

Securities

Freshworks, Investor Dispute Recovery for Some Stock Declines

Oct. 24, 2025, 2:33 PM PDT

Freshworks Inc. and an investor each told the Ninth Circuit the Securities Act is clear about a shareholder's ability to recover for losses when the stock price remains above the offering price.

But the software company and Mohan Sundaram view the meaning of that "clear" provision in opposite ways.

Section 11(e) of the Securities Act of 1933 "expressly limits recovery to declines that occur *below* the offering price," Freshworks told the US Court of Appeals for the Ninth Circuit on Thursday.

That means Sundaram, who bought above the initial public offering price and seeks to recover for price declines that occurred before the stock sank below the IPO price, "has no recoverable damages," Freshworks and its underwriters said in their brief.

"In nearly a century of '33 Act jurisprudence, no court has ever permitted recovery for losses occurring above the offering price," the companies said.

Freshworks and the underwriters are defending the proposed class action's dismissal by Judge Charles Breyer of the US District Court for the Northern District of California.

Meanwhile, Sundaram argued Section 11(e) provides a clear, albeit complex, "loss limitation formula."

"Because the values for all relevant variables are known and undisputed here, calculating Plaintiff's loss limitation amount is simply a matter of correctly doing the relevant math," Sundaram said in his July 31 opening brief.

In his case, the loss limitation amount is roughly \$21 per share, and his "unchallenged" damages are at least \$10.75 per share, he says. He purchased 1,000 shares, according to the brief.

His reading of the statute "does full justice to every aspect of the statute and Congress's stated concerns," he said.

“What the statute does *not* provide, however, is *immunity* for investor losses” under the formula, “simply because those losses were suffered while the security was still trading above its offering price,” he said.

Scott & Scott Attorneys at Law LLP and the Schall Law Firm represent Sundaram. Cooley LLP represents Freshworks. Orrick, Herrington & Sutcliffe LLP represents the underwriters.

The case is Sundaram v. Freshworks, Inc. , 9th Cir., No. 25-3127, brief 10/23/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Securities

Better Therapeutics SPAC Deal Suit Ends in \$1 Million Settlement

Oct. 24, 2025, 1:26 PM PDT

Investor claims over a blank-check deal that took Better Therapeutics Inc. public will be resolved with a \$1 million cash settlement, a Delaware judge ruled Friday.

The Delaware Chancery Court had previously allowed investor John Solak to advance his lawsuit claiming the transaction created a windfall for Mountain Crest Capital LLC insiders. Vice Chancellor Bonnie W. David accepted the settlement after a hearing in Georgetown, Del., according to a docket update.

David also approved a \$325,000 fee award sought by Solak's attorneys from Cooch & Taylor PA and Newman Ferrara LLP.

Mountain Crest, a serial SPAC sponsor, had argued last year that the high percentage of shares redeemed in the transaction showed that stockholders had enough reliable information to participate

The class action was part of a steady stream of litigation prompted by SPAC mergers in Chancery Court, the country's premier venue for M&A disputes. The deals, known as de-SPACs, give private businesses a shortcut to public markets by combining them with a shell entity.

The Better Therapeutics case gave David's predecessor, Vice Chancellor Sam Glasscock III, the opportunity to liken SPAC litigation to the slow digestion of large snakes. "The adult anaconda, they say, eats perhaps once a year; open its belly, and you will see not what it is eating, but what it has eaten in times past," Glasscock wrote in an October 2024 opinion, "The sorting out of the fiduciary problems inherent in the SPAC form, together with other factors, has reduced the SPAC population on the ground, but the bulge of SPAC carcasses continues to be digested in equity."

Mountain Crest is represented by Dailey LLP.

The case is Solak v. Mountain Crest Capital LLC , Del. Ch., No. 2023-0469, settlement hearing 10/24/25 .

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

Rivian to pay \$250M to settle investor suit

DJ [dailyjournal.com/articles/388257-rivian-to-pay-250m-to-settle-investor-suit](https://www.dailyjournal.com/articles/388257-rivian-to-pay-250m-to-settle-investor-suit)

[Share](#)

Oct. 27, 2025

Electric truck maker Rivian Automotive Inc. has agreed to a \$250 million settlement resolving claims it misled investors about the cost of producing its R1T pickup and R1S SUV before going public in 2021. The deal, subject to court approval, will compensate shareholders who bought stock during the months after Rivian's IPO.

The Rivian R1T electric truck in Pound Ridge, N.Y., Nov. 9, 2021. / New York Times News Service

Electric vehicle maker Rivian Automotive Inc. will pay \$250 million to settle a class action accusing the Irvine-based company of misleading investors about the cost of producing its first vehicles before its 2021 initial public offering.

The proposed settlement, filed Thursday in the Central District of California, would resolve claims brought by shareholder Charles Larry Crews Jr., who alleged that Rivian underpriced its flagship R1T pickup and R1S SUV models by thousands of dollars before the IPO. *Charles Larry Crews Jr. v. Rivian Automotive Inc.*, 2:22-cv-01524-RGK-E (C.D. Cal., filed Mar. 07, 2022)

Under the agreement -- which is subject to court approval -- Rivian will compensate investors who purchased Class A common stock between Nov. 10, 2021, and March 10, 2022. According to court filings, the company will fund the settlement with \$67 million in directors' and officers' insurance and \$183 million in cash.

"The company denies the allegations in the suit and maintains that this agreement to settle is not an admission of fault or wrongdoing," Rivian said in a statement. The company added that settling "will enable Rivian to focus its resources on the launch of its mass-market R2 vehicle in the first half of 2026."

Boris Feldman, a partner at Freshfields Bruckhaus Deringer LLP, represents Rivian and declined to comment beyond the company's statement. Jacob A. Walker at the San Mateo firm of Block & Leviton, representing Crews, was not available for comment.

The lawsuit alleged that Rivian's registration and offering documents misrepresented production costs for its R1 vehicles. Those concerns surfaced in March 2022, when Rivian abruptly raised prices on the R1T and R1S by nearly 20%, citing inflation and rising supply-chain costs. The announcement sent Rivian's stock tumbling and angered preorder customers who believed their orders were price-locked.

In response, CEO RJ Scaringe issued a letter acknowledging the company's misstep. "Earlier this week, we announced pricing increases that broke the trust we have worked to build with you," Scaringe wrote. "Since originally setting our pricing structure, and most especially in recent months, a lot has changed. The costs of the components and materials that go into building our vehicles have risen considerably."

Scaringe admitted that Rivian "wrongly decided to make these changes apply to all future deliveries, including pre-existing configured preorders," adding, "While this was the logic, it was wrong and we broke your trust in Rivian."

Rivian quickly reversed the price increases for existing orders and offered to reinstate canceled preorders at their original prices. Crews filed his lawsuit days later, alleging that Rivian's IPO disclosures understated production costs and misled investors, leading to the post-hike stock decline. The case received class-action certification in July 2024.

If approved, the settlement will resolve all investor claims against Rivian and its executives. The company reported \$4.8 billion in cash and equivalents as of June 30, 2025.

Rivian is preparing to launch its next-generation R2 SUV in 2026, which it says will be more affordable and built at a larger scale -- up to 150,000 vehicles annually at its Illinois plant. Construction is also underway on a new manufacturing facility in Georgia for future models.

#388257

Douglas Saunders Sr.

Law firm business and community news

douglas_saunders@dailyjournal.com

Securities Litigation

Elon Musk Can't Raise 'Advice of Counsel' Defense in Shareholder Suit

U.S. Magistrate Judge Gabriel Gorenstein explained that Musk's Quinn Emanuel Urquhart & Sullivan legal team can't assert the advice-of-counsel defense while also refusing to hand over information on the legal advice given to Musk when he began buying Twitter Inc. stock.

October 24, 2025 at 01:47 PM By **Alyssa Aquino**



Tesla CEO and space X founder Elon Musk, and Twitter headquarters. Credit: Shutterstock.com/ALM

A federal magistrate blocked Elon Musk from claiming that he had acted on the advice of his attorneys as a defense to shareholder allegations that, before purchasing Twitter, the billionaire amassed a significant chunk of the social media platform without letting the public know.

U.S. Magistrate Judge Gabriel Gorenstein explained that Musk's Quinn Emanuel Urquhart & Sullivan legal team can't assert the advice-of-counsel defense while also refusing to hand over information on the legal advice given to Musk when he began buying Twitter Inc. stock.

"It would obviously be unfair for defendants to be permitted to offer evidence or argue that they had a good faith belief that their alleged conduct was lawful while at the same time barring plaintiff from examining the evidence that would most obviously put the claim to the test: the

advice defendants' attorneys gave them about that very conduct," Gorenstein wrote in [a Thursday order](#).

In issuing the order, Gorenstein noted that it was "unclear" whether Musk's team planned on using the defense.

"Thus, defendants are now precluded from offering argument or evidence that they had a good faith belief in the lawfulness of their conduct after they consulted with counsel on April 1, 2022," Gorenstein said.

The order comes in closely watched securities litigation over Musk's acquisition of Twitter, which he rebranded as X after the buyout closed in October 2022. The shareholder claims, which are unfolding in the U.S. District Court for the Southern District of New York and are being handled by lead plaintiff's counsel Bernstein Litowitz Berger & Grossmann, are largely echoed in a separate lawsuit filed by the U.S. Securities and Exchange Commission.

In the case, shareholders alleged that Musk began secretly purchasing shares in the social media platform in January 2022. Investors must disclose when they own more than 5% of a publicly traded company, but Musk only disclosed his stake on April 4, after he owned 9.2% of the company's shares. That interest made him the largest shareholder of Twitter at the time.

Twitter's stock rose 27% after Musk's ownership was revealed, prompting shareholder allegations that the billionaire hid his ownership to buy more stock at a premium.

The lawsuit is still in its beginning stages, with discovery underway. But in August, Bernstein Litowitz had sought court intervention for an apparent discovery dispute.

Musk had indicated he would raise a good-faith defense and argue that he acted on the advice of McDermott Will & Emery and Quinn Emanuel, the plaintiffs said. But at the same time, Musk is claiming attorney-client privilege over documents concerning those firms' involvement, the plaintiffs said. They argued that Musk couldn't use his attorneys as a "shield and a sword."

In issuing the order preventing the advice-of-counsel defense, Gorenstein said

Counsel from Bernstein Litowitz declined to comment. Counsel for Musk didn't respond to a request for comment.

Page printed from: <https://www.law.com/newyorklawjournal/2025/10/24/elon-musk-cant-raise-advice-of-counsel-defense-in-shareholder-suit/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

Securities

This Week in Chancery Court: Tesla's Lawyer Fees Appeal, Masimo

Oct. 27, 2025, 2:00 AM PDT

Lawyers for Tesla Inc. and its board of directors, including CEO Elon Musk, return yet again to the Delaware Supreme Court this week.

This time they're asking the high court to overturn \$176 million in legal fees the Delaware Chancery Court awarded to shareholder attorneys who challenged four years of pay for the electric vehicle-maker's board.

Here's a look at the calendars for both courts this week:

Wednesday: In re Tesla, Inc. Dir. Comp. S'holder Litig., Del., No. 53,2025, oral arguments 10/29/25.

At issue: The board compensation lawsuit targeted the pay from 2017 to 2020 for Tesla directors including Oracle Corp. founder Larry Ellison, Musk's brother Kimbal, and a son of media mogul Rupert Murdoch. The attorney fee award came in a settlement where the board will return stock and options valued up to \$735 million and forgo three years of pay allegedly worth \$184 million. The legal fees would go to the firms that led the litigation: McCarter & English LLP, Fields Kupka & Shukurov LLP, and Bleichmar Fonti & Auld LLP.

Court action: The Delaware Supreme Court hears arguments in Dover, Del.

Tesla Appeals \$176 Million Legal Payout in Board Comp Case (1)

Wednesday: Cleveland Bakers and Teamsters Pension Fund v. Bezos, Del., No. 127, 2025, oral arguments 10/29/25.

At issue: A pension fund wants to revive its lawsuit claiming that Amazon.com Inc. founder Jeff Bezos contributed to delays in its space satellite project by relying on his own rocket startup, Blue Origin LLC, instead of Musk's SpaceX. The Delaware Chancery Court dismissed the case, finding Amazon's board was free from conflicts of interest when it made the decision to go with Blue Origin.

Court action: The Delaware Supreme Court hears arguments in Dover, Del.

Bezos-Musk Space Rivalry Dispute Goes to Delaware Supreme Court

Thursday: Masimo Corp. v. Kiani, Del. Ch., No. 2024-1086, hearing 10/30/25.

At issue: Ousted Masimo Corp. founder Joe Kiani seeks to disqualify Quinn Emanuel Urquhart & Sullivan LLP from representing the medical equipment company in a pending Chancery Court lawsuit against him. The firm also represented Kiani in previous litigation involving Politan Capital Management. Kiani left Masimo in September 2024, and a proxy battle has spawned parallel litigation in Delaware, New York, and California.

Court action: The hearing before Vice Chancellor Nathan A. Cook will take place in Wilmington, Del.

Masimo Fails to Disqualify Law Firm on Ousted Founder's Team (1)

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Musk could leave Tesla if \$1 trillion pay plan is rejected, chair warns

 [reuters.com/legal/transactional/musk-could-leave-tesla-if-1-trillion-pay-plan-is-rejected-chair-warns-](https://www.reuters.com/legal/transactional/musk-could-leave-tesla-if-1-trillion-pay-plan-is-rejected-chair-warns-2025-10-27)
2025-10-27

Reuters

October 27, 2025

[\(TSLA.O\)](#)  [opens new tab](#) as CEO if his proposed \$1 trillion pay package was not approved, Chair Robyn Denholm warned in a letter to shareholders on Monday.

The appeal comes ahead of the November 6 annual meeting, with Tesla's board having faced repeated criticism for not acting in shareholders' best interests and governance experts and advocacy groups questioning its independence and oversight of Musk's influence.

The proposed performance-based plan was designed to retain and motivate Musk to continue leading Tesla for at least another seven-and-a-half years, Denholm said in the letter.

Elon Musk attends the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS//File Photo [Purchase Licensing Rights](#)  [opens new tab](#)

Musk's leadership was "critical" to Tesla's success, she said, and warned that without a plan that properly incentivizes him, the company could lose his "time, talent and vision". Musk's role was vital as Tesla seeks to become a global leader in artificial intelligence and autonomous technology, she said.

The proposed package would grant Musk 12 tranches of stock options tied to ambitious targets, including a market capitalization of \$8.5 trillion and milestones in autonomous driving and robotics.

Denholm's letter portrays the package as necessary to align Musk's incentives with shareholder value and long-term growth, also urging investors to re-elect three long-serving directors who have worked closely with him.

Tesla's board has been under scrutiny for years over its close relationship with Musk. A Delaware court earlier this year struck down his 2018 pay deal, finding it was improperly awarded and negotiated by directors who were not fully independent.

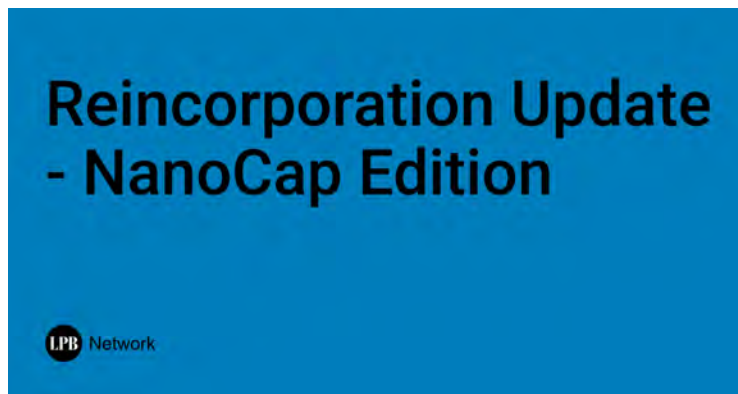
Reporting by Akash Sriram in Bengaluru; Editing by Pooja Desai

Reincorporation Update - NanoCap Edition

 [businesslawprofessors.com/2025/10/reincorporation-update-nanocap-edition](https://www.businesslawprofessors.com/2025/10/reincorporation-update-nanocap-edition)

Benjamin P. Edwards

October 25, 2025



Although not much time has passed since I put out [updated tables](#) for Nevada and Texas on October 9, I've found another four reincorporations to Nevada recently, so I've updated these tables below. In the interest of making this readable, I've dropped the tables at the bottom and covered the stated rationales at the top.

The four recent firms announcing moves or attempts to move to Nevada include: (1) Oblong, Inc.; (2) HWH International Inc.; (3) Twin Vee PowerCats, Co.; and (4) Digital Brands Group, Inc. In terms of market capitalization, these are all nano-cap firms with market capitalizations under \$50 million. Digital Brands Group is larger than the remainder combined with a market capitalization of roughly \$38 million. This is a group where cost concerns about franchise taxes may be more material.

The stated rationales cover franchise tax costs, litigation risk environments, transaction planning, books and records actions, and potential D&O savings. As I am reading more of these proxies, I'm also beginning to develop concerns that not every firm reincorporating to Nevada has consulted with a Nevada lawyer about Nevada law. I've added some mild finger wagging to try to help.

Before discussing these, I want to drop a few quick notes for counsel drafting filings around Nevada reincorporations.

- Nevada's statute online is out of date. You can access the [Nevada Revised Statutes](#) online, but you shouldn't trust them until they're updated. The [2025 revisions](#) to the Nevada statute went into effect on May 30, 2025 upon Governor Lombardo's signature. Westlaw has updated its version of the

Nevada Revised Statutes. As of today, LexisNexis has not yet updated and is just as out of date as the Nevada website.

- The Nevada statute exempts public companies from [stockholder inspection](#) actions so long as they keep making their securities filings. The 15% threshold is for private companies.
- The Nevada statute does define controlling stockholders. It's NRS 78.240. It provides that a controlling stockholder is "a stockholder of a corporation having the voting power, by virtue of such stockholder's relative beneficial ownership of shares or otherwise pursuant to the articles of incorporation, to elect at least a majority of the corporation's directors." The statutory duty "is to refrain from exerting undue influence over any director or officer of the corporation with the purpose and proximate effect of inducing a breach of fiduciary duty by such director or officer." You will not currently find this on the Nevada website or LexisNexis. You should pull it up on Westlaw or use the legislative materials.

Stated Rationales

Franchise Tax Cost Savings

Oblong

For this particular subset of firms, cost appears to be a material factor. Oblong, Inc. explained that its board seeks to move to Nevada for cost reasons, explaining that it expects to save at least about \$175,000 per year. This is how the company put it:

We anticipate tax savings of approximately \$175,000 to \$200,000 on an annual basis. For the 2025 calendar year, we expect **Delaware franchise tax expense will be approximately \$175,000 to \$200,000**. We anticipate that, if we remain a Delaware corporation, for the 2026 calendar year, our Delaware franchise taxes will be approximately the same as 2025 (based on our current capital structure and assets). By comparison, if we redomesticate in Nevada, our current annual fees will consist of an annual Nevada state business license fee of \$500, and the current fee for filing the Company's annual list of directors and officers, based on the number of authorized shares and their par value, would equal \$400. (emphasis added)

Interestingly, Oblong's proxy gives two different numbers for its expected franchise tax cost in Delaware. On page 29, it says it expects \$175,000 to \$200,000 in franchise taxes for 2025. On page 32 it states that it expects the franchise taxes for 2025 will be \$165,000. That's at least a \$10,000 difference.

HWH International

Similarly, HWH also identified cost a concern. Notably, HWH moved via written consent so there will not be a vote. It succinctly explained that “[t]he Company, while incorporated in the state of Delaware, is required to pay a corporate franchise tax each year, however the State of Nevada does not have a franchise tax. **We paid franchise tax in the amount of \$48,810 for the tax year 2024 and \$205,000 for the tax year 2023.** We estimate that we will save approximately \$37,000 per year on franchise taxes if this proposal is approved.” (emphasis added)

Twin Vee PowerCats

Twin Vee also identified franchise tax savings as a rationale, explaining that it recently “**paid approximately \$25,258** in franchise taxes to the state of Delaware, which will no longer be required to be paid if the Reincorporation is completed. If the Reincorporation is completed, our current annual fees in Nevada will consist of an annual state business license fee of \$500, plus the fee for filing our annual list of directors and officers based on the number of authorized shares and their par value, currently equal to \$60,000, for a total of \$75.” (emphasis added)

Digital Brands Group

Although Digital Brands also identified franchise tax cost savings, it did not specify what they would be. I took a quick look at the number of authorized shares (a billion shares of common stock authorized according to a [10-K](#)) and an out-of-date calculator from Delaware and came up with \$200,000 annually. I do not know if that is right and I don’t plan to spend any more time attempting to figure it out as no one is paying me to.

Lower D&O Insurance Premiums

Oblong

Oblong also contends that it hopes for lower D&O premiums as a Nevada firm. It identified “[p]otential cost savings in director and officer (D&O) insurance premiums from reduced litigation and litigation costs, including attorneys’ fees, which can be significant for corporate litigation.”

This potential and hope for lower D&O Premium benefit is something that a good number of firms have identified, but I have not yet been able to find any current D&O insurer that offers a discounted rate for Nevada firms. Nevada firms may end

up paying lower rates over time if they don't have any claims history, but there is not currently any insurer I know of that is offering a discount.

Concern About Delaware's Litigation Risk Environment

Oblong

Oblong also expressed concern about Delaware's litigation risk environment. It explained that "there has been an increased risk of opportunistic litigation for Delaware public companies, which has made Delaware a less attractive place of incorporation due to the substantial costs associated with defending against such suits. These costs are often borne by the Company's stockholders through, among other things, indemnification obligations, distraction to Company management and employees, and increased insurance premiums."

Twin Vee PowerCats

Twin Vee echoed this concern, stating that its board had "considered the increasingly litigious environment in Delaware, which has engendered less meritorious and costly litigation and has the potential to cause unnecessary distraction to our directors and management team and potential delay in our response to the evolving business environment."

Digital Brands Group

Digital Brands also echoed these concerns about litigation risk environments:

we believe the Nevada Reincorporation will result in less unmeritorious litigation against the corporation and our directors and officers, which in turn would better allow our directors and officers to focus on the business and save the Company the costs of such litigation. Though the DGCL was recently amended to, among other things, increase protections for officers of a corporation, we believe Nevada strikes a better balance between the benefits and costs of litigation to the Company and its stockholders than does Delaware because Nevada has a statute-focused approach to corporate law whereas Delaware's approach depends upon judicial interpretation that lends itself to greater uncertainty.

The increasing frequency of claims and litigation in Delaware brought by financially-interested law firms against corporations and their directors and officers creates unnecessary distraction and costs for businesses, especially businesses in competitive and innovative industries. The absence of statutory bright-line standards in Delaware for transactions that may involve a controlling stockholder has encouraged law firms to test new theories of liability and broaden the definition of who is in control, what transactions should be deemed conflicted and how strict the standards should be for cleansing such transactions. (emphasis added)

Predictability and Transaction Planning

Oblong

Oblong expressed concern about Delaware courts creating governance uncertainty and expressed a preference for Nevada's statutory approach. This is how it put it:

We believe that the recent variety in and **unpredictability of judicial interpretation in the Delaware courts will have a chilling effect on corporate decision-making**, which could result in a company not engaging in transactions potentially beneficial to stockholders. Nevada courts follow a more statute-based approach to director and officer duties that is less dependent on the vagaries of judicial interpretation in the Delaware courts. The Board considered recent amendments to the Delaware General Corporation Law (the "DGCL") that appear to attempt to address, at least in part, some of the uncertainty that has been created by recent Delaware court decisions, but the DGCL amendments are untested, subject to judicial interpretation and may not fully mitigate a variety of litigation and business planning concerns for the Company, and the Board believes that Nevada's statute-based approach provides greater certainty for corporate decision making, which, in turn will benefit our stockholders. (emphasis added)

Twin Vee PowerCats

Twin Vee also discussed predictability. It put it this way:

Nevada's statute-focused approach to corporate law and other merits of Nevada law and determined that Nevada's approach to corporate law is likely to foster more predictability than Delaware's approach at the current time. The Board believes that Nevada can offer more predictability and certainty in decision-making because of its statute-focused legal environment. NRS Chapter 78, which governs Nevada corporations, is generally recognized as a comprehensive and thoughtfully maintained state corporate statute. Among other things, the Nevada statutes codify the fiduciary duties of directors and officers, which decreases reliance on judicial interpretation and promotes stability and certainty for corporate decision-making. As we look to our planned growth, strategic decisions and plan for the years to come, removing ambiguity resulting from the prioritization of judicial interpretation can offer our Board and management clearer guideposts for action that will benefit our stockholders.

Concern about Books and Records Request Costs

Oblong

Oblong also identified Delaware 220 actions as a cost-driver for public firms in contrast to the Nevada approach which directs public company shareholders to the securities filings. It put it this way:

we may be subject to stockholder books and records inspection demands, pursuant to Section 220 of the DGCL, purportedly seeking to investigate alleged mismanagement and wrongdoing, which, in turn, may cause us to expend substantial legal fees and costs in responding to such demands, in addition to the time and distraction for our management team in gathering records and providing information to our lawyers. Although Section 220 of the DGCL was amended on March 25, 2025 (the “2025 DGCL Amendments”) to narrow the scope of such demands and increase the burden on stockholders for obtaining such records, we still expect fewer frivolous books and records demands under Nevada law, as inspection rights are more restricted for stockholders of a public company like Oblong.

Specifically, under the Nevada Revised Statutes (the “NRS”), the right of a stockholder of record to inspect books of account and financial statements does not apply to a corporation that furnishes stockholders a detailed, annual financial statement or that has filed certain reports required pursuant to the Exchange Act during the preceding 12 months. (emphasis added)

Digital Brands Group

Digital Brands also expressed this concern, stating that “Nevada law also takes a different approach than Delaware with respect to stockholder inspection rights, which we believe may balance stockholder rights to accountability while mitigating the unmeritorious use of inspection rights.”

Mild Finger Wagging

In the interest of helping make sure people get Nevada law right, I’ve got two things to highlight here. As Nevada’s law is public and available to everyone, I don’t know whether firms will want to clean these details up before any vote or not. I’m calling these little notes finger wags to convey some chiding disapproval.

Books and Records

It’s worth noting that Digital Brands and Oblong describe Nevada law differently. Digital Brands described Nevada law on stock holder inspection rights this way:

The right to inspect the books of account and all financial records of a corporation, to make copies of records and to conduct an audit of such records is granted only to a stockholder who owns at least 15% of the issued and outstanding shares of a corporation, or who has been authorized in writing by the holders of at least 15% of such shares. A Nevada corporation may require a stockholder to furnish the corporation with an affidavit that such inspection is for a proper purpose related to his or her interest as a stockholder of the corporation.

This is incomplete. It's a direct quote from the [Nevada statute](#), but it does not mention that this provision wouldn't apply to Digital Brands because it's a public company. The same statutory provision, as Oblong noted, goes on to say "the provisions of this section do not apply to any corporation that furnishes to its stockholders a detailed, annual financial statement or any corporation that has filed during the preceding 12 months all reports required to be filed pursuant to section 13 or section 15(d) of the Securities Exchange Act, 15 U.S.C. §§ 78m or 78o(d)."

Interestingly, the same language in the Digital Brands proxy also shows up in [a number of other proxies](#), including BAIYU Holding and Elevai Labs Inc.

Controlling Stockholders

Twin Vee describes Nevada law on controlling stockholders this way:

NRS 78.140 provides a statutory framework for the approval of transactions between a corporation and a director or officer who has an interest in such transaction. Under this framework, such an interested transaction will not be void or voidable if: (a) the interest is disclosed to the board of directors or a committee thereof, and the disinterested directors or committee members approve such transaction in good faith; (b) the interest is disclosed to the stockholders of the corporation, and the stockholders holding a majority of the voting power approve or ratify the transaction in good faith; (c) the interest is not known to the interested director or officer at the time the transaction is brought before the board of directors for action; or (d) the transaction is fair to the corporation at the time it is authorized or approved. The NRS does not contain specific provisions that specify requirements related to transactions with controlling stockholders, but the Nevada Supreme Court has clarified that Nevada's codified business judgment rule, and not an "entire fairness" standard, applies to judicial review of director and officer actions in the context of a transaction with a controlling stockholder. **However, neither the NRS nor Nevada case law has precisely delineated the scope or extent of the fiduciary duties of controlling stockholders as such.** (emphasis added)

This isn't accurate after the 2025 session. The changes went into effect after being signed by the governor. The controlling stockholder duty is explicitly defined in the statute now. The Nevada Revised Statutes on the Nevada website is way too far out of date.

Updated Nevada Table

2025 Nevada Domicile Shifts

	Firm	Result	Notes
1.	Fidelity National Financial	Pass	
2.	MSG Sports	Pass	
3.	MSG Entertainment	Pass	
4.	Jade Biosciences	Pass	Jade merged with Aerovate.
5.	BAIYU Holdings	Pass	Action by Written Consent
6.	Roblox	Pass	
7.	Sphere Entertainment	Pass	
8.	AMC Networks	Pass	
9.	Universal Logistics Holdings, Inc.	Pass	Action by Written Consent
10.	Revelation Biosciences	Fail	97% of votes cast were for moving. There "were 1,089,301 broker non-votes regarding this proposal"
11.	Eightco Holdings	Fail	Votes were 608,460 in favor and 39,040 against with 763,342 broker non-votes.
12.	DropBox	Pass	Action by Written Consent
13.	Forward Industries	Fail	This is New York to Nevada. Votes were 427,661 for and 96,862 against with 214,063 Broker Non-Votes. Did not receive an affirmative vote of the majority of the outstanding shares of common stock.

14.	Nuburu	Fail	87% of the votes cast were in favor of the proposal. 11% against 1.6% Abstained. There were 12,250,658 Broker Non-Votes.
15.	Xoma Royalty	Pass	
16.	Tempus AI	Pass	
17.	Affirm	Pass	
18.	Liberty Live	Pending	This is a split off from a Delaware entity to Nevada
19.	Netcapital	Fail	This was a proposed move from Utah to Nevada. It failed with 541,055 votes in favor and 1,456,325 votes against.
20.	Algorhythm Holdings	Pending	Meeting set for Nov. 20
21.	Capstone Holding Corp	Pending	Meeting set for Nov. 18
22.	Oblong, Inc.	Pending	Meeting set for Dec. 17
23.	HWH International Inc.	Pass	Action by written consent
24.	Twin Vee PowerCats	Pending	Meeting set for Dec. 4
25.	Digital Brands Group, Inc.	Pass	Action by written consent

Updated Texas Table

2025 Texas Domicile Shifts

Firm	Result	Notes
1. Zion Oil and Gas	Pass	

2.	Mercado Libre	Withdrawn	
----	---------------	---------------------------	--

3.	Dillard's	Pass	12,791,756 votes for and 1,477,174 votes against
----	-----------	----------------------	--

4.	United States Antimony Corporation	Pass	Shift from Montana to Texas . 20,626,385 votes in favor. 11,816,235 against. 35,888,464 broker non-votes.
----	------------------------------------	----------------------	---

[Subscribe Now](#)

Copyright © 2025, Law Professor Blogs, LLC. All Rights Reserved.

Guest Post: Is AI Reshaping D&O Litigation?

K [dandodiary.com/2025/10/articles/artificial-intelligence/guest-post-is-ai-reshaping-do-litigation](https://www.dandodiary.com/2025/10/articles/artificial-intelligence/guest-post-is-ai-reshaping-do-litigation/)

Kevin LaCroix

October 27, 2025

Emma Bailey

James Parsons

As this blog's readers know, AI is not only an emerging technological phenomenon it is also a [potentially disruptive source of D&O risk and liability](#). In the following guest post, Emma Bailey and James Parsons, take a look at the contours of the developing AI-related D&O risk and discuss the implications. Emma is Senior Underwriter, Commercial Management Liability, Berkshire Hathaway Specialty Insurance, London, and James is Senior Claims Examiner, Executive & Professional Liability, Berkshire Hathaway Specialty Insurance, London. I would like to thank James and Emma 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 authors' article.

As underwriters, we're constantly evaluating emerging risks—and few topics are as dynamic and widely debated as Artificial Intelligence (AI). It's impossible to reduce a projected \$1 trillion+ in AI-related capital expenditure to a simple yes or no answer, however, in this article we will explore some AI terminology, how we're approaching AI as a risk factor, and what impact it is—and isn't—having on Directors & Officers (D&O) litigation, particularly for US-listed insureds.

What is AI?

What appears to be newer to the risk register is a concept that dates back several decades. However, more recent and accessible use has propelled the broad term 'Artificial Intelligence' into the public eye, even in the most traditional of industries. AI can be described as an area of computer science and engineering that focuses on developing software capable of solving problems which have historically required human ability to think and reason, with speed and effectiveness, to reach a conclusion or a decision. Artificial Intelligence is a multidisciplinary field which is often used interchangeably with other terms such as Machine Learning, Deep Learning, and Neural Networks.

MACHINE LEARNING – An older form of AI (existing since the 1950's) which consists of algorithms that allow computers to learn without human involvement.

DEEP LEARNING – An advancement of Machine Learning that uses the neural networks to perform human-like tasks involving judgement and reason.

NEURAL NETWORKS – Inspired by the human brain, this describes different collections of algorithms focused on different areas of data, which is processed in order to learn but all the areas are interconnected.

PREDICTIVE AI – Refers to the way you can use machine learning to study data to find patterns or trends within the data. The computer can then use what it has found to make predictions on future patterns without a human having to program it.

GENERATIVE AI – Using deep learning and neural networks to respond to language prompts with newly generated data which could be in the form of text, images or other.

Is AI a disruptive technology?

The term is being used in public filings, regulations, news and related media – and in my opinion, it's rather good at designing a two-week holiday itinerary. Globally around 78% of organisations are said to have used Gen AI in at least one business function, with 42% using it for marketing and sales purposes, and 28% for product and/or service development.

Despite this, adoption still looks to be in early stages, with most products that use Gen AI remaining in pilot phase. As a result, there are a number of, and sometimes conflicting schools of thought, supported by corresponding literature surrounding the future of the technology. This raises important questions for businesses, investors, regulators and other stakeholders:

- Projected capex: Will the cost of adoption (be it investment, recruitment, servicing, integration or employee acceptance of change) translate into a directly better long-term business valuation?
- Impact: How can you accurately measure efficiency gains that came directly from Gen AI usage – and will this be done consistently across public company disclosures?
- Competition: What is the unique selling point if any potential margin impact or revenue increase can also be replicated by competitors?

- Regulation: What and how will the industry be regulated?
- Environmental Impact: Is the global grid capable of keeping up with the electricity power that is needed and are there political and ethical changes required to get there?
- Strategy: What is the balance between being a first mover and learning from the mistakes of others?

Do we see AI as a risk factor for every customer?

It is likely there are some industries that will be impacted or disrupted to a greater or lesser extent than others. As we are still early in the cycle, it is hard to pinpoint who the winners or losers will be. Previous experience with disruptive technologies suggests that being first past the post doesn't necessarily guarantee success.

However, what is clear is the increasing mention of AI related disclosures on public earnings calls. [According to FactSet](#), more than 210 or 40% of S&P 500 Companies have cited "AI" on earnings calls in Q1 2025, this being the fifth consecutive quarter. This significantly exceeds the 5-year average of 114 and the 10-year average of 72.

This trend is not limited to US companies. [Similar analysis by Bloomberg found](#) that mentions of "AI" on Q4 2024 earnings calls from companies in the Stoxx Europe 600 index reached a record 1,788, around 20% more than the prior year.

General concerns raised by AI exposure and the potential for related litigation include 'AI Washing' which refers to a deceptive marketing strategy in which a company overstates their product or service offerings around AI. Some companies have also been accused of trying to capitalise on this by exaggeration of capabilities. More recently, we have seen allegations of under disclosure regarding business model disruption due to broader adoption of AI.

Privacy and security also raise concerns. Some customers may not want their risk information or data used in the development or training of AI systems, and will the AI capabilities of one company comply with their customers by-laws, codes of conduct and business agreements, particularly in a global economy across jurisdictions, regulations and cultures. Other areas of interest include the assumptions used in providing quarterly and annual guidance along with Risk Factors and disclosures in public filings. Increasingly, attention is being paid to the tone of management discussions in filings, particularly as some readers are using AI supported screening tools to quickly compare company results and review the strength of the language used⁶. Further concerns regarding the implementation

of AI include the extent to which a company's board delegate tasks to AI, and how will these decisions leave D&O's liable for those when there may not be a statement made by an individual.

A VIEW FROM CLAIMS

What impact is AI having on D&O litigation?

The focus of this litigation analysis is on US listed companies, which to date is where we have seen the most D&O litigation. [According to the chart 'Federal and State Class Action Filings Summary' as depicted in figure 1 from Cornerstone's 2024 Year In Review](#), SCA's (core filings, exc. M&A) filed in 2024 increased to 225, from 215 in 2023, and from 208 in 2022, and was 14% higher than the historical average. The majority of these filings (95%) are rule 10b-5 claims, which is the highest level in more than 5 years, and roughly similar to the average level from 1997-2023. The industries which are impacted the most are the services, technology, financial and pharmaceutical companies.

SCA's are on the rise (increase of 10) and AI-related litigation doubled from 7 to 15 in 2024, so it appears this is a new focus of underlying allegations from the Plaintiff Bar, but this could simply be a shift of focus into the relative unknown, where all parties (companies, plaintiff's, insurers) are learning what to disclose and how AI will impact their business models. What we must also learn in time as insurers, is how AI related SCA filings are comparable to the average SCA filings.

Cornerstone Research found that filing activity in the first half of the year has remained on par with the second half of 2024, with 114 filings compared to 115, respectively. 12 class actions filed in the AI category "When annualized, the number of AI-related filings is on pace to far surpass the 2024 total (15)," Whilst potentially unrelated to the increase in specific AI-related SCA filings, what is interesting is that the Maximum Dollar Loss (MDL) sharply increased to nearly USD 1.9 trillion in H1 2025 from USD 730 billion in H2 2024 which could be an indicator of an increased level of severity in settlements.

It is too early to determine at this stage, but these AI related filings could have a higher dismissal rate or severity rate which could cause the Plaintiff Bar to really focus on AI disclosures as a source of litigation. In the early days of AI litigation, the allegations related to overstating AI capabilities, failing to disclose AI risks, and misleading investors about AI business models. As generative AI use becomes more widely accepted, allegations will continue to evolve too as plaintiffs are continually tracking and challenging business behaviours. Trends in litigation are

constantly changing; we have seen COVID, ESG and Crypto related SCA's all be a focus with various degrees of success, and it appears AI is the current focus. These new trends of litigation, shift over time with a number of factors behind them, such as;

- Macroeconomic factors such as inflation and interest rates, global supply chain issues, foreign exchange markets and stock markets.
- Political regimes – In the US, federal AI regulation has not developed at the pace that many expected. The current administration has issued an Executive Order emphasizing the goal of maintaining the US at the forefront of AI innovation. The appointment of Paul Atkins as SEC Chair may influence how the SEC balances the removal of barriers to innovation with the need for regulatory oversight in a competitive global marketplace.
- Industry specific factors – AI is more prevalent in certain industries.

Of all the AI related Securities Class Actions that have been filed (as at August 1, 2025), there have been 50 complaints according to our records which in some way relate to AI; this could be against an AI company, or AI is referenced in the complaint with varying degrees of materiality. Of the 50, only 15 directly relate to AI washing, i.e. AI specific disclosures made by the company, and that is the alleged reason for the stock drop and misrepresentations. Of those, one has been voluntarily dismissed, and the remainder are pending – it remains to be seen how successful these pending matters will develop. At BHSI, we will continue to closely monitor new and current AI-related SCA's as they proceed through the litigation and settlement process, to compare against aggregate SCA's. The success, or lack of, will be a huge driver in determining if the Plaintiff Bar continue to focus on AI related SCA's. Until we start to see some decisions, particularly at the Motion to Dismiss stage, the plaintiffs' bar is free to capitalize on the "unknown" and the overall concern companies have as to the impact of AI on business models and the level of disclosure needed.

[Based on Cornerstone Research SCA Filings 2024 Year In Review, the graph 'Summary of Trend Filings – Core Federal Filings'](#), this shows the various different branches of allegations in SCA's in the years 2020 – 2024. Whilst the AI litigation has indeed increased, it seems to have essentially off set the decreases in other previous allegation options.

We have also seen a decline in Environmental related cases. According to Nera, "there were five environment- related securities class action suits filed in 2024, a 38% decline from the eight cases seen in 2023." This further demonstrates that AI-

related and AI-driven litigation is a shift from a previous hot topic to a new mode of litigation.

Conclusion

What we've observed over the past few years is growing awareness of AI and its capabilities from both business leaders and consumers. The discussion is broad and has many angles but with AI references in earnings transcripts consistently exceeding five-year averages and the industry mix of those mentions expanding beyond Technology, we believe the topic is here to stay. So, while the current impact on claims trends involves a shift in the theme behind allegations, what remains to be seen is what the long-term severity impact of AI related SCAs with 50 open cases. With respect to any settlement data, the lack of decisions (either dismissals or not) means that we cannot yet determine the impact these pending SCA's will have on losses to the D&O market, and if any will follow the traditional patterns of settlement. As the AI space evolves, and the current and new cases mature, it could be a natural development to experience more litigation focused around this area, but only if the Plaintiff bar also experience a similar relative success in bringing these suits.

Copyright ©2025, Kevin M. LaCroix. All Rights Reserved.

California Brief

Intel Workers Seek SCOTUS Ruling on Meaningful 401(k) Benchmarks

Oct. 24, 2025, 7:10 AM PDT

Intel Corp. workers challenging the private equity investments in their 401(k) plan joined the chorus asking the US Supreme Court to review the “meaningful benchmark” standard courts use to parse claims of retirement plan mismanagement.

The “meaningful benchmark” standard, which has been used to varying degrees by the Sixth, Seventh, Eighth, Ninth, and Tenth circuits, asks whether workers alleging fiduciary imprudence in their 401(k) plans have identified a better alternative that’s sufficiently similar to the fund or fee structure being challenged. In June, the Supreme Court signaled interest in this topic by asking the US solicitor general whether it should hear a case involving Parker-Hannifin Corp.’s 401(k) plan.

The Intel workers asked the Supreme Court to either hear the Parker-Hannifin case and then resolve their lawsuit accordingly, or else take their case and reject the meaningful benchmark standard as a categorical pleading rule that’s not established or supported by the Employee Retirement Income Security Act.

The solicitor hasn’t yet filed a brief in the Parker-Hannifin case, which the Intel workers say carries certain “vehicle problems” that may impede a clear resolution of the relevant legal question.

Investment Challenge

The proposed class action stems from the 2008 financial crisis, which workers say spurred Intel’s retirement committee to move the plan toward riskier investments like hedge funds, private equity, and commodities. A federal court dismissed the bulk of the case and the US Court of Appeals for the Ninth Circuit affirmed, saying the workers didn’t allege the disputed investments underperformed other funds with similar goals.

The Ninth Circuit used the case to announce its version of the meaningful benchmark standard. Fiduciary imprudence claims based on retirement investments typically require a sound comparison to other investments if they aren’t based on allegations of a flawed fiduciary process, the appeals court said.

The Intel workers criticized this approach as “incorrect and harmful.”

“It has no basis in the statute, contravenes this Court’s precedent, and immunizes fiduciaries from liability where they engage in reckless investment decisionmaking that no other investment professional would dare employ—denying participants and beneficiaries ERISA’s protections when they need them the most,” the workers said in their Oct. 20 petition.

The longrunning dispute over Intel’s retirement plan has already made one trip to the Supreme Court, which ruled in 2020 that employers can’t shorten the window 401(k) participants have to sue over plan mismanagement by simply posting plan information online or sending disclosures in the mail.

Barton Firm LLP, Bailey & Glasser LLP, and Gupta Wessler LLP represent the Intel plan participants. Proskauer Rose LLP and Williams & Connolly LLP represented the Intel committee in the Ninth Circuit.

The case is *Anderson v. Intel Corp. Inv. Policy Comm.*, U.S., No. 25-498, 10/20/25 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Large US law firm apologizes for AI errors in bankruptcy court filing

 [reuters.com/legal/litigation/large-us-law-firm-apologizes-ai-errors-bankruptcy-court-filing-2025-10-24](https://www.reuters.com/legal/litigation/large-us-law-firm-apologizes-ai-errors-bankruptcy-court-filing-2025-10-24)

Sara Merken

October 24, 2025

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

Oct 24 (Reuters) - Marking the latest collision of artificial intelligence with attorney ethics, a large U.S. law firm told a judge it was "profoundly embarrassed" after one of its lawyers submitted a court filing with inaccurate and non-existent citations that were generated by AI.

Gordon Rees Scully Mansukhani, an 1,800-lawyer firm that had been representing a creditor in an Alabama hospital bankruptcy case, in a Thursday [filing, opens new tab](#) apologized to the judge and others involved in the bankruptcy. The firm said it has updated its AI policies to prevent against misuse and would accept any sanctions the court imposed.

Gordon Rees is the latest large law firm to be [forced to explain itself](#) in a case involving potential misuse of AI. Lawyers across the country, at firms of all sizes, have [faced sanctions and harsh warnings](#) for not vetting the technology's output. Gordon Rees and some of its lawyers submitted the filings ahead of a hearing scheduled for Tuesday before U.S. Bankruptcy Judge Christopher Hawkins in Montgomery.

Hawkins in August had asked the firm and Cassie Preston, the lawyer representing creditor Progressive Perfusion, to explain why they should not be sanctioned after submitting a filing with what the judge called "pervasive inaccurate, misleading, and fabricated citations, quotations, and representations of legal authority."

Preston and a spokesperson for the San Francisco-founded firm, which says it is the only law firm with offices in all 50 states, did not immediately respond to requests for comment on Friday.

Jackson Hospital & Clinic and its bankruptcy lender Jackson Investment Group notified the court in August that AI may have been used to draft a Progressive filing that contained fabricated and mis-paraphrased material. At a hearing, the judge asked Preston if AI was used, and she said no, but withdrew the filing. The debtor and lender each later sought sanctions.

Preston and another Gordon Rees lawyer withdrew from the case last week. A lawyer representing Progressive, Joel Connally of Strength & Connally, said in an email that he is concerned that the firm's actions "have damaged my client's position with Jackson and those investing in its continued operations."

In a Thursday [filing, opens new tab](#), Preston said that while she "did not personally use generative AI to prepare the filing, she was aware that generative AI was used." She said she would disclose "the source of this information" under seal or at a closed hearing.

Preston apologized to the court and said she had taken on "more work than she could reasonably do under the strain of difficult personal circumstances."

Gordon Rees in its response said it had reached agreements to pay more than \$35,000 in attorneys' fees to the lender and more than \$20,000 in legal fees to the debtors lawyers to account for the work responding to the AI errors. Lawyers for the debtors and the lender did not immediately respond to requests for comment.

The firm also said that it has put in place new education and training on AI risks and created a new "cite checking policy." It said that if the court decides that it should be sanctioned, "the law firm will understand the basis of the court's decision."

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

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

Judge urges AI use in social media addiction litigation

DJ [dailyjournal.com/articles/388258-judge-urges-ai-use-in-social-media-addiction-litigation](https://www.dailyjournal.com/articles/388258-judge-urges-ai-use-in-social-media-addiction-litigation)

Oct. 27, 2025

U.S. District Judge Yvonne Gonzalez Rogers of Oakland urged attorneys general to use AI for jury instruction analysis in a Social Media Addiction MDL, criticized "gamesmanship," and moved the first bellwether trial to Oakland.

U.S. District Judge Yvonne Gonzalez Rogers

A federal judge in Oakland blasted counsel for "gamesmanship" and encouraged state attorneys general to use artificial intelligence to assist with jury instructions in a multidistrict litigation against social media companies accused of intentionally addicting young people to their platforms.

Judge Yvonne Gonzalez Rogers told Deputy Attorney General Megan O'Neill that the multiple states involved in the action should use AI to figure out if there are overlapping claims for those states involved in this portion of the case at a hearing Friday.

"I want you to throw the jury instructions into an AI model for a starting point to understand [if there is] any overlap," Gonzalez Rogers said at the hearing. *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 4:22-md-03047 (N.D. Cal., filed Oct. 6, 2022).

"New York is a mess; I might bifurcate that out. Most states have one or two claims. AI is a great tool for consolidating information so use it and let me know. Run some models and get creative," the judge added.

There are 35 states involved in the coordinated action that combines lawsuits from hundreds of individual plaintiffs, school districts and states seeking to hold some of the world's largest technology companies liable for allegedly designing their products to be addictive.

The complaints claim the companies knew the physical, psychological and societal effects social media addiction allegedly has on minors and young adults. Those companies include Snap Inc., Meta Platforms Inc. and TikTok Inc.

In addition, Gonzalez Rogers changed the venue of the first bellwether trial - for plaintiff Breathitt County Board of Education -- from McKinleyville to Oakland, citing travel issues for attendees. The judge also admonished counsel for "gamesmanship on both sides" after a last-minute statute of limitations defense for summary judgment brought by Meta's attorney, Paul Schmidt of Covington and Burling LLP.

An attorney for school districts in the action, Michael Weinkowitz of Levin Sedran & Berman LLP, said, "Bellwether cases are supposed to be about the merits. The first case should not have a statute of limitations defense. We will learn nothing about the case."

"We don't agree that asserting a statute of limitations defense feels like a reach," Schmidt replied. "It will apply to other [bellwether] cases."

Gonzalez Rogers denied the defense motion without prejudice, telling Schmidt it should have been raised as an issue earlier before being officially filed.

"I don't want to give the impression you're allowed to do this," the judge said.

Earlier in the hearing, Gonzalez Rogers told all counsel that no one is allowed to file a motion without proof of a prior meet and confer; otherwise, she will dismiss them with prejudice.

Later in the hearing, she warned counsel she would sanction any lawyers engaging in gamesmanship.

"I've seen it; I've played it, and I will sanction you," Gonzalez Rogers said. "I don't want documents submitted through the back door. Put that quote on your wall. I wouldn't test me."

Breathitt lawyers had argued that holding the trial in McKinleyville would impose "substantial, unwarranted hardship" on its limited staff and budget, citing high airfare and logistical obstacles for witnesses who would have to travel across the country to a remote region with minimal flight service.

The school district said in court filings it waived its Lexecon rights -- allowing trial outside Kentucky -- on the understanding the case would be tried in Oakland, not in a smaller division with what it called "limited facilities and reduced public access."

Defense counsel, representing Meta, Snap, TikTok, and Alphabet Inc.-owned YouTube, accused the plaintiffs of backtracking on an arrangement they had previously supported in a joint statement ahead of the hearing.

They argue that trying the case in a rural venue was a deliberate choice to reflect the realities of many of the roughly 200 school district plaintiffs, over 40% of whom come from similar communities.

"Moving Breathitt to Oakland--an urban center many times more populous than Breathitt or Eureka/McKinleyville -- would not accomplish this goal," defendants wrote in the statement, referencing the nearby county seat. They suggested the venue objection emerged only after the court named Breathitt as the first case to go to trial.

The first bellwether trial, involving a minor identified as K.G.M., is now set to begin jury selection on Jan. 27, 2026, according to a case status briefing. Two additional school district trial pools are scheduled for April and June 2026.

Elsewhere, Los Angeles Superior Court Judge Carolyn Kuhl, who oversees parallel state proceedings, has completed a series of Sargon rulings on expert admissibility and set a schedule of summary judgment and pretrial hearings stretching into the winter, the briefing said.

#388258

James Twomey

Daily Journal Staff Writer

james_twomey@dailyjournal.com

D.C. Superior Court Judge Rules Meta's Counsel Advised it to Block Research on Teen User Safety

A Washington, D.C. Superior Court judge has ruled that Meta Platforms Inc.'s counsel advised Meta researchers to "remove" and "block" portions of Meta's internal research on the mental health of teens using its platforms, Instagram and Facebook, to avoid liability in ongoing multidistrict litigation against the social media titan.

October 24, 2025 at 08:08 PM By  **Kat Black**



Credit: Ink Drop / AdobeStock

A Washington, D.C. Superior Court judge has ruled that Meta Platforms Inc.'s counsel advised the social media titan's researchers to "remove" or "block" portions of internal research on the mental health of teens using its platforms, Instagram and Facebook, to avoid liability in ongoing multidistrict litigation.

The judge also invoked the crime fraud exception, which exempts communications in pursuit of alleged criminal or fraudulent conduct from the protections afforded by attorney-client privilege, to reject Meta's request to claw back privileged documents.

Plaintiffs' counsel in the multidistrict litigation against Meta, which alleges that Meta intentionally designed its platforms to fuel addiction to social media in teenagers and children, has [submitted](#) the judge's order to support their arguments in the U.S. District Court for the Northern District of California. The first bellwether trial in the litigation, which is being overseen by District Judge Yvonne Gonzalez Rogers, has been slated for Nov. 25.

"... [T]he Court finds that given the totality of the facts and circumstances, the communications in the Documents establish sufficient probable cause to show that Meta sought and heeded the advice of its counsel to obfuscate its potential liability during the related multidistrict litigation, or in other words, to engage in a crime, fraud, or any "other type of misconduct fundamentally inconsistent with the basic premises of the adversary system," wrote Judge Yvonne Williams in the Superior Court of the District of Columbia, Civil Division on Thursday.

"Accordingly, the Court concludes that application of the crime-fraud exception to the communications in the Documents is warranted."

The communications at issue include four documents that Williams held contained advice from Meta's counsel to "remove," "block," "button ... up," "limit" and "update" Meta's internal research on the harms posed by its platforms to minors in order to "specifically limit Meta's potential liability."

The District of Columbia's counsel at Edelson referred requests for comment to the D.C. Office of the Attorney General, which did not respond to an email seeking comment.

The underlying [claim](#), captioned *Washington, D.C. v. Meta Platforms Inc.*, was filed by D.C. Attorney General Brian Schwalb on Oct. 24, 2023. Schwalb alleged that Meta and co-defendant subsidiary Instagram LLC violated the Consumer Protection Procedures Act by deliberately baking "addictive" features into their platforms' design in order to prey on "children's developing brains" and maximize user engagement, "to the detriment of their mental health."

On Sept. 9, the U.S. Senate Judiciary Subcommittee on Privacy, Technology, and the Law heard whistleblower testimony from two former Meta researchers, Jason Sattizahn and Cayce Savage, in a [hearing](#) titled "Hidden Harms: Examining Whistleblower Allegations that Meta Buried Child Safety Research." The whistleblowers claimed that Meta "buried" its internal research on children's safety, which allegedly exposed harms to minors caused by using its virtual reality devices.

According to Williams' order, Meta started producing documents to the District of Columbia pursuant to discovery in Jan. 2024, but subsequently clawed back the four documents at issue, citing attorney-client privilege, between March 10, 2025 and August 7, 2025.

The District of Columbia filed a motion requesting that the court require Meta to produce the documents on August 18, 2025. In response, Meta filed an opposition motion on Sept. 2, 2025.

Williams issued the Oct. 23 order after conducting an *in camera* review of the four documents.

Williams has ordered Meta to produce the documents to the District of Columbia within seven days of the ruling's release, on or before Oct. 30.

Meta's counsel at Covington & Burling referred requests for comment to Meta, which did not respond to an emailed request for comment.

Page printed from: <https://www.law.com/nationallawjournal/2025/10/24/dc-superior-court-judge-rules-metas-counsel-advised-it-to-block-research-on-teen-user-safety-/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

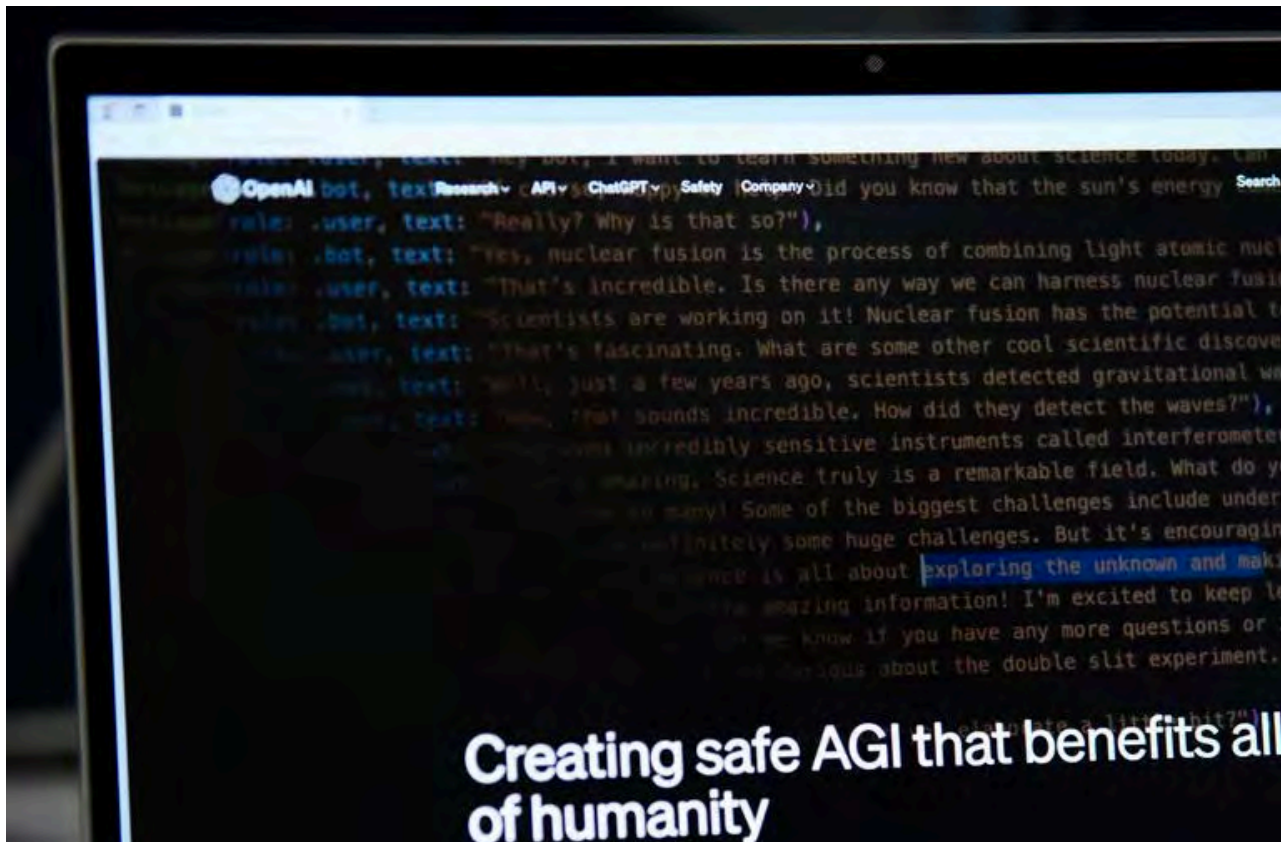
Plaintiffs Allege OpenAI Removed Safety Guardrails From ChatGPT in Teen Suicide Case

"The story we're going to be able to tell the jury will be significantly stronger, and also the fact that now we understand that the death was the result of deliberate decisions expands the discovery we're able to take," said plaintiffs' attorney Jay Edelson.

October 24, 2025 at 08:53 AM By  **Kat Black**

What You Need to Know

- The parents of a 16-year-old boy who died by suicide filed a case against OpenAI in August, alleging that he died as a result of his interactions with ChatGPT.
- In an amended complaint, the plaintiffs alleged that OpenAI intentionally dismantled two of ChatGPT's safety protocols in the months leading up to their son's death.
- Plaintiff's counsel stated that these new details change the legal theory scaffolding the case and strengthen the plaintiff's arguments.



OpenAI website on a laptop in February 2023. Photo: Ryland West/ALM

The family of a 16-year-old boy who died by suicide after interacting with OpenAI's flagship AI chatbot product, ChatGPT, has filed an amended complaint in a suit against the artificial intelligence pioneer and its founder, Sam Altman, shifting the legal theory underpinning the case from "reckless indifference" to "intentional misconduct," according to plaintiff's counsel.

The [amended complaint](#), filed Wednesday morning, alleges that OpenAI deliberately weakened two of ChatGPT's safety protocols in the months leading up to the death of the plaintiffs' son, Adam Raine, in order to drive user engagement and gain an edge on competitors such as Google's Gemini. The dilution of these protections, it said, cleared the path for ChatGPT to coach Raine on planning his death by suicide. Raine, an Orange County resident, died by hanging in April.

OpenAI, it said, removed a feature that refused to engage with user conversations about self-harm, creating "an unresolvable contradiction—ChatGPT was required to keep engaging on self-harm without changing the subject, yet somehow avoid reinforcing it," according to the complaint.

It also allegedly replaced a directive to not "encourage or enable self-harm" with one instructing the chatbot to "take care in risky situations" and "try to prevent imminent real-world harm."

"This impossibly high bar—'imminent' harm meant happening right that second, not over the months Adam spent discussing suicide—gave ChatGPT license to engage in detailed discussions about suicide methods," wrote the plaintiff's counsel at Edelson [in a news release](#) obtained by The Recorder.

"As long as death wasn't happening that very moment, ChatGPT could help."

Edelson's news release pointed to a comment Sam Altman made in a Sept. 10 [interview](#) with conservative political commentator Tucker Carlson, in which Altman estimated as many as 1,500 people a week had interacted with ChatGPT before taking their own lives, given that 15,000 people a week die by suicide and "about 10% of the world are talking to ChatGPT."

A representative for OpenAI could not immediately be reached for a comment by email but said in a previous statement to The Recorder and Law.com that the company "prioritize[s] teen safety above all else, because we believe minors need significant protection."

Jay Edelson, the founder and CEO of Edelson, who is representing the plaintiffs in *Raine v. OpenAI*, said in an interview that, when the firm first filed the case, the allegations were rooted in a theory of recklessness that OpenAI and Sam Altman had rushed GPT-4o—then the latest model of ChatGPT—to compete with Google Gemini and hadn't completed adequate testing on the product.

The firm, he added, has been conducting investigations into the company since before the suit was filed and obtained the information on which these new accusations of "intentional

misconduct" are predicated as a result of reviewing ChatGPT chat logs, reviewing public documents and speaking to whistleblowers and people associated with OpenAI.

"[OpenAI] told ChatGPT to keep the conversation going, create—essentially—a safe space for teens who have suicidal ideations and validate them," Edelson said.

"And when you match the changes that they made with the chat logs, you can see that's why the changes resulted in his death. It's really frightening, and it's inexplicable why the company would do this. They knew that ... many of their users had mental health issues. And the idea that they kept relaxing their safety standards in favor of more and more engagement at the expense of innocent lives is just one of the worst things I've ever seen as an attorney."

Edelson and the Tech Justice Law Project filed the original [complaint](#) alleging wrongful death, product liability and negligence on behalf of Adam's parents, Matthew and Maria Raine, on Aug. 26 in San Francisco Superior Court.

The plaintiffs claimed that ChatGPT encouraged and validated Adam's suicidal thoughts in messages exchanged over a seven-month period and provided a "step-by-step playbook for ending his life," including instructions for setting up a noose and acquiring alcohol on the night of his death.

Adam's father, Matthew Raine, later [testified](#) at a September Senate Judiciary Committee hearing examining the harms posed to children by AI chatbots, along with parents of children who allegedly engaged in self-harm or died by suicide as a result of their interactions with AI chatbot platform Character.AI, which now faces at least five lawsuits in federal courts across the country.

OpenAI's CEO, Sam Altman, released a [statement](#) hours ahead of the hearing on the OpenAI website that outlined the company's plans to develop and implement safety protections for minors, including "an age-prediction system to estimate age based on how people use ChatGPT" and new parental controls.

"The story we're going to be able to tell the jury will be significantly stronger, and also the fact that now we understand that the death was the result of deliberate decisions expands the discovery we're able to take," Edelson said.

"So we're going to be asking a lot of tough questions to Sam [Altman] and to others. ... How are you balancing these harms? ... You knew, at least from a meta level, of the struggles that people were having with mental health issues in public. You were encouraging people to use ChatGPT, essentially, as a therapist. And yet you were degrading the safeguards. Why, and who was making those decisions?"

OpenAI's counsel at Mayer Brown declined to comment.

Free, confidential services for people in suicidal crisis or emotional distress, or those around them, exist 24/7. The National Suicide Prevention Lifeline is at 1-800-273-TALK (8255). A crisis text line is at 741-741. The [American Bar Association](#) has a directory of lawyer assistance programs.

**Page printed
from:**

<https://www.law.com/therecorder/2025/10/24/plaintiffs-allege-openai-removed-safety-guardrails-from-chatgpt-in-teen-suicide-case-/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

EU threatens Meta, TikTok with billions in fines over research 'black box' around kids' content

 [courthousenews.com/eu-threatens-meta-tiktok-with-billions-in-fines-over-research-black-box-around-kids-content](https://www.courthousenews.com/eu-threatens-meta-tiktok-with-billions-in-fines-over-research-black-box-around-kids-content)

Yuval Molina Obedman

October 24, 2025

A child looks at a smartphone display in bed under the covers in the dark in Berlin, Germany, Aug. 18, 2025. (Thomas Trutschel / Photothek Media Lab / dpa Picture-Alliance via AFP)

BRUSSELS (CN) — European regulators [slammed](#) Meta and TikTok on Friday for systematically walling off researchers from studying what content reaches children, setting up nearly \$20 billion in potential fines in Brussels' most aggressive strike yet against the industry's data vaults.

The European Commission — the EU's executive arm — said the tech giants have erected such high barriers to data access that researchers are left with incomplete or unreliable information, making it nearly impossible to study whether children are exposed to harmful content.

"Allowing researchers access to platforms' data is an essential transparency obligation," regulators said Friday, because it lets the public scrutinize platforms' impact on physical and mental health.

But Facebook, Instagram and TikTok "may have put in place burdensome procedures and tools for researchers to request access to public data," the commission said. The preliminary findings fall under the Digital Services Act — Europe's sweeping content moderation law that took effect in 2024 — giving Brussels power to [impose fines of up to 6% of global revenue](#) for violations.

For Meta, that's \$9.9 billion [based](#) on 2024 revenue of \$164.5 billion. For ByteDance, TikTok's parent company, it's \$9.3 billion based on [reported](#) 2024 revenue of around \$155 billion.

Brussels zeroed in on Meta's decision to shut down CrowdTangle "without an adequate replacement." CrowdTangle was a dashboard that let researchers and journalists track what content was going viral on Facebook and Instagram in real time — particularly useful for spotting misinformation during elections. Meta pulled the plug just before European Parliament elections in June 2024, leaving researchers flying blind at a critical moment.

The action is part of a broader EU push on child safety. Earlier this month, the EU [opened investigations into Snapchat, YouTube and app stores](#) over age verification and whether they prevent minors from accessing harmful content and illegal products.

The enforcement machinery is moving, but slowly. The commission already hit X with preliminary findings in July 2024 and also opened proceedings against AliExpress and Temu. Despite multiple ongoing cases, no platform has yet been fined under the Digital Services Act.

That lack of follow-through gives ammunition to critics like the Trump administration, which has called the law "Orwellian" and accused Europe of targeting American companies.

"Our democracies depend on trust," said Henna Virkkunen Friday, the commission's executive vice president for tech policy. "That means platforms must empower users, respect their rights and open their systems to scrutiny."

The preliminary findings land just five days before even tougher transparency requirements kick in Wednesday, forcing platforms to hand over non-public data for the first time.

First coordinated strike

The findings mark the first time Brussels has simultaneously gone after multiple platforms for violating Digital Services Act data access rules, signaling regulators are done negotiating quietly.

Beyond blocking researchers, the commission found Meta buries tools for reporting illegal content like child sexual abuse material. Facebook and Instagram don't offer "a user-friendly and easily accessible 'Notice and Action' mechanism," regulators said, and the platforms have "deceptive interface designs" that confuse users and discourage reporting.

Meta's appeals systems also don't "allow users to provide explanations or supporting evidence to substantiate their appeals," making it nearly impossible to challenge content decisions.

The two companies mounted starkly different defenses.

Meta rejected the accusations outright. “We disagree with any suggestion that we have breached the DSA, and we continue to negotiate” with the commission, Meta’s spokesperson Ben Walters told Courthouse News. The company insists changes it’s made to reporting tools, appeals processes and researcher access meet EU requirements.

TikTok took a different approach, arguing Brussels has created an impossible legal trap. The commission’s data sharing demands clash directly with Europe’s strict privacy law, a representative said: “If it is not possible to fully comply with both, we urge regulators to provide clarity on how these obligations should be reconciled.”

He noted nearly 1,000 research teams have accessed data through TikTok’s tools.

The findings stem from investigations the commission opened against [Meta](#) in April 2024 and [TikTok](#) in February 2024. Both probes are ongoing, with regulators still examining how platforms protect minors and handle election-related risks.

Ireland’s Digital Services Coordinator participated in the investigation because Meta’s European headquarters are there. The platforms can now review the commission’s files, respond in writing and implement fixes before any final decision.

The EU executive will now consult the European Board for Digital Services before reaching conclusions. There’s no legal deadline — but if violations are confirmed, Brussels can impose fines and ongoing penalties to force compliance.

Facebook, Instagram and TikTok were [designated](#) Very Large Online Platforms in April 2023, triggering enhanced transparency and researcher access obligations. Meta’s platforms have more than 250 million combined monthly users in the EU. TikTok has about 136 million.

The irony isn’t lost on Brussels. Platforms are being accused of failing to meet current transparency requirements just days before facing even stricter ones — timing that suggests regulators are drawing a line after months of what they see as foot-dragging.

Courthouse News correspondent Yuval Molina is based in Brussels, Belgium.

Categories / [Business](#), [Consumers](#), [Government](#), [International](#), [Technology](#)

Apple Faces Third Class-Action Copyright Claim Over AI Training on Pirated Books

The suit brought by Cotchett, Pitre & McCarthy alleges Apple and two executives willfully violated the copyrights of authors whose books were downloaded from pirated collections.

October 23, 2025 at 07:01 PM By **Michelle Morgante**

What You Need to Know

- The suit alleges two senior vice presidents personally directed the infringing conduct.
- The claim is the third such class action filed in the district since September.
- The two earlier claims were consolidated this week before Judge Yvonne Gonzalez Rogers.



Apple executives Craig Federighi (left) and John Giannandrea. Photos: Harry Murphy/Web Summit/Sportsfile and Steve Jennings/TechCrunch, via Wikimedia Commons

A new class action suit against Apple alleges the company and two key artificial intelligence executives violated the copyrights of authors whose works were downloaded from pirated

collections and used to create AI-powered products.

The suit, filed Wednesday in the U.S. District Court for the Northern District of California in San Jose, names as defendants Apple Inc. and two senior vice presidents—Craig Federighi and John Giannandrea—who it alleges were “personally involved in the relevant decision making at Apple and directed, approved, or ratified the conduct that has led to widespread infringement.”

Among the [dozens of copyright lawsuits](#) filed over AI training, the new suit is a rare instance of individual executives being named as defendants.

The complaint was filed by Cotchett, Pitre & McCarthy on behalf of Tasha Alexander, the pen name of Anastasia Grant, whose best-selling books of historical mystery fiction are alleged to have been part of the pirated collections used to train Apple Intelligence.

The complaint alleges Apple willfully infringed upon copyrights by deciding to train its large language models by using protected works without compensating the rights-holders. The decision, it said, was part of Apple’s move to keep from falling behind other AI competitors.

“The piracy that defendant engaged in is infringement without a defense,” the suit said.

“Apple’s piracy was intended to build a central library that defendant could have paid for, but chose not to. Apple did not copy from authorized purchased versions of copyrighted work, but instead downloaded thousands of unauthorized copies from a library known to be from an illicit torrent and used Applebot to indiscriminately Hoover up countless copyrighted works for its centralized commercial database, all with complete disregard to the rights of copyright holders.”

Apple did not immediately respond to a request for comment Thursday. Defense counsel has yet to appear.

The case was assigned to Magistrate Judge Lisa Cisneros. A case-management conference was scheduled for Jan. 22, 2026, in San Francisco.

Messages sent to the plaintiffs’ attorneys were not immediately answered.

The suit is the third class action to be filed against Apple since September over alleged misuse of copyrighted works. All three were filed in the U.S. District Court for the Northern District of California.

Authors Grady Hendrix and Jennifer Roberson, represented by Keller Rohrbach of Seattle and Butterwick Law of Los Angeles, filed suit on Sept. 5. Neuroscientists Susan Martinez-Conde and Stephen Macknick, represented by Joseph Saveri Law Firm, filed their claim on Oct. 9.

Martinez-Conde and Macknick submitted an administrative motion to consider consolidating the two claims. The court determined this week that the two cases are related and assigned both to District Judge Yvonne Gonzalez Rogers.

Apple, represented by Latham & Wakens in the Hendrix case, supported the consolidation, given the substantial overlap between the cases, according to court documents.

Page printed from: <https://www.law.com/therecorder/2025/10/23/apple-faces-third-class-action-copyright-claim-over-ai-training-on-pirated-books/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

Google to pay \$190 million in legal fees to Texas' law firms in privacy settlement

 [reuters.com/legal/government/google-pay-190-million-legal-fees-texas-law-firms-privacy-settlement-2025-10-24](https://www.reuters.com/legal/government/google-pay-190-million-legal-fees-texas-law-firms-privacy-settlement-2025-10-24)

Mike Scarcella, David Thomas

October 24, 2025

A Google logo is seen at a company research facility in Mountain View, California, U.S., May 13, 2025. REUTERS/Carlos Barria [Purchase Licensing Rights, opens new tab](#)

Oct 24 (Reuters) - Alphabet ([GOOGL.O](#)), [opens new tab](#) Google said on Friday that it has agreed to pay up to \$190 million in legal fees to private law firms representing Texas as part of a \$1.375 billion consumer privacy settlement with the state.

Google in a court filing also said it would pay \$71 million in legal fees to the Texas attorney general's office as part of [the May settlement](#).

Texas's lawyers at law firm Norton Rose Fulbright and Google asked the state court in Midland to issue a final judgment based on the settlement.

Norton Rose and the attorney general's office did not immediately respond to requests for comment.

Google in a statement said the accord "settles a raft of old claims, many of which have already been resolved elsewhere, concerning product policies we have long since changed."

Texas Attorney General Ken Paxton [sued Google](#) in 2022, alleging it collected face geometry and voiceprints from residents without consent, tracked users' locations despite disabled settings, and misled users about the privacy protections of Incognito mode, which is meant to provide private browsing.

Paxton in announcing the settlement in May said that "in Texas, Big Tech is not above the law." Google did not admit wrongdoing in the settlement.

Texas' legal team from 3,000-attorney Norton Rose included Joseph Graham, a litigation leader in the firm's Houston office. Two smaller law firms, Crenshaw, Dupree & Milam and Cotton Bledsoe Tighe & Dawson, also represented the state.

Norton Rose's 2022 retainer agreement with Texas showed that it could collect as much as \$3,780 an hour or 27% of any successful recovery, whichever is less.

State attorneys general routinely hire private law firms to help them pursue major lawsuits against companies.

Texas is [working](#) with law firms Cooper & Kirk and Buzbee Law Firm for its antitrust lawsuit against asset managers BlackRock, Vanguard and State Street.

Last year, Chicago-founded Keller Postman and Dallas-founded McKool Smith were expected to receive a combined [\\$142.6 million](#) for their work on a 2022 consumer privacy lawsuit for Texas against Facebook parent Meta Platforms [\(META.O\)](#), [opens new tab](#).

Meta agreed last year to settle the lawsuit for \$1.4 billion.

Read more:

[More lawyers join the \\$3,000-an-hour club, as other firms close in Big Law rates for small firms? US appeals court takes up fee fight Contracts in Texas' BlackRock lawsuit show fees for private law firms Legal Fee Tracker: Meta case yields Texas-size fees as more firms ink state contracts](#)

Reporting by Mike Scarcella

Our Standards: [The Thomson Reuters Trust Principles](#), [opens new tab](#)

[David Thomas](#)

Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter [@DaveThomas5150](#).

Litigation

Manage Newsletters

J&J Talc Cancer Suits Rise 17% After Failed Settlement Effort

Oct. 27, 2025, 10:18 AM PDT

Summary by Bloomberg AI

AI Generated



- Johnson & Johnson has seen a 17% jump in new lawsuits claiming its baby powder causes cancer after its latest attempt to force a global settlement was thrown out of bankruptcy court.
- The company is facing approximately 73,570 suits from consumers who blame baby powder for their illnesses as of the end of September, according to securities filings.
- J&J has steadfastly maintained talc doesn't cause cancer and that there's never been any asbestos in its baby powder, and is refusing to pay more than the \$9 billion it offered during the last bankruptcy case.

Johnson & Johnson has seen a 17% jump in new lawsuits claiming its iconic baby powder causes cancer after the company's latest attempt to force a global settlement was thrown out of bankruptcy court.

J&J is facing approximately 73,570 suits from consumers who blame baby powder for their illnesses as of the end of September, the company said last week in securities filings. The pharma giant previously said it was facing about 62,830 suits as of December 2024 over the now-withdrawn version of the product.

The increase adds to J&J's litigation woes over its talc-based baby powder, which it took off the market in 2023 and replaced with a cornstarch substitute. The rising caseload follows a California jury's decision earlier this month awarding [\\$966 million](#) to the family of a deceased woman who blamed her cancer on life-long use of baby powder.

The jump should prod J&J officials to make "another attempt to reach a global settlement because the morass of baby powder cases only promises to deepen and impose even greater expense," said Carl Tobias, a University of Richmond professor who specializes in product-liability law.

Earlier: [J&J Must Pay Record \\$966 Million in Talc Baby Powder Cancer Case](#)

J&J has steadfastly maintained talc doesn't cause cancer and that there's never been any asbestos in its baby powder. The company also says it has appropriately marketed the product for more than 100 years. It is refusing to pay more than the [\\$9 billion](#) it offered during the last bankruptcy case.

"Volume does not connote merit," said Erik Hass, the J&J in-house lawyer leading the company's defense in the baby powder cases. "This is an expected development following our return to the tort system."

Bloomberg Intelligence's **Holly Froum** has predicted the number of baby powder cases could grow to more than 93,000. She said J&J could ultimately be forced to pay as much as [\\$11 billion](#) to resolve all the current and future suits. J&J already has spent more than \$3 billion settling lawsuits alleging asbestos in its baby powder harmed users, according to data compiled by Bloomberg.

J&J is gearing up for a new wave of jury trials after a bankruptcy judge in Houston [concluded](#) in April that the company couldn't use a subsidiary's Chapter 11 filing to force consumers to settle claims J&J hid the health risks of its talc-based powders.

Read More: [J&J Plunges After Plan to Settle Baby Powder Suits Fails](#)

After failing three times to find a bankruptcy solution, J&J vowed to return to the regular court system to defend the baby powder cases. It faces its first ovarian-cancer claim trial since the bankruptcy ruling in California next month. Other trials will follow in state courts in Pennsylvania, Georgia, Illinois and Florida.

A federal judge in New Jersey also is readying the first federal-court trial of thousands of cases consolidated before him for pre-trial information exchanges. Those cases had been delayed by the repeated bankruptcy filings.

A dozen state-court juries have held J&J and its Kenvue spinoff responsible for baby powder users' cancers and awarded billions of dollars in damages in total. Some of those awards later were reduced or thrown out on appeal, however.

The consolidated federal case is In Re Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation, 16-md-2738, US District Court for the District of New Jersey (Trenton).

To contact the reporter on this story:

Jeff Feeley in Wilmington, Delaware at jfeeley@bloomberg.net

To contact the editors responsible for this story:

Sara Forden at sforden@bloomberg.net

Peter Blumberg

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

Exxon sues California over climate disclosure laws

 [reuters.com/sustainability/climate-energy/exxon-sues-california-over-climate-disclosure-laws-2025-10-25](https://www.reuters.com/sustainability/climate-energy/exxon-sues-california-over-climate-disclosure-laws-2025-10-25)

Chandni Shah

October 25, 2025

The company logo for Exxon Mobil Corporation is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York, U.S., July 30, 2025.

REUTERS/Jeenah Moon [Purchase Licensing Rights](#) , [opens new tab](#)

- Exxon sues California, citing First Amendment rights
- California laws require emissions and climate risk disclosures from large companies
- Exxon claims California's laws mislead and counteract voluntary reporting

Oct 25 (Reuters) - Exxon Mobil ([XOM.N](#)) , [opens new tab](#) sued California on Friday, challenging two state laws that require large companies to publicly disclose their greenhouse gas emissions and climate-related financial risks.

In a complaint filed in the U.S. District Court for the Eastern District of California, Exxon argued that Senate Bills 253 and 261 violate its First Amendment rights by compelling Exxon to "serve as a mouthpiece for ideas with which it disagrees," and asked the court to block the state of California from enforcing the laws.

Exxon said the laws force it to adopt California's preferred frameworks for climate reporting, which it views as misleading and counterproductive. The oil giant said it already reports emissions and climate risks voluntarily, and objects to California's frameworks.

Democratic-ruled California has long had some of the strictest environmental rules in areas like vehicle fuel efficiency standards and planning policy, after passing a climate change law in 2006.

California [passed two laws](#) in 2023 that would require companies to publicly report their greenhouse gas emissions and climate-related financial risks.

The California laws were supported by several big companies including Apple ([AAPL.O](#)) , [opens new tab](#), Ikea and Microsoft ([MSFT.O](#)) , [opens new tab](#), but opposed by [several major groups](#) such as the American Farm Bureau Federation and the U.S. Chamber of Commerce, which called them "onerous."

SB 253 requires public and private companies that are active in the state and generate revenue of more than \$1 billion annually to publish an extensive account of their carbon emissions starting in 2026. The law requires the disclosure of both the companies' own emissions and indirect emissions by their suppliers and customers.

SB 261 requires companies that operate in the state with over \$500 million in revenue to disclose climate-related financial risks and strategies to mitigate risk. Exxon also argued that SB 261 conflicts with existing federal securities laws, which already regulate what publicly traded companies must disclose regarding financial and environmental risks.

"The First Amendment bars California from pursuing a policy of stigmatization by forcing Exxon Mobil to describe its non-California business activities using the State's preferred framing," Exxon said in the lawsuit.

The California Department of Justice and the California Air Resources Board did not immediately respond to a request for comment.

Reporting by Chandni Shah in Bengaluru and Mike Scarcella in Washington,
Editing by Deepa Babington and Matthew Lewis

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

California Brief

ExxonMobil Sues California, Claims New Green Laws Violate Speech

Oct. 25, 2025, 11:26 AM PDT

ExxonMobil Corp. has sued California, arguing that two new state laws violate the First Amendment by trying to force it to agree to a certain climate viewpoint, and conflict with federal regulations.

The lawsuit, filed Friday, alleges that the two new laws, which seek to make large corporations more transparent about their climate emissions and financial exposure to climate risk, force ExxonMobil to publicly endorse opinions about climate change that it does not agree with.

One bill requires large companies doing business in California with over \$1 billion in annual revenue to measure and publicly disclose their greenhouse gas emissions each year. The other one calls for companies with over \$500 million in annual revenue to publish a biennial report assessing how climate change could affect their financial performance, and what steps they are taking to manage those risks.

These laws require companies to comply with California's Greenhouse Gas Protocol and Task Force on Climate-related Financial Disclosures, which ExxonMobil claims requires them to take responsibility for global warming, amounting to government-compelled speech..

The energy giant says California claims large corporations are "most responsible" for climate change. Because these laws target only large companies, California is singling out those most likely to oppose climate policies, the lawsuit says.

The company asserts that California is attempting to regulate conduct and speech outside its borders, since much of the reporting concerns emissions and risks from global operations.

"ExxonMobil understands the very real risks associated with climate change and supports continued efforts to address those risks," the filing says. "California may believe that companies that meet the statutes' revenue thresholds are uniquely responsible for climate change; but the First Amendment categorically bars it from forcing ExxonMobil to speak in service of that misguided viewpoint."

The suit says lawmakers sought to "embarrass" corporations into changing behavior, which ExxonMobil calls an attempt to shame companies into compliance.

ExxonMobil contends that SB 261 conflicts with federal securities laws, which already govern what publicly traded companies must disclose about financial and environmental risks. It argues that states cannot impose additional or inconsistent disclosure obligations on matters overseen by the US Securities and Exchange Commission.

The company is asking a court to block enforcement of the laws and declare them unconstitutional and preempted by federal law.

To contact the reporter on this story:

María Paula Mijares Torres in Washington at mmijarestorr@bloomberg.net

To contact the editors responsible for this story:

Kevin Whitelaw at kwhitelaw@bloomberg.net

Wendy Benjaminson

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Attorney of the Year Finalist: Seeger Weiss's Jennifer Scullion Secures MDL Settlements

She has served in multiple key roles in national prescription opiate litigation, including as a member of the plaintiffs' executive committee, settlement committee, manufacturers' committee and law and briefing committee. Over the course of that national case, over \$50 billion in settlement funds have been paid to tackle the opioid crisis.

October 27, 2025 at 12:00 PM By **Nicholas Malfitano**



Jennifer Scullion, with Seeger Weiss. Courtesy photo

Seeger Weiss is one of the most recognizable names when it comes to mass litigation in the United States and beyond, and much of that high-profile recognition is due to Jennifer Scullion, a partner at the firm for nearly 10 years.

Scullion, a finalist for New Jersey's Attorney of the Year Award, has captained legal teams working on complex litigations, arbitration and appeals in the fields of antitrust, consumer fraud, communications, civil rights and international bondholder disputes.

She has served in multiple key roles in national prescription opiate litigation, including as a member of the plaintiffs' executive committee, settlement committee, manufacturers' committee and law and briefing committee. Over the course of that national case, over \$50 billion in settlement funds have been paid to tackle the opioid crisis.

In the past, Scullion has also served as liaison counsel in the Valeant Pharmaceuticals International, Inc. Securities Litigation, helping to achieve a \$1.2 billion settlement on behalf of company investors, and helped negotiate a \$33 million settlement in an antitrust litigation surrounding Liquid Aluminum Sulfate.

Scullion's talents have also translated to lawsuits involving the international automotive industry, as a part of Seeger Weiss's team chosen to serve on the plaintiffs' steering committee by the U.S. Judicial Panel on Multidistrict Litigation, in an antitrust suit against German car manufacturers. The suit was brought by plaintiffs alleging BMW, Volkswagen, Audi, Porsche, Daimler, and their U.S. affiliates of a decades-long conspiracy to corner the market.

Moreover, Scullion, along with colleagues Chris Seeger and Chris Ayers, also filed a class action suit against Apple, claiming the company insulated itself from competition, abused its power over its customers and third-party application developers and charged inflated prices for its products. In addition to seeking injunctive relief to stop Apple from its alleged anticompetitive conduct, Scullion, Seeger, and Ayers are seeking treble damages for economic harms related to Apple's alleged conduct.

Last year, Scullion was named co-chair of the plaintiffs' steering committee for the provider track in the Change Healthcare, Inc. Customer Data Security Breach Litigation, stemming from a Feb. 21, 2024 cybersecurity attack on Change Healthcare which caused healthcare payment systems around the globe to malfunction and released sensitive patient data. Almost 50 suits resulting from that data breach have been consolidated by the steering committee Scullion joined.

In addition to her role at Seeger Weiss, Scullion has regularly contributed articles to the National Law Review, written two chapters on international civil litigation for a book titled "International Aspects of U.S. Litigation" and published by the American Bar Association in 2017 and has been a presenter at law schools, such as the Bolch Judicial Institute of Duke Law.

Scullion's legal involvement also extends to her communities, having established a fund at her alma mater of Boston University to help students with emergency financial needs, acting as a trustee for the Lawyers' Committee for Civil Rights Under Law and co-founding the Three and a Half Acres Yoga Foundation in New York City.

Before arriving at Seeger Weiss in 2016, Scullion was a litigation partner in the New York office of Proskauer Rose. Prior to that, Scullion worked in the New York City office of Solomon Zauderer Ellenhorn Frischer & Sharp, and in the Los Angeles office of Munger Tolles & Olson. Scullion also served as a law clerk for Judge Stephen V. Wilson, in U.S. District Court for the Central District of California.

Page printed from: <https://www.law.com/njlawjournal/2025/10/27/attorney-of-the-year-finalist-seeger-weiss-jennifer-scullion-secures-mdl-settlements/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

News | **Litigation**

Appellate Court Sides With L.A. County in \$1.7M Billing Dispute With Quinn Emanuel

The law firm argued it had a valid retainer agreement with former Los Angeles County Sheriff Alex Villanueva. The county disagreed.

October 23, 2025 at 07:07 PM By  **Cheryl Miller**



Photo: Jason Doiy/ALM

Former Los Angeles County Sheriff Alex Villanueva had no authority to retain Quinn Emanuel Urquhart & Sullivan in his legal fight with county supervisors, leaving the firm on the hook for \$1.7 million in bills, the Second District Court of Appeal held Thursday.

A three-justice panel of the court found that, while the county allowed Villanueva to choose his own attorneys in a hiring-practices dispute, there is no evidence supervisors gave the sheriff carte blanche to approve legal billing rates.

"Quinn Emanuel nonetheless insists there are triable issues concerning the sheriff's authority, and contends the trial court 'improperly weighed evidence and failed to draw reasonable inferences' in

favor of Quinn as the nonmoving party," retired Justice Laurence Rubin, sitting by designation, wrote in the 40-page [opinion](#). "We see no such flaws in the trial court's ruling."

Rubin was joined in the opinion by Justices Maria Stratton and John Shephard Wiley Jr.

The appellate court decision upholds the rulings of two Los Angeles County Superior Court judges in protracted litigation that has outlasted Villanueva's tenure. The embattled sheriff lost his bid for reelection in 2022.

A Quinn Emanuel spokesperson said Thursday afternoon that the firm is reviewing the opinion and will "consider its options."

The litigation addressed in the Second District's opinion stems from Villanueva's attempt, shortly after he was elected in 2018, to rehire a sheriff's deputy who had been [fired](#) in 2016 after an investigation determined he assaulted and stalked a colleague. County supervisors opposed the rehire and in March 2019 sued to block the move.

Days before the lawsuit was filed, the county counsel's office told Villanueva in a letter he could hire conflict counsel but warned him that under state law, supervisors retained the authority to determine how much the county should pay the attorneys. After representing the sheriff in fast-moving temporary restraining order proceedings, Quinn Emanuel sent Villanueva what the appellate court called an "engagement letter," setting out expected billing rates of \$695 an hour to \$1,400 an hour. Villanueva signed the letter in April 2019.

In the following months, the county and its own attorneys in the conflict counsel matter from O'Melveny & Myers exchanged messages with Quinn Emanuel lawyers about representing the sheriff. In a 14-page letter, the county counsel's office proffered a retainer agreement that offered to pay a "blended" hourly billing rate of \$495 an hour. Quinn Emanuel lawyers rejected those terms, saying they already had a contract with Villanueva.

The back-and-forth continued until 2020 when Quinn Emanuel sent Villanueva a bill for \$1.7 million and then asked the county counsel's office for payment. After the county refused to pay, the firm tried to move the billing matter to arbitration. Los Angeles County sued, seeking a declaration that there was no valid agreement to pay Quinn Emanuel and an order keeping the matter out of arbitration.

Los Angeles County Superior Court Judge Holly Fujie sided with the county in 2023. More legal maneuvering ensued, and Quinn Emanuel asked the court to file a cross-complaint for breach of contract and other causes. The trial court denied the motion.

In August 2023, Quinn Emanuel filed a new lawsuit against the county, the sheriff's department and Villanueva, mirroring the same complaints the firm had lodged in its motion for arbitration and cross-complaint. Los Angeles County Superior Court Judge Jon Takasugi granted the defendants' demurrer.

In addition to finding that Villanueva had no authority to approve Quinn Emanuel's engagement letter, the Second District panel said the firm waited too long to try to file its cross-complaint.

"Quinn had plenty of time to file its motion in the many months between the time the arbitration was preliminarily enjoined and summary judgment was granted," Rubin wrote. "As the trial court stated, 'to the extent there is any potential forfeiture it was [Quinn's] deliberate decision that caused it.'"

Page printed from: <https://www.law.com/therecorder/2025/10/23/appellate-court-sides-with-la-county-in-17m-billing-dispute-with-quinn-emanuel/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

When to Depose Corporate Representatives and What to Do When a 30(b)(6) Depo Goes Haywire

Even though Mark Brice works on the plaintiffs' side of medical malpractice and product liability cases at Decof, Mega & Quinn in Providence, Rhode Island, he offered up four different ways defense lawyers could address problematic answers in a deposition of a corporate representative.

October 27, 2025 at 06:30 AM By  **Ross Todd**



Mark Brice of Decof, Mega & Quinn speaking during an ABOTA Foundation webinar. Image via web video

“Failing to prepare is preparing to fail.”

Last week, **Mark Brice** of **Decof, Mega & Quinn** in Providence, Rhode Island broke out the old high school coach cliché, which he noted is somewhat dubiously attributed to Benjamin Franklin. Brice said the phrase describes the lawyer’s job getting ready for the deposition of a corporate representative under [Rule 30\(b\)\(6\)](#) of the Federal Rules of Civil Procedure. The rule requires corporations to designate individuals to testify about information “known or reasonably available” to the organization. Even though Brice works on the plaintiffs’ side of medical malpractice and product liability cases, during a web presentation sponsored by the ABOTA Foundation, he offered

up ways defense lawyers could address problematic answers in a deposition of a corporate representative.

But first, Brice stressed the need for plaintiffs lawyers to thoroughly prepare by learning as much as they can about a corporate defendant, by reviewing annual reports and other relevant public information.

“One of the great things about public corporations is [that] they publish a lot of stuff that's easily available to the public,” Brice said. “The last case I had the annual report gave me the name of all of the major competitors. It gave me the structure of the corporation, all of the divisions, the names of the officers and managing directors. It gave me how well they're doing financially.” He said in some cases the annual report will also list significant litigation, another potential source of information.

Another useful tool? The telephone. Brice suggested that if you find other cases that have involved the deposition of a corporate representative of a company you're up against, you should just pick up the phone and call the lawyers involved.

“You'll be amazed,” he said. “Lawyers love to talk about their cases, and so you'll get an enormous amount of information that gets you a head start on your corporate depositions before you even begin.”

Timing

Brice has strong opinions about when is the best time for 30(b)(6) depositions. For one, he said that you should seek to depose your opponent's chief information officer or someone else aware of the company's protocols for electronically stored information that might be subject to discovery. “This is a critical thing to make discovery easier, to make it more organized, and it's a helpful way to be able to marshal all of these documents,” he said.

Brice said that you need to approach the deposition of a corporate representative as if it were trial testimony, since the corporation likely won't have to produce the same witness at trial. “Most times, the courts will say that they've got to produce somebody—a person—but they don't produce the same ones they produced at the 30(b)(6) deposition,” he said. “You're not going to get a second shot at deposing that person or cross-examining that person.” For that reason, Brice said he tends to depose corporate representatives at the end of fact discovery. “You should never take a 30 (b) (6) deposition without having all of your information available.”

Brice sympathized with the task of defense lawyers who have to pick the right person to represent the corporation, educate them properly on the topics at issue and prepare them to testify on the

company's behalf. He said that it's important for everyone involved to make a good faith effort to refine the areas of examination with "reasonable particularity" as required under the Rule.

"Preparing the designee is critical, because trying to change it later is not ideal," he said. "You're up that famous creek with no navigable means of transportation."

Still, Brice offered up four suggestions for what to do when the designated witness "explodes" during the deposition and "says some stuff that really hurts you." First, he said you can simply examine your own witness. "At the deposition itself, you get a break, and you get to ask questions," he said. "That's probably the best way. The earlier you do this, the better it is." Brice's second suggestion was to address any problems with an errata sheet, which requires an explanation for the mistake. Brice said in that situation, both answers—the original and the errata sheet answer, with its explanation—go into evidence.

He said you also can go to your opposing counsel, explain what's going on and offer to do another deposition. "You say, 'Look, he said A, B and C. I know for a fact A, B, C is not true because I got the documents to prove it, and I can do it at trial, or I can do it now, so you have a chance to examine it,'" he said.

If your opponent doesn't take you up on that offer, Brice said that at trial, you can go to the judge, say you tried to fix the problem earlier and your opponent wasn't interested in dealing with it then. "So, the judge says, 'Well, why weren't you interested?'"

"It's probably better to try to get the information up front."

Page printed from: <https://www.law.com/litigationdaily/2025/10/27/when-to-depose-corporate-representatives-and-what-to-do-when-a-30b6-depo-goes-haywire/print/>

NOT FOR REPRINT

© 2025 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).

Securities

Gerresheimer Says Its Own Probe Shows Probable Accounting Issues

Oct. 26, 2025, 3:07 AM PDT

Gerresheimer AG, a maker of packaging for medicines and cosmetics, said an external investigation it commissioned has found evidence of probable accounting issues from last year and that the probe will continue.

After disagreeing with findings by Germany's financial watchdog last month, Gerresheimer now says that it is "more likely to assume" that it did indeed fail to properly recognize sales during the 2024 financial year.

An initial external probe by a law firm hired by Gerresheimer centered on roughly €3 million (\$3.5 million) in booked revenue from a contract last year, the company said. The law firm will now investigate a further €25 million or so in income from similar contracts, it said.

The admission comes a month after Germany's watchdog BaFin said that Gerresheimer may have booked revenue for some client contracts despite the sales not having been realized. The probe of the accounts, set to last through Nov. 30, started because of "concrete indications," BaFin said. That revelation caused shares in the Dusseldorf-based company to plunge by as much as 38% on Sept. 24.

The government audit focuses on orders for so-called "bill-and-hold" agreements and seeks to clarify whether sales should have been recognized in financial statements for the 2024 or 2025 financial year, Gerresheimer said. Revenue from such agreements reached €28 million in the 2024 financial year, a small portion of the company's €2.04 billion total sales, the company said.

Gerresheimer will continue to fully cooperate with BaFin's audit, it added.

Germany's markets watchdog has taken a tougher tack on policing company accounts after being given more powers in the wake of the Wirecard AG scandal. The 2020 collapse of the payments company highlighted shortcomings at the regulator and undermined confidence in Germany as a place to do business.

Gerresheimer's shares have fallen about 65% in the past year amid the investigation and cuts to its outlook and dividend. The company has also been the subject of takeover speculation and seen as a prime breakup candidate due to the different nature of its two businesses.

To contact the reporter on this story:

Tim Loh in Munich at tloh16@bloomberg.net

To contact the editors responsible for this story:

Shiyin Chen at schen37@bloomberg.net

John Viljoen, Marcus Wright

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

**Bloomberg
Law**[Request a Demo](#)[Login](#)

California Brief

Why Tesla Is Losing Ground Around the World: QuickTake

Oct. 24, 2025, 9:28 AM PDT

Tesla Inc. is facing a difficult road ahead. Deliveries of its electric vehicles are on track to decline for the second year in a row, even as the broader global EV market expands.

In the US, consumer demand will be put to the test now that a federal purchase subsidy has come to an end. The company is also facing pressure from the Trump administration's tariffs and the loss of revenue from regulatory credits sold to other automakers to help them comply with emissions standards.

Elsewhere, Tesla is struggling with heightened competition, particularly in China, and backlash to the polarizing politics of Chief Executive Officer Elon Musk. More fundamentally, it's lacking a truly new, affordable vehicle to revitalize its aging lineup, having instead opted for cheaper, stripped-down versions of the best-selling Model Y SUV and Model 3 sedan.

Investors remain buoyant nonetheless, keeping Tesla's market capitalization hovering around \$1.4 trillion. The value they ascribe to the company is increasingly rooted in Musk's vision of a future filled with autonomous vehicles and a "robot army," rather than the human-driven EVs in the here and now.



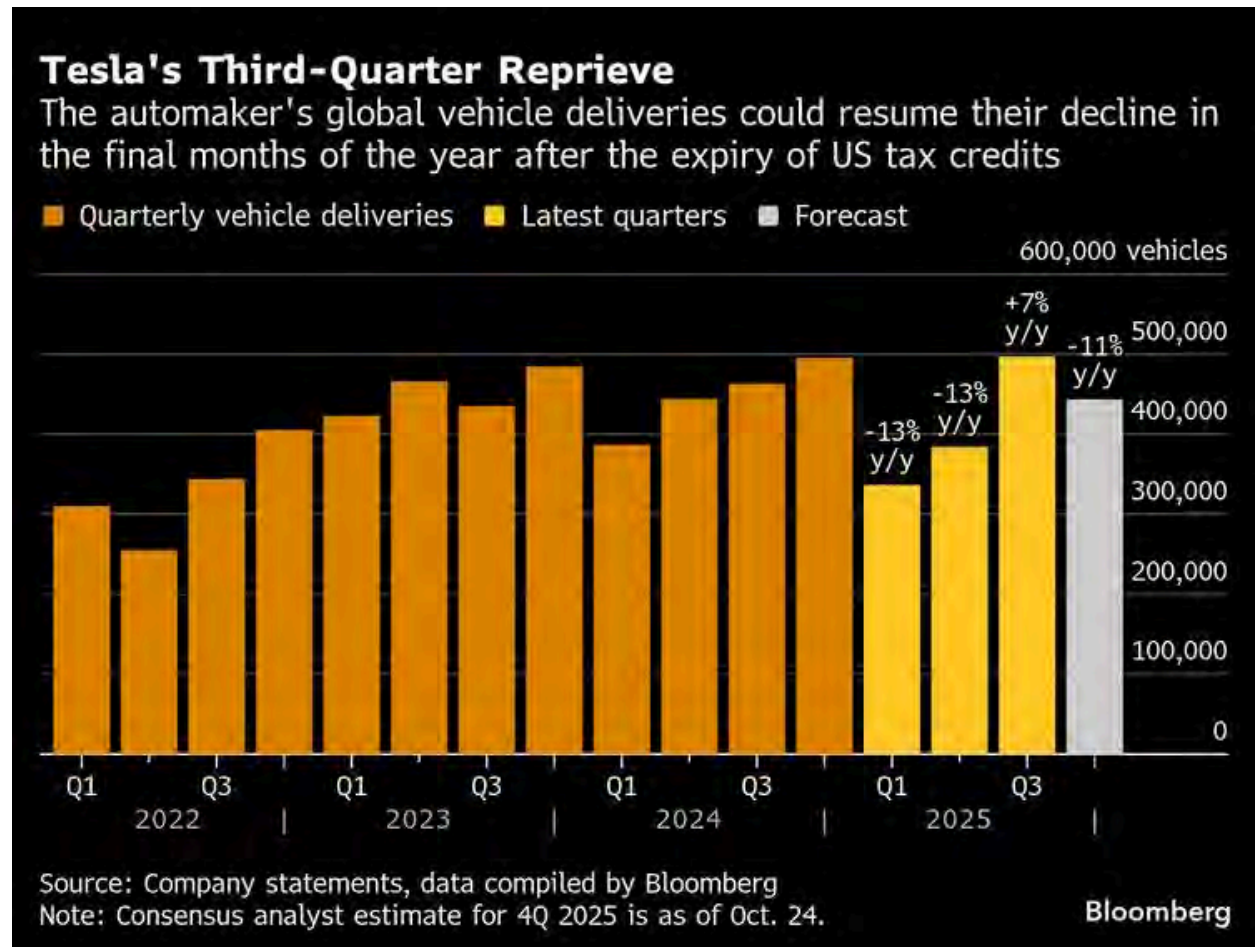
Listen: Craig Trudell joins Big Take podcast host David Gura to discuss why Tesla investors are, once again, all in on Musk.

What's happened to Tesla's sales?

Its global vehicle deliveries dropped by 13% in the first half of the year. This partly reflects disruption from a redesign of the Model Y, as Tesla paused output at each of its assembly plants to retool its production lines.

The third quarter was a different story. Sales rose by 7% year-on-year as, alongside other EV makers, Tesla benefited from US consumers rushing to buy electric cars before a \$7,500 federal purchase incentive ended on Sept. 30.

Now that those tax credits have expired, Tesla is facing the prospect of a slowdown in its home market in the final months of the year. It's losing market share in the US, too. While Tesla is still the top-selling EV brand in America, its share of electric-car sales has dropped to around 40%, according to Kelley Blue Book, down from more than 75% in 2022.



What's going on with Tesla's sales outside the US?

By Musk's own admission, Europe is the company's weakest major market. From January to August, the number of new Teslas registered across the region plunged by a third year-on-year, according to the European Automobile Manufacturers' Association — even as the wider market grew. Industrywide battery-electric vehicle sales in Europe were up 26%.

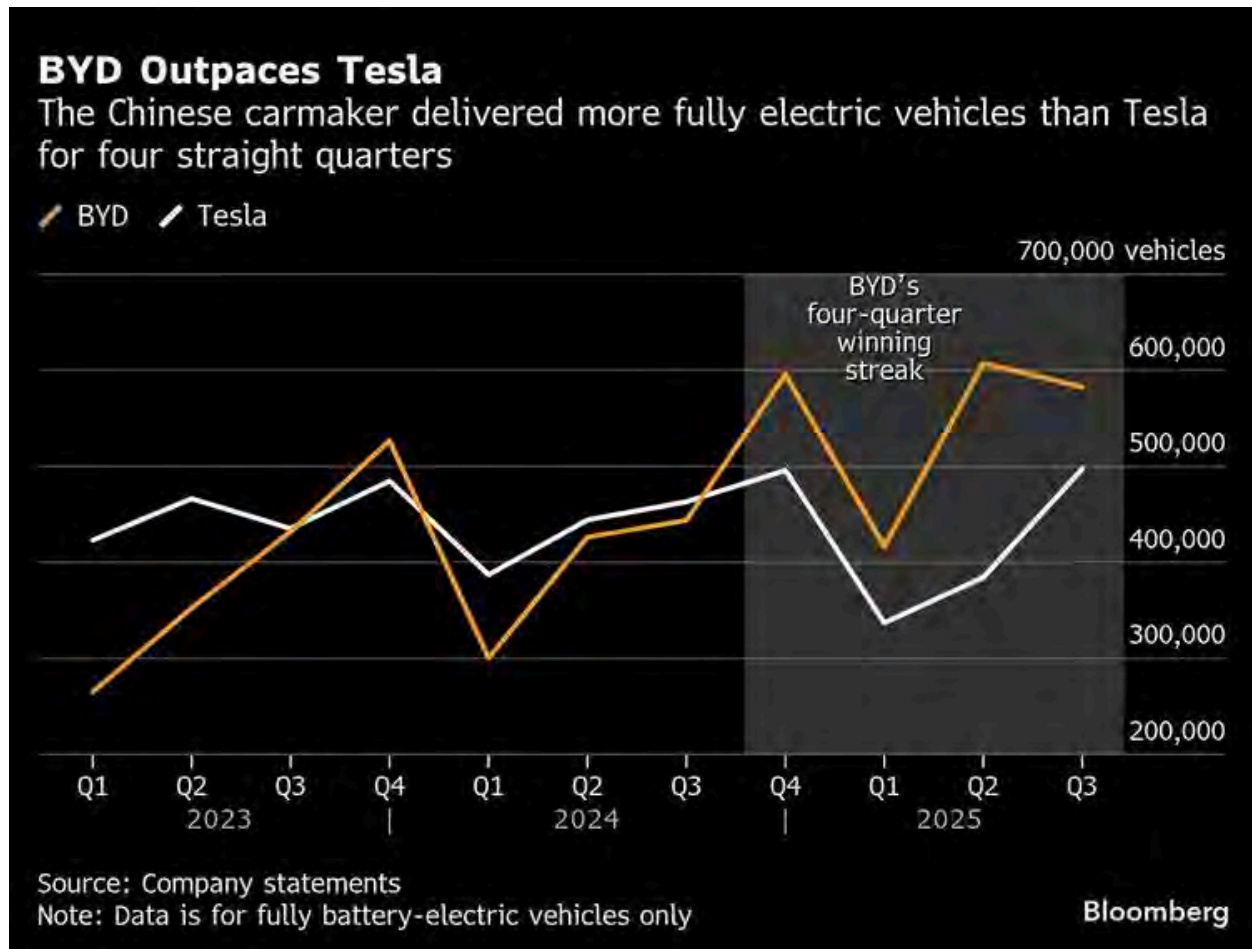
In China, the world's biggest EV market, Tesla has been in reverse gear for much of the year. Shipments from its Shanghai plant — which are destined for both domestic customers and for export — declined year-on-year in seven out of the first nine months of 2025, according to the China Passenger Car Association.



Why is Tesla losing ground in the EV market?

Musk has stuck to a less-is-more approach to Tesla's lineup. For years, the company only sold five models — the Model S (which debuted in 2012), Model X (2015), Model 3 (2017), Model Y (2020) and the Cybertruck (2023) — and not all of these are available globally.

BYD Co., by contrast, has a substantially larger lineup and most of its vehicles are cheaper than Tesla's most popular offerings, the Model Y and Model 3. The Chinese automaker is outselling Tesla globally, having delivered more fully electric vehicles for four straight quarters. That's without BYDs being available in the US and also amid a bruising EV price war in China.



A sub-\$30,000 car has long been seen as key to further sales growth for Tesla. After a diversion with the expensive Cybertruck – a pickup that’s fallen well short of the CEO’s volume expectations – the “more affordable” vehicles Musk promised this year ended up being simplified versions of the Model 3 and Model Y. While these new cars are cheaper than the normal iterations, they still have a starting price closer to \$40,000 and customers will have to settle for less range, slower acceleration and no lane-keeping assistance.

It’s unclear whether Tesla will make more radical adjustments to its lineup anytime soon. In the meantime, it risks looking increasingly out of step with competitors’ fresher designs.



A Tesla Cybertruck at the company's store in Colma, California.

Photographer: David Paul Morris/Bloomberg

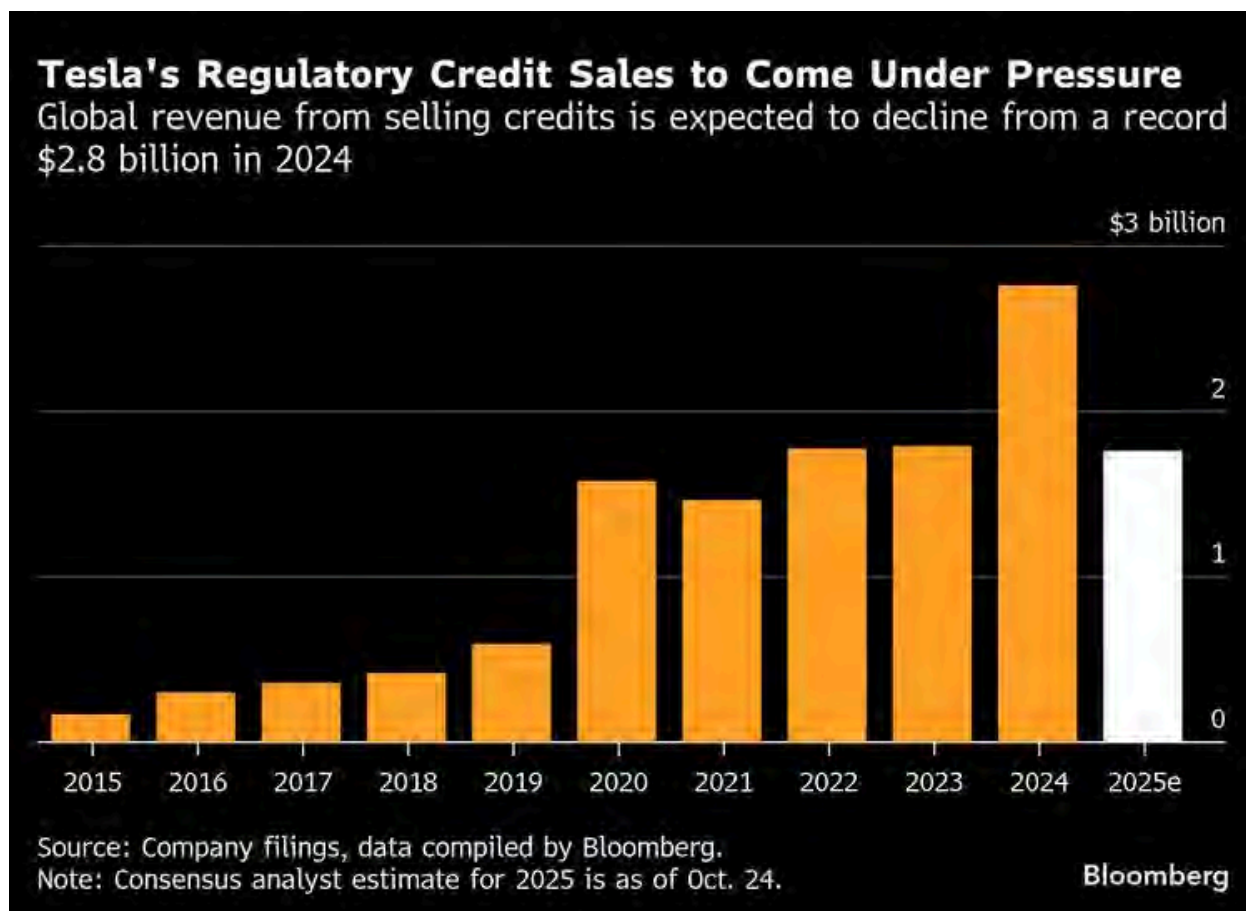
How have politics factored into Tesla's slump?

Some consumers have been turned off by Musk's politicking: his close links to Trump and the Republican Party during the US presidential campaign, his subsequent work gutting federal agencies as the government's efficiency czar, and his cheering of far-right politicians in Europe.

The "Tesla Takedown" movement emerged in 2025 and its organizers arranged protests at showrooms globally and called for a boycott of the company's products and shares. The EV maker has also dealt with incidents of vandalism and arson.

Musk spent almost \$300 million to help elect Trump and his Republican allies in the 2024 election. But that hasn't afforded Tesla protection from the president's tariffs, which added around \$700 million to its costs across the second and third quarters of this year.

After Musk's bromance with Trump broke down, Republican lawmakers didn't spare Tesla when voting to eliminate the federal EV tax credits as part of a sweeping tax-and-spending law. They also abolished the penalties for automakers that fail to meet federal fuel-economy standards. Tesla sells regulatory credits in the US and elsewhere that help other car manufacturers comply with such emissions rules. In the third quarter, this revenue stream shrank by 44%.



What is Tesla doing to try to recover?

Tesla has expanded into India, opening its first showroom in Mumbai in mid-July. But initial appetite in the nascent EV market appeared to be underwhelming. Reflecting India's high tariffs on vehicle imports, the entry-level Model Y is priced closer to \$70,000, putting it out of reach for the vast majority of the country's drivers.

Looking to regain market share in China, Tesla is making changes to keep pace with competitors' tech-filled cars. It's integrating in-car voice assistant functions powered by local artificial intelligence models from DeepSeek and Bytedance Ltd.'s Doubao. The automaker has also rolled out a six-seat Model Y at a starting price of \$47,200, comparable to rival EVs with three-row seat configurations.

Elsewhere, Musk has assumed oversight of sales in Europe and the US after the departure of longtime confidant Omead Afshar, Bloomberg reported. Afshar's exit followed a string of senior-level departures this year, including Milan Kovac, the engineering lead for Tesla's Optimus robot program, and David Lau, who ran software for over a decade.

What's the outlook beyond EVs?

Musk has been hyping up what he sees as the company's true calling: self-driving cars and humanoid robots. He's said that Optimus has the potential to be "the biggest product of all time" and will eventually account for 80% of Tesla's value.

There's currently a huge gap between ambition and execution – both autonomous vehicles and bipedal robots are some way off from starting to "move the financial needle," as Musk put it during an earnings call in April.

Tesla has proposed giving Musk a \$1 trillion pay package to incentivize him to stick around and bring his vision to reality. The full payout hinges on him achieving a series of "Mars-shot" milestones, including having 1 million robotaxis in commercial operation, delivering 20 million EVs and 1 million AI robots, and increasing Tesla's market cap to at least \$8.5 trillion. The package faces a shareholder vote in early November.

Tesla aims to have a driverless ride-hailing network that initially uses its consumer vehicle models before incorporating a purpose-built Cybercab, which will have no steering wheel or pedals. After roughly a decade of Musk predicting Teslas should soon be able to drive autonomously, the company launched its long-awaited robotaxi service in June.



A Tesla Cybercab prototype.

Photographer: David Paul Morris/Bloomberg

It was a modest debut in Austin, Texas, open to a small contingent of fans. While the general public now has access to Tesla's robotaxi app, there's a waitlist to actually gain access to the service. Human safety monitors are still inside the front passenger seat of the vehicles, although Musk said they could be removed in some parts of the city by the end of the year. In an October earnings call, the company didn't provide an update on the current size of the fleet or when anyone in Austin will be able to easily hail a ride.

The challenge for Tesla is to scale its robotaxi operations to prove that its future is indeed in autonomy rather than automaking. Musk said he expects to expand to as many as 10 metropolitan areas in the US by the end of the year, though this will depend on receiving regulatory approvals.

The Reference Shelf

Bloomberg's Big Take looks at Tesla's door handle issue.

Bloomberg Opinion's Liam Denning unpacks Tesla's third-quarter earnings.

Read explainers on why Tesla's valuation rests on Musk more than reality, why it's so hard to make a self-driving car, and the problems rival BYD is facing.

To contact the reporter on this story:

Kara Carlson in Austin at kcarlson72@bloomberg.net

To contact the editors responsible for this story:

Nilushi Karunaratne at nkarunaratne@bloomberg.net

Craig Trudell

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Securities

Insight

Truman-Era Securities Ruling That Governs Crypto Needs an Update

Oct. 27, 2025, 1:30 AM PDT

A 1946 US Supreme Court ruling is deciding the fate of today's digital token networks, and the results are irreconcilable. The test, from *SEC v. Howey*, treats a deal as a "security" when people invest in a common enterprise with an expectation of profits from others' efforts.

This rule assumes a static instrument, but digital assets aren't static. Many tokens function as lifecycle instruments: they may start like fundraising tools and later run as decentralized networks. A rule built for fixed arrangements doesn't account for how most digital assets evolve.

Digital Asset Lifecycle

In the launch phase, a core team raises funds and promises to build a network. Early purchasers might expect profits tied to the team's efforts, making a token launch resemble a securities offering, especially when promoters emphasize that its value will appreciate like an investment.

Not all launch-phase purchases are investment driven. Some buyers seek discounted future utility (such as Kickstarter backers pre-purchasing a product) or simply want to support a project they believe in (such as GoFundMe donors).

In the transition phase, control and governance diffuse as the network decentralizes. Reliance on any single promoter diminishes. In the mature phase, demand is utility-driven, and the network operates with minimal reliance on a promoter. Thousands of independent participants may secure and use the chain.

Not all digital assets have lifecycle phases that resemble securities. Some distributions (airdrops or rewards) involve no monetary investment. Some cryptocurrencies (stablecoins) lack a profit expectation by design. And assets launched on already-decentralized networks may not depend on any team's efforts. Such tokens fail the *Howey* test.

But that static test struggles to keep up with tokens that evolve through a securities-like phase.

Why Lifecycle Matters

Traditional securities, such as a 1946 IBM share, are static. But digital assets can, and do, change. That's why judges in New York, Washington, DC, and California—even judges sitting in the same courthouse—have reached opposite outcomes on materially similar transactions involving dynamic tokens.

In *SEC v. Ripple*, Judge Analisa Torres in the US District Court for the Southern District of New York held that programmatic exchange sales weren't investment contracts because buyers couldn't reasonably tie profits to the issuer's efforts. Months later, in *SEC v. Terraform Labs*, SDNY Judge Jed Rakoff rejected that reasoning and treated all token sales as investment contracts, leading to a multibillion-dollar settlement.

Six months later, DC Judge Amy Berman Jackson in *SEC v. Binance* dismissed some government claims while allowing others to proceed, emphasizing that *Howey* analyzes transactions—not tokens as objects. And six months after that, in *SEC v. Coinbase*, SDNY Judge Katherine Polk Failla certified the core question for appeal, acknowledging “substantial ground for difference of opinion.”

The SEC oscillates, too. In 2017, Chair Jay Clayton stated that, by and large, most token sales are securities offerings. Then, in 2018, then-Director William Hinman stated that Ethereum's network had become decentralized enough that Ether wasn't a security. Under Biden-appointed Chair Gary Gensler, the SEC largely rejected temporal distinctions, claiming the vast majority of tokens are securities.

Following Gensler's resignation and the Trump administration's appointment of Commissioner Mark Uyeda as acting chair, the SEC dismissed several enforcement actions and announced a comprehensive policy review. On Aug. 19, now-Chair Paul Atkins declared “very few tokens are securities”—and that the SEC “regretted any confusion.”

This confusion has produced inconsistent precedent and caused lasting damage. Defendants face criminal exposure and billion-dollar remedies under standards that vary by courthouse. This isn't just a litigation issue; it's a day-to-day compliance problem for issuers, exchanges, and trading venues.

Nascent industries need regulations that don't change with each administration. Lower courts can limit *Howey* at the margins, but only the Supreme Court or Congress can provide a durable rule for assets that can change character through decentralization.

Compounding Pain Points

Howey evaluates transactions, so the same token can flit in and out of the SEC's regulatory ambit over its lifecycle, producing confusing precedent.

Confusing laws present constitutional due-process problems, especially when there are criminal consequences. When tokens evolve, yet doctrine supplies no criteria for whether a token is “sufficiently decentralized,” constitutionally required fair notice becomes precarious.

The Supreme Court's 2024 decision in *Loper Bright v. Raimondo* further strains outdated rules. *Loper Bright* overruled *Chevron* deference given to federal agencies and requires courts to independently judge statutory questions. Agencies no longer can legislate through strained interpretations of ambiguous statutes.

Federal judges have shown they can't agree on whether the Securities Act applies, which is precisely when clarity from the Supreme Court or Congress becomes essential.

Looking Ahead

The Supreme Court could clarify *Howey* by crystallizing that "efforts of others" means *ongoing* efforts by *identifiable* others, confirming that a "sufficiently decentralized" network is not a "common enterprise," and codifying that transactions and not tokens are the subject of the *Howey* test. Then, common law can work out how much decentralization is enough.

Alternatively, Congress can require agencies to establish decentralization metrics. For example, the Nakamoto coefficient could quantify network decentralization for securities regulations, much like the Herfindahl-Hirschman Index measures market concentration for antitrust regulation purposes. Congress also could create a safe harbor for early-stage transactions in tokens that haven't yet reached some threshold.

Congress already recognizes a lifecycle framework. The GENIUS Act excludes permitted payment stablecoins from security and commodity definitions. The CLARITY Act would define when a digital asset is a digital commodity, and not a security, as part of a functional and decentralized system.

As a stopgap, lower courts can read *Howey* narrowly by applying it only when there's a clear promoter who's making promises about ongoing management. That narrowing aligns judicial doctrine with Congress's emerging architecture without overruling *Howey* itself.

Rather than forcing 1946 logic onto networks that can transform through decentralization, courts should narrow *Howey* to arrangements that fit its static-instrument premise, clearing the way for Congress to build a modern legal framework that matches how digital-asset technology actually works.

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

Author Information

Seth Oranburg is a professor at the University of New Hampshire Franklin Pierce School of Law and director of the Program on Organizations, Business, and Markets at NYU Law's Classical Liberal Institute.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Max Thornberry at jthornberry@bloombergindustry.com; Rebecca Baker at rbaker@bloombergindustry.com

Securities

Stablecoins Versus CBDCs: Who Will Win the Digital Money Fight?

Oct. 27, 2025, 4:26 AM PDT

With more consumers abandoning physical cash and the US under President Donald Trump throwing its weight behind cryptocurrencies, monetary authorities are under pressure to evolve. They're going about this in different ways. The Trump administration supports the emergence of decentralized, privately managed digital money in parallel with the traditional "fiat" currencies issued by governments — as long as they continue to use the dollar as a reference. The European Central Bank and the People's Bank of China have chosen the opposite tack: developing digital versions of the euro and the yuan to ensure they can hold their own against these new rivals.

The contrasting approaches speak to a broader battle for global influence. US officials are convinced that making dollar-backed tokens known as stablecoins part of mainstream finance will entrench US dominance in global payments. Many governments elsewhere see central bank digital currencies — or CBDCs for short — as the first line of defense against cryptocurrencies that threaten their control over the flow of money through national economies.

Both stablecoins and CBDCs remain new and relatively untested, and their future is difficult to predict despite plenty of confident projections made by investors and policymakers alike. History shows ample evidence of how financial innovation can head in unexpected directions. Both market participants and governments will learn as they proceed.

What are CBDCs?

They're not so different, at least on the surface, from keeping money in a bank account and using plastic cards, smartphones or fintech apps to send it electronically into the world. The key difference is that money held in the form of a CBDC is a direct liability of the central bank that issued it, making it ostensibly risk-free — safer even than savings held in a commercial bank. In theory, the money in a regular bank account is convertible into paper cash on demand. In reality, that's subject to the health of the bank and its liquidity, meaning consumers might not always be able to access their balance and can lose money if the bank goes bust.

Old and New Forms of Money

A range of digital tokens are trying to compete with fiat currencies



Fiat currency

Traditional currencies such as the US dollar or Japanese yen. Issued and backed by governments, they rise and fall with the fortunes of nations. Central banks are making digital versions



Cryptocurrency

Digital tokens often created by dispersed groups of believers, with transactions recorded on secure online ledgers. Prices can be volatile as their value depends on acceptance and use



Stablecoin

Cryptocurrencies designed to hold a steady value by tracking the price of another financial instrument such as the US dollar. Some claim to be backed by pools of liquid assets



Algorithmic stablecoin

Stablecoins that are supposed to maintain their pegs through automated operations, for example by increasing or decreasing supply of the tokens

What are stablecoins?

Like other cryptocurrencies, stablecoins are digital tokens developed and managed by a private organization and encoded on a blockchain, a kind of digital ledger that makes forgery — the biggest threat to any currency's viability — basically impossible. Whereas most cryptocurrencies such as Bitcoin are notoriously volatile, a stablecoin's value is usually pegged to a traditional currency, backed up by reserves composed typically of cash and short-term government debt. In the US, where it can take days to move funds through the legacy banking system, stablecoins are seen as one path to improving the speed and efficiency of transactions.

Stablecoins are also considered an appealing option for millions of people in developing nations who may have a smartphone but not a bank account. In countries with volatile national currencies, they are being touted as a useful hedge against runaway inflation.

For now, stablecoins are used mostly by crypto investors as a safe way to park their profits without needing to convert them back into cash, and to switch in and out of different cryptoassets or move funds between exchanges. They are nowhere near challenging the dominance of mainstream money in the real economy.

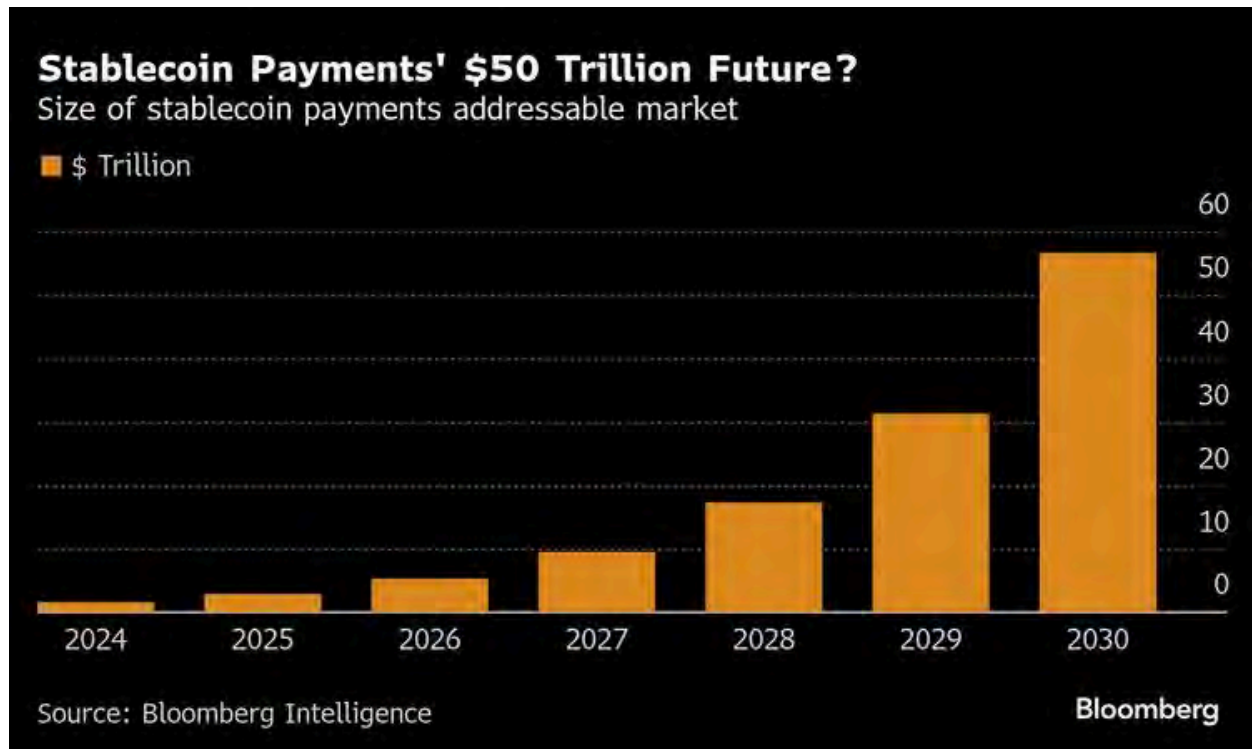
How similar are CBDCs and stablecoins?

Not very, beyond the fact that they are both used for digital transactions. Many CBDC projects borrow from blockchain technology. But stablecoins and other cryptocurrencies were born as a revolt against centralized, state-backed finance, while CBDCs are its purest expression. Central banks first turned to the idea in part as a defensive move, spurred by private-sector experiments such as Facebook owner Meta Platforms Inc.'s doomed 2019 plan for a global digital currency, Libra. For central bankers, the attraction of CBDCs is that they offer more efficiency and traceability than paper cash, without many of the risks posed by private tokens. And while crypto is decentralized by design — digital tokens are registered on blockchains that are distributed across a multitude of computers — CBDCs are under the control of a central authority.

How do you use CBDCs and stablecoins to pay for things?

Using a CBDC may feel a lot like paying with regular money using a bank card or a smartphone, only the recipient gets paid instantly as there are fewer intermediaries involved. Regular digital payments require a host of middlemen, including the banks of the buyer and the merchant as well as payment processors such as Visa, Mastercard, Worldpay and Stripe. In principle, CBDC payments carry limited risk as they change hands within the central bank's own systems, doing away with the need for authorization, clearing and settlement.

Both CBDCs and stablecoins are transferred from the user's digital wallet held on a smartphone or a computer to a compatible platform used by the vendor. For now, stablecoins aren't often used for everyday payments in stores or for groceries, or for big payments across borders by businesses. The crypto industry's hope is that the world eventually embraces stablecoins en masse and a new ecosystem emerges in which consumers, merchants and their suppliers transact across a host of compatible blockchains.



What's being done to regulate stablecoins?

Several countries have been devising rules to put stablecoins on a more solid legal footing and impose specific requirements for their back-up reserves, including the US with the Genius Act passed by Congress in July. That legislation has already seen transactions via stablecoins increase by 70%, according to research by Artemis. Treasury Secretary Scott Bessent has said the act will usher in “the next era of dollarization.”

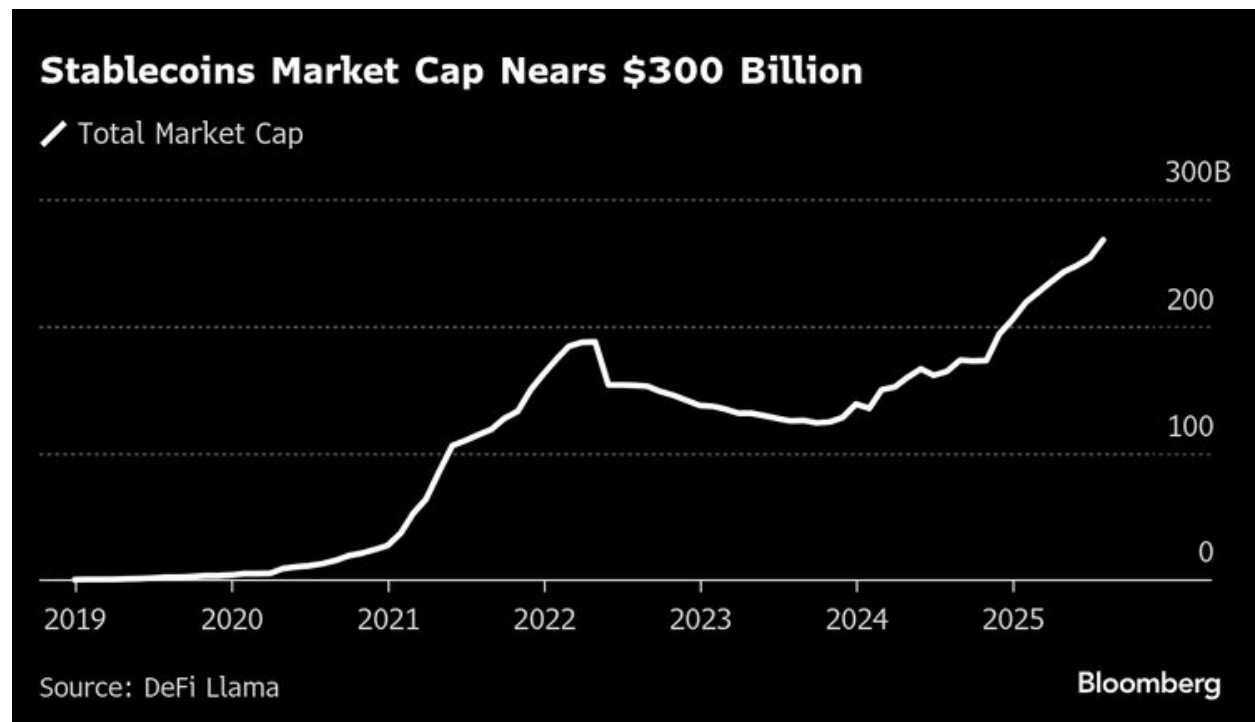
The European Union passed rules to regulate stablecoins tied to the euro and other currencies in 2023, forming one of the first comprehensive frameworks that banks and other major firms might rely on to issue their own tokens. Japan and South Korea are among nations working on a regulatory framework for stablecoins denominated in local currencies. Hong Kong enacted such a bill in May. Even in China, which has for years been cracking down on the local cryptocurrency industry, new voices have emerged calling for the establishment of yuan-denominated stablecoins.

What are the drawbacks of stablecoins?

It's private money, so there will always be a measure of risk compared with central bank cash. The biggest stablecoin is Tether's USDT, a dollar-denominated unit issued by a corporate entity based in El Salvador — a jurisdiction not known for its centrality in global finance.

Stablecoins have not always been stable. Stablecoin TerraUSD — which used an algorithm to maintain its peg instead of a reserve — and its sister token Luna melted down entirely in 2022, sending their combined market value of \$60 billion to near zero. Circle's USDC, the second-largest stablecoin, unhitched from its peg to trade briefly at 85 cents on the dollar in 2023 after more than \$3 billion of its reserves got caught in the collapse of Silicon Valley Bank. Such incidents have made financial authorities wary of approving these relatively experimental digital tokens for wider use.

A full-scale shift to stablecoins poses the risk of large-scale money laundering, tax evasion and fraud unless governments impose on them the same controls and transparency requirements applied to banks.



Crypto wallets are popular targets for thieves and hackers. Attackers can quickly drain a wallet of its tokens if they gain access, and a lack of protections for consumers means there's little chance for recompense. If issuers act fast enough, they may be able to step in and freeze the stablecoins before hackers launder the funds out of sight, but they'll usually only do so at the request of law enforcement, and that often comes too late.

There are also questions about whether stablecoins can be robust enough to handle the vast increase in usage required for them to challenge mainstream currencies. Sudden surges in transaction activity have occasionally overwhelmed the blockchains that support Bitcoin and Ether, the most popular cryptocurrencies, leading to long waiting times for users and astronomical fees. Blockchains developed more recently, such as Solana, are designed with transaction speed as the main focus.

What types of CBDC are there?

Central banks are working on two main CBDC tracks: wholesale and retail. Wholesale CBDCs aim to modernize the plumbing of the financial system — payments between banks and central banks — with some pilots using blockchain or other new settlement technologies. The Bank for International Settlements estimates that nine wholesale CBDCs could be in circulation by 2030. Retail CBDCs, by contrast, would give households and businesses direct access to central-bank money in digital form. Countries with emerging markets were the first to push retail projects, often to include people without bank accounts and reduce the costs of distributing cash.



The European Central Bank has chosen to develop a digital version of the euro.

Photographer: Liesa Johannssen/Bloomberg

Why are some governments pushing CBDCs?

Digital payments could be settled at lower cost and faster, in some cases instantly, which would reduce credit risk. In countries where electronic payments remain limited because of high merchant fees, CBDCs could make paying by phone or card more common. By adding competition to the system, they might also put pressure on payment service providers such as Visa and Mastercard to lower their charges.

In Europe, they're seen as a way to keep national currencies relevant in the event of a large-scale pivot to blockchain-based digital payments. The thinking is that the euro could better compete with private tokens backed by other currencies if it exists in a digital form that's compatible with their blockchain networks.

There's also a national security element. More than half of euro zone countries have no homegrown competitor to big US payments networks such as Visa, Mastercard and Paypal. If Trump decided one day to stop them operating in Europe, it would cause severe disruption in countries where there's very little cash still in circulation, such as Estonia or Slovakia.

There's a power play going on too. Dollar-pegged stablecoins are seen by officials in Washington as one way to reinforce the status of the US currency in developing nations.

Rival economic superpower China is promoting its digital yuan as a potential rival to the dollar for international transactions. The US currency accounts for most of the activity on the SWIFT cross-border payment system established in the 1970s. Transactions between banks using the SWIFT network can sometimes take days to complete. China has developed a system to send digital yuan across borders in a few seconds, and is lobbying trading partners to adopt it as their preferred conduit for international trade.



The prices of Tether's USDT ainst global currencies at a crypto exchange in Hong Kong.

Photographer: Paul Yeung/Bloomberg

What are the potential downsides of CBDCs?

Because a CBDC is the liability of a central bank, a commercial bank cannot use CBDC deposits as capital for making investments and issuing loans. So there are concerns that a surge in CBDC usage could undermine the crucial role that lenders play in providing finance for businesses and individuals. To counter this, the ECB plans to set holding limits on the digital euro, with €3,000 (\$3,499) most commonly cited by bank officials as the cap per individual. Privacy is another hurdle: every digital payment leaves a trace, sparking fears of government surveillance if cash use declines. Central banks say cash would still be available, and are trying to strike a balance between transparency and privacy.

Is a US dollar CBDC likely?

The Federal Reserve lagged other central banks in kicking off research into a CBDC, with its Chairman Jerome Powell regularly emphasizing that it was important for the US to “get it right” rather than to be a pioneer in this space, given the dollar’s role as the world’s reserve currency. Former President Joe Biden’s administration and some congressional Democrats signaled a greater degree of interest, noting the potential for a CBDC to nudge more Americans from the cash economy into the banking system. Then things turned hard against a digital dollar after Trump’s return to the White House. One of his first executive orders specifically barred a CBDC, reversing an order from Biden that had called for exploring its potential.

How close are CBDCs to reality?

For now, no major economy has yet introduced a CBDC on a full, economy-wide scale. Some frontier economies have been more ambitious. The Bahamas were the first to introduce a digital currency, the Sand Dollar, in 2020, but uptake has been slow. Nigeria followed with its eNaira in 2021. It’s been a mixed success, but proved an effective backstop after a botched banknote swap in 2023 created a severe cash shortage. Jamaica followed with JAM-DEX in 2022.

China appeared to be moving swiftly at the start of this decade toward a national and even global rollout of the digital yuan. But almost four years after it was unveiled to an international audience at the 2022 Winter Olympics, trials and pilot programs remain the order of the day. The government has pushed small businesses and local governments to pay their employee salaries in digital yuan, but adoption has been slow given that many Chinese prefer to transact in regular yuan using private platforms such as Alipay and WeChat Pay. The government is still pressing ahead.

The ECB is eyeing a potential digital euro launch in mid-2029. The biggest holdup is the European Parliament, which must pass legislation to underpin the initiative.

In the UK, Bank of England officials are weighing whether to set aside plans for a CBDC and encourage the banking industry to accelerate alternative payment innovations instead.

The Reference Shelf

Bloomberg explainers on stablecoins and Bitcoin's new purpose.

A Bank for International Settlements survey on how work on CBDCs is advancing across the world and how they'll compare to fast payment systems.

A European Central Bank overview about its digital-euro project and its latest progress report.

The Atlantic Council's global CBDC tracker.

Bloomberg Opinion's Andy Mukherjee on how stablecoins will whip up US-China rivalry, and Lionel Laurent on the arguments for a digital euro.

The IMF's virtual handbook for policymakers at central banks and finance ministries seeking to evaluate CBDCs.

(Adds data on stablecoin usage growth since Genius Act, and reference to slowness of some cross-border bank transfers.)

--With assistance from Yujing Liu, Anna Irrera and Zeke Faux.

To contact the authors of this story:

Jana Randow in Frankfurt at jrandow@bloomberg.net

Chris Anstey in Boston at canstey@bloomberg.net

Emily Nicolle in London at enicolle@bloomberg.net

To contact the editor responsible for this story:

Tom Pfeiffer at tpfeiffer3@bloomberg.net

Lauren Tara LaCapra

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved

Securities

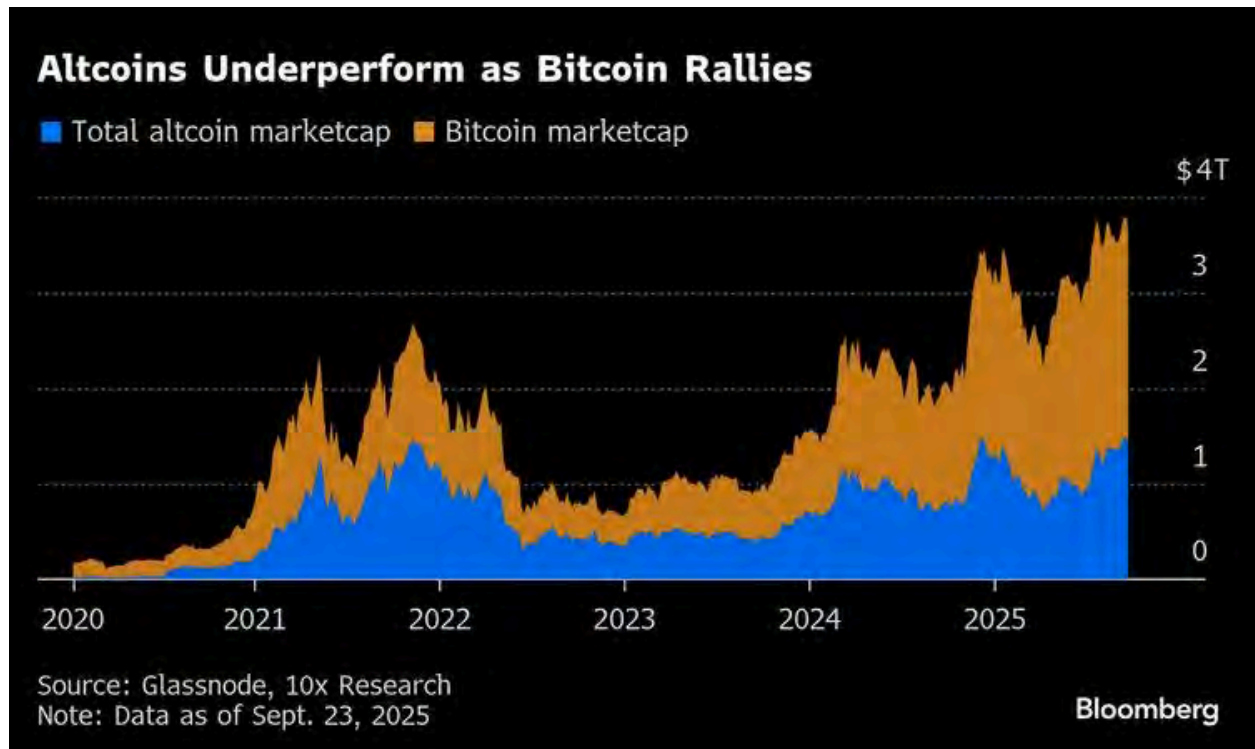
Altcoin Market Falls \$800 Billion Short as Retail Traders Vanish

Oct. 24, 2025, 4:44 AM PDT

The altcoin market is \$800 billion smaller than past cycles would suggest — and a shift in retail sentiment may have killed it.

A new estimate from 10x Research argues that the complex of non-Bitcoin tokens has been starved of capital this cycle, largely because retail investors, especially in South Korea, have turned to crypto-linked equities instead, while Bitcoin boomed on institutional flows. The estimate lands just weeks after a record liquidation wiped out swathes of the altcoin market, amplifying fears that the speculative playground for digital tokens beyond Bitcoin and Ether may never recover.

“Altcoin market capitalization would be roughly \$800 billion higher if retail investors — especially in South Korea — hadn’t redirected their attention toward crypto-related stocks and other equities,” said Markus Thielen, CEO and head of research at 10x Research. In this cycle, “altcoins have failed to attract sufficient new capital,” he added.



Bloomberg

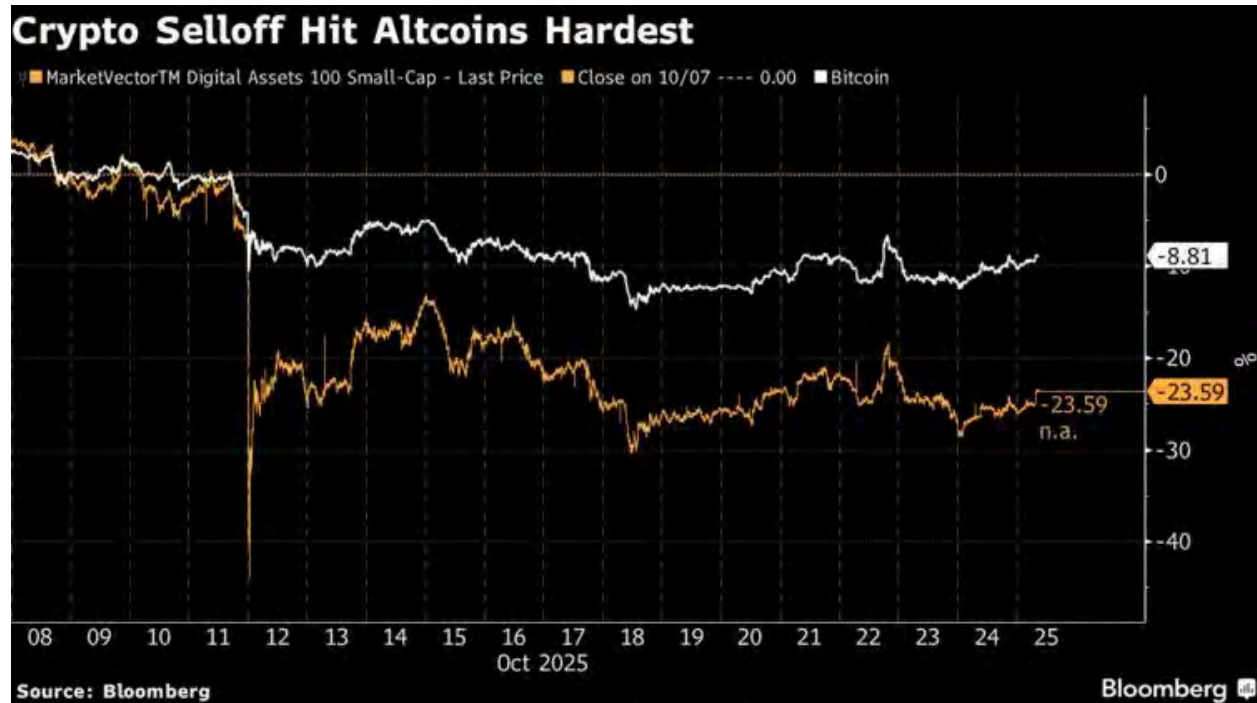
Historically, South Korea's crypto traders have shown a proclivity for altcoins, which in the past have accounted for more than 80% of total trading activity on local exchanges. That's a stark contrast to global platforms, where Bitcoin and Ether together make up 50% or more of overall volumes.

Read: Wipeouts Threaten Korea Retail Army Chasing Riskiest Investments

In 2024, from Nov. 5 through Nov. 28, the daily average trading on Korean crypto exchanges amounted to about \$9.4 billion, versus \$7 billion for the Kospi, according to data from CCData and Korea Exchange. Since then, volumes have collapsed, according to 10x Research.

Diminished appetite among Korea's traders is a key factor in altcoins' under-performance, 10x said, and it could presage further declines.

A sharp recent selloff in crypto markets sparked by escalating US-China trade tensions sent both Bitcoin and altcoins spiraling, but altcoins were hit hardest on a relative basis. Of the \$380 billion erased, about \$131 billion was concentrated in altcoins, 10x said at the time.



Bloomberg

For altcoins, the shift in attention to Bitcoin and crypto stocks represents a “structural shift,” according to 10x report — a deficit that appears like unlikely to be made up any time soon.

Read more: A \$131 Billion Crypto Crash Has Traders Fearing Lasting Damage

A MarketVector index tracking the bottom half of the largest 100 digital assets has edged back up about 4% this week, after tumbling 23% the previous one. The index is down 57% this year. Bitcoin, is up about 3.7% this week to around \$111,000, and 18% higher since December.

To contact the reporter on this story:

Suvashree Ghosh in Singapore at sghosh186@bloomberg.net

To contact the editors responsible for this story:

Lauren Tara LaCapra at llacpra1@bloomberg.net

Ryan Weeks, Dave Liedtka

© 2025 Bloomberg L.P. All rights reserved. Used with permission.

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Avalara Investors Fight Stay In \$8.4B Buyout Dispute

By **Asha Glover**

Law360 (October 24, 2025, 6:51 PM EDT) -- Shareholders of tax software company Avalara are fighting a motion by the company in Washington federal court to stay litigation accusing it of misleading investors ahead of an \$8.4 billion deal to take the company private.

Martin Sohovich and other investors said in a **brief** filed Thursday that Avalara Inc. "cannot cite a single case" to show why the proceedings should be paused while it fights a state court case. The court should reject the company's argument that a stay is warranted in the case until breach of fiduciary claims in a similar case, [Pipe Fitters Local Union 120 Pension Plan and Suzanne Flannery v. Scott McFarlane](#) in the Washington Court of Appeals, have been resolved. McFarlane is Avalara's CEO.

Avalara's arguments "inappropriately presume that any overlapping issues should be decided in the Pipe Fitters case," instead of the Sohovich case, even though the former case was filed three months after the Sohovich one, the investors said in their brief.

The argument over the stay follows U.S. District Judge Marsha J. Pechman's decision to allow the proposed Sohovich class action accusing Avalara of misleading investors ahead of the deal to take the company private.

Judge Pechman **in September** issued an order primarily denying the defendants' renewed dismissal motion after the Ninth Circuit revived some of the suit's claims in March.

She had thrown out the suit **last year**, declining to give Sohovich another chance at amending the suit that accuses Avalara of downplaying its future profitability to win investor approval of its \$8.4 billion buyout by investment firm Vista Equity Partners Management LLC **in 2022**.

The appellate court revived the suit's claims that Avalara misled investors by omitting that inorganic growth was not included as part of the company's valuation and that the defendants cherry-picked positive information from a report issued by Institutional Shareholder Services about the acquisition.

Judge Pechman agreed with the Ninth Circuit that the exclusion of inorganic growth from future revenue projections in Avalara's valuation was material to investors. According to the order, the complaint included "substantial allegations" that "Avalara had always included inorganic growth in its guidance, and when it did not, it 'explicitly stated as such.'"

Avalara had argued in October that a stay of the investors' case is warranted because of certain issues that have arisen from Pipe Fitters. Both the Sohovich and Pipe Fitters cases arise from the same underlying dispute — whether Avalara was undervalued in its sale to Vista at \$93.50 per share.

Both issues also are brought on behalf of Avalara shareholders against virtually the same defendants and ask for the same relief, according to the company's motion to stay.

"The factual and legal issues in Pipe Fitters fully encompass the remaining issues in this case, which have been narrowed to two challenged disclosures in the proxy for the transaction," Avalara argued. "As such, a resolution of Pipe Fitters will significantly simplify— and likely entirely resolve — the claims that remain in this case."

On Thursday, the investors urged the court to deny the motion to stay, saying that Avalara failed to

provide any past litigation that would justify granting it.

"Defendants cannot cite a single case holding that any argument they raise is relevant where a federal court holds exclusive jurisdiction over a cause of action, the parallel state case asserts a different cause of action with different elements, and the federal case is first-filed," the investors said.

Representatives of the investors and Avalara didn't immediately respond to requests for comment Friday.

The investors are represented by Tamar A. Weinrib and Jeremy A. Lieberman of Pomerantz LLP and Duncan C. Turner of Badgley Mullins Turner PLLC.

Avalara is represented by Christopher B. Durbin, Shannon M. Eagan, Patrick E. Gibbs, Ziwei Xiao and Taylor Boyle of Cooley LLP.

The case is Martin Sohovich v. Avalara Inc. et al., case number 2:22-cv-01580, in the U.S. District Court for the Western District of Washington, Seattle Division.

--Additional reporting by Katryna Perera and Jessica Corso. Editing by Neil Cohen.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Canadian Tech Co. Moves To Toss Investors' AI Hype Suit

By **Jessica Corso**

Law360 (October 24, 2025, 10:49 PM EDT) -- Canadian technology services firm Telus Digital has moved to dismiss a lawsuit accusing it of misleading investors about its artificial intelligence capabilities, arguing that the case is "fatally defective" because the company does, in fact, sell some AI products.

Telus is asking a New York federal judge to dismiss the proposed class action lawsuit because even suing investors concede that the company sells some AI technology.

"The complaint is fatally defective, and fails to identify any fraud whatsoever," Telus said in a Thursday court filing.

The company was sued in January 2025 with investors alleging that Telus' stock price fell 80% over a year-and-a-half-long period as it struggled to pivot to an AI-centric business model.

The investors said the company, which traditionally offered customer service support for call centers, shifted its focus toward AI after buying Lionbridge Technologies Inc. in 2020.

Lionbridge provided an AI-based data annotation service, but Telus didn't have the personnel with the knowledge or expertise to actually develop the product or any other AI product that the company wished to offer, suing investors said.

"These in-house engineers did not have experience, training or education in AI, but were diverted to such projects in lieu of hiring qualified AI engineers externally, because Telus did not have the budget to do so," according to the lawsuit.

The employees were also diverted from working on Telus' traditional money-making products, like its customer service support, the investors alleged. They argue that all of this was going on behind the scenes while Telus' executives were publicly touting its "next-generation" AI solutions.

But Telus said Thursday that claims it was only running AI pilot programs were false.

"[Telus] offers many AI-related capabilities, ranging from AI-powered chatbots to AI data annotation services to AI-supported content moderation services," according to the motion to dismiss. "Even the complaint concedes that [Telus] sells AI-related services, and plaintiff does not identify any AI service or product that [Telus] falsely claimed to have."

The company also said that plaintiffs have not provided any evidence that the Telus executives named in the suit committed fraud, saying that the confidential witnesses working with investors hadn't identified any instances in which individual defendants took public stances that they knew were incorrect.

While the company's financial results in the first half of 2024 were "disappointing," they didn't reveal any misrepresentations tied to its AI capabilities, Telus said.

"Plaintiff's alleged stock drop losses, therefore, were not caused by the alleged misstatements," according to Telus.

Attorneys for the investors and for Telus didn't immediately respond to a request for comment Friday.

The proposed class of investors is represented by Shannon Hopkins, Gregory Potrepka and Andrew Lencyk of Levi & Korsinsky LLP.

Telus and individual defendants are represented by Audra Soloway and Emily Miller of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Sarria v. Telus International Inc. et al., case number 1:25-cv-00889, in the U.S. District for the Southern District of New York.

--Editing by Jay Jackson Jr.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Investors Push To Find Crypto Firm Liable In Fraud Case

By **Katryna Perera**

Law360 (October 24, 2025, 6:36 PM EDT) -- Investors alleging their cousin fraudulently talked them into investing in a cryptocurrency firm have asked a Michigan federal judge to grant them a partial early win and find the firm liable for selling unregistered securities to the public.

The investors filed a **motion** on Thursday, seeking a win on the first two counts of the suit against the cryptocurrency firm Bitcoin Latinum, which is named as a defendant alongside Kevin Jonna.

The investors — Raymond and Simon Jonna, who are Kevin Jonna's cousins, and Farid Jamardov — argue that no reasonable jury could determine that Latinum is not liable for the sale of unregistered securities because the firm offered tokens to the public via investment contracts titled "Simple Agreement for Future Tokens," or SAFT.

"The SAFTs have all the hallmarks of a security and, as such, should have been registered with the [U.S. Securities and Exchange Commission]. Indeed, the SAFT states it 'is a security,'" the motion states. "Latinum, as the issuer of SAFTs (and the corresponding tokens), violated state and federal securities law by failing to file a registration statement with the SEC."

The investors argue that Latinum is "undeniably" a common enterprise that pooled investors' funds to develop and launch a digital token and blockchain platform, "effectively rendering investors' profits entirely dependent upon the blockchain's successful launch."

Additionally, the motion argues that investors expected that the \$514,000 investment would yield profits, further qualifying the tokens as securities.

"Latinum's marketing efforts, listing on public exchanges, and its design of [the] token to be a 'self-inflating' digital asset created the expectation of profits (and was the direct cause of plaintiffs' investment in tokens)," the motion states.

The undisputed facts in the record demonstrate that Latinum is liable for selling unregistered securities under both federal and state law, the motion states and therefore, summary judgment should be granted.

The plaintiffs said Kevin Jonna persuaded them to invest \$514,000 to purchase digital assets purportedly offered by Bitcoin Latinum. They never received the tokens or their money back, the investors said.

In May, the Sixth Circuit **ruled** Bitcoin Latinum could not force the investors' claims into arbitration after the company waited two years to invoke an arbitration clause in a purchase agreement for the tokens.

Last month, Kevin Jonna was **ordered to pay** \$1,000 for missing a deposition deadline in the case.

The investors had complained they had not made any progress scheduling Jonna's deposition despite contacting him five times in July and August to request his availability ahead of the Sept. 15 deadline to complete party depositions in the case.

Jonna responded once to say he was "interviewing a few different lawyers" and that someone would

"reach out expeditiously," but he did not provide any dates or agree to sit for a deposition, according to the order.

The cryptocurrency promoter has gone without a lawyer since June 2024, when his Dinsmore & Shohl LLP counsel withdrew from the case.

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

The investors are represented by Sidney S. Liebesman and Marc C. Tucker of Fox Rothschild LLP and Dennis W. Loughlin and Ashley E. Racette of Warner Norcross + Judd.

Bitcoin Latinum is represented by Eric A. Browndorf and William P. Rubley of Cooper Levenson PA, and Deborah Kovsky-Apap of Troutman Pepper Locke LLP.

Kevin Jonna is represented pro se.

The case is Jonna et al. v. Bitcoin Latinum et al., case number 2:22-cv-10208, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Carolyn Muyskens. Editing by Vaqas Asghar.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Tricidia Investors Win OK Of \$14.2M Deal Over Kidney Drug

By **Bonnie Eslinger**

Law360 (October 24, 2025, 6:06 PM EDT) -- A California federal judge on Thursday granted final approval to a \$14.2 million settlement that ends a class action against Tricidia founder Gerrit Klaerner claiming he and the company misled investors on the approval chances for their new kidney disease drug, including nearly \$4 million for plaintiffs' counsel.

U.S. District Judge Haywood S. Gilliam Jr. called the settlement "fair, adequate, and reasonable," particularly in light of the complexity of the case and the "substantial risk" the litigation faced.

"This is a complex securities case that has been hard fought and vigorously defended from the beginning," the judge said. "It also involves complex issues regarding the [U.S. Food and Drug Administration] approval process."

Further, the case, and any possible recovery, is "complicated" by Tricida filing for bankruptcy in 2023, leaving only Klaerner, the judge said.

"Class counsel has explained that although defendant had directors and officers insurance to provide coverage for the claims against him, the policy was for a limited amount and provided for the payment of defense costs and expenses," the judge said. Thus, the longer the case went on, the less would be available to satisfy the class' claims.

In addition, class counsel told the court that they had no reason to believe Klaerner had personal assets that would satisfy any potential judgment.

The judge noted that if the case were to proceed, Klaerner would press several defenses, including that investors already knew about the risks associated with FDA approval of the drug.

"Such issues would likely involve a 'battle of the experts' at trial," he said.

The judge also noted that counsel for the class "acknowledges that there are significant risks that the settlement class would recover substantially less than their damages expert's calculations," which estimated that if Pardi was to prevail on all of his claims could recover a maximum of \$215 million. The judge underscored that Klaerner's lawyers said any recoverable damages would be as low as \$44 million.

In his order, the judge also approved an award of 27.5% of the settlement — \$3,918,750 — for class counsel's fees and \$337,000 in costs. The settlement is a "good result that confers benefits on the class," he said.

No class members objected or opted out, which "further buttresses this conclusion," the judge said.

The securities class action, first filed in 2021, accused Tricida and Klaerner, its CEO, of making false and misleading statements about the prospects for FDA approval of their kidney disease drug, veverimer, which led to investor losses.

Tricida completed its Phase 3 clinical trial for veverimer, a drug intended to slow the progression of chronic kidney disease, in 2018, and in August 2019, submitted its New Drug Application to the FDA under the agency's accelerated approval program.

The company also went public in June 2018 based on the purported strength of veverimer's trial results, according to the complaint. Fiore claimed Tricida's initial public offering documents contained false and misleading statements about the ability of veverimer to gain FDA approval and the clinical safety and efficacy of its trials.

In May 2020, Fiore said the company began receiving indications from the FDA that there were problems with veverimer's NDA, and when the FDA met with Tricida's executives, the agency shared concerns about the durability of the drug and the applicability of the trial data.

Fiore said Klaerner and the company continued to spout optimism about the drug's pending approval. The truth finally came to light in summer 2020, when Tricida announced that the FDA had concluded that Tricida's Phase 3 trial of veverimer was inadequate on its own to demonstrate the drug's efficacy.

The company's stock price suffered several drops during that time, according to the complaint.

Veverimer's NDA was eventually denied by the FDA in February 2021, and Fiore said Tricida's stock price plummeted by roughly 30%, wiping out \$93 million in market capitalization.

In March 2024, Judge Gilliam **tossed some claims**, saying several of Klaerner's challenged statements in the second amended complaint were opinions since they "inherently reflect the speaker's assessment of and judgment about the underlying circumstances."

Months later, however, the judge certified a class of investors who acquired Tricida common stock from May 8, 2020, to Feb. 25, 2021.

Representatives for the parties did not immediately respond to requests for comment Friday

Fiore and the class are represented by Jeffrey C. Block, Michael D. Gaines and Jacob A. Walker of Block & Leviton LLP.

Tricida and Klaerner are represented by Sara B. Brody, Sarah A. Hemmendinger, Sarah E. Gallo, Matthew J. Dolan and Robin E. Wechkin of Sidley Austin LLP.

The case is Pardi v. Tricida, Inc. et al. case number 4:21-cv-00076, in the U.S. District Court for the Northern District of California.

--Additional reporting by Katryna Perera. Editing by Stephen Berg.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Texas Drilling Co. Sued In Chancery Over Record Access

By **Jarek Rutz**

Law360 (October 24, 2025, 7:12 PM EDT) -- A stockholder-director of a Texas-based drilling company has sued in the Delaware Chancery Court to seek documents, alleging its president unilaterally and unlawfully shut down operations and refused to provide paperwork about the winding-up process.

In his complaint filed late Thursday, Michael D. Jones is seeking books and records, claiming Nova Directional Inc. President Edward Chiaramonte wrongfully rejected his lawful demand to inspect financial and operating records to investigate possible fraud.

Jones said in the complaint he "has reason to believe Chiaramonte knowingly misrepresented to him that the company was shutting down in an improper and fraudulent attempt to cut him out of the Company."

Jones says he needs the materials to determine whether Nova actually dissolved, the financial status of the company and whether Chiaramonte's actions, including alleged asset sales, constitute mismanagement or fraud.

Jones, a shareholder since 2017 and sitting director, says Chiaramonte notified him on May 12 that he was "shutting NOVA's business down and selling its assets," without any board consultation, shareholder vote or formal dissolution procedures.

"Upon information and belief, no formal procedures to wind down the company had been taken prior to Chiaramonte's sudden announcement," Jones said in the complaint, adding that he never consented to this plan of action.

He asserts the abrupt decision, and subsequent refusal to provide corporate records, gives credible grounds to suspect wrongdoing under Delaware's standard for Section 220 inspections.

Jones says he first sought answers through a July 18 demand letter asking for detailed documentation — such as financial statements, tax filings, organizations charts, meeting minutes, electronic communications and asset-sale records — to verify Nova's operational status and the legitimacy of Chiaramonte's claimed authority.

Nova, which operates out of Texas and Oklahoma, allegedly rejected the demand a few days later, denying Jones is a director and asserting that his compensation claims breached fiduciary duties if he is, in fact, a director.

Jones argues that Nova's rejection misstates Delaware law, which grants inspection rights to any stockholder with a "proper purpose" reasonably related to their interests.

His stated purposes include confirming Nova's dissolution status, locating company assets, evaluating claims by or against officers and investigating possible fiduciary breaches.

Without access to the books, Jones says, he cannot verify whether Nova truly shut down or simply diverted assets away from him and other stockholders.

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

Michael D. Jones is represented by Herbet Mondros of Rigrodsky Law PA.

Counsel information for defendants Nova Directional Inc. and Edward Chiaramonte were not available Friday.

The case is Michael D. Jones v. NOVA Directional, Inc. and Edward Chiaramonte, case number 2025-1218, in the Delaware Court of Chancery.

--Editing by Alex Hubbard.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

TeamSpeak Directors Urge Delay For Chancery Fines

By **Jeff Montgomery**

Law360 (October 24, 2025, 5:01 PM EDT) -- Two former U.K. directors of voided online gaming chat venture TeamSpeak urged a Delaware senior magistrate Friday to keep on hold a \$1,000 per day penalty and other sanctions imposed in a stockholder dispute over the company's disclosures and compliance with record demands.

The two directors, Ian Bamford and Keith Ridgway, became subject to fines initially proposed as \$5,000 daily on Oct. 20, under a contempt ruling that followed a default judgment in May 2024. They asked Senior Magistrate Selena E. Molina this week to require use of a "structured, neutral, and court-supervised electronic discovery protocol" for the case, purportedly aimed at preventing "irreversible disclosure of personal, privileged, or internationally protected data."

Stockholder John Zdrodowski turned to the court last year for enforcement of long-delayed books and records demands and sought \$5,000 per day sanctions. The demands accused the two — along with businessman Sean Conlon — of lining up an acquisition of TeamSpeak from an earlier Germany-chartered incarnation of the company, with Conlon said to have orchestrated conditions that allegedly left Zdrodowski and other shareholders "with nothing."

Attorneys for Bamford and Ridgeway asked the court to defer activation of the daily sanctions pending agreement on disclosure compliance under "a proportional, privacy-protective process."

Zdrodowski argued in a brief last month that Bamford and Ridgeway "are engaged in a campaign of delay and obfuscation. Their primary argument, that the company is void, arises solely from their own failure to pay franchise taxes and file annual reports required by Delaware."

In the court **filing** Friday, attorneys for Bamford and Ridgeway said they "do not presently contest the finding of contempt for purposes of this proceeding. Rather, they seek limited reconsideration or modification" solely to allow court-supervised electronic discovery.

A related case is pending before Vice Chancellor Nathan A. Cook, naming Bamford, Ridgway and Conlon and alleging breaches of their fiduciary duties as directors, officers and controllers of the business and waste of corporate assets.

"To date, the stockholders of TeamSpeak have no information about why TeamSpeak has taken no action to investigate claims against Conlon, Ridgway or Bamford for the theft of the TeamSpeak GmbH opportunity," Zdrodowski said in the books and records complaint last year.

The dispute revolves around a "voice over internet protocol" business and technology that competes in a market that runs into the billions, according to court filings in the derivative case before Vice Chancellor Cook, with Zdrodowski seeking appointment of a receiver for the company.

TeamSpeak's technology "allows users to communicate with each other in real time through voice chat," with its primary competition called Discord, "which also offers voice chat for gamers," one court brief said. "But despite Discord's general market dominance and \$15 billion valuation as of 2021, competitive gamers and the Esports community favored TeamSpeak ... for its superior voice quality, control, customizability, and reliability — key factors for serious gamers."

The parties did not immediately respond to requests for comment.

John Zdrodowski is represented in the books and records suit by Sean A. Meluney, William M.

Alleman and Matthew D. Beebe of Meluney Alleman & Spence LLC.

UK residents Keith Ridgeway and Ian Bamford are represented pro se.

The case is John Zdrodowsky v. TeamSpeak Inc., case number 2024-0315, in the Court of Chancery of the State of Delaware.

John Zdrodowski is represented in the derivative suit by Sean A. Meluney, William M. Alleman and Matthew D. Beebe of Meluney Alleman & Spence LLC.

Ian Bamford et al., are represented in the derivative suit by Timothy S. Martin of White & Williams LLP.

The derivative case is John Zdrodowsky v Ian Bamford et al., case number 2024-1146, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Hagens Berman Wants Judge DQ, Alleges Drug Lawsuit Bias

By **Adrian Cruz**

Law360 (October 24, 2025, 4:39 PM EDT) -- Hagens Berman Sobol Shapiro LLP asserted Friday that the Pennsylvania federal judge overseeing the long-running thalidomide birth-defect litigation in the state should be recused, alleging over 100 undisclosed private contacts between the court and special discovery master as an indication of bias.

Hagens Berman and managing partner Steve Berman said in a **recusal motion** and **supporting brief** that extensive, undisclosed communications between U.S. District Judge Paul S. Diamond and special discovery master William T. Hangley have created the possibility of bias regarding recommendations that the firm be sanctioned for allegedly pursuing unviable lawsuits.

The motion alleges that Judge Diamond and Hangley had 146 ex parte communications, with 22 occurring between June 2021 and October 2023 when Hangley was drafting his final report and recommendations. The firm said that according to Rule 53 of the Federal Rules of Special Procedure, those undisclosed communications "fatally compromised" the judge's ability to properly review the matter.

"In the instant matter, this court's ability to conduct an independent de novo review appears to be irreparably impaired by the extent and presumed content of ex parte communications with SDM Hangley and because of the appearance of bias, the presiding judge must be disqualified and should recuse itself from the instant matter," Hagens Berman's brief says.

In his final report, Hangley suggested that Berman and former partner Tyler Weaver should be sanctioned for allegedly continuing to pursue lawsuits against GlaxoSmithKline and other pharmaceutical companies over birth defects it claimed were caused by the morning sickness drug thalidomide. The firm is accused of ignoring concerns over the viability of the plaintiffs' claims and whether they were time-barred.

Hagens Berman added that although a definitive answer on whether Judge Diamond was actually biased in his dealings with the firm is unavailable at the moment, the mere appearance of bias means that he should recuse himself from the matter, according to both federal law and the judicial code of conduct for U.S. judges.

"The court's ex parte communications with SDM Hangley, especially when considered with other unusual circumstances in this case, create an appearance of bias against respondents," Hagens Berman's brief says.

"The volume of ex parte communications between the court and SDM Hangley was excessive; the court failed to uphold its gatekeeping function with respect to those ex parte communications; and the timing of certain ex parte communications compels the conclusion, or at the very least, raises the appearance that these communications involved the actual substance of SDM Hangley's final R&R."

Judge Diamond in 2014 first appointed Hangley to untangle discovery issues over whether the suits were time-barred and to monitor and ensure the "plaintiffs' compliance with their discovery and disclosure obligations," according to court documents. Hangley first raised the possibility of sanctions in December of that year.

In October 2023, Hangley submitted a report and recommendation to Judge Diamond regarding the

possibility of sanctioning Hagens Berman, and in August, the court overruled the firm's objection to the report and ordered it to show cause as to why it should not be sanctioned.

Earlier this month, **Hagens Berman said** that it spent hundreds of hours researching the legal theories it pursued before filing the cases and devoted substantial time and resources to them. The firm added that in filing cases for plaintiffs who allegedly sustained birth injuries related to thalidomide in the early 1960s, the firm pursued in good faith a legal approach to overcoming the statute of limitations, based on updated science suggesting thalidomide injuries could be much broader than once believed.

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

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

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

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

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

–Additional reporting by Emma Cueto. Editing by Amy French.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Meta To Face Sanctions Bid Over Alleged Atty-Advice Fraud

By **Dorothy Atkins**

Law360 (October 24, 2025, 11:19 PM EDT) -- Plaintiffs told the California federal judge presiding over social media-addiction multidistrict litigation that Meta should be sanctioned after a D.C. court found Meta likely engaged in "crime, fraud, and/or misconduct" when, on the advice of counsel, it modified its research into Facebook's effects on teens' mental health to limit its liability.

Plaintiffs' counsel Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP broke the news about the D.C. state court's **recent ruling** to U.S. District Judge Yvonne Gonzalez Rogers during the latest hearing in the MDL in Oakland on Friday.

The federal MDL involves claims by hundreds of personal injury plaintiffs, schools and attorneys general that YouTube LLC, Meta Platforms Inc. and other social media giants design their multibillion-dollar revenue-generating social media platforms to be addictive, to the detriment of minors' health and livelihoods.

Hazam explained that on Thursday, D.C. Superior Court Judge Yvonne Williams agreed with lawyers for the District of Columbia that certain internal Meta Platforms Inc. documents are not shielded by attorney-client privilege due to the so-called "crime-fraud exception," and Judge Williams therefore denied Meta's request to claw back documents in that case.

Judge Williams found there is probable cause to believe that Meta engaged in "a crime, fraud, and/or misconduct" by acting on advice of its counsel to "block research and instruct researchers to alter research to stymie law enforcement investigations" after the first social media addiction cases were **initially filed** against the Facebook and Instagram owner, as well as Snap Inc., TikTok-owner ByteDance and Google in 2022.

In light of that ruling, Hazam told Judge Gonzalez Rogers that the personal injury and school district plaintiffs in the MDL plan to also demand to see the documents and seek relief before her court regarding Meta's alleged misconduct, including sanctions and potential adverse inference jury instructions.

In response, Meta's counsel, Timothy Channing Hester of Covington & Burling LLP, told the judge that the company takes the allegations seriously, but he argued that Meta believes the D.C. court misinterpreted the documents and Meta plans to ask the D.C. court to reconsider the ruling.

He also repeatedly noted that the ruling was only regarding four documents, which is a small fraction of the hundreds of thousands of documents produced in the case.

Judge Gonzalez Rogers appeared surprised by the allegations, but she repeatedly said the sanctions issue isn't properly before her to decide. She also demanded to know the names of the attorneys who were involved in giving Meta the legal advice at issue.

"Who are the lawyers?" the judge asked. "What firm?"

Neither party knew the names of the specific attorneys involved, although Hazam noted that the D.C. court's order indicates it was in-house counsel at Meta.

For her part, Judge Gonzalez Rogers warned Meta's counsel that whether they were four documents

at issue or 10, "it doesn't matter."

"You as well as I know that many cases are lost and won on one, two, three or four documents," she said. "Those are the documents that they show every day during the trial, so the fact that there are four [at issue] — they could be the four critical documents. Who knows? There's more to come on that."

According to Judge Williams' order, two of the four documents at issue contain communications between Meta researchers passing on advice from Meta's attorneys to excise parts of research showing that Meta knew that teen users were developmentally vulnerable, since that research could be used by government investigators.

Another document contains more communications between researchers about attorneys' attempts to block or redesign research about teen mental health harms due to litigation risks, according to the order.

The fourth document contains additional communications recounting legal advice and attorney work product about a presentation about teen exposure to harmful content on Meta platforms intended to be shown to company executives, the order says.

Aside from the discussion regarding sanctions, Judge Gonzalez Rogers on Friday also denied a request by Time Magazine's owner — Time USA LLC — to intervene in the case in order to review sealed documents.

However, the judge agreed to alter the sealing review process so that there's minimal delay between when the parties agree to redactions and when the documents are unsealed and viewable to the public.

Judge Gonzalez Rogers also informed the parties that she had changed her mind about holding the first school district bellwether trial in the federal MDL in Eureka, California, which is a rural community that is more akin to the first bellwether school district plaintiffs' small community. She said that the trial will instead be held in Oakland, likely in the summer, because the courtroom in Eureka is too small.

The first bellwether trials over claims against the social media giants are expected to occur in parallel state court litigation pending in Los Angeles. In late October, Los Angeles Superior Court Judge Carolyn B. Kuhl — the judge overseeing that litigation — **ordered** Meta CEO Mark Zuckerberg to testify at the first upcoming bellwether trial but put off deciding whether he must testify at future bellwether trials.

The order issued also applied to Adam Mosseri, the president and CEO of Meta-owned Instagram, and Snap Inc. CEO Evan Spiegel, and requires all three to testify at a planned January trial.

Time was represented during the hearing by Samuel Ivan Ferguson of Ferguson Law PC.

The personal injury plaintiffs and school district plaintiffs were represented during the hearing by Lexi J. Hazam of Lief Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC.

Meta was represented during the hearing by Ashley Margaret Simonsen, Paul William Schmidt and Timothy Channing Hester of Covington & Burling LLP.

The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

The D.C. case is the District of Columbia v. Meta Platforms Inc. et al., case number 2023-CAB-006550, in the Superior Court of the District of Columbia, Civil Division.

—Additional reporting by Emily Field. Editing by Michael Watanabe.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Judiciary Panel Eyes Rules For Class Cert., Litigation Funding

By **Jeff Overley**

Law360 (October 25, 2025, 12:06 AM EDT) -- Federal judiciary advisers set the stage Friday for new and far-reaching rules involving two sets of highly contentious topics: long-simmering demands for greater transparency in third-party litigation funding and calls for closer scrutiny of class action issues, including payouts to class counsel, certification standards and financial perks for plaintiffs.

Friday's moves occurred in Washington, D.C., during a semiannual meeting of the Advisory Committee on Civil Rules, which assists the Judicial Conference of the United States with possible additions and alterations to the Federal Rules of Civil Procedure.

Although the committee hasn't drafted regulatory text and didn't hold any formal votes Friday regarding third-party litigation funding or class actions, it did agree to forge ahead with research and development of rules in those areas. By doing so, the panel took significant steps forward in processes that could play out for years to come and ignite a bonanza of legal and political fireworks.

"To say that there are opposing views — and intense, emotionally held ... views — would be an understatement," U.S. District Judge R. David Proctor, a committee member, said Friday of the third-party financing debate. "This is very much an issue that people care greatly about."

Here's a rundown of the panel's discussion during Friday's six-hour meeting, plus key details to know as work continues.

Litigation Finance Brings Out "Sharp Views and Sharp Elbows"

Third-party litigation funding, in a nutshell, is when institutional investors, hedge funds or affluent individuals bankroll big-ticket lawsuits — in fields such as antitrust, intellectual property or torts — and get a cut of any settlements or judgments. It's seen explosive growth over the past decade, according to **a report in 2023** by the U.S. Government Accountability Office, which described nearly \$3 billion in new litigation financing agreements during a single year.

Corporations, defense lawyers and Republican lawmakers have long pursued mandatory disclosure of funding sources. Those efforts have previously gathered steam, only to lose momentum as policymakers wrestled with the subject's complexity or struggled to reach consensus.

But the pressure has kept building, and the Advisory Committee on Civil Rules established a TPLF subcommittee in October 2024; that same month, dozens of major companies — including Amazon.com Inc., Johnson & Johnson and Microsoft Corp. — signed **a joint letter** that urged Judicial Conference leaders to adopt a transparency rule. The letter insisted that "it is unfair to deny parties information about who controls the litigation."

Judge Proctor chairs the TPLF subcommittee, and at Friday's meeting, he reported encountering "sharp views and sharp elbows from time to time" at a TPLF conference held Thursday at George Washington University Law School.

"You're putting it too mildly," Richard L. Marcus, a committee researcher who joined Judge Proctor at the conference, quickly added during Friday's meeting, eliciting laughter.

Judge Proctor elaborated Friday on some of the thorny issues, such as whether a rule would require

disclosure of "foreign actors," whether disclosures would become public, whether there would be a threshold that triggers disclosure, and "whether disclosure would encourage collateral, expensive litigation or discovery motion practice."

And there's "not just the funding of actual litigation, but use of funds to retain claimants — that's an issue that seems like it's brewing, kind of under the surface," the Alabama federal judge said.

Proponents of TPLF call the funding arrangements vital for individuals or small entities aggrieved by the practices of deep-pocketed corporations. The International Legal Finance Association — a trade group that includes Burford Capital and Parabellum Capital LLC — says its work "levels the playing field" and has spurred corporate defendants to launch "a global campaign of disinformation to attack the idea of commercial legal finance."

Friday's agenda included a memorandum in which Marcus — a professor at the University of California College of the Law, San Francisco — said the subcommittee remains in "information receptor mode." And more information is expected to be available in the spring, when the advisory committee next meets.

"We'll hear from you again in April; it's a fast-moving, many faceted topic," U.S. District Judge Sarah S. Vance, the committee's chair, said Friday.

"A Big Project" for Class Actions Gets Started

Andrew Bradt, a professor at the University of California, Berkeley School of Law, who also serves as a committee researcher, guided a discussion Friday of separate issues involving potential revisions to [Federal Rule of Civil Procedure 23](#) . That rule governs class actions, and committee members greenlighted the exploration of possible changes that Bradt outlined.

That outline included several cautionary words from Bradt, who warned that Rule 23 has interlocking provisions and that past revisions have been arduous affairs.

"Diving into Rule 23 is a big project. It will require a subcommittee, and we can't necessarily predict the scope of that project from the outset," the scholar said.

As it stands, the project has three conceptual components. One component would amend Rule 23 to specifically address financial incentives, or "service awards," that are frequently given to named plaintiffs who serve as class representatives.

A **decision in 2020** by the Eleventh Circuit in *Johnson v. NPAS Solutions* deemed those awards impermissible based on U.S. Supreme Court precedents. No other circuit has embraced that view, but a Rule 23 amendment could deliver "a restoration of uniformity across the circuits when it comes to the availability of these awards," Bradt said.

W. Mark Lanier of The Lanier Law Firm, a committee member and nationally prominent trial lawyer, said Friday that named plaintiffs have little motivation to devote time and energy to a case if they're prohibited from receiving more compensation than other class members.

"There are a number of cases that we would not file in Georgia, Florida or Alabama for that reason," Lanier said, referring to the Eleventh Circuit's territory.

A second proposal that the committee debated Friday would amend a Rule 23 section that says a class action can be maintained if it "is superior to other available methods for fairly and efficiently adjudicating the controversy."

Defense bar groups, including Lawyers for Civil Justice, have advocated an overhaul. LCJ argues that policymakers should "widen the lens of the superiority requirement," so that it looks at "other methods of resolving the controversy, such as arbitration, recalls, refunds [and other] defendant-initiated efforts to try to resolve the controversy, compensate the class and avoid litigation altogether," Bradt said.

Panelists were supportive Friday of further research, although several expressed surprise that a rule

change would even be necessary.

"I'm a little taken aback by the idea that, right now, I couldn't consider those things if I wanted to," U.S. District Judge David C. Godbey, a committee member, said at Friday's meeting. "I'm a firm believer in the vast, vast discretion of the district judge."

U.S. Magistrate Judge Annie Christoff, also a committee member, added that "this sparks my curiosity on a lot of levels," and that defendants should perhaps bear the burden of demonstrating that alternatives are superior.

The third issue that committee members tackled Friday relates to Rule 23's requirement that class action settlements receive court approval. The rule doesn't require approval of resolutions that occur in the absence of class certification, and some observers — including judges on the Seventh Circuit — **have fretted** about a loophole enabling shenanigans.

One concern, Bradt said, is that someone can "assert the class action, get the company to pay the lawyers off, and maybe do some surface-level things that are a remedy." Another concern, he added, is "the pick-off-the-plaintiff problem," where defendants quickly and quietly settle with the named plaintiff, thus making a class case disappear while the statute of limitations on applicable claims ticks away.

But Jocelyn D. Larkin, a committee member and plaintiffs attorney at the Impact Fund, urged her peers Friday to eschew further study. A settlement solely with a named plaintiff is basically just a dismissal that doesn't bind potential class members, Larkin said.

"I think that this particular issue is not one that would be beneficial for us to spend our time on," she said.

Committee member U.S. District Judge Manish S. Shah echoed that view, saying that "interjecting a new category of quasi-class that has rule-based rights, I think, is not an appropriate project."

A contrary view came from committee member David C. Wright III of Robinson Bradshaw & Hinson PA, who said the status quo might be facilitating "abuse of the class action mechanism."

"If there's a racket going on, I think that's something that a court should be empowered to look at," Wright said.

Ultimately, the panelists assented to Judge Vance's suggestion that the committee "take all three of these [Rule 23] issues and continue to study them and come back in April with an updated report."

--Editing by Michael Watanabe.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NFL Players' Race Bias Claims Tossed In Concussion Case

By **Mike Curley**

Law360 (October 24, 2025, 4:24 PM EDT) -- A Pennsylvania federal judge on Friday denied a motion by a group of 16 former football players who claimed that they were wrongly denied benefits under the National Football League's 2015 concussion injury settlement.

In the **order**, U.S. District Judge Anita B. Brody of the Eastern District of Pennsylvania rejected claims by the players that animus toward one of their attorneys, Byron Cuthbert of Byron Cuthbert & Associates LLC, caused claims administrators to deny or delay their claims.

The 16 players are among 21 players whose claims were denied by the case's special masters because of material misrepresentations made by Cuthbert. Kevin Turner, who played for the New England Patriots and Philadelphia Eagles, and Shawn Wooden, who played for the Miami Dolphins and the Chicago Bears, are listed as plaintiffs in the docket, as they are class representatives for the settlement class, but are not among the 16 players behind the motion.

In their **motion**, the players claimed that the claims administrators and special masters in the case had improperly slow-walked or denied their claims because Cuthbert is Black, but Judge Brody emphatically denied their allegations.

"This motion is an unmerited attack against a program that has worked well for over eight years since the implementation phase began," the judge wrote in her three-page order. "The claims administrator and special masters have endeavored mightily to work with individually retained plaintiff attorneys — including Mr. Cuthbert — to ensure that class members' claims are properly supported and so that meritorious claims can be paid."

The judge noted that the people in the best position to assess the merits of these players' claims — the class counsel — opposed the motion, arguing that it was an attempt to relitigate issues already resolved, and that the settlement terms were not violated nor was Cuthbert discriminated against because of his race.

The settlement, reached and approved **in 2015**, resolved about 5,000 players' claims that they received concussions and other neurological injuries while playing in the NFL. According to an audit in **November last year**, the NFL had paid more than \$1.3 billion.

Over the course of the multidistrict litigation, Cuthbert was **censured**, a finding **upheld** by the Third Circuit in June. The appellate court found that the district court correctly declined to address Cuthbert's race discrimination arguments, and upheld the special master's suspension of his clients' claims after finding that Cuthbert pressured physicians to use an unreliable diagnosis method and was untruthful during the claims process.

Representatives for the parties could not immediately be reached for comment Friday.

The players are represented by John F. Meyers of JMeyers Group LLC, by Vicki Trammell Cuthbert of the Cuthbert Firm LLC, and by Byron Cuthbert of Byron Cuthbert & Associates LLC.

The NFL is represented by Brad S. Karp, Lynn Bayard and Tyler B. Myers of Paul Weiss Rifkind Wharton & Garrison LLP.

The settlement class is represented by Christopher A. Seeger and Michael L. Rosenberg of Seeger Weiss LLP.

The case is In Re: National Football League Players' Concussion Injury Litigation, case number 2:12-md-02323, in the U.S. District Court for the Eastern District of Pennsylvania.

–Additional reporting by P.J. D'Annunzio and Jonathan Capriel. Editing by Karin Roberts.

Correction: This story previously misidentified plaintiffs Kevin Turner and Shawn Wooden as leading the motion, and the error been corrected.

All Content © 2003-2025, Portfolio Media, Inc.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Justices' Whistleblower Denial Has Some Attys Fearing A Chill

By Sarah Jarvis

Law360 (October 24, 2025, 10:48 PM EDT) -- The U.S. Supreme Court's decision not to take up a whistleblower award calculation appeal has highlighted a long-running concern that whistleblowers could be left out in the cold if the company they expose falls into bankruptcy before they get awards to which they would otherwise be entitled.

Earlier this month, the high court **declined to take up** John Barr and John McPherson's request to review the U.S. Securities and Exchange Commission's calculation of their whistleblower awards under the Dodd-Frank Act. The pair received a combined \$26,000 for assisting the SEC's investigation into Life Partners Holdings Inc., which was ordered to pay \$38.7 million in disgorgement and civil penalties for defrauding life settlement investors.

But Barr and McPherson argue they were entitled to much more. The SEC's whistleblower program promises to pay between 10% and 30% of monetary sanctions collected in actions brought by the agency and related actions brought by other regulatory authorities. The SEC argued it was only able to obtain a small portion of the judgment against Life Partners because the company declared bankruptcy shortly after the judgment was handed down, and the Fifth Circuit **agreed** last year.

While some attorneys told Law360 the Fifth Circuit's decision likely won't have a wide-ranging impact on whistleblowers because of the unique circumstances of the case, Katz Whistleblower Law LLC head Rebecca Katz said the case exemplifies a tactic corporations can use to voluntarily carry out "an end-run around paying an SEC judgment and paying a whistleblower."

"Limiting awards to deserving whistleblowers because defendants voluntarily go into bankruptcy really is harmful to informants and has a deterrent effect on whistleblowers," Katz said. "It doesn't happen all the time, but it happens enough to be a real problem."

A Chilling Effect?

McPherson and Barr had argued that the SEC violated its own whistleblower rules under the Dodd-Frank Act by denying them a higher recovery than Barr's 5% and McPherson's 20%, especially given that the agency led the way on appointing a bankruptcy trustee who eventually recovered \$1 billion for investors.

After the Supreme Court declined to take up his case, McPherson said the decision effectively killed the SEC's whistleblower program, noting attorneys will not want to spend several years pursuing major fraud cases when the prospect of a bankruptcy filing could eliminate any award payment.

Katz noted the SEC has long held the position that whistleblowers can't collect awards from bankruptcies, calling it a problem that has existed since 2020. During that year, the SEC amended its whistleblower rules to replace the standard for whistleblower recoveries. Whistleblowers were previously entitled to a percentage of the amount the commission would be "able to recover," but the amendments narrowed that standard to a percentage of the money the commission and other entities actually "collected."

Barr and McPherson argued in their petition to the Supreme Court that the SEC "could have collected on its judgment, but chose instead the expedient of routing the collection for investors to a bankruptcy trustee."

Speaking to Law360, Katz said, "This issue with companies going into bankruptcy and whistleblowers not getting paid — it's just not new. It hasn't happened to me, but I've heard colleagues of mine complaining about it for years."

Katz also said an appellate court has never overturned an SEC whistleblower award decision. But the Barr case marks the first time the matter has come through the Fifth Circuit and been denied by the high court, she said.

She said that while paying whistleblowers is important to the agency, the SEC's main goal is getting injured investors their money back. In Barr and McPherson's case, the SEC subordinated a claim in bankruptcy to allow victims to recover funds first, reducing the pool of funds the agency could use to pay out whistleblower awards.

The case exposes a large flaw in the SEC's whistleblower rules, she said.

"I think it's a real problem, and I do think that it will deter people from reporting," Katz said, adding that while it's been happening for years, it's becoming more publicized. That attention will lead to more companies weighing voluntary bankruptcy when they are hit with large fines and penalties, she predicted.

She said the SEC should clarify its rules to allow for whistleblowers to receive awards based on funds recovered in bankruptcy, calling it an unfair result otherwise. Congress could also change the relevant statute, but neither Congress nor the SEC is likely to prioritize this issue anytime soon, she added.

Barr told Law360 he believes the SEC's 2020 amendments "provided bad actors with a roadmap to silence whistleblowers in SEC enforcement actions that could ultimately end up in bankruptcy."

He said firms could use the potential of bankruptcy to steer whistleblowers away from reporting and into a settlement that keeps them quiet. He also thinks bankruptcy is a tactic companies use to get out of paying whistleblowers and that these scenarios will have a deterrent effect on whistleblowers.

In response to a request for comment on this story, an SEC spokesperson said the agency's public affairs office "is not able to respond to many inquiries from the press" due to the government shutdown.

Stephen M. Kohn, founding partner of whistleblower firm Kohn Kohn & Colapinto and chairman of the National Whistleblower Center, said he completely disagrees with the SEC's position that money paid out in bankruptcy does not qualify for whistleblower awards. Those funds should instead be "Dodd-Frank eligible" as collected proceeds, he said.

Kohn said the Dodd-Frank Act defines the kinds of proceedings through which whistleblowers can receive awards, including through a "judicial action." While the SEC doesn't think bankruptcy is a covered proceeding, whistleblowers have argued those proceedings should fall under judicial actions.

"If a whistleblower had revealed the [Bernie] Madoff scandal under Dodd-Frank and did everything they were supposed to do, it would be outrageous to think that they would not get an award," Kohn said, referencing the disgraced Wall Street titan who masterminded the largest Ponzi scheme in history. "It's very detrimental to what I would call some of the worst types of frauds that you want to encourage whistleblowers to come forward on."

He added that Congress passed Dodd-Frank "in large part because of the Madoff scandal," noting also that convicted fraudster Madoff's investment firm went bankrupt.

"You now mean to tell me that Congress somehow intended that that case would have been excluded from the whistleblower law?" Kohn said. "It's kind of a contradiction there."

Kohn also said he anticipates fewer whistleblowers will want to come forward in the future. It's common for large fraud cases to involve criminal charges and bankruptcy, he said, adding fraudsters who file for bankruptcy can protect certain assets.

"If you hate the whistleblower, you're definitely incentivized to go bankrupt," he said. "You may be going to jail, but you'll make damn sure the whistleblower doesn't get a penny."

Kohn said that type of "vengeance" exists in every whistleblower case, adding "the targets of the whistleblower hate the whistleblower."

"If going bankrupt is a way to make sure the whistleblower never collects a penny, they'll be lining up to do it," he continued.

Kohn said the issue is "not an open-and-shut case," predicting the SEC's position will be challenged in the future. But those will be tough cases, he added, and they won't be "big profitable ones."

A Limited Impact

Some attorneys had a different upshot of letting the Fifth Circuit's opinion stand. Jane Norberg, a partner at Arnold & Porter Kaye Scholer LLP and former chief of the SEC's whistleblower office, said she wasn't surprised the high court declined to take up this case, noting the whistleblowers did receive payments, albeit not as much as they had wanted.

She explained that the SEC can pay whistleblower awards on amounts collected on its own enforcement actions, as well as other judicial, administrative and covered actions, such as matters brought by the U.S. Department of Justice.

"The SEC argued, and the Fifth Circuit ultimately agreed, that the bankruptcy case did not qualify as an action brought by one of the enumerated entities for which the SEC could pay an award," Norberg said.

But she said she doesn't think the case will have a long-term chilling impact on the SEC's whistleblower program.

"I don't know how often there's a bankruptcy proceeding where this very specific set of facts and circumstances would apply, where the trustee collects the money and returns it to the investors," Norberg said. "This is very unique."

Erika A. Kelton, a partner at the whistleblower firm Phillips & Cohen LLP, also predicted the impact of the case won't be far-ranging. That's because of the case's unique set of circumstances that hasn't arisen in previous cases, as far as she knows.

"I wish that the result was different. I wish that the SEC had exercised some discretionary power that they have to provide an award, because those whistleblowers, I think, deserved it," Kelton said. "But it was just this unfortunate set of facts and unfortunate timing, and I do hope that it's fixed so that doesn't happen again in the future."

--Editing by Jay Jackson Jr.