

AI-Related Securities Suit Filed Against IC Design Software Firm

K [dandodiary.com/2025/11/articles/artificial-intelligence/ai-related-securities-suit-filed-against-ic-design-software-firm](https://www.dandodiary.com/2025/11/articles/artificial-intelligence/ai-related-securities-suit-filed-against-ic-design-software-firm)

Kevin LaCroix

November 4, 2025



AI-related news dominates the business pages these days. Many companies increasingly are adapting their business processes to incorporate AI-related operations, and an growing number of companies are adjusting their business strategies to accommodate AI. While these changes present a host of opportunities, they also involve risks. A securities lawsuit recently filed against the integrated circuit (IC) design software company Synopsis shows how these kinds of AI-related risks can translate into securities litigation. In the complaint, the company is alleged to have understated the additional customization requirements that its customers' AI-adapted operations would entail. A copy of the October 31, 2025, complaint can be found [here](#).

Background

Synopsis provides electronic design automation software products used to design and test integrated circuits. It operates in two segments, Design Automation and Design IP. The Design IP segment provides pre-designed components that semiconductor companies can use to build chips more quickly and cost-effectively. The Design IP segment has in the recent past been the company's fastest growing part. The securities complaint alleges that during the class period, the company touted its growth prospects, particularly with respect to its Design IP segment.

On September 9, 2025, Synopsis released its fiscal third quarter 2025 financial results, disclosing that the company's "IP business underperformed expectations." Quarterly revenue and net income came in below the company's guidance. Reported net income represented a 43% year-over-year decline. The Design IP segment revenue declined over 7% on a year-over-year basis. The company also lowered its full year guidance. According to the subsequently filed securities lawsuit complaint, the company's share price declined nearly 36% on this news.

The Lawsuit

On October 31, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against Synopsis and certain of its officers. The complaint purports to be filed on behalf of investors who purchased the company's securities between December 4, 2024, and September 9, 2025.

The complaint alleges that during the class period, the defendants failed to disclose to investors: "(1) the extent to which the Company's increased focus on artificial intelligence customers, which require additional customization, was deteriorating the economics of its Design IP business; (2) that, as a result, 'certain road map and resource decisions' were unlikely to 'yield their intended results'; (3) that the foregoing had a material negative impact on financial results; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis."

The plaintiff alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the class.

Discussion

There have of course been prior AI-related securities lawsuits filed. By and large, these lawsuits have involved so-called "AI-washing" type allegations – that is, allegations that the defendant company overstated its AI-related prospects or opportunities.

This lawsuit involves an arguably different kind of AI-related allegation.

Here, rather than alleging that Synopsis overstated its AI-related prospects or opportunities, the plaintiff alleges that the company understated the risks associated with servicing AI-related business. Synopsis is alleged to have omitted to disclose that its increased focus on AI-related customers could cause the economics of its Design IP business to deteriorate because of the increased customization that the AI-related customers require.

This lawsuit is not the first AI-related securities suit to involve allegations not that the company overstated its AI-related prospects but rather that the company understated its AI-related risks. For example, and as discussed in detail [here](#), earlier this year the online community bulletin board company Reddit was hit with

a securities suit after Google's adoption of AI-enhanced search results caused Reddit's user numbers and revenue to shrink. Reddit is alleged to have understated the risk to the company from Google's adoption of AI-enhanced search results.

While it is interesting to me that this new lawsuit involves allegations of the under-disclosure of AI-related *risks* (rather than the over-disclosure of AI-related *opportunities*), there is another aspect of the allegations that is particularly interesting to me. That is, it was not Synopsis's *own* adoption of AI that created the risks involved here; rather it was its *customers'* AI-adoption that created the supposedly undisclosed risks for Synopsis. Similarly, in the Reddit case, it was not Reddit's own adoption of AI that created the allegedly undisclosed risks, but rather it was Google's adoption of AI that created the risks for Reddit.

I emphasize this aspect of the allegations in this case and in the Reddit case because in a business environment in which so many company's are adopting AI-related processes or strategies, risks will be proliferating for every enterprise, even those that are not themselves expressly adopting AI. The fact is, AI-adoption by a host of economic players could affect any given firm's operations, and as customers, suppliers, even regulators adopt AI, it could give rise to a host of risks for the firm.

The potential proliferation of these kinds of AI-related risks does put a premium on company disclosures. The disclosures of companies that experience disruption as its business partners adopt AI will be subject to hindsight scrutiny, as plaintiffs' lawyer seek to establish that the companies failed to disclose the risks involved.

This kind of AI-related disclosure scrutiny is interesting in the context of this case, as the complaint here expressly quotes the company's AI-related risk factor disclosure in its periodic SEC filings. In each SEC report filed during the class period, the company expressly disclosed that its AI initiatives "could" impact the company's results, stating that "we may not be successful in our AI initiatives, which could adversely affect our business, operating results or financial condition."

The risk factor disclosure goes on to say, among other things, that "While these AI initiatives can present significant benefits, the AI landscape is rapidly evolving and may create risks and challenges for our business," adding that "If we fail to develop and timely offer products with AI features, if such products fail to meet our customers' demands, if these products fail to operate as expected, or if our

competitors incorporate AI into their products more quickly or more successfully than we do, we may experience brand or reputational harm or lose our competitive position.”

These AI-related risk factor disclosures are interesting. The company may well contend that through these risk factor disclosures the company tried to identify and disclose its AI-related risks. The problem for the company in trying to make this argument is that the risk-factor disclosures seek to address the company’s risks associated with its *own* adoption of AI processes and strategies. The plaintiffs may well contend that the risk factor disclosure does not address, or even attempt to address, the risks to the company from its customer’s adoption of AI related processes or strategies. For me, this just highlights the litigation risks firms will face as their customers, suppliers, and regulators adopt AI-related processes or strategies.

In any event, the widespread adoption of AI is going to continue to be a significant contributing factor to corporate and securities litigation in the weeks and months ahead.

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Securities

Synopsys Sued Over Statements, Silence Before Record Stock Drop

Nov. 3, 2025, 1:14 PM PST

Synopsys Inc. concealed how its shift to artificial intelligence was hindering revenue from the chip-design software maker's Design IP unit before releasing disappointing financial results and a 36% stock drop, an investor's proposed class action said.

That plummet—in which Synopsys' share price closed at \$387.78 on Sept. 10—was the stock's biggest one-day nosedive on record since the company's 1992 market debut, according to data compiled by Bloomberg.

Synopsys revealed the company's intellectual property segment had underperformed in the third fiscal quarter of 2025 on Sept. 9.

Before this, the company downplayed the extent to which its elevated AI-customer focus was economically impacting its IP business and that certain corporate decisions weren't likely to pan out as planned, investor Hyungjoon Kim said in the complaint filed in the US District Court for the Northern District of California on Oct. 31.

Synopsys reported Sept. 9 quarterly revenue that came in below estimates in a press release, and a 43% year-over-year decline in net income. Its Design IP business made up a fourth of its quarterly revenue, and that it had declined compared to the third quarter of 2024. Synopsys also tempered its full-year 2025 earnings outlook.

Synopsys' Design IP "segment provides pre-designed, silicon-proven components," the complaint said. Synopsys serves chipmakers such as Intel Corp. as the semiconductor industry is entangled in the US-China trade conflict.

Kim's complaint accused the company, its chief executive, and chief financial officer of touting financial targets while merely warning AI initiatives "could" adversely impact the company or changes in products sold "may" hit margins. His counsel reviewed and analyzed federal filings, press releases, and media reports it said.

CEO Sassine Ghazi told analysts in a Sept. 9 earnings call Sept. 9 the IP business had been hurt by deals not materializing due to challenges in China, difficulties at a foundry customer, and “certain road map and resource decisions that did not yield their intended results.”

Reflected in the financial results was Synopsys closing its \$35 billion acquisition of Ansys Inc. in July after gaining approval from China and other antitrust regulators.



The proposed class would include those who acquired Synopsys securities from Dec. 4, 2024, through Sept. 9, 2025.

Kim seeks damages for alleged 1934 Securities Exchange Act violations by the company, Ghazi, and CFO Shelagh Glaser.

“We believe these allegations are without merit and we intend to vigorously defend against them,” a Synopsys spokesperson said in an email.

Glancy Prongay & Murray LLP and Pennsylvania-based attorney Howard G. Smith represent Kim.

The case is Kim v. Synopsys, Inc. , N.D. Cal., No. 3:25-cv-09410, complaint filed 10/31/25 .

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Securities

Tariff-Linked Class Action Suits to Boost D&O Insurance Demand

Nov. 3, 2025, 9:00 PM PST

A group of Dow Inc. investors filed a lawsuit at the end of August accusing the chemical manufacturer of failing to properly disclose the impact of tariffs on its business.

This is the first investor class action linked to President Donald Trump's tariff onslaught that upended global trade, according to lawyers, forced companies to reevaluate entire supply chains and resulted in profit warnings across sectors. It probably won't be the last.

As the impact of tariffs starts to feed through to companies' results and share prices, more investors may say they've been deceived by overly upbeat messaging, exposing firms to potential litigation and prompting them to seek directors and officers liability coverage known as D&O insurance.

"I view the Dow case as an example of plaintiffs' lawyers seizing on a stock price decline and working backward to claim that generalized statements were somehow misleading because they did not predict the future," said Edmund Polubinski, partner at law firm Davis Polk & Wardwell.

Securities class actions tend to reflect predominant themes in the financial markets. During the Covid-19 pandemic, lawsuits were filed against companies for downplaying the impact of dwindling demand during lockdowns. More recently, lawyers have noticed an increase in filings related to cryptocurrency and artificial intelligence, with some being sued for "AI washing," or misrepresenting their AI capabilities.

A few months into a whirlwind of changing tariffs and sudden trade deals, the litigation risk is growing.

For companies, this is a minefield. Beyond the financial impact of levies themselves, an uncertain environment can delay investments and damage consumer confidence. That hurts visibility and puts companies at greater risk of investors noticing a discrepancy between outlooks and actual performance.

"Plaintiff's counsel are well versed in – and I'm being a little facetious here – taking advantage of these types of market disruptions and finding a hook to allege that a company did something wrong in the way that they managed it or communicated about it," Kelly Thoerig, product leader in the Professional & Executive Risk division at insurance brokerage firm Lockton Inc., said in an interview.

That's creating a new opportunity in the insurance market.

Wayne Imrie, head of London Market Wholesale Executive Risks at insurer Beazley Plc, has noticed an increase in interest from clients for relevant coverage. "In this current environment, you're probably seeing demand at its highest level because there is so much uncertainty," he said, referring to insurance coverage for directors and officers.

The first port of call for companies dealing with tariff-related allegations is D&O coverage, a type of liability insurance that protects directors, officers and other senior managers from personal financial losses and legal costs if they are accused of a "wrongful act."

A side of D&O coverage that protects the company itself is less in demand, though its popularity may rise. "It's rarely purchased, although let's see whether we see renewed interest in that form of coverage given these new risks," Lockton's Thorig said. "I suspect that may change."

Alongside companies and shareholders, insurers will be at the forefront of this new development.

"What we are very keen to understand is, what are our clients telling the Street and how open and transparent are they being?" Imrie said. "And then, do the ongoing financial reports back up what was said, because if not, that's when investors will be upset. They don't like surprises."

In Dow's case, investors said the company blamed tariffs for disappointing second-quarter results and a lowering of the dividend, despite having previously said it was well positioned to weather the levies and could support shareholder returns. Plaintiffs are seeking damages after the share price slumped in reaction to second-quarter results.

"The plaintiffs' bar will surely continue to try to capitalize on stock price declines by bringing securities cases," Davis Polk's Polubinski said. "Unfortunately, any company with exposure to tariffs will face the threat of cases like this."

Plaintiffs' lawyers will look back at the disclosure statements the companies have made, especially optimistic statements about the impact of the tariffs, the ability to source materials from low-tariff jurisdictions, and more disclosures or lack thereof, according to Kevin M. LaCroix, attorney and executive vice president of insurance intermediary RT ProExec.

"Although my crystal ball is no better than anyone else's, I do think we will see more tariff-related securities class action lawsuits," he said in an interview.

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Class Action

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CarMax Sued Over Growth Comments After Tariff-Led Sales Spike

Nov. 4, 2025, 10:13 AM PST

Summary by Bloomberg AI

AI Generated



- Consumer concerns about tariffs fueled CarMax Inc.'s sales in its first fiscal 2026 quarter, according to an investor suit over disappointing Q2 results.
- The suit alleges CarMax, its CEO William Nash, and another executive recklessly overstated CarMax's growth prospects, blaming them for the investors' losses.
- The plaintiff, Jason Cap, seeks damages on his securities fraud claims, representing a proposed class of hundreds or thousands of members.

Consumer concerns about tariffs fueled CarMax Inc.'s sales in its first fiscal 2026 quarter, not its claimed market strength, according to an investor suit over disappointing Q2 results.

The second-quarter results, announced Sept. 25, caused the stock to plunge 20%, closing at \$45.60 per share that day, Jason Cap says. He filed his proposed class action Monday in the US District Court for the District of Maryland.

The case is one of the first based on consumer spending stemming from what CarMax CEO William Nash called "tariff speculation" in March and April of this year. CarMax's 2026 fiscal year began on March 1, 2025.

The Trump administration's tariff-related announcements set the stage for a potential securities suit trend over consumer demand, supply chain costs, and other issues, attorneys have said. A suit by a 1-800-Flowers investor alleged short-swing trading violations before dropping his suit, and more recent class and derivative suits by Dow Inc. investors focused on the chemical manufacturer's supply chain disclosures.

Here, Cap says CarMax, Nash, and another executive are to blame for the investors' losses. They "recklessly overstated CarMax's growth prospects when, in reality, its earlier growth in the 2026 fiscal year was a temporary benefit from customers buying cars due to speculation regarding tariffs," he says.

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

Cap seeks damages on his securities fraud claims.

CarMax has no information to share, it said in an email Tuesday.

The Rosen Law Firm PA and the Schall Law Firm represent Cap.

The case is Cap v. CarMax, Inc. , D. Md., No. 1:25-cv-03602, complaint 11/3/25 .

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Securities

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Air Lease Investor Drops Lawsuit Over \$7.4 Billion Acquisition

Nov. 4, 2025, 6:02 AM PST

An Air Lease Corp. shareholder dropped his lawsuit seeking to hold up the company's take-private deal until it provided more details about its financial projections and potential board conflicts of interest.

Investor Lincoln Sise told the US District Court for the Central District of California he was voluntarily dismissing his lawsuit Monday, the same day Air Lease released financial results for the third quarter of 2025. He'd sued the aircraft leasing corporation and its board on Oct. 30, alleging billionaire chairman Steven F. Udvar-Házy, CEO John L. Plueger, and others could have a huge payday through the \$7.4 billion takeover without similar benefits to public stockholders.

Air Lease investors will get \$65 a share through the buyout by newly-formed holding company Gladiators Designated Activity Co., a "total valuation of approximately \$7.4 billion, or approximately \$28.2 billion including debt obligations to be assumed or refinanced net of cash," said the September press release announcing the agreement

Gladiators's shares are held by Sumitomo Corp., SMBC Aviation Capital Ltd., and investment vehicles connected to Apollo Capital Management LP and Brookfield Asset Management Ltd.

The deal's proxy statement should have disclosed more information about post-merger employment discussions, financial projections for Air Lease, and data underlying adviser JP Morgan Securities LLC's fairness opinion, Sise said

Brodsky Smith represents Sise. Neither Sise's lawyers nor Air Lease immediately responded to emails seeking comment.

The case is Sise v. Air Lease Corp. , C.D. Cal., No. 2:25-cv-10445, notice of voluntary dismissal 11/3/25 .

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Class Action

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BoFA, BNY Sued Over Alleged Ties to Epstein Sex Crimes (Correct)

Nov. 4, 2025, 6:19 AM PST

Summary by Bloomberg AI

AI Generated



- Bank of America Corp. and Bank of New York Mellon Corp. were hit by proposed class-action lawsuits accusing them of aiding in Jeffrey Epstein's sex-trafficking scheme.
- The lawyers said Bank of New York processed \$378 million in payments to women trafficked by Epstein, and Bank of America knowingly facilitated payments that were part of Epstein's sex-trafficking.
- Spokespeople for Bank of America and Bank of New York declined to comment on the suits, which were filed on behalf of Epstein victims.

Bank of America Corp. and Bank of New York Mellon Corp. were hit by proposed class-action lawsuits accusing them of aiding in **Jeffrey Epstein's** sex-trafficking scheme.

The same lawyers who previously secured settlements with JPMorgan Chase & Co. and Deutsche Bank AG over Epstein ties on Wednesday accused Bank of New York of processing \$378 million in payments to women trafficked by the financier. In a separate suit, the lawyers said Bank of America knowingly facilitated payments that were part of Epstein's sex-trafficking.

Spokespeople for Bank of America and Bank of New York both declined to comment on the suits, which were filed on behalf of Epstein victims.

The complaint against Bank of America doesn't allege Epstein was a client but focuses instead on accounts at the bank allegedly used by "his co-conspirators, associates and victims," including **Ghislaine Maxwell**. According to the suit, Bank of America was aware these accounts were being used for crimes.

"Bank of America had a plethora of information regarding Epstein's sex trafficking operation but chose profit over protecting the victims," lawyer **David Boies** said in the suit.

Wednesday's suits both extensively cite a July letter by Senator Ron Wyden of Oregon, ranking Democrat on the finance committee, [urging](#) Attorney General Pam Bondi to subpoena payment and transfer records from several banks. The suit noted Wyden's suspicion about \$170 million Apollo Global Management co-founder Leon Black allegedly sent Epstein from Bank of America accounts, supposedly for tax and estate planning advice.

Wyden has said his investigators have documented more than 4,700 transfers of funds in and out of Epstein's accounts before his 2019 death by suicide in prison. The transfers were detailed by banks in so-called suspicious activity reports that are supposed to serve as an early-warning system to investigators about possible criminal activity. Some of the banks did not file the reports until years later.

In June 2023, JPMorgan agreed to pay \$290 million to settle suits by Epstein victims represented by Boies, **Sigrid McCawley** and Bradley Edwards. Deutsche Bank reached a \$75 million pact earlier that year.

The case are Doe v. Bank of America NA, 25-cv-8520, US District Court, Southern District of New York, and Doe v. Bank of New York Mellon Corp., 25-cv-8525, US District Court, Southern District of New York.

(Corrects amount in payments allegedly processed in second paragraph of story originally published on Oct. 15.)

--With assistance from Katherine Doherty.

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Jeffrey Epstein had accounts with Goldman Sachs and HSBC, documents show

 [reuters.com/business/finance/jeffrey-epstein-had-accounts-with-goldman-sachs-hsbc-documents-show-2025-11-04](https://www.reuters.com/business/finance/jeffrey-epstein-had-accounts-with-goldman-sachs-hsbc-documents-show-2025-11-04)

Reuters

November 4, 2025

Item 1 of 3 REFILE - QUALITY REPEAT U.S. financier Jeffrey Epstein appears in a photograph taken for the New York State Division of Criminal Justice Services' sex offender registry March 28, 2017 and obtained by Reuters July 10, 2019. New York State Division of Criminal Justice Services/Handout via REUTERS. THIS IMAGE HAS BEEN SUPPLIED BY A THIRD PARTY. THIS IMAGE WAS PROCESSED BY REUTERS TO ENHANCE QUALITY, AN UNPROCESSED VERSION HAS BEEN PROVIDED SEPARATELY.

[1/3]REFILE - QUALITY REPEAT U.S. financier Jeffrey Epstein appears in a photograph taken for the New York State Division of Criminal Justice Services' sex offender registry March 28, 2017 and obtained by Reuters July 10, 2019. New York State Division of Criminal Justice Services/Handout via REUTERS.... [Purchase Licensing Rights](#)  [opens new tab](#) Read more

NEW YORK, Nov 4 (Reuters) - Jeffrey Epstein, the disgraced late financier and sex offender, had accounts at Goldman Sachs [\(GS.N\)](#)  [opens new tab](#), HSBC [\(HSBA.L\)](#)  [opens new tab](#) and other banks, new court filings show.

The revelations came in previously sealed documents made public by JPMorgan Chase [\(JPM.N\)](#)  [opens new tab](#), once Epstein's main bank, in a now-settled lawsuit brought by the U.S. Virgin Islands, where Epstein had a private island residence.

Epstein is listed as having had a Goldman account and three accounts with HSBC's private bank in Switzerland in a suspicious activity report filed by JPMorgan with the U.S. Treasury's Financial Crimes Enforcement Network soon after he died.

Released to the public on Friday, the report did not provide dollar amounts or details about Epstein's relationships with other banks, but alerted authorities to money transfers he made.

A U.S. judge ordered the documents unsealed in response to requests from The New York Times and The Wall Street Journal. Bloomberg earlier reported the banks' names.

In an emailed statement, Goldman said: "We terminated our client relationship with Mr. Epstein, and his assets were transferred out of the firm in 2010."

HSBC declined to comment.

Epstein died by suicide in 2019 in a Manhattan jail while awaiting trial on sex trafficking charges.

The circumstances of his death, and his relationships with wealthy and powerful people, fueled theories that others may have been involved in his crimes.

His case became a political headache for U.S. President Donald Trump, who reneged on a pledge during his 2024 election campaign to release Epstein-related files from a Department of Justice investigation.

That prompted an outcry from Trump's conservative base, including some members of Congress.

The House Committee on Oversight and Government Reform is investigating the Epstein case.

Reporting by Saeed Azhar and Jonathan Stempel in New York; Editing by Daniel Wallis

Securities

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Argument Preview

Delaware Justices Gear Up Review of New Corporate Law Overhaul

Nov. 4, 2025, 7:00 AM PST

Summary by Bloomberg AI

AI Generated



- Delaware's Supreme Court is reviewing the constitutionality of a law that narrowed the definition of "controlling stockholder" and made it easier to avoid scrutiny of potentially conflicted transactions.
- The law, S.B. 21, is being challenged by a shareholder who claims it curtails the Chancery Court's ability to hear allegations of fiduciary breach by directors or officers.
- The case could determine the state's future as a corporate enclave, with some experts saying that if the law is upheld, it could reassure investors and maintain Delaware's reputation as a stable and business-friendly environment.

Delaware's Supreme Court now turns to the fallout of a trial judge's rejection of Elon Musk's pay package, in a case that could determine the state's future as the country's preeminent corporate enclave.

The high court must decide the constitutionality of safe harbors (S.B. 21) drafted as Musk, Meta CEO Mark Zuckerberg, and other corporate leaders publicly discussed moving their companies to Texas and Nevada.

The law that took effect in March narrowed the definition of "controlling stockholder" and made it easier to avoid scrutiny of potentially conflicted transactions. It reinforced the presumption that directors are capable of independent oversight, and it restricted shareholder access to internal corporate records.

The challenge comes from a Delaware Chancery Court lawsuit involving BlackRock affiliates and a dispute over a wind farm. It's one of several cases challenging the law's retroactivity and safe harbors for dealmakers with conflicts of interest. The high court fast-tracked the wind farm lawsuit for review.

Delaware Gov. Matt Meyer (D) leads the law's defense against a shareholder who claims it curtails the Chancery Court's ability to hear allegations of fiduciary breach by directors or officers.

Wednesday's oral arguments follow bitter debates over unpopular Chancery Court rulings focused on controllers, which are blamed for driving the "DExit" phenomenon championed by Musk and others.

The constitutional questions are a hurdle Delaware must clear before its courts and corporate bar can interpret the rest of S.B. 21, such as how it impacts books-and-records demands, said Columbia Law School professor Dorothy Lund.

"Is this giving other states an opening or not? Is it shutting off competition?," she said. "These are big, important questions, but we've got to get past the constitutionality thing before we're going to get into the nitty-gritty on a lot of this."

Historically, Delaware regarded controlling shareholders skeptically. That's "come up against this new view which is that controlling shareholders are great" and now the state's corporate law is experiencing "growing pains," she said.

"It's not just Musk," Lund said. "How do we reassure investors while also being aware of this new market reality that we have a lot of companies that by virtue of dual class structuring have a controlling shareholder, or just one really rich, idiosyncratic shareholder?"

Constitutional Question

A Clearway Energy Inc. shareholder argues S.B. 21 violates Delaware's constitution by limiting the Chancery Court's ability to provide remedies for breaches of fiduciary duty. It also violates protections against retroactive laws affecting vested rights with provisions that apply to transactions that occurred before the law took effect, he said.

The company and Meyer say the legislation maintains authority lawmakers hold to define corporate duties and standards of review—and if necessary apply changes retroactively. S.B. 21 establishes a framework for reviewing fiduciary duty claims involving interested transactions without stripping the Chancery Court's jurisdiction, they said.

Meyer further argues S.B. 21 serves a legitimate purpose in addressing changes in Delaware corporate law, and this purpose justifies its retroactive application. "Addressing judicial developments is a legitimate reason for enacting retroactive legislation," the governor said.

One issue the high court isn't expected to address: the precedent set by S.B. 21's development. The Delaware bar association's Corporation Law Council usually initiates amendments for legislators to introduce, but drafting of S.B. 21 started with an outside panel that included two former chief judges of the Chancery Court. It's also the second major corporate law overhaul to follow an unpopular Chancery ruling, without waiting for an appeal.

"Once you can end-run a court, you can basically end-run the genius of the Delaware system," said Charles Elson, founding director of the University of Delaware's Weinberg Center for Corporate Governance. "It tarnishes the reputation of the state's greatest asset."

Monte Mann of Armstrong Teasdale LLP said it was “disconcerting” to see such a quick legislative “knee-jerk reaction” in response to criticism of certain Chancery Court decisions, when “the hallmark of Delaware law has been these well-reasoned, well-crafted, long, smart, deliberate, reasoned opinions of judicial doctrines that really shape the law.”

However, with S.B. 21, it’s easier to advise clients because “a clear direction is always a little bit easier to follow than different cases saying different things.” It would be worrisome, he said, if the justices declared S.B. 21 unconstitutional and removed those clear rules.

Stable Expectations

Lund thinks it’s unlikely the court will declare S.B. 21 unconstitutional. It’s stuck with the expectation that it’s got to issue some kind of reassurance that Delaware courts still decide cases in a balanced way, she said.

“If I had to guess, this would be a moment where the Supreme Court justices are going to throw cold water on this idea that the legislature couldn’t constitutionally enact these amendments,” she said.

Attorneys say the justices shouldn’t worry that S.B. 21 is keeping companies in Delaware—it’s just very expensive to move elsewhere.

Jonathan Lazarow of Ambrose Lazarow PLLC says many private equity funds and clients on the buyer’s side of M&A deals would like to be in Texas or Nevada. “They’re following Elon, and they think it’s a business-friendly environment,” he said.

But they’re sticking with Delaware for now because they don’t want to pay additional legal fees for someone to figure out how business courts might rule in Texas or Nevada when their corporate law is still developing, he said.

“People just see Delaware as stable,” he said. Clients think, “We know how they’re going to rule. We know what they think, and that’s more important to us than anything else.”

Rutledge is represented by Bernstein Litowitz Berger & Grossmann LLP, Equity Litigation Group LLP, and Morris Kandinov LLP. Meyer is represented by Potter Anderson & Corroon LLP and Wachtell, Lipton, Rosen & Katz. Clearway is represented by Young Conaway Stargatt & Taylor LLP, Gibson, Dunn & Crutcher LLP, and Richards, Layton & Finger PA.

The case is *Rutledge v. Clearway Energy Grp. LLC*, Del., No. 248,2025, oral arguments 11/5/25 .

—With assistance from Bloomberg Law Automation.

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Securities

Tesla's \$1 Trillion Musk Award Opposed by Norway Wealth Fund (3)

Nov. 4, 2025, 6:32 AM PST

The world's largest sovereign wealth fund voted against Tesla Inc.'s unprecedented stock award to Chief Executive Officer Elon Musk in the biggest show of opposition yet by a major shareholder.

"While we appreciate the significant value created under Mr. Musk's visionary role, we are concerned about the total size of the award, dilution and lack of mitigation of key person risk," Norway's Norges Bank Investment Management said in a notice on its website.

The verdict from Tesla's ninth-largest holder is a meaningful blow to the proposal to grant Musk stock potentially worth \$1 trillion. The carmaker overcame the Norway fund's opposition to an earlier compensation package for the CEO that was re-approved last year. That award was voided by a Delaware court, leading Tesla's board to arrange another payout while it appeals the ruling.

[Read More: Tesla Offers Musk an Unprecedented \\$1 Trillion Pay Deal](#)

The new pay package will be the focal point of Tesla's annual meeting on Nov. 6, with the chair of the board having suggested Musk's future with the company is at stake. During negotiations with a committee of directors that constructed the award, Musk warned he may leave Tesla unless he acquires at least a 25% voting interest and is paid for past performance.

"I've had the conversations with him directly," Tesla Chair **Robyn Denholm** said of Musk in an interview last week. "There's no question in my mind that if we don't get this across, there is a high probability" he would back away from the company or become less engaged.

Tesla shares fell as much as 3.6% shortly after the start of regular trading Tuesday. The stock has risen 16% this year, roughly in line with the advance in the S&P 500 Index.

[Read More: Tesla Eyes Internal CEO Candidates If Musk Leaves Over Pay Vote](#)

Tesla's board aims to incentivize Musk to keep leading the company by setting a series of performance milestones that must be achieved to earn more tranches of stock. If paid out in full, the award would hand Musk shares equal to 12% of the company.

Tesla's Milestones for Musk

CEO must attain both a market value and operational milestone for each tranche of shares in award

Market value milestones	Operational milestones
\$2 trillion	20 million vehicles delivered
\$2.5 trillion	10 million active FSD subscriptions
\$3 trillion	1 million robots delivered
\$3.5 trillion	1 million robotaxis in commercial operation
\$4 trillion	\$50 billion adjusted Ebitda
\$4.5 trillion	\$80 billion adj. Ebitda
\$5 trillion	\$130 billion adj. Ebitda
\$5.5 trillion	\$210 billion adj. Ebitda
\$6 trillion	\$300 billion adj. Ebitda
\$6.5 trillion	\$400 billion adj. Ebitda
\$7.5 trillion	
\$8.5 trillion	

Source: Tesla proxy filing

Note: Milestones structure is detailed on pages A-31 and A-32 of proxy filing.

Bloomberg

Read More: Musk's Path to Trillionaire Rides on Dopamine, 'Mars-Shot' Goals

The proxy advisers Institutional Shareholder Services and Glass Lewis have urged shareholders to reject the pay plan for Musk, citing concerns with its magnitude and its potential to dilute other shareholders' ownership. California Public Employees' Retirement System, the largest public pension plan in the US, said last week it was planning to vote against the award.

NBIM also is against a shareholder proposal for Tesla to invest in Musk's artificial intelligence startup xAI, and opposes reelecting **Ira Ehrenpreis** and **Kathleen Wilson-Thompson** to the carmaker's board of directors. The one director up for reelection that the fund backs is **Joe Gebbia**, the co-founder of Airbnb Inc.

"Shareholders should have the right to seek changes to the board when it does not act in their best interest," the fund wrote in explaining its votes on Ehrenpreis and Wilson-Thompson. The fund didn't provide rationale for its vote against the xAI investment, or its vote for Gebbia, who's been on Tesla's board since 2022.

Read More: Norway Wealth Fund Backs 4 of 8 Shareholder Proposals at Tesla

Musk lashed out against NBIM CEO **Nicolai Tangen** over the fund's opposition to re-ratifying the Tesla CEO's compensation last year. In messages that were made public via freedom of information request, Musk refused Tangen's invitation to a dinner in Oslo, writing that he needed to "make amends."

(Updates share move in the sixth paragraph.)

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Norwegian opposition complicates Musk's path to \$1 trillion pay deal

 [reuters.com/sustainability/boards-policy-regulation/norway-wealth-fund-vote-against-musks-1-trillion-tesla-pay-package-2025-11-04](https://www.reuters.com/sustainability/boards-policy-regulation/norway-wealth-fund-vote-against-musks-1-trillion-tesla-pay-package-2025-11-04)

Terje Solsvik, Ross Kerber

November 4, 2025

- Norwegian fund opposes Tesla's general stock compensation plan
- Proxy advisers urge rejection of Musk's compensation plan
- Musk's pay package likely to pass despite opposition

OSLO / BOSTON, Nov 4 (Reuters) - Norway's sovereign wealth fund, Tesla's sixth-largest outside investor, said on Tuesday it would vote against ratifying a proposed pay deal for CEO Elon Musk potentially worth \$1 trillion.

Musk's pay package is still seen as likely to win, given broad investor support in the past and the backing Tesla enjoys from its large retail shareholder base. Laws in Texas, where Tesla moved its headquarters last year, allow Musk to vote his own large stake, giving him 15.3% of voting power including restricted stock granted in August.

The opposition from stewardship-minded [Norges Bank Investment Management](#), [opens new tab](#) was no surprise. But its direct criticism of the compensation and planned votes against two Tesla board directors add uncertainty to the outcome of a ballot set for Thursday, corporate governance experts said, and underscore how other European investors may also turn against the electric-vehicle maker.

CHAIR WARNS MUSK COULD QUIT

Tesla did not immediately respond to a request for comment.

Tesla's board is pushing for shareholders to [approve the plan](#), with Chair Robyn Denholm warning that Musk could leave the \$1.5 trillion market cap firm if the deal is rejected.

"European voters are much more likely to be swayed by where Norges goes, because of the general support of ESG (environmental, social and governance) principles and concerns into their investment philosophy," said Francis Byrd, a partner at consulting firm Alchemy Strategies Partners.

Byrd and several other consultants said they expect Tesla's recommendations to prevail at the meeting, since top investors have stuck with him so far. With a 1.12%

stake in Tesla, the Norwegian firm known as [NBIM](#) is the only one of Tesla's top-10 outside investors to disclose its voting intentions ahead of the meeting so far. They also noted how big U.S. investors are under pressure from the Trump administration to [apply less public pressure on companies](#). That could make it harder to know if there is really much [opposition](#) until the day of the meeting, said Karla Bos, an independent governance consultant in Arizona. "Less predictability is the watchword for 2025, and certainly for complicated votes like at Tesla," Bos said.

LOCKING MUSK'S HUGE PAY PACKAGE WON'T BE EASY

A Tesla logo is seen at a Tesla showroom in Shanghai, China January 7, 2019. REUTERS/Aly Song [Purchase Licensing Rights, opens new tab](#)

After NBIM, the next-largest investor to give its voting intentions is Baron Capital, which plans to back Musk's pay package and has 0.39% of Tesla's shares. Tesla's largest institutional investors, including BlackRock, Vanguard and State Street, have yet to disclose their intentions.

Among other large European investors in Tesla, representatives for Legal & General Investment Management of London and Amundi Asset Management of Paris declined to comment. Each has about 0.6% of Tesla shares.

Proxy advisers [ISS](#) and [Glass Lewis](#) have both urged shareholders to reject Musk's compensation plan, arguing it would be too large, deliver high payouts even if the CEO only meets some goals and could dilute the holdings of other investors. Both also opposed a re-ratification vote last year on a 2018 \$56 billion package for Musk.

PRAISING VALUE CREATION, BUT CONCERNED WITH OVERALL SIZE

While this year's package could grant stock worth up to \$1 trillion over 10 years, the cost of those shares at the time of the award will be deducted, making the value to Musk slightly lower, at up to \$878 billion, according to [a Reuters analysis](#). "While we appreciate the significant value created under Mr. Musk's visionary role, we are concerned about the total size of the award, dilution, and lack of mitigation of key person risk - consistent with our views on executive compensation," NBIM said on its website.

NBIM also voted "no" on Musk's previous compensation plan, drawing a [sharp response](#) from the CEO, who turned down an invitation to a conference in Oslo. Tesla's sales in Norway fell 50% in October, [along with declines in some other European markets](#), amid rising competition and backlash to Musk's political alliance with U.S. President Donald Trump.

NBIM on Tuesday also said it would vote against two of three Tesla directors who are up for reelection, declining to back board veterans Kathleen Wilson-Thompson and Ira Ehrenpreis while supporting Joe Gebbia, who joined in 2022.

Both Wilson-Thompson and Ehrenpreis are on Tesla's compensation committee. So is board chair Robyn Denholm, who is not up for election this year.

NBIM, which runs \$2.1 trillion, also said it would vote against Tesla's proposed general stock compensation plan, which is intended for all employees and can also be used by the board to benefit Musk.

Tesla says its CEO would earn "nothing" unless the company's market value grows substantially and that the maximum award is only paid if the group reaches several milestones, most notably a market value of \$8.5 trillion, a near six-fold increase.

Reporting by Terje Solsvik in Oslo and by Ross Kerber in Boston; additional reporting by Nick Carey in London; Editing by Joe Bavier, Thomas Derpinghaus, Peter Henderson and Rod Nickel

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Ross Kerber is U.S. Sustainable Business Correspondent for Reuters News, a beat he created to cover investors' growing concern for environmental, social and governance (ESG) issues, and the response from executives and policymakers. Ross joined Reuters in 2009 after a decade at The Boston Globe and has written on topics including proxy voting by the largest asset managers, the corporate response to social movements like Black Lives Matter, and the backlash to ESG efforts by conservatives. He writes the weekly Reuters Sustainable Finance Newsletter.

BREAKING The Trump administration is negotiating with Eli Lilly and Novo Nordisk to sell some of their weight-loss drugs for \$149 via TrumpRx



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<https://www.wsj.com/business/autos/major-tesla-investor-rejects-elon-musks-1-trillion-pay-deal-a55d2e68>

BUSINESS | AUTOS

Major Tesla Investor Rejects Elon Musk's \$1 Trillion Pay Deal

Norway's sovereign-wealth fund is the first major institutional investor to disclose how it voted

By [Becky Peterson](#) [Follow](#) and [Gareth Vipers](#) [Follow](#)

Updated Nov. 4, 2025 1:26 pm ET



Tesla will host a shareholder meeting Thursday to announce the results of Elon Musk's compensation-package vote. SHAWN THEW/POOL/SHUTTERSTOCK

Quick Summary



- Norway's sovereign-wealth fund, a major investor, rejected Elon Musk's proposed \$1 trillion Tesla pay package.

View more

Norway's sovereign-wealth fund rejected [Tesla](#) TSLA **-4.34%** ▼ Chief Executive [Elon Musk's](#) new [\\$1 trillion pay package](#), becoming the first major investor to disclose its decision.

Norges Bank Investment Management, the arm of the central bank which manages the \$1.9 trillion fund, raised concerns Tuesday over the size of the remuneration package.

"While we appreciate the significant value created under Mr. Musk's visionary role, we are concerned about the total size of the award, dilution, and lack of mitigation of key person risk—consistent with our views on executive compensation," it said in a statement.

Tesla shares were down nearly 4.3% in afternoon trading on Tuesday.

On Thursday, Tesla will host its annual shareholder meeting and announce the results of voting on several proposals including Musk's compensation package, which offers him an additional 12% stake in Tesla if he grows the company to an \$8.5 trillion valuation over the next decade, nearly eight times its current valuation. At that level, the proposed award would be valued at slightly more than \$1 trillion.

With a 1.2% stake in Tesla, the fund is the sixth-largest institutional investor behind others such as Vanguard and [BlackRock](#), according to FactSet. It is the first major institutional investor to disclose how it voted.

Shareholders will also vote on the re-election of board members and a shareholder proposal that asks [Tesla's board to invest](#) in Musk's artificial intelligence startup, xAI.

Smaller public pension funds, like the American Federation of Teachers and various New York City retirement systems, have also publicly opposed the pay package, as have major proxy advisory firms Institutional Shareholder Services and Glass Lewis.

Several Tesla shareholders have come out in favor of the proposal, including Morgan Stanley's Counterpoint Global fund and Florida's public pension fund.

Musk, who is Tesla's largest shareholder with a voting stake of around 15%, can also vote on the proposal.

The proposed deal would allow Musk—already the world's wealthiest person—to receive installments of shares if Tesla hits a series of market-capitalization and business milestones, which include the delivery of 20 million Tesla vehicles, putting a

million robotaxis into service and reaching a three-month average of 10 million subscribers for Tesla's Full Self-Driving service.

Last year, [the wealth fund opposed a separate proposal](#) to ratify a 2018 pay package for Musk that had been canceled by a Delaware judge.

That proposal passed with 72% support, though the judge upheld her decision to rescind the package. Tesla is now awaiting a decision on its appeal in the Delaware Supreme Court.

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Corrections & Amplifications

Tesla shares slipped in premarket trading on Tuesday. An earlier version of this article incorrectly said Wednesday. (Corrected on Nov. 4)

Videos

Elon Musk**Norway's oil fund to vote against Elon Musk's \$1tn pay deal at Tesla**

World's largest sovereign wealth fund is a top-10 investor at US electric vehicle maker



Tesla chair Robyn Denholm has framed the vote on Elon Musk's pay as being essential to keeping him at the company © Allison Robbert/AFP/Getty Images

Richard Milne in Oslo

Published YESTERDAY



The world's largest sovereign wealth fund will vote against Tesla chief executive Elon Musk's \$1tn pay package, saying it is worried about the size of the deal.

Norway's \$2.1tn oil fund, which is a top-10 Tesla shareholder with a stake of 1.1 per cent, said on Tuesday that while it appreciated "the significant value created under Mr Musk's visionary role" it would vote against his performance award.

"We are concerned about the total size of the award, dilution, and lack of mitigation of key person risk — consistent with our views on executive compensation," it said two days before the electric-car maker's annual meeting on November 6.

“We will continue to seek constructive dialogue with Tesla on this and other topics.”

Tesla chair Robyn Denholm has [characterised the vote as essential](#) to keeping Musk as the carmaker's chief executive. Musk has publicly threatened to walk away if shareholders again block his pay package.

Tesla shares fell 3 per cent in early trading on Tuesday.

The oil fund last year [voted against](#) Musk receiving what was then the biggest remuneration package in US corporate history of \$56bn.

That pay deal was approved by shareholders in June but rejected for a second time by a Delaware court in December.

Two shareholder advisory groups, Glass Lewis and ISS, have [recommended that investors reject](#) the latest \$1tn pay deal, which is tied to ambitious milestones for share price and operational performance.

A group of big pension funds has also issued an open letter opposing the pay plan, arguing that the board's “relentless pursuit” of keeping its chief executive had damaged Tesla's reputation and led to excessive pay.

[Norway's oil fund](#) has felt Musk's wrath over pay before. Nicolai Tangen, the fund's chief executive, invited Musk and other chief executives to dinner in Oslo earlier this year, but Musk turned down the invitation after the oil fund voted against the \$56bn pay deal.

“When I ask you for a favour which I very rarely do, and you decline, then you should not ask me for one until you've done something above nothing to make amends. Friends are as friends do,” [Musk told Tangen](#) in October 2024 in a text message revealed by the fund under a freedom of information request.

The Norwegian fund usually reveals its voting intentions five days before annual meetings. But it released its vote for Tesla only two days in advance, saying it wanted “to ensure all relevant information is available and able to be considered in our analysis”.

[Musk](#) talked about the criticism of the pay deal on X, the social media site he owns, last month.

“Tesla is worth more than all other automotive companies combined. Which of those CEOs would you like to run Tesla? It won’t be me,” he wrote. He separately called ISS and Glass Lewis “corporate terrorists”.

The fortune of the world’s richest man is largely locked up in Tesla shares, which have more than tripled in value over the past five years as its market capitalisation has soared to \$1.5tn.

Denholm told the Financial Times last month that if Tesla could not retain Musk “it wouldn’t be a good outcome for shareholders” but added that she did not believe he would do anything “sudden and detrimental” if Tesla lost the vote.

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Tesla's China-made EV sales fall 9.9% y/y in October

 [reuters.com/business/autos-transportation/teslas-china-made-ev-sales-fall-99-yy-october-2025-11-04](https://www.reuters.com/business/autos-transportation/teslas-china-made-ev-sales-fall-99-yy-october-2025-11-04)

Reuters

November 4, 2025

A Tesla Model 3 standard vehicle, featuring cloth seats and less premium features, but still with a range above 300 miles (480 km), is shown in a Tesla show room in San Diego, California, U.S. October 21, 2025. REUTERS/Mike Blake [Purchase Licensing Rights](#)  , [opens new tab](#)

[\(TSLA.O\)](#)  , [opens new tab](#) China-made electric vehicle sales fell 9.9% to 61,497 units in October from a year earlier, reversing a 2.8% increase in September, data from the China Passenger Car Association showed on Tuesday. Sales of the U.S. automaker's Model 3 and Model Y vehicles made at its Shanghai "gigafactory", including exports to Europe, India and other markets, dropped 32.3% from September.

Its biggest Chinese rival, BYD [\(002594.SZ\)](#)  , [opens new tab](#) , posted a 12% [drop](#) in global vehicle sales last month, a second consecutive month of decline and the steepest fall in nearly two years amid hyper-competition in the home market.

Tesla has not yet announced the availability on the Chinese market of the lower-cost versions of its best-selling Model Y SUVs and Model 3 sedans, which were unveiled last month.

In spite of the swift European roll-out of the new cars, which opt out of some premium features, Tesla sales resumed [falling](#) in a number of countries there, pointing to continued struggles on a continent that has been crowded with budget EVs.

By comparison, BYD has seen robust sales growth in Europe even while its growth on home turf hit a speed bump.

Tesla is also set to [showcase](#) its Cybercab in Shanghai from Wednesday. It remains unknown if Tesla has planned the robotaxi's roll-out on Chinese roads where local firms such as Baidu [\(9888.HK\)](#)  , [opens new tab](#) , Pony.ai [\(PONY.O\)](#)  , [opens new tab](#) and WeRide [\(WRD.O\)](#)  , [opens new tab](#) have been testing their robotaxis in various cities.

Federal Judge Denies Big Pharma's Motion to Shut Down Multistate Dermatological Generic Drug Price Fixing Lawsuit

"A reasonable juror could find that the defendants' 'blaming supply,' making uncompetitively high bids and falsely citing production costs for increased prices were aimed at concealing their alleged conspiracy," the court ruled.

November 03, 2025 at 07:46 PM By  **Emily Cousins**



Credit: Chexy139/Adobe Stock

A Connecticut federal judge has ruled that most claims of price fixing generic drugs may proceed against 36 pharmaceutical companies and executives.

The lawsuit was filed by 45 states, including Connecticut, California, Delaware, Florida, Georgia, New Jersey and New York, the District of Columbia and four U.S. territories in the District of Connecticut in 2020. The multistate coalition, led by Attorney General William Tong, claimed that between 2009 and 2016, the defendants conspired to raise prices and shrink competition for generic drugs used for dermatological issues, such as Differin, Lotrimin AF Cream and Ritalin. Tong did not respond to a request for comment.

This case named major pharmaceutical companies, including Pfizer Inc., Perrigo New York Inc., Mallinckrodt Inc. and Sandoz Inc., as defendants.

This suit is among three cases brought by attorneys general against big pharma for alleged unfair trade practices and antitrust violations. The plaintiffs claim "a series of 80 single-drug conspiracies, as well as an overarching conspiracy, to collude on price and market allocation and to rig bids for the business of customers," according to court records.

The defendants, represented by firms like Morgan, Lewis & Bockius, DLA Piper, Wiggin and Dana, Ropes & Gray, Proskauer Rose and Day Pitney, argued in a motion for summary judgment that the majority of claims are time-barred. Counsel for the defendants did not respond to a request for comment.

In particular, the defendants contended that the clock started ticking for the states to bring their claim "as early as mid-2012 and no later than 2014."

The defendants pointed to "media reports, congressional investigation and [Department of Justice] subpoenas regarding price hikes across the generic pharmaceutical industry," but the court said the drug makers and executives based their argument on "two erroneous assumptions."

"First," the court said, "that unexplained price increases across multiple generic drugs constitute strong evidence of anticompetitive conduct, and second, that evidence of collusion in the market for one drug must indicate collusion in the markets for others. In short, the defendants argue that where there is smoke emanating from a few houses, I must find as a matter of law that a plaintiff must act as if the whole town is on fire."

U.S. District Judge Michael P. Shea concluded in his 130-page decision, handed down on Friday, that the earliest time there was no genuine dispute that the states had notice of the alleged anti-competitive conduct connected to the drugs in this lawsuit was May 2017.

The court held that the claims were timely and the states had "diligently pursued an investigation" of the alleged conspiracy. In addition, the court determined a jury could reasonably find that certain statements were used to conceal the alleged drug price fixing conspiracies.

"A reasonable juror could find that the defendants' 'blaming supply,' making uncompetitively high bids and falsely citing production costs for increased prices were aimed at concealing their alleged conspiracy," the court ruled.

Shea denied the defendants' motion for summary judgment to all the claims except proprietary claims under Kansas law, which the court agreed are time-barred.

Read the decision:

California Brief

Procter & Gamble Loses Bid to Dismiss Kid's Toothpaste Case

Nov. 3, 2025, 8:40 AM PST

The Procter & Gamble Co. lost its first bid to dismiss claims from parents that the company's packaging fraudulently suggests more of its fluoride-containing Kid's Crest toothpastes can be used by children than is safe.

The US District Court for the Northern District of Illinois largely denied on Oct. 31 the company's motion to dismiss the proposed class action and ordered a status hearing for Nov. 13.

P&G successfully convinced the court to dismiss the plaintiffs' allegations that its label violated the Uniform Commercial Code, which requires products to be fit for the purpose for which they're sold.

But the company will have to continue to defend itself against allegations brought by parents in Illinois, California, and New York claiming P&G violated state consumer laws prohibiting deceptive, fraudulent, or unfair business practices.

The parents' core complaint is that two Kid's Crest products show pictures of full strips of toothpaste on a toothbrush. Yet only a "smear," or rice-grain sized amount of paste is recommended by the Centers for Disease Control and Prevention and American Academy of Pediatrics for children age 2 to 3, and only a pea-sized amount is recommended from age 3 to 6.

Due to the misleading labeling, packaging, and marketing, which includes the toothpaste's candy-like flavor, plaintiffs' children used more toothpaste per brushing than they should have, and their parents bought more of the toothpaste than they otherwise would have, the plaintiffs said.

But none of the plaintiffs allege they or their children were injured by ingesting fluoride, P&G countered in its motion to dismiss. The thrust of the complaint is that the packaging led them to use and buy too much toothpaste. Yet that packaging complies with the Food & Drug Administration's labeling regulations, it said.

Plaintiffs “are attempting to use state law to impose additional restrictions on the labeling for Kid’s Crest beyond what federal law requires,” P&G said. “But Congress has enacted an express preemption provision that bars attempts to impose any state-law requirement ‘that is different from or in addition to’ or ‘otherwise not identical with’ federal law.”

The lawsuit is one of six filed in January asserting safety claims made by companies making fluoride-containing toothpastes and mouthwashes targeted at young children violate consumer protection and other laws.

Siri & Glimstad LLP represents the plaintiffs. Covington & Burling LLP represents P&G.

The case is *Gurrola v. The Procter & Gamble Co.*, N.D. Ill., No. 25-00358, 10/31/25 .

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California Brief

California Consumers Get Early Nod for \$14 Million Fee Deal

Nov. 3, 2025, 3:15 PM PST

A group of consumers got early approval to proceed with a \$14 million proposed settlement resolving class action claims that a California rent-to-own business unlawfully charged for partaking in its furniture and appliance contracts.

The agreement was granted preliminary approval on Oct. 31 by Judge James Donato, of the US District Court for the Northern District of California. The class—certified in June—claimed RAC Acceptance East LLC violated California's Karmette Rental-Purchase Act, Consumer Legal Remedies Act, and Unfair Competition Law by charging a \$45 processing fee when customers entered a rental purchase agreement.

The \$14 million settlement fund will allow class members to recover actual and potential statutory damages under the Karmette Act, in addition to covering attorneys' fees, litigation expenses, and up to \$10,000 in service awards, the class's motion for preliminary approval said

The settlement administrator is required to send class members the court-approved Summary Class Notice within the next 28 days, Donato said

Any class member who wants to exclude themselves from the settlement or object to its terms must send a written request within 75 days after the notice is distributed

K&L Gates LLP and Womble Bond Dickinson LLP represent RAC. Dostart Hannink LLP and Altshuler Berzon LLP represent the two named plaintiffs and the class.

The case is *McBurnie v. Acceptance Now LLC*, N.D. Cal., No. 3:21-cv-01429, 10/31/25 .

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Musician RBX Sues Spotify in Class Action Over Alleged Fraud, Citing 'Billions' of Drake Streams

"One of the big points here is not everybody in the music business is wearing gold chains and wealthy and flying around in private jets," said Mark Pifko, a shareholder at Baron & Budd. "There's a ton of people who are just trying to make it."

November 03, 2025 at 08:44 PM By  **Kat Black**

What You Need to Know

- Hip-hop artist RBX sued Spotify for allegedly allowing streaming fraud to proliferate on its platform.
- The musician alleged that the streaming giant "turns a blind eye" to bots that generate "billions" of streams for artists like Drake.
- Spotify argues that it "in no way benefits" from artificial streaming and proactively deploys measures to curb it on the platform.



Spotify's headquarters in downtown Manhattan. Credit: Roman Tiraspolsky/Adobe Stock

Hip-hop musician and producer Eric Dwayne Collins, known professionally as RBX, sued Spotify for allegedly failing to prevent and remedy streaming fraud on its platform, arguing that the company deliberately overlooks bot accounts generating "billions" of music streams for artists like Drake—currently one of the most-streamed artists on Spotify—in order to drive engagement and artificially maximize profits for investors.

"The more users (including fake users) Spotify has, the more advertisements it can sell, the more profits the company can report, all of which serves to increase the purported value delivered to shareholders," the suit contended.

"... Accordingly, Spotify is all too happy to turn a blind eye to the substantial number of fake users on its platform whose activities are controlled by artificial bots to fraudulently inflate streams."

Baron & Budd and Irpino Avin & Hawkins filed the class action [complaint](#) on behalf of RBX on Nov. 2 in the U.S. District Court for the Central District of California. The proposed class includes "music recording artists, song writers, performers and other music rights holders" who are compensated for hosting music on Spotify.

Mark Pifko, a shareholder at Baron & Budd who is representing the plaintiff, said in an interview that, to his knowledge, the lawsuit is the first of its kind to hit the streaming giant.

"One of the big points here is not everybody in the music business is wearing gold chains and wealthy and flying around in private jets," said Pifko.

"There's a ton of people who are just trying to make it. ... And so what this case is about is ensuring that these musicians, producers, songwriters ... regardless of where they are in the food chain of the music industry, that they're getting paid appropriately for what's going on."



Mark Pifko of Baron & Budd. Courtesy photo

The plaintiff noted that Spotify, a monthly subscription-based service that also generates revenue through advertising, determines the amount paid to rights-holders on the platform based on the number of their songs streamed each month.

RBX alleged that the presence of fake users or automated bots on the platform accounts for "a substantial percentage of the total music streams on Spotify," effectively stealing revenue from legitimately streamed artists.

According to the complaint, streaming fraud is frequently committed by bots, or "automated software programs" deployed by third parties "for the purpose of manipulating streaming metrics" in favor of a particular artist. Since Spotify does not require a credit card to set up an account, it said, there is no way of verifying if an account is controlled by a bot, allowing fake accounts to flourish on the platform and game the system on behalf of a small, privileged handful of big-name musicians.

Though Aubrey Drake Graham, known professionally as Drake, is not named as a defendant, the rap titan—who is facing his own legal battles in a defamation suit against [Universal Music Group](#)—is invoked in the complaint as one of the most obvious beneficiaries of alleged streaming fraud on the platform.

Drake, it said, "became the first artist to nominally achieve 120 billion total streams on Spotify" in September 2025—but a "substantial, non-trivial" percentage of those streams dating back to January 2022 were, it alleged, "upon information and belief ... inauthentic and appeared to be the work of a sprawling network of bot accounts."

The claim alleges negligence and violation of California's Unfair Competition Law.

A spokesperson for Spotify said that the company could not comment on pending litigation, but asserted that it "in no way benefits from the industry-wide challenge of artificial streaming."

"We heavily invest in always-improving, best-in-class systems to combat it and safeguard artist payouts with strong protections like removing fake streams, withholding royalties and charging penalties," the spokesperson said in an email.

"Our systems are working: In a [case from last year](#), one bad actor was indicted for stealing \$10,000,000 from streaming services, only \$60,000 of which came from Spotify, proving how effective we are at limiting the impact of artificial streaming on our platform."

The spokesperson referred The Recorder to its [web page](#) on artificial streaming, which states that "Spotify strictly prohibits using any third party service that promises streams or playlist placement in exchange for money." According to the web page, artificial streams do not earn royalties, can incur penalties such as song removal and are not factored into charts, streaming numbers or recommendation algorithms.

The plaintiff is seeking damages, injunctive relief, restitution and disgorgement of profits. Counsel has not yet appeared for Spotify.

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'Profound Suffering': Willkie Helps Plaintiffs Secure \$841M Damages Award in Terrorism Case

"It takes hundreds and hundreds of hours to work these cases," said Willkie Farr & Gallagher litigation partner Nick Reddick, who helped 36 plaintiffs secure an \$841 million damages award holding Iran liable for multiple international terrorist attacks that killed Americans in Iraq.

November 03, 2025 at 07:56 PM By  **Sulaiman Abdur-Rahman**

What You Need to Know

- Willkie Farr & Gallagher and Sparacino PLLC helped 36 plaintiffs secure an \$841 million damages award holding Iran liable as a designated state sponsor of terrorism.
- U.S. District Judge Randolph D. Moss of the District of Columbia awarded the damages under the terrorism exception to the Foreign Sovereign Immunities Act.
- The U.S. Victims of State Sponsored Terrorism Fund has not received adequate funding from Congress.



The E. Barrett Prettyman U.S. Courthouse, home of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia, on Jan. 12, 2022. Photo: Diego M. Radzinski/ALM

A federal judge has found Iran liable and awarded \$841 million in damages to 36 plaintiffs who had family members wounded or killed in terrorist attacks in Iraq.

“[T]he Court recognizes that no monetary award—no matter how large—can return to any of the victims in this case what they lost through abhorrent actions of Iran and terrorist groups it supports,” U.S. District Judge Randolph D. Moss of the District of Columbia wrote in his [12-page memorandum opinion](#) filed Oct. 31.

Willkie Farr & Gallagher and Sparacino PLLC helped the plaintiffs secure the damages award holding Iran liable under the state sponsor of terrorism exception to the Foreign Sovereign Immunities Act.

“It brings some small measure of justice just to know someone is held accountable on the other end,” said Nicholas “Nick” Reddick, a Willkie litigation partner and co-counsel for the plaintiffs. “We are happy with the result.”

Iran helped the Zarqawi and Ansar al-Islam organizations carry out multiple terrorist attacks in Iraq between 2003 and 2017 by providing significant material support, according to Moss, who awarded about \$420.7 million in compensatory damages and \$420.7 million in punitive damages to 36 plaintiffs who had immediate family members wounded or killed in western Al Anbar Province.

“Plaintiffs have experienced profound suffering,” Moss wrote in his decision.

“It takes hundreds and hundreds of hours to work these cases,” Reddick said Monday in an interview. “A lot of time is spent trying to get evidence trying to prove which group carried out the attacks.”

Reddick represents hundreds of plaintiffs impacted by international acts of terrorism and has helped nearly 200 secure \$4 billion in total damages to date.

“We work to move as quickly as we can to get everyone a judgment,” Reddick said. “It takes months and months to be able to get the necessary evidence.”

“Working with victims of terrorism is a very difficult and timely matter,” Reddick added. “It takes a lot of time to work with these folks to be able to get their sworn declarations.”

Plaintiffs generally rely on the U.S. Victims of State Sponsored Terrorism Fund for compensation because collecting judgments from Iran is “very difficult,” Reddick said. “Pretty much all of Iran’s assets have already been seized by the government or prior litigants, so there isn’t just money sitting around in a bank account that we can go seize.”

More than 21,000 claimants are eligible for compensation under the [USVSST Fund program](#), including about 13,000 impacted by the events of Sept. 11, 2001, and about 8,800 impacted by other acts of international terrorism.

The terrorism victims' fund has not received adequate funding from Congress, according to Reddick, a former U.S. Department of Justice prosecutor and U.S. Navy judge advocate who called for Congress to shore up the program.

"We are hoping Congress will do something about it, and it certainly needs to be a bipartisan issue," Reddick said. "That is the single most important thing."

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Federal Judge Threatens to Disqualify Doe Run Defense Counsel Over 'Repeated Disregard of My Orders'

U.S. District Judge Rodney Sippel of the Eastern District of Missouri threatened to disqualify Doe Run's lawyers in an Oct. 29 order as part of long-running litigation involving lead exposure from a Peruvian land mine.

November 03, 2025 at 06:17 PM By  **Amanda Bronstad**

What You Need to Know

- The judge planned to take up the potentially terminating sanctions at the next hearing, which he has yet to schedule.
- The judge, who is overseeing 3,000 of the lead poisoning cases against Doe Run, called the defense's attempt to obtain information through two related Florida legal actions 'tantamount to a vexatious multiplication of litigation.'
- The order didn't give specific names or firms, but Doe Run's legal team includes attorneys from Rivero Mestre, Polsinelli, Lewis Rice, Dowd Bennett and King & Spalding.



Senior Judge Rodney Sippel of the U.S. District Court for the Eastern District of Missouri. Credit: Wikimedia Commons

A federal judge threatened to disqualify mining firm Doe Run's lawyers for attempting to skirt his sealing orders in long-running litigation involving alleged lead poisoning near a Peruvian mine.

Doe Run Resources Corp.'s lawyers filed two legal actions in Florida, one of which is aimed at assisting a criminal prosecution in Peru against the plaintiffs' lawyers who filed the lead poisoning lawsuits. But U.S. District Senior Judge Rodney Sippel, who has been overseeing 3,000 of the lead poisoning cases since 2015 in the Eastern District of Missouri, called the defense's attempt to obtain information in violation of his court order "tantamount to a vexatious multiplication of litigation."

"The activities of defendants," Sippel wrote in an Oct. 29 order, "are very concerning."

"Any attempts by defendants to circumvent my discovery orders in this case, or to circumvent plaintiffs' ability to assert attorney-client and work-product privileges on behalf of their active plaintiffs, will be met with sanctions, including the possibility of striking defendants' pleadings in this matter and proceeding with trials solely on damages given defendants' repeated disregard of my orders in this case," he wrote.

Sippel planned to take up the potentially terminating sanctions at the next hearing, which he has yet to schedule.

The order does not specify the names of the defense attorneys, or their firms, but references Robert Kuntz and Jon Bierman, two lawyers involved in the Florida actions. Kuntz, at Rivero Mestre in Miami, filed an ex parte application in the U.S. District Court for the Southern District of Florida to obtain discovery as part of a criminal prosecution in Peru involving disbarred Miami attorney Victor Careaga, who allegedly recruited local residents to claim lead exposure injuries, often creating fake documents and paying off notaries.

And Bierman, a Polsinelli partner in St. Louis, Missouri, brought a malicious prosecution case in Florida's 11th Judicial Circuit Court against Careaga and Lou Thaler, an attorney in Coral Gables, Florida, that cited two whistleblowers who accused Careaga of bribing local government officials and altering records.

Also involved in the case before Sippel were St. Louis attorneys Thomas Berra, of Lewis Rice, and Edward Dowd, of Dowd Bennett, as well as King & Spalding partners Geoffrey Drake and Andrew Bayman, in Atlanta, and Tracie Renfroe in Houston.

None of the defense lawyers responded to requests for comments.

Hunter Shkolnik, of Napoli Shkolnik in San Juan, Puerto Rico, one of the plaintiffs' lawyers, told Law.com that Sippel's order was a long time coming.

“He’s been even-tempered, and we thought he should have punished them with that type of terminating sanctions two years ago, but he’s been gentle, and giving them the ability to do the right thing, but they keep doubling down,” Shkolnik said of Sippel. “He’s at the end of his rope now.”

‘An Extraordinary Request’

The Napoli Shkolnik case, brought on behalf of more than 3,000 children, is one of two lawsuits alleging that Doe Run’s mining operations in Peru caused children living near the site to get lead poisoning. Shkolnik’s case also involves plaintiffs’ lawyer Frank Rodriguez, of Rodriguez Tramont & Nuñez, in Coral Gables, Florida.

“It is so highly toxic that when you’re in the mining town there, it looks like there are snowcaps, but they aren’t; it’s bleached white from acid rain,” Shkolnik said. “So, we filed suit, and it’s been scorched earth ever since. They’ve done everything and anything to stop this case.”

The other case, brought in 2011 by Schlichter Bogard on behalf of 900 children, is pending before U.S. District Judge Catherine Perry, also in the Eastern District of Missouri. Both are set for trials in 2026, Shkolnik said.

In 2022, Doe Run began insisting that plaintiffs in Peru had fraudulently signed up clients and falsified documents. Plaintiffs’ lawyers in the Napoli Shkolnik case countered that the Florida lawsuits Doe Run brought were designed to access discovery that they weren’t able to get from Sippel.

Sippel, however, was hesitant to get involved in a widespread fraud investigation.

“And there were a lot of—there’s a lot of belief that there is misconduct of some sort in this case,” he said, according to a March 24 transcript that year. “I get that. But I need to see it. I need to hear it. I need to understand it. It needs to be individualized, not generalized, and subject to conclusions.”

Doe Run then filed the Florida actions, but plaintiffs’ lawyers moved for an injunction on the grounds that it violated Sippel’s orders. Sippel, however, sided with Doe Run, which argued its legal actions were limited to plaintiffs whose cases were dismissed.

“I take defendants’ representations at their word,” Sippel said in a 2023 order.

Last year, the Napoli Shkolnik filed its first motion for sanctions, insisting that Doe Run “deliberately, repeatedly, and surreptitiously violated this court’s confidentiality order” by handing over full names, dates of birth and other identifying information of the plaintiffs to the Peruvian prosecutor. The firm later filed a second motion for an estimated \$4.95 million in sanctions and



Hunter J. Shkolnik. Courtesy photo

provided more details about the plaintiffs, whose names were given to prosecutors in Peru, many of whom were children.

“They fed the prosecutor the documents that they felt they needed in order to prosecute the criminal prosecution that they initiated in Peru,” Rodriguez told Sippel at a Feb. 27 hearing.

Doe Run’s attorneys denied any violations of Sippel’s sealing order and fought what they called “grossly excessive sanctions.”

Sippel declined to grant the first motion but, on July 29, agreed that Doe Run had disclosed the names of nearly 500 minor plaintiffs in violation of his sealing orders, and issued a sanction of \$49,500.

“Defendants’ intentional and willful disclosure of the minor plaintiffs’ names in this case is in direct violation of the sealing and redaction orders and rules of procedure in this case,” he

wrote.

In a new emergency motion for sanctions last month, plaintiffs argued that Doe Run’s lawyers were violating the attorney-client privilege in their pursuit of discovery in the ex parte, and they sought to disqualify Doe Run’s lawyers.

“Tens of thousands of emails sent in preparation for, or during the conduct of, the decade of litigation before this court would fall into the hands of plaintiffs’ adversary in pending litigation,” they wrote. “Strong, quick action by this court is called for to avert potentially catastrophic results for both plaintiffs and the interests of justice.”

In response, Doe Run’s attorneys called the motion “premature and unfounded,” and the disqualification requests “litigation gamesmanship.”

“Beyond sanctions, plaintiffs go even further and ask this court to disqualify the companies’ counsel,” he wrote. “That is an extraordinary request, and one that exposes the litigation tactic driving this motion. Disqualification is a drastic remedy, reserved for clear cases of actual harm. Plaintiffs show none.”

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California Brief

Insight

Washington Court Expands Liability for Misleading Retail Emails

Nov. 4, 2025, 1:30 AM PST

In response to a federal court's request to answer a certified question, the Washington Supreme Court recently interpreted the state's Commercial Electronic Mail Act to prohibit any false or misleading information in the subject line of a commercial email.

With consumer class actions spiking around the country, and with other states having similar or identical laws on the books, this could open another litigation trap for the countless businesses who rely on email to drive sales.

Court's Decision

Washington's statute prohibits sending commercial emails that contain "false or misleading information in the subject line." The gist of *Brown v. Old Navy, LLC*, is that only the subject line matters—even if the body of the email says otherwise, has disclaimers, waivers, etc.

In the suit against Old Navy, plaintiffs challenged subject lines such as "Today Only!" and "Three Days Only!", arguing they improperly created a false sense of urgency because the underlying promotions extended beyond those deadlines.

Old Navy argued CEMA targeted only subject lines that misled recipients about an email's commercial nature—the substance of the email. The state Supreme Court disagreed, holding that any materially misleading subject line can violate the statute, regardless of the contents. The court based its conclusion on what it called the "plain meaning" of the statute.

The decision drew a narrow safe harbor for "puffery" but found that specific claims about timing, price, or availability are actionable. Notably, each CEMA violation comes with a \$500 per email penalty—regardless of actual harm. In response to Old Navy's point that this reading of the statute could lead to a multibillion-dollar exposure, the court retorted that such a result was "the plain consequence of a clear statute."

After the Washington Supreme Court answered the certified question, Old Navy filed a motion to dismiss contending that the Washington Supreme Court's interpretation of CEMA is preempted by the federal CAN-SPAM Act.

Specifically, CAN-SPAM preempts state laws that "expressly regulate the use of electronic mail to send commercial messages," except to the extent those laws prohibit "falsity or deception." Old Navy argues that the plaintiffs failed to plead a theory of liability based on material misstatements, hence their claim is preempted. Plaintiffs argue that CAN-SPAM's "savings clause" covers their CEMA claims. The motion is fully briefed and awaiting the court's decision.

Comparable Statutes

Recent filings of lawsuits based on allegedly deceptive or misleading email subject lines creates a daunting threat to retailers. Washington isn't alone in having legislation directed at email subject lines.

Several states similarly regulate deceptive subject-line content (sometimes under their own versions of CEMA), creating the possibility for far-ranging risk. For example, Florida has a very similar statute prohibiting commercial emails containing "false or misleading information in the subject line" (the same verbiage as Washington's CEMA) and similar \$500 per email penalties plus attorney fee exposure. Florida courts have read this statute broadly.

California has a statute banning email subject lines that are "likely to mislead" recipients "about a material fact regarding the contents or subject matter of the message." While California's law isn't limited to the subject line, California courts have already ruled the statute is *not* preempted by CAN-SPAM—and California courts generally construe consumer statutes favorably toward consumers.

The situation in Washington may not be an outlier, and prudent retailers should adjust their email marketing strategies without delay.

This includes ensuring that any sale timelines promoted in the subject line are valid and not subject to extension, and confirming that any reference prices in email subject lines were prices that were prevailing for a reasonable period of time over the past 90 days (e.g., if an email promotes 40% off, the undiscounted price must have been the actual price charged).

For national retailers, the immediate challenge is practical: ensuring email subject lines survive scrutiny under various state statutes. Some states have laws regulating commercial emails, although many of these states laws—unlike California—were found to be preempted by CAN-SPAM. Given that retail marketing is typically done on a nationwide basis, prudent retailers should ensure compliance with the more restrictive state laws.

Even if Old Navy's preemption defense succeeds, plaintiffs' attorneys (and possibly state attorneys general) may continue to assert claims under similar laws, potentially wreaking havoc on prevalent digital marketing practices.

Whether CAN-SPAM preempts Washington's expansive interpretation of CEMA is uncertain, and the District Court's opinion will probably not be the final word. But the message for retailers is clear: Subject-line truthfulness is a new compliance minefield.

With the holiday season approaching and the influx of electronic marketing messages, retailers need to be vigilant regarding the subject lines and/or contents of any email blasts to ensure they are in no way misleading or deceptive.

A single national email blast might generate substantial sales, but it might also generate massive exposure. Until there is clear legal authority blocking this type of lawsuit, subject-line creativity should yield to caution. Failure to do so may result in per se liability of \$500 per email—far exceeding any benefit of the promotional email.

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

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Conservative appellate judge faults US whistleblower law's 'constitutional problems'

 [reuters.com/legal/government/conservative-appellate-judge-faults-us-whistleblower-laws-constitutional-2025-11-04](https://www.reuters.com/legal/government/conservative-appellate-judge-faults-us-whistleblower-laws-constitutional-2025-11-04)

Nate Raymond

November 4, 2025

Judge James Ho speaks at Yale University in New Haven, Connecticut, U.S., November 30, 2022. REUTERS/Michelle McLoughlin [Purchase Licensing Rights, opens new tab](#)

Nov 4 (Reuters) - A conservative federal appeals court judge is urging his court to revisit its own precedent in order to address the "serious constitutional problems" with a law that allows whistleblowers to sue companies on the government's behalf to recover taxpayer funds paid out based on false claims.

U.S. Circuit Judge James Ho of the New Orleans-based 5th U.S. Circuit Court of Appeals laid out his position in a [concurring opinion, opens new tab](#) on Monday as he joined a three-judge panel's decision to uphold the dismissal of one such lawsuit against an inpatient-rehabilitation facility under the False Claims Act. His concurring opinion took aim at the "qui tam" provision of a law first enacted in 1863 during the Civil War that allows citizens to file lawsuits on the government's behalf against individuals and companies defrauding it.

That provision has become central to how the U.S. government today combats fraud in the health care and defense sectors. Settlements and judgments under the False Claims Act in cases first filed by whistleblowers exceeded \$2.4 billion in the 2024 fiscal year, the U.S. Department of Justice said.

Hundreds of such cases are filed annually, initially under seal so the Justice Department can investigate and decide whether to take them over. If it chooses not to, whistleblowers, who stand to receive a cut of any financial recovery, may pursue the lawsuits on the government's behalf.

The case before the 5th Circuit was one such lawsuit. It was filed against a rehabilitation hospital in Pearland, Texas, owned by Encompass Health Corp ([EHC.N](#)), [opens new tab](#) by one of its former sales representatives, Deidra Gentry, who alleged it presented false claims to Medicare in order to get paid. Ho, who was appointed by Republican President Donald Trump during his first term in office, agreed with the panel's decision to uphold the dismissal of Gentry's complaint, which it said failed to allege facts that could show patients who did not

require treatment were admitted.

But Ho said the full 5th Circuit should consider going further by overturning its own 2001 precedent and holding that whistleblowers, or relators, like Gentry cannot constitutionally step into the role of the government to pursue such cases on its behalf at all in a future case.

"They presume to represent the United States government in federal court, and to defend the interests of the United States Treasury against fraud," Ho wrote. "But like federal civil servants, they are neither appointed by, nor accountable to, the President."

Ho noted that "many members of the federal judiciary have expressed repeated constitutional concerns about the qui tam provisions of the False Claims Act."

U.S. Supreme Court Justice Clarence Thomas in a 2023 dissent said the provisions exist in a "constitutional twilight zone," and fellow conservative Justices Brett Kavanaugh and Amy Coney Barrett in a concurring opinion in [that case](#), United States, ex rel. Polansky v. Executive Health Resources, said the Supreme Court should consider the issue in a future case.

The Atlanta-based 11th U.S. Circuit Court of Appeals is scheduled on December 12 to [consider whether](#) to uphold a [2024 ruling](#) by U.S. District Judge Kathryn Mizelle, a Trump appointee in Tampa, Florida, holding the law violates the Appointments Clause in Article II of the U.S. Constitution.

The makeup of the 17-judge 5th Circuit, known as the most conservative federal appeals court, has changed since 2001 when it overwhelmingly upheld the law. Only three judges who participated in that case upholding the whistleblower provisions remain on the bench.

They include U.S. Circuit Judge Jerry Smith, an appointee of Republican President Ronald Reagan, who wrote what Ho called a "lonely" dissent to the 2001 ruling. Ho noted that U.S. Circuit Judge Kyle Duncan, another Trump appointee, earlier this year in another case also called on the 5th Circuit to revisit its 2001 ruling.

"Had I been on that panel, I would have joined him," Ho wrote. "I'm pleased to do so now."

The case is U.S. ex rel Gentry v. Encompass Health Rehabilitation Hospital of Pearland, 5th U.S. Circuit Court of Appeals, No. 25-20093.

For Gentry: Volney Brand of Brand Law and Keith French of Keith B. French Law

For Encompass Health: Robert Layne and Alan York of Reed Smith

Read more:

[Fight over False Claims Act whistleblower provision heats up on appeal](#)

[False Claims Act's whistleblower provisions are unconstitutional, US judge rules](#)

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Nate Raymond reports on the federal judiciary and litigation. He can be reached at nate.raymond@thomsonreuters.com.

Litigation

Manage Newsletters

Judge Ho Critiques Constitutionality of Whistleblower Lawsuits

Nov. 4, 2025, 10:22AM PST

Summary by Bloomberg AI

AI Generated



- Vocal Fifth Circuit Judge James Ho said the court should consider whether the False Claims Act's whistleblower provisions have "serious constitutional problems."
- Ho concurred with the US Court of Appeals for the Fifth Circuit panel's decision to reject an FCA suit alleging Medicare fraud by Encompass Health Rehabilitation Hospital of Pearland LLC.
- The appeals court said whistleblower Deidra Gentry's complaint lacked facts suggesting admission decisions rested with anyone other than physicians and failed to show that Encompass submitted false claims to Medicare.

Vocal Fifth Circuit Judge James Ho said the court should consider in the future whether the False Claims Act's whistleblower provisions have "serious constitutional problems."

Ho concurred with the US Court of Appeals for the Fifth Circuit panel's decision Monday to reject an FCA suit alleging Medicare fraud by Encompass Health Rehabilitation Hospital of Pearland LLC. But he also said FCA whistleblowers present Article II concerns.

Whistleblowers act like representatives of the federal government in court and seek to combat federal fraud, Ho said, but they "are neither appointed by, nor accountable to, the President."

Ho agreed with fellow Judge Stuart Kyle Duncan, who said in a recent opinion that the Fifth Circuit should revisit its 2001 decision in *Riley v. St. Luke's Episcopal Hosp.*, which rejected similar constitutional concerns.

Many members of the federal judiciary have voiced concerns about the FCA's constitutionality, Ho said, including the three US Supreme Court justices in *United States ex rel. Polansky v. Executive Health Resources Inc.*, who expressed doubt in 2023 as to whether Congress could authorize whistleblower suits.

Ho also cited a US District Court for the Middle District of Florida decision, *United States ex rel. Zafirov v. Florida Medical Assocs. LLC* , which said in 2024 that the FCA whistleblower provisions violate the appointments clause. That dispute is pending at the US Court of Appeals for the Eleventh Circuit, which will hear oral argument Dec. 12.

Ho joined Judge Patrick E. Higginbotham, who wrote the majority opinion, and Judge Dana M. Douglas to affirm dismissal of whistleblower Deidra Gentry's suit against Encompass.

Gentry alleged Encompass improperly billed Medicare for inpatient-rehabilitation services. Physicians allegedly admitted patients by rubber-stamping the non-clinical judgment of sales representatives, which violates Medicare requirements, Gentry contended.

But her complaint lacked facts suggesting admission decisions rested with anyone other than physicians, the appeals court said. Gentry's assertion that physicians didn't evaluate pre-admission screening information is speculative at best, the opinion said.

Gentry also failed to show that Encompass submitted false claims to Medicare, the opinion said. Her complaint didn't establish how the alleged fraud scheme led to billing, for what services Encompass billed, and who submitted false claims.

Brand Law PLLC represented Gentry. Reed Smith LLP represented Encompass.

The case is *United States ex rel. Gentry v. Encompass Health Rehab. Hosp. of Pearland LLC* , 5th Cir., No. 25-20093, opinion filed 11/3/25 .

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NewsRoom

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Cleveland Plain Dealer

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November 4, 2025

Section: A

'They're not VIPs.' Former FirstEnergy execs get special treatment in corruption case. Chuck Jones and Mike Dowling have been granted extraordinary...

Cleveland.com and The Plain Dealer

'They're not VIPs.' Former FirstEnergy execs get special treatment in corruption case. Chuck Jones and Mike Dowling have been granted extraordinary privacy protections.

Note: Artificial intelligence was used to help generate this story from Today in Ohio, a news podcast discussion by cleveland.com editors. Visitors to cleveland.com have asked for more stories based on podcast discussions.

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," podcast host Leila Atassi said. "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 said: "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 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."

Find the podcast discussion at tinyurl.com/CLETodayInOhio. Listen to full "Today in Ohio" episodes, where Editor/President Chris Quinn hosts our daily half-hour news podcast with Editorial Board member Lisa Garvin, Impact Editor Leila Atassi, Content Director Laura Johnston and Trends Editor Courtney Astolfi.

---- Index References ----

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Securities

Opinion

Matt Levine's Money Stuff: Coinbase Said Web3

Nov. 3, 2025, 11:04 AM PST

Coinbase earnings call

The main point I want to make here is that this is all so dumb and I hate it. Kalshi, a commodities futures exchange registered with the US Commodity Futures Trading Commission, offers contracts on various unconventional commodities like election outcomes and football games. Last month you could buy futures contracts on commodities like a Coinbase Global Inc. representative saying the words “prediction market” or “Bitcoin” or “Web3” on its third quarter earnings call. Why? I don’t know. To hedge your risk that Coinbase wouldn’t say those words? To help people understand and price the future states of the world in which Coinbase did or didn’t say those words? Because you were bored and liked to gamble, probably.

At 9 a.m. last Thursday, “Bitcoin” was trading at about a 92% probability. Coinbase is a crypto exchange, Bitcoin is the biggest cryptocurrency, that makes sense. “Prediction market” was trading at about 71%. Prediction markets are hot right now and you might have guessed that Coinbase was thinking about them. “Web3” was trading at about 15%. “Web3” is definitely a thing that crypto people said a lot in, like, 2022, but not so much recently. These probabilities all seem pretty reasonable.

The earnings call happened at 5:30 p.m. on Thursday; you can listen [here](#), or [here](#) is the Bloomberg transcript. Near the end of the call, Coinbase Chief Executive Officer Brian Armstrong said this:

I hope we answered your question on that. I was a little distracted because I was tracking the prediction market about what Coinbase will say on their next earnings call. And I just want to add here the words Bitcoin, Ethereum, Blockchain, staking, and Web3 to make sure we get those in before the end of the call.

Okay? Sure. I don’t know. Total volume on the what-will-Coinbase-say Kalshi market seems to have been about \$80,000, so you could have made, you know, probably tens of dollars on “Web3” when he said that. But he sure did say that.

Traditionally commodity futures markets reference commodities. There is a lot of real-world economic supply and demand for, like, wheat. If you bought a lot of wheat futures, you would want the price of wheat to be high at the expiration of the contract, because then you would make more money. But in the general case it would be hard for you to *make* the price of wheat high. There's a lot of wheat in the world, and a lot of people who use it, and you can't do that much to change the price.

Every so often this situation breaks down: Sometimes there is a derivative market (a commodities futures contract) that is much bigger than the underlying market (for the commodity), so you can make a lot of money on the derivative by spending a little money to manipulate the underlying. We have talked about allegations that Jane Street manipulated the Indian options market; an essential element of those allegations is that the Indian options market is much bigger than the market for the underlying Indian stocks, so you *could* manipulate the options by buying the stocks.

But when the commodity derivative is "Brian Armstrong will say some words in public," I mean ... ? The Kalshi what-will-Coinbase-say market was not *big* in dollar terms. But the market for the underlying commodity was infinitesimal. It cost Brian Armstrong approximately nothing to say "Web3" at the end of his earnings call. (Maybe it cost him a little bit in terms of, like, lawyer heartburn; maybe it *benefitted him* by pleasing prediction-market gamblers.) He could just say that! And then the settlement values of those commodity futures would change.

The Commodities Exchange Act makes it illegal to "manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." The standard definition of commodities market manipulation requires proof that "(1) Defendants possessed an ability to influence market prices; (2) an artificial price existed; (3) Defendants caused the artificial prices; and (4) Defendants specifically intended to cause the artificial price." An artificial price is one that "does not reflect basic forces of supply and demand," one that is not determined "by free competition alone."

Was the final settlement price of the "Brian Armstrong will say 'Web3' on an earnings call" contract ... artificial? Did he manipulate that price? If you had given him \$5 and said "hey can you say 'Web3'" and he was like "sure whatever I don't care," would that be manipulation? If you had *not* given him \$5, but just pointed him to the prediction market prices and said "lol wouldn't it be funny to say 'Web3,'" would that be manipulation? If he had bought "Yes" contracts before saying it, would it be manipulation?

I have no idea. I think the questions are incoherent. I don't know what it could mean to manipulate the market for Brian Armstrong saying words. If you and your buddy have a \$20 bet on whether or not your boss will say some words in a meeting, and your buddy prods her into saying the words, and she says the words and your buddy wins the bet, I think you would probably be like "ahhh you got me" and hand over the \$20. Your buddy would be *kind of* cheating, but not really. That is the sort of dumb bet that you and your buddy make because you are bored in a meeting and like gambling; in that context, a little market manipulation is a perfectly acceptable way to spice things up.

Kalshi poses the question: What if dumb bets that you and your buddies make because you are bored and like gambling were *regulated by the CFTC*? I don't think there are good answers for anything here.

Bloomberg's Emily Nicolle and Justina Lee write about this stunt:

Under the CFTC's core guidelines, regulated platforms aren't supposed to list contracts that are "readily susceptible to manipulation." Mention markets may now test the limits of that definition, though rules surrounding this new era of prediction markets are still evolving.

"I'm hopeful that we see additional guidance from the CFTC and maybe a comprehensive regulatory framework that addresses these kinds of issues as they come up," said Andrew Kim, partner at Goodwin Procter LLP. "A core question that needs to be answered first, is there something to regulate here? Or is this a flash in the pan feature that sounds nice in theory but doesn't work in execution and you move on to the next thing."

Right, the ideal answer — aesthetically and probably legally — is neither "this sort of thing is prohibited" nor "this sort of thing is fine" but rather "please stop talking to me about markets in what Brian Armstrong will say on a call." What Brian Armstrong says on an earnings call is not intuitively a commodity, and having it trade on a regulated commodity exchange raises questions that are both hard to answer and also dumb.

Obviously this doesn't matter. Again, the market for these derivatives was tiny. On the other hand, this was an earnings call for a \$90 billion public company that reported \$433 million of net income on \$1.8 billion of revenue last quarter. Like, real business is happening here, and the Coinbase earnings calls was a way for investors and analysts to get some information about the fundamentals of the business that they are allocating capital to. Presumably people and algorithms used what was said on the call to inform how they traded Coinbase stock, and perhaps the stocks of other companies, or cryptocurrencies, or other financial instruments whose expected future cash flows changed based on what Coinbase said about its business. And then also, entirely separately, there were some prop bets on Coinbase saying "Web3."

Everything, I increasingly find myself saying, is sports betting. Within just the past year, US financial markets have caught the sports-betting bug. You can bet on sports in your brokerage account — it's an "emerging asset class" — and that behavior has infected the rest of financial markets. An earnings call is an opportunity to learn fundamental information about a real business, but you know what would make it more exciting? Having a little action on what words the company might say.

Metsera

We talked on Thursday about a cool M&A deal. Metsera Inc. is a publicly traded biotech company that, in September, agreed to sell itself to Pfizer Inc. for \$47.50 per share in cash plus up to \$22.50 in contingent value rights. Last week, it announced that it had a better offer from Novo Nordisk A/S, which would pay \$56.50 per share plus up to \$21.25 in CVRs. The Novo deal has a higher price, but also much more antitrust risk than the Pfizer deal: There is very little overlap between Pfizer and Metsera, but a lot between Novo and Metsera, so antitrust regulators are fine with the Pfizer deal but might block the Novo deal.

Novo addressed this problem by *paying for the Metsera shares before the deal closes*: It will give Metsera \$56.50 per share in cash (about \$6.5 billion total) when it signs the merger agreement, and Metsera will dividend that cash out to its shareholders. (They only get the \$21.25 CVR if the deal closes.) In exchange, Novo will immediately get a non-voting convertible preferred stock giving it 50% economic ownership of Metsera. If the deal gets through antitrust review, Novo will acquire all of Metsera. But if the deal gets shot down for antitrust reasons, the Metsera shareholders will keep the cash and Novo will keep the preferred stock; if Metsera ultimately sells itself to someone else, it will have to pay back the \$6.5 billion in cash before its shareholders get anything.

One way to think about this structure — and the way I wrote about it on Thursday — is that it is a clever allocation of antitrust risk. Novo wants to buy Metsera, Metsera wants to sell to Novo, but there is some uncertainty about whether US antitrust regulators will allow the deal to go through. Novo thinks it will. Metsera is worried, and does not want to abandon Pfizer's sure-thing bid for Novo's higher but riskier offer. So Novo has found a way to take all of the antitrust risk on itself: Metsera's shareholders get paid no matter what, and if the deal gets blocked for antitrust reasons, that's Novo's problem.

But there is another, more cynical way to think about it. The more cynical view is:

Novo and Pfizer are giant global pharmaceutical companies.

Novo is a big player in the weight-loss-drug space: It makes Ozempic and Wegovy.

Pfizer is not a big player in weight loss, and in August it discontinued trials of its weight-loss drug.

Metsera has a promising weight-loss drug.

If Pfizer buys Metsera, it will be a big player in the weight-loss-drug space, and a strong competitor to Novo.

If Novo buys Metsera, it will be even more dominant in weight loss.

But if *nobody* buys Metsera, that's *just as good for Novo*: Metsera is unlikely to commercialize its weight-loss drug on its own, so if nobody acquires it then the drug will not be a viable competitor for Ozempic and Wegovy. In particular, Pfizer — a giant drug company with no weight-loss drug of its own — would be a competitive owner of Metsera, with strong incentives to commercialize its drug. Stopping Pfizer from getting Metsera would be very good for Novo's market power.

This deal structure might lead to Novo owning Metsera, sure, anything's possible. But given the competitive dynamics it probably won't.

But this deal structure *will* stop *Pfizer* from owning Metsera: It will tie Metsera up for years in antitrust review; Novo might never end up owning it, but the important thing is that Pfizer won't either.

On this view, Pfizer needs a weight-loss drug and Novo already has a weight-loss drug, so Novo doesn't need another one, but it does want to stop Pfizer from getting one. And on this view, Novo doesn't actually care about closing the merger and acquiring Metsera: It is willing to spend \$6.5 billion just to stop Pfizer.

The more cynical view is, of course, *Pfizer's* view. Bloomberg's Madison Muller reports:

Pfizer Inc. accused Novo Nordisk A/S of trying to stifle competition in the weight-loss market by attempting to acquire obesity startup Metsera Inc., the second lawsuit in four days as Pfizer tries to retain its grip on a deal that Novo upended last week.

In a statement on Monday, Pfizer said it filed a new lawsuit against Novo and Metsera on antitrust grounds, saying the company's taking action to "stop Novo Nordisk from illegally paying off Metsera and its controlling stockholders to gain control of, and impair and potentially kill, an emerging US competitor."

Here is the first lawsuit, filed against Metsera in Delaware Chancery Court on Friday to try to stop Metsera from ending its merger agreement with Pfizer. Right now, Metsera still has a signed binding merger agreement to be acquired by Pfizer. The merger agreement allows Metsera to get out of the deal if it gets a "superior proposal" from someone else, and Metsera has announced that the Novo deal is likely a superior proposal. But Pfizer's argument is that (1) the Novo deal is illegal or at least very unseemly and therefore (2) it is not a "superior proposal" that Metsera should be allowed to accept. From the complaint:

The Novo Nordisk proposal, reflected most recently in presumptive deal documents sent to Pfizer yesterday, involves a contrived scheme designed to evade antitrust review, breakup the Pfizer deal, and kill a nascent competitor in violation of the antitrust laws.

It works like this: Novo Nordisk will pay more than \$6.5 billion in cash to Metsera, on signing, in exchange for Metsera's termination of the Pfizer deal and newly issued non-voting economic interests in Metsera representing 50% economic ownership of the company. It is contemplated that Metsera will then *immediately* dividend that cash to its stockholders. All of this will happen within days and without a stockholder vote or regulatory approvals.

In an announced but illusory "second step," Novo Nordisk would also acquire Metsera's voting securities and provide a contingent valuation right ("CVR"), *if* the deal survives regulatory scrutiny and closes — in other words, *never*, given that Novo Nordisk's dominant position in the market will prevent antitrust approval. An extraordinarily long outside date, *more than two years* from now, will lock up the company in the meantime. During this interim period, Novo Nordisk would fund Metsera's ongoing operations in exchange for a debt instrument, rendering Novo Nordisk not only Metsera's largest stockholder, but also its largest creditor, tightening its grip over Metsera's competing products. And even if the rest of the Novo Nordisk proposal fails to pass regulatory review, Metsera and its stockholders get to keep the initial \$6.5 billion payment.

At its core then, Novo Nordisk's proposal is nothing more than an old-fashioned bribe of Metsera and its key stockholders to not compete against Novo Nordisk, and prevent its pipeline product from reaching the market, to the detriment of Pfizer and ultimately consumers that are dependent on these life-changing drugs.

The second lawsuit was filed in federal court against Novo:

The lawsuit asserts that Novo Nordisk's recent proposal to acquire Metsera constitutes an anticompetitive action by Novo Nordisk to protect its dominant market position in GLP-1s by capturing and killing a nascent American competitor before it gains the support of Pfizer, one of America's leading pharmaceutical companies. The lawsuit alleges that Novo Nordisk's proposed transaction violates Section 7 of the Clayton Act because of the anticompetitive effects it would have in the GLP-1 drug markets to the detriment of millions of Americans who suffer from obesity, diabetes, and other metabolic conditions, that it constitutes an anticompetitive conspiracy between Novo Nordisk and Metsera in restraint of trade in violation of Section 1 of the Sherman Act, and that it constitutes attempted monopolization and conspiracy to monopolize under Section 2 of the Sherman Act.

Ordinarily, antitrust laws prevent companies from *closing* anticompetitive mergers. You sign a merger agreement, you submit it for regulatory review, and the antitrust regulators either say "yes that's fine" or "no this merger would make you too big." If they say it's fine, you close the deal; if they say it's not, you walk away. The bad antitrust effect would come from closing the deal, so regulators get a chance to prevent that. But Pfizer's argument is that, in this case, the thing that is bad for competition is not *Novo acquiring Metsera*, but rather *Novo breaking up the Pfizer deal*, so even if the Novo never ends up getting Metsera it is still an antitrust problem.

Elon's votes

We also talked on Thursday about Elon Musk's pay package at Tesla Inc. Basically Musk has about 15% of the voting stock of Tesla, and he'd like to have 25%. If he doesn't get at least a path to 25%, he might quit. To get him to 25%, Tesla's board of directors has decided to give him a pile of restricted stock, contingent on meeting various operational and stock-price targets, with a headline value of \$1 trillion. Seems high.

I argued on Thursday that it would be much better to just give him more *votes*, without giving him more economic ownership. Give him extra-voting stock to get to 25%, boom, done. Is this possible? I dunno; it raises obvious conflict-of-interest problems, but it seems to me that it's strictly better for shareholders than giving him \$1 trillion of stock, so it *ought* to be possible.

But it probably isn't. Law professor Ann Lipton emailed me to point out that, whatever state corporate law might say, the actual constraint on Tesla is stock exchange listing standards. Nasdaq, where Tesla is listed, has a rule that says:

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

Not only can Tesla not create a new super-voting stock and give it to him, it also can't create a new non-voting stock and ask other shareholders to exchange into it. It is tempting to propose something like "you dividend one share of non-voting Class B stock for every share of existing stock (like Google did in 2012), and then Elon Musk does a public exchange offer where he offers to exchange 1.05 shares of his new pile of non-voting stock for 1 share of other holders' voting stock, and Tesla's extremely Musk-friendly shareholder base tenders enough shares to get him there," but even that seems to violate at least the spirit of the rule.

And it's hard to get out of this. The New York Stock Exchange, the other main US listing exchange, has a similar rule. Even the Texas Stock Exchange's listing standards say that "Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance"; this seems to be required of US exchanges. "We searched high and low" for a way to give Musk more votes without giving him more economic value, Tesla board chair Robyn Denholm told the Financial Times, but they didn't find one, and the listing rules seem to be the main impediment.

Let me try one more. Maybe create new non-voting stock and do a 9-for-1 dividend of the new stock, so that each shareholder now has nine non-voting shares for every one voting share and the voting shares represent 10% of the value of the company. And *then* give Elon Musk a new pay package consisting entirely of voting stock, representing 12% of the votes, but only 1.2% of the economic value of the company. That saves shareholders \$900 billion! But, again, seems to violate at least the spirit of the rule.

Two points here:

1. Hahaha what if Musk had taken Tesla private in 2018, when he said he was thinking about it? In a lot of ways Tesla perhaps should have dual-class stock to entrench Musk's control forever, but that's hard to do with an already-public company. But you go private, you zhuzh up the share classes, you go public again ... I don't know, seems too late now, but something to think about.
2. If you do have a really good way to get Elon Musk 25% of the votes without giving him more stock, do let me know!

ARMs are back

In 2004 and 2005, roughly one-third of US mortgages were adjustable-rate loans, with a low initial rate that would adjust after a few years to a (potentially much higher) floating rate. Adjustable-rate mortgages made it possible for people to buy houses that they couldn't sustainably afford: They could make the low initial payments for a few years, but they probably would not be able to make the higher floating payments. The theory at the time was roughly that, in two years, your home's price would be way up and you could refinance the mortgage and avoid the problem. This theory eventually stopped working and there was a mortgage-related financial crisis in 2008 for which ARMs took some of the blame.

Since then ARMs have been considerably less popular. Why? Well, one set of theories might include "banks remember 2008 and don't want to do that again," or "borrowers remember 2008 and don't want to do that again," or "bank regulators remember 2008 and don't want to do that again." But I suppose another possible theory is "after 2008 there was a fall in house prices followed by a long period of low interest rates, so nobody needed ARMs, since the whole point of an ARM is to make it possible to finance an expensive house with a lower interest rate than a fixed-rate mortgage." And now houses are expensive and interest rates are higher so, boom, ARMs are back:

The unaffordable housing market is causing a growing number of home buyers to take on a type of riskier loan to cut their borrowing costs.

They are opting for adjustable-rate mortgages, or ARMs. These loans initially offer cheaper borrowing rates compared with a fixed-rate mortgage. But ARMs reset, usually after three to 10 years, which can saddle borrowers with higher monthly payments if mortgage rates have risen over that time. ...

About 10% of purchase-mortgage applications were for ARMs in the week ended Oct. 3, the highest rate since 2023, according to the Mortgage Bankers Association. In early 2021, when mortgage rates were near historic lows, less than 3% of purchase applications were for ARMs.

Stereotypically if you got an ARM in 2005 you were betting on house prices going up, but if you get an ARM in 2025 you're betting on mortgage rates going down.

Fried chicken

One aspect of the modern artificial intelligence boom is that the hottest AI-linked companies — particularly OpenAI and Nvidia Corp. — can make other companies' stocks go up. The market assumes that there will be big winners from the AI boom, that OpenAI and Nvidia are among the likely winners, and that they have the power to create other winners. If OpenAI or Nvidia announces a commercial relationship with or an investment in some other company, that company is a winner and its stock goes up. Sometimes this fact can be exploited for financial gain: OpenAI bought some chips from Advanced Micro Devices Inc. that were kind of paid for by AMD's stock-price rally when the deal was announced. Mostly though it is just a pleasant accident, the immense enthusiasm for Nvidia and OpenAI spilling over onto everything they touch.

It would be very funny if Nvidia announced a \$10 billion commercial deal for fried chicken but no:

Jensen Huang's Midas touch extends to Korean fried chicken.

Photos and videos of Nvidia Corp.'s CEO having beers and fried chicken at a local restaurant, Kkanbu Chicken, in Seoul — with Samsung Electronics Co. Chair Jay Y Lee and Hyundai Motor Co. Executive Chair Chung Euisun — went viral, and now investors are driving up the stocks that may be a beneficiary.

While Kkanbu is not publicly listed, shares of rival Kyochon F&B Co. briefly surged as much as 20% on Friday after photos and videos of the gathering circulated widely on social media. Korean poultry processor Cherrybro Co. also soared by the daily limit of 30%, with trading volume about 200 times its average. Neuromeka Co., a Kosdaq-listed company that makes chicken-frying robots, also jumped.

I mean! The AI boom's appetite for chips and power and data centers is massive, and if OpenAI announces a deal to buy billions of dollars of chips from AMD then AMD's stock kind of *should* go up. Jensen Huang's appetite for fried chicken is ... look, I don't know him or anything, maybe he loves fried chicken more than anyone else on earth, but he is one guy, there is only so much chicken he can possibly eat. Jensen Huang is not going to materially increase the revenue of a Korean poultry processor. Nevertheless.

Things happen

Trump Battles Tiny Toymaker Over Tariffs in Landmark Supreme Court Case. Amazon Inks \$38 Billion Deal With OpenAI For Nvidia Chips. Microsoft Signs \$9.7 Billion Deal With Data Center Firm IREN. Kimberly-Clark to Buy Tylenol Maker Kenvue for \$40 Billion. Shutdown Stalls SEC Work on Private Credit in Retirement Plans. What next for Andrea Orcel's UniCredit? Anthropic, AWS Give Customers of AI Agents a Helping Hand. Green Investors Enjoy Huge Returns as Stock Market Powers Through Trump's Attacks. Short Seller Andrew Left Says Hedge Fund Lied to SEC About Payment in Trading Probe. Nvidia CEO Jensen Huang Completes \$1 Billion Share Sale. An Unlikely Business Trend: Men's Vulnerability Groups at Work. Sam Altman is trying to get his deposit back for a Tesla Roadster he ordered in 2018.

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1. It was. Bloomberg reports: "Coinbase itself has jumped onto the prediction market bandwagon. It holds stakes in Kalshi and Polymarket, and Armstrong said during the same call that the company plans to expand into event contracts as part of its broader effort to become an 'Everything Exchange' for financial products."
2. More modern commodity futures markets often reference things that are not quite commodities, interest rates or stock indexes or whatever, but the same principle applies. Your S&P 500 futures are worth more if the S&P goes up, but there's like \$58 trillion in the S&P, so you can't just make it go up.
3. Occasionally the underlying market is nonexistent. An essential element of the Libor manipulation scandal a few years ago was that trillions of dollars of loans and derivatives were indexed to the London Interbank

Offered Rate, so you could make a lot of money if you made Libor higher or lower than expected, but the way Libor was set was just by asking some bank representatives what Libor should be. Not *entirely* — in theory Libor was the rate that those banks paid in eurodollar funding markets — but in practice those markets were pretty thin and Libor was set by survey rather than by trades.

4. I mean, it pleased some people who were long those contracts and displeased some other people who were short, but virtually nobody was in either category. If you like prediction markets but *didn't* have any money on these contracts, perhaps you found this stunt a bit pleasing. "The official Polymarket account on X called the move 'diabolical work,'" which I think is praise.

5. That's quoted from page 15 of a 2018 court decision, CFTC v. Wilson, involving interest-rate futures, which we discussed at the time. Here is a law firm memo on manipulation in election markets, also starting from this standard.

6. From page 16 of CFTC v. Wilson.

7. I should say that it's not really *market* manipulation: The possible manipulation here is of the *outcome*, not the trading market. ("Fundamentals manipulation," Byrne Hobart calls it.) I am not sure how much that matters. Back when companies were doing "manufactured defaults" to trigger their credit default swaps, the CFTC took the position that those defaults could be "market manipulation," even though clearly what was being manipulated was not the CDS market but the underlying reality.

8. I assume he'd have to pay a little premium. Maybe the board could give him the extra 0.05 shares as part of his compensation package so he's not worse off economically.

9. If *Musk*, rather than *Tesla*, does the exchange offer, is that "any corporate action or issuance"? I think you'd have to combine it with the corporate action of issuing the new non-voting shares, and conclude that the whole transaction is a *corporate* action designed to reduce the voting rights of existing shareholders, but maybe there's an argument the other way.

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Securities

First Brands Sues Founder for Allegedly Pilfering Firm Funds (2)

Nov. 4, 2025, 5:01 AM PST

First Brands Group sued founder **Patrick James** for allegedly misappropriating hundreds of millions of dollars from the US automotive supplier that collapsed into bankruptcy in September.

Lawyers for the company — now run by restructuring consultants at Alvarez & Marsal — alleged that James borrowed funds on fraudulent terms, only to “routinely and regularly” divert cash for himself and his family, according to a Southern District of Texas filing dated Nov. 3. More than \$700 million was funneled from First Brands directly to James and his affiliated entities from 2018 to 2025, they claimed.

James “secretly pilfered some of the Company’s assets to fund his and his family’s lavish lifestyle. In short, he lined his pockets at the expense of First Brands and its creditors,” according to the document. The plaintiffs drew on data from more than seven million documents, as well as bank records and a collection of devices from employees.

In the 35-page document, lawyers paint a picture of James’ luxuriant spending habits, pointing to a fleet of at least 17 “exotic cars” and a celebrity personal trainer. In some cases, payments to James and his family were made directly from First Brands accounts, including at least \$3 million in rent paid over 2019 to 2024 for a New York townhouse and about \$500,000 paid to a private chef in 2025.

First Brands’ lawyers asked the court for relief to freeze “any and all assets” belonging to James and the other defendants. First Brands didn’t respond to requests for comments sent outside business hours.

Web of Intrigue

The allegations expand the web of intrigue around James himself, who had a relatively low public profile until First Brands shook credit markets amid concern over its complex financing structure. The implosion of First Brands, alongside other high-profile bankruptcies such as subprime auto lender Tricolor Holdings, has prompted nervousness across Wall Street about further “cockroaches” lurking in investor portfolios.

James’ spokesperson said the company founder “categorically denies the baseless and speculative allegations contained in the First Brands complaint” and said he intends to immediately challenge the suit.

"Mr. James has always conducted himself ethically and is committed to doing everything he can to support First Brands' stakeholders during the restructuring process," the spokesperson said.

In a separate court filing on Monday, a lawyer for James said that he "categorically refutes 23 allegations of wrongdoing and will address them at the appropriate time." The attorney added that James welcomed the appointment of an independent examiner to investigate the off-balance sheet financing and factoring transactions, though he wants the scope of the inquiry to include claims against the third parties that provided the funding.

Read more: First Brands CEO Resigns and Leaves \$10 Billion Mess to Clean Up

The former CEO had aggressively built up the auto-parts conglomerate via a series of debt-fueled deals. Part of the company's financing was secured on "non-existent or doctored invoices," the documents alleged, and in other cases special-purpose vehicles raised debt backed by assets that First Brands had seemingly already borrowed against.

'Siphoned Away'

Lawyers for First Brands highlight one example of a package of invoices submitted to Katsumi Global for factoring. The documents had been tweaked to show net values and purchase prices higher than the value originally given. As a result, the factoring company purchased a package of invoices at a cost of about \$11.2 million, when the true value of the invoices was around \$2.3 million.

James also allegedly pocketed the proceeds of financing accrued by First Brands' special purpose vehicles. Lawyers for the company describe how certain vehicles would undertake sale-and-leaseback transactions, which were followed by transfers to entities affiliated with James on the same day.

The investigation by First Brands shows that of the more than \$1 billion in total financing received between April 2024 and March 2025 from equipment financier Onset Financial, more than \$200 million was paid to James or his affiliated entities.

"Mr. James induced third-party lenders to lend to First Brands irrespective of its true financial condition to bring more money into First Brands only so that portions of it could be siphoned away," they claimed in the filing.

Spokespeople for Onset and Katsumi didn't immediately respond to a request for comment outside of usual business hours.

At the time of the bankruptcy filing on Sept. 28, the company had \$6.1 billion of funded debt obligations, at least \$2.3 billion off-balance sheet financings through special purpose vehicles and about \$800 million in unsecured supply chain financing liabilities. It also had at least \$2.3 billion in factoring liabilities, according to the filing.

(Updates with comments from James' spokesperson in paragraphs 7 and 8)

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MARKETS & FINANCE | INVESTING

Wall Street Intensifies Scrutiny of Fraud After Spate of Loan Losses

Lenders are increasing due diligence and demanding access to more data

By [Sam Goldfarb](#) [Follow](#) and [Soma Biswas](#) [Follow](#)

Nov. 3, 2025 9:00 pm ET



A series of alleged frauds by corporate borrowers has made it harder to dismiss any one case as an isolated event. BRENDAN MCDERMID/REUTERS

Quick Summary

- Alleged corporate-borrower frauds are prompting Wall Street to increase due diligence and demand more financial data from companies.

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A string of alleged frauds by corporate borrowers is spurring a reckoning across Wall Street, sending bankers and investors scrambling to prevent future blowups.

Lenders are increasing due diligence and demanding a longer history of financial data from companies. Some are inserting conditions that permit them to do more frequent

checkups before agreeing to make loans. A group of the biggest names in banking, investment management and accounting have formed a task force that will take a deeper look at the nature of the problem and how to protect investors.

The frauds that have emerged so far, which involve small to midsize companies in sectors such as autos and telecommunications, haven't sparked widespread trouble in the market or economy. But they have generated fallout for both regional banks and Wall Street giants such as [JPMorgan Chase](#) and [BlackRock](#), and the string of revelations has made it harder to dismiss any one case as an isolated event.

"This is sending real ripples in the credit markets," said Colin Adams, partner at Uzzi & Lall, a restructuring adviser that works with both borrowers and financing providers. "People are really starting to ask: 'How does this happen?'"

The worries emerged in late September, when the aftermarket auto-parts supplier First Brands [filed for bankruptcy](#) amid questions over whether it had pledged the same accounts receivable to different lenders. Around the same time, the now-defunct auto dealer and subprime lender Tricolor Holding [also filed for bankruptcy](#), facing similar allegations that it fabricated or double-pledged consumer auto loans.

Since then, regional banks including Utah-based [Zions Bancorp](#) [have taken losses](#) on loans to California real-estate investors, whom they have accused of fraud. A recent bankruptcy filing also increased scrutiny of [an accusation of fraud](#) made by BlackRock's private-credit arm against one of its borrowers, the owner of two little-known telecom-services companies.

By then, fraud was the talk of industry gatherings. One industry group, the Structured Finance Association, convened a “Fraud Mitigation Task Force,” which will meet regularly over the next few months with the goal of presenting findings at a conference in late February.

The group represents players in one part of the credit market that bundles together pools of loans that are then used to back tiers of bonds of different credit ratings. That corner of the market has only been directly affected by alleged fraud involving Tricolor.

But Michael Bright, the association’s chief executive, said that the new task force will focus on what types of fraud lenders should be looking for and what processes they should follow to detect them—findings that could be relevant to other types of lending. The effort will include representatives from across SFA’s membership, which includes Wall Street banks, asset managers and the big four accounting firms.

Since the structured-finance industry’s infamous role bundling bad loans into supposedly safe bonds ahead of the 2008-09 financial crisis, it has become more regulated and members have taken pride in their improved lending practices. That, Bright said, has added to the sense of urgency to figure out whether recent fraud “is a one-off, or something systemic.”

The collapse of First Brands in particular has brought attention to how a variety of lenders from banks to asset-management and private-credit investors have been jumping into increasingly popular asset-based finance strategies, including providing short-term working-capital financing backed by receivables.

Those strategies remain popular. But now, some of those lenders are asking to take a look at companies’ record of payments on receivables stretching back years rather than months, and inserting language into loan agreements that allow them to do more regular appraisals on the collateral, said Adams of Uzzi & Lall.



Subprime auto lender Tricolor Holdings filed for a bankruptcy in September. MARK FELIX/BLOOMBERG NEWS

Academic studies have suggested that corporate fraud tends to increase during good, if not great, financial environments, when businesses have an incentive to fudge numbers to get funding, said Alexander Dyck, a professor at the Rotman School of Management at the University of Toronto.

In the past, increased revelations of fraud have sometimes coincided with economic downturns and increased default rates. But in this case, default rates on low-rated corporate debt haven't been surging, and the latest data [has generally pointed to a stable economy](#).

As a result, demand for corporate bonds and loans [has remained robust](#) in recent days and weeks, enabling continued borrowing by companies.

One pocket of weakness has been bonds backed by subprime auto loans, where Tricolor's bankruptcy has exacerbated already existing concerns about [low-income car buyers falling behind](#) on their debt payments. Prices of those bonds have slumped in recent weeks, pushing their yields higher relative to those of ultrasafe Treasuries.

Investors are "being cautious around Tricolor, kind of taking a step back, thinking about could this happen to other issuers, and then there's concern about consumer credit," said Theresa O'Neil, an asset-backed securities strategist at Bank of America.

George Goudelias, a senior portfolio manager and head of leveraged finance at Seix Investment Advisors, said that fraud allegations were "cause for concern" but still not something that has changed his thinking much about the overall credit market.

His team of analysts remains focused on traditional credit metrics, such as earnings growth and earnings relative to their interest expense, and making sure businesses could withstand an unexpected increase in interest rates.

Investors “really need to look at the whole picture,” he said.

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Corrections & Amplifications

A summary bullet on an earlier version of the story omitted the word alleged when describing possible frauds at First Brands and Tricolor. (Corrected on Nov. 4)

Appeared in the November 4, 2025, print edition as 'Wall Street Intensifies Lookout For Fraud'.

Videos

Securities

Cryptocurrencies Slump as October Liquidations Repel Buyers

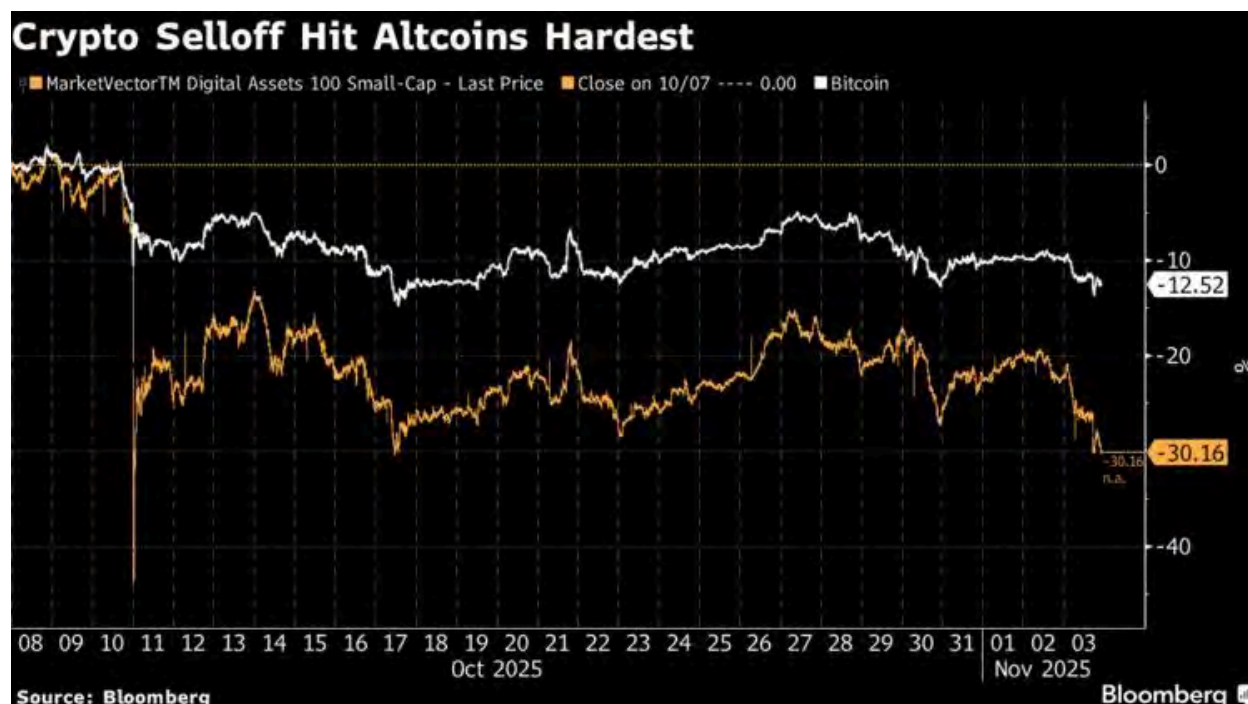
Nov. 3, 2025, 2:05 PM PST

Cryptocurrencies remained under pressure on Monday, with Bitcoin trading below \$107,000 and altcoins struggling even more, three weeks after a historic liquidation event shook the asset class and wiped out billions of dollars in leveraged positions.

This comes as, for the first time in seven months, institutional demand for Bitcoin has also slipped below the rate at which new coins are being mined, according to **Charles Edwards**, founder of Capriole Investments. While this move suggests that large buyers may be pulling back, other activity shows a risk-off attitude across the crypto market as a whole.

A MarketVector index tracking the bottom half of the largest 100 digital assets fell for a third consecutive trading session, dropping as much as 8.8% with some tokens retesting the lows seen during the October flash crash. The index is down around 60% this year.

Bitcoin slipped as much as 4.3% on Monday to around \$105,300, and is still about 14% higher since December. Even so, Bitcoin has lagged global equities in recent weeks as investors rotate toward risk assets more sensitive to macroeconomic developments, leaving crypto struggling to find its footing despite a broadly positive global backdrop.



Elsewhere, Ton, a digital asset from a blockchain project that was initially linked to Telegram Messenger, fell around 10%. Last week, the digital asset treasury firm TON Strategy Inc. revealed that it received a warning from Nasdaq that it failed to comply with shareholder approval requirements. The DAT's stock fell 4% on Monday, and is down 37% this year.

The October event wiped out roughly \$19 billion in long positions and market participants say rebuilding that capital base takes time. In this, experts say sentiment remains cautious as investors wait for confirmation that prices have found a low point.

"The market will have to first show that a convincing bottom in price is near before making a fresh attempt at breaking upwards," said Jordi Alexander, CEO at crypto trading and market making firm Selini Capital. He added that the crypto market is in a "hangover phase" from October's liquidation shock. While many point to October as an inflection point for crypto market volatility, others still see soft prices across the asset class as a mystery.

"I view this as somewhat of a puzzling correction," said **Matthew Kimmell**, a digital asset analyst at CoinShares. While Kimmell believes that the crypto market is "still experiencing some reverberations" from the liquidation event, he highlighted indicators in Bitcoin supply through noting the movements of previously stagnant wallets in the coin's open transaction records.

"Those coins have been moving, likely coming back onto the market, providing some sale pressure, investors taking profit," Kimmell added. "That's something I'm continuing to monitor."

This is why prices are trending lower, said Jake Hanley, a managing director at Teucrium ETFs, who noted that the current technical picture shows a bifurcated market. "Prices have been trending lower, topping out with Bitcoin since the summertime and certainly trending lower in XRP since mid-summer," he said. "As that's been happening, this price is just telling you that folks are taking profits."

(An earlier update corrected the spelling of Kimmell in the eighth paragraph.)

--With assistance from **Sidhartha Shukla** and **David Pan**.

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News from Bloomberg Terminal

Once a Lithium Darling, Sigma's Woes Mount With 29% Stock Rout

Nov. 4, 2025, 10:33AM PST

Summary by Bloomberg AI

AI Generated



- Sigma Lithium Corp. is plunging amid growing doubts about near-term production and potential delays to a key expansion project.
- The company has lost almost one-third of its market value this week due to concerns about its flagship Brazilian mine and a recent change in mining contractors.
- Sigma shares are down more than 50% this year and the company is grappling with weaker prices for the battery metal and heightened investor scrutiny.

By Mariana Durao, Vinícius Andrade and Annie Lee

(Bloomberg) --

Sigma Lithium Corp. is plunging amid growing doubts about near-term production and potential delays to a key expansion project.

In a sharp reversal for a stock once seen as an industry darling, Sigma has lost almost one-third of its market value this week for the worst two-day slump in 21 months. On Tuesday, the stock was down more than 7%, making it one of the worst performers in an index of lithium producers.

Late Monday, BMO Capital Markets joined a growing chorus of analysts tempering outlooks after Sigma abruptly changed mining contractors last month as part of measures the company said were aimed at improving efficiency at its flagship Brazilian mine.

Plans to begin using larger trucks and modernize some gear may inflate capital-spending requirements and slow an expansion project, analysts said.

Read More: Ex-Goldman Banker Turned Lithium CEO Vows to Ride Out Slump

"We're not sure of the exact reason for recent volatility in the stock but know there are many questions around the change in mining contractor, the balance sheet, etc., causing SGML to underperform this lithium rally," BMO analyst Joel Jackson wrote in a note to clients.

Bank of America has been ringing alarm bells as far back as August, highlighting the potential implications of increasing delays in payments to vendors. Late last month, the bank downgraded Sigma shares from buy to neutral.

Sigma is grappling with weaker prices for the battery metal and heightened investor scrutiny. The company didn't immediately respond to a request for comments.

Sigma shares are down more than 50% this year after losing 64% of their value in 2024.

The global lithium market has been in turmoil amid slower-than-expected growth in electric-vehicle demand that's been compounded by US President Donald Trump's revamp of clean-energy policies in the world's largest economy.

Sigma is scheduled to release third-quarter results on Nov. 14.

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Palantir Technologies Inc**Palantir shares drop as much as 10% after Michael Burry shorts stock**

Hedge fund manager discloses \$912mn short against tech group's shares using derivatives



Palantir's net income reached \$476mn, beating analysts' expectations of \$435mn © Reuters

Rafe Rosner-Uddin in San Francisco

Published YESTERDAY | Updated 08:29



Shares in Palantir fell as much as 10 per cent in morning trading on Tuesday, after star hedge fund manager Michael Burry revealed a short position against the data intelligence company.

Burry, whose role in predicting the collapse of the subprime mortgage market was depicted in the 2015 film *The Big Short*, disclosed a \$912mn short against Palantir's shares using derivatives on Monday. He also disclosed a short position in artificial intelligence chipmaker Nvidia.

Palantir's chief executive Alex Karp said in response that the move represented a wager against artificial intelligence and that it was unclear whether it was specifically aimed at his company.

“The idea that chips and ontology are the ones you want to short is batshit crazy,” Karp told CNBC. “I do believe this behaviour is egregious and I’m going to be dancing around when it’s proven wrong.”

Burry did not respond to a request for comment.

Palantir lifted its 2025 revenue guidance on Monday to about \$4.4bn from a previous estimate in August of \$4.15bn. The figures exceeded Wall Street’s forecast of \$4.17bn, according to Bloomberg.

[Palantir](#) said its revenue in the third quarter soared 63 per cent from the same period in the previous year to \$1.18bn, while net income climbed to \$476mn, beating analysts’ expectations of \$435mn.

Analysts at Deutsche Bank said the company’s results were among the “most impressive” they had seen in the software industry, but that Palantir’s valuation was “still very difficult to wrap our heads around” which explained some of the market reaction on Tuesday.

The company’s shares had risen more than 170 per cent this year as of Monday’s closing price, on top of a blistering 340 per cent rally last year, bringing its market capitalisation close to \$500bn.

The company trades at nearly 230 times forward earnings.

Palantir has far outpaced the US S&P 500 this year

Share price rebased



Source: LSEG via markets.ft.com

Karp hailed Palantir's growth, pushing back against analysts who warn that a share price boom in recent years has left the group trading at a highly elevated valuation.

"Some of our detractors have been left in a kind of deranged and self-destructive befuddlement," he said in a letter to shareholders.

"It has indeed been difficult for outsiders to appraise our business, either its significance in shaping our current geopolitics or its value in the vulgar, financial sense," Karp added.

Palantir signed several notable deals in the quarter, including a long-term \$10bn contract with the US government in July. US commercial revenues climbed 121 per cent to \$397mn in the third quarter, while US government sales increased 52 per cent to \$486mn.

Chief technology officer Shyam Sankar told investors on Monday evening that the company hoped to benefit from global strife and US military modernisation initiatives that focus on AI and data analytics.

“The number of opportunities are great,” Sankar said. “America is involved with three conflicts from Europe, the Middle East and our own hemisphere right now. Things are also getting spicy in Africa.”

Investors have bought up the stock as part of a broad rally in AI companies that has also benefited big US tech groups such as Nvidia and Alphabet.

Securities and Exchange Commission filings published on Monday showed Burry’s hedge fund Scion Asset Management had bought put options in the quarter ending September 30 equivalent to 5mn Palantir shares, valued at about \$912mn at the time of the disclosure.

Palantir, which was founded in 2003 by Karp, Peter Thiel and others, sells AI software to businesses and governments around the world. Its technology is used to collate and analyse data from supply chain analysis to surveillance of military targets and identification systems for undocumented migrants.

The company has built a strong following among retail investors, while Karp has developed a persona that includes extolling the view that the US should project strength overseas.

Nato member Poland signed a deal with Palantir and Anduril, a US-based defence start-up also backed by Thiel, last month as the country has taken steps to upgrade its military capabilities.

Palantir also announced a partnership with the UK government in September that included it investing up to £1.5bn in the region, including creating 350 new roles, and making the country the base of its European headquarters.

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Trump Media & Technology Group

How two tiny banks are helping Trump's sons build a crypto empire

Dominari Holdings and Yorkville Advisors are benefiting from close connections with Eric and Donald Trump Jr

George Steer in New York

Published YESTERDAY



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The Trump family has tapped two little-known boutique banks to help finance its crypto empire: one based in Manhattan's Trump Tower, the other sandwiched between a junkyard and a funeral parlour in New Jersey.

Dominari Holdings and Yorkville Advisors have jumped from relative obscurity to the centre of a blizzard of crypto deals the Trumps have struck this year, capitalising on a digital asset boom fuelled by the president's administration.

Access to the inner circle seems to have helped too.

"Some of the smaller guys are faster, more nimble, and some of them have become great friends," Eric Trump, the president's son and a Dominari advisory board member, told the Financial Times.

"I'm not sure you'd get that same kind of warm fuzzy [feeling] from going over to Goldman Sachs, where you would probably fall asleep in some fancy conference room over expensive finger food," he added. Goldman Sachs did not respond to a request for comment.

From a bungalow deep in Mountainside, a New Jersey commuter suburb, Yorkville executives this year helped Trump Media & Technology Group raise \$2.5bn to buy bitcoin and agreed to launch five "America First themed" exchange traded funds.

In August, TMTG partnered with Crypto.com and Yorkville Acquisition Corp, a Nasdaq-listed special purpose acquisition company, to buy \$1bn worth of a cryptocurrency called Cronos. A separate Yorkville fund pledged a \$5bn equity line of credit to the newly formed company.

Cronos surged after TMTG said it would buy 6.3bn tokens, but has slipped ever since

Price per token (\$)



Source: Bloomberg

Founded in 2001 by New Jersey native Mark Angelo, who cut his teeth at Los Angeles penny stock broker the Boston Group, Yorkville Advisors has since made more than 750 investments in predominantly small and often financially distressed companies around the world.

The investments are usually structured as so-called standby equity purchase agreements. They involve buying shares at a discount to their market price and selling them back into the market when a company needs cash.

“People used to call it death-spiral financing,” said one Wall Street veteran who now works at a market data company. “If a company’s shares are declining and the investor is buying the stock at a discount, that can perpetuate the downward move.”

Yorkville struck such a deal with TMTG in July 2024, agreeing to buy up to \$2.5bn of the company’s stock at a 2.75 per cent discount whenever Trump Media saw fit. Yorkville last year bought more than 20mn TMTG shares, raising \$450mn, filings show.

The Financial Times was repeatedly turned away by a Yorkville employee on a visit to the company’s office in mid-October. Angelo had received a death threat earlier this year following the publication of an article about Yorkville and its relationship with TMTG, according to a person familiar with the matter.

Yorkville executive Troy Rillo said in an email that the company denied the FT’s “false and misleading characterisation . . . of Mr Angelo, Yorkville, Yorkville’s investment strategies and the companies that are funded by Yorkville-advised funds”.



Yorkville has made more than 750 investments in predominantly small and often financially distressed companies © Olga Ginzburg/FT

The company hit out at what it called the FT's "reckless so-called reporting that causes legitimate organisations, like Yorkville, to refuse to engage with 'journalists'."

Yorkville's main hedge fund generated taxable income of \$272mn in the three years to 2008, but began to unwind during the global financial crisis as it lost \$352mn between 2009 and 2011.

The figures were published in a September court filing contesting a claim by the Internal Revenue Service that the Yorkville fund "was engaged in a US trade or business" rather than acting as an investor, and owes nearly \$100mn in withheld tax and penalties as a result.

Yorkville's plight was compounded in 2012 when it was charged with fraud by the Securities and Exchange Commission following an investigation by the Aberrational Performance Inquiry, a US regulatory task force established in the wake of the Bernard Madoff scandal.

Yorkville strenuously denied any wrongdoing but had to wait six years for the SEC's case to be dismissed. By the end of 2023 Yorkville's assets under management had reached \$323mn.

Angelo eventually entered into the Trump orbit through Eric Swider, a US navy veteran who ran the Spac that merged with TMTG in 2023, according to a broker at a rival US lender. Swider did not respond to a request for comment.

In August, a member of Yorkville's board of directors became chief executive of a separate Trump-backed Spac set up to merge with a US manufacturer. Dominari executive Kyle Wool — who was introduced to the Trump brothers about four years ago through charity events at Long Island golf clubs — is on the advisory board of the same vehicle.



Dominari executive Kyle Wool: 'Access to superior products in a superior structure created by me is the main factor driving our success' © Paul Bruinooge/Patrick McMullan via Getty Images

Dominari's specialities include “elegant solutions” for small companies looking to list, merge with a Spac or mount a reverse takeover, Wool told the FT.

“Everyone wants to focus on money, money, money, but [our relationship with the Trump family] actually started with charity,” said Anthony Hayes, a lawyer and Dominari chief executive. “We’re not involved in politics, we don’t go to the White House. We hustle, we’re scrappy and we work incredibly hard.”

Along with his wife and several colleagues, in 2022 Wool joined Hayes at Dominari from New York broker Revere Securities. Eric and Donald Trump Jr joined Dominari's advisory board in February and hold about 12 per cent of the company's stock.

A former Dominari subsidiary called American Data Centers rebranded as American Bitcoin when the Trump brothers joined in March. It listed through a reverse merger six months later in what Wool called “record time, according to Nasdaq”. Eric Trump owns a more than \$300mn stake and sits on American Bitcoin's board along with Don Jr.

Dominari moved in two levels below the Trump Organization in Trump Tower in 2021 with five employees. Hayes now leads a team of about 70 but stressed that business was on the up long before Donald Trump regained the presidency. Since May 2023, broker-dealer subsidiary Dominari Securities has worked on more than 200 IPOs, follow-on offerings and private placements, averaging a deal every three business days.

“Access to superior products in a superior structure created by me is the main factor driving our success,” Wool said.



Shares in Dominari Holdings rose 580% in the six weeks before its February 11 filing revealing that Donald Trump Jr, left, and Eric Trump had joined its advisory board © Andrew Harnik/Getty Images

In August, Dominari advised on a deal between healthcare group Safety Shot and memecoin company BONK.fun. Safety Shot was previously a major shareholder in toy manufacturer SRM Entertainment, which in June, with Dominari's help, merged with Tron, a digital asset platform owned by Trump-supporting crypto billionaire [Justin Sun](#).

Early investments through special purpose vehicles in some of America's highest valued private companies including defence contractor [Anduril](#) and AI group Databricks have also paid off.

“Most of these names won't let you in unless you have something like \$100mn with one of the biggest banks. We got that minimum investment down to values around \$100,000,” Wool said.

Dominari also backs xAI, the AI start-up founded by Elon Musk. Wool said he was up “probably 10x” on his initial investment and was now hunting for bargains in quantum computing, rockets and “health and [longevity](#)” groups.

“Powerful men have always wanted to live forever,” Wool said, referring to the first emperor of China’s quest for immortality some 2,000 years ago. “People want to invest in that.”

Shares in Dominari Holdings rose 580 per cent in the six weeks before its February 11 filing revealing that Trump Jr and Eric Trump had joined its advisory board, the [FT reported in April](#). Revenue jumped 520 per cent from 2024 in the quarter to June and the stock remains up about 350 per cent this year, with a market value of about \$75mn.

“They’re uniquely positioned, with amazing access to capital, a really high profile and great relationships with the Trump sons,” said a managing director at a rival US investment bank. “It’s not at all surprising they’re doing a really good job.”

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Keeping \$23 Trillion in Assets Dark Is Troubling: Nir Kaissar

Nov. 4, 2025, 3:30 AM PST

The US has a baffling two-tier system of rules for its companies. Public companies are buried in regulation while little is demanded of comparably sized private businesses. The Securities and Exchange Commission, under the new leadership of Chair Paul Atkins, is set to relax disclosure requirements for public companies. It should take the opportunity to apply the same standard to all big US companies, even those staying private.

There used to be a genuine distinction between public and private businesses. For a long time, public companies were far bigger and more valuable, requiring vast amounts of capital to operate. Public markets were pretty much the only place to get it. That's no longer true: There's nearly \$23 trillion invested in private assets in the US alone. Unlike in public markets, though, many of those investments were made with scant or questionable financial disclosure.

This lack of transparency around private assets has helped the industry grow and innovate; it has also created a rapidly expanding multi-trillion-dollar black box that could pose systemic risks. Meanwhile, the regulatory burden on public companies is driving them to flee the stock market or avoid it altogether. Atkins can right the balance and safeguard investors.

If free markets functioned flawlessly — alas, they don't — investors would have the information they need to make fully informed choices. The market would work out what facts and figures it needs and how often, and companies would provide them. Atkins trusts the market. He is pushing a new rule that will require public companies to report their financial statements biannually rather than quarterly, as they're now required to do, but leave them free to report more often if they choose. "Let the market decide how often companies report," Atkins wrote in a recent op-ed in support of the change.

I favor unconstrained markets wherever possible, but I also know that absent rules to compel full and honest disclosure, some — perhaps many — companies will withhold critical information from investors or mislead them altogether. That was all too common before Congress created the SEC in the 1930s and began mandating financial disclosures from public companies. It still is when it comes to private investing.

Without all the facts, investors will inevitably make bad choices. Individually, it may be their own misfortune, but collectively, it's everyone's problem. Ill-informed and thereby inherently speculative investments greatly contributed to the 1929 stock market crash that gave birth to the SEC and disclosure rules for public companies. I worry that we are fated to relearn that lesson with private assets, only this time on a bigger scale. The US stock market was valued at roughly \$1.6 trillion in today's dollars at its peak in 1929, a fraction of the money invested in private markets today.

In this light, the debate underway about how many times a year public companies should report misses the big picture — the opinions expressed are generally right but misguided. Citadel CEO Ken Griffin, who supports quarterly reporting, told CNBC recently that he doesn't understand "the merits of holding back from the market readily knowable information." On the other side, former SEC Chair Jay Clayton, my old colleague at Sullivan & Cromwell, reminded the network in a separate interview that "senior management at public companies spend way, way too much time preparing for quarterly earnings."

They're both right. Disclosure rules should require companies to report readily available information to investors, mindful of the burden it places on them. But that should apply to both public and private companies. One way to balance those considerations is to require biannual reporting for all companies, public or private, valued at, say, \$250 million or more, which is the bottom end of the range for small-cap publicly traded companies. The same threshold should apply to private asset funds.

There's more to be gained from transparency around big private companies than would be lost by requiring public companies to report less frequently, if anything.

The frequency of reporting has moved over time, both in the US and elsewhere, with little discernable, or at least arguable, impact. The US required companies to report their financials annually until 1955, then biannually until 1970, and quarterly ever since. The European Union, the United Kingdom and Australia already require semiannual reporting.

It's not even clear that public companies will report any less frequently. Many of them broadcast earnings ahead of the deadline or share information that isn't required, all to satisfy and attract investors. That is likely to continue. Either way, the market is more interested in forward earnings estimates than historical results, and Wall Street analysts will continue publishing their forecasts as often as investors demand.

In the meantime, as private markets grow in the shadows, there are mounting questions about the health of private credit and the stability of private equity — questions that can't be properly answered without more information. We don't know much more about a growing number of mega sized, perhaps systemically important private businesses, such as OpenAI or SpaceX, each of which would easily rank among the US's 50 most valuable public companies.

Beyond that, there are nearly 20,000 private US companies with revenue of \$100 million or more, which very likely pegs their value at more than \$250 million based on a conservative multiple of sales. That's many times the number of comparably sized companies trading on the US stock market.

If transparency is key to healthy markets, which has been a foundational principle of financial regulation for nearly a century, focusing on a relatively small number of highly valued companies while ignoring the rest doesn't make much sense. A better approach is to bridge the disclosure gap between public and private companies with thoughtfully crafted rules for both.

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Bernstein Litowitz, Robbins Geller To Lead \$8.9B Class Action

By **Jarek Rutz**

Law360 (November 3, 2025, 3:16 PM EST) -- The Delaware Chancery Court has tapped Bernstein Litowitz Berger & Grossmann LLP and Robbins Geller Rudman & Dowd LLP to lead stockholder litigation over an \$8.9 billion take-private deal, citing the firms' alignment with institutional investors holding the largest stake.

Vice Chancellor Morgan T. Zurn ordered the selection late Friday in regard to the deal that closed earlier this year involving R1 RCM Inc., a healthcare technology and services company headquartered in Utah. Bernstein Litowitz and Robbins Geller, representing the city of Pontiac coalition, beat out the Rhode Island plaintiffs, represented by Labaton Keller Sucharow LLP and Block & Leviton LLP.

The vice chancellor gave the edge to Bernstein Litowitz and Robbins Geller because the Pontiac Group's stockholders had holdings that "swamp the Rhode Island Group's by three powers of ten."

Stockholders filed a class action against R1 in September, accusing the company and its controlling investors of orchestrating an unfair deal in November 2024 by leveraging their control to push through a \$14.30-per-share sale price that undervalued the company and relied on conflicted advisors and a misleading proxy to secure approval. The deal took the company private under private equity shops TowerBrook Capital Partners LP and Clayton Dubilier & Rice LLC.

"The Pontiac Group's stockholders have more skin in the game; it follows they are more incentivized to participate in the litigation in a way that benefits the class more than counsel," Vice Chancellor Zurn said in her order.

She also found that Bernstein Litowitz and Robbins Geller's fee-cap agreement with their institutional clients distinguished them from rival counsel, adding that arrangement "causes the catchall factor to favor the Pontiac Group" reflecting a structure where counsel's financial incentives are directly aligned with those of the class.

She credited the Pontiac team for pushing its books-and-records efforts further, uncovering more detailed information about the R1 special committee's advisor conflicts than their rivals had alleged. While she cautioned that such extra digging can sometimes be wasteful, she said in this case the additional details "bear on the transaction's underlying process and whether the stockholder vote was informed."

While the vice chancellor found both groups capable, she said Bernstein Litowitz and Robbins Geller had demonstrated the preparation, client oversight and litigation discipline that best served the class under Delaware law, which takes into consideration competence, resources, structure, conflicts, economic stake, quality of pleadings, counsel performance and case-specific considerations.

The Pontiac claimants are represented by Lindsay K. Faccenda, Kimberly A. Evans and Daniel Baker of Block & Leviton LLP; Daniel Meyer of Bernstein Litowitz Berger & Grossmann LLP; and Christopher Lyons and Jason Avellino of Robbins Geller Rudman & Dowd LLP.

Defendants are represented by Nicole A. DiSalvo, Joseph Larkin, Arthur Bookout and Sukhandeep Kaur of Skadden Arps Slate Meagher & Flom LLP, Kevin M. Coen of Morris Nichols Arshat & Tunnell LLP and Jacob Perrone of Dragon Lawyer PC.

The case is City of Pontiac Reestablished General Employees' Retirement System, et al. v. TowerBrook Capital Partners L.P., et al., case number 2025-1077, in the Delaware Chancery Court.

--Editing by Alex Hubbard.

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2nd Circ. Urged To Revive Norfolk Southern Fraud Suit

By **Abigail Harrison**

Law360 (November 3, 2025, 8:26 PM EST) -- The Second Circuit was told Friday that a proposed securities fraud class action against Norfolk Southern Corp. investors should be revived, as the rail giant misled investors by falsely extolling safety commitments while the company winnowed its workforce and cut costs.

Lead plaintiffs, the Ohio Carpenters Pension Fund and the City of Pontiac Reestablished General Employees' Retirement System, asked the court to reverse a New York federal judge order tossing the suit at the start of the year. In a **reply brief** Friday, the funds pointed to offering documents that contained false and misleading statements about safety, made prior to February 2023's catastrophic **derailment and toxic chemical spill** in East Palestine, Ohio.

Taken together, these statements aren't "abstract expressions of corporate philosophy," but are instead a misleading narrative that safety was central to its operations, the funds said. The complaint plausibly alleges Securities Act violations, as it showed that Norfolk Southern omitted essential facts about deteriorating safety practices and its regulatory noncompliance, the funds said.

"These statements were not isolated platitudes. Rather, in context they form a cohesive representation of Norfolk Southern's purported safety culture," the brief said.

These statements include that Norfolk Southern's capital spending priorities are geared toward safe rail transportation services, that employees receive safety training and that the board of trustees established a safety committee. The funds pointed out that investors are especially attuned to what Norfolk Southern says about safety because it is a "common carrier," an enterprise that transports passengers or goods and is open to the general public.

While Norfolk Southern contends it's allowed to operate with a hopeful outlook, "hope does not entitle the company to make statements that fly in the face of current data," the funds said.

The data includes former employees who said the company only cared about trains running on time, according to the brief. In the period leading up to the crash, staffing reductions saddled employees with more work, and trains that once had five or six employees started to run with only two. The funds' complaint also referenced an initiative to reduce inspection times to "mere seconds per railcar," and pressure employees to ignore safety protocols, they said.

While the rail magnate downplayed the relevance of its safety statements in an **October brief**, arguing that other major railroads say the same things, no contention is enough to defeat the funds' claims, they said.

They pointed to a March **decision** in Bucks County Employees Retirement System v. Norfolk Southern Corp., another shareholder lawsuit against the rail company, in which a Georgia federal judge said claims related to allegedly false statements about safety culture were specific enough to be material.

The funds' argument is not that any statement, no matter how vague, can't be "mere puffery" when it involves a core business practice. Rather, for a company transporting hazardous waste throughout the country, Norfolk Southern's statements about safety would lead an investor to conclude the company made it a serious priority, the funds said.

They added that cases Norfolk Southern references to back their arguments are distinguishable, such

as cases in which risk management is not core to a company's business, or where a plaintiff relies on conclusory allegations rather than detailed facts from former employees.

Company statements were also materially false for omitting key facts that "directly contradicted their substance," the funds said. For example, Norfolk Southern's contention that the funds didn't challenge the existence of promised training programs misses the point, they said.

"The issue is not whether training occurred — it is whether the training was effective and consistent with the company's representations. The complaint alleges it was not," they said.

While Norfolk Southern suggests that a board-level safety committee immunizes them from liability, the funds alleged that these committees were ineffective and marginalized, they said. The company also had a duty to disclose the omitted information under the Securities Act and boilerplate risk disclosures in offering documents don't cure these omissions, according to the brief.

"Courts in this circuit have consistently held that generic disclosures cannot shield a company from liability when it chooses to speak on a topic and omits material facts that contradict its representations," the funds said.

In February, U.S. District Judge Lewis A. Kaplan **tossed the suit**, agreeing with Norfolk Southern that a magistrate judge didn't go far enough in tossing **only some claims**. All of the fund's claims were based on general and vague statements and did not rise to the level of securities fraud, Judge Kaplan concluded.

In the May 2023 lawsuit, the funds said they were blindsided by the plummeting stock value after the train derailment and chemical spill in East Palestine. The suit also names several Norfolk Southern higher-ups, and underwriters of the senior notes, including Goldman Sachs & Co. LLC and BofA Securities Inc.

The parties didn't immediately respond to requests for comment Monday.

The Ohio Carpenters Pension Fund and the City of Pontiac Reestablished General Employees' Retirement System are represented by Alfred L. Fatale III, Jessica N. Goudreault and Charles J. Stiene of Labaton Keller Sucharow LLP.

Norfolk Southern is represented by Denise Tsai, Sofie C. Brooks, Elizabeth Bedrick, Michael G. Bongiorno, Tamar Kaplan-Marans and Trena M. Riley of Wilmer Cutler Pickering Hale and Dorr LLP.

The underwriter defendants are represented by Adam S. Hakki, Benjamin Klebanoff and Thad Behrens of Allen Overy Shearman Sterling US LLP.

The case is In Re: Norfolk Southern Corporation Bond/Note Securities Litigation, case number 25-739 in the U.S. Court of Appeals for the Second Circuit.

--Additonal reporting by Linda Chiem, Matthew Santoni and Juan-Carlos Rodriguez. Editing by Drashti Mehta.



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CarMax's Hype Over Sales Ignored Tariff Fears, Investors Say

By **Gina Kim**

Law360 (November 3, 2025, 10:58 PM EST) -- CarMax investors filed a proposed securities class action in Maryland federal court Monday alleging its executives recklessly overhyped the used vehicle seller's growth potential and assured positive results for "years to come" when it should have known its sales bump was due to consumers purchasing cars ahead of anticipated tariffs.

In a 14-page complaint filed in the District of Maryland, Jason Cap accuses CarMax Inc. and its individual executives of violating the Securities Exchange Act in connection with materially misleading statements they made earlier this summer highlighting a growth in sales, gross profit and net earnings per diluted share.

CarMax's CEO and President William D. Nash was quoted in the company's June 20 release for the first quarter saying the positive results emphasize the strength of CarMax's earnings growth model, "which is underpinned by our best-in-class omni channel experience," where its associates, locations, technology and digital capabilities "provide the most customer-centric car buying and selling experience."

Nash went on to state that these were distinguishing factors in a large and fragmented market that positioned CarMax to continue driving up sales, gain market share and produce substantial year-over-year earnings growth "for years to come," the complaint says.

"In reality, defendants were in no position to assure that there would be positive results for 'years to come,'" Cap argues. "In fact, as defendants knew or should have known, CarMax's Q1 results were positive because of consumer speculation about tariffs (which motivated many to buy cars), and not a sign that CarMax's business was positioned to deliver 'significant year-over-year earnings growth for years to come.'"

During an earnings call held the same day the company's first quarter results were released, Nash and Enrique N. Mayor-Mora, CarMax's executive vice president and chief financial officer, were asked by an analyst how CarMax was interpreting the uptick in its business. Nash responded that some macro factors could have been behind the company's performance that quarter while remarking he believed it was also partly driven by factors the company could control.

In that call, Nash reiterated his comments in the previous quarterly call when there was an uptick amid tariff speculation toward the latter part of March and another climb in April, which ended up "being the strongest month for us," Cap says.

Nash stated that even before the initial climb, CarMax's business was doing well, which he said reflected the company's internal efforts, from inventory management, pricing, savings and the "omnichannel experience," the suit says.

In September, CarMax revealed its second quarter results during pre-market hours. It revealed that retail unit sales had dipped 5.4% and comparable store unit sales dropped 6.3% while wholesale units plunged 2.2%, according to the complaint. Net earnings per diluted share was 64 cents, compared to 85 cents at the same time last year, Cap says.

The Sept. 25 press release also quoted Nash conceding that the second quarter was a challenging one, the suit says. That same day, Nash held another earnings call during which he revisited his

remarks from the company's first quarter call where he had discussed the growth in sales volume in the spring due to speculation about tariffs, Cap points out.

Nash explained that the uptick in the spring had affected CarMax's performance since it ramped up inventory before the second quarter to back the growth, the suit says. Then, CarMax saw approximately \$1,000 in depreciation which impacted its price competitiveness and sales in the latter half of May through the end of June, according to the complaint.

CarMax's stock prices took a 20.07% dive, falling \$11.50 per share, and closed at \$45.60 per share Sept. 25, Cap says. He adds that the next day, stock prices fell again, this time, by 1.62% to close at \$44.86, causing the investors to suffer significant financial hits.

The suit against CarMax comes two months after an investor sued raw materials supplier Dow Chemical Co., accusing the company of overstating its ability to navigate global economic challenges. In the suit filed in September, shareholder Jereth Camacho claims Dow leaders represented to the investing public that it was well-positioned to ride out macroeconomic and tariff-related headwinds and overstated the company's ability to maintain its profitability and dividend.

Camacho's suit claims that the company's executives and multiple board members made misleading statements about Dow's performance starting in January when it issued a press release announcing its financial results for fourth quarter 2024. That release said Dow delivered continued volume growth and that it was "optimistic" it would see further demand growth in various markets.

According to the suit, Dow continued making false statements **about its ability to navigate the fluid tariff** and economic situation, but a July 24 release reporting Dow's financial results for the second quarter of 2025 revealed it had suffered a 7.3% year-over-year decline in net sales, missing estimates by \$130 million, leading common stock prices to drop.

A few weeks before Camacho filed his complaint, Todd A. Sarti filed a complaint arguing that the company's decision to reduce shareholder payouts earlier this year contradicted its earlier claims of its ability to withstand economic uncertainty, **including tariffs**.

Cap's two-count suit against CarMax asserts violations of Section 10(b) and Rule 10b-5 under the Exchange Act and Section 20(a) against CarMax's executives on behalf of a proposed class of all those who bought or otherwise acquired CarMax securities between June 20 and Sept. 24.

Cap asks the court to order CarMax to pay damages, attorney fees and costs to the investors, and to certify the proposed class and appoint Cap as class representative and his attorneys as class counsel.

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

Cap is represented by Phillip Kim of The Rosen Law Firm PA and Brian Schall of The Schall Law Firm.

Counsel information for CarMax was not immediately available.

The case is Jason Cap v. CarMax Inc. et al., case number 1:25-cv-03602, in the U.S. District Court for the District of Maryland.

--Additional reporting by Danielle Ferguson and Sydney Price. Editing by Kristen Becker.



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Oncology Co. Board Hit With Suit Over Product Growth Claims

By **Sydney Price**

Law360 (November 3, 2025, 9:15 PM EST) -- Executives and directors of radiopharmaceuticals company Lantheus Holdings Inc. have been hit with an investor's derivative suit accusing them of allowing the company to misrepresent the growth potential of its key product used to detect prostate cancer.

According to the suit filed by shareholder Brian Jones on Friday, Lantheus touted the market position of its product Pylarify, a PET imaging agent used to diagnose and treat prostate cancer, as proof of the company's ability to meet forecasted revenue and growth. The complaint alleges Lantheus' shares fell nearly 30% in August after the company revealed it had significantly reduced growth expectations for Pylarify and cut fiscal year 2025 growth projections.

Even though Pylarify accounted for nearly 70% of Lantheus' \$1.5 billion in total revenues in 2024, Lantheus faces "stiff competition" for the product, which is set to lose its new chemical entity exclusivity in 2026, according to the suit.

Lantheus failed to inform investors that a price increase for Pylarify earlier this year created an opportunity for competitive pricing that "compromised Pylarify's revenues and overall growth potential," the suit claims.

The relevant period begins Feb. 26, 2025, the day the company announced its fourth-quarter and full-year 2024 results, telling investors that sales for the quarter were \$266 million, up nearly 16% year-over-year and driven by volume.

Several weeks later, on May 7, the company lowered projections for Pylarify for the year but continued "misrepresenting the issues surrounding the alleged short-term competitive pressures," the suit alleges.

The truth began to emerge, the suit claims, on August 6, the day Lantheus announced that Pylarify sales decreased 8% year-over-year, attributing the decline to the company's challenges navigating increased competition.

"The statements made contradicted those made during the call on May 7, 2025 ... In truth, Pylarify's increased pricing had increased a gap that allowed competition to worsen and threatened Pylarify's market position," the suit states.

On this news, shares of Lantheus fell \$20.96 each, or about 29%, to close at \$51.87 on August 6, according to the suit.

In addition to nominal defendant Lantheus, its current CEO Brian A. Markison and several other directors are also named in the suit. The defendants are accused of violating the Exchange Act, being unjustly enriched, wasting corporate assets and breaching their fiduciary duties.

The complaint also notes the company is facing a proposed securities class action in the U.S. District Court for the Southern District of New York.

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

Jones is represented by Shane Thomas Rowley and Danielle Rowland Lindahl of Rowley Law PLLC.

Counsel information for Lantheus and the individual defendants was not immediately available on Monday.

The case is Jones v. Markison et al., case number 1:25-cv-09059, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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Catching Up With Delaware's Chancery Court

By Jarek Rutz and Jeff Montgomery

Law360 (November 3, 2025, 2:20 PM EST) -- From billion-dollar pharma feuds to shifting equity deadlines, Delaware's courts saw another week of battles over mergers, fiduciary duty and judicial limits.

Here's what you might have missed.

Supreme Court and Fiduciary Oversight

Delaware Supreme Court justices **heard arguments** Wednesday on whether Amazon.com's directors acted in bad faith by approving billions of satellite-launch contracts with Jeff Bezos' Blue Origin, looking to salvage a Court of Chancery derivative suit dismissed in January.

Stockholders urged revival of the derivative suit, saying the board's deference to its founder mirrored the "ostrich-like" conduct condemned in the landmark ruling *In re Walt Disney Corporation Derivative Litigation* in the mid-2000s. Amazon countered that majority director independence undermined claims that demand on the board to investigate would have been futile.

Also Wednesday, the high court heard Tesla Inc.'s bid to **slash a \$176 million attorney fee award** tied to Chancellor Kathaleen St. J. McCormick's ruling that voided \$730 million in director options. Tesla argued the 11.6 times multiplier inflated class counsel's rates to "windfall" levels and threatened public confidence in fee awards. The justices probed whether Delaware's precedents justify such multipliers, signaling concern over how derivative recoveries are valued.

Merger and Milestone Battles

Pfizer Inc. launched **a Chancery action** Friday to block Metsera from abandoning their up-to-\$7.3 billion merger after Novo Nordisk dangled a \$9 billion buyout. Pfizer called Novo Nordisk's bid an anticompetitive "catch and kill" scheme meant to eliminate a future competitor in weight loss drugs. The drugmaker accused Metsera's board of breaching fiduciary duties by entertaining Novo Nordisk's offer despite a binding agreement and early Federal Trade Commission clearance, framing the episode as a direct clash between Delaware contract law and federal antitrust principles.

MayStreet Inc. co-founder Patrick Flannery Thursday accused the London Stock Exchange Group of **duping him into selling his market-data firm** with false promises of global expansion. Acting for former investors, he said the London Stock Exchange's subsidiaries abandoned their integration plan, sabotaged earnout milestones and fired him after he objected. The suit alleges breaches of contract and Delaware's implied covenant of good faith.

Control Fights and Corporate Maneuvers

Hertz Corp. urged state Supreme Court justices Wednesday to **overturn a Superior Court ruling** that let insurers off the hook for \$170 million in false-arrest settlements. The car rental giant said its flawed theft-reporting system was a single systemic cause under Delaware's "cause test," making the wave of arrests one insurable occurrence. Former car rental customers sued Hertz in the Court of Chancery in 2020, alleging a systemic, nationwide practice by Hertz of false theft reports for purportedly missing or overdue vehicles. Ultimately, a \$168 million mediated settlement was reached with nearly 400 claimants, and Hertz's insurers denied coverage.

Vice Chancellor Nathan Cook considered the idea of the Delaware Chancery Court **applying shorter**

filing windows to certain equitable claims. During arguments in *Sheadrick Richards v. Shipwright SPAC I LLC* on Oct. 27, Vice Chancellor Cook questioned whether laches should always shadow the three-year statutory limit. The suit, filed just beyond that threshold, challenges a 2021 special purpose acquisition company merger that took autonomous vehicle software provider Innoviz public and allegedly deprived investors of fair redemption rights.

Bankruptcy and Data Preservation

Vice Chancellor J. Travis Laster **refused to dismiss** a bid by Johnson & Johnson, Dow Chemical and other asbestos defendants to stop bankruptcy trusts from destroying decades of claims data. In his Oct. 24 opinion, Vice Chancellor Laster found the companies plausibly alleged a property interest in the records and that Chancery's equitable power extends to preserving evidence crucial to future litigation.

Quotable

"Tesla makes the interesting observation in their brief that your fee is \$60 million over and above the entire budget for the entire judiciary in the state of Delaware, for a case that settled. At some point, do we have to be concerned about the public perception of the size of the fee as a matter of acceptable corporate governance and our oversight?" — Justice Karen L. Valihura, speaking during Delaware Supreme Court oral arguments over Tesla's bid to slash a \$176 million class attorney fee award.

--Edited by Alex Hubbard.

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Chancery Considers Reviewing Icahn's \$10M Illumina Settlement

By **Jeff Montgomery**

Law360 (November 3, 2025, 5:39 PM EST) -- A Delaware Chancery Court hearing on resolving class and derivative claims over Illumina fiduciary data breaches connected to the company's \$8 billion acquisition of Grail Inc. was sidelined Monday by questions over a private, \$10 million proposed settlement payment.

Vice Chancellor Paul A. Fioravanti said during a brief teleconference hearing that he was leaning toward requiring public notice and settlement proceedings for a part of the deal that would end claims lodged by Icahn Partners LP and two affiliates.

Illumina Inc. reacquired Grail in 2021 for \$8 billion, then spun the business off in 2024 after scrutiny by the Federal Trade Commission and European regulators.

Icahn's interests alleged in a securities class and derivative action filed in October 2023 that Illumina and its board of directors caused millions of dollars in losses to the biotech company by pushing the Grail deal through. Several stockholders have since challenged the company's actions, although details of Icahn's settlement remained under wraps.

"I am strongly inclined to require notice and a formal settlement process, but I will take the counsel up on your offer to provide some research and authority as to why this case can be settled and dismissed without court approval and without notice to the class," Vice Chancellor Fioravanti told Eric A. Veres of Abrams & Bayliss LLP, counsel to Illumina's individual directors and officers, and Michael A. Hanin of Pallas LLP, counsel to the Icahn parties.

The vice chancellor added that the court has discretion to require notice of any dismissal, and it unsuccessfully sought citations authorizing the Icahn parties' view that no hearing would be required.

Kevin J. Orsini of Cravath Swaine & Moore LLP, counsel to Illumina, said the parties were "very explicit" in agreeing that other derivative claims that overlap those potentially being settled by the Icahn agreement "are not being released as part of this settlement."

The Icahn parties submitted a stipulation and proposed order of dismissal on September 19. The vice chancellor directed their counsel on Monday to submit supplemental information and said the court should be contacted in a month if the request is still pending. Under the stipulation, the Icahn parties would be paid \$10 million.

The FTC ordered Illumina to unwind the reacquisition in April 2023. In December, Illumina said it would divest Grail after the Fifth Circuit largely upheld the FTC's findings.

Icahn, who has called the Grail reacquisition "ill-advised" and "frankly inexplicable," launched a proxy battle against Illumina in March 2023, proposing three new director candidates. One of his candidates — Andrew Teno of Icahn Capital LP — won a seat on the biotech's board.

Some of Icahn's objections already have found their way to the Delaware Supreme Court. In a mid-case appeal that was shot down in April 2024, Justice Karen L. Valihura found at the time there were no "exceptional circumstances" warranting the early review.

San Diego, California-headquartered Illumina, which develops tools and systems for genetic analysis,

formed Grail in 2015 and then spun it off in 2017. In 2020, shortly after Grail went public, Illumina announced it would reacquire its former subsidiary, sparking scrutiny from the FTC and European regulators.

In August 2024, New York state Comptroller Thomas DiNapoli sued nine Illumina directors and two officers in Delaware's Chancery Court on behalf of state retirement funds holding the company's stock. The complaint claimed that the biotechnology company's leaders rushed into the doomed deal recklessly and with full knowledge they were violating a European regulation requiring companies to pause mergers pending antitrust review.

"The damage to Illumina from this disastrous acquisition cannot be overstated," the complaint said. It observed that, on Aug. 16, 2021 — two days before the Grail deal closed — Illumina's stock had dropped from an all-time high of \$524.84 per share to \$128.80 on Aug. 15 of this year, with market capitalization plunging 75%, from \$77 billion in 2021 to \$20.5 billion in 2024.

Icahn Partners, Icahn Partners Master Fund and Matsumura Fishworks are represented by C. Barr Flinn and M. Paige Valeski of Young Conaway Stargatt & Taylor LLP, and Michael A. Hanin, Anastasia Cembrovskaya and Andrew W. Breland of Pallas LLP.

Illumina is represented by Peter J. Walsh, Michael A. Pittenger and Justin T. Hymes of Potter Anderson & Corroon LLP, and Kevin J. Orsini and Brittany L. Sukiennik of Cravath Swaine & Moore LLP.

Charles Dadswell and Sam Samad are represented by Thomas A. Uebler, Adam J. Waskie and Sarah P. Kaboly of McCollom D'Emilio Smith Uebler LLC, and Koji Fukumura, Ryan Blair and Heather Speers of Cooley LLP.

Francis deSouza and the other directors are represented by A. Thompson Bayliss and Eric Veres of Abrams & Bayliss LLP, and William Savitt, Jonathan M. Moses, Lauren M. Kofke and Emily R. Barreca of Wachtell Lipton Rosen & Katz.

The case is Icahn Partners LP et al, v. DeSouza, et al, case number 2023-1045, in the Court of Chancery of the State of Delaware.

--Editing by Adam LoBelia.



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Biotech Co. Agrees To Reforms After Co-Founder's Conviction

By **Emilie Ruscoe**

Law360 (November 3, 2025, 9:47 PM EST) -- Executives of the company formerly known as Enochian BioSciences Inc. have agreed to implement a series of corporate reforms to end shareholder derivative claims that they breached their fiduciary duty when a company co-founder it hailed as a "genius" was accused of both a murder-for-hire plot and falsifying research data.

In a **Monday filing** in California federal court, investor Samuel I. Koenig asked U.S. District Judge John W. Holcomb to grant preliminary approval to the proposed deal, which would also end separate derivative suits in California state court and in Delaware federal court.

The settlement includes corporate governance reforms the parties agreed to as part of the deal would "enhance the value of the company, improve the company's business prospects, and ... foster investor confidence in the accuracy of the company's public disclosures and the independence and effectiveness of the company's corporate governance and board oversight."

Among other things, the reforms require the company, which is now known as Lunai Bioworks Inc., to appoint an independent director who would streamline certain board functions and evaluate the CEO's performance.

The company agreed to additional rules and responsibilities for its audit committee and its compensation committee, and it agreed to create a disclosure committee focused on the accuracy and timeliness of the company's public disclosures.

Additionally, the company will verify whether any nonemployee scientific adviser it engaged "holds the credential required to perform the scientific work he or she is retained to perform," and it will build out whistleblower, ethics and compliance programs for employees and board members, the filing states.

The settlement agreement also has the company's insurance paying \$250,000 to Koenig's counsel for the work done on the case, with those funds coming from director and officer insurance.

The deal ends claims the company was subjected to "a heightened risk of reputational and financial harm" by relying on Enochian co-founder Serhat Gumrukcu despite knowing he'd faced criminal allegations in his past.

Gumrukcu was arrested in May 2022, with the U.S. Department of Justice announcing at the time that he was charged with a murder-for-hire conspiracy in connection with the death of a Vermont man. Gumrukcu was convicted in April of murder-for-hire, murder-for-hire conspiracy and wire fraud conspiracy, and has a sentencing hearing scheduled for November.

The derivative actions allege the company's share price declined after Gumrukcu was charged and again after short sellers' reports stated Gumrukcu's purported medical credentials couldn't be verified, among other things.

Following this, an internal Enochian probe found Gumrukcu had altered certain scientific data sets that had been generated by third-party research institutions before the company's scientists had a chance to review the data, the suit says.

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

Koenig is represented by Joel E. Elkins, David C. Katz and Mark D. Smilow of WeissLaw LLP.

The defendants are represented by Patrick E. Gibbs and Brett H. De Jarnette of Cooley LLP.

The case is Koenig v. Gumrukcu et al, case number 2:22-cv-06871, in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.

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'Pay-To-Pay' PenFed Fee Class Scores Cert. In West Virginia

By **Katryna Perera**

Law360 (November 3, 2025, 8:43 PM EST) -- A West Virginia federal judge granted certification Monday to a class of borrowers who claim Pentagon Federal Credit Union illegally charged them a \$5 fee for making loan payments by phone or online, finding that the class meets all the requirements for certification.

U.S. District Judge Thomas S. Kleeh issued an **order** granting the borrowers' request to certify a class that includes all West Virginia residents with a loan or line of credit from PenFed who made a payment over the phone or online and were charged a fee.

In granting certification, Judge Kleeh said the class meets all the necessary requirements, including numerosity and typicality and that plaintiff Joseph Boczek will serve as class representative, and his counsel from Bailey & Glasser LLP and Katz Kantor Stonestreet & Buckner PLLC will serve as class counsel.

According to the order, PenFed argued that the class fails to satisfy the predominance requirements because several key issues, including whether class members' transactions were for personal, family, or household purposes and whether the transactions have sufficient ties to West Virginia, cannot be resolved on a classwide basis.

However, Judge Kleeh disagreed, saying, "the common questions of law and fact presented in this case outweigh the claimed dissimilarities among class members that could require individualized inquiries."

The judge reached the same conclusion on the superiority and ascertainability requirements.

"[Plaintiff's claims] are ascertainable because they arise from PenFed's alleged assessment of illegal fees and misrepresentations regarding those fees which were made on a class wide basis," the order stated. "The alleged fraud, threats, or misrepresentations are not based upon any individual interactions. Thus, these claims are common to the class."

The proposed class action was filed in 2023. It accused PenFed of breaking state law and telling the court that the lender was "supposed to be compensated out of the interest paid on each borrower's monthly payment — not via additional 'service' fees that do not reflect the cost to defendant of providing such services."

West Virginia law states that pay-to-pay fees can't be used to "create an additional profit center" for the party charging them, but Boczek argued that this is precisely what PenFed has done. Although the fee is \$5 for each monthly auto loan payment made over the phone, Boczek said PenFed is more likely paying somewhere in the ballpark of 30 cents.

In March 2024, Judge Kleeh **denied** a dismissal motion from the credit union, finding that it qualifies as a debt collector and therefore the state's ban on "pay-to-pay" fees applies to it.

"As pled, PenFed is the lender and servicer of plaintiff's automobile loan; thus, PenFed is clearly engaged directly in debt collection," Judge Kleeh said.

The West Virginia Consumer Credit and Protection Act says "no debt collector may use unfair or

unconscionable means to collect or attempt to collect any claim." Since Boczek has already provided enough evidence that PenFed is a debt collector, the judge said, all that's left is alleging that the fee is "unfair or unconscionable."

Counsel for Boczek declined to comment Monday, and counsel for PenFed did not immediately respond to requests for comment.

Boczek and the class are represented by Jason E. Causey of Katz Kantor Stonestreet & Buckner PLLC and Denali S. Hedrick, James L. Kauffman, Jonathan R Marshall and Patricia M. Kipnis of Bailey & Glasser LLP.

Pentagon Federal Credit Union is represented by Brian J. Moore and Kinsey M. Novak Booth of Dinsmore & Shohl LLP, and Michael A. Graziano and Sarah A. James of Eckert Seamans Cherin & Mellott LLC.

The suit is Boczek v. Pentagon Federal Credit Union d/b/a PenFed, case number 1:23-cv-00043, in the U.S. District Court for the Northern District of West Virginia.

--Additional reporting by Nadia Dreid. Editing by Kristen Becker.

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Pharmacies Seek Cert. In Cholesterol Drug Price-Fixing MDL

By **Dorothy Atkins**

Law360 (November 3, 2025, 10:25 PM EST) -- A group of indirect reseller plaintiffs urged a Pennsylvania federal judge on Friday to certify a nationwide class of thousands of pharmacies that indirectly purchased the cholesterol medication pravastatin in sprawling multidistrict litigation over alleged price-fixing in the generic drug industry.

In a 64-page motion, the indirect reseller plaintiffs asked U.S. District Judge Cynthia M. Rufe to certify a nationwide class of privately held U.S. pharmacies that indirectly purchased defendants' Pravastatin products — including 10 mg, 20 mg, 40 mg and 80 mg tablets — from May 1, 2013, through Dec. 31, 2018.

The motion also seeks to certify a separate damages class of indirect pravastatin-product purchasers during that same time period, and the motion argues that the proposed classes include potentially thousands of pharmacies that share common legal issues that meet the requirements for class certification.

The class certification bid is the latest development in high-stakes antitrust litigation over generic drug prices that landed on Judge Rufe's docket in 2016. The latest motion concerns claims by a group of indirect reseller plaintiffs who allege that four defendants — Glenmark Pharmaceuticals Inc., Lupin Pharmaceuticals Inc., Teva Pharmaceuticals USA Inc. and Zydus Pharmaceuticals (USA) Inc. — entered into an anticompetitive agreement in May 2013 that led to the prices of pravastatin to skyrocket in some cases by more than 1000%.

Although the initial version of the allegations also named a fifth defendant, Apotex Corp., that company settled the indirect reseller claims in May for \$5.2 million, according to court documents.

The latest class certification motion argues that the defendants, which collectively made up 99% of the market, were making an "obscene profit" by allegedly overcharging pharmacies for pravastatin. As a purported result, the drugmakers' alleged collusion played a role in forcing many pharmacies to close across the country, and particularly in rural areas, the motion says.

The motion argues that the pharmacies were particularly vulnerable to the allegedly drastic overcharges because of their position in the American health care system, and the plaintiffs' expert on drug pricing, Benjamin J.S. Link, argues in his report that pharmacies have little negotiating power for either their purchases or reimbursements for generic drugs.

"Power players in the system above them dictate pricing terms, and pharmacies are left trying to find ways to make up the shortfall," the motion says. "When the price of a commonly-prescribed medication like Pravastatin skyrocketed due to defendants' unlawful anticompetitive conduct, IRPs were the ones left holding the bag."

Plaintiffs' economic expert, Michael A. Williams, also found that defendants' alleged anticompetitive conduct cost the proposed class of pharmacies an average overcharge of 232.2%, according to the motion.

Ultimately, all questions of liability can be resolved on a class-wide basis, and although the indirect reseller plaintiffs bring claims arising under both federal antitrust law and various state and territorial laws, the claims are "all premised on the same unlawful conduct and will be proven using the same

evidence," the motion says.

Christian Hudson of Cuneo Gilbert & LaDuca LLP, who is lead counsel for the indirect reseller plaintiffs, said in a statement Monday that for nearly a decade, pharmacies have led the fight to hold generic drug manufacturers accountable for allocating markets and coordinating price increases that hurt small businesses and consumers alike.

"Our motion seeks class certification so these pharmacies can pursue justice collectively and recover damages from years of unlawful overcharges," Hudson said.

Representatives for the defendants and defense liaison counsel did not immediately respond to requests for comment on Monday.

Earlier this year, the judge **certified** several other sets of classes for the cases for the MDL's latest bellwethers, but the drugmakers are currently **challenging** that decision before the Third Circuit.

The indirect reseller plaintiffs are represented by Christian Hudson, Alexandra Klein, Jennifer E. Kelly, Claire Esmonde and Charles Barrett of Cuneo Gilbert & LaDuca LLP.

The defendants are represented by defense liaison counsel Chul Pak of Wilson Sonsini Goodrich & Rosati PC, Devora W. Allon of Kirkland & Ellis LLP, Sheron Korpus of Kasowitz Benson Torres LLP and Alison Tanchyk of Morgan Lewis & Bockius LLP.

The MDL is In Re: Generic Pharmaceuticals Pricing Antitrust Litigation, MDL number 2724, and In Re: Pravastatin Cases, lead case number 2:16-md-02724, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Matthew Perlman and Nadia Dreid. Editing by Vaqas Asghar.

Update: This story has been updated to include comment from plaintiffs' counsel.

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