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Sun Pharma Defeats Taro Investor Suit Over Take-Private Deal

Oct. 28, 2025, 10:24 AM PDT

Summary by Bloomberg AI

AI Generated

- A federal court ruled that an investor failed to adequately allege Taro Pharmaceutical Industries Ltd. or Sun Pharmaceutical Industries Ltd. concealed material information before a shareholder vote approving their merger.
- The investor didn't show misstatements or omissions about financial adviser BofA Securities Inc.'s role or price calculation, the status of litigation involving Taro, or independent proxy adviser reports, Judge Cathy Seibel said.
- The judge dismissed the proposed class action with finality, saying the allegations fell short and declining to address whether Section 13(e) of the Securities Exchange Act provides private litigants with a right to sue.

A Taro Pharmaceutical Industries Ltd. investor failed to adequately allege the generic drugmaker or its then-suitor Sun Pharmaceutical Industries Ltd. concealed material information before a shareholder vote approving their merger, a federal court ruled.

The investor didn’t show misstatements or omissions about financial adviser BofA Securities Inc.'s role or price calculation, the status of litigation involving Taro, or independent proxy adviser reports, Judge Cathy Seibel said Monday for the US District Court for the Southern District of New York. Seibel dismissed the proposed class action with finality.

Investor Neal Mitchell’s “strained interpretation of the Proxy Statement as leaving open the possibility that BofA had some greater, undisclosed role in determining the merger consideration does not state a plausible omission claim,” Seibel said.

Because the allegations fell short, the judge declined to address whether Section 13(e) of the Securities Exchange Act—governing disclosure requirements for going-private transactions—provides private litigants with a right to sue. That’s an unsettled issue of law, Seibel said.

Mitchell alleged that Sun already owned about 86% of Taro's shares before the companies announced their agreement in January 2024. Proxy statement disclosures and a Securities and Exchange Commission filing preceded a favorable vote by Taro shareholders to approve the acquisition.

The vote was supposed to include a favorable vote by a majority of the non-Sun shareholders, but the suit alleged Taro hadn't confirmed that part of the outcome. The proposed class action challenged the deal's valuation by alleging disclosure failures.

Although the proxy statement may not have spelled out how a litigation liability contingency factored into BofA's analysis, "the calculations underlying BofA's valuation were explained in more detail in its full financial presentation—exactly where one would expect to find such information," she said. "It cannot be said that Defendants 'buried' this information."

Milberg Coleman Bryson Phillips Grossman PLLC represented Mitchell. A&O Shearman represented Taro and Sun.

The case is Mitchell v. Taro Pharma. Inds. Ltd. , 2025 BL 385396, S.D.N.Y., No. 7:24-CV-06818-CS, 10/27/25 .

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Securities

Dangdang Investors’ Arbitration Class Upheld in Take-Private Row

Oct. 27, 2025, 9:28 AM PDT

E-Commerce China Dangdang Inc. investors can proceed with class arbitration of claims against the online retailer over a take-private merger, a federal district judge ruled.

The tribunal overseeing the arbitration acted within its powers while saying the “plain meaning” and “unambiguous language” of the agreement permitted class proceedings, Judge Katherine Polk Failla said. The case, which alleges Dangdang paid below market to buy back its American Depositary Shares when going private in 2016, remains stayed in the US District Court for the Southern District of New York during arbitration proceedings of the investors’ common-law claims.

Dangdang argued its clause contained standard language recommended by arbitration organizations—if the tribunal’s right, every contract following this model would allow class arbitration, contrary to the default presumption against such proceedings

“Such prudential concerns are not before the Court,” Failla’s Oct. 24 order said. “The Tribunal was acting within its delegated authority when it interpreted the plain language of the Arbitration Agreement broadly, regardless of whether the language it interpreted was standard”

The tribunal scrutinized the relevant case law in reaching its determination and reconciled the existence of absent class members with Dangdang’s arbitration clause, Failla said

Sadis & Goldberg LLP represents the investors. Skadden, Arps, Slate, Meagher & Flom LLP represents Dangdang. Neither law firm immediately responded to an email seeking comment.

The case is Fasano v. Li , S.D.N.Y., No. 1:16-cv-08759, 10/24/25 .

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Securities

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Origin Materials Settles Investor’s Manufacturing Plant Suit (1)

Oct. 28, 2025, 7:25 AM PDT; Updated: Oct. 28, 2025, 9:13 AM PDT

Summary by Bloomberg AI

AI Generated

- Origin Materials Inc. reached a settlement to resolve investor proposed class claims the company hid shifting plans that delayed construction for a manufacturing facility.
- The settlement resolves all claims asserted against Origin and the other named defendants in the lawsuits, without any liability or wrongdoing attributed to them or the Company, according to Origin.
- The investor leading the case will file the stipulation and seek Judge William B. Shubb's preliminary approval on or before Nov. 14.

Origin Materials Inc. reached a settlement to resolve investor proposed class claims the sustainable plastics maker hid shifting plans that delayed construction for a manufacturing facility.

The investor leading the case, Todd Frega, told the US District Court for the Eastern District of California about the agreement Monday, saying he’d file the stipulation and seek Judge William B. Shubb’s preliminary approval on or before Nov. 14. Frega’s suit alleged the company concealed shifting its Origin 2 plant’s focus away from making a chemical used to produce a form of polyester known as polyethylene terephthalate, delaying construction.

Frega adequately alleged a pair of powerpoints and a federal disclosure were misleading, plus a sufficient inference of intent for securities fraud claims against Origin and CEO John Bissell, Shubb said while partially dismissing the suit in February.

Shareholders leading a derivative lawsuit against current and former Origin leaders sought preliminary approval of a settlement to have the company establish a board “Operational Excellence Committee,” among other corporate governance reforms, earlier this month.

“The proposed settlements resolve all claims asserted against Origin and the other named defendants in the lawsuits, without any liability or wrongdoing attributed to them or the Company,” Origin said in a press release Monday.

Bernstein Liebhard LLP is lead counsel for the proposed class, which would include those who got Origin securities from Feb. 23, 2023, through Aug. 9, 2023. Attorneys didn't immediately respond to an email seeking comment on the accord. Freshfields US LLP represents Origin and Bissell. Attorney Boris Feldman declined to comment on the deal.

The case is In re Origin Materials Inc. Sec. Litig. , E.D. Cal., No. 2:23-cv-01816, 10/27/25 .

(Updates to note an attorney representing Origin declined to comment in the sixth paragraph.)

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Respectful consideration or overreach? Argentina fights $16 billion judgment on appeal

reuters.com/legal/litigation/respectful-consideration-or-overreach-argentina-fights-16-billion-judgment-2025-10-28

Jenna Greene October 28, 2025

Cars drive past a gas station of Argentina's state energy company YPF, in Buenos Aires, Argentina, February 10, 2021. REUTERS/Matias Baglietto Purchase Licensing Rights, opens new tab

Oct 28 (Reuters) - Two words — "respectful consideration" — could be key in one of the year's biggest appellate battles, as Argentina on Wednesday asks the 2nd U.S. Circuit Court of Appeals to overturn a staggering $16.1 billion judgment.

A federal judge in New York ordered the payment to minority shareholders of YPF after Argentina seized a majority stake in the oil and gas company in 2012. Lawyers for the country say U.S. District Judge Loretta Preska misapplied Argentine law, and that as a sovereign nation, its interpretation of its own statutes deserves significant weight.

U.S. judges can consult expert testimony or other relevant material when determining foreign law. In a 2018 decision, opens new tab, the U.S. Supreme Court said a sovereign's interpretation of its own laws merits "respectful consideration" — but not blind acceptance.
Exactly what that deference looks like in practice can be tricky to gauge, especially in a case like this where the country has billions of dollars on the line and its legal interpretation would let it off the hook. In court papers, Argentina said the judgment would amount to 45% of its fiscal budget in 2024 – the equivalent of the U.S. taking a $2 trillion hit.

While not a usual occurrence, U.S. courts are periodically called upon to decide cases using foreign laws. Just last week, for example, Manhattan jurors held French bank BNP Paribas liable under Swiss law for aiding genocide in Sudan. BNP has denied wrongdoing and said it will appeal the verdict.
What makes Argentina's case so complex, Preska acknowledged, opens new tab after she ruled against the country on summary judgment in 2023, is that her decision rested on "issues of first impression and questions of Argentine law." That effectively put a Manhattan judge in the position of shaping new Argentine precedent.

The question for the 2nd Circuit panel — Judges José Cabranes, Denny Chin, and Beth Robinson — is whether Preska went too far in awarding investors Petersen Energía Inversora and Eton Park Capital Management massive compensation for their YPF shares. Defense lawyers say the $16.1 billion judgment is the biggest-ever in the history of the Southern District of New York.

The "stakes in this case could not be higher," said Juan Ignacio Stampalija, Argentina's deputy attorney general for the treasury of the nation, via email, urging the 2nd Circuit to overturn the judgment "in a case that never belonged in a U.S. court."

Plaintiffs' counsel Mike Fragoso of Torridon Law counters that the investors "lost everything because of a serious and knowing breach of YPF's bylaws," he said in an email. "Investors understand, and need continuing confidence, that these transactions are subject to the Rule of Law."

Paul Clement, who is leading the plaintiffs' appellate team, did not respond to a request for comment. Neither did a spokesperson for litigation funder Burford Capital, which bought an interest in the investors' claims and would share in any award.

The dispute has its origins in the early 1990s, when Argentina privatized YPF, which was originally founded as a state-controlled company. To reassure wary would-be investors, Argentina amended YPF's corporate bylaws to provide clear protections, plaintiffs' lawyers said. The country raised more than $1 billion from shares listed on the New York Stock Exchange.

In 2012, Argentina opted to re-nationalize YPF, seizing a majority stake held by Spain's Repsol. But it did so without also making a tender offer to minority shareholders to buy their shares at a specified price. Under the YPF bylaws, such an offer should have been made, plaintiffs allege, saying they lost billions of dollars as a result.

Repsol settled its claims in 2014 for $5 billion via Argentina's legal process for expropriation, but Petersen and Eton Park – YPF's second and third-largest shareholders – did not participate in the proceedings.

Plaintiffs' lawyers argue the U.S. is the appropriate forum for their claims, writing that "you cannot raise capital on the NYSE and then express surprise when you are sued" in the Southern District of New York.

But lawyers representing Argentina argue that Preska erred by treating the claims as a U.S.-style breach-of-contract action. Argentine law does not recognize such damages claims between shareholders for violations of corporate bylaws, defense lawyers led by Sullivan & Cromwell co-chair Robert Giuffra Jr. argue. (Nor for that matter does U.S. corporate law, nine law school professors wrote an amicus brief, opens new tab supporting Argentina.)
“The district court, unfamiliar with Argentina’s civil-law system, misapplied Argentine law at nearly every turn,” defense lawyers wrote.

Argentine corporate law has an established process for aggrieved shareholders to seek remedies – a process that favors in-kind remedies and strictly limits monetary damages – and that's how the investors' claims should have been handled, they argue.

“Argentine law does not permit plaintiffs to sleep on their rights and then run to another nation’s courts,” defense lawyers wrote.

However the panel rules, the case will test both Argentina’s finances and just how much “respectful consideration” one nation’s law deserves in another’s court.

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

California Brief

Apple iPhone Consumers Lose Class Status in Antitrust Litigation

Oct. 27, 2025, 2:37 PM PDT

A federal judge Monday decertified a class of millions of consumer plaintiffs who allege Apple Inc. monopolized the software applications aftermarket for iPhones.

"The court finds that the consumer plaintiffs have failed to provide a model capable of reliably showing classwide injury and damages in one stroke," said Judge Yvonne Gonzalez Rogers of the US District Court for the Northern District of California in an order. "Nor can it reliably limit the percentage of uninjured class members, such that the Court may determine whether the class is 'fatally overbroad.'"

The ruling leaves the plaintiffs free to sue on an individual basis but significantly restricts the scope of any continuing litigation.

Consumers sued Apple in 2011, alleging that the tech giant restricted competition by controlling which applications could be downloaded, in violation of Section 2 of the Sherman Act.

Apple argued that the court incorrectly certified the class nearly two years ago, saying it contained a staggering number of impossible-to-identify uninjured members, making it overbroad.

Apple is represented by Gibson Dunn & Crutcher LLP. The plaintiffs are represented by Kellogg, Hansen, Todd, Figel & Frederick, PLLC.

The case is In re Apple iPhone Antitrust Litig. , N.D. Cal., No. 4:11-cv-06714, 10/27/25 .

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US judge decertifies Apple app store class action

reuters.com/sustainability/boards-policy-regulation/us-judge-decertifies-apple-app-store-class-action-2025-10-27

Jonathan Stempel October 27, 2025

The iPhone 17 series stands on display at the Apple Store in New York City, U.S., September 19, 2025. REUTERS/Shannon Stapleton/File Photo Purchase Licensing Rights, opens new tab

- Judge reverses February 2024 class certification
- Apple monopolization said to result in higher prices
- Disappointed plaintiffs to review next steps, lawyer says

Oct 27 (Reuters) - A federal judge decertified on Monday a class action by tens of millions of Apple (AAPL.O), opens new tab customers who accused the company of monopolizing the market for iPhone apps by banning purchases outside its App Store, leading to higher prices.
U.S. District Judge Yvonne Gonzalez Rogers in Oakland, California, reversed her February 2024 class certification ruling, which let Apple account holders who spent $10 or more on app or in-app content within the last 17 years sue as a group.

In decertifying the class, Rogers said the plaintiffs failed to provide a model "capable of reliably showing classwide injury and damages in one stroke" by matching Apple accounts to consumers, while limiting the number of "unharmed" consumers in the class.

She ruled after an expert hired by Cupertino, California-based Apple found "alarming" errors in the plaintiffs' model.

These included one that named plaintiff Robert Pepper and supposed claimant "Rob Pepper" were different people despite sharing home addresses and credit card information.

They also included the lumping together of more than 40,000 payment records for people whose first name was "Kim," but who otherwise had nothing in common.

DISAPPOINTED PLAINTIFFS TO REVIEW NEXT STEPS

Mark Rifkin, a lawyer for the plaintiffs, said in an email "we are of course disappointed" with the decision, and are reviewing their next legal steps to protect consumers "harmed by Apple's unlawful App Store monopoly."

Apple said it was pleased with the decision, and that it invests "significantly" to make the App Store "a safe and trusted place for users to discover apps and a great business opportunity for developers."

Class actions can result in greater recoveries at less cost than if plaintiffs sue individually.

The plaintiffs said Apple's monopoly included charging excessive commissions to app developers, which would be passed on to consumers through higher prices to download apps or make in-app purchases.

Lawyers for the plaintiffs had estimated that classwide damages could total billions of dollars.

The lawsuit began in December 2011, and the class had covered users of iOS-powered devices since July 10, 2008.

The case is In re Apple iPhone Antitrust Litigation, U.S. District Court, Northern District of California, No. 11-06714.

Reporting by Jonathan Stempel in New York; Editing by Nia Williams, Bill Berkrot and Matthew Lewis

Expert Opinion | **Discovery**

10 Years After the Rule Changes on Proportionality, Defendants Must Emphasize to Courts the Burdens of Discovery

Brett F. Clements of Hollingsworth LLP writes that defendants must advise courts about the volume, cost or specific burdens of a challenged discovery request, even a decade after the 2015 amendment to Federal Rule of Civil Procedure 26(b)(1).

October 28, 2025 at 06:30 AM By **Brett F. Clements**

Brett F. Clements of Hollingsworth. Courtesy photo

Corporate parties, especially defendants in mass and serial litigation, continue to be inundated by oppressive discovery despite the 2015 amendment to Federal Rule of Civil Procedure 26(b)(1). That amendment clarified that courts must consider proportionality. However, 10 years later, many courts do not conduct a thorough analysis of the six proportionality factors required under amended Rule 26. This issue has become even more salient given not only the massive increase in data generated by AI, but also the continued growth of electronically stored information over the past decade. Defendants must make a concerted effort to educate the court on proper discovery limitations from the outset of a case and be prepared with specific details to show the burden of requests that have no bearing on the claims and defenses at issue. Too often, courts make conclusory statements that the requested discovery is proportional without further analysis. Defendants must be proactive and show it is not.

Under Rule 26(b)(1), courts must consider (1) the importance of the issue at stake in litigation; (2) the amount in controversy; (3) the parties' relative access to the information; (4) the parties' resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden of discovery outweighs the benefit. The 2015 Advisory Committee Notes make clear that the amendment "reflects the need for continuing and close judicial involvement in the cases that do not yield readily to the ideal of effective party management." As a practical matter, however, the onus is on defendants to bring these issues to the attention of the court. They must address each factor and should, when applicable and appropriate, provide hard evidence of cost and burden.

Even when courts make ultimate rulings that are not favorable on proportionality, the decisions often lay out a roadmap to win on these issues. For example, in *Jones v. AssuredPartners NL LLC*, the court examined the proportionality factors in detail. Third-party defendants argued that the discovery sought was disproportionate to the needs of a case involving allegations of breach-of-employment agreements and other related claims. While third-party defendants had produced 40,000 pages of documents, third-party plaintiffs had also served thirty-six subpoenas, been granted leave to conduct 15 depositions and received discovery in response to the forensic examination of cellphones. However, these numbers did not provide the court with enough context. The court explained that "mere citations to [the] number of pages or documents produced are often meaningless in this type of dispute because how much a party has produced does nothing to illuminate for the court how much a party should have produced."

In a vacuum, 40,000 pages means little. Defendants should, if possible and relevant in a particular circumstance, give the court numbers to show the full burden of collection, review and production of documents, though they must also always be mindful not to disclose privileged information or work product. The volume of documents at issue in *Jones* may seem low in comparison to often expansive discovery in complex litigation involving much more damages. That makes proportionality assessments equally, if not more, important where much larger productions are in play.

In addition to the volume of documents, defendants may also wish to explain the cost of additional discovery. In *Empey v. Caliber Holdings LLC*, defendant argued that requested discovery was disproportionate to the needs of the case because the requested discovery would be expensive, but the court found that the defendant did not give detailed support showing the expense. The court further explained that the defendant failed to explain how the cost outweighed the benefit of the discovery. Even if the defendant explained the burden in this case, it seems, the court was unpersuaded by the defendant opposing discovery against a single plaintiff because it reasoned that the defendant company had more resources than a single, private individual. In these situations, defendants should focus on the portion of the Committee Notes that explains, "the parties' resources do[] not foreclose discovery requests addressed to an impecunious party, nor justify unlimited discovery requests addressed to a wealthy party."

While circumstances vary, parties may wish to provide certain appropriate evidence or an affidavit to resist burdensome and irrelevant discovery, though courts may not require this when the requests are unduly burdensome on their face. In *Ravarino v. Voya Financial, Inc.*, the court analyzed a wide array of Requests for Production and Interrogatories in response to the plaintiffs' motion to compel. The court granted the motion as to certain requests, stating that the defendant should have provided an affidavit, but denied it as to other requests. The court noted, "[a] motion to compel compliance with such a facially overbroad request can be denied even where, as here, the responding party did not support its undue burden objection with an affidavit."

These principles highlight a key portion of the Committee Notes: The 2015 amendment was "not intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional." Defendants should be mindful of this and provide more detail when possible and practical. That detail may come in the form of volume, cost or specific burdens that defendants would encounter if the court permits the discovery. Defendants must keep this goal in mind and make every effort to advise and remind courts of the 2015 amendment, even a decade after its implementation.

Brett F. Clements*is a partner at* **Hollingsworth LLP***, where he practices complex litigation in products liability and toxic tort matters, defending clients in high-profile multidistrict litigation, mass torts and individual products liability cases alleging significant losses.*

Expert Opinion | **E-Discovery**

Discovery Deficiencies Lead to Search Term Disclosure

Courts require concrete evidence of search deficiencies before ordering full discovery. In Lively v. Wayfarer, the court ordered disclosure of search terms and limited post-complaint discovery to a reasonable date, emphasizing fairness and proportionality in e-discovery.

October 15, 2025 at 06:47 AM By **Daniel J. Toal**

H. Christopher Boehning

H. Christopher Boehning and Daniel J. Toal

Introduction

As electronic discovery continues to evolve, courts increasingly are called on to referee disputes over not just what documents must be produced, but also how parties go about finding them. Litigants now routinely challenge the adequacy of their opponents' search efforts, raising questions about transparency, proportionality, and the boundaries of permissible inquiry.

At the heart of these disputes lies a tension between the autonomy of responding parties to manage their own discovery processes and the appropriate remediation when those processes appear flawed. While collaborative approaches to search methodology can streamline litigation, courts generally resist intrusive oversight absent a showing of deficiency.

A recent ruling from the Southern District of New York in *Lively v. Wayfarer Studios LLC*, 2025 WL 2463633 (S.D.N.Y. Aug. 27, 2025), helps shed light on how courts are navigating such terrain. In this decision, the district judge carefully addressed whether a party could be compelled to disclose its search terms and extend the temporal scope of its production, providing helpful guidance on an increasingly thorny topic.

Disclosure of Search Terms

In *Lively v. Wayfarer*, the plaintiff—a well-known actor—alleged sexual harassment by the defendants along with a subsequent effort to damage her reputation. As discovery progressed, disputes arose over the adequacy of the defendants' productions. The plaintiff moved to compel the defendants, *inter alia,* "to disclose the search terms and parameters used to perform their document collection and review" and to produce responsive materials "postdating Dec. 20, 2024," the date she had filed her California Civil Rights Division complaint.

In its analysis of the motion to compel discovery, the court first addressed the plaintiff's request for the defendants' search terms. It noted that mere suspicions of missing documents ordinarily do not support entry of such discovery orders against a party.

However, when the requesting party "identifies specific evidence to call into question the responding party's contention that no further responsive documents exist,... courts have the discretion to order the responding party to explain specifically what efforts were undertaken to find relevant documents."

The plaintiff identified such specific evidence here, principally that third parties produced documents that the defendants "apparently should have disclosed but did not." These included emails and text messages with defendant representatives that contained terms central to the plaintiff's claims such as "HR complaint," "harassment protocols," and the name of the film related to the plaintiff's allegations.

"A reasonably diligent search," stated the court, "would have captured these responsive messages, and the Wayfarer Parties' failure to produce these materials casts doubt on the completeness of their searches."

Moreover, the defendants neglected to produce documents "presumably within their possession, custody, or control" that they "annexed to and referenced in their own complaint." The court noted that this failure "to produce materials cited in their own legal filings provides additional reason to believe that their other discovery obligations may have gone unfulfilled."

With these demonstrated deficiencies in the defendants' productions, the court determined that "Lively is entitled to verify the processes by which the Wayfarer Parties have searched their databases for responsive documents" and ordered the defendants to produce their search terms.

Notably, the defendants additionally argued, without citing authority, "that they should not be required to produce their search terms unless Lively is as well." The court rejected this suggestion, stating that it "orders disclosure of collateral information such as search terms not as a matter of course, but because Lively has proffered specific evidence regarding deficiencies in the Wayfarer Parties' productions. These deficiencies give rise to the inference that additional responsive materials exist but have not yet been disclosed. The Wayfarer Parties have not attempted to offer an analogous showing regarding Lively's discovery productions, so their request for a reciprocal disclosure is unwarranted."

Temporal Scope of Discovery

The court additionally reviewed the plaintiff's request for "discovery through the present" from the defendants, covering approximately nine months after she filed her California Civil Rights Division complaint. The defendants objected, having aligned their discovery cutoff with the date of that complaint, Dec. 20, 2024.

They argued "that a request for documents to present would be overbroad and burdensome, that the obligation is disproportionate to that on Lively—who produced documents only through Dec. 31, 2024—and that a more reasonable cutoff would be Feb. 18, 2025, the date of the filing of Lively's Amended Complaint."

After first determining which post-complaint materials were discoverable, the court then addressed the appropriate end date for post-complaint discovery. Here, the court declined to compel discovery of all relevant materials since Dec. 20, 2024 as the plaintiff had requested. Rather, considering "relevance, overbreadth, and proportionality," the court selected the defendants' date of Feb. 18, 2025.

The court explained that while post-complaint materials may be relevant, "their relevance diminishes over time with greater distance from the underlying allegations in the complaint." Moreover, while acknowledging that the plaintiff's "allegations of ongoing harm justify certain extensions of the discovery window," the court emphasized that "without more, they cannot justify perpetual discovery—especially given the potential that her allegations regarding a smear campaign overlap with advocacy related to the underlying suit."

The plaintiff had additionally requested that the defendants "produce a privilege log for documents withheld on the basis of privilege after the filing of her original complaint." The defendants objected to this on the grounds that such materials were presumptively privileged. The court disagreed and ordered the defendants "to produce a categorical privilege log" for post-complaint documents, consistent with Local Civil Rule 26.2(c).

Analysis

Demands for details on the process by which an opposing party conducts discovery, often called "discovery on discovery," seem to have become more common in litigation. Indeed, some parties will go even further than asking for details, and may insist on control of their opposing party's discovery process before it begins.

While collaborative discovery efforts can be useful as part of streamlining and facilitating the litigation process, the general rule, most clearly set forth in *Principle 6* from The Sedona Conference, is that "Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information." Courts will generally only allow such discovery on discovery when presented with concrete evidence of a deficiency in the responding party's discovery process.

The *Lively* decision is more than a resolution of discovery disputes in a high-profile matter—it is a thoughtful articulation of how a court can balance reasonableness, proportionality, and evidentiary rigor in modern e-discovery. Here, United States District Judge Lewis Liman carefully applied such standards to each request, weighing the plaintiff's demands for discovery on discovery and expanded temporal scope against the defendants' objections.

Liman's analysis underscores several principles that are shaping modern discovery practice. First, the court reaffirmed that mere suspicion or conjecture regarding missing documents is insufficient to justify intrusive discovery into a party's search methodologies.

However, when the requesting party presents concrete evidence—such as third-party productions revealing gaps or omissions in the responding party's disclosures—courts may order disclosure of search terms and processes.

Such an approach helps maintain the integrity of the discovery process while avoiding unnecessary fishing expeditions that could burden litigants and the court system. Second, the decision illustrates the balancing act required when determining the temporal scope of discovery.

While post-complaint materials may have relevance, their probative value diminishes as they become increasingly distant from the events underlying the claims. The court's selection of a reasonable cutoff date, rather than granting open-ended discovery, highlights the importance of proportionality and a tailored approach—especially where claims of ongoing harm are asserted.

Finally, reciprocal discovery is not automatically granted, and requests for such measures must be supported by evidence of comparable deficiencies under the applicable rules. Courts require independent factual justification before ordering reciprocity.

H. Christopher Boehning *and* **Daniel J. Toal** *are litigation partners at Paul, Weiss, Rifkind, Wharton & Garrison LLP.* **Ross M. Gotler**, *deputy chair and counsel, e-discovery, and* **Lidia M. Kekis**, *e-discovery attorney, assisted in the preparation of this article.*

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Securities

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3M, J&J Mass Tort Funder Sues NY Law Firm for Investment Debacle

Oct. 28, 2025, 10:04 AM PDT

Summary by Bloomberg AI

AI Generated

- Rick Solit is suing Lake Law Firm for failing to bring results from mass tort cases and tax credit claims he invested in.
- Solit claims the law firm initiated only a fraction of the promised cases and defaulted on paying him under a case replacement agreement.
- Solit demands $6.2 million in damages, as well as any mass tort profits and federal tax credit cases that "rightfully belong" to him.

A litigation investor who ventured nearly $5.3 million for mass tort cases and tax credit claims is suing a New York law firm for failing to bring results.

Rick Solit, a trained medical doctor who became a financier, claims that Lake Law Firm and partner Ed Lake initiated only a fraction of mass tort cases and federal tax claims it promised—and then defaulted on paying him under a case replacement agreement, the lawsuit filed in the New York State Supreme Court Oct. 22 alleges.

“His practice was more akin to a Ponzi scheme than a legitimate litigation finance program,” the complaint alleged of Ed Lake, who did not immediately respond to a request for comment. Solit demands $6.2 million in damages, any mass tort profits and federal tax credit cases that “rightfully belong” to him.

The complaint is an example of how litigation finance, the practice of investing in lawsuits for a potential return through case awards, can go sour when funders accuse law firms of reneging on promises.

Solit invested in Lake Law as part of a broader plan to fund mass tort cases related to hernia mesh devices, Bayer AG’s RoundUp, 3M Co., and Johnson & Johnson talcum powder, all for possible returns, according to his lawsuit. The law firm promised that every plaintiff it signed up would provide medical records to confirm the viability of cases, Solit alleges.

However, the firm delivered no talcum powder cases, just 15 of the promised 113 hernia mesh suits, 40 of the pledged 100 3M matters, and eight of the planned 50 RoundUp cases, according to Solit. The firm later reneged on a case replacement agreement and defaulted, the suit claims.

Separately, Lake Law allegedly pledged to gather 8,000 cases under the Employee Retention Credit, a Covid-era federal program designed to help employers keep workers on the job. Solit's plan involved paying legal fees to guide businesses through the refund application process and then getting a cut of the refund as a return, according to the lawsuit. But Lake delivered only 2,655 of the promised cases, Solit claims.

Solit received his BA in economics from the University of Pennsylvania and an MD degree from Jefferson Medical College, according to an online profile at PENN. He decided not to practice medicine and instead worked in the finance industry, according to his lawsuit.

Solit's wife Sylvia Benito introduced him to investing in the mass tort area, according to the lawsuit. She filed a similar suit last week alleging Lake Law also never repaid her on the $2.5 million she invested, according to her lawsuit.

Lake "misused" investment funds and Solit's confidence in an attorney was "exploited," said Solit's attorney, William A. Brewer III, in a statement. "Dr. Solit intends to ensure that those responsible are held to account under the law."

The case is: Solit v. Lake , N.Y. Sup. Ct., 628419/2025, 10/22/25

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Business books

From opioids to tainted talc: how Johnson & Johnson lost the trust of consumers

A former New York Times reporter accuses the US company of corporate gaslighting on an epic scale in his book 'No More Tears'

The Johnson & Johnson sign over the company's Madrid offices © Cristina Arias

Andrew Hill

Published 30 MINUTES AGO

A group action lawsuit against Johnson & Johnson, launched in London's High Court earlier this month, will have opened many British consumers' eyes to a stark, and for some, surprising, fact: the US company is no longer the unimpeachable and trusted purveyor of bathroom cabinet staples that it once was.

J&J, and its consumer products spin-off Kenvue, are accused of knowingly peddling baby powder containing asbestos, which caused individuals to develop cancer. In the US, J&J has already sought to settle similar cases. Both companies have repeatedly denied the accusations.

In Gardiner Harris's brilliant telling, J&J has exploited a deep bond of trust with consumers, forged in the early intimate interactions between parent and baby. The unforgivable betrayal of that confidence is evident in the tale of tainted talc, whose presence and scent were once ubiquitous in homes around the world. It occupies the first section of *No More Tears*, which was longlisted for the FT and Schroders Business Book of the Year Award.

But Harris, a former New York Times reporter, goes much wider and deeper and he does not pull his punches in his assessment. "For all intents and purposes, Johnson & Johnson was a criminal enterprise," he suggests. He compares the company to the mafia, based on his chronicling of patient deaths, bribery and illegal drug marketing schemes in the past, but adds "no mafia outfit ever consistently targeted the kind of vulnerable people that J&J exploited".

> **Of J&J's role in the opioid addiction epidemic, Harris writes that J&J should shoulder more of the blame than Purdue Pharma and the Sackler family**

Drawing on secret grand jury files and interviews with anonymous whistleblowers, Harris traces, in often distressing and deeply reported detail, the malign influence of what was once described as a "quintessentially American company" over the sale of allegedly unsafe consumer products, prescription drugs and medical devices.

Credibility has been at the heart of J&J's success, virtually since the Johnson brothers set up the company as a manufacturer of medicinal plasters (the roots of J&J's trusted Band-Aid brand) in the late 19th century.

More recently, the purpose movement that swept through companies in the 2010s refocused attention on its "credo", a mission statement first devised in 1943 and carved into stone at its headquarters. Its withdrawal of hundreds of millions of bottles of the painkiller Tylenol in 1982, after a tampering incident that killed seven people, is still cited as a case study in doing the right thing, whatever the cost. Special legislation by Congress makes J&J the only company in the world that can freely use the symbol of the Red Cross on its products.

Harris acknowledges some of the healthcare innovations J&J has brought to the world, from prostate cancer treatments to disposable contact lenses. Yet he describes the credo as "corporate gaslighting on an epic scale". It supported the notion among staff that J&J was "truly special and good", and it helped lull regulators and customers, whether doctors or individuals, into believing J&J's increasingly aggressive sales pitches for dangerous or damaging products.

He finds no evidence that the credo ever changed a strategy or a major corporate decision. As for the Tylenol recall, he suggests the tampering may have been made possible by a breach of J&J's distribution network, which would make the company less of an innocent victim.

J&J's role in the opioid addiction epidemic is emblematic. Harris writes that J&J should shoulder more of the blame even than Purdue Pharma and the Sackler family. Their involvement in spreading addictive painkillers, supported by enticements for physicians and academics and unhindered by an ineffective and compromised Food and Drug Administration, has been well-documented, including in some excellent investigative accounts such as *Empire of Pain* and *Dopesick*. Unlike some of the Sacklers at Purdue, the Johnsons did not occupy senior roles at their family company after the early 1960s.

In fact, the FDA approved J&J's fentanyl patch Duragesic five years before Purdue's OxyContin tablet, and foresaw some of the risks. Yet J&J went on to match many of OxyContin's hard-sell tactics, and continued selling opioid-based treatments that were open to abuse even after the fatal consequences were obvious. Doctors believed the benefits of opioids, Harris writes, because they were "also being endorsed and propagated by the largest and what many believed to be the most ethical healthcare conglomerate in the world".

J&J stopped marketing Duragesic in 2008 and later joined other drug companies in settling thousands of US opioid-related claims, contributing up to $5bn without admitting wrongdoing.

Harris's claim is that J&J has laid down "the most effective smokescreen in capitalism", with the complicity of regulators, legislators and the media. Litigation and bad publicity have badly dented its once haloed reputation, but *No More Tears*' conclusions are muted.

Among other solutions, Harris suggests a clampdown on drug company incentives for doctors and an end to direct industry funding of the FDA. Above all, the J&J story "must lead to a wholesale reassessment of the very system in which the conglomerate was allowed to thrive". Yet the chaotic healthcare programme of the second Trump administration, which came to office shortly before the book was published, must surely make such a reasoned reassessment even less likely.

No More Tears: The Dark Secrets of Johnson & Johnson by Gardiner Harris, *Random House £25/$32, 464 pages*

Andrew Hill is the FT's senior business writer

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Texas Sues J&J, Kenvue Over Alleged Tylenol Autism Risks (1)

Oct. 28, 2025, 7:17 AM PDT

Summary by Bloomberg AI

AI Generated

- The state of Texas sued Johnson & Johnson and Kenvue, alleging that the companies hid the risks of autism and other disorders for children if mothers take Tylenol during pregnancy.
- Texas Attorney General Ken Paxton claims that the companies deceptively marketed Tylenol despite knowing the risks of the drug, and that they "lied for decades, knowingly endangering millions to line their pockets."
- Kenvue called the allegations "baseless" and asserted that its medication is safe for pregnant women to take, noting that both pain and fevers in pregnant women can be dangerous for their children.

The state of Texas sued Johnson & Johnson and Kenvue Tuesday, alleging that the companies hid the risks of autism and other disorders for children if mothers take Tylenol during pregnancy.

The lawsuit, filed in state court in Texas, claims that the two drugmakers deceptively marketed Tylenol despite knowing the risks of the drug. It comes weeks after President Donald Trump claimed the drug caused autism in children, a link that has not been proven.

“Big Pharma betrayed America by profiting off of pain and pushing pills regardless of the risks,” Texas Attorney General Ken Paxton said in a statement. “These corporations lied for decades, knowingly endangering millions to line their pockets.”

The suit adds to pressure on the drugmakers over the issue, which has been a focus of Robert F. Kennedy Jr., the Secretary of Health and Human Services. Trump on Friday intensified his campaign against Tylenol to include young kids, posting on his Truth Social that parents shouldn’t give children the drug “for virtually any reason” without providing scientific evidence for the claim.

Read More: Trump Ratchets Up Pressure on Tylenol With Warning for Kids

Kenvue, a Johnson & Johnson spinoff, has made Tylenol since 2023. The company called the allegations behind Paxton's lawsuit baseless and asserted that its medication is safe for pregnant women to take, noting that both pain and fevers in pregnant women can be dangerous for their children.

"We are deeply concerned by the perpetuation of misinformation on the safety of acetaminophen and the potential impact that could have on the health of American women and children," it said in a statement.

Texas alleged both companies knowingly withheld evidence that acetaminophen, the active ingredient in Tylenol and a common pain and fever treatment, was linked to autism and attention deficit hyperactivity disorder in children when taken by pregnant women.

In a statement, Johnson & Johnson said it divested its consumer health business and "all rights and liabilities associated with the sale of its over-the-counter products, including Tylenol (acetaminophen), are owned by Kenvue."

Paxton took a swipe at the motives behind the spinoff, saying that Johnson & Johnson "attempted to escape responsibility by illegally offloading their liability onto a different company."

Underlying Science

In the suit, Paxton argues that there are other drugs regulated by the Food and Drug Administration that include detailed information about potential risks on their labels, "even when the underlying science — unlike here — is not fully settled."

The lawsuit seeks a court order barring the companies from engaging in any deceptive advertising practices while selling Tylenol in Texas and requiring them from destroying any marketing materials that say the drug is safe for pregnant women and does not increase the risk of autism. The companies could also be ordered to pay civil penalties.

Paxton, who has served as Texas Attorney General since 2015, is a longtime ally of Trump and is known for his aggressive pursuit of conservative causes in the courts. His tenure in office has also been marked by allegations of bribery and abuse of office, but he was acquitted at his impeachment trial in the state Senate in 2023.

Paxton is currently running for the US Senate in Texas, challenging fellow Republican John Cornyn for the seat he has held since 2002. Trump has yet to offer an endorsement in the race.

The Trump administration's focus on Tylenol has stoked concern among doctors and medical experts, who have pushed back on Trump's unsupported claims. The American College of Obstetricians and Gynecologists called Trump's statements "irresponsible" and still recommends Tylenol for pregnant people.

Tylenol Defense

Earlier this month, Kenvue laid out its most detailed defense of Tylenol in response to a citizen petition filed last month asking for changes to the label.

The Tylenol maker said the changes "are unsupported by the scientific evidence and legally and procedurally improper," the company said in an Oct. 17 submission to the US Food and Drug Administration.

The "overwhelming weight of the evidence" contradicts any claim that the nonprescription medicine used to treat pain and reduce fevers is a risk for neurodevelopmental disorders, the company said.

(Updates throughout with details from the lawsuit and a statement from Johnson & Johnson)

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Texas SNAP benefit pause: Here’s how to receive and give help

texastribune.org/2025/10/28/texas-tylenol-johnson-lawsuit-rfk-ken-paxton-autism

Eleanor Klibanoff October 28, 2025

Audio recording is automated for accessibility. Humans wrote and edited the story. See our AI policy, and give us feedback.

Texas Attorney General Ken Paxton is suing Johnson and Johnson, accusing the pharmaceutical company of failing to warn consumers about the risk of taking Tylenol while pregnant.

This lawsuit, the first of its kind from a state government, comes a month after President Donald Trump and U.S. Secretary of Health and Human Services Robert F. Kennedy, Jr. announced updated guidance discouraging pregnant women from taking acetaminophen, citing it as a possible cause of autism. The announcement set off a wave of controversy in the health care community, and confusion among pregnant women unsure how they should manage fever and pain during pregnancy.

The science around Tylenol and autism is uncertain. While some studies suggest a correlation between taking Tylenol while pregnant and having a child with autism, others have repudiated those findings. Major medical associations rejected Kennedy and Trump’s claims as overly generalized and potentially harmful.

Kenvue, the corporate subsidiary that makes Tylenol, said in a statement that it would vigorously defend itself against Paxton’s claims in court.

“We stand firmly with the global medical community that acknowledges the safety of acetaminophen and believe we will continue to be successful in litigation as these claims lack legal merit and scientific support,” the company said in a statement.

This issue has been bubbling up for far longer than Trump and Kennedy have been in office. Dozens of people have filed personal injury lawsuits against Johnson and Johnson, and its corporate spin-off, Kenvue, alleging adverse neurodevelopment outcomes for their children after taking Tylenol while pregnant.

Those cases have been consolidated into multi-district litigation, which is still making its way through the courts and being led by Ashley Keller of Chicago law firm Keller Postman. Keller has represented Texas in litigation against Google and Meta, and has been contracted by the attorney general's office to handle this new lawsuit against Johnson and Johnson.

"[Paxton] figured I knew the science, I knew the history, I knew a lot of the moving parts," Keller said in an interview. "And so I'd be an obvious choice to pursue this for Texans."

Paxton, who is running in the GOP primary to unseat U.S. Sen. John Cornyn, said in a statement announcing the lawsuit that "by holding Big Pharma accountable for poisoning our people, we will help Make America Healthy Again."

What the science says

Autism affects approximately one in 31 American children, and the rate of diagnoses has increased almost 300% over the last 20 years. Researchers attribute that rise to better screening and an expanded definition of the spectrum of behaviors that qualify for a diagnosis.

Kennedy, in contrast, has long blamed the debunked theory that autism is caused by common childhood vaccines. Since becoming health secretary, Kennedy has vowed to figure out and eliminate the root causes of autism, putting $50 million toward research.

Relabeling Tylenol was one of his first steps. Kennedy pointed to an August study from the Harvard School of Public Health and Mount Sinai Hospital that found pregnant women who reported taking acetaminophen seemed to be slightly more likely to have a child diagnosed with autism, a conclusion other studies have reached over the years.

But one of the largest studies, which looked at the health records of 2.5 million children born in Sweden over 25 years, found that link went away when they looked at siblings where the parent took acetaminophen during one pregnancy but not the other.

It's hard to get a "100% definitive case closed on any topic" in epidemiology, Dr. Brian Lee, a Drexel University epidemiologist who authored that study, told [the Johns Hopkins Bloomberg School of Public Health podcast](). It would be unethical to give pregnant women Tylenol just to see if they have a child with autism, so researchers must rely on less definitive methods to determine how great the risk is.

While more research is needed, he said, right now, "the needle is pointing strongly toward there being no causal effect of acetaminophen use during pregnancy on autism."

Keller, the lawyer leading the litigation against Johnson and Johnson, said it's better to inform people about the potential risks, and the uncertainty around them, and let them make their own decisions based on that.

"It is mind boggling to me that these major medical organisations would say, 'We aren't sure, and therefore we should say nothing,'" he said. "The opposite is true: We are not sure, and therefore we should sound the alarm."

A federal judge recently excluded the expert witnesses that Keller had planned to present in the consolidated litigation against Johnson and Johnson, "supposedly because the science wasn't strong enough," he said. That decision has been appealed to the 2nd U.S. Circuit Court of Appeals.

The lawsuit

Paxton's lawsuit builds on these claims, saying Johnson and Johnson "willfully ignored and attempted to silence the science" around acetaminophen and autism. Paxton takes specific aim at a spin-off company, Kenvue, which the suit says was only created to shelter Johnson and Johnson's main assets from liability.

"Given the prevalence of acetaminophen use and these conditions, there is little doubt that Defendants will have to pay tens of billions of dollars in damages to children who were permanently injured from acetaminophen use," the lawsuit said.

As attorney general, Paxton has a different avenue into court than an individual trying to prove that Tylenol caused their child's autism. While those lawsuits focus on personal injury claims, this suit hinges on two state consumer protection laws, the Uniform Fraudulent Transfer

Act and the Deceptive Trade Practices Act.

"That overlaps a lot with the science and with the argument that is going on about Tylenol right now, but it's ultimately a different burden of proof and different damages that we're going to be seeking," Keller said.

Texas has repeatedly sued Johnson and Johnson over the years, negotiating a $290 settlement over the company's role in the opioid epidemic in 2021; tens of millions of dollars in settlements over medical devices; and $158 million for deceptive marketing of the anti-schizophrenia drug, Risperdal.

Disclosure: Google has been a financial supporter of The Texas Tribune, a nonprofit, nonpartisan news organization that is funded in part by donations from members, foundations and corporate sponsors. Financial supporters play no role in the Tribune's journalism. Find a complete list of them here.

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Texas attorney general sues Tylenol company over autism claims (Eleanor Klibanoff/The Texas Tribune)

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CEOs are hugely expensive – why not automate them?

If a single role is as expensive as thousands of workers, it is surely the prime candidate for robot-induced redundancy.

BY WILL DUNN

Texas sues Tylenol makers J&J and Kenvue, claiming they hid drug's autism risks

reuters.com/world/texas-sues-jj-kenvue-claiming-they-hid-tylenols-autism-risks-2025-10-28

Reuters October 28, 2025

The company logo for Kenvue Inc. Johnson & Johnson's consumer-health business, is displayed on during the company's IPO at the New York Stock Exchange (NYSE) in New York City, U.S., May 4, 2023. REUTERS/Brendan McDermid
Purchase Licensing Rights, opens new tab

(JNJ.N), opens new tab and Kenvue (KVUE.N), opens new tab, were sued on Tuesday by Texas Attorney General Ken Paxton, who accused them of knowingly hiding the drug's links to autism and attention deficit hyperactivity disorder.
Paxton, a Republican, sued five weeks after Republican President Donald Trump said using Tylenol during pregnancy can cause autism in children. Trump is not a doctor, and his claim is unproven and not backed by scientific evidence.

Johnson & Johnson sold Tylenol for more than six decades, and its former Kenvue unit has sold it since 2023 after being spun off. The pain reliever is known generically as acetaminophen.

Kenvue has repeatedly defended Tylenol's safety, and in a statement said it would defend against Paxton's lawsuit.

"Acetaminophen is the safest pain reliever option for pregnant women as needed throughout their entire pregnancy," Kenvue said. "We are deeply concerned by the perpetuation of misinformation on the safety of acetaminophen."

In a separate statement, Johnson & Johnson did not comment on Paxton's lawsuit, and said Kenvue is responsible for "all rights and liabilities associated with the sale of its over-the-counter products, including Tylenol."

Reporting by Jonathan Stempel in New York; Editing by Chizu Nomiyama

https://www.wsj.com/health/healthcare/texas-sues-kenvue-alleging-omission-of-autism-link-from-tylenol-marketing-d5ab7d50

HEALTH | HEALTHCARE

Texas Suit Accuses Tylenol Maker of Hiding a Link to Autism

State alleges Kenvue deceptively marketed popular drug despite doctors saying it is safe to take during pregnancy

By Jennifer Calfas Follow , *Katherine Hamilton* Follow and *Nicholas G. Miller* Follow

Updated Oct. 28, 2025 11:59 am ET

Texas' lawsuit also seeks warnings about autism on Tylenol's labels. HANNAH BEIER/REUTERS

Texas sued Tylenol maker Kenvue alleging the company hid autism risks of its popular pain reliever despite doctors saying it is safe to take during pregnancy.

In a suit filed Tuesday, Texas Attorney General Ken Paxton alleges Kenvue engaged in deceptive marketing by advertising that Tylenol was safe to use while pregnant. The lawsuit claims that research shows a link between autism and prenatal and early-childhood use of Tylenol's active ingredient acetaminophen.

Studies examining a link between acetaminophen and autism are inconclusive. Doctors, medical societies and researchers say acetaminophen remains the best option for treating fever and pain during pregnancy and advise patients to discuss the medication with their doctors.

President Trump and Health Secretary Robert F. Kennedy Jr. put out an official warning in September stating that acetaminophen is a potential cause of autism, citing no new evidence but existing studies. Kennedy and the Food and Drug Administration plan to update the label for acetaminophen and conduct an awareness campaign about the potential link to autism.

Kenvue called the lawsuit's claims "baseless" and said in a statement that the company was concerned by misinformation spread about the popular pain reliever. "We stand firmly with the global medical community that acknowledges the safety of acetaminophen and believe we will continue to be successful in litigation as these claims lack legal merit and scientific support," the company said.

The suit also names Johnson & Johnson, which spun off Kenvue in 2023, for allegedly transferring liabilities from Tylenol to Kenvue when the companies separated. A J&J spokesperson said "all rights and liabilities associated with the sale of its over-the-counter products, including Tylenol (acetaminophen), are owned by Kenvue."

The suit asks Kenvue and J&J to pay Texas civil penalties of $10,000 per violation of the state's deceptive marketing law, of which 11 are named in the suit. It also seeks warnings about autism on Tylenol's labels.

"Big Pharma betrayed America by profiting off of pain and pushing pills regardless of the risks," Paxton said in a statement.

Autism, a neurodevelopmental disorder, affected around one in 31 8-year-olds in the U.S. in 2022—a statistic the Trump administration has often cited. Many doctors and scientists say how the diagnosis itself has changed over time can help explain the bulk of the rise in diagnoses in recent years.

Hundreds of lawsuits were filed against J&J and later Kenvue beginning in 2022 that alleged exposure to acetaminophen caused autism or attention-deficit hyperactivity disorder. Kenvue has so far successfully pushed back on the lawsuits. A federal judge ruled in 2023 there wasn't sufficient evidence that the drug's active ingredient caused autism and the lawsuits were dismissed. The plaintiffs' lawyers have appealed the ruling.

Kenvue has said it doesn't believe science shows that taking acetaminophen causes autism and has pushed back on the efforts to change Tylenol's label. The consumer-health company's stock has lost nearly a third of its value in the past three months.

The FDA's notice to doctors was less strongly worded than the White House's briefing in September. FDA Commissioner Marty Makary said in the notice that an association between acetaminophen and autism had been described in many studies, but a causal relationship had not been established and was still an area of continuing scientific debate.

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Videos

Judge to unseal more than 100 documents in Epstein-related civil suit against JPMorgan Chase

courthousenews.com/judge-to-unseal-more-than-100-documents-in-epstein-related-civil-suit-against-jpmorgan-chase

Erik Uebelacker

United States Attorney for the Southern District of New York Geoffrey Berman speaks during a news conference, in New York, Monday, July 8, 2019. Federal prosecutors announced sex trafficking and conspiracy charges against wealthy financier Jeffrey Epstein. Court documents unsealed Monday show Epstein is charged with creating and maintaining a network that allowed him to sexually exploit and abuse dozens of underage girls.(AP Photo/Richard Drew)

MANHATTAN (CN) — A federal judge in Manhattan has ordered the unsealing of more than 100 documents from a civil lawsuit brought by the U.S. Virgin Islands against JPMorgan Chase over the finances of disgraced pedophile financier Jeffrey Epstein.

U.S. District Judge Jed Rakoff, a Bill Clinton appointee in the Southern District of New York, broadly granted a request from The New York Times and The Wall Street Journal to release sealed exhibits from the summary judgment phase of the case, which was settled in 2023.

Some of the filings purportedly contain “financial settlements from JPMorgan Chase, either for accounts controlled by Epstein or the accounts of victims of Epstein’s crimes,” according to Times journalist Matthew Goldstein, who sought a broad unsealing of “financial documents” from the case.

"I believe that records documenting the flow of money into Epstein's accounts from persons who may have been involved in his sexual abuse of minors and the flow of money to victims are of particular public interest at this time in light of allegations that the federal government has not been forthcoming in providing records from the Epstein investigation, despite promises to do so," Goldstein wrote in a letter to the judge from August.

None of the parties opposed unsealing a significant majority of the documents sought by the Times and the Journal, according to the judge's order. But certain redactions, even in those filings, must remain.

"All the parties agree that, because Epstein's victims have strong interests in their privacy, the victims' identifying information should remain sealed," Rakoff wrote in a 17-page ruling, which was dated for Friday but docketed on Monday morning.

JPMorgan Chase objected to unsealing 36 of the exhibits sought by the newspapers.

The bank claims some of those documents contain personal and financial information of other customers unrelated to Epstein. Rakoff noted several of these exhibits contain "internal JPMC correspondence concerning individuals and entities whose activities could pose various forms of financial and/or reputational risk to JMPC."

That information should remain sealed, the judge ruled, finding that those entities' privacy interests merit protection.

Other information the judge ruled should stay private was a pair of redactions in an email exchange among the bank's executives, which were designed to "protect the identity of an individual who is identified in the exhibit as gay." Since the individual purportedly had "no connection to Epstein," those redactions will stay.

Other documents, JPMorgan Chase claims, should stay sealed on the basis of the Bank Secrecy Act. But the judge was broadly unmoved by this argument, finding the confidentiality obligations stemming from that law "are distinct from the right of access to judicial documents."

Rakoff ordered most documents to be released to the newspapers by Thursday. For exhibits that need new or changed redactions, those proposed changes need to be submitted to the court on the same day.

The underlying case is a 2022 civil claim against the international bank brought by the U.S. Virgin Islands, the longtime home of Epstein's infamous private island residence. According to the complaint, JPMorgan Chase knew about and recklessly disregarded Epstein's sex trafficking venture, which lawyers say brought $1 billion into the bank between 2003 and 2019, when Epstein died in a Manhattan prison.

In 2023, JPMorgan Chase agreed to settle the suit for $75 million and agreed to implement anti-trafficking measures. The bank did not have to admit liability. Earlier that year, JPMorgan Chase reached a private $290 million settlement with Epstein's victims.

Epstein was arrested in 2019 on federal sex trafficking charges following years of lurid accusations against him. President Donald Trump's second administration has renewed the public's interest in the case, as the two were reportedly close friends and associates.

Trump has repeatedly tried to distance himself from the disgraced financier and has expressed annoyance that the story has once again picked up steam. He continues to face criticism as his Justice Department denies releasing files related to Epstein's investigation.

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California Brief

Meta Loses Bid to Block Internal Docs on Teen Mental Health (1)

Oct. 23, 2025, 4:23 PM PDT; Updated: Oct. 27, 2025, 2:53 PM PDT

Meta Platforms Inc.'s lawyers advised employees to amend internal research on teen mental health harm in order to reduce legal liability, a Washington, DC, judge said in a ruling requiring the social media giant to turn over attorney-client communications to the local government.

The ruling—which did not address whether Meta actually followed through on its attorneys' advice—could ripple into the multi-district litigation faced by the tech company in California.

Judge Yvonne Williams ruled that Meta can't use attorney client privilege to block the DC attorney general from using Meta's internal documents in the District's suit over teen mental health harms.

Williams, ruling for the Superior Court of the District of Columbia, found the communication in the documents falls under the crime-fraud exception to attorney client privilege. She found that the DC attorney general established probable cause to show Meta sought and heeded legal advice to obfuscate potential liability or engage in fraud.

"The Court notes that Meta's counsel explicitly advised Meta researchers to 'remove,' 'block, 'button up,' 'limit,' and 'update' their research," Williams said. "Meta's counsel offered such legal advice to specifically limit Meta's potential liability."

A Meta spokesperson said the company disagrees with the court's ruling. "These were routine, appropriate lawyer-client discussions, and contrary to the District's misleading claim, no research findings were deleted or destroyed," the company said in a statement.

Williams said Meta must produce the four documents in question, dated between November 2022 and July 2023, within seven days of her ruling.

Meta's counsel provided the advice to researchers in reference to a sweeping multidistrict litigation in California federal court, where Meta faces a teen addiction and mental health lawsuit from dozens of state attorneys general, including Washington, DC.

The same case also involves hundreds of private civil lawsuits against Meta and other social media platforms from teens, parents, and school districts affected by the harms of social media addiction. The first trials are slated to start next year.

The DC attorney general initiated his own lawsuit against Meta in the district's superior court, alleging violations of the district's consumer protection act. Meta started producing documents to the district last year as part of the discovery process.

Attorneys for the plaintiffs in the multidistrict litigation submitted Williams' ruling to the California court.

Williams' ruling said the documents contain communication between Meta researchers relaying and discussing company counsel's advice to removing or redesigning research.

"The communications in the Documents speak for themselves," Williams said. "Following the initiation of the related multidistrict litigation, Meta's counsel informed Meta's researchers to amend their research to limit Meta's potential liability."

The case is District of Columbia v. Meta Platforms Inc. , D.C. Super. Ct., No. 2023 CAB 006550, 10/23/25 .

(Updates Oct. 23 story to include detail about probable cause finding in fourth paragraph.)

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Litigation

Manage Newsletters

Gen Digital Users Fail to Revive Wiretapping Claims on Appeal

Oct. 28, 2025, 9:25 AM PDT

Summary by Bloomberg AI

AI Generated

- The Ninth Circuit said a federal judge properly dismissed wiretapping claims against Gen Digital LLC over its collection of data from users of its browser extension.
- The plaintiffs failed to show that Gen Digital was a third party to their communications, a requirement for liability under the federal Electronic Communications Privacy Act and the California Invasion of Privacy Act.
- The appeals court rejected the plaintiffs' arguments, including that the browser extensions could function without routing communications through Gen Digital, and upheld the dismissal of their claims.

A federal judge properly dismissed wiretapping claims against Gen Digital LLC based on the software company's collection of data from users of its browser extension designed to prevent surreptitious data collection, the Ninth Circuit said.

Lead plaintiffs Grace Lau and Christopher Karwowski failed to show that the software company was a third party to their communications, a requirement for liability under the federal Electronic Communications Privacy Act and the California Invasion of Privacy Act, the US Court of Appeals for the Ninth Circuit said Monday in an unpublished, unsigned opinion.

The proposed class action alleged privacy violations originating with Avast PLC, a developer of browser extensions for Google Chrome and Microsoft Edge. Avast said its products made browsing safer and more secure, but in reality the company was a data harvester masquerading as a data protector, the plaintiffs said in an amended complaint.

Gen Digital acquired Avast PLC's assets in 2022, it said.

A federal judge in California dismissed the original complaint but allowed the plaintiffs to amend. Another judge with the same court dismissed the amended complaint's wiretapping claims after the case was reassigned to her.

On appeal, the Ninth Circuit said the plaintiffs referred to themselves as users of Gen Digital's software, which was inconsistent with their argument that the company was an "unannounced second auditor."

Their argument that it was possible for the browser extensions to function without routing their communications through Gen Digital fared no better, as the communications still needed to be sent to Gen Digital for website verification, the panel said.

The appeals court also rejected two arguments because the plaintiffs made them for the first time on appeal, and held that the district court properly dismissed their CIPA section 632 claims for failure to respond to arguments in Gen Digital's motion to dismiss.

Judges Mary H. Murguia, John B. Owens, and Patrick J. Bumatay issued the decision.

Bird, Marella, Rhow, Lincenberg, Drooks & Nessim LLP; Glancy Prongay & Murray LLP; and Burns Charest LLP represented the plaintiffs. Latham & Watkins LLP represented Gen Digital.

The case is Karwowski v. Gen Digit., LLC , 9th Cir., No. 24-7213, unpublished 10/27/25 .

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California Brief

Anthropic's $1.5 Billion AI Deal Covers Trump, Four Justices

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Four sitting US Supreme Court justices and a trio of presidents are eligible to collect checks from Anthropic PBC's $1.5 billion deal with authors whose books were part of a pirated database the AI company downloaded.

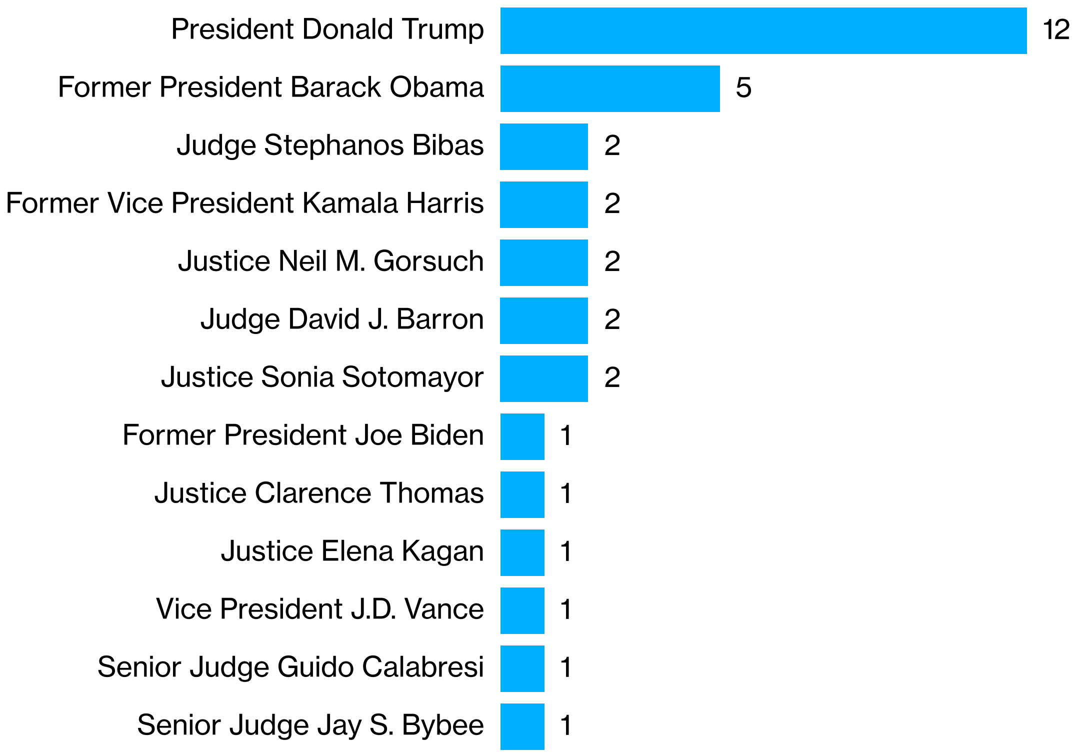
Books by Justices Clarence Thomas, Sonia Sotomayor, Elena Kagan, and Neil M. Gorsuch, and by Presidents Donald Trump, Joe Biden, and Barack Obama appear in a digital library of millions of pirated works Anthropic downloaded to develop its AI models. Skyhorse Publishing Inc., a publisher of Trump's book "Time to Get Tough," told Bloomberg Law it intends to file a payment claim, but it's unclear which other officials' publishers have or will also do so.

The largest ever copyright settlement stems from a class action claiming Anthropic illegally trained its large language models on protected works without consent. The company struck the historic deal months before trial, citing "inordinate pressure" to settle and avoid potentially business-ending damages of $1 trillion after a federal judge certified the class of authors.

Accepting settlement money could create ethics problems, especially for the jurists. Should these authors file claims, they would be eligible for payouts up to $3,100 per book, according to the database created to identify works included in the record settlement.

The legality of AI training on copyrighted works—a central question in the Anthropic case—is likely to reach the Supreme Court, creating a potential conflict of interest. Although Anthropic settled this dispute before trial, the pipeline of AI training copyright lawsuits remains robust, with dozens of cases primed to climb through the circuits and up to the high court.

Settlement-Eligible Books



Source: Bloomberg Law, Settlement Database

Bloomberg Law

Tony Lyons, president of Skyhorse Publishing, said in an emailed statement that it plans to submit a claim for Trump's book, but it's unclear if the publisher will evenly split the reward with the president—the default assumption under the settlement—or request a different allocation. Other publishers declined to comment or didn't respond to questions about plans to file claims for the presidents, vice presidents, and judges.

Third Circuit Judge Stephanos Bibas is eligible to file two claims. Sitting in a federal trial court, Bibas in February ruled an AI-powered legal tool's ingestion of protected data isn't fair use under copyright law, and an appeal of the decision is pending. He declined to comment on whether he plans to submit claims.

Books by at least three other appellate judges, David J. Barron of the First Circuit, Senior Judge Guido Calabresi of the Second Circuit, and Senior Judge Jay S. Bybee of the Ninth Circuit, also appeared in Anthropic's pirated library and qualify for settlement payments, according to a Bloomberg Law review.

Ethical Concerns

While federal judges are subject to enforceable ethics codes, the nine Supreme Court justices self-regulate under the federal law requiring jurists to recuse themselves from cases if their "impartiality might reasonably be questioned," leading to sometimes uneven enforcement. The code of ethics adopted by the court in 2023 is "an aspirational code with no enforcement mechanism," said Hofstra University law professor James Sample.

Emory University law professor Tonja Jacobi said the justices should instruct their publishers not to file a claim to avoid any perception of bias when AI training questions reach the high court. Five justices in May recused themselves from a copyright case involving a Penguin Random House subsidiary, which has published books authored by four of the justices. Because the court lacked a quorum it was required by statute to affirm the judgment of the lower court.

The justices may disagree among themselves on the propriety of collecting the settlement money. Either way, New York University law professor Stephen Gillers sees no problem with justices opting in because the AI training matter isn't presently before them and the dollar amount is too low to merit disqualification.

"These are not poor people," he said, "so it's not as though even a low six-figure sum"—let alone $3,100 per title—"will affect their quality of life in any way."

Bubbling Issue

Authors, photographers, and news publishers have filed dozens of copyright lawsuits against leaders of the burgeoning AI industry since 2022, largely claiming the companies illegally trained large language models on copyrighted works without permission or compensation. While the Anthropic settlement centers on pirate downloads, the novel question of whether the training qualifies as fair use is slowly ascending the legal ladder.

Two federal California judges this year issued divergent opinions. Judge William Alsup, who oversaw the case Anthropic settled, found the training to be fair use, but downloading pirated books likely wasn't. Judge Vince Chhabria also found Meta Platforms Inc.'s training was fair use, but indicated he would've ruled for the plaintiffs if they'd presented better evidence of market harm.

The case closest to the Supreme Court is Thomson Reuters' lawsuit against the AI-powered legal tool Ross Intelligence Inc. over its ingestion of legal headnotes. The US Court of Appeals for the Third Circuit in June accepted Ross' early appeal of a summary judgment ruling rejecting its fair use defense.

There's "a lot more pressure" on lower court judges to recuse, Jacobi said, because their code of ethics has a real enforcement mechanism.

Supreme Court justices have also argued lower court judges can more easily recuse themselves, because there are more of them.

That’s another reason they should refuse any settlement money, Jacobi said.

“If they’re publishing books that are contributing to the understanding of the law in the general community, which they should be, they shouldn’t be focused on how much money they can make,” she said.

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Judge to approve $65M World Financial Group PAGA settlement

DJ **dailyjournal.com**/articles/388278-judge-to-approve-65m-world-financial-group-paga-settlement

Labor/Employment

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Oct. 28, 2025

A San Francisco judge said she will approve a $65 million settlement resolving a class action accusing World Financial Group of misclassifying 380,000 sales agents and running a pyramid-style recruiting scheme.

San Francisco Superior Court Judge Christine Van Aken. Courtesy photo

A judge said she would grant final approval for a $65 million settlement in a wage-and-hour class action against World Financial Group Insurance Agency -- a financial services company accused of running a "massive pyramid scheme" recruiting operation and misclassifying its sales agents as independent contractors.

After deductions, the net payout to class members totals approximately $43 million.

At a hearing on the final approval Monday, San Francisco Superior Court Judge Christine Van Aken congratulated counsel on reaching the settlement and told them she was going to approve it, though it was technically under submission at the time of going to press.

"I think the fees are reasonable," said Van Aken. "This is a good settlement."

World Financial Group Insurance Agency denied any liability in the agreement and stated it had decided to settle "solely to avoid the cost of further litigation."

In response to the complaint, the company maintained that all associates were independent contractors, not employees, and that they consented to the terms of their agreements.

Nearly seven years after the complaint was filed, the class of just over 380,000 people won their lawsuit for failure to pay wages and other workplace violations. Tricia Yeomans et al. v. World Financial Group Insurance Agency, Inc. et al. CGC18572397 (S. F. Super. Ct. filed Dec. 28, 2018).

Class counsel -- from Marlin & Saltzman; Rosenberg, Shpall, & Zeigen APLC and Farnaes & Lucio APC -- requested $18.2 million in fees, or 28% of the general settlement amount. They voluntarily reduced the fee request from 33.33%, below the amount preliminarily approved by the court.

"The reduced 28% fee award currently sought by plaintiffs' counsel is extremely reasonable," the plaintiffs' motion for fees said.

The motion claimed that the requested amount falls below the average fee awarded in California and the maximum percentage of award permissible in both state and federal courts.

"Accordingly, plaintiffs' attorney fee request may easily be adopted by this court," the motion argued.

The complaint described World Financial Group Insurance Agency's structure as a "massive multi-level recruiting scheme" in which new associates were required to pay a non-refundable $100 fee and encouraged to recruit others who would, in turn, pay the same fee.

Plaintiffs said the model generated profits primarily through recruitment rather than sales of financial products, while associates -- controlled by company rules and policies -- were denied labor protections owed to employees.

The case began in December 2018, when five former associates filed a class action complaint alleging that World Financial Group Insurance Agency and its Georgia-based parent company misclassified thousands of workers to avoid paying wages, overtime and business expenses.

They also sought civil penalties under the Private Attorneys General Act (PAGA), arguing the defendant's practices harmed thousands of California workers.

The PAGA penalties amount to $3.25 million, with $2.44 million going to the California Labor & Workforce Development Agency and the remaining $812,500 to affected workers.

World Financial Group Insurance Agency argued that the plaintiffs failed to state valid claims, that many were time-barred, and that the company acted in good faith. It also invoked federal preemption and claimed that disputes should be resolved through binding arbitration, citing agreements signed by its associates.

The case spanned both state and federal courts. World Financial Group Insurance Agency unsuccessfully sought to move the case to Georgia and compel arbitration. The 9th Circuit Court of Appeals in 2021 upheld the lower court's rulings denying those motions.

#388278

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ExxonMobil sues to block California's new climate disclosure laws

DJ **dailyjournal.com**/articles/388266-exxonmobil-sues-to-block-california-s-new-climate-disclosure-laws

Jonathan P. Schneller of O'Melveny

Exxon Mobil Corp. has filed a federal lawsuit seeking to halt two of California's landmark climate-disclosure statutes, arguing the measures unlawfully compel speech and are preempted by federal securities law.

In the complaint filed Friday, Exxon targeted SB 253, which requires companies with over $1 billion in revenue that do business in California to publicly report global greenhouse-gas emissions, and SB 261, which mandates that companies with over $500 million in revenue publish climate-related financial risk reports aligned with the Task Force on Climate-related Financial Disclosures. The G20 nations formed the task force in 2015 to create consistent and transparent standards for climate disclosures. Gov. Gavin Newsom signed both laws in 2023.

"California enacted two statutes that purport to require Exxon Mobil Corporation ('ExxonMobil') to serve as a mouthpiece for ideas with which it disagrees," wrote Jonathan P. Schneller, quoting a Senate Judiciary Committee analysis of SB 253 in the complaint, *Exxon Mobil Corporation v. Sanchez*, 2:25-at-01462 (E.D. Cal., filed Oct. 24, 2025). "The goal is to 'embarrass' large corporations that California believes are uniquely responsible for climate change into 'tak[ing] meaningful steps to reduce GHG emissions.'"

Representing ExxonMobil as a partner with O'Melveny & Myers in Los Angeles, Schneller continued, "The statutes compel ExxonMobil to trumpet California's preferred message even though ExxonMobil believes the speech is misleading and misguided. But the Constitution does not permit a State to use speech mandates to turn private parties into 'instrument[s] for fostering public adherence to an ideological point of view [they] fin[d] unacceptable,'" citing *Wooley v. Maynard*, 430 U.S. 705, 715 (1977).

But the complaint could face an uphill battle, at least in the short term. In August, a judge in a different federal court rejected a bid for a preliminary injunction in a separate case against the laws brought by the U.S. Chamber of Commerce, finding they were likely constitutional. *Chamber of Commerce of the United States of America et al. v. California Air Resources Board*, 2:24-cv-00801-ODW-PVC (C.D. Cal., filed Jan. 30, 2024).

In his Aug. 13 order, U.S. District Judge Otis D. Wright II found the challenge was ripe because the claims "do not require further factual development" and the plaintiffs established potential harm. But he found they failed the next part of the test.

"As Plaintiffs have not demonstrated that the laws violate the First Amendment, they have also not shown irreparable harm.... Moreover, the balance of equities favors denial of Plaintiffs' Motion," Wright wrote. "See id. at 852 (finding challengers failed to demonstrate any hardship tipping the balance in their favor where their 'First Amendment claim is unlikely to succeed'). This is especially true because enjoining SBs 253 and 261 would delay the State from advancing the public interests for which it adopted the laws."

Schneller directly referenced that case in the complaint, arguing that ExxonMobil is more likely to be able to show direct harm from the laws. He cited the "three government interests" identified in passing SB 253 and SB 261: protecting California consumers and investors, providing reliable information about climate impacts, and encouraging companies to reduce emissions.

"Under any applicable standard, none of those interests justifies the statutes' sweeping speech restrictions as applied to ExxonMobil," he wrote.

He added that the oil giant already discloses emissions and climate risks through its voluntary reports and SEC filings but objects to California's mandated frameworks. The company argues SB 253 forces it to adopt reporting rules it views as misleading--such as recalculating historical emissions and counting hard-to-verify Scope 3 data--while SB 261 requires subjective scenario analyses and targets it "would prefer to remain silent" about. Exxon says both laws are content- and viewpoint-based speech mandates that fail strict scrutiny under the First Amendment.

#388266

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Private equity

Kirkland & Ellis trains lawyers on communication style after investor tensions

Firm moves to repair relations with backers of private equity funds after claims of uncooperative behaviour in negotiations

Some investors suggested Kirkland naturally attracted frustration as the most active legal adviser on private capital fundraisings. © Kent Nishimura/Bloomberg

Alexandra Heal in London

Published YESTERDAY

Kirkland & Ellis has given its lawyers training on their communication style as it tries to combat a reputation for uncooperative behaviour in negotiations between its private equity clients and their investors.

The efforts follow frustration among investors in private capital funds, known as limited partners, which was vented at an industry event last year.

Organisers of the event in New York asked LPs to name one thing they would like private equity groups to do if they could wave a "magic wand". Displayed prominently in a word cloud of responses was: "Fire K&E", according to people who attended.

The global buyout sector is coming under increasing fundraising pressure, making relationships between private capital groups, many of them represented by Kirkland, and their investors even more important.

The world's largest law firm by revenue has a prominent practice representing private equity groups in negotiating terms with investors, such as pension funds.

Gripes among investors have centred on two main issues. One was Kirkland's refusal to negotiate on even minor fund terms, according to limited partners and two former Kirkland lawyers.

One person said buyout firms represented by Kirkland had claimed in some cases that they did not know the law firm was refusing to negotiate on investment terms.

An in-house lawyer at one institutional investor said they had not put money into two private capital funds because of Kirkland's refusal to negotiate clauses governing gross negligence and international sanctions.

The in-house lawyer said that since those incidents their organisation had discussed internally that it might not go ahead with investments if Kirkland was on the deal, adding that they did not believe fund managers had instructed the law firm to refuse to negotiate.

The second issue related to Kirkland's communication style. According to the people familiar with the matter, the firm's lawyers gave little explanation as to why they were rejecting changes suggested by the other side and often used a stock phrase: "We respectfully decline."

When Kirkland held training this year for its global funds team on improving their tone in negotiations, it "banned" the term, one of the people said.

Top Kirkland partners who heard about the event where "Fire K&E" appeared on a word cloud thought that the organiser, the Institutional Limited Partners Association (ILPA), was discouraging private equity groups from working with them, the people said. This triggered tension between the two organisations, they added.

The Chicago-founded firm has since set out to reset relations with fund investors. In October 2024 the firm invited in-house counsel from ILPA and two major Texan pension funds to a gathering of its top partners in Austin, according to people familiar with the matter.

This summer the law firm hired Greg Durst, a senior managing director from ILPA, as "senior director of global fund partnerships" in a move that people familiar with the matter said was aimed at smoothing relations. Kirkland said at the time that the hire would "strengthen the firm's relationships" with fund investors.

Some investors suggested Kirkland naturally attracted frustration as the most active legal adviser on private capital fundraisings.

The firm's funds team was no more aggressive than those at other firms, said one in-house counsel at a large US pension plan, noting that they had some "great" experiences with Kirkland lawyers.

"Our firm values the relationships we have built within the funds industry," said Kirkland. "We continue to evolve our business, collaborate with our counterparts, and provide strong support for our clients . . . as market dynamics shift in the fund formation process."

ILPA declined to comment.

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Biglaw Firm 'Profoundly Embarrassed' After Submitting Court Filing Riddled With AI Hallucinations

abovethelaw.com/2025/10/biglaw-firm-profoundly-embarrassed-after-submitting-court-filing-riddled-with-ai-hallucinations

Staci Zaretsky October 28, 2025

We've all heard the hype about artificial intelligence's capabilities to do the heavy lifting in the legal world, but a recent faceplant by a Biglaw firm shows how far we still have to go.

In yet another case of an attorney failing to check the work performed by AI, Gordon Rees — a firm that brought in $759,869,000 gross revenue in 2024, putting it at No. 71 on the Am Law 100 — found itself apologizing profusely to a judge and all parties affected, saying its attorneys were "profoundly embarrassed" after submitting a bankruptcy filing that was riddled with "inaccurate and non-existent citations."

Reuters has additional details on this benchslap brought on by an AI-handicapped court filing:

> 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[, Alabama].
>
> 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."

Gordon Rees — a firm with 1,800 lawyers that has an office in every state in the country — is now one of the largest law firms (joining K&L Gates on this front) to face potential sanctions over the misuse of AI.

In response to the court's order to show cause, Preston said that while she "did not personally use generative AI to prepare the filing, she was aware that generative AI was used." She went on to ask that the court "show mercy," further stating that "[t]here can be little doubt that [she would] lose her job and source of income for her family because of her actions in this matter." At this time, Preston's profile is still available on the Gordon Rees site.

For its part, Gordon Rees said it had updated its AI policies to include a "cite checking policy," and would accept any sanctions the court imposed.

This should be a cautionary tale for all lawyers and law firms — artificial intelligence can certainly speed things up, but it can in no way replace the fundamentals of law practice. Robust human oversight is still needed when it comes to AI usage, because as Gordon Rees just learned, when you submit something to a judge, it needs to be based in fact, not hallucination.

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

is the managing editor of Above the Law, where she's worked since 2011. She'd love to hear from you, so please feel free to email her with any tips, questions, comments, or critiques. You can follow her on Bluesky, X/Twitter, and Threads, or connect with her on LinkedIn.

Women Are Quitting. WTF Is Happening?

abovethelaw.com/2025/10/women-are-quitting-wtf-is-happening

Vivia Chen October 28, 2025

Ed. note: Please welcome Vivia Chen back to the pages of Above the Law. Subscribe to her Substack, "The Ex-Careerist," here.

NOW THAT TAYLOR SWIFT is "dreamin' 'bout a driveway with a basketball hoop," is this the death knell for female ambition?

It kind of seems that way. Not only is the richest, most influential female rock star in the world hinting in her latest album that she's ready to hang it up for life as Mrs. Travis Kelce (they've been spotted house hunting in the suburbs of Ohio, of all places), but some worrisome data on women in the American workforce has come out.

According to the US Bureau of Labor Statistics, women are dropping out of the job market in notable numbers. In the last year, over 600,000 women abandoned ship (from a participation rate of 57.7% in 2024 to 56.9% this year). That's a huge deal, reports the Economist, marking the biggest rise in the male-female participation gap since the 1950s.

Even more concerning: it's women with college or higher degrees and young children who are responsible for this decline, says a new study by KPMG. Though these young women had been driving the record participation of prime-age women in the US economy, those gains began to erode in late 2023, dropping by 2.30% by August 2025. During the same period, college-educated men with young children saw their participation rate in the workplace rise by 0.31%.

This is puzzling. Because just when we thought that women were unstoppable (remember, they're the majority in colleges, law schools, and medical schools), they're instead losing ground. What is going on?

The female stigma is back!

"I think that a big reason for the exodus of women from the workforce is the insistence by many employers, including legal employers, that employees work in the office rather than providing them with the flexibility to work from home and utilize hybrid work schedules," Roberta ("Bobbi") Liebenberg, the co-author of a 2023 American Bar Association study on parents, tells me. Though flexible working arrangements gained steam during Covid, companies and law firms now require employees work in the office four or five days a week, which "means we are reverting back to where we were before the pandemic started," says Liebenberg. "Just as in the past, women with children who work from home will be stigmatized and their ability to advance and succeed will be impeded."

Then there's the **childcare crunch**, worsened by the crackdown on immigrants. "An estimated one-fifth of childcare workers overall are immigrants, including one-fourth in center-based daycares," reports the KPMG study.

To top it off, **childcare costs** have exploded. KPMG finds that prices for daycare and preschool have increased roughly twice as fast as overall inflation, with parents often spending 20–30% of their income on childcare alone.So all things considered, why shouldn't women throw in the towel and stay home with the kids?

Fact is, this country has never made it easy for parents, especially moms, to work. The United States stands alone among developed countries in providing no federally guaranteed paid leave for new parents. As for state-sponsored childcare, forget about it. While government subsidized childcare is common throughout western Europe, here it's regarded as a socialist fantasy – something that the radical likes of Zohran Mamdani would propose.

So is it the lack of flexibility or the shortage of childcare that's pushing women to the brink?

For professional women, it's the hostility.

"I think for less educated women, the cost of childcare is a major factor," Joni Hersch, a professor of law and economics at Vanderbilt University, tells me. "But for more educated women, it's the hostility. There's now an attack on professional women, and it's become acceptable to say things that denigrate women." Normalizing that disrespect, Hersch adds, are people in power, such as Pete Hegseth, JD Vance, and Donald Trump.

The backlash against flexible work is another sign of the hostility. "There's a rollback on anything that's supportive of women," says Hersch. "What I've found in my research is that men have always had more flexibility because the better jobs tend to be more flexible anyway. During the work-from-home period, women were starting to catch up; now, we're at the margins again."

But are there also larger cultural factors at play that are driving women from the workplace?

Men are living like their grandfathers.

In a new book, *Having It All: What Data Tells Us About Women's Lives and How to Get the Most Out of Yours*, Wharton School professor Corinne Low argues that women have been getting a raw deal at work and at home. Though they've made big strides in the workplace, women still shoulder most of the childcare and home responsibilities. Even for women in high-pressure jobs, the imbalance is stark: according to the 2023 ABA study, 65% of mothers vs. only 7% of fathers arranged for childcare.

"If you understand women entering the labor force as a gender revolution that came in and changed our attitudes about women's role in society, then of course, men's role would change, too," Low told The Guardian. However, "there was no force acting on men requiring them to do something different." In other words, while women have contorted themselves over the decades to adapt to the male workplace while running the home, men have had lives more or less the same as their grandfathers.

Are our daughters feminists?

And though this generation of young women were told by their mothers that it's vital to be independent (I always preach to my daughters, keep working and depend on no man), that message might not be resonating. As Low puts the takeaway: "Your moms are really stressed out. Wouldn't it be nice to not be so stressed out?"

Is that why the tradwife thing seems to be gaining traction? Because it's easier, less fraught, and more fun? After all the hard work we've done to pave the way for our daughters – storming the doors of male educational institutions and brodominated professions – they just want to be June Cleaver living the suburban dream?

Where did we go wrong? But perhaps we're overreacting. For one thing, women's progress hasn't been linear. Women's participation in the workforce jumped dramatically from the 1960s to the 1980s, peaking at 60% in 1999. But in this century, it hit a low in 2015 of 56.7%, before reaching a post-covid high of 57.7%.

Maybe women will return.

The Economist offers some comfort, floating the theory that this most recent dip is temporary. "The fall seems to reflect a rise in the number of young mothers," says the UK publication. With a surge of pandemic-delayed weddings in 2022, the resulting baby boom may simply mean many new moms are taking time off. "In some senses, this is good news: many will return to work after maternity leave," it says cheerfully.

But will they, now that we live in a return-to-the-office and tradwife era?

Hersch isn't convinced by the tradwife hype but is wary about what comes next. "I think they will come back," Hersch says about the most recent crop of women who've dropped out. "But returning to the labor force years later is a different experience. What we see in European countries that have long parental leaves is that it doesn't help women's careers. The hiatus will help get them back to work but it won't help with their earnings."

Liebenberg makes a similar point about women who leave Biglaw. "Women will continue to be underrepresented in equity partner ranks and positions of leadership," she says. "We have seen this movie before, and it is distressing."

We've seen this movie like a thousand times. Because it seems no matter how many women fill the ranks of higher education and the professions, we are always playing catch up.

But I hate to leave on such a dour note. So here's my remix: Swift will get her driveway and her hoop — and still rule her billion-dollar empire. At least in Taylor's version, everything works out just fine.

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***"The Ex-Careerist"* column on Substack where she unleashes her unvarnished views about the intersection of work, life, and politics. A former lawyer, she was an opinion columnist at Bloomberg Law and The American Lawyer. Subscribe to her Substack by clicking here:**

Stepping into the AI void in employment: Why state AI rules now matter more than federal policy

reuters.com/legal/legalindustry/stepping-into-ai-void-employment-why-state-ai-rules-now-matter-more-than-federal--pracin-2025-10-24

Sara H. Jodka October 24, 2025

October 24, 2025 - With employers embracing AI to help wade through a mountain of resumes, it was only a matter of time until regulators and plaintiffs' lawyers followed the data trail. In 2025, three powers define AI-in-hiring risk in the U.S.: New York City's Local Law 144 (LL 144), state attorneys general building an AI enforcement playbook, and Title VII's disparate-impact doctrine, made even more complicated by the April 23, 2025, federal Executive Order — Restoring Equality of Opportunity and Meritocracy (the "Executive Order") directing agencies to deprioritize disparate-impact enforcement.

Companies can still use AI, but the legal bar has seemingly moved from "try not to be biased" to: (1) prove job-relatedness, (2) monitor outcomes, (3) disclose use, and (4) be ready to defend the math. In other words, technology marketed and sold as making hiring easier turned out to be anything but.

What is LL 144 and what does it require?

New York City has the only AI-in-hiring law, but it has some gaps in deterring all protected discrimination. New York City's LL 144 prohibits the use of automated employment decision tools (AEDTs) unless: (1) they have undergone an independent "bias audit" within the prior 12 months, (2) the employer posts a public summary of results, and (3) the employer gives advance notice to candidates or employees (at least 10 business days before use).

The issue is with the audit scope. LL 144's audit scope aligns with the requirements of the Equal Employment Opportunity Commission's (EEOC) Uniform Guidelines, which is limited to Title VII covering only race/ethnicity and sex, leaving out age or disability, which were protected by law codified after Title VII. Further, its "impact ratio" criteria borrows the 4/5ths rule, which provides that if the company's hiring rate (passing rate) for one protected group is less than 80% (four-fifths) of the rate of the group with the highest success rate, that is a red flag that suggests potential discrimination.

However, it is not a dispositive safe harbor under federal law. So, while the rule helps employers quickly screen for potential bias, it is not a full statistical analysis. This means that, if businesses stop their audits using the LL 144's metrics, they can miss age and disability discrimination.

What Title VII has to say about disparate impact

Title VII codifies disparate-impact liability, in which a neutral screening practice that disproportionately excludes members of a protected group is unlawful unless the employer proves the practice is job-related and consistent with business necessity. Even then, a plaintiff can prevail by showing an equally effective, less-discriminatory alternative. This framework is statutory, meaning it survives policy swings.

The 4/5ths rule helps flag adverse impact, but is not outcome-determinative, as discussed above. For AI tools that rank, score, disqualify, or auto-dispose of applicants, employers should take extra measures to (a) monitor selection rates across protected classes, (b) document validation evidence, and (c) continuously test alternatives.

The *Workday* Litigation introduces vendor liability for AI technology in hiring

Mobley v. Workday, Inc. reshaped the vendor-risk debate. In July 2024, a California federal court held that Workday, a hiring-software provider, can be liable as an employer's "agent" under Title VII/ADEA/ADA when its tools perform traditional hiring functions (e.g., recommending who advances and auto-rejecting others).

The court rejected the plaintiff's separate "employment agency" theory but allowed disparate-impact claims to proceed.

In May 2025, the case was conditionally certified to allow age discrimination claims to proceed, and authorized notice to similarly situated applicants over the age of 40 who applied through Workday-enabled flows. It is the first federal certification order of its kind for an AI-screening case.

This matters because the court's reasoning that employers are responsible for the impacts of technology they use in hiring all but does away with the defense tactic of blaming "the vendor's black box" requiring all those in the hiring process to take some level of accountability over understanding what the AI is doing, including whether it is making employment decisions based on unknown and unidentified biases.

Harper v. Sirius XM may allow employer liability for AIassisted screening

On Aug. 4, 2025, *Harper v. SiriusXM* was filed in the Eastern District of Michigan wherein Harper alleged Sirius XM's use of an applicant-tracking/AI tool disproportionately rejected Black applicants via proxy variables (education history, employment gaps, ZIP code). Claims include both disparate treatment and disparate impact under Title VII and 42 U.S.C. § 1981 (race discrimination in contracting). The case is in its introductory stages but will be one to watch as it signals that plaintiffs will mirror the Mobley theory directly against employers using commercial AI technology.

The Executive Order and its impact on federal enforcement of disparate impact actions

On April 23, 2025, the Trump Administration issued the Executive Order directing federal agencies to eliminate or deprioritize disparate-impact enforcement "to the maximum degree possible" and to revisit regulations and cases premised on disparate impact. Commentary and reporting since then indicate agencies, including the EEOC, are reevaluating (and in some reports, closing) disparate-impact investigations.

The Executive Order denotes a dramatic shift of federal priorities, and a narrowing of disparate-impact investigations. The Executive Order's scope is limited to federal enforcement, and none of that binds private plaintiffs or state enforcers. As such, we can expect more private class and collective actions (like Mobley and Harper), targeted AG probes that combine civil-rights and state unfair, deceptive, or abusive practices (UDAP) theories, and local municipalities jumping in to fill gaps with their own legislation.

State Attorneys General are filling in the gaps

State Attorney Generals (AGs), specifically California and New Jersey, are doing just this and are moving on two fronts using: (1) civil-rights and fair-employment statutes where applicable, and (2) state UDAP laws to police AI claims (e.g., "bias-free," "fair," "validated") and undisclosed automated decision-making.

According to California's AG's legal advisory, "California Attorney General's Legal Advisory on the Application of Existing California Laws to Artificial Intelligence" AI developers and users should be aware of any risks to fair competition created by

AI systems triggering the enforcement of any number of California's competition laws. The guidance rules prohibit discriminatory practices likely to be caused by AI, including disparate impact discrimination.

New Jersey Attorney General Platkin published "Guidance on Algorithmic Discrimination and the New Jersey Law Against Discrimination" (LAD) to address algorithmic discrimination, and noted that the LAD applies the same way as other forms of discriminatory conduct. Specifically, the LAD prohibits algorithmic discrimination in employment on the basis of actual or perceived discrimination, regardless of whether it is facilitated by automated decision-making tools or driven purely by human practices.

What business can do now

The focus for automated decision-making technology and its use in hiring has shifted to courts, cities, and state AGs. LL 144 makes bias audits and public transparency routine. Title VII's disparate-impact standard still governs private litigation, as the Workday and Sirius XM cases highlight. The federal executive order affects who brings some cases, not whether those cases exist.

Businesses that want to keep AI in their hiring technology without turning discovery into a crime scene need to do three things: (1) measure outcomes across the full set of protected classes, (2) validate every consequential screen, and (3) require vendors to show their work. Failure to take proactive steps to ensure the technology being used is void of bias is not anti-innovation, it is ensuring your model does not someday become Exhibit A.

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Securities

Iconix Founder Cole Cleared on Appeal After Two Fraud Trials (1)

Oct. 27, 2025, 12:06 PM PDT

Iconix Brand Group founder and former chief executive officer Neil Cole was cleared by a federal appeals court in New York of charges that he inflated the apparel licenser's earnings and misled investors a decade ago.

A jury found Cole not guilty in 2021 of two counts of conspiracy but deadlocked on eight other charges, resulting in a mistrial. The following year, he was found guilty on those charges and sentenced to spend 18 years in prison.

But in a ruling Monday, the US Court of Appeals for the Second Circuit said he should not have faced another trial under the double jeopardy clause. The court said the first jury's rejection of the conspiracy charges undermined the prosecution's "implausible" claim in the second.

"For more than 10 long and difficult years, I have fought with everything I had to clear my name," Cole said in a statement. "Today, I am vindicated." He'd yet to begin his prison sentence and remained free on bail pending appeal.

Cole stepped down as chairman and CEO in August 2015 after a decade of leading New York-based Iconix, which owns brands including Ed Hardy, Marc Ecko and Ocean Pacific. Later that year, the company restated financial results and disclosed it was under investigation by the US Securities and Exchange Commission.

Prosecutors alleged Cole conspired with Iconix's chief operating officer and executives at one of its business partners to inflate revenues reported in 2014. The government said he agreed with one of the partners to pay them back if they inflated prices for certain assets. Cole then touted the revenue from the higher prices to investors while not mentioning the promised repayments, according to prosecutors.

In his appeal, Cole argued the only rational explanation for the verdict in the first trial was that the jury had decided he hadn't made any such agreements. Prosecutors said the jury might have doubted that he actually entered into a conspiracy but didn't doubt he committed fraud, or that the jurors might have only been unable to reach a unanimous verdict.

The appeals court sided with Cole.

“After a close review of the evidence presented to the first jury, we conclude that each of the government’s hypotheses is, in the end, implausible,” the court said. “As a practical matter, Cole could not have made and concealed an overpayments-for-givebacks arrangement without persuading a co-conspirator to participate,” and the first jury, by acquitting him of conspiracy, “must have determined that Cole did not make agreements to inflate Iconix’s revenue fraudulently.”

The decision is another victory for Cole’s lawyer on the appeal, **Alexandra Shapiro**, who has become one of the most sought-after lawyers for wealthy clients seeking to overturn convictions in white-collar crime cases. Shapiro is also representing music producer **Sean “Diddy” Combs**, crypto mogul Sam Bankman-Fried and hedge fund founder **Bill Hwang** in their appeals.

“We are pleased with the court’s thoughtful and thorough analysis of the double jeopardy issues,” Shapiro said. “Neil Cole was acquitted at the first trial because he was not guilty, and fortunately after a long ordeal he will now finally be able to move on with his life.”

In June 2021, Iconix agreed to be acquired by a unit of Lancer Capital.

The case is US v. Cole, 19-cr-00869; US District Court, Southern District of New York (Manhattan).

(Updates with lawyer comment.)

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Securities

Opinion

Matt Levine's Money Stuff: The Tariff Refund Trade

Oct. 27, 2025, 11:48 AM PDT

Tariff refund trade

What is the probability that the US Supreme Court will strike down President Donald Trump's broad tariffs? There are a number of ways of thinking about that question. One is what you might call *legal analysis:* You can look at the text of the US Constitution and the relevant statutes, as well as relevant legal precedents, and try to figure out whether the tariffs are legal or not. If they seem very illegal, then the probability that the Supreme Court will strike them down is high; if they seem very legal, low; if the law is genuinely ambiguous then maybe it's 50/50. In previous columns I have sort of gestured in the direction of this analysis, but honestly this might be the *worst* way of thinking about the question.

A more promising approach is what you might call *legal realism:* You notice who sits on the Supreme Court and what their preferences are about partisan politics and executive power, and you try to figure out what that predicts for their ruling. I have gestured in this direction as well, and it seems a bit more, um, realistic than relying on the law.

A third approach is what you might call *market-implied probabilities:* You look at the market price of some traded instrument and try to back out a probability from that, assuming that markets are generally efficient and that the aggregated opinions of people with skin in the game are probably better than your own legal or political analyses. In general I am a fan of this sort of approach. But: what instrument? You can pick some public companies that are particularly exposed to tariffs, regress their prices against tariff news, and try to figure out what changes in their prices say about the likely legality of the tariffs. But that is very noisy: Those stocks will move for lots of reasons unrelated to tariffs, and even their tariff-related moves will be compounded of (1) the probability that the tariffs stay in place and (2) the impact of the tariffs on their business. Maybe Treasury bond prices reflect tariffs in some way — if the tariffs are struck down that will probably increase the budget deficit — but again the effects are noisy and ambiguous.

This is, classically, what prediction markets are for. You can just go on Kalshi or Polymarket and see the prices of contracts that pay out $1 if the Supreme Court rules in favor of the tariffs or $0 if it rules against them. The price of that contract is a reasonably pure market estimate of probability. These contracts trade in the neighborhood of 40 cents on the dollar, which translates fairly directly into an implied probability of about 40% that the tariffs will be upheld. Not quite a coin toss, but a biased coin toss.

Why would you trade that market? Well, you might have a view: You might have used legal analysis or legal realism or an insider source on the Supreme Court or whatever to come to a view that the court will uphold the tariffs, or that it won't, or that it's a true 50/50 tossup so the current 40% price is too low. Different people will use different (or the same) methods to come up with different answers; the ones who think the court will uphold the tariffs will buy the "Yes" contracts and the ones who think it won't will buy the "No" contract and the market will trade to a price that balances both sides.

But there is another reason you might trade that market. You might have economic exposure to tariffs. You might be a company that imports stuff into the US and has to pay tariffs; if the Supreme Court upholds the tariffs your costs will remain high, but if it strikes them down your costs will go down. You have no idea what will happen, but you need to plan. You could spend $4 million to buy 10 million "Yes" contracts. If the Supreme Court rules in favor of the tariffs, those contracts will pay out $10 million, offsetting your increased costs. If the Supreme Court rules against the tariffs, you will lose your $4 million, but your costs will be lower. (In fact, if the Supreme Court rules against the tariffs, and you have already paid a lot of tariffs, you might get a *refund*, which might cover this loss.) You have *hedged* some of your tariff risk.

This is a good use of prediction markets: There is some uncertain future event with significant economic consequences to real businesses. Those businesses could trade prediction market contracts to hedge those consequences. Doing this hedging does *not* necessarily require them to have a strong view on the merits: You might say "I am a simple widget importer, I have no idea what will happen in the Supreme Court, but paying $4 million today to take some tariff risk off the table will help me sleep at night so I'll do it." And because these hedging flows are relatively price-insensitive, there are lucrative opportunities for informed investors to trade against them, so there is an incentive to become informed.

I am just kidding about all of this. I mean, I'm not, this is how prediction markets should work, but there is a problem, which is that the volumes are tiny. As of this morning, Kalshi shows less than $250,000 of total volume on its tariff contract, Polymarket less than $400,000. The order books show resting orders in the single-digit thousands of contracts. The biggest position on Polymarket is about $70,000 notional amount on "No." If you wanted to hedge $10,000 of tariff risk, you could, at the cost of moving the price several percentage points. If you wanted to hedge $10 million of tariff risk, no chance.

Anyway here's a Bloomberg story about actual tariff risk transfer:

Wall Street banks are arranging bets on President Donald Trump's tariffs being struck down by the Supreme Court — long-shot trades that could pay off handsomely for hedge funds betting against the legality of the administration's flagship policy.

Jefferies Financial Group Inc. and Oppenheimer & Co. are among firms brokering the deals, matching investors with companies that have paid tariffs to import goods into the US, according to people with knowledge of the matter and correspondence seen by Bloomberg News. …

In the trades, the importing companies essentially sell to investors any future rights to claim refunds on their tariff bills, which could come if the nation's top court sides with an ongoing legal challenge to Trump's tariffs. The companies sell at a discount to their expected refunds, meaning investors would reap the upside in a ruling favorable to them. The banks arranging the deals take a cut. …

For example, a hedge fund might pay somewhere between 20 to 40 cents for each dollar of claims they could get back in refunds, giving them an upside of several times their bet, according to the correspondence and some of the people, who asked not to be identified discussing potential terms. Most of the trades range in size from $2 million to $20 million, with few over $100 million, one of the people said.

The smallest of these trades is bigger than the total tariff volume on prediction markets. I suppose we are still in early days, but so far, the prediction markets arguably are not "expanding how individuals and institutions use probabilities to understand and price the future" as far as tariffs go. Whereas the traditional financial sector *is:* It is arranging large trades between economically motivated speculators and real-economy hedgers, trades that both help companies hedge risks and give some market-implied indication of probabilities.

Kalshi had $12.5 million of volume on yesterday's Jets game.

Wizards

But can the traditional financial sector do this?

[Kalshi is] hiring tarot card readers, palm readers, psychics, fortune tellers, oracles, wizards, and individuals born with divine intuition.

If you are familiar with magic and the dark arts I'm hiring for something big.

(YOU HAVE TO BE UNEMPLOYED - No job havers please).

That's from an X post by Salman Sohani at Kalshi (via Emily Sundberg). Is he kidding? I have no idea. In general there is not a ton of evidence that tarot card reading is useful in predicting financial asset prices; there is an xkcd. But prediction markets are a fairly new sort of financial asset, and maybe the tarot has more power there. Fun to find out.

By the way, we talked last week about a bunch of people who were charged with federal crimes for allegedly using inside information about professional basketball games to place bets at sportsbooks. My basic point was that "insider betting" is an odd sort of crime: They were charged with wire fraud, that is, using a "scheme or artifice to defraud" the sportsbooks. How did they defraud the sportsbooks? Well, there are some intuitive answers like "come on betting on inside information is fraud," but the history of insider trading does not entirely support that theory. There is a simpler answer, though, which is that the sportsbooks' terms of service forbid insider betting. The prosecution's theory is approximately that the bettors were *lying* to the sportsbooks — by acknowledging the terms of service, which include saying "I won't use inside information," and then using inside information anyway — and that this lie is what makes it fraud.

But another way to put it is that the sportsbooks' terms of service can *make things into crime*. If the sportsbook says "you can't use inside information," and you do, that's wire fraud. If the sportsbook says "you can't use sophisticated statistical models," and you do, would that be wire fraud? I don't know. The terms of service don't say that. I don't think? DraftKings' terms of service do say that it's a violation to use "automated means including, without limitation, bots, scripts, artificial intelligence, programs, parser, spiders, screen scrapers tools, or applications, to interact with the Services or Website, including, without limitation, collecting any information or content from the Services or Website, automatically placing bets or wagers, automatically entering any poker or live dealer Game, or automation of game play decisions." Does that make it a *federal crime* to use a computer to automate your betting decisions? I suppose we'll find out eventually.

Anyway my point here is that I do not *think* that any sportsbook currently bans occult powers or divine intuition in their terms of service. But if they *did*, and you used your occult powers to make bets, would that be a crime?

PE TV

Man, I don't know, if you see a television ad that is like "The World's Most Sophisticated Investors Want to Invest *Your* Money, Act Now, Supplies Are Limited," what conclusions should you draw? An ad like "The World's Best Smartphone Company Wants to Sell You a Smartphone" is fine, you know, the more volume the better. Investing isn't quite like that. Every strategy has some capacity, and historically one way that, for instance, private equity firms made buckets of money for themselves and their investors is that they *picked deals*. If there are thousands of companies, and your job is to buy 20 of them, and you are very sophisticated, it is not hard to understand how you could achieve a market-beating return. You could evaluate the companies to find the best ones, you could build good relationships so they will sell to you, you could negotiate fiercely to buy them cheaply, you could lean on your lenders to get attractive credit terms, you could focus on improving their operations to increase their value, and when you have done all that you could sell them back to the public markets at a premium that reflects their quality and scarcity.

But if there are thousands of companies and your job is to buy, you know, 2,000 of them, all of that is attenuated. You might still be really good and smart at picking companies and negotiating deals and improving operations. But your returns are just naturally going to end up being closer to the broad market return. And if you are still hiring lots of smart people to work very hard to pick the best companies and negotiate the best deals, your *costs* will be high. People can get market returns with index funds; why should they pay you a lot to get similar returns?

And the answer is perhaps "because they are retail investors and you can advertise your history of good returns"? I wrote last month:

I suppose the natural endpoint of this is a complete leveling, where "being owned by private equity" and "being owned by public shareholders" are essentially equivalent: In each category you'd get the same sorts of companies with the same sorts of capital structures and the same sorts of operations.

Also, why not, the same ultimate owners. We have talked a lot about the push to get ordinary investors' retirement savings into private assets. If private equity is just a normal way to own companies, you would expect "being owned by private equity" to mean, ultimately, "being owned by ordinary investors in their 401(k)s." This is in part because individual retirement savings are a big source of cash, and as private equity gets big enough it will require all the biggest sources of cash.

But it is also in part because individual retirement savings are, like, the most normie source of cash. People's 401(k)s are the last place you would expect to find a ton of differentiated alpha. In the beginning, when private equity was a novel risky arbitrage to correct systematic mispricing of companies, it was funded by sophisticated investors who could understand and appreciate that bet. If private equity is just "owning companies," it will be funded by everyone's retirement savings.

But to make that transition happen, you need two things. One is regulatory reform to make it easier for private equity firms to sell to retail investors and 401(k)s. That is very much happening!

The other thing you need is a television advertising campaign. Bloomberg's Loukia Gyftopoulou and Preeti Singh report on a Blackstone Group TV ad:

Scene: The Gold Rush, 1849. Prospectors gaze up at a snow-capped peak.

"Now let's go get that gold!" a newcomer exclaims, trudging up the trail to the twang of spaghetti-western music.

"I got a better idea," says another. His brainstorm: Rather than hunt for gold, they'll get rich selling picks and shovels.

Welcome to "Blackstone Town," as a crew member later calls it – the set of an old-timey TV western that's been repurposed for, of all things, an advertisement for the world's largest private equity firm.

Okay! The article goes on to point out that nobody is exactly asking for this:

For Main Street, the timing looks iffy. Pension funds and endowments that have long powered private equity have begun to pull back. Returns don't look as good as they used to, particularly given the record boom in stocks. Private credit has hit a few bumps lately, too, and faces concerns about rising defaults in a slowing economy.

If all that weren't enough, average Janes and Joes aren't knocking down the door. According to a recent Harris Poll for the Wall Street Journal, only 10% of 401(k) savers are dissatisfied with their investment choices and want less traditional options.

But if nobody is buying, that makes it all the more important to sell:

Interviews with more than two dozen wealth advisers and retirement plan advisers paint a picture of an industry in full sales mode. Wealth advisers — gatekeepers to the high-net-worth crowd — say they've been inundated with one come-on after another: spam emails, LinkedIn messages, cold calls and more. Some say they've even gotten happy birthday messages. Retirement plan advisers, who help companies with their 401(k) offerings, say the same.

I want to make a parody ad. Scene: The private-markets gold rush, 2025. Alternative investment managers in suits huddle around a campfire, eating takeout sushi. "Now let's go earn our incentive fees by making market-beating investments," a newcomer explains, firing up a spreadsheet. "I got a better idea," says another. His brainstorm: Rather than beating the market, they'll get rich selling private assets to retail investors.

AI performance reviews

There are two theories of artificial intelligence in the workplace. One theory is that AI will take over a lot of the intellectual drudgework of many white-collar jobs, freeing up humans to think higher-level thoughts and pursue deeper understanding. The other theory is that AI will take all of the good jobs and do all of the fun interesting important higher-level thinking, leaving humans to do the less intellectual work of fixing AI's mistakes and going to the in-person sales meetings.

We talked last week about OpenAI's efforts to hire former investment bankers to make its chatbot really good at financial modeling. "AI can build a financial model in seconds that would previously have taken an investment banking analyst days" is an ambiguous claim. Building that model would have felt, to the analyst, a lot like drudgery, but also analyzing the drivers of a company's financial value *is* the intellectual content of investment banking, and if you hand that over to the AI, what is left? Shaking hands with clients and babysitting the AI?

On the other hand:

JPMorgan Chase has given employees the option to use its in-house artificial intelligence system to help write year-end performance reviews, underscoring how AI-generated text is proliferating in corporate America.

The tool allows employees to use the US bank's large language model to generate a review based on prompts they give it, according to people familiar with the matter.

It is a shortcut to the often painstaking process of writing multiple reviews that are typically required by large companies.

Ahahaha. Obviously, yes, writing year-end performance reviews is perhaps the best-known example of intellectual drudgery in white-collar employment. Letting an AI do it is a strict improvement for the people writing the reviews. Then one assumes that the reviews are also read by AIs, and increasingly people's salaries and job security will be set by AIs talking to AIs rather than by human beings. Still that's a tradeoff a lot of people would take if it means not writing performance reviews.

OpenAI deal team

Similarly, here are two theories of how AI will affect various knowledge industries:

1. The incumbents in the industry — consulting firms, investment banks, etc. — will get really good at deploying AI, improving their work product and profit margins and making themselves indispensable to clients; or
2. The *clients* will get good *enough* at deploying AI to dispense with the incumbents entirely. Instead of asking a consultant for advice, you just ask ChatGPT and get a good enough answer.

We discussed these two theories in connection with consulting a few weeks ago. Consulting strikes me as particularly vulnerable to AI because the work product of a consultant (advice, reports) is broadly similar to that of an AI chatbot.

Investment banking seems a bit safer: The product of an investment bank is a deal, and AI cannot yet do deals. Still. If you are the chief executive officer of a big company and you want to have a bit of fun, you could fire up a chatbot and type in questions like "what strategic buyers or private equity firms would be good buyers of my company" and "how much should they be willing to pay for my company" and "what is the best way for me to persuade them to pay the most for my company" and "please write an information memo for potential buyers incorporating a robust financial model and pretty charts" and "please write a merger agreement for the potential buyer to sign." I do not think that, in 2025, you will get outputs that are good enough to put into production. But, again, OpenAI is hiring people to improve that. Give it a few years. You never know.

OpenAI itself, for instance, is post-investment banking:

OpenAI chief Sam Altman and an inner circle of executives masterminded deals worth as much as $1.5tn with little input from external advisers, despite unusual structures that tie the start-up's fortunes to some of the world's largest companies.

Altman largely shunned OpenAI's bankers and lawyers to negotiate huge multiyear deals with Nvidia, Oracle, AMD and Broadcom to supply chips and other computing infrastructure.

Instead, he has leaned on a few lieutenants including the start-up's president, Greg Brockman, chief financial officer Sarah Friar and Peter Hoeschele, recently promoted to a new role leading infrastructure financing, said people close to the company.

The unconventional dealmaking process has resulted in agreements that analysts have criticised for their lack of detailed financial terms — as well as circular structures that tie together suppliers, investors and customers.

Well, I am on record saying that "OpenAI Is Good at Deals"; it's not obvious to me that "detailed financial terms" are what OpenAI wants.

I am joking a little here, in that there is no evidence that OpenAI *asked ChatGPT to structure its deals*. The deals were done with a combination of in-house expertise, personal relationships, and the general hubris of a company that is changing the world; it's not like ChatGPT wrote up a pitchbook. Still, we live in a world in which many kinds of expertise are increasingly (1) devalued and (2) getting acquired by AI bots. OpenAI is at the cutting edge of both trends.

Gold

One generic form of career advice for young people is along the lines of "skate where the puck is going." Look around, try to predict what skills and sectors will be hot in five or 10 years, and then get good at that stuff. This is hard, because predicting the future is hard for anyone and particularly hard for college freshmen, but if you get it right the payoff is enormous. This is the sort of advice that leads people to start billion-dollar companies in their dorm rooms, or at least get deep learning PhDs in 2019 so that now they can get $100 million pay packages.

Another generic form of career advice is along the lines of "be countercyclical." Look around, try to see what skills and sectors are hot right now, and try to see what other skills and sectors are ice-cold. Then get good at the ice-cold ones, figuring that they will make a comeback eventually, you will be ready and the competition will be sparse. This is risky, too, since some things remain ice-cold forever; don't spend your 20s getting really good at hand-crafting buggy whips. But this is the sort of advice that leads people to become, like, Cobol programmers, or to get into distressed-debt trading in a boom where there is no distressed debt to trade. But just you wait.

Anyway I know nothing about the pipeline for gold traders but I have to assume that … you know, over the last 10 years, if you had somewhat crankish monetary inclinations and wanted to be a trader, you got into *crypto* trading, and if you had less crankish inclinations you got into stocks or bonds or natural gas or electricity or cocoa or, you know, kind of anything else. "The barbarous relic," people call gold, often proudly and crankily. But gold is super hot now, and if you *did* get into gold trading a few years ago, now you can name your price:

Trading houses, hedge funds and banks are on a hiring spree for specialist gold traders as interest in the metal soars, creating a battle for talent that is driving up pay packages in what has historically been a niche market.

Major commodity traders Trafigura Group and Gunvor Group have brought in teams of precious-metals traders this year, while rivals IXM and Mercuria Energy Group Ltd. have also been looking to hire in the sector, according to people familiar with the matter. Numerous hedge funds, banks and industrial companies like refiners are also either trying to break into precious metals or expand their teams, headhunters and industry executives said.

While gold is a high-profile market, with the equivalent of hundreds of billions of dollars changing hands every week in the main hub of London, it has traditionally been dominated by a handful of banks such as JPMorgan Chase & Co., HSBC Holdings Plc and UBS Group AG, operating with lean teams of traders. As prices soared this year, new market participants seeking to break into the sector had only a small pool of experienced traders to draw on. …

"Precious metals has been, for many years, seen as more on the fringe," LBMA Chief Executive Officer Ruth Crowell told the conference on Monday. "But I think given the growth in not just trading but client interest and participation, there certainly is a mainstream feeling and potentially a new chapter."

Right what you want is to get into an industry when it's on the fringe, and then cash in when there is a mainstream feeling.

Things happen

Private Jets and Car Washes Are the Latest Tax Shields for the Ultrarich. Inside Steve Cohen's Cubist shake-up: How a quiet search and chance timing led to the surprising change at Point72. The AI Startup Fueling ChatGPT's Expertise Is Now Valued at $10 Billion. Keurig Dr Pepper Turns to Private Equity to Back $18 Billion Deal. Argentine Assets Surge After Decisive Milei Election Win. Huntington Strikes $7.4 Billion Deal to Expand in the South. It's decorative gourd season.

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1. Not perfectly pure. We've talked about some time-value-of-money oddities in the market for the return of Jesus Christ in 2025.
2. As a matter of legal analysis I'd put it lower, as a matter of legal realism I'd put it a bit higher, so 40% seems fair to me but this is not legal or investing or anything else advice.
3. I suppose the prices are comparable. The implied chances of tariff refunds on these trades is 20% to 40%, give or take; Kalshi's "Will a Court order a tariff refund?" contract is at 16%. That's significantly below the 60%-ish implied odds of the tariffs being struck down, for a combination of timing and substantive reasons.

4. Byrne Hobart had a good post about this in the case of software engineers: “When you’re using AI to write code, you’re right back in the bad old days of dealing with fallible human communication instead of relentless mechanical logic. ... It’s intrinsically gratifying to imagine something and then be personally responsible for creating it, and adding a noisy intermediate layer—a way to more quickly create something that’s approximately what you imagined, but probably not how you would have done it—means spending more time debugging code you don’t like, or rephrasing things you asked for so they finally get done.”

Securities

Manage Newsletters

Opinion

Matt Levine's Money Stuff: All Public Companies Are Alike

Oct. 28, 2025, 11:02 AM PDT

Worse than Marxism

The thing investors want is uncorrelated returns. What you worry about, as a big institutional investor, is all of your stocks going down at the same time. If you could buy some stuff — private equity or catastrophe bonds or gold — that *doesn't* go down when all the stocks go down, that would be good for you, and you would pay a premium for it. This is true within stocks, too: Some stocks don't go down when all the other stocks do, and those stocks are in theory more valuable. Investors should pay more for those uncorrelated stocks than they'd pay for more typical stocks that are correlated to the broad market. Those uncorrelated companies should have a *lower cost of capital:* They should be able to sell more stock and raise more money to do more projects, because their projects are in an important theoretical way *more desirable*. The market wants to fund projects that won't lose value when everything else loses value.

This is all a bit fragile, though. Stock prices go up and down in part for fundamental business reasons (the company sells more widgets, etc.) and in part for supply-and-demand reasons (investors like the stock so it goes up). A company's fundamental business might be uncorrelated (or negatively correlated) to the rest of the stock market, but its stock is owned by investors, and those investors can create correlations. If the stock market goes down, the company's stock might not go down because of its uncorrelated business, but those investors also own other stocks that went down, so they might decide to dump the stock to raise cash, which will make the stock go down. And so the company's stock will become more correlated with the stock market, not because of its business but because of who owns it.

So we talked a few weeks ago about the effect of high-frequency trading on the cost of capital of small companies. There are small off-the-beaten-track companies whose stocks do not move much with the broader stock market. This might be because their businesses are genuinely uncorrelated with the broader market, or it might just be that no one is paying attention to them. But when high-frequency electronic trading firms start trading those stocks, they become more correlated with the broader market, because (1) the HFT firms are now paying attention to them and (2) they are paying attention in a somewhat generic way, *assuming* that they will be correlated with the market — using simple heuristics like "if the stock market goes down we should lower our price for this stock" — and thus causing that correlation. And this raises the cost of capital for those companies: They become more correlated to the market, so investors are less excited about giving them money.

The story here might be something like "as markets get more efficient at processing and disseminating information, they get more correlated." The good technology of modern markets tends to make all the stocks move on the same news, making them more correlated and raising their cost of capital.

Of course there are offsetting tendencies. Investors want things other than uncorrelated returns. They want liquidity, for instance, and if stocks all become more liquid then that should lower their cost of capital. Or just in general if more money flows into some country or sector or industry, that will lower its cost of capital, even if it also makes it more correlated to the broader stock market. Probably on balance deep liquid global stock markets should lower the cost of raising capital to do business, even if they make companies more correlated.

Here (via Hanno Lustig) is a very cool paper on "The Real Cost of Benchmarking" by Christian Kontz and Sebastian Hanson of Stanford. Intuitively, the *most* obvious thing that would make a stock correlated with the broader stock market is *being in a stock index*. If a stock is in the index, then all the index funds will buy it when they get inflows and sell it when they get outflows: It will be owned by generic owners of the stock market, so it will trade like a generic stock. Because it trades like a generic stock, its correlation to the broad market — measured in the standard capital asset pricing model by beta, the sensitivity of the stock's price to market moves — will go up. And in fact they find that: "Using exogenous variation from Russell and S&P 500 reconstitutions, we show that inclusion in a benchmark stock index increases a stock's CAPM beta." As indexing has increased over recent decades, the beta of the average stock has increased: More stocks are more correlated to the broad market.

In the standard capital asset pricing model, a company's cost of capital should go up when its beta goes up. It is not obvious that this would be true in the case of index inclusions. After all, getting added to an index is generally *good* for a stock: Index funds control a lot of money, and they buy the stocks in the index. "The S&P 500 Pop Is Back From the Dead," my Bloomberg Opinion colleague Jonathan Levin wrote this month : Traditionally stocks go up when they get added to the index. When people want to buy a company's stock, that should *lower* its cost of capital.

But there is an important intellectual oddity here. The standard capital asset pricing model is taught in business school, and it says that a company's cost of capital is a function of (1) the risk-free interest rate, (2) the stock market's equity risk premium and (3) the company's beta, that is, its sensitivity to market moves. The model does *not* say anything about being in the index. At some level everybody knows that stock investors care about stuff other than beta : Index funds only buy stocks that are in the index, ESG investors only buy stocks with good environmental records, meme investors only buy stocks whose executives do interviews with no pants, etc. But that stuff is hard to quantify and model. Whereas you learn the CAPM in business school. Kontz and Hanson write:

The inelastic demand of benchmarked funds for benchmark constituent stocks raises their price, but also increases their comovement. These forces have opposing effects on the discount rate: the increased stock price lowers the implied discount rate and incentivizes investment, while greater comovement increases exposure to market risk and discourages investment. As such, the total effect of benchmarking on discount rates and optimal investment is ambiguous. Second, we assume that managers are boundedly rational and behave exactly as they are taught to in corporate finance textbooks and MBA classrooms: they use the weighted average cost of capital implied by the CAPM to discount cash flows.

The assumption that managers practice what textbooks teach is key to our mechanism. Managers who set discount rates using their stocks' CAPM beta observe an increase in comovement after benchmark inclusion and infer that their cost of equity has increased. However, the price effect does not enter the CAPM-based discount rate they compute. The failure to fully internalize the effects of benchmarking leads managers to perceive an increase in their cost of capital. Consequently, benchmarking has an unambiguously negative effect on firm investment.

Getting added to the index probably *lowers* a company's cost of capital, but to a manager with a spreadsheet it *looks like* it *raises* the cost of capital. They compute that the average mid-sized public company faces an apparent increased cost of capital of about 1 to 2 percentage points, and that this actually drives capital decisions:

Assuming a 6% equity risk premium, the increase in the equal-weighted beta translates into an increase of more than 200 basis points (bps) in the CAPM-implied cost of equity. Importantly, changes in fundamental risk or leverage do not drive this increase. Instead, [indexed ownership] and beta vary systematically across the market capitalization ranks used in the construction of benchmark indices. For example, the average levels of [indexed ownership] and beta change around the assignment thresholds for the Russell 1000 and 3000. This phenomenon has tangible consequences for corporate policy: we find that firms accounting for over 70% of annual capital expenditures in Compustat experienced an increase in beta. In the cross-section, firms with higher [indexed ownership] invest less and issue less equity, suggesting that the growth of benchmark-linked investing and the institutional design of benchmark indices impact real and financial decisions.

Higher index-linked ownership "results in lower investment and increased payouts to shareholders."

It is a strange little story about efficiency creating inefficiency. Index funds make investing cheaper and better and thus *increase* the supply of capital to public companies. But they also make those companies more similar to each other, which raises their *perceived* cost of capital, which makes them more reluctant to invest and quicker to return money to shareholders.

Meanwhile in private markets every company is a special snowflake, investors are happy to fund risky bets, and *the companies know that*. Public markets make all the companies more alike, so they are reluctant to make bold investments. The action is in the private markets because the public companies are all the same.

Prediction markets

Sure okay the president of the United States is getting into the sports gambling business :

Donald Trump's social-media company is getting into the prediction markets business, where record betting is attracting a host of new entrants.

Trump Media & Technology Group Corp. plans to make prediction contracts available on its Truth Social network, allowing users to bet on events ranging from political elections to inflation-rate changes, according to a statement on Tuesday. Initial testing of the service, called Truth Predict, will start "in the near future," the release said.

The initiative adds to recent efforts by Trump Media to capitalize on its retail following and comes just after trading volume on the leading marketplaces, Polymarket and Kalshi, hit a fresh record. Investors' voracious appetite for betting on real-world events has prompted firms like CME Group Inc. and Intercontinental Exchange Inc. to look for ways into the business.

Come on. It is always clarifying to replace the term "prediction markets" with the term "sportsbook," and terms like "betting on real-world events" with "betting on football." Here is Trump Media's announcement:

Truth Social users will be able to trade prediction contracts related to major events and milestones, such as political elections, interest and inflation rate changes, commodity prices on gold and crude oil, events across all major sports leagues, and more using the new product technology called "Truth Predict." Prices will update in real-time, allowing users to react instantly to developments in major current events.

"We are thrilled to become the world's first publicly traded social media platform to offer our users access to prediction markets," said Devin Nunes, Chairman and CEO of Trump Media. "Truth Predict will allow our loyal users to engage in prediction markets with a trusted network while harnessing our social media platform to provide totally unique ways for users to discuss and compare their predictions. With more than $3 billion in financial assets as of the end of the second quarter, and having posted our first quarter of positive operating cash flow after going public just last year, Trump Media is well-positioned to leverage our strong balance sheet and existing social media capabilities to create a new standard
for access to prediction market platforms. For too long, global elites have closely controlled these markets - with Truth Predict, we're democratizing information and empowering everyday Americans to harness the wisdom of the crowd, turning free speech into actionable foresight."

Global elites! The actual prediction markets are operated by Crypto.com. Here is Crypto.com's prediction markets web page:

Notice the button that is bigger than the other buttons!

At Bloomberg Intelligence, Jackson Gutenplan and Geovanni Alvarado have a note out today titled " Sports Betting Dominates Prediction Markets ":

Kalshi's volume surge in September coincided with the start of the NFL season, and our analysis found 69% of September volume was in NFL and college football-related contracts. In total, $2.5 billion was wagered on sports at Kalshi in September, 88% of all volume. Though other markets are also active — $89 million wagered on crypto, $108 million on finance/economy (including Fed decisions) and $61 million on politics — Kalshi is essentially the first national sports-betting ecosystem.

Super Bowl futures can now be in one's brokerage account, and this may expand to prop bets and parlays, erasing any line between trading and gambling. Given an ETF can be structured around derivative futures, if the status quo continues it's conceivable to have sports bets in an IRA. When will we have the first Knicks Championship ETF?

Gutenplan and Alvarado add — as I keep pointing out — that it is *not at all clear that this is legal:* These contracts are regulated by the US Commodity Futures Trading Commission, whose rules *explicitly prohibit* event contracts that relate to "gaming." Everyone, including Kalshi and the CFTC, understood that "gaming" included *football bets* until about this year. And then Kalshi started offering football bets and the CFTC just quietly let it. There was no new rulemaking or interpretive release or public hearing about how now football bets are not "gaming," and the CFTC has not repealed its rule prohibiting "gaming" contracts. Everyone is just ignoring it.

You could imagine that that could change at any time: The CFTC could shut all of this down without any new rulemaking, just by enforcing its existing rules. But it won't! If the president is running a sportsbook, surely the CFTC won't stop him.

In other news, you can take Bloomberg's Markets Pulse survey about prediction markets here.

OpenAI

OpenAI was, for a while, a nonprofit organization devoted to building artificial general intelligence for the benefit of humanity. This turned out to be an expensive proposition, so OpenAI needed to raise a lot of money, including from investors who wanted a return on capital. This was a bit hard to square with the nonprofit mission, but they had some ideas. For instance, OpenAI raised a lot of money from Microsoft Corp. by offering it a combination of equity-like investment returns and a commercial partnership in which Microsoft could use OpenAI's models in its products.

But all of that was just temporary, just stops on the road to artificial general intelligence for the benefit of humanity. It's not like OpenAI was going to build artificial general intelligence for the benefit of *Microsoft*. There were assurances against that:

1. Microsoft's investment returns were capped.

2. Microsoft's commercial deal would *not* give it access to OpenAI's models that achieved artificial general intelligence (AGI): Microsoft was providing interim funding in exchange for interim models, *not* for control of future AGI.

3. OpenAI was controlled by its nonprofit board , which had no fiduciary duties to its investors. When it achieved AGI, its board might (should) decide to *give it away* for the benefit of humanity, rather than to hoard it for profit. "It would be wise to view any investment in OpenAI Global, LLC in the spirit of a donation," it gloriously told investors, "with the understanding that it may be difficult to know what role money will play in a post-AGI world."

This has all slowly ebbed away, and now OpenAI is running slop video feeds and looking into porn . It has also become a for-profit company :

OpenAI is giving its long-time backer Microsoft Corp. a 27% ownership stake as part of a restructuring plan that took nearly a year to negotiate, removing a major uncertainty for both companies and clearing the path for the ChatGPT maker to become a for-profit business.

Under the revised pact, Microsoft will get a stake in OpenAI worth about $135 billion, the companies said in a statement Tuesday. In addition, Microsoft will have access to the artificial intelligence startup's technology until 2032, including models that achieved the benchmark of artificial general intelligence (AGI), a more powerful form of AI that most say does not exist yet.

Microsoft will also continue to be entitled to receive 20% of OpenAI's revenue, according to people familiar with the matter, who spoke on condition of anonymity as the information is not public. But as part of the new pact, OpenAI can pay more later. In a blog post, the companies said a revenue share agreement remains in effect until an expert panel verifies AGI.

With the agreement, OpenAI said its corporate restructure is now complete. The company had spent much of this year working to form a more traditional for-profit company. Microsoft, which backed OpenAI with some $13.75 billion, was the biggest holdout among the ChatGPT maker's investors, Bloomberg News has reported. …

The restructuring had been under review by the state attorneys general of Delaware and California. In a statement, Delaware State Attorney General Kathy Jennings said her office had decided not to object to the for-profit shift after a long review process in which she and her California counterpart, Rob Bonta, urged OpenAI to give the nonprofit more control over the new for-profit entity.

Here is the joint OpenAI/Microsoft announcement of the deal, which modifies various aspects of the commercial relationship. Starting with:

Once AGI is declared by OpenAI, that declaration will now be verified by an independent expert panel.

Microsoft's IP rights for both models and products are extended through 2032 and now include models post-AGI, with appropriate safety guardrails.

Microsoft's IP rights to research, defined as the confidential methods used in the development of models and systems, will remain until either the expert panel verifies AGI or through 2030, whichever is first.

When OpenAI was a nonprofit building AGI for the benefit of humanity, you sort of had to assume its good faith. If it achieved AGI, it would declare that it had achieved AGI; its commercial arrangements would fall away and it would usher in a new era of universal abundance. Now that OpenAI is more of a, you know, gigantic capital-hungry commercial enterprise, you don't have to make the same assumptions. If OpenAI declares "hey we achieved AGI so we're ending our revenue-sharing agreement and cutting you off from our models so we can sell them to someone else," you can check. You can demand an independent expert review of whether OpenAI has actually achieved AGI. And if it has you can keep selling the products. It may be difficult to know what role money will play in a post-AGI world, but OpenAI and Microsoft have a guess! The guess is "money will still be great, and we will get a lot of it, so we should figure out how to split it."

K&E

Big law firms tend to specialize in certain types of deals, and in representing one or another side of those deals. There are firms that do a lot of sell-side mergers and acquisitions and those that do more buy-sides, firms that represent creditors in bankruptcy and those that represent debtors, firms that represent companies doing initial public offerings and firms that represent underwriters, etc. If you regularly represent one side of a deal, you want to appeal to the people who do that side of the deal: You want to be an aggressive negotiator on their behalf; you want to push contract terms in the direction that is good for them. You want to be tough, because they want tough lawyers on their side.

But if your client is a repeat player, you can't be *too* tough. If you are too mean to the other side, that will make life harder for your client. The Financial Times has a fun story about Kirkland & Ellis:

Kirkland & Ellis has given its lawyers training on their communication style as it tries to combat a reputation for uncooperative behaviour in negotiations between its private equity clients and their investors.

The efforts follow frustration among investors in private capital funds, known as limited partners, which was vented at an industry event last year.

Organisers of the event in New York asked LPs to name one thing they would like private equity groups to do if they could wave a "magic wand". Displayed prominently in a word cloud of responses was: "Fire K&E", according to people who attended.

The global buyout sector is coming under increasing fundraising pressure, making relationships between private capital groups, many of them represented by Kirkland, and their investors even more important.

The world's largest law firm by revenue has a prominent practice representing private equity groups in negotiating terms with investors, such as pension funds.

Yes, look, if the other side of a negotiation regularly hates you, that implies that you are doing something right for your client. Some things are zero-sum, and you want to win as many of those as possible. But you can take it too far.

Things happen

Evercore's Rainmaker Is Driving PE's $200 Billion Bright Spot. Wall Street Shrugs Off Credit Worries Even as More Cracks Emerge. HSBC Reviews Ties to Hedge Funds With Credit Fears on the Rise. Nvidia to Invest $1 Billion in Nokia in AI Networking Push. Why Germany's Merz Is Calling for a Joint European Stock Exchange . Trump Considers Fed Chair Selection by Year-End From Slate of Five Finalists. $100bn stock swings expose 'fragility' beneath Wall Street rally. Qualcomm Launches AI Chips to Challenge Nvidia's Dominance. Texas Sues J&J, Kenvue Over Alleged Autism Risks from Tylenol. Exxon Mobil Sues California Over Looming Climate Disclosure Rules. Forge Global explores sale after share price plunge. "To fire them, we might have to find a concierge to kick down a door in an L.A. hotel and revive them after a three-day cocaine binge. We needed a strong human-resources department." CEOs Are Furious About Employees Texting in Meetings.

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1. The title of this section is taken from a famous fun Sanford C. Bernstein & Co. research note from 2016 titled "The Silent Road to Serfdom: Why Passive Investing is Worse Than Marxism," arguing that index funds are bad at allocating capital. Maybe!

2. The paper uses the Greek letter beta; I just replace it with the word "beta." In some contexts they use a beta with a hat to represent *estimated* beta, but I ignore that and write the word "beta" in each case.

3. That is sort of arithmetically unintuitive, since the total average beta of the market has to be 1.0. But the point here is that on an *equal-weighted* basis, more stocks have higher betas, even though on a market-cap-weighted basis the total market beta is always 1. They write: "Over the past 25 years, CAPM betas and BMI [benchmarking intensity, that is, how much of the market is owned by funds benchmarked to an index] increased in lockstep. The average stock's BMI increased from 8.3% in 1998 to 18.3% in 2018, while the (equal-weighted) average beta rose by around 0.36. The large increase in the equal-weighted beta is offset by a decrease in the beta of the 50 largest stocks, on average." And: "The intuition that any aggregate effects of changes in the cross-section of betas cancel out rests on two assumptions that the data reject: First, it assumes that market capitalization weights and investment share weights coincide. Empirically, the weights can differ substantially. For instance, the financial sector averages 17.3% of U.S. market capitalization yet only 3.5% of capital expenditures. Second, it assumes a uniform elasticity of investment with respect to the cost of capital across firms. However, a large body of literature shows that the investment of large firms is relatively inelastic to changes in financing costs, while the investment of smaller firms is highly elastic." Hanno Lustig adds on X: "The rise in passive investing has not affected all stocks equally. The benchmarking intensity has dramatically increased in the middle of the size distribution, pushing up their CAPM betas, mainly because of the Russell 2000's emergence as an important index, in addition to the S&P 500. The stand-in US firm has not experienced an increase in beta, as the value-weighted CAPM beta of all firms is still one of course, but the equal-weighted US firm has seen a large increase. This divergence between the value-weighted and equal-weighted beta is driven by a change in the cross-sectional covariance between market cap and beta. As a result of the rise in passive investing, smaller firms have experienced an increase in their beta. Their CFOs use a higher discount rate as a result. On the other hand, larger firms have seen a decrease in their discount rate, but their investment appears to be less elastic with respect to the discount rate. Even though the representative firm's value-weighted beta is one, the increase in betas in the middle of the size distribution affects aggregate investment as a result of the heterogeneity in the firm-level elasticity of investment."

4. There is empirical evidence for this thought process on pages 5 and 6 of the paper, e.g.: "Our [instrumental variable] estimates imply a perceived equity risk premium of around 3.3%, close to the average equity risk premium of 3.6% reported by CFOs in the survey of Graham and Harvey (2018). We provide ancillary evidence from earnings calls that support this mechanism, as managers explicitly state that they use the CAPM to determine their cost of equity. We provide corroborating evidence that benchmarking-induced changes in CAPM beta change the perceived cost of equity in five additional datasets: Independent stock analysts of Morningstar and Value Line, as well as sell-side analysts covered by I/B/E/S, all report a higher perceived cost of equity after an

exogenous increase in BMI. Similarly, the authorized cost of equity of regulated monopolies such as public utilities and railroads rises when their BMI increases."

5. Not everyone is a repeat player, or to the same degree. Sell-side merger assignments and company-side IPO assignments can be a little more aggressive than buy-sides or underwriter-sides, because most companies sell themselves once and go public once.

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Ann Monster Lipton
@annmlipton.bsky.social

guys your mistake is thinking that tesla is a car company

> **Ned Resnikoff** @resnikoff.bsky.social · 1d
> "Without the Musk partisan effect, Tesla sales between October 2022 and April 2025 would have been 67-83% higher, equivalent to 1-1.26 million more vehicles." www.nber.org/papers/w34413
>
> Meanwhile the Tesla board chair is asking shareholders to approve a $1 TRILLION compensation plan for Musk.
>
> NBER
>
> **The Musk Partisan Effect on Tesla Sales**
> Founded in 1920, the NBER is a private, non-profit, non-partisan organization dedicated to conducting economic research and to disseminating research ...
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>
> "The Special Committee's Thoughtful, Rigorous and Disinterested Process"
>
> Note also, the non-existent products....
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2

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I consider it a memetic special purpose wealth extraction company.

1

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Source: www.cnbc.com/2025/10/27/t...

Tesla risks losing CEO Musk if $1 trillion pay package isn't approved, board chair says
Tesla Board Chair Robyn Denholm said Elon Musk is key to the future of the EV maker as it focuses more on Full Self Driving and Optimus.
www.cnbc.com

4 16

En Buen Ora - "Hell Çid" @enbuenora.bsky.social · 1d
stop wait don't go

4

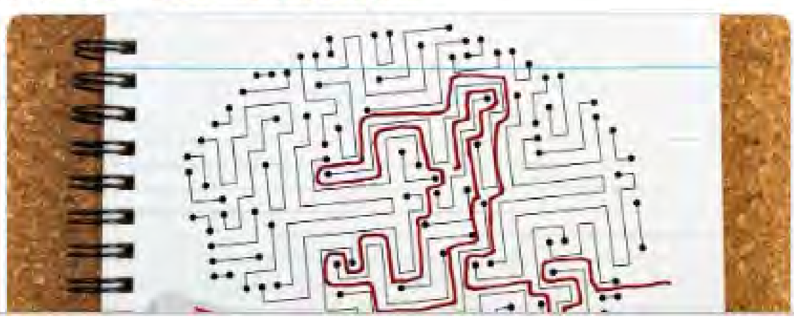
Noam "Free Link" Law-msky @noamlaw.bsky.social · 1d
what is with the Tesla Cult even effecting the Tesla board? isn't it against their direct financial interests?

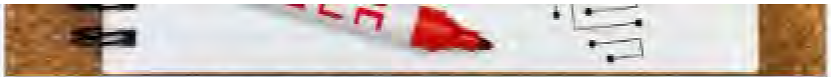
3

Derrick @derrickwb.bsky.social · 1d
If you don't pay me $1 Trillion, then I'm going to stop harassing you.

1

Jonathan Gitlin @drgitlin.bsky.social · 1d
Yes because despite the fact that car sales are still more than 75% of revenues, he has convinced them that Tesla is actually an AI company now. arstechnica.com/cars/2024/08...





Elon Musk says Tesla is an AI company now. Here's how plausible that is.
As Tesla's core business starts to falter, CEO Elon Musk has robot fever.

arstechnica.com

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Are they still going to pay him $58bn? Capitalism has gone off the rails.

Tesla CEO Musk's partisan politics cost automaker over 1 million EV sales, report shows

reuters.com/business/autos-transportation/tesla-ceo-musks-partisan-politics-cost-automaker-over-1-million-ev-sales-report-2025-10-28

Reuters October 28, 2025

- Study links sales drop to Musk's political actions and donations
- Democratic buyers shift to competitors' electric vehicles
- Musk's actions impact California's zero-emissions vehicle goals

(TSLA.O) , opens new tab CEO Elon Musk's polarizing political actions since acquiring Twitter, later rebranded X, in 2022 dramatically hurt the automaker's U.S. sales, underscoring how deeply its fortunes are intertwined with the billionaire's persona.
The findings quantify for the first time how the political actions of the world's wealthiest person - including his role in U.S. President Donald Trump's administration - may have cost Tesla billions in lost vehicle sales while benefiting rival electric carmakers.

Tesla's U.S. sales would have been between 67% and 83% higher, or about 1 million to 1.26 million additional vehicles, from October 2022 to April 2025, had it not been for what researchers call the "Musk partisan effect", according to a working paper from the National Bureau of Economic Research by Yale University economists.

Tesla did not immediately respond to a request for comment on the report.

As Democratic-leaning buyers shifted away from Tesla, that effect also boosted the sales of competitors' electric and hybrid vehicles by roughly 17% to 22%, the study found.

Tesla CEO Elon Musk attends a memorial service for slain conservative commentator Charlie Kirk at State Farm Stadium, in Glendale, Arizona, U.S., September 21, 2025. REUTERS/Daniel Cole/File Photo Purchase Licensing Rights , opens new tab

The Yale University researchers linked the drop to Musk's increasingly partisan behavior, including his roughly $300 million in donations to Republican candidates as well as leadership of the Department of Government Efficiency (DOGE) under Trump.

Musk's political stance has alienated environmentally minded Democratic buyers - historically Tesla's strongest base - according to surveys cited in the report.

Sentiment toward Tesla improved somewhat as Musk pivoted the company towards robotaxis, self-driving technology and robots in human form.

Tesla board Chair Robyn Denholm said in an interview with CNBC on Monday that the outside perception of Musk spending time in the U.S. government had diminished.
The NBER paper said Musk's actions also hampered California's progress toward its zero-emissions vehicle goals, concluding that the state would likely have met its 2026 targets "had it not been for the Musk partisan effect".

Registrations of Tesla cars in the state fell 9.4% in the third quarter, with its market share falling to 46.2% in the three-month period.

Reporting by Akash Sriram in Bengaluru; Editing by Pooja Desai

Tesla Inc

Tesla chair warns Musk could quit if shareholders reject $1tn pay deal

Robyn Denholm urges investors to support billionaire chief's package ahead of crucial November 6 vote

Tesla chair Robyn Denholm said: 'If we don't have Elon at the helm, or he isn't as motivated or incentivised to actually create that future, then it's actually a negative for all shareholders' © AAPIMAGE via Reuters Connect

Tabby Kinder in New York and **Stephen Morris** in San Francisco

Published 7 HOURS AGO

Tesla chair Robyn Denholm has stepped up her campaign to win shareholder support for Elon Musk's $1tn pay package, warning there is no "Elon mark 2" if the carmaker's board is forced to try to replace the chief executive.

Denholm and other Tesla board members are meeting this week with the company's largest institutional investors which include Vanguard, BlackRock and State Street, to lobby for the plan ahead of a vote on November 6.

Musk has threatened to walk out if shareholders vote down a new package of stock options that could be worth up to $1tn over the next decade.

Denholm confirmed that Musk's public threats had also been communicated privately to the board, but refused to explain Tesla's contingency plan if shareholders reject the pay deal. Denholm has also written to shareholders warning of his potential departure if his package is not approved.

"This is a vote for shareholders on the future of Tesla," Denholm told the Financial Times. "There's just not anybody, either inside or outside the organisation, that is Elon today," she said.

Musk's pay has been the centre of years of controversy and legal wrangling. Last year, shareholders voted in favour of a previous $56bn pay deal. That package was originally awarded in 2018 but subsequently blocked by a Delaware court, which said the process lacked proper board oversight.

The new proposal is expected to face significant opposition after advisory groups Glass Lewis and ISS recommended that shareholders reject the proposals.

A group of big pension funds separately issued an open letter opposing the pay plan, claiming the board's "relentless pursuit" of retaining its chief executive had damaged Tesla's reputation and led to excessive compensation. On Monday, the head of the New York pension fund called the pay proposal "inflated and poorly designed" and urged investors to vote against it.

Musk responded to the criticism on X, the social media site he owns, last week: "Tesla is worth more than all other automotive companies combined. Which of those CEOs would you like to run Tesla? It won't be me."

The fortune of the world's richest man is largely tied up in the value of Tesla's shares, which have more than tripled in value over the past five years as the carmaker's market capitalisation soared to $1.4tn.

Asked what the board will do if Tesla loses the vote and cannot retain Musk, Denholm said: "I don't want to foreshadow anything on that front at this moment, but clearly, as a board, we have discussed what happens and we know that it wouldn't be a good outcome for shareholders."

"If we don't have Elon at the helm, or he isn't as motivated or incentivised to actually create that future, then it's actually a negative for all shareholders."

She added that she did not believe Musk would do anything "sudden and detrimental" if Tesla loses the vote.

Musk has used large quantities of his Tesla shares as security to borrow billions of dollars to fund his other ventures, such as his acquisition of Twitter, now X, in 2022 and the development of his artificial intelligence start-up, xAI. He currently owns a 15 per cent stake in Tesla and is able to vote his shares in favour of the compensation plan.

Tesla has warned investors that Musk's leadership is crucial to a strategic pivot into AI, including through autonomous driving and its plans to build millions of humanoid "Optimus" robots.

Musk has argued he needs to control at least a quarter of Tesla's voting rights to stop its AI products falling into the wrong hands, using the example of him being ousted by activist investors.

Last week, Musk branded Glass Lewis and ISS "corporate terrorists" and said: "I just don't feel comfortable building a robot army and then being ousted because of some asinine recommendations from ISS and Glass Lewis who have no freaking clue."

Denholm told the FT that the special committee set up to design the pay package — which was made up of her and director Kathleen Wilson-Thompson — explored whether there was a way to give Musk the voting rights he wanted without the vast payout.

"There wasn't an instrument that you could use that could do that," she said. "We searched high and low for it, but so we ended up using restricted stock, which does have economic rights."

The proposed $1tn compensation award includes 12 tranches of restricted stock that are each tied to ambitious milestones for its share price and operational performance.

It would grant Musk an additional 12 per cent of Tesla's shares if he increases its valuation to $8.5tn, boosts earnings 24-fold and sell millions more cars and robots. Achieving even half of those targets could make him the world's first trillionaire.

Shareholders will also vote on a string of other proposals next week, including the reappointment of three directors and whether Tesla can invest in xAI.

Tesla eyes internal CEO candidates if Musk steps down over pay vote, Bloomberg News reports

reuters.com/business/autos-transportation/tesla-eyes-internal-ceo-candidates-if-musk-steps-down-over-pay-vote-bloomberg-2025-10-28

Reuters October 28, 2025

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

(TSLA.O) , opens new tab is looking at internal CEO candidates if Elon Musk leaves in case the $1 trillion pay plan is not passed at the annual shareholder meeting next week, Bloomberg News reported on Tuesday, citing the automaker's board chair.
Chair Robyn Denholm had urged shareholders on Monday to vote for the proposed CEO compensation package, seeking to keep the world's richest person at the helm of Tesla as the company pivots to focus on self-driving technologies and human-like robots.

The development underscores how central Musk remains to Tesla's identity and investor confidence, even as it faces pressure to reduce dependence on him.

Tesla did not immediately respond to a Reuters request for comment.

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

A string of senior departures over the last few years has left Tesla with a shallow management bench, where Chief Financial Officer Vaibhav Taneja and Senior Vice President of Automotive Tom Zhu are now the most prominent executives after Musk.

Reporting by Akash Sriram in Bengaluru; Editing by Shilpi Majumdar

Guest Post: Shot of Crypto

dandodiary.com/2025/10/articles/cryptocurrencies/guest-post-shot-of-crypto

Kevin LaCroix October 28, 2025

Sarah Abrams

Among the many concerns arising from the increasing prevalence of cryptocurrency are the problems and risks associated with the fact that the liquidity and value of cryptocurrencies fluctuate over time. To illustrate the kinds of liability risks this fluctuation can lead to, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, reviews a recent set of circumstances in which Stoli Group USA, LLC sought to settle a secured debt liability by payment of another kind of alternative asset with fluctuating valuation – in this case, 35,000 barrels of unfinished bourbon. Sarah considers the potential implications from the Stoli case for companies with crypto treasury assets. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

****

A recently rejected attempt by Stoli Group USA, LLC (Stoli) to satisfy $78 million in secured debt with 35,000 barrels of unfished bourbon may present a compelling analog for D&O risk stemming from the increasing creation of crypto treasuries. As companies continue to invest in crypto treasury strategies, there can be follow-on financial stress and D&O underwriting liability resulting from cryptocurrency volatility.

The court's decision in the Stoli bankruptcy proceeding highlights a potential theme in distressed-company D&O underwriting exposure stemming from the liquidity and value of assets that fluctuate in real time. Particularly, when a bankruptcy estate cannot satisfy creditors because a key asset (like crypto) loses value, disappears, or proves illiquid, the D&O underwriter risk may arise not from the bankruptcy itself, but from the alleged governance failures and disclosure missteps leading up to it.

To appreciate the potential D&O underwriting impact from increasing corporate crypto treasury strategies, particularly when a company becomes distressed or files for bankruptcy, the following will discuss relevant portions of Stoli's rejected restructuring plan, as well as how crypto treasuries are created and D&O-related risks stemming therefrom.

Bourbon-as-Collateral Plan

Stoli and its affiliate Kentucky Owl, LLC (Kentucky Owl) filed for Chapter 11 bankruptcy protection on November 27, 2024, in the U.S. Bankruptcy Court for the Northern District of Texas. According to Stoli the bankruptcy filing was driven by a liquidity crisis stemming from supply chain disruptions, decreased demand for spirits, and rising prices.

Notably, Stoli cited that Kentucky Owl's bourbon inventory was a root cause of its inventory and supply chain imbalance. Specifically, Kentucky Owl held tens of thousands of barrels of aging bourbon stored at third-party facilities and carrying costs of that inventory, coupled with limited near-term revenue from finished goods, strained Stoli's liquidity. Thus, Stoli's restructuring plan presented the Kentucky Owl bourbon as the Stoli's principal tangible asset and requested that the barrels of bourbon be used as collateral to secure the company's senior bank debt.

Stoli proposed, in part, that its secured creditors monetize Kentucky Owl's bourbon inventory, either through sale, transfer, or collateral substitution. One of Stoli's secured creditors objected to the plan on the basis that bourbon prices are too depressed to cover the value of its loan and that the bank is not in a position to conduct liquor sales. The Stoli bankruptcy judge agreed, indicating that he was further persuaded by the bank creditor's expert witness' description of a "dismal" bourbon market due to falling customer demand and a surplus of barrels from several large distilleries, creating a "race to the bottom" in pricing.

The Stoli bankruptcy court's decision reinforces that bankruptcy courts often resist speculative asset-for-debt plans where valuation depends on unstable commodity markets or extended liquidation timelines. While confirmation of (bankruptcy) plan §1129(b)(2)(A) allows non-cash payments to secured creditors, feasibility and adequate protection remain paramount. To succeed, debtors must provide credible, market-supported valuations; ensure prompt liquidation timelines; and secure creditor consent or backstop guarantees.

That may be a challenge for a distressed company that invested in a crypto treasury with large Bitcoin and Ether reserves. Below, I will briefly discuss what a crypto treasury is and how it is created, before going through potential D&O insurer exposure should a bankruptcy be filed.

Crypto Treasury

A crypto treasury refers to the portion of a company's balance sheet or reserve assets held in cryptocurrency rather than in traditional cash or short-term instruments. It serves the same role as a corporate treasury, providing liquidity, collateral, and potential investment yield, but substitutes cryptocurrency coins or tokens (e.g., Bitcoin, Ether, or stablecoins) for fiat holdings or marketable securities.

From an accounting standpoint, under U.S. GAAP, crypto holdings are typically classified as indefinite-lived intangible assets, not cash equivalents, meaning gains cannot be marked up but losses must be impaired. Notably, PIPEs have become a favored method for companies seeking to establish a crypto treasury – through direct conversion of proceeds, direct participation by crypto investors, and in-kind PIPE investments. A PIPE (Private Investment in Public Equity) is a transaction where a public company issues new shares or convertible securities to accredited investors, at a negotiated discount to its current market price.

Thus, if a company raises U.S. dollars through the PIPE and converts a portion of that cash into crypto, the crypto may be held as a reserve or investment on the balance sheet. And, if a company's particular treasury crypto, similarly to bourbon, becomes depressed in value, the impact on that company and D&O carriers may be significant. Particularly, if that company ends up filing for bankruptcy.

Discussion

D&O underwriters may want to consider, certainly in the case of a distressed insured, what percentage of company assets are in a crypto treasury. If a company raises cash through a PIPE and converts it into Bitcoin, Ether, or other tokens, those holdings sit on the balance sheet as intangible, market-sensitive assets. When prices drop sharply, the company's reported liquidity and net worth can erode overnight, potentially triggering covenant defaults, restatements, or insolvency events. For Stoli, the price of bourbon became a driving factor to file for Chapter 11; for a company that created a crypto treasury, it could be the value of Bitcoin.

And, if bankruptcy occurs, the trustee or creditors' committee may bring 10(b) and 10(b)(5) securities claims derivatively on behalf of the estate, arguing that management inflated liquidity or understated risk associated with crypto holdings as cash equivalents as part of a crypto treasury strategy. In addition, the trustee or creditors' committee may allege breach of fiduciary duty and oversight failure claims brought when crypto formed a material part of a company's balance sheet because the board is expected to institute controls and valuation governance around custody, accounting, and disclosure.

Finally, even if a D&O policy's "insured vs. insured" or "entity exclusion" limits coverage for the bankrupt entity, Side A coverage may respond to trustee or creditor-derivative actions alleging mismanagement of digital assets; regulatory enforcement actions (SEC, CFTC, or DOJ) related to misstatements or asset misappropriation; or securities class actions filed pre-petition that continue post-bankruptcy under the automatic stay exceptions.

Therefore, D&O underwriters may want to keep in mind that, if, like Stoli, a company'sbankruptcy estate cannot satisfy creditors because a digital or volatile asset evaporates, D&O liability stemming from the creation of a crypto treasury may increase.

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Securities

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Crypto’s Political Machine Amasses $263 Million to Rival Big Oil

Oct. 28, 2025, 4:00 AM PDT

Summary by Bloomberg AI

AI Generated

- A handful of crypto-focused super political action committees are building up a war chest of around $263 million ahead of the 2026 midterms.
- The crypto industry's legislative victories and the Trump family's embrace of crypto are leading some super-PACs to line up more firmly behind Republicans.
- The industry is leveraging its political giving to push for legislative and regulatory priorities, including a crypto market-structure bill that would make sweeping changes to oversight of digital assets.

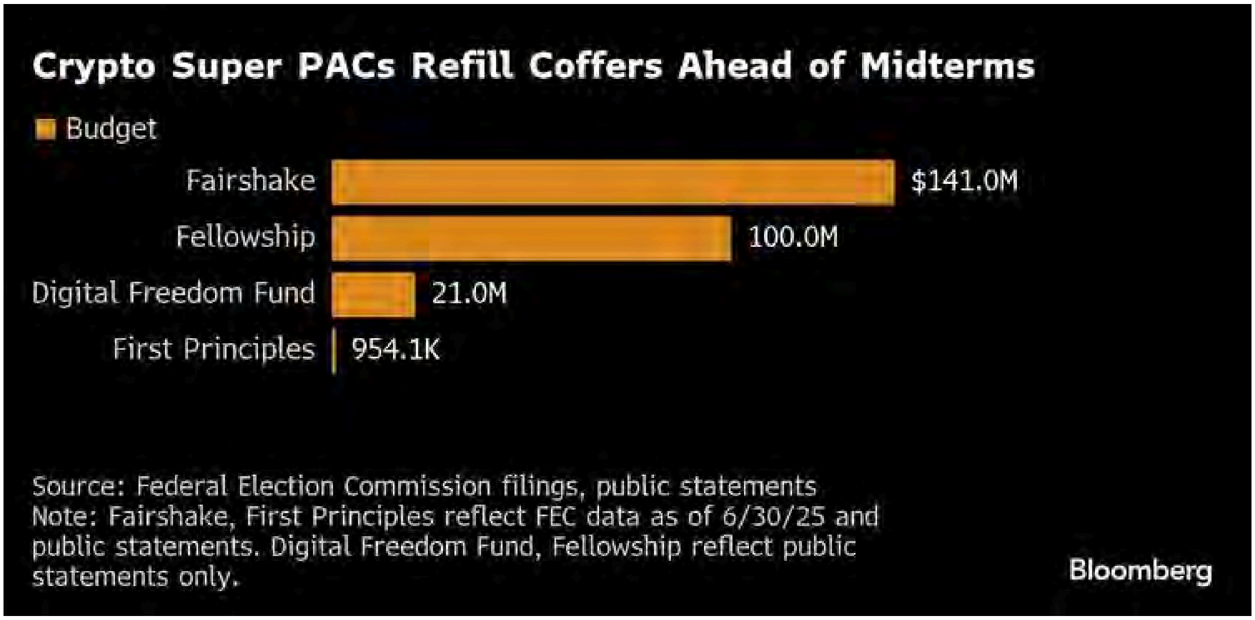
Fresh off its success in the 2024 elections, the crypto industry is amping up its spending power ahead of the 2026 midterms.

A handful of crypto-focused super political action committees are building up a war chest of around $263 million, according to Federal Election Commission filings and public statements. That is nearly double what the largest one, Fairshake, deployed in 2024 and slightly more than what the entire oil and gas industry spent in that cycle, according to data from OpenSecrets.

Since the 2024 spending spree, with Republican majorities in both chambers of Congress, lawmakers have passed legislation that the industry championed and confirmed friendly regulators to key posts. The clout was on display again last week when President Donald Trump pardoned crypto exchange Binance’s co-founder **Changpeng Zhao**, who previously pleaded guilty to violating US anti-money laundering laws and was sentenced to four months in prison during the Biden administration.

The legislative victories — and the Trump family’s embrace of crypto — are leading some of the newest super-PACs to split with a previous strategy and line up more firmly behind Republicans in ways that could help the party maintain its hold over Congress.

The industry is also leveraging its political giving to push for a list of legislative and regulatory priorities. The immediate focus is a crypto market-structure bill that would make sweeping changes to oversight of digital assets and potentially offer more power to what has been a more crypto-friendly regulatory agency, the Commodity Futures Trading Commission.



To encourage passage of the bill, about a dozen top crypto executives traveled to Washington last week, where, despite the jockeying around the government shutdown, they met for more than an hour with a group of leading Republican Senators, and had an even longer meeting with Democratic Senators, including minority leader Chuck Schumer.

"The success that the industry had in 2024 created a road map or a blueprint where, whether you're an industry CEO or you're just a consumer of the industry, you have shown that crypto has a voice and can impact elections," said Cody Carbone, chief executive officer of The Digital Chamber, a Washington-based advocacy group. "There's going to be more players involved, there's going to be more dollars involved."

Crypto companies and executives have found many ways to give financial support to policymakers and Trump's projects.

There have been business deals between crypto firms and the Trump family's crypto ventures. Other companies donated to the inauguration in January and the military parade in June. And several companies are pitching in for the new White House ballroom , which will cost $300 million. Among them are Coinbase, Ripple and the US arm of the stablecoin giant Tether, according to the White House.

US President Donald Trump holds a model of the planned Triumph Arch during a dinner with corporate executives that highlighted a new White House ballroom construction project.
Photographer: Jim Lo Scalzo/EPA/Bloomberg

Beyond the White House, though, super PACs are a focal point for members of Congress, who have the power to shape legislation that matters to the industry.

Fairshake remains the biggest, with $141 million at the end of June, according to the group's public statements and FEC data. That's after it spent more than $133 million to elect pro-crypto candidates in 2024, according to OpenSecrets — making it one of the top single-issue spending groups in last year's cycle. Its backers are some of the largest US crypto players, including Coinbase and Ripple, as well as venture capital firm Andreessen Horowitz .

Fairshake and its two affiliated spending groups sought to turn crypto-friendly policies into a bipartisan issue in 2024. For instance, it spent roughly $10 million apiece to support Democrats Elissa Slotkin and Ruben Gallego, helping them win Senate races in Michigan and Arizona, respectively. They were among the 18 Democratic Senators who voted to pass the GENIUS Act, which paved the way for stablecoins, a favorite tool of the crypto industry, to be used more widely in the financial system.

But even in 2024, most of the money Fairshake spent in the general election went to electing Republicans, including a blockbuster $40 million to successfully defeat the then-leader of the Senate Banking Committee, Sherrod Brown of Ohio.

Elissa Slotkin speaks to supporters at an election night watch party in November 2024.
Photographer: Scott Olson/Getty Images

This time there are even more super-PACs and some are more explicitly aligned with GOP candidates.

World Liberty Financial, the crypto platform co-founded by the Trump family and the family of presidential envoy Steve Witkoff, said last month that it would support the Digital Freedom Fund PAC. The group was announced in August by the co-founders of the crypto exchange Gemini, Tyler and Cameron Winklevoss, who said they were donating $21 million in Bitcoin to "support champions of President Trump's crypto agenda" in primary races and midterms, according to a statement on X.

Digital Freedom Fund plans to take aim at Brown, according to a person familiar with the matter, as he makes a bid to return to the Senate.

Cameron, left, and Tyler Winklevoss, co-founders of the crypto exchange Gemini, speak with President Donald Trump during a signing ceremony for the GENIUS Act in July.
Photographer: Al Drago/Bloomberg

Another new group is First Principles Digital PAC, which calls itself "a Republican-led, Republican-focused organization working to elect pro-crypto leaders." Jason Thielman, a Republican strategist, leads the group, which started after the 2024 election and had about $954,000 in cash at the end of June, according to filings. It has already endorsed Mike Rogers, who is running for an open Senate seat in Michigan in 2026.

Most recently, Fellowship PAC announced its launch in September with $100 million in commitments. Its donors aren't public but initial filings indicate its treasurer is an executive at Cantor Fitzgerald , the financial firm formerly led by Trump's commerce secretary, Howard Lutnick.

Representatives for Digital Freedom Fund, Fellowship, Fairshake and First Principles Digital did not provide comments.

One big wild card in the conversation is Tether, the El Salvador-based stablecoin company that has close ties to Cantor Fitzgerald. The New York Times reported that Fellowship's backers are expected to include Tether, which recently set up a US entity.

In August, the company said it would start offering a US-based product, and that it was hiring one of Trump's top former crypto staffers, Bo Hines, to lead the effort.

Tether is now in talks with several PACs, CEO Paolo Ardoino said in an interview last week. Foreign companies are forbidden from giving to super-PACs. The company's new foothold in the US may allow it to contribute.

Read More: Tether Weighs Splitting From Big Crypto PAC for Political Giving

Tether CEO Paolo Ardoino during the Token2049 conference in Singapore on Oct. 2.
Photographer: Suhaimi Abdullah/Bloomberg

There is growing consternation among Democrats who sit on the other side of this firepower.

Erik Balsbaugh, who worked on campaigns for Elizabeth Warren and Hillary Clinton, is executive director of a new group called Open Frontier, which aims to get more "progressive voices" aligned with crypto.

"A lot of people are trying to figure out this industry on my side of the aisle," Balsbaugh said. "There's no one who's a credible messenger. There's a lot of broken trust in crypto."

The partisan dynamics were in force when crypto executives went to Washington last week to huddle with lawmakers. Chainlink Labs co-founder Sergey Nazarov, who attended those meetings, said Republicans, including the chair of the Senate Banking Committee, Tim Scott of South Carolina, made it clear that they were aligned with the industry's priorities. On the other hand, Democrats came to the meeting with hard questions about the use of cryptocurrencies in money laundering and decentralized finance, he said.

"I don't think that the Democrats have gotten to that point in understanding our industry — they are worried about illicit finance," he said.

Others pointed to signs that the industry's hoard of cash and newfound political power are forcing at least some Democrats to rethink their approach. Even Brown has sanded some of the sharper edges off of his critiques.

"Cryptocurrency is a part of America's economy, and becoming more commonplace in Ohio and throughout the country," Brown's campaign manager Patrick Eisenhauer said in a statement. As more people adopt digital assets, he added, Brown wants to ensure "it expands opportunity and lifts up Ohioans and they are not put at risk."

Senator Sherrod Brown during a campaign event in 2024.
Photographer: Justin Merriman/Bloomberg

Crypto executives have aspirations beyond the market-structure bill, which Republicans want to pass before the midterms. They include changing taxation of cryptocurrencies, rules around money laundering and sanctions, and how decentralized exchanges are regulated.

Some donors are also looking at state and local elections, like the New York mayoral race, where the crypto entrepreneur Brock Pierce gave more than $1 million to a group backing Eric Adams, just days before he ended his campaign.

To Chainlink Labs’ Nazarov, the meetings with politicians have had a common thread.

“They realize that the economic value of the industry is high so they need to address how they are going to deal with it,” he said. “It’s just going to keep growing, they need to address it correctly.”

--With assistance from **Bill Allison** and **Anna Irrera**.

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Securities

How Zhao's Binance Aided Trump Family Crypto Venture: QuickTake

Oct. 27, 2025, 8:27 AM PDT

In late October, President Donald Trump pardoned crypto billionaire **Changpeng Zhao**, one of the industry's most powerful men, after he mounted a months-long bid for clemency.

Zhao pleaded guilty in 2023 to violating US law by failing to run an appropriate anti-money laundering program during his tenure as chief executive officer of Binance Holdings Ltd., the industry-leading crypto exchange he founded. He was sentenced to four months in prison and stepped down as head of the exchange. Binance later built up ties to World Liberty Financial, a crypto platform co-founded by members of the Trump family and a pillar of the family's more than $7 billion fortune.

Zhao is the latest prominent crypto figure to receive a pardon in Trump's second term. Here's what to know.

Who is Changpeng Zhao?

Zhao is the billionaire founder of Binance Holdings Ltd., the world's largest crypto exchange by volume. Zhao — an industry celebrity often referred to by his initials "CZ" — was released from custody in September 2024. Following his pardon, Zhao wrote on X that he was "deeply grateful" for the president's action.

What was Zhao convicted of?

Zhao and Binance admitted the company had failed to set up appropriate money-laundering safeguards on the exchange. Following a yearslong investigation, federal prosecutors said that as a result of Binance's lax controls, terrorist groups, hackers and sanctions violators used its platform to move billions of dollars. Janet Yellen, who was Treasury Secretary at the time of the conviction, said the exchange had "turned a blind eye to its legal obligations in the pursuit of profit."

The guilty plea marked a sobering turn for a crypto celebrity. In addition to Zhao resigning from his role, the exchange agreed to pay a more than $4 billion penalty. But Zhao wasn't forced to give up his controlling stake in Binance, which is the source of his $61.4 billion fortune, according to the Bloomberg Billionaires Index.

The Securities and Exchange Commission also charged Zhao and Binance with additional infractions in 2023 — but earlier this year, the SEC dropped its case against him.

How do Zhao and Trump's crypto ventures intersect?

Binance is linked to a Trump family crypto venture, called World Liberty Financial, in multiple ways.

Binance wrote the basic code underpinning World Liberty's stablecoin, called USD1 — a virtual asset designed to maintain a one-to-one value with the US dollar.

Weeks after World Liberty's stablecoin USD1 launched, an Emirati state-backed fund called MGX used it to invest $2 billion into Binance. The move was an early financial boost for USD1. Stablecoin issuers earn interest from the reserves backing them — there are dozens to choose from, all performing the same basic function. MGX's decision to use the USD1 stablecoin gave World Liberty the chance to earn potentially tens of millions of dollars in interest.

What does World Liberty Financial do?

World Liberty Financial is a crypto platform co-founded by Trump's family and the family of his special envoy Steve Witkoff. It has attracted scrutiny from ethics watchdogs, Congressional Democrats and even the occasional pro-crypto Trump supporter, who worry the Trump family's crypto business could incentivize the president to shape policy to align with his own financial interests. Trump's family has denied that such potential conflicts exist, and the White House has said he's "the most transparent president in history in all respects, including when it comes to his finances."

In addition to its stablecoin USD1, World Liberty has its own branded virtual token, which became available to trade in a limited capacity in September.

How does the Trump family earn money from World Liberty Financial?

An entity affiliated with Trump and his family owns a 38% stake of the parent company. Members of the family have also earned more than half a billion dollars from token sales, according to Bloomberg estimates, and have a stash of 22.5 billion virtual tokens, worth hundreds of millions more on paper.

Has Trump pardoned other crypto figures?

Once a crypto skeptic who said Bitcoin "seems like a scam," Trump has transformed into one of the industry's biggest champions in his second term. Shortly after his inauguration, he pardoned Ross Ulbricht, who created the Bitcoin-based illicit drug market called Silk Road, and who had been sentenced to life in prison. In March, he also pardoned Arthur Hayes, who had been convicted of violating federal money-laundering law at BitMEX, the exchange he co-founded and owned.

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Securities

Logan Paul's Manager, Associates Escape CryptoZoo Lawsuit (1)

Oct. 27, 2025, 11:07 AM PDT; Updated: Oct. 27, 2025, 12:23 PM PDT

Logan Paul's manager, a former assistant, and a contributor of his failed cryptocurrency venture defeated customers' proposed class claims that they were lured into a fraudulent investment scheme.

Judge Alan D. Albright adopted a magistrate judge's recommendations dismissing manager Jeffrey Levin, assistant Danielle Strobel, and associate Ophir Bentov.

The US District Court for the Western District of Texas judge also ratified Magistrate Judge Ronald C. Griffin's recommendation denying Paul's bid for entry of a default judgment against two CryptoZoo Inc. co-creators who've yet to appear in the case. The influencer's cross-claims alleged the absent duo tricked Paul into bringing them onto the project when in reality they lacked the requisite expertise.

Albright's orders, entered Oct. 24, were without prejudice.

Customers alleged CryptoZoo, announced in 2021, was a ploy to sell worthless tokens posing as a pending game company. Paul said in 2024 that the game would never come to be due to regulatory hurdles and promised a refund program.

Griffin also recommended Paul not face the most recent complaint, but that the customers be able to replead most of their claims. Albright didn't address this in his recent trio of adoptions.

"We are grateful for the Court's thorough consideration of this matter, and we are pleased that its ruling confirms Plaintiffs had no basis in fact or law to bring suit against Mr. Levin or Mr. Bentov in the first place," said Sarah Moses and Christopher Chatham, partners at Manatt, Phelps & Phillips LLP who represent those two individuals.

"We appreciate the Court's thoughtful consideration of the issue," echoed Lindsay Gerdes, a partner at Dinsmore & Shohl LLP, who represents Strobel. "Our client never belonged in this litigation. With this decision, the judge agreed with what we have been saying all along."

Houston, Texas-based attorney Tom Kherkher and Ellzey & Associates PLLC represent the customers. The attorneys didn't immediately respond to an email seeking comment.

Neiman Mays Floch & Almeida PLLC and Kozyak Tropin & Throckmorton LLP represent Paul. His legal team declined to comment.

Butler Snow LLP also represents Paul, Levin, and Bentov locally. Sheppard, Mullin, Richter & Hampton LLP also represents Strobel locally.

The case is Holland v. CryptoZoo, Inc. , W.D. Tex., No. 1:23-cv-00110, orders entered 10/24/25 .

(Updates with a comments from defendants' attorneys in the seventh and eighth paragraphs, and additional reporting throughout.)

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okay so, i mean, apart from the obvious, this really highlights one reason we prohibit insider trading. the problem w/ a ceo trading ahead of company announcements is, he controls company announcements, and he may substantively run the company differently if he can profit from frontrunning.

> **FinTwitter** @fintwitter.bsky.social · 3h
> TRUMP MEDIA TO ENTER PREDICTION MARKETS BUSINESS

October 28, 2025 at 5:33 AM · Everybody can reply

58 reposts **2** quotes **240** likes **8** saves

6 60 240

Write your reply

Ann Monster Lipton @annmlipton.bsky.social · 3h
So, Trump say has an interest in a contract over what the tariffs are. Now, policy considerations (stop laughing) must give way to profits on the contract.

2 23

Eric Columbus @ericcolumbus.bsky.social · 2h
Consideration of whether the government of Ontario quoted Reagan in a World Series ad must give way to . .

4

Justin M @justinmm2.bsky.social · 2h

Ironically, the value of prediction markets comes from insiders. I want the people with inside knowledge betting, not outsiders!

Of course, I also want the bets to be about when we're going to launch a product, not a public market for who we're going to bomb next

♡ 2

who cares @maaaatttt.bsky.social · 2h

my job subjects me to trading restrictions because I have access to material nonpublic information and the training I have to do every year is so fucking quaint now. "The SEC enforces strict laws around insider trading, all individuals are subject to these laws." fuck outta here

1 ♡ 2

Emily B @emiblu.bsky.social · 2h

Omg, same scenario with my job. Every time I have a 'training' session pop up I don't know whether to laugh or cry.

♡ 1

nodietofworms.bsky.social @nodietofworms.bsky.social · 2h

Up to our noses in trump's corruption. We can see it, smell it, we are drowning in it.

♡ 1

Bruce Korb UA @b-korb.bsky.social · 25m

tRUmp's corruption and greed aren't blatant enough, so he's upping his game.

Joe Friday I'm In Love @ultramod2.bsky.social · 1h

See: Pete Rose being banned from baseball for betting on the team he managed, even though he insisted that he only placed bets for them to win.

UK financial regulation

UK to stop disclosing identity of stock market short sellers

FCA overhauls regulations in break with EU rules and more in line with the US

There are concerns that less transparency on short selling activity could make it easier for hedge funds to manipulate markets or make profits at the expense of market stability © Reuters

Martin Arnold in London

Published 2 HOURS AGO

Short sellers betting on a fall in a UK company's share price will no longer have their identities disclosed in public, under rules set to be announced by the financial watchdog on Tuesday.

The Financial Conduct Authority is expected to shift to publishing the total short positions of investors betting against a company's share price on an anonymised and aggregated basis, according to two people briefed on the decision.

The UK could make the change because it is no longer bound by EU rules requiring all short positions above 0.5 per cent of a company's share capital to be disclosed publicly.

The planned lighter disclosure regime will bring Britain more in line with the US, which only discloses short positions in aggregate without revealing the identity of those holding them.

The FCA is also expected to water down the rules on when short sellers have to privately inform the regulator about their positions by raising the threshold from any that are above 0.1 per cent of a company's share capital to those higher than 0.2 per cent.

The regulator, which declined to comment, is likely to present the changes as part of its response to calls by the government to lighten the burden of its rules in support of UK economic growth and competitiveness. The move is set to be applauded by hedge funds.

However, there are fears that less transparency on short selling activity could make it easier for hedge funds to manipulate markets or make profits at the expense of market stability.

"It beggars belief that policymakers would look to water down the supervisory regime for short selling further," said Simon Youel, head of policy and advocacy at campaign group Positive Money.

"Short selling can serve useful functions in theory, but in practice it is too often abused cynically by hedge funds to juice returns in ways that at best add no economic value, and at worst amplify risks for the wider public," said Youel, also a visiting research fellow at the University of Manchester.

But financiers believe the reforms will boost the UK's appeal as a global financial centre. "Smart reforms will enhance UK financial markets, attract investment and support economic growth," said Rob Hailey, head of Emea government affairs at the Managed Funds Association, which represents hedge funds. "We will continue to pursue similar enhancements to the EU's short sale framework."

One US observer said the changes were unlikely to help UK investors. "Eliminating the disclosure of the identity of short sellers will likely result in increased short selling activity, but who would that benefit?" said Dennis Kelleher, head of US-based investor advocacy group Better Markets. "More financial activity often leads to bubble growth, not economic growth that benefits the real productive economy."

The Treasury set the stage for the change with legislation introduced in January that replaced a law the UK inherited from Brussels.

Britain has already scrapped restrictions on “naked” short selling of sovereign bonds that prevented investors from taking a short position without borrowing the underlying bonds. But the FCA is expected to maintain the ban on “naked” short selling of shares.

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Acadia Pushes For Appeal Of Investors' Partial Early Win

By **Katryna Perera**

Law360 (October 27, 2025, 6:46 PM EDT) -- Acadia Healthcare Company Inc. is looking to appeal a partial early win granted to a proposed class of investors accusing the company of misleading them about the strength of its United Kingdom operations, arguing that the court's recent ruling presents controlling questions of law warranting immediate appellate review.

Acadia filed a **motion** to certify U.S. District Judge William L. Campbell Jr.'s recent summary judgment order for immediate appeal and for a stay of the proceedings. Roughly two weeks ago, Judge Campbell **granted** a summary judgment **motion** filed by investors that focused solely on the issue of reliance, or whether there was a causal connection between the defendants' alleged misrepresentation and the investors' injury.

Acadia had also filed a cross-motion for summary judgment, arguing that the safe harbor provision of the Private Securities Litigation Reform Act bars the suit's claims related to projected earnings at Acadia's U.K. facilities in 2017 and that the suit lacks evidence of loss causation.

But the judge found that the investors presented genuine issues of material fact and that Acadia failed to rebut them.

On Monday, Acadia argued that the court erred by interpreting the PSLRA to exclude forward-looking statements accompanied by cautionary language that warns of future harm that has already occurred when the statement is made. According to Acadia, the Sixth Circuit has held that "cautionary language is meaningful even if the risk is already occurring."

Acadia also argued in its cross-motion that the suit fails to plead loss causation, but Judge Campbell disagreed. On Monday, the healthcare company said this was an error because the investors' only evidence of loss causation is based on "event studies that failed to disaggregate fraud-related from non-fraud-related causes and that assume disclosures were corrective, even though some contained no new information."

"Although the court denied summary judgment to defendants, other federal courts routinely hold that 'in order to defeat summary judgment, plaintiffs in a securities fraud case must present evidence disaggregating the fraud and non-fraud-related causes of the plaintiff's loss,'" the motion states.

"And another court in this district excluded analogous testimony from plaintiffs' same expert on loss causation because the expert assumed that a corrective disclosure contained no 'information beyond defendant's alleged fraud' and failed to evaluate the information in the disclosure that 'the market did know,'" the motion further states.

In its cross-motion for summary judgment, Acadia also said it has evidence showing that the suit's alleged misrepresentations did not impact Acadia's stock price and that at least one of the plaintiffs would have bought Acadia stock irrespective of the alleged fraud.

But Judge Campbell stated that several courts have recognized that the "absence of a statistically significant price adjustment does not show the stock price was unaffected by the misrepresentation," and that a "non-statistically significant decline simply does not 'sever the link' between the alleged misrepresentations and corrective disclosures."

Acadia pushed back on Monday, however, saying that courts have regularly determined that the absence of a statistically significant price change is evidence of a lack of price impact.

These controlling questions of law warrant an immediate review, Acadia argues, and an appeal would "materially advance the ultimate termination of the litigation ... now rather than after a three-week jury trial."

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

The investors are represented by Christopher M. Wood, Jerry E. Martin, Darren J. Robbins, Sam S. Sheldon, Darryl J. Alvarado, J. Marco Janoski Gray, Ting H. Liu and T. Alex B. Folkerth of Robbins Geller Rudman & Dowd LLP, Justin J. Lannoye of Dowd Bloch Bennett Cervone Auerbach & Yokich, and Michael Bauman of Pitta LLP.

The defendants are represented by Steven A. Riley and Milton S. McGee III of Riley & Jacobson PLC, and David L. Balser, Jessica P. Corley, Lisa R. Bugni, Brandon R. Keel and Ronni D. Solomon of King & Spalding LLP.

The case is St. Clair County Employees' Retirement System v. Acadia Healthcare Company Inc. et al., case number 3:18-cv-00988, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Vaqas Asghar.

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$HAWK Buyers Get Suits Over Coin Flop Consolidated

By **Rae Ann Varona**

Law360 (October 27, 2025, 11:17 PM EDT) -- A New York federal court on Monday granted two groups of buyers of the viral "Hawk Tuah" meme-themed cryptocurrency to combine their securities suits against the meme coin's promoters and developers.

Two groups of $HAWK buyers have accused the project's promoters, Alex Larson Schultz and Hong Kong resident Clinton So, along with So's development platform overHere and a Cayman Island-based entity called the Tuah the Moon Foundation, of using "Hawk Tuah Girl" Haliey Welch's notoriety to sell the token as an unregistered security.

U.S. Magistrate Judge James R. Cho granted the two groups' request to consolidate their suits in the Eastern District of New York after the buyers said the suits were substantively the same.

"All securities class actions on behalf of purchasers of $HAWK Tokens subsequently filed in, or transferred to, this district shall be consolidated into this action," Judge Cho wrote in an **order**.

A group of nearly 20 crypto buyers filed the **first suit** in December, accusing the project's promoters and developers of failing to register the asset as a security while creating a "speculative frenzy" that led to holders losing thousands of dollars.

Meme coins, the buyers said, have "emerged as a distinctive category within the cryptocurrency ecosystem, characterized by their deep-rooted connection to internet culture, humor, and community engagement."

The $HAWK coin came amid Welch's rise to social media fame in the summer of 2024 after she coined the now-viral phrase, which is an onomatopoeia and refers to a sex act, during a street interview in Nashville, Tennessee, that was broadcast on YouTube. The moment amassed Welch millions of followers online and led to an array of deals, including the launch of her comedy podcast, "Talk Tuah with Haliey Welch."

Buyers in the first suit said that the token had "all the characteristics of an unregistered security under established legal precedent."

The buyers said that a common enterprise existed, pointing to a "pooling of funds and the token's success being tied to the collective efforts of Welch."

The marketing campaign for the coin also created a reasonable expectation of profits among investors, the buyers said.

Following that suit was a proposed securities class action that, like the first, accused Schultz, So, overHere and the Tuah the Moon Foundation of having "leveraged Welch's celebrity status and connections to enhance the Token's credibility and appeal, including discussing the $HAWK project during Welch's podcasts featuring notable guests."

Welch is not named as a defendant in either case.

Buyers from the two suits asked the court to **combine** their actions in late July, saying that the only substantive difference between the suits is that the first is brought by several individuals while the other was brought on behalf of a class that would include individuals from the first suit.

The buyers' counsel said in a status report in August that they were informed that So and overHere could not be served. They said that they also learned that the Tuah the Moon Foundation is no longer active in the Cayman Islands.

Counsel for the buyers or Schultz did not immediately respond to requests for comment on Monday evening. OverHere, So and Tuah the Moon Foundation could not immediately be reached for comment.

The buyers are represented by Chet B. Waldman, Matthew Insley-Pruitt and Terrence Zhang of Wolf Popper LLP, and Max Burwick of Burwick Law PLLC.

Schultz is represented by Jeffrey Zuber and Mark Bloomberg of Zuber Lawler LLP.

Counsel information for overHere, So and Tuah the Moon Foundation was not immediately available.

The cases are Abdulhadi Albouni et al. v. Schultz et al., case number 1:24-cv-08650, and Carlos Rodriguez Mena v. Schultz et al., case number 1:24-cv-08695, both in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Aislinn Keely. Editing by Michael Watanabe.

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Moderna Says Vax Efficacy Math Doesn't Show Investor Fraud

By **Emilie Ruscoe**

Law360 (October 27, 2025, 3:36 PM EDT) -- An investor in vaccine giant Moderna Inc. has failed to show that the company misrepresented the efficacy of its RSV vaccine by pointing out that the U.S. Food and Drug Administration later recalculated the vaccine's efficacy, the company said in an effort to slip a proposed investor class action.

In a dismissal bid in Boston federal court Friday, Moderna said investor Pak Sa Kim's claims rested on the "fundamentally flawed premise" that the difference between two vaccine efficacy conclusions showed the company had lied to investors and caused them losses by pushing down trading prices for the company's shares.

Specifically, Moderna said, its primary analysis of 64 RSV cases showed an undisputed efficacy rate of 83.7% that was never found to be inaccurate. The FDA later did a separate analysis that showed 78.7% as an efficacy metric, Moderna said. But the company noted that that second finding was based in part on the regulator's inclusion of an additional 21 RSV cases that hadn't been available for inclusion in the first study. RSV, or respiratory syncytial virus, is a common cause of mild coldlike symptoms such as runny nose, cough and fever.

The FDA later based its approval of the RSV vaccine on the efficacy rate from the second study. But Moderna said that doesn't show the company misled anyone with its earlier efficacy findings.

The vaccine company pointed to the investor suit's assertion that the FDA had "rejected" and "disputed" the company's efficacy finding. With those terms, Moderna said, the suit "mischaracterizes the very documents it references and on which it is based."

The complaint should be dismissed because it failed to show misstatements that would represent a violation of fraud provisions of federal securities laws, Moderna said.

The company said the latest version of the suit, from August, didn't show a strong inference that Moderna had intentionally misled the markets or that the announcement of the second efficacy finding could be described as a corrective disclosure that would support an investor loss causation argument.

The proposed class includes those who purchased Moderna shares between Feb. 15, 2024, when the company published the initial 83.7% efficacy finding, and May 31, 2024, when the FDA cited its own 78.7% efficacy finding in announcing that it had approved the vaccine and market records show trading prices for Moderna shares fell $8.94 per share, or 5.9%, from $151.49 a share to $142.55 a share.

Alongside the company, the suit, which launched in August 2024, names Moderna CEO Stéphane Bancel, Chief Financial Officer James M. Mock and President Stephen Hoge.

Counsel for Moderna declined to comment Monday and representatives for the investors did not immediately respond to request for comment.

The investors are represented by Stanley D. Bernstein, Michael S. Bigin, Stephanie M. Beige and Jeffrey R. McEachern of Bernstein Liebhard LLP and Theodore M. Hess-Mahan of Hutchings Barsamian Mandelcorn LLP.

Moderna is represented by Boris Feldman, Meredith Kotler and Adam Rosenfeld of Freshfields US LLP and Sara Jane Shanahan and Mariem Marquetti of Sherin & Lodgen LLP.

The case is Wentz v. Moderna Inc. et al., case number 1:24-cv-12058, in the U.S. District Court for the District of Massachusetts.

--Editing by Stephen Berg.

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Minerals Co. Brass Settles Investor Suit Over Gov't Contract

By **Katryna Perera**

Law360 (October 27, 2025, 6:57 PM EDT) -- Compass Minerals International's leadership has reached a settlement in a shareholder derivative suit accusing them of hiding signs that the company would not be able to renew a lucrative supplier relationship with the U.S. Forest Service.

The parties filed a joint status **report** on Friday, alerting the court to the deal, which also includes a payment of $850,000 for attorney fees. Plaintiff Fabrizio Morelli filed suit **last year**, claiming the brass of Overland Park, Kansas-headquartered Compass Minerals breached their fiduciary duties over statements mischaracterizing the company's confidence in products it supplied to the government for use in fighting fires from planes.

The settlement does not include a monetary amount but requires Compass Minerals to implement several corporate governance reforms, including, among other things, improvements to the oversight of the company's marketing and sales efforts, improvements to its Chief Operating Officer position, improved internal controls and the adoption of a formal board policy on strategic transactions.

Friday's filing states that while plaintiffs and their counsel believe the suit's claims have significant merit, they also recognize the risks of continued litigation. Therefore, the filing states that the settlement is fair, reasonable, and adequate, and in the best interests of Compass Minerals and its stockholders.

The deal also includes an attorney fee award of $850,000 to plaintiffs' counsel from The Brown Law Firm, and the filing states that plaintiffs' counsel may ask the court for service awards of $1,500 each to both plaintiffs.

Counsel for the plaintiffs declined to comment on Monday, and counsel for the defendants did not immediately respond to requests for comment.

Compass Minerals produces minerals such as those used to provide nutrients to agricultural crops and salt for de-icing roads, and in May 2023, it bought Fortress North America LLC, which makes fire retardants to fight wildfires.

Later in 2023, Morelli said, Fortress inked a deal to supply magnesium chloride-based aerial fire retardants to the U.S. Forest Service for the year's fire season. The federal agency was Fortress' "only primary client" for the season, the suit stated.

But according to Morelli, the company's testing did not properly confirm that its proprietary magnesium chloride-based aerial fire retardants were safe and the company ultimately failed to lock down a supplier contract with the Forest Service for the 2024 fire season.

In March 2024, the company told investors it had not gotten a contract to work with the U.S. Forest Service to provide fire retardants for its 2024 fire season. The investor referenced market records showing that over the next two trading days, the company saw trading prices for its shares fall from just under $18 to under $14.

Morelli is represented by R. Frederick Walters and Karen Wedel Renwick of Walters Renwick Richards Skeens & Vaughan PC and Timothy Brown of The Brown Law Firm PC.

The defendants are represented by Jay B. Kasner and Susan L. Saltzstein of Skadden Arps Slate Meagher & Flom LLP, and Sara Fevurly of Husch Blackwell LLP.

The case is Morelli v. Crutchfield et al., case number 2:24-cv-02496, in the U.S. District Court for the District of Kansas.

--Additional reporting by Emilie Ruscoe. Editing by Vaqas Asghar.

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Catching Up With Delaware's Chancery Court

By **Jarek Rutz**

Law360 (October 27, 2025, 2:36 PM EDT) -- The Delaware Chancery Court and Delaware Supreme Court saw another busy week of disputes spanning biotech milestones, reincorporation showdowns, shareholder voting schemes and cryptocurrency fiduciary rights.

Here's what you might have missed.

Supreme Court and Fiduciary Oversight

The Delaware Supreme Court affirmed Vice Chancellor J. Travis Laster's **dissolution of the Keynetics Shareholder Trust**, endorsing his remedy after the trust's repeated defiance of stock-holder restrictions protecting Idaho-based Keynetic Inc.'s S-corporation status. Chief Justice Collins J. Seitz Jr. said that the trust's years of contempt left dissolution as the viable sanction, upholding more than $225,000 in free awards and permanently barring chair Gary Lutin from managing Keynetics-related entities.

Separately, CytoDyn Inc. investors **filed a consolidated derivative complaint** alleging the board ignored multiple litigation demands to pursue claims against former executives accused of a "pump-and-dump" scheme involving its flagship drug leronlimab. The plaintiffs said directors acted in bad faith by letting potential claims expire despite former CEO Nader Pourhassan's later criminal indictment, arguing that "complete board turnover" was no excuse for inaction.

Merger and Milestone Battles

A Chancery judge **ordered shareholders of Padlock Therapeutics Inc.** to arbitrate claims that Bristol-Myers Squibb dodged up to $450 million in milestone payments from its 2016 acquisition, ruling that the merger's dispute-resolution clause functions as an arbitration agreement rather than a simple expert determination. The decision stays a separate good-faith claim pending arbitration. Investors accuse Bristol-Myers of manipulating patent filings to avoid triggering milestone payouts, charges the company denies.

Two Envestnet Inc. stockholders **sued the company's board**, its former CEO and Morgan Stanley over its $4.5 billion sale to Bain Capital affiliates, alleging the adviser's conflicts tainted the process. The suit contends Morgan Stanley, a repeat Bain client, guided directors toward a low-end $63.15-per-share deal while omitting higher rival bids and downplaying its own financial interests.

Control Fights and Corporate Maneuvers

Elon Musk's Tesla Inc. pressed Delaware's chancellor to **dismiss consolidated stockholder suits**, arguing that Tesla's 2024 reincorporation in Texas shifts governance disputes out of Delaware's reach under the internal-affairs doctrine. Plaintiffs countered that the alleged misconduct, including $16 billion in stock sales and self-dealing tied to Musk's other ventures, occurred before the move and remains subject to Delaware law. The debate comes as the state's Supreme Court weighs Tesla's separate appeal over Musk's rescinded $56 billion pay package.

Biotech firm **Ocugen Inc. faces a stockholder challenge** claiming its board rigged a 2024 vote to expand its authorized shares by issuing temporary preferred stock with inflated voting rights. Plaintiff Megan Prater alleges the short-lived Series C class violated the company's charter and Delaware law, and that a backdated certificate of correction exceeded statutory authority, rendering millions of shares void.

New Filings and Crypto Fallout

Delaware startup **DNA SEQ Inc. sued its former CEO** David M. Doyle for secretly enriching himself through unauthorized stock grants and deceptive loans that diluted shareholders. The complaint accuses Doyle of issuing more than a million restricted stock units, including 266,000 to himself, while fabricating records and threatening directors after his ouster. The company seeks to void the issuances and bar Doyle from contacting investors.

In another fiduciary-duty dispute, former RWA Co. executive **Max Glass accused the blockchain firm's controllers of coercing him** into signing away his rights before diverting RWA's planned stablecoin partnership with Germany's CrossLen GmbH into a new venture dubbed M^0. Glass alleges controllers and directors Gregory DiPrisco and Joseph Quintilian breached loyalty and noncompete duties by usurping the opportunity for themselves, later securing more than $100 million in financing. He seeks rescission of a 2022 release and a constructive trust over M^0 assets.

Quotable

"The trust's controller — Lutin, acting for Clickbank — did so anyway, when he sought to have Clickbank — an impermissible entity — take possession of trust certificates and Keynetics stock. These attempts persisted even after the court specifically warned Lutin that any further violations would result in the trust's dissolution," — Chief Justice Collins J. Seitz, as the Delaware Supreme Court affirmed Vice Chancellor J. Travis Laster's dissolution of the Keynetics Shareholder Trust, upholding more than $225,000 in free awards and permanently barring chair Gary Lutin from managing Keynetics-related entities.

--Editing by Alex Hubbard.

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Chancery Mulls Shorter Fuse For Some Court Of Equity Suits

By **Jeff Montgomery**

Law360 (October 27, 2025, 5:22 PM EDT) -- A Delaware jurist questioned Monday some applications of the Court of Chancery's "laches" counterpart to regular, statutory courts' three-year deadline for bringing claims, saying during arguments on dismissal of a special purpose acquisition company suit that claims in equity "may well" get less time to file.

Vice Chancellor Nathan A. Cook raised the point at the end of a dismissal hearing for a suit, filed in 2024, seeking damages tied to a $1.4 billion deal in which principals of Collective Growth Corp. took autonomous vehicle software provider Innoviz public in April 2021.

Investors in the SPAC, Collective Growth Corp., sued its sponsor, Shipwright SPAC I LLC, and others, challenging the deal in late March 2024. The case hit Chancery Court more than a week beyond a three-year threshold for commencing a regular suit making statutory claims, based on filing of an allegedly misleading proxy on March 11, 2021.

"At least as traditionally understood, at the point where we're bumping up at the end of two or three years, if you were to talk to an equity judge 50 or 75 years ago, they would have no problem saying, 'That's just too long, and we're not going to start rooting around in questions of "Should it have been two days sooner or three days sooner"'" to commence in Chancery Court, the vice chancellor said.

"It may well be that folks get less than three years to bring what are considered timely claims as a matter of equity," the vice chancellor said, referencing in part a January 2010 opinion by then Vice Chancellor Leo E. Strine — later Chief Justice — in the case of Sunrise Ventures LLC v. Rehoboth Canal Ventures LLC , observing that parties "may not slumber" on rights despite tolling limits.

Vice Chancellor Cook added that "some would argue" that a court of equity "never really intended a 'bright line' standard for laches," Chancery's label for unreasonable delay in bringing a claim.

The suit alleged misleading disclosures, a sale process tilted in favor of SPAC insiders and an inherently unfair and conflicted structure that rewarded Collective Growth directors and controllers and left public stockholders "holding the bag."

Kelly Tucker of Grant & Eisenhofer PA, counsel to a proposed stockholder class alleging that the deal gave insiders a substantial, unfair benefit, said the court should find that the claims accrued "when they lost their opportunity to redeem their shares," for their original $10 investment.

Inaccurate and inadequate deal disclosures, the suit said, caused stockholders to miss their opportunity to redeem their shares for the original value.

"Plaintiff reasonably relied on the competence and good faith of the fiduciaries," Tucker said.

Accusations included unjust enrichment and breaches of fiduciary duty, with the suit calling the transaction "abysmal" for investors. Shares fell from the $10 entry to less than $7.25, then $6.55 four months later, $3.92 one year later and continuing to fall.

In a brief filed ahead of the argument, attorneys for lead stockholder Sheadrick Richards argued that "the statute of limitations is tolled for claims of wrongful self-dealing, even in the absence of actual fraudulent concealment, where a plaintiff reasonably relies on the competence and good faith of a fiduciary."

Douglas L. Shively of BakerHostetler, counsel to Shipwright SPAC I LLC and Shipwright Partners and their principals, told the vice chancellor that the complaint included a substantial due diligence process.

"It's also important to know what's not alleged in this case. Unlike many SPAC cases in this court, it's not alleged that the proxy omitted significant information," Shively said.

There are no allegations in the complaint, Shively said, "that there is anything beside the disclosure risk that accounts for post transaction stock performance, let alone that any such thing was known to the defendant and not disclosed in the proxy statement."

Formed in 2016, Israel-based Innoviz Technologies Ltd. creates sensor technologies and software for autonomous vehicles. As a startup, it raised hundreds of millions of dollars through several funding rounds.

The company announced in December 2020 it would merge with Austin, Texas-headquartered Collective Growth and go public through a transaction that valued Innoviz at $1.4 billion at the time.

The SPAC told investors at the time it was looking for a merger target in the CBD industry or the industrial hemp sector.

Under its charter, Collective Growth had 18 months to find a merger partner and get stockholder approval, or liquidate and return the cash proceeds to its public stockholders, Richards said in an opposition to a motion to dismiss.

Richards' complaint asserted that Collective Growth CEO Bruce Linton and the SPAC's co-founder and president at the time, Geoffrey W. Whaling, dominated the process leading up to the merger, creating an unfair process that favored the blank-check firm's insiders.

The proxy statement given to Collective Growth stockholders allegedly "painted an overly rosy picture" of the Innoviz's business that failed to disclose the true amount of cash underlying each Collective Growth share, the complaint said.

When Collective Growth went public, Linton, a defendant in the Chancery Court case, had steered mergers and acquisitions involving cannabis businesses and was formerly the CEO of cannabis device maker Canopy Growth Corp.

Whaling, who is also a defendant in the case, was additionally serving as chair of the National Hemp Association, a hemp sector advocacy group.

Sheadrick Richards is represented by Michael J. Barry, Christine M. Mackintosh, Kelly L. Tucker and Jonathan C. Millis of Grant & Eisenhofer PA.

Shipwright SPAC I LLC and the other named parties are represented by Raymond J. DiCamillo, Kevin M. Gallagher and Sandy Xu of Richards Layton & Finger PA and Douglas W. Greene and Douglas L. Shively of BakerHostetler.

The case is Sheadrick Richards v. Shipwright SPAC I LLC et al., case number 2024-0320, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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Del. Dispatch: Chancery Expands On Caremark Red Flags

By **Gail Weinstein, Philip Richter and Rati Ranga** (October 27, 2025, 5:17 PM EDT)

This article is part of a monthly column that delves into the most significant corporate law cases emerging from Delaware and offers practice points arising from recent court decisions. In this installment, we examine the Delaware Court of Chancery's decision in Brewer v. Turner.

Gail Weinstein

Philip Richter

Rati Ranga

In Brewer v. Turner, the Delaware Court of Chancery on Sept. 29 **declined**, at the pleading stage of litigation, to dismiss a Caremark claim brought against directors of Regions Financial Corp., which operates Regions Bank.

The plaintiff sought a return to the company, from the directors personally, of the $191 million the company paid under a **consent settlement** with the Consumer Financial Protection Bureau in connection with the bank's allegedly illegal overdraft checking practices. The court, finding that the directors face a substantial likelihood of liability under Caremark for a failure of their fiduciary duties of oversight, rejected Regions' demand futility defense.

Key Points

The court viewed a whistleblower complaint from a disgruntled former executive as a red flag under Caremark.

We note that, in previous Caremark cases, the court often has not viewed a whistleblower complaint as a red flag, as it does not evidence that the company actually engaged in any wrongdoing. In the Regions case, however, the court emphasized that the whistleblower complaint came from the company's former deputy general gounsel — and, although there were reasons to doubt his credibility, his job had involved assessing legal risk.

We note also that the complaint was detailed and specific as to the alleged illegal conduct.

The court viewed the board's delay in ending the allegedly illegal practices as indicating bad faith under Caremark.

We note that, in previous Caremark cases, the court has often stressed that Caremark liability arises if a board consciously ignored a red flag — but, when a board instead responded to a red flag, legal challenges with respect to the substance or timing of the response will not be successful.

In the Regions case, the board discussed the whistleblower complaint and the practices detailed in it, and hired a law firm to investigate. Eighteen months after receiving the complaint, the company ended the allegedly illegal practices.

The court emphasized, however, that it was reasonably conceivable — the standard at the pleading stage — that, as the complaint asserted and the CFPB found, the board delayed ending the allegedly illegal practices to provide the company time to develop a plan to replace the revenue it knew would be lost when the practices ended.

The court viewed the consent settlement with the CFPB as a "corporate trauma" sufficient to give rise to Caremark liability.

Often, Caremark cases have involved corporate traumas relating to human health and safety — for example, airplanes falling from the sky, in Boeing; or contaminated ice cream poisoning consumers, in Blue Bell — or extreme financial losses.

In the Regions case, the court accepted without discussion that the $191 million fee paid to the CFPB rose to the level of a corporate trauma sufficient to give rise to Caremark liability. The court stated that, as "Regions offer[ed] retail banking services, it [was] reasonably conceivable that overdraft practices were a central compliance risk" for the company.

The decision reinforces a broader approach that the court seems to have been taking with respect to potential Caremark liability.

While historically Caremark claims were almost invariably dismissed at the pleading stage — given, in particular, the required element of bad faith by directors — in recent years, Caremark claims have survived the pleading stage in a number of cases.

In this case, the court arguably took a somewhat more expansive view than it has previously as to when a whistleblower complaint may constitute a red flag, when a board's delay in responding to a red flag that the board is not consciously ignoring may constitute bad faith, and when events may be deemed to rise to the level of a corporate trauma.

That said, the court has generally let Caremark claims survive only where it views the overall factual context as egregious or extreme. In the Regions case, the critical factor appears to have been that, in the court's view, the board — after being put on notice of possibly illegal practices — may have purposefully continued the practices for a year and a half based on concerns about the impact that ending the practices would have on corporate profits.

The new Delaware General Corporation Law amendments may discourage Caremark claims.

We note that the **amendments** narrow stockholders' access to books and records under Section 220 demands to investigate possible corporate wrongdoing. Accordingly, it may now be more difficult than in the past for stockholders to bring Caremark claims, which typically have been based on information discovered in books and records produced in response to Section 220 demands.

Background

The audit committee and risk committee of Regions' board each had oversight responsibility for Regions' practices relating to overdraft checking. When the CFPB increased its regulatory scrutiny of overdraft practices at banks, Regions formed a Consumer Transparency Working Group to look at Regions' overdraft practices.

"In November 2019, the Board received a draft complaint from [its] former Deputy General Counsel, Jeffrey A. Lee," the court wrote. Lee accused Regions of reverse discrimination against him when the company promoted a woman over him to become general counsel; stated that he had been viewed by the CEO as a troublemaker; asserted that he had been fired for raising issues about the legality of Regions' overdraft practices; and detailed how Regions' overdraft practices were illegal. Regions reached a confidential settlement with Lee within two weeks after receiving the complaint.

Then, the court wrote, in "September 2020, the CFPB served Regions with a Civil Investigative Demand ... concerning the Company's overdraft practices." In July 2021, Regions terminated its allegedly illegal overdraft practices. The CFPB concluded that Regions violated the CFPB's overdraft regulations from at least August 2018 to July 2021.

In September 2022, Regions entered into a consent order settlement with the CFPB, pursuant to which it paid $141 million — the amount of the allegedly illegal overcharges — and a $50 million civil penalty.

The plaintiff brought a derivative suit asserting Caremark claims. At the pleading stage, Chancellor Kathaleen St. J. McCormick held that demand on the board was futile, as a majority of the directors faced a substantial likelihood of liability under Caremark.

The chancellor concluded that the Lee complaint was a red flag that had provided the board with notice that Regions was engaging in illegal overdraft practices, and that it was reasonably conceivable that the board's delay in ending those practices constituted "consciously ignor[ing]" the red flag for Caremark purposes.

Discussion

The Caremark claim was brought.

The plaintiff asserted a red flags claim, alleging that Regions' board had consciously ignored the Lee complaint and continued to permit the company to engage in overdraft checking fees practices that were contrary to the requirements set forth in regulations promulgated by the CFPB.[1]

The plaintiff claimed that — as Lee had asserted and the CFPB had found — Regions delayed ending its allegedly illegal practices so that it could develop a plan to replace the revenue that would be lost when it ended the practices.

The court viewed the Lee complaint as a red flag.

Notably, in Caremark cases, the court often has found that a company's receipt of a whistleblower complaint — or, similarly, notice of a lawsuit or a subpoena — was not a red flag, as they do not evidence that the company actually engaged in wrongdoing.[2]

In this case, however, even though there were reasons to doubt the whistleblower's credibility,[3] the court found that his complaint was a red flag of illegal conduct by the company. The court emphasized that Lee's "job [had] included identifying legal risks"; that the complaint had been sent to the audit committee; and that, "[g]iven Lee's former position at the Company, it is reasonable to infer that the Board was made aware of the ... Complaint and its contents."

We note also that the complaint was detailed and specific — it related that Lee had advised management, as early as March 2019, that Regions' overdraft practices did not comply with federal regulations, and it explained specifically how the company's practices violated statutes and CFPB guidance on overdraft practices.

The court viewed the board's delay in responding to the red flag as bad faith.

Notably, in previous Caremark cases, the court has emphasized that a response by a board to a red flag need not have been effective nor timely in the plaintiff's view. The critical issue has been whether the board responded — and the nature and timing of the response have been viewed as being within the board's purview to decide.

The Regions case highlights that there are limits to this concept. The Regions directors argued that, although they did not act on the plaintiff's preferred timeline, they had hired a law firm to investigate the overdraft practices; as reflected in meeting minutes, they had discussed the Lee complaint, the CFPB's guidelines on overdraft fees and the company's overdraft practices; and they had expanded the scope of the working group's work to include the overdraft fees issue.

However, the court wrote: "Everyone knows that delay can be intentional and a tactic to avoid the consequences of acting appropriately," and "[c]onsciously delaying actions [to stop conduct] that a Board knows to be illegal supports an inference of bad faith."

The court rejected the Regions directors' argument that their hiring of a law firm to investigate the matter proved a lack of bad faith.

The board minutes reflected that the law firm delivered a report and recommendations, but the minutes produced to the plaintiff in her Section 220 demand were "largely redacted," so it was unknown what the findings and recommendations were.

The court wrote, "Hiring counsel to advise [on] regulatory risk is a good thing," but "merely hiring an attorney to look into something [is not] sufficient to avoid inferences of bad faith under Caremark."

The court viewed the board as having made a conscious decision to continue the allegedly illegal practices.

The Lee complaint asserted, and the CFPB found, that the board sought to delay terminating the allegedly illegal practices so that it could develop a plan to offset the loss of revenue that would occur when the practices were ended. The court, at the pleading stage, found this reasonably conceivable.

The court pointed to Lee's allegations that the Customer Transparency Working Group was not empowered to stop the allegedly illegal overdraft practices, and that management had hired an outside consultant whom it charged not just with reviewing the overdraft practices, but also with developing a plan for how Regions could increase its fee revenue even if it stopped collecting the allegedly illegal fees.[4]

Practice Points

Although the substance and timing of a board's response to a red flag of illegal corporate conduct is up to the board to decide, unreasonable delay in actually ending illegal practices may give rise to Caremark liability.

A board, having received a red flag warning of illegal conduct, should not only discuss and investigate the company's legal compliance, but should also seek to end the illegal conduct promptly.

If a law firm is hired to investigate, the board should be made aware of the firm's conclusions, consider its recommendations, and either implement the recommendations or record why they are not being implemented — all on a timely basis. Delaying to consider how to offset revenue losses that will result from ending illegal practices is not likely to be accepted by the court as an appropriate reason to delay ending the illegal practices.

When determining whether a whistleblower complaint — or notice of litigation or subpoena — is a red flag for Caremark purposes, a company should consider the overall context.

The Regions case highlights that complaints should be taken seriously when the information comes from an executive who had legal compliance responsibilities, and particularly where the information is detailed and specific with respect to the alleged legal noncompliance.[5]

If Caremark claims are asserted, the board should consider establishing a special litigation committee to determine if it is in the company's best interests to pursue the derivative litigation.

Notably, the board could add one or more new directors, who are independent, to comprise the special litigation committee.[6]

A board must oversee the company's central compliance risks.

The potential for Caremark liability is heightened when legal noncompliance — i.e., a "violation of positive law" — is involved. Although management may have day-to-day responsibility in these areas, identifying the central compliance risks and monitoring compliance is a board-level responsibility.

A board or board committee should consider preparing more robust, rather than cursory, meeting minutes relating to responses to red flags, and should avoid overredaction when producing books and records.

Where the minutes mention only that the topic was discussed, or where they are heavily redacted when produced, they will not necessarily support an argument that the board's response was not inappropriately delayed.

In light of the new DGCL amendments, boards should reconsider their practices with respect to Section 220 demands.

Books and records, as now defined by the DGCL amendments, should be maintained so that they can be produced in response to Section 220 demands, lessening the likelihood of having to produce other documents.

Also, companies must be ready to meet the new five-business day time period for producing books and records, and should consider taking advantage of the restrictions that can be imposed with respect to the confidentiality, use and distribution of documents that are produced.

Companies should keep in mind the new, higher burdens that the amendments impose for stockholder access to books and records.

We note that both exculpation and directors and officers insurance are unavailable for Caremark liability.

Given that Caremark claims generally require a finding that the director's or officer's failure to act rose to the level of bad faith, it should be kept in mind that a successful Caremark claim may not be covered by any Section 102(b)(7) exculpatory provisions in the corporation's charter, nor by any D&O insurance policies that the corporation may carry.

Gail Weinstein is senior counsel, Philip Richter is a partner and Rati Ranga is special counsel at Fried Frank Harris Shriver & Jacobson LLP.

Fried Frank managing partner Steven Epstein contributed to this article.

[1] Under Caremark, a board's duty of oversight requires directors (i) to make a good faith effort to ensure that the corporation has proper reporting systems in place (so-called "information system claims"), and (ii) to take action in response to "red flags" that indicate potential corporate wrongdoing that may lead to a corporate trauma (so-called "red flags claims").

[2] Red flags, for Caremark purposes, are events that put a board on notice of an impending corporate trauma. Because bad faith is a required element of a Caremark claim, the court has focused on how clear the warning signs were and how directly they were tied to the trauma the corporation suffered—that is, as the court states in Regions, the court considers whether a red flag was "sufficiently connected to the corporate trauma at issue to elevate the board's inaction in the face of the red flag to the level of bad faith."

[3] Specifically, Lee was a disgruntled former employee, who had been viewed by the CEO as "a troublemaker," and he was primarily making that the court characterized as an "unusual" complaint about reverse discrimination against him.

[4] It is unclear why the court did not evaluate the claims under the Massey prong of the Caremark doctrine. The court has evaluated under claims that directors and officers purposely caused the corporation to break the law in pursuit of greater profits. In these cases, the court has emphasized that "the law does not charter lawbreakers" (Massey Energy, 2011), and that Massey claims will survive where the corporation engaged in "recidivous law breaking" (Facebook, 2023). In Regions, the plaintiff asserted claims under both Massey and Caremark, but the court did not analyze the Massey claim, stating only, without explanation, that "Plaintiff's strongest theory is Caremark."

[5] We note that in one recent case (Garfield v. Allen, 2022), the court suggested that plaintiffs

can themselves generate red flags that put directors on notice by delivering a demand letter to the board prior to bringing litigation. The court emphasized that this outcome is problematic from a policy standpoint, since it opens space for plaintiffs to create their own claims by sending demand letters. But, the court stressed, from a doctrinal perspective, where the red flags come from does not matter —all that matters is that directors knew of a serious problem and consciously ignored it.

[6] The court recently considered for the first time, in Chou (2023), the validity of an SLC in the Caremark context. The court had found that the directors of AmerisourceBergen faced a substantial likelihood of liability under Caremark based on their apparently having consciously ignored multiple red flags of illegal conduct that led to corporate trauma. The board then added a new director, who was independent, and appointed him to be the sole member of an SLC to determine whether it was in the company's best interests to pursue the derivative case. The one-person SLC determined that the Board's actions did not merit pursuing the litigation. The court, applying the standard Zapata framework, concluded that the SLC had been independent and its investigation had been reasonable —and the case was dismissed.

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Epstein Docs From JPMorgan Case To Be Largely Unsealed

By **Dorothy Atkins**

Law360 (October 27, 2025, 8:11 PM EDT) -- A New York federal judge agreed Friday to unseal the "great majority" of documents sought by The New York Times and The Wall Street Journal in since-settled litigation alleging JPMorgan Chase aided Jeffrey Epstein's sex-trafficking activity, finding the names of individuals who discussed Epstein with bank executives must be unsealed.

In his order, U.S. District Judge Jed S. Rakoff agreed to unseal the majority of 158 exhibits that the U.S. Virgin Islands filed in July 2023 to support its motion for partial summary judgment in its suit against the banking giant over its ties to the billionaire financier and convicted sex offender, who was **found dead** by hanging in his jail cell in 2019 while awaiting trial on renewed sex trafficking charges.

Among the documents at issue, Rakoff agreed to unseal the name of an individual who corresponded with a JPMorgan executive specifically about Epstein, along with the name of another individual who asked a JPMorgan executive whether certain details regarding the individual's finances "might help in lining up a meeting with Epstein."

"Because personal finances and family affairs are 'traditionally considered private,' this individual has substantial privacy interests in his or her identity and in his or her personal and family finances," the order says. "The individual does not have such an interest, however, in the entirety of his or her correspondence with the JPMC executive in which the individual sought a connection with Epstein."

Additionally, the judge agreed to unseal dozens of other documents, including 18 exhibits JPMorgan had sought to keep private. In his ruling, Judge Rakoff rejected the bank's arguments that those documents contain information statutorily protected from disclosure under the Bank Secrecy Act and related regulations.

The judge ordered the bank to submit by no later than Oct. 30 its proposed redactions to protect the privacy interests of sex trafficking victims as well as individuals and entities that are unrelated to the litigation.

The unsealing ruling comes as Attorney General Pam Bondi has **faced criticism** for the U.S. Department of Justice's handling of demands to release files in the criminal case against Epstein, and as President Donald Trump has been **locked in a defamation legal battle** with The Wall Street Journal over a July 17 article reporting that he was among friends who sent Epstein a "bawdy" letter for his 50th birthday.

The current litigation by the U.S. Virgin Islands was launched against JPMorgan in December 2022, claiming the bank had processed over $1 billion for Epstein between 2003 and 2019, when he died in a federal prison in Manhattan. The USVI argues that insiders at the bank — including Jes Staley, former chief executive of JPMorgan Chase NA's investment bank, whom JPMorgan **later sued** and who was **hit with another lawsuit** by an Epstein victim — had known about aspects of Epstein's trafficking activity since at least 2006, the year he was arrested in Florida for soliciting prostitution.

Epstein's primary residence for years was an island within the U.S. Virgin Islands called Little Saint James, where he is accused of bringing underage girls to be abused. The bank denied knowing about Epstein's misconduct.

After both JPMorgan and the USVI filed summary judgment bids in July 2023 and after a hearing on the motions, but before the judge ruled, the bank and the USVI struck **a $75 million settlement** to resolve the dispute.

In a statement issued when the deal was announced in September 2023, the bank continued to deny the USVI's allegations, but noted that the settlement includes $55 million for USVI-based charitable organizations, including $30 million for charities that assist survivors of human trafficking and sex crimes, and $20 million in attorney fees.

But in the months following the settlement, in February 2024, nonparty The New York Times Co. sought to unseal certain exhibits that were filed during the summary judgment filings, including certain excerpts of the transcript of a lead plaintiff Jane Doe 1's deposition.

In July 2024, the judge granted the request in part, but denied the request in regard to Doe's deposition due to victim privacy concerns.

In August, Times reporter Matthew Goldstein again asked the court to unseal more documents, this time requesting the court specifically unseal financial documents that the USVI submitted with its motion for partial summary judgment.

The Wall Street Journal's publisher, Dow Jones & Co. Inc., also filed its own request, seeking the unsealing of even more exhibits attached to the USVI's motion that went beyond the financial documents. Together, the Times and the Journal's unsealing requests implicate 158 exhibits that the USVI filed in connection with its motion.

In his ruling Friday, Judge Rakoff noted that neither the USVI nor JPMorgan opposes the unsealing of a "significant majority of the documents," except for the names of the sex trafficking accusers, and so those documents will be unsealed with redacted accusers' names.

After individually reviewing each document, he also agreed to unseal 10 of 13 documents the bank had sought to seal and that originate from nonparties to the litigation, which include materials like probate claims against Epstein's estate and correspondence involving Epstein, JPMorgan and USVI agencies.

The judge concluded that the materials all constitute judicial documents submitted in support of the USVI's summary judgment motion, and — except three documents that include private information about the accusers — they are all subject to the First Amendment "right of public access" given that they were being used to support the resolution of the litigation ahead of trial.

However, the judge agreed to keep under seal photographs of two minor accusers, as well as the name of an individual who is identified in the documents as being gay. He also agreed to keep sealed certain exhibits that contain information about JPMorgan's clients or prospective clients other than Epstein, whose activities could pose various forms of financial or reputational risk to the bank.

"Having individually assessed the contested documents that contain information about other JPMC clients, the court concludes that the continued sealing or redaction of such information is justified," the order says. "The privacy interests of the individuals and entities whose sensitive personal and financial affairs are discussed therein are 'higher values' that merit protection."

New York Times spokesperson Charlie Stadtlander said Monday that the Times is pleased that the court has reaffirmed the public's right to see court documents, and "we are confident the unsealed records will shed light on the actions of the powerful people and institutions connected to Jeffrey Epstein."

The U.S. Virgin Islands Department of Justice said in a statement Monday that the department stands with all survivors of sexual abuse and exploitation.

"The women who were subjected to Jeffrey Epstein's horrific crimes have our unwavering support, including in their calls for the release of sealed court documents that may shed light on Epstein's sex trafficking scheme and those who were complicit in his actions," the statement says.

Counsel and representatives for the other parties didn't immediately respond to requests for comment Monday.

As of Monday, the documents at issue had not yet been unsealed, according to the docket.

The New York Times Co. and reporter Matthew Goldstein are represented in-house by David E. McCraw.

Dow Jones & Co. Inc., publisher of The Wall Street Journal, is represented by Matthew A. Leish of Klaris Law PLLC.

The U.S. Virgin Islands is represented by Linda Singer of Motley Rice LLC.

JPMorgan is represented by Christopher Bouchoux of WilmerHale.

The case is the Government of the U.S. Virgin Islands v. JPMorgan Chase Bank NA, case number 1:22-cv-10904, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Elliot Weld and Phillip Bantz. Editing by Kristen Becker.

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7th Circ. Mulls Standing In BIPA Suit Against Schwab Vendor

By **Celeste Bott**

Law360 (October 27, 2025, 6:20 PM EDT) -- Two Seventh Circuit judges on Monday grilled an attorney for a proposed class of Illinois residents seeking to hold a voiceprint authenticator used by Charles Schwab liable under a biometrics privacy law, questioning how they were injured and whether they have standing if the data was collected on behalf of an institution exempt from the law's requirements.

Lead plaintiff Norma Cisneros is seeking to revive her putative class action targeting Nuance Communications' allegedly illegal voiceprint collections after a lower court found that Nuance, as a software technology vendor to Schwab, could be considered a financial institution subject to the federal Gramm-Leach-Bliley Act, and thus exempt from Illinois' Biometric Information Privacy Act.

Specifically, Cisneros claimed in her complaint that when she activated the "voice ID" authentication feature offered by her banking provider Schwab, she wasn't aware that her voiceprint would be collected and stored by Nuance without her knowledge or consent.

During oral arguments in Chicago on Monday, U.S. Circuit Judge Frank Easterbrook quickly made clear he had a "major worry" about the fact Nuance collected the data through Schwab and for Schwab.

"Let's assume that you're right that Nuance can't be treated as a financial institution itself. My question is how can you prevail without requiring Schwab to do something? And you concede that Schwab is a financial institution," the judge said. "It's Schwab that has hired Nuance to do particular things. It's Schwab with whom the customers contact. And Schwab can't be required to comply with this state law. So how can you get anywhere in this case?"

Brandon Wise of Peiffer Wolf Carr Kane Conway & Wise LLP, arguing for the putative class, pointed out that one of BIPA's requirements would only necessitate that Nuance, not Schwab, make publicly available a policy governing its data retention and destruction.

But that poses a standing problem, Judge Easterbrook countered, as the Seventh Circuit has held that allegations under BIPA Section 15(a), which includes the policy requirement, cannot be litigated in federal court, referencing the court's 2020 ruling in Bryant v. Compass Group U.S.A.

Both Judge Easterbrook and U.S. Circuit Judge Michael Scudder then pressed Wise repeatedly to show how the first amended complaint alleges an injury in fact that would give Cisneros standing on the 15(a) claim.

"You're not injured in an Article III standing sense by a defendant's failure to comply with law, without more," Judge Scudder said.

Wise insisted Nuance had an independent duty to obtain the written, informed consent of those whose data it collected.

"Why, when it's Schwab who deals with the customer?" Judge Easterbrook asked.

Wise said BIPA doesn't have a relationship or customer requirement, and the act of having the data in your possession triggers the requirements.

Judge Easterbrook appeared skeptical, posing a hypothetical in which Schwab gathers the data and sends it to the KGB, questioning if the KGB would then be required to get customers' consent.

Andrianna Kastanek of Jenner & Block LLP, arguing for Nuance, said the judges' questioning illustrates the "double bind" the plaintiff is in, where the allegations separate from Schwab, which is exempt from BIPA, do not appear to have standing in federal court.

But she, too, drew questioning from Judge Easterbrook when she argued the district court correctly found Nuance is independently exempt from BIPA's scope.

"I'm sure Schwab buys office equipment from Office Depot. Is Office Depot a [financial] institution?" he asked.

The Gramm-Leach-Bliley Act defines "financial institution" as "any institution the business of which is engaging in financial activities," and financial activities include anything the Federal Reserve Board determined "to be so closely related to banking or managing or controlling banks," Nuance contended in its brief to the court. The Federal Reserve Board further determined these kinds of close relations cover nonbank subsidiaries that provide authentication services for banks, the company argued.

After saying she disagreed "wholeheartedly" with that premise, Judge Scudder asked Kastanek what the limited principle would be for a financial institution's vendors.

It has to be an institution, in the business of financial activities, that comes into possession of biometric information in conducting that business, she said.

"Providing office services to a financial institution doesn't fall within any of those limits," she said.

The appellate court ordered the parties to submit supplemental briefing as to whether there's an Article III case or controversy before it rules on the case.

U.S. Circuit Judges Frank Easterbrook, Michael Scudder and Joshua Kolar sat on the panel for the court on Monday.

The putative class is represented by Brandon Wise of Peiffer Wolf Carr Kane Conway & Wise LLP and Eugene Turin of McGuire Law PC.

Nuance is represented by Andrianna D. Kastanek, Sophia Montgomery, Lindsay Harrison and David C. Layden of Jenner & Block LLP.

The case is Norma Cisneros v. Nuance Communications Inc., case number 24-2982, in the U.S. Circuit Court of Appeals for the Seventh Circuit.

--Editing by Philip Shea.

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AGs Call Landlord Deals In RealPage MDL 'Weak'

By **Bryan Koenig**

Law360 (October 27, 2025, 7:40 PM EDT) -- A quartet of state attorneys general urged a Tennessee federal judge to hold off on approving $141.8 million in class settlements resolving claims that major landlords used RealPage to fix rent prices, arguing the "weak injunctive terms" and "meager monetary relief" interferes with their own cases.

In a statement of interest Friday, the attorneys general of Kentucky, Maryland, New Jersey and the District of Columbia raised concerns specifically about the multidistrict litigation settlements interfering with their cases targeting six "overlapping" defendants — Avenue5 Residential LLC, Bell Partners Inc., BH Management Services LLC, Bozzuto Management Co., First Communities Management Inc. and Greystar Management Services LLC.

"The proposed class settlements jeopardize our residents' ability to obtain meaningful relief through sovereign enforcement efforts," the enforcers said. "The settlements purport to enjoin class members from prosecuting claims against overlap defendants in any forum, potentially interfering with the state AGs' ability to call witnesses or to continue prosecuting their pending enforcement actions."

In some cases, the enforcers warned, courts have blocked attorneys general from suing on behalf of their citizens, via their parens patriae authority, "when their citizens have already received compensation (however nominal) through class action settlements."

The attorneys general of D.C. and the three states had already telegraphed their concerns **earlier this month** in seeking permission Oct. 15 to file the statement, which U.S. District Judge Waverly D. Crenshaw Jr. approved three days later. Participating in that initial filing, but not Friday's, was Washington state, while Kentucky didn't appear until the new statement of interest. The enforcers' concern: 26 settlements worth $141.8 million, which do not include RealPage itself, with worries about broad releases and insufficient notice of the deals to enforcers as required under the Class Action Fairness Act.

As private plaintiffs and government enforcers at **the state** and federal levels target **landlords**, hotel chains and the software companies like RealPage that allegedly allow them to fix rental prices, enforcers' actions should take priority over the MDL and that any concerns they raise deserve significant weight, the four attorneys general said Friday.

"When state parens patriae actions and class actions regarding the same conduct proceed concurrently, courts often recognize that state cases are superior in the context of Rule 23 class certification, even if the state action is filed later in time than the class action," they said, arguing state enforcers are "best positioned" to protect their citizens and that they don't suffer from the same major hurdle of class certification to represent those citizens.

The enforcers said the court should deny preliminary approval for the deals, or at least hold approval "in abeyance" until they've had a chance to work with the parties to clarify "the scope and impact of the proposed settlements" and the settling defendants have fulfilled their CAFA notice requirements.

They argued that none of the overlapping defendants have complied with CAFA's requirements in their notice to the four enforcers, calling the notices they've received "only placeholders" that "fail to provide even basic information about class members, such as an estimated number of class members in the notified state." Instead, they said the notices merely say the parties can't yet know how many people in a given state may be covered by the deals.

The CAFA information gaps, according to the filing, also "highlight a broader concern" that the parties haven't adequately thought through the implication of the deals. The enforcers said there's no estimates about how much each class member may get or how funds would be distributed. In the heavily redacted brief, they said that their own cases have turned up "substantial liability evidence" not available to the MDL plaintiffs who negotiated the settlements "well before the completion of fact discovery in the MDL."

Based on the information available, the enforcers argued the deals simply aren't strong enough. What injunctive relief there is only bars "landlords from using [RealPage's revenue management] software that generates prices using competitors' non-public data," while failing to tackle "core features of this software that limit competition" like rules setting pricing floors.

"Moreover, all overlap defendants save Greystar are allowed to continue using RealPage's RM software," they said, asserting that the Greystar deal was copied from **that company's agreement** with the U.S. Department of Justice. "Proposed settlements that purport to release our citizens' claims against landlords for having used pricing software to charge inflated rents — while allowing landlords to continue their use of that exact software — pose significant concerns for the state AGs."

While the CAFA notices don't offer damage estimates, the enforcers said "a very rough analysis suggests that these settlements reflect very low recoveries compared to the harms suffered."

Counsel for one of the settling defendants, Windsor Property Management Co., declined comment Monday. Representatives for the enforcers, the plaintiffs, RealPage and the other settling defendants did not immediately respond Monday to requests for comment.

The settling defendants responded to the statement of interest Saturday with a request to file an answering brief. "Settling defendants believe a response is necessary to correct legal and factual assertions made by those attorneys general," they said in the one-paragraph filing. Judge Crenshaw granted their request Monday.

Washington, D.C., is represented by John Spragens of Spragens Law PLC and Adam Gitlin, Mehreen Imtiaz and Ashley Walters of the Office of the Attorney General for the District of Columbia, Public Advocacy Division.

Maryland is represented by Schonette J. Walker and Melissa L. English of the Office of the Attorney General of Maryland.

New Jersey is represented by Brian F. McDonough, David Reichenberg, Jesse J. Sierant and Douglas T. Post of the New Jersey Office of the Attorney General.

Washington is represented by Rachel A. Lumen of Washington's Office of the Attorney General.

Kentucky is represented by Jonathan E. Farmer with the Kentucky Attorney General's Office.

D.C., Maryland and New Jersey are also represented by Emmy L. Levens, Robert A. Braun and Aaron J. Marks Cohen Milstein Sellers & Toll PLLC.

The proposed class is represented by Tricia R. Herzfeld and Anthony A. Orlandi of Herzfeld Suetholz Gastel Leniski & Wall PLLC, Patrick J. Coughlin, Carmen A. Medici, Fatima Brizuela, Isabella De Lisi, Patrick McGahan, Amanda F. Lawrence, Michael Srodoski, G. Dustin Foster, Matthew J. Perez and Daniel F. Loud of Scott + Scott Attorneys at Law LLP, Stacey Slaughter, Thomas J. Undlin, Geoffrey H. Kozen, J. Austin Hurt, Caitlin E. Keiper, Navy A. Thompson, Julie C. Moroney and Laura Song of Robins Kaplan LLP and Swathi Bojedla, Mandy Boltax, Gary I. Smith Jr., Joey Bui, Samuel Maida, Katie R. Beran and Mindee Reuben of Hausfeld LLP.

RealPage is represented by Jay Srinivasan, Daniel G. Swanson, Stephen Weissman, Michael J. Perry, S. Christopher Whittaker and Ben A. Sherwood of Gibson Dunn & Crutcher LLP and Thomas H. Dundon of Neal & Harwell PLC.

Avenue5 Residential LLC is represented by Danny David, James Kress and Paul Cuomo of Baker Botts LLP and John R. Jacobson and Milton S. McGee III of Riley Jacobson PLC.

Allied Orion Group LLC is represented by Edwin Buffmire, Michael Moran and Michael J. Murtha of Jackson Walker LLP, Kevin Fulton of The Fulton Law Group PLLC and Samuel P. Funk of Sims Funk PLC.

Bell Partners Inc. is represented by Marguerite S. Willis, Michael A. Parente and Margaret M. Siller of Maynard Nexsen PC.

Bozzuto Management Co. is represented by James D. Bragdon and Sam Cowin of Gallagher Evelius & Jones LLP, Philip A. Giordano of Hughes Hubbard & Reed LLP and Charles E. Elder of Bradley Arant Boult Cummings LLP.

ConAm Management Corp. is represented by Benjamin R. Nagin of Sidley Austin LLP.

CH Real Estate Services LLC is represented by Danielle R. Foley and Morenike Oyebade of Venable LLP.

CWS Apartment Homes LLC is represented by Ann MacDonald and Barry Hyman of ArentFox Schiff LLP.

FPI Management Inc. is represented by Charles H. Samel and Edward C. Duckers of Stoel Rives LLP and George A. Guthrie of Wilke Fleury LLP.

Lantower Luxury Living LLC is represented by Michael W. Scarborough and Dylan I. Ballard of Vinson & Elkins LLP.

First Communities Management Inc. is represented by Richard P. Sybert of Gordon Rees Scully Mansukhani LLP.

Mission Rock Residential LLC is represented by Yonaton Rosenzweig, Fred B. Burnside and MaryAnn T. Almeida of Davis Wright Tremaine LLP.

Simpson Property Group LLC is represented by Brent Justus and Nick Giles of McGuireWoods LLP.

WinnCompanies LLC and WinnResidential Manager Corp. are represented by Evan Fray-Witzer of Ciampa Fray-Witzer LLP.

Prometheus Real Estate Group Inc. is represented by Heather T. Rankie and Judith A. Zahid of Zelle LLP.

Thrive Communities Management LLC is represented by Benjamin I. VandenBerghe and Kaya R. Lurie of Montgomery Purdue PLLC.

Apartment Income REIT LLC is represented by Kathryn A. Reilly, Michael T. Williams and Judith P. Youngman of Wheeler Trigg O'Donnell LLP and Mark Bell of Holland & Knight LLP.

Sherman Associates Inc. is represented by John J. Sullivan, Thomas Ingalls, Robert S. Clark and Nathan J. Larkin of Cozen O'Connor.

Kairoi Management LLC is represented by Eliot Turner and Alex Cummings of Norton Rose Fulbright US LLP.

Pinnacle Property Management Services LLC is represented by Kenneth S. Reinker, Jeremy Calsyn and Joseph M. Kay of Cleary Gottlieb Steen & Hamilton LLP.

ECI Management LLC is represented by Jeffrey S. Cashdan, Emily S. Newton and Lohr A. Beck of King & Spalding LLP.

BH Management Services LLC is represented by Ian Simmons and Patrick J. Jones of O'Melveny & Myers LLP.

Brookfield Properties Multifamily LLC is represented by Yehudah L. Buchweitz and Jeff L. White of Weil Gotshal & Manges LLP and E. Steele Clayton IV of Bass Berry & Sims PLC.

Knightvest Residential is represented by Danny David and Ed Duffy of Baker Botts LLP and Cliff Wade and Chelsea Futrell of Baker Lopez PLLC.

Greystar Management Services LLC is represented by Karen Hoffman Lent, Boris Bershteyn, Evan Kreiner, Sam Auld and Adam Kochman of Skadden Arps Slate Meagher & Flom LLP and Joshua C. Cumby, F. Laurens Brock and Rocklan W. King III of Adams & Reese LLP.

Windsor Property Management Co. is represented by Stephen M. Medlock, Craig P. Seebald and Christopher W. James of Vinson & Elkins LLP and Jessalyn H. Zeigler of Bass Berry & Sims PLC.

Highmark Residential LLC is represented by Mike Bonanno of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In re: RealPage Inc. Rental Software Antitrust Litigation (No. II), case number 3:23-md-03071, in the U.S. District Court for the Middle District of Tennessee.

--Additional reporting by Isaac Monterose. Editing by Jay Jackson Jr.

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Apple Gets Class Decertified In App Store Antitrust Case

By **Hailey Konnath**

Law360 (October 27, 2025, 10:59 PM EDT) -- A California federal judge Monday decertified a class of consumers claiming Apple violated antitrust laws with its App Store policies, finding that the plaintiffs' damages expert isn't qualified to do the work and submitted an analysis that included several "alarming" errors.

U.S. District Judge Yvonne Gonzalez Rogers **granted** Apple's motion for decertification, noting that when she certified the class more than a year ago, she warned the consumers that she would consider decertifying the class if their expert failed to reasonably determine whether and to what extent consumers were harmed. She said she had been assured that the consumers' experts could match Apple ID accounts with actual consumers, and that would allow them to prove consumer harm.

"The expert — on which plaintiffs chose to rely — could not do so and instead conducted an error-ridden 'matching' attempt," Judge Gonzalez Rogers said.

The judge also granted Apple's motion to exclude the report prepared by plaintiffs' expert Darryl Thompson, the chief information officer at JND Legal Administration. Thompson oversees the IT organization, supervises class notice and distribution, and handles data management and processing, according to the order.

Critically, Thompson has conceded that he "was not aware of, and his methodology was not rooted in, literature or studies related to data matching," the judge said. "Nor was Thompson familiar with rudimentary statistical concepts."

"The court finds that Thompson is not qualified to serve as an expert in identifying payors for purposes of consumer plaintiffs' damages model," Judge Gonzalez Rogers said.

The litigation goes back to 2011. The consumers claim Apple forces iPhone users to get apps through its App Store and also requires developers to use Apple's payment systems. Apple collects commissions of up to 30% on apps and in-app purchases; the suit alleges those costs are then passed off to consumers, who pay higher prices than they would have otherwise.

Judge Gonzalez Rogers initially rejected the consumers' certification bid, pointing to issues with their experts' damages model. However, in **February 2024**, she found that they could likely address those problems and certified a nationwide class of individuals who purchased one or more iOS applications or application licenses from Apple or who paid via in-app purchases since 2008. Members of the class must have spent more than $10 in that time period, according to the order.

In Monday's order, Judge Gonzalez Rogers said Apple's expert, Victoria Stodden, couldn't replicate Thompson's work and identified several errors. For one, Thompson failed to match all payment records belonging to the named plaintiff, determining that "Rob Pepper" and "Robert Pepper" were different people, according to the order.

"Among other errors, Thompson lumped together all payment records for individuals that shared the first name Kim, despite that those over 40,000 records have nothing else in common, including different last names and addresses," the judge said. "He did not omit, or otherwise address, records that inappropriately listed Apple's headquarters or 'N/A' as the payor address."

Thompson's method also didn't recognize that Bronx/Manhattan matched with New York City, according to the order. At his deposition, Thompson conceded that his work contained errors, Judge Gonzalez Rogers noted.

Ultimately, the judge found that Thompson didn't use a reliable method to "clean" Apple's payer data — or the process to detect and remove errors and inconsistencies from the data.

"In sum, the court finds that Thompson's expert testimony should be excluded because he is not qualified, his methods are not reliable and he did not reliably apply his methods and his testimony is not relevant to this action," Judge Gonzalez Rogers said. "The court has no confidence in Thompson's work."

And without Thompson's report, the litigation "is back to square one," she said. "That alone requires decertification."

Judge Gonzalez Rogers said that the consumers have indicated that they would appeal the decision. If they do, she said she is "inclined to stay the action" because trial deadlines are looming.

Apple said in a statement Monday, "We're pleased the court recognized the plaintiffs failed to demonstrate the alleged harm to consumers and decertified the class."

"We continue to invest significantly to make the App Store a safe and trusted place for users to discover apps and a great business opportunity for developers," it said.

Mark Rifkin, a lawyer for the consumers, told Law360, "We are of course disappointed that the court chose to decertify this important class action, and we are considering our next steps to protect millions of consumers harmed by Apple's unlawful App Store monopoly."

Apple filed a **summary judgment motion** in August, along with a separate motion seeking to decertify the class, arguing the antitrust claims for a class of more than 185 million consumers targeting its App Store policies shouldn't go to trial because the allegations focus on legitimate product design and business decisions, not anticompetitive conduct.

The consumers **responded last month**, arguing that Apple restricts the distribution of apps on its devices to block competition, not as part of a legitimate design choice. The response said there's still a factual dispute about whether Apple has engaged in anticompetitive conduct, noting that the consumers have offered evidence showing the technical restrictions were part of a scheme that reached beyond mere design decisions.

During **oral arguments** on Oct. 14, Judge Gonzalez Rogers indicated she was likely to decertify the class but probably wouldn't grant Apple's summary judgment motion.

The consumer class is represented by Betsy C. Manifold, Rachele R. Byrd, Mark C. Rifkin, Matthew M. Guiney, Thomas H. Burt and Stephanie Aviles of Wolf Haldenstein Adler Freeman & Herz LLP and David C. Frederick, Mark C. Hansen, Aaron M. Panner, James Webster, Lillian V. Smith, Alex A. Parkinson, Alex Treiger, Caroline Schechinger, Kyle M. Wood, Ashle J. Holman, Anna K. Link, Anthony R. Guttman and Kelley C. Schiffman of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Theodore J. Boutrous Jr., Daniel G. Swanson, Dana L. Craig, Caeli A. Higney, Julian W. Kleinbrodt, Eli M. Lazarus and Harry R.S. Phillips of Gibson Dunn & Crutcher LLP.

The case is In re: Apple iPhone Antitrust Litigation, case number 4:11-cv-06714, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger, Matthew Perlman, Dorothy Atkins, Bryan Koenig and Lauren Berg. Editing by Michael Watanabe.

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Families Back Experts In Heavy Metal Baby Food MDL

By **Emily Field**

Law360 (October 27, 2025, 10:22 PM EDT) -- Families swung back Friday at bids to disqualify their experts in multidistrict litigation consolidated over claims that baby foods made by Gerber, Nurture and Beech-Nut contain heavy metals, telling a California federal judge that their experts' opinions are backed by a wealth of scientific data and that it's time to set bellwether trials.

The families told the court that their experts — who include epidemiologists, toxicologists and other scientists — are imminently qualified to present their testimony on babies' risks of developing autism spectrum disorder and attention-deficit hyperactivity disorder from ingesting heavy metals. They have taken into account reliable materials and used tried methodologies to come to their opinions, the families said in their opposition.

The question here is whether the eight experts' methods and opinions meet the elements of the Federal Rules of Evidence, not whether these experts are correct, the families said. That issue is left up to the fact-finder.

Instead, the companies are trying to reframe the question on general causation, misstate what the experts said and challenge the science, the families said.

"Defendants invite this court to don a lab coat and wade into scientific debates," the families said. "And, while the court will surely have to engage on core scientific issues to properly adjudicate defendants' Rule 702 motions, what the defendants have done here is a step too far."

The families asked U.S. District Judge Jacqueline Scott Corley to dismiss the motions to bar their experts and to direct the parties to prepare a process for bellwether trials.

"It is time for this case to proceed with full discovery and trial," the families said.

The MDL is an amalgamation of suits filed last year by parents and guardians who claim their children developed autism and ADHD after being exposed to heavy metals in baby food. The suits lean on a 2021 congressional report that said baby foods from major companies were tainted with dangerous levels of heavy metals such as lead and arsenic, according to the court record.

"Unlike other mass torts, where the science is still emerging, here, there is robust agreement and near-consensus within the scientific community that lead and arsenic — including ingested lead and arsenic — cause neurodevelopmental disabilities, which includes ASD and ADHD," the families said.

There are hundreds of studies and experiments that repeatedly show that children exposed to lead early on develop brain damage that increases the risk of developing behaviors that lead to a diagnosis of ASD or ADHD, the families said.

Gerber and others argue that there are no studies that examine whether eating baby food increases the risk of developing ASD or ADHD, the families said.

"This is a complete red herring as there are hundreds of studies examining whether the toxic agents at issue, i.e., lead and arsenic, are associated with ASD and/or ADHD," the families said. "And, as explained by plaintiffs' experts, there is consensus within the scientific community that heavy metal exposure harms early neurodevelopment irrespective of the source."

The companies also argue that the experts' methods can't be relied upon since the fruits and vegetables in baby food are good for brain development, the families said.

"This is akin to arguing that water contaminated with poison is safe because water 'is good for humans,'" the families said. "But simply saying 'nutritious food' is 'good for babies' ignores the real question: whether otherwise nutritious food contaminated with toxic heavy metals increases the risk of neurodevelopmental harm."

Representatives of the parties didn't immediately respond to requests for comment Monday.

In April, the judge cut overseas food makers Nestlé, Danone and Hero from the litigation while ordering that domestic subsidiaries that manufactured the products must remain as defendants.

Judge Scott Corley determined there was a lack of evidence that the foreign parent companies, Nestlé SA, Hero AG and Danone SA, were directly responsible for any lack of testing for toxic metals in the baby food or that they knowingly sold tainted products.

The plaintiffs, parents and guardians of children with autism spectrum disorder who ate the baby food in dispute, had failed to show that the court had personal jurisdiction over the companies and seemingly confused passing references in labeling as indicators of direct involvement, the judge said.

The MDL will move forward with a focus on the baby food manufacturers, including Gerber, Beech-Nut, Nurture, Plum PBC — a former subsidiary of Campbell now owned by Sun-Maid — Walmart Inc., Sprout Foods Inc. and Neptune Wellness Solutions Inc.

The families are represented by Wisner Baum, Wagstaff Law Firm, Walsh Law PLLC, Motley Rice LLC, Moore Law Group PLLC, Peiffer Wolf Carr Kane Conway & Wise LLP, The Russo Firm, DiCello Levitt LLP and Pendley Baudin & Coffin LLP, among others.

Walmart and Beech-Nut are represented by Livia M. Kiser, Michael Anthony Lombardo and Todd P. Davis of King & Spalding LLP.

Hain Celestial Group is represented by Michael X. Imbroscio, Phyllis A. Jones and David N. Sneed of Covington & Burling LLP.

Gerber is represented by Bryan A. Merryman of White & Case LLP and Joseph G. Petrosinelli and Neelum J. Wadhwani of Williams & Connolly LLP.

Sun-Maid and Plum are represented by Hope S. Freiwald and Michelle H. Yeary of Dechert LLP.

Nurture is represented by Brooke Killian Kim, Mary Gately and Loren H. Brown of DLA Piper.

Sprout Foods is represented by Michael R. Klatt and Nancy Mae Erfle of Gordon Rees Scully Mansukhani LLP.

The case is In re: Baby Food Products Liability Litigation, MDL number 3101, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jonathan Capriel. Editing by Nick Petruncio.

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Minn. Court Blocks Immediate Appeal In Pork Price-Fixing Suit

By **Joyce Hanson**

Law360 (October 27, 2025, 11:34 PM EDT) -- A Minnesota federal court refused Monday to allow immediate appeals for its summary judgment ruling in multidistrict litigation over alleged price-fixing in the pork industry, saying certain pork producers and a benchmarking company have not properly articulated a controlling question of law.

U.S. District Judge John R. Tunheim denied two separate motions by Triumph Foods LLC and by pork producers and Agri Stats Inc. to certify an order for interlocutory appeal under the portion of the U.S. Code that governs interlocutory decisions.

The motions came following **the judge's 232-page March 31 opinion** that mostly denied multiple summary judgment motions from Tyson Foods Inc. and other pork producers seeking wins in the antitrust suit alleging they conspired with data firm Agri Stats to fix pork prices and reduce supply.

On Monday, the judge found that under Title 28 of the U.S. Code, Section 1292, the court has discretion to certify an order for interlocutory appeal. But, the judge said, the companies' question — of whether it is permissible to infer an unlawful conspiracy from evidence that competitors "participated in a third-party service that provided historical average pricing information" — incorrectly mixes law and fact.

"For two reasons, the court concludes that the query posed by the moving defendants is not a controlling question of law but rather is a mixed question of law and fact," Judge Tunheim wrote.

First, he said, in his April summary judgment order he concluded that a reasonable jury could find that the reports provided by the third-party service "could be used by subscribers to collectively target higher prices than they otherwise would have." Also, he said, his order found that the reports included not just historical average pricing information but instead "a recipient's sales information by product against averages for similar, bundled products sold by competitors."

Secondly, the judge said, he did not hold that an unlawful conspiracy can be inferred solely from evidence that competitors participated in a third-party service that provided historical average pricing information, as the proposed question implies.

"The moving defendants' proposed question would be controlling only if the court had found that participation in the third-party service was necessary to infer the defendants had participated in an unlawful ... conspiracy. The court made no such finding," Judge Tunheim wrote.

Agri Stats, Clemens Food Group LLC, The Clemens Family Corp., JBS USA Food Co., Seaboard Foods LLC, Seaboard Corp., Smithfield Foods LLC, Triumph and several Tyson entities moved the judge on April 29 to certify his order for interlocutory appeal.

Separately, Triumph asked that same day for an appearance before the judge to argue the motion, but the judge denied the company's request.

More recently, on Oct. 22, **Triumph tried again to convince Judge Tunheim to reconsider** throwing out claims against it concerning alleged price-fixing in the pork industry, saying it shouldn't be held responsible for the alleged actions of hog farmers and the company that sells the pork it processes.

Triumph said in its motion seeking reconsideration of the March 31 summary judgment ruling that it stemmed from the pork purchasers convincing the court to hold it responsible for alleged reductions in hog supplies because the farms that supply the hogs hold minority stakes in the company.

"But there is no evidence that those non-party hog farms ever reduced market hog production, or did so in furtherance of any conspiracy," Triumph's motion said. "And more to the point, there is no legal theory or evidence to support connecting Triumph to them, much less holding Triumph liable for under this fabricated narrative regarding non-parties."

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

The consumer indirect purchasers are represented by Shana E. Scarlett, Rio S. Pierce, Steve W. Berman, Breanna Van Engelen, Elaine T. Byszewski and Abigail D. Pershing of Hagens Berman Sobol Shapiro LLP and Daniel E. Gustafson, Daniel C. Hedlund, Michelle J. Looby and Joshua J. Rissman of Gustafson Gluek PLLC.

The institutional indirect purchasers are represented by Shawn M. Raiter of Larson & King LLP and Michael J. Flannery of Cuneo Gilbert & LaDuca LLP.

Sysco Corp. is represented by James J. McGuire of Greenspoon Marder LLP.

The Kroger Co., Albertsons Cos. Inc., Hy-Vee Inc., Save Mart Supermarkets and US Foods Inc. are represented by Samuel J. Randall and William J. Blechman of Sperling Kenny Nachwalter.

Amory Investments LLC is represented by Derek T. Ho and Collin R. White of Kellogg Hansen Todd Figel & Frederick PLLC.

McDonald's Corp., PJ Food Service Inc., Aramark Food and Support Services Group Inc., Target Corp., Gordon Food Service Inc., Glazier Foods Co., Quality Supply Chain Co-Op Inc., Sherwood Food Distributors LLC, Harvest Meat Co. Inc., Western Boxed Meat Distributors Inc., Hamilton Meat LLC, Jetro Holdings LLC, Maximum Quality Foods Inc., BJ's Wholesale Club Inc., Kraft Heinz Foods Co., Winn-Dixie Stores Inc. and Bi-Lo Holdings LLC are represented by Mark A. Singer of Cadwalader Wickersham & Taft LLP.

Meat Distributors Inc., Topco Associates LLC, Alex Lee Inc./Merchants Distributors LLC, Associated Food Stores Inc., Brookshire Grocery Co., Colorado Boxed Beef Co., Certco Inc., The Golub Corp., Nicholas & Co., PFD Enterprises Inc., SpartanNash Co., Springfield Grocer Co., Van Eerden Foodservice Co., URM Stores Inc., Giant Eagle Inc. and UniPro Foodservice Inc. are represented by Brian C. Hill of Marcus & Shapira LLP.

Triumph is represented by Aaron Chapin, Christopher A. Smith, Jason Husgen, Sarah L. Zimmerman, Kate Ledden, Tanner Cook and A. James Spung of Husch Blackwell LLP.

The case is In re: Pork Antitrust Litigation, case number 0:18-cv-01776, in the U.S. District Court for the District of Minnesota.

--Additional reporting by Dorothy Atkins and Matthew Perlman. Editing by Jay Jackson Jr.
