dismissed after the withdrawal of Plaintiffs' appeal, and there is no settlement."

The filing comes less than a week after a major shakeup in the appeal cast serious doubt on the tentative settlement, the terms of which haven't been publicly disclosed. The lawsuit claimed about 6,000 laid-off Twitter employees were owed at least $500 million in severance pay after Musk's acquisition of the social media platform.

Back and Forth

On Oct. 16, McMillian and Cooper announced they'd retained a new attorney—Shannon Liss-Riordan of Lichten & Liss-Riordan PC—and told the court they were withdrawing their appeal.

On the same day, two other former Twitter employees—Diana Ye and James Kurtz—asked to intervene in the litigation. Ye and Kurtz, who are represented by McMillian and Cooper's prior attorneys at Sanford Heisler Sharp McKnight LLP, want to continue negotiating the settlement or resume litigation if a deal can't be reached.

But according to the latest filing from Liss-Riordan, McMillian and Cooper "did not agree with the actual proposed settlement," which was for a "far smaller sum" than the $500 million in cumulative severance payments sought by the lawsuit. McMillian and Cooper said that news reports about the tentative settlement —including one from Bloomberg Law—along with Google AI summaries of such reports could potentially lead some former employees to believe that the settlement was worth $500 million.

Kate Mueting a partner at Sanford Heisler told Bloomberg Law Wednesday that "the previously announced settlement in principle was achieved with the full knowledge and approval of our clients. We are committed, with new Named Plaintiffs, to continuing to represent the interests of all potential class members and to proceeding with the existing settlement."

Liss-Riordan declined to comment on the case, as did an attorney from Morgan, Lewis & Bockius LLP, which represents Musk and X.

Liss-Riordan has represented about 2,000 individual former Twitter employees, mostly in arbitration, over the past three years, she said in a declaration submitted with the Wednesday filing. Employees who might have been covered by the proposed class deal should be informed of the case's status so they don't inadvertently lose the ability to pursue individual claims, according to the filing.

There's a "real risk that many former Twitter employees may be sitting on their rights, unaware that they are *not* currently the beneficiaries of a significant settlement agreement, and that they must proactively pursue individual claims if they wish to try to receive severance payments they may be entitled to in the wake of their layoffs," according to the filing by McMillian and Cooper. "Due to this risk, court-ordered notice is necessary to ensure that these formerly putative class members are not prejudiced by reliance on the reporting surrounding this class action that is being dismissed."

The case is McMillian v. Musk , 9th Cir., No. 24-5045, motion to remand 10/22/25 .

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Oil & Gas industry

TotalEnergies misled consumers over climate action, French court rules

Key win in Paris civil case over disinformation in marketing campaigns

The court ordered Total to stop communicating to consumers that it was 'a major actor in the energy transition' © AFP via Getty Images

Ian Johnston in Paris and **Kenza Bryan** in London

Published 5 HOURS AGO

TotalEnergies lost a landmark greenwashing case on Thursday after a French court found it misled consumers with claims about its contributions to tackling climate change.

The oil and gas group was guilty of "misleading commercial practices" by saying that it planned to reach carbon neutrality by 2050 and be a "major actor in the energy transition", the civil court found in a case brought by Greenpeace, Notre Affaire à Tous and Friends of the Earth France.

The judgment is the first win for activists against a key player in the oil industry under French law, although advertising regulators including the UK body have previously made findings on corporate green claims.

Shell last year won an appeal against a landmark order for it to cut greenhouse gas emissions in a Dutch court, which nonetheless said the company had an obligation to limit its emissions.

The Paris court ordered Total to stop communicating to consumers that it was "a major actor in the energy transition", and to pay the non-government organisations €8,000 each. It must also publish the court's decision on its website for 180 days, or face fines.

Justine Ripoll, a campaign lead at Notre Affaire à Tous, said the decision "sends a clear message — climate disinformation isn't an acceptable commercial strategy. Citizens have a right to honest information and fossil businesses must give an account of the reality of their businesses."

Jonathan White, a lawyer at the non-profit group Client Earth, which is supporting the case, said that it set an important precedent as other companies had made similar claims to both consumers and investors.

The court said on Thursday that Total led consumers to believe that its climate goals were aligned with the scientific opinion that fossil fuel production should fall rapidly if the goals outlined in the 2015 Paris agreement to limit global warming are to be reached.

Instead, the company had its own scenarios to reach carbon neutrality and continued to increase production and investments in oil and gas, the court said. By failing to communicate this, the company misled consumers.

However, the court rejected claims relating to TotalEnergies communications about biofuels and gas being cleaner than other fossil fuels, saying these were not linked to promotion, sale or provision of energy to consumers.

The action centred on 44 pieces of communication ranging from advertisements to social media posts and statements on TotalEnergies' website.

The case is the latest in a string of action taken against oil and gas companies across Europe. In April, the UK's Advertising Standards Authority banned a TotalEnergies ad that highlighted its investments in renewable energy, for "misleading by omission". It has previously banned ads by companies including Shell, Repsol and Petronas for promoting their green goals without mentioning their larger polluting operation.

But courts have not so far upheld significant legal rulings against oil majors for greenwashing, nor ordered them to stop emitting or pay for climate-related damages.

Earlier this year, a German court dismissed a climate lawsuit brought by a Peruvian farmer against power company RWE over the threat to his home from global warming. But it upheld its previous position that polluters could be held accountable for damages under German civil law — this was interpreted, like the Shell case, as a marginal win for activists.

This week, Shell was also asked to pay compensation by dozens of Filipino citizens who lost family members or homes in a powerful typhoon that leading scientists found was made twice as likely by man-made climate change.

Shell said it agreed that action was needed on climate change, but that it never had "unique knowledge" about the problem. "As we supply vital energy the world needs today, we are transforming our business to supply lower-carbon fuels for the future."

TotalEnergies said it "took note of the judgment". It noted that the court had "rejected" most of the demands against "in particular those linked to institutional [investor] communication" and those over biofuels and gas.

TotalEnergies' strategy since its name change has involved investing more in renewables than rivals to increase electricity generation, while also increasing oil and gas production.

The company aims to produce 100TWh of electricity by 2030, using a combination of renewables, gas power plants and batteries, while also continuing to grow fossil fuel production by about 3 per cent each year.

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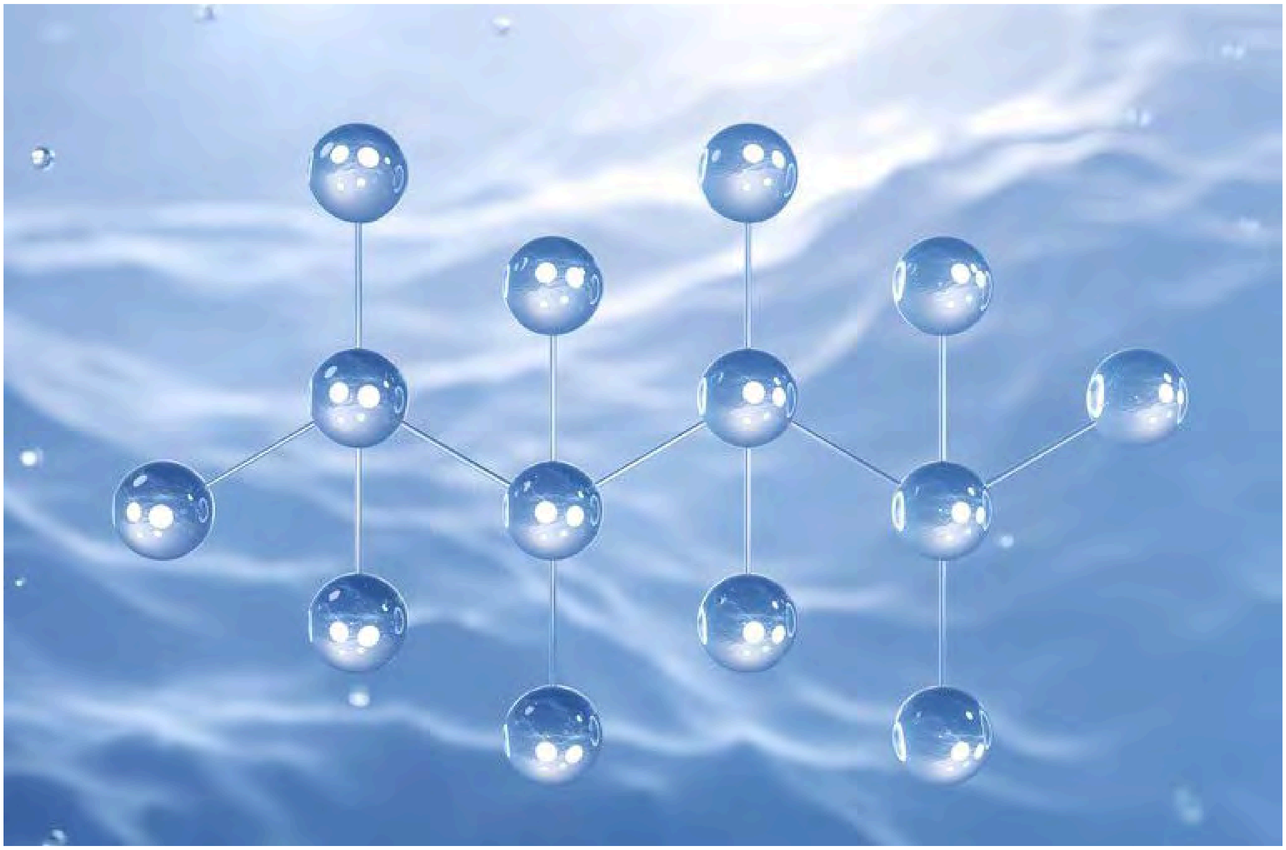
Ian Johnston

News | Class Actions

Lawyers Unveil Novel Strategy in 'Forever Chemicals' Lawsuit

Silver Golub & Teitell partner Ian Sloss said their approach in the claims against Kimberly-Clark Corp.—under the Connecticut Inland Wetlands and Watercourses Act and the Connecticut Environmental Protection Act—is a departure from how the statute is normally used.

October 21, 2025 at 03:11 PM By Emily Cousins



Perfluorobutane molecular structure 3d model. Credit: Adobe Stock

A new "forever chemicals" lawsuit against Kimberly-Clark Corp. in state court is utilizing two environmental protection statutes that allow citizens to sue to enjoin pollution or contamination.

But Silver Golub & Teitell partner Ian Sloss said the plaintiffs' approach to claims—under the Connecticut Inland Wetlands and Watercourses Act and the Connecticut Environmental Protection Act—parts ways from how the statutes are normally used.

The suit also names New Milford Inland Wetlands and Watercourses Commission and the town of New Milford as defendants. It claims the commission declined to investigate potential violations that the plaintiff, Minah McBreairty, reported in February.

Kimberly-Clark owns multiple brands, including Huggies, Scott and Kleenex, manufactured at a paper mill in New Milford, Connecticut.

The lawsuit claimed the company used per- and polyfluoroalkyl substances, also referred to as PFAS or forever chemicals—in the 1970s to manufacture the nonwoven materials in Huggies diapers. Further, the proposed class alleged Kimberly-Clark knew of the environmental risk by 2000 but took no action.

The plaintiff claimed Kimberly-Clark has polluted wetlands and watercourses in Connecticut. Their complaint alleged the level of PFAS in the Housatonic River is hazardous to residents' health and to the environment.

The suit claimed the alleged contamination falls under the Connecticut Inland Wetlands and Watercourses because the concentration of PFAS in the water qualifies as pollution, and Kimberly-Clark allegedly does not have a permit to discharge PFAS into the state's wetlands and watercourses.

Under the Connecticut Environmental Protection Act, the plaintiff claimed they have standing to bring a lawsuit "in the public interest to protect Connecticut's natural resources from unreasonable pollution, impairment, or destruction."

Sloss said the traditional way these statutes have been used is to prevent a new altercation that would harm the environment. But the plaintiff believe the baseline intent of the law is to protect Connecticut's natural resources—and that is their goal with this lawsuit.

"This is an ongoing pollution that we believe has been going on for decades that we've only recently discovered," Sloss claimed. "The discovery is not due to a new altercation to the land that's occurred in recent years. It's a new awareness of the dangers of these chemicals, and what we believe is Kimberly-Clark's historic use of them."

Sloss said he anticipates Kimberly-Clark could argue that, even if it did historically use PFAS, it was not prohibited in the past.

"But environmental standards change," Sloss said, "so I dont think there's anything too unique about applying an environmental statute to changing awareness of the dangers of certain chemicals."

Kimberly-Clark media relations provided a statement that said it does not use PFAS in any U.S. consumer products.

"We have rigorous safety and quality requirements and adhere to all regulatory and legal requirements," the company stated.

But Silver Golub & Teitell also have a federal class action pending against Kimberly-Clark in the District of Connecticut.

The plaintiffs in that action claim PFAS contaminate their drinking water. That federal case is stayed, pending the court's decision on the defendant's motion to dismiss the litigation.

"The distinguishing factor here is the goal," Sloss said. "The prior case was about the contamination of property and people's private property and human bodies. This present case is to protect the state's natural resources, which everybody in the state has an interest in. We hope the Connecticut public in general is interested in ensuring that companies in Connecticut aren't contaminating the natural resources with their legacy operations."

Meanwhile, however, Kimberly-Clark believes this case and the federal class action should be dismissed.

It said, "We will continue to defend these lawsuits to ensure we maintain the trust our consumers have in our products and our company."

Read the complaint:

Quinn Emanuel's Spiro joins defense of ex-Activision CEO Kotick

reuters.com/legal/government/quinn-emanuels-spiro-joins-defense-ex-activision-ceo-kotick-2025-10-22

Mike Scarcella October 22, 2025

Attorney Alex Spiro speaks during a news conference in New York City, U.S., September 30, 2024. REUTERS/Brendan McDermid Purchase Licensing Rights, opens new tab

Oct 22 (Reuters) - Alex Spiro, the prominent New York lawyer whose clients include billionaire entrepreneur Elon Musk, has signed on to defend former Activision Blizzard chief executive Bobby Kotick in a shareholder lawsuit in Delaware after a judge said the case could move forward.

Spiro and others at his law firm Quinn Emanuel formally joined Kotick's legal team on Tuesday in Delaware's Chancery Court, records , opens new tab show.

Spiro is among a small but growing number of lawyers at elite firms who are billing at $3,000 an hour or more. Along with Tesla (TSLA.O) , opens new tab chief Musk, his high-profile clients have included New York City Mayor Eric Adams and actor Alec Baldwin.

Kotick is fighting investors' claims that he rigged the "Call of Duty" game maker's $75.4 billion sale to Microsoft (MSFT.O) , opens new tab to keep his job and $400 million in change-of-control benefits, and to insulate himself from claims he knew about widespread sexual harassment at Activision.

Activision and Spiro did not immediately respond to requests for comment, and neither did attorneys leading the shareholder lawsuit. Quinn Emanuel declined to comment.

A lawyer for Kotick in a prior statement to Reuters disputed claims of widespread harassment at Activision, saying that no investigation, court finding, verdict or ruling concluded they had merit.

Shareholders led by Swedish pension fund Sjunde AP-fonden accuse Kotick of rushing into the Microsoft merger, which closed in October 2023. They contend the $95 per share takeover price was too low from the outset.

This month, Chancellor Kathaleen McCormick of the Delaware Chancery Court said the shareholders in the proposed class action can pursue their chief claim that Kotick and other Activision directors breached their fiduciary duties.

Kotick, who has denied any wrongdoing, is still represented by a team of attorneys from law firm Skadden Arps, including veteran litigation partner Edward Micheletti, court records show.

Skadden and Micheletti did not immediately respond to requests for comment.

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News | **Pricing/Billing Rates**

Law Firm Billing Rates Continue to Outpace Inflation. Is This Growth Sustainable?

A new report by Thomson Reuters shows that Big Law rates continued to increase through the second quarter of 2025, and there appears to be no slowdown at this point, with rates projected to go up even more next year.

October 22, 2025 at 03:57 PM By **Jon Campisi**

What You Need to Know

- Many Big Law firms have experienced significant rate growth alongside increased spending of their own.
- Some observers worry whether Big Law's escalating rates will continue to be sustainable.
- Clients are taking some of their business to lower-cost providers

Credit: Ratana21 - stock.adobe.com

Law firm rates continue to climb at a historic trajectory that outpaces the rate of inflation, fueling revenue growth in the legal industry even as actual demand for legal work expands more modestly. But economic uncertainty is generating concerns that client support for elevated pricing will continue moving into the new year, according to a new industry report.

Thomson Reuters this week released its Law Firm Rates Report 2026, which showed that rates in 2025 have pushed twice as high as the rate of inflation—up 7.4% compared with a 2.8% general inflation rate—causing some observers to worry whether Big Law's escalating rates will continue to be sustainable.

“Indeed, clients are becoming more cost-conscious, shifting work to lower-cost legal providers, and financial red flags are starting to appear in firm balance sheets,” the report states. “The sustainability of these record rates is far from guaranteed.”

Jumping ahead to 2026, as concerns mount over rate increases, some law firms are attempting to address the issue by investing in newer technologies, such as generative AI, in order to deliver more value for clients when it comes to hourly rates, while other firms are focusing more on strategic volume discounts and absorbing write-offs to preserve client relationships, the report states.

The report—a collaboration between the Thomson Reuters Institute and the True Value Partnering Institute—also says that despite different approaches to discounting and realization, many law firms end up collecting about the same amount per hour, yet industry leaders continue to grapple with understanding how their efforts will give them a leg up over their competition.

The report’s authors noted that Gen AI investments that justified premium pricing now also demand premium spending during a time when the going theory is that law firms should be conserving cash. Clients, meanwhile, are taking some of their business to lower-cost providers even as some continue to pay higher rates to their primary legal practitioners.

At the same time, experts note, demand for legal work in 2025 was only 6% higher than it was two decades ago, while worked rates have jumped 122% since 2006, leading observers to question how much billable hour legal services may have been counteracted by efficiency improvements in legal service delivery.

As a result of these factors, the report states, fees worked have grown 139% during the past 20 years, and nearly all of that growth has stemmed from billing rate increases.

“Law firms in the aggregate have transitioned from volume-based growth to value-based growth, capturing more revenue from the same level of market activity,” the report states. “It would be a mistake, however, to assume that market activity has become completely divorced from pricing power.”

The report breaks down rate growth by job title, practice area and geographic region. When looking at rate growth by practice area, corporate M&A, real estate, general corporate work, litigation and labor and employment came out on top, while the U.S. west, southwest and southeast saw higher rate growth than in the country's northeast and Midwest. Premium-priced transactional practices, including M&A and real estate, appear to be experiencing the highest rate growth.

The report also highlights the fact that while many Big Law firms have benefited from significant rate growth, they are simultaneously seeing their own spending rise significantly, with direct costs per lawyer up 5% through the second quarter of 2025, and overhead costs up 4.4%.

"In other words, costs are rising nearly as much as rates," the report states.

One trend worth highlighting, the report states, is the intersection between law firms' worked rates increasing—up 7.4% so far in 2025—and client average spending decreasing during the same period. Experts pin the discrepancy on clients moving some work to lower-cost law firms in order to save money, with the disparity between worked rate increases and actual paid rate results reported by clients continuing to widen.

"Indeed, the growth of this trend may signify that clients—especially larger ones—have found a way to respond to the ever-increasing rates being charged by some of the largest law firms," the report states.

Outside industry observers are not shocked at some of the insights to come out of this report, including Kent Zimmermann, a consultant with Zeughauser Group, who said discussion across a number of high-performing firms is revolving around a possible 7% to 11% rate increase in 2026.

"I agree with those who believe we are on our way to $5,000 an hour," he said in an email. "Interestingly, Gen AI may speed rate growth in some areas as clients increasingly expect discounts for efficiencies of using technology and firms raise rates even higher to compensate, which will continue to drive greater profitability."

Zimmermann, who initially thought 2025 would be the year that rate growth began to slow down, said a "perfect storm" is currently happening for many law firms, "because not only are the most recent rate increases for this year sticking, by and large, but demand is increasing in many areas, including in a-cyclical practices such as areas of sophisticated litigation and in certain less rate-constrained, Washington-facing practices."

"Among firms that area attracting an outsize share of large transactions, that is adding additional rocket fuel to this year's performance, particularly given the late year IPO surge," Zimmermann said.

Will NetDocuments' 'We're Not A Rock Band' Approach To Legal AI Sustain It?

abovethelaw.com/2025/10/will-netdocuments-were-not-a-rock-band-approach-to-legal-ai-sustain-it

Stephen Embry October 22, 2025

Artificial Intelligence Tools

Image courtesy of NetDocuments.

In the season of seemingly never-ending user conferences, the NetDocuments Inspire conference took place this week in Scottsdale, Arizona. NetDocuments is one of the leading document management service providers and is finding its way in the AI landscape. I came to its conference frankly wondering whether its laser product focus and credibility could sustain it long term in the era of consolidation of functions and offerings. I still don't know the answer.

The Opening Keynote

The opening keynote was primarily given by Josh Baxter, NetDocuments CEO, along with Dan Hauck, its Chief Product Officer.

In the era of bombastic, over-the-top keynotes by C-suite legal tech bros leaping about the stage, Baxter's approach was refreshing. He was understated and spoke in a calm, credible voice. As Baxter put it when I met with him separately, "We're not a rock band."

Baxter reflects the company well. NetDocuments has always quietly delivered a workman-like document management system. It doesn't overpromise, and it usually overdelivers. I think that's why it is used by so many law firms. Its team can walk into a room of skeptical lawyers and let the products sell themselves. Too often, legal tech vendors forget that at the end of the day, they are selling to lawyers who are trained to be skeptical and can spot bullshit a mile away.

An Apology

Baxter's opening remarks reflected this approach and the company's attitude. He didn't start by touting NetDocuments successes; he started by taking responsibility for an outage last week that affected NetDocuments customers. You have to understand how that played. Baxter was talking to a room full of mostly IT people. He understood that when systems from outside vendors fail, angry lawyers who know little about technical issues flood IT personnel with demands to get it up and running immediately. Who gets the blame and takes the beating? The IT folks. I talked to some of them afterwards about the outage who confirmed that was exactly how it played out.

Baxter put that event up front and didn't sugarcoat it.

The Announcement of AI Profile

The product announcement portion of the keynote primarily focused on a new tool called AI Profile. AI Profile is designed to run in the background (it's no coincidence that many of NetDocuments tools run in the background doing nuts-and-bolts work day after day that the user rarely notices). It's designed to use metadata to automatically profile the critical information about a document, so that users can drill down and get the information they need. This enables users to precisely search for and find particular documents on particular issues.

Ahh metadata, I haven't heard that term much lately. The problem with metadata has always been that inputting good metadata into any system takes time. Lawyers and legal professionals aren't and won't spend the time to input critical metadata about documents.

When they are done working with a document, they're done. And it shouldn't be surprising that this is the case: most NetDocuments customers bill by the hour. Inputting metadata isn't billable.

The second problem? Lawyers by nature are independent. Which means 10 lawyers can produce the same document and call it 10 different things. And they are all convinced they are right.

And as one of the placards outside the session rooms put it, "Lawyers didn't go to law school to fill out metadata fields."

But it’s metadata that reveal the guts of a document: its type, its unique characteristics, and what it does. So, it’s valuable and NetDocuments seems to have found a way to automate its collection.

How Does It Work and What Does It Do?

NetDocuments has created a prebuilt taxonomy and document attributes to profile various documents based on working with experts in legal taxonomy and data extraction. (The taxonomy can also be customized to meet particular firm needs.) AI Profile will look at a document and fill in the information about it based on the prebuilt profile. This can be done quickly across millions of documents.

Hauck gave an example of the preparation of a cell phone tower lease agreement in Arizona. With profiling, I can access all the leases for cell phone towers in Arizona the firm has done and then access the key unique clauses.

And by having AI tools run on profiled documents, you reduce response inaccuracies.

In short, according to Hauck, “metadata dramatically improves the search capabilities of AI. We are doing things with semantic search and AI search to be able to carve out results that are profoundly impactful.” It overlays “foundational GenAI capabilities into NetDocuments.”

But Isn’t This Old School?

But Hauck posed the question that was running through my mind, especially after attending some recent user conferences: “Isn’t this old school? Aren’t there amazing tools that already can handle unstructured data?”

Hauck says, no, there aren’t a lot of tools that can do that, at least quickly. With AI Profile, “You can formulate a generic search and then use complex metadata to look for something specific like a certain kind of agreement of a certain deal value.” You can do things like determining how many times a lawyer has done a certain task, which is valuable for things like RFPs and bringing the right expertise to the table. Without profiling, Hauck says AI tools can’t do that accurately and quickly.

Using the filtered metadata is also important for security: it would enable users to find and ensure the protection of documents containing, say, personally identifiable information or personal health records and place those documents in secure folders.

NetDocuments' Future

I don't know if AI Profile will do what Baxter and Hauck say it will. I don't know if other companies that offer AI tools that work on internal and external data can intrude on the document management space and take over that function. I don't know if someday NetDocuments will be acquired by a company that offers AI tools for external data to catch up with competition. Or if NetDocuments might become the acquirer.

But what I can tell you is that tech companies that are laser focused on one thing typically do it well because of that focus. NetDocuments isn't trying to take over the legal tech world. As Baxter put it, "We're not going to deliver every capability from the business of law to the practice of law."

What it is doing is trying to solve frustration points in document retention and management. It's trying to help lawyers and legal professionals use their documents and internal content in new and valuable ways. Hauck told me NetDocuments wants "to give them the ability to access content at the right moment in the right way. With AI capabilities that are built into the experience," instead of being the experience like others seem to want to do. Baxter added, "We believe there is still this world where meeting users where they are is valuable."

So, I can't answer whether NetDocuments can remain a player by offering a document management product, as comprehensive as it is, especially when we may be approaching the era of tech Walmarts. But its credibility and history of offering good products makes it a valued and trusted partner to many law firms.

And that fact alone may sustain it for the time being, even as other vendors promise products that can do more across various disciplines.

Stephen Embry is a lawyer, speaker, blogger, and writer. He publishes [TechLaw Crossroads](), a blog devoted to the examination of the tension between technology, the law, and the practice of law.

Expert Opinion | **Litigation**

Lincoln's Law, One of the Most Powerful Tools to Combat Fraud on the Government, Is Under Attack

The False Claims Act (FCA) can be a powerful tool to protect veteran health care in the wake of an uptick in private equity's participation in the sector, in that it is now well-established that private equity companies and their principals can be held liable under the FCA.

October 23, 2025 at 08:21 AM By **Edward T. Kang**
Kandis L. Kovalsky

Edward T. Kang (L) and Kandis L. Kovalsky (R) of Kang Haggerty. Courtesy photos.

On Sept. 9, 2025, we had the great honor, along with our colleague Jacklyn DeMar, the chief executive officer of The Antifraud Coalition (TAF), of participating in a roundtable meeting at the U.S. House of Representatives Committee on Veterans' Affairs at the invitation of the Honorable Mark Takano, the Ranking Member of the Committee. The roundtable, titled "Profit Over Quality: Examining the Effects of Private Equity on Veteran Healthcare," was specifically focused on private equity's role in the demise of health care for veterans. We discussed with Reps. Mark Takano and Jullia Brownley how the False Claims Act (FCA) can be a powerful tool to protect veteran health care in the wake of an uptick in private equity's participation in the sector, in that it is now well-established that private equity companies and their principals can be held liable under the FCA.

Under the FCA, a whistleblower, called a "relator," can file an action for violations of the FCA in federal court on behalf of the U.S. government; this is known as a qui tam action. The FCA requires that the action must be filed under seal and remain sealed for 60 days, during which time the government can investigate the reported fraud and misconduct. The reality is that the seal period in qui tam actions is usually extended many times, and it is not uncommon for the investigations to take several years. Oftentimes, litigation follows the investigation, which can take another few years, and sometimes more. The recent monumental case of *Penelow v. Janssen Products,* out of the U.S. District Court for the District of New Jersey, which resulted in a $1.64 billion judgment, is a good example. This case was filed in 2012, yet a judgment was not obtained until 2025—*13 years later.*

We explained to Ranking Member Takano and other members of Congress that to disincentivize private equity companies from participating in fraud on the government, the investigations in qui tam actions must move much quicker than they do now. The speed of the investigation regarding any private equity defendant is critical. This is because, generally, private equity companies exit their portfolio companies within three to seven years, to align with the life cycle of their investment funds. Private equity firms do not typically have a large pot of money sitting in an operating account like other types of companies may. To be able to collect damages under the FCA against a private equity firm, there needs to be liquidity in the specific fund formed for the acquisition of the portfolio company at issue. In situations where qui tam actions, through investigation and litigation, are taking a case to a point where settlement or obtaining a judgment is occurring seven to 10 years after the private equity firm's acquisition of the portfolio company, it can make it difficult to have any chance of collecting, unless individual liability can also be established. Even so, settlements based on individual liability will almost always be on an ability-to-pay basis (especially when the mandatory trebling of damages and statutory penalties are accounted for).

DeMar explained to Takano that one solution to this predicament is to increase resources and staffing to the civil departments within the Department of Justice that are responsible for investigating and prosecuting qui tam cases. Rep. Takano responded: "I am wondering if some of the members here, we might write a letter to DOJ about the staffing challenges. If we are looking for government efficiency and rooting out fraud, waste, and abuse, I think we have hit a pretty big vein here, and if we could redirect DOGE into things like this, I would hazard to guess what that amount of money would be."

This is correct. Government fraud is rampant. According to the Government Accountability Office (GAO), the federal government loses between $233 billion and $521 billion *annually* to fraud, waste and improper payments. Since 2003, federal agencies have reported about $2.8 trillion in improper payments. In 2024, 16 agencies reported improper payment estimates that totaled $162 billion. Specific high-problem areas include government health care programs (Medicare, Medicaid, TRICARE) and government defense contracts. All these statistics directly correlate to taxpayers' hard-earned money being effectively stolen. According to The Heritage Foundation, this pattern continues to contribute to a taxpayer burden that already exceeds more than $270,000 per household due to the $36 trillion in taxpayer debt.

In 2024, $2.9 billion was recovered under the FCA, 83% of which is attributable to qui tam suits. Since the enactment of Sen. Chuck Grassley's 1986 reforms to the FCA, FCA actions have returned $78 billion to the taxpayers, with more than 70% of this amount being because of qui tam actions (and the remainder being from FCA actions filed directly by the government). These cases also have a strong deterrent on future fraud, estimated to be in the many billions.

While we were at the U.S. House of Representatives, discussing how to better use FCA to fight fraud, others sought to dismantle its very existence.

On Sept. 10, 2025, an article was published here in The Legal Intelligencer titled "Historical Patterns Cannot Justify Contemporary Violations of Constitutional Guarantees—Renewed Constitutional Attacks on FCA Qui Tam Provisions." The authors of this article argued that "this is a pivotal moment for defendants to raise and preserve constitutional challenges to qui tam actions." The article summarizes two court opinions from Judge Kathryn Kimball Mizelle, from the U.S. District Court for the Middle District of Florida, and one concurrence from Judge Stuart Kyle Duncan, from the U.S. Court of Appeals for the Fifth Circuit, in which these judges held that the FCA's qui tam allowance violates Article II of the Constitution.

The FCA, also known as "Lincoln's Law, was passed in 1863, during the Civil War. It was passed in response to war profiteers who defrauded the Union Army. The FCA has been good law for 162 years. So, why is there a push to change the law now? More importantly, why is this something defense lawyers would want and celebrate? If the FCA is ruled unconstitutional, the taxpayers will be saddled with billions more in debt each year while fraudsters profit from them, and the government will be left much more powerless to do anything about it. Further, holding the qui tam mechanism of the FCA statute as unconstitutional would not preserve or advance the interests of the Constitution; in fact, it would do the opposite and undermine many decades of precedent.

The constitutionality of the qui tam mechanism has been challenged many times before, and every circuit to consider the issue, including the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits, has held, in decisions ranging from 1993 to 2002, that the qui tam provision is in accordance with the Constitutional separation of powers. This aspiration to dismantle the FCA began with a 2023 dissent by Justice Clarence Thomas, who has authored many FCA opinions since his tenure on the high court began in 1991 without raising this issue, including the infamous *Escobar* decision in 2016.

In 2023, in the case of *Polansky v. Executive Health Resources*, Thomas disagreed with the eight-Justice majority, which held that the government has broad discretion to seek dismissal of relators' *qui tam* actions. Justice Thomas went further, though, in arguing that the qui tam function of the FCA violates Article II of the Constitution. In his flawed opinion, representation of the United States' interests is an executive function conferred only to the president and individuals appointed as officers of the United States under Article 2, the appointments clause.

Shortly thereafter, Judge Mizelle, who clerked for Justice Thomas in 2018 and 2019, reached the same flawed conclusion in *Zafirov v. Florida Medical Associates.* The Eleventh Circuit's decision in this case will be a defining moment for the FCA. If the court rules in favor of the appellants, it will be the seventh circuit to join the majority view that qui tam actions are constitutional. Suppose it rules in favor of the appellees. In that case, it will create a circuit split on the issue, and with not only Justice Thomas, but also Justices Brett Kavanaugh and Amy Coney Barrett itching to revisit this issue, it is somewhat unclear what the outcome would be.

Justice Thomas said last month that he does not view the high court's prior rulings as "the gospel" and that any precedent that does not respect the U.S. Constitution or the country's legal traditions is ripe for reconsideration. Justice Thomas' attack on the constitutionality of qui tam actions seems to be a part of his larger philosophy to upend any precedent, no matter how longstanding, that he believes is violative of the Constitution. This approach undermines the public's faith in the judiciary, which is already at an all-time low. In the case of the FCA, there appears to be no upside. More than 75% of the recoveries in FCA actions are from cases filed by whistleblowers. Simply put, the government does not have the resources to achieve what whistleblowers can in the FCA space. To dismantle qui tam actions would be bad for the public. And, for the reasons outlined in all the briefs filed on behalf of the appellants in the *Zafirov* appeal, particularly the amicus brief filed on behalf of Sen. Grassley, Justice Thomas, and Judges Mizelle and Duncan are wrong in their analysis.

For the sake of this country, let's hope that the Eleventh Circuit does the right thing in the *Zafirov* appeal, that more resources can be allocated to the DOJ to fight fraud on the government, and that there can be a bipartisan approach in doing so under the FCA so that the government can recoup more of the billions of dollars that are siphoned off by fraudsters each year.

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Examples Of A Corporate FCPA Action After A Related Individual Action

fcpaprofessor.com/examples-of-a-corporate-fcpa-action-after-a-related-individual-action

October 23, 2025

In the modern era of FCPA enforcement, most DOJ FCPA enforcement actions against business organizations do not involve related criminal charges against individuals associated with the organization. (See here).

When individuals associated with the company are also charged – based on the same core conduct alleged, in whole or in part, in the corporate action – the process generally occurs in one of three ways.

The corporate action and the individual action(s) occur on the same day.

The corporate action occurs first, followed (sometimes by months or longer) the individual action(s).

The individual action(s) occur first, followed (sometimes by months or even years) the corporate action.

As to the later, there are several recent examples.

For instance, in September 2020 the DOJ announced that Javier Aguilar (a former employee of Vitol Inc.) was criminally charged for "his alleged participation in a five-year international bribery and money laundering scheme involving corrupt payments to Ecuadorian officials." (See here). In December 2020, Vitol resolved an FCPA enforcement action based on the same core conduct. (See here).

In 2018 individuals associated with Goldman Sachs were criminally charged with FCPA offenses for paying bribes to various Malaysian and Abu Dhabi officials in connection with 1Malaysia Development Berhad (1MDB), Malaysia's state-owned and state-controlled investment development company. The individuals were also charged with conspiring to launder billions of dollars embezzled from 1MDB. Based on the same core conduct, nearly two years later Goldman Sachs resolved an FCPA enforcement action.

In 2017, the DOJ announced that two former executives at a Dutch oil and gas services company SBM Offshore pleaded guilty to conspiracy to violate the FCPA for their roles in a scheme to bribe foreign government officials in Brazil, Angola and Equatorial Guinea. (See here). Several weeks later, based on the same core conduct, SBM resolved an FCPA enforcement action. (See here).

In mid-2013, the DOJ announced that various current and former employees of Alstom resolved a Foreign Corrupt Practices Act enforcement action in connection with the Tarahan power project in Indonesia. The underlying charging documents were from 2012. Thereafter, in 2013 additional individuals associated with Alstom were also charged. (See here). In late 2014, Alstom resolved an FCPA enforcement action regarding alleged conduct around the world including in Indonesia in connection Tarahan power contract. (See here).

As highlighted in this prior post, in August 2024 the DOJ in the **Biden administration** announced that a "federal grand jury in the Southern District of Florida returned an indictment … charging three executives of an election voting machine and service provider company and a former Chairman of the Commission on Elections (COMELEC) of the Republic of the Philippines for their roles in an alleged bribery and money laundering scheme to retain and obtain business related to the 2016 Philippine elections. […] These bribes were allegedly paid to obtain and retain business related to providing voting machines and election services for the 2016 Philippine elections and to secure payments on the contracts, including the release of value added tax payments." Although not mentioned in the indictment, the company at issue was obviously Smartmatic (and related entities).

As highlighted in this recent post, last week – based on the same core conduct alleged in the individual enforcement action – Smartmatic was also criminally charged with conspiracy to violate the FCPA's anti-bribery provisions, money laundering conspiracy, and money laundering. (See here for the DOJ release).

According to a partisan commentator in the FCPA space, this was "troubling" and the question was posed: "well, why? Why Smartmatic, and why now?"

A potential answer, according to the commentator: "given Trump's vengeful nature and corrupt impulses, the **appearance** of vindictive prosecution is very real, and the department isn't doing much to dissuade anyone from that fear." (emphasis in original).

The apparent proof according to the commentator: "The cloud hanging over this case is that perhaps the Trump Administration indicted Smartmatic because Smartmatic is locked in bitter civil litigation with Fox News, and Fox News is a valuable piece of President Trump's political apparatus."

Yes, it is true, as discussed in this prior post, that 2010 was the last time a business organization was criminally indicted for FCPA offenses (as opposed to a criminal information / complaint resolved through a plea agreement or deferred prosecution agreement; non-prosecution agreement; or declination with disgorgement).

However, based on statements made by Smartmatic representatives last week, it is obvious that the company was under FCPA scrutiny for several years and according to a knowledgeable source the company was offered a resolution path short of criminal indictment. That the company – no doubt advised by competent counsel – refused to settle and appears poised to put the DOJ to its burden of proof based on the facts and law will be interesting to follow given that most companies under FCPA scrutiny "roll over and play dead" with the goal of getting rid of the DOJ as quickly and efficiently as possible.

Yet, according to the partisan commentator, "the fundamental problem here is that **nobody can trust the Trump 2.0 Administration to act consistently and honestly**, because Trump himself is not a consistent and honest person." (emphasis in original).

See here for perhaps most dim-witted 70 seconds of FCPA commentary in existence?

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Elon Musk Raises the Stakes for Vote on His Pay

Tesla CEO says control—not money—is the main issue. But walking away would be a problem for him as well.

By Dan Gallagher Follow

Oct. 23, 2025 5:30 am ET

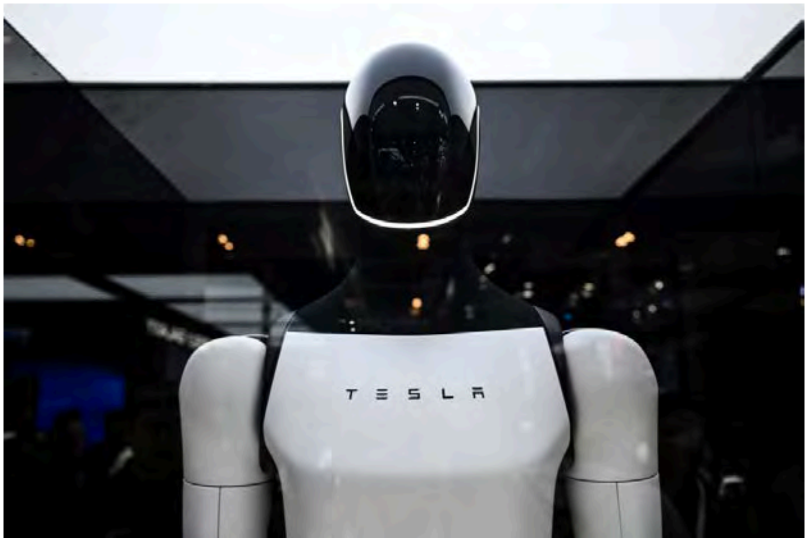
Tesla's board has proposed a pay package for CEO Elon Musk that could potentially be worth as much as $1 trillion. KEVIN LAMARQUE/AP

Tesla's TSLA **1.87%** latest results won't do much to help its investors settle their most pressing question at hand: Whether or not to make the world's richest person a whole lot richer.

Tesla said Wednesday that third-quarter revenue jumped nearly 12% from a year earlier to $28.1 billion. That beat Wall Street's consensus target by nearly 6%—the widest such margin in more than four years, according to FactSet data. But the gain still wasn't a complete shock, given that Tesla had already reported a jump in vehicle deliveries for the quarter.

Tesla has a lot going on these days besides building cars. The company is working on its own artificial-intelligence chips, self-driving taxicabs and humanoid robots. Chief Executive Elon Musk said during Tesla's earnings call Wednesday that robots alone will likely be "the biggest product of all time."

Maybe, but that doesn't come cheap, which is why expenses like R&D keep going up even as revenue has trended down this year. Tesla's operating income for the third quarter fell 40% year over year and missed Wall Street's targets.



A Tesla Optimus robot was on display in July at the World Artificial Intelligence Conference in Shanghai. HECTOR RETAMAL/AFP/GETTY IMAGES

The company also warned during its conference call that capital expenditures would go up "substantially" next year. Tesla's share price slipped more than 3% in after-hours trading Wednesday.

The latest results are further complicated by the fact that the recent strength in electric-vehicle sales has nothing to do with Tesla. The expiration of tax credits sparked a rush of sales across the EV industry—with some automakers reporting even stronger jumps in U.S. unit sales. Tesla actually saw its share of EV sales in the U.S. fall to 41% for the third quarter compared with 49% in the same period last year, according to data from Cox Automotive.

But even that is a seemingly mundane issue for a company now valued at nearly $1.5 trillion, roughly the combined market capitalization of every other publicly traded car company in the world, according to data from S&P Global Market Intelligence. The majority of Tesla's value lies in hopes for what the company hasn't done yet, like building a massive Uber-like ride-hailing service with its own self-driving Cybercabs, or putting a walking, human-sized robot in every home.

All are projects close to Musk's heart, which is also why the company is sparing no effort to keep him around. Tesla's board of directors has proposed a compensation plan for its co-founder and leader that would add an additional 12% to his already substantial stake in the company, and carry a value of a little more than $1 trillion, if the company hits all the milestones outlined in the plan. One of those targets is for Tesla to reach a market cap of $8.5 trillion, or adding roughly two Nvidia's to its current value.

An ambitious goal, to say the least. And transferring that kind of wealth to a man worth nearly a half-trillion dollars already seems like overkill, though Musk insisted Wednesday that his aim isn't about the money. "I don't feel comfortable building that robot army if I don't have at least a strong influence," he said on the call. He added later that he worries about building such an army, then getting ousted "because of some asinine recommendations from ISS and Glass Lewis"—shareholder advisory firms he described as "corporate terrorists" that have recommended against Tesla's compensation plan.

Musk has also previously hinted that he would consider leaving Tesla if the compensation plan isn't approved. But that creates a quandary of his own making, as leaving the company would still cost him control of the robot business and everything else he has built at Tesla. Starting over from scratch would be a tall task even for him.

Tesla's investors have to decide if Elon, with all his notable talents and baggage, is still worth the trouble. It isn't a simple choice.

Write to Dan Gallagher at dan.gallagher@wsj.com

Videos

Tesla gambles that introducing new models no longer matters

reuters.com/business/autos-transportation/teslas-big-gamble-that-introducing-new-models-no-longer-matters-2025-10-23

Chris Kirkham October 23, 2025

- Tesla's car business relies heavily on the aging models 3 and Y
- Industry experts warn of risks from lack of new models
- Chinese EV makers are cranking out new models much faster

Oct 23 (Reuters) - Tesla's groundbreaking 2017 Model 3 electric sedan, followed by a taller Model Y variant, ushered in the era of mass-market electric cars, made Tesla (TSLA.O), opens new tab the world's most valuable automaker and CEO Elon Musk the world's richest man.
But years later, Tesla's stalling car business remains almost entirely dependent on that one breakthrough – and it may continue to be for years to come.

The automaker's only model since then, the Cybertruck, flopped. Tesla now has next to nothing in the product pipeline for human drivers as Musk refocuses the company on self-driving technology and humanoid robots.
A new Roadster supercar, unveiled in 2017 as a prototype, has yet to arrive and would serve only a super-wealthy niche. The automaker last year killed a project to make a $25,000 EV and instead, earlier this month, introduced stripped-down versions of the Model 3 and Model Y costing $37,000 and $40,000, respectively.
And that's it – Musk has promised no other new or redesigned human-driven vehicles. Tesla's apparent neglect of its core car business poses major risks for investors and will test whether the U.S. electric-vehicle pioneer can sustain growth without regular new-model launches, analysts say.

Tesla did not respond to requests for comment.

Tesla has not fully redesigned any model in two decades in an industry where models often have short shelf lives – and where Tesla's leading EV rivals in China are launching new vehicles at a dizzying pace in every conceivable segment.

Instead, Tesla continues to treat its models much like iPhones that need only incremental improvements delivered in software updates to stay competitive.

Some industry observers see no reason why that cannot work.

While traditional automakers spend heavily on regular hardware and styling overhauls, Tesla has succeeded in delivering a “high-margin product with no frills” serving customers who care more about its updatable technology than its appearance, said Adrian Balfour, founder of Envorso, a technology consulting firm that works with the automotive industry.

"I don’t think they have to do a ton of redesign-type work" to vehicles like its best-selling Model Y, he said.

'LIKE ANY OTHER BRAND'

Others argue that Tesla cannot indefinitely defy the automotive industry’s law of gravity – that sales fall as models age.

Tom Libby, an S&P Global Mobility analyst, said Tesla’s customer loyalty rate plunged last year and improved only after Tesla doubled its average spending on product incentives.

"The data show that Tesla is like any other brand," Libby said. "Over the long term, there’s going to have to be some major product actions or the brand will keep going down."

Tesla vehicle sales fell 6% through the first three quarters of this year. Now it faces steep challenges from U.S. President Donald Trump’s sweeping rollback of government support for EVs, including a $7,500-per-vehicle tax credit for consumers that expired last month.

A Tesla model 3 is pictured inside a showroom, as the U.S. prepares to announce tariffs on Taiwan, in Taipei, Taiwan July 31, 2025. REUTERS/Ann Wang Purchase Licensing Rights, opens new tab

The pending tax-credit expiration boosted Tesla vehicle sales in the third quarter as customers hurried purchases to get the subsidy. That boosted revenue in quarterly financial results the company released on Wednesday.
But profit nonetheless fell by 37% because of higher costs from Trump's tariffs, increased research-and-development spending and falling revenue from the sale of government regulatory credits to other automakers.

Musk and other Tesla executives said little during the earnings call about its current automotive business, which accounted for 88% of its third-quarter revenue, and focused instead on future plans for self-driving robotaxis and humanoid robots.

When Tesla recently made cosmetic updates to the models 3 and Y – a "refresh" in industry parlance – the subtle changes were not enough to generate the sales bumps often gained by traditional automakers after major redesigns of models from the ground up, Libby said.

On average, automakers in the United States overhaul their models every eight years, according to S&P Global Mobility data, a time frame that has shortened over the last decade. Many mass-market models are redesigned more frequently; trucks and luxury vehicles are overhauled less often.

Redevelopment cycles globally could get radically shorter soon as traditional automakers respond to intense competitive pressure from China's heavily subsidized electric vehicle industry.

Chinese EV makers led by BYD (002594.SZ), opens new tab, Tesla's leading global rival, have slashed model development times to two years or less.
The fast iteration has allowed Chinese EV makers to "keep up with trends, keep up with what consumer products are doing," said Dan Hearsch, co-leader of the automotive and industrial practice at consultancy AlixPartners. "It's half the time, and it's also half the fixed costs."

BYD, for example, launched at least 17 SUV models from 2020 through 2025, about double the number of new or redesigned Ford (F.N), opens new tab SUVs launched in that period.
Tesla, by comparison, has released only the triangular, stainless-steel Cybertruck since the Model Y began production in early 2020.

It has launched just six vehicles since 2008, including the Model S sedan, Model X sport-utility vehicle and its first car, the short-lived Roadster two-seater. Only the models 3 and Y, which share the same platform and most components, have sold in high volumes.

Musk predicted Tesla would sell hundreds of thousands of Cybertrucks annually. So far this year, through September, Tesla sold about 16,000 of them, according to research firm Cox Automotive.

A successful pickup would have given Tesla a foothold in one of the best-selling U.S. auto segments.

Libby said the automaker's unusually small lineup also leaves Tesla out of other huge-selling segments, such as mass-market three-row SUVs, which account for 13% of U.S. vehicle sales, according to S&P Global Mobility data. (The Model X offers a tight, optional third row in the luxury segment.)

The Model 3 is in a smaller, declining segment – compact cars. The bigger problem for the models 3 and Y may be their advancing age, said Garrett Nelson, an analyst at CFRA Research who tracks Tesla.

"You can't have a portfolio that's that stale," he said. "They will be paying a price."

Reporting by Chris Kirkham in Los Angeles; Editing by Brian Thevenot and Matthew Lewis

Our Standards: [The Thomson Reuters Trust Principles., opens new tab]

Chris Kirkham is a business reporter in Los Angeles who writes about Tesla, electric vehicles and the wider automotive industry. He previously worked at The Wall Street Journal and the Los Angeles Times, and has covered topics including tobacco, worker safety, gambling, and the economy over a two-decade career. Contact him at chris.kirkham@thomsonreuters.com or on Signal at chris_kirkham.51

Tesla profit falls short despite record sales, hit by higher costs and fading credits

reuters.com/business/autos-transportation/teslas-record-revenue-tops-forecasts-tax-credit-expiry-drives-us-ev-sales-2025-10-22

Akash Sriram, Abhirup Roy October 22, 2025

- Tesla Q3 rev $28.1 bln vs analysts' estimate of $26.4 bln - LSEG
- Tesla Q3 profit per share 50 cents vs analysts' estimates of 55 cents
- Operating expenses jump 50%; regulatory credits revs falls 44%
- Shares down 4% in after-market trading
- Tesla did not give a full-year 2025 forecast

Oct 22 (Reuters) - Tesla (TSLA.O), opens new tabreported record third-quarter revenue that beat Wall Street estimates on Wednesday, driven by the highest quarterly sales of its electric vehicles as U.S. buyers rushed to lock in a key tax credit ahead of its expiry last month.
However, Tesla's profit failed to live up to analysts' expectations, in part due to tariff and research costs, as well as a drop in income from regulatory credits that are expected to continue to fade away with recent legislation passed by the Trump administration.

Tesla's $1.45 trillion valuation largely reflects investor bets on CEO Elon Musk's pivot to robotics and AI, but vehicle sales remain key to the financial stability of the company while those products are being developed. Shares of the Austin, Texas-based company were down 4% in extended trading.
Demand for Tesla's vehicles and those of its rivals is also expected to drop through the rest of the year without the tax credits that have been a key driver of EV sales.
Apart from the removal of tax credits and the waning sales of regulatory credits that traditional automakers bought to make up for their polluting vehicles, Tesla is also grappling with tariffs imposed by the Trump administration on auto-parts imports, which Chief Financial Officer Vaibhav Taneja said cost Tesla more than $400 million in the quarter.

The EV maker also reported a 50% rise in operating expenses driven by AI and other research and development projects, an increase in stock-based compensation, and on an earnings conference call, Taneja said capital expenditures would rise substantially in 2026.

"Tesla dished out just the right amount of good and bad news to both appease its fans while also providing enough evidence for its critics," Camelthorn Investments adviser Shawn Campbell told Reuters. "This earnings report isn't going to change anyone's mind on Tesla."

To combat a demand drop, Tesla introduced lower-cost "Standard" variants of Model Y and Model 3 vehicles earlier this month, stripping out a myriad of premium and basic features and lowering prices by about $5,000 to $5,500. While Tesla hopes the cheaper variants will drive higher volumes, analysts warn the move will squeeze margins as thousands of dollars of cost cuts per vehicle may not fully compensate for lower selling prices.

Item 1 of 2 Tesla Motors' Model Y Standard car is seen in this handout picture released by Tesla Motors on October 7, 2025. Tesla Motors/Handout via REUTERS

[1/2]Tesla Motors' Model Y Standard car is seen in this handout picture released by Tesla Motors on October 7, 2025. Tesla Motors/Handout via REUTERS Purchase Licensing Rights, opens new tab

Tesla said it was on track to start volume production of its Cybercab robotaxi, Semi truck and Megapack 3 battery in 2026. Tesla's energy business also showed strength, including an 81% increase in storage deployment in the quarter, and its robot plans are advancing, with production of humanoid bot Optimus hopefully starting toward the end of 2026, Musk said.

The electric vehicle maker reported total revenue of $28.1 billion for the third quarter ended September 30, compared with analysts' average estimate of $26.37 billion, according to data compiled by LSEG.

Profit per share in the third quarter was 50 cents, below analysts' estimates of 55 cents.

Automotive regulatory credits, once a key driver of profit, fell to $417 million in the quarter from $739 million a year ago and $435 million in the second quarter.

Tesla reported gross margin of 18%, compared with estimates of 17.5%. Its closely watched automotive gross margin, excluding regulatory credits, was 15.4%, compared with an average estimate of 15.6%, according to 19 analysts polled by Visible Alpha.

Tesla's automotive gross margin improves in Q3

Tesla did not provide a full-year forecast for production, but Musk said Tesla could expand production, given his confidence in self-driving software. Asked whether increasing production would require offering incentives and squeezing profit margins, Musk forecast "nutty" demand for the self-driving Cybercab and said margins would not be sacrificed.

Tesla launched a limited rollout of its self-driving "robotaxi" service in Austin, Texas earlier this year. Musk also said he expected robotaxis to operate without safety drivers in large parts of Austin this year and that robotaxis would be operating in eight to ten metropolitan areas by the end of the year as well. In July, he had predicted Tesla robotaxis to serve about half the U.S. population by year end. Wall Street expects Tesla's deliveries in 2025 to fall 8.5% due to the expiry of the tax credit, reliance on older models and rising competition. CEO Musk's embrace of right-wing politics has also alienated some potential buyers.

But many investors are deeply confident in Musk. Nancy Tengler, CEO and chief investment officer of Tesla shareholder Laffer Tengler Investments, said she was bullish on the next three to five years. "I'm less concerned about the next quarter," she said. "It's messy, it's hard, it's trial-and-error, it's try again. But this is a CEO who is determined. And I think what we've seen historically is that he will get it done"

Reporting by Akash Sriram in Bengaluru and Abhirup Roy in San Francisco; Chris Kirkham in Los Angeles; Editing by Anil D'Silva, Peter Henderson and Matthew Lewis

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Akash Sriram
Thomson Reuters

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Abhirup Roy
Thomson Reuters

Post by @niedermeyer.online — Bluesky

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· 20h

Tesla Q3 earnings call is starting, and even though I definitely have better things to do from both a professional and mental health perspective I'll be doing a live thread 🧵

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· 20h

Musk opens with his by-now usual lament that people just don't appreciate that "no one can do what we can do with real-world AI." "People don't quite appreciate the degree to which this will take off," he says. Off to a good start here!

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· 20h

Musk says his confidence in achieving unsupervised FSD means Tesla will expand production. In related news, here's a chart of Tesla's market share.

ALT

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· 20h

People are "quite amazed" by Version 14 of Tesla's "Full Self-Driving" software, Musk says. Amazed that they're still getting away with this scam after nine years of empty promises?

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· 20h

Musk hyping V3 of the Optimus robot, which should be "available" in Q1. "It won't seem like a robot, it will seem like a person in a robot suit... which is sorta how we started this," Musk says, without a hint of irony. You'll have to poke it to tell it's not a human, he says (um...)

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· 20h

Musk says Tesla's new mission of sustainable abundance is about creating a world with "no poverty" and universal free healthcare, because the robot will be an "incredible surgeon" (?) He articulates this new and utterly insane "mission" with incredibly low energy, underlining its absurdity.

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· 20h

Taneja: Unlike our competitors, our robotaxi fleet blends in in the markets where they operate, because they don't have sensors hanging off them. Oh FOR SURE man, that's really the killer app in autonomous driving, not the >50 humans who have died using your technology

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· 20h

Lots of talk about Tesla's grid-level storage business, which is one of the few unambiguous high-growth areas for the company (up 44% in the quarter). Looks like the global trade war/tariff situation may cut into that going forward though, per Taneja.

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· 20h

Tesla now has over $41 billion in cash and equivalents on hand, and yet somehow isn't developing new cars with that massive pile. Not sure how much bigger of a red flag it gets than this.

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· 20h

Musk expects to take "safety monitors" out of the Austin robotaxi fleet in "a couple of months." Expects expansion of the service to ten cities by the end of the year. Absolutely no promises about the long-hyped Bay Area service, which is no surprise considering the total lack of permits there.

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· 20h

unnamed Tesla exec confirms that hyperscalers are driving demand for grid storage products bubbles on bubbles!

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· 20h

"Bringing Optimus to market is an incredibly difficult task," Musk says, "it's not a walk in the park." He stops here to explain that walking in the park is one of the few things Tesla's robot can do right now. It walks!

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· 20h

The more you study the human hand the more complex it turns out to be to reproduce electromechanically, Elon Musk explains. "The Optimus hand and and forearm are an incredibly complex engineering challenge," he says. How many things has he said this about now??

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· 20h

There's no supply chain for humanoid robots, it turns out. Who knew?

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· 20h

Asked about his compensation package, Musk says it's not about money. "If I build this massive robot army, can I be ousted in the future?" he asks. "I don't feel comfortable building that robot army" if I can't retain control, he explains. bro really thinks he's living a comic book

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· 20h

obviously you build a secret backdoor into the robot army and use that to take over the world's government's, you absolute rube!

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· 20h

Musk says he doesn't hand out praise easily, but the Tesla team working on the AI5 self-driving chip is doing incredible work he says. "We're designing the hardware to address pain points in the software," he says. "I don't think anyone else is doing this." Except Waymo, of course, right?

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· 20h

Elon in 2016: self-driving is just a software problem now! Elon in 2025: we're designing the hardware around the shortcomings of software, isn't that a novel approach? this fucking guy

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· 20h

Musk: "this is a beautiful chip... I've poured so much life energy into this chip" for sure man, millions of customers also poured a lot of "life energy" into buying the HW3 chip that you said would solve self-driving too, and are now never gonna get there

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· 20h

If we have too many AI5 chips for vehicle production we can always just put them in data centers, Musk says. sure, demand for both of those things will only ever go up, overcapacity isn't real, economic bubbles are a liberal talking point

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· 20h

having recently re-watched the 2019 and 2021 "autonomy day" and "AI day" events, a huge amount of Musk's AI5 hype here feels like "groundhog day"

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· 20h

"we will definitely take care of you guys," a Tesla executive (Taneja?) says to the owners of cars with HW3, which Tesla now basically admits won't ever achieve unsupervised FSD... he says he drives a HW3 car himself, as if that's remotely relevant sounds like you have to buy a new car though...

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· 20h

(I'll have to check again later, because it's important, but it sounds like the plan is to just allow HW3 customers to transfer FSD to a new vehicle for free, which usually isn't allowed)

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· 20h

we are on to the actual analyst questions, and the first question is about Musk's claim to expand capacity, which he says is headed to a 3m unit/year rate... says that figure could be hit in 24 months, which is super conservative compared to his old crazy ramp claims (current rate is ~2m units/year)

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· 20h
"here's the killer app, really: can you text while you're in the car?" he says that when Tesla tells people they can text any time their car is in motion the demand will be "nutty," so he's not worried about volume or margins

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· 20h
Musk says that people already do a lot of texting in their car. This is basically his entire defense against the safety criticisms of Autopilot and FSD: people aren't paying attention anyway, and these systems make it marginally safer (totally ignoring the fact that they wildly induce this behavior)

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· 20h
"This car will feel like a living creature," is Musk's most deeply disturbing metaphor of the call. His entire marketing pitch for anything AI-related is collapsing into "it will pass the Turing Test, bro... you will think it's alive" he says he's worried the cars will get bored, really

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· 20h
Adam Jonas is unable to work a telephone

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· 20h
they will have to come back to him, and I will need a brief pause to belly laugh

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· 20h
good question here for Elon: how do you decide what lies outside of Tesla's core competency? Musk opens by saying he doesn't really understand. "We didn't have any of these competencies when we started," he says. Emphasizes that Tesla is a lot of startups in a trench coat, "and I founded them"

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· 20h
Musk says there's a limit to AI's ability to improve human productivity, but there's no limit to its ability to improve productivity when it is embodied... "that's why I call it the infinite money glitch" folks

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· 20h
the SEC should have a law that just says any CEO who uses the term "infinite money glitch" just has to go straight to prison, right away

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· 20h
we are currently in the midst of an extended ramble about how Elon gets these ideas, tweets about them, and then gets flooded with money and talent to make them happen he seems more proud of his particular role in this dynamic than he should

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· 20h
have to note that Musk refers to X, The Everything App as "formerly Twitter" because it's hilarious and fuck him

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· 20h
Musk now claiming that people at the Tron:Ares premier didn't realize they were looking at a robot, they thought it was human felt like he had to stop himself from saying they could tell it wasn't just being remotely controlled by someone standing nearby, as in past Optimus demos

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· 20h
Grok is trying to solve for AGI and is too big a model to put on a car... it will only run on a GB300, Musk says

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· 20h
Musk talking about the huge differences between Grok and Tesla's AI work kinda undercuts his previous pitch about all the synergies these companies would have

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· 20h
ADAM JONAS SWINGS AGAIN AND HE MISSES AGAIN I REPEAT ADAM JONAS IS NOW ZERO FOR TWO ON JOINING THE CONFERENCE CALL ATTEMPTS

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· 20h
this call is lowkey one of the more fun in a while

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· 20h
(this is probably more of a measure of my brain's brokenness than anytihng else)

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· 20h
All it takes is to have one incident in 10,000 "and you have an issue" with your robotaxi service, Musk says, in what is almost certainly the lowest that anyone in driving automation technology has ever set the safety bar

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· 20h
Musk repeats the line about the car "feeling like a living creature" with some future update in FSD software. This functionality is not dependent on the new AI5 hardware. Purely a software problem. "Living creature."

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· 20h
Version 14.3 is going to be much better than a human at identifying parking spots. "It has 360 degree vision," he says. "It will use reasoning," he says, with the kind of emphasis that suggests he will be repeating it for years into the future.

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· 19h
Tough question about Optimus timeline, given hand dexterity challenges. Musk says they simply won't freeze the design, even after the start of production. That's gonna make those cost numbers a lot of fun to hit!

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· 19h
So, Optimus 3.0 is what is starting production next year. Optimus 4.0 is where volume hits 10,000 units per year. The ramp is "nutty" from there, Musk says. This all sounds like trillion dollar valuation stuff.

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· 19h

Tesla CFO Taneja closes with a few words urging Tesla shareholders to approve Musk's compensation plan, at which Musk jumps in to explain that it's not really about compensation at all... he basically just wishes he had preferred voting shares like Meta, he admits

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Musk calls GlassLewis and ISS "financial terrorists," saying that they have terrible ideas, and represent a major problem for corporate governance, which is something Elon Musk is famously in favor of.

October 22, 2025 at 3:40 PM

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· 19h
After that deeply unseemly appeal to approve a compensation package that would make Elon Musk the world's first trillionaire, complete with sincere attestations to its Not Being About The Money, the call is now over. I like my Tesla calls like my cocktails: short, painful, and madness-inducing

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· 19h
Thanks for tuning in, I'm always amazed at how many people enjoy these little live threads. I definitely missed some howlers, and will try to add a few here as I find them bsky.app/profile/cove...
CoverDrive @coverdrive12.bsky.social
· 19h
Musk: “We looked at every way to increase voting influence short of... [actually buying shares.] He almost said it out loud.

Tom Hearden @followtheh.bsky.social
· 19h

Nice work Ed

[Ironbound @ironbound.bsky.social](https://bsky.app/profile/ironbound.bsky.social)
[· 19h]
Weird how normal companies and CEOs never have to think about Glass Lewis and ISS at all

Bloomberg Law

Manage Newsletters

AI-Powered CLO Investor Built an Outsized First Brands Position

Oct. 22, 2025, 7:47 AM PDT

Summary by Bloomberg AI

AI Generated

- Anthelion Capital Partners had an unusually concentrated position in loans of now-bankrupt car-parts supplier First Brands, with about $5 million of First Brands debt as part of a roughly $400 million investment vehicle.

- The company has fully sold out of its position in First Brands' debt, with sales at levels at or above 90 cents on the dollar and an average between roughly 70 cents and 90 cents.

- Anthelion's use of artificial intelligence to detect market signals was not able to prevent the firm from taking on a significant position in First Brands debt, which underscores that artificial intelligence is hardly infallible.

Money manager Anthelion Capital Partners had an unusually concentrated position in loans of now-bankrupt car-parts supplier First Brands, a blow for an investor that had touted the ability of its AI-driven platform to pick up on subtle market signals.

Anthelion, as of last month, owned about $5 million of First Brands debt as part of a roughly $400 million investment vehicle known as a collateralized loan obligation, according to people familiar with the matter. Since then, the company has fully sold out of its position in First Brands' debt, the people said.

The percentage of the CLO's loan portfolio that First Brands' debt represents — 1.29% — is the highest out of CLOs printed in 2025, according to an analysis by CLO analytics firm Valitana, which compiled the latest available deal data as of September. Valitana's analysis focused on broadly syndicated CLOs, which are vehicles backed by pools of leveraged loans.

Anthelion co-founder **Vusal Najafov** declined to comment.

While Anthelion's First Brands exposure is dwarfed by other creditors, the firm's investment speaks to how pervasive the company's debt became across Wall Street before its collapse into bankruptcy last month.

Anthelion has heavily promoted the ability of its artificial intelligence platform to detect market signals other investors may miss. The firm's use of large language models allows it to scour data such as companies' customers and suppliers, among other areas, co-founders Najafov and **Ewa Kozicz** told Bloomberg in July. In retrospect, Anthelion's appetite for the car-parts supplier's debt underscores that artificial intelligence is hardly infallible.

That said, other investors sank more money into First Brands' debt. Point Bonita Capital, an asset manager controlled by a unit of Jefferies Financial Group, had about $715 million invested in company receivables.

Overall CLO exposure is "manageable," Morgan Stanley analysts wrote in a note late last month. Of the group of managers that Morgan Stanley analyzed, which did not include Anthelion, just 13% of them had First Brands exposure above 1%. In the US, the overall exposure to First Brands within CLOs was 0.21%, the note said. The CLO market is a roughly $1 trillion arena.

Anthelion started selling out of its First Brands debt at levels at or above 90 cents on the dollar and an average between roughly 70 cents and 90 cents, people said. That helped them avoid taking deep losses that some of First Brands' other creditors are now facing.

Still, those sales would have crystallized losses early in the life of the CLO, which the firm issued only in June. CLOs have investment periods lasting several years. Anthelion plans to issue about five CLOs per year, its co-founders told Bloomberg in July.

--With assistance from **Aaron Weinman** and **Paula Seligson**.

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Rheaa Rao

Beyond Meat short interest surges past 100% of public shares, Ortex data shows

reuters.com/business/beyond-meat-short-interest-surges-past-100-public-shares-ortex-data-shows-2025-10-23

Reuters October 23, 2025

Products from Beyond Meat Inc, the vegan burger maker, are shown for sale at a market in Encinitas, California, U.S., June 5, 2019. REUTERS/File Photo Purchase Licensing Rights , opens new tab

Oct 23 (Reuters) - Short interest in shares of plant-based meat seller Beyond Meat (BYND.O) , opens new tab surged more than 100% of its publicly available shares, Ortex data showed on Thursday.
About 109% of Beyond Meat's free float shares were shorted, up from 81.8%, as of Wednesday.

Beyond Meat stock jumped more than 112% in the last session, but closed slightly lower in volatile trading as retail traders piled into the heavily-shorted stock.

It was last down 5.6% to $3.37.

Short selling is a strategy where investors borrow shares and sell them, aiming to buy them back later at a lower price to profit from a decline.

Short interest in a stock can exceed 100% of its free float due to the re-lending of borrowed shares, allowing multiple investors to short the same underlying stock. This phenomenon, seen in cases like GameStop (GME.N) , opens new tab in 2021, reflects how market mechanics and derivatives can amplify short exposure beyond the number of shares available for public trading.
GameStop had around 140% short interest at its peak in January 2021, meaning more shares were shorted than the company had outstanding.

Ortex said the percentage of total shares shorted for Beyond Meat is likely to change to reflect newly released shares in the market, even though the absolute number of shares shorted remains unchanged.

Beyond Meat said last week that lock-up restrictions, which applied to more than 316 million of its shares that were issued in connection with a 0% convertible notes offering, will expire on October 16.

Reporting by Shashwat Chauhan in Bengaluru; Editing by Shinjini Ganguli https://www.wsj.com/finance/currencies/trump-binance-changpeng-zhao-pardon-7509bd63

EXCLUSIVE CURRENCIES

Trump Pardons Convicted Binance Founder

Pardon follows months of efforts by Changpeng Zhao to boost the Trump crypto company

By Rebecca Ballhaus Follow , *Josh Dawsey* Follow , *Patricia Kowsmann* Follow and *Angus Berwick* Follow

Updated Oct. 23, 2025 11:18 am ET

Binance founder Changpeng Zhao JULIANA TAN FOR WSJ

President Trump has pardoned Changpeng Zhao, the convicted founder of the crypto exchange Binance, according to people familiar with the matter, following months of efforts by Zhao to boost the Trump family's own crypto company.

The president signed the pardon on Wednesday, the people said. Trump recently indicated to advisers that he was sympathetic to arguments of political persecution related to Zhao and others, one of the people said.

White House press secretary Karoline Leavitt said that Trump had "exercised his constitutional authority by issuing a pardon for Mr. Zhao, who was prosecuted by the Biden Administration in their war on cryptocurrency." She added: "The Biden Administration's war on crypto is over."

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

A pardon will likely pave the way for Binance, the world's largest crypto exchange, to return to the U.S. after the company pleaded guilty in 2023 to violating U.S. anti-money-laundering requirements and was barred from operating in the country.

The company has spent nearly a year pursuing a pardon for Zhao, who left prison in September 2024 after serving a four-month sentence for related charges. Earlier this year, the company hired lobbyist Ches McDowell to help pursue a pardon, the Journal previously reported.

Since Trump's election, Binance has also been a key supporter of his family's World Liberty Financial crypto venture, a business that has driven a huge leap in the president's personal wealth.

Eric Trump and Donald Trump Jr., sons of the president, are outside of Nasdaq in Times Square after ringing the opening bell as part of the Trump family's World Liberty Financial. SPENCER PLATT/GETTY IMAGES

The Justice Department imposed a record $4.3 billion fine and burdensome oversight on Binance, which the department said had become a colossal money-laundering hub through which sanctioned groups and criminal organizations laundered billions of dollars in illicit funds.

The pardon may also prematurely end the Justice Department's three-year Binance monitorship, set up to ensure the company complies with U.S. financial crime laws. However, it likely won't end a separate monitorship established by the Treasury Department without the additional approval of Trump or the Treasury secretary.

Binance executives met with Treasury officials this spring to discuss loosening U.S. oversight on the company, which has lost ground over its rivals due to its legal troubles, The Wall Street Journal previously reported.

Binance first reached out to allies of Trump last year, offering to strike a business deal with the family as part of a plan to return the company to the U.S., the Journal reported earlier this year. Representatives of the Trump family have held talks to take a financial stake in the U.S. arm of Binance.

At the time, Zhao said he hadn't discussed a Binance.US deal with anyone but wrote on X, "No felon would mind a pardon." He later filed a formal application for a pardon and hired U.S. lobbyists.

World Liberty has generated significantly more income for the Trump family in the past year than their property portfolio ever has annually.

Binance has been one of the main drivers of the growth of World Liberty's dollar-pegged cryptocurrency, called USD1. It delivered World Liberty's first big break this spring when it accepted a $2 billion investment from an outside investor paid in USD1. Binance has also incentivized trading in USD1 across platforms it controls.

World Liberty has said that Zhao is friends with Zach Witkoff, a World Liberty co-founder whose father Steve Witkoff is Trump's special envoy, but the venture hasn't struck any business deal with Binance.

Zhao, who lives in Abu Dhabi, founded Binance in 2017 and grew it into the world's largest crypto-trading platform, with some 300 million users globally. He served four months in prison last year after pleading guilty to an anti-money-laundering violation. Prosecutors said the illicit transactions Binance enabled under Zhao's oversight caused "significant harm to U.S. national security."

Zhao is the latest crypto executive to receive a pardon from Trump. In March, the president pardoned Arthur Hayes, a co-founder of the crypto exchange BitMEX who had pleaded guilty to violating anti-money-laundering laws.

Binance has been flying high this year, with its BNB token surging nearly 80% to become the fourth-largest cryptocurrency by market cap after bitcoin, ether and stablecoin tether, according to CoinMarketCap.

Nonetheless, Zhao's criminal record has been a thorn in the side of Binance's business dealings, complicating its applications for regulatory licenses around the world and its ability to open bank accounts.

A pardon for Zhao will likely invite intense scrutiny from Democrats on Capitol Hill. Earlier this year, Democrats asked the Trump administration to detail its interactions with Binance and Zhao on a pardon, saying Binance's financial relationship with the Trump family raised ethical concerns.

Write to Rebecca Ballhaus at rebecca.ballhaus@wsj.com, Josh Dawsey at Joshua.Dawsey@WSJ.com, Patricia Kowsmann at patricia.kowsmann@wsj.com and Angus Berwick at angus.berwick@wsj.com

Corrections & Amplifications

Changpeng Zhao is the former CEO of Binance. An earlier version of this article incorrectly said he was the company's CEO in a photo caption. (Oct. 23)

The Latest on Crypto

Coverage of bitcoin and other cryptocurrencies, selected by the editors

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Videos

SPACs Are Back. And MAGA Is Fueling Their Growth

bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/T4L2OAGPWCGJ

Bailey Lipschultz October 23, 2025

Illustration: Andrea Chronopoulos for Bloomberg Businessweek

The final year of 's first presidency kicked off a boom in so-called special purpose acquisition companies, with hundreds reaching the market. When moved into the White House and cracked down on the murky investments, the frenzy subsided, but with Trump's return to power SPACs are back. Founders have raised more than $24 billion since the November election, easily exceeding the past two years combined.

A sizable number of them have ties to Trump's inner circle. , son of the US secretary of commerce; , chief executive officer of and a former GOP representative; and , a big-time donor who hosts a podcast with the president's crypto czar, have all founded SPACs. And Trump's two eldest sons are listed as advisers on a SPAC that's yet to sell shares but is targeting a manufacturer that will reinforce "America's economic foundation."

Donald Jr. and Eric Trump, the president's two eldest sons.
Photographer: Justin Lane/EPA/Bloomberg

So far the bulk of the action is in businesses that pair well with "America First" rhetoric: nuclear and quantum computing (both priorities for the administration) and, of course, cryptocurrencies. "We know Trump and his kids are knee-deep in crypto," says , CEO of , which oversees $5 billion in assets. "That stuff is doing really well, but if someone launches a SPAC and it doesn't have a Trump tie, then it's the same old same old."

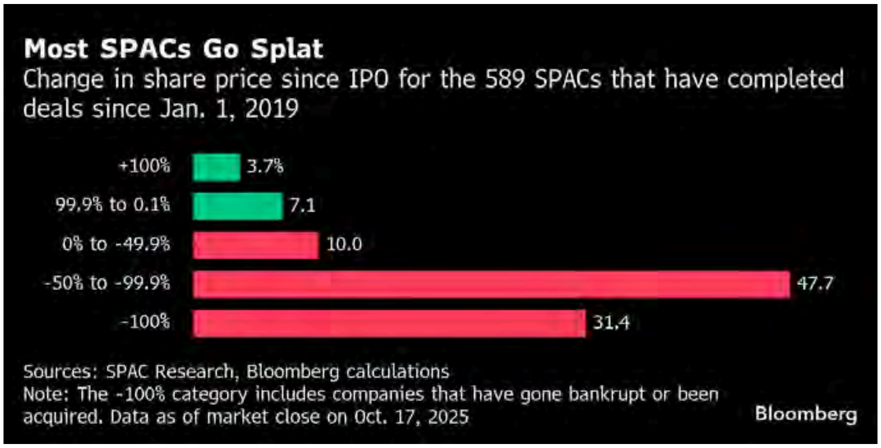
SPACs are publicly traded shell corporations that raise money to do one thing: find a private company to merge with. The private company then inherits the SPAC's stock listing, offering a shortcut to the market with less scrutiny than is typical for an initial public offering. Although the idea has been around for decades, SPACs soared in popularity in 2020 as celebrities, athletes and Wall Street titans jumped in with their own. As the market flooded, many of them started coupling with subpar companies while predicting as much as 300-fold increases in revenue, sparking a clampdown by the US Securities and Exchange Commission and lawsuits from investors blaming SPAC sponsors for losses.

Trump's SEC loosened the clamps, and MAGA figures were quick to capitalize. One Lutnick-led SPAC is merging with Twenty One Capital, a Bitcoin company with ties to and . Another of Lutnick's half-dozen SPACs is joining with an outfit called BSTR —short for —to invest in the token. And Palihapitiya has raised $300 million for American Exceptionalism Acquisition Corp. A, which aims to merge with a company that works in Trump faves such as decentralized finance and artificial intelligence. Its shares climbed 13% in their first few weeks, making it one of the top-performing SPACs without a deal announced.

Brandon Lutnick.
Photographer: Savid Becker/Zuma Press

Through Oct. 17, more than a quarter of the 150-plus SPACs that have filed for IPOs or raised money this year have targeted industries that dovetail with Trump's agenda, according to data compiled by Bloomberg. , a finance professor at the University of Florida, points to transactions such as a tie-up between the president's media company and a cryptocurrency holding company, and a SPAC merger with a gun startup that counts as a board member. "It's crony capitalism at work," he says. "The Trump family is certainly having no qualms about doing deals."

In a statement, White House spokesman Kush Desai wrote: "The President's personal assets are in a trust managed by his children, and have nothing to do with his presidential decision-making, while all Administration members take compliance with government ethics rules with the utmost seriousness."



SPAC skeptics caution that the investments can be exceedingly risky: Only about 11% of companies that have gone public through a SPAC merger since 2019 are trading above their issue price, and dozens went bust just months after listing on US stock exchanges. Meanwhile, since the end of 2018, the S&P 500 has more than doubled and the Nasdaq 100 has almost tripled. “The rate of success of SPACs does not justify the risk,” says , managing director at brokerage . “These are probably companies that couldn’t go out the regular way.”

Read next: The Banker Behind the Trumps’ Quick Wall Street Wins

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Mark Milian

Sequoia Capital

Sequoia COO quit over Shaun Maguire's comments about Mamdani

Sumaiya Balbale left the venture firm after it decided not to discipline outspoken investor for posts about New York mayoral candidate

Shaun Maguire is one of Sequoia's most high-profile investors, having cultivated close ties to Elon Musk © Brendan Smialowski/AFP/Getty Images

Stephen Morris and **George Hammond** in San Francisco and **Madhumita Murgia** in London

Published OCT 21 2025

Sequoia Capital's chief operating officer resigned over comments made by partner Shaun Maguire that she regarded as Islamophobic, as political debates sow division at one of Silicon Valley's most powerful venture capital firms.

Sumaiya Balbale — a practising Muslim who has spoken publicly about how her gender, ethnicity and faith have shaped her career — stepped down after five years at the company in August. Her decision to leave was precipitated by Maguire's social media posts, according to three people with knowledge of the matter.

Maguire, an outspoken and high-profile investor who is close to Elon Musk, wrote on X in July that New York mayoral candidate Zohran Mamdani "comes from a culture that lies about everything. It's literally a virtue to lie if it advances his Islamist agenda. The West will learn this lesson the hard way."

Balbale complained to other senior partners at the firm, who declined to take action against Maguire, arguing he was just exercising his right to free speech, the people said. She left soon after, feeling her position was untenable.

Sumaiya Balbale stepped down from Sequoia in August © Sequoia Capital

Her departure caused consternation among staff and portfolio companies, the people said. Balbale, who is on the board of Shake Shack, was well regarded internally and by the start-ups she worked with as an experienced operating executive.

Maguire walked back some of his comments in posts and long videos — drawing a distinction between criticising Islamism, a political ideology, and Muslims in general. But Sequoia’s reluctance to rein him in has caused friction between staff and sparked debate across the tech sector.

Sequoia declined to comment. Maguire and Balbale did not respond to requests for comment.

The saga has become a problem for Roelof Botha, Sequoia’s managing partner, who has tried to keep peace internally. He held an “all-hands” meeting to address the issue, while trying to limit wider fallout by not commenting publicly, according to a person with knowledge of the meeting.

In interviews, Botha has described the firm’s approach as “institutional neutrality” and said staff are entitled to their own positions.

Maguire’s posts about Mamdani were criticised by multiple other colleagues, said people with knowledge of the disputes. Senior figures told him he had a right to speak his mind but should consider the reputation of the firm.

Maguire is one of Sequoia’s most successful investors, having cultivated close ties to Musk and won a devoted following among some founders who admire his intellect and outspoken style.

“He’s genuinely one of the polymaths and there aren’t many of those left,” said one person who has taken investment from Maguire.

A physicist with a PhD in quantum gravity, his investments in Musk’s start-ups such as xAI, SpaceX, Neuralink, and Boring Company have proved lucrative for Sequoia.

The runaway success of SpaceX in particular has earned him “a lot of rope” at the firm, the people added. The rocket and satellite company was valued at $400bn in a recent employee share sale and has netted Sequoia a gain of about $4bn on paper, said a person with knowledge of the matter.

Maguire's other political stances have also drawn pushback from colleagues. Earlier in the year, he posted on X in support of Germany's right-wing AfD party.

This prompted a series of X posts by Luciana Lixandru, a London-based Sequoia partner who has family in Germany, who said she "felt compelled" to share her views.

"I find extremism on either side a dangerous undercurrent in our society," she wrote in January. "I believe in political leaders and parties who encourage strong policies to further growth, but who also support equal rights for all and who share my social values. AfD is certainly not that party."

Maguire replied: "One of the beautiful things about Sequoia is that we're comfortable disagreeing with each other. Personally I think it's the secret to the firm's historical investment success."

Maguire's rhetoric — which spans from passionately defending Israel's actions in Gaza, to endorsing UK anti-immigration activist and convicted criminal Tommy Robinson — has also led to private complaints from executives at Sequoia's portfolio companies and institutional investors, the people familiar said.

More than 1,000 founders and tech employees signed an open letter calling for Maguire to be disciplined. This was followed by a counter-letter with a similar number of signatories supporting him.

The scandal has also soured Sequoia's relationship with some top Middle Eastern investors. One financier based in the region who has worked with Sequoia described Maguire's comments as "a humiliation".

"A lot of sovereign wealth funds from this part of the world are not going to work with this guy, that's for sure . . . he is not welcome here," he said. "You work for your limited partners and founders, you are entrusted with serious capital by investors," the person added. "This is not good for the brand."

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Lloyds Banking Group

Lloyds profits plunge 40% on car finance scandal

UK high-street bank took £800mn charge linked to motor commissions, offsetting growth in net income

Lloyds bank is in the final phase of a plan launched in 2022 by chief executive Charlie Nunn to generate more income that is less closely tied to the interest rate cycle © Bloomberg

Laith Al-Khalaf in London

Published YESTERDAY | Updated 03:46

Lloyds Banking Group's profits tumbled almost 40 per cent to £1.2bn in the third quarter, as the bank took an £800mn charge linked to the car finance mis-selling scandal.

The UK high-street lender had already disclosed that it would take the £800mn hit this quarter from the long-running car finance probe, meaning that profits were better than the £1bn analysts had expected.

But pre-tax profits were 36 per cent lower than the £1.8bn the bank generated in the same period last year, and the £2bn it reported in the previous quarter.

Lloyds disclosed the extra charge to cover redress payments for the motor finance scandal earlier this month, after the Financial Conduct Authority set out details of its compensation scheme. Lloyds, which is the biggest provider of motor loans through its Black Horse business, has now made total provisions of £1.95bn for the scandal.

William Chalmers, the group's chief financial officer, said Lloyds was in discussions with the FCA as part of the regulator's consultation on the redress scheme.

The finance chief said the current scheme risked "producing anomalous outcomes for customers" and that its calculation for harm was unclear and too broad. Lloyds believed the scheme was inconsistent with previous Supreme Court rulings on the scandal, he said.

The car finance hit offset an increase in third-quarter net revenues to £4.6bn, up from £4.3bn over the same period last year. In the three months to June, the bank brought in £4.5bn. The boost was driven by growth in lending for mortgages, credit cards and unsecured loans.

Lloyds recognised £176mn in underlying impairments for the quarter, broadly in line with last year. But the deterioration was confined to the bank's retail customers, with business customers now in a better position than the bank had expected.

Shares rose 1.3 per cent in lunchtime trading, with the stock gaining about 55 per cent this year to value the lender at just over £50bn.

Lloyds is in the final phase of a plan launched in 2022 by chief executive Charlie Nunn to generate more income that is less closely tied to the interest rate cycle.

This month, the Financial Times reported that Lloyds was assuming full control of Schroders Personal Wealth, its joint venture with the asset manager, as it targets the mass-affluent market. Chalmers said Lloyds was planning to find cost reductions across the two business as well as expand its offering to Lloyds customers.

Lloyds, which is often seen as a bellwether for the UK economy, forecast UK GDP growth of 1.3 per cent this year and 1 per cent next year.

Nunn said the group had continued to perform well and was making progress on its strategy.

"Strong capital generation was supported by income growth, cost discipline and strong asset quality in the first nine months of 2025, despite the impact of the additional motor finance charge in the third quarter."

Nunn has also tried to digitise the bank's operations and cut costs. In September, the FT reported the bank was overhauling its performance review system to shed underperforming staff.

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Laith Al-Khalaf

News from Bloomberg Terminal

O’Reilly Automotive Sinks on First Brands Risk, DIY Pullback

Oct. 23, 2025, 9:55 AM PDT

Summary by Bloomberg AI

AI Generated

- O'Reilly Automotive Inc. shares fell after company executives discussed its exposure to a bankrupt supplier and the impact of inflation on sales to do-it-yourself customers.
- The bankrupt supplier, First Brands Group, accounts for about 3% of O'Reilly's costs of goods sold, but the company has alternative suppliers for those products.
- O'Reilly is also facing headwinds from customers unwilling or unable to pay higher prices for some items to repair their own vehicles, which has impacted its DIY business.

By Miguel Ambriz

(Bloomberg) --

O’Reilly Automotive Inc. shares fell more 7% after company executives detailed its exposure to a bankrupt supplier and said inflation is taking a toll on sales to do-it-yourself customers.

While the replacement auto parts retailer said it doesn’t view the failure of First Brands Group as a significant blow to its supply chain, O’Reilly President Brent Kirby told analysts on an earnings call Thursday that insolvent supplier accounts for about 3% of its costs of goods sold. He added that O’Reilly has alternative suppliers for those products.

“It’s not a huge material thing when you think about the fact that we’re dual- and triple- and quadruple-sourced on most of our lines,” Kirby said.

Aftermarket parts maker First Brands filed for protection from creditors last month, shaking Wall Street due to its reliance on private financing and poor disclosure.

Read more: First Brands Blindsides Wall Street in ‘Black Box’ Loan Fiasco

Shares of O’Reilly pared an early drop of 7.1% to trade down 4.2% to $96.99 as of 12:51 p.m. in New York. The stock is up about 23% this year.

The company also is facing headwinds from customers unwilling or unable to stomach higher prices for some more expensive items to repair their own vehicles, Chief Executive Officer Brad Beckham told analysts on the call.

“The pressure to our DIY business as we move through the quarter was primarily felt in some categories, where we could be seeing some deferral in larger ticket jobs,” he said, noting that has “also factored into our guidance a continuation of the pressure to our DIY customers.”

On Wednesday, the Springfield, Missouri-based company raised its full-year profit and revenue outlook, but also lowered projections for cash from operating activities in 2025.
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https://www.wsj.com/finance/investing/popular-leveraged-funds-shock-investors-with-huge-losses-5714f1ac

MARKETS & FINANCE | INVESTING

Popular Leveraged Funds Shock Investors With Huge Losses

Some funds offering to double single-stock moves have veered sharply off course from the shares they track

By Jack Pitcher Follow

Oct. 23, 2025 5:30 am ET

EMIL LENDOF/WSJ, ISTOCK

Quick Summary

- Leveraged single-stock ETFs had accumulated $40 billion in assets by mid-October.
  View more

Risky leveraged exchange-traded funds are booming. Their performance over the past year highlights their pitfalls.

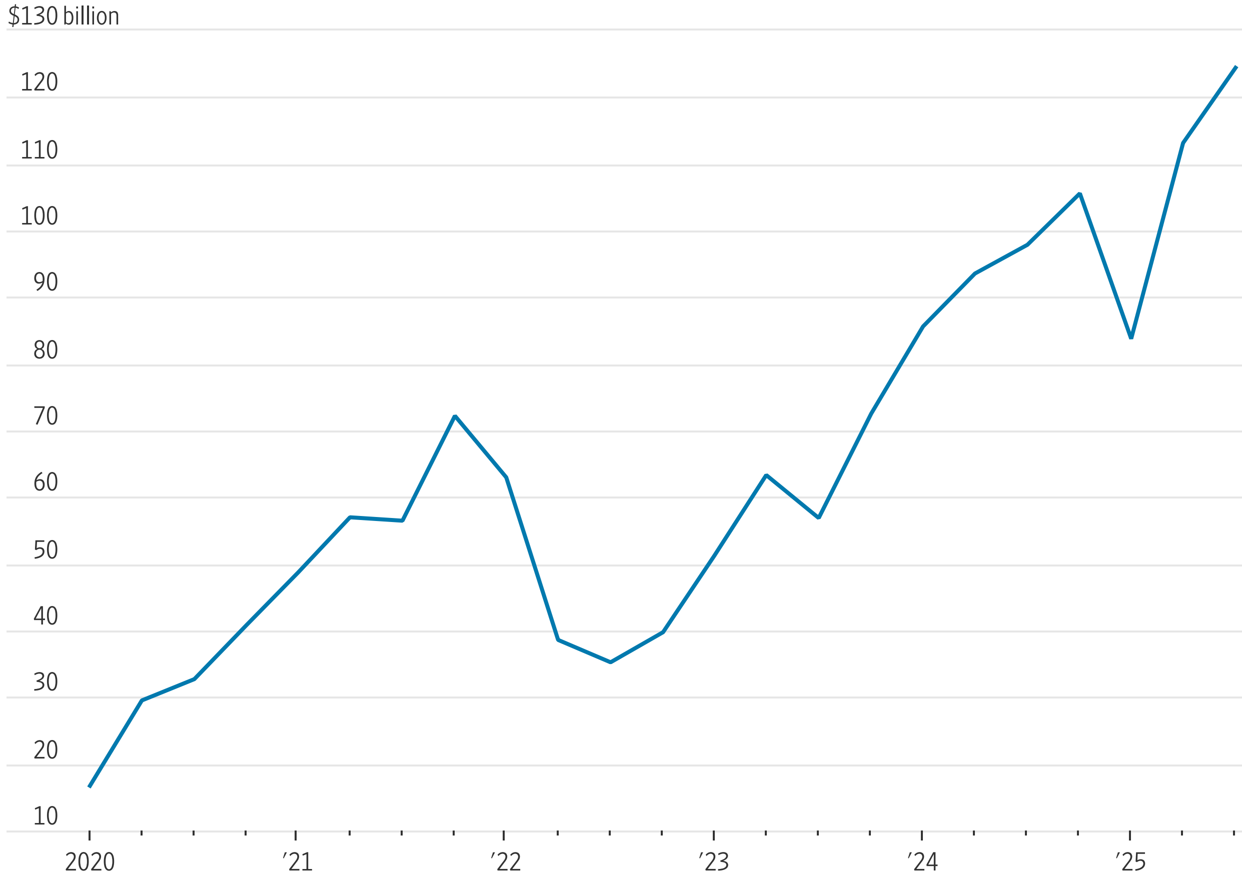
The funds, accessible to anyone through most brokerage accounts, use derivative contracts or borrowed money to amplify the return of an underlying asset. Leveraged funds tracking stock indexes have been around for more than a decade. Their bolder cousin, the leveraged single-stock ETF, was first approved by U.S. regulators in 2022.

Those single-stock funds have grown rapidly in number, and gained a following among individual investors who yearn for even bigger returns than what a record-setting stock-market rally has offered. By mid-October, leveraged single-stock ETFs had accumulated some $40 billion in assets, according to VettaFi data.

While some large managers such as BlackRock and J.P. Morgan Asset Management have avoided these ETFs given their risks, many others have been drawn to the category for the thick management fees they provide. Leveraged ETFs typically collect about 1% on the assets they manage, well above the 0.3% fee averaged by active funds. Roughly 200 leveraged equity ETFs have been launched in 2025 alone, bringing the total number to 701 funds in October, according to Bank of America analysts.

Their surging popularity has exposed more investors to steep losses, particularly among those investors who misunderstood how leveraged funds work.

Total assets in U.S.-listed leveraged ETFs



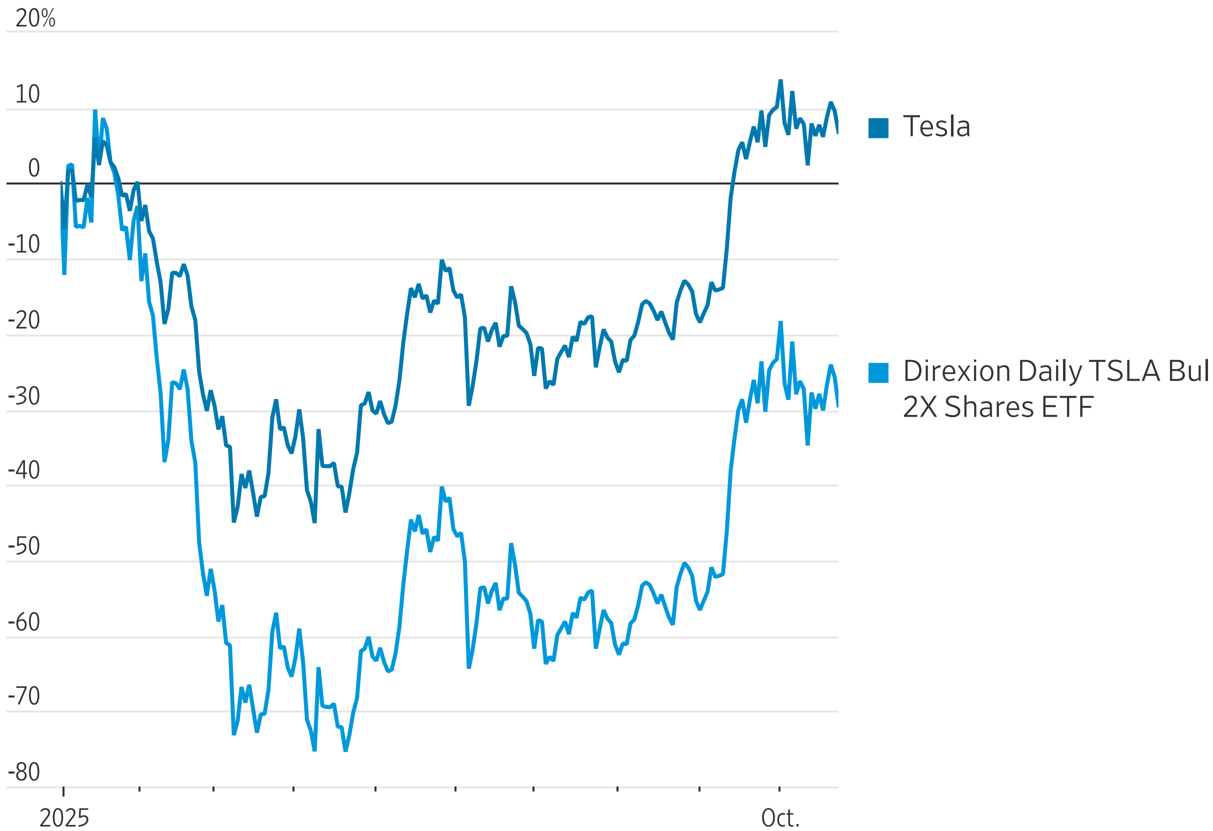
Source: Morningstar Direct

The most common type of leveraged fund offers to double the return of a reference asset on a daily basis. So a 2x leveraged ETF tracking Tesla shares would rise 10% on a day the stock climbs 5%. But the same fund also amplifies losses; if Tesla were to fall 5%, the leveraged ETF would post a decline of 10%.

Over time, those amplified gains and losses can pile up in hurry, and veer from the returns produced by the underlying stock.

Tough Recovery

Year-to-date return, Tesla vs. 2x leveraged Tesla ETF

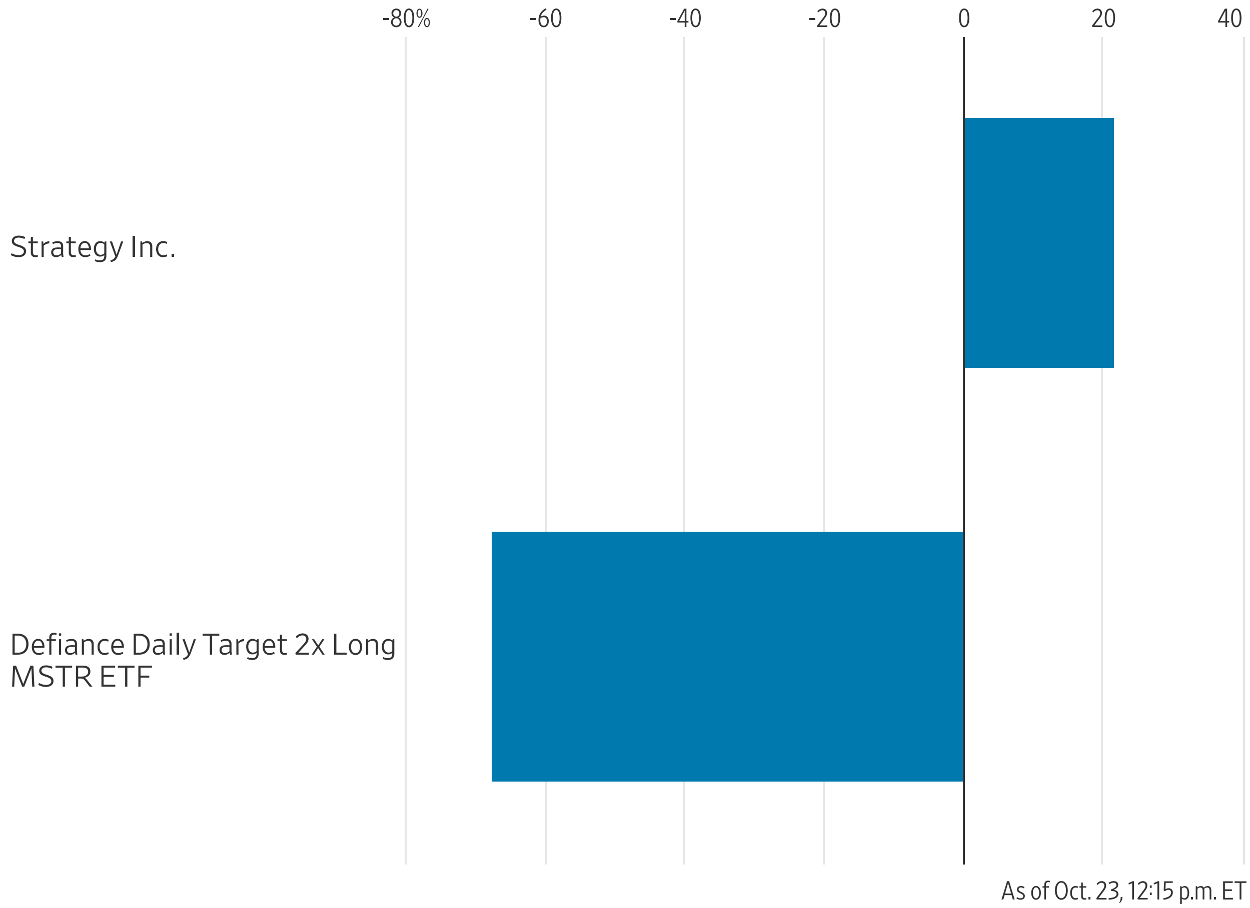


Source: FactSet

One of the most popular funds provides an extreme example. Last November, two recently launched ETFs that offered to double the daily returns of bitcoin-linked stock MicroStrategy (now known as Strategy), began to soar. The outsize gains attracted attention on social media, and thrill-seeking individual investors began to pile in at a pace never seen before for a leveraged single-stock fund.

Many of those investors are now sitting on huge losses, despite the fact that the underlying Strategy shares are up over the past year. Strategy shares rose 28% in the 12 months ended Wednesday, while one of the leveraged funds, the Defiance Daily Target 2x Long MSTR ETF, plunged 65%.

1-year return



Source: FactSet

The brutal divergence in performance is caused by what traders call “volatility decay,” or the tendency of price fluctuations to erode the long-term returns of a leveraged fund, even if the underlying asset goes up. And it is why leveraged-fund managers are quick to warn that their funds shouldn’t be held for long periods.

“Everything that is problematic about these funds is more problematic the more leverage or volatility you add to them,” said Dave Nadig, an industry veteran and director of research at ETF.com.

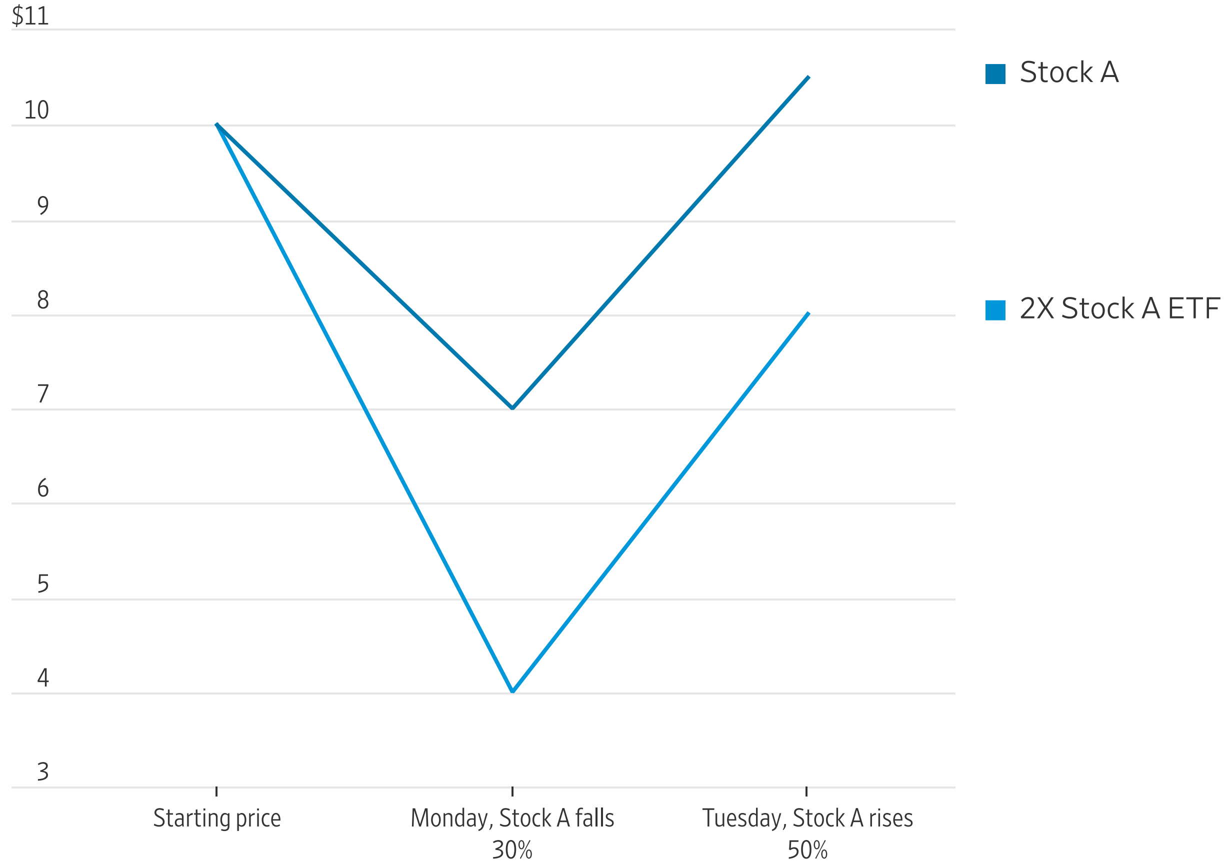
Money managers say that most leveraged funds aim to amplify returns for a single day, and shouldn’t be held for longer periods.

Take a hypothetical stock and a 2x daily leveraged ETF that tracks it, for example. Imagine both the stock and the leveraged fund begin the week with a share price of $10. If the shares fall 30% on Monday, the 2x ETF tracking them will fall 60% to close at $4.

If the stock roars back with a 50% gain on Tuesday, it is now up on the week, trading at $10.50. But even though the 2x ETF would have doubled the shares’ Tuesday performance, rising 100%, the ETF is only back to $8, and is now trailing its underlying asset on the week.

How a leveraged ETF can quickly underperform the stock it tracks

A hypothetical stock chart



The more volatile the asset, the more the leveraged ETF can diverge from its performance. And the harder it is for investors to climb back from steep losses.

"Are we MSTU and MSTX holders screwed beyond recovery?" one user on a Reddit investing forum asked, referencing the tickers of the two MicroStrategy funds. "If I did not understand price decay before, I do now."

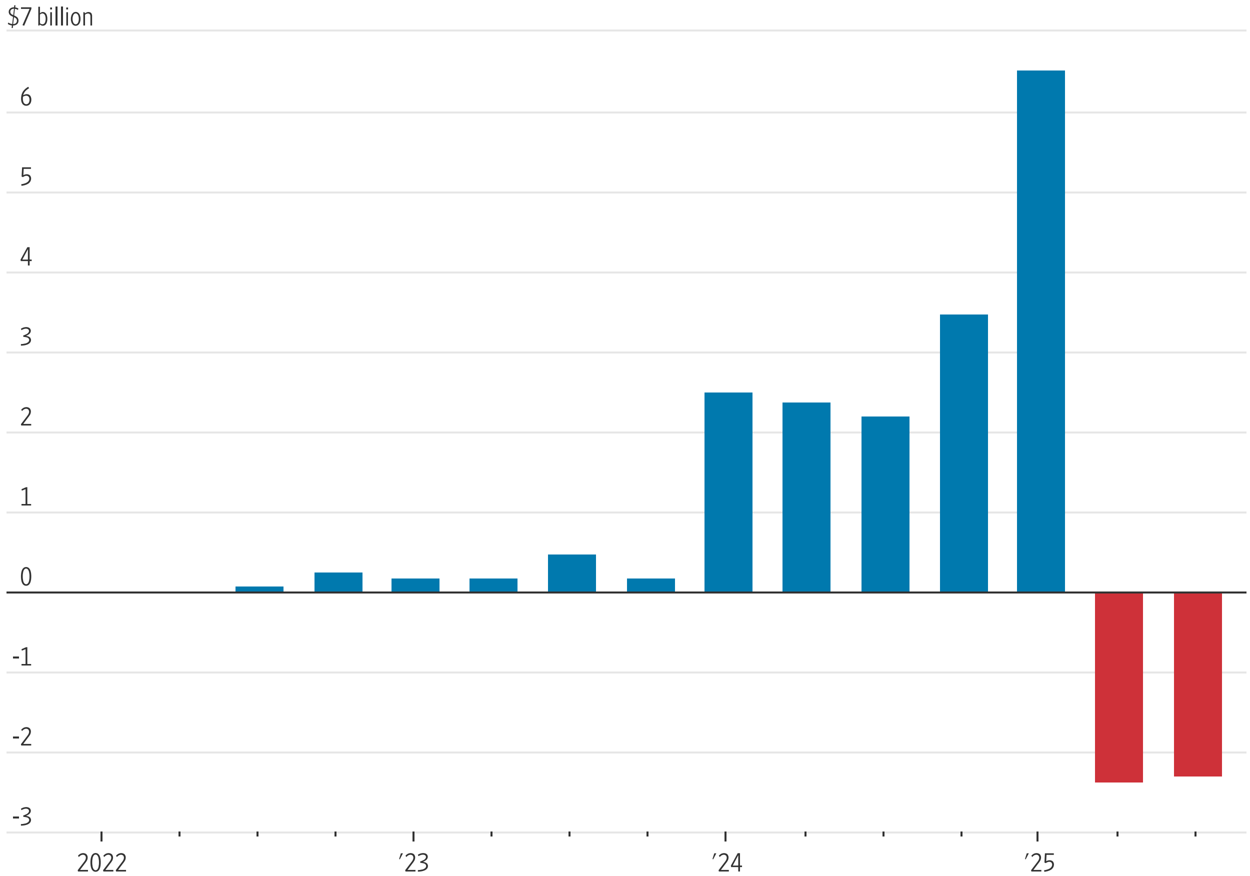
"I learned my lesson and don't plan on playing leveraged ETFs again," one of the thousands of other posters discussing the funds wrote.

Some sophisticated investors have profited from the funds' poor performance. In a letter to investors earlier this year, hedge-fund manager David Einhorn said he had been shorting the leveraged MicroStrategy ETFs in a trade that was "a material winner."

“These products are destined to fail,” Einhorn wrote. “Over time, they are likely to bleed out their capital.”

After plowing billions into leveraged single-stock funds in 2024, some investors have soured on them in recent months. Traders pulled almost $5 billion from the fund category over the past two quarters, according to Morningstar, the first time the fund category has ever reported outflows.

Quarterly net inflow, U.S.-listed leveraged single-stock ETFs



Source: Morningstar Direct

Money managers haven’t been deterred. Some have continued to launch leveraged ETFs, seeking to capitalize on investors emboldened by the market’s recent rally.

Last week, ETF issuer Volatility Shares filed paperwork to launch 27 highly leveraged ETFs, including what would be the first 5x funds in the U.S. Such funds would go to zero and be liquidated in the event their underlying stock falls 20% in one day.

The Securities and Exchange Commission has voiced opposition to such highly levered funds in the past and could block them from being launched. If the regulator doesn’t take action—it currently isn’t reviewing fund applications during the government shutdown—the funds will be free to launch 75 days after their application date, analysts said.

Write to Jack Pitcher at jack.pitcher@wsj.com

Videos

The $500 Million Fraud Case Exposing Football's Shaky Finances

Oct. 22, 2025, 10:00 PM PDT

Summary by Bloomberg AI

AI Generated

- Joshua Wander, a Miami-based investor, has been charged with conspiracy and fraud for allegedly cheating lenders and investors in his firm, 777 Partners, out of almost $500 million.
- Wander's firm had less than $500,000 in cash and was close to bankruptcy, but he allegedly sent a doctored bank account screenshot to show he had $8 million, according to federal prosecutors in New York.
- The case has lifted the lid on Wander's investments, including stakes in seven football teams, and has raised questions about the scrutiny of prospective club owners in European football.

Joshua Wander already owned a fleet of Boeing 737s and stakes in famous European football teams. But there were bigger deals on the horizon — if the Miami-based investor could show he had enough money.

The trouble was that his investment firm, 777 Partners, had less than $500,000 in cash and was close to bankruptcy, according to details from court filings released by federal prosecutors in New York. So, Wander sent his creditor a screenshot of a bank account, doctored using Microsoft Paint, to show he had $8 million instead, prosecutors allege.

Last week, Wander was charged with conspiracy and fraud for allegedly cheating lenders and investors in the firm out of almost $500 million. The 44-year-old denies the charges, according to his lawyer, Jordan Estes.

The case lifts the lid on an investor who — until his sporting investments — had been relatively unknown outside Miami, focusing on a niche corner of the financial industry. It also suggests that Europe's footballing authorities are still struggling to scrutinize prospective club owners in a sport whose parlous finances make it crave fresh money.

Wander, left, greets the crowd at Genoa before a Serie A match against Hellas Verona in 2021.
Source: Getty Images

At its peak, 777 Partners had stakes in seven football teams, including Hertha Berlin, 130-year-old Italian club Genoa and the entirety of Belgium's Standard Liege . Last year, the firm was close to completing a bid for Everton FC in England's Premier League, a trophy asset that would have cemented Wander as a name in the sport's ownership.

"The problem is that football is not a very profitable industry so many clubs become desperate for investment," Christina Philippou, associate professor in sport finance at the University of Portsmouth in England. "That increases the risk to the clubs and the football ecosystem."

777 Partners made its money from structured settlements, where claimants agree to settle personal injury claims in exchange for a series of payouts. Wander and his partners built one of the largest providers of them, with subsidiary SuttonPark Capital posting $184 million in net income in 2020.

The growth of the business for Wander coincided with European football's desire to bring in American money .

777 Partners' first foray came in 2018, when the firm bought a tiny stake in Spanish club Sevilla, upping it to 9% a couple of years later. Despite SuttonPark making money, 777 Partners needed cash upfront for its football deals.

The funding came from Nakula Management, according to company filings. The Cypriot-based firm's ultimate beneficial owner is Oleg Boyko, a Russian tycoon with alleged ties to Russian intelligence and organized crime, something Boyko has denied.

Wander led 777 Partners on a football investment spree. Many of these teams were bought for nominal value, with 777 Partners agreeing to take on sizable debts. The deals often needed the sport's national authorities to approve the firm as a viable buyer.

As he rapidly expanded the portfolio, numerous financial institutions were eager to provide capital or advisory services. Norton Rose Fulbright and DLA Piper were among those who advised 777 Partners on its acquisitions. Neither responded to requests for comment.

Other 777 Partners investments included a London-based basketball team, a stake in the British Basketball League, and an investment in STX Entertainment, a film studio that produced *Molly's Game*, *The Irishman*, and *Ferrari*.

Wander was also building out his airlines business, placing an order for Boeing 737 Max 8 aircraft to be used by Canada's Flair Airlines. He owned Australian budget airline Bonza, too.

Stan Deal, Boeing's CEO of commercial airplanes, left, and Wander sign a deal on day two of the Farnborough Airshow in 2022. Photographer: Jason Alden/Bloomberg

By 2021, 777 Partners "faced major liquidity constraints," according to a press release from the Federal Bureau of Investigation in New York. Wander was also being sued by his Sunset Beach landlord for first failing to vacate his $10,000 a month apartment, according to a separate court filing. (The case was settled in 2024.)

But Wander was also embarking on raising $237 million from 13 different investors, using prospectuses littered with false information about the health of companies, court filings allege. On the same day Wander received more than $200 million from investors, he transferred $24.9 million to his own account, the filings said.

Aided by Finance Director Damien Alfalla and statements doctored by Microsoft Paint, Wander created fictitious structured settlements in order to obtain more funds from his lenders and divert money from SuttonPark Capital, according to US court filings.

Alfalla, who pleaded guilty in the case last week, is cooperating with the government, the FBI said on Oct. 16. Alfalla couldn't be reached for comment.

"The defendants put forth an illusion of stability that was a years-long house of cards," Ricky Patel, a Homeland Security Investigations special agent, said in the FBI press release. "This alleged scheme was self-serving, siphoning funds meant for victims and leaving investors and lenders holding the bag."

Drugs to Dealmaking

Wander has faced legal problems before. As a University of Florida student, he was arrested in 2003 after being caught with 31 grams of cocaine. He avoided a prison sentence and was placed on drug-offender probation. Wander called the incident a "a stupid college thing" in an interview with the Financial Times two decades later.

In 2011, The Bellagio, a famous Las Vegas resort, sued Wander in an attempt to retrieve $78,000 it advanced him in credit, according to court filings. Wander, who was photographed partying with Miami Heat basketball players including LeBron James, had also run up $245,642.96 in credit card debt, according to court documents filed by American Express in 2012.

The Bellagio Hotel and Casino in Las Vegas.
Photographer: Roger Kisby/Bloomberg

The football investments enabled Wander, often dressed in a white shirt, suit, and ever-present midnight blue cap, to boost his profile as a dealmaker. It looked like 777 Partners was building a multi-club empire like the owners of England's Manchester City, said Vitor Roma, who served as vice president of marketing at Rio de Janeiro's Vasco de Gama when the team was sold to 777 in 2022.

"It made sense that a company with money was in theory going to buy various clubs in the world and make something similar to City Football Group," recalled Roma, who said he wasn't involved in the sale of the club.

Later, there were reports in Brazilian media that payments to Vasco de Gama were slow. "Back then, I thought, 'man, these guys who bought a ton of clubs are already short on cash.'"

777 Partners' Fleeting Football Empire

Holdings Miami-based 777 Partners had in football clubs prior to its failed takeover of Everton FC

Team	777 Stake	Year
Hertha Berlin	79%	2023
Vasco de Gama	70%	2022
Standard Liege	100%	2022
Red Star FC	100%	2022
Melbourne Victory	70%	2022
Genoa CFC	100%	2021
Sevilla FC	~15%	2018

Source: Bloomberg Bloomberg

By now, Wander was increasingly seen as a legitimate football club owner. 777 Partners also took up a lease for an office on the edge of London's hedge fund district.

In 2023, he was elected to the board for the European Club Association, or ECA, as the representative for Standard Liege. There he mingled with fellow owners such as Nasser Al-Khelaifi , chairman of beIN Media Group and Qatar Sports Investments, majority owner of Paris Saint-Germain.

Wander and his wife once had dinner with Al-Khelaifi, one of football's biggest powerbrokers, in Paris, according to a person familiar with the situation who declined to be identified when discussing a private meeting. Wander used the occasion to try to pitch 777 as an investment for Al-Khelaifi, the person said. Al-Khelaifi declined to comment.

Despite later reports of unpaid player fees and a transfer embargo at Standard Liege, no action was publicly taken to investigate Wander by the ECA, since renamed European Football Clubs, or EFC. A spokesperson for EFC declined to comment.

Wander enjoyed the trappings of owning a sports team. He regularly greeted the crowds when his teams played and wrote messages of hope and support to the fans. At some point during 2023, he saw the opportunity to acquire a sporting crown jewel, and a major piece of collateral that could help prop up the rest of his sprawling empire.

Once one of the biggest clubs in England, Everton was going through a prolonged slump. Owner Farhad Moshiri had spent almost $1 billion trying — and failing — to win trophies. The building of a giant new waterfront stadium in its home city of Liverpool was also stalling.

Moshiri and Wander held talks about a potential investment, with 777 Partners extending a $200 million loan to Everton. Moshiri had also run out of money , struggling to keep builders working on the new stadium.

It was unclear how 777 Partners found the capital for the loan. The firm employed Tifosy, a London-based football adviser, to help it raise €200 million ($232 million) to fund its football portfolio . However, the firm was unable to secure the funds.

Wander shakes hands with Moshiri at Goodison Park, Liverpool, in 2023.
Photographer: Peter Byrne/PA/Getty Images

In September 2023, 777 Partners agreed to buy Everton. The actual cost of the takeover was never publicly disclosed, with Everton's £500 million debt swallowing up most of any deal price. Moshiri was advised by Deloitte's Sports M&A team on the sale.

"Deloitte's advice and support has been critical in ensuring a successful deal that will secure the financial sustainability of the club for years to come," Moshiri said in a statement at the time. Deloitte declined to comment for this story.

Those working with Moshiri at Everton argued that five other football leagues had already backed 777 Partners as a legitimate owner, according to a person familiar with the matter. They declined to be identified when discussing the approval process.

The sellers were also presented with a multi-billion-dollar balance sheet from a group operating a regulated insurance business, the people said.

Any takeover of a Premier League team needs to pass a so-called fit and proper test for owners and directors. While sometimes a lengthy process, no eventual owner has ever been stopped from buying a team.

The Premier League raised internal concerns regarding the suitability of 777 Partners, citing their diverse portfolio, which included record labels, aviation financing and stakes in various smaller football clubs.

But by March 2024, the league's board said it was "minded" to accept the firm's bid for Everton if a series of conditions for the sale were met, according to a letter seen by Bloomberg. The main ones were regarding where the money was coming from.

In the end, the time it took for the Premier League to make a decision was long enough for the takeover to collapse . In May 2024, Bloomberg revealed that 777 Partners' lenders had accused it of fraud , claiming that the firm borrowed against $350 million of assets that either it didn't own, didn't exist or were already pledged to other creditors.

Wander and 777 Partners were sued that month in the New York federal court by Leadenhall Capital Partner LLP and Leadenhall Life Insurance Linked Investments Fund Plc., which claimed the firm had double pledged assets. The Australian airline Bonza was repossessed by creditors, and by October the UK High Court declared the British entity of 777 Partners insolvent.

"Was this a masterclass of regulatory diplomacy," said Paul Quinn, a UK businessman and a regular commentator on Everton, "or was it a failure by the Premier League to act decisively and state that 777 Partners had failed to meet their requirements?"

Wander departs federal court in New York on Oct. 21.
Photographer: Bing Guan/Bloomberg
The Premier League declined to comment on whether it should have disqualified the offer before it collapsed.

Wander's portfolio of companies is now being sold off, while former employees are suing for unpaid compensation. Wander appeared in Manhattan federal court last Thursday and was released on a $15 million bond.

In addition to the criminal charges, the US Securities and Exchange Commission sued the firm, Wander, Alfalla and co-founder Steven Pasko , for allegedly violating securities laws. Pasko didn't respond to a message via social media, while Wander didn't respond to repeated requests for comment.

Everton, meanwhile, was bought by US billionaire Daniel Friedkin in late 2024. The club moved into its new stadium this season.

--With assistance from Andrew Rosati .

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4th Circ. Seems Wary Of Under Armour's $100M Coverage Win

By **Hope Patti**

Law360 (October 22, 2025, 8:51 PM EDT) -- The Fourth Circuit didn't seem convinced Wednesday that it should affirm a lower court's finding that government investigations into Under Armour are unrelated to a securities class action against the sportswear company and thus trigger an additional $100 million in directors and officers coverage from Under Armour's excess insurers.

During oral arguments, Under Armour counsel Michael T. Sharkey of Perkins Coie LLP contended that investigations by the U.S. Securities and Exchange Commission and the U.S. Department of Justice concerning certain sales and accounting practices are not related to a consolidated securities class action. The securities case, which alleged that the company made misleading public statements about its financial condition, was covered under the company's 2016-2017 tower of D&O coverage.

Sharkey asserted that a common motive is not enough to establish that the claims are related.

Many D&O claims concern securities class actions alleging that a company was trying to keep its stock prices up, Sharkey said, and "if that were the level of generality that were appropriate … all claims would be related."

U.S. Circuit Judge Nicole G. Berner cut Sharkey off, saying, "but here it's not you're trying to keep your stock prices up, it's you're trying to keep your stock prices up through a specific scheme."

U.S. Circuit Judge A. Marvin Quattlebaum Jr. then seemed to suggest that the public statements were related to the company's sales and accounting practices, particularly the act of pulling forward sales from future quarters, though Sharkey asserted that the statements were broad and did not touch on pulling sales.

Under Armour shareholder Brian Breece filed the securities action against the company and its executives in February 2017, and the government began looking into the company later that year.

The company's insurers covered the securities action and certain derivative demands under the 2016-2017 policy period, but denied Under Armour's request for coverage under the 2017-2018 policy for the government investigations and subsequent derivative matters, according to court filings. Under Armour's primary carrier, Endurance American Insurance Co., filed the present action in September 2022, with the excess carriers, including AIG unit National Union Fire Insurance Co. and Hartford unit Navigators Insurance Co., joining later.

Endurance and Under Armour eventually resolved their dispute, but the excess carriers maintained that the securities action, government investigations and subsequent derivative matters all constituted one claim under the 2016-2017 policy. The lower court ultimately rejected that contention in March 2024, when U.S. District Judge Richard D. Bennett granted Under Armour's Rule 12(c) motion for judgment on the pleadings and held that the government investigations and derivative matters triggered coverage under the 2017-2018 tower.

Judge Bennett found that the "supposed common nexus of facts" between the securities class action and the government investigations was insufficient to make the two claims "wrongful acts that are logically or causally related," and thus subject to the policy's single claims provision. The judge held that an endorsement added to the 2017-2018 policy was "significantly narrower" than the original single claims provision, such that it replaced the original provision.

The original provision provides that all claims arising out of the same wrongful act or wrongful acts that have a common nexus shall be deemed one claim. The endorsement states that all claims that "arise out of the same fact, circumstance, situation, event, or wrongful act, or facts, circumstances, situations, events, or wrongful acts that are logically or causally related" shall be deemed one claim.

On Wednesday, U.S. Circuit Judge Toby J. Heytens voiced confusion and displeasure with the lower court's ruling, remarking that the court summarily declared that the endorsement was narrower than the original provision without any explanation.

"First, let me say, these definitions are confusing as heck," Judge Heytens said. "Second of all, it is not at all obvious to me that one of these definitions is much narrower than the other."

Sharkey contended that the endorsement is indeed narrower because it applies only to "the" facts and circumstances rather than "any" facts and circumstances, adding that Maryland courts have held that "the" is a narrower term.

Arguing for the insurers, Richard A. Simpson of Wiley Rein LLP told the panel that the "logically or causally related" standard used in the endorsement and the "common nexus" standard used in the original provision are "overlapping and comparable."

Determining whether the claims are related also depends on the level of generality used, Judge Quattlebaum said.

"I don't think you would say [the claims are] related because they both involve Under Armour. I don't think you would say they're related because they both involved potential securities violations," the judge added.

Simpson agreed, saying the securities class action and government investigations are connected by a single scheme and fall within the single claims provision under either standard.

U.S. Circuit Judges A. Marvin Quattlebaum Jr., Toby J. Heytens and Nicole G. Berner sat on the appeals panel for the Fourth Circuit.

The insurers are represented by attorneys from Wiley Rein LLP, DLA Piper, Werner Ahari Mangel LLP, Azrael Franz Schwab Lipowitz & Solter LLC, Kaufman Borgeest & Ryan LLP, Walker Murphy & Nelson LLP, Ropers Majeski PC, Kennedys CMK, Bailey Cavalieri LLC and Peabody & Arnold LLP.

Under Armour is represented by Michael T. Sharkey, Jonathan G. Hardin and Molly A. Olds of Perkins Coie LLP.

The case is Navigators Insurance Co. et al. v. Under Armour Inc., case number 25-1068, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Abbie Sarfo.

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Grocery Outlet Fights Investor Claims Over IT Update Woes

By **Sydney Price**

Law360 (October 22, 2025, 7:12 PM EDT) -- Grocery Outlet Holding Corp. has asked a California federal court to toss a shareholder's suit accusing it of botching the implementation of an enterprise resource planning system that allegedly caused operational disruptions and financial losses, saying the suit is based on "impermissible fraud by hindsight."

The suit, which was most recently amended in August, said Grocery Outlet Holding Corp., the parent company of independently owned and operated grocery retailers, knew it was unprepared to launch its information technology system transition in August 2023.

When the company announced six months later that its controls dependent upon the updates were deemed ineffective, shares fell approximately 2%, the suit said. The company's shares dropped 16% in October 2024, the suit said, when then-CEO Robert Sheedy Jr. announced his resignation.

Grocery Outlet said Tuesday that the plaintiff's fraud by hindsight claims incorrectly fault management for "failing to predict that integration challenges would persist longer than originally anticipated."

The company said it disclosed all the relevant challenges in a November 2023 earnings call and it told investors it expected disruptions to continue to affect sales and gross margin in the end of 2023 and possibly beyond.

"Ultimately, plaintiff's theory boils down to the claim that defendants should have disclosed more detail or sounded more pessimistic when describing the progress and challenges associated with the systems upgrade," **the motion** said. "But the securities laws 'prohibit only misleading and untrue statements,' not statements that are incomplete."

Grocery Outlet also claims the suit "leans heavily" on insufficient allegations of former employees.

For example, one former employee said certain critical testing had not been completed before the August 2023 launch and another recalled lingering data issues prior to the implementation.

But Grocery Outlet said the plaintiff's allegations that the company would have avoided later problems had testing been finished are speculative.

"These vague and subjective views from low-level employees — none of whom worked in IT or had any role in implementing the systems transition — are 'short on the facts' and, again, do not contradict defendants' contemporaneous public statements warning of operational disruptions and their associated financial impact," the motion said.

Additionally, Grocery Outlet said its former Chief Financial Officer Charles Bracher's resignation announcement in December 2023, as well as Sheedy's in December 2024, do not support the suit's scienter allegations. The company made clear the departures were amicable, the defendants claim.

"[B]oth departures were entirely benign," the motion said.

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

The proposed class is represented by Laurence Matthew Rosen, Jonathan Stern and Joshua E. Baker of The Rosen Law Firm PA and Brian Schall of The Schall Law Firm.

Grocery Outlet and the individual defendants are represented by Craig I. Varnen and Jeffrey Lombard of Gibson Dunn & Crutcher LLP.

The case is In re Grocery Outlet Holding Corp. Securities Litigation, case number 4:25-cv-00957, in the U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.

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REIT Inks $7M Settlement Of Ex-CEO's Class Action Claims

By **Emilie Ruscoe**

Law360 (October 22, 2025, 7:52 PM EDT) -- A real estate investment trust has reached a $7.125 million deal to end a proposed investor class action brought by its former CEO alleging its insiders breached their fiduciary duties after the company's common stock was diluted by "disastrous" stock redemption decisions.

In a Tuesday filing in Virginia federal court, Daniel Khoshaba, the former CEO of Wheeler Real Estate Investment Trust Inc., and certain directors of and investors in the company, asked U.S. District Judge Mark S. Davis to grant preliminary approval to their proposed settlement deal, describing the agreement as a favorable result for the class.

The parties reached an agreement in principle in August on eve of a settlement conference, following 16 months of "hard-fought and vigorous litigation" that included two dismissal bids and a partially briefed class certification bid.

The joint motion states that a damages expert for the plaintiffs estimated that the maximum amount of damages that the investors could recover in the case is about $35 million. The settlement sum represents about 20% of that potential maximum recovery, "which is certainly an adequate result given the additional risks to class recovery," the parties said.

Counsel for the proposed class will ask for a fee of 28% of the settlement sum at most and would seek reimbursement of litigation costs of no more than $665,000. The motion also states that the plaintiffs will seek a $50,000 incentive award for Khoshaba for his work on the case.

The suit was filed in April 2024. In it, Khoshaba, who headed Wheeler between 2020 and 2021, alleged that his successors engaged in a share redemption strategy that "tanked" the price of Wheeler's common stock "to basically worthless levels," and enabled the activist hedge fund Stilwell Value LLC and its principal Joseph Stilwell to "become the effective owners of more than 80 percent of the Company."

Stilwell and his firm are named defendants of Khoshaba's suit, alongside other Wheeler directors and managers.

Khoshaba said he was previously the company's largest individual shareholder, with over 11% of its common stock. But he said he saw his ownership and voting power reduced when his stake was diluted to at most 1.2% of Wheeler's outstanding shares as a result of the insiders' scheme.

The issue at the heart of the suit concerns a July 2021 rights offering and "a looming crisis with respect to its Series D Preferred Stock," the complaint said. Since that rights offering, Khoshaba claimed, a majority of the company's board members and his successor as Wheeler's CEO either held notes from the offering or worked for Stilwell and the funds it advised, which purchased the majority of the notes from the offering.

As a result, Khoshaba said, Wheeler's board and management had made decisions about the notes that were "compromised by debilitating conflicts of interest."

"Rather than prudently reducing the outstanding Series D shares subject to redemption before the redemption date, the defendants increased them," Khoshaba claimed, asserting this decision had "disastrous implications for the company's capital structure."

Khoshaba sought to represent a class of all Wheeler stockholders who didn't participate in the July 2021 rights offering.

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

The proposed class is represented by Marc B. Kramer, Jeffrey A. Ritholtz and Joseph R. Sparacio of Rolnick Kramer Sadighi LLP and Richard H. Ottinger and Katherine M. Lennon of Woods Rogers Vandeventer Black PLC.

The individual defendants are represented by Hugh M. Fain III, M. F. Connell Mullins Jr. and Nancy Y. Simpson of Spotts Fain PC and Jerrold A. Thrope of Gordon Feinblatt LLC.

The fund defendants are represented by Charles M. Sims of O'Hagan Meyer PLLC, Richard L. Crisona and Alexander E. Ehrlich of Allegaert Berger & Vogel LLP.

The case Khoshaba v. Stilwell et al., case number 2:24-cv-00237, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Sydney Price. Editing by Emily Kokoll.

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Tesla Claims Texas Charter Trumps Sweeping Claims In Del.

By **Jeff Montgomery**

Law360 (October 22, 2025, 8:56 PM EDT) -- Attorneys for Tesla, its principals and Elon Musk told Delaware's chancellor on Tuesday that the company's widely trumpeted corporate charter move from Delaware to Texas should doom a Court of Chancery consolidated stockholder suit challenging a string of actions by the company and Musk.

"The plaintiffs enthusiastically endorse the internal affairs doctrine" making the laws in the state of incorporation control, "except when it's inconvenient," Brian T. Frawley of Sullivan & Cromwell LLP, counsel to Tesla, told Chancellor Kathaleen St. J. McCormick during a late afternoon dismissal hearing.

"The immutable rules of directorial conduct are governed by the state of incorporation at the time of the conduct," Frawley said during arguments, citing Texas as the company's new official sheriff. "We submit that the application of the internal affairs doctrine at the time of the conduct at issue requires dismissal of these cases."

The comments and those in rebuttal sent to the chancellor long-brewing questions regarding which state's business laws govern Tesla and its often-in-the-news founder in the wake of the company's redomestication from Delaware to Texas in June 2024.

The charter relocation, validated by the chancellor earlier this year, followed a bitter court fight over Musk's $56 billion compensation package, struck down in January 2024 and often cited as a major spur for the company's exodus — along with legislation in Delaware that expanded liability shields for otherwise conflicted corporate acts, among other changes.

In the months since, stockholders have nevertheless continued to pursue suits accusing Musk of leveraging nonpublic Tesla information for sales of his stock and manipulating public markets, arguing in part that Tesla's new home did not immediately nullify duties under Delaware law.

Among other claims, the suit up for dismissal arguments on Tuesday accused Musk of using Tesla and its assets to promote his side businesses — including X, formerly Twitter, and xAI — at a cost to Tesla.

"There is nothing aspirational about a court order. There is also nothing aspirational about a code of ethics," said John T. Nicolaou of Lieff Cabraser Heimann & Bernstein, counsel to the Employees Retirement System of Rhode Island.

Nicolaou termed "remarkable" what he described as arguments that Tesla shareholder votes for directors named in the suit is "somehow a defense to a fiduciary duty claim."

"It is not true that the only important financial reporting obligation relates to finance," Nicolaou said. "The purpose of these requirements is to honestly inform shareholders about management conflicts of interest" and to comply with positive law.

Boris Feldman of Freshfields US, counsel to all the individuals named except Musk, said a strong majority of noncontroller shareholders support the company's initiatives, including those involving artificial intelligence. Litigation in Delaware, meanwhile, has focused on the Court of Chancery and its judicial officers, with arguments that they are protecting the rights of stockholders.

"But in the case of Tesla, for all current outside directors, in every election, they have been elected" by a majority ranging from 63% to 68%, with Musk holding his position by 95.3% most recently.

The largest of the now-consolidated suits, led by the Rhode Island employee pension fund, accused Musk of concealing his true intent to sell $16 billion worth of Tesla stock as his Twitter takeover took shape, allegedly allowing the shares to go for inflated prices to buyers kept in the dark about the true purpose.

Tesla's stock price dropped after the public learned of Musk's plan to buy Twitter, triggering reports that he and his brother Kimball, a board member, would have made $2 billion less on their sales had the plan come to light.

On Tuesday, however, Feldman told the chancellor that the company's shares hit a record high, valuing the business at $1.4 trillion — or 13 times that of Ford and General Motors combined — while shares have appreciated at more than double the rate of the S&P 500 index.

"This matters because it relates to why shareholders continue to support this board and its management, even though they may be unconventional," Feldman said.

Delaware's Supreme Court one day earlier took under advisement arguments on an appeal from Chancellor McCormick's strike-down of Musk's $56 billion, multiyear compensation plan last year, along with questions regarding how he could regain the original benefit if the decision is reversed.

In a brief, the stockholders argued that to the extent the case presents some novel issues, it is because "the [Tesla] directors are using unprecedented tactics to evade Delaware law."

The stockholders also argued that, although derivative cases can require an initial demand that independent stockholders first have a chance to pursue claims on behalf of the company, the strength of the case and board conflicts would have undercut Tesla's chance at recovery.

"A demand futility analysis turns on the independence of each person on the board," said Marcus E. Montejo of Prickett Jones & Elliott PA, counsel to the stockholders. "The whole point of the underlying policy demand is about the presumption of independence."

Tesla had argued that its conversion to a Texas corporation invalidated stockholders' claim that Delaware was the proper forum for the dispute, the complaint noted.

"The Texas bylaw's presumptive validity doesn't invalidate Delaware bylaws that govern this action," Montejo argued.

The litigation was consolidated under Employees' Retirement System of Rhode Island v. Elon Musk et al., case number 2024-0631; Cleveland Bakers and Teamsters Pension Fund et al. v. Elon Musk et al., case number 2024-0646; and Perry v. Musk et al., case number 2024-0560, with an order for coordination on briefing and dismissal arguments.

The Employees' Retirement System of Rhode Island is represented by Marcus Montejo, Bruce Jameson, Kevin Davenport, John Day and Seth Ford of Prickett Jones & Elliott PA and Daniel Chiplock, John Nicolaou, Sean Petterson, Richard Heimann, Katherine Benson and Bruce Leppla of Lieff Cabraser Heimann & Bernstein LLP.

The Cleveland Bakers and Teamsters Pension Fund as well as Daniel Hazen and Michael Giampietro are represented by Christine M. Mackintosh, Vivek Upadhya and William G. Passannante II of Grant & Eisenhofer PA, Thomas Curry, David J. Schwartz, David L. Wales and Adam D. Warden of Saxena White PA, and Brian Schall of The Schall Law Firm.

Tesla Inc is represented by Rudolf Koch and Andrew L. Milan of Richards Layton & Finger PA, John L. Reed and Ronald N. Brown III of DLA Piper, and Brian T. Frawley and Matthew A. Schwartz of Sullivan & Cromwell.

Elon Musk is represented by Michael A. Barlow, Shannon M. Doughty, Alex B. Spiro, Christopher D.

Kercher and Jonathan E. Feder of Quinn Emanuel Urquhart & Sullivan LLP.

Tesla's directors are represented by David E. Ross, Garrett B. Moritz and Thomas C. Mandracchia of Ross Aronstam & Moritz LLP and Boris Feldman, Doru Gavril and Rebecca Lockert of Freshfields US.

--Editing by Philip Shea.

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Purdue Fights Baltimore Objection Ahead Of Ch. 11 Plan Trial

By **Alex Wittenberg**

Law360 (October 22, 2025, 4:46 PM EDT) -- Purdue Pharma LP told a New York bankruptcy judge on Wednesday it is concerned a recent objection to its Chapter 11 plan brought by the city of Baltimore could disrupt its case just weeks before the drugmaker is set to begin trial on a deal that creditors overwhelmingly support.

At a hearing, an attorney for Purdue, Benjamin S. Kaminetzky of Davis Polk, said the debtor has "no idea what Baltimore is up to," criticizing the city's "wildcard" move to object to Purdue's bankruptcy plan at a late stage in the more than six-year-old case.

U.S. Bankruptcy Judge Sean H. Lane also questioned the timing of Baltimore's objection filed on Oct. 7, urging the city to negotiate with Purdue as the debtor prepares for a trial on its Chapter 11 plan slated to start in November.

"You obviously join a case very much in progress," Judge Lane said to an attorney representing Baltimore. "Trial by ambush went out in the Middle Ages."

Baltimore's mayor and city council said in their objection that Purdue's Chapter 11 plan proposes to provide disparate treatment to creditors based on whether they agree to legal releases for members of the Sackler family, purportedly violating equal treatment requirements of the Bankruptcy Code.

Purdue's plan puts non-federal government claimants into a single class and "discriminates" among them by giving preference to those who opt to release the Sacklers, the city charged. Claims from those who do not grant the release would be put on hold for at least two years, and Purdue's plan does not allow those claimants to be paid interest for the delay, according to the objection.

As a result, Purdue's latest Chapter 11 plan contravenes a U.S. Supreme Court ruling that rejected an earlier Purdue reorganization deal by providing a "de facto" nonconsensual third-party release, the city said.

"Any creditor that refuses the release is punished severely by the plan," the Baltimore entities said. "They are denied equality of treatment and any semblance of meaningful choice: releasing the Sackler shareholders is a de facto requirement of preserving a claim against the debtors."

At the hearing, Judge Lane pressed Baltimore's counsel, Allan B. Diamond of Diamond McCarthy, for information about the objection.

Diamond said his firm had been retained only a few days ago and was working "around the clock" to try to pare down a witness and exhibit list to be used at the confirmation hearing.

Judge Lane offered counsel for Purdue and Baltimore the opportunity to confer with him by phone about the objection while also stressing Baltimore would not be exempt from deadlines in the case.

"You joined a case in progress," Judge Lane said. "It does not reset anything for purposes of the case. The deadlines are the deadlines."

Purdue Pharma, which filed for Chapter 11 protection in September 2019, said in a news release on Tuesday that more than 99% of voting creditors support its Chapter 11 plan. The $7.4 billion deal would settle claims against it brought by individuals and governments over the company's role in the opioid crisis and give creditors the choice of whether to release claims against the Sacklers.

In June, Judge Lane allowed Purdue to **send** its Chapter 11 plan to creditors for voting. The proposal, **unveiled** in March, calls for Purdue's former owners in the Sackler family to contribute up to $6.5 billion.

Purdue's confirmation hearing in November comes more than a year after the Supreme Court decided that the Bankruptcy Code didn't authorize the kind of nonconsensual third-party releases contained in a previous Chapter 11 plan proposed by the company.

The debtor says its latest settlement **incorporates that ruling** by including an opt-in mechanism under which holders of direct claims against nondebtors, such as the Sacklers, will have to affirmatively sign on to granting releases of those claims.

If approved, Purdue's plan will transfer the company's assets to a new public benefit company that will be "100% devoted to improving the lives of Americans," Purdue said in a statement in March.

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

The Baltimore mayor and city council are represented by Christopher D. Johnson, Justin Strother, Brian Hogue and Allan B. Diamond of Diamond McCarthy LLP.

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

--Additional reporting by Rick Archer. Editing by Philip Shea.

Update: This story has been updated to clarify the effect of Purdue's proposed Chapter 11 plan.

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SDNY OpenAI Order Clarifies Preservation Standards For AI

By **Philip Favro** (October 22, 2025, 3:59 PM EDT)


Philip Favro

The widespread use of artificial intelligence has led to inevitable questions regarding the discoverability of such information in litigation.

Are AI prompts and outputs discoverable? Is other AI-related content, like user information and settings, discoverable? If AI content is discoverable, what is the nature and extent of a party's corresponding preservation and production obligations?

These questions only intensified in May when the U.S. District Court for the Southern District of New York imposed broad preservation **obligations** on a defendant in In re: OpenAI Inc. Copyright Infringement Litigation, one of the many bellwether copyright lawsuits seeking to address the legality of AI companies' use of plaintiffs' copyrighted works.

After this order, organizations may be wondering if they now must preserve all AI prompts, outputs and related information that could have some connection to anticipated or ongoing litigation.

Commentators have only exacerbated this concern by suggesting that preservation obligations for AI content should extend to all potentially relevant evidence. This "preserve everything" mantra runs contrary to the 2015 amendments to Rule 37(e) of the Federal Rules of Civil Procedure.[1] Those amendments implemented a national standard for the imposition of severe sanctions based on a standard of reasonableness and was specifically designed to reduce the problem of overpreservation.[2]

Despite this concern, the Southern District of New York in September issued instructive case law that both addresses and reasonably circumscribes parties' preservation and production obligations regarding AI content. In the same OpenAI lawsuit involving the previously issued broad preservation order, the court rejected the movant's request for broad discovery relief while limiting preservation obligations to discoverable information under the Federal Rules of Civil Procedure.

By doing so, the court emphasized that traditional notions of relevance and proportionality apply to preservation obligations regarding AI content. With these standards firmly reinforced, organizations may consider adopting a more reasonable approach for handling preservation of AI content for anticipated or pending litigation.

What AI Content Could Be Requested in Discovery?

Organizations should have a basic understanding of the information that AI technologies may retain and that could be subject to discovery in litigation.

The most obvious sources of information include: (1) prompts or inputs from users who are seeking information from AI technologies; and (2) the corresponding outputs or results that AI technologies generate in response to those prompts.

Inputs may include basic written queries. But they may also include a variety of other content uploaded into the AI technology. Prompts can include documents, audio and video files, images, computer code, and so forth. Similarly, outputs will also vary, ranging from simple written responses to articles, images, music, movies, drawings, diagrams and other results. Tools also may retain time stamp information for this information, i.e., the dates and times when users entered the information and the AI tools generated outputs.

Other content could include user information and settings. This information may range from elementary details, like usernames, email addresses and the nature of the subscribed services, to more technical data, such as application programming interface keys that developers use to integrate AI technology content into corporate applications and workflows.

There are also AI system or technical logs, which delineate information regarding the performance of AI technologies, along with metadata reflecting any number of user or AI-generated details. Not to be overlooked is AI training data, which includes the vast amounts of information on which AI tools have been trained to generate their responses.

Standards for Preserving Discoverable Information in Federal Court

Once organizations understand the sources of AI content that could be subject to discovery, they can next turn to grasping what courts expect in terms of preserving discoverable AI content for litigation.

Since December 2015, the Federal Rules of Civil Procedure have required litigants to preserve unique, discoverable information — including electronically stored information — once litigation is reasonably anticipated or is pending.[3]

Under the rules, discoverable information includes materials that are relevant to the claims or defenses in a particular lawsuit and proportional to the needs of that case.[4] Discoverability under Rule 26(b)(1) does not include information that is merely relevant or potentially relevant.

Once the duty to preserve triggers, a party must take reasonable steps to preserve discoverable information. As Rule 37(e) makes clear, reasonableness is the benchmark against which a preserving party's efforts will be measured. Perfection is not the standard.[5]

The May 2025 OpenAI Blanket Preservation Order

While these standards are not subject to reasonable disagreement, their application to AI content was thrown into question by the OpenAI blanket preservation order from earlier this year.

On May 13, the court issued the preservation order in a copyright lawsuit that The New York Times brought against OpenAI and Microsoft arising from their use of The New York Times' copyrighted information to train their AI technologies. In its order, the court directed "OpenAI to preserve all output log data on a going forward basis."[6] In other words, OpenAI would need to keep all AI outputs generated in response to user prompts, irrespective of its retention policies or applicable data protection or privacy laws.

A few days later, the court denied OpenAI's motion for either reconsideration or modification of its May 13 decision.[7] OpenAI eventually filed objections to the blanket preservation order, which the court overruled, leaving the preservation order in place at that time.[8]

September 2025 OpenAI Order Rejecting Preservation and Production of AI Content

While the May 13 order raised concerns for organizations over the nature and extent of their preservation obligations for AI content, the court issued a subsequent order on Sept. 19 that should somewhat ameliorate those concerns.

In the Sept. 19 order, the court — in response to a separate AI content preservation issue — held that the Times did not need to preserve certain AI prompts and outputs since they were neither relevant nor proportional in that case.[9]

In particular, the court addressed whether the Times needed to preserve and produce prompt and output data from its internal AI tool, known as ChatExplorer. ChatExplorer, which the Times developed to "interface with OpenAI's GPT models using OpenAI's API," maintains logs of prompts from New York Times employees and outputs from the ChatExplorer tool.

OpenAI and Microsoft sought discovery of the ChatExplorer logs. They argued that the Times employee prompts and outputs were relevant to their copyright defenses because such data would reflect how the Times uses OpenAI's technologies in its journalism business. The defendants requested an order compelling production of the ChatExplorer log data, along with leave to conduct a Rule 30(b)(6) deposition to explore the nature and extent of The New York Times' failure to preserve ChatExplorer log data.

However, the court rejected defendants' arguments, concluding that the requested ChatExplorer log data was not relevant or proportional to the needs of the case. Though powered by OpenAI's technology, the court indicated that the Times' use of ChatExplorer was not relevant because it does not bear on one of the key issues in the case: whether defendants used the Times' copyrighted information.

Nor, as the court observed, was ChatExplorer log data relevant because it encompassed The New York Times' copyrighted materials, which the Times owns and upon which it "cannot infringe its own copyrights."

The court also found that the requested discovery was disproportionate. The Times detailed the burdens that its review and production of the ChatExplorer log data would entail, i.e., more than 80,000 entries reviewed for attorney-client and reporter's privileges, which would require 1,333 hours to review and cost more than $1 million.

In contrast, the defendants asserted that the Times' production burden would be minimal, a conclusory argument the court deemed insufficient to overcome the Times' fact-specific showing.

Accordingly, the court denied the defendants' discovery demands, along with their requested Rule 30(b)(6) deposition on preservation issues. As the court observed, "[b]ecause the ChatExplorer Logs are not relevant, the inadvertent loss of these logs does not implicate [Federal Rule of Civil Procedure] 37(e)."

Adopting Reasonable Methods to Preserve AI Content

The Sept. 19 order is instructive on the nature of the preservation standards that should apply to AI content. By denying the defendants' discovery motions, the order clarifies that preservation benchmarks under both the common law and Rule 37(e) unequivocally apply to AI content.

As a result, parties should consider dispensing with a keep-everything approach when it comes to AI content. This is consistent with the prevailing practice sustained by courts for nearly 30 years that a litigant need not keep every email, every piece of paper, or every speck of digital dust that is relevant to anticipated or pending litigation.[10]

Instead, the order teaches that parties may adopt reasonable preservation measures regarding discoverable AI information.

As a starting point, organizations should consider adding AI content to their ESI checklists that identify sources of relevant information. And it's probably not good enough to generally reference AI as a broad category of discoverable ESI. Instead, the ESI checklist should delineate specific types and categories of AI, such as prompts, outputs, user information, user settings and so forth. In some instances, more nuanced descriptions of these broader categories may be warranted.

Next, enterprises should determine whether custodians of discoverable ESI are using AI tools. This includes enterprise-approved and consumer grade applications.

Organizations should not presume that employee custodians are not using consumer applications simply because they have banned the use of these tools. Just like with text messaging and other communications applications, enterprises should expect that their employees are using consumer AI applications for work, and then seek to identify the nature and extent of custodian AI uses. This applies to both consumer and enterprise tools.

Organizations should then determine whether ESI custodians or noncustodial ESI managers have possession, custody or control of discoverable AI content. Because different AI technologies may store content in distinct locations, organizations should be aware of the specific locations where tools retain content and then take appropriate measures to identify discoverable information.

In addition, companies should ascertain whether retention policies are in place for discoverable AI content and assess their impact on the availability of such information.

By taking these steps, organizations can more readily confirm that they have a reasonable and defensible preservation process in place that accords with legal standards for preserving discoverable AI content.

Philip Favro is the founder and governing member at Favro Law PLLC.

[1] See Fed. R. Civ. P. 37(e), 2015 committee note ("Due to the ever-increasing volume of electronically stored information and the multitude of devices that generate such information, perfection in preserving all relevant electronically stored information is often impossible . . . This rule recognizes that 'reasonable steps' to preserve suffice; it does not call for perfection.").

[2] See generally Philip J. Favro, The New ESI Sanctions Framework under the Proposed Rule 37(e) Amendments, 21 Rich. J.L. & Tech. 8 (2015).

[3] See Oracle Am. Inc. v. Hewlett Packard Enter. Co., 328 F.R.D. 543, 553 (N.D. Cal. 2018).

[4] Fed. R. Civ. P. 26(b)(1).

[5] See Fed. R. Civ. P. 37(e), 2015 committee note.

[6] In re: OpenAI Inc., Copyright Infringement Litig., No. 23-CV-11195, 2025 WL 1442678 (S.D.N.Y. May 13, 2025).

[7] In re: OpenAI Inc., Copyright Infringement Litig., No. 23-CV-11195, 2025 WL 1443780 (S.D.N.Y. May 16, 2025).

[8] See In re: OpenAI Inc., Copyright Infringement Litig., No. 23-CV-11195, ECF No. 712 (S.D.N.Y. June 26, 2025). On October 9, 2025, the parties filed a stipulation, subsequently entered as an order, that terminated OpenAI's ongoing preservation obligations, effective September 26, 2025. Among other things, the order provided that OpenAI would continue to maintain the output log data it already preserved with certain limited exceptions. OpenAI has also agreed to "preserve on a going-forward basis output log data" from various media entities. See In re: OpenAI Inc., Copyright Infringement Litig., No. 23-CV-11195, ECF No. 922 (S.D.N.Y. Oct. 9, 2025).

[9] In re: OpenAI Inc., Copyright Infringement Litig., --- F. Supp. 3d ---, 2025 WL 2691297 (S.D.N.Y. 2025).

[10] See Concord Boat Corp. v. Brunswick Corp., No. LR-C-95-781, 1997 WL 33352759 (E.D. Ark. Aug. 29, 1997); Zubulake v. UBS Warburg LLC, 220 F.R.D. 212 (S.D.N.Y. 2003) ("Zubulake IV").
