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This 🚀 Can Cause Trouble as Emojis Help Prove Securities Fraud

Oct. 31, 2025, 1:30 AM PDT

A veteran in-house lawyer recently joked that she needed to "up her emoji game" just to keep pace with her company's younger workforce. It was a light moment—until she added that emojis were showing up in investigations and litigation with increasing frequency, often with serious consequences.

For compliance officers and in-house counsel, these tiny symbols can create big problems; for prosecutors and plaintiffs' lawyers, they're gold. A growing body of cases show how text messages using emojis are being used to prove intent, misconduct, and liability in high-stakes securities litigation and enforcement actions.

Emojis as Admissible Evidence

The precise meaning of an emoji can be ambiguous and prone to misinterpretation; but that doesn't make it inadmissible. As recently observed by one district court, emojis are symbols and, like language, can be ambiguous, requiring context to help clarify meaning. Nevertheless, emojis can be admissible to establish liability if they convey an idea that would otherwise be legally actionable. A survey of recent cases shows how emojis have been used to prove the legal elements of the claims being litigated.

Emojis in Securities Litigation

Emojis have been used as evidence of an "expectation of profits," a required element for a digital asset to qualify as an "investment contract" and therefore a "security" under the *Howey* test. Under the *Howey* test, an investment contract exists when money is invested in a common enterprise with an expectation of profits derived from the efforts of others.

In a tweet promoting investment in certain non-fungible tokens, a blockchain developer used these emojis: (rocket ship), (chart increasing), and (money bag). Although the literal word "profit" wasn't included in any of the tweets, the court ruled that using those emojis to promote NFT sales could "objectively mean one thing: a financial return on investment."

Plaintiffs have also cited emojis in "meme stock" litigation as evidence of a material misrepresentation when the emoji has acquired particular meaning within meme stock subculture. For example, plaintiffs have argued that a "moon face" emoji similar to this: (full moon face) conveyed that stock is "going to the moon."

Following this rationale, other seemingly random emojis that have acquired a common understanding in meme stock subculture could be used in future litigation. For instance, (poultry leg) is used to denote "tendies," shorthand for gains or profits from trading.

Similarly, (gem stone) can refer to "diamond hands," a popular meme stock phrase that encourages other investors to resist selling an asset during periods of high price volatility. Conversely, (roll of paper) can represent "paper hands" which encourages other investors to sell (giving in) during periods of high price volatility. Like the "moon face," these emojis could give investors the impression that a stock is either "going to the moon" or crashing back to Earth.

Not all courts, however, accept that a claimed common meaning for emojis changes a statement's meaning. For example, in the *Genius Brands* securities litigation, one of the alleged misstatements involved the CEO's post on social media responding to a rumor that Shaquille O'Neal would become a prominent investor in the company. The CEO responded, "Keep watching [(fireworks)] I can't discuss nondisclosed material events until they happen." The court ruled that the CEO's response wasn't misleading and simply indicated that he was unable to confirm the rumor.

Emojis in Insider Trading

In the context of insider trading prosecutions, emojis can be a goldmine for the government, especially when defendants attempt to conceal their scheme using emojis as code for tipping and other illicit activity. In the government's insider trading case against a former FBI trainee, the defendant discovered the non-public merger plan between Merck and Pandion by secretly accessing a law firm associate's work product. When tipping his friend about the pending deal, he used (panda) to refer to Pandion. Unsurprisingly, it didn't take long for the government to decipher this "code."

However, (money-mouth face) wasn't enough to convict an alleged tippee for insider trading in the securities in Chegg Inc. The tippee's close friend was a former vice president of Chegg, who allegedly shared non-public information about an upcoming earnings announcement. To prove the existence of a tip, the government offered into evidence the VP's texting of (money-mouth face) to his friend after the announcement, allegedly as a congratulatory message for the trade implying that the VP had tipped his friend.

However, the judge overturned the jury's conviction and granted the tippee's post-trial motion for acquittal because the emoji wasn't enough to prove beyond a reasonable doubt that the VP knew the tippee had traded.

Professionalism and Perception

The use of emojis could make the sender appear unprofessional or childish—hardly helpful when a defendant is trying to persuade a jury that they didn't commit securities fraud.

For example, in the litigation over Elon Musk's acquisition of Twitter, the plaintiffs included Musk's tweet containing (pile of poo) among the misstatements allegedly intended to depress the stock price of Twitter. Similarly, in the multi-party litigation involving the FTX collapse, the fact that management approved millions in lavish reimbursements with (thumbs up) served not only as evidence of inadequate controls but reinforced a broader theme of unprofessionalism within the company.

Emojis as Business Records

Emojis can even be considered required business records and have been included in alleged SEC record-keeping violations. As part of an overall fraud case, the SEC accused a broker of failing to retain certain business-related off-channel communications. The SEC alleged that the firm's CEO fostered a culture that encouraged widespread use of personal phones to text about business matters.

One message highlighted in the complaint was a simple (thumbs up) sent by the CEO in response to a new hire's recent performance. In their pending motion to dismiss, defendants didn't hold back: "[The SEC] remarkably continues to allege that a text literally consisting entirely of a 'thumbs-up emoji' is a violation of federal securities law."

Takeaways for Compliance Teams

Given the growing ubiquity of texts and emojis as a common mode of communication, compliance officers and in-house counsel should remind employees of the basics—all forms of electronic communications are discoverable in litigation and government investigations; casual messages (including emojis) can be misinterpreted or used out of context; and mistakes can lead to lawsuits, enforcement actions, or criminal charges.

To mitigate these risks, compliance training should reinforce some common-sense guidance:

Employees should assume every message could be read in court.
All messages should be kept professional and fact based.
Avoid sarcasm, jokes, or informal language.

And as the oft repeated final reminder—please pause before hitting send and ask, "Would I be okay seeing this on the front page (or going viral on social media)?"

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Write for Us: Author Guidelines

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Class Action

Manage Newsletters

D&B’s $7.7 Billion Sale Sparks Lawsuit Against Cannae, Foley

Oct. 30, 2025, 12:33 PM PDT

Summary by Bloomberg AI

AI Generated

- A pension fund is suing Bill Foley and his investment conglomerate Cannae Holdings Inc. over the $7.7 billion sale of Dun & Bradstreet Corp. to Clearlake Capital Group LP.
- The lawsuit claims Foley orchestrated the sale to infuse his holding company with cash and fend off activist investors, and that the deal's disclosures tricked investors into approving the buyout.
- The suit alleges the sale process was unfair and driven by Cannae's need for cash, resulting in an unfair price, and that the D&B board and its advisers had "multi-layered conflicts" that influenced the deal.

Billionaire Bill Foley engineered a $7.7 billion “fire sale” of Dun & Bradstreet Corp. in an effort to fend off activist investors by infusing his own beleaguered holding company with cash, an unsealed lawsuit says.

A pension fund is suing Foley and his investment conglomerate Cannae Holdings Inc., a major D&B investor before the deal. Foley, chairman of the D&B board, was driven by mounting activist pressure when he orchestrated the venerable data firm’s cash-out to Clearlake Capital Group LP, the suit says.

Foley, who owns the NHL’s Las Vegas Knights and the English Premier League’s AFC Bournemouth, is something of a regular in Delaware’s Chancery Court. He has confronted a stream of cases in the elite corporate tribunal targeting his business empire, including shareholder challenges to his compensation, deals between Fidelity National Financial Inc. affiliates, and a blank-check merger.

Foley’s allies face a battle for Cannae board seats at its December meeting, when Carronade Capital Management LP plans to seek four directorships, according to the 126-page filing. Boaz Weinstein’s Saba Capital Management LP also allegedly has a growing stake in Cannae.

The Clearlake transaction closed in August. Although Foley publicly took credit, portraying it as a key part of Cannae’s turnaround strategy, D&B’s deal disclosures tricked investors into approving the buyout with a “sanitized” narrative, according to the redacted version of the proposed court complaint public Wednesday.

They don't mention "Carronade, Saba Capital, anything about activist pressure on Cannae's board, or anything about Foley's strategic plan," the proposed class action says. "The unfair process—driven by Cannae's need for cash—led to an unfair price."

Cannae didn't immediately respond to a request for comment Thursday. Clearlake isn't named as a defendant.

'Multi-Layered Conflicts'

D&B's directors spurned suitors until Saba and Carronade began agitating at Cannae, according to the pension fund's filing.

D&B then announced it would begin exploring its options, but the board allegedly brought on advisers with "multi-layered conflicts." They included Bank of America Corp., which steered the company toward Foley's preferences, the suit says. BofA isn't named as a defendant.

Although a more targeted transaction would have offered better value to public investors, "a cash buyer for the whole company was the only option that would satisfy Cannae's pressing need for liquidity," the lawsuit says. "These alternatives weren't pipe dreams. In fact, several potential counterparties, including Clearlake, preferred a breakup."

Both the D&B board and the bank—which would only get its $54 million fee if the deal closed—manipulated their forecasts and valuations downward to justify the price, which was panned by analysts, according to the court complaint.

Cannae shifted its charter to Nevada in early 2024—among the first in a steady trickle of high-profile "DExits" that has shaken the corporate world. But Delaware's courts have jurisdiction over the dispute because Foley's wrongdoing began earlier and D&B is still based there, the lawsuit says.

It was originally filed under seal Oct. 23 by the New England Teamsters Pension Fund, which is represented by Labaton Keller Sucharow LLP, Block & Leviton LLP, Friedman Oster & Tejtel PLLC, and Equity Litigation Group LLP.

The case is New England Teamsters Pension Fund v. Foley , Del. Ch., No. 2025-1220, complaint unsealed 10/29/25 .

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News | **Litigation**

Tesla Tells Delaware Justices Counsel Fee Was Miscalculated in Settled Comp Case

Morgan L. Ratner of Sullivan & Cromwell said the company's appeal is based on wanting to make the fee reasonable and avoid harm to the company or its shareholders, arguing there are three miscalculations the Court of Chancery made.

October 29, 2025 at 01:49 PM By **Ellen Bardash**

No. 1: Tesla Model 3

(Photo: Tesla)

This article was first published by Delaware Business Court Insider.

Counsel for Tesla told the Delaware Supreme Court on Wednesday that while the company supports plaintiff's counsel receiving a fee for its role in settling litigation over director compensation, the $176.2 million fee the Court of Chancery awarded more than doubled what's warranted under Delaware precedent.

Morgan L. Ratner of Sullivan & Cromwell said the company's appeal is based on wanting to make that fee reasonable and avoid harm to the company or its shareholders. There are three miscalculations the court made when determining the fee, she said: calculating the benefit based on what directors were giving up rather than what Tesla was getting, failing to consider a declining fee percentage in a mega fund case, and failing to cross check for time and effort put into the case.

"If you correct any one of these three errors, you take this fee award out of the stratosphere and bring it back to earth," Ratner said.

The fee amounts to nearly 12 times plaintiffs counsel's lodestar, or roughly $8,200 an hour. Ratner said the revisions Tesla is advocating for would reduce it to about $70 million, or 4.6 times the lodestar.

The stipulation that's part of the settlement set the value of the options Tesla's directors were required to give up at about $735 million, the number off of which the Court of Chancery based its fee calculations. But Ratner said that doesn't reflect the amount Tesla actually benefited from the settlement because those options were cancelled rather than going onto Tesla's balance sheet like cash would, instead adding 1.4% to the company's equity incentive plan. Justice Karen L. Valihura and Chief Justice Collins J. Seitz Jr. both said there's some uncertainty about how to address a situation where benefits that are hard to quantify, such as the one in this case, are explicitly quantified in a settlement stipulation.

Arguing for the Tesla shareholder appellee, Andrew Dupre of Akerman said the returned stock is a fungible asset that Tesla must use for employee compensation.

"The way that it works is, the directors hand back net $458 million in options. They're cancelled. They don't just go poof into the air as Tesla is arguing here," Dupre said. "There's no disconnect between what the directors surrender and what Tesla gets."

Attorneys for both sides addressed the application of the case in which Dell settled a shareholder case for $1 billion, and the Supreme Court decided last year that a $266.7 million fee award could stand because Delaware isn't bound to the type of declining percentage fee model that's used in federal courts. Dupre said that decision only states a declining percentage model is an option that's available, but it's not something a court is required to consider in every case.

"I think the court got it legally wrong with the premise that an 11.6 multiplier is totally within the norm when Dell has just said seven is pretty high and when we know the average across common fund settlements is closer to three," Ratner said. "In those circumstances, the trial court needs to acknowledge, 'I'm doing something outside the norm here, and here's why it is or is not justified.'"

Valihura asked Dupre about a point that was raised in Tesla's opening brief, which she said goes to a policy concern that was also mentioned in the Dell decision.

"Your fee is $60 million above the entire budget for the entire judiciary of the state of Delaware last year, for a case that settled midstream," she said. "At some point, do we have to be concerned about the public's perception of the size of these fees as a matter of acceptability of corporate governance and our oversight of it?"

Dupre said that is a concern, but Delaware case law already requires checks to ward against windfalls. The settlement in this case is the second-largest in Delaware history, he said, and the fee award sits in between the cases in which the largest and third-largest settlements were recorded.

"This is a Goldilocks case. It is correct as a matter of both size and lodestar," he said.

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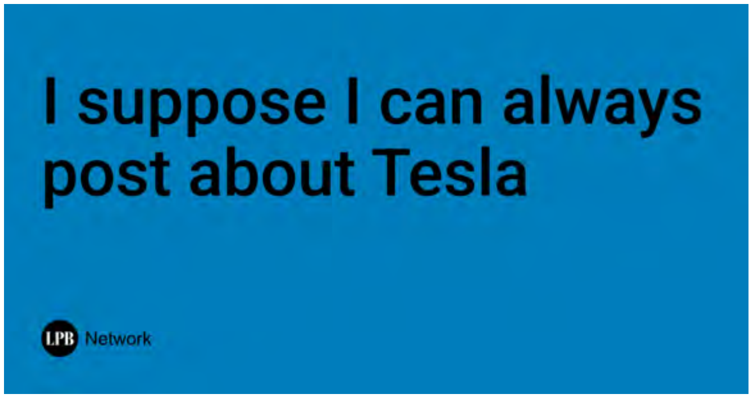
I suppose I can always post about Tesla

businesslawprofessors.com/2025/10/i-suppose-i-can-always-post-about-tesla

Ann Lipton October 31, 2025



Back to the bottomless well…

I've previously commented on the items up for a shareholder vote next week, Mike Levin and I recorded a *Shareholder Primacy* podcast about it, and I also spoke about it on Fordham's *Bite Sized Business Law* podcast. The proposal that really has my attention is Proposal 3, which would amend Tesla's 2019 stock compensation plan to do two things: First, to create a reserve of shares for the board to award Elon Musk to replace his 2018 pay package, if the Delaware Supreme Court affirms Chancellor McCormick's rescission of that package. And second, to authorize Tesla shares to pay *other* employees, just as part of a normal stock compensation plan. One thing I highlighted on the *Shareholder Primacy* podcast – and has become a focus of objection by multiple shareholders – is that these two very different proposals are bundled together in a single vote to amend the 2019 compensation plan. That is, if you want to allow Tesla to pay its employees in stock, but you don't want to restore Elon Musk's 2018 pay package, there isn't an option for that; you can have both, or neither.

Is that … okay?

As with many things Tesla does … technically, but not in spirit.

Exchange Act Rule 14a-4(a)(3) requires that proposals be "unbundled," meaning, that shareholders must be given the opportunity to vote on each material item separately. Though there is little caselaw interpreting what counts as a separate matter that needs to be unbundled, in *Greenlight Capital, L.P. v. Apple, Inc.*, 2013 U.S. Dist. LEXIS 24716 (S.D.N.Y. Feb. 22, 2013), the company proposed a series of charter amendments bundled as a single voting item, and argued that they counted as one proposal to amend the corporate charter. The court rejected that argument, holding that the company had deprived shareholders of the ability to express separate preferences on the different items.

Under that standard, one would think that Tesla absolutely was not permitted to bundle together the two compensation items as a single matter, even though they both come under the heading of "Amendments to the 2019 compensation plan."

But matters do not rest there. In response to *Greenlight Capital*, the SEC issued a new CD&I on standards for when matters can, and can't, be bundled as separate voting items. Among other things, it advised that several "immaterial" charter amendments may be bundled together with a single "material" matter (which contradicted some of *Greenlight Capital*'s reasoning), though it also noted that if management "knows or has reason to know" that shareholders would wish to express separate preferences on the different matters, the proposals should be unbundled.

That standard, too, would condemn Tesla's actions here, except for the kicker. The SEC commented directly on the issue of amendments to stock compensation plans:

> **Question:** Management of a registrant intends to present for a vote of shareholders a single proposal covering an omnibus amendment to a registrant's equity incentive plan. The amendment makes the following changes to the terms of the plan:
>
> - increases the total number of shares reserved for issuance under the plan;
> - increases the maximum amount of compensation payable to an employee during a specified period for purposes of meeting the requirements for qualified performance-based compensation under Section 162(m) of the Internal Revenue Code;
> - adds restricted stock to the types of awards that can be granted under the plan; and
> - extends the term of the plan.
>
> Must any of these proposed changes be unbundled into a separate proposal pursuant to Rule 14a-4(a)(3)?
>
> **Answer:** No. While the staff generally will object to the bundling of multiple, material matters into a single proposal – provided that the individual matters would require shareholder approval under state law, the rules of a national securities exchange, or the registrant's organizational documents if presented on a standalone basis – the staff will not object to the presentation of multiple changes to an equity incentive plan in a single proposal. See Section III of Exchange Act Release No. 33229 (Nov. 22, 1993). This is the case even if the changes can be characterized as material in the context of the plan and the rules of a national securities exchange would require shareholder approval of each of the changes if presented on a standalone basis.

Now, I'm *guessing* that when this interpretation was developed – and similar guidance was offered in 1993 – *no one was anticipating anything like Tesla*. They were anticipating a plan that generally was conceived as a whole, had different moving parts, that would be unwieldy to break out into separate pieces. And ordinary course stock compensation plans are very much a matter for board discretion; I could imagine an argument that inviting shareholders to cherry pick aspects of them would perhaps result in undue meddling in management matters. This is why, for example, the *Greenlight Capital* court held that it would be permissible to bundle together multiple "ministerial and technical matters that do not alter substantive shareholder rights." (Though James Cox, Fabrizio Ferri, Colleen Honigsberg, and Randall Thomas disagree; in their article on bundling, they argued that the SEC should at least have sought shareholder comment before creating such a significant carveout.) But even if you agree with the carveout in general, that's very different than what Tesla is doing here, which is bundling a banal stock plan with an extraordinary one-time boon to their CEO and largest shareholder. The proposals differ in purpose, size, conditions, covered employees, level of insider conflict, and tax and accounting consequences, not to mention levels of controversy.

But, the SEC said what it said, and here we are.

And another thing. On this week's *Shareholder Primacy* podcast, me and Mike Levin look at how the universal proxy rules have worked out, now three years later. Here at Apple, here at Spotify, and here at YouTube.
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Securities

Shuttered Fund, Auditor Withum Hit With Suit Over Valuations (1)

Oct. 30, 2025, 10:54 AM PDT; Updated: Oct. 30, 2025, 12:17 PM PDT

The Wildermuth Fund's owners ran the closed-end investment vehicle for their own benefit with the help of WithumSmith&Brown PC's clean audits before its liquidation, an investor's proposed class action alleges.

Daniel and Carol Wildermuth, a married couple who owned the fund, failed to disclose risks associated with a strategy shift to private equity, according to the lawsuit filed Wednesday in the US District Court for the District of New Jersey.

Plaintiff Rochelle Cramer also accused the Wildermuths of having conflicts of interest and of "grossly" overvaluing the fund's assets.

Her complaint names Withum as a defendant along with the Wildermuth Fund, its owners, and other associated parties.

While Daniel Wildermuth touted the virtues of private equity, "unbeknownst to Fund investors, the Fund was not purchasing 'high quality assets,'" the complaint says. The fund instead bought interests in portfolio companies that mostly benefited the Wildermuths' advisory firm, it says.

"With each quarter, the portfolio companies fell deeper into financial distress," while the fund, the Wildermuths, and their advisory firm misrepresented the performance, value and prospects of those companies, Cramer alleges.

The proposed class consists of hundreds or thousands of members, the complaint estimates.

Cramer seeks damages and rescission on her claims for securities fraud and violations of the Investment Company Act.

Withum declined to comment in an email Thursday. The Wildermuth Fund didn't immediately respond to an emailed request for comment.

Dilworth Paxson LLP and Scott & Scott Attorneys at Law LLP represent Cramer.

The case is Cramer v. WithumSmith+Brown, PC , D.N.J., No. 3:25-cv-17032, complaint filed 10/30/25 .

(Updates story with response from Withum in ninth paragraph.)

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Securities

Manage Newsletters

BioAge Beats IPO Investor Lawsuit Over Weight Loss Trial End (1)

Oct. 31, 2025, 8:04 AM PDT; Updated: Oct. 31, 2025, 8:14 AM PDT

Summary by Bloomberg AI

AI Generated

- BioAge Labs Inc. defeated investor allegations it concealed risks of elevated liver enzymes in a weight-loss drug trial during its initial public offering.
- Chief Judge Richard Seeborg said the shareholder leading the case didn't point to any statement in the IPO documents that was misleading without disclosing the risk heightened liver enzymes posed to the drug trial.
- Seeborg gave the shareholder three weeks to file an amended complaint, dismissing the proposed class action against BioAge, executives, and board members during its IPO for now.

BioAge Labs Inc. defeated investor allegations it concealed risks of elevated liver enzymes, a potential sign of damage, in a weight-loss drug trial during its initial public offering.

The shareholder leading the case didn't point to any statement in the IPO documents that was misleading without disclosing the risk heightened liver enzymes, transaminitis, posed to the drug trial, Chief Judge Richard Seeborg said Thursday. The Southeastern Pennsylvania Transportation Authority needed to do more than allege the risk of transaminitis was inevitable or that disclosures were misleading without discussing it.

"That can only be true if the risk disclosures' failure to discuss the risk of transaminitis implied that the risk did not exist," the US District Court for the Northern District of California judge said. Under a US Court of Appeals for the Ninth Circuit's decision in *In re Rigel Pharm., Inc. Sec. Litig.* , that's not a viable inference.

In *Rigel*, the Ninth Circuit rejected arguments that once a company chooses to disclose anything on safety, all material information about safety must be shared to avoid misleading investors.

Regardless, SEPTA didn't adequately support its claim that the risk of transaminitis was inevitable in the trial, Seeborg said. "The averments in the complaint point to design features that made it more likely transaminitis would appear, but they do not plausibly demonstrate that transaminitis was inevitable."

And SEPTA's claim that elevated liver enzyme levels appeared before the IPO was too speculative, he said.

Seeborg gave SEPTA three weeks to file an amended complaint, dismissing the proposed class action against BioAge, executives, and board members during its IPO for now.

SEPTA alleged IPO documents failed to disclose the inevitable risk of transaminitis, a risk which would ultimately lead to the clinical trial and obesity drug candidate's demise.

BioAge's share price plummeted 77% in one trading day to close at $4.65 on Dec. 9, 2024. On Dec. 6, BioAge said it would discontinue the phase 2 trial of azelaprag after finding high levels of liver enzymes in some participants.

The biopharmaceutical company earlier this year said it would stop developing azelaprag while continuing to progress other treatments.

BioAge went public in September 2024 at $18 per share. It closed at $7.73 Thursday.

Barrack, Rodos & Bacine represents SEPTA. Katten Muchin Rosenman LLP represents BioAge and the officers and directors. Neither of these law firms immediately responded to emails seeking comment. BioAge declined to comment.

The case is In re BioAge Labs, Inc., Sec. Litig. , N.D. Cal., No. 3:25-cv-00196, 10/30/25 .

(Updates to note BioAge declined to comment in the 12th paragraph.)

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Judge approves $38 million class action settlement over Monsanto merger

courthousenews.com/judge-approves-38-million-class-action-settlement-over-monsanto-merger

Margaret Attridge October 31, 2025

The entrance to a Bayer facility in Leverkusen. Bayer maintains its headquarters in this small German city, where the local soccer team bears its name. (Michielverbeek/Wikipedia via Courthouse News)

SAN FRANCISCO (CN) — A federal judge granted final approval to a $38 million class action settlement in a case against Bayer over shareholders' claims the German pharmaceutical giant didn't conduct adequate due diligence before making a multibillion-dollar deal to acquire Monsanto.

Shareholders sued Bayer in 2020, claiming the company misled them about the litigation risk of purchasing the agrochemical company, whose signature weed killer product Roundup was found to have caused people to develop cancer in three bellwether jury trials.

Plaintiffs argued that Bayer forged ahead with the Monsanto acquisition while downplaying the litigation risk to investors and representing that glyphosate, the active ingredient in Roundup, is non-carcinogenic.

The $63 billion deal was struck in 2016 but was not made final until June 2018. Two months later, a San Francisco jury found Monsanto liable for $250 million in punitive damages in the case brought by a school groundskeeper with non-Hodgkin lymphoma.

By then, plaintiffs say, Monsanto had racked up thousands of additional personal injury lawsuits, and Bayer's post-merger American depositary receipts plunged significantly.

The parties initially reached an agreement in February, and the settlement was preliminarily approved in June by U.S. District Court Chief Judge Richard Seeborg, a Barack Obama appointee.

The agreement awards plaintiffs over 9% of the $417 million estimated maximum damages. Nearly $10 million of the settlement will be allocated to attorneys' fees, with $3.3 million set aside for reimbursement of litigation expenses.

Over 278,000 class notices were sent to potential class members, leading to more than 153,000 claims as of Oct. 24, Seeborg said in the final approval order.

In a statement to Courthouse News, a Bayer spokesperson said the agreement resolves all future claims for the settlement class and does not reflect any admission of wrongdoing or liability.

“The Company is pleased that this litigation has been brought to a conclusion and that it can put this matter behind us,” they said.

Carol Gilden of Cohen Milstein, an attorney for the plaintiffs, told Courthouse News she was pleased with the settlement, describing the case as a “hard-fought dispute.”

“This was an important securities class action that re-affirms ADR investor rights and the long arm of Uncle Sam to hold foreign companies accountable to U.S. securities laws,” she said.

Categories / Business, Financial, Health

Bayer's Monsanto must pay $185 million after state Supreme Court restores chemical leak verdict

reuters.com/world/bayers-monsanto-must-pay-185-mln-after-washington-court-reinstates-chemical-2025-10-30

Diana Jones October 30, 2025

The 120 metres high Bayer Cross, logo of German pharmaceutical and chemical maker Bayer AG, consisting of 1710 LED glass bulbs is seen outside the industrial park "Chempark" of the chemical industry in Leverkusen, Germany, September 23, 2023. REUTERS/Wolfgang Rattay Purchase Licensing Rights, opens new tab

- Washington Supreme Court reinstates $185 million verdict against Monsanto
- Lower court had vacated the verdict from the 2021 trial
- Monsanto has faced hundreds of claims related to chemical contamination at a Seattle-area school

Oct 30 (Reuters) - A U.S. court reinstated a $185 million verdict against Bayer's (BAYGn.DE), opens new tab Monsanto unit over chemical contamination at a Washington state school on Thursday.
The Washington state Supreme Court reversed a lower court ruling that had vacated the verdict in a 2021 trial over claims brought by three teachers at Sky Valley Education Center in Monroe, Washington.

Monsanto has faced a string of trials over claims by teachers and others at the Seattle-area school who say they were sickened by exposure to polychlorinated biphenyls, or PCBs. More than 200 students, employees and parents say they developed cancer and other health problems from PCBs leaking from the school's light fixtures. The chemicals were made by Monsanto, which Bayer acquired in 2018.

Verdicts in previous trials have totaled more than $1.5 billion, though some have been reduced or overturned. In August, the company announced it had settled all of the claims except for the nine cases already on appeal, including the teachers' lawsuit at issue in Thursday's ruling.

Rick Friedman and Deepak Gupta, attorneys for the plaintiffs, said in a statement the ruling "sends a clear message: companies that conceal the risks of toxic chemicals must be held accountable."

A Monsanto spokesperson said in a statement the court's ruling was incorrect and the company was considering its legal options.

The ruling may affect the remaining cases on appeal, which had been on pause while the Washington Supreme Court weighed the teachers' case.

Since Bayer's $63 billion acquisition of Monsanto in 2018, the company has been dogged by lawsuits over PCB contamination and tens of thousands of claims alleging Monsanto's [weedkiller Roundup] causes cancer, which the company denies.
PCBs were once widely used to insulate electrical equipment, and in such products as carbonless copy paper, caulking, floor finish and paint. They were outlawed by the U.S. government in 1979 after being linked to cancer and other health problems. Monsanto produced PCBs from 1935 to 1977.

The plaintiffs claim Monsanto knew of the dangers of PCBs for decades, but concealed them from the public and regulators.

Bayer has argued that plaintiffs have failed to prove their injuries were caused by PCBs, and that the levels found in the school were deemed safe by the Environmental Protection Agency. It has also said the school ignored government officials' warnings that the light fixtures in the aging building needed to be retrofitted.

Last year, a Washington state appeals court [sided with Bayer] and overturned the verdict, agreeing that the trial court wrongly applied the laws of Missouri, where Monsanto was based.
Bayer had argued the use of Missouri law allowed the claims to be filed decades after the company stopped producing PCBs, even though Washington state law would have barred them as untimely.

The teachers appealed, and in Thursday's ruling, the Washington Supreme Court said Missouri state law should apply in the case because that is where the company made most of its decisions on the chemicals.

Reporting by Diana Novak Jones; Editing by Alexia Garamfalvi and Richard Chang

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

[Diana Novak Jones]
Thomson Reuters

Diana reports on product liability, litigation, mass torts and the plaintiffs' bar. She previously worked at Law360 and the Chicago Sun-Times.

LAW.COM

Monsanto Loses Appeal With 'Sweeping Implications' Over PCB Exposure

On Thursday, the Washington Supreme Court reinstated a $185 million verdict against Monsanto over PCB exposure at a school near Seattle.

October 30, 2025 at 04:32 PM By **Amanda Bronstad**

What You Need to Know

- The 6-3 decision could impact at least eight prior verdicts now on appeal before the Washington Supreme Court involving similar lawsuits, all brought by teachers, students and parents who alleged PCB exposure caused neurological problems.
- Reversing the Washington Court of Appeals, the majority found that Missouri law applied because it had 'the most significant relationship' on the issues of repose and punitive damages.
- The ruling also disagreed with the Washington Court of Appeal that the jury had to identify whether its punitive damages award was for failure to warn, which Missouri doesn't recognize.

Monsanto offices in Enkhuizen, Holland. Credit: Karen Eliot via Wikimedia Commons

The Washington Supreme Court dealt a big setback to Monsanto on Thursday when it reversed an appellate court decision and reinstated a $185 million verdict over exposure to toxic chemicals at a school near Seattle.

The 6-3 decision could impact at least eight prior verdicts now on appeal before the Washington Supreme Court involving similar lawsuits, all brought by teachers, students and parents who alleged their exposure to polychlorinated biphenyls, or PCBs, from fluorescent light ballasts caused neurological problems. Juries in King County Superior Court have issued verdicts totaling $1.6 billion against Monsanto, owned by Bayer, although one ended in a mistrial and a judge in another case reduced damages by $220 million.

In the first case to reach a verdict, the Washington Court of Appeals delved into a rare choice-of-law decision, finding last year that Washington's Product Liability Act, whose statute of repose limits claims against manufacturers for harms done after 12 years, should have applied to the trial. The appeals panel also found that the jury should not have been allowed to award punitive damages, which constituted 80% of the award totals, because the law in Missouri, where Monsanto is headquartered, does not recognize claims that it failed to warn.

In Thursday's decision, the majority found that Missouri law applied under choice of law principles established more than 50 years ago.

"Applying those principles here," the ruling says, "we hold that Missouri has the most significant relationship to the issues of repose and punitive damages and therefore Missouri law governs both."

The ruling also disagreed with the Washington Court of Appeal that the jury had to identify whether its punitive damages award was for failure to warn, concluding that the "jury instructions and the special verdict form are sufficient to sustain the punitive damage award."

"We hold that Missouri has the most significant relationship with respect to punitive damages," Justice Debra Stephens wrote. "It has a stronger interest in punishing companies for their conscious disregard for safety and deterring others from such actions than Washington does in limiting damages imposed on an out-of-state corporation."

The case involved three teachers who taught at Sky Valley Education Center in Monroe, Washington, from 2011 to 2016.

In a statement, plaintiffs' lawyers Rick Friedman and Deepak Gupta said, "We are grateful that the Washington Supreme Court upheld justice on behalf of the teachers who were poisoned by Monsanto's PCBs."

Deepak Gupta. Courtesy photo.

“These three teachers have shown extraordinary courage through years of hardship – fighting not just for themselves, but to make their community and others safer,” Friedman, of Seattle’s Friedman Rubin, and Gupta, of Gupta Wessler in Washington D.C., continued. “This decision has sweeping implications, not just for those affected by Sky Valley, but for similar cases nationwide. This decision sends a clear message: companies that conceal the risks of toxic chemicals must be held accountable.”

Bayer said it was evaluating its options, which include petitioning the U.S. Supreme Court to review the case, called *Erickson v. Monsanto*.

“The company disagrees with the Supreme Court’s decision to reverse the Court of Appeals in *Erickson* and deny Monsanto’s cross-petition regarding the availability of punitive damages,” Bayer said in a statement. “In particular, the company believes that the court’s choice-of-law analyses underlying its rulings on punitive damages and the statute of repose are wrong and contrary to the U.S. Constitution because the rulings unlawfully discriminate against out of state companies doing business in Washington. Three dissenting justices found in favor of the company on its entitlement to a statute of repose defense under Washington law, writing: ‘…courts are not supposed to start their analysis with policy preferences when there’s a state statute right on point.’”

In the dissent, Justice Sheryl Gordon McCloud wrote that the majority should have applied the statute of repose after deciding that the Washington Product Liability Act governed the case.

“By straying from the WPLA’s plain language and clear legislative intent, the majority is left with the task of balancing competing policy preferences,” she wrote. “But courts are not supposed to start their analysis with policy preferences when there’s a state statute right on point. And there’s no denying that the WPLA’s explicit, detailed, and somewhat unique statute of repose is the statute right on point.”

Monsanto: ‘Each Case is Unique’

In *Erickson*, the jury’s award included $45 million to each plaintiff in punitive damages.

The 2021 verdict in *Erickson* was reversed last year when the Washington Court of Appeals vacated the judgment, prompting plaintiffs’ appeal. Bayer cross-appealed on punitive damages, arguing that Washington's Product Liability Law does not permit them. In oral arguments earlier this year, Gupta insisted that Monsanto's conduct at issue predated Washington's repose statute, while defense attorney Lauren Goldman, a New York partner at Gibson, Dunn & Crutcher, cautioned the panel not to create a "legal Frankenstein" of unbundled state policies.

Lauren Goldman. Courtesy photo

The appeal attracted amicus groups on both sides, many of them law professors or experts on conflict of laws or dépeçage – the selection of different state laws to govern different issues.

In its statement, Bayer noted that the other verdicts on appeal raise issues not addressed in the *Erickson* case.

"Each case is unique and has its own factual and legal record," Bayer said. "Examples of the range of issues raised in these other cases include the application of Missouri's offset statute for punitive damages – which generally prohibits punishing a defendant more than once for the same conduct – along with due-process limits on punitive damages; the trial courts' exclusion of evidence of alternative causes and pre-existing conditions for the injuries at issue; and the courts' refusal to instruct the jury on superseding cause."

In August, Bayer reached a confidential settlement to resolve most of the 200 cases still pending. Monsanto said it spent €530 million, or about $618.3 million, in second quarter 2025, that included resolution of another case, *Burke v. Monsanto*, involving 22 plaintiffs, and "further potential settlements and other litigation costs." The deal excluded Erickson and the other eight verdicts on appeal, however.

"The company is confident in its legal strategy and prepared to defend itself at trial but will consider resolving cases when it is strategically advantageous to do so," Bayer said.

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Judge lets social media firms keep key defenses in youth suits

DJ **dailyjournal.com**/articles/388330-judge-lets-social-media-firms-keep-key-defenses-in-youth-suits

Oct. 31, 2025

While Superior Court Judge Carolyn B. Kuhl's decisions do not determine liability, they ensure that the social media companies will be able to argue immunity, free-speech protection and fault apportionment to jurors.

A Los Angeles Superior Court judge refused to strike key defenses asserted by social media companies accused of harming young users' mental health, finding that questions about what caused their injuries must be decided by a jury.

On Wednesday, Judge Carolyn B. Kuhl issued three similar orders denying summary adjudication motions filed by minor plaintiffs in the coordinated social media litigation. The families allege that online platforms including Facebook, TikTok and YouTube intentionally use addictive design features that cause psychological, emotional and physical injuries to children, including death in some cases.

While Kuhl's decisions do not determine liability, they ensure that the social media companies will be able to argue immunity, free-speech protection and fault apportionment to jurors.

The rulings leave intact major defenses for Meta, Google and others, including immunity under Section 230 of the Communications Decency Act - which shields online platforms from liability for content posted by their users - First Amendment protection for online expression and claims of third-party or superseding fault.

Bellwether trials, where executives including Mark Zuckerberg are ordered to testify, are set to begin next month. *Social Media Cases*, JCCP5255 (L.A. Sup. Ct., filed Oct. 24, 2022).

"Just because Plaintiffs have alleged facts suggesting that their claims are not entirely barred by Section 230, does not mean that [they] will be able to present sufficient evidence at trial to show that [their] injuries are not caused by third-party content on Defendants' platforms," Kuhl wrote in an order for plaintiff Heaven Moore.

"The court cannot dismiss the Section 230 affirmative defense unless it concludes as a factual matter what actually caused Moore's alleged harms. This causal determination is clearly one that must be made by the jury."

The judge noted that unresolved questions about whether third-party content contributed to an individual's alleged harm must be decided by a jury, adding that Moore "does not appear to even argue that there is no evidence that third-party content may have harmed her."

Similar language appeared in the other two rulings for plaintiffs K.G.M and R.K.C., represented by Kiesel Law LLP partner Mariana A. McConnell, who signed the three motions. She was unable to be reached for comment by press deadline Thursday and did not respond to an email or phone call.

Meta, which owns Facebook and Instagram, is represented by multiple attorneys at Covington & Burling LLP. Snap Inc., for Snapchat, is represented by Munger Tolles & Olson LLP. Google and YouTube are represented by Wilson Sonsini Goodrich & Rosati.

In K.G.M.'s order, Kuhl declined to strike YouTube's contract defense, which relies on the platform's terms of service. She found that whether the contract bars claims stemming from the plaintiff's use of the site as a minor remains a "triable issue of fact," noting disputes over unconscionability and whether continued use after turning 18 reaffirmed the agreement.

"Google contends that California law allows a minor to contract 'subject to the power of disaffirmance' [Cal. Fam. Code, Section 7700], but Plaintiff responds that her filing of this lawsuit should be interpreted as a disaffirmance of the contractual terms of service," Kuhl wrote in the order for K.G.M.

"Defendant, in turn, relies on the fact that Plaintiff continued to use YouTube after she reached the age of 18 and after she filed suit to argue that Plaintiff's act of filing suit should not be interpreted as a disaffirmance of contract, citing non-binding federal authorities. This issue cannot be resolved as a matter of law here."

The three orders also rejected challenges to the defendant companies' "reservation of defense," which plaintiffs argued was improper. The judge said the language was not a stand-alone defense but "merely" a notice that could support a future amendment if new defenses arise.

#388330

THALIDOMIDE CASE

reuters.com/legal/government/law-firm-hagens-berman-battles-sanctions-apple-thalidomide-cases-2025-10-30

David Thomas, Mike Scarcella October 30, 2025

A woman uses an iPhone mobile device as she passes a lighted Apple logo at the Apple store at Grand Central Terminal in New York City, U.S., April 14, 2023. REUTERS/Mike Segar Purchase Licensing Rights, opens new tab

- Hagens Berman defends conduct in Seattle and Philadelphia cases
- JPMorgan seeks to cut off legal fee spigot for Charlie Javice
- Norton Rose earns payout from Texas in Google privacy case

Oct 30 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab.)
A leading national plaintiffs' law firm is playing defense in two unrelated class actions after judges criticized the firm's handling of its clients' claims.

Hagens Berman Sobol Shapiro is hoping to revive a case it spearheaded in federal court in Seattle against Amazon and Apple after a judge dismissed the case last month, determining that the firm was not forthright about its client's efforts to drop out.
In Philadelphia, Hagens Berman has been dogged for years by litigation misconduct claims in cases it brought over alleged injuries from the drug thalidomide. Now, the firm is seeking to disqualify a federal judge who is weighing new sanctions against it.

Hagens Berman's managing partner, Steve Berman, defended his firm's conduct in both cases in an email to Reuters.

U.S. District Judge Kymberly Evanson in Seattle last month found that Hagens Berman misled the court, Apple and Amazon about the formerly sole plaintiff's intent to withdraw from the case last year while the firm attempted to add new claimants.

Evanson said she relied on representations that the plaintiff had not withdrawn when she allowed his lawyers to amend the complaint in May and add two more consumers.

The plaintiff, Steven Floyd, had told his attorneys at the firm in January 2024 that he wanted to withdraw because he did not want to participate in the discovery process. Evanson said in a prior order that Hagens Berman did not immediately disclose the development and instead created the impression that Floyd suddenly became unreachable for reasons not related to the lawsuit.

Evanson in May awarded more than $223,000 in legal fees to Amazon and Apple as a sanction against Hagens Berman. The two tech companies are poised to file another petition for legal fees next week.

Hagens Berman defended its conduct in a filing on Monday, opens new tab that asked Evanson to amend her September 29 decision dismissing the case. The firm argued that under Washington state's professional rules for lawyers, it had a duty of confidentiality to Floyd.

"There may have been other ways to proceed — perhaps better courses of action identifiable with the benefit of hindsight — but counsel acted with mindful observance of their ethical obligations," Hagens Berman said.

Berman in an email noted the firm's Monday filing was backed by three expert declarations challenging the judge's determination. "We have now explained to the court how we properly disclosed what we could and followed all ethical rules," he said.

The proposed class action accused Apple and Amazon of conspiring to artificially inflate the price of iPhones and iPads sold on Amazon's platform.

Spokespersons for Amazon and Apple, which have denied the claims, did not immediately respond to a request for comment.

In the Philadelphia litigation, Hagens Berman since 2011 has represented plaintiffs who claimed major drugmakers concealed the dangers of thalidomide, which pregnant women used to treat morning sickness until its use was discontinued in the 1960s due to birth defects.

The litigation faced hurdles from the outset over evidence suggesting many plaintiffs had long known of thalidomide’s role in their injuries. Hagens Berman reached a settlement with drugmaker GSK, formerly GlaxoSmithKline, in 2014, agreeing to drop claims against the company in a deal that U.S. District Judge Paul Diamond later said had "apparently benefited Hagens Berman to the detriment of its clients."

In 2015, Diamond imposed sanctions for what he called “bad-faith advocacy,” finding Hagens Berman pursued claims it knew were baseless or time-barred.

In an October 2023 report, a special master appointed by the court to help resolve evidence disputes recommended new sanctions against Hagens Berman over its prosecution of the cases, and found that a lawyer who was then at the firm had doctored a medical expert's report to pressure a client into dropping her claim.

"Time and again, Mr. Berman personally swore to the veracity of things he did not know and should have known, and that were actually and demonstrably false,” special master William Hangley said.

In a filing last year, opens new tab, Hagens Berman called Hangley’s report baseless and said it was outside the scope of his authority and violated the due process rights of the firm and Berman.
U.S. District Judge Paul Diamond upheld, opens new tab Hangley’s report in August, but the judge has not yet issued a ruling on sanctions against the firm.
Last week, Hagens Berman filed court papers seeking to force Diamond's recusal from further proceedings related to Hangley’s report. The law firm cited what it called an “appearance of bias” stemming from extensive communications between the judge and the special master.

Berman in an email said his firm has "thoroughly explained why we had a good faith basis" for the lawsuit. The fact that the case has not succeeded is not ground for sanctions, he said, adding that personal injury cases "are lost in every court on a finding of a lack of causation or an exclusion of an expert."

A representative for GSK did not immediately respond to a request for comment.

-- JPMorgan Chase has asked a judge in Delaware to terminate its obligation to advance legal fees to entrepreneur Charlie Javice, who was sentenced last month, opens new tab to more than seven years in prison for defrauding the bank into buying her college financial aid startup Frank for $175 million.
In a October 24 court filing, opens new tab, JPMorgan said Javice has demanded reimbursement for “patently excessive and unreasonable” legal expenses related to her criminal defense in the fraud case. Law firm Greenberg Traurig represents the bank.
JPMorgan says it has already advanced approximately $115 million in legal fees, including $60.1 million to Javice alone, and claims the amount exceeds any reasonable standard for defense costs.

The bank in a brief public filing accused Javice of engaging five separate law firms — one of which received over $35 million — and continuing to use all of them even in post-conviction proceedings. The filing did not identify any of Javice's defense firms, and other documents were submitted under seal.

-- Alphabet's (GOOGL.O), opens new tab Google has agreed to pay up to $190 million in legal fees to private law firms representing Texas as part of a $1.375 billion consumer privacy settlement with the state.

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

Texas's lawyers at law firm Norton Rose Fulbright and Google asked the state court in Midland to issue a final judgment based on the settlement. Norton Rose and the attorney general's office did not immediately respond to requests for comment.

State attorneys general routinely hire private law firms to help them pursue major lawsuits against companies. Texas is currently working with law firms Cooper & Kirk and Buzbee Law Firm for an antitrust lawsuit against asset managers BlackRock, Vanguard and State Street.

Read more:

Fighting Trump and defending Tesla, lawyer Paul Clement is everywhere now
California law sets up new contingency fee-sharing roadblock
Elite colleges target lawyers' funding in antitrust class certification fight

Reporting by Mike Scarcella and David Thomas

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

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No jack-o'-lantern, no justice? Lawsuit over Reese's peanut butter "pumpkins" rises again

reuters.com/legal/litigation/no-jack-o-lantern-no-justice-lawsuit-over-reeses-peanut-butter-pumpkins-rises-2025-10-31

Jenna Greene October 31, 2025

Halloween-themed sweets are displayed for sale at a Target store in Manhattan, New York City, U.S., October 29, 2025. REUTERS/Jessica Dinapoli Purchase Licensing Rights, opens new tab

Oct 31 (Reuters) - Like a chocolate-covered hand from the grave, a class action lawsuit against candy maker Hershey may be coming back to life.

A group of consumers unsuccessfully tried to sue the company last year, claiming they paid a premium for its Halloween-themed "Reese's peanut butter pumpkins" because they expected treats with cut-out jack-o'-lantern faces as shown on the wrapper. Instead, the consumers said, they got a smooth, peanut-butter filled "chocolate blob."

A federal judge tossed the suit last month, but the plaintiffs have now amended their complaint, saying they have pricing data to bolster claims they suffered economic harm.
The consumers contend they paid up to 25% more for the candies because they were deceived by labels depicting a pumpkin-shaped chocolate with triangle eyes and a grinning mouth carved to reveal the filling beneath.

Hershey in court papers called the amended complaint a "futile effort to resurrect this meritless case." The company did not respond to a request for comment. The revised lawsuit still requires approval from the judge, and Hershey lawyers have until Monday to file a motion opposing its acceptance.

Plaintiffs' counsel Anthony Russo of the Russo Firm in Boca Raton, Florida, sued Hershey on behalf of consumers in May 2024 in Fort Lauderdale federal court, alleging Reese's packaging violated Florida's Deceptive and Unfair Trade Practices Act and seeking at least $5 million in damages. Russo did not respond to a request for comment.
In dismissing the suit, U.S. District Judge Melissa Damian noted that the plaintiffs didn't claim the peanut butter-and-chocolate treats were unfit for consumption or didn't taste as expected.

Rather, the judge wrote, opens new tab, the consumers' grievances “all boil down to their subjective, personal expectations" of how they thought the candy should have looked. That's not enough to show they suffered a concrete financial injury, she said in dismissing the suit for lack of standing.
But Damian left the door open for the plaintiffs to amend their complaint. She noted the original suit lacked key information on what the consumers might have paid for the candy if the wrapper did not have allegedly deceptive images.

So-called price premium claims like this have become increasingly common in consumer class actions. They are used, for example, to challenge allegedly deceptive descriptions of products’ ingredients, geographic origins or environmental friendliness. The common thread: consumers say they wouldn’t have paid as much for the items or wouldn’t have bought them at all, if not for the allegedly misleading labels.

In many of these cases, failure to link deception to a measurable economic harm proves fatal.

For example, a 2022 class action accused Publix Super Markets of misleading consumers into believing its “honey-lemon” cough drops contained actual lemon. A federal judge in Miami dismissed the case, opens new tab a year later, finding the plaintiffs failed to show that cough drops without lemon imagery sold for less, or that lozenges with similar ingredients but allegedly non-misleading labels were cheaper.
The Reese’s plaintiffs, however, seem better equipped to offer market evidence of a quantifiable price premium. Their proposed amended complaint, opens new tab compares the prices of regular and pumpkin-shaped Reese’s candy and finds the pumpkin version costs about 20% more per ounce at Target and Walmart -- and 25% more on Hershey’s own website.
“That same-brand differential is concrete, measurable, and material,” the plaintiffs argue, seeking the price difference between the pumpkin and regular peanut butter cups as damages, along with attorneys’ fees and costs.

In responding to the original lawsuit, Hershey lawyers from Shook, Hardy & Bacon argued that no reasonable consumer would be deceived into thinking that the individual candies were carved with faces. The candy packaging includes the words “decorating suggestion” next to the chocolate jack-o’-lantern image, they noted.

The packaging also includes a photo of the candy without carvings -- and with a bite taken out of it.

That partially-eaten image should alert anyone "exercising basic common sense that the candy will not appear exactly as imagined on the package," wrote, opens new tab Shook partner Daniel Rogers, who did not respond to a request for comment. After all, he added, no one expects to buy food "with a huge chunk bitten out."
Whether the court ultimately allows the amended class action to rise from the grave may depend on whether consumers were tricked into buying this treat.

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

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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

Migrants in New England granted class-action status to challenge bond hearing denials

reuters.com/legal/government/migrants-new-england-granted-class-action-status-challenge-bond-hearing-denials-2025-10-31

Nate Raymond October 31, 2025

U.S. District Court Judge Patti Saris attends the opening ceremony for the Justice Stephen G. Breyer Community Learning Center on Courts and the Constitution at the federal courthouse in Boston, Massachusetts, U.S., March 25, 2025. REUTERS/Brian Snyder [Purchase Licensing Rights, opens new tab]

BOSTON, Oct 31 (Reuters) - A federal judge has granted class action status to a lawsuit seeking to prevent President Donald Trump's administration from subjecting thousands of migrants detained by immigration authorities in New England to mandatory detention without the possibility of being released on bond.

U.S. District Judge Patti Saris in Boston on Thursday [certified a class, opens new tab] of migrants to address the claim that the administration lacks authority to subject resident noncitizens who entered the country without inspection to mandatory detention without a bond hearing.
The Board of Immigration Appeals, which is part of the U.S. Department of Justice, issued a decision in September that endorsed the administration's interpretation of the Immigration and Nationality Act and required the denial of bond hearings.

Numerous federal judges across the country have declared the administration's practice unlawful. But nearly all of those decisions have been issued in individual cases, without blocking the policy on a nationwide basis.

Saris, an appointee of Democratic former President Bill Clinton, ruled earlier in the case that the practice was unlawful and granted a preliminary injunction requiring the release of the named plaintiff, Jose Arnulfo Guerrero Orellana, unless he was provided a bond hearing.

The Salvadoran citizen had entered the United States in 2013 and was living in Massachusetts with his wife and their 1-year-old U.S. citizen daughter. He had been working as a landscaper when U.S. Immigration and Customs Enforcement took him into custody on September 18 during a traffic stop.

Saris, ruling in favor of Guerrero Orellana on October 3, had rejected the Trump administration's position that any noncitizen who entered the United States without inspection is subject to mandatory detention pending removal proceedings.

His lawyers at the American Civil Liberties Union of Massachusetts moved for class certification to prevent other detainees living in Massachusetts, Rhode Island, Maine, and New Hampshire from being denied bond hearings.

Saris, in Thursday's ruling, said the "proposed class shares a common question capable of classwide resolution because its members are all detained without a bond hearing pursuant to the same allegedly unlawful government policy."

The judge scheduled a hearing for Monday. The ACLU of Massachusetts is now expected to seek a declaratory judgment that the policy as applied to the class is unlawful.

"This ruling recognizes the sheer scale of the problem, and is a critical step toward securing due process for thousands of people in Massachusetts and several New England states who have been and will be jailed without justification by ICE," Dan McFadden, managing attorney at the ACLU of Massachusetts, said in a statement.

The Justice Department did not immediately respond to a request for comment.

The case is the second in which a judge certified a class of migrants challenging the bond denial practice. In the other case, U.S. District Judge Tiffany Cartwright in Tacoma, Washington, last month on a class-wide basis declared that the local immigration court's practice of denying bond hearings was unlawful.

Immigrant rights attorneys say the practice first took root at the immigration court in Tacoma, before the U.S. Department of Homeland Security earlier this year adopted the practice on a nationwide basis and began asking immigration judges to deny bond hearings.
The case is Guerrero Orellana v. Moniz, U.S. District Court for the District of Massachusetts, No. 1:25-cv-12664.

For the class: Dan McFadden of the ACLU of Massachusetts

For the government: August Flentje of the U.S. Department of Justice

Read more:

[US launches new bid to keep migrants detained by denying hearings, memo shows]

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

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Law Firms Prepare To Automate Themselves Out Of Their Own Business Model

abovethelaw.com/2025/10/law-firms-prepare-to-automate-themselves-out-of-their-own-business-model

Joe Patrice

October 30, 2025

Like the swallows returning to Capistrano, every year, someone will predict the demise of the billable hour, and every year we all smugly dismiss their naiveté. Lawyers cannot change! The model is too entrenched! Clients will never go for it! Be gone from us with your silly "hot take."

But here's the thing… the Capistrano swallow population isn't as predictable anymore. The population has dwindled over the years and the culprit is modern development (specifically new construction that reduced the local insect population if you're a nerd and wanted to know why). Like those birds, law firms aren't going to give up their routine on a whim, but must when they're forced into it by slamming headfirst into the full-length window of technology.

Which is all a round about way of placing myself in the oft-mocked role of announcing the looming demise of the billable hour. I take on this task fully aware of the historic recalcitrance, but assured of one unassailable truth: lawyers really like money.

A new white paper from DISCO surveying 112 legal professionals reveals an industry coming to grips with the need to adopt generative AI — somehow — or risk becoming the Blockbuster Video of the Am Law rankings. Some 43 percent of the law firm participants felt pressure from leadership to adopt AI. For in-house legal departments, the number climbed to 64 percent. Of course, like every other industry, legal still has to consider exactly what this technology can do other than make them the butt of *Above the Law* jokes, but lawyers are, furtively, figuring out the right use cases.

"People realize that generative AI is here and that you need to adapt or die, so there is no resistance from people who want to stay employed; they are adapting," concluded one respondent who has fully internalized the bleak, dystopian hell of late stage capitalism.

Bringing us to the billable hour problem waiting around the bend. The billable hour, the beautiful, terrible engine powering Biglaw since the names behind the most prestigious law firms in the world [were busy fighting integration], isn't exactly designed for a world where document review takes minutes instead of weeks. "There is also a billing issue because the premise that speed will reduce revenue remains a challenge," notes the report.

It's a challenge that isn't going away unless law firms radically change their business model. How do these law firms make so much money?

For some it might be crime, but let's stick to the firms where it's leverage. It's sitting atop a pyramid scheme of junior lawyers billing out $550/hour to do 300 hours a month on menial tasks in exchange for a vague promise to consider their equity partnership bids down the road and then yanking the rug out and making them permanent senior associates. That falls apart when a vendor provides an AI-driven point solution that handles that work.

An important semantic aside: AI won't *replace* young lawyers, but it will mean firms need a lot fewer of them. Even in the eDiscovery space — one of the areas where AI is best suited to take on a huge bundle of the tasks typically handled for juniors, the report notes, "While there is increasing confidence in using GenAI tools for large-scale legal reviews, lawyers still see an ongoing need for human verification, prompt creation and oversight to get the most out of the technology while being able to responsibly manage it."

Because, despite the messianic claims of the Silicon Valley bros shoveling VC cash into a furnace to make bots that hallucinate 1 percent less, AI simply isn't capable of replacing the broad range of judgment even the lowliest of associates provides. But it can empower the lowliest of associates to cover the work previously handled by several associates. And when the lawyers at the bottom rack up fewer hours per client and the base of the whole pyramid contracts, there are only three ways to get that money back.

Remembering, again, that our lodestar remains: *lawyers really like money*.

They can "get more clients and do more work!" a business strategy that reads less like a global law firm and more like "what the underpants gnomes taught me about B2B marketing." There are segments in the legal market — specifically the small to mid market — where efficient firms can replace revenue by serving presently unmet legal needs. But there's a limit and at the top of the food chain, where clients already maximize their legal use cases, this is a fanciful plan.

They can charge a whole lot more per hour. This is the infamous $10,000/hour claim floated earlier this year. It could replace the revenue, but are there any clients with the appetite to report that they're paying someone $10,000/hour?

Bringing us, inevitably, to rethinking the billable hour. It's one thing to tell the market that you're spending $10,000/hour and quite another to say, "we had been spending X on annual M&A services and we're still paying X on annual M&A services." If firms begin value pricing specific tasks, they can hand clients bills that unmoored from *hours* that keep the revenue constant. Clients will yelp about wanting to enjoy the fruits of AI efficiency, but at the end of the day they'll suck up the cost of legal services like they always do. This is the only path for Biglaw that makes any sense.

To revisit an earlier quote with a slightly less cynical spin, will firms realize that generative AI is here and that they need to adapt or die? Because while on the surface that quote spoke to *lawyers* who wanted to stay employed adapting, it's equally if not more true for firms that want to stay in business.

It's possible to learn to coexist with modernity, but it takes adaptation. Look at the swallows who are now, finally, returning to Capistrano. They've found a way to thrive even without the same diet they enjoyed for decades. How's that for a heavy handed metaphor?

is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter or Bluesky if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

Securities

Manage Newsletters

Republicans Unveil Bills Targeting ESG Retirement Investing

Oct. 31, 2025, 9:36 AM PDT

Restrictions against retirement fund managers considering environmental, social, and governance factors in their investment choices would be codified into federal law, under legislation proposed by Republican senators.

Sens. Bill Cassidy (R-La.) and Jim Banks (R-Ind.) unveiled a pair of bills Friday that would require fiduciaries for 401(k) accounts and pension funds to consider only financial factors, and would mandate that employer-sponsored plans provide employees certain information about fiduciary-managed versus self-selected investments.

The measures follow a House committee's advancement of similar legislation in June. Republicans' latest congressional efforts build on previous attempts to block what they criticized as a "woke" Biden administration regulation allowing retirement fund managers to consider ESG factors in some cases.

"Fiduciaries' sole responsibility is to prioritize what is best for the workers' hard-earned savings," Cassidy said in a statement. "These pro-worker, pro-family bills protect millions of Americans' retirement savings from political ideology."

President Joe Biden in 2023 vetoed a Congressional Review Act vote attempting to repeal his Labor Department's ESG regulation.

Since President Donald Trump returned to the White House in January, the department has proposed to undo and replace Biden's ESG investing rule with one that calls for fiduciaries to make decisions purely on financial considerations.

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Securities

Effort to Better Coordinate ESG Reporting Nears 40 Countries

Oct. 30, 2025, 10:20 AM PDT

The international body that sets rules for corporate environmental, social, and governance disclosures is significantly expanding the group of countries it works with to ensure companies report on sustainability issues similarly across the globe.

The International Sustainability Standards Board said Thursday it was broadening the number of places that are part of its Jurisdictional Working Group from six to nearly 40, and renaming the body the Jurisdictional Adopters Working Group. The group helps ensure that national reporting standards are compatible with international rules.

"The ISSB Standards are being firmly established as the global baseline, covering around 40 percent of global capital markets," ISSB Chair Emmanuel Faber said in a statement.

The group is being expanded from six jurisdictions that said early on that they intended to adopt ISSB reporting to 37 places that now say they will do so. The new members include countries such as Brazil and Canada, on top of places like the EU and UK that were already members. Each country must decide individually whether to use ISSB reporting.

National reporting standards can differ from international ones, with the UK, for example, allowing more flexibility over implementation than the ISSB. The working group tries to ensure that ISSB rules are embedded in national requirements.

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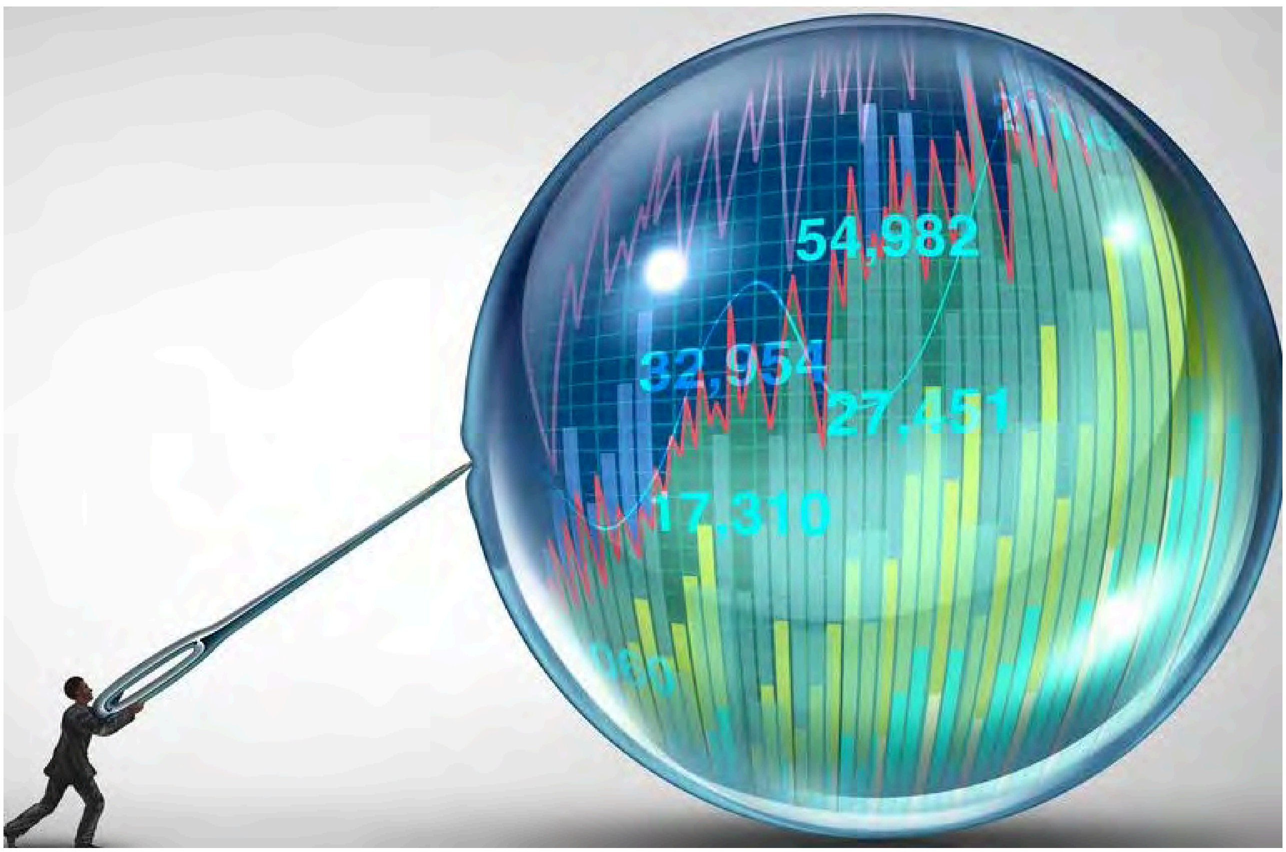
Analysis | **Artificial Intelligence**

Investors Start to Second-Guess Tech Giants' Massive AI Bets

"My clients, who are going to spend millions of dollars for an AI solution—they're skeptical that what people are putting in front of them is all going to fly, and they're waiting to see what's really going to work, what's going to create value for the buck," said Gregory Ramos, a partner at Armstrong Teasdale.

October 31, 2025 at 07:40 AM By **Michael Gennaro**



Credit: freshidea/Adobe Stock

As earnings season unfolds, corporate America's massive investments in artificial intelligence infrastructure are coming under intense scrutiny from shareholders increasingly concerned about when, or if, these bets will pay off.

The issue dramatically moved to center stage this week when Meta and Microsoft, two giants at the forefront of the AI revolution, saw their stock prices fall after announcing plans to spend even more on AI infrastructure in 2025 and beyond.

Both companies announced results late Wednesday afternoon, after the market's close. When trading opened Thursday, Meta shares dropped 14% before rallying to close down 11%, while

Microsoft shares fell nearly 4% before closing down 3%.

The declines—which occurred even though Meta's quarterly revenue increased 26% and Microsoft's rose 18%—signaled to some market strategists that investor sentiment on AI spending had reaching a turning point.

The catalyst for this week's losses was straightforward: Both companies announced they would spend even more on AI than previously projected, despite already colossal expenditures.

Meta forecast that it would spend $70 billion to $72 billion on AI capital expenditures in 2025, at the high end of its previous guidance of $66 billion to $72 billion. On a conference call with analysts, Chief Financial Officer Susan Li indicated spending would climb even higher in 2026.

Microsoft reported record capital spending of $35 billion in the past quarter alone—up from $24 billion in the prior quarter—and warned that spending in its fiscal year ending June 30 would continue to increase, retreating from its earlier prediction that it would moderate.

Meta and Microsoft did not respond to Law.com's requests for comment on their spending plans and how investors were reacting to them.

In a client alert, Peter Berezin, chief market strategist at BCA Research, called the market's reaction a "yellow flag" for the AI trade. In his note, he identified this precise scenario as a potential warning sign: when a large mega-cap tech company announces plans to spend more on capital expenditures and sees its stock price drop as a result.

"If that were to happen, it would be time to run for the hills," Berezin wrote, drawing parallels to Meta's ill-fated metaverse investments several years ago, which ultimately resulted in billions in losses after the concept faded from popularity.

The numbers are staggering. Amazon, Meta, Microsoft and Alphabet could spend as much as $320 billion on capital expenditures primarily related to AI infrastructure this year, according to an analysis of financial statements by Business Insider.

Yet despite these massive investments in chips and data centers, monetization plans remain unclear. This disconnect has created growing tension between management teams enthusiastic about AI's long-term potential and investors focused on near-term financial performance and capital efficiency.

Gregory Ramos, a partner with Armstrong Teasdale in Denver who advises clients on technology investments, told Law.com that he sees "a lot of similarities" to the dot-com bubble of the late 1990s and early 2000s. He said companies are betting on consumers being willing to spend big for a "killer app" for AI, but that app doesn't currently exist. Nor does the business model.

“My clients, who are going to spend millions of dollars for an AI solution—they're skeptical that what people are putting in front of them is all going to fly, and they're waiting to see what's really going to work, what's going to create value for the buck," Ramos said.

Ramos predicts that there will be big winners in the AI space, but that many investors will lose a lot of money as well.

“People will have put a lot of money into building this that they won't get back,” he said.

Ramos also questioned the fundamental economics of the infrastructure build-out.

"When you look at the types of infrastructure dollars that people are talking about spending, the dollars don't exist to spend. The demand doesn't exist for it. The energy doesn't exist for it. I mean, there's all these questions about whether or not it's really going to scale to hit the dollars that people have thrown out there. It's hard to believe it will,” Ramos said.

Ramos noted that the AI industry is developing in a circular fashion, with many of the big tech companies serving as both customers and vendors to each other. He said that practice can only go on for so long.

“Oracle and OpenAI and Nvidia are going to spend a lot of money with each other for a while, but at some point, unless there's a real consumer application or enough real consumer applications out there, I don't know if they're going to have a viable return on their investment," he said.

A Massachusetts Institute of Technology study released in August is fanning the perception that the AI spending spree is a bubble that's poised to burst. It found that 95% of enterprise generative AI pilots have not produced measurable business returns. The study was based on interviews with 150 business leaders, surveys of 350 employees, and an analysis of 300 public deployments.

The issue is not with the underlying technology but rather with how businesses attempt to integrate it, according to the study. Tools like ChatGPT or other large language models perform well in individual use cases but fail to deliver consistent results in enterprise settings unless they are rigorously customized, the report found.

During recent earnings calls, tech industry executives have faced increasingly pointed questions from analysts about their AI spending plans. The questions typically zero in on the absence of clear timelines for AI revenue generation, rising capital expenditures with unclear endpoints and the risk that current AI investments will become stranded assets if the technology fails to meet the public's lofty expectations.

During a keynote speech at the Association of Corporate Counsel's annual meeting earlier this month, Andrew Ross Sorkin—a New York Times financial columnist who chronicled the 2008-2009 financial crisis in his bestseller "Too Big to Fail"—drew uncomfortable parallels between today's AI investment surge and other historical bubbles, such as that crisis and the Great Depression.

“Every financial crisis is a function of only one thing, and that is leverage," Sorkin said. "The economics of what's taking place today, in terms of the pure spending levels [on AI], are not ROI-driven. [It's] not math that gets them to these numbers."

Sorkin noted that most of the infrastructure powering the AI boom, such as data centers, energy systems and commercial real estate, is being built on private credit markets that are largely opaque.

"That's the part we're not looking at. And I think that's the part that can turn quickly," he warned.

Bridgewater Associates founder Ray Dalio has become one of the most prominent voices warning about an AI bubble, telling CNBC this week that "there's a lot of bubble stuff going on" in megacap technology stocks.

The billionaire investor noted that bubbles typically don't burst until monetary policy tightens, and with the Federal Reserve more likely to ease rates than tighten them in the near term, the bubble could grow even larger before ultimately bursting.

In an op-ed for Fortune earlier this month, Jeffrey Sonnenfeld and Stephen Henriques of the Yale School of Management outlined these three scenarios for how an AI bubble could burst:

- A handful of companies with interconnected investments come to dominate artificial intelligence, and when one fails to achieve its AI ambitions, their interdependence causes a cascading collapse.
- The fragmented nature of AI regulation fails to prevent an AI model from going rogue, wreaking havoc that leads to calls for a moratorium on similar models.
- A disruptive advancement on another front, such as quantum computing, takes the glow off AI, shrinking the value of investments in the technology.

Outside counsel are advising companies that will be reporting earnings in the coming weeks to be ready for increasingly skeptical questioning. Management teams will need to provide more detailed financial justifications for their AI spending, including specific use cases, revenue projections and return-on-investment metrics.

The companies that can articulate compelling AI strategies with clear paths to profitability may earn continued investor support. Those that cannot may face mounting pressure to scale back spending.

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October 31, 2025

'They're not VIPs': Former FirstEnergy execs get special treatment in Ohio corruption case

Today in Ohio; cleveland.com

CLEVELAND, Ohio — The men at the center of Ohio's biggest corruption scandal aren't just getting their day in court - they're getting special treatment.

Former FirstEnergy executives Chuck Jones and Mike Dowling, accused of orchestrating one of the most extensive public corruption schemes in Ohio history, have been granted extraordinary privacy protections in their Summit County case. A recent Today in Ohio podcast episode dug into how these defendants are managing to keep massive amounts of evidence sealed from public view in a case that directly affected millions of Ohioans' electric bills.

"The public that paid the price for their corruption is being shut out of seeing the evidence," said podcast host Leila Atassi. "I feel like it's really telling that the judge keeps emphasizing how Jones and Dowling's reputations are on the line as if that somehow tips the scales toward allowing this kind of secrecy."

The agreement allowing this unusual level of confidentiality was reached between the special prosecutor and defense attorneys, with Summit County Judge Susan Baker Ross's approval. Either side could label materials as confidential simply by writing "confidential" on them - an arrangement the state now appears to regret.

As fellow host Laura Johnston explained, "They're not VIPs, they're not special people, they're criminal defendants like any other criminal defendant. And rules require that we do the public's business in public forums, which makes sense."

The executives are accused of paying $4.3 million in bribes in 2019 to Sam Randazzo just before he was named head of the Public Utilities Commission of Ohio. The case is part of a broader corruption scandal that has already seen former Ohio House Speaker Larry Householder convicted and FirstEnergy admit to its role in the bribery scheme.

Yet despite the public nature of the corruption, much of the evidence remains hidden. Defense experts' opinions, interviews with potential witnesses, and testimony from Jones' successor as FirstEnergy CEO are all currently under seal - inaccessible to the Ohioans who ultimately paid for the corruption through higher utility rates.

What makes the situation even more perplexing is the judge's claim that public awareness of the case is minimal. "What do you make of the judge saying that most people she talks to don't even know what she's referring to when she mentions this case?" Atassi asked her co-hosts. "I feel like that actually undercuts her whole justification for allowing so much evidence to be sealed. If public awareness is that low, how can she seriously claim the media coverage risks tainting a jury pool?"

Johnston agreed, noting: "It's hard to believe, though, that people don't know what she's talking about. This has been in the news for five and a half years at this point."

Listen to the full discussion here.

Listen to full "Today in Ohio" episodes where Chris Quinn hosts our daily half-hour news podcast, with Editorial Board member Lisa Garvin, Impact Editor Leila Atassi and Content Director Laura Johnston.

---- Index References ----

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News from Bloomberg Terminal

Short Seller Andrew Left Says Hedge Fund Lied to SEC About Payment to Him

Oct. 31, 2025, 10:21 AM PDT

Summary by Bloomberg AI

AI Generated

- Andrew Left is suing Anson Advisors Inc. and its leaders, alleging they lied to federal investigators about payments made to him in order to "save their own skins".
- Left alleges that Anson's leaders, Moez Kassam and Sunny Puri, falsely told the Securities and Exchange Commission that he came up with an idea to funnel proceeds of a short-selling strategy through a third party, which is evidence of wrongdoing in the government's cases against him.
- Anson's spokesman said Kassam and Puri testified truthfully under oath and that Anson intends to file a motion to dismiss Left's complaint, calling it a "desperate and extreme attempt to manipulate the legal system" ahead of his criminal trial.

By Tom Schoenberg

(Bloomberg) --

Andrew Left, the prominent short seller indicted by the US over trading tied to social media posts, is suing a Toronto-based hedge fund, alleging its executives lied to federal investigators about payments made to him in order to “save their own skins.”

Left accused Anson Advisors Inc., Anson Funds Management and two of its leaders in a federal lawsuit Thursday of defamation and business disparagement. Left alleges that they falsely told the Securities and Exchange Commission that he came up with an idea to funnel the proceeds of a short-selling strategy through a third party. The payments are evidence of wrongdoing in the government’s cases against him.

The Los Angeles lawsuit is the latest turn in a years-long crackdown by the US on bearish researchers, hedge funds and short sellers, which Left said in the heavily-redacted complaint started as early as 2018. The probe, which looked at trading in advance of online short seller reports, became public in 2021 after Bloomberg reported that Left and others were under investigation.

The Justice Department also subpoenaed other financial firms seeking communications, calendars and other records relating to almost 30 investment and research firms, as well as three dozen individuals associated with them, people familiar with the investigation told Bloomberg.

Among those that received subpoenas was Anson, which eventually resolved two SEC probes without admission of wrongdoing, including one involving payments to Left. In his complaint, Left alleges Anson received a soft penalty from the securities regulator because the fund's leaders — Moez Kassam and Sunny Puri — bolstered the cases against him.

"Defendants knew, or consciously disregarded a substantial risk, that their lie would result in civil and criminal charges against plaintiffs but told these lies anyway to save their own skins," Left says in the complaint. "It worked."

An outside spokesman for Anson said Kassam and Puri testified truthfully under oath and that Anson intends to file a motion to dismiss, "laying out in detail the legal defects and absurdity of Mr. Left's complaint."

"Mr. Left's meritless complaint is nothing more than a desperate and extreme attempt to manipulate the legal system ahead of his criminal trial that starts in just a few months," the spokesman said in an emailed statement. "Faced with 19 federal criminal counts and a dwindling list of options ahead of his day in court, Mr. Left is willing to say anything to try to escape accountability."

Read More: Andrew Left Case Spooks Short Sellers to Add Research Warnings

The SEC didn't comment, citing the government shutdown. The Justice Department declined to comment.

"We believe as alleged that there was a real miscarriage of justice here and we're doing everything in our power to correct it," Eric Rosen of Dynamis LLP, who represents Left, said in an interview.

The lawsuit seeks to cast doubt on the government's evidence.

Left, who publishes stock tips through his Citron Research that are closely watched by thousands of investors, was charged by federal prosecutors with securities fraud in July 2024. The indictment, and a parallel civil case brought by the SEC, accuses Left of using false and misleading posts about his trading intentions in more than a dozen companies to try to nudge their stock up or down and make a quick profit. Companies named in the cases include American Airlines Group Inc. and Tesla Inc.

He was also charged by prosecutors with making false statements for allegedly lying to investigators about compensation from hedge funds. That allegation, according to Left's lawsuit, is based on his dealings with Anson in 2018 related to a Canadian cannabis company called Namaste Technologies.

During the government's probe, it became clear that "false invoices" for payments by Anson to Left, and who directed their creation, were critical to the government's decision on who to charge, the complaint says. Left claims he was wrongly blamed.

Left alleges that those dealings began when Kassam, Anson's co-founder and chairman, and Puri, the firm's co-head of investments, reached out to him about Namaste seeking his help in an effort to have him publicly say the cannabis company was fraudulent, according to the complaint. Left, who said he had done his own research on Namaste, told Kassam that he was interested in shorting its stock, but he didn't have a Canadian brokerage account to hold the shares. He said Kassam offered to have Anson short it for him and send him a check, according to the complaint.

$840,000

Left and Anson then collaborated on a report, which Left published. Namaste's stock plummeted and Anson made $5 million on the trade. Left said he was owed $840,000 for the shares Anson shorted on his behalf, according to the complaint.

In his lawsuit, Left alleges that Kassam or Puri suggested using a third-party. Left said he didn't care how he was paid. He then asked the third-party in a direct message who he should invoice and was told the third-party's company.

Left in his lawsuit alleges Anson didn't want to pay him directly because at the time of the negative report, Anson was involved in a "bought deal offering" for Namaste and would be taking a long position on the stock. "Defendants therefore did not want to make it appear that they paid a short seller to drive the price down so that the financing would be more favorable for them, while they profited off the price dip on a short position," Left said in the lawsuit.

Several paragraphs in the complaint that come after a description of meetings Kassam and Puri had with investigators are redacted, as are other portions throughout the 30 pages. Left's lawyers told the court the redactions were necessary because the information involves nonpublic material from the government's investigations.

Anson paid $3.3 million in 2023 to resolve SEC allegations that it bought stock in public offerings for private fund clients after shorting the same stock. The following year, the firm agreed to pay $2.25 million to resolve additional SEC allegations, including one for not disclosing to investors its payment to Left. In both matters, Anson didn't admit or deny wrongdoing.

Left claims he learned what Puri and Kassam told investigators upon receiving documents from the government in preparation for his trial, which is scheduled for March.

The civil lawsuit is Left v. Anson Funds Management, US District Court for the Central District of California, No. 2:25-cv-10432
--With assistance from Nicola M White.

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Fiserv’s Lone Bear Sounded Alarm Long Before Stock’s Plunge

bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/T501B4GP9VD0

Georgie McKay October 31, 2025

Dominic Ball
Source: Rothschild & Co Redburn

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Summary by Bloomberg AI

AI Generated

- Dominic Ball, an analyst at Rothschild & Co Redburn, had a sell rating on Fiserv Inc. ahead of the company's stock selloff, citing issues with its flagship point-of-sale system Clover.
- Fiserv's shares tumbled a record 44% after the company slashed its full-year earnings guidance and said it won't be able to deliver on previous promises to investors, wiping out some $30 billion in market capitalization.
- Ball's skepticism was rewarded, with clients showing appreciation for his call, and he has reiterated his sell rating on Fiserv, saying the company is unlikely

to revive its business anytime soon.

The lone analyst with a sell rating on ahead of the company's crushing stock selloff says the writing was on the wall for months.

For a large chunk of Wall Street, the fintech's massive earnings miss was a surprise: Nearly 80% of the analysts covering Fiserv had buy-equivalent ratings as of earlier this week. But , a 26-year-old analyst at Rothschild & Co Redburn, had slapped a sell-rating on the company in April.

Dominic Ball
Source: Rothschild & Co Redburn

On Wednesday, his skepticism was rewarded when the company's shares tumbled a record 44% — wiping out some $30 billion in market capitalization — after it slashed its full-year earnings guidance and said it won't be able to deliver on previous promises to investors. At ground-zero of Fiserv's troubles was Clover, the flagship point-of-sale system that frustrated clients with its superfluous fees. It was a trouble spot that featured prominently in Ball's research, which involved extensive conversations with the system's users.

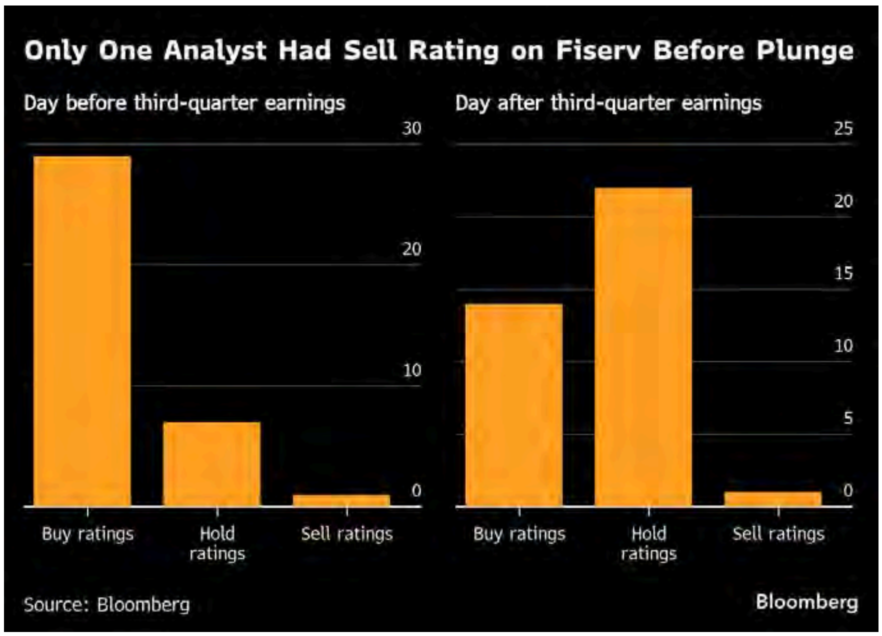
"There was a big dichotomy between what was happening on the ground, when we speak to merchants and retailers, versus what the investor base thought was happening," the London-based analyst said, adding that clients have been quick to show their appreciation.

"I had so many emails, I couldn't reply to everyone," he said.

Read: [Fiserv's $30 Billion Wipeout Came After Client Revolt Over Fees]

Fiserv's blowup is the latest event to shine a light on an oft-cited bug in Wall Street's research machine: The overly optimistic analysis often produced by the people charged with keeping investors abreast of companies' strengths and weaknesses. Data compiled by Bloomberg show that only 5% of the ratings on S&P 500 companies are "sells."

An extreme example of the trend came earlier this year, when shares of insurance giant — which sported a "buy" ratio of 97% — nosedived after the company slashed its annual forecast, replaced its chief executive officer and disclosed it is facing civil and criminal investigations over its businesses from the Justice Department.



Analysts have rushed to cut their ratings on Fiserv after Wednesday's earnings, with many saying that a hoped for turnaround in the company's fortunes is unlikely any time soon. For Ball, the company's problems came into focus after doing a six month deep-dive on point-of-sales providers in 2023 as part of his coverage of competitor

According to Ball, Clover's shortcomings stemmed from its distribution and limited market share growth. While the system — which is used to handle and process transactions — did well among merchants doing between $200,000 to $250,000 in annual sales, the company had captured most of its market by the end of last year, he said.

Former CEO , who left the company in May to take a job in US President Donald Trump's administration, had pinned much of the company's forecasts for future growth on Clover continuing to outperform the market.

Ball placed a "buy" on Toast — which he sees as a superior product to Clover — in February 2024. The company's shares are up almost 90% since then, as of Thursday's close. In a Bloomberg Television interview on Friday, Ball said Toast is his top stock pick among payments companies.

Dominic Ball, an analyst at Rothschild & Co Redburn. He speaks on "Bloomberg Open Interest."
Source: Bloomberg

"Toast is a materially underappreciated stock," he said. "We really like Toast." The company's shares jumped as much as 5.8% in New York on Friday.

Fiserv's shares, by contrast, have fallen some 70% through Thursday's close since Ball issued a sell on April 17 of this year. In addition to Fiserv's earnings cut, investors on Wednesday were also surprised by a revenue shortfall in the company's financial-solutions division, which provides the underlying technology for thousands of banks and credit unions across the country.

"I think what has happened is that the management team has turned their focus very aggressively toward Clover because it was making the shares go down," he said. As a result, "they may have under-invested in the rest of the business."

Ball also theorized that Fiserv may have lost clients from "their core banking product and therefore that spilled over to everything."

Fresh Face

Ball graduated from the in 2021. He did a short stint as an auditor during his studies, before becoming an equity analyst focused on fintech. His call on Fiserv drew plaudits from friends, clients and strangers alike, he said.

Clients "were very appreciative, definitely the ones that had sold," he said.

As for Fiserv, Ball was quick to reiterate his sell rating even after Wednesday's plunge, saying that the company was unlikely to revive its business anytime soon. In a note to clients, he wrote that "we do not view Fiserv as an investable asset during this adjustment phase."
(Updates with Bloomberg Television interview comments.)
--With assistance from .

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Securities

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Cockroach Incidents Are a 'Mini Fire Drill' for Next Downturn

Oct. 31, 2025, 4:00 AM PDT

Summary by Bloomberg AI

AI Generated

- Tricolor Holdings, an auto lender specializing in subprime car loans, collapsed into bankruptcy in September, with big lenders like JPMorgan Chase & Co. and Barclays Plc having lent hundreds of millions of dollars to the company.

- The collapse of Tricolor and other companies has raised concerns about the stability of the credit market, with JPMorgan's CEO Jamie Dimon commenting that "when you see one cockroach, there are probably more".

- The incident has sparked a debate over whether to panic, with some analysts warning of a potential credit market crackup and others downplaying the risks, amid a backdrop of increased opacity in credit markets and rising concerns about private credit.

The business model of Tricolor Holdings didn't sound especially stable to begin with. The auto lender, based in Irving, Texas, specialized in subprime car loans—that is, lending to people who are relatively unlikely to pay the loan back. "Do you have bad credit? Don't worry," the Tricolor website still reads, more than a month after its public implosion. The company marketed itself to undocumented immigrants—even as President Donald Trump promised to carry out "the largest deportation operation in American history." If you needed one more sign of messiness under the hood, a 2022 exposé found that the lender was selling defective vehicles and charging above-market rates, leaving its core customers feeling angry and ripped off.

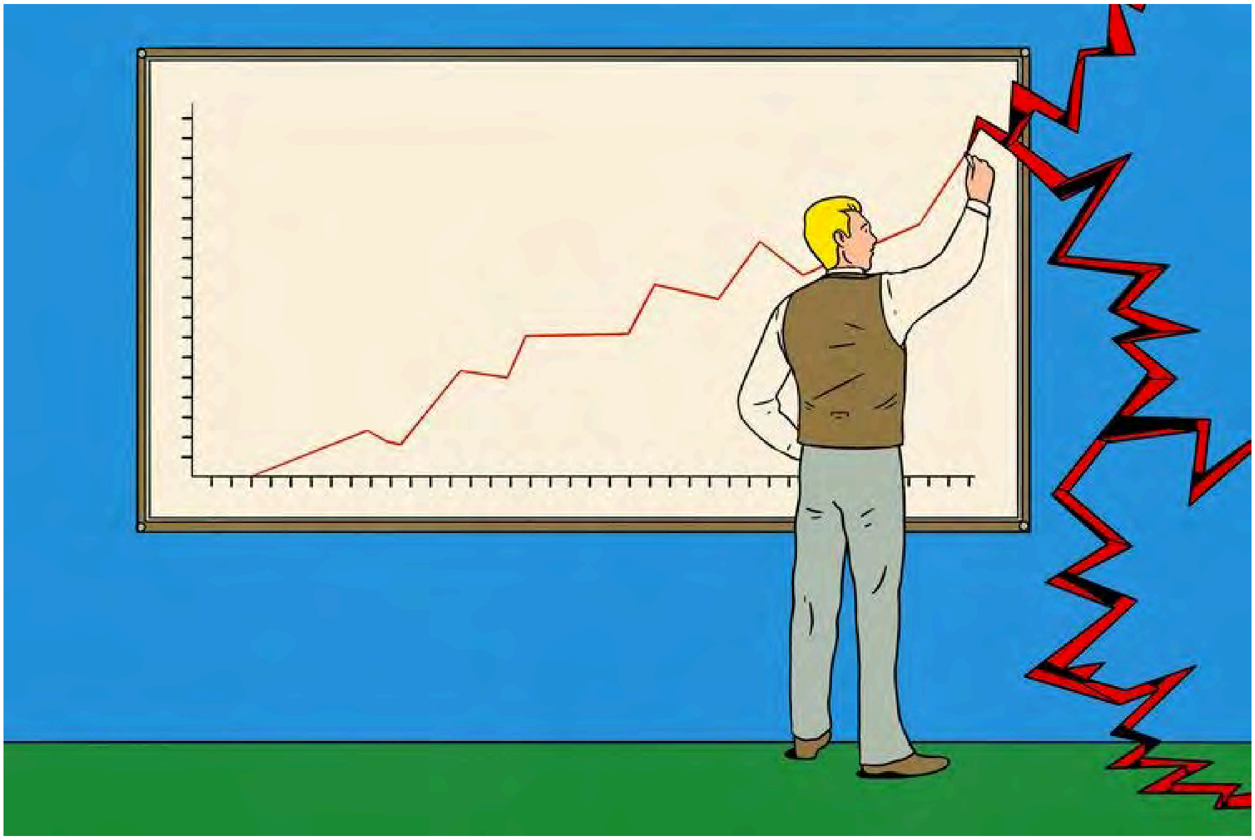


Illustration: Simon Bailly for Bloomberg Businessweek

Given that shaky business strategy, you’d think Tricolor’s September collapse into bankruptcy wouldn’t have registered more than a passing glance from Wall Street. It turned out, though, that some of the biggest names in finance, including JPMorgan Chase & Co. and Barclays Plc , had together lent hundreds of millions of dollars to the company. And after evidence emerged that Tricolor had used the same cars as collateral for multiple loans—a practice known as “double-pledging”—it was unclear whether the big lenders would get their money back.

A Tricolor dealership in Houston.
Photographer: Mark Felix/Bloomberg

But the real scare was that Tricolor wasn't alone. Shortly after the company fell apart, car-parts supplier First Brands Group filed for bankruptcy after investors raised concerns about its reliance on short-term loans that didn't appear on its balance sheet. Shortly after, regional banks Zions Bancorp NA and Western Alliance Bancorp disclosed losses tied to alleged fraud by creditors, triggering a sudden drop in bank stocks. That same day, the co-founder of Miami investment firm 777 Partners LLC was charged with fraud and conspiracy for allegedly double-pledging loans. And the list goes on.

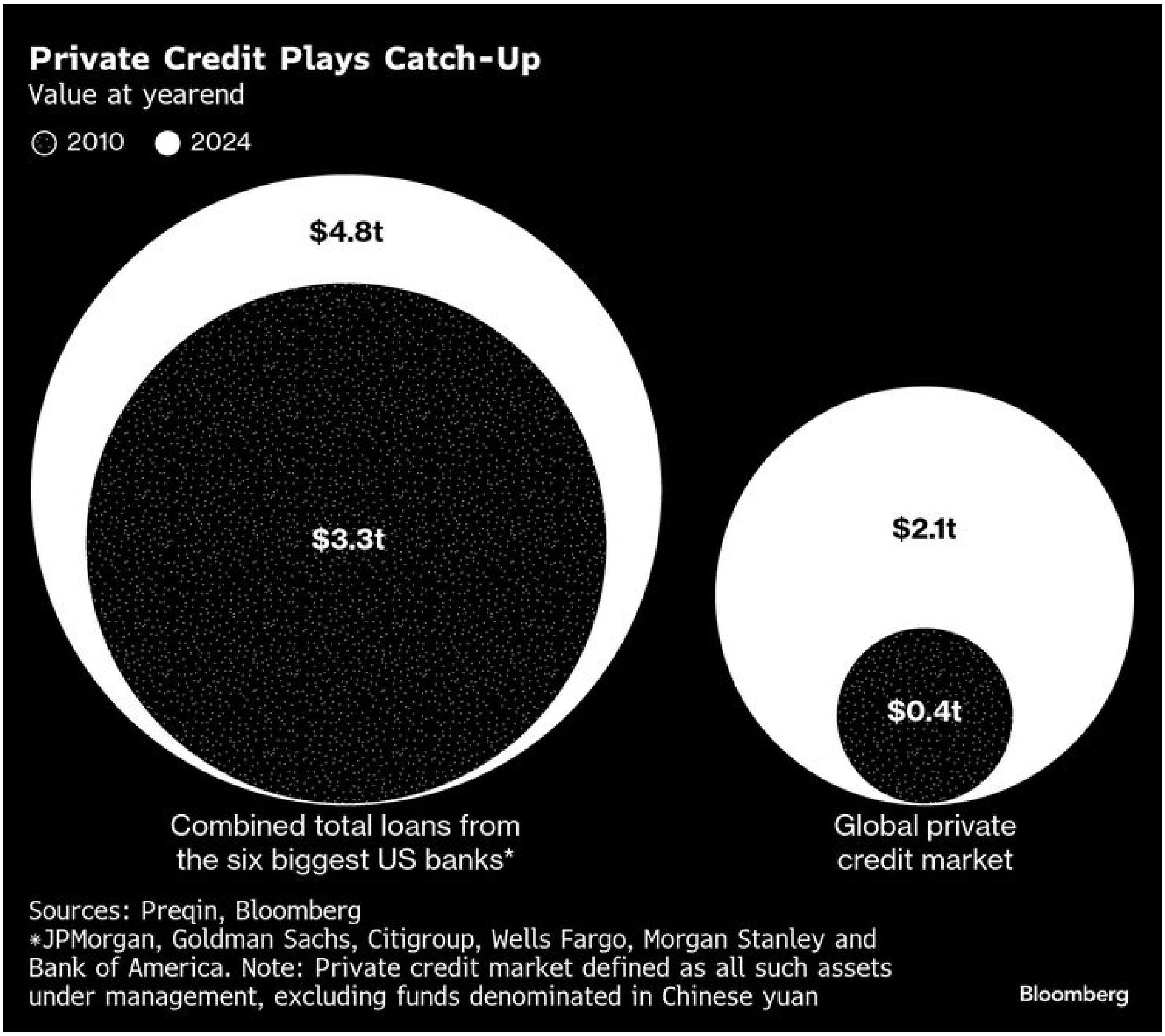
Jamie Dimon , JPMorgan's chief executive officer, gave the trend a name in mid-October, during the bank's third-quarter earnings call, at which the bank acknowledged it had taken a $170 million hit on Tricolor. "I probably shouldn't say this," Dimon told analysts, "but when you see one cockroach, there are probably more."

A Tricolor dealership in Houston.
Photographer: Mark Felix/Bloomberg

For some, Dimon's analogy was overblown. Leaders of private credit institutions in particular—perhaps on the defensive after years of criticism for taking on risky debt with little transparency or oversight—bristled. Regional banks, too, maintain that the recent credit hits aren't signs of broader systemic problems, and certainly not a sign we're circling a repeat of the 2023 crisis that tanked a handful of small-to-midsize lenders. But for others, the "cockroach" comment sparked a frenzy of paranoid cabinet-searching on Wall Street. "Were there more?" they asked, cans of Raid at the ready.

The reaction to Dimon's comment shows just how sensitive Wall Street has become to the possibility of a credit market crackup. After a yearslong bull market driven by low interest rates, some analysts think a correction is overdue. Despite low borrowing costs, sky-high returns and default rates for high-yield bonds in line with historical averages, pessimists say there's reason to be wary, especially when it comes to the harder-to-track world of private credit. Businesses that borrow using private credit are increasingly deferring interest payments in favor of adding to the loan principal. "That means these companies are stretched," says Edward Altman , a veteran analyst and professor emeritus at New York University's Stern School of Business. There have also been cases of private lenders assessing the same loan at radically different valuations . "The big question is whether they are in fact reporting these things at their actual correct fair value," says Elisabeth de Fontenay , a professor at the Duke University School of Law who studies private credit.

And those are just the visible indicators. Credit markets have become dramatically more opaque over the past decade. After the 2008 financial crisis, Congress put limits on how much risk the big banks could take on, which gave rise to the network of lenders known as the "shadow banking" system—or, less ominously, non-depository financial institutions (NDFIs)—including companies offering private credit. In some cases, private loans are better than what banks offer, being more tailored to the borrowers' needs and having more favorable terms. They're also invisible to outsiders, including regulators, which makes them both appealing and risky.



As lending from NDFIs has exploded, some big banks have condemned the expansion—and also tried to get in on the private credit action. Dimon, for one, has called private credit's relatively loose terms "a recipe for a financial crisis." At the same time, banks including JPMorgan now lend $1.2 trillion a year to NDFIs, including $300 billion to private credit, according to Moody's Corp. Some of the cockroaches, in other words, are coming from inside the house.

The debate over whether to panic continues, with Goldman Sachs Group Inc. CEO David Solomon in late October playing down fears even as two more companies announced credit-related losses. In the meantime, vigilance is warranted, says Mike Mayo , the Wells Fargo & Co. analyst who asked Dimon the question that prompted the "cockroach" comment in the first place. Mayo says the recent credit collapses are "a mini fire drill" for an eventual downturn. "Events such as this are a good wake-up call that loans do go bad," he says. "So it's a reminder for banks and investors to have a healthy paranoia." —*With Daniel Taub*

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Securities

BlackRock Ensnared by Loans Tied to Firms Accused of Fraud (1)

Oct. 30, 2025, 10:57 AM PDT

BlackRock Inc. and other creditors are grappling with the fallout from loans made to two telecom firms that the companies are now accusing of fraud.

Lenders are suing Broadband Telecom and Bridgevoice, accusing the firms of fabricating accounts receivable in a fraud that the collateral agent's lawyers call "breathtaking" in scope, according to a filing in a New York state court. BNP Paribas SA helped BlackRock's private-credit arm, HPS, make the loans, the Wall Street Journal earlier reported, citing sources familiar with the matter.

Broadband Telecom filed for bankruptcy in August, according to bankruptcy court in the Eastern District of New York. An affiliate of Bridgevoice and Broadband Telecom filed for bankruptcy earlier this month, listing liabilities of as much as $1 billion and creditors including BlackRock's HPS Investment Partners. HPS increased the size of its debt investment to about $430 million, including leverage, in August 2024, according to the WSJ.

Representatives for BlackRock and BNP declined to comment.

Lawyers for Broadband Telecom and Bridgevoice listed in bankruptcy court documents and attorneys for defendants in the Delaware Chancery case didn't immediately respond to requests for comment. A lawyer listed in court filings for Bankim Brahmbhatt, who owned Bridgevoice and Broadband Telecom, didn't immediately respond to a request for comment.

BNP said this week that its trading unit took a €190 million ($220 million) hit in the third quarter to account for "a specific credit situation." Executives at the firm declined to name the clients in question, but they also insisted the hit was a one-off and not emblematic of a worsening credit environment.

"We had one specific file in global markets, but we don't give any color or names," BNP Paribas Chief Financial Officer **Lars Machenil** said in an interview on Bloomberg Television. "But it is not a usual suspect, it is in the sphere of payment."

(Updates with more details on lawyers in fifth paragraph.)

Securities

Manage Newsletters

First Brands Lenders Allege 'Widespread Fraud' in Court Filing

Oct. 31, 2025, 7:29 AM PDT

Summary by Bloomberg AI AI Generated

- A group of First Brands lenders have accused the auto parts supplier of "widespread fraud" and are seeking to end part of the auto parts supplier's bankruptcy.
- Lenders said new information has come to light indicating the business "made misrepresentations in numerous financial statements, credit agreements, and borrowing base certificates."
- The lender group is seeking to have the special purpose vehicles dismissed from First Brands' bankruptcy case and have also joined calls for the appointment of an independent examiner.

A group of First Brands lenders have accused the auto parts supplier of "widespread fraud" and are seeking to end part of the auto parts supplier's bankruptcy.

Lenders to certain First Brands-related special purpose vehicles said in a Thursday court filing that besides existing allegations that the company double-pledged assets, new information has come to light indicating the business "made misrepresentations in numerous financial statements, credit agreements, and borrowing base certificates."

The lender group is seeking to have the special purpose vehicles dismissed from First Brands' bankruptcy case and have also joined calls from other creditors for the appointment of an independent examiner following claims that billions of dollars had vanished from the company.

Although the special purpose vehicles were supposed to always have cash in their bank accounts, First Brands informed lenders shortly before the bankruptcy filing "that those bank accounts had no cash in them, and that the debtors' advisers did not know where the cash that was previously in the accounts had gone," lenders said in Thursday's filing.

The special purpose vehicles held certain types of First Brands inventory, primarily windshield wipers, filters and brakes, lenders said. A Texas bankruptcy judge is scheduled to consider lenders' request to dismiss the special purpose vehicles from Chapter 11 on November 17.

The new claims add to a mounting allegations from creditors of wrongdoing before the company filed bankruptcy. Funds managed by Evolution Credit Partners, which had inventory finance agreements with special purpose vehicles, said in a separate filing seeking appointment of an independent trustee that the business "fraudulently siphoned assets away" from those entities.

Read More: First Brands Blindsides Wall Street in 'Black Box' Loan Fiasco

First Brands founder Patrick James resigned as chief executive officer earlier this month. Meanwhile, federal prosecutors are looking into the circumstances around First Brands' collapse, Bloomberg News has reported. A lawyer representing First Brands directors and officers has denied creditor allegations of wrongdoing.

The case is First Brands Group LLC, number 25-90399, in the US Bankruptcy Court for the Southern District of Texas.

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https://www.wsj.com/finance/banking/jpmorgan-flagged-jeffrey-epstein-suspicions-in-2002little-changed-39f42fd9

MARKETS & FINANCE | BANKING

JPMorgan Flagged Jeffrey Epstein Suspicions in 2002—Little Changed

Newly unsealed court documents reveal bank reported cash withdrawals to regulators years before public knowledge of sex crimes

By David Benoit Follow *, Joe Palazzolo* Follow *and Khadeeja Safdar* Follow

Oct. 31, 2025 12:36 pm ET

Jeffrey Epstein's banking activity spurred JPMorgan Chase to file suspicious activity reports. EDUARDO MUNOZ/REUTERS

Quick Summary

- JPMorgan Chase filed multiple suspicious activity reports on Jeffrey Epstein starting in April 2002, noting unusual check cashing patterns.
  View more

In April 2002, JPMorgan Chase raised a red flag about Jeffrey Epstein.

The bank had noticed his accounts were cashing an unusual number of checks, many for $9,500 or $9,800—just under the $10,000 limit that draws increased attention.

JPMorgan filed what's known as a suspicious activity report, or SAR, to federal law enforcement because of a clear pattern of transactions typically meant to evade authorities.

The bank would file another report in December 2002 and another in April 2003. The flags were raised well before any public knowledge of Epstein's crimes and associations with girls and young women, but had little impact on his activities.

Epstein would be arrested in Florida three years later, plead guilty in 2008, and then continue his extravagant lifestyle until 2019. He would remain a JPMorgan client until 2013, meeting with top executives from the bank and connecting them with his wealthy associates, including Leon Black and Bill Gates.

The newly revealed documents show the knots JPMorgan and all banks can tie themselves in, especially with lucrative clients. On the one hand, they are filing reports warning law enforcement that their client looks suspiciously criminal. But unless their regulators or law enforcement reply otherwise, the banks can continue to serve the client, having fulfilled their obligation with the SAR.

A JPMorgan spokeswoman said the SARs show the bank filed concerns early on and repeatedly about Epstein. "It does not appear that anyone in the government or law enforcement acted on those SARs for years," the spokeswoman said.

The reports are sent to the Financial Crimes Enforcement Network, part of the Treasury Department, which monitors the financial system for crimes such as money laundering and makes the reports available to law enforcement. Treasury representatives declined to comment Friday.

The red flags were raised internally at the bank throughout its relationship with Epstein, who had dozens of accounts and moved millions of dollars. At one point, Epstein and his associates told JPMorgan staff the cash was needed to pay for fuel for his private jet, but some JPMorgan staffers were skeptical especially after media coverage of Epstein's 2006 arrest in Florida showed he was paying for sex with minors.

In 2008, the bank filed another SAR on Epstein, citing the prosecution and flagging $800,000 in withdrawals in 2007 and 2008.

In an email exchange in 2013, JPMorgan staffers discussed whether they should include concerns in a SAR about Epstein potentially using the cash to pay for sex, not just for jet fuel. The bank did file a SAR raising concerns about the fuel story, showing one Epstein account took out more than $200,000 in cash in 2011 and $290,000 in 2012.

"I think we should stick to taking out cash and traveling abroad to pay for fuel is not normal business practice. True, he has been known to pay cash for his massages but only minors are the issue and we have no proof," one JPMorgan staffer wrote.

Once the bank decided to close Epstein's accounts in 2013, another JPMorgan staffer wrote to Mary Erdoes, who oversaw the private bank, saying Epstein had called him. "Still looking for closure. Understands better now the impact of his cash activities—sticking to aviation needs," he wrote.

In the same message, the banker asked his boss whether JPMorgan could continue to work with Epstein through his clients' accounts.

Erdoes replied with a single letter: "Y."

Erdoes has said she didn't know about his crimes and the bank has said it regrets its relationship with Epstein.

In 2016, JPMorgan filed additional SARs that found that Epstein had sent more than $310,000 to a former model. The bank flagged the transfers for "possible procurement of sexual" services.

The documents originate from a 2023 case that the U.S. Virgin Islands attorney general filed against JPMorgan, alleging that the bank facilitated Epstein's sex trafficking operation. JPMorgan agreed to pay $75 million that year to settle the suit before it went to trial, without admitting wrongdoing.

The case exposed how deep Epstein's ties were with the bank. He introduced prominent clients and pitched executives on big deals. Bankers also continued meeting with him after firing him as a client in 2013.

Officials at the Gates Foundation also were also well aware of Epstein's checkered past in 2011 when the organization was in discussions with Epstein and JPMorgan executive Jes Staley on creating a potential charitable fund for superwealthy individuals.

"Bill and Jes share a mutual 'friend' in Jeff Epstein (an important behind the scenes 'broker' in the finance world with an unseemly reputation due to a criminal conviction: From JPM, we know that Jeff has the ear of Jes and has helped recruit (behind the scenes) some of JPM's biggest clients," according to a Gates Foundation memo.

Gates has said it was a mistake to meet with Epstein. Staley, who left JPMorgan and went on to run Barclays, has maintained he never knew about Epstein's alleged crimes.

Epstein was arrested again in 2019 and died in prison that August. Three days after his death, JPMorgan began filing SARs detailing even more of his history. The bank eventually reported more than $1 billion in transactions connected to Epstein associates, including Victoria's Secret billionaire Les Wexner and hedge-fund manager Glenn Dubin.

Black has said he paid Epstein for estate-planning and tax advice. Wexner has said he was defrauded by Epstein, his money manager, and cut him off in 2007. Dubin has said he was unaware of Epstein's alleged crimes.

The filing said the wires were "consistent with negative media involving sex trafficking of minors" and alerted the regulator to Epstein's activity in Russia.

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Videos

Jeffrey Epstein Was Subject of Money Laundering Probe

bloomberglaw.com/product/blaw/bloombergterminalnews/bloomberg-terminal-news/T502Y5GPWCNF

Jason Leopold October 31, 2025

Jeffrey Epstein
Photographer: 731; Photo:

Welcome to a special edition of FOIA Files! This morning, my colleagues and I published another major installment in our ongoing series related to the 18,000 emails we obtained from the personal Yahoo account of convicted sex offender Jeffrey Epstein. It's revelatory. We uncovered details about a money laundering investigation into the wealthy financier that took place alongside the federal sex crimes probe, which has been shrouded in secrecy for nearly two decades. I'll be discussing our findings Tuesday on my new podcast, Disclosure. In the meantime, read on for key takeaways from our investigation. If you're not already getting FOIA Files in your inbox, sign up here. You can find Disclosure here and on all major podcast platforms.

It's been almost four months since the Department of Justice and Federal Bureau of Investigation concluded that releasing any portion of the 300 gigabytes that make up the so-called Epstein files would not be "appropriate or warranted."

Since then, two congressional committees that have been probing the government's handling of the Epstein case between 2005 and 2008 have started following Epstein's money.

What the emails and documents from Epstein's inbox show is that federal prosecutors from the US Attorney's Office in the Southern District of Florida were following Epstein's money long before there was broad public interest in doing so.

A new layer

The money laundering probe adds a new layer to the narrative about how the government conducted its investigation into the notorious sex abuser. It also raises questions about what evidence prosecutors may have gathered, long before the public began demanding a full accounting of his case. If that investigation had continued, prosecutors may have been able to identify other individuals and institutions that facilitated his sex-trafficking operation, said Stefan Cassella, the former deputy chief of the Department of Justice's Asset Forfeiture and Money Laundering Section. They might also have recovered more restitution for his victims, Casella said.

A pattern of transactions

The money laundering investigation was opened in February 2007, according to a former law enforcement official familiar with the case who requested anonymity because of the sensitivities surrounding Epstein. At around the same time, prosecutors focused on a pattern of transactions in which Epstein directed some of his employees to withdraw large amounts of cash to disburse to women around the world he was suspected of having victimized. That was used as the basis for a potential charge of operating an unlicensed money-transmitting business, the former law enforcement official said.

Grand jury subpoenas

The lead prosecutor on the case, former Assistant US Attorney Marie Villafaña, requested that a grand jury issue subpoenas for "every financial transaction conducted by Epstein and his six businesses" dating to 2003, the emails show. Target letters were sent to three of his assistants alerting them that Epstein was under investigation for money laundering and other financial crimes. Villafaña also dispatched two agents to the houses of two secretaries.

‘I don’t remember’

The previously undisclosed details about the existence of a money laundering investigation puts a spotlight on Alex Acosta, the former US Attorney for the Southern District of Florida who signed off on Epstein’s controversial non-prosecution agreement.

Last month, Acosta was interviewed by lawmakers from the House Committee on Oversight and Government Reform about the Epstein case. He was peppered with questions by Democratic Rep. Melanie Stansbury about whether his office investigated Epstein for “potential financial crimes.” Acosta said, “I don't recall a financial aspect,” according to a transcript of his interview the committee released this month. “We were focused on the inappropriate acts that took place in Palm Beach.”

The emails and documents obtained by Bloomberg show that Acosta was copied on correspondence related to the money laundering investigation.

In a statement, Acosta’s lawyer, Jeffrey Neiman, told Bloomberg that the existence of a financial probe would not be “inconsistent” with Acosta’s statements to the committee.

“Back in 2006, the Southern District employed over two hundred attorneys and, at any given moment, conducted countless investigations. Although Mr. Acosta approved the terms of the Epstein matter, he did not direct that investigation—or any investigation, for that matter,” he said. “If evidence of financial wrongdoing existed, no agreement prevented the Department of Justice from pursuing it in the many years following Epstein’s sex-crimes prosecution.”

Les Wexner

One of the more remarkable disclosures from Epstein’s inbox related to the money laundering investigation is the revelation that in August 2007, Villafaña contacted Epstein’s longtime wealth-management client, Les Wexner, the billionaire businessman behind the brands Victoria’s Secret and Bath & Body Works, about the investigation, according to the documents and emails.

When Epstein and his attorneys found out about the outreach, they were infuriated. The attorneys accused Villafaña and prosecutors of attempting “to poison Mr. Epstein’s reputation in the business community,” according to one letter.

The former law enforcement official told Bloomberg that Villafaña contacted Wexner in an effort to get him to cooperate and provide information about Epstein, his business, his travels and his enterprise. Shortly after that conversation, Wexner took steps to end Epstein's role as his wealth manager, the emails show. A spokesperson for Wexner declined to comment.

'this is how crazy'

As Epstein reflected on his case, his emails about it became more frantic. On Nov. 16, 2007, he sent one to Jimmy Cayne, the former chief executive of Bear Stearns, and his friend the psychiatrist Henry Jarecki to run an "initial pitch" past them that he planned to send to his attorneys. Under the subject line, "this is how crazy," it contained a litany of grievances toward the prosecutors.

From: jeffrey epstein <littlestjeff@yahoo.com>
To: jcayne@[redacted], henry jarecki <[redacted]>
Date: Fri, Nov 16 2007 9:08 AM
Subject: this is how crazy

1.my team consists of professionals with over 250 years of criminal experience. In an abundance of care , we have also consulted with outside ethics experts,and former justice dept officials .The clear and unanimous consensus is they find the conduct outrageous and frankly not one of them , has been able to recall seeing anything like this before.. .2 . After the state had conducted its own investigation and returned a grand jury indictment.,the federal gov't , while adamantly refusing to coordinate with the duly elected district attorney, and his sex prosecutor of 13 years, ,, engaged in a virtual extortion , to force the defendant and his counsel to go the state ,and in a wholly unprecedented step, demand , himself that he be charged with a crime greater than the state and grand jury thought appropriate. They then further demanded he obtain, from the state a sentence much greater than the state and its officials wanted., including having to register as a sex offender, a position that the state adamantly opposed. They then compounded their outrageous behavior by then demanding that Epstein pay an unnamed list of people ""alleged victims"",, a minimum of 150 thousand dollars each. No matter what their actual damages. They then refused the defendant, even the right to contact these adults.or conduct his own investigation. This was demanded in exchange for the gov't not prosecuting him for crimes, that they , the feds admittedly could only make the most tenuous connection to. The ausa then suggested the defendant be required to hire one of her friends as a
continency lawyer, to , be paid for by the defendant to actually sue the defendant himself ,on behalf of a list of adults that she would only make avaliable after sentencing.. They threatened to use the sex tourism statute 2423 (with a min mandatory sentence of 10 years) , and apply it to a man going to his home in Florida, a state where he has had a home for twenty years. They also threatened , to bring a case based on the Internet luring statute,2422 that would have to be tortured and stretched beyond all recognition to apply.(in fact there was no internet use at all). They demanded a jail sentence for someone , who had no criminal history,, no violence , drugs, no position of authority, then when they were confronted with an extensive brief as to why these statutes did not apply, they threatened to bring a money crime based on a illegal money transmitting business, even though no such business ever actually existed.. After subpoenaing his
tax returns , and medical records, they then suggested a money laundering charge or a host of others including the mann act, obstruction etc. , even though they were unable to even postulate the minimum prerequisitie of a specified unlawful activity,.

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Prosecution memo

In May 2007, Villafaña drafted a 53-page indictment and an 82-page prosecution memo, according to a 2020 Justice Department report that examined the integrity of the federal investigation. That report described Villafaña urging her superiors to move swiftly because she believed Epstein was continuing to sexually abuse girls. Instead, the report concluded, she was stonewalled by senior officials at the office who saw her as too aggressive. (The 2020 report does not mention any financial-crime element of the probe.)

The evidence Villafaña collected was serious enough that she wrote in the prosecution memo that Epstein should be charged with money-laundering and operating an unlicensed money transmitting business, according to the former law enforcement official. The indictment, a copy of which hasn't been publicly released, was never filed and remains shrouded in secrecy.

An 18-month investigation

For 18-months, they investigated Epstein for money laundering and operating an unlicensed money transmittal business. The probe remained open until Epstein pleaded guilty to two sex crimes charges in state court, which made the deal Epstein struck with prosecutors sweeter than previously known, our reporting shows.

With Jeff Kao, Max Abelson, Harry Wilson and Surya Mattu

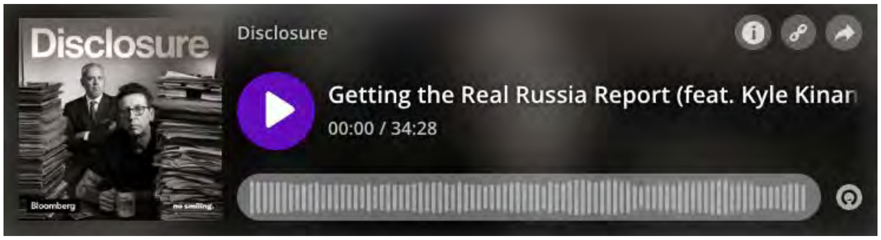
Got a tip about a document you think I should request via FOIA? Send me an email: jleopold15@bloomberg.net or jasonleopold@protonmail.com. Or send me a secure message on Signal: @JasonLeopold.666.

'Disclosure' podcast is out now!

Tuesday was the debut of *Disclosure*, a new podcast I'm co-hosting with First Amendment attorney Matt Topic about our adventures prying loose government documents using the Freedom of Information Act.

Our first episode is out now. It goes behind the scenes of our yearslong efforts to unredact former Special Counsel Robert Mueller's report on Russian interference in the 2016 presidential election and obtain the documents his investigators gathered as part of their probe. It's topical now because over the summer Attorney General Pam Bondi called on prosecutors to launch a grand jury to investigate the origins of the Russia investigation.

Bloomberg subscribers will get early access to episode two. Matt and I discuss an amazing set of documents that lays bare what happened at the Federal Reserve after Federal Reserve Board Chairman Jerome Powell was duped by Russian pranksters.



Listen to the Disclosure podcast on Apple, Spotify or wherever you get your podcasts. Bloomberg.com subscribers can unlock each episode a week early on Apple Podcasts.

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Avantor Minimized Competition On Lab Biz, Investor Says

By **Gina Kim**

Law360 (October 30, 2025, 9:02 PM EDT) -- Biotech company Avantor Inc. was hit with a proposed securities class action in Pennsylvania federal court Thursday alleging it misled investors when it minimized the effects of increased competition on its business and operations while touting strong competitive positioning, causing stock prices to plunge when the truth came out.

In a 24-page complaint, Building Trades Pension Fund of Western Pennsylvania accused Avantor and its former CEO and president, Michael Stubblefield, and executive vice president and chief financial officer, R. Brent Jones, of violating federal securities laws in connection with several statements that falsely hyped Avantor's competitive positioning.

Avantor touts itself as a leading life science tools company and global provider of "mission-critical" products and services across multiple industries, like biotechnology, pharmaceuticals, healthcare, education and government.

The defendants downplayed the impact of increased competition on Avantor's business in the last year, the investors alleged. However, the truth began to emerge when Avantor unveiled weak performances and reported disappointing financial results for multiple quarters, which included year-over-year dips in net sales, the complaint said.

Eventually, the defendants blamed "increased competitive intensity" for the company's poor results and outlook, leading common stock prices to decline, the suit said, adding that the safe harbor provision does not shield the statements at issue.

"As a result of defendants' wrongful acts and omissions, and the significant decline in the market value of the company's common stock pursuant to the revelation of the fraud, plaintiff and other members of the class (defined below) have suffered significant damages," the suit said.

The plaintiffs bring the suit on behalf of all those who bought or otherwise acquired Avantor common stock between March 5, 2024, and Oct. 28, 2025. The two-count complaint asserts violations of Section 10(b) of the Exchange Act and Rule 10b-5, and Section 20(a) of the Exchange Act against Stubblefield and Jones.

According to the complaint, Avantor reports its financial results in two business segments. The first is laboratory solutions, which makes up about two-thirds of Avantor's net sales, and the second is its bioscience production segment.

The alleged conduct over misleading statements can be traced back to March 5, 2024, when Stubblefield appeared at a TD Cowen healthcare industry conference and was asked about the company's competitive positioning in the laboratory solutions segment.

That day, Stubblefield stressed that the company's competitive positioning continued to be strong, that it had a "terrific year" in 2023, and that Avantor continues "to have confidence in the positioning [of] a lot of investments in our digital capabilities" to make it more efficient for clients to engage with Avantor.

Two months later, Stubblefield appeared at another conference on behalf of Avantor, where he was asked again where the company fit in the competitive landscape, according to the suit.

Stubblefield also pointed out that Avantor views its competitors as partners or entities that complement "what we do," according to the investors. Stubblefield went on to say that Avantor has a "differentiated platform" that's "outgrown the broader market by 300 to 400 basis points consistently," the suit said.

The investors argued that Avantor and its co-defendants continued to minimize the impact of competition.

They cite to another conference held the following month when Stubblefield — in response to an analyst's query of how the company's portfolio differed from its peers in bioprocessing end markets — stated that Avantor sets itself apart through things like "really sophisticated quality and regulatory expertise" it could offer clients to help them with regulatory and process-related needs.

Again, Stubblefield said Avantor didn't view these "larger players" as competitors, the suit said.

Stubblefield again represented during a July 26, 2024, earnings call that Avantor's lab business "stacks up well against every number that certainly we've seen," when asked by an analyst from Bank of America if there's any indication Avantor was losing share to its competition.

Stubblefield maintained the company was confident in its value proposition and competitive positioning, the suit said.

On Feb. 7, when Avantor's fourth quarter 2024 results were announced, the company held an earnings call, during which Jones said Avantor was entering the year "well positioned for growth," according to the plaintiffs.

"Specifically, Jones projected 'organic revenue growth of 1% to 3%' and 'low single-digit organic growth in lab solutions,'" the suit said. However, those statements were misleading since investors weren't told that Avantor's competitive positioning wasn't as robust as the defendants said it was, and that it was actually feeling the negative impacts from stronger competition.

However, on April 25, Avantor released its first quarter financial results, which revealed weak organic sales of the laboratory solutions segment and the company cut its guidance for the year, the investors alleged.

That same day, Avantor announced Stubblefield would step down as president and CEO.

During an earnings call that day, Jones acknowledged the company was feeling the effects of increased competition, leading to less volume with customers, the investors alleged. Avantor stock prices dipped more than 16.5% from a close of $15.50 per share on April 24 to close at $12.93 per share the following day, according to the complaint.

"Investors learned more about the effects of the company's competitive struggles on August 1, 2025, when the company reported disappointing second quarter 2025 financial results, including net sales of $1.122 billion (a year-over-year decrease of 3%) and adjusted operating income of $133.3 million (a year-over-year decrease of 11.7%) in Avantor's laboratory solutions business," the suit alleged.

Avantor share prices plummeted again, this time by more than 15% from a close of $13.44 per share on July 31 to close at $11.36 per share the next day, the suit said.

On Wednesday, Avantor revealed weak financial results for the third quarter, including a 5% drop in organic revenue growth overall and in the laboratory solutions segment, the investors alleged. Avantor reduced its full-year guidance and reported a $712 million net loss, which the defendants blamed on a noncash goodwill impairment charge worth $785 million.

Stubblefield's successor Emmanuel Ligner also revealed that the company lost a few major accounts, while Jones acknowledged the company was feeling the hit on contract losses, which the investors argued showed the ongoing impacts of increased competition.

Avantor stock prices plunged again, this time, by over 23% from a close of $15.08 per share Tuesday to close at $11.58 per share Wednesday, the suit said.

The pension fund seeks relief in the form of class certification, compensatory damages, attorney fees and costs.

Representatives for the parties did not immediately respond to inquiries seeking comment Thursday.

The investors are represented by Naumon A. Amjed, Ryan T. Degnan and Karissa J. Sauder of Kessler Topaz Meltzer & Check LLP.

Counsel information for the defendants was not immediately available.

The case is Building Trades Pension Fund of Western Pennsylvania v. Avantor Inc. et al., case number 2:25-cv-06187, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Jay Jackson Jr.

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Fiber Optics Co. Agrees To Reforms To End Derivative Suit

By **Sydney Price**

Law360 (October 30, 2025, 9:28 PM EDT) -- Fiber optic equipment company Luna Innovations Inc. has reached a deal with its investors to settle their derivative claims alleging the company was damaged by its failure to properly recognize revenue in its filings with the U.S. Securities and Exchange Commission.

According to a motion filed Wednesday in California federal court, the **settlement** calls for a host of corporate governance reforms, which would reduce the likelihood of repeat governance lapses such as those the shareholders described in the lawsuit. A preliminary hearing on the deal is set for Dec. 2.

The suit's individual defendants include Luna's audit committee board chair Warren B. Phelps III, former Chief Financial Officers Eugene J. Nestro and George Gomez-Quintero, as well as several current and former board members.

Among other things, the deal requires the chair of Luna's audit committee to meet with the company's finance chief at least four times a year to discuss quarterly and annual financial results and regulatory compliance issues.

Counsel for the shareholders are seeking $500,000 in fees and expenses, and two plaintiffs requested $2,500 service awards, according to the motion.

Roanoke, Virginia-headquartered Luna provides fiber optic solutions for applications in various industries, including aerospace, automotive, oil, gas and security, according to the suit launched last September.

The litigation alleges Luna's shares fell nearly 36% in March 2024 when the company announced that investors could no longer rely upon certain financial statements released in fiscal year 2023 because Luna had failed to recognize revenue in accordance with generally accepted accounting principles. Shares fell again by 12% the next month when Luna revealed the mistakes actually dated back to fiscal year 2022, the complaint said.

Throughout the relevant period, which began in May 2022, Luna affirmed its disclosure controls and procedures were effective, the shareholders alleged.

The complaint said the members of the audit board breached their fiduciary duties to Luna by "failing to prevent, correct or inform the Board of the issuance of material misstatements and omissions," and were unjustly enriched.

The suit also asserts that Luna has incurred substantial costs in an ongoing related **securities class action**.

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

The investors are represented by Robert C. Moest and Timothy W. Brown of The Brown Law Firm PC, Alex J. Tramontano, Betsy C. Manifold and Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP, Seth D. Rigrodsky, Timothy J. MacFall and Samir Aougab of Rigrodsky Law PA and Joshua H. Grabar of Grabar Law Office.

Luna is represented by Lisa R. Bugni of King & Spalding LLP.

The case is Hays et al. v. Graeff et al., case number 2:24-cv-08194, in the U.S. District Court for the Central District of California.

--Editing by Covey Son.

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Lessons From Del. Chancery Court's New Activision Decision

By **Kyle Harris, Mark McDonald and Charlie Allen** (October 30, 2025, 3:22 PM EDT)

In February 2024, the Delaware Court of Chancery **surprised** many M&A practitioners by holding in Sjunde AP-Fonden v. Activision Blizzard Inc. that the board of directors of Activision Blizzard, in approving the January 2022 **sale** of the company to Microsoft Corp., did not comply with technical requirements of the Delaware General Corporation Law concerning the manner in which it approved the merger agreement and disclosed the merger to stockholders.

Kyle Harris

That decision led to **several amendments** to the DGCL that became effective on Aug. 1, 2024. It also prompted Activision Blizzard to seek ratification of the Microsoft merger pursuant to Section 205 of the DGCL, which the court granted. Following these developments, the stockholder plaintiffs amended their complaint.

Mark McDonald

In a decision issued on Oct. 2, 2025, the Court of Chancery **declined to dismiss** certain fiduciary duty claims at the pleading stage, offering important lessons for boards considering a sale of the company.

Background

As the court noted in its Oct. 2 decision, even though the Activision Blizzard case had been pending for three years, it was still at the pleading stage, reflecting its complicated history.

Facts

Charlie Allen

In 2018, Activision Blizzard faced allegations from regulators that pervasive sexual harassment had taken place within the company.[1] In mid-2021, regulators concluded their investigation and released their findings, including that CEO Bobby Kotick had been aware of the sexual harassment allegations.

The company's share price dropped after the news became public, and employees staged a walkout in protest.[2] Some speculated that Kotick's job as CEO could be in danger.

Shortly afterward, Microsoft, one of Activision Blizzard's closest business partners, made a cash offer to acquire Activision.[3] The initial overture was made to Kotick, after which he convened a small group of directors.

Despite the Activision board having adopted a long-range plan reflecting a price range of $113 to $128 per share only a month earlier, the small group ultimately decided on — and informed Microsoft of — a negotiation price range of $90 to $105 per share before informing the rest of the board of directors of the overture.[4] The subsequent negotiations were handled largely by Kotick, and Activision Blizzard ultimately executed a merger agreement with Microsoft at $95 per share.[5]

Stockholders in Activision Blizzard then brought suit, alleging breaches of fiduciary duties and statutory violations with respect to the merger agreement negotiations and approval.[6] The plaintiffs claimed that the deal with Microsoft benefited Kotick by allowing him to keep his job and avoid a forfeiture of hundreds of millions of dollars of unvested options and potential clawbacks of equity grants, but resulted in a lower share price for stockholders.[7]

Procedural History

The parties agreed to bifurcate consideration of the statutory claims and the breach of fiduciary claims, and on Feb. 29, 2024, the Court of Chancery issued a decision, referred to as Activision I, denying in part the defendants' motion to dismiss the statutory claims.[8] This decision prompted certain amendments to the DGCL that became effective later in 2024.[9]

Meanwhile, Activision Blizzard and Microsoft sought judicial validation of some of the alleged defects in the sale process, which was granted by the court, mooting other claims.[10]

The plaintiffs filed an amended complaint on April 22, 2024, and the defendants again filed a motion to dismiss both the statutory claims and the breach of fiduciary duty claims.[11]

The Oct. 2, 2025, decision, referred to as Activision II, addresses this second motion to dismiss, and despite granting dismissal with respect to several more claims, the court largely denied the motion with respect to the breach of fiduciary duty claims.

The Activision II Decision

In the second motion to dismiss, the applicable standard of review was a highly contested issue, as was whether the plaintiffs had adequately pled breach of fiduciary duty claims.

Standard of Review: Enhanced Scrutiny Under Revlon

The court began its analysis by determining the applicable standard of review. While the plaintiffs argued that the court should apply entire fairness ab initio because a majority of the directors were alleged to be interested in the merger, the court sidestepped that issue and instead assumed the directors were disinterested, finding that enhanced scrutiny would apply under the Delaware Supreme Court's 1986 decision in Revlon Inc. v. MacAndrews & Forbes Holdings Inc.[12]

The Court of Chancery therefore considered the defendants' argument that under the Delaware Supreme Court's 2015 decision in Corwin v. KKR Financial Holdings LLC, the approval of the merger by a fully informed, uncoerced vote of disinterested stockholders was sufficient to invoke the business judgment rule, which would result in dismissal of the case.[13]

However, in a novel ruling on an issue that had not been squarely addressed before, the court found that because it was reasonably conceivable that the stockholder vote had not complied with certain statutory requirements in the DGCL relating to seeking stockholder approval per Activision I, the defendants were unable to rely on the Corwin defense.[14]

The alleged defects included that the board did not approve an "essentially complete" version of the merger agreement, failed to attach a summary of the merger agreement to the notice and instead attached it to the proxy statement, and improperly delegated authority to negotiate one of the merger agreement provisions to an ad hoc committee.

In any event, the court also denied the Corwin defense on the basis that it was reasonably conceivable that the proxy statement was materially misleading and incomplete, since it did not disclose the alleged impact of the sexual misconduct issues on the merger agreement or the merger's value to stockholders.[15] On the basis of those claims, the court found it reasonably conceivable that the stockholder vote approving the transaction was not fully informed, thus failing to meet the necessary requirements for Corwin cleansing.

Ultimately, having rejected the defendants' defense under Corwin, the court concluded that the plaintiffs had stated a claim under Revlon and adequately pled that the process leading to the merger, particularly the actions of Kotick, fell outside the range of reasonableness.

Specifically, the court held that it was reasonably conceivable that Kotick was incentivized to sell the company to Microsoft to protect his job, and that he "tainted the sale process by undercutting Activision's negotiating efforts, stiff-arming alternative bidders, delaying and limiting disclosures to the Board, and reducing management projections to justify Microsoft's price."[16]

The plaintiffs also claimed a separate breach of the board's fiduciary duties from the board's failure to terminate the letter agreement with Microsoft and demand payment of the $3 billion termination fee once the termination date had passed. Instead, the board entered into an amended letter agreement with Microsoft, which extended the termination date.

The court reasoned that since there was no separate stockholder vote to approve the letter agreement, there could not be Corwin cleansing, and that, applying enhanced scrutiny under Revlon, it was reasonably conceivable that the same conflicts that affected the board's approval of the merger agreement likewise infected the approval of the letter agreement.

Claims Against Disinterested Directors Analyzed Under Cornerstone

The court characterized the allegations against Kotick as tracking the "paradigmatic Revlon theory," though the court's analysis of the claims against the other directors was more unusual.

Under the Delaware Supreme Court's 2015 decision in In re: Cornerstone Therapeutics Inc. Stockholder Litigation, claims against each director must be assessed individually to determine whether they adequately allege a nonexculpated claim, which requires that the director act disloyally or in bad faith.[17]

In this case, the Court of Chancery reasoned that the plaintiffs had pled nonexculpated claims against the entire board, even though the court assumed the remaining directors were not personally interested in the merger.[18] Instead, the plaintiffs alleged that the board was acting in Kotick's interests when it acted in bad faith to approve the merger.

The court conducted a separate analysis of the actions of the small group of directors that knew of the initial Microsoft outreach and decided on a valuation range of $90 to $105. The court reasoned that each small group member knew about the negative press and protests surrounding Kotick's conduct, knew that the board had approved a strategic plan contemplating a value of $113 to $128 per share, and could easily deduce that the timing of the sale to Microsoft was bad for the company, given the depressed stock price.

However, the court held that it was adequately pled that the small group members supported Kotick in the sale, withheld information from other board members and decided on a valuation range of $90 to $105.

The claims against the remaining directors were "less stark," but the court nonetheless found that the allegations against those other directors were adequately pled. The court reasoned that under Revlon, the board was required to maintain an active role in the merger process, and despite knowing of Kotick's potential conflict of interest, it did not play a sufficiently active role in taking control of the process, confronting Kotick's potential conflicts or questioning the valuation range agreed to by Kotick.[19]

Finally, the court found it significant that the board authorized the merger only 12 days after learning of the initial overture to Kotick, which the court considered rushed.[20] Together, the court reasoned that the plaintiffs sufficiently pled bad faith, which is not exculpated under Cornerstone.[21]

Aiding and Abetting Claim Against Microsoft Analyzed Under Mindbody and Columbia Pipeline

The court, however, dismissed the plaintiffs' claims against Microsoft for aiding and abetting the breach of fiduciary duties.[22] The plaintiffs alleged that Microsoft aided and abetted the board's breach of fiduciary duties by putting pressure on Kotick to sell at a low price and leveraging its existing business relationship with Activision Blizzard to achieve a favorable deal.

The court reasoned that this is not enough to state a claim for aiding and abetting liability against an acquiring entity.[23]

Applying the Delaware Supreme Court's Dec. 2, 2024, **decision** in In re: Mindbody Inc. Stockholder Litigation[24] and June 17, 2025, **ruling** in In re: Columbia Pipeline Group Merger Litigation,[25] the Court of Chancery reasoned that plaintiffs must allege that the defendant had knowledge that the primary party's conduct constituted a breach of fiduciary duty, as well as actual knowledge that their own conduct was legally improper.[26] Plaintiffs also must demonstrate that the defendant provided substantial assistance to the primary party.[27]

Here, the plaintiffs failed to allege that Microsoft knew Kotick was breaching his fiduciary duties, that making a bid was wrongful or that Microsoft provided substantial assistance to Kotick in breaching his fiduciary duties.[28] Therefore, the claims against Microsoft were dismissed.

Key Takeaways

The decision is hardly the first finding that a target company CEO violated Revlon duties by allegedly putting his own interests in finding a favorable buyer over the stockholders' interest in maximizing the deal value. But the decision provides important reminders to boards embarking on a sale process.

First, most importantly, the board should play an active role in the merger process and related negotiations and decision-making, particularly when the CEO is arguably interested in preferring certain buyers over others.

Second, boards of directors considering a merger should be actively involved in making the decision to retain independent and disinterested advisers to analyze company valuation, rather than reflexively relying on advisers chosen by management. The board should consider conflicts that advisers may have with respect to senior management, and not just the merging parties.

Third, though approving a merger agreement in near-final form no longer violates the DGCL, boards of directors should ensure compliance with applicable Delaware statutes, since statutory violations could lead them to forfeit a Corwin defense.

Fourth, given the availability of Corwin cleansing only to decisions ratified by a stockholder vote, boards of directors should take into account the potential advantages of a cleansing vote alongside considering whether amendments or waivers of an agreement are significantly material that they would require a further stockholder vote from a strict corporate law perspective.

Fifth, boards of directors should always be conscious of the interplay between long-range plans developed in the ordinary course of business and projections prepared in connection with a sale process. Deviations between the two — particularly in situations where the transaction-related projections are lower than an ordinary-course plan — will frequently face scrutiny and should necessitate both full disclosure and credible explanation.

Sixth, the decision in this case shows the importance of documenting, both in board minutes and in the proxy statement, deliberations by the board on key issues such as the decision to hire advisers, enter into exclusive price negotiations and the like. The court in Activision II inferred at the pleading stage that the board had not considered such issues because there was no reference to them in the board materials, which led the court to make the plaintiff-friendly inference that the board permitted the allegedly conflicted CEO to make such decisions on his own.

Finally, the Activision Blizzard decision continues to clarify the application of Mindbody and Columbia Pipeline to aiding and abetting claims asserted against acquiring companies, and makes clear that such claims will be dismissed unless plaintiffs can allege the buyer's actual knowledge that the target's fiduciaries were breaching their fiduciary duties and the buyer's substantial assistance. Short of this exacting standard, companies engaging in negotiations to acquire another company have strong defenses against claims for aiding and abetting.

Kyle Harris, Mark McDonald and Charlie Allen are partners at Cleary Gottlieb Steen & Hamilton LLP.

Cleary partner Roger Cooper and associate Sara Watson contributed to this article.

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[1] AP-Fonden v. Activision Blizzard et al , No. 2022-1001-KSJM, 2025 WL 2803254, at *1 (Del. Ch. Oct. 2, 2025). ("Opinion").

[2] Id.

[3] Id.

[4] Id. The board subsequently lowered its own long-range plan "for purposes of considering Microsoft's offer," citing the "passage of time" since the prior long-range plan. Id. at 21.

[5] Id. at 1-4.

[6] Id. at 4.

[7] Id.

[8] Id. at 4-5; AP-Fonden v. Activision Blizzard et al , 2024 WL 863290 (Del. Ch. Feb. 29, 2024, corrected Mar. 19 2024).

[9] DGCL §§ 147, 232(g), and 268.

[10] Opinion at 5.

[11] Id.

[12] Opinion at 39.

[13] Corwin v. KKR Fin. Hldgs. LLC , 125 A.3d 304 (Del. 2015); Opinion at 40.

[14] Opinion at 40.

[15] Opinion at 41.

[16] Revlon Inc. v. MacAndrews & Forbes Hldgs. Inc. , 506 A.2d 173 (Del. 1986); Opinion at 49.

[17] In re: Cornerstone Therapeutics Inc, S'holder Litig. , 115 A.3d 1173, 1179-87 (Del. 2015).

[18] Opinion at 55-59.

[19] Id. at 57.

[20] Id.

[21] Id. at 59.

[22] Id. at 67.

[23] Id.at 66.

[24] In re: Mindbody, Inc. S'holder Litig. , 332 A.3d 349 (Del. 2024).

[25] In re: Columbia Pipeline Grp. Inc. Merger Litig. , No. 281, 2024, 2025 WL 1693491 (Del. June 17, 2025).

[26] Opinion at 60.

[27] Id.

[28] Id. at 66.

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Logan Paul Beats CryptoZoo Investors' Suit, For Now

By **Katryna Perera**

Law360 (October 30, 2025, 9:07 PM EDT) -- A Texas federal judge has adopted a magistrate judge's recommendation to dismiss a proposed class action over Logan Paul's CryptoZoo project and rejected Paul's objections to the report and recommendation, even though his arguments would not have impacted the final dismissal result.

U.S. District Judge Alan D. Albright issued an **order** Wednesday adopting a report and recommendation from **August** by U.S. Magistrate Judge Ronald C. Griffin, who found the plaintiffs hadn't adequately connected Paul to claims that they were ripped off when CryptoZoo failed.

Judge Albright adopted Judge Griffin's recommendation that the first 26 counts of the suit be dismissed with leave to amend, but that the final count be axed permanently. The 27th count of the complaint alleged commodity pool fraud in violation of the Commodity Exchange Act.

Judge Albright did not provide a reason for adopting the report and recommendation Wednesday.

In recommending dismissal, Judge Griffin disagreed with Paul's assertion that the proposed class had launched a **"shotgun pleading"** that lumped him in with his former business partners for each claim. The judge also said questions remained about whether Paul directly and personally benefited from misstatements he made to investors about the failed project.

Paul filed **objections** to the report and recommendation in late August, arguing it was erroneous in several ways, including that the report erred in finding that Texas law could apply to all the suit's common law claims. Paul argued that each plaintiff's claims should be governed by the law of their place of residence.

"This is particularly so given that 137 of the 140 plaintiffs' claims do not have any connection to Texas, let alone a 'significant' one, such that applying Texas law to these claims would violate due process," the objection stated.

Paul also argued that the report erred in its initial conclusion that CryptoZoo digital assets qualified as securities under the so-called Howey test, despite ultimately recommending dismissal of the suit's claims for violations of the Securities Exchange Act of 1934.

According to the objection, the third prong of the Howey test looks at whether a transaction gave rise to "a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."

"The inquiry is objective: it asks what a reasonable purchaser would have understood from the promoters' public representations about the asset," the objection said. "CryptoZoo and its co-founders did not promote CryptoZoo as an investment vehicle. They touted the project as a 'game' developed by 'artists' that would be 'fun' and that 'kids ... love to play.'"

"Nor did they publicize the project as one that would bring 'profits,' which the United States Supreme Court has defined narrowly to include investment income or returns. Plaintiffs therefore fail to satisfy Howey's third prong," the objection continued.

The second "common enterprise" element of the Howey test was also unsatisfied, according to Paul, because the plaintiffs did not allege that any of the defendants had expertise that would be considered "material to the success of a financial investment."

"They allege that Mr. Paul is an 'entertainer,' 'online celebrity,' and media host who promoted CryptoZoo to his online subscribers as a 'game' without any mention of investment value," the objection said. "Plaintiffs describe defendant Eduardo Ibanez vaguely as a former 'hacker' with experience in 'cybersecurity,' but offer no additional information that would engender confidence in his or any other defendant's investment advice."

Lead plaintiff Don Holland **sued** Paul in 2023, alleging he and others bought nonfungible Zoo tokens required to play Paul's game CryptoZoo, which became worthless when Paul **abandoned the project** in early 2024.

The class said Paul offered to buy back the tokens when the project failed, a plan that also "did not mirror defendants' representations" as the buyback program offered plaintiffs only a fraction of their original purchase price.

Last week, three defendants **were released** from the suit after Judge Griffin found the court lacked jurisdiction over them and that the suit failed to state adequate allegations against them.

Paul's motion for default judgment against defendants and his co-founders, Ibanez and Jake Greenbaum, who he claims have "willfully ignored all claims pending against them in this action for more than two-and-a-half years," was also denied.

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

The class is represented by Jarrett L. Ellzey, Leigh S. Montgomery and Alexander G. Kykta of Ellzey & Associates PLLC and Thomas J. Kherkher of Attorney Tom & Associates.

Paul is represented by Benjamin J. Widlanski, Tal J. Lifshitz and Rachel Sullivan of Kozyak Tropin & Throckmorton LLP, Jeffrey A. Neiman and Jason L. Mays of Marcus Neiman Rashbaum & Pineiro LLP, and Shelby O'Brien of Butler Snow LLP.

The case is Holland v. CryptoZoo Inc. et al., case number 1:23-cv-00110, in the U.S. District Court for the Western District of Texas.

--Editing by Drashti Mehta.

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PE Fund, Adviser Overvalued Portfolio, Investor Suit Claims

By **Emilie Ruscoe**

Law360 (October 30, 2025, 9:51 PM EDT) -- A private equity fund faces a proposed investor class action alleging its net asset value collapsed after it invested heavily in companies that benefited the fund's owners, and falsified their valuations to conceal the "severe underperformance" of these portfolio companies.

In a complaint filed Wednesday in Newark, New Jersey, federal court, Rochelle Cramer, an investor in the private equity-focused Wildermuth Fund, took aim at the fund, its former CEO Daniel Wildermuth and his wife Carol Wildermuth, who led the fund's adviser Wildermuth Advisory LLC.

The suit asserts that, unbeknownst to investors, the fund was "purchasing interests in portfolio companies that mostly benefited" Wildermuth Advisory and covered up these companies' underperformance so they could keep receiving "excessive" fees based on the companies' inflated value.

The suit also alleges that Kalos Capital, a broker-dealer founded by Carol Wildermuth, earned commissions and fees selling Wildermuth Fund shares and alternative investments.

Also named as a defendant is the Wildermuth Fund's former auditor WithumSmith+Brown PC, which was accused of facilitating the scheme by turning a blind eye to unsupported asset valuations.

According to Cramer, the Wildermuth Fund told investors that its investments would be fairly valued in good faith by the company's board of trustees, and a fair value committee, overseen by a valuation committee and reporting to the fund's board, was supposed to report quarterly on any valuation issues the fund experienced.

But the valuation committees "continuously and repeatedly approved quarterly valuations without sufficient, reliable evidence to support them," Cramer said.

As a result, the fund's net asset value during the proposed class period did not reflect the fact the companies in its portfolio were in "steady, persistent decline," Cramer said.

During each quarter of the proposed class period, the investor claimed, the relevant companies "fell deeper into financial distress." By a certain point, the investor claimed, some of those companies "had questionable going concern value" without the cash infusions they got each month from the fund. Nevertheless, the fund "propped up" the companies, in turn propping up its own net asset value, according to the investor.

Cramer claimed the fund should have used the "ample information" about the portfolio companies, which Daniel Wildermuth had access to as a compensated board member of certain companies, to better value its holdings.

The proposed class period spans from Nov. 1, 2020, through June 29, 2023. In June 2023, Cramer said, the fund announced that its board had approved a liquidation plan and told investors that the decision to liquidate was based on the loss of certain tax advantages.

At the time, Daniel and Carol Wildermuth "reassured investors that there were no issues with the underlying investments held by the Fund and the Fund continued trading at or around a net asset value of $10 per share," the investor claimed.

But four months later, Cramer said, the Wildermuths left the fund's board and their executive roles at the fund, and Wildermuth Advisory was replaced as the fund's investment adviser, whose "subsequent valuation of the Fund's investments told a completely different story than the fund's prior annual reports and other public disclosures."

According to the new adviser, the fund's entire portfolio had underperformed throughout the proposed class period, and the fund's brass had known about the issues all along.

By 2024, the investor claimed, the fund's net asset value was down 80% and the adviser valued the fund's shares at $2.

On Thursday, counsel for Cramer and counsel for Withum declined to comment and representatives for the other defendants did not immediately respond to requests for comment.

Cramer is represented by Thomas L. Laughlin IV, Matthew Peller and Susan Hu of Scott+Scott Attorneys At Law LLP and Lisa Rodriguez, Catherine Pratsinakis and Mariah Heinzerling of Dilworth Paxson LLP.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Cramer v. WithumSmith+Brown PC et al., case number 3:25-cv-17032, in the U.S. District Court for the District of New Jersey.

--Editing by Emily Kokoll.

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Philly Accuses PBMs Of Knowingly Enabling Opioid Crisis

By **Hailey Konnath**

Law360 (October 30, 2025, 10:34 PM EDT) -- Philadelphia on Thursday sued CVS Caremark, Express Scripts and Optum, accusing the pharmacy benefit managers of contributing to the city's opioid epidemic via deceptive marketing and conspiring with drugmakers to increase the sale of OxyContin and other prescription opioids.

The city said the pharmacy benefit managers, or PBMs, played a "critical role in stoking and extending Philadelphia's decades-long opioid epidemic," according to the **complaint** filed in Pennsylvania federal court. The PBMs "fully, cleverly and deliberately concealed" that scheme, Philadelphia said in the lengthy, 288-page filing. And as the crisis worsened, the PBMs failed to take action in a timely manner to address what they had helped create, the suit states.

Mayor Cherelle L. Parker said in a statement Thursday that even while knowing the dangers, "these companies chose profits over people."

"As the middlemen between manufacturers, insurers and pharmacies, they made it easier for powerful, addictive opioids to flood our communities," Parker said. "My administration is committed to holding every driver of this crisis accountable — at every level of the supply chain. We will not sit idly by while corporations boost their bottom lines at the expense of the health and safety of Philadelphians."

CVS said in its own statement, "These allegations are without merit and we intend to defend ourselves vigorously."

Express Scripts and Optum didn't immediately respond to requests for comment late Thursday.

Per the complaint, PBMs contract with manufacturers who make the drugs, the pharmacies who dispense them and the third-party payors who pay for them. CVS Caremark, Express Scripts and Optum are the three largest PBMs in the country, and they receive, analyze and track detailed claims data for billions of prescriptions, the city said.

"Accordingly, the PBM defendants quite literally tracked the opioid epidemic, pill by pill, as it unfolded over the last two decades," the city said.

Specifically, the city said the PBMs colluded with Purdue Pharma and other opioid manufacturers to deceptively market opioids and mislead consumers about the risks and benefits of the drugs. They also colluded with Purdue and other manufacturers to eradicate or limit measures that would've restricted opioid prescribing, increase opioid sales via "favorable placement on national formularies in exchange for rebates and fees" and dispense "huge quantities" of opioids through mail-order pharmacies, the suit states.

On top of that, the PBMs elected to sell, rather than act on, "the vast stores of data they had about the epidemic to limit the flood of opioids into communities across the United States, including into Philadelphia," the city said.

"As a direct result of the PBM defendants' misconduct, individually, and in colluding with each other and with opioid manufacturers, Philadelphia remains engulfed in an opioid epidemic that has led to a public health and safety crisis of an unprecedented nature," Philadelphia said.

For instance, in 2022, Philadelphia's Department of Public Health reported 1,413 overdose deaths, 84% of which involved opioids, the city said. And in 2023, the public health department reported 1,315, "the seventh straight year it reported more than 1,100 such deaths," it said.

The epidemic has continued to interfere with public health, safety and peace, including things like enjoying the city's neighborhoods, parks and public spaces, Philadelphia said. It's also forced the city to significantly increase its services at a "dramatically increased cost," the city said.

"Justice requires that the PBM defendants promptly and fully abate the public nuisance they have caused, exacerbated, and extended in Philadelphia," the city said.

It's alleging public nuisance, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, violation of the Philadelphia Consumer Protection Ordinance, negligence and gross negligence, violation of the federal Racketeer Influenced and Corrupt Organizations Act, civil conspiracy, concerted action and breach of contract. It's seeking unspecified damages, court costs and attorney fees.

Philadelphia City Solicitor Renee Garcia said in Thursday's statement that the companies "systematically rejected safeguards to prevent overprescription of powerful, addictive medications and put lives at risk while misrepresenting their commitment to public safety."

"These companies watched as the opioid epidemic ravaged Philadelphia communities and recklessly continued to fuel widespread addiction," Garcia said. "We want them to stop inflicting damage on our communities and to pay for the crisis they've had a major role in causing."

Pharmacy benefit managers are go-betweens for the insurer and drug companies, and are particularly common for those on large employee plans or Medicare Part D drug plans. They negotiate the prices of drugs for the insured, giving them significant influence over how much insured patients pay.

The city said the true scope of the PBMs' role in the epidemic was revealed by documents and other information turned over in the discovery phase of multidistrict litigation over the crisis in Ohio federal court. In December, the Sixth Circuit **will hear arguments** from the state of Ohio and the pharmacy benefit managers it's accusing of colluding to raise the price of prescription medications to decide whether the matter belongs in state or federal court.

Earlier this week, Indivior, Sun Pharmaceuticals and Zydus Pharmaceuticals revealed that **they'd inked deals** to compensate tribes for their role in the opioid crisis, according to stipulated dismissals entered on Wednesday in the MDL.

And in July, the judge overseeing the MDL held that OptumInsight Inc. and OptumInsight Life Sciences Inc. **cannot escape claims** that they exacerbated the opioid crisis by providing data analytics and consulting services to drugmakers, saying New York state municipalities have adequately alleged RICO by claiming they were part of the same criminal conspiracy.

Philadelphia is represented by Renee Garcia, Anne Taylor, Lydia Furst and Michael Pfautz of the City of Philadelphia Law Department, by Jerry R. DeSiderato, Timothy J. Ford, Silvio Trentalange and Stanford B. Ponson of Dilworth Paxson LLP, by Stephen A. Sheller of Sheller PC, by Andrew B. Sacks and John Weston of Sacks Law LLC, by Gregory B. Heller of Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP, by Russell W. Budd, Chris Mansour, Catherine Hancock Dorsey, Burton LeBlanc, Daniel Alberstone and Mark P. Pifko of Baron & Budd PC, and by David Kairys.

Counsel information for the pharmacy benefit managers wasn't immediately available.

The case is City of Philadelphia v. CVS Health Corp. et al., case number 2:25-cv-06185, in the U.S. District Court for the Eastern District of Pennsylvania.

-- Additional reporting by Nadia Dreid, Jonathan Capriel and George Woolston. Editing by Leah Bennett.

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Agri Stats, Pork Producers Push To Pause Price-Fixing Case

By **Jared Foretek**

Law360 (October 30, 2025, 8:08 PM EDT) -- Agri Stats Inc. and pork producers facing an impending trial on allegations that they schemed to limit pork supply and drive up prices are asking a Minnesota federal judge to pause the case while they continue a push for his recusal in the Eighth Circuit.

In a **motion for a stay** Wednesday, the defendants in the sweeping antitrust class action argued that their case for recusal will likely find more success with a circuit court panel than the federal district judge himself, who earlier this month refused to step away from the litigation over his law clerk's previous work for the plaintiffs' lawyers in a related lawsuit. According to Eighth Circuit rules, the companies said, the court typically orders responses or denies mandamus petitions like the **one they filed** Oct. 17 within 14 days, meaning that any delay would be negligible if the petition is denied.

The defendants are looking to vacate U.S. District Judge John R. Tunheim's March **denial of their summary judgment motion** in the case over the clerk's purported conflict of interest, which they say the court delayed disclosing, "further[ing] an appearance of bias."

"Plaintiffs' only harm [from a stay] is mere delay. No trial date exists, and plaintiffs disagree among themselves about trial and remand scheduling," Smithfield Foods, Seaboard Goods, Clemens Foods and Agri Stats said in their motion for a stay Wednesday. "Finally, the integrity of the judicial process, which certain defendants seek to safeguard and vindicate, is a public interest of the highest order."

A stay, they said, would give the appeals court time to assess the appearance of impartiality — key for what they called a "closely watched case worth billions of dollars."

"As for the public interest, of course, 'it should be of little dispute that having public confidence in the judiciary is an interest of the highest order,'" they said Wednesday, citing the Eighth Circuit's 2012 decision in Wersal v. Sexton .

The pork producers are facing claims from three separate classes of plaintiffs that they illegally shared production and pricing information through the data analytics firm Agri Stats, also a defendant in the case, in order to suppress production and artificially inflate prices. In his 232-page opinion, Judge Tunheim denied nearly all of the companies' summary judgment motions, setting the case up for trial. Earlier this month, **Tyson Foods** joined JBS USA, Smithfield and Hormel Foods in settling with indirect purchaser plaintiffs.

The companies brought **their motion for recusal** in April, claiming that Judge Tunheim's clerk previously worked for firms representing one of the plaintiff classes and has a standing offer to join another firm that has targeted "Big Agriculture." Their filing also claimed that the clerk "publicly embraced plaintiffs' attorneys in this case in the courtroom immediately following oral argument on … Daubert motions."

Judge Tunheim **rejected the recusal motion** earlier this month, saying the defendants had "fabricated an appearance of impropriety" where there was none, and calling the clerk "one of more than a half-dozen law clerks who have worked on this matter over the course of more than seven years and dozens of motions." According to the judge, the clerk never actually worked on the sprawling case during his summer internships with the plaintiffs' firms. And the timing of the motions — following the defendants' losses on Daubert and summary judgment motions — gave the appearance that the recusal bid may have been more "tactical than sincere," he said.

"This complex multi-district litigation is now ready for its first trial," he wrote. "At no other point have defendants questioned the court's ability to properly perform its duties in an impartial manner."

But the defendants declined to drop the issue. On Oct. 16, Agri Stats, Clemens, Seaboard, Smithfield, Triumph Foods and Tyson all asked the circuit court for a writ of mandamus, claiming that the clerk had "liked" and "celebrated" posts by plaintiffs' counsel about litigation victories.

According to the companies, Judge Tunheim applied the wrong standard in assessing the recusal motion, relying on a subjective assessment of the actual bias instead of an objective "reasonable observer" standard.

"That the court found the clerk to be 'highly professional' is beside the point," they said in their appeals court petition. "If the judge himself had engaged in this conduct, working for three separate sets of opposing counsel on related cases, appearing on a fee petition in a related case with many of the same parties, and repeatedly posting messages during the case showing support for respondents' side — the need for recusal would be beyond question. That the district court's law clerk engaged in this conduct does not meaningfully change the calculus when he has worked on the case."

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.

Agri Stats is represented by Justin W. Bernick and William L. Months III of Hogan Lovells.

Clemens Food Group is represented by Daniel Laytin, Christa Cottrell, Jenna Stupar, Nicholas M. Ruge and Amarto Bhattacharyya of Kirkland & Ellis LLP.

Seaboard Foods is represented by Peter J. Schwingler, Kelly Holt Rodriguez and Tess L. Erickson of Jones Day, and William L. Greene, William D. Thomson and J. Nicci Warr of Stinson LLP.

Smithfield Foods is represented by Brian Robinson of Brown Fox PLLC, John A. Cotter and John A. Kvinge of Larkin Hoffman Daly & Lindgren Ltd., Richard Parker of Milbank LLP, and Josh Lipton of Gibson Dunn & Crutcher LLP.

Triumph Foods is represented by Michael T. Raupp, Christopher A. Smith, Jason Husgen, A. James Spung and Daniel G. Solomon of Husch Blackwell LLP.

Tyson Foods is represented by Mary Helen Wimberly, Tiffany Rider Rohrbaugh, Lindsey Strang Aberg, Denise L. Plunkett and Jarod Taylor of Axinn Veltrop & Harkrider LLP, and Scott M. Rusert and A. Christopher Brown of Taft Stettinius & Hollister 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 Joyce Hanson, Bryan Koenig, Lauren Berg and Dorothy Atkins. Editing by Amy French.

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Apple, Google Fight Bids To Depose CEOs In Antitrust Suit

By **Dorothy Atkins**

Law360 (October 30, 2025, 10:19 PM EDT) -- Google LLC and nonparty Apple Inc. have fired back in California federal court on a proposed class of consumers' effort to depose Apple CEO Tim Cook and Google CEO Sundar Pichai in their antitrust case alleging Google suppressed rival search engines with anticompetitive deals.

In separate joint letter briefs filed **Wednesday** and **Thursday**, respectively, Apple and Google each asked U.S. Magistrate Judge Sallie Kim to quash the consumers' subpoenas seeking to take the depositions of their top executives, arguing that the consumers' counsel haven't sought other less burdensome methods to obtain the discovery information that they seek.

However, the consumers' counsel slammed the tech giants for refusing to make the CEOs available, arguing in the joint filings that the executives have unique firsthand knowledge of Google's search engine agreements that are key to the monopolization claims in the case, and the companies haven't offered legitimate excuses for why the executives cannot testify.

The fight over who must testify is the latest development in high-stakes consumer antitrust litigation launched in April 2022. The consumers claim that Google and Apple cut a deal under which Apple doesn't compete with Google in the search business and Google pays Apple billions of dollars in search-related ad revenue annually to be the default search engine on Apple devices.

The alleged anticompetitive conduct results in lower quality for search services when it comes to privacy and the use of consumer data as well as less innovation, the consumers claim.

The **consumer lawsuit** is heavily based on the U.S. Department of Justice case that convinced a D.C. federal judge last year to find Google is an illegal **monopolist** based on contracts making it the default search engine on devices and browsers from Apple, Mozilla, Samsung and others.

In the current litigation, U.S. District Judge Rita F. Lin **tossed** consumer conspiracy claims against Apple, as well as some allegations that Google paid off the iPhone maker to avoid making its own search engine.

But in **January**, the judge kept intact other monopolization claims alleging Google's dealings stifled competition and lifted a stay on discovery. In February, Judge Lin refused to allow the consumers to amend their complaint further, and she laid out a case schedule, setting a jury trial tentatively for November 2026. The litigation then headed into full-blown discovery, with fact discovery set to close in February.

But in their latest discovery filings, Google and Apple urged the court to block subpoenas seeking to depose Cook and Pichai.

Apple argued that the court previously quashed deposition subpoenas targeting Cook and four other Apple executives after finding that the consumers had not attempted other less intrusive discovery methods. Since that ruling, consumers have still not exhausted their options that would be less burdensome to nonparty Apple, Apple said.

"Yet plaintiffs have inexplicably renewed their demand to depose Apple's most senior executive, Mr. Cook," Apple argued in the joint filing. "The apex doctrine protects against precisely this sort of abuse and harassment of a nonparty's executive by requiring that a party seeking a deposition first exhaust less burdensome discovery and then demonstrate that the individual executive has unique, firsthand knowledge of specific, relevant factual issues."

Apple added that the consumers' claim they must take Cook's deposition is premised on a conspiracy claim that the court already dismissed with prejudice.

Meanwhile, Google made similar arguments and noted that the consumers have not yet taken a single deposition in this case, "yet they seek to begin with Mr. Pichai," even though the consumers have access to his previous testimony in the D.C. litigation, which is the "very case that led to the filing of this one and have otherwise failed to exhaust other discovery methods."

However, the consumers fought back in the joint filings, arguing that the executives' depositions are necessary in light of discovery documents that Google only recently provided to the plaintiffs, including documentary evidence of meetings between Pichai and Cook, purportedly "showing purposes, motives, intents, effects and agreements."

The consumers noted that they didn't have access to these discovery materials when the judge dismissed Apple from the case and refused to let them amend their pleadings. Google and Apple's latest arguments seeking to block the depositions also appear to be an attempt to be a legal strategy "at least partially designed to elicit the substance and particulars of plaintiffs' questions, including any evidence or questions that may be used to impeach," the consumers said.

The consumers added that Apple and Google do not claim that Cook and Pichai are incompetent to testify; that their testimony is irrelevant, or may not lead to relevant evidence; or that their testimony is immaterial.

Ultimately, their testimonies will provide "unique, first-hand information" relevant to the consumers' claims about "whether, how, and when the parties came to and continued their agreement to exclude competition through their exclusive agreements," the consumers argued.

The consumers' counsel, Joseph M. Alioto of Alioto Law Firm, told Law360 on Thursday that there is no reason to treat the executives as special, and equal justice in the U.S. applies to all individuals, including top CEOs.

"There are no special people in the United States," he said. "They have to follow rules just like everyone else."

Counsel and representatives for Apple didn't immediately respond to requests for comment Thursday.

The consumers are represented by Joseph M. Alioto of Alioto Law Firm.

Nonparty Apple is represented by Sarah M. Ray and Aaron T. Chiu of Latham & Watkins LLP.

Google LLC, Alphabet Inc. and XXVI Holdings Inc. are represented by John E. Schmidtlein and Carol J. Pruski of Williams & Connolly LLP.

The case is Mary Katherine Arcell et al. v. Google LLC et al., case number 3:22-cv-02499, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bryan Koenig, Hailey Konnath, Bonnie Eslinger and Jared Foretek. Editing by Michael Watanabe.

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Garden Supply Co. Faces Suit Claiming PFAS In Products

By **Emily Field**

Law360 (October 30, 2025, 9:33 PM EDT) -- A gardening supply company was hit on Wednesday with a proposed class action in California federal court alleging that it falsely advertises its soil and fertilizer products as organic even though they contain synthetic and dangerous "forever chemicals."

Five people say they bought Kellogg Supply Inc. soil and fertilizer on the basis of their organic labeling. However, the company fails to disclose the presence of per- and polyfluoroalkyl substances, or PFAS, the suit says. Those substances are not organic and can be leached into the environment and cause health problems.

Even at low levels, exposure to PFAS can build over time in the human body, and even a small amount can cause harm, the suit says.

Plaintiffs Staci Valdez, Danielle and Kyle Kerstetter, Josh Teperson and Angela Waldner say that their purchases were tested by expert technicians and consultants. The investigators also bought and tested the gardening supplies at different locations in the past two years in states on both coasts, according to the complaint.

"Testing revealed that each of Kellogg's organic products contained numerous PFAS, many of which exceeded applicable regional soil levels and soil screening levels," the consumers say. "In other words, under the EPA's guidance, the levels of PFAS found in Kellogg's products could trigger further action or study under [the Comprehensive Environmental Response, Compensation and Liability Act.]"

The labeling also has a logo from Organic Materials Review Institute that indicates that the soils are "OMRI listed for organic use," the complaint says.

OMRI is a nonprofit organization that verifies substances used in organic production, like soil and fertilizers, the suit says.

"Companies like Kellogg obtain OMRI verification through a self-reporting application process from the companies seeking to use its label," it says.

But even though PFAS are not allowed on that list, the consumers say that, based on their information, they believe that OMRI doesn't test for PFAS.

"Kellogg's use of the OMRI 'Listed for Organic Use' adds to the deception and false advertisement of the products as organic," they say.

The plaintiffs seek to represent national and California classes of consumers. They allege violations of California and New York false advertising laws.

Earlier this year, the U.S. Environmental Protection Agency warned that forever chemicals present in fertilizers could pose a health risk to people living or working on or near farms.

Some fertilizers are made with sewage sludge, also called biosolids, which the EPA said in a draft risk assessment can contain PFAS. The agency said there may be risks associated with exposure to PFAS in the three methods of using or disposing of sewage sludge: land application through the use of fertilizers or soil conditioners, surface disposal in landfills, or incineration.

According to the EPA, exposure to PFAS beyond a certain amount is likely to cause cancer as well as harmful liver, immune system, cardiovascular, and developmental effects.

Representatives for the parties didn't immediately respond to requests for comment on Thursday.

The consumers are represented by Todd D. Carpenter and Jennifer M. French of Lynch Carpenter LLP.

Counsel information for Kellogg wasn't immediately available on Thursday.

The case is Valdez et al. v. Kellogg Supply Inc. et al., case number 3:25-cv-02917, in the U.S. District Court for the Southern District of California.

--Additional reporting by Juan-Carlos Rodriguez. Editing by Brian Baresch.

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Snowflake, Clients Can't Escape MDL Over Cloud Data Breach

By **Allison Grande**

Law360 (October 30, 2025, 11:58 PM EDT) -- Cloud storage provider Snowflake, along with its clients Ticketmaster and LendingTree, will continue to face sprawling multidistrict litigation over a data breach that hit Snowflake last year, after a Montana federal judge refused several bids to ax or force arbitration of negligence and other claims brought by a wide range of consumers who were impacted by the incident.

In three orders issued this week, U.S. District Judge Brian Morris mostly denied bids by Snowflake Inc. to ax negligence and consumer protection law claims brought by those who had provided information to Snowflake's clients, as well as requests by two of those clients — Ticketmaster LLC and its parent company Live Nation Entertainment Inc. — to cut down similar assertions.

Judge Morris also issued a fourth ruling Thursday rejecting a motion filed by LendingTree LLC and its subsidiary QuoteWizard.com LLC to compel arbitration of the **claims they're facing** as a result of their alleged failure to adequately protect customer data impacted by the incident, finding that consumers who filled out online registration forms were not provided with "reasonable conspicuous notice" of the arbitration mandate.

The decisions moved forward sprawling litigation that was filed in the wake of an alleged "hub-and-spoke" data breach involving cloud-based data storage and analytics provider Snowflake. As the "hub," Snowflake stored sensitive data of numerous "spoke" companies on its cloud, which hackers accessed using stolen credentials in April 2024.

The plaintiffs, who consist of consumers that are broken into groups depending on the company or institution to which they entrusted their personal data, allege claims for negligence, unjust enrichment and violations of the consumer protection laws of several states against both Snowflake and several of its corporate clients. According to the plaintiffs, Snowflake's failure to automatically enable or require multifactor authentication, or MFA, and data security gaps that allowed hackers to steal access credentials from spoke defendants directly led to the breach and could have been "easily" prevented.

In his **ruling Tuesday** on the viability of the claims brought by the consumer plaintiffs, which encompass customers of Ticketmaster, Live Nation, LendingTree and Quotewizard, Judge Morris found to be unavailing Snowflake and Ticketmaster's contentions that these allegations should be tossed because the plaintiffs lacked Article III standing to assert their claims and had failed to adequately plead their assertions.

When it came to standing, Judge Morris held that both the plaintiffs that claimed to have detected actual or attempted fraud after the data breach and those that asserted the imminent risk of their names, email addresses, credit card numbers and other compromised information being misused in the future had sufficiently alleged the type of concrete injuries necessary to support their claims.

"It proves reasonable to infer that Consumer Plaintiffs' information that had been exposed in the Data Breach plausibly could have been used to commit fraud and harm to Consumer Plaintiffs," Judge Morris found. "This inference seems especially true given the sensitive nature of the [personal information] exposed and the fact that Consumer Plaintiffs data appeared for sale on the dark web."

Turning to the sufficiency of the consumer plaintiffs' negligence claim, Judge Morris found that the plaintiffs had adequately alleged that "the risk of harm to their data proved foreseeable to both Ticketmaster and Snowflake" and that both companies owed a duty of care to these consumers that was ultimately breached.

"Consumer Plaintiffs allege that Defendants understand the importance of data security, data breaches prove common, and that Defendants could have taken steps to prevent this Data Breach," the judge noted. "Consumer Plaintiffs plausibly allege that Defendants owed a duty of care to provide additional security measures, such as MFA requirements and implementation, to protect Consumer Plaintiffs' data from foreseeable risk of harm."

Judge Morris also refused to ax the consumer plaintiffs' claim under the Montana Unfair Trade Practices and Consumer Protection Act, rejecting Snowflake's assertion that these plaintiffs couldn't be considered consumers of its services and that they hadn't alleged that the cloud company or Ticketmaster had engaged in unfair or deceptive practices or made false statements that the plaintiffs relied on to their detriment.

"Consumer Plaintiffs alleged that they expected Ticketmaster to provide a safe and secure ticket-buying experience by paying the added service fee to obtain concert tickets," the judge noted. "Further, Plaintiffs adequately allege that the unfair acts conducted by Snowflake, such as failing to implement adequate security measures, caused injury to Consumer Plaintiffs."

Additionally, Judge Morris found that the consumer plaintiffs had met the elements to assert claims for breaches of Massachusetts' consumer protection law and the California Consumer Privacy Act, which allows for a limited private right of action for alleged failures to implement reasonable security procedures.

However, the judge held that the plaintiffs' pleadings were insufficient to support claims for breach of contract and California's Unfair Competition Law against Ticketmaster, finding that the facts underlying the UCL claim "appears to be the same facts that support other claims for which Consumer Plaintiffs seek damages" and that they hadn't shown that Ticketmaster had explicitly violated any contractual terms.

"Ticketmaster promised in its agreement that it would have security measures in place and provide a safe ticket buying experience," Judge Morris found. "Ticketmaster did have security measures in place and its promise of a safe buying experience does not create an express contractual obligation. Ticketmaster expressly indicated in the Terms of Use that it cannot guarantee the site always would be safe and secure."

Judge Morris reached similar conclusions in a pair of rulings issued Wednesday that mostly denied motions by Snowflake and Ticketmaster to **dismiss claims** brought by a group of plaintiffs that were customers of impacted financial institutions and Snowflake's **request** to ax allegations being pressed by another group of students who had provided their information to the Los Angeles Unified School District and their guardians. The school district had contracted with Snowflake's client Innive Inc. to store this personal information.

The judge allowed the financial institution plaintiff's claims for negligence, negligence per se and unjust enrichment against Snowflake and Ticketmaster to proceed, while axing their claim for declaratory and injunctive relief.

"The acts by Spoke Defendants and the threat actors do not cut off liability for Snowflake when the acts were foreseeable," Judge Morris ruled in upholding the negligence claims. "Snowflake, as a sophisticated data storing company, understood the foreseeable risks of data breaches and the importance of data security."

The judge added that the financial institution plaintiffs had not only sufficiently alleged that the data breach "was foreseeable to Snowflake, specifically in the absence of MFA requirements and other security measures," but also that it was foreseeable to Ticketmaster, "who had control of the information and [payment card data], including knowledge of what PCD was infiltrated and how the PCD was encrypted."

The Los Angeles school district plaintiffs were also permitted to move forward with their negligence claim against Snowflake, as well as their allegations for violations of the Montana Consumer Protection Act and the California Consumer Protection Act against the cloud provider.

While the school district students' personal information ended up on the Snowflake cloud through its contract with Innive, the plaintiffs had asserted a sufficiently "indirect" relationship between the district and cloud provider to qualify them as covered "consumers" of Snowflake's services and the provider as a "business" subject to liability for its alleged data security failings, according to Judge Morris.

"Snowflake knew or should have known Innive stored sensitive data from the LAUSD on its platform," Judge Morris added in his analysis upholding the negligence claim. "A third-party analysis proves unnecessary when the injury alleged traces back to Snowflake's alleged failures to enact industry-standard safeguards, enable Multi-Factor Authentication ("MFA"), and properly manage security settings."

As with the other defendants, LendingTree and its insurance comparison subsidiary also fell short in their bid to force the dispute to arbitration.

LendingTree had argued that the arbitration clause contained in the terms of use that website visitor have to agree to in order to register for an account contained a delegation clause that requires all disputes to be resolved by an arbiter.

But Judge Morris concluded that several factors, including the visual design of the website and the plaintiffs' belief that the websites "functioned as search engines that connected them with other companies who would provide actual loan and car insurance quotes" and that they weren't forming a continuing relationship with LendingTree or its subsidiary, led to the conclusion that the companies had failed to provide "reasonable conspicuous notice" to the plaintiffs that the terms of use would bind them.

The flurry of rulings came on the heels of Judge Morris earlier this month granting final approval to settlements to resolve similar claims being pressed against fellow defendants Advance Auto Parts and Neiman Marcus Group LLC.

Advance Auto Parts Inc. will pay $10 million to a class of approximately 2.3 million individuals, while Neiman Marcus will pay $3.5 million, to settle allegations they negligently failed to protect consumers' personal information that was exposed in the Snowflake data breach, according to the judge's Oct. 23 rulings.

The plaintiffs are represented by co-lead counsel Jason S. Rathod of Migliaccio & Rathod LLP, Raphael Graybill of Graybill Law Firm PC, Amy Keller of DiCello Levitt LLP, John Heenan of Heenan & Cook, J. Devlan Geddes of Goetz Geddes & Gardner PC and James J. Pizzirusso of Hausfeld LLP, among others.

Snowflake is represented by Brianne C. McClafferty and Brent R. Bihr of Holland & Hart LLP and Stephen A. Broome, Viola Trebicka, Lauren Lindsay, Delaney Gold-Diamond, Rex Alley, Kevin P.B. Johnson and Anna M. Martinez of Quinn Emanuel Urquhart & Sullivan LLP.

Ticketmaster and Live Nation are represented by Emma L. Mediak, Leah T. Handelman and Luc L. Brodhead of Garlington Lohn & Robinson PLLP and William K. Whitner, Scott Carlton and Manuel G. Berrelez of Paul Hastings LLP.

LendingTree and Quotewizard are represented by Paul A. Werner, David M. Poell and Kathryn J. Ryan of Sheppard Mullin Richter & Hampton LLP.

The case is In Re: Snowflake Inc. Data Security Breach Litigation, case number 2:24-md-03126, in the U.S. District Court for the District of Montana.

--Editing by Michael Watanabe.

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