Securities

Perrigo Failed to Disclose Acquired Nestle Unit Woes, Suit Says

Nov. 18, 2025, 4:19 PM PST

Perrigo Co. kept falsely reassuring investors as costs associated with a newly acquired Nestlé infant formula segment mounted, a shareholder alleges in a proposed class action.

Perrigo's stock took a series of tumbles as news of additional manufacturing facility remediations, lower sales, and scrapped product emerged, Tanner French says. French filed his suit Monday in the US District Court for the Southern District of New York.

Perrigo announced on Nov. 5 that it was reassessing its $240 million investment in the business and cutting its growth outlook, French says. Perrigo's stock dropped 25% to close at $15.10 per share that day. That was the stock's steepest drop in nearly seven years, according to data compiled by Bloomberg.

Perrigo failed to disclose "that the infant formula business acquired from Nestlé suffered from significant underinvestment in maintenance, operational improvements, and repairs," French says of the Good Start brand and Gateway plant in Wisconsin. Perrigo also failed to alert investors that it "needed to make substantial capital and operational expenditures above the Company's outwardly stated cost estimates to remediate the infant formula business," he says.

The proposed class of those who bought Perrigo securities between Feb. 27, 2023 and Nov. 4, 2025, inclusive, consists of hundreds or thousands of members, the complaint estimates.

French seeks damages on his securities fraud claims.

Perrigo didn't immediately respond to an emailed request for comment.

Glancy Prongay & Murray LLP and Frank R. Cruz of Century City, Calif., represent French.

The case is French v. Perrigo Co. PLC , S.D.N.Y., No. 1:25-cv-09596, complaint 11/17/25 .

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Securities

American Airlines Defeats Investor Suit Over Sales Strategy Flop

Nov. 18, 2025, 11:04 AM PST

American Airlines Group Inc. investors can't proceed with a proposed securities fraud class action alleging the airline misled them about an unsuccessful push toward website-based corporate bookings, a federal court ruled.

The investors failed to show material misrepresentations, according to Chief Judge Reed O'Connor of the US District Court for the Northern District of Texas. They also failed to create an inference of fraudulent intent, he said.

The investors sued over a 14% stock drop that followed American's alleged acknowledgement in May 2024 that reduced bookings were due to the change from widely used platforms to its own direct channels

A shareholder derivative suit over the same issues, also before O'Connor, is on pause pending the outcome of this proposed class action

O'Connor dismissed the class claims with finality in a Nov. 15 order

Levi & Korsinsky LLP and Pomerantz LLP were lead counsel for the investors. Latham & Watkins LLP and Kelly Hart & Hallman LLP represented American.

The case is Qawasmi v. Am. Airlines Grp. Inc. , 2025 BL 410987, N.D. Tex., No. 4:24-CV-00673, 11/15/25 .

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Securities

NanduQ Beats Investor Fraud Lawsuit Over Russian Law Compliance

Nov. 18, 2025, 11:06 AM PST

The Russian fintech company formerly known as Qiwi PLC defeated allegations it misled US investors over its regulatory compliance and recordkeeping before failing an audit in 2020.

The company leading the proposed investor class didn't adequately allege any actionable misstatements or omissions by NanduQ PLC or executives around at that time, US District Court for the Eastern District of New York Judge Brian M. Cogan said in an order entered Monday. Allegations of intent or recklessness for securities fraud were largely recycled from investor Moset International Co.'s previously-dismissed complaint, Cogan said while ordering the case closed.

Cogan, who took over the case last month, echoed Judge Rachel P. Kovner's 2023 dismissal.

This amended complaint against the company—which said it facilitated payments to gambling sites—added only "vague and conclusory allegations" to support the theory Qiwi and leadership misrepresented its compliance with Russian betting and banking law before disclosing it failed a Central Bank of the Russian Federation audit, Cogan said.

Moset didn't plausibly allege a key source of the company's success was improper business practices, that Qiwi violated Russian law, or what reporting or recordkeeping controls were supposedly insufficient enough to render statements about its compliance false or misleading. Claims of undisclosed violations also failed because companies don't have a duty to disclose uncharged wrongdoing, he said.

Russian betting law amendments made after alleged misrepresentations didn't help Moset's case, Cogan said, since Moset would've needed to plead "Qiwi actually violated the law as it existed at the time—not as it would evolve in the future."

No reasonable investor would've taken statements about Qiwi remedying past violations to mean future audits wouldn't find noncompliance, he said, because of the company's specific warnings about the risk of audits.

The suit centered around a Russian crackdown on online gambling and payment facilitators like Qiwi. Moset alleged online betting generated revenue for Qiwi through its anonymous electronic wallet, and that it misled US investors over its compliance with Russian law while concealing it was undergoing an audit that it would ultimately fail.

Qiwi's American Depositary Share price plunged almost 21% the day after it said the Central Bank identified certain reporting and recordkeeping deficiencies during a routine audit, resulting in a fine and restrictions on its bank operations.

Freedman Normand Friedland LLP was lead counsel for the proposed class, which aimed to cover those who acquired Qiwi's securities from Nov. 14, 2018, through Dec. 9, 2020, when it disclosed the negative audit results. Skadden, Arps, Slate, Meagher & Flom LLP represents the company and executives. Neither of these law firms nor NanduQ immediately responded to emails seeking comment.

The case is In re Qiwi PLC Sec. Litig. , E.D.N.Y., No. 20-cv-6054, order entered 11/17/25 .

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Securities

Tempus Investor Drops Lawsuit Levying Short Seller Accusations

Nov. 18, 2025, 12:13 PM PST

Tempus AI Inc. escaped proposed class allegations the health tech company misrepresented its artificial intelligence capabilities and other issues after the court-appointed lead investor dropped the lawsuit.

Judge Matthew F. Kennelly terminated the case Monday at the request of investor Art Esa, saying the dismissal wouldn't impact other shareholders' decisions to sue. Esa, whom the US District Court for the Northern District of Illinois named lead plaintiff, had said the decision to voluntarily drop the suit came after "a thorough investigation that confirmed he could not file an amended complaint that met the heightened pleading requirements under the Private Securities Litigation Reform Act of 1995."

Another investor filed the originating complaint in this case against the company and two executives after a short-seller accused Tempus of overhyping its AI-driven revenue, questioned top brass' work histories, and levied other allegations

Tempus' stock price fell more than 19% on May 28, the day short-seller Spruce Point Capital Management LLC published its report

"This case should never have been filed as it was based entirely on an inaccurate report designed to enrich short sellers at the expense of other investors," Tempus said in an emailed statement. "As always, we remain focused on growing our business and serving our physicians and patients"

Bernstein Liebhard LLP was Esa's lead counsel. His attorneys didn't immediately respond to an email seeking comment. Latham & Watkins LLP represented Tempus, billionaire CEO Eric Lefkofsky, and Chief Financial Officer Jim Rogers.

The case is Shouse v. Tempus AI, Inc. , N.D. Ill., No. 1:25-cv-06534, case terminated 11/17/25 .

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Securities

Manage Newsletters

PepGen Investor Drops Suit Over Muscular Dystrophy Drug Study

Nov. 19, 2025, 6:42 AM PST

A PepGen Inc. shareholder is dropping allegations the biotechnology company overstated prospects for a muscle-degenerating genetic disorder therapy before announcing underwhelming trial results and its discontinuation.

The investor decided against filing a renewed complaint after being appointed lead plaintiff, said the stipulation filed in the US District Court for the District of Massachusetts Tuesday to dismiss the proposed class action. Stockholder Johnny Karam's originating complaint alleged PepGen and top executives overhyped the potential Duchenne muscular dystrophy therapy's efficacy and clinical, regulatory, and commercial prospects, plus misled investors about study results.

PepGen's stock price plunged on multiple days in 2024 and 2025 after the company posted updates about its studies of the treatment, Karam said

PepGen said this year it would wind down its DMD-related research and discontinue developing that therapy, PGN-EDO51

Karam sued in the Eastern District of New York before agreeing to move the case to Massachusetts, where PepGen's corporate headquarters are located

Pomerantz LLP represented Karam and the proposed class, which aimed to cover those who acquired PepGen securities from March 7, 2024, through March 3, 2025. Skadden, Arps, Slate, Meagher & Flom LLP represented PepGen and the executives. Neither of these law firms nor a PepGen spokesperson immediately responded to emails seeking comment.

The case is Karam v. PepGen Inc. , D. Mass., No. 1:25-cv-12007, stipulation 11/18/25 .

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Litigation

Manage Newsletters

Deloitte's $34 Million Nuclear Investor Accord Gets Court Nod

Nov. 19, 2025, 8:37 AM PST

Summary by Bloomberg AI

AI Generated

- Deloitte & Touche LLP's $34 million settlement received a court's initial approval to end allegations it misled Scana Corp. investors over a failed nuclear reactor project.
- The deal came while Deloitte's appeal of Judge Jacquelyn D. Austin's class certification order was pending.
- Laura Posner said the case "sets an important precedent" due to the rarity of auditor lawsuits achieving class status and the summary judgment briefing stage.

Deloitte & Touche LLP's $34 million settlement received a court's initial approval to end allegations it misled Scana Corp. investors over a failed nuclear reactor project.

Judge Jacquelyn D. Austin preliminarily approved the agreement in the US District Court for the District of South Carolina on Tuesday. The nod paves the way to resolve six years of litigation alleging Deloitte released misleadingly clean audits before the former public utility abandoned the project amid delays and ballooned costs in 2017. Various people and groups involved with the project have faced federal charges and civil litigation, including Scana's acquirer Dominion Energy Inc.

The class includes those who acquired Scana stock from Feb. 26, 2016, through Dec. 20, 2017

The deal came while Deloitte's appeal of Austin's class certification order was pending

Laura Posner, a partner at Cohen Milstein Sellers & Toll PLLC which is lead counsel for investors, said in an email the case "sets an important precedent" due to the rarity of auditor lawsuits achieving class status and the summary judgment briefing stage: "I'm very pleased with the trail we have blazed to hold auditors liable and the recovery we have obtained for investors, and look forward to presenting to the Court why the settlement should receive final approval"

Tinkler Law Firm LLC is investors’ liaison counsel. Milbank LLP and Moore & Van Allen PLLC represent Deloitte LLP and Deloitte & Touche. Neither of these law firms nor Deloitte immediately responded to emails seeking comment.

The case is Int’l Brotherhood of Elec. Workers Loc. 98 Pension Fund v. Deloitte & Touche LLP , D.S.C., No. 3:19-cv-03304, 11/18/25 .

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Securities

Travelers, Ziegler Agree to Pause Bondholder Suit Coverage Case

Nov. 18, 2025, 11:18 AM PST

Chicago investment bank Ziegler and its insurers are asking a federal court to put their coverage dispute on hold until underlying litigation against the bank is resolved.

Given the advanced stage of the suits by investors in bonds issued to finance the development of a sports complex, the parties agreed a stay would serve judicial economy and conserve resources, Ziegler and its insurers said in a joint motion filed Monday in the US District Court for the Northern District of Illinois.

Travelers Casualty & Surety Co. of America sued Ziegler in August, seeking a ruling on its coverage obligations in the bondholder litigation. US Specialty Insurance Co. joined the litigation in an amended complaint filed in October.

Travelers had dropped a previous case in August 2024 pursuant to a standstill and non-waiver agreement, which it terminated in July.

Ziegler was retained to underwrite the bonds and provide other investment banking services for the sports complex project. The underlying litigation alleges Ziegler made fraudulent representations and omissions in connection with the bond offering, and the bondholders seek to rescind the bonds.

Dykema Gossett PLLC represents Travelers. Werner Ahari Mangel LLP represents US Specialty. Neal Gerber & Eisenberg LLP represents Ziegler.

The case is Travelers Casualty & Surety Co. of America v. B.C. Ziegler & Co. , N.D. Ill., No. 1:25-cv-09337, 11/17/25 .

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Litigation

Manage Newsletters

Purdue Bankruptcy Plan, Sackler Settlement Clear Legal Hurdles

Nov. 18, 2025, 10:43 AM PST

Summary by Bloomberg AI

AI Generated

- A judge ruled that Purdue Pharma LP's bankruptcy plan and settlement with the Sackler family is legally sound, allowing the company to pay at least $7.4 billion to creditors.

- The plan incorporates more than $6.5 billion worth of settlements with Sackler family members and will provide relief for victims of opioid addiction, with funds used to enhance nationwide opioid abatement efforts and compensate individuals and families.

- The plan also includes the creation of a publicly available repository of documents related to Purdue's business and the transfer of the company's business assets to a public benefit company that will develop and distribute opioid overdose reversal and addiction treatment medications.

Purdue Pharma LP’s years-in-the-making bankruptcy plan and multibillion-dollar settlement with the drugmaker’s Sackler family owners is legally sound, a judge ruled.

The OxyContin manufacturer, blamed for helping fuel a nationwide opioid addiction crisis, has met all legal requirements to confirm a Chapter 11 plan that will pay at least $7.4 billion to creditors, Judge Sean H. Lane of the US Bankruptcy Court for the Southern District of New York ruled Tuesday.

The plan, which incorporates more than $6.5 billion worth of settlements with Sackler family members, “is not perfect” but hopefully offers at least a “modest amount of relief” for victims of opioid addiction, Lane said in a formal bench ruling following his statement last week that he would approve the proposals.

He overruled a handful of objections filed by individuals who represented themselves at trial.

“My heart goes out to those who have suffered,” he said.

Purdue filed for bankruptcy in 2019 to address thousands of lawsuits related to its mass marketing and production of addictive painkillers. The proceedings drew more than $40 trillion in claims asserted by state and local governments, medical providers, school systems, tribes, and personal injury victims.

The company in 2021 won bankruptcy court approval of a plan that forced all creditors to release legal claims against the Sacklers, setting off a lengthy appeal process that concluded last year when the US Supreme Court barred releases for third parties without creditor consent in Chapter 11 cases.

Following months of renewed negotiations, Purdue advanced an amended plan earlier this year with enhanced contributions from the Sacklers. Over 99% of voting creditors supported the updated agreement, which gave creditors the opportunity to opt out of releasing claims against company owners and others in exchange for a smaller settlement distribution.

Funds will largely be used to enhance nationwide opioid abatement efforts, while roughly $850 million will be used to compensate individuals and families with addiction-related claims.

Additionally, the plan will create a publicly available repository comprised of tens of millions of documents culled from decades of legal proceedings related to Purdue's business.

The plan further calls for the transfer of Purdue's business assets to a public benefit company that will develop and distribute opioid overdose reversal and addiction treatment medications.

The company is represented by Davis Polk & Wardwell LLP. The unsecured creditors' committee is represented by Akin Gump Strauss Hauer & Feld LLP.

The case is In re Purdue Pharma LP , Bankr. S.D.N.Y., No. 19-23649, hearing 11/18/25 .

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Judge greenlights $7.4 billion Purdue Pharma bankruptcy settlement in fallout of opioid epidemic

courthousenews.com/judge-greenlights-7-4-billion-purdue-pharma-bankruptcy-settlement-in-fallout-of-opioid-epidemic

Erik Uebelacker November 18, 2025

FILE - This Tuesday, May 8, 2007, file photo shows the Purdue Pharma logo at its offices in Stamford, Conn. Arizona's attorney general is asking the U.S. Supreme Court to force the Sackler family, which owns OxyContin-maker Purdue Pharma, to return billions of dollars they took out of the company. The court filing on Wednesday, July 31, 2019, marks the first time the high court has been asked to weigh in directly on the nation's opioid crisis. (AP Photo/Douglas Healey, File)

MANHATTAN (CN) — A federal bankruptcy judge on Tuesday formally approved pharmaceutical company Purdue Pharma’s latest plan, worth $7.4 billion, to settle thousands of lawsuits over the company’s role in the nationwide opioid addiction crisis.

U.S. Bankruptcy Judge Sean Lane greenlit the deal from the bench, putting Purdue and the Sackler family, who owns the company, on the hook for the multibillion-dollar settlement to be paid over the next 15 years.

The Sacklers have agreed to relinquish control of the company, though no family member has been paid by the company or served on its board since 2018.

Purdue filed for bankruptcy protection in 2019, facing a flood of lawsuits from state and local governments accusing it of hooking Americans on the company’s flagship opioid OxyContin. They reached a $6 billion settlement deal two years later, but the U.S. Supreme Court blocked it in 2024 since it would have given the Sackler family immunity from future opioid lawsuits.

That stipulation is not featured in the new agreement, which is among the largest settlements with individuals who contributed to the opioid crisis in the U.S. to date. Attorneys general representing all 55 eligible states and U.S. territories agreed to the settlement in June. Around 9,300 local governments opted in as well.

“For decades, the Sacklers ran Purdue with one goal in mind: maximizing profits for their family, no matter the cost,” New York Attorney General Letitia James said. “Purdue was at the very center of the opioid crisis, fueling addictions and overdoses with deceptive marketing and sales tactics. While no amount of money will ever fully reverse the damage they caused, securing this bankruptcy plan brings us one step closer to delivering critical funding to communities impacted by the opioid crisis."

According to James, the settlement funds will go directly to communities to support opioid addiction treatment, prevention and recovery programs.

Around $850 million will go toward individual victims, including children born with opioid withdrawal. People with addiction and their surviving relatives can prove they were prescribed OxyContin to qualify for payments of between $8,000 and $16,000, set to be distributed next year.

The states claim that, under the Sacklers' leadership, Purdue for decades misleadingly marketed OxyContin as a cure-all drug with minimal risks, fueling the nationwide opioid epidemic. In New York alone, nine people died of a fatal opioid overdose every day in 2024.

Under the deal, the company will be barred from marketing its opioid products and will get a new name — Knoa Pharma, which will be owned and operated by an independent nonprofit foundation. The new company's excess revenue will be doled out to state and local governments and the foundation to support opioid abatement, according to James' office.

The Sacklers cannot be involved in any way. The wealthy family has long been under scrutiny over its role in driving Purdue to aggressively market opioid painkillers, perpetuating a national epidemic that has led to more than 300,000 prescription opioid overdoses.

The family will foot a majority of the settlement — a total of $6.5 billion over 15 years. The payments will be frontloaded with $1.5 billion to be paid out immediately, followed by $500 million after one year, another $500 million after two years and $400 million after three years.

Purdue will pay an additional $900 million up front.

"Today is a landmark day, representing the culmination of a six-year bankruptcy and mediation process," said Steve Miller, Purdue board chairman. "The plan is the product of intense work with our creditors through a singular, shared focus on delivering as much value as possible to meaningfully address the opioid crisis. We are grateful for the perseverance and herculean efforts of our creditors who worked with us to craft an entirely consensual plan that unlocks billions in recoveries and significant non-monetary benefits."

Categories / Health, National

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Critical Mass With Law.com's Amanda Bronstad: Florida Jury Deliberates in Opioid Trial Against Pharmacies, Appeals Panel Probes Ruling Tossing Experts Linking Acetaminophen And Autism/ADHD

November 19, 2025 at 10:40 AM By **Amanda Bronstad**

Walgreens pharmacy in Baltimore, MD. August 11, 2020. Photo: Diego M. Radzinschi/ALM

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

This week: A jury in Fort Lauderdale, Florida, is on its fourth day of deliberations after a 51-day opioid trial in which more than a dozen hospitals want up to $1.5 billion from **Walgreens**, **Walmart** and **CVS.** The **U.S. Court of Appeals for the Second Circuit** appeared skeptical about a ruling that wiped out hundreds of lawsuits alleging prenatal use of acetaminophen, like **Tylenol**, causes autism and ADHD. Find out who one of the "lemon law" lawyers **Ford** sued for racketeering has replaced as counsel.

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

David Oscar Markus of Markus/Moss. Courtesy photo

Purdue Settlement Approved, But Pharmacies Await Florida Verdict

A jury in Fort Lauderdale is on its fourth day of deliberations after 51 days of trial in a case alleging three pharmacies engaged in a racketeering scheme to populate Florida counties with excessive amounts of prescription opioids. A lawyer for hospitals such as **Tampa General Hospitals** and **Broward Health**, Warren Burns (**Burns Charest**) asked jurors during his closing argument on Nov. 12 for up to $1.5 billion in damages against **Walgreens**, **Walmart** and **CVS**, which were the "ultimate gatekeepers in this case."

Unlike most opioid trials, which brought public nuisance claims, the case in Florida alleges the three pharmacies conspired under **Florida's Racketeer Influenced and Corrupt Organizations Act.** Burns presented two separate damage models: one for $528.3 million and another for $1.494 billion.

In Nov. 13 closings, Walmart attorney David Markus (**Markus/Moss**) called the damages calculations a "money grab" that doesn't account for patients admitted for other events, such as car accident injuries, or the $2 billion the hospitals received for uninsured patients. Brian Swanson (**Bartlit Beck**), who represents **Walgreens**, said doctors, not pharmacies, dictate the volume of pills. Eric Delinsky (**Zuckerman Spaeder**) represented **CVS**.

In other opioid news: A judge in New York approved a new $7.4 billion bankruptcy plan in which **Purdue Pharma**'s founders, the Sackler family, will contribute more than $6.5 billion. The **U.S. Supreme Court** rejected the original plan last year due to its nonconsensual releases protecting the Sackler family from lawsuits.

The co-lead counsel in the opioid multidistrict litigation—Joe Rice (**Motley Rice**), Jayne Conroy (**Simmons Hanly Conroy**) and Paul Farrell (**Farrell & Fuller**)—said of **U.S. Bankruptcy Judge Sean Lane**'s approval:

"The approval of this settlement marks a significant step toward providing additional funds for the victims of the opioid epidemic across the country after years of hard-fought negotiation. We appreciate Judge Lane's careful consideration of this matter and applaud the efforts of all opioid MDL attorneys and firms. There is still substantial work ahead to set up the trust and begin the settlement distribution process, but this achievement is a meaningful step forward."

Gerard E. Lynch - Judge, U.S. Court of Appeals for the Second Curcuit...Rec'd 1110

Second Circuit: 'All That Matters is That People Bring Evidence'

A federal appeals court appeared receptive during oral arguments on Monday to a plaintiffs' expert who was one of five tossed in lawsuits alleging prenatal use of acetaminophen, like **Tylenol**, caused autism or ADHD in children.

Here's my recap of the oral arguments before the **U.S. Court of Appeals for the Second Circuit.**

Plaintiffs' attorney Ashley Keller (**Keller Postman**) is attempting to reverse **U.S. District Judge Denise Cote**'s 2023 order tossing all his general causation experts in 600 cases in multidistrict litigation in **New York's Southern District**, particularly **Harvard's Andrea Baccarelli,** an epidemiologist who was cited during a Sept. 22 announcement by **President Donald Trump** and **Department of Health and Human Services Secretary Robert Kennedy** warning pregnant women not to take Tylenol.

Jay Lefkowitz (**Kirkland & Ellis**), representing Tylenol maker **Kenvue**, defended Cote's 148-page order, but **Judges Gerard Lynch** and **Guido Calabresi** pushed back on many of his assertions that the science was on his client's side.

"Seems to me you're constantly coming back to where you began, which is these people didn't show that there was a causal link," Calabresi told Lefkowitz. "All that matters is that people bring evidence so that then juries or courts may say this goes one way or the other."

Meanwhile: The appellate arguments come as **Texas Attorney General Ken Paxton**, with Keller as outside counsel, sued Kenvue over Tylenol. On Nov. 14, **Panola County Judge LeAnn Rafferty** dismissed some of the claims against Kenvue in that case and a motion for a temporary restraining order that sought to ban marketing Tylenol as safe for pregnant women.

Foley & Lardner offices in Washington, D.C. Photo: Diego M. Radzinschi/ALM

Who Got the Work?

Pamela Johnston (**Foley & Lardner**) stepped in to represent Amy Morse (**Knight Law Group**), one of the five "lemon law" lawyers sued by **Ford** for conducting an alleged racketeering enterprise. Ford, in a suit this year, accused lawyers at **Knight Law Group, Altman Law Group** and **Wirtz Law** of fraudulently inflating at least 50% of their $100 million in legal fees in lemon law cases against it. The lawyers—who also include Roger Kirnos (**Knight Law Group**), Steve Mikhov (**Rusk**), Bryan Altman (**Quill & Arrow**), Richard Wirtz (**Wirtz Law**)—have moved to dismiss the case. This month, Morse retained Johnston, along with Foley & Lardner's Kendall Waters and Tam Wheat. Knight Law Group and its other lawyers continue to be represented by Neal Katyal (**Milbank**), Aaron Dyer (**Pillsbury Winthrop**) and Zachary Warren (**Williams & Connolly**).

Here's what else is happening:

Powder Plunge: Andy Birchfield (**Beasley Allen**) and Dan Robinson (**Robinson Calcagnie**) told a jury on Oct. 13 that **Johnson & Johnson**'s baby powder caused their clients, two women from California, to get ovarian cancer. The "bellwether" trial, anticipated to last four weeks in **Los Angeles Superior Court**, is the first from among the talcum powder cases in California state courts coordinated under the state's JCCP. Allison Brown (**Kirkland & Ellis**), in her opening statement, questioned the science behind the case, noting that even the doctors who treated the two plaintiffs never mentioned cosmetic talc as a cause of their cancers.

Roundup Resolved: **Monsanto** has resolved three **Roundup** cases whose verdicts were on appeal in Pennsylvania. The appeals of all three cases were jointly dismissed on Nov. 13. One case ended in a $2.25 billion verdict in 2024, later reduced to $404 million, while the others resulted in verdicts of $177.3 million and $75 million, later lowered to $30.5 million. All three were cases filed by Tom Kline (**Kline & Specter**). Bayer, which owns Monsanto, said in a statement, the "parties have fully resolved these claims on terms that are confidential, and are covered by Bayer's existing provisions."

Formula Recall: At least seven lawsuits have been filed over this month's recall of **ByHeart Inc**.'s infant formula, which has been linked to 23 cases of infant botulism. The parents of two kids who got sick filed suits, including one by food safety attorney Bill Marler (**Marler Clark**), while the other five lawsuits are class actions filed on behalf of consumers by firms such as **Morgan & Morgan** and **Levi & Korsinsky**. Sam Geisler (**Aylstock Witkin**), who co-leads the multidistrict litigation over **Abbott**'s 2022 recall of its formula, told Law.com that he is investigating potential cases against ByHeart.

Thanks for reading Critical Mass! I'll be back next week.

[Litigation]

[Manage Newsletters]

Google Prepared to Settle Android Phone Data Transfer Class Suit

Nov. 18, 2025, 1:21 PM PST

Google LLC has resolved disagreements with Android cellphone users who sued over the tech giant's use of their cellular data that previously prevented a settlement, the parties said in a status update.

The parties expect to finalize the settlement term sheet and submit a second update by Friday, Nov. 21, according to their notice filed to the US District Court for the Northern District of California on Monday.

The Ninth Circuit revived the plaintiffs' conversion claim over the Android operating system's alleged use of their data, where the carrier doesn't distinguish between Google's usage and that of its customers

Google's unauthorized alleged use of cellular data deprived the plaintiffs of the limited resources provided by their carrier, the Ninth Circuit said last year

Google, and counsel for the plaintiffs didn't immediately respond to a request for comment

Korein Tillery LLC, McManis Faulkner, and Bartlit Beck LLP represent the plaintiffs. Cooley LLP represents Google.

The case is Taylor v. Google LLC , N.D. Cal., No. 5:20-cv-07956, status update 11/17/25 .

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Pillsbury Winthrop Latest Firm Targeted By Data Breach Suit

By **Hailey Konnath**

Law360 (November 19, 2025, 12:02 AM EST) -- Pillsbury Winthrop Shaw Pittman LLP on Tuesday was hit with a proposed class action stemming from a data breach the firm says happened in April, adding to the growing litigation firms are facing in the aftermath of cyberattacks.

Pillsbury Winthrop Shaw Pittman LLP failed to "properly secure and safeguard private information that was entrusted to it," according to a lawsuit filed Tuesday. (iStock.com/mustafaU)

The suit, filed in New York federal court, centers on a data breach the firm disclosed earlier this month. According to named plaintiff Allison Archer, thousands of individuals' personally identifiable information was exposed in the breach, which she blames on the firm's "failure to properly secure and safeguard private information that was entrusted to it."

Among information compromised in the breach were Social Security numbers, addresses, dates of birth and financial account information, Archer says.

"Defendant owed plaintiff and class members a duty to take all reasonable and necessary measures to keep the private information collected safe and secure from unauthorized access," she argues. "Defendant solicited, collected, used and derived a benefit from the private information, yet breached its duty by failing to implement or maintain adequate security practices."

Pillsbury joins an increasing number of law firms targeted by cyberattacks and subsequent related litigation. In May, the FBI issued a notice about Silent Ransom Group, a "cyber threat actor" that has been consistently targeting law firms since 2023. Law firms are **prime targets** "likely due to the highly sensitive nature of legal industry data," the FBI said at the time.

Law firms of all sizes, including BigLaw, Mid-Law and small law firms, have experienced data breaches in recent years. One study **from 2024** found that the previous year was the worst on record in terms of cyberattacks on law firms.

Pillsbury reported it was the victim of the breach Nov. 6 and that the breach happened in April. In the days following its disclosures, at least four other law firms announced they were investigating whether Pillsbury had implemented sufficient data protection protocols and whether affected individuals were entitled to compensation.

New York-based Pillsbury has launched an investigation to determine the nature and scope of the breach, according to Archer, who lives in Texas.

She says the firm made promises and representations to her and other individuals that their private information would be kept safe and confidential, and Pillsbury had a duty to use reasonable measures to protect it.

"Defendant admits that information in its system was accessed by unauthorized individuals, though it provided little information regarding how the data breach occurred," she says

Now Archer and the other proposed class members have "lost the ability to control their private information and are subject to an increased risk of identity theft," she argues although she acknowledges that the firm has "sought to minimize the damage caused by the data breach."

"Plaintiff and the class members have suffered and will continue to suffer injuries including: financial losses caused by misuse of their private information; the loss or diminished value of their private information as a result of the data breach; lost time associated with detecting and preventing identity theft; and theft of personal and financial information," Archer says.

She's alleging negligence and unjust enrichment, and she's looking to represent a class of "all persons in the United States whose private information were impacted by the data breach."

Pillsbury declined to comment, and counsel for Archer didn't immediately respond to a request for comment late Tuesday.

Last month, a California federal judge signed off on final approval of a **$1.3 million settlement** and $351,000 in attorney fees in a class action against business litigation firm Houser LLP over a 2023 data breach. That same month, insurers Cowbell Cyber Inc. and Spinnaker Insurance Co. reached a **tentative agreement** with Seattle-based Connelly Law Offices PLLC over the firm's alleged loss of more than $1 million following a data breach by hackers.

In July, Miami-headquartered national law firm Zumpano Patricios **was hit with a proposed class action** in Florida federal court accusing the firm of failing to protect sensitive information, including dates of birth and healthcare payments, that was compromised in a May data breach. And in March, Connecticut business litigation, intellectual property and employment firm Brown Paindiris & Scott LLP was accused of **waiting too long to notify current and former clients** of a breach.

Archer is represented by Mark K. Svensson and Mariya Weekes of Milberg PLLC.

Counsel information for Pillsbury wasn't immediately available Tuesday.

The case is Allison Archer v. Pillsbury Winthrop Shaw Pittman LLP, case number 1:25-cv-09613, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Steven Lerner, Matt Perez, Ben Adlin, Sarah Martinson and Aaron Keller. Editing by Kristen Becker.

News | **Legal Ethics and Attorney Discipline**

Lawyer Sanctioned—Despite Denying Knowledge of AI Use

An ethics expert offers guidance, after a federal judge suggested the problem of attorney misuse of artificial intelligence is "substantial" and "growing weekly."

November 18, 2025 at 10:31 AM By **Laura Lorek**

Credit: InfiniteFlow/Adobe Stock

A federal judge in Texas has sanctioned a Houston attorney for submitting a brief containing fake, AI-generated case citations, finding the lawyer failed to supervise her junior associate's work.

And now an ethics experts is offering best-practice tips for litigators.

U.S. Magistrate Judge Brian McKay, Northern District of Texas, Dallas division, determined attorney Bridget Davidson violated professional conduct rules by not conducting a reasonable inquiry into the brief's legal citations, after delegating the work to a newly licensed associate.

The court found Davidson negligent for accepting a draft without verifying its citations.

On Nov. 10, the court reprimanded Davidson for filing a brief with faulty case citations in *Giovonni Shelton v. Parkland Health*. Davidson did not immediately respond to a request for comment by phone or email on Monday.

"The number of judicial decisions decrying the problems associated with legal briefs prepared using GAI is substantial and growing weekly," McKay wrote. "The Court need not amplify the burgeoning chorus here. Suffice it to say that "[f]or some time, it has been well known—and well-publicized—that generative AI tools 'hallucinate' fake cases."

McKay added, "Attorneys who do less and imprudently rely on GAI tools to create legal filings diminish the legal profession. When it is discovered, their indolence slows court proceedings and saddles opposing parties and courts with the time costs and other burdens associated with detecting and responding to the errors."

The Northern District of Texas requires lawyers to disclose their use of generative AI to prepare briefs. Filing without such disclosure certifies that no part was AI-generated.

The rise of AI presents new challenges for the legal field, requiring clear policies and oversight to prevent ethical issues, according to Carol M. Langford, an attorney, professor, and legal ethics expert in Benicia, California. She co-authored Legal Ethics in the Practice of Law.

"Lawyers can't rely on any agent out there unless they check the work," Langford said. She emphasized that preparing a brief is especially critical. "In the old days, lawyers wrote the brief, did the research, found the citations, and if they screwed up, it was on them; they were supposed to know the case law," she said.

But now lawyers are trying to have their cake, using AI to make a bundle of money, even though a chatbot is doing the work. At the same time, they claim, "I thought it was right and my associate checked," Langford said.

Professional conduct rules require lawyers to supervise others who work for them. That's especially true with young associates who might be more inclined to use generative AI, often in pursuit of billable hours, Langford said. "They figure, 'I'll use it. How will my boss ever know? I'll write the brief and it'll pass muster.'"

Langford said law firms need explicit, written AI usage policies, and supervising attorneys must verify citations, especially those from junior lawyers. "Young lawyers rely more on technology than older generations do," she said.

"You can't have lawyers charging $2,000 or $3,000 or $5,000 an hour and then giving a client a piece of crap with bad citations," Langford said. "I mean, that's really going to make people lose faith in the legal industry and the courts. We have a public interest in having people respect and rely on the courts to resolve disputes because, guess what, when we don't have a place to resolve disputes, people take to fisticuffs and they take their guns out."

Warren Buffett's famous quote that "It takes 20 years to build a reputation and five minutes to ruin it" applies here, Langford said, noting that reputation depends on consistent ethics but can be undone instantly by one poor choice.

In Davidson's case, the court noted that she neither cautioned her associate nor established a policy regarding the use of generative AI. She also did not disclose that she had filed a brief with nonexistent cases, generated by AI.

Since 2023, U.S. courts have received 383 documents containing hallucinated citations, with a total of 562 worldwide, according to a database compiled by France-based lawyer Damien Charlotin. The database tracks sanctions, including warnings, fines, and other actions, against both pro se litigants and attorneys for submitting false case citations and fabricated quotes.

Generative AI is still relatively new, but the first U.S. court sanction for AI misuse was issued in the Southern District of New York in 2023, said Christina Frohock, University of Miami School of Law professor. She has a forthcoming paper in the Penn State Law Review titled "Ghosts at the Gate: A Call for Vigilance Against AI-Generated Case Hallucinations." Hallucinations are the ghosts and lawyers and judges are the gatekeepers that must keep them out of the industry, Frohock said.

"In the New York case, the court and attorneys who cited hallucinated cases admitted they didn't know ChatGPT could create hallucinations—it was a new technology at that point," Frohock said. "But it's been a couple of years now, and at this point, everyone knows or should know that these programs hallucinate. Why lawyers are still relying on AI and not checking what it tells them is a mystery to me."

Briefs with hallucinations are causing significant problems, she said. They cost time, effort, and money. "It's a huge burden on everyone involved to untangle everything."

"The deeper risk is these hallucinated cases are attacking the integrity of our legal system," Frohock said.

"If we can't trust the body of case law because it's being polluted and there are all these fake cases swimming around, I mean that attacks the integrity of the legal system and that's really the deep concern," Frohock said. "If and when these cases show up as authorities in judicial orders, then it's going to be very hard to unring that bell because they will take on a sheen of legitimacy."

Gerard Fox faces sanctions for citing unpublished cases in appeal

DJ dailyjournal.com/articles/388656-gerard-fox-faces-sanctions-for-citing-unpublished-cases-in-appeal

Jeremy T. Katz of Hall Griffin LLP

The 4th District Court of Appeal ordered an Orange County judge to impose sanctions on veteran litigator Gerard P. Fox, his client, or both, for citing unpublished opinions and other errors in appealing summary judgment in a real estate title case.

Fox had requested a continuance only three hours before appellate argument, the panel said, and when the request was denied, no one from his firm appeared. "Although given the opportunity to file an opposition to the motion for sanctions, ARC's counsel failed to do so," the panel said.

The justices affirmed summary judgment in favor of Orange Coast Title Company of Southern California, represented by Hall Griffin LLP, and granted the company's request for sanctions against appellant ARC Retail 1 LLC and/or its counsel. The justices did not find ARC's appeal was frivolous, but said, "such sanctions are appropriate to enforce court rules and 'to discourage similar conduct in the future.'"

The panel's disposition on Nov. 13 sent the case back to Orange County Superior Court Judge William Claster to determine who should bear the sanctions--ARC, its appellate counsel, or both--and how much of the $26,542.50 Orange Coast seeks should be awarded. If sanctions against counsel exceed $1,000, the trial court must notify the State Bar.

One of the practical problems Fox's use of unpublished opinions caused Hall Griffin was "we had to go spend time, money and effort going through to see what legal issues were raised and if they were still based on good case law," firm partner Jeremy T. Katz said in an interview Tuesday. "If he had just cited the underlying cases, we could have responded to those instead of creating unnecessary derivative work on our part."

Katz said there is nothing wrong with attorneys using unpublished opinions as guideposts or suggestions for arguments, but the way to avoid mistakes is to find and cite the original published cases being relied on.

"Situations like this happen when someone is trying to move too fast or working outside their normal area of expertise," Katz commented, noting he did not want to cast aspersions on opposing counsel. "I don't know if this was the situation here." The citations were to real cases, he noted, not AI hallucinations.

The unpublished opinion, written by Orange County Judge Julianne Sartain Bancroft, sitting by assignment, listed the violations. ARC's brief cited six unpublished opinions (three in the opening brief, three in reply) contrary to Rule 8.1115. Also, there were inaccurate quotations from cited authorities; references to ARC's own opposition papers rather than evidence; and incorrect volume and page numbers. *ARC Retail 1 LLC v. Orange Coast Title Co. of Southern California*, G062923 (Cal. App. 4th Dist., filed Nov. 13, 2025, unpublished). Acting Division 3 Presiding Justice Thomas A. Delaney and Justice Nate Scott concurred.

Fox did not respond to emailed and phone requests for comment on Tuesday. The 35-year trial attorney who founded Gerard Fox Law in 2009 has represented major clients including Madonna, Dow Chemical, Vivendi, Clear Channel, and the Isley Brothers. Since 2005 he has hosted "The Verdict Is In" podcast, interviewing lawyers to educate the public.

In the underlying case, Fox's client, ARC Retail 1 LLC, sued Orange Coast Title Company over a shopping-center lease transaction. According to ARC, Orange Coast failed to disclose a bank deed of trust, recorded a forged grant deed, and improperly handled documents so that ARC could not unwind the financing deal. ARC sued for breach of contract, negligence, fiduciary duty, misrepresentation, and fraud.

Orange Coast moved for summary judgment, and the trial court agreed. The court said ARC had not shown any real disputes of fact. For instance, the court concluded Orange Coast had no contract duty to reveal the prior deed of trust, noting ARC should have had "constructive notice" of it. The court also found the other claims merely restated the contract dispute.

ARC appealed, but the appellate court affirmed in full and partially granted the sanctions motion.

After the issuance of a remittitur, the next steps are a status conference in the trial court and briefing on the amount and payer of sanctions. Katz expects the matter to be wrapped up in 60 to 90 days.

Claster had previously denied Hall Griffin's motion for attorney fees in connection with post-summary judgment matters. "We cross-appealed from that," said Katz, who was joined by Kasandra C. Goldberg on the defense team. "But we voluntarily dismissed the cross-appeal to simplify the issues on appeal and to get a final judgment in favor of our client, the defendant-respondent."

#388656

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$24K sanctions weighed for late witness disclosure in BlackBerry case

DJ **dailyjournal.com**/articles/388651-24k-sanctions-weighed-for-late-witness-disclosure-in-blackberry-case

A federal jurist in San Francisco said Monday she would sanction a plaintiff for failing to timely produce witnesses to testify about her allegations of sexual harassment, discrimination and retaliation in a $10 million lawsuit against cybersecurity firm BlackBerry.

BlackBerry, once a world leader in mobile devices, denied any wrongdoing and moved for a $24,864 sanction against former executive Neelam Sandhu. It accuse her of concealing the witnesses' identities for more than a year of discovery, waiting until 11 days before fact discovery closed to produce the witnesses and offering manipulated evidence that hid their relevance.

Sandhu's attorney said it was the defendant's fault.

Sandhu filed the federal lawsuit in April 2024 accusing BlackBerry of pushing her out of her job to clear the way for newly appointed CEO John Giamatteo.

Giamatteo was dismissed, with prejudice, as a defendant in November 2024. U.S. Magistrate Judge Sallie Kim also dismissed claims of wage discrimination and a hostile work environment.

Kim denied a motion to strike the complaint, which still contains allegations of sexual harassment and BlackBerry's failure to prevent it.

Kim wrote in her order, "Defendants' position is that, if the court dismisses plaintiff's hostile workplace sexual harassment and disparate pay claims, plaintiff cannot use allegations of sexual harassment or disparate pay as support for other claims. For example, defendants argue that, as a matter of law, plaintiff cannot succeed on a claim for failure to prevent harassment if she has not properly pled any harassment."

The remaining claims include allegations of retaliation, whistleblower retaliation, wrongful termination, sex discrimination, and negligent retention.

Kim took the matter under submission but said she likely would have the plaintiff pay "the delta of what defendant incurred."

"Some costs are going to be paid by the plaintiff's side because of this issue," Kim said. "My concern is plaintiff did not disclose the witnesses in time."

Sandhu's attorney, Anthony Tartaglio of Gomerman Bourn & Associates, said at the hearing, "Monetary sanctions are not justified because we have been trying to make these depositions happen and the defendant has resisted."

In the sanctions motion filed Oct. 14, the company argues that Sandhu violated disclosure rules by failing to identify her sister and a childhood friend as key witnesses who would attest to her emotional distress. Both live in the United Kingdom.

BlackBerry says it was given only email addresses, effectively preventing it from subpoenaing or deposing the pair before discovery closed on Sept. 26.

"We're concerned about plaintiff's reliability because of what has transpired thus far," BlackBerry's attorney, Craig Jennings Lavoie, said at the hearing.

Tartaglio said the defendants' document requests were "super broad."

But Lavoie -- a Los Angeles litigation partner at Munger, Tolles & Olson LLP -- said the defendants are entitled to a wide range of Sandhu's communications to understand her "everyday mood" and ascertain if any "alternative stressors" existed around the time of the alleged sexual harassment and workplace issues.

"She's seeking $10 million," said Lavoie. "We're entitled to pretty searching testimony to rebut that assertion."

Lavoie also asked Kim to exclude both witnesses under Federal Rules of Civil Procedure Rule 37(c)(1), which automatically bars the use of information or witnesses not properly disclosed unless the failure was substantially justified or harmless.

Much of BlackBerry's motion for sanctions focuses on what it describes as a monthslong effort to obtain complete text messages from Sandhu, who initially produced only snippets -- cropped images showing her own messages but omitting the names and replies of the people she was texting.

According to the filing, several messages were cut off mid-sentence, and entire pages of conversations were missing. *Sandhu v. BlackBerry Corporation et al.*, 3:24-cv-02002-SK (N. D. Cal. filed Apr. 3, 2024).

BlackBerry says those messages were in response to its discovery requests and, in places, undercut Sandhu's claims, including her allegation that a senior executive retaliated against her after an inappropriate advance in 2021.

The company notes that in pages of chat logs discussing her interactions with the executive, Sandhu never mentioned any physical contact -- an omission BlackBerry characterizes as significant. Some messages also portrayed Sandhu as struggling with colleagues and speaking derisively about leadership.

#388651

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Firm sanctioned $1.4M for 'frivolous suit, evidence manipulation'

DJ **dailyjournal.com**/articles/388565-firm-sanctioned-1-4m-for-frivolous-suit-evidence-manipulation

U.S. District Judge Vince Chhabria

A federal judge sanctioned a law firm and its client $1.4 million for bringing a frivolous patent and false advertising claim for a medical maternity device, as well as manipulating evidence in a lawsuit where less than $1 million was at dispute.

The sanctioned law firm, Womble Bond Dickinson (US) LLP, denies manipulating any evidence and said at a sanctions hearing Friday that they plan to appeal the order.

U.S. District Judge Vince Chhabria said at the hearing he had "not seen litigation like this before."

Chhabria ordered sanctions against ALC Medical Holdings LLC and Womble Bond Dickinson, finding they pursued a patent infringement lawsuit that was baseless. He also found the parties willfully engaged in litigation "misconduct."

At Friday's hearing, Womble Bond Dickinson attorney Matthew K. Blackburn asked Chhabria for a stay in the payment proceedings, as well as a Rule 42A dismissal or consent judgment. *Raydiant Oximetry, Inc. v. ALC Medical Holdings LLC*, 3:25-cv-00392 (N.D. Cal. filed Jan. 10, 2025).

Chhabria responded, "Given the history of counsel's conduct in this case, I'm not interested in waiting to see if you can negotiate a dismissal."

Chhabria held the law firm and its client jointly and severally liable and ordered them to pay the plaintiff, Raydiant Oximetry Inc., $1,437,075 in attorney fees.

An attorney for Raydiant, Brent D. Sokol of Greenberg Traurig LLP, said at the hearing they "adamantly oppose any stay" for payment so that his client could continue its work providing medical equipment that prevents postpartum hemorrhages.

"That money is material to the client to continue its mission," said Sokol. "It will matter a lot to our client."

Chhabria set a hearing on the proposed payment stay for Thursday, saying, "I don't think it will be rocket science to decide."

The judge wrote in his order awarding sanctions that the firm's actions "bespeak not negligence, but bad faith: the willful continuation of a suit known to be meritless."

"At each step of the way, the position taken by ALC Medical and its lawyers became increasingly disconnected from the reality of the situation, in a way that would have made even SNL's Tommy Flanagan blush," Chhabria wrote.

The dispute over the device, known as DAISY, began in April 2022 when a Raydiant patent application for the device listed its employee Jennifer West as a co-inventor.

West then sent a letter to Raydiant through her counsel asserting sole ownership of the invention and was subsequently terminated by the company in March 2023. West sued Raydiant through ALC Medical, of which she is a single shareholder, in November 2024, according to court filings.

Chhabria found the accusation of patent infringement to be false. He said ALC Medical's patent requires an adjustable placement marker designed to keep the device in place during a C-section delivery, whereas Raydiant's DAISY device has a permanently affixed placement marker.

West already knew that DAISY's design included a permanently bonded marker and had previously endorsed the design as "just stunning," said Chhabria.

When Raydiant filed a claim seeking declaratory judgment of noninfringement in January, ALC Medical and its lawyers filed counterclaims for infringement and false advertising, according to court filings.

Womble Bond attorneys allegedly submitted a diagram depicting Raydiant's device but "superimposed dotted lines over the original image, giving the impression that the placement marker moves" onto the image to falsely suggest that the placement marker was moveable, the opposition filings stated.

The attorneys cited a Raydiant presentation video as the source, making it seem as though the image originated there without alteration, but "nothing in Raydiant's actual slide deck or the video of the presentation suggested that was the case," said Chhabria.

Womble Bond denied that the annotation was made in bad faith in their opposition to the motion for sanctions, asserting that the dashed lines were distinguishable. However, the court found this explanation "difficult to swallow," noting that counsel filed a black and white copy of the counterclaim and failed to include a disclaimer.

According to Chhabria's order, Raydiant allowed ALC Medical to inspect a sample DAISY device in April 2025. They confirmed that the placement marker was permanently bonded. Instead of unconditionally dropping the claims, they embarked on a "ham-fisted scramble to avoid liability for Raydiant's attorneys' fees," Chhabria wrote.

#388565

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News | **Insurance Litigation**

'Opaque Area of the Law': Horizon Blue Cross to Pay $100M Settlement

New Jersey Attorney General Matthew J. Platkin noted the cost of health care is top of mind for many Americans, and slammed Horizon for allegedly "defraud[ing] our state and overcharg[ing] use while driving up the costs of healthcare for hundreds and thousands of dedicated public servants."

November 18, 2025 at 04:21 PM By **Emily Cousins**

Horizon Blue Cross and Blue Shield building, Newark, New Jersey. Photo: Carmen Natale/ALM

Horizon Blue Cross Blue Shield of New Jersey agreed to pay $100 million to resolve allegations it systematically overcharged the state for health care, in a lawsuit filed by several whistleblowers.

The company denied wrongdoing.

This settlement was announced as insurers like Blue Cross Blue Shield face litigation for alleged failure to pay claims in the private sector and alleged violations under the False Claim Acts after entering into contracts with the government.

New Jersey Attorney General Matthew J. Platkin and McKool Smith, counsel for the relators, teamed to secure the settlement with Horizon Services Inc., which does business as Horizon Blue

Cross Blue Shield of New Jersey.

In 2019, the Division of Pensions and Benefits was looking for a third-party administrator to manage benefits for the State Health Benefits Program and the School Employee's Health Benefits Program, according to court documents.

Under the contract, the third-party administrator was required to agree to the "lesser of" provision, which meant the state could only be charged the smaller amount between a negotiated rate and the medical provider's rate. This was a new requirement that year.

The Office of the Attorney General claimed that, before Horizon bid on the new contract, the insurer determined it could not comply with the "lesser of" provision. In addition, executives at Horizon allegedly decided the insurer could retroactively issue refunds for overbilling.

In 2021, McKool Smith brought a whistleblower lawsuit on behalf of Christin Deacon, Kevin Lyons, Pat Colligan, Marc Kovar, Mark Flores and Vince Flores under the New Jersey False Claims Act. This private action remains under seal.

The state intervened with a complaint of its own on Nov. 7, 2025, with allegations based on an investigation into the relators' claims and Horizon's billing practices.

McKool Smith and the office of the attorney general worked together to reach the settlement.

Jon Corey of McKool Smith said one of the challenges is showing the government it should investigate a whistleblower's claims under the False Claims Act.

"We developed an expertise in an opaque area of the law and were able to use that to help ... educate the attorney general's office in support of the investigation," Corey said.

According to a press release from Platkins' office, the state was unable to substantiate the claims of the whistleblowers beyond the allegations the state had already begun investigating before the private lawsuit was filed.

Since the whistleblower's complaint is still sealed, Corey declined to comment on this contention from the New Jersey Attorney General.

Corey said he is pursuing other cases with the same allegations, and he hopes this $100 million settlement creates a domino effect of change.

"My expectation is that this result will lead other companies and other governments to examine their agreements for similar types of violations," Corey claimed.

Platkin noted that the cost of health care is top of mind for many Americans and slammed Horizon for allegedly "defraud[ing] our state and overcharg[ing] use while driving up the costs of healthcare for hundreds and thousands of dedicated public servants."

Horizon was represented by Craig Murphy of Windels Marx Lane & Mitterdorf. While Murphy did not respond to a request for comment, Tom Wilson, spokesperson for Horizon, said in a statement that Platkin's words "continue a disturbing pattern of significantly mischaracterizing and distorting facts to falsely allege intentional wrongdoing where none exists."

Wilson claimed Horizon tried to resolve the dispute more than four years ago through a negotiated reimbursement, like it has done in the past with the state.

"Stripped of the Attorney General's over-the-top rhetoric," Wilson claimed in the statement, "this settlement resolves a contractual dispute concerning how a relatively small number of claims should have been paid. ... By 2023, we had fully addressed the underlying issues that led to the dispute and in 2024 were again chosen through competitive bid as an administrator of [State Health Benefits Program] and [School Employee's Health Benefits Program] benefits."

The settlement agreement stipulated that Horizon must comply with the "lesser of" requirement laid out in its current contract with the state, and provisions to include various verification reports to prove Horizon is in compliance.

In addition, the state agreed to pay $12 million to each of the relators except for Christin Deacon, who was the assistant director of health benefits at the Division of Pensions and Benefits and the administrator for the 2020 contract. The state reasoned Deacon was excluded because she discovered the alleged fraudulent conduct during the course of her duties in the Division of Pensions and Benefits.

In Wilson's statement on behalf of Horizon, he also stated that within the context of more than 48 million claims during the four-and-a-half-year term of the 2020 contract, the settlement involves 0.07% of claims.

"Since its founding nearly 100 years ago, Horizon has had a long and positive history of partnering with the State and other public employers," Wilson said. "Those partnerships, built on a hard-earned foundation of trust, have provided best-in-class service and unsurpassed access to high quality health care for millions of public employees while saving them, and their employers, billions of dollars."

Report Shows Scandal-Plagued Ohio Utility Made $108 Million in Errors. It Wants Customers to Pay

clevescene.com/news/ohio-news/report-shows-scandal-plagued-ohio-utility-made-108-million-in-errors-it-wants-customers-to-pay

Marty Schladen, The Ohio Capital Journal November 18, 2025

As it was in the midst of financing a $61 million bribery scheme, Akron-based FirstEnergy also improperly claimed millions in construction expenses, according to a new report.

The company classified lobbying and donations as construction expenses at the same time that it funded the bribery scandal, although it's not clear if any of that money was paid in bribes.

Now that $108 million in such errors have been found, the utility is asking Ohio regulators for permission to charge its customers for them.

Otherwise, they'll be billed to FirstEnergy shareholders — which prominently include the company's own executives.

Corruption surcharge

Ohioans are already frustrated with skyrocketing utility costs.

Due in part to AI-driven demand for data centers, monthly utility bills were up $32 on average this summer compared to 10 years ago, Signal Cleveland reported.

But Ohio customers also have faced a sizable surcharge for corruption over the past decade.

In 2023, former Ohio House Speaker Larry Householder, R-Glenford, was sentenced to 20 years in federal prison for his role in a conspiracy in which FirstEnergy paid $61 million in bribes to get a $1.3 billion ratepayer bailout.

Former FirstEnergy CEO Chuck Jones and Vice President Michael Dowling face felony charges in the same scandal.

Most of the bailout money was intended to prop up money-losing nuclear plants owned by FirstEnergy. It was repealed after the FBI made its first arrests.

But it wasn't until five years later that the Republican-led legislature repealed a coal bailout benefitting a group of Ohio utilities that was part of the same 2019 legislation.

By that time, ratepayers had already been forced to pay more than $500 million that won't be refunded.

That's all in addition to $1.5 billion that electric utilities have been allowed to collect since 2009 in charges that the Ohio Supreme Court later deemed to be illegal.

But because the Public Utilities Commission of Ohio greenlit the charges without creating a refund mechanism, customers won't get that back either.

Underwriting incompetence

Now a new report by the Energy & Policy Institute has flagged another way FirstEnergy might be trying to profit improperly.

A FirstEnergy spokeswoman didn't respond to calls and emails requesting comment for this story.

As revealed in court documents and testimony in the fallout from the scandal, by 2016, company leaders' poor business decisions had made them desperate.

They were heavily invested in aging coal and nuclear plants, fracking had made gas-fired electricity generation much cheaper, and they couldn't compete.

So they went looking for a way to force customers to bail them out.

FirstEnergy started courting Householder at the World Series in Cleveland that October, and by flying him on the corporate jet to Donald Trump's first inauguration the following January.

Using FirstEnergy money, Householder and his allies were elected, he became Ohio House speaker at the start of 2019, and he shepherded the bailout through the legislature later that year.

The FBI arrested Householder and four others in July 2020. Two of his codefendants later died by suicide.

Construction? Or lobbying?

Auditors later found that concurrent with the scheme, FirstEnergy had engaged in another practice that — regardless of whether it was intentional — worked to the company's financial advantage.

A 2022 audit by the Federal Energy Regulatory Commission found that from 2015 to 2021, FirstEnergy incorrectly classified millions spent on things like lobbying, advertising, and political donations as construction costs.

That's important, the Energy and Policy Institute Report said, because utilities are allowed to collect a profit from ratepayers on their construction investments.

They're not allowed to collect such profits for money they spend on lobbying and political donations.

"Utilities are supposed to fund lobbying and donations with shareholder money because these expenditures primarily benefit shareholders and do not benefit ratepayers," the report said.

However, the federal audit found lots of claimed construction expenses that had almost nothing to do with actual construction.

"For example, audit staff found that some employees spent 5% or less of their time performing work that supported the FirstEnergy subsidiaries' construction operations, but had more than 90% of their labor and related costs capitalized as a cost of construction," the audit said.

Construction? Or bribes?

Some of those misclassified dollars might have been used in the bribery scandal.

The Energy and Policy Institute report cited a 2024 utilities commission audit. It said that FirstEnergy claimed as a construction expense $2.5 million that was part of a $4.3 million bribe paid to Sam Randazzo.

Randazzo played a pivotal role in the bribery scandal, starting shortly after the Nov. 6, 2018 elections.

On Dec. 18, 2018, FirstEnergy execs Jones and Dowling met with Gov.-elect Mike DeWine and Lt. Gov.-elect (and now-U.S. Sen.) Jon Husted at the Columbus Athletic Club.

They discussed whether the executives wanted Randazzo to regulate their massive electric utility, according to a state indictment.

Jones and Dowling then drove about a mile to Randazzo's German Village condo and negotiated the $4.3 million bribe, the indictment said.

DeWine appointed Randazzo to the state's top regulatory spot a few weeks later.

It was a perch from which Randazzo helped write the corrupt energy bill that FirstEnergy paid huge bribes for.

The $2.5 million part of the bribe for the future regulatory chief was itself part of $6.45 million that FirstEnergy paid to a group controlled by Randazzo.

The company then classified the money as a construction expense, the Energy and Policy Institute Report said.

After being arrested, Randazzo died by suicide in April 2024.

Dunning ratepayers, not stockholders

As a consequence of the federal audit's findings, FirstEnergy reclassified $108 million in claimed construction expenses as "miscellaneous deferred debits."

Now, even though some of the funds were apparently used to improperly profit from ratepayers, FirstEnergy is asking to bill those same customers for the whole shebang.

It's part of a request to the utility commission to pass on $190 million in additional costs to ratepayers.

In its annual 2024 10-K report to the U.S. Securities and Exchange Commission, FirstEnergy said it "has accepted" the findings of the 2022 federal audit. But it added that it hopes the company's owners won't have to shoulder them.

If the Public Utilities Commission doesn't allow it to bill ratepayers for charges that the audit said were improperly accounted for, it would "have an adverse impact on FirstEnergy's financial condition," the filing said.

In other words, shareholders instead of customers would be left holding the bag. And that would cost the FirstEnergy brass, as opposed to their ratepayers, who have no choice about whether to use the company's distribution system.

For example, total compensation for FirstEnergy CEO Brian X. Tierney was $26.5 million in 2023, Axios reported.

To give an idea just how much that is, assume Tierney works 70 hours a week. That would mean he was paid $7,280 an hour, or 219 times the average hourly wage of his Ohio customers.

And a huge portion of Tierney's 2023 pay — more than $22 million — was in the form of company stock, which would take a hit if something "had an adverse impact on FirstEnergy's financial condition."

The state's official consumer advocate, the Office of Consumers Counsel is urging the public utilities commission to make FirstEnergy's owners pay for errors made by the people they pick to run the company.

"Consumers shouldn't pay for FirstEnergy's mistakes. Both the independent auditor and OCC's expert agree that FirstEnergy's $108 million 'fix' for its own error was improper," the agency's head, Maureen Willis, said in an email.

"FirstEnergy caused the problem — now it's trying to make consumers clean it up. The record points the other way: FirstEnergy consumers deserve a rate cut, not another hike.

Willis added, "The PUCO should stand with consumers, not FirstEnergy."

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Matt Levine’s Money Stuff: SEC Opposes Shareholder Proposals

Nov. 18, 2025, 11:29 AM PST

Shareholder proposals

When I was starting out as a young corporate lawyer, I worked on several 14a-8 shareholder proposals. I did this because I was very junior and nobody else wanted them. Here is how 14a-8 proposals work:

1. US public companies have annual meetings where shareholders can vote on various things, mainly electing the board of directors and approving executive pay. The companies send out proxy statements to the shareholders, explaining the stuff that they are voting on; the shareholders vote by tearing out the proxy card at the back of the proxy statement, checking the box for “Yes” or “No” on each question, and mailing it back to the company.
2. Historically, shareholders can participate in this process not only by *voting* on the company’s proposals, but also by submitting proposals of their own. A shareholder might say “hey I think the company should do ______,” submit a proposal to the company (“Resolved, the shareholders think the company should do ______”), submit a little supporting statement, and if all goes well the company will include her proposal in the proxy statement for shareholders to vote on. The company can include its own statement along with the proposal, often of the form “Here’s why you should vote *against* her proposal,” but the shareholders get to vote on it. The US Securities and Exchange Commission rule regulating these proposals is Rule 14a-8.
3. (Note that this is different from a “proxy fight.” In a proxy fight, an activist sends out its own proxy materials to shareholders, at significant expense, trying to get them to, for instance, vote for a competing slate of board candidates. In Rule 14a-8 proposals, the activist gets to put her proposal in the company’s own proxy statement. Generally speaking big activist hedge funds wage proxy fights; small social activist shareholders do 14a-8 proposals.)
4. These proposals can’t *do* much. In particular, they are not binding: They are just recommendations to the board of directors, and the board is free to ignore them even if the shareholders all vote for them.
5. Rule 14a-8 also has other limits on what a proposal can say, and the company does not have to include a proposal in its proxy if the proposal violates those rules. The proposal and supporting statement can’t contain any false information. It can’t be about a shareholder’s “personal claim or grievance.” It can’t be too trivial: If it “relates to operations which account for less than 5 percent of the company’s total assets … and for less than 5

percent of its net earnings and gross sales," the company can leave it out of the proxy. But it can't be *too* business-y either: If it "deals with a matter relating to the company's ordinary business operations," the company can leave it out. And the company can leave it out if "the company has already substantially implemented the proposal," or if it "substantially duplicates" another shareholder proposal in the same proxy, or if it "addresses substantially the same subject matter as a proposal" from a previous proxy that didn't get much shareholder support.

6. In practice, this means that a lot of shareholder 14a-8 proposals tend to relate to environmental, social or governance topics. "The company should write a report about reducing its fossil fuel use," or "about separating the jobs of chief executive officer and board chair," or "increasing diversity on its board of directors," or something like that.

7. Companies generally don't like these proposals. If a shareholder submits a proposal saying "the company should write a report on its fossil fuel use," and the board replies "no we shouldn't," and a majority — or even a substantial minority — of shareholders votes for the proposal, that is embarrassing; it suggests that the company is not in tune with its shareholders. Even just replying to the proposal — writing a paragraph in the proxy saying "actually we don't need to write this report" — is a little embarrassing. The company would prefer to just ignore the proposal, to not print it in the proxy statement.

8. And so in practice companies will often try to omit the proposals from their proxy statements, claiming that they violate some part of Rule 14a-8.

9. But the rule is a little vague, and it is often not clear if a proposal violates it. So companies commonly ask the SEC if they can exclude a proposal. The way this works is that the company writes a letter to the SEC explaining why it thinks the proposal violates Rule 14a-8, and the SEC sends back a letter either agreeing (so the company can omit the proposal) or disagreeing (so the company has to include the proposal). For boring legalistic reasons the SEC never actually *agrees* to anything: If it agrees with the company, instead of saying "we agree that you can omit this proposal," it says "we will not recommend taking any enforcement action against you if you omit this proposal." Thus the SEC's response is called a "no-action letter." The no-action letters are public; you can read them here. A sample — the first alphabetically — is this letter from the SEC telling AbbVie Inc. to go ahead and omit a shareholder proposal from its proxy statement asking it to "issue a report … assessing how the Company's advertisement and promotion of puberty blockers impacts AbbVie's legal and reputational risks." That sort of thing.

10. Some sad law firm associate has to write these letters to the SEC explaining why the shareholder proposal is bad.

Does this stuff matter? I tend to believe that shareholder voting is largely symbolic and less important than people think, and that view is probably informed by my experience of writing dull 14a-8 no-action letter requests. This stuff doesn't matter *much*. But it has some symbolic importance. The standard theory is:

Shareholder proposals, and the level of support they command from big asset managers, tell you something about the ESG interests of investors. If lots of companies get proposals saying "write a report on fossil fuels," and those proposals all get 60% shareholder support, then that tells you that investors care a lot about fossil fuels. Companies will try to minimize their fossil fuel use, regulators will pay attention, etc., even if the actual nonbinding votes to issue reports don't specifically accomplish much.

When a company *loses* a vote — it says "no we shouldn't write a report" and shareholders vote for it anyway — that tells you something broader about shareholder dissatisfaction. If 60% of shareholders are voting against management's recommendation, that's probably not just because they want to read a report about fossil fuels; it suggests that they have lost confidence in management more generally. That is a sign to activist hedge funds that perhaps they should mount a proxy fight and try to take over the board, or to potential buyers that perhaps they should mount a hostile takeover bid. If management has lost the confidence of shareholders, it might be time for new management.

So companies don't like them, not so much for their substance, but for the risk of creating or highlighting disagreements with shareholders. We talked last year about a lawsuit that Exxon Mobil brought against two shareholders who submitted nonbinding environmental proposals under Rule 14a-8. That was an unusual and drastic response: Normally, a company would just submit a no-action request to the SEC if it wanted to omit the proposals. But Exxon didn't trust the SEC. I wrote:

Basically Exxon's complaint here is that activist shareholders submit a lot of environmental proposals that other shareholders don't support, Exxon considers them to be a nuisance, but *the SEC disagrees*. But the SEC's views are not the law. So Exxon has gone to court to find a friendly judge to rule that it can omit these proposals, because a court ruling *is* the law: If a court rules that Exxon can omit environmental proposals, then it (and other companies) can keep doing that forever, without asking the SEC for permission.

This worked out fine for Exxon. But also, that was the previous SEC. The current SEC has the opposite view: It also considers shareholder proposals to be a nuisance. And so yesterday it might have ended them, putting out this statement:

The Division of Corporation Finance … has determined to not respond to no-action requests for, and express no views on, companies' intended reliance on any basis for exclusion of shareholder proposals under Rule 14a-8. ...

Pursuant to Rule 14a-8(j), companies that intend to exclude shareholder proposals from their proxy materials must still notify the Commission and proponents no later than 80 calendar days before filing a definitive proxy statement. We remind companies and proponents, however, that this requirement is informational only, there is no requirement that companies seek the staff's views regarding their intended exclusion of a proposal, and no response from the staff is required.

Essentially, the process is the same as before — a shareholder submits a proposal, the company grumbles, it hires a lawyer, and the lawyer sends a letter to the SEC saying "we think we can omit this proposal" — except that now the response is automatic: The SEC will, *in every case*, "respond with a letter indicating that, based solely on the company's or counsel's representation, the Division will not object if the company omits the proposal from its proxy materials." The SEC is no longer in the business of objecting when companies omit shareholder proposals.

That doesn't mean the company is right: The company still has to follow Rule 14a-8, and if it omits a proposal that it shouldn't, then … the shareholders can sue? In practice, though, it hardly seems worth hiring lawyers to sue companies for excluding your proposal to write a report about fossil fuels or puberty blockers. It's not clear what the equilibrium us. Michael Levin writes:

[SEC Chair Paul] Atkins clearly seeks to assure companies they can exclude proposals with little fear of what the SEC will do to them. Yet his statement will probably lead to less certainty, not more, among companies and activists. Sure, a number of smaller proponents or those with less popular ideas will decline to even submit their proposals, which undoubtedly is part of the goal here.

More experienced proponents with greater resources might consider tactics like [suing or waging their own proxy fights], leading to greater attention and cost. Those proponents might escalate even further, to binding bylaw amendments, withhold campaigns, and proxy contests.

We expect only a few companies to get aggressive with these exclusions. … We guess many companies will grudgingly accept the certainty of a vote on a couple of ESG proposals that will almost certainly fail, based on recent proposal votes, to avoid the threat of worse.

So it is not clear whether the SEC has actually gotten rid of shareholder proposals with this new approach; it's possible that shareholders will keep submitting them and companies will be afraid to exclude them. But it does seem clear that the SEC *wants* to get rid of shareholder proposals: Companies think they are a nuisance, and now the SEC thinks so too.

GSEs

Right now, the US government controls Fannie Mae and Freddie Mac: The two "government-sponsored enterprises" that dominate the US mortgage market are in conservatorship and run by the government, and the government also effectively *owns* them. The ownership, though, is a bit tricky. The US Treasury owns two bits of the GSEs' capital structures:

1. It effectively owns 79.9% of their common stock (in the form of warrants). The other 20.1% trades in the market and is owned by various public shareholders, including notably Bill Ackman's Pershing Square funds.
2. It owns an unusual instrument called "senior preferred stock." The senior preferred stock (SPS) is senior to the common stock — it is effectively like debt — and it keeps growing. The government loaned the GSEs a total of about $191 billion ($119.7 billion to Fannie Mae, $71.6 billion to Freddie) when it bailed them out after the 2008 financial crisis, in exchange for SPS which carried a 10% interest rate. But over the years, the terms of the SPS were amended, so that now effectively 100% of any increase in the GSEs' net worth goes to increase the amount they owe the government. Fannie and Freddie have by now paid the Treasury back considerably more than the $119.7 billion and $71.6 billion that they borrowed, but their debt has *increased*; they now owe $227 billion and $140.2 billion, respectively, and those numbers increase each quarter. That is: Fannie and Freddie owe the government $367 billion, which is considerably more than their net worth, *and* 100% of their

profits of Fannie and Freddie go to increasing the amount they owe the government. So the common stock has essentially no interest in their future profits and should be worth zero.

The common stock is not worth zero (Fannie Mae closed at $9.35 yesterday, Freddie Mac at $8.33), because nobody believes Point 2 above. That is what the terms of the Fannie and Freddie senior preferred stock *say*, but many people dislike it. In particular, the terms of the SPS were amended by the Obama administration in a way that was very bad for shareholders and that seems to be quite unpopular in the Trump administration. There has been somewhat vague talk, for many years, about undoing it.

That talk has, however, been wrapped up in more complicated and even vaguer talk about what to do with Fannie and Freddie generally. There is a widespread assumption that *something* has to be done. Fannie and Freddie have been in conservatorship for 17 years now. Eventually, people assume, that must end. Some stuff has to happen. The stuff that has to happen is, approximately:

1. The conservatorship has to end. Fannie and Freddie have to go back to being somewhat regular companies, run by boards of directors answerable to their owners, though they will be heavily regulated to make sure they are well capitalized and serving their social purpose (making mortgages cheap).
2. The capital structure has to get cleaned up. If Fannie and Freddie become normal companies, they can't have this ever-increasing debt to the government. Something has to be done to give them a more normal capital structure; the residual claimants will have to be shareholders.
3. There will probably have to be some sort of public offering. Right now, depending how you count, Fannie and Freddie are probably undercapitalized: They back trillions of dollars of mortgages with relatively little equity. So they would have to raise more money to get out from government conservatorship. And the US Treasury owns most of the value of these companies, and might want to sell shares in any offering. There has been talk of a $30 billion public offering as soon as this year.

We have talked about all of this a few times this year. (In particular I went through the structures and history in detail in January, and I am being rather brisk here) A general point that I have made is that all of the details are very much up for debate: The conservatorship will end, the capital structure will get more normal, and some stock will be sold, but *how*?

In particular, as a legal matter, the Treasury can drive as hard a bargain as it wants. The key piece here really is cleaning up the capital structure by getting rid of Treasury's ever-growing senior preferred stock. Here are some ways that might happen:

- Treasury might say "okay you owe us $367 billion under the current terms of the SPS, so pay us $367 billion and we'll call it even. And then you can go public with a normal capital structure (and we'll own 79.9% of the stock when you do)." And then Fannie and Freddie would have to raise $367 billion from investors just to pay back Treasury, which would dilute their *current* common stock down to roughly nothing.
- Treasury might say "okay you borrowed $191 billion and have repaid that with interest, the $367 billion stuff was just an Obama-era mistake, we're going to call it even right now. You don't have to pay us any more; you

can go public with a normal capital structure right now, and we'll own 79.9% of the stock when you do." And then Fannie and Freddie's *current* common stock would be quite valuable.
Any number between $0 and $367 billion. "Why don't you pay us back another $50 billion and we'll call it even," or whatever.

It is not quite true that this choice is zero-sum, but there is an obvious tradeoff here. Every dollar that the Treasury extracts for itself comes from the current Fannie and Freddie shareholders; every dollar that the shareholders get in a sense comes out of Treasury's claim. (Not entirely, though, because treating the shareholders well arguably maximizes the market value of the companies and thus of Treasury's 79.9% stake.)

Crudely speaking everyone assumes that, if the Trump administration takes Fannie and Freddie public, it will land somewhere closer to the "we're calling it even right now" side of things, and the existing public shareholders — many of whom bought their stock back when it seemed worthless — will do extremely well. But of course things were different in different administrations, and there's no guarantee that Trump will actually get around to it. People have been talking about Fannie and Freddie exiting conservatorship for more than a decade; what's the rush?

Today Bill Ackman gave a clever presentation on what the government should do with Fannie and Freddie. Bloomberg's Katherine Burton reports:

Billionaire Bill Ackman said now isn't the right time for the Treasury to sell its shares of the government-sponsored mortgage giants known as Fannie Mae and Freddie Mac.

The Pershing Square Capital Management founder held a presentation on X Tuesday that said it "will take significant time" for the government to "deliberately execute" an initial public offering of its shares of Federal National Mortgage Association and Federal Home Loan Mortgage Corp. He also laid out a series of moves — including re-listing on the New York Stock Exchange — that could help Trump take some action sooner.

Here is the presentation. The essential thesis is: Look, sure, whatever, there are lots of details to figure out about how they can exit from conservatorship, how to recapitalize them and how to structure and execute a public stock offering. But *right now*, the government could do something much quicker and simpler and easier. It could just go ahead and declare that the senior preferred stock has already been paid back, and make $367 billion of liabilities disappear from Fannie's and Freddie's books. ("Account for the Repayment of the SPS," says the presentation.) That would, uh, be good for Bill Ackman? Like:

1. If Fannie's and Freddie's profits go back to accruing to its common shareholders, instead of to the government, that will be good for their common shareholders. Right now the shares trade based on the assumption that the profits *might eventually* go back to the shareholders, but there is a lot of uncertainty. Just eliminating the SPS will resolve that uncertainty and increase the expected cash flows to the common stock, some of which Pershing Square owns.

2. Then eventually Fannie and Freddie could do stock offerings and exit conservatorship. But that could take years, and might happen in a less friendly administration. Getting rid of the government's senior preferred stock *now* removes a lot of risk from the common stock: Presumably a future less friendly administration couldn't get it *back*.

I mean, the argument is not "this would be good for Bill Ackman." The argument, which I think is plausible, is that zeroing the government's preferred stock is also a necessary first step to eventually returning Fannie and Freddie to investors. "Investors would either assign a very low valuation multiple to a company whose prior shareholders were wiped out by the government without just compensation," says the presentation (slide 23), "or more likely choose not to invest. We believe an SPS conversion would severely impair the value of Treasury's stakes in Fannie and Freddie." Because the government did not zero Fannie and Freddie's shareholders in 2008, when it took them over, it can't zero them now. The simplest thing for the government to do with the GSEs, and also the most useful for Bill Ackman, is to write off the $367 billion that Fannie and Freddie owe to the Treasury. Everything else can wait.

***k*-beauty contests**

We talked last week about South Korean retail investors logging on at midnight to speculate on US meme stocks. I wrote: "It is strange to think that frictionless global markets would cause stock prices to be set by the *least* rational investors but I suppose that is the working theory here." I guess I was sort of kidding. Like, my intuitive model was that if every investor has frictionless electronic access to every financial asset, then if prices became irrational, smart well-capitalized arbitrageurs could quickly step in to correct them.

But what is "irrational," really? If the value of its stock is its expected future cash flows then, fine, whatever, but if the value of a stock is the maximum amount that a retail investor will pay for it, then maybe the arbitrageurs should push prices *up*. In that vein, I got an email from Eric Schoenberg at Columbia:

I am working on just such a model where stock prices are set by the least rational individuals based on a theory called *k*-level reasoning.

The basic model was developed to explain behavior in the beauty contest game inspired by Keynes where a large number of players each guess a number between 0 and 100 with the goal of being closest to 2/3 the average of all guesses. If the most rational players determined the outcome of this game the winning number would be 0, the unique Nash Equilibrium, but in reality the winning guess is always much higher (20 or so is a pretty good guess). The descriptive theory offered to explain this is that some people are Level 0 players who guess randomly (average guess of 50), and some are Level 1 players who assume other players are Level 0 and guess 33 (2/3 of 50), while Level 2 players assume other players are Level 1 and guess 22. The point is that nobody in this model cares that the "correct number" is 0, they are simply responding to their beliefs about what people slightly less thoughtful than themselves will do. In other words, the least rational player is the driving force in this game, and I believe a similar argument can be made for financial markets.

I say from time to time that someone should write a textbook of meme finance. That's kind of a joke, though: How do you make meme finance rigorous and mathematically tractable? Maybe like this.

690,420

On the other hand. One chapter of the meme finance textbook will be "what numbers to choose for stuff," and it will be extremely nonrigorous and stupid. Like, if you are the chief executive officer of a public company, and you want to signal confidence in the company's prospects by buying some stock, how much stock should you buy? Traditional finance does not offer a right answer, per se, but you could come up with various sensible-sounding amounts. (I don't know, "10% of your net worth" or "1% of the stock" or "one day's trading volume" or "$1 million" or whatever.)

But the meme finance textbook will tell you: The amount of shares that you buy has to have a "420" in it, or a "69," or ideally both. Those are the meme finance numbers and they have magic powers. If you do stuff in units of 69 and 420 then your stock will go up. I do not make the rules; I merely document them. Last week CG Oncology Inc. — a biopharma company making a bladder cancer drug! — announced that its chairman and CEO will be buying 690,420 shares of stock. Sure he will! Why not! Verity Data published a note on the announcement, saying:

It is certainly possible that he arrived at that number of shares for some innocuous reason, but the use of "420" and "69" in the same number is something we have seen from the likes of Elon Musk and meme stocks and may suggest he is looking to attract the attention of eagle-eyed retail investors.

Yeah. Well. Eventually investment bankers are going to come in to meet with companies with ideas for how to get their stock prices up, and the investment bankers will heave a long sigh and say "you have to do something with 69 and 420," and the executives will heave a long sigh and say "really," and the investment bankers will say "yes," and they'll all stare at each other dead-eyed for a minute, and then the company will wearily announce a new $420.69 million bond deal and investors on Reddit will cheer and the stock will go up.

Abstract Birkin space

I wrote yesterday about a hedge fund that trades Hermès bags. A reader emailed: "Can I just say how giddy it makes me that we're one step closer to trading designer goods via warehouse receipts? And inevitably finding out one day that a bin supposedly full of luxury handbags is in fact full of handbag-painted rocks?" That is of course a joke about " abstract commodity space," and about the time that JPMorgan owned some nickel that turned out to actually be rocks.

I should say though that it is also more or less the theory of nonfungible tokens? Remember NFTs? Like, you traded receipts for exclusive singular luxury objects, but the objects were not actually tied to the receipts and in many cases were lit on fire; the receipts were what traded for millions of dollars. By 2030 nobody will believe what crypto was like in 2021, but it was nuts.

Elsewhere

I was recently a guest on two fun podcasts that I want to tell you about. One is Michael Lewis's podcast revisiting *The Big Short* 15 years after it came out. You can listen to that here. The other is a Planet Money+ episode with Mary Childs and Kenny Malone in which we discuss my love for the movie *Margin Call.* You can listen to that here.

Things happen

Widespread Cloudflare Outage Takes Down ChatGPT, X, Others. Microsoft, Nvidia to Invest as Much as $15 Billion in Anthropic. OpenAI strikes deal with Intuit to plug personal financial data into ChatGPT. Elliott Takes Large Stake in Barrick as Gold Miner Lags Peers. U.S. Investigators Probe Exec Facing Fraud Allegations From BlackRock's HPS. (Earlier.) UBS O'Connor Loses Private Credit Chiefs Before Cantor Deal. Hedge Funds Reap Windfalls on Argentina Bets as Trump Steps In. The 'JPMorgan Boys' Behind the U.S. Bailout for Argentina. Banco Master CEO Arrested as Central Bank Moves to Liquidate Firm. A $100,000 Robot Dog Is Becoming Standard in Policing — and Raising Ethical Alarms. Panera Plans to Spend Millions on Better Sandwiches and Nicer Stores. "Raising Cane's managers make the sauce from unidentified ingredients that are shipped to their locations in bags of unknown quantities." Baby Shark IPO.

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1. This is approximately true in an analogue world. Now everyone votes by clicking buttons in some intermediary's electronic system, but it doesn't hurt to imagine that they cut out the proxy card and mail it back.
2. This is not actually a requirement of the rule, but it is true in practice. In a note to paragraph (i)(1) of the rule, the SEC explains: "Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law."
3. See slide 22 of Bill Ackman's presentation today: "The Treasury has earned an 11.6% IRR from the $301bn of dividends received from the GSEs, ~$25bn more than what was owed under the original 10% dividend rate."
4. The numbers there are the liquidation preferences of the preferred stocks; see page 51 of the Fannie Mae 10-Q and page 2 of the Freddie Mac 10-Q.
5. I'm trying to put reasonable maxima and minima here, but you could imagine saying "you owe us $367 billion but the perpetually-increasing notional amount also has some value, so pay us like $450 billion and we'll call it even." That is, the $367 billion is not *actually* a *cap* on what Treasury might demand for the SPS.
6. In fact, someone once tried something like this specifically with Hermès Birkin bags, and got sued.

SEC Enforcement, Penalties Fall After Leadership Change, Report Finds

The U.S. Securities and Exchange Commission under former Chair Gary Gensler took 52 enforcement actions between Oct. 1, 2024, and Trump's inauguration, the highest amount for an outgoing chair since 2013.

November 18, 2025 at 05:21 PM By Dan Novak

U.S. Securities and Exchange Commission building in Washington, D.C. Photo: Diego M. Radzinschi/ALM

The U.S. Securities and Exchange Commission under the Trump administration brought just four enforcement actions in fiscal year 2025, the lowest amount initiated for a new SEC administration since at least 2013, a new study found.

That figure amounted to 7% of all enforcement actions taken in the 2025 fiscal year, which began Oct. 1, 2024—almost three months before President Donald Trump took office on Jan. 20, according to the study released Tuesday by Cornerstone Research and the New York University Pollack Center for Law & Business.

The SEC under former Chair Gary Gensler took 52 enforcement actions between Oct. 1, 2024, and Trump's inauguration, the highest amount for an outgoing chair since 2013. The commission took

23 enforcement actions in the January of Gensler's departure, the most of any January on record, the report found.

The study analyzed data through NYU and Cornerstone's joint Securities Enforcement Empirical Database, which has been tracking SEC enforcement actions since 2009.

NYU professor and study co-author Stephen Choi said generally fewer actions are taken in the first year of a new SEC administration, as incoming enforcement directors and staff take time to get up to speed and establish their priorities.

"What's different here is the number of enforcement actions from when the old chair steps down to the end of the fiscal year," said Choi, co-director of the Pollack center. "This transition period—it is quite a bit lower in this particular transition year than other transition years."

The report also found that fiscal year 2025, which ended Sept. 30, was an unusually low year for monetary settlements.

The commission collected $808 million in penalties in 2025, the lowest of any fiscal year since 2012 and the second lowest since 2010. That is also less than half of the fiscal year 2016 to 2024 average total monetary settlement of $1.9 billion, according to the study.

One reason for the low amount of settlements is the lack of disgorgement claims, which was also a record low, Choi said. The smaller disgorgement amount could be due to a circuit split over whether the SEC can collect disgorgement absent proof investors suffered pecuniary harm, he noted.

Still, "it's hard to know exactly what's going on here," with the large reduction in monetary settlements, Choi added. "It could be a mix of cases—different kinds of cases result in different kinds of penalties. Some cases result in just a cease-and-desist order. Others will result in civil penalties."

For fiscal year 2026, Choi said he will be tracking the SEC's crypto enforcement, as well as whether there is a shift of focus toward disclosure and reporting compliance and away from off-channel communications, which Gensler emphasized.

On Monday, the SEC's Division of Examinations released its priorities for the 2026 fiscal year, giving firms an idea of where to focus their compliance efforts. The division said it would focus on fiduciary duty and standards of conduct and will prioritize examinations of newly registered advisers, among other areas.

The list of priorities did not include a section on digital assets as it has in years past.

SEC Enforcement Actions Decline, But Foreign Cos. Should Remain Vigilant

dandodiary.com/2025/11/articles/securities-enforcement/sec-enforcement-actions-decline-but-foreign-cos-should-remain-vigilant

Kevin LaCroix November 18, 2025

In the 2025 fiscal year (ended September 30, 2025), the SEC's enforcement activity, as measured by the number of stand-alone enforcement actions, was at its lowest level in ten years. While the decline was reflected across many categories of SEC enforcement, there were certain specific areas – such as cases involving insider trading and market manipulation – where SEC activity actually *increased*. And notwithstanding the overall decline in SEC enforcement activity, there are signs to suggest that foreign companies listed on U.S. exchanges should be prepared heightened SEC scrutiny and enforcement activity, as discussed below.

According to a November 12, 2025, memo from the Covington law firm (here), the SEC brought 313 stand-alone enforcement actions in FY 2025, compared to 431 in FY 2024, representing a decline 118 actions (27.3%). The SEC's enforcement activity in FY25 was, according to the law firm memo, at its "lowest level in ten years."

Among the reasons for the apparent decline, the law firm memo suggests, is the loss of approximately one-fifth of the SEC's work force. Since the start of 2025, about 1,300 employees have left the agency (many due to early retirements or buyouts), for a headcount reduction from 5,400 to 4,100 (representing a decline of 24%).

The year-to-year decline in the number of enforcement actions also reflects a shift in priorities due to the change in administration following President Trump's January 2025 inauguration. Among other things, the agency has taken a different approach to cryptocurrency under its current Chair, Paul Atkins. The FY 2025 enforcement actions also reflect a decrease in the number of actions in nearly every area, with the exception that it now appears that the SEC under Atkins is, as the law firm memo puts it, "what it sees as flagrant fraud and individual wrongdoing." In that regard, the number of enforcement actions relating to insider trading and market manipulation actually *increased* in FY25 compared to FY24.

While the agency's shifting priorities and reduced enforcement activity might be welcomed by many companies, there are signs that at least one category of companies in particular should remain vigilant. According to a November 14, 2025, *Law360* article from the Cooley law firm (here), there are signs based on recent SEC activity that foreign companies participating in the U.S. capital markets "should anticipate heightened SEC oversight and enforcement in coming years."

In support of its thesis that foreign companies may experience increased scrutiny, the Cooley law firm memo cites four recent developments.

First, in a series of orders beginning in September, the SEC suspended the trading in the securities of ten foreign-based issuers listed on the Nasdaq suspected of market manipulation. The ten companies are all Asia-based, with four headquartered in Hong Kong, three in Singapore, one in Malaysia, and one in Japan. The memo quotes the SEC suspension orders reference to "unknown persons" using social media to "artificially inflate the price and trading volume" of the affected securities. The law firm memo notes that the SEC orders' reference to "unknown persons" makes it unclear whether the activity allegedly was conducted by anyone connected to the company. The memo notes that the uptick in suspensions is particularly noteworthy given the "relative scarcity" of suspensions in recent years (for example, there were only two suspensions in all of FY24).

Second, in June the SEC published a concept release soliciting public comment on potential changes to the definition of a foreign private issuer. The law firm memo notes that the SEC's concept release, as well as comments made by SEC officials, signal that the commission is considering narrowing the eligibility criteria for FPIs, potentially making it harder for FPIs to benefit from such accommodations. The concept release notes that as a result of a population shift in foreign companies current FPIs are "not subject to meaningful disclosure requirements and oversight outside the United States," resulting in less information for U.S. investors. Were the proposed changes to be implemented, foreign companies "likely would face more frequent and expansive disclosure obligations, potentially leading to higher noncompliance and enforcement risks."

Third, according to the memo, a recent enforcement action "further underscores the SEC's scrutiny of non-U.S. market participants." The action, in which the SEC announced settled charges on August 6, 2025, involves MUFG Securities EMEA, a U.K.-based security swap dealer. The firm had elected, as permitted under SEC rules, to opt, as permitted, for compliance with its home country recordkeeping and financial reporting requirements. However, the SEC alleged, the firm failed to comply with those requirements, obliging the company to comply with SEC requirements, which the firm failed to do. To settle the charges, the firm agreed to pay $9.8 million and to undertake a comprehensive review of its compliance program. The law firm memo notes that the enforcement action underscores the need for foreign companies opting to elect to follow its home country compliance requirements must be diligent in ensuring compliance or follow the equivalent SEC requirements.

Fourth, and perhaps most significantly, in September, the SEC announced the formation of a cross-border task force to investigate potential U.S. federal securities law violations related to foreign-based companies. Among other things, the SEC noted in announcing the task force formation that it was focusing in particular on companies in foreign jurisdictions "where governmental control and other factors pose unique investor risks," including China; and on "gatekeepers, particularly auditors and underwriters, which help these companies access the U.S. capital markets." My prior post about the cross-border task force formation can be found here.

The Cooley law firm memo notes that the task force is "the SEC's first major enforcement initiative announced under Atkins." The memo notes that in coming months, "we can expect to task force to increase scrutiny of foreign-based – and in particular, China-based – companies, as well as their companies as well as their U.S.-based auditors and underwriters."

The Cooley law firm memo concludes by emphasizing that "in recent months, the SEC has made it clear that it is focused on violations by foreign-based companies that participate in the U.S. capital markets." The memo notes that these foreign companies should "ensure compliance with the U.S. securities laws" and should "consider enhancing their compliance programs and strengthening their internal reporting systems to mitigate the risks of an SEC investigation."

Securities

B. Riley Files Long-Overdue Report With Loss Instead of Profit

Nov. 18, 2025, 3:21 PM PST

B. Riley Financial Inc. filed its long-delayed report for this year's first quarter showing a loss of $12 million instead of the profit the firm had estimated earlier.

The loss, disclosed in a form 10-Q filing on Tuesday, contrasted with the Los Angeles-based company's estimate of $1 million to $6 million of quarterly profit back in May, when B. Riley told shareholders it couldn't make the deadline for filing the results with the US Securities and Exchange Commission.

The quarter's loss narrowed from $51.2 million a year earlier, aided by some one-time gains. The operating loss swelled to $61.5 million from $16 million a year earlier, with revenue falling to $186 million from $298 million. One reason cited by the company was a decline in investment banking business due to the late SEC filings.

Chairman **Bryant Riley** called the report a step toward putting B. Riley back on a regular reporting schedule after repeatedly missing SEC deadlines, with filings still to come for the second and third quarters. The delays have left investors without a clear idea of how the financial services firm is performing as it struggles to cope with soured investments and an ongoing SEC investigation of its dealings with a former business partner who's now facing federal fraud accusations.

Read More: Brian Kahn's Secrets Led to Broken Promises and FRG's Collapse

B. Riley has said it didn't do anything wrong and reiterated that it's cooperating with investigators. Its stock rose 3.2% to $5.20 in extended trading at 5:50 p.m. in New York.

The firm also missed deadlines for prior years, disclosed weaknesses in its financial reporting procedures and dismissed its auditor earlier this year. Nasdaq has threatened to delist the stock over the delays.

A representative for B. Riley didn't have an immediate comment on the swing from the profit it first estimated to the loss detailed in the final results. As for the remaining overdue reports, B. Riley estimated profit as high as $140 million for the second quarter and as much as $77 million for the third quarter when it announced delays for those filings.

Retail sector

WHSmith boss resigns after presiding over US accounting errors

Carl Cowling steps down as retailer discloses worse than expected hit to profits from discrepancies in its US business

WHSmith in August slashed its forecasts for its North American division © Bloomberg

Philip Stafford in London

Published YESTERDAY | Updated 08:35

The chief executive of WHSmith has resigned after an independent investigation found that accounting errors uncovered in its US business went on for several years and would result in a larger than expected hit to the retailer's profits.

WHSmith said on Wednesday that Carl Cowling had quit as group chief executive and stepped down as a board director with immediate effect. The London-listed company added that it had begun the search for a replacement.

The travel retailer said it expected to have to restate full-year earnings for 2023 and 2024 and it further cut forecasts for trading profit in its US business to £5mn-£15mn for 2025, down from a reduced £25mn guidance set in August.

WHSmith, which has about 1,300 stores globally in airports, train stations and hospitals, shocked the market in August when it slashed forecasts for its North American division, blaming the way it had recognised payments from suppliers when they ran promotions.

Typically such income is recorded gradually over time to align with when the related products are sold. A Deloitte review found WHSmith instead recorded the income when deals were agreed, the company said.

The review found the company's North American business had a "target-driven performance culture" and noted "weaknesses in the composition of the finance team", WHSmith said. Deloitte also found limited group oversight of finance procedures in North America.

In response, WHSmith said it was reviewing its North America leadership team and had appointed a new chief for the US division in June.

Shares in the group, which fell more than 40 per cent following sharp cuts to its forecasts in August, were up 1 per cent in morning trading in London.

The Deloitte report, which covered the retailer's 2023 to 2025 accounts, found that its treatment of the US supplier payments "was not consistent with the requirements of the relevant accounting standards", WHSmith said.

The company expects to take additional one-off costs of about £20mn relating to its treatment of inventory.

Cowling had been at WHSmith for 11 years and became chief executive in 2019. He oversaw the sale of its 233-year-old UK high street business last year to little-known investment firm Modella Capital, which has since rebranded it to TG Jones.

“Whilst the issues identified in the Deloitte review arose in our North American division, I recognise the seriousness of this situation and as group chief executive feel it is only right that I step down from my position,” said Cowling.

The company will be run by Andrew Harrison, chief executive of its UK division, in the interim. It also appointed a new chief financial officer, Max Izzard, in September 2024 after the end of its last full financial year.

Separately on Wednesday, Greggs said WHSmith’s former chief financial officer, Robert Moorhead, had withdrawn his candidacy as a non-executive director at the food-to-go chain.

Moorhead stepped down from WHSmith a year ago after 16 years in the role but deferred his appointment at Greggs until Deloitte’s review into the retailer’s accounting was complete.

In a trading update, the company added that headline trading profit for its UK business was expected to be about £130mn, slightly ahead of analyst forecasts, while net debt stands at £390mn — lower than previous guidance of £410mn-£420mn.

WHSmith expects to publish its full-year results next month. Its regular auditor is PwC.

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Securities

Great Bitcoin Crash of 2025 Has It Lagging Bonds, Gold and More

Nov. 18, 2025, 8:47 AM PST

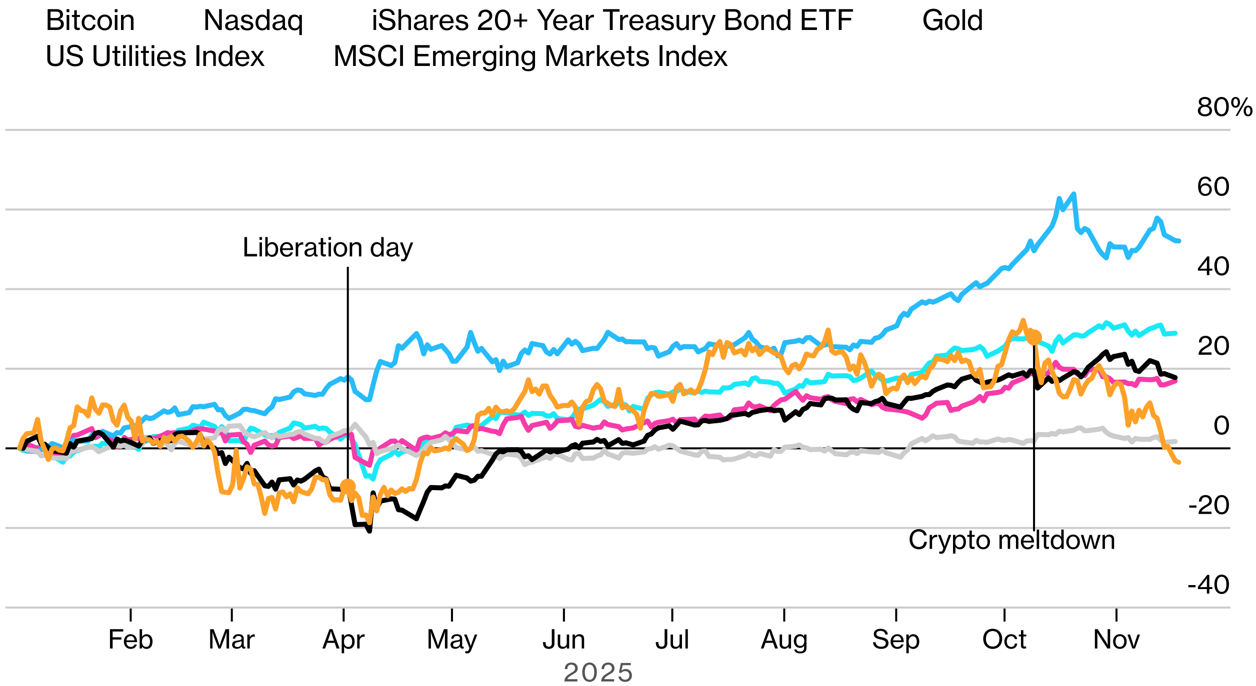
The asset once expected to "go to the moon" is struggling to keep pace with Treasuries. Bitcoin has fallen nearly 30% from its 2025 peak, lagging behind everything from tech stocks to T-bills.

Once promoted as a high-growth play, an inflation hedge, and a portfolio diversifier, the world's largest cryptocurrency now faces the prospect of ending the year in the red — without fulfilling any of those roles.

Gold — often dismissed by Bitcoin believers as outdated — is easily outperforming the token, which the crypto faithful have dubbed digital gold. So are long-term bonds and the Nasdaq, in a year defined by falling interest rates and shrinking risk appetite.

The underperformance is even starker against benchmarks Bitcoin was supposed to outclass. The MSCI Emerging Markets Index is up sharply this year, and even the US Utilities Index — a byword for low-volatility, low-growth stability — has outpaced Bitcoin's slide.

Bitcoin Lags Behind Even T-Bills in 2025



Source: Bloomberg

Bloomberg

On Tuesday, Bitcoin briefly dipped below $90,000 — roughly the average entry price of all ETF inflows since their launch — meaning the typical ETF investor was, for a while at least, underwater. The largest cryptocurrency climbed off the seven-month low to trade about 1.5% higher to $93,241 as of 11:46 a.m. in New York.

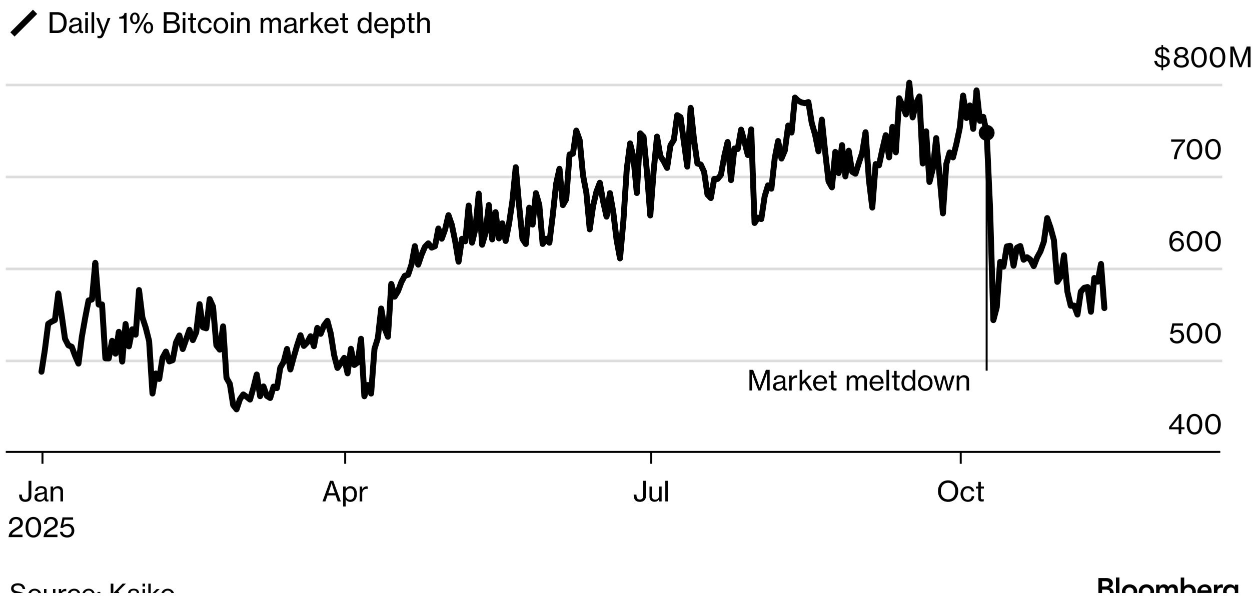
For many, this was supposed to be crypto's breakout year. A pro-crypto White House, new rules allowing launch of exchange-traded funds across tokens, and a wave of institutional inflows had seemingly secured digital assets a place in mainstream finance. Instead, for investors who bought near the highs, Bitcoin's 2025 story feels familiar: a burst of euphoria, a crash, and growing disbelief.

Once pitched as everything from an inflation hedge to a growth engine and an uncorrelated store of value, the token has fallen short on every count of late. Volatile? Always. Reliable? Less and less.

That matters for professional investors. In diversified portfolios, Bitcoin has failed to offset losses from tariff-driven selloffs or amplify gains during rebounds. Nor has it acted independently when other markets turned volatile. For fund managers who saw crypto as a strategic addition, the disappointment goes beyond performance — it cuts to purpose.

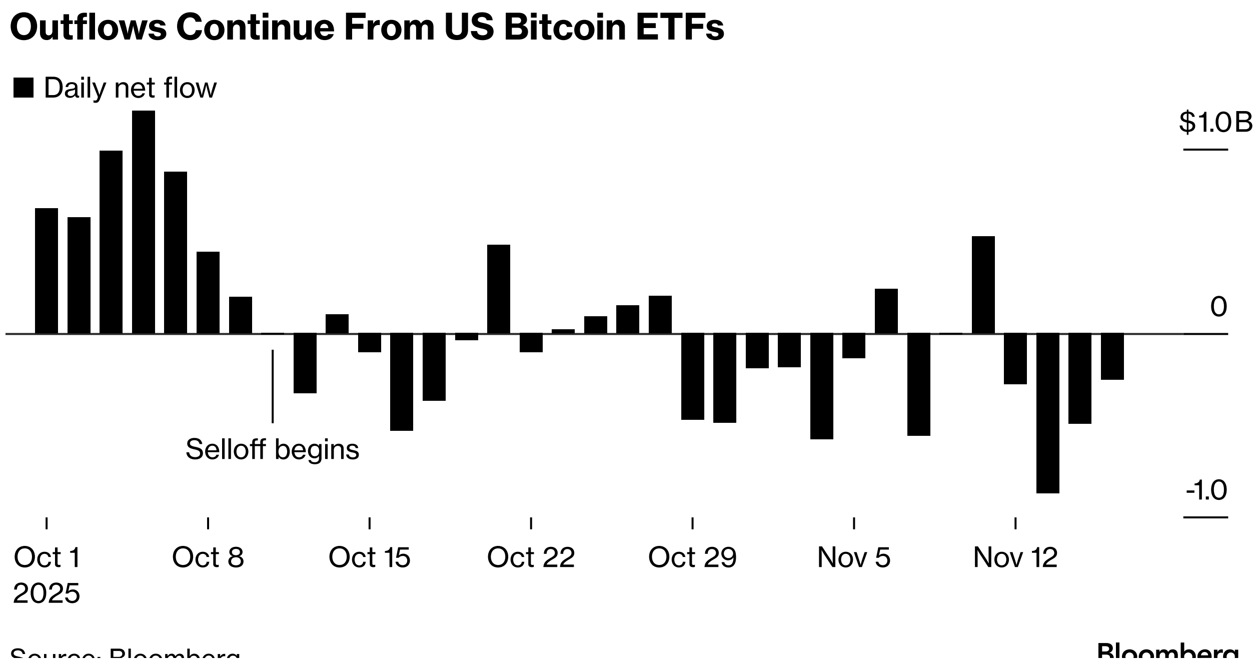
Bitcoin Market Depth

Amount of Bitcoin trades within 1% of mid-price has shrunk since Oct.10 meltdown



Theories about what went wrong vary. Some blame October's violent crash, which erased roughly $19 billion in leveraged positions and left deep psychological scars across the market. "10th October is definitely a longer lasting shock to the market than it appears on the surface," said **George Mandres**, senior trader at XBTO Trading. "As much as market participants will try to forget or brush it off, it will remain deeply embedded in the appetite of market-makers to provide liquidity and in market participants' conviction and risk appetite."

Others point to broader market weakness. "Asia printed softer growth data overnight, Chinese equities weakened, and global tech valuations retreated as investors reassessed pricing ahead of Nvidia's earnings on November 19," said Timothy Misir, head of research at digital asset analytics firm BRN. "With liquidity conditions already thin, correlations snapped back to their high-beta defaults. Crypto traded not as a hedge, but as the most leveraged expression of macro tightening."



“Talks of an incoming bear market are starting to ring louder and louder,” said **Augustine Fan**, director at SignalPlus.

Read more: Bitcoin ETF Investors in the Red After $89,600 Level Breaks

To be sure, Bitcoin still trades well above levels seen before Donald Trump’s re-election, and its history is filled with sharp declines followed by spectacular recoveries. Over longer horizons, returns remain impressive. But for now, traders are positioned defensively. Demand for downside protection around the $85,000 and $80,000 levels has surged, and options data suggest less than a 5% chance of Bitcoin revisiting its record high above $126,000 by year-end, according to data from Coinbase-owned Deribit.

What Bloomberg Strategists say...

“For now, Bitcoin looks like it’s trying to reassert its leadership role — only this time, as a sign of stabilization rather than stress. If $90,000 holds, it could mark the moment where the digital asset space starts leading risk sentiment higher, not lower.”

—**Brendan Fagan**, FX Strategist, Markets Live

For the full analysis, click here.

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Deep Dive

Trump CFTC Pick Has Crypto Chops From Agency, Willkie Stints (1)

Nov. 18, 2025, 1:16 PM PST; Updated: Nov. 18, 2025, 2:25 PM PST

Michael Selig, tapped by President Donald Trump to lead the Commodity Futures Trading Commission, is regarded by his colleagues as a tech-savvy lawyer prepared to tackle the agency's expanding crypto mission, even with other vacancies lingering at the top and perennial funding challenges.

Selig, set for a Senate confirmation hearing Wednesday, is Trump's second pick for the job. His first nominee, Brian Quintenz—the head of global policy for a16z crypto and a former CFTC commissioner—stalled in hearings and was ultimately pulled following a dust-up with crypto billionaire Tyler Winklevoss.

Selig can point to a strong track record of crypto-focused policy work from a previous role at the CFTC and his more recent stint at the Securities and Exchange Commission, as well as legal practice at firms including Willkie Farr & Gallagher LLP, Perkins Coie LLP, and Reed Smith LLP.

His work at the firms is unlikely to raise red flags in the confirmation process, said J. Christopher Giancarlo, senior counsel at Willkie and a former CFTC chairman.

"We have a long tradition in Washington of lawyers coming out of law firms to take on roles like this, and having served clients is not considered the type of conflict you have if you're serving on boards, or direct work for firms," he said.

"With Mike, there's not a lot of attack surface there," Giancarlo said. "His views on innovation are actually quite aligned with the tradition of the CFTC."

The CFTC stands to take on even more crypto jurisdiction under a digital asset market structure bill winding its way through Congress, the "CLARITY Act" (H.R. 3633), which would saddle the relatively small regulator with responsibilities for policing an expanding universe of tokenized assets and commodities.

Since September, the CFTC has operated under the sole leadership of acting Chairman Caroline Pham, after multiple departures from the agency by other commissioners.

As chief counsel for the SEC's crypto task force, Selig is already well acquainted with the lines being drawn between the two agencies and the narrower definition of digital assets as securities under the SEC's purview.

"Mike is eminently qualified and will be an excellent chairman of the CFTC," SEC Chairman Paul Atkins said in an emailed statement.

A CFTC spokesperson didn't immediately respond to a request for comment.

Return to CFTC

Giancarlo hired Selig when he was a commissioner before becoming chairman, a role that provided Selig a platform to conduct research that led to the CFTC's 2015 position on Bitcoin as a digital commodity under its jurisdiction.

Selig's private practice focused closely on matters related to the CFTC, including the area of digital commodities that he helped to delineate as part of the small derivatives regulator's growing remit.

Upon arriving at Reed Smith in 2016, Selig met Kari Larsen, who continued working with him in blockchain or fintech capacities across Perkins Coie and Willkie, where she now holds the role of partner and co-chair of the firm's digital works practice.

"He was always interested in the innovative product class, as am I, so we were very simpatico and aligned in our interests," she said. "He has real depth in the protocol and development engineering side as well, real understanding of the technology."

This year Selig became chief counsel on the SEC's crypto task force and a senior adviser to Atkins, who touted their shared dedication to helping Congress advance its market structure legislation as a statutory tool to "future-proof against rogue regulators" in remarks this month at a fintech conference in Philadelphia.

But at least one group advocating for tighter financial regulations has raised concerns about Selig's crypto work.

"Mike Selig's role on the SEC's crypto task force, which has done nothing but give the crypto industry everything it wants, and his time in private practice, where he argued that the CFTC's characterization of sporting events as a form of gaming was arbitrary and capricious, bode ill for his ability to effectively regulate the industries that are increasingly under the CFTC's purview," Benjamin Schiffrin, director of securities policy at Better Markets, said in an emailed statement.

Challenges Ahead

The CFTC plans to staff up to handle an "expanded mission," Pham said Nov. 12 at the same fintech conference, citing priorities including collateral management with stablecoins, spot crypto products on designated contract markets, and swap dealer rulemaking.

The agency is also reckoning with event contracts popular on prediction market platforms, with litigation pending on thorny jurisdictional questions. Selig and other Willkie lawyers were listed on a 2024 letter from crypto venture capital firm Paradigm Operations LP opposing a Biden-era proposal on event contracts.

“It’s going to be a significant challenge, because their jurisdiction is growing,” Larsen said. “It’s necessary that they further fund the CFTC to wrestle with a lot of very complex things.”

Even as the CFTC races to align with the Trump administration’s efforts to ease the regulatory environment for digital assets, Pham and Selig—if confirmed—would fill only two of the commission’s five seats.

“There’s going to be a wide breadth of issues to handle and there are also committees that sit under each commissioner that will obviously consolidate under the chairman,” Larsen said. “It’s a lot to manage. Most of the people that are commissioners in our world are experienced people and that experience is very relevant and helpful to keeping the agency nimble.”

Despite Selig’s background covering traditional commodities and new technologies broadening the CFTC’s regulatory horizons, one or two experienced leaders can’t fully supplement the power of five commissioners, Giancarlo said.

He cited one stretch during his tenure when there were only three commissioners, “which meant any conversation between two of us would violate the Sunshine Act, so we had to work through staff.”

“No one person can have all that expertise, and the founders of this commission design knew what they were doing,” Giancarlo said. “So I would hope that Mike as chairman gets the benefit of a full commission sooner rather than later.”

(Adds comment from Better Markets in paragraphs 17 and 18.)

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News | Civil Appeals

'Shotgun Pleading': 11th Circuit Hears Trump's Bid to Revive 2016 Election Lawsuit

A trial judge had dismissed President Donald Trump's civil Racketeer Influenced and Corrupt Organizations Act claims against Hillary Clinton and later issued nearly $1 million in attorney sanctions, calling the complaint part of a pattern of Trump's misuse of the courts.

November 18, 2025 at 05:55 PM By Avalon Zoppo

President Donald Trump in January 2025. Credit: The White House via Wikimedia Commons

The U.S. Court of Appeals for the Eleventh Circuit on Tuesday heard President Donald Trump's bid to revive a failed racketeering lawsuit that alleged Hillary Clinton conspired to rig the 2016 election, which Trump won.

The lawsuit, filed in March 2022, contends Clinton was part of a conspiracy to spread “a false narrative of collusion between Trump and Russia” during the 2016 election. U.S. District Judge Donald Middlebrooks of the Southern District of Florida dismissed the civil Racketeer Influenced and Corrupt Organizations Act claims and later issued nearly $1 million in attorney sanctions, calling the complaint part of a pattern of Trump's misuse of the courts.

Lawyers for Clinton have argued the civil RICO claims are barred by the statute of limitations. They said statements Trump alleged as a basis for an injurious falsehood claim occurred in 2016 and 2017, so the two-year statute of limitations had expired by the time he filed the lawsuit.

But Trump's lawyer told the Eleventh Circuit that since Trump was president until January 2021, the statute of limitations deadline should get a special extension to account for that time in office.

“There certainly are allegations of injurious falsehood that I don't believe even the defendants claimed were beyond the statute of limitations,” added attorney Richard Klugh.

Klugh also argued that the trial judge wrongly tossed the complaint on "shotgun pleading grounds"—meaning the complaint was poorly drafted—without giving Trump a chance to amend the allegations

Chief Judge William Pryor Jr. pushed back on that assertion.

He said the case wasn't dismissed on shotgun pleading grounds and that the trial judge only referenced that issue in issuing sanctions.

“I can read this complaint. It's a shotgun pleading. There's no question about that," Pryor said. "It incorporates by reference hundreds of paragraphs into succeeding counts.”

The Eleventh Circuit judges also pressed Clinton's counsel about whether the injurious falsehood claim—that Clinton and others made misleading statements they knew would cause economic harm—was adequately pleaded.

Trump's attorneys argue the president incurred damages in the form of legal fees to defend himself against “various federal investigations and/or official proceedings” related to the 2016 presidential election and alleged Russian interference.

David Kendall of Williams & Connolly, arguing for Clinton, told the panel the complaint wasn't specific enough.

“There was no specific linking of any of those so-called falsehoods to any particular damages, so I think that's why that fails,” he said.

Kendall also said the case wasn't dismissed due to shotgun pleading reasons. Though the trial court said there were hallmarks of a shotgun pleading, the dismissal was based on a a failure to state a claim, Kendall said.

“It's defects were much, much worse,” Kendall added.

Judges Andrew Brasher and Embry Kidd also sat on the Eleventh Circuit panel.

The appellate court heard arguments in *Trump v. Clinton*, No. 22-13410.

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Perrigo Sued Over Misstatements On Infant Formula Business

By **Katryna Perera**

Law360 (November 18, 2025, 7:19 PM EST) -- Perrigo Company PLC faces a shareholder class action alleging the company and its top brass failed to disclose critical issues with infant formula operations that it purchased from Nestle and caused stock prices to drop as the issues came to light.

Investor Tanner French filed a **complaint** Monday in New York federal court against Perrigo, its CEO Patrick Lockwood-Taylor, Chief Financial Officer Eduardo Bezerra and former CEO Murray Kessler on behalf of a proposed class of individuals and entities that purchased or acquired Perrigo stock between Feb. 27, 2023, and Nov. 4, 2025.

According to the complaint, Perrigo provides over-the-counter health and wellness solutions worldwide and manufactures and markets home health products, including infant formula under the company's "nutrition" sales category. The complaint states that the nutrition category is Perrigo's third largest in North America, accounting for approximately 17% of the company's fiscal year 2024 sales in that segment.

French says that in November 2022, Perrigo acquired Nestlé's Gateway infant formula plant in Wisconsin, along with the U.S. and Canadian rights to Nestlé's "Good Start" infant formula brand, for $170 million.

Perrigo touted the acquisition as a strategic investment to "expand and strengthen its U.S. infant formula manufacturing, with $110 million allotted to the purchase and an additional '$60 million to expand Gateway's 29 million pound per year production capacity.'"

"The acquisition would increase the company's supply, as 'prior to the Gateway plant purchase, Perrigo had insufficient capacity to meet consumer demand' and 'was also unable to fully meet demand for contract manufacturing customers,'" the complaint states.

However, French alleges that the defendants made false and misleading statements throughout the proposed class period and failed to disclose that the acquired infant formula business suffered from "significant underinvestment in maintenance, operational improvements, and repairs."

The suit alleges that remediation of the infant formula business required Perrigo to make "substantial" capital and operational expenditures above its stated cost estimates; that there were significant manufacturing deficiencies in the infant formula facility; and that Perrigo's financial results were overstated.

French claims the truth began coming to light in February 2024. In reporting its fiscal year 2023 earnings, Perrigo revealed "significant acquisition and integration-related charges, including a purported one-time cash cost of an additional $35 million to $45 million for remediations to address production and facility issues in the infant formula business," the complaint states.

Perrigo also disclosed a 50% decline in earnings per share compared to the year before due to infant formula remediation actions, the complaint states, and the company revealed that the infant formula business's full year adjusted operating income was "less than half the expected normalized run rate of $140 million per quarter, and its full year 2024 adjusted operating income was expected to be below 2023 levels."

However, despite these disclosures, Perrigo assured investors that it anticipated its business stabilizing and returning to growth in the second half of the fiscal year, the complaint states.

On this news, French says Perrigo's share price fell $4.87, or 15.14%, to close at $27.30 on Feb. 27, 2024.

A second alleged disclosure occurred on May 7, 2024, when Perrigo released first-quarter earnings that revealed the negative impact of the actions the company took to augment and strengthen its infant formula business.

"The press release disclosed 'net sales of $91 million decreased 34.5% due primarily to lower shipments to customers as the company works through its infant formula plant remediation plans' and 'gross margin of 36.5% declined 90 basis points, including a -280 basis points impact from infant formula,'" the complaint states.

"Nonetheless, in the company's quarterly filing on that date, Perrigo assured investors '[c]urrently, any planned large-scale manufacturing plant resets have been completed' and the cash costs in 2024 to achieve the remediation plan would stay flat at $35 to $45 million," the complaint further states.

On this news, Perrigo's share price fell $3.28, or 9.8%, to close at $30.15 on May 7, 2024, according to the complaint.

The truth continued to be revealed in August 2025, according to the complaint, when Perrigo announced earnings for the second quarter and disclosed that its adjusted gross profit had decreased $30 million, or 6.9%, due in part to "production variability in infant formula, leading to an increase in product scrap in the quarter."

Additionally, during a corresponding earnings call, Bezerra revealed the "production issue led to scrapping of approximately $11 million of inventory," but still assured investors that "[r]ecovery in our infant formula business is progressing."

On this news, French says the company's share price fell $3.01, or 11.31%, to close at $23.61 on Aug. 6, 2025.

A fourth and final disclosure occurred on Nov. 5, according to the complaint, when Perrigo announced that it was "initiating a strategic review of its infant formula business," including "a full range of alternatives."

"The press release revealed Perrigo is 'reassessing the company's previously announced investment in this business of $240 million,'... [and] that 'due primarily to infant formula industry dynamics,' Perrigo had slashed its fiscal year 2025 outlook," the complaint states.

On this news, Perrigo's stock price fell $5.09, or 25.2%, to close at $15.10 per share on Nov. 5, 2025, according to the complaint.

The suit seeks damages, attorney fees and a jury trial.

In a statement to Law360 on Tuesday, a spokesperson for Perrigo said: "It is not uncommon for a firm to file a lawsuit surrounding fluctuations in a company's stock price. We are confident that the action lacks legal merit."

Counsel for Frank did not immediately respond to requests for comment Tuesday.

French is represented by Rebecca Dawson, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP, and Frank R. Cruz of The Law Offices of Frank R. Cruz.

Counsel information for the defendants was not immediately available.

The case is French v. Perrigo Company PLC et al., case number 1:25-cv-09596, in the U.S. District Court for the Southern District of New York.

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Delaware Chancery Atty Fee Awards Under Fire In New Report

By **Jeff Montgomery**

Law360 (November 18, 2025, 9:25 PM EST) -- Attorney fees in Delaware's Court of Chancery lack "consistent benchmarks" and, for big awards, may fail to reflect "risk or performance," according to a report Tuesday that potentially ratchets up pressure on state lawmakers wary of jeopardizing Delaware's standing as the national hub for corporate law disputes.

The **94-page work** by three law school professors, "Is Delaware Different? Stockholder Lawyering in the Court of Chancery," provided more fodder for defense- and corporate-side arguments that lawmakers should consider curbs on big fees and awards in Court of Chancery derivative actions and could consider curbs on judicial discretion.

"The data contradict the core judicial narrative that Delaware cases are 'uniquely risky,'" co-author Jessica Erickson, George E. Allen Chair in Law at the University of Richmond School of Law, said in an email to Law360. "Delaware judges frequently justify high fee awards on the theory that Chancery litigation involves greater risk."

The report concluded that Delaware stands out compared with federal securities class litigation, and "may over-reward repeat players ... while undercompensating smaller claims."

"Notwithstanding Delaware's confidence in its judiciary's ability to calibrate appropriate fee awards, our data reveal little evidence that those awards systematically account for firm performance or litigation risk," the report said. "The data suggest that Delaware should reconsider the broad discretion it grants judges in fee setting."

New York University's Stephen J. Choi, University of Richmond's Erickson and University of Michigan's A.C. Pritchard released the work several months after a second consecutive year of bruising Delaware legislative battles over stockholder litigation and costs.

John L. Reed of DLA Piper told Law360 on Tuesday the report "is the most comprehensive analysis to date of fee awards in representative stockholder actions. Reaching the right public policy decision should be the sole goal. A proper analysis of fee statistics can expose whether there is a problem, and I believe we have a problem in Delaware."

Legislative changes in Delaware this year already have provided new safe harbors for directors and controlling stockholders in conflict transactions and narrowed shareholder rights to inspect corporate books and records. The developments included a bitter fight in 2024 over changes that, in part, permitted corporate boards to cede some governance rights to chosen stockholders.

Joel Friedlander of Friedlander & Gorris PA, a corporation law litigation boutique, said on Tuesday that the latest study report "does not capture the reality of stockholder litigation as I have practiced it. I asked to see their data about our firm's cases and they declined."

The report, described as based on hand-collected data from every derivative suit and class case involving public companies in Chancery Court between 2017 and 2022, emerged as the corporate and plaintiffs' bar and Delaware lawmakers already were predicting a legislative push in 2026 focused on big case awards and criticisms that plaintiffs' attorneys receive higher fees for Delaware stockholder cases than comparable federal securities actions.

The focus on high fees and risks to Delaware's status as a major corporate charter hub this year led to a proposed resolution by state lawmakers seeking recommendations on attorney fees from the Council of the Corporation Law Section of the Delaware State Bar. The Council already had planned to issue a recommendation in time for the 2026 legislative session, the report noted.

"We are awaiting the completion of the council's work," Sen. Bryan Townsend, a Morris James LLP attorney and state Senate leader for majority Democrats, told Law360 on Tuesday.

The latest report observed that when courts "grant excessive fee awards, they are diverting value from stockholders — a concern that courts and lawmakers should take seriously," the report said. It added that big fees may create unintended incentives in stockholder litigation, and "Delaware fees trend higher than fees in federal securities class actions" for the largest cases.

Attorney fee rates were $1,692 hourly in the Chancery Court versus $935 hourly in federal securities litigation, according to the report.

"If corporate America perceives a problem with the volume or quality of such litigation, then Delaware should be motivated to carefully examine its use of this lever," the researchers said in the report.

Among the recent standouts, the report noted, a $345 million fee award — a $17,692 rate — in a case that saw Delaware Chancellor Kathaleen St. J. McCormick order the cancellation of Elon Musk's $56 billion Tesla compensation plan after years of litigation.

Also highlighted was a $266.7 million fee affirmed in connection with a $1 billion settlement in a Dell Technologies stockholder suit.

Joel Fleming of Equity Litigation Group said in a LinkedIn post, "The math at the heart of this analysis is badly wrong," and excluded the cost of unreimbursed expenses and risk.

"Specifically, they exclude four outcomes where plaintiffs' lawyers see some or all of their work go uncompensated: fruitless books-and-records investigations, lost leadership disputes, partial settlements followed by trial losses, and appeals," Fleming wrote. "Each of these errors causes them to understate the risks of contingent practice," and fees necessary to incentivize contingent practice.

Reed said one purpose of an attorney contingency fee "is to ameliorate risk so lawyers can make up for the contingent cases they lose. But overhead is only incurred once, so each multiple is really an additional 2x award, assuming a generous 50% profit margin."

As a result, Reed said, a 2x multiple is really 3x, and a 10x is 19x.

"Awarding anything even close to 10x creates perverse incentives because it encourages a regime where 90% of the cases can be unmeritorious if the plaintiffs' bar can make up for all the losers in one case," Reed said. "That is bad public policy, because those unmeritorious cases have costs that must then be borne by corporate America, stockholders, and the judicial system itself, with no cost or risk to those bringing the cases."

Anat Alon-Beck, an assistant professor at Case Western Reserve University School of Law, told Law360 that the study provided "valuable empirical insight into fee award practices" but warrants a cautious read.

"Delaware litigation is distinct in its procedural structure, remedies, and judicial approach; federal securities cases involve class certification, statutory frameworks, and discovery processes that differ materially from the equity-based, judge-driven proceedings typical of the Court of Chancery," Alon-Beck said.

Taken into account in the report was data on 2,492 federal class suits involving a securities disclosure claim against a public company from 2005 to 2018, litigation with similarities to Chancery derivative cases.

Delaware cases, the law professors' study found, were more likely to produce a fee and less likely to be dismissed than federal securities actions for the period examined.

"Overall, lawyers in Delaware face a lower risk of walking away empty-handed than lawyers in federal securities class actions," the study concluded. "Delaware lawyers received nothing in approximately 40 percent of their cases, while lawyers in federal securities class actions walked away with nothing in approximately 60 percent of cases."

The authors said Delaware jurists give plaintiff attorneys a higher return on litigation than seen in federal court and said the report provides little evidence that fee awards account for law firm performance or litigation risk.

"It is frustrating that certain members of academia choose to repeatedly opine on contingency fees without understanding basic concepts underlying the contingency firms' business models," Mark D. Richardson of Labaton Keller Sucharow LLP said in an email Tuesday. "Many of their assumptions would quickly deteriorate if they spent five minutes speaking to someone who actually does this for a living."

--Editing by Dave Trumbore.

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Redfin Investor Denied Atty Fees For Rocket Cos. Merger Suit

By **Sydney Price**

Law360 (November 18, 2025, 3:46 PM EST) -- A Washington federal judge has denied a Redfin investor an award of $450,000 in legal fees to counsel at Monteverde & Associates PC and Wohl & Fruchter LLP after the judge determined that the investor failed to show that his efforts produced material benefits for shareholders voting on Redfin's merger with Rocket Cos. Inc.

In an **order** signed Monday, U.S. District Judge John H. Chun rejected plaintiff Jason Morano's argument that the $450,000 request is warranted. Even though Morano claimed that he secured supplemental disclosures to the proxy statement and the release of other material information before the shareholder vote on the merger in June, Judge Chun said Morano does not show that a typical shareholder would have considered the information important.

"In fact, shareholders were provided with this information before the merger vote and about 98.85% of shares still voted for the merger," the order said.

The merger — valued at $1.75 billion — was approved by nearly all shareholders on June 4, a day after Judge Chun denied Morano's request for a preliminary injunction postponing the vote.

Morano argued, however, that his suit was meritorious and that the defendants took an action that "produced a corporate benefit before the plaintiffs obtained a judicial resolution," entitling the attorneys to fees and expenses.

Morano said the attorneys spent nearly 342 hours litigating the alleged material disclosure violations in the merger proxy over a "short three-week time period."

But Judge Chun said Monday that the result of the vote "lends further support to the conclusion that a reasonable shareholder would not have considered this information to be material."

The proposed class action alleged that Redfin's proxy statement failed to identify key inputs into a discounted cash flow analysis that Goldman Sachs leaned on in its declaration that the exchange ratio of the merger was fair to Redfin shareholders. The court found June 3, however, that Redfin provided these projections in later supplementary disclosures.

The suit also argued that Redfin failed to provide enough information about financial adviser Goldman Sachs' involvement in Rocket Cos. $1.15 billion revolving credit facility. But later disclosures in federal court and with the U.S. Securities and Exchange Commission gave investors all they needed to evaluate whether a potential conflict exists, the court said when denying the preliminary injunction request.

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

Morano is represented by Roger M. Townsend of Townsend Legal PC, Juan E. Monteverde and Jonathan T. Lerner of Monteverde & Associates PC and Joshua E. Fruchter of Wohl & Fruchter LLP.

Rocket Cos. Inc. is represented by Tim J. Filer and Angelo Marchesini of Foster Garvey PC and Deborah S. Birnbach and Tucker DeVoe of Goodwin Procter LLP.

Redfin Corp. and Redfin executives are represented by Jonathan G. Tamimi, Dean S. Kristy, Marie C.

Bafus and Felix Lee of Fenwick & West LLP.

The case is Morano v. Redfin Corp. et al., case number 2:25-cv00883, in the U.S. District Court for the Western District of Washington.

--Editing by Rich Mills.

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Car Services Co.'s $851M Write-Down Sparks Del. Suit

By **Jarek Rutz**

Law360 (November 18, 2025, 5:28 PM EST) -- A car services conglomerate's board and senior leadership face a stockholder derivative suit filed Tuesday in the Delaware Chancery Court alleging they ignored clear signs of operational deterioration, concealed significant deficiencies in the company's internal controls and allowed public misstatements that preceded an $851 million write-down.

The complaint, filed by stockholder Stephen Bushansky, claims Driven Brands Holdings Inc.'s directors breached fiduciary duties of loyalty and good faith by failing to oversee integration problems, weakening performance across key business lines and breakdowns in disclosure controls, all failures the plaintiff says should have been detected long before the valuation reduction.

Bushansky cites reporting from former chief financial officer Gary Ferrara, who allegedly said the company had seen a year-over-year decline in its car wash segment and added "In our car wash segment, we experienced negative same-store sales of 4%. It is far from where we want to be performing. We've seen some weakness in our retail customer demand, continued unfavorable weather conditions and we are also seeing an increase in competitive intensity."

Bushansky argues that this downturn stemmed not merely from business cycles but from factors that directors either ignored or failed to correct despite responsibilities to review disclosure controls, accounting judgments, risk-management reports and financial statement quality.

Framing a case of board-level oversight failure under Delaware's fiduciary-duty standards, Bushansky said multiple directors received regular briefings on integration problems in the auto-glass business, softening demand in several divisions, and maintenance and operation issues affecting car-wash performance. He also alleges defendants knew about significant deficiencies in Driven's internal control environment.

Despite this, Bushansky said, the board permitted optimistic public guidance to continue even after conditions deteriorated. In one example, the company cut its full-year 2023 revenue and key performance projections just months after previously reaffirming them, changes Bushansky said were attributable to longstanding issues, not sudden developments.

When analysts questioned why the company had waited to disclose integration problems, an executive allegedly acknowledged that nothing material changed in prior quarters but that Ferrera had uncovered issues promptly after joining and reviewed the business with "a fresh set of eyes" after he assumed his position in May 2023. Ferrera left the company a year later.

Bushansky argues Ferrera's comment shows problems were detectable all along, but leadership had not previously taken corrective action.

Bushansky also said Driven's controlling stockholder, Jonathan Aronson, who allegedly holds more than 60% of the company's voting power, negatively influenced director elections, management decisions, major transactions and overall corporate affairs.

Bushansky also asserts an insider trading claim, alleging Aronson sold Driven stock while he possessed material, nonpublic information.

"Aronson profited from his misconduct and was unjustly enriched through his exploitation of material and adverse inside information," Bushansky said.

Bushansky wants an order requiring the individual defendants to disgorge profits, implement stronger internal control and oversight systems and issue restitution to the company.

Representatives for the parties were not immediately available for comment Tuesday.

Stephen Bushansky is represented by Blake Bennett of Cooch & Taylor PA.

Counsel information for the defendants was not immediately available Tuesday.

The case is Stephen Bushansky, derivatively on behalf of Driven Brands Holdings Inc. v. Jonathan G. Fitzpatrick, et al., case number 2025-1306, in the Delaware Chancery Court.

--Editing by Alex Hubbard.

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Buyers Ask To Add 'Hawk Tuah' Influencer To Token Suit

By **Katryna Perera**

Law360 (November 18, 2025, 10:53 PM EST) -- Buyers of the "Hawk Tuah" themed-meme coin want to expand their securities suit with new claims and defendants, including naming the social media star behind the viral phrase, Haliey Welch, as well as her managers.

The buyers filed a **motion** Monday seeking leave to file a first amended complaint based on purportedly newly obtained evidence from a confidential informant.

"The evidentiary foundation has strengthened materially since the initial complaint," the motion states. "The confidential informant's revelations include contractual documents proving that no utilities were ever intended to be built, technical evidence of coordinated market manipulation through pre-funded 'sniper' wallets, and admissions that the offshore structure was designed to evade securities laws."

"Blockchain analysis has further uncovered wallet clusters connecting $HAWK to prior frauds, with the same funding sources and extraction patterns repeated across multiple schemes," the motion further states.

The buyers want to add seven new defendants to the suit, including, among others, Welch, Benjamin Chow and Meteora, who the buyers claim provided the technical infrastructure and false safety features of the scheme, and Johnnie Forster and 16 Minutes LLC, who managed Welch's participation, the motion states.

Additionally, the buyers seek to add claims for common law fraud, violations of the New York General Business Law, breach of contract and unjust enrichment, according to the motion.

The buyers argue the court should grant their request to file an amended complaint because there is no delay or bad faith in their request since the confidential informant did not come forward until this month, after a consolidation order was granted, and because an amendment will "streamline the litigation by presenting all claims and parties in a single, comprehensive pleading."

Last month, the court **consolidated** two groups of buyers who brought similar securities claims against the meme coin's promoters and developers.

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

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

The buyers have pointed to a "pooling of funds and the token's success being tied to the collective efforts of Welch," as proof of the existence of a common enterprise. Additionally, they claim the coin's marketing campaign created a reasonable expectation of profits among investors.

In a statement to Law360 Tuesday, Max Burwick of Burwick Law, counsel for the buyers, said, "This case is not a referendum on crypto, but on what we allege is the misuse of crypto technology to exploit everyday people at a time when bad actors are already using these tools to run large-scale scams and harm public markets."

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

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

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

Counsel information for the other defendants and proposed defendants was not immediately available.

The case is In re: $Hawk Token Securities Litigation, case number 1:24-cv-08650, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Rae Ann Varona. Editing by Jay Jackson Jr.

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Citadel Securities, Virtu Face Claims Of 'Massive' Spoofing

By **Emilie Ruscoe**

Law360 (November 18, 2025, 10:02 PM EST) -- Market makers Citadel Securities LLC and Virtu Americas LLC face a proposed class action alleging they used the illegal trading strategy known as spoofing to manipulate trading prices for a technology company, depressing the issuer's market capitalizations while enriching themselves.

In a complaint filed Friday in federal court in Manhattan, educational technology company Genius Group Ltd. takes aim at the two firms with claims they had placed, then quickly canceled, so-called baiting orders for Genius Group shares at distorted prices to trick the market for their own benefit.

Between April 2022 and May 2025, Genius Group claims, Citadel Securities and Virtu "repeatedly entered thousands of baiting orders designed to create the false impression that there was both excess supply and excess volatility in [Genius Group] stock."

"These manipulative orders were calculated to (and successfully did) deceive or induce other investors to sell their holdings at artificially deflated prices," the company claims.

Genius Group describes itself in its suit as an artificial intelligence-powered education company, and its website states it went public in April 2022, grossing nearly $23 million with its shares priced at $6. On Tuesday, market records showed Genius Group trading below $1.

During the proposed class period, Citadel Securities and Virtu were the largest traders of Genius Group shares, executing 65%-85% of all over-the-counter trading for Genius Group securities, the complaint says.

The company also contends "market data makes clear that defendants held substantial proprietary short positions in [Genius Group] stock during the class period."

Genius Group accuses the firms' traders of "inundat[ing] exchange limit order books with a large volume of baiting orders" that they then canceled as soon as they had managed to get prices to move.

The firms repeated those steps "numerous times each day" throughout the proposed class period, Genius Group says, asserting that together, the defendants placed at nearly 1.4 million baiting orders involving nearly 140 million Genius Group shares during that time.

In support of its assertions, the issuer cites market data from certain shorter periods of time during the class period.

For example, Genius Group says, between Jan. 20 and Feb. 14, the two broker-dealers "built up significant short positions in [Genius Group] stock" at the same time that the company saw a 22% decline in trading prices for its shares "despite the absence of any new material Company-specific news."

"The ongoing, repetitive, and continuous nature of defendants' spoofing activity — which occurred on nearly every trading during the class period — exerted a prolonged negative effect on the price of Genius' shares," the complaint says.

"Defendants deliberately concealed their spoofing scheme to accomplish their unlawful objective of manipulating the price of Genius shares. The resulting and sustained decline in Genius' share price confirms that defendants' manipulative activity was effectively hidden from the market," the complaint says.

On Tuesday, a spokesperson for Citadel Securities characterized the lawsuit as "a blatant attempt to shake down the world's leading liquidity providers."

Representatives for Genius Group and Virtu did not immediately respond to requests for comment Tuesday.

Genius Group Ltd. is represented by Abe Alexander and Timothy Clark B. Dauz of Grant & Eisenhofer PA, and James W. Christian of Christian Attar.

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

The case is Genius Group Ltd. v. Citadel Securities LLC et al., case number 1:25-cv-09546, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

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Purdue's $7.4B Ch. 11 Plan Jibes With New Release Paradigm

By **Vince Sullivan**

Law360 (November 18, 2025, 5:26 PM EST) -- A New York bankruptcy judge gave a bench ruling Tuesday explaining his decision to confirm Purdue's $7.4 billion Chapter 11 plan, which transforms the pharmaceutical giant into a public benefit company, ruling that liability releases fully comply with new restrictions imposed by the U.S. Supreme Court last year.

During a lengthy oral decision, U.S. Bankruptcy Judge Sean H. Lane said the third-party releases of nondebtor entities in Purdue Pharma LP's plan are consistent with the high court's June 2024 ruling in Harrington v. Purdue Pharma LP that nonconsensual releases are not permitted under the Bankruptcy Code.

The justices made that ruling in an appeal of Purdue's previous confirmed Chapter 11 plan, sending the company and its major creditor constituencies back to the drawing board to come up with the current version of the plan, which requires creditors to take an affirmative action to grant releases to nondebtors, including the Sackler family members who own Purdue.

"These sorts of consensual releases are specifically carved out of the Harrington decision," Judge Lane said, noting that the majority opinion decided the narrow issue of whether nonconsensual releases would be allowed.

He also pointed out that the plan allows creditors to obtain recoveries from Purdue without giving up their potential claims against the Sacklers.

"Moreover a decision not to opt in to the release for the Sackler parties is separate and apart from and does not prevent any party from voting in favor of the plan and receiving a distribution from the bankruptcy estate," Judge Lane said.

The plan is premised on a $6.5 billion contribution from the Sacklers and a $900 million cash contribution from Purdue itself into disbursement trusts that will provide recoveries to individual personal injury claimants and state and local governments and agencies with claims tied to the national opioid epidemic.

Creditors can opt in to the Sackler releases to have access to a greater pool of cash for recoveries, but aren't required to release their direct claims against the owners. If they choose not to participate, those claimants will maintain their right to sue the Sacklers.

Personal injury claimants will have access to a pool of about $865 million from which to receive recoveries on their claims.

The plan also includes significant noneconomic aspects, among them a requirement that the Sacklers exit the global pharmaceutical industry and sell off their non-Purdue international holdings in that business, which could result in an additional contribution to the creditor trusts of up to $500 million.

Purdue itself will cease to exist when the plan becomes effective, and a new, public benefit company called Knoa Pharma will receive its noncash assets and will be managed by a board appointed with input from various creditor constituencies. The company will continue developing and marketing opioid addiction therapies and overdose reversal medications.

A massive public record repository is also slated to be created that will be populated with millions of pages of documents detailing Purdue's prebankruptcy operations, including how it developed and marketed its opioid painkiller OxyContin.

Judge Lane overruled the only objections to the plan Tuesday, which all came from pro se personal injury claimants asserting opposition on a variety of bases. The objections focused on the criminal liability of the Sacklers, he said, but the perception that the bankruptcy plan allowed them to "get away with it" was unfounded.

"It is crystal clear in the plan that no criminal liability is affected by the plan or these bankruptcy cases," Judge Lane said. "That fact has been explained at numerous hearings in these cases."

He disposed of other objections based on the releases, the good faith of the debtor in proposing the plan, constitutional arguments and the allocation of plan recoveries among the various creditor groups before agreeing to sign an order confirming the plan.

Purdue Pharma filed for bankruptcy in September 2019 and has said in court filings its total opioid liability could top $41 trillion. It entered Chapter 11 with a settlement framework in place that had the support of two dozen states and the Sacklers in which the owners would contribute $3 billion and get a release of liability from third parties.

In 2021, now-retired U.S. Bankruptcy Judge Robert Drain confirmed a version of the plan that increased the Sackler contribution to $4.325 billion and included the nonconsensual releases. During the appellate process, the Sacklers pumped their contributions north of $5 billion.

After the U.S. Supreme Court remanded the case, Purdue and its major creditor groups returned to mediation and emerged with the current plan with the $6.5 billion minimum payments from the Sacklers over 15 years and the opt-in release provisions.

Creditors will have until March 1 to exercise their opt-in rights for the releases to provide a concrete date for claimants, as the effective date of the plan is not yet known with any certainty.

Purdue declined to comment on Tuesday's bench ruling, but said Friday when Judge Lane signaled his intent to confirm the plan that it was a "landmark day," and that implementation of the plan will begin immediately.

"We will now commence the process of satisfying all outstanding requirements for Purdue to emerge from bankruptcy so that resources from the settlements can flow to communities across America as quickly as possible," Purdue Board Chairman Steve Miller said in a statement.

Purdue is represented by Marshall S. Huebner, Benjamin S. Kaminetzky, Eli J. Vonnegut, Christopher S. Robertson and Marc J. Tobak of Davis Polk & Wardwell LLP.

The official committee of unsecured creditors is represented by Arik Preis, Mitchell Hurley, Sara L. Brauner and Theodore James Salwen of Akin Gump Strauss Hauer & Feld LLP.

The ad hoc group of individual victims is represented by Thomas E. Lauria, J. Christopher Shore and Michele J. Meises of White & Case LLP, Edward E. Neiger and Jennifer A. Christian of ASK LLP and Anne Andrews, Sean T. Higgins and Robert S. Siko of Andrews & Thornton.

The multistate governmental entities group is represented by Kevin C. Maclay, Todd E. Phillips, Serafina Concannon, Lucas H. Self and Ariel K. Hayes of Caplin & Drysdale.

The ad hoc committee of governmental and other contingent litigation claimants is represented by Kenneth H. Eckstein, Rachael Ringer, David E. Blabey Jr., Elan Daniels, Andrew Pollack and Ashish Virmani of Herbert Smith Freehills Kramer LLP, David J. Molton and Gerard Cicero of Brown Rudnick LLP, Kami E. Quinn, Richard D. Shore, Emily P. Grim and Ethan H. Kaminsky Gilbert LLP and Melanie L. Cyganowski of Otterbourg PC.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

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23andMe Seeks OK On Updated $9M Settlement

By **Emlyn Cameron**

Law360 (November 18, 2025, 7:59 PM EST) -- 23andMe asked a Missouri bankruptcy judge to approve a deal that will modify a settlement with data breach claimants to encompass more claims and pay $9 million, saying doing so will avoid litigation.

In **a motion filed Monday**, 23andMe told U.S. Bankruptcy Judge Brian C. Walsh he should approve its new settlement with the so-called U.S. Data Breach Arbitration Settlement Counsel and U.S. Data Breach Arbitration Represented Claimants. The debtor, now going by Chrome Holding Co., said it had been given permission to include a previous settlement with those parties in its proposed Chapter 11 plan but the new deal offers claimants more in exchange for encouraging plan support and putting litigation to rest.

The new settlement will increase the payout an additional $2.5 million, bringing it to $9 million, and cover 2,600 more claimants. In exchange, the arbitration settlement counsel will do their best to encourage claimants to support the debtor's Chapter 11 plan, which is up for confirmation Wednesday, the motion says.

"The settlement remains subject to the approval of the bankruptcy court but we are pleased that we were able to reach a consensual resolution with the debtors as reflected in the 9019 motion for the benefit of the participating arbitration claimants and the enhanced recovery that the settlement, if approved, will provide," Michael Etkin of Lowenstein Sandler LLP, an attorney for the arbitration claimants and counsel, told Law360 on Tuesday.

23andMe, known for its mail-order consumer DNA testing kits, filed for bankruptcy **in March** due in part to liabilities stemming from a 2023 data breach that compromised personal information belonging to about 7 million customers.

In late June this year, it got the go-ahead to sell its assets to a nonprofit owned by co-founder Anne Wojcicki for $305 million. The company proposed a bankruptcy plan that included a $30 million data breach class action settlement reached in arbitration prior to the bankruptcy, a settlement of between $30 million to $50 million for other U.S. data breach claimants and $6.5 million in settlements with two smaller classes.

In September, Judge Walsh approved the plan disclosure statement and scheduled a confirmation hearing for Wednesday, while reserving judgment on motions to assume the prebankruptcy settlement and approve the three new settlements. Later that week, Judge Walsh gave the go-ahead to include customer data breach settlements worth up to $86.5 million in the plan.

In an oral ruling, the judge overrode objections to the assumption of the $30 million prebankruptcy settlement and the inclusion of $20 million in leeway in new settlement payments in the proposed bankruptcy plan.

The arbitration parties **fought the assumption of their settlement** and although the court allowed 23andMe to assume the settlement, Judge Walsh also left it the right to litigate the enforceability of some provisions. By approving the new deal, that legal wrangling will be avoided, the motion filed Monday says.

Counsel for the debtors did not immediately respond to a request for comment Tuesday.

The debtors are represented by Thomas H. Riske, Nathan R. Wallace, Jackson J. Gilkey and Becky R.

Eggmann of Carmody MacDonald PC and Paul M. Basta, Christopher Hopkins, Jessica I. Choi and Grace C. Hotz of Paul Weiss Rifkind Wharton & Garrison LLP.

The arbitration claimants and arbitration counsel are represented by Michael S. Etkin, Andrew Behlmann, Nicole Fulfree and Carolyn M. Gauvin of Lowenstein Sandler LLP and Erik M. Papke of Kramer Buchholz & Partney LLC.

The bankruptcy case is In re: Chrome Holding Co. fka 23andMe Holding Co. et al., case number 25-40976, in the U.S. Bankruptcy Court for the Eastern District of Missouri.

--Additional reporting by Rick Archer and Allison Grande. Editing by Stephen Berg.

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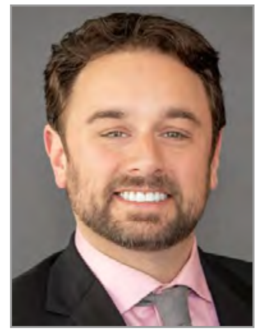
Litigation Funding Could Create Ethics Issues For Attorneys

By **Matthew Feinberg** (November 18, 2025, 5:23 PM EST)


Matthew Feinberg

Over the past decade, there has been a substantial rise in the number of attorneys using litigation funding to help prosecute or defend a case. This area is largely unregulated in New York.[1]

While this new way of financing legal services might help lawyers advocate for clients and achieve highly favorable outcomes, it could open up the lawyer to liability from the lender, and possibly from the client.

Take the example of Benito v. Lake, a complaint **filed** on Oct. 20 in the Supreme Court of the State of New York, County of Suffolk. The plaintiff, an investment professional, alleged that mass tort attorney Edward Lake and his law firm were "effectively running a Ponzi scheme" based upon the funding the firm was receiving to prosecute multiple cases.[2]

The complaint explains that, after becoming "interested in mass torts litigation as an investment class," the plaintiff "recommended that investors entrust over $15 million to Lake Law in connection with the purchase of a docket of mass torts cases." But, the complaint continues, "neither Lake Law nor Ed Lake ever came close to delivering on their promises."

The plaintiff claims that Lake burned through the more than $15 million in alleged investor funds. The pleading alleges breach of contract and fraudulent inducement, and seeks an accounting of Lake's finances based on allegations of comingled investor funds and diverted monies for inappropriate purposes. The suit seeks $2.55 million in compensatory damages, an $8.55 million constructive trust over firm assets, and punitive damages.

This example prompts some questions. It is logical to consider how such a litigation funding lawsuit might affect the underlying claims. If an attorney jeopardizes the claims, even based upon the mere allegations contained in a complaint, the attorney could face liability for legal malpractice or other theories of liability.

Under New York law, in order to plead a cause of action for legal malpractice, a plaintiff is required to plead: (1) the existence of an attorney-client relationship between the parties, (2) negligence by the attorney-defendant in its legal representation, (3) proximate cause between the attorney-defendant's negligence and the plaintiff's loss, and (4) actual and ascertainable damages suffered by the plaintiff.[3]

If an attorney mishandles the funds, thereby breaching the standard of care, it is possible such a breach could proximately cause damages to the client.

Also, depending on the facts of the underlying litigation, it is reasonable to assume there could be a situation where there is a breach of a fiduciary duty. In New York, as articulated by the Second Judicial Department in its 2010 decision in Rut v. Young Adult Institute Inc., the "elements of a cause of action to recover damages for breach of a fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct."[4]

On that end, considering that the lawyer owes the client fiduciary duties, it is reasonable to think about what duties, if any, are owed to the investors. If a conflict arises between the investors and the client — such as the investor seeking attorney-client privileged documents or otherwise confidential information about the attorney's client — the lawyer could be put in a jeopardizing situation. Such situations could include having to decide what information can be disclosed to the investors without the attorney unlawfully disclosing privileged information, or having to decide whether a settlement is in the best interest of the client or the best interests of the investors, as the two might not align.

Moreover, if the litigation funding ends up more like a business transaction entered into between the lawyer and client, that could run afoul of the New York Rules of Professional Conduct prohibiting an attorney from entering into business agreements with a client.[5]

Looking at other possible causes of action that are fact-specific and not necessarily related to this new case, such a fact pattern could even yield a fraud claim. As noted by the Second Judicial Department in its 2014 decision in Mariano v. Fiorvante, in order to plead a cause of action for fraud in the state of New York, "a plaintiff must allege that (1) the defendant made a false representation of fact, (2) the defendant had knowledge of the falsity, (3) the misrepresentation was made in order to induce the plaintiff's reliance, (4) there was justifiable reliance on the part of the plaintiff, and (5) the plaintiff was injured by the reliance."[6]

If there is a situation where an attorney uses litigation funding without disclosing it to the client, one could see a scenario where a fraud claim might lie. Furthermore, during discovery in any litigation funding lawsuit, the attorney will surely be asked to produce information and documents that are likely cloaked with an attorney-client privilege.

In New York, the attorney-client privilege is the client's to waive, not the attorney's.[7] Thus, the power to disclose otherwise confidential information sits with only the client, so the lawyer can't provide information to investors without the consent of the client.

Of course, litigation funding needs to be disclosed to the client, as the funding lien is generally paid before the client receives the proceeds from the suit, and the rules governing an attorney's professional responsibility require an attorney to abide by the client's decision pertaining to the objectives of the representation.[8]

For these reasons, among others, the attorney engagement letter needs to be very clear to avoid potential pitfalls when an attorney is going to be utilizing litigation funding.

This newly filed lawsuit raises important ethical considerations, including the need for written disclosure — signed by the client — of litigation funding details, such as the identity of the lender, applicable interest rates and other terms. Additionally, the lawsuit serves as a reminder to attorneys to avoid the commingling of funds — just as an attorney cannot commingle any funds with a client's escrow account.[9]

It is safe to say that high-stakes litigation can be costly, but attorneys contemplating the use of litigation funding, which could greatly benefit the client if used properly, should think long and hard about the facts of the case and how the funds should be applied.

Further, in compliance with the ethical constraints placed on lawyers, attorneys should keep their clients continuously updated about any developments regarding the funding, including whether the funds are ever in jeopardy.

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[1] See https://nysba.org/new-yorks-unregulated-litigation-lending-industry/?srsltid=AfmBOorufnoyNGQqocEzhHMsT8Ud8fTrhjMdf9EU5AfiOUDTYibFAorc.

[2] Index No. 628021/2025.

[3] Schmidt v. Burner, 202 A.D.3d 1117, 119 (2d Dep't 2022); Federal Ins. Co. v. North Am. Specialty Ins. Co. 47 A.D.3d 52, 59 (1st Dep't 2007).

[4] Rut v. Young Adult Inst., Inc., 74 A.D.3d 776, 777 (2nd Dept. 2010).

[5] New York Rules of Prof. Conduct. Rule 1.8.

[6] Mariano v Fiorvante, 118 A.D.3d 961, 963 (2d Dep't 2014).

[7] SeeCPLR 4503(a)(1); People v. Osorio, 75 N.Y.2d 80, 84 (1989); Sieger v. Zak, 60 A.D.3d 661, 662 (2d Dep't 2009) quoting Osorio.

[8] New York Rules of Prof. Conduct. Rule 1.2 (a); Rule 1.4.

[9] New York Rules of Prof. Conduct. Rule 1.15.

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Sig Sauer Let Ad Men Guide 'Defective' Gun Design, Suit Says

By **Ben Adlin**

Law360 (November 18, 2025, 10:35 PM EST) -- Sig Sauer Inc. allowed its marketing team to remove key safety features on its popular P320 pistol, resulting in a "defectively designed" weapon with a light trigger that's killed at least one person, a Washington gun owner alleged Monday in the latest of dozens of suits over the gun's design.

Patrick Schreiber claimed in a proposed class action in Seattle federal court that the New Hampshire-based arms manufacturer never warned him about the gun's alleged defects before he shelled out more than $1,000 for the pistol.

Sig Sauer knew of the P320's danger as far back as February 2017, when it evaluated the gun's safety hazards and reported to the U.S. Army that it was at "high risk" of unintentionally killing a person, Schreiber said.

At issue is the P320's light trigger pull and lack of any standard safety features that could prevent a misfire, he claimed. That means the gun "is functionally equivalent to a single action pistol with the hammer cocked back," he added, "i.e., ready to fire and without any safety features to prevent it from firing."

While the P320 was originally designed to have two safeties — a thumb safety and a trigger safety — Sig Sauer removed those features by decision of its marketing team, Schreiber alleged.

Rather than tell customers about the risk, Sig Sauer took "purposeful measures to prevent this information from entering the public domain," Schreiber said, for example dismissing reports of P320-related accidents as fraudulent or "anti-gun."

Schreiber's lawsuit comes on the heels of New Jersey's challenge last month **seeking a mandatory recall of the P320**. Law enforcement and civilians nationwide "have suffered immense harm as a result of Sig Sauer's actions and brazen deceptions," state Attorney General Matthew Platkin said at the time.

Although Schreiber doesn't claim he was harmed physically, he pointed to more than 30 personal injury lawsuits across the country filed by plaintiffs alleging that P320s went off unintentionally. The gunmaker has received more than 200 complaints of accidental discharges, he claimed, and collected "four binders' worth of incident reports concerning the P320 that its senior customer service manager keeps at his home."

Though the pistol is still sold, Schreiber pointed to multiple law enforcement agencies that have banned it over safety concerns.

U.S. Immigration and Customs Enforcement recently prohibited ICE officers from carrying the P320, he claimed, and the National Law Enforcement Firearms Instructors Association has also banned the gun. More than a dozen law enforcement agencies — including police departments in Chicago and Milwaukee — have similarly forbidden or replaced the P320, he said.

Schreiber sued Sig Sauer under the Washington Consumer Protection Act, which forbids unfair or deceptive business acts. He's seeking to certify a class of all Washington state buyers of P320 pistols that lacked an external thumb safety dating to Nov. 17, 2021.

The suit doesn't specify a damages amount, but it notes that plaintiffs are entitled to triple damages under the Washington CPA. Schreiber said a damages model presented and supported by an economist will allow a jury to determine how much buyers overpaid for the gun.

Schreiber also wants the court to require that Sig Sauer either "adequately disclose" or fix the alleged defect.

Sig Sauer did not immediately respond to a request for comment Tuesday. Counsel for Schreiber also did not immediately respond.

Patrick Schreiber is represented by Amanda M. Steiner of Terrell Marshall Law Group PLLC, Matthew L. Dameron and Clinton J. Mann of Williams Dirks Dameron LLC and Todd C. Werts of Lear Werts LLP.

Counsel information for Sig Sauer Inc. was not immediately available.

The case is Schreiber v. Sig Sauer Inc., case number 2:25-cv-02303, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Emily Field. Editing by Bruce Goldman.
